

EXHIBIT 4

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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AMERICAN SOCIETY FOR	:	Case No.
TESTING AND MATERIALS d/b/a:	:	1:13-cv-01215-PSC-DAR
ASTM INTERNATIONAL;	:	
	:	
NATIONAL FIRE PROTECTION	:	
ASSOCIATION, INC.; and	:	
	:	
AMERICAN SOCIETY OF	:	
HEATING, REFRIGERATING,	:	
AND AIR-CONDITIONING	:	
ENGINEERS, INC.	:	
Plaintiffs,	:	
	:	
vs.	:	
	:	
PUBLIC.RESOURCE.ORG, INC.,	:	
Defendant.	:	
	:	
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AND RELATED COUNTERCLAIMS.	:	
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Videotaped 30(b)(6) deposition of American Society for Testing & Materials, through DANIEL SMITH, held in the offices of Veritext Philadelphia, 1801 Market Street, Ten Penn Center, Suite 1800, Philadelphia, Pennsylvania 19103, commencing at 10:43 a.m., July 24, 2015, before Linda Rossi Rios, a Federally Approved RPR, CCR and Notary Public.

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1 giving your best testimony today?
 2 A. No.
 3 Q. Mr. Smith, what do you do for a
 4 living?
 5 A. I work for ASTM International.
 6 Q. And when you say you work for
 7 ASTM International, what do you mean?
 8 A. I'm the vice --
 9 MR. FEE: Objection. Vague.
 10 You can answer.
 11 THE WITNESS: I'm the vice
 12 president of technical committee
 13 operations.
 14 BY MR. BECKER:
 15 Q. And what is technical committee
 16 operations?
 17 A. It's a division within ASTM.
 18 Q. What does technical committee
 19 mean?
 20 A. Technical committees develop
 21 standards.
 22 Q. When you say "standards," what
 23 do you mean by that?
 24 A. Consensus standards.
 25 Q. By "consensus standards," what

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1 do you mean by that?
 2 A. Documents.
 3 Q. Any documents?
 4 A. Specifications, test methods,
 5 practices, guides, classifications and
 6 terminology.
 7 Q. Does the term "standards" have
 8 any specific meaning to you?
 9 MR. FEE: Objection. Vague.
 10 THE WITNESS: I'm not sure what
 11 you mean by that.
 12 BY MR. BECKER:
 13 Q. Can you define what a standard
 14 is?
 15 A. Just what I said previously,
 16 it's a test method, a specification, a
 17 practice, a guide, classification or
 18 terminology.
 19 Q. And you say that the technical
 20 committees develop standards. How do --
 21 actually, let me back up.
 22 What is a technical committee?
 23 A. I'm not sure how to answer
 24 that. I'm not sure what you mean by that.
 25 Q. How would you define a

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1 technical committee?
 2 A. A group of experts that develop
 3 standards.
 4 Q. And who are those experts?
 5 A. Volunteers.
 6 Q. And are they only volunteers?
 7 MR. FEE: Objection. Vague.
 8 THE WITNESS: For the most part
 9 from my knowledge, they're all
 10 volunteers.
 11 BY MR. BECKER:
 12 Q. How does a technical committee
 13 go about developing standards as you say?
 14 A. They use our consensus process.
 15 Q. What is the consensus process?
 16 A. It's two levels of voting
 17 starting with the subcommittee and then the
 18 main committee.
 19 Q. What's the difference between a
 20 subcommittee and a main committee?
 21 A. A subcommittee is typically
 22 smaller with a more narrow interest. A main
 23 committee has broader interest.
 24 Q. So within a technical
 25 committee, then, there is -- is there just

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1 one main committee?
 2 A. A main committee is a technical
 3 committee.
 4 Q. And are there numerous
 5 subcommittees?
 6 A. Yes.
 7 Q. And how many subcommittees on
 8 average?
 9 A. It varies.
 10 Q. Could you give me a range by
 11 which it might vary?
 12 A. The best of my knowledge, maybe
 13 from 3 to 40, 50.
 14 Q. When you say there is a
 15 consensus process that involves voting in the
 16 subcommittee and then voting at the main
 17 committee level, can you elaborate on that
 18 process?
 19 MR. FEE: Objection. Vague.
 20 THE WITNESS: They vote on
 21 standards so the folks on that
 22 committee will vote on whether or not
 23 they agree or not agree with the
 24 content of the standard.
 25 BY MR. BECKER:

