

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

APPLE, INC.,) C-11-01846-LHK
)
PLAINTIFF,) JUNE 17, 2011
)
V.)
)
SAMSUNG ELECTRONICS) PAGES 1 - 39
COMPANY LIMITED, ET)
AL.,)
)
DEFENDANTS.)
-----)

THE PROCEEDINGS WERE HELD BEFORE
THE HONORABLE UNITED STATES DISTRICT
JUDGE LUCY H. KOH

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

FOR THE PLAINTIFF: MORRISON & FOERSTER
BY: HAROLD J. MCELHINNY
MICHAEL A. JACOBS
GRANT L. KIM
425 MARKET STREET
SAN FRANCISCO, CALIFORNIA 94105

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

OFFICIAL COURT REPORTER: IRENE RODRIGUEZ, CSR, CRR
CERTIFICATE NUMBER 8074

A P P E A R A N C E S: (CONT'D)

FOR THE DEFENDANTS: QUINN, EMANUEL, URQUHART &
SULLIVAN
BY: CHARLES K. VERHOEVEN
MICHAEL T. ZELLER
ERIK C. OLSON
KEVIN P.B. JOHNSON
VICTORIA F. MAROULIS
865 SOUTH FIGUEROA STREET
10TH FLOOR
LOS ANGELES, CALIFORNIA 90017

1 SAN JOSE, CALIFORNIA

JUNE 17, 2011

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

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

14:27:50 6 THE CLERK: CALLING CASE NUMBER
14:27:56 7 C-11-1846-LHK, APPLE VERSUS SAMSUNG ELECTRONICS
14:27:59 8 COMPANY LIMITED, ET AL.

14:28:18 9 MR. MCELHINNY: GOOD AFTERNOON, YOUR
14:28:21 10 HONOR. HAROLD MCELHINNY, MICHAEL JACOBS, AND GRANT
14:28:22 11 KIM FOR THE PLAINTIFFS APPLE.

14:28:25 12 THE COURT: GOOD AFTERNOON.

14:28:29 13 MR. VERHOEVEN: GOOD AFTERNOON, YOUR
14:28:30 14 HONOR. CHARLES VERHOEVEN FOR QUINN EMANUEL ON
14:28:33 15 BEHALF OF THE SAMSUNG DEFENDANTS AND WITH ME IS MY
14:28:37 16 PARTNER KEVIN JOHNSON, MIKE ZELLER, VICKIE
14:28:48 17 MAROULIS.

14:28:48 18 THE COURT: GOOD AFTERNOON. PLEASE SIT
14:28:49 19 OR STAND, WHICHEVER IS MOST COMFORTABLE.

14:28:52 20 I HAVE QUESTIONS FOR ALL SIDES TODAY.

14:28:58 21 I'LL START FIRST WITH MR. VERHOEVEN.
14:29:01 22 WHEN WE HAD THE HEARING ON APPLE'S MOTION YOU HAD
14:29:03 23 SPECIFIED SOME EXPEDITED DISCOVERY THAT SAMSUNG
14:29:06 24 WOULD NEED, WHICH I THOUGHT WAS VERY REASONABLE,
14:29:09 25 BUT IT DOESN'T APPEAR THAT YOU'RE REQUESTING THAT

14:29:11 1 NOW.

14:29:11 2 WHY IS THAT?

14:29:16 3 MR. VERHOEVEN: WELL, YOUR HONOR, WHEN WE
14:29:18 4 WERE AT THE HEARING WE WERE GOING OVER THE SCOPE OF
14:29:19 5 THE DISCOVERY THAT THE PLAINTIFF WAS SEEKING, AND
14:29:21 6 THEY HAD SOUGHT BROADER DISCOVERY THAN WHAT YOUR
14:29:28 7 HONOR ACTUALLY ORDERED.

14:29:29 8 AND SO WE ACTUALLY THOUGHT THAT WE WOULD
14:29:31 9 PARE BACK AND TRY TO BE AS RECIPROCAL AS POSSIBLE
14:29:35 10 IN THE DISCOVERY WE WERE SEEKING.

14:29:36 11 SO OUR MOTION IS THE EXACT RECIPROCAL
14:29:40 12 DISCOVERY THAT YOUR HONOR ORDERED.

14:29:41 13 AND THAT'S BASICALLY THE EXPLANATION.

14:29:45 14 THE COURT: SO DO YOU NOT NEED THE THINGS
14:29:47 15 THAT YOU SPELLED OUT AT THE HEARING, YOU DON'T NEED
14:29:53 16 THAT ANYMORE?

