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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.)
) DECEMBER 16, 2011
SAMSUNG ELECTRONICS CO.)
)
LTD., ET AL,)
) PAGES 1-66
)
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, LLP
BY: MICHAEL JACOBS
ESTHER KIM
JASON BARTLETT
RICHARD HUNG
425 MARKET STREET
SAN FRANCISCO, CA 94105

FOR THE DEFENDANT: QUINN EMANUEL
BY: VICTORIA MAROULIS
555 TWIN DOLPHIN DR., 5TH FL
REDWOOD SHORES, CA 94065

(APPEARANCES CONTINUED ON THE NEXT PAGE)

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

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FOR THE DEFENDANT: QUINN EMANUEL
BY: BRETT ARNOLD
SARA JENKINS
MELISSA CHAN
555 TWIN DOLPHIN DRIVE, 5TH FL
REDWOOD SHORES, CA 94065

1 SAN JOSE, CALIFORNIA DECEMBER 16, 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 CLERK: APPLE, INC. VERSUS SAMSUNG
6 ELECTRONICS COMPANY. CASE NUMBER CV -11-1846.

7 MATTER ON FOR PLAINTIFF'S MOTION TO
8 COMPEL AND DEFENDANT'S MOTIONS TO COMPEL.

9 COUNSEL, PLEASE STATE YOUR APPEARANCES.

10 MR. JACOBS: GOOD AFTERNOON YOUR HONOR.
11 MICHAEL JACOBS FROM MORRISON & FOERSTER FOR APPLE.

12 WITH ME IS RICH HUNG, JASON BARTLETT AND
13 ESTHER KIM FROM MORRISON & FOERSTER.

14 THE COURT: ALL RIGHT.

15 GOOD MORNING, OR I SHOULD SAY GOOD
16 AFTERNOON TO EACH OF YOU.

17 MS. MAROULIS: GOOD MORNING, YOUR HONOR.

18 VICTORIA MAROULIS FROM QUINN EMANUEL.
19 WITH ME ARE MY COLLEAGUES BRETT ARNOLD,
20 MELISSA CHAN AND SARA JENKINS.

21 THE COURT: ALL RIGHT. GOOD AFTERNOON TO
22 EACH OF YOU.

23 ALL RIGHT. I HAVE A TOTAL OF THREE
24 MOTIONS BEFORE ME. I HAVE READ THE PAPERS,
25 INCLUDING THOSE THAT WERE MOST RECENTLY SUBMITTED.

1 AS I UNDERSTAND IT THERE'S ONE MOTION
2 FROM APPLE AND TWO FROM SAMSUNG BEFORE ME THIS
3 AFTERNOON.

4 AGAIN, I'M AFRAID GIVEN THE OTHER
5 CONSTRAINTS IN MY SCHEDULE I CAN ONLY AFFORD AN
6 HOUR OF TIME FOR TODAY'S ARGUMENT, SO I WILL LEAVE
7 IT FOR YOU ALL TO DECIDE HOW YOU SPEND YOUR HALF AN
8 HOUR, BUT UNFORTUNATELY MY CRIMINAL CALENDAR TAKES
9 PRIORITY AND I HAVE TO STOP AT 1:30.

10 SO MR. JACOBS, I'LL START WITH YOU. HOW
11 DO YOU WANT TO SPEND YOUR HALF-HOUR?

12 MR. JACOBS: CONCISELY, YOUR HONOR. WE
13 HAVE NO PRESENTATIONS.

14 AND I THINK WHAT WE ARE ASKING FROM YOU
15 TODAY CAN BE SUMMARIZED AS FOLLOWS:

16 WE NEED TO LIGHT A FIRE UNDER SAMSUNG TO
17 GET PRODUCTION DONE VERY QUICKLY. IT HAS LAGGED.
18 WE HAVE BEEN IN THIS CASE FOR A FAIR AMOUNT OF
19 TIME.

20 WE HAD A VERY PRODUCTIVE OCTOBER AND
21 NOVEMBER BUT WE REALLY NEED TO GET DECEMBER TO BE A
22 PRODUCTIVE MONTH GIVEN OUR SCHEDULE. AND WE HAVE
23 NOTICED DEPOSITIONS IN KOREA FOR JANUARY.

24 I THINK THE HEART OF THE ISSUE, ACTUALLY
25 LOOKING AT SAMSUNG'S OPPOSITION BRIEF, IS THAT WE

1 ENVISIONED GETTING THIS PRODUCTION IN TIME FOR
2 THOSE DEPOSITIONS TO GO FORWARD. WE ARE ONLY NOW,
3 LITERALLY LAST NIGHT, THIS MORNING, GETTING DATES
4 FROM SAMSUNG. THEY ARE LATER THAN WE ASKED FOR.

5 BUT THERE'S A KIND OF AN ALFONSE AND
6 GASTON ASPECT TO THIS. WE NEED THESE DOCUMENTS.
7 WE NEED THEM FOR THE DEPOSITIONS. THEY ARE CORE
8 DOCUMENTS, WE ARE NOT FISHING HERE.

9 WE HAVE ILLUSTRATED TO YOUR HONOR SOME OF
10 THE DOCUMENTS WE GOT ALREADY THAT LEAD US TO THINK
11 THAT WHEN THIS PRODUCTION IS DONE WE ARE GOING TO
12 HAVE VERY PRODUCTIVE RESULTS.

13 SO NUMBER ONE, WE WERE ASKING YOU TO
14 PRESS SAMSUNG FOR REALLY EXPEDITIOUS PRODUCTION OF
15 THE DOCUMENTS THAT THEY CONCEDE ARE RELEVANT.

16 THERE ARE REALLY ACTUALLY -- IN GENERAL,
17 THERE'S NOT A LOT OF FIGHTS HERE ABOUT RELEVANCE,
18 IT'S ABOUT GETTING IT DONE.

19 SO THAT'S NUMBER ONE WHAT WE ARE ASKING
20 FOR.

21 ON THEIR COMEBACK MOTIONS, IN MOST CASES
22 WE ARE DONE ALREADY. WE CONVEYED THAT IN OUR
23 OPPOSITION BRIEF, OR THERE'S SOME THINGS THAT I
24 THINK THIS IS KIND OF THE LONG TAIL OF THE
25 PRODUCTION WE ARE AT NOW WHERE THEY ARE ASKING FOR

1 THINGS THAT SURFACED IN DEPOSITIONS.

2 WE ARE ASKING FOR A COUPLE THINGS. WE'RE
3 ASKING FOR CONFIDENTIALITY PROTECTION FROM
4 YOUR HONOR. WE ARE ASKING FOR SOME TIME WHERE WE
5 ARE CHASING DOWN THINGS, ESPECIALLY WHERE WE ARE
6 CHASING DOWN THINGS THAT ARE QUITE OLD.

7 AND THEN WE'RE ASKING FOR -- WE THINK WE
8 DREW REASONABLE RELEVANCE CUTS SO THAT THE TOTAL
9 BURDEN OF THIS PRODUCTION IS JUST MASSIVE AND NOT
10 GARGANTUAN, AND WE WOULD LIKE YOUR SUPPORT FOR
11 THOSE RELEVANCE DETERMINATIONS WE'VE MADE.

12 SO THAT'S IT IN A NUT SHELL.

13 AND ON THE OFFENSIVE MOTION, IF YOU WILL,
14 ON OUR MOTION TO COMPEL, IT'S REALLY JUST A
15 QUESTION OF GETTING IT DONE. SAMSUNG WILL PROTEST
16 THAT THIS IS WAY TOO FAST AND WHY THE RUSH BUT WE
17 HAVE A RUSH WE HAVE A MARCH CUTOFF DATE.

18 AND ON OUR SIDE THE ASYMMETRY IN THIS
19 SITUATION IS THAT WE ARE GOING TO HAVE TO GO TO
20 KOREA TO TAKE THE DEPOSITIONS AND THE DOCUMENTS
21 WILL BE IN KOREAN AND WILL HAVE TO HAVE BEEN
22 TRANSLATED.

23 THE COURT: CAN I ASK A QUESTION ABOUT
24 THE SOURCE CODE THAT SAMSUNG HAS PRODUCED OR NOT
25 PRODUCED TO DATE.

1 I HAVE REVIEWED THE DECLARATIONS
2 SUBMITTED BY SAMSUNG IN RESPONSE TO YOUR MOTION AND
3 THEY SEEM TO SUGGEST THAT ON MULTIPLE OCCASIONS
4 THEY HAVE IN FACT PRODUCED CODE.

5 IS THAT NOT TRUE? IS THERE SOME PROBLEM
6 WITH WHAT THEY HAVE PRODUCED?

7 I WOULD LIKE TO HEAR YOUR THOUGHTS ABOUT
8 THAT.

9 MR. JACOBS: SURE.

10 AS I READ THE PAPERS, WHAT THEY SAID IS
11 THEY HAVE PROMISED TO PRODUCE. WHAT WE HAVE BEEN
12 ASKING FOR IS PRODUCTION OR DEADLINES FOR
13 PRODUCTION. AND EXCEPT FOR MINOR FRAGMENTS OF CODE
14 THAT I UNDERSTAND WERE VERY RECENTLY PRODUCED, THEY
15 HAVEN'T ACTUALLY PRODUCED THE CODE.

16 SO THIS GOES BACK TO THE LOCAL RULE, THE
17 REQUIREMENT THAT YOU PRODUCE CODE FOR AN ACCUSED
18 INSTRUMENTALITY.

19 IN THEIR ANSWER TO THAT THEY SAID, WE
20 WILL GET AROUND TO IT AFTER WE MEET AND CONFER,
21 AFTER WE HAVE A PROTECTIVE ORDER, NOTWITHSTANDING
22 WE HAVE A DEFAULT PROTECTIVE ORDER.

23 THEN THERE WERE VARIOUS LETTERS BACK AND
24 FORTH AND VARIOUS COMMITMENTS, IN PRINCIPLE TO
25 PRODUCE, BUT WHAT WE NEVER GOT FROM THEM WAS

1 NATURAL PRODUCTION OR A HARD DATE FOR THAT
2 PRODUCTION.

3 AND I'M GOING TO TURN TO MY TEAM AND MAKE
4 SURE I'M REPRESENTING TO THE COURT ACCURATELY.

5 MR. HUNG: THAT IS CORRECT.

6 WHAT HAPPENED WAS WE RECEIVED THE PROMISE
7 ON OCTOBER 7TH AND THEN MULTIPLE LETTERS RELATING
8 TO SOURCE CODE, ALMOST ALL OF WHICH WERE ON THE
9 DEFENSIVE SIDE OF THE CASE, MEANING THEIR ASSERTION
10 OF PATENTS AGAINST US.

11 AND FINALLY LAST NIGHT WITHIN A WEEK WE
12 RECEIVED SOME LIMITED AMOUNTS OF SOURCE CODE.

13 BEFORE THIS WEEK'S OFFER OF ACCESS TO
14 SOURCE CODE, I BELIEVE THE TOTAL AMOUNT WAS A
15 COUPLE OF PAGES OF A PRINTOUT RELATED TO ONE CODE,
16 AT LEAST FOR THE OFFENSIVE SIDE.

17 THE COURT: ALL RIGHT.

18 I HAD ANOTHER QUESTION REGARDING THE
19 DESIGN HISTORY DOCUMENTS YOU ALL POINT TO.

20 SO AS I UNDERSTAND IT THERE HAS BEEN A
21 PRODUCTION; IS THAT NOT CORRECT?

22 AGAIN, IS THE PROBLEM WITH THE QUALITY OR
23 SUFFICIENCY OF THE PRODUCTION OR, TO DATE, HAVE YOU
24 NOT RECEIVED ANYTHING LIKE CAD FILES AND THINGS OF
25 THAT NATURE REGARDING PRODUCTS?

1 MR. JACOBS: RIGHT. LET'S TAKE THE CAD
2 FILES TO START WITH.

3 WHAT WE RECEIVED WERE THE FINAL CAD FILES
4 FOR THE PRODUCT AS SHIPPED. BUT WE HAVEN'T GOTTEN
5 THE CAD FILES THAT REPRESENT DEVELOPMENT
6 DOCUMENTATION FOR THESE DESIGNS.

7 THE COURT: HAVE YOU GOT ANY SKETCHBOOKS,
8 ANYTHING LIKE THAT?

9 MR. JACOBS: I DON'T BELIEVE UNLESS, VERY
10 RECENTLY.

11 MR. HUNG: AFTER FILING OUR MOTION WE
12 RECEIVED ABOUT 20,000 PAGES WHICH I UNDERSTAND
13 INCLUDE SOME SKETCHBOOKS. THEY CAN TELL -- THEY
14 CAN SAY BETTER THAN WE CAN WHETHER IT'S ALL. I
15 DOUBT IT'S ALL BECAUSE THEY WERE PRIMARILY
16 MARKETING DOCUMENTS AND THE LIKE WITHIN THOSE
17 20,000 PAGES.

18 THE COURT: OKAY.

19 AND WHETHER WE'RE TALKING ABOUT CAD FILES
20 OR I WILL CALL THEM INTERIM CAD FILES FOR LACK OF A
21 BETTER TERM, SKETCHBOOKS AND SO FORTH, I TAKE IT
22 IT'S THE DESIGNERS WHO WANT TO USE THESE FOUR, IT'S
23 THE DEPOSITIONS OF THEIR DESIGNERS?

24 MR. JACOBS: ABSOLUTELY.

25 THE COURT: HAVE THOSE DEPOSITIONS BEEN

1 FIXED YET?

2 MR. JACOBS: THEY HAVE NOT.

3 AGAIN, THE SEQUENCING ISSUE. JUST TO
4 GIVE YOU OUR DEPOSITION STRATEGY HERE, WE
5 IDENTIFIED WITNESSES UP FRONT THAT WE THOUGHT COULD
6 HELP US SET THE STAGE FOR DOING THOUGHTFUL
7 DEPOSITIONS GOING FORWARD.

8 AND SO WE WERE TRYING TO GET THE
9 DOCUMENTS DONE TO HAVE THE DEPOSITIONS TO DO THE
10 THOUGHTFUL EXERCISE OF DEPOSITIONS AFTER THAT.