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1 document.
 2 Q. Well, this is the listing of
 3 standards that ASTM is asserting are
 4 infringed by Public.Resource.Org.
 5 - - -
 6 (Exhibit 1291, Certificates of
 7 Copyright Registration, Bates
 8 ASTM000001 - ASTM000168, was marked
 9 for identification.)
 10 - - -
 11 BY MR. BECKER:
 12 Q. I'm handing you what has been
 13 marked as Exhibit 1291. These are the
 14 documents produced as Bates number ASTM000001
 15 to ASTM000168. Do you recognize this
 16 document?
 17 MR. FEE: Objection.
 18 Mischaracterizes what has been marked
 19 as 1291 as one document.
 20 THE WITNESS: I think I saw an
 21 example of one yesterday.
 22 BY MR. BECKER:
 23 Q. What is Exhibit 1291?
 24 MR. FEE: Objection. Lack of
 25 foundation.

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1 THE WITNESS: They look like
 2 they're examples of Certificates of
 3 Copyright Registration.
 4 BY MR. BECKER:
 5 Q. I will represent to you that
 6 Exhibit 1291 is all of the Certificates of
 7 Copyright Registration that ASTM has produced
 8 to Public.Resource in this action.
 9 You said you saw an example of
 10 one of these Certificates of Copyright
 11 Registration yesterday?
 12 A. Yes.
 13 Q. Was that in preparation for
 14 your deposition?
 15 A. Yes.
 16 Q. And in what context did you see
 17 an example of the Certificate of Copyright
 18 Registration?
 19 MR. FEE: Objection. Vague.
 20 THE WITNESS: I'm not sure what
 21 you mean by "context."
 22 BY MR. BECKER:
 23 Q. Were you shown an example of
 24 the Certificate of Copyright Registration by
 25 anybody?

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1 A. It was just in the materials
 2 along with other Bates numbered documents.
 3 Q. Do you recall which Certificate
 4 of Copyright Registration you viewed
 5 yesterday?
 6 A. No.
 7 Q. Was it only one Certificate of
 8 Copyright Registration that you looked at?
 9 A. I believe so.
 10 Q. Did you have any discussions
 11 with anyone in preparation for your
 12 deposition today concerning Certificates of
 13 Copyright Registration by ASTM?
 14 MR. FEE: You can answer it yes
 15 or no.
 16 THE WITNESS: Yes.
 17 BY MR. BECKER:
 18 Q. And who did you have these
 19 discussions with?
 20 A. I had a discussion with Kathe
 21 Hooper.
 22 Q. Anybody else?
 23 A. Other than the legal team, I
 24 don't think so.
 25 Q. I don't believe that Kathe

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1 Hooper was one of the people that you listed
 2 as an individual that you spoke with in
 3 preparation for your deposition?
 4 A. Yeah, we -- I didn't -- we did
 5 not have a special meeting with her.
 6 Q. What did you discuss when you
 7 spoke with Kathe Hooper in preparation for
 8 your deposition today?
 9 A. We discussed why, when this
 10 form was filled out, why we had checked off
 11 the box yes to question 2a about "Was this
 12 contribution to the work a work made for
 13 hire."
 14 Q. And why is that, that box 2a
 15 was checked off on the copyright
 16 registrations?
 17 A. She said that the copyright
 18 office had told her to fill out the form that
 19 way.
 20 Q. Did she say why the copyright
 21 office told her to fill out the form that
 22 way?
 23 A. I don't believe so.
 24 Q. Was she the one who prepared
 25 the copyright registrations?

