

Better Safe Than Sorry: DISCOVERY

2021年9月24日

モルガン・ルイス・アンド・バッキアス外国法事務弁護士事務所
森下 実郎

FTIコンサルティング
吉田 卓

Morgan Lewis

Webinar開始の前に

- 技術的なサポートが必要な場合は、WebEx サポート 国内フリーダイヤル：0120-339-836 または、03-6434-6780（通話料がかかります）にお問い合わせ下さい。
- 質問がある場合には、画面右下のQ&A のタブがございます、こちらに質問事項を入力いただき、「All Panelists」を選択して、「Send」でご送信ください。
- 音声は自動に設定されております。スピーカー、またはヘッドフォンをONにし、マイクはミュートに設定していただきますようお願いいたします。
- 電話音声にて参加を希望される方は、画面上のお名前の下にある「phone」のアイコンをクリックすると電話参加の詳細が表記されます。



General Litigation Timeline

Pleading

Discovery

Trial

Appeal (CAFC)



1-3 months

- Answer
- Scheduling Order

12-18 months

- Exchange of Contentions
- Claim Construction
- **Fact Discovery**
 - ❖ Request for Production
 - ❖ Interrogatory
 - ❖ Request for Admission
 - ❖ Deposition
- Expert Discovery

3-6 months

- Pre-trial Motions
- **Trial**
- **Jury Verdict**
- Final Judgement

18-24 months

- Briefs Submitted
- Hearing
- Ruling

Request for Production of Documents

- **DOCUMENT REQUEST NO. X**: All Documents relating to your **first awareness** of the Patent-in-Suit.
- **DOCUMENT REQUEST NO. Y**: All Documents relating to the **design, development, functionality, or testing** of any Accused Product, including specifications, requirement documents, schematics, manuals, drawings, guides, instructions, layouts, notebook entries, programming instructions, and source codes.

Request of Production of Documents

From: Steve Jobs <sjobs@apple.com>
Date: October 24, 2010 6:12:41 PM PDT
To: ET <et@group.apple.com>
Subject: Top 100 - A

Here's my current cut.

Steve

1. 2011 Strategy - SJ

- who are we?
- headcount, average age, ...
- VP count, senior promotions in last year
- percent new membership at this meeting
- what do we do?
- pie chart of units/product line and revenues/product line
- same charts with tablets + phones merged together
- Post PC era
- Apple is the first company to get here
- Post PC products now 66% of our revenues
- iPad outsold Mac within 6 months
- Post PC era = more mobile (smaller, thinner, lighter) + communications + apps + cloud services
- 2011: Holy War with Google
- all the ways we will compete with them
- primary reason for this Top 100 meeting - you will hear about what we're doing in each presentation
- 2011: Year of the Cloud
- we invented Digital Hub concept

Morgan Lewis

- PC as hub for all your digital assets - contacts, calendars, bookmarks, photos, music, videos
- digital hub (center of our universe) is moving from PC to cloud
- PC now just another client alongside iPhone, iPad, iPod touch, ...
- Apple is in danger of hanging on to old paradigm too long (innovator's dilemma)
- Google and Microsoft are further along on the technology, but haven't quite figured it out yet
- tie all of our products together, so we further lock customers into our ecosystem
- 2015: new campus

2. State of the Company - Peter & Tim

- FY2010 recap
- FY2011 plan
- where is our business - geo analysis (NA, Euro, Japan, Asia, possibly break out china) (present on map)
- key milestones, trends & future goals
- comparisons with Google, Samsung, HTC, Motorola & RIM

3. iPhone - Joz & Bob

- 2011 Strategy:
- "plus" iPhone 4 with better antenna, processor, camera & software to stay ahead of competitors until mid 2012
- have LTE version in mid-2012
- create low cost iPhone model based on iPod touch to replace 3GS
- Business & competitive update
- show Droid and RIM ads
- Verizon iPhone
- schedule, marketing, ...
- iPhone 5 hardware
- H4 performance
- new antenna design, etc
- new camera
- schedule
- **CONFIDENTIAL**
- cost goal

Request of Production of Documents

- セクハラ訴訟 (Zubulake v. UBS Warburg)
 - “Let’s exit her ASAP before she is entitled to a bonus”
 - 30億円以上の損害賠償
- 薬害訴訟 (Brown v. American Home Products Corp.)
 - “I don’t want to spend the rest of my career paying off fat people who are a little afraid of some silly lung problem”
 - 和解金4,000億円
- 粉飾決算に関する訴訟 (People v. Davis)
 - “Can you find another clueless auditor for next year?”

Interrogatory and Request for Admission

INTERROGATORY NO. X: For each Patent-in-Suit, describe in detail all facts and circumstances under which you **first became aware of that patent**, including, but not limited to, the date(s) when this occurred, the source of the information, the identity of the person(s) who received the information, when and how you first obtained a copy of that patent, and **any actions taken** by you or any of its directors, officers, or employees as a result, and **identify each person with knowledge** of the foregoing and all documents relating to the foregoing.