11 THE COURT: NOW, YOU ALSO, I BELIEVE
12 REQUESTED A NUMBER OF E-MAILS REGARDING, TO WHAT
13 EXTENT AT ALL THEY LOOKED AT YOUR PRODUCTS DURING
14 THE DESIGN PROCESS. I AM IN A FOG AS TO THAT
15 PRODUCTION. HAVE YOU RECEIVED ANY SUCH E-MAILS?

16 MR. JACOBS: NOT SINCE THE PRELIMINARY
17 INJUNCTION DISCOVERY.

18 AND AGAIN, WE HAVE AN AGREEMENT IN
19 PRINCIPLE TO SEARCH FOR ALL REFERENCES TO APPLE.
20 SIMILARLY, WE'RE SEARCHING FOR ALL REFERENCES TO
21 SAMSUNG AND THAT'S WHAT WE ARE LOOKING FOR RIGHT
22 AWAY.

23 THE COURT: ALL RIGHT.

24 AND I HAD THOUGHT THAT BACK IN SEPTEMBER
25 I ISSUED AN ORDER ON THIS; IS THAT CORRECT?

1 MR. JACOBS: YOU HAD.

2 THE COURT: SO EVEN AS TO THE PRELIMINARY
3 INJUNCTION PHASE MATERIALS, YOUR POSITION IS THAT
4 SAMSUNG HAS NOT COMPLIED WITH MY ORDER ON THAT?

5 MR. JACOBS: THAT'S CORRECT.

6 I THINK TO BE FAIR TO THE SAMSUNG SIDE ON
7 THIS, IN THE PRELIMINARY INJUNCTION WE HAD A
8 LIMITED TARGET SET OF PRODUCTS AND A LIMITED
9 TARGETED SET OF PATENTS. I HOPE THEY FOCUSED ON
10 THAT IN PRODUCING IN RESPONSE TO THE PRELIMINARY
11 INJUNCTION.

12 BUT NOW WE ARE, OF COURSE IT'S A LARGER
13 SET OF PRODUCTS, A LARGER SET OF RIGHTS, PRESUMABLY
14 A LARGER SET OF DESIGNERS.

15 THE COURT: LARGER SET OF FEATURES AND SO
16 FORTH.

17 MR. JACOBS: EXACTLY.

18 THE COURT: AGAIN, I'M JUST GOING THROUGH
19 THE LIST OF REQUESTS IN YOUR MOTION.

20 ON THE SURVEY AND MARKETING DOCUMENTS, SO
21 WHAT IS THE STATUS OF THAT PRODUCTION? I SUSPECT
22 THIS HAS BEEN A MOVING TARGET AS YOU MOVE THROUGH
23 THE MOTION PRACTICE, BUT WHERE DO THINGS STAND
24 TODAY?

25 MR. JACOBS: WE HAVE GOTTEN SOME SURVEY

1 DOCUMENTS, QUITE INTERESTING SURVEY DOCUMENTS, BUT
2 WE HAVE A LOT OF REASON TO BELIEVE THEY ARE NOT
3 DONE YET AND I THINK THEY HAVEN'T REPRESENTED THAT
4 THEY ARE DONE.

5 THE COURT: ALL RIGHT.

6 AND AS BETWEEN THESE FOUR MAJOR
7 CATEGORIES OF REQUESTS THAT YOU'VE IDENTIFIED, YOU
8 BROUGHT UP THE ISSUE OF SEQUENCING.

9 IS THERE ANY KIND OF RESOLUTION YOU MIGHT
10 REACH ABOUT WHAT YOU NEED SOONER RATHER THAN LATER?
11 LATER ISN'T VERY LATE GIVEN THE SCHEDULE JUDGE KOH
12 SET.

13 ARE THERE PARTICULAR CATEGORIES THAT ARE
14 MOST CRITICAL?

15 MR. JACOBS: I THINK THE ONLY HONEST
16 ANSWER, YOUR HONOR, THAT I CAN GIVE YOU IS THAT WE
17 HONED IT DOWN FOR PURPOSES OF THIS MOTION.

18 THESE ARE -- WE CHARACTERIZE IT AS SUCH AND
19 PREPARING FOR THE HEARING I THOUGHT THROUGH THAT
20 QUESTION AGAIN, ARE THESE REALLY CORE DOCUMENTS?
21 ARE THESE THE, TO USE A PHRASE I RATHER LIKE, THE
22 NUGGET OF THE CASE?

23 AND WITH RESPECT TO, JUST TO CLICK
24 THROUGH THEM, WITH RESPECT TO SOURCE CODE, ALTHOUGH
25 ANDROID IS PROBABLY AVAILABLE, SAMSUNG IS NOT

1 STIPULATING THAT ANDROID IS THE RELEVANT UNIVERSE
2 OF CODE AND THEY HAVE THEIR OWN SKIN ON TOP OF
3 ANDROID PHONES.

4 THE COURT: I SEE.

5 MR. JACOBS: SO YOU SEE WHERE THIS IS
6 GOING.

7 THE COURT: YES.

8 SO AT LEAST AS OF TODAY, THE
9 MODIFICATIONS OR IMPLEMENTATION OF ANDROID THAT
10 SAMSUNG HAS DEPLOYED IS IN PLAY IN THIS CASE AND SO
11 THE PUBLICLY AVAILABLE ANDROID SOURCE IS
12 INSUFFICIENT, FROM YOUR PERSPECTIVE.

13 MR. JACOBS: EXACTLY.

14 TO BE SLIGHTLY MORE PRECISE, THERE'S A
15 TOUCHWIZ SAMSUNG USER INTERFACE THAT SAMSUNG
16 DEVELOPED AND TOUCHWIZ IS AN IMPORTANT COMPONENT OF
17 THE CODE WE SEEK.

18 SIMILARLY, WITH DESIGN HISTORY WE HAVE AN
19 EARLY PRODUCTION OF SOME DOCUMENTS THAT GO TO SOME
20 OF OUR COPYING CASE. BUT WE BELIEVE THAT THERE IS
21 A LOT MORE THERE.

22 WE INFER THAT THERE'S A LOT MORE THERE BY
23 LOOKING AT THE SIMILARITY OF THE PRODUCTS, BUT WE
24 BELIEVE BASED ON SOME OF THE EVIDENCE WE'VE
25 RECEIVED THAT THERE'S A LOT MORE THERE AS WELL.

1 THE COURT: SO ACROSS THESE FOUR
2 CATEGORIES, ARE ANY SPECIFIC SUBCATEGORIES OR TYPES
3 OF DOCUMENTS WITHIN THE CATEGORIES THAT SAMSUNG
4 JUST TOLD YOU, LOOK, WE DON'T THINK YOU NEED TO
5 PRODUCE THEM, OR IS THE ISSUE SPEED AND
6 SUFFICIENCY?

7 MR. JACOBS: SPEED AND SUFFICIENCY,
8 YOUR HONOR.

9 THE COURT: ALL RIGHT.

10 WELL, BEFORE WE TURN TO ANY OF THE
11 SAMSUNG ISSUES, ANY OTHER POINTS YOU WANT TO MAKE
12 IN YOUR MOTION?

13 I WOULD LIKE TO HEAR FROM SAMSUNG, OF
14 COURSE, BUT I THINK IT'S EASIEST TO STICK TO THIS.

15 MR. JACOBS: THE TOUGHEST ISSUE ON OUR
16 MOTION IS EXACTLY WHAT TIME.

17 AND I WOULD LOVE TO BE ABLE TO SAY WE
18 COULD GIVE THEM AN EXTRA WEEK OR AN EXTRA TWO WEEKS
19 FROM WHAT WE ARE ASKING FOR, BUT I FEAR THAT IF WE
20 DON'T GET AN ORDER TO DO IT AS QUICKLY AS OBVIOUSLY
21 POSSIBLE, IT'S GOING TO HAUNT US AS WE CAREEN
22 TOWARD THE DISCOVERY CUTOFF.

23 THE COURT: I DON'T MEAN TO QUIBBLE, BUT
24 I TAKE SAMSUNG AT THEIR WORD THAT THEY ARE ACTING
25 AS QUICKLY AS POSSIBLE.

1 THE ISSUE SEEMS TO ME AS IF THEY'RE AT
2 THEIR LIMITS. ARE YOU LOOKING FOR DATES CERTAIN
3 FROM THE COURT?

4 MR. JACOBS: OH, YES.

5 I THINK THAT THE -- WHAT WE HAVE SEEN
6 WHEN WE HAVE SOUGHT PRODUCTION FROM SAMSUNG, WHEN
7 THE COURT SETS A DATE, THEY DO THEIR BEST TO
8 COMPLY.

9 SO YOU WILL RECALL THAT IN THE
10 PRELIMINARY INJUNCTION PHASE ORDER THAT YOU ISSUED
11 YOU SAID FRIDAY BEFORE THE HEARING, AND I THINK
12 THEY REALLY TRIED. IT TURNED OUT IT CAME IN OVER
13 THE WEEKEND AND EVEN ON MONDAY BECAUSE OF SOME
14 TECHNICAL GLITCHES, BUT WE BELIEVE THEY RESPOND TO
15 COURT ORDERS.

16 THE COURT: ALL RIGHT.

17 MR. JACOBS: THANK YOU, YOUR HONOR.

18 THE COURT: THANK YOU, MR. JACOBS.

19 MS. MAROULIS?

20 MS. MAROULIS: GOOD AFTERNOON,
21 YOUR HONOR.

22 THE COURT: GOOD AFTERNOON.

23 MS. MAROULIS: JUST TO FOCUS ON THE MAIN
24 POINT OF THE APPLE MOTION WHICH IS THE TIMING OF
25 THE PRODUCTION, AS YOU SAW FROM OUR PAPERS AND AS

1 APPLE KNOWS FROM MULTIPLE MEET AND CONFERS, WE ARE
2 COMMITTED TO PRODUCING VIRTUALLY ALL OF THESE
3 DOCUMENTS AROUND JANUARY 6TH.

4 THEY MAY HAVE WANTED IT EARLIER BUT WE
5 CANNOT MAKE IT EARLIER. AND IF THERE'S AN ORDER
6 THAT REQUIRES US TO DO IT EARLIER, WE WOULD HAVE TO
7 SEEK SOME KIND OF RELIEF FROM THAT ORDER.

8 THE COMBINATION OF ISSUES, INCLUDING THE
9 NUMBER OF CUSTODIANS --

10 THE COURT: I HAVEN'T EVEN ISSUED THE
11 ORDER AND YOU ARE ALREADY TELLING ME YOU ARE GOING
12 TO SEEK RELIEF.

13 MS. MAROULIS: THIS IS BECAUSE APPLE
14 REPRESENTED THEY NEED THIS NOW.

15 I THINK ORIGINALLY THEY ASKED FOR
16 DECEMBER 15TH, IN THE MOTION PAPERS THEY SAY
17 DECEMBER 23RD. AND IT'S JUST NOT VIABLE.

18 WE SUBMITTED DECLARATIONS FROM OUR TEAM
19 MEMBERS AND FROM SAMSUNG ABOUT THE FACT THAT THAT'S
20 NOT GOING TO HAPPEN.

21 AND WE ARE TRYING VERY HARD TO WORK WITH
22 THAT BOTH IN TERMS OF MEET AND CONFERS WITH THE
23 PRODUCTION OBLIGATIONS TO MOVE THE CASE ALONG
24 BECAUSE WE UNDERSTAND THAT'S THE COURT ORDER TO US
25 FROM JUDGE KOH.

1 BUT REALISTICALLY WE STARTED PRODUCING
2 ALL THE CATEGORIES OF DOCUMENTS AND WE TOLD THEM WE
3 WILL COMPLETE THEM SOON. SO FROM SAMSUNG'S
4 PERSPECTIVE THIS MOTION WAS NOT NECESSARY AT ALL.

5 THE COURT: WOULD YOU AGREE MS. MAROULIS,
6 THEN, THAT THE ISSUE BEFORE ME NOW ISN'T YOUR
7 WILLINGNESS TO PRODUCE THESE DOCUMENTS IT'S UNDER
8 WHAT SCHEDULE AND UNDER WHAT DEMANDS APPLE IS
9 INSISTING UPON, THAT IS REALLY THE CRUX OF THE
10 DEBATE?

11 MS. MAROULIS: THAT IS THE CRUX OF THAT.

12 THERE'S A COUPLE EXCEPTIONS, AND THAT HAS
13 TO DO WITH APPLE MOVED ON SOME REQUESTS THAT WERE
14 NEVER MET AND CONFERRED ON IN THE TECHNICAL
15 DOCUMENT SECTION.

16 FOR EXAMPLE, THEY LIST A NUMBER OF
17 REQUESTS WE COVER IN THE CHAN DECLARATION,
18 PARAGRAPHS 21 TO 22, THAT BROADLY TAKE A SWIPE AT
19 TECHNICAL DOCUMENTS.

20 OTHER THAN SOURCE CODE, THOSE THINGS WERE
21 NOT DISCUSSED AMONG THE PARTIES.

22 SO SOURCE CODE, WE OFFERED THEM FOR
23 INSPECTION. AND THEY'RE GOING TO BE INSPECTING
24 THAT. BUT I CANNOT MAKE A REPRESENTATION AS TO
25 EACH ONE OF THESE, I THINK IT'S 17 DIFFERENT

1 REQUESTS THAT HAS NOT BEEN VENTILATED YET.

2 THE SECOND POINT WE WANTED TO MAKE WAS TO
3 THE EXTENT THE COURT IS INCLINED TO SET A DATE BY
4 WHICH SAMSUNG NEEDS TO COMPLETE ITS PRODUCTION, THE
5 SAME SHOULD APPLY TO APPLE.

6 IN OUR MOTION WE EXPLAINED THE DIFFERENT
7 CATEGORIES, THE SAME CATEGORIES IN THEIR MOTION
8 THAT APPLE HAS NOT ITSELF MET.

9 FOR EXAMPLE, THEY HAVE NOT PRODUCED ANY
10 SOURCE CODE. THEY OFFERED YESTERDAY TO FILE A
11 MOTION TO COMPEL TWO PAGES OF SOURCE CODE THAT
12 RELATES TO PRIOR ART.

13 THE COURT: WOULD YOU BE SO KIND AS TO
14 REFRESH ME IN THIS CASE. I HAVE A NUMBER OF THESE
15 HERE, YOU JUST HEARD ONE OF THEM. ARE YOU ALL
16 MAKING SOURCE CODE AVAILABLE THROUGH SOME TYPE OF
17 LIVE ACCESS, LAPTOP PRODUCTION?

