

FILED
01-10-2025
Clerk of Circuit Court
Brown County, WI
2022CV001027

Exhibit 3

DECLARATION OF KIRTI GUPTA, PH.D.

I, Kirti Gupta declare:

1. I am a Vice President and Chief Economist of Global Technology with Cornerstone Research, a financial and economics consulting firm providing economic and financial analysis in all phases of commercial litigation. I joined Cornerstone Research in 2023. Prior to Cornerstone Research, I served as Qualcomm's Chief Economist, where I supported global antitrust and litigation matters involving licensing of Intellectual Property. During my career at Cornerstone Research and Qualcomm, I have worked on dozens of projects analyzing data in connection with class actions and other types of litigations. My CV is attached as Exhibit A.

2. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, I could, and would, testify competently thereto. I was assisted by a team of Cornerstone Research staff to complete my assignment, and all work was performed at my direction.

3. Plaintiffs' attorneys at Winston & Strawn LLP ("Counsel") provided me a list of 334,150 cases in a spreadsheet Bates-stamped DEF_001919. For each case, the list includes the County Name, the Defendant Name, and the CCAP Case Number. This list included Defendants in all of Wisconsin's counties.

4. I understand from Counsel that this list was produced by Defendants in discovery and contains all criminal defendants in the State of Wisconsin that the Office of the State Public Defender ("SPD") determined to be indigent, and therefore eligible for public defense counsel, on or after January 1, 2019.

5. Using this list, I was asked to identify the felony cases in which (1) more than 30 days passed between the date of the defendant's first initial appearance in court and the date on which the public defense counsel was ultimately appointed and (2) the delay appears due to the SPD's failure to secure the services of a private-bar attorney (the "Calculation").

6. The Calculation was completed using the following steps: First, using Cornerstone Research's subscription to Bloomberg Law,¹ I programmatically searched for the legal docket for each of the 334,150 cases identified in DEF_001919. I was able to identify and download the legal docket for 319,990 (95.8%) of the cases identified by Counsel.

7. Second, I programmatically reviewed the legal dockets to determine in which of the 319,990 cases identified in DEF_001919 the SPD sought to appoint an attorney from the private bar. I understand from Counsel that the below types of entries indicate private-bar assignment:²

- Docket entries indicating the filing of an "OSPD Appointment of Counsel Report" or similarly titled document;
- Clerk notes indicating that the SPD has been searching for an attorney (examples below);
 - "Public defender's office is still seeking counsel;"
 - "Per SPD: Defendant qualify for our services but we do not have an attorney;"
 - "Conflict with Public Defenders office. Still looking for attorney;"
 - "Public Defenders office is still looking to appoint an Attorney;"
- Clerk notes indicating that the SPD has been contacting attorneys (examples below);

¹ Bloomberg Law maintains a database of more than 200 million state and federal court legal dockets. To download the dockets for the cases identified by counsel, I programmatically search this database based on each case's County Name and CCAP case number. <https://pro.bloomberglaw.com/products/court-dockets-search/>

² I understand from Counsel that the SPD claims it assigns approximately 37% of cases to the private bar. Based on the available data, however, out of the 334,150 cases identified in DEF_001919, I am only able to definitively identify 29,286 cases as being assigned to the private bar, which is 9.2% of 334,150. If the SPD's claimed percentage is correct, the Calculation likely undercounts the true number of private-bar-assigned, felony cases in which the time to attorney appointment was greater than 30 days.

- “Report: 65 contacts (contacts includes phone calls, emails, personal discussions, and any other appropriate means of contact) to private bar attorneys certified by the SPD to take this case type, however, no attorney has agreed to represent this applicant.”
- “Def is eligible for SPD. 214 contacts made.”
- “SPD is looking for counsel. 1947 contacts made.”

8. To determine which cases were felony cases, I utilized metadata collected from Bloomberg Law.³

9. To calculate the duration each defendant waited for appointment of counsel, I counted the number of days between (1) the date of the defendant’s first attended initial appearance and (2) the date on which counsel was appointed.⁴

10. Based on the methodology above, I am able to identify **8,445** felony cases in which (1) the difference between the initial appearance date and the date on which counsel was appointed is greater than 30 days and (2) the delay appears due to the SPD’s failure to secure the services of a private-bar attorney.

11. Appendix B shows the breakdown of the 8,445 cases by county.

12. Of these 8,445 cases, the median wait time is 79 days and the upper quartile is 154 days, which means that 50% of these defendants (4,204 individuals) waited longer than 79 days and 25% of these defendants (2,097 individuals) waited longer than 154 days.

The conclusions included in this declaration are based on the data currently available to me. I reserve the right to update these analyses if new relevant data becomes available.

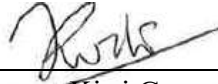
³ I rely on the “case_type” field that is provided by Bloomberg Law. Values found in the “case_type” field include: “Felony”, “Civil”, “Misdemeanor”, etc. I identify 163,207 felony cases. Of those, I am able to identify 21,449 cases as being assigned to the private bar.

