No. 2024-2296

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

EXAFER, LTD., *Plaintiff-Appellant*

v.

MICROSOFT CORPORATION, *Defendant-Appellee*

Appeal from the United States District Court for the Western District of Texas
No. 1:20-CV-131-RP, Judge Robert Pitman

PLAINTIFF-APPELLANT'S RESPONSE TO COMBINED PETITION FOR PANEL REHEARING AND REHEARING EN BANC

June 23, 2026

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CERTIFICATE OF INTEREST

Counsel for Exafer, Ltd., certifies under Federal Circuit Rule 47.4 that the following information is accurate and complete to the best of their knowledge:

1. **Represented Entities.** Provide the full names of all entities represented by the undersigned counsel in this case.

Exafer, Ltd.

2. **Real Parties in Interest.** Provide the full names of all real parties in interest for the entities. Do not list real parties if they are the same as the entities.

None.

3. **Parent Corporations and Stockholders.** Provide the full names of all parent corporations for the entities and all publicly held companies that own 10% or more stock in the entities.

None.

4. **Legal Representatives.** List all law firms, partners, and associates that (a) appeared for the entities in the originating court or agency or (b) are expected to appear in this court for the entities. Do not include those who have already entered an appearance in this court. Fed. Cir. R. 47.4(a)(4).

Daignault Iyer LLP: Chandran B. Iyer, Shailendra Masheshwari, Oded Burger, Hoda Rifai-Bashjawish, Stephanie R. Mandir, Austin Ciuffo

5. **Related Cases.** Other than the originating case(s) for this case, are there related or prior cases that meet the criteria under Fed. Cir. R. 47.5(a)?

No.

6. **Organizational Victims and Bankruptcy Cases.** Provide any information required under Fed. R. App. P. 26.1(b) (organizational victims in criminal cases) and 26.1(c) (bankruptcy case debtors and trustees). Fed. Cir. R. 47.4(a)(6).

None/Not Applicable.

Dated: June 23, 2026

/s/ Elizabeth Bernard
Elizabeth Bernard

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INTRODUCTION

Microsoft's petition attacks a standard the panel never adopted. The panel's decision does not alter long-standing apportionment principles or any requirement under 35 U.S.C. § 284. It simply held that the district court erred in treating *Enplas* as a categorical bar requiring exclusion of Mr. Blok's opinions. Because Mr. Blok's methodology captured the incremental value created by Microsoft's use of the patented invention and quantified that value using Microsoft's own engineering metrics, the panel concluded that his opinion satisfied Rule 702.

Having lost that issue, Microsoft expressly abandons any challenge to the panel's *Enplas* holding and instead advances a new theory that recasts this fact-specific Rule 702 dispute as a sweeping question about proximate cause under § 284. Microsoft also devotes substantial argument to criticisms of Dr. Congdon's opinions, even though those opinions were *not* challenged on appeal and are not before this Court. Rehearing is not warranted to address arguments the panel did not decide and that Microsoft did not appeal.

More fundamentally, the panel's decision does not conflict with *any* precedent or raise an "exceptional" question. The unanimous decision properly reflects § 284's requirement that damages value the "use made of the invention by the infringer." Here, the infringement is *Microsoft's* infrastructure-level use of VFP Fastpath and SmartNIC within Azure. Exafer's methodology directly targets this infringement, valuing the infrastructure benefits by the additional virtual machine capacity created, *exactly* as Microsoft did in its contemporaneous documents at first infringement.

Microsoft's petition attempts to escape this real-world valuation by diverting focus away from the actual "use made of the invention." Microsoft does not seek to value its infringement. It seeks to limit damages to proof of "actual use" by a downstream economic metric—the virtual machine-hour that Exafer's methodology uses to *value* the unlocked capacity benefit. Microsoft's approach conflates the infringing use with the valuation tool used to quantify it and fundamentally undercompensates the capacity benefit delivered by its infringement. And any suggestion that the expected increase in virtual machine hours cannot be used without subsequent confirmation that each hour was ultimately realized and specifically tied to its infrastructure gains is inconsistent with the hypothetical negotiation framework. Decades of precedent hold that this reasonable royalty construct is an *ex ante* valuation, not an *ex post* accounting.

The panel's decision is grounded in standard patent law principles. It recognized the direct causal link under § 284 between Microsoft's infrastructure infringement and the increased capacity the parties would have valued during an *ex ante* hypothetical negotiation. Because the decision is tethered to Microsoft's actual infringement and consistent with the hypothetical negotiation framework, Microsoft identifies no doctrinal error. The petition should be denied.

STATEMENT OF THE CASE

Exafer asserts two patents directed to optimizing communication paths between virtual network devices. Op. 2-3. Exafer alleges infringement by Microsoft's use of VFP Fastpath and SmartNIC in the Azure Platform in the United States (the "Accused Features"). Op. 4. Microsoft does not sell those features or directly charge its customers for its use of the Accused Features. Appx4.

The Accused Features are core platform-level infrastructure, and Microsoft broadly deploys the features to save Central Processing Units ("CPUs") in *each* Azure server. Appx0927-0938(¶¶240-249), Appx1456(186:4-11), Appx2110. At the time of first infringement, Microsoft's engineering metrics projected these CPU savings as 50% (for VFP Fastpath) to 300% (for SmartNIC). Appx1588-90, Appx1969. Microsoft's business evaluations of its use of this technology revealed these substantial processing efficiencies would directly free-up server capacity to host additional virtual machines ("VMs") in Azure. Op. 6-8. Microsoft contemporaneously *valued* its implementation of the infringing technology by the additional VM capacity it could offer across Azure. *See id.*; Blue.Br.12-19.

Based on this evidence, Exafer's technical expert, Dr. Paul Congdon, opined that this platform-wide reduction in CPU usage directly enables an Azure server to host a higher, quantifiable volume of VMs. Op. 6 (citing Appx896-900(¶¶113-126)). Microsoft would be able to sell more VMs without the need for additional network infrastructure. Op. 8 (citing Appx897(¶117)). Dr. Congdon testified that the infrastructure-level benefit from the infringing use does *not* depend on use of the Accused Features by individual VMs. *See* Appx1546(267:19-274:2). Exafer's damages expert, Mr. Justin Blok, then used virtual-machine hours ("VM-hours") as an economic metric to capture the value of the *additional* VM capacity attributable to the use of the Accused Features. Op. 8. Mr. Blok calculated an incremental benefit of $534.3 million enabled by the infringing use and then *expressed* this as a per-VM-hour royalty over the damages period. *Id*. (citing Appx1256-60((¶¶113-19)).

Both experts' methodology properly focused on valuing the "use made of the invention by the infringer" for the measure of damages—Microsoft's use of the Accused Features in the Azure Platform.

SUMMARY OF THE PANEL'S DECISION

The panel's unanimous decision reversed the district court's Rule 702 exclusion order of Mr. Blok's damages methodology. Microsoft had also challenged the opinions of Dr. Congdon under Rule 702, but the district court denied that objection. *See* Op. 4. Microsoft did not appeal that denial, and no challenge to Dr. Congdon's opinions was before the panel.

The panel held that *Enplas Display Device Corp. v. Seoul Semiconductor Co*., 909 F.3d 398 (Fed. Cir. 2018), does not create the *per se* categorical bar against unaccused products in a reasonable-royalty analysis that Microsoft sought below and found Mr. Blok's methodology reliable and admissible under Rule 702. Op. 6-8. The panel reviewed the extensive evidence establishing the CPU reduction metrics and Microsoft's own valuation of its infringing use in terms of the additional VMs it would be able to sell. *Id*. The panel found that "Microsoft's own documents demonstrate that Mr. Blok's VM royalty base was based on a causal connection between the Accused Features of the Azure Platform and VMs." Op. 6.

Focusing on the specific facts in this case to determine how the parties would value the technology during the hypothetical negotiation, consistent with this Court's precedent, the panel concluded Mr. Blok's damages methodology is sound based on the infrastructure-level technology at issue. Op. 6-8.

REASONS TO DENY REHEARING

I. The Panel's Opinion Does Not Conflict With § 284 or Any Precedent and Presents No Question of "Exceptional Importance."

Microsoft's petition steps far outside the boundaries of this proceeding and fails to satisfy any standard for rehearing. Microsoft's petition is an attempt to relitigate a damages methodology that rests on Microsoft's own contemporaneous documents and expert opinions that the district court allowed (and Microsoft chose *not* to challenge on appeal). The petition should be denied.

A. This Court Should Deny Rehearing Because Microsoft's Petition Relies on Arguments Outside the Record Below.

Under Federal Rule of Appellate Procedure 40(b), panel rehearing is strictly confined to points of law or fact the panel "overlooked or misapprehended," while en banc review is reserved for clear conflicts with precedent or questions of "exceptional importance." *See Halo Elecs., Inc. v. Pulse Elecs., Inc.*, 780 F.3d 1357, 1360-61 (Fed. Cir. 2015) (Taranto, J., concurring). Microsoft's petition meets none of these criteria, wholly departing from the record below.

Microsoft identifies no legal or factual point the panel overlooked or misapprehended, or any conflict with precedent in the panel's unanimous decision. The core legal issue addressed was whether *Enplas* categorically bars unaccused products from a reasonable-royalty analysis. The panel properly distinguished *Enplas* based on the evidence-backed causal connection shown here. Op. 6-8. Rather than creating new law, the panel simply rejected the *per se* bar Microsoft sought below—a holding that Microsoft "does not reargue [here]." Pet. 6. That alone should end the inquiry, rendering any rehearing unwarranted.

Nor is rehearing proper to address highly specific, fact-bound evidentiary disputes. The panel merely applied standard Rule 702 principles to an extensive factual record. That record includes Microsoft's own documents showing a 50% to 300% CPU efficiency gain from infringing use, which Microsoft valued by the increased VM capacity it would allow in Azure at the time of first infringement. Op. 6. Microsoft's petition nonetheless rests on its claim that the evidence was "irrespective" of use, pointing to Dr. Congdon's allegedly "unapportioned" opinions. Pet. 13-16. Microsoft is wrong—but further, Microsoft did *not* appeal the admissibility of Dr. Congdon's opinions. The unchallenged record before the panel reflects a quantifiable increase in VM capacity from Microsoft's use of the patented invention, and the panel's decision is not "irrespective" of use.

Microsoft's "proximate cause" theory was neither presented nor developed below and cannot serve as a basis for en banc review after Microsoft abandoned its *Enplas* challenge. A petition for rehearing is not a vehicle to test-drive new legal theories. *See In re Google Tech. Holdings LLC*, 980 F.3d 858, 863 (Fed. Cir. 2020); *Pentax Corp. v. Robison*, 135 F.3d 760, 762 (Fed. Cir. 1998). Microsoft's original argument—that *Enplas* categorically bars unaccused products from a royalty base—is entirely distinct from its *new* claim that § 284 imposes a rigid "proximate-cause" requirement demanding a unit-by-unit apportionment of economic valuation metrics. *See* Pet. 13. Microsoft cannot reframe its case now to skirt the panel's evidence-based "causal connection" rationale and Rule 702 holding.

Microsoft's petition improperly treats this Court as a court of first instance. Granting the petition would incentivize litigants to hold theories in reserve, waiting to spring novel back-up arguments en banc only after they are needed to salvage a loss. Because the *Enplas* issue is fully resolved, and Microsoft presents *no* alternative basis properly raised in this appeal, the petition should be denied.

B. Microsoft Manufactures a "Bare Causal Connection" Standard to Recast the Panel's Routine Application of Settled Law.

Microsoft's petition repeatedly attempts to recast the panel's decision as creating a "bare causal connection" standard under § 284. *See, e.g.*, Pet. 2, 7. But the panel did not alter the governing § 284 framework. The panel only held that Exafer's damages methodology was sufficiently tied to the accused technology to satisfy Rule 702 and *Enplas* does not create a categorical bar on using unaccused products in a reasonable-royalty analysis. Op. 6-8.

Microsoft manufactures this phrasing to suggest the panel substituted a "product-to-product" relationship for § 284's requirement that damages compensate for the "use made of the invention by the infringer." Pet. 11. But the panel did not simply find because the Accused Features are connected to VMs, Exafer's damages are proper. The panel found that Exafer presented evidence that Microsoft *valued* its use of the Accused Features at the time of the hypothetical negotiation based on the infrastructure benefits it provides (*i.e.*, more VM capacity), and that Mr. Blok properly used VM-hours to *measure* that value under Rule 702. Op. 6-8.

That evidentiary foundation was built on Microsoft's data, not speculation. Dr. Congdon opined that Microsoft's infrastructure-level use generates platform-wide CPU reductions—yielding improvements between 50% (for VFP Fastpath) and 300% (for SmartNIC)—directly freeing up server capacity to host unaccused VMs. Op. 6-7. Dr. Congdon further apportioned to attribute one-third of the SmartNIC reduction to the patented invention—using data from Microsoft's internal testing and development presentations. Op. 6 (citing Appx1588-90, Appx1969). Mr. Blok used these precise quantifications to construct his valuation. He did not apply a royalty on "100%" of Azure VM-hours—he mathematically isolated the *incremental* VM-hours enabled by Microsoft's infringing use. Op. 8; Gray.Br.14-16.

The panel concluded that this evidence connected the CPU reductions to increased VM capacity, enabling the additional VM-hours used in Mr. Blok's valuation methodology. Op. 6-8. The panel *expressly* found that Mr. Blok's methodology was "tethered" to the patented invention, confirming damages are grounded in evidence tying the use of the Accused Features to its economic value. Op. 8. The panel distinguished *Enplas* because Exafer's evidence connected the infringing use of the Accused Features to the VMs in the valuation methodology, unlike the completely separate products in *Enplas*. Op. 6.

Microsoft's attempt to convert this well-supported evidentiary ruling into a "bare causal connection" standard to manufacture a conflict in the law is groundless. The panel did not create a new legal standard—it applied existing § 284 and Rule 702 standards to specific facts. The panel found that the evidence established a direct causal link—the Accused Features freed-up CPU demand in Azure, which translated into a quantifiable, incremental benefit of additional VM capacity. Op. 6-8. That is not an undefined or attenuated connection, but is precisely the kind of direct nexus that satisfies § 284. Mr. Blok's apportioned VM-hour methodology captured the value of this incremental benefit. Op. 8.

Supreme Court and Federal Circuit precedent—including *Garretson*, *Aro II*, *WesternGeco*, and *Brumfield*[1]—confirms that the relevant inquiry under § 284 is whether an evidentiary and economic nexus ties the acts of infringement to the measure of value, ensuring the royalty reflects the patented invention's value rather than unrelated activity. The panel's decision is consistent with those principles. Because the uncontested evidence confirmed that the VM capacity increase is the direct technical benefit valued in the hypothetical negotiation, Exafer's royalty directly measures that benefit. *See* Op. 6-8.

The panel's decision is a straightforward Rule 702 ruling that does not alter § 284's requirement ensuring that damages are awarded "for the use made of the invention by the infringer."

C. Microsoft's Misapplication of § 284's "Use" Impermissibly Conflates Acts of Infringement with Exafer's Economic Metric.

Microsoft's petition relies on a bait-and-switch: substituting the statutory "use made of the invention" with downstream VM activity. Section 284 commands compensation for "the use made of the invention *by the infringer*." Microsoft

[1] *WesternGeco LLC v. ION Geophysical Corp.*, 585 U.S. 407, 414-15 (2018); *Aro Mfg. Co.* v. *Convertible Top Replacement Co.*, 377 U.S. 476, 507 (1964); *Garretson v. Clark*, 111 U.S. 120, 121 (1884); *Brumfield Tr. for Ascent Tr. v. IBG LLC*, 97 F.4th 854, 876-77 (Fed. Cir. 2024).

repeatedly invokes "actual use" and "use made of the invention," but ignores the proper statutory focus in this case—Microsoft's *own* infrastructure-level deployment of the Accused Features, *not* downstream use by individual VMs. Microsoft's petition looks to the wrong "use made of the invention."

Exafer's damages are not "irrespective" of Microsoft's infringing use. As the panel correctly recognized, the infringing use in this case is Microsoft's use of VFP Fastpath and SmartNIC in the Azure Platform. Op. 6-8. That infringing use reduces CPU demand, directly increasing capacity for additional VMs across Azure. When Dr. Congdon testified that benefits accrue "irrespective" of use, he was explaining that Microsoft's infringing infrastructure-level optimization does not depend on individual VM-level use. His testimony reflects engineering reality: The invention optimizes the platform's core infrastructure. Mr. Blok looked to VM-hours strictly to measure the economic value unlocked by the infrastructure-level use and the additional VMs that Microsoft can offer due to the infringement. Op. 8.

VM-hours serve as a proper *economic metric* to value the scope of Microsoft's infrastructure-level use, not to define the relevant compensable use itself. Microsoft's infringing use occurs when it deploys the Accused Features to optimize Azure and free-up CPUs. Op. 6-8. Microsoft's reliance on *Niazi*—a failure-of-proof case concerning whether the claimed method was ever used—and its demand for evidence of "actual use" by VMs are entirely misplaced. Pet. 11, 13-16; *Niazi*

Licensing Corp. v. St. Jude Med. S.C., Inc., 30 F.4th 1339, 1352-53, 1357 (Fed. Cir. 2022). None of Microsoft's alleged "overlooked" VM evidence (Pet. 14, 19) addresses, much less undermines, the unchallenged record of infrastructure-level use and benefit across Azure. *See* Appx1492(71:24-25)("we reduced the number of [CPU] cores required by network processing"). Microsoft disregards § 284 and its own infringing use, improperly recasting the damages inquiry as downstream "use."

Damages must compensate for the value of Microsoft's infringement. When the proper focus is on Microsoft's infrastructure-level use, the panel's framework aligns with Microsoft's own recitation of § 284's causation requirement (Pet. 1)—correctly defining the nexus as a "causal connection between the Accused Features of the Azure Platform and VMs." Op. 6. Microsoft's petition shifts the focus away from its own infringing behavior. Pet. 13-16. It now demands proof that each VM-hour independently reflects the infringing use, seeking to impose a unit-by-unit apportionment requirement on downstream *economic metrics* rather than ensuring that damages value the infrastructure-level infringement itself. *Id*.

No authority Microsoft identified supports such a redefinition of § 284 when using an unaccused product as an economic metric to value the infringement. *Carnegie Mellon*'s "when and only when" language provides no support for that theory. *See id*.; *Carnegie Mellon Univ. v. Marvell Tech. Grp., Ltd.*, 807 F.3d 1283, 1306 (Fed. Cir. 2015). *Carnegie Mellon* addressed the territorial limits of recoverable infringement under § 271. It did not address how a reasonable royalty may value proven domestic infringement under § 284, much less hold that every economic metric used in that valuation must itself constitute infringing use.

Microsoft's framing conflicts with the foundational principle that "the value of what was taken—the value of the use of the patented technology—measures the royalty." *Aqua Shield v. Inter Pool Cover Team*, 774 F.3d 766, 770 (Fed. Cir. 2014) (citation omitted). It collapses the fundamental distinction between the act of infringement and the metric used to value it. Section 284 requires compensation for "the use made of the invention by the infringer," not proof that every economic metric used to value that use itself constitutes the "use made of the invention."

Exafer's damages theory "starts from an act of infringement"—the deployment of VFP Fastpath and SmartNIC in Azure—and measures the value of the incremental capacity enabled by that use. Exafer's royalty properly reflects the value of the infringement. Microsoft's shifting "use" would undercompensate Exafer for the infringement by forcing a valuation of a subset of activity less than the infringing use itself. Section 284 requires damages "adequate to compensate for the infringement," not a truncated measure that ignores the true value of the "use made of the invention" by Microsoft.

D. This Court's Precedent Rejects Microsoft's Attempt to Tie the Hypothetical Negotiation to Realized Business Outcomes.

Microsoft's misdirection of the relevant "use" under § 284 also distorts the hypothetical negotiation framework by improperly shifting the inquiry from an *ex ante* valuation to proof of *ex post* realized business outcomes.

The value of the "use made of the invention by the infringer" is measured by the hypothetical negotiation. The hypothetical negotiation asks what the parties would have agreed to at the time of first infringement based on the *expected* value of Microsoft's infringing use. *See Lucent Techs., Inc. v. Gateway, Inc.*, 580 F.3d 1301, 1324 (Fed. Cir. 2009). It values the expected benefits of the patented technology *ex ante*—not whether infringement later produced actual downstream sales or business decisions. *See id.* at 1325; *Interactive Pictures Corp. v. Infinite Pictures, Inc.*, 274 F.3d 1371, 1385 (Fed. Cir. 2001) ("The fact that Infinite did not subsequently meet [future sales] projections is irrelevant to Infinite's state of mind at the time of the hypothetical negotiation.").

The evidence the panel relied on showed that Microsoft itself *valued* the Accused Features based on the additional VM capacity those features were expected to create in Azure. Op. 6-8. Microsoft's documents showed a 50% to 300% CPU efficiency gain from its infringing use of the VFP Fastpath and SmartNIC within Azure, which Microsoft valued by the increased VM capacity it would allow. Op. 6. Consistent with that evidence, Mr. Blok used VM-hours as an economic metric to quantify the value Microsoft attributed to the additional capacity created by the use of the Accused Features. Exafer's damages theory thus mirrors Microsoft's own contemporaneous valuation framework.

Microsoft now attacks that evidence-backed framework by demanding proof that the expected capacity benefit later resulted in realized VM sales and downstream business outcomes. Pet. 10-11, 19. That is not the inquiry the hypothetical negotiation asks. VM-hours are not the injury for which Exafer seeks compensation; they are an economic measure used to quantify the value of Microsoft's infringing use. By insisting that Exafer prove a chain of later business decisions and actual VM sales, Microsoft improperly converts the *ex ante* valuation inquiry required by § 284 into an *ex post* inquiry focused on whether projected outcomes ultimately occurred. *See WesternGeco*, 585 U.S. at 417 (warning against conflating the legal injury with the damages arising from that injury).

The panel properly understood this distinction, identifying the direct connection between the Accused Features and the VM capacity used to measure the economic benefit. Op. 6-8. Microsoft's reliance on causation principles from liability cases like *Anza* is misplaced. Pet. 10; *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 457-58 (2006). Those cases address *ex post* downstream harm for standing and liability, not the separate *ex ante* valuation inquiry that governs reasonable royalties. Similarly, Microsoft's reliance on *Carnegie Mellon* is misguided. Pet. 12; 807 F.3d at 1306-07. That case addressed whether foreign sales lacking a domestic act of infringement could be included in a hypothetical negotiation. These liability and foreign-sales hurdles do not bear on valuing a domestic, *ex ante* infrastructure benefit in the hypothetical negotiation.

The relevant question is whether Exafer's methodology reliably measures the value attributable to the patented invention—not whether every projected benefit later manifested in realized business outcomes. To change the question as Microsoft now demands would fundamentally alter the hypothetical-negotiation framework by requiring proof that the economic measures used to value the patented invention actually later materialized. Neither § 284 nor this Court's reasonable-royalty cases have ever imposed such a requirement.

II. The Panel Did Not Usurp the District Court's Rule 702 Gatekeeping Role.

Microsoft's argument that the panel should have remanded rather than reversed the exclusion order misconstrues standard appellate review. *See* Pet. 17-18. Because a district court abuses its discretion when its decision rests on an erroneous view of the law, the panel was fully entitled to correct the misinterpretation of *Enplas* and find the methodology admissible under the proper legal standard. The panel did not improperly weigh facts; it merely evaluated whether the existing record contained a legally sufficient methodology to clear the Rule 702 threshold. *EcoFactor* does not support any error by the panel. *See EcoFactor, Inc. v. Google LLC*, 137 F.4th 1333, 1340 (Fed. Cir. 2025) (en banc) (distinguishing judge's gatekeeping role from factfinder's role).

Remanding a fully developed record on a pure legal issue would waste judicial resources. By relying on Microsoft's own internal documents, the panel identified an objective, legally-sound foundation that established admissibility without resolving factual disputes. Op. 6-8. Microsoft claims the panel ignored admissions (Pet. 18-20), but Dr. Congdon's opinions were not appealed, and Microsoft focuses on the wrong "use." *See supra*. Whether Microsoft's competing evidence is more persuasive is a merits question for the jury, not an admissibility issue.

The panel's admissibility ruling does not foreclose the district court from addressing separate "other grounds" for Mr. Blok's exclusion previously raised below that have not been addressed. *See* Pet. 20.

III. Microsoft's and Amici's Broad Policy Arguments Are Overstated.

The panel's opinion is not a sweeping doctrinal decision on damages, nor does it impact long-standing principles such as the smallest saleable patent-practicing unit (SSPPU) standard. It is a routine case where the infringer's own internal documentation proved the value of its infringing use at the time of the hypothetical negotiation. The panel simply applied standard damages frameworks based on the data-backed evidentiary foundation found within Microsoft's own records.

CONCLUSION

For the foregoing reasons, Exafer respectfully requests this Court to deny Microsoft's combined petition for panel rehearing and rehearing en banc.

Dated: June 23, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The foregoing filing complies with the relevant type-volume limitation of the Federal Rules of Appellate Procedure and Federal Circuit Rules because the filing has been prepared using a proportionally spaced typeface and includes 3,886 words, excluding the parts of the brief exempted by the Rules.

Dated: June 23, 2026

/s/ Elizabeth Bernard
Elizabeth Bernard

CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing document using the Court's CM/ECF filing system on June 23, 2026, which will send notifications to all counsel registered to receive electronic notices.

Dated: June 23, 2026

/s/ Elizabeth Bernard
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