14:29:54 17 MR. VERHOEVEN: WELL, IT SOMEWHAT DEPENDS
14:29:56 18 ON THE SCOPE AND THE NATURE OF THESE POTENTIAL
14:29:58 19 PRELIMINARY INJUNCTION MOTIONS THEY FILED, YOUR
14:30:00 20 HONOR.

14:30:00 21 SO IF THEY FILE A PRELIMINARY INJUNCTION
14:30:02 22 MOTION, WE'RE NOT SURE AT THIS POINT WHAT PRODUCTS
14:30:06 23 THEY'RE GOING TO FILE ON, WE'RE NOT SURE THEY'RE
14:30:08 24 EVEN GOING TO FILE IT.

14:30:09 25 AND I THINK IN FULL DISCLOSURE, YOUR

14:30:11 1 HONOR, ONCE WE SEE A MOTION, WE PROBABLY WILL MEET
14:30:15 2 AND CONFER WITH THE OTHER SIDE, ONCE WE SEE THE
14:30:18 3 SCOPE OF IT, AND TRY TO WORK OUT SOME SORT OF
14:30:20 4 ARRANGEMENT IF THEY FILE A MOTION SO THAT BOTH
14:30:23 5 SIDES CAN HAVE SOME SORT OF A RECIPROCAL DISCOVERY.
14:30:28 6 FOR EXAMPLE, IF THEY HAVE DECLARANTS OR EXPERT
14:30:31 7 DECLARATIONS OR THEY DO A SURVEY OR SOMETHING, THEN
14:30:34 8 WE WOULD NEED TO DO A CERTAIN AMOUNT OF DISCOVERY.

14:30:36 9 HOWEVER, IF THEY DIDN'T DO THAT AND THEY
14:30:38 10 DON'T HAVE DECLARATIONS, THEN IT WOULD BE SLIGHTLY
14:30:40 11 DIFFERENT.

14:30:40 12 SO WHAT WE TRIED TO DO, YOUR HONOR, IS
14:30:44 13 YOUR HONOR HAD INDICATED AT THE HEARING -- YOU KNOW
14:30:46 14 WE OPPOSED THIS VERY DISCOVERY AND OF FUTURE
14:30:49 15 PRODUCTS.

14:30:52 16 BUT YOUR HONOR WAS PERSUADED THAT THAT
14:30:54 17 LIMITED DISCOVERY SHOULD BE -- SHOULD PROCEED AND
14:30:57 18 SO WE WENT BACK AND TRIED TO MAKE OUR REQUEST AS
14:31:00 19 RECIPROCAL AND AS LIMITED AS WHAT YOUR HONOR
14:31:04 20 ORDERED.

14:31:08 21 NOW, IT MAY BE THAT IF THEY LATER TRY TO
14:31:10 22 FILE SOMETHING, WE'LL HAVE TO REVISIT THE ISSUE OF
14:31:13 23 ANY FURTHER DISCOVERY THAT MIGHT BE NEED TO BE
14:31:16 24 TAKEN.

14:31:16 25 BUT ESSENTIALLY WHAT WE'RE SEEKING HERE

14:31:18 1 IS RECIPROCAL FAIR PARITY IN DISCOVERY.

14:31:22 2 THEY HAVE SAID TO YOUR HONOR, WE NEED
14:31:25 3 THESE -- THE DISCOVERY OF THESE FUTURE PRODUCTS,
14:31:28 4 FOR EXAMPLE, THE GALAXY S2 WHICH IS NOT GOING TO BE
14:31:31 5 RELEASED UNTIL THE FALL.

14:31:34 6 YOUR HONOR ORDERED THAT TO BE PRODUCED.
14:31:37 7 AND WHAT WE'RE SIMPLY TRYING TO DO IS, AND THEIR
14:31:40 8 BASIS FOR THAT, YOUR HONOR, QUICKLY, I'LL TRY TO BE
14:31:43 9 QUICK, IS THEY NEED TO GET PREPARED SO THAT IF THIS
14:31:45 10 COMES OUT, THERE'S NO FURTHER DELAY AND WHATNOT.

14:31:49 11 WHAT WE'RE SIMPLY ASKING IS FOR PARITY
14:31:53 12 HERE. WE SHOULD BE ABLE TO GET PREPARED, TOO. IF
14:31:57 13 THERE'S GOING TO BE MOTION PRACTICE AND PRELIMINARY
14:31:59 14 INJUNCTION ON THE GALAXY S2 IN THE FALL OF 2011,
14:32:03 15 THEN THE PRODUCT THAT IS GOING TO BE OUT THERE IN
14:32:05 16 THE MARKETPLACE WITH IS VERY, VERY LIKELY, YOUR
14:32:07 17 HONOR, GOING TO BE A NEW VERSION OF THE IPHONE AND
14:32:11 18 SO WE SHOULD BE ABLE TO, IF YOU LOOK AT, FOR
14:32:13 19 EXAMPLE, THE SLEEKCRAFT FACTORS, YOUR HONOR, WE
14:32:16 20 SHOULD BE ABLE TO BE LOOKING AT THE -- NO PUN
14:32:19 21 INTENDED -- APPLES TO APPLES, THE S2 VERSUS THE NEW
14:32:25 22 VERSION OF THE IPHONE IN THE FALL OF 20000.

