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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

OPENAI, INC., a Delaware corporation,

Plaintiff,

vs.

OPEN ARTIFICIAL INTELLIGENCE, INC.,
a Delaware corporation, and GUY RAVINE,
an individual,

Defendants.

AND RELATED COUNTERCLAIMS.

Case No. 4:23-cv-03918-YGR

The Hon. Yvonne Gonzalez Rogers

**PLAINTIFF OPENAI'S NOTICE OF
ERRATA REGARDING REPLY IN
SUPPORT OF MOTION FOR SUMMARY
JUDGMENT**

Date: June 17, 2025

Time: 2:00 p.m.

Place: Courtroom 1 (4th Floor)
1301 Clay St., Oakland, CA 94612

1 TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that Plaintiff OpenAI, Inc. submits this Notice of Errata regarding
3 its Reply in Support of Motion for Summary Judgment, filed May 14, 2025:

4 Certain supporting documents to Plaintiff's Reply in Support of Motion for Summary
5 Judgment (the "Reply") included inadvertent errors that warrant correction, as detailed below.

6 **Response to Defendants' Statement of Additional Material Facts** (Dkt. 284): Plaintiff's
7 Response to Defendants' Statement of Additional Material Facts ("RAF") inadvertently contained
8 incomplete or otherwise incorrect references to supporting materials.

9 First, in response to Defendants' Fact 90, Plaintiff cited "Scher Dec. Ex. 13 (Gaer Tr.) at
10 164:6-13." The correct citation is "Perahia Dec. Ex. 13 (Gaer Tr.) at 164:6-13."

11 Second, in response to Defendants' Fact 92, Plaintiff referenced "Brewer Decl. Ex. 43 ¶ 48."
12 The correct reference is "Brewer Decl. Ex. 43 ¶¶ 7-8."

13 Third, in response to Defendants' Fact 107, Plaintiff cited "*(see id.* Ex. Q (Dkt. 46-3), Ex. R
14 (Dkt. 46) ¶ 5." The correct citation is "*(see id.* Ex. R (Dkt. 46-3), Ex. Q (Dkt. 46) ¶ 5."

15 The corrections address those errors for clarification and accuracy.

16 **Scher Declaration, Exhibit O** (Dkt. 286-3): The version filed under seal of Exhibit O to the
17 Declaration of Dylan I. Scher in Support of Motion for Summary Judgment ("Scher Declaration")
18 inadvertently included a slipsheet labeling the exhibit as "Exhibit N." The underlying document is
19 correct and corresponds to Exhibit O. Plaintiff has refiled the sealed exhibit with the correct
20 slipsheet.

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24 DATED: May 21, 2025

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

25
26 By /s/ Margret M. Caruso
27 Margret M. Caruso
28 Attorneys for Plaintiff OpenAI, Inc.

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AND RELATED COUNTERCLAIMS.

Case No. 4:23-cv-03918-YGR

The Hon. Yvonne Gonzalez Rogers

**[CORRECTED] PLAINTIFF OPENAI,
INC.'S RESPONSE TO DEFENDANTS'
STATEMENT OF ADDITIONAL
MATERIAL FACTS IN OPPOSITION
TO PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

Date: June 17, 2025

Time: 2:00 pm

Place: Courtroom 1 (4th Floor)

1301 Clay Street

Oakland, California 94612

Trial Date: October 20, 2025

PLAINTIFF'S RESPONSE TO DEFENDANTS' ADDITIONAL MATERIAL FACTS

Pursuant to the Court's Standing Order in Civil Cases, Plaintiff OpenAI, Inc. ("OpenAI") submits this Response to Defendants' Statement of Additional Material Facts in Opposition to Plaintiff's Motion For Summary Judgment.¹

ISSUE	DEFENDANTS' ADDITIONAL MATERIAL FACTS	PLAINTIFF OPENAI'S RESPONSE
1	Fact 81: Ravine is an entrepreneur who has been involved in various companies within the tech industry for the last twenty-five years.	<p>Ravine Decl. ¶¶2-4.</p> <p>Fact 81 presents an immaterial statement. Because of that, Fact 81 does not raise a genuine issue of material fact for purposes of this motion.</p> <p><i>Immaterial:</i> This general statement of Ravine's employment history is immaterial to the validity or timing of Defendants' asserted trademark rights.</p>
1	Fact 82: In 2012 Ravine launched a tool called "Wikineering," a not-for-profit online platform for engineers and researchers to collaborate on various ideas and projects.	<p>Dkt. 38-2 ¶5; Brewer Decl. Ex. 29; Ravine Decl. ¶7, Ex. 2. Tenery Decl. Ex. 2 ¶¶73, 77, 111-113.</p> <p>Fact 82 presents an immaterial statement. Because of that, Fact 82 does not raise a genuine issue of material fact for purposes of this motion.</p> <p><i>Immaterial:</i> Wikineering branding is irrelevant to the validity or timing of Defendants' asserted trademark rights in the "Open AI" Mark. Ravine's Wikineering tool was not at the open.ai domain, and in 2012, it was not operated under the "Open AI" Mark. See RUF 25; Ravine Decl. ¶ 12 (describing 2015 "rebrand[ing]" of Wikineering site "with the mark 'Open AI'").</p>
1	Fact 83: In mid to late-2014, Ravine expanded Wikineering by launching an AI-	<p>Ravine Decl. ¶10; Tenery Decl. Ex. 1 ¶¶72-78, 80-84; Ex. 2 ¶¶73-84.</p> <p>Fact 83 presents an immaterial statement. Because of that, Fact 83 does not raise a genuine issue of material fact for purposes of this motion.</p>

¹ As used herein, "SUF" refers to Plaintiff's corrected statement of undisputed fact (Dkt. 242); "RUF" refers to Defendants' corrected response (Dkt. 271) to Plaintiff's corrected statement of undisputed fact (Dkt. 242); "S/RUF" refers collectively to Plaintiff's corrected statement of undisputed fact (Dkt. 242) and Defendants' corrected response (Dkt. 271); "RAF" refers to Plaintiff's response to Defendants' additional material fact herein; and "S/RAF" refers collectively to Defendants' additional material fact and Plaintiff's response thereto herein.

1		specific discussion page on the platform.		<i>Immaterial:</i> Wikineering branding is irrelevant to the validity or timing of Defendants’ asserted trademark rights in the “Open AI” Mark. Ravine’s Wikineering tool was not at the open.ai domain, and in 2014, it was not operated under the “Open AI” Mark. <i>See</i> RUF 25; Ravine Decl. ¶ 12 (describing 2015 “rebrand[ing] of Wikineering site “with the mark ‘Open AI’”).
2	1, 3	Fact 84: By early 2015 Ravine began to focus on AI more than generalized engineering issues and on March 25, 2015, he rebranded AI content on Wikineering as “OpenAI” (in the upper lefthand corner) and the tool became known as the “Initial Collaboration Tool.”	Ravine Decl. ¶12-17; Brewer Decl. Ex. 1 at 17:21- 18:9; 19:17- 20:17; 20:21- 21:10; 27:19- 28:13, Brewer Decl. Exs. 62- 63; Belkin Decl. ¶5; McMurray Decl. ¶¶5-6; Gaer Decl. ¶¶5-6; Tenery Decl. Ex. 1 ¶¶80-84.	Fact 84 presents an immaterial statement, which is unsupported as to “the tool became known as the ‘Initial Collaboration Tool.’” Because of that, Fact 84 raises no genuine issue of material fact for the purpose of this motion. <i>Immaterial:</i> Statements about Ravine’s “focus” are immaterial to the validity and timing of Defendants’ asserted trademark rights. Ravine’s “rebranding” of AI content on Wikineering as “OpenAI” is immaterial to establishing continuing use in commerce in light of the discontinuation of the Initial Collaboration Tool in February 2016 and Defendants’ conceded non-use of “OpenAI” in commerce between February 2016 and the start of September 2016. <i>See</i> , <i>e.g.</i> , S/RUF 31, 32, 59-61; Ravine Decl. ¶ 19 (Ravine admitting he “now know[s]” that his sign-up page in December 2015 was an “improper specimen of [his] use of the Open AI Mark”). <i>Unsupported:</i> The cited evidence does not support that the tool “became known” as the Initial Collaboration Tool except during this litigation. <i>See</i> Gaer Decl. ¶ 5 (“It is my understanding that the project I saw on the Wikineering site in 2015 has been referred to as the ‘Initial Collaboration Tool’ in this lawsuit”).
3	1	Fact 85: Testimony (from at least 5 witnesses) and documents from 2015 confirm that the Initial Collaboration	Brewer Decl., Ex. 1 at 17:21- 18:9, 19:17- 20:17; 20:21- 21:10; 27:19- 28:13; 98:9-	Fact 85 presents an immaterial and unsupported statement. Because of that, Fact 85 does not raise a genuine issue of material fact for purposes of this motion.

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	<p>Tool existed in 2015, prominently featured the OpenAI Mark, and had users.</p>	<p>19; 101:5-14, Exs. 62-63; Belkin Decl. ¶¶4; McMurray Decl. ¶¶5-7; Gaer Decl. ¶¶5-6; Ravine Decl. ¶¶12-17.</p>	<p><i>Immaterial:</i> The display of the OpenAI Mark on the Initial Collaboration Tool is immaterial in light of the discontinuation of the Initial Collaboration Tool in February 2016. <i>See</i> R/SUF 31. Any display of the OpenAI Mark from March 25, 2015 to February 2016 predates Defendants’ conceded non-use of “Open AI” in commerce between February 2016 and the start of September 2016. <i>See, e.g.,</i> S/RUF 31, 32, 59-61; Ravine Decl. ¶ 19. Even if the evidence showed use in commerce, it would be immaterial to establishing continuous use in commerce.</p> <p><i>Unsupported:</i> The cited evidence does not support that the Initial Collaboration Tool “had users” beyond direct employees and associates of Ravine.</p> <ul style="list-style-type: none"> ▪ Sergey Belkin and Nikita Gaer were developers hired by Ravine. Belkin Decl. ¶¶ 3-6 (Belkin “worked with” and was “hired” by Ravine); Gaer Decl. ¶ 3 (Gaer began working for Ravine in “May 2014” and “generally worked for him 40 hours per week”); Scher Decl. Ex. D (Ravine Tr.) at 10:19-11:19 (Ravine referring to Gaer as an employee). ▪ Kirk McMurray “worked on” Wikineering with Ravine. McMurray Decl. ¶ 3 (“we worked on a number of different projects over the next decade”). ▪ Deborah Reynolds was Ravine’s landlord and an investor in Ravine’s initiatives, including at least the We Communicate and Video.io, and also facilitated others’ investments in Ravine’s projects. Scher Decl. Ex. G (Reynolds Tr.) at 64:9-13, 74:24-76:1. Invoices cited by Ravine show that Video.io and We Communicate sometimes paid expenses related to Ravine’s Open AI websites. Scher Decl. Ex. A. Ravine has referred to McMurray and Reynolds as [REDACTED] Perahia Decl. Ex. 10 (Ravine Tr.) at 55:4-22; <i>see also</i> Scher Decl. Ex. G (Reynolds Tr.) at 134:18-136:10
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1			(discussing hosting Ravine for holidays, attending birthday parties, and claiming he has been to her home “probably more than 50” times); 139:2-8 (in 2024, “we checked in with each other once a month or something”).
2			None of these witnesses (aside from Ravine) testified that he or she used the Initial Collaboration Tool for its intended purpose, <i>i.e.</i> to create and share content. Reynolds testified that the pages she saw on Wikineering were pages that “he [Ravine] created.” Brewer Decl. Ex. 1 at 21:1-4.
3			The cited documents include screenshots from the Initial Collaboration Tool (or a similar website) taken by Ravine, and do not establish that the Initial Collaboration Tool “had users” or was used in commerce.
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13	1	Fact 86: Results from a forensic analysis confirm that the websites that hosted the Initial Collaboration Tool were continuously used from April 2014 through 2016.	Tenery Decl. Ex. 1 ¶¶72-78, 80-84; Ex. 2 ¶¶44-46, 64.
14			Fact 86 presents an immaterial unsupported statement. Because of that, Fact 86 does not raise a genuine issue of material fact for purposes of this motion.
15			<i>Immaterial:</i>
16			It is immaterial whether websites without “Open AI” branding and goods and services were “used.” There is no evidence Defendants used “Open AI” in 2014.
17			It is immaterial whether websites with “Open AI” branding and goods and services were used before February 2016 given Defendants’ discontinuation of the Initial Collaboration Tool in February 2016 and Defendants’ conceded non-use of “OpenAI” in commerce between February 2016 and the start of September 2016. <i>See, e.g.,</i> S/RUF 31, 32, 59-61; RAF 84-85; Ravine Decl. ¶ 19.
18			<i>Unsupported:</i>
19			None of the cited evidence supports that the Initial Collaboration Tool was “continuously used” during this period. To the contrary, the cited forensic report indicates Defendants’ expert was “unable to confirm the appearance of the Initial Collaboration Tool on the Wikineering
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1			page with the OpenAI brand.” Tenery Decl. Ex. 1 ¶ 83.
2			The cited evidence does not support Defendants’ asserted continuous use in connection with “Open AI” branding.
3			Exhibit 1 to the Tenery Declaration discusses two “unique users” who visited the “Initial Collaboration Tool” between September 13, 2014 to December 17, 2014 (Tenery Decl. Ex. 1 ¶ 82-83), but it is undisputed that the Initial Collaboration Tool did not exist in 2014. <i>See</i> S/RAF 83-84 (referring to an “AI-specific discussion page on the [Wikineering] platform” in 2014, which was “rebranded” as Open AI and became what is now referred to as the Initial Collaboration Tool in 2015).
4			The cited expert reports do not support that any of the approximately 140 US-based users of Wikineering (many of whom visited Wikineering <i>before</i> the Initial Collaboration Tool was created (<i>compare</i> Tenery Decl. Ex. 1, Exhibit K, Figure 3 <i>with</i> S/RAF 83-84)) encountered the Initial Collaboration Tool after it became available on the Wikineering website.
5			None of the cited evidence supports that the Initial Collaboration Tool was used after February 2016. <i>Cf.</i> S/RUF 31.
6	1	Fact 87: On March 26, 2015 (<i>i.e.</i> , the day after launching the Open AI-branded Initial Collaboration Tool), Ravine purchased the domain name “open.ai” to use as a website for his Open AI brand.	Brewer Decl. Ex. 60; Tenery Decl. Ex. 1 at ¶60; Dkt. 38-2 at ¶6.; Ravine Decl. ¶13, Exs. 4, 5.
7			Fact 87 presents an immaterial statement. Because of that, Fact 87 does not raise a genuine issue of material fact for purposes of this motion.
8			<i>Immaterial:</i> The purchase of a domain name is immaterial to the validity and timing of Defendants’ asserted trademark rights. Defendants do not tie the purchase of this domain to any goods or services that were actually offered, much less any existed after the conceded non-use of Open AI in commerce between February 2016 and the start of September 2016. <i>See, e.g.</i> , S/RUF 31, 32; 59-61; RAF 84-85; Ravine Decl. ¶ 19.
9	1	Fact 88: Ravine hired Sergey Belkin to design the Open AI	Belkin Decl. ¶4; Ravine Decl. ¶15.
10			Fact 88 presents an immaterial statement. Because of that, Fact 88 does not raise a

