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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.)
) JANUARY 19, 2012
)
SAMSUNG ELECTRONICS, CO.,)
)
LTD., ET AL,)
) PAGES 1-276
)
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
JASON BARTLETT
HAROLD MCELHINNY
MIA MAZZA
425 MARKET STREET, 34TH FL
SAN FRANCISCO, CA 94105

FOR THE DEFENDANT: QUINN EMANUEL
BY: DIANE HUTNYAN
865 S. FIGUEROA ST., 10TH FL
LOS ANGELES, CA 90017

(APPEARANCES CONTINUED ON THE NEXT PAGE)

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

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FOR THE PLAINTIFF: WILMER HALE
BY: MARK SELWYN
CALVIN WALDEN
950 PAGE MILL ROAD
PALO ALTO, CA 94304

FOR THE DEFENDANT: QUINN EMANUEL
BY: VICTORIA MAROULIS
RACHEL KASSABIAN
JOBY MARTIN
KEN SUH
SCOTT HALL
555 TWIN DOLPHIN DRIVE, 5TH FL
REDWOOD SHORES, CA 94065

ALSO PRESENT: CHRISTOPHER KELLY

1 SAN JOSE, CALIFORNIA JANUARY 19, 2012

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: MR. RIVERA, WOULD YOU CALL
6 THE NEXT MATTER ON THIS MORNING'S CALENDAR.

7 THE CLERK: YES, YOUR HONOR.

8 CALLING APPLE, INC. VERSUS SAMSUNG
9 ELECTRONICS. CASE NUMBER CV-11-1846.

10 MATTER ON FOR APPLE AND SAMSUNG DISCOVERY
11 MOTIONS.

12 COUNSEL, PLEASE STATE YOUR APPEARANCES.

13 MR. JACOBS: MICHAEL JACOBS FROM MORRISON
14 & FOERSTER, YOUR HONOR, FOR APPLE.

15 WITH ME FROM MORRISON & FOERSTER IS
16 JASON BARTLETT, HAROLD MCELHINNY AND MIA MAZZA AT
17 COUNSEL TABLE.

18 THE COURT: GOOD MORNING, COUNSEL.

19 MR. WALDEN: GOOD MORNING, YOUR HONOR.

20 FROM WILMER HALE, MARK SELWYN. AND WITH
21 ME TODAY IS MY PARTNER CALVIN WALDEN ALSO OF WILMER
22 HALE.

23 THE COURT: GOOD MORNING AS WELL.

24 MS. MAROULIS: GOOD MORNING, YOUR HONOR.

25 VICTORIA MAROULIS, WITH QUINN EMANUEL,

1 COUNSEL FOR SAMSUNG.

2 AND WITH ME ARE MY PARTNERS

3 MS. RACHEL KASSABIAN, DIANE HUTNYAN, AND OUR

4 COLLEAGUES JOBY MARTIN, KEN SUH AND SCOTT HALL.

5 THE COURT: MS. MAROULIS, WELCOME BACK.

6 GOOD MORNING TO YOUR TEAM, AND ALSO TO

7 YOUR TEAM AS WELL.

8 ALL RIGHT. COUNSEL, I HAVE BEFORE ME IF

9 I'VE GOT THE COUNT RIGHT, NINE MOTIONS.

10 I WANT TO FIRST ASK COUNSEL A SIMPLE

11 QUESTION. WHEN I GRANTED EACH PARTY THE RIGHT TO

12 PURSUE ITS MOTIONS ON AN EXPEDITED BASIS, I WAS NOT

13 TOLD WE WOULD BE TALKING ABOUT NINE SEPARATE

14 MOTIONS.

15 AND AS I THINK YOU ALL CAN APPRECIATE, AS

16 I THINK WE'VE DISCUSSED BEFORE, THIS TYPE OF

17 EXTRAORDINARY RELIEF IMPOSES BURDENS NOT ONLY ON

18 THE COURT, PUT THAT TO THE SIDE, BUT OTHER PARTIES

19 WHO HAVE CASES PENDING IN THIS COURT. YOU ARE,

20 EFFECTIVELY, JUMPING THE LINE.

21 AND WHILE I'M EAGER TO JUMP IN AND HELP

22 YOU RESOLVE AS MANY OF THESE DISPUTES AS POSSIBLE,

23 I HAVE TO ASK THE QUESTION: AT WHAT POINT HAS THAT

24 LINE BEEN CROSSED? BECAUSE NINE MOTIONS ON AN

25 EXPEDITED BASIS IS SOMEWHAT UNUSUAL, I WILL PUT IT

1 THAT WAY.

2 DID THE PARTIES ADDRESS OR CONSIDER THIS
3 AT ALL IN THE MEET AND CONFER THAT TOOK PLACE
4 BEFORE THE MOTIONS WERE FILED?

5 MS. MAROULIS: IF I MAY, YOUR HONOR.

6 WE HAVE HAD THE LEAD COUNSEL MEET AND
7 CONFER, AND DUE TO THE SCHEDULING ISSUES OF GETTING
8 TOGETHER MR. MCELHINNY AND MR. VERHOVEN, SOME OF
9 THE DISPUTES HAVE PENT UP AND STACKED UP.

10 SO PART OF THE REASON FOR THE MOTIONS IS
11 BECAUSE WE WERE NOT SUCCESSFUL IN SCHEDULING THE
12 COUNSEL MEET AND CONFER UNTIL RECENTLY.

13 THE COURT: ALL RIGHT.

14 MR. MCELHINNY: HAROLD MCELHINNY FOR
15 APPLE.

16 I THINK THERE ARE TWO THINGS GOING ON ONE
17 OF WHICH MR. JACOBS WILL ADDRESS ON THE MERITS.

18 ONE, I AGREE WITH MS. MAROULIS, THERE HAS
19 BEEN A PROBLEM GETTING COUNSEL TOGETHER TO MEET AND
20 CONFER. SO WHEN WE WERE ABLE TO GET TOGETHER,
21 THERE WAS A CAR WASH SORT OF LINE OF MOTIONS THAT
22 HAD TO BE RESOLVED.

23 THE OTHER MAJOR ISSUE WHICH MR. JACOBS IS
24 GOING TO ADDRESS, I'M NOT, AS YOUR HONOR KNOWS WE
25 ARE WORKING ON AN EXPEDITED SCHEDULE SET BY

1 JUDGE KOH.

2 THE COURT: AND REQUESTED BY APPLE.

3 MR. MCELHINNY: AND REQUESTED BY APPLE,
4 THERE'S NO QUESTION ABOUT IT. BUT IT'S GOT SHORT
5 DEADLINES IN ORDER TO GET DISCOVERY COMPLETED.

6 AND FRANKLY, THERE ARE A LOT OF ISSUES.
7 SO IT'S THE COMBINATION OF THE SCHEDULE, THE
8 INABILITY TO RESOLVE DISPUTES AND THE FACT THAT
9 LEAD COUNSEL WERE AVAILABLE HAD THERE BEEN THAT
10 MANY MOTIONS HADN'T BACKED UP BEHIND THAT.

11 MS. KASSABIAN: YOUR HONOR,
12 MS. KASSABIAN, IF I MIGHT BRIEFLY ADDRESS YOUR
13 POINT.

14 SAMSUNG DID NOT WANT TO EXPEDITE THE
15 APPLE MOTIONS THAT WERE BEING THREATENED.
16 UNFORTUNATELY, EVERY TIME WE HAVE OPPOSED A MOTION
17 TO EXPEDITE, WE'VE LOST.

18 SO WE WERE JUST UNDER THE ASSUMPTION OR
19 PRESUMPTION THAT IF WE OPPOSED AGAIN IT WOULD BE A
20 WASTE OF TIME. SO WE TRIED TO WORK OUT A SHORTENED
21 SCHEDULE THAT WE WOULD BE ABLE TO STIPULATE TO AND
22 THEN ONCE WE DID THAT, I AGREE WITH BOTH
23 MS. MAROULIS AND MR. MCELHINNY, THERE HAVE BEEN
24 ENOUGH ISSUED STACKED UP THAT IT WAS KIND OF A DOG
25 PILE EFFECT.

1 BUT I WILL SAY WE DON'T THINK APPLE'S
2 MOTIONS NEED TO BE HEARD ON A SHORTENED PERIOD OF
3 TIME, BUT IT WOULD NOT BE PRODUCTIVE TO OPPOSE THEM
4 GIVEN THE PRIOR ORDERS OF THE COURT.

5 THE COURT: I'LL NOTE APPLE'S MOTIONS
6 AREN'T THE ONLY ONES BEFORE ME THIS MORNING.

7 MS. KASSABIAN: THAT'S WHERE THE DOG PILE
8 EFFECT -- WE ARE EQUALLY AT FAULT.

9 THE COURT: I ONLY NOTE ALL OF THIS TO
10 MAKE A PRETTY SIMPLE POINT. MY TIME IS YOUR TIME.

11 I'M HERE TO DO WHAT I CAN TO RESOLVE
12 THESE DISPUTES AND I'M FRANKLY INTERESTED, AS A LOT
13 OF YOU KNOW, WITH THESE ISSUES, BUT THERE IS A COST
14 HERE IMPOSED ON THESE PARTIES, A SERIOUS COST.

15 I'M STRUCK BY THE IMPACT OF THIS TYPE OF
16 PRACTICE ON ALL OF THE CIVIL RIGHTS, SOCIAL
17 SECURITY AND OTHER PARTIES IN CASES THAT I HAVE
18 PENDING BEFORE ME. AND I JUST THINK IT'S WORTHY OF
19 NOTING ON THE RECORD THAT THIS TYPE OF PILE ON OR
20 DOG PILE DOES HAVE COSTS THAT EXTEND BEYOND THE
21 PARTIES AND THE COURT AND IT'S UNFORTUNATE THAT
22 OTHER PEOPLE HAVE TO BEAR THOSE COSTS.

23 ALL RIGHT. WELL, LET'S TURN TO THE
24 MATTERS AT HAND.

25 I WON'T PRETEND TO HAVE ANY TYPE OF

1 SCHEDULE OR FRAMEWORK FOR HOW WE ARE GOING TO
2 ALLOCATE TIME HERE. I WOULD LIKE TO TAKE THESE UP
3 ONE AT A TIME, HEAR THE ARGUMENTS THEN MOVE ON TO
4 THE NEXT.

5 I WOULD LIKE TO BEGIN WITH THE PROTECTIVE
6 ORDER ISSUE. AND I WILL START WITH APPLE AND ITS
7 MOTION FOR PROTECTIVE ORDER. OBVIOUSLY SAMSUNG HAS
8 ITS POSITIONS TO BE HEARD AS WELL.

9 MR. JACOBS, WOULD YOU LIKE TO BEGIN WITH
10 THAT?

11 MR. JACOBS: YOUR HONOR, THIS ONE I THINK
12 IS QUITE WELL BRIEFED SO I WILL BE BRIEF.

13 REALLY, WE WERE VERY CLOSE TO HAVING AN
14 AGREED UPON PROTECTIVE ORDER. WE HAVE BEEN
15 OPERATING IN A WAY THAT LITIGANTS OFTEN DO UNDER
16 THE INTERIM PROTECTIVE ORDER, AND THEN IN THE
17 SHADOW OF WHAT WE THOUGHT WOULD BE THE ENTERED
18 PROTECTIVE ORDER AND THEN AT THE LAST MINUTE
19 SAMSUNG PROPOSED THIS NEW TIER, WE SEE NO REASON
20 FOR A NEW TIER.

21 WE SEE NO JUSTIFICATION FOR WHAT SAMSUNG
22 HAS PROFFERED FOR INTRODUCING THIS NEW TIER AT THIS
23 LATE STAGE. WE SUSPECT AN ALTERNATIVE MOTIVE
24 RELATED TO THE SWIRL OF MOTIONS AROUND THIS DREXLER
25 AND MORE PAPER ON A SINGLE EXPERT HAS NEVER BEEN

1 FILED IN MY EXPERIENCE.

2 AND THAT IS BACKED UP BY E-MAILS WE GOT
3 FROM SAMSUNG SAYING IN LIGHT OF RECENT DEVELOPMENTS
4 WE NEED TO PROPOSE THIS NEW TIER OF CONFIDENTIAL
5 MATERIAL.

6 PERHAPS THE MOST IMPORTANT REASON WHY A
7 NEW TIER DOESN'T MAKE ANY SENSE HERE IS BECAUSE IT
8 DOESN'T ALLOW IN-HOUSE COUNSEL ACCESS. SO WE ARE
9 ALL OPERATING NOW UNDER OUTSIDE COUNSEL ONLY
10 PROTECTIVE ORDERS.

11 AND BY THE WAY THAT'S TRUE IN THE ITC
12 WHERE WE ARE LITIGATING MANY OF THE ISSUES IN
13 PARALLEL WHERE WE DO WANT TO KEEP THE PROTECTIVE
14 ORDERS IN SYNC, SO WE DO WANT TO MANAGE THAT PART
15 OF DISCOVERY PROCESS EFFICIENTLY.

16 SO NO REASON FOR THIS NEW TIER, NO
17 SUBSTANTIAL JUSTIFICATION FOR IT. IT'S LATE AND
18 THERE'S THE INCONSISTENCY PROBLEM.

19 THE COURT: ALL RIGHT.

20 WELL, LET ME ASK YOU THIS, THE
21 IMPLICATIONS ON THE RELATED ITC ACTIONS DID STRIKE
22 ME AS SOMETHING WE OUGHT TO TALK ABOUT.

23 CAN YOU EXPLAIN TO ME EXACTLY HOW THE
24 PROTECTIVE ORDERS HAVE RELATED TO ONE ANOTHER OR
25 MORE IMPORTANTLY HOW THE DISCLOSURES MADE IN THE

1 ITC ACTION HAVE BEEN PRODUCED IN THIS CASE?

2 MR. JACOBS: SO WE HAVE A CROSS USE
3 AGREEMENT ALLOWING MATERIAL USED IN -- AND JUMP UP
4 COLLEAGUES IF I DON'T SAY THIS RIGHT.

5 WE HAVE A CROSS USE AGREEMENT THAT ALLOWS
6 MATERIALS USED IN ONE ACTION TO BE USED IN ANOTHER.

7 WE HAVE PRODUCTIONS OCCURRING FROM THIRD
8 PARTIES IN THE ACTIONS THEY ARE DEPENDENT ON THE
9 PROTECTIVE ORDERS.

10 WE HAVE -- SO THAT'S ESSENTIALLY THE
11 NATURE OF THE AGREEMENT.

12 SO WHEN WE SAY WE PRODUCED X NUMBERS OF
13 DOCUMENTS, WE ACTUALLY REALLY PROBABLY NEED TO TAKE
14 A GLOBAL VIEW OF THIS TO BE COMPLETELY ACCURATE.

15 THE COURT: I TAKE IT YOUR COUNTS INCLUDE
16 PRODUCTIONS IN THE RELATED CASES?

17 MR. JACOBS: I THINK WE HAVE BEEN
18 SPECIFIC. IF IT'S BEEN PRODUCED IN THE ND CAL
19 ACTION, WE SAY THIS IS OUR PRODUCTION IN THE ND CAL
20 ACTION. IT'S GOT AN ND CAL BATES NUMBER ON IT,
21 IT'S BEEN PRODUCED IN RESPONSE AND DELIVERED BY THE
22 ND CAL TEAM TO THE ND CAL TEAM ON THE OTHER SIDE.

23 SO UNLESS WE SAY THE ITC, I THINK THE
24 COUNT IS ND CAL.

25 THE COURT: ALL RIGHT.

1 NOW IF THE COURT WERE TO ENTER A
2 PROTECTIVE ORDER WITH THE SECOND TIER, COULD YOU
3 ADDRESS OR DISCUSS THE IMPLICATIONS FOR RE
4 DESIGNATION OR DE DESIGNATION OF PRODUCTION TODAY?

5 MR. JACOBS: WELL, HAVING OPERATED UNDER
6 THE ASSUMPTION, IF YOU WILL, OR THE INTERIM
7 PROTECTIVE ORDER PLUS ASSUMPTION THAT IT WOULD BE
8 OUTSIDE COUNSEL, BOTH SIDES HAVE DONE THIS. WE
9 HAVE PROBABLY ALL ERRED ON THE SIDE OF CAUTION AND
10 DESIGNATION TRYING TO PUSH OUT DOCUMENTS QUICKLY
11 AND KNOWING WE CAN TURN TO DE DESIGNATION LATER.

12 WE HAVE, I THINK, BEEN IN THIS AREA VERY
13 RESPONSIVE TO SAMSUNG WHEN THEY HAVE ASKED TO DE
14 DESIGNATE ALL THE WAY DOWN TO NO DESIGNATION, FOR
15 EXAMPLE, ON DEPOSITION MATERIAL.

16 BUT TO NOW GET LAUNCHED INTO A PROCESS OF
17 OH, WE WANT THESE CONFIDENTIAL AND OUTSIDE COUNSEL
18 ONLY, AND HAVE TO FIGURE OUT WHAT THOSE LINES ARE
19 WITH EVERYTHING ELSE GOING ON IN A SHORT TIME
20 TABLE, THAT STRIKES US AS A LOT OF PROCESS FOR NOT
21 MUCH BENEFIT.

22 THE COURT: WHAT WOULD THE IMPLICATION OF
23 THE SECOND TIER, AN ORDER ADOPTING A SECOND TIER BE
24 ON MY DECEMBER 22ND ORDER WITH RESPECT TO THE -- I
25 BELIEVE THE GENTLEMAN'S NAME WAS --

1 MR. JACOBS: DREXLER?

2 THE COURT: SHERMAN.

3 MR. JACOBS: I'M SORRY, SHERMAN.

4 THE COURT: COULD YOU SPEAK TO THAT
5 ISSUE.

6 MR. JACOBS: I THINK LURKING IN THIS
7 CONFIDENTIAL CATEGORY IS THIS ARGUMENT THAT SAMSUNG
8 IS ADVANCING THAT THEY SHOULD NOT HAVE TO IDENTIFY
9 CONSULTANTS WHO WILL HAVE ACCESS TO CONFIDENTIAL
10 MATERIALS.

11 I IMAGINE WHAT THEY ARE CONTEMPLATING IS
12 THEY ARE GOING TO COME TO US AND SAY, YOU NEED TO
13 DE DESIGNATE THIS RANGE OF MATERIALS TO
14 CONFIDENTIAL, AND THEN THEY WILL SHOW THE
15 CONFIDENTIAL MATERIALS TO THESE UNNAMED,
16 UNDISCLOSED CONSULTANTS OR DISCLOSE IT TO SHERMAN.

17 AND THAT'S GOT US QUITE ANXIOUS BECAUSE
18 THE WHOLE POINT OF THE SHERMAN ISSUE WAS DIVIDING
19 THE LINE OF WHAT SHERMAN COULD SEE AND WHAT NOT.

20 THAT'S WHY THIS STRUCK US AS AN END RUN.

21 SO THAT'S -- YOU COULD IMAGINE A
22 CONFIDENTIAL TIER THAT HAD DESIGNATION OF EXPERTS.
23 YOU COULD SEPARATE THOSE TWO ISSUES. SAMSUNG HAS
24 LUMPED THOSE TOGETHER AND CLAIMED WORK PRODUCT FOR
25 IDENTIFYING CONSULTANTS WHO WOULD HAVE ACCESS UNDER

1 THE PROTECTIVE ORDER.

2 THE COURT: ALL RIGHT.

3 WELL, I GUESS THE NEXT QUESTION I HAD FOR
4 YOU, MR. JACOBS, WAS IT SEEMS TO ME THAT IN MANY OF
5 THESE COMPETITOR CASES, AND I THINK THAT'S A FAIR
6 CHARACTERIZATION OF THIS DISPUTE, MULTIPLE TIER
7 PROTECTIVE ORDERS ARE NOT EXACTLY UNUSUAL, OTHER
8 THAN THE FACT THAT THE INTERIM PROTECTIVE ORDER HAS
9 A SINGLE TIER; WHAT'S UNIQUE ABOUT THIS CASE?

10 MR. JACOBS: IT'S A VERY CURRENT CASE.
11 WE ARE PRODUCING, THEY ARE PRODUCING, BOTH SIDES
12 ARE PRODUCING TO EACH OTHER DOCUMENTS THAT ARE
13 QUITE IMMEDIATE.

14 THIS IS A VERY FAST MOVING INDUSTRY AS WE
15 HAVE HEARD SEVERAL TIMES, YOU'VE HEARD SEVERAL
16 TIMES. SO THE DOCUMENTS ARE OF A CERTAIN
17 IMMEDIACY.

18 THERE IS ALSO A TRUE HEAD-TO-HEAD NATURE
19 HERE. I MEAN, THIS ISN'T JUST COMPETITORS, THESE
20 ARE COMPANIES THAT ARE NOW QUITE LOCKED IN A
21 RIVALRY.

22 SO YES, IT'S NOT UNCOMMON -- I WOULD SAY
23 IT'S NOT UNCOMMON TO HAVE A CONFIDENTIAL
24 CLASSIFICATION. IT'S NOTABLE THAT IN THE ITC, THE
25 ITC ADOPTED AN OUTSIDE COUNSEL ONLY REGIME TO

1 EXPEDITE PRODUCT IN LIGHT OF THE ITC'S EXPEDITED
2 TRIAL PROCEDURES.

3 THE COURT: IT'S WHAT THEY DO.

4 MR. JACOBS: THAT'S WHAT THEY DO.

5 AND WE'RE ON AN EXPEDITED SCHEDULE HERE.
6 AND I THINK THE SAME LOGIC APPLIES. WE NEED TO GET
7 THESE DOCUMENTS OUT, WE NEED TO GET THEM OUT
8 QUICKLY AND WE NEED TO GET THEM REVIEWED BY THE
9 PRODUCING REVIEWING PARTY, AND THE MOST EFFICIENT
10 WAY TO DO THAT IS UNDER A SINGLE TIER AND NOT HAVE
11 A LOT OF PROCESS.

12 THE COURT: ALL RIGHT. THANK YOU VERY
13 MUCH.

14 MS. MAROULIS?

15 MS. MAROULIS: YOUR HONOR, MS. HUTNYAN
16 WHO HAS BEEN NEGOTIATING THE ORDER WILL ADDRESS
17 THESE ISSUES.

18 THE COURT: COUNSEL.

19 MS. HUTNYAN: GOOD MORNING, YOUR HONOR.

20 THE COURT: GOOD MORNING.

21 MS. HUTNYAN: I THOUGHT I WOULD TAKE EACH
22 OF THE ISSUES THAT MR. SELWYN RAISED IN TURN.

23 THE FIRST IS ISSUE IS THE NEW TIER.
24 THERE IS NO NEW TIER. THE INTERIM PROTECTIVE ORDER
25 ACTUALLY HAS TWO TIERS THAT ARE ALMOST EXACTLY

1 ALIKE THE ONE SAMSUNG WANTS.

2 IT HAS A LOWER LEVEL CONFIDENTIAL TIER
3 THAT DOES NOT REQUIRE ANY DISCLOSURE, IT JUST
4 REQUIRES THE EXPERTS TO SIGN ON TO THE PROTECTIVE
5 ORDER.

6 AND IT HAS A HIGHER TIER WHICH IS
7 CONSISTENT WITH THE HIGHER LEVEL OF PROTECTION
8 NEEDED FOR THE DOCUMENTS AS THE DISCLOSURE
9 PROVISION DOES.

10 SO SAMSUNG'S PROPOSAL WOULD CHANGE THE
11 DEFINITIONS A LITTLE BIT. IN PARTICULAR, IT WOULD
12 ALLOW US TO HAVE ALL OF OUR CONFIDENTIAL DOCUMENTS
13 PROTECTED FROM BEING DISCLOSED TO THE EMPLOYEES OR
14 THE IN-HOUSE COUNSEL OF THE COMPETITOR.

15 BUT OTHERWISE IT'S MUCH THE SAME AS THE
16 INTERIM PROTECTIVE ORDER THAT APPLE AGREED TO AND
17 HAS BEEN USING ALL ALONG IN THIS CASE.

18 THE COURT: SO LET ME ASK YOU THIS, LET'S
19 START WITH THE STATUS QUO.

20 UNDER THE CURRENT INTERIM PROTECTIVE
21 ORDER, WALK ME THROUGH HOW GIVEN DOCUMENT
22 DESIGNATION WOULD AFFECT WHO AT APPLE COULD SEE
23 YOUR INFORMATION.

24 MS. HUTNYAN: SO UNDER THE CURRENT ORDER,
25 PARAGRAPHS 2.2 AND 2.8 SET UP THE TWO TIERS. THEY

1 DEFINE WHAT IS CONFIDENTIAL AND WHAT IS HIGHLY
2 CONFIDENTIAL, ATTORNEY'S EYES ONLY.

3 AND THEN PARAGRAPH 5 IS THE ONE THAT SAYS
4 PERSONS MUST DESIGNATE THESE THINGS IN GOOD FAITH.

5 PARAGRAPH 6.1 PROVIDES A PROCEDURE FOR
6 CHALLENGING CURRENT DESIGNATION. SO IT WOULD BE
7 SIMILAR AND IT WOULD ALLOW FOR MEET AND CONFER
8 PROCESS.

9 PARAGRAPH 7.2 AND 7.3 ARE THE ONES THAT
10 SAY WHAT THOSE DESIGNATED DOCUMENTS, YOU KNOW, WHO
11 CAN SEE THOSE DESIGNATED DOCUMENTS.

12 AND SO 7.2, SINCE EXPERTS ARE KIND OF KEY
13 IN THIS EXERCISE, THAT WOULD BE 7.2(C), AND IT
14 SAYS, EXPERTS AS DEFINED IN THIS ORDER OF THE
15 RECEIVING PARTY TO WHOM DISCLOSURE IS REASONABLY
16 NECESSARY FOR THIS LITIGATION AND WHO HAVE SIGNED
17 THE ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND.

18 SO THAT'S ALL THAT'S REQUIRED OF THEM.

19 7.3 ON THE OTHER HAND, SUBSECTION C,
20 SAYS, EXPERTS OF THE RECEIVING PARTY ONE, TO WHOM
21 DISCLOSURE IS REASONABLY NECESSARY TO THIS
22 LITIGATION; TWO, WHO HAVE SIGNED AN ACKNOWLEDGEMENT
23 AND AGREEMENT TO BE BOUND, EXHIBIT A; AND THREE, AS
24 TO WHOM THE PROCEDURE SET FORTH IN PARAGRAPH 7.4
25 SUBSECTION (A) (2) BELOW HAVE BEEN FOLLOWED.

1 AND THAT'S THE DISCLOSURE REQUIREMENT.

2 THE COURT: AND WHEN YOU SAY DISCLOSURE
3 REQUIREMENT, FORGIVE ME, CAN YOU ARTICULATE EXACTLY
4 WHAT YOU ARE REFERRING TO?

5 MS. HUTNYAN: ABSOLUTELY.

6 SO 7.4(A)(2) SETS FORTH THAT UNLESS IT'S
7 OTHERWISE SHOWN BY THE COURT OR AGREED TO IN
8 WRITING BY THE OTHER PARTY, A PARTY THAT SEEKS TO
9 DISCLOSE TO AN EXPERT ANY INFORMATION OR ITEM --
10 AND I'M PARAPHRASING, I'M NOT QUOTING -- ANY
11 INFORMATION OR ITEM DESIGNATED AT THE HIGHER LEVEL,
12 MUST FIRST MAKE A WRITTEN REQUEST TO THE
13 DESIGNATING PARTY THAT IDENTIFIES THE GENERAL
14 CATEGORIES OF HIGHLY CONFIDENTIAL, ATTORNEY'S-EYES
15 ONLY INFORMATION THAT THE RECEIVING PARTY SEEKS
16 PERMISSION TO DISCLOSE TO THE EXPERT.

17 TWO, SETS FORTH THE FULL NAME OF THE
18 EXPERT AND THE CITY AND STATE OF HIS OR HER PRIMARY
19 RESIDENCE.

20 THREE, ATTACHES A COPY OF THE EXPERT'S
21 CURRENT RESUME.

22 FOUR, IDENTIFIES THE EXPERT'S CURRENT
23 EMPLOYERS.

24 FIVE, IDENTIFIES EACH PERSON OR ENTITY
25 FROM WHOM THE EXPERT HAS RECEIVED COMPENSATION OR

1 FUNDING FOR WORK IN HIS OR HER AREAS OF EXPERTISE,
2 OR TO WHOM THE EXPERT HAS PROVIDED PROFESSIONAL
3 SERVICES INCLUDING IN CONNECTION WITH THE
4 LITIGATION AT ANY TIME DURING THE PROCEEDING BY
5 PEERS.

6 AND SIX, IDENTIFIES BY NAME AND NUMBER OF
7 THE CASE, FILE DATE, LOCATION OF COURT, ANY
8 LITIGATION IN CONNECTION WITH WHICH THE EXPERT HAS
9 OFFERED EXPERT TESTIMONY, INCLUDING THROUGH
10 DECLARATION, REPORT OR TESTIMONY OR DEPOSITION AT
11 TRIAL FOR THE PRECEDING FIVE YEARS.

12 THE COURT: ALL RIGHT.

13 SO LET'S TAKE AN EXAMPLE JUST SO I MAKE
14 SURE I UNDERSTAND PRECISELY HOW THIS WORKS IN
15 PRACTICE.

16 THE TWO TIERS, THE FIRST TIER IN THE
17 CURRENT INTERIM ORDER IS DESIGNATED CONFIDENTIAL;
18 IS THAT RIGHT?

19 MS. HUTNYAN: THAT'S RIGHT.

20 THE COURT: THE SECOND TIER IS AEO; AM I
21 RIGHT ABOUT THAT?

22 MS. HUTNYAN: IT'S HIGHLY CONFIDENTIAL,
23 ATTORNEY'S EYES ONLY.

24 THE COURT: LET'S USE THE AEO LABEL FOR
25 EFFICIENCY SAKE.

1 APPLE PRODUCES A DOCUMENT TO SAMSUNG
2 THAT'S LABELED AEO, ALL RIGHT. SAMSUNG WISHES TO
3 SHARE THAT DOCUMENT WITH ONE OF ITS EXPERTS, OKAY.

4 UNDER THE PROVISIONS YOU'VE JUST
5 DESCRIBED TO ME, SAMSUNG WOULD BE REQUIRED FIRST TO
6 IDENTIFY TO APPLE WHO THIS EXPERT WAS; AM I RIGHT?

7 MS. HUTNYAN: UNLESS THEY WANTED TO -- IF
8 IT WASN'T A DOCUMENT THAT SHOULD PROPERLY BE
9 DESIGNATED AT THAT HIGHER LEVEL, THEN WE COULD
10 INITIATE A PROCESS TO --

11 THE COURT: RIGHT.

12 YOU COULD ALL FIGHT ABOUT THAT IN THE
13 DESIGNATIONS, IF IT'S REASONABLE.

14 MS. HUTNYAN: YES.

15 THE COURT: LET'S ASSUME THAT MERCIFULLY
16 IS NOT AN ISSUE IN THIS HYPOTHETICAL.

17 SO GOING BACK TO THE HYPOTHETICAL, YOU'VE
18 GOT AN AEO DOC FROM APPLE, YOU WANT TO SHOW IT TO
19 AN EXPERT. BEFORE YOU DO THAT YOU HAVE TO TELL
20 APPLE WHO THE EXPERT IS WHAT THEIR RESUME LOOKS
21 LIKE, THEIR HISTORY AND SO ON AND SO FORTH.

22 APPLE THEN PRESUMABLY HAS A PERIOD OF
23 TIME IN WHICH TO OBJECT TO THAT DISCLOSURE.

24 AND ARE YOU ALSO REQUIRED IN THAT
25 HYPOTHETICAL OR SCENARIO TO IDENTIFY WHAT AEO

1 DOCUMENT YOU WISH TO SHARE?

2 MS. HUTNYAN: IT IS THE CATEGORIES.

3 THE COURT: BECAUSE THAT'S WHERE I'M --
4 I'M SORRY.

5 MS. HUTNYAN: IT SAYS, IDENTIFIES THE
6 GENERAL CATEGORIES OF HIGHLY CONFIDENTIAL
7 ATTORNEY'S EYES ONLY INFORMATION THAT THE RECEIVING
8 PARTY SEEKS PERMISSION TO DISCLOSE TO THE EXPERT.

9 THE COURT: SO THAT'S A LITTLE SQUISHY,
10 ISN'T IT?

11 SO YOU DON'T HAVE TO SAY I WANT TO SHOW
12 BATES NUMBER 24562, YOU SIMPLY NEED TO DESCRIBE THE
13 GENERAL CATEGORY WITHIN WHICH THAT DOCUMENT FALLS,
14 FOR EXAMPLE, FINANCIAL DATA, SOURCE CODE
15 SPECIFICATIONS OR WHATEVER IT MAY BE.

16 MS. HUTNYAN: I THINK THAT'S A REASONABLE
17 INTERPRETATION, YES.

18 THE COURT: SO IN THIS SCENARIO THEN, AS
19 LONG AS THE EXPERT TO WHOM YOU WANT TO MAKE THE
20 DISCLOSURE IS IDENTIFIED, DISCLOSED, NO OBJECTIONS
21 IS RAISED, YOU ARE FREE TO MAKE THE DISCLOSURE,
22 RIGHT?

23 MS. HUTNYAN: IF THERE'S NO OBJECTION,
24 YES.

25 THE COURT: OKAY.

1 IF THERE IS AN OBJECTION, YOU FIGHT ABOUT
2 IT. IF YOU HAVE A PROBLEM, YOU FILE A MOTION AND I
3 GET TO DEAL WITH IT. OKAY.

4 IF THE DOCUMENT YOU WISH TO SHARE WITH
5 YOUR EXPERT IS NOT AEO BUT RATHER SIMPLY
6 CONFIDENTIAL, UNDER YOUR HIERARCHY I TAKE IT THERE
7 IS NO OBLIGATION ON YOUR PART TO DISCLOSE THE
8 EXPERT OR TO PROVIDE APPLE WITH AN OPPORTUNITY TO
9 OBJECT; IS THAT FAIR?

10 MS. HUTNYAN: THAT'S CORRECT.

11 THE COURT: OKAY. ALL RIGHT.

12 IF THAT'S HOW THINGS WORK UNDER THE
13 CURRENT ORDER, WHAT CHANGE DO YOU WANT?

14 MS. HUTNYAN: THAT'S THE THING. IT'S NOT
15 A CHANGE. IT'S --

16 THE COURT: WELL, WHAT DIFFERENCE DO I
17 MAKE? THERE'S OBVIOUSLY SOME DELTA OR WE WOULDN'T
18 HAVE A DEBATE HERE.

19 MS. HUTNYAN: PART OF IT IS THE REST OF
20 THE CORRECTIVE ORDER.

21 SAM AND I TALKED FOR WEEKS ABOUT HOW TO,
22 THE CROSS USE PROVISION AND THINGS, SO PART OF THAT
23 IS ENTERING THE REST OF THE ORDER.

24 BUT THE DIFFERENCE HERE IS THE
25 DEFINITIONS UNDER THE INTERIM PROTECTIVE ORDER, THE

1 CONFIDENTIAL INFORMATION IS JUST TANGIBLE THINGS
2 THAT QUALIFY FOR PROTECTION UNDER FEDERAL RULE OF
3 CIVIL PROCEDURE 26(C).

4 THE COURT: YOU ARE BASICALLY
5 INCORPORATING BY REFERENCE A TRADE SECRET
6 DEFINITION UNDER RULE 26?

7 MS. HUTNYAN: UMM, I THINK IT'S NOT
8 LIMITED TO TRADE SECRETS, IT'S THINGS THAT QUALIFY
9 FOR PROTECTION. SO IT'S ARGUABLY THINGS THAT
10 AREN'T FULL OF TRADE SECRETS.

11 BUT 2.8 IS INFORMATION OR ITEMS THAT ARE
12 EXTREMELY SENSITIVE CONFIDENTIAL INFORMATION
13 DISCLOSURE OF WHICH TO ANOTHER PARTY OR NONPARTY
14 WOULD CREATE A SUBSTANTIAL RISK OF SERIOUS HARM
15 THAT COULD NOT BE AVOIDED BY LESS ASSERTIVE MEANS.

16 THE COURT: THE CROWN JEWELS.

17 MS. HUTNYAN: YES.

18 SO IT'S A LITTLE BIT DIFFERENT THAN THE
19 ONE WE ARE PROPOSING BOTH IN THE DEFINITION THAT WE
20 HAVE PROPOSED OF WHAT YOU QUALIFY. OURS IS BROADER
21 TO ALLOW MORE THINGS TO BE AEO, BUT THEN --

22 THE COURT: SO YOU WANT TO EXPAND THE
23 DEFINITION OF AEO TO BROADEN THE CATEGORY OF
24 DOCUMENTS THAT ARE SUBJECT TO THIS HIGHER
25 DISCLOSURE REQUIREMENT; IS THAT RIGHT?

1 MS. HUTNYAN: A LITTLE BIT. JUST TO
2 CREATE A SUBSTANTIAL RISK OF SERIOUS HARM.

3 I DON'T THINK THIS IS A HUGEY MEANINGFUL
4 DISTINCTION, JUST HAPPENS TO BE A SLIGHTLY
5 DIFFERENT FORMULATION THAT'S ARGUABLY BROADER. BUT
6 I THINK WE MIRROR THE CONFIDENTIAL LEVEL EXACTLY.

7 BUT THE MAIN DIFFERENCE BETWEEN THE
8 INTERIM PROTECTIVE ORDER AT THIS POINT AND THE ONE
9 WE ARE PROPOSING IS THAT IN OURS WE WOULD NOT HAVE
10 IN-HOUSE COUNSEL OR EMPLOYEES OF THE COMPETITOR
11 ABLE TO SEE ANYTHING THAT WAS CONFIDENTIAL AT
12 EITHER LEVEL.

13 WHICH THAT'S ONE OF THE RATIONALS I THINK
14 THAT APPLE HAD IN, OR DESIGNATING THINGS, BECAUSE
15 THAT'S THE ONLY WAY TO PROTECT IT FROM OUR
16 EMPLOYEES SEEING THEIR STUFF.

17 THE COURT: LET ME BACK UP FOR A MOMENT,
18 AND FORGIVE ME FOR NOT BEING ON TOP OF THIS AS
19 CAREFULLY AS I SHOULD BE.

20 MS. HUTNYAN: OUR FAULT, YOUR HONOR.

21 THE COURT: SO UNDER THE CURRENT
22 PROTECTIVE ORDER, AGAIN, I WANT TO UNDERSTAND THE
23 STATUS QUO AND UNDERSTAND THE DELTA BETWEEN THE
24 STATUS QUO.

25 UNDER THE CURRENT PROTECTIVE ORDER,

1 IN-HOUSE COUNSEL ARE AMONG THOSE -- ARE THEY AMONG
2 THOSE WHO ARE QUALIFIED TO SEE AEO DESIGNATED
3 MATERIAL?

4 MS. HUTNYAN: NOT AEO.

5 THE COURT: OKAY.

6 SO IF APPLE IS DESIGNATING DOCUMENTS AEO,
7 UNDER THE CURRENT PROTECTIVE ORDER NO IN-HOUSE
8 COUNSEL FOR SAMSUNG ARE ENTITLED TO SEE IT; IS THAT
9 FAIR?

10 MS. HUTNYAN: LET ME JUST DOUBLE CHECK.

11 SO RIGHT. HOUSE COUNSEL CAN SEE -- THIS
12 IS DIRECTORS AND EMPLOYEES CAN SEE CONFIDENTIAL BUT
13 NOT HIGHLY CONFIDENTIAL.

14 THE COURT: OKAY.

15 SO IN THAT SENSE HOUSE COUNSEL, IN-HOUSE
16 COUNSEL ARE NO DIFFERENT THAN OTHER EMPLOYEES OF
17 THE COMPANY.

18 MS. HUTNYAN: THAT'S RIGHT.

19 THE COURT: THEY ARE ENTITLED TO SEE THE
20 CONFIDENTIAL INFORMATION, THEY ARE NOT ENTITLED TO
21 SEE THE AEO MATERIAL; HAVE I GOT THAT RIGHT?

22 MS. HUTNYAN: I SEE.

23 IN HIGHLY CONFIDENTIAL, ACTUALLY IT
24 ALLOWS DESIGNATED HOUSE COUNSEL OF THE RECEIVING
25 PARTY WHO HAS NO INVOLVEMENT IN COMPETITIVE

1 DECISION MAKING, ET CETERA, SO THERE'S SOME CARVE
2 OUT FOR SOME IN-HOUSE COUNSEL.

3 THE COURT: SO EVEN UNDER THE CURRENT
4 PROTECTIVE ORDER, IN-HOUSE COUNSEL HAVE ACCESS TO
5 AEO, ASSUMING OTHERWISE QUALIFIED?

6 MS. HUTNYAN: YES.

7 THE COURT: OKAY. SO THAT'S THE CURRENT
8 SITUATION.

9 AS TO -- APART FROM CHANGING THE
10 DEFINITION OF AEO SLIGHTLY TO NOT SLIGHTLY, WHAT
11 CHANGE WITH RESPECT TO ACCESS FOR IN-HOUSE COUNSEL
12 ARE YOU PROPOSING?

13 MS. HUTNYAN: SO IN-HOUSE COUNSEL WOULD
14 NOT BE ABLE TO SEE CONFIDENTIAL OR HIGHLY
15 CONFIDENTIAL TIER OF INFORMATION, THEY WOULD ONLY
16 BE ABLE --

17 THE COURT: THAT WOULD OBVIOUSLY APPLY TO
18 SAMSUNG IN-HOUSE COUNSEL AS WELL AS TO APPLE.

19 MS. HUTNYAN: YES, YOUR HONOR.

20 THE COURT: SO YOU BASICALLY WANT TO,
21 FORGIVE ME FOR THIS CHARACTERIZATION, YOU WANT TO
22 PUT ADDITIONAL HANDCUFFS ON WHAT YOUR IN-HOUSE
23 CLIENTS CAN SEE? YOU WISH TO FURTHER RESTRICT
24 THEIR ABILITY TO REVIEW MATERIAL?

25 YOU ARE SAYING THEY SHOULD NOT HAVE

1 ACCESS TO CONFIDENTIAL INFORMATION AT ALL.

2 MS. HUTNYAN: WELL, THAT'S WHERE WE WOUND
3 UP. I MEAN, I THINK THAT WASN'T THE INTENT OF
4 THIS. I MEAN --

5 THE COURT: THE EFFECT.

6 MS. HUTNYAN: RIGHT. THE EFFECT WOULD
7 BE -- THAT WASN'T THE INTENT.

8 THE INTENT IS TO HAVE -- TO NOT HAVE A
9 SITUATION WHERE WE HAVE ONE HUMONGOUS TIER OF STUFF
10 WHERE THE PARTIES CAN DESIGNATE EVERYTHING UNDER
11 THAT AND THEN THERE'S NO WAY TO DESIGNATE THAT ONE
12 OTHER THAN --

13 THE COURT: RIGHT.

14 BUT UNDER THE SO CALLED SINGLE TIER
15 APPROACH THAT APPLE IS PROPOSING, AND AS I
16 UNDERSTOOD YOUR CHARACTERIZATION OF IT, IN-HOUSE
17 COUNSEL HAS ACCESS TO THAT INFORMATION IF THEY
18 OTHERWISE QUALIFY; IS THAT RIGHT?

19 MS. HUTNYAN: I THOUGHT WE WERE TALKING
20 ABOUT THE INTERIM PROTECTIVE ORDER THE WHOLE TIME.
21 UNDER THEIR PROPOSAL, IN-HOUSE COUNSEL WOULD NOT BE
22 ABLE TO SEE ANYTHING.

23 THE COURT: THANK YOU. YOU ARE
24 ABSOLUTELY RIGHT. I WAS MISCHARACTERIZING THE
25 PROPOSAL.

1 JUST, AGAIN, TO PUT A VERY FINE POINT ON
2 THIS BECAUSE YOU APPARENTLY HAVEN'T ALL BEEN ABLE
3 TO REACH AGREEMENT ON THIS AND I NEED TO MAKE A
4 DECISION.

5 YOUR PROPOSAL ON IN-HOUSE COUNSEL -- IS
6 THE ISSUE IN-HOUSE COUNSEL ACCESS IN PARTICULAR?
7 OR ARE THERE OTHER INDIVIDUALS FOR WHOM YOU HAVE A
8 DIFFERENCE OF OPINION WITH APPLE ABOUT THE ACCESS?

9 MS. HUTNYAN: WELL, APPLE'S POSITION IS
10 THAT THERE SHOULDN'T BE A CONFIDENTIAL TIER.

11 AND SO THE DIFFERENCE IN TERMS OF WITH OUR
12 CONFIDENTIAL TIER OR THEIR LACK OF CONFIDENTIAL
13 TIER, THE DELTA BETWEEN THOSE TWO OPTIONS WOULD BE
14 MOCK JURORS, WHICH I DON'T THINK THAT'S THE ISSUE,
15 AND THEN THE EXPERTS. BECAUSE IT WOULD EFFECTIVELY
16 CREATE THIS DISCLOSURE REQUIREMENT FOR ANY EXPERT
17 TO SEE ANYTHING THAT ISN'T PUBLIC IN THIS CASE.

18 THE IN-HOUSE COUNSEL, THAT SEEMS TO BE
19 KIND OF A NONISSUE. BOTH OF US HAD AGREED WHEN WE
20 WERE DISCUSSING WHETHER IT SHOULD BE ONE OR TWO
21 TIERS, THERE'S NEVER A CONCERN OF WHETHER IN-HOUSE
22 COUNSEL OR EMPLOYEES COULD SEE IT.

23 I THINK THE PARTIES AGREE THAT
24 CONFIDENTIAL DOCUMENTS, INTERNAL DOCUMENTS TO THESE
25 COMPANIES, DON'T NEED TO BE SHOWN TO THE OTHER

1 SIDE'S IN-HOUSE PEOPLE OR THEIR EMPLOYEES. I DON'T
2 THINK THAT'S WHERE THE ISSUE IS.

3 THE COURT: ALL RIGHT. I THINK I
4 UNDERSTAND THE DIFFERENCE NOW.

5 ALL RIGHT. WELL, HAVING EXPLAINED TO ME
6 WHAT THE DIFFERENCES ARE BETWEEN THOSE TWO,
7 PROPOSALS, I WOULD LIKE YOUR VIEW ON EXACTLY WHY
8 APPLE'S SUGGESTION -- LOOK, ALL YOU NEED TO DO IS
9 MAKE THE DISCLOSURE TO THE EXPERTS AND THEY CAN
10 HAVE ACCESS TO THE SAME INFORMATION THEY WOULD
11 OTHERWISE HAVE ACCESS TO UNDER YOUR PROPOSAL.

12 WHY IS THAT A PROBLEM FOR YOU? WHAT'S
13 THE BURDEN IN THAT?

14 MS. HUTNYAN: OKAY.

15 SO I THINK THE EASIEST WAY TO ILLUSTRATE
16 THAT HERE FOR YOU IS TO SUGGEST THAT WHEN YOU GET A
17 CHANCE, AND I UNDERSTAND THE COURT HASN'T HAD THAT
18 OPPORTUNITY YET PERHAPS, BUT TO LOOK AT EXHIBITS B
19 THROUGH K OF MY DECLARATION. THAT GAVE YOU A BUNCH
20 OF EXAMPLES THAT YOU CAN THUMB THROUGH.

21 YOU CAN SEE IT'S PUBLIC INFORMATION THAT
22 HAS BEEN DESIGNATED AEO THAT OUR EXPERTS CAN'T SEE
23 WITHOUT DISCLOSURE. IT'S --

24 THE COURT: BUT IF IT'S PUBLIC
25 INFORMATION, AND THE PROBLEM IN THAT SCENARIO IS

1 THE ACCURACY OF THE DESIGNATION, IT'S NOT THE
2 STRUCTURE OF THE ORDER.

3 MS. HUTNYAN: RIGHT.

4 BUT IF PEOPLE ARE COMPLAINING ABOUT THERE
5 WOULD BE THIS BURDEN IN DE DESIGNATING AND THEY ARE
6 REFUSING TO DE DESIGNATE ANY MATERIALS, OBVIOUSLY
7 WE ARE GOING TO HAVE LITIGATION OVER THAT.

8 E-MAILS FROM 2003, 2006, THOSE CANNOT BE
9 AT A HIGHLY CONFIDENTIAL LEVEL THAT MERITS ALL THAT
10 ADDITIONAL PROTECTION. IT JUST DOESN'T OUTWEIGH
11 THE BURDEN THAT A PARTY NORMALLY WOULD HAVE TO MEET
12 TO SHOW EXCEPTIONAL CIRCUMSTANCES ALLOWING THEM TO
13 INVADE OUR WORK PRODUCT.

14 THAT'S WHY THE INTERIM PROTECTIVE ORDER
15 IS SET UP THE WAY IT IS SO THAT THERE'S A LOWER
16 LEVEL AND EVERYBODY RECOGNIZES FOR THOSE ADDITIONAL
17 THINGS THEY DON'T GET THOSE PROTECTIONS, IT'S
18 REALLY FOR THE HIGHLY CONFIDENTIAL THINGS THEY
19 SHOULD HAVE THOSE PROTECTIONS.

20 THE COURT: RIGHT.

21 I UNDERSTAND THE EFFECT AND THE ORDER IN
22 THE SCENARIO YOU DESCRIBED MAY BE DIFFERENT
23 DEPENDING ON WHICH ORDER IS ADOPTED, BUT IT SEEMS
24 TO ME IF THE CORE ISSUE IS THE QUALITY OF THE
25 ACCURACY OF THE DESIGNATIONS, YOU ARE GOING TO BE

1 DEBATING THAT EITHER WAY, RIGHT?

2 MS. HUTNYAN: WELL, IF THE COURT WERE TO
3 TAKE APPLE'S PROPOSAL WHICH IS TO NOT HAVE A
4 CONFIDENTIAL TIER AT ALL, IT WOULD MAKE IT
5 DIFFICULT FOR US TO EVEN CHALLENGE THE DESIGNATION
6 BECAUSE WE WOULD HAVE TO ASK FOR A MODIFICATION OF
7 THE PROTECTIVE ORDER TO ADD A CONFIDENTIAL TIER OR
8 WE WOULD HAVE TO ASK FOR COMPLETE DE DESIGNATION OF
9 THE DOCUMENT WHEN THESE ARE INTERNAL DOCUMENTS THAT
10 SHOW, YOU KNOW, A FEW YEARS AGO WHAT THEY ARE
11 TALKING ABOUT WITH RESPECT TO THE DESIGN OR
12 FUNCTIONALITY OF A PRODUCT AND REALLY SHOULD BE A
13 CONFIDENTIAL TIER.

14 THE COURT: ALL RIGHT.

15 ANY OTHER POINTS YOU WISH TO MAKE ON THIS
16 ISSUE?

17 MS. HUTNYAN: I CAN ADDRESS SOME OF THE
18 OTHER POINTS THAT MR. SELWYN MADE, IF IT WOULD
19 PLEASE THE COURT.

20 THE COURT: GO AHEAD.

21 MS. HUTNYAN: AS FAR AS THE ULTERIOR
22 MOTIVE ON SHERMAN, I THINK THIS IS KIND OF AMUSING.

23 ABSOLUTELY IT'S ABOUT SHERMAN, IT'S ABOUT
24 EVERY EXPERT IT COULD AFFECT. SHERMAN BECAME THE
25 POSTER CHILD FOR THE OVER DESIGNATION IS TRULY A

1 PROBLEM. AND WE ALMOST FELL FOR NOT INCLUDING THAT
2 DESIGNATION, WE ALMOST AGREED TO SOMETHING BECAUSE
3 WE THOUGHT OH, WELL MAYBE THAT ISN'T A BIG DEAL,
4 AND IT TURNED OUT IT WAS A REALLY BIG DEAL.

5 SO THIS THING ABOUT THE THINLY VEILED
6 EFFORT TO HIDE SHERMAN, IT'S ABSOLUTELY ABOUT
7 SHERMAN.

8 THE COURT: SO YOU ARE SEEKING -- WE ARE
9 GOING TO GET TO THAT IN A MOMENT. YOU ARE SEEKING
10 RECONSIDERATION ON MY ORDER OF SHERMAN?

11 MS. HUTNYAN: NO, IT'S A CLARIFICATION.

12 THE COURT: WELL, CLARIFICATION VERSUS
13 RECONSIDERATION IS A FINE LINE.

14 WE ARE GOING GET TO THAT. I DON'T WANT
15 TO JUMP AHEAD OF THINGS. IT SEEMS TO ME YOU ALL
16 HAVE A PROBLEM WITH MY DECEMBER 22ND ORDER; IS THAT
17 FAIR?

18 MS. HUTNYAN: WE THINK THERE'S
19 AMBIGUITIES IN IT, AND I'M NOT PREPARED TO ADDRESS
20 THAT IN ANY DETAIL.

21 MS. MAROULIS: YOUR HONOR, I WILL ADDRESS
22 THAT ONE.

23 THE COURT: ALL RIGHT. WE WILL GET TO
24 THAT.

25 MS. HUTNYAN: YES.

1 BUT I'M JUST SAYING, TO SUGGEST THAT WE
2 WERE HIDING SHERMAN IN OUR MOTION FOR ENTRY OF
3 PROTECTIVE ORDER OR THAT HE ISN'T -- YOU KNOW, WE
4 WERE KEEPING IT A SECRET THAT HE WAS RELEVANT TO
5 THIS.

6 NO, THAT'S THE BEST ILLUSTRATION THAT I
7 COULD POSSIBLY PULL OUT TO SHOW WHY YOU HAVE TO
8 HAVE INITIAL TIER, AND IT'S LIKE THE INTERIM
9 PROTECTIVE ORDER.

10 AND THEN I'M NOT SURE WHAT MR. SELWYN WAS
11 SAYING ABOUT THERE BEING A PROBLEM IN NOT ALLOWING
12 IN-HOUSE COUNSEL TO SEE DOCUMENTS THAT ARE
13 CONFIDENTIAL OR HIGHLY CONFIDENTIAL.

14 THIS IS THE FIRST I'VE EVER HEARD THAT
15 THERE WAS SUCH AN ISSUE. AND AS THEY SAID, WE ARE
16 LOCKED IN RIVALRY. AND WHEN YOU HAVE COMPETITORS
17 IN A LAWSUIT, YOU DO HAVE TWO TIERS. AND I THINK
18 APPLE WOULD CONCEDE THEY DO NOT WANT IN-HOUSE
19 PEOPLE TO SEE THEIR CONFIDENTIAL LOWER LEVEL
20 CONFIDENTIAL MATERIALS, SO I DON'T ACTUALLY THINK
21 THAT'S AN ISSUE.

22 THE ITC AND THE IMPLICATION OF THE CROSS
23 USE AGREEMENT. ALL THE CROSS USE AGREEMENT DOES IN
24 OUR CASE AND WHAT WE AGREED TO, THE PROVISION WE
25 HAD AGREED TO, IS THAT IT ALLOWS DOCUMENTS THAT ARE

1 PRODUCED IN THAT CASE TO AUTOMATICALLY BE DEEMED
2 PRODUCED IN THIS CASE.

3 SO IT CREATES A BODY OF DOCUMENTS THAT
4 SAYS VOILA, THESE ARE NOW PRODUCED. SO IT'S JUST
5 LIKE ANY OTHER DOCUMENTS PRODUCED IN THIS CASE, IT
6 CAN BE REDESIGNATED.

7 AND THE WAY WE HAVE IT IN OUR PROPOSED
8 ORDER WOULD BE TO LET ALL OF THOSE COME IN BECAUSE
9 THEY ARE ALL DESIGNATED THE SAME WAY IN THE ITC,
10 AEO. AND IF THERE IS SOME KIND OF PROBLEM, WE WILL
11 REDESIGNATE IT AS NECESSARY.

12 THE COURT: WELL, HOW WOULD YOU HAVE THE
13 WHOLESALE OF RE DESIGNATION IF THEY ARE LABELED AEO
14 IN THE ITC PROCEEDING?

15 EFFECTIVELY, UNDER YOUR PROPOSAL THERE
16 WOULD BE A REQUIREMENT TO REASSESS THAT LABEL AS TO
17 EACH AND EVERY DOCUMENT, RIGHT.

18 MS. HUTNYAN: WELL, I JUST DON'T THINK
19 THAT YOU NEED TO DO THAT.

20 I MEAN, FOR THE VAST QUANTITY OF
21 DOCUMENTS, AND WE ARE GOING TO SHOW YOU SOME
22 EXAMPLES OF WHAT'S BEEN PRODUCED IN THIS CASE. FOR
23 PROBABLY HUNDREDS OF THOUSANDS OF PAGES, THERE'S NO
24 NEED TO BOTHER WITH THEM, FRANKLY.

25 SO THERE'S NO NEED TO MEET AND CONFER AND

1 DECIDE WHETHER THINGS BE DESIGNATED BECAUSE THEY
2 ARE USELESS DOCUMENTS.

3 THE COURT: THAT'S AN INTERESTING
4 CONCESSION.

5 MS. HUTNYAN: WELL, MINE.

6 I THINK THE REALITY IS YOU DO YOUR BEST,
7 NOT KNOWING ANYTHING, TO CREATE CATEGORIES THAT ARE
8 DEEMED RELEVANT. AND WITHIN THE THINGS THAT ARE
9 PRODUCED PURSUANT TO THOSE THINGS, IF EVERYBODY IS
10 DOING IT IN GOOD FAITH THEN THINGS COME BACK THAT
11 AREN'T USEFUL TO YOUR CASE.

12 YOU COULD GET THOUSANDS OF DOCUMENTS THAT
13 YOU ARE NOT GOING TO USE AT TRIAL, YOU ARE NOT
14 GOING TO SHOW YOUR EXPERT. YOU SIFT THROUGH AND
15 YOU FIND THE ONES YOU CARE ABOUT.

16 BUT THIS WHOLE BUGABOO ABOUT OH, WE NEED
17 TO REDESIGNATE EVERYTHING FOR THE SAKE OF RE
18 DESIGNATION. THAT HASN'T HAPPENED WITH THE INTERIM
19 PROTECTIVE ORDER.

20 WE HAVE HAD THE TWO TIERS ALL ALONG.
21 THEY'VE BEEN OVER DESIGNATING LIKE CRAZY. THEY
22 ADMITTED IN THEIR BRIEFING, THEY STATED VIRTUALLY
23 EVERY DOCUMENT IN THIS CASE IS AEO. HAVE WE HAD
24 LITIGATION OF THAT? NO. IT'S JUST A HANDFUL OF
25 THINGS THAT WE NEED TO BE ABLE TO WORK WITH AND

1 THAT'S WHAT PROTECTIVE ORDERS ARE FOR TO STREAMLINE
2 LITIGATION TO ALLOW THE PARTIES TO SHOW PEOPLE WHAT
3 THEY NEED TO, TO MAKE THEIR CASE.

4 SO THE CROSS USE, IT'S SEAMLESS. IT
5 COMES IN, IN THE AEO. IF THERE'S SOMETHING MORE WE
6 NEED TO TALK ABOUT FROM THAT, AND IF WE'RE NOT OVER
7 DESIGNATING THEN YEAH, THERE'S THIS LOWER TIER.
8 WITHOUT A LOWER TIER THERE WILL BE NO TALKING.

9 THE COURT: SO FIRST OF ALL, CAN YOU
10 EXPLAIN TO ME WHAT ITC DOCUMENTS ARE WE TALKING
11 ABOUT? WHAT IS THE CASE OR WHAT ARE THE CASES THAT
12 YOU ARE REFERRING TO? WHAT'S THE BODY?

13 MS. MAROULIS: YOUR HONOR, THERE ARE TWO
14 PARALLEL ITC PROCEEDINGS WHERE EACH COMPANY
15 INITIATED INVESTIGATION AGAINST THE OTHER.

16 SO IN THIS CASE THE CLAIMS THAT GO BOTH
17 WAYS, AND ITC THEY ARE TWO SEPARATE PROCEEDINGS,
18 THEY HAVE THE 794 INVESTIGATIONS AND 796
19 INVESTIGATION.

20 THERE'S OVERRIDING SUBJECT MATTER, BUT
21 THE PATENTS ASSERTED ARE DIFFERENT, BOTH UTILITY
22 AND DESIGN.

23 THE COURT: ALL RIGHT.

24 SO UNDER THE CROSS USE AGREEMENT THE
25 PARTIES HAVE ENTERED INTO IN THIS CASE, ALL THE

1 DOCUMENTS PRODUCED IN THE 794N OR THE 796 MATTERS
2 ARE DEEMED PRODUCED IN THIS CASE; IS THAT CORRECT?

3 MS. MAROULIS: THAT'S CORRECT.

4 MS. HUTNYAN: THEY WOULD BE.

5 THE COURT: OKAY.

6 AND ARE EACH OF THE DOCUMENTS -- ARE THE
7 DOCUMENTS IN EACH OF THOSE CASES SUBJECT TO A
8 DESIGNATION OF AEO? A SINGLE DESIGNATION OF AEO
9 FOR CONFIDENTIALITY PURPOSES?

10 MS. MAROULIS: IT'S MY UNDERSTANDING THAT
11 THOSE ARE CONFIDENTIAL, AEO. THERE ARE PUBLIC
12 DOCUMENTS PRODUCED AS WELL.

13 MR. JACOBS: THE LABEL TO THE ITC IS CBI,
14 CONFIDENTIAL BUSINESS INFORMATION, AND IT'S
15 STANDARD ITC PROTECTIVE ORDER THAT THEN DESIGNATES
16 THOSE EFFECTIVELY AS OUTSIDE COUNSEL ONLY.

