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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

FEDERAL TRADE COMMISSION, ) C-17-00220 LHK  
)  
PLAINTIFF, ) SAN JOSE, CALIFORNIA  
)  
VS. ) JANUARY 29, 2019  
)  
QUALCOMM INCORPORATED, A ) VOLUME 11  
DELAWARE CORPORATION, )  
) PAGES 2095-2183  
DEFENDANT. )  
\_\_\_\_\_ )

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE LUCY H. KOH  
UNITED STATES DISTRICT JUDGE

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PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
TRANSCRIPT PRODUCED WITH COMPUTER

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**(MS. MILICI GAVE HER CLOSING ARGUMENT ON BEHALF OF THE  
FTC.)**

MS. MILICI: GOOD AFTERNOON, YOUR HONOR. WE ARE HERE TODAY BECAUSE QUALCOMM VIOLATED THE FTC ACT. IT ACQUIRED MONOPOLY POWER IN MODEM CHIP MARKETS AND RATHER THAN SIMPLY COMPETING ON THE MERITS, QUALCOMM USED ITS POWER TO THROW UP ROADBLOCKS THAT MADE IT HARD FOR RIVALS TO CATCH UP.

QUALCOMM SHOULD BE ENJOINED FROM CONTINUING THE CORPORATE POLICY THAT HARMED COMPETITION IN 3G AND 4G AND ARE LIKELY TO HARM COMPETITION IN 5G.

AT THE BEGINNING OF THIS TRIAL I SAID THAT THE CONDUCT AT ISSUE WOULD BE UNDISPUTED, AND IT HAS BEEN. THAT CONDUCT INCLUDES REFUSING TO SELL MODEM CHIPS UNLESS THE BUYER SIGNS A LICENSE THAT REQUIRES, OFTEN OVER MANY, MANY YEARS, PAYMENTS ON PHONES THAT USE RIVAL CHIPS.

THOSE PAYMENTS ARE NOT A FAIR REFLECTION OF THE VALUE OF QUALCOMM'S PATENTS. THEY CAN'T BE BECAUSE THE NEGOTIATIONS WERE UNFAIR.

AND THE CONDUCT INCLUDES THE USE OF STRATEGIC FUNDS, NOT SIMPLY TO SERVE A MARKETING OR OTHER LEGITIMATE BUSINESS

1 PURPOSE, BUT INSTEAD TO SHORE UP THE HIGH ROYALTY THAT IS PAID  
2 ON HANDSETS USING RIVAL CHIPS.

3 AND THE UNDISPUTED CONDUCT AT ISSUE IN THIS CASE INCLUDES  
4 REFUSING TO MAKE LICENSES AVAILABLE TO RIVAL CHIP MAKERS.

5 QUALCOMM DOES NOT DENY THIS POLICY, AND IT DOES NOT DENY  
6 THAT IT RECEIVED VALUABLE LICENSES FOR ITS OWN CHIP BUSINESS.

7 AND WITH APPLE, QUALCOMM AGREED TO MAKE PAYMENTS  
8 OFFSETTING SOME OF THE BURDEN OF THE HIGH ROYALTIES PAID BY  
9 APPLE'S CONTRACT MANUFACTURERS IN EXCHANGE FOR EXCLUSIVITY.

10 THAT FORECLOSED AN IMPORTANT POINT OF ENTRY FOR  
11 COMPETITORS.

12 SO MOST OF THE FACTS ARE UNDISPUTED.

13 WHERE THERE ARE DISPUTES, THE COURT WILL HAVE THAT MAKE  
14 CREDIBILITY DETERMINATIONS. ON ONE SIDE IS THE CONSISTENT  
15 TESTIMONY OF WITNESSES FROM LENOVO, MOTOROLA, SAMSUNG,  
16 BLACKBERRY, PEGATRON, HUAWEI, WISTRON, APPLE, AND LG THAT  
17 QUALCOMM USED ITS CHIP MONOPOLY POWER TO OBTAIN LICENSING TERMS  
18 THAT THE OEM'S CONSIDER HORRIBLE, EXCESSIVE, AND UNFAIR.

19 THAT TESTIMONY IS SUPPORTED BY CONTEMPORANEOUS DOCUMENTS  
20 PRODUCED BY THIRD PARTIES AND BY QUALCOMM'S OWN INTERNAL  
21 DOCUMENTS.

22 ON THE OTHER HAND, THERE IS THE SELF-SERVING TESTIMONY OF  
23 QUALCOMM'S EXECUTIVES WHO INCREDIBLY CLAIM THAT TYING CHIPS AND  
24 LICENSES ALLOWS QUALCOMM TO CREATE CLOSE PARTNERSHIPS WITH ITS  
25 CUSTOMERS.

1           NEEDLESS TO SAY, THOSE CUSTOMERS DISAGREE. NOT A SINGLE  
2           THIRD PARTY HAS COME TO COURT AND TESTIFIED IN FAVOR OF  
3           QUALCOMM'S NO LICENSE, NO CHIPS POLICY, THE FAIRNESS OF ITS  
4           ROYALTY RATES, OR THE PROCOMPETITIVE EFFECTS OF ITS BUSINESS  
5           MODEL.

6           AND DESPITE ARGUING TO THE COURT REPEATEDLY ABOUT EXHIBIT  
7           LIMITS, QUALCOMM INTRODUCED FROM ITS LIST ONLY 53 EXHIBITS, 7  
8           OF WHICH WERE NOT ADMITTED FOR THEIR TRUTH.

9           QUALCOMM'S ARGUMENTS IN THIS CASE SIMPLY LACK EVIDENTIARY  
10          SUPPORT.

11          QUALCOMM'S DEFENSE THAT THE FTC HAS NOT PRECISELY  
12          QUANTIFIED THE IMPACT OF ITS CONDUCT WIDELY MISSES THE MARK AND  
13          IT MISREPRESENTS THE SUPREME COURT'S HOLDING IN THE  
14          AMERICAN EXPRESS CASE, WHICH WAS A SECTION 1 CASE IN WHICH  
15          THERE WAS NO PROOF OF MONOPOLY POWER.

16          AND NO GOVERNMENT ANTITRUST CASE REQUIRES THE TYPE OF  
17          PROOF THAT QUALCOMM DEMANDS HERE, NOR SHOULD IT.

18          TO THE CONTRARY. THE EVIDENCE IN THIS CASE IS MORE THAN  
19          ENOUGH TO ESTABLISH THE ANTICOMPETITIVE EFFECTS OF QUALCOMM'S  
20          CONDUCT.

21          NOW, QUALCOMM SPENT A LOT OF ITS TRIAL TIME ESTABLISHING  
22          THAT IT IS AN INNOVATIVE COMPANY THAT HAS MADE SOME GREAT  
23          PRODUCTS. MANY MONOPOLISTS COULD SAY THE SAME.

24          AS I SAID IN THE OPENING, NO ONE EVER CLAIMED THAT  
25          MICROSOFT HAD BAD TECHNOLOGY.

1           QUALCOMM WORKED HARD TO DEVELOP THE USE OF CDMA TECHNOLOGY  
2           IN CELLULAR COMMUNICATIONS. THAT'S CERTAINLY ADMIRABLE.

3           BUT THAT DOESN'T GIVE QUALCOMM THE RIGHT TO IMPEDE  
4           COMPETITORS.

5           AND AS DR. JACOBS TESTIFIED, QUALCOMM CHOSE TO STANDARDIZE  
6           CDMA TECHNOLOGY THROUGH TIA IN ORDER TO MONETIZE ITS PRODUCTS.

7           STANDARDIZATION BROUGHT IT A WIDER CUSTOMER BASE FOR ITS  
8           PRODUCTS AND MORE LICENSED UNITS.

9           BUT IN EXCHANGE FOR THAT WIDER CUSTOMER BASE, QUALCOMM  
10          MADE A FRAND COMMITMENT, FIRST TO TIA AND THEN TO OTHERS. AND  
11          THAT WAS THE BARGAIN THAT QUALCOMM VOLUNTARILY STRUCK. MORE  
12          CHIP CUSTOMERS AND MORE LICENSED UNITS, BUT CONSTRAINED  
13          LICENSING TERMS.

14          NOW, OVER THE YEARS, QUALCOMM CONTINUED TO CONTRIBUTE  
15          TECHNOLOGY TO STANDARDIZATION. AND IT'S STRONG PRESENCE IN THE  
16          STANDARD SETTING PROCESS HAS GIVEN ITS CHIP BUSINESS A  
17          SIGNIFICANT TIME TO MARKET ADVANTAGE, AS YOU CAN SEE ON THIS  
18          SLIDE.

19          QUALCOMM HAS ENJOYED AN ESPECIALLY STRONG CHIP POSITION AT  
20          THE EARLY STAGE OF THE NEW STANDARDS, AND THIS IS THE EVIDENCE  
21          THAT WE ARE SEEING AGAIN IN 5G.

22          BUT OVER THE PAST 25 YEARS, AS QUALCOMM HAS CONTINUED  
23          PARTICIPATING IN STANDARDIZATION, ITS SHARE OF STANDARD  
24          ESSENTIAL PATENTS HAS DECLINED.

25          AS YOU CAN SEE IN THIS INTERNAL DOCUMENT, ITS SHARE OF 2G

1 CDMA STANDARD ESSENTIAL PATENTS WAS FAR HIGHER THAN ITS SHARE  
2 OF 3G STANDARD ESSENTIAL PATENTS, OR LTE.

3 UNLIKE THE EARLY DAYS OF CDMA, OTHER FIRMS HAVE COMPARABLE  
4 SET PORTFOLIOS OF LTE.

5 AT THE SAME TIME, CELLULAR HANDSETS HAVE CHANGED AS WELL.  
6 THE FEATURE PHONES SOLD 20 YEARS AGO DID LITTLE MORE THAN  
7 PROVIDE CELLULAR CONNECTIVITY.

8 SMARTPHONES TODAY PROVIDE A HOST OF OUR STATE OF THE ART  
9 FEATURES, MANY OF WHICH DON'T REQUIRE CELLULAR CONNECTIVITY AT  
10 ALL.

