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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

APPLE, INC.,) CV-11-1846-LHK
)
PLAINTIFF,) SAN JOSE, CALIFORNIA
)
VS.)
) SEPTEMBER 28, 2011
SAMSUNG ELECTRONICS CO.,)
LTD., ET AL,)
) PAGES 1-87
DEFENDANT.)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE PAUL S. GREWAL
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: MORRISON FOERSTER
BY: WESLEY OVERSON
RICHARD HUNG
MINN CHUNG
MICHAEL JACOBS
425 MARKET STREET
SAN FRANCISCO, CA 94105

FOR THE DEFENDANT: QUINN EMANUEL
BY: VICTORIA MAROULIS
BRETT ARNOLD
KEVIN JOHNSON
555 TWIN DOLPHIN DRIVE, 5TH FL
REDWOOD SHORES, CA 94065

OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR
CERTIFICATE NUMBER 13185

1 SAN JOSE, CALIFORNIA SEPTEMBER 28, 2011

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

3 (WHEREUPON, COURT CONVENEED AND THE
4 FOLLOWING PROCEEDINGS WERE HELD:)

5 THE COURT: GOOD MORNING. PLEASE HAVE A
6 SEAT.

7 MR. RIVERA, WHENEVER YOU ARE READY, WOULD
8 YOU CALL THE MATTER ON THIS MORNING'S CALENDAR

9 THE CLERK: YES, YOUR HONOR.

10 CALLING APPLE, INC. VERSUS SAMSUNG
11 ELECTRONICS, ET AL. CASE NUMBER CV-11-1846.

12 COUNSEL, PLEASE STATE YOUR APPEARANCES.

13 MR. OVERSON: WESLEY OVERSON ON BEHALF OF
14 APPLE, INC.

15 THE COURT: MR OVERSON, GOOD MORNING,
16 SIR.

17 MS. MAROULIS: VICTORIA MAROULIS WITH
18 QUINN EMANUEL ON BEHALF OF SAMSUNG.

19 AND WITH ME IS MR. KEVIN JOHNSON ALSO FOR
20 SAMSUNG AND BRETT ARNOLD.

21 THE COURT: ALL RIGHT.

22 WELCOME BACK, MS. MAROULIS.

23 GOOD MORNING, GENTLEMAN.

24 MR. OVERSON: YOUR HONOR, MAY I ALSO
25 INTRODUCE MR. JACOBS, MR. HUNG AND MR. MINN CHUNG.

1 ALSO WITH US HERE TODAY IS CYNDI WHEELER
2 FROM APPLE, INC.

3 THE COURT: GOOD MORNING TO EACH OF YOU
4 AS WELL.

5 ALL RIGHT. WELL, I HAVE REVIEWED THE
6 FILINGS WITH RESPECT TO THIS MOTION AS WELL AS
7 THE -- I SHOULD SAY, INCLUDING THE NUMEROUS
8 DECLARATIONS THAT HAVE BEEN SUBMITTED, SO I FEEL AS
9 IF I'M FAIRLY UP TO SPEED ON THE PAPER RECORD.

10 IT IS APPLE'S MOTION, SO I WILL BEGIN
11 WITH COUNSEL FOR APPLE.

12 AND BEFORE WE TURN TO THE MATTERS AT HAND
13 I HAD A PROCEDURAL QUESTION, I WANTED TO MAKE SURE
14 I WAS UNDERSTANDING THE POSTURE OF THIS MOTION
15 CORRECTLY.

16 WHEN DID LEAD TRIAL COUNSEL MEET BEFORE
17 THIS MOTION WAS BROUGHT?

18 MR. OVERSON: THE 15TH, I BELIEVE,
19 YOUR HONOR.

20 THE COURT: AND WHO ATTENDED ON BEHALF OF
21 APPLE AND WHO ATTENDED ON BEHALF OF SAMSUNG?

22 MR. OVERSON: MR. JOHNSON FOR SAMSUNG AND
23 MR. JACOBS FOR APPLE.

24 THE COURT: OKAY.

25 AND IS IT CORRECT TO UNDERSTAND THAT

1 MR. JACOBS AND MR. JOHNSON WILL BE TRYING THIS
2 CASE?

3 MR. OVERSON: I CAN SAY SO FOR OUR SIDE,
4 YOUR HONOR.

5 MR. JOHNSON: YES, YOUR HONOR. IT WAS
6 THE 16TH.

7 THE COURT: ALL RIGHT. I APPRECIATE
8 THAT.

9 MR. OVERSON: THANK YOU.
10 IT WAS THE FRIDAY.

11 MR. JACOBS: IF I MAY, YOUR HONOR, JUST
12 ON THAT TOPIC BECAUSE MR. JOHNSON AND I HAVE TALKED
13 ABOUT THIS AS WELL.

14 WE ARE ON A VERY FAST PACE ON THIS CASE
15 AND AS YOU MIGHT IMAGINE LEAD TRIAL COUNSEL ARE
16 PULLED IN A VARIETY OF DIFFERENT DIRECTIONS AND WE
17 HAVE BEEN TRYING TO FIGURE OUT HOW WE COULD MEET,
18 WHAT WE UNDERSTAND YOUR DESIRES TO BE TO HAVE
19 SERIOUS, REALLY INTENSE EFFORTS TO RESOLVE THESE
20 DISPUTES BEFORE THEY TEE UP TO YOU WITHOUT BOGGING
21 DOWN THE PROCESS GOING BACK AND FORTH BETWEEN THE
22 PENINSULA.

23 I DON'T KNOW IF YOU'VE SEEN ANYTHING IN
24 OTHER CASES THAT YOU HAVE FOUND SATISFACTORY AS A
25 SUBSTITUTE FOR LEAD COUNSEL MEETING AND CONFERRING

1 IN PERSON THAT YOU WOULD BE OPEN TO, BUT SINCE YOU
2 ASKED THE QUESTION I THOUGHT IT WOULD BE --

3 THE COURT: SURE. IT'S AN INTEREST I
4 SUSPECT MR. JOHNSON SHARES AS WELL.

5 WELL, FIRST EVER ALL, I THINK IT'S
6 IMPORTANT TO NOTE PARTICULARLY ON THE RECORD, THIS
7 IS NOT MY INTEREST, IT'S JUDGE KOH'S INTEREST AND
8 ORDER, SO I'M NOT ABOUT TO MODIFY HER ORDER WITHOUT
9 SPECIFIC DIRECTION FROM HER ON THAT.

10 I WOULD SUGGEST THAT IF YOU FOUND THIS
11 PROCESS CUMBERSOME, PARTICULARLY IN THE CONTEXT OF
12 THIS FAST TRACK IN ITS PRELIMINARY INJUNCTION
13 PHASE, TWO THOUGHTS COME TO MIND.

14 ONE, THAT PERHAPS I MIGHT SUGGEST THAT
15 THE BURDENS THAT YOU ALL FACE IN PRESENTING THESE
16 ISSUES ARE SIMILAR TO THE BURDEN THE COURT HAS IN
17 RESOLVING THEM, THAT OUGHT TO BE WEIGHED AND
18 CONSIDERED BEFORE BRINGING A WAVE OF MOTIONS.

19 HAVING THAT SAID, IF YOU THINK A MORE
20 STREAMLINE PROCESS WOULD BE APPROPRIATE ESPECIALLY
21 NOW THAT DISCOVERY IS BEFORE MYSELF INSTEAD OF
22 JUDGE KOH, I WOULD SUGGEST A SHORT LETTER OR MOTION
23 TO JUDGE KOH WOULD BE THE APPROPRIATE COURSE.

24 I JUST DON'T BELIEVE I HAVE JURISDICTION
25 TO OVERRULE THE ARTICLE III JUDGE ON THIS

1 PARTICULAR ISSUE.

2 MR. JACOBS: THANK YOU VERY MUCH, JUDGE.

3 THE COURT: ALL RIGHT.

4 LET'S TURN TO THE MATTERS AT HAND.

5 SO WHY DON'T YOU BEGIN MR. OVERSON.

6 MR. OVERSON: YES, YOUR HONOR.

7 IF YOU WOULD PERMIT ME JUST A FEW MINUTES
8 FOR CONTEXT HERE.

9 I KNOW THAT YOUR HONOR IS FAMILIAR WITH
10 THE CASE AND HAS READ THE PAPERS BUT THIS CASE IS
11 KIND OF -- THE BASIS OF THIS CASE IN THE
12 PRELIMINARY INJUNCTION MOTION IS REALLY THE
13 SIMILARITY, THE STRIKING SIMILARITY BETWEEN THE
14 DESIGNS OF THE ACCUSED PRODUCTS AND THE APPLE
15 PRODUCTS AND OF COURSE THE UNDERLYING PATENTS THAT
16 ARE AT ISSUE.

17 THE COURT: WELL, IT IS THE DESIGNS THAT
18 ARE CLAIMED IN THE PATENTS THAT ARE THE BASIS FOR
19 YOUR DESIGN PATENT INFRINGEMENT CLAIM.

20 MR. OVERSON: THAT IS CORRECT.

21 BUT AS YOUR HONOR CAN IMAGINE, WHEN APPLE
22 SEES A PHONE THAT LOOKS LIKE -- THIS IS THE SAMSUNG
23 AND THIS IS THE APPLE IPHONE. WHEN THEY SEE THIS
24 KIND OF SIMILARITY AND THE MARKET IMPACT THAT IT
25 HAS, THAT'S WHAT'S DRIVING THIS WHOLE PROCEEDING

1 AND THE URGENCY OF THE PROCEEDING.

2 THE COURT: SINCE YOU BROUGHT UP THE
3 ISSUE OF THE PRODUCTS I DID HAVE A QUESTION UNDER
4 EGYPTIAN GODDESS.

5 IS THE DESIGN OF THE PRODUCT ITSELF
6 RELEVANT IN ANY WAY TO THE ANALYSIS, THE ORDINARY
7 OBSERVER ANALYSIS?

8 MR. OVERSON: I WOULD SAY THAT IN THE
9 CONTEXT OF THE PRELIMINARY INJUNCTION MOTION IT IS
10 RELEVANT BECAUSE IT GOES TO THE MARKET IMPACT AND
11 IRREPARABLE HARM.

12 THE COURT: ALL RIGHT.

13 PUTTING ASIDE THE ISSUE OF IRREPARABLE
14 HARM, WHICH I UNDERSTAND IS A PRETTY IMPORTANT PART
15 OF YOUR MOTION AND WE'LL COME BACK TO IT, STRICTLY
16 SPEAKING THOUGH UNDER THE FEDERAL CIRCUIT'S
17 PRECEDENT, WOULD THE DISTRICT JUDGE IN EVALUATING
18 THE LIKELIHOOD OF THE SUCCESS ON THE MERITS, THAT
19 PRONG OF YOUR PI MOTION, WOULD SHE BE PERMITTED TO
20 LOOK TO THE EMBODIMENTS OR MUST SHE CONSIDER HOW
21 THESE PATENTS ARE CLAIMED AND NOTHING MORE?

22 MR. OVERSON: THE ANALYSIS CERTAINLY
23 SHOULD CERTAINLY FOCUS ON THE --

24 THE COURT: IT'S GOING TO FOCUS ON IT,
25 I'M SAYING AS A LEGAL MATTER.

1 MR. OVERSON: -- CLAIMS, AND BRINGING OF
2 THE CLAIMS.

3 WE WOULD SAY IT'S TOTALLY IRRELEVANT,
4 HONOR.

5 THE COURT: SO IS IT LEGALLY PERMISSIBLE
6 UNDER FEDERAL CIRCUIT PRECEDENT FOR HER TO CONSIDER
7 THE DESIGN EMBODIMENT?

8 MR. OVERSON: I WOULD SAY IT'S A FACTOR,
9 YOUR HONOR, THE JUDGE COULD CONSIDER.

10 THE COURT: ALL RIGHT. I SUSPECT WE WILL
11 HEAR MORE ABOUT THAT.

12 ALL RIGHT. GO ON. I'M SORRY FOR
13 INTERRUPTING.

14 MR. OVERSON: OKAY.

15 AND WE ALSO HAVE, OF COURSE, AN IPAD II
16 AND WE HAVE THE SAMSUNG TABLET.

17 THE COURT: FULL DISCLOSURE, I'VE GOT MY
18 IPAD I UP HERE, SO LET'S GET THAT OUT ON THE TABLE.

19 MR. OVERSON: SO SAMSUNG'S POSITION IN
20 THE PRELIMINARY INJUNCTION PROCEEDINGS IS THERE WAS
21 JUST A NATURAL EVOLUTION OF PRODUCT DEVELOPMENT
22 SUCH THAT THEIR PRODUCT ENDED UP LOOKING A LOT LIKE
23 THE APPLE PRODUCTS, AND I THINK THEY HAVE TO
24 ADDRESS THE SIMILARITY, EVEN JUDGE KOH STATED ON
25 THE RECORD THAT THE PRODUCTS LOOK "STRIKINGLY

1 SIMILAR."

2 WHETHER THERE'S A NATURAL EVOLUTION OR
3 SOMETHING MORE, LIKE THE COPYING OF THE APPLE
4 PRODUCT, IS VERY, VERY IMPORTANT TO THE MOTION.

5 AND WHAT WE ARE DOING IS WE ARE SEEKING
6 EVIDENCE THAT IN FACT WHEN SAMSUNG CHOSE TO DEVELOP
7 PRODUCTS THAT LOOK LIKE THESE PRODUCTS DO, WHEN
8 THEY FIRST CHOSE TO GO THAT DIRECTION IN THE
9 DESIGN, DID THEY CONSIDER AND REVIEW THE APPLE
10 PRODUCTS AND MAKE A DECISION, WE WANT TO LOOK MORE
11 LIKE THAT VERY SUCCESSFUL APPLE PRODUCT.

12 THE COURT: IF I MIGHT INTERRUPT AGAIN, I
13 JUST WANT TO MAKE SURE I UNDERSTAND YOUR ARGUMENT
14 CLEARLY.

15 IS IT APPLE'S THEORY THAT WHEN SAMSUNG
16 FIRST DESIGNED THESE PRODUCTS THEY WERE LOOKING AT
17 AND INDEED COPYING THE APPLE'S DESIGNS, OR IS IT
18 THE REDESIGN OR ALLEGED REDESIGN?

19 MR. OVERSON: YES.

20 OUR THEORY AS TO THE PHONES -- THERE'S
21 THREE PHONES, ONE TABLET.

22 AS TO THE PHONES, THEY COPIED THE
23 IPHONES, OKAY. AS TO THE TABLET, THEY INITIALLY
24 COPIED THE IPAD. THE IPAD II CAME OUT AND THEN
25 THEY COPIED THE IPAD II.

1 SO SAMSUNG'S THEORY, AGAIN, IS THAT
2 THERE'S JUST THIS EVOLUTION, WE DIDN'T COPY.

3 AND IF I MAY, I'VE ALREADY GIVEN TO
4 OPPOSING COUNSEL, I WOULD LIKE TO HAND UP TO THE
5 BENCH A SET OF REFERENCE EXHIBITS.

6 IF YOU WOULD LOOK A TAB 1, YOUR HONOR,
7 AGAIN, IN THE WAY OF SETTING THE STAGE, BUT I THINK
8 IT'S IMPORTANT TO UNDERSTAND THE --

9 MS. MAROULIS: YOUR HONOR, MAY I RAISE A
10 QUICK OBJECTION TO THESE EXHIBITS? THEY INCLUDE
11 MATERIALS THAT WERE NEVER SUBMITTED WITH THE PAPERS
12 THAT WERE FILED.

13 SO WE ARE NOT ONLY SEEING THEM FOR THE
14 FIRST TIME NOW, THEY WERE NOT PART OF THE MOTION.

15 THE COURT: ALL RIGHT. I WILL NOTE YOUR
16 OBJECTION.

17 I JUST WANT TO GET TO THE MERITS OF THIS
18 DISPUTE.

19 MS. MAROULIS: AND TO THE EXTENT
20 MR. OVERSON WANTS TO GO INTO THE DESCRIPTION OF
21 SAMSUNG'S CONFIDENTIAL DOCUMENTS, WE WILL NEED TO
22 EXCUSE APPLE'S COUNSEL WHO IS PRESENT HERE.

23 THE COURT: AGAIN, I WILL LEAVE IT TO YOU
24 ALL TO POLICE THAT. IF THERE'S AN ISSUE
25 IMPLICATING PROTECTIVE ORDER, I'M SURE YOU WILL

1 TAKE APPROPRIATE STEPS TO REQUEST THE CLEARING OF
2 THE COURTROOM OR MOVE ON TO ANOTHER DOCUMENT.

3 MS. MAROULIS: THERE'S A NUMBER OF
4 DOCUMENTS IN MR. OVERSON'S STACK THAT ARE MARKED
5 HIGHLY CONFIDENTIAL.

6 THE COURT: WELL, LET'S TAKE THIS ONE
7 DOCUMENT AT A TIME. I REALLY WANT TO GET TO THE
8 MERITS OF YOUR DISPUTE.

9 MR. OVERSON: I UNDERSTAND, YOUR HONOR.

10 REALLY BRIEFLY, THE ARGUMENT IS FROM
11 SAMSUNG'S SIDE THAT THERE'S A NATURAL EVOLUTION,
12 BUT WHAT WE CAN SEE IS THE SMARTPHONES BEFORE THE
13 IPHONE THAT SAMSUNG PUT OUT ON THE LEFT.

14 IN THE CENTER, THE IPHONE COMES OUT ON
15 JANUARY 2007. THEN ON THE RIGHT ARE SOME IPHONES
16 THAT WERE DEVELOPED AFTERWARDS. AND NEEDLESS TO
17 SAY, THE ACCUSED DEVICE IS, IN OUR VIEW, SPOT ON.

18 THE COURT: NONE OF THE THREE DESIGN
19 PATENTS THAT ARE BEING ASSERTED IN THIS PI PHASE
20 CLAIM FEATURES WHICH ARE REVEALED WHILE THE
21 PRODUCTS ARE OPERATING, RIGHT?

22 IN OTHER WORDS, IT'S NOT ENTIRELY --

23 MR. OVERSON: I BELIEVE THEY ARE EXTERIOR
24 FEATURES.

25 THE COURT: RIGHT.

1 SO ANY OF THESE INTERIOR ICON FEATURES,
2 THEY ARE NOT RELEVANT TO THE ANALYSIS, CORRECT?

3 MR. OVERSON: NOT IN THE PI PHASE,
4 YOUR HONOR.

5 MR. OVERSON: OKAY. SO I WILL MOVE ON
6 AND LET'S GET TO THE MERITS.

7 I DO -- BOTH SIDES AGREE THAT COPYING
8 EVIDENCE IS RELEVANT IN A PI CONTEXT. COPIERS
9 DON'T FARE AS WELL ON PI PROCESS BECAUSE IT'S
10 BALANCING OF THE EQUITIES.