18 MS. MAROULIS: IT'S FOR INSPECTION,
19 YOUR HONOR, NOT IN ESCROW BUT IN COUNSEL'S OFFICES.

20 THE COURT: RIGHT. OKAY.

21 AND I KNOW WE HAD THE DISCUSSION AROUND
22 THAT BEFORE, SO I APPRECIATE YOU REMINDING ME.

23 MS. MAROULIS: YES, YOUR HONOR.

24 SO WITH RESPECT TO THE FOURTH CATEGORY AT
25 ISSUE. SOURCE CODE DESIGN DOCUMENTS, SURVEY

1 DOCUMENTS AND DOCUMENTS THAT REFLECT A SEARCH BASED
2 ON THE TERM "APPLE" FOR US AND "SAMSUNG" FOR THEM,
3 THEY HAVE NOT COMPLETED THEIR PRODUCTION.

4 SO TO THE EXTENT THERE'S A DATE,
5 JANUARY 6TH OR JANUARY 10TH, IT HAS TO BE
6 RECIPROCAL.

7 WE --

8 THE COURT: AND I TAKE YOUR POINT AND
9 SAUCE FOR THE GOOSE IS SAUCE FOR THE GANDER, THE
10 ARGUMENT IS USUALLY A GOOD ONE.

11 IS IT YOUR RECOMMENDATION ARGUMENT,
12 POSITION, HOWEVER YOU WANT TO FRAME IT TO THE
13 COURT, THAT IF I'M GOING TO APPLY A SINGLE STANDARD
14 TO BOTH PARTIES THAT THE BETTER STANDARD IS TO SET
15 A DATE FURTHER OUT AS OPPOSED TO AN EARLIER DATE?

16 IN OTHER WORDS, AS BETWEEN THOSE TWO
17 WHICH POSITION DO YOU THINK IS MORE APPROPRIATE?

18 MS. MAROULIS: YOUR HONOR, I THINK IT
19 WOULD BE MORE REALISTIC TO SET IT FOR MID-JANUARY,
20 WOULD BE MORE REALISTIC WITH SOME CATEGORIES OF
21 DOCUMENTS BEING PRIORITIZED FOR DEPOSITIONS.

22 FOR EXAMPLE, WE'VE WORKED SUCCESSFULLY
23 WITH APPLE FOR THE INVENTION PROSECUTING ATTORNEY
24 DEPOSITIONS. WE JUST COMPLETED ABOUT 50 OF THEM
25 WHERE WE PRODUCED DOCUMENTS SEVERAL DAYS BEFORE

1 DEPOSITIONS.

2 SO EVEN IF THERE'S A DEADLINE THAT'S
3 FURTHER OUT IN JANUARY, WE CAN CERTAINLY EXPEDITE
4 SOME CATEGORIES OF DOCUMENTS TARGETED TO THE
5 SPECIFIC DEPOSITIONS.

6 THE COURT: SO ARE THERE PARTICULAR -- I
7 MEAN, THE CONCERN I HAD IS JUST THE SCHEDULE IS
8 MIGHTY TIGHT. AND, YOU KNOW, EVEN A DEADLINE IN
9 MID-JANUARY WOULD SUGGEST WE LOSE THE FIRST TWO
10 WEEKS OF THE MONTH FOR DEPOSITION PURPOSES.

11 ARE THERE PARTICULAR INDIVIDUALS OR
12 CATEGORIES RELATING TO INDIVIDUALS THAT I MIGHT
13 PRIORITIZE IN YOUR VIEW? SO WE TAKE ADVANTAGE OF
14 THOSE FIRST TWO WEEKS.

15 MS. MAROULIS: THERE WERE A COUPLE
16 DEPOSITION DATES OFFERED TO APPLE. ONE IS
17 DECEMBER 30TH AND ANOTHER ONE IS JANUARY 12TH.

18 SO FOR THOSE CUSTODIANS WE WILL
19 PRIORITIZE AND PRODUCE THEIR DOCUMENTS, IF THEY
20 HAVEN'T ALREADY BEEN PRODUCED, NO LATER THAN THREE
21 DAYS BEFORE THE DEPOSITION LIKE WE HAVE DONE WITH
22 THE INVENTOR DEPOSITIONS FOR BOTH SIDES.

23 AND TO THE EXTENT YOUR HONOR NEEDS
24 EXAMPLES OF WHY WE BELIEVE APPLE'S PRODUCTION IS
25 NOT COMPLETE, IT'S LISTED IN THE PAPERS.

1 BUT FOR EXAMPLE, THEY ARE PRESSING FOR
2 THE SURVEYS. AND APPLE ITSELF PRODUCED ONLY FIVE
3 SURVEYS TOTAL THAT WE COULD FIND IN THE PRODUCTION.
4 AND CLEARLY ORGANIZATIONS SUCH AS APPLE PROBABLY
5 HAS AN ENTIRE CONSUMER SURVEY DEPARTMENT.

6 THE COURT: WELL, I WILL GET TO APPLE'S
7 PRODUCTION IN A MINUTE. I STILL WANT TO FOCUS ON
8 YOUR PRODUCTION, JUST SO I CAN KEEP ALL OF THIS
9 STRAIGHT.

10 IN YOUR ORGANIZATION, IS THERE A SIMILAR
11 ORGANIZATION THAT'S RESPONSIBLE?

12 MS. MAROULIS: WE HAVE SEVERAL CUSTODIANS
13 WHO ARE PRIMARILY RESPONSIBLE AND WE SEARCHED THEIR
14 FILES, AND WE PRODUCED SOME OF THE DOCUMENTS.

15 I DON'T KNOW IF IT'S ALL, I WILL NEED IT
16 TO CONFER --

17 THE COURT: YOU ARE NOT OBJECTING TO
18 MAKING THEM A COMPLETE PRODUCTION, YOUR POINT IS
19 IT'S IN PROCESS?

20 MS. MAROULIS: IT'S IN THE PROCESS.

21 THERE'S ONE LIMITATION WE'VE ASKED IT BE
22 FOCUSED ON THE PRODUCTS SOLD IN THE U.S. THAT ARE
23 ACCUSED IN THE COMPLAINT AS OPPOSED TO PRODUCTS
24 SOLD IN A NETHERLANDS OR CHINA OR SOMEWHERE ELSE.

25 BUT FOR THE U.S. WE DO NOT HAVE AN

1 OBJECTION.

2 THE COURT: ON THE ISSUE OF THE E-MAIL,
3 AN ISSUE OF SOME INTEREST TO ME THESE DAYS, THE
4 QUESTION I HAVE IS: SO THEY ESSENTIALLY ARE ASKING
5 YOU TO PAW THROUGH A NUMBER OF CUSTODIANS E-MAILS
6 LOOKING FOR REFERENCES TO APPLE. I ASSUME YOU HAVE
7 ALL REACHED SOME CONSENSUS OR AGREEMENT ON WHO
8 EXACTLY YOU NEED TO BE RESEARCHING E-MAILS FOR?

9 MS. MAROULIS: WELL, THEY WANT US TO
10 SEARCH EVERY SINGLE CUSTODIAN FOR THE TERM "APPLE."

11 WE'VE GENERALLY AGREED TO IT, BUT SUBJECT
12 TO THE CONDITION. ONE, THEY WANTED US TO SEARCH
13 FOR SAMSUNG, AND THEY HAVEN'T YET COMMITTED TO
14 THAT.

15 AND TWO, UNFORTUNATELY "APPLE" IS A MORE
16 COMMON TERM THAN "SAMSUNG." SO IN ADDITION TO
17 PEOPLE BUYING FOOD FOR DINNER, YOU ALSO GET
18 QUICKTIME, ITUNE FILES.

19 SO IN SEARCHING CUSTODIAN FILES, WE'RE
20 GETTING A LOT OF FALSE HITS. WE ARE TRYING TO
21 FILTER IT OUT BUT THAT'S ONE OF THE THINGS SLOWING
22 DOWN THE PRODUCTION.

23 THE COURT: I JUST WANT TO MAKE SURE,
24 THERE WAS ONE OTHER QUESTION I HAD FOR YOU AND THEN
25 WE'LL TURN TO YOUR MOTION AFTER REBUTTAL ON THIS

1 ARGUMENT TO CLOSE THIS OUT.

2 THE ADDITIONAL QUESTION I HAD CONCERNS
3 THE SOURCE CODE WHEN IT WAS FIRST AVAILABLE TO
4 APPLE.

5 YOUR DECLARATION SEEMS TO SUGGEST OR
6 IMPLY THAT THERE HAS BEEN SOURCE CODE AVAILABLE TO
7 THEIR FOLKS FOR SOME TIME, AM I READING THOSE RIGHT
8 OR IS THE THAT NOT TRUE?

9 MS. MAROULIS: YES, YOUR HONOR.

10 WE MADE REPRESENTATIONS IN OUR INITIAL
11 PATENT RULES DISCLOSURES UNDER 3-4 THAT THE SOURCE
12 CODE WILL BE AVAILABLE TO APPLE UPON THE PROTECTIVE
13 ORDER CONCLUSION.

14 WE'VE HAD AN UNUSUALLY DIFFICULT TIME
15 HERE NEGOTIATING THE PROTECTIVE ORDER BETWEEN THE
16 SIDES AND WE HAVE BEEN WAITING FOR THE PROTECTIVE
17 ORDER. BUT SEEING HOW THE PROTECTIVE ORDER IS NOT
18 YET COMPLETE WE STARTED OFFERING SOURCE CODE WHILE
19 IT'S STILL BEING NEGOTIATED.

20 THE COURT: SINCE YOU BROUGHT UP THE
21 PROTECTIVE ORDER, ARE YOU SAYING -- I WILL
22 APOLOGIZE WITH ANY PROBLEMS WITH THE COURT. YOU
23 HAVE NOT ALL SUBMITTED A PROTECTIVE ORDER TO ME.

24 MS. MAROULIS: NO, YOUR HONOR.

25 WE HAVE BEEN OPERATING UNDER THE INTERIM

1 PROTECTIVE ORDER AND WE GENERALLY PRODUCED VERY
2 HIGHLY CONFIDENTIAL INFORMATION PURSUANT TO IT.

3 SOURCE CODE IS A BIT DIFFERENT, SO WE
4 NEGOTIATED A FAIRLY ROBUST PROVISION UNDER WHICH
5 BOTH SIDES WILL BE PRODUCING TO EACH OTHER CODE.

6 THERE HAS BEEN SOME SOURCE CODE PRODUCED
7 BY SAMSUNG IN CONNECTION TO THE INVENTOR
8 DEPOSITIONS, SO THAT'S OLD, HISTORIC SOURCE CODE,
9 SO NOT THE SAME CONFIDENTIALITY ISSUES NECESSARILY
10 IN PLAY.

11 THE COURT: SO IT WOULD SEEM TO ME THAT
12 GETTING THAT PROTECTIVE ORDER ISSUE RESOLVED IS ONE
13 OF THE HIGHEST PRIORITIES IF WE ARE TALKING ABOUT
14 CODE GETTING PRODUCED IN ADVANCE OF DEPOSITIONS; IS
15 THAT FAIR?

16 MS. MAROULIS: IT IS, YOUR HONOR.
17 IT'S SUBJECT OF THE NEGOTIATIONS. YOU PROBABLY
18 SURMISED FROM OUR PAPERS WE HAVE A WEEKLY MEET AND
19 CONFER CALL THAT LASTS BETWEEN THREE AND SIX HOURS.
20 IT'S BEING DISCUSSED VERY ACTIVELY AND WE ARE VERY
21 CLOSE.

22 THE COURT: ALL RIGHT.

23 THOSE ARE THE QUESTIONS I HAD. UNLESS
24 YOU HAVE ANYTHING FURTHER, I WILL HEAR FROM
25 MR. JACOBS AND WE WILL COME BACK AND TALK ABOUT

1 YOUR NEGOTIATIONS.

2 ANY REBUTTAL, MR. JACOBS?

3 MR. JACOBS: YES, YOUR HONOR.

4 I THINK THERE'S A FALSE SYMMETRY,
5 YOUR HONOR, BEING ADVANCED. WE HAVE MADE ENORMOUS
6 PRODUCTIONS IN THE PRELIMINARY INJUNCTION PHASE.

7 THEY HAVE MADE A TINY PRODUCTION. THIS
8 IS A PROBLEM OF SAMSUNG'S OWN MAKING FOR NOT HAVING
9 GOTTEN TO IT AND FOR HAVING ENGAGED IN DILATORY
10 TACTICS.

11 WE SAW AN EXAMPLE OF IT JUST NOW.
12 THERE'S NO EXCUSE FOR US NOT HAVING GOTTEN THEIR
13 SOURCE CODE UNDER THE INTERIM PROTECTIVE ORDER.

14 AND THE FACT THAT THERE'S A COMPLEX
15 PROTECTIVE ORDER GOING ON, COMPLEX NEGOTIATION IS
16 NO EXCUSE FOR THAT ONCE WE SAID WE REALLY NEED IT.
17 MAYBE WHILE WE WERE TALKING EARLIER, BUT ONCE WE
18 SAY WE NEED IT, WE NEED IT.

19 AS FOR APPLE'S PRODUCTION, THERE'S A
20 MESSAGE FROM WILMER HALE TO SAMSUNG DATED
21 DECEMBER 6TH THAT SAYS, THE SOURCE CODE WE ARE
22 PREPARED TO PRODUCE IT AND HERE'S HOW WE ARE GOING
23 TO PRODUCE IT, AND IT'S ALL OUT THERE FOR THEM.

24 SO WE HAVE, THIS IS THE SOURCE CODE,
25 THAT'S THE CORRESPONDING SOURCE CODE, THE

1 DEFENDER'S SOURCE CODE.

2 THE COURT: JUST SO THAT I UNDERSTAND
3 YOUR POINT COMPLETELY, ARE YOU TELLING ME THAT
4 BECAUSE OF THIS PROTECTIVE ORDER ISSUE, YOU HAVE
5 NOT HAD ANY ACCESS TO SOURCE CODE FROM SAMSUNG?

6 I'M STILL UNCLEAR ON THAT.

7 MR. JACOBS: ESSENTIALLY, THAT'S CORRECT.

8 THESE FILES THAT WE WERE BOTH REFERRING
9 TO OF HISTORICAL NATURE. BUT IN TERMS OF TOUCHWIZ,
10 IN TERMS OF THE CURRENT SAMSUNG CELL PHONE
11 OPERATING SYSTEM, WE HAVE NOT HAD ACCESS.

12 THE COURT: THE TOUCHWIZ, IS THAT THE UI
13 LAYER?

14 MR. JACOBS: EXACTLY.

15 AND I DON'T MEAN BY THAT TO BE LIMITING,
16 I THINK OUR REQUESTS SPEAK FOR THEMSELVES AND
17 THERE'S BEEN PLENTY, YOUR HONOR, OF MEET AND
18 CONFER.

19 IF ANYTHING WAS CONVEYED TO YOU IN THE
20 PILE OF PAPERS YOU GOT, IT'S BEEN THERE'S LOTS OF
21 DISCUSSIONS, LOTS OF EFFORTS TO WORK IT OUT.

22 WE REACHED OUR LIMIT IN TWO WAYS. WE
23 REACHED OUR TIME LIMIT, WE JUST HAVE TO GET THIS
24 STUFF QUICKLY. AND WE REACHED OUR LIMIT WHERE WE
25 STARTED MEASURING WHAT WE HAD DONE AS AGAINST WHAT

1 SAMSUNG HAD DONE.

2 AND THAT ASYMMETRY JUST STARTED TO JUMP
3 OUT AT ALL OF US.

4 THE COURT: I CONFESS I HAVE NOT REVIEWED
5 THE INTERIM PROTECTIVE ORDER RECENTLY, BUT I
6 BELIEVE UNDER THE TERMS OF THAT ORDER THERE'S A
7 PROVISION FOR SOURCE CODE.

8 MR. JACOBS: EXACTLY.

9 THE COURT: OKAY. ALL RIGHT.

10 ANYTHING FURTHER?

11 MR. JACOBS: SO THAT'S THE ESSENCE OF IT,
12 YOUR HONOR.

13 IN TERMS OF TIME, IF WE -- IF THIS MOTION
14 WERE NOT NECESSITATED BY A PATTERN THAT WE SAW OF
15 COMMITMENTS, BUT NOT REAL HARD COMMITMENTS, THEN WE
16 WOULD HAVE MORE SYMPATHY FOR SAMSUNG.

17 WE DO KNOW THERE ARE ISSUES COMING BACK
18 OUR WE WAY, BUT WE THINK WE HAVE MOVED HEAVEN AND
19 EARTH TO MEET TIME DEADLINES AND WE DON'T SEE THAT
20 ON THEIR SIDE.

21 THE COURT: IN THE E-MAIL, HOW MANY
22 CUSTODIANS ARE AT ISSUE HERE?

23 MR. JACOBS: I THINK WE HAD A GOOD
24 DISCUSSION ABOUT CUSTODIANS AND I DON'T KNOW THE
25 ANSWER BUT I DON'T THINK THAT'S THE NATURE OF THE

1 DISPUTE. I KNOW YOU'RE INTERESTED IN IT FOR OTHER
2 REASONS, BUT I DON'T THINK --

3 THE COURT: WE ARE TALKING ABOUT A DOZEN,
4 A THOUSAND, YOU ALL HAD A LOT OF FOLKS WHO KNOW
5 STUFF.

6 MR. HUNG: IT'S CERTAINLY IN THE DOZENS,
7 I BELIEVE IT'S THE HIGH DOZENS; IS THAT FAIR?

8 MS. MAROULIS: I THINK IT WOULD BE AROUND
9 50 PROBABLY.

10 THE COURT: SOMEWHERE IN THAT RANGE?

11 ALL RIGHT. IS THERE ANYTHING ELSE YOU
12 WANT TO ADD, MR. JACOBS?

13 MR. JACOBS: WELL, THERE'S SOME SPECIFIC
14 ISSUES THAT SAMSUNG RAISED.

15 I THINK THEY ARE WELL BRIEFED AND I WOULD
16 BE SURPRISED IF YOU WANTED TO HEAR VERY GRANULAR
17 ARGUMENT ABOUT INDIVIDUAL ISSUES.

18 BUT LIMITING TO U.S. PRODUCTS, WHEN THE
19 PRODUCTS ARE SOLD ON AN INTERNATIONAL BASIS AND
20 MAYBE JUST LABELED AND TAILORED FOR A PARTICULAR
21 MARKET, THAT'S UNACCEPTABLE. THAT WOULD BE A HUGE
22 CARVE OUT FROM SAMSUNG'S DEVELOPMENT ACTIVITY.

23 THIS PRODUCT SHIPPED IN THE UNITED STATES
24 MAY BE A VERSION OF THIS PRODUCT THAT WAS SHIPPED
25 IN KOREA OR AUSTRALIA OR THE NETHERLANDS. THE

1 COPYING MAY HAVE BEEN DONE FOR THE PRODUCT IN MY
2 LEFT HAND AND THEN REFLECTED IN THE COPY IN MY
3 RIGHT HAND.

4 THE COURT: IF YOUR THEORY IS THAT
5 THERE'S A SUBSTANTIAL RELATIONSHIP THAT JUSTIFIES
6 DISCOVERY WITH RESPECT TO EACH OF THOSE PRODUCT
7 VERSIONS, DO YOU NEED TO HAVE DISCOVERY AS TO ALL
8 THOSE PRODUCT VERSIONS IN ORDER TO PROVE UP YOUR
9 THEORY? DO YOU SEE WHAT I'M GETTING AT?

10 IT SEEMS TO ME IF WHAT YOU ARE SAYING IS,
11 THERE MAY BE A DUTCH VERSION OF THIS PRODUCT THAT
12 SHEDS LIGHT ON ISSUES CONCERNING THE U.S. VERSION,
13 OF COURSE IT'S THE U.S. VERSION THAT'S ACCUSED,
14 RIGHT? WHAT DO YOU NEED THE DUTCH VERSION FOR?
15 I'M STRUGGLING WITH THAT.

16 MR. JACOBS: WELL, IF THE DUTCH VERSION
17 WAS AFTER THE U.S. VERSION THEN NO NEW COPYING
18 WOULD HAVE SHOWN UP IN THE U.S. VERSION BY VIRTUE
19 OF BEING DERIVED FROM THE DUTCH VERSION.

20 BUT IF THE KOREAN VERSION -- THE U.S. IS
21 NOT THE FIRST MARKET TO GET THE PRODUCTS WHEN
22 SAMSUNG RELEASES. SO IF YOU SAY THE KOREAN VERSION
23 IS THE ONE THAT SAMSUNG WAS DEVELOPING OR TESTING
24 ON ITS CONSUMERS TO SEE HOW THEY -- WHAT APPLE
25 FEATURES THEY WERE MISSING, LET'S SAY, WHICH IS THE

1 KIND OF THING THAT COULD SHOW UP IN THE DOCUMENT,
2 BELIEVE ME, THEN WE WOULD NEED THE DOCUMENTATION OF
3 HOW THE KOREAN VERSION WAS DEVELOPED.

4 THE COURT: IS THERE ANY KIND OF
5 AGREEMENT WE COULD FORGE HERE THAT FOR CERTAIN
6 PHONES OR TABLETS, THE U.S. WAS THE PRIMARY.

7 OR, YOU KNOW, IN OTHER WORDS, DOES THIS
8 ISSUE IMPLICATE THE ENTIRE SET OF ACCUSED PRODUCTS
9 OR THERE ARE SPECIFIC PRODUCTS OR VERSIONS THAT ARE
10 MORE PARTICULARLY IMPACTED BY THIS REALITY THAT
11 AMERICA DOESN'T ALWAYS GET THE FIRST VERSION OF THE
12 PRODUCT.

13 MR. JACOBS: I THINK IT'S ALMOST ALWAYS
14 THE CASE THAT THE UNITED STATES HAS NOT BEEN THE
15 FIRST.

16 THE COURT: WE ARE ALWAYS SECOND OR
17 THIRD.

18 MR. JACOBS: I'M JUST DOING A MENTAL
19 CHECK LIST, YOUR HONOR, THIS ISN'T A REPRESENTATION
20 BUT A MENTAL CHECK LIST OF WHAT WE'VE SEEN AND HOW
21 THESE PRODUCTS ROLL OUT.

22 ON THE OTHER HAND, I'D BE SURPRISED IF
23 ZIMBABWE WAS THE FIRST MARKET.

24 THE COURT: KOREA AND EUROPE ARE
25 OBVIOUSLY VERY IMPORTANT MARKETS.

1 MR. JACOBS: KOREA, JAPAN, AUSTRALIA,
2 EUROPE ARE CRITICAL.

3 THE COURT: OKAY. ALL RIGHT.

4 THANK YOU, MR. JACOBS.

5 ALL RIGHT. MS. MAROULIS, LET'S TURN TO
6 YOUR MOTIONS.

7 I WOULD LIKE TO START WITH THE MOTION
8 WITH RESPECT TO DOCUMENTS AND ANSWERS.

9 MS. MAROULIS: YES, YOUR HONOR.

10 MAY I MAKE ONE BRIEF POINT ABOUT
11 MR. JACOBS'S REBUTTAL?

12 THE COURT:

13 MS. MAROULIS: NEITHER SIDE HAS PRODUCED
14 SOURCE CODE TO EACH OTHER, JUST SO IT'S CLEAR.
15 NEITHER SIDE HAS.

16 THE COURT: OTHER THAN THE HISTORICAL
17 CODE.

18 MS. MAROULIS: BOTH SIDES HAVE PRODUCED
19 SMALL AMOUNTS OF HISTORICAL CODE.

20 TURNING TO SAMSUNG'S MOTION, THERE WERE
21 THREE DIFFERENT CATEGORIES RAISED IN OUR PAPERS,
22 AND I'M PLEASED TO REPORT THAT ONE OF THEM SEEMS TO
23 HAVE BEEN RESOLVED.

24 SO WITH RESPECT TO THE UTILITY DOCUMENTS
25 THAT WE ASKED FOR IN CONNECTION WITH THE CLAIMS

1 CONSTRUCTION, JUST YESTERDAY APPLE SENT US A LETTER
2 SAYING THAT THEY WILL PRODUCE THE SUPERCLOCK AND A
3 MAC CODE THAT WE HAVE BEEN ASKING FOR.

4 AND ASSUMING THAT THE CODE WHEN YOU LOOK
5 AT IT ACTUALLY IS THE CODE THEY REPRESENT IT IS, WE
6 DON'T THINK THE COURT NEEDS TO CONCERN ITSELF WITH
7 THAT.

8 THE COURT: IS THE SUPERCLOCK THE
9 RELEVANT PORTION OF THE 10.0 CODE OR --

10 MS. MAROULIS: NO, IT'S THE 7.5.

11 THE COURT: I THOUGHT I WAS WITH YOU, BUT
12 ALL RIGHT.

13 MS. MAROULIS: YES, YOUR HONOR. IT
14 APPEARS THAT'S BEEN RESOLVED.

15 WITH RESPECT TO THE PLEADINGS FROM
16 MOTOROLA AND OTHER PRIOR CASES, AGAIN, THEY'VE
17 STARTED PRODUCING THOSE PLEADINGS TO US BUT WOULD
18 LIKE SOME KIND OF CLARIFICATION FROM THE COURT OR
19 FROM THEM THAT THEY HAVE GIVEN US EVERYTHING.
20 BECAUSE THIS IS A VERY DISCREET SET OF DOCUMENTS
21 AND IT'S EASIER FOR THEM TO TELL US WHETHER THEY
22 PRODUCED IT OR NOT.

23 THE COURT: AND WHEN YOU SAY YOU WANT
24 EVERYTHING FROM THE MOTOROLA LITIGATION MATERIALS,
25 ARE YOU TALKING ABOUT PLEADINGS, BRIEFS,

1 TRANSCRIPTS?

2 MS. MAROULIS: CORRECT, YOUR HONOR.

3 IT'S WITH RESPECT TO JUST A COUPLE OF PATENTS,
4 IT'S NOT EVERYTHING FROM THE LITIGATION.

5 THE COURT: YOU ARE JUST LOOKING TO
6 FIGURE OUT WHAT THEY SAID ABOUT THOSE TERMS IN
7 OTHER CASES.

8 MS. MAROULIS: EXACTLY.

9 AND IN ADDITION TO THAT THEY HAVE
10 REDACTED CERTAIN CONFIDENTIAL INFORMATION OF THIRD
11 PARTIES FROM THAT LITIGATION, BUT WE HAVE AN
12 INTERIM PROTECTIVE ORDER AND THEY HAVE ASKED US TO
13 PRODUCE THIRD PARTY CONFIDENTIAL INFORMATION SUCH
14 AS LICENSES.

15 SO WE BELIEVE IT'S APPROPRIATE FOR THEM
16 TO PRODUCE THAT INFORMATION SUBJECT TO THE HIGHEST
17 LEVEL OF CONFIDENTIALITY OF THE PROTECTIVE ORDER.

18 WITH RESPECT TO THE OTHER CATEGORIES,
19 YOUR HONOR, I THINK MR. JACOBS FAILED TO RAISE IT
20 AS A FOLLOW ON OR VERY DISCREET SET.

21 IT IS A VERY TARGETED MOTION AND THAT IS
22 WHY WE THINK APPLE SHOULD HAVE NO PROBLEM COMPLYING
23 WITH IT BECAUSE WE GAVE THEM A LIST OF THINGS THAT
24 ARE DISCREET BUT CRUCIALLY IMPORTANT TO OUR CASE.

25 AND GIVEN HOW QUICKLY THEY REACTED, FOR

1 EXAMPLE WITH THE SOURCE CODE, AFTER WE FILED THE
2 MOTION WE THINK IT SHOULD BE FAIRLY EASY FOR THEM
3 TO COMPLY WITH OUR REQUESTS.

4 SO TURNING TO THE CATEGORY OF THE DESIGN
5 DOCUMENTS, THAT'S THE MAIN AREA OF OUR MOTION,
6 THERE ARE BASICALLY FOUR DIFFERENT THINGS WE ARE
7 ASKING FOR.

8 ONE IS VERY FAMILIAR TO YOUR HONOR. IT
9 RELATES TO THE 035 MOCK UP WHICH IS THE PRODUCT
10 TYPE FOR THE '889 DESIGN PATENT.

11 THE COURT: YOU ARE LOOKING FOR THE CAD
12 FILES.

13 MS. MAROULIS: WE ARE LOOKING FOR A
14 VARIETY OF THINGS.

15 FIRST OF ALL, IT SHOULD BE A REALLY
16 SIMPLE ISSUE, BUT WE ARE ASKING FOR THE RETURN OF
17 OUR WORK PRODUCT PHOTOS.

18 THE COURT: THESE ARE THE MEMORY CARDS?

19 MS. MAROULIS: YES, THE MEMORY CARDS.

20 AS YOUR HONOR RECALLS, ON DECEMBER 2ND
21 YOU WERE ASKED TO RULE ON A MOTION BY APPLE WHEN
22 THEY VIDEO TAPED AN INSPECTION OF ONE OF THE
23 PROTOTYPES WE OFFERED. AND THEY ARGUED THAT IT'S
24 WORK PRODUCT, AND YOUR HONOR AGREED WITH THAT.

25 YOUR HONOR FURTHER SAID THAT THESE ARE

1 THE RULES THAT APPLY TO BOTH SIDES.

2 SO UNDER THAT RULING AND IN THE GENERAL,
3 MOTIONS OF WORK PRODUCT WE ASKED FOR THE RETURN OF
4 THAT AND APPLE IS REFUSING.

5 THIS SHOULD BE A VERY SIMPLE THING, THEY
6 NEED TO RETURN US THE MEMORY STICK AND THE PHOTOS.

7 THE COURT: I HAVE TAKE IT YOU HAVE NOT
8 WITHHELD OR OBJECTED TO ANY OF THEIR ATTENTION FROM
9 THEIR INSPECTION?

10 MS. MAROULIS: THAT'S CORRECT.

11 THE ONLY TIME WE DID OBJECT WE WERE
12 OVERRULED BY YOUR HONOR SO WE COMPLIED.

13 THAT SHOULD BE A SIMPLE ISSUE.

14 OTHER RELATED ITEMS TO THE 035 MOCK UP,
15 ONE IS WE NEED TO SEARCH FOR HIGHER QUALITY PHOTOS
16 OF THIS PRODUCT.

17 A RELATED ISSUE IS VERY IMPORTANT TO US
18 WHICH IS APPLE CONTINUES TO SHIELD THE 035 MOCK UP
19 WITH A SECRECY IN THE PROTECTION OF THE ORDER.

20 HOWEVER, THIS IS THE SAME MOCK UP THEY
21 SUBMITTED TO THE PTO IN THE FORM OF PHOTOS.

22 THIS IS WHAT THEY BASE THEIR PATENT ON.
23 THIS IS WHY THE PATENT OFFICE GAVE THEM THE PATENT.
24 THEY SUBMITTED PHOTOS TO THE PATENT OFFICE AND THAT
25 WAS PART OF THE FILE HISTORY AND PART OF WHAT THE

1 PATENT EXAMINER CONSIDERED.

2 NOW THEIR OBJECTIONS TO DESIGNATING THIS
3 IS THAT OUR PICTURES ARE APPARENTLY MUCH MORE
4 FOCUSED AND CLEAR THAN WHAT THEY SUBMITTED TO THE
5 PATENT OFFICE.

6 BUT WE CAN'T REALLY, SERIOUSLY HAVE THIS
7 CONVERSATION THAT THEY SENT THE BLURRY PICTURES TO
8 THE PATENT OFFICE AND THEREFORE MORE CLEAR, USEFUL
9 EVIDENCE THAT WE COULD SUBMIT TO THE JURY AND TO
10 YOUR HONOR AND TO OTHER PARTS OF THIS CASE, SHOULD
11 BE GRANTED TO US.

12 SO THAT'S AN ISSUE WHERE WE NOT ONLY NEED
13 ADDITIONAL DOCUMENTS FOR THE 035 MOCK UP, BUT WE
14 NEED TO DE-DESIGNATE THE PICTURES THAT WERE OF
15 PUBLIC KNOWLEDGE BECAUSE THEY WERE SUBMITTED IN TO
16 THE PATENT OFFICE IN SOME FORM.

17 THE COURT: JUST SO I UNDERSTAND YOUR
18 POINT, YOU ARE SAYING THAT THERE ARE ADDITIONAL
19 PICTURES THAT EXIST AND THERE'S NO DISPUTE THE
20 ADDITIONAL PICTURES EXIST; IS THAT RIGHT?

21 MS. MAROULIS: NO, YOUR HONOR.

22 THE PICTURES WE ARE DISCUSSING IS THE
23 PICTURES WE TOOK OF THE MOCK UP.

24 SO THEY PRODUCED THE MOCK UP FOR
25 INSPECTION, WE TOOK THE PHOTOS AND THE PHOTOS ARE

1 ATTACHED TO THE MOTION.

2 AND YOU WILL SEE THAT IN CONTRAST TO THE
3 PHOTOS THAT WERE SENT TO THE PTO, IT HAS MULTIPLE
4 VIEWS OF THE DEVICE AND MUCH MORE GRANULAR AND THAT
5 IS VERY IMPORTANT TO OUR ARGUMENTS.

6 APPLE IS REFUSING TO DE-DESIGNATE THEM
7 EVEN THOUGH THEY ARE OF THE SAME MOCK UP WHICH THEY
8 SUBMITTED TO THE PTO IN THE PHOTO FORM.

9 AND FINALLY, YOUR HONOR, AS MENTIONED
10 WE'RE SEEKING ADDITIONAL CAD FILES, RECORDS, SHOP
11 RECORDS FROM THE MODEL AND ANYTHING ELSE YOU CAN
12 FIND ON THIS 035 MOCK UP BECAUSE IT GOES DIRECTLY
13 TO THE SCOPE OF THEIR PATENT, AND HOW TO INTERPRET
14 IT AND WHETHER THE SIMILARITY OF THE SAMSUNG
15 DEVICE.

16 THE COURT: DO YOU HAVE ANY AFFIRMATIVE
17 PROOF OR DEMONSTRATION THAT THESE CAD DRAWINGS OR
18 MODEL SHOP RECORDS EXIST AND THEY ARE NOT BEING
19 PRODUCED?

20 OR IS YOUR COMPLAINT THAT THEY HAVEN'T
21 LOOKED IN THE CORRECT PLACES?

22 MS. MAROULIS: I THINK OUR COMPLIANT IS
23 MORE IN THE TERMS OF THE SEARCH.

24 ALL RIGHT. MOVING ON TO OTHER CATEGORIES
25 OF DESIGN DOCUMENTS, THERE ARE QUITE A FEW.

1 I WOULD LIKE A BETTER PRODUCTION OF
2 SKETCHBOOKS THAT WE ALSO DISCUSSED WITH YOUR HONOR
3 SEVERAL MONTHS AGO.

4 THE COPIES THAT WE RECEIVED WERE SEVERELY
5 REDACTED. AND WHILE WE AGREED THAT THERE SHOULD BE
6 SOME REDACTION OF FUTURE PRODUCTS THAT WE SHOULD
7 NOT BE LOOKING AT, WE INTRODUCED OR DEPOSED VARIOUS
8 WITNESSES AND ONE INVENTOR CONCEDED WE HAD ABOUT 50
9 DIFFERENT SKETCHBOOKS AND ONLY SEVEN PAGES FROM
10 THAT INDIVIDUAL WERE PRODUCED.

11 AND UNLESS HE WAS WORKING WITH
12 REFRIGERATORS OR SOMETHING COMPLETELY DIFFERENT
13 THERE'S GOT TO BE --

14 THE COURT: WHAT IF HE WAS WORKING ON
15 FUTURE PRODUCTS?

16 WAS HE CLEAR THAT THE 50 BOOKS HE WAS
17 REFERENCING WERE PAST PRODUCTS?

18 MS. MAROULIS: IT WAS -- I WAS NOT AT
19 THAT DEPOSITION, BUT MY UNDERSTANDING WAS WITH PAST
20 PRODUCTS.

21 THEN FINALLY THERE'S A CATEGORY THAT I
22 WILL TERM "PRIOR ART" AND I CAN SPEAK DIRECTLY TO
23 IT IF YOUR HONOR WOULD LIKE. IT'S SONY DEVICES,
24 TRIO DEVICES --

25 THE COURT: THE RAZOR AND THE PHILIPS?

1 MS. MAROULIS: THE RAZOR AND THE PHILIPS
2 AND BRAINBOX AND APPLE, APPLE CINEMA, THOSE ARE
3 PRETTY SELF EXPLANATORY BECAUSE WE NEED THEM TO
4 SHOW THE INVALIDITY OF APPLE'S PATENTS AND ALSO TO
5 SHOW THE EVOLUTION OF THE DESIGN LANGUAGE THAT
6 WE'RE DISCUSSING IN THIS CASE.

7 THIS IS A BRIEF SUMMARY OF THE PRIOR ART
8 ISSUES. AND WITH RESPECT TO THE VERY LAST CATEGORY
9 WHICH IS THE TRANSCRIPT FOR THE PRIOR INVENTOR
10 DEPOSITIONS AND PRIOR EMPLOYEE DEPOSITIONS.

11 WE ASKED APPLE TO PRODUCE MANY OF THE
12 TRANSCRIPTS FROM PRIOR LITIGATIONS. THIS CASE IS
13 DIFFERENT FROM MANY OF THE PATENT CASES BECAUSE IN
14 THE PATENT CASE YOU SAY, OKAY, I WILL PRODUCE YOU
15 TRANSCRIPTS FROM THE SAME PATENT OR FROM SOMETHING
16 SIMILARLY TECHNOLOGICALLY.

17 BECAUSE APPLE PUT AT ISSUE THE LOOK AND
18 FEEL OF THE IPHONE, THE REASON IT'S SUCCESSFUL, WHY
19 PEOPLE BUY IT, HOW IT EVOLVED, THE CONSUMER
20 BEHAVIOR, A LOT WIDER SPECTRUM OF TRANSCRIPTS IS
21 RELEVANT.

22 THE COURT: AREN'T AT LEAST -- WELL, FOR
23 EXAMPLE, YOU POINT TO THIS MOTION THAT THERE MAY BE
24 ANY NUMBER OF REASONS WHY THE IPHONE IS SUCCESSFUL.

25 ISN'T THAT AN ISSUE IN PRETTY MUCH EVERY

1 PATENT CASE INVOLVING THE IPHONE?

2 MS. MAROULIS: THAT'S TRUE AS WELL, BUT
3 IT ISN'T JUST LIMITED TO THE PATENT CASES.

4 IF THERE'S A FALSE ADVERTISING CASE THERE
5 COULD BE SOME PRODUCTS LIABILITY CASES WHERE
6 FUNCTIONALITY IS DISCUSSED. THAT'S WHY THEY SAY WE
7 ARE GOING TO LIMIT IT TO A TECHNOLOGICAL NEXUS. WE
8 DON'T KNOW HOW TO ASSESS THAT, AND WE WILL ONLY GET
9 THE TRANSCRIPTS THAT DISCUSS THE PATENT --

10 THE COURT: WELL, HAVE YOU ALL TAKEN A
11 LOOK AT THE CASES THAT HAVE BEEN FILED THAT
12 IMPLICATE THESE PRODUCTS AND TAKEN A FIRST CUT AT
13 THE CASES THAT YOU ARE PARTICULARLY INTERESTED?

14 MS. MAROULIS: WE SUGGESTED TO APPLE THAT
15 THEY PRODUCE TO US A LIST OF, AND THIS WOULD BE
16 RECIPROCAL AS WELL, A LIST OF DEPOSITION
17 TRANSCRIPTS IMPLICATED THERE, BECAUSE IT'S POSSIBLE
18 THE MAJORITY OF CUSTODIANS HAVE NEVER BEEN DEPOSED
19 OR VERY FEW OF THEM HAD BEEN. THEY REJECTED THAT
20 PROPOSAL.

21 IT IS DIFFICULT TO DETERMINE FOR PUBLIC
22 SEARCH OF PACER AND SIMILAR DATABASES, WHAT IS AT
23 STAKE AND WHAT TECHNOLOGY IS AT STAKE. IT'S
24 IMPOSSIBLE TO DO IT VIA PATENT NUMBER SEARCH, BUT
25 NOT THE --

1 THE COURT: WELL, I GUESS WHAT I WAS
2 THINKING OF IS WHY NOT JUST LOOK FOR ALL OF THE --
3 THE COMPLAINTS ARE CERTAINLY MATTERS OF PUBLIC
4 RECORD, SO WHY NOT IDENTIFY, YOU KNOW, A UNIVERSE
5 OF APPLE CASES, CASES IN WHICH APPLE IS A DEFENDANT
6 IN WHICH THE PRODUCTS HAVE BEEN ACCUSED OF
7 INFRINGEMENT TO START, AND REVIEW THE COMPLAINTS
8 AND YOU COULD PRETTY QUICKLY UNDERSTAND WHAT
9 PATENTS ARE AT ISSUE AND WHAT FUNCTIONS AND
10 FEATURES WERE BEING PUT IN PLAY BY THOSE CASES;
11 ISN'T THAT ONE WAY OF AT LEAST FOCUSING THE REQUEST
12 A LITTLE BIT?

13 MS. MAROULIS: YES, YOUR HONOR. THAT'S
14 DEFINITELY ONE OF THE WAYS.

15 THE COURT: AND THIS WOULD APPLY TO BOTH
16 SIDES. I'M JUST BRAIN STORMING.

17 OKAY. ALL RIGHT.

18 MS. MAROULIS: SO THIS, IN SHORT, IS THE
19 SUBSTANCE OF OUR MOTION, AND I'M SURE YOUR HONOR
20 HAS SOME SPECIFIC QUESTIONS THAT I'M HAPPY TO
21 ANSWER, BUT I'M MINDFUL OF THE CRIMINAL CALENDAR.

22 THE COURT: WELL, I THINK WE STILL HAVE A
23 LITTLE BIT OF TIME, SO LET ME HEAR FROM MR. JACOBS
24 OR ONE OF HIS COLLEAGUES THEN I'LL GIVE YOU A
25 CHANCE FOR REBUTTAL ON THIS ISSUE.

1 MR. JACOBS: SO LET ME BREAK IT DOWN BY
2 RELEVANCE AND BY CONFIDENTIALITY.

3 ON THE TRANSCRIPT ISSUE IT'S A RELEVANCE
4 QUESTION. WE DREW A REASONABLE CUT, WE SAID
5 TECHNOLOGICAL NEXUS.

6 APPLE IS IN LITIGATION FOR A VARIETY OF
7 REASONS. WITNESSES MIGHT BE DEPOSED FOR EMPLOYMENT
8 CASES, THEY MIGHT BE DEPOSED IN A PRODUCT DEFECT
9 CASES WHERE IT'S JUST REMOTE.

10 WE THINK WE MADE A REASONABLE RELEVANCE
11 CUT THERE AND WE WOULD ASK FOR YOU TO SUPPORT IT.

12 SIMILARLY, WE HAVE -- IN SOME CASES THERE
13 ARE REQUESTS WHILE IF NARROWLY CONSTRUED MIGHT BE
14 THOUGHT OF AS TARGETED, THEY GO OFF INTO
15 IRRELEVANCY.

16 SO FOR EXAMPLE ON THE 035 AND IPAD ON
17 MODEL SHOP ORDERS AND OTHER RECORDS, WELL WHAT DOES
18 "OTHER RECORDS" MEAN? WHAT'S THE RELEVANCE OF
19 OTHER RECORDS WHEN WE ARE TALKING ABOUT A CLAIM
20 THAT A DESIGN PATENT IS INVALID FOR SOME REASON.

21 I SHOULD PAUSE FOR A MINUTE.

22 ONE OF THE BENEFITS OF THE PRELIMINARY
23 INJUNCTION ORDER THAT WE GOT IS I THINK THE ISSUES
24 HAVE BECOME FOCUSED.

25 WE KNOW HOW TO ASSESS VALIDITY, WE KNOW

1 HOW TO ASSESS INFRINGEMENT. NOT NOW BETWEEN THE
2 BRIEFS OF THE PARTIES, BUT THE JUDGE HAS LAID THAT
3 OUT FOR US.

4 ONE OF THE IMPACTS OF THAT IS I THINK IT
5 HAS NARROWED ON THE VALIDITY SIDE THE SCOPE OF
6 RELEVANT MATERIAL.

7 SO LET'S TAKE THE 035, FOR EXAMPLE, WHICH
8 IS AGAIN KIND OF A MIX OF RELEVANCE AND
9 CONFIDENTIALITY.

10 AS WE NOTED IN OUR BRIEF, THE EXAMINER
11 SPECIFICALLY DISCLAIMED THE RELEVANCE OF THE
12 PHOTOGRAPHS THAT WE SUBMITTED.

13 THEY WANT NOW TO DE-DESIGNATE AS
14 CONFIDENTIAL THE PHOTOGRAPH THEY TOOK OF THE ACTUAL
15 MODEL. WHY? BECAUSE THEY ARE MORE DETAILED.

16 WHAT'S THE POSSIBLE RELEVANCE OF MORE
17 DETAILED INFORMATION THAN THAT WHICH WAS SUBMITTED
18 TO THE PATENT OFFICE WHEN THE EXAMINER SAID EVEN
19 THAT WHICH YOU SUBMITTED TO THE PATENT OFFICE IS
20 NOT RELEVANT.

21 WE TAKE THESE MODELS AND THEIR
22 CONFIDENTIALITY VERY SERIOUSLY. WHEN YOU MIX THE
23 LIMITED RELEVANCE WITH THE CONFIDENTIAL TREATMENT
24 WE GIVE TO THOSE MODELS, THEN IT'S CLEAR THAT THEY
25 SHOULD BE KEEPING THE PHOTOGRAPHS OF THE MODELS AS

1 CONFIDENTIAL.

2 SEGWAY FOR A MINUTE, CAN'T QUITE FIGURE
3 OUT WHY THEY NEED THESE DE-DESIGNATED, BECAUSE THEY
4 WANT TO USE THEM IN FOREIGN PROCEEDINGS? I'M NOT
5 SURE THAT'S ALL THAT PERMISSIBLE HERE TO USE THIS
6 VEHICLE FOR THAT, BUT WE COULD WORK SOMETHING OUT
7 SO THAT AS LONG AS THEIR CONFIDENTIALITY IS
8 MAINTAINED, THAT'S OUR CORE INTEREST. WE ARE NOT
9 TRYING TO BLOCK THEM FROM DEVELOPING THE CASE.

10 SO ON CLICKING THROUGH THEN, THE LIST TO
11 MAKE SURE I'M COMPLETE, WE HAVE REALLY TAKEN CARE
12 OF A LOT OF THESE THINGS.

13 SO ON THE MOTOROLA DOCUMENTATION, IT'S
14 EITHER PRODUCED OR IT DOESN'T EXIST. SO WE
15 PRODUCED EVERYTHING WITH THE ONLY EXCLUSION BEING
16 REDACTIONS FOR GOOGLE CONFIDENTIAL INFORMATION IN
17 THE MOTOROLA TRANSCRIPTS.

18 IF YOU ORDER US TO PRODUCE REGARDLESS OF
19 THE REDACTIONS, OF COURSE WE WILL COMPLY WITH YOUR
20 ORDER BUT WE'VE GONE TO GOOGLE AND ASKED THEM FOR
21 PERMISSION TO PRODUCE THE REDACTED --

22 THE COURT: WHAT HAVE THEY SAID?

23 MR. JACOBS: -- PORTION.

24 I THINK WE ARE STILL WAITING FOR AN
25 ANSWER.

1 THE COURT: I SHOULD HAVE ASKED THEM.

2 ALL RIGHT.

3 MR. JACOBS: I THINK SOME OF THIS
4 MS. MAROULIS CONCEDED.

5 ON MAC OS 10, ALREADY PRODUCED.
6 SUPERCLOCK, ALREADY PRODUCED. MEMORY CARDS, I'M
7 GOING TO LET MR. HUNG HANDLE BECAUSE HE WAS ON THE
8 PHONE WITH YOU AND THIS WAS DISCUSSED BEFORE.

9 ON THE 035, ASIDE FROM THE CONFIDENTIAL
10 ISSUE, THEY ARE ASKING FOR "OTHER RECORDS AND CAD
11 DRAWINGS."

12 AND WE ARE GOING TO TRY TO TIE THE CAD TO
13 THE 035, AND WE WILL TRY TO TELL THEM AS BEST WE
14 CAN, YES, THIS IS THE CAD FOR THIS MODEL.

15 MR. JACOBS: SKETCHBOOKS.

16 SO THIS IS PRETTY IMPORTANT. WE HAVE
17 AGREED THAT WE ARE GOING TO TRY TO MAKE THE
18 SKETCHBOOK PRODUCTION MORE COMPLETE FROM THE
19 STANDPOINT OF DATES AND DATE IDENTIFICATION.

20 BUT YOU RULED ON THIS IN SEPTEMBER AND
21 SAID THAT AS TO IRRELEVANT PRODUCTS WE DON'T NEED
22 TO PRODUCE THOSE SKETCHES SO WE WOULD CONTINUE TO
23 REDACT.

24 AND WE THINK THAT'S IMPORTANT AND
25 CONSISTENT WITH THE DIRECTION THAT YOU HAVE GIVEN

1 US.

2 ON THE SONY TRIO AND THE RAZOR, WE ARE
3 LOOKING, THESE ARE OLD PROJECTS. WE'RE LOOKING.
4 WE WILL DO OUR BEST.

5 ON THE 1989 FLAT PANEL DISPLAY BRAINBOX,
6 IT'S 20 YEARS OLD BUT WE ARE LOOKING.

7 ON APPLE CINEMA DISPLAY, THIS IS BACK TO
8 A RELEVANCE ISSUE. THEY ASK FOR ALL DOCUMENTS
9 ABOUT CINEMA DISPLAY.

10 I MEAN, THAT'S A PRODUCT. THE ONLY
11 RELEVANCE IS WHAT WAS MADE AVAILABLE TO THE PUBLIC
12 AS A CLAIMED INVALIDITY PRIOR ART REFERENCE. SO
13 WAY TOO EXTREME IN TERMS OF WHAT THEY ARE SEEK.

14 WE PROPOSED TO PRODUCE THE CAD OR THE
15 FINAL DESIGN ON THAT, SO THEY WILL HAVE THE CAD.

16 I TALKED ABOUT THE DEPOSITION
17 TRANSCRIPTS, I THINK I COVERED IT EXCEPT FOR THE
18 MEMORY CARDS.

19 THE COURT: MR. HUNG, DO YOU WANT TO
20 ADDRESS THE MEMORY CARD?

21 MR. HUNG: SURE.

22 JUST TO CLARIFY ONE THING.

23 IN TERMS OF ASKING GOOGLE FOR PERMISSION
24 TO PRODUCE THE TRANSCRIPTS, WE ASKED, SIMPLY
25 UNDERSTAND THAT QUINN EMANUEL DOES REPRESENT

1 GOOGLE. WE DID SAY, CAN YOU ASK YOUR CLIENT? WE
2 SAID, YOU SHOULD BE ASKING THE TWO PARTIES GOOGLE
3 AND I BELIEVE ATMEL.

4 THEY THEN WENT BACK AND SAID, NO YOU
5 SHOULD DO IT. I THINK THAT'S THE CURRENT STATUS.
6 WE DO HAVE TO DO IT, THAT'S IN OUR COURT, BUT WE
7 HAVEN'T DONE IT YET.

8 TO CLARIFY THE ISSUE ON MEMORY CARDS --

9 THE COURT: WOULD YOU AGREE, MR. HUNG, IF
10 I JUST SIMPLY ORDERED IT THERE WOULD BE NO PROBLEM?

11 MR. HUNG: IN TERMS OF THE TRANSCRIPTS?

12 THE COURT: WITH RESPECT TO GOOGLE'S
13 CONFIDENTIALITY CLAIMS.

14 MR. HUNG: I THINK THAT'S RIGHT. WE
15 WOULD HAVE TO INFORM THEM OF THE ORDER IN CASE THEY
16 WANTED TO SEEK PROTECTION. I THINK THAT'S RIGHT.

17 MR. HUNG: SO ON THE MEMORY CARD ISSUE, I
18 THINK THERE'S SOME CONFUSION GOING ON BECAUSE WHEN
19 WE LAST SPOKE THE ISSUE WAS THIS DIAMOND TOUCH
20 WASN'T A PROTOTYPE IT WAS A PUBLIC PIECE OF PRIOR
21 ART, SOMETHING YOU COULD BUY ON EBAY IF IT WAS
22 STILL CARRIED ON EBAY.

23 THE ISSUE WITH THE 035, IT'S A PRIVATE
24 DOCUMENT, IT'S A CONFIDENTIAL MODEL. WE'VE ASKED
25 THEM FOR COPIES OF OUR MODELS, IN THE BRIEF WE

1 ASKED THEM FOR CAD FILES AND WE WOULDN'T PURPORT TO
2 GO TO KOREA AND INSPECT THE MODEL AND TAKE A
3 VIDEOTAPE AND TAKE THE PICTURES AND NOT SHARE IT
4 WITH THEM. THAT'S THE POINT OF THE PROTECTIVE
5 ORDER.

6 WHEN WE LAST SPOKE YOU SAID, WHAT'S GOOD
7 FOR THE GOOSE IS GOOD FOR THE GANDER, AND IT
8 APPLIES BOTH WAYS.

9 YOU EMPHASIZE THE WORK PRODUCT ISSUE. WE
10 ARE NO LONGER COMING CLOSE TO HAVING SOMEONE
11 SITTING IN THE ROOM MONITORING, WE AGREE WORK
12 PRODUCT TO GET PROTECTIVE WORK PRODUCT.

13 THE ISSUE COMES DOWN TO WHEN YOU TAKE
14 PHOTOGRAPHS OR VIDEOS OF WHATEVER ELSE YOU WANT OF
15 A CONFIDENTIAL DOCUMENT PROTECTED BY THE PROTECTIVE
16 ORDER, DOES THAT HAVE TO BE PRODUCED?

17 AND YOU DID SAY AT THE END OF THE LAST
18 HEARING WE SHOULD GO AND MAKE SURE IT'S COVERED BY
19 THE PROTECTIVE ORDER.

20 WHAT THE PROTECTIVE ORDER SAYS IS DURING
21 AN INSPECTION IT'S DESIGNATED CONFIDENTIAL, THEN
22 YOU PRODUCE AND YOU BATES LABEL IT.

23 THE IMPLICATION IS YOU REVIEW AND YOU
24 PRODUCE, THAT WAY EVERYONE CAN TRACK AND KNOWS WHAT
25 HAPPENED TO IT.

1 THE COURT: IT WOULDN'T SEEM TO DESTROY
2 THE WORK PRODUCT PROTECTION THAT IS ATTACHED TO IT,
3 WOULDN'T IT?

4 MR. HUNG: BUT THAT'S ALWAYS THE CASE
5 WHEN YOU REVIEW SOURCE CODE. FOR EXAMPLE, OR WHEN
6 YOU REVIEW IN THIS CASE CAD DRAWINGS.

7 THE PURPOSE BEHIND THE PROTECTIVE ORDER
8 IS IT'S AN AGREED ORDER, WHETHER AN INTERIM ORDER
9 OR THE ACTUAL ENTERED ORDER. YOU WANT TO PROTECT
10 THE CONFIDENTIALITY AND IT'S SECRET STUFF. YOU
11 DON'T WANT TO ALLOW SOMEONE TO WALK IN AND MAKE A
12 VIDEO AND NOT SHOW YOU WHAT THEY DID, STORE IT
13 SOMEWHERE WHERE YOU DON'T EVEN KNOW HOW MANY COPIES
14 THEY MADE OR WHAT THEY MADE.

15 SO THAT'S WHY THE INTERIM PROTECTIVE
16 ORDER, THE ORDER WE PROPOSED OR WE ARE GOING TO
17 PROPOSE, WOULD HAVE A PROVISION WHERE WE TREAT IT
18 LIKE SOURCE CODE. THEY INSPECT IT, WE BATES LABEL,
19 IT WE SHARE IT.

20 PUBLIC PRIOR ART, AGREED, TOTALLY
21 DIFFERENT. IF WE'RE GOING TO LOOK AT DIAMOND TOUCH
22 AGAIN, THEY SHOULD HAVE TO GIVE US THE MEMORY CARD.

23 IF THEY WERE GOING TO LOOK AT ONE OF OUR
24 ITEMS ON THE DEFENSIVE CASE, WE SHOULDN'T BE IN THE
25 ROOM WHEN THEY'RE LOOKING AT THE PUBLIC ITEM AS

1 WELL IF WE HAVE THE ONLY COPY.

2 SO THAT'S OUR VIEW ON THAT ISSUE.

3 THE COURT: THANK YOU, MR. HUNG.

4 ANY REBUTTAL ON THIS MOTION,

5 MS. MAROULIS?

6 MS. MAROULIS: BRIEFLY, YOUR HONOR.

7 LET'S START FROM THE BACK OF WHAT

8 MR. HUNG DISCUSSED.

9 APPLE DID INSPECT SAMSUNG PROTOTYPES AND
10 TOOK A NUMBER OF PICTURES AND NEVER GAVE US A COPY.

11 THE DISTINCTION THAT YOUR HONOR DREW IN
12 THE DECEMBER 2ND ORDER WAS BETWEEN WORK PRODUCT AND
13 NOT. NOT BETWEEN CONFIDENTIAL AND NONCONFIDENTIAL.

14 SO WE BELIEVE THAT'S THE DISTINCTION THAT
15 APPLIES AND THE SAME RULE SHOULD APPLY TO BOTH
16 PARTIES, AND THAT IS WHY APPLE NEEDS TO RETURN OUR
17 MATERIALS.

18 SECOND POINT RELATES TO DESIGNATIONS AS
19 WELL, AND THAT'S THE POINT MR. JACOBS RAISED WHICH
20 IS: WHY DO WE NEED TO DE-DESIGNATE THE PHOTOS OF
21 THE 035.

22 ONE OF THE REASONS IF IT'S NOT
23 CONFIDENTIAL IS WE CAN SHARE IT WITH THE CLIENT TO
24 HELP US FIND MORE PRIOR ART. WE CAN SHARE WITH OUR
25 EXPERT, AND AS WE WILL DISCUSS IN A MINUTE IN A

1 DIFFERENT MOTION, THEY ARE BLOCKING OUR EXPERT'S
2 ACCESS TO CONFIDENTIAL INFORMATION.

3 SO HAD THIS INFORMATION ABOUT 035 MOCK UP
4 BEEN PROPERLY DESIGNATED AS PUBLIC, WE COULD HAVE
5 SHOWN IT TO MR. SHERMAN LONG AGO WHILE THIS MOTION
6 WAS PENDING.

7 THE COURT: OR I CAN GRANT THE OTHER
8 MOTION AND HE COULD GET ACCESS THAT WAY.

9 MS. MAROULIS: THAT IS ALSO TRUE, BUT WE
10 CANNOT OBVIOUSLY SHOW IT TO SAMSUNG EVEN THOUGH
11 IT'S THE SAME PHOTO JUST WITH DIFFERENT ANGLES
12 THAT'S SUBMITTED TO THE PATENT OFFICE.

13 FINALLY, MR. JACOBS MADE A STATEMENT THEY
14 WERE LOOKING FOR THE VARIOUS CATEGORIES THAT ARE
15 LISTED IN OUR MOTION, SAME IS TRUE FOR US.

16 TO DATE, THEY DID NOT PRODUCED AND NOT
17 AGREED ON VARIOUS CATEGORIES OTHER THAN WHAT I
18 STATED AT THE OUTSET OF MY ARGUMENT WHICH IS THE
19 SOURCE CODE FOR THE TWO PRIOR ART DEVICES AND
20 PLEADINGS FROM THE MOTOROLA LITIGATION.

21 SO THE REST IS SUBJECT TO THE MOTION.

22 THE COURT: ALL RIGHT.

23 SHALL WE TURN OUR LAST FEW MINUTES TO
24 YOUR SECOND MOTION WITH RESPECT TO MR. SHERMAN?

25 I'M SORRY, MR. HUNG, IF YOU WANT TO TAKE

1 A MINUTE, I WILL GIVE YOU A MINUTE.

2 MR. HUNG: CAN I ADD ONE POINT IN TERMS
3 OF THE INSPECTION?

4 TO THE EXTENT THAT WE PREVIOUSLY KEPT AND
5 CAN DID NOT GIVE THEM COPIES OF PHOTOGRAPHS WE TOOK
6 OF SOMETHING THAT'S CONFIDENTIAL, WE'RE HAPPY TO
7 DESTROY AND RETURN IT TO TAKE CARE OF THIS ISSUE.

8 WHAT'S GOOD FOR THE GOOSE IS GOOD FOR THE
9 GANDER.

10 RELATEDLY, BEFORE THE LAST INSPECTION
11 WHEN WE CALLED YOU THERE WAS ANOTHER INSPECTION
12 WHERE THEY DID TAKE A COPY OF OUR MEMORY STICK, SO
13 THAT SHOULD BE GIVEN BACK TO US AS WELL.

14 IT SHOULD APPLY BOTH WAYS, BUT WE THINK
15 THAT PROTECTIONS SHOULD CONTINUE TO APPLY TO
16 CONFIDENTIAL INFORMATION.

17 THE COURT: LET'S TURN TO THE SECOND OF
18 SAMSUNG'S MOTIONS.

19 MS. MAROULIS: YOUR HONOR, THE SECOND
20 MOTION WE HAVE IS A MOTION TO ALLOW ACCESS FOR OUR
21 DESIGN EXPERT MR. SHERMAN. MR. SHERMAN IS AN
22 EXPERT ON THE ISSUES OF PHONE DESIGN WHICH IS
23 CENTRAL TO THIS CASE.

24 HE'S BEING DESIGNATED SOLELY FOR THE
25 PURPOSE OF LOOKING AT THE OUTSIDE HARDWARE LOOK AND

1 FEEL OF THE PHONES. HE SUBMITTED HIS TESTIMONY IN
2 CONNECTION WITH THE PRELIMINARY INJUNCTION
3 PROCEEDINGS AND JUDGE KOH CREDITED HIS TESTIMONY.

4 WE STRONGLY BELIEVE AN EXPERT WHO CAN BE
5 USEFUL TO THE COURT AND THE JURY IN THIS CASE IS
6 SOMEONE WHO KNOWS ABOUT PHONE DESIGN BECAUSE THE
7 ISSUES OF INVALIDITY, THE ISSUES OF FUNCTIONALITY
8 AND THE ISSUES OF HOW THESE PHONES COME INTO BEING.
9 THEREFORE, THIS MOTION IS NOT JUST ABOUT
10 MR. SHERMAN. WE BELIEVE APPLE WILL HAVE SIMILAR
11 OBJECTIONS TO ANY OTHER PERSON WHO KNOWS AND
12 PRACTICES DESIGN OF PHONES.

13 THE COURT: THE ONLY PROBLEM IS FOLKS
14 WITH EXPERTISE, I SUSPECT ARE IN GREAT DEMAND BY
15 THE MARKET. SO WHAT LINE SHOULD I DRAW AROUND
16 THAT?

17 MS. MAROULIS: YOUR HONOR, THERE ARE TWO
18 BASIC LINES HERE.

19 ONE IS THAT WE HAVE TOLD APPLE THAT WE
20 WILL ONLY SHOW TO MR. SHERMAN THE DESIGN DOCUMENTS,
21 WE WILL NOT SHOW THEM ANY TECHNICAL DOCUMENTS.

22 THEIR CONCERN, AS STATED IN THEIR PAPERS,
23 IS THAT MR. SHERMAN'S CONSULT CURRENT CONSULTANT
24 COMPANY, WHICH IS ALL OF ONE PERSON, IS ENGAGED IN
25 THE BUSINESS OF PROVIDING CONSULTING ON MULTI TOUCH

1 TECHNOLOGY.

2 WE WOULD NOT SHOW HIM ANY SOURCE CODE OR
3 ANY OF APPLE'S TECHNICAL DOCUMENTATION. HE WILL BE
4 REVIEWING DESIGN CAD FILES, DESIGN HISTORY
5 DOCUMENTS AND OTHER DESIGN SKETCHBOOKS AND DESIGN
6 DOCUMENTS.

7 HE IS NOT IN BUSINESS RIGHT NOW OF
8 DESIGNING HARDWARE. HE'S NOT DOING ANY CONSULTING
9 RELATING TO THAT. AND APPLE QUESTIONED HIM DURING
10 HIS DEPOSITION REGARDING WHAT HE DOES ACTUALLY DO.

11 THE COURT: SO THE LINE BETWEEN DESIGN
12 AND FUNCTION IS AN ATTRACTIVE ONE, BUT HASN'T YOUR
13 OWN WITNESS SUGGESTED THAT'S PRETTY BLURRY WHEN YOU
14 GET DOWN TO SPECIFIC INSTANCES OF WHETHER SOMEONE
15 SHOULD LOOK AT THE DOCUMENT OR NOT?

16 MS. MAROULIS: YOUR HONOR, WHEN I SAY I'M
17 NOT GOING TO SHOW HIM TECHNICAL DOCUMENTS, WE WILL
18 NOT SHOW HIM THE GUTS OF THE FILM.

19 HOW ONE -- IN THAT, THE MULTITOUCH
20 SYSTEM, HOW ONE DEALS WITH THE TOUCH SCREEN
21 TECHNOLOGY. WHAT HE WAS TALKING ABOUT THE FUNCTION
22 IS THAT DEPENDING WHERE YOU PLACE THE SPEAKERS
23 DICTATE THE FACT WHERE YOUR EAR IS. THAT'S A
24 FUNCTIONAL ARGUMENT BUT IT DOESN'T REQUIRE HIM TO
25 GO TO THE SOURCE CODE WHEN YOU HAVE THE ASPECTS OF

1 THE CASE.

2 WE HAVE PREVIOUSLY DISCUSSED WITH APPLE
3 SUBMITTING TO THEM A BROAD LIST OF CATEGORIES THAT
4 WE WILL SHOW THEM. SUBMITTED DECLARATIONS THAT
5 DOES CREEP INTO THE WORK PRODUCT ISSUES WE WERE
6 WILLING TO DO THAT, THEY REJECTED THAT PROPOSAL.

7 WE WILL CERTAINLY NOT BE REQUIRED TO VET
8 WITH THEM EVERY DOCUMENT WE SHOW TO OUR EXPERT.

9 BUT IN GENERAL WE BELIEVE IN OUR MOTION
10 AND IN MR. SHERMAN'S DECLARATION, WE LAID OUT
11 SUFFICIENT BASIS TO SHOW THAT HE -- TWO THINGS.

12 ONE, HE'S NOT DIRECTLY COMPETING WITH
13 APPLE IN ANY WAY.

14 AND TWO, THAT BECAUSE HE WILL BE GIVEN
15 ONLY DESIGN DOCUMENTS AND NOT ANY KIND OF SOURCE
16 CODE OR TECHNICAL DOCUMENTS THAT CAN POTENTIALLY
17 HELP SOMEONE IN THE MULTI TOUCH BUSINESS, THIS WILL
18 NOT BE A THREAT TO APPLE.

19 AND I KNOW YOU WILL HEAR ON RESPONSE HOW
20 APPLE IS VERY CAREFUL ABOUT THE SECRECY OF ITS
21 DOCUMENTS AND WE OBVIOUSLY WE RESPECT THAT, BUT
22 THERE'S A NEED IN THIS CASE TO LOOK AT THE DESIGN
23 DOCUMENTS AND THERE'S A NEED FOR SOMEONE WHO KNOWS
24 ABOUT PHONE DESIGN.

25 ONE OF THE REASONS WE CHALLENGED ON THE

1 DAUBERT MOTION, APPLE'S EXPERT, IS HE DOESN'T KNOW
2 ANYTHING ABOUT FILM DESIGN. AND WE SHOULD NOT BE
3 FORCED TO GO WITH A SIMILAR EXPERT WHO DOES NOT
4 HAVE PRACTICAL EXPERIENCE IN LEARNING HOW TO DESIGN
5 PHONES AND EXPLAINING THAT TO THE JUDGE AND TO THE
6 JURY.

7 THE COURT: THE QUESTION I HAVE ON THAT
8 IS, IT SEEMS TO ME WHEN I'M DEALING WITH MOTIONS
9 LIKE THIS, ONE REASONABLE CONSIDERATION IS THE
10 UNIVERSAL POOL OF TALENT FROM WHICH TO DRAW ONE OR
11 MORE EXPERTS.

12 IN THIS PARTICULAR INSTANCE ARE YOU
13 TELLING ME THAT MR. SHERMAN IS ONE OF ONLY A
14 HANDFUL OF FOLKS IN THE WORLD, SAMSUNG IS A
15 WORLDWIDE COMPANY, THEY HAVE AMPLE REAL ESTATE
16 SOURCES WHO CAN INTELLIGENTLY SPEAK TO THE ISSUES
17 OF DESIGN?

18 MS. MAROULIS: YOUR HONOR, YOU SHOULD
19 PROBABLY PICK UP FROM OUR PAPERS THAT MR. SHERMAN
20 IS IN ISRAEL. SO WE HAD TO GO ALL THE WAY THERE TO
21 GET SOMEBODY WHO IS NOT IN SOME CAPACITY INVOLVED
22 WITH APPLE, SAMSUNG OR ANY OF ITS DIRECT
23 COMPETITORS.

24 THE COURT: HE SHOULD LOVE TO WORK WITH
25 ALL OF YOU.

1 MS. MAROULIS: AFTER THESE MOTIONS, I'M
2 SURE YOU WILL FORM THAT OPINION.

3 THE COURT: I'M EXPRESSING NO OPINION AT
4 ALL.

5 MS. MAROULIS: IT WOULD BE DIFFICULT.

6 THE COURT: I KNOW SOMETIMES THAT'S AN
7 ISSUE RIGHT.

8 MS. MAROULIS: IT'S A VERY SMALL POOL,
9 RIGHT, FOR REASONS OF BOTH SPECIFIC EXPERTISE AND
10 THE CONFLICT ISSUES.

11 WE OBVIOUSLY CANNOT WORK WITH ANYONE WHO
12 IS WORKING DIRECTLY OR INDIRECTLY WITH APPLE. WE
13 CANNOT WORK WITH ANYONE WHO IS WORKING DIRECTLY OR
14 INDIRECTLY WITH SAMSUNG.

15 THERE'S SEVERAL OTHER LARGE COMPETITORS
16 OF BOTH COMPANIES WHERE THAT WOULD BE AN ISSUE AS
17 WELL VIS A VIE LOOKING AT BOTH APPLE'S CONFIDENTIAL
18 DOCUMENTS BUT OURS AS WELL.

19 THE COURT: IS HE THE ONLY EXPERT YOU
20 HAVE ON THIS PARTICULAR SUBJECT?

21 I DON'T WANT TO INTRUDE UPON YOUR
22 CONFIDENTIAL --

23 MS. MAROULIS: HE'S THE ONLY EXPERT
24 DISCLOSED IN THE DESIGN.

25 SO IN CONCLUSION WE WOULD GREATLY

1 APPRECIATE A RULING ON THIS ISSUE. WE ACTUALLY
2 TEED IT UP ABOUT TWO MONTHS AGO BUT WE HAD BEEN
3 HOPING TO RESOLVE IT WITH APPLE WITHOUT A MOTION
4 PRACTICE, AND IT LOOKED AT ONE POINT THAT WE WERE
5 CLOSE BUT PARTIES FELL APART AGAIN, ON THIS ISSUE.

6 AND SO IT WOULD BE VERY IMPORTANT FOR US
7 TO BE ABLE TO START SHOWING MR. SHERMAN THE
8 CONFIDENTIAL DOCUMENTS BECAUSE SO FAR HIS OPINION
9 HAS BEEN BASED ON PUBLIC INFORMATION AND HE NEEDS
10 TO GET ACCESS TO THE CONFIDENTIAL INFORMATION.

11 THE COURT: ALL RIGHT. THANK YOU.

12 MS. MAROULIS: THANK YOU, YOUR HONOR.

13 THE COURT: MR. JACOBS?

14 MR. JACOBS: WELL, AGAIN, WE'RE SEEKING
15 HELP FOR PROTECTION OF OUR CONFIDENTIAL
16 INFORMATION. THIS IS AN INDIVIDUAL WHO IS
17 GEOGRAPHICALLY REMOTE BUT QUITE PROXIMAL IN SUBJECT
18 AREA.

19 AND THE FACT THAT HE'S STILL ENGAGED IN
20 MULTI TOUCH, WHICH IS DIRECTLY COMPETITIVE WITH
21 APPLE, AND WHERE IN SAMSUNG'S VIEW OF THE CASE
22 MULTI TOUCH DRIVES DESIGN, MEANS THAT THERE'S --
23 THE OVERLAP BETWEEN, AS YOU WERE SUGGESTING THE
24 OVERLAP BETWEEN WHAT MIGHT BE REGARDED AS FUNCTION
25 AND WHAT MIGHT BE REGARDED AS DESIGN ESPECIALLY

1 FROM SAMSUNG'S STANDPOINT IS QUITE WIDE.

2 SO RECENTLY HE DID PHONE RELATED WORK.
3 HE CONSULTS. NOW THEY DESIGNATED SOME OF HIS
4 CONSULTING INFORMATION AS ATTORNEY'S EYES ONLY, SO
5 ALL I WILL SAY ABOUT IT IS HE CONSULTS NOW AND
6 WOULD NOT DISCLOSE ALL OF HIS CONSULTING CLIENTS,
7 AND SOME OF HIS CONSULTING CLIENTS ARE IN THE PHONE
8 BUSINESS.

9 SO THE TEMPTATION THAT HE MIGHT HAVE,
10 BECAUSE ONCE YOU SEE THESE DESIGNS, I MEAN ONCE YOU
11 SEE THE DESIGN IDEAS, IT'S YOUR HEAD. THAT'S WHY
12 WE HAVE THESE PROTECTIVE MEASURES. THAT'S WHY WE
13 HAVE A PROSECUTION BAR WHICH WOULD CUT MORE BROADLY
14 FOR LAWYERS THAN THE LINE THEY WOULD DRAW FOR
15 SHERMAN.

16 SO FOR ALL THOSE REASONS WE THINK THIS
17 ONE IS TOO CLOSE.

18 AND IT'S A MULTI FACTORIAL. I DON'T WANT
19 TO PIN IT TO ANY INDIVIDUAL ASPECT, ONCE HE GETS
20 INTO THE CIRCLE OF THE SUBJECT MATTER. BUT TO ADD
21 TO THE COMPLEXITY HERE OR OUR CONCERN THAT HE'S NOT
22 AN ACADEMIC, SO HE'S IN THE BUSINESS OF SELLING HIS
23 KNOWLEDGE AND TIME TO PEOPLE WHO WILL PAY FOR IT.

24 AND WE ARE JUST VERY, VERY CONCERNED.
25 BECAUSE OF THE IMPORTANCE OF THIS INFORMATION AND

1 ITS SENSITIVITY

2 THE COURT: DO YOU HAVE A -- HAVE YOU
3 DISCLOSED YET A COUNTERPART TO MR. SHERMAN?

4 MR. JACOBS: YES.

5 THE COURT: CAN YOU DESCRIBE FOR ME WHO
6 THAT PERSON IS AND THEIR EXPERTISE?

7 MR. JACOBS: WE HAVE TWO.

8 THE COOPER WOODRING IS A LONG TIME DESIGN
9 EXPERT WHO IS HEAD OF THE INDUSTRIAL DESIGN
10 ASSOCIATION, FOR THE MOMENT I CAN'T REMEMBER HIS
11 NAME.

12 THEY DID CHALLENGE HIS CREDENTIALS --
13 JUDGE KOH DID NOT GRANT THAT MOTION AND ADMITTED
14 HIS TESTIMONY FOR PURPOSES OF THE PRELIMINARY
15 INJUNCTION.

16 WE ALSO HAVE ANOTHER EXPERT, IF YOU WILL
17 JUST GIVE ME A MINUTE

18 THE COURT: SURE.

19 MR. JACOBS: A BRESSLER, A DOCTOR
20 BRESSLER WHO HAS -- AND HE IS AN INDUSTRIAL
21 DESIGNER BY BACKGROUND. AND WE HAVE DISCLOSED HIM,
22 AND I DON'T THINK -- HAVE WE DRAWN AN OBJECTION?

23 MR. JACOBS: OH, THEY ARE OBJECTING.
24 THERE YOU GO.

25 SO WE DO NEED TO DRAW THE LINE. BUT WE

1 WOULD DRAW IT AGAINST SHERMAN AND WE'LL GET TO
2 BRESSLER WHEN WE GET TO HIM.

3 THE COURT: IS THERE ANY ROLE FOR
4 MR. SHERMAN THAT YOU THINK IS APPROPRIATE?

5 I MEAN, OBVIOUSLY HE CAN LOOK AT
6 NONCONFIDENTIAL INFORMATION, THAT'S NO PROBLEM.

7 MR. JACOBS: EXACTLY. AND HE DID THAT.
8 AND HE TESTIFIED IN THE PRELIMINARY INJUNCTION AND
9 JUDGE KOH ACKNOWLEDGED HIS TESTIMONY.

10 THE COURT: BUT YOUR VIEW IS THAT GIVEN
11 HIS EXPERIENCE AND SUCCESS AT WHAT HE DOES, THERE'S
12 NO LINE I COULD DRAW AS TO CONFIDENTIALITY
13 INFORMATION THAT WOULD ADEQUATELY PROTECT YOUR
14 INTEREST?

15 MR. JACOBS: I DON'T THINK SO, AND LET ME
16 GIVE YOU AN EXAMPLE AS TO WHY ITS SO DIFFICULT.

17 ONE OF THEIR PROPOSED CATEGORIES IS
18 DESIGN DOCUMENTATION THAT GO TO THE DESIGN OF APPLE
19 PRODUCTS.

20 WELL, APPLE'S PRODUCTS ARE CAPTURED IN
21 REVIEW DOCUMENTS AND THOSE REVIEW DOCUMENTS WOULD
22 MIX WHAT WE MIGHT THINK OF DESIGN, INDUSTRIAL
23 DESIGN WITH HARDWARE DESIGN OR PRODUCT DESIGN AND
24 THAT WILL ALL BE INTERMINGLED.

25 THE FACT OF ITS INTERMINGLING, I IMAGINE

1 WILL BE SOMETHING SAMSUNG WILL USE TO SAY, LOOK,
2 THIS IS ALL FUNCTIONALLY DRIVEN. BUT THAT MEANS
3 THEN THAT THE DOCUMENT THAT THEY WOULD PROPOSE TO
4 RELY ON WOULD NOT BE A PURE INDUSTRIAL DESIGN
5 DOCUMENT, IT WOULD HAVE A MINGLING OF MOTION.

6 THE COURT: IF I WERE ABLE TO DEFINE AND
7 DELINEATE A CATEGORY OF PURELY INDUSTRIAL DESIGN
8 DOCUMENTS THAT WERE NOT TAINTED IN ANY WAY BY MORE
9 FUNCTIONAL OR HARDWARE DRIVEN CONCERNS, WOULD THAT
10 BE SOMETHING I COULD DO THAT WOULD ADEQUATELY
11 PROTECT APPLE'S INTEREST? OR WHY WOULD THAT STILL
12 NOT WORK?

13 MR. JACOBS: I THINK BECAUSE HE'S SO
14 ACTIVE IN A CLOSE AREA. THE FACT THAT HE'S DEALING
15 WITH MULTI TOUCH NOW AND CONSULTING FOR CONSUMERS
16 OF MULTI TOUCH, WHICH BY DEFINITION IS HANDHELD
17 PRODUCTS THAT YOU ARE GOING TO USE TO TOUCH, THAT'S
18 ALL PRETTY CLOSE TO AN IPAD OR IPHONE OR WHATEVER
19 OTHER DOCUMENTS MIGHT SURFACE IN THAT PRODUCTION.

20 THE COURT: ALL RIGHT.

21 THANK YOU VERY MUCH.

22 MR. JACOBS: THANK YOU VERY MUCH.

23 THE COURT: ANY LAST REMARKS,

24 MS. MAROULIS.

25 MS. MAROULIS: YES, YOUR HONOR.

1 MR. JACOBS INVOKED THE MIX DOCUMENTS THAT
2 MIGHT INVOLVE TECHNICAL SPECIFICATIONS WITH THE
3 DESIGN.

4 HOWEVER, THERE'S A HUGE NUMBER OF
5 CATEGORIES THAT ARE NOT MIXED AT ALL.

6 FOR EXAMPLE, CAD FILES WILL HAVE NO
7 TECHNICAL INFORMATION AS TO MULTI TOUCH TECHNOLOGY.
8 SAME WITH THE SKETCHBOOKS.

9 IN FULL, THEY WILL NOT HAVE THE
10 INFORMATION EITHER

11 THE COURT: I TAKE IT THAT THEIR
12 INDUSTRIAL DESIGNERS ARE NOT CONCERNED VERY MUCH
13 WITH THE BLOOD AND GUTS OF THE MICROPROCESSOR,
14 RIGHT?

15 MS. MAROULIS: CORRECT, YOUR HONOR
16 IT'S PURELY OUTSIDE THE HARDWARE AND SUCH.

17 AND THEN FINALLY, WE CAN NOT HAVE THE
18 CONCERNS ABOUT SECRECY OF APPLE'S PRODUCTS OVER
19 SAMSUNG'S NEED TO HAVE ACCESS TO INFORMATION
20 BECAUSE APPLE CHOSE TO PUT THE DESIGN AT ISSUE IN
21 THIS CASE.

22 THIS IS A CASE WHERE APPLE IS MOVING FULL
23 FORWARD ON ITS REVOLUTIONARY DESIGNS. THERE'S A
24 COST TO INITIATING LITIGATION, AND THAT IS YOU HAVE
25 TO LET YOUR OPPONENT DO DISCOVERY.

1 AND THIS IS GOING TO BE PROTECTED BY THE
2 PROTECTIVE ORDER BY HIGHEST LEVEL OF DESIGNATION.
3 MR. SHERMAN IS GOING TO BE SUBJECT TO THE
4 PROTECTIVE ORDER UNDERTAKING. IF HE VIOLATES IT,
5 HE'S GOING TO BE SUBJECT TO SANCTIONS OF THIS
6 COURT.

7 AND WE CANNOT SIMPLY NOT ALLOW US ACCESS
8 TO THE INFORMATION BECAUSE APPLE PREFERS TO KEEP
9 ITS FILES SUPER CONFIDENTIAL.

10 THE COURT: IS MR. SHERMAN SUBJECT TO ANY
11 RESTRICTIONS AT ALL?

12 UNDER THE TERMS OF THE PROTECTIVE ORDER,
13 FOR EXAMPLE, PATENT ATTORNEYS ARE BOUND BY
14 PROSECUTION BARS, OFTEN THERE ARE COMPETITIVE
15 DECISION MAKING BOUNDARIES THAT ARE DRAWN.

16 IS MR. SHERMAN SUBJECT TO ANY
17 RESTRICTIONS?

18 MS. MAROULIS: YOUR HONOR, I BELIEVE THAT
19 THE EXHIBITS TO PROTECTIVE ORDER UNDERTAKING SAYS I
20 THEREBY SUBJECT MYSELF TO THE JURISDICTION OF THIS
21 COURT.

22 I CANNOT QUOTE IT FROM MEMORY, BUT THERE
23 IS SOME LINE ABOUT THAT, SO HE WILL BE BOUND BY
24 THAT.

25 THE COURT: ALL RIGHT.

1 UNLESS YOU HAVE ANYTHING FURTHER, I'M
2 AFRAID I'M OUT OF TIME.

3 MS. MAROULIS: THANK YOU, YOUR HONOR.

4 THE COURT: THANK YOU.

5 ALL THESE MOTIONS ARE SUBMITTED. I WILL
6 WORK AS DILIGENTLY AS I CAN TO GET YOU AN ORDER
7 SHORTLY. IN THE MEANTIME, HAVE A GOOD WEEKEND.

8 MR. JACOBS: THANK YOU, YOUR HONOR.

9 THE CLERK: THE COURT IS IN RECESS.

10 (WHEREUPON THE MATTERS IN THIS CASE WERE
11 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