11 AND SMARTPHONE USERS HAVE BEGUN RELYING MORE HEAVILY ON  
12 WI-FI TO TRANSMIT DATA, DIMINISHING THE RELATIVE IMPORTANCE OF  
13 CELLULAR TECHNOLOGY OVERALL.

14 AND SEVERAL EXPERTS IN THIS CASE TESTIFIED ABOUT THIS,  
15 INCLUDING SEVERAL OF QUALCOMM'S EXPERTS.

16 BUT QUALCOMM'S ROYALTIES DO NOT REFLECT THESE CHANGES AND  
17 QUALCOMM'S ROYALTIES DO NOT REFLECT CHANGES IN PATENT LAW OVER  
18 THE SAME PERIOD OF TIME.

19 INSTEAD, THROUGHOUT ALL OF THESE CHANGES IN THE INDUSTRY,  
20 IN ITS PORTFOLIO, AND IN THE LAW, QUALCOMM HAS MAINTAINED HIGH  
21 RATES. INDEED, ACCORDING TO THEIR OWN EXPERT, THEIR RATES  
22 HAVEN'T CHANGED AT ALL IN MORE THAN 25 YEARS.

23 THIS DEMONSTRATES ITS CHIP MARKET POWER.

24 NOW, PROFESSOR SHAPIRO PERFORMED A REASONED ANALYSIS OF  
25 QUALCOMM'S CHIP MARKET POWER. HE USED A HYPOTHETICAL

1 MONOPOLIST TEST, A STANDARD TOOL USED BY ANTITRUST ECONOMISTS  
2 TO DEFINE MARKETS, AND PROFESSOR SHAPIRO EXPLAINED THAT THESE  
3 MARKETS, GLOBAL MARKETS FOR CDMA AND PREMIUM LTE CHIPS SATISFY  
4 THAT TEST.

5 DR. CHIPTY AGREES THAT THE HYPOTHETICAL MONOPOLIST TEST IS  
6 A REASONABLE APPROACH TO DEFINING A MARKET, BUT SHE DIDN'T  
7 APPLY IT AND SHE DIDN'T ARGUE WITH THE WAY PROFESSOR SHAPIRO  
8 APPLIED IT.

9 DR. CHIPTY QUIBBLED AT THE MARGINS. SHE ARGUED THAT  
10 PREMIUM LTE COULD BE DEFINED TO INCLUDE MORE OR DIFFERENT  
11 CHIPS.

12 BUT DR. CHIPTY AGREES THAT THERE IS COMPETITION FOR  
13 PREMIUM SOCKETS THAT IS DISTINCT FROM COMPETITION FOR LOWER  
14 TIER SOCKETS. SHE AFFIRMATIVELY TESTIFIED ABOUT THAT MARKET.  
15 SHE JUST DIDN'T DEFINE IT.

16 AND THE OTHER SET OF TOOLS USED TO DEFINE RELEVANT MARKETS  
17 ARE THE SO-CALLED BROWN SHOE FACTORS TAKEN FROM THE SUPREME  
18 COURT CASE. HERE THESE FACTORS CONFIRM THAT THERE ARE RELEVANT  
19 GLOBAL MARKETS FOR CDMA MODEM CHIPS AND PREMIUM LTE MODEM  
20 CHIPS. INDUSTRY PARTICIPANTS, INCLUDING QUALCOMM, RECOGNIZED  
21 DISTINCT CDMA AND PREMIUM LTE MODEM CHIP MARKETS AND DISTINCT  
22 PRICING, COMPETITORS AND COMPETITIVE CONDITIONS FOR THESE  
23 MARKETS.

24 UNDER THE CASE LAW, MARKET POWER CAN BE SHOWN EITHER  
25 THROUGH THE DIRECT EVIDENCE OR INDIRECTLY THROUGH HIGH MARKET

1 SHARES AND DEFINED MARKETS. HERE BOTH KINDS OF EVIDENCE PROVE  
2 MARKET POWER.

3 AS TO BOTH PREMIUM LTE AND CDMA MODEM CHIPS, THERE IS A  
4 VERY LARGE VOLUME OF ADMITTED EVIDENCE THAT CUSTOMERS DID NOT  
5 HAVE GOOD ALTERNATIVES TO QUALCOMM, INCLUDING MOTOROLA AND  
6 BLACKBERRY WHO ARE QUOTED ON THIS SLIDE.

7 CUSTOMERS RECOGNIZED QUALCOMM'S MARKET POWER AND TESTIFIED  
8 ABOUT IT IN THIS CASE. QUALCOMM RECOGNIZED IT AND COMPETITORS  
9 RECOGNIZED IT, AND THERE'S SIGNIFICANT EVIDENCE OF THIS IN THE  
10 RECORD.

11 HIGH MARKET SHARES IN THE CDMA AND PREMIUM LTE MARKETS  
12 ALSO SUPPORT A FINDING OF MONOPOLY POWER. PROFESSOR SHAPIRO  
13 CALCULATED MARKET SHARES AND QUALCOMM CALCULATED EQUALLY HIGH  
14 OR HIGHER SHARES IN ITS ORDINARY COURSE DOCUMENTS.

15 THE SHARES ON THIS SLIDE ARE QUALCOMM'S OWN CALCULATIONS,  
16 AND THESE SHARES, AS CALCULATED BY QUALCOMM, SUPPORT A FINDING  
17 OF MONOPOLY POWER.

18 NOW, QUALCOMM HAS POINTED OUT THAT ITS MARKET SHARE HAS  
19 BEEN DECREASING AND THAT ITS SHARE IN 2016 WAS LOWER THAN IT  
20 WAS IN PREVIOUS YEARS.

21 BUT EVEN QUALCOMM'S LOWER SHARE IS VERY HIGH. THAT SHARE  
22 IS SUFFICIENT TO SUPPORT A FINDING OF MONOPOLY POWER IN LIGHT  
23 OF NINTH CIRCUIT PRECEDENCE AND THE FACTUAL EVIDENCE IN THIS  
24 CASE.

25 AND WHILE QUALCOMM CLAIMS THAT ITS SHARE HAS DROPPED EVEN

1 MORE AFTER THIS LITIGATION WAS FILED IN JANUARY OF 2017, ITS  
2 INTERNAL -- IN ITS INTERNAL DOCUMENTS, QUALCOMM SHOWS THAT IT  
3 REMAINS THE DOMINANT PRODUCER OF PREMIUM CHIPS AND IS, IN FACT,  
4 THE ONLY MERCHANT SUPPLIER OF PREMIUM SOC'S, AND THIS IS IN  
5 CX 8191 AND CX 8190, WHICH WERE INTRODUCED THROUGH THE  
6 TESTIMONY OF MR. MOLLENKOPF.

7 NOW, UNDER THE CASE LAW, MONOPOLIZATION REQUIRES TWO  
8 ELEMENTS: FIRST, THE POSSESSION OF MONOPOLY POWER IN A  
9 RELEVANT MARKET; AND, SECOND, ANTICOMPETITIVE CONDUCT.

10 DIRECT EVIDENCE THAT OEM'S LACKED GOOD ALTERNATIVES TO  
11 QUALCOMM'S CDMA AND PREMIUM LTE MODEM CHIPS AND QUALCOMM'S HIGH  
12 MARKET SHARES IN THESE MARKETS SATISFY THE FIRST ELEMENT.

13 BUT NOW LET'S TURN TO THE SECOND ELEMENT. THAT'S  
14 ANTICOMPETITIVE CONDUCT.

15 WHILE THERE'S NOTHING WRONG WITH A COMPANY GAINING  
16 MONOPOLY POWER BY HAVING BETTER PRODUCTS, AND THE FTC DOES NOT  
17 ALLEGE THAT QUALCOMM CAME BY ITS MONOPOLY POWER IN CDMA  
18 UNLAWFULLY. IT PRODUCED THE FIRST CDMA MODEM CHIP, AND THAT'S  
19 EARNED MONOPOLY POWER, AND QUALCOMM WAS ENTITLED TO USE THAT  
20 POWER TO CHARGE A MONOPOLY PRICE FOR ITS CHIPS.

21 WHAT QUALCOMM WAS NOT ENTITLED TO DO WAS TO USE ITS  
22 MONOPOLY POWER TO PUT UP ROADBLOCKS THAT INHIBITED THE ABILITY  
23 OF OTHERS TO CATCH UP AND CHALLENGE QUALCOMM'S DOMINANCE.

24 AND THAT'S WHAT QUALCOMM DID WITH NO LICENSE, NO CHIPS,  
25 REFUSING TO LICENSE ITS RIVALS AND ENTERING EXCLUSIVE DEALS.

1 IT PUT UP ROADBLOCKS FOR COMPETITORS.

2 NOW, THIS COURT HAS HEARD A LOT ABOUT NO LICENSE, NO CHIPS  
3 OVER THE COURSE OF THIS TRIAL AND THE FACTS ABOUT IT ARE  
4 LARGELY UNDISPUTED.

5 IT IS UNDISPUTED THAT QUALCOMM WOULD NOT SELL MODEM CHIPS  
6 TO AN OEM BEFORE IT ENTERED A LICENSE. AND IT IS ALSO  
7 UNDISPUTED THAT THE POLICY WAS LONGSTANDING AND WIDELY KNOWN IN  
8 THE INDUSTRY.

9 IT WAS WIDELY KNOWN, IN PART BECAUSE QUALCOMM TOLD  
10 POTENTIAL CUSTOMERS THAT THEY NEEDED A LICENSE BEFORE ENGAGING  
11 ON CHIP SUPPLY.

12 WHEN CUSTOMERS ASKED FOR CHIPS, THEY GOT LETTERS LIKE THE  
13 ONE ON THIS SLIDE, EXPLAINING THAT THEY NEEDED A LICENSE BEFORE  
14 THEY WOULD, QUOTE, "HAVE THE RIGHT TO PURCHASE CHIPS."