11 SOMEBODY WHO IS COPYING SOMEBODY ELSE'S
12 PRODUCT IS NOT GOING TO GET MAYBE A BENEFIT OF THE
13 DOUBT THAT SOMEBODY WHO JUST DESIGNED THE PRODUCT
14 AND THEN IT HAPPENED TO INFRINGE.

15 THE COURT: THEY TELL YOU IN THEIR
16 OPPOSITION, CORRECT, THAT YOU HAVE NO EVIDENCE OF
17 COPYING, THEY PUT THAT ISSUE IN PLAY?

18 MR. OVERSON: THEY PUT THE ISSUE SQUARELY
19 IN PLAY.

20 AND WHAT WE'LL SEE AS A THEME THROUGH
21 THIS HEARING, I BELIEVE, IS THAT SAMSUNG WILL NOT
22 PRODUCE EVIDENCE THAT'S DIRECTLY RELEVANT TO THE
23 ARGUMENTS THEY WERE MAKING. THEY ARE INJECTING
24 MANY OF THESE ISSUES INTO THE PI PROCESS AND YET
25 THEY THINK THEY CAN MAKE THE ARGUMENTS ON THE

1 AFFIRMATIVE SIDE WITHOUT BACKING IT UP WITH THE
2 PRODUCTION OF THE DOCUMENTS THAT ARE RELEVANT TO
3 THOSE ARGUMENTS.

4 SO WHAT APPLE IS LOOKING FOR IN DOCUMENT
5 REQUEST NUMBER 1 IS DOCUMENTS WHEREBY THE SAMSUNG
6 DECISION MAKERS AND DESIGNERS LOOK AT APPLE
7 PRODUCTS AND EVALUATED THOSE PRODUCTS AND
8 CONSIDERED THEM DURING THE PROCESS THAT THEY WERE
9 ARRIVING AT THE DECISION TO COME OUT WITH THESE
10 PRODUCTS, THE DESIGN OF THESE PRODUCTS.

11 AND IT'S A PRETTY BASIC --

12 THE COURT: ALL APPLE PRODUCTS OR ANY
13 APPLE PRODUCT?

14 MR. OVERSON: WELL, CERTAINLY THE
15 PRODUCTS THAT ARE THE PHONES AND THE TABLETS,
16 YOUR HONOR.

17 THE COURT: SO TO BE PRECISE THE
18 EMBODIMENTS OF THE THREE DESIGN PATENTS THAT ARE
19 BEING ASSERTED IN THIS PHASE, CORRECT?

20 MR. OVERSON: I THINK THAT'S RIGHT,
21 YOUR HONOR, YES.

22 THE COURT: OKAY.

23 SO WHEN YOUR PAPERS REFER TO "APPLE
24 PRODUCTS," WE'RE ALL ON THE SAME PAGE HERE, WE ARE
25 TALKING ABOUT THE EMBODIMENTS OF THOSE THREE DESIGN

1 PATENTS?

2 MR. OVERSON: WE ARE NOT TALKING ABOUT
3 THE MAC, YOUR HONOR.

4 THE COURT: NOR ARE WE TALKING ABOUT
5 OTHER VERSIONS OF THESE PRODUCTS WHICH ARE NOT
6 EMBODIMENTS OF THE CLAIMS.

7 MR. OVERSON: I THINK THAT'S CORRECT. I
8 DON'T THINK THERE'S ANY FURTHER EMBODIMENTS THAT
9 NEED TO BE CONSIDERED.

10 WHAT -- SO WHEN WE HAVE MET AND CONFERRED
11 ON THESE ISSUES WE HAVE GOTTEN NOWHERE. WE HAVE
12 ASKED, WHO HAVE YOU TALKED TO? WHO, WHAT HAVE YOU
13 DONE TO COLLECT THESE DOCUMENTS?

14 THE COURT: WHAT DID THEY TELL YOU?

15 MR. OVERSON: WORK PRODUCT. IT'S A WORK
16 PRODUCT OBJECTION. THEY WON'T TELL US WHAT THEY'VE
17 DONE TO DO THE COLLECTION.

18 SO THAT HAS LEFT US UP AGAINST A WALL
19 WHERE WE CAN'T REALLY GET FURTHER.

20 SO THAT IS WHY IT IS CERTAINLY ONE OF THE
21 REASONS WHY WE ARE HERE.

22 THEY HAVE GIVEN US SOME DOCUMENTS AND
23 THEY HAVE MADE A BIG POINT IN THE PAPERS OF SAYING,
24 LOOK, WE PRODUCED THINGS. THEY HAVE PRODUCED SOME
25 DOCUMENTS.

1 "SOME DOCUMENTS" IS NOT WHAT THE
2 DISCOVERY OBLIGATIONS REQUIRE. THEY HAVE NEVER
3 SAID AND THEY DON'T SAY IN THE PAPERS, WE'VE DONE A
4 REASONABLE SEARCH, WE'VE DONE A THOROUGH JOB AND WE
5 HAVE GIVEN YOU ALL THE RESPONSIVE DOCUMENTS
6 ALREADY.

7 THEY DO NOT SAY THAT AS TO ANY OF THESE
8 REQUESTS AND CERTAINLY NOT AS TO THIS ONE HAVING TO
9 DO WITH THE ANALYSIS OF APPLE PRODUCTS.

10 WHAT THEY HAVE GIVEN US IS DISTURBING IN
11 THAT IT IS LARGELY NONRESPONSIVE AND REFLECTS, IN
12 OUR VIEW, DISRESPECT OF THE PROCESS.

13 AND NOW I'M GOING TO REFER TO TAB 3 WHICH
14 I THINK OPPOSING COUNSEL BELIEVES CONTAINS HIGHLY
15 CONFIDENTIAL ATTORNEY'S EYES ONLY INFORMATION; IS
16 THAT CORRECT, COUNSEL?

17 THE COURT: THAT'S WHAT IT SAYS ON THE
18 BOTTOM OF THE PAGE, RIGHT?

19 MS. MAROULIS: THAT'S CORRECT,
20 YOUR HONOR.

21 MR. OVERSON: SO I'M FLAGGING THIS IN
22 CASE YOU WISH TO HAVE --

23 MS. MAROULIS: AND IT WOULD BE MY REQUEST
24 TO HAVE APPLE IN-HOUSE COUNSEL EXCUSED.

25 THE COURT: WELL, I THINK WE TALKED ABOUT

1 CLEARING THE COURTROOM THE LAST TIME. I CAN'T
2 REMEMBER WHICH COUNSEL IN THE PATENT CASE I HAD THE
3 DISCUSSION WITH IN THE PAST, BUT I'M NOT INCLINED
4 TO DO THAT.

5 I APPRECIATE THE DOCUMENTS MAY ILLUSTRATE
6 CERTAIN POINTS, I THINK SAMSUNG'S POINT HERE IS THE
7 BETTER ONE. LET'S NOT IMPLICATE THIS PROTECTIVE
8 ORDER AND LET'S HAVE AN OPEN DISCUSSION ABOUT
9 WHAT'S AT STAKE HERE. I DON'T NEED TO SEE THESE
10 PAPERS TO UNDERSTAND YOUR POINT. SO LET'S VOID ANY
11 ISSUES THAT REQUIRE ME TO LOCK THE PUBLIC
12 COURTHOUSE, OKAY.

13 MR. OVERSON: OKAY.

14 BUT YOUR HONOR, I WILL HAVE TO REFER TO
15 WHAT THE CONTENT IS OF WHAT THEY'VE PRODUCED AND I
16 KNOW THAT SAMSUNG HAS TAKEN THE POSITION THAT I
17 CAN'T DO THAT WITHOUT BREACHING THE PROTECTIVE
18 ORDER IN FRONT OF SOMEONE FROM APPLE.

19 WE DON'T AGREE WITH THAT POSITION AS TO
20 THESE DOCUMENTS, WE DON'T AGREE AT ALL. I WANT TO
21 MAKE THAT CLEAR. I'M JUST BEING RESPECTFUL OF ONE
22 SIDE HAS SAID I CANNOT DO THIS WITHOUT BREACHING
23 THE PROTECTIVE ORDER.

24 THE COURT: ALL RIGHT.

25 WELL, YOU KNOW I TRY TO SET THIS ON THE

1 FAST TRACK AND BE AS AVAILABLE AND AS OPEN AS I CAN
2 WITH YOU GUYS BUT I THINK I'VE MADE MY POSITION
3 VERY CLEAR THAT I DON'T LIKE CLOSING COURTROOMS.

4 IF WE ARE GOING TO TALK ABOUT
5 CONFIDENTIALLY DESIGNATED INFORMATION, I DON'T SEE
6 AS A PROCEDURAL MATTER THAT I CAN DO ANYTHING OTHER
7 THAN LOCK THE COURTROOM.

8 SO LET'S GET TO THE MERITS HERE, LET'S
9 AVOID ANY OF THESE ISSUES AND FOCUS ON THE
10 ARGUMENT, ALL RIGHT?

11 MR. OVERSON: THE DOCUMENTS THAT ARE
12 PRODUCED TO US, OVER A THOUSAND PAGES OF THEM WERE
13 PICTURES, PICTURES OF THINGS THAT DON'T HAVE TO DO
14 WITH THIS CASE.

15 SO WHEN WE TAKE INTO ACCOUNT THAT THEY
16 CLAIM WE'VE DONE THIS GREAT JOB, WE PRODUCED ALL
17 THE DOCUMENTS AND THEY LIST THE BATES NUMBERS, IF
18 YOU LOOK AT PARAGRAPH 8 OF THE JENKINS
19 DECLARATION --

20 THE COURT: YOUR POINT IS THE HANDFUL OF
21 DOCUMENTS PRODUCED INCLUDE PARAGRAPHS OF BILLINGS
22 THAT HAS NOTHING TO DO WITH THIS CASE.

23 MR. OVERSON: AND MY POINT IS ALSO ALL OF
24 THE DOCUMENTS LISTED UNDER PARAGRAPH 8 OF THE
25 JENKINS DECLARATION DON'T HAVE TO DO WITH WHAT

1 WE'RE LOOKING FOR OR WHAT WAS CALLED FOR.

2 AND THEY ACTUALLY CITED TO THESE
3 DOCUMENTS IN THEIR DECLARATION AS IF THEY SUPPORTED
4 THEIR POSITION THAT THEY'D DONE A GOOD JOB ON THE
5 PRODUCTION.

6 APPLE, FOR ITS PART, HAS DONE IN-PERSON
7 INTERVIEWS, IN-PERSON COLLECTIONS, THEY HAVE DONE
8 THE E-MAIL SWEEPS, WE'VE DONE ATTORNEY REVIEW OF
9 DOCUMENTS BEFORE PRODUCTION, WE'VE DONE ALL THE
10 THINGS WE ARE SUPPOSED TO DO.

11 WE DON'T KNOW WHAT SAMSUNG HAS DONE BUT
12 WHAT WE'VE SEEN IT DOES NOT LOOK LIKE THEY'VE DONE
13 THAT GOOD OF A JOB.

14 THE COURT: HAVE YOU TOLD THEM YOUR
15 CUSTODIAN?

16 MR. OVERSON: WE HAVE. WE PRODUCED A LOT
17 OF DOCUMENTS, WE HAVE A LOT OF DEPOSITIONS.

18 THE COURT: SO THEY HAVE A LIST.

19 LET'S TAKE THIS FROM THE TOP. THEY HAVE
20 A LIST OF EACH OF THE INDIVIDUALS FROM WHOM YOU'VE
21 COLLECTED DOCUMENTS?

22 MR. OVERSON: YES. I BELIEVE THAT THEY
23 HAVE --

24 THE COURT: YES OR NO? DO YOU KNOW THE
25 ANSWER?

1 MR. JACOBS: I BELIEVE THE STATE OF PLAY
2 IS WE HAVE OFFERED THAT KIND OF TRANSPARENCY ON THE
3 PRODUCTION AND WE HAVEN'T REACHED CLOSURE.

4 THE COURT: MAYBE WE WILL GET TO THAT.
5 IT SOUNDS LIKE WE ALL AGREE THAT INFORMATION HAS
6 NOT BEEN SHARED.

7 HAVE YOU PROVIDED A LIST OF INDIVIDUALS
8 WHO RECEIVED LITIGATION HOLDS IN THIS MATTER?

9 MR. JACOBS: SAME ANSWER, YOUR HONOR. WE
10 HAVE OFFERED AFFIRMATIVELY TO HAVE THAT KIND OF
11 TRANSPARENCY RECIPROCALLY IN BOTH SIDE'S
12 PRODUCTION.

13 WE THINK THAT'S THE ONLY WAY TO GET
14 THROUGH A CASE LIKE THIS WITHOUT A LOT OF
15 MISUNDERSTANDINGS DOWN THE ROAD.

16 WE HAVEN'T REACHED CLOSURE. I DON'T
17 THINK THEY HAVE SAID NO, BUT WE HAVEN'T REACHED
18 CLOSURE.

19 MR. OVERSON: WE FAVOR TRANSPARENCY SO WE
20 FAVOR HAVING EVERYTHING ON THE TABLE AS TO WHAT'S
21 HAPPENED. AND THAT HAS HAPPENED DURING THE
22 COLLECTION PROCESS, SO THE PARTIES HAVE SOME
23 CONFIDENCE IN THE RESULT.

24 SO WHY DO WE KNOW WE HAVEN'T GOTTEN
25 EVERYTHING? WELL, THERE'S 13 DESIGNERS THAT HAVE

1 BEEN IDENTIFIED IN INTERROGATORY ANSWERS.

2 THE COURT: THESE ARE INDIVIDUALS WHO ARE
3 IDENTIFIED IN EITHER 26(A) OR RULE 33 RESPONSES AS
4 PARTICIPATING IN THE DESIGN OF THE ACCUSED
5 PRODUCTS?

6 MR. OVERSON: YES.

7 OUT OF THOSE 13 DESIGNERS, WE HAVE SEVEN
8 E-MAILS, SEVEN TOTAL.

9 THE COURT: SEVEN E-MAILS FROM THEIR
10 FILES OR SEVEN E-MAILS ON WHICH THOSE INDIVIDUALS
11 APPEAR EITHER AS A SENDER OR RECEIVER?

12 MR. OVERSON: YES. AS A SENDER OR
13 RECEIVER. I DON'T KNOW WHERE THEY CAME FROM.

14 THE COURT: SO YOU HAVEN'T RECEIVED A
15 CUSTODIAN LOG?

16 MR. OVERSON: NO.

17 THE COURT: IN OTHER WORDS, YOU DON'T
18 KNOW FROM WHOSE FILES THE DOCUMENT WAS PRODUCED?

19 MR. OVERSON: NO, YOUR HONOR.

20 THERE IS ONE LEAD DESIGNER ON ONE OF THE
21 ACCUSED PHONES AND THAT LEAD DESIGNER WAS
22 IDENTIFIED IN A 30(B)(6) DEPOSITION. WE HAVE ONE
23 E-MAIL FROM THAT PERSON.

24 THE COURT: WHAT'S THAT INDIVIDUAL'S
25 NAME.

1 MR. OVERSON: MIN HUNG LEE.

2 MR. CHUNG: MIN HYOUK LEE.

3 MR. OVERSON: THANK YOU.

4 MR. CHUNG SPEAKS KOREAN.

5 THE COURT: ALL RIGHT.

6 MR. OVERSON: SO WE DON'T -- IT'S VERY
7 PLAIN THAT THERE WAS NOT AN E-MAIL TYPE REVIEW. WE
8 HAVE -- WE DO HAVE SOME KOREANS, WE DO.

9 THE COURT: AN E-MAIL COLLECTION?

10 MR. OVERSON: CORRECT.

11 I'M ASSUMING, YOUR HONOR, I DON'T WANT TO
12 CAST ASPERSIONS ON OPPOSING COUNSEL, I'M ASSUMING
13 IT WASN'T COLLECTED.

14 THE COURT: WELL, TO BE FAIR, EACH OF YOU
15 IN YOUR PAPERS CAST A LOT OF ASPERSIONS AND I WAS
16 GOING TO BRING THIS UP LATER.

17 YOU KNOW, AS I SAID THE LAST TIME, I'VE
18 BEEN THERE AND I KNOW WHAT IT'S LIKE TO WRITE THESE
19 BRIEFS, BUT THE INVECTIVE ON BOTH SIDES DOESN'T
20 HELP ME ANSWER THE QUESTION.

21 SO SINCE YOU BROUGHT UP THE ISSUE OF
22 ASPERSIONS IN THE FUTURE, IT WOULD HELP ME GET AT
23 THE MERITS BY AVOIDING ALL THAT RHETORIC AND
24 PROVIDING SPECIFICS HERE.

25 I HOPE THAT WON'T BE NECESSARY.

1 MR. OVERSON: YES, YOUR HONOR, I WILL
2 TAKE THAT TO HEART. OUR CONCERN IS THAT THE
3 DOCUMENTS HAVE NOT BEEN COLLECTED.

4 THE COURT: SURE, I GET THAT.

5 MR. OVERSON: AND THERE'S AN OFFICE OF
6 DEVELOPMENT AT SAMSUNG THAT APPARENTLY IS INVOLVED
7 IN DECIDING WHAT PRODUCTS ARE PURSUED AND WHICH
8 ONES ARE NOT.

9 WE DON'T KNOW ALL OF THOSE PEOPLE AS TO
10 THESE PRODUCTS. WE DON'T KNOW WHO AT SAMSUNG SAID,
11 GO FORWARD WITH THIS DESIGN, WE DON'T KNOW THAT
12 INFORMATION SO IT'S HARD -- WE CANNOT JUST SAY HERE
13 ARE THE INDIVIDUALS, GO SEARCH THEIR E-MAIL BECAUSE
14 WE DON'T HAVE THAT INFORMATION.

15 THE COURT: IS IT YOUR POSITION THAT TYPE
16 OF DOCUMENT WOULD BE RESPONSIVE TO, SAY, REQUEST
17 NUMBER 1 WHICH IS THE DOCUMENT REQUEST WHICH YOU'RE
18 MOVING ON?

19 MR. OVERSON: YES.

20 THE COURT: SO IF A GENTLEMAN WITH, MY
21 APOLOGIES, I WILL CALL HIM MR. SMITH.

22 IF MR. SMITH AT SAMSUNG HAS DECIDED WE
23 ARE GOING TO GO TO MARKET ON X DATE WITH THIS
24 DESIGN, THEN YOU WOULD LIKE TO KNOW THAT RIGHT?

25 MR. OVERSON: YES.

1 THE COURT: OKAY.

2 HOW IS THAT E-MAIL WHICH SAYS, WE ARE
3 GOING TO GO TO MARKET ON X DAY, RESPONSIVE TO A
4 DOCUMENT REQUEST THAT IS DIRECTED SPECIFICALLY TO
5 AN ANALYSIS OF APPLE PRODUCTS?