17 THE COURT: SO AS TO THE OUTSIDE COUNSEL
18 ONLY DOCUMENTS THAT ARE PRODUCED IN THE ITC
19 ACTIONS, AND BY VIRTUE OF YOUR AGREEMENT PRODUCED
20 IN THIS CASE, IF APPLE FOR EXAMPLE, WISHED TO SHOW
21 CERTAIN OF THOSE DOCUMENTS TO THEIR OUTSIDE
22 EXPERTS, OKAY, AND LET'S ASSUME FOR THE MOMENT I
23 ADOPTED YOUR PREFERRED PROTECTIVE ORDER, HOW WOULD
24 THEY GO ABOUT DOING THAT? THEY ARE CURRENTLY
25 LABELED CBI, CORRECT? SO HOW WOULD THEY UNDERSTAND

1 WHETHER THEY HAD THE AUTHORITY TO DISCLOSE THAT
2 INFORMATION UNDER YOUR SCHEME?

3 MS. HUTNYAN: SO UNDER OUR PROTECTIVE
4 ORDER IT EXPLICITLY SAYS THAT ITEMS COMING IN FROM
5 THOSE ACTIONS WITH THAT DESIGNATION ARE
6 AUTOMATICALLY AEO.

7 THE COURT: RIGHT. SO THEY WOULDN'T BE
8 ABLE TO SHOW THEM.

9 MS. HUTNYAN: WELL, THEY WOULD HAVE TO
10 DISCLOSE, RIGHT.

11 THE COURT: RIGHT.

12 SO UNLESS -- IT SEEMS TO ME WE ARE
13 GETTING RIGHT BACK WHERE WE STARTED FROM, RIGHT?

14 IF THEY WANT TO SHOW THOSE DOCUMENTS, AS
15 YOU SAY THEY ARE DEEMED AEO UNDER YOUR SCHEME, AND
16 SO THEY WOULD HAVE TO QUALIFY THEIR EXPERTS IN THE
17 SAME WAY THAT AN EXPERT WOULD HAVE TO BE QUALIFIED
18 THROUGH ANY AEO DISCLOSURE, RIGHT?

19 MS. HUTNYAN: NO, YOUR HONOR, BECAUSE ALL
20 THEY HAVE TO DO IS SAY THIS ONE CLEARLY DOESN'T
21 MERIT THAT HIGHER LEVEL STATUS, WE HAVE A SECOND
22 TIER IN THIS CASE, YOU SHOULD DE DESIGNATE THAT,
23 SAMSUNG. WE HAVE A TALK ABOUT IT AND WE SAY YES,
24 THAT'S A SIX-YEAR OLD DOCUMENT, DOESN'T NEED TO
25 STAY AT THE HIGHER LEVEL, LET THEM SEE IT.

1 OR NOT EVEN. WE CAN JUST SAY, THIS
2 HASN'T HAPPENED A LOT IN THIS CASE. WE COULD SAY
3 EVEN THOUGH IT'S AEO, LET THEM SEE IT, IT'S NOT AN
4 ISSUE.

5 THE FACT IS APPLE HAS OBJECTED TO 14 OF
6 14 OF OUR EXPERTS IN THE ITC. THIS IS A WHOLE
7 MACHINE TRYING TO KEEP THE PARTIES FROM LITIGATING
8 THEIR CASE. AND IT SHOULDN'T BE ABOUT THAT, THERE
9 HAS TO BE A CONFIDENTIAL TIER SO THERE'S AN
10 OPPORTUNITY TO RESOLVE THOSE KINDS OF ISSUES THAT
11 NEED TO BE RESOLVED.

12 THE COURT: I UNDERSTAND YOUR POINT.

13 BUT WHAT I'M STRUGGLING TO UNDERSTAND IS
14 I'M JUST TRYING TO PUT MYSELF BACK IN THAT ROOM,
15 AND UNDERSTAND, YOU KNOW, IF I'M EITHER APPLE OR
16 SAMSUNG IN THIS SCENARIO AND I'VE GOT AN EXPERT AND
17 I'VE GOT THE SAMSUNG PROTECTIVE ORDER ISSUED BY
18 THIS COURT AND I'VE GOT DOCUMENTS I WANT TO SHOW AN
19 EXPERT THAT WERE PRODUCED IN THE ITC ACTION, IT
20 WOULD SEEM TO ME BEFORE I COULD DO THAT, UNDER YOUR
21 SCHEME I WOULD FIRST HAVE TO SECURE YOUR
22 PERMISSION, APPLE, OR YOU WOULD HAVE TO SECURE
23 APPLE'S PERMISSION IN THE REVERSE SITUATION.
24 PERMISSION WOULD HAVE TO BE SECURED BEFORE A SINGLE
25 ONE OF THOSE DOCUMENTS COULD ARE SHARED, RIGHT?

1 MS. HUTNYAN: YES. JUST UNDER THE
2 INTERIM PROTECTIVE ORDER THEY AGREED TO,
3 YOUR HONOR.

4 THE COURT: ALL RIGHT.

5 ANYTHING FURTHER YOU WISH TO ADD?

6 MS. HUTNYAN: NOT UNLESS THE COURT HAS
7 ANY MORE QUESTIONS.

8 THE COURT: THANK YOU VERY MUCH.

9 MS. HUTNYAN: THANK YOU.

10 THE COURT: ANY BRIEF REBUTTAL?

11 MR. JACOBS: SO I THINK WE DISTILLED IT.

12 THE ISSUE IS WHAT WE HAVE BEEN DOING OVER
13 THE LAST FIVE MONTHS WHICH IS OPERATING IN THE
14 SHADOW OF WHAT WE THOUGHT WOULD BE ENTERED WHICH
15 WOULD BE PARALLEL IN THE ITC IN THE DISTRICT COURT,
16 WOULD HAVE A SINGLE TIER, SO WE DESIGNATED WITH
17 THAT IN MIND.

18 AND THE ONLY PREJUDICE THAT SAMSUNG HAS
19 ARGUED IS THIS SUPPOSED INVASION OF WORK PRODUCT
20 FOR THIS INTERIM PROPOSED INTERMEDIATE CATEGORY.
21 BECAUSE IT DOES ALL DISTILL DOWN TO, SHOULD THEY BE
22 REQUIRED TO DISCLOSE THEIR EXPERTS AND GIVE US A
23 CHANCE TO VET THEM THE WAY WE DID ON JUST ONE WITH
24 YOU, YOUR HONOR.

25 SO YOU'VE SEEN THE BACK AND FORTH IN THIS

1 CASE. WE ARE ALL SHAKING OUR HEADS ABOUT 14 IN THE
2 ITC, I DON'T KNOW WHAT THAT WAS A REFERENCE TO.

3 SO THAT HAS NOT BEEN A BIG BATTLEGROUNDS.
4 SO THIS STRIKES US AS A LAST MINUTE CHANGE OF HEART
5 BECAUSE SOMETHING DIDN'T GO SAMSUNG'S WAY THAT
6 WOULD ADD A LOT OF EXPENSE, COST AND SOME MORE
7 FIGHTING BEFORE YOUR HONOR ABOUT PROPER DESIGNATION
8 WHICH WE DO NOT THINK WOULD BE PRODUCTIVE,
9 ESPECIALLY ON THE SCHEDULE WE ARE ON.

10 THE COURT: ALL RIGHT. THANK YOU.

11 LET'S TURN TO THE NEXT ITEM, OR ONE OF
12 THE NEXT ITEMS.

13 I WOULD LIKE TO ADDRESS THE MOTION FOR
14 PROTECTIVE ORDER ON SAMSUNG'S 30(B)(6) DEPOSITION
15 NOTICE.

16 MR. JACOBS: WHAT IS 30(B)(6) FOR?

17 30(B)(6) IS DESIGNED TO ADDRESS THE
18 SITUATION IN WHICH IT'S NOT CLEAR WHAT WITNESS YOU
19 SHOULD DEPOSE TO GET SOME CORPORATE LEVEL
20 INFORMATION.

21 A 30(B)(6) TO A HOSPITAL. TELL US WHAT
22 HAPPENED IN THE OPERATING ROOM SO WE DON'T HAVE TO
23 TAKE A DEPOSITION OF A NURSE, A DOCTOR, AN
24 ATTENDANT. THAT'S WHAT 30(B)(6) IS ALL ABOUT.

25 IN THIS CASE, YOUR HONOR, THERE HAVE

1 ALREADY BEEN 50 DEPOSITIONS ABOUT WITNESSES AND
2 THERE ARE SOME 50 PLUS MORE THAT HAVE BEEN NOTICED.

3 WE HAVE THE INVENTORS ON THE DESIGN
4 PATENT. THERE HAS BEEN AMPLE TESTIMONY OF WHO IS
5 WHO AND WHO DID WHAT AT APPLE.

6 SO THERE'S NO INHERENT PROBLEM HERE OF A
7 CASE THAT DOESN'T WARRANT TAKING DEPOSITIONS, SO WE
8 NEED TO TARGET THE 30(B)(6) RIGHT TO GET TO THE
9 RIGHT PERSON EFFICIENTLY AND QUICKLY.

10 WE DO HAVE A 250 HOUR DEPOSITION LIMIT.
11 AND AT 100 DEPOSITIONS, THAT'S ABOUT TWO AND A HALF
12 HOURS A DEPOSITION. SO --

13 THE COURT: THAT'S 250 PER SIDE, RIGHT?

14 MR. JACOBS: 250 PER SIDE, AND THERE ARE
15 SOME EXCLUSIONS THAT IF I WERE TO GET VERY
16 GRANULAR, SOME OF THOSE 50 MAY BE SUBJECT TO THE
17 EXCLUSION, SO MY MATH MAY BE A LITTLE BIT OFF.

18 BUT WE HAVE AN HOUR'S LIMIT HERE. AND WE
19 ARE CAREENING TOWARD THIS MARCH 8TH FACT DISCOVERY
20 CUTOFF.

21 SO WE GET THIS NOTICE AND IT'S IMPOSSIBLE
22 TO FIGURE OUT HOW TO PROCEED ON IT. IN FACT, IN
23 RESPONSE TO OUR PROTESTS, SAMSUNG CAN'T REALLY
24 FIGURE OUT HOW TO PROCEED BECAUSE THEY IDENTIFY A
25 157 TOPICS THAT WE ARE SUPPOSED TO FIND WITNESSES

1 ON.

2 THAT WAS THE LAST STATE OF THE KIND OF
3 PROPOSALS BACK AND FORTH.

4 THE COURT: SO JUST SO THAT I'M CLEAR ON
5 THAT POINT, I HAD READ THE NOTICE AS LISTING AS
6 MANY AS 229 TOPICS. YOU HAVE SINCE NEGOTIATED OR
7 HAD DISCUSSIONS; IS THAT FAIR?

8 MR. JACOBS: I THINK THAT WOULD OVERSTATE
9 IT.

10 WE SAID THIS IS IMPOSSIBLY OVERBROAD.
11 THEY SENT US A LETTER SAYING OKAY, ONLY WORK ON 157
12 OF THE TOPICS. AND THEN THERE WERE SOME
13 DISCUSSIONS THAT THE LEAD COUNSEL MEET AND CONFER
14 AND OTHER DISCUSSIONS ABOUT THERE'S GOT TO BE A
15 BETTER WAY.

16 I WILL NOTE THIS, THE INSTINCT THAT WE
17 FELT WHEN WE GOT THEIR NOTICE WAS TO COPY IT INTO
18 OUR NOTICE AND SEND THEM THE SAME NOTICE, BUT WE
19 RESISTED BECAUSE WE REALLY WANT TO BE BEFORE YOU ON
20 THIS QUESTION OF, WHAT'S THE PROPER USE OF 30(B)(6)
21 IN A CASE LIKE THIS?

22 IF THERE WERE RIGHTFUL SOUGHT QUESTIONS
23 THAT THEY ARE HAVING TROUBLE FINDING THE RIGHT
24 WITNESS FOR, PROBABLY THEY COULD ASK US WHO IS THE
25 RIGHT WITNESS AND WE WOULD TELL THEM OR THEY COULD

1 SEND US A RIGHTFUL SOUGHT QUESTION ON THE 30(B)(6)
2 TOPIC AND WE'LL FIND A WITNESS ON THAT TOPIC.

3 IN A CASE OF THIS TYPE AND THIS KIND OF
4 EVIDENCE AND THESE DEPOSITIONS AND THESE KIND OF
5 TIME LIMITS, THAT'S THE RIGHT APPROACH.

6 WE NOTED IN A FOOTNOTE THAT JUDGE ALSUP
7 HAS THIS RULE BECAUSE HE DECIDED HE SHOULD ISSUE AN
8 ORDER THAT DEALT WITH THE PROPER USE OF 30(B)(6).

9 AND IT'S NOT JUST THAT THERE ARE TEN
10 TOPICS, A TEN TOPIC LIMIT IN HIS STANDING ORDER,
11 BUT IT'S VERY CRISP ABOUT WHAT A PROPER 30(B)(6)
12 TOPIC IS. AND IT'S DESIGNED TO FIND VERY SPECIFIC
13 FACTUAL INFORMATION THAT A WITNESS COULD BE
14 EXPECTED TO HAVE OR READILY GATHER. THAT'S WHAT
15 30(B)(6) IS FOR UNDER THAT STANDING ORDER.

16 THAT'S KIND OF A BEST PRACTICE, AND
17 CERTAINLY A PRACTICE THAT WOULD MAKE SENSE IN THIS
18 CASE WHERE AT LEAST AS WE ARE PRODUCING OUR
19 EVIDENCE TO SAMSUNG, THERE DOESN'T SEEM TO BE
20 ANY -- THERE'S BEEN NO CLAIM OF, WE DON'T FIND THE
21 RIGHT WITNESS, WE CAN'T GET THIS ANY OTHER WAY, YOU
22 HAVE TO PREPARE.

23 THAT'S THE LAST POINT. THERE WAS
24 ACTUALLY SOME -- I DON'T KNOW IF YOU SAW THIS
25 ASPECT OF IT, JUDGE KOH ORDERED, BUT DURING THE

1 PRELIMINARY INJUNCTION PHASE WE DID SEND A 30(B)(6)
2 DEPO NOTICE TO SAMSUNG AND SAMSUNG SAID OH, TO
3 PREPARE ON THIS NOTICE WE WOULD HAVE TO INTERVIEW
4 600 EMPLOYEES, FIND OUT ALL THE INFORMATION THEY
5 HAD, AND THEY SOUGHT TO BAR THAT NOTICE ON THAT
6 BASIS.

7 AND JUDGE KOH ESSENTIALLY GRANTED THAT
8 PROTECTION AGAINST 30(B)(6) IN THAT CONTEXT.

9 SO AS WE LOOK AT THE HOURS LIMIT, THE
10 PROPER USE OF 30(B)(6), ALL WE COULD SEE IN
11 SAMSUNG'S NOTICE TO US WAS, GO OUT AND PREPARE A
12 LOT OF PEOPLE ON TESTIMONY THAT WE CAN'T POSSIBLY
13 BE ABLE TO ELICIT, BECAUSE HOW ARE THEY GOING TO
14 GET IT IN THE HOURS LIMIT TO START WITH?

15 AND THAT'S WHAT REALLY STRUCK US AS AN
16 ABUSE, HARASS, ALL THE NEGATIVE WORDS THAT GET US
17 INTO PROTECTION BEFORE FOR YOU.

18 SO THAT'S WHY WE SEEK PROTECTION FROM THE
19 NOTICE. WE THINK THEY SHOULD GO BACK TO THE
20 BEGINNING AND START OVER.

21 THE COURT: OKAY.

22 LET ME ASK YOU A QUESTION ABOUT THE
23 STRUCTURE, THE DISCOVERY LIMITS JUDGE KOH ORDERED
24 EARLIER IN THIS CASE.

25 WITH RESPECT TO 30(B)(6), IS IT FAIR TO

1 SAY THAT THE 250 HOURS WHEN IT APPLIES TO EACH SIDE
2 IS AGNOSTIC AS TO WHETHER THOSE HOURS ARE SPENT ON
3 30(B)(1) OR 30(B)(6) WITNESSES?

4 MR. JACOBS: THAT'S OUR UNDERSTANDING OF
5 THE WAY IT WORKED, AND THERE'S NO DISAGREEMENT ON
6 THAT POINT.

7 THE COURT: OKAY.

8 AND IS IT ALSO FAIR TO ASSUME THAT THE
9 REQUIREMENTS OF 30(B)(6) APPLY NOTWITHSTANDING THE
10 LIMITS THAT IF ONE SERVES A NOTICE, LET'S PUT ASIDE
11 THE SAMSUNG NOTICE FOR A MOMENT, LET'S SAY I HAVE
12 SIX TOPICS IN MY NOTICE I SERVE ON YOU.

13 AM I LIMITED, IF YOU PUT TOGETHER
14 30(B)(6) WITH JUDGE KOH'S ORDER, AM I LIMITED TO
15 SEVEN HOURS ON THOSE SIX TOPICS?

16 MR. JACOBS: I DON'T BELIEVE THAT'S THE
17 WAY THE ORDER HAS BEEN INTERPRETED OR APPLIED, NO.
18 I'M GETTING AGREEMENT.

19 THE COURT: ALL RIGHT.

20 IT SEEMS TO ME THAT'S A SIGNIFICANT
21 ISSUE, RIGHT? BECAUSE IF I HAD UNDERSTOOD FROM
22 YOUR PAPERS THAT THE WAY THIS ALL WORKS UNDER
23 JUDGE KOH'S ORDER, WHATEVER THE NUMBER OF TOPICS
24 ONE DISCLOSES IN THE NOTICE, ONE IS LIMITED TO
25 SEVEN HOURS ON THOSE TOPICS ABSENT RELIEF FROM THE

1 COURT OR SOMETHING.

2 I THINK WHAT YOU ARE TELLING ME NOW IS
3 THAT'S NOT CORRECT.

4 MR. JACOBS: I THINK THE SEVEN HOURS
5 LIMIT IS EXTERNAL TO JUDGE KOH'S ORDER.

6 MS. MAROULIS: YOUR HONOR --

7 MR. JACOBS: THAT'S JUST THE DEFAULT.

8 MS. MAROULIS: THAT'S THE BASIC RULES OF
9 CIVIL PROCEDURE FOR 30 (B) (6) .

10 MR. JACOBS: BUT I THINK THE WAY THIS
11 WOULD WORK, AND THERE IS A CASE IN OUR PAPERS WHERE
12 WE NOTED THAT A COURT SAID, WELL, YOU CAN HAVE ALL
13 THE TOPICS YOU WANT BUT YOU ONLY GET SEVEN HOURS OF
14 TESTIMONY.

15 THE COURT: THAT'S WHERE I'M GOING.

16 MR. JACOBS: THE TROUBLE WITH THAT
17 DECISION IS I DON'T THINK IT HELPS US ON THE
18 PREPARATION FRONT. WE WON'T KNOW WHAT QUESTIONS
19 THEY ARE GOING TO ASK.

20 NOW THE COURT SAID THERE THAT WAS KIND OF
21 INTERESTING IS, NO ONE WILL BE ABLE TO COMPLAIN,
22 BUT YOU THE SEEKING PARTY, BECAUSE YOUR NOTICE WAS
23 SO OVERBROAD, IF THE WITNESS ISN'T REALLY PREPARED.

24 BUT THEN WHAT'S THE POINT? I MEAN, IF
25 THEY REALLY NEED SOME INFORMATION, WE DON'T -- WE

1 ARE NOT TRYING TO HIDE IT. WE WILL GIVE THEM THE
2 GRANULAR INFORMATION THEY NEED.

3 SO IT WAS CLEVER, BUT MAYBE THAT DECISION
4 WAS SLIGHTLY TOO CLEVER.

5 THE COURT: ALL RIGHT.

6 THANK YOU VERY MUCH.

7 MS. MAROULIS?

8 MS. MAROULIS: YOUR HONOR, THIS ISSUE
9 SPANS TO DIFFERENT MOTIONS, APPLE'S MOTION FOR
10 PROTECTIVE ORDER AND A PORTION OF OUR MOTION TO
11 COMPEL. BECAUSE WE DID PROPOUND THIS NOTICE THAT
12 WE RECEIVED NOT ONLY NO WITNESSES BUT NO MEANINGFUL
13 DISCUSSION PROCEEDED WITH RESPECT TO THIS NOTICE,
14 AND WE ARE ESSENTIALLY ASKED TO START OVER.

15 THE COURT: SO ON THAT POINT,
16 MS. MAROULIS, SO I UNDERSTAND YOU ALL HAD A
17 DIFFERENCE OF OPINION ON THE PROPRIETY OF THIS
18 NOTICE OF TYPE OR STRUCTURE.

19 BUT WHEN YOU SERVE THE NOTICE WITH
20 HOWEVER YOU COUNT THE TOPICS, A LOT OF TOPICS, I
21 THINK WE CAN AGREE ON THAT.

22 MS. MAROULIS: YES, YOUR HONOR.

23 THE COURT: DID APPLE SAY TO YOU, HERE
24 ARE AT LEAST SEVEN, LET'S GO FORWARD WITH THOSE.

25 MS. MAROULIS: NO, YOUR HONOR.

1 THAT'S A MAJOR POINT OF OURS. THEY NEVER
2 SAID WE WILL GIVE YOU WITNESSES ON TOPICS 1, 2 AND
3 26.

4 FOR EXAMPLE, THERE ARE TOPICS AS SIMPLE
5 AS, WHEN DID YOU GIVE SAMSUNG NOTICE OF ALLEGED
6 INFRINGEMENT, OR WHEN DID YOU FIRST BECOME AWARE OF
7 ALLEGED INFRINGEMENT?

8 TOPICS THAT ARE REALLY NARROW AND DON'T
9 HAVE ANY SUBPARTS. THERE ARE TOPICS WITH SUBPARTS
10 AND WE'LL GET TO THAT IN A MOMENT, BECAUSE IN OUR
11 MIND WHAT WE ARE DOING IS WE ARE CREATING A NOTICE
12 THAT WOULD BE HELPFUL FOR SOMEONE TO PRESENT A
13 SERIES OF COMPETENT WITNESSES.

14 YOU CAN TAKE THIS VERY SAME NOTICE AND
15 REDUCE IT, TAKE OTHER SUBPARTS AND MAKE IT MORE
16 GENERAL, BUT THEN WE WILL GET INTO THE QUESTIONS OF
17 VAGUENESS AND OVERBREADTH.

18 WHAT WE ARE TRYING TO DO IS TO GIVE A
19 SPECIFIC LIST OF SUBJECTS ON WHICH WE NEED
20 TESTIMONY.

21 AND MR. JACOBS POSED AN INTERESTING
22 QUESTION WHICH IS, WHAT IS THE PURPOSE OF 30(B)(6)
23 NOTICE?

24 THE PURPOSE IS TO ELICIT TESTIMONY THAT
25 BINDS COMPANIES. AND THE PURPOSE OF THAT IS TO

1 AVOID WHAT WE HAVE BEEN GETTING A LOT FROM APPLE IN
2 THE LAY DEPOSITIONS. IN THE LAY DEPOSITIONS OF THE
3 INVENTORS THERE WAS A NUMBER OF DESIGN DEPOSITIONS
4 WHERE WE GOT ALMOST NOTHING BECAUSE THEY CLAIMED
5 EITHER IGNORANCE OR NO RECOLLECTION.

6 A 30(B)(6) WOULD DEFINITELY BIND APPLE
7 AS TO EACH OF THOSE NOTICES, WHETHER IT'S SIX
8 TOPICS OR 206 OR 226.

9 THE COURT: LET'S SAY YOU ARE RIGHT ABOUT
10 THAT.

11 ARE ANY LIMITS APPROPRIATE AS TO THE
12 NUMBER OF TOPICS IN THE NOTICE? A THOUSAND, 5000?
13 WHAT IS THE UPPER BOUNDARY?

14 MS. MAROULIS: WE HAVE NOT FOUND A CASE
15 THAT SAID THERE WAS AN UPPER BOUNDARY. SOME COURTS
16 HAVE --

17 THE COURT: 10,000?

18 I MEAN, AT SOME POINT THERE MUST BE SOME
19 RATIONAL BASIS, SOME RATIONAL LIMITATION ON WHAT
20 ONE CAN IDENTIFY.

21 MS. MAROULIS: YOUR HONOR, WE SUBMIT -- I
22 DON'T KNOW WHAT THE UPPER BOUNDARY IS BUT HERE IN
23 THIS CASE 220 WAS APPROPRIATE. BECAUSE WE HAVE 27
24 PATENTS. WE HAVE DOZENS OF TRADE DRESS AND
25 TRADEMARK CLAIMS. WE HAVE ANTI-TRUST CLAIMS. WE

1 HAVE DEFENSES THAT BOTH SIDES RAISED THAT ARE THEIR
2 OWN UNIQUE AREAS OF LAW.

3 IT IS A BIG CASE, AND BECAUSE OF THAT WE
4 HAVE GIVEN EXTENSIVE NOTICE OF DEPOSITION AND WE
5 HAVE HAD EXTENSIVE DISCOVERY.

6 APPLE HAS NEVER MAINTAINED IN EITHER
7 DISCUSSION OR IN THEIR PAPERS THAT ANY OF THE
8 TOPICS ARE NOT RELEVANT.

9 EACH TOPIC, HOWEVER OPPRESSIVE THEY
10 CONSIDER IT, IS RELEVANT TO ONE OF THE PARTIES'
11 CLAIMED DEFENSES. THEY ALL GOT GO TO THE PATENTS
12 ASSERTED, THE TRADEMARKS ASSERTED, THEY GO TO
13 DAMAGES, THEY GO TO DEFENSES. THEY ARE ALL
14 RELEVANT. AND WE MADE THEM DETAILED FOR THE
15 BENEFIT OF THE OTHER SIDE.

16 IF THEY DID NOT LIKE THAT THEY COULD HAVE
17 COME BACK TO US AND SAID, LET'S RENEGOTIATE IT, CAN
18 WE ABROGATE THE TOPICS, COULD WE DO SOMETHING
19 DIFFERENT? THEY ALWAYS REFUSED TO DISCUSS THIS
20 PARTICULAR AREA.

21 TOWARD THE END OF THIS PROCESS WE CAME
22 BACK AND WE SAID OKAY, WE ARE GOING TO BARGAIN
23 AGAINST OURSELVES. HERE'S A LIST OF TOPICS THAT IF
24 YOU GIVE US A WITNESS MAYBE WE WILL EITHER GO AWAY
25 WITH THE REST OR SOMEHOW NARROW IT DOWN.

1 AND THERE WAS NO RESPONSE TO THAT. THAT
2 WAS THE JANUARY 3RD LETTER TO APPLE'S COUNSEL.

3 THE POINT HERE IS THIS, MR. JACOBS IS
4 CONCERNED ABOUT OUR HOURS REMAINING FOR
5 DEPOSITIONS. WE HAVE 140-SOME HOURS AND THAT IS
6 PROBABLY UNDERCOUNTING IT BECAUSE ONCE WE TAKE OUT
7 ALL THE SPEAKING OBJECTIONS BY APPLE COUNSEL, WE
8 WILL HAVE WAY MORE TIME.

9 BUT THE TRUTH OF THE MATTER IS IT'S UP TO
10 US HOW TO USE THAT TIME. IF THEY DESIGNATE ONE
11 WITNESS OR 200 TOPICS, WE ARE GOING TO GET SEVEN
12 HOURS. IF THEY DESIGNATE FIVE WITNESSES, WE ARE
13 GOING TO DEPOSE THESE FIVE WITNESSES FOR NO MORE
14 THAN UP TO SEVEN HOURS EACH.

15 THE COURT: SO YOU ARE SUGGESTING THAT IN
16 FACT THE SEVEN-HOUR LIMIT WOULD APPLY TO THE TOPICS
17 COVERING THIS?

18 MS. MAROULIS: THE SEVEN-HOUR LIMIT IS
19 PER PERSON.

20 WE SUBMIT THAT NO SINGLE PERSON CAN COVER
21 ALL THESE TWO HUNDRED TOPICS, BUT ULTIMATELY
22 THERE'S NO SPECIFIC LIMITS OUTSIDE THE FEDERAL
23 RULES OF CIVIL PROCEDURE THAT APPLY TO THIS CASE AS
24 TO 30(B)(6).

25 THE LIMITS, INCIDENTALLY BOTH SIDES ARE

1 BOUND BY THE LIMITS, AND APPLE PROPOUNDED NOTICES
2 AND WE PROPOUNDED OUR OWN. WE ARE IN CHARGE OF HOW
3 WE ARE TO DECIDE THIS DEPOSITION TIME BUDGET. THEY
4 ARE NOT TO DICTATE TO US WE SHOULDN'T USE THE TIME
5 BUDGET TO DEPOSE 30 (B) (6) WITNESSES.

6 THE COURT: WHEN YOU HAVE 229 LISTED
7 TOPICS THAT INCLUDE TEST, FOR EXAMPLE, ON ALL
8 COMMUNICATIONS OR ALL SOFTWARE REGARDING A SET OF
9 FEATURES, AS A PRACTICAL MATTER, HOW IS ONE TO
10 PREPARE FOR THAT?

11 I MEAN, SO FOR EXAMPLE, IF THE TOPIC --
12 I'M TAKING ONE OF THESE TOPICS, ALL TOPICS
13 REGARDING COMMUNICATIONS WITH THIRD PARTIES ABOUT
14 HOW CERTAIN FEATURES WORK ON THE ACCUSED PRODUCT.

15 WELL, CONSIDERING THE GLOBAL SALES FORCE
16 THAT EACH COMPANY HAS IN THIS CASE, CERTAINLY APPLE
17 HAS THAT, HOW AS A PRACTICAL MATTER IS ONE WITNESS
18 SUPPOSED TO CAPTURE ALL OF THAT INFORMATION AND
19 ADEQUATELY PREPARE, PROVIDE TESTIMONY ON BEHALF OF
20 THE PARTY?

21 MS. MAROULIS: YOUR HONOR, THAT SHOULD
22 HAVE BEEN THE SUBJECT OF THE PARTY'S DISCUSSION.
23 THAT WAS NEVER THE GRANULAR ITEM OF THE DISCUSSION.

24 BUT TO TAKE THE EXAMPLE YOU TAKE WHICH IS
25 ALL COMMUNICATIONS, WE COULD CARVE OUT AS TO, FOR

1 EXAMPLE, DISCUSSIONS WITH SUPPLIERS, DISCUSSIONS
2 RELATED TO APPLE'S EXHAUSTION DEFENSES AS TO HOW
3 THEY GET CERTAIN FEATURES FROM, HOW IT WORKS, HOW
4 IT'S IMPLEMENTED.

5 IF THEY DON'T KNOW WHAT WE MEAN, THEY CAN
6 TALK TO US, BUT THAT'S NOT WHAT HAPPENED HERE. THE
7 TOPIC WAS REJECTED, THIS NOTICE WAS REJECTED
8 WHOLESALE WITHOUT ANY MEANINGFUL DISCUSSION.

9 THE COURT: I DON'T KNOW HOW YOU GO ABOUT
10 THAT, THOUGH.

11 I'M JUST THINKING ABOUT THIS. LET'S JUST
12 STICK WITH THIS ONE EXAMPLE FOR A MOMENT.

13 HOW AM I, AS AN ATTORNEY FOR A GLOBAL
14 TECHNOLOGY FIRM WITH THOUSANDS OF EMPLOYEES WITH
15 POTENTIALLY RESPONSIVE INFORMATION, TO ADEQUATELY
16 MEET MY RESPONSIBILITIES AND HAVE MY WITNESS
17 COLLECT AND GATHER ALL THAT INFORMATION? HOW WOULD
18 THAT POSSIBLY WORK? AND IF YOU SCALE THAT ACROSS
19 229 TOPICS OF THAT NATURE, HOW COULD THIS WORK?

20 MS. MAROULIS: FIRST OF ALL, YOUR HONOR,
21 SOME TOPICS ARE BROADER THAN OTHERS. THERE'S A
22 NUMBER OF EXAMPLES I GAVE UP FRONT THAT ARE MUCH
23 NARROWER THAN THAT.

24 THE COURT: BUT YOU HAVE ALL
25 COMMUNICATIONS REQUEST FOR, I BELIEVE, 112 TOPICS,

1 SO HOW WOULD THAT WORK?

2 MS. MAROULIS: THE FEATURES AT ISSUE ARE
3 SPECIFIC USE FEATURES, THEY ARE NOT PRODUCTS AS A
4 WHOLE.

5 SO IF THERE WERE DISTRIBUTIONS IN, SAY,
6 LITIGATION CONTEXT OR THE SUPPLY CONTEXT THAT I
7 GAVE THE EXAMPLE, THAT WOULD BE A MORE DISCREET
8 UNIVERSE OF INFORMATION.

9 THE COURT: HOW MANY SUPPLIERS ARE YOU
10 TALKING ABOUT?

11 MS. MAROULIS: WE ARE TALKING ABOUT --
12 THE MAJOR ONES ARE INTEL AND QUALCOMM, IN THIS
13 CASE, THAT SUPPLY CHIPS, RIGHT. SO THAT'S ONE OF
14 THE EXAMPLES. AND APPLE MIGHT SAY THERE ARE MORE
15 BUT WE DON'T KNOW BECAUSE THEY HAVEN'T GIVEN US
16 DISCOVERY.

17 THE COURT: BUT YOUR TOPIC -- I'M SORRY,
18 ISN'T LIMITED TO QUALCOMM OR INTEL. AND THEY ARE
19 ALSO NOT LIMITED TO BASEBAND PROCESSORS, RIGHT?

20 SO CONCEIVABLY, IF ANY SALES PERSON IN
21 APPLE'S WORLDWIDE GLOBAL SALES FORCE HAD DISCUSSION
22 WITH A THIRD PARTY ABOUT HOW A PARTICULAR SOFTWARE
23 FEATURE OPERATED, THE 30(B)(6) WOULD BE RESPONSIBLE
24 FOR MEETING WITH THAT PERSON, GATHERING THAT
25 INFORMATION.

1 IT JUST SEEMS UTTERLY IMPRACTICAL AND
2 IT'S EQUALLY APPLICABLE TO THE SIMILAR REQUESTS TO
3 SAMSUNG, I WOULD ADD.

4 SO HOW WOULD ALL THIS WORK?

5 MS. MAROULIS: WELL, YOUR HONOR, THE
6 PERSON CAN START WITH HIGH LEVEL INFORMATION
7 GATHERING IN THEIR ORGANIZATION, AND UPON RECEIVING
8 THE INFORMATION OF DOCUMENTS, TALK TO PEOPLE IN
9 CHARGE OF THE RELATIONSHIPS, FOR EXAMPLE, AND FIND
10 OUT IF THERE ARE SUCH DISCUSSIONS. WE HAVE TO
11 ANSWER TO EQUALLY BROAD DISCOVERY REQUESTS AND
12 TOPICS.

13 SO IT'S THE NATURE OF WHITTILING DOWN THE
14 DISCOVERY TO THE BASE OF WHAT'S AT STAKE IN THE
15 CASE.

16 THE COURT: IS IT ALSO ACCURATE THAT IN
17 RESPONSE TO A 30(B)(6) NOTICE YOU WERE SUCCESSFUL
18 IN SECURING RELIEF FROM JUDGE KOH ON A SIMILAR
19 DISPUTE?

20 MS. MAROULIS: YOUR HONOR, THAT WAS A
21 VERY DIFFERENT SITUATION.

22 THE COURT: APPLES AND ORANGES. TELL ME
23 WHY.

24 MS. MAROULIS: SO THIS WAS A PRELIMINARY
25 INJUNCTION BEFORE APPLE EVEN KNEW THEY SOUGHT

1 EXPEDITED DISCOVERY. THAT WAS BEFORE THEY MOVED
2 FOR PRELIMINARY INJUNCTION.

3 AND ONE OF THE THINGS THEY WANTED WAS
4 THIS MASSIVE 30(B)(6) NOTICE. AND JUDGE KOH SAID
5 THAT, AMONG OTHER THINGS, IT'S NOT APPROPRIATE TO
6 DO IT, SUCH DISCOVERY IN THE CONTEXT OF PRELIMINARY
7 INJUNCTION PROCEEDINGS.

8 AND WHAT HAPPENED IS SHE ISSUED AN ORDER
9 IN JULY THAT CONTROLLED THE DISCOVERY AND BASICALLY
10 SAID, YOU GUYS HAVE TWO MONTHS, YOU CAN ISSUE SOME
11 DISCOVERY RESPONSES, DISCOVERY REQUESTS, YOU CAN
12 TAKE SOME DEPOSITIONS BUT IT HAS TO BE NARROW.

13 AS IT IS, WE SUBMIT THAT APPLE TURNED IT
14 INTO A VERY BROAD FISHING EXPEDITION. BUT AS TO
15 THAT PARTICULAR NOTICE, IT WASN'T APPROPRIATE AT
16 THAT TIME TO PROVIDE SUCH BROAD TESTIMONY.

17 ULTIMATELY, THEY DID SERVE A DIFFERENT
18 NOTICE AND WE DID PRESENT A WITNESS. SO WE HAD A
19 30(B)(6) WITNESS IN THE PI PROCEEDINGS ON A TOPIC.
20 SO IT WAS A TOPIC LEGITIMATELY PROPOUNDED BY APPLE.

21 BUT WHEN JUDGE KOH RULED ON THAT ONE
22 ISSUE EARLIER, IT WAS IN THE CONTEXT OF THE
23 EXPEDITED DISCOVERY PROCEEDINGS BEFORE THE PI
24 HEARING IF I REMEMBER EVERYTHING CORRECTLY, TIME
25 WISE.

1 THE COURT: ALL RIGHT.

2 IT'S MY UNDERSTANDING THERE'S SOME
3 DISPUTE HERE WHETHER THIS PARTICULAR ARGUMENT OR
4 ISSUE WAS EVEN THE SUBJECT OF THE MEET AND CONFER
5 BETWEEN LEAD COUNSEL.

6 WAS THIS RAISED AND DISCUSSED ON
7 JANUARY 5TH?

8 MS. MAROULIS: THIS WAS DEFINITELY
9 DISCUSSED ON JANUARY 5TH. I WAS NOT PRESENT BUT I
10 UNDERSTAND IT WAS DISCUSSED, AND AT THAT POINT IN
11 TIME WE WERE ADVISED TO QUOTE "START OVER." THAT
12 WAS THE EXTENT OF APPLE'S DESIRE TO NEGOTIATE.

13 AND WE HAVE A CONCERN ABOUT THAT BECAUSE
14 IF THEY HAD QUESTIONS ABOUT SPECIFIC TOPICS IF THEY
15 WANTED TO EITHER CARVE OUT SOME TOPICS OR CHANGE
16 TOPICS OR DELETE SOME TOPICS, WE COULD HAVE
17 DISCUSSED THAT. WE DIDN'T HAVE TO BE BEFORE YOU ON
18 THIS WHOLESALE 200 OR SO TOPICS.

19 AND THEIR REFUSAL TO ENGAGE IN THIS
20 PROCESS IS PROBLEMATIC BECAUSE THAT'S SOMETHING THE
21 PARTIES REALLY SHOULD DECIDE AMONG THEMSELVES,
22 ESPECIALLY BECAUSE THERE'S NO QUESTION OF
23 RELEVANCE, IT'S JUST A QUESTION OF THEM CLAIMING
24 IT'S HARDER FOR THEM TO PREP PEOPLE.

25 THE COURT: HOW DOES THE 30(B)(6), YOU

1 SERVED SQUARE WITH THE INDIVIDUAL DEPOSITIONS THAT
2 ARE OUTSTANDING?

3 WHERE I'M GOING WITH THIS IS YOU ARE
4 SUBJECT TO AN HOURS CAP, I UNDERSTAND THERE ARE
5 EXCEPTIONS AND THERE REMAIN SOME DEBATES ABOUT HOW
6 YOU COUNT OUT -- I SUSPECT YOU ALSO HAD DEBATES
7 ABOUT WHETHER CERTAIN OBJECTIONS WERE APPROPRIATE,
8 YOU HAVE ALLUDED TO THAT ALREADY.

9 BUT AGAIN, HOW MANY INDIVIDUAL NOTICES
10 ARE YOU ALSO -- HAVE YOU ALSO SERVED? AND WHAT I'M
11 TRYING TO FIGURE OUT HERE IS IF YOU ARE WERE ASKING
12 FOR TESTIMONY ON 229 LIST OF TOPICS IN A CORPORATE
13 CAPACITY AND YOU ARE ALSO SEEKING INDIVIDUAL
14 TESTIMONY ON WHATEVER -- AT SOME POINT YOU ARE
15 GOING TO EXHAUST YOUR BUDGET, RIGHT?

16 MS. MAROULIS: YES, YOUR HONOR.

17 SO IF WE CAN GET THE WITNESS NOW ON THESE
18 TOPICS, WE MIGHT NOT NEED TO DEPOSE A LOT OF OTHER
19 INDIVIDUALS.

20 WE CURRENTLY HAVE 48 OR 49 NOTICES
21 OUTSTANDING. WE RECEIVED DATES FOR MOST OF THEM
22 SINCE THE FILING OF THE MOTION.

23 WE WILL NOT BE ABLE TO DEPOSE EVERY
24 SINGLE ONE OF THOSE PERSONS. BUT GIVEN THE FACT
25 THAT WE HAVE NOT GOTTEN THE 30(B)(6) DESIGNEE, WE

1 HAVE TO NOTICE ALL OF THEM BECAUSE WE DON'T KNOW
2 WHAT WE DON'T HAVE YET.

3 IF WE COULD GET A WITNESS ON THE TOPICS
4 WE PROVIDED THEN THERE MAY BE NO NEED FOR SOME OF
5 THE NOTICES AND WE WOULD ACTUALLY LIKE NOT TO TAKE
6 UP THE TIME OF INDIVIDUALS IF IT'S NOT NECESSARY.

7 THE COURT: SO IS IT YOUR PROPOSAL THAT
8 YOU WOULD PROCEED ON THE 30(B)(6) NOTICE IF YOU
9 WERE AUTHORIZED TO DO SO AND ONLY PURSUE AT LEAST A
10 SUBSET OF THE INDIVIDUAL NOTICES, IF NECESSARY?

11 MS. MAROULIS: YOUR HONOR, WE WILL STILL
12 PURSUE SOME INDIVIDUALS.

13 I CANNOT, STANDING HERE RIGHT NOW, SAY WE
14 WILL CANCEL 40-SOME DEPOSITIONS BECAUSE THERE ARE
15 DIFFERENT AREAS WHERE THOSE PEOPLE ARE COMPETENT.

16 BUT IF WE GET GOOD, COMPETENT TESTIMONY
17 ON THE TOPICS WE PROPOUNDED THEN THERE WILL NOT BE
18 A NEED FOR THE ENTIRE REST OF THE INDIVIDUALS TO BE
19 DEPOSED. I JUST CANNOT TELL YOU WHICH ONES
20 SPECIFICALLY BECAUSE I DON'T KNOW WHICH TOPICS THEY
21 WILL PRESENT WITNESSES ON AND HOW PREPARED THEY
22 WILL BE.

23 THE COURT: ALL RIGHT.

24 THANK YOU VERY MUCH.

25 ANY REBUTTAL?

1 MR. JACOBS: JUST VERY BRIEFLY,
2 YOUR HONOR.

3 IN EXHIBIT C TO MS. MAZZA'S DECLARATION
4 WE STATED WHAT WE ASKED SAMSUNG TO DO. WE SAID, AS
5 WE ALSO DISCUSSED DURING THE CALL, THIS IS
6 DECEMBER 27TH LETTER, THERE MAY BE LIMITED TOPICS
7 IN YOUR NOTICE THAT WOULD BE APPROPRIATE FOR A
8 30(B)(6) DEPOSITION IF STATED SEPARATELY OR
9 CLARIFIED. APPLE WOULD BE WILLING TO PROVIDE
10 30(B)(6) TESTIMONY ON SUCH TOPICS PROVIDED THAT
11 SAMSUNG IS WILLING TO RECIPROCATATE AND PROVIDE
12 CORPORATE TESTIMONY TO APPLE ON SIMILAR TOPICS.

13 SO TRY TO SET A LEVELLING PRINCIPLE.

14 DURING OUR CALL WE ASKED SAMSUNG TO GO
15 BACK AND REEXAMINE ITS NOTICE AND IDENTIFY A
16 NARROWED AND MORE FOCUSED SET OF TOPICS ON WHICH
17 SAMSUNG SEEKS TESTIMONY AND FOR WHICH IT WILL BE
18 WILLING TO PROVIDE RECIPROCAL TESTIMONY. WE LOOK
19 FORWARD TO SAMSUNG'S IDENTIFICATION OF SUCH TOPICS.

20 ACTUALLY, THAT MAY BE EXHIBIT, I MAY HAVE
21 MISSTATED THAT, EXHIBIT B.

22 AND THEN EXHIBIT C IS A LETTER BACK FROM
23 SAMSUNG DATED DECEMBER 31ST THAT BASICALLY REJECTS
24 THAT PROPOSITION.

25 THEN EXHIBIT D IS ANOTHER LETTER FROM

1 SAMSUNG IDENTIFYING THE 150 PLUS TOPICS THAT THEY
2 WANTED US TO PROCEED ON WITHOUT ANY ACKNOWLEDGEMENT
3 OF RECIPROCITY.

4 THE COURT: WHILE I HAVE YOU MR. JACOBS,
5 ON THIS ISSUE, SO GIVEN THAT HISTORY, AT ANY POINT
6 DID APPLE SAY, FOR EXAMPLE ON THE CORPORATE
7 STRUCTURE, YEAH, WE WILL GIVE YOU A WITNESS ON
8 THAT, HERE HE IS, HE'S AVAILABLE ON THIS DATE.

9 MR. JACOBS: NO.

10 WE TOOK A LOOK AT THE NOTICE AND WE JUST
11 KIND OF THREW UP OUR HANDS, YOUR HONOR, HONESTLY.
12 WHAT COULD WE POSSIBLY DO WITH A NOTICE OF THIS
13 MANY TOPICS AND SUBTOPICS?

14 THE COURT: WELL, ONE THING YOU COULD
15 POSSIBLY DO IS TO IDENTIFY DISCREET TOPICS WHICH
16 THERE'S LITTLE CONTROVERSY RIGHT.

17 MR. JACOBS: THAT WOULD A POSSIBLE
18 AVENUE, YOUR HONOR.

19 I THINK OUR POINT WAS TO PUT 30(B)(6) IN
20 ITS PROPER POSITION BETWEEN THE COMPANIES
21 RECIPROCALLY, AND THAT SEEMED LIKE AN APPROPRIATE
22 WAY TO PROCEED

23 THE COURT: HAS APPLE SERVED ITS OWN
24 30(B)(6) NOTICE?

25 MR. JACOBS: WE HAVE SERVED SOME 30(B)(6)

1 NOTICES. I DON'T KNOW THE DETAILS OF ALL OF THEM
2 BECAUSE THEY HAVE BEEN SERVED BY CO-COUNSEL AS
3 WELL.

4 THE COURT: I'M CURIOUS IF YOU OR YOUR
5 CO-COUNSEL CAN TELL ME HOW MANY TOPICS DID YOU
6 INCLUDE?

7 MR. JACOBS: I DON'T KNOW THE ANSWER TO
8 THAT.

9 THE COURT: DOES ANYBODY?

10 MR. SELWYN: I BELIEVE THERE WERE TWO
11 NOTICES, IF I RECALL. MARK SELWYN.

12 THE FIRST NOTICE WHICH WAS RELATED TO
13 LICENSE ISSUES, I BELIEVE HAD ABOUT 20 TOPICS.

14 THE OTHER NOTICE THAT I RECALL IS ONE
15 DIRECTED TO TWO PATENTS ON WHICH SAMSUNG HAS NOT
16 OFFERED UP ANY INVENTOR TESTIMONY.

17 SO WE SAID IF THERE ARE NO INVENTORS TO
18 TESTIFY ABOUT THESE PATENTS, WELL, WE NEED TO SERVE
19 30(B)(6) NOTICES SO WE UNDERSTAND WHAT THE FACTUAL
20 LANDSCAPE OF THOSE TWO PATENTS ARE.

21 I BELIEVE THEY ARE ON THE ORDER OF 20 OR
22 SO TOPICS. I MAY BE OFF BY A LITTLE BUT I THINK
23 THAT'S THE RIGHT MAGNITUDE

24 THE COURT: ALL RIGHT.

25 SO JUST TO PROVIDE ME WITH SOME CONTEXT

1 HERE THEN.

2 ON SIMPLY THE ISSUES OF LICENSING AND
3 CONCEPTION OR REDUCTION TO PRACTICE AND SO FORTH,
4 THE TWO PATENTS, APPLE ITSELF SERVED NOTICES TO
5 INCLUDE AS MANY AS 40 TOPICS, GIVE OR TAKE?

6 MR. SELWYN: YOUR HONOR, I'M ACTUALLY
7 LOOKING AT IT NOW.

8 WE SERVED A SECOND 30(B)(6) NOTICE ON
9 TOPICS RELATED TO TWO PATENTS ON WHICH THEY HAD NO
10 INVENTORS. AND THE GOAL THERE WAS TO IDENTIFY ANY
11 INFORMATION RELATED TO THE CONCEPTION, REDUCTION TO
12 PRACTICE AND SO FORTH, THE VERY QUESTIONS WE WOULD
13 ASK INVENTORS IF THEY HAD IT.

14 WE ALSO SERVED 30(B)(6) NOTICES RELATED
15 TO -- PARDON ME -- THAT NOTICE HAS 15 TOPICS IN IT,
16 I'M LOOKING AT IT NOW. PROBLEM TO BE SOLVED BY
17 THOSE PATENTS, CONCEPTION, REDUCTION TO PRACTICE,
18 DILIGENCE AND SO FORTH.

19 IT ALSO HAS A FEW TOPICS THAT ARE RELATED
20 TO PRIOR ART THAT I BELIEVE TO BE SEPARATE FROM
21 THOSE CONCEPTIONS REDUCTION TO PRACTICE.

22 THE OTHER 30(B)(6) NOTICE I'M REFERRING
23 TO ON THESE LICENSING ISSUES HAS ABOUT 20 TOPICS.

24 THE COURT: SO IF I'M DOING MY MATH
25 RIGHT, 35 TOPICS ON A FRACTION OF THE ISSUES IN THE

1 CASE. THAT WOULD SEEM TO SUGGEST IF YOU COMPARE
2 THAT AND SCALE IT TO WHAT SAMSUNG IS SERVING, YOU
3 ALL ARE KIND OF IN THE SAME BALLPARK HERE.

4 MR. JACOBS: I THINK WE AREN'T RESTING ON
5 THE NUMBER OF TOPICS ALONE, WE ARE RESTING ON
6 OVERLAP, NATURE OF TOPICS, DIFFICULTY OF PREPARING
7 FOR TOPICS, HOW IT FITS INTO THE OVERALL LANDSCAPE
8 OF THE DEPOSITION AND OTHER DISCOVERY TO DATE.

9 I DON'T THINK YOU CAN ISOLATE ANY
10 PARTICULAR FACTOR, 229 IS A LOT OF TOPICS TO
11 GRAPPLE WITH ON A NOTICE AND EXPLAINS WHY WE SAID,
12 GO BACK, LET'S FOCUS, LET'S DO IT RECIPROCALLY.

13 MS. MAROULIS: IF I MAY JUST, YOUR HONOR,
14 I AM TOLD BY MY TEAM THERE MIGHT BE FOUR SEPARATE
15 NOTICES SERVED. I DON'T HAVE THEM HANDY, BUT
16 THERE'S BEEN SOME ADDITIONAL ONES SERVED RECENTLY.

17 THE COURT: ALL RIGHT.

18 LET'S TURN TO ANOTHER ISSUE IN DISPUTE.

19 LET'S TURN TO THE APPLE MOTION TO COMPEL
20 DISCOVERY ON ITS AFFIRMATIVE DEFENSES.

21 MR. WALDEN: GOOD MORNING, YOUR HONOR.

22 CALVIN WALDEN FROM WILMER HALE.

23 THE COURT: GOOD MORNING.

24 MR. WALDEN: SO THIS APPLE MOTION HAS
25 THREE PARTS.

1 THE FIRST PART IS TO COMPEL PRODUCTION OF
2 ADDITIONAL DOCUMENTS FROM THE INVENTOR FILES.

3 THE SECOND PART IS TO COMPEL ADDITIONAL
4 DOCUMENTS RELATED TO STANDARD SETTING ORGANIZATION,
5 SPECIFICALLY ETSI AND 3GPP.

6 AND THE FINAL PART IS TO COMPEL
7 ADDITIONAL DOCUMENTS RELATING TO LICENSES AND
8 LICENSE NEGOTIATIONS TO PATENTS THAT SAMSUNG HAS
9 DECLARED STANDARD ESSENTIAL. AGAIN, TO ETSI AND
10 3GPP.

11 SO I WILL START WITH THE FIRST PART, THE
12 COLLECTION OR THE MOTION TO COMPEL ADDITIONAL
13 PRODUCTION FROM THE INVENTOR FILES. THE INVENTORS,
14 OR THE SAMSUNG INVENTORS WHO WERE ORDERED TO BE
15 DEPOSED IN THIS CASE BEFORE DECEMBER 1ST AND THE
16 PRODUCTIONS WERE ROLLING BEFORE THOSE DEPOSITIONS,
17 AND WE HAVE HAD SOME PRODUCTION SINCE THOSE
18 DEPOSITIONS.

19 FROM THOSE DEPOSITIONS WE LEARNED A
20 COUPLE OF WHAT WE -- WELL, WE LEARNED ONE ESSENTIAL
21 FACT AND THEN FROM A TRANSPARENCY BY SAMSUNG WE
22 LEARNED THE SECOND FACT.

23 THE FIRST FACT WE LEARNED WAS THAT THE
24 SAMSUNG INVENTORS WERE TASKED TO COLLECT THEIR OWN
25 DOCUMENTS. ESSENTIALLY, THEY WERE ASKED TO GO LOOK

1 IN THEIR OWN FILES AND COLLECT THE DOCUMENTS FOR
2 FORWARDING TO COUNSEL AND THEN PRODUCTION.

3 THE SECOND THING WE LEARNED WAS THAT THE
4 INVENTORS FROM THE DEPOSITIONS, THAT THE INVENTORS
5 ACTUALLY PERFORMED THE WORD SEARCHES OF THEIR OWN
6 FILES THAT WERE PROVIDED TO THEM BY COUNSEL.

7 AND WHAT WE LEARNED IS THAT THOSE
8 SEARCHES WERE PERFORMED, BOTH KIND OF THE MANUAL
9 SEARCHS AND THE ELECTRONIC WORD SEARCHES, WERE
10 PERFORMED IN A FAIRLY AD HOC, WHAT WE CONSIDER
11 HAPHAZARD AND UNGUIDED WAY BY THE INVENTORS.

12 AND NOT SURPRISINGLY, ULTIMATELY WE HAVE
13 PRODUCTION FROM SAMSUNG THAT HAS NO DOCUMENTS BEING
14 PRODUCED FROM 15 OF 32 NAMED INVENTORS AND ONLY A
15 HANDFUL FROM SOME OF THE OTHER INVENTORS.

16 ULTIMATELY, AS COMPARED TO APPLE'S
17 PRODUCTION FROM ITS OWN INVENTORS, WE ARE ON AN
18 ORDER AND MAGNITUDE DIFFERENT IN TERMS OF NUMBER OF
19 DOCUMENTS AND TOTAL PAGES.

20 THE COURT: WELL, IF THEY PRODUCED ZERO,
21 THEN TEN IS AN ORDER OF MAGNITUDE.

22 MR. WALDEN: THAT'S FAIR.

23 I'M TALKING ABOUT THE TOTAL NUMBER OF
24 DOCUMENTS FROM ALL THEIR INVENTORS AS COMPARED TO
25 OURS.

1 THE COLLECTION, AGAIN AS WE HAVE
2 DESCRIBED IN MORE DETAIL IN OUR BRIEF WITH CITES TO
3 MULTIPLE DEPOSITIONS, REALLY WAS TASKED TO THE
4 INVENTORS THEMSELVES TO GO OUT AND FIGURE OUT FROM
5 THEIR OWN FILES WHAT WAS RELEVANT, HOW TO, AND THEN
6 PULL THOSE DOCUMENTS AND FORWARD THEM TO COUNSEL.

7 THERE HAD BEEN -- THERE WERE SOME
8 FOLLOWUP WITH COUNSEL, USUALLY IT APPEARS BASED ON
9 WHEN THEY WERE MEETING TO PREPARE FOR THEIR
10 DEPOSITIONS.

11 A COUPLE OF TIMES WE GOT LATE PRODUCTIONS
12 THAT DID APPEAR TO BE AS A RESULT OF HAVING THE
13 INVENTORS MEET WITH COUNSEL, FIGURING OUT THAT
14 THEIR PRODUCTION WAS INSUFFICIENT AND THEN PULLING
15 ADDITIONAL DOCUMENTS AND PRODUCING THEM JUST RIGHT
16 BEFORE THEIR DEPOSITIONS.

17 THE SECOND THING WE LEARNED WAS AT THE
18 TIME AT THE END OF THE DEPOSITION PERIOD ON
19 DECEMBER 1ST, SAMSUNG PROVIDED WHAT WE CALL
20 TRANSPARENCY DISCLOSURES, AND WHICH WAS PER
21 JUDGE KOH'S EARLIER ORDER THAT THE PARTIES DESCRIBE
22 HOW SEARCH TERMS OR WHICH SEARCH TERMS WERE USED
23 FOR THE PARTICULAR WITNESSES.

24 AND FROM THOSE WE LEARNED THAT THERE WERE
25 WHAT WE CONSIDERED TO BE SERIOUS DEFICIENCIES WITH

1 THE SEARCH TERMS THAT THEY USED FOR THEIR
2 INVENTORS.

3 SPECIFICALLY, WE DIDN'T RECEIVE ANY
4 SEARCH TERMS THAT WERE UTILIZED FOR TWO PATENTS AND
5 THOSE WERE THE TWO PATENTS THAT MR. SELWYN JUST
6 MENTIONED.

7 THE COURT: THE '035 AND THE '871.

8 MR. WALDEN: YES, SIR.

9 SECOND, WE RECEIVED THEIR DISCLOSURES OF
10 SEARCH TERMS BUT WITH ONE EXCEPTION, THEY DID NOT
11 APPEAR TO USE KOREAN LANGUAGE EQUIVALENTS OF THE
12 ENGLISH LANGUAGE SEARCH TERMS THAT THEY TOLD US
13 THEY WERE USING, WHICH TO US WAS VERY PROBLEMATIC
14 BECAUSE THE INVENTORS ARE LOCATED IN KOREA. THEIR
15 DEPOSITIONS WERE TAKEN THROUGH INTERPRETERS.

16 AND THE DOCUMENTS THAT WE HAVE RECEIVED
17 FROM THE PRODUCTION SHOWS THAT THERE'S A LOT OF
18 KOREAN LANGUAGE IN THE DOCUMENTS, SOMETIMES A MIX
19 OF ENGLISH AND KOREAN.

20 THEY DIDN'T USE WHAT WE CALL STANDARD
21 SETTING ORGANIZATION RELATED SEARCH TERMS FOR THEIR
22 INVENTORS, FOR EXAMPLE 3GPP OR ETSI OR OTHER TERMS
23 WITH THE LIMITERS.

24 AND THEN FINALLY ON A PATENT-BY-PATENT
25 BASIS WE IDENTIFIED WHAT WE CONSIDERED TO BE

1 SERIOUS DEFICIENCIES WITH THEIR SEARCHES AND
2 ULTIMATELY, NOT SURPRISINGLY, FOR 15 OF THEIR
3 INVENTORS THEIR SEARCHES APPEARED TO HAVE RESULTED
4 IN ZERO DOCUMENTS BEING PRODUCED.

5 SO WE HAVE HAD MET AND CONFERRED MULTIPLE
6 TIMES WITH SAMSUNG ABOUT THIS ISSUE, BOTH WITH
7 RESPECT TO WHAT WE CONSIDER TO BE THE DEFICIENCIES
8 IN THEIR COLLECTION AND WITH THE DEFICIENCIES IN
9 THE SEARCH TERMS THEY USED THAT WE HAD THE
10 INVENTORS SEARCH THEIR OWN FILES.

11 ULTIMATELY WE WERE NOT ABLE TO GET
12 AGREEMENT IN ANY FORM INCLUDING AT THE LEAD COUNSEL
13 MEET AND CONFER, SO WE ARE MOVING TO COMPEL.

14 AND WHAT WE ARE ESSENTIALLY ASKING FOR ON
15 THE INVENTOR SIDE IS SAMSUNG GO BACK TO ITS
16 INVENTORS AND ACTUALLY COLLECT DOCUMENTS IN A MORE
17 APPROPRIATE WAY, SCIENTIFIC WAY. IF IT MEANS
18 COPYING HARD DRIVES FROM THE INVENTORS, THAT'S WHAT
19 THEY SHOULD DO. IF IT MEANS SOMETHING ELSE, THAT'S
20 MORE THAN JUST SAYING INVENTORS, GO FIND YOUR
21 DOCUMENTS, THAT'S WHAT THEY SHOULD DO.

22 SECOND, WE BELIEVE THAT WHEN THEY RUN
23 SEARCH TERMS THEY SHOULD RUN ADDITIONAL SEARCH
24 TERMS ON THE INVENTOR DOCUMENTS, AND IN OUR
25 PROPOSED ORDER WE PROVIDED THE TERMS THAT WE HAD

1 PROPOSED.

2 I WILL SAY A QUICK POINT ABOUT THE TERMS
3 THAT WE PROPOSED. SAMSUNG, IN ITS OPPOSITION,
4 CLAIMS THAT THE TERMS THAT WE PROPOSED WERE
5 OVERBROAD OR WAY TOO BROAD AND THEY PROVIDED
6 EXAMPLES, AN EXAMPLE AT LEAST, OF WHERE THEY SAY
7 WELL, WE RAN THE SEARCH AND IT GOT 30,000 HITS OR
8 SOMETHING WHICH THEY CLAIM IS TOO BROAD.

9 WE NEVER WERE INFORMED OF THAT PRIOR TO
10 THEIR OPPOSITION. WE HAD TOLD THEM DECEMBER 13TH
11 WE SENT A LETTER SAYING WE WANT ADDITIONAL SEARCH
12 TERMS RUN.

13 WE WOULD HAVE NEGOTIATED. IT NEVER
14 HAPPENED ONLY BECAUSE THEY JUST IGNORED OUR LETTER
15 UNTIL THE POINT OF, AT SOME POINT THEY SAID WELL,
16 YOUR TERMS ARE TOO BROAD. THEY NEVER GAVE US
17 EXAMPLES, AND ULTIMATELY FOR THE FIRST TIME IN
18 THEIR OPPOSITION WE SEE THAT THEY SAY SOME OF THESE
19 TERMS ARE TOO BROAD.