14:32:28 23 ACCORDING TO THE ELEMENTS, FOR EXAMPLE,
14:32:30 24 THE SIMILARITY OF THE MARKS, WE SHOULD BE ABLE TO
14:32:33 25 LOOK AT THE ACTUAL PRODUCTS AND BE ABLE TO COMPARE

14:32:36 1 THEM SO THAT WE COULD, FOR EXAMPLE, ONE THING YOU
14:32:38 2 DO, SO SLEEKCRAFT HAS EIGHT FACTORS, BUT THE EIGHT
14:32:42 3 FACTORS ARE DESIGNED FOR ONE -- TO ANSWER ONE LEGAL
14:32:45 4 QUESTION: THE LIKELIHOOD OF CONFUSION.

14:32:47 5 AND SO WHAT PEOPLE DO IN THESE KINDS OF
14:32:50 6 CASES IS THAT THEY DO SURVEYS.

14:32:57 7 SO WE SHOULD BE ABLE TO -- TO HAVE PARITY
14:33:00 8 AND BE IN THE SAME POSITION AS THEM. THEY'RE GOING
14:33:02 9 TO BE ABLE TO DO WHATEVER THEY WANT WITH OUR
14:33:04 10 ADVANCED PRODUCTS AND WE SHOULD BE ABLE TO DO THE
14:33:07 11 SAME THING, FOR EXAMPLE, GET READY SO WE HAVE THAT
14:33:10 12 PRODUCT AVAILABLE, WE CAN SEE AND DO A SURVEY AND
14:33:13 13 SEE, DO PEOPLE THINK THAT THESE ARE SIMILAR? ARE
14:33:16 14 PEOPLE CONFUSED?

14:33:18 15 YOU KNOW, ANOTHER FACTOR IS STRENGTH OF
14:33:20 16 THE MARKS.

14:33:21 17 IF THEIR NEW PRODUCT IS SUBSTANTIALLY
14:33:26 18 DIFFERENT IN DESIGN, AND THEY PUT \$100 MILLION
14:33:30 19 MARKETING CAMPAIGN INTO IT THIS FALL AND -- BUT
14:33:34 20 IT'S A DIFFERENT DESIGN, AND YOUR HONOR IS
14:33:38 21 ADDRESSING IRREPARABLE -- THE LIKELIHOOD OF
14:33:41 22 IRREPARABLE HARM AND IT TURNS OUT THAT THE THINGS
14:33:44 23 THAT THEY'RE COMPLAINING ABOUT DON'T EVEN APPLY TO
14:33:46 24 THIS NEW PRODUCT THAT THEY'RE PUTTING \$100 MILLION
14:33:50 25 OF A MARKETING CAMPAIGN INTO, THAT IS GOING TO

14:33:53 1 SIGNIFICANTLY AFFECT, FOR EXAMPLE, THE LIKELIHOOD
14:33:55 2 OF HARM IN THE MARKETPLACE IF THEY'RE NOT EVEN
14:33:57 3 USING THAT STUFF ANYMORE IN THEIR NEW MARKETING
14:34:00 4 CAMPAIGN.

14:34:00 5 IT'S GOING TO SIGNIFICANTLY AFFECT THE
14:34:02 6 BALANCE OF HARMS IF THEY'RE ASKING THIS COURT TO
14:34:05 7 ENJOIN SAMSUNG FROM SELLING BASICALLY ITS ENTIRE
14:34:08 8 SMART PHONE AND TAB LINE IN THE UNITED STATES.

14:34:11 9 SO THIS STUFF IS HIGHLY RELEVANT IF THEY
14:34:15 10 DO FILE A P.I., YOUR HONOR, AND ALL WE'RE ASKING
14:34:22 11 FOR IS THE EXACT SAME DISCOVERY THAT YOUR HONOR
14:34:24 12 ALREADY ORDERED WITH RESPECT TO THE DEFENDANTS.

14:34:27 13 AND WE THINK THAT IT'S REASONABLE, AND AS
14:34:32 14 I SAID AT THE LAST HEARING, WHAT IS GOOD FOR THE
14:34:35 15 GOOSE IS GOOD FOR THE GANDER AND WE SHOULD BE
14:34:37 16 ENTITLED TO THE SAME DISCOVERY THAT THEY GOT, YOUR
14:34:40 17 HONOR.