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1 A. I think she started back in
 2 1984, I think she may have said.
 3 Q. Do you know who was filling out
 4 ASTM Certificate of Copyright Registration
 5 forms prior to Kathe Hooper?
 6 A. A name was mentioned yesterday,
 7 but I don't recall the name.
 8 Q. Was that individual Robert L.
 9 Meltzer?
 10 A. I recognize that name, but I
 11 don't know if Robert Meltzer was the one that
 12 was filling out this form.
 13 Q. Do you know who Robert Meltzer
 14 is?
 15 A. He was a former vice president
 16 of publications.
 17 Q. Did Kathe Hooper say what
 18 communications with the copyright office led
 19 to her decision to check box 2a of the
 20 copyright registrations?
 21 A. What led her to fill out this
 22 form that way?
 23 Q. Did she say what communications
 24 she had with the copyright office that led
 25 her to fill out the forms to check box 2a?

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1 A. She had said that her
 2 predecessor had a conversation with the
 3 copyright office, and they had informed her
 4 that it should be filled out that way.
 5 Q. Do you know if Kathe Hooper had
 6 any interactions with the copyright office in
 7 which the copyright office told her to fill
 8 out the registrations by checking box 2a?
 9 A. I don't believe she did.
 10 Q. What is Kathe Hooper's role at
 11 ASTM?
 12 A. She assists the vice president
 13 of publications.
 14 Q. How long has Kathe Hooper held
 15 that role for at ASTM?
 16 A. I can't say for certain, but I
 17 think she said yesterday, since about 1984
 18 she was in that role.
 19 Q. And currently the vice
 20 president of publications is John Pace.
 21 Correct?
 22 A. Correct.
 23 Q. Do you know how long John Pace
 24 has held that role for?
 25 A. It's been about 11 years.

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1 Q. Do you know what had been the
 2 discussion with the copyright office by Kathe
 3 Hooper's predecessor concerning checking box
 4 2a?
 5 A. Do I know?
 6 MR. FEE: Objection.
 7 BY MR. BECKER:
 8 Q. Yeah.
 9 MR. FEE: Vague.
 10 THE WITNESS: I only know what
 11 Kathe Hooper told me.
 12 BY MR. BECKER:
 13 Q. And what precisely did Kathe
 14 Hooper tell you about that?
 15 MR. FEE: Objection. Asked and
 16 answered.
 17 THE WITNESS: That the copyright
 18 office had informed Kathe Hooper's
 19 predecessor to check box yes to the
 20 answer -- to the question on 2a.
 21 BY MR. BECKER:
 22 Q. Did Kathe Hooper tell you any
 23 information about what her predecessor had
 24 said to the copyright office that led to the
 25 copyright office telling her to check box 2a?

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1 A. No. My understanding is it was
 2 just a question on how to fill out the form.
 3 Q. Did ASTM ever have a lawyer
 4 review the applications for copyright
 5 registration?
 6 A. I don't know.
 7 Q. Do you have any knowledge about
 8 what information the copyright office had
 9 obtained from ASTM when it said to check box
 10 2a?
 11 A. No.
 12 Q. If ASTM had provided different
 13 facts concerning the material that was being
 14 copyrighted, that might call for a different
 15 answer to whether box 2a should be checked on
 16 the copyright registration form. Correct?
 17 MR. FEE: Objection. Calls for
 18 speculation. Calls for a legal
 19 conclusion. Calls for expert
 20 testimony. You can answer if you
 21 know.
 22 THE WITNESS: I don't know.
 23 BY MR. BECKER:
 24 Q. Why is ASTM listed as the
 25 author under section 2a?

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1 A. I think the copyright office
 2 told us to fill out the form in that manner.
 3 Q. Did Kathe Hooper tell you that
 4 the copyright office said to fill out the
 5 copyright registration form by putting
 6 American Society for Testing and Materials
 7 under name of author, section 2a?
 8 A. Yes.
 9 Q. Did Kathe Hooper tell you
 10 anything else about listing ASTM under the
 11 name of author field in section 2a?
 12 A. No.
 13 Q. Are there any documents that
 14 reflect ASTM's communication with the
 15 copyright office concerning how to fill out
 16 section 2a of the forms for copyright
 17 registration?
 18 MR. FEE: Objection. Calls for
 19 speculation. This is beyond the
 20 scope. You can answer.
 21 THE WITNESS: Not that I'm aware
 22 of.
 23 BY MR. BECKER:
 24 Q. Are there any letters that
 25 reflect ASTM's communication with the

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1 copyright office concerning how to fill out
 2 section 2a of the forms for copyright
 3 registration?
 4 MR. FEE: Objection. Same
 5 objections as before, plus you just
 6 answered that question. You can
 7 answer it again.
 8 THE WITNESS: Not that I'm aware
 9 of.
 10 BY MR. BECKER:
 11 Q. Are there any internal memos
 12 that reflect ASTM's communication with the
 13 copyright office concerning how to fill out
 14 section 2a of the forms for copyright
 15 registration?
 16 MR. FEE: Objection. Calls for
 17 speculation. It's beyond the scope of
 18 his designation. You can answer if
 19 you know.
 20 THE WITNESS: Not that I'm aware
 21 of.
 22 BY MR. BECKER:
 23 Q. Who would know whether any
 24 documents exist that reflect ASTM's
 25 communications with the copyright office

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1 concerning how to fill out section 2a of the
 2 forms for copyright registration?
 3 MR. FEE: Objection. Calls for
 4 speculation. Beyond the scope of his
 5 designation. You can answer.
 6 THE WITNESS: I don't know.
 7 Maybe the people that worked in our
 8 publications department at the time
 9 that that question was -- at the time
 10 that the copyright office had informed
 11 us.
 12 BY MR. BECKER:
 13 Q. Do you know who was the
 14 president of publications as of the time that
 15 ASTM communicated with the copyright office
 16 regarding how to fill out section 2a of the
 17 copyright registration forms?
 18 A. I believe it was Bob Meltzer,
 19 Robert Meltzer.
 20 Q. Do you know if Robert Meltzer
 21 is still alive?
 22 A. I don't know for sure.
 23 MR. FEE: Matt, is now a good
 24 time to take a break?
 25 MR. BECKER: We can in just a

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1 moment.
 2 BY MR. BECKER:
 3 Q. Please turn to page ASTM000107
 4 of Exhibit 1291. I will represent to you
 5 that this is the earliest copyright
 6 registration that ASTM has provided to
 7 Public.Resource in this action. Under
 8 section 2-1, in the section that says, "NAME
 9 OF AUTHOR," do you see that it lists
 10 "American Society for Testing and Materials,"
 11 and then says, "Was this author's
 12 contribution to the work a 'work made for
 13 hire,'" and then checks the box yes?
 14 A. Yes.
 15 Q. And then on the next page, do
 16 you see that under the "CERTIFICATION" near
 17 the bottom of the page, it lists "Robert L.
 18 Meltzer," and then has his -- what appears to
 19 be his signature --
 20 A. Yes.
 21 Q. -- with a date of January 31,
 22 1980?
 23 A. Yes.
 24 Q. Is it your belief that as of at
 25 least January 31, 1980, Kathe Hooper's

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1 predecessor had had a conversation with the
 2 copyright office in which they instructed her
 3 to check the box saying that the -- scratch
 4 that.
 5 Is it your understanding that
 6 as of at least January 31, 1980, someone at
 7 ASTM had had a conversation with someone from
 8 the copyright office in which that person
 9 from ASTM was instructed to check the box
 10 saying that the work was a "work made for
 11 hire," and listing the name "American Society
 12 for Testing and Materials" under the "NAME OF
 13 AUTHOR" field?
 14 MR. FEE: Objection to form.
 15 THE WITNESS: I'm not sure I
 16 understand the question. If you could
 17 rephrase it, I'm a little lost.
 18 BY MR. BECKER:
 19 Q. Sure. Is it your -- after
 20 looking at this document, page ASTM000107 to
 21 108, is it your understanding that as of at
 22 least January 31, 1980, someone at ASTM had a
 23 conversation with someone from the copyright
 24 office in which that person from ASTM was
 25 instructed to check the box saying that the

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1 work was a "work made for hire," and listing
 2 the names "American Society for Testing and
 3 Materials" under the "NAME OF AUTHOR" field?
 4 MR. FEE: Objection. Form. Go
 5 ahead.
 6 THE WITNESS: Yeah, I believe
 7 that's right, I just don't know
 8 when that con -- I don't know when
 9 that conversation exactly was made.
 10 BY MR. BECKER:
 11 Q. But you believe it was as of at
 12 least January 31, 1980?
 13 A. I don't know. It could have
 14 been before that. I really don't know.
 15 MR. BECKER: All right. We can
 16 go off the record.
 17 VIDEOGRAPHER: The time is now
 18 3:08. We're going off the video
 19 record.
 20 - - -
 21 (A recess was taken.)
 22 - - -
 23 VIDEOGRAPHER: The time is now
 24 3:20. We're back on the video record.
 25 BY MR. BECKER:

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1 Q. Mr. Smith, do you know which
 2 standards at issue in this litigation each
 3 copyright registration that ASTM has provided
 4 corresponds to?
 5 A. I'm not sure I get the
 6 question.
 7 Q. If you look at, we were just
 8 discussing ASTM000107 in Exhibit 1291, that's
 9 a standard, the title of the work is "1980
 10 ANNUAL BOOK OF ASTM STANDARDS, Part
 11 1:Steel-Piping, Tubing, Fittings." Is that
 12 correct?
 13 A. Correct.
 14 Q. Do you know how many standards
 15 are in the 1980 Annual Book of ASTM
 16 Standards, Part 1:Steel-Piping, Tubing,
 17 Fittings?
 18 A. No.
 19 MR. FEE: Objection. Beyond the
 20 scope of his designation.
 21 THE WITNESS: No, I don't.
 22 MR. BECKER: I would disagree, I
 23 don't think this is beyond the scope
 24 of his designation. This has to do
 25 with the -- with copyright ownership

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1 and the chain of title. This is --
 2 MR. FEE: You just asked him how
 3 many chapters essentially there were
 4 in a book.
 5 MR. BECKER: Well, that's one of
 6 the questions I have, is related to
 7 this particular registration. It's a
 8 registration for a work.
 9 MR. FEE: We disagree for the
 10 record.
 11 BY MR. BECKER:
 12 Q. Are there multiple standards
 13 listed in the 1980 Annual Book of ASTM
 14 Standards, Part 1:Steel-Piping, Tubing,
 15 Fittings?
 16 MR. FEE: Same objection.
 17 THE WITNESS: Yes.
 18 BY MR. BECKER:
 19 Q. How do you know that?
 20 A. Because it's our volume of
 21 standards and volumes contain more than one
 22 standard.
 23 Q. Is there a way to confirm --
 24 excuse me, scratch that.
 25 Do you know how to determine

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1 Annual Book of ASTM Standards, Part
 2 1:Steel-Piping, Tubing, Fittings?
 3 A. I don't know specifically if
 4 there would be -- you know, if it was called
 5 the same thing, a Part 1 or -- because
 6 sometimes we have to reshuffle our volumes
 7 depending -- as they get bigger, we have to
 8 manage the size of each volume. So I don't
 9 know if it was -- would have been called Part
 10 1 or something else, but I also don't know if
 11 the same exact standards that were in there
 12 in 1979 are not necessarily in there in 1980.
 13 Q. Would ASTM A370 1977e2 have
 14 been published in an Annual Book of ASTM
 15 Standards prior to 1980?
 16 A. Most -- yeah, most likely, yep.
 17 Q. Do you know why ASTM has not
 18 provided Public.Resource with the copyright
 19 registrations for any such volumes prior to
 20 1980?
 21 MR. FEE: Objection. Calls for
 22 speculation. Beyond the scope of his
 23 designation.
 24 THE WITNESS: I don't know.
 25 BY MR. BECKER:

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1 Q. Why are some standards
 2 re-approved?
 3 MR. FEE: Objection. Beyond the
 4 scope of his designations.
 5 THE WITNESS: The technical
 6 committees make the decision as to
 7 whether or not they want to re-approve
 8 the standard through the consensus
 9 process.
 10 BY MR. BECKER:
 11 Q. And in what situations are
 12 standards re-approved?
 13 MR. FEE: Same objection.
 14 THE WITNESS: If the committees
 15 want -- it's up to the committees. So
 16 if there's -- if the committees are
 17 happy with the current state of the
 18 standard and they don't feel like
 19 there's any revisions that are
 20 necessary, then they can initiate a
 21 ballot for a re-approval.
 22 BY MR. BECKER:
 23 Q. And does that re-approval mean
 24 there are no changes from the previous
 25 version?

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1 A. Yes. Nothing is technically
 2 significant.
 3 Q. Returning to ASTM000108, just
 4 below where it lists the information under
 5 "PREVIOUS REGISTRATION," it has a section
 6 that says, "COMPILATION OR DERIVATIVE WORK"
 7 which says, "PREEXISTING MATERIAL." And then
 8 below that it says, "1979 Annual Book of ASTM
 9 Standards, Part 1." And then below that,
 10 "MATERIAL ADDED TO THIS WORK," it says,
 11 "Compilation of previously published text
 12 plus additional text."
 13 Do you know what that
 14 additional text is that was added to the 1979
 15 Annual Book of ASTM Standards, Part 1 to
 16 create the 1980 Annual Book of ASTM
 17 Standards, Part 1?
 18 A. I don't know exactly what that
 19 text was, but it's -- my guess is that it
 20 means revisions to the standards that were
 21 included in the 1979 book that are also
 22 included in the 1980 book, but there are also
 23 revisions, and any new standards that were
 24 approved that were not in the 1979 book but
 25 made it to the 1980 book.

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1 Q. Is the basis of your previous
 2 statement that typically the next years'
 3 Annual Book of Standards includes standards
 4 that had been recently approved or changed in
 5 that past year?
 6 MR. FEE: Objection.
 7 Mischaracterizes his testimony. Vague
 8 and confusing.
 9 THE WITNESS: Can you restate
 10 that?
 11 BY MR. BECKER:
 12 Q. Yeah. Maybe I'll just ask you,
 13 what's the basis for your guess that the
 14 revisions to the standards that were included
 15 in the 1979 book are -- excuse me.
 16 What is the basis for your
 17 statement that your guess is that any
 18 revisions to the 1979 book of standards that
 19 resulted in the 1980 book of standards is
 20 attributable to new standards or revised
 21 standards within that past year?
 22 MR. FEE: Objection. Vague.
 23 Confusing.
 24 THE WITNESS: I'm not sure I
 25 completely understand what your

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<p>1 IP Policy or assignments? 2 MR. BECKER: Object as to form. 3 THE WITNESS: There is 4 additional language. This document 5 identifies membership renewal Web 6 screenshots for different types of 7 members. So I identified page 2, and 8 then there's also additional language 9 on page ASTM001796 as well as 10 ASTM001798. And I believe that's it. 11 MR. FEE: I have no other 12 questions. 13 Do you have any other questions 14 or is he done? 15 MR. BECKER: No, no redirect. 16 MR. FEE: Great. Thank you. 17 THE WITNESS: Thanks. 18 VIDEOGRAPHER: The time is now 19 7:57. This concludes the videotape 20 deposition of Dan Smith. 21 - - - 22 (Witness excused.) 23 - - - 24 (Deposition concluded at 7:57 25 p.m.)</p> <p style="text-align: right;">Page 290</p>	<p>1 I declare under penalty of perjury 2 under the laws that the foregoing is 3 true and correct. 4 5 Executed on _____, 20____, 6 at _____, _____. 7 8 9 10 11 _____ 12 DANIEL SMITH 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: right;">Page 292</p>
<p>1 CERTIFICATE 2 3 4 I do hereby certify that I am a Notary 5 Public in good standing, that the aforesaid 6 testimony was taken before me, pursuant to 7 notice, at the time and place indicated; that 8 said deponent was by me duly sworn to tell 9 the truth, the whole truth, and nothing but 10 the truth; that the testimony of said 11 deponent was correctly recorded in machine 12 shorthand by me and thereafter transcribed 13 under my supervision with computer-aided 14 transcription; that the deposition is a true 15 and correct record of the testimony given by 16 the witness; and that I am neither of counsel 17 nor kin to any party in said action, nor 18 interested in the outcome thereof. 19 20 WITNESS my hand and official seal this 21 7th day of August, 2015. 22 23 24 25</p> <p style="text-align: center;">_____ Notary Public</p> <p style="text-align: right;">Page 291</p>	