20 THE COURT: MR. WALDEN, LET'S TAKE A STEP
21 BACK FOR A MOMENT.

22 GIVE ME YOUR PERSPECTIVE OR VISION OF HOW
23 AN INVENTOR DOCUMENT COLLECTION OUGHT TO WORK.
24 WHAT STANDARDS ARE YOU URGING THIS COURT IMPOSE NOT
25 ONLY ON SAMSUNG BUT ON APPLE THAT IN YOUR MIND MEET

1 THE REQUIREMENTS OF RULE 34?

2 MR. WALDEN: WE'RE NOT SAYING AN INVENTOR
3 SHOULD NOT BE INVOLVED IN COLLECTING FROM THEIR OWN
4 FILES.

5 THE COURT: ONE MIGHT ARGUE THEY NEED TO
6 BE INVOLVED IN ORDER FOR IT TO BE MEANINGFUL.

7 MR. WALDEN: ABSOLUTELY. THAT'S TRUE.

8 THEY NEED TO BE INVOLVED AND IT NEEDS TO
9 BE A COMMUNICATION, A CONVERSATION THAT INVENTORS
10 HAVE WITH COUNSEL IN WHICH THERE'S AN
11 IDENTIFICATION OF POTENTIAL REPOSITORIES, EITHER
12 ELECTRONIC OR HARD COPY, WHETHER ON YOUR COMPUTER
13 OR LOCATED IN A CENTRAL SERVER, POTENTIAL
14 REPOSITORIES OF RESPONSIVE RELEVANT DOCUMENTS.

15 ONCE THOSE ARE FOUND, WE BELIEVE THAT THE
16 RIGHT THING TO DO IS FOR THE ATTORNEYS THEN, AND
17 THEN MAYBE IN CONJUNCTION WITH THE INVENTORS, TO GO
18 COLLECT THOSE FILES, NOT TO SAY TO THE INVENTORS
19 NOW GO FIND THE RELEVANT DOCUMENTS FROM THOSE
20 FILES, BUT INSTEAD TO GO COLLECT THE FILES AND THEN
21 BRING THEM BACK AND HAVE THEM IN A WAY THAT CAN BE
22 SEARCHED. IF IT'S COPYING A HARD DRIVE, YOU COPY
23 THE HARD DRIVE. YOU DOWNLOAD IT INTO A SERVICE IF
24 YOU WANT TO USE THAT OR YOU SEARCH THAT HARD DRIVE.

25 AGAIN, COUNSEL SHOULD BE SEARCHING THAT

1 HARD DRIVE.

2 WHAT YOU SHOULDN'T DO IS WHAT WE THINK
3 THEY'VE DONE WHICH IS TASK THE INVENTORS TO DO
4 THAT, ESPECIALLY IN A SITUATION WHERE WE HAVE
5 COUNTERCLAIMS FOR ANTI-TRUST VIOLATIONS, FOR
6 STANDARD SETTING ORGANIZATION VIOLATIONS, AND THESE
7 INVENTORS ARE INVOLVED IN THE STANDARDS
8 ORGANIZATIONS WHY THERE'S A SITUATION WHERE THEY
9 MIGHT FIND DOCUMENTS IN THEIR OWN FILES THAT ARE
10 NEGATIVE THAT REFLECT POORLY ON THEM OR INDIVIDUALS
11 OR EMPLOYEES OF SAMSUNG.

12 AND THEN WHAT ARE THEY SUPPOSED TO DO?
13 THEY MAY BE VERY WELL TEMPTED NOT TO FORWARD THOSE
14 DOCUMENTS.

15 AND WE HAVE CITED CASE LAW THAT SAYS YOU
16 SHOULDN'T TASK PERSONS WHO ARE NOT LAWYERS,
17 EMPLOYEES OF COMPANIES, TO GO FIGURE OUT WHAT'S
18 RELEVANT AND WHAT MATTERS FOR A CASE AND FORWARD
19 THAT TO THE ATTORNEYS.

20 SO WE THINK THERE SHOULD BE A
21 CONVERSATION DEFINITELY TO FIND THE RIGHT
22 REPOSITORIES AND THEN SOME WAY OF MORE
23 SCIENTIFICALLY OR FORENSICALLY COLLECTING THE
24 DOCUMENTS FROM THOSE REPOSITORIES, AND ESSENTIALLY
25 IN A BLIND MANNER YOU GO AND YOU COLLECT IT ALL AND

1 THEN YOU RUN YOUR SEARCHES TO FIGURE OUT WHAT MIGHT
2 BE THE RELEVANT UNIVERSE OF RESPONSIVE DOCUMENTS,
3 THEN YOU REVIEW THOSE DOCUMENTS FOR PRIVILEGE AND
4 OTHER ISSUES AND WHAT NOT AND THEN YOU PRODUCE.

5 THE COURT: SO MR. KIM FROM SAMSUNG, I
6 APOLOGIZE, I BELIEVE IT WAS MR. KIM, UNDER PENALTY
7 OF PERJURY TELLS THIS COURT THAT TO THE EXTENT THE
8 INVENTORS SEARCHED THEIR OWN COMPUTERS, THEY WERE
9 ACTING AT THE DIRECTION OF COUNSEL.

10 IS IT YOUR VIEW THAT'S INSUFFICIENT AS A
11 MATTER OF LAW?

12 MR. WALDEN: I THINK I DO, ONLY BECAUSE I
13 THINK IF YOU READ THE KIM DECLARATION, AND THEIR
14 BRIEF VERY CAREFULLY, YOU SEE TWO THINGS.
15 THEY SAY THEY WERE ACTS UNDER DIRECTION OF COUNSEL,
16 BUT THEY DO NOT DENY TWO IMPORTANT FACTS. IT WAS
17 THE INVENTORS WHO SEARCHED THEIR OWN FILES. AND
18 AGAIN, ON THE MANUAL LEVEL.

19 AND THEN AGAIN IT WAS THE INVENTORS WHO
20 PERFORMED THESE WORD SEARCHES OF THEIR OWN FILES.
21 AND NOT ONLY DID THEY USE -- WERE THEY TASKED TO
22 PERFORM THE WORD SEARCHES, THEY WERE APPARENTLY
23 GIVEN FREE REIN AS TO WHAT TYPE OF SEARCH TOOLS TO
24 USE. SO SOME OF THEM WERE APPARENTLY USING A
25 MICROSOFT SEARCH ENGINE WHICH WE FEEL ISN'T VERY

1 ROBUST, IT'S NOT GOING TO FIND ATTACHMENTS OR EVEN
2 KNOW HOW TO DEAL WITH A PDF, FOR EXAMPLE.

3 SO WHAT THE KIM DECLARATION IS, I THINK,
4 IS A CAREFULLY WORDED DECLARATION.

5 THE COURT: MOST OF THEM ARE.

6 MR. WALDEN: THEY ARE.

7 BUT I BELIEVE WHAT REALLY COMES THROUGH
8 WITH THIS IS THAT THERE'S NO DENYING THE INVENTORS
9 ACTUALLY DID THE SEARCHES, MANUAL SEARCHES, AND THE
10 INVENTORS AGAIN PERFORMED THE WORD SEARCHES.

11 NOW THERE WERE SOME EXCEPTIONS THAT WE
12 FOUND OUT IN TESTIMONY WHERE THE INVENTORS JUST DID
13 SUCH A POOR JOB AT THEIR DEPOSITION -- I'M SORRY,
14 DURING THEIR PREPARATION, THEY JUST FORWARDED --
15 THEY FINALLY MADE A HARD COPY OFF THEIR HARD
16 COPIES.

17 WELL, OUR POINT IS THAT'S WHAT YOU SHOULD
18 HAVE DONE IN THE FIRST PLACE, SAMSUNG, YOU SHOULD
19 HAVE DONE THAT BEFORE YOU WERE MEETING WITH THE
20 WITNESS IN JUST A FEW DAYS BEFORE THE DEPOSITION.
21 YOU SHOULD HAVE COPIED OFF THESE HARD DRIVES A LONG
22 TIME BACK.

23 SO I'M NOT HERE TO CALL MR. KIM A
24 PERJURER OR ANYTHING LIKE THAT, BUT I THINK IT IS
25 VERY CLEAR IF YOU LOOK AT THAT DECLARATION THEY ARE

1 NOT DENYING THAT THE INVENTORS DID THEIR OWN
2 SEARCHES BOTH MANUALLY AND THE WORD SEARCHES.

3 THE COURT: SO IF I UNDERSTAND YOUR
4 POINT, YOU ARE SUGGESTING THAT AT LEAST IN CASES OF
5 THIS NATURE, THE COURT SHOULD ADOPT OR IMPOSE A
6 STANDARD WHICH REQUIRES OUTSIDE COUNSEL TO
7 SPECIFICALLY CONDUCT THE MANUAL COLLECTION AS WELL
8 AS TO EXECUTE ANY SEARCH ON ELECTRONIC DATA WHICH
9 HAS BEEN GATHERED? IS THAT THE STANDARD YOU ARE
10 SUGGESTING OR URGING APPLY?

11 MR. WALDEN: I THINK -- I THINK IT COMES
12 CLOSE TO IT.

13 THE OUTSIDE COUNSEL, AND PERHAPS INSIDE
14 COUNSEL IF IN WORKING WITH OUTSIDE COUNSEL, IN
15 CONJUNCTION WITH OUTSIDE COUNSEL, I THINK THE
16 STANDARD SHOULD BE THAT COUNSEL SHOULD BE THE ONES
17 MAKING THE CUT BETWEEN WHAT'S RELEVANT AND NON
18 RELEVANT IN THE DOCUMENT COLLECTION RATHER THAN THE
19 INVENTORS.

20 THE COURT: OKAY.

21 SO WITH RESPECT TO PAPER DOCUMENTS
22 PRESUMABLY THAT WOULD REQUIRE INSIDE OR OUTSIDE
23 COUNSEL TO ACTUALLY DO THE COLLECTION AND REVIEW,
24 RIGHT?

25 IF THEY ARE MAKING AN ASSESSMENT OF

1 RELEVANCE UNDER YOUR PROPOSAL, THAT WOULD REQUIRE
2 THOSE INDIVIDUALS ACTUALLY DO THE REVIEW.

3 WITH RESPECT TO THE ELECTRONIC DOCUMENTS
4 IT WOULD SEEM TO ME UNDER YOUR PROPOSAL, A
5 REQUIREMENT THAT OUTSIDE COUNSEL DRIVE THE
6 RELEVANCE DETERMINATION OR MAKE THE RELEVANCE
7 DETERMINATION COULD BE SATISFIED BY OUTSIDE OR
8 INSIDE COUNSEL SUPPLYING THE TERMS?

9 BUT I HEAR IN WHAT YOU ARE SAYING, A
10 PROBLEM OR A CONCERN THAT THAT MAY BE INSUFFICIENT
11 TO MEET THE TEST.

12 MR. WALDEN: I AM.

13 GIVEN IN THIS SITUATION WHERE OKAY, SO
14 THEY SUPPLIED THE TERMS BUT THEN THE INVENTORS
15 THEMSELVES WERE THEN TASKED TO FIGURE OUT HOW TO
16 APPLY THOSE TERMS, HOW TO RETURN THE SEARCHES.

17 IF THEY SUPPLIED THE TERMS AND SAID, ALL
18 RIGHT, HERE'S A TRIED AND TRUE METHOD AND HERE'S A
19 LIST OF BULLET POINTS THAT YOU HAVE TO FOLLOW IN
20 ORDER TO SEARCH YOUR OWN FILES, AND YOU MUST
21 CONFIRM THAT YOU HAVE SEARCHED E-MAILS, YOU HAVE
22 SEARCHED ATTACHMENTS, THAT PDF'S THAT HAVEN'T BEEN
23 OCR'S WOULD BE SEARCHABLE IN SOME WAY, AND THEN
24 PERHAPS.

25 WE ARE NOT SAYING THE INVENTOR, THAT IT

1 HAS TO BE COUNSEL THAT GOES TO THE INVENTOR'S
2 COMPUTER AND TYPES IN THE TERMS. BUT IT'S NOT
3 SUFFICIENT IN OUR VIEW TO SAY THAT THE INVENTORS
4 ARE GIVEN THE TERMS THEN ARE TASKED TO DO THE
5 SEARCHES THEMSELVES, AND THEN FURTHER ARE TASKED TO
6 SAY, OKAY FORWARD TO ME WHAT YOU THINK IS THE
7 PROPER DOCUMENTS BECAUSE WE DIDN'T GET -- AND
8 AGAIN, THE KIM DECLARATION DOESN'T SAY THIS, WE
9 DIDN'T GET ANY INDICATION THAT EVERY DOCUMENT, FOR
10 EXAMPLE THAT THE INVENTORS FOUND FROM THEIR
11 SEARCHES, WAS FORWARDED. WE DON'T KNOW.

12 THE COURT: DID YOU PUT THAT QUESTION TO
13 ANY OF THE INVENTORS DURING THE DEPOSITION?

14 MR. WALDEN: THERE WERE QUESTIONS AT
15 LEAST TO MR. LI, AND HE'S I BELIEVE IN EXHIBIT D OF
16 THE EXHIBITS IN WHICH HE DID SAY HE FORWARDED
17 EVERYTHING THAT HE FOUND.

18 SO WE DIDN'T ASK ALL 32 INVENTORS.

19 THE COURT: SO THE ONE INDIVIDUAL YOU DID
20 ASK SAID HE DID FORWARD THE MATERIALS AND YOU
21 DIDN'T ASK THE OTHERS IF IT'S REASONABLE TO
22 CONCLUDE THERE'S A PROBLEM IN THE FORWARDING
23 PROCESS.

24 MR. WALDEN: HE SAID THAT HE SEARCHED
25 USING THE MICROSOFT SEARCH ENGINE AND THEN HE

1 FORWARDED WHAT HE FOUND.

2 SO AGAIN, WE ARE NOT HERE TO POINT
3 FINGERS AT ALL 32 INVENTORS SAYING THAT THEY
4 VIOLATED THEIR DUTY. WHAT WE ARE SAYING IS THAT
5 THE STRUCTURE THAT WAS SET UP BY SAMSUNG FOR
6 COLLECTING DOCUMENTS, RELYING TOO HEAVILY ON THE
7 INVENTORS, IS JUST RIPE FOR PROBLEMS.

8 WE DIDN'T IDENTIFY A SITUATION WHERE WE
9 HAD A SMOKING GUN FROM A DEPOSITION WHERE THE
10 INVENTOR SAYS YEAH, I FOUND A REALLY BAD ONE, I
11 DIDN'T FORWARD IT.

12 WHAT WE DID FIND WAS TERMS THAT WE
13 PROPOSED IT WAS PRETTY AD HOC SPORADIC AND OFTEN
14 TIMES HAD TO BE CORRECTED IN ORDER TO PREPARE FOR
15 THE DEPOSITION.

16 THE COURT: SO MR. WALDEN, IS YOUR
17 COMPLAINT OR CONCERN ABOUT THIS PROTOCOL OR LACK OF
18 PROTOCOL LIMITED TO INVENTOR CUSTODIANS OR IS IT
19 MORE GENERAL THAN THAT? DOES IT APPLY TO OTHER
20 INDIVIDUALS AT SAMSUNG WITH RELEVANT INFORMATION?

21 MR. WALDEN: IT WOULD APPLY BUT WE DON'T
22 HAVE TESTIMONY THAT THAT'S BEEN THE METHOD OF
23 COLLECTING.

24 AGAIN, WE HAD A SLEW OF INVENTOR
25 DEPOSITIONS THAT OCCURRED PURSUANT TO THE ORDER.

1 SO OUR MOTION IS SPECIFIC TO THE
2 INVENTORS, BUT IN GENERAL WE WOULD EXPECT THAT
3 DOCUMENTS COLLECTED FROM ANY WITNESS FILES WOULD BE
4 REFLECTED IN A MORE ROBUST MANNER.

5 THE COURT: ALL RIGHT.

6 BEFORE WE TURN TO THE SECOND AND THIRD
7 ELEMENTS OF YOUR MOTION I WOULD LIKE TO HEAR FROM
8 SAMSUNG, THEN WE WILL PICK THESE UP ONE AT A TIME.

9 WHO WANTS TO SPEAK ON BEHALF HALF OF
10 SAMSUNG?

11 MS. MAROULIS: MS. KASSABIAN.

12 MS. KASSABIAN: GOOD MORNING, YOUR HONOR.
13 I THINK IT'S STILL MORNING.

14 SO I'M STILL WAITING TO HEAR SOMETHING
15 THAT PERSUADES ME THAT THERE WAS ANYTHING WRONG
16 WITH SAMSUNG'S INVENTOR COLLECTION.

17 AND I THINK YOUR HONOR'S QUESTIONS WERE
18 EXACTLY RIGHT ASKING MR. WALDEN TO EXPLAIN WHAT WE
19 WOULD ENVISION AS BEING THE IDEAL OR MODEL OR,
20 FRANKLY, REQUIRED WAY TO SEARCH CUSTODIAL
21 DOCUMENTS.

22 I THINK SAMSUNG DID EVERYTHING THAT ANY
23 PARTY TYPICALLY DOES IN THIS SITUATION. THERE
24 WERE, AS DETAILED IN MS. ROSA KIM'S, DECLARATION
25 THERE WERE --

1 THE COURT: IT IS MS. KIM? I APOLOGIZE.

2 MS. KASSABIAN: IT IS MS. KIM.

3 ALSO AS DETAILED IN MS. CHAN'S
4 DECLARATION, MY COLLEAGUE AT QUINN EMANUEL, BOTH
5 INSIDE AND OUTSIDE COUNSEL WAS HEAVILY INVOLVED
6 FROM MINUTE ONE IN THESE COLLECTIONS, INCLUDING ME
7 PERSONALLY AND MANY MEMBERS OF MY FIRM AND MANY
8 MEMBERS OF SAMSUNG'S IN-HOUSE COUNSEL TEAM.

9 THIS WAS A GLOBAL EFFORT. IT WAS A TEAM
10 COLLABORATIVE EFFORT BOTH IN TERMS OF LOCATING
11 INVENTORS, VETTING AND COMING UP WITH SEARCH TERMS,
12 COMMUNICATING WITH THE INVENTORS -- AND I DON'T
13 WANT TO GO INTO, OBVIOUSLY WE ARE GETTING VERY
14 DANGEROUSLY CLOSE TO ISSUES OF PRIVILEGE, BUT I CAN
15 CERTAINLY TELL YOU WHAT WAS COLLECTED AND GENERALLY
16 DESCRIBE THAT COMMUNICATIONS WERE HAD.

17 BUT THERE WERE VERY THOROUGH
18 INVESTIGATIONS AS DETAILED IN THE TWO DECLARATIONS
19 WE SUBMITTED TO DETERMINE WHERE DOCUMENTS WOULD BE,
20 AND COUNSEL WAS INVOLVED IN EVERY STEP OF THAT
21 PROCESS.

22 IS IT INAPPROPRIATE TO ASK ENGINEERS TO
23 RUN SEARCHES ON THEIR LAPTOPS? I THINK NOT. I
24 THINK THEY ARE PROBABLY THE MOST SKILLED PERSON TO
25 DO SUCH A THING. IS IT INAPPROPRIATE TO ASK AN

1 ENGINEER, A PHD WHO IS WORKING ON HIGHLY TECHNICAL
2 AND COMPLICATED SUBJECT MATTER, TO HELP COUNSEL
3 POINT COUNSEL TO WHERE THE RELEVANT DOCUMENTS WOULD
4 BE? I THINK THAT'S REQUIRED.

5 I THINK THERE'S NO WAY AN ATTORNEY COULD
6 SIMPLY STUMBLE THROUGH ONE OF THESE LAPTOPS AND
7 FIGURE OUT WHICH SETS OF TECHNICAL DOCUMENTS ARE
8 RELEVANT.

9 I THINK YOU WOULD BE REMISS NOT TO
10 INVOLVE THE INVENTOR VERY HEAVILY IN THAT MANUAL
11 COLLECTION.

12 SO THAT'S EXACTLY WHAT WE DID. THERE'S
13 AN ACCUSATION THAT COUNSEL WASN'T INVOLVED; THAT'S
14 UNTRUE. AND WE SUBMITTED SWORN DECLARATIONS ABOUT
15 THAT. THERE'S AN ACCUSATION THAT THE SEARCHES WERE
16 NOT SUPERVISED; THAT IS ALSO UNTRUE.

17 THE COURT: WHEN YOU SAY SEARCHES WERE
18 SUPERVISED, IS IT ACCURATE, ARE WE ALL ON THE SAME
19 PAGE HERE AS TO HOW THESE SEARCHES WERE EXECUTED?

20 IS IT IN FACT TRUE THAT FOR EACH AND
21 EVERY ONE OF THESE INVENTORS WE ARE TALKING ABOUT
22 THE INVENTORS WERE RESPONSIBLE FOR TAKING THE TERM
23 AND USING THE MICROSOFT TOOL OR ANOTHER LIKE IT IN
24 ORDER TO EXECUTE THE SEARCH, IS THAT AN ACCURATE
25 STATEMENT OF WHAT HAPPENED?

1 MS. KASSABIAN: YES. THE INVENTORS DID
2 THE TYPING.

3 AND I HEARD MR. WALDEN SAY THAT'S NOT
4 WHAT CONCERNS HIM. WHAT CONCERNS HIM IS THAT HE IS
5 THEN SUPPOSING OR SPECULATING THAT THESE INVENTORS
6 SOMEHOW HAD THE TIME AND THE INCLINATION TO SIT
7 DOWN AND REVIEW THE TENS OF HUNDREDS OF THOUSANDS
8 OF HITS THAT THESE SEARCH TERMS RETRIEVED AND
9 NEFARIOUSLY PULL OUT RELEVANT DOCUMENTS AND NOT
10 PASS THEM ON TO COUNSEL PURSUANT TO THE GUIDANCE
11 THEY WERE GIVEN BY COUNSEL.

12 AND THAT'S NOTHING BUT UTTER AND PURE
13 SPECULATION. THAT IS NOT WHAT HAPPENED. HE HAS NO
14 BASIS TO SAY THAT. APPLE HAS NO BASIS TO SPECULATE
15 THAT.

16 IF THAT WERE TRUE, THEN, YOU KNOW, APPLE
17 WOULD HAVE TO THEN COME AND EXPLAIN TO US AND MAYBE
18 REDO ALL OF ITS ASCERTAINS BECAUSE, WHO KNOWS,
19 MAYBE THERE'S SOME APPLE INVENTOR WHO DIDN'T TURN
20 OVER A NOTEBOOK OR DIDN'T TURN OVER A FILE OR TOOK
21 A PAGE OF A PRINTOUT OUT BEFORE HANDING IT OVER TO
22 COUNSEL.

23 THAT'S NOT A BASIS TO ASK SAMSUNG TO
24 SPEND ANOTHER, I THINK THIS COLLECTION TOOK TWO
25 MONTHS, MANY, MANY WEEKS, TO ASK US HERE WE ARE IN

1 LATE JANUARY, TO GO BACK AND REDO ALL THAT HARD
2 WORK.

3 SAMSUNG PRODUCED 122,000 PAGES OF
4 INVENTOR DOCUMENTS. I HEARD MR. WALDEN SAY THAT
5 APPLE'S INVENTOR DOCUMENT PRODUCTION WAS LARGER. I
6 DON'T THINK THAT'S TRUE. BUT IF MR. WALDEN CAN
7 PROVIDE A NUMBER, I GUESS WE CAN COMPARE.

8 I KNOW THAT APPLE'S ENTIRE PRODUCTION IS
9 250,000 PAGES NOT INCLUDING SEVERAL HUNDRED
10 THOUSAND PAGES OF GIBBERISH WE GOT FROM ONE
11 CUSTODIAN.

12 BUT IN ANY EVENT, TO PRODUCE 122,000
13 DOCUMENTS USING MANUAL COLLECTION EFFORTS AND
14 SEARCH TERMS, YOU CAN IMAGINE HOW MANY DOCUMENTS
15 WERE ACTUALLY COLLECTED IN A SHORT PERIOD OF TIME.

16 I DON'T HAVE THE EXACT NUMBER, BUT I
17 SUSPECT IT WAS IN THE NEIGHBORHOOD OF HALF A
18 MILLION, A MILLION SOMETHING, CERTAINLY MUCH LARGER
19 THAN THE ULTIMATE SET OF DOCUMENTS THAT WAS
20 PRODUCED BECAUSE, OF COURSE, THERE'S A REVIEW
21 PROCESS.

22 THE COURT: I WANT TO FOCUS ON, IF I
23 MAY --

24 MS. KASSABIAN: ABSOLUTELY, YOUR HONOR.

25 THE COURT: -- ON WHAT FACTS WE CAN AGREE

1 UPON IN TERMS OF WHAT ACTUALLY HAPPENED.

2 THE LEGAL SIGNIFICANCE OF THOSE FACTS IS
3 I SUSPECT AN ISSUE FOR ME TO MAKE A CALL ON.

4 BUT YOU HAVE CONFIRMED THAT AS TO WHO
5 ACTUALLY EXECUTED THE SEARCH, IT WAS IN FACT THE
6 CASE THAT THE INVENTORS WERE RESPONSIBLE FOR
7 EXECUTING THE SEARCH IN EACH AND EVERY INSTANCE; IS
8 THAT FAIR?

9 MS. KASSABIAN: ARE WE TALKING ABOUT THE
10 SEARCH TERMS OR THE MANUAL COLLECTION?

11 THE COURT: THE SEARCH TERMS ON THE
12 ELECTRONIC DATA.

13 MS. KASSABIAN: OKAY.

14 BECAUSE CERTAINLY THE PRIMARY COLLECTION
15 METHOD WAS TO ASK THE INVENTORS, TELL US WHERE
16 THESE DOCUMENTS ARE.

17 THE COURT: RIGHT. I'M PAST COLLECTION,
18 I'M TALKING ABOUT APPLYING SEARCH TERMS.

19 MS. KASSABIAN: YES, ABSOLUTELY.

20 THEY PUNCHED IN THE TERMS --

21 THE COURT: OKAY.

22 MS. KASSABIAN: -- WITH GUIDANCE FROM
23 COUNSEL. THERE WERE MEETINGS, THERE WERE
24 EXPLANATIONS AS TO HOW TO RETURN THE SEARCHES AND
25 THEN THERE WERE SEARCH TERMS GIVEN TO THEM, AND IT

1 WAS A COLLABORATIVE PROCESS.

2 THE COURT: OKAY.

3 SO THEY RAN THE TERMS, THAT'S ALL I NEED
4 TO KNOW ON THAT ISSUE.

5 MS. KASSABIAN: ABSOLUTELY.

6 THE COURT: AS TO FORWARDING POSITIVE
7 HITS, WERE THE INVENTORS RESPONSIBLE FOR FORWARDING
8 THOSE?

9 MS. KASSABIAN: THEY WERE RESPONSIBLE FOR
10 HANDING EVERYTHING OVER TO COUNSEL, ABSOLUTELY. I
11 MEAN, THROUGH AN UPLOAD PROCESS.

12 I MEAN, WE ARE TALKING ABOUT COMPUTER
13 ENGINEERS HERE, THEY CAN HANDLE IT.

14 SO INSTRUCTIONS WERE GIVEN TO PASS THE
15 DOCUMENTS ON. DID A LAWYER WALK OVER TO THE WORK
16 STATION AND, YOU KNOW, STICK IN A THUMB DRIVE AND
17 DO THE FILE TRANSFER THEMSELVES? I DON'T FRANKLY
18 KNOW. I'M NOT SURE IF THAT OCCASIONALLY HAPPENED.

19 I DO KNOW THAT THE INSTRUCTIONS WERE,
20 GIVE THE HITS TO COUNSEL. AND THEN THE INVENTORS
21 WERE NOT GIVEN THE DISCRETION TO GO THROUGH THOSE
22 HITS AND DECIDE WHAT THEY THOUGHT WAS RELEVANT.
23 THAT'S WHAT THE MANUAL COLLECTION WAS FOR, RIGHT?

24 SO THE MANUAL COLLECTION WAS THE STAGE
25 WHERE THEY SAY TO THE WITNESS, DO YOU KEEP FOLDERS

1 AND FILES ON YOUR COMPUTER REGARDING THE '941
2 INVENTION? YES, OF COURSE I DO. OKAY. GIVE US
3 THOSE.

4 THEN SEPARATELY, JUST TO MAKE SURE
5 EVERYTHING WAS CAUGHT, BECAUSE WE ALL OCCASIONALLY
6 SAVE A DOCUMENT IN THE WRONG PLACE, THAT'S WHEN THE
7 SEARCH TERMS CAME IN.

8 SO TO BE CLEAR, THE MANUAL COLLECTIONS I
9 THINK TYPICALLY ARE MORE ACCURATE AND MORE RELIABLE
10 WHEN YOU ARE DEALING WITH THESE TYPES OF TECHNICAL
11 DOCUMENTS.

12 BUT IN ANY EVENT, BELT AND SUSPENDERS WAS
13 APPLIED AND THAT WAS THE SEARCH TERM TECHNIQUE, AND
14 THOSE SEARCH TERMS WERE DISCLOSED AND THEY WERE,
15 LIKE I SAID, VERY CLEARLY VETTED.

16 IT WAS A COLLABORATIVE EFFORT BOTH IN
17 TERMS OF COUNSEL'S VIEW OF WHAT TERMS MIGHT HIT
18 RELEVANT DOCUMENTS AND THE INVENTOR'S VIEW OF WHAT
19 TERMS THEY TYPICALLY USED AND WHETHER THEY USED
20 THOSE TERMS IN KOREAN OR IN ENGLISH GIVEN THE FACT
21 THAT THE SSO COMMUNITY COMMUNICATES IN ENGLISH.
22 OFTEN TIMES WE FOUND THAT IT WAS ACTUALLY ENGLISH
23 TERMS BEING USED FOR SOME OF THE THESE TECHNICAL
24 TERMS.

25 THE COURT: ALL RIGHT.

1 ON THE ISSUE OF THE TERMS THEMSELVES, IS
2 IT TRUE THE '055 AND '871 PATENTS WERE NOT INCLUDED
3 AMONG THE SEARCH TERMS?

4 MS. KASSABIAN: THERE WAS NOTHING TO
5 SEARCH. THOSE INVENTORS ARE FORMER EMPLOYEES AND
6 THEY HAVE NOT BEEN ABLE TO LOCATE THEM. SO THERE
7 WAS NO DATA SET TO APPLY THE SEARCH TERMS TO.

8 THE COURT: SO DID THE UNIVERSE OF TERMS
9 THAT WERE USED TO CALL, COLLECT THE MATERIAL AND TO
10 POTENTIALLY RESPONSIVE MATERIAL, WAS THAT UNIVERSE
11 DIFFERENT FROM ONE INVENTOR TO THE NEXT?

12 MS. KASSABIAN: YOU MEAN THE SEARCH
13 TERMS?

14 THE COURT: YEAH.

15 MS. KASSABIAN: ABSOLUTELY, YEAH.
16 BECAUSE IT'S VERY DIFFERENT TECHNOLOGY.

17 SO THERE WERE SETS OF SEARCH TERMS
18 DEVELOPED, I MEAN, THIS WAS A VERY COMPLEX AND VERY
19 TIME CONSUMING PROCESS.

20 BUT YES, THERE WERE SEPARATE SEARCH TERMS
21 FOR EACH INVENTOR BECAUSE NATURALLY THERE WERE
22 DIFFERENT WORDS INVOLVED IN TERMS OF THE
23 TECHNOLOGY, THE PATENT, WHETHER THERE WAS SSO
24 INVOLVEMENT AND THAT TYPE OF THING.

25 THE COURT: SO YOUR POINT IS THE '055 AND

1 '871 WERE CONSCIOUSLY DISREGARDED BECAUSE THOSE
2 INVENTORS ARE NO LONGER EMPLOYED BY THE COMPANY?

3 MS. KASSABIAN: THERE WAS NO LAPTOP OR
4 COMPUTER TO SEARCH.

5 THE COURT: ARE THEY CURRENTLY EMPLOYED?

6 MS. KASSABIAN: WE DON'T KNOW WHERE THEY
7 ARE, WE'VE LOOKED. I ASSUME APPLE HAS LOOKED TOO.

8 THE COURT: I JUST WANT TO KNOW THE
9 FACTS. IF YOU HAVE LOOKED THEN CAN YOU CONFIRM FOR
10 ME THEY ARE NO LONGER EMPLOYED BY SAMSUNG?

11 MS. KASSABIAN: THEY ARE DEFINITELY
12 FORMER EMPLOYEES, BUT SAMSUNG WAS ABLE ON LOCATE
13 SOME FORMER EMPLOYEES AND RAN SEARCHES ON THEIR
14 COMPUTERS AND COLLECTED MANUAL DOCUMENTS.

15 BUT FOR '055 AND '871, NO ONE HAS BEEN
16 ABLE TO LOCATE THE INVENTORS. SO IT ISN'T THAT
17 THOSE TERMS JUST WEREN'T CREATED, BUT THERE WAS
18 NOTHING TO RUN THEM AGAINST.

19 SO WHAT WE DID INSTEAD --

20 THE COURT: AND THEIR ELECTRONIC DATA WAS
21 NOT FOUND AFTER A REASONABLE SEARCH? THE HARD
22 DRIVES AREN'T SITTING AROUND IN A LOCKER SOMEWHERE?

23 MS. KASSABIAN: RIGHT. NO, NO.

24 I DON'T HAVE THE EXACT NUMBER OF YEARS
25 BUT I THINK IT WAS SOMETHING IN THE NEIGHBORHOOD OF

1 6 TO 10 YEARS AGO AS TO THE RELEVANT TIME PERIOD
2 FOR THESE PATENTS.

3 AND OF COURSE LIKE MOST TECH COMPANIES,
4 OVER A FEW YEARS PEOPLE GET NEW COMPUTERS. WHEN
5 PEOPLE LEAVE THE COMPANY, OBVIOUSLY THERE ARE
6 PROCEDURES FOR RETAINING OR DISPOSING OF THE WORK
7 PRODUCT.

8 THIS WAS SO LONG AGO THAT THEIR LAPTOPS
9 WERE NOT STILL AROUND. BUT IT'S NOT THAT NOTHING
10 WAS DONE ON THOSE PATENTS, THERE WERE MANUAL
11 SEARCHS OF CENTRAL SERVERS TO SEE IF ANYTHING COULD
12 BE LOCATED FOR THOSE TWO, AND SOME DOCUMENTS WERE
13 LOCATED AND SOME WERE PRODUCED.

14 THE COURT: ALL RIGHT.

15 WERE THERE KOREAN SEARCH TERMS INCLUDED?

16 MS. KASSABIAN: YES.

17 I'M CERTAIN OF ONE WHICH WE DISCLOSED
18 BECAUSE DURING THE PROCESS OF DEVELOPING THE SEARCH
19 TERMS, THAT DISCUSSION WAS HAD WITH EVERYONE.

20 AND, YOU KNOW, THE TRUTH OF THE MATTER IS
21 THAT A LOT OF THESE INDIVIDUALS WORK ACROSS BORDERS
22 INTERNATIONALLY WITH STANDARD SETTING
23 ORGANIZATIONS, WITH WORKING GROUPS, AND THOSE
24 BODIES TEND TO COMMUNICATE IN ENGLISH.

25 AND SO WHEN WE LEARNED THAT THERE WAS A

1 TERM THAT WAS TYPICALLY USED IN KOREAN, OF COURSE
2 WE RAN THAT TERM. THESE ARE KOREAN SPEAKING
3 PEOPLE. THERE WAS NO INTENTIONAL DECISION TO
4 EXCLUDE CERTAIN TERMS IN THE TRANSLATION TO HIDE
5 DOCUMENTS.

6 WE DIDN'T INCLUDE KOREAN SEARCH TERMS
7 WHERE WE LEARNED THROUGH THE MULTIPLE INTERVIEWS
8 WITH THESE PEOPLE THAT THEY DID NOT USE THOSE TERMS
9 IN ANY LANGUAGE BUT ENGLISH.

10 SO IT WAS A THOUGHTFUL PROCESS. THIS WAS
11 NOT SLOPPY, THIS WAS NOT INTENTIONALLY NEFARIOUS,
12 IT WAS CAREFUL AND THOUGHTFUL.

13 THE COURT: ALL RIGHT.

14 LET'S LOOK AT HOW CAREFUL AND THOUGHTFUL
15 IT REALLY WAS.

16 IF THE SEARCH TERMS -- WELL, LET ME ASK
17 YOU THIS, DID YOU COMPUTE OR RUN THE SEARCH TERMS
18 ON THE DATA SETS, LET'S FOCUS ON THE ELECTRONIC
19 DATA FOR THE MOMENT, BEFORE OR AFTER THOSE TERMS
20 WERE DISCLOSED TO APPLE?

21 MS. KASSABIAN: THAT WAS ALL DONE BEFORE
22 BECAUSE THE PARTIES ONLY AGREED TO EXCHANGE SEARCH
23 TERMS AFTER YOUR HONOR'S SEPTEMBER, I THINK IT WAS
24 IN THE SEPTEMBER 28TH ORDER WHERE YOUR HONOR
25 INDICATED THAT THAT WOULD BE A GOOD IDEA.

1 AND SO WE STARTED THE MEET AND CONFER
2 PROCESS WITH APPLE, AND SAMSUNG PROPOSED THAT IT BE
3 DONE AT LEAST ON SOMEWHAT OF A REGULAR BASIS. WE
4 SUGGESTED MONTHLY.

5 AND SO THERE WAS AN INITIAL EXCHANGE
6 CONSISTENT WITH YOUR HONOR'S ORDER ON OCTOBER 7TH
7 WHICH WAS THE PRODUCTION DATE FOR YOUR LAST ORDER.

8 AND THEN DURING DISCUSSIONS WITH APPLE IN
9 NOVEMBER, LATE OCTOBER AND INTO NOVEMBER, WE
10 SUGGESTED HEY, YOU KNOW, WE SHOULD KEEP EXCHANGING
11 BECAUSE THE PARTIES ARE CONTINUING TO DISCOVER NEW
12 CUSTODIANS AND RUN NEW SEARCHES, SO THESE ARE GOING
13 TO HAVE TO BE UPDATED.

14 SO WE EXCHANGED UPDATED SEARCH TERMS IN
15 LATE NOVEMBER, THE VERY END OF NOVEMBER, APPLE GAVE
16 US A SET I THINK IN MID NOVEMBER. WE GAVE OURS IN
17 LATE NOVEMBER.

18 THE COURT: AND WERE THESE SETS OF TERMS
19 EXCHANGED IN NOVEMBER BEFORE OR AFTER --

20 MS. KASSABIAN: AFTER THE DEPOSITIONS --

21 THE COURT: AFTER THE SEARCH HAD BEEN
22 CONDUCTED?

23 MS. KASSABIAN: OH, YES, YES. AND THAT'S
24 WHAT APPLE DID AS WELL.

25 THE PARTIES HAVE NOT, ALTHOUGH IT

1 CERTAINLY IS DONE IN SOME CASES, AND FRANKLY, YOU
2 KNOW, CAN BE A GOOD IDEA IF THE PARTIES ARE
3 SOMEWHAT COOPERATIVE WITH EACH OTHER.

4 THE COURT: SO IF YOU ARE NOT COOPERATING
5 WE WILL JUST ALL THROW IT AT THE COURT?

6 MS. KASSABIAN: WELL CERTAINLY IN SOME
7 CASES THE PARTIES EXCHANGED TERMS BEFOREHAND.

8 THE COURT: WHY WOULDN'T THAT MAKE SENSE?

9 I DON'T UNDERSTAND THE RESISTANCE IN OUR
10 BUSINESS HERE, A TYPE OF TRANSPARENCY. HOW COULD
11 THAT NOT BE A GOOD IDEA?

12 MS. KASSABIAN: I DON'T KNOW IF ANYONE
13 AFFIRMATIVELY DECIDED NOT TO DO THAT. I THINK THIS
14 CASE IS JUST BARRELING THROUGH SPACE AT LIGHT SPEED
15 AND APPLE'S INVENTORS WERE DEPOSED IN OCTOBER,
16 INCLUDING ON DATES BEFORE, RIGHT AROUND THE TIME
17 YOUR HONOR'S ORDER ISSUED, SO THEY HAD ALREADY DONE
18 THEIR SEARCHES AND STARTED --

19 THE COURT: SO I CAN UNDERSTAND AND
20 PERHAPS FORGIVE A FAILURE TO DISCLOSE IN ADVANCE
21 BEFORE I MADE IT CLEAR OF MY VIEWS ON THE SUBJECT,
22 ALTHOUGH I DON'T THINK I HAVE A PARTICULARLY UNIQUE
23 PERSPECTIVE ON THIS, IT STRIKES ME AS COMMON SENSE.

24 BUT AFTER THAT DATE, WHY WOULDN'T YOU
25 MAKE THAT DISCLOSURE BEFORE YOU GO THROUGH THE

1 TROUBLE AND EXPENSE OF RUNNING THE SEARCH?

2 MS. KASSABIAN: I THINK THAT'S SOMETHING
3 THE PARTIES SHOULD HAVE AGREED TO BUT IT DIDN'T
4 HAPPEN.

5 AS I UNDERSTAND IT APPLE RAN ALL OF ITS
6 SEARCHES BEFORE YOUR HONOR'S ORDER ISSUED. SO WE
7 GOT THE TERMS AFTER THEY HAD BEEN RUN, AND WE
8 ACTUALLY HAD SOME BONES TO PICK WITH THEIR
9 SEARCHES, NOT ON TERMS, WE DIDN'T ARM SHARE OR
10 QUARTERBACK THEIR TERMS SO MUCH AS WE WERE
11 CONCERNED WITH THE DATES. THERE WERE SOME DATE
12 ISSUES WITH THEIR INVENTOR SEARCHES AND WE DID HAVE
13 SOME MEET AND CONFER EFFORTS ON THAT.

14 THE COURT: IS IT ACCURATE THAT NO
15 DOCUMENTS HAVE BEEN PRODUCED FROM THE FILES OF 15
16 OUT OF 32 INVENTORS?

17 MS. KASSABIAN: YES, THAT'S RIGHT.

18 I BELIEVE THAT'S THE RIGHT NUMBER, BUT
19 IT'S ALL DETAILED IN THE KIM DECLARATION. FOR
20 EVERY PERSON THAT THEY TOOK ISSUE WITH, YOU KNOW,
21 THERE IS A REASON OR AN EXPLANATION.

22 TYPICALLY, IT'S TIME AND AGE. A LOT OF
23 THESE SAMSUNG PATENTS ARE OLD. AND THE RELEVANT
24 TIME PERIOD FOR INVENTION, CONCEPTION, REDUCTION TO
25 PRACTICE, HAS LONG, LONG PASSED. THESE FOLKS HAVE

1 MOVED ON, SOME TO OTHER COMPANIES, SOME ARE STILL
2 AT SAMSUNG BUT THEY'VE HAD SIX LAPTOPS BETWEEN THEN
3 AND NOW. SOME INDIVIDUALS CHOOSE TO SAVE THEIR
4 DATA FOREVER AND TRANSFER FILES TO THEIR NEW
5 LAPTOPS AND SOME DON'T.

6 BUT EVERYONE WAS CHECKED AND IF THERE
7 WERE RELEVANT DOCUMENTS OR DOCUMENTS THAT HAD A HIT
8 ON THE SEARCH TERMS, THEY WERE PRODUCED. THERE'S
9 NOTHING MORE THAT CAN BE DONE. IT'S NOT THAT
10 PEOPLE WERE NOT CONSULTED OR THAT PEOPLE'S
11 DOCUMENTS WEREN'T SEARCHED, IT'S JUST THAT SOME
12 PEOPLE LITERALLY WITH THE PASSAGE OF TIME DID NOT
13 STILL HAVE ANY RELEVANT DOCUMENTS.

14 THE COURT: ALL RIGHT.

15 DO YOU HAVE ANYTHING FURTHER YOU WISH TO
16 ADD ON THIS PARTICULAR ISSUE?

17 MS. KASSABIAN: YES.

18 I GUESS I WOULD JUST MAKE A FEW POINTS.

19 I GUESS WHAT TROUBLES ME AND CONFUSES ME
20 ABOUT THIS ENTIRE MOTION IS THAT WE'VE CAREFULLY
21 AND THOROUGHLY DISCLOSED WHAT HAPPENED, HOW THESE
22 SEARCHES WERE CONDUCTED. AND FROM WHAT I CAN TELL
23 IT'S EXACTLY THE WAY APPLE GATHERS ITS DOCUMENTS IN
24 TERMS OF INTERVIEWS, SEARCH TERMS, TERMS THAT ARE
25 VETTED AND THEN A SET IS DECIDED UPON.

1 AND I COULD UNDERSTAND THE MOTION, I
2 SUPPOSE IF THEY WERE ABLE TO POINT TO DOCUMENTS AND
3 SAY HEY, YOU KNOW WHAT, SPECIFIC DOCUMENTS, ACTUAL
4 THINGS ARE MISSING.

5 BUT THERE'S NOTHING LIKE THAT IN THEIR
6 MOTION. THE ONLY TIME THEY GET CLOSE TO THAT
7 SUGGESTION IS ABOUT SSO DOCUMENTS. THEY DON'T
8 REALLY ACCUSE THAT THE INVENTION, CONCEPTION,
9 REDUCTION TO PRACTICE TYPE OF DOCUMENTS ARE
10 MISSING.

11 THEY DON'T SAY THAT ANYWHERE IN THEIR
12 MOTION AND FOR GOOD REASON, BECAUSE OUR SEARCH
13 TERMS WOULD HAVE CAUGHT THOSE AND WE PRODUCED
14 122,000 PAGES OF THAT.

15 THE CLOSEST THEY GET IN THEIR MOTION IS
16 THEY SAY WELL, WE THINK SSO SEARCH TERMS SHOULD
17 HAVE BEEN USED.

18 AND I THINK THAT'S A RED HERRING FOR TWO
19 REASONS.

20 NUMBER ONE, SSO DOCUMENTS WERE CAUGHT.

21 AND IN THE EXHIBITS TO THESE MOTIONS YOU
22 WILL FIND A JANUARY 6TH, 2012, LETTER WHERE -- FROM
23 SAMSUNG -- WHERE WE LAID OUT BATES NUMBERS OF SSO
24 DOCUMENTS THAT WERE IN THESE INVENTORS'
25 COLLECTIONS.

1 BUT SECONDLY, IN A SEPARATE PART OF
2 MOTION THAT WE ARE GOING TO GET TO NEXT, SAMSUNG
3 HAS AGREED TO SUPPLEMENT ITS PRODUCTION OF SSO
4 RELATED DOCUMENTS.

5 SO TO THE EXTENT -- THE ONLY THING TO THE
6 EXTENT IT IDENTIFIED ANYTHING THAT'S MISSING, THAT
7 ARGUMENT IS ESSENTIALLY MOOT BECAUSE THE SSO
8 DOCUMENT ISSUE IS ALREADY COVERED IN SAMSUNG'S
9 AGREEMENT TO GO BACK AND MAKE SURE THAT IT HAS
10 COLLECTED AND PRODUCED ALL COMMUNICATIONS BETWEEN
11 THE INVENTORS OF THE -- THE INVENTORS WHO WERE
12 INVOLVED IN THE RELEVANT THREE SPECIFICATIONS THAT
13 ARE AT ISSUE IN THE COUNTERCLAIM AND THE SSO
14 ORGANIZATIONS.

15 SO THAT PART OF THE --
16 THE COURT: SO YOU HAVE NO OBJECTION OR
17 YOU DO NOT OBJECT TO PRODUCING SSO RELATED
18 COMMUNICATIONS AND OTHER DOCUMENTS IN THE FILES OF
19 THE INVENTORS?

20 MS. KASSABIAN: WE DON'T, YOUR HONOR.
21 AND IN THE SSO SECTION YOU WILL SEE --
22 THE COURT: AND THOSE HAVEN'T BEEN
23 PRODUCED THUS FAR.

24 MS. KASSABIAN: NO, THAT'S NOT CORRECT.
25 AS I EXPLAINED, WE DID PRODUCE --

1 THE COURT: BUT YOU DIDN'T INCLUDE
2 SPECIFIC SSO RELATED TERMS IN YOUR SEARCH TERMS.

3 MS. KASSABIAN: SOME TERMS WERE, BUT THE
4 PROBLEM IS THAT SOME OF THE THESE SSO TERMS, IF YOU
5 SEARCH 3GPP, IT'S INSANE. IT WOULD BE WILDLY OVER
6 INCLUSIVE AND THAT'S NOT THE RIGHT WAY TO DO IT.

7 THERE ARE WAYS YOU CAN DO THAT, AND WE'VE
8 AGREED IN THE MOTION WITH RESPECT TO THE INVENTORS
9 OF THE SPECIFICATIONS, THE INVENTORS WHO HAVE
10 RELEVANT KNOWLEDGE AND INFORMATION REGARDING THE
11 THREE SPECIFICATIONS WHICH IS NOT ALL 32 OF THE
12 INVENTORS, IT'S A SUBSET WITH RESPECT TO THOSE
13 INVENTORS WHO HAD SSO INVOLVEMENT, WITH REGARD TO
14 THE THREE SPECIFICATIONS AT ISSUE, ABSOLUTELY WE'VE
15 AGREED ALREADY IN OUR BRIEF AND IN MEET AND CONFER
16 CORRESPONDENCE THAT SHOULD HAVE AVERTED THIS MOTION
17 TO SUPPLEMENT OUR PRODUCTION TO THE EXTENT ANY OF
18 THOSE COMMUNICATIONS ARE MISSING.

19 THE COURT: ALL RIGHT.

20 THANK YOU VERY MUCH.

21 MS. KASSABIAN: THANK YOU.

22 THE COURT: MR. WALDEN, ANY BRIEF
23 REBUTTAL BEFORE WE TURN TO THE SSO ISSUE IN ERNEST?

24 MR. WALDEN: CERTAINLY.

25 JUST TO ADDRESS A COUPLE OF POINTS FROM

1 MS. KASSABIAN.

2 IT'S NOT THE CASE THAT WE COLLECTED
3 DOCUMENTS AND THAT OUR COLLECTION HAS BEEN THE SAME
4 AND THAT WE RAN SEARCHES THE SAME.

5 LIKE I SAID EARLIER, WE THINK A GOOD
6 COLLECTION IS YOU FIND THE RIGHT DOCUMENTS, THEN
7 YOU -- THE RIGHT UNIVERSE OF DOCUMENTS, THEN YOU
8 COLLECT THOSE DOCUMENTS. IF IT MEANS MAKING A COPY
9 OF A HARD DRIVE, THAT'S WHAT WE DID. IF IT MEANS
10 MAKING COPIES OF HARD DOCUMENTS, THAT'S WHAT WE DID
11 AS WELL.

12 AND WE AGREE WITH YOU IN A SENSE THAT IT
13 IS A BIT PUTTING THE CART BEFORE THE HORSE TO RUN
14 YOUR SEARCHES, HAVE THE DEPOSITIONS, THEN DISCLOSE
15 THE SEARCH TERMS, BUT THAT HAS BEEN THE MODUS OF
16 THIS CASE.

17 IN THAT CASE WHERE WE DISCLOSED SEARCH
18 TERMS, AND THEY'VE HAD ISSUES WITH DATE
19 RESTRICTION, WE'VE COLLECTED THE DOCUMENT. SO FOR
20 US TO GO BACK AND RERUN THE SEARCHES IS
21 STRAIGHTFORWARD. WE'VE GOT THE DOCUMENTS, RERUN
22 THE SEARCH, REPRODUCE.

23 I THINK PART OF THE RESISTANCE HERE ON
24 THEIR BOTH RESISTING THE IDEA THAT THEY'VE
25 COLLECTED IMPROPERLY BUT ALSO THAT THEY WOULD NEED

1 TO RUN ADDITIONAL SEARCH TERMS, THEY DIDN'T DO IT
2 THAT WAY. THEY LEFT IT UP ON THE INVENTOR, SO NOW
3 IF THEY HAVE TO RUN ADDITIONAL SEARCH TERMS, THEY
4 HAVE TO GUESS, GO BACK TO THE INVENTORS UNDER THEIR
5 WAY AND DO THAT.

6 SO FOR EXAMPLE MS. KASSABIAN SAYS HEY, WE
7 AGREED TO PRODUCE ADDITIONAL SSO DOCUMENTS. THEY
8 HAVEN'T SAID THEY WOULD AGREE TO RUN ADDITIONAL
9 TERMS USING SSO TERMS.

10 SO WE ARE NOT EVEN SURE WHAT THAT MEANS.
11 WE WILL GO BACK TO THE INVENTORS AND ASK IF THEY
12 HAVE ADDITIONAL DOCUMENTS THAT ARE RELEVANT.

13 THE I WANTED TO ADDRESS REAL QUICKLY THE
14 ISSUE OF FOREIGN LANGUAGE. AGAIN, WE GOT ONE TERM
15 THAT WE WERE TOLD THAT THEY RAN A KOREAN LANGUAGE
16 SEARCH EQUIVALENT FOR. SO WE HAVEN'T BEEN INFORMED
17 OF ANY OTHER TERMS THAT EITHER THE INVENTORS OR ANY
18 ATTORNEYS RAN FOREIGN EQUIVALENCE FOR.

19 THE COURT: IT'S JUST ONE TERM, RIGHT?

20 MR. WALDEN: WELL, I GUESS THAT'S RIGHT,
21 ALTHOUGH THEIR BRIEF SAID THERE WERE OTHER
22 INSTANCES OR IMPLIED THERE WERE OTHER INSTANCES, SO
23 WE JUST HAVEN'T BEEN INFORMED OF THAT.

24 THE COURT: SO IN THIS PROCESS YOU HAVE
25 ALL BEEN OPERATING UNDER INDEPENDENTLY, HAVE YOU

1 HAD THE OPPORTUNITY TO SAY TO SAMSUNG, HEY, HERE
2 ARE FIVE OTHER KOREAN LANGUAGE TERMS THAT WE THINK
3 WOULD BE APPROPRIATE TO RUN AND HAVE YOU SHARED
4 THOSE WITH THEM?

5 MR. WALDEN: NO.

6 WHAT WE EXPLAINED IS THAT WE BELIEVE THAT
7 BECAUSE THESE INVENTORS FOR EXAMPLE WERE DEPOSED IN
8 KOREAN, OR THEIR COLLEAGUES ARE KOREAN, WE EXPECT
9 THAT THEY COMMUNICATE IN E-MAILS OR OTHERWISE, THAT
10 ESSENTIALLY YOU SHOULD TAKE WHATEVER TERMS THAT YOU
11 USE AND RUN THE ENGLISH LANGUAGE OF THAT AND THE
12 KOREAN LANGUAGE EQUIVALENT OF THAT.

13 WE WOULD OF COURSE BE WILLING TO DISCUSS
14 IF THERE ARE TERMS THAT ARE SPECIFIC TO SSO'S OR
15 WHATEVER THAT AREN'T -- THAT THERE IS NO FOREIGN
16 LANGUAGE, THERE IS NO KOREAN LANGUAGE EQUIVALENT.

17 BUT IN GENERAL, WHAT WE EXPECT IS WHY NOT
18 JUST RUN THE SEARCH USING BOTH? RUN IT WITH THE
19 ENGLISH LANGUAGE VERSION OF THE TERM THAT MATTERS
20 AND THE KOREAN VERSION.

21 FINALLY, I JUST WANTED TO ADDRESS A
22 COUPLE OF THINGS. THE NUMBER OF PAGES AND DOCS
23 THAT HAVE BEEN PRODUCED FROM THE INVENTORS.

24 WE UNDERSTAND, AND WE PUT IN OUR BRIEFS,
25 THAT BASED ON OUR REVIEW OF THEIR CUSTODIAL

1 INFORMATION, SAMSUNG HAS PRODUCED 2,354 DOCUMENTS
2 FROM ITS 32 INVENTORS. AND AGAIN, 15 OF THOSE WE
3 GOT ZERO FROM.

4 AND IN CONTRAST, APPLE HAS PRODUCED
5 APPROXIMATELY 24,864 DOCUMENTS FROM ITS INVENTORS.
6 WE ARE OVER 1.2 MILLION PAGES WORTH.

7 SO WHEN I SAID IN ORDER OF MAGNITUDE,
8 IT'S PRETTY CLOSE.

9 THE COURT: ALL RIGHT.

10 THANK YOU VERY MUCH.

11 DO YOU WISH TO RESPOND BRIEFLY ON THAT?

12 MS. KASSABIAN: IF I MAY, YOUR HONOR.

13 I JUST HAVE TO -- I HAVE TO.

14 SO 600,000 PAGES OF APPLE'S PRODUCTION
15 LOOKS LIKE THIS. IT'S JUST GIBBERISH AND IT MUST
16 BE INCLUDED IN THE COUNT.

17 THE BRIEFS SAY THEY PRODUCED
18 870,000 PAGES. HE'S NOW JUST SAID 1.2 MILLION. I
19 DON'T KNOW WHAT THE RIGHT NUMBER IS, BUT I DO KNOW
20 600,000 PAGES CAME FROM ONE INVENTOR THAT LOOKED
21 LIKE THIS AND APPEAR TO BE COMPLETE GIBBERISH.

22 AND I JUST WANT TO REALLY QUICKLY SAY
23 YOUR HONOR, AGAIN, WITH THE RISK OF, I DON'T
24 WANT -- THE ATTORNEY-CLIENT COMMUNICATION ISSUE IS
25 A DICEY ONE HERE, BUT I WANT TO BE CRYSTAL CLEAR

1 THAT DURING THE INTERVIEWS OF ALL OF THE INVENTORS,
2 THEY WERE QUESTIONED REGARDING SSO DOCUMENTS AND
3 ASKED TO TURN THEM OVER. I JUST WANT TO MAKE THAT
4 CRYSTAL CLEAR.

5 AND OUR OBJECTION -

6 THE COURT: BUT -- THAT MAY BE SUFFICIENT
7 AS TO THE PAPER DOCUMENTS, BUT IF THE SEARCH TERMS
8 DID NOT INCLUDE ANY SPECIFIC REFERENCES THAT WOULD
9 CAPTURE SSO'S --

10 MS. KASSABIAN: BUT THEY WOULD,
11 YOUR HONOR.

12 THE COURT: HOW?

13 MS. KASSABIAN: BECAUSE THE TECHNOLOGY
14 THAT'S INVOLVED THAT'S BEING SUBMITTED TO THE SSO'S
15 ARE THE TERMS THAT WE USE.

16 SO THEY SAY RUN 3GPP, AND WE SAY THAT'S
17 WILDLY OVERBROAD. OUR JANUARY 6TH LETTER, CONTRARY
18 TO MR. WALDEN'S REPRESENTATION, WE SENT A
19 MULTI-PAGE LETTER TAKING ISSUE WITH THE PRECISE
20 SEARCH TERMS THEY WERE PROPOSING.

21 SO THEY SAID USE 3GPP OR APPLY A LIMITER.
22 WELL GUESS WHAT LIMITER WE WOULD APPLY? THE TERMS
23 THAT WE USED, BECAUSE THERE ARE MULTIPLE DIFFERENT
24 TECHNOLOGIES THAT SOME OF THESE PEOPLE MAY BE
25 INVOLVED IN OR THEY MAY JUST BE GENERIC BLASTS THAT

1 THEY ARE GETTING.

2 SO THE LIMITING TERMS WOULD BE THE
3 SPECIFIC TECHNOLOGICAL TERMS WE ARE TALKING ABOUT,
4 THAT'S THE TECHNOLOGY THAT'S BEING SUBMITTED TO SSO
5 IN DISCUSSIONS ABOUT THESE STANDARDS.

6 SO YES, IT ABSOLUTELY WOULD CATCH
7 STANDARDS DOCUMENTS.

8 AND ALSO, THERE ARE ELECTRONIC FILES.
9 SOME INVENTORS KEEP FOLDERS. 3GPP MEETINGS
10 FOLDERS. THOSE WERE COLLECTED IF THEY EXISTED.
11 THAT WAS PART OF THE INTERVIEW AND THE MANUAL
12 COLLECTION PROCESS.

13 AND LASTLY, I JUST WANT TO SAY THERE'S A
14 HUGE BURDEN ISSUE AS WE MENTION IN OUR BRIEF. WE
15 TOOK SOME OF THEIR TERMS AND RAN IT ON AN IMAGE
16 HARD DRIVE FOR TWO OF THE INVENTORS AND THEIR
17 TERMS, WITHOUT VETTING BECAUSE THIS IS JUST APPLE
18 SHOOTING IN THE DARK SAYING HERE'S WHAT WE THINK
19 YOU SHOULD RUN, THEIR TERMS RESULTED IN ONE OUT OF
20 EVERY THREE E-MAILS BEING HIT THAT THESE PEOPLE
21 HAVE EVER SENT IN THEIR ENTIRE LIVES, AT LEAST ON
22 THEIR EXISTING COMPUTERS.

23 THAT'S 200,000 DOCUMENTS WHICH IS MANY,
24 MANY, MANY MORE HUNDREDS OF THOUSANDS OF PAGES, OF
25 COURSE, BECAUSE MOST DOCUMENTS ARE MORE THAN A

1 SINGLE PAGE.

2 THAT'S JUST FOR TWO OUT OF THE 17 OR SO
3 INVENTORS WHO HAD, YOU KNOW, STILL HAD RETAINED
4 RELEVANT DOCUMENTS OVER THE YEARS.

5 SO WE ARE TALKING ABOUT A CRUSHING BURDEN
6 HERE WHERE I DO NOT THINK THE BENEFIT OF RUNNING
7 SOME OF THESE VERY GENERIC TERMS BASED ON
8 SPECULATION THAT SOMETHING MIGHT NOT HAVE BEEN
9 CAUGHT IS WARRANTED HERE.

10 THE COURT: HOW ARE YOU ALL PRODUCING
11 YOUR DOCUMENTS ARE YOU TIF'G THESE OUT, PRODUCING
12 THEM ON HARD DRIVES?

13 MS. KASSABIAN: I BELIEVE -- I'M NOT IN
14 CHARGE OF THAT, BUT MY UNDERSTANDING IS THEY ARE
15 TIF'D AND THERE ARE LOAD FILES.

