

11 San Francisco, California
Tuesday, July 1, 2025

13 TRANSCRIPT OF PROCEEDINGS OF THE OFFICIAL ELECTRONIC SOUND
RECORDING 1:03 - 1:27 = 25 MINUTES

14 APPEARANCES:

15 For Plaintiff:

23823 Malibu Road

Suite 50-363

Malibu, California 90265

BY: JAYMIE PARKKINEN, ESQ.

18 | For Defendants:

Wachtell, Liptom, Rosen

51 W 52nd St

New York, New York 10019

BRADLEY R. WILSON, ESQ.

NATHANIEL CULLERTON, ESQ.

Dechert, LLP

45 Fremont Street

Floor 26

San Francisco, California

94105

RUSSELL P. COHEN, ESQ.
HOWARD M. WILMANS, ESQ.

HOWARD M. ULLMAN, ESQ.

(APPEARANCES CONTINUED ON NEXT PAGE)

1 For Defendants:

2 Morrison & Foerster, LLP
3 425 Market Street
4 San Francisco, California
5 94105

6 BY: WILLIAM FRENZEN, ESQ.

7 Transcribed by:

8 Echo Reporting, Inc.
9 Contracted Court Reporter/
10 Transcriber
11 echoreporting@yahoo.com

12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 Tuesday, July 1, 2025

1:03 p.m.

2 P-R-O-C-E-E-D-I-N-G-S

3 --oOo--

4 THE CLERK: We are here in civil action 24-4722,
5 Musk versus Altman, the Honorable Thomas S. Hixson
6 presiding.

7 Counsel, please state your appearances. Let's start
8 with Plaintiffs' counsel, and then Open ID (sic) Defendants,
9 and then the rest of the Defendants' counsel, okay? So go
10 ahead.

11 MR. PARKKINEN (via Zoom): Good afternoon. Jaymie
12 Parkkinen on behalf of Plaintiffs, Elon Musk and xAI.

13 THE COURT: Good afternoon.

14 MR. WILSON (via Zoom): Good afternoon, your
15 Honor. Bradley Wilson from Wachtell, Lipton, Rosen, and
16 Katz on behalf of the OpenAI Defendants. I'm here with my
17 partner Nate Cullerton.

18 THE COURT: Good afternoon.

19 MR. FRENTZEN (via Zoom): Good afternoon, your
20 Honor. William Frentzen, also for the OpenAI Defendants.

21 THE COURT: Good afternoon.

22 MR. COHEN (via Zoom): And good afternoon, your
23 Honor. Russell Cohen on behalf of the Microsoft Defendants.
24 And here with me is Howard Ullman.

25 THE COURT: Good afternoon.

1 We are here on a discovery dispute raised by the OpenAI
2 Defendants. And the issue to be decided is whether Mr.
3 Musk's e-mail accounts at the other business entities that
4 he controls should be treated as party discovery or third-
5 party discovery. Before we get to that, I wanted the
6 parties to update me on the status of things.

7 Let me first turn to the OpenAI Defendants. In your
8 most recent filing, you indicated that Tesla, X Corp,
9 Excession, and the Musk Foundation have produced nothing and
10 that SpaceX and Neuralink have produced no metadata. Is
11 that still the case, or are there status updates you have
12 for me?

13 MR. WILSON: Your Honor, thank you for the
14 question. The state of play as it existed when we sent that
15 letter yesterday remains unchanged.

16 THE COURT: I see.

17 Then let me turn to Plaintiffs. Do you disagree with
18 that characterization?

19 MR. PARKKINEN: We disagree insofar as X Corp was
20 only sent a subpoena two weeks ago, and it's not even due to
21 respond to the subpoena until tomorrow. So, certainly, you
22 know, it's not surprising that X Corp hasn't produced any
23 documents just yet.

24 THE COURT: Okay.

25 MR. PARKKINEN: Yes, I'll leave it -- I'll leave

1 it at that.

