

**UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.**

**Before the Honorable Doris Johnson Hines
Administrative Law Judge**

In the Matter of

**CERTAIN VEHICLE TELEMATICS,
FLEET MANAGEMENT, AND VIDEO-
BASED SAFETY SYSTEMS, DEVICES,
AND COMPONENTS THEREOF**

Investigation No. 337-TA-1393

**COMPLAINANT SAMSARA INC.'S MOTION TO DECLASSIFY DOCUMENTS
IMPROPERLY DESIGNATED CONFIDENTIAL BUSINESS INFORMATION BY
RESPONDENT**

Pursuant to Commission Rules 210.20(a) and 201.6(a)(1), and Paragraphs 2(b) and 10 of the Protective Order (Order No. 1), Complainant Samsara Inc. moves to declassify, either in full or in part, 37 documents produced by Respondent Motive Technologies, Inc. in this Investigation that contain Samsara's confidential information and relate to Motive's extensive and concerted efforts to copy Samsara's products and misappropriate Samsara's trade secrets.

Pursuant to Ground Rule 5.1, Complainant certifies that the parties made good-faith efforts to resolve the matter, including through a meet and confer, a prior case management conference, and another meet and confer that occurred on Monday, September 23, 2024. Motive contends that the information Samsara seeks to declassify is Motive's own confidential business information. As explained in the accompanying memorandum, this is not so. Motive's characterization of the documents is both overbroad and incorrect—many of the documents contain CBI that belongs to

Samsara, not Motive.¹ Further, to the extent the documents contain Motive CBI, Samsara has proposed extensive redactions that would de-designate only the portions of those documents that do not contain Motive's CBI. Samsara's request is thus narrowly tailored, and should be granted.

DATED: September 25, 2024

Respectfully submitted,

/s/ Ellisen S. Turner

Ellisen S. Turner, P.C.

Ali-Reza Boloori

KIRKLAND & ELLIS LLP

2049 Century Park East

Los Angeles, CA 90067

Telephone: (310) 552-4200

Facsimile: (310) 552-5900

Leslie Diaz

KIRKLAND & ELLIS LLP

555 South Flower Street, Suite 3700

Los Angeles, CA 90071

Telephone: (213) 680-8400

Facsimile: (213) 680-8500

Joseph A. Loy, P.C.

Joshua L. Simmons

Matt Hershkowitz

KIRKLAND & ELLIS LLP

601 Lexington Avenue

New York, NY 10022

Telephone: (212) 446-4800

Facsimile: (212) 446-4900

Jeanne M. Heffernan, P.C.

Beth Knuppel

Connor M. Donaldson

KIRKLAND & ELLIS LLP

401 Congress Avenue

Austin, TX 78701

¹ After declassification, Complainant intends to seek re-designation of Samsara CBI after in-house review.

Telephone: (512) 678-9100
Facsimile: (512) 678-9101

Paul F. Brinkman, P.C.
Karthik Ravishankar
Matthew J. McIntee
Alexandra Obiol
KIRKLAND & ELLIS LLP
1301 Pennsylvania Avenue NW
Washington, DC 20004
Telephone: (202) 389-5000

Tasha Francis Gerasimow, Ph.D.
KIRKLAND & ELLIS LLP
333 West Wolf Point Plaza
Chicago, IL 60654
Telephone: (312) 862-2000

Tiffany M. Knapp
200 Clarendon Street
Boston, MA 02116
Telephone: (617) 385-7500

*Counsel for Complainant
Samsara Inc.*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been filed and served on October 3, 2024, on the following:

The Honorable Lisa R. Barton Secretary to the Commission U.S. INTERNATIONAL TRADE COMMISSION 500 E Street, S.W., Room 112-A Washington, D.C. 20436	<input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via FedEx <input type="checkbox"/> Via Electronic Mail <input checked="" type="checkbox"/> Via Electronic Filing (EDIS)
The Honorable Doris Johnson Hines Administrative Law Judge U.S. INTERNATIONAL TRADE COMMISSION 500 E Street, S.W. Washington, D.C. 20436 JohnsonHines1393@usitc.gov	<input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via FedEx <input checked="" type="checkbox"/> Via Electronic Mail <input checked="" type="checkbox"/> Via Electronic Filing (EDIS)
Megan Wantland Investigative Attorney Office of Unfair Import Investigations U.S. INTERNATIONAL TRADE COMMISSION 500 E Street, S.W. Washington, D.C. 20436 megan.wantland@usitc.gov	<input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via FedEx <input checked="" type="checkbox"/> Via Electronic Mail <input type="checkbox"/> Via Electronic Filing (EDIS)
Aamir A. Kazi FISH & RICHARDSON P.C. 1180 Peachtree St. NE, 21st Floor Atlanta, GA 30309 kazi@fr.com ServiceMotive-SamsaraITC1393@fr.com COUNSEL FOR MOTIVE TECHNOLOGIES, INC.	<input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via FedEx <input checked="" type="checkbox"/> Via Electronic Mail <input type="checkbox"/> Via Electronic Filing (EDIS)

/s/ Vicki Merideth

Vicki Merideth

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**COMPLAINANT SAMSARA INC.'S MEMORANDUM IN SUPPORT OF ITS
MOTION TO DECLASSIFY DOCUMENTS IMPROPERLY DESIGNATED
CONFIDENTIAL BUSINESS INFORMATION BY RESPONDENT**



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I. INTRODUCTION

Motive has produced at least hundreds of documents that evidence a massive, years-long campaign to access and copy Samsara's products and misappropriate Samsara trade secrets and confidential information. Motive designated all of those documents as containing Motive Confidential Business Information (CBI). That includes documents that summarize Samsara's own internal business strategies and information, and documents that evidence Motive's efforts to obtain that Samsara confidential information from former Samsara employees. Although some of those documents appear to contain *Samsara* CBI, none can credibly be alleged to be entirely *Motive* CBI. Samsara has therefore asked Motive to declassify, and to allow Samsara's in-house counsel to review, only (a) 12 documents that Motive improperly marked as containing Motive CBI, and (b) narrow portions of 25 other documents, which can easily be redacted to remove any arguable Motive CBI (collectively, the "challenged documents").¹ Motive has refused.

Motive improperly maintains its overbroad and unsupportable assertion that every challenged document discloses only Motive's CBI. But the documents, on their face, show otherwise—they contain only Samsara confidential information, the dates and nature of Motive's unlawful efforts to obtain that information, and the specific people involved. Other than the actions and people involved in Motive's unlawful acts, nothing substantive about Motive's business appears anywhere in the redacted portions of any of the challenged documents. And no Commission rule or policy, and nothing in the Protective Order, supports Motive's efforts to hide

¹ For documents that contain Samsara CBI, Samsara would seek re-designation after Samsara in-house review. This motion includes one additional document that Motive recently produced that was referenced within documents previously addressed in the parties' letter briefs.

[REDACTED]

the mere fact that Motive's unlawful conduct occurred, or the identities of the people who directed and undertook its unlawful actions, from the public eye.

Motive also argues that, irrespective of whether any of the documents have actually been demonstrated to contain Motive CBI (and they have not), any declassification of even a portion of the challenged documents, and even disclosing the fact that they exist and demonstrate Motive's misconduct, will impede the Commission's investigatory functions. But Commission Rules and precedent demonstrate that the ALJ can and should selectively declassify improperly designated materials. Thus, pursuant to Commission Rules 210.20(a) and 201.6(a)(1), and Paragraphs 2(b) and 10 of the Protective Order, Samsara moves to declassify the documents in **Appendix A**, which are a small subset of the hundreds if not thousands of documents that demonstrate or relate to Motive's misconduct and unfair competition.

II. FACTUAL AND PROCEDURAL BACKGROUND

To address secondary considerations of non-obviousness, Complainant Samsara served discovery in this Investigation seeking information on Respondent Motive's efforts to copy Samsara's domestic industry (DI) products. In particular, Samsara sought discovery on both Motive's long-standing culture of copying Samsara generally, and Motive's specific efforts to access and use Samsara's DI products and otherwise copy patented product features. But Motive's resulting document production and testimony revealed something far more alarming. For years, Motive has gone to even greater lengths than Samsara could have ever suspected to not only copy Samsara's products, but to also engage in a massive and ongoing campaign to misappropriate trade secrets and other confidential information about Samsara's entire business. In many instances, the very same documents that show Motive's culture of copying also evidence Motive's other unfair acts. But the challenged documents all relate to just one aspect of Motive's scheme—its ongoing

[REDACTED]

practice of hiring former Samsara employees and grilling them for confidential information about every aspect of Samsara's internal business and sales strategies and product plans.

As discussed during the August 14, 2024 monthly case management conference (CMC), Samsara wanted to amend its Complaint in the present Investigation to address Motive's trade secret misappropriation. But upon further review of the evidence that Motive produced near the end of fact discovery, Samsara agreed with the Staff and Motive that, due to the apparently massive scale of Motive's misconduct, the further discovery needed to fully investigate it, and the additional witnesses and time that would be necessary to address it during an evidentiary hearing, the ALJ could not reasonably incorporate Samsara's trade secret claims into this Investigation at this late stage and maintain an acceptable schedule.

Motive asserted during the August 14, 2024 CMC that "[i]f they [Samsara] want to file a new case and believe they have the evidence to do it and consistent with the protective order, then they are entitled to," while objecting to all possible approaches to adjudicating the trade secret claims in the present Investigation. Ex. 1, Aug. 14, 2024 CMC Hearing Tr. at 72:7-12. Samsara now seeks to do exactly as Motive proposed, without being blocked by Motive's baseless CBI designations or accused of violating the Protective Order (PO). Samsara is entitled to seek redress for Motive's misconduct, including the misconduct that came to light during discovery. But Motive has made clear that (unless the documents are declassified) Motive will try to leverage the PO to prevent Samsara from using the information revealed in Motive's produced documents to file any claim for relief in any future litigation or administrative proceeding to address Motive's misconduct. And Motive intends to block that effort even if neither the produced documents nor their specific contents are disclosed to the public when Samsara's trade secret claims are filed. Motive is also blocking Samsara's outside counsel from showing any of the documents to Samsara

[REDACTED]

so that counsel can comprehensively advise on the scope of Motive's copying and misappropriation, and the bases that Motive's documents reveal for filing trade secret or other claims based on that misconduct.

In essence, Motive's assertion is that even though Motive produced clear evidence of its unlawful conduct shortly before discovery closed, the PO stands as a blockade that prevents Samsara from relying on that evidence to pursue any remedy, anywhere. This cannot be so—the purpose of a PO is to protect specific and demonstrable confidentiality, not shield unlawful behavior from redress. *See generally* Order No. 1; 19 C.F.R. § 210.5. Moreover, Motive previously agreed that there is nothing confidential about the fact that Motive has produced evidence in this Investigation that shows:

1. "Motive had been systematically getting Samsara's confidential information from the former Samsara employees that Motive hired and from other sources."
2. Motive had confidential Samsara documents within Motive's possession.
3. "[T]here were multiple conversations directed by Motive's own CEO where he would tell the Motive employees to interview the former Samsara employees that they had hired, get as much information about Samsara and its business operations and its products and features as they could from those employees, and then use that information to help Motive sell products, the same products at issue here, into the domestic industry."

Ex. 1, Aug. 14, 2024 CMC Hearing Tr. at 60:15–24, 61:3–10; *id.* at 75:18-21 (Motive's counsel stating "I know we went on the confidential record for that portion of the discussion. From our perspective, there wasn't any Motive confidential business information."); *Id.* at 76:8-10 (ALJ instructing "the court reporter to designate the entirety of the transcript as public" in light of Motive's confirmation that all of the above points are not CBI). These admittedly non-CBI facts are precisely the type of activity that the challenged documents demonstrate.

The 12 documents Samsara seeks to fully declassify (or reclassify as only Samsara CBI) include communications between Motive employees demonstrating Motive's solicitation of

[REDACTED]

confidential information from former Samsara employees and misappropriation of Samsara’s trade secrets, all without any information related to any protectable “processes, operations, or style of works” of Motive. As for the remaining 25 documents, Samsara has proposed extensive redactions that would declassify (or reclassify as only Samsara CBI) only narrow portions of those documents, completely avoiding any potential for disclosure of any supposed Motive CBI. Samsara’s request is thus narrowly tailored and should be granted.

III. LEGAL STANDARD

Commission Rules allow any party to move to declassify documents, either in full or in part, that do not meet the Commission’s definition of “confidential business information” (CBI). See 19 C.F.R. § 210.20(a). CBI is defined as:

[A] information which concerns or relates to the *trade secrets, processes, operations, style of works*, or apparatus, or to the production, sales, shipments, purchases, transfers, identification of customers, inventories, or amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or other organization, or other information of commercial value, [B] the disclosure of which is likely to have the effect of either impairing the Commission’s ability to obtain such information as is necessary to perform its statutory functions, or causing substantial harm to the competitive position of the person, firm, partnership, corporation, or other organization from which the information was obtained,

19 C.F.R. § 201.6(a)(1) (emphasis added); Order No. 1 at ¶ 1 (same definition).² Textually, part [B] of the definition is an explicit, further limitation on whether any materials listed in Part [A] of the definition will be entitled to protection.

² The ALJ asked the parties to address what “style of works” means in this context. Samsara’s review of the legislative history and ITC precedent has not revealed any further definition or explanation of this specific term. But the surrounding context (“operations, style of works, or apparatus”) indicates that the word “works” refers either to (1) an object that is designed with a certain style that is not yet public, *i.e.*, “something produced or accomplished by effort, exertion, or exercise of skill” (as in “works of art”) or (2) specific manufacturing or industrial activities (as in “ironworks”). *Works*, MERRIAM-WEBSTER ONLINE, <https://www.merriam->

[REDACTED]

In evaluating motions to declassify, the Commission applies a two-part test. *Certain Integrated Circuit Products and Devices Containing the Same*, Inv. No. 337-TA-1295, Order No. 16 at 2 (May 31, 2022) (“*Integrated Circuit*”) (citing *Certain Network Devices, Related Software and Components Thereof*, Inv. No. 337-TA-944, Comm’n Declassification Op. at 6 (Apr. 19, 2017) (“*Network Devices*”)). **First**, to avoid declassification, the information must fall within the CBI definition set forth in 19 C.F.R. § 201.6(a)(1). *Id.* If the information falls within the Commission’s definition, it will be protected. *Id.* But the party seeking to maintain confidentiality (Motive) has the burden to demonstrate that the information falls within that definition. *Id.* at 1–2. Mere attorney argument does not suffice to meet that burden. *Id.* at 3, 5 (relying on declarations submitted by the non-moving party to evaluate the confidential nature of the challenged material); *Certain Foodservice Equipment and Components Thereof*, Inv. No. 337-TA-1166, Order No. 45 at 7 n. 5 (June 1, 2020) (“*Foodservice Equipment*”) (suggesting that proposed redactions to public orders should be supported by “declarations from individuals with personal knowledge, justifying each proposed redaction and specifically explaining why the information sought to be redacted meets the definition for [CBI under Commission Rules].”).

Second, the Commission evaluates whether the disclosure of the information is “likely to have the effect of either (1) impairing the Commission’s ability to obtain such information as is necessary to perform its statutory functions, or (2) causing substantial harm to the competitive position of the person, firm, partnership, corporation, or other organization from which the

webster.com/dictionary/works (last accessed Sept. 24, 2024). “Works” in this context cannot be an indefinite, amorphous concept that would apply to any and all activities or tasks undertaken by a business, as Motive appears to contend, or there would be no need for the other terms in the CBI definition, and all business activity of any kind would automatically be CBI.

[REDACTED]

information was obtained.” *Integrated Circuit* at 2. Publicly available information is not CBI, nor is otherwise unprotectable information that would be embarrassing or disreputable. *Id.*

IV. MOTIVE’S BLANKET DESIGNATIONS FALL SHORT OF ITS BURDEN TO SHOW THE CHALLENGED DOCUMENTS CONTAIN CBI

Motive broadly contends “[a]ll of the [37]³ documents Samsara seeks to have declassified are internal to Motive and all include confidential information regarding Motive’s ‘processes, operations, [and] style of work.’” Ex. 2 at 1. Motive’s basis for this argument is that the documents Samsara seeks to de-designate are internal emails and Slack communications. *Id.* at 2. But Motive fails to support any contention that any of the specific content within each document meets the CBI definition. Similarly, Motive contends that the entire documents constitute Motive CBI “such that redaction is not feasible.” *See* Ex. 3, 4. With this blanket designation and mere attorney argument,⁴ Motive has not met its burden to establish that the narrow set of information Samsara seeks to de-designate constitutes CBI. The Commission has found an “all-or-nothing” approach to confidentiality designations to be “inappropriate.” *Integrated Circuit* at 3. The analysis must instead “focus on the exact words alleged to be confidential,” rather than on “the

³ Since submission of the parties’ letters on this issue and the September 12, 2024 CMC, Samsara has identified an additional document (MOTIVE-ITC-1393-1099516) that it seeks to de-designate in part, as outlined in Appendix A. It appears to be [REDACTED] that was linked in the previously challenged document at MOTIVE-ITC-1393-0465176 (Ex. 20). Samsara no longer seeks declassification of MOTIVE-ITC-1393-0432148 or MOTIVE-ITC-1393-0432150 at this time as they are partially redundant.

⁴ Samsara does not challenge Motive’s practice of broadly applying initial CBI designations to voluminous company internal documents during ESI discovery. Rather, Samsara challenges Motive’s unsupported attempts to *maintain* its CBI designations for the few, specific documents addressed in this motion, where there is either no CBI involved, or the only CBI is either redacted or actually belongs to Samsara.

[REDACTED]

nature of the document containing the allegedly confidential information.” *Id.* at 2–4. Thus, confidentiality is evaluated on a “word-by-word” basis. *Id.*

In *Integrated Circuit*, the respondent sought to declassify portions of a license agreement, which had been designated as CBI in its entirety. *Id.* at 2. The complainant opposed the respondent’s motion, arguing the license overall “relat[ed] to the amount and source of income of [complainant], and is of commercial value, and meets both prongs of the second part of the CBI definition, that is, its disclosure would impair the Commission’s ability to obtain CBI in the future and would cause [complainant] competitive harm.” *Id.* at 3 (internal quotations omitted). The Commission rejected this argument and the complainant’s “all-or-nothing” approach to CBI designation. *Id.* Though the Commission agreed that the complainant was “in the business of licensing its intellectual property rights,” *id.* (internal quotations omitted), it was publicly known that complainant had entered into such license agreements. *Id.* Thus, the Commission found that the existence of the license agreement was public knowledge without commercial value, and determined to de-designate the agreement in part.

Like the complainant in *Integrated Circuit*, Motive’s blanket designations of the challenged documents as containing Motive CBI merely because they are internal communications is inappropriate. The required “word-by-word” analysis shows that the documents contain information that is not *Motive* CBI as defined by the Commission. For example, two documents, as redacted, contain [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

Exs. 15–18.

[REDACTED]

Another document is [REDACTED]

[REDACTED] Ex. 19. [REDACTED]

[REDACTED]

[REDACTED] but any potential CBI regarding any supposed Motive competitive advantages are not revealed. Motive argues that this calendar invite contains “information concerning Motive’s ‘processes, operations, [and] style of work’ by revealing the subjects of internal company meetings.” Ex. 2 at 2. But Motive has offered no basis to conclude that the mere fact that companies have meetings, or that the subject of those meetings includes discussions about their competitors, is confidential. Indeed, the fact that Motive conducts competitive intelligence of its competitors, including Samsara, is public knowledge, *see* Motive’s Response to the Complaint and NOI at ¶ 13, and thus is not a reasonable basis for full designation of the documents.

Motive’s CBI argument also fails because Motive has not established that the mere fact that it conducts internal meetings with former Samsara employees, about Samsara’s products and internal business, has commercial value to Motive that would be impacted if those facts became known. *See Integrated Circuit* at 5–6. Motive has also offered no basis to conclude that its attempts (through its CEO and other senior executives and employees) to secure confidential information from any former Samara employee is confidential, and indeed Motive already agreed during the August 14, 2024 CMC that such topics, and the fact that Motive produced documents that demonstrate that activity, are not CBI. Ex. 1, Aug. 14, 2024 CMC Hearing Tr. at 61:3–10, 75:17-23; *Cf. Integrated Circuits* at 5 (citing *Network Devices*) (describing public characterizations leading to declassifications of the associated information). The information that Samsara seeks to declassify from the challenged documents evidences that admitted non-CBI activity. *See, e.g.,* Exs. 13–14, 21.

[REDACTED]

Another challenged document shows that [REDACTED]

[REDACTED]

[REDACTED]. Ex. 20. Motive’s possession of Samsara’s trade secrets, and efforts to obtain them, is not CBI deserving protection—it’s a violation of Section 337. And, even if the underlying documents were partially entitled to CBI protection, the fact that Motive engaged in such misconduct, and that Motive produced documents in this Investigation evidencing that conduct, are not CBI under the Commission’s Rules or the Protective Order.

Motive argues that “Samsara has not identified any publicly available material among the [37] documents.” Ex. 2 at 2. But it is Motive’s burden—not Samsara’s—to demonstrate that each piece of information it seeks to protect falls within the Commission’s definition of CBI. *Integrated Circuit* at 1-2. Motive has not done so, and the challenged documents should be declassified.

V. DECLASSIFICATION OF THE CHALLENGED INFORMATION WILL NOT IMPAIR THE COMMISSION’S FUNCTION

Motive has failed to show that disclosure of the challenged information would “[impair] the Commission’s ability to obtain such information as is necessary to perform its statutory functions.” *Integrated Circuit* at 2. Motive relies on the factually unsupported theory, masquerading as an empirical prediction, that declassifying the challenged materials will result in some future parties somehow becoming reluctant to participate in the discovery process. This, says Motive will hinder the Commission’s “investigative mandate” which requires “obtain[ing] all information necessary, including a private party’s most sensitive information.” Ex. 2 at 2. Staff has echoed this point, further arguing that “permitting such declassification may also have the impact of dissuading (often necessary) third-party participation and cooperation during discovery as such parties would not be confident that the information provided to the Commission pursuant to a protective order would remain protected.” Ex. 5 at 2. As a result, Motive argues this chilling

[REDACTED]

effect will “multiply motion practice before the ITC.” Ex. 6, Sept. 12, 2024 CMC Hearing Tr. at 15:24–16:7.⁵ These arguments, unsupported by any demonstration that any such dissuasion or discouragement would actually occur in practice, presume that the information Samsara seeks to declassify is actually sensitive and protectible Motive confidential information to begin with. That presumption is wrong, and the unsupported policy arguments therefore fall apart at the seams. In the specific circumstances of the present case, declassification will actually serve and support the Commission’s core functions to investigate and put an end to unfair acts in multiple respects.

First, the mere fact that produced documents demonstrate that misconduct has occurred, while uncomfortable to admit for the guilty party, typically becomes public in the ordinary course of any proceedings that assert claims based on those documents. Motive cannot hide the mere fact that it possesses documents that support Samsara’s claims. Further, the *content* of the documents that reveal a party’s misconduct are also not shielded unless they demonstrably would disclose the producing party’s CBI. Here, none of the documents contain Motive CBI—they include only Samsara CBI and logistical information regarding Motive’s efforts to obtain it. Commission Rules guarantee only that “a private party’s most sensitive information” that meets the CBI definition is protected. *Integrated Circuit* at 2.⁶ Granting Samsara’s motion will not change or compromise that guarantee in any way. Here, the challenged documents do not reveal any of Motive’s “most sensitive information” as described by the Commission and embodied in its rules. Thus, de-

⁵ If any such chilling effect were a real concern, and a legitimate standalone basis upon which to maintain confidentiality, the ALJ and Commission could completely avoid it by ordering the challenged material declassified but then keeping the declassification order itself confidential.

⁶ Even that guarantee is qualified: the Commission may in some circumstances disclose information that it is required by law to disclose, despite otherwise applicable CBI protections. *See* 19 C.F.R. § 201.6(a)(1).

classification will not and cannot result in any chilling effect on future discovery because no party to an ITC investigation could or should have ever expected to be able to misuse the Commission's protective order to shield its non-sensitive information, to shield itself from remedy against its own unlawful conduct, to hide the fact that it possesses sensitive information belonging only to its opposing party, or to hide the dates that it obtained that information and the people directly involved.

Second, Motive and the Staff's position would yield the untenable conclusion that *any* opposed declassification, even where documents are clearly not CBI, would hinder the Commission's investigative function. That sweeping and unsupported generalization is insufficient because it contradicts the Commission Rules and the Protective Order, which have procedures in place for declassifying documents. *See* 19 C.F.R. § 210.20(a). The Rules demonstrate that lawmakers already balanced the Commission's investigative functions against (1) the possibility that a party would over-designate its documents to hide information, and (2) the needs for, and public's interest in, full disclosure of non-confidential information in the pursuit of justice and remedies for unfair acts. The Commission's and the public's interest in identifying, investigating, and preventing misconduct of the kind evidenced in the challenged documents is paramount. And both the Rules and the PO clearly and conclusively establish that declassification can and will occur in appropriate circumstances, such as this. Nothing about complying with the black letter of the Commission's established rules can plausibly be found to discourage law-abiding parties with legitimate confidentiality concerns about actual CBI from complying with document requests or otherwise fully participating in the discovery process. Instead, Motive's approach encourages broad over-designation of non-CBI materials in a manner designed to disrupt parties and the Commission from investigating and halting unfair acts disclosed late in the

[REDACTED]

discovery process, such as Motive’s massive efforts to misappropriate trade secrets here. Such injustice cannot possibly be consistent with Commission law or policy.⁷

Moreover, all the documents in question are *party* discovery. The Commission provides every administrative law judge with the ability to compel discovery and to sanction parties who fail to timely comply. *See* 19 C.F.R. § 210.33. Wrongdoers, who improperly withhold relevant documents, may be sanctioned. The Commission thus has a full ability to obtain all necessary discovery, and to timely conduct and complete its Investigation if a party completely fails to provide what is required. It is those discovery and sanction procedures, and the ethical obligations of parties and counsel, that encourage and ensure discovery compliance. No just system could reach the conclusion that merely enforcing the black letter of its rules and orders (which here strictly limit the class of CBI documents) would somehow discourage honest, timely and forthright compliance. To the contrary, strict adherence to those rules and orders, even when they result in declassification, provides assurance that the Commission’s Rules and Orders actually mean what they say, and will not be subject to the whims and wishes of one party to hide whatever information it desires from scrutiny. Further, Motive’s argument that de-designation will result in increased motion practice because parties will be more reluctant to “liberally produce documents” ignores that Motive produced the challenged documents only after Samsara was forced to resort to motion

⁷ Staff points out that “[d]iscovery documents are generally not available to the public unless and until those documents become part of the investigatory or evidentiary record via citation in a motion and/or as part of the documents submitted as evidence during the hearing.” Ex. 5 at 2. But that is merely a question of timing and procedural posture, not a substantive argument against declassification. It makes no difference to a document’s CBI status whether its declassification was sought before use in a proceeding rather than after. Notably, Samsara also sought to use all but one of the challenged documents in a draft Amended Complaint, an effort that both Motive and the Staff rebuffed (albeit each for their own different reasons).

[REDACTED]

practice and the ALJ ordered the documents produced. *See* Ex. 8, June 18, 2024 CMC Hearing Tr.

Third, the Commission (and the ALJ here) has demonstrated thoughtful evaluation of motions to declassify—including those implicating third-party CBI—inspiring trust in the Rules and the system, and ensuring that no parties or third-parties will not be dissuaded from fully participating in the discovery process. Indeed, as the instant motion practice and the three letter briefs and hearing that preceded it demonstrate, a future party can rest assured that before any of its produced materials are even considered for declassification, it will have a full and fair opportunity to be heard, and that only truly non-CBI will be declassified. For example, in *Foodservice Equipment*, the Commission evaluated the respondents’ request to declassify documents that contained the third-party CBI of a private investigator who had procured the challenged documents for the complainant. *See generally Foodservice Equipment*, Inv. No. 337-TA-1166, Order No. 45 (June 1, 2020). The Commission, acknowledging that the documents would reveal the investigator’s valuable CBI insofar as it revealed the proprietary methods and personnel employed to obtain such evidence, determined to not declassify the documents. *Id.* at 5–6. Thus, *Foodservice Equipment* illustrates the Commission’s careful consideration and handling of third-party CBI in its declassification analysis, negating any concern that motions to declassify will result in thoughtless, mass-declassification of properly designated, third-party CBI.

The Commission’s thoughtful analysis is further demonstrated in *Integrated Circuit*. There, the Commission chose to declassify only portions of the challenged license agreement, rather than the entire document, with careful consideration of what information declassified might actually “cause substantial harm to the competitive position” of the affected non-moving party and third party. *See generally Integrated Circuit*. Indeed, *Integrated Circuit* serves as an example that

[REDACTED]

the Commission *has* declassified documents without a resulting chilling effect on the discovery process. In short, the weight of the Commission’s many decisions carefully evaluating the scope and nature of alleged CBI protections inspire confidence and trust, rather than skepticism, that the Commission will protect true CBI from public disclosure.

Finally, Samsara’s identification and selection of a narrow set of information for challenge and review further mitigates any alleged chilling effect that Motive or Staff argues declassification may create. Motive has produced over 230,000 documents in this Investigation, with potentially hundreds or thousands of them relating to Motive’s efforts to copy Samsara products and misappropriate Samsara’s trade secrets. Samsara requests declassification of only 37 of those documents. Of those 37, Samsara requests full declassification of only 12. For the remaining 25, Samsara has only requested a narrow set of information to be declassified. Therefore, such declassification is narrow and will not strike fear that true CBI will ever be declassified by the Commission.

VI. SAMSARA HAS ACTED IN GOOD FAITH AND IN ACCORDANCE WITH THE PARTIES’ PROTECTIVE ORDER

Motive has expressed doubt that declassification of the challenged documents is necessary for Samsara to advise its client, arguing that Samsara’s “public complaints already include recitations of Motive’s alleged conduct,” and that Samsara’s CEO is aware of some of Motive’s conduct. Ex. 2 at 3. Motive claims that “eight months before taking discovery, Samsara was alleging that Motive was engaged in trade secret misappropriation.” *Id.* at 2. This is not so. Samsara’s complaints against Motive, both in the ITC and in other forums, did not allege trade secret misappropriation. *See* Complaint ¶¶ 4, 14; *see also Samsara v. Motive*, Case No. 1:24-cv-00084-UNA, Dkt. No. 1 at ¶¶ 4, 92–96. Those filings show only that Samsara was generally aware that Motive was hiring its former employees and potentially soliciting them for information about

[REDACTED]

Samsara’s products, not that Motive, at its CEO’s behest, had engaged in the years of massive efforts to misappropriate Samsara’s business and technical trade secrets from a dozen or more former Samsara employees as the discovery in this Investigation has now revealed.

Motive’s overbroad designations impede Samsara’s counsel’s ability to advise its client on case developments and further evaluate the scope of the trade secrets that Motive misappropriated. *See Certain High-Potency Sweeteners*, Inv. No. 337-TA-1030, Order No. 8 at 7 (Mar. 28, 2017) (granting respondent’s motion to de-designate alleged CBI where respondents argued that they “have been deprived of crucially important information about the development of this case” and “[t]he lack of information has significantly impeded counsel’s ability to effectively advise their clients”) (internal quotations omitted). Identifying the types and content of Samsara information that Motive misappropriated, the people involved, and the dates such misappropriation occurred, will allow Samsara to complete a further investigation, seek appropriate remedies, and put an end to Motive’s unlawful conduct. Motive’s refusal to declassify the materials does not protect Motive’s CBI, but instead seeks to protect Motive from the consequences of its unlawful behavior.⁸

Motive argues that Samsara’s reasons for requesting de-designation are improper and “for reasons prohibited by the PO—to disclose this information to its client and to include Motive’s

⁸ At the September 12, 2024 CMC, Counsel for Motive argued that Samsara seeks to de-designate “for an improper purpose, and that is to embarrass [Motive] publicly, to expand the cloud that has been put over [Motive] by the filing of these lawsuits, and to keep pressure on [Motive]’s customers, investors, and others, to not do business with us.” Ex. 6 at 18–19. Motive’s baseless contentions about Samsara’s motivations for de-designating these documents are wrong. But even so, any embarrassment or harm to Motive’s reputation that may result from declassification of these documents (and its own misconduct) is not a sufficient rationale to maintain their CBI designation. *Integrated Circuit*, Order No. 16 at 2.

[REDACTED]

CBI as part of a new complaint.” Ex. 2 at 2. To the contrary, Samsara’s counsel has followed the procedures outlined by the PO to request de-designation of the challenged documents before using them in any way, and without sharing those documents with its client. *See* Order No. 1 at ¶¶ 2(b), 10. Further, Samsara’s desire to include the challenged documents in a new complaint came at Motive’s own urging. Originally, after Motive finally produced these documents, Samsara sought to amend the Complaint in *this Investigation*. In opposing Samsara’s plan to do so, Motive opposed any procedure to add claims of trade secret misappropriation here and asserted that Samsara should instead raise any claims that arise from the challenged documents in a separate proceeding in another venue. Ex. 1, Aug. 14, 2024 CMC Hearing Tr. at 67:15–25, 72:7–12. Yet, Motive is now attempting to block the use of non-CBI materials for that purpose, arguing that cross-use of the materials is impermissible under the PO and, more generally, would have a chilling effect on discovery in ITC investigation. *See* Ex. 2 at 3. This is particularly hypocritical, as just this week Motive affirmatively requested cross-use of *all* discovery produced in this Investigation for use in concurrent arbitration proceedings between the parties. *See* Ex. 13, Sept. 23, 2024 Arb. Conf. Hearing Tr. (Rough) at 12:7–15, 5: 7–11. Motive cannot favor cross-use in one venue to its benefit, and oppose it in another for the sole purpose of blocking Samsara’s ability to pursue valid claims against Motive.