16 THE COURT: YOU ARE TIF'G EVERY PAGE YOU
17 ARE PRODUCING?

18 MS. KASSABIAN: I BELIEVE SO.

19 I'M NOT THAT PERSON -- I MEAN, CERTAINLY
20 SOMETIMES DOCUMENTS ARE EXCHANGED NATIVELY WHETHER
21 IT'S A SPREAD SHEET, AND I THINK THE PARTIES HAVE
22 BEEN MORE OR LESS IN AGREEMENT ON THOSE SORTS OF
23 ISSUES, I DON'T THINK THERE'S A BIG DISPUTE ABOUT
24 FORMAT, BUT SOMETIMES THERE ARE REQUESTS.

25 THE COURT: BUT CERTAINLY YOU CAN

1 APPRECIATE THE FORMAT IS MATERIAL TO THE QUESTION
2 OF BURDEN.

3 BECAUSE IF YOU ARE TIF'G OR PDF'G EVERY
4 SINGLE PAGE THAT'S PART OF YOUR PRODUCTION, AND THE
5 PRODUCTION COSTS ASSOCIATED ARE GREATER THAN THE
6 NATIVE PRODUCTION, RIGHT, AND IT STRIKES ME AS THE
7 BURDEN THAT YOU ARE ARGUING HERE IS LARGELY A COST
8 BURDEN.

9 MS. KASSABIAN: NO, IT'S A REVIEW BURDEN.

10 IF WE -- AGAIN --

11 THE COURT: YOU ARE DOING MANUAL REVIEW
12 OF ALL YOUR POSITIVE DOCUMENTS?

13 MS. KASSABIAN: ABSOLUTELY.

14 ATTORNEYS ARE REVIEWING DOCUMENTS FOR
15 RELEVANCE. WE ARE TALKING ABOUT ARCH COMPETITORS
16 HERE AND BOTH SIDES ARE DOING RELEVANCE REVIEWS
17 BEFORE THEY TURN DOCUMENTS OVER.

18 THE COURT: SO ATTORNEYS ARE LOOKING AT
19 EVERY IMAGE BEFORE THEY ARE PRODUCED.

20 MS. KASSABIAN: THAT'S MY UNDERSTANDING.

21 I AM NOT PERSONALLY SUPERVISING THAT, BUT
22 YES, THE DOCUMENTS ONCE THEY ARE COLLECTED THEY ARE
23 TURNED OVER TO COUNSEL, COUNSEL IS REVIEWING THEM.

24 AGAIN, THESE ARE VERY SENSITIVE DOCUMENTS
25 INVOLVING VERY IMPORTANT TECHNOLOGY. AND NO, WE

1 ARE NOT JUST PICKING UP THE BOX AND SHIPPING IT OUT
2 WHEN IT COMES IN FROM THE CLIENT. WE HAVE TO DO
3 PRIVILEGE REVIEWS. SOME OF THAT CAN BE AUTOMATED
4 OF COURSE WITH ATTORNEY NAMES AND SUCH.

5 BUT OFTEN TIMES THERE ARE DISCUSSIONS
6 THAT ARE PRIVILEGED RIGHT ON THE FACE OF THE
7 DOCUMENT ESPECIALLY INVOLVING INVENTIONS THAT YOU
8 SIMPLY HAVE TO MANUALLY REVIEW IF YOU ARE DOING THE
9 JOB.

10 THE COURT: OR IF YOU HAVE A BUDGET THAT
11 SUPPORTS IT.

12 MS. KASSABIAN: WE ARE FORCED TO, I
13 THINK. BUT YES, I BELIEVE THAT IS WHAT BOTH SIDES
14 ARE DOING, THEY ARE NOT TURNING THEM OVER PRE
15 REVIEW.

16 THE COURT: ALL RIGHT. THANK YOU.

17 LET'S TURN TO THE SECOND OF THE ISSUES IN
18 THIS MOTION. WE'VE ALREADY TOUCHED UPON STANDARDS
19 ALREADY, BUT LET'S HEAR APPLE'S THOUGHTS.

20 MR. WALDEN: YES, YOUR HONOR.

21 WE HAD MOVED TO COMPEL PRODUCTION FROM
22 SAMSUNG OF ITS PUBLIC AND NONPUBLIC DOCUMENTS
23 CONCERNING PARTICIPATION IN ETSI AND 3GPP.

24 I WILL GIVE YOU JUST A QUICK BACKGROUND
25 JUST BECAUSE I WANT TO SET UP, BECAUSE SAMSUNG HAS

1 COME OUR WAY A LITTLE BIT SINCE WE FILED THE
2 MOTION.

3 WE HAVE BEEN DISCUSSING THE ISSUE OF
4 STANDARD SETTING ORGANIZATION DOCUMENTS, I BELIEVE
5 SINCE OCTOBER. WE HAVE BEEN FAIRLY CONSISTENT WITH
6 WHAT WE WANTED. WE HAVE BEEN VERY CLEAR WE WANTED
7 PUBLIC AND NONPUBLIC DOCUMENTS CONCERNING SAMSUNG'S
8 PARTICIPATION IN THESE WIRELESS STANDARDS.

9 BEFORE WE FILED OUR MOTION TO COMPEL,
10 UNTIL THE DAY OF THAT WE FILED OUR MOTION TO
11 COMPEL, SAMSUNG HAD TOLD US THIS SHOULD BE PART OF
12 THE DISCUSSIONS ABOUT RECIPROCITY AGREEMENT. THE
13 PARTIES HAD BEEN DISCUSSING PERHAPS WHETHER BOTH
14 SIDES WOULD HAVE AN OBLIGATION, AND WE COULD
15 CLARIFY WHAT THAT OBLIGATION WAS.

16 WE TOLD THEM ALWAYS THAT THE OBLIGATION,
17 WHATEVER WE CONSIDERED TO BE IMPORTANT FOR
18 RECIPROCITY NEEDS TO INCLUDE NONPUBLIC DOCUMENTS
19 RELATING TO YOUR PARTICIPATION STANDARDS, SAMSUNG.

20 WE WAITED FOR A LONG TIME AND THEN
21 ULTIMATELY WHAT WE GOT BY WAY OF A PROPOSAL FROM
22 SAMSUNG WAS ONLY THAT THEY WOULD PRODUCE PUBLIC
23 DOCUMENTS, PUBLIC DISCLOSURES, TO ETSI ONLY.

24 WE TOLD THEM IN THE LEAD COUNSEL MEET AND
25 CONFER THIS THAT WAS UNACCEPTABLE.

1 THE FIRST TIME WE GOT A COMMITMENT BY
2 SAMSUNG, TO MY KNOWLEDGE, THE FIRST TIME WAS
3 7:45 P.M. PACIFIC OF THE DAY WE FILED A MOTION. WE
4 GOT A LETTER WHERE SAMSUNG OFFERED FOR THE FIRST
5 TIME TO PRODUCE SOME NONPUBLIC COMMUNICATIONS WITH
6 ETSI BUT LIMITED ONLY TO THE PATENTS IN SUIT AND TO
7 THREE SPECIFIC UMTS SPECIFICATIONS.

8 THE COURT: ARE THESE SPECIFICATIONS THAT
9 ARE CLAIMED FOR WHICH THE PATENTS ARE DEEMED
10 ESSENTIAL OR CLAIMED ESSENTIAL?

11 MR. WALDEN: THERE ARE THREE
12 SPECIFICATIONS FOR WHICH THE PATENTS WERE DEEMED
13 ESSENTIAL.

14 I SHOULD SAY THERE'S A FOURTH
15 SPECIFICATION THAT WE DON'T KNOW WHY THEY DIDN'T
16 INCLUDE, EXCEPT IN ANSWERING OUR COUNTERCLAIMS IT
17 WASN'T JUST LISTED BY NAME WHICH IS SPEC 25.3 22.
18 AND THAT'S RELATED TO THE '491 PATENT, SAMSUNG'S
19 '491 PATENT.

20 NONETHELESS, WE HAD TOLD THEM WE WEREN'T
21 LOOKING JUST FOR THE PATENTS IN SUIT OR JUST THE
22 SPECIFICATIONS THAT WERE -- THAT THESE PARTICULAR
23 PATENTS WERE DISCLOSED UNDER, BUT WE ARE LOOKING
24 MORE GENERALLY AT THE STANDARD, WHAT HAS BEEN YOUR
25 PRACTICE BEFORE THIS STANDARD.

1 THE COURT: IS IT FAIR TO CHARACTERIZE
2 YOUR REQUEST AS ASKING FOR EVERY SAMSUNG DOCUMENT
3 RELATING TO ETSI AND 3GPP?

4 MR. WALDEN: I THINK THAT'S --

5 THE COURT: THAT'S KIND OF HOW I READ
6 THEM.

7 MR. WALDEN: IT'S FAIR THERE WERE, AS WE
8 LOOKED AT IT IN LOOKING AT THEIR OPPOSITION, IF
9 GOES THAT BROAD.

10 THE REQUESTS THEMSELVES ARE DEFINED TO BE
11 WIRELESS STANDARDS, SO WE ARE LOOKING AT ONLY THOSE
12 IN ETSI AND 3GPP THAT ARE WIRELESS SO IS MORE
13 NARROW THAT WAY.

14 THE COURT: SAMSUNG HAS BEEN INVOLVED IN
15 THOSE NEGOTIATIONS FOR YEARS, RIGHT? SO WE ARE
16 TALKING ABOUT SUBSTANTIAL VOLUME OF MATERIALS,
17 RIGHT?

18 MR. WALDEN: YEAH.

19 I THINK ONE WAY PERHAPS TO LOOK AT IT,
20 IT'S NOT AS BROAD AS SAMSUNG IS SAYING.

21 IF YOU LOOK AT THEIR CHART ON PAGE 13
22 THEY HAVE A GRAPH OF ETSI, 3GPP AND SOME COMPONENTS
23 OF BOTH OF THOSE.

24 ESSENTIALLY, THEY ARE SAYING OUR MOTION
25 IS ASKING FOR EVERYTHING IN THE BLACK CIRCLE ETSI

1 AND 3GPP, BUT THAT'S NOT THE CASE BECAUSE WE ARE
2 NOT LOOKING FOR NON WIRELESS STANDARDS, WE ARE NOT
3 LOOKING AT SPACE SHIPS OR REFRIGERATORS.

4 THE COURT: SAMSUNG HAS A LOT OF STUFF, I
5 GET THAT.

6 MR. WALDEN: SO THAT GETS RID OF A LOT OF
7 SAMSUNG'S COMPLAINT.

8 IF YOU LOOK WITHIN THE 3GPP BUBBLE, WE
9 CAN ACTUALLY AGREE NOT TO ASK FOR DOCUMENTS RELATED
10 TO LTE AND THE LTE ADVANCED BUBBLE THERE,
11 ESSENTIALLY BECAUSE WHAT WE ARE LOOKING AT IS THE
12 MTS STANDARD WHICH IS WCDMA/HSBA, AND ESSENTIALLY
13 THE PREDECESSOR STANDARDS FOR THOSE WHICH WOULD BE
14 THE EDGE, GSM AND GPRS.

15 SO WE ARE NOT LOOKING AT THE ENTIRE VENN
16 DIAGRAM THERE, WE ARE LOOKING AT SPECIFIC PORTIONS
17 WITHIN THAT.

18 IF YOU LOOK AT THIS AND SAY, WELL, REALLY
19 WHAT WE ARE ENTITLED TO IS 3 OUT OF 248
20 SPECIFICATIONS WHICH IS THE LOWER MOST BUBBLE ON
21 THEIR DIAGRAM.

22 FOR ONE, THEY ARE LEAVING OUT A
23 SPECIFICATION THAT'S CLEARLY RELEVANT TO ONE OF
24 THEIR PATENTS. BUT MORE IMPORTANTLY, WE DON'T SEE
25 THAT IT SHOULD BE LIMITED THIS WAY BASED ON OUR

1 ANTI-TRUST AND OTHER COUNTERCLAIMS WHICH ARE
2 ESSENTIALLY -- WHICH ARE ESSENTIALLY ALLEGING THAT
3 SAMSUNG HAS A PRACTICE OF GETTING TECHNOLOGY INTO
4 STANDARDS, AND SPECIFICALLY THE 3GPP STANDARDS
5 HERE, THEN ONLY LATER DISCLOSING THE INTELLECTUAL
6 PROPERTY FOR THOSE AFTER THOSE TECHNOLOGIES HAVE
7 BEEN LOCKED IN.

8 SO IN OUR VIEW IT SHOULDN'T BE LIMITED TO
9 THE SPECIFIC SPECIFICATIONS THAT THESE PATENTS IN
10 SUIT HAVE BEEN SUBMITTED IN, BUT MORE GENERALLY
11 TOWARDS THE UMTS, EDGE, TSP AND GPRS.

12 SO --

13 THE COURT: AND OF THE 248 SPECIFICATIONS
14 THAT SAMSUNG DESCRIBES IN ITS PAPERS WHICH -- WHAT
15 NUMBER OF THE SPECIFICATIONS WOULD FALL WITHIN THE
16 SCOPE OF YOUR CLAIM, ALL OF THEM?

17 MR. WALDEN: YES, YES.

18 THE COURT: OKAY. SO 248 SPECIFICATIONS.

19 AND AS I READ YOUR REQUEST, IF SOMEONE AT
20 SAMSUNG WAS ASKING SOMEONE AT QUALCOMM TO GO TO
21 LUNCH AFTER THE SSO MEETING ON ONE OF THOSE
22 SPECIFICATIONS, THEY WOULD HAVE TO PRODUCE THAT,
23 RIGHT?

24 MR. WALDEN: THAT WOULD BE A
25 COMMUNICATION RESPECTING THOSE, ALTHOUGH I THINK IN

1 GENERAL, YOU KNOW, WE HAVEN'T SEEN VERY MANY
2 PRODUCTION -- VERY MUCH PRODUCTION OF ANYTHING LIKE
3 THAT, SO WE ARE NOT EVEN SURE IF THAT TYPE OF
4 COMMUNICATION IS INVOLVED.

5 I WILL TELL YOU ONE OF THE THINGS THAT
6 CONCERNS US OF JUST SAYING OKAY, WE COULD LIMIT IT
7 TO THE PARTICULAR SPECIFICATIONS THAT SAMSUNG HAS
8 DECLARED ITS PATENTS ESSENTIAL TO. WHAT ABOUT
9 COMMUNICATIONS REGARDING DISCLOSURE REQUIREMENTS IN
10 ETSI OR IN 3GPP OR SPECIFIC TO THE UMTS?

11 THAT'S NOT SPECIFIC TO A SPECIFICATION.
12 THAT'S MORE ABOUT HEY, WHAT ARE WE DOING HERE?
13 WHAT IS OUR GOAL WITH RESPECT TO GETTING IPR
14 ACCEPTED BY THE SPECIFICATION?

15 SO IF WE WERE TO TRY TO LIMIT JUST TO THE
16 SPECS THAT ARE CRITICAL TO THESE PARTICULAR PATENTS
17 IN SUIT, WE BELIEVE THAT'S GOING TO SEVERELY LIMIT
18 OUR ABILITY TO CONDUCT THE DISCOVERY ON OUR
19 COUNTERCLAIMS. THAT'S MORE BROADLY DIRECTED
20 TOWARDS THEIR BEHAVIOR BEFORE THESE BODIES.

21 THE COURT: AND ON A RULE 11 BASIS YOU
22 ARE ALLEGING THAT SAMSUNG HAS VIOLATED THE
23 ANTI-TRUST LAWS WITH RESPECT TO ITS ROLE, ITS
24 PARTICIPATION IN THESE SSO'S GENERALLY WITHOUT
25 REGARD TO A PARTICULAR SPECIFICATION? IS THAT WHAT

1 YOUR CLAIM IS?

2 MR. WALDEN: I THINK OUR ANTI-TRUST
3 COUNTERCLAIMS WHICH WERE VERY SIMILARLY PUT
4 TOGETHER, WE MAKE THE ASSERTION THEY HAVE VIOLATED
5 ANTI-TRUST GENERALLY IN FRONT OF THESE
6 ORGANIZATIONS. WE PROVIDED THE SPECIFIC EXAMPLES,
7 CERTAIN SPECIFIC EXAMPLES TO SATISFY OUR
8 PARTICULARITY REQUIREMENTS.

9 SO IN THE END, WHAT SAMSUNG IN ITS
10 OPPOSITION DID, IN ADDITION TO SAYING THAT OUR
11 REQUESTS WERE OVERBROAD, THEY AGREED TO PRODUCE
12 MORE THAN THEY'VE EVER AGREED TO PRODUCE BEFORE.

13 THEY NOW SAY THAT THEY WILL DISCLOSE
14 THEIR GENERAL -- THEY SAY THEY WILL DISCLOSE
15 DOCUMENTS SHOWING THEIR GENERAL POLICIES OF THEIR
16 PRACTICES OF ETSI AND 3GPP. THEY SAY THEY WILL
17 PRODUCE DOCUMENTS SHOWING DOCUMENTS RELATED TO SSO
18 ISSUES.

19 AGAIN, THESE ARE AGREEMENTS THAT WERE
20 MADE FOR THE FIRST TIME AFTER WE MOVED TO COMPEL IN
21 THEIR OPPOSITION, AND ULTIMATELY, THEY SAY THAT
22 THEY WILL DISCLOSE DOCUMENTS RELATED TO THE
23 DECISION TO DISCLOSE OR NOT DISCLOSE THE PATENTS IN
24 SUIT TO ETSI.

25 NOW WHILE THIS COMES HALFWAY -- IT COMES

1 A FAIRLY LONG WAY TOWARDS WHAT WE MOVED TO COMPEL,
2 IT'S STILL NOT SUFFICIENT.

3 FIRST, WHEN THEY SAY THEY WILL PRODUCE
4 DOCUMENTS SUFFICIENT, DOCUMENTS SHOWING ITS GENERAL
5 PRACTICES AND POLICIES BEFORE ETSI, WE READ THAT
6 MEANING SUFFICIENT TO SHOW.

7 AND WHAT WE WANT IS REALLY THEIR
8 DOCUMENTS A THOROUGH PRODUCTION OF THEIR DOCUMENTS
9 SHOWING THEIR UNDERSTANDING OF WHAT IT IS THEY ARE
10 SUPPOSED TO BE DOING.

11 THE COURT: SO ARE YOU SPECIFICALLY
12 INTERESTED IN THEIR UNDERSTANDING OF THE DISCLOSURE
13 OBLIGATION? IS THAT WHAT YOU ARE SEEKING?

14 MR. WALDEN: STATEMENTS THAT WOULD
15 EVIDENCE THEIR UNDERSTANDING OF THEIR DISCLOSURE
16 OBLIGATIONS. STATEMENTS THAT ARE INTERNAL OR
17 EXTERNAL OF WHAT THEY DESCRIBE, WHAT THEY BELIEVE
18 OTHER COMPANY'S DISCLOSURE OBLIGATIONS WOULD BE,
19 BUT CERTAINLY THAT WOULD BE INCLUDED, YES.

20 THE COURT: BUT IS IT LIMITED TO THAT?

21 I'M JUST TRYING TO UNDERSTAND WHAT
22 BOUNDARIES MIGHT BE IMPOSED TO MANAGE THE BURDEN
23 AGAINST THE LEGITIMATE INTEREST YOU HAVE IN THESE
24 DOCUMENTS.

25 MR. WALDEN: WE'VE ASKED FOR,

1 SPECIFICALLY, POLICIES AND PROCEDURES GENERALLY,
2 AND MORE SPECIFIC TO THE PATENTS IN SUIT. BUT THAT
3 WOULD INCLUDE POSITIVE AND NEGATIVE AND NOT JUST
4 SUFFICIENT TO SHOW.

5 ULTIMATELY, THEY OFFERED COMMUNICATIONS
6 WITH ETSI BUT WE EXPLAINED WE BELIEVE THAT IT
7 SHOULD BE SPECIFIC MORE FOR THE UMTS, THE EDGE, THE
8 TSM AND THE GPRS.

9 AND AGAIN, WE DON'T BELIEVE IT SHOULD BE
10 LIMITED TO ANY PARTICULAR SPECIFICATIONS BUT
11 CERTAINLY NOT THE THREE THAT THEY SAY ARE
12 IDENTIFIED IN THE COMPLAINT.

13 THERE'S AT LEAST FOUR IDENTIFIED IN THE
14 COMPLAINT AND WE BELIEVE WE ARE ENTITLED TO MORE
15 GENERAL DISCOVERY ON THIS.

16 THE COURT: ALL RIGHT.

17 ANYTHING FURTHER?

18 MR. WALDEN: I THINK JUST, WELL, I WILL
19 LEAVE IT AT THAT.

20 THANK YOU.

21 THE COURT: THANK YOU, MR. WALDEN.

22 MS. KASSABIAN?

23 MS. KASSABIAN: YES, YOUR HONOR.

24 I WOULD LIKE TO HAND UP AN ANNOTATED
25 VERSION OF THE VENN DIAGRAM.

1 THE COURT: DO YOU HAVE A COPY FOR
2 COUNSEL?

3 MS. KASSABIAN: YES, I DO.

4 IN THE RUSH TO GET THINGS FILED ON OUR
5 SHORTENED TIME, THIS ANNOTATED VERSION WASN'T QUITE
6 READY SO I JUST THOUGHT IT MIGHT BE HELPFUL, SINCE
7 WE ARE TOSSING AROUND A LOT OF ACRONYMS.

8 THE COURT: YOU ARE BRINGING BACK A LOT
9 OF FOND MEMORIES FOR ME.

10 I'M SORRY, GO AHEAD.

11 MS. KASSABIAN: SO I GUESS I WILL START
12 WITH THE VENN DIAGRAM.

13 WHAT MR. WALDEN, WHAT I HEAR HIM SAYING
14 IS THAT, YOU KNOW, IF YOU PUT YOUR FINGERS OVER THE
15 TWO BLUE DOTS ON THE RIGHT, LTE ADVANCED AND LTE,
16 THEY WANT EVERYTHING ELSE.

17 AND AS YOU CAN SEE, THE WCDMA CALL OUT
18 OBVIOUSLY HAS MANY, MANY, MANY WORKING GROUPS AND
19 SUBPARTS AND ORGANIZATIONS WITHIN IT AS OF COURSE
20 WOULD EDGE AND GSM AND GPRS.

21 SO, YOU KNOW, WE DID NOT OBVIOUSLY
22 INCLUDE THAT HERE BECAUSE OUR POINT WAS THAT
23 THIS --

24 THE COURT: THE PAGE IS ONLY SO BIG.

25 MS. KASSABIAN: THERE'S ONLY SO MUCH YOU

1 CAN FIT ON AN 8X11 PIECE OF PAPER, BUT CERTAINLY
2 I'M SURE I COULD COME UP WITH ANOTHER FANCY CHART
3 FOR YOU TO SHOW THAT THAT IS NOT THAT FAR DIFFERENT
4 FROM ASKING FOR THE BIG BLACK CIRCLE WHICH IS WHAT
5 THEY ARE DOING.

6 AND I WOULD ALSO --

7 THE COURT: WELL, CERTAINLY, I MEAN, WE
8 CAN DRAW THESE PICTURES HOWEVER WE WANT TO DRAW
9 THEM, BUT THE FACT OF THE MATTER IS THEY ARE
10 DISCLAIMING ANY INTEREST IN DSL, BROADBAND, CLOUD
11 COMPUTING AND THE LIKE, RIGHT?

12 MS. KASSABIAN: SO IF THAT'S TRUE, AND
13 IT'S NOT WHAT THEIR PROPOSED ORDER SAYS, I
14 APPRECIATE THAT WHAT MR. WALDEN IS SAYING, MAYBE
15 THAT'S THE CURRENT --

16 COURT REPORTER: I'M SORRY, CAN YOU TRY
17 TO SLOW DOWN A LITTLE BIT.

18 MS. KASSABIAN: WELL, I'M JUST WORRIED WE
19 ARE GOING TO BE HERE ALL NIGHT.

20 THE COURT: YOU ARE NOT THE ONLY ONE.

21 MS. KASSABIAN: THE PROPOSED ORDER ASKED
22 FOR ALL DOCUMENTS RELATED TO SAMSUNG'S
23 PARTICIPATION AND ETSI OR 3GPP.

24 SO I GUESS IF YOU THROW AWAY THE PROPOSED
25 ORDER AND LISTEN TO MR. WALDEN, THEN YES, WE CAN

1 GET RID OF OUR AERONAUTICS, BROADBAND, SATELLITE
2 SYSTEMS, ET CETERA.

3 AND IT SOUNDS LIKE THEY ARE SAYING WE
4 WANT ALL OF 3GPP, ALL DOCUMENTS BETWEEN SAMSUNG AND
5 3GPP, AND THAT WOULD MEAN 12 YEARS WORTH OF
6 DOCUMENTS.

7 THE COURT: THIS IS AN ANTI-TRUST CASE,
8 RIGHT?

9 I MEAN, IN MY EXPERIENCE IN ANTI-TRUST
10 LITIGATION, I SEEM TO RECALL THESE TYPES OF CLAIMS
11 DO CALL FOR FAIRLY BROAD DISCOVERY GIVEN THE NATURE
12 OF THE CLAIMS.

13 MS. KASSABIAN: WELL, IT'S FISHING.

14 AND SAMSUNG HAS IDENTIFIED -- SORRY, APPLE,
15 HAS OFFERED SOME CASE LAW SUPPORTING ITS CLAIM FOR
16 STANDARDS DOCUMENTS.

17 I PRESUME THAT THEY OFFERED YOU THE BEST
18 CASES THEY COULD FIND. AND THOSE CASES ARE NOT
19 GOOD FOR THEM.

20 THE LG CASE, WHICH IS ONE OF THE CASES
21 THEY FEATURE IN THIS ARGUMENT, IT ACTUALLY DECLINES
22 TO GIVE ANY SSO DOCUMENTS EXCEPT FOR ONES RELATED
23 TO THE SPECIFIC STANDARDS.

24 AND THIS WAS A CASE ABOUT DIGITAL VIDEO
25 TRANSMISSION STANDARD FOR CABLE TELEVISION WHICH

1 HAS A FUN ACRONYM AND ALSO ITU-T RECOMMENDATION
2 J.A3NXB. THOSE WERE THE TWO SPECIFIC STANDARDS AT
3 ISSUE IN THIS CASE, AND THE MOVANT WAS SEEKING A
4 MUCH BROADER CATEGORY OF SSO DOCUMENTS.

5 AND THE COURT SAID NO, LG HAS NOT
6 ESTABLISHED HOW THESE STANDARD SETTING ACTIVITIES
7 RELATE TO THEIR CLAIMS BECAUSE THERE ARE NO OTHER
8 STANDARDS REFERENCED IN THEIR COMPLAINT.

9 WELL, IN THIS CASE APPLE HAS REFERENCED
10 STANDARDS IN ITS COMPLAINT, ITS REFERENCED THREE
11 SPECIFICATIONS. THREE SPECIFIC ONES WHICH WE ARE
12 FINE WITH GIVING DOCUMENTS ON THOSE THREE.

13 AND I SHOULD MENTION THE TOTAL NUMBER OF
14 SPECIFICATIONS WITHIN THE WORKING GROUPS AND THE
15 LIGHT BLUE BUBBLE AT THE BOTTOM IS NOT 248, 248 IS
16 THE NUMBER JUST WITHIN SERIES 25 WHICH IS THE
17 SERIES AT ISSUE HERE.

18 THE TOTAL NUMBER OF SPECIFICATIONS FOR
19 ALL OF THESE, JUST THESE TWO WORKING GROUPS, IS
20 2600.

21 I DIDN'T INCLUDE THAT NUMBER BECAUSE, I
22 MEAN, THERE'S MUCH MORE WE COULD HAVE INCLUDED BUT
23 I WANTED TO MAKE CLEAR IF YOUR HONOR WERE TO ORDER
24 THIS, YOU KNOW, JUST LIMITING IT TO S25, THAT WOULD
25 BE 200 DOCUMENTS REGARDING 248 SPECS. IF

1 YOUR HONOR ORDERED EVERYTHING REGARDING WORKING
2 GROUP 1 AND 2, THAT'S 2600

3 THE COURT: AND DID SAMSUNG PARTICIPATE
4 IN EACH OF THE SPECIFICATIONS HERE WITHIN WORKING
5 GROUPS 1 AND 2?

6 MS. KASSABIAN: SAMSUNG HAD -- THERE ARE
7 MANY PEOPLE THAT PARTICIPATE IN THE WORKING GROUPS.

8 AND IN THIS LIMITED SPACE OF TIME WE HAD,
9 I COULDN'T GET A COMPLETE LISTING OF EVERYTHING,
10 BUT I CAN GIVE YOU SOME GENERAL INFORMATION IN
11 TERMS OF ETSI, SSO TECHNOLOGY, SAMSUNG PARTICIPATES
12 IN BROADBAND WIRELESS, BROADCAST AND --

13 THE COURT: SO THOSE ARE OFF THE TABLE,
14 SO LET'S TALK ABOUT IT.

15 MS. KASSABIAN: THAT'S GOOD.

16 ACCORDING TO MR. WALDEN THEY ARE ON THE
17 TABLE.

18 THE COURT: BUT HE JUST TOLD US THEY
19 WEREN'T, RIGHT?

20 MS. KASSABIAN: WELL, HE SAID HE WANTS --
21 NO, I DON'T THINK SO.

22 THE COURT: I THINK HE JUST SAID, DIDN'T
23 HE, THAT THINGS LIKE AERONAUTICAL AND BROADBAND
24 WERE OFF THE TABLE?

25 MS. KASSABIAN: WELL, I GUESS IT DEPENDS

1 ON WHAT'S WITHIN 3GPP AND WHAT'S WITHIN ETSI MORE
2 GENERALLY.

3 SO IF WE NARROW IT DOWN TO JUST 3GPP,
4 LET'S TALK ABOUT THE SIX BUBBLES HERE. HE SAID,
5 YOU KNOW, WE WANT GSM AND EDGE. AND MY
6 UNDERSTANDING OF THOSE IS THAT THEY ARE.

7 SO THE RELEVANT SYSTEM HERE IS WCDMA, AND
8 THAT IS ALL THE PATENTS IN SUIT RELATED TO THIS
9 SPECIFIC TECHNOLOGY, IT'S A RADIO INTERFACE.

10 THESE OTHER BUBBLES ARE DIFFERENT. SOME
11 OF THEM ARE PREDECESSOR AND SOME OF THEM ARE FUTURE
12 TECHNOLOGY.

13 THE COURT: RIGHT.

14 DO YOU HAVE ANY INFORMATION ON SAMSUNG'S
15 PARTICIPATION IN THESE OTHER SPECIFICATION SERIES
16 OR WORKING GROUPS? CAN I GET SOME SENSE OF --

17 MS. KASSABIAN: YES.

18 MY GENERAL UNDERSTANDING IS THAT THEY DO
19 PARTICIPATE IN OTHER OF THE LTE, LTE ADVANCED
20 WCDMA, GSM. I CAN PROBABLY PROVIDE YOU WITH A
21 SUPPLEMENTATION ON THAT. I DON'T HAVE ALL THOSE
22 LEVELS OF DETAILS HERE BECAUSE, AGAIN, THE MOTION
23 ASKED FOR THE WHOLE ENCHILADA. SO IN OUR LIMITED
24 SPACE WE KIND OF TALKED ABOUT THAT, BUT I AM FAIRLY
25 CERTAIN THAT SAMSUNG'S INVOLVEMENT, GIVEN THE

1 NUMBER OF ENGINEERS IT HAS, IS AT MANY LEVELS OF
2 THIS.

3 I WOULD BE HAPPY TO OFFER SOME ADDITIONAL
4 BRIEFING ON THAT, BUT I THINK MR. WALDEN'S COMMENTS
5 MADE ONE THING CLEAR, AND THAT IS MAYBE THE PARTIES
6 HAVE MORE TO TALK ABOUT HERE.

7 UNFORTUNATELY, DURING THE MEET AND CONFER
8 PROCESS WE TRIED TO GET APPLE TO NARROW THIS DOWN
9 TO SOMETHING OTHER THAN THE BLACK BUBBLE AND IT
10 DIDN'T HAPPEN.

11 THE REASON WHY FOR THE FIRST TIME SAMSUNG
12 AGREED TO THESE THREE SPECIFIC CATEGORIES IN THEIR
13 MOTION WAS BECAUSE THAT'S THE FIRST WE HEARD OF IT.
14 THAT WAS NOT AN OFFER THAT WAS MADE DURING MEET AND
15 CONFER.

16 DURING THE MEET AND CONFER APPLE SAID,
17 YOU KNOW, WE'VE THOUGHT ABOUT IT, WE'VE TRIED AND
18 WE DON'T THINK WE COULD NARROW IT DOWN FROM 3GPP.

19 THE COURT: WELL, THE FIRST TIME YOU
20 HEARD ABOUT THESE THREE SPECIFICATIONS, I THOUGHT
21 WAS IN THE COMPLAINT.

22 MS. KASSABIAN: NO.

23 REGARDING THE THREE CATEGORIES OF
24 DOCUMENTS, SORRY, I WAS REFERRING TO IN THEIR
25 MOTION. THEY CALL OUT THREE SPECIFIC CATEGORIES.

1 THEY SAY DOCUMENTS SHOWING GENERAL POLICIES OR
2 PRACTICES REGARDING DISCLOSURE OF ESSENTIAL IPR TO
3 THESE STANDARD BODIES; DOCUMENTS SHOWING THE
4 STRUCTURE OF THE DEPARTMENTS OR TEAMS AT SAMSUNG
5 THAT WORK ON SSO ISSUES; AND DOCUMENTS RELATED TO
6 SAMSUNG'S DECISION TO DISCLOSE OR NOT TO DISCLOSE
7 THE PATENTS IN SUIT.

8 SO THIS WAS NEVER AN OFFER THAT WAS PUT
9 TO US. IF IT WAS WE WOULD HAVE ACCEPTED IT. WE
10 HAVE ACCEPTED IT NOW HAVING SEEN IT IN THE MOTION.

11 BUT BEFORE THE MOTION, DESPITE OUR BEST
12 EFFORTS, WE COULD NOT MAKE GO HEADWAY. AND APPLE
13 WOULD NOT AGREE WHEN WE MADE SUGGESTIONS, BUT WE
14 WERE MET WITH, YOU KNOW, REFUSALS AND JUST, YOU
15 KNOW, INSISTENCE AND BASICALLY APPLE WANTED TO
16 MAINTAIN ITS POSITION THAT THEY WERE ENTITLED TO
17 ALL DOCUMENTS REGARDING THESE ORGANIZATIONS.

18 IT SOUNDS LIKE MR. WALDEN IS MAKING SOME
19 CONCESSIONS NOW. WE CERTAINLY CAN MAKE SOME AS
20 WELL.

21 YOU KNOW, ONE THOUGHT I MIGHT HAVE HERE
22 GIVEN THE MANY UNKNOWNNS IN THESE LAYERS OF THIS
23 ORGANIZATION IS MAYBE YOUR HONOR COULD ORDER THE
24 PARTIES TO SPEND A WEEK REALLY HAMMERING OUT AN
25 AGREEMENT, AND IF WE CAN'T --

1 THE COURT: I THOUGHT THAT'S WHAT OUR
2 LOCAL RULES REQUIRE BEFORE YOU MEET AND CONFER.

3 MS. KASSABIAN: I AGREE. I COULD NOT
4 AGREE MORE.

5 AND WE TRIED, BUT APPLE NEVER CAME OFF
6 ITS POSITION THAT THEY WANTED THE WHOLE ENCHILADA.
7 WE MADE OFFERS, MY JANUARY 10TH LETTER IS EXHIBIT 1
8 TO THE CHAN DECLARATION IN OPPOSITION TO THIS
9 MOTION. IT'S A SIX OR SEVEN PAGE LETTER THAT I
10 WORKED INCREDIBLY HARD TO NEGOTIATE WITH MY CLIENT,
11 WITH MY COLLEAGUES AND WITH APPLE, AND DESPITE THE
12 MAJOR CONCESSIONS IN THAT LETTER AGREEING TO
13 PRODUCE VAST CATEGORIES OF DOCUMENTS INCLUDING
14 THESE, APPLE FILED THIS MOTION ANY WAY.

15 THE COURT: ALL RIGHT.

16 THANK YOU VERY MUCH.

17 ANY REBUTTAL, MR. WALDEN?

18 MR. WALDEN: YES, BUT BRIEF.

19 FIRST, I WILL JUST REMIND THE COURT THAT
20 THE LETTER MS. KASSABIAN MENTIONED SHE WORKED VERY
21 HARD ON, AND I DON'T DOUBT THAT SHE WORKED VERY
22 HARD ON IT, CAME AT 7:45 P.M. ON THE DAY WE FILED
23 OUR MOTION WHEN THE PARTIES HAD AGREED THAT WE
24 WOULD BE FILING THE MOTIONS ON THAT DAY.

25 EVEN WHEN IT CAME THOUGH, IT WAS TOO

1 LITTLE TOO LATE.

2 THE CASE THAT MS. KASSABIAN CITES WHICH
3 IS CITED IN BOTH PARTY'S BRIEFS, LG ELECTRONICS V.
4 MOTOROLA WHICH IS 2010, WEST LAW 3075755, DID IN
5 FACT COMPEL PRODUCTION OF DOCUMENTS RELATED TO A
6 STANDARD.

7 THEY SAY IT'S VERY SPECIFIC STANDARDS,
8 SCTE07 AND ITU-TJ.83, BUT IT WASN'T SAYING LIMIT IT
9 TO PARTICULAR SPECIFICATIONS WITHIN THE STANDARD,
10 BUT IT GAVE THEM -- IT GRANTED THE MOTION TO COMPEL
11 ON THE STANDARD.

12 AND WHAT THE COURT JUST SAID IS THAT NO,
13 I'M NOT GOING TO LET YOU HAVE EVERYTHING ABOUT
14 STANDARD SETTING ORGANIZATIONS FROM THAT PARTY.

15 SO WHEN WE ARE LOOKING AT IN THE VENN
16 DIAGRAM, WE IN OUR COMPLAINT -- I'M SORRY, IN OUR
17 ANSWER AND COUNTERCLAIMS, HAVE ASSERTED THEY HAVE
18 VIOLATED THE ANTI-TRUST LAWS AND CALIFORNIA
19 BUSINESS LAWS AND OTHERS WITH RESPECT TO THE
20 STANDARD, THE UMTS STANDARD, NOT 3 OUT OF 248
21 SPECIFICATIONS, BUT THE STANDARD.

22 AND A LOT OF THAT IS DETAILED IN OUR
23 ANSWER AND COUNTERCLAIMS AND IT HAS A LOT TO DO
24 WITH SAMSUNG'S BEHAVIOR ACROSS THE STANDARD AND
25 WHETHER ITS BEHAVIOR IS CONSISTENT WITH INDUSTRY

1 PRACTICES.

2 AND AGAIN, SAMSUNG HAS TALKED ABOUT HOW
3 INDUSTRY PRACTICES HAVE BEEN AND WE THINK WE ARE
4 ENTITLED TO DISCOVERY ON WHETHER THOSE INDUSTRY
5 PRACTICES ARE REALLY BEING FOLLOWED BY SAMSUNG OR
6 NOT.

7 THE COURT: DO YOU HAVE ANY IDEA, BECAUSE
8 I TAKE IT THIS IS ALL A MATTER OF PUBLIC RECORD,
9 HOW MANY OF THESE SPECIFICATIONS THAT ULTIMATELY
10 FALL IN THE SCOPE OF THE 3GPP RUBRIC, HOW MANY OF
11 THOSE SAMSUNG HAS PARTICIPATED IN?

12 MR. WALDEN: I DON'T HAVE A SPECIFIC
13 NUMBER HERE. WE DID LOOK WHEN WE GOT THEIR
14 OPPOSITION AND THEIR STATEMENT THAT THERE WAS
15 HUNDREDS OF INDIVIDUALS INVOLVED AND WERE INVOLVED
16 IN ALL OF THOSE.

17 WHEN WE NARROWED IT DOWN TO UMTS AND THE
18 BACKWARDS COMPATIBLE STANDARDS, EDGE, GSM AND GPRS,
19 IT DID SEEM LIKE IT WAS A MUCH SMALLER UNIVERSE,
20 BUT I'M NOT REALLY ABLE TO GIVE YOU A PARTICULAR
21 NUMBER.

22 AND WHEN WE GO TO THE MORE BACKWARDS
23 COMPATIBLE STANDARDS, THE EDGE, GSM, GPRS, IT DID
24 SEEM THAT --

25 COURT REPORTER: I'M SORRY, YOU NEED TO

1 SLOW DOWN. IT'S BEEN A LONG MORNING, AND THESE
2 ACRONYMS -- CAN YOU START THAT SENTENCE AGAIN,
3 PLEASE.

4 MR. WALDEN: I'M SORRY.

5 WHEN WE GO TO THE BACKWARDS COMPATIBLE
6 STANDARDS, THE EDGE, GSM AND GPRS, IT DID APPEAR IN
7 OUR VIEW THAT THEIR INVOLVEMENT WAS MUCH LIGHTER.

8 SO UMTS, FAIRLY HEAVY INVOLVEMENT, BUT
9 AGAIN WE ARE STILL LIMITING IT TO UMTS.

10 THE COURT: ALL RIGHT.

11 LET'S COVER TOPIC NUMBER THREE ON THIS
12 MOTION.

13 MR. WALDEN: OKAY.

14 SO THIS IS A SOMEWHAT RELATED TOPIC IN
15 THAT WE ARE LOOKING -- WE HAVE MOVED TO COMPEL
16 LICENSES AND NEGOTIATIONS DOCUMENTS RELATING TO
17 SAMSUNG'S PATENTS THAT HAVE BEEN DECLARED ESSENTIAL
18 TO ETSI UNDER 3GPP.

19 HERE AGAIN WE HAD, I THINK A LONG BUT
20 UNFORTUNATELY NOT VERY FRUITFUL, MEET AND CONFER
21 PROCESS WHERE WE HAD PUT INTO RECIPROCITY AGREEMENT
22 OR DRAFT RECIPROCITY AGREEMENT ESSENTIALLY WHAT WE
23 MOVED TO COMPEL. THAT WE WANT LICENSES FOR ALL
24 PATENTS IN SUIT, BUT FOR THE STANDARDS ESSENTIAL
25 PATENTS IN SUIT WE WANT NEGOTIATION DOCUMENTS AS

1 WELL.

2 AND WE BELIEVE WE SHOULD GET NEGOTIATION
3 DOCUMENTS FOR OTHER SAMSUNG PATENTS THAT HAVE BEEN
4 DECLARED ESSENTIAL TO ETSI UNDER 3GPP.

5 THE NEGOTIATIONS WERE UNFRUITFUL BECAUSE
6 ESSENTIALLY SAMSUNG TOOK EVERY PROPOSAL THAT WE
7 MADE AND SAID, HERE'S WHAT WE WILL GIVE YOU, PUBLIC
8 DISCLOSURES. I'M SORRY, THE LICENSES -- I GOT A
9 LITTLE CONFUSED THERE, BUT THE LICENSES OWNED UNTIL
10 AGAIN, 7:45, THE DAY THAT WE MOVED.

11 THEY DID MOVE SOMEWHAT FURTHER BY
12 AGREEING THAT THEY WOULD GIVE NEGOTIATION DOCUMENTS
13 IF THOSE NEGOTIATION DOCUMENTS FOR THE PATENTS IN
14 SUIT DISCUSSED ROYALTY INFORMATION.

15 WE EXPLAINED IN OUR BRIEF THAT THAT STILL
16 WAS NOT SUFFICIENT AND THAT WE WERE LOOKING FOR
17 THOSE PATENTS THAT HAVE BEEN DECLARED STANDARDS
18 ESSENTIAL, WE'RE LOOKING FOR NEGOTIATIONS BECAUSE
19 WE WANT INFORMATION AS TO HOW SAMSUNG HAS
20 COMMUNICATED ITS FRAND OBLIGATIONS OR OTHER PARTIES
21 FRAND OBLIGATIONS, OR AN ORDER TO DETERMINE WHETHER
22 THOSE COMMUNICATIONS WOULD BE RELEVANT HERE, AND
23 THEY VERY LIKELY WOULD BE IN ORDER TO ASSERT OR TO
24 ASSESS WHAT A FRAND LICENSE WOULD MOUNT TO.

25 SO SAMSUNG HAS SAID IN OTHER CONTEXTS FOR

1 THESE PATENTS OR FOR OTHER PATENTS THAT HAVE BEEN
2 DECLARED ESSENTIAL TO ETSI OR 3GPP, WE BELIEVE A
3 FRAND OBLIGATION ENTAILS A, B, AND C, WE WOULD BE
4 ENTITLED TO DISCOVERY OF THAT INFORMATION SO THAT
5 OUR DAMAGES EXPERT COULD PUT TOGETHER A DAMAGES
6 FORMULATION.

7 AGAIN, THEY HAVE COME FURTHER IN THEIR
8 OPPOSITION BRIEF THAN THEY HAD EVEN ON THE DAY THAT
9 WE MOVED TO COMPEL BECAUSE NOW THEY ARE SAYING THEY
10 WILL PRODUCE ALL COMMUNICATIONS WITH THIRD PARTIES
11 NEGOTIATIONS OF TERMS OF THE LICENSES TO THE
12 PATENTS IN SUIT.

13 SO NOW THEY ARE NOT SAYING, I GUESS,
14 LIMITED ONLY TO ROYALTY BUT THEY WILL GIVE US ALL
15 NEGOTIATIONS, THEY ARE NOT SAYING WE HAD REALLY
16 MOVED ON PATENTS THAT HAD BEEN DECLARED ESSENTIAL,
17 BUT AGAIN, WE HAD MOVED ON NOT JUST THE PATENTS IN
18 SUIT THAT HAD BEEN DECLARED ESSENTIAL BUT OTHER
19 PATENTS AS WELL.

20 SO WE SEE THAT SAMSUNG IS KIND OF
21 HALFWAY, THAT OUR MOTION -- UNFORTUNATELY, IT TAKES
22 A MOTION BUT OUR MOTION HAS SHAKEN SOME FRUIT FROM
23 THE TREE, BUT WE DON'T BELIEVE WE HAVE GOTTEN
24 ALL OF IT.

25 THE COURT: WHY ISN'T THAT FRUIT A

1 REASONABLE COMPROMISE HERE?

2 I UNDERSTAND THE RATIONAL OR THE
3 RELEVANCE OF THESE ADDITIONAL PATENTS OR
4 DISCUSSIONS ON FRAND TERMS FOR ADDITIONAL PATENTS,
5 I GET THAT.

6 BUT ALL OF THIS HAS TO BE A GIVE AND TAKE
7 OF A BALANCING ISSUE.

8 ONE OF THE PATENTS THAT ARE ACTUALLY AT
9 ISSUE HERE, THE MOST PERTINENT, THE MOST
10 SIGNIFICANT, WHY ISN'T THAT AN APPROPRIATE LINE FOR
11 ME TO DRAW?

12 MR. WALDEN: WELL, WE WOULD NOT DISAGREE
13 THAT THE PATENTS IN SUIT ARE PROBABLY THE MOST
14 PERTINENT BUT THAT DOESN'T MEAN THAT OTHER PATENTS
15 AREN'T PERTINENT OR RELEVANT, AND THEREFORE WE ARE
16 ENTITLED TO DISCOVERY ON THEM.

17 THE COURT: YOU ARE NOT ENTITLED TO
18 RELEVANT DOCUMENTS. WE HAD THIS DISCUSSION OVER
19 AND OVER AGAIN. RELEVANCE IS A FACTOR, BUT IT'S
20 NOT THE ONLY FACTOR, RIGHT?

21 SO I HAVE TO BALANCE, AND I HOPE YOU
22 WOULD ALL BALANCE IN NEGOTIATING THESE THINGS OUT,
23 THE BURDEN OF COLLECTING ALL THESE THINGS.

24 BUT WHAT I'M STRUGGLING WITH IS IF THE
25 MOST RELEVANT DOCUMENTS ARE SOMETHING SAMSUNG IS

1 WILLING TO PRODUCE, WHY IS THAT NOT AN APPROPRIATE
2 COMPROMISE HERE THAT ADEQUATELY PROTECTS EACH OF
3 YOUR INTERESTS?

4 MR. WALDEN: WELL, UNFORTUNATELY BECAUSE
5 WE FEEL IF THAT WAS THE CUT THEN WE ARE GOING TO
6 ONLY GET DOCUMENTS THAT SPECIFICALLY REFERENCE THE
7 PATENTS IN SUIT.

8 SO WHAT ABOUT LICENSES TO A PORTFOLIO?
9 WHAT ABOUT LICENSES THAT, YES, WOULD BE FOR ALL OF
10 SAMSUNG'S ETSI PATENTS, BUT THAT DON'T NECESSARILY
11 SPECIFICALLY CALL OUT OUR PATENTS IN SUIT BY
12 NUMBER.

13 SO WE BELIEVE THAT THEY ARE RELEVANT, NOT
14 JUST -- WELL, WE BELIEVE THAT THEY ARE RELEVANT
15 BECAUSE STATEMENTS MADE ABOUT FRAND OBLIGATIONS OR
16 WHAT IS AN APPROPRIATE LICENSE TO A DECLARED
17 ESSENTIAL PATENT ARE RELEVANT TO OUR CASE WHETHER
18 OR NOT IT'S FOR THE PATENTS IN SUIT.

19 IF WE WERE TO LIMIT IT ONLY TO THE
20 PATENTS IN SUIT, THE CONCERN REALLY WOULD BE THAT
21 WE ARE NOT GOING GET MANY DOCUMENTS THAT EITHER
22 MORE GENERALLY DESCRIBE FRAND REQUIREMENTS OR ARE
23 TO LICENSES THAT WOULD BE FOR A PORTFOLIO OF
24 PATENTS.

25 SO FOR THAT REASON WE BELIEVE THE BETTER

1 LINE TO DRAW FOR RELEVANCE AND FOR WHAT WE BELIEVE
2 TO BE, I GUESS THE RIGHT LINE, WOULD BE ETSI AND
3 3GPP PATENTS ONLY, NOT ALL --

4 THE COURT: ALL ETSI PATENTS.

5 MR. WALDEN: WE CAN LIMIT IT AGAIN TO THE
6 SAME WAY DESCRIBED EARLIER, THE UMTS AND THE
7 BACKWARDS COMPATIBLE, BUT WE COULD LEAVE OFF LTE
8 AND ADVANCED.

9 THE COURT: AND BROADBAND.

10 MR. WALDEN: YES, EVERYTHING ELSE LIKE
11 THAT.

12 THE COURT: MS. KASSABIAN, ARE YOU UP
13 AGAIN?

14 COURT REPORTER: CAN WE TAKE A QUICK
15 BREAK BEFORE WE CONTINUE?

16 THE COURT: YES. WHY DON'T WE TAKE OUR
17 LUNCH BREAK NOW.

18 SO WE WILL RESUME -- I WOULD LIKE TO KEEP
19 THIS THING MOVING, SO LET'S GET BACK HERE AT, SAY,
20 1:15.

21 THE CLERK: THE COURT IS IN RECESS.

22 (WHEREUPON A RECESS WAS TAKEN.)

23 THE COURT: ALL RIGHT.

24 BEFORE WE BROKE, I BELIEVE WE WERE
25 ADDRESSING THE THIRD OF THE ISSUES RAISED IN

1 APPLE'S MOTION TO COMPEL.

2 MS. KASSABIAN: YES.

3 THE COURT: SO LET'S RETURN TO THAT
4 TOPIC.

5 MS. KASSABIAN: YOUR HONOR, IF I MAY, I
6 WAS ABLE TO QUICKLY GET AN ANSWER TO YOUR HONOR'S
7 QUESTION ON WHETHER SAMSUNG IS INVOLVED, WHAT ELSE
8 BESIDES THE SPECS AT ISSUE IS SAMSUNG INVOLVED IN,
9 AND I WAS ABLE TO CONFIRM THAT FOR WCDMA ALONE
10 WHICH IS I GUESS THE THIRD MAJOR BUBBLE DOWN,
11 SAMSUNG HAS 514 DECLARED ESSENTIAL PATENTS AT THAT
12 LEVEL WHICH WOULD MEAN THAT IF APPLE WERE PERMITTED
13 TO HAVE ITS WAY AND ASK FOR ALL DOCUMENTS REGARDING
14 THOSE TECHNOLOGIES AND SAMSUNG'S INTERACTIONS WITH
15 SSO, THAT WOULD COVER 514 DECLARED INDIVIDUAL
16 PATENTS AND WOULD PRESUMABLY INCLUDE OTHER THINGS
17 THAT WEREN'T DECLARED ESSENTIAL IF THE "ALL
18 DOCUMENTS" MONIKER WERE ADOPTED.

19 THE COURT: DO YOU HAVE ANY INFORMATION
20 REGARDING WHICH OF THE SPECIFIC WORKING GROUPS OR
21 SPECIFICATIONS THOSE 514 PATENTS APPLY?

22 MS. KASSABIAN: THAT'S AT THE WCDMA
23 LEVEL.

24 SO WHAT I'M TOLD IS THAT SAMSUNG WORKS ON
25 ALL OF THESE NEXT LEVEL DOWN BUBBLES TSGCT, TSGSA,

1 TSGGERAN, AND TSG RAN. THESE, AS I UNDERSTAND IT,
2 THESE ARE ALL COMPONENTS OF 3G.

3 SO IF YOU GO UP A BUBBLE AND YOU LOOK AT
4 GPRS, GSM EDGE, THOSE ARE 2G, OLD ANTIQUATED
5 TECHNOLOGIES THAT ARE NOT RELEVANT HERE. AND THEN
6 LTE AND LTE ADVANCED ARE FUTURE TECHNOLOGIES.

7 AND THEN WCDMA IS 3G. THIS CASE IS ABOUT
8 3G. BUT THERE ARE MANY DIFFERENT ASPECTS OF THE
9 CELLULAR TECHNOLOGY HERE, AND IT'S ONLY THE RADIO
10 ACCESS NETWORK COMPONENT WHICH IS TSG RAN THAT IS
11 AT ISSUE HERE.

12 SO AS --

13 THE COURT: WELL, THAT'S WHAT'S AT ISSUE
14 IN THE PATENT CASE.

15 THE CONCERN, RIGHT, OR THE CLAIM IS THAT
16 THERE ARE ANTI-COMPETITIVE BEHAVIORS WHICH TOUCH
17 UPON ALL OF THESE DIFFERENT ORGANIZATIONS, THAT'S
18 THE CLAIM.

19 MS. KASSABIAN: RIGHT.

20 NUMBER ONE, YOU HAVE TO HAVE A BASIS FOR
21 THAT CLAIM.

22 THE COURT: THAT'S A RULE 11 ISSUE.

23 MS. KASSABIAN: BUT I THINK IT IMPLICATES
24 DISCOVERY IF YOU HOLD THEM TO THE CLAIMS THEY'VE
25 ARTICULATED SO FAR.

1 THEIR ARGUMENT THAT WELL, WE THINK THAT
2 YOU, THAT THERE WAS SOME MISCONDUCT REGARDING THREE
3 PARTICULAR SPECIFICATIONS WAY DOWN THE LINE OF
4 RELEVANCE HERE IN THE VENN DIAGRAM, TO SAY THAT WE
5 GET TO FIND OUT, TAKE DISCOVERY ON EVERY SINGLE
6 INTERACTION SAMSUNG HAS EVER HAD WITH ETSI TO SEE
7 IF THERE MIGHT BE ANY OTHER MISCONDUCT THAT WE ARE
8 NOT AWARE OF, THAT'S JUST A CLASSIC FISHING
9 EXPEDITION.

10 SO I WANTED TO LET THE COURT KNOW THAT I
11 WAS ABLE TO CONFIRM THAT EVEN AT THE WCDMA LEVEL WE
12 ARE TALKING ABOUT MANY DIFFERENT ASPECTS OF THE
13 CELLULAR TECHNOLOGY THAT HAS NOTHING TO DO WITH THE
14 RADIO ACCESS NETWORK BUBBLE THAT IS AT ISSUE IN
15 THIS CASE.

16 THE COURT: ALL RIGHT.

17 MS. KASSABIAN: SORRY FOR THAT
18 DIGRESSION.

19 I THINK LICENSING IS RELATED AND CAN BE
20 DISCUSSED MORE QUICKLY.

21 THE ONLY REAL PROBLEM I THINK THAT I
22 HEARD MR. WALDEN SAY BEFORE WE BROKE FOR LUNCH IS
23 THAT HE'S CONCERNED THAT PORTFOLIO LICENSES WOULD
24 NOT BE PRODUCED.

25 I'M NOT SURE WHERE HE GOT THAT CONCERN

1 BECAUSE CERTAINLY HE'S NEVER RAISED THAT WITH
2 SAMSUNG. IF HE HAD DURING THE MEET AND CONFER I
3 CERTAINLY WOULD HAVE ASSURED HIM THAT WE WOULDN'T
4 TAKE SUCH A STRICT AND ARTIFICIAL READING OF THEIR
5 REQUEST.

6 THE COURT: SO ARE THEY GOING TO BE
7 PRODUCED?

8 MS. KASSABIAN: ABSOLUTELY.

9 IF A PORTFOLIO LICENSE INCLUDES THAT
10 TECHNOLOGY, THOSE PATENTS, EVEN IF IT DOESN'T LIST
11 THEM OUT BY NAME BUT REFER TO THEM AS A GROUP,
12 ABSOLUTELY THEY ARE INCLUDED.

13 AND WE ARE TEEING SOME OF THOSE UP RIGHT
14 NOW FOR PRODUCTION PURSUANT TO OUR VOLUNTARY
15 AGREEMENT AS DESCRIBED IN, AT PAGE 16 OF OUR
16 OPPOSITION BRIEF TO PRODUCE THE LICENSES TO SAMSUNG
17 PATENTS THAT ARE INCORPORATED IN THE UMTS
18 SPECIFICATIONS IDENTIFIED IN THEIR ANSWER. AND
19 THERE WERE THREE, AS WE PREVIOUSLY DISCUSSED.

20 SO IF THERE'S A PORTFOLIO LICENSE THAT
21 INCLUDES THAT AND A BUNCH OF OTHER THINGS, THAT'S
22 GETTING PRODUCED.

23 SO IF THAT'S THE ONLY CONCERN THEN I
24 DON'T THINK THERE'S REALLY A DISPUTE HERE, AND WHAT
25 WE'VE AGREED TO PRODUCE SHOULD BE ENOUGH.

1 ON THE BROADER ISSUE, IT'S UNCLEAR TO ME
2 WHETHER APPLE IS STILL PRESSING ITS BROADER DEMAND
3 FOR LICENSES REGARDING ALL ETSI AND 3GPP PATENTS.
4 BUT THERE ARE MORE THAN 3500 SUCH PATENTS.

5 SO AGAIN, WE WOULD ARGUE THAT'S
6 OVERBROAD.

7 THE COURT: HOW MANY LICENSES ARE THERE
8 IMPLICATED BY THOSE PATENTS?

9 MS. KASSABIAN: I'M STILL TRYING TO GET
10 THAT INFORMATION. YOU KNOW, WE'RE TALKING ABOUT A
11 VERY BIG UNIVERSE OF PATENTS AND TECHNOLOGIES, SO
12 I'M WORKING ON THE INFORMATION. IF I HAD IT, I
13 DEFINITELY WOULD HAVE PUT IT IN THE BRIEF.

14 BUT WE DO THINK IT IS A FACT THAT
15 SAMSUNG, LIKE MANY TECHNOLOGY COMPANIES, DOES OFTEN
16 ENTER INTO PORTFOLIO LICENSES.

17 AND SO THIS MAY BE, YOU KNOW, A NONISSUE
18 ULTIMATELY IF THE PORTFOLIO LICENSES ARE ENOUGH AND
19 ARE THE ONLY LICENSES THAT INCLUDE OR IMPLICATE
20 PATENTS COVERING THE THREE SPECIFICATIONS AT ISSUE
21 HERE.

22 SO I MEAN, I THINK YOUR HONOR IS RIGHT,
23 THERE HAS TO BE A BALANCING HERE. I THINK OUR
24 OFFER FAIRLY BALANCES THE INTEREST HERE. APPLE CAN
25 RECEIVE THOSE DOCUMENTS. IF THEY THINK THEY ARE

1 INSUFFICIENT, THEY CAN ASK US FOR MORE. BUT I
2 THINK AT THIS POINT THAT'S ENOUGH.

3 THE COURT: DO YOU HAVE ANY OBJECTION TO
4 PRODUCING THE DOCUMENTS CONCERNING THE UNDERLYING
5 NEGOTIATIONS AS TO THOSE LICENSES THAT YOU
6 DESCRIBED A MOMENT AGO?

7 MS. KASSABIAN: NO. WE'VE AGREED TO
8 PRODUCE ALL COMMUNICATIONS WITH THIRD PARTIES
9 NEGOTIATING THE TERMS OF LICENSES THAT INCLUDE THE
10 PATENTS IN SUIT.

11 THE COURT: THAT ARE LIMITED TO THE
12 PATENTS IN SUIT.

13 MS. KASSABIAN: YES.

14 THE COURT: THAT'S WHAT YOU ARE TELLING
15 ME, RIGHT?

16 MS. KASSABIAN: YES, BUT A LOT OF THESE
17 ARE PORTFOLIO LICENSES.

18 SO THE LICENSES MAY NOT SPECIFICALLY SAY
19 THIS PARTICULAR PATENT BUT REFERS TO A FAMILY OF
20 PATENTS.

21 THE COURT: BUT THAT FAMILY HAS TO
22 INCLUDE ONE OF THE OTHER ASSERTED PATENTS.

23 MS. KASSABIAN: ABSOLUTELY. THAT'S
24 WHAT'S RELEVANT HERE, ABSOLUTELY.

25 AND OBVIOUSLY TO THE EXTENT THAT THEY ARE

1 PORTFOLIO LICENSES, THEY WOULD INCLUDE MANY OTHER
2 PATENTS MAYBE NOT BY NAME BUT BY FAMILY AS WELL.

3 SO I THINK THEY ARE GOING TO GET A LARGE
4 UNIVERSE OF INFORMATION. IF THEY AT THAT POINT
5 FEEL IT'S INSUFFICIENT, THEY CAN TALK TO US ABOUT
6 IT. BUT I DON'T SEE A MORE RELEVANT SET THAT WOULD
7 BE REASONABLE GIVEN THE BALANCING TEST THAT HAS TO
8 OCCUR.