15 NOW, QUALCOMM WOULD NOT ENTER INTO SUPPLY AGREEMENTS WITH  
16 CUSTOMERS UNTIL THEY SIGNED A LICENSE, AND ONCE THEY BECAME  
17 LICENSED, QUALCOMM REQUIRED AGREEMENT TO SUPPLY CONTRACTS THAT  
18 INCORPORATED NO LICENSE, NO CHIPS.

19 AND YOU CAN SEE THAT IN THIS EXAMPLE. THE CONTRACT STATES  
20 QUALCOMM'S CUSTOMERS CANNOT USE A MODEM CHIP WITHOUT A SEPARATE  
21 PATENT LICENSE.

22 AND THE COURT HEARD SUBSTANTIAL TESTIMONY ABOUT THAT  
23 REQUIREMENT. AND, AGAIN, THIS IS UNDISPUTED.

24 AND IT IS THESE CONTRACTS AND THE LICENSE AGREEMENTS THAT  
25 THE FTC ALLEGES ARE UNLAWFUL.

1           THERE IS ALSO NO DISPUTE IN THIS CASE THAT QUALCOMM  
2           REMINDS EXISTING CUSTOMERS THAT THEY WOULD NO LONGER BE ABLE  
3           TO PURCHASE CHIPS IF THEY FAILED TO REACH AGREEMENT ON LICENSE  
4           RENEWAL OR EXPANSION TERMS OR IF THEY EXERCISED CONTRACTUAL  
5           RIGHTS TO TERMINATE EXISTING LICENSES.

6           THE EXAMPLE ON THIS SLIDE IS FROM QUALCOMM'S NEGOTIATIONS  
7           WITH ZTE, BUT THERE ARE MANY, MANY EXAMPLES IN THE RECORD.

8           NOW, QUALCOMM HAS STATED UNAMBIGUOUSLY THAT IT NEVER  
9           THREATENED CHIP SUPPLY.

10          ALEX ROGERS TESTIFIED ABOUT THAT LAST WEEK.

11          BUT THIS IS JUST A SEMANTIC TRICK. IN EXAMPLE AFTER  
12          EXAMPLE, WE SAW THAT QUALCOMM DEMANDED CERTAIN ROYALTY TERMS  
13          FROM A CUSTOMER, THE CUSTOMER RELISTED, AND QUALCOMM, WHICH WAS  
14          THE ONLY COMMERCIALY VIABLE SUPPLIER OF CDMA AND/OR PREMIUM  
15          LTE MODEM CHIPS, SAID, "IF WE DON'T REACH AGREEMENT, THEN YOU  
16          WON'T BE ABLE TO BUY CHIPS ANYMORE."

17          THE CUSTOMERS WHO HEARD THESE STATEMENTS CERTAINLY VIEWED  
18          THEM AS THREATS. SONY, LENOVO, AND OTHERS ALL CALLED THEM  
19          THREATS. THIS LABEL WAS NOT MANUFACTURED FOR LITIGATION.

20          AS YOU CAN SEE HERE ON THE SLIDE, WHICH IS SEALED AND NOT  
21          IN THE COURTROOM, BUT IN THE DEMONSTRATIVES, THAT VERY PHRASE  
22          WAS USED IN CONTEMPORANEOUS COMMUNICATIONS.

23          AND CONTRARY TO ITS SUGGESTIONS IN COURT AND TO INVESTORS,  
24          INTERNAL QUALCOMM DOCUMENTS SHOW THAT QUALCOMM EXECUTIVES KNEW  
25          THAT THEIR COMMENTS WOULD BE TAKEN AS THREATS AND INTENDED THAT

1           THEY BE TAKEN THAT WAY.

2           QUALCOMM KNEW THAT THE THREAT OF CUTTING OFF CHIP SUPPLY  
3           MAY BE WHAT IS NEEDED TO RESOLVE LICENSING DISPUTE AS  
4           STEVE ALTMAN WROTE IN THE E-MAIL IN THE MIDDLE HERE, WHICH IS  
5           CX 8281.

6           NOW, QUALCOMM WITNESSES ALSO REPEATEDLY TESTIFIED THAT  
7           QUALCOMM HASN'T CUT OFF CHIP SUPPLY IN ANY NEGOTIATION, AND WE  
8           THINK THAT THAT'S NOT ACCURATE AND THAT THE RECORD CONTAINS  
9           EVIDENCE OF ACTUAL CHIP SUPPLY CUTOFFS.

10          BUT WHETHER QUALCOMM ACTUALLY CUT OFF CHIP SUPPLY IS ALSO  
11          JUST BESIDE THE POINT. NO PART OF THE FTC'S CASE DEPENDS ON AN  
12          ACTUAL CUTOFF OF CHIP SUPPLY. QUALCOMM REFUSED TO SELL CHIPS  
13          TO A COMPANY BEFORE IT SIGNED A LICENSE AND ITS POLICY THAT WAS  
14          WRITTEN INTO ITS CONTRACT AND COMMUNICATED TO CUSTOMERS WAS TO  
15          CUT OFF SUPPLY IF THE CUSTOMER BREACHED OR BECAME UNLICENSED.

16          THE FACT THAT IT GENERALLY DID NOT HAVE TO CUT OFF CHIP  
17          SUPPLY IS PROOF OF ITS MARKET POWER. NO CUSTOMER WAS WILLING  
18          TO RISK LOSING QUALCOMM'S CHIPS. THEY GAVE IN INSTEAD, AS THE  
19          SAMSUNG EXAMPLE SHOWN HERE REFLECTS.

20          NOW, QUALCOMM HAS POINTED TO A COUPLE OF EXAMPLES OF TIMES  
21          WHERE THEY CONTINUED SHIPPING CHIPS TO CUSTOMERS THAT HAD  
22          STOPPED PAYING ROYALTIES. BUT QUALCOMM HAS RECOGNIZED,  
23          INCLUDING IN THIS INTERNAL DOCUMENT, THAT CUTTING OFF CHIP  
24          SUPPLY COULD CREATE ANTITRUST PROBLEMS FOR IT. AND IN EACH OF  
25          THE EXAMPLES THAT QUALCOMM HAS PROVIDED TO THE COURT, IT WAS

1 UNDER ACTIVE ANTITRUST INVESTIGATION WHEN THE CUSTOMER  
2 SUSPENDED PAYMENTS.

3 THAT QUALCOMM CONTINUED SHIPPING UNDER THOSE CIRCUMSTANCES  
4 IS NOT SURPRISING. NOR DOES IT CHANGE THE FACT THAT DESPITE  
5 THE RECOGNIZED ANTITRUST RISK, QUALCOMM AFFIRMATIVELY CHOSE, AS  
6 A CORPORATE STRATEGY, TO KEEP THE OPTION OF CEASING SUPPLY ON  
7 THE TABLE AND TO USE IT WHEN NECESSARY TO PROTECT ITS LICENSING  
8 BUSINESS.

9 SO THE POLICY'S UNDISPUTED AND CUSTOMER AFTER CUSTOMER HAS  
10 TESTIFIED UNDER OATH THAT THE POLICY GAVE QUALCOMM ADDITIONAL  
11 LEVERAGE IN NEGOTIATIONS.

12 THIS SLIDE HIGHLIGHTS SOME OF THAT TESTIMONY.

13 AND THIS WAS CONSISTENT TESTIMONY ACROSS MAJOR OEM'S.

14 AND IMPORTANTLY, IT IS THE POLICY ALONE THAT CREATES THIS  
15 LEVERAGE. CUSTOMERS KNEW THAT QUALCOMM COULD CUT OFF CHIP  
16 SUPPLY, THAT IT HAD A POLICY OF DOING SO, AND THE CONTRACTUAL  
17 RIGHT TO BACK IT UP. WHETHER QUALCOMM MADE AN EXPLICIT THREAT  
18 OR NOT, THAT LEVERAGE EXISTS.

19 IN DOCUMENT AFTER DOCUMENT ADMITTED DURING TRIAL, QUALCOMM  
20 ACKNOWLEDGED THAT ITS CHIP LEVERAGE ALLOWS IT TO CHARGE HIGHER  
21 ROYALTY RATES, AND THAT'S IN THE TESTIMONY OF DAVID WISE,  
22 DR. PAUL JACOBS, STEVE ALTMAN, AND OTHERS.

23 AND THE EVIDENCE HERE ABOUT PROJECT BERLIN AND  
24 PROJECT PHOENIX IS JUST A SMALL SAMPLE OF THE EVIDENCE THAT  
25 PROVES THIS POINT.

1           NOW, DR. JACOBS AND MR. MOLLENKOPF BOTH TESTIFIED,  
2           INCREDIBLY, THAT QCT HELPS QTL IN LICENSING NEGOTIATIONS  
3           BECAUSE THE CHIP SUPPLY RELATIONSHIP CREATES SUCH GREAT  
4           PARTNERSHIPS BETWEEN QUALCOMM AND ITS CUSTOMERS.

5           BUT THAT IS NOT HOW THE CUSTOMERS SEE IT. AND WHEN THE  
6           COURT CONSIDERS CREDIBILITY, TO THE EXTENT THAT IT HAS TO AT  
7           ALL, IT SHOULD CONSIDER THE VAST GULF BETWEEN HOW QUALCOMM  
8           EXECUTIVES SAY THAT YOU SHOULD VIEW ITS RELATIONSHIP WITH ITS  
9           CUSTOMERS AND HOW THOSE CUSTOMERS ACTUALLY VIEW IT.

10          NOW, IN ITS PROPOSED FINDINGS OF FACT, QUALCOMM OFFERED  
11          SEVERAL BUSINESS JUSTIFICATIONS FOR ITS NO LICENSE, NO CHIPS  
12          POLICY. QUALCOMM SUGGESTS THAT THE POLICY IS NECESSARY TO EARN  
13          A FAIR RETURN ON ITS INVESTMENTS OR TO PROTECT ITS INTELLECTUAL  
14          PROPERTY RIGHTS.

15          BUT IT BEARS REPEATING THAT THIS POLICY IS UNIQUE. THERE  
16          ARE MANY SUCCESSFUL TECHNOLOGY FIRMS, INCLUDING SEMICONDUCTOR  
17          FIRMS, THAT INVENT GREAT THINGS AND ARE PROFITABLE.