14:34:40 18 THE COURT: LET ME ASK THE PLAINTIFFS,
14:34:42 19 WHAT IS YOUR, IF YOU DO END UP FILING A P.I.
14:34:46 20 MOTION, IS IT GOING TO BE JUST THE TRADEMARK AND
14:34:48 21 THE TRADE DRESS OR IS IT ALSO GOING TO BE DESIGN
14:34:52 22 PATENTS?

14:34:53 23 I'M REALLY HOPING IT'S NOT GOING TO BE
14:34:55 24 UTILITY PATENTS, BECAUSE AS I SAID, THAT'S NOT
14:34:59 25 REALLY I THINK FEASIBLE TO DO A FULL CLAIM

14:35:02 1 CONSTRUCTION AND A FULL ANALYSIS ON A P.I. BASIS.

14:35:05 2 SO TELL ME WHAT YOU'RE CURRENT THINKING
14:35:07 3 IS.

14:35:07 4 MR. MCELHINNY: MY CURRENT THINKING IS
14:35:08 5 THAT I INTEND TO, IF NECESSARY, CHANGE YOUR MIND
14:35:12 6 ABOUT THE UTILITY PATENTS, BUT THE DIRECT ANSWER TO
14:35:16 7 YOUR QUESTION IS WE'RE GOING TO REVIEW THE RIGHTS
14:35:22 8 THAT WE HAVE ASSERTED.

14:35:23 9 AND WE'RE GOING TO MOVE -- IF WE MOVE, WE
14:35:25 10 ARE GOING TO MOVE ONTO SOME KIND OF COMBINATION OF
14:35:27 11 THE RIGHTS THAT WE HAVE ASSERTED, YOUR HONOR.

14:35:29 12 BUT I CAN'T TELL YOU RIGHT NOW THAT WE
14:35:31 13 HAVE DECIDED TO MOVE, MUCH LESS WHICH OF OUR MANY
14:35:34 14 CLAIMS WE'RE GOING TO MOVE ON.

14:35:35 15 THE COURT: WELL, LET ME ASK ACTUALLY OF
14:35:37 16 BOTH PARTIES AND IT SOUNDS LIKE BOTH OF YOU ARE
14:35:41 17 INTERESTED IN GETTING -- ESPECIALLY IF YOU WANT TO
14:35:43 18 LITIGATE UTILITY PATENTS, THEN LET'S JUST SET AN
14:35:47 19 EXPEDITED SCHEDULE FOR THE WHOLE CASE.

14:35:49 20 I WOULD RATHER US JUST START NOW AND I
14:35:51 21 WANT TO HEAR FROM BOTH SIDES WHETHER YOU WOULD
14:35:54 22 AGREE WITH IT RATHER THAN EVERY SIX WEEKS HAVING AN
14:35:57 23 EXPEDITED DISCOVERY MOTION.

14:35:59 24 IF YOU REALLY FEEL THIS ANXIOUS, SET THE
14:36:02 25 SCHEDULE NOW AND I'LL GIVE YOU A TRIAL IN

14:36:04 1 EIGHT MONTHS, SIX MONTHS, WHATEVER YOU WANT, MY
14:36:07 2 SCHEDULE IS OPEN. ONE YEAR? YOU TELL ME.

14:36:11 3 WHAT ARE YOUR THOUGHTS ON THAT?

14:36:18 4 MR. MCELHINNY: THE ANSWER -- WELL, THE
14:36:19 5 ANSWER TO YOUR QUESTION IS THAT WE WOULD LIKE THAT,
14:36:21 6 YOUR HONOR. WE WOULD LIKE AN EXPEDITED TRIAL DATE.

14:36:24 7 IN TERMS OF THE SPECIFIC MONTHS, I WOULD
14:36:26 8 NEED TWO MINUTES TO CONSULT WITH MY CLIENT TO GET
14:36:29 9 MORE DIRECT INFORMATION ABOUT THAT.

14:36:31 10 THE COURT: WELL, LET ME HEAR FROM -- IS
14:36:33 11 THAT SOMETHING THAT SAMSUNG WOULD BE INTERESTED IN
14:36:35 12 RATHER THAN US INCREMENTALLY GETTING DISCOVERY
14:36:39 13 PIECEMEAL? WHY DON'T WE JUST GET STARTED ON THE
14:36:41 14 CASE?

14:36:42 15 MR. VERHOEVEN: WELL, I THINK I, TOO,
14:36:43 16 WOULD HAVE TO CONFER. IT'S SORT OF COMING OUT NOT
14:36:47 17 ON THE SUBJECT OF THIS PARTICULAR MOTION.

14:36:49 18 THE COURT: I UNDERSTAND.