REQUEST FOR ADMISSION NO. Y: Admit that you had knowledge of the Patent-in-Suit by **10/14/2020**.

Deposition



Morgan Lewis

Deposition



Morgan Lewis

<https://www.youtube.com/watch?v=3dqE9Ns-RJM>

Morgan Lewis

STEP BY STEP DISCOVERY

WITH FTI CONSULTING

Data Collection (データ収集)

- 共有サーバー、メールサーバ、個人PC等のデータイメージング
 - フォレンジックに対応したデータ収集
 - ❖ メタデータ喪失でいらぬ疑いを、
 - 収集対象PC等のUSBポートに直接アクセスする必要性
 - ❖ ダウンロードに2年間、
- 紙文書の収集
 - プロのスキャン会社に依頼
 - ❖ 社員のメンタル問題、

Data Processing (データ処理)

- 収集したデータをディスクバリーに最適化したデータ形式に
 - 重複排除、OCR処理、翻訳等のプロセッシング
 - ❖ アメリカのベンダーに頼んだら日本語データが文字化け、
 - 関連性レビュー（AIレビュー）、キーワードサーチ等を行った上で絞り込んだ文書をレビュー用データベースへ
 - ❖ サーバー（2テラ）をアップロードしたらホスティング費用が凄いことに、

Document Review (レビュー)

- レビュー用データベース上の文書をレビュー
 - 関連文書のピックアップ（無関係な文書の排除）
 - ❖ レビューチームの管理が悪く、レビュー基準がバラバラでやり直しに、
 - 弁護士秘匿特権文書を選り分け
 - ❖ Privilege Confidentialだらけで選り分け作業が困難に、

Document Review (レビュー)



Documents F90001-H0001-00001033

Native No Image Extracted Text No Production PDF

100% Search within Document

FW: OREO PERSONALITY TEST

From: lewis
To: poltan, Sylvia S. <[redacted]@ou.nal.cnr.recipients.cnr.spollan>
Date: Sat, 05 May 2001 11:35:29 -0800

Original Message

From: Amy Yuan <ayuah@hotmail.com> @ENRON [mailto:IMCEANOTES+22Amy+20Yuan+22+20+3Cayuah+40hotmail+2Ecom+3E+40ENRON@ENRON.com]
Sent: Friday, May 04, 2001 2:18 PM
To: jentub22@yahoo.com; an1229@hotmail.com; Lewis, Andrew H.; pulran@hotmail.com; chuck@leas.net; emh_22@hotmail.com; chih.le@compaq.com; dylee42@hotmail.com; davidhoh74@yahoo.com; dicheang@aol.com; evans@asiant.com; vuchanag@hotmail.com; erik_lovenstein@BOL.com; patric@netmail.com; gretchen_sueblee@den.inverco.com; naoyao@yahoo.com; todmh@hotmail.com; troychung@hotmail.com; barbaraeanin@yahoo.com; Rudolph, Jennifer; jerryvencin@hotmail.com; jessetee@q-run.com; J.Lomis@yahoo.com; voo@epenergy.com; thv_125@hotmail.com; katey_lee@nimmanmaruac.com; kelly_yuah@hotmail.com; kenny@shh-usa.com; li_yu@hotmail.com; linda.yuan@economics.oxford.ac.uk; lizaw@iadel.com; marcos@iayoo.com; mhuo@att.net; michang199@hotmail.com; miny0115@hotmail.com; mohammad.sivadi@uph.edu.sg; eesleap@yahoo.com; peterwu2@compaq.com; rolandrod@aol.com; ron_hah@iadel.com; stive_wiang2@compaq.com; stevenlee@myself.com; tyang@law.harvard.edu; truongyen2@hotmail.com; Dirk, Trang; vronchung@aol.com
Subject: FW: OREO PERSONALITY TEST

>From: THAO NGO@sat.net
>To: ayuah@hotmail.com (AMY YUAN); JENNST962@AOL.COM (JENNIFER SORENSEN); KERRI_SHEVCH@HOTMAIL.COM (KERRI SHEVCHOW); DORWELLF58@CS.COM (DAVID ROYVELL); ngornme@ntu.com (NAM HO); 3TRAUZY@AOL.COM (MILLICENT JACKSON); CHMZ2@HOTMAIL.COM (CHENMEI HO); MARCUS.WILLICH@ISE.COM (MARCUS WELLS); >brooke_1@ev1.net - (MICHELLE HENDERSON); MTHAHNG@XCITE.COM (MARCELLA HAHN); Nlary_haso@enl.mn.com (HLARY HAO); JBOCDERT@WORLDNETATT.NET (JASON GOCDERT); JONATHAN.DONOHUE@PUBLICSERVICE.COM (JONATHAN DONOHUE); mts_sam_cho@yahoo.com (SAM CHO); JENNY_BOOKER@HOTMAIL.COM (JENNY BOOKER); >DEASLEE@HOTMAIL.COM (DONNA BASLEE); MIKED@MAIL.THEAUDITGROUP.COM (KENTL@MAIL.THEAUDITGROUP.COM)
>Subject: OREO PERSONALITY TEST
>Date: Fri, 04 May 2001 14:02:12 -0000

>Oreo Personality Test
>
>
>Psychologists have discovered that the manner in which people eat
>Oreo cookies provides great insight into their personalities. Choose
>which method best describes your favorite method of eating Oreos:

- > 1. The whole thing all at once.
- > 2. One bite at a time.
- > 3. Slow and methodical nibbles examining the results of each bite afterwards.
- > 4. In little feverous nibbles.
- > 5. Durned in some liquid (milk, coffee...)
- > 6. Twisted apart, the inside, then the cookie.
- > 7. Twisted apart, the inside, and toss the cookie.
- > 8. Just the cookie, not the inside.

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T-Responsiveness*

- Not Coded
- Responsive
- Non-Responsive
- Needs Further Review
- Technical Issue

Manage

T-Privilege

- Attorney Client Communication
- Attorney Confidential
- Attorney Work Product

Manage

T-Confidentiality

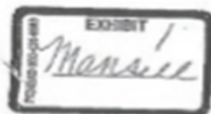
- Confidential
- Highly Confidential
- Not Confidential
- Confidential Subject to Protective Order
- Highly Confidential Subject to Protective Order

Manage

Production (文書提出)

- レビューが済んだ文書を相手方に提出
 - Tiff化して提出することが多い、Privilege文書は提出しない
 - ❖ 提出期限ギリギリにミスコミュニケーションで誤ってPrivilege文書を提出してしまい大惨事に、、
 - Privilege文書はPrivilege Logを提出する
 - ❖ 新人弁護士が作ったPrivilege Logを提出した結果、、

Privilege Log



PRIVILEGE LOG

DATE	TYPE	CONTENT	AUTHOR	RECIPIENT	CC	BASES
May 3, 2006	Written report requesting approval for Tom Brennan to receive auditing at Church of Scientology Flag Service Organization.	Information from Tom Brennan to Ethics officer and/or background information from previous auditing concerning Tom Brennan's request for approval to receive auditing services at Church of Scientology Flag Service Organization	Matteo Rosetti	Karine Howd, OSA	none	Clergy communication Fla. Stat. 90.505. Right to privacy Florida Constitution. Religion clauses of US and Florida Constitutions. Religious Freedom Restoration Act
May 5, 2006	Written report regarding Tom Brennan's eligibility to receive religious services at Church of Scientology Flag Service Organization	Additional information from Tom Brennan to FSO Ethics officer request to receive auditing services at Church of Scientology Flag Service Organization.	Matteo Rosetti	Karine Howd, OSA	none	Clergy communication Fla. Stat. 90.505. Right to privacy Florida Constitution. Religion clauses of US and Florida Constitutions. Religious Freedom Restoration Act
Sept. 7, 2006	Written report from Tom Brennan's ethics officer to the Case Supervisor in furtherance of auditing process.	Private personal confidential communications made by Tom Brennan to his ethics officer for the purpose of seeking spiritual counsel under the established practices and procedures of Scientology, as directed by the case supervisor.	Matteo Rosetti	Marissa Jensen, CS	none	Clergy communication Fla. Stat. 90.505. Right to privacy Florida Constitution. Religion clauses of US and Florida Constitutions. Religious Freedom Restoration Act

Case Management (案件管理)

- eDiscoveryにおいて最も大切な作業
 - 信頼関係のあるクライアント、弁護士、eDiscoveryベンダーが密に連絡を取り合いながらディスカバリーを進めることが成功の秘訣
 - ❖ レガシー価格が放置されて、、
 - ❖ アバウトなスケジュール管理でしわ寄せがクライアントに、、

Jitsuro Morishita



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Jitsuro Morishita devotes his practice to resolving complex global disputes in the areas of intellectual property, antitrust, governmental investigations, environmental issues, and labor.

Early in his career, he worked in-house for two global technology companies, Pioneer Corporation and Fujifilm Corporation, bringing unique expertise to advocate using profound understanding of Japanese company cultures.

Jitsuro is devoted to bringing his clients (i) easy communication using excellent communication skills, (ii) pleasant surprises from creative and out-of-the-box ways of thinking, and (iii) deep satisfaction through great results and client-friendly experiences.

Suguru Yoshida, FTI Consulting



Suguru Yoshida

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Suguru Yoshida is a Senior Director in the Technology segment at FTI Consulting and is based in Tokyo, Japan. He has a broad in-depth knowledge and extensive experience in addressing clients' business and regulatory needs through applying cutting edge technologies with numerous information governance and data analytics perspectives.

A legal technology expert and Certified Fraud Examiner, Suguru has over 12 years' of experience in digital forensics and eDiscovery. During this time, Suguru has assisted Japanese companies with responding to eDiscovery requests in international litigation and regulatory investigations, as well as in internal compliance investigations. He also has provided information governance consulting services to global companies based in Japan to help them resolve governance issues by using advanced data classification technologies and accelerating cloud platform adoptions, along with other tailored solutions.