18          THOSE COMPANIES SELL PRODUCTS EXHAUSTIVELY OR THEY LICENSE  
19          PORTFOLIOS WITHOUT EXERCISING PRODUCT LEVERAGE TO DRIVE UP THE  
20          RATES.

21          ONLY QUALCOMM HAS THIS POLICY, AS NUMEROUS WITNESSES HAVE  
22          TESTIFIED.

23          AND EVEN WITHIN QUALCOMM, THE POLICY IS UNIQUE. QUALCOMM  
24          SELLS LOTS OF PRODUCTS, INCLUDING WI-FI CHIPS, EXHAUSTIVELY AS  
25          THIS SLIDE SHOWS.

1           NOW, QUALCOMM HAS SPENT A LOT OF TRIAL TIME DISCUSSING THE  
2           SCOPE OF ITS PATENT PORTFOLIO WITHOUT PROVIDING ANY VALUATION  
3           OR VALUATION METHODOLOGY TO JUSTIFY ITS ROYALTIES.

4           INSTEAD, ITS EXECUTIVES TESTIFIED THAT IT KNOWS THAT ITS  
5           ROYALTY RATES ARE FAIR BECAUSE LICENSEES AGREED TO THEM.

6           BUT THAT ARGUMENT DOESN'T HOLD UP. EVEN QUALCOMM'S  
7           EXECUTIVES ADMIT THAT WHETHER THE RESULT OF A NEGOTIATION IS  
8           FAIR OR UNFAIR DEPENDS ON THE CIRCUMSTANCES OF THE NEGOTIATIONS  
9           AND THE TERMS OF THE AGREEMENT.

10          MR. GONELL'S TESTIMONY HIGHLIGHTED ON THIS SLIDE  
11          CONTRADICTS OTHER ASPECTS OF HIS TESTIMONY IN THIS CASE. IN  
12          THE TESTIMONY PRODUCED HERE, HE SAID THAT THE TERMS IN  
13          QUALCOMM'S HANDSET LICENSES MUST REFLECT A FAIR VALUE BECAUSE  
14          OF THE LICENSEES AGREED TO IT.

15          BUT MR. GONELL ALSO SAID THAT THE AVANCI AGREEMENT DOES  
16          NOT REFLECT THE FAIR VALUE FOR QUALCOMM'S PATENTS, EVEN THOUGH  
17          IT WAS A NEGOTIATED AGREEMENT. AND THAT'S AT PAGE 1471 OF THE  
18          TRIAL TRANSCRIPT.

19          BUT MR. GONELL HAS IT BACKWARDS. THERE'S NO SUGGESTION  
20          THAT THE AVANCI AGREEMENT WAS THE RESULT OF AN UNFAIR PROCESS  
21          OR WAS TAINTED BY ANTICOMPETITIVE CONDUCT.

22          QUALCOMM'S LICENSES WITH HANDSET MANUFACTURERS, HOWEVER,  
23          REFLECT QUALCOMM'S EXPERT OF ITS CHIP MONOPOLY POWER AS A  
24          TREMENDOUS AMOUNT OF EVIDENCE SHOWS.

25          AND ALSO, THE ROYALTY RATES WE'RE TALKING ABOUT HERE HAVE

1 BEEN LARGELY NONNEGOTIABLE. ACCORDING TO DR. NEVO, LOOKING AT  
2 JUST THE CONTRACT RATES, QUALCOMM'S ROYALTY RATES HAVE BEEN  
3 CONSISTENT FOR DECADES. AND AS THE EVIDENCE SHOWS, THAT'S  
4 BECAUSE QUALCOMM REFUSED TO NEGOTIATE ROYALTIES. THERE'S  
5 SUBSTANTIAL EVIDENCE REGARDING QUALCOMM'S INFLEXIBILITY ON  
6 ROYALTIES, INCLUDING THE EVIDENCE CITED HERE.

7 AND ONE WAY QUALCOMM HAS FOUND TO AVOID REDUCING ROYALTIES  
8 HAS BEEN TO COMBINE THE STICK OF ITS NO LICENSE, NO CHIPS  
9 POLICY WITH THE CARROTS OF INCENTIVE FUNDS.

10 THROUGH INCENTIVE FUNDS, QUALCOMM EFFECTIVELY OFFERS A  
11 CHIP DISCOUNT TO CUSTOMERS WHEN THEY BUY QUALCOMM CHIPS, BUT  
12 ONLY IF THEY AGREE TO PAY THE ELEVATED FEE TO QUALCOMM WHEN  
13 THEY PURCHASE FROM OTHER CHIP MAKERS.

14 AND THAT CARROTS AND STICKS STRATEGY IS LAID OUT ON THIS  
15 SLIDE AND IN MR. REIFSCHNEIDER'S TESTIMONY.

16 NOW, THE ADMITTED EVIDENCE SHOWS THAT QUALCOMM PROVIDED  
17 THESE INCENTIVE FUNDS, TIED TO LICENSING AGREEMENTS AND  
18 ACCRUING ON CHIP PURCHASES, TO MULTIPLE CUSTOMERS.

19 NOW, THAT QUALCOMM HAS HAD TO USE -- HAS USED CARROTS, AS  
20 WELL AS STICKS, TO ACHIEVE SUPRA-FRAND ROYALTIES IS ENTIRELY  
21 CONSISTENT. MONOPOLISTS OFTEN COMBINE THREATS WITH INCENTIVES  
22 IN ORDER TO EXCLUDE COMPETITION, AND THIS COURT RECOGNIZED THAT  
23 IN ITS MOTION TO DISMISS DECISION.

24 AND QUALCOMM'S INTERNAL DOCUMENTS INDICATE THAT INCENTIVE  
25 FUNDS ARE JUST ANOTHER END RUN AROUND FRAND.

1           QUALCOMM ITSELF RECOGNIZED THAT IT WOULD VIOLATE FRAND TO  
2 DIRECTLY PROVIDE LICENSING DISCOUNTS TO ITS CUSTOMERS WHO BUY  
3 THEIR CHIPS.

4           BUT IT COULD, AND DOES, ACHIEVE THE SAME RESULT BY  
5 CREATING INCENTIVE FUNDS THAT IT OFFERS TO LICENSEES IN  
6 EXCHANGE FOR AGREEMENT TO LICENSE TERMS.

7           AS THIS DOCUMENT SHOWS, QUALCOMM CONSIDERED FRAND  
8 COMPLIANCE, QUOTE, "NOT AN OBSTACLE TO THIS PRACTICE IF THE  
9 FUNDS ARE KEPT SEPARATE FROM LICENSING AGREEMENTS."

10           BUT AS THE EVIDENCE SHOWS, THESE INCENTIVE FUND AGREEMENTS  
11 ARE NOT SEPARATE FROM LICENSE AGREEMENTS. THEY WORK TOGETHER  
12 WITH QUALCOMM'S OTHER ANTICOMPETITIVE CONDUCT TO RAISE RIVAL'S  
13 COSTS AND HARM COMPETITION.

14           AS WITH OTHER POINTS IN THIS CASE, THE PROOF ON INCENTIVE  
15 FUNDS IS IN QUALCOMM'S INTERNAL DOCUMENTS. THIS IS ONE OF  
16 THOSE DOCUMENTS. IT'S AN INTERNAL ACCOUNTING MEMO.

17           IN THESE MEMOS, IT SHOWS THAT QUALCOMM HAS CONSISTENTLY  
18 ATTRIBUTED THE COST OF THE INCENTIVE FUNDS TO QTL, AND THIS IS  
19 THE CASE EVEN WHERE THE FUNDS HAVE BEEN DESIGNATED AS MARKETING  
20 OR OTHER BUSINESS DEVELOPMENT FUNDS, AND EVEN WHERE THE FUNDS  
21 ARE PAID ON PURCHASES OF QUALCOMM CHIPS.

22           NOW, EVEN QUALCOMM RECOGNIZES THAT THE CORE PURPOSE OF  
23 THESE FUNDS IS TO MAINTAIN ITS ROYALTY RATES.

24           AS WITH OTHER ALLEGED CONDUCT, QUALCOMM HAS CARRIED THIS  
25 PRACTICE ON EVEN AFTER THIS LAWSUIT WAS FILED.

1           IN JANUARY OF 2018, JUST BEFORE THE CLOSE OF DISCOVERY,  
2           QUALCOMM ENTERED INTO AN AMENDED LICENSE AGREEMENT WITH  
3           SAMSUNG. QUALCOMM HAS SUGGESTED THAT THE EVIDENCE SHOWS THAT  
4           THIS AGREEMENT WAS UNAFFECTED BY QUALCOMM'S CHIP MARKET POWER.

5           BUT THE EVIDENCE IS CLEAR THAT THE AGREEMENT INVOLVED  
6           SUBSTANTIAL INCENTIVE FUNDS PAID BY QUALCOMM TO SAMSUNG,  
7           INCLUDING FUNDS TIED TO SAMSUNG'S USE OF QUALCOMM'S MODEM  
8           CHIPS.

9           NOW, QUALCOMM'S ALEX ROGERS, WHO WAS HERE LAST WEEK,  
10          CLAIMED NOT TO KNOW ANYTHING ABOUT A NUMBER OF THE  
11          QUALCOMM/SAMSUNG AGREEMENTS THAT WERE ENTERED AT THE SAME TIME.

12          BUT WHETHER HE REMEMBERS THEM OR NOT, THESE AGREEMENTS  
13          EXIST. SOME ARE ADMITTED INTO EVIDENCE IN THIS CASE AND  
14          THEY'VE BEEN ANNOUNCED PUBLICLY.

15          SO QUALCOMM RAISES RIVALS' COST THROUGH NO LICENSE, NO  
16          CHIPS AND IT BUTTRESSES THAT THROUGH THE USE OF INCENTIVE  
17          FUNDS.