14:36:49 19 MR. VERHOEVEN: AND IT'S A VERY
14:36:51 20 COMPLICATED CASE. AS YOU KNOW, YOUR HONOR RELATED
14:36:53 21 THE OTHER CASE TOGETHER WITH IT AND IF WE'RE GOING
14:36:56 22 TO BE PROCEEDING ON UTILITY PATENTS, WE SHOULD
14:36:58 23 PROCEED IN TOTAL.

14:37:01 24 AND SO WE WOULD NEED TO TRY TO DO A
14:37:05 25 SIGNIFICANT ASSESSMENT BECAUSE OFF THE TOP OF -- AT

14:37:10 1 LEAST OFF THE TOP OF MY HEAD, I'LL LET
14:37:12 2 MR. MCELHINNY SPEAK FOR HIMSELF, BUT AT LEAST OFF
14:37:15 3 THE TOP OF MY HEAD IT'S IMPORTANT THAT WE GET IT
14:37:18 4 RIGHT IN TERMS OF THE SCHEDULE AND WE WOULD HAVE TO
14:37:20 5 SIT DOWN AND FIGURE OUT HOW MANY EXPERTS ARE WE
14:37:21 6 TALKING ABOUT? YOU KNOW, HOW ARE WE GOING TO DO
14:37:24 7 THE MARKMAN HEARING WITH ALL OF THESE PATENTS? YOU
14:37:27 8 KNOW, WHAT ARE YOUR HONOR'S LIMITS, IF ANY, ON THE
14:37:30 9 NUMBER OF TERMS FOR CONSTRUCTION PER PATENT? IS IT
14:37:35 10 FOR THE WHOLE CASE?

14:37:36 11 THOSE ARE THE THINGS I THINK WOULD BE
14:37:37 12 MORE INVOLVED THAN ME JUST TELLING YOU RIGHT OFF
14:37:42 13 THE TOP OF MY HEAD.

14:37:43 14 THE COURT: I'M NOT ASKING YOU TO TELL ME
14:37:45 15 OFF THE TOP OF YOUR HEAD, AND I DON'T THINK THAT'S
14:37:48 16 FAIR TO YOU ALL SINCE THIS IS REALLY NOT EVEN A
14:37:50 17 CMC.

14:37:50 18 MR. VERHOEVEN: MAY I SAY ONE OTHER THING
14:37:52 19 REALLY QUICKLY, YOUR HONOR?

14:37:54 20 LAST NIGHT I THINK IT WAS APPLE FILED AN
14:37:57 21 AMENDED COMPLAINT.

14:37:57 22 THE COURT: I KNOW.

14:37:58 23 MR. VERHOEVEN: AND ADDED NEW PATENTS.
14:38:00 24 SO WE HAVEN'T EVEN HAD A CHANCE TO GO THROUGH THAT
14:38:03 25 YET, YOUR HONOR.

14:38:03 1
14:38:06 2
14:38:06 3
14:38:07 4
14:38:10 5
14:38:12 6
14:38:14 7
14:38:18 8
14:38:20 9
14:38:21 10
14:38:24 11
14:38:26 12
14:38:28 13
14:38:29 14
14:38:31 15
14:38:33 16
14:38:37 17
14:38:42 18
14:38:43 19
14:38:48 20
14:38:48 21
14:38:49 22
14:38:53 23
14:38:57 24
14:38:57 25

SO THAT WOULD OBVIOUSLY IMPACT US AS WELL.

THE COURT: SURE. LET ME ASK, THE SAMSUNG VERSUS APPLE CASE, IT HAS BEEN RELATED BUT IT HASN'T BEEN CONSOLIDATED.

ARE YOU ALL GOING TO SEEK TO CONSOLIDATE IT OR ARE YOU JUST GOING TO THEN ASSERT THE PATENTS THAT YOU ASSERTED IN THAT CASE AS COUNTERCLAIMS IN THIS CASE AND IT IS RESPECTIVELY THE SAME CASE ANYWAY, OR WHAT IS GOING TO HAPPEN?

MR. VERHOEVEN: WE THINK IT SHOULD BE CONSOLIDATED, YOUR HONOR, AND WE THINK IT SHOULD BE CONSOLIDATED AND SHOULD PROCEED AS A SINGLE CASE.

THE COURT: NOW, WHEN YOU -- I THINK YOUR ANSWER DATE IS NOT FOR A LITTLE WHILE, RIGHT? I KNOW YOU STIPULATED TO A DATE. WHEN WAS THAT?

MR. VERHOEVEN: JULY 15TH.

MS. MAROULIS: YOUR HONOR, JULY 5TH. IT'S GOING TO BE CHANGED BECAUSE OF THE FILING YESTERDAY.