1	logo and the landing		genuine issue of material fact for purposes
2	page for the open.ai		of this motion.
3	website.		<i>Immaterial:</i>
4			Creation of a logo is immaterial to the
5			validity and timing of Defendants' asserted
6			trademark rights.
7			Creation of a landing page and logo for an
8			initiative that was never launched and did
9			not constitute a use in commerce is
10			immaterial to the validity and timing of
11			Defendants' asserted trademark rights. <i>See</i>
12			Perahia Decl. Ex. 10 (Ravine Tr.) at 159:4-
13			12 ("Q. When you said in -- on the page of
14			open.ai, 'Announcement will be made
15			soon, what kind of announcement were
16			you referring to? A. I was referring to a
17			wider announcement. The initiative was
18			already in existence. And the wider
19			announcement I was referring to is, we're
20			going to close a bunch of money from --
21			from Google or some other
22			company. Once that happens, we're going
23			to make the announcement."), 160:21-25
24			("Q. Okay. And so you didn't -- you
25			ultimately never did make the
26			announcement that was referenced in this
27			specimen, right? A. No. We couldn't -- we
28			didn't get funding, ultimately, for the Open
			AI initiative[.]), Ex. 13 (Gaer Tr.) at
			166:4-8 ("Q. When did you next put
			something on this website? A. Oh, I don't
			remember what -- so I think most of the
			time it was this -- this kind of
			announcement page."); Dkt. 100 ¶ 125
			("Relying on these [2015] assurances
			Ravine stopped pursuing the OpenAI
			initiative because as Brockman implied, it
			was indeed true that they stole the thunder
			of the original OpenAI now that there is
			one with Musk's \$1 billion in the
			picture."); <i>see also</i> S/RUF 24, 59-61; RAF
			83-85; Ravine Decl. ¶ 19.
1	Fact 89: On or around	Dkt. 38-2 ¶6;	Fact 89 presents an immaterial statement.
	April 9, 2015, the	Brewer Decl.	Because of that, Fact 89 does not raise a
	open.ai website went	Ex. 23.	genuine issue of material fact for purposes
	live.		of this motion.
			<i>Immaterial:</i>
			The date and fact that a website "went
			live" is immaterial to the timing and
			validity of Defendants' asserted trademark
			rights because Defendants do not tie the

1			cited evidence to any goods or services that were actually offered in commerce. Perahia Decl. Ex. 10 (Ravine Tr.) at 160:21-25 (“Q. Okay. And so you didn’t -- you ultimately never did make the announcement that was referenced in this specimen, right? A. No. We couldn’t -- we didn’t get funding, ultimately, for the Open AI initiative[.]”), Ex. 13 (Gaer Tr) at 166:4-8 (“Q. When did you next put something on this website? A. Oh, I don’t remember what -- so I think most of the time it was this -- this kind of announcement page.”); Dkt. 100 ¶ 125 (“Relying on these [2015] assurances Ravine stopped pursuing the OpenAI initiative because as Brockman implied, it was indeed true that they stole the thunder of the original OpenAI now that there is one with Musk’s \$1 billion in the picture.”); <i>see also</i> S/RUF 24, 59-61; RAF 83-85; Ravine Decl. ¶ 19.
13	1	Fact 90: Duplicate Fact 90 omitted.	No response required.
15	1	Fact 90: Documents and testimony from at least 6 witnesses confirm that the landing page of open.ai prominently displayed the Open AI Mark, explained the purpose of the initiative, and enabled users to sign up via email.	<p>Ravine Decl. ¶15; Belkin Decl. ¶4; Gaer Decl. ¶¶5-7; Iavarone Decl. ¶4; Brewer Decl. Ex. 1 at 24:25-25:7, 28:23-29:7, Ex. 41, Ex. 51 at Response to RFA 3.</p> <p>Fact 90 presents an immaterial statement. Because of that, Fact 90 does not raise a genuine issue of material fact for purposes of this motion.</p> <p><i>Immaterial:</i> Defendants’ described landing page, which was not a use in commerce, is immaterial to the validity or timing of their asserted trademark rights. Perahia Decl. Ex. 10 at 160:21-161:1 (“Q. Okay. And so you didn’t -- you ultimately never did make the announcement that was referenced in this specimen, right? A. No. We couldn’t -- we didn’t get funding, ultimately, for the Open AI initiative[.]”), Ex. 13 (Gaer Tr) at 166:4-8 (“Q. When did you next put something on this website? A. Oh, I don’t remember what -- so I think most of the time it was this -- this kind of announcement page.”); Dkt. 100 ¶ 125 (“Relying on these [2015] assurances Ravine stopped pursuing the OpenAI initiative because as Brockman implied, it was indeed true that they stole the thunder of the original OpenAI now that there is one with Musk’s \$1 billion in the</p>

1			picture.”); <i>see also</i> S/RUF 24, 59-61; Ravine Decl. ¶ 19.
2			Defendants’ assertion that their landing
3			page “enabled users to sign up via email”
4			is immaterial to their attempts to show use
5			in commerce. Gaer testified that the “only
6			functionality available to the public was to
7			insert their e-mail address.” Perahia Dec.
8			Ex. 13 (Gaer Tr.) at 164:6-13. These
9			individuals were not “users” in any
10			meaningful or commercial sense—they
11			received no product, no communication,
12			and no service. Defendants’ decision to
13			label passive email sign-ups as “users”
14			illustrates their tendency to stretch basic
15			facts beyond recognition.
16	1	Fact 91: Ravine pitched Open AI to leaders in the tech industry, including, but not limited to, Google’s CEO, Siri’s co-founder, and Stripe’s CEO.	Ravine Decl. ¶¶16 & 20; Brewer Decl. Ex. 1 at 25:8-23, Ex. 8 at 38:8-39:25, Ex. 42, Ex. 43 ¶¶6-11, 61-63, Ex. 65.
17			Fact 91 presents an immaterial statement. Because of that, Fact 91 does not raise a genuine issue of material fact for purposes of this motion.
18			<i>Immaterial:</i>
19			The fact and its cited evidence is immaterial because it does not connect the pitch activity to any use in commerce or any good or service ever offered in commerce. It also predates Defendants’ conceded non-use of “Open AI” in commerce between February 2016 and September 2016. <i>See, e.g.</i> , S/RUF 31, 32, 59-61; RAF 83-85; Ravine Decl. ¶ 19. The pitched initiative never launched. <i>See</i> S/RUF 25.
20	1	Fact 92: Ravine attended various conferences in an effort to generate interest in Open AI.	Ravine Decl. ¶¶16; Brewer Decl. Exs. 42, 43 ¶¶7-8
21			Fact 92 presents an immaterial and unsupported statement. Because of that, Fact 92 does not raise a genuine issue of material fact for purposes of this motion.
22			<i>Immaterial:</i>
23			The fact and its cited evidence is immaterial because it does not connect Ravine’s attendance at any conference to the use in commerce or any good or service ever offered in commerce. The “initiative” (Brewer Decl. Ex. 43 ¶¶7-8) that Ravine attempted to generate interest in was never launched. <i>See</i> S/RUF 25, 32; Perahia Decl. Ex. 10 (Ravine Tr.) at 160:21-25 (“Q. Okay. And so you didn’t -- you ultimately never did make the announcement that was referenced in this
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1			specimen, right? A. No. We couldn't -- we didn't get funding, ultimately, for the Open AI initiative[.]"); Dkt. 100 ¶ 125 ("Relying on these [2015] assurances Ravine stopped pursuing the OpenAI initiative because as Brockman implied, it was indeed true that they stole the thunder of the original OpenAI now that there is one with Musk's \$1 billion in the picture.").
2			Even if the evidence showed use in commerce, it would be immaterial to establishing continuous use in commerce.
3			The evidence relating to conference attendance predates Defendants' conceded non-use of "Open AI" in commerce between February 2016 and the start of September 2016. <i>See, e.g.</i> , S/RUF 31, 32, 59-61; RAF 83-85; Ravine Decl. ¶ 19; <i>see also</i> Ravine Decl. ¶ 16 (referring to conference in May 2015); Brewer Decl. Exs. 42, 43 (describing activity in March and April 2015).
4			<i>Unsupported:</i>
5			The evidence that Ravine attended a party in connection with the "TED" conference (Brewer Decl. Ex. 42) does not support that Ravine attended this conference.
6			Brewer Exhibit 43 does not mention any conferences. At most, these exhibits refer to a single discussion Ravine had.
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18	1	Fact 93: Third party testimony and documents confirm Ravine's efforts to promote the Open AI brand before December 11, 2015.	Brewer Decl. Ex. 1 at 25:8-23, Ex. 8 at 38:8-39:25, Ex. 43 ¶¶ 7-11, Exs. 61-63.
19			Fact 93 presents an immaterial statement. Because of that, Fact 93 does not raise a genuine issue of material fact for purposes of this motion.
20			<i>Immaterial:</i>
21			The fact is immaterial to showing continuous use in commerce because Ravine's cited efforts to promote Open AI predate Defendants' conceded non-use of "Open AI" in commerce between February 2016 and September 2016. <i>See, e.g.</i> , S/RUF 31, 32, 59-61; RAF 83-85; Ravine Decl. ¶ 19.
22			Defendants' fact is immaterial to showing use in commerce because the cited evidence does not establish any promotion efforts related to any good or service ever offered in commerce. Deborah Reynolds testified that Ravine gave a presentation about the "Open AI project" to Google.
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1			<p>Brewer Decl. Ex. 1 (Reynolds Tr.) at 25:8-23. Tom Gruber testified that Ravine proposed the Open AI “initiative” to Larry Page, and that he held discussions with Ravine about the “Open AI initiative.” Gruber Decl. ¶¶ 8-9. Brewer Exhibits 62 and 63 relate to Ravine’s “potential idea” for an “AI School.” Ravine Decl. ¶ 17. None of these “projects,” “initiatives,” or “ideas” were ever launched. Perahia Decl. Ex. 10 (Ravine Tr.) at 160:21-25 (“Q. Okay. And so you didn’t -- you ultimately never did make the announcement that was referenced in this specimen, right? A. No. We couldn’t -- we didn’t get funding, ultimately, for the Open AI initiative[.]”); Dkt. 100 ¶ 125 (“Relying on these [2015] assurances Ravine stopped pursuing the OpenAI initiative because as Brockman implied, it was indeed true that they stole the thunder of the original OpenAI now that there is one with Musk’s \$1 billion in the picture.”).</p> <p>The fact of Defendant’s 2015 activity is also immaterial to establishing continuous use in commerce because it predates Defendants’ conceded non-use of “Open AI” in commerce between February 2016 and the start of September 2016. <i>See</i> S/RUF 24, 59-61; RAF 83-85; Ravine Decl. ¶ 19.</p>
2	1, 5	<p>Fact 94: In 2015, Ravine spent \$50,000 on his efforts to get his Open AI initiative off the ground, including software development costs, marketing costs, and fundraising activities.</p>	<p>Ravine Decl. ¶¶ 16, Exs. 6-9; Gaer Decl. ¶ 8, Ex. 1 & ¶ 10.</p> <p>Fact 94 presents an unsupported and immaterial statement. Because of that, Fact 94 does not raise a genuine issue of material fact for purposes of this motion.</p> <p><i>Unsupported:</i> The cited evidence does not support that Ravine’s “OpenAI initiative [got] off the ground” or offered goods or services in commerce. The undisputed evidence shows the OpenAI initiative never “got off the ground.” <i>See</i> Dkt. 100 ¶ 125 (“Relying on these [2015] assurances Ravine stopped pursuing the OpenAI initiative because as Brockman implied, it was indeed true that they stole the thunder of the original OpenAI now that there is one with Musk’s \$1 billion in the picture.”); Perahia Decl. Ex. 10 (Ravine Tr.) at 160:21-25 (“Q. Okay. And so you didn’t -- you ultimately never did make the announcement that was referenced in this specimen, right? A. No.</p>