18          AND QUALCOMM HAS ALSO REFUSED TO LICENSE ITS STANDARD  
19          ESSENTIAL PATENTS TO ITS COMPETITORS, AND IT IS UNDISPUTED THAT  
20          RIVALS HAVE ASKED FOR LICENSES AND THAT QUALCOMM HAS REFUSED.

21          AS YOUR HONOR RULED ON SUMMARY JUDGMENT, QUALCOMM'S FRAND  
22          COMMITMENTS TO TIA AND ATIS REQUIRE LICENSING RIVAL MODEM CHIP  
23          SUPPLIERS, AND THAT REQUIREMENT WAS PART OF THE BARGAIN THAT  
24          QUALCOMM MADE TO EXPAND THE MARKET FOR ITS TECHNOLOGY AND FOR  
25          ITS PRODUCTS.

1           NOW, QUALCOMM'S REFUSAL TO LICENSE RIVALS IS NOT REQUIRED  
2 BY FRAND OR COMMON IN THE INDUSTRY. INSTEAD, QUALCOMM CHOSE  
3 THIS BUSINESS MODEL BECAUSE IT DETERMINED THAT LICENSING ONLY  
4 AT THE HANDSET LEVEL LED TO ROYALTIES THAT WERE HUMONGOUSLY  
5 MORE LUCRATIVE THAN LICENSING CHIP MAKERS, AND THAT'S WHAT THEY  
6 SAID TO THE IRS.

7           AND QUALCOMM'S POSITION ON COMPONENT LEVEL LICENSING HAS  
8 NOT BEEN CONSISTENT OVER TIME. QUALCOMM USED TO CALL, OFFER  
9 WHAT IT CALLED LICENSES TO CHIP MAKERS AND COLLECT THE  
10 ROYALTIES UNDER THOSE AGREEMENTS.

11           BUT AS MR. BLECKER ALSO EXPLAINED DURING THE IRS MEETING  
12 SHOWN HERE IN THE MIDDLE OF THE SLIDE, THE AGREEMENTS THAT  
13 QUALCOMM ENTERED WITH OTHER CHIP MANUFACTURERS GENERALLY  
14 CONTAINED AUTHORIZED PURCHASER REQUIREMENTS.

15           UNDER AN AUTHORIZED PURCHASER REQUIREMENT, QUALCOMM  
16 PROMISED NOT TO SUE THE COMPETITOR FOR PATENT INFRINGEMENT IN  
17 EXCHANGE FOR A PROMISE FROM THE COMPETITOR THAT IT WOULD ONLY  
18 SELL CHIPS TO QUALCOMM'S LICENSEES.

19           IN FACT, WHAT THAT MEANT WAS THAT WHEN THESE AGREEMENTS  
20 WERE IN EFFECT, QUALCOMM SENT TO ITS CUSTOMERS -- TO ITS  
21 COMPETITORS LISTS OF THE CUSTOMERS THAT THEY COULD SELL TO.

22           AND QUALCOMM'S STORY THAT THE INDUSTRY HAS HAD A UNIFORM  
23 PRACTICE OF NOT LICENSING AT THE CHIP LEVEL IS SIMPLY NOT  
24 SUPPORTED BY THE RECORD. QUALCOMM'S INTERNAL DOCUMENTS, LIKE  
25 THE ONE CITED ON THIS SLIDE, REVEAL QUALCOMM'S OWN

1 LONG-STANDING PRACTICE OF PROACTIVELY SEEKING LICENSES FOR THE  
2 BENEFIT OF ITS CHIP BUSINESS FROM ITS LICENSEES AND FROM  
3 OTHERS. AND THAT'S WHAT IT SAYS IN THE LOWER RIGHT CORNER  
4 THERE.

5 QUALCOMM RECOGNIZED THAT SUCH LICENSES HELP QCT GAIN  
6 MARKET SHARE, AND THAT'S WHAT DR. PAUL JACOBS TESTIFIED. YOU  
7 CAN SEE THAT IN THE LOWER LEFT.

8 AND QUALCOMM OBTAINED RIGHTS FOR ITS OWN CHIPS FROM EVERY  
9 MAJOR LICENSOR, INCLUDING ERICSSON, SIEMENS, INTERDIGITAL,  
10 MOTOROLA, PHILIPS, SAMSUNG, LG.

11 AND IT USED THOSE RIGHTS TO MARKET ITS CHIPS TO CUSTOMERS.  
12 AND THAT'S IN THE DOCUMENT IN THE UPPER RIGHT CORNER HERE.

13 QUALCOMM'S REFUSAL TO LICENSE NOT ONLY SUPPORTED ITS NO  
14 LICENSE, NO CHIPS STRATEGY, IT HURT COMPETITORS IN OTHER WAYS,  
15 TOO. FOR EXAMPLE, SAMSUNG AND OTHERS TRIED TO FORM A MODEM  
16 CHIP JOINT VENTURE CALLED DRAGONFLY, BUT ONE OF THE CONDITIONS  
17 OF THAT JOINT VENTURE WAS A LICENSE FROM QUALCOMM. WHEN THE  
18 JOINT VENTURE COULDN'T GET ONE, IT NEVER GOT OFF THE GROUND.

19 AND THERE'S ALSO EVIDENCE THAT HANDSET MANUFACTURERS  
20 WANTED TO BUY LICENSED CHIPS, AND MEDIATEK'S FINBARR MOYNIHAN  
21 TESTIFIED THAT CUSTOMERS REPEATEDLY ASKED ABOUT WHETHER IT HAD  
22 A LICENSE TO QUALCOMM'S PATENTS, BUT WHEN MEDIATEK TRIED TO GET  
23 A LICENSE TO ADDRESS THOSE CUSTOMER CONCERNS, IT COULDN'T GET  
24 ONE.

25 NOW, QUALCOMM'S AGREEMENTS WITH APPLE BOTH GREW OUT OF AND

1 PERPETUATED ITS DOMINANT CHIP POSITION, IT'S UNREASONABLE  
2 ROYALTIES, AND ITS REFUSAL TO LICENSE RIVALS. THERE ARE THREE  
3 KEY DEALS BETWEEN THE COMPANIES, THE 2007 MARKETING INCENTIVE  
4 AGREEMENT, THE 2011 TRANSITION AGREEMENT, AND THE 2013 AMENDED  
5 TRANSITION AGREEMENT.

6 IN THESE AGREEMENTS, QUALCOMM TRADED ROYALTY RELIEF FOR  
7 COMPETITIVE ADVANTAGES FOR ITS CHIP BUSINESS. THE AGREEMENTS  
8 ALLOWED QUALCOMM TO PRESERVE AND STRENGTHEN ITS BUSINESS MODEL  
9 FOR OVER TEN YEARS.

10 AND THE EVIDENCE ON THIS SLIDE DEMONSTRATES HOW IN THE  
11 CASE OF APPLE, QUALCOMM SET ABOUT CONVERTING ITS ESTABLISHED  
12 SUPRA-FRAND ROYALTIES DIRECTLY INTO THE EXCLUSION OF  
13 COMPETITORS. EACH TIME APPLE SOUGHT RELIEF FROM ITS QUALCOMM  
14 ROYALTY BURDEN, QUALCOMM RESPONDED BY DEMANDING CHIP BUSINESS  
15 CONCESSIONS IN EXCHANGE.

16 AS SHOWN ON THIS SLIDE, QUALCOMM EXECUTIVES REPEATEDLY  
17 OFFERED ROYALTY RELIEF ONLY IN THE CONTEXT OF A LARGER BUSINESS  
18 DEAL AND ONLY IF APPLE BROUGHT ADDITIONAL VALUE IN TERMS OF  
19 CHIP BUSINESS TO QUALCOMM.

20 NOW, PROFESSOR CHIPTY ARGUES THAT THE COURT MUST EVALUATE  
21 THE EXCLUSIVE DEAL FROM QUALCOMM'S PERSPECTIVE ON THE EVE OF  
22 THE NEGOTIATION.

23 PROFESSOR SHAPIRO EMPLOYED THIS TEST AND THE EVIDENCE  
24 SHOWS THAT QUALCOMM ENTERED INTO THE 2013 TRANSITION AGREEMENTS  
25 FOR THE PURPOSE OF EXCLUDING COMPETITORS.

1           STEVE MOLLENKOPF PERCEIVED COMPETITIVE THREATS AND HE  
2 SPECIFICALLY RECOGNIZED APPLE'S ABILITY TO MAKE COMPETITORS  
3 STRONGER. AVOIDING THAT OUTCOME WAS HIGHLIGHTED AS ONE OF THE  
4 STRATEGIC BENEFITS OF THE EXCLUSIVITY DEAL.

5           AND TO BE CLEAR, THE EVIDENCE ESTABLISHES THAT QUALCOMM  
6 DID CONSIDER THE TRANSITION AGREEMENT TO BE AN EXCLUSIVITY  
7 AGREEMENT. AND IF IT MATTERS AT ALL, THE EVIDENCE ESTABLISHES  
8 THAT QUALCOMM IS THE ONE THAT SOUGHT OUT THE EXCLUSIVITY TERM.

9           THE TRANSITION AGREEMENT HAD THE INTENDED EFFECT. AS  
10 APPLE WITNESSES TESTIFIED AT TRIAL, EVEN THOUGH THEY HAD AN  
11 INTEREST IN DEVELOPING AND MAINTAINING ADDITIONAL SOURCE  
12 SUPPLIERS, THE AGREEMENTS PROVIDED STRONG INCENTIVES NOT TO  
13 WORK WITH ANYONE BUT QUALCOMM.

14           WHEN THE 2013 AGREEMENT WAS SIGNED, APPLE WAS INTENSIVELY  
15 ENGAGED WITH INTEL AND POISED TO BEGIN USING INTEL IN LESS  
16 RISKY IPAD MODELS.

17           THE RENEWAL OF THE TRANSITION AGREEMENT CAUSED APPLE TO  
18 TERMINATE THAT ENGAGEMENT. AS APPLE AND INTEL WITNESSES MADE  
19 CLEAR, INTEL'S LOSS AT APPLE WAS NOT DUE TO ITS OWN TECHNICAL  
20 DEFICIENCY, BUT RATHER WAS A DIRECT RESULT OF APPLE'S 2013  
21 AGREEMENTS WITH QUALCOMM.