9 THE COURT: DO THE PARTIES AGREE -- OR
10 LET ME ASK YOU. YOU ARE NOT THE PARTIES, YOU ARE
11 YOU.

12 DO YOU AGREE THAT I CAN APPROPRIATELY
13 DRAW THE BOUNDARIES AROUND DISCOVERY ON THIS ISSUE
14 BY LOOKING TO THE LG CASE? IS THAT AN APPROPRIATE
15 PRECEDENT FOR ME TO APPLY IN ANSWERING THIS
16 QUESTION?

17 MS. KASSABIAN: WELL, I THINK THAT
18 THERE'S SOME ISSUE. GENERALLY, YES, BUT I THINK
19 THERE'S AN ISSUE OF SEMANTICS.

20 I'VE TRIED MY BEST TO FIGURE OUT WHAT THE
21 PROPER DEFINITION OF THE TERM "STANDARD" IS AND I
22 THINK DIFFERENT PEOPLE HAVE DIFFERENT DEFINITIONS.

23 I THINK THE ACTUAL -- THE COURT CALLS
24 THEM "STANDARDS" BUT THE COURT IDENTIFIES WHAT I
25 BELIEVE ARE SOMETHING MAYBE NARROWER THAN A

1 STANDARD AND CALLS THEM STANDARDS.

2 IT LOOKS TO BE LIKE IT'S A SERIES OR A
3 RELEASE OR A SPECIFICATION.

4 THE COURT: OR A WORKING GROUP. THERE
5 ARE MANY DIFFERENT WAYS OF LOOKING AT THIS.

6 MS. KASSABIAN: ABSOLUTELY. WE COULD
7 LOOK AT IT AS A WORKING GROUP LEVEL. I THINK THAT
8 WOULD MAKE SENSE.

9 IT WOULD STILL BE OVER INCLUSIVE BECAUSE
10 IF YOU LOOKING AT VENN DIAGRAM, JUST AMONG WORKING
11 GROUPS 1 AND 2 THERE ARE 245 SPECIFICATIONS THAT
12 JUST HAVE NOTHING TO DO WITH THE CASE.

13 SO EVEN AT THAT LEVEL I THINK IT WOULD
14 PROBABLY INCLUDE TOO MUCH. BUT THAT IS FAR, FAR,
15 FAR MORE REASONABLE THAN TALKING ABOUT, YOU KNOW,
16 THE 3GPP LEVEL, THE WCDMA LEVEL, ET CETERA, WHICH I
17 THINK WOULD INCLUDE THOUSANDS OF SPECIFICATIONS AND
18 MANY, MANY MORE WORKING GROUPS AND DIFFERENT PIECES
19 OF THE TECHNOLOGY LOGICAL PUZZLE THAN THE VERY
20 NARROW PIECE AT ISSUE IN THIS CASE REGARDING THE
21 RADIO ACCESS NETWORK.

22 THE COURT: SO IF WE COULD IMAGINE, FOR A
23 MINUTE, AN ALTERNATIVE UNIVERSE IN WHICH THE
24 COUNTER COMPLAINT IDENTIFIED ANTI-COMPETITIVE
25 BEHAVIOR WITH RESPECT TO ALL OF THE SPECIFICATIONS,

1 WORKING GROUPS, WITHIN 3GPP, WOULD YOU AGREE UNDER
2 THOSE CIRCUMSTANCES THAT THE DISCOVERY THEY ARE
3 SEEKING IS APPROPRIATE?

4 MS. KASSABIAN: IT WOULD DEPEND.

5 IF IT WAS A FRAUD CLAIM, OBVIOUSLY THEY
6 WOULD NEED TO SATISFY RULE 9 AT ALL OF THOSE
7 LEVELS. BUT I THINK GIVEN THE SIZE OF SAMSUNG AND
8 THE BREADTH OF THE TECHNOLOGIES THAT SAMSUNG IS
9 INVOLVED IN, YOU KNOW, MAYBE YOU WOULD HAVE TO
10 NARROW IT IN SOME OTHER WAY.

11 YOU COULD NARROW IT BY PRODUCTS OR BY
12 WITNESSES, THERE'S MANY DIFFERENT WAYS YOU COULD DO
13 IT.

14 APPLE DIDN'T HELP US AT ALL HERE IN
15 PROPOSING ANY NARROWING. SO WHAT WE ARE PROPOSING
16 IS THAT YOU GO DOWN TO THE SPECIFICATION LEVEL
17 THAT'S ACCUSED.

18 IF YOUR HONOR WANTS TO BROADEN IT A BIT
19 AND LET THEM EXPLORE, YOU KNOW, WHETHER THERE MIGHT
20 BE ANY RELEVANT EVIDENCE THAT'S COMPARABLE
21 REGARDING A DIFFERENT SPECIFICATION, IF THAT'S
22 WHERE YOU ARE HEADED YOUR HONOR, I WOULD SAY IT HAS
23 TO BE AT THIS WORKING GROUP LEVEL. BECAUSE EVEN
24 THAT IS, WE ARE TALKING ABOUT LIKE I SAID, 245
25 SPECIFICATIONS, AND I'M NOT EVEN SURE HOW MANY

1 PATENTS EVEN AT THAT LEVEL.

2 SO IF THEY HAD PLEADED FRAUD OR -- SORRY,
3 FAILURE TO DISCLOSE INFORMATION REGARDING SAMSUNG'S
4 INTERACTION WITH 3GPP UNDER THE TSG CT WORKING
5 GROUP FOR EXAMPLE, THEN YES I WOULD AGREE THEY
6 WOULD BE ENTITLED TO SOME DOCUMENTS IN THAT BUBBLE
7 ALL. ALL OF THEM, I DON'T THINK SO. BUT SOME OF
8 THEM, ABSOLUTELY, BUT THAT'S JUST NOT PLEADED HERE.

9 SO THEY ARE SAYING WE THINK YOU DID
10 SOMETHING BAD IN THIS CORNER SO WE WANT THE ENTIRE
11 BUILDING'S WORTH OF DOCUMENTS. AND THAT'S JUST,
12 IT'S JUST A CLASSIC FISHING EXPEDITION.

13 WE MIGHT FIND SOMETHING ELSE WRONG THAT
14 YOU DID, ALLEGEDLY.

15 AND I THINK YOU HAVE TO FOCUS ON THE
16 CLAIMS, AND IF THEY ARE NOT SATISFIED, THEN AGAIN,
17 COME BACK TO US AND LET'S TALK ABOUT THAT.

18 IF YOU DON'T THINK YOU HAVE ENOUGH
19 DOCUMENTS AFTER WE'VE PRODUCED THE RELEVANT
20 MATERIALS RELATED TO THE ALLEGATIONS HERE, THE
21 ALLEGED IMPROPER FAILURE TO DISCLOSE REGARDING
22 THREE PARTICULAR SPECIFICATIONS, THEN WE WILL TALK.

23 THE COURT: SO WHEN ARE YOU GOING TO
24 PRODUCE THE DOCUMENTS YOU SAID YOU WERE GOING TO
25 PRODUCE?

1 MS. KASSABIAN: SO MY JANUARY 10TH
2 LETTER, THE FAMOUS JANUARY 10TH LETTER, LAID OUT
3 SPECIFIC PRODUCTION DATES.

4 AND I REALLY WAS AS LEAN AS I COULD BE IN
5 PERSUADING OUR CLIENT TO EXPEDITE THESE AS MUCH AS
6 I COULD.

7 CALL ME NAIVE, BUT I REALLY THOUGHT WE
8 MIGHT BE ABLE TO AVOID THIS MOTION. SO I ASKED FOR
9 THE VERY EARLIEST DATE THAT THEY COULD REASONABLY
10 AGREE AND THAT'S INCLUDED IN THE LETTER. THIS IS
11 EXHIBIT 1 TO THE CHAN DECLARATION IN OPPOSITION TO
12 THE MOTION TO COMPEL.

13 AND FOR THE LICENSE DOCUMENTS, BASICALLY
14 EACH DOCUMENT HAS A DIFFERENT DATE BECAUSE OF THE
15 AMOUNT OF BURDEN INVOLVED AND THE VOLUME OF
16 DOCUMENTS.

17 SO I BELIEVE FOR THE LICENSING DOCUMENT,
18 AND THE SSO DOCUMENTS WE SAID FEBRUARY 10TH. EACH
19 SET OF DOCUMENTS HAS A DIFFERENT DATE. AND THEY
20 ARE DIFFERENT FOR A REASON. THESE WERE THOUGHTFUL
21 DATES.

22 YOU KNOW, I PRESSED PEOPLE, I BEGGED
23 PEOPLE. YOU KNOW, TRIPS ARE BEING TAKEN, DOCUMENTS
24 ARE BEING GATHERED AS WE SPEAK, BUT THIS IS A VERY
25 LARGE UNIVERSE OF MATERIALS. EVEN OUR COMPROMISE

1 IS STILL GOING TO RESULT IN A VERY LARGE
2 PRODUCTION.

3 SO FEBRUARY 10TH IS THE DATE FOR THOSE
4 DOCUMENTS. AND THAT, WE BELIEVE, IS PROBABLY ONE
5 OF THE BIGGER CATEGORIES.

6 SOME OF THE OTHER DATES WE OFFERED ARE IN
7 JANUARY, LATE JANUARY. AND IT STILL WASN'T ENOUGH,
8 I GUESS, TO AVERT THE MOTION. BUT SOME OF THE
9 DOCUMENTS WE THINK WE CAN GATHER MORE QUICKLY. WE
10 OFFERED AS EARLY AS JANUARY 27TH, JANUARY 31ST,
11 SOME DATES IN EARLY FEBRUARY.

12 BUT THE SSO AND LICENSING DOCUMENTS, I
13 THINK IT'S A BIG BODY OF WORK SO FEBRUARY 10TH WAS
14 OUR BEST ESTIMATE.

15 THE COURT: AND WHAT NUMBER OF WITNESSES
16 WHO HAVE BEEN NOTICED FOR DEPOSITION ARE IMPLICATED
17 BY THESE CATEGORIES, THE SSO AND THE LICENSES?

18 MS. KASSABIAN: SO THE INVENTOR
19 DEPOSITIONS ARE DONE. SO NONE OF THEM. AS FAR AS
20 I KNOW, NONE OF THEM.

21 AND BOTH PARTIES HAVE PRODUCED INVENTOR
22 DOCUMENTS AFTER THE INVENTOR DEPOSITIONS. I THINK
23 EACH PARTY NEEDS TO BE THOUGHTFUL AND LOOK THROUGH
24 THOSE DOCUMENTS AND DECIDE WHETHER ANY OF THEM ARE
25 SO MATERIAL THAT THEY WANT TO ASK FOR MORE

1 DEPOSITION TIME WITH THAT PARTICULAR INVENTOR.

2 SO FAR I DON'T THINK THAT PROCESS HAS
3 HAPPENED. YOU KNOW, THEY CERTAINLY, I UNDERSTAND
4 THEY RESERVE THEIR RIGHT TO DO THAT AND WE RESERVE
5 OUR RIGHT TO DO THAT GIVEN THAT MANY INVENTOR
6 DOCUMENTS HAVE COME FROM APPLE AFTER THE
7 DEPOSITIONS.

8 BUT WE DID MAKE CLEAR IN OUR OFFER THAT,
9 AND I BELIEVE THIS IS IN THE JANUARY 10TH LETTER,
10 THAT THE PRODUCTION WOULD BE COMING ON THESE DATES
11 OR SOONER IF A DEPOSITION WAS IMPLICATED.

12 SO WE ARE NOT IN ANY WAY PLANNING TO BLOW
13 BY ANY DEPOSITIONS. WE ARE EITHER GOING TO GET THE
14 DOCUMENTS THAT FALL UNDER THESE CATEGORIES RELATED
15 TO A PARTICULAR WITNESS PRODUCED EARLY SO THAT THEY
16 CAN BE REVIEWED FOR THAT DEPO, OR IF IT'S
17 PHYSICALLY IMPOSSIBLE THEN WE PROBABLY MOVE DEPO
18 DATES AROUND BECAUSE THAT WOULD OBVIOUSLY, I THINK,
19 BE THE MOST EFFICIENT WAY TO HANDLE IT.

20 THE COURT: ALL RIGHT.

21 WITH THE MARCH 8TH DEADLINE YOU DON'T
22 HAVE A LOT OF TIME TO WORK WITH, RIGHT?

23 MS. KASSABIAN: NO.

24 BUT HONESTLY, A MONTH IN THIS CASE,
25 THAT'S A FAIRLY LONG TIME. WE GET A LOT DONE IN

1 ONE DAY.

2 IT'S NOT A LOT OF TIME BUT, YOU KNOW,
3 LIKE I SAID, THE PARTIES HAVE SPENT WEEKS TRYING TO
4 NARROW THIS DOWN, AND WE WEREN'T SUCCESSFUL SO HERE
5 WE ARE.

6 BUT I DO THINK EVEN WITH THAT DATE, AND
7 THEY'VE GOT A LARGE TEAM, THEY'VE GOT TWO
8 OUTSTANDING LAW FIRMS, I THINK HAVING THESE
9 DOCUMENTS A MONTH BEFORE THE CUTOFF GIVES THEM
10 PLENTY OF TIME TO TAKE DEPO'S.

11 THEY'VE ALREADY NOTICED, I THINK, 40
12 DEPOSITIONS, RIGHT AROUND 40. AND WE JUST GOT A
13 FEW MORE NOTICES A FEW DAYS AGO.

14 SO, YOU KNOW, AS FAR AS I KNOW THEIR DEPO
15 CALENDAR IS FULL. BUT CERTAINLY THEY HAVE THE
16 RIGHT TO WITHDRAW SOME NOTICES AND ISSUE OTHERS IF
17 THEY RECEIVE THESE DOCUMENTS AND FEEL THAT THEY
18 HAVE OTHER PEOPLE THEY WANT TO TALK.

19 THE COURT: ALL RIGHT.

20 THANK YOU, MS. KASSABIAN.

21 MR. WALDEN, ANY REBUTTAL?

22 MR. WALDEN: YES, YOUR HONOR.

23 AND AGAIN, I WILL TRY TO BE SHORT. JUST A
24 QUICK RESPONSE.

25 THE INVENTORS ARE NOT THE ONLY RELEVANT

1 WITNESSES FOR THE SSO DOCS WHO ARE THE LICENSING
2 DOCS.

3 THE INVENTORS ARE INVOLVED IN STANDARD
4 SETTING ORGANIZATIONS, BUT AS WE PUT IN OUR BRIEF
5 THERE ARE A LOT OF NON INVENTORS INVOLVED.

6 WE'VE NOTICED I BELIEVE FOUR OR FIVE THAT
7 HAVE COME TO LIGHT IN SOME OF THEIR MORE RECENT
8 PRODUCTIONS AS NAMES THAT WE THOUGHT WERE MORE
9 RELEVANT.

10 BUT AGAIN, AS WE PUT IN OUR MOTION, PART
11 OF OUR PROBLEM IS THEY'VE BEEN SO DEFICIENT IN
12 THEIR SSO PRODUCTION, NON INVENTOR RELATED,
13 ESPECIALLY THAT WE'RE NOT EVEN QUITE SURE WHO TO
14 DEPOSE.

15 THE LETTER, JUST TO CLARIFY,
16 MS. KASSABIAN'S LETTER THEY SAID THEY WOULD PRODUCE
17 THE SSO DOCUMENTS BY FEBRUARY 10TH BUT THE LICENSE
18 DOCUMENTS BY JANUARY 31ST.

19 AND AGAIN, WE HAD MOVED TO COMPEL THEM BY
20 JANUARY 23RD BECAUSE WE SERVED THESE REQUESTS A
21 LONG TIME AGO. IT SHOULDN'T BE THAT THEY ARE
22 COLLECTING THEM AND GETTING THEM READY FOR
23 PRODUCTION, THEY SHOULD HAVE BEEN PRODUCED A WHILE
24 BACK.

25 AND THEN FINALLY JUST TO ADDRESS THE ONE

1 POINT THAT MS. KASSABIAN MENTIONED BEFORE, I
2 BELIEVE IT WAS THE UMTS, SHE SAID SOMETHING ON THE
3 ORDER, IT WAS 500 PLUS.

4 THE COURT: IT WAS 514.

5 MR. WALDEN: 514.

6 MS. KASSABIAN MAY BE ABLE TO CLARIFY
7 THAT, BUT IN OUR REVIEW IT WAS NOT THAT GREAT OF AN
8 AMOUNT IF YOU LOOK AT WHETHER THERE'S, SAY, FOREIGN
9 COUNTERPARTS TO A U.S. PATENT OR SOMETHING LIKE
10 THAT.

11 SO ALL OF THE SUDDEN YOU'VE GOT FOUR OR
12 FIVE -- LOOKS LIKE FOUR OR FIVE PATENTS BEING
13 DISCLOSED, BUT REALLY IT'S THE SAME PATENT BUT IN
14 MULTIPLE JURISDICTIONS.

15 SO AGAIN, I THINK YOU NARROW THAT DOWN.
16 WE HAVE BROAD, REAL SUBSTANTIVE ANTI-TRUST AND
17 OTHER TYPES OF COUNTERCLAIMS, WE BELIEVE WE ARE
18 ENTITLED TO DISCOVERY FOR THAT REASON.

19 THE COURT: ALL RIGHT.

20 THANK YOU VERY MUCH.

21 LET'S TURN NEXT TO THE LAST OF THE APPLE
22 MOTIONS. APPLE'S MOTION TO COMPEL PRODUCTION,
23 WHICH IS DOCKET NUMBER 613.

24 WHO'S UP, MR. JACOBS?

25 MR. JACOBS: YES, SIR.

1 THE COURT: OH, YOU'RE UP. OKAY.

2 MR. JACOBS: IT'S A LITTLE AMBIGUOUS.

3 WELL, WE ARE HERE ON THIS MOTION,
4 YOUR HONOR, OUT OF A VERY SERIOUS CONCERN THAT WAS
5 REINFORCED BY SAMSUNG'S MOTION FOR AN EXTENSION OF
6 TIME ON YOUR DECEMBER 22ND ORDER.

7 WHAT BECAME CLEAR IN SAMSUNG'S MOVING
8 PAPERS FOR THAT EXTENSION WAS THAT SAMSUNG HAS ONLY
9 NOW GOTTEN UNDER WAY IN A SERIOUS WAY TO GATHER,
10 COLLECT AND PRODUCE THE DOCUMENTS THAT ARE
11 APPROPRIATE FOR PRODUCTION IN THIS CASE, EVEN BY
12 SAMSUNG'S OWN ACKNOWLEDGEMENT OR BY COURT ORDER.

13 SO TO BE CLEAR, WHAT SAMSUNG WAS SEEKING
14 EXTENSION ON WAS NOT JUST DOCUMENTS WE HAD LONG
15 REQUESTED OR THE COURT ORDERED IN ITS DECEMBER
16 ORDER, BUT RATHER AS THE DECEMBER ORDER WAS WORDED,
17 DOCUMENTS THAT HAD BEEN ORDERED FOR PRODUCTION IN
18 SEPTEMBER.

19 SO WHAT HAS BECOME APPARENT TO US WITH
20 ALL -- WITH VERY DEEP CONCERN FOR THE BURDEN WE ARE
21 PLACING ON THE COURT, AND REALLY, WE TALK ABOUT
22 THIS ALL THE TIME, HOW CAN WE TEE THIS UP MORE
23 EFFICIENTLY? IS THERE ANYTHING WE CAN DO?

24 WE HAVE REACHED THE CONCLUSION THAT WE
25 JUST HAVE TO GET TO THESE MOTIONS THROUGH THE MEET

1 AND CONFER PROCESS WHICH IS ITS OWN SET OF
2 WANDERING PATHS HERE AND THEN IN FRONT OF
3 YOUR HONOR AND GET ORDERS. AND I HOPE WE DON'T
4 NEED THIS, BUT ORDERS ON ORDERS BECAUSE THAT'S WHAT
5 IT SEEMS WE NEED IN THIS CASE.

6 SO SAMSUNG'S PROTESTATION IS LOOK, WE'VE
7 AGREED TO ALL THIS PRODUCTION. THAT AGREEMENT CAME
8 FOUR DAYS AFTER THE FIRST PROMISE OF A SUBSTANTIVE
9 RESPONSE TO THE LEAD COUNSEL MEET AND CONFER WITH
10 SEVERAL EXTENSIONS GRANTED.

11 AND THE AGREEMENT, AS I WILL ILLUSTRATE
12 IN A MOMENT, IS INCOMPLETE.

13 BUT WE HAVE ANOTHER REASON FOR WORRY
14 WHICH IS THAT THE DECEMBER ORDER ALSO HAD AN ORDER
15 ABOUT PRODUCTION IN ADVANCE OF DEPOSITIONS.

16 THE DECEMBER ORDER SAID PRIORITIZE
17 DEPOSITIONS, RELATED PRODUCTION, AND SAID THREE
18 DAYS IN ADVANCE.

19 WE HAD EARLIER AGREED TO FIVE DAYS IN
20 ADVANCE. AND AT THE APPLE INVENTOR DEPOSITIONS WE
21 AIMED FOR AND ALMOST ALWAYS HIT THAT DEADLINE.
22 WERE THERE A FEW DOCUMENTS THAT WE UNCOVERED DURING
23 DEPOSITION PREPARATION AND MADE AVAILABLE? YES.
24 BUT WHAT WE HAVE NOW IN OUR DEPOSITIONS FROM
25 SAMSUNG IS A QUITE SERIOUS PROBLEM WITH DOCUMENTS

1 BEING PRODUCED ON OR ABOUT THE DAY OF THE
2 DEPOSITION.

3 SO WE PREPARED A CHART FOR YOUR HONOR.
4 AND WE ARE NOT MOVING ON THIS ISSUE RIGHT NOW IN A
5 SPECIFIC SENSE BUT THIS ILLUSTRATES THE PROBLEM WE
6 ARE HAVING GETTING SAMSUNG, AND BY SAMSUNG I MEAN
7 THE COMPANY, THE PEOPLE AT THE COMPANY, TO PAY
8 ATTENTION TO THIS PROCESS.

9 MS. MAROULIS: YOUR HONOR, THIS IS NOT
10 THE MOTION THAT'S BEEN NOTICED, SO WE OBJECT.

11 THE COURT: I NOTE THAT. AND I TAKE IT
12 THAT MR. JACOBS IS GOING TO TIE THIS TO THE MOTION
13 THAT IS BEFORE ME PRETTY QUICKLY.

14 MS. KASSABIAN: BUT THIS IS WHAT THE
15 PARTIES ARE CURRENTLY MEETING AND CONFERRING ON.

16 MR. JACOBS: THE TIE, AS I SAID
17 YOUR HONOR, SAMSUNG HAS NOT GOTTEN TO IT ON
18 PRODUCTION. WE ARE GETTING DOCUMENTS AFTER
19 DEPOSITIONS HAVE STARTED. WE'RE GETTING DOCUMENTS
20 SHORTLY BEFORE DEPOSITIONS HAVE STARTED. THOSE ARE
21 DOCUMENTS IN KOREAN LANGUAGE. AND THE POINT IS
22 SAMSUNG HAS STILL NOT GOTTEN TO IT.

23 SO THAT'S WHY WE HAVE WHAT IS FAIRLY
24 BROAD IN TERMS OF THE NUMBER OF TOPICS IT COVERS, A
25 FAIRLY BROAD MOTION BEFORE YOUR HONOR SEEKING AN

1 ORDER TO PRODUCE AND TO PRODUCE ESSENTIALLY
2 IMMEDIATELY.

3 LET'S GET DOWN -- I THINK HAVING SAID
4 THAT BY WAY OF INTRODUCTION, I WANT TO BE AS
5 HELPFUL TO THE COURT IN ACTUALLY ISSUING AN ORDER
6 AS WE CAN.

7 SO WHAT I DID THIS MORNING, AND IT'S A
8 LITTLE ROUGH AND IT MAY BE THAT WE'VE
9 MISINTERPRETED WHAT SAMSUNG IS OFFERING, BUT WE
10 MARKED UP OUR PROPOSED ORDER WITH WHAT WE
11 UNDERSTAND SAMSUNG'S COMMITMENTS TO BE.

12 THE PROPOSED ORDER ITSELF WAS DESIGNED TO
13 MAKE THIS PROCESS AS CLEAR AND CRISP AS POSSIBLE.
14 AND WHAT YOU WILL SEE IS THAT IN SOME CASES WE
15 DON'T HAVE A DATE. IN SOME CASES WE HAVE A NO.

16 NO COULD BE MEAN TWO THINGS: IT COULD
17 MEAN REFUSAL, OR NO COULD MEAN SILENCE. THEN IN
18 SOME CASES WE HAVE KIND OF A REWRITE.

19 AND SO AGAIN IF WE MARCH THROUGH THESE --
20 AGAIN, I WANT TO DO THIS AS EFFICIENTLY AND FOR THE
21 COURT AS POSSIBLE. WHAT YOU WILL SEE IS WE DON'T
22 HAVE AGREEMENT YET AND WE DON'T HAVE A DATE.

23 MS. KASSABIAN: MR. JACOBS, WHERE DID THE
24 LANGUAGE COME FROM?

25 MR. JACOBS: I HAVE BEEN ASKED A QUESTION

1 BY COUNSEL.

2 THIS IS OUR INTERPRETATION OF WHAT WE
3 HAVE GOTTEN FROM SAMSUNG. AGAIN, IF WE
4 MISINTERPRET IT, I'M SURE THEY WILL POINT IT OUT TO
5 US, BUT THIS IS OUR INTERPRETATION OF WHAT WE HAVE
6 GOTTEN.

7 SO I THINK MAYBE A COUPLE ARE WORTH
8 FLAGGING FOR YOUR HONOR BECAUSE THEY REQUIRE MORE
9 THAN JUST A KIND OF YES, THESE ARE RELEVANT, YES
10 THEY SHOULD BE ORDERED TO BE PRODUCED.

11 ON THE ISSUE OF DESIGN AROUNDS, THIS IS
12 AN IMPORTANT ONE, IT COMES UP TO TWO WAYS.

13 ONE, IF THEY HAVE DESIGNED AROUND
14 ALREADY, WE WANT THE DOCUMENTATION ABOUT THAT
15 DESIGN AROUND.

16 TWO, IF THEY ARE GOING TO ARGUE THAT THEY
17 HAVE NON INFRINGING ALTERNATIVES, HYPOTHETICAL OR
18 IN THE WORKS, WE WANT THE DOCUMENTS ABOUT THAT.

19 WHAT THEY HAVE SIGNALLED TO US IS THIS IS
20 CLOAKED IN PRIVILEGE ON ALL COUNTS AND THAT THERE
21 ISN'T ANYTHING TO PRODUCE. BUT THAT JUST CAN'T BE
22 RIGHT.

23 IN THE FIRST CASE, WHEN AN ENGINEER
24 ACTUALLY IMPLEMENTS A DESIGN AROUND, THE
25 IMPLEMENTATION OF THAT DESIGN AROUND IS NOT A

1 PRIVILEGED EVENT.

2 THE DIRECTION FROM A MANAGER TO AN
3 ENGINEER CREATES THE BLUE GLOW EFFECT, IS NOT A
4 PRIVILEGED EVENT. IT MAY BE THERE WAS LEGAL ADVICE
5 IN REACHING THE DECISION TO IMPLEMENT THE DESIGN
6 AROUND, AND SOME DAY WE WILL GET TO PRIVILEGE LOGS,
7 BUT THAT CAN'T BE RIGHT.

8 AND THEN, OF COURSE, IF THEY'RE GOING TO
9 ARGUE NON INFRINGING ALTERNATIVES AND THAT THEY
10 HAVE SOMETHING IN THE WORKS AND IT WOULD HAVE BEEN
11 TRIVIAL TO DESIGN OF THE PATENTS, THAT SHOULD BE
12 DOCUMENTED.

13 THE ISSUE OF FINANCIAL DOCUMENTS IS A
14 KNOTTY ONE. IT'S KNOTTY BECAUSE OUR BURDEN IN ONE
15 SENSE IS FAIRLY EASY, AND IN ANOTHER SENSE IT'S
16 FAIRLY CHALLENGING.

17 WE ARE ENTITLED, FOR DESIGN PATENT
18 INFRINGEMENT, TO SAMSUNG'S PROFITS. BUT SAMSUNG IS
19 A GLOBAL COMPANY WITH LOTS OF OPPORTUNITY TO MOVE
20 REVENUES INTO A SUBSIDIARY IF IT'S TAX ADVANTAGED
21 OR NOT OR ALLOCATE COSTS IN PARTICULAR WAYS.

22 AND WE HAVE TO REVERSE ENGINEER THAT FROM
23 THE UNDERLYING DOCUMENTATION AND WE HAVE TO CREATE
24 A DAMAGES MODEL THAT CREATES AN APPROPRIATELY
25 ALLOCATED MODELLING OF SAMSUNG'S PROFITS.

1 IT'S NOT MERELY WHAT SAMSUNG REPORTS AS,
2 SAY, PROFITS FOR THE HANDSET DIVISION, BECAUSE SOME
3 PRODUCTS INFRINGE THE DESIGN PATENTS, WE ALLEGE,
4 AND SOME PRODUCTS DO NOT. SO WE NEED TO GET DOWN
5 TO A FAIRLY GRANULAR LEVEL HERE.

6 NOW AGAIN, WE ARE NOT EXACTLY SURE WHAT
7 SAMSUNG HAS PROMISED TO DO BUT IT DOES HAVE TO BE
8 QUITE COMPLETE, IT DOES HAVE TO BE GLOBAL AND IT
9 DOES HAVE TO BE DOWN TO THE PRODUCT IN A
10 MONTH-BY-MONTH LEVEL.

11 THE COURT: DOESN'T THE CHAN DECLARATION,
12 OR EXHIBIT 1 TO IT, LAY OUT THAT JANUARY 10TH
13 LETTER WHAT THEY'VE AGREED TO PRODUCE?

14 MR. JACOBS: YES.

15 AND I THINK IT'S THE -- THE SHORT ANSWER
16 IS IT'S INCOMPLETE.

17 SO I DON'T THINK WE ARE TRULY GETTING --
18 AMONG THE THINGS THAT WE'VE SPOTTED, WE NEED TO GET
19 THIS FROM ALL THE ENTITIES THAT ARE INVOLVED IN THE
20 SALES.

21 SO WE NEED IT AT THE SUBSIDIARY AND AT
22 THE PARENT LEVEL. WE NEED IT AT THE MONTH-BY-MONTH
23 LEVEL BECAUSE PRODUCTS ARE BEING ROLLED IN AND OUT.
24 WE NEED IT AT THE PRODUCT LEVEL BECAUSE IT'S A
25 PRODUCT-BY-PRODUCT ASSESSMENT. WE NEED THE BUILD

1 OF MATERIALS, WE NEED THE GNA ALLOCATION. WE NEED
2 A PRETTY COMPREHENSIVE VIEW OF THE INCOME AND COSTS
3 STRUCTURE OF SAMSUNG'S MOBILE PHONE GROUP DOWN TO
4 THOSE LEVELS OF GRANULARITY.

5 THE COURT: YOU ARE ASKING FOR THE BILL
6 OF MATERIALS FOR EACH OF THE INDIVIDUAL UNITS THAT
7 INFRINGE?

8 MR. JACOBS: OH, YES. AND WE HAVE GIVEN
9 THAT ON THE APPLE'S SIDE, YOUR HONOR.

10 THE COURT: HOW MANY BILLS OF MATERIAL
11 ARE THERE?

12 MR. JACOBS: WELL, THERE ARE A NUMBER OF
13 ACCUSED PRODUCTS. FOR THIS PURPOSE, I DON'T THINK
14 IS THAT HUGE.

15 SO THAT'S AN AREA THAT'S PROBABLY WORTH A
16 LITTLE FURTHER EXPLORATION.

17 THOSE ARE THE ONES I WANTED, THAT I
18 THOUGHT IMPORTANT TO HIGHLIGHT, YOUR HONOR.

19 WE'VE ACTUALLY, WE COVERED A LOT OF
20 TOPICS WITH THIS MOTION. WE THINK IT'S IMPORTANT
21 THAT WE GET AN ORDER FROM YOUR HONOR ORDERING
22 SAMSUNG TO DO WHAT IN MANY CASES, NOW ON THE EVE OF
23 THE LAST MINUTE IT SAID IT WAS WILLING TO DO,
24 BECAUSE ONLY WITH AN ORDER DO WE REALLY GET THEIR
25 ATTENTION.

1 THE COURT: MR. JACOBS, COULD YOU SHED
2 SOME FURTHER LIGHT ON WHAT, IN YOUR VIEW, HAS BEEN
3 SAMSUNG'S NONCOMPLIANCE WITH MY DECEMBER 22ND AND
4 SEPTEMBER 28TH ORDERS?

5 I WOULD LIKE TO JUST BETTER UNDERSTAND
6 FROM APPLE'S PERSPECTIVE WHAT I ORDERED AND WHAT
7 YOU BELIEVE SAMSUNG HAS FAILED TO DO.

8 MR. JACOBS: WE GOT DOCUMENTS LATE AFTER
9 THE DECEMBER 31ST DATE. WE HAVE NOT MOVED ON THAT.
10 BUT WE ARE LOOKING AT IT TO SEE IN WHAT WAY IT WAS
11 IMPACTFUL THAT WE GOT THEM LATE.

12 WE GOT DOCUMENTS PURSUANT TO THAT ORDER
13 THAT WE SHOULD HAVE GOTTEN IN ADVANCE OF THE
14 PRELIMINARY INJUNCTION.

15 THAT'S POTENTIALLY HIGHLY PREJUDICIAL.
16 BUT AGAIN, WE DON'T WANT TO -- WE HAD A LOT TO DO.
17 AND IF WE ARE GOING TO BRING A MOTION, IT'S GOING
18 TO BE A VERY WELL PLACED MOTION WITH A LOT OF
19 THOUGHT GIVEN TO WHAT THE POSSIBLE RELIEF COULD BE.

20 AND THEN AS I MENTIONED, BECAUSE OF IT'S
21 ALREADY WELL INTO THE DATES FOR WHICH ALL
22 PRODUCTION IS TO BE COMPLETE, THE FACT THAT SAMSUNG
23 IS HAVING TROUBLE MEETING ITS PRE DEPOSITION
24 OBLIGATIONS, WHICH THEMSELVES ARE STATED IN THE
25 ORDER -- I'M SORRY, I'M NOT BEING CLEAR. THERE'S

1 THE THREE-DAY ORDER IN THE ORDER AND THEN THERE'S
2 THE ORDER TO PRODUCE CATEGORIES OF DOCUMENTS.

3 WE WOULD HAVE THOUGHT THAT THE SECOND
4 ORDER WOULD HAVE SUBSUMED THE FIRST IN LARGE PART
5 SO THAT WE WOULDN'T BE GETTING LARGE PRODUCTIONS
6 RIGHT ON THE EVE OF A DEPOSITION. THAT WOULD
7 ENABLE US TO DO THE TRANSLATIONS WELL ENOUGH IN
8 ADVANCE THAT WE CAN ACTUALLY PREPARE FOR THE
9 DEPOSITIONS.

10 BUT INSTEAD, AND YES THIS WILL PERHAPS BE
11 THE SUBJECT OF A SEPARATE MOTION, WE ARE GETTING
12 THEM VERY CLOSE IN TIME TO THE DEPOSITIONS.

13 THE COURT: JUST SO THAT I'M CLEAR, YOU
14 WOULD AGREE THAT AT THIS POINT I DO NOT HAVE A
15 MOTION BEFORE ME WHICH SPECIFICALLY ADDRESSES
16 NONCOMPLIANCE WITH MY EARLIER ORDERS?

17 MR. JACOBS: THAT'S CORRECT.

18 THE COURT: ALL RIGHT. THANK YOU.

19 LET'S HEAR FROM SAMSUNG.

20 MS. KASSABIAN, ARE YOU UP?

21 MS. KASSABIAN: I AM. AND I THANK
22 MR. JACOBS FOR HIS BREVITY. I WILL TRY TO BE AS
23 BRIEF.

24 SO I GUESS THE FIRST THING I WILL QUICKLY
25 TALK ABOUT IS THIS RECURRING AND INCORRECT

1 ACCUSATION THAT THERE HAS BEEN A VIOLATION OF
2 YOUR HONOR'S PRIOR ORDERS.

3 IT WAS MENTIONED IN THE BRIEF, IT WAS
4 MENTIONED JUST NOW BY MR. JACOBS SPECIFICALLY
5 REGARDING THE MERCY EXTENSION OF TIME THAT WE ASKED
6 FOR OVER THE CHRISTMAS HOLIDAY.

7 I WANT TO BE CRYSTAL CLEAR ABOUT THAT.
8 THE ORDER SAID ANY DOCUMENTS THAT SHOULD HAVE BEEN
9 PRODUCED PURSUANT TO THE SEPTEMBER 28TH ORDER MUST
10 BE PRODUCED BY DECEMBER 31ST OR THERE MAY BE
11 SANCTIONS.

12 WE -- ALL OF THE DOCUMENTS THAT WERE
13 ORDERED PRODUCED BY SEPTEMBER 28TH HAD ALREADY BEEN
14 PRODUCED PURSUANT TO THAT ORDER IN DECEMBER. THE
15 POINT OF THAT REQUEST WAS TWO FOLD, THE EXTENSION
16 REQUEST.

17 ONE, IT WAS BECAUSE AFTER THE PRODUCTION
18 HAD BEEN MADE PURSUANT TO THE SEPTEMBER 28TH ORDER,
19 SAMSUNG DISCOVERED A FEW ADDITIONAL CUSTODIANS ON
20 SURVEYS. AND SO DEPENDING ON HOW YOU READ THAT, IF
21 YOU'RE BEING VERY CONSERVATIVE, ONE COULD ARGUE
22 WELL, THOSE ARE SURVEY DOCUMENTS THAT FIT THE
23 DESCRIPTION OF THE ORDER SO YOU REALLY SHOULD GET
24 THOSE OUT BY --

25 THE COURT: THAT'S NOT REALLY A CLOSE

1 CALL, IS IT? IT'S NOT BEING CONSERVATIVE, THE
2 SURVEY SHOULD HAVE BEEN PRODUCED MONTHS BEFORE.

3 MS. KASSABIAN: RIGHT.

4 BUT I'M SAYING THAT DESPITE OUR
5 INVESTIGATIONS WE FOUND NEW CUSTODIANS.

6 WE DIDN'T WITHHOLD ANYTHING, THERE WERE
7 JUST WITNESSES THAT CAME TO LIGHT MONTHS LATER. WE
8 REALIZED THESE PEOPLE HAD TO DO SURVEYS, SO WE
9 GATHERED THEIR DOCUMENTS WHICH WERE MASSIVE AND WE
10 BELIEVED THAT THAT WAS GOING TO MAYBE TRICKLE ON
11 PAST DECEMBER 31ST.

12 SO IT WASN'T THAT THEY WERE WITHHELD, IT
13 WASN'T THAT GOOD FAITH INVESTIGATION HADN'T
14 HAPPENED, IT WAS THAT WHEN WE DISCOVERED A COUPLE
15 ADDITIONAL SURVEY CUSTODIANS, WE INTERPRETED YOUR
16 ORDER TO SAY THOSE DOCUMENTS SHOULD BE OUT BY
17 DECEMBER 31ST.

18 IT TURNS OUT WE WERE ABLE TO DO THAT, YOU
19 KNOW, WITH SOME LATE NIGHTS WE WERE ABLE TO GET
20 THOSE DOCUMENTS OUT BY THE DECEMBER 22ND ORDER
21 DEADLINE WHICH WAS NEW YEARS EVE. SO THOSE DID GET
22 OUT, THERE WAS NO VIOLATION

23 THE COURT: SO YOU ARE STANDING HERE
24 REPRESENTING TO ME THAT EVERY DOCUMENT SUBJECT TO
25 MY SEPTEMBER 28TH AND DECEMBER 22ND ORDERS WAS

1 PRODUCED ON OR BEFORE DECEMBER 31ST?

2 MS. KASSABIAN: JUST THE PART OF THE
3 ORDER -- WELL, THERE'S DIFFERENT PARTS OF
4 YOUR HONOR'S ORDER.

5 THE COURT: WELL, THAT'S A PRETTY
6 YES-OR-NO QUESTION.

7 MS. KASSABIAN: SOME OF THE DEADLINES IN
8 YOUR ORDER WERE JANUARY 15TH, SO THOSE DOCUMENTS
9 WERE NOT PRODUCED BY DECEMBER 31ST, BUT THEY WERE
10 PRODUCED BY JANUARY 15TH.

11 AND I CAN SPECIFICALLY TELL YOU YOUR
12 DECEMBER 22ND ORDER HAS, I THINK, FOUR PARAGRAPHS.
13 THE FIRST PARAGRAPH REQUIRE THAT DOCUMENTS BE
14 PRODUCED BY DECEMBER 31ST, THEY WERE. THAT WAS
15 SOURCE CODE AND RELATED TECHNICAL DOCUMENTS.

16 DESPITE APPLE'S CLAIMS OF URGENCY, THEY
17 DECLINED TO COME INSPECT THEM THAT DAY CLAIMING
18 THEY DIDN'T REALIZE THOSE DOCUMENTS WERE COMING ON
19 THAT DAY AND THEY WEREN'T PREPARED, WHICH WAS
20 SURPRISING TO US.

21 THE SECOND PARAGRAPH SAYS DESIGN HISTORY
22 DOCUMENTS, CAD FILES, SKETCHBOOKS, MODELS AND
23 MOCKUPS.

24 ALL THREE OF THOSE CATEGORIES WERE
25 PRODUCED AND MADE AVAILABLE FOR INSPECTION ON

1 DECEMBER 31ST. APPLE DECLINED TO COME LOOK AT THEM
2 THAT DAY.

3 THE ONLY CATEGORY WHERE THERE WAS A
4 SPILLOVER ON NUMBER TWO, AND IT WAS WHY WE
5 REQUESTED RELIEF, WAS ON THE E-MAILS, DESIGN
6 HISTORY E-MAILS AMONG THE DOZENS OF SAMSUNG
7 EMPLOYEES THAT WERE INVOLVED. THAT PRODUCTION
8 STARTED BEFORE DECEMBER 31ST AND THE VERY LAST PAGE
9 OF IT WAS OUT BY JANUARY 5TH.

10 PARAGRAPH 3 ASKED FOR E-MAILS CONCERNING
11 SAMSUNG'S ANALYSIS OF APPLE PRODUCTS, AND THE
12 DEADLINE FOR THAT WAS 12/31. THAT DEADLINE WAS
13 MET.

14 THE LAST SENTENCE TALKS ABOUT OTHER TYPES
15 OF ADDITIONAL DOCUMENTS REGARDING PRODUCTS IN
16 PATENT CLAIMS NOT AT ISSUE IN THE PI PHASE, SETS A
17 DEADLINE OF JANUARY 15TH, THAT DEADLINE WAS MET.

18 PARAGRAPH 4, SURVEY AND MARKETING
19 DOCUMENTS. ALL OF THOSE DOCUMENTS WERE PRODUCED.
20 AGAIN, THESE WERE NEW CUSTODIANS THAT WERE JUST
21 RECENTLY FOUND, NOT SOMETHING WE KNEW ABOUT AT THE
22 TIME OF THE PRODUCTION IN CONNECTION WITH THE
23 SEPTEMBER 28TH ORDER.

24 THOSE DOCUMENTS WERE PRODUCED
25 DECEMBER 31ST. I'M TOLD THERE WAS SOME SORT OF A

1 FILE CORRUPTION ISSUE AND THE FILES WERE RE
2 UPLOADED FOR APPLE ON THE 1ST, BUT IN ANY EVENT
3 THEY WENT OUT.

4 SO I JUST WANT TO BE CRYSTAL CLEAR ABOUT
5 THAT, THESE RECURRING ALLEGATIONS THAT THERE HAD
6 BEEN VIOLATIONS OF COURT ORDERS ARE INCORRECT.

7 GOING BACK TO THE SUBSTANCE OF THE
8 MOTION, DESIGN AROUNDS, THERE'S REALLY NOTHING TO
9 TALK ABOUT HERE.

10 ON THE BLUE GLOW, WHICH IS THE ONLY ISSUE
11 THAT APPLE MET AND CONFERRED WITH US ABOUT, WE'VE
12 AGREED TO PRODUCE DOCUMENTS. WE DIDN'T SAY
13 EVERYTHING WAS PRIVILEGED. WE SAID IN THE PRIOR
14 LETTER THAT AT THIS POINT ALL THAT WE HAD FOUND
15 WOULD BE PRIVILEGED, BUT CERTAINLY ANYTHING THAT'S
16 NOT PRIVILEGED WE WILL PRODUCE.

17 WE HAVE AGREED TO THAT PRODUCTION.
18 THERE'S NOTHING TO ORDER, IT'S MOOT.

19 THE COURT: HAVE YOU PRODUCED THEM?

20 MS. KASSABIAN: I DON'T THINK SO, I THINK
21 WE OFFERED TO --

22 THE COURT: WELL, THEN IT'S NOT MOOT.

23 MS. KASSABIAN: I THINK WE OFFERED TO
24 PRODUCE THEM WHICH IS JANUARY 27TH WHICH IS NEXT
25 WEEK.

1 SO BY AGREEMENT I BELIEVE IT'S MOOT
2 BECAUSE THERE'S NOT A DISPUTE ABOUT THAT, BUT
3 OBVIOUSLY IF YOUR HONOR WANTS TO ORDER THAT, IT'S
4 OBVIOUSLY WITHIN YOUR DISCRETION.

5 ON THE OTHER DESIGN AROUNDS THERE'S NOT
6 BEEN A MEET AND CONFER ON THAT. WE GOT A LETTER
7 TWO DAYS BEFORE THE LEAD COUNSEL MEET AND CONFER
8 SAYING OH, WE WANT EVERYTHING ELSE REGARDING ALL
9 OTHER DESIGN AROUNDS.

10 IN THEORY, THERE REALLY ISN'T A DISPUTE
11 THERE EITHER BUT THERE'S BEEN NO DISCUSSION WHAT
12 DESIGN AROUNDS THOSE MIGHT BE. ARE THERE ANY
13 DESIGN AROUNDS IN RELEASED PRODUCTS THAT WOULD BE
14 SUBJECT TO PRODUCTION? THERE'S BEEN NO DISCUSSION
15 ON THAT.

16 SO THAT'S SOMETHING WE'VE ASKED
17 YOUR HONOR TO TELL APPLE TO GO BACK TO THE DRAWING
18 BOARD AND DO ITS HOMEWORK AND TALK TO US ABOUT IT
19 BEFORE FILING A MOTION.

20 THE COURT: WELL, YOU INDICATED THAT THE
21 ISSUE WAS RAISED TWO DAYS BEFORE THE LEAD COUNSEL
22 MEET AND CONFER.

23 MS. KASSABIAN: I BELIEVE THAT'S RIGHT.

24 THE COURT: AM I RIGHT ABOUT THAT?

25 MS. KASSABIAN: I BELIEVE THAT'S RIGHT.

1 THE COURT: SO IF IT WAS RAISED TWO DAYS
2 BEFORE WHY WASN'T IT DISCUSSED ON THE 5TH?

3 MS. KASSABIAN: I THINK IT WAS DISCUSSED,
4 BUT THE LEAD COUNSEL MEET AND CONFER IS NOT THE
5 TIME HAVE YOUR FIRST CONVERSATION, THAT'S THE TIME
6 TO HAVE YOUR LAST CONVERSATION. AND THAT'S
7 SOMETHING WE FEEL IS BEING ABUSED BY APPLE.

8 THERE ARE MANY PEOPLE ON OUR TEAM THAT
9 ARE MORE THAN COMPETENT, AND FRANKLY BETTER SUITED,
10 TO HARSH OUT DISCOVERY ISSUES THAN MR. MCELHINNY
11 AND CHARLIE VERHOEVEN. THEY ARE VERY BUSY MEN WITH
12 A LOTS OF THINGS TO DO.

13 AND SO IT'S BEEN AN AMBUSH --

14 THE COURT: WELL, EXCEPT THAT A DISTRICT
15 JUDGE IN THIS COURT, IN THIS CASE, ORDERED THEM TO
16 BE INVOLVED IN THIS PROCESS.

17 MS. KASSABIAN: THAT'S ABSOLUTELY RIGHT,
18 BUT WE CAN --

19 THE COURT: I DON'T MEAN TO GO OUT ON A
20 TANGENT HERE, BUT THERE SEEMS TO BE A
21 MISUNDERSTANDING HERE ABOUT HOW THIS MEET AND
22 CONFER IS SUPPOSED TO WORK.

23 I DON'T KNOW HOW MANY TIMES WE HAVE
24 TALKED ABOUT THIS NOW, BUT I TEND TO FOLLOW THE
25 ORDERS OF THE PRESIDING JUDGE, HAS GOTTEN ME IN A

1 GOOD PLACE SO FAR.

2 I DON'T UNDERSTAND WHY IT'S SO HARD. I
3 UNDERSTAND THEY ARE BUSY MEN, I UNDERSTAND THEY
4 HAVE OTHER CASES, I KNOW THIS WORLD. BUT YOU'VE
5 GOT AN ARTICLE III JUDGE WHO SAID TO LEAD COUNSEL
6 IN THIS CASE THAT THEY NEED TO DRIVE THIS PROCESS
7 AND SERVE AS AN EFFECTIVE SCREEN BEFORE THESE
8 MOTIONS ARE BROUGHT BEFORE THE COURT.

9 MS. KASSABIAN: ABSOLUTELY.

10 THE COURT: SO I DON'T TAKE WELL THE
11 SUGGESTION THAT BECAUSE THEY'RE BUSY, BECAUSE THEY
12 CAN ONLY GET INVOLVED AT THE VERY TAIL END THE
13 PROCESS THAT SOMEHOW THEIR PARTICIPATION OUGHT TO
14 BE EXCUSED IN ANY WAY.

15 THAT'S NOT WHAT SHE TOLD ALL OF US TO DO.

16 MS. KASSABIAN: DEFINITELY NOT.

17 I BELIEVE THE ORDER SAYS BEFORE YOU FILE
18 THE MOTION, LEAD COUNSEL MUST MEET AND CONFER IN
19 PERSON.

20 THAT DOES NOT MEAN THAT YOU SEND YOUR
21 VERY FIRST LETTER TO LEAD COUNSEL. THEY ARE NOT AT
22 THAT LEVEL OF THE PROCESS WHERE THEY CAN
23 EFFECTIVELY FIELD THESE HUNDREDS OF DISCOVERY
24 DISPUTES WE ARE DEALING WITH. SO ONE PERSON CAN.

25 WE HAVE TEAMS OF PEOPLE ON BOTH SIDES WHO

1 DEAL WITH THIS. SO IT'S AN AMBUSH TO SHOW UP AT
2 LEAD COUNSEL MEET AND CONFER WHEN WE, THE LOWER
3 LEVEL LAWYERS, HAVEN'T EVEN HAD A CHANCE TO DISCUSS
4 IT.

5 THAT'S ALL I MEANT, YOUR HONOR. I'M NOT
6 SAYING THEY SHOULDN'T BE, INVOLVED THEY MUST BE
7 INVOLVED. BUT IT'S NOT EFFICIENT AND IT SEEMS LIKE
8 IT'S A CHECK THE BOX, OKAY, LEAD COUNSEL HAS MET
9 AND CONFERRED, WE GET TO BOTHER JUDGE GREWAL ABOUT
10 THIS.

11 THAT'S NOT HOW IT SHOULD WORK. THERE
12 SHOULD BE A MEANINGFUL DISCUSSION AND IF WE ARE
13 LEARNING ABOUT SOMETHING AT THE FIRST TIME LEAD
14 COUNSEL MEET AND CONFER, WE HAVE NO TIME TO CONSULT
15 WITH OUR CLIENT, NO TIME TO REACH AGREEMENT.

16 SO LET ME QUICKLY MOVE ON. FINANCIAL
17 DOCUMENTS.

18 MR. JACOBS MENTIONED THREE THINGS.
19 SUBSIDIARY AND PARENT, HE SAID, I'M FINE WITH
20 SAMSUNG'S PROPOSAL BUT IT'S MISSING THREE THINGS.
21 HE SAID, WE WANT A BREAKDOWN BETWEEN SUBSIDIARIES
22 AND PARENTS.

23 I'M NOT SURE WHAT HE'S TALKING ABOUT. I
24 DON'T THINK ANYONE HAS MADE THAT DISTINCTION. WE
25 CERTAINLY HAVEN'T. I DON'T RECALL SEEING APPLE

1 MEET AND CONFER LETTERS TALKING ABOUT THAT.

2 BUT THERE CERTAINLY IS AN AGREEMENT AND
3 WE'VE MADE CLEAR OUR OFFER THAT FOR THE ACCUSED
4 DEFENDANTS WHICH WOULD INCLUDE STA WHICH IS A
5 SUBSIDIARY OF SCC, THAT ALL THOSE FINANCIAL
6 DOCUMENTS ARE GOING TO BE PRODUCED AND HAVE BEEN
7 AND WE HAVE AGREED TO PRODUCE THEM.

8 SO I DON'T UNDERSTAND THAT POINT BUT I
9 DON'T THINK THAT IT MATTERS BECAUSE THERE'S NOT
10 BEEN A REFUSAL ON SAMSUNG'S PART TO PRODUCE
11 DOCUMENTS RELATING TO THE FINANCIAL CATEGORIES
12 INVOLVED FOR THE THREE NAMED DEFENDANTS.

13 HE ALSO SAID, WE WANT INFORMATION AT THE
14 PRODUCT LEVEL AND SAMSUNG HASN'T OFFERED THAT, AND
15 THAT'S JUST COMPLETELY NOT TRUE.

16 IN OUR BRIEF IT LISTS OUT THE EXACT
17 CATEGORIES THAT HAVE BEEN AGREED TO AND IT INCLUDES
18 AT THE PRODUCT LEVEL.

19 SO I'M NOT SURE WHERE HE GOT THAT BUT
20 IT'S DEFINITELY NOT SOMETHING THAT WE REFUSED TO
21 PRODUCE.

22 THE NEXT THING HE IDENTIFIED IS BILLS OF
23 MATERIALS. I AGREE WITH YOU THAT I THINK THAT'S
24 OVERKILL BY A LARGE MARGIN WHEN THERE ARE SUMMARY
25 FINANCIAL DOCUMENTS AT COMPANIES THIS LARGE. BUT

1 TO TRY TO STAVE OFF A MOTION, WE AGREED TO DO IT,
2 AND WE ARE GOING TO TRY TO GET TO THOSE AND LOOK
3 FOR THEM.

4 SO THAT'S TOO -- HE'S INCORRECT THAT THAT
5 WAS MISSING FROM OUR OFFER. SO EVERYTHING HE'S
6 SAYING IS WRONG WITH OUR OFFER, I DON'T AGREE WITH.
7 AND I THINK THE OFFER SPEAKS FOR ITSELF WHICH IS IN
8 THE JANUARY 10TH LETTER AND ALSO LISTED AGAIN IN
9 OUR OPPOSITION BRIEF.

10 THE COURT: DOES YOUR OFFER INCLUDE SALES
11 DATA, REVENUE DATA OUTSIDE THE UNITED STATES?

12 MS. KASSABIAN: FOR THE PRODUCTS THAT ARE
13 SOLD OUTSIDE, YES, WE AGREED TO THAT AND STILL THIS
14 MOTION WAS FILED.

15 MOST OF THESE PRODUCTS AREN'T SOLD
16 ANYWHERE ELSE, BUT THINGS LIKE THE TAB ARE. SO
17 YES, IF IT'S SOLD -- AGAIN, I DON'T KNOW WHY WE ARE
18 HERE ON THIS ISSUE.

19 THE COURT: WELL, IF IT'S NOT SOLD
20 OUTSIDE THE U.S. THERE IS NO DATA.

21 MS. KASSABIAN: THAT'S RIGHT.

22 SO WE CAN'T AGREE TO PRODUCE ANYTHING
23 THAT DOESN'T EXIST. BUT FOR THE PRODUCTS SOLD
24 ABROAD, WE AGREED TO PRODUCE WORLDWIDE DATA FOR
25 THOSE PRODUCTS WHICH THE TAB IS AN EXAMPLE.

1 AND IF I COULD JUST QUICKLY TOUCH ON
2 THREE ISSUES THAT MR. JACOBS DIDN'T MENTION, I JUST
3 WANT TO MAKE SURE THAT YOUR HONOR UNDERSTANDS THE
4 BURDENS AND IRRELEVANCE.

5 TECHNICAL DOCUMENTS. APPLE ASKED FOR,
6 YOU KNOW, ALL DOCUMENTS REGARDING ALL VERSIONS OF
7 THE OPERATING SYSTEMS, THE SOURCE CODE, THE
8 TECHNOLOGIES AT ISSUE.

9 NOT ONLY IS THAT WILDLY, WILDLY
10 BURDENSOME BECAUSE OF THE AMOUNT, THE NUMBER OF
11 VERSIONS AND UPDATES THAT HAPPENED, SOMETIMES IT'S
12 SEVERAL TIMES A DAY FOR THESE PRODUCTS. IT'S JUST
13 CRUSHING THE VOLUME THAT WE ARE TALKING ABOUT.
14 SAMSUNG DOESN'T STORE IT ALL IN ONE TIDY PLACE WITH
15 LITTLE LABELS AND STICKERS ON IT, SO YOU WOULD HAVE
16 TO GATHER THIS FROM A NUMBER OF DIFFERENT SOURCES
17 INCLUDING DIFFERENT ENGINEERS.

18 BUT SETTING ASIDE THE BURDEN, IT'S
19 COMPLETELY IRRELEVANT BECAUSE IN RESPONSE TO OUR
20 FIFTH INTERROGATORY WHERE WE ASKED ABOUT
21 IDENTIFYING -- ASKED APPLE TO IDENTIFY THE PRODUCTS
22 THAT WE BELIEVE MAY BE INFRINGING, HERE'S WHAT THEY
23 SAID:

24 "APPLE BELIEVES THAT THE USE OR POSSIBLE
25 USE OF ITS PATENTED INVENTIONS, TRADE DRESS AND

1 TRADEMARKS OCCURRED FOR EACH PRODUCT LISTED ABOVE
2 NO LATER THAN THE DATE OF EACH PRODUCT'S RELEASE IN
3 THE UNITED STATES."

4 THAT'S WHAT WE HAVE GIVEN THEM. THEY
5 HAVE COMPLETE, FULL BILLS FOR THE ENTIRE PRODUCTS
6 OF EVERY SINGLE PRODUCT AT ISSUE AS OF THE RELEASE
7 DATE.

8 THEY ARE SAYING YOUR PRODUCTS INFRINGE
9 FROM DAY ONE. THEY'VE GOT THAT SOURCE CODE. SO
10 ALL THESE SUBSEQUENT RELEASES AND UPDATES AND
11 MODIFICATIONS ARE COMPLETELY IRRELEVANT IN THEIR
12 INFRINGEMENT CASE BECAUSE THEY ARE SAYING THE WHOLE
13 SHOOTING MATCH INFRINGES, IT WAS INFRINGING FROM
14 THE MOMENT OF RELEASE. AND THEY ALREADY HAVE THAT
15 VERSION, THEY HAVE THAT CODE.

16 SO FORCING US TO DO THE BUSY WORK OF
17 GATHERING EVERY LITTLE BUG THAT WAS FIXED OR EVERY
18 LITTLE CHANGE OR UPDATE THAT WAS MADE IS POINTLESS,
19 IT ADDS ZERO TO OUR CASE.

20 THE COURT: IN YOUR MEET AND CONFER DID
21 SAMSUNG EVER OFFER TO STIPULATE THAT ITS
22 INFRINGEMENT OR NON INFRINGEMENT OF APPLE'S
23 ASSERTED PATENTS MUST STAND AND FALL AS OF THE DATE
24 OF THE RELEASE?

25 IN OTHER WORDS, COULD YOU TAKE THIS ISSUE

1 OFF THE TABLE AND JUST SAY LOOK, MAYBE WE WILL WIN,
2 MAYBE WE'LL LOSE, BUT WE WILL WIN OR LOSE BASED ON
3 THE PRODUCT RELEASE DATE.

4 MS. KASSABIAN: THAT'S ABOVE MY PAY
5 GRADE. THAT'S A TECHNICAL QUESTION I WOULDN'T FEEL
6 COMFORTABLE ANSWERING. IT'S NOT SOMETHING --

7 THE COURT: IT'S NOT TECHNICAL. IT SEEMS
8 TO ME IT'S A STRATEGY IN THE DECISION, DID
9 MR. VERHOEVEN DISCUSS THIS AT ALL?

10 MS. MAROULIS: YOUR HONOR, MAY I
11 INTERJECT?

12 FOR SOME OF THE PRODUCTS THAT WOULD NOT
13 BE POSSIBLE. FOR EXAMPLE, ON THE DESIGN SIDE THERE
14 WERE SOME TABS THAT WERE NOT IN THE DESIGN LOGO.

15 THE COURT: THERE MAY BE MATERIAL
16 DIFFERENCES FROM VERSION TO VERSION.

17 BUT IT SEEMS TO ME WHAT I'M HEARING FROM
18 MS. KASSABIAN IS A LOT OF THESE SUBSEQUENT RELEASES
19 ARE NOT MATERIALLY DIFFERENT FROM EARLIER RELEASES
20 AND YOU ARE SUFFERING FROM A BURDEN OF THIS. WELL
21 WHY NOT JUST TAKE THAT ISSUE OFF THE TABLE?