1			<p>We couldn't -- we didn't get funding, ultimately, for the Open AI initiative[.]"); <i>see also</i> S/RUF 24, 59-61; RAF 83-85; Ravine Decl. ¶ 19.</p> <p><i>Immaterial:</i> Because the initiative never got off the ground, this statement is immaterial to any issue in this motion.</p> <p>Amounts spent developing software are immaterial to the validity and timing of Defendants' asserted trademark rights or any other issue raised by Plaintiff's motion.</p> <p>Expenditures made on marketing in 2015 are immaterial to Defendants' claimed rights because Defendants cannot show any continuous use in commerce that began before December 11, 2015 (<i>see, e.g.</i>, S/RUF 31, 32). As discussed above, the 2015 initiative was not launched.</p> <p>The cited bank records from 2015 (Gaer Decl. Ex. 1 at 2-289) do not mention "Open AI" and list the ordering customers as "We Communicate." and "Upwork Escrow Inc." <i>See also</i> Scher Decl. Ex. A.</p>
2	1	<p>Fact 95: By December 10, 2015, Defendants' open.ai website had attracted the attention of a modest but proportionally meaningful portion of the AI research community. At least 393 unique users had visited the website, and about 149 had signed up with their emails.</p>	<p>Tenery Decl. Ex. 1 ¶¶60-66, 72-78, 80-84; Ex. 2 ¶¶50, 74.; Brewer Decl. Ex. 61</p> <p>Fact 95 presents an immaterial and unsupported statement. Because of that, Fact 95 does not raise a genuine issue of material fact for purposes of this motion.</p> <p><i>Immaterial:</i> It is immaterial that Defendants website "attracted attention" without any showing of use of goods or service, press mentions, social media posts, or any other evidence showing association of "Open AI" with a single source of goods.</p> <p>User activity as of December 10, 2015 is immaterial to establishing Defendants' trademark rights given Defendants' conceded non-use of "Open AI" in commerce between February 2016 and the start of September 2016. <i>See</i> S/RUF 31, 32, 59-61; RAF 83-85; Ravine Decl. ¶ 19.</p> <p>Email signups as of December 10, 2015 in connection with an initiative that was never launched are immaterial to use in commerce or the validity of Defendants'</p>

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asserted trademark rights. *See* RAF 90; Dkt. 100 ¶ 125 (“Relying on these [2015] assurances Ravine stopped pursuing the OpenAI initiative because as Brockman implied, it was indeed true that they stole the thunder of the original OpenAI now that there is one with Musk’s \$1 billion in the picture.”); Perahia Decl. Ex. 10 (Ravine Tr.) at 160:21-25 (“Q. Okay. And so you didn’t -- you ultimately never did make the announcement that was referenced in this specimen, right? A. No. We couldn’t -- we didn’t get funding, ultimately, for the Open AI initiative[.]”).

It is immaterial that anyone signed up to receive an email about an announcement that was never made, as there is no evidence that anyone who signed up ever received an email from Defendants. *See id.*; Perahia Decl. Ex. 13 (Gaer Tr.) at 166:4-9 (Gaer admitting he could not recall whether any email was ever sent to those addresses).

Unsupported:

None of the cited evidence supports that Defendant’s open.ai website received “attention” from a “proportionally meaningful portion of the AI research community.” The cited expert report reflects that only 41 users who visited open.ai by December 10, 2015 were from the US. Tenery Decl. Ex. 2 ¶ 74. No evidence is offered that any of these 41 users were members of the AI research community (as opposed to, for example, accidental visitors, visits by agents or friends of Ravine, or visits by automated web scrapers).

None of the cited evidence concerns the size of the AI research community as of December 10, 2015, or how many AI researchers would constitute a “modest but proportionally meaningful portion” of this community.

Even if all 41 U.S. users were part of the AI research community, that is not “a proportionally meaningful portion” of the AI research community as of December 2015. *See, e.g.*, Lipson Decl. Ex. A, ¶¶ 12-21; *id.* at 12 (graph showing that attendance at major AI conferences

1			exceeded 20,000 people by 2016); Brewer Decl. Ex. 3 at 41:22-42:1 (“But the entire AI community -- the tens or hundreds of thousand who write, who are interested in AI, who write code using AI or use AI to solve problems -- that community was well aware of -- of OpenAI [in 2016]”).
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5		Fact 95: [Fact omitted] [sic]	No response required.
6	1	Fact 96: Plaintiff had settled on the name just days before December 11, 2015, had not filed a trademark registration, and had no goods or services to offer.	Brewer Decl. Exs. 27, 28, 66, Ex. 11 at 108:17-24.
7			Undisputed for purposes of this motion.
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11	1	Fact 97: On December 11, 2015, a colleague who knew about Ravine’s Open AI notified Ravine that Plaintiff had announced that it was forming OpenAI, Inc.	Ravine Decl. ¶19, Ex. 10.
12			Undisputed for purposes of this motion.
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16	1,3	Fact 98: To protect the Open AI brand, Ravine filed an application to register the Open AI mark with the USPTO that same day without assistance of counsel.	Ravine Decl. ¶19; Brewer Decl. Ex. 44.
17			Fact 98 is undisputed as to its claim that Ravine filed an application to register “Open AI” on December 11, 2015, but unsupported as to its claim that Ravine had an “Open AI mark” capable of being registered. Because of that, Fact 98 does not raise a genuine issue of material fact for purposes of this motion.
18			<i>Unsupported:</i>
19			The cited evidence does not support that Ravine had trademark rights in OpenAI in December 2015.
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24			The USPTO examiner determined that Defendant Ravine’s December 11, 2015 application “does not show the applied-for mark in use in commerce” and “does not show the mark used in reference to or in connection with the services in the application.” See S/RUF 59-61; see also Ravine Decl. ¶ 19.
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28	1, 4	Fact 99: [Fact omitted]	No response required.

1, 4	Fact 100: On December 12, 2015, Brockman visited www.open.ai and verified that it was an operating website.	Brewer Decl. Ex. 51 at Response to RFA 3.	<p>Fact 100 is undisputed as to Brockman visiting www.open.ai on or around December 15, 2015, but the remainder is immaterial and unsupported. Because of that, Fact 100 does not raise a genuine issue of material fact for purposes of this motion.</p> <p><i>Unsupported:</i> The cited evidence reflects that Mr. Brockman visited www.open.ai after receiving an email from Mr. Ravine with that domain name and saw the webpage reflected in the Internet Archive’s capture of it in December 2015, a copy of which is attached to the Scher Declaration as Exhibit R (filed at Dkt. 46-3); <i>see also</i> Scher Decl. Ex. Q (Dkt. 46), ¶ 5. As that image reflects, the website at that time did not reflect use in commerce or any goods or services being offered. <i>See also</i> S/RUF 59-61; RAF 83-85; Ravine Decl. ¶ 19. This does not support that Mr. Brockman “verified it was an operating website.”</p> <p><i>Immaterial:</i> Even if Defendants use “operating” to mean nothing more than what Mr. Brockman confirmed, it is immaterial to establishing trademark rights that a website is “operational” if it is not offering goods and services or promoting goods and services that are eventually offered—which the December 15, 2015 website was not doing. <i>See</i> RAF 90; Dkt. 100 ¶ 125 (“Relying on these [2015] assurances Ravine stopped pursuing the OpenAI initiative because as Brockman implied, it was indeed true that they stole the thunder of the original OpenAI now that there is one with Musk’s \$1 billion in the picture.”); Perahia Decl. Ex. 10 (Ravine Tr.) at 160:21-25 (“Q. Okay. And so you didn’t -- you ultimately never did make the announcement that was referenced in this specimen, right? A. No. We couldn’t -- we didn’t get funding, ultimately, for the Open AI initiative[.]”); S/RUF 59-61; RAF 83-85; Ravine Decl. ¶ 19.</p>
1, 4	Fact 101: On December 16, 2015, Brockman met Ravine in person and asked Ravine to	Brewer Decl. Ex. 11 at 69:19-70:5, Ex. 30, Ex. 55;	Undisputed for purposes of this motion.

1		change his venture's name to something other than Open AI—but Ravine declined.	Ravine Decl. ¶¶20-21.	
2	1, 4	Fact 102: Out of Ravine's presence, Altman admitted he wanted Defendants to "change their name," and Brockman assured Altman he was "working on it" and "playing a medium-term game."	Brewer Decl. Ex. 30.	Undisputed for purposes of this motion.
3	1	Fact 103: By April 27, 2016, Ravine's website had received over 17,000 interactions for thousands of unique users and nearly 1,000 verified email signups.	Tenery Ex. 1 ¶63 (17,384 interactions, 2,629 unique users, 998 email signups).	<p>Fact 103 presents an immaterial statement. Because of that, Fact 103 does not raise a genuine issue of material fact for the purpose of this motion.</p> <p><i>Immaterial:</i> User activity as of April 2016 is immaterial to establishing Defendants' trademark rights given Defendants' conceded non-use of "Open AI" in commerce between February 2016 and the start of September 2016. <i>See</i> S/RUF 31, 32, 59-61; RAF 83-85; Ravine Decl. ¶ 19. As such, even if the evidence showed use in commerce, it would be immaterial to establishing continuous use in commerce.</p> <p>Verified email signups as of April 2016 in connection with an initiative that was never launched are immaterial to the validity of Defendants' asserted trademark rights. <i>See</i> RAF 90; Dkt. 100 ¶ 125 ("Relying on these [2015] assurances Ravine stopped pursuing the OpenAI initiative because as Brockman implied, it was indeed true that they stole the thunder of the original OpenAI now that there is one with Musk's \$1 billion in the picture."); Perahia Decl. Ex. 10 (Ravine Tr.) at 160:21-25 ("Q. Okay. And so you didn't -- you ultimately never did make the announcement that was referenced in this specimen, right? A. No. We couldn't -- we didn't get funding, ultimately, for the Open AI initiative[.]"); <i>see also</i> S/RUF 59-61; Ravine Decl. ¶ 19.</p>

1			<p>It is immaterial that anyone signed up to receive an email about an announcement that was never made, as there is no evidence that anyone who signed up ever received an email from Defendants. <i>See</i> Perahia Decl. Ex. 10 (Ravine Tr.) at 160:21-25, Ex. 13 (Gaer Tr.) at 164:6-13 (Gaer admitting he could not recall whether any email was ever sent to those addresses).</p> <p>The cited evidence concerning the number of “interactions” a website had is not material to establishing Defendants’ asserted trademark rights. Mr. Tenery’s measure of “interactions” is not a proxy for web traffic, the number of registered or unregistered users, or the number of times the claimed services offered by any website were used; rather, it includes any “requests made of the web server,” which separately counts whenever a server loads asset files, such as an image, script, or stylesheet that is contained within a broader webpage. Mr. Tenery testified that “a single web page visit” by one user “could generate 10 or more interactions in [his] counts.” Scher Decl. Ex. I (Tenery Tr.) at 138:23-139:1.</p>
2	1	<p>Fact 104: Hub had numerous features, for collaboration and sharing, and cost \$45,000 to develop.</p>	<p>Ravine Decl. ¶26; Response to Facts 33-35.</p> <p>Fact 104 presents an immaterial and unsupported statement. Because of that, Fact 104 does not raise a genuine issue of material fact for the purpose of this motion.</p> <p><i>Immaterial:</i> Development costs associated with creating a website and the numerosity of its features are immaterial to Defendants’ trademark rights, which require actual, bona fide use.</p> <p><i>Unsupported:</i> The cited evidence does not support that Hub cost \$45,000 to develop. Ravine “approximat[es]” that he paid \$45,000 to Nikita Gaer to develop Hub. Ravine Decl. ¶ 25. Defendants’ fact is not similarly qualified.</p> <p>The bank records submitted by Gaer (Gaer Decl. Ex. 1) do not mention “Open AI”; most records from 2015 through November 2016 list the ordering customer</p>

