

2017 Trade Secrets Symposium

On May 8, 2017, at the one-year anniversary of the enactment of the Defend Trade Secrets Act of 2016, the USPTO convened a one-day symposium on trade secrets: "Developments in Trade Secret Protection – Afternoon Session

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1
00:00:00,734 --> 00:00:03,737
They're going
to be representing various viewpoints.

2
00:00:03,803 --> 00:00:06,706
I have the honor of introducing
several people.

3
00:00:06,706 --> 00:00:11,077
The person who is going to be our
general counsel,

4
00:00:11,077 --> 00:00:15,749
the way the format will work as
various individuals are going to be sort

5
00:00:15,749 --> 00:00:20,153
of like working
from a in-house perspective and and sort

6
00:00:20,153 --> 00:00:22,555
of giving their opinions
about a trade secret matter

7

00:00:22,555 --> 00:00:25,892

that we have a hypothetical that we've developed that will be sharing with you.

8

00:00:26,259 --> 00:00:30,230

We'll also have the perspective of government relations, people

9

00:00:30,230 --> 00:00:34,567

that are in-house and also, I think very uniquely an attorney

10

00:00:34,567 --> 00:00:39,572

from the Department of Justice's Computer Crime and IP section.

11

00:00:39,939 --> 00:00:42,709

So we'll have the criminal perspective, too.

12

00:00:42,709 --> 00:00:48,782

Now, normally, the criminal person would be not joining, if you will,

13

00:00:49,983 --> 00:00:52,685

but we're going to pretend for this for the sake of argument here

14

00:00:52,685 --> 00:00:55,688

that this little section right here is the federal building.

15

00:00:56,089 --> 00:01:00,326

So that's where Kendra sits here

and she's representing the

16

00:01:00,660 --> 00:01:04,230
of the Department of Justice.

17

00:01:04,230 --> 00:01:07,167
But I have the privilege of introducing
several people.

18

00:01:07,167 --> 00:01:10,970
David Cohen is the chief legal
and IP officer at Form.

19

00:01:11,004 --> 00:01:13,339
That's a Form Holdings Inc..

20

00:01:13,339 --> 00:01:16,342
That's formerly Grine Incorporated.

21

00:01:16,342 --> 00:01:20,013
He oversees a bunch of different
holdings of the company,

22

00:01:20,246 --> 00:01:23,083
including IP development and monetization.

23

00:01:23,083 --> 00:01:25,919
I previously was litigation
counsel at Nokia.

24

00:01:25,919 --> 00:01:31,057
So much of what form does
is in the information technology field.

25

00:01:31,057 --> 00:01:34,861

He also has experience in private practice
with several large

26

00:01:34,861 --> 00:01:37,897

law firms to Mr.

27

00:01:37,897 --> 00:01:39,399

Cohen's right.

28

00:01:39,399 --> 00:01:43,837

And to my left is Tom McBride.

29

00:01:44,170 --> 00:01:48,741

He is the deputy general counsel for IP
and licensing for Monsanto,

30

00:01:49,175 --> 00:01:52,712

and he's responsible
for Monsanto's global IP portfolio.

31

00:01:53,513 --> 00:01:56,416

The gentleman to Mr.

32

00:01:56,416 --> 00:02:00,220

Cohen's left your right is Jay Rice's.

33

00:02:00,620 --> 00:02:02,956

He is with McDermott, Will and Emory.

34

00:02:02,956 --> 00:02:06,593

He's practiced before the ITC in Section
337 investigation.

35

00:02:06,593 --> 00:02:09,829
So of the three through seven
consideration

36
00:02:09,829 --> 00:02:11,831
will figure in our fact pattern.

37
00:02:11,831 --> 00:02:15,268
He's been doing this for over two decades
and has also represented

38
00:02:15,602 --> 00:02:17,604
clients at U.S.

39
00:02:17,604 --> 00:02:20,240
Customs and Border Protection
and at the federal Circuit.

40
00:02:20,240 --> 00:02:23,343
He also has very, very deep experience.

41
00:02:23,343 --> 00:02:26,946
Having worked for 12 years at the
International Trade Commission at South.

42
00:02:27,413 --> 00:02:31,317
He was co-counsel
in one of the very seminal

43
00:02:31,351 --> 00:02:37,624
ITC trade secret cases of Amstrad
Industries versus Chien Ray Holdings.

44
00:02:37,624 --> 00:02:40,393
That was a case involving a U.S.

45

00:02:40,393 --> 00:02:44,531

company making caste railway wheels
against a Chinese manufacturer.

46

00:02:45,064 --> 00:02:49,903

Kendra Irvin to my immediate left,
is the assistant deputy chief

47

00:02:49,903 --> 00:02:54,207

for intellectual Property, which she ships
the computer crime and IP section

48

00:02:54,674 --> 00:02:56,142

of the Department of Justice.

49

00:02:56,142 --> 00:03:01,681

He she has a leads, a group
I'm sorry, of 15 attorneys

50

00:03:01,681 --> 00:03:06,686

dedicated to IP prosecution
and has been with CSX for seven years.

51

00:03:06,986 --> 00:03:08,788

So she has a wealth of experience.

52

00:03:08,788 --> 00:03:10,490

On the end is Ms..

53

00:03:10,490 --> 00:03:12,659

Ellen says Nancy.

54

00:03:12,659 --> 00:03:15,662

She's a former colleague of ours
with the Department of Commerce.

55

00:03:15,662 --> 00:03:17,797

She's now senior director of the U.S.

56

00:03:17,797 --> 00:03:22,769

Chamber of Commerce's Global IP Center,
focusing on international advocacy.

57

00:03:23,169 --> 00:03:26,306

So she was also
in private practice in Seattle.

58

00:03:26,306 --> 00:03:29,309

She's going to be giving our government
relations perspective.

59

00:03:29,842 --> 00:03:33,246

Duncan Wilson to next to Mrs.

60

00:03:33,246 --> 00:03:35,882

Minsky is a colleague of mine
in the attorney

61

00:03:35,882 --> 00:03:39,219

as an attorney advisor in our Office
of Policy and International Affairs.

62

00:03:39,686 --> 00:03:43,356

He's on the China team
and he has responsibilities for developing

63

00:03:43,356 --> 00:03:44,290

and negotiating U.S.

64

00:03:44,290 --> 00:03:47,460

positions on IP

issues on behalf of our government

65

00:03:47,694 --> 00:03:50,697

and providing legal and technical

assistance to the Chinese government.

66

00:03:50,830 --> 00:03:53,733

Prior to joining our office,

he was in private

67

00:03:53,733 --> 00:03:57,470

practice with Baker

McKenzie in China and in Hong Kong.

68

00:03:58,037 --> 00:03:59,973

And my name is Conrad Wong.

69

00:03:59,973 --> 00:04:03,142

I am also excuse me,

my allergies are getting the better of me.

70

00:04:03,676 --> 00:04:07,814

I'm an attorney with the China

team here at the Office of Policy

71

00:04:07,814 --> 00:04:09,082

and International Affairs.

72

00:04:09,082 --> 00:04:13,686

I joined the office in 1993

as a trademark examiner.

73

00:04:14,320 --> 00:04:16,923

I've also been posted as the IP attache

74

00:04:16,923 --> 00:04:19,959

in Gwangju, China, from 2011 2012.

75

00:04:20,260 --> 00:04:23,896

So I'm very pleased to be speaking
with all of our folks here,

76

00:04:24,130 --> 00:04:27,700

and I hope you all have an opportunity
to ask questions of our panel.

77

00:04:28,167 --> 00:04:30,870

Have we disseminated the fact pattern?

78

00:04:32,071 --> 00:04:34,140

Okay.

79

00:04:34,140 --> 00:04:35,975

That is being disseminated now.

80

00:04:35,975 --> 00:04:39,545

Duncan, would you like to
or do you want me to go through this?

81

00:04:39,545 --> 00:04:40,580

Okay.

82

00:04:40,580 --> 00:04:43,883

Just to let you know,
we have a fact pattern, which is, I think,

83

00:04:44,250 --> 00:04:48,354

pretty much what you would see in a trade
secret matter.

84

00:04:48,755 --> 00:04:51,758

It involves a company based in Michigan

85

00:04:52,025 --> 00:04:55,495

that makes 3D printers.

86

00:04:55,595 --> 00:05:01,801

But like a lot of the manufacturing
that's done nowadays, it's been outsourced

87

00:05:02,135 --> 00:05:05,138

to a company in China, in Shenzhen.

88

00:05:06,039 --> 00:05:09,309

And then we have
that company is called Printer.

89

00:05:09,309 --> 00:05:12,312

Just to make it interesting here.

90

00:05:12,345 --> 00:05:15,348

The other company is a Chinese company
called Tinker,

91

00:05:15,348 --> 00:05:17,717

which has gotten into 3D printing.

92

00:05:17,717 --> 00:05:21,120

It was launched
with the Chinese central government's

93

00:05:22,088 --> 00:05:24,857

blessing and investment and financing.

94

00:05:24,857 --> 00:05:28,027

Like printer,

it makes 3D printers in China

95

00:05:28,027 --> 00:05:31,030

and has begun to export

these items to the United States.

96

00:05:31,664 --> 00:05:34,801

The interesting part here

is that the Chinese

97

00:05:34,801 --> 00:05:38,671

company has hired away

a an employee of the U.S.

98

00:05:38,671 --> 00:05:39,372

company in Mr.

99

00:05:39,372 --> 00:05:41,007

Jason Smith, a U.S.

100

00:05:41,007 --> 00:05:43,776

citizen,

an engineer who was working for the U.S.

101

00:05:43,776 --> 00:05:45,445

company in Detroit.

102

00:05:45,445 --> 00:05:48,781

He signed a non-disclosure agreement,
a non-compete agreement,

103

00:05:49,282 --> 00:05:52,518
and then he was also compensated for

104

00:05:52,919 --> 00:05:56,222
the duration of the non-compete
for about two years.

105

00:05:56,689 --> 00:05:58,524
He's not an officer of the U.S.

106

00:05:58,524 --> 00:06:01,561
company, so I should be advised there.

107

00:06:02,462 --> 00:06:03,062
The U.S.

108

00:06:03,062 --> 00:06:06,299
company printer
conducted an exit interview, reminded Mr.

109

00:06:06,299 --> 00:06:10,636
Smith of his obligations not to disclose
any trade secret information.

110

00:06:11,237 --> 00:06:12,171
But of course, Mr.

111

00:06:12,171 --> 00:06:14,841
Smith does possess trade secret matters,

112

00:06:14,841 --> 00:06:19,112

and he appears to have acquired
additional trade secret

113

00:06:19,112 --> 00:06:23,349
information brought through
an unauthorized download from the U.S.

114

00:06:23,349 --> 00:06:25,918
headquarters in Detroit.

115

00:06:26,853 --> 00:06:27,520
And the reason

116

00:06:27,520 --> 00:06:33,426
why is because the Chinese company
has apparently now is making

117

00:06:33,426 --> 00:06:36,529
a printer, are very, very incorporating
a lot of the features of the U.S.

118

00:06:36,529 --> 00:06:40,900
company,
but at a significant price discount at

119

00:06:40,900 --> 00:06:44,971
a \$5,000 retail price,
which is 20% below of the U.S.

120

00:06:44,971 --> 00:06:46,139
company.

121

00:06:46,139 --> 00:06:48,207
Now, the other fact here

122

00:06:48,207 --> 00:06:51,978

is that the Chinese company,
which was just exclusively in Shanghai,

123

00:06:52,512 --> 00:06:56,883

opened a small sales office
in Redwood City, California.

124

00:06:56,883 --> 00:06:59,185

So they have three people there.

125

00:06:59,185 --> 00:07:02,955

The Chinese,
and this has happened in other cases,

126

00:07:03,423 --> 00:07:08,027

the Chinese printer contains
forensic evidence that it used the U.S.

127

00:07:08,027 --> 00:07:09,495

companies designs.

128

00:07:09,495 --> 00:07:13,900

And in some sort of micro script,
probably somewhere on a printer board

129

00:07:13,900 --> 00:07:18,838

or inside the printer itself
is the phrase dedicated to mom.

130

00:07:19,472 --> 00:07:23,142

And that's that
that little tidbit of the U.S.

131

00:07:23,142 --> 00:07:26,145
design made its way into the Chinese
printer

132
00:07:26,179 --> 00:07:28,948
based on an additional information
from a private investigator.

133
00:07:28,948 --> 00:07:29,282
The U.S.

134
00:07:29,282 --> 00:07:32,118
company has reason to believe that Mr.

135
00:07:32,118 --> 00:07:35,121
Smith divulges
trade secrets to the Chinese company.

136
00:07:35,621 --> 00:07:39,358
One last item is that 3-D
printing is considered

137
00:07:39,358 --> 00:07:42,662
a court target technology under the U.S.

138
00:07:43,062 --> 00:07:47,033
strike that under the Chinese government's
expansion plans

139
00:07:47,200 --> 00:07:52,538
for their industrial base
and it also in that particular

140
00:07:52,538 --> 00:07:56,008
technology is also not included

at the national central government level.

141

00:07:56,209 --> 00:07:59,779

But in a local Shenzhen plan
sold that covers it.

142

00:07:59,779 --> 00:08:01,914

So I'm going to turn it over to Mr.

143

00:08:01,914 --> 00:08:04,684

Cohen, sir. Hello.

144

00:08:04,684 --> 00:08:05,985

I got green, too.

145

00:08:05,985 --> 00:08:09,388

So the way we're going to do this,
we all agreed that

146

00:08:09,388 --> 00:08:13,159

we'll take the roles of various group
heads of a larger

147

00:08:13,159 --> 00:08:16,162

legal department than probably printer
would justify in the real world.

148

00:08:16,462 --> 00:08:19,131

But in any event,
and we'll all have different roles,

149

00:08:19,131 --> 00:08:22,502

we'll talk about civil law enforcement,
IDC enforcement, China

150

00:08:22,502 --> 00:08:25,571

level enforcement, government relations,
and then we'll go to the criminal stuff.

151

00:08:26,305 --> 00:08:30,543

So and the idea is that this is sort
of a meeting of the legal department

152

00:08:31,410 --> 00:08:34,380

once we've learned to learn
the basic facts

153

00:08:34,614 --> 00:08:38,484

about this case
and how we hope to create a working plan

154

00:08:38,484 --> 00:08:41,420

going forward in
light of the various options on the table.

155

00:08:41,420 --> 00:08:42,355

And there might be some things

156

00:08:42,355 --> 00:08:45,525

that we have to sort of
think about still or learn more about

157

00:08:45,525 --> 00:08:48,594

in order to be able to better facilitate
the various aspects of the program.

158

00:08:49,395 --> 00:08:54,367

So before we start,
I think the as a general counsel,

159

00:08:54,367 --> 00:08:58,237

the first things that I want to do is
understand how we can stop the bleeding.

160

00:08:58,871 --> 00:09:01,874

This guy stole some core
trade secrets of ours.

161

00:09:01,941 --> 00:09:04,010

We also need to know how bad is it,
really?

162

00:09:04,010 --> 00:09:06,646

Like, how bad is what he stole?

163

00:09:06,646 --> 00:09:08,748

Do we have anything left as a business?

164

00:09:08,748 --> 00:09:11,517

Is this a most important business unit
to the business?

165

00:09:11,517 --> 00:09:15,655

Do we have other business units
that are equally important

166

00:09:15,655 --> 00:09:17,156

or perhaps more important than this?

167

00:09:17,156 --> 00:09:21,627

And that will drive how the answer to
those questions may drive how we approach

168

00:09:22,228 --> 00:09:26,132

this particular unit's problem
from a publicity perspective,

169

00:09:26,132 --> 00:09:28,200
from an enforcement perspective,
and from, frankly,

170

00:09:28,200 --> 00:09:31,837
whether or not we can come up with
some sort of win win scenario

171

00:09:31,837 --> 00:09:34,974
between us and the putative thief.

172

00:09:35,441 --> 00:09:39,011
And then the third question I have is
what did we do

173

00:09:39,378 --> 00:09:44,550
that may have facilitated this situation
and what have we done

174

00:09:44,951 --> 00:09:49,355
or that may have that may prejudice
our ability to prosecute these actions,

175

00:09:49,355 --> 00:09:54,126
any actions that we think we need to do
and what can we do to fix that now?

176

00:09:54,727 --> 00:09:57,630
Or are we forever prejudiced?

177

00:09:57,630 --> 00:10:00,066
And this is an important question

a lot of companies have to face

178

00:10:00,066 --> 00:10:03,502

because generally speaking,
you don't think about your trade secrets

179

00:10:03,502 --> 00:10:06,672

being stolen as a general company
until they've been stolen.

180

00:10:06,672 --> 00:10:08,074

And then you have to figure out
what to do.

181

00:10:08,074 --> 00:10:11,344

So we asking the various team members
to point out things

182

00:10:11,877 --> 00:10:16,182

that they think that we need to tell our
our operations folks, our CFO

183

00:10:16,182 --> 00:10:19,518

and other people to make the company
more secure in the future.

184

00:10:20,052 --> 00:10:23,089

And then the final question is deterrence.

185

00:10:23,623 --> 00:10:26,792

What can we do to avoid these things
in the in the future,

186

00:10:26,792 --> 00:10:30,363

both against our competitors

and against individual employees?

187

00:10:30,796 --> 00:10:33,633

And how could it all backfire?

188

00:10:33,633 --> 00:10:37,136

How do we know what this person can do
to us or what

189

00:10:37,236 --> 00:10:40,239

the Chinese government might back
do to us, or what

190

00:10:40,539 --> 00:10:43,542

various competitors in the industry
might think of us afterwards?

191

00:10:43,909 --> 00:10:46,646

So those are the things
I think I'd like to cover. And

192

00:10:48,314 --> 00:10:51,350

I have some specific questions, but

193

00:10:52,351 --> 00:10:55,955

maybe we can go after them or we can
address them as you go through your

194

00:10:56,522 --> 00:10:57,123

your pieces.

195

00:10:57,123 --> 00:11:00,393

So first we'll go with civil
law enforcement, I think.

196

00:11:00,893 --> 00:11:03,195

Sorry, I have to put it in front of here.

197

00:11:03,195 --> 00:11:05,931

The talks are so. Tom.

198

00:11:05,931 --> 00:11:07,366

All right. Thank you.

199

00:11:07,366 --> 00:11:07,600

Yeah.

200

00:11:07,600 --> 00:11:09,268

I think in this particular situation,

201

00:11:09,268 --> 00:11:12,271

we've got a just

a clear case of misappropriation.

202

00:11:12,271 --> 00:11:17,576

I think we've got a great action,
certainly with the DTA.

203

00:11:17,877 --> 00:11:19,378

I think that's our course here.

204

00:11:19,378 --> 00:11:23,049

I think going into federal court,
we know they've already sold in the US.

205

00:11:23,382 --> 00:11:24,650

I like the idea.

206

00:11:24,650 --> 00:11:27,620

I think we've got it against both Tinker and Smith.

207

00:11:27,620 --> 00:11:29,755

Smith clearly misappropriated.

208

00:11:29,755 --> 00:11:33,826

We've got evidence that he downloaded, but we just learned this last week.

209

00:11:33,826 --> 00:11:35,561

So how quickly do we have to act?

210

00:11:35,561 --> 00:11:38,564

I think we need to act very quickly, like tomorrow night, tomorrow.

211

00:11:38,631 --> 00:11:39,565

And I think we're behind.

212

00:11:39,565 --> 00:11:40,833

I think we're late on this game.

213

00:11:40,833 --> 00:11:44,370

They've already downloaded, they've all reproduced, They're already selling.

214

00:11:45,337 --> 00:11:45,638

We need

215

00:11:45,638 --> 00:11:49,508

to talk later about our, our, our, you know, our I.t group

216

00:11:49,508 --> 00:11:52,478

and whether they can tell us
when someone is downloading.

217

00:11:52,478 --> 00:11:53,979

But but we're behind.

218

00:11:53,979 --> 00:11:55,581

I think we need to act now.

219

00:11:55,581 --> 00:12:00,753

And I think I want to start with proposing
that we try the civil seizure under

220

00:12:00,753 --> 00:12:05,124

the DSA and I want to stop you
start by getting, stopping the bleeding.

221

00:12:05,424 --> 00:12:08,861

I kind of want to stop
those printers from getting any further.

222

00:12:08,861 --> 00:12:10,930

I don't want any more sales
of those printers.

223

00:12:10,930 --> 00:12:13,132

I think we could try it, I'm not sure.

224

00:12:13,132 --> 00:12:16,535

But the case law, as we know already,
we may not get it,

225

00:12:16,802 --> 00:12:21,107

but we'll condition the judge
and then we go for our TIO in our API.

226

00:12:21,474 --> 00:12:23,275

We'll be able to it'll be ready for us.

227

00:12:24,376 --> 00:12:27,513

Is there any way to keep that on the down
low so we go after the seizure?

228

00:12:27,513 --> 00:12:28,981

Certainly the civil seizure first.

229

00:12:28,981 --> 00:12:30,816

It is no publicity.

230

00:12:30,816 --> 00:12:34,053

It is just what the judge he'll give us
a decision and we'll go from there.

231

00:12:34,453 --> 00:12:36,922

So I think we're not going to tip them off
that way.

232

00:12:36,922 --> 00:12:38,924

You're the forensic evidence.

233

00:12:38,924 --> 00:12:41,460

You don't normally get forensic evidence
like this.

234

00:12:41,460 --> 00:12:43,028

You know, we know that they've taken it.

235

00:12:43,028 --> 00:12:46,532

We have a lot of really good evidence
from the dedicated

236

00:12:46,532 --> 00:12:49,802

to mom and the evidence of the download.

237

00:12:49,969 --> 00:12:52,972

I mean, it puts us in a great spot
for this case.

238

00:12:53,105 --> 00:12:57,409

Again, we could think about state action,
but I don't like the state action.

239

00:12:57,877 --> 00:12:59,445

Too much ambiguity there.

240

00:12:59,445 --> 00:13:03,516

Michigan, if we could get into Michigan
and I convinced it, it is a uniform trade

241

00:13:03,516 --> 00:13:07,353

secret act, but still, I'd rather go
the federal route in this case.

242

00:13:07,653 --> 00:13:12,658

And how can we get expedited analysis or
information about what he actually took,

243

00:13:12,658 --> 00:13:16,629

not just what he he chose
to make a product line to rip off now.

244

00:13:16,962 --> 00:13:19,899

So I all rights groups
should be looking at that right now.

245
00:13:19,899 --> 00:13:22,401
And they're doing the analysis
of what was taken.

246
00:13:22,401 --> 00:13:24,870
And we can obtain a printer.

247
00:13:24,870 --> 00:13:29,375
We can compare those two things
from what we've seen and what we know.

248
00:13:29,375 --> 00:13:33,312
Each state is taken and if we, you know,
people always complain

249
00:13:33,312 --> 00:13:37,216
about fishing expeditions, but if we
we suspect he's taken out more than just

250
00:13:37,216 --> 00:13:38,083
this particular printer.

251
00:13:38,083 --> 00:13:41,086
As you know, we have a couple of,
you know, top secret projects

252
00:13:41,220 --> 00:13:41,987
that we're working on.

253
00:13:41,987 --> 00:13:44,323
If he stole those projects, information

254

00:13:44,323 --> 00:13:46,058

is planning

to release those at a later date.

255

00:13:47,226 --> 00:13:49,862

Is there

a way we can find out about that as well?

256

00:13:49,862 --> 00:13:51,530

I think that was a little more difficult
right now.

257

00:13:51,530 --> 00:13:52,131

I think

258

00:13:52,131 --> 00:13:56,435

the fact that they are a Chinese company
and all their information is in China

259

00:13:56,435 --> 00:14:00,439

right now, I'm not convinced there's
any of this information is in a U.S.

260

00:14:00,439 --> 00:14:01,807

computer or a U.S.

261

00:14:01,807 --> 00:14:03,843

system, certainly at their sales office.

262

00:14:03,843 --> 00:14:06,745

We could try to do that
and try and find out if it's there.

263

00:14:06,745 --> 00:14:10,082

I'm just not convinced that that's going to be our best source for that.

264

00:14:11,217 --> 00:14:12,484

Got it.

265

00:14:12,484 --> 00:14:15,487

You know, I think we have, of course, the breach of contract with Smith,

266

00:14:15,688 --> 00:14:17,389

with his employment agreements.

267

00:14:17,389 --> 00:14:19,825

Certainly, you know, Tinker was well aware of this.

268

00:14:19,825 --> 00:14:20,926

We sent them a letter.

269

00:14:20,926 --> 00:14:22,661

We told them, you're hiring this guy.

270

00:14:22,661 --> 00:14:24,597

He has trade secret information.

271

00:14:24,597 --> 00:14:27,499

Everyone is fully aware that's going to go well with the judge.

272

00:14:27,499 --> 00:14:29,735

I think we're in a good position for that. So.

273

00:14:29,735 --> 00:14:30,469
So who do we sue?

274
00:14:30,469 --> 00:14:31,237
Do we sue Tinker?

275
00:14:31,237 --> 00:14:33,772
Do we Sue Smith or sue them both?

276
00:14:33,772 --> 00:14:35,174
Both. Both.

277
00:14:35,174 --> 00:14:38,911
And is there any anything we can do
you think that would encourage?

278
00:14:38,911 --> 00:14:40,713
Smith to come and defend his good name?

279
00:14:41,814 --> 00:14:43,582
Yeah, I'm not sure about that right now.

280
00:14:43,582 --> 00:14:46,185
I don't think he wants
a judgment against him.

281
00:14:46,185 --> 00:14:48,621
I don't think he wants a career
in this industry.

282
00:14:48,621 --> 00:14:51,190
So there's a chance he may

283
00:14:51,190 --> 00:14:53,926

fess up and say, I'm sorry,
I didn't mean to do this,

284
00:14:53,926 --> 00:14:55,427
and we'll see where that goes.

285
00:14:55,427 --> 00:14:57,997
But that doesn't stop what happened.

286
00:14:57,997 --> 00:14:59,899
You know, finally,
the last thing I'm going to mention again

287
00:14:59,899 --> 00:15:01,967
is the business piece of this.

288
00:15:01,967 --> 00:15:05,771
They've got excess capacity
of 20,000 printers, right?

289
00:15:05,804 --> 00:15:08,807
They've got improvements
for the Chinese market.

290
00:15:08,941 --> 00:15:12,478
We want to be big in the Chinese
market as well. So.

291
00:15:12,478 --> 00:15:14,580
So how do we do this litigation without.

292
00:15:14,580 --> 00:15:16,315
Well, I think we have to think
about this litigation.

293

00:15:16,315 --> 00:15:19,218

I think we've got to
we've got to make sure that's the right.

294

00:15:19,218 --> 00:15:22,988

We understand from the business side,
is this the right course of action

295

00:15:23,555 --> 00:15:27,326

for our business long term
in our relationships in China?

296

00:15:27,326 --> 00:15:29,995

And we'll talk about it
from the other people in the group here.

297

00:15:29,995 --> 00:15:32,831

But is litigation
the right course of action?

298

00:15:32,831 --> 00:15:34,166

I'm not convinced yet.

299

00:15:34,166 --> 00:15:36,335

It is certainly a course of action.

300

00:15:36,335 --> 00:15:39,338

And I think we we need to think about
it in the big business sense.

301

00:15:40,406 --> 00:15:40,739

Right.

302

00:15:40,739 --> 00:15:41,740

And I think

303

00:15:41,740 --> 00:15:44,310

how is how do you think

we can also have to understand is

304

00:15:44,310 --> 00:15:47,813

how the Chinese recipients of us discovery

305

00:15:48,080 --> 00:15:49,715

requests are going to react to

that as well?

306

00:15:49,715 --> 00:15:52,117

I think certainly.

307

00:15:52,117 --> 00:15:52,584

Okay.

308

00:15:52,584 --> 00:15:55,888

Well, I think that's a useful overview
of what what you're recommending.

309

00:15:55,888 --> 00:16:00,693

And let's go to some to Jay here

and talk about a little bit the ITC.

310

00:16:00,693 --> 00:16:02,428

Yeah, well,

you talked about stopping the bleeding

311

00:16:02,428 --> 00:16:05,631

and the ITC, I think to

my mind is the best way to go there.

312

00:16:05,631 --> 00:16:06,632

I mean,

313

00:16:06,632 --> 00:16:09,168

you're going to get the other things,
you're going to get injunctive relief

314

00:16:09,168 --> 00:16:10,035

when you go to the ITC.

315

00:16:10,035 --> 00:16:12,438

There's no question that's what they do.

316

00:16:12,438 --> 00:16:14,239

You're not going to struggle
to get injunctive relief,

317

00:16:14,239 --> 00:16:17,309

as you might in district court,
and it's going to move quickly.

318

00:16:17,376 --> 00:16:18,811

You will be in.

319

00:16:18,811 --> 00:16:20,980

But don't
you need 30 days to get get approval

320

00:16:20,980 --> 00:16:23,382

before you even can file something?

321

00:16:23,382 --> 00:16:24,850

No, no, no. You can file it.

322

00:16:24,850 --> 00:16:25,751

It takes the commission.

323

00:16:25,751 --> 00:16:28,020

So it will be a public filing.

There's no question about it.

324

00:16:28,020 --> 00:16:30,689

But that could work in our favor, right?

It gets their attention.

325

00:16:30,689 --> 00:16:34,460

I mean, it shows more serious

and it doesn't preclude negotiations.

326

00:16:34,460 --> 00:16:38,097

You know, as Tom suggested, down the road,

but it shows them that we're serious.

327

00:16:38,230 --> 00:16:39,898

You filed the complaint

and then the commission

328

00:16:39,898 --> 00:16:43,068

will institute within 30 days,

and then you're off to the races

329

00:16:43,068 --> 00:16:44,503

and you'll be on trial in nine months

330

00:16:44,503 --> 00:16:47,373

and you'll have the whole thing

done in 16 months.

331

00:16:47,373 --> 00:16:50,609

And how do you coordinate
with what Tom is suggesting

332

00:16:51,143 --> 00:16:53,145

or is as one precluded from the other?

333

00:16:53,145 --> 00:16:54,146

No, no, no.

334

00:16:54,146 --> 00:16:57,316

The other exclusive, the statute says
in addition to any other remedies.

335

00:16:57,316 --> 00:17:00,686

So you can proceed at the
ITC simultaneously.

336

00:17:00,686 --> 00:17:03,689

And I would recommend that we do that
with civil action.

337

00:17:03,822 --> 00:17:07,292

And how do you protect
us being exposed to discovery

338

00:17:08,327 --> 00:17:09,161

from the other side?

339

00:17:09,161 --> 00:17:12,164

I'm going to you know, when I remember
back when I was a junior lawyer,

340

00:17:12,164 --> 00:17:16,068

one of the biggest problems

we had as a trade secrets case was the

341

00:17:16,101 --> 00:17:18,404

the other side

wanted access to our trade secrets

342

00:17:18,404 --> 00:17:20,839

to be able

to show that they didn't steal them.

343

00:17:20,839 --> 00:17:23,709

Well, that's that's going to be a dilemma

whether whichever way we go

344

00:17:23,709 --> 00:17:27,613

and if the ITC

they have procedures to protect

345

00:17:27,613 --> 00:17:29,982

you can get a regular protective order

346

00:17:29,982 --> 00:17:33,118

and then you can have heightened

protections for the actual trade secrets.

347

00:17:33,118 --> 00:17:33,685

Now, of course,

348

00:17:33,685 --> 00:17:35,421

the theory is

they already have your trade secrets,

349

00:17:35,421 --> 00:17:37,623

so you're not disclosing anything

new to them. Right.

350

00:17:37,623 --> 00:17:40,292

So that you sort of
get that pushback from the other side.

351

00:17:40,292 --> 00:17:41,093

Well, what are you worried about?

352

00:17:41,093 --> 00:17:43,228

You claim we already have this stuff,

353

00:17:43,228 --> 00:17:47,132

but you can put a two tiered protective
order in place at the ITC, go it.

354

00:17:49,234 --> 00:17:49,635

Okay.

355

00:17:49,635 --> 00:17:50,969

And anything else to add on?

356

00:17:50,969 --> 00:17:53,806

I would just say there's no jury
so there's no vagaries of the jury.

357

00:17:53,806 --> 00:17:55,941

These are folks who deal with these
IP issues all the time.

358

00:17:55,941 --> 00:17:57,509

They're experts in the area.

359

00:17:57,509 --> 00:17:59,011

You have national jurisdiction.

360

00:17:59,011 --> 00:18:00,746

We don't have to worry about where
we file,

361

00:18:00,746 --> 00:18:03,882

you know, and you're going
to get very broad discovery

362

00:18:03,882 --> 00:18:06,552

and you're going to get
and this is an agency

363

00:18:06,552 --> 00:18:09,555

that deals with foreign companies
all the time and foreign governments.

364

00:18:09,788 --> 00:18:13,692

So you're going to get, you know, action

365

00:18:13,692 --> 00:18:18,163

and discovery in ways that you might not
if you go to civil to district court for.

366

00:18:18,197 --> 00:18:21,200

I mean, for example,
the judges are not bashful about

367

00:18:21,834 --> 00:18:24,837

suggesting that they might put in place
adverse inferences

368

00:18:24,937 --> 00:18:28,740

if you can't get a plant tour in China
and all of a sudden now

369

00:18:28,740 --> 00:18:31,977

all of a sudden in comes an invitation
letter to a luncheon or tour of the plant.

370

00:18:32,411 --> 00:18:33,679

So, I mean, there's

371

00:18:33,679 --> 00:18:36,682

there's a lot of additional reasons
you might want to consider the ITC,

372

00:18:36,682 --> 00:18:40,486

and I know there's quite a few quality
ITC representatives out there,

373

00:18:40,486 --> 00:18:41,386

but they ain't cheap.

374

00:18:41,386 --> 00:18:45,124

So from a cost
effective perspective, is there is there

375

00:18:45,124 --> 00:18:48,961

is there a need for both overlap
or or from the perspective of remedies?

376

00:18:48,961 --> 00:18:51,964

Are we getting are we just doing overkill
or is there both?

377

00:18:52,197 --> 00:18:54,233

Are there different remedies
that can be achieved?

378

00:18:54,233 --> 00:18:55,901

And I guess that's also the time.

379

00:18:55,901 --> 00:18:58,770

Well, I mean, I would start
with the seizure action, you know, and

380

00:18:58,770 --> 00:19:01,607

but I think at the ITC, you're going
to get more bang for your buck.

381

00:19:01,607 --> 00:19:02,274

I mean,

382

00:19:02,274 --> 00:19:04,143

you're going to go through the same things

383

00:19:04,143 --> 00:19:05,911

that you would go through in the civil
action.

384

00:19:05,911 --> 00:19:08,413

You might have more teeth
to your discovery of the ITC

385

00:19:08,413 --> 00:19:09,481

and it's going to move faster.

386

00:19:09,481 --> 00:19:12,117

And so, as we all know,
billable hours fill up, right?

387

00:19:12,117 --> 00:19:15,120

So if you give the lawyers less time

to bill, the bills are going to go down.

388

00:19:16,588 --> 00:19:17,289

We also have

389

00:19:17,289 --> 00:19:21,360

a chance for enhanced damages under DSA,
which I like the idea

390

00:19:21,627 --> 00:19:24,630

of, again,
the punitive piece of it and getting that.

391

00:19:25,297 --> 00:19:27,966

What about attorney's fees?

392

00:19:27,966 --> 00:19:30,969

They're not cheap,

393

00:19:32,738 --> 00:19:34,106

but lawyers are worth the money, too.

394

00:19:34,106 --> 00:19:35,073

yes, I know.

395

00:19:35,073 --> 00:19:35,741

Yeah, I know.

396

00:19:35,741 --> 00:19:38,844

I know very well very much so.

397

00:19:39,611 --> 00:19:44,283

But so the end result, though, in an ITC
would be an exclusionary order.

398

00:19:44,783 --> 00:19:45,717

Yes, an exclusion order.

399

00:19:45,717 --> 00:19:47,386

And as we say, you're going to have folks

400

00:19:47,386 --> 00:19:49,354

with guns

enforcing your injunction at the border.

401

00:19:49,354 --> 00:19:51,657

I mean, it's a pretty powerful weapon.

402

00:19:51,657 --> 00:19:52,457

I understood.

403

00:19:52,457 --> 00:19:56,795

But how do you make sure that they know
that the bad stuff is coming in

404

00:19:56,795 --> 00:19:59,798

or they can't sit on a constant lookout?

405

00:20:00,032 --> 00:20:01,166

Well, no.

406

00:20:01,166 --> 00:20:03,068

And in fairness,
they're pretty overwhelmed.

407

00:20:03,068 --> 00:20:05,070

They're part of the Department
of Homeland Security.

408

00:20:05,070 --> 00:20:07,406

You know, they're kind of looking
for nukes and stuff.

409

00:20:07,406 --> 00:20:10,709

But what you do is through discovery,
you find out exactly where

410

00:20:10,709 --> 00:20:12,811

they're shipping, how they're shipping,
what ports,

411

00:20:12,811 --> 00:20:16,682

and you deal with the folks
at the IPR branch here in D.C.

412

00:20:16,682 --> 00:20:20,452

But then you go to each port
and you specifically visit with them,

413

00:20:20,452 --> 00:20:24,423

tell them what to look for, to plead
your case so that you get on their radar.

414

00:20:24,790 --> 00:20:25,390

Right.

415

00:20:25,390 --> 00:20:27,693

And what kind of remedies
can we get in the civil action?

416

00:20:27,693 --> 00:20:30,862

I want to get the permanent injunction
of mean even using the trade secret,

417

00:20:31,063 --> 00:20:34,066

as well as the damages
that occurred already.

418

00:20:34,233 --> 00:20:37,603

And what if the trade secret
use is outside the U.S.?

419

00:20:40,005 --> 00:20:41,106

Me, A tough one.

420

00:20:41,106 --> 00:20:44,409

I think what I've talked
to our China experts on this one,

421

00:20:44,643 --> 00:20:47,646

but I don't I'm not sure
where we're going to go with that.

422

00:20:47,879 --> 00:20:49,915

All right. Well, that's a good Segway.

423

00:20:49,915 --> 00:20:51,817

Thanks, Tom.

424

00:20:51,817 --> 00:20:52,251

All right.

425

00:20:52,251 --> 00:20:54,353

So let's talk about China.

426

00:20:54,353 --> 00:20:55,654

Let's talk about China.

427

00:20:55,654 --> 00:20:58,557

Yes. So

428

00:20:58,557 --> 00:21:02,561

so based on what you've heard thus far,
why should I do anything in China?

429

00:21:02,561 --> 00:21:03,962

We've all heard the horror stories.

430

00:21:03,962 --> 00:21:06,932

So how can it help us
and how can it blow up in our face?

431

00:21:07,165 --> 00:21:09,334

Well, there
certainly are a lot of horror stories

432

00:21:09,334 --> 00:21:12,170

from China, but I think there are
some good stories as well.

433

00:21:12,170 --> 00:21:16,141

And I think that because this is where
the product is being manufactured,

434

00:21:16,174 --> 00:21:17,609

this is where it's coming from.

435

00:21:17,609 --> 00:21:22,147

China is a is we should strongly consider
bringing an action in China.

436

00:21:22,614 --> 00:21:25,684

And there are options there.

437

00:21:25,884 --> 00:21:28,987

As you may be familiar,
there is, of course, the courts in China.

438

00:21:29,655 --> 00:21:32,190

There are also administrative enforcement

439

00:21:32,190 --> 00:21:34,793

and there's also criminal enforcement.

440

00:21:34,793 --> 00:21:37,062

I don't think administrative enforcement
or criminal enforcement

441

00:21:37,062 --> 00:21:38,497

are good options for us.

442

00:21:38,497 --> 00:21:43,669

Administrative enforcement generally
a bit simpler case is a bit more complex.

443

00:21:44,269 --> 00:21:48,440

Police generally in China won't take
a case until they have the smoking gun.

444

00:21:48,440 --> 00:21:50,976

We need to present all that evidence
for them to take action.

445

00:21:50,976 --> 00:21:52,411

We don't have that evidence right now.

446

00:21:52,411 --> 00:21:54,279

But don't you have isn't it
a civil law country

447

00:21:54,279 --> 00:21:56,481

where you have to get
all this evidence certified?

448

00:21:56,481 --> 00:21:57,482

And I've heard horror stories.

449

00:21:57,482 --> 00:21:59,017

Yeah, well, that's
that's what I was going to say.

450

00:21:59,017 --> 00:22:01,253

So so civil enforcement is the option.

451

00:22:01,253 --> 00:22:03,155

But even that
there are going to be some obstacles.

452

00:22:03,155 --> 00:22:05,757

And the first is
that there is no discovery in China.

453

00:22:05,757 --> 00:22:07,959

So it's very difficult to obtain evidence
from the other

454

00:22:07,959 --> 00:22:10,962

side of the evidence that you do
bring from the U.S.

455

00:22:10,996 --> 00:22:12,531
has to be notarized and legalized.

456
00:22:12,531 --> 00:22:15,534
And if we have a lot of evidence
that we need to bring, that takes time.

457
00:22:15,834 --> 00:22:19,037
What about hiring an investigator
in China to go into the factory?

458
00:22:19,037 --> 00:22:24,409
And that's that's a very common
tactic and has been for many years.

459
00:22:24,509 --> 00:22:27,012
But there are risks
there. There are exactly.

460
00:22:27,012 --> 00:22:28,380
Yeah, there are risks.

461
00:22:28,380 --> 00:22:31,783
Recently, they've cracked down a bit
on the private investigator

462
00:22:32,384 --> 00:22:34,052
for illegal even to do that in China.

463
00:22:34,052 --> 00:22:36,121
I don't think
it's well that's a very good.

464
00:22:37,055 --> 00:22:38,123
Is it legal?

465

00:22:38,123 --> 00:22:41,326

Yeah, that's my job
to ask the tough questions.

466

00:22:42,527 --> 00:22:45,097

I would
I would say I would say it's unclear.

467

00:22:45,097 --> 00:22:47,699

I think private investigating it's unclear
whether it's legal.

468

00:22:47,699 --> 00:22:50,435

There a little heard about that.
A guy from GlaxoSmithKline. Right.

469

00:22:50,435 --> 00:22:52,804

We know that that was one case.
That's right.

470

00:22:52,804 --> 00:22:53,672

I mean, it

471

00:22:53,672 --> 00:22:56,241

depends on who you're investigating
and we do have a company

472

00:22:56,241 --> 00:22:58,677

with central government
financing and backing,

473

00:22:58,677 --> 00:23:01,713

and that's a consideration
that will come up with later issues.

474

00:23:02,280 --> 00:23:06,017

The one thing I do want to say
is that one of the options with the courts

475

00:23:06,017 --> 00:23:10,956

in China is a evidence
preservation order,

476

00:23:11,623 --> 00:23:15,994

and that is a very effective tool
in the trade secret context

477

00:23:15,994 --> 00:23:17,763

because there is no discovery

478

00:23:17,763 --> 00:23:20,565

and it's one of the only ways
to obtain that evidence.

479

00:23:20,565 --> 00:23:23,201

So is that like the French CAC
where you basically do

480

00:23:23,201 --> 00:23:26,505

a dawn raid in the name of evidence
preservation or what is that exactly?

481

00:23:26,671 --> 00:23:30,542

It's an exploratory proceeding
where they go to the other side and it's

482

00:23:30,542 --> 00:23:34,579

the judges they raid, take computers,
take files and that kind of thing.

483

00:23:34,579 --> 00:23:35,514

And then we can repeat it.

484

00:23:35,514 --> 00:23:38,216

Doesn't that get expensive for us
or do they pay for that?

485

00:23:38,216 --> 00:23:41,253

Well, for us, it's
not like I read any Chinese or.

486

00:23:41,286 --> 00:23:42,654

No, no. Well, that's an issue.

487

00:23:42,654 --> 00:23:45,724

I mean, it depends on who we use,
whether we use an international firm

488

00:23:45,724 --> 00:23:48,193

that has a local presence
or a local Chinese firm.

489

00:23:48,193 --> 00:23:49,661

I mean, those are considerations.

490

00:23:49,661 --> 00:23:52,664

But for an evidence preservation order,

491

00:23:52,697 --> 00:23:56,001

we're probably looking at about 40
or \$50,000 altogether.

492

00:23:56,301 --> 00:23:59,304

We should get a response from the court within 48 hours.

493

00:23:59,538 --> 00:24:02,240

So that could be effective and quick.

494

00:24:02,240 --> 00:24:05,577

Is that filing ex parte
or the someone going to be sitting there?

495

00:24:05,577 --> 00:24:06,812

No, they don't. They're not notified.

496

00:24:08,346 --> 00:24:10,682

So it can be devastating.

497

00:24:10,682 --> 00:24:13,051

Of course,
whether you get or not is another issue.

498

00:24:13,051 --> 00:24:17,022

But it is more likely than getting
something like a preliminary injunction

499

00:24:17,022 --> 00:24:20,025

for a trade secret, a case in China,
which is very difficult.

500

00:24:20,192 --> 00:24:23,128

And what can you do with the evidence
when you get it?

501

00:24:23,128 --> 00:24:26,131

Well, that's a
that's part of how you would build a case

502

00:24:26,398 --> 00:24:27,799

is using that evidence.

503

00:24:27,799 --> 00:24:30,802

But can you only use it in China
or can we bring it back to the states?

504

00:24:30,902 --> 00:24:32,737

that's a good question.
I have to double check on that.

505

00:24:32,737 --> 00:24:34,773

But at least they could use it in China.

506

00:24:34,773 --> 00:24:37,642

So but but like

507

00:24:37,642 --> 00:24:40,645

I mentioned, there are a lot of issues
with bringing litigation in China.

508

00:24:40,645 --> 00:24:43,215

I see Jay wants to jump in.

509

00:24:43,215 --> 00:24:45,951

As you say, you could get it into an
ITC action. There are ways.

510

00:24:46,985 --> 00:24:49,187

So that's good.

511

00:24:49,187 --> 00:24:49,721

But I'm I get it.

512

00:24:49,721 --> 00:24:52,891

But but by doing so,
am I getting myself in trouble in China

513

00:24:52,924 --> 00:24:56,094

by for breaching some sort
of confidentiality regime that I'm not,

514

00:24:56,094 --> 00:24:59,364

that I just was formed
after of after I breached it?

515

00:25:00,832 --> 00:25:04,703

Well, I think I think, you know,
because there is this

516

00:25:04,703 --> 00:25:09,674

central government backing,
there's always a risk of taking action.

517

00:25:09,674 --> 00:25:13,378

I mean, courts in China are not completely
free from all political interference.

518

00:25:13,445 --> 00:25:15,514

Most cases
don't have that kind of interference.

519

00:25:15,514 --> 00:25:17,616

But in this case, I think it's a red flag.

520

00:25:17,616 --> 00:25:19,384

We need to be careful of that.

521

00:25:19,384 --> 00:25:22,387

And there's all sorts of things
that they can do.

522

00:25:22,387 --> 00:25:26,925

Tactics like if we bring over a one of
our company officials as general counsel,

523

00:25:27,292 --> 00:25:31,830

they could restrict your ability to leave
China if you're party to a dispute.

524

00:25:31,830 --> 00:25:34,399

So we need to be aware
of all those tactics going in.

525

00:25:34,399 --> 00:25:37,636

And there is this amorphous sort of state
secret provision there.

526

00:25:37,636 --> 00:25:40,038

Right. So you can't take anything out
that's a state secret.

527

00:25:40,038 --> 00:25:41,907

It's a very amorphous concept.

528

00:25:41,907 --> 00:25:43,575

So they could define it however they want.

529

00:25:43,575 --> 00:25:45,610

That's a risk, including our own secrets.

530

00:25:47,245 --> 00:25:48,380

Well, they may not think

531

00:25:48,380 --> 00:25:51,383
they're ours, but exactly.

532

00:25:52,751 --> 00:25:53,652
Okay.

533

00:25:53,652 --> 00:25:55,320
Well, it sounds like we're going to need

534

00:25:55,320 --> 00:25:59,124
a little bit government help,
both on both sides, both in the U.S.

535

00:25:59,124 --> 00:25:59,791
and in China.

536

00:25:59,791 --> 00:26:02,761
So maybe Ellen can give us
some thoughts here

537

00:26:03,762 --> 00:26:05,263
first. Thank you, David.

538

00:26:05,263 --> 00:26:08,900
I just want to say
that our team is positioned and ready

539

00:26:09,467 --> 00:26:12,804
to help our company
when we make a decision here.

540

00:26:12,871 --> 00:26:14,639

It's going to be your team's big moment.

541

00:26:14,639 --> 00:26:15,974

Yeah. Yeah, we're ready.

542

00:26:15,974 --> 00:26:19,678

I'd like to make a couple of comments
about China in particular

543

00:26:19,678 --> 00:26:23,081

and then kind of lay out an action plan
for us to proceed with.

544

00:26:23,582 --> 00:26:28,553

So one thing I would mention,
which which dovetails a bit with what

545

00:26:28,587 --> 00:26:31,590

Duncan said relating to the legal system

546

00:26:31,957 --> 00:26:35,694

is that the judiciary is not independent.

547

00:26:35,694 --> 00:26:39,831

So there will be Communist Party
involvement in the final decision.

548

00:26:39,864 --> 00:26:40,999

There will be consult it.

549

00:26:40,999 --> 00:26:46,738

So we have to be aware of the fact
that in particular politically

550

00:26:46,738 --> 00:26:53,812
sensitive cases have that type of
consultation with leadership

551
00:26:54,079 --> 00:26:58,683
and that also can lengthen
the adjudication of a case significantly.

552
00:26:58,850 --> 00:27:03,588
So so I'm not sure we're going
to get in a fast proceeding in China.

553
00:27:04,189 --> 00:27:06,658
I'd also want to mention

554
00:27:06,658 --> 00:27:11,997
that quite often parties in a litigation
when it's filed

555
00:27:11,997 --> 00:27:17,702
are pressured
to settle quietly in in in

556
00:27:17,702 --> 00:27:21,373
the spirit of good relations
between our two countries.

557
00:27:21,773 --> 00:27:26,878
And so we will have pressure from probably
likely the local governments,

558
00:27:26,878 --> 00:27:30,548
Shenzhen and Shanghai,
and maybe central leadership as well.

559

00:27:30,548 --> 00:27:36,588

So we should go into this prepared to know
what we are interested in settling for.

560

00:27:36,588 --> 00:27:38,556

So I just want to make you aware of that.

561

00:27:38,556 --> 00:27:41,126

That will be a pressure that we receive.

562

00:27:41,126 --> 00:27:43,995

Sounds like we're going to have to talk
to our business heads to see whether

563

00:27:43,995 --> 00:27:47,999

or not, you know, Tom's idea
of using their excess capacity,

564

00:27:47,999 --> 00:27:51,002

how we do want to structure
that kind of deal and see if we think

565

00:27:51,002 --> 00:27:54,339

we could leverage up our goals
or our business goals to convince

566

00:27:55,106 --> 00:27:59,744

the local authorities to convince Tinker
to adopt them as a way to settle.

567

00:28:00,879 --> 00:28:03,314

I would say everything is negotiable,

568

00:28:03,314 --> 00:28:07,352

but what I would say of another thing

569

00:28:07,919 --> 00:28:12,691

kind of along those lines
is relating to industrial plans in China.

570

00:28:12,991 --> 00:28:18,430

So the way that the Chinese economy
develops is very much

571

00:28:18,430 --> 00:28:22,934

based on these market planning tools
that they use.

572

00:28:22,934 --> 00:28:26,571

So, for example,
China decided many years ago that by 2020

573

00:28:26,571 --> 00:28:28,740

they're going to become
an innovative nation.

574

00:28:28,740 --> 00:28:32,610

So the central leadership
and provincial leadership really decided

575

00:28:32,777 --> 00:28:37,148

to implement plans to make this happen
now to our detriment.

576

00:28:37,315 --> 00:28:41,453

There are two aspects of industrial plans
that we need to be very careful of.

577

00:28:41,786 --> 00:28:45,590

The first is when it calls

for absorption of foreign technology.

578

00:28:46,524 --> 00:28:51,996

The second is when it calls for import substitution targets.

579

00:28:51,996 --> 00:28:55,567

So that's where they're going to say by this year we're going to have,

580

00:28:55,800 --> 00:28:59,904

you know,
we import 50% of 3D printers in China.

581

00:29:00,205 --> 00:29:03,508

You know, by then in the next five years, that number is going to be down to zero.

582

00:29:04,008 --> 00:29:06,211

Shenzhen has one of those plants.

583

00:29:06,211 --> 00:29:10,982

So we need to we need to understand and the reality of our situation in China

584

00:29:11,282 --> 00:29:14,252

in that, yes,
we employ people in Shenzhen,

585

00:29:14,419 --> 00:29:16,654

but we are not supporting that industrial plan.

586

00:29:16,654 --> 00:29:19,424

The Shanghai Domestic Company is.

587

00:29:19,424 --> 00:29:22,527

So did we make a mistake
by opening up our manufacturing in China

588

00:29:22,527 --> 00:29:23,228

in the first place?

589

00:29:25,597 --> 00:29:29,367

The situation is very serious.

590

00:29:29,501 --> 00:29:33,271

I would really counsel the company
to take it as that.

591

00:29:33,571 --> 00:29:37,876

On next week I'm going to be on a panel
with a bunch of our other industries

592

00:29:37,876 --> 00:29:41,846

associations talking about the 3D
industrial plan in China.

593

00:29:42,180 --> 00:29:43,481

Remember, this is a case study.

594

00:29:43,481 --> 00:29:47,552

I'm not actually doing this, but

595

00:29:48,620 --> 00:29:53,224

and you can of our CFO is happy
because they didn't know about the.

596

00:29:53,525 --> 00:29:57,228

Yeah, good but you know
it's a serious threat to the industry.

597

00:29:57,228 --> 00:30:00,265

Low cost manufacturing

598

00:30:00,265 --> 00:30:03,868

with stolen technology has really been
a winning strategy for China

599

00:30:04,135 --> 00:30:07,272

and has really been difficult
for American companies to deal with.

600

00:30:07,272 --> 00:30:10,308

So I think we should, as we are,
take this very seriously.

601

00:30:12,143 --> 00:30:12,710

Okay.

602

00:30:12,710 --> 00:30:16,981

So anything else to add about
how if for example, if we choose

603

00:30:16,981 --> 00:30:21,719

to prosecute a case in China,
what's the best way of dancing on the line

604

00:30:21,719 --> 00:30:25,323

to avoid ticking off the local authorities
in a way

605

00:30:25,857 --> 00:30:28,593

that redounds to our detriment?

606

00:30:28,593 --> 00:30:30,795

I would say two ways.

607

00:30:30,795 --> 00:30:34,799

The first way is I would suggest
when we are ready

608

00:30:34,799 --> 00:30:38,036

to take action, that we do consult
with the Shenzhen government.

609

00:30:38,203 --> 00:30:40,338

They have a delegation coming here
next week.

610

00:30:40,338 --> 00:30:44,509

So I've arranged for you to have a side
meeting with the head of the IP office.

611

00:30:44,909 --> 00:30:48,713

So I would suggest that when we're ready
and you know, some

612

00:30:48,713 --> 00:30:52,984

we were about to file that we do
let them know in the government

613

00:30:52,984 --> 00:30:55,854

there may also be opportunities
at the central level

614

00:30:55,854 --> 00:30:58,323

and with this also apply to
the case that Tom's pitching.

615

00:30:59,557 --> 00:31:00,859

In other words, should we

616

00:31:00,859 --> 00:31:04,195

reach out to them before we file
any cases in the States or at the ITC?

617

00:31:04,963 --> 00:31:08,366

We do absolutely not
have to do any of these things.

618

00:31:08,366 --> 00:31:11,302

It's more along the lines of I understand
it's all pretty.

619

00:31:11,302 --> 00:31:17,475

Yeah, it's focusing really on the action
in China because they will have much

620

00:31:17,475 --> 00:31:20,545

more influence on what happens in China
than they will here.

621

00:31:20,879 --> 00:31:25,817

But they also may be able
to help us with the negotiation.

622

00:31:25,817 --> 00:31:30,588

So if our first action here
as a group is we're going to try to

623

00:31:30,755 --> 00:31:33,157

to negotiate a settlement,
then we should do that.

624

00:31:33,157 --> 00:31:36,327

Now, if we're going to file first,
which puts us in a very strong position,

625

00:31:36,794 --> 00:31:39,430

then we would want to do that
as a second step.

626

00:31:39,430 --> 00:31:44,936

So and the only thing I want to add,
because I do want to add some good news

627

00:31:44,936 --> 00:31:48,640

here, that we also have the ability,

628

00:31:48,640 --> 00:31:51,442

because we have a very strong association
profile.

629

00:31:51,442 --> 00:31:55,780

I mean, we have a lot of our memberships
in trade associations and business

630

00:31:55,780 --> 00:31:58,783

councils that we can pursue this issue

631

00:31:58,983 --> 00:32:02,787

without attaching our name to the issue.

632

00:32:02,787 --> 00:32:06,190

So if we want to press for

633

00:32:06,190 --> 00:32:11,596

better trade secret protection in China
or more preliminary injunctions

634

00:32:11,596 --> 00:32:14,599

which which talk about the bleeding,
that's the way to stop it,

635

00:32:14,632 --> 00:32:18,703

then we have an ability to do that
through these associations

636

00:32:18,703 --> 00:32:22,874

without putting our name to it,
which can be damaging to it.

637

00:32:22,907 --> 00:32:24,275

To an individual company.

638

00:32:24,275 --> 00:32:27,946

There is positive momentum
and the US-China relationship

639

00:32:28,313 --> 00:32:30,982

President Xi just visited,
there was a meeting

640

00:32:30,982 --> 00:32:33,985

between President Trump and President
Xi in Mar a Lago.

641

00:32:34,052 --> 00:32:39,223

They created a new economic dialog
in which in the next 100 days,

642

00:32:39,223 --> 00:32:40,258

our two governments

643

00:32:40,258 --> 00:32:44,262

will be looking at resolving trade issues
like the theft of trade secrets.

644

00:32:44,262 --> 00:32:47,432

So I would encourage us
to reach out to our U.S.

645

00:32:47,432 --> 00:32:49,300

government representatives.

646

00:32:49,300 --> 00:32:52,136

Do you think that if we
then make a profile

647

00:32:52,136 --> 00:32:54,772

of an aggressive litigator
without having first reached out,

648

00:32:54,772 --> 00:32:57,842

we will lose the benefit
of all this political goodwill?

649

00:32:59,911 --> 00:33:02,714

I would say in the past, perhaps.

650

00:33:02,714 --> 00:33:04,115

But the one thing I would say

651

00:33:04,115 --> 00:33:07,352

is that the China market
now is much more sophisticated.

652

00:33:07,585 --> 00:33:11,923

And if if they don't believe we're serious
about using their own legal system,

653

00:33:12,156 --> 00:33:14,058

they're not going to take this
very seriously.

654

00:33:14,058 --> 00:33:16,861

So it is going to be a judgment call.

655

00:33:16,861 --> 00:33:21,366

But more often than not, companies
and I've learned this through our

656

00:33:21,399 --> 00:33:26,270

our membership and associations,
that the first question you're going

657

00:33:26,270 --> 00:33:30,708

to get from the Chinese government is
have you pursued a legal remedy in China?

658

00:33:30,708 --> 00:33:34,178

And if you say, no, no,
we don't trust your legal system,

659

00:33:34,412 --> 00:33:37,248

we're not going to get
a lot of respect from them.

660

00:33:37,248 --> 00:33:42,153

So one question that that occurs to me
is if we go down

661

00:33:42,153 --> 00:33:44,989

sort of a multi-pronged approach,
we're going to have to coordinate a rather

662

00:33:44,989 --> 00:33:47,792

large team across different continents.

663

00:33:47,792 --> 00:33:52,363

How do we ensure that our own communications with, say, Chinese counsel don't get

664

00:33:54,132 --> 00:33:56,367

waved in and become non

665

00:33:56,367 --> 00:33:59,370

privileged in a litigation that we have

666

00:34:00,571 --> 00:34:03,207

in the States, for example?

667

00:34:03,207 --> 00:34:04,609

That's a question for the for the group.

668

00:34:04,609 --> 00:34:06,344

I'd ask your team of lawyers over.

Yeah, yeah.

669

00:34:06,344 --> 00:34:06,878

No, I know.

670

00:34:06,878 --> 00:34:08,346

It just occurred to me

we're talking to you

671

00:34:08,346 --> 00:34:11,682
but the ITC will recognize it
as a privilege.

672
00:34:11,682 --> 00:34:15,453
It will depend which district court
we go to, how they'll treat that.

673
00:34:15,453 --> 00:34:18,456
That will vary. So it's going to vary.

674
00:34:18,656 --> 00:34:18,956
Yeah.

675
00:34:18,956 --> 00:34:23,761
I think we can find a way to do it, but
we'll have to have to work through that.

676
00:34:24,829 --> 00:34:25,463
Okay, excellent.

677
00:34:25,463 --> 00:34:28,166
Well well team so we've we've lined up.

678
00:34:28,166 --> 00:34:31,669
She's been waiting very patiently
in the antechamber to this wonderful

679
00:34:31,669 --> 00:34:34,672
conference room.

680
00:34:35,440 --> 00:34:37,442
We've, we've lined up
Kendra from the DOJ, who's

681

00:34:37,442 --> 00:34:41,813
going to give us a little overview
of our non civil remedies.

682

00:34:43,181 --> 00:34:44,415
Sure, David.

683

00:34:44,415 --> 00:34:50,721
So if well, in short, what you could do
once you're ready and you have

684

00:34:50,721 --> 00:34:54,525
your evidence is arrange a meeting
either with my office, the Computer Crime

685

00:34:54,525 --> 00:34:57,728
and Intellectual property section
here in D.C., or even a phone conference.

686

00:34:57,728 --> 00:35:00,298
We recognize that everyone's time
is valuable.

687

00:35:00,298 --> 00:35:01,632
Or with your local U.S.

688

00:35:01,632 --> 00:35:05,403
Attorney's office, we can put you in touch
with one of our chip computer hacking

689

00:35:05,403 --> 00:35:09,474
and intellectual property assistant
United States attorneys that work on IP

690

00:35:09,474 --> 00:35:13,144
and computer crime cases
day in and day out to meet with them

691
00:35:13,144 --> 00:35:17,014
and look at referring the case
for criminal enforcement.

692
00:35:17,248 --> 00:35:22,019
Another option also, and especially
where time might be of the essence.

693
00:35:22,019 --> 00:35:24,021
And I understand
may want to stop the bleeding.

694
00:35:24,021 --> 00:35:25,623
Not that I heard
anything from your meeting,

695
00:35:27,191 --> 00:35:27,792
but going

696
00:35:27,792 --> 00:35:30,928
straight to the FBI,
to the FBI, local field office,

697
00:35:30,928 --> 00:35:34,632
or to the intellectual property
rights Coordination Center here in or

698
00:35:34,699 --> 00:35:38,436
in Crystal City, where it's led by ICE.

699
00:35:38,436 --> 00:35:41,405

But FBI is very much a partner agency
in number there.

700

00:35:41,405 --> 00:35:45,943

If if you haven't done
so already and want more background,

701

00:35:45,943 --> 00:35:49,847

I encourage you to download and I brought
a copy with the data to give you all

702

00:35:50,214 --> 00:35:53,985

but it's our reporting intellectual
property Crime Victims Guide.

703

00:35:54,352 --> 00:35:57,889

It's available
as a pdf on cybercrime dot gov.

704

00:35:57,889 --> 00:36:00,758

And there's a checklist
for reporting trade secret theft.

705

00:36:00,758 --> 00:36:05,129

This isn't meant to be you need to go
through and physically write on answers.

706

00:36:05,129 --> 00:36:08,166

And in fact, from a discovery perspective,
it may be better just to think through

707

00:36:08,166 --> 00:36:11,269

those answers in your head
and have the underlying documents

708

00:36:11,269 --> 00:36:14,071

to answer those questions
if you decide to move forward.

709

00:36:14,071 --> 00:36:17,808

But the checklist for reporting trade
secret crime toward the end of there

710

00:36:18,242 --> 00:36:20,878

I think is an invaluable guide
as you're thinking about

711

00:36:20,878 --> 00:36:24,649

preserving evidence, what steps you're
taking in your internal investigation,

712

00:36:24,916 --> 00:36:29,320

and then how, if you choose to do so,
to make the referral to the government,

713

00:36:31,222 --> 00:36:34,625

what do
we get from going having the government?

714

00:36:34,625 --> 00:36:38,196

How can what is it going to help us other
than sort of getting the feds involved?

715

00:36:38,196 --> 00:36:41,332

I mean, how is it going
to stop our business problems and

716

00:36:42,400 --> 00:36:43,201

help us?

717

00:36:43,201 --> 00:36:47,305

So here, in a lot of cases
where evidence is located

718

00:36:47,305 --> 00:36:50,942

abroad, a defendant may be abroad,
perhaps in a country

719

00:36:51,008 --> 00:36:53,578

that we extradition from
will be difficult.

720

00:36:53,578 --> 00:36:56,581

But if there's an instance where
the defendant we know is still traveling,

721

00:36:56,981 --> 00:37:00,818

you know, having a criminal charge filed,
where you

722

00:37:00,818 --> 00:37:04,488

then can get a provisional arrest warrant
and an Interpol red notice, we could pick

723

00:37:04,488 --> 00:37:07,425

the government could pick him up overseas
and bring him back to the United States.

724

00:37:07,425 --> 00:37:10,561

So from a standpoint of getting a body
in a courtroom,

725

00:37:10,561 --> 00:37:13,531

oftentimes
where defendants and targets are abroad,

726

00:37:13,598 --> 00:37:16,534

looking at the criminal side
is a good option.

727

00:37:16,534 --> 00:37:17,401

There.

728

00:37:17,401 --> 00:37:20,404

We would never want to be

729

00:37:20,771 --> 00:37:24,842

used as a tool for civil enforcement,
but it could be cheaper,

730

00:37:25,009 --> 00:37:28,379

you know, depending on you'd still be
working with your own in-house team,

731

00:37:28,446 --> 00:37:30,381

perhaps outside counsel,
to work with the government.

732

00:37:30,381 --> 00:37:33,884

But if a criminal case were filed in
the civil case were stayed,

733

00:37:34,185 --> 00:37:36,120

that might be a decrease in legal costs.

734

00:37:36,120 --> 00:37:40,658

But it all depends and ask me about
whether the criminal civil case

735

00:37:40,658 --> 00:37:41,859

will necessarily be stayed.

736

00:37:41,859 --> 00:37:43,828

If a criminal case is tried,

737

00:37:43,828 --> 00:37:46,097

that might be a question

on the forefront of your mind.

738

00:37:46,097 --> 00:37:48,933

I wish I had a definitive answer,

but it really it depends.

739

00:37:48,933 --> 00:37:53,070

I myself worked on a trade secret case

740

00:37:53,070 --> 00:37:56,974

where the civil case got very far

along through the close of fact.

741

00:37:56,974 --> 00:38:00,778

Discovery and those depositions ended up

being incredibly valuable

742

00:38:00,778 --> 00:38:02,280

to the criminal side.

743

00:38:02,280 --> 00:38:05,182

And quite frankly,

the seriousness of the crime was revealed.

744

00:38:05,182 --> 00:38:06,784

This was public case.

745

00:38:06,784 --> 00:38:09,620
None stays versus Lou in Baton
Rouge, Louisiana.

746
00:38:09,620 --> 00:38:12,523
But through the civil discovery,
they realized

747
00:38:12,523 --> 00:38:16,927
just the breadth of the theft
and the magnitude of the conduct,

748
00:38:16,927 --> 00:38:21,599
and that led them to come back to federal
law enforcement and consider charges.

749
00:38:22,199 --> 00:38:24,001
At that point, the civil case was stayed.

750
00:38:24,001 --> 00:38:27,204
And ultimately the victim company, Dell,
you know, did obtain restitution.

751
00:38:27,471 --> 00:38:30,308
Another thing in it for
you would be restitution.

752
00:38:30,308 --> 00:38:31,909
In addition to the defendant.

753
00:38:31,909 --> 00:38:34,712
I'm looking at jail time and statutory
fines.

754
00:38:34,712 --> 00:38:39,450

There is a restitution,
which would be hopefully to make

755

00:38:39,450 --> 00:38:42,953

your business whole and also recoup
investigative costs as well.

756

00:38:43,054 --> 00:38:45,690

The ITC would not be state, by the way.

757

00:38:45,690 --> 00:38:46,724

Interesting.

758

00:38:46,724 --> 00:38:49,360

Well, so our boss is a our CEO

759

00:38:49,360 --> 00:38:53,230

and founder is a bit of a control freak
and he runs his company that way.

760

00:38:53,564 --> 00:38:57,868

How much input is he going to have into
this criminal prosecution?

761

00:38:57,868 --> 00:39:01,205

And more importantly,
he likes to think himself as a deal man

762

00:39:01,639 --> 00:39:03,641

If he can make a deal with these bad guys,

763

00:39:04,642 --> 00:39:05,609

I know of a

764

00:39:05,609 --> 00:39:08,612
pending criminal case is going to be
particularly helpful to that.

765
00:39:09,680 --> 00:39:13,884
So I'll be honest, once once
the investigation is opened, the you know,

766
00:39:13,884 --> 00:39:16,921
you cannot boss will not be able
to come to us and say, stop,

767
00:39:16,921 --> 00:39:19,890
put on the brakes, government,
we don't want you to go any further

768
00:39:19,990 --> 00:39:24,362
once it is opened and it could be opened
independent of the referral as well.

769
00:39:24,362 --> 00:39:26,597
So keep that in mind as and some level.

770
00:39:26,597 --> 00:39:30,768
If any wind of a lawsuit is public,
you may not have control

771
00:39:30,768 --> 00:39:33,804
to begin with, but once there,
that's an interesting question.

772
00:39:33,804 --> 00:39:36,741
So if we go on a public

773
00:39:36,741 --> 00:39:39,477

allowed publicity approach,

774

00:39:39,477 --> 00:39:42,012

is it possible

that the DOJ will investigate,

775

00:39:42,012 --> 00:39:45,015

open an investigation and start
a criminal prosecution regardless?

776

00:39:45,116 --> 00:39:48,386

That certainly could be a way
a criminal investigation is opened.

777

00:39:48,452 --> 00:39:50,721

That typical? I

778

00:39:51,722 --> 00:39:53,190

would not say typical.

779

00:39:53,190 --> 00:39:54,759

And that's because, you know, we

780

00:39:54,759 --> 00:39:57,862

we very much value cooperation
with the victim companies,

781

00:39:57,862 --> 00:40:01,632

certainly an arm's length relationship,
but we rely on victim

782

00:40:01,632 --> 00:40:05,503

companies for fact and expert witnesses
to understand the technology.

783

00:40:05,836 --> 00:40:09,240

Oftentimes,
even if the government is replicating

784

00:40:09,240 --> 00:40:13,210

forensic analysis, that initial forensic
analysis, the workplace

785

00:40:13,244 --> 00:40:17,281

emails, all of that is crucial
to building the criminal case.

786

00:40:17,281 --> 00:40:20,885

So to move forward
on a criminal prosecution

787

00:40:20,885 --> 00:40:23,521

with a victim company
that is very reticent

788

00:40:23,521 --> 00:40:27,491

would give me a lot of pause and I
give a lot of my colleagues pause as well.

789

00:40:27,491 --> 00:40:31,429

But you never know,
depending on the nature of the technology

790

00:40:31,429 --> 00:40:34,598

sensitivities related to the foreign
and nation state actors,

791

00:40:35,933 --> 00:40:37,067

anything is possible.

792

00:40:37,067 --> 00:40:38,169

But I would say it's not common.

793

00:40:38,169 --> 00:40:41,972

David,

any questions before we ask Ken to leave?

794

00:40:43,474 --> 00:40:45,876

Can I

on your your can I add two more, though,

795

00:40:45,876 --> 00:40:48,879

just to alleviate some of your concerns
and your boss's concerns?

796

00:40:48,879 --> 00:40:53,217

Because I gave you the honest answer,
which is, well, you do lose control,

797

00:40:53,451 --> 00:40:54,452

but there are steps

798

00:40:54,452 --> 00:40:57,655

that that we as the government work
with victim companies to take.

799

00:40:57,655 --> 00:41:02,326

And that's very we're very sensitive
to how protective orders can assist.

800

00:41:02,393 --> 00:41:07,097

And within the Economic Espionage
Act and DTC amended 18 U.S.C.

801

00:41:07,097 --> 00:41:11,368
1835, now allow victim companies as well
to lodge objections with the court.

802
00:41:11,368 --> 00:41:13,270
But even prior to that,

803
00:41:13,270 --> 00:41:17,041
no, I can't think of a trade secret
prosecution where there has not been

804
00:41:17,041 --> 00:41:17,908
a protective order

805
00:41:17,908 --> 00:41:21,645
obtained by the government and oftentimes
multiple protective orders.

806
00:41:21,645 --> 00:41:24,648
One for pre indictment,
one for pretrial, one for trial.

807
00:41:24,782 --> 00:41:27,952
We work with the victim companies
on that as well.

808
00:41:27,952 --> 00:41:30,955
So and then also to I think Ellen's

809
00:41:31,755 --> 00:41:34,758
some of Ellen's concerns
as government affairs.

810
00:41:34,992 --> 00:41:38,929
There are ways that, you know, DOJ

press office will work with the company's

811

00:41:38,929 --> 00:41:43,033

press office to make sure that if press
is issued, it has done appropriately and,

812

00:41:43,334 --> 00:41:46,070

you know, does not go into details
about the technology,

813

00:41:46,070 --> 00:41:49,039

perhaps even details about the company
and documents filed.

814

00:41:49,039 --> 00:41:53,511

We can take into account your your boss
and your legal team sensitivities there.

815

00:41:54,211 --> 00:41:55,713

That's very helpful. Thank you.

816

00:41:55,713 --> 00:41:59,083

So as the secretary of the meeting,
Conrad, how much time do we have?

817

00:42:01,018 --> 00:42:01,986

We actually have

818

00:42:01,986 --> 00:42:05,022

about another 15 minutes or 14 minutes.

819

00:42:05,022 --> 00:42:07,358

So while you were taking
a lot of good notes, though,

820

00:42:07,358 --> 00:42:09,660

so I wonder if you had any questions
you wanted to circle up

821

00:42:09,660 --> 00:42:11,795

because I think
what would be interesting is

822

00:42:11,795 --> 00:42:15,499

if we come up with a holistic approach
as a team, so maybe you noticed something

823

00:42:15,900 --> 00:42:19,169

that stood out that might help
jolla the brainstorming.

824

00:42:19,203 --> 00:42:19,570

Sure.

825

00:42:19,570 --> 00:42:23,374

But actually there's this actually
has to go with the supplement

826

00:42:23,374 --> 00:42:26,977

and build on Duncan's observations
about the litigation in China.

827

00:42:27,378 --> 00:42:32,449

One thing
which I would commend for the companies,

828

00:42:32,816 --> 00:42:36,153

a consideration
is when you're bringing suit in China,

829

00:42:36,687 --> 00:42:39,690

the fact that there are specialized IP,

830

00:42:39,723 --> 00:42:42,726

this is an experiment right now in China.

831

00:42:42,793 --> 00:42:47,164

It's right there right now approaching
the end of its initial three year run.

832

00:42:47,331 --> 00:42:50,701

We don't know whether or not
they're going to continue this or not,

833

00:42:50,935 --> 00:42:52,469

but it looks like there are indications

834

00:42:52,469 --> 00:42:55,472

that they do want to continue what,
an actual expand the program.

835

00:42:55,839 --> 00:43:00,578

So right now, the courts are in Beijing,
Shanghai and Gwangju.

836

00:43:00,978 --> 00:43:05,215

So I've heard some pretty funny things
about some of the chief judges

837

00:43:05,215 --> 00:43:08,218

in Guangdong about what
he view the purpose of the courts.

838

00:43:08,385 --> 00:43:09,820

Well, that's Guangdong.

839

00:43:09,820 --> 00:43:13,591

And full disclosure, my family's
from Guangdong and we Guangdong, as

840

00:43:13,591 --> 00:43:16,226

are sometimes real outliers
from the central government. It's

841

00:43:17,861 --> 00:43:18,295

not that

842

00:43:18,295 --> 00:43:21,932

we don't my, my family does A does obey
the central government,

843

00:43:22,099 --> 00:43:23,000

the ones that are there.

844

00:43:23,000 --> 00:43:25,135

But I'm just saying.

845

00:43:25,135 --> 00:43:28,172

But for that very reason,
I'm also going to suggest

846

00:43:28,472 --> 00:43:33,377

that instead of taking advantage
of the specialized IP courts in Gwangju,

847

00:43:33,611 --> 00:43:38,248

of which Shenzhen is in Guangdong Province
or in Shanghai, where Tinker is

848

00:43:38,248 --> 00:43:43,988

located, to go and perhaps consider
litigation at the Beijing IP court.

849

00:43:44,321 --> 00:43:47,958

And the reason why also is
because it is a leading court,

850

00:43:47,958 --> 00:43:48,993

it is a central government.

851

00:43:48,993 --> 00:43:53,697

They are actually doing, from what
we've been told and we're observing

852

00:43:53,697 --> 00:43:58,836

through rights holders that there is
a fair amount of professionalism.

853

00:43:58,836 --> 00:44:03,040

You are dealing with judges
who do have an IP background.

854

00:44:03,374 --> 00:44:08,379

So just something again, where yes,
is there going to be politicization,

855

00:44:08,379 --> 00:44:12,216

I'm sure, but at least you're sort of
getting away, if you will, from any.

856

00:44:12,783 --> 00:44:13,917

I wouldn't say any,

857

00:44:13,917 --> 00:44:17,454
but at least some possibilities
of the local protectionism slant.

858
00:44:17,721 --> 00:44:19,423
Duncan,
where you're about to say something.

859
00:44:19,423 --> 00:44:21,158
Sorry. No, no, it's all right.

860
00:44:21,158 --> 00:44:22,292
I'm glad you raised that.

861
00:44:22,292 --> 00:44:25,663
What one consideration
when when considering the court

862
00:44:25,663 --> 00:44:29,199
is the execution of the evidence
preservation order.

863
00:44:29,199 --> 00:44:34,204
And so that will Beijing
would be farther from Pinker's

864
00:44:34,204 --> 00:44:37,374
home base, but that would complicate
enforcement of that order.

865
00:44:37,608 --> 00:44:41,679
It probably the easiest for the Shanghai
IP court to execute that order.

866
00:44:41,812 --> 00:44:43,414

But I hear what you're saying.

867

00:44:43,414 --> 00:44:46,950

The other thing is, yeah, the IP courts, we've generally heard

868

00:44:47,284 --> 00:44:48,419

pretty good things about IP

869

00:44:48,419 --> 00:44:52,289

courts and particularly with respect to trade secrets and maintaining

870

00:44:52,289 --> 00:44:56,060

some of those trade secrets as secret during court proceedings.

871

00:44:56,093 --> 00:44:59,496

That's probably a venue or a court where they better understand

872

00:44:59,496 --> 00:45:02,332

those concerns, are better able to accommodate them.

873

00:45:02,332 --> 00:45:04,902

So I want to keep the IP courts in mind for that reason.

874

00:45:06,170 --> 00:45:07,171

Yeah, I would

875

00:45:07,171 --> 00:45:10,607

second the professionalism of those courts as well,

876

00:45:10,941 --> 00:45:14,578

but I would make a couple other comments
just because,

877

00:45:15,079 --> 00:45:17,081

you know, our legal team
may make assumptions

878

00:45:17,081 --> 00:45:19,683

about the legal system in China
that are not the case.

879

00:45:19,683 --> 00:45:22,686

So ex party
communication with the judge is allowed

880

00:45:22,886 --> 00:45:24,988

so the other side can go
talk to the judge.

881

00:45:24,988 --> 00:45:27,157

Any time they want.
We're not going to be in the room.

882

00:45:27,157 --> 00:45:30,094

We're not going to be privy
to what those conversations were.

883

00:45:30,094 --> 00:45:33,097

Purges are a way to monitor
that or to the judges.

884

00:45:33,397 --> 00:45:36,333

I mean, I've heard some stories

like Brazil, where people monitor

885

00:45:36,333 --> 00:45:39,636

the judge's chambers, the offices
of the judge's chambers, to make sure

886

00:45:39,636 --> 00:45:42,639

they know who's going into the courts
all the time.

887

00:45:42,740 --> 00:45:45,642

Well, I think that as a foreign litigant,

888

00:45:45,642 --> 00:45:49,980

we should be exceedingly careful
about how we proceed

889

00:45:50,481 --> 00:45:53,016

and doing something along those lines.

890

00:45:53,016 --> 00:45:57,688

Just the building on what Duncan said
about investigative

891

00:45:57,721 --> 00:46:03,060

industry being walking a line
that's very unclear about legality.

892

00:46:03,060 --> 00:46:04,695

I think we should be very careful
with that.

893

00:46:04,695 --> 00:46:06,463

We aren't going to be able to change that.

894

00:46:06,463 --> 00:46:09,066

Zapata's part of the system.

895

00:46:09,066 --> 00:46:11,401

Does that bleed into
what kind of counsel we want to get?

896

00:46:11,401 --> 00:46:14,204

I mean, someone who knows the judge
socially or something like that?

897

00:46:16,306 --> 00:46:17,141

Yeah, generally.

898

00:46:17,141 --> 00:46:19,243

I mean, when you're looking at counsel
and trying,

899

00:46:19,243 --> 00:46:20,811

you're looking for two types of counsel,

900

00:46:20,811 --> 00:46:23,313

either
a local counsel to deliver your message

901

00:46:23,313 --> 00:46:24,481

and you're going to do all the work,

902

00:46:24,481 --> 00:46:26,717

or you're looking for a local council
that has connections.

903

00:46:26,717 --> 00:46:29,353

Most likely it's most common.

It's the latter.

904

00:46:29,353 --> 00:46:32,489

You want to have someone that knows
the judges, that knows the other firm.

905

00:46:32,956 --> 00:46:35,959

It's it can be

906

00:46:36,093 --> 00:46:36,960

very unfortunate.

907

00:46:36,960 --> 00:46:40,430

If you were to bring in Beijing,
it can be unfortunate

908

00:46:40,430 --> 00:46:42,666

if you bring a Beijing council
to Shanghai or

909

00:46:42,666 --> 00:46:45,269

and they do it
there are large national Chinese firms,

910

00:46:45,269 --> 00:46:47,871

but you can be more effective
with the local council.

911

00:46:47,871 --> 00:46:52,242

And as to X party communications, I think
they are taking steps to limit those,

912

00:46:52,442 --> 00:46:55,279

but they are still going to happen,
just as Ellen has said.

913

00:46:55,279 --> 00:46:59,650

And you have to assume that the other side
is talking to the judge

914

00:47:00,417 --> 00:47:04,621

and you should not be surprised
if local council that we hire tells you.

915

00:47:04,621 --> 00:47:08,759

I spoke to the judge, you know, and they
he really said we should we should settle.

916

00:47:09,026 --> 00:47:10,761

And he said, you know,
do you have any more evidence,

917

00:47:10,761 --> 00:47:11,662

you know, that kind of thing.

918

00:47:11,662 --> 00:47:13,130

We should expect to happen.

919

00:47:13,130 --> 00:47:14,832

Unfortunately, as his normal course

920

00:47:17,167 --> 00:47:18,535

on a on a positive note, I

921

00:47:18,535 --> 00:47:22,539

would say that the IP courts
are now using technical assessors.

922

00:47:22,973 --> 00:47:24,741

So they're bringing in these experts

923

00:47:24,741 --> 00:47:27,911

in the technology
and 3D printing, for example.

924

00:47:27,911 --> 00:47:32,015

And I think that is really going to help
a judge make a good decision in a case.

925

00:47:32,015 --> 00:47:34,651

So that is a very positive legal
development there.

926

00:47:34,651 --> 00:47:36,220

But those those technical assessors

927

00:47:36,220 --> 00:47:39,523

are going to have to be local
or can we bring a non-Chinese expert?

928

00:47:40,257 --> 00:47:42,392

So just just to build on that.

929

00:47:42,392 --> 00:47:45,963

So the technical investigation
officers will be court appointed.

930

00:47:45,963 --> 00:47:47,898

A lot of them are patent examiners.

931

00:47:47,898 --> 00:47:50,901

It turns out that's the way it is
currently.

932

00:47:51,034 --> 00:47:53,370

We will

we can and should get our own expert.

933

00:47:53,370 --> 00:47:55,272

That's another part of the litigation
strategy

934

00:47:55,272 --> 00:47:57,341

in China is to get your own expert

935

00:47:57,341 --> 00:48:01,044

and get them up to speed so they're ready
to convince that technical investigation.

936

00:48:01,044 --> 00:48:04,047

Officer

Why The determinations that they make

937

00:48:04,114 --> 00:48:06,550

and present to the judge
should be in our favor?

938

00:48:06,550 --> 00:48:07,651

Sounds very expensive.

939

00:48:07,651 --> 00:48:10,621

I heard Chinese firm
rates are pretty high nowadays.

940

00:48:11,054 --> 00:48:13,457

I mean, comparatively low,

941

00:48:13,457 --> 00:48:15,826

I guess I would say compared to the U.S.,
what you might expect

942

00:48:15,826 --> 00:48:18,629

to pay for litigation here,
it could be cheaper in China.

943

00:48:18,629 --> 00:48:21,632

Certainly it's getting more expensive,
more expensive than it was before.

944

00:48:21,932 --> 00:48:23,333

And it depends on who you work with.

945

00:48:23,333 --> 00:48:25,502

Again, are you working with a foreign firm
that has a U.S.

946

00:48:25,502 --> 00:48:28,338

office or are you working
directly with Chinese counsel?

947

00:48:28,338 --> 00:48:32,175

I heard that there are restrictions
on what foreign firms can do in China.

948

00:48:32,910 --> 00:48:35,679

That's right. So for foreign firms.

949

00:48:35,679 --> 00:48:38,582

So first of all, foreign lawyers
can't practice law in China.

950

00:48:38,582 --> 00:48:41,218

Only Chinese citizens can be barred

in the country

951

00:48:41,218 --> 00:48:44,554

of Chinese citizens working for foreign
law firms can't practice Chinese law.

952

00:48:44,988 --> 00:48:48,992

As far as I recall,
Chinese firms are or foreign

953

00:48:48,992 --> 00:48:52,362

firms are joining with Chinese foreign
firms right now in certain parts of China

954

00:48:52,362 --> 00:48:55,866

to create this kind of combined entity
where they can practice law.

955

00:48:56,233 --> 00:48:59,069

But generally in Chinese court, you're
not going to have a foreign law firm.

956

00:48:59,069 --> 00:49:02,039

You're going to have a Chinese law firm
before the judge.

957

00:49:02,039 --> 00:49:02,506

Right. Right.

958

00:49:02,506 --> 00:49:05,342

I remember being pitched by Chinese firm

959

00:49:05,342 --> 00:49:08,512

that claimed that they shared office space
with an international firm.

960

00:49:09,947 --> 00:49:12,950

Well, that's probably a good sign.

961

00:49:14,418 --> 00:49:15,352

So go ahead.

962

00:49:15,352 --> 00:49:17,587

I was just going to say
one other thing, too.

963

00:49:17,587 --> 00:49:20,824

Relatively speaking, to Duncan's point,

964

00:49:21,158 --> 00:49:25,228

it is cheaper,
but relatively speaking, in terms of

965

00:49:26,029 --> 00:49:30,267

I hear I hear and I know well,
I hear that Chinese lawyers

966

00:49:30,267 --> 00:49:33,837

to take it a lot better when you just say,
I'll cut your rates in half.

967

00:49:33,837 --> 00:49:35,205

Is that okay?

968

00:49:35,205 --> 00:49:38,041

I'm sure everything
everything in China's negotiable.

969

00:49:38,041 --> 00:49:41,078

As you well know, if law firms
and it's a dirt market, too.

970

00:49:41,311 --> 00:49:44,081

So the other thing I would note, too, is

971

00:49:44,081 --> 00:49:47,084

that Chinese litigation
tends to be pretty speedy.

972

00:49:47,250 --> 00:49:49,319

They try to move their cases along.

973

00:49:49,319 --> 00:49:51,755

There's not a lot of,
you know, continuances.

974

00:49:51,755 --> 00:49:54,091

And you know, can we get more time
and that sort of thing.

975

00:49:54,091 --> 00:49:58,495

So depending on, you know, what
the litigation strategy is of of an entity

976

00:49:58,495 --> 00:50:02,799

or a company, you can actually
move things quite smartly in China.

977

00:50:03,033 --> 00:50:06,870

What's the likelihood that the government
might try to get involved

978

00:50:06,870 --> 00:50:08,438

in some capacity and what can they do?

979

00:50:09,606 --> 00:50:11,541

I think

Ellen, probably a great answer for that.

980

00:50:11,541 --> 00:50:12,976

I'll just answer that.

981

00:50:12,976 --> 00:50:16,013

You know, if the government does
get involved in a case,

982

00:50:16,113 --> 00:50:19,082

I mean, although Conrad is right,
generally

983

00:50:19,116 --> 00:50:22,753

litigation was very quickly first,
in some cases between 8 to 10 months.

984

00:50:23,320 --> 00:50:25,689

Second instance appeals 3 to 5 months.

985

00:50:25,689 --> 00:50:28,692

But you can have a case
that goes on for seven years

986

00:50:28,959 --> 00:50:31,094

just because there's
that kind of interference.

987

00:50:31,094 --> 00:50:34,231

But yeah, I would go back to the fact

988

00:50:34,231 --> 00:50:37,234
that this case
likely will get media attention.

989
00:50:37,467 --> 00:50:40,470
We should assume
that we should proceed on that basis.

990
00:50:40,670 --> 00:50:43,807
So we should also have a media plan
in place,

991
00:50:44,107 --> 00:50:47,110
but that also is going to make it
more politically sensitive,

992
00:50:47,277 --> 00:50:52,182
which is then going to result
in a longer process for us.

993
00:50:52,249 --> 00:50:55,585
And again, the preliminary injunction,
I assume,

994
00:50:55,585 --> 00:50:58,688
would be our most effective tool

995
00:50:58,688 --> 00:51:02,192
to deal
with the bleeding of the technology.

996
00:51:02,192 --> 00:51:04,995
And so we should get an answer

997
00:51:04,995 --> 00:51:09,232

on the preliminary injunction
and a much shorter time frame.

998

00:51:09,499 --> 00:51:13,336

What's the likelihood
what if go on a media campaign that the

999

00:51:13,970 --> 00:51:16,673

our other potential partners
in China would never want

1000

00:51:16,673 --> 00:51:18,909

to not want to touch the ten foot pole

1001

00:51:18,909 --> 00:51:22,846

because we're these bad foreigners
in harassing the local people?

1002

00:51:23,280 --> 00:51:26,249

Or are they or is it not going to affect
our business climate at all?

1003

00:51:26,249 --> 00:51:26,817

You'll think

1004

00:51:29,152 --> 00:51:30,187

I think we need to

1005

00:51:30,187 --> 00:51:33,723

evaluate and I'm not entirely sure about

1006

00:51:34,825 --> 00:51:37,027

the big question here,

1007

00:51:37,027 --> 00:51:41,364
what how important is the Chinese domestic
market to our company?

1008
00:51:41,898 --> 00:51:46,203
And if it is, we need to make
that part of our calculation.

1009
00:51:46,636 --> 00:51:49,473
But if we're using the Chinese
legal system,

1010
00:51:49,473 --> 00:51:52,776
the Chinese are very supportive
of intellectual property.

1011
00:51:53,110 --> 00:51:58,381
We can frame this litigation
and we can frame this relationship up

1012
00:51:58,381 --> 00:52:02,853
with our partners as supporting
the innovative ecosystem in China.

1013
00:52:02,853 --> 00:52:04,788
So I think that there is a way that

1014
00:52:04,788 --> 00:52:07,691
we'll be able to frame this discussion
in a very positive manner

1015
00:52:07,691 --> 00:52:10,694
for both our company
and for China as well.

1016

00:52:11,161 --> 00:52:12,295

And just just to supplement,

1017

00:52:12,295 --> 00:52:15,799

we're talking about a media strategy,
whether or not we should go public.

1018

00:52:16,533 --> 00:52:19,402

Often in China, Chinese defendants

1019

00:52:19,402 --> 00:52:22,606

will go public if a foreign company
sues them for infringement.

1020

00:52:22,772 --> 00:52:23,940

That's part of their strategy.

1021

00:52:23,940 --> 00:52:26,810

So I think we need to be prepared
with a media strategy,

1022

00:52:26,810 --> 00:52:28,612

whether we wanted to go public or not.

1023

00:52:28,612 --> 00:52:32,516

It's going to be important
to have a proactive message than reactive.

1024

00:52:32,649 --> 00:52:36,119

Well, you better have a message
because if you stay silent,

1025

00:52:36,119 --> 00:52:39,256

the the media is going to be influenced
by this story.

1026

00:52:39,256 --> 00:52:41,024

And it's a very

1027

00:52:42,125 --> 00:52:43,326

it's a not

1028

00:52:43,326 --> 00:52:45,962

it's a very comfortable

and acceptable story

1029

00:52:45,962 --> 00:52:49,466

that a foreigner would be abusive with
is intellectual property rights in China.

1030

00:52:49,466 --> 00:52:51,067

That's something that's been said it

1031

00:52:51,067 --> 00:52:53,403

time and time again

whether or not it plays out.

1032

00:52:53,403 --> 00:52:55,438

So I guess this is for for Tom and Jay.

1033

00:52:55,438 --> 00:53:00,076

How how much you think the actions
in China will have an impact at all,

1034

00:53:00,477 --> 00:53:04,848

both from the PR perspective

with with the courts in the U.S.

1035

00:53:04,848 --> 00:53:05,582

or in

1036

00:53:05,582 --> 00:53:07,117

from what we learned, the

1037

00:53:07,117 --> 00:53:10,687

discovery perspective, how much how siloed
are we going to have to be as a team

1038

00:53:11,087 --> 00:53:13,023

when we start talking this thing
and that thing

1039

00:53:13,023 --> 00:53:14,624

and all the different protective orders

1040

00:53:14,624 --> 00:53:17,627

and regulations and ability
to do this, that and the other thing?

1041

00:53:17,794 --> 00:53:20,730

Well, I think at the ITC
you have very limited effect.

1042

00:53:20,730 --> 00:53:22,399

I mean, they're used to this, you know,

1043

00:53:22,399 --> 00:53:26,603

and even in the U.S., companies will try
to bring politics or something into it

1044

00:53:26,603 --> 00:53:28,872

and they're inured to it
at the commission.

1045

00:53:28,872 --> 00:53:31,808

So they deal with that all the time.

1046

00:53:31,808 --> 00:53:32,809

And I think you said that

1047

00:53:32,809 --> 00:53:35,812

the stuff we learn in China

we probably can use in the ITC,

1048

00:53:36,279 --> 00:53:39,482

we would find some way to get that

through our regular discovery channels.

1049

00:53:39,482 --> 00:53:40,517

Once we learned about it.

1050

00:53:41,885 --> 00:53:42,619

And I think

1051

00:53:42,619 --> 00:53:46,089

we can use that to our advantage,

I think in in district court litigation.

1052

00:53:46,890 --> 00:53:49,559

So I think the fact that we we're

bringing action

1053

00:53:49,559 --> 00:53:52,562

in China, whatever we can utilize,

we're going to utilize.

1054

00:53:52,596 --> 00:53:54,064

And I think that's going to help us.

1055

00:53:54,064 --> 00:53:57,567

So I think overall, I think if we if we're going with a multi-pronged approach,

1056

00:53:57,901 --> 00:54:01,438

we can use each of those prongs to our as we see fit.

1057

00:54:01,438 --> 00:54:04,441

And I think it will help us in in district court.

1058

00:54:12,482 --> 00:54:15,485

Kendall has come back from the antechamber.

1059

00:54:15,919 --> 00:54:17,420

There's I think the door is locked.

1060

00:54:17,420 --> 00:54:22,392

I think just one other advantage that occurred to me and something

1061

00:54:22,392 --> 00:54:24,361

to consider with the criminal prosecution angle

1062

00:54:24,361 --> 00:54:27,430

is that we've been focused on theft of trade secret charges,

1063

00:54:27,430 --> 00:54:29,899

which for me on the criminal side is 18 U.S.C.

1064

00:54:29,899 --> 00:54:31,167
1832.

1065

00:54:31,167 --> 00:54:35,372
Here with the Chinese government angle,
we would be in consultation

1066

00:54:35,372 --> 00:54:37,173
with our colleagues
at the Counterintelligence

1067

00:54:37,173 --> 00:54:40,577
and export control section
within National Security Division to,

1068

00:54:40,910 --> 00:54:44,514
you know, at least make sure they're in
the loop for potential economic espionage.

1069

00:54:44,514 --> 00:54:45,882
1831 charges.

1070

00:54:45,882 --> 00:54:49,252
But another piece to this,
which goes to the multi-prong approach

1071

00:54:49,252 --> 00:54:51,721
and not having all your eggs
in one basket is you

1072

00:54:51,721 --> 00:54:54,791
there's always a risk as far as well,
what if the measures were not deemed

1073

00:54:54,791 --> 00:54:57,794

reasonable and it's not considered
a trade secret here?

1074

00:54:57,794 --> 00:54:59,462

You know, I'm
sitting in the business side.

1075

00:54:59,462 --> 00:55:00,797

You all are convinced that your trade,

1076

00:55:00,797 --> 00:55:04,234

you know, it is trade secret information,
and that's an assumed conclusion.

1077

00:55:04,567 --> 00:55:07,337

But one thing we would want to also
consider

1078

00:55:07,337 --> 00:55:10,674

is looking at charges under 18 U.S.C.

1079

00:55:10,674 --> 00:55:12,776

1030, the Computer Fraud and Abuse Act

1080

00:55:12,776 --> 00:55:15,812

for the unauthorized download
After he had left employment.

1081

00:55:16,079 --> 00:55:19,082

And that's something to consider
in addition to depending on facts

1082

00:55:19,082 --> 00:55:22,986

and what comes out, you know, wire fraud charges, money laundering, who knows?

1083

00:55:22,986 --> 00:55:26,022

But other charges
so that you're not or just obstruction

1084

00:55:26,022 --> 00:55:29,259

of justice, depending on, you know,
statements to law enforcement later.

1085

00:55:29,492 --> 00:55:32,462

But other charges
which would would still have

1086

00:55:32,462 --> 00:55:36,333

a deterrent effect,
still get you all restitution.

1087

00:55:36,566 --> 00:55:41,204

But that may not be so wedded to
if the information was not deemed

1088

00:55:41,204 --> 00:55:44,374

a trade secret, because as I think
someone already acknowledged, you know,

1089

00:55:44,374 --> 00:55:47,377

juries,
who knows what goes on in the jury room

1090

00:55:47,911 --> 00:55:49,579

or even before a bench trial
for that matter.

1091

00:55:49,579 --> 00:55:52,182
But I guess Kendra raises a good point.

1092
00:55:52,182 --> 00:55:56,219
We talked about having a China government
relation sort of strategy.

1093
00:55:56,219 --> 00:55:58,822
What about a U.S.?
What can our guys do for us,

1094
00:55:59,956 --> 00:56:01,291
if anything?

1095
00:56:01,291 --> 00:56:03,626
I a lot, actually.

1096
00:56:03,626 --> 00:56:08,998
I would say the first thing
we'd want to look at is, well,

1097
00:56:08,998 --> 00:56:12,669
among the many strategies, we want to
look at all branches of our government.

1098
00:56:12,669 --> 00:56:16,773
So I think we talked about the judicial
branch and the support you can get there,

1099
00:56:17,040 --> 00:56:20,844
but also we'd want to look
at the executive branch and that's

1100
00:56:20,910 --> 00:56:22,679
reaching out to the White House.

1101

00:56:22,679 --> 00:56:25,181

And then also Congress.

1102

00:56:25,181 --> 00:56:28,985

So we're going to we've got some Hill briefings next week, you and I,

1103

00:56:29,252 --> 00:56:34,791

and we're going to meet with a number of our House of Representative

1104

00:56:34,858 --> 00:56:37,861

staff, as well as the Senate.

1105

00:56:37,861 --> 00:56:41,364

And we'll be talking to them about this issue trade,

1106

00:56:41,364 --> 00:56:46,002

secret theft, cyber security is a

1107

00:56:47,036 --> 00:56:49,639

front and center issue for our Congress.

1108

00:56:49,639 --> 00:56:54,878

And the US-China relationship is an exceedingly important one

1109

00:56:54,878 --> 00:56:56,780

and one that gets a lot of attention on the Hill.

1110

00:56:56,780 --> 00:57:00,917

So our opportunity
there is to brief them, to potentially

1111
00:57:00,917 --> 00:57:04,320
ask them to write letters on our behalf
relating to this issue

1112
00:57:04,320 --> 00:57:07,624
and then to address this directly with
their Chinese government counterparts.

1113
00:57:07,991 --> 00:57:10,860
So we can do that again

1114
00:57:10,860 --> 00:57:13,863
as just part of an industry.

1115
00:57:13,930 --> 00:57:17,500
But we can also do that
in the name of our company as well.

1116
00:57:17,500 --> 00:57:19,936
So both
those options will be available to us.

1117
00:57:19,936 --> 00:57:22,505
And also to Kendra's point,
I would bring breach of contract.

1118
00:57:22,505 --> 00:57:25,141
I go file some copyrights
on some aspects of the printer.

1119
00:57:25,141 --> 00:57:28,111
I mean, you just layer

the causes of action.

1120

00:57:28,111 --> 00:57:31,381

I like that I'm

a big believer in multi-prong strategies,

1121

00:57:31,381 --> 00:57:34,751

so I'd like you to collate all your reach
out to local counsel

1122

00:57:35,285 --> 00:57:39,422

and counsel and our PR external services
and come up with a comprehensive budget

1123

00:57:39,422 --> 00:57:41,591

because I'm meeting the CFO
at eight in the morning tomorrow.

1124

00:57:43,793 --> 00:57:45,695

Well,

I think this has been a terrific panel.

1125

00:57:45,695 --> 00:57:46,963

I hope you all agree.

1126

00:57:46,963 --> 00:57:51,167

I actually there's some time
just for maybe one or two questions.

1127

00:57:51,167 --> 00:57:55,538

I actually did receive a question
from someone who had to depart early,

1128

00:57:55,538 --> 00:57:59,642

but I wanted to open up the floor

for any questions

1129

00:57:59,642 --> 00:58:02,612

that people might have,

1130

00:58:04,080 --> 00:58:06,082

like going one, scoring twice.

1131

00:58:06,082 --> 00:58:09,085

Okay. Okay.

1132

00:58:09,152 --> 00:58:12,121

Finish.

1133

00:58:12,722 --> 00:58:15,892

You just take your time.

1134

00:58:16,559 --> 00:58:17,727

They probably should.

1135

00:58:17,727 --> 00:58:21,331

Most of them, I think, are very reactive
and they just go because it's cheap.

1136

00:58:21,364 --> 00:58:25,301

I told you, David, how many times
did I tell you we had to do this?

1137

00:58:25,401 --> 00:58:27,270

How many times?

1138

00:58:27,270 --> 00:58:30,273

Well, the CFO wouldn't pay for the budget.

1139

00:58:31,875 --> 00:58:34,310

I would say, yes,

1140

00:58:34,310 --> 00:58:37,080

this would be

1141

00:58:37,080 --> 00:58:38,748

I think you're thinking about this now.

1142

00:58:38,748 --> 00:58:39,883

This is maybe a smaller company.

1143

00:58:39,883 --> 00:58:40,683

Wasn't thinking.

1144

00:58:40,683 --> 00:58:41,484

Yeah, that's right.

1145

00:58:41,484 --> 00:58:43,953

Larger companies are thinking about this.

1146

00:58:43,953 --> 00:58:44,220

Yeah.

1147

00:58:44,220 --> 00:58:47,624

This is not specific to trade secrets,
but again, on our cybercrime dot

1148

00:58:47,624 --> 00:58:50,727

gov website, we have a best practices
for reporting cyber incidents

1149

00:58:50,994 --> 00:58:53,763

and in that best practices
white paper on very much

1150

00:58:53,763 --> 00:58:56,032

as I think about this in advance,
have your different teams

1151

00:58:56,032 --> 00:58:59,035

have your media strategy
so that when you're approaching,

1152

00:58:59,035 --> 00:59:02,138

you know, actually even having
made contacts with your local U.S.

1153

00:59:02,138 --> 00:59:06,809

attorney's office, local law enforcement
in advance of anything that can help

1154

00:59:06,809 --> 00:59:09,812

you react even quicker
when something occurs, you know,

1155

00:59:10,280 --> 00:59:13,483

the real answer is, in my experience,
when companies are more

1156

00:59:14,017 --> 00:59:16,686

concerned about
their intellectual property generally,

1157

00:59:16,686 --> 00:59:18,454

they tend to think about these things
ahead of time.

1158

00:59:18,454 --> 00:59:19,656
Or if they're very well organized.

1159
00:59:19,656 --> 00:59:22,792
Often though, for like the company,
in the hypothetical, it's probably just

1160
00:59:23,826 --> 00:59:24,561
cost driven.

1161
00:59:24,561 --> 00:59:26,829
They go to China because it's
the cheapest place to manufacture.

1162
00:59:26,829 --> 00:59:27,797
They never really thought about it.

1163
00:59:27,797 --> 00:59:30,033
They never thought about their own
intellectual property in the U.S.

1164
00:59:30,033 --> 00:59:32,135
context, let alone in China.

1165
00:59:32,135 --> 00:59:35,138
So it's sort of a reactive situation.

1166
00:59:36,105 --> 00:59:36,806
Okay.

1167
00:59:36,806 --> 00:59:38,675
The question that I received

1168
00:59:38,675 --> 00:59:42,078

was from Jim Pauley,
who was a panelist earlier today.

1169

00:59:42,545 --> 00:59:46,349

And the question has to do with
the application of extra

1170

00:59:46,349 --> 00:59:48,418

territoriality of laws.

1171

00:59:48,418 --> 00:59:52,355

We know that in the ITC, particularly
in the Amstrad Industries versus

1172

00:59:52,622 --> 00:59:57,660

Tien Ray Group Holdings Case,
that there was the application of U.S.

1173

00:59:57,660 --> 01:00:01,030

law, even though it was a situation
where that wasn't

1174

01:00:01,030 --> 01:00:04,067

the product being made here,
but at least it impacted U.S.

1175

01:00:04,067 --> 01:00:04,934

industry.

1176

01:00:04,934 --> 01:00:08,371

The question is whether or not
this goes to the Defend Trade Secrets Act,

1177

01:00:08,371 --> 01:00:11,341

which I know is still a fairly

you know, it's a new law.

1178

01:00:11,641 --> 01:00:16,245

My understanding is that there's
only been about 300 cases filed thus far.

1179

01:00:16,646 --> 01:00:19,749

But is there room or the possibility

1180

01:00:20,016 --> 01:00:25,321

of the application of extra territoriality
in a civil clause of action?

1181

01:00:25,555 --> 01:00:30,593

There certainly seems to be implied,
a one in a criminal one

1182

01:00:30,593 --> 01:00:37,133

with the Section 1837
issue under the Economic Espionage Act.

1183

01:00:37,133 --> 01:00:39,602

But it just to the panel.
So that was what Mr.

1184

01:00:39,602 --> 01:00:40,403

Pooley wanted to know,

1185

01:00:40,403 --> 01:00:44,140

was whether extra territoriality
could have applied to a federal civil

1186

01:00:44,140 --> 01:00:44,874

course of action.

1187

01:00:47,310 --> 01:00:48,111

I frankly don't know.

1188

01:00:48,111 --> 01:00:51,114

I mean, Jim probably knows best.

1189

01:00:51,381 --> 01:00:53,316

He was asking the experts.

1190

01:00:53,316 --> 01:00:56,519

I think it's how you phrase it, You know,
I mean, I think it's whether you phrase

1191

01:00:56,519 --> 01:00:59,889

it as ultimately
and this is what the Amsterdam Tennessee

1192

01:01:00,123 --> 01:01:03,726

federal Circuit said, is it
really grounded essentially in U.S. law?

1193

01:01:03,860 --> 01:01:06,129

Is it really a U.S. contract dispute?

1194

01:01:06,129 --> 01:01:07,797

It's just really how you spin it.

1195

01:01:07,797 --> 01:01:10,800

And then what judge you get.

1196

01:01:11,200 --> 01:01:13,836

David, do you have an opinion on it?

1197

01:01:13,836 --> 01:01:14,671

I was going to second.

1198

01:01:14,671 --> 01:01:17,640

It's the what judge you get out of.

1199

01:01:18,041 --> 01:01:19,876

No, you stole my thunder with 1837.

1200

01:01:19,876 --> 01:01:20,743

Sorry. Sorry.

1201

01:01:20,743 --> 01:01:21,844

No, you guys need

1202

01:01:21,844 --> 01:01:24,847

to do some book to the U.S.,

But there is the extra territoriality

1203

01:01:24,847 --> 01:01:27,583

provision right there in the in I.

1204

01:01:27,583 --> 01:01:29,886

Okay, Duncan, Ellen, anything?

1205

01:01:30,987 --> 01:01:32,522

Anyone else?

1206

01:01:32,522 --> 01:01:33,389

Okay.

1207

01:01:33,389 --> 01:01:36,359

Can we please give a big round of applause
to our panelists?

1208

01:01:36,359 --> 01:01:39,362

Thank you so much.

1209

01:01:47,336 --> 01:01:49,272

And now we're going to have
a couple of closing remarks.

1210

01:01:49,272 --> 01:01:58,848

So just we'll just do a quick
rearranging of folks up here to.

1211

01:02:23,706 --> 01:02:27,744

So in concluding our second symposium
on trade secret protection,

1212

01:02:27,777 --> 01:02:31,147

I would like to thank the participants
here and Alexander,

1213

01:02:31,214 --> 01:02:35,251

to viewers
watching online and participants

1214

01:02:35,251 --> 01:02:39,455

from our satellite offices
in Detroit, Denver, Dallas and San Jose,

1215

01:02:39,722 --> 01:02:43,760

and particularly our panelists
for taking the time to come here today.

1216

01:02:44,227 --> 01:02:46,863

As we've seen, the importance
of trade, secret protection

1217

01:02:46,863 --> 01:02:50,133

and enforcement resonates
across the legal and policy frameworks.

1218

01:02:50,533 --> 01:02:53,703

Our first panel on measuring
the value of secrecy

1219

01:02:54,070 --> 01:02:57,673

looked at the various approaches
of valuing both the trade secrets

1220

01:02:57,673 --> 01:03:01,744

and evaluating the damages of trade secret
misappropriation.

1221

01:03:02,111 --> 01:03:05,815

The second panel, focusing
on the use of the Defense Trade Secrets

1222

01:03:05,815 --> 01:03:09,185

Act in practice, took a look at the impact

1223

01:03:09,185 --> 01:03:12,188

of seizure orders under the TSA,

1224

01:03:12,355 --> 01:03:17,093

which have garnered a lot of attention
as an extra extraordinary remedy.

1225

01:03:17,727 --> 01:03:22,632

The third panel on differences in trade
secret protection in foreign jurisdictions

1226

01:03:23,399 --> 01:03:25,735
looked at trade, secret protection

1227

01:03:25,735 --> 01:03:28,738
and foreign areas, with particular

1228

01:03:28,738 --> 01:03:32,942
emphasis on the legal traditions
of each jurisdiction

1229

01:03:32,942 --> 01:03:37,146
and the impact that that has on direct
how the current laws

1230

01:03:37,146 --> 01:03:42,084
and procedures affect
the enforcement of trade secret laws.

1231

01:03:42,585 --> 01:03:46,656
And then our last panel looked at from a
considerations of business owners

1232

01:03:46,656 --> 01:03:50,760
in international cases and panelists
discussed enforcement options

1233

01:03:50,760 --> 01:03:54,664
based on a hypothetical
and from a business point of view,

1234

01:03:55,031 --> 01:03:57,900
considered legal options. Also

1235

01:03:59,368 --> 01:04:00,636

going forward, the U.S.

1236

01:04:00,636 --> 01:04:03,973

Patent and Trademark Office

will continue to focus on these issues,

1237

01:04:03,973 --> 01:04:06,776

and we look forward

to continuing the conversation with you.

1238

01:04:06,776 --> 01:04:08,678

So thank you very

much. Have a good afternoon.