22 MS. KASSABIAN: I'M NOT SAYING THEY ARE
23 NOT MATERIALLY DIFFERENT, I'M SAYING THEY ARE
24 IRRELEVANT TO THE CASE.

25 THE COURT: WHAT'S THE DIFFERENCE BETWEEN

1 MATERIALLY DIFFERENT AND THEN IRRELEVANT?

2 MS. KASSABIAN: WELL, IF APPLE WERE TO
3 COME TO US AND SAY, YOU KNOW WHAT, WE'VE LOOKED AT
4 THE CODE YOU'VE PROVIDED AND WE DON'T THINK THE
5 FIRST RELEASE INFRINGES, BUT WE KNOW YOU EVENTUALLY
6 DID INFRINGE, SO GIVE US THE VERSION THAT STARTED
7 INFRINGING, THAT MIGHT BE RELEVANT.

8 BUT I HAVE NOT HEARD APPLE SAY TO US, WE
9 DON'T THINK THE FIRST VERSION IS INFRINGING.

10 THE COURT: WELL THEY JUST TOLD YOU
11 PRECISELY THE OPPOSITE, RIGHT? THAT'S WHAT YOU
12 READ TO ME IN THE INTERROGATORY RESPONSE.

13 MS. KASSABIAN: YEAH, EXACTLY.

14 THE COURT: SO WHY NOT SIMPLY SAY LOOK,
15 WE BELIEVE WE DON'T INFRINGE THESE PATENTS -- I
16 ASSUME THAT'S YOUR POSITION IN THIS CASE. AND IN
17 ORDER TO AVOID THE BURDEN OF HAVING TO PRODUCE ALL
18 OF THIS CODE AND ALL OF THESE DOCUMENTS FOR EACH
19 SUBSEQUENT RELEASE, WE WILL STIPULATE THAT OUR
20 INFRINGEMENT AS TO THOSE SUBSEQUENT RELEASES WILL
21 STAND OR FALL BASED ON A JURY'S CONCLUSION OR THE
22 COURT'S CONCLUSION ON THE ORIGINAL RELEASE.

23 WHY NOT THINK ABOUT SOMETHING LIKE THAT?

24 MS. KASSABIAN: YEAH, THAT'S SOMETHING
25 THAT'S VERY INTERESTING AND SOMETHING THAT SHOULD

1 BE THOUGHT ABOUT.

2 I WILL SAY JUST THINKING OFF THE TOP OF
3 MY HEAD ON MY FEET HERE WITHOUT HAVING TIME TO
4 ANALYZE A VERY IMPORTANT DECISION LIKE THAT, IT
5 WOULD SEEM ON THE DAMAGES FRONT THERE PROBABLY
6 WOULD BE SOME -- YOU KNOW, YOU WOULD HAVE TO
7 ANALYZE THAT TO SEE IF AT SOME POINT THAT
8 INFRINGEMENT, ALLEGED INFRINGEMENT, HAD STOPPED.

9 BUT I THINK YOUR HONOR IS MAKING A VERY
10 GOOD POINT WHICH IS, THAT'S SOMETHING THE PARTIES
11 SHOULD DISCUSS TO SEE IF THERE MIGHT BE SOME OTHER
12 VERSION THAT COULD BE RELEVANT IN ADDITION TO THE
13 FIRST VERSION OR NOT.

14 I DON'T THINK THAT DISCUSSION HAS TAKEN
15 PLACE BUT I'M HAPPY TO ENGAGE IN THAT WITH COUNSEL.

16 BUT ON THE TECHNICAL DOCUMENTS, THAT WAS
17 I THINK ANOTHER ONE OF THOSE CATEGORIES THAT WAS
18 KIND OF SPRUNG ON US WITH THESE VERY, VERY BROAD
19 SWEEPING, YOU KNOW, MULTI-RFP ARGUMENTS THROWN INTO
20 THEIR BRIEF WITHOUT SUFFICIENT TIME FOR THE PARTIES
21 TO HASH THAT OUT.

22 SO I WOULD BE HAPPY TO ENGAGE IN THAT
23 DISCUSSION WITH THEM.

24 THE COURT: ALL RIGHT.

25 DO YOU HAVE ANY FURTHER POINTS YOU WISH

1 TO RAISE ON THIS ISSUE?

2 MS. KASSABIAN: JUST ON DESIGN DOCUMENTS.

3 I MEAN, THIS IS PROBABLY THE OBVIOUS ONE
4 FROM THE BRIEFING, BUT WE STRONGLY URGE THE COURT
5 TO DENY APPLE'S MOTION FOR EVERY SINGLE DESIGN
6 DOCUMENT REGARDING EVERY SINGLE PHONE OR TABLET
7 PRODUCT THAT SAMSUNG HAS EVER MADE GOING BACK, I
8 BELIEVE 12 YEARS.

9 AND I WON'T ADDRESS THAT FURTHER UNLESS
10 YOUR HONOR IS SERIOUSLY CONSIDERING IT.

11 MR. JACOBS DIDN'T RAISE IT AND I'M HOPING
12 PERHAPS THEY ARE NOT PRESSING THAT ANYMORE, BUT
13 OBVIOUSLY WE THINK THAT IS WILDLY OVERBROAD AND
14 RESTS ON AN INFIRM RELEVANCE ARGUMENT AND WOULD
15 EFFECTIVELY SHUT DOWN THE INDUSTRIAL DESIGN PORTION
16 OF SAMSUNG IF EVERYONE HAD TO PRODUCE EVERY
17 DOCUMENT REGARDING EVERY PRODUCT THEY EVER WORKED
18 ON, RELEASED OR UNRELEASED, AT ISSUE IN THIS CASE
19 OR NOT AT ISSUE IN THIS CASE.

20 SO WE VERY, VERY STRONGLY OBJECT TO THAT
21 PORTION OF THEIR MOTION AND URGE THE COURT TO DENY
22 IT.

23 THE COURT: ALL RIGHT. THANK YOU.

24 MR. JACOBS, ARE YOU ASKING FOR EVERY
25 SINGLE DOCUMENT THAT EVERY SINGLE PERSON AT SAMSUNG

1 HAS WORKED ON IN THE LAST 11 YEARS?

2 MR. JACOBS: NO.

3 BUT THERE IS A MODIFICATION THAT I MEANT
4 TO CONVEY WHEN I WAS FIRST UP HERE AND I JUST LOST
5 TRACK OF IT BECAUSE THERE WAS A POINT THAT SAMSUNG
6 MADE IN ITS BRIEF THAT WE THOUGHT WAS WELL TAKEN
7 WHICH IS THAT GOING BACK TO 2000 IS UNNECESSARY,
8 AND IN FACT GOING BACK TO NON -- SEEKING DOCUMENTS
9 FROM NON TOUCHSCREEN PRODUCTS IS UNNECESSARY.

10 SO WHAT WE WOULD MODIFY OUR PROPOSED
11 ORDER TO READ FOR PRODUCTS RELEASED IN 2005 OR
12 AFTER THAT ARE TOUCHSCREEN PRODUCTS. AND THAT
13 WOULD SUBSTANTIALLY REDUCE THE SCOPE OF THE REQUEST
14 TO REALLY -- THAT'S WHAT THE CASE IS ABOUT.

15 THE COURT: WHY DO YOU NEED EVERY
16 DOCUMENT OF EVERY PRODUCT SINCE '05.

17 MR. JACOBS: I THINK EVERY PRODUCT --
18 THIS WORD IS ONE OF THE BUGABOOS HERE, "PRODUCT."

19 SAMSUNG HAS FAMILIES OF PRODUCTS. AND AS
20 YOU MAY RECALL OUR DISCUSSION LAST TIME, WE HAVE
21 U.S. MODELS WE HAVE AUSTRALIAN MODELS, WE HAVE
22 GERMAN MODELS, AND WHEN SAMSUNG SAYS "PRODUCT" AND
23 WE SAY "PRODUCT" WE MAY MEAN SOMETHING DIFFERENT.

24 SO WHEN WE SAY "PRODUCT" WE MEAN THE
25 PRODUCT THAT SAMSUNG'S MOBILE PHONE GROUP HAS

1 RELEASED.

2 WE WANT TO SEE THE ONES -- THE DESIGN
3 DOCUMENTS FOR THOSE THAT WE REGARD AS INFRINGING.
4 AND BECAUSE THEY ARE CLAIMING THAT THIS IS ALL
5 FUNCTIONALLY DRIVEN, THE DESIGN DOCUMENTATION FOR
6 THOSE, EVEN THOUGH THAT WE CONTEND ARE NON
7 INFRINGING, BECAUSE WE ARE ASKING WITNESSES IN
8 DEPOSITIONS, DOES THIS PHONE WORK OKAY? AND
9 THEY'RE SAYING YES, IN MANY CASES PROVING OUR POINT
10 THAT THERE'S A DOCUMENTARY BASIS. AND WE HAVE A
11 LOT OF WITNESSES COMING UP AND THAT'S WHAT WE WANT
12 TO BE ABLE TO DO.

13 SO THAT'S THE -- IF SAMSUNG, HAVING
14 PLACED FUNCTIONALITY IN DISPUTE FOR THE DESIGN
15 PATENTS AND FOR TRADE DRESS, THAT IS DRIVING THAT
16 REQUEST.

17 THE COURT: IT SURE STRIKES ME, THOUGH,
18 THAT IN ANY DESIGN PATENT CASE FUNCTIONALITY IS IN
19 DISPUTE, THAT'S A PRETTY COMMON ISSUE RAISED BY A
20 DEFENDANT.

21 SO IN JUST ABOUT EVERY CASE OF THIS
22 NATURE, IF I UNDERSTAND THE LOGIC OF YOUR ARGUMENT,
23 THE COURT IS OBLIGATED TO ORDER THE PRODUCTION OF
24 ALL DOCUMENTS FOR ALL PRODUCTS, INFRINGING OR NOT.

25 IS THAT THE LOGICAL CONCLUSION I SHOULD

1 REACH BASED ON WHAT YOU TOLD ME?

2 MR. JACOBS: SO I MODIFIED IT TO
3 TOUCHSCREEN PRODUCTS BECAUSE THAT'S A UNIFYING
4 CONCEPT HERE.

5 I HAVEN'T BEEN ABLE TO COME UP WITH
6 ANOTHER NARROWING CATEGORY, BUT YES, ONCE WE'RE IN
7 THE TOUCHSCREEN WORLD WE ARE LOOKING AT SAMSUNG'S
8 INFRINGING AND EVEN PRODUCTS THAT WE WOULD REGARD
9 AS NON INFRINGING TO PROVE THAT THERE ARE A LOT OF
10 ALTERNATIVES WITH THEM.

11 AND OF COURSE SAMSUNG ITSELF HAS PRESSED
12 THIS FUNCTIONALITY POINT WITH VERY INTRUSIVE
13 DISCOVERY FROM APPLE.

14 AT ONE POINT WE TRIED TO PERSUADE
15 EVERYBODY INVOLVED THAT THIS DOESN'T NEED TO GO
16 QUITE SO DEEP, BUT SAMSUNG HAS GONE VERY DEEP INTO
17 APPLE ON THIS ISSUE OF FUNCTIONALITY BECAUSE
18 APPARENTLY SAMSUNG THINKS THAT YOU CAN ARGUE THIS
19 AT A VERY MICROSCOPIC LEVEL, VERY GRANULAR LEVEL.

20 THE COURT: I WANT TO ASK YOU ABOUT THE
21 SAME TOPIC I DISCUSSED WITH MS. KASSABIAN WHICH IS,
22 WAS ANY THOUGHT, AT ANY POINT IN THIS PROCESS,
23 GIVEN TO THE NOTION OF CERTAIN PRODUCTS SERVING AS
24 PROXIES FOR QUESTION OF INFRINGEMENT OR OTHERWISE?

25 IT SEEMS TO ME ONE COULD CONSIDER THIS

1 UNIVERSE OF ACCUSED PRODUCTS AND RELEASES AS
2 ESSENTIALLY A POPULATION FROM WHICH YOU COULD DRAW
3 REPRESENTATIVE SAMPLES.

4 SO WAS ANY THOUGHT AT ALL GIVEN TO
5 MITIGATING THE BURDEN HERE IN THAT WAY?

6 MR. JACOBS: I UNDERSTAND THAT A
7 STIPULATION -- SOMETHING ALONG THE LINES OF WHAT
8 YOU ASKED MS. KASSABIAN ABOUT WHICH WAS MORE ALONG
9 THE LINES OF STIPULATING TO AN ADDITION OF A
10 PRODUCT.

11 THE COURT: I THINK THAT'S ONE SPECIES OF
12 THE BROADER CLASS. BUT EITHER WAY, WAS ANY THOUGHT
13 GIVEN TO THAT?

14 MR. JACOBS: YES.

15 I'M TOLD -- MR. MCELHINNY IS HERE BECAUSE
16 HE WAS AT THAT MEET AND CONFER AND I WOULD LIKE HIM
17 TO TALK A LITTLE BIT ABOUT THE MEET AND CONFER
18 PROCESS. BUT I'M TOLD AT THE JANUARY 5TH MEETING
19 THERE WAS A STIPULATION ALONG THOSE LINES EXPLORED.
20 AND IT WAS NOT --

21 THE COURT: MR. MCELHINNY, CAN YOU SHED
22 HAD SOME LIGHT ON THAT FOR ME?

23 MR. MCELHINNY: YES, YOUR HONOR.

24 I WOULD LIKE TO TALK ABOUT THE MEET AND
25 CONFER PROCESS, BUT ON THAT POINT SPECIFICALLY I

1 WILL SAY TWO THINGS.

2 I'M NOT IN A POSITION TO SPEAK ABOUT THE
3 SAMSUNG'S STRATEGIES, BUT IN TERMS OF EXTERNAL
4 PEOPLE WHO ARE WATCHING THESE CASES, THEY HAVE
5 COMMENTED THAT ONE OF THE THINGS THAT SAMSUNG IS
6 USING THIS LITIGATION FOR PROPERLY IS TO EXPLORE
7 THE BOUNDARIES OF APPLE'S INTELLECTUAL PROPERTY.

8 AND SO NOT JUST IN THIS COUNTRY, BUT IN
9 OTHER COUNTRIES AS THE LITIGATION GOES ON THEY ARE
10 COMING OUT WITH NEW PRODUCTS THAT MOVE A LITTLE
11 BIT.

12 THEY ARE NOT ANNOUNCING THEM AS CHANGED
13 BECAUSE THAT DOESN'T HELP THEIR SALES POSITION, BUT
14 THEY ARE IN FACT MOVING, IN SOME WAYS TRYING TO
15 MOVE A LITTLE BIT TO DETERMINE WHETHER OR NOT THEY
16 WILL CROSS OVER THE LINE, WHETHER THEY CAN GET JUST
17 OUTSIDE THE LINE OF WHAT THE COURTS WILL ENFORCE.

18 SO I THINK, STRATEGICALLY, THE IDEA THAT
19 YOUR HONOR IS PROMOTING PROBABLY DOESN'T WORK WITH
20 WHAT THEY ARE TRYING DO. I DON'T THINK THAT'S
21 THEIR INTEREST TO GET A BROAD RULING, THAT DOESN'T
22 PARTICULARLY HELP THEM DECIDE WHERE THE LINE GOES.

23 THE COURT: WELL, UNLESS IT'S A BROAD
24 RULING THAT'S IN THEIR FAVOR.

25 MR. MCELHINNY: WELL, NOW ARE MAKING ME

1 ARGUE THEIR POSITION.

2 MS. MAROULIS: I MUST OBJECT TO THIS
3 ARGUMENT ABOUT THE MERITS OF THE CASE BECAUSE WE
4 DON'T THINK IT'S APPROPRIATE HERE.

5 THE COURT: I WILL NOTE THE OBJECTION. I
6 AM SUPPOSED TO GIVE SAMSUNG A FULL AND FAIR
7 OPPORTUNITY TO RESPOND.

8 WHERE I'M GOING WITH THIS IS YOU ALL PUT
9 DISCOVERY BEFORE ME AND I'M JUST EXPLORING THE
10 NOTION THAT IN CASES OF THIS NATURE IT STRIKES ME
11 AS REASONABLE TO AT LEAST CONSIDER WAYS IN WHICH
12 YOU COULD USE CERTAIN PRODUCTS OR CERTAIN FEATURES
13 WITHIN CERTAIN RELEASES OF PRODUCTS AS
14 REPRESENTATIVE OF THE BROADER CLASS.

15 AND IF YOU COULD AT LEAST NEGOTIATE AND
16 EXPLORE THAT OPTION, WE MIGHT BE ABLE TO AVOID A
17 LOT OF REDUNDANT AND UNNECESSARY DISCOVERY ON BOTH
18 SIDES. SO I'M JUST CURIOUS IF THAT WAS AN ISSUE
19 EXPLORED HERE?

20 MR. MCELHINNY: IT HAS BEEN.

21 THE SPECIFIC ANSWER TO YOUR QUESTION IS
22 IT HAS BEEN EXPLORED. I THINK IT'S FAIR TO SAY IT
23 IS BEING EXPLORED BUT ONLY IN THE LIMITED IDEA
24 WHETHER OR NOT PRODUCTS THAT HAVE BEEN RELEASED
25 SINCE THE LITIGATION STARTED.

1 JUDGMENTS AGAINST THE INITIAL PRODUCTS
2 WOULD BE GOOD AGAINST THOSE AS WELL.

3 THAT'S THE ONE AREA BECAUSE BOTH SIDES
4 HAVE AN INTEREST IN THAT, BUT AT LEAST WE CAN
5 TALK --

6 THE COURT: AND OBVIOUSLY THEY ARE IN
7 LOCATIONS FOR INJUNCTIONS AND THE LIKE --

8 MR. MCELHINNY: TRUE.

9 I WOULD ALSO SAY THAT STARTING -- I'M
10 LOSING TRACK OF THE DAYS. ON TUESDAY JUDGE KOH
11 STARTED A DIALOG WITH US I THINK ABOUT HOW WE
12 ACTUALLY PLAN TO TRY THIS CASE.

13 AND I THINK WHAT YOUR HONOR IS SUGGESTING
14 IS CERTAINLY GOING TO COME UP IN THE DIALOG ABOUT
15 HOW TO MAKE THE CASE, TO PUT IT IN A POSITION SO
16 THAT A JURY CAN UNDERSTAND AND DEAL WITH IT.

17 THE COURT: ALL RIGHT.

18 MR. MCELHINNY: I WANTED TO ADDRESS THE
19 MEET AND CONFER ISSUES SO THAT YOUR HONOR
20 UNDERSTANDS THEM.

21 FOR THE MEET AND CONFER THAT HAPPENED --
22 I NEED TO START WITH WHAT MR. JACOBS HAS TOLD YOU
23 BECAUSE THIS IS OUR VIEW.

24 OUR VIEW IS THAT MOST OF THE DISPUTES
25 THAT YOU ARE SEEING NOW INVOLVE DOCUMENT REQUESTS

1 THAT WERE SERVED AT THE VERY BEGINNING OF THE CASE,
2 DOCUMENTS THAT SHOULD HAVE BEEN PRODUCED A LONG
3 TIME -- AND WE ARE DEALING FROM A PERCEPTION THAT
4 ORDERS FROM YOU ARE THE BEGINNING POINT IN THE
5 PRODUCTION PROCESS.

6 FOR THE MEET AND CONFER THAT HAPPENED IN
7 THIS CASE -- UNFORTUNATELY, WHAT'S HAPPENING NOW IS
8 THE MEET AND CONFER PROCESS IS BECOMING A MINI
9 LITIGATION PROCESS AS WELL.

10 YOUR HONOR CAN -- IN A CASE WITH AN
11 EXPEDITED SCHEDULE YOU CAN SEE THE ADVANTAGES OF
12 CONTROLLING ACCESS TO THE COURT.

13 FOR THE MEET AND CONFER PROCESS THAT
14 HAPPENED ON THESE MOTIONS, I PREPARED FOR FIVE
15 HOURS THE DAY BEFORE THE MEET AND CONFER PROCESS.
16 AND LET ME BE CLEAR, I'M NOT AS BUSY AS I WOULD
17 LIKE TO BE, I AM A BUSY PERSON. I DO NOT CONSIDER
18 MY TIME THAT GOES INTO A MEET AND CONFER PROCESS
19 MORE VALUABLE THAN THE COURTS TIME IN DEALING WITH
20 MOTIONS. I DON'T HAVE THAT VIEW AND I DON'T THINK
21 ANYTHING THAT WE SAY IS DIRECTED IN THAT VIEW.

22 I PREPARED FIVE HOURS FOR THE MEET AND
23 CONFER PROCESS. I WENT DOWN TO REDWOOD CITY TO
24 MEET WITH QUINN EMANUEL PEOPLE. I BROUGHT THREE
25 LAWYERS WITH ME. THEY HAD SIX LAWYERS WITH THEM,

1 AND WE TALKED FOR FOUR HOURS.

2 AND TO THE EXTENT THAT PEOPLE WERE
3 WILLING TO EXCHANGE, WE EXCHANGED IDEAS.

4 IT'S INTERESTING, JUST TO GIVE YOU AN
5 EXAMPLE ON THE FINANCIAL INFORMATION, THERE HAD
6 BEEN LETTERS EXCHANGED WHERE WE SAID WE NEED THIS
7 BECAUSE WE ARE SEEKING SAMSUNG'S PROFITS.

8 AND WHEN WE GOT TO THE MEET AND CONFER
9 THE QUESTION WAS, WELL, HOW CAN YOU GET OUR
10 PROFITS? YOU GET A REASONABLE ROYALTY, YOU DON'T
11 GET OUR PROFITS. AND I SAID, WELL, THERE'S A
12 STATUTE THAT SAYS.

13 AND MS. KASSABIAN'S RESPONSE WAS, WELL,
14 WHY DIDN'T YOU TELL US ABOUT THAT SECTION IN THE
15 MEET AND CONFER LETTERS?

16 YOU KNOW, IT WAS SORT OF A STRANGE THING,
17 BUT WE TALKED FOR FOUR AND A HALF HOURS AND AT THE
18 END OF IT WE JUST SAID, YOU KNOW, HERE'S THE ISSUE,
19 WE HAVE TO FILE A MOTION. THE DOCUMENTS WERE DUE
20 40 DAYS AGO AND IF YOU ARE NOT GOING TO GET THEM WE
21 WILL HAVE TO GO IN FRONT OF THE COURT WITH THAT
22 ISSUE.

23 I ACTUALLY THINK THE MEET AND CONFER
24 PROCESS WORKED A LITTLE BIT BECAUSE WE DID GET SOME
25 OFFERS AFTER. WE DID GET, YOU KNOW, MR. VERHOEVEN

1 AND I DISCUSSED SOME ISSUES AND YOU COULD SEE THERE
2 WERE SOME ISSUES THAT NEEDED TO BE EXPLORED FURTHER
3 ON EITHER SIDE AND THAT WERE.

4 THE THING WE HAVE SEEN SINCE THEN, WE
5 JUST HAD ANOTHER MEET AND CONFER BUT WE ARE NOW
6 GETTING TO A PROCESS WHERE -- WE ARE NOT ALLOWED TO
7 MEET AND CONFER WITH MR. VERHOEVEN UNTIL THE OTHER
8 LAWYERS AGREE THAT THE LETTER-WRITING PROCESS HAS
9 GONE FAR ENOUGH THAT AND HE'S NOT PREPARED IF WE
10 ONLY HAVE 48 HOURS NOTICE BEFORE WE GET THERE.

11 AND THE IDEA THAT FURTHER MEET AND CONFER
12 IS GOING TO MOVE THIS, I JUST HAVE TO TELL YOU,
13 PARTICIPATING IN IT, I'M NOT GOING TO FILE A MOTION
14 IN FRONT OF YOU UNLESS I THINK WE NEED AN ORDER TO
15 GET THE DOCUMENTS.

16 AND IF THERE'S A WAY TO RESOLVE IT BEFORE
17 THAT, THAT IS WHAT WE'RE LOOKING TO DO BECAUSE WE
18 ARE TRYING GET TO OUR DEADLINE.

19 AND I JUST WANTED TO GIVE YOU ASSURANCE
20 PERSONALLY AND TELL YOU THAT'S HOW YOU GOT THE
21 MOTIONS THAT YOU HAVE TODAY.

22 THE COURT: ALL RIGHT.

23 MS. KASSABIAN, MS. MAROULIS, WHO WANTS TO
24 RESPOND?

25 MS. KASSABIAN: I WILL JUST ADDRESS THE

1 MOTION SPECIFIC ISSUES QUICKLY, YOUR HONOR.

2 SO THE FIRST ISSUE WAS MR. JACOBS OFFERED
3 A COMPROMISE OF NON TOUCHSCREEN PRODUCTS RELEASED
4 SINCE 2005. THAT WOULD STILL BE OVER 1,000
5 PRODUCTS.

6 AND I'M BALL PARKING THAT BASED ON THE
7 FACT THEY BELIEVE IT'S 2 OR 3,000 PRODUCTS GOING
8 BACK 12 YEARS. AND I BELIEVE THAT THE NUMBER OF
9 MODELS THAT ARE RELEASED HAS GENERALLY BEEN
10 INCREASING OVER TIME.

11 THERE ARE 26 PRODUCTS AT ISSUE IN THIS
12 CASE AND WE HAVE PRODUCED 600,000 PAGES OF
13 DOCUMENTS AND COUNTING FOR 26 PRODUCTS AT ISSUE.

14 SO ONE CAN ONLY IMAGINE WHAT DISCOVERY
15 WOULD LOOK LIKE REGARDING 975 PRODUCTS. IT WOULD
16 BE ABSURD.

17 BUT SETTING ASIDE THE BURDEN, I HAVE TO
18 TALK ABOUT THIS RELEVANCE ARGUMENT, IT'S JUST
19 WRONG.

20 AT PAGES 12 AND 13 OF APPLE'S MOVING
21 PAPERS THEY SAY, SAMSUNG HAS ARGUED THAT THE
22 DESIGNS THAT APPLE HAS ACCUSED OF INFRINGEMENT ARE
23 DICTATED BY FUNCTION.

24 THAT PART IS TRUE. IT'S AFTER THE DASH
25 WHERE IT FALLS APART:

1 WHICH MEANS THAT THE SAME FUNCTION CANNOT
2 BE PERFORMED THROUGH ANY OTHER DESIGN.

3 THAT'S JUST AN INCORRECT STATEMENT OF THE
4 LAW. FOR A DESIGN PATENT TO BE INVALID IT HAS TO
5 IMPACT THE USEFULNESS.

6 THE REVERSE IS NOT TRUE. IT DOES NOT
7 MEAN THAT THAT FUNCTION CAN ONLY BE ACCOMPLISHED BY
8 ONE SINGLE DESIGN AND THAT THEREFORE THEY'RE
9 ENTITLED TO SEE ALL OF OUR OTHER DESIGNS TO SEE IF
10 THEY SERVE THAT SAME FUNCTION.

11 THERE'S NO CITE AT END OF THAT SENTENCE
12 BECAUSE IT'S JUST NOT THE LAW.

13 YOU KNOW, AS LONG AS THE PATENTED DESIGN
14 IS PRIMARILY FUNCTIONAL RATHER THAN ORNAMENTAL,
15 THEN THE PATENT IS INVALID.

16 IT IS NOT THE SAME THING TO SAY -- IT'S
17 SIMPLY AN INCORRECT STATEMENT OF LAW TO SAY THAT IF
18 A DIFFERENT DESIGN CAN ACCOMPLISH THAT SAME
19 FUNCTION, THAT THAT HAS SOME LEGAL IMPACT. IT
20 DOESN'T. IT'S COMPLETELY IRRELEVANT. THERE'S NO
21 CITATION TO IT BECAUSE THAT'S NOT THE STANDARD FOR
22 DESIGN PATENT INFRINGEMENT.

23 THE NEXT THING THAT WAS MENTIONED WAS
24 THAT THEY ARE NOT ASKING FOR UNRELEASED PRODUCTS,
25 AND THAT'S INCORRECT.

1 THEY ARE ASKING FOR RELEASED OR
2 UNRELEASED PRODUCTS. THEY ARE ALSO ASKING FOR
3 EVERY ALTERNATIVE DESIGN EVER CONSIDERED BUT NOT
4 IMPLEMENTED.

5 SO WE ARE NOT JUST TALKING ABOUT 975 MORE
6 PRODUCTS, WE ARE THEN ALSO TALKING ABOUT UNRELEASED
7 PRODUCTS THAT FROM 2005 TO NOW AND ALTERNATIVE
8 DESIGNS THAT WERE CONSIDERED, IT WOULD ABSOLUTELY,
9 YOU KNOW, BRING THIS CASE TO A SCREECHING HALT IF
10 WE HAD TO PRODUCE DOCUMENTS ON THAT MAGNITUDE.

11 THE COURT: REALLY? SO IF I ISSUED AN
12 ORDER THAT THEY REQUEST, YOU ARE TELLING ME THIS
13 CASE WILL COME TO A GRINDING HALT?

14 MS. KASSABIAN: I'M SAYING THE DESIGN
15 DEPARTMENT AT SAMSUNG, I DON'T KNOW WHAT WOULD
16 HAPPEN.

17 IT WOULD BE CATASTROPHIC TO SAY, HEY,
18 MCDONALD'S, I WANT EVERY DOCUMENT IN YOUR COMPANY
19 REGARDING HAMBURGERS. THAT'S WHAT WE ARE TALKING
20 ABOUT.

21 SO SAYING TO SAMSUNG'S MOBILE DIVISION,
22 WE WANT EVERY DOCUMENT REGARDING EVERY PRODUCT
23 YOU'VE EVER RELEASED IN THE LAST SEVEN YEARS, EVEN
24 THOUGH WE HAVE NO RELEVANCE ARGUMENT FOR THAT, I
25 THINK DOES NOT MEET THE PROPORTIONALITY

1 REQUIREMENT, YOUR HONOR.

2 AND I BELIEVE WE HAVE SUBMITTED A
3 DECLARATION FROM MR. KAHNG ABOUT BURDEN.

4 THE COURT: ALL RIGHT. THANK YOU.

5 MS. KASSABIAN: UNLESS YOU HAVE ANY OTHER
6 QUESTIONS.

7 THE COURT: THANK YOU.

8 MR. JACOBS: JUST ONE TECHNICAL
9 CORRECTION.

10 WHAT I SAID WAS WE DON'T NEED DOCUMENTS,
11 WE CAN EXCLUDE NON TOUCHSCREEN PRODUCTS.

12 WHAT WE ARE SEEKING IS THE DOCUMENTATION
13 ALONG THE LINES OF WHAT WAS ARTICULATED FOR
14 PRODUCTS THAT WERE RELEASED POST-2005 THAT ARE
15 TOUCHSCREEN PRODUCTS AND THE ALTERNATIVE DESIGNS
16 THAT WERE CONSIDERED FOR THEM.

17 AND ON THIS COUNTING ISSUE, I THINK WE
18 ARE BACK TO THE DEFINITION OF PRODUCT BECAUSE THE
19 PRODUCTS COME IN FAMILIES AND THAT'S A COMMON
20 SOURCE AND THEN OFFSPRING FOR DIFFERENT COUNTRIES.

21 THE COURT: DO YOU NEED THE SOURCE OR THE
22 DOCUMENTATION FOR EACH OF THOSE OFFSPRING?

23 MR. JACOBS: I HAVEN'T FIGURED OUT A WAY
24 TO SLICE IT MORE NARROWLY, YOUR HONOR.

25 IF SAMSUNG -- WE ARE RIGHT ON THE LAW.

1 JUDGE KOH'S ORDER DEALS WITH THIS QUESTION OF THE
2 STANDARD. BUT SAMSUNG IS GOING TO ARGUE THAT THESE
3 FEATURES DON'T WORK AS WELL OR THEY ARE GOING TO
4 NOT BE AS FUNCTIONAL IN SOME ALTERNATIVE DESIGN
5 CONCEPT, AND WE NEED TO BE ABLE TO PROVE THAT
6 THAT'S JUST WRONG.

7 MS. KASSABIAN: YOUR HONOR, THAT'S JUST
8 ABSOLUTELY -- I STILL HAVEN'T HEARD AN ARGUMENT FOR
9 RELEVANCE.

10 IF APPLE WANTS TO GO OUT AND PURCHASE
11 SOME PUBLICLY AVAILABLE PHONES MADE BY SAMSUNG OR
12 MADE BY SOMEBODY ELSE AND MAKE WHATEVER ARGUMENT
13 THEY ARE REFERRING TO NOW, THEY ARE FREE TO DO
14 THAT.

15 BUT THAT IS NOT THE SAME THING AS ASKING
16 THIS COMPANY SAMSUNG TO PRODUCE MILLIONS AND
17 MILLIONS AND MILLIONS OF PAGES OF DOCUMENTS FOR
18 SEVEN YEARS WORTH OF DESIGN WORK WHEN THERE'S
19 ABSOLUTELY NO RELEVANCE. THERE'S ZERO RELEVANCE TO
20 HOW AN UNACCUSED PRODUCT WAS DESIGNED IN THIS CASE.

21 IT DOES NOT MATTER WHETHER SOME OTHER
22 PRODUCT MIGHT, A DESIGN FEATURE OF THAT PRODUCT
23 MIGHT BE FUNCTIONAL, THAT HAS NO BEARING ON WHETHER
24 APPLE'S DESIGN PATENTS ARE VALID.

25 THE COURT: ALL RIGHT. THANK YOU.

1 LET'S TURN TO SAMSUNG'S MOTIONS.

2 I THINK IT'S FAIR TO SAY THAT SAMSUNG'S
3 MOTION FOR THE PROTECTIVE ORDER HAS BEEN ADEQUATELY
4 EVALUATED IN THE CONTEXT OF APPLE'S RECIPROCAL
5 MOTION.

6 SO MS. MAROULIS, I WOULD LIKE TO START
7 WITH YOUR MOTION TO COMPEL DOCUMENTS, WHICH IS 603.

8 MS. MAROULIS: YES, YOUR HONOR.

9 OUR OMNIBUS MOTION TO COMPEL CONCERNS
10 BASICALLY --

11 THE COURT: THAT'S A GREAT TERM, BY THE
12 WAY.

13 MS. MAROULIS: SEVEN CATEGORIES OF
14 DOCUMENTS AND TWO TYPES OF DEPOSITION TESTIMONY.

15 I BELIEVE WE COVERED ONE OF THE
16 DEPOSITION SUBPARTS BEFORE, SO WE'LL JUST FOCUS ON
17 THE DOCUMENTS AND FACT WITNESSES.

18 SO BROADLY SPEAKING, WE SEEK SOURCE CODE
19 AND TECHNICAL DOCUMENTS, PRIOR ART DOCUMENTS,
20 DOCUMENTS RESPONSIVE TO SEARCH SAMSUNG, AND RELATED
21 TERMS LIKE ALIASES FOR THE TERM "SAMSUNG" USED
22 WITHIN APPLE, DESIGN HISTORY DOCUMENTS, ADDITIONAL
23 INVENTOR DESIGN DOCUMENTS, SURVEY DOCUMENTS AND
24 FINANCIAL DOCUMENTS.

25 AND IN SOME WAYS, YOUR HONOR, THIS MOTION

1 IS AN OUTLINE OF THE FAILED DISCUSSIONS BETWEEN THE
2 PARTIES IN THE NOVEMBER/DECEMBER TIME FRAME
3 REGARDING WHAT WE REFER TO AS RECIPROCITY RULES.

4 THIS IS A TWO WAY CASE. BOTH SIDES ARE
5 ALLEGING INTELLECTUAL PROPERTY AGAINST EACH OTHER.
6 THEY ARE ACCUSING EACH OTHER OF INFRINGEMENT, SO
7 THERE'S SOME CATEGORIES OF DOCUMENTS THAT BOTH NEED
8 TO PRODUCE.

9 FOR EXAMPLE, SURVEYS, FINANCIAL
10 INFORMATION, PRIOR ART AND TECHNICAL DOCUMENTS
11 CERTAINLY FALL WITHIN THAT.

12 SO WHAT HAPPENED IS THAT WE KEPT
13 NEGOTIATING WITH APPLE IN GOOD FAITH, AND WE
14 ATTACHED TO SOME OF OUR MOTION PAPERS THE CHARTS
15 THAT WE HAVE BEEN GOING BACK AND FORTH ON IN THE
16 MEET AND CONFER PROCESS. AND THEN APPLE DROPPED
17 THE NEGOTIATIONS AND FILED A MOTION THAT RESULTED
18 IN YOUR HONOR'S DECEMBER 22ND ORDER.

19 WE AT SAMSUNG HAVE TAKEN THE MEET AND
20 CONFER PROCESS VERY SERIOUSLY, KEPT GOING, TRIED TO
21 CONVINCED APPLE TO PRODUCE THE DOCUMENTS WE NEED
22 THAT WERE SUBJECT TO THIS RECIPROCITY NEGOTIATION,
23 BUT THAT HAS NOT MATERIALIZED.

24 AND WHILE I DON'T DOUBT THAT
25 MR. MCELHINNY SPENT FIVE HOURS PREPARING FOR THE

1 MEET AND CONFER, THE ULTIMATE MEET AND CONFERS WERE
2 NOT FRUITFUL.

3 AND SO WHAT WE WANT TO IS TO AVOID THE
4 UNFORTUNATE DOUBLE STANDARD THAT APPLE IS URGING ON
5 THIS COURT WHEREBY SAMSUNG IS FORCED TO PRODUCE
6 VERY BROAD CATEGORIES OF DOCUMENTS IMMEDIATELY AND
7 APPLE CAN PICK AND CHOOSE WHAT IT WANTS TO PRODUCE
8 AND DO IT ON A FAIRLY LEISURELY SCHEDULE WHEN AND
9 IF IT WANTS IT.

10 AND THERE ARE MANY EXAMPLES BUT I WILL
11 JUST CITE ONE TO YOUR HONOR. AS RECENTLY AS LAST
12 WEEK WE LEARNED THAT THERE'S A THOUSAND PROTOTYPE
13 MODELS OF THE DESIGN PATENTS AT ISSUE THAT APPLE
14 FINALLY MADE AVAILABLE TO US.

15 THESE ARE THE VERY SAME PROTOTYPES THAT
16 SHOULD HAVE BEEN PRODUCED BEFORE THE MOTION FOR
17 PRELIMINARY INJUNCTION, BECAUSE FOR EXAMPLE SAMSUNG
18 OFFERED ITS PROTOTYPES AND MOCKUPS FOR INSPECTION
19 BEFORE THE HEARING ON THE PRODUCTS AT ISSUE.

20 NOW WE LEARN IN THE MIDDLE OF JANUARY
21 ABOUT THESE THOUSAND PRODUCTS. I HAVE A TEAM OF
22 PEOPLE TRYING TO INSPECT THAT. AND THIS IS JUST
23 ONE OF MANY EXAMPLES OF THINGS THAT HAVE NOT BEEN
24 PRODUCED BEFORE AND THINGS THAT NEED TO BE
25 PRODUCED.

1 SO GOING THROUGH THE VARIOUS ITEMS THAT
2 WE BRIEFED IN OUR MOTION, AND IF YOUR HONOR WANTS I
3 IS SKIP SOME AND FOCUS MORE ON OTHERS.

4 WITH RESPECT TO SOURCE CODE, SOME SOURCE
5 CODE HAS BEEN OFFERED FOR INSPECTION BUT IT'S NOT
6 COMPLETE, IT'S NOT THE TYPE WE WANT.

7 AND THE EXAMPLES WERE FROM THE MOTION,
8 ARE FOR EXAMPLE THE SOURCE CODE RELATING TO THE
9 BASEBAND PROCESSORS.

10 AND WHAT'S HAPPENING THERE IS THAT APPLE
11 HAS A VARIETY OF EXCUSES.

12 ONE IS THAT IT'S THIRD PARTIES THAT
13 PROVIDE THE SOURCE CODE AND NOT APPLE SO THEY DON'T
14 HAVE IT. THEN IT TURNS OUT THAT THEY DO HAVE IT
15 BUT THEY HAVEN'T SECURED THE PERMISSION IN TIME,
16 FOR EXAMPLE, INTEL.

17 AND ALL THIS TIME WE ARE WITHOUT AN
18 INCREDIBLY IMPORTANT TOOL FOR PROVING OUR
19 INFRINGEMENT ALLEGATIONS. IN FACT, SOMETHING THAT
20 THEY SHOULD HAVE PRODUCED BACK IN SEPTEMBER WHEN
21 THE INFRINGEMENT CONTENTIONS WERE DUE.

22 THE COURT: SO PERHAPS YOU MIGHT EXPLAIN
23 TO ME INTEL'S OBJECTION.

24 SO YOU HAVE ASKED FOR SOURCE CODE
25 RELATING TO CERTAIN BASEBAND PROCESSORS. IT'S

1 UNDISPUTED AT LEAST A PORTION OF THAT CODE IS
2 SUPPLIED TO APPLE BY INTEL; HAVE I GOT IT RIGHT SO
3 FAR?

4 MS. MAROULIS: YES, YOUR HONOR. WE ASKED
5 INTEL AND APPLE.

6 WE ASKED INTEL BECAUSE WE WANT TO SEE
7 WHAT THEY SUPPLY AND WE ASKED APPLE BECAUSE WE WANT
8 TO SEE IF THERE'S ANY IMPLEMENTATION THAT'S
9 DIFFERENT.

10 FOR EXAMPLE, YOUR HONOR KEEPS ASKING HOW
11 COME YOU DON'T STIPULATE TO THINGS, HOW COME YOU
12 DON'T SIMPLIFY THIS CASE? WE TRIED.

13 WE PROPOUNDED A SERIES THAT SAID, PLEASE
14 ADMIT THIS PRODUCT IS IN COMPLIANCE, AND THEN WE
15 INCLUDED THE SPEC NUMBER, 25 DOT WHATEVER.

16 AND THE RESPONSE WAS THOSE WITHOUT
17 KNOWLEDGE WHETHER THEIR PHONES ARE COMPLIANT. I
18 MEAN, THAT MIGHT BE SUBJECT TO A SEPARATE MOTION
19 ENTIRELY, BUT THAT'S THEIR RESPONSE.

20 CONFRONTED WITH THAT RESPONSE, WE NEED TO
21 SEE HOW THE SOURCE CODE IS LISTED. ARE THEY
22 CHANGING IT? WHAT ARE THEY DOING TO IT? ARE THEY
23 TAKING IT WHOLESAL? WE UNDERSTAND WE WILL
24 EVENTUALLY GET THIS FROM INTEL, BUT WE ALSO NEED TO
25 GET IT FROM APPLE.

1 THE COURT: AND WHAT IS APPLE'S OBJECTION
2 BEEN SO FAR TO YOUR REQUEST?

3 MS. MAROULIS: MY UNDERSTANDING IS IT'S A
4 VARIETY OF OBJECTIONS.

5 ONE IS THAT THIS IS INTEL'S CODE SO INTEL
6 SHOULD BE PRODUCING IT. THE OTHER ONE IS THAT THEY
7 MAY PRODUCE IT LATER ON.

8 BUT WE HAVE NOT GOTTEN A SATISFACTORY
9 EXPLANATION OF WHY THIS EXTREMELY CRUCIAL PIECE HAS
10 NOT BEEN PRODUCED.

11 THE COURT: THERE'S NO DISPUTE THAT THE
12 CODE IS RELEVANT, RIGHT?

13 MS. MAROULIS: THERE SHOULDN'T BE. I DO
14 NOT BELIEVE APPLE DISPUTES THAT.

15 THE COURT: OKAY. ALL RIGHT.

16 MS. MAROULIS: I DO NOT HAVE INSIGHT AS
17 TO WHAT ARE THE GROUNDS FOR INTEL'S OBJECTION TO
18 APPLE.

19 THE COURT: AND I APPRECIATE THAT.

20 I'M SIMPLY TRYING TO UNDERSTAND WHAT YOU
21 HAVE BEEN TOLD DURING THE MEET AND CONFER PROCESS
22 ABOUT THAT. AND IT SOUNDS TO ME LIKE YOU ARE
23 SAYING YOU HAVE NOT BEEN PRESENTED WITH ANY
24 RELEVANCE OBJECTION TO THAT.

25 MS. MAROULIS: EXACTLY, YOUR HONOR.

1 AND AGAIN, IF APPLE IS WISHING TO
2 STIPULATE OR TO ANSWER SOME OF THOSE THINGS, SOME
3 OF THE PRODUCTION BURDENS COULD BE ALLEVIATED, BUT
4 WE ARE FACED WITH THAT NOT HAPPENING.

5 THE NEXT CATEGORY, BROAD CATEGORY OF
6 DOCUMENTS WE WANT, IS PRIOR ART. GETTING PRIOR ART
7 OUT OF APPLE HAS BEEN AN ODYSSEY.

8 WE KNOW THAT APPLE IS INVOLVED IN A
9 VARIETY OF INTELLECTUAL PROPERTY LITIGATION, AND WE
10 KNOW THAT THROUGH THESE LITIGATIONS AND PUBLIC
11 INFORMATION THAT THEY ARE NOTICED OF A LOT OF PRIOR
12 ART FOR THE SAME PATENTS OR THE RELATED PATENTS.

13 GETTING IT OUT OF THEM HAS BEEN ALMOST
14 IMPOSSIBLE. SO AGAIN, BY WAY OF EXAMPLE, WE ARE
15 DESCRIBING THE NEXT PRODUCT, THE PRODUCT THAT WE
16 HAVE BEEN TRYING TO GET INFORMATION FROM THEM, BUT
17 THAT'S NOT THE ONLY ONE. IT TOOK US A MOTION
18 BEFORE YOUR HONOR LAST TIME TO GET MOTOROLA
19 LITIGATION MATERIALS.

20 WE HAVE NOW GOTTEN THEM, FOR THE MOST
21 PART. AND OF COURSE MAC OS IS A WHOLE SEPARATE
22 MOTION BEFORE US AND WE WILL RETURN TO THAT.

23 BUT THE BROAD LEVEL WE ARE SEEKING IS
24 THAT APPLE PRODUCE ANY PRIOR ART IN ITS POSSESSION
25 RELEVANT TO THE 12 ASSERTED PATENTS.

1 THERE'S SOME PRIOR ART THAT APPLE HAS.
2 WE CANNOT BE FORCED TO GUESS FROM EITHER PUBLIC
3 FILING OR IN CASES OF DESIGN PATENTS WE FOUND PRIOR
4 ART IN READING THE DESIGN BOOKS THAT ARE PUBLICLY
5 PUBLISHED.

6 THEY ARE IN LITIGATION, THEY ARE NOTICED
7 THAT THEY HAVE TO PRODUCE PRIOR ART AND THEY HAVE
8 TO DO THAT.

9 THE COURT: IF I COULD ASK ABOUT THAT.

10 I APPRECIATE YOU DON'T HAVE PERFECT
11 INSIGHT INTO THE PRIOR ART AND OTHER ISSUES IN
12 DISPUTES IN OTHER CASES, BUT AS YOU POINTED OUT YOU
13 ARE AT LEAST ABLE TO GLEAN FROM CERTAIN INSTANCES
14 WHAT PRIOR ART.

15 HAVE YOU IDENTIFIED, OTHER THAN THE NEXT
16 STEP OS, HAVE YOU IDENTIFIED ANY SPECIFIC PRIOR ART
17 THAT YOU WOULD LIKE PRODUCED THAT THEY REFUSED TO
18 PRODUCE?

19 MS. MAROULIS: RIGHT NOW WE IDENTIFIED
20 NEXT BEFORE WE IDENTIFIED THE MOTOROLA PRIOR ART,
21 BUT WE DON'T KNOW WHAT WE DON'T KNOW, RIGHT?

22 THERE'S SOME PRIOR ART THAT THEY ARE
23 SITTING ON POTENTIALLY THAT THEY HAVE NOT PRODUCED
24 AND THEY WILL NOT TELL US IF THEY PRODUCED IT AT
25 ALL.

1 THE COURT: BUT FOR EXAMPLE, YOU HAVEN'T
2 REVIEWED OR ANALYZED OTHER CASES IN WHICH THIS
3 PRIOR ART HAS BEEN AT ISSUE AND IDENTIFIED ANY
4 OTHER SPECIFIC REFERENCES --

5 MS. MAROULIS: YOUR HONOR --

6 THE COURT: -- TO FOCUS THEIR EFFORT.

7 MS. MAROULIS: I UNDERSTAND THERE WAS A
8 LETTER FROM MS. CHAN SENT TO APPLE, AND I'M TRYING
9 TO FIND THE EXHIBIT NUMBER FOR YOU SO I CAN SHOW
10 YOU THE LETTER.

11 THE NEXT CATEGORY IS THE CATEGORY THAT
12 RELATES TO SEARCHES RESPONSIVE TO THE TERM SAMSUNG
13 OR SOME VARIATION THEREOF. FOR EXAMPLE, ALIASES
14 FROM THE INTERNAL SLANG OR CODE WORDS THAT ARE USED
15 WITHIN APPLE. AND RELATED TO THAT WE HAVE ASKED
16 THEM TO RUN ANDROID OR DROID WHICH IS AN
17 ABBREVIATION OF THAT. AND WE RECEIVED A VARIETY OF
18 RESPONSES TO THAT.

19 AGAIN, ONE WAS THAT IT'S BURDENSOME.
20 ANOTHER ONE WAS THAT THERE'S NO NEED FOR THEM TO
21 RUN "SAMSUNG" EVEN THOUGH THEY FORCED US TO RUN
22 "APPLE" BECAUSE THEY SAY, YOU COPIED OUR PRODUCTS
23 AND WE HAVEN'T COPIED YOURS.

24 WELL, THAT'S NOT REALLY A SERIOUS
25 CONVERSATION BECAUSE WE ALLEGE THAT THEY INFRINGED

1 12 OF OUR PATENTS THAT THEY COPIED OUR TECHNOLOGY.
2 AND I KNOW MR. MCELHINNY LIKES TO SPEAK BEFORE
3 YOUR HONOR AND OTHER TRIBUNALS ABOUT THE COPYING,
4 BUT THERE'S COPYING ON APPLE'S SIDE, IT'S COPYING
5 OF THE TECHNOLOGY, THAT'S THE PATENT INFRINGEMENT
6 SAMSUNG IS ALLEGING.

7 THE TERM "SAMSUNG" CAN BE RELEVANT TO A
8 WHOLE VARIETY OF POINTS FROM LACK OF
9 DISTINCTIVENESS IN THE TRADEMARK AREA TO
10 COMPETITIVE ANALYSIS TO COPYING BY APPLE OF SAMSUNG
11 FEATURES AND OTHERS.

12 THEY CANNOT SERIOUSLY DISPUTE THAT'S NOT
13 RELEVANT. SO FOR THAT REASON, THE REASONS OF
14 CLARITY, THEY SHOULD EXECUTE THOSE SEARCHES.

15 IT IS MY UNDERSTANDING THAT THEY AGREED
16 TO SEARCH SOME OF THE FILES FOR THE TERM "SAMSUNG"
17 BUT NOT ALL OF THEM, AND THEY HAVE NOT AGREED TO
18 SEARCH ANDROID AND DROID.

19 THE COURT: SO AS I UNDERSTAND IT IN A
20 LETTER DATED JANUARY 5 THEY IDENTIFIED AT LEAST
21 SOME TERMS THAT THEY WOULD BE WILLING TO SEARCH FOR
22 IN ORDER TO MEET YOUR LEGITIMATE NEEDS.

23 WHAT'S WRONG WITH THEIR PROPOSAL?

24 MS. MAROULIS: YOUR HONOR, MY
25 UNDERSTANDING IS IT'S NOT AS TO ALL THE CUSTODIANS

1 AND IT'S NOT ALL OF OUR TERMS. ONE MOMENT.

2 AND YOUR HONOR, WHILE WE ARE LOOKING UP
3 YOUR OTHER QUESTION, I WANTED TO DIRECT YOU TO
4 DECLARATION EXHIBIT E WHICH LISTS THE SPECIFIC
5 SOURCE CODE THAT WE WANTED AND I THINK YOU WERE
6 ASKING --

7 THE COURT: I WAS CURIOUS ABOUT THE
8 JANUARY 5TH PROPOSAL.

9 MS. MAROULIS: YEAH.

10 SO THE LETTER THAT THEY ARE DIRECTING US
11 TO SAYS THAT THEY WILL AGREE TO RUN "SAMSUNG" AS TO
12 INVENTOR DOCUMENTS BUT NOT OTHERS AND THAT THEY ARE
13 REFUSING TO RUN ANDROID AND DROID.

14 AND WE BELIEVE --

15 THE COURT: IS YOUR BIGGER BEEF WITH THE
16 SUFFICIENCY OF THE SEARCH TERMS OR WITH THE
17 UNIVERSE OF CUSTODIANS SUBJECT TO THE SEARCH?

18 MS. MAROULIS: IT'S BOTH.

19 THE COURT: I GET THAT.

20 YOU WANT EVERYTHING IN A DAY, BOTH SIDES
21 DO, BUT WHAT'S MORE IMPORTANT TO YOU? TELL ME WHAT
22 YOU REALLY NEED.

23 MS. KASSABIAN: IF I COULD JUST SPEAK TO
24 THIS BRIEFLY BECAUSE I WAS INVOLVED IN THE MEET AND
25 CONFER ON THIS ISSUE.

1 APPLE AGREED TO DO THIS. APPLE DEMANDED
2 THAT SAMSUNG SEARCH FOR THE WORD "APPLE" AND ALL OF
3 THE DOCUMENTS OF EVERYONE WHO DESIGNED, DEVELOPED
4 OR MARKETED ANY OF THE PRODUCTS AT ISSUE.

5 SO DESIGNERS AND -- DESIGNERS TEND TO BE
6 THE INVENTORS, IF YOU WILL, AT LEAST ON APPLE'S
7 SIDE. DEVELOPERS TEND TO BE ENGINEERS, AND
8 MARKETERS ARE MARKETERS.

9 WE AGREED TO DO THAT IN EXCHANGE FOR THEM
10 TO DO SAMSUNG. THEY ARE NOW RENEGING. THEY ARE
11 SAYING, WE HAVE DONE THAT. THEY ARE NOW SAYING WE
12 WILL SEARCH FOR THE WORD SAMSUNG BUT NO ALIASES,
13 EVEN THOUGH A LOT OF PEOPLE CALL SAMSUNG SS AND
14 OTHER ALIASES.

15 THE COURT: DID YOU INCLUDE ANY ALIASES
16 FOR APPLE IN YOUR SEARCH?

17 MS. KASSABIAN: ABSOLUTELY.

18 THE COURT: GIVE ME AN EXAMPLE OF ONE.

19 MS. KASSABIAN: A COMPANY. A4.

20 THERE WAS AN "A" WITH A CHINESE CHARACTER
21 WHICH IS SOMETIMES USED IN SAMSUNG BECAUSE THE
22 PRONUNCIATION OF A CHINESE CHARACTER SOUNDS LIKE 4
23 AND A4 WAS SOMETIMES USED.

24 WE DID USE ALIASES, SO THIS IS REALLY
25 FRUSTRATING BECAUSE WE SPENT WEEKS NEGOTIATING THIS

1 IN NOVEMBER. WE REACHED AN AGREEMENT. WE HAVE
2 LETTERS CONFIRMING THE AGREEMENT, INCLUDING LETTERS
3 FROM APPLE. AND THEN THEY APPARENTLY CHANGED THEIR
4 MIND AND ARE ONLY SEARCHING IN THEIR INVENTORS, NOT
5 IN THE ENGINEERS' DOCUMENTS, NOT IN THE MARKETERS,
6 AND NO ALIASES.

7 AND THEN, YOU KNOW, RELATED TO THAT IS
8 THE ANDROID/DROID TERM WHICH THEY ARE REFUSING TO
9 SEARCH IN ANY CUSTODIAN FILES.

10 WE DID THIS. THIS WAS AN AGREEMENT AND
11 THEY ARE NOW BACKING OUT, AS I UNDERSTAND IT.

12 MS. MAROULIS: BUT YOUR HONOR, TO ANSWER
13 YOUR ORIGINAL QUESTION, WHICH IS, WHAT'S MORE
14 IMPORTANT TO US IN THE BROADER SEARCH OF SAMSUNG
15 VERSUS ANDROID, I GUESS WE WOULD LIKE THE BROADER
16 SEARCH OF SAMSUNG BECAUSE THAT MIGHT BE A LITTLE
17 BIT MORE VALUABLE TO US, ULTIMATELY.

18 BUT THERE'S NO REASON WHY THEY SHOULD
19 REFUSE. AND AS MS. KASSABIAN DESCRIBED, THERE WAS
20 AN AGREEMENT.

21 AND AS I BEGAN THIS MOTION BY EXPLAINING
22 THESE NEGOTIATIONS AND HOW WE, IN GOOD FAITH, WENT
23 FORWARD WITH A LOT OF PRODUCTION AND AGREEMENTS AND
24 OFFERS TO THE COURT, AND THAT HAS NOT BEEN
25 RECIPROCATED.

1 THE COURT: JUST SO I UNDERSTAND YOUR
2 POINT, I'M SORRY TO INTERRUPT YOU, MS. MAROULIS,
3 AND ALSO MS. KASSABIAN'S POINT.

4 YOU BOTH ARE TELLING ME IF I CRANK
5 THROUGH THE MEET AND CONFER LETTERS WHICH ARE
6 ATTACHED AS EXHIBITS AND EVALUATE THE EXCHANGE OF
7 PROPOSALS IN THOSE LETTERS, I WILL FIND A HARD
8 EVIDENCE, IRREFUTABLE EVIDENCE OF AGREEMENT,
9 COMMITMENT ON BOTH SIDES TO THIS PROCESS AS YOU
10 DESCRIBED.

11 MS. MAROULIS: YOUR HONOR, I THINK WE
12 WILL DO BETTER THAN THAT. I WILL ASK MY COLLEAGUES
13 TO GIVE YOU SPECIFIC NUMBERS BECAUSE I DON'T THINK
14 IT'S FAIR FOR THE COURT TO HAVE TO LOOK FOR THAT.

15 THE COURT: BUT I WILL FIND IT IS WHAT
16 YOU ARE SAYING?

17 MS. KASSABIAN: YES.

18 MS. MAROULIS: YES.

19 ALL RIGHT.

20 SO THE RELATED CATEGORY OF THINGS THAT
21 WERE ASKING FOR IS THE SEARCH TERMS THAT GOVERN THE
22 DESIGN DOCUMENTS.

23 AND THOSE SEARCH TERMS ARE ESSENTIALLY
24 LAID OUT BOTH IN OUR BRIEF, BUT IF HONOR WANTS THE
25 ORIGINAL CORRESPONDENCE, IT'S THE LETTER FROM

1 MS. HUTNYAN ADDRESSED TO MS. MIA MAZZA OF APPLE,
2 MORRISON & FOERSTER'S EXHIBIT Z TO THE HUTNYAN
3 DECLARATION IN SUPPORT OF OUR MOTION TO COMPEL.

4 THOSE SEARCH TERMS WERE CAREFULLY
5 SELECTED BY US TO ADDRESS SPECIFIC DESIGN ISSUES
6 AND APPLE AGREED TO SEARCH SOME OF THEM BUT NOT
7 OTHERS. AND THEY HAVE NOT AGREED, FOR EXAMPLE, TO
8 SUCH BASIC SEARCH OF TABLET, EVEN THOUGH THE TABLET
9 IS -- THEY HAVE THE TABLET THAT THEY ARE CLAIMING
10 TO BE AN EMBODIMENT IN THIS CASE AND THEY ARE
11 ACCUSING OUR TABLET. SO IT'S A VERY PERTINENT
12 SEARCH.

13 BUT EXHIBIT Z ITEMIZES ALL THE SEARCHES
14 AND ALSO WHAT IT DOES IS IT PUTS A CHART TOGETHER
15 OF WHAT WE ARE ASKING VERSUS WHAT APPLE IS WILLING
16 OR NOT WILLING TO DO.

17 SO YOUR HONOR CAN EVALUATE THAT WAY AS
18 WELL.

19 SO I'M GOING TO HAND UP A COPY TO
20 YOUR HONOR IN A MINUTE. BUT TO ANSWER YOUR
21 PREVIOUS QUESTION, WHICH IS, WHERE'S THE AGREEMENT
22 REGARDING SEARCHING EACH OTHER'S FILES REGARDING
23 THE COMPANY TERMS? IT'S A LETTER DATED DECEMBER 5,
24 2011 AND IT'S FROM MS. MAZZA TO MS. KASSABIAN.

25 I DON'T THINK YOUR HONOR WANTS US TO READ

1 IT IN THE RECORD, BUT IF YOU WANT THEN I WILL.

2 THE COURT: IF I HAVE THE LETTER, THAT'S
3 FINE.

4 MS. MAROULIS: VERY WELL.

5 ALL RIGHT. SO MOVING ON, THE CATEGORIES
6 THAT WE DO WANT TO COVER AS WELL ARE DESIGN
7 DOCUMENTS AND FINANCIALS.

8 WITH THE DESIGN DOCUMENTS WE HAVE SEEN A
9 VERY DISTURBING PATTERN, WHICH IS WE HAD TO DEPOSE
10 BY SCHEDULE ALL OF THEIR DESIGN INVENTORS AND THEIR
11 KEY DESIGNERS IN OCTOBER OF THIS YEAR.

12 WE ARE GOING TO TALK ABOUT REVISITING ONE
13 OF THOSE DEPOSITIONS, BUT GENERALLY WE ARE GOING TO
14 HAVE A HARD TIME REOPENING THEM. WE MIGHT NEED TO
15 TRY WITH RESPECT TO SOME OF THEM, BUT OUR TIME ON
16 THOSE IN SOME WAYS HAVE PASSED.

17 EVER SINCE THEN WE FOUND AN INCREDIBLE
18 AMOUNT OF DESIGN EVIDENCE THAT SHOULD HAVE BEEN
19 PRODUCED A LONG TIME AGO.

20 YOUR HONOR IS VERY FAMILIAR WITH THE '035
21 MOCKUP SITUATION WITH THE CAD FILES AND THE
22 INVENTOR BOOKS THAT WE DISCUSSED BEFORE.