⁴ I identified both dates by executing text searches on the legal dockets. I understand from Counsel that the defendant’s first appearance in court triggers attachment of the right to counsel and therefore I determine the initial appearance date as the first initial appearance that the defendant attends.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 9, 2025, in Los Angeles, California.

By:



Kirti Gupta, Ph.D.

Appendix A

Dr. KIRTI GUPTA

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RANGE OF EXPERIENCE

Practicing economist for more than 20 years with experience in litigation, business, policy, academic teaching, and research. Chief economist with Fortune 500 industry experience as intellectual property, antitrust, and technology expert.

Consulting experience for various matters including intellectual property and damages, antitrust, consumer protection, in industries including telecommunications, semiconductors, and digital markets. Founded and led Qualcomm's Office of the Chief Economics providing the executive team strategic guidance on global technology, legal/IP, Antitrust, and policy. Experienced in all stages of various Antitrust and IP litigation cases, evaluation of IP portfolios for potential acquisitions, analyzing licensing and cross-licensing offers, valuation models for licensing of IP, and damages calculation for litigation. In prior roles, worked as systems standards engineer, attending global standards meetings including 3GPP, IEEE-SA, and OMA, and owner of 50+ patents in wireless communications. Published and taught classes on standard-setting, intellectual property, and competition issues, and run the intellectual property program at CSIS.

EDUCATION

Ph.D. in Economics, University of California, San Diego	2007-2012
M.S. in Electrical Engineering, Purdue University	1999-2001
B.S. in Electrical Engineering, Faculty of Engineering and Technology, New Delhi	1995-1999

CURRENT POSITIONS

Vice President & Chief Economist of Global Tech, at Cornerstone Research

Senior Advisor, Center for Strategic and International Studies

Co-Director at the Institute for Business Innovation, Haas School of Business, University of California, Berkeley

WORK EXPERIENCE

July 2023 – Present: Vice President & Chief Economist of Global Tech, Cornerstone Research

Economic expert reports and consulting experience for various matters including antitrust, consumer protection, intellectual property and damages, telecommunications, semiconductors, and online markets.

Expert for *Netgear* vs. TP Link* (2024). Testified experience in *FTC v. Qualcomm** (2019) and *Apple v. Qualcomm** (2019). (*indicates client)

Testified in ITA-NIST-USPTO hearings on “Innovating Ideas around Standards and IP” (2023).

June 2012 – June 2023: Vice President & Chief Economist, Qualcomm Inc.

Founded the Global Economics function & team at Qualcomm. Provided economic analysis to executive team, legal (litigation), government affairs, legal, marketing, and communications.

Experience in all stages of various Antitrust and IP litigation cases, including *FTC v. Qualcomm*, *Apple v. Qualcomm*, global antitrust investigations of Qualcomm from *EC*, *KFTC*, *TFTC*, and *SAMR*, Qualcomm’s acquisition of *NXP*. spanning a range of issues, including abuse of market dominance, refusal to deal, excessive pricing, horizontal mergers, vertical mergers, and conglomerate effects.

As a part of Qualcomm’s Strategic IP department, worked on evaluation of IP portfolios for potential acquisitions, analyzing licensing and cross-licensing offers, valuation models for licensing of IP, and damages calculation for litigation. Also designed and operationalized IP strategy economic model for strategic patent filing of Qualcomm’s IP portfolio worldwide.

2001 – 2012: Engineering Expert, Corporate Research & Development, Qualcomm Inc.

Served as a strategic IP engineering expert for economic and technical evaluation of IP portfolios for the purposes of litigation and potential patent acquisitions.

Attended international standards meetings for various technical standards including 3GPP for 3G and 4G cellular standards, IEEE-SA for Wi-Fi standards, and OMA for upper layer mobile standards as an engineering expert. Wrote and presented technical contributions.

Owner of 50+ patents world-wide including declared SEPs and non-SEPs.

CONFERENCES AND SEMINARS (Selected Speakerships or Presentations Made)

Led various presentations on standards setting at the at FTC, DOJ, DOC, NEC, NSC, USPTO, NIST, Congressional offices, and Hill events, and internationally at the European Commission.

Taught and presented at classes on standards setting at Cornell University and Northwestern University. Taught “Intellectual Property and Competition Policy” summer school as an adjunct professor at the National Law University, New Delhi.

Presented research on standards, intellectual property and competition policy at: CSIS, Stanford’s Hoover Institute, Heritage Foundation, Hudson Institute, CNAS, University of Pennsylvania, Northwestern University, Harvard University, New York University, etc.

Regularly spoken on the issues related to standards, intellectual property and antitrust, alongside other industry experts at: American Bar Association (ABA), Concurrences, Licensing Executive Society (LES), and Intellectual Property Business Congress (IPBC).

Featured in media including Reuters, Forbes, The Economist, Bloomberg, and CNBC. Spoken at large forums like Mobile World Congress (MWC) & Consumer Electronic Show (CES) as an industry expert.

OTHER PROFESSIONAL AFFILIATIONS FELLOWSHIPS

Invited Forbes Finance Council member for regular publication. Member of American Bar Association (ABA) and National Association of Business Economists (NABE). Edison fellow at George Mason University.

(SELECTED) PUBLICATIONS

1. Gupta, Kirti, "Intellectual Property meets Artificial Intelligence", CPI TechReg, September 2024.
2. Emanuelson, David, Gupta, Kriti and Wong, Anora, "Semiconductors Today: Geopolitics, Mergers and Acquisitions" Handbook of Technology and Competition, European University Institute, September 2024.
3. Gupta, Kirti and Kifer, Avigail, "Algorithms, Artificial Intelligence, and Antitrust: An Overview", Antitrust Source, February 2024.
4. Gupta, Kirti, Langus, Gregor, and Lipatov, Vilen, "Innovation in Merger Control", CPI Antitrust Chronicle, November 2023.
5. Gupta, Kirti and David Kappos, "Empirical Data on the Patent Wars", *Center for Strategic and International Studies, Bloomberg Law* (2022).
6. Gupta, Kirti and Fabien Gonell, "Standards, Patents, and Transparency", *Competition Policy International*, (2021).
7. Gupta, Kirti and Petrovcic, Urska, "The Value of Cellular Technology", *The Hudson Institute White Paper* (2021).
8. Gupta, Kirti and Petrovcic, Urska, "Standards, Patents, and Antitrust Policy: The Road Ahead", *Competition Policy International* (2020).
9. Baron, Justus, and Kirti Gupta. "Unpacking 3GPP standards", *Journal of Economics & Management Strategy* 27.3 (2018): 433-461.
10. Gupta, Kirti. "FRAND in India: emerging developments", *IIMB Management Review* 30.1 (2018): 27-36.
11. Gupta, Kirti, and Georgios Effraimidis. "IEEE Revisions: An Empirical Examination of Impact", *The Antitrust Bulletin* 64.2 (2019): 151-171
12. Gupta, Kirti. "Technology standards and competition in the mobile wireless industry", *Geo. Mason L. Rev.* 22 (2014): 865

13. Gupta, Kirti. "The patent policy debate in the high-tech world", *Journal of Competition Law and Economics* 9.4 (2013): 827-858.
14. Gupta, Kirti. "The role of SMEs and startups in standards development", *Available at SSRN 3001513* (2017).
15. Gupta, Kirti, Koren Wong-Ervin, Joseph Coniglio, and Dylan Naegele "IP Leadership Brussels: Highlights and Economic Analysis", *Competition Policy International* (2017).
16. Gupta, Kirti" How SSOs Work: Unpacking the Mobile Industry's 3GPP Standards", Book Chapter in *The Cambridge Handbook of Technical Standardization* (2017).
17. Gupta, Kirti and Mark Snyder, "Smartphone Litigation and Standards Essential Patents", *Stanford Hoover IP2* (2015).
18. Gupta, Kirti and Jay Kesan, "The Impact of eBay on Injunctive Relief in Patent Cases", *Available at SSRN, Hoover IP2, Harvard Law* (2015).

Appendix B**Cases by County^[1]**

County	Number of Cases
Adams	18
Ashland	62
Barron	23
Bayfield	1
Brown	1,067
Buffalo	1
Burnett	17
Calumet	69
Chippewa	88
Clark	5
Columbia	60
Dane	717
Dodge	48
Door	33
Douglas	7
Dunn	16
Eau Claire	291
Florence	2
Fond du Lac	101
Forest	65
Grant	10
Green	9
Green Lake	45
Iowa	3
Iron	5
Jackson	10
Jefferson	47
Juneau	1
Kenosha	137
Kewaunee	1
La Crosse	715
Lafayette	1
Langlade	42
Lincoln	77
Manitowoc	310
Marathon	388
Marinette	30
Marquette	2
Menominee	23
Milwaukee	1,278
Monroe	26
Oconto	28
Oneida	42
Outagamie	391
Ozaukee	25

Appendix B

Cases by County^[1]

County	Number of Cases
Pepin	5
Pierce	12
Polk	36
Portage	37
Price	50
Racine	904
Richland	14
Rock	75
Rusk	84
Sauk	18
Sawyer	6
Shawano	255
Sheboygan	165
St. Croix	8
Taylor	25
Trempealeau	15
Vernon	4
Vilas	74
Walworth	19
Washburn	7
Washington	36
Waukesha	22
Waupaca	61
Winnebago	101
Wood	75
Total	8,445

Source: Bloomberg Law; DEF001919

Note:

[1] Relevant cases are felony cases in which (1) the difference between the initial appearance date and the date on which counsel was appointed is greater than 30 days and (2) the delay appears due to the SPD's failure to secure the services of a private-bar attorney.