THE COURT: I SEE. OKAY. ARE YOU ANTICIPATING THEN FILING COUNTERCLAIMS THAT WOULD ASSERT YOUR OWN -- WHATEVER COMBINATION OF UTILITY PATENTS?

MR. VERHOEVEN: WE'RE STILL EVALUATING

14:38:59 1 OUR OPTIONS, AND I REALLY CAN'T SPEAK TO THAT AT
14:39:01 2 THIS POINT.

14:39:02 3 THE COURT: OKAY.

14:39:02 4 MR. VERHOEVEN: WE ARE EVALUATING THOSE
14:39:04 5 OPTIONS THOUGH, YOUR HONOR.

14:39:05 6 MR. MCELHINNY: IF I MAY, YOUR HONOR?

14:39:07 7 THE COURT: YES.

14:39:08 8 MR. MCELHINNY: TWO OF THE SUBJECTS THAT
14:39:09 9 HAVE BEEN TOUCHED ON, WE DO, THE REASON WE'RE
14:39:11 10 TALKING ABOUT AN INJUNCTION, IS THAT WE DO FEEL
14:39:13 11 THAT THERE IS INJURY GOING ON.

14:39:16 12 WE DO SEEK TO EXPEDITE A RESOLUTION OF
14:39:19 13 THIS CASE. WE DO THINK THAT -- WE WILL OPPOSE
14:39:22 14 CONSOLIDATION SIMPLY BECAUSE ADDING A TEN-UTILITY
14:39:26 15 PATENT ONTO THE CASE THAT WE HAVE WE THINK IS A
14:39:29 16 DELAYING TACTIC.

14:39:30 17 BUT IN CONNECTION I THINK I CAN SAY
14:39:34 18 COUNSEL, ALL OF THE COUNSEL WHO ARE IN THE CASE,
14:39:36 19 WILL OPPOSE CONSOLIDATING THAT ON APPLE'S SIDE.

14:39:40 20 AS YOU KNOW FROM THE DECLARATIONS, I
14:39:42 21 MEAN, I SAT IN FRONT OF YOU AND YOU SAID, YOU CAN
14:39:46 22 EXPEDITE DISCOVERY AND WE KNOW FROM THE
14:39:49 23 DECLARATIONS, WE CALLED THEM UP AND WE WENT THROUGH
14:39:51 24 THE LIST THAT MR. VERHOEVEN HAD STATED AND HE SAID
14:39:54 25 EXACTLY YOUR POINT, WHICH WAS THAT THERE IS GOING

14:39:57 1 TO HAVE TO BE SOME DISCOVERY RELATIVE TO THIS
14:39:59 2 INJUNCTION IF IT IS FILED, CAN'T WE AGREE ON A
14:40:02 3 PROCESS FOR THAT? CAN'T WE DECIDE IF DECLARANTS
14:40:06 4 ARE TO BE DEPOSED, ALL OF THE STUFF THAT I
14:40:07 5 MENTIONED TO YOU?

14:40:08 6 AND TODAY THEY WILL NOT ENGAGE WITH US.

14:40:12 7 AND, AGAIN, I THINK AS COUNSEL HAS SAID,
14:40:14 8 THE LIKELY PROCEDURE HERE IS THAT THEY FILED THIS
14:40:17 9 SORT OF WHAT WE WOULD CALL IT A "GOTCHA MOTION" AND
14:40:21 10 IF IT DOESN'T SUCCEED THEN WE'RE GOING TO START
14:40:24 11 OVER THE PROCESS ABOUT NOW WHAT DISCOVERY DO YOU
14:40:27 12 REALLY NEED THAT IS RELEVANT TO THE INJUNCTION AND
14:40:30 13 HOW LONG WOULD IT TAKE, AND I THINK WE WILL SEE AN
14:40:33 14 ENGAGEMENT AND PROBABLY A DRAWN-OUT DISCOVERY
14:40:36 15 PERIOD.

14:40:36 16 MR. VERHOEVEN: YOUR HONOR, MAY I
14:40:37 17 BRIEFLY?

14:40:37 18 MR. MCELHINNY: JUST LET ME FINISH.

14:40:39 19 THE OTHER THING IS ALL OF THE CLAIMS THAT
14:40:41 20 WE WILL BE PURSUING, WHATEVER THEY ARE IN THE
14:40:43 21 PRELIMINARY INJUNCTION, AS WE POINTED OUT TO YOUR
14:40:47 22 HONOR BEFORE, AND AS WE POINTED OUT CLEARLY IN OUR
14:40:49 23 AMENDED COMPLAINT, WILL BE BASED ON PRODUCTS THAT
14:40:51 24 ARE CURRENTLY IN THE MARKET. THEY WILL NOT BE
14:40:54 25 BASED ON OUR FUTURE PRODUCTS.