2 THE COURT: Okay. Well, thank you for that
3 clarification.

4 And then the OpenAI Defendants, in terms of the other
5 Musk-controlled entities that you've mentioned, the ones
6 that you specifically mentioned in the brief were Tesla, X
7 Corp, Excession, the Musk Foundation, SpaceX, and Neuralink.
8 But when you refer to the Musk-controlled entities, you use
9 words like "including." Are there other Musk-controlled
10 entities that are embraced within this discovery dispute?

11 MR. WILSON: No, your Honor, those are the
12 entities that we're focused on. I have not included xAI,
13 which is another Musk-controlled entity, because it is a
14 Plaintiff in the case, and so I think, as to that entity,
15 they are agreeing on the other side that they are on the
16 hook for party discovery from xAI.

17 THE COURT: Okay. Thank you.

18 Then let me turn to Plaintiffs' counsel. For the
19 entities, Tesla, X Corp, Excession, the Musk Foundation,
20 SpaceX, and Neuralink, do you dispute that Mr. Musk controls
21 those entities?

22 MR. PARKKINEN: We would just add that he does not
23 exclusively control all of these entities. As I'm sure you
24 may know, Tesla, for example, is a publicly traded
25 corporation with many people involved in the controlling of

1 that entity. But we don't dispute that he has control over
2 his e-mail accounts with respect to those entities.

3 THE COURT: So for all of those entities, you
4 agree that he has control over his business e-mail accounts,
5 correct?

6 MR. PARKKINEN: At least as a practical matter,
7 your Honor, yes.

8 THE COURT: Can you clarify me -- let's start with
9 Tesla. What is his position at the company? Is he CEO?

10 MR. PARKKINEN: Yes, he's CEO, and I -- to be
11 honest, I'm not sure if he has other titles within the
12 company as well.

13 THE COURT: Do you know if he's the majority
14 shareholder?

15 MR. PARKKINEN: I do not know for certain whether
16 he is or not. I don't think he is.

17 THE COURT: For X Corp, is he the CEO?

18 MR. PARKKINEN: Again, I believe that's true. For
19 Neuralink -- and if I see where your Honor is going, I do
20 not know his exact position in all of these companies and
21 couldn't speak to it with certainty. He is the CEO of xAI,
22 which is the Plaintiff in this case.

23 THE COURT: Would you agree that Mr. Musk is a
24 high level executive at each of these entities?

25 MR. PARKKINEN: Yes.

1 THE COURT: Under the case law, if someone is a
2 high level executive at a company, they are deemed to have
3 control over their business e-mail accounts, and so my
4 tentative thought is to conclude that this is party
5 discovery and that because of this control that Mr. Musk has
6 as a high level executive, these e-mails should be produced
7 as part of party discovery. I didn't see any legal
8 arguments to the contrary advanced by Plaintiffs, so why
9 don't I turn to you now to see if you have any legal
10 arguments to the contrary?

11 MR. PARKKINEN: Well, your Honor, our position is
12 largely that -- if I can just back up just a little bit to
13 provide some --

14 THE COURT: Sure, that would be fine.

15 MR. PARKKINEN: -- some context.

16 So the OpenAI Defendants subpoenaed Tesla, SpaceX,
17 Neuralink, for example, and then those entities, their in-
18 house counsel and some retained outside counsel, proceeded
19 to respond to those subpoenas. OpenAI and those counsel
20 negotiated the scope of the requests and the agreed upon
21 production. They negotiated the search terms, all without
22 any involvement of Plaintiffs. OpenAI -- I was not copied
23 on any e-mails. I was not a party of any of these
24 conferences that took place. And then come June, OpenAI all
25 of a sudden now wants these documents produced from

1 Plaintiffs, even though we were excluded from the process
2 the entire time. And so our position is that at this point,
3 it's somewhat moot. The party -- the -- SpaceX, for
4 example, has already produced documents. Neuralink has
5 already produced documents. And it's not quite clear what
6 exactly OpenAI Defendants are, in fact, seeking, whether
7 they want those documents to come from Plaintiffs with
8 Plaintiffs' Bates numbers on them or what exactly the relief
9 is they're requesting. So we believed we were -- while
10 trying to respect the third-party nature of these other
11 entities -- working to help facilitate and help these third
12 parties understand the issues in the case, the scope of
13 discovery, what would be responsive, providing them copies
14 of the protective order, the complaint, and so on. So we
15 believe as an effective matter, you know, as we said in our
16 letter, this is essentially moot because, you know, it's not
17 just OpenAI that wants these documents. Plaintiffs want
18 these documents as well. We agree that there's a lot of
19 relevant information coming from these entities, and we're
20 just as incentivized to get these documents as they are. So
21 while not necessarily being a legal argument, we just -- we
22 believe it's moot and really not necessitating the Court's
23 input or attention any further.

24 THE COURT: Well, it doesn't sound like it is moot
25 because, according to the OpenAI Defendants, Tesla, X Corp,

1 Excession, and the Musk Foundation have produced nothing.
2 So that doesn't sound like obligations have been satisfied.
3 And they say that SpaceX and Neuralink haven't produced any
4 metadata. So it doesn't sound to me like this dispute is
5 moot. And I don't think that their serving subpoenas on
6 these other entities waives any argument about these being
7 party discovery. They can do a belt and suspenders approach
8 to discovery, and it looks like that's what they've done.
9 But you represent the Plaintiffs in this action, Counsel,
10 and one of them is Mr. Musk, and he has control over those
11 e-mail accounts in those other companies, and you represent
12 him in this action, and so you need to make those e-mails
13 get produced.

14 MR. PARKKINEN: Your Honor, we are working with
15 these companies to get those e-mails produced, and that
16 production is ongoing. Tesla is due to produce documents
17 imminently. And if I may ask for some clarification, what
18 is it specifically that the Plaintiffs must be doing
19 differently is, I guess, our question either to OpenAI
20 Defendants or if the Court can offer some guidance.

21 THE COURT: Well, this is party discovery, so you
22 don't get to put responsibility on other people for what is
23 your job. So you and your client should be collecting
24 documents and producing them. And if I understand
25 correctly, under the current case schedule, the deadline for

1 the substantial completion of document discovery is July
2 14th. Do you agree that's the substantial completion
3 deadline?

4 MR. PARKKINEN: Yes.

5 THE COURT: Then that's the deadline that you need
6 to meet. And you can't hide behind these other companies as
7 third parties because your client in this case controls his
8 business e-mail accounts at those companies.

9 MR. PARKKINEN: Just to clarify, your Honor, I
10 assure you, we're not hiding behind the companies with
11 respect to producing Mr. Musk's e-mails. We -- like -- as I
12 said, we want these documents as well and are -- you know,
13 as my colleague says, we're in violent agreement with OpenAI
14 about this. We all want these documents, and we're going to
15 make sure that these documents get produced.

16 In terms of searching for these documents, as we stated
17 in our letter response, it's really important to have these
18 entities involved in this production process, as they have
19 proprietary information, and as we said, with SpaceX, they
20 coordinate with NASA and the armed forces regarding national
21 defense matters, and so their participation is really
22 integral to, you know, the efficient handling of this
23 process.

24 THE COURT: There is no problem with involving
25 additional attorneys or other additional people who might

1 need to be involved. That's not a problem. But,
2 ultimately, the responsibility for complying with discovery
3 obligations rests on the parties and their attorneys, and so
4 that's your client and you. So if you want to involve other
5 people at the companies or other outside counsel to review
6 things to make sure that, you know, appropriate safeguards
7 are in place, that's all perfectly fine. However, that
8 doesn't allow you to get out of the deadlines under the case
9 schedule. So it's perfectly fine for you to involve other
10 people. You've identified some relevant considerations
11 that, for example, SpaceX might have, and I think those are
12 legitimate concerns to have. However, even as you deal with
13 those issues, you do have to comply with your obligations in
14 this case and to complete document production in a timely
15 fashion.

16 Now, if some of these subpoenas asked for things beyond
17 the scope of Mr. Musk's e-mails, then those are, in fact,
18 subpoenas to other companies, and so I'm not expressing a
19 view on that. The only issue teed up for me is Mr. Musk's
20 e-mail accounts at those companies, and I think that is
21 party discovery.

22 Let me turn to the OpenAI Defendants. You're not
23 asking me to say that things that Tesla or SpaceX, for
24 example, possess outside of Musk's e-mail accounts, that
25 those are party discovery, are you?

1 MR. WILSON: No, your Honor, we aren't. And
2 that's actually the answer to the question why we served the
3 subpoenas. There are other relevant individuals at these
4 companies, other relevant repositories of documents that
5 we're seeking through those subpoenas. And what this motion
6 is about is Mr. Musk's e-mail accounts at the various
7 companies. And I suppose if there is a folder, for example,
8 of electronic documents at any of these companies that only
9 Mr. Musk could access, then that might be covered by party
10 discovery. We don't have enough insight into this to know
11 whether those kinds of repositories exist, but that's the
12 only caveat I would offer to the Court's question.

13 THE COURT: Okay. Well, thank you for that
14 additional information. And so I'm going to issue a written
15 order, but, as far as I'm concerned, the only issue teed up
16 for me today is whether Mr. Musk's e-mail accounts at those
17 other entities at which he's a high level executive aren't
18 under his control, and I think that the answer is yes.

19 Let me turn to Plaintiffs' counsel. The substantial
20 completion deadline is July 14th. Are you on track to meet
21 that?

22 MR. PARKKINEN: We are -- I just want to be
23 careful and think through this. You know, for example --

24 THE COURT: And just to make sure my question is
25 clear, when I say, "Are you on track to meet that?" I mean

1 including Mr. Musk's e-mail accounts at these other entities
2 that we've discussed.

3 MR. PARKKINEN: I will say, broadly speaking, yes,
4 your Honor. The only reason I pause is, for example, the X
5 Corp -- not to be confused with xAI, but the X Corp, as we
6 said, the subpoena response is not even due until tomorrow.
7 So that production, to have that -- you know, all the
8 documents searched for and reviewed within two weeks would
9 be challenging indeed.

10 THE COURT: Well, as I've explained, if the OpenAI
11 Defendants are asking for things from X Corp outside of Mr.
12 Musk's e-mails, I'm not expressing an opinion one way or the
13 other about whether that's party discovery. That issue
14 hasn't been teed up for me. So if there's true third-party
15 discovery, then that's not what I'm asking about. But it's
16 really about X Corp's -- Mr. Musk's e-mails at X Corp. Are
17 you on track to have those reviewed and produced by July
18 14th?

19 MR. PARKKINEN: Yes, your Honor.

20 THE COURT: Okay.

21 MR. WILSON: Your Honor, if I could just clarify
22 that the metadata issue is important here to us, and I
23 didn't mention it, but I think that is captured within our
24 request about Mr. Musk's e-mails, and we would ask that the
25 Court's order -- and if the Court is so inclined -- would

1 include a requirement that Mr. Musk's e-mail accounts have
2 metadata produced along with the e-mails.

3 THE COURT: My tentative thought is that I do
4 think that metadata is included within the e-mails that Mr.
5 Musk controls, but let me turn to Plaintiffs' counsel.

6 Do you have a different view? Do you distinguish
7 control over the e-mails from control over metadata?

8 MR. PARKKINEN: I would have to think about that.
9 I have not considered that as of yet. I will say that
10 complicates the July 14th deadline because it's much more
11 invasive to go in and reach in and grab this metadata as
12 well.

13 THE COURT: Have the parties discussed with each
14 other an ESI protocol, in terms of when you produce
15 documents, what's to be included with them, for example
16 metadata?

17 MR. PARKKINEN: We have discussed that. We had
18 circulated an ESI protocol draft, and OpenAI has not given
19 it back to us for, you know, final review and consideration
20 or entry by the Court, and I believe we sent that draft
21 maybe five weeks ago, so I'm not sure why that's taking so
22 long, but --

23 MR. WILSON: Your Honor, I don't want to bog down
24 on an issue that is not presented to the Court, but what Mr.
25 Parkkinen just said is not accurate. We exchanged multiple

1 drafts of an ESI protocol. I think we were down to
2 essentially agreement on all the terms except for perhaps
3 one or two, and neither of those, I think, should impede
4 their ability to provide at least customary metadata for
5 these e-mails.

6 THE COURT: In my opinion, it is typical to
7 produce metadata with an e-mail document production, and so
8 I will expect that for these e-mail accounts as well. I'm
9 just talking about the normal and customary metadata fields
10 that litigants normally produce, and that's what I think
11 should be done here. If you want to negotiate something
12 more elaborate or detailed than that, then you can, of
13 course, do that, but in terms of the scope of my order, I do
14 think that metadata should accompany the e-mail productions.

15 And to be clear, I'm only ruling on the party status of
16 these e-mail accounts at the other companies. If there are
17 particular disputes, for example as to particular request
18 for production or timeframes or something like that, that's
19 not presented to me, and I'm not expressing a view on that.
20 But I am going to issue a written order finding that these
21 e-mail accounts at these other entities are party discovery
22 and that Plaintiffs are obligated to produce this in a
23 timely fashion under the case schedule.

24 Now, this -- the case schedule is keeping the parties
25 on a fast track, and so what I would like to do is to ask if

1 there are any other discovery disputes that are likely to
2 arise that the parties will want me to address. If you
3 can't think of them right now and they come up later, that's
4 fine. I'm just asking for a preview, if there's anything
5 that you see coming down the road, to help me see what's
6 coming.

7 Let me first turn to Plaintiffs. Do you have any
8 discovery disputes that you anticipate having to need to
9 raise with the Court?

10 MR. PARKKINEN: Yes, your Honor. We have a fair
11 number of issues about the scope of requests for production,
12 OpenAI's refusals to respond to requests for admission,
13 evasive interrogatory answers. So we do anticipate needing
14 some relief if we can't get to the bottom of that through
15 the meet and confer process soon. We've already met and
16 conferred about it. We've exchanged letters. It appears
17 we're reaching impasses on some of these matters, and so we
18 would expect to have to submit a letter soon.

19 THE COURT: All right. Thank you for that.

20 And let me turn first to the OpenAI Defendants. Are
21 there any discovery disputes that you see coming down the
22 pipeline?

23 MR. WILSON: Unfortunately, your Honor, yes. In
24 terms of the discovery bit that's been requested from us,
25 I'm a little surprised by what Mr. Parkkinen just said.

1 It's been, I think, two weeks since we made substantial
2 compromise positions or conveyed substantial compromise
3 positions to the other side, and we hadn't heard anything
4 further about that, but we'll deal with whatever lingering
5 issues there are.

6 On our side, we do have substantial concerns, including
7 -- I would start with the Plaintiffs' position that they're
8 not obligated to produce any documents that are relevant to
9 our counterclaims in the case because there's a pending
10 motion to dismiss those counterclaims. Our position is,
11 under the federal rules, there's no automatic stay of
12 discovery. The Court has entered an expedited schedule at
13 the Plaintiffs' request. This case is progressing to
14 depositions in a few weeks, and that motion will not be
15 decided by the Court. It may not even be fully submitted to
16 the Court in time for those depositions. And so we think
17 the idea that discovery on our counterclaims should be held
18 in abeyance does not have merit. So if we don't get
19 progress on that, we'll have to present that to the Court.

20 We've also been met with reluctance to produce
21 documents and communications related to the alleged implied
22 contract that is at the core of this dispute. The
23 Plaintiffs are taking the position that those communications
24 should not be produced unless we produce documents
25 responsive to other requests on what I would characterize as

1 tangential at best issues, and we don't think a tit for tat
2 approach on core documents in the case when they're the
3 Plaintiff is appropriate. And so we would anticipate, if we
4 can't get a resolution, bringing that to the Court's
5 attention I would anticipate no later than next week.

6 THE COURT: All right. Thank you.

7 And then let me turn to the other Defendants. Are
8 there other discovery fights you see coming up?

9 MR. ULLMAN (via Zoom): Your Honor, we've tried to
10 structure or tailor our discovery requests to focus on
11 Microsoft-specific issues. We understand from the
12 Plaintiffs that they are conducting one search, one
13 collection process for documents responsive to OAI's
14 requests, as well as ours, and are making tranches of
15 productions responsive to both sets of requests or all sets
16 of requests. So I would just say we share OpenAI's concerns
17 about the e-mail domain searches that have just been
18 discussed and about the scope and pace of Plaintiffs'
19 document production.

20 THE COURT: Okay. Thank you.

21 Then this is a fairly tight case schedule, so we need
22 to keep things moving. So if you have a discovery dispute,
23 I want the parties to meet and confer with each other
24 promptly. But please don't meet and confer forever. Meet
25 and confer in good faith to see if you can resolve the

1 dispute. And if you can't, then promptly get a joint
2 discovery letter brief on file. We need to -- if there are
3 disputes that the parties can't work out, that's what I'm
4 here for, to help resolve those issues. So don't let these
5 things drag out for a long time. Meet and confer. Do so in
6 good faith and attempt to resolve it. And if you can't
7 resolve it, that's fine. Please quickly get one or more
8 joint discovery letter briefs on file.

9 So let me turn to Plaintiffs. Is there anything
10 further that you would like to address at the hearing today?

11 MR. PARKKINEN: One thing, yes, your Honor. It's
12 in OpenAI's initial letter to Judge Gonzalez Rogers. They
13 had raised the issue of Mr. Birchall's subpoenas and our
14 ability to accept service of them. Within that, while, you
15 know, we have since been authorized to accept service and
16 have done so, the issue arises that they unilaterally
17 scheduled Mr. Birchall's deposition without conferring with
18 Counsel regarding that scheduling in violation of the local
19 rules. And so we propose that, rather than doing this
20 piecemeal, scattershot and have a -- having a unorganized
21 schedule at the parties, including Microsoft, OpenAI, and
22 the Plaintiffs, you know, get together and try to
23 collaborate on a global deposition schedule, given that
24 there are likely numerous witnesses to be deposed in the
25 relatively short amount of time. And so if we could get

1 some guidance from the Court on that, I think that would
2 help resolve that issue kind of proactively.

3 THE COURT: I think what you should do is meet and
4 confer with the Defendants, and then if you're able to get
5 an agreement on that, then great. And if you're not, then
6 the parties should promptly file a joint discovery letter
7 brief, and we can discuss the scheduling and sequence of the
8 depositions.

9 MR. PARKKINEN: Thank you.

10 THE COURT: And let me turn to the OpenAI
11 Defendants. Do you have any further issues you would like
12 to address at the hearing today?

13 MR. WILSON: Nothing further, your Honor, except
14 to say that on the deposition of Mr. Birchall, I had thought
15 we had been very clear with Mr. Parkkinen that that date was
16 there as a placeholder and that we were planning to discuss
17 its scheduling in connection with the broader schedule. But
18 if there was any confusion on that, hopefully I've just
19 clarified it.

20 THE COURT: All right. And then let me turn to
21 the other Defendants.

22 Do you have any additional issues you would like to
23 raise at the hearing today?

24 MR. COHEN: We don't, your Honor. Thank you.

25 THE COURT: All right. Thank you, Counsel. The

1 matter is submitted. I will issue a written order.

2 MR. WILSON: Thank you, your Honor.

3 MR. PARKKINEN: Thank you, your Honor.

4 THE CLERK: Thank you, everyone. We're off the
5 record in this matter. Court is in recess.

6 (Proceedings adjourned at 1:27 p.m.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

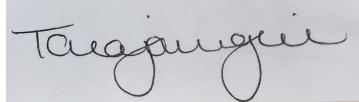
21

22

23

24

25

1 CERTIFICATE OF TRANSCRIBER
23 I certify that the foregoing is a true and correct
4 transcript, to the best of my ability, of the above pages of
5 the official electronic sound recording provided to me by
6 the U.S. District Court, Northern District of California, of
7 the proceedings taken on the date and time previously stated
8 in the above matter.9 I further certify that I am neither counsel for,
10 related to, nor employed by any of the parties to the action
11 in which this hearing was taken; and, further, that I am not
12 financially nor otherwise interested in the outcome of the
13 action.14
15 
1617 Echo Reporting, Inc., Transcriber
18 Saturday, July 5, 2025
19
20
21
22
23
24
25