1			as “We Communicate” (e.g., <i>id.</i> at 27, 30, 33, 36, 39), with records from December 2016 listing the ordering customer as “Upwork Escrow Inc.” (e.g., <i>id.</i> at 90, 93, 96, 99, 102, 105). <i>See also</i> Scher Decl. Ex. A.
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5	1, 4	Fact 105: On January 5, 2017, the USPTO issued a non-final Office Action rejecting Plaintiff’s 2016 trademark application, partially on the grounds that there was a “likelihood of confusion” with Ravine’s Open AI Mark and then Plaintiff abandoned the application.	Brewer Decl. Ex. 7 at 107:1-3, 11-18, 108:3-19, 110:23-111:2, 111:8-17; Ex. 19 at 4-30.
6			Fact 105 is undisputed as to Plaintiff’s abandonment of its 2016 application following the USPTO’s January 5, 2017 non-final office action, but the remainder of Fact 105 is immaterial and unsupported. Because of that, Fact 105 does not raise a genuine issue of material fact.
7			<i>Unsupported:</i>
8			The cited evidence does not support Defendant’s fact. Brewer Exhibit 19 reflects that the USPTO office action stated that Ravine’s “ <i>pending application may present a bar to registration,</i> ” such that “[i]f the mark in the referenced application registers, applicant’s mark <i>may be refused ... because of a likelihood of confusion.</i> ” Brewer Decl. Ex. 19 at 6 (emphasis added). It stated that Plaintiff “may present arguments in support of registration by addressing the issue of the potential conflict between applicant’s mark and the mark in the referenced application, and that Plaintiff’s “election not to submit arguments at this time in no way limits applicant’s right to address this issue later.” <i>Id.</i> Nothing in the cited testimony (Brewer Ex. 7) contradicts this.
9			<i>Immaterial:</i>
10			The cited evidence is immaterial to the timing or validity of Defendants’ asserted trademark rights or Plaintiff’s laches defense. <i>See</i> SUF 31-34, 58-63, 69, 71-77; McCurry Decl. ¶ 6 (“Nothing in my investigation showed that Guy Ravine had made a use in commerce of the ‘Open AI’ mark in March of 2015 or at any time before I filed OpenAI’s applications with the PTO to register its ‘Open AI’ trademarks.”).
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26	1, 4	Fact 106: In response to the Office Action, Plaintiff’s then-COO Chris Clark emailed Brockman, asking	Brewer Decl. Ex 58.
27			Undisputed for purposes of this motion.
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1		about Ravine’s trademark.		
2		Brockman		
3		responded: “Yes,		
4		I’ve met him. He’s a		
5		bit weird. Had been		
6		trying to make		
		open.ai into a thing.		
		May be willing to		
		give up on open.ai		
		now though.”		
7	1, 4	Fact 107: Brockman	Brewer Decl.	Fact 107 presents an immaterial statement.
8		visited Ravine’s	Ex 11 at	Because of that, Fact 107 does not raise a
9		open.ai website and	87:12-19.	genuine issue of material fact for the
10		confirmed that it		purpose of this motion.
11		could still be		<i>Immaterial:</i>
12		accessed but took no		The fact that Defendants’ website could be
13		action to contact		“accessed” in March 2017 is immaterial to
14		Ravine or the		Defendants’ trademark rights or Plaintiff’s
15		USPTO about		laches defense. Scher Decl. Ex. B
16		Ravine’s trademark.		(Brockman Tr.) at 87:8-15, 87:25-88:6. At
17				that time, the open.ai website displayed
18				“the same thing that had been there before”
19				(<i>id.</i> at 87:13-15); <i>i.e.</i> , the open.ai landing
				page in December 2015 (<i>see id.</i> Ex. R
				(Dkt. 46-3), Ex. Q (Dkt. 46) ¶ 5 (“The
				appearance of the webpage when I visited
				Mr. Ravine’s webpage in December 2015
				was consistent with Mr. Ravine only
				having ‘idea[s]’, not a product or service
				he was actually offering.”)). Without
				evidence that Brockman knew of Ravine’s
				use in commerce, it is immaterial that he
				“took no action” about Ravine’s claimed
				trademark.
20	1, 4	Fact 108: When	Brewer Decl.	Fact 108 is undisputed as to Plaintiff being
21		Plaintiff filed its	Ex. 7 at 70:11-	aware of the fact of Defendants’
22		January 26, 2022	21, 89:2-90:19	Supplemental Registration and open.ai
23		trademark		webpage on January 26, 2022, but the
24		applications, it knew		remainder is immaterial and unsupported.
25		about Ravine’s		Because of that, Fact 108 does not raise a
26		registration and that		genuine issue of material fact for purposes
27		Defendants’ open.ai		of this motion.
28		website and		<i>Immaterial:</i>
		subdomains were		That a trademark attorney acting on behalf
		still in use.		of Plaintiff OpenAI became aware of
				Defendants’ registration and certain
				webpages in December 2021 (<i>see</i> Scher
				Decl. Ex. C (McCurry Tr.) at 12:13-13:6,
				37:17-20) is immaterial to Defendants’
				rights or Plaintiff’s laches defense—

1			<p>particularly because she did not believe that Defendants’ websites were being used in commerce. <i>See</i> McCurry Decl. ¶ 6 (“Nothing in my investigation showed that Guy Ravine had made a use in commerce of the ‘Open AI’ mark in March of 2015 or at any time before I filed OpenAI’s applications with the PTO to register its ‘Open AI’ trademarks.”); Brewer Decl. Ex. 7 at 90:2-7 (content on hub.open.ai “appeared to copy posts from the website GitHub”).</p> <p><i>Unsupported:</i> The cited evidence does not support that Defendants’ open.ai website and subdomains were used in commerce, much less that Plaintiff knew of it. <i>Cf.</i> SUF 33, 34, 62.</p> <p>The cited testimony does not support that McCurry—or anyone else associated with Plaintiff—was aware of more than one “subdomain” of open.ai on January 26, 2022 (let alone all of its subdomains). The only subdomain discussed in the cited testimony is hub.open.ai, which Ravine’s specimen identified. <i>See</i> SUF 62; <i>see also</i> SUF 33, 34.</p>
2	1, 4	<p>Fact 109: After Altman failed to purchase Ravine’s “IP rights,” Plaintiff continued to monitor Defendants’ website and tools.</p>	<p>Brewer Decl. Ex. 7 at 102:3-16, 122:2-25; 123:7-9; 124:23-125:24; 126:10-131:4, 135:6-138:15, Ex. 18, Ex. 26.</p> <p>Fact 109 presents an immaterial and unsupported statement. Because of that, Fact 109 does not raise a genuine issue of material fact for the purpose of this motion.</p> <p><i>Immaterial:</i> The fact that an attorney representing Plaintiff visited one of Ravine’s webpages at some point in 2022 is immaterial to any party’s trademark rights or laches. Rebecca McCurry, the attorney whose testimony (Brewer Ex. 7) and documents (<i>id.</i>, Ex. 18, 26) are cited, did not believe that Ravine’s website or tools were being used in commerce. McCurry Decl. ¶ 6 (“Nothing in my investigation showed that Guy Ravine had made a use in commerce of the ‘Open AI’ mark in March of 2015 or at any time before I filed OpenAI’s applications with the PTO to register its ‘Open AI’ trademarks.”); <i>see</i> Scher Decl. Ex. C (McCurry Tr.) at 101:20-102:16, 134:23-135:15 (testifying regarding Exs. 18 & 26).</p>

1			<p><i>Unsupported:</i> Brewer Exhibit 26 does not reflect any “monitoring” of “Defendants’ website or tools,” but information from a Google search. Neither does Brewer Ex. 18, which reflects a February 2022 screen capture of the hub.open.ai webpage identified in Defendants’ 2016 PTO specimen.</p> <p>None of the cited exhibits establishes a pre-existing “monitor[ing]” of Defendants’ website or tools that was “continued.”</p>
2	1, 3, 4	<p>Fact 110: Plaintiff did not consistently and prominently display its OpenAI Mark in connection with its most popular products, DALL-E and ChatGPT.</p>	<p>Response to Fact 4; Chiagouris Decl. ¶¶26-28 & Ex. 1 ¶¶56-63, Ex. 2 ¶¶23-29, ¶¶36-39; Brewer Decl. Exs. 33, 35, 36, 56, 57, 59 (no OpenAI branding).</p> <p>Fact 110 presents an immaterial and unsupported statement. Because of that, Fact 110 does not raise a genuine issue of material fact for the purpose of this motion.</p> <p><i>Immaterial:</i> Whether Plaintiff “consistently” (as opposed to continuously) and “prominently” displayed its mark in connection with ChatGPT and DALL·E 2 (or DALL·E) is immaterial to whether Plaintiff used its mark in commerce, whether the mark acquired secondary meaning at the relevant time, laches, or Defendants’ fraudulent registration.</p> <p>The cited evidence does not support the stated fact. It reflects isolated examples from which Defendants and their expert argue the OpenAI Mark was not displayed “consistently” or “prominently” at a given moment. Defendants mischaracterize the evidence they rely upon, stating the mark is not displayed when it is, and providing incomplete portions of documents. <i>See</i> Scher Decl. ¶¶ 20-23, Exs. S, T.</p> <p>From the initial launch of DALL·E 2 and ChatGPT, Plaintiff has continuously used the OpenAI Mark in connection with DALL·E 2 and ChatGPT. <i>See, e.g.,</i> Brockman Decl. Ex. B at 316 (DALL·E 2 Blog Post); Dyett Decl. Ex. K at 6 (ChatGPT Blog Post); Ex. L at 1, 2 (ChatGPT Plus Blog Post); <i>see generally</i> Brockman Decl. Ex. B; SUF 4.</p>

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1			including the seniority of its trademark rights.
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3			<i>Unsupported:</i>
4			Defendants' cited evidence fails to support
5			an absence of secondary meaning because
6			their evidence and conclusions are not
7			based on the relevant universe for
8			determining secondary meaning—i.e.,
9			Plaintiff's consumers—or the relevant
10			question for determining secondary
11			meaning—i.e., whether Plaintiff's
12			consumers recognize "OpenAI" as an
13			indicator of source versus a description of
14			goods and services—not whether the
15			general population can name who created
16			ChatGPT or immediately call to mind the
17			name "OpenAI" in connection with AI
18			products and companies. <i>See</i> Reply,
19			Section I.A.
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1, 2	Fact 113: Plaintiff did not consistently and prominently display the OpenAI Mark in association with its goods and services or promotion thereof.	Brewer Decl. Ex. 14; Chiagouris Decl. Ex. 1 ¶¶56-64, Ex. 2 ¶¶13-39; Response to Fact 4.	Fact 113 presents an immaterial and unsupported statement. Because of that, Fact 113 does not raise a genuine issue of material fact for the purpose of this motion. <i>Immaterial:</i> Whether Plaintiff "consistently" (as opposed to continuously) and "prominently" displayed its mark is immaterial to whether Plaintiff's mark acquired secondary meaning or the issue of confusion. <i>Unsupported:</i> The evidence Defendants cite does not support their stated fact. Defendants and their expert provide a handful of examples (spanning at least a 5-year time period) in which they contend the OpenAI Mark was not displayed "consistently" or "prominently" at a given moment. This mischaracterizes the evidence they rely upon. <i>See</i> Scher Decl. ¶¶ 20-23, Exs. S, T. <i>Contradicted by the evidence:</i> Plaintiff has continuously used the OpenAI mark in connection with its products, and it has prominently displayed the mark—i.e., in