Moreover, Motive has stalemated Samsara’s counsels’ efforts to attempt to reach a compromise on the issue. At the September 12, 2024 CMC, counsel for Motive suggested middle ground—that it would allow Samsara’s counsel to share the challenged materials with its client to avoid full public declassification. Ex. 6, Sept. 12, 2024 CMC Hearing Tr. at 25:5–12. Your Honor suggested the parties confer on that point. *Id.* at 25:20–23. Since that CMC, Samsara reached out to Motive on three separate days providing times to confer, and a fourth time asking for Motive’s

[REDACTED]

availability to confer. Only after this fourth outreach did Motive inform counsel for Samsara that it believed it “unlikely [the parties] will be able to reach agreement on this issue.” Ex. 7.

Finally, to the extent Motive argues that Samsara abused the discovery process to obtain these documents—that is not so. The challenged documents were obtained as a result of the ALJ’s order for Motive to produce documents responsive to Samsara’s discovery requests pertaining to copying, a secondary consideration of non-obviousness relevant to Samsara’s public interest analysis. *See* Ex. 8, June 18, 2024 CMC Hearing Tr. This discovery was keenly directed at the Motive employees and individuals identifiable as having accessed Samsara’s platforms through Samsara’s own access logs. *See* Ex. 9 (SAMSARA-1393-ITC_090744), Ex. 10 (SAMSARA-1393-ITC_090747), Ex. 11 (SAMSARA-1393-ITC_090708). The discovery was *not* dedicated towards development of any trade secret misappropriation claims against Motive. Rather, Motive produced documents responsive to Samsara’s relevant discovery requests that revealed Motive was misappropriating Samsara’s trade secrets. Indeed, in some instances Motive’s efforts to access and copy Samsara’s products [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. *See* Exs. 22–23.

In sum, when Samsara sought to amend the complaint in this Investigation to pursue trade secrets claims, Motive suggested that Samsara instead pursue those claims in another venue or a separate proceeding. Ex. 1, Aug. 14, 2024 CMC Hearing Tr. at 67:15–25, 72:7–12. Now, Motive seeks to prevent Samsara from doing so by blocking Samsara’s counsel from advising its client on the subjects and scope of the trade secrets that Motive misappropriated, and the timeline and identities of the persons involved, by improperly designating documents as containing Motive’s

[REDACTED]

CBI. But to the extent any of the material Samsara seeks to declassify constitutes CBI, it is Samsara's and not Motive's, and Samsara has therefore properly and in good faith sought its declassification for client review and so that Samsara can fully pursue remedies against Motive's misconduct.

VII. CONCLUSION

For the foregoing reasons, Samsara respectfully requests that the ALJ declassify Motive's documents consistent with Appendix A. As indicated in the Appendix, certain documents should be fully declassified, while others should be declassified as containing Motive CBI but may still be designated as containing Samsara CBI upon review by Samsara.

DATED: September 25, 2024

Respectfully submitted,

/s/ Ellisen S. Turner

Ellisen S. Turner, P.C.

Ali-Reza Boloori

KIRKLAND & ELLIS LLP

2049 Century Park East

Los Angeles, CA 90067

Telephone: (310) 552-4200

Facsimile: (310) 552-5900

Leslie Diaz

KIRKLAND & ELLIS LLP

555 South Flower Street, Suite 3700

Los Angeles, CA 90071

Telephone: (213) 680-8400

Facsimile: (213) 680-8500

Joseph A. Loy, P.C.

Joshua L. Simmons


Matt Hershkowitz

KIRKLAND & ELLIS LLP

601 Lexington Avenue

New York, NY 10022

Telephone: (212) 446-4800



Facsimile: (212) 446-4900

Jeanne M. Heffernan, P.C.
Beth Knuppel
Connor M. Donaldson
KIRKLAND & ELLIS LLP
401 Congress Avenue
Austin, TX 78701
Telephone: (512) 678-9100
Facsimile: (512) 678-9101

Paul F. Brinkman, P.C.
Karthik Ravishankar
Matthew J. McIntee
Alexandra Obiol
KIRKLAND & ELLIS LLP
1301 Pennsylvania Avenue NW
Washington, DC 20004
Telephone: (202) 389-5000

Tasha Francis Gerasimow, Ph.D.
KIRKLAND & ELLIS LLP
333 West Wolf Point Plaza
Chicago, IL 60654
Telephone: (312) 862-2000

Tiffany M. Knapp
200 Clarendon Street
Boston, MA 02116
Telephone: (617) 385-7500

*Counsel for Complainant
Samsara Inc.*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been filed and served on October 3, 2024, on the following:

The Honorable Lisa R. Barton Secretary to the Commission U.S. INTERNATIONAL TRADE COMMISSION 500 E Street, S.W., Room 112-A Washington, D.C. 20436	<input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via FedEx <input type="checkbox"/> Via Electronic Mail <input checked="" type="checkbox"/> Via Electronic Filing (EDIS)
The Honorable Doris Johnson Hines Administrative Law Judge U.S. INTERNATIONAL TRADE COMMISSION 500 E Street, S.W. Washington, D.C. 20436 JohnsonHines1393@usitc.gov	<input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via FedEx <input checked="" type="checkbox"/> Via Electronic Mail <input checked="" type="checkbox"/> Via Electronic Filing (EDIS)
Megan Wantland Investigative Attorney Office of Unfair Import Investigations U.S. INTERNATIONAL TRADE COMMISSION 500 E Street, S.W. Washington, D.C. 20436 megan.wantland@usitc.gov	<input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via FedEx <input checked="" type="checkbox"/> Via Electronic Mail <input type="checkbox"/> Via Electronic Filing (EDIS)
Aamir A. Kazi FISH & RICHARDSON P.C. 1180 Peachtree St. NE, 21st Floor Atlanta, GA 30309 kazi@fr.com ServiceMotive-SamsaraITC1393@fr.com COUNSEL FOR MOTIVE TECHNOLOGIES, INC.	<input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via FedEx <input checked="" type="checkbox"/> Via Electronic Mail <input type="checkbox"/> Via Electronic Filing (EDIS)

/s/ Vicki Merideth



Appendix A
Motive Documents for Declassification

The following materials do not contain Motive CBI where indicated, but in certain instances may still contain Samsara CBI, which Samsara’s counsel would identify after client review. The chart indicates for each document either (a) that the entire document should be declassified by Motive, (b) the specific material that should be declassified by Motive, or (c) although the entire document should be declassified by Motive, specifically identified material may nevertheless be redacted to the extent Motive contends it contains Motive CBI. Motive refused to declassify even redacted versions of any of the below documents, and has not provided any of its own proposed redactions.

Exhibit Nos.	Bates No.	Information to <u>Declassify</u>
13, 14	MOTIVE-ITC-1393-0432154	

Exhibit Nos.	Bates No.	Information to <u>Declassify</u>
15, 16	MOTIVE-ITC-1393-1511225	The entire document should be declassified, <u>except</u> the following <u>may be redacted</u> : <div></div>
17, 18	MOTIVE-ITC-1393-1099516	The entire document should be declassified, <u>except</u> the following <u>may be redacted</u> : <div></div>
19	MOTIVE-ITC-1393-1010951	The entire document should be declassified.
20	MOTIVE-ITC-1393-0465176	The entire document should be declassified.
21	MOTIVE-ITC-1393-1480589	The entire document should be declassified.
22, 23	MOTIVE-ITC-1393-0518711	The entire document should be declassified, <u>except</u> for the bullets listed under "Documents:" <u>may be redacted</u> .
24, 25	MOTIVE-ITC-1393-0077226	
26, 27	MOTIVE-ITC-1393-0415591	The following text: <div></div>



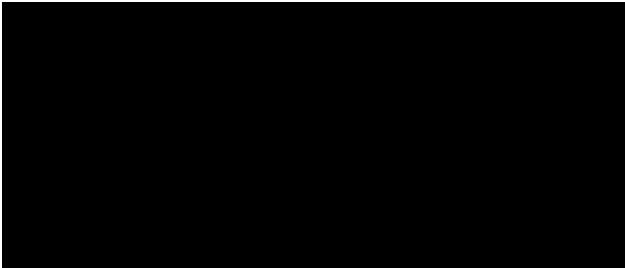
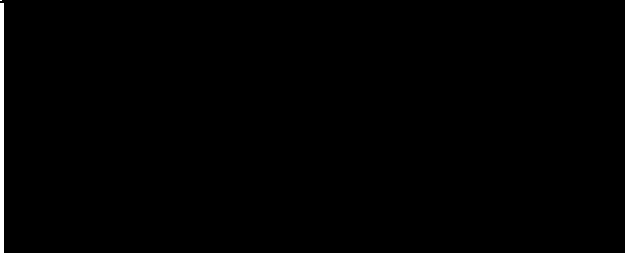
Exhibit Nos.	Bates No.	Information to <u>Declassify</u>
28, 29	MOTIVE-ITC-1393-0416900	
30, 31	MOTIVE-ITC-1393-0431599	
32, 33	MOTIVE-ITC-1393-0434429	The entire document should be declassified, <u>except</u> the following italicized comments at - 0434429 <u>may be redacted</u> : 
34, 35	MOTIVE-ITC-1393-0437316	

Exhibit Nos.	Bates No.	Information to <u>Declassify</u>
36, 37	MOTIVE-ITC-1393-0476983	
38, 39	MOTIVE-ITC-1393-0481606	
40	MOTIVE-ITC-1393-0486595	The entire document should be declassified.
41	MOTIVE-ITC-1393-0495156	The entire document should be declassified.
42, 43	MOTIVE-ITC-1393-0942977	
44	MOTIVE-ITC-1393-0998286	The entire document should be declassified.
45	MOTIVE-ITC-1393-1003179	The entire document should be declassified.
46, 47	MOTIVE-ITC-1393-1012271	



Exhibit Nos.	Bates No.	Information to <u>Declassify</u>
48	MOTIVE-ITC-1393-1015394	The entire document should be declassified.
49, 50	MOTIVE-ITC-1393-1052128	
51, 52	MOTIVE-ITC-1393-1056510	
53, 54	MOTIVE-ITC-1393-1056847	
55	MOTIVE-ITC-1393-1110910	The entire document should be declassified.
56, 57	MOTIVE-ITC-1393-1358588	

[REDACTED]

Exhibit Nos.	Bates No.	Information to <u>Declassify</u>
		[REDACTED]
58, 59	MOTIVE-ITC-1393-1393870	[REDACTED]
60, 61	MOTIVE-ITC-1393-1405577	[REDACTED]

[REDACTED]

Exhibit Nos.	Bates No.	Information to <u>Declassify</u>
		[REDACTED]
62	MOTIVE-ITC-1393-1407917	The entire document should be declassified.
63	MOTIVE-ITC-1393-1408885	The entire document should be declassified.
64	MOTIVE-ITC-1393-1414526	The entire document should be declassified.



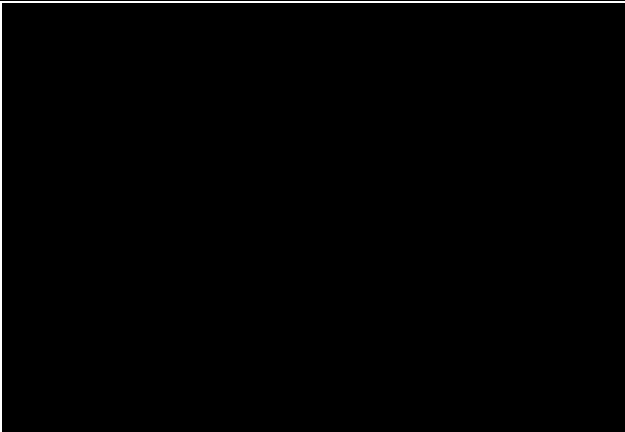
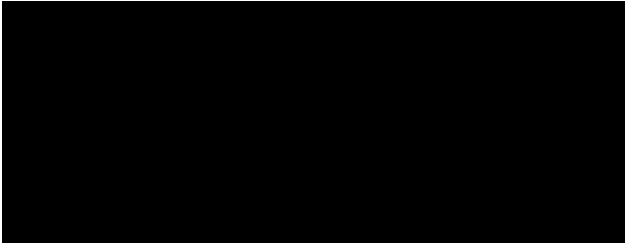
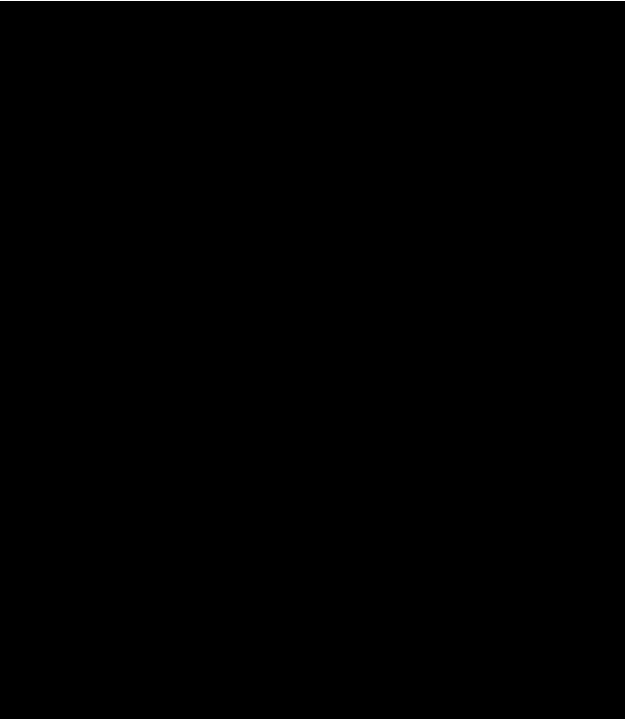
Exhibit Nos.	Bates No.	Information to <u>Declassify</u>
65, 66	MOTIVE-ITC-1393-1477481	
67, 68	MOTIVE-ITC-1393-1478381	
69, 70	MOTIVE-ITC-1393-1480547	<p>The entire document should be declassified, <u>except</u> the following text at -1480550 <u>may be redacted</u>:</p> 



Exhibit Nos.	Bates No.	Information to <u>Declassify</u>
71, 72	MOTIVE-ITC-1393-1481848	
73, 74	MOTIVE-ITC-1393-1488653	The entire document should be declassified, <u>except</u> page -1488655 <u>may be redacted.</u>

EXHIBIT 1

UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:)	Investigation No.
CERTAIN VEHICLE TELEMATICS, FLEET)	337-TA-1393
MANAGEMENT, AND VIDEO-BASED SAFETY)	
SYSTEMS, DEVICES, AND COMPONENTS)	
THEREOF)	

Pages: 1 through 80

Place: Washington, D.C.

Date: August 14, 2024

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1 UNITED STATES INTERNATIONAL TRADE COMMISSION
2 Washington, D.C.
3 BEFORE THE HONORABLE DORIS JOHNSON HINES
4 Administrative Law Judge

5 _____
6 In the Matter of:) Investigation No.
7 CERTAIN VEHICLE TELEMATICS, FLEET) 337-TA-1393
8 MANAGEMENT, AND VIDEO-BASED SAFETY)
9 SYSTEMS, DEVICES, AND COMPONENTS)
10 THEREOF)
11 _____

12
13 International Trade Commission
14 500 E Street, S.W.
15 Washington, D.C.

16
17 Wednesday, August 14, 2024

18
19 Case Management Conference - Remote

20
21 The Case Management Conference commenced, pursuant to
22 the notice of the Judge, at 1:00 p.m. Eastern.

23
24
25 Reported by: Karen Brynteson, FAPR, RMR, CRR

1 APPEARANCES:

2

3 For Complainant Samsara Inc.:

4 ELLISEN S. TURNER, ESQ.

5 JOSHUA GLUCOFT, ESQ.

6 Kirkland & Ellis LLP

7 2049 Century Park East

8 Los Angeles, CA 90067

9

10 JOSEPH A. LOY, ESQ.

11 Kirkland & Ellis LLP

12 601 Lexington Avenue

13 New York, New York 10022

14

15

16

17

18

19

20

21

22

23

24

25

1 APPEARANCES: (CONTINUED)

2

3 For Respondent Motive Technologies, Inc.:

4 NOAH C. GRAUBART, ESQ.

5 AAMIR A. KAZI, ESQ.

6 Fish & Richardson P.C.

7 1180 Peachtree Street SE, Suite 2100

8 Atlanta, GA 30309

9

10 MICHAEL AMON, ESQ.

11 Fish & Richardson P.C.

12 12860 El Camino Real, Suite 400

13 San Diego, CA 92130

14

15 For the Office of Unfair Import Investigations:

16 MEGAN WANTLAND, ESQ.

17 Investigative Attorney

18 ANNE GOALWIN, ESQ.

19 Supervisory Attorney

20 U.S. International Trade Commission

21 500 E Street, S.W.

22 Washington, D.C. 20436

23

24

25

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

2 (1:00 p.m.)

3 JUDGE JOHNSON HINES: Good afternoon, everyone.

4 THE REPORTER: Good afternoon, Your Honor.

5 JUDGE JOHNSON HINES: We are here in
6 Investigation No. 337-TA-1393, Certain Vehicle Telematix,
7 Fleet Management, and Video-Based Safety Systems, Devices
8 and Components Thereof.

9 THE REPORTER: Excuse me, Your Honor.

10 JUDGE JOHNSON HINES: Are you getting feedback?

11 THE REPORTER: I am.

12 JUDGE JOHNSON HINES: All right. Can I have
13 folks mute? Thank you for whoever did that.

14 Can I have appearances of counsel, please. We
15 will start with Complainant.

16 MR. TURNER: Good morning, Your Honor. This is
17 Ellisen Turner with Kirkland & Ellis. Here with me today
18 are Joseph Loy and Josh Glucoft for Complainant.

19 JUDGE JOHNSON HINES: Good afternoon. And for
20 the Respondent.

21 MR. KAZI: Good afternoon, Your Honor, this is
22 Aamir Kazi with the law firm of Fish & Richardson here on
23 behalf of the Respondent. And with me today is Noah
24 Graubart and Michael Amon.

25 JUDGE JOHNSON HINES: Good morning. Or good

1 afternoon.

2 And I am now getting the feedback again. So
3 there we go. All right. Thank you.

4 And for the Staff, please.

5 MS. WANTLAND: Megan Wantland on behalf of the
6 Commission Investigative Staff. And with me, I am joined by
7 Anne Goalwin, supervisory attorney.

8 JUDGE JOHNSON HINES: Good afternoon. All right.

9 I received letters from the parties and also an
10 agenda. So we will follow the order of the proposed agenda.
11 Before we do that, I had a couple of questions that I wanted
12 to ask, some of which come from the conference that we had
13 July 17th and some then which lead into Motive's July 26th
14 letter.

15 The first question I have is with respect to
16 source code. We have talked about this generally at the
17 July 17th conference, and what I would like to know from
18 each party is where we are on the production of source code,
19 and the identification of what source code is actually on
20 accused products and what source code is used in the accused
21 products.

22 And the reason I'm asking these questions is I
23 would like the parties to be as clear as possible on these
24 issues so that the focus of any discussion and evidence at
25 the hearing can be about what's disputed and not whether or

1 not code is on products or implemented in products and that
2 the parties have an understanding of that, a mutual
3 understanding of that going in.

4 So, Mr. Turner, are there any questions on the
5 Respondents' source code, what code is actually on accused
6 products and what source code is actually used in the
7 accused products?

8 MR. TURNER: Thank you, Your Honor. Mr. Glucoft
9 will handle that issue for us.

10 JUDGE JOHNSON HINES: All right. Thank you.
11 Mr. Glucoft?

12 MR. GLUCOFT: Thank you, Your Honor. So at a
13 high level, I think by and large the answer is no. I think
14 the parties have figured it all out. There is only two
15 small residual issues with respect to the source code. One
16 is there is a certain version of the accused fuel score
17 feature, Version 3, we understand Respondent calls it, and
18 as far as we're aware, we have never received the source
19 code for specifically Version 3 of fuel score.

20 There are two other versions, Version 1 and
21 Version 2, which we did receive the source code for, but to
22 the extent that a V3 exists and we're not able to
23 independently confirm that it does, a V3 fuel score source
24 code appears to be lacking, but ultimately that's one of the
25 two issues.

1 The other is with respect to some
2 belatedly-produced source code related to certain redesigns
3 that Respondents have contended recently exists. I don't
4 know -- there's a dispute over whether that source code was
5 timely produced. I also don't know if the parties have come
6 to ground as to whether the identification of what in that
7 source code is operative, versus non-operative has been
8 complete, because that was only recently produced to us.
9 We're still analyzing that code.

10 So the identification of what's operative versus
11 non-operative specifically in the alleged redesigns is still
12 ongoing on our end.

13 JUDGE JOHNSON HINES: All right. Okay.

14 Have these issues, the first issue, Version 3,
15 the second issue, redesign, have these issues been raised
16 with counsel for Motive?

17 MR. GLUCOFT: So the issues with the redesigned
18 source code has been raised with counsel for Motive. It
19 will be the subject of a motion to strike that we intend to
20 file shortly and that the parties have conferred about.

21 The version -- the missing Version 3 code is
22 something that we have just recently figured out ourselves
23 because the code is fairly voluminous and we have asked --
24 we have had discussions about the sample products that were
25 exchanged between the parties enabling that code, so we

1 could try to figure it out, but we have not specifically
2 conferred about that piece yet, Your Honor.

3 JUDGE JOHNSON HINES: All right. So I suggest
4 that you do that. And the reason -- as I said, the reason
5 I'm asking these questions is because I would like to have
6 the parties have as much clarity as possible about what code
7 is -- what code is on the products and what code is used in
8 the products.

9 So before I move on from that, for the issues
10 that Mr. Glucoft raised, Mr. Kazi, is there a response?

11 MR. KAZI: Your Honor, I think this is the first
12 we're hearing of the fuel score V3 issue. I think we can
13 confer with counsel on that and hopefully get to the bottom
14 of that.

15 JUDGE JOHNSON HINES: All right.

16 MR. KAZI: On the redesign issue, I believe
17 counsel did raise what they believe to be questions about
18 the timeliness of the production, but I don't believe, to my
19 knowledge, that they have raised with us previously
20 questions about the completeness or the accuracy of, you
21 know, what's on the products and what isn't.

22 To the extent that's a question. I think we can
23 confer with them and address those issues. I do believe
24 there's a dispute between the parties as to the timeliness
25 of it. You know, we believe we produced the redesigned code

1 in time and they have a different perspective. And I think
2 that might have to be the subject of motion practice, but
3 with respect to what is actually on the device or not, I
4 don't think that that's really much of a disputed issue.

5 And perhaps it makes sense for us to discuss that
6 with counsel and get to the bottom of that because I don't
7 really -- there's nothing to hide there. You know, we could
8 quickly point them to what is on the --

9 JUDGE JOHNSON HINES: All right. Thank you for
10 that. Then I suggest on that issue as well, the parties
11 confer now that the issues have been somewhat -- at least
12 somewhat more fleshed out. Mr. Kazi, a question for you.

13 The same questions for you, but with respect to
14 the domestic industry products. Are there questions about
15 what code is on those products and what code is used?

16 MR. KAZI: I don't believe we have any questions
17 about what's on the products and what is used. I mean,
18 certainly we will see the expert report. And if something
19 comes up that we weren't expecting, maybe we will raise it,
20 but at this point, we do not have any such questions.

21 JUDGE JOHNSON HINES: All right. And I'm
22 certainly not meaning to preclude any issues that come up
23 later. What I want to do is flag the issues and see that we
24 can get as much clarity as possible.

25 All right. The next issue I had, Mr. Turner or

1 whoever on your team, at the July 17th conference, there was
2 a discussion about Motive teardowns and that some
3 information had been produced about Motive teardowns and
4 whether ESI related to teardowns could be provided.

5 And I would like to know what the status of that
6 is.

7 MR. TURNER: So Samsara's teardowns of Motive
8 products, I believe is what you're referring to as opposed
9 to Motive teardowns of Samsara products. So for Samsara
10 teardowns of Motive products, just for clarity --

11 JUDGE JOHNSON HINES: Yes.

12 MR. TURNER: -- which have been produced and also
13 addressed in depositions and interrogatories, so, yes, the
14 teardowns were provided.

15 JUDGE JOHNSON HINES: Okay. So that was my
16 understanding when we talked in July. Maybe not as to the
17 depositions, but that's some information about Samsara's
18 teardowns of Motive products that have been provided.

19 There was an additional discussion about -- and I
20 had asked a question at that hearing about ESI related to
21 those teardowns and whether it could be collected and
22 produced. My understanding of where that was left at the
23 July 17th hearing was that it was an interesting question
24 and that it was something that would be looked into.

25 And so I would like to know what has happened in

1 the month since.

2 MR. TURNER: Yes, Your Honor. Those were
3 collected and produced as well. I apologize. I didn't
4 realize you were referring to the communications about
5 those, and, yes, those were collected and produced. And,
6 again, talked about in depositions and interrogatory
7 responses.

8 JUDGE JOHNSON HINES: All right. And, Mr. Kazi,
9 is that your understanding as well?

10 MR. KAZI: Your Honor, I do believe the teardowns
11 themselves have been produced. With respect to ESI related
12 to those teardowns, there's no way for me to understand if
13 the entirety of those have been produced or not. Part of
14 the issue we have with the ESI requests generally is that we
15 have just not really received feedback on what is or isn't
16 going to be produced.

17 And so if counsel represents that some ESI
18 related to those teardowns have been produced, I'll take him
19 at his word, but I don't know that the entirety of it has
20 been produced and there is no way for us to tell because we
21 -- I do know that we asked for specific search terms that
22 would reveal those teardowns and the hit counts that were
23 provided for those search terms do not line up with what
24 they have produced. So there's certainly something that has
25 not been produced with respect to those documents.

1 JUDGE JOHNSON HINES: Well, according to what Mr.
2 Turner said, there has been depositions -- and I assumed
3 from that -- and that information relating to teardowns has
4 been addressed at depositions. I assumed that meant that
5 ESI related to those teardowns was addressed at depositions
6 as well.

7 Is that true, Mr. Kazi?

8 MR. KAZI: We did ask the witnesses about
9 teardowns. I don't believe that there was wholesome
10 explanations of it. I mean, I can point, for example, to
11 their corporate representative on this topic, on the topic
12 of competitive analysis. It was Mr. Benjamin Calderon. He
13 was asked who performed teardowns of Motive products. He
14 didn't know the answer to that.

15 He was asked: Other than the two teardowns that
16 he had mentioned in his deposition, if he was aware of any
17 others? And he didn't know the answer to that. And that's
18 at page 142 of his deposition. We're happy to submit that.

19 So certainly the questions were asked. But I
20 don't believe that we received fulsome responses, and I
21 don't want to jump the gun here, but this was sort of the
22 issue that we were inquiring about when we talked about why
23 we needed the ESI in the first instance. It was to be able
24 to investigate these issues prior to the deposition.

25 And so the short answer to your question, Your

1 Honor, is the questions were asked but I don't believe that
2 they were answered in a way that satisfies our inquiries on
3 this, particularly without the documents to understand the
4 extent of it.

5 JUDGE JOHNSON HINES: So perhaps I was unclear.
6 I was asking Mr. Kazi whether ESI related to Samsara's
7 teardown of Motive products was available and used at the
8 depositions.

9 MR. KAZI: I'm not aware of ESI related to the
10 teardowns being used in any depositions.

11 JUDGE JOHNSON HINES: All right.

12 MR. TURNER: I can address the production, Your
13 Honor.

14 JUDGE JOHNSON HINES: All right.

15 MR. TURNER: The search terms, I don't want to
16 beat a dead horse but the search terms they provided weren't
17 specifically directed to this issue. We actually did
18 reasonable searches for teardowns regardless of whether they
19 hit on their search terms. So some hit; some didn't. That
20 wasn't the issue. We went to the witnesses and employees
21 who were knowledgeable with those teardowns, collected their
22 documents related to those teardowns and produced them.

23 ESI and, you know, whether it's communications or
24 actual just kind of standalone documents, the witnesses who
25 were knowledgeable on that subject were not just

1 Mr. Calderon, another Samsara employee, John Bicket was
2 provided on those subjects, who provided -- testified much
3 of the day of his day about them. And talked extensively
4 about what Samsara did in that regard.

5 So I think depositions have been had and
6 documents have been produced on the teardowns.

7 JUDGE JOHNSON HINES: All right. So, Mr. Turner,
8 then is it your representation with respect to Samsara's
9 teardowns of Motive products that ESI-related materials were
10 collected and produced by Samsara?

11 MR. TURNER: That's right, Your Honor. We did a
12 reasonable search and produced everything that we could
13 find.

14 JUDGE JOHNSON HINES: All right. What does that
15 mean, reasonable search?

16 MR. TURNER: Exactly as I said, Your Honor. So
17 we figured out who was knowledgeable about the teardowns.
18 We inquired with them about the location of documents
19 regarding those teardowns. We searched their materials for
20 any communications regarding those teardowns.

21 So if Mr. Glucoft has additional detail, he can
22 provide it, but those are the categories of things that you
23 would expect for a reasonable search and that's what we did.

24 JUDGE JOHNSON HINES: So when you say their
25 materials with respect to ESI, are you including e-mail and

1 Slack communications?

2 MR. TURNER: I am not sure if they are Slack, but
3 I will have Mr. Glucoft talk about that, if there were any
4 Slack messages related to them.

5 JUDGE JOHNSON HINES: Mr. Glucoft?

6 MR. GLUCOFT: Your Honor, I don't know the answer
7 to that offhand. Certainly we would not have affirmatively
8 excluded it. Generally our search protocol for ESI included
9 both e-mail and Slack.

10 I just don't know if there were any actual hits
11 on the Slack. I'd have to double-check that.

12 JUDGE JOHNSON HINES: All right. But the search
13 for ESI related to Samsara's teardowns of Motive products
14 included e-mail?

15 MR. GLUCOFT: Included both e-mail and Slack. I
16 just don't know offhand if there were actual hits in the
17 Slack or not.

18 JUDGE JOHNSON HINES: All right. Well, the
19 question is what was searched, not necessarily what was
20 found.

21 MR. GLUCOFT: They both would have been searched,
22 yes, as part of that investigation that Mr. Turner was just
23 describing.

24 JUDGE JOHNSON HINES: All right.

25 The next issue I have is at the July 17th

1 hearing, there was an identification of certain potential
2 prior art products, VS2 and Gateway were identified as
3 potentially being related to prior art.

4 And, Mr. Turner, I'd like to know the status of
5 the production of information related to VS2 and Gateway,
6 including ESI-related materials?

7 MR. TURNER: Yeah, once again, Your Honor, we did
8 carry out that search, investigation for those, and have
9 produced the results. Mr. Glucoft can provide any details,
10 but, again, it was the same -- I would give the same answer
11 that we provided with respect to the teardowns, that with
12 respect to those prior art materials, it was searched for
13 and produced.

14 JUDGE JOHNSON HINES: All right. So e-mail and
15 Slack were searched?

16 MR. TURNER: Correct, Your Honor.

17 JUDGE JOHNSON HINES: All right. Mr. Kazi,
18 question for you. What was identified at the July 17th
19 hearing was VS2 and Gateway. Has there been any other
20 identification by Motive of additional potential prior art
21 products?

22 MR. KAZI: Your Honor, so I'll answer that
23 question but I would like to go back to the teardown issue
24 after that, if that's okay with you.

25 JUDGE JOHNSON HINES: All right.

1 MR. KAZI: So the short answer to your question
2 is we did not identify any additional specific prior art
3 search terms.

4 JUDGE JOHNSON HINES: All right. So before you
5 go back to the teardown issue, have you received -- has
6 Motive received production of information including ESI,
7 Slack, and e-mail related to VS2 and Gateway?

8 MR. KAZI: We did, Your Honor, receive some
9 production but, again, the hit counts don't match with what
10 they provided to us. So it's our understanding that they
11 didn't produce everything based on those hit counts.

12 But we just have no way of verifying that because
13 we have not received verification of that from the other
14 side.

15 JUDGE JOHNSON HINES: All right. I promise I
16 will let you get back to the teardown issue, but what does
17 it mean that the hit counts don't match?

18 MR. KAZI: Well, so, Your Honor, not to go back
19 too far in the history of this dispute, but we have been
20 asking for hit counts for some time. And at every stop
21 along the way, we haven't received them. And the reason
22 we're asking for hit counts is because we understood that
23 the main objection to producing the amount of discovery was
24 the expansiveness of it and specifically that there were too
25 many custodians at issue and they were returning too many

1 documents.

2 So we asked for hit counts in June. We had a
3 hearing with Your Honor in July, early July. We asked for
4 hit counts again. We never received the hit counts until
5 the night before the Markman hearing, you may remember.

6 JUDGE JOHNSON HINES: Right.

7 MR. KAZI: Even then it wasn't broken down by
8 custodian. At the Markman hearing, we had that discovery
9 conference in the morning and ultimately the resolution of
10 that was Samsara was to provide counts by custodian and by
11 term. And you may recall we had that resolution in the
12 morning. And Samsara and Motive conferred about that over
13 lunch and set forth a schedule at which that would happen.

14 And then we didn't receive the hit counts by
15 custodian on that schedule. When we finally did receive the
16 hit counts by custodian, it turned out that they didn't have
17 ESI for six of the 14 custodians, which we were a little bit
18 blind-sided by because we understood that one of the
19 objections were the number of custodians that we were
20 seeking ESI for.