23 IT JUST RECENTLY CAME TO OUR ATTENTION
24 THAT THERE WAS A WHOLE TROVE OF MODELS THAT THEY
25 HAD PRODUCED TO US FOR INSPECTION THIS WEEK. BUT

1 THERE ARE STILL ADDITIONAL DOCUMENTS THAT WE NOW
2 KNOW THEY HAVE WHICH THEY ARE NOT PRODUCING.

3 JUST TO GIVE YOU A FEW EXAMPLES, THERE'S
4 SOMETHING CALLED MCO.

5 THE COURT: THESE ARE MECHANICAL
6 OUTLINES?

7 MS. MAROULIS: I'VE BEEN TRYING TO FIND
8 OUT WHAT "C" STANDS FOR, BUT I HAVEN'T BEEN ABLE
9 TO. BUT IT'S A MECHANICAL OUTLINE OF THE PRODUCT
10 AND IT'S MORE DETAILED THAN A CAD FILE, BUT IT IS
11 THE ACTUAL PROTOTYPE.

12 AND IT SHOWS A VARIETY OF THE FEATURES OF
13 THE PRODUCT, FOR EXAMPLE FUNCTIONALITY IN THIS
14 CASE. THE MCO SHOWS THE THICKNESS OF THE WALLS,
15 AND THERE ARE INVENTOR DOCUMENTS AND E-MAILS THAT
16 DISCUSS THICKNESS OF THE WALLS AND VARIOUS
17 MEASUREMENTS AND THAT IS RELEVANT AS WELL TO OUR
18 CASE.

19 SO APPLE'S POSITION IS THAT THEY SHOULD
20 NOT HAVE TO PRODUCE ANY NONWORKING PROTOTYPES OR
21 ANY PARTS OF THE PROTOTYPES. AND WE DISAGREE WITH
22 THAT.

23 FIRST OF ALL, WE DON'T KNOW WHAT ELSE
24 THEY ARE HIDING OUT THERE BECAUSE THE DESIGN
25 DOCUMENTS AND THINGS HAVE BEEN DRIBBLING OUT ARE

1 VERY, VERY SLOWLY.

2 BUT SECONDLY, FOR THE DESIGN PATENTS THEY
3 DON'T NEED TO BE FUNCTIONAL. THEY ARE CLAIMING FOR
4 SOME OF THEM THE OUTSIDE HARDWARE, THEY ARE
5 BASICALLY CLAIMING THE SHELL, THE FLAT SURFACE.

6 AND SO WHETHER THE PROTOTYPE IS
7 FUNCTIONAL OR NOT DOES NOT AFFECT ITS RELEVANCE OR
8 RESPONSIVENESS IN THIS CASE.

9 SO IN OUR MOTION WE ARE SEEKING COMPLETE
10 PRODUCTION OF INVENTOR NOTEBOOKS, CAD FILES, MCO'S
11 AND PROTOTYPES. AND THE INVENTOR NOTEBOOKS, AGAIN,
12 I APOLOGIZE FOR BRINGING IT UP YET AGAIN FOR THE
13 THIRD OR FOURTH TIME, BUT THIS IS AN IMPORTANT
14 ISSUE FOR US AND IT HAS NOT BEEN ADDRESSED AND
15 THAT'S SUBJECT TO OUR --

16 THE COURT: ARE THERE PARTICULAR CAD
17 FILES OR SKETCHBOOKS THAT HAVE NOT BEEN PRODUCED?

18 MS. MAROULIS: YOUR HONOR, THE
19 SKETCHBOOKS, APPARENTLY THEY ARE DRAWING A LINE AT
20 2003. AND WE DON'T BELIEVE IT'S THE CORRECT LINE
21 BECAUSE THEY RECENTLY FINALLY GAVE US THE
22 CONCEPTION REDUCTION TO PRACTICE DATE FOR THE
23 TABLET AND IT'S SEPTEMBER 2003. SO WE BELIEVE IT
24 SHOULD BE BELOW OR BEFORE THAT, AND 2003 IS AN
25 ARBITRARY CUTOFF. AND THEY SHOULD SEARCH FOR

1 RELEVANCE NOT AN ARBITRARY CUTOFF IN TERMS OF THE
2 TIME.

3 ALSO IN TERMS OF THE INVENTOR NOTEBOOKS,
4 IT'S NOT SOMETHING THE OTHER SIDE ADDRESSED IN THE
5 PAPERS BUT WE RAISED IN OUR PAPERS THE NOTEBOOKS
6 WERE REDACTED VERY HEAVILY BY COUNSEL.

7 AND APPARENTLY WHAT ONE UNDERSTOOD TO
8 COME OUT OF THIS PROCESS WAS THE INVENTORS
9 THEMSELVES WERE NOT INVOLVED, OR THE COUNSEL MADE,
10 BASICALLY FROM OUR PERSPECTIVE, MADE ARBITRARY
11 DECISIONS TO WHAT IS RELEVANT AND WHAT IS NOT,
12 BECAUSE SOME OF THE SKETCHBOOKS IF YOUR HONOR HAS
13 SEEN THEM, ARE VERY DIFFICULT TO DECIPHER AS TO
14 WHAT DATE THEY ARE AND WHAT ACTUAL PRODUCT IT IS.
15 AND IT WOULD BE DIFFICULT TO DETERMINE WITHOUT
16 SIGNIFICANT CONSULTATION.

17 IT'S MY UNDERSTANDING THAT IN THE MEET
18 AND CONFER COUNSEL FOR APPLE BASICALLY REVEALED FOR
19 THE FIRST TIME THAT THEY WERE THE ONES WHO WERE
20 DOING THE REDACTIONS.

21 WITH RESPECT TO THE SURVEY DOCUMENTS,
22 AGAIN, THEY HAVE NOT PRODUCED MOST OF THE SURVEY
23 DOCUMENTS. WE HAVE SOME SURVEYS BUT VERY FEW OF
24 THEM, AND THEY HAVE OFFERED BUT HAVE NOT REPUTED ON
25 THIS YET, TO PRODUCE ONLY --

1 THE COURT: COUNSEL, I'M SORRY -- I DON'T
2 MEAN TO INTERRUPT BUT I WILL BECAUSE I WANT TO MAKE
3 SURE I UNDERSTAND YOUR PREVIOUS POINT COMPLETELY.

4 ON THE MECHANICAL OUTLINES, MY EXPOSURE
5 TO MECHANICAL DESIGN IS PRETTY LIMITED BUT I HAD
6 ALWAYS UNDERSTOOD THESE THINGS TO BASICALLY REVEAL
7 HOW THE INTERNAL OPERATIONS OF COMPONENTS ARE LAID
8 OUT, THAT THEY WEREN'T TERRIBLY RELEVANT OR
9 ILLUMINATING AS TO EXTERIOR DESIGN.

10 AM I MISUNDERSTANDING AS TO WHAT THESE
11 THINGS ARE?

12 MS. MAROULIS: YOUR HONOR, I AM NEW TO
13 THIS AS WELL, BUT THE MECHANICAL OUTLINES WE HAVE
14 SEEN BASICALLY SHOW KIND OF SLICED PRODUCTS. AND
15 IT'S TAKEN APART, SO YOU SEE THE CROSS SECTION OF
16 WHAT'S INSIDE AND WHAT'S OUTSIDE AND HOW THE INSIDE
17 AND OUTSIDE FUNCTION.

18 WHEN WE MAKE SOME OF OUR FUNCTIONALITY
19 ARGUMENTS, FOR EXAMPLE, WE SAY THAT THE SCREEN IS
20 BLOCKED TO PRIVATE COMPONENTS, OR THE SCREEN IS
21 LOCATED IN SUCH A WAY TO EFFECTIVELY MAXIMIZE THE
22 SCREEN.

23 SO THESE DOCUMENTS -- THESE ARGUMENTS ARE
24 VERY MUCH INTERWOVEN FOR US WITH HOW THIS MCO DOES
25 -- I THINK THERE'S A SAMPLE MCO IN ONE OF THE

1 PARTIES' PAPERS, SO THERE'S ACTUALLY A DRAWING OF
2 THAT.

3 THE COURT: YOU ARE TURNING TO THE SURVEY
4 DOCUMENT?

5 MS. MAROULIS: YES, YOUR HONOR, I'M
6 MINDFUL OF THE LATE HOUR, SO I'M TRYING TO BE
7 CONCISE.

8 SO WITH RESPECT TO SURVEYS IT'S OUR
9 UNDERSTANDING THAT THEY ARE OFFERING TO PRODUCE NOW
10 WHICH THEY HAVEN'T YET DONE, FINAL SURVEYS THAT
11 APPLE HAVE RUN AND SURVEYS THAT THEY RECEIVE OR BUY
12 IN THE ORDINARY COURSE OF BUSINESS.

13 THAT IS FAR FROM THE VERY BROAD SURVEY
14 REQUESTS AND REQUIREMENTS THAT WERE IMPOSED TO
15 SAMSUNG BOTH BY APPLE AND BY THIS COURT.

16 WE BELIEVE THAT ALL SURVEYS SHOULD BE
17 PRODUCED TO US WHETHER THEY ARE GENERATED BY APPLE
18 OR ARE IN APPLE'S POSSESSION BUT GENERATED BY
19 SOMEBODY ELSE.

20 THE COURT: SO -- I'M SORRY, SO WHAT
21 EXACTLY BEYOND WHAT THEY COMMITTED TO PRODUCING DO
22 YOU REQUIRE?

23 MS. MAROULIS: WE REQUIRE ALL SURVEYS IN
24 THEIR POSSESSION.

25 SO IF THEY RECEIVE A SURVEY FROM ANOTHER

1 COMPANY, IF THEY ACCESS IT THROUGH COMPETITIVE
2 INTELLIGENCE, WHATEVER THEY HAVE, I WANT ALL THEIR
3 SURVEYS. EVEN IF THOUGH THEY OFFERED TO PRODUCE
4 SOME OF THE SURVEYS, THEY HAVEN'T DONE SO YET.

5 AND AS WE DISCUSSED EARLIER, YOUR HONOR
6 WAS ASKING CLEAR QUESTIONS. AND JUST TO BE CLEAR,
7 THEY HAVE NOT PRODUCED IT. THIS IS STILL AN OFFER,
8 AND THEY GAVE THEMSELVES A FAIRLY LUXURIOUS
9 SCHEDULE. I THINK THE OFFER WAS MADE A FEW DAYS
10 AGO AND THEY HAVE UNTIL EARLY FEBRUARY TO DO THAT.

11 WITH RESPECT TO FINANCIAL DOCUMENTS, WE
12 ARE STILL LOOKING FOR, DESPITE SOME OFFERS IN THE
13 IN BETWEEN, FOR PROJECTIONS, BUSINESS PLANS AND
14 KIND OF A MORE BIG PICTURE FINANCIAL DOCUMENTS.

15 I UNDERSTAND WE ARE GOING TO BE GETTING
16 SALES DATA BROKEN OUT BY PRODUCTS. IF THAT'S
17 INCORRECT, WE CERTAINLY NEED THAT, BUT IT'S MY
18 UNDERSTANDING THEY WON'T BE GETTING US THE SALES
19 DATA. BUT WE HAVE NO INFORMATION OR COMMITMENT TO
20 PRODUCE ON EITHER PROFIT MARGINS, COST ALLOCATION
21 AND PROJECTIONS AND BUSINESS PLANS.

22 THE COURT: SO WHEN YOU RAISED THAT ISSUE
23 IN THE MEET AND CONFER WHAT DID THEY TELL YOU?

24 MS. MAROULIS: THEY TOLD US THEY WOULD
25 PROVIDE SALES DATA AND BILLS AND MATERIALS.

1 THE COURT: DID THEY EXPLAIN WHY BUSINESS
2 PLANS, FOR EXAMPLE, WOULD NOT BE PRODUCED OR
3 PROJECTIONS?

4 MS. MAROULIS: THEY DIDN'T BELIEVE THAT
5 WAS CALLED FOR.

6 WE DISAGREE. RFP 55, I BELIEVE THAT VERY
7 SQUARELY ADDRESSES THAT.

8 THE COURT: ALL RIGHT.

9 MS. MAROULIS: BUT FINANCIAL DOCUMENTS IS
10 CERTAINLY ANOTHER AREA WHERE IT SHOULD BE FAIRLY
11 RECIPROCAL.

12 WE WILL SKIP THE 30(B)(6) ARGUMENTS
13 BECAUSE WE TALKED LONG ABOUT THEM EXTENSIVELY.

14 IN ADDITION, WE ASKED FOR ADDITIONAL TIME
15 OF DEPOSITION WITH DESIGN WITNESSES, BUT MORE
16 SPECIFICALLY MR. JONATHAN IVE. WE DEPOSED MR. IVE
17 ON DECEMBER 1ST. IT WAS A LITTLE BIT LATER THAN
18 MOST OF THE INVENTORS FOR REASONS OF HIS PERSONAL
19 SCHEDULE COMMITMENTS.

20 WE WERE NOT ABLE TO EXHAUST A NUMBER OF
21 THINGS WITH MR. IVE, NOT THE LEAST OF WHICH WAS
22 INFORMATION WE RECEIVED IN JANUARY INCLUDING
23 VARIOUS PROTOTYPES.

24 THE COURT: HOW MANY HOURS DID YOU SPEND
25 WITH HIM?

1 MS. MAROULIS: SEVEN HOURS.

2 THE COURT: SO THE BASIS FOR YOUR REQUEST
3 FOR MORE TIME ISN'T THAT YOU HAVEN'T YET EXHAUSTED
4 THE DEFAULT UNDER THE RULES BUT RATHER THAT
5 ADDITIONAL DOCUMENTS AND OTHER INFORMATION HAS BEEN
6 PRODUCED AFTERWARDS.

7 MS. MAROULIS: THERE'S BEEN A LOT OF
8 INFORMATION PRODUCED SINCE THEN AND WE NEED TIME
9 WITH HIM.

10 AND THE REASON IT IS HIM AND NOT OTHERS
11 IS THAT WHEN WE ARE DEPOSING VARIOUS DESIGN
12 INVENTORS, MANY OF THEM PLED IGNORANCE TO THINGS
13 THAT WE THINK THEY SHOULD HAVE KNOWN.

14 THE COURT: DID ANY OF THEM POINT TO
15 SPECIFICALLY MR. IVE.

16 MS. MAROULIS: YES, YOUR HONOR.

17 I DON'T HAVE TRANSCRIPTS, BUT IF
18 YOUR HONOR WOULD NEED IT -- IT'S NOT SURPRISING
19 BECAUSE HE'S THE HEAD OF DESIGN.

20 SO APPLE ARGUES THAT HE'S SUBJECT TO
21 WHAT'S CALLED THE APEX RULES. WE BELIEVE THAT THIS
22 IS NOT AN APEX DEPONENT EVEN THOUGH HE HAS A HIGH
23 RANK WITHIN APPLE. HE HAS UNIQUE KNOWLEDGE, AND SO
24 FOR THAT REASON, EVEN THOUGH HE'S A VERY HIGHLY
25 RANKED INDIVIDUAL, THAT DOESN'T ABSOLVE HIM FROM

1 SITTING FOR DEPOSITION.

2 AND FINALLY, WE ALREADY COVERED THE TOPIC
3 OF THE SOURCE CODE, BUT IF YOUR HONOR WOULD INDULGE
4 ME A LITTLE BIT MORE.

5 IN THE LETTER FROM MS. HUTNYAN WHICH IS
6 EXHIBIT E TO HER DECLARATION, WE EXHAUSTED THE LIST
7 SPECIFIC SOURCE CODE THAT WE WANT ORDERED.

8 I ALREADY DISCUSSED THE BASEBAND PROCESS,
9 BUT TO THE EXTENT YOUR HONOR TAILORS THE ORDER,
10 CALLS OUT SPECIFICALLY WHICH SOURCE CODES THAT
11 NEEDS TO BE, THAT LETTER CONTAINS AN EXHAUSTIVE
12 LIST OF THE SOURCE CODE.

13 THE COURT: ALL RIGHT.

14 THANK YOU VERY MUCH, MS. MAROULIS.

15 I NEED TO GIVE MY COURT REPORTER A BREAK,
16 SO LET'S TAKE TEN MINUTES.

17 WE WILL RESUME IN TEN MINUTES.

18 (WHEREUPON A RECESS WAS TAKEN.)

19 THE COURT: PLEASE BE SEATED.

20 MS. MAROULIS: YOUR HONOR, I NEGLECTED TO
21 MAKE A COUPLE OF POINTS THAT I CAN EITHER MAKE NOW
22 OR DURING REBUTTAL, WHICH I THINK IS UP TO THE
23 COURT.

24 THE COURT: WELL, I BELIEVE WE HAVEN'T
25 TECHNICALLY PASSED THE GAVEL OR BATON OR WHATEVER

1 THE METAPHOR IS.

2 MS. MAROULIS: THANK YOU, YOUR HONOR.

3 ONE OF THE ITEMS WE WERE DISCUSSING
4 BEFORE THE BREAK WAS SURVEYS, AND YOU ASKED WHAT
5 SPECIFICALLY APPLE OFFERED VERSUS WHAT WE STILL
6 WANT.

7 AND I CHARACTERIZE PARTLY WHAT THEY
8 OFFERED BUT THERE WAS ANOTHER LIMITATION THAT THEY
9 PLACED ON THEIR OFFERING WHICH IS I BELIEVE THAT
10 THEY SAID THEY WILL SEARCH FOR SURVEYS REGARDING
11 THEIR OWN PRODUCTS, APPLE IPHONES, IPADS AND SUCH.

12 WE WOULD LIKE THEM TO SEARCH FOR ALL
13 SURVEYS REFERENCING SAMSUNG OR SAMSUNG PRODUCTS
14 BECAUSE THAT IS WHAT WAS RECIPROCAL OF US AS WELL.
15 AND WE HAD TO CONDUCT A NUMBER OF SEARCHES AND
16 PRODUCE ALL THESE DOCUMENTS.

17 THE SECOND POINT IS, THIS IS WITH RESPECT
18 TO THE SURVEYS, SO THE SECOND POINT IS THAT WITH
19 RESPECT TO FINANCIALS, WE BELIEVE THAT THEIR OFFER
20 IS TO PRODUCE REVENUES FOR PRODUCT.

21 AND WE WANT TO MAKE SURE IT'S ACTUALLY
22 PER MODEL, MEANING WE ARE NOT GETTING AN ABROGATE
23 IPAD OR IPHONE BUCKET, BUT IT'S SEGREGATED BY
24 IPHONE 4 OR 3, HOWEVER THE ACCUSED PRODUCTS ARE.

25 THE COURT: HAVE THEY EXPLAINED TO YOU

1 WHETHER THEY EVEN TRACKED THAT LEVEL OF
2 GRANULARITY?

3 MS. MAROULIS: WE DON'T KNOW YET BECAUSE
4 WE HAVEN'T DEPOSED THEIR FINANCIAL WITNESSES.

5 THE COURT: IN THE MEET AND CONFER
6 PROCESS, WHEN YOU EXPLAINED TO THEM, WE NEED TO
7 HAVE A PRODUCT LEVEL. I'M SORRY, IT'S A PRODUCT OR
8 RELEASE LEVEL, WHAT DID THEY TELL YOU?

9 MS. MAROULIS: I DON'T KNOW ABOUT THE
10 DETAILS FOR THAT ONE BUT THE CORRESPONDENCE SAYS
11 THAT IT WOULD BE BY PRODUCT.

12 SO PERHAPS MR. JACOBS WOULD ELUCIDATE ON
13 THAT. IF IT'S BY MODEL, THEN WE DON'T HAVE A
14 DISPUTE TO THAT.

15 AND FINALLY, YOUR HONOR, WE ASKED AT THE
16 BREAK WHERE WE CAN FIND THE AGREEMENT AS TO
17 RECIPROCAL SEARCHING OF THE TERMS "SAMSUNG" AND
18 SUCH. AND IT IS EXHIBIT V TO THE HUTNYAN
19 DECLARATION, AND I WILL READ THIS INTO THE RECORD.

20 THIS IS WHAT APPLE'S COUNSEL STATED:

21 "AS DISCUSSED DURING THE CALL AND IN
22 RECENT CORRESPONDENCE, APPLE IS RECIPROCATING.
23 APPLE AGREES TO SEARCH FOR SAMSUNG OR ANY SAMSUNG
24 PRODUCT AT ISSUE IN THIS CASE OR ANY ALIAS
25 THEREFORE. AND WITH RESPECT TO DOCUMENTS IN THE

1 FILES OF ITS DESIGNERS AND ENGINEERS WHO WORKED ON
2 THE RELEVANT PRODUCTS, EMPLOYEES RESPONSIBLE FOR
3 MARKETING THESE PRODUCTS AND EMPLOYEES RESPONSIBLE
4 FOR DEVELOPING THE FEATURES AT ISSUE."

5 SO THEY WENT BACK ON THAT WORD AND NOW
6 ARE SEARCHING MUCH MORE NARROWER.

7 THE COURT: IS IT FAIR TO SAY,
8 MS. MAROULIS, THAT YOUR REQUEST OF THIS COURT IS
9 COEXTENSIVE IN THE SCOPE OF WHAT'S IDENTIFIED IN
10 THAT LETTER?

11 IN OTHER WORDS, YOU ARE NOT LOOKING FOR
12 SOMETHING MORE THAN THAT COMMITMENT, YOU'RE SIMPLY
13 LOOKING FOR THE COMMITMENT ALONE?

14 MS. MAROULIS: WE ARE LOOKING FOR THE
15 SAME COMMITMENT WE WERE HELD TO.

16 THE COURT: WHICH IS WHAT THAT LETTER
17 SAYS?

18 IN OTHER WORDS, I JUST WANT TO UNDERSTAND
19 YOUR REQUEST. IS YOUR REQUEST WHAT THEY AGREED TO
20 DO?

21 MS. MAROULIS: YES, YOUR HONOR.

22 WITH RESPECT TO THE TERM "SAMSUNG," YES.
23 WE ARE ALSO SEEKING "ANDROID" AND "DROID" WHICH IS
24 A RELATED ISSUE AND WE SHOULD NOT HAVE TO CHOOSE
25 BETWEEN THE TWO.

1 THE COURT: ALL RIGHT.

2 MS. MAROULIS: THANK YOU, YOUR HONOR.

3 THE COURT: THANK YOU.

4 MR. JACOBS?

5 MR. JACOBS: YES.

6 I THINK TO START WITH THE SOURCE CODE
7 ISSUE, YOUR HONOR, MR. SELWYN WILL START.

8 THE COURT: ALL RIGHT.

9 MR. SELWYN.

10 MR. SELWYN: GOOD AFTERNOON, YOUR HONOR.

11 THE COURT: GOOD AFTERNOON.

12 MR. SELWYN: LET ME TRY TO GIVE YOU THE
13 FACTS AS BEST I CAN ON THE SOURCE CODE ISSUE.

14 ON DECEMBER 6TH WHICH WAS TWO BUSINESS DAYS
15 AFTER SAMSUNG'S LETTER REQUEST, APPLE TOLD SAMSUNG
16 THAT IT WAS PREPARED TO PRODUCE APPLE SOURCE CODE
17 FOR ALL THE ACCUSED FUNCTIONALITY FOR ALL THE NON
18 WIRELESS PATENTS IN THE CASE.

19 YOU RECALL THAT THERE WAS A BUCKET OF
20 PATENTS THAT'S THE DECLARED ESSENTIAL, THEN THERE'S
21 A BUCKET OF PATENTS THAT'S THE NON DECLARED
22 ESSENTIAL OR THE IMPLEMENTATION PATENTS.

23 WE TOLD SAMSUNG ON DECEMBER 6TH THAT WE
24 WERE PREPARED, THEY COULD COME AND SEE ALL THE
25 APPLE HOMEGROWN SOURCE CODE FOR THOSE FIVE PATENTS.

1 AND TO BE TRANSPARENT, APPLE SPECIFIED THE
2 CATEGORIES OF SOURCE CODE THAT IT WAS MAKING
3 AVAILABLE, THAT'S EXHIBIT A TO MR. MASELLI'S
4 DECLARATION.

5 THOSE CATEGORIES RELATE TO THE FEATURES
6 THAT ARE ACCUSED OF INFRINGING 50 SAMSUNG PATENTS,
7 THINGS LIKE THE IPOD AND MUSIC APP SOURCE CODE THAT
8 RELATES TO PLAYING MUSIC, THE CLOCK APP SOURCE CODE
9 THAT RELATES TO THE WORLD CLOCK AND TIME
10 INFORMATION.

11 AND TO BE CLEAR, WE'RE NOT TALKING ABOUT
12 A TINY AMOUNT OF SOURCE CODE HERE. WHAT APPLE MADE
13 AVAILABLE TO SAMSUNG ON DECEMBER 6TH AND WHAT HAS
14 REMAINED AVAILABLE TO SAMSUNG SINCE DECEMBER 6TH IS
15 A STAGGERING AMOUNT OF CODE, IT'S MORE THAN 75,000
16 FILES, IT'S MORE THAN TWO GIGABYTES. IF YOU WERE
17 TO ACTUALLY PRINT ALL OF THIS CODE IT WOULD BE
18 SOMEWHERE BETWEEN 350 TO 500,000 PAGES.

19 THE FIRST TIME THAT SAMSUNG'S EXPERT
20 LOOKED AT THIS CODE WAS JANUARY 6TH, THE DAY AFTER
21 THE MEET AND CONFER THAT PRECEDED THIS MOTION. SO
22 ONE MONTH AFTER IT WAS OFFERED.

23 SAMSUNG'S EXPERT HAS NOT LOOKED AT THAT
24 CODE ONCE SINCE. SO TO DATE, SAMSUNG'S EXPERT HAS
25 LOOKED AT THE 5,000 FILES ONCE FOR THE GRAND TOTAL

1 OF 90 MINUTES.

2 AND TO DATE SAMSUNG HAS NOT, IN ANY
3 BRIEF, IN ANY CORRESPONDENCE ANYWHERE TO OUR
4 KNOWLEDGE, IDENTIFIED ANY SHORTCOMING, ANY OMISSION
5 IN THE CODE THAT APPLE MADE AVAILABLE FOR THE
6 ACCUSED FUNCTIONALITY OF THE BUCKET OF PATENTS THAT
7 RELATES TO THE NON WIRELESS FEATURES.

8 SO THAT'S ONE BUCKET.

9 TURNING TO THE BASEBAND CODE AT ISSUE,
10 WE'VE NEVER HAD ANY OBJECTION TO PRODUCING THE
11 INTEL BASEBAND CODE RELEVANT TO THE ACCUSED
12 FUNCTIONALITY.

13 WE SAY THAT EXPLICITLY IN OUR PATENT
14 LOCAL RULE 34(A) DISCLOSURE. BUT THIS IS NOT APPLE
15 SOURCE CODE, IT'S INTEL SOURCE CODE. AFTER INTEL
16 PROVIDES APPLE THE SOURCE CODE, APPLE DOESN'T MAKE
17 ANY CHANGES TO IT. INTEL SOURCE CODE.

18 APPLE SOUGHT INTEL'S CONSENT TO PRODUCE
19 THE RELEVANT SOURCE CODE. AND IN RESPONSE, INTEL
20 INDICATED THAT IT WOULD NOT CONSENT TO APPLE'S
21 PRODUCTION OF THE INTEL SOURCE CODE IN APPLE'S
22 POSSESSION.

23 BUT WHAT INTEL DID INDICATE WAS THAT
24 SAMSUNG HAD SUBPOENAED THE SAME CODE FROM INTEL AND
25 IN FACT HAD SUBPOENAED MUCH MORE CODE THAN APPLE

1 POSSESSES. BECAUSE APPLE DOES NOT POSSESS THE SO
2 CALLED HDL CODE, THE HARDWARE DESCRIPTION LANGUAGE
3 CODE, WHICH IS PROBABLY MORE RELEVANT THAN THE CODE
4 THAT APPLE ACTUALLY HAS.

5 THE COURT: I MAY BE RUNNING A LITTLE FAR
6 AFIELD HERE, BUT I TAKE IT THAT CODE IS DELIVERED
7 TO APPLE BUT NOT IN SOURCE FORM; IS THAT FAIR?
8 IT'S IN OBJECT FORM?

9 MR. SELWYN: RIGHT. IT'S BAKED IN SO
10 APPLE DOESN'T HAVE THAT.

11 SO INTEL INDICATED THAT IT WAS
12 NEGOTIATING WITH SAMSUNG OVER THE SUBPOENA. IT
13 INDICATED IT WANTED TO PRODUCE THIS VERY SENSITIVE
14 INFORMATION IN A CONSOLIDATED FASHION AFTER ITS
15 PROTECTIVE ORDER CONCERNS WERE SATISFIED.

16 THAT SEEMED TO US TO BE AN ORDERLY,
17 SENSIBLE WAY TO PROCEED.

18 THE COURT: WHEN DID THAT DIALOG WITH
19 INTEL TAKE PLACE?

20 MR. SELWYN: IT BEGAN IN DECEMBER.

21 AND INTEL'S OUTSIDE COUNSEL
22 MR. CHRIS KELLY IS ACTUALLY SITTING HERE IN THE
23 FIRST ROW.

24 THE COURT: I SAW MR. KELLY.

25 MR. SELWYN: AND MR. KELLY IS PREPARED TO

1 ANSWER ANY QUESTIONS THAT YOUR HONOR MIGHT HAVE
2 REGARDING INTEL'S POSITION ON THIS.

3 BUT AGAIN, WE HAVE NO OBJECTION TO
4 PRODUCING THE RELEVANT SOURCE CODE. AT THE SAME
5 TIME WE ARE SENSITIVE TO THE CONCERNS THAT IT IS
6 INTEL'S SOURCE CODE. WE ARE SENSITIVE TO THE
7 CONCERNS AND NEED TO PRODUCE IT IN AN EFFICIENT
8 MANNER.

9 AND THE FACT IS THAT OUR SOURCE CODE IS
10 JUST A SUBSET OF THE SOURCE CODE THAT SAMSUNG
11 WANTS.

12 THE COURT: SO JUST SO I UNDERSTAND
13 APPLE'S POSITION, MR. SELWYN, IF THE COURT WERE TO
14 ORDER APPLE TO PRODUCE THE INTEL SUPPLIED CODE,
15 APPLE WOULD HAVE NO OBJECTION?

16 MR. SELWYN: WELL, YOUR HONOR, WE WOULD
17 FOLLOW ANY ORDER THE COURT WOULD ISSUE.

18 THE COURT: WOULD YOU AGREE ALSO THAT MY
19 ORDER WOULD RELIEVE APPLE OF ANY OTHER CONTRACTURAL
20 RESTRICTIONS THAT MIGHT OTHERWISE APPLY TO ITS
21 PRODUCTION?

22 MR. SELWYN: MY UNDERSTANDING IS THAT
23 APPLE WOULD BE REQUIRED TO FOLLOW ANY ORDER THAT
24 YOUR HONOR ISSUES.

25 I WILL SAY ON THE QUESTION THAT YOU POSED

1 TO SAMSUNG WHETHER ALL THAT SOURCE CODE IS
2 RELEVANT, I DON'T THINK IT IS.

3 YOU WILL RECALL THE PRESENTATION SAYING
4 THERE WERE THREE SPECIFICATIONS WITHIN THE STANDARD
5 THAT THE PATENTS RELATE TO. THE SOURCE CODE THAT
6 WE ARE TALKING ABOUT RELATES TO THE FUNCTIONALITY
7 ON THE BASEBAND CHIP MUCH MORE BROADLY THAN THAT.
8 SO I WOULDN'T AGREE THAT ALL OF THAT SOURCE CODE IS
9 RELEVANT.

10 I DON'T DISAGREE, HOWEVER, THAT SOME OF
11 THE SOURCE CODE THAT IS IN APPLE'S POSSESSION, SOME
12 OF THE INTEL SOURCE CODE IS RELEVANT. IT'S LIKELY
13 A SMALL SUBSET OF THE TOTAL AMOUNT OF RELEVANT
14 SOURCE CODE BECAUSE APPLE DOESN'T POSSESS THE HDL
15 CODE.

16 THE LAST POINT I WOULD MAKE, AND THIS IS
17 REALLY TO ADDRESS ONE OF THE SCHEMATIC POINTS
18 SAMSUNG TRIES TO MAKE IN ITS PAPERS WITHOUT THE
19 OVERALL PRODUCTION ON THE DEFENSIVE SIDE, APPLE HAS
20 TO DATE PRODUCED IN THE U.S. CASES -- AND NOW THIS
21 WOULD BE THE DOCUMENTS THAT ARE SUBJECT TO CROSS
22 USE, WHETHER THEY ARE PRODUCED. IN THIS CASE, THE
23 ITC CASE, SUBJECT TO CROSS USE.

24 THE STATS NOW ARE THAT APPLE HAS PRODUCED
25 ON THE DEFENSIVE SIDE ALONE ABOUT 17 MILLION PAGES.

1 WE ESTIMATE THAT 13.9 MILLION PAGES OF THAT ARE
2 TECHNICAL DOCUMENTS. AND THESE ARE FROM DOZENS OF
3 CUSTODIANS.

4 SO IT HAS BEEN A VERY SIGNIFICANT
5 PRODUCTION. WE BELIEVE THE SOURCE CODE THAT HAS
6 BEEN MADE AVAILABLE WITH RESPECT TO THE
7 IMPLEMENTATION PATENTS IS COMPREHENSIVE.

8 WE HAVEN'T HEARD ANY SPECIFIC COMPLAINT
9 ABOUT THAT AND THAT'S NOT A SURPRISE BECAUSE IT'S
10 ONLY BEEN LOOKED AT FOR 90 MINUTES.

11 WHAT WE ENDEAVOR TO DO IS MAKE A
12 COMPREHENSIVE PRODUCTION OF THAT SOURCE CODE TIMELY
13 TO SAMSUNG.

14 THE COURT: THANK YOU.

15 MR. JACOBS: TO FINISH WITH THAT LAST
16 POINT, YOUR HONOR, ONE OF THE THINGS WE CHECKED AT
17 THE BREAK WAS THE STATUS OF THE PILE OF PAPER THAT
18 SAMSUNG'S COUNSEL SHOWED YOU AND IMPLIED THAT APPLE
19 WAS INCLUDING THAT IN ITS COUNTER PRODUCTION.

20 THAT PILE OF PAPER WAS IMMEDIATELY CLAWED
21 BACK WHEN IT WAS SENT TO SAMSUNG BECAUSE WE
22 REALIZED IT HAD BEEN PRODUCED IN A FORMAT THAT MADE
23 IT TAKE A LOT OF PAGES AND WASN'T REASONABLE, AND
24 IT'S NOT INCLUDED IN ANY OF OUR COUNTS.

25 SO ONE OF THE CHALLENGES WE HAVE IN

1 TRYING TO KEEP OURSELVES ON THE ISSUE HERE IS THAT
2 THERE ARE ALLEGATIONS RAISED FROM TIME TO TIME
3 ABOUT APPLE'S CONDUCT AND SAMSUNG'S PRESENTATION ON
4 THIS MOTION, FOR EXAMPLE WE HEARD A LOT OF, FOR THE
5 FIRST TIME THIS, FOR THE FIRST TIME THAT.

6 SO WITH RESPECT TO MODELS, FOR EXAMPLE,
7 THE COURT WAS TOLD FOR THE FIRST TIME WE FOUND OUT
8 APPLE HAS A THOUSAND MODELS. MR. STRINGER'S
9 DEPOSITION WAS TAKEN IN THE SUMMER. HE DISCUSSED
10 THE PROCESS OF CREATING CAD AND BUILDING MODELS
11 FROM CAD.

12 IN CONNECTION WITH THE '035 ISSUE,
13 SAMSUNG SAW THE CATALOG OF MODELS THAT WE PRODUCED
14 TO EXPLAIN TO THEM HOW WE FOUND THAT PARTICULAR
15 MODEL.

16 AND THERE WAS A LOT OF DISCUSSION ABOUT
17 THE MODELS THAT EXIST IN THE MODEL SHOP. AND NOW
18 WE'VE PRODUCED, THE DETAILS WERE GIVEN TO YOU IN
19 OUR PAPERS COVERED UP UNDER CLOAKS AND TAKEN TO A
20 HOTEL ROOM, A THOUSAND MODELS.

21 AND WE HEARD -- FOR THE FIRST TIME WE
22 HEARD ABOUT A THOUSAND MODELS. SO IT'S NOT A
23 RELIABLE ASSERTION.

24 SO WHEN SAMSUNG ASSERTS TO YOU THEY NEED
25 MORE TIME WITH JOHN IVE OF INDUSTRIAL DESIGN, WHO

1 IS ONE OF A HANDFUL OF THE MOST IMPORTANT PEOPLE IN
2 THE COMPANY IN THE WAKE OF THE CEO'S DEATH, AND
3 SAY, THAT'S NOT AN APEX DEFINITION, WE NEED MORE
4 TIME FOR AN UNSPECIFIED REASON.

5 WE WOULD ASK THE COURT TO BE VERY
6 DEMANDING, EXACTLY WHAT IS IT THAT YOU NEED TO
7 SPEND MORE TIME WITH MR. IVE ON? WHAT IS THE
8 DOCUMENT YOU INTEND TO ASK HIM ABOUT? WILL IT TAKE
9 MORE THAN HALF AN HOUR TO ASK HIM ABOUT THAT
10 DOCUMENT? COULD YOU BUILD IT INTO THE ITC
11 DEPOSITION THAT WE PROPOSED FOR FEBRUARY 8TH OF
12 MR. IVE?

13 BUT TO GIVE SAMSUNG, OH, WE FOUND MORE
14 DOCUMENTS --

15 THE COURT: IF I MIGHT STOP YOU THERE, I
16 APOLOGIZE.

17 SO MR. IVE IS GOING TO BE DEPOSED BY
18 SAMSUNG IN THE ITC PROCEEDING?

19 MR. JACOBS: EXACTLY.

20 THE COURT: AND ARE THE DEPOSITION
21 TRANSCRIPTS IN THOSE CASES ALSO PART OF THE USER
22 AGREEMENT WE WERE TALKING ABOUT THIS MORNING?

23 MS. MAROULIS: NO, YOUR HONOR, THEY ARE
24 NOT.

25 MR. JACOBS: YOU SEE WHERE I'M GOING.

1 THE COURT: I THINK I DO.

2 WOULD APPLE HAVE ANY OBJECTION TO
3 STIPULATING THAT THE IVE DEPOSITION IN THE ITC
4 ACTION COULD BE USED IN THIS CASE FOR ALL INTENTS
5 AND PURPOSES?

6 IN OTHER WORDS, COULD WE CREATE A SPECIAL
7 RULE FOR MR. IVE TO MINIMIZE AND MITIGATE THE
8 BURDEN ON HIM WITH YET ANOTHER DEPOSITION?

9 MR. JACOBS: LET ME CHECK AT THE NEXT
10 BREAK AND REPORT BACK IN, IF I MIGHT, YOUR HONOR.
11 I THINK SOMETHING LIKE THAT MIGHT WORK.

12 MY POINT IS IF THEY'VE GOT A SPECIFIC
13 DOCUMENT THEY NEED TO ASK MR. IVE ABOUT THEN THEY
14 SHOULD HAVE BROUGHT IT TO YOU. THEY SHOULD HAVE
15 SAID, WE WANT TO ASK ABOUT THIS LATE-PRODUCED
16 DOCUMENT AND WE WILL TACK IT ON TO THE END OF THE
17 ITC DEPOSITION THAT WE HAVE BEEN OFFERED FOR
18 FEBRUARY 8TH.

19 SO THAT'S THE KIND OF RIGOR WE THINK
20 SHOULD BE IMPOSED ON SAMSUNG PARTLY BECAUSE THE
21 KINDS OF CLAIMS THEY MAKE UPON INSPECTION TURN OUT
22 NOT TO BE VALID.

23 SO LET'S MARCH THROUGH THIS MOTION TO
24 COMPEL. I THINK A LOT OF THIS IS MOOT, HAS BEEN
25 ADDRESSED.

1 I WOULD LIKE TO START WITH SOME OF THE
2 INDUSTRIAL DESIGN ISSUES.

3 SO THIS 2002 VERSUS 2003 ISSUE, SAMSUNG
4 DOESN'T CHALLENGE THIS, WE LAID OUT IN OUR PAPERS
5 HOW WE TOLD SAMSUNG EXACTLY WHAT WE WERE GOING TO
6 DO WHEN WE LAUNCHED ON THIS EFFORT

7 AND IT'S A COMPLICATED PROCESS TO GATHER
8 AND SCAN AND PRODUCE THE SKETCHBOOKS, SO WE TRY TO
9 DO IT SYSTEMATICALLY AND WE HAD IT DONE BY THE
10 DEADLINE.

11 WE TOLD SAMSUNG TWICE, ONCE ORALLY AND
12 ONCE IN WRITING, THAT WE WERE STARTING WITH 2003
13 AND WE DREW NO OBJECTION. AND WE ARE DONE. WE
14 THINK WE SHOULD BE DONE. THE FACT THAT WE HAVE A
15 CONCEPTION DATE OF 2003, WHY DOES THAT MAKE 2002
16 RELEVANT?

17 THERE'S NOTHING -- AGAIN, NOTHING
18 SPECIFIC THEY POINTED TO. AND THAT GOES FOR A LOT
19 OF THE CATEGORIES IN SAMSUNG'S MOTION. THE MCO'S,
20 IT'S THIS VAGUE ALLEGATION THAT THE MCO'S MIGHT
21 HAVE SOMETHING THAT'S RESPONSIVE TO THIS THEORY
22 THAT IT'S FUNCTIONALITY DRIVEN, BUT NO SPECIFIC
23 SHOWING.

24 AND YOUR QUESTIONS WERE VERY WELL TAKEN,
25 THAT THE MCO'S DEAL WITH THE INTERNAL DESIGN OF THE

1 PHONES. THE INDUSTRIAL DESIGN WE ARE TALKING
2 ABOUT, THE LEVEL WE ARE TALKING ABOUT IS THINGS
3 LIKE THE BEZEL, THE FRONT SHAPE, YOU KNOW THIS FROM
4 THE ORDER.

5 SO HOW CAN THE MCO'S BE THAT RELEVANT AS
6 WHEN MEASURED AGAINST THE BURDEN THAT WE SHOULD
7 HAVE TO GO PRODUCE ALL OF THOSE?

8 AND I HAVE TO NOTE FROM THE VERY
9 BEGINNING THEY'VE HAD A COMPLETE CAD PRODUCTION.
10 NOW THEY'VE GOT ALL THE SKETCHBOOKS AND THE OTHER
11 DOCUMENTS FROM THE INDUSTRIAL DESIGNERS. THEY HAD
12 A VERY THOROUGH UNDERSTANDING OF HOW APPLE CAME TO
13 DESIGN THE PRODUCTS THAT ARE AT ISSUE IN THIS CASE.

14 ON NEXT 2 OS, WE HAVE GIVEN THEM
15 EVERYTHING WE CAN REASONABLY DO THAT'S RELEVANT
16 TO -- NEXT AS PRIOR ART.

17 THERE IS A VAGUE REQUEST FOR ALL
18 DOCUMENTS AND SOURCE CODE RELATING. WE HAVE GIVEN
19 THEM WHAT WE CAN KIND FROM NEXT THAT IS RESPONSIVE
20 TO THEIR REQUEST. THEY HAVE IT.

21 WE DON'T KNOW OF ANYTHING ELSE IN THE
22 PRIOR ART CATEGORY THAT WE HAVE NOT PRODUCED TO
23 THEM. THEY HAVE NOT POINTED TO IT. WE HAVE NOT
24 INTENTIONALLY WITHHELD ANY PRIOR ART. WE HAVE
25 PRODUCED DOCUMENTS FROM OTHER LITIGATION.

1 SO IN THE ABSENCE OF SOME GREATER
2 SPECIFICITY, WE THINK THAT ONE IS DISTRESSED.

3 SIMILARLY, THAT IS SIMILARLY THE CASE
4 WITH TIGER. I'M NOT SURE WHERE THEY ARE ON TIGER
5 NOW. WE PRODUCED TIGER, MAC OS 10.4 TO THEM WITH
6 THE SCREEN SHOTS SHOWING THE DOC ICONS. I THINK
7 THAT ONE IS DEALT WITH, BUT AGAIN THEY ARE ASKING
8 FOR ALL DOCUMENTS RELATING TO IT. I DON'T KNOW
9 WHAT THEY REALLY NEED TO ADDRESS TIGER AS PRIOR
10 ART.

11 ON SURVEY DOCUMENTS, I DON'T THINK THERE
12 ARE ANY SAMSUNG SURVEYS BY APPLE, BUT WE ARE HAPPY
13 TO LOOK FOR SAMSUNG. I DON'T THINK THAT WAS A
14 FOCUS OF THEIR MOTION OR SOMETHING THEY HAD RAISED
15 EARLIER AS A SPECIFIC TARGET. WHAT HE SAID IS, WE
16 WILL PRODUCE SURVEY REPORTS, QUESTIONNAIRES AND RAW
17 SURVEY DATA FOR CUSTOMER SURVEY DATA CONDUCTED BY
18 APPLE RELATING TO THE IPHONE, IPOD TOUCH AND THE
19 IPAD.

20 NOW I WASN'T -- MS. MAROULIS WAS NOT
21 CLEAR ON THIS POINT. SHE SAID "ALL SURVEYS." I
22 PRESUME THAT WHAT WAS MEANT WAS ALL SURVEYS, AT
23 LEAST RELATED TO THESE PRODUCT CATEGORIES, LIMITED
24 BY THESE PRODUCT CATEGORIES RATHER THAN THE
25 MACINTOSH, TELEVISION --

1 THE COURT: MAC, TV, WHATEVER.

2 MR. JACOBS: EXACTLY.

3 AND THAT'S SIMILARLY THE CASE FOR MARKET
4 RESEARCH REPORTS. SO FOR MARKET RESEARCH REPORTS
5 THAT IS -- WE HAVE NO PROBLEM PRODUCING THAT AND
6 WILL GET IT OUT FORTHWITH.

7 SAMSUNG. SO LOOK, I DON'T THINK THEY
8 BRIEFED THAT THERE WAS AN AGREEMENT ON THIS AND I
9 HAVEN'T GONE BACK TO LOOK AT THE WHOLE CHAIN OF
10 CORRESPONDENCE. YOU HAVE NOW HEARD THERE WAS THIS
11 EFFORT AT KIND OF A RECIPROCAL BASIS FOR PRODUCTION
12 THAT WAS UNDERTAKEN.

13 WE LAID OUT IN DETAIL WHAT THE PROBLEM
14 WAS WITH SAMSUNG AND DROID AS A SEARCH TERM. PART
15 OF THE PROBLEM WITH "SAMSUNG" IS IT'S A BIG
16 SUPPLIER TO APPLE. SO WHEN APPLE REFERS TO
17 SAMSUNG, IT MAY VERY WELL BE REFERRING IN THESE
18 DOCUMENTS TO SAMSUNG AS A COMPONENT SUPPLIER AND
19 THAT'S GOING TO PRODUCE A LOT OF DOCUMENTS.

20 THERE'S BEEN A LOT OF BACK AND FORTH ON
21 THIS. FROM OUR VANTAGE POINT THERE HASN'T BEEN
22 REAL ENGAGEMENT. WHEN WE GO BACK TO SAMSUNG AND
23 DETAIL -- ACTUALLY, I NEED TO DO THIS. I NEED TO
24 GO BACK FOR A SECOND.

25 WE ARE ABLE TO DO SOMETHING SAMSUNG CAN'T

1 DO. WE HAVE THE DOCUMENTS IN A COMPUTERIZED
2 DATABASE. SO WHEN SAMSUNG PROPOSES SEARCH TERMS TO
3 US, WE CAN RETURN THOSE SEARCH TERMS AGAINST THE
4 DATABASE, REPORT HOW MANY HITS THERE WILL BE AND
5 THEN ASSESS THE BURDEN BECAUSE BOTH SIDES ARE DOING
6 ATTORNEY REVIEW BEFORE PRODUCTION.

7 WE ARE SCANNING FOR PRIVILEGE, WE ARE
8 SCANNING FOR UNANNOUNCED PRODUCTS. IN THAT AREA
9 THERE'S A CERTAIN SYMMETRY BETWEEN THE PARTIES,
10 BOTH SIDES ARE DOING ATTORNEY REVIEW BEFORE
11 PRODUCTION.

12 THE PROBLEM IS THAT SAMSUNG DIDN'T DO
13 THAT ON THE INTAKE. THEY HAD THEIR ENGINEERS
14 PULLING DOCUMENTS ONE BY ONE AND FORWARDING THEM TO
15 THE COLLECTION CENTRAL POINT.

16 SO WE CAN REPORT BACK TO THEM, THAT'S A
17 VERY IMPORTANT ADVANTAGE THAT WE HAVE. WE CAN
18 REPORT BACK. THIS WILL HAVE 5,000 HITS. WHAT WE
19 HAVEN'T FOUND ON THE SAMSUNG SIDE IS A REAL
20 WILLINGNESS TO ENGAGE WHEN WE DO THAT.

21 SAY, WELL, WHAT IF YOU TRY IT THIS WAY?
22 WHAT IF YOU RUN THIS LIMITER? BECAUSE WE CAN DO
23 THAT AND WE CAN DO IT FAIRLY READILY. SO WE CAN
24 FIGURE OUT HOW TO ITERATE TO GET DOWN TO A
25 REASONABLE LEVEL OF PRODUCTION AND THAT'S WHAT WE

1 PROPOSED TO DO FOR THAT PART OF SAMSUNG THAT WE
2 STILL RESIST.

3 SO WE HAVE AGREED TWICE. IN THE
4 JANUARY 5TH AND THE JANUARY 7TH LETTERS, WE AGREED
5 TO PRODUCE FOR SAMSUNG FOR SOME CATEGORIES OF
6 CUSTODIANS THAT WE THOUGHT OKAY, THAT'S GOING TO BE
7 A MANAGEABLE NUMBER, AND THEN AFTER THAT WE SAID WE
8 REALLY NEED TO FIGURE OUT HOW TO LIMIT IT FURTHER.

9 AND DROID AND ANDROID JUST PRODUCED --
10 DROID IS MOTOROLA, SO I DON'T KNOW WHERE DROID
11 COMES FROM. ANDROID PRODUCED LOTS AND LOTS OF HITS
12 BECAUSE WE GOT ENGADGET AND ALL THESE OTHER
13 JOURNALS COMING INTO THE COMPANY. THAT WAS
14 ILLUSTRATED IN MR. BARTLETT'S DECLARATION. TRYING
15 TO EXPLAIN IN DETAIL WHY SOME OF THE SEARCH TERMS
16 DON'T WORK.

17 SO WE'VE COVERED A LOT OF THE TOPICS.

18 ON FINANCIAL DOCUMENTS THE GENERAL
19 PRINCIPLE IS WE HAVE A SYSTEM OF RECORD. WE CAN
20 QUERY THE SYSTEM OF RECORD AND IT CAN PRODUCE
21 REPORTS TO A PRETTY FINE LEVEL OF GRANULARITY. IF
22 THERE'S MORE GRANULARITY SAMSUNG NEEDS, WE WILL DO
23 IT. WE WILL QUERY THE SYSTEM OF RECORD AND WE WILL
24 PROVIDE IT. IF IT CAN PROVIDE IT ON A MODEL BASIS,
25 I JUST DON'T HAPPEN TO KNOW OFFHAND AS OPPOSED

1 TO --

2 THE COURT: YOU DON'T HAVE AN OBJECTION.

3 MR. JACOBS: I DON'T HAVE ANY OBJECTION,
4 EXACTLY.

5 WE ARE IN A MODE WHERE WE CAN DO WHATEVER
6 NEEDS TO BE DONE.

7 ON ALL MARKETING DOCUMENTS, WASN'T A
8 FOCUS OF SAMSUNG'S ARGUMENT BEFORE YOU -- WE HAVE
9 EITHER DONE OR WILL DO THE CATEGORIES THAT SAMSUNG
10 HAS IDENTIFIED. ONCE AGAIN, THE PROBLEM IS WHEN
11 SAMSUNG SAYS "ALL DOCUMENTS RELATING TO."

12 SO WE HAVE PRODUCED LITERALLY ONE VERSION
13 OF EVERY PRINTOUT THAT'S EVER BEEN RUN. WE HAVE
14 PRODUCED LITERALLY A COPY OF EVERY TELEVISION ADD
15 THAT'S BEEN RUN FOR THESE PRODUCTS, A COPY OF EVERY
16 OUTDOOR ADVERTISEMENT. WE WILL DO THE ADVERTISING
17 CAMPAIGN BINDERS, WE WILL DO THE MEDIA PLANS. WE
18 WILL DO CLICK COUNTS FOR THE SEARCH ENGINE. WE
19 WILL DO BULLET REPORTS AND WE HAVE ALREADY
20 DISCUSSED THE MARKET RESEARCH DATA.

21 THE COURT: WHEN WILL THAT PRODUCTION BE
22 COMPLETED?

23 MR. JACOBS: WHAT IS OUR LATEST ESTIMATE?

24 MR. BARTLETT: YOUR HONOR, I THINK ALL OF
25 THOSE DOCUMENT CATEGORIES SHOULD BE DONE BY

1 JANUARY 31ST.

2 MR. BARTLETT: SORRY, THAT WAS
3 JASON BARTLETT SPEAKING FOR APPLE.

4 THE COURT: THANK YOU, MR. BARTLETT.
5 ANYTHING FURTHER, MR. JACOBS?

6 MR. JACOBS: I THINK -- YOUR HONOR, I
7 THINK I COVERED THE IMPORTANT POINTS. I NEED TO
8 RETURN TO THE JOHN IVE ISSUE BECAUSE THE MAN IS
9 CRITICAL TO THE COMPANY AS IT MOVES ON TO THE NEXT
10 PAGE OF ITS LEADERSHIP AND ANY BURDEN THAT WOULD BE
11 IMPOSED ON HIM WITHOUT A REALLY, REALLY GOOD
12 SHOWING WOULD BE UNDUE.

13 THE COURT: ALL RIGHT. THANK YOU.

14 MS. MAROULIS, REBUTTAL?

15 MS. MAROULIS: YES, YOUR HONOR.

16 I WILL TRY TO ADDRESS EACH ISSUE RAISED
17 BRIEFLY AND WE CAN THEN MOVE ON.

18 SO WITH RESPECT TO SOURCE CODE I
19 UNDERSTOOD APPLE'S COUNSEL TO CONCEDE THAT THEY
20 HAVE NOT PRODUCED ANY SOURCE CODE WITH RESPECT TO
21 THE STANDARDS PATENTS.

22 WE HAVE TWO BUCKETS OF PATENTS, THE
23 FEATURE PATENTS AND THE STANDARDS PATENTS. AND
24 IT'S MY UNDERSTANDING FROM BOTH OUR DISCUSSIONS AND
25 FROM THEIR ARGUMENT TODAY THAT THEY ARE NOT

1 PRODUCING IT EVEN THOUGH THEY HAVE IT.

2 THAT IS NOT APPROPRIATE. IF THEY HAVE
3 SOURCE CODE THEY NEED TO SECURE APPROPRIATE
4 PERMISSION AND THEY NEED TO PRODUCE IT.

5 AND TO THE EXTENT THE SOURCE CODE DIFFERS
6 FROM WHATEVER SOURCE CODE THEY RECEIVED FROM INTEL
7 OR QUALCOMM OR OTHER SUPPLIERS, THEY NEED TO SHARE
8 WITH US THE SOURCE CODE THAT IMPLEMENTS APPLE'S
9 PRODUCTS.

10 WITH RESPECT TO PRIOR ART, I ONLY
11 IDENTIFY THE TWO. THE PROBLEM WE HAVE WHICH IS WE
12 KEEP FINDING OUT APPLE HAS THIS OTHER PRIOR ART AND
13 THEN WE ASKED THEM FOR THE DOCUMENTS AT THAT POINT.
14 SO TO AVOID THAT WE WOULD LIKE THEM TO SAY IF THEY
15 HAVE EXHAUSTED THEIR PRIOR ART AND THEY HAVE
16 PRODUCED THE PRIOR ART WE WILL ASK THEM TO CERTIFY
17 IN WRITING THAT THEY HAVE DONE SO.

18 MOVING ON TO OTHER TOPICS. WE
19 DISCUSSED -- MR. JACOBS DISCUSSED AT GREAT LENGTH
20 THE SKETCHBOOK ISSUE. YOUR HONOR'S ORDER OF
21 DECEMBER 22ND WAS NOT TIME LIMITED. THERE IS NO
22 TIME CUTOFF BY WHICH THEY CAN REFUSE TO SEARCH FOR
23 BOOKS.

24 WE REITERATE OUR REQUEST THAT PRE 2003
25 BOOKS BE PRODUCED TO US IF THEY HAVE RELEVANT

1 INFORMATION. IF THEY HAVE RELEVANT INFORMATION ON
2 SKETCHES, WE NEED THEM AND WE'RE ENTITLED TO THEM.

3 THE COURT: YOUR POSITION IS THEY HAVE
4 BEEN ORDERED TO PRODUCE THOSE BOOKS.

5 MS. MAROULIS: THEY HAVE BEEN ORDERED TO
6 PRODUCE THOSE BOOKS SEVERAL TIMES, HENCE OUR MOTION
7 TO ENFORCE THE ORDERS.

8 WITH RESPECT TO SPECIFIC DESIGN ITEMS
9 CALLED TIGER, IT'S A PARTICULAR TYPE OF PRIOR ART
10 WITH RESPECT TO ONE OF THEIR ICON DESIGN PATENTS.

11 THEY OFFERED TO PRODUCE THE PRIOR ART
12 ITSELF BUT WE ASKED FOR ADDITIONAL DOCUMENTS THAT
13 PLACE IT IN THE CONTEXT AND SHOW WHEN IT WAS
14 AVAILABLE AND WHEN IT WAS PREPARED. WE ARE
15 ENTITLED TO THIS, THIS IS A VERY SPECIFIC AREA AND
16 IT'S NOT THAT BURDENSOME FOR THEM TO DO.

17 THE COURT: WOULD YOU AGREE THAT ONLY THE
18 DOC ICON PORTION OF TIGER IS RELEVANT TO THIS
19 LITIGATION?

20 MS. MAROULIS: THAT IS THE MOST RELEVANT
21 BUT WE MIGHT FIND OUT THINGS ABOUT WHEN IT WAS
22 OFFERED, HOW IT WAS OFFERED, WHAT APPLE KNEW ABOUT
23 IT AND WHETHER APPLE HAD OBLIGATIONS TO THE PATENT
24 OFFICE TO -- WELL, TECHNICALLY SPEAKING, THAT IS AN
25 APPROPRIATE COMPARISON.

1 THE COURT: ALL RIGHT.

2 SO JUST SO I UNDERSTAND YOUR POSITION,
3 ARE THERE OTHER PORTIONS OF TIGER OTHER THAN THE
4 PORTIONS WHICH RELATE TO THE DOC ICON WHICH ARE
5 RELEVANT TO AN ISSUE IN THIS CASE?

6 MS. MAROULIS: TO THE EXTENT THERE ARE
7 ANY OTHER ICON INFORMATION, NO, IT'S RELEVANT TO
8 ICON.

9 SO TO RECAP, WITH RESPECT TO THE DESIGN
10 DOCUMENTS, APPLE STOOD HERE BEFORE YOU AND
11 EXPLAINED TO YOU HOW EASY IT IS FOR THEM TO SEARCH
12 FOR DOCUMENTS.

13 WE HEARD IT FOR THE FIRST TIME TODAY.
14 AND IF IT'S SO EASY TO GET DOCUMENTS TO US THEN WHY
15 IS IT THAT WE ARE WAITING FOR MONTHS FOR THE SIMPLE
16 CATEGORIES OF DOCUMENTS THAT THEY SHOULD HAVE
17 PRODUCED LONG AGO?

18 SO THAT'S A THEME THAT RUNS THROUGH ALL
19 OF OUR REQUESTS WHICH IS, IF YOU HAVE THEM, PRODUCE
20 THEM. DON'T MAKE US WAIT, DON'T MAKE US PLEA,
21 DON'T MAKE US FILE EXCESSIVE MOTIONS TO COMPEL.
22 IT'S NOT APPROPRIATE LITIGATION CONDUCT.

23 SO TO RECAP WITH THE SKETCHBOOKS, WE
24 BELIEVE THE ORDER TO COMPEL THEM WAS NOT TIME
25 LIMITED. AND THE SKETCHBOOKS, TO THE EXTENT WHICH

1 THEY ARE REDACTED BY THE ATTORNEYS, MAY BE MISSING
2 RELEVANT INFORMATION BECAUSE THEY ARE DIFFICULT TO
3 READ AND ONLY A PROFESSIONAL WHO IS USED TO DEALING
4 WITH SKETCHBOOKS CAN FULLY APPRECIATE WHETHER A
5 PARTICULAR SKETCH RELATES TO A PARTICULAR MODEL
6 THAT IS AT ISSUE IN THIS CASE.

7 WITH RESPECT TO SURVEYS, AGAIN, I
8 UNDERSTOOD MR. JACOBS TO SAY THAT THEY WILL PRODUCE
9 SURVEYS TO THE EXTENT THEY RELATE TO APPLE-OWNED
10 PRODUCTS. THEY ARE NOT OFFERING TO PRODUCE ANY
11 SURVEYS OR ANY SURVEY DOCUMENTS WHICH CAN INCLUDE
12 E-MAIL AND OTHER DOCUMENTS THAT HAVE HITS FOR
13 SAMSUNG OR SAMSUNG PRODUCTS.

14 AGAIN, THIS HAS TO BE RECIPROCAL. WE
15 WERE SUBJECTED TO --

16 THE COURT: SO YOUR REQUEST WAS DIRECTED,
17 I THOUGHT, TO SURVEYS? WHAT DOCUMENTS BEYOND
18 SURVEYS? WHEN YOU SAY E-MAIL, WHAT SPECIFICALLY
19 ARE YOU REFERRING TO?

20 MS. MAROULIS: SURE.

21 E-MAIL DISCUSSING SURVEY RESULTS AMONG
22 THE MARKETING DEPARTMENT.

23 SO WHEN WE SAY "SURVEYS" IT'S A BIT OF A
24 SHORTHAND, WE REALLY MEAN DOCUMENTS.

25 THE COURT: ALL DOCUMENTS REGARDING ANY

1 SURVEY RELATING TO OR CONCERNING.

2 MS. MAROULIS: WELL, CORRESPONDENCE AMONG
3 THE PEOPLE WITHIN THE MARKETING DEPARTMENT OR THE
4 CONSUMER RESEARCH DEPARTMENT WOULD BE HIGHLY
5 RELEVANT BECAUSE THAT'S WHERE THEY WOULD INTERPRET
6 AND PERHAPS COMMENT ON SOME OF THESE SURVEYS.

7 WITH RESPECT TO SAMSUNG HITS, APPLE'S
8 COUNSEL EXPLAINED THAT BECAUSE OF THE CUSTOMER
9 SUPPLIER RELATIONSHIP THERE WOULD BE A LOT OF FALSE
10 HITS MEANING HITS THAT'S NOT RELEVANT TO THIS CASE.
11 WE OBVIOUSLY FACE THE SAME PROBLEM BECAUSE THE
12 RELATIONSHIP WAS TWO-WAY.

13 IN ADDITION TO THAT WE FACED ISSUES OF
14 GETTING HITS ON APPLE THAT WERE COMPLETELY
15 IRRELEVANT BECAUSE SOME OF THE MACHINES SEARCHED
16 WERE MACINTOSHES, AND GENERALLY THERE WAS A LOT OF
17 FALSE POSITIVES. BUT THIS IS PART OF THE AGREEMENT
18 THAT WE THOUGHT WE MADE WITH THEM AND WE URGE THE
19 COURTS TO HELP US ENFORCE IT.

20 SO MS. KASSABIAN JUST POINTED ME TO THE
21 PORTION OF THE SEPTEMBER 28TH ORDER RELATING TO THE
22 SURVEY DOCUMENTS, IT'S PARAGRAPH 3 IF HONOR WANTS
23 TO REFER BACK TO THAT.

24 THE COURT: ALL RIGHT.

25 ANYTHING FURTHER ON THIS ONE?

1 MS. MAROULIS: WITH RESPECT TO
2 FINANCIALS, I UNDERSTOOD APPLE'S COUNSEL TO SAY
3 THAT IF THEY HAVE A SYSTEM OF RECORD, IT'S
4 APPARENTLY A DATABASE WE CAN RUN A VARIETY OF
5 QUERIES.

6 I UNDERSTAND THE COMMITMENT THAT WE WILL
7 OBTAIN FROM THEM MODEL-BY-MODEL SALES DATA BY
8 QUARTER AND GRANULARITY. IT'S GOOD TO HEAR BUT WE
9 DON'T HAVE THAT AND WE NEED THAT BECAUSE THE
10 REPORTS ARE COMING UP QUITE SOON.

11 WHAT I DIDN'T HEAR HIM ADDRESS WAS
12 BUSINESS PLANS, PROJECTIONS AND KIND OF A BIG
13 PICTURE FINANCIALS. AND THIS IS PART OF OUR FEES
14 WE MOVED ON THEM AND WE BELIEVE IT SHOULD BE
15 GRANTED AND I DIDN'T HEAR ANY ARGUMENTS TO THE
16 CONTRARY.

17 IN CONCLUSION, YOUR HONOR, AND MY TEAM
18 WILL LET ME KNOW IF I MISSED ANYTHING, WE ARE
19 SEEKING A RELIEF THAT IS MUCH NARROWER IN SCOPE
20 THAT WHAT APPLE HAS BEEN SEEKING IN THIS CASE.

21 WE BELIEVE THAT WE HAVE TAKEN A POSITION
22 WHERE WE FOCUS ON THE SPECIFIC THINGS THAT MATTER
23 AND WANT APPLE TO PRODUCE THEM. AND IT'S BEEN A
24 REAL BATTLE GETTING THIS OUT OF THEM.

25 AND THIS MOTION TO COMPEL IS A RESULT OF

1 OUR MONTHS OF NEGOTIATIONS, DISCUSSIONS AND
2 ATTEMPTS TO AVOID THIS MOTION AND TO OBTAIN THESE
3 RESULTS WITHOUT RESULTING TO A COURT PROCESS.

4 BUT NOW WE ARE HERE AND WE ARE SEEKING
5 FROM YOUR HONOR THE RELIEF ON THE RFP'S AND THE
6 SPECIFIC RECIPROCITY AS TO BROAD CATEGORIES OF
7 DOCUMENTS THAT AFFECT BOTH PARTIES EQUALLY.

8 THE COURT: ALL RIGHT.

9 LET'S TURN TO DOCKET NUMBER 605 WHICH
10 IS --

11 MR. KELLY: YOUR HONOR, MAY I BE HEARD
12 BRIEFLY ON INTEL?

13 THE COURT: YOU MAY, MR. KELLY. PLEASE
14 STEP FORWARD.

15 MR. KELLY: AND I WILL BE BRIEF.

16 SO THE COURT RAISED, IN PASSING, THE
17 QUESTION OF AN ORDER COMPELLING APPLE TO PRODUCE
18 INTEL CODE.

19 AND THERE'S TWO TYPES OF CODE WE ARE
20 TALKING ABOUT. ONE IS HDL WHICH IS THE CODE USED
21 TO GENERATE THE SILICON. AND THE OTHER TYPE OF
22 CODE, IT'S A DSP CODE THAT ENGINEERS REFER TO IT AS
23 FIRMWARE.

24 APPLE DOES NOT HAVE THE HDL WHICH IS THE
25 MOST RELEVANT TO THE MAJORITY OF THE ASSERTIONS

1 MADE BY SAMSUNG HERE.

2 I GUESS THERE MAY BE SOME FIRMWARE THAT
3 APPLE HAS, BUT WE WOULD ASK THE COURT TO ALLOW
4 INTEL RATHER THAN APPLE TO PRODUCE THE CODE.
5 SAMSUNG HAS SUBPOENAED INTEL FOR THIS CODE. INTEL
6 HAS GATHERED A BUNCH OF IT AND WE ARE GATHERING THE
7 REST AND WILL SOON HAVE THE REST OF IT.

8 OBVIOUSLY WE'RE THE PARTY FOR WHOM THESE
9 ARE THE CROWN JEWELS, THESE ARE THE MOST IMPORTANT
10 DOCUMENTS FOR US, SO WE WOULD PREFER TO BE THE ONES
11 WHO ARE CARRYING OUT THE PROCESS OF SUPERVISING THE
12 ACCESS TO THE CODE AND SO FORTH UNDER THE STANDARD
13 PRIVILEGES FOR CODE REVIEW.

14 SO THAT'S AN INTEREST IN WHICH WE HAVE A
15 MUCH DEEPER AND MORE SIGNIFICANT INTEREST THAN
16 APPLE DOES.

17 THE COURT: WELL, YOUR REQUEST RAISES AN
18 INTERESTING ISSUE OF MY AUTHORITY OR JURISDICTION
19 TO ORDER PRODUCTION ON A THIRD PARTY.

20 I DON'T HAVE A SUBPOENA BEFORE ME OR
21 MOTION TO COMPEL ON THE SUBPOENA, SO I'M CURIOUS
22 EXACTLY HOW TO DO THAT WITHOUT RUNNING AFOUL.

23 THE WITNESS: YOU HAD RAISED IT SO I
24 WANTED TO AT LEAST FLAG THAT ISSUE FOR THE COURT.

25 THE COURT: ALL RIGHT. THANK YOU.

1 LET'S TURN TO DOCKET 605 WHICH IS
2 SAMSUNG'S MOTION TO ENFORCE THE ORDER.

3 MS. MAROULIS: YES, YOUR HONOR.

4 I UNDERSTAND THAT YOU WOULD LIKE ME TO
5 KEEP IT SHORT, BUT THE MOTION TO ENFORCE IS AGAIN
6 AS A RESULT OF A FACT THAT WE SOUGHT AND OBTAINED
7 RELIEF ON A NUMBER OF ISSUES RELATED TO DESIGN
8 DOCUMENTS IN THIS CASE.

9 AND WE ARE VERY FRUSTRATED THAT WE HAVE
10 TO BE HERE YET AGAIN TO REVISIT THE VERY SAME
11 ISSUES THAT WE'VE DISCUSSED BEFORE AD NAUSEAM.

12 THERE'S SPECIFICALLY FOUR CATEGORIES OF
13 DOCUMENTS. ONE IS THE DESIGNER OR INVENTOR
14 SKETCHBOOKS, AND IT'S LARGELY THE TWO ISSUES I
15 FLAGGED BEFORE WHICH IS THE DATE CUTOFF AND THE
16 REDACTION FOR RELEVANCE THAT IS CONDUCTED BY
17 ATTORNEYS WITHOUT INPUT OF THE PERSONNEL WHO COULD
18 ACTUALLY TELL WHAT'S WHAT.

19 THE SECOND ISSUE IS MCO'S WHICH IS THE
20 MECHANICAL OUTLINES, CADS, PROTOTYPES AND MODELS.
21 WHEN THIS MOTION WAS BEING FILED, WE STILL DID NOT
22 HAVE ACCESS TO THE MODELS THAT WE ARE NOW
23 INSPECTING. SO SOME OF IT IS ADDRESSED WITH
24 RESPECT TO THE INSPECTION GOING ON NOW WITH THE
25 THOUSANDS OF MODELS WE HAVE SEEN. HOWEVER, WE

1 STILL DO NOT HAVE THE CONFIRMED CAD FILES FOR THE
2 '035 MOCKUP WHICH IS SOMETHING WE EXTENSIVELY
3 DISCUSSED BEFORE.

4 AND OUR UNDERSTANDING IS THAT APPLE IS
5 REFUSING TO PRODUCE NONFUNCTION PROTOTYPES AND/OR
6 PARTS AND PORTIONS OF THE PROTOTYPES.

7 SO THIS MOTION IS SEEKING TO ENFORCE THE
8 COURT'S ORDER RELATING TO SKETCHBOOKS, PROTOTYPES
9 CAD DRAWINGS AND SUCH.

10 AND THE TWO OTHER ISSUES ARE FAIRLY
11 DISCREET, BUT AGAIN WE NEED TO BE HERE BECAUSE WE
12 THOUGHT THE COURT ORDERED THEM VERY EXPLICITLY AND
13 WE DON'T UNDERSTAND WHY IT'S STILL NOT HAPPENING.

14 ONE OF THEM IS DE DESIGNATION OF THE '035
15 TABLET PHOTOS. TO REMIND YOUR HONOR, THIS WAS THE
16 MOCKUP THAT WAS PHOTOGRAPHED AND SUBMITTED TO THE
17 PATENT OFFICE AS PART OF THE PROSECUTION OF THE
18 TABLET PATENT. AND THROUGH EXTENSIVE MOTION WE
19 OBTAINED ACCESS TO THIS MOCKUP AND WE HAVE BEEN
20 SEEKING TO USE THE PHOTOGRAPHS THAT WE TOOK THAT
21 ARE FAR MORE DETAILED THAN WHICH WERE SUBMITTED TO
22 THE PATENT OFFICE.

23 AND BASICALLY THEY DE DESIGNATED SOME OF
24 THEM BUT NOT OTHERS. AND THE ONES THAT THEY DID
25 NOT DESIGNATE THEY STRIPPED OUT OUR RULERS SHOWING

1 SCALE AND THEY ARE NOT ALLOWING US TO USE SOME VERY
2 DETAILED PICTURES THAT IS EXACTLY WHAT WE NEED TO
3 SHOW OUR EXPERT AND OTHERWISE USE IN LITIGATION.

4 AND WE THOUGHT YOUR HONOR'S ORDER WAS
5 VERY SPECIFIC WHICH IS THEY HAD TO DE DESIGNATE
6 ANYTHING THAT IS NOT CONFIDENTIAL. AND WE STILL
7 DON'T UNDERSTAND HOW POSSIBLY THEY CAN CLAIM
8 CONFIDENTIALITY OVER A MOCKUP THAT WAS
9 PHOTOGRAPHED, SUBMITTED TO THE PUBLIC U.S.
10 GOVERNMENT AND GETTING A PATENT BASED ON THAT, BUT
11 THAT'S ANOTHER PORTION OF THE MOTION.

12 THE COURT: WELL, BUT IF IT TURNS OUT THE
13 SCALE INFORMATION WAS NOT DISCLOSED TO THE PUBLIC,
14 ARGUABLY ISN'T THAT A DETAIL WHICH REMAINS
15 PROPRIETARY TO APPLE? SO WOULDN'T THAT BE
16 APPROPRIATELY REDACTED OR MAINTAINED AS
17 CONFIDENTIAL?

18 MS. MAROULIS: YOUR HONOR, IN THE FILE
19 HISTORY ITSELF WAS A PHOTOGRAPH OF A MAN THAT WE
20 ACTUALLY DEPOSED WHILE HOLDING THIS.

21 SO WHILE HIS EXACT MEASUREMENTS DON'T
22 APPEAR IN THE FILE, IT'S A HUMAN FIGURE HOLDING THE
23 TAB AND THE SCALE IS REVEALED. IT'S NOT REVEALED
24 AS TO THE INCH AND THE CENTIMETER, BUT IT'S
25 CERTAINLY REVEALED IN PROPORTION.

1 FOR EXAMPLE, IT'S SOMETHING THAT A GROWN
2 MAN IS HOLDING LIKE THIS AS OPPOSED TO A SIZE WHERE
3 IT'S BIGGER THAN THE COURTROOM OR TINY. SO WE
4 DON'T BELIEVE IT'S AN APPROPRIATE CONCERN.

5 AND THEN FINALLY WITH RESPECT TO THE
6 PHOTOGRAPHS THAT WERE SHOWN TO THE PTO, WE HAVE
7 RECENTLY DEPOSED THE PERSON WHO HAD SOME RELATION
8 TO THE PROSECUTION FILES AND APPARENTLY ANOTHER
9 SEVERAL CD'S THAT ARE RELEVANT TO THE FILE HISTORY,
10 AND ALL WITH RESPECT TO THIS PORTION OF THE MOTION
11 IS TO PUT THE FINAL END ON THIS CHAPTER THAT
12 THEY'VE SEARCHED, THEY'VE COMPLIED AND THEY LOOKED
13 FOR THESE BETTER PHOTOS OF THIS MOCKUP SUBMITTED TO
14 THE PATENT OFFICE.

15 THE COURT: SO ARE YOU SPECIFICALLY
16 ASKING FOR AN ORDER COMPELLING APPLE TO SEARCH
17 TRACY DURKIN'S FILES.

18 MS. MAROULIS: WE WANT IT BROADER THAN
19 THAT. WE WANT THEM TO SEARCH ALL FILES BECAUSE WE
20 NOW HAVE ANOTHER CD SURFACING UP.

21 WE HAVE A VERY LIMITED TIME UNTIL
22 DISCOVERY CLOSES IN THIS CASE, YOUR HONOR, WE ONLY
23 HAVE UNTIL MARCH 8TH AND WE JUST NEED TO END THIS
24 CHAPTER SOMEHOW.

25 AND THE REASON WE BROUGHT THIS MOTION TO

1 ENFORCE IS THAT THE NORMAL PROCESSES OF GETTING
2 DISCOVERY OUT OF AN ADVERSARY DID NOT WORK. AND
3 WHAT SEEMS TO HAVE BEEN WORKING IS REPEATED COURT
4 ORDERS, AND WE RECEIVED A LOT MORE DESIGN
5 DOCUMENTATION.

6 AND THE THOUSAND MODELS, I CANNOT OVER
7 EMPHASIZE HOW IMPORTANT THIS IS GIVEN THAT THEY
8 PROBABLY SHOULD HAVE BEEN PRODUCED BEFORE THE
9 PRELIMINARY INJUNCTION HEARING AND WE HAVE NEVER
10 SEEN THEM UNTIL JUST NOW.

11 THERE WAS ONE OTHER THING THAT JUST CAME
12 UP. I JUST REMEMBERED ONE POINT I WANTED TO MAKE
13 WITH RESPECT TO SKETCHBOOKS WHICH IS THEY DID NOT
14 GIVE US THE CONCEPTION REDACTION TO PRACTICE DATE
15 UNTIL LATE FALL UNTIL ALMOST END OF DECEMBER.

16 SO TO THE EXTENT YOU ARE WONDERING WHY
17 SOME OF THE ISSUES ARE COMING UP NOW AS TO THE
18 CUTOFF, THAT IS PART OF REASON.

19 THE COURT: ALL RIGHT. THANK YOU.

20 MR. JACOBS?

21 MR. JACOBS: WE JUST HAVE TO GET REALLY
22 DOWN INTO THE FACTS, YOUR HONOR.

23 THE COURT: AS OPPOSED TO WHAT WE HAVE
24 BEEN DOING FOR THE LAST SIX HOURS?

25 MR. JACOBS: MS. MAROULIS PERSONALLY

1 NEGOTIATED THE SCOPE OF OUR PRELIMINARY INJUNCTION
2 DISCOVERY.

3 I SAT ACROSS FROM THE TABLE FROM HER AND
4 NEGOTIATED THAT WITH HER. SO, PROBABLY SHOULD HAVE
5 PRODUCED DURING THE PRELIMINARY INJUNCTION. WE
6 REACHED AN AGREEMENT ON THE SCOPE OF APPLE'S
7 PRODUCTION. IT WAS THE CAD FILES AND THEN THERE
8 WAS THE CONFUSION AROUND SKETCHBOOKS, NOTEBOOKS,
9 AND ALL THAT AND THAT LEAD TO MOTION PRACTICE AND
10 THE LIKE.

11 BUT IN TERMS OF WHAT WAS DUE TO BE
12 PRODUCED DURING THE PRELIMINARY INJUNCTION, THAT
13 WAS SPECIFICALLY NEGOTIATED INSOFAR AS APPLE'S
14 INDUSTRIAL DESIGN PRODUCTION WAS CONCERNED.

15 MAYBE MOVING IN REVERSE ORDER JUST
16 BECAUSE OF RECENCY, THIS '035 ISSUE, THIS IS NOW
17 GOTTEN TRULY QUITE BAZAAR.

18 MS. DURKIN SAID SHE HAS NO REASON TO
19 THINK THAT THERE ARE IMAGES ON THAT CD AND SHE
20 ASKED. SO NOW --

21 THE COURT: SHE SAID THIS IN THE
22 DEPOSITION.

23 MR. JACOBS: EXACTLY.

24 AND NOW ON THE BASIS THAT SHE HAD A CD,
25 SAMSUNG MOVES TO ENFORCE COMPLIANCE WITH AN ORDER

1 THAT WE SEARCH IN MORE UNSTATED PLACES FOR THESE
2 PHOTOGRAPHS.

3 THEY HAVE THE MODEL, THEY CAN TAKE ALL
4 THE PHOTOGRAPHS OF THE MODEL THEY WANT, SUBJECT TO
5 OUR CONFIDENTIAL ISSUE WHICH REMAINS OBVIOUSLY A
6 POINT OF CONTENTION.

7 BUT THIS IS JUST NOW -- AGAIN, TO WHAT
8 PURPOSE, WHY MORE PHOTOGRAPHS? WHAT IS MISSING
9 ABOUT THE '035 MODEL? WHAT PROOF DOES IT GO TO?
10 RECALL THE EXAMINER SAYS IN THE PROSECUTION OF THE
11 '035 OF THE '889, THESE PHOTOGRAPHS ARE NOT PART OF
12 THE SPECIFICATION. SO EXACTLY WHERE THIS IS GOING
13 REMAINS QUITE MYSTERIOUS.

14 ON THE CONFIDENTIALITY, WELL OF COURSE
15 YOU ARE EXACTLY RIGHT. THE RULERS PROVIDE EXACT
16 SIZE INFORMATION. AGAIN, TO WHAT PURPOSE? WHY DO
17 THEY NEED TO HAVE A PUBLIC DOCUMENT WITH EXACT SIZE
18 INFORMATION WHEN APPLE REGARDS THAT AS CONFIDENTIAL
19 INFORMATION? WHAT IS THE SIGNIFICANCE OF THAT HOW
20 IT WILL AID THE PROGRESS OF THE CASE? WHAT IS THE
21 RELEVANT TO? THAT IT BE DE DESIGNATED BECAUSE IT
22 HAS A RULER NEXT TO IT.

23 WE ADEQUATELY DISCUSSED THE MCO'S. WE
24 TALKED ABOUT THE MODELS, THE MODELS THEY'VE GOT ON
25 SKETCHBOOKS. THE ORDER WAS ALL RELEVANT

1 SKETCHBOOKS. WE BELIEVE WE HAVE PRODUCED ALL
2 RELEVANT SKETCHBOOKS.

3 SAMSUNG HAS TWO ISSUES. 2002, NOT 2003.
4 BASED ON OUR DISCUSSIONS WITH INDUSTRIAL DESIGN
5 PERSONNEL WE BELIEVE THAT 2003 REPRESENTS A
6 RELEVANT DELIMITER. WE MADE A RELEVANCE CUT, WE
7 MADE IT AT 2003 BASED ON THE DISCUSSIONS AND THE
8 BEST INFORMATION WE HAD AVAILABLE TO US.

9 THERE'S BEEN NO INDICATION OTHER THAN
10 THEY THINK IT'S RELEVANT THAT WE IN ANY WAY
11 BREACHED AN ORDER OF ALL THINGS. THE LAST THING WE
12 WOULD WANT TO DO IN THIS MATTER.

13 ON ATTORNEY REVIEW, THIS IS NOW TURNING
14 AN ISSUE ON ITS HEAD. OF COURSE WE ARE CONCERNED
15 THAT ATTORNEYS WEREN'T INVOLVED ENOUGH IN SAMSUNG'S
16 PRODUCTION. NOW THEY ARE COMPLAINING THAT
17 ATTORNEY'S WERE INVOLVED IN REVIEWING THESE
18 SKETCHBOOKS FOR RELEVANCE. WE TRAINED UP THE TEAM,
19 WE TAUGHT THE TEAM ABOUT HOW TO DO THE SEARCHING.
20 IT'S HOW WE ARE BOTH PRODUCING DOCUMENTS, WE ARE
21 USING ATTORNEYS TO DO THE REVIEW.

22 AGAIN, OTHER THAN THE FACT THAT THERE'S A
23 LOT OF REDACTION BECAUSE THERE WERE A LOT OF
24 UNRELATED SKETCHES, UNREPORTED PROJECTS, SAMSUNG
25 HAS NO BASIS FOR ARGUING WE BREACHED THE ORDER BY

1 DOING THE REVIEW ON THAT BASIS.

2 I THINK CO WE'VE COVERED IT. THE MAC OS
3 10 HAS NOW BEEN -- WE HAD A PROBLEM WITH THE FIRST
4 VERSION. FOR SOME REASON IT DIDN'T BOOT UP
5 PROPERLY. WE GOT A TECHNICIAN IN AND WE GOT A
6 VERSION THAT'S WORKING. I THINK THAT ONE HAS BEEN
7 ENTIRELY ADDRESSED. WE HEARD NO COMPLAINT SINCE
8 THEIR LAST REVIEW OF IT.

9 TWO THINGS I NEED TO BE SURE I CORRECT
10 BECAUSE I TRY AND EXPLAIN TO YOUR HONOR PRETTY
11 CLEARLY I THINK WHAT'S GOING ON IN DISCOVERY AND
12 THEN I HEAR A SOMEWHAT DIFFERENT CHARACTERIZATION
13 FROM SAMSUNG'S COUNSEL.

14 TO BE CLEAR, ON THE SYSTEM OF RECORD, IF
15 IT IS DOWN TO THE MODEL LEVEL, WE ARE HAPPY TO
16 QUERY IT TO GO DOWN TO THE MODEL LEVEL. THAT IS
17 WHAT I HAVE REPRESENTED TO THE COURT, IT'S A
18 CONFIDENTIAL STATEMENT.

19 MS. MAROULIS: DO YOU KNOW WHAT IT IS
20 OR --

21 MR. JACOBS: I DO NOT KNOW FOR SURE. BUT
22 I WOULDN'T MENTION IT IF I WASN'T A LITTLE
23 CONCERNED THAT IT MAY NOT BE IN THE SYSTEM OF
24 RECORD, SO I DO WANT TO BE SURE.

25 AND THOSE ARE THE IMPORTANT POINTS,

1 YOUR HONOR.

2 THE COURT: ALL RIGHT.

3 THANK YOU, MR. JACOBS.

4 ANY REBUTTAL, MS. MAROULIS?

5 MS. MAROULIS: YOUR HONOR, VERY BRIEFLY.

6 ONE IS IT'S TRUE I SAT ACROSS FROM
7 MR. JACOBS AND WE TALKED ABOUT THE SCOPE OF
8 DISCOVERY. HOWEVER, I HAD ABSOLUTELY NO WAY OF
9 KNOWING WHAT TYPES OF DOCUMENTS THE DESIGN TEAM
10 HAS.

11 SO UNTIL WE FOUND OUT THROUGH DEPOSITION
12 TESTIMONY AND OTHERWISE ABOUT MOCKUPS AND MCO'S AND
13 SUCH INFORMATION, THERE WAS NO WAY FOR US TO EVEN
14 ASK FOR THAT. WE KNEW WHAT CAD FILES ARE AND WE
15 ASKED FOR THOSE AND WE ASKED FOR OTHER HARD COPY
16 DOCUMENTS.

17 SECONDLY, WITH RESPECT TO MS. DURKIN, WE
18 WERE NOT VERY EXPLICIT IN OUR MOTIONS BECAUSE IT'S
19 SUBJECT TO THE ITC PROCEEDINGS, BUT BECAUSE
20 MR. JACOBS BROUGHT IT UP, BASICALLY THE WITNESS
21 ADMITTED NOT HAVING SEARCHED A NUMBER OF SOURCES
22 WHICH IN OUR MIND CAST DOUBT ON THIS EFFICIENCY OF
23 SEARCH. WHETHER OR NOT THERE WAS ACTUALLY ANYTHING
24 ON THOSE CD'S OR NOT, THAT IS WHAT HAPPENED.

25 AND FINALLY WITH RESPECT TO THE

1 SKETCHBOOKS, LOOKING AT THOSE SKETCHBOOKS
2 THEMSELVES AND HAVING REVIEWED THEM, IT IS VERY
3 DIFFICULT TO TELL WITHOUT A TRAINED DESIGNER EYE
4 WHAT IS THIS CONCERN ABOUT.

5 SO THE IDEA IS THAT THEY TRAINED A TEAM
6 OF ATTORNEYS AND THEY MADE CUTS IS VERY CONCERNING
7 TO US. BECAUSE MANY SKETCHES LOOK ALIKE, MANY
8 SKETCHES DON'T LOOK LIKE WHAT THE FINISHED PRODUCT
9 DOES AND IT'S A VERY SIGNIFICANT ISSUE. SO SIMPLY
10 DELEGATING IT TO COUNSEL WITHOUT WITNESS'S INPUT
11 AND PARTICIPATION IS A PROBLEM.

12 THE COURT: SO YOU WOULD ASK THAT I ORDER
13 THAT SOME NUMBER OF APPLE DESIGNERS PARTICIPATE IN
14 DOCUMENT REVIEW?

15 MS. MAROULIS: YOUR HONOR, THERE'S A
16 POSSIBILITY WE CAN JUST GET UN REDACTED SKETCHES
17 OR --

18 THE COURT: WELL, THAT WOULD CERTAINLY
19 RESOLVE THE ISSUE.

20 BUT TO THE EXTENT THERE ARE LEGITIMATE
21 INTERESTS THEY ARE PROTECTING, IS THAT WHAT YOU ARE
22 ASKING ME TO DO?

23 MS. MAROULIS: MS. KASSABIAN INFORMS ME
24 THAT WE ACTUALLY TURNED OVER THE ENTIRE
25 SKETCHBOOKS.

1 MS. KASSABIAN: SO YOUR HONOR, IT IS
2 IMPOSSIBLE LOOKING AT THESE. SOMETIMES IT'S JUST A
3 SKETCH OF, LIKE, A CORNER OR A SIDE VIEW OR JUST
4 LINES OR A PICTURE OF SOMETHING THAT'S NOT A PHONE.
5 IT'S IMPOSSIBLE TO TELL WHAT IS DEPICTED IN MANY OF
6 THESE SKETCHES.

7 SO WHEN WE COULDN'T MAKE HEADS OR TAILS
8 OF IT --

9 THE COURT: IF THAT'S TRUE, WHY DO YOU
10 WANT THEM AT ALL?

11 MS. KASSABIAN: BECAUSE THEY COULD BE
12 DRAWING SOMETHING THAT RELATES TO SOME OF THE
13 FUNCTIONALITY.

14 THE COURT: IT SEEMS TO ME THAT THEY ARE
15 RELEVANT FOR PURPOSES OF YOUR REQUEST. THE
16 RELEVANCE OF THE INDIVIDUAL PORTION OF THE SKETCH
17 IS SOMETHING THAT MIGHT BE PROPERLY ASSESSED PRIOR
18 TO PRODUCTION.

19 MS. KASSABIAN: THAT'S FOR AN EXPERT,
20 THOUGH, TO DETERMINE, AND LAWYERS ARE NOT EXPERTS.
21 SO YOU EITHER HAVE TO SIT DOWN WITH THE INVENTOR --

22 THE COURT: SO DO YOU HAVE BASEBAND
23 DESIGNERS REVIEWING YOUR TECHNICAL DOCUMENTS BEFORE
24 YOU PRODUCE THEM TO THE OTHER SIDE?

25 MS. MAROULIS: WELL, YOUR HONOR, THIS IS

1 WHY WE HAD OUR INVENTORS LOOK AT DOCUMENTS AS WELL.

2 THE COURT: WERE THEY DOING -- SO TO BE
3 CLEAR, ARE YOUR INVENTORS INVOLVED IN THE FINAL
4 DETERMINATION OF THE RELEVANCE OF ANY DOCUMENT? I
5 HAD UNDERSTOOD FROM OUR EARLIER DISCUSSION YOU HAD
6 LAWYERS PERFORMING IT.

7 MS. MAROULIS: NO, YOUR HONOR. THEY GAVE
8 US EVERYTHING THAT WAS --

9 MS. KASSABIAN: RIGHT. SO WE WERE
10 INCLUSIVE, IS WHAT I'M SAYING.

11 WHEN WE COULDN'T TELL, WE WERE INCLUSIVE.
12 AND IT SOUNDS LIKE IF APPLE'S LAWYERS COULDN'T
13 TELL, THEY EXCLUDED THINGS. AND THAT MAKES US
14 NERVOUS BECAUSE FROM OUR --

15 THE COURT: I CAN APPRECIATE IT MAKES YOU
16 NERVOUS.

17 I HAVE A CHALLENGE HERE OF DRAFTING AN
18 ORDER THAT COVERS GOD ONLY KNOWS HOW MANY ISSUES
19 HAVE BEEN PRESENTED TO THE COURT.

20 AND WHAT I'M STRUGGLING WITH IS
21 ARTICULATING A PROPER BOUNDARY THAT BALANCES
22 COMPETING INTEREST.

23 SO ONE'S NERVOUSNESS DOESN'T TERRIBLY
24 MOVE ME, BUT WHAT MOVES ME IS AN APPROPRIATE
25 BALANCE OF INTEREST.

1 AND IN THIS PARTICULAR CASE IF I
2 UNDERSTAND YOUR OBJECTION, WHAT YOU ARE SAYING IS
3 YOU DON'T BELIEVE LAWYERS SHOULD BE PERMITTED TO
4 PERFORM THE EXCLUSIVE DETERMINATION AS TO RELEVANCE
5 OF SKETCHBOOKS; IS THAT RIGHT?

6 MS. MAROULIS: YES, YOUR HONOR, BECAUSE
7 THEY CAN MAKE MISTAKES AND THAT WOULD --

8 THE COURT: OKAY. I UNDERSTAND WHERE
9 YOU'RE AT.

10 BUT THAT WOULD SUGGEST, WOULDN'T IT NOT,
11 A VERY ONEROUS BURDEN UNDER RULE 34 AND 26, IF THIS
12 COURT WERE TO APPLY THAT PRINCIPLE MORE BROADLY IN
13 ALL CASES INVOLVING SPECIALIZED KNOWLEDGE, WOULDN'T
14 IT?

15 MS. MAROULIS: IT SEEMS TO BE
16 PARTICULARLY SPECIALIZED.

17 I HAVE BEEN INVOLVED IN A LOT OF PATENT
18 CASES --

19 THE COURT: AND ME TOO.

20 MS. MAROULIS: -- AND THERE ARE A LOT OF
21 DOCUMENTS YOU CAN READ WITH AN ATTORNEY, THESE
22 SKETCHBOOKS AND CAD FILES SEEM PARTICULARLY VAGUE
23 AND INDIFFERENT.

24 AND IT'S OUR UNDERSTANDING THAT THEY HAVE
25 ALREADY SCANNED THOSE NOTEBOOKS, AND IF THAT'S

1 CORRECT THAT WOULD NOT BE AN ADDITIONAL BURDEN.

2 THE COURT: THANK YOU.

3 LET'S TURN TO JUST -- I'M SORRY, ANYTHING
4 FURTHER TO BE PRESENTED BY EITHER SIDE?

5 MR. SELWYN: YOUR HONOR, IF I COULD MAKE
6 ONE POINT OF CLARIFICATION.

7 THE COURT: YOU MAY.

8 MR. SELWYN: IN MS. MAROULIS'S REBUTTAL
9 ON THE SOURCE CODE ISSUE SHE MENTIONED IN PASSING,
10 QUALCOMM. QUALCOMM IS THE SUPPLIER OF THE BASEBAND
11 CHIP FOR THE IPHONE 4S. THAT IS NOT AN ACCUSED
12 PRODUCT IN THIS CASE.

13 THE PARTIES HAVE BEEN MEETING AND
14 CONFERRING ABOUT A POSSIBLE STIPULATION AS TO
15 ADDITIONAL PRODUCTS ON BOTH SIDES. I THINK THAT
16 THAT MEET AND CONFER PROCESS IS PROBABLY BROKEN
17 DOWN AT THIS POINT SUCH THAT EITHER PARTY WOULD
18 HAVE TO MOVE TO AMEND ITS INFRINGEMENT CONTENTIONS
19 TO IDENTIFY NEW PRODUCTS.

20 BUT TO BE CLEAR, THE 4S IS NOT AN ACCUSED
21 PRODUCT. THE 4S IS THE ONLY UMTS APPLE PRODUCT
22 WITH A QUALCOMM BASEBAND CHIP. THERE'S BEEN NO
23 DISCUSSION IN ANY MEET AND CONFER ABOUT THE IPHONE
24 4S BASEBAND CODE.

25 THE COURT: ALL RIGHT.

1 MS. MAROULIS, I WILL GIVE YOU THE LAST
2 WORD ON THAT ISSUE.

3 MS. MAROULIS: YOUR HONOR, I DON'T
4 DISAGREE WITH THE CHARACTERIZATION REGARDING 4S.

5 I THINK THE QUESTION OF THE COURT WAS
6 MORE BROAD AS TO WHAT BASEBAND PROCESSES WE ARE
7 TALKING ABOUT.

8 WE DO HAVE DISCUSSIONS REGARDING ADDING
9 4S, AND I UNDERSTAND APPLE WANTS TO ADD A BUNCH OF
10 OTHER PRODUCTS, SO THIS MIGHT COME TO FRUITION
11 SOON.

12 SO THE ISSUE WILL BE THE SAME IN TERMS OF
13 QUALITATIVE ISSUES. WE WILL NEED THOSE PIECES FROM
14 QUALCOMM ONCE WE GET THE PRODUCT ADDED TO THE CASE.

15 MR. JACOBS: YOUR HONOR, JUST BRIEFLY. I
16 PROMISED TO GET BACK TO YOU ON TWO THINGS.

17 ONE IS THE ITC DEPO ISSUE AND WE CAN'T
18 AGREE IN THE CASE OF JONY IVE BECAUSE THE UNIQUE
19 RULES IN THE ITC AND IN PARTICULAR THE DIFFERENCE
20 IN TIME LIMITS.

21 SO IN THE ITC THERE AREN'T ANY.

22 THE COURT: JUST ON THAT ISSUE, I CAN
23 APPRECIATE AND CERTAINLY RESPECT THE ITC'S
24 REQUIREMENTS AS A PRACTICAL MATTER IF YOU ARE ALL
25 IN A ROOM WITH A COURT REPORTER AND A VIDEO PERSON

1 AND YOU'VE GOT THE WITNESS THERE, WOULD IT NOT BE A
2 REASONABLE APPROACH HERE TO SAY LOOK, IF SAMSUNG IS
3 ENTITLED TO 30 OR 60 OR 90 MORE MINUTES OF
4 DEPOSITION, LET'S DO IT ALL HERE, AND WE WILL END
5 ONE DEPOSITION AND START THE NEXT.

6 MR. JACOBS: THAT WAS EXACTLY -- IN A
7 WAY, THAT'S THE DIRECTION I WAS GOING, I JUST DON'T
8 THINK THEY MADE THE SHOWING THAT THEY ARE ENTITLED
9 TO THAT. BUT I HEAR -- OBVIOUSLY WE HEAR THE
10 POINT.

11 AND THEN I ALSO SAID I WOULD GET BACK ON
12 YOU ON THE AGREEMENT. AND IF YOU READ IN THE REST
13 OF THE LETTER, IT'S QUALIFIED.

14 THERE'S A PARAGRAPH THAT WAS READ THEN
15 THERE'S ANOTHER PARAGRAPH THAT TALKS ABOUT THE
16 LIMITERS BEING APPLIED IF THE SEARCH TERM "SAMSUNG"
17 BRINGS UP TOO MANY HITS.

18 THE COURT: ALL RIGHT.

19 WELL, I SUSPECT THE LETTER WILL TELL ME
20 WHAT I NEED TO KNOW ONE WAY OR THE OTHER.

21 LET'S TURN BRIEFLY TO THE MOTION TO
22 COMPEL REGARDING OS 10.0.

23 HAS THIS ISSUE BEEN MOOTED? DO YOU ALL
24 HAVE A BUTTON FIGURED OUT YET?

25 MS. MAROULIS: SO ONCE WE FILED THE

1 SECOND MOTION ON THIS ISSUE, UNFORTUNATELY APPLE
2 DID PRODUCE A SOFTWARE WITH A FUNCTIONING BUTTON SO
3 WE WERE ABLE IT TO GET IT TO WORK.

4 THE COURT: YOUR BUTTON WORKS.

5 MS. MAROULIS: IT'S -- UNFORTUNATELY, IT
6 TOOK TWO MOTIONS TO GET TO THAT POINT, HOWEVER.

7 WHAT WE DON'T HAVE THAT WE'RE HOPING TO
8 GET FROM APPLE EITHER BY DOCUMENTS OR BY
9 STIPULATION IS DOCUMENTS SHOWING IT WAS IN PUBLIC
10 USE OR SOLD AT THE TIME, SO BASICALLY TYING THIS
11 PARTICULAR THING THAT THEY PRODUCED TO US FOR
12 INSPECTION.

13 THE COURT: THERE'S NO WAY TO GO ON THE
14 INTERNET AND CONFIRM?

15 MS. MAROULIS: WE DON'T WANT TO DISPUTE
16 WITH THEM AS TO WHAT THEY PRODUCED TO US, IT BEING
17 THE VERSION FROM THE INTERNET.

18 THE COURT: SO ALL YOU WANT TO BE ABLE TO
19 PROVE IS WHATEVER THEY PRODUCED WAS MADE AVAILABLE
20 FOR SALE AS OF A CERTAIN DATE?

21 MS. MAROULIS: THAT'S CORRECT,
22 YOUR HONOR, TO AVOID FUTURE DISPUTES.

23 MR. JACOBS: WE ARE FINE WITH THAT,
24 YOUR HONOR.

25 THE COURT: ALL RIGHT. THAT'S EASY.

1 LET'S MOVE ON.

2 MS. MAROULIS: SO MOTION TO CLARIFY, I
3 BELIEVE IS THE LAST REMAINING ONE ON THE CALENDAR.

4 THE COURT: I BELIEVE IT IS AS WELL.

5 MS. MAROULIS: CONTRARY TO WHAT APPLE
6 ASSERTED, IT'S NOT A MOTION FOR RECONSIDERATION.

7 LAST TIME WE WERE BEFORE YOUR HONOR WE
8 SOUGHT A BROAD RELIEF OF SHOWING MR. SHERMAN THE
9 DESIGN DOCUMENTS AND YOUR HONOR RULED THAT THERE
10 SHOULD BE BALANCE BETWEEN APPLE'S PROPRIETARY
11 INTEREST AND OUR INTEREST IN HAVING AN EXPERT WHO
12 HAS INDUSTRY EXPERIENCE.

13 THE COURT: SO I THINK I GAVE YOU THREE
14 OUT OF FOUR.

15 MS. MAROULIS: YOU TOOK THE FOUR
16 CATEGORIES THAT WERE OFFERED BY APPLE AT SOME POINT
17 AS AN ALTERNATIVE. WE WANTED IT BROADER SO WE
18 DON'T HAVE TO DO WHAT WE'RE DOING NOW WHICH IS TO
19 ASK FOR SPECIFIC CATEGORIES.

20 SO THIS MOTION IS BORN OF TWO
21 NECESSITIES. ONE, THE FACT THAT THEY HAVE NOW TOLD
22 US ABOUT OR GAVE US ACCESS TO INFORMATION AND TYPES
23 OF DOCUMENTS THAT WERE SIMPLY NOT AVAILABLE WHEN
24 THIS MOTION WAS BEING SOUGHT, FOR EXAMPLE THE
25 THOUSAND MODELS WE ARE TALKING ABOUT IN THE MCO'S.

1 BUT SECONDLY, THERE WERE SOME CATEGORIES
2 OF DOCUMENTS THAT WE HONESTLY THOUGHT WOULD BE
3 SUBSUMED WITHIN YOUR ORDER

4 THE COURT: LIKE THE EXHIBITS, FOR
5 EXAMPLE.

6 MS. MAROULIS: YEAH.

7 FOR EXAMPLE, YOUR HONOR ORDERED THAT HE
8 COULD HAVE ACCESS TO DEPOSITIONS AND THEY'RE TAKING
9 THE POSITION THAT THAT EXCLUDES EXHIBITS. WE COULD
10 NOT HAVE POSSIBLY FOUR. THAT'S WHAT YOUR ORDER
11 MEANT AND THAT'S WHY WE ARE SEEKING A MOTION TO
12 CLARIFY.

13 BECAUSE TO US, IF YOU'RE READING A
14 DEPOSITION YOU MUST BE ABLE TO READ THE EXHIBITS
15 OTHERWISE HALF THE POSITION IS COMPLETELY
16 INCOMPREHENSIBLE.

17 SIMILARLY, INVENTOR DECLARATIONS TO US
18 SEEMED LIKE AN EQUIVALENT OR SIMILAR ITEM TO A
19 DEPOSITION. THERE ARE ALSO SWORN TESTIMONY, FOR
20 EXAMPLE BY PEOPLE LIKE CHRIS STRINGER WHO WAS WELL
21 DEPOSED AND GAVE A DECLARATION.

22 EXPERT DEPOSITIONS, WE DON'T SEE A
23 DISTINCTION BETWEEN EXPERT DEPOSITIONS AND DESIGN
24 WITNESS DEPOSITIONS.

25 THEN THE LAST THREE CATEGORIES WE COVER

1 IN OUR MOTION ARE SLIGHTLY DIFFERENT WHICH IS THEY
2 WERE NOT WITHIN THE COURT'S ORDER BUT BASED ON WHAT
3 WE LEARNED SUBSEQUENTLY AND THE TYPES OF DOCUMENTS
4 WE ENCOUNTERED SUBSEQUENTLY, WE WOULD LIKE TO BRING
5 IN UNDER THAT ORDER BECAUSE WE WERE NOT AWARE OF
6 THE EXISTENCE OF THESE PROTOTYPES AND MODELS AND
7 CERTAIN TYPES OF MCO'S.

8 THE COURT: I APOLOGIZE, MS. MAROULIS,
9 WHEN DID YOU FIRST RECEIVE THESE ADDITIONAL
10 PROTOTYPES, BEFORE OR AFTER YOU FILED YOUR MOTION
11 WITH ME THAT LEAD TO THE ORDER?

12 MS. MAROULIS: IT WAS AFTER, YES.

13 I DON'T KNOW THE EXACT DATE. IF I NEED
14 THE EXACT DATE --

15 THE COURT: IF YOU ARE TELLING ME IT'S
16 AFTER, I WILL ACCEPT YOUR REPRESENTATION SUBJECT TO
17 CHALLENGE, OF COURSE.

18 YOU ARE TELLING ME WHAT WE ARE TALKING
19 ABOUT HERE ARE MATERIALS, DOCUMENTS AND THE
20 LANGUAGE THAT CAME AFTER THE REQUEST?

21 MS. MAROULIS: YES. TWO TYPES OF THE
22 CATEGORIES.

23 ONE IS THE CATEGORY THAT WE THOUGHT WAS
24 PART OF YOUR ORDER BUT WE HAVE A FIGHT NOW. AND
25 THE OTHER ONE IS THE THINGS WE LEARNED

1 SUBSEQUENTLY.

2 SO THAT'S REALLY IT. IN THEIR MOTION
3 APPLE DOES NOT REALLY DISPUTE WHAT WE ARE SAYING,
4 ALL THEY ARE SAYING IS THAT THIS IS AN END RUN
5 AROUND THE REQUIREMENTS OF THE LOCAL RULES
6 REGARDING MOTION FOR RECONSIDERATION, BUT WE DON'T
7 BELIEVE IT'S A MOTION FOR RECONSIDERATION, IT DOES
8 NOT FIT INTO THOSE THREE CATEGORIES THAT ARE
9 REQUIRED.

10 SO IN A SENSE THERE IS NEW FACTS BECAUSE
11 THERE'S NEW DOCUMENTS, BUT WE BELIEVE IT'S PROPER
12 TO REVISIT THE ORDER WITH THE KNOWLEDGE THAT WE
13 HAVE NOW ABOUT THE SCOPE OF APPLE'S PRODUCTION AND
14 ABOUT WHAT PARTIES CONSIDERED TO BE OR NOT TO BE IN
15 THAT ORDER.

16 THE COURT: ALL RIGHT.

17 THANK YOU VERY MUCH.

18 MR. JACOBS?

19 MR. JACOBS: YES, YOUR HONOR.

20 WELL, WE THINK YOUR ORDER WAS CLEAR AND
21 WE THINK, FOR EXAMPLE, THE WORD "TRANSCRIPTS" WAS
22 CLEAR BECAUSE MANY OF THE DEPOSITIONS HAVE
23 QUESTIONS AND HAD EXHIBITS, MORE IMPORTANTLY, THAT
24 GO TO INTERNAL DESIGN.

25 WHAT WE UNDERSTOOD YOUR ORDER TO SAY IS,

1 I'M GOING TO FIGURE OUT ON THE BASIS OF THE
2 CATEGORIES THAT HAVE BEEN PRESENTED TO ME WHICH
3 CATEGORIES DON'T POSE THAT MUCH OF A RISK GIVEN
4 WHAT SHERMAN DOES AND WHICH CATEGORIES AT A
5 CATEGORICAL LEVEL POSE A GREATER RISK.

6 AND EVERY TIME YOU WORK IN CATEGORIES
7 SOMETIMES IT'S OVER INCLUSIVE AND SOMETIMES IT'S
8 UNDER INCLUSIVE. THE CATEGORIES WERE TEED UP TO
9 YOU AND YOU CALLED THE CATEGORIES.

10 AND OUR VIEW IS THAT THEY ARE TRYING TO
11 CHANGE THE CATEGORIES AND CHANGE THE CALCULATION OF
12 RISK AND BENEFIT OVER INCLUSIVENESS AND UNDER
13 INCLUSIVENESS.

14 SO FOR EXAMPLE, ASKING FOR ALL EXHIBITS
15 ATTACHED TO DEPOSITION TRANSCRIPTS OF DESIGN
16 INVENTORS, IN OUR VIEW RAISES A SUBSTANTIAL RISK OF
17 EXPOSURE TO SHERMAN OF INFORMATION THAT FALLS ON
18 THE "DON'T SHOW" SIDE OF THE LINE YOUR HONOR DREW.
19 AND THAT'S BECAUSE A LOT OF THEM ARE INTERNAL
20 DOCUMENTS BECAUSE THOSE HAPPEN TO GET ASKED ABOUT
21 IN DEPOSITIONS.

22 AND THE SAME IS TRUE FOR PROTOTYPES. I
23 DO WANT TO DISTINGUISH BETWEEN MODELS AND
24 PROTOTYPES HERE. MODELS ARE WHAT INDUSTRIAL DESIGN
25 CREATES FROM CAD. PROTOTYPES ARE ACTUAL ATTEMPTS

1 TO BUILD WORKING SYSTEMS.

2 SAMSUNG ASKS FOR ALL OF THOSE. WE DID
3 SEE THAT DECLARATIONS FIT INTO THE CATEGORY OF
4 DEPOSITIONS AND SO WE OFFERED THAT, OKAY. THEY CAN
5 SEE THE DECLARATIONS OF STRINGER, FOR EXAMPLE,
6 BECAUSE THAT'S AKIN TO A DEPOSITION OF STRINGER
7 THAT HE COULD SEE.

8 WE REMAIN VERY CONCERNED ABOUT SHERMAN.
9 WE REMAIN VERY CONCERNED ABOUT HIS ONGOING WORK.
10 SO WE'RE READING YOUR ORDER TO DEFINE SOME
11 CATEGORIES AND TO OPPOSE ANY EXPANSION OF THOSE
12 CATEGORIES.

13 THE COURT: ARE YOU SUGGESTING THAT
14 EITHER SAMSUNG'S REQUEST OR MY ORDER WAS EXCLUSIVE
15 OF ANY ADDITIONAL CATEGORIES WHICH WERE REVEALED BY
16 THE SUBSEQUENT APPLE PRODUCTION? I MEAN, THAT
17 SEEMS LIKE A PRETTY EXTREME POSITION TO ME.

18 MR. JACOBS: I DON'T THINK WE NEED THAT.
19 I DON'T THINK IT'S TRUE.

20 THE FACT THAT WE HAVE LOTS OF MODELS,
21 AGAIN, THEY'VE KNOWN THAT SINCE THE SUMMER. THE
22 FACT THAT WE HAD VARIOUS CATEGORIES OF INTERNAL
23 DESIGN DOCUMENTS THEY'VE KNOWN THAT FROM THE VERY
24 BEGINNING.

25 SO I THINK THERE'S A FACTUAL DISPUTE OF

1 WHETHER THEY KNEW OR SHOULD HAVE KNOWN EARLIER THAT
2 THIS MIGHT COME UP IN CONNECTION WITH SHERMAN, BUT
3 MORE IMPORTANTLY THEY GAVE YOU A CATEGORY THAT
4 INCLUDED THOSE INTERNAL DOCUMENTS BY CATEGORY AND
5 THAT WAS WHERE YOU DREW THE LINE.

6 SO WE THINK THAT'S THE ANSWER HERE, THE
7 CATEGORIES THAT WERE DEFINED BY YOUR ORDER.

8 AND AGAIN, WE REMAIN VERY CONCERNED.

9 THE COURT: THANK YOU.

10 ANY REBUTTAL?

11 MS. MAROULIS: YES, YOUR HONOR.

12 I THINK IT'S IMPORTANT TO NOTE FOR THE
13 RECORD THAT APPLE IS ALSO OBJECTING TO OUR OTHER
14 DESIGN EXPERT, MR. LUCENTE.

15 THE COURT: HIS NAME IS LUCENTE?

16 MS. MAROULIS: YES. HE'S IN DESIGN, BUT
17 IN THE U.S. AREA.

18 AND IT'S STILL NOT RIPE FOR THE MOTION
19 BEFORE YOU. WE ARE STILL CONFERRING ABOUT IT. BUT
20 WE SEE A VERY TROUBLING PATTERN OF APPLE BLOCKING
21 US FROM OUR EXPERTS EFFECTIVELY ASSISTING US IN
22 THIS CASE.

23 AND MS. HUTNYAN ALREADY MENTIONED THAT
24 THERE WERE OBJECTIONS TO EVERY SINGLE ONE OF OUR
25 EXPERTS IN THE ITC PROCEEDING. THAT'S NOT BEFORE

1 YOU, IT'S JUST A DATA POINT. BUT THIS PROCEEDING
2 SHOULD NOT BE USED TO DEPRIVE US OF EXPERT'S
3 ASSISTANCE.

4 THE COURT: SO IS IT FAIR TO SAY,
5 MS. MAROULIS, THAT YOUR POSITION ON THIS RESTS ON
6 THE NOTION THAT YOU'RE ENTITLED TO KEEP FROM APPLE
7 WHAT NON TESTIFYING EXPERTS YOU ARE WORKING WITH?
8 IS THAT THE CRITICAL ISSUE HERE?

9 I SEE THIS AS RELATED TO THE EARLIER
10 PROTECTIVE ORDER YOU MADE. IS THAT WHERE THIS
11 ISSUE IS COMING TO A HEAD?

12 MS. MAROULIS: THERE ARE TWO SEPARATE
13 ISSUES, YOUR HONOR.

14 THE COURT: WHY DON'T YOU BREAK THEM
15 APART FOR ME.

16 MS. MAROULIS: THE ISSUE MS. HUTNYAN
17 ALREADY COVERED IS WE SHOULDN'T HAVE TO EXPOSE
18 IDENTITIES OF EXPERTS OF THINGS THAT ARE NOT
19 ENTIRELY CONFIDENTIAL, THEY ARE REMEDIAL
20 CONFIDENTIALITY.

21 THE ISSUE HERE IS THAT IN THE DESIGN AREA
22 FOR SOME REASON APPLE IS PARTICULARLY BEING
23 DIFFICULT IN NOT LETTING US ENGAGE EXPERTS WHO WILL
24 BE HELPFUL IN THIS CASE AND THAT'S WHY WE HAVE
25 SUCCESSIVE MOTION PRACTICE.

1 MR. JACOBS HAS SAID HE'S NEVER SEEN THIS
2 MUCH MOTION PRACTICE FROM ONE EXPERT. I HAVEN'T
3 EITHER. I DON'T UNDERSTAND WHY WE CAN'T SHOW OUR
4 EXPERTS, MR. SHERMAN AND MR. LUCENTE, SOME OF THE
5 TEN-YEAR OLD E-MAILS PASSING ON PUBLIC ARTICLES OR
6 DEPOSITION EXHIBITS TO DEPOSITIONS HE CAN READ.

7 SO TO THE EXTENT THAT WE NEED TO PARSE
8 APART DIFFERENT CATEGORIES OF DOCUMENTS, WE CAN NOT
9 HAVE A BROADER PERMISSION, WE ARE BEFORE YOUR HONOR
10 WITH SPECIFIC SIX OR SEVEN CATEGORIES THAT WE SEEK
11 FROM THE COURT THE RELIEF TO GET IN THIS CASE.

12 THE COURT: I APPRECIATE YOUR COMMENTS.

13 I GUESS WHERE I WAS GOING WITH ALL OF
14 THIS IS AS I SEE IT THERE ARE TWO ISSUES HERE WHICH
15 RELATE TO ONE ANOTHER.

16 ONE IS THE SUBJECT MATTER OF THE
17 DOCUMENTS OR DEPOSITION TRANSCRIPTS AT ISSUE AND
18 WHETHER OR NOT THOSE LEGITIMATELY IMPLICATE APPLE'S
19 COMPETITIVE CONCERNS.

20 THE SECOND IS WHETHER THE DOCUMENTS ARE
21 TRULY THE SECRET SAUCE OR SUPER SECRET OR SUPER
22 CONFIDENTIAL HIGHER LEVEL OF CONFIDENTIALITY
23 SEEKING AN ORDER.

24 AND WITH RESPECT TO MR. SHERMAN, LET'S
25 FOCUS ON HIM, I SUSPECT I WILL GET A MOTION ON THE

1 OTHER GUY LATER ON.

2 MS. MAROULIS: I HOPE NOT. I HOPE WE CAN
3 ACHIEVE AGREEMENT ON THAT.

4 THE COURT: I HOPE NOT TOO.

5 BUT IT SEEMS TO ME WITH RESPECT TO
6 MR. SHERMAN WHAT YOU ARE SAYING IS GIVEN THE
7 CURRENT STATE AFFAIRS OR THE CURRENT PROTECTIVE
8 ORDER AND ALL OF THAT, YOU SHOULD BE ENTITLED TO
9 SHARE WITH MR. SHERMAN THE ADDITIONAL CATEGORIES
10 YOU IDENTIFIED FOR ALL THE SAME REASONS OR FOR
11 SIMILAR REASONS TO THE CATEGORIES THAT WERE
12 PREVIOUSLY AUTHORIZED.

13 MS. MAROULIS: YES, YOUR HONOR.

14 THE COURT: IS THAT A SUMMARY OF THE
15 POSITION?

16 MS. MAROULIS: THAT'S CORRECT.

17 THE COURT: ALL RIGHT.

18 ANYTHING FURTHER?

19 MS. MAROULIS: THANK YOU, YOUR HONOR.

20 I THINK YOU'VE HEARD A LOT FROM US TODAY.

21 MR. JACOBS: YES, IF I MAY.

22 THE COURT: APPARENTLY NOT QUITE.

23 MR. JACOBS: NOT QUITE. WE WOULD LIKE
24 SOME DIRECTION FROM YOU.

25 THE COURT: ALL RIGHT.

1 MR. JACOBS: WE INFERRED FROM THE
2 SCHEDULE JUDGE KOH ENTERED AND FROM YOUR HONOR'S
3 EARLIER GRANTS OF MOTIONS TO EXPEDITE THAT
4 YOUR HONOR WAS MORE THAN -- NOT JUST OPEN, BUT IN A
5 AWAY KIND OF SAYING LOOK, LET'S GET THESE TEED UP,
6 LET'S GET THEM DECIDED, LET'S NOT PUT THEM ON THE
7 ORDINARY TRACK BECAUSE IF WE DO THAT IT WILL BE A
8 MONTH AND A HALF OUT.

9 THE COURT: THAT'S BEFORE I KNEW THERE
10 WERE NINE OF THEM IN THE CUE AND MORE TO COME.

11 MR. JACOBS: THAT'S WHY I'M GOING.

12 WE REALLY WANT TO DO THIS IN A WAY THAT
13 RESPECTS THE LIMITED THROUGHPUT OF THIS
14 INSTITUTION, THAT WE -- THAT DOESN'T GET CROSSWISE
15 WITH YOU, BECAUSE WE ARE HIGHLY DEPENDENT ON YOU,
16 FRANKLY, TO GET THE DISCOVERY WE NEED.

17 BUT I DON'T WANT TO JUST READ SIGNALS
18 THAT YOUR HONOR MIGHT HAVE BEEN SENDING ABOUT NO, I
19 DON'T WANT ANY MORE EXPEDITED MOTIONS.

20 CAN YOU GIVE US ANY GUIDANCE ON HOW YOU
21 WANT US TO PROCEED OVER THE SIX NEXT SIX OR
22 SEVEN WEEKS?

23 THE COURT: WELL, WE SHOULD SPEAK TO THE
24 SUBJECT, MS. MAROULIS, I DON'T WANT TO DEPRIVE YOU
25 OF AN EQUAL OPPORTUNITY.

1 MS. MAROULIS: WE NEED TO DO WHAT WORKS
2 FOR THE COURT.

3 IN THE PAST WE AT SAMSUNG WERE NOT
4 SEEKING EXPEDITED RELIEF. EVERY SINGLE MOTION
5 APPLE FILED WAS AN EXPEDITED -- EXCUSE ME.

6 SO TO AVOID HAVING TWO DIFFERENT TRACKS,
7 WHERE THEIR MOTIONS ARE HEARD WELL BEFORE OURS IN
8 THE SENSE WE HAD TO JOIN THE EXPEDITED SCHEDULE.

9 BUT IF THERE'S A PERIOD WHERE ALL OUR
10 MOTIONS ARE HEARD, I THINK WE CAN LIVE WITH THAT.

11 THE COURT: WELL LET ME, TO ADDRESS THE
12 ISSUE YOU BOTH HAVE SPOKEN TO, LET ME JUST SAY
13 THIS.

14 I HAVE STRUGGLED IN THIS CASE LIKE NO
15 OTHER IN CONSTRUCTING A PROCEDURE THAT WOULD ALLOW
16 ME TO ADDRESS YOUR DISPUTES EFFICIENTLY AND
17 REASONABLY GIVEN MY OTHER DEMANDS.

18 AND I HAVE RESISTED THE APPROACH THAT A
19 NUMBER OF MY COLLEAGUES HAVE ADOPTED IN THIS
20 DISTRICT OF LETTER BRIEFING. FRANKLY, MANY OF
21 THESE ISSUES REQUIRE MORE THAN A THREE-PAGE
22 SINGLE-SPACER, IN MY VIEW.

23 IF THAT TYPE OF APPROACH IN YOUR MIND
24 WOULD ALLOW YOU TO FRAME THE ISSUES AND GET THEM
25 TEED UP IN AN EFFICIENT WAY, I'M OPEN TO IT.

1 IF YOU CAN REACH AN AGREEMENT TO
2 SOMETHING LIKE MY COLLEAGUES DO, I'M CERTAINLY
3 WILLING TO CONSIDER IT. BUT FRANKLY, I WAS
4 RELUCTANT TO GO DOWN THAT ROAD OUT OF RESPECT TO
5 YOU TO COMPLETELY AND ADEQUATELY PRESENT THIS TO
6 ME.

7 I CAN'T OFFER ANY MORE GUIDANCE. IF YOU
8 HAVE SOMETHING IN MIND, I WILL HEAR YOU OUT.

9 I WILL SAY IN THE FUTURE IF YOU WANT
10 EXPEDITED RELIEF, I WOULD APPRECIATE YOU TELLING ME
11 EXACTLY WHAT YOU HAD IN MIND IN TERMS OF THE MOTION
12 PRACTICE THAT WOULD FOLLOW SO I'M NOT SURPRISED BY
13 THE VOLUME. THAT WOULD CERTAINLY ASSIST ME.

14 MR. JACOBS: THAT'S VERY HELPFUL,
15 YOUR HONOR, THANK YOU.

16 THE COURT: IS THERE ANYTHING ELSE I CAN
17 DO FOR YOU THIS AFTERNOON?

18 IF NOT, I WILL WISH YOU ALL A GOOD DAY.
19 THANK YOU.

20 MS. MAROULIS: THANK YOU, YOUR HONOR.

21 THE CLERK: COURT IS ADJOURNED.

22 (WHEREUPON, THE PROCEEDINGS IN THIS
23 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