1			a manner that users and likely users are likely to see it. <i>See, e.g.,</i> Scher Decl. ¶¶ 20-23, Exs. S, T; Brockman Decl. Ex. B; Dyett Decl. Ex. K, L; <i>see generally</i> SUF 4.
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4	1, 2	Fact 114: Plaintiff's OpenAI Mark did not have secondary meaning by August 4, 2023.	Chiagouris Decl. & Exs. 1-2; Ex. 6 at 25:3-5, 25:12-26:6.
5			Fact 114 presents an immaterial and unsupported legal conclusion. Because of that, Fact 114 does not raise a genuine issue of material fact for the purpose of this motion.
6			<i>Immaterial:</i>
7			Whether Plaintiff's OpenAI mark had secondary meaning <i>by August 4, 2023</i> is immaterial to any issues raised in Plaintiff's motion, including the seniority of its trademark rights.
8			<i>Unsupported:</i>
9			The evidence Defendants cite is insufficient to support their stated "fact." As the Chiagouris Declaration does not contain an Exhibit 6, presumably Defendants intend to cite to Exhibit 6 of the Brewer Declaration, but the cited testimony of Plaintiff's confusion survey expert that he did not <i>also</i> conduct a secondary meaning survey does not support Defendants' claimed "fact."
10			As discussed in RAF 112, <i>supra</i> , the Chiagouris Report is immaterial to the issue of secondary meaning [REDACTED]
11			[REDACTED]
12			[REDACTED]
13			[REDACTED]
14			[REDACTED], and
15			"prominence" of branding.
16			To the extent the Chiagouris Declaration offers opinions beyond those expressed in his reports, it is improper.
17			<i>Contradicted by the evidence:</i>
18			Plaintiff's OpenAI mark did acquire secondary meaning by August 4, 2023. <i>See generally</i> SUF 1-21.
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27		Fact 115: The Open AI Mark is suggestive.	Leonard Decl. Ex. 1; Brewer Decl. Ex. 15 ¶26, Ex. 11 at
28			Fact 115 presents an unsupported legal conclusion, which is also untimely because it was not included in Defendants' April 30, 2025 filing. Because of that, Fact 115

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		<p>39:24-40:9, 41:1-9, 104:17-105:7; Ex. 5 at 93:16-94:14.</p>	<p>does not raise a genuine issue of material fact for the purpose of this motion.</p> <p><i>Unsupported:</i> The evidence Defendants cite is insufficient to support their stated “fact,” which improperly contradicts Ravine’s prior declaration and Defendants’ own counterclaims, which describe Defendants as operating “a literally open AI company.” Dkt. 100 ¶ 189; SUF 45.</p> <p>The Leonard report fails to provide an opinion that addresses the relevant legal standard for suggestiveness, as it improperly focuses on the definition of “open” to mean “open source.” <i>See</i> Leonard Decl. Ex. 1 at ¶¶ 63-64. In addition, Leonard does not have the technological credentials required to assess whether “open source” describes any quality or characteristic of Defendants’ goods and services (<i>id.</i> ¶ 2 (he was “informed by counsel for Defendants that the products/services provided by Defendants were not literally open-source nor non-proprietary”), and he ignored evidence of Defendants’ own use of “open” to describe their goods and services.</p> <p>Testimony that there are multiple meanings of “open” and not one “universally accepted definition or understanding” (Brewer Decl. Ex. 5 at 93:16-94:14), and that “open” is “open-ended in terms of how you could interpret it,” and does not correspond to a single “particular meaning,” but rather has “many meanings in the dictionary” (<i>id.</i>, Ex. 11 at 39:24-40:9, 41:1-9, 42:1-9, 104:17-105:7) does not support the legal conclusion of non-descriptiveness—i.e., that no meaning of “open” describes the qualities or characteristics of Defendants’ goods and services.</p> <p><i>Contradicted by the evidence:</i> SUF 45, S/RUF 46 (admitting that the USPTO found the “Open AI” mark descriptive); McCurry Decl. ¶ 3, Ex. A (USPTO 3/22/2017 Office Action stating “registration is refused because the applied-for mark merely describes a feature of applicant’s services”).</p>
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1 Pursuant to this Court's Standing Order in Civil Cases, I attest that the evidence cited
2 herein fairly and accurately supports the facts as asserted.

3
4 DATED: May 21, 2025

Respectfully submitted,

5 QUINN EMANUEL URQUHART &
6 SULLIVAN, LLP

7
8 By /s/ Margret M. Caruso
9 Margret M. Caruso
10 *Attorneys for Plaintiff OpenAI, Inc.*
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Exhibit O

Scher Declaration ISO Plaintiff's Motion for Summary Judgment

FILED UNDER SEAL

EXHIBIT 13

**Perahia Declaration ISO
Plaintiff's Motion for
Summary Judgment**

HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

OPENAI, INC., a Delaware corporation,)
)
Plaintiff,)
)
v.) Case No.
) 4:23-cv-03918-YGR
OPEN ARTIFICIAL INTELLIGENCE, INC., a)
Delaware corporation; and GUY RAVINE,)
an individual,)
)
Defendants.)
)
)
OPEN ARTIFICIAL INTELLIGENCE, INC., a)
Delaware corporation; and GUY RAVINE,)
an individual,)
)
Counterclaimants,)
v.)
)
OPENAI, INC., a Delaware corporation;)
SAMUEL ALTMAN, an individual; and)
GREGORY BROCKMAN, an individual,)
)
Counterclaim-Defendants.)
)
)
AND RELATED COUNTERCLAIMS.)
)

*** HIGHLY CONFIDENTIAL***

*** ATTORNEYS' EYES ONLY ***

DEPOSITION OF NIKITA GAER

DECEMBER 6, 2024

REPORTED BY: RENEE HARRIS, CSR 14168, CCR, RPR
JOB NO. 7055662; PAGES: 1 - 282

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1 Mr. Ravine, we just need you to identify
2 yourself.

3 MR. RAVINE: Yeah. My name is Guy
4 Ravine. I'm a named plaintiff and defendant
5 in this lawsuit. 08:12:51

6 THE VIDEOGRAPHER: Okay. Thank you so
7 much.

8 Whenever you're ready, Renée.

9
10 NIKITA GAER,
11 called as a witness and having been first duly
12 sworn by the Certified Shorthand Reporter, was
13 examined and testified as follows:

14
15 EXAMINATION 08:13:21

16 BY MR. WILSON:

17 Q. Mr. Gaer, can you tell us what the
18 appropriate pronunciation of your last name is.

19 A. Gaer. Gaer.

20 Q. Okay. 08:13:29

21 A. Yeah.

22 Q. And can you tell us where you are in
23 Kazakhstan at the moment?

24 A. I'm in a city called Uralsk.

25 Q. And how do you -- do you know how you 08:13:41

Page 11

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1 working on artificial intelligence project was
2 2015.

3 Q. Okay. And what was that project?

4 A. It was Open AI Initiative.

5 Q. And what did you do in your first project 08:24:22
6 for the Open AI Initiative?

7 A. I developed this website with
8 announcement, like web announcement page.

9 Q. Do you recall when in 2015 you did that?

10 A. I believe it was April. 08:24:39

11 Q. Okay. Before you started working on the
12 website, did you have a discussion with Mr. Ravine
13 about what this website was going to do?

14 A. Yes.

15 Q. Do you recall anything about that 08:25:00
16 discussion now?

17 A. Yes.

18 Q. And what did he tell you?

19 A. So he tell me he working on this Open AI
20 Initiative. He kind of pitching this idea to 08:25:17
21 other people. So he told me what he already have
22 some project, like something which already kind of
23 exists.

24 He showed me briefly the -- so it's
25 something called -- look like Wikipedia, some -- 08:25:32

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1 Wikipedia-looking page, with Open AI logo on it.

2 Plus he show me, like, we have this thing. Now we

3 going to kind of announce initiative. So to

4 collect all -- like, basically, to start building

5 Open AI -- like open artificial intelligence. 08:25:46

6 Yeah, so basically explained me what is initiative

7 about.

8 Q. And when in -- did he explain to you the

9 purpose of the web page?

10 A. Yes. So the idea is, basically, we 08:26:07

11 announce what they going to build, Open AI, like

12 open artificial intelligence initiative, so people

13 could get there so they can put their e-mail, like

14 submit e-mail. So they interested in this

15 project, so they can -- like, interested in 08:26:24

16 contributing to open source artificial

17 intelligence.

18 So basically, idea is to build AI openly

19 and for benefit of the humanity.

20 Q. How long did you work on the web page? 08:26:33

21 MR. SCHER: Objection. Vague.

22 THE WITNESS: I think it was --

23 BY MR. WILSON:

24 Q. Let me rephrase the question.

25 Do you recall how many -- you said you 08:26:45

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1 worked on the web page for Open AI?

2 A. Yeah, that's right.

3 Q. Okay. Do you recall how many hours you
4 devoted to work on the web page?

5 A. I think something like 60 hours. 08:27:00

6 Q. Okay. And this work on the web page, did
7 you get paid for it?

8 A. Yes.

9 Q. And did Mr. Ravine pay you through a
10 different company other than We Communicate? 08:27:23

11 A. I don't remember exactly. So I don't
12 remember exactly how he paid me, like, ten years
13 ago.

14 Q. Okay. After -- and in terms of building
15 the web page, do you recall what steps you took to 08:27:47
16 build the web page?

17 A. I'm sorry. I'm not sure what you mean.

18 Q. Let me rephrase the questions.

19 Do you recall what tasks you undertook in
20 order to build the web page? 08:28:03

21 A. Yeah. So basically, I had to kind of
22 write HTML code with CSS -- like, so, basically, I
23 had to -- I got the design from our designer,
24 Serge Belkin, which work with us at the time.

25 So I -- yeah, I turn this, like, 08:28:22

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1 MR. WILSON: We've been going about an
2 hour. So unless there's any objection, I
3 think it's a good time for a ten-minute
4 break.

5 So, Mr. Gaer, it's up to you, but 09:05:46
6 traditionally what people do when we're on
7 their break is they mute their feed and they
8 turn their camera off.

9 A. Okay. Thank you.

10 MR. WILSON: So we'll be back in ten 09:05:59
11 minutes.

12 THE VIDEOGRAPHER: Off the record at the
13 9:05 a.m.

14 (Short break taken.)

15 THE VIDEOGRAPHER: We are on the record 09:18:26
16 at 9:17 a.m., and this is the beginning of
17 Media 2 in the deposition of Nikita Gaer.

18 BY MR. WILSON:

19 Q. All right. Mr. Gaer, after the third
20 collaboration tool in 2017, did you work on any 09:18:43
21 other project related to Open AI?

22 A. Yeah. I think -- I think so. The next
23 kind of version of this third, which kind of was
24 actual evolution of it, was also in 2017. But I
25 honestly don't recall when it was exactly, what 09:19:17

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1 was the month or, like, the period when we started
2 work on this. So it's kind of naturally grows out
3 of this third iteration. So we just, yeah, make
4 it -- it looks better and add more functionality
5 to this.

09:19:36

6 So basically, it was, we could say,
7 fourth iteration of collaboration tool.

8 Q. Okay. Do you recall, did it have a name,
9 or --

10 A. We deployed it to decentralize at Open

09:19:46

11 AI. So we called it Decentralized.

12 Q. Do you recall why it was called
13 Decentralized?

14 A. I mean, basically, that's kind of, I
15 think, similar thing to Open. So it's kind of
16 not -- AI not controlled by central entity. So
17 it's kind of controlled by open community.

09:20:01

18 Q. Do you recall this -- another iteration
19 of the collaboration tool, do you recall how it
20 was different from the version that we discussed
21 just before the break?

09:20:24

22 A. So it was -- basically, it use -- use the
23 third iteration as a basis. So they used the same
24 technology.

25 So in this third iteration, we use a

09:20:36

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1 project called editpad [phonetic], so -- which we
2 used as a basis, as well. So we -- we edit the
3 big part of it to make it work; so to make it
4 modern and make it work fast. So it started to
5 work much faster after that. 09:20:51

6 We also had a nicer design. So
7 previously, I think I designed it myself, I mean
8 with, Guy's feedback. So this iteration had
9 actual design, also from Serge Belkin. So it
10 looks better. It has more functionality than 09:21:09
11 that. So we had a talks functionality here. We
12 had basically discussion functionality. You was
13 able to run the code, actually. So they had a
14 code blocks which could run. So it could
15 technically run the code on the models on this 09:21:26
16 project.

17 So we used the third iteration as a
18 basis, but add more stuff and improve it
19 technically and visually from the third iteration.

20 Q. And you said you could use code in the 09:21:36
21 third generation. So you could write computer
22 code and then have it demonstrate on this version
23 of collaboration called Decentralized?

24 A. Yes, you could -- you could run your
25 code, you could execute it, actually and see the 09:21:55

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1 with anyone about this case?

2 MR. CUNNINGHAM: Same objections.

3 MR. WILSON: Join.

4 MR. CUNNINGHAM: You're really treading
5 on work product. How they are preparing for 12:16:04
6 trial, it's a work product immunity.

7 MR. SCHER: Are you instructing him not
8 to answer?

9 MR. CUNNINGHAM: I'm instructing him not
10 to answer the question. 12:16:27

11 BY MR. SCHER:

12 Q. Are you going to follow your counsel's
13 objection -- or instruction?

14 A. Yes, I do.

15 Q. Besides Mr. Ravine and lawyers associated 12:16:33
16 with Open Artificial Intelligence, Inc., or any of
17 your colleagues who conduct work for Open
18 Artificial Intelligence, Inc., have you had any
19 conversations with anyone about this case?

20 A. I might have some conversations with, 12:16:50
21 like, my wife. I don't know.

22 Q. What did you discuss with your wife?

23 A. There is a case. I might get deposed,
24 basically. Not sure what's going on.

25 Q. Are you currently employed? 12:17:21

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1 A. Yeah. Yes.