21 We had along the way in a show of good faith
22 unilaterally narrowed -- we dropped custodians because we
23 said okay, 16 is too many, we will start dropping some. It
24 turns out there was no custodian data for six of the 14
25 anyway, so, you know, that was a surprise to us. At that

1 point, I think on July 22nd or 23rd, we did receive hit
2 counts by custodian and by search term.

3 And when you look at those hit counts, what was
4 actually produced doesn't match with the hit counts that
5 they provided us. So there is some filtering that is being
6 done. We don't know if it's filtering by some date because
7 you may recall there was a dispute as to what the
8 appropriate start date for those hit counts. We don't know
9 if it's filtering by custodian, by term.

10 But there certainly is some discrepancy in the
11 hit counts that were provided to us in the July 22nd time
12 frame versus what was produced.

13 JUDGE JOHNSON HINES: Has that issue been raised
14 with counsel?

15 MR. KAZI: Yes, Your Honor. We raised it in a
16 July 25th letter that was attached to our motion. Well, I'm
17 sorry, the discrepancy in hit counts? No. The specific
18 discrepancy in hit counts has not been raised, Your Honor.
19 I think where we left it was we asked them on July 25th if
20 there was a way for us to move forward with whatever they
21 deemed to be reasonable, and we just never got a response to
22 that.

23 So the only substantive response we saw would be
24 the letter that they filed with the Court in opposition to
25 our motion, where Samsara represented that it had produced

1 certain documents. But even in that letter, I don't think
2 that they are taking a position that they produced
3 everything that we asked for. So, you know, it hasn't
4 directly been raised, but I don't think there was a dispute
5 between us and Samsara that they have held back certain of
6 the documents called for by our search terms.

7 JUDGE JOHNSON HINES: All right.

8 Well, I mean, the difficulty for me here when
9 Mr. Kazi, you say, the hit counts don't match, if you
10 haven't discussed that with counsel for Samsara, there may
11 well be an explanation for that that could resolve the
12 issue. I don't know if that's true or not. But I would
13 like to -- we can set that issue aside for the moment.

14 MR. KAZI: Your Honor, may I just respond on that
15 just briefly?

16 The issue for us is that we asked for certain
17 search terms to be searched. And they just never responded
18 and told us that they would or wouldn't do it. We never
19 received a response. In fact, we even said if some aspect
20 of this is overly burdensome, if the Slack is too many hits,
21 give us the e-mail and we can work with you on the Slack.
22 And we just never received a response to that.

23 So --

24 JUDGE JOHNSON HINES: All right. And that is the
25 next issue I want to raise. And that is a question for you,

1 Mr. Turner, and your team.

2 I saw in the Staff's response that Ms. Wantland
3 raised the issue of a proposal to expedite e-mail ESI. And
4 a question I have: What is the status of that? And have
5 you responded?

6 MR. TURNER: Yeah. So, Your Honor, there's a
7 prior question about VS2 and gamification. We disagree with
8 everything that was said by Motive.

9 JUDGE JOHNSON HINES: I'm sorry. Can you say
10 that again? I missed what you said.

11 MR. TURNER: Your prior question was about VS2
12 and gamification, the prior art. There was a response by
13 counsel that went beyond that. I will just note, first,
14 that we disagree with everything that was said in relation
15 to search terms as relates to VS2 and gamification, as it
16 relates to search terms more broadly, and the negotiations
17 between the parties, we disagree there as well. And we can
18 address those issues with Your Honor.

19 As to the most recent proposal from them that I
20 think they are referring to, it's still that we produce
21 within days 60,000 e-mails. And it's just too broad. And
22 it's too many hits, especially given the tangential
23 relevance.

24 All they have mentioned as being relevant is the
25 prior art and the teardowns, as to which we did produce.

1 And what they are trying to get with their search terms
2 beyond that is a true mystery because they haven't even
3 date-limited it to something that would be relevant to prior
4 art or some alleged copying of Motive products, if that's
5 what they are alleging.

6 So the hit or 60,000 e-mails is, I think, where
7 they are, and, yes, we don't agree to that. And I can have
8 Mr. Glucoft address the search term back and forth and
9 details more accurately than was just conveyed to Your Honor
10 if you like.

11 JUDGE JOHNSON HINES: Well, what I don't
12 understand is this. What I am hearing from you, Mr. Turner,
13 is there was a communication on July 25th from Mr. Amon
14 regarding e-mail ESI and separating that out from what
15 appears from the communications to be more problematic,
16 difficult production of Slack.

17 And then there was a response from Mr. Glucoft on
18 July 25th, so quite a while ago, we will check with our
19 client and get back with you, though obviously I cannot
20 guarantee we will have a response by noon tomorrow.

21 So what I'm hearing -- and that, I see, is in the
22 first page of Mr. Kazi's July 26th letter to me. And what I
23 think I'm hearing is notwithstanding, "we will check with
24 our client and get back to you, maybe not by noon tomorrow,"
25 is that you have never gotten back to him at all?

1 MR. TURNER: We have told him that's too broad,
2 Your Honor. They sent that e-mail the night before they
3 moved to compel. Right? And so we said: Well, we can't
4 get back to you within less than 24 hours on this. They
5 moved to compel anyway, seeking the entire set of what they
6 are asking for, 110,000 documents plus, is my understanding.
7 We have told them that 60,000 is too broad. We have told
8 them that repeatedly.

9 And so -- our client has confirmed it, but it is
10 too broad.

11 JUDGE JOHNSON HINES: So I guess what I don't
12 understand is there seems to be no effort on Samsara's part
13 to reach any kind of agreement or compromise. Instead what
14 I am seeing is that there is a request, you deem it too
15 broad, and then just say no, we will not do anything.

16 I have not seen any alternative that would result
17 in something that may be more modest. I do see from
18 Motive's side that they do seem to be attempting to modify
19 and reduce the requests to the extent they can. I'm not
20 seeing any movement on your part.

21 And, you know, I understand that a letter was
22 sent the next day. I don't think that means that all
23 discussion ends and that absolves you of the responsibility
24 to respond and try to keep discovery moving forward.

25 You know, the "we will check with our client and

1 get back to you" and then just say: Well, we're not going
2 to do that. That's unacceptable, honestly.

3 MR. TURNER: Your Honor, that is not the history.
4 That's not the end of what we feel is appropriate. We have
5 made multiple efforts to narrow, both the e-mail and Slack
6 productions, offers to limit it to something more relevant.
7 They have rejected every single one.

8 We have offered to, say, look, let's just find a
9 way to get this down to 3- to 5,000 documents, which could
10 be produced within the time frame, such as by using date
11 limits that take it down to the relevance of what you're
12 saying is relevant, prior art and that it's these patents
13 were somehow derived from Motive's products. They have
14 refused that.

15 We don't know how to narrow their terms down to
16 5,000 documents that they want, other than by those date
17 limits or something that they would need to propose, but we
18 have said here's a volume that we think we could do within
19 the time frame and they have refused to come back with
20 anything that would reduce that volume or actually align
21 with what they have told Your Honor is the relevance of
22 these documents. We have done our best to get there, but
23 absent the date limits or some narrowing of the terms, we
24 are not sure what else to do.

25 We have given them the full hit counts by

1 custodian. And they have refused to narrow by those
2 further, given that information.

3 JUDGE JOHNSON HINES: Have you done the date
4 narrowing that you think is appropriate and provided hit
5 counts on the dates that you believe are appropriate?

6 MR. TURNER: We haven't. We can certainly do
7 that, Your Honor. I would like to know what dates they
8 think are appropriate. They haven't actually told us that.
9 We -- our first effort at that, Your Honor, was the -- so,
10 for example, VS2. They have alleged that VS2 is prior art
11 but they provided no search terms on that.

12 So what we did is we took, I think within,
13 Mr. Glucoft can correct me if I am wrong, within six months
14 after the filing or some number of months after the filing,
15 and then collected VS2-related documents, even though they
16 didn't propose search terms for it because they were so
17 adamant that they needed that information to address VS2 as
18 prior art.

19 So what we focused on is providing them the
20 information they say is relevant. And we're happy to use
21 that same date limit across other terms, if that will
22 satisfy them. I am just not sure what they want us to do,
23 short of producing everything, which seems to be their
24 demand, every e-mail.

25 JUDGE JOHNSON HINES: Well, a couple of responses

1 to that. With respect to VS2, it is, Mr. Turner, your
2 obligation to produce relevant information on that. It is
3 not the obligation of Motive to provide -- to necessarily
4 provide search terms in order for you to provide relevant
5 information.

6 It is, after all, your information. And you and
7 your client know how it is kept, know what it is called,
8 know what the dates are with some investigation. I don't
9 think it is the obligation of Motive and its counsel to
10 guess at that.

11 So while it seems to me what you're saying is
12 with respect to VS2 that you went above and beyond what your
13 obligation was to produce information, I don't agree with
14 that.

15 MR. TURNER: That is not my -- sorry, Your Honor.

16 JUDGE JOHNSON HINES: And, likewise, with respect
17 to providing information in response to search terms that
18 Mr. Kazi and Motive's team has provided, to the extent that
19 you believed those were inappropriate in a date-related way,
20 it was and is your obligation to provide information on the
21 date ranges you deem are appropriate.

22 If Mr. Kazi then disagrees with that, you can
23 have that discussion, but at least it would move the ball
24 forward in producing some information. And instead, it
25 appears what has happened is that Samsara has decided that

1 it will not produce the information and also will not engage
2 in any self-help to produce information that it deems is
3 appropriate and relevant and within an appropriate time
4 frame.

5 I don't know that it is Mr. Kazi's responsibility
6 to identify to you and to really guess at the correct date
7 range. You have this information. Apparently you have it
8 collected and pulled in a way that you can run searches on
9 it that would not be terribly burdensome to provide
10 information to Mr. Kazi about, okay, if we restrict the date
11 range like this, this is what the hit count looks like.

12 And then get that information reviewed --
13 collected and reviewed and produced. And you have not done
14 that. And I don't understand why.

15 MR. TURNER: So two points, Your Honor.

16 With respect to date limitations, we had proposed
17 to use the filing date of the patents with respect to prior
18 art. And Your Honor had mentioned it should go beyond that.
19 So we proposed to use six months after -- or Mr. Glucoft can
20 correct me on the months -- but some number of months after.
21 So we have proposed a date range.

22 With respect to VS2, Your Honor, I agree, with
23 respect to documents, when they make a request about VS2, it
24 is our obligation to then produce them for ESI
25 communications. So e-mails and Slack, the parties had

1 discussed and agreed that those productions would be made by
2 virtue of search terms and custodians or specific requests.

3 So we carried out our obligations there beyond
4 their search terms. It was all I meant to say was, for
5 example, when they say that the hit counts don't match up,
6 there would have been no hit counts for VS2 because they
7 didn't propose that as a term. It's something that we
8 carried out.

9 We have always provided proposals to narrow. We
10 provided count proposals. We provided date proposals. And
11 we provided subject matter proposals. They were all
12 rejected. So when we got to the point where there was
13 110,000 documents overall and 60,000 documents, we expected
14 that they would, seeing that number of hits, provide us with
15 some proposal to reduce. When we said it is overbroad, they
16 didn't further reduce, as they had us do.

17 We carried out the same procedures when they
18 provided us with hit counts. We said we will narrow every
19 time. We're happy to apply the date limiters, Your Honor,
20 and see what the hit counts are. And we're also happy to
21 use our own approaches to get down to 3,000 to 5,000
22 documents that could be reasonably produced. I don't want
23 to be accused of then withholding if we do that, which is
24 supposed to be by agreement.

25 JUDGE JOHNSON HINES: What is the -- why is the

1 magic number 3- to 5,000?

2 MR. TURNER: That was to get to a number of
3 documents that could be reasonably produced within the time
4 frame at the time of the motion that would, you know, be
5 before the close of discovery and that we could complete the
6 privilege review that would be necessary for that volume.

7 So that's where that number came from, was to try
8 to do it within the time frame they were requesting.

9 JUDGE JOHNSON HINES: Mr. Kazi, may I hear from
10 you?

11 MR. KAZI: Yes, Your Honor. I would like to
12 address a couple of points. And I am going to hopefully not
13 skip around too much, but we never received a response to
14 that July 25th letter. There is no response. And if Mr.
15 Turner sent one and we overlooked it, I welcome him to point
16 us to the date it was sent.

17 We don't have a response. It's just not there.
18 So to say that there has been some continuing dialogue on
19 this, it's not accurate. It's not accurate.

20 Point number 2: Counsel for Samsara said that
21 they went above and beyond our request. The bottom line is
22 that they picked which documents they want to produce and
23 they have produced those. And he said that as well. He
24 said that they gave us the VS2 documents. We never asked
25 for the VS2 documents. We asked for a broader term,

1 Gateway, that would encompass VS2. It is not appropriate
2 for Samsara to write its own search terms without input from
3 us and then say that they have satisfied our request.

4 So I don't think that's a fair explanation of the
5 process for them to say they went above and beyond. We
6 offered them search terms and if they were too broad, we
7 wanted to negotiate them, the terms with them. We just
8 never received from our perspective meaningful engagement on
9 that. It was strung along beyond deadlines that were
10 ordered by the Court, beyond deadlines that the parties
11 agreed upon to negotiate, and ultimately it resulted in that
12 July 25th motion because we were at the point that we
13 couldn't wait any longer.

14 A couple of other points. And I don't want to go
15 back to the metadata thing, but I wanted to address one
16 issue on the metadata. It is not true that Mr. Bicket was
17 asked about teardowns. It's not true. I took that
18 deposition. I didn't ask a single question about teardowns
19 because we didn't have the documents at the time.

20 So for Mr. Turner to say that I asked him about
21 teardowns, it's just not in the deposition transcript. And
22 I searched it again as I was bringing -- as I was listening
23 to his argument.

24 MR. TURNER: I would like to apologize. I meant
25 Mr. Biswas. I apologize for using the wrong name. Mr.

1 Biswas was asked about teardowns as well.

2 MR. KAZI: Well, it is correct Mr. Biswas was
3 asked about teardowns and he didn't know anything about
4 them.

5 MR. TURNER: That is not true.

6 MR. KAZI: Sorry, counsel, if you don't mind me
7 finishing my statement here.

8 Mr. Biswas was asked about teardowns at page 132
9 and 133 of his deposition and he said he doesn't himself do
10 teardowns, and it is not regular course of business for
11 Samsara to do it.

12 But beyond that, he didn't really know much about
13 who was doing teardowns or what -- why they were doing them.
14 That's the Biswas deposition transcript.

15 So just, you know, to close it out, Your Honor
16 asked a question about why 3- to 5,000. First of all, this
17 is the first time I think that I have heard that that's some
18 target. I don't know that I agree that that's an
19 appropriate target to land on.

20 If it's simply a matter of timing, we're now
21 August 14th. This issue was raised in June. You know, in a
22 matter of two weeks we were ordered to and we did produce
23 200,000 documents and 1.5 million pages. And I understand
24 this is not a scenario where just because we did it, they
25 should have to do it, but for them to say that in almost one

1 and a half months they can only produce 3- to 5,000
2 documents, I don't really agree. I think that's an
3 unreasonable limit.

4 Bottom line is we have been willing to negotiate
5 the terms in a way that lands us on a reasonable limit, but
6 what we -- from our perspective, we don't think the
7 engagement is there and we feel like there is an attempt to
8 run-out the clock on us.

9 JUDGE JOHNSON HINES: Mr. Kazi, question for you:
10 You have identified terms for search. I believe at this
11 point you have at least gotten back from your search terms
12 an identification of hits per term per custodian. Is that
13 correct?

14 MR. KAZI: Yes, Your Honor.

15 JUDGE JOHNSON HINES: Okay. Has anything else
16 happened? Has there been any negotiation on terms?

17 MR. KAZI: We never received a response back from
18 that July 25th letter. And to be -- yeah, to be completely
19 candid, Your Honor, we didn't then respond and say: Are you
20 still interested in negotiating? We didn't feel like it was
21 our obligation to negotiate against ourselves. I mean, we
22 had been reducing custodians. We had been reducing terms.
23 And we have just never received any reciprocal response.
24 And we just never received a response at all on that July
25 25th letter.

1 So we did not engage further after that July 25th
2 letter. We were willing to, if we received some response,
3 but we just never received a response.

4 JUDGE JOHNSON HINES: All right. Mr. Turner, is
5 it correct that Samsara has never identified alternative
6 search terms?

7 MR. TURNER: Alternative? Maybe I will have
8 Mr. Glucoft address that. Alternative to the ones that they
9 were in the very last set that hit on 110,000 documents,
10 Your Honor? Is that --

11 JUDGE JOHNSON HINES: That's right. That's
12 right. If the issue for Samsara was these search terms are
13 hitting on too many documents, then you would think that the
14 response should be to identify alternative search terms that
15 may reduce that to a somewhat more reasonable number.

16 Mr. Kazi may disagree that that number is
17 reasonable, or there should be a reduction, but that there
18 should be some movement to say: You know, this particular
19 term is hitting on a lot, but if we revise the term to be
20 something else, the hit count is more reasonable.

21 Was that done?

22 MR. TURNER: I'll let Mr. Glucoft address the
23 actual meet and confers. He attended those.

24 MR. GLUCOFT: Your Honor, so we have orally
25 during the confers conveyed our position that we don't want

1 to choose for Motive which terms to pursue, but based on the
2 hit counts that were provided, there are various different
3 combinations, including ones that we can discuss today that
4 would allow them to get to the number that, again, we
5 believe is reasonable in the time frame. So our proposal to
6 them was they choose which set of terms and custodians that
7 they have already identified up to a number that we believe
8 we can review for privilege and produce in the relevant time
9 frame.

10 So we have not produced an alternative set of
11 search terms or provided an alternative set of search terms.
12 Our position has always been they can choose among the terms
13 and custodians now that they have this set, up to the 5,000
14 or so that we believe we can get out in the reasonable time
15 frame. So that's the extent.

16 But we have responded to their most recent
17 proposal, which was produce 60,000 e-mails and then let's
18 continue to negotiate about Slack. Our position has been
19 let's just choose something that is reasonable within the
20 search terms and counts that you already have provided,
21 because there are available combinations that would get to a
22 reasonable number based on what they have already identified
23 and then they won't be upset with us cherry-picking.

24 JUDGE JOHNSON HINES: All right. I don't think
25 you actually answered my question, which was have you

1 identified alternative search terms or combinations or
2 provided hit counts with those to Mr. Kazi?

3 MR. GLUCOFT: No, Your Honor. The last -- the
4 last --

5 JUDGE JOHNSON HINES: I understand.

6 MR. GLUCOFT: What they included in the motion.

7 JUDGE JOHNSON HINES: I understand. Thank you.

8 Before I ask additional questions, and I have
9 some more, I wanted to hear from Ms. Wantland if you have
10 any comments, suggestions, or proposal.

11 MS. WANTLAND: Thank you, Your Honor.

12 I am largely uncertain because the parties have
13 continued to produce documents. There were productions
14 yesterday from both sets, from both sides, so the Staff is
15 uncertain as to whether any of the requested ESI that is
16 still kind of pending has been produced or if we're at a
17 full stop and standstill.

18 And it sounds like from the discussion today that
19 those might not have been produced and it may be other
20 documents in production, so that was one of the Staff's
21 questions for the parties, is that we haven't had a full
22 conversation yet as to the documents -- documents have
23 continued to be rolled out, basically.

24 So I am not certain that stuff hasn't been
25 produced and then at this point it is a question or at least

1 I have not seen a response, as you have requested in terms
2 of alternative proposals that narrowed things down. I have
3 been trying to go back through letters and things on my
4 computer over here, and I'm not seeing that.

5 I know that during some of our DCMs there have
6 been, as Mr. Glucoft said, oral conversations about date
7 limiters and things of that nature, but to the extent that
8 that has actually happened on Samsara's end, I have not seen
9 that either.

10 At this point in the investigation, Your Honor,
11 and where we are, my questions are how much of it is
12 necessary, I believe you brought this up at one of our
13 conferences, for the parties to prove what they need to
14 prove or in terms of the allegations or the defenses still
15 at issue.

16 There might be proportionality concerns and
17 obviously parties are not entitled to every shred of
18 discovery possible, so I have outstanding issues and
19 questions but I am not close enough to what has been
20 actually produced to, I believe, provide further insight to
21 Your Honor beyond what the parties have said.

22 JUDGE JOHNSON HINES: All right. Thank you.
23 That's helpful.

24 So I will ask Ms. Wantland's first question.
25 Mr. Glucoft, does any of the ESI that's been identified in

1 the -- from the search terms in the per custodian per search
2 term hit counts been produced?

3 MR. GLUCOFT: Yes, Your Honor. All of the
4 buckets of categories that were ordered to be produced at
5 the July 17th hearing, which include Mr. Boireau's ESI and
6 the Gateway term were produced. The additional terms,
7 there's not been production from those additional terms
8 beyond what was discussed at the last hearing, which is both
9 Mr. Boireau's and the Gateway term, which were part of their
10 set, their selected terms and custodians.

11 JUDGE JOHNSON HINES: All right.

12 I have a few more questions, and we can turn back
13 to what can be done now with respect to this ESI issue. I
14 will say, Mr. Turner, I am a little troubled because it does
15 not seem to me that Samsara has complied with its
16 obligations to get to a point where this ESI issue could be
17 resolved.

18 I do think there was and is an obligation on
19 Samsara to try to work through this. And to not respond and
20 to not provide some kind of alternatives, I think, has been
21 troubling.

22 I had a couple of other questions on the
23 Samsara's response, July 29 letter, and some things I was a
24 little confused about. So -- and this is addressed to
25 Mr. Turner.

1 There's a question about the number of custodians
2 and whether, you know, custodians retain e-mails. And in
3 your July 29th letter on page 2, there's a bullet point that
4 says that in May, you produced your data retention policy.
5 And it states that e-mail is only retained for two years.

6 What I gleaned from that is that by producing the
7 data retention policy that counsel for Motive was to
8 understand that certain of the custodians would not have
9 e-mail. Is that right?

10 MR. TURNER: At least from that, Your Honor,
11 there may have been additional confers that Mr. Glucoft
12 could refer to, but, yes, the data retention policy
13 indicates generally as a policy who has e-mail, what date.

14 JUDGE JOHNSON HINES: My question is, because I
15 think this is a very kind of round-about way of supposedly
16 telling the other side that certain custodians don't have
17 e-mail.

18 Did Samsara tell Motive that Samsara didn't
19 retain e-mail for six of the 14 custodians?

20 MR. TURNER: I will have Mr. Glucoft address the
21 meet and confers, Your Honor.

22 MR. GLUCOFT: We did, Your Honor. That was --
23 that's reflected in the back and forth that was filed with
24 the letter. I think, just to be clear, we do have Slack
25 associated with these individuals. It's just that some of

1 the custodians that they have selected when we went to
2 search, it turns out that they did not have -- we did not
3 retain their e-mails because they all left three years
4 before the litigation started.

5 And so once we figured that out, we did tell them
6 and that is reflected in one of the exhibits with the
7 filings as well. I think Motive's counsel appears to have
8 assumed that for longer than they believed was the case,
9 that the e-mails were there, but we never said that we
10 retained their e-mails and then we provided hit counts
11 indicating that there weren't. So they are aware of that.
12 And there are Slack associated with all of these custodians.

13 JUDGE JOHNSON HINES: Well, certainly in the
14 previous round of letters and the issues that we discussed
15 at the July 17th hearing, where there was a discussion of 14
16 custodians, whether 14 custodians was appropriate, whether
17 there should be some lesser number of custodians, I will
18 tell you I certainly understood that by identifying
19 custodians that Samsara was indicating that custodians
20 actually had information.

21 I do think it is unreasonable to suggest that by
22 producing a data retention policy, a policy, that someone
23 should glean from that that notwithstanding the
24 identification and discussion of custodians that those --
25 some of those people would not have information.

1 I don't understand that at all. And when we talk
2 about custodians -- and we did talk about this at the July
3 17th hearing -- about custodial ESI and who that would be
4 provided from; my understanding is that Slack is ESI but it
5 is not custodial ESI. Is that correct, Mr. Glucoft?

6 MR. GLUCOFT: Yes, Your Honor, although the
7 parties have been effectively treating Slack as custodial
8 ESI, even though it is not stored in a custodial way. So
9 all of these custodians were used to identify Slack and they
10 all do have Slack. But, yes, there's a technical difference
11 in the way that this information is stored in Slack.

12 JUDGE JOHNSON HINES: I think that the way that
13 this issue of custodians and custodial ESI, Slack, and
14 Gmail, the identification of the document retention policy
15 has on Samsara's part unnecessarily confused these issues.
16 It has not been helpful at all.

17 When we discussed these issues in July, I had a
18 very -- I had a very different understanding of what the
19 issues were and what the potential problems were. It is
20 very different to say that the 14 custodians is too many,
21 and information shouldn't be produced from 14 custodians,
22 than it is to say: Oh, for six of them, we don't have
23 e-mail because they left the company and we didn't retain
24 their e-mail, based on our document retention policy.

25 Those are very different things. And the

1 conversation and discussion and potential resolution of
2 these issues has not been aided at all by that confusion.

3 One other point I would like to raise. And I saw
4 a lot of discussions in the letters and e-mails that were
5 attached to the letters that were submitted to me, was the
6 issue of "by term" and "by custodian." I'd like to make
7 crystal clear that what I meant by that was what was per
8 term, per custodian.

9 There's no difference in those things. I think
10 that Samsara's interpretation of what was said at the
11 hearing was unreasonable. Nothing else makes sense.
12 Nothing else makes sense. There's no way to have a
13 reasonable discussion about reducing terms or reducing hit
14 counts, rather, than if the information is provided per term
15 and per custodian.

16 What should have happened, if there was truly
17 some confusion on that -- and I do not see how that is so --
18 is that should have requested clarification. I never
19 intended to authorize or to say what should happen was
20 something that does not make sense at all.

21 Mr. Kazi, I would like to know what Motive is
22 seeking by virtue of this July 26th letter.

23 MR. KAZI: Your Honor, I think we would like for
24 them to produce the ESI that hit on the search terms. You
25 know, we tried to engage and we're out of time to engage

1 anymore. So I think it's a large number but it's not an
2 excessive number and they can produce it. That's what we
3 would like.

4 JUDGE JOHNSON HINES: Ms. Wantland, can I get
5 your view on that?

6 MS. WANTLAND: Your Honor, in looking back
7 through the correspondence, it appears that the number of
8 hits -- and the parties can correct me if I am wrong --
9 would be still around 100,000, I believe. Now, that has not
10 been run through a filter, I don't believe so.

11 I think that there are some things in terms of --
12 and I'm not sure about de-duplication either.

13 So those would be questions still outstanding,
14 but at this point, the negotiations have not seemed to work.
15 So perhaps the best course is to get those reviewed and get
16 them out the door and just be finished with the discussion.

17 But I do think that we can narrow it a bit
18 further in terms of privilege and maybe some de-duplication.

19 JUDGE JOHNSON HINES: All right. I understand
20 from that as well, which is that at least some of what is in
21 the 100,000 hits has already been produced, because of the
22 production of prior art-related documents and the production
23 of one custodian, whose name was said and I did not write
24 down and don't remember.

25 So I think it may be less than that for that

1 reason as well.

2 All right. I'm going to put a pin in that. When
3 we are done here, I would like to take a break for a few
4 minutes and then we can reconvene. But I would like to move
5 on to -- unless anyone has anything else to add, I would
6 like to move on to Samsara's August 1 letter.

7 MR. KAZI: Your Honor, just real quickly with
8 respect to the one custodian, we don't agree that his
9 documents have all been produced. So I think we will leave
10 it at that. But we disagree based on the hit counts that
11 Samsara produced all of his ESI.

12 JUDGE JOHNSON HINES: All right. Well, at least
13 some of it has, so presumably that would reduce the number.
14 So I understand what you're saying, but I wanted to follow
15 up on Ms. Wantland's point about the hit count potentially
16 being reduced because of the issues that she raised and that
17 there were a few more as well.

18 MR. TURNER: Your Honor, you asked if anyone else
19 had anything?

20 JUDGE JOHNSON HINES: Yes.

21 MR. TURNER: Your Honor, I certainly do apologize
22 for any confusion or inability to reach agreement with
23 respect to the ESI. We will make sure -- I do want to
24 remind Your Honor of one thing, that in the beginning it was
25 Samsara that proposed a fully negotiated ESI procedure so

1 that there would be none of this confusion.

2 And Motive completely rejected that. And that's
3 why it has occurred piecemeal throughout the course of
4 discovery, exactly -- questions about exactly what the
5 obligations are, what would be searched, what dates would be
6 used, what custodians, and so it was in the beginning that
7 the negotiations broke down when the parties couldn't agree,
8 even on the procedure, and so that's why we have had
9 multiple motions about the procedure, scope of custodians,
10 scope of custodial sources and so on.

11 But certainly, Your Honor, we could have done
12 more. I think both parties could have done more to reach
13 agreement on those issues and we apologize.

14 MR. KAZI: Your Honor, may I address that?

15 JUDGE JOHNSON HINES: Yes.

16 MR. KAZI: That's factually inaccurate, Your
17 Honor. We proposed an ESI procedure that would follow the
18 N.D. Cal. Guidelines. There is an e-mail record on this. I
19 am happy to, you know, present that as an exhibit. So to
20 say that we didn't engage on this, it's just factually
21 inaccurate.

22 JUDGE JOHNSON HINES: And, in any event, it's
23 irrelevant because the parties were unable to agree. So I
24 appreciate that you tried. But it didn't happen. There was
25 no agreement.

1 And we saw the result of that when we addressed
2 -- when I addressed Motive's production of ESI. And we will
3 see the result of that with respect to the letters that
4 we're considering right now.

5 So I understand the parties tried to reach
6 agreement. They didn't. And so now we're left with what
7 happens as a result of that.

8 With respect to -- I want to move on to Samsara's
9 letter. First, Samsara's letter is designated as CBI, as is
10 Motive's response. I don't believe we need to go on the
11 confidential record, but if we do, someone tell me, and if
12 we need to back up the identification of confidentiality, we
13 can do that.

14 So I have some questions before I get to them,
15 Ms. Wantland. You had indicated -- no problem at all --
16 that you weren't able to submit a responsive letter but I
17 did want to give you the opportunity if there was anything
18 you wanted to add or say before I ask any questions.

19 MS. WANTLAND: No, Your Honor. The Staff is
20 still uncertain if these issues have been resolved or to
21 what extent they have been partially resolved. So I am also
22 waiting to hear today.

23 JUDGE JOHNSON HINES: Okay. So it seems there
24 are two issues that were raised. And the first issue was
25 with respect to documents that could not be rendered or the

1 identification of documents that could not be rendered.

2 And I see Samsara made a specific request for 168
3 unrendered documents. I did not see that Motive's
4 responsive letter addressed this issue. Mr. Kazi, what is
5 the status of the requested 168 documents?

6 MR. KAZI: Your Honor, Mr. Amon from our team is
7 going to handle this for you.

8 JUDGE JOHNSON HINES: All right. Thank you.

9 MR. AMON: Good morning, Your Honor, or good
10 afternoon. I apologize. It's morning where I am.

11 So I think that the response to your question is
12 both sets of the documents that are identified in Samsara's
13 letter of August 1st relate to the same type of document.
14 Those are documents that are linked either in Slack or in
15 e-mail.

16 Some of those were provided with slip sheets that
17 said could not be rendered. And I think that that applies
18 to the entire universe of documents that are subject of
19 Samsara's letter.

20 And as we explained in our response, the process
21 of identifying those, seeing if they are still active, in
22 some instances having to get additional rights to be able to
23 access the documents, if they are still active, manually
24 pulling them and then producing them is very labor
25 intensive. It's a manual process. It cannot be automated.

1 And we have been working through that process
2 continually. It has taken significant person hours to do
3 that process, but we continue to work on that.

4 JUDGE JOHNSON HINES: All right. So my question
5 was with respect to the 168 unrendered documents, what is
6 the status?

7 MR. AMON: We continue to try to identify those,
8 Your Honor, and produce them to the extent that we have
9 access to them, that they still exist.

10 JUDGE JOHNSON HINES: How many of them have been
11 produced?

12 MR. AMON: I am not sure on the total number. I
13 would have to get back to you on that, Your Honor.

14 JUDGE JOHNSON HINES: I'm frankly surprised by
15 that since this issue was specifically identified, I am not
16 understanding how my question could be a surprise.

17 Has Motive provided any update on the status of
18 the 168 unrendered documents?

19 MR. AMON: To Samsara, we have not, Your Honor.
20 We do have -- I'm sorry. I didn't mean to cut you off.

21 JUDGE JOHNSON HINES: Why not?

22 MR. AMON: Because we have been working through
23 the process of trying to collect those. I can tell you that
24 our document review team as of this morning had gone through
25 about 20 to 25 of those -- excuse me, 20 to 25 percent of

1 the documents in total to try to gather those. And that
2 that process has rendered essentially three buckets.

3 Some documents that are no longer available, some
4 documents that need additional rights, and others that are
5 being captured and being processed for production.

6 JUDGE JOHNSON HINES: So when you say 20 to
7 25 percent, you had in answering my initial question about
8 the 168 documents conflated that with the links, 20 to
9 25 percent. Are you referring to the links or are you
10 referring to the 168 documents?

11 MR. AMON: We're talking about the total volume
12 of documents, Your Honor. So both categories together.

13 JUDGE JOHNSON HINES: All right. If 168
14 documents have been identified, I'm a little confused why
15 those have not been prioritized.