6 MR. OVERSON: WELL, THE DOCUMENT -- FAIR
7 ENOUGH.

8 THE DOCUMENT REQUEST HAS TO DO WITH
9 ANALYSIS OR CONSIDERATION OF APPLE PRODUCTS

10 THE COURT: AND WE HAVE PRODUCTS, NOW WE
11 ARE TALKING SPECIFICALLY ABOUT THE EMBODIMENTS OF
12 THE THREE DESIGN PATENTS.

13 MR. JACOBS: YOUR HONOR, IF I MAY ON A
14 TECHNICAL POINT HERE. I KNOW THIS ISSUE BECAUSE WE
15 ARE WORKING ON IT.

16 THEY POINTED OUT IN OPPOSITION TO THE
17 PRELIMINARY INJUNCTION THAT WE DID NOT ANSWER AN
18 INTERROGATORY ABOUT, AND DECLARE THAT THE IPAD OR
19 IPAD II IS AN EMBODIMENT IN THE TECHNICAL SENSE OF
20 THE IPAD RELATED DESIGN PATENT THAT IS IN SUIT.

21 AND SO I WASN'T SURE WHETHER YOU WERE
22 USING THE TERM IN A TECHNICAL SENSE. WE ARE
23 TALKING ABOUT THEIR COPYING. IN THIS PROCEEDING
24 WE'RE TALKING ABOUT THE COPYING OF THE IPHONE AND
25 THE IPADS, IPAD (1) OR IPAD II.

1 THE COURT: FEATURES WHICH ARE CLAIMED IN
2 THE PATENT.

3 MR. JACOBS: WELL, WHICH LEADS TO THE
4 INFRINGEMENT OF THE PATENT. AND AS IT HAPPENS, WE
5 WILL BE UPDATING OUR DISCOVERY RESPONSE TODAY AS TO
6 WHETHER THOSE ARE EMBODIMENTS OF THE TECHNICAL
7 LEGAL SENSE OF THE IPAD RELATED PATENT.

8 I THINK THEY ARE GOING TO GO DOWN A PATH
9 IN RESPONDING TO THIS ARGUMENT AND I WANTED TO HEAD
10 THAT OFF BECAUSE I SEE AGITATION AT THE OTHER
11 TABLE.

12 THE COURT: I'M GOING TO GIVE
13 MS. MAROULIS AMPLE OPPORTUNITY TIME TO ADDRESS IT.

14 MS. MAROULIS: YOUR HONOR, WOULD YOU LIKE
15 ME TO ADDRESS IT NOW OR LATER?

16 THE COURT: I WOULD RATHER HAVE YOUR
17 ARGUMENT IN TOTAL.

18 MR. OVERSON: SO YOUR HONOR, ADDRESSING
19 YOUR CONCERN ABOUT THE E-MAIL, IF THE E-MAIL
20 DOESN'T HAVE ANYTHING TO DO WITH APPLE, WE
21 UNDERSTAND THAT'S NOT RESPONSIVE TO REQUEST NUMBER
22 1.

23 IF THE EXECUTIVE SAID APPLE HAS THIS
24 GREAT FEATURE, WE SHOULD LOOK INTO THAT, THEN IT IS
25 RESPONSIVE. BECAUSE IT'S GOING -- IT'S A

1 CONSIDERATION OF APPLE IN THE CONTEXT OF THE
2 DEVELOPMENT OF THESE PRODUCTS AT THE DESIGN OF THE
3 PRODUCTS.

4 THE COURT: FAIR ENOUGH.

5 IF HE SAYS THE APPLE IPAD II HAS THIS
6 FEATURE AND IT'S THE FEATURE THAT'S AT ISSUE IN ONE
7 OF THE THREE DESIGN PATENTS, I UNDERSTAND YOUR
8 POINT.

9 BUT AGAIN, IF HE'S SIMPLY COMMENTING ON
10 THE DESIGN OR DEVELOPMENT PRODUCT OUTSIDE OF THE
11 CONTEXT OF A COMPARISON TO APPLE, IT'S NOT
12 RESPONSIVE TO REQUEST 1.

13 MR. OVERSON: SO WE HAVE ADDITIONAL
14 REQUESTS THAT WENT TO THOSE KINDS OF DOCUMENTS.

15 THE COURT: BUT THEY ARE NOT BEFORE ME.

16 MR. OVERSON: CORRECT.

17 WHAT WE TRIED TO DO BECAUSE OF THIS
18 EMERGENCY STATUS WE ARE IN WITH THE REPLY DUE IN
19 TWO DAYS WITH THE HEARING IN TWO WEEKS, WE TRIED TO
20 FOCUS ON THE ONE OF THE MOST IMPORTANT THINGS.

21 AND ONE OF THE MOST IMPORTANT THINGS IS
22 THIS TYPE OF DOCUMENT WHERE THEY ARE DISCUSSING
23 APPLE PRODUCTS. WHAT WE HAVE SEEN IS WE DIDN'T GET
24 THE DOCUMENTS WHERE THE DESIGNERS ARE TALKING ABOUT
25 APPLE. THE BUSINESS MEN ARE TALKING ABOUT APPLE.

1 APPLE IS THE MARKET LEADER AND
2 CLEARLY --

3 THE COURT: CLEARLY, HOW DO I KNOW THAT?

4 MR. OVERSON: WELL, EVEN THE 30(B)(6)
5 WITNESS SAID THAT, WHICH HAPPENED -- THE DEPOSITION
6 HAPPENED AFTER, YOUR HONOR, EVEN HE SAID THEY
7 ALWAYS EVALUATE ALL OF THE APPLE PRODUCTS.

8 THE COURT: WELL, IT'S ONE THING TO
9 EVALUATE THE PRODUCTS.

10 WHAT PROOF DO I HAVE IN THE RECORD BEFORE
11 ME THAT THERE ARE E-MAIL COMMUNICATIONS LOOKING AT
12 THESE CLAIMED FEATURES THAT YOU'RE NOT RECEIVING?

13 BECAUSE THAT'S THE QUESTION I HAVE TO
14 ANSWER, RIGHT? I CAN'T JUST IMAGINE WHAT MIGHT BE
15 THERE, I HAVE TO LOOK AT WHAT IS THERE. HELP ME.

16 MR. OVERSON: SO THE FACTS THAT WE HAVE
17 NO E-MAILS WHATSOEVER FROM SEVERAL OF THE
18 DESIGNERS. THE FACT THAT WE HAVE ONE E-MAIL FROM
19 THE LEAD DESIGNER OF ONE OF THE ACCUSED PRODUCTS.
20 THE FACT THAT WOOK YAN KHO, W-O-O-K Y-A-N K-H-O,
21 WAS STATED IN AN INTERROGATORY ANSWER, THIS IS ALL
22 HAPPENING AS WE SPEAK, IT'S KIND OF REAL TIME. BUT
23 HE CONSIDERED, THEY ADMITTED THEY CONSIDERED THE
24 APPLE PRODUCT IN THE PROCESS OF THE DESIGN. WE
25 HAVE NOTHING FROM HIM.

1 THE FACT THAT AN EXECUTIVE AT SAMSUNG WAS
2 QUOTED IN THE PRESS AS SAYING THAT THE APPLE
3 PRODUCT WAS THINNER AND THAT THE SAMSUNG I-TABLET
4 PRODUCT WOULD HAVE TO BE REDESIGNED.

5 THE COURT: IS IT TRUE THAT STATEMENT WAS
6 LATER CORRECTED BY THE VERY SAME PERIODICAL WHICH
7 PUBLISHED IT?

8 MR. OVERSON: I DIDN'T THINK THAT WAS
9 CLEARLY ESTABLISHED FROM THE OPPOSITION PAPERS.

10 THE COURT: WELL, I'M NOT SURE WHAT THAT
11 MEANS. DID THEY RETRACT IT OR DIDN'T THEY?

12 MR. OVERSON: I CANNOT SEE. I LOOKED --

13 THE COURT: YOU ARE NOT AWARE OF ANY
14 RETRACTION AT ALL?

15 MR. OVERSON: I HAVE NOT SEEN THAT. AND
16 THEY HAVEN'T GIVEN YOU EVIDENCE TO THAT EFFECT.

17 THE ONLY THING I HAVE IS WHAT'S IN THE
18 OPPOSITION PAPERS.

19 BUT IN ANY EVENT, THE FACT OF WHETHER
20 THEY RETRACTED IT OR NOT, THERE WAS EVIDENCE
21 SOMETHING WAS SAID AND THERE WAS A FEW E-MAILS
22 ABOUT IT AFTERWARDS.

23 OBVIOUSLY THERE'S NO DISPUTE THAT THEY --
24 THE CHRONOLOGY GOES, THEY HAVE A TABLET, THE IPAD
25 II COMES OUT, IT'S THINNER, THEY REDESIGN A THINNER

1 TABLET. THAT'S JUST A FRACTION -- IT'S WITHIN A
2 PERCENTAGE POINT OR TWO OF THE THINNESS OF THE
3 APPLE PRODUCT.

4 THE COURT: AND IS THE RELATIVE THICKNESS
5 OF THE PRODUCT, I SHOULD SAY THE OBJECTIVE
6 THICKNESS OF THE PRODUCT, IS THAT AN ISSUE RELEVANT
7 TO ANY OF THE THREE DESIGN PATENTS?

8 MR. OVERSON: THAT'S AN ISSUE THAT'S BEEN
9 FILED, YOUR HONOR, YES.

10 OKAY. SO AGAIN, WE -- WHAT WE'RE LOOKING
11 FOR HERE IS SOME FAIRNESS. THEY ARE SAYING LOOK,
12 THERE'S NO EVIDENCE OF COPYING, APPLE HAS FAILED,
13 THEY HAVEN'T PRESENTED ANYTHING THAT SHOWS COPYING
14 AND YET THEY ARE MAKING THESE KINDS OF OBJECTIONS
15 TO OUR DOC REQUESTS AND THEY ARE NOT TELLING US
16 WHAT THEY ARE DOING IN TERMS OF THE PRODUCTION.
17 AND THEY HAVEN'T TOLD YOUR HONOR, WE PERFORMED A
18 THOROUGH SEARCH AND PRODUCED ALL RESPONSIVE
19 DOCUMENTS; THEY HAVE NOT SAID THAT.

20 WHAT WE ARE LOOKING FOR FROM YOUR HONOR
21 IS AN ORDER SAYING THEY SHOULD DO THAT.

22 THE COURT: I DON'T WANT TO JUMP AHEAD IN
23 YOUR ARGUMENT, BUT DO YOU WANT TO SPEAK
24 SPECIFICALLY TO MR. LEE'S DOCUMENTS? I THINK THAT
25 WAS AN ISSUE THAT WAS THE SUBJECT OF A PARTICULAR

1 DOCUMENT REQUEST, CORRECT?

2 MR. OVERSON: CORRECT.

3 SO MR. LEE WAS QUOTED IN THE PRESS AS
4 SAYING, WE WILL HAVE TO IMPROVE THE PARTS THAT ARE
5 INADEQUATE, APPLE MADE IT VERY THIN.

6 SO OUR REQUEST IS VERY SIMPLE, WE WANT
7 THE DOCUMENTS TO/FROM FROM MR. LEE HAVING TO DO
8 WITH THAT. IT'S A VERY, VERY NARROW REQUEST.

9 THE COURT: YOU GOT SOME.

10 MR. OVERSON: WE GOT SOME AND WHEN WE MET
11 AND CONFERRED WE WEREN'T EVEN TOLD THAT THEY WOULD
12 AGREE TO SEARCH.

13 I SAID, CAN YOU AT LEAST AGREE TO SEARCH?
14 THEY SAID, WE CAN'T TELL YOU WHETHER WE WILL SEARCH
15 OR NOT.

16 SO --

17 THE COURT: AND I'M GOING TO HEAR FROM
18 SAMSUNG AS I SAID IN JUST A MINUTE, BUT YOU ARE
19 TELLING ME IN A MEET AND CONFER ON A REQUEST
20 SPECIFICALLY DIRECTED TO THIS GENTLEMAN, BASED ON A
21 STATEMENT HE MADE IN A PUBLIC NEWSPAPER, THE
22 RESPONSE FROM OPPOSING COUNSEL, SOMEBODY SITTING AT
23 THAT TABLE WAS, WE WILL NOT COMMIT TO SEARCHING
24 THIS GENTLEMAN'S FILES?

25 MR. OVERSON: IT WAS MS. CHAN,

1 YOUR HONOR. MELISSA CHAN.

2 SO SHE SAID, I CAN'T TELL YOU ONE WAY OR
3 ANOTHER WHETHER WE AGREE TO SEARCH THOSE FILES.

4 THAT'S THE ACCURATE WAY OF PUTTING IT.

5 AND WHAT DO THEY SAY IN THE PAPERS? THEY
6 ARE NOT SAYING, WE'VE DONE IT, LET'S COMPLETE THE
7 SEARCH. IN FACT, WITH THIS REQUEST THEY SAY THEY
8 WILL PRODUCE AFTER A REASONABLE SEARCH.
9 ESSENTIALLY CONCEDING THAT THEY HAVEN'T DONE THE
10 SEARCH.

11 THE COURT: AND THIS IS, BY THE WAY, A
12 REQUEST YOU MADE ON AUGUST 26TH, CORRECT?

13 MR. OVERSON: THAT'S CORRECT.

14 THE COURT: THE LAST DAY YOU COULD SERVE
15 THE REQUEST.

16 MR. OVERSON: LET ME ADDRESS THAT.

17 SO WE SERVED REQUEST NUMBER 1 ON
18 JULY 12TH. IN THE INTERIM AFTER THAT THE JUDGE --
19 JUDGE KOH SET A SCHEDULE.

20 THE SCHEDULE CONTEMPLATED THAT APPLE
21 WOULD HAVE A FEW DAYS AFTER RECEIVING THE
22 OPPOSITION PAPERS FROM SAMSUNG TO ISSUE REQUESTS.
23 THEIR OPPOSITION PAPERS CAME IN ON THE 22ND OF
24 AUGUST, WE ISSUED THE REQUEST BY THE DUE DATE ON
25 THE 26TH.

1 SO IT IS -- THE STRUCTURE OF THE
2 PROCEEDING WAS SUCH THAT WE -- HAVING THE
3 OPPORTUNITY TO LOOK AT THE OPPOSITION AND THEN
4 DECIDING WHAT WE NEEDED.

5 OKAY. SO I WOULD SAY ON THE ISSUE WITH
6 MR. LEE, IT'S SIMPLY THEY ADMITTED IN THEIR
7 OPPOSITION PAPERS THAT THEY HAVEN'T DONE THE SEARCH
8 YET.

9 SO WE BELIEVE WE DESERVE AN ORDER SAYING
10 THEY SHOULD DO THE SEARCH AND PRODUCE PROMPTLY.
11 AND WE WOULD SUGGEST PROMPTLY MEANS WE CAN GET TO
12 THIS AT THE END BUT PROMPTLY MEANS BY NEXT TUESDAY.

13 THERE'S ALSO REQUESTS, YOUR HONOR,
14 RELATING TO MARKETING AND SURVEY DOCUMENTS. AGAIN,
15 THEY SAY WE HAVE PRODUCED A LOT ALREADY. THEY
16 DON'T SAY WE'VE DONE A REASONABLE SEARCH, WE'VE
17 PRODUCED ALL RESPONSIVE DOCUMENTS.

18 THE COURT: I HAD A QUESTION ABOUT YOUR
19 CHOICE OF LANGUAGE ON THE REQUESTS AT LEAST WITH
20 RESPECT TO EITHER ONE OR THE OTHER, I CAN'T
21 REMEMBER IF IT WAS MARKETING OR THE CONSUMER SURVEY
22 REQUEST.

23 AS I READ YOUR REQUEST, IT REFERENCED
24 PRODUCTS AND THE DEFINITION OF PRODUCTS SEEMED TO
25 BE, SAMSUNG PRODUCTS, NOT APPLE PRODUCTS.

1 SO AM I MISREADING OR MISUNDERSTANDING
2 THE REQUEST ITSELF? OR AM I RIGHT?

3 MR. OVERSON: SO THERE ARE TWO DIFFERENT
4 REQUESTS THAT RELATE TO THIS SUBJECT. AND REQUEST
5 NUMBER 214 GOES TO ALL DOCUMENTS RELATING TO THE
6 MARKETING OF PRODUCTS AT ISSUE THAT DISCUSSED OR
7 REFER DIRECTLY OR INDIRECTLY TO APPLE OR APPLE
8 PRODUCTS INCLUDING, AND THEN THERE'S A LIST AND
9 MARKETING, PLANS, MARKET SURVEYS, FOCUS GROUP
10 STUDIES.

11 SO TO THE EXTENT THAT THERE ARE APPLE
12 MARKET SURVEYS THAT ARE RELATED TO THESE PRODUCTS,
13 AND I CAN'T IMAGINE WHY THEY WOULD BE DOING MARKET
14 SURVEYS ON APPLE, ON THE IPHONE, IF IT DOESN'T
15 RELATE TO THIS PRODUCT.

16 SO I BELIEVE THAT QUESTION WOULD BE
17 ADDRESSED BY DOCUMENT REQUEST NUMBER 214 RATHER
18 THAN 206 WHICH WE CONCEDE DOES NOT GO TO THE APPLE
19 PRODUCTS.

20 OKAY. IT'S CURIOUS HERE YOUR HONOR, AND
21 AGAIN THIS IS A THEME HERE THAT THEY ARE NOW
22 ARGUING WELL, THESE SURVEYS ARE RELEVANT BECAUSE
23 THEIR OWN IRREPARABLE HARM EXPERT MR. WAGNER HAS
24 RELIED EXTENSIVELY ON SURVEYS.

25 AND I PUT IN THE BINDER AND I WON'T

1 REFERENCE IT BECAUSE I'M TAKING YOUR DIRECTION
2 YOUR HONOR THAT I NOT DISTRACT US, BUT PARAGRAPHS
3 81 THROUGH 84 OF THE WAGNER DECLARATION GO THROUGH
4 APPLE'S LACK OF SURVEY EVIDENCE, AND MORE
5 IMPORTANTLY HIS RELIANCE ON DIFFERENT SURVEYS.

6 THEIR EXPERT HAS USED AN APPLE SURVEY AND
7 SAID, SEE, THERE'S NO IRREPARABLE HARM, LOOK AT
8 THIS APPLE SURVEY THAT APPLE PRODUCED, AND SAYING
9 PEOPLE AREN'T AS INTERESTED IN THESE QUALITIES AS
10 APPLE SAYS, LOOK AT THE SURVEY, OKAY.

11 SO THEY WON'T GIVE US THE SURVEYS ON
12 THEIR SIDE. I MEAN, THIS IS AN IMBALANCE THAT
13 SHOULD NOT BE ALLOWED TO --

14 THE COURT: COULD YOU SHED SOME MORE
15 LIGHT ON MR. WAGNER'S THEORY? WHAT EXACTLY IS HE
16 SAYING? I DON'T UNDERSTAND OR FOLLOW THE POINT,
17 AND I UNDERSTAND HE'S NOT YOUR EXPERT.

18 MR. OVERSON: MR. WAGNER, I CAN HELP ON
19 THAT SINCE I TOOK HIS DEPOSITION SO I COULD HELP ON
20 THAT.

21 THE COURT: ALL RIGHT.

22 MR. OVERSON: ON THE SURVEY FRONT
23 MR. WAGNER IS LOOKING AT SURVEY RESULTS AND
24 DECIDING WHETHER THERE HAS BEEN ANY BRAND EROSION
25 OR DAMAGE TO APPLE AS A RESULT OF THE SALES OF THE

1 SAMSUNG PRODUCTS.

2 AND ONE OF THE WAYS HE ATTEMPTS TO
3 BUTTRESS HIS POSITION IS BY SAYING APPLE'S BRAND IS
4 REALLY, REALLY STRONG. IT'S NOT GOING TO GET HURT
5 BY THIS, PEOPLE KNOW WHAT APPLE IS.

6 HE ALSO LOOKS AT WHETHER DESIGN, WE ARE
7 TALKING LARGELY ABOUT DESIGN PATENTS, WHETHER
8 DESIGN MATTERS TO PEOPLE.

9 HIS POSITION IS THESE SURVEYS SHOW PEOPLE
10 CARE ABOUT OTHER THINGS, THEY DON'T CARE ABOUT
11 DESIGN AS MUCH.

12 THE COURT: SO AS PART OF THE BODY OF
13 EVIDENCE WHICH HE POINTS TO SUPPORT THESE
14 CONCLUSIONS HE IDENTIFIES ONE OR MORE APPLE
15 SURVEYS.

16 MR. OVERSON: CORRECT.

17 THE COURT: AND SAYS, HEY, IF YOU LOOK AT
18 THAT INFORMATION YOU WILL SEE NOTHING IN HERE ABOUT
19 ANY ISSUE IN THIS CASE; FAIR ENOUGH?

20 MR. OVERSON: WELL, YOU WILL SEE RESULTS
21 THAT SHOW THAT THIS IS NOT SO IMPORTANT SO THERE'S
22 NO IRREPARABLE HARM.

23 THE COURT: ALL RIGHT.

24 MR. OVERSON: SO AGAIN WE DESERVE A
25 REPRESENTATION THAT THERE'S BEEN A REASONABLE

1 SEARCH ON ALL RESPONSIVE DOCUMENTS ON THE SURVEY
2 MARKETING FRONT HAS BEEN PRODUCED.

3 THE SAME THING GOES FOR THE CONSUMER
4 CONFUSION REQUEST WHICH IS 215.

5 SO AGAIN, LET ME GO THROUGH THE
6 CHRONOLOGY HERE.

7 WE ASKED FOR A CONSUMER CONFUSION RELATED
8 DOCUMENTS ON EXHIBIT E, PAGE 48 IS EXHIBIT E TO THE
9 BARTLETT DECLARATION RATHER. PAGE 48 YOU WILL SEE
10 THEIR RESPONSE, THERE WAS NOTHING ABOUT IRRELEVANCE
11 OF CONSUMER CONFUSION. THEY DIDN'T OBJECT ON THAT
12 IN WRITING.

13 AND IN FACT THEY COULDN'T BECAUSE THEIR
14 OWN EXPERT HAS STATED THAT CONSUMER CONFUSION IS
15 THE KEY FACTOR THAT SHOULD BE LOOKED AT TO DECIDE
16 WHETHER THERE'S BEEN HARM TO THE BRAND EQUITY OF
17 APPLE OR NOT.

18 THE COURT: THIS IS MR. WAGNER AGAIN?

19 MR. OVERSON: YES.

20 SO MR. WAGNER, PARAGRAPH 18, 20, 22, 31
21 OF HIS DECLARATION ALL GO ON ABOUT HOW CONSUMER
22 CONFUSION IS THE ONLY WAY THAT APPLE COULD HAVE
23 BEEN HURT. AND BECAUSE APPLE DIDN'T SUBMIT
24 ANYTHING ON THAT IN THEIR OPENING PAPERS, I FIND
25 THERE'S NO BRAND DILUTION, THERE'S NO EROSION.

1 THE COURT: SO IF YOU CAN INDULGE ME FOR
2 A MOMENT, I WANT TO MAKE SURE I'M FOLLOWING THIS.

3 SO IN A NUT SHELL, WE ARE IN THE CONTEXT
4 HERE OF A PRELIMINARY INJUNCTION MOTION AND PUTTING
5 ASIDE THE UTILITY PATENT FOR THE MOMENT, WE HAVE A
6 QUESTION AS TO WHETHER UNDER EGYPTIAN GODDESS AN
7 ORDINARY OBSERVER WOULD BE ABLE TO DISTINGUISH
8 BETWEEN THE PRODUCT THAT'S ACCUSED AND THE
9 ORNAMENTAL DESIGN THAT'S CLAIMED, FAIR ENOUGH?

10 MR. OVERSON: YES.

11 THE COURT: AND THAT REALLY GOES TO THE
12 ISSUE IN THE CONTEXT OF A PI MOTION OF THE MERITS
13 OF THE CLAIM.

14 YOUR POSITION -- YOUR ARGUMENT IS THAT
15 SEPARATE OR BEYOND THE MERITS QUESTION THERE'S THIS
16 QUESTION OF WHETHER YOUR CLIENT WILL SUFFER
17 IRREPARABLE HARM AS A RESULT OF OR FLOWING FROM
18 THAT INFRINGEMENT.

19 MR. OVERSON: CORRECT.

20 THE COURT: THAT'S THAT PRONG OF THE
21 ANALYSIS THAT THE CONFUSION ISSUE BECOMES RELEVANT.
22 HAVE I BASICALLY FOLLOWED YOUR ARGUMENT?

23 MR. OVERSON: CORRECT, YOUR HONOR.

24 THE COURT: OKAY. ALL RIGHT.

25 MR. OVERSON: BUT THE ARGUMENT IS FAIRLY

1 SIMPLE.

2 WHEN YOU ARE A LITIGANT, YOU CAN'T HAVE
3 YOUR EXPERT GET UP AND SAY, APPLE DOESN'T HAVE ANY
4 PROOF OF THIS PARTICULAR THING, CONSUMER CONFUSION.
5 THAT'S THE ONLY WAY THAT THEY COULD HAVE BEEN
6 HARMED ON THE BRANDS.

7 THE COURT: BY THE WAY, DO YOU AGREE WITH
8 MR. WAGNER THAT IT'S A NECESSARY OR ESSENTIAL
9 CONDITION THAT APPLE DEMONSTRATE CONSUMER CONFUSION
10 IN ORDER TO SECURE A PI IN THIS CASE?

11 MR. OVERSON: NO.

12 THE COURT: I SUSPECTED NOT.

13 NEVERTHELESS, YOUR POINT IS THAT'S HIS
14 POSITION AND WE ARE ENTITLED TO TEST HIM.

15 MR. OVERSON: YES.

16 THE COURT: OKAY.

17 MR. OVERSON: OKAY.

18 AND SO ON THE CONSUMER CONFUSION FRONT WE
19 SAW IN THE OPPOSITION PAPERS A DECLARATION SAYING
20 THAT THIS WOULD BE TOO HARD, WE HAVE ALL THESE
21 CONSUMER RECORDS AND CALL DATABASES BUT THIS IS
22 JUST TOO DIFFICULT.

23 AND TO THAT I SAY THEY'VE ADMITTED YOU
24 CAN'T EXPORT THE DATA INTO AN EXEL FORMAT AND THEN
25 IT'S SEARCHABLE.

1 AND THE FACT THAT IT'S DIFFICULT, THERE'S
2 A LOT OF THINGS DIFFICULT IN THIS CASE. AND THE
3 FACT THAT THEY WAITED THIS LONG TO THINK ABOUT
4 DOING IT IS ALSO DISTURBING.

5 THE COURT: WELL, SHORT OF GETTING
6 SAMSUNG'S SUPPORT ORGANIZATION TO EXPORT ITS
7 ENTIRE, I CAN'T IMAGINE THE SIZE OF THEIR DATABASE
8 SYSTEM, WHAT LIMITATIONS HAVE YOU PROPOSED OR
9 OFFERED TO MINIMIZE THAT BURDEN?

10 WHAT WOULD YOU HAVE IN MIND? SURELY YOU
11 DON'T WANT TO KNOW ABOUT EVERY COMPLAINT OF EVERY
12 SAMSUNG TOASTER, FOR EXAMPLE, RIGHT?

13 MR. OVERSON: YOU ARE ABSOLUTELY RIGHT.

14 AND SO WHAT WE WOULD PROPOSE IS THAT -- I
15 MEAN, WE COULD COME UP WITH A LIST OF TEN SEARCH
16 TERMS TODAY.

17 THE COURT: HAVE YOU MADE THAT PROPOSAL
18 TO THEM?

19 MR. OVERSON: I HAVE NOT GIVEN THEM
20 SPECIFIC TERMS.

21 THE COURT: ALL RIGHT.

22 MR. OVERSON: BUT WE WOULD -- WE COULD
23 COME UP WITH A LIST OF SEARCH TERMS AND THEY WOULD
24 BE THINGS LIKE IPAD, APPLE, THERE WOULD BE MAYBE
25 FACE TIME, APPLICATIONS THAT RUN ON APPLE BUT NOT

1 ON SAMSUNG, MAYBE ITUNES. THOSE ARE THE KINDS OF
2 SEARCH TERMS WE WOULD BE TALKING ABOUT.

3 THE COURT: SO I TAKE IT THE KIND OF
4 RECORD YOU ARE MOST INTERESTED IN IS SOMETHING LIKE
5 THE FOLLOWING: A COMPLAINT FROM AN INDIVIDUAL HERE
6 IN SAN JOSE, CALIFORNIA TO THE SAMSUNG HELP DESK
7 THAT THEIR TABLET OR THEIR PHONE DOESN'T HAVE QUOTE
8 "THE FEEL OR THE FEATURE THAT THE IPAD HAS," WHICH
9 HAPPENS TO BE CLAIMED IN YOUR PATENT.

10 IS THAT THE KIND OF THING YOU ARE TRYING
11 TO GET AT?

12 MR. OVERSON: CERTAINLY WE BELIEVE IT HAS
13 THE FEEL. SO IT'S MORE THE FEATURE.

14 THE COURT: YOU WOULD LIKE SOME EVIDENCE
15 THAT THE PUBLIC AGREES WITH YOU, RIGHT?

16 MR. OVERSON: THE PUBLIC, WE BELIEVE THAT
17 THERE WILL BE EVIDENCE THAT THE PUBLIC THOUGHT THEY
18 COULD RUN THEIR ITUNES ON THE SAMSUNG PHONE, THE
19 ACCUSED PHONE.

20 THE COURT: ALL RIGHT.

21 MR. OVERSON: OKAY.

22 SO THE OTHER OBJECTIONS I THOUGHT WERE
23 MOSTLY TO -- WERE, WE THOUGHT, WERE NOT TERRIBLY
24 STRONG LIKE THAT. THERE MIGHT BE MISSPELLINGS,
25 THAT IT MIGHT NOT WORK, AND WE CAN DEAL WITH THAT.

1 I THINK THE KEY THING IS COMING UP WITH A
2 LIST OF TERMS AND DOING IT.

3 FINALLY, I WANT TO CLARIFY ON SANCTIONS.
4 WE DID NOT FILE A SEPARATE SANCTIONS MOTION AND THE
5 PROPOSED ORDER DOESN'T SAY ISSUE SANCTIONS,
6 YOUR HONOR.

7 THE COURT: WHICH MEANS I DON'T HAVE A
8 MOTION FOR SANCTIONS BEFORE ME AS A LOCAL RULE.

9 MR. OVERSON: CORRECT.

10 AND THIS WAS NOT INTENDED TO BE A
11 SANCTIONS MOTION, THAT'S WHY WE DID NOT DO THAT.

12 WHAT WE ARE ASKING FOR IS AN ORDER TO
13 PRODUCE BY A DATE CERTAIN. OUR REPLY IS DUE
14 FRIDAY, WE UNDERSTAND THAT'S NOT GOING TO BE
15 REALISTIC BUT WE ARE ASKING THAT THE COURT MAKE
16 THAT DATE CERTAIN, BE NEXT TUESDAY.

17 A LOT OF THESE DOCUMENTS ARE GOING TO
18 COME IN KOREAN. WE ARE VERY FORTUNATE TO HAVE
19 MR. CHUNG WHO SPEAKS KOREAN ON OUR TEAM, BUT IT'S
20 GOING TO TAKE US SOME TIME TO PROCESS THAT. AND WE
21 ARE GOING TO WANT TO TRY TO PROCESS THESE DOCUMENTS
22 FOR PURPOSES OF USE IN THE PI PROCEEDINGS.

23 THE COURT: AND YOUR PI HEARING BEFORE
24 JUDGE KOH IS ON THE 13TH?

25 MR. OVERSON: CORRECT.

1 SO WE WOULD ALSO ASK THAT WE, WHEN THE
2 PRODUCTION HAPPENS WE GET A LETTER FROM OPPOSING
3 COUNSEL CERTIFYING THAT A REASONABLE SEARCH HAS
4 BEEN DONE INCLUDING IN KOREA.

5 AND FINALLY, WE REQUEST THAT THERE BE
6 ORDERED -- THAT WE GET A DEPOSITION OF A 30(B)(6)
7 WITNESS ABOUT THE COLLECTION PROCESS.

8 WITHOUT THIS ORDER WE WILL NOT GET ANY
9 INFORMATION BECAUSE WE'RE TOLD IT'S WORTH NOTHING.

10 THE COURT: HAVE YOU SERVED A DEPOSITION
11 NOTICE TO THAT EFFECT?

12 MR. OVERSON: WE HAVEN'T BECAUSE WE ARE
13 PAST THE TIME AND THERE'S OBJECTIONS ALREADY ABOUT
14 BEING PAST THE TIME.

15 SO WE DIDN'T ANTICIPATE THAT WE WOULD
16 HAVE HAD THIS KIND OF PROBLEM.

17 I'M ABOUT TO SIT DOWN, THERE HAS TO BE
18 SOME CONSEQUENCES THOUGH. WE DIDN'T MOVE FOR A
19 SANCTION MOTION HERE BUT THERE HAS TO BE SOME
20 CONSEQUENCES IF WE JUST DON'T GET THE INFORMATION.

21 IF THEY'RE DELAYED, DELAYED, DELAYED AND
22 WE ARE TWO WEEKS BEFORE THE HEARING AND THEY ARE
23 PAST THE DEADLINE AND NOW THEY ARE DOING A
24 REASONABLE SEARCH ON THESE THINGS, THERE SHOULD BE
25 SOME CONSEQUENCES NOW TO SAMSUNG.

1 AND WE WOULD ASK YOUR HONOR THAT IF
2 YOUR HONOR AGREES THEY HAVE TO PRODUCE BY A DATE
3 CERTAIN THAT WE BE GIVEN THE OPPORTUNITY TO COME
4 RIGHT BACK IN IF SOMEHOW THAT DOESN'T HAPPEN.

5 THE COURT: ALL RIGHT.

6 YOU WILL HAVE SOME OPPORTUNITY FOR
7 REBUTTAL AS WELL.

8 THANK YOU FOR YOUR ARGUMENT.

9 MS. MAROULIS?

10 MS. MAROULIS: GOOD MORNING, YOUR HONOR.

11 THANK YOU FOR LISTENING TO US ON THE
12 SHORT NOTICE.

13 I WANT TO BEGIN WITH THE QUESTION
14 YOUR HONOR POSED FOR COUNSEL FOR APPLE EARLIER IN
15 THE ARGUMENT WHICH IS THE SIMILARITY OF PRODUCT
16 MATTER IN THE PATENT DESIGN INFRINGEMENT CASE.

17 AND THE FEDERAL CIRCUIT LAW SAYS IT DOES
18 NOT MATTER. THERE'S LAW THAT WE CITED --

19 THE COURT: THAT'S WHAT SUN HILL SAYS.

20 MS. MAROULIS: SUN HILL, KEYSTONE AND
21 MANY OTHER CASES THAT SAY FOR THE PURPOSES OF
22 LIABILITY YOU COMPARE ACCUSED PRODUCT TO AN
23 ASSERTED DESIGN PATENT AND SPECIFICALLY THE
24 FEATURES THAT ARE ASSERTED.

25 SO THE FIRST ORDER OF BUSINESS IS THAT

1 ANY ALLEGED SIMILARITY OF PRODUCTS IS NOT REALLY
2 RELEVANT FOR THEIR PI MOTION.

3 THE SECOND IS, AND I CAN SAY THAT BECAUSE
4 I THINK THE ONLY PERSON IN THE AUDIENCE IS APPLE
5 COUNSEL, IN THEIR INTERROGATORY RESPONSES THEY
6 ADMITTED THAT IPAD II OR IPAD IS NOT AN EMBODIMENT
7 OF THEIR PATENT THAT COVERS THE TABS.

8 SO MR. JACOBS HERE REPRESENTED THEY WERE
9 GOING TO CHANGE THE INTERROGATORY. IT SOUNDS LIKE
10 THEY WANT TO CHANGE IT FROM YES TO NO, ERRATICALLY.

11 BUT THE RECORD SHOWS THE TAB IS NOT AN
12 EMBODIMENT OR THE IPAD IS NOT AN EMBODIMENT OF THE
13 PATENT.

14 AND THAT'S A VERY SIGNIFICANT ISSUE
15 BECAUSE PART OF MR. OVERSON'S ARGUMENT FOCUSED ON
16 THAT STATEMENT BY LEE DON-JOO, ONE OF THE
17 EXECUTIVES FROM SAMSUNG, RELATED TO THE IPAD II.

18 AND WHILE WE HAVE PRODUCED A NUMBER OF
19 DOCUMENTS RELATED TO THE STATEMENTS, WE ARE
20 POSITIVE THIS IS NOT RELEVANT TO THE PRELIMINARY
21 INJUNCTION MOTION WHICH IS FUNDAMENTALLY ABOUT
22 ALLEGED PATENT INFRINGEMENT.

23 THE COURT: WELL, I THINK YOU UNDOUBTEDLY
24 HEARD WHAT I HAD POSED TO OPPOSING COUNSEL JUST A
25 FEW MOMENTS AGO.

1 I TEND TO AGREE THAT FOR PURPOSES OF
2 LIABILITY OR MERITS ASSESSMENT EGYPTIAN GODDESS,
3 SUN HILL SET THE METES AND BOUNDS OF WHAT'S
4 APPROPRIATE FOR DISCOVERY.

5 BUT A MOTION FOR PI ADDRESSES THE MORE
6 FUNDAMENTAL OR BROADER QUESTION OF IRREPARABLE
7 HARM, DOES IT NOT?

8 DOESN'T THAT HARM ANALYSIS GO BEYOND
9 SIMPLY WHETHER THIS PARTICULAR FEATURE HAPPENS TO
10 INFRINGE THEIR CLAIM?

11 MS. MAROULIS: YES, YOUR HONOR.

12 AND FOR THAT REASON WE HAVE PRODUCED A
13 NUMBER OF DOCUMENTS THAT ARE CUSTOMER SURVEYS IN
14 VARIOUS MARKETING DOCUMENTS THAT OTHERWISE WOULD BE
15 COMPLETELY IRRELEVANT TO THE PATENT CASES BECAUSE
16 OUR EXPERT DID RELY ON VARIOUS PUBLICLY AVAILABLE
17 SURVEYS.

18 SO ONE OF THEIR REQUESTS GOES TO --

19 THE COURT: THESE WERE ALL PUBLICLY
20 AVAILABLE SURVEYS?

21 MS. MAROULIS: MR. WAGNER RELIED ON SOME
22 PUBLICLY AVAILABLE DATA AND SOME PRODUCED BY APPLE.

23 BUT THERE ARE BASICALLY TWO TYPES OF
24 ISSUES BEFORE YOUR HONOR TODAY:

25 THE FOUR CATEGORIES OF DOCUMENTS WHICH

1 SAMSUNG HAS ALREADY PRODUCED AND WHICH WE BELIEVE
2 THE COMPLAINTS ARE WARRANTED.

3 AND THERE'S ONE CATEGORY OF DOCUMENTS
4 THAT SAMSUNG BELIEVES IS IN DISPUTE, THE ONLY ONE
5 IN DISPUTE AND THAT'S THE DOCUMENTS GOING TO THE
6 CUSTOMER CONFUSION OR ALLEGED CONFUSION.

7 SO WITH RESPECT TO THE FIRST SET OF
8 ISSUES WHICH IS FOUR DIFFERENT CATEGORIES OF
9 DOCUMENTS, WE BELIEVE THAT THE RECORD IS CLEAR FROM
10 THE JENKINS DECLARATION AND FROM OUR BRIEF AND
11 OTHERWISE THAT WE'VE PRODUCED DOCUMENTS AFTER
12 REASONABLE SEARCH THAT ANSWER THESE REQUESTS.

13 THE COURT: IS IT YOUR POSITION YOU HAVE
14 PRODUCED ALL DOCUMENTS WHICH HAVE BEEN IDENTIFIED
15 AFTER A REASONABLE SEARCH?

16 MS. MAROULIS: YOUR HONOR, IT'S ALWAYS
17 HARD TO SAY ALL DOCUMENTS WITH A COMPANY OF THAT
18 SIZE.

19 THE COURT: THAT'S WHY I'M ASKING.

20 MS. MAROULIS: I THINK NOBODY CAN MAKE A
21 REPRESENTATION.

22 BUT IT'S CLEAR FROM OUR DECLARATIONS THAT
23 WE'VE CONDUCTED THE SEARCH AND WE CAME UP WITH A
24 NUMBER OF DOCUMENTS. THERE'S A NUMBER OF DOCUMENTS
25 THAT APPLE COUNSEL RIDICULED, BUT THOSE DOCUMENTS

1 COME FROM THE DESIGNER FILES OF SAMSUNG EMPLOYEES
2 AND THEY WERE THEMSELVES INQUIRING DEPOSITIONS
3 ABOUT SOURCE OF INSPIRATION.

4 SO THOSE ARE THE DOCUMENTS THAT PROVIDE
5 SOURCE OF INSPIRATION.

6 THE COURT: REALLY? THE EXTERIOR OF A
7 BUILDING WAS SOURCE OF INSPIRATION FOR ONE OF THE
8 PRODUCTS?

9 MS. MAROULIS: APPARENTLY THIS IS THE WAY
10 DESIGNERS COLLECT IDEAS.

11 THE COURT: THAT'S YOUR POSITION? THAT'S
12 WHAT THEY ARE TELLING YOU?

13 MS. MAROULIS: YOUR HONOR, IT COMES FROM
14 THE DESIGNERS' FILES DIRECTLY AND I WOULD RATHER
15 NOT GO FURTHER INTO THAT TO AVOID PROTECTIVE ORDER
16 ISSUES.

17 THE COURT: ALL RIGHT.

18 MS. MAROULIS: AMONG THE DOCUMENTS WE
19 PRODUCED ARE A LOT OF CATEGORIES THAT EXHAUSTIVELY
20 ADDRESS THE ISSUE OF -- FOR EXAMPLE, TWO WEEKS AGO
21 WE WERE BEFORE YOUR HONOR AND APPLE COUNSEL WAS
22 MAKING ARGUMENT THAT CAD TIMES ARE THE AND ALL AND
23 BE ALL.

24 WE PRODUCED THE CAD FILES. THEY HAVE OUR
25 CAD FILES. THE CAD FILES SPAN BACK, THEY CAN LOOK

1 AT ITERATIONS OF DESIGN AND MAKE CONCLUSIONS.

2 THE COURT: WHAT ABOUT SKETCHBOOKS? YOU
3 WERE VERY PERSUASIVE IN EXPLAINING THE SIGNIFICANCE
4 OF SKETCHBOOKS.

5 MS. MAROULIS: YOUR HONOR, THE SKETCHBOOK
6 BELONG TO THE INVENTORS OF THE PATENTS.

7 THE COURT: THEY DON'T HAVE SIMILAR
8 SKETCHBOOKS?

9 MS. MAROULIS: WE DON'T HAVE SIMILAR
10 SKETCHBOOKS. WE HAVE LOOSE NOTES AND PRESENTATIONS
11 THAT HAVE BEEN PRODUCED.

12 SO IN THE JENKINS DECLARATION THERE'S A
13 LIST OF DIFFERENT CATEGORIES OF DESIGN DOCUMENTS
14 THAT HAVE BEEN PRODUCED.

15 BUT WHAT YOUR HONOR FOCUSED ON EARLIER
16 CORRECTLY IS THAT REQUEST 1 ACTUALLY DOESN'T GO TO
17 ALL DESIGN DOCUMENTS, IT GOES TO DOCUMENTS WHERE
18 THERE WAS ANY COMPARISON OF THE TIMES.

19 SO IN THE PRODUCTION AS A WHOLE, WE
20 PRODUCED DOCUMENTS REGARDING MARKET ANALYSIS OF
21 APPLE PRODUCTS INCLUDING DOCUMENTS LOOKING AT THE
22 INTERNALS OF THE IPHONES, THE TEAR DOWNS. SO THOSE
23 DOCUMENTS WERE IN THE PRODUCTION.

24 BUT IN PRODUCING OUR DESIGN DOCUMENTS WE
25 ARE NOT OBLIGATED TO MANUFACTURE DOCUMENTS THAT

1 DON'T EXIST. THEY ARE LOOKING FOR A SMOKING GUN
2 DOCUMENT, A DOCUMENT THAT SAYS WE COPIED SOMETHING
3 FROM APPLE. WE DON'T HAVE THOSE DOCUMENTS.

4 WE HAVE TAKEN A 30(B)(6) DEPOSITION LAST
5 WEEK --

6 THE COURT: WELL, JUST TO BE PRECISE,
7 THEIR POSITION, THEIR REPRESENTATIONS THAT YOU HAVE
8 NOT IDENTIFIED ANY SUCH DOCUMENTS BASED ON THE
9 INVESTIGATION YOU HAVE DONE TODAY.

10 I THINK YOU JUST TOLD ME EARLIER YOU
11 CAN'T STAND HERE AND MAKE A REPRESENTATION THAT NO
12 SUCH DOCUMENT EXISTS OF YOUR CLIENT BECAUSE YOU
13 DON'T KNOW.

14 MS. MAROULIS: THAT'S CORRECT,
15 YOUR HONOR.

16 BUT I DO WANT TO TALK BRIEFLY ABOUT THE
17 30(B)(6) DEPOSITION OF A SAMSUNG REPRESENTATIVE WHO
18 ASKS SPECIFICALLY WHETHER HE INTERVIEWED THE
19 DESIGNERS OF THE PRODUCTS AT ISSUE.

20 HE TESTIFIED HE SPOKE WITH ALL OF THEM
21 AND INQUIRED EXTENSIVELY WHETHER ANY OF THEM
22 CONSIDERED APPLE PRODUCTS WHEN DESIGNING THEIR
23 PRODUCTS, NOT JUST COPYING, BUT ANY CONSIDERATION
24 OF FRAME OF REFERENCE. THEY TESTIFIED THEY HAVE
25 NOT.

1 THE COURT: SO HE SPOKE WITH EACH OF
2 THESE 13 INDIVIDUALS?

3 MS. MAROULIS: HE SPOKE WITH MAYBE 7 OR 8
4 INDIVIDUALS, HE SPOKE WITH PRINCIPAL DESIGNERS FOR
5 ALL OF THE FOUR PRODUCTS AT ISSUE.

6 THE COURT: IT IS TRUE THOUGH, IS IT NOT,
7 THAT THERE WERE 13 PEOPLE IDENTIFIED IN YOUR
8 INTERROGATORY IN 26(A) RESPONSES?

9 MS. MAROULIS: THINKING BACK ACTUALLY, HE
10 HAS TALKED TO EVERYONE WHO WAS IDENTIFIED IN
11 INTERROGATORY 1 RESPONSE. BUT I CANNOT SAY
12 STANDING HERE NOW HE TALKED TO EVERYONE IN THE
13 INITIAL DISCLOSURES. THAT'S THE DIFFERENCE. BUT
14 HE DID SPEAK WITH INDIVIDUALS FROM INTERROGATORY 1.

15 THE COURT: ALL RIGHT.

16 SO AS TO INTERROGATORY 1, OR ANY OF THE
17 OTHER INDIVIDUALS IN 26(A) RESPONSES, HAVE
18 DOCUMENTS BEEN COLLECTED?

19 MS. MAROULIS: DOCUMENTS HAVE BEEN
20 COLLECTED FROM INDIVIDUALS LISTED IN THE
21 INTERROGATORY 1 TO THE EXTENT THEY HAD THEM, AND
22 ADDITIONAL INDIVIDUALS TOO. THE DOCUMENT EFFORTS
23 WERE FAIRLY WIDE RANGING.

24 THE COURT: OKAY.

25 MS. MAROULIS: AND HERE IF YOUR HONOR

1 DOES REFER SECOND, WE HEARD TODAY THE OFFERS OF
2 TRANSPARENCY FROM APPLE ABOUT THEIR CUSTODIAN
3 INFORMATION, THAT'S THE FIRST TIME WE'VE HEARD
4 ABOUT THIS.

5 WE ASKED IN DEPOSITIONS, MR. JOHNSON
6 ASKED IN THE BUCHAKJIAN DEPOSITION ABOUT HOW THEY
7 COLLECTED DOCUMENTS, WHAT STEPS THEY TOOK, AND WORK
8 PRODUCT OBJECTION WAS MADE.

9 SO TO THE EXTENT THERE'S GOING TO BE ANY
10 TRANSPARENCY GOING FORWARD, IT HAS TO BE OBVIOUSLY
11 A TWO-WAY STREET, BUT TO DATE THERE HASN'T BEEN
12 THAT TRANSPARENCY.

13 THE COURT: WHAT'S YOUR POSITION ON THAT?

14 I UNDERSTAND YOU WANT TO HAVE THE SAME
15 RULES APPLY, YOU ARE ENTITLED THAT SENSE OF
16 RECIPROCITY.

17 WHAT DO YOU PROPOSE HERE, A DISCLOSURE OF
18 SUCH INFORMATION OR NOT?

19 MS. MAROULIS: YOUR HONOR, IN SOME OTHER
20 LITIGATIONS WE ARRIVED AT AGREEMENTS WHERE YOU
21 EXCHANGE CUSTODIAN LISTS AND MUTUALLY AGREEABLE
22 SEARCH TERMS. THAT IS ACCEPTABLE PRACTICES AND
23 IT'S FREQUENTLY DONE.

24 I THINK THAT ONCE WE GET PAST THE
25 PRELIMINARY INJUNCTION STAGE AND HAVE MORE TIME

1 COLLECTIVELY, WE WILL WORK THAT POSITION OUT.

2 BUT LET IT BE CLEAR THIS IS THE FIRST
3 TIME APPLE REQUESTED IT ALL AND THEY CERTAINLY
4 DIDN'T OFFER IT UNTIL THIS HEARING TOWARD US, AND
5 SO IT'S SOMETHING THAT HELPS LITIGATION TO PROCEED
6 EFFICIENTLY, BUT IN A CONTEXT OF VERY COMPRESSED
7 DISCOVERY PERIOD. IT HAS NOT BEEN DONE WITH THE
8 PARTIES HERE.

9 AND THE FRAMEWORK OF THIS --

10 THE COURT: WELL, IF I CAN JUST STOP YOU
11 THERE.

12 I ACCEPT WHAT YOU ARE SAYING FOR THE
13 MOMENT, BUT WHAT I'M MORE INTERESTED IN IS, IN THIS
14 CONTEXT WE ARE HERE IN THE CONTEXT OF THE
15 PRELIMINARY INJUNCTION AND I AGREE THIS IS
16 CERTAINLY THE FIRST TIME I'VE HEARD ABOUT THIS
17 ISSUE. WHAT IS YOUR POSITION? SHOULD THE PARTIES
18 MAKE THAT DISCLOSURE TO EACH OTHER OR NOT? I HEARD
19 APPLE SAY WE WANT TO MAKE THAT DISCLOSURE, WHAT'S
20 SAMSUNG'S POSITION?

21 MS. MAROULIS: WE WOULD BE UPON WILLING
22 TO COME UP WITH A LIST OF CUSTODIANS, YOUR HONOR.

23 THE DOCUMENT COLLECTION WAS DONE PRETTY
24 QUICKLY AND IT WAS PRETTY FAR REACHING, SO WE'LL
25 RETRACE THE STEPS AND IF NECESSARY PROVIDE THE

1 LISTS.

2 BUT I DON'T THINK IT'S NECESSARY THIS
3 INSTANCE BECAUSE OUR PRODUCTION IS FAR MORE
4 EXTENSIVE THAN APPLE AT THE MOMENT.

5 IF YOU COMPARE THE PURE NUMBERS, WE
6 PRODUCED MORE THAN 30,000 PAGES THEY PRODUCED
7 14,000 PAGES. WE PRODUCED NINE WITNESSES FOR
8 DEPOSITION, THEY HAVE DONE SIX. WE HAVE 1500
9 E-MAILS TO THEIR 600.

10 SO IF ANYONE SHOULD BE COMPLAINING ABOUT
11 POSITIVE PRODUCTION IT SHOULD BE US. BUT WE
12 ACTUALLY COMPLAINED TWO WEEKS AGO ABOUT VERY
13 SPECIFIC THINGS WE KNEW EXISTED WERE RELEVANT AND
14 WERE BEING WITHHELD. BY CONTRAST APPLE IS
15 COMPLAINING ABOUT THINGS THEY THINK SHOULD EXIST.

16 THE COURT: WELL, YOU MAY BE RIGHT ABOUT
17 THAT BUT NONETHELESS THE ISSUE REMAINS.

18 LET'S FOCUS ON THE SPECIFIC 13
19 INDIVIDUALS. I HAVE BEEN TOLD, AND I HAVEN'T
20 VERIFIED THIS SO ALL OF YOU CAN BEAR WITH ME FOR A
21 MOMENT, I HAVE BEEN TOLD YOU IDENTIFIED 13 PEOPLE
22 WHO PARTICIPATED IN THE DESIGN PROCESS OF THESE
23 ACCUSED PRODUCTS.

24 MS. MAROULIS: YES, YOUR HONOR.

25 THE COURT: WERE EACH OF THOSE 13

1 INDIVIDUALS INTERVIEWED FOR POSSIBLE COLLECTION AND
2 PRODUCTION?

3 MS. MAROULIS: YOUR HONOR, I BELIEVE SO.

4 THE COURT: OKAY.

5 MS. MAROULIS: BUT I DO NOT REPRESENT
6 HUNDRED PERCENT RIGHT NOW AS TO THE 13 INDIVIDUALS.

7 THE COURT: ALL RIGHT.

8 SO AT LEAST SITTING HERE TODAY YOU CANNOT
9 REPRESENT TO ME THAT ALL 13 HAVE BEEN INTERVIEWED,
10 CORRECT?

11 MS. MAROULIS: I KNOW A NUMBER OF
12 DESIGNERS WERE INTERVIEWED AND A NUMBER OF THEIR
13 DOCUMENTS COLLECTED. WHETHER OR NOT IT'S THE EXACT
14 13 THAT WERE INTERVIEWED, IT'S ACTUALLY MORE THAN
15 THAT. BUT I DON'T WANT TO MAKE A REPRESENTATION TO
16 THE COURT THAT ALL 13 WERE INTERVIEWED WHEN IN FACT
17 IT WAS 12 PLUS ANOTHER 20 AND ONE WAS MISSING.

18 THE COURT: LET ME BE AS TRANSPARENT AS I
19 AM SUGGESTING YOU ALL MIGHT WANT TO BE.

20 I DON'T RELISH THE OPPORTUNITY TO SIT
21 HERE AND NANNY THIS MEET AND CONFER PROCESS BUT
22 IT'S OBVIOUS TO ME THAT SOMETHING NEEDS TO BE DONE
23 BECAUSE SITTING HERE TODAY IN THE MIDDLE A VERY
24 COMMERCIALY SIGNIFICANT DISPUTE, NEITHER ONE OF
25 YOU EVEN KNOWS OR CAN TELL ME WHAT CUSTODIANS HAVE

1 BEEN INTERVIEWED. I FIND THAT SURPRISING.

2 SO WE DON'T KNOW WHETHER ALL 13 HAVE BEEN
3 INTERVIEWED. AS TO THOSE INDIVIDUALS WHO WERE
4 INTERVIEWED, CAN YOU TELL ME WERE THEIR INDIVIDUAL
5 HARD DRIVES WERE SEARCHED?

6 MS. MAROULIS: YOUR HONOR, IF THEY WERE,
7 AND IF YOU WANT ME TO GO INTO ANY FURTHER DETAIL
8 ABOUT THEIR DOCUMENTS I THINK I NEED TO EXCUSE
9 APPLE IN-HOUSE COUNSEL.

10 THE COURT: ALL RIGHT.

11 WELL, AGAIN, I DON'T RELISH THIS
12 OPPORTUNITY BUT I'M GOING HAVE TO ASK APPLE COUNSEL
13 TO STEP OUTSIDE AND I WILL NOTE FOR THE RECORD THAT
14 THE ONLY INDIVIDUALS REMAINING IN THIS COURTROOM
15 ARE MEMBERS OF THE COURT PERSONNEL AND PARTIES.

16 MR. OVERSON: ON BEHALF OF APPLE WE WOULD
17 OBJECT BECAUSE WE DO NOT --

18 THE COURT: I'LL NOTE YOUR OBJECTION FOR
19 THE RECORD.

20 AS I SAID, I WOULD RATHER TALK ABOUT SOME
21 LEGAL ISSUES HERE, BUT IT'S GET DOWN TO THE
22 NITTY-GRITTY.

23 SO OF THE 13 PEOPLE SOME SUBSET WERE
24 INTERVIEWED. NOW OF THAT SUBSET THAT WERE
25 INTERVIEWED, WERE THEIR HARD DRIVES SEARCHED?

1 MS. MAROULIS: YES, YOUR HONOR.

2 AND I WANT TO PREFACE MY WORDS WITH
3 SAYING THAT WE, TO THE EXTENT APPLE LATER CLAIMS
4 THERE'S ANY KIND OF WAIVER OF PRIVILEGED
5 INFORMATION, THIS IS NOT A WAIVER IT'S IN RESPONSE
6 TO THE COURT'S INQUIRY.

7 THE COURT: NOTED. SO THEIR INDIVIDUAL
8 HARD DRIVES WERE SEARCHED?

9 MS. MAROULIS: YES, YOUR HONOR.

10 THE COURT: ARE EACH OF THESE SEARCHED
11 INDIVIDUALS IN KOREA?

12 MS. MAROULIS: YES, THE DESIGNERS WERE IN
13 KOREA.

14 THE COURT: DID SOMEONE REPRESENTING
15 SAMSUNG IN THIS LAWSUIT GO MEET WITH EACH OF THOSE
16 PEOPLE?

17 MS. MAROULIS: INCLUDING HOUSE COUNSEL,
18 YOUR HONOR?

19 THE COURT: YOU TELL ME.

20 MS. MAROULIS: IN-HOUSE COUNSEL
21 INTERVIEWED THOSE INDIVIDUALS, YES, YOUR HONOR.

22 THE COURT: DID ANY OUTSIDE COUNSEL
23 PARTICIPATE IN THOSE DOCUMENT INTERVIEWS?

24 MS. MAROULIS: SOME, BUT NOT ALL.

25 THE COURT: ALL RIGHT.

1 MS. MAROULIS: AND AGAIN, WE DON'T
2 BELIEVE WE HAVE GOTTEN ANY SIMILAR INFORMATION AT
3 ALL FROM APPLE.

4 THE COURT: BELIEVE ME, WHERE I'M GOING
5 WITH THIS IS GOING TO APPLY ACROSS THE BOARD BUT I
6 HAVE A SPECIFIC MOTION IN FRONT OF ME SO I NEED TO
7 DEAL WITH THAT.

8 NOW IN TERMS OF THE COLLECTION EFFORTS,
9 WAS SOME TYPE OF MEMORANDUM PREPARED WHICH
10 IDENTIFIED THE TOPICS CORRESPONDING TO RESPONSIVE
11 DOCUMENTS? HOW DID YOU GO ABOUT INTERVIEWING THESE
12 FOLKS, IF YOU KNOW?

13 MS. MAROULIS: YOUR HONOR, I BELIEVE THAT
14 WOULD GO INTO THE WORK PRODUCT ISSUES, HOW THEY
15 WERE INTERVIEWED SPECIFICALLY.

16 THE COURT: ALL RIGHT.

17 MS. MAROULIS: BUT THEY WERE SPOKEN WITH?

18 THE COURT: OKAY. WERE SEARCH TERMS
19 USED?

20 MS. MAROULIS: THE SEARCH TERMS WERE USED
21 FOR THE PRODUCTION OF DOCUMENTS.

22 THE COURT: BUT NOT FOR THE COLLECTION?

23 MS. MAROULIS: I CANNOT SAY FOR SURE,
24 YOUR HONOR.

25 MS. MAROULIS: MY UNDERSTANDING,

1 YOUR HONOR, IS THAT SOME SEARCH TERMS WERE USED.

2 THE COURT: HAVE THOSE SEARCH TERMS BEEN
3 DISCLOSED TO APPLE?

4 MS. MAROULIS: NO, THEY HAVE NOT
5 DISCLOSED ANY SEARCH TERMS.

6 THE COURT: ALL RIGHT.

7 WERE E-MAIL REPOSITORIES SEARCHED AS PART
8 OF THIS COLLECTION AND INTERVIEW PROCESS FOR EACH
9 OF THESE -- I'M TALKING ABOUT THESE 14 OR SUBSET OF
10 THE 13 DESIGNERS.

11 MS. MAROULIS: YOUR HONOR, I UNDERSTAND
12 THAT E-MAIL WAS SEARCHED.

13 THE COURT: ARE THESE FOLKS RUNNING
14 MICROSOFT EXCHANGE OR SOME COMMERCIALY AVAILABLE
15 E-MAIL SERVER?

16 MS. MAROULIS: I COULD NOT SPEAK TO THE
17 TYPE OF SERVERS BUT I KNOW E-MAILS WERE SEARCHED,
18 THAT'S FROM THE E-MAIL SEARCHES THAT WE'VE
19 ASSEMBLED, THE E-MAILS THAT WERE PRODUCED.

20 THE COURT: SO DO YOU KNOW ONE WAY OR THE
21 OTHER, I DO NOT KNOW WHETHER SAMSUNG RUNS
22 MICROSOFT, PST FOLDERS WERE INTERVIEWED?

23 MS. MAROULIS: I DO NOT KNOW THE
24 SPECIFICS OF THE DESIGNATIONS OF WHAT EXACTLY WAS
25 SEARCHED.

1 THE COURT: ALL RIGHT. WELL --

2 MS. MAROULIS: YOUR HONOR, ONE THING I DO
3 WANT TO POINT OUT IS THAT TO THE EXTENT ANY OF THE
4 E-MAIL EXISTED AS OF WHEN THIS LAWSUIT WAS FILED,
5 OBVIOUSLY IT'S BEING COLLECTED AND DEALT WITH BUT
6 TO THE EXTENT THAT SOME E-MAIL WAS ALREADY DELETED
7 LAST YEAR OR YEAR BEFORE, THE PARTY HAS NO
8 OBLIGATION TO FOREVER PRESERVE ITS E-MAIL BEFORE
9 LITIGATION IS PENDING.

10 THE COURT: ALL RIGHT.

11 DID EACH OF THESE MEMBERS IN THIS SUBSET
12 OF 13 GET A LITIGATION HOLD NOTICE OF SOME KIND?

13 MS. MAROULIS: PARDON ME, YOUR HONOR, CAN
14 I ASK YOU TO REPEAT.

15 THE COURT: FOCUSING ON THE SUBSET OF
16 THE 13 DID EACH OF THOSE INDIVIDUALS RECEIVE SOME
17 KIND OF HOLD NOTICE OR STRUCTURE.

18 MS. MAROULIS: YES, YOUR HONOR.

19 THE COURT: WAS IT PROVIDED IN WRITING?

20 MS. MAROULIS: YES, YOUR HONOR.

21 THE COURT: HAS A COPY OF THAT HOLD
22 NOTICE BEEN TENDERED TO APPLE?

23 MS. MAROULIS: NO.

24 THE COURT: AND I'M GUESSING THEY HAVEN'T
25 GIVEN YOU A COPY?

1 MS. MAROULIS: ABSOLUTELY NOT. WE
2 BELIEVE THE WHOLE NOTICE IS PRIVILEGED BUT IT
3 EXISTS.

4 THE COURT: ALL RIGHT.

5 WELL, IS THERE ANYTHING ELSE YOU CAN TELL
6 ME ABOUT THE SPECIFICS OF THIS COLLECTION EFFORT AS
7 TO THIS SUBSET?

8 MS. MAROULIS: IS YOUR HONOR STILL ON
9 DESIGN DOCUMENTS?

10 THE COURT: I'M JUST STARTING THERE, BUT
11 YEAH.

12 MS. MAROULIS: OKAY.

13 THE IMPORTANT PART OF THE COLLECTION IS
14 THAT WE'VE PROVIDED A WHOLE NUMBER OF DIFFERENT
15 DESIGN TYPES OF DOCUMENTS.

16 COMPARED TO APPLE COLLECTION WHICH HAD
17 ALMOST NO DESIGN DOCUMENTS OUT OF THE FAMOUS CAD
18 FILES. WE PRODUCED CAD FILES, DESIGNER DRAWINGS,
19 INSPIRATION DOCUMENTS, POWERPOINTS, MARKETING
20 DOCUMENTS WITH DESIGNS EMBEDDED. SO THERE'S A
21 WHOLE VARIETY OF DOCUMENTS --

22 THE COURT: I'M SORRY. I ACTUALLY -- I
23 REMEMBERED MY OTHER QUESTION I HAD FOR YOU.

24 DID APPLE EVER SAY TO YOU, COULD YOU JUST
25 SEARCH THESE INDIVIDUALS, THE SUBSET OR THE 13, FOR

1 E-MAIL AND USE THESE TERMS THAT WE ARE GOING TO
2 GIVE TO YOU TO FIND DOCUMENTS THAT ARE GOING TO BE
3 IMPORTANT IN THIS DISPUTE?

4 DID THEY EVER GIVE YOU LIST OF THE SEARCH
5 TERMS?

6 MS. MAROULIS: THEY DID NOT GIVE A LIST
7 OF SEARCH TERMS. THEY HAVE INQUIRED WHETHER
8 INDIVIDUAL E-MAILS CAN BE SEARCHED AND IT WAS NOT
9 AS THE 13, IT WAS AS TO TWO OR THREE NAMES, I
10 RECALL, FROM THE MEET AND CONFER CORRESPONDENCE.

11 THE COURT: WHAT WAS THE ANSWER TO THAT
12 QUESTION?

13 MS. MAROULIS: THAT WE ARE LOOKING INTO
14 IT.

15 AND YOUR HONOR, THIS GOES BACK TO WHAT
16 MR. JACOBS SAID EARLIER BECAUSE WE WERE DEFENDING
17 NINE DEPOSITIONS IN THE SPACE OF TEN DAYS, NOT
18 EVERY MEET AND CONFER COULD BE ATTENDED BY
19 MR. JOHNSON AND MYSELF.

20 SO WE HAVE BEEN INVOLVED AS MUCH AS WE
21 COULD BUT SOME OF THEM TRANSPIRED WITH PEOPLE WHO
22 ARE NOT PRESENT HERE.

23 THE COURT: YOU MENTIONED THAT, I BELIEVE
24 YOU SAID YOU'VE TENDERED UP TO NINE WITNESSES FOR
25 DEPOSITION TODAY, SOMETHING LIKE THAT.

1 MS. MAROULIS: YES, YOUR HONOR.

2 THERE WERE SEVEN DECLARANTS AND THEN A
3 30(B)(6) WITNESS WHO TESTIFIED EXTENSIVELY AND
4 PREPARED AND SPOKE WITH A COUPLE DOZEN PEOPLE ON
5 THE RECORD. HE EXPLAINED THAT. AND A FORMER
6 EMPLOYEE EXECUTIVE THAT HAD BEEN NOTICED.

7 THE COURT: MR. WAGNER IS ONE OF THESE
8 SEVEN DECLARANTS.

9 MS. MAROULIS: YES, YOUR HONOR.

10 THE COURT: NOW PUTTING ASIDE ANY
11 RETAINED EXPERTS LIKE MR. WAGNER, WERE THE FILES OF
12 EACH OF THESE INDIVIDUALS WHO WERE TESTIFIED UP FOR
13 DEPOSITION REVIEWED FOR POSSIBLY RELEVANT
14 RESPONSIVE DOCUMENTS?

15 MS. MAROULIS: YES, YOUR HONOR.

16 THE COURT: SO EACH OF THOSE INDIVIDUALS
17 HAD AN INTERVIEW?

18 MS. MAROULIS: YES, YOUR HONOR.

19 THE COURT: AND DOCUMENTS WERE COLLECTED
20 AND PRODUCED IN ADVANCE OF THE DEPOSITION.

21 MS. MAROULIS: SO ONE OF THEM
22 MR. DENNISON IS THE CURRENT EMPLOYEE OF SAMSUNG,
23 AND HIS DOCUMENTS WERE SEARCHED AND PRODUCED.

24 AND MR. KONG IS A FORMER EMPLOYEE, SO HIS
25 FILES WERE SEARCHED AND WHATEVER WAS PRODUCED WAS

1 SAMSUNG DOCUMENTS.

2 THEY ALSO SERVED A SEPARATE SUBPOENA ON
3 HIM FOR DOCUMENTS IN HIS CURRENT POSSESSION. HE
4 DIDN'T HAVE ANYTHING EXCEPT FOR FRAMED PARAGRAPH OR
5 FRAMED ARTICLE ABOUT HIM TALKING ABOUT VARIOUS
6 PRODUCTS. SO HE BROUGHT THAT TO DEPOSITION. BUT
7 OTHERWISE THEIR FILES WERE SEARCHED.

8 THE COURT: ALL RIGHT.

9 MR. LEE IS AN INDIVIDUAL WHO IS
10 SPECIFICALLY IDENTIFIED. IS IT TRUE THAT DURING A
11 MEET AND CONFER WHEN APPLE ASKED, YOU WOULD SEARCH
12 HIS FILES, YOU WOULD NOT COMMIT ONE WAY OR THE
13 OTHER WITH THAT?

14 MR. JOHNSON: YOUR HONOR, IF I COULD
15 ADDRESS THAT BECAUSE I WAS AT THE MEET AND CONFER
16 AND MS. MAROULIS WASN'T.

17 THAT IS NOT CORRECT. THEY RAISED
18 MR. LEE'S FILES AT THE MEET AND CONFER WHICH I WAS
19 THERE FOR THAT. AND WHEN THEY RAISED IT I SAID
20 IT'S FRIDAY AFTERNOON, WE ARE CHECKING, WE ARE
21 GOING TO GET BACK TO YOU THE BEGINNING OF NEXT WEEK
22 BECAUSE IT WAS ALREADY THE WEEKEND IN KOREA.

23 AND THAT'S EXACTLY WHAT I TOLD THEM AND
24 THE NEXT THING THAT HAPPENED WAS, I MEAN, SO I WAS
25 ACTUALLY WAS QUITE AMAZED THAT WES GOT UP HERE AND

1 SAID THAT BECAUSE THAT DIDN'T HAPPEN AT ALL.

2 WE WENT AND CHECKED AND WE PRODUCED FILES
3 AND WE DID PRODUCE DOCUMENTS THAT DEMONSTRATED THAT
4 THE STATEMENT THAT WAS MADE IN THE PRESS WAS
5 ULTIMATELY RESTRUCTURED AND THERE WERE DOCUMENTS
6 ASSOCIATED WITH THAT THAT WERE PRODUCED.

7 AND THERE WERE E-MAILS AND OTHER
8 DOCUMENTS THAT WERE PRODUCED OUT OF THE FILES AS
9 WELL, ULTIMATELY.

10 THE COURT: SO JUST SO I UNDERSTAND AS WE
11 SIT HERE TODAY, MR. LEE'S FILES HAVE BEEN REVIEWED,
12 RESPONSIVE DOCUMENTS HAVE BEEN COLLECTED, THE
13 PRIVILEGE HAS BEEN CLEARED OUT AND MATERIALS HAVE
14 BEEN PRODUCED; IS THAT RIGHT?

15 MR. JOHNSON: YES.

16 THE COURT: OKAY.

17 MR. JOHNSON: AND IF -- JUST WHILE I'M
18 HERE, WITH RESPECT TO -- AND THEN I'LL SIT DOWN,
19 MS. MAROULIS IS DOING PERFECTLY GREAT JOB -- YOU
20 KNOW, WE TALKED ABOUT WHO IS DOING THE DOCUMENT
21 COLLECTION, YOU KNOW, PART OF THE ISSUE HERE AS
22 WELL IS THERE ARE PEOPLE IN KOREA HELPING WITH THE
23 DOCUMENT COLLECTION.

24 SAMSUNG HAS PEOPLE WHO ARE INVOLVED
25 WITHIN SAMSUNG, THERE'S A FORMER QUINN EMANUEL

1 ASSOCIATE WHO WORKED VERY CLOSELY WITH ME FOR MANY
2 YEARS WHO IS NOW IN HOUSE AT SAMSUNG. SHE'S BEEN
3 PARTICIPATING AND COLLECTING DOCUMENTS IN KOREA
4 THERE'S A FORMER PARTNER FROM QUINN EMANUEL WHO IS
5 AT SAMSUNG WHO PARTICIPATED IN A COLLECTION WHO HAS
6 NOW MOVED ON BUT HE WAS ALSO INVOLVED.

7 SO IT'S NOT AS THOUGH -- AND THERE ARE
8 OTHER PEOPLE WITHIN THE LEGAL TEAM, FRANKLY, THAT
9 ARE ADMITTED TO THE BARS EITHER IN CALIFORNIA OR
10 NEW YORK WHO HAVE ALSO BEEN INVOLVED.

11 SO IT'S NOT AS THOUGH WE TURNED THIS OVER
12 TO PEOPLE AND SAID, GO COLLECT DOCUMENTS AND WE
13 DIDN'T FOLLOW UP WITH IT. THESE ARE PEOPLE WE
14 WORKED WITH FOR MANY YEARS AND THE RELATIONSHIP
15 WITH SAMSUNG IS SUCH THAT, I MEAN, WE'VE GOTTEN
16 WHERE WE TRUST THEM AND WE'VE WORKED WITH THEM.

17 SO DON'T WANT IT TO SEEM LIKE THERE WAS A
18 DISCONNECT BECAUSE IT WAS ACTUALLY VERY MUCH
19 CONNECTED.

20 THE COURT: ALL RIGHT.

21 WELL, I SUSPECT YOU WOULD SIMILARLY
22 ACCEPT A PROCESS AT APPLE THAT RELIED UPON THEIR
23 IN-HOUSE EXPERTISE TO DRIVE THIS PROCESS, FAIR
24 ENOUGH?

25 MR. JOHNSON: YES.

1 AND FRANKLY, YOU KNOW, I THINK I TOOK THE
2 FIRST DEPOSITION IN THE CASE WHERE I DEPOSED
3 MR. LUTTON WHO IS A FORMER PATENT COUNSEL AT APPLE.
4 AND I ASKED MR. LUTTON ABOUT DOCUMENT COLLECTION
5 AND, YOU KNOW, WHETHER THE RIGHT THING WAS DONE,
6 AND I WAS CONFRONTED WITH A WORK PRODUCT AND
7 ATTORNEY/CLIENT PRIVILEGE OBJECTION, SO I NEVER GOT
8 INTO IT AND I NEVER UNDERSTOOD.

9 SO TO HEAR APPLE SAY NOW THAT THEY WANT
10 THE PROCESS TO BE TRANSPARENT IS AGAIN, THAT DIDN'T
11 COME UP IN THE MEET AND CONFER PROCESS I ATTENDED
12 UNTIL THIS VERY HEARING.

13 I'M SORRY TO SAY THAT. I AGREE WITH YOU,
14 WE NEED TO DO A BETTER JOB OF MEET AND CONFERRING
15 AND I THINK A LOT OF THIS IS TIED TO THE SCHEDULE
16 THAT EVERYONE HAS BEEN UNDER.

17 SO ONCE WE GET BEYOND THE PRELIMINARY
18 INJUNCTION MOTION ON THE 13TH, HOPEFULLY THIS GETS
19 BACK TO A NORMAL CASE IN SOME RESPECTS AND WE CAN,
20 YOU KNOW, WE CAN AVOID THESE KINDS OF HEARINGS WITH
21 YOUR HONOR AND TRY TO RESOLVE THESE THINGS WHICH IS
22 WHAT WE WERE TRYING TO DO ON THE 16TH.

23 THE COURT: ALL RIGHT.

24 MS. MAROULIS, YOU WERE SAYING?

25 MS. MAROULIS: EXCELLENT. I'M GLAD

1 MR. JOHNSON CLARIFIED THAT MEET AND CONFER ISSUE
2 BECAUSE I WAS NOT THERE.

3 I WAS ANSWERING YOUR HONOR'S SPECIFIC
4 QUESTIONS ABOUT COLLECTION PROCESS, IF THERE'S
5 ANYTHING ELSE YOUR HONOR WOULD LIKE TO ADDRESS, WE
6 CAN DO THAT.

7 SO THAT'S WITH RESPECT TO THE DESIGN
8 DOCUMENTS, RIGHT? THERE'S A BODY OF DESIGN
9 DOCUMENTS. WE PRODUCED A HUGE NUMBER OF THEM.
10 APPLE IS LOOKING FOR SPECIFIC DOCUMENTS OF ALLEGED
11 COPYING.

12 THROUGH OUR SEARCH WE HAVEN'T FOUND ANY.
13 IF WE FIND ANY OTHER TIME OF COURSE IT WOULD BE
14 PRODUCED AND SUPPLEMENTED BECAUSE THAT'S THE
15 PARTIES OBLIGATION.

16 THE OTHER CATEGORIES OF DOCUMENTS ARE
17 BROADLY MARKETING AND CONSUMER SURVEYS. AND AGAIN,
18 WITH RESPECT TO THESE CATEGORIES, WE HAVE SEARCHED
19 THE RELEVANT FILES AND PRODUCED AN ENORMOUS NUMBER
20 OF DOCUMENTS RANGING FROM MARKET SHARE TO MARKETING
21 PRESENTATIONS TO COMPETITIVE ANALYSIS, WHO IS OUR
22 COMPETITION, WHAT YOU SHOULD BE TARGETING,
23 MARKETING SURVEYS AS WELL.

24 SO THERE ARE TWO DIFFERENT REQUESTS. ONE
25 IS MARKETING AS A WHOLE, THE OTHER IS CONSUMER

1 SURVEYS.

2 SO CONSUMER SURVEYS WAS A CONTESTED
3 TOPIC, WE THOUGHT IT WAS NOT RELEVANT IN THIS
4 INSTANCE, WE THOUGHT RATHER THAN FIGHT IT JUST
5 PRODUCE IT SO WE DID. WE ARE SURPRISED TO SEE THAT
6 IN THE MOTION TO COMPEL.

7 AND AGAIN WITH DESIGN DOCUMENTS WE
8 BELIEVE THESE DOCUMENTS HAVE BEEN PRODUCED.

9 NOW THE DOCUMENTS OF CONFUSION, THE LAST
10 CATEGORY, IS A CONTESTED TOPIC STILL BECAUSE WE
11 DON'T THINK THOSE DOCUMENTS ARE RELEVANT IN THE PI
12 TEXT.

13 IT IS TRUE THAT BROADLY SPEAKING APPLE
14 HAS TRADEMARK CLAIMS IN THIS CASE, BUT THEY CHOSE
15 TO NOT MOVE ON TRADEMARK CLAIMS. THEY CHOSE TO
16 MAKE THE PI MOTION SOLELY ABOUT PATENT INFRINGEMENT
17 ANALYSIS.

18 THE COURT: EVEN THOUGH IT'S PRETTY CLEAR
19 JUDGE KOH UNDERSTOOD TRADEMARKS WERE GOING TO BE AN
20 ISSUE IN THE PI MOTION, CORRECT?

21 MS. MAROULIS: THEY MADE IT SOUND TO
22 JUDGE KOH THAT TRADEMARK WAS GOING TO BE PART OF
23 IT, CORRECT.

24 WHEN SEE THAT IT WAS ONLY PATENT
25 INFRINGEMENT ALLEGATIONS, SO WE FOCUSED OUR EFFORTS

1 ON THAT.

2 BUT WE JUST DON'T BELIEVE THE ALLEGED
3 CONFUSION DOCUMENTS ARE AT ISSUE HERE AT ALL. BUT
4 THE BURDEN SHOULD NOT BE OVERLOOKED AT ALL. WE
5 SUBMITTED A DECLARATION OF ONE OF SAMSUNG EMPLOYEES
6 WHO HAS PERSONAL KNOWLEDGE OF THE CONSUMER
7 COMMUNICATION DATABASE.

8 AS YOU CAN IMAGINE THIS DATABASE MOSTLY
9 CONCERNS PEOPLE WHO ARE ANNOYED WHEN THEIR DATA IS
10 NOT WORKING OR THEY HAVE A SCRATCH ON THEIR PHONE.
11 SO PROBABLY 99.9 PERCENT OF THAT IS GOING TO BE
12 ENTIRELY IRRELEVANT. THERE MIGHT BE SOME SUBSET
13 POTENTIALLY WHERE SOME CONSUMER VOLUNTEERS THEIR
14 THOUGHTS ABOUT OTHER PEOPLE'S PRODUCTS. IT'S HARD
15 TO IMAGINE THE CALL, BUT IF THEY DO I CAN REPRESENT
16 HERE THAT THAT CANNOT HAPPEN.

17 SO MR. WILKINS EXPLAINED IN DETAIL WHAT
18 IT WOULD TAKE TO ASSEMBLE AND FARE OUT THE RELEVANT
19 EVIDENCE THAT WE COULD THEN NEED TO SEARCH AND HAVE
20 ATTORNEY REVIEW OF AND THEN PRODUCE, BECAUSE NOT
21 EVERY CALL THAT MENTIONED APPLE IS GOING TO BE
22 NECESSARILY RESPONSIVE TO THE REQUEST.

23 I THINK BY HIS ESTIMATE IT WAS GOING TO
24 BE THREE TO FOUR WEEKS. THE QUESTION THAT
25 MR. OVERSON POSED, WHY DIDN'T WE START DOING THIS

1 EARLIER? AS WE SAID IN OUR PAPERS, THE BULK OF OUR
2 DISCOVERY WE RECEIVED FROM APPLE IS CLOSE TO 60
3 DOCUMENT PRODUCTION REQUESTS WAS SEARCHED AUGUST
4 26TH.

5 WE BELIEVE WHEN JUDGE KOH SET THE
6 DISCOVERY FOR THE PI MOTION SHE ENVISIONED
7 SOMETHING VERY DIFFERENT, SHE ENVISION AID NARROW
8 SUBSET OF DISCOVERY AND DEPOSITIONS OF THOSE
9 DECLARANTS WHO SUBMITTED DECLARATIONS PRO/CON, THE
10 PRELIMINARY INJUNCTION.

11 I DOUBT THAT SHE HAD IN MIND THIS FAR
12 REACHING 60 TO 70 REQUEST FISHING TRIP INTO
13 SAMSUNG'S FILE PRIVACY.

14 SO IN CONCLUSION YOUR HONOR, TO AGAIN
15 CLARIFY ISSUES BEFORE US, UNLESS YOU HAVE OTHER
16 QUESTIONS, IS THAT THE FORTY CATEGORIES OF
17 DOCUMENTS WHERE SAMSUNG HAS ALREADY COMPLIED WITH
18 THE DISCOVERY --

19 THE COURT: BUT YOU DO NOT KNOW IF YOU'VE
20 SEARCHED ALL 13 DESIGNERS' FILES SO HOW CAN YOU SAY
21 IT'S DONE? YOU ARE NOT DONE. YOU MAY BE DONE, BUT
22 YOU DO NOT KNOW.

23 MS. MAROULIS: YOUR HONOR, I APOLOGIZE
24 FOR NOT BEING ABLE TO SAY ON RECORD ALL 13 WERE
25 SEARCHED. I BELIEVE THEY WERE BUT I WOULD NEED TO

1 DOUBLE CHECK.

2 THE COURT: ALL RIGHT.

3 MR. LEE'S FILES, THOSE ARE ALL SEARCHED?

4 MS. MAROULIS: JACOB LEE'S FILES WERE
5 SEARCHED; YES, YOUR HONOR.

6 THE COURT: ALL THE DOCUMENTS?

7 MS. MAROULIS: YES, YOUR HONOR.

8 AND SO GOING TO THE LAST DISPUTED ISSUE
9 WHICH IS THE ISSUE OF THE POTENTIAL CONFUSION
10 DOCUMENTS, WE SUBMIT THEY ARE BOTH RELEVANT AND
11 VERY BURDENSOME TO SEARCH.

12 AND WHEN WE TALK ABOUT BURDEN, WE ARE NOT
13 TALKING BURDEN ON OUTSIDE COUNSEL BECAUSE THAT'S
14 NOT AN ISSUE, IT'S A BURDEN OF THE COMPANY ON
15 SAMSUNG. AND THE AMOUNT OF TIME AND EFFORT IT
16 WOULD TAKE FROM THE LEGITIMATE ENTERPRISE OF DOING
17 THE BUSINESS TO FOCUS ON HELPING US FARE OUT THE
18 POTENTIAL TWO OR THREE CUSTOMER CALLS THAT MAY OR
19 MAY NOT COME IN.

20 THE COURT: SO WITH RESPECT TO THE, I'M
21 GOING TO USE LANGUAGE OR VERNACULAR FROM MY OLD
22 WORLD, SUSPECT DATABASE, AS I REMEMBER IT AND
23 RECALL IT WHEN I HAD TO DO THESE COLLECTIONS THERE
24 WERE, ON OCCASION, PRODUCT MANAGERS IN PARTICULAR
25 WHO HAD A KEEN INTEREST IN UNDERSTANDING WHAT

1 FEATURES CUSTOMERS WERE INTERESTED IN, RIGHT?
2 THAT'S THEIR JOB IS TO FIGURE OUT WHAT THE NEXT
3 FEATURE OR RELEASE IS GOING TO BE.

4 SO HAVE YOU UNDERTAKEN ANY EFFORTS TO
5 UNDERSTAND WHETHER THERE ARE ANY EXISTING PROCESSES
6 FOR SECURING FROM THAT DATABASE SOME SMALL SET OF
7 INFORMATION, NOT THE WHOLE THING, BUT HAVE YOU DONE
8 ANY OF THAT?

9 MS. MAROULIS: YOUR HONOR, WE LOOKED INTO
10 THE CUSTOMER SURVEYS, THOSE DATABASES, THAT'S WHERE
11 THE PRODUCTION CAME FROM IN FIGURING OUT WHAT
12 CUSTOMERS LIKE ABOUT SOMETHING AND WHY THEY BUY
13 PRODUCTS. THAT'S THE SUBSET OF DOCUMENTS I BELIEVE
14 YOU'RE TALKING ABOUT. BUT THOSE DOCUMENTS WOULD BE
15 RESPONSIVE TO REQUEST 214 NOT NECESSARILY THE 206
16 WHICH IS THE ALLEGED CONFUSION.

17 THE COURT: YEAH. I ACCEPT YOUR
18 CLARIFICATION.

19 WHAT I WAS ACTUALLY GETTING AT WAS WITHIN
20 THE SUPPORT DATABASE, SUPPORT ORGANIZATIONS TEND
21 TO, AT LEAST IN MY EXPERIENCE, RESIST TAKING ON THE
22 RESPONSIBILITY AND OBLIGATION OF PROVIDING
23 COMPETITIVE INTELLIGENCE TO OTHER ELEMENTS OF THE
24 CORPORATION WHICH MAY VERY MUCH VALUE THAT
25 INFORMATION.

1 NEVERTHELESS I'M AWARE AT LEAST IN A
2 NUMBER OF LARGE MULTINATIONAL TECHNOLOGY
3 CORPORATIONS THAT I'M FAMILIAR WITH, THERE EXISTS
4 CERTAIN PROCESSES FROM TIME TO TIME WHEREBY THE
5 PRODUCT MANAGEMENT FUNCTION CAN SECURE SOME
6 INTELLIGENCE FROM THIS VAST DATABASE AS TO WHAT
7 YOUR ACTUAL CUSTOMERS WANT IN AN EXTRA RELEASE OF
8 THE PRODUCT.

9 MY QUESTION IS SIMPLY WHETHER YOU'VE
10 UNDERTAKEN ANY EFFORTS TO IDENTIFY ANY OF THOSE
11 EXISTING OR PRE-EXISTING PROCESSES TO MINIMIZE YOUR
12 BURDEN SO YOU ARE NOT REDOING IT.

13 MS. MAROULIS: IF I UNDERSTAND
14 YOUR HONOR'S QUESTION CORRECTLY, YES WE INTERVIEWED
15 PEOPLE IN THE MARKETING ORGANIZATION AND THE
16 COMPETITIVE INTELLIGENCE ORGANIZATION AND FIGURED
17 OUT HOW THEY KEEP INFORMATION.

18 THE COURT: OKAY. ALL RIGHT.

19 ANYTHING FURTHER?

20 MS. MAROULIS: WOULD YOUR HONOR LIKE ME
21 TO BRIEFLY ADDRESS THE QUESTION OF SANCTIONS OR
22 IT'S NOT BEFORE THE COURT?

23 THE COURT: WELL, I WOULD LIKE TO HEAR
24 YOUR POSITION. I THINK I UNDERSTAND IT BUT I WANT
25 TO GIVE YOU THIS OPPORTUNITY.

1 MS. MAROULIS: OUR POSITION IS IT'S NOT
2 ENTIRELY PROPERLY BROUGHT FOR A NUMBER OF REASONS.

3 I TOLD THEM EARLY ON IN JULY WE ARE
4 COMPLYING WITH ALL OUR OBLIGATIONS. BUT FOR THIS
5 COURT'S PURPOSES, IT'S NOT SUPPORTED BY ANY LAW,
6 NINTH CIRCUIT OR OTHERWISE. THERE'S BEEN NO MEET
7 AND CONFER ON THESE ISSUES. IT WASN'T PUT IN THE
8 SEPARATE MOTION AS REQUIRED BY THE LOCAL RULES.

9 IT'S NOT JUST UNRIPE IT'S ENTIRELY
10 UNSUPPORTED. AND IT'S QUITE OFFENSIVE IN A WAY
11 BECAUSE IT'S SOMETHING THROWN OUT THERE IN THE
12 CONCLUSION IN PART OF THEIR PAPERS, NOT PROPER
13 SUPPORT, AND IT'S A GRAVE ACCUSATION.

14 WE HOPE THAT IN THIS CASE IT CONTINUES
15 THERE'S NOT GOING TO BE ACCUSATION OF THAT SORT
16 JUST FLYING ACROSS THE --

17 THE COURT: ALL RIGHT.

18 MS. MAROULIS: SO WE'VE BRIEFED THESE
19 ISSUES IN OUR MOTION, BUT VERY SIMPLY SPEAKING THEY
20 CANNOT JUST POINT TO SOME OTHER CASES THAT INVOLVE
21 SAMSUNG AND LUMP THEM ALL TOGETHER, WHATEVER THE
22 CIRCUMSTANCES ARE IN THOSE CASES, AND INFER THAT
23 SOMETHING SIMILAR IS HAPPENING HERE.

24 THE COURT: AS YOU POINTED OUT I BELIEVE
25 YOUR ADVERSARY HAS SIMILARLY BEEN SANCTIONED IN

1 OTHER CASES AS WELL, CORRECT?

2 MS. MAROULIS: THAT'S TRUE AS WELL.

3 THE COURT: OKAY. THANK YOU.

4 REBUTTAL?

5 MR. OVERSON: YES, YOUR HONOR.

6 MR. JACOBS: CAN I BRING BACK

7 MS. WHEELER?

8 THE COURT: IF WE ARE GOING TO AVOID ANY
9 CONFIDENTIAL INFORMATION WITH THE PROTECTIVE ORDER,
10 I HAVE NO PROBLEM WITH THAT.

11 IF YOU WOULD, MR. JACOBS.

12 MR. JACOBS: CAN I?

13 MR. OVERSON: I DON'T THINK ANY OF THE
14 THINGS I'M GOING TO SAY ARE CONFIDENTIAL, I'M SURE.
15 I WILL DO MY BEST.

16 THE COURT: ALL RIGHT.

17 MR. OVERSON: SO YOUR HONOR, WE DO
18 BELIEVE A TRANSPARENCY, AND I THINK THAT WE HAVE,
19 INCLUDING IN RESPONSES TO SOME OF THEIR DOCUMENT
20 REQUESTS THAT WE HAVE NOTED THAT WE WOULD BE
21 WILLING TO BE MORE TRANSPARENT.

22 AND THESE ISSUES DID COME UP TO SOME
23 DEGREE IN THE MEET AND CONFER SESSIONS BECAUSE WE
24 TALKED ABOUT, YOU KNOW, HAVE YOU SEARCHED THESE
25 FOUR PEOPLE? THEY LISTED FOUR PEOPLE INVOLVED IN

1 THE DESIGN IN THEIR INITIAL DISCLOSURES, HAVE YOU
2 SEARCHED THEM? WHAT HAVE YOU DONE?

3 AND WE HIT ROADBLOCKS. I THINK YOU HONOR
4 UNDERSTANDS THAT WE WERE TRYING TO PURSUE THAT AND
5 THEY TOLD US THEY WOULDN'T TELL US WHAT SEARCH
6 TERMS THEY USED.

7 THERE WAS A PROCESS WHEREBY WE WERE GOING
8 TO TRY AND AGREE ON SEARCH TERMS BUT IT DIDN'T, IT
9 GOT OVERWHELMED BY THE SPEED OF THE CASE.

10 BUT I DON'T THINK WE HEARD THAT AN E-MAIL
11 SEARCH HAS BEEN DONE ON THESE INDIVIDUALS TO LOOK
12 FOR, FOR EXAMPLE, APPLE OR IPHONE OR IPAD. I MEAN,
13 THAT HAS NOT HAPPENED. I DIDN'T HEAR THAT, THAT
14 THAT SEARCH HAS HAPPENED AND CERTAINLY THE FILES
15 AND THE PRODUCTION WOULD CONFIRM THAT.

16 THE FACT THAT THERE'S ZERO E-MAILS FROM
17 THE MAJORITY OF THESE INDIVIDUALS THAT SAY APPLE
18 AND APPLE IS THE LEADING PRODUCT IN THE MARKET, IT
19 DOESN'T MAKE SENSE.

20 THE COURT: HAVE YOU DONE ANYTHING, AS
21 PART OF YOUR TRAFFIC ANALYSIS HAVE YOU ANALYZED,
22 FOR EXAMPLE, I UNDERSTAND YOU HAVEN'T RECEIVED A
23 CUSTODIAL LOG SO YOU DON'T KNOW WHERE THE DOCUMENTS
24 CAME FROM. BUT HAVE YOU LOOKED TO SEE WHETHER ALL
25 13 OF THESE INDIVIDUALS HAVE APPEARED ON AT LEAST

1 ONE E-MAIL? ARE THERE INDIVIDUALS WHO DO NOT
2 APPEAR ANYWHERE IN THE PRODUCTION? IF YOU KNOW.

3 MR. OVERSON: THERE MAY BE. I CAN'T SAY
4 THAT.

5 THERE'S A -- WE DID TRY IN THE CHUNG
6 DECLARATION TO GIVE YOUR HONOR AN OVERVIEW OF WHO
7 WAS MENTIONED AND WHO WASN'T.

8 WE CAN SAY THERE'S NO E-MAILS FROM MOST
9 OF THE PEOPLE THEY SAY KNOW THE MOST ABOUT THIS.
10 AND THERE WAS INTERVIEWS OF 18 PEOPLE APPARENTLY
11 FOR 30(B)(6) DEPOSITIONS, AND WE DON'T HAVE E-MAILS
12 FROM THOSE PEOPLE.

13 WE HAVE ONE OR TWO E-MAILS, WE ARE
14 TALKING TOTAL. WE ARE NOT TALKING AS TO ONE FROM
15 EACH, WE HARDLY HAVE ANYTHING. SO IT SUGGESTS THAT
16 THIS WAS JUST NOT DONE.

17 AND YOU KNOW, I'M NOT TRYING TO
18 DISRESPECT THE IN-HOUSE PEOPLE AT SAMSUNG, THEY MAY
19 BE FINE LAWYERS, I DO NOT KNOW, BUT THERE'S NO
20 SUBSTITUTE FOR HAVING OUTSIDE COUNSEL DO WHAT WE
21 HAVE DONE.

22 THE COURT: SO YOU HAVE HAD OUTSIDE
23 COUNSEL FROM MORRISON & FOERSTER AT EVERY CUSTODIAL
24 INTERVIEW?

25 MR. OVERSON: YES.

1 THE COURT: ALL RIGHT.

2 MR. OVERSON: SO WE NEED THOSE SEARCHES
3 TO BE DONE AND WE NEED SOME DETAILS THAT HOW THEY
4 WERE DONE AND THAT'S WHY WE WANTED TO DO THIS
5 FOLLOWUP 30(B)(6) IN ADDITION TO GETTING SOME
6 CERTIFICATION THAT IT'S ALL BEEN DONE.

7 NOW, THERE'S MENTION OF CAD FILES, THEY
8 PRODUCE A LOT OF CAD FILES. WELL, THE CAD FILES
9 REFLECT THE PRODUCTS THAT AS THEY ENDED UP
10 APPEARING THEY DON'T GIVE US THE INFORMATION ABOUT
11 WHERE THE DESIGN ELEMENTS CAME FROM, AND THAT'S
12 REALLY WHAT WE ARE LOOKING AT IN DOCUMENT REQUEST
13 NUMBER 1.

14 THE COURT: THAT'S WHY I WAS ASKING ABOUT
15 THE SKETCHBOOKS, AT LEAST THE LAST TIME YOU ALL
16 WERE HERE OR AT LEAST SOME OF YOU WERE HERE, WE HAD
17 A PRETTY ROBUST DISCUSSION AROUND THE DESIGN
18 PROCESS.

19 MR. OVERSON: RIGHT.

20 AND THERE VERY WELL COULD BE SKETCHBOOKS.

21 THE COURT: SHE'S SAYING THERE AREN'T ANY
22 SKETCHBOOKS. SHE'S SAYING IF THERE WERE SKETCHES
23 OR INDIVIDUAL DRAWINGS THEY HAVE BEEN PRODUCED TO
24 YOU.

25 HOW AM I TO ASSESS WHETHER THAT'S

1 LEGITIMATE OR NOT AS TO SOME SPECIFIC -- I HAVE TO
2 ACCEPT YOUR REPRESENTATION JUST AS I HAVE TO ACCEPT
3 HERS.

4 SO HOW AM I TO INDEPENDENTLY QUESTION
5 THAT UNLESS YOU COME FORWARD WITH SOME PROOF THAT
6 IN FACT THEY ARE HOLDING BACK DOCUMENTS?

7 MR. OVERSON: ON THE E-MAIL FRONT, I
8 THINK WE HAVE SET FORTH --

9 THE COURT: WELL, YOU ARE POINTING TO THE
10 FACT THAT YOUR REQUEST NUMBER 1 WHICH WAS VERY
11 SPECIFIC IN ASKING FOR DOCUMENTS THAT REFERENCE THE
12 APPLE PRODUCTS, WE NOW ESTABLISHED WE ARE TALKING
13 ABOUT A SUBSET OF THE APPLE PRODUCT LINE. YOU ARE
14 SAYING WE HAVEN'T SEEN E-MAILS FROM CERTAIN PEOPLE
15 THAT HAVE THAT INFORMATION.

16 WELL, IT'S ENTIRELY POSSIBLE, ISN'T IT,
17 THAT THERE ARE NO SUCH E-MAILS. HOW AM I TO ASSESS
18 WHETHER OR NOT THEY ARE HOLDING THEM BACK JUST
19 BECAUSE THEY HAVEN'T SEEN THE DOCUMENTS YOU WANTED
20 TO SEE IN THE PRODUCTION?

21 MR. OVERSON: YOUR HONOR DOES NOT NEED TO
22 ASSESS THAT AT THIS STAGE.

23 WHAT WE ARE ASKING YOUR HONOR TO DO IS
24 ISSUE AN ORDER THAT BY TUESDAY OF NEXT WEEK THEY
25 PRODUCE ALL RESPONSIVE E-MAILS AND CERTIFY THAT IF

1 THEY HAVE DONE THE SEARCH WHICH WOULD OF COURSE
2 INCLUDE SEARCHING PEOPLE'S E-MAIL FOR TERMS LIKE
3 APPLE, IPHONE, IPAD --

4 THE COURT: OKAY. AND IS YOUR REQUEST
5 SPECIFIC AND DIRECTED TO THE 13 INDIVIDUALS WHO
6 HAVE BEEN IDENTIFIED AS BEING INVOLVED IN DESIGN
7 PROCESS? CAN WE AT LEAST PUT THAT BOUNDARY AROUND
8 THIS?

9 MR. OVERSON: I'M SORRY, YOUR HONOR, BUT
10 WE CAN'T.

11 IT WOULD BE EASY TO DO THAT AND CERTAINLY
12 THEY SHOULD BE SEARCHED, BUT THOSE ARE MY
13 UNDERSTANDINGS FROM SAMSUNG IS THAT THOSE ARE
14 DESIGNERS AS OPPOSED TO THE PEOPLE WHO DECIDED WHAT
15 PRODUCT DESIGNS TO PURSUE.

16 THE COURT: SO WHO ARE THOSE FOLKS?

17 MR. OVERSON: THOSE ARE PEOPLE --

18 THE COURT: THE OFFICE OF THE
19 DEVELOPMENT?

20 MR. OVERSON: THERE'S SOMETHING CALLED
21 THE OFFICE OF THE DEVELOPMENT AND WE UNDERSTAND
22 THEY HAVE A ROLE IN MAKING THOSE DECISIONS.

23 THE COURT: SO WHAT INDIVIDUALS IN THAT
24 ORGANIZATION ARE WE TALKING ABOUT?

25 MR. OVERSON: UNFORTUNATELY, WE DON'T

1 KNOW.

2 THE COURT: DID YOU ASK THE 30(B)(6)
3 WITNESS ABOUT THAT?

4 MR. OVERSON: WE ASKED QUESTIONS ABOUT
5 HOW THIS PROCESS WAS GOING BUT WE DIDN'T GET
6 SPECIFIC ANSWERS. THESE ARE THE FOUR PEOPLE WHO
7 MADE THE DECISION.

8 THE COURT: ARE WE TALKING FOUR PEOPLE OR
9 400 HERE IN THIS OFFICE?

10 MR. OVERSON: I CAN'T IMAGINE IT WOULD BE
11 400. I THINK MY SUPPOSITION WOULD BE --

12 THE COURT: MR. HUNG APPEARS TO HAVE SOME
13 HELPFUL INFORMATION ON THIS TOPIC.

14 MR. HUNG: I ACTUALLY TOOK THE 30(B)(6)
15 DEPOSITION OF MR. DENNISON ALONG WITH MS. MAROULIS.

16 I JUST ASKED THE QUESTION ABOUT THE
17 DESIGN PROCESS, IT CUT OFF AT MR. CARRIERA.
18 MR. DENNISON LOOKED AT MR. CARRIERA AND KNEW VERY
19 LITTLE BEYOND THE DESIGN PROCESS.

20 THE COURT: HERE'S THE DILEMMA I FACE.

21 YOU'RE ASKING FOR AN ORDER THAT WOULD NOT
22 BE LIMITED TO 13 PEOPLE, POTENTIALLY MIGHT INVOLVE
23 DOZENS OF INDIVIDUALS AND YOU ARE ASKING THIS
24 COLLECTION OF PRODUCTION BE COMPLETED BY TUESDAY.
25 THAT'S JUST NOT GOING TO HAPPEN.

1 SO YOU ARE ASKING ME ESSENTIALLY TO ISSUE
2 AN ORDER THAT I KNOW WILL NOT BE OBEYED OR COULD
3 NOT BE OBEYED.

4 MR. OVERSON: I'M NOT ASSUMING THERE'S
5 DOZENS OF OTHER INDIVIDUALS BEYOND THESE 13 PEOPLE.

6 THE COURT: LET'S SAY THERE'S ONLY FOUR.

7 MR. OVERSON: OKAY.

8 THE COURT: THAT'S 17 PEOPLE TO GET A
9 COLLECTION PRODUCTION PRIVILEGE REVIEW DATA
10 MANAGEMENT PROCESS, ALL OF THAT DONE BY TUESDAY?
11 THAT'S JUST NOT GOING TO HAPPEN, RIGHT?

12 MR. OVERSON: WELL, WE HAVE BEEN PUT IN
13 THIS POSITION. THIS REQUEST WENT OUT ON JULY 12TH
14 AND OUR REPLY IS DUE IN TWO DAYS.

15 YOUR HONOR, WE ARE VERY, VERY WELL AWARE
16 OF THE SCHEDULE AND HOW TOUGH IT IS.

17 AND IT'S NOT FAIR THOUGH TO DEPART AT THE
18 MOVING PARTY TO FACE THIS KIND OF STONE WALLING
19 THEN AT THE END SAY, WELL, IT'S TOO LATE. THAT'S
20 NOT A FAIR OUTCOME.

21 SO THAT IS WHY THERE HAS TO BE SOME
22 CONSEQUENCE TO SAMSUNG FOR NOT PRODUCING THESE
23 DOCUMENTS, NOT DOING THE PROPER E-MAIL SEARCH THAT
24 WE ALL KNOW WE HAVE TO DO.

25 THE COURT: CAN I ASK YOU ABOUT THE --

1 AND I WILL USE THE TERMINOLOGY OR TERM "SUPPORT
2 DATABASE." I SUSPECT SAMSUNG HAS ITS OWN SPECIFIC
3 REFERENCE FOR IT.

4 I CAN UNDERSTAND WHY YOU WOULD LIKE TO
5 KNOW IF CUSTOMERS ARE REFERRING TO SPECIFIC APPLE
6 FEATURES IN PLACING CALLS TO THAT ORGANIZATION,
7 NEVERTHELESS, I WOULD SUSPECT YOU WOULD AGREE
8 BECAUSE APPLE FACES THE SAME SITUATION WITH ITS
9 SUPPORT ORGANIZATION, THERE ARE THOUSANDS PERHAPS
10 MILLIONS OF RECORDS THAT WE ARE TALKING ABOUT WOULD
11 NEED TO BE REVIEWED AND EXPORTED.

12 IS THERE SOME BOUNDARY OR LIMITATION
13 OTHER THAN GIVEN TO US ALL WITH CERTAIN TERMS THAT
14 YOU WOULD BE WILLING TO ACCEPT IN RESPONSE TO YOUR
15 REQUEST?

16 MR. OVERSON: SO YES IS THE ANSWER.

17 I THINK THE -- NO ONE SHOULD HAVE TO
18 REVIEW THOUSANDS AND TENS OF THOUSANDS OF ENTRIES.
19 THIS SHOULD BE A SEARCH PROCESS. I DO THINK THE
20 SEARCH PROCESS IS THE MOST ECONOMIC WAY IS THE
21 FASTEST WAY TO DO IT.

22 I THINK THE ISSUE IS GOING TO BE FINDING
23 SEARCH TERMS THAT DON'T END UP WITH TOO MANY HEADS.

24 THE COURT: JUST TO DO THE AGGREGATION
25 AND EXPORT, MY POINT OF REFERENCE MIGHT BE DATED

1 AND GETTING MORE DATED BY THE DAY, BUT THAT'S NOT
2 SOMETHING THAT'S INSUBSTANTIAL, YOU WOULD AGREE?

3 I SUSPECT YOUR OWN SUPPORT PEOPLE WOULD
4 TELL YOU THAT, RIGHT? AND OF COURSE YOU UNDERSTAND
5 BY ASKING FOR THIS INFORMATION FROM SAMSUNG YOU
6 KNOW IT'S COMING BACK AT YOU, RIGHT?

7 MR. OVERSON: CERTAINLY.

8 THE COURT: SO WITH ALL THAT INFORMATION
9 AND UNDERSTANDING, YOU ARE SAYING YOU WANT THAT
10 KIND OF EFFORT UNDERTAKEN IN ORDER TO FIND THESE
11 INDIVIDUAL RECORDS THAT MAY OR MAY NOT EXIST?

12 MR. OVERSON: HAVING A TARGETED SEARCH OF
13 A DATABASE THAT'S BEEN IN A SEARCHABLE -- THAT'S
14 PUT IN THE SEARCHABLE FORMAT AND HAVING THE SEARCH
15 TERMS BE REASONABLE, I MEAN, WE'RE NOT GOING TO ASK
16 EVERY TIME THEY CALLED ABOUT THE GALAXY PHONE, THAT
17 WOULD BE TOO MANY, THE SEARCH TERMS WILL BE MORE
18 FOCUSED ON THE CONFUSION MEANING THE APPLE
19 PRODUCTS.

20 WE DON'T BELIEVE -- I CAN'T SAY, BUT I
21 DON'T THINK THERE'S GOING TO BE TENS OF THOUSANDS
22 OF HITS IN APPLE IN THE CUSTOMER SERVICE.

23 THE COURT: YOUR POINT IS YOU WOULD BE
24 DELIGHTED TO FIND OUT IF THAT WAS TRUE AND YOU
25 WOULD LIKE TO FIND WHAT THE DOCUMENTS HAVE TO SAY.

1 MR. OVERSON: CERTAINLY, BUT I DON'T
2 THINK THERE WOULD BE THAT KIND OF BURDEN IF WE
3 LIMIT THE SEARCH TERMS AS I'VE DESCRIBED.

4 SO WE UNDERSTAND THE TIME PRESSURE. WE
5 DO UNDERSTAND THAT. BUT WE ALSO UNDERSTAND THE
6 PREJUDICE THAT IS HAPPENING TO US.

7 THERE ARE STATEMENTS FROM THEIR EXPERTS
8 AND WE -- BY THE WAY, MOST ALL OF THE DEPOSITIONS
9 HAVE BEEN EXPERTS SO FAR. SO WHEN THE QUESTION WAS
10 ASKED HAVE WE SEARCHED EVERYTHING, IT'S MOSTLY ALL
11 EXPERTS. THERE'S BEEN ONE FORMER SAMSUNG EMPLOYEE,
12 ONE CURRENT AMERICAN EMPLOYEE, NO KOREAN EMPLOYEES,
13 SO THERE HASN'T BEEN THAT PROCESS FOR DEPOSITIONS
14 HERE.

15 BUT LET ME STAY ON POINT BECAUSE I'M
16 CLOSING UP HERE. THERE'S A PREJUDICE TO US. WE
17 ARE COMING TO THE END. IT CANNOT BE THE CASE THAT
18 YOU CAN COME TO THE END AND SAY, YOU KNOW, THIS IS
19 JUST TOO HARD AND THIS IS TOO MUCH EFFORT.

20 WE COULDN'T MOVE EARLIER. THEY PRODUCED
21 A LOT OF DOCUMENTS RIGHT ON THAT MEET AND CONFER
22 DAY, SEPTEMBER 16TH. THEY PRODUCED HALF THE
23 DOCUMENTS THAT WERE DUE ON THAT FRIDAY NIGHT AND
24 SATURDAY. WE MOVED ON THE 20TH.

25 WE GOT THIS HEARING AS FAST AS WE COULD.

1 WE'VE DONE THE BEST WE COULD TO GET THIS IN FRONT
2 OF THE COURT.

3 AND WE NEED THE COURT'S ASSISTANCE IN
4 MOVING THIS FORWARD AND COMING UP WITH SOME FAIR
5 RESOLUTION SO WE DON'T END UP IN A SITUATION WHERE
6 WE ARE STANDING THERE ON THE 13TH NOT HAVING
7 RECEIVED RELEVANT EVIDENCE FROM THE OTHER SIDE IN
8 THE FACE OF THE OTHER SIDE'S ALLEGATIONS THAT WE
9 FAILED TO PRODUCE DOCUMENTS THAT ARE IN THEIR
10 POSSESSION.

11 OKAY. THANK YOU.

12 THE COURT: ALL RIGHT.

13 THANK YOU VERY MUCH.

14 MS. MAROULIS, ANY SURREBUTTAL, AS THEY
15 SAY IN OTHER PARTS OF THE COUNTRY?

16 MS. MAROULIS: NO, YOUR HONOR, UNLESS YOU
17 HAVE ANY SPECIFIC QUESTIONS.

18 THE COURT: NO, I THINK I UNDERSTAND YOUR
19 RESPECTIVE POSITIONS.

20 I APPRECIATE THE ARGUMENT THIS MORNING.
21 I WILL GET AN ORDER OUT JUST AS QUICKLY AS I CAN,
22 ESPECIALLY IN LIGHT OF THE SCHEDULE YOU'RE ALL
23 OPERATING UNDER.

24 AND THANK YOU FOR YOUR REMARKS THIS
25 MORNING.

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MR. OVERSON: THANK YOU, YOUR HONOR.

THE CLERK: COURT IS ADJOURNED.

(WHEREUPON, THE PROCEEDINGS IN THIS
MATTER WERE CONCLUDED.)

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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT
REPORTER OF THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH
FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY
CERTIFY:

THAT THE FOREGOING TRANSCRIPT,
CERTIFICATE INCLUSIVE, CONSTITUTES A TRUE, FULL AND
CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS
SUCH OFFICIAL COURT REPORTER OF THE PROCEEDINGS
HEREINBEFORE ENTITLED AND REDUCED BY COMPUTER-AIDED
TRANSCRIPTION TO THE BEST OF MY ABILITY.

SUMMER A. FISHER, CSR, CRR
CERTIFICATE NUMBER 13185