2 Q. Who is your employer?

3 A. Yeah, I still work with Guy, Guy Ravine.

4 Q. Do you have a full-time position with

5 Mr. Ravine, or are you a contractor? 12:17:43

6 A. Yeah, it's a full-time position. Yeah,

7 but I was on a break for a while, during the

8 autumn, but now I work again.

9 Q. When were you on a break?

10 A. September, October, and part of November. 12:18:03

11 Q. September, October, of 2024?

12 A. Yes.

13 Q. What is your current position working for

14 Mr. Ravine?

15 A. I don't really have a position, I think. 12:18:22

16 I'm just something like core engineer.

17 Q. Do you work with Mr. Ravine for multiple
18 companies?

19 A. Yes.

20 Q. In 2024, what companies have you done 12:18:41
21 work for?

22 A. So I think all of them is Open Artificial
23 Intelligence.

24 Q. This year, you have exclusively worked

25 for Open Artificial Intelligence, Inc.? 12:19:03

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1 A. Yes, I think so.

2 Q. What companies did you work for in 2023?

3 A. So I think it's the same. It's also --

4 is mostly Open Artificial Intelligence. I --

5 probably not exactly sure what you mean, what 12:19:34

6 company you worked on, because there is companies,

7 and there is projects. So what do you mean by

8 "what company you works on"?

9 Q. In 2023, did you do any work for Video

10 Inc.? 12:19:50

11 A. Okay. Let me think. Maybe there was --

12 there was some minor things which we -- I did on

13 Video Inc. So, like, maybe small portion of the

14 time I fixed something in that.

15 Q. Putting aside any work that you may have 12:20:16

16 done for this litigation, what projects have you

17 worked on in 2024 for Mr. Ravine?

18 A. So we worked on -- we kept working on

19 image generation and Ava, I think, at the

20 beginning of the year. Then the preliminary 12:20:47

21 injunction, after that we has to stop using the

22 mark, and we stopped working on those projects.

23 Then I think I worked on the Boom for a while and

24 then worked on this AI voice memos project.

25 Q. So after the injunction, you worked on 12:21:18

1 get design at mail, edits, and so there's some
2 comments, so I change it. So that's why.

3 Q. The only functionality available to the
4 public was to insert their e-mail address;
5 correct? 13:17:52

6 A. Yes.

7 And also, like, you could see the -- that
8 information in the announcement. So it's kind of
9 informational thing.

10 Q. What information was being shared? 13:18:03

11 A. Well, this initiative -- it is Open AI
12 initiative, and it's going to be released soon.

13 Q. Anything else?

14 A. No. There is a also contact e-mail.

15 Q. You don't know how many people submitted 13:18:21
16 their e-mail addresses to this website; correct?

17 A. I don't remember it, but we had this
18 list, like --

19 Q. The list only contained e-mails; right?

20 A. Yes. 13:18:43

21 Q. The list doesn't tell you the location of
22 where anyone was who submitted their e-mail?

23 A. No.

24 Q. You have no way to tell whether or not
25 someone who submitted an e-mail was a bot, do you? 13:19:03

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1 from anyone associated with this initiative;

2 correct?

3 MR. CUNNINGHAM: Objection. Calls for

4 speculation.

5 MR. WILSON: Join. 13:20:39

6 THE WITNESS: I don't know anything about

7 it, about e-mailing -- about -- about

8 e-mailing them.

9 BY MR. SCHER:

10 Q. You don't know if anyone was ever 13:20:47

11 e-mailed back who submitted an e-mail address to

12 this page?

13 A. Yes.

14 Q. Why not?

15 MR. CUNNINGHAM: Objection. 13:21:10

16 THE WITNESS: Sorry?

17 MR. CUNNINGHAM: Form.

18 THE WITNESS: Why not?

19 MR. WILSON: Join.

20 BY MR. SCHER: 13:21:31

21 Q. Do you have an answer?

22 A. Wait. I said, no, I didn't send any --

23 any e-mail to those people. But you asked if

24 anyone ever send them e-mail. I don't know. So I

25 didn't send. 13:21:43

HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

1 Q. Do you see that the web page says
2 "announcement will be made soon"?

3 A. Yes.

4 Q. No announcement was ever made; correct?

5 MR. WILSON: Objection. Calls for 13:21:58
6 speculation.

7 MR. CUNNINGHAM: Joined.

8 THE WITNESS: So back in 2015, I think
9 there was no announcement.

10 BY MR. SCHER: 13:22:10

11 Q. Was there an announcement in 2016?

12 MR. CUNNINGHAM: Same objection.

13 MR. WILSON: Join.

14 THE WITNESS: No. No. I don't think so.

15 BY MR. SCHER: 13:22:21

16 Q. There was never any announcement;
17 correct?

18 MR. CUNNINGHAM: Same objection.

19 MR. WILSON: Join.

20 THE WITNESS: Yeah. No. So, like -- I'm 13:22:34
21 not sure what to answer on this. Because,
22 yeah, basically -- so they -- we put
23 something on this website after --
24 afterwards. I don't -- is it count as
25 announcement or not, like, because of here 13:22:52

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1 announcement? So it had image generator
2 here.

3 BY MR. SCHER:

4 Q. When did you next put something on this
5 website? 13:23:00

6 A. Oh, I don't remember what -- so I think
7 most of the time it was this -- this kind of
8 announcement page. Maybe they put some other
9 stuff there occasionally, but I don't recall right
10 now. 13:23:24

11 So basically, the things what I remember
12 for sure is what we -- on November 2022, we put
13 image generator here, but maybe they put something
14 here before that too.

15 Q. But you can't recall that, sitting here 13:23:38
16 today; right?

17 A. Yeah. Yes.

18 Q. And you are Mr. Ravine's core engineer?

19 A. Yes.

20 Q. How could a user have found this web 13:23:50
21 page?

22 MR. CUNNINGHAM: Objection. Calls for
23 speculation.

24 MR. WILSON: Join.

25 THE WITNESS: I don't know. 13:24:12

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1 BY MR. SCHER:

2 Q. The initial collaboration tool did not
3 display Open AI anywhere; correct?

4 A. I mean, I'm talking about the 2016
5 January, February internal -- internal thing, 13:28:50
6 yeah. It didn't have Open AI logo on it.

7 Q. The next project you discussed was a
8 second collaboration tool; correct?

9 A. Yes.

10 Q. That tool is -- was available at 13:29:11
11 hub.open.ai; correct?

12 A. Correct.

13 Q. And you testified that that was released
14 to the public; correct?

15 A. Yes. 13:29:29

16 Q. Do you recall when that was released to
17 the public?

18 A. Yeah. I think it was autumn 2016.

19 Q. Was there any advertising or promotion
20 for hub.open.ai? 13:29:44

21 MR. WILSON: Objection. Calls for
22 speculation.

23 MR. CUNNINGHAM: Joined.

24 THE WITNESS: Yeah, I didn't know about
25 advertisement of this project. 13:29:53

HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

1 BY MR. SCHER:

2 Q. Did you have an administrative role for
3 hub.open.ai?

4 MR. CUNNINGHAM: Objection. Vague.

5 THE WITNESS: Yeah, what do you mean? 13:30:06

6 BY MR. SCHER:

7 Q. Were you an administrator on hub.open.ai?

8 A. Honestly, I don't remember.

9 Q. Do you recall if you ever posted on
10 hub.open.ai? 13:30:19

11 A. Yes.

12 Q. Were there any formal business plans
13 prepared for hub.open.ai?

14 MR. WILSON: Objection. Calls for
15 speculation. 13:30:37

16 MR. CUNNINGHAM: Joined.

17 THE WITNESS: Yeah, I don't know anything
18 about business plans related to hub.

19 BY MR. SCHER:

20 Q. As part of your work in connection with 13:30:42
21 hub.open.ai, did you monitor or look at posts?

22 A. No, I don't think so.

23 Q. Did you know how many users there were
24 are of hub.open.ai?

25 MR. WILSON: Objection. Vague as to 13:31:06

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1 time.

2 MR. CUNNINGHAM: Join.

3 THE WITNESS: No, I don't know much. I

4 don't really, like, pay much attention to,

5 like -- to all these things. 13:31:15

6 BY MR. SCHER:

7 Q. At any point in time, did you know how

8 many users there were of hub.open.ai?

9 A. No. I don't -- I don't know. I don't

10 remember. 13:31:27

11 Q. Have you ever discussed the number of

12 users there were of hub.open.ai?

13 A. I don't think so.

14 Q. Do you know if hub.open.ai ever had

15 someone sign up who was not one of your colleagues 13:31:43

16 or an acquaintance of one of your colleagues?

17 A. I'm not sure I got what you mean. Can

18 you clarify?

19 Q. Nobody ever signed up for hub.open.ai who

20 did not work for Mr. Ravine or know someone who 13:32:05

21 worked for Mr. Ravine; correct?

22 A. I don't know. I mean, I was sign up to

23 Open -- like, hub. So I had an account there.

24 Q. Aside from you, do you know anybody who

25 ever signed up for hub.open.ai? 13:32:26

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1 attached hereto.)

2 BY MR. SCHER:

3 Q. Please let me know when you can access

4 Exhibit 31, which bears the Bates No.

5 RAVINE0002089.

14:42:55

6 A. I can see it.

7 Q. Do you recognize this document?

8 A. Yes. It looks like one of the problems

9 from hub.open.ai.

10 Q. This is a problem that you posted on

14:43:16

11 hub.open.ai; correct?

12 A. Yes.

13 Q. And the problem is titled "Deep

14 Reinforcement Algorithm Problem"; correct?

15 A. Yes.

14:43:28

16 Q. And you made this post on September 26,

17 2016?

18 A. I don't remember, but I don't even see

19 the date. But, I guess, yes, from the previous

20 exhibition, it follows, 26, right. So, yes, I

14:43:46

21 think so.

22 Q. And you see it says "September 2016" on

23 the right side of this page; correct?

24 A. Yes. Yes.

25 Q. And in your post, you wrote [as read:]

14:44:00

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1 "Here is a proposed improvement to the current
2 deep learning reinforcement algorithm that we are
3 discussing, but it represents a problem. Here is
4 the formulation."

5 Did I read that correctly? 14:44:13

6 A. Yes.

7 Q. Then there's a box within your post, and
8 that's some code that you inserted; right?

9 A. Yes.

10 Q. And that code begins, "ctx = [mx.gpu"; is 14:44:25
11 that right?

12 A. Yes.

13 Q. And the code ends with "mod.update"?

14 A. Yes.

15 Q. Why did you make this post? 14:44:41

16 A. I took a bunch of problems to kind of
17 kick start the thing, so people could see how it
18 function, could actually see the problems and
19 maybe, like, comment them. So basically, the idea
20 was to kick start the thing when we originally 14:45:00
21 deployed.

22 Q. So you made the post so that people who
23 saw hub.open.ai knew how to use it?

24 A. Yes. People could, like, basically
25 understand how it works and see -- yeah, and 14:45:23

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1 basically, maybe post solution or just watch it.

2 Like, see, like, the thread, basically, yeah.

3 Q. Did you make this post for any other
4 reason?

5 A. No. No. Just this. 14:45:38

6 Q. Were you looking for an answer to a
7 question?

8 A. What?

9 Q. Were you looking for an answer to a
10 question? 14:45:50

11 A. I don't get what you mean. What you
12 mean, looking for --

13 Q. Were you looking for someone to help
14 solve a problem for you?

15 A. Oh, no, no. Not really. So basically, I 14:46:00
16 just post some things which is relevant to the
17 idea of the project. But in reality -- so
18 basically, someone could post it, but I am not
19 exactly looking for the -- so basically, as I said
20 already, so the idea was we want to put something 14:46:23
21 relevant to the platform so people could see how
22 it works.

23 If someone would post a solution, of
24 course, I'll be happy. But this is what the
25 purpose of this post was, so people understand it 14:46:35

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1 and, basically, participate.

2 Q. So this was not part of any code that you
3 were working on; correct?

4 A. Yes.

5 Q. Did Mr. Ravine tell you to make this 14:46:48
6 post?

7 A. I don't think he tell me, but -- I mean,
8 probably, yeah, we kind of talked about, I think.

9 Os, yeah, I think we discuss what we --
10 we could deploy it, and we need to put something 14:47:03
11 here.

12 Q. Did he tell you that in September of
13 2016, you needed to make some posts on
14 hub.open.ai?

15 A. I don't remember. 14:47:15

16 Q. And then if you scroll down, do you see
17 that someone with the username Rick responded to
18 your problem?

19 A. Yes.

20 Q. Did you create the account Rick? 14:47:25

21 A. Honestly, I don't remember who create the
22 account Rick. It might be me, but might be
23 someone else from the team.

24 So basically, yeah, it's kind of -- so
25 it's also someone from us, I think. But I 14:47:40

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1 don't -- I don't know for sure, to be honest. So
2 Nikita is definitely me, because it's my -- it's
3 my avatar. So it's my, like, avatar which I use
4 still.