14:40:55 1 MR. VERHOEVEN TALKED ABOUT THE
14:40:57 2 POSSIBILITY THAT HE WAS TAKING SURVEYS WITH
14:41:00 3 WHATEVER THEY GET TOGETHER BUT IF THAT REACHED THE
14:41:04 4 CONFIDENTIALITY ORDER, WE JUST CAN'T.

14:41:08 5 THE COURT: I KNOW YOU ADDED A BUNCH OF
14:41:11 6 DESIGN PATENTS, UTILITY PATENTS AND YOU CHANGED
14:41:15 7 YOUR TRADE DRESS ALLEGATION AND YOU ADDED A CLAIM
14:41:20 8 FOR RELIEF.

14:41:28 9 WHY DID YOU AMEND THIS? WAS THAT IN
14:41:31 10 ANTICIPATION OF THIS MOTION TO MAKE IT MORE TIED TO
14:41:33 11 SPECIFIC CURRENTLY AVAILABLE IPHONES AND IPADS
14:41:35 12 OR --

14:41:36 13 MR. MCELHINNY: I THINK THERE ARE A
14:41:38 14 COUPLE OF REASONS THAT WE HAVE DONE IT.

14:41:39 15 THE COURT: UH-HUH.

14:41:40 16 MR. MCELHINNY: ONE, AS PART OF THEIR
14:41:41 17 INTENTIONAL STRATEGY, SAMSUNG KEEPS RELEASING
14:41:48 18 ADDITIONAL INFORMATION ABOUT THE PRODUCTS.

14:41:49 19 SO IN THE TIME THAT WE WERE LAST IN FRONT
14:41:51 20 OF YOU BEFORE, WE HAVE BEEN ABLE TO GET THE SAMPLES
14:41:53 21 AND THE S2 PHONE AND WHICH IS BEING MARKETED
14:41:56 22 OUTSIDE OF THE UNITED STATES, AND WE WERE ABLE TO
14:41:58 23 DRAFT A COMPLAINT THAT WAS MORE CLOSELY DRAWN TO
14:42:01 24 THE PRODUCTS THAT WE WERE GOING TO BE ATTACKING AND
14:42:03 25 WE WANTED TO MAKE SURE THAT THAT COMPLAINT WAS ON

14:42:05 1 FILE BEFORE WE ACTUALLY GOT THE PRODUCTION DUE DATE
14:42:09 2 BECAUSE WE WANTED TO MAKE SURE THAT THAT WAS DONE
14:42:11 3 COMPLETELY WITH PUBLIC INFORMATION. SO THERE'S NO
14:42:15 4 QUESTION ABOUT HOW WE WOULD USE THE PRODUCTS THAT
14:42:17 5 ARE BEING PROVIDED TO US TODAY.

14:42:19 6 BUT BASICALLY IT'S A TAILORING OF -- I
14:42:22 7 MEAN, APPLE, AS YOU KNOW, IT HAS A LOT OF
14:42:26 8 INTELLECTUAL PROPERTY RIGHTS AND IT'S A TAILORING
14:42:28 9 OF THOSE PRODUCTS.

14:42:30 10 THE COURT: LET ME ASK IF THE PARTIES --
14:42:34 11 IF YOU ALL -- UNDERSTANDING LAST TIME YOU WERE
14:42:37 12 HERE, YOU SAID THAT YOU HAD A BUSINESS
14:42:39 13 RELATIONSHIP, I FORGET WHAT THE NUMBER WAS, EIGHT
14:42:44 14 MILLION, EIGHT BILLION?

14:42:44 15 MR. MCELHINNY: I THINK IT WAS IN EXCESS
14:42:45 16 OF SEVEN BILLION.

14:42:47 17 THE COURT: SEVEN BILLION. CAN WE ALL
14:42:49 18 JUST GET ALONG HERE AND CAN I SEND YOU OUT TO ADR?

14:42:53 19 IS THERE ANY -- YOU NAME IT WHO YOU WANT
14:42:55 20 TO GO TO? I WILL SEND YOU WITH BOXES OF
14:43:00 21 CHOCOLATES. I MEAN, WHATEVER.

14:43:01 22 IS THERE ANYTHING THAT WOULD BE POSSIBLE
14:43:04 23 HERE IN TERMS OF AT LEAST EXPLORING?

14:43:06 24 I KNOW YOU SAID YOU ALREADY ENGAGED IN A
14:43:09 25 BIT OF DISCUSSION BEFORE FILING THIS CASE, BUT IS

14:43:12 1 THERE ANYTHING NOW?

14:43:13 2 MR. VERHOEVEN: WE'RE ALWAYS WILLING TO
14:43:14 3 DO THAT, YOUR HONOR.

14:43:17 4 THERE HAS BEEN DISCUSSIONS BETWEEN THE
14:43:18 5 PARTIES AND --

14:43:22 6 THE COURT: YOU MEAN SINCE THE LAWSUIT
14:43:24 7 WAS FILED OR ARE YOU TALKING ABOUT THE PRE --

14:43:27 8 MR. VERHOEVEN: BEFOREHAND.

14:43:27 9 THE COURT: OKAY. BUT WHAT ABOUT
14:43:29 10 POST-LAWSUIT, IS THERE ANYTHING THAT WE SHOULD BE
14:43:31 11 TRYING RIGHT NOW?

14:43:32 12 MR. VERHOEVEN: I MEAN, FRANKLY, WHAT HAS
14:43:33 13 HAPPENED POST-LAWSUIT IS THAT APPLE'S PATENT
14:43:36 14 COUNSEL HAS BEEN LITIGATING IN THE PRESS AND THAT'S
14:43:38 15 WHERE THEY HAVE BEEN DEVOTING THEIR EFFORTS.

14:43:44 16 MR. MCELHINNY: WELL, HOLD ON. WE HAVE
14:43:45 17 NEVER SPOKEN TO THE PRESS, YOUR HONOR.

14:43:48 18 THE COURT: I DON'T WANT TO GET INTO --
14:43:50 19 OKAY. WHAT WOULD BE FEASIBLE RIGHT NOW? ARE YOU
14:43:52 20 WILLING TO GO TO SOME FORM OF ADR NOW?

14:43:57 21 MR. MCELHINNY: MY UNDERSTANDING --

14:43:58 22 THE COURT: YES.

14:43:58 23 MR. MCELHINNY: -- I HAVE NOT BEEN
14:44:00 24 INVOLVED IN THESE TALKS, BUT MY UNDERSTANDING IS
14:44:01 25 THAT THIS CASE OBVIOUSLY HAS GOT THE ATTENTION OF

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14:44:32 13
14:44:37 14
14:44:38 15
14:44:40 16
14:44:41 17
14:44:46 18
14:44:50 19
14:44:55 20
14:44:56 21
14:44:59 22
14:45:02 23
14:45:05 24
14:45:07 25

PEOPLE AT THE HIGHEST LEVELS, LITERALLY AT THE
HIGHEST LEVELS AT BOTH COMPANIES.

THE COURT: CAN WE GET THEM TOGETHER?

MR. MCELHINNY: THAT THEY ARE, IN FACT,
MEETING AND TALKING AND THAT'S MY UNDERSTANDING.
AND I DON'T THINK INTRODUCING A MEDIATOR INTO THAT
WOULD BE HELPFUL, YOUR HONOR, IS MY READ.

I CAN ANSWER YOUR EARLIER QUESTION. WE
WOULD BE PREPARED TO TRY THIS CASE IN SIX MONTHS.

MR. VERHOEVEN: YOUR HONOR, MAY I SPEAK
BRIEFLY TO THE ACTUAL MOTION?

THE COURT: YES, I'M GOING TO GET BACK TO
THE MOTION.

MR. VERHOEVEN: OH.

THE COURT: I'M SORRY. I'M JUST GETTING
DISTRACTED HERE.

LET ME GO TO MR. MCELHINNY. IT LOOKS
LIKE BASED ON THE RELEASE OF IPHONE, IPHONE 3G,
IPHONE 3GS, IPHONE 4, IT LOOKS LIKE YOU'RE DUE FOR
A RELEASE OF AT LEAST A PHONE.

I AGREE WITH THE -- THAT THE TABLET
COMPUTER, YOU RELEASED ONE IN MARCH OF LAST YEAR
AND OF THIS YEAR AND IT COMES OUT WITHIN A YEAR, IT
SEEMS A LITTLE PREMATURE THAT YOU HAVE HAD LESS
THAN THREE MONTHS OF DEVELOPMENT ON THE TABLET

14:45:10 1
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14:45:28 9
14:45:29 10
14:45:31 11
14:45:32 12
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14:45:42 15
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14:45:55 20
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14:46:00 22
14:46:01 23
14:46:02 24
14:46:05 25

COMPUTER .

BUT ON THE IPHONE IT LOOKS LIKE YOU'RE
DUE ON ONE, ALTHOUGH THE RELEASE DATES IN THE PAST
FOUR YEARS HAVE ALL BEEN IN JUNE.

WHY SHOULDN'T THEY BE ABLE TO FIND OUT?
I MEAN, IF YOU'RE GOING TO RELEASE A PRODUCT IT
LOOKS LIKE PROBABLY BEFORE YOUR P.I. MOTION IS
FILED, WHY SHