

1 a document that wasn't cited in the contentions or somewhere  
2 in a document that was, that document talks about News, and  
3 Bing -- Microsoft should have to read the tea leaves to figure  
4 out how exactly the plaintiff was applying that theory to the  
5 accused instrumentality.

6 And we suggest, Your Honor, that that's simply not -- not  
7 the standard. That's not what's required by us. It should  
8 not be required by the court to have to sift through the  
9 record to figure out what -- where exactly this theory was  
10 disclosed. It should be right there in the contentions. That  
11 seems to be the point of the Patent Local Rules.

12 The remedy here we think is straightforward. The remedy  
13 is to strike the infringement theory. We cited cases in the  
14 briefs. I'm not going to rehash those cases.

15 The *Adobe Wowza* case is probably the -- the most on-point  
16 case that this court could follow and come up with the same --  
17 same result. Something that -- that's happened that's changed  
18 the character of this case here that -- that warrants  
19 mentioning again is that with the infringement contentions  
20 that were served, what was in play was an [REDACTED]  
21 [REDACTED] index for the Bing Web index.

22 With the modified theory for Bing News, what's at play is  
23 an index for claims one and six that's [REDACTED]  
24 pages, so [REDACTED] percent of the universe of things that were  
25 supposedly at play initially are in play now.