5 But Rick, I can't tell for sure who is 14:47:51
6 this. But I would speculate that someone probably
7 from the team.

8 So again, to represent how -- how the
9 thing works, we post problem, we post solution, so
10 people could see and understand it. 14:48:06

11 Q. So you don't recall if you operated the
12 account Rick but, the person who operated the
13 account Rick worked for Mr. Ravine; correct?

14 MR. WILSON: Objection. Misstates
15 testimony. 14:48:19

16 MR. CUNNINGHAM: Joined.

17 THE WITNESS: Yes. I say that I
18 remember.

19 BY MR. SCHER:

20 Q. You have no reason to believe that the 14:48:33
21 person who operated the account Rick did not work
22 for Mr. Ravine?

23 MR. CUNNINGHAM: Objection. Confusing.
24 Double negative.

25 MR. WILSON: Join. 14:48:43

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1 THE WITNESS: Again, I can't say for
2 sure. I could only guess, but I don't
3 remember exactly.

4 So in case with Nikita, I can tell
5 exactly because it's my avatar. So I can 14:48:53
6 tell exactly that's my user.

7 And Nikita is not a common name, so to
8 have -- to, like, yeah, have a double-post
9 here.

10 For Rick, I can't tell for sure who is 14:49:02
11 this.

12 BY MR. SCHER:

13 Q. But you believe that Rick is likely
14 someone from your team; correct?

15 MR. WILSON: Objection. Misstates prior 14:49:16
16 testimony.

17 MR. CUNNINGHAM: Join. Objection. Calls
18 for speculation.

19 THE WITNESS: I don't know.

20 BY MR. SCHER: 14:49:28

21 Q. Okay. Do you see that Rick responded and
22 wrote, "The best permutation so far is" -- and
23 then included code that begins "gpus=4"?

24 A. Yes.

25 Q. And then below that, do you see that you 14:49:44

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1 A. Okay. So I try to understand what post
2 you reference.

3 So from ilkarman, on August 20th, 2016?

4 Q. Yes.

5 Do you see that he posted the same exact 14:56:36
6 code that was posted by Nikita in Exhibit 31 that
7 begins "ctx"?

8 A. Yeah. I can't compare it by just a
9 glance, but I would -- yeah, I would guess it's
10 the same -- it's that's code, yeah. 14:57:01

11 Q. Can you open Exhibit 31 to make sure.

12 MR. CUNNINGHAM: Objection. Compound.

13 MR. WILSON: Join.

14 THE WITNESS: So it's actually not
15 exactly like this. Oh, yeah. Okay. Yeah, 14:57:45
16 it seems like this is the same code, yeah.

17 BY MR. SCHER:

18 Q. Okay. Let's go back to Exhibit 33.

19 A. Yeah.

20 Q. Now, if you go to the fourth page of 14:57:57
21 Exhibit 33, do you see that there is a comment
22 from the account ilkarman from August 22, 2016,
23 that begins "@antinucleon"?

24 A. Yeah.

25 Q. And do you see that the account posted 14:58:21

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1 the same code that Rick posted on hub.open.ai in
2 Exhibit 31?

3 A. Yes. It looks the similar, yeah.

4 MR. CUNNINGHAM: Objection. Compound.

5 MR. WILSON: Join. 14:58:38

6 BY MR. SCHER:

7 Q. You did not operate the account ilkarman
8 on github.com; right?

9 A. Yes.

10 Q. "Yes" as in you did not operate that 14:58:51
11 account?

12 A. Yes, correct. I did not.

13 Q. You do not know who operated the account
14 ilkarman on github.com?

15 A. Yes, I don't know. 14:59:02

16 Q. You did not try to get in contact with
17 the account ilkarman on github.com?

18 A. No.

19 Q. You did not participate on this
20 conversation on github.com? 14:59:16

21 A. No.

22 Q. You did not make any of these comments on
23 Exhibit 33; correct?

24 A. I did -- yes, I did not post any on
25 GitHub. 14:59:32

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1 Q. But you copied content from Exhibit 33
2 and put them on hub.open.ai; correct?

3 A. Yes. I copied -- as I said before,
4 basically, the idea was to be started with
5 relevant content. So that's relevant content from 14:59:49
6 the open source. We covered this already.

7 Q. You did not learn anything new about the
8 code you posted on hub.open.ai, did you?

9 A. New about what?

10 Q. You didn't learn anything about the code 15:00:09
11 you posted on hub.open.ai from your post on
12 hub.open.ai?

13 MR. WILSON: Objection. Vague.

14 MR. CUNNINGHAM: Objection --

15 THE WITNESS: Well, I don't know. Maybe 15:00:22

16 I -- I can't tell if I learned anything. I
17 might have learned something from this.

18 BY MR. SCHER:

19 Q. You were paid to make that post on
20 hub.open.ai; right? 15:00:28

21 MR. WILSON: Objection --

22 THE WITNESS: No, I wasn't paid
23 specifically to put my code. I was paid to
24 make my job, basically.

25 ///

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1 BY MR. SCHER:

2 Q. And making that post was part of your
3 job; right?

4 A. Yes, kind of. I mean, so I was -- I
5 already told -- yeah, so, like, the purpose code 15:00:52
6 to the slot -- the problem solution topics on the
7 hub.

8 Q. You made that post to represent how
9 hub.open.ai worked; correct?

10 A. Correct. 15:01:28

11 MR. SCHER: I am going to upload
12 Exhibit 34, but I am going to be careful and
13 make sure that it has a stamp.

14 (Exhibit 34 was received and marked
15 for identification on this date and is 15:01:36
16 attached hereto.)

17 BY MR. SCHER:

18 Q. I have introduced Exhibit 34.
19 Please let me know when you can access
20 it. 15:01:40

21 A. Yeah, I see it.

22 Q. Do you recognize this document?

23 A. Not really.

24 Q. Have you seen this document before?

25 A. No, I don't think so. I'm not sure. I 15:02:08

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1 don't think so.

2 Q. Okay. I can represent to you that this
3 is a document submitted to the U.S. Patent and
4 Trademark Office.

5 You have no reason to doubt me; correct? 15:02:22

6 MR. CUNNINGHAM: Objection. Lacks
7 foundation.

8 MR. WILSON: Join.

9 THE WITNESS: Yeah, I got no idea how --
10 how, like, documents for the -- for this 15:02:32
11 thing works, yeah.

12 BY MR. SCHER:

13 Q. Okay. Do you see that on page 2, there's
14 something that says "Signature section"?

15 A. Signature? Yes. 15:02:46

16 Q. Do you see it says "Declaration,"
17 "Signature," and "Guy Ravine"?

18 A. Yes.

19 Q. Do you see it says "Date Signed," and it
20 has a date from September 27, 2016? 15:03:00

21 A. Yes.

22 Q. That's the day after your posts were made
23 on hub.open.ai; right?

24 A. Yes.

25 Q. And then do you see that lower on page 2, 15:03:16

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1 MR. CUNNINGHAM: Same objection.

2 MR. WILSON: Join.

3 THE WITNESS: Yes.

4 BY MR. SCHER:

5 Q. It's titled "Deep Reinforcement Algorithm 15:04:33
6 Problem?"

7 A. Actually, it looks like that discussion.
8 But, yeah, it's the same problem. Yeah.

9 Q. It's the same problem that is in Exhibit
10 31; correct? 15:04:47

11 A. Yes.

12 MR. CUNNINGHAM: Continuing objection.
13 It lacks foundation.

14 MR. WILSON: Join.

15 MR. CUNNINGHAM: Through the entire line 15:04:55
16 of questioning for this exhibit.

17 BY MR. SCHER:

18 Q. It's a screenshot of hub.open.ai?

19 A. Yes.

20 Q. And do you see in the top right corner, 15:05:05
21 it says "Guy"?

22 A. Yeah. Yes. It's actually dirty. Yeah,
23 it's actually quite dirty, but I could guess it's
24 Guy.

25 MR. CUNNINGHAM: Same objection. 15:05:31

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1 MR. WILSON: Join.

2 BY MR. SCHER:

3 Q. And if you scroll to page 6 --

4 A. Yes.

5 Q. -- that's a screenshot of your original 15:05:40
6 post from Exhibit 31; correct?

7 MR. CUNNINGHAM: Same objection.

8 MR. WILSON: Join.

9 THE WITNESS: Yeah, it looks like this
10 problem post, yeah. 15:05:57

11 BY MR. SCHER:

12 Q. So pages 5 and 6 of this document are
13 screenshots of the posts depicted in Exhibit 31;
14 correct?

15 MR. CUNNINGHAM: Objection. Lacks 15:06:07
16 foundation.

17 MR. WILSON: Join.

18 THE WITNESS: It looks similar, yeah. So
19 from what I can tell, like, it looks similar
20 to this post. 15:06:17

21 BY MR. SCHER:

22 Q. This is the problem that had material
23 copied from the github.com page; correct?

24 MR. CUNNINGHAM: Objection. Lacks
25 foundation. 15:06:33

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1 MR. WILSON: Join.

2 THE WITNESS: Yes.

3 BY MR. SCHER:

4 Q. It is the problem that you posted to
5 represent how hub.open.ai might be used? 15:06:37

6 MR. CUNNINGHAM: Objection. Lacks
7 foundation.

8 MR. WILSON: Join.

9 THE WITNESS: Yeah, basically. To kick
10 start the platform, the project. 15:06:48

11 BY MR. SCHER:

12 Q. When you posted on hub.open.ai, did you
13 know Mr. Ravine was going to submit screenshots of
14 your posts to the U.S. Patent and Trademark
15 Office? 15:07:04

16 MR. CUNNINGHAM: Objection. Lacks
17 foundation.

18 MR. WILSON: Join.

19 THE WITNESS: I don't remember, honestly,
20 but I don't think so. 15:07:09

21 One second.

22 MR. CUNNINGHAM: Let's pause for a second
23 because his video was blurred right there.
24 Still got quite a bit of a blur in your --
25 there. Better. 15:07:28

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1 THE WITNESS: Yeah. Sorry. What are you
2 saying?

3 BY MR. SCHER:

4 Q. Before today, did you know Mr. Ravine
5 submitted screenshots of your posts to the U.S. 15:07:38
6 Patent and Trademark Office?

7 A. Yeah, I think I knew what we used. At
8 some point, I knew what we used. Hub -- hub was
9 used for trademark.

10 Q. But did you know that Mr. Ravine 15:07:58
11 submitted posts made from your account to the U.S.
12 Patent and Trademark Office?

13 MR. WILSON: Objection. Asked and
14 answered.

15 MR. CUNNINGHAM: Join. 15:08:11

16 THE WITNESS: I'm not sure what you
17 meant.

18 BY MR. SCHER:

19 Q. When did you learn that your posts from
20 hub.open.ai were submitted to the U.S. Patent and 15:08:24
21 Trademark Office?

22 MR. WILSON: I object to the extent it
23 might ask for attorney work product. If he
24 can answer the question without exposing
25 attorney work product, I don't have an 15:08:41

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1 objection.

2 MR. CUNNINGHAM: Yeah, I'll make the
3 objection. I instruct the client -- witness
4 not to divulge any substance of any
5 attorney-client communication in any answer. 15:08:59

6 THE WITNESS: Yeah, I don't remember.
7 So, like, I don't remember when it was in.

8 BY MR. SCHER:

9 Q. Before 2023, you did not know that
10 screenshots of hub.open.ai were submitted to the 15:09:11
11 U.S. Patent and Trademark Office; correct?

12 MR. CUNNINGHAM: Same objections.

13 MR. WILSON: Join.

14 THE WITNESS: I don't know.

15 BY MR. SCHER: 15:09:23

16 Q. What was your response --

17 A. I don't remember what year it was and
18 when exactly it was.

19 (Exhibit 35 was received and marked
20 for identification on this date and is 15:09:57
21 attached hereto.)

22 BY MR. SCHER:

23 Q. I've just uploaded Exhibit 35. Please
24 let me know when you can view it.

25 A. I see it. 15:10:14

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1 MR. CUNNINGHAM: Objection. Compound.

2 Objection. Lacks foundation.

3 MR. WILSON: Join.

4 THE WITNESS: It looks similar.

5 BY MR. SCHER: 15:23:04

6 Q. And the code that's posted is also the
7 same code that you posted on hub.open.ai in
8 Exhibit 37?

9 MR. CUNNINGHAM: Same objections.

10 MR. WILSON: Join. 15:23:19

11 THE WITNESS: Yes, it's also.

12 BY MR. SCHER:

13 Q. And then if you go to the bottom of
14 page 5 of Exhibit 38.

15 A. Yes. 5. 15:23:37

16 Q. Do you see a comment from August 31,
17 2016?

18 A. Yes.

19 MR. CUNNINGHAM: Same objections.

20 MR. WILSON: Join. 15:23:45

21 BY MR. SCHER:

22 Q. And this comment has language [as read:]

23 "I should init the NDArrayIter with batch
24 size..."