22           QUALCOMM'S INTENDED ANTICOMPETITIVE EFFECTS CAME TO  
23 FRUITION. THE EXCLUSIVE CONTRACTS DEPRIVED INTEL OF THE  
24 BENEFITS OF ENGAGEMENT WITH APPLE, DELAYED INTEL'S DEVELOPMENT,  
25 AND HARMED INTEL'S ABILITY TO WIN BUSINESS BOTH AT APPLE AND

1 ELSEWHERE.

2 THE RECORD DOES NOT CONTAIN ANY SUPPORT FOR ANY  
3 PROCOMPETITIVE JUSTIFICATION FOR QUALCOMM'S 100 PERCENT  
4 EXCLUSIVE DEALS.

5 QUALCOMM'S THIN MODEM BUSINESS INVOLVES RESEARCH AND  
6 DEVELOPMENT COSTS THAT ARE LARGELY SHARED ACROSS PRODUCTS, SO  
7 INVESTMENTS WERE NOT TRULY CUSTOMER SPECIFIC TO APPLE.

8 MR. THOMPSON'S TESTIMONY, CITED HERE, SHOWS THAT.

9 AND ADDITIONALLY, THE THIN MODEMS RETURN ON R&D IS  
10 SUBSTANTIALLY HIGHER THAN QUALCOMM'S OTHER SOC'S AND EXCEEDS  
11 THE BENCHMARKS THAT WERE PROPOSED BY DR. CHIPTY IN HER REPORT,  
12 WHICH IS REPRODUCED HERE ON THE RIGHT.

13 AND SINCE INTEL'S ENTRY AT APPLE IN 2016, INTEL HAS NOT  
14 REQUIRED ANY, MUCH LESS 100 PERCENT, VOLUME OR EXCLUSIVITY  
15 COMMITMENTS TO RECOUP ITS INVESTMENT.

16 ALL RIGHT. THE NEXT SLIDE IS SEALED.

17 NOW, LOOKING AT THE EFFECT OF ALL OF THIS CONDUCT,  
18 QUALCOMM'S OWN DOCUMENTS SHOW THAT IT EARNED MANY TIMES THE  
19 LICENSING REVENUE OF OTHER MAJOR LICENSORS, LIKE ERICSSON.

20 QUALCOMM HAS NOT EXPLAINED HOW THIS CAN BE SQUARED WITH  
21 THE TESTIMONY CONCERNING ROYALTY DISTRIBUTIONS IN THE AVANCI  
22 POOL, THE DETAILS OF WHICH ARE UNDER SEAL.

23 MR. LASINSKI ANALYZED WHETHER THIS ENORMOUS DIFFERENCE IN  
24 ROYALTIES COULD BE EXPLAINED BY THE RELATIVE QUALITY AND SIZE  
25 OF QUALCOMM'S PORTFOLIO, BUT THAT MASSIVE DISPARITY WAS NOT

1 EXPLAINED.

2 QUALCOMM'S ROYALTIES ARE DISPROPORTIONATE TO THOSE OF  
3 OTHER SEP LICENSORS AND MANY TIMES HIGHER THAN ANY PLAUSIBLE  
4 CALCULATION OF A FRAND RATE.

5 NOW, MR. LASINSKI EMPLOYED WELL ACCEPTED PORTFOLIO  
6 VALUATION METHODS. IN HIS INPUTS INTO THESE ANALYSES, HE  
7 RELIED ON PORTFOLIO STRENGTH METRICS COMMONLY USED IN THE  
8 INDUSTRY, INCLUDING BY QUALCOMM.

9 HE LOOKED AT DEEMED SEP STUDIES, INCLUDING DEEMED SEP  
10 STUDIES THAT WERE ACTUALLY CITED BY QUALCOMM IN ITS OWN  
11 LICENSING NEGOTIATIONS, INCLUDING A DOCUMENT THAT WAS  
12 INTRODUCED AS CX 7128.

13 AND MR. LASINSKI ALSO LOOKED AT APPROVED CONTRIBUTIONS,  
14 AND THAT'S A METRIC THAT IS FREQUENTLY USED BY LICENSORS AND  
15 CHRISTINA PETERSSON OF ERICSSON TESTIFIED ABOUT THAT IN THE  
16 DEPOSITION PLAYED IN TRIAL.

17 NOW, MR. LASINSKI EXPLAINED HOW THE METRICS HE RELIED ON  
18 RELATE TO QUALCOMM'S OWN LICENSING PRACTICES AND INTERNAL  
19 DOCUMENTS AND USING THOSE METRICS, QUALCOMM'S HUMONGOUS  
20 ROYALTIES ARE NOWHERE CLOSE TO JUSTIFIED BY ITS PORTFOLIO  
21 STRENGTH.

22 NOW, PROFESSOR SHAPIRO REACHED THE SAME CONCLUSION, THAT  
23 QUALCOMM'S ROYALTIES ARE SIGNIFICANTLY HIGHER THAN ANY MEASURE  
24 OF REASONABLE ROYALTIES BY LOOKING AT THE SUBSTANTIAL DIRECT  
25 EVIDENCE IN THIS CASE OF QUALCOMM'S CONDUCT AND HOW THAT

1 CONDUCT AFFECTED NEGOTIATIONS.

2 THE OVERWHELMING DIRECT EVIDENCE, SOME OF WHICH IS CITED  
3 HERE, SHOWS THAT QUALCOMM'S CONDUCT LED LICENSEES TO PAY HIGHER  
4 ROYALTIES THAN THEY WOULD HAVE IN FAIR NEGOTIATIONS.

5 THE DOCUMENTS OFFERED BY QUALCOMM IN THIS CASE SHOW THAT  
6 IT EARNS 25 PERCENT OF GLOBAL PATENT LICENSING REVENUE. THAT  
7 IS NOT A REFERENCE TO THE MODEM CHIP INDUSTRY. THAT IS A  
8 REFERENCE TO ALL OF THE PATENTS IN THE WORLD.

9 NOW, QUALCOMM SPENT A LOT OF TIME TOUTING ITS RESEARCH AND  
10 DEVELOPMENT ACTIVITIES AND STATING THAT IT OWNS IMPORTANT  
11 PATENTS.

12 BUT NOT ONE OF ITS WITNESSES, SOME OF WHOSE TESTIMONY IS  
13 SHOWN ON THIS SLIDE, COMPARED QUALCOMM TO OTHER MAJOR PLAYERS  
14 IN THE CELLULAR INDUSTRY WHO ALSO ENGAGE IN EXTENSIVE RESEARCH  
15 AND DEVELOPMENT. NOT ONE OF QUALCOMM'S WITNESSES TESTIFIED  
16 ABOUT HOW MUCH QUALCOMM'S PATENTS ARE WORTH. NO QUALCOMM  
17 EXPERT ATTEMPTED TO VALUE QUALCOMM'S PORTFOLIO OR PROPOSED A  
18 METHODOLOGY FOR DOING SO.

19 DR. ANDREWS TESTIFIED THAT QUALCOMM'S PORTFOLIO INCLUDED  
20 SOME FUNDAMENTAL PATENTS, BUT HE DID NOT COMPARE THEM TO ANYONE  
21 ELSE'S PATENTS.

22 DR. ANDREWS'S OPINION WAS BASED ON SIMPLY READING 34 OF  
23 QUALCOMM'S PATENTS AND REPORTING ABOUT HIS GUT FEELING, AND  
24 THAT'S AT TRANSCRIPT PAGE 1616.

25 AND AS SHOWN ON THE BOTTOM OF THIS SLIDE, DR. ANDREWS WAS

1 QUITE CLEAR THAT HE WAS NOT OFFERING ANY OPINION ON WHAT A  
2 REASONABLE ROYALTY WOULD BE OR WHETHER THE MONETARY VALUE OF  
3 QUALCOMM'S PATENT PORTFOLIO CHANGED OVER TIME.

4 AND THERE HAS BEEN NO TESTIMONY, NO PROOF IN THIS CASE  
5 THAT ANY OF THE PATENTS THAT LIREN CHEN TESTIFIED ABOUT, IN HIS  
6 PATENT COUNTING EXERCISE, ARE VALID OR ARE ACTUALLY USED OR  
7 INFRINGED BY ANYONE.

8 QUALCOMM'S ONLY ARGUMENT IN SUPPORT OF ITS ROYALTIES IS  
9 THAT ITS RATES WERE NEGOTIATED IN THE MARKET, BUT AS I  
10 MENTIONED BEFORE, EVEN MR. GONELL AGREES THAT NEGOTIATIONS CAN  
11 BE UNFAIR AND LEAD TO UNFAIR OUTCOMES IF SUFFICIENT ECONOMIC  
12 PRESSURE IS BROUGHT TO BEAR, AS QUALCOMM DID WITH ITS HANDSET  
13 CUSTOMERS.

14 NOW, THE FTC EXPERT, RICHARD DONALDSON, EXPLAINED HOW  
15 QUALCOMM GOT THESE HIGH ROYALTIES BE EXERTING TREMENDOUS  
16 BARGAINING POWER USING NO LICENSE, NO CHIPS. IN A TYPICAL  
17 NEGOTIATION, THE PARTIES HAVE TO CONSIDER WHAT WOULD HAPPEN IF  
18 NEGOTIATIONS FAIL, AND THAT'S PATENT LITIGATION WHERE A COURT  
19 WOULD DETERMINE WHETHER THE PATENTS AT ISSUE ARE VALID AND  
20 INFRINGED AND WHAT A REASONABLE ROYALTY RATE WOULD BE.

21 THE RISK OF THAT LITIGATION INFORMS NEGOTIATIONS, AND  
22 MR. DONALDSON EXPLAINED THIS, AS DID MR. BLUMBERG OF LENOVO  
23 WHOSE TESTIMONY IS CITED HERE.

24 BUT IN NEGOTIATIONS WITH QUALCOMM, ABILITY TO WITHHOLD  
25 CHIP SUPPLY PROTECTED QUALCOMM FROM LEGAL CHALLENGES. BECAUSE

1 OF THEIR NEED FOR CHIPS, LICENSEES COULD NOT AFFORD TO RISK  
2 SUPPLY BY FORCING LITIGATION WITH QUALCOMM. THAT'S WHAT  
3 QUALCOMM SAID IN ITS OWN DOCUMENTS, INCLUDING DOCUMENTS WE  
4 LOOKED AT EARLIER IN CONNECTION WITH PROJECT BERLIN.

5 SO IT IS NOT SURPRISING TO SEE, AS MR. DONALDSON OBSERVES  
6 HERE, THAT QUALCOMM HAS BEEN INVOLVED IN MUCH LESS PATENT  
7 LITIGATION THAN OTHER SEP HOLDERS OVER TIME.

8 THE FACT THAT QUALCOMM HAS RARELY HAD TO GO TO COURT AND  
9 SUBJECT ITS PORTFOLIO TO COURT DETERMINATION OF VALIDITY,  
10 INFRINGEMENT, OR REASONABLE ROYALTY HAS LED TO SNOWBALLING  
11 EFFECTS OVER TIME. QUALCOMM USES CHIP LEVERAGE TO OBTAIN  
12 LICENSE TERMS AND THEN ASSERTS THAT THE RESULTING TERMS PROVE  
13 THE VALUE OF ITS PORTFOLIO.

14 AND ALL THIS LEADS, OF COURSE, TO THE TAX THAT WE'VE BEEN  
15 TALKING ABOUT AND THE INCREASE IN RIVALS' COSTS, AND  
16 PROFESSOR SHAPIRO, IN HIS TESTIMONY, EXPLAINED HOW QUALCOMM'S  
17 ROYALTY SURCHARGE HARMS COMPETITION AND CONSUMERS.

18 THE ROYALTY SURCHARGE OPERATES AS A TAX, AND THAT TAX  
19 REDUCES WHAT QUALCOMM'S RIVALS AND THEIR CUSTOMERS CAN GAIN BY  
20 TRADING WITH ONE ANOTHER.

21 AS A MATTER OF TEXTBOOK ECONOMICS, IT DOESN'T MATTER  
22 WHETHER THE OEM OR THE RIVAL PAYS THE TAX. NO MATTER WHO  
23 WRITES THE CHECK, THE TAX REDUCES THE GAINS FROM TRADE AND  
24 MAKES RIVALS' CHIPS LESS ATTRACTIVE.

25 AND AS DR. SHAPIRO EXPLAINS ON RIGHT PART OF THIS SLIDE,

1 QUALCOMM'S ROYALTY SURCHARGE IS NOT CHIP NEUTRAL. THIS IS  
2 BECAUSE WHEN AN OEM BUYS QUALCOMM CHIPS, THE GAINS FROM TRADE  
3 ARE NOT REDUCED BECAUSE THE ROYALTY IS PAID TO QUALCOMM.  
4 QUALCOMM IS THE TAX COLLECTOR.

5 NOW, PROFESSOR NEVO CLAIMED THAT THIS IS -- THAT THIS  
6 ISN'T ANY DIFFERENT FROM THE EFFECT THAT A REASONABLE ROYALTY  
7 RATE WOULD HAVE. BUT HE MISSED THE POINT ENTIRELY.

8 IT IS TRUE THAT EVEN A REASONABLE ROYALTY GIVES QUALCOMM A  
9 COST ADVANTAGE OVER ITS RIVALS. BUT THAT COST ADVANTAGE IS  
10 JUSTIFIED. IT'S THE REWARD THAT QUALCOMM IS ENTITLED TO FOR  
11 ITS PATENTED INNOVATION.

12 BUT WHEN QUALCOMM USES ITS CHIP MONOPOLY POWER TO IMPOSE A  
13 ROYALTY SURCHARGE, THAT IMPOSES AN ADDITIONAL COST DISADVANTAGE  
14 THAT HAS NOTHING TO DO WITH QUALCOMM'S PATENTS AND THAT CANNOT  
15 BE JUSTIFIED.

16 AS PROFESSOR SHAPIRO EXPLAINED, THE EFFECTS OF QUALCOMM'S  
17 CONDUCT IS TO RAISE RIVALS' COSTS, REDUCE RIVALS' MARGINS, AND  
18 RAISE THE ALL-IN PRICES OF MODEM CHIPS AND HANDSETS.

19 BUT YOU DON'T HAVE TO TAKE PROFESSOR SHAPIRO'S WORD FOR  
20 IT. THE BUSINESS JUSTIFICATIONS THAT QUALCOMM HAS OFFERED ARE  
21 SIMPLY ANTICOMPETITIVE HARM BY ANOTHER NAME.

22 ASKED TO EXPLAIN THE BUSINESS RATIONAL FOR QUALCOMM'S NO  
23 LICENSE, NO CHIPS POLICY, FABIAN GONELL BASICALLY LAID OUT  
24 PROFESSOR SHAPIRO'S THEORY. AS MR. GONELL EXPLAINED IN THE  
25 TESTIMONY REPRODUCED ON THE RIGHT SIDE OF THIS SLIDE, QUALCOMM

1 CHARGES FOR ITS CHIPS AN AMOUNT THAT IS X PLUS Y WHERE X IS THE  
2 CHIP PRICE AND Y IS THE ROYALTY.

3 THANKS TO QUALCOMM'S NO LICENSE, NO CHIPS POLICY, OEM'S  
4 HAVE TO ACCEPT LICENSES THAT REQUIRE THEM TO PAY THAT SAME  
5 ROYALTY, Y, WHEN THEY USE SOMEBODY ELSE'S CHIP.

6 BUT WHAT IF AN OEM DIDN'T HAVE TO ACCEPT A LICENSE TO BUY  
7 QUALCOMM'S CHIPS? THEN, AS MR. GONELL TESTIFIES, THEY COULD GO  
8 TO A COURT WHICH WOULD NOT MAKE THEM PAY QUALCOMM MORE THAN Y  
9 AND MIGHT WELL MAKE THE OEM PAY LESS THAN Y.

10 AS A RESULT, QUALCOMM'S MODEM CHIP RIVALS WOULD BENEFIT,  
11 AND AS MR. GONELL PUT IT, ALL OTHER THINGS BEING EQUAL, THE  
12 OTHER OFFERING IS GOING TO BE MORE ATTRACTIVE AND SO QUALCOMM'S  
13 GOING TO HAVE TO ADJUST ITS PRICE.

14 NOW, QUALCOMM HAS ATTACKED PROFESSOR SHAPIRO FOR NOT DOING  
15 SOME KIND OF LARGE DATA ANALYSIS.

16 BUT PROFESSOR SHAPIRO CONDUCTED A THOROUGH AND EXACTING  
17 ANALYSIS OF THE CONDUCT ALLEGED OF QUALCOMM'S MARKET POWER AND  
18 THE EFFECT ON COMPETITION. NONE OF QUALCOMM'S EXPERTS DID  
19 THAT. DR. CHIPTY ATTACKED DR. SHAPIRO'S MARKET DEFINITION, BUT  
20 DID NOT REACH HER OWN OPINION AND DID NOT CONSIDER QUALCOMM'S  
21 CONDUCT.

22 DR. SNYDER PURPORTED TO LOOK AT MARKET OUTCOMES, BUT HE  
23 DIDN'T CONSIDER QUALCOMM'S CONDUCT AT ALL. HE NEVER REACHED  
24 THAT POINT IN HIS ANALYSIS.

25 AND DR. NEVO PURPORTED TO TEST THE EFFECTS OF THE CONDUCT,

1 BUT HE MADE UNSUPPORTABLE ASSUMPTIONS ABOUT MARKET POWER. HE  
2 ASSUMES THAT IF THE FTC DID NOT BRING A LAWSUIT ABOUT A  
3 PARTICULAR PRODUCT OR A PARTICULAR TIME PERIOD, THAT THAT MEANS  
4 THAT CONDITIONS MUST HAVE BEEN COMPETITIVE.

5 THERE'S NO BASIS FOR THAT ASSUMPTION.

6 HE ALSO USED FAULTY AND INCOMPLETE DATA, EXCLUDED A  
7 SIGNIFICANT PORTION OF THE MARKET FROM HIS ANALYSIS, AND DID  
8 REGRESSIONS THAT DIDN'T EVEN TRY TO CONTROL FOR OBVIOUS  
9 VARIABLES.

10 AND THAT'S WHAT THE COURT SHOULD CONSIDER, THE FULL  
11 PICTURE. THAT'S WHAT DR. SHAPIRO CONSIDERED, NOT  
12 COMPARTMENTALIZED PIECES AND UNINFORMATIVE REGRESSIONS.

13 AND THE DIRECT EVIDENCE SUPPORTS ANTICOMPETITIVE EFFECTS  
14 IN THIS CASE. QUALCOMM'S RIVALS, INCLUDING INTEL AND MEDIATEK  
15 AND BROADCOM, ALL TESTIFIED THAT QUALCOMM'S LICENSING PRACTICES  
16 AFFECT THEM PRECISELY AS DR. SHAPIRO PREDICTED.

17 AND IF YOU LOOK AT THE TOP RIGHT OF THIS SLIDE, QUALCOMM'S  
18 OWN DOCUMENTS SHOW THAT IT UNDERSTOOD HOW ITS PRACTICES WOULD  
19 AFFECT RIVALS. ITS STRATEGY DOCUMENTS REVEAL A PLAN TO DESTROY  
20 MEDIATEK'S MARGIN AND PROFIT TO LIMIT ITS ABILITY TO INVEST IN  
21 3G.

22 QUALCOMM'S ROYALTY SURCHARGE IMPLEMENTS EXACTLY THIS TYPE  
23 OF STRATEGY ACROSS THE ENTIRE INDUSTRY.

24 AND QUALCOMM'S CONDUCT HAS HARMED COMPETITION EXACTLY AS  
25 ONE WOULD EXPECT. RIVALS HAVE OBTAINED THIN MARGINS, AND

1 DESPITE INTEL'S GROWING BUSINESS AT APPLE, IT HAS NOT YET BEEN  
2 PROFITABLE.

3 BROADCOM SHUT DOWN ITS BUSINESS DUE TO ITS LACK OF SCALE  
4 AND THIN MARGINS.

5 COMPANIES LIKE NVIDIA, TEXAS INSTRUMENTS, ST-ERICSSON AND  
6 FREE SCALE HAVE ALL EXITED THE MODEM CHIP BUSINESS ENTIRELY.  
7 EVEN MEDIATEK, WHICH HAS BEEN DESCRIBED AS ONE OF THE SUCCESS  
8 STORIES, PAUSED ITS DEVELOPMENT OF PREMIUM TIER CHIPS.

9 SO WHEN CONSIDERED TOGETHER, I THINK THE EVIDENCE IS  
10 OVERWHELMING THAT QUALCOMM ENGAGED IN EXCLUSIONARY CONDUCT AND  
11 THAT THE EFFECTS OF QUALCOMM'S CONDUCT, WHEN CONSIDERED  
12 TOGETHER, ARE ANTICOMPETITIVE. QUALCOMM'S POLICIES HAVE HARMED  
13 COMPETITION AND COMPETITIVE PROCESS.

14 UNDER THE ANTITRUST RULE OF REASON, WHICH APPLIES IN THIS  
15 CASE, QUALCOMM HAS THE OPPORTUNITY TO PROVIDE VALID BUSINESS  
16 JUSTIFICATIONS FOR ITS CONDUCT. BUT QUALCOMM HAS NOT  
17 ESTABLISHED THESE JUSTIFICATIONS THROUGH EVIDENCE.

18 FIRST, WE HEARD A LOT FROM QUALCOMM WITNESSES ABOUT PATENT  
19 EXHAUSTION, THAT IF QUALCOMM HAD TO ABANDON ITS POLICY, IT  
20 WOULD FACE THE RISK THAT ITS PATENTS WOULD BE FOUND TO BE  
21 EXHAUSTED, AND WE SEE THAT IN CONTEMPORANEOUS BUSINESS  
22 DOCUMENTS, AS WELL AS IN THE IRS AUDIO.

23 BUT AVOIDING EXHAUSTION IS NOT A VALID BUSINESS  
24 JUSTIFICATION. PATENT EXHAUSTION IS A DOCTRINE RECOGNIZED BY  
25 THE SUPREME COURT. IT PROMOTES IMPORTANT PUBLIC POLICIES,

1 INCLUDING THE FREE MOVEMENT OF GOODS THROUGH THE ECONOMY.

2 AND QUALCOMM CASE, ITS EXHAUSTION DEFENSE BOILS DOWN TO A  
3 DESIRE TO AVOID THE RISK OF NEGOTIATING IN THE SHADOW OF THE  
4 LAW. IN AVOIDANCE OF ARM'S LENGTH NEGOTIATIONS WITH THE  
5 POSSIBILITY OF PATENT SCRUTINY IS NOT COGNIZABLE AS AN  
6 ANTITRUST DEFENSE.

7 QUALCOMM HAS ALSO TALKED A LOT IN THIS TRIAL ABOUT ITS  
8 RESEARCH AND DEVELOPMENT EFFORTS, AND IT IS IMPORTANT THAT  
9 PARTICIPANTS IN THIS INDUSTRY, NOT JUST QUALCOMM, BUT OTHERS,  
10 TOO, INVEST IN RESEARCH AND DEVELOPMENT TO IDENTIFY AND DEVELOP  
11 TOMORROW'S TECHNOLOGIES. THE FTC IS NOT INTERESTED IN  
12 DISCOURAGING OR DETERRING INNOVATION.

13 BUT FAIR MARKET BASED RETURNS OF QUALCOMM'S PATENT  
14 PORTFOLIO AND MODEM CHIP SALES WOULD INCENTIVIZE INNOVATION.  
15 AS EVIDENCE IN THIS CASE HAS SHOWN, MANY COMPANIES INVEST IN  
16 R&D WITHOUT EMPLOYING THE ANTICOMPETITIVE SALES AND LICENSING  
17 PRACTICES THAT QUALCOMM RELIES ON.

18 AND COLLECTING A SURCHARGE ON COMPETITORS' PRODUCTS DOES  
19 NOT PROMOTE INNOVATION. IT DETERS INNOVATION BY INHIBITING  
20 COMPETITION.

21 AND IT IS WORTH LOOKING AT QUALCOMM'S R&D EXPENDITURES IN  
22 THE BROADER CONTEXT OF ITS BUSINESS. QUALCOMM MAKES  
23 SUBSTANTIAL R&D EXPENDITURES, BUT AS YOU CAN SEE ON THIS SLIDE,  
24 QUALCOMM HISTORICALLY HAS SPENT EVEN MORE ON STOCK BUYBACKS AND  
25 DIVIDENDS.

1           NOW, THERE'S NOTHING WRONG WITH THAT. BUT QUALCOMM'S  
2           ASSERTED JUSTIFICATIONS OF NEEDING TO FUND R&D SHOULD BE  
3           EVALUATED IN THAT CONTEXT.

4           FINALLY, QUALCOMM HAS ASSERTED THAT IF IT HAD TO LICENSE  
5           ITS COMPETITORS, IT WOULD STILL HAVE TO LICENSE TO OEM'S.

6           FIRST, IT ISN'T OBVIOUS THAT THIS IS TRUE. IN THE IRS  
7           AUDIO, MR. BLECKER CONFIRMED THAT ALL OF QUALCOMM'S STANDARD  
8           ESSENTIAL PATENTS WERE PRACTICED BY CHIPS. AND QUALCOMM HAS  
9           NOT INTRODUCED ANY EVIDENCE THAT ITS DEVICE LEVEL PATENTS ARE  
10          VALID AND INFRINGED BY ANY HANDSETS.

11          BUT ASSUMING THAT QUALCOMM HAS VALID PATENTS THAT WOULD  
12          NOT BE EXHAUSTED BY THE CHIP SALE, THAT DOESN'T MEAN THAT THERE  
13          WOULD HAVE TO BE MULTI LEVEL LICENSING. YOU CAN SEE  
14          PROFESSOR SHAPIRO'S TESTIMONY ON THIS POINT AT THE TOP OF THE  
15          SLIDE.

16          IT COULD BE THAT THE MARKET BASED OUTCOME WOULD BE MULTI  
17          LEVEL LICENSING, AND IF THAT'S THE CASE, QUALCOMM HAS NOT  
18          ESTABLISHED THAT IT WOULD BE INEFFICIENT.

19          BUT IF TURNED OUT THAT IT WAS MORE EFFICIENT FOR OEM'S AND  
20          QUALCOMM TO LICENSE AT THE DEVICE LEVEL WITHOUT ANY SUPPLY  
21          LEVERAGE INVOLVED, THEN THAT'S WHAT WOULD HAPPEN. THE FTC  
22          WOULD NOT STAND IN THE WAY OF THAT.

23          THIS CASE IS ALL ABOUT PROMOTING FAIR MARKET BASED  
24          NEGOTIATIONS.

25          NOW, BECAUSE QUALCOMM'S CONDUCT VIOLATES THE FTC ACT,

1 COURT SHOULD FIND FOR THE FTC ON LIABILITY, AND IT SHOULD GRANT  
2 INJUNCTIVE RELIEF. AS YOUR HONOR RECOGNIZED IN A PRETRIAL  
3 ORDER, THE LEGAL STANDARD FOR IMPOSING EQUITABLE RELIEF IN THIS  
4 CASE REQUIRES THE FTC TO SHOW THAT THE ANTICOMPETITIVE CONDUCT  
5 IS ONGOING OR LIKELY TO RECUR.

6 THE EVIDENCE EASILY MEETS THIS STANDARD. IT IS BEYOND  
7 DISPUTE THAT THE CONDUCT IS ONGOING.

8 AND QUALCOMM'S CONDUCT HAS BEEN ONGOING DESPITE RECENT LAW  
9 ENFORCEMENT ACTIONS BY FOREIGN ANTITRUST AGENCIES THAT LED TO  
10 BILLIONS OF DOLLARS IN FINES. THOSE ACTIONS ARE DETAILED IN  
11 THE QUALCOMM ANNUAL REPORT THAT ARE CITED HERE ON THE RIGHT,  
12 CX 7257.

13 AND WHILE THAT'S ENOUGH TO JUSTIFY A REMEDY, THE EVIDENCE  
14 ALSO SHOWS A RISK OF RECURRENCE. EVIDENCE FROM QUALCOMM AND  
15 THIRD PARTIES ALIKE SHOW QUALCOMM'S LEAD IN 5G CHIP  
16 DEVELOPMENT.

17 AND AS YOU CAN SEE IN CX 8197, CITED HERE ON THE RIGHT,  
18 QUALCOMM EXPECTS TECHNOLOGY TRANSITION TO AGAIN CREATE  
19 SIGNIFICANT RETURNS FOR QUALCOMM AS IN THE TRANSITION FROM 3G  
20 TO 4G WHEN IT CAPTURED 80 PERCENT SHARE OF THE UNITS.

21 IN OTHER WORDS, THERE'S A SIGNIFICANT RISK THAT THE STORY  
22 THAT THE INDUSTRY SAW PLAY OUT FIRST IN 3G AND THEN IN 4G WILL  
23 RUN AGAIN IN 5G. QUALCOMM WILL HAVE A TIME TO MARKET ADVANTAGE  
24 AND WILL USE THAT ADVANTAGE AND THE CORPORATE POLICIES  
25 CHALLENGED HERE TO PUT UP ROADBLOCKS THAT SLOWS ITS COMPETITORS

1           DOWN.    THE COURT SHOULD PREVENT THAT FROM HAPPENING BY ORDERING  
2           QUALCOMM TO ABANDON ITS ANTICOMPETITIVE POLICIES AND PRACTICES.  
3                    THANK YOU, YOUR HONOR.