16 MR. AMON: Well, Your Honor, I think as we laid
17 out in our letter, we did ask them to prioritize the list of
18 documents that they think are relevant to alleged copying.

19 As we explained, Your Honor, they have identified
20 documents that merely reference Samsara or Samsara deep
21 dive, but they do not make any effort either in their letter
22 or anyplace else during the meet and confer to say that
23 those are expressly tied to an allegation of copying and of
24 copying a specific novel aspect of the invention.

25 For copying to be relevant to secondary

1 considerations, it must be tied to a novel aspect of an
2 asserted claim. They have made no effort to do that. They
3 have just basically said: Any reference to Samsara, please
4 produce it immediately.

5 JUDGE JOHNSON HINES: I'm not -- Mr. Amon, I
6 disagree with you that it is Motive's obligation to provide
7 the level of detail before you will give them a document. I
8 disagree with that.

9 Also, as I said, I don't understand why having
10 identified in an August 1 letter two weeks ago that there
11 were 168 documents that they particularly want, why that
12 hasn't been prioritized and why information about that has
13 not been provided. I don't understand why that hasn't
14 happened.

15 With respect to the 20 to 25 percent, what's the
16 denominator on that? 20 to 25 percent of what number of
17 things?

18 MR. AMON: I believe the total number is, after
19 it has been de-duplicated, is 522 total items.

20 JUDGE JOHNSON HINES: All right.

21 MR. AMON: And, again, Your Honor, just to
22 reemphasize, that is a process of having to manually go
23 through and identify each of those documents, so it is a
24 very person-intensive, manual-intensive process.

25 JUDGE JOHNSON HINES: I understand that. And I

1 understood that from the letter that you provided.

2 So 522, 522 comes from what? When Samsara sent
3 its letter, they make a statement that there are nearly
4 6,000 documents that were identified, documents cannot be
5 rendered. Is the 522, does that come from that pile of
6 6,000?

7 MR. AMON: I believe that the 522 comes from the
8 total list of two files that they provided to us, Your
9 Honor; that is, the specific cannot-be-rendered documents
10 and then all of the links that are identified in the
11 documents that they include have links.

12 JUDGE JOHNSON HINES: All right, okay.

13 So you did some processing on those links and
14 determined some of the links are repeated time, and time,
15 and time again?

16 MR. AMON: Yes, Your Honor. The original
17 denominator was over 1200, I believe.

18 JUDGE JOHNSON HINES: All right. According to
19 the letter that Samsara sent, of these cannot-be-rendered
20 documents, a single document has been produced. What's the
21 status of production?

22 MR. AMON: I -- well, I, first of all, we dispute
23 that a single document has been produced, Your Honor. I
24 think if you --

25 JUDGE JOHNSON HINES: How many have been

1 produced?

2 MR. AMON: I think we laid this out in our
3 responsive letter where we identified specifically in
4 response -- and if you allow me, Your Honor, I can just pull
5 that up from our letter.

6 On page 2 of our letter, we have identified where
7 we produced 28 documents -- well, let me take a step back.
8 We produced 25 documents on July 19th. Subsequently we
9 produced 28 documents on July 25th. We produced an
10 additional eight hyperlinked documents embodied in Slack on
11 July 29th.

12 And I think as far as I know, to the extent of
13 production, that is the universe of documents that we have
14 produced that are within the universe of both lists, Your
15 Honor.

16 JUDGE JOHNSON HINES: So that is as of August
17 2nd?

18 MR. AMON: Correct.

19 JUDGE JOHNSON HINES: So has anything been done
20 since August 2?

21 MR. AMON: We have been working on going through
22 the various links and trying to process those, to the extent
23 they are available for production. I'm not sure that we
24 have actually -- well, I take that back.

25 I know we have produced a few additional

1 documents, but it's not the majority of them, Your Honor.

2 JUDGE JOHNSON HINES: You mentioned 28 documents,
3 29 documents, eight documents that have been produced. Are
4 those part of the group of documents with the denominator
5 522, that collection of 522 that you mentioned?

6 MR. AMON: No, Your Honor. Those were produced
7 previously to the process of going through the 522.

8 JUDGE JOHNSON HINES: All right.

9 MR. AMON: The denominator of 522 is based on the
10 processing of the remaining documents to be identified, Your
11 Honor, to be clear.

12 JUDGE JOHNSON HINES: All right, okay. That's
13 not exactly clear, but all right.

14 Mr. Turner, I would like to understand Samsara's
15 position, given developments since the August 1st and August
16 2nd submissions of the parties.

17 MR. TURNER: Thank you, Your Honor.

18 I don't have a way to dispute what Mr. Amon is
19 saying, so I will not, in regards to the level of effort or
20 exactly what they have produced so far. We thought it was
21 about four documents. We don't -- they haven't provided a
22 way to match up what they produced with what was missing
23 before, what is in our spreadsheet.

24 If they do that, you know, I can correlate, but I
25 do trust Mr. Amon's statement as to the number of documents

1 they have produced. I will just take it for granted.

2 With respect to the 6,000 number, Your Honor, I
3 hope I can provide some clarification there. It's not our
4 intent that they should have to go through all of their
5 production and produce every missing link because that's --
6 we just haven't demanded that, Your Honor. It's just these
7 things that are focused on Samsara. And that's a subset of
8 the 6,000.

9 And so we have provided those lists. But our
10 issue is, Your Honor, that we can see that key documents are
11 outstanding. Those on our lists, and as Mr. Amon has said,
12 they haven't yet been fully produced, but, you know, the
13 difficulties that he is having illustrate the difficulties
14 of going through some of these documents, which is why we
15 also wanted narrowed and specific lists like Samsara has
16 provided to them of exactly what we think is relevant.

17 JUDGE JOHNSON HINES: All right. I had
18 understood from the August 1 letter that there were two
19 separate categories. I mean, your letter says there were
20 two categories of documents. So I understood that they were
21 separate; and one related to links and another related to
22 documents that cannot be rendered.

23 And what I believe I'm hearing from Mr. Amon is
24 that they may be the same thing. Mr. Turner, do you have an
25 understanding of how these two issues relate to each other?

1 MR. TURNER: I believe I do, Your Honor. So all
2 of these issues relate to links. For some of the documents
3 when there is a link, what ends up getting produced is a
4 slip sheet that says "document cannot be rendered" but that
5 is not always the case.

6 JUDGE JOHNSON HINES: All right.

7 MR. TURNER: And so it's easy for us to identify
8 that a linked document is missing when we see that slip
9 sheet, "document cannot be rendered."

10 JUDGE JOHNSON HINES: Okay.

11 MR. TURNER: And most often, we can see that
12 there was a file name for that missing document. And we can
13 see that that file name referenced something about Samsara
14 or its products.

15 So that's one category where we can actually see
16 some information from a document could not be rendered slip
17 sheet, that there is a missing document.

18 JUDGE JOHNSON HINES: So can I just stop you
19 there?

20 MR. TURNER: Sure.

21 JUDGE JOHNSON HINES: And so when you see that,
22 that is where you came up with the 168 unrendered documents;
23 is that right?

24 MR. TURNER: For the 168 that are relevant to
25 Samsara, that's right.

1 JUDGE JOHNSON HINES: Okay.

2 MR. TURNER: The broader set of all unrendered
3 would be a much bigger number.

4 JUDGE JOHNSON HINES: Okay. All right.

5 So can I understand that what Samsara is really
6 seeking is the 168 unrendered documents?

7 MR. TURNER: I think it's the 522. The 168 is
8 the priority, and the 522 is the full set. I will trust the
9 number on the 522. We don't really have a way to count
10 that.

11 JUDGE JOHNSON HINES: All right. So tell me --
12 and it might have been said and maybe I didn't understand
13 it -- what is your understanding of what that group of 522
14 contains?

15 MR. TURNER: Our understanding is it contains
16 documents that discuss specifically Samsara, its products,
17 and conversations amongst Motive employees regarding Samsara
18 and its products.

19 JUDGE JOHNSON HINES: So you have the underlying
20 communications, right; you don't have links that may be
21 included within those conversations; is that correct?

22 MR. TURNER: Yes. That's right, Your Honor.
23 Sometimes the links are further communications, but, yes,
24 that's right, Your Honor.

25 JUDGE JOHNSON HINES: All right.

1 I mean, it seems that if the links were to
2 underlying communications and those underlying
3 communications reference Samsara, then a search of the pile
4 of communications might have provided that.

5 MR. TURNER: The reason it's not so, Your
6 Honor -- the word "communications" can be so broad. A
7 Google doc can have comments in it where the employees talk
8 back and forth through the comments.

9 JUDGE JOHNSON HINES: Sure.

10 MR. TURNER: And sometimes that's reflected in an
11 e-mail; and sometimes it's not. So there's a document, but
12 there may be communications between the employees embedded
13 within it.

14 JUDGE JOHNSON HINES: Mr. Amon, I wanted to give
15 you the opportunity to explain to me, what is your
16 understanding of what the 522 documents are?

17 MR. AMON: Well, I think, Your Honor, to answer
18 your question directly, it's a variety of different types of
19 documents that are linked either in e-mails or Slack
20 communications. That's at the highest level, what those
21 are.

22 It could be Google docs. It could be links to
23 Samsara websites. It could be a variety of different types
24 of linked documents.

25 JUDGE JOHNSON HINES: So how did they get placed

1 in that pile; is it because they relate or refer to Samsara?

2 MR. AMON: I think that the way that they got
3 placed, and let me just give you a bit of the history, Your
4 Honor. When we were ordered to produce ESI from one of our
5 custodians, one of the search terms Samsara provided to us
6 was the term "Samsara."

7 And so they got in the 200,000 plus, over 1.4
8 million pages of ESI that we produced, documents that
9 reference Samsara. And some of those had links that
10 referenced Samsara.

11 Now, as we identified in our responsive letter,
12 some of the linked documents have titles like Samsara deep
13 dive. And we have pointed Samsara to where in our
14 production documents that have Samsara deep dive are
15 located. We have given them Bates numbers. We have given
16 them all types of information in that regard.

17 So having to then go through these 522 links to
18 manually click on every one to see if the link is still
19 active, to see if we need additional rights to click on
20 that, and then to manually pull that down to produce is a
21 very intensive process. It's taking time.

22 Some of that may be duplicative, as we have said.
23 We think, actually, a good percentage of it is duplicative.
24 As we identified in our responsive letter, we think that
25 some of it is just not relevant. For example, in the July

1 8th e-mail from Mr. Glucoft, with the list, the very first
2 document relates to Samsara government pricing.

3 How Samsara government pricing is relevant to any
4 technology development in this -- at issue in this case, we
5 have no idea. And this leads to what we're concerned is
6 potentially a bigger problem and it's something Mr. Graubart
7 is going to address later is, you know, was this just a
8 fishing expedition?

9 Was this, you know, under the guise of trying to
10 come up with new claims to assert against Motive by claiming
11 that they were relevant to secondary considerations but when
12 they are really not?

13 JUDGE JOHNSON HINES: Can you answer a question?
14 You said sometimes when a link is clicked on, that you
15 require additional rights. What does that mean?

16 MR. AMON: I believe when document reviewers
17 click on particular links, it may require an additional
18 authorization from within the company to be able to access
19 that document. It may be password protected or something
20 along those lines, Your Honor.

21 JUDGE JOHNSON HINES: All right. And just to be
22 clear, you mentioned at the very beginning that your team
23 has been through approximately 20 to 25 percent of the 522
24 identified items, correct?

25 MR. AMON: That's my understanding, yes, Your

1 Honor.

2 JUDGE JOHNSON HINES: All right, okay.

3 I don't have any more questions on that.

4 I would like to put a pin in that. Like I said,
5 we're going to take a break here because I would like to
6 consider these issues before we move on.

7 Does anyone have anything to add on the August
8 1st or August 2nd letter. And, in particular, Ms. Wantland,
9 hearing what you have heard, you said you had some
10 questions. I would appreciate if you had comments. If you
11 don't, that's okay. But if you do, I welcome them.

12 MS. WANTLAND: Your Honor, I think my only,
13 again, just given where we are in this case, the priority of
14 168, let's get it done. Beyond that, I don't believe I have
15 anything further to add.

16 JUDGE JOHNSON HINES: All right. The parties
17 raised a third issue to discuss. And I assume, given what I
18 saw that it was, that it was just for my information, but
19 I'd like to know the status of that.

20 MR. TURNER: With respect to the trade secret
21 issue, Your Honor?

22 JUDGE JOHNSON HINES: Yes.

23 MR. TURNER: Yes. It is a bit more than just an
24 FYI, because we would like some of Your Honor's guidance
25 procedurally regarding this issue.

1 I will describe what's happened. During
2 discovery --

3 JUDGE JOHNSON HINES: And, Mr. Turner, if we're
4 going to be discussing anything trade secrets, if we do need
5 to go on the confidential record, please make sure we do
6 that.

7 MR. TURNER: I suspect we do, Your Honor. I
8 suspect Motive would consider this information CBI.

9 JUDGE JOHNSON HINES: All right. So let's go on
10 the confidential record now.

11 (Confidential designation later removed in
12 total.)

13 JUDGE JOHNSON HINES: Thank you.

14 MR. TURNER: Thank you, Your Honor.

15 During discovery, it was revealed that -- well,
16 we saw discovery regarding Motive's copying of Samsara's
17 products. And it was determined that that activity has been
18 ongoing from at least 2019, maybe earlier, until the
19 present.

20 In the course of reviewing the documents that
21 Motive produced, it was clear that Motive had been
22 systematically getting Samsara's confidential information
23 from the former Samsara employees that Motive hired and from
24 other sources.

25 The first indication we had was some documents

1 that were in Motive's production that were marked Samsara
2 confidential. Those were not, it turned out, the key issue.
3 It turned out that there were multiple conversations
4 directed by Motive's own CEO where he would tell the Motive
5 employees to interview the former Samsara employees that
6 they had hired, get as much information about Samsara and
7 its business operations and its products and features as
8 they could from those employees, and then use that
9 information to help Motive sell products, the same products
10 at issue here, into the domestic industry.

11 I could show Your Honor the evidence of that. I
12 think that will be for another day. The real issue now is
13 what to do with that. Because Motive will dispute this. In
14 our view there is no doubt that our confidential and trade
15 secret information was secured by Motive and the documents
16 show that.

17 And so there is certainly a claim for trade
18 secret misappropriation that Samsara wants to bring. We
19 think that can be done within the current investigation.

20 JUDGE JOHNSON HINES: Have you -- Mr. Turner,
21 have you -- I assume what you are proposing is a motion to
22 amend --

23 MR. TURNER: Yes.

24 JUDGE JOHNSON HINES: -- the complaint. All
25 right. Have you discussed a motion to amend the complaint

1 with counsel for Motive and the Staff?

2 MR. TURNER: I have, Your Honor.

3 JUDGE JOHNSON HINES: All right.

4 MR. TURNER: And aside from the substance of the
5 motion, where, of course, that will -- Motive will dispute
6 -- I'm sorry, did Your Honor have further question on that?

7 JUDGE JOHNSON HINES: No, I'm sorry. Go ahead.

8 MR. TURNER: I'm sure, and Motive has indicated
9 that they will dispute the substance, we haven't been able
10 to provide them a draft of the amended complaint yet because
11 we are just preparing this based on the information we are
12 now seeing.

13 But we described substantively the evidence we
14 have seen and the types of trade secrets involved. Motive
15 has said they will likely dispute on the substance and they
16 will also dispute the procedure which we would propose for
17 addressing this.

18 We wanted Your Honor's guidance on procedurally
19 how to move forward with the motion to amend and how it
20 might be dealt with in the current investigation, and if
21 Your Honor would indulge us, we describe the procedure that
22 we have in mind and what the parties discussed, and we
23 wanted to see if Your Honor had guidance or if we should
24 just simply file the motion and wait.

25 JUDGE JOHNSON HINES: I'm happy to hear what you

1 suggest and the rationale for it. I'm pretty certain at
2 this point I am not going to be able to rule on it. But I
3 am happy to hear, you know, what the parties thought, if
4 there have been discussions, the results of those
5 discussions, but I don't want you to be under any illusion
6 that given this conversation, that I will be in a position
7 to rule.

8 MR. TURNER: Absolutely, Your Honor, completely
9 understood.

10 And that's the exact sort of conversation we
11 wanted to have. Samsara's proposal was that we would file
12 our motion to amend by next week, probably towards the end
13 of next week, that we suspect that it will not be possible
14 to have those claims in this investigation on the current
15 hearing schedule because both sides would want some
16 additional discovery to address those additional claims. It
17 wouldn't be expanding discovery on what's already been done,
18 but just to address the additional claims.

19 So the hearing would need to move and our
20 suggestion would be to the parties originally proposed time
21 frame of February or March 2025. We understand, though,
22 since we have had those discussions that Your Honor has a
23 hearing in February that would potentially conflict with
24 that, but our proposal would be to have a single hearing to
25 address all the claims, given the overlapping subject

1 matter, but the same domestic industry is involved, a lot of
2 the same witnesses will be involved, there's overlapping
3 discovery for the exact reason that you may suspect, we
4 found discovery and seeking information about copying, so we
5 thought that a single hearing in that time frame would be
6 most reasonable.

7 Now, we discussed that issue with Motive and the
8 Staff, and there was a suggestion, I think it is a
9 reasonable one, from the Staff that a possible way to handle
10 it would be a bifurcated hearing, where you would address
11 the current issues as scheduled in November, and then have a
12 second hearing in whatever time frame Your Honor finds
13 appropriate, to address the additional issues on trade
14 secret.

15 Then there was an open question as to whether
16 there would be one ID, initial determination, or two, one at
17 the end of the first hearing and then another at the end of
18 the second or just kind of wait until all the evidence is in
19 and then have an initial determination at the end.

20 Samsara's view would be if we do bifurcated,
21 which our proposal would be not to bifurcate and just have
22 one later, but if we do bifurcate, to just do the initial
23 determination at the end of the second evidentiary hearing.

24 So to summarize, Your Honor, our proposal was
25 file within a week, move the hearing date out to something

1 like February or March. Staff's suggestion but not
2 proposal, just a suggestion for consideration, was
3 bifurcated hearings. And I believe Motive's position, as we
4 last left it, was reject all of that for the reasons that
5 they can provide and, if Samsara has a claim, it should
6 simply bring that claim in a separate case.

7 JUDGE JOHNSON HINES: All right. Thank you.

8 Mr. Kazi?

9 MR. KAZI: Your Honor, Mr. Graubart is handling
10 this.

11 JUDGE JOHNSON HINES: Okay, thank you.

12 Mr. Graubart?

13 MR. GRAUBART: Good afternoon, ALJ Johnson Hines.
14 So Noah Graubart from Motive. We have a number of serious
15 concerns about all of this.

16 So, first of all, we don't believe this is an
17 appropriate use of the Commission's discovery process. You
18 know, as you have heard us saying, I think, for the entirety
19 of the case, that we thought it appeared that Samsara was
20 using the discovery process for purposes other than to try
21 to prove the claims that it actually asserted here and that
22 were in the scope of the investigation.

23 Your Honor hopefully remembers that back in June
24 when Samsara moved to compel Motive ESI regarding Samsara
25 products and Samsara's platform and Motive's supposed

1 copying of it, they swore up and down that this was just
2 about secondary considerations of non-obviousness and it was
3 not about the claims they were asserting or going to assert
4 in other jurisdictions.

5 And I think the timeline here is really
6 important. In January, even before filing the complaint
7 here at the ITC, Samsara filed a lawsuit in Delaware where
8 they pled these allegations. There is an entire section of
9 the complaint entitled Motive's solicitation of Samsara's
10 employees. And they spent more than a page detailing things
11 about "aimed at recruiting Samsara professionals who will
12 divulge and bring Samsara's competitive business information
13 to Motive."

14 So --

15 JUDGE JOHNSON HINES: Can I ask a question about
16 that?

17 MR. GRAUBART: Yes, Your Honor.

18 JUDGE JOHNSON HINES: I assume, but you can tell
19 me, those claims in Delaware, are they Delaware state law
20 claims?

21 MR. GRAUBART: For whatever reason, Your Honor,
22 they didn't actually plead a trade secret misappropriation
23 claim in Delaware.

24 JUDGE JOHNSON HINES: That's a separate -- that's
25 a separate question, I think. The claims that have been

1 brought with respect to solicitation, I assume are Delaware
2 state law claims?

3 MR. GRAUBART: So I should clarify this, Judge.
4 It is really unclear from their Delaware complaint whether
5 any of the causes of action actually rely on those
6 allegations. Just as if, as Your Honor knows here in the
7 ITC complaint, that much of the complaint relates to Samsara
8 -- excuse me, Motive's alleged access to Samsara's complaint
9 in response to their platform but in response to our motion
10 to terminate, Samsara said oh, that is just background
11 color. I think that's what is going on in this Delaware
12 complaint too.

13 The point is this is not new, right? This was
14 something that Samsara had in its sights eight months ago.

15 JUDGE JOHNSON HINES: Is there a claim of trade
16 secret misappropriation in Delaware?

17 MR. GRAUBART: No. There's an unfair
18 competition. Now, Samsara, it's not as if they are lacking
19 an ability to seek redress for trade secret
20 misappropriation. Yesterday they filed a lawsuit in
21 California against one of our employees who is a former
22 Samsara employee, alleging trade secret misappropriation and
23 seeking a temporary restraining order.

24 So, again, they are aware of these issues. They
25 have multiple avenues of redress on them. But I think if I

1 can continue, if Your Honor will indulge me a little bit
2 longer, that the pattern here, it reveals very clearly that
3 this was never about -- this discovery was never about just
4 secondary considerations.

5 They served an RFP in April, Request Number 124,
6 specifically asking about employees: "Motive's efforts to
7 understand or copy domestic industry products or other
8 Samsara products by soliciting or hiring Samsara employees
9 to join Motive's work force, including Travis Kirkland and
10 Oscar Lorenzana."

11 So when we came to Your Honor in June at the CMC
12 in response to Samsara's motion to compel ESI, we said it
13 seemed that all this was directed to claims Samsara was
14 pursuing in other fora. And they told you that wasn't the
15 case. And Your Honor took them at their word for it.

16 But then after Your Honor ordered significant,
17 you know, top-to-bottom EST discovery from our CEO on down
18 about anything related to Samsara, then for the last month
19 we have seen Samsara spend time at depositions on things
20 that couldn't possibly be related to secondary
21 considerations, like allegations of alleged copying that
22 took place years before the priority date of their patents.
23 So, therefore, there couldn't have been anything to copy.

24 And I thought: Well, this is once again, seems
25 like they are trying to identify evidence to use in the

1 District Court. Lo and behold, what we know is they were
2 trying to identify evidence for a new claim that's outside
3 the scope of the notice of investigation.

4 So the first point just to sum it up is, Your
5 Honor, I think for no other reason, Your Honor should reject
6 this out of hand because of a misuse of the discovery
7 process under the protective order.

8 The second point, though -- I'm sorry, Your
9 Honor, it looks like you have a question.

10 JUDGE JOHNSON HINES: No, no. Go ahead.

11 MR. GRAUBART: -- is that, as you said, this
12 requires a motion. Under 19 CFR 210.14(b) Samsara needs to
13 file a motion and they need to prove good cause in order to
14 do that. And a lot of the facts that I just laid out
15 demonstrate the lack of good cause in terms of the lack of
16 timeliness.

17 But the statute also or the regulation also asks
18 to consider the prejudice to the public interest or the
19 parties rights. You know, so in good cause, it is not as if
20 they didn't have an inkling of this. They have been making
21 noise about it for eight months and waited until the very
22 last possible moment.

23 This was raised with Mr. Kazi verbally by
24 Mr. Ellisen at the end of a deposition on Friday last, which
25 was the very last deposition in the case, before we get to

1 expert discovery.

2 And there is no reason it couldn't have been done
3 earlier. There's no excuse for having waited that long when
4 we know these were things that were in the offing long
5 before.

6 JUDGE JOHNSON HINES: All right. I'm sorry, go
7 ahead.

8 MR. GRAUBART: On the prejudice point, I think
9 Mr. Turner over -- I think, like oversimplifies the
10 discovery that was going to be necessary here. This is an
11 entirely new case. Trade secret misappropriation claims are
12 going to require discovery on, first of all, what are these
13 alleged trade secrets.

14 We have been asking them, and although Mr. Turner
15 has given us, you know, vague descriptions of the categories
16 they may relate to, I don't know what the trade secret is.
17 So we're going to have to figure that out.

18 We're going to have to take discovery as to
19 whether those were, in fact, generally known in the
20 industry, whatever it is that is supposedly the trade
21 secret. That is going to require expert testimony from
22 experts we haven't lined up yet. We're going to have to
23 know about -- there is a whole different economic DI prong
24 that the statute requires to be proven. We haven't taken
25 any discovery on that, let alone get our experts looking at

1 it.

2 We don't know if we have any of the documents or
3 the witnesses that we've identified in discovery that are
4 necessary to rebut any of this. They have to prove injury.
5 We haven't taken any discovery on injury.

6 This is a whole new case that would require, you
7 know, eight months, just like we did in a patent
8 infringement case. And, you know, I think one more point on
9 prejudice, Your Honor.

10 From the beginning of this, Samsara put a website
11 together with statements about this lawsuit saying they are
12 going to get an exclusion order from Samsara against --
13 excuse me, from Motive, against Motive from the ITC because
14 of our alleged patent infringement.

15 We think it has been a cloud over Motive in the
16 market, which I'm sure was exactly the intended effect, and
17 we're entitled to get a prompt ruling from this Commission
18 confirming what we believed all along, that these patent
19 infringement allegations are meritless.

20 And if Samsara no longer has confidence in its
21 patent infringement allegations, then that's -- they can
22 dismiss, if they would like, but it's not a reason to string
23 this out longer, let us be under this cloud for many -- some
24 indefinite amount of months and even though still again
25 under a compressed time frame that wouldn't allow us to

1 justly defend ourselves against this.

2 In terms of bifurcation or severance, severance
3 is only permissible under Section 210.14(h), within 30 days
4 of institution. So I appreciate Ms. Wantland's thought on
5 that, but after looking at it, I don't think that is
6 permissible under the regulation.

7 If they want to file a new case and believe they
8 have the evidence to do it and consistent with the
9 protective order, then they are entitled to, but I don't
10 think there is a mechanism to do this where you sever it and
11 bifurcation just strings this out in a way that we don't
12 think is appropriate.

13 JUDGE JOHNSON HINES: All right. Thank you.

14 Well, as I expected, I appreciate the parties'
15 comments. It is useful to me to understand what's going on
16 and where the parties are now.

17 Ms. Wantland, do you have anything to add, other
18 than what has been said of what your position is at the
19 moment?

20 MS. WANTLAND: Your Honor, the Staff has been
21 quite clear that I do not yet have a position until I see
22 the good cause. And I would agree that we floated both
23 bifurcation and severance. Severance is after institution.
24 So should they be added and should it be instituted on new
25 claims, I do believe it could possibly still be severed.

1 Again, and I am sympathetic to part of good cause
2 may be that the question of whether the information that
3 they have learned in discovery in this investigation could
4 not have been learned otherwise and how to use that, you
5 know, without violating a protective order has been the
6 discussion that the parties have had.

7 But I have real concerns about the good cause,
8 given what Mr. Graubart has discussed today in terms of the
9 other investigations or other cases throughout the country
10 and just movement in general of employees. But, otherwise,
11 nothing further to add.

12 JUDGE JOHNSON HINES: All right. Thank you.
13 That's helpful.

14 All right. Well, I don't have further guidance
15 to provide, other than to tell you, Mr. Turner, to file your
16 motion as soon as you can. You have said, you know, by the
17 end of next week. That's by the 23rd.

18 I would urge you to do it as soon as you can.
19 Obviously you need to get whatever information you need to
20 get to put that together.

21 You have heard some of -- and perhaps you have
22 already heard it before -- but you heard Mr. Graubart's
23 comments. And you are now in a unique position to address
24 those when you file your paper. And you have heard what
25 Ms. Wantland had to say as well with respect to showing good

1 cause, and to indicating, to the extent that you can, how
2 information resulting from discovery in this investigation
3 caused you to be seeking to amend your complaint in this
4 investigation.

5 I think it would be to your benefit to address
6 those things head on. You obviously -- I do provide moving
7 parties with the opportunity for a reply, but to the extent
8 that you can address those things that you have heard here
9 today head on, I think that you should do that.

10 I will consider any motion. I think in this
11 instance, and I hadn't heard -- I haven't heard Mr. Turner
12 ask for it -- I would be disinclined to shorten any response
13 time for a few reasons.

14 One is I think the response times are already
15 pretty short and I think the issues that could potentially
16 be raised in this motion to amend are serious and are --
17 that Motive should be entitled to the full response time
18 period.

19 In addition, my understanding is that the parties
20 are pretty busy as it is. So to the extent, Mr. Turner, you
21 had considered asking for a shortened response time, I would
22 be disinclined to grant that.

23 And unless there are any other questions, I am
24 not sure what other information I can provide at this point.

25 MR. TURNER: Yes. Thank you, Your Honor.

1 So on the merits of those points, that's not
2 something that Mr. Graubart raised. That's not something I
3 intended to bring to Your Honor today, the merits, of
4 course. And we have responses to all of those issues.

5 On the procedures, we do appreciate your guidance
6 on the shortened response time and being disinclined on
7 that. That's the sort of thing we wanted to discuss.

8 The other, which Your Honor just may have no
9 position today, is simply that that procedure of potentially
10 moving the hearing in order to address all of this in one
11 matter, regardless of the date that it gets moved to, but
12 the concept of moving the hearing to address it all in one
13 matter. If Your Honor had thoughts on that, we would
14 appreciate them, but we understand if you do not.

15 JUDGE JOHNSON HINES: I do not.

16 MR. TURNER: Thank you, Your Honor.

17 MR. GRAUBART: Your Honor, can I ask one quick
18 administrative question? I know we went on the confidential
19 record for that portion of the discussion. From our
20 perspective, there wasn't any Motive confidential business
21 information, and I would like to be able to share the
22 transcript with our client if there is no objection from
23 Samsara or the Staff.

24 JUDGE JOHNSON HINES: I don't see how there could
25 be because it would be -- well, actually, no.

1 Let me ask, Mr. Turner, is there anything CBI or
2 can this entire transcript be designated public?

3 MR. TURNER: From Samsara's perspective, that's
4 fine, Your Honor.

5 JUDGE JOHNSON HINES: All right. And I assume
6 Ms. Wantland, you have no objection to that?

7 MS. WANTLAND: No objection from Staff.

8 JUDGE JOHNSON HINES: All right. Then I would
9 ask the court reporter to designate the entirety of the
10 transcript as public.

11 As promised, I would like to take a break. Let's
12 reconvene at 3:00 o'clock. I am going to keep this line
13 open. The line will be kept open.

14 But let's reconvene then because I want to
15 address the issues that were discussed in the parties'
16 letters.

17 (A recess was taken at 2:46 p.m., after which the
18 proceedings resumed at 3:00 p.m.)

19 JUDGE JOHNSON HINES: All right. Good afternoon,
20 everyone.

21 Okay. With respect to Motive's July 26th letter,
22 Samsara's July 29th response, the July 29th response of the
23 Staff, my understanding is that approximately 100,000 hits
24 on ESI, based on the search terms that were provided by
25 Motive, that number may be reduced by de-duplication,

1 privilege screening, or based on what has already been
2 produced.

3 Given the arguments of the parties in the letters
4 that I have received and the arguments that I heard here
5 today, I agree with Motive that those documents should be
6 produced. And they should be produced by August 30th.

7 With respect to Samsara's August 1 letter, and
8 Motive's August 2nd response, my understanding is that
9 Samsara has identified 168 unrendered documents. And those
10 documents, those 168 unrendered documents should be
11 produced. And they should be produced by August 30th.

12 If there is a reason that any of those unrendered
13 documents cannot be produced, that shall be communicated to
14 Samsara and specific identification of what documents cannot
15 be rendered and why.

16 Are there any questions? Mr. Turner?

17 MR. TURNER: Your Honor, there was a set of
18 documents beyond the 168 that also are discussing Samsara.
19 Those were the 522 that Mr. Amon referenced, which may
20 include the 168. Would those need to be produced as well,
21 Your Honor? They are effectively the same category, linked
22 documents that discuss Samsara.

23 JUDGE JOHNSON HINES: What I've indicated should
24 be produced are the 168 that Samsara specifically identified
25 for production.

1 Are there any questions on that?

2 MR. TURNER: I don't think so, Your Honor.

3 JUDGE JOHNSON HINES: All right. Mr. Kazi, any
4 questions on that?

5 MR. KAZI: No, Your Honor.

6 JUDGE JOHNSON HINES: All right. Are there any
7 questions with respect to the production of Samsara ESI and
8 Motive's July 26th letter, Mr. Turner?

9 MR. TURNER: I don't believe so, Your Honor.

10 JUDGE JOHNSON HINES: All right. Mr. Kazi?

11 MR. KAZI: No, Your Honor.

12 JUDGE JOHNSON HINES: All right. And,
13 Ms. Wantland, are there any questions with respect to either
14 of the letters or what I have ordered the parties to do?

15 MS. WANTLAND: Nothing from Staff, Your Honor.
16 Thank you.

17 JUDGE JOHNSON HINES: I want to say this is -- to
18 the private parties, this is your opportunity to tell me
19 that something is unclear in what I have said.

20 MR. TURNER: Your Honor, I don't think this is
21 unclear. We can do a privilege review on those documents.
22 It may reduce the number of hits, of course, and privileged
23 documents would not be produced. They would be withheld in
24 the ordinary way.

25 JUDGE JOHNSON HINES: Of course. And, you know,

1 on that point, my understanding was that the approximately
2 100,000 hits could be reduced in a number of ways, either by
3 de-duplication, privilege, a privilege pull and from what
4 has already been produced. So it could happen in three
5 different ways, maybe somewhat overlapping ways.

6 So, Mr. Kazi, to the extent that there is not
7 perfect symmetry between the number of hits that have been
8 identified and the documents that are produced, I think it
9 would be unreasonable to require Samsara to, you know,
10 identify with perfect numerical precision why that is so.

11 I have ordered production. The parties have an
12 understanding of how that hit count may be less than what it
13 is for a number of reasons. So I want to be clear that I'm
14 not requiring perfect alignment of hit counts to produce
15 documents.

16 MR. KAZI: Understood, Your Honor.

17 JUDGE JOHNSON HINES: All right. Is there
18 anything else we should discuss?

19 All right. Hearing nothing, thank you for your
20 time.

21 (Whereupon, at 3:06 p.m., the Case Management
22 Conference concluded.)

23

24

25

1 CERTIFICATE OF REPORTER

2 TITLE: Certain Vehicle Telematics, Fleet Management, and
3 Video-Based Safety Systems, Devices, and Components Thereof

4 INVESTIGATION NO: 337-TA-1393

5 HEARING DATE: August 14, 2024

6 LOCATION: Washington, D.C. - Remote

7 NATURE OF HEARING: Case Management Conference

8 I hereby certify that the foregoing/attached
9 transcript is a true, correct and complete record of the
above-referenced proceedings of the U.S. International Trade
Commission. Date: August 14, 2024

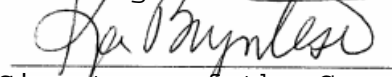
10 SIGNED: 

11
12 Signature of the Contractor of the
Authorized Contractor's Representative
13 1220 L Street, N.W., Suite 206
Washington, D.C. 20005

14 I hereby certify that I am not the Court Reporter
15 and that I have proofread the above-referenced transcript of
the proceedings of the U.S. International Trade Commission,
16 against the aforementioned Court Reporter's notes and
recordings, for accuracy in transcription in the spelling,
17 hyphenation, punctuation and speaker identification and did
not make any changes of a substantive nature. The
foregoing/attached transcript is a true, correct and
18 complete transcription of the proceedings.

19 SIGNED: 
20 Signature of Proofreader

21 I hereby certify that I reported the above-referenced
proceedings of the U.S. International Trade Commission and
22 caused to be prepared from my tapes and notes of the
proceedings a true, correct and complete verbatim recording
of the proceedings.

23 SIGNED: 
24 Signature of the Court Reporter

25

EXHIBIT 2

**Contains Confidential Business Information
Redacted In Its Entirety**

EXHIBIT 3

From: Turner, Ellisen Shelton
Sent: Thursday, August 22, 2024 5:37 PM
To: Noah Graubart; Wantland, Megan
Cc: [Service] Motive-Samsara ITC 1393; #Samsara - ITC
Subject: Inv. No. 337-TA-1393 - Confer Regarding Amended Complaint
Attachments: DRAFT Samsara Amended ITC Complaint (Redline) (contains CBI).pdf

Dear Noah and Megan,

We are following up on Samsara's planned motion to amend its complaint to add claims regarding Motive's trade secret misappropriation. That conduct was uncovered during discovery in this Investigation directed to Motive's copying of Samsara's products and platform in the context of secondary considerations of non-obviousness. I understand Motive disagrees on that point and on whether Samsara would have good cause to file an amended complaint in this Investigation. The purpose of this email is not to debate those points and Motive's positions and rights on them are preserved.

I have attached our current draft of the amended complaint that addresses claims that stem from the discovery Motive produced. Noah, Samsara CBI has been removed from this draft, so you may share it with your client. The more we reviewed materials related to the claims in this amendment, the more concerned we've become regarding the extent and nature of the conduct that would need to be addressed with the new claims. We therefore determined that Motive's and the Staff's comments at the August 24 Case Management Conference (CMC) regarding the amount of discovery necessary to resolve the new claims are likely correct. As a result, a hearing to address the new claims alongside the patent claims in the February 2025 timeframe might not be feasible. Yet, Motive said it wants a "prompt" ruling on the patent claims, as do we.

That leaves us with Motive's representations during the CMC that "it's not as if they [Samsara] are lacking an ability to seek redress for misappropriation" and that Samsara has "multiple avenues of redress on them." Motive concluded that "If they [Samsara] want to file a new case and believe they have the evidence to do it and consistent with the protective order, then they are entitled to," and we accept Motive's proposal in that regard. As you can see, our draft amended complaint cites to documents that Motive produced in this Investigation as Confidential Business Information (CBI). Paragraph 3 of the ITC's Protective Order permits us to use those materials outside of the Investigation with Motive's consent. **Consistent with Motive's proposal in the CMC, and as an alternative to filing an amended complaint in this case, does Motive consent to Samsara filing a new case that cites to these materials?** To the extent the materials are required to be submitted in that new case at the pleading stage, we would do so under seal and otherwise agree to afford the materials the same level of confidentiality protections provided in the ITC's protective order. By providing this consent, Motive is not agreeing to the merits of any such new case or pleading.

Relatedly, our review of the cited materials reflects that few of the materials contain any potential Motive CBI as that term is defined in Paragraph 1 of the Protective Order, and any alleged Motive CBI can be redacted to the extent it is present. We therefore formally lodge our disagreement with Motive's designations in accordance with Paragraph 10 of the Protective Order. **Will Motive consent to withdraw its CBI designations from the cited Motive documents in the draft amended complaint, or at least redact from those documents any information that Motive believes qualifies as Motive CBI under the Protective Order?** We would also like to be able to share our draft complaint in full, and all portions of the cited documents that do not contain Motive CBI, with our client. For any of the documents that

potentially contain Samsara CBI, we can then provide any appropriate confidentiality designations after they are reviewed by our client.

Noah, please let us know your response on the two questions raised in bold above as soon as you can, preferably by tomorrow.

Megan, for completeness, can you also confirm that the Staff has no independent objection to Motive's cited CBI being used to file a new case assuming Motive consents?

In light of the discussions at the CMC, we will be sending the Administrative Law Judge a status update to inform her that we are conferring on the above issues and therefore are not filing the motion to amend this week.

Many thanks,

Ellisen

Ellisen Shelton Turner P.C.

Partner

[bio](#) | [vcard](#) | (he/him)

KIRKLAND & ELLIS LLP

2049 Century Park East, 37th Floor, Los Angeles, CA 90067

T [+1 310 552 4220](#)

F [+1 310 552 5900](#)

ellisen.turner@kirkland.com

EXHIBIT 4

From: Noah Graubart <graubart@fr.com>
Sent: Wednesday, August 28, 2024 7:27 PM
To: Turner, Ellisen Shelton; Wantland, Megan
Cc: [Service] Motive-Samsara ITC 1393; #Samsara - ITC
Subject: RE: Inv. No. 337-TA-1393 - Confer Regarding Amended Complaint

This message is from an EXTERNAL SENDER

Be cautious, particularly with links and attachments.

Ellisen,

Thank you for providing the draft amended complaint and relaying Samsara's updated thinking on whether to seek leave to amend.

With respect to whether Motive consents to Samsara filing a new case citing to Motive CBI produced under the Protective Order in this investigation, Motive does not agree to that. As explained at the CMC, using Motive CBI produced in this investigation for purposes of asserting claims that are not the subject of this investigation is not a proper use of the ITC's discovery process. My statement at the CMC that Samsara is entitled to file a new case was expressly based on the premise that Samsara could do so "consistent with the Protective Order," which does not permit use of Motive CBI for purposes other than this investigation. To the extent that Samsara therefore wishes to move for leave to assert new claims in this investigation, Motive will as previously explained oppose such a motion.

As to Samsara's request that Motive de-designate or redact the Motive documents cited in Samsara's draft amended complaint, Motive cannot agree to do so. The Motive documents in question are non-public materials concerning, e.g., Motive's internal operations and processes, such that redaction is not feasible.

Please let me know if you have any questions.

Thanks,

Noah

From: Noah Graubart <graubart@fr.com>
Sent: Tuesday, August 27, 2024 7:46 PM
To: Turner, Ellisen Shelton <ellisen.turner@kirkland.com>; Wantland, Megan <Megan.Wantland@usitc.gov>
Cc: [Service] Motive-Samsara ITC 1393 <ServiceMotive-SamsaraITC1393@fr.com>; #Samsara - ITC <KE_Samsara_ITC@kirkland.com>
Subject: Re: Inv. No. 337-TA-1393 - Confer Regarding Amended Complaint

Ellisen,

Thank you for your message below. We are still discussing this with our client and should have a substantive response for you within 1-2 days.

Thanks,

Noah

From: Turner, Ellisen Shelton <ellisen.turner@kirkland.com>
Sent: Thursday, August 22, 2024 5:37:11 PM
To: Noah Graubart <graubart@fr.com>; Wantland, Megan <Megan.Wantland@usitc.gov>
Cc: [Service] Motive-Samsara ITC 1393 <ServiceMotive-SamsaraITC1393@fr.com>; #Samsara - ITC <KE_Samsara_ITC@kirkland.com>
Subject: Inv. No. 337-TA-1393 - Confer Regarding Amended Complaint

[This email originated outside of F&R.]

This email contains one or more password protected attachments, which may not have been scanned for malware. Please use caution.

Dear Noah and Megan,

We are following up on Samsara's planned motion to amend its complaint to add claims regarding Motive's trade secret misappropriation. That conduct was uncovered during discovery in this Investigation directed to Motive's copying of Samsara's products and platform in the context of secondary considerations of non-obviousness. I understand Motive disagrees on that point and on whether Samsara would have good cause to file an amended complaint in this Investigation. The purpose of this email is not to debate those points and Motive's positions and rights on them are preserved.

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That leaves us with Motive's representations during the CMC that "it's not as if they [Samsara] are lacking an ability to seek redress for misappropriation" and that Samsara has "multiple avenues of redress on them." Motive concluded that "If they [Samsara] want to file a new case and believe they have the evidence to do it and consistent with the protective order, then they are entitled to," and we accept Motive's proposal in that regard. As you can see, our draft amended complaint cites to documents that Motive produced in this Investigation as Confidential Business Information (CBI). Paragraph 3 of the ITC's Protective Order permits us to use those materials outside of the Investigation with Motive's consent. **Consistent with Motive's proposal in the CMC, and as an alternative to filing an amended complaint in this case, does Motive consent to Samsara filing a new case that cites to these materials?** To the extent the materials are required to be submitted in that new case at the pleading stage, we would do so under seal and otherwise agree to afford the materials the same level of confidentiality protections provided in the ITC's protective order. By providing this consent, Motive is not agreeing to the merits of any such new case or pleading.

Relatedly, our review of the cited materials reflects that few of the materials contain any potential Motive CBI as that term is defined in Paragraph 1 of the Protective Order, and any alleged Motive CBI can be redacted to the extent it is present. We therefore formally lodge our disagreement with Motive's designations in accordance with Paragraph 10 of the Protective Order. **Will Motive consent to withdraw its CBI designations from the cited Motive documents in the draft amended complaint, or at least redact from those documents any information that Motive believes qualifies as Motive CBI under the Protective Order?** We would also like to be able to share our draft complaint in full, and all portions of the cited documents that do not contain Motive CBI, with our client. For any of the documents that potentially contain Samsara CBI, we can then provide any appropriate confidentiality designations after they are reviewed by our client.

Noah, please let us know your response on the two questions raised in bold above as soon as you can, preferably by tomorrow.

Megan, for completeness, can you also confirm that the Staff has no independent objection to Motive's cited CBI being used to file a new case assuming Motive consents?

In light of the discussions at the CMC, we will be sending the Administrative Law Judge a status update to inform her that we are conferring on the above issues and therefore are not filing the motion to amend this week.

Many thanks,

Ellisen

Ellisen Shelton Turner P.C.

Partner

[bio](#) | [vcard](#) | (he/him)

KIRKLAND & ELLIS LLP

2049 Century Park East, 37th Floor, Los Angeles, CA 90067

T +1 310 552 4220

F +1 310 552 5900

ellisen.turner@kirkland.com

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EXHIBIT 5

**Contains Confidential Business Information
Redacted In Its Entirety**

EXHIBIT 6

UNITED STATES INTERNATIONAL TRADE COMMISSION

-----x

In the Matter of

Investigation No.

337-TA-1393

CERTAIN VEHICLE TELEMATICS, FLEET
MANAGEMENT, AND VIDEO-BASED SAFETY
SYSTEMS, DEVICES, AND COMPONENTS
THEREOF

-----x

Pages: 1 through 39

Place: Washington, D.C.

Date: September 12, 2024

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1 UNITED STATES INTERNATIONAL TRADE COMMISSION

2 Washington, D.C.

3 Before the Honorable Doris Johnson Hines

4 Administrative Law Judge

5 -----x

6 In the Matter of Investigation No.

7 337-TA-1393

8 CERTAIN VEHICLE TELEMATICS, FLEET

9 MANAGEMENT, AND VIDEO-BASED SAFETY

10 SYSTEMS, DEVICES, AND COMPONENTS

11 THEREOF

12 -----x

13

14 International Trade Commission

15 500 E Street, SW

16 Washington, D.C.

17

18 Case Management Conference

19 Thursday, September 12, 2024

20

21 The parties met via videoconferencing pursuant to
22 notice of the Administrative Law Judge at 1:00 p.m. Eastern.

23

24 Reported by: Linda S. Kinkade RDR CRR RMR RPR CSR

25

1 A P P E A R A N C E S:

2 [All parties appeared via remote videoconferencing and/or
3 telephonically.]

4

5 Counsel for Complainant SAMSARA INC.:

6 KIRKLAND & ELLIS LLP

7 2049 Century Park East

8 Los Angeles, California 90067

9 (310) 552-4200

10 Ellisen Shelton Turner, Esq.

11 Ali-Reza Boloori, Esq.

12 Josh Glucoft, Esq.

13

14 -and-

15 KIRKLAND & ELLIS LLP

16 601 Lexington Avenue

17 New York, New York 10022

18 (212) 446-4800

19 Joseph A. Loy, Esq.

20

21

22

23

24

25 CONTINUED ON FOLLOWING PAGE

1 A P P E A R A N C E S (continued):

2

3 Counsel for Respondent MOTIVE TECHNOLOGIES INC.:

4 FISH & RICHARDSON P.C.

5 1180 Peachtree Street, NE

6 Atlanta, Georgia 30309

7 (404) 892-5005

8 Aamir Kazi, Esq.

9

10 -and-

11 FISH & RICHARDSON P.C.

12 12860 El Camino Real

13 San Diego, California 92130

14 (858) 678-5070

15 Michael A. Amon, Esq.

16

17

18

19

20

21

22

23

24

25 CONTINUED ON FOLLOWING PAGE

1 A P P E A R A N C E S (continued):

2

3 Counsel for the Office of Unfair Import Investigations:

4 U.S. International Trade Commission

5 500 E Street, SW

6 Washington, DC 20436

7 (202) 205-2000

8 Megan Wantland, Esq.

9 Investigative Attorney

10 Anne Goalwin, Esq.

11 Supervisory Attorney

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

2 (In session at 1:00 p.m.)

3 JUDGE JOHNSON HINES: Good afternoon, everyone.
4 We're here in Certain Vehicle Telematics, Fleet Management,
5 and Video-Based Safety Systems, Devices, and Components
6 Thereof, Investigation No. 337-TA-1393.

7 May I have appearances from counsel, please, and
8 we'll start with Samsara.

9 MR. TURNER: Thank you, Your Honor. This is
10 Ellisen Turner for Complainant Samsara. With us today are
11 Joseph Loy, Ali-Reza Boloori, and Josh Glucoft, all from
12 Kirkland.

13 JUDGE JOHNSON HINES: Good afternoon, everyone,
14 and welcome.

15 And for Motive?

16 MR. KAZI: Good afternoon, Your Honor. Aamir
17 Kazi with Fish & Richardson here on behalf of the
18 Respondent, and also on behalf of the Respondent is Michael
19 Amon, also with Fish.

20 JUDGE JOHNSON HINES: Good afternoon.

21 And for the Staff?

22 MS. WANTLAND: Good afternoon, Your Honor. Megan
23 Wantland on behalf of the Commission Investigative Staff,
24 and I'm joined by supervisory attorney Anne Goalwin.

25 JUDGE JOHNSON HINES: Good afternoon. Welcome to

1 everyone.

2 All right. We have a couple of things on the
3 agenda. I will start with the September 10 letter, letter
4 brief, from Samsara. I've gotten the brief. I've gotten
5 the two responses to it.

6 Before I say anything else, I wanted to know if
7 any of the parties have anything to add to what has already
8 been presented in the briefs, and I'll start with Samsara.

9 MR. TURNER: I do, Your Honor, I have some
10 responses to the points made by Motive and the Staff in
11 their opposition briefs.

12 JUDGE JOHNSON HINES: All right.

13 MR. TURNER: Should I proceed?

14 JUDGE JOHNSON HINES: Please.

15 MR. TURNER: Thank you.

16 So I'll first address, I think it's been repeated
17 several times in several hearings now, the sort of aspersion
18 that Samsara had some sort of ulterior motive for the
19 discovery it served or for seeking the discovery, and, in
20 doing that, I'll explain how this discovery came to be in
21 our possession and how it came into being.

22 I do take offense to those assertions. It is
23 essentially saying that we violated the rules of the ITC,
24 which we did not. The materials that we received are
25 directly relevant to the copying assertions that we have

1 made. The copying assertions are relevant, of course, to
2 secondary considerations of non-obviousness, and, as they
3 relate to the success of the products, they also relate to
4 the domestic industry for our products, and, ultimately, the
5 public interest showing that these products are, by the
6 popularity of the features, used by the public for the same
7 safety reasons that Motive allege. The materials are all
8 relevant.

9 The discovery we served was all directed to
10 people, both parties, party employees, and former employees
11 of Motive that we knew, based on our own access logs, were
12 involved in accessing and using Samsara's platforms and
13 systems.

14 So it was always directed to people who were
15 involved in access and copying. They either directly did
16 those activities or shared the usernames with others who did
17 those activities. Those were the individuals on whom we
18 either served discovery or listed as custodians.

19 It so happens that those same individuals, and,
20 as it turns out, many others who have not provided discovery
21 in this investigation, were also involved in seeking Samsara
22 confidential information inappropriately, both from
23 Samsara's former employees and other sources. So there is
24 overlap.

25 Some of the documents submitted to Your Honor

1 demonstrate that overlap. In the very same document that
2 the employees are circulating the means to access Samsara's
3 platform and copy its technology, they list the former
4 Samsara employees who now work at Motive that should be
5 inquired for confidential information about Samsara's
6 business strategy, product roadmap, and so on.

7 So, yes, the discovery overlaps, but the purpose
8 was always for the purposes of this investigation. Of
9 course, once we saw this trade secret misappropriation, and
10 it goes well beyond anything that we could have suspected,
11 because certainly we knew they were accessing and copying
12 the same parts of our platform that customers see, we did
13 not know that they were mining our employees for information
14 about our future product roadmaps, our sales strategies, our
15 business operations, and much more.

16 That is information that largely came to light
17 through the documents that were produced in response to the
18 discovery that's directed very clearly to the copying
19 activity. So there is no ulterior purpose. The discovery
20 was always appropriately served on the appropriate people
21 for the appropriate purposes.

22 So I did want to address that issue that trade
23 secret misappropriation became an issue later on, and we did
24 try to then add those claims to this matter, not file them
25 in a separate matter based on the document discovery here,

1 but to add them in this matter based on the discovery here.

2 There was an objection. Both Staff and Motive
3 noted that, boy, it looks like this is a very big issue and
4 too much to handle in this investigation even if some more
5 time was permitted for discovery.

6 As we look into it, we agree with them. The
7 amount of trade secrets, the number of Motive employees that
8 were involved, including ones who were not subject to
9 discovery here yet, would be extensive, and it would be
10 difficult to do it in just a few weeks of additional
11 discovery as we had originally proposed based on what we
12 initially saw.

13 Motive suggested in the last hearing that what we
14 should do, then, is pursue our claims in a separate venue.
15 The Staff indicated that we could pursue our claims
16 potentially by severing and having a separate investigation.

17 So what we're trying to accomplish is take,
18 essentially, Motive up on its offer and proceed in a
19 separate venue.

20 Now we will proceed in a separate venue
21 regardless of what happens with these documents, because
22 there is other information that indicates Motive's trade
23 secret misappropriation, including more recent activity that
24 was not discovered in this case, we will be pursuing those
25 claims separately regardless, but we do not want to be in a

1 situation where, when we pursue those claims, Motive says,
2 well, you're only doing this because you saw it in the ITC,
3 and the mere fact that you saw it in the ITC means you can't
4 raise it somewhere else, which is what they appear intent on
5 doing, that as soon as we file those claims elsewhere,
6 despite their prior offer and statements made to Your Honor,
7 they are going to say that's all a violation of the
8 protective order to even file claims based on what you saw
9 in the ITC even if you saw a clear violation of the law.

10 A way to avoid that is two things: one,
11 declassify documents that have no CBI and indicate the
12 misappropriation, and, two, allow me to advise my client on
13 exactly what has happened here by letting them see the
14 clearly Samsara internal information that's in Motive's
15 possession that there really could be no argument that it's
16 Samsara information.

17 Motive has not, in response to our motion, done
18 what the ITC precedent requires and gone in and explained
19 specifically how the specific things that we have included,
20 either by word or by line or by paragraph, are actually
21 Motive CBI.

22 What we have is a broad reference to it's
23 internal, it's a business strategy. No declaration showing
24 that it's confidential. No information showing that it has
25 value. If everything that is an internal document is

1 automatically CBI, there would be no need whatsoever for the
2 listing of subcategories in the protective order or in the
3 ITC's rule that describes the nature of what confidential
4 information can be.

5 You actually have to fall within one of those
6 items at least in order to be CBI; otherwise, the protective
7 order is a joke. It really means just, as long as a
8 document is internal, it's confidential CBI and can never be
9 revealed, redacted, declassified, because it was an internal
10 document.

11 And that's simply not the way the ITC's
12 protective order or any protective order works. If it's
13 challenged, you have to justify the classification according
14 to the categories that were provided.

15 There is another response, Your Honor, that, if
16 these materials are declassified, even though there's been
17 no showing that any of them are confidential, but the
18 allegation is, if they are declassified, that will undermine
19 the ITC's ability to require parties to provide discovery in
20 the future.

21 Again, Your Honor, I think that's a fallacy based
22 on old precedent and a misapplication of it. There is no
23 question that, under the rules, the ITC is able to compel
24 parties to provide discovery and impose sanctions if they do
25 not -- monetary sanctions and sanctions that allow the ITC

1 to carry out its work in completing its investigation and
2 conducting the hearing.

3 So there is no doubt that requiring people to
4 declassify materials that are not demonstrated to be
5 confidential could not possibly impede the ITC's ability to
6 the compel discovery when required.

7 And to the extent the language in precedent
8 addresses the practical issues of people needing to
9 voluntarily provide discovery in response to requests,
10 recall that Motive fought all of this discovery and the ALJ
11 required it and they provided it. They didn't say we're not
12 going to produce it because of protective order issues or
13 difficulties in complying with the ability to maintain
14 protections on what is actually confidential. They said it
15 was just something that they didn't want to provide, because
16 of the type of information, that it was Slack messages.

17 So there is really no cause to believe that
18 de-designating nonconfidential information here would cause
19 future parties to think that they could flout the ITC's
20 requirements or a future ALJ saying produce these materials
21 or else I will have to sanction you. There is no reason to
22 believe that that's the case.

23 Your Honor, I can address any of the specific
24 documents as well in the appendix. There is only a few of
25 them. I don't think there is a need --

1 JUDGE JOHNSON HINES: Excuse me. I don't think
2 that's necessary, but thank you.

3 MR. TURNER: Yes. I will say something about the
4 nature of the appendix, Your Honor, just to make sure it's
5 clear.

6 There are three categories there, and I hope it
7 is clear. There are documents that we think should be made
8 fully public; there are documents where we're only asking to
9 declassify a paragraph or a few sentences in the document;
10 and there are a few others where we don't think it's
11 confidential, but we're not going to fight that. You can
12 redact most of it and just declassify a sentence or a
13 paragraph or two.

14 So we have been very selective. There are
15 hundreds, maybe thousands of documents that relate to this
16 subject matter, but we selected a very small subset and
17 asked to declassify even a smaller subset of that. So we're
18 being very selective. I think there is no imposition on the
19 ITC's ability to seek discovery in future matters, and there
20 has been no showing with any support that any of these
21 materials are confidential.

22 Thank you, Your Honor.

23 JUDGE JOHNSON HINES: All right. Thank you. I
24 will allow, Mr. Kazi, or your team, to identify any
25 additional information. I have read the letters, your

1 responsive letter, but if you have something to add or to
2 respond to Mr. Turner, then I'll hear that as well.

3 MR. KAZI: Mr. Amon is handling this one,
4 Your Honor.

5 JUDGE JOHNSON HINES: Thank you.

6 MR. AMON: Good afternoon, Your Honor. So I
7 think mostly it's to respond to Mr. Turner's new arguments
8 presented here today. And I'll start with the fact that
9 there is no dispute or can be that these are all internal
10 Motive documents that reflect Motive's processes,
11 operations, and style of work. They relate to business
12 plans; they relate to competitive intelligence strategies;
13 they relate to employment offers.

14 And I think Staff agreed that all of those are
15 confidential Motive information under the definition
16 provided by the Commission's rule and under the protective
17 order in this case.

18 As it relates to --

19 JUDGE JOHNSON HINES: Can you hold on? One
20 question I had for you. The Commission Rule 201.6(a)(1)
21 identifies information which concerns or relates to trade
22 secrets, processes, operations, and style of works. It
23 seems the focus has been on processes, operations.

24 Is there a difference? I see that you all quoted
25 it as "style of work." I believe it's "style of works." Is

1 there a difference between those things?

2 MR. AMON: When you say the listing of trade
3 secrets, processes, operations, and style of work, or just
4 style of work versus style of works?

5 JUDGE JOHNSON HINES: My understanding was that
6 C.F.R. 201.6(a) talks about style of works. Maybe I'm wrong
7 on that point. But it does seem that the parties in the
8 letter from Mr. Turner on September 10th, the quotation from
9 19 C.F.R. 201.6(a)(1) is "style of works." You have
10 identified it as "style of work." Maybe there is no
11 difference between those things. It does seem to me that
12 there is. At any rate --

13 MR. AMON: Sorry, Your Honor. I didn't mean to
14 interrupt you.

15 I think that was, frankly, an oversight on the
16 "work" versus "works" citation. I think we intended it to
17 cover style of works. And it relates to the business plans,
18 employment offers, you know, intelligence strategies. Those
19 are all styles of work and things that we undertake to
20 advance our competitive position in the market.

21 JUDGE JOHNSON HINES: All right.

22 MR. AMON: As it relates to Mr. Turner's point
23 about the chilling effect, we entirely disagree.

24 First of all, to the extent that documents like
25 this are de-designated and ordered made public, the problem

1 becomes that the parties, and, as Staff pointed out, third
2 parties potentially become much more reluctant to want to
3 liberally produce documents, if they believe that they won't
4 be protected by the protective orders as confidential
5 information. And I think the concern there is that it will
6 actually increase and multiply motion practice before the
7 ITC.

8 As Mr. Turner's statements reflected, parties
9 would then have to come to Your Honor or other ALJs, seek
10 motions to compel. That's going to complicate the process,
11 increase litigation costs, slow the process down.

12 And so I think that it will have a chilling
13 effect and it will have the effect of complicating
14 litigation and production of discovery, which otherwise
15 occurs relatively voluntarily and liberally.

16 The other thing that I would just note, as was
17 referenced in our letter, our opposition letter, is that the
18 rule regarding confidentiality is relatively broad as
19 interpreted by the Commission and is applied liberally, and
20 the Commission tends to err on the side of protecting
21 information.

22 With respect to Mr. Turner's point that they need
23 this to support the claims, I think a reading of the
24 Delaware complaint that was filed before the complaint in
25 this investigation clearly undermines that argument.

1 As we said in our opposition letter, in the
2 Delaware complaint filed before this investigation Samsara
3 alleged that we were engaged in conduct of hiring their
4 former employees to gather intelligence to learn about their
5 products. That is exactly what they are now claiming is
6 their trade secret and the basis for their new allegations.
7 They similarly made those types of accusations in the
8 complaint filed here.

9 So the fact that they are now trying to say that
10 they need these documents de-designated or declassified to
11 support those allegations that they made eight months ago
12 seems like a stretch, frankly, Your Honor.

13 And I think that their behavior -- what I mean by
14 their behavior, I mean Samsara's behavior -- throughout
15 discovery has been reflective of that. Again, Mr. Turner
16 repeated his statement that their discovery requests were
17 all in support of alleged copying regarding secondary
18 considerations of non-obviousness.

19 But when you look at the way they have conducted
20 discovery, that they have asked for things unrelated to
21 domestic industry products, that they questioned our
22 witnesses about teardowns that predate any of the priority
23 dates or predate any of the domestic industry products, it's
24 clearly that they were doing investigations to try to
25 support new claims and new allegations in the guise of

1 secondary considerations, Your Honor. So we think that that
2 really does not withstand scrutiny.

3 I think, from our perspective, Your Honor --

4 JUDGE JOHNSON HINES: May I ask you a question
5 about that?

6 MR. AMON: Of course.

7 JUDGE JOHNSON HINES: I'm not in a position to
8 know whether any of that is true or not, but does any of it
9 relate to the documents that are at issue here?

10 MR. AMON: Your Honor, I believe that some of
11 them are very early documents. I would have to go back and
12 confirm that. I don't have the entire list of 38 committed
13 to memory. I apologize.

14 JUDGE JOHNSON HINES: All right. That's fine.

15 MR. AMON: But, Your Honor, I think that, in
16 essence, as Mr. Turner admitted, there is nothing stopping
17 them from pursuing their trade secret allegations. They
18 were able to make those allegations eight months ago when
19 they filed their Delaware complaint. They included some
20 more statements in their complaint here.

21 They don't need these documents. They, from our
22 perspective, are seeking to de-designate these for an
23 improper purpose, and that is to embarrass our client
24 publicly, to expand the cloud that has been put over our
25 client by the filing of these lawsuits, and to keep pressure

1 on our customers, investors, others, to not do business with
2 us. And so we think that it is for an improper purpose.

3 And the last point that I'll make with respect to
4 one of Mr. Turner's comments is Mr. Biswas, Samsara's CEO,
5 admitted in deposition that he was aware of -- or he had
6 been made aware of some of Motive's alleged conduct of
7 trying to hire former Samsara employees, et cetera.

8 So the fact that he is already aware of that
9 shows they don't need these documents to keep their client
10 properly informed. Their client is already informed of the
11 allegations that's reflected in the public filings and by
12 his own deposition testimony.

13 With that, Your Honor, unless you have other
14 questions, I'll pass.

15 JUDGE JOHNSON HINES: I do not. Thank you.

16 Ms. Wantland, I'll give you the same opportunity
17 if there is anything you want to add to what has been
18 submitted and what has been said.

19 MS. WANTLAND: Good afternoon, Your Honor.
20 Briefly, counsel for Complainant indicated that they wanted
21 to avoid when they do bring these allegations stating or
22 having Motive come back and say that they can't use it
23 because the only way they learned it was the ITC.

24 I think, as Respondent's counsel just noted,
25 there is ample other evidence from which they could bring

1 these allegations and have a good Rule 11, good-faith basis
2 to do so, and I cited, just as an example, in the Staff's
3 responsive letter as well.

4 But I want to echo also what Respondent's counsel
5 said about the burden that at least the Staff believes that
6 this precedent could create on the discovery process. When
7 we have general discovery documents, just the cost and --
8 two parties in terms of declassification, and then
9 additionally the trust in the system as a whole.

10 Obviously the ITC's ability to compel parties
11 would still remain, but, as Respondent's counsel said, we
12 are increasing costs, if the process is going to be fought
13 tooth and nail the entire time. And parties would want to
14 do that if they do not have faith that their documents would
15 remain confidential or could be, you know, the processes
16 could be disclosed, especially for third parties, and
17 everything that's listed in the letter.

18 So that's all that I would add, Your Honor.

19 JUDGE JOHNSON HINES: All right. Thank you for
20 that.

21 What I am thinking is I will allow Samsara to
22 file a motion. I want to make some observations, however.

23 It will be a while until this issue is finally
24 decided. A motion to declassify requires the issue in
25 initial determination and then subsequent review by the

1 Commission before anything can actually be declassified,
2 assuming that the motion is opposed, which my understanding
3 is it will be.

4 So I do want -- Mr. Turner, presumably you know
5 that, but I want to make clear that there is nothing that is
6 going to happen quickly on this type of motion.

7 I do understand and appreciate the comments of
8 Ms. Wantland with respect to investigations moving forward
9 and the costs, both in terms of party time and resources and
10 Commission time and resources with respect to discovery
11 documents. So I do take that to heart.

12 At the same time, what I have been told and at
13 least what appears to be the case is that, with respect to
14 this investigation and the subject matter and the claims
15 made in this investigation, there is a relatively small
16 subset of documents that relate -- may relate or argued to
17 relate to copying domestic industry, potentially to public
18 interest, that there is a dispute over whether those have
19 properly been designated.

20 I am not pre-deciding anything here. I do
21 understand logistically why, as an initial matter, many
22 documents like this would be designated as CBI, because they
23 are coming from internal party discussions, conversations,
24 et cetera, but I do think it is appropriate for the
25 Complainant to raise this issue and to try to get it

1 resolved with respect to the subject matter of this
2 investigation. And I do want to make that clear, because
3 that is at least part of how this issue was presented to me.

4 I do think that the ability of counsel to be able
5 to openly discuss issues with clients in the attempt to
6 further the case and potentially lead to settlement is an
7 important factor to consider in this situation where
8 documents are seeking to be de-designated.

9 In any motion that is filed and the responsive
10 documents, I would like the parties to specifically address
11 the portions of the Commission rule that address
12 confidential business information, and, in particular,
13 processes, operations, and style of works. Those seem to be
14 the three that were focused on.

15 I would like to get a better understanding of
16 what those things mean in the context of the Commission
17 Rule, and, to the extent there is any discussions of what
18 those specific things mean and their parameters, I would
19 like to get a better understanding of that.

20 Also, Ms. Wantland, you raise some important what
21 I believe are policy issues that I would like to understand
22 in more detail as well, in particular, why sort of going
23 down this road would discourage trust in the Commission as a
24 whole, which was something that you mentioned in your letter
25 and I think is something that should be addressed, because I

1 think the Commission and the parties appearing before the
2 Commission, that is something that would be quite
3 undesirable, so I would like to get a better understanding
4 of that.

5 And there was another issue about potential
6 declassification dissuading parties and potentially third
7 parties from cooperating fully during discovery. That was
8 mentioned in letters, that was mentioned earlier here this
9 afternoon, I would like to get a better understanding of
10 that as well.

11 Finally, another point. I will allow the motion
12 to be filed and then responses. Having looked before this
13 hearing at the schedule in this case, I understand this is
14 quite a busy time in the case, so that is not at all lost on
15 me.

16 I do believe from what I've seen from the parties
17 that there have been meet-and-confer efforts to resolve this
18 issue before submitting letters to me, so I'm not suggesting
19 that that didn't happen.

20 What I am suggesting is moving forward, to the
21 extent that a motion is filed, considering the other
22 deadlines in the procedural schedule, that the parties do
23 make an effort to reduce the number of issues and
24 potentially agree on some compromise here. Maybe that's not
25 possible, but maybe also hope springs eternal that the

1 parties can do that with respect to this subset of
2 documents.

3 So I would ask the parties to make a real
4 vigorous effort to make that happen, to make it easier for
5 your teams to do the substantive work that needs to be
6 accomplished here, because it's a fair amount remaining in
7 the case.

8 Mr. Turner, a question for you. I've said you
9 may file a motion. Do you have a date by which a motion
10 will be filed?

11 MR. TURNER: I do not, Your Honor. I don't think
12 it would take too long, probably ten days, if we're going to
13 meet and confer ahead of it, because I do agree that I would
14 like to have a response to the specific redactions we made,
15 for example, and why they would designate those
16 confidential. So if we could meet and confer and then maybe
17 file the motion a week after that is completed.

18 JUDGE JOHNSON HINES: All right. You mentioned
19 ten days. That would, by my count, be September 23rd. Is
20 that going to work for you?

21 MR. TURNER: I think that's -- I'm looking at the
22 same count, Your Honor, and I think that's right, yes.

23 JUDGE JOHNSON HINES: All right. If it can be
24 filed before then, I suggest that you do that, but I don't
25 want to cut off any opportunity for the parties to reduce or

1 eliminate this issue entirely. So the 23rd will be the
2 date.

3 Mr. Amon, do you have any questions or comments
4 on anything else I've said?

5 MR. AMON: Your Honor, I think the only thing
6 that I would add, and taking a cue from your last comment
7 about trying to resolve this, to the extent that the primary
8 concern for Samsara is being able to share this information
9 with their client, to be able to advise them, perhaps that's
10 something that we can agree to, let them share that
11 information without making it public, if that's something
12 that Samsara is willing to compromise on.

13 Because if the real concern is being able to
14 advise their clients, then maybe, you know, with the
15 understanding that it would still be kept confidential, that
16 is something that perhaps we can agree with. We can meet
17 and confer with Samsara on that point. But I just wanted to
18 make sure that you were aware that that is something that
19 maybe we're amenable to, as we have done in the past.

20 JUDGE JOHNSON HINES: All right. I suggest that
21 the parties further meet and confer on that point and the
22 others as well, the more fundamental issue of whether the
23 information is actually CBI.

24 As I said, I am not pre-deciding that issue in
25 any way, but I think the parties should continue to discuss

1 as they move forward with respect to a motion.

2 MR. TURNER: Thank you, Your Honor. I appreciate
3 that offer from Mr. Amon. That is something that we had
4 asked for several times and it sounds like we might get it.
5 That will help my client decide whether a motion is in their
6 interest if they could actually see the materials, so I
7 appreciate that.

8 JUDGE JOHNSON HINES: Ms. Wantland, do you have
9 any questions or comments on what I said and what looks like
10 a potential schedule moving forward?

11 MS. WANTLAND: Your Honor, my only comment would
12 be regarding the schedule, that the Staff would likely need
13 to ask for an extension to respond to any motion filed, just
14 given the sheer number of other deadlines and anticipated
15 other motions coming down the pipeline and as well as the
16 Staff will be out of the country for a portion of this, so
17 it just will not be possible. And we're busy as an office
18 right now and don't have that kind of coverage.

19 So it would just -- I just wanted to put that out
20 there that I would probably be asking for an extension in
21 order to fully respond to everything that Your Honor has
22 asked us to address.

23 JUDGE JOHNSON HINES: All right. I understand
24 that. You can discuss that with the parties. I would be
25 quite surprised if there was any disagreement on the Staff's

1 request for an extension given what you have just said, but
2 perhaps the parties can consider that beforehand when a
3 motion is filed and let me know proposed dates for full
4 briefing of the motion. If it can't happen at the time the
5 motion is filed, that's fine, I can look at things after,
6 but seeing as this issue has been teed up now, perhaps the
7 parties can discuss what the briefing schedule will look
8 like given the issues the Staff has raised, given other
9 events that are on the schedule as it exists now.

10 All right. Thank you, Ms. Wantland.

11 Is there anything else we should discuss in the
12 parties' letters or Samsara's letter?

13 MR. TURNER: No, Your Honor.

14 JUDGE JOHNSON HINES: All right. One other thing
15 I did want to note and the Staff pointed out in her
16 response, there is a deadline to provide discovery letters,
17 and it's in the rules for a couple of reasons.

18 One is so that the parties can have some time to
19 prepare for a case management conference. You obviously all
20 came here prepared, and I appreciate that. The other is so
21 that I have time to prepare. It is helpful to me if I have
22 a little more time than overnight to review materials and
23 get ready for one of these conferences. So I would
24 appreciate if the parties took heed of those deadlines and
25 complied with them moving forward.

1 All right. The next item was an impending motion
2 to move the mediation deadline from September 16th to
3 September 19th. I assume that would also mean moving the
4 date for submitting a joint report on the mediation, but who
5 is going to address this issue?

6 MR. TURNER: I can, Your Honor. We have -- this
7 is one where the parties do have agreement. We have found a
8 mediator. The mediator is available on the 19th. We have
9 scheduled the mediation, so we are ready to proceed, and so
10 we just need a three-day extension there.

11 And then, yes, the report would be extended as
12 well, I believe, to the 26th, so it would give a week to
13 provide the report on the mediation.

14 JUDGE JOHNSON HINES: All right. Assuming there
15 is no opposition to moving those dates, is that correct,
16 Mr. Kazi?

17 MR. KAZI: That's correct, Your Honor.

18 JUDGE JOHNSON HINES: Ms. Wantland?

19 MS. WANTLAND: No opposition from the Staff.

20 JUDGE JOHNSON HINES: All right. So I will grant
21 motion to move the mediation deadline to September 19th and
22 the joint report on mediation until September 26th.

23 The next item was the potential change to
24 demonstrative service date.

25 Mr. Turner, will you be taking that as well?

1 MR. TURNER: I will, Your Honor. This is one
2 where it says potential because the parties hadn't had a
3 chance to meet and confer on it, but we thought we were
4 discussing schedule today, it might make sense. And it
5 really is an issue of Your Honor's preference more so than
6 the parties', I believe.

7 There is a date for demonstrative exchange that's
8 in October, and in a case where there is no witness
9 statements and everything is happening live, ordinarily I
10 would expect the demonstratives to be exchanged closer to
11 the time the witness testifies, such as the night before, so
12 that -- certainly time for objections to be raised and those
13 to be resolved -- but shortly before the witness testifies.

14 So that would be our preference. And I think
15 Motive may be in agreement with that but they needed to
16 check on it.

17 MR. AMON: Your Honor, I can take this one for
18 Motive.

19 JUDGE JOHNSON HINES: Thank you.

20 MR. AMON: Yes, we are generally in agreement,
21 Your Honor. I think the parties needed to confer with both
22 Staff and Samsara to figure out what's an appropriate time,
23 but, generally speaking, exchanging demonstratives the day
24 before is our practice and something that we would prefer,
25 subject, of course, to Your Honor's preference.

1 JUDGE JOHNSON HINES: Typically my ground rules
2 include a footnote in this place where the parties agree
3 that the date for demonstratives can be separately
4 negotiated, and typically the parties agree that
5 demonstratives are exchanged 24 hours or some time period --
6 sometimes it varies; it depends on what the parties agree
7 to -- before a witness testifies.

8 So that would be -- that would implicate the
9 October 11th deadline for direct demonstrative exhibits and
10 also the October 14th deadline for rebuttal demonstrative
11 exhibits.

12 I have no problem with changing those to whatever
13 period of time the parties agree that they will be
14 exchanged, whether it's 24 hours -- I have seen parties
15 agree to longer than that, 48 hours -- it is really up to
16 you all to do that.

17 So what I suggest is that the parties meet and
18 confer and come to an agreement on how far ahead of live
19 witness testimony the demonstratives, whether they be direct
20 or rebuttal, are exchanged.

21 Are there any questions about that?

22 MR. TURNER: No, Your Honor.

23 JUDGE JOHNSON HINES: All right. I see Mr. Amon
24 shaking his head no, so I will take that as a no.

25 Ms. Wantland, anything on that?

1 MS. WANTLAND: Nothing from Staff, Your Honor.

2 JUDGE JOHNSON HINES: All right. Those, I
3 believe, are the only issues on case schedule; is that
4 correct?

5 MR. TURNER: Yes, Your Honor, those are the only
6 on case schedule, that's correct.

7 JUDGE JOHNSON HINES: All right. Then what I
8 would ask the parties to do is, after you meet and confer on
9 the period of time for the exchange of demonstratives,
10 direct and rebuttal, that you all file a Joint Amended
11 Procedural Schedule to reflect the changed dates for the
12 mediation and for the joint report and also what you all
13 have agreed to with respect to the time period for exchange
14 of demonstrative exhibits.

15 Is that understood?

16 MR. TURNER: Yes, Your Honor.

17 JUDGE JOHNSON HINES: All right. And is it
18 possible for me to get that by Monday, the 16th?

19 MR. TURNER: Yes, Your Honor.

20 JUDGE JOHNSON HINES: All right. So that will be
21 a joint filing. Thank you.

22 The last was an update regarding the parties'
23 conferring on case narrowing.

24 Mr. Turner, did you want to take that?

25 MR. TURNER: Sure, I'll take that.

1 So there was a request by Motive's counsel that
2 the Complainant narrow the number of asserted claims for the
3 hearing for trial in this matter.

4 We had had some discussions -- they were
5 partially under 408, so I won't get into the details of the
6 discussion -- but the nature of the discussion was removing
7 a product which would thereby remove two claims from one of
8 the patents. We were unable to reach agreement on that, so
9 that particular patent remains without its claims narrowed.

10 To give Your Honor context, there are three
11 patents at issue. One patent has two claims at issue; the
12 second patent has three claims at issue; and then the
13 remaining patent, the '621, has 15 claims at issue.

14 So any narrowing at this point would be, if it
15 happens, would be with respect to the '621 patent, because
16 the other patents we're talking about one independent and
17 one dependent claim or two independent claims and one
18 dependent claim. So there is not any really meaningful
19 narrowing to happen on those two unless the parties are able
20 to reach some agreement in their mediation.

21 On the '621, where there are 15 claims at issue,
22 what we have are three claim sets: a system claim set, a
23 method claim set, and a Beauregard claim set that proceed
24 along a similar structure within the claims.

25 The way the experts have handled those claims,

1 from both sides, is largely, not entirely, but largely to
2 say I've said this for claim 1, I mean the same thing for
3 the corresponding method claim and Beauregard claim where
4 the same or similar element is addressed.

5 So, therefore, it may not be that reducing the
6 claims would actually change anything for the hearing in
7 terms of the time to present something.

8 So what the parties are discussing at this point
9 is Motive is going to identify any way in which it thinks
10 handling those claims would be burdensome given the way that
11 the experts have handled them, and then we're going to
12 confer further and see if Samsara can narrow in light of
13 that.

14 The parties may have disagreement still,
15 depending on what Motive proposes, but right now I think
16 we're still at the tail end of the meet-and-confer stage.

17 JUDGE JOHNSON HINES: All right. Mr. Kazi?

18 MR. KAZI: Good afternoon, Your Honor. I'd like
19 to make three points here.

20 JUDGE JOHNSON HINES: Can you speak up a little
21 for me?

22 MR. KAZI: Sorry. Can you hear me better now?

23 JUDGE JOHNSON HINES: Yes. Thank you.

24 MR. KAZI: I don't think this was Mr. Turner's
25 intention, but I don't want there to be any suggestion that

1 Motive was considering dropping a product, to be absolutely
2 clear on the record.

3 MR. TURNER: Sorry.

4 MR. KAZI: The second point is with respect to
5 the patents. We don't agree that including the 15 claims
6 asserted from the '621 patent is appropriate or necessary at
7 this stage. If Mr. Turner believes they are all
8 duplicative, then he should just pick the ones that he
9 thinks is the best for his case, but we don't view the
10 issues as duplicative across all of the claim sets.

11 So if that's Samsara's perspective, then I see no
12 reason why we would have multiple sets of duplicative claims
13 in the case.

14 But, from our perspective, we are at a place
15 where we're two months out from trial, a little bit less, we
16 have three patents in the case, and we have more than 20
17 asserted claims. And so we think that there has to be some
18 meaningful efforts to narrow. We would like to see some
19 progress to that, and we're looking for the Court's guidance
20 in how to accomplish that.

21 JUDGE JOHNSON HINES: All right. Thank you.

22 Ms. Wantland?

23 MS. WANTLAND: Your Honor, this issue recently
24 came to the forefront because of the Staff's response to
25 Complainant's motion to strike. I noted that in our June

1 18th CMC with Your Honor there was a long discussion
2 involving the invalidity combinations and that we discussed
3 the process for narrowing that, and at that time Complainant
4 had said that it would also make serious efforts to narrow
5 its case.

6 And, to date, I understand what counsel is saying
7 about the claims being similar, but it's not just hearing
8 time. We're also briefing. We have experts that have spent
9 time and money of the clients having to walk through this
10 and any nuances or differences between those claims, and you
11 are going to have to sit and read pre-hearing briefs for all
12 three parties.

13 And so it is still a large undertaking that, to
14 the extent it can be reduced, it should have already been
15 reduced and needs to be reduced is the Staff's position --
16 not at least or at least because Complainant said that they
17 would do so back in June. So that's the Staff's only point
18 on this.

19 JUDGE JOHNSON HINES: Ms. Wantland, do you have a
20 proposal for how that would happen?

21 MS. WANTLAND: I would have liked for it to
22 happen before now, but if the claims in the '621, because
23 that does seem to be the patent where it could be narrowed,
24 I believe it is up to Complainant. I don't want to make
25 their case for them or figure out which claims they believe

1 are stronger than others, but if there is that much of a
2 substantial overlap, then I would -- we're in the middle of
3 expert depositions right now, Your Honor, so the ship has
4 sailed in terms of expert reports, but the private parties'
5 pre-hearing briefs are due on October 18th.

6 So I'd like at least by the end of the month,
7 this month, for there to have been some narrowing so that by
8 the time the parties sit down to start briefing they are not
9 expending time and resources -- it's not a waste, I would
10 say, but it is going to be unnecessary.

11 JUDGE JOHNSON HINES: All right. Thank you.

12 My process to date has been not to require case
13 narrowing by certain deadlines but to leave it to the
14 parties to do that.

15 I suggest to you, Mr. Turner, and what I was
16 hearing from you right now was that there is no burden,
17 undue burden, because the claims in the '621 patent fall
18 into sets that largely overlap. I think that, given that
19 argument, there is a good counterargument that, if that is
20 so, then why keep them.

21 I think that you should consider that. I am not
22 ordering case narrowing. I think it is up to the parties to
23 determine what they can present in the full way that they
24 need to to be successful in the amount of time they have and
25 to consider that in light of the number of asserted claims

1 and also the number of identified invalidity defenses.

2 We have a finite amount of time for the hearing
3 and the information that must be presented, the evidence
4 that must be presented at that hearing to make your case.
5 So given the arguments that you yourself are making and the
6 responses that you are hearing to those arguments,
7 Mr. Turner, I would encourage you to consider how to move
8 forward with respect to the '621 patent and the number of
9 claims asserted there and the upcoming deadlines,
10 particularly the deadline on the pre-hearing briefs.

11 MR. TURNER: Appreciated, Your Honor, and that
12 was exactly the tone and tenor of the meet-and-confer that
13 we had and Motive had said they would get back to me on a
14 point about the '621 and how they felt about those claims,
15 and I was simply waiting for them to get back to me, which
16 they haven't yet. But if they don't get back to us, we'll
17 figure something out.

18 JUDGE JOHNSON HINES: All right. Well, the
19 parties need to keep having discussions. They should do
20 that. But now, at least partially, how the issue has been
21 presented to me, those are my thoughts.

22 Is there anything else that we should discuss
23 today?

24 MR. TURNER: Your Honor, for the transcript, I
25 just want to correct the record. It's not asking Your Honor

1 to rule on anything.

2 Mr. Amon, in response to my argument, had said
3 that Samsara believes that they can't file a trade secret
4 claim without this evidence. That is not what I said or
5 argued. If I was understood to say that, I misspoke.
6 That's not what I was asserting. And so I just want to make
7 that clear for the transcript in case it was attempted to be
8 used later on in a different way.

9 JUDGE JOHNSON HINES: All right.

10 Mr. Kazi? Mr. Amon? Anything else?

11 MR. KAZI: No, Your Honor.

12 JUDGE JOHNSON HINES: All right. Ms. Wantland?

13 MS. WANTLAND: Nothing further from Staff,
14 Your Honor.

15 JUDGE JOHNSON HINES: All right. Then thank you,
16 everyone, for your time and preparation. We're adjourned.

17 //

18 (Whereupon, the proceedings concluded at
19 1:55 p.m.)

20

21

22

23

24

25

C E R T I F I C A T E

TITLE: IN THE MATTER OF CERTAIN VEHICLE TELEMATICS, FLEET
MANAGEMENT, AND VIDEO-BASED SAFETY SYSTEMS, DEVICES, AND
COMPONENTS THEREOF

INVESTIGATION NO.: 337-TA-1393

HEARING DATE: September 12, 2024

LOCATION: Washington, D.C. - Remote

NATURE OF HEARING: Case Management Conference

I hereby certify that the foregoing/attached transcript is a true, correct and complete record of the above-referenced proceedings of the U.S. International Trade Commission.

Date: September 13, 2024

Signed:

ss//

Signature of the Contractor or the Authorized Contractor's Representative

I hereby certify that I am not the court reporter and that I have proofread the above-referenced transcript of the proceedings of the U.S. International Trade Commission against the aforementioned court reporter's notes and recordings for accuracy in transcription in the spelling, hyphenation, punctuation and speaker identification and did not make any changes of a substantive nature. The foregoing/attached transcript is a true, correct and complete transcription of the proceedings.

Signed:

ss//

I hereby certify that I reported the above-referenced proceedings of the U.S. International Trade Commission and caused to be prepared from my record media and notes of the proceedings a true, correct and complete verbatim recording of the proceedings.

Signed:

Linda Kinkade

September 12, 2024

EXHIBIT 7

Obiol, Alexandra

From: Michael Amon <Amon@fr.com>
Sent: Friday, September 20, 2024 11:56 PM
To: Turner, Ellisen Shelton; Noah Graubart
Cc: [Service] Motive-Samsara ITC 1393; #Samsara - ITC; Wantland, Megan
Subject: RE: Inv. No. 337-TA-1393: Met and Confer items

This message is from an EXTERNAL SENDER

Be cautious, particularly with links and attachments.

Hi Ellisen,

We have been going back and forth with our client, and in the end, our client has substantial reservations about letting anyone at Samsara see what are internal Motive documents for the same reason we would imagine that folks at Samsara would have concerns about showing Motive in-house employees internal communications among Samsara employees like those cited in our opposition letter. Moreover, as we articulated in our opposition letter and at the last CMC, it appears that Samsara's principals are well apprised both from public filings as well as other, undisclosed information, regarding issues relevant to Samsara's trade secret allegations. That, plus the fact that there is no guarantee that Samsara will not proceed to file a motion to de-designate even if we do agree to let a limited number of folks at Samsara see some limited universe of documents leads us to think that it is unlikely we will be able to reach agreement on this issue.

If you have some other thoughts on this, we would welcome hearing them and passing them on to our client for consideration.

If Samsara files its motion by Sept. 25, Motive will not oppose on timeliness grounds. We can be available to discuss any issues on Monday, as needed.

Best,
Mike

Michael Amon

Principal ■ Fish & Richardson P.C.

T: 858 678 4708 | M: 619 865 7095
amon@fr.com | [Bio](#) | [fr.com](#)

From: Turner, Ellisen Shelton <ellisen.turner@kirkland.com>
Sent: Friday, September 20, 2024 10:27 AM
To: Michael Amon <Amon@fr.com>; Noah Graubart <graubart@fr.com>

Cc: [Service] Motive-Samsara ITC 1393 <ServiceMotive-SamsaraITC1393@fr.com>; #Samsara - ITC <KE_Samsara_ITC@kirkland.com>; Wantland, Megan <Megan.Wantland@usitc.gov>
Subject: RE: Inv. No. 337-TA-1393: Met and Confer items

Hi Mike,

We had offered Motive windows on three separate days to confer on the below and we have not heard back. This confer, and Motive's position on what it will allow our client to see, are important to our preparation of our motion. When can we talk? Although the ALJ did not issue an order directing us to file by September 23, that is the deadline discussed at hearing. Will Motive agree to extend that deadline by two days?

Many thanks,

Ellisen

Ellisen Shelton Turner P.C.

Partner

[bio](#) | [vcard](#) | (he/him)

KIRKLAND & ELLIS LLP

2049 Century Park East, 37th Floor, Los Angeles, CA 90067

T +1 310 552 4220

F +1 310 552 5900

ellisen.turner@kirkland.com

From: Turner, Ellisen Shelton <ellisen.turner@kirkland.com>

Sent: Tuesday, September 17, 2024 2:18 PM

To: Michael Amon <Amon@fr.com>; Noah Graubart <graubart@fr.com>

Cc: [Service] Motive-Samsara ITC 1393 <ServiceMotive-SamsaraITC1393@fr.com>; #Samsara - ITC <KE_Samsara_ITC@kirkland.com>; Wantland, Megan <Megan.Wantland@usitc.gov>

Subject: RE: Inv. No. 337-TA-1393: Met and Confer items

Hi Mike,

I'm free to talk for the rest of the day today. Tomorrow, I'm currently available between 10-12 and 2:30-4 PT.

Many thanks,

Ellisen

Ellisen Shelton Turner P.C.

Partner

[bio](#) | [vcard](#) | (he/him)

KIRKLAND & ELLIS LLP

2049 Century Park East, 37th Floor, Los Angeles, CA 90067

T +1 310 552 4220

F +1 310 552 5900

ellisen.turner@kirkland.com

From: Michael Amon <Amon@fr.com>

Sent: Monday, September 16, 2024 1:14 PM

To: Turner, Ellisen Shelton <ellisen.turner@kirkland.com>; Noah Graubart <graubart@fr.com>

Cc: [Service] Motive-Samsara ITC 1393 <ServiceMotive-SamsaraITC1393@fr.com>; #Samsara - ITC <KE_Samsara_ITC@kirkland.com>; Wantland, Megan <Megan.Wantland@usitc.gov>
Subject: RE: Inv. No. 337-TA-1393: Met and Confer items

Hi Ellisen,

Thanks for the updated times below. We are discussing this internally, and will get back to you as soon as possible regarding a time to meet and confer, which will likely be at the earliest tomorrow. Do you also have availability on Wednesday, in case that is needed?

Best,
Mike

Michael Amon :: Principal

Fish & Richardson P.C.
+1-858-678-4708 direct :: 619-865-7095 mobile :: amon@fr.com
fr.com

From: Turner, Ellisen Shelton <ellisen.turner@kirkland.com>
Sent: Monday, September 16, 2024 9:20 AM
To: Michael Amon <Amon@fr.com>; Noah Graubart <graubart@fr.com>
Cc: [Service] Motive-Samsara ITC 1393 <ServiceMotive-SamsaraITC1393@fr.com>; #Samsara - ITC <KE_Samsara_ITC@kirkland.com>; Wantland, Megan <Megan.Wantland@usitc.gov>
Subject: RE: Inv. No. 337-TA-1393: Met and Confer items

[This email originated outside of F&R.]

Hi Mike and Noah, just adjusting my available times below in light of conflicts that have arisen:

- Today: 9:30-10:30, 2-3, 4-5 PT
- Tomorrow (9/16): 10-12 PT.

Ellisen

Ellisen Shelton Turner P.C.
Partner
[bio](#) | [vcard](#) | (he/him)

KIRKLAND & ELLIS LLP
2049 Century Park East, 37th Floor, Los Angeles, CA 90067
T +1 310 552 4220
F +1 310 552 5900

ellisen.turner@kirkland.com

From: Turner, Ellisen Shelton
Sent: Monday, September 16, 2024 8:24 AM
To: 'Michael Amon' <Amon@fr.com>; Noah Graubart <graubart@fr.com>
Cc: [Service] Motive-Samsara ITC 1393 <ServiceMotive-SamsaraITC1393@fr.com>; #Samsara - ITC <KE_Samsara_ITC@kirkland.com>; Wantland, Megan <Megan.Wantland@usitc.gov>
Subject: Inv. No. 337-TA-1393: Met and Confer items

Hi Mike and Noah,

Mike said during the recent hearing that Motive has a proposal for allowing Samsara's in-house folks to review the documents we are seeking to de-classify (or redact) to the extent they are alleged to contain Motive CBI. Can we confer on that, and any other approaches to resolving that planned motion, today? I'm currently free at the times listed below.

- Today: 9:30-10:30, 12-1, 2-3, 4-5 PT
- Tomorrow (9/16): 10-12 PT.

Also, Noah said during our meet and confer last week regarding claim narrowing that Motive would get back to us on which of the '621 patent claims Motive considered particularly burdensome to address despite any overlap amongst the claim sets (and Aamir also mentioned at the hearing that Motive doesn't view the issues as duplicative across all of the claim sets). Could you get back to us on that so we can determine whether a further confer is necessary on that issue as well?

Many thanks,

Ellisen

Ellisen Shelton Turner P.C.

Partner

[bio](#) | [vcard](#) | (he/him)

KIRKLAND & ELLIS LLP

2049 Century Park East, 37th Floor, Los Angeles, CA 90067

T +1 310 552 4220

F +1 310 552 5900

ellisen.turner@kirkland.com

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EXHIBIT 8

UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:)	Investigation No.
CERTAIN VEHICLE TELEMATICS, FLEET)	337-TA-1393
MANAGEMENT, AND VIDEO-BASED SAFETY)	
SYSTEMS, DEVICES, AND COMPONENTS)	
THEREOF)	

Pages: 1 through 45

Place: Washington, D.C.

Date: June 18, 2024

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1 UNITED STATES INTERNATIONAL TRADE COMMISSION
2 Washington, D.C.
3 BEFORE THE HONORABLE DORIS JOHNSON HINES
4 Administrative Law Judge

5 _____
6 In the Matter of:) Investigation No.
7 CERTAIN VEHICLE TELEMATICS, FLEET) 337-TA-1393
8 MANAGEMENT, AND VIDEO-BASED SAFETY)
9 SYSTEMS, DEVICES, AND COMPONENTS)
10 THEREOF)
11 _____

12
13
14 International Trade Commission
15 500 E Street, S.W.
16 Washington, D.C.

17
18 Tuesday, June 18, 2024

19
20 CASE MANAGEMENT CONFERENCE - REMOTE

21
22 The conference commenced remotely, pursuant to
23 the notice of the Judge, at 3:00 p.m. Eastern.

24
25 Reported by: Karen Brynteson, FAPR, RMR, CRR

1 APPEARANCES:

2 ** All parties appearing remotely **

3

4 For Complainant Samsara Inc.:

5 JOSHUA GLUCOFT, ESQ.

6 Kirkland & Ellis LLP

7 2049 Century Park East

8 Los Angeles, CA 90067

9

10 KARTHIK RAVISHANKAR, ESQ.

11 Kirkland & Ellis LLP

12 1301 Pennsylvania Avenue, N.W.

13 Washington, D.C. 20004

14

15 JOSEPH A. LOY, ESQ.

16 Kirkland & Ellis LLP

17 601 Lexington Avenue

18 New York, New York 10022

19

20

21

22

23

24

25

1 APPEARANCES: (CONTINUED)

2

3 For Respondent Motive Technologies, Inc.:

4 MICHAEL J. McKEON, ESQ.

5 Fish & Richardson P.C.

6 1000 Maine Avenue, S.W., Suite 1000

7 Washington, D.C. 20024

8

9 NOAH C. GRAUBART, ESQ.

10 AAMIR A. KAZI, ESQ.

11 Fish & Richardson P.C.

12 1180 Peachtree Street SE, Suite 2100

13 Atlanta, GA 30309

14

15 MICHAEL A. AMON, ESQ.

16 Fish & Richardson P.C.

17 12860 El Camino Real, Suite 400

18 San Diego, CA 92130

19

20 For the Office of Unfair Import Investigations:

21 MEGAN WANTLAND, ESQ.

22 ANNE GOALWIN, ESQ.

23 U.S. International Trade Commission

24 500 E Street, S.W.

25 Washington, D.C. 20436

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

2 (3:00 p.m.)

3 JUDGE JOHNSON HINES: Good afternoon.

4 All right. We're here in Certain Vehicle
5 Telematics, Fleet Management, and Video-Based Safety
6 Systems, Devices, and Components Thereof, Investigation No.
7 337-TA-1393.

8 May I have appearances of counsel, please. Let's
9 start with the Complainant.

10 MR. LOY: Joseph Loy on behalf of the
11 Complainant. Together with me today is Karthik Ravishankar,
12 as well as Joshua Glucoft.

13 JUDGE JOHNSON HINES: Good afternoon. And for
14 Respondent, for Motive?

15 MR. McKEON: Good afternoon, Your Honor. Mike
16 McKeon for Motive, the Respondent. And with me today is
17 Noah Graubart, Aamir Kazi, and Mike Amon.

18 JUDGE JOHNSON HINES: Good afternoon. And for
19 the Staff?

20 MS. WANTLAND: Good afternoon, Your Honor, Megan
21 Wantland on behalf of Commission Investigative Staff. And
22 with me is supervisory attorney, Anne Goalwin.

23 JUDGE JOHNSON HINES: All right. Good afternoon.

24 I received two letters and responses. Before we
25 start on those, I did have a few questions that were

1 holdovers from the last conference that we had. One thing
2 that we discussed there was the production of source code,
3 and I wanted to find out the status of that production.

4 For Complainant, Mr. Loy?

5 MR. LOY: Yes, Your Honor. The parties have
6 produced source code since the last discovery conference
7 with Your Honor. There are some outstanding follow-up
8 requests, because the source code files that were produced
9 by Respondents seem to still be missing key files. We have
10 been working with them to try to supplement those
11 productions, but are still waiting for additional source
12 code to be produced.

13 JUDGE JOHNSON HINES: All right. And what about
14 the production of Samsara's code?

15 MR. LOY: Our code has been produced, Your Honor.

16 JUDGE JOHNSON HINES: All right. Thank you.

17 Mr. McKeon, anything to add to that?

18 MR. McKEON: I think that's a fair recitation,
19 Your Honor, of the current status. We're working closely
20 together to get that -- make sure everybody is satisfied
21 with the code production, so I think we're on track with
22 that.

23 JUDGE JOHNSON HINES: All right. If what I am
24 hearing is right, if there is still some outstanding
25 production from Respondents on that, please go ahead and get

1 that produced. It sounds like from the various
2 correspondence I have gotten and just from the nature of the
3 case, that the production of source code is going to be
4 important. With fact discovery closing on August 1, it's
5 time. It's time to get all that produced.

6 MR. McKEON: Yes, Your Honor. We'll certainly
7 endeavor to do that. But just to be clear, we produced a
8 large quantity of source code. It's -- to the extent there
9 is any left, it is sort of a straggler, and we're meeting
10 and conferring on that. But they have had the bulk of it
11 for some time now.

12 JUDGE JOHNSON HINES: Okay. I understand. And I
13 appreciate that clarification.

14 All right. The next thing I wanted to ask about
15 was there had been some discussion or suggestion at the last
16 case management conference on a cross-use agreement. And I
17 was wondering what the status of that was, if anything.
18 Mr. Loy?

19 MR. LOY: Your Honor, we understood at the last
20 conference that if the parties could not agree on cross use,
21 that the protective order in this case precludes it. We
22 understand the protective order. The parties have not
23 agreed on cross use, so there is no such agreement in place,
24 nor do we intend or will we use information obtained in this
25 case under CBI in any other case.

1 JUDGE JOHNSON HINES: Okay. Thank you for that.
2 Is there anything that you have to add to that,
3 Mr. McKeon?

4 MR. McKEON: No. That's a good summary.

5 JUDGE JOHNSON HINES: All right. Also at the
6 last conference there was discussion of an ESI agreement.
7 Has there been progress on that? Mr. Loy?

8 MR. LOY: Your Honor, there has been progress on
9 the ESI agreement. Largely where we are at the moment, I
10 think, we're very close to actually submitting something is
11 an agreement on the file format and the type of electronic
12 formatting of the documents that are produced.

13 So whether a file name will be included, what the
14 document types are included. Where we have not reached
15 agreement and is part of the subject of today's dispute is
16 which custodians will be searched and how those searches
17 will be conducted.

18 And so we are relying on the Commission's rules
19 for that discovery.

20 JUDGE JOHNSON HINES: Okay. Mr. McKeon, do you
21 have anything to add on the ESI agreement?

22 MR. McKEON: No, I think Mr. Loy has got that.
23 We just couldn't agree, Your Honor, really on sort of
24 threshold question, is identifying the custodians and search
25 terms and the process. And that sort of brought us to

1 loggerheads, which is the subject of today's hearing.

2 So we're hoping to get some good guidance from
3 the Court on that so we can move forward.

4 JUDGE JOHNSON HINES: All right. Thank you.

5 Ms. Wantland, with respect to any of the things I
6 have mentioned, source code production, cross-use, ESI
7 agreement, does the Staff have anything to add?

8 MS. WANTLAND: No, Your Honor.

9 JUDGE JOHNSON HINES: Okay. Thank you.

10 All right. So why don't we start then with the
11 letter from Samsara of June 11th.

12 Mr. Loy, has there been any update as a result of
13 discussions between the parties since the letters have been
14 exchanged?

15 MR. LOY: There has not, Your Honor. And one
16 issue that we foreshadowed in our letter was we had served
17 some recent discovery that wasn't due until June 14th
18 seeking additional information about what their custodians
19 use as particular platforms for the development. And we got
20 the same response that we expected to get, which is they are
21 willing to meet and confer but refuse to produce any
22 information.

23 JUDGE JOHNSON HINES: All right. Mr. McKeon, do
24 you have anything to add to that?

25 MR. McKEON: I think we're, as I said earlier,

1 Your Honor, really at a loggerheads on how this should
2 happen in these cases. You know, in my experience, you
3 normally agree on these types of issues, which is the number
4 and nature of the custodians and then exchanging search
5 terms to try to make sure you don't get 100,000 hits, so you
6 can narrow it down. And we just haven't been able to agree
7 on that process.

8 And I think that's why we need Your Honor's
9 assistance today. And I think we will be able to move
10 forward after that, but we do need some guidance on that
11 because what we believe is going on here is sort of a
12 massive request for, you know, extraordinary number of
13 custodians. And we just don't think that's the right
14 direction this case should go in.

15 JUDGE JOHNSON HINES: Mr. McKeon, has e-mail been
16 produced?

17 MR. McKEON: E-mail -- so e-mail has not been
18 produced yet, Your Honor, but we are -- again, because of
19 the custodian issue, but we have identified nine custodians
20 that are sort of central on the technology, the development
21 of the products, design, development. And these are the
22 custodians that we have selected to produce e-mails on.

23 And so we are in the process of collecting them
24 and preparing them for production, but we don't have an
25 agreement as of now on the custodians. And that's really

1 the issue because we have been more than willing to move
2 forward on e-mails, of course. That's part of the
3 obligation. And we have identified these nine custodians
4 that we think are directly on point.

5 And then we just have an issue with sort of the
6 direction that they are headed in in terms of identifying
7 custodians that have nothing to do with this case in our
8 view. And that's the issue.

9 JUDGE JOHNSON HINES: All right. Mr. Loy, has
10 Samsara identified search terms?

11 MR. LOY: Your Honor, we have not specifically
12 because we were at an impasse at the very beginning as to
13 two fundamental issues; one, who the individuals that would
14 be searched would be and that may dictate the search terms
15 that we would use; and, two, what electronic discovery
16 platforms would be searched.

17 Samsara and Motive are both in the software
18 development business, hardware and software, and software,
19 as Your Honor certainly knows, is often developed using
20 tools other than e-mail. And one of the most classic and
21 popular tools these days to develop software is Slack.

22 So we have been trying to reach agreement with
23 the opposing counsel to find just relevant information. It
24 is less important to us as to where the source is and more
25 important is that we're actually hitting at the place where

1 Motive employees have accessed our systems, have copied our
2 systems, and then transferred that information across from
3 the continuity line from access to development.

4 And where Motive has seemingly been willing to
5 produce e-mail only, has been focused at the kind of back
6 end of that, only starting with the engineers that they
7 self-selected as people who are most relevant. And I
8 appreciate that they are trying to find relevant witnesses
9 who developed the product, but we have already produced
10 information of up to 27 individuals that span the entire
11 gamut of their organization from the top down who have
12 created false accounts, accessed our systems, and then
13 behind the scenes, which we don't know what's happening, is
14 where is that moving along the chain of custody into their
15 product development?

16 So the most important witnesses to us at the
17 moment, Your Honor, are those people that started the chain
18 of custody who accessed our systems. And because that has
19 been a no-go from the beginning, we have never once got to
20 the point where search terms have been exchanged because we
21 have been just told no, it's a no-go.

22 JUDGE JOHNSON HINES: All right. Mr. McKeon, you
23 mentioned 27 individuals. I think I saw that in the letters
24 as well.

25 Is it your assertion that 27 separate people from

1 Motive accessed Samsara's platform?

2 MR. McKEON: Well, that's their allegation, Your
3 Honor, and I believe that's the nature of the list that they
4 have developed. I don't know that they -- just to back up a
5 second, Your Honor, on that, remember, this case is in
6 Delaware, you know, where Samsara filed a lawsuit in
7 Delaware dealing with unfair competition claims.

8 And my friend on the other side, Mr. Loy,
9 mentions that he wants to get all the employees that have
10 access, and I think this is the 27 employees that we have
11 that they have identified, but if you recall, Your Honor,
12 from the termination briefing, this case wasn't about
13 copying. This case wasn't about access. Because that case
14 is in Delaware.

15 So now I'm hearing today all of a sudden this
16 case is about access, this case is about copying. And
17 that's our problem, Your Honor. This is a patent
18 infringement case. And they are doing -- this is really a
19 scorched earth type of litigation that we're seeing here; 27
20 people, Your Honor, including our CEO, CTO, CPO, which is
21 the chief products officer, a former CEO, and just to add
22 more spice to it, they have got two secretaries of these
23 people on their list.

24 And this is the ITC case. We're focusing on the
25 patent infringement claims that are the basis of the case.

1 And this is what they told Your Honor in the termination
2 briefing. And now all of a sudden they want to go down a
3 list of 27 here that have nothing -- these people are not
4 involved, Your Honor, in the design and development. You
5 know, the core people that are doing that are the nine
6 engineers that we have identified.

7 And to be sure, Your Honor, you know, we will
8 produce the e-mails from those folks. And if for some
9 reason those e-mails reveal that some of the folks on the
10 list had input or that's relevant, then come back to us and
11 then we can talk about further collection, but we just have
12 a problem, Your Honor, doing the scorched earth 27 folks
13 that are not relevant to the design and development, in our
14 view. And the features that we focused on are the ones that
15 are accused here in this case.

16 And to make this about a massive scorched earth
17 type discovery process, which is what's going to happen in
18 Delaware, because these 27 people are, you know, apparently
19 -- ones that they allege had access, well, you could deal
20 with that in Delaware. But here in this court, this is not
21 a copying case. This is a case about patent infringement.

22 MR. LOY: Your Honor, may I respond?

23 JUDGE JOHNSON HINES: I have a question first.

24 Mr. Loy, the 27 people that have been identified,
25 are those all separately and individual people that you

1 allege have accessed the Samsara system?

2 MR. LOY: They are, Your Honor. We have evidence
3 of accounts that were created, some using actual names; some
4 using false names. We have access to credit cards that were
5 used to enroll in the systems and pay the fees that are used
6 to subscribe to the systems.

7 And we also produced some 200 videos, video
8 footage of Motive employees using the system. One of those
9 images you will see is a still frame in the complaint that
10 does include the picture of the CEO, Shoaib Makani, and also
11 of their chief product officer, Jairam Ranganathan. Those
12 are just two examples.

13 But from the images, we can't tell necessarily
14 the identities of all of all of those individuals, because
15 we haven't been able to cross-compare because we don't have
16 their pictures, but we definitely know that at least those
17 27 individuals were involved in access.

18 And if I just may respond to one point briefly,
19 on the copying point, the Federal Circuit has repeatedly
20 stated that copying is one of the most significant, if not
21 strongest evidence, of non-obviousness.

22 When we received Motive's invalidity contentions
23 recently, it included over 107 pages of narrative
24 description of the obviousness of the three patents asserted
25 in this case.

1 There were 52 claim charts and up to 10,000 or
2 more combinations for obviousness. And so to say that
3 copying is not relevant in this case is just completely
4 false. And if that is going to be the issue, copying isn't
5 relevant, then Motive should just withdraw their obviousness
6 case, in which case I can admit that this won't be relevant.

7 If they are not willing to do that, and I assume
8 they're not, then copying is absolutely relevant. In fact,
9 it is one of the most relevant pieces of evidence in the
10 case.

11 JUDGE JOHNSON HINES: The nine engineers that
12 have been identified, and presumably, Mr. Loy, you know who
13 those are, they have been identified to you.

14 MR. LOY: Yes.

15 JUDGE JOHNSON HINES: Is there any overlap
16 between the nine engineers and the 27 individuals?

17 MR. LOY: Not a single one.

18 JUDGE JOHNSON HINES: Okay.

19 MR. McKEON: Your Honor, if I can respond to the
20 last salvo, when you're done.

21 JUDGE JOHNSON HINES: Actually, I have another
22 question. What messaging platforms does Motive use?

23 MR. McKEON: We have a platform, Your Honor,
24 called Slack and e-mails and then Slack, that is sort of a
25 side discussion we need to have on the relevance of Slack.

1 And I do want to talk about that.

2 But that's the messaging platform, which is a
3 message board, essentially, but there is different ways to
4 communicate over it. I don't know all the details, but what
5 I can tell you is this: That there's no final -- there is
6 no formal design decisions made on Slack. It's a very
7 informal method of communication that's used at the company,
8 but all the formal design decisions are made with technical
9 requirements, specifications that we have, that have been
10 produced, and maybe some e-mails, you will have some of
11 this, but this is not done in Slack.

12 It's a very informal method of communication, but
13 it's not a source of design decisions, design directions
14 that, you know, the nature that would be relevant to this
15 question of obviousness of secondary considerations that
16 Mr. Loy just brought up.

17 JUDGE JOHNSON HINES: So I hear Slack and e-mail.
18 Are there other message platforms that you use?

19 MR. McKEON: That's all, Your Honor. Certainly
20 that's all that we have some control over.

21 Now, there was something in the discovery
22 responses about personal, you know, devices of our
23 employees, their devices. We don't have any control over
24 them. And is there communication going on those? Maybe.
25 But we have no ability to collect that. And they are not

1 our devices.

2 So other than what I have mentioned, the Slack
3 and the e-mail, that's the method of communication.

4 And, of course, the software, Your Honor, the
5 code, obviously, is the central source of evidence in this
6 case on the technical questions.

7 JUDGE JOHNSON HINES: Sure. So is it correct
8 that Motive provides devices to its employees?

9 MR. McKEON: As far as I know, no, Your Honor,
10 the answer is we provide -- I mean, obviously the tools they
11 need for their functions but not the personal phones, if
12 that's what your question is.

13 JUDGE JOHNSON HINES: Okay.

14 MR. McKEON: We don't give out phones to our
15 employees as far as I'm aware. I have never been -- that's
16 something I am not aware of that we do that.

17 JUDGE JOHNSON HINES: Okay. So you don't know.

18 So with respect to collecting information on
19 Slack, that would be search of a central repository where
20 Slack messages are maintained by the company?

21 MR. McKEON: Slack is maintained by the company,
22 that is correct.

23 JUDGE JOHNSON HINES: All right.

24 MR. McKEON: I did confirm, Your Honor, Motive
25 does not give out phones. They have computers, of course,

1 but not phones.

2 JUDGE JOHNSON HINES: Okay. All right.

3 So, Mr. McKeon, I would be a little more
4 sympathetic if some production had already happened, but
5 this is the second time we're talking about this. And from
6 what I understand from you earlier today, not even e-mail
7 has been produced yet from the more limited set of engineers
8 that you have identified.

9 Fact discovery closes August 1st, so this is
10 becoming a problem to collect -- for you to collect, review,
11 and produce this information in time for depositions to take
12 place with a close of fact discovery on August 1st.

13 MR. McKEON: Your Honor --

14 JUDGE JOHNSON HINES: So -- yes. Go ahead.

15 MR. McKEON: Just one comment on that. And I
16 understand your point very well on that. To be honest with
17 Your Honor, I think there is, of course -- of course I am
18 being honest with you -- but really we had a breakdown in
19 the communication among the teams about, you know, the
20 standard process, it's always been in these cases -- and,
21 Your Honor, you have been in them, you know them -- you
22 identify terms and you, you know, identify the custodians.
23 And that process broke down. And I think that's really what
24 delayed everything.

25 And I'm not blaming anybody. It is just a

1 process breakdown that we normally encounter in these cases.

2 That's why the ESI order we had, that we had been
3 working on, it doesn't include any of these sort of what I
4 view as the fundamental, you know, points in these ESI
5 orders, which is the method of identifying custodians, the
6 search terms, and then you have the back and forth. Well,
7 that's 150,000 documents. You have got to narrow your
8 terms.

9 And this is a process we take in every case,
10 except here it was just an immediate break that went from 15
11 custodians they offered initially and now there is 27. And
12 I just think we're moving in the wrong direction.

13 Yes, Your Honor, my hope was to have this
14 resolved and to have documents out the door, but we will get
15 these documents produced, these e-mails will be produced.
16 You know, the Slack question is a different one that we need
17 to talk about, but we are getting the e-mails prepared for
18 these nine, which we think it should be the focus of this
19 case.

20 And, you know, that's -- so it has been a
21 breakdown, Your Honor. And that's unfortunate. And, you
22 know, this happens in some of these cases, but that's where
23 we're at right now.

24 JUDGE JOHNSON HINES: Well, I think we need to
25 move forward now with the Slack communications as well. I

1 don't think that this case is in a position to have a staged
2 process anymore. I think it is too late for that.

3 Mr. Loy, do you have an estimate of the number of
4 search terms of the -- I understand you have identified 27
5 individuals, and apparently nine others have been identified
6 as well, so looking at potential 36 custodians, which seems
7 large, but do you have a sense of number of search terms and
8 absolute number of custodians that you can provide?

9 MR. LOY: Yes, Your Honor. We were willing to
10 agree to 15. I think we could even do it with fewer search
11 terms. It will be partially just dependent on whether we
12 get any objection from the search terms that we offer, but I
13 believe we can do that in anywhere between 10 and 15 search
14 terms.

15 And then, similarly, with the custodians, we
16 didn't necessarily choose the nine. The nine were chosen
17 for us by Motive. And we are willing to reduce the 27.

18 I would propose 15 of those people instead of the
19 full 27. I was hoping to have a candid dialogue with my
20 friends on the other side. They have just never given me
21 accurate information about the people's involvement. So we
22 can select them ourselves. I certainly have 15 I can give
23 them.

24 JUDGE JOHNSON HINES: All right.

25 MR. McKEON: Sorry, Your Honor.

1 JUDGE JOHNSON HINES: Go ahead.

2 MR. McKEON: 15, I mean, we could agree on 15,
3 Your Honor, if we're at the point of negotiating this, but,
4 I mean, I think it should include the nine because, you
5 know, these folks here, including the CEO, the CTO, as I
6 mentioned earlier, secretaries and, you know, a lot of these
7 people are gone at the company. They are not even at the
8 dome.

9 And then I wasn't part of the dialogue on sort of
10 identifying, you know, the roles of these individual people,
11 but the fact that -- you know, the 27, and even 15 from this
12 list, Your Honor is really objectionable because it has
13 nothing to do with the technical issues in the case.

14 So we're going on down a rabbit hole on an issue
15 that they said is not relevant and that's going on in
16 Delaware. So I just would urge the Court to, you know, look
17 at that closely. And let's focus on the nine. If they want
18 to give six from their list that for some reason they feel
19 like are super relevant, then, okay, we can do 15, but 27,
20 Your Honor, I just think will open this case up to going in
21 a direction that is just -- you know, we don't want this
22 trial in this case to be about this access, you know, to
23 their website which is conventional, competitive
24 intelligence that everyone in the industry does.

25 MR. LOY: Your Honor, to be fair, we have -- we

1 previously did offer a fewer number and they refused. So
2 the delay here is what is really causing us a problem. It
3 is the intentional delay from the other side to give us any
4 information that has us where we are one month away from
5 concluding discovery, and I can't take depositions without
6 the relevant documents.

7 JUDGE JOHNSON HINES: Yes. Mr. McKeon, I assume
8 it's correct that Motive would not be willing to either
9 withdraw its obviousness contentions or stipulate to
10 copying?

11 MR. McKEON: Yeah, Your Honor, obviously I can't
12 do that. That's a central issue in the case.

13 JUDGE JOHNSON HINES: Okay. And I do. And I
14 agree with you. It has been identified as an issue in the
15 case. I do see this as different than the issues being
16 presented in Delaware and any claims being made in Delaware.
17 I am cognizant that here the claim is of patent infringement
18 under Section 337.

19 One of the issues that's relevant to that is a
20 defense of obviousness where a secondary consideration is
21 copying. And in this situation, the potential access for
22 purposes of copying, for just that purpose, and not for
23 anything else, whether there is a breach of an agreement or
24 any implication of the arbitration provisions per that
25 agreement, that is not an issue.

1 MR. McKEON: Yes, we understand that.

2 JUDGE JOHNSON HINES: But separate and apart from
3 copying for the purposes of rebutting obviousness, that is
4 an issue. And I understand. And I'm not surprised by your
5 response that you're not willing to withdraw an obviousness
6 defense or stipulate to copying.

7 In that situation, this discovery is relevant.
8 And the time is now for that discovery.

9 So what I am going to do is I want a
10 clarification, Mr. Loy. When you said 15, 15 from what
11 denominator? Are we talking 15 of the 27 and what are we
12 doing with the nine?

13 MR. LOY: Yes. Our proposal was to reduce the 27
14 to 15, and then include the nine as well, as those that have
15 been identified by Motive as the most relevant people on the
16 back end.

17 MR. McKEON: If I can be heard.

18 JUDGE JOHNSON HINES: All right. I will allow
19 that. And 15 search terms, can you provide search terms to
20 Mr. McKeon and his team by Thursday?

21 MR. LOY: Yes.

22 JUDGE JOHNSON HINES: The 20th?

23 MR. LOY: Yes, we can do that.

24 MR. McKEON: Your Honor, one point of
25 clarification on the 15. So, I mean, as I mentioned, you

1 know, we have the CEO. We have the C-suite people on this
2 list. And I would just ask the Court's indulgence to take
3 them off the list. These are C-suite people, shouldn't be
4 involved -- again, if it comes up that they are somehow
5 involved and we can cross that bridge, but I just think as a
6 threshold matter to start collecting from the C-suite people
7 at the company, I just feel like that's a bridge too far,
8 but that's my one last request on this.

9 JUDGE JOHNSON HINES: It seems to me, Mr. McKeon,
10 that bridge has already been crossed. That bridge was
11 crossed with the complaint and with the evidence that was
12 presented with the complaint.

13 Ordinarily I would tend to agree with you, but
14 C-suite people may be so far removed that discovery from
15 them would really be nothing but burdensome, without the
16 likelihood of providing anything close to relevant, but here
17 there does seem to be information indicating that at
18 least -- at least one C-suite person, maybe more, from the
19 complaint I only know of the one -- but maybe more, were --
20 have been directly involved, and more directly involved than
21 may be more typical. So I am going to deny that.

22 MR. LOY: Your Honor, may I make one caveat to
23 our agreement that we can get search terms by Thursday? We
24 can do that. The one outstanding point is we have asked in
25 an interrogatory which has not been responded to yet about

1 code names used for Samsara products internally within
2 Motive. We would want to include those types of code names.

3 So I could put a place holder for the code name
4 or if Your Honor is so willing, to require Motive to provide
5 us those code names by Thursday, we can use them in our
6 search terms.

7 JUDGE JOHNSON HINES: All right.

8 MR. McKEON: Your Honor, we're going to be able
9 to work that out. The guidance you are giving here, I think
10 you have spoken, so I think code names and things of that,
11 to the extent that we have them, we can certainly, you know,
12 help them put the list together. That's certainly what I am
13 hearing here. And that's not a problem at all. Obviously
14 we will do that.

15 JUDGE JOHNSON HINES: All right. So why don't
16 you, Mr. McKeon, and your team provide any of the code names
17 by Thursday morning at the latest. Presumably that will not
18 be difficult to do.

19 And then, Mr. Loy, if you can provide the search
20 terms by Thursday, by close of business Thursday. I would
21 like the resulting documents produced by July 1st. That
22 gives you a month for fact discovery, based on that document
23 production.

24 So if when you run those searches, Mr. McKeon,
25 you find there is an extraordinary number, I want an

1 immediate meet and confer. I want the process to go forward
2 expeditiously so that documents can be produced. And I
3 don't mean the start of production. I mean completion of
4 production by July 1st, so that depositions can go forward
5 and conclude by August 1st.

6 If there is a problem, I want you all to let me
7 know. Our next case management conference is July 17th, I
8 believe, the same time as the claim construction hearing.
9 If between that time or before that time there is an issue
10 that I can help resolve, I want you to let me know, and we
11 can get on a conference call and we can resolve it. But I
12 don't want the parties to get mired in this production and
13 arguments about this production. I want the documents to be
14 produced so that the depositions can go forward.

15 MR. McKEON: Thank you, Your Honor. And, Your
16 Honor, your guidance is very helpful. I think we understand
17 the parameters here. So this is going to go smoothly, I
18 predict, but I just have one last comment or one question.
19 And I'm assuming your order today, what's good for the goose
20 is good for the gander, so we will have the same type of
21 production from Complainant. I'm assuming that's part of
22 your tenor of your words?

23 JUDGE JOHNSON HINES: Well, I had not heard that
24 there is a similar discovery dispute or issues with respect
25 to production. And, Mr. McKeon, I had assumed that, you

1 know, your team isn't going to turn around and ask for
2 discovery that you don't really need --

3 MR. McKEON: No.

4 JUDGE JOHNSON HINES: -- to keep Mr. Loy and his
5 team busy, while you're producing this information.

6 MR. McKEON: No, Your Honor, we're not going to
7 do that at all. But one thing that is relevant, Your Honor,
8 is competitive intelligence and the nature of competitive
9 intelligence in this business and the types of things that
10 competitors look at, look for. And that is relevant
11 discovery based on today's argument, given by counsel. So
12 we will be pursuing that.

13 And then we will also have, you know, part of the
14 meet-and-confer process, of course, was both sides producing
15 e-mails. And now, of course, message board production.

16 JUDGE JOHNSON HINES: Mr. Loy, do you have any
17 questions about what I have directed the parties to do?

18 MR. LOY: No, Your Honor, it seems clear. And we
19 will get this done and work cooperatively.

20 JUDGE JOHNSON HINES: All right. Are there any
21 other questions or anything else we should discuss with
22 respect to Samsara's June 11th letter?

23 MR. LOY: I don't believe so, Your Honor.

24 JUDGE JOHNSON HINES: All right.

25 MR. McKEON: Nothing from Motive. Thank you,

1 Your Honor.

2 JUDGE JOHNSON HINES: And for the Staff, is there
3 any comments, questions, anything else we should address
4 with respect to ESI production?

5 MS. WANTLAND: Your Honor, to the extent that I
6 understood you, that Complainant is going to pick a smaller
7 selection of the 27 and then also go forward with the nine
8 engineers, I don't know that I have seen from the list of 27
9 what those job titles are for every single one of those
10 people.

11 I think we asked on an initial, you know,
12 discovery conference meeting, and it wasn't known at the
13 time, so I don't know. Perhaps it has been provided to
14 Complainant and I have just not seen it.

15 Obviously some of those names are known, just
16 based on their current positions and LinkedIn and all of
17 that, but if it helps to any extent that Complainant needs
18 to know job titles, because we don't need secretarial work
19 or whatnot being pulled from Slack and e-mail, that might
20 just help facilitate the process to get to 15 individuals
21 that are actually relevant to the question at hand.

22 JUDGE JOHNSON HINES: All right. Mr. Loy, is
23 that information you already have?

24 MR. LOY: It hasn't been provided to us, Your
25 Honor. It would be helpful, I agree. Some of them are, as

1 Staff has just indicated, things we could find out, just by
2 doing Google searches.

3 JUDGE JOHNSON HINES: All right. Mr. McKeon, I
4 assume from the list of 27 you can provide job titles for
5 each of those people?

6 MR. McKEON: Yes, Your Honor. We will -- to the
7 extent we don't have that, we will get that. Obviously that
8 would be helpful, I think, for everybody.

9 JUDGE JOHNSON HINES: All right. I think what
10 would be useful, if there is a list of 27 with 27 job
11 titles, so everything is in one place, that would be most
12 helpful.

13 And, Mr. Loy, you mentioned the number 15. There
14 is nothing magic in that number. So if it's fewer than
15 that, that would be okay too.

16 MR. LOY: I appreciate that, Your Honor. I do.

17 JUDGE JOHNSON HINES: You know, from the
18 information that you have, make the best decision that you
19 can.

20 MR. LOY: Thank you.

21 JUDGE JOHNSON HINES: I think, you know, given
22 where we are in the discovery period, I think you having a
23 little more leeway makes sense, but at the same time to the
24 extent that it can be smaller, without you losing
25 information that you need, then that makes sense to me.

1 MR. LOY: Understood, Your Honor. Thank you.

2 JUDGE JOHNSON HINES: All right. I want to get
3 an update on the status of the issues that were identified
4 in Motive's June 13th letter.

5 Mr. McKeon, I will start with you.

6 MR. McKEON: You know what, Your Honor, I am
7 going to have my colleague, Mr. Aamir Kazi, handle that.

8 JUDGE JOHNSON HINES: All right. Mr. Kazi.

9 MR. KAZI: Good afternoon, Your Honor.

10 So the parties, Samsara, did produce some
11 documents. We still think the issues are still live. And
12 specifically with respect to the driver gamification
13 document, we don't believe that we have everything we need
14 with respect to their letter brief, for example, which
15 indicates that they have produced all technical documents,
16 right, and so I am not sure what is being referred to by
17 technical documents, what's being held back.

18 Certainly, for example, there's a website we
19 identified in our brief that was very relevant to the driver
20 gamification prior art. That website referenced specific
21 customers. That website referenced other documents that
22 describe how the driver gamification supposedly worked.

23 We haven't seen anything about those customers.
24 We haven't seen anything about that linked knowledge base
25 article on the website that said how a safety score is

1 calculated.

2 So, you know, I appreciate in their letter brief
3 and in their subsequent -- in their letter brief they
4 indicated that they had produced all technical documents but
5 it still seems like there is something missing, and it is
6 not clear to us what is being held back. And we didn't see
7 anything in the recent productions that addressed that
8 particular aspect of our request.

9 JUDGE JOHNSON HINES: All right. Have you raised
10 those issues with Samsara?

11 MR. KAZI: Which issues, Your Honor?

12 JUDGE JOHNSON HINES: The ones that you just
13 raised with me, that there were certain driver gamification
14 and customer information that it didn't look like had been
15 produced?

16 MR. KAZI: Well, Your Honor, we just received in
17 their letter brief for the first time an affirmation that
18 they believe that they have produced everything.

19 JUDGE JOHNSON HINES: Okay.

20 MR. KAZI: We had taken the position that things
21 had been missing all along.

22 JUDGE JOHNSON HINES: All right.

23 MR. KAZI: Including that kind of document, yes,
24 Your Honor.

25 JUDGE JOHNSON HINES: Okay. You mentioned a

1 website. Whose -- is that a Samsara website?

2 MR. KAZI: That's right, Your Honor. It's a
3 Samsara website that we linked to in our letter. So the
4 link is live in the letter. And you can click on the link,
5 and it will take you to their blog.

6 JUDGE JOHNSON HINES: Yes.

7 MR. KAZI: And if you visit that blog, for
8 example, it references the customer. The very first line of
9 the website references Bruce Donovan of NECO Transport. So
10 there is at least one data point about documents in
11 discovery we haven't seen. We haven't seen anything about
12 NECO Transport being a customer in the gamification product.

13 But if you go down towards the middle of the
14 page, there's a picture of, it looks like an iPhone. And
15 below the iPhone on that same website, it says: These
16 scores are based on data captured by the Samsara vehicle
17 gateway and calculated using Samsara's methodology. If
18 you're curious, it is fully explained in our Knowledge Base.
19 And there's a link. And that link doesn't work.

20 So I bring those up as two examples. We don't
21 know what they are holding back when they say they have
22 produced all technical documents, but clearly there are
23 other documents that would relate to this feature that we
24 would expect that they would have, given it was only four
25 years ago, five years ago -- well, six years ago. Sorry, my

1 math is wrong there. But we don't have those documents and
2 that's what we would like with proper gamification.

3 JUDGE JOHNSON HINES: All right. So that is with
4 respect to driver gamification. What about VS1 or VS2?

5 MR. KAZI: Your Honor, with respect to the VS1
6 and VS2 issues, so we received some documents over the
7 weekend, I think, but we still don't believe within those
8 documents that we received that there is any documents that
9 demonstrate how VS2 -- technical documents that actually
10 demonstrate how VS2 functions.

11 We raised this issue at the very outset of the
12 case. And I appreciate that in their opposition that they
13 indicate that they are going to complete production by June
14 21st, but just some history here. You know, we raised this
15 back in May. And on May 10th, they indicated that they
16 would have completed their production by May 24th.

17 May 24th came and went. And now here we are in
18 June. And now they are telling us June 21st. So, you know,
19 for the same reasons that we're getting close to discovery,
20 we need to figure out the scope of the art, we just need an
21 order compelling them to produce this by a certain date
22 because the prior dates that they have given us, they have
23 just not honored.

24 JUDGE JOHNSON HINES: All right. Thank you for
25 that. That was helpful.

1 Mr. Loy?

2 MR. LOY: Your Honor, my colleague, Mr. Glucoft,
3 will be handling this motion.

4 JUDGE JOHNSON HINES: All right. Thank you.

5 MR. GLUCOFT: Good afternoon, Your Honor. I
6 think it will help us to take the issues in reverse order,
7 starting with the VS2.

8 I am not familiar with the entire May 24th
9 deadline that Mr. Kazi was referring to, but the short of it
10 is we're going to get the docs out exactly when we said we
11 would. Actually, I think we will have the rest of them out
12 today, but a date certain, by June 21st, they will all be
13 out.

14 There are just thousands of documents that needed
15 to clear privilege review, and so those have now cleared
16 privilege review and we are in the process of preparing them
17 for production. So the short of it is we're not withholding
18 anything on the VS2 system. All the documents that we have
19 found, except for those that are privileged, will be out,
20 again, I believe today, but in no event later than the end
21 of this week. That is a firm date.

22 The only exception are documents that are being
23 withheld for privilege that will be timely logged on the
24 privilege log when the parties agree to provide. So I just
25 don't think there is anything to order on the VS2 issue

1 because we're giving them what we have and there is no more
2 delay. We never blew any sort of deadline, I am learning
3 about now for the first time, and now that we found the
4 documents, we're getting them out.

5 So I will stop there to ask if there is any
6 questions about VS2.

7 JUDGE JOHNSON HINES: No, no. Go ahead.

8 MR. GLUCOFT: So on the driver gamification
9 thing, again, I think from our perspective, this is
10 basically a non-issue. This is, as Mr. Kazi noted, prior
11 art that was at issue six years ago. And so if there aren't
12 more documents that we found, it's because there aren't more
13 documents that we could find.

14 We are not withholding documents based on
15 relevance. It is just privilege. And everything will be
16 logged.

17 To the extent that they are expecting there to be
18 additional documents, we just haven't found them based on
19 our searches. And I think he has focused in on a particular
20 part of our brief where he said that we've produced all
21 non-privileged technical documents. So that is correct.

22 And the purpose of that is ultimately this is
23 prior art. So we're just trying to make it clear that we
24 are not, for example, searching internal e-mails where
25 people may have glancingly referenced driver gamification

1 because that doesn't relate to anything that -- either the
2 actual operation of the product or its relevance as prior
3 art in this case.

4 If for whatever reason e-mails became relevant to
5 driver gamification, we're certainly happy to take that up.
6 I don't think we have anything to hide about the prior art
7 product, but what we have been focused on and have completed
8 our document production is all the documents that reflect
9 the operation of the product that we could find based on our
10 search.

11 And if there is not more, it is because at least
12 in large part it's six years old. We're getting them, the
13 source code this week. I actually think it may even be
14 available as of today.

15 Again, in no event later than this week, they
16 will have the source code as well. So I am not sure what
17 documents related to NECO Transport they were hoping to
18 find. I'm also not quite sure how that would be relevant to
19 prior art but, again, we're not withholding anything. We're
20 just getting it out. And everything else needs to clear
21 privilege review and will be timely logged.

22 JUDGE JOHNSON HINES: Well, two specific items
23 that Mr. Kazi mentioned were customer data and knowledge,
24 something called the knowledge base.

25 It does seem to me that customer data may be

1 relevant with respect to producing prior art. To the extent
2 it was used by customers when that happened, proving up
3 prior art dates, et cetera, does the information that you
4 have collected and produced, will it include those two
5 sub-areas of information that Mr. Kazi identified, the
6 customer data and knowledge base?

7 MR. GLUCOFT: So, again, in reverse order, as for
8 the knowledge base issue, I believe the answer is yes. I
9 think knowledge base was just a data repository that has
10 since been marked over to our new systems. And so if it's
11 located on our systems presently, whether it was located on
12 knowledge base before or not, it should have been included.
13 We're more than happy to go back and do one more search to
14 make sure that nothing was missed, but to my knowledge, yes,
15 I do believe it was produced.

16 As to the customer data aspect, we have produced
17 some e-mails related to the prior art status. I guess this
18 whole customer data issue is something that has never been
19 discussed before, even though we did confer with them on
20 Friday about this issue, so this is honestly news to us. I
21 am not exactly sure what it is they want us to search for
22 customer data, but we are happy to search for it and produce
23 it in timely fashion.

24 JUDGE JOHNSON HINES: All right. What I would
25 like you to do is, with respect to the knowledge base, I

1 would like you to do whatever you need to do to confirm that
2 whatever was transferred over from an old system to a new
3 system relating to that knowledge base of driver
4 gamification has been collected and will be produced.

5 With respect to the customer data issue, I would
6 like the parties to have a discussion on that. And if you
7 all can have that discussion by Thursday, so, Mr. Kazi, if
8 you can be prepared to identify what specific information
9 you're looking for with respect to customer data that's not
10 available on the website that you have already identified,
11 what additional information you're seeking and why, and the
12 parties can discuss that, and I urge you to reach agreement.

13 If there has to be additional searching, e-mail
14 or otherwise, I suggest that should happen. But at this
15 point it sounds like the parties themselves haven't had the
16 opportunity to meaningfully discuss the issues among
17 themselves yet, so I would like that to happen, but I would
18 like it to happen quickly.

19 MR. GLUCOFT: Absolutely, Your Honor. We can do
20 that.

21 JUDGE JOHNSON HINES: Mr. Kazi, do you have any
22 questions or comments on that?

23 MR. KAZI: No questions, Your Honor. No
24 questions.

25 JUDGE JOHNSON HINES: All right. I understand

1 that source code may be made available today. Are there any
2 issues? Do you see any issues with respect to making it
3 available, the source code for the prior art?

4 MR. GLUCOFT: No, Your Honor. Again, my
5 understanding is that it is -- we have it and I think it is
6 being loaded onto the review computer as we speak. I don't
7 think there is any issues making that available.

8 JUDGE JOHNSON HINES: All right. Okay.

9 Is there anything else we should discuss on this
10 issue?

11 MR. GLUCOFT: Nothing from Respondent, Your
12 Honor.

13 JUDGE JOHNSON HINES: Mr. Kazi?

14 MR. KAZI: No, Your Honor. I think we're okay.
15 I just want to be -- I want to make sure that with respect
16 to this meet and confer that is going to happen in a couple
17 of days, by Thursday, I think, is that our concern is that
18 there are records that are not being searched for because
19 they are not construed technical documents, but I think we
20 will take that up with Samsara and revisit it if we have to.

21 JUDGE JOHNSON HINES: Right. And I appreciate
22 that. I think I agree with you that documents related to
23 this prior art system, if that's what it is, may be broader
24 than just strictly technical documents.

25 To the extent that you intend to prove up use,

1 prior art status, how something was used, there could be a
2 number of reasons why you may want to go outside of just
3 strictly technical documents. Without knowing more about
4 the situation, it's hard to know exactly what that is, but I
5 am not disagreeing with you. So I think that should be part
6 of the parties' discussions.

7 MR. KAZI: Understood, Your Honor.

8 JUDGE JOHNSON HINES: All right.

9 Ms. Wantland, is there anything that the Staff
10 would like to add with respect to this discovery issue?

11 MS. WANTLAND: Nothing from Staff on this. Thank
12 you, Your Honor.

13 JUDGE JOHNSON HINES: All right. Is there
14 anything else we should talk about today?

15 MR. McKEON: Nothing from Respondents, Your
16 Honor. Sorry.

17 MR. LOY: Pardon me. For Complainants I just had
18 one small issue, Your Honor. I know this is not on the
19 agenda but just very briefly, as I hinted at earlier, the
20 invalidity contentions that we received are extraordinarily
21 voluminous. And we noted that the combinations are in the
22 and/or sequences. You can take this and/or, combine it with
23 any number of these other references.

24 So the combinations are now literally in the tens
25 of thousands. And we all know that there is no way that

1 anyone is going to present that many combinations at the
2 hearing. And so I was curious if Your Honor had a
3 standardized practice or any guidance for us as to how we
4 can get those number of invalidity contentions within the
5 realm of reason.

6 JUDGE JOHNSON HINES: What is the date that final
7 contentions are due?

8 MS. WANTLAND: July 22nd, Your Honor, the final
9 burden contentions.

10 JUDGE JOHNSON HINES: Right, okay. Thank you.

11 MR. McKEON: Your Honor, if I can respond to that
12 opening.

13 JUDGE JOHNSON HINES: Yes, please.

14 MR. McKEON: Your Honor, certainly we're not --
15 we're going to be narrowing our contentions. There is no
16 doubt about that, obviously. But we -- part of this process
17 is getting discovery, and our prior art, their prior art,
18 and even our own prior art, you know, collecting on that.

19 So the prior art is evolving. We will be
20 narrowing our prior art case. There is no doubt about it,
21 but in terms of timing and committing to a timing on that,
22 that's very hard to do at this point. We're obviously going
23 to focus the case and it is going to narrow. And when we
24 get the expert reports, you know, we will have a very
25 limited set of prior art in the reports.

1 And I think those are due in -- let me see here
2 -- looking at the schedule I have, we have August 6th. So
3 we're going to -- by August 6th, we're going to have a
4 tightened prior art case. And, you know, with the
5 contentions, the preliminary contentions are to sort of put
6 folks on notice of the scope of things. Final contentions,
7 you know, what's still in play. We will have a narrowing
8 then.

9 And then, of course, expert reports will be where
10 we pick our best and the ones we want to proceed on. And
11 even before the hearing, we may drop again. You know, this
12 is a process that happens in every case. So at this point I
13 would like to stick to the schedule that we have already on
14 narrowing and disclosures on that.

15 JUDGE JOHNSON HINES: All right. Thank you for
16 that.

17 With respect to both the number of asserted
18 claims and prior art contentions, my practice thus far has
19 been to allow the parties to narrow their contentions as
20 they move along.

21 I may not always do that, but for now, that's my
22 practice.

23 I think I agree with what you say, Mr. McKeon. I
24 understand initial contentions are often much broader and
25 they do get narrowed down. I think that making a real

1 effort in the final contentions to narrow down the prior art
2 is a good idea.

3 Understood, it must be in the expert report. My
4 ground rules are pretty clear that a presentation of
5 obviousness based on "and/or" is not acceptable because
6 people don't know what the contention actually is.

7 So I suggest in the final contentions that some
8 serious narrowing occur and that it absolutely must happen
9 by the time of the expert reports. By the same token, my
10 understanding is now there are three claims asserted in the
11 '373 patent, 15 claims in the '621 patent. And 18 claims is
12 a lot to try, and probably too many to try.

13 Is there any indication of when claim narrowing,
14 any claim narrowing may occur?

15 MR. LOY: I think we can follow the same guidance
16 we just heard to the Respondents, Your Honor, and make a
17 serious attempt to narrow to what is pragmatic, at least by
18 the expert reports.

19 JUDGE JOHNSON HINES: All right. I urge the
20 parties to do that and to focus, not only on the expert
21 reports, Mr. Loy, but also on the final contentions. If you
22 know there are claims that you are not going forward with,
23 concentrate on what's important and concentrate on what you
24 know you're going to go forward with.

25 So you have dates in the schedule by which to do

1 that. Is there anything else on this issue we should
2 discuss now?

3 MR. LOY: Not from Complainant, Your Honor.

4 JUDGE JOHNSON HINES: And is there anything else
5 we should discuss at all?

6 MR. LOY: I don't believe so from Complainant.

7 JUDGE JOHNSON HINES: Mr. McKeon?

8 MR. McKEON: No, Your Honor. I think we're in
9 good shape. Thank you for your time today, Your Honor.

10 JUDGE JOHNSON HINES: All right. I thank you all
11 for your time. And I said it before, I will say it again,
12 if there are issues at the end of fact discovery that are
13 causing the parties problems, write a letter, and we will
14 see if we can get on a call quickly and get it resolved.

15 That way there don't have to be extensions of
16 discovery and the compression of a whole lot of work in a
17 very small amount of time. So I would like to get the
18 issues resolved as soon as we can get them resolved.

19 MR. LOY: Thank you, Your Honor.

20 MR. McKEON: Thank you, Your Honor.

21 JUDGE JOHNSON HINES: Thank you very much. Have
22 a good afternoon everyone.

23 (Whereupon, at 3:56 p.m., the Case Management
24 Conference concluded.)

25

1 CERTIFICATE OF REPORTER

2 TITLE: Certain Vehicle Telematics, Fleet Management, and
3 Video-Based Safety Systems, Devices, and Components Thereof

4 INVESTIGATION NO: 337-TA-1393

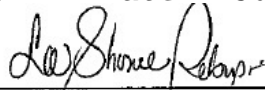
5 HEARING DATE: June 18, 2024

6 LOCATION: Washington, D.C. - Remote

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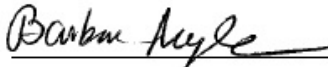
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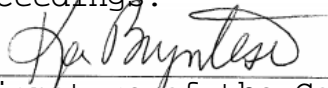
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Redacted In Its Entirety**

EXHIBIT 10

**Contains Confidential Business Information
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EXHIBIT 11

**Contains Confidential Business Information
(Excerpted)
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EXHIBIT 12

1 DISCLAIMER

2

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25

1



1 Claimant Motive - Williams & Connelly

2 MS. PYO: Angela Pyo

3 MR. WILSON: Bryan Wilson.

4 Lauren Whittlemore - client rep

5

6 Respondent Samsara - Kirkland & Ellis

7 MR. TURNER: Ellisen Turner

8 Kristen Richenbach - client rep

9

10 THE ARBITRATOR: Judge James Ware

11

12 JAMS ARBITRATION.

13 CASE REFERENCE NO. 51000001923

14

15 In the Matter of an Arbitration Between:

16 MOTIVE TECHNOLOGIES, INC., Claimant, v. SAMSARA

17 INC., Respondent.

18

19 THE ARBITRATOR: Good morning, all.

20 May I have appearances for Motive.

21 MR. WILSON: Sure this is Brian Wilson
22 from Williams & Connelly. Also joining us is our
23 client Lauren Whittlemore.

24 THE ARBITRATOR: And appearances for
25 Samsara.

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1 MR. TURNER: Good morning, your Honor.
2 This is Ellisen Turner with Kirkland & Ellis for
3 Samsara. Also from the client is Kristen
4 Richenbach.

5 THE ARBITRATOR: Thank you, all. This is
6 a hearing that we set up back when order number 4
7 was issued, and I have read now some material that
8 you submitted to me including the joint --
9 although there are verbiage joint dates in the
10 schedule that you've submitted to me.

11 And so, I guess that is the subject of
12 our discussion today is just, kind of, where are
13 we in terms of the efforts to get the District
14 Court to intervene. I read judge Stenato's SPEL
15 minute order, as I call it, and the parties
16 comments about that. And I've kind of gone

17 through the schedule with all of the differing
18 positions with respect to that.

19 So let me start with the claimant first.

20 Mr. Wilson? Ms. Pyo?

21 MR. WILSON: Sure. Thank you, your
22 Honor. So you recall that on August 9th of this
23 year, you entered order number 3 as an alert to
24 the Delaware judge who was, at that point in time,
25 had Samsara's emergency motion pending before it.

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1 And you said, look we're going to have another
2 call on August 23rd, and if the court hasn't
3 stopped this arbitration, we're going to get
4 moving.

5 And whether in response to that or just
6 because, the Delaware transferred the whole case
7 to the Northern District of California with where
8 it ended up in front of judge Stenato who read, at
9 least, the PI papers, and said, I see no need to
10 stop this arbitration. And, you know, with full
11 knowledge that we would be entering a case
12 management order and moving forward, he denied

13 Samsara's motion, although in a minute order with
14 some reasoning behind it, that suggests -- we
15 think he sees no likelihood of success on their
16 claim that this arbitration should be stopped.

17 So we've had two different Federal
18 District Court judges consider Samsara's emergency
19 motion, and neither of them saw an emergency. And
20 they did it fully cognizant of your Honor saying,
21 okay, there's a request to stop the arbitration.
22 I'm planning to go forward. Does anybody have a
23 problem with that? And so, our view is, with the
24 emergency motion now denied, it is time to enter a
25 full blown case schedule here and move forward.

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1 It is true, as Samsara points out, that
2 our motion to compel arbitration remains formally
3 pending in the Northern District of California
4 because that was not filed as an emergency, and
5 when the case got transferred and put in front of
6 Judge Stenato, he said, please notice everything
7 -- I think it was no less than 35 days from the
8 date of transfer.

9 So that is going to be before him in mid

10 October, but given the denial of the emergency
11 motion, we think we should enter a case schedule
12 here and get moving.

13 And as we said before, for some reason,
14 if he were to change his mind when he sees the
15 motion to compel, we would certainly let, your
16 Honor know about it, and we can adjust. But at
17 this point in time, we think for an arbitration
18 that we filed in February, we're long past time to
19 get moving. And the reason unfortunately -- we
20 had for few joint submissions to you on the
21 schedule is that Samsara, having initiated
22 litigation, having initiated the ITC proceedings,
23 is now invoking the ITC proceeding that it
24 precipitated to say, let's delay the arbitration
25 indefinitely.

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1 And so, we don't think Samsara and its
2 very able counsel at a very large law firm, should
3 be just be able to keep dragging this out, really
4 with no end in sight when the purpose of
5 arbitration is fast, efficient resolution of

6 things.

7 And we think given all the work that they
8 have done in the ITC, there's not a lot of
9 discovery that needs to happen here. And so, we
10 ought to enter a brisk but reasonable schedule of
11 the type that we put forward.

12 THE ARBITRATOR: Mr. Wilson, what do you
13 consider to be the claims for arbitration?

14 MR. WILSON: So we would arbitrate all of
15 the claims that Samsara --

16 THE ARBITRATOR: What are they though?
17 I'd like to -- where do I look to find the claims
18 that I am arbitrating?

19 MR. WILSON: Sure. Fair question. So
20 you know we put forward in our statement of claim
21 that we've amended to correspond with their
22 amendments over time. The arbitration -- the
23 claims at issue -- and let me get you the exact
24 date of that. So we amended our demand April 30th
25 of this year, and then Samsara responded to that

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1 on May 14th.

2 Basically, what we're seeking is to say

3 the various claims that they filed originally in
4 Delaware in the ITC, they're arbitrable, and they
5 have no merit. And they are, to the extent there
6 are arbitrable, Samsara is seeking to pursue those
7 same claims. You've got a group of patent claims
8 as well as a group of other business tort-type of
9 claims, false advertising, things like that.

10 THE ARBITRATOR: Right. Okay. So I'm
11 understanding you to say that the claims before me
12 parallel those that Samsara filed in the ITC and
13 before the Delaware District Court.

14 MR. WILSON: Correct.

15 THE ARBITRATOR: All right. Mr. Turner?

16 MR. TURNER: Thank you, your Honor.

17 So just to give you some clarity on the
18 claims which -- well, let me back up a step. I
19 think there was a position stated that Samsara is
20 looking to delay the arbitration indefinitely.
21 Not so. Our schedule puts forward specific dates
22 that the arbitrable hearing should proceed.
23 They're later than Motive's dates, and I'll get
24 into that, but certainly we put forward specific
25 dates. so we recognize that our motion for

1 preliminary injunction was denied.

2 It remains the case, as Mr. Willis noted,
3 that the Mr. Wilson still may end this arbitration
4 through a ruling, the pending motion. But for
5 now, yes not enjoined, and so we're here on the
6 scheduling conference and we put forward a
7 schedule.

8 As to the claims that are at issue, I
9 think that's really important, your Honor. It's
10 why we say, let's start with figuring out what
11 exactly is going to be arbitrated because that has
12 not been resolved yet.

13 What your Honor resolved is contract
14 formation. And we objected, but of course decided
15 that a contract was formed between the parties and
16 has an arbitration clause that allows this
17 arbitrator to determine the scope of
18 arbitrability. We still have not gone through
19 that step. We must now determine which of those
20 claims fall within the scope of the arbitration
21 clause in the agreement.

22 And there are, if you look at the demand
23 for arbitration and our -- Samsara's response,

24 there are ten claims at issue here. And if you
25 consider Motive's affirmative defenses, we really

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1 have 20 claims and issues for adjudication. So
2 it's quite a complex case, your Honor. The ten
3 claims are, three claims for patent infringement,
4 claim for false advertising -- it's really a
5 two-part claim that one. There's count 5, as
6 fraud under California law. Count 6, violation of
7 the computer fraud and abuse act. Count 7,
8 violation of California unfair competition laws.
9 Count 8, is a separate violation of California
10 unfair competition laws. And Count 9 is, a
11 violation of the Delaware unfair competition laws.

12 And in addition, your Honor, there is a
13 contingent counter claim from Samsara because,
14 obviously, we disagreed on contract formation, but
15 if there is a contract here, Motive breached it,
16 and that's very clear.

17 So it's quite a complex case with many
18 claims at issue if, your Honor finds that it's all
19 arbitrable. If all of those claims are
20 arbitrable, including the patent claims, clearly

21 we have to have some procedure to deal with the
22 patent claims, and the most appropriate procedure
23 would be the Northern California local rules that
24 set forth a really efficient procedure to Mark sue
25 claim SPEL, have a claim construction done, get a

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1 resolution on claim construction from your Honor,
2 and address infringement and validity of those
3 patent claims.

4 That accounts for really the different --
5 the majority of the different between the parties
6 schedules is whether or not the patent claims are
7 arbitrable. But certainly, the scope of the rest
8 of the claims at issue will dictate what discovery
9 is necessary, as well as with the patent claims,
10 to resolve the issues here.

11 So we really have that threshold issue of
12 what is arbitrable to resolve, and then we can
13 plan for the rest of the schedule in light of that
14 which may be longer or shorter depending upon your
15 judge's ruling, but certainly both parties have
16 actually put forward schedules and we have.

17 THE ARBITRATOR: Mr. Turner, let me just
18 kind of clarify. I have not studied the
19 submissions well enough to know the answer and
20 that's why I'm asking the question. Does Samsara
21 consider that it has tendered as issues for
22 determination, the claims that were submitted to
23 the ITC and to the Delaware District Court?

24 MR. TURNER: No, your Honor. Samsara
25 still maintains the position that it has objected

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1 to jurisdiction and is not tendering any claims
2 for submission, but Motive has put all of those
3 claims at issue in both courts in this
4 arbitration. So it's really the claims that
5 Motive has put in as declaratory judgment claims
6 which is really every single claim in those cases.

7 THE ARBITRATOR: Yeah. I -- I suspected
8 that that would be the answer to my question. So
9 if -- I take it that Samsara is waiting for a
10 definitive ruling with respect to my jurisdiction
11 before it tenders claims -- any claims in this
12 arbitration. Is that the position of Samsara?

13 MR. TURNER: No, your Honor. So we have,

14 at all times, endeavored to move along wherever
15 possible, subject to our objections to
16 jurisdiction. Therefore, we did submit contingent
17 counter claims, meaning if your Honor found that
18 there was contract formation and that the claims
19 were arbitrable, we submitted what we thought the
20 claims would be. And in that instance, yes, your
21 Honor, to very clearly answer to your question,
22 then what we've put forth is that all of the
23 claims that Motive has put in at issue, we find
24 that -- we believe that they're liable for all of
25 those claims, subject to a ruling on arbitrability

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1 of each individual claim. So we still dispute
2 that individual claims in that set are arbitrable,
3 but if they are, we certainly assert them against
4 Motive. So they would all be at issue if they are
5 arbitrable, your Honor.

6 The first step in both party's schedules
7 is to determine which of those claims are are
8 actually arbitrable, meaning been the scope of the
9 arbitration clause. And so, your Honor, both

10 parties pro pose briefing that issue first.

11 THE ARBITRATOR: Yes, I saw that opening
12 briefs actually it's assigned to you as an opening
13 brief scheduling arbitrability of claims. So as
14 my understanding it, that would be a motion saying
15 that as a -- as to a particular claim or group of
16 claims, it's beyond the scope of the arbitration
17 agreement.

18 MR. TURNER: That's correct, your Honor.

19 THE ARBITRATOR: And then, the claimant
20 is proposing -- both sides agree that then I would
21 have an argument from the claimant here in
22 opposition challenging the challenge to
23 arbitrability. And then, you would do a reply,
24 and I would decide that.

25 And then, it does make sense, it seem to

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1 me, Mr. Wilson, that if I decide that that the
2 patent claims are arbitrable, then why don't I
3 need a schedule that Mr. Turner is suggesting with
4 respect to claim construction and all of the
5 features that would go with this infringement
6 counter demand, I guess I'd call it?

7 MR. WILSON: We just don't think that
8 JAMS rules call for that. We don't think it's
9 necessary in a for better or worse, these parties
10 have been litigating feverishly in the ITC. And
11 in order to move this along and agree that
12 discovery can be limited, we are willing --
13 subject to entry of a protective order -- to have
14 the ITC discovery and expert work they did come --
15 come in and be used here.

16 And to give you a flavor of that, I ask
17 Motive's ITC counsel just for some statistics. In
18 the ITC proceeding, Samsara have served 635
19 requests for admission. They've taken or will
20 take 19 depositions of Motive-affiliated
21 witnesses, including two experts. Motive took 15
22 depositions of Samsara-affiliated witnesses.
23 Samsara served 230 requests for production.
24 Motive apparently served 132. Samsara served 26
25 interrogatories.

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1 THE ARBITRATOR: Mr. Wilson -- let me
2 interrupt. My question, though, raised the

3 question of law. Claim construction is not
4 discovery related. It -- it has to do with the
5 process of trying to figure out what the claims
6 mean so that a judgment can be made as to whether
7 or not an accused product infringes.

8 And so, my question is -- was: Isn't
9 that -- shouldn't I allow time for that if I'm
10 going decide that claim infringement is
11 arbitrable?

12 MR. WILSON: I apologize for interrupting
13 you.

14 THE ARBITRATOR: I -- I paused. My
15 pregnant pause invited an interruption.

16 MR. WILSON: I'll take whatever room I
17 can get.

18 We think you could take that all up in
19 the context of the final hearing or in connection
20 with dispositive motions. If your Honor would
21 prefer to have a claim construction phase, I think
22 we could build that into the schedule that we put
23 forward that still gets this hearing done by March
24 or perhaps April at the latest rather than -- you
25 know, our view was Samsara was, you know, to the

1 extent they're not just going to be using
2 decisions that have already been made, they're
3 building in months and months of additional
4 process that are unnecessary.

5 And so, the disclosures and claim
6 construction could be done much more expeditiously
7 if your Honor wants to add those phases.

8 THE ARBITRATOR: I don't know much about
9 your background, but are you frequently litigating
10 patent infringement cases?

11 MR. WILSON: I frequently have patent
12 infringement cases in my cases, but I do not
13 litigate them. I leave that to patent -- my
14 patent colleagues, but I've had arbitrations where
15 patents were -- patent infringement was
16 arbitrated, and I've done them both without any
17 claim construction and you take it up as part of
18 of the hearing, and I've done -- I think on one
19 occasion -- we did do a separate claim
20 construction proceeding.

21 THE ARBITRATOR: Well, I apologize for
22 asking that question, but the reason I do is that
23 it just seems to me that if I'm going to be in a
24 position of judging, as an arbitrator, questions

25 of patent infringement and the claims are the

15

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1 '373, '130, and the '621 patents were infringed by
2 Motive, I've got to know what those claims say and
3 what they mean. And maybe what you're telling me
4 is I can rely on the ITC claim construction, but
5 I -- I normally don't do that. I normally believe
6 that that is something that I need to decide. I
7 might decide that I agree with them, but I need to
8 make that decision and I should build in time for
9 that. That's the only issue before us now.

10 One schedule allows time for that, and
11 the other does not, and it does seem to me that
12 I -- I need to build that in. I would probably be
13 in favor of a schedule that gets me at this point
14 to the point of decision. In other words, both
15 sides seems to have the end of October as a period
16 for full briefing on this question of what claims
17 are before me. And I would, then, have us come
18 back together once that decision is made to talk
19 more substantively about, okay, now that I've
20 decided a claim is in or out, how much time do you

21 need to do that? Doesn't that make more sense to
22 both sides?

23 MR. WILSON: We're certainly open to
24 that, your Honor. That was one point of at least
25 near agreement with Mr. Turner when we discussed

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1 this is, if you want to give us an end date or an
2 initial date if we're talking about arbitrability
3 first, and then let's pick a hearing date and say
4 these type of milestones we want to see, we're
5 happy to work with them and come one a schedule
6 that works for everyone.

7 If you want to do arbitrability first and
8 come back and then say, okay, now we know what's
9 in or what's out, we're happy to do that as well.

10 THE ARBITRATOR: Well, that's what it
11 seems to me, that you both, kind of, agreed to one
12 date, October 28th and October 30th. That's
13 really the same day as far as I'm concerned. So
14 if I adopt that schedule, and then set a further
15 case management conference following my order -- I
16 don't know how difficult that is going to be to
17 decide.

18 I have had, I should tell you,
19 arbitrations of claim infringement, but I know
20 there are legal issues that can be raised with
21 respect to that in terms of the arbitration
22 agreement itself. And I -- I don't prejudge it,
23 I'll wait until I have your arguments about that
24 to decide it.

25 But it -- it seems to me that if I give

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1 myself a couple weeks after your briefing closes
2 to make a decision, we ought to come back together
3 then at a date sometime toward the end of November
4 to fill out the rest of the schedule, and then
5 we'll know whether or not we can get it done in
6 March or we need more time for that. That's kind
7 of my thinking at this point.

8 MR. TURNER: Samsara agrees with that
9 approach, your Honor. It makes sense to figure
10 out what claims we're deciding here in this
11 arbitration, and then figure out the schedule and
12 the scope of further discovery from there.

13 THE ARBITRATOR: The period around

14 November gets to be kind of tricky with
15 Thanksgiving coming in. If you're done all with
16 your briefing by October 30th, and I have a couple
17 of weeks after that to give you a decision, maybe
18 the 22nd of November would be another status
19 conference at 11:00 clock to talk about it.

20 MR. TURNER: So, your Honor the period of
21 November is doubly tricky because we have our ITC
22 trial during that time. I -- I apologize, your
23 Honor, could you repeat that date that you
24 mentioned?

25 THE ARBITRATOR: I just suggested

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1 November 22nd which is a Friday. I don't know
2 what dates you're involved in your proceeding.

3 MR. TURNER: Yeah. So that is after the
4 proceeding ends, your Honor. The proceeding
5 should -- is scheduled to end on the 20th right
6 now. I -- I -- I can't say for certain. I
7 believe that those extra two days in the week are
8 just-in-case days because we haven't got into
9 setting witnesses evidence for trial and so on.

10 I think probably for safety, the 25th

11 would be better, but the 22nd is not a hearing
12 date right now.

13 THE ARBITRATOR: Looking at the 25th now.
14 I will be in another proceeding on the 25th, and
15 then we're coming up -- so the next date that I
16 would have would be December 2nd.

17 MR. WILSON: Is it possible to meet on
18 the 22nd a little bit later in the day? We do
19 have the advantage of California hours in this
20 case.

21 THE ARBITRATOR: Oh, sure. The 22nd
22 is -- I can accommodate you at any time on the
23 22nd.

24 MR. TURNER: Yeah, then I would suggest
25 -- just because I'll be in DC -- that we do the

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1 afternoon if we're going to do the 22nd, somewhere
2 around -- again, for safety -- 3:00 o'clock to
3 give me time to get -- if I happen to be in court
4 that day to get back to a space where I can talk.

5 THE ARBITRATOR: All right. 3:00 o'clock
6 on 11-22 for a further case management conference.

7 And then at that point, I would task the parties
8 -- because you will have my decision on what
9 claims are in -- I will address timing, but I
10 won't set up a schedule. I'll just kind of
11 address the kind of timing that I anticipate will
12 be needed if I decide that patent infringement is
13 before us so that it becomes a meeting that we can
14 really talk in earnest about what kind of a
15 schedule makes sense.

16 It would be a waste of our time for me to
17 just on the 22nd to raise that issue. So you'll
18 expect that in the order that I give you on what
19 claims are in or out, some comment on timing that
20 I hope will guide you to conferring and give me a
21 realistic schedule.

22 All right?

23 MR. WILSON: Sound good.

24 MR. TURNER: Understood.

25 THE ARBITRATOR: Anything further?

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1 MR. TURNER: This is one issue, your
2 Honor, that we wanted to bring to your attention
3 in case it was oversight. It may have been

4 intentional.

5 During the last hearing, there was some
6 discussion about whether or not Samsara had waived
7 its objections to arbitrability and jurisdiction,
8 and, your Honor indicated that you thought that
9 Samsara had not waived, and that it was within
10 your power to issue an order saying that because
11 issue had been disputed.

12 And we've been faced with a situation
13 where Motive has continued to submit arguments to
14 the District Court in support of its waiver theory
15 based on the arbitration.

16 If, your Honor is amenable to providing
17 that order that you mentioned in the last hearing
18 that you would provide that Samsara had not waived
19 its objections to jurisdiction or arbitrability by
20 appearing here, we would appreciate that because
21 it is still a live point in front of the District
22 Court, not with respect to our preliminary
23 injunction at this point, but with respect to the
24 other pending motion that will determine formation
25 and arbitrability.

1 THE ARBITRATOR: Mr. Wilson?

2 MR. WILSON: I wasn't at the last
3 hearing. My law partner handled. I think there's
4 a difference between, say, today where we put --
5 we agreed in the submission that Samsara appearing
6 here today is not a waiver.

7 We think what happened around the
8 formation questions earlier this year, Samsara
9 through its conduct, did, in fact, waive and
10 invite a decision from your Honor on arbitrability
11 or at least formation consistent with the JAMS
12 rules and consistent with its own contract.

13 Whether that is a waiver in the context
14 of the motions before the District Court, I think
15 will be a question for the District Court. I
16 think it's a little ironic for Samsara to say only
17 the court can decide, but now we need the
18 arbitrator to weigh in on one of the waiver
19 points. So we certainly agree that today Samsara
20 has not waived anything.

21 I think when it comes to the briefing
22 that they submitted and the ruling that they
23 invited on formation last summer, I do think
24 legally that is a waiver where they -- they

25 thought they were going to get favorable decision

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1 from your Honor. They didn't, and now they want
2 to have the court revisit it. So not sure exactly
3 what Mr. Turner has in mind, but...

4 THE ARBITRATOR: You all keep raising
5 issues that question my jurisdiction. I don't
6 consider that I have any waiver by Samsara. It
7 has consistently questioned whether or not I have
8 the power to proceed.

9 I will go back and look at what happened
10 before when the issue of my consideration of the
11 Delaware filings to make my determination. I
12 actually had in mind that that was done as a
13 matter of convenience rather than having the party
14 brief all of those matters again, they simply
15 allowed me to use those material because
16 everything that you wanted to said to me had been
17 said to the District Court, and it was not done in
18 a way that submitted to jurisdiction or waived
19 anything.

20 It was done with the intent that I would
21 find that they had not -- I did not have

22 jurisdiction. And so, I don't believe that
23 there's a waiver now. How I address that is a
24 good question, so I'll consider that I have a
25 request that my order from today address that

23

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1 issue, and I will.

2 MR. TURNER: I appreciate it, your Honor.
3 And I'll remind you, during hearing I -- you had
4 asked the question when I said to you prudentially
5 not rule did I really mean you cannot rule and I
6 said, it would be better -- easier if prudentially
7 you did not rule, but yes our view is that you
8 cannot rule and that had not been our position and
9 we maintained that.

10 THE ARBITRATOR: I understand that that
11 has been your position. I have with respectfully
12 disagreed with your position, but that's how these
13 things go.

14 All right. Thank you. I'll include a
15 statement about that in my order.

16 MR. TURNER: Thank you, your Honor we
17 appreciate it.

18 THE ARBITRATOR: Anything further?
19 MR. TURNER: No, your Honor.
20 THE ARBITRATOR: All right. Thank you
21 I'll bring this conference to a close.
22 You have a court reporter. If you
23 actually do a transcript of this for any purpose,
24 I'd like to have an electronic copy.
25 MR. TURNER: Thank you, your Honor.

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1 We'll insure that happens if it's used.
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EXHIBIT 13

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EXHIBIT 14

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EXHIBIT 15

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