25 Do you see that? 15:24:02

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1 A. Yes.

2 MR. CUNNINGHAM: Objection.

3 Mischaracterizes the evidence.

4 MR. WILSON: Join.

5 THE WITNESS: I see this, yes. 15:24:05

6 BY MR. SCHER:

7 Q. Do you see that the language here is
8 similar to the language that Rick posted on
9 Exhibit 36?

10 MR. CUNNINGHAM: Objection. Compound. 15:24:20

11 Objection. Lacks foundation.

12 THE WITNESS: Join.

13 BY MR. SCHER:

14 Q. And the code posted is the same, too;
15 correct? 15:24:30

16 MR. CUNNINGHAM: Same objections.

17 MR. WILSON: Join.

18 THE WITNESS: Yes. It's similar.

19 BY MR. SCHER:

20 Q. You did not operate the account 15:24:36
21 zihoulucky on github.com; right?

22 A. Right.

23 Q. You do not know who operated the account
24 zihoulucky on github.com?

25 A. Right. 15:24:54

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1 Q. And you never tried to get into contact
2 with that account?

3 A. No, I didn't.

4 Q. And you did not participate in this
5 conversation on github.com? 15:24:59

6 A. I didn't.

7 Q. You didn't make these posts on
8 github.com?

9 A. I didn't.

10 Q. But you copied the content from those 15:25:09
11 posts and put them on hub.open.ai; right?

12 MR. CUNNINGHAM: Objection. Lacks
13 foundation. Objection --

14 MR. WILSON: Join.

15 THE WITNESS: I missed the question. So 15:25:22
16 what you asked? When? Repeat.

17 BY MR. SCHER:

18 Q. You copied the content from these posts
19 and put them on hub.open.ai; correct?

20 MR. CUNNINGHAM: Same objections. 15:25:33

21 MR. WILSON: Join.

22 THE WITNESS: Yes, I think so.

23 BY MR. SCHER:

24 Q. The posts on hub.open.ai that we looked
25 at in Exhibits 31, 34, and 37, they were not 15:25:42

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1 conversations happening between two users that
2 were answering each other's questions; right?

3 MR. WILSON: Objection. Leading.

4 THE WITNESS: Yeah. It was, like, the
5 problems to start up -- like, basically, to 15:26:05
6 start the project.

7 BY MR. SCHER:

8 Q. The posts weren't made by third-party
9 users; correct?

10 A. I don't remember who is Rick, but Nikita 15:26:17
11 is me.

12 Q. The posts were made to set an example for
13 how hub.open.ai might be used; right?

14 A. Yes. The idea was, yeah, to start up the
15 project. 15:26:43

16 MR. SCHER: One more exhibit before the
17 break. I'd like you to take a look at
18 Exhibit 39.

19 (Exhibit 39 was received and marked
20 for identification on this date and is 15:27:09
21 attached hereto.)

22 THE WITNESS: Yeah, I see it.

23 BY MR. SCHER:

24 Q. Have you seen this document before?

25 A. I don't think so. 15:27:25

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1 Yeah, I don't -- I don't recall it.

2 Q. It's --

3 A. Yeah, that's hub. Yeah, that's a hub.

4 Yeah, that's a hub from mobile device.

5 Q. These are the hub.open.ai posts from a 15:27:44
6 mobile device; right?

7 A. Yes.

8 Q. Did you ever do any coding regarding the
9 hub.open.ai mobile device appearance?

10 A. I don't remember. But -- yeah, I don't 15:27:57
11 remember, to be honest.

12 Q. But you, as a developer of hub.open.ai,
13 understand that there were mobile pages for
14 hub.open.ai; correct?

15 A. Sorry. It was -- there was no dedicated 15:28:13
16 mobile pages, but you could open website from
17 different devices.

18 Q. Right.

19 You could visit hub.open.ai from your
20 phone? 15:28:28

21 A. Yes. I think it should work on your
22 phone.

23 Q. And this Exhibit 39, these are
24 screenshots from a mobile device of the posts on
25 hub.open.ai that we just look at; right? 15:28:39

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1 it. Yeah.

2 BY MR. SCHER:

3 Q. On page 3, there is a section,

4 Section 10, advertisements.

5 Can you let me know when you're there. 15:50:10

6 A. Yes, I can see.

7 Q. And you see that it says, [as read]:

8 "Company_short_name reserves the right to

9 display advertisements on your content unless

10 you have purchased an ad-free upgrade or a 15:50:25

11 services account."

12 Do you see that?

13 A. Yes.

14 Q. Did anyone ever pay for an ad-free

15 upgrade? 15:50:36

16 A. I don't know.

17 Q. Did anyone ever pay for a services

18 account?

19 A. I don't know.

20 Q. Was there ever an option for anyone to 15:50:44

21 pay for anything on hub.open.ai?

22 MR. CUNNINGHAM: Objection. Calls for

23 speculation.

24 THE WITNESS: I don't know.

25 MR. WILSON: Join. 15:50:55

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1 THE WITNESS: I don't know.

2 BY MR. SCHER:

3 Q. You're the core engineer of Mr. Ravine's
4 team; right?

5 A. Yes. 15:51:05

6 Q. Did you ever design anything for anyone
7 to pay for anything on hub.open.ai?

8 A. I don't remember.

9 Q. Do you remember if there was ever an
10 option for anyone to pay for anything on any 15:51:21
11 open.ai website or subdomain?

12 A. I don't remember.

13 Q. So sitting here today, you cannot
14 remember if there was ever an option for anyone to
15 pay anything on an open.ai website; correct? 15:51:47

16 A. Yeah, correct. I can't -- I can't recall
17 anything like this.

18 Q. Were any ads ever displayed on any
19 open.ai website or subdomain?

20 MR. CUNNINGHAM: Objection. Calls for 15:52:03
21 speculation.

22 MR. WILSON: Join.

23 THE WITNESS: I don't know.

24 BY MR. SCHER:

25 Q. You never designed anything for an 15:52:15

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1 open.ai website to display ads; correct?

2 A. Yes. I don't remember anything like
3 this.

4 MR. SCHER: All right. I just uploaded
5 Exhibit 41, but I accidentally did not 15:52:44
6 include a stamp again. So I would ask that
7 Veritext add one after the deposition is
8 over.

9 (Exhibit 41 was received and marked
10 for identification on this date and is 15:52:58
11 attached hereto.)

12 BY MR. WILSON:

13 Q. Can you please let me know when you've
14 opened Exhibit 41.

15 A. Yeah, I could see it. 15:53:07

16 Q. Do you recognize this document?

17 A. Yes. It looks like FAQ section from Open
18 AI app.

19 Q. It's the FAQ section from hub.open.ai?

20 A. Yes. 15:53:24

21 Q. Did you write any of the FAQ section of
22 hub.open.ai?

23 A. I don't remember.

24 Q. Do you remember who wrote the FAQ section
25 of hub.open.ai? 15:53:37

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*** ERRATA SHEET ***

NAME OF CASE: OPENAI, INC VS. OPEN ARTIFICIAL
INTELLIGENCE, INC

DATE OF DEPOSITION: DECEMBER 6, 2024

NAME OF WITNESS: NIKITA GAER

Reason Codes:

1. To clarify the record.
2. To conform to the facts.
3. To correct transcription errors.

PAGE	LINE	FROM	TO	REASON
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Subscribed and sworn before me

This ____ day of _____, 20__.

(Notary Public) My Commission Expires:

Page	Line	From	To	Reason
32	24	Actually, I can give you exact numbers because I	Actually, I can't give you exact numbers because I	3
34	19	be, like, a discussion of some years or some	be, like, a discussion of something or some	3
40	16	Let me think. So there was Badim --	Let me think. So there was Vadim --	3
40	25	definitely was a guy named Badim .	definitely was a guy named Vadim .	3
41	2	Zagorschi , that was the person who worked on some	Zagorski , that was the person who worked on some	3
41	6	Yeah, so -- so Victor Zagorschi . There	Yeah, so -- so Victor Zagorski . There	3
41	7	was Badim . There was Andrey. Yeah, I think those	was Vadim . There was Andrey. Yeah, I think those	3
45	2	Open AI logo on it. They've already called it	Open AI logo on it. We've already called it	3
45	14	At some point, they put a password -- put	At some point, we put a password -- put	3
46	11	Wait, wait. Sorry. Can you identify	Wait, wait. Sorry. Can you clarify	3
47	2	A. So, I mean, after they put this behind a	A. So, I mean, after we put this behind a	
47	19	least one person. There was Anton Pavlovsky that	least one person. There was Anton Frolovsky that	
50	10	We deployed it to decentralize at Open	We deployed it to decentralized.open.ai	
51	1	project called editpad [phonetic], so -- which we	project called etherpad [phonetic], so -- which we	
51	11	that. So we had a talks functionality here. We	that. So we had a tasks functionality here. We	
51	15	technically run the code on the models on this	technically run the code of the models on this	
54	21	it's really innovative process for this time. And	it's really innovative project for this time. And	
55	8	I said, we use editpad [phonetic] project. So we	I said, we use etherpad [phonetic] project. So we	
55	18	So then was the resign . So we	So then was the design . So we	
55	19	implemented nice resign -- nice modern design,	implemented nice design -- nice modern design,	
56	14	felt on the rewards system, which I think was	worked on the rewards system, which I think was	
63	4	There was Peter. There was Yunis . There was	There was Peter. There was Joonas . There was	
64	15	A. There was also Dennis and Yunis . Yunis	A. There was also Dennis and Joonas . Joonas	
67	1	allows you to think happen, but you have to build	allows you to things happen, but you have to build	
71	16	So basically, it's a three main thesis . It's a	So basically, it's a three main things . It's a	
71	18	model. Second thing is API and date storage. And	model. Second thing is API and data storage. And	
77	24	inside, like, books . And basically -- yeah, it's,	inside, like, textbox . And basically -- yeah, it's,	
90	15	Diffusion. He was selling what's -- like, he	Diffusion. He was saying what's -- like, he	
93	6	A. So it's available on LinkedIn only.	A. So it's available on internally only.	
99	9	like service-side developer, like, who we work	like server-side developer, like, who we work	
99	12	A. It's here . He.	A. It's he . He.	
100	13	like, service provider called bad grid [ph] or	like, service provider called ByteGrid [ph] or	
101	19	A. Yeah. It's, again, relates to bad grid ,	A. Yeah. It's, again, relates to ByteGrid ,	
145	18	April -- in May 2024 . So that's how we met.	April -- in May 2014 . So that's how we met.	
146	24	A. Sorry. Can you verify what you mean?	A. Sorry. Can you clarify what you mean?	
153	25	A. I don't -- I can tell -- I mean, I don't	A. I don't -- I can't tell -- I mean, I don't	
154	3	think we just most likely had couple of sessions ,	think we just most likely had couple of issues ,	
175	17	remember when they put it behind the password. So	remember when we put it behind the password. So	
182	21	earlier today, Anton Pavlovsky , helped a little	earlier today, Anton Frolovsky , helped a little	
189	20	editpad . So I had to rewrite most of it to makes	etherpad . So I had to rewrite most of it to makes	
190	5	like, not part which could run the code. So lot	like, notebook which could run the code. So lot	
194	23	project which we had here initially when we raise	project which we had here initially when we released	
198	12	released on this stage in Open AI .	released on this staging.open.ai .	
202	22	it was original Boom, but then they put it to the	it was original Boom, but then we put it to the	
202	23	Open AI. So they separated it.	Open AI. So we separated it.	
229	22	A. Yeah. Yes. It's actually dirty . Yeah,	A. Yeah. Yes. It's actually blurry . Yeah,	
229	23	it's actually quite dirty , but I could guess it's	it's actually quite blurry , but I could guess it's	
252	22	A. So as I saw before -- so it was based on	A. So as I said before -- so it was based on	
259	21	A. I can tell it was designed for	A. I can't tell it was designed for	
274	15	approach. So they change it this way, and we	approach. So we change it this way, and we	

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1 STATE OF CALIFORNIA)
2 (ss.
3 COUNTY OF LOS ANGELES)
4

5 I, RENEE HARRIS, do hereby certify that I
6 am a licensed Certified Shorthand Reporter, duly
7 qualified and certified as such by the State of
8 California;

9 That prior to being examined, the witness named
10 in the foregoing deposition was by me duly sworn
11 to testify to tell the truth, the whole truth, and
12 nothing but the truth;

13 That the said deposition was by me recorded
14 stenographically;

15 And the foregoing pages constitute a full,
16 true, complete and correct record of the testimony
17 given by the said witness;

18 That I am a disinterested person, not
19 being in any way interested in the outcome of said
20 action, or connected with, nor related to any of
21 the parties in said action, or to their respective
22 counsel, in any manner whatsoever.

23 

24 Renee Harris, CSR, CCR, RPR
CA CSR No. 14168,
25 NJ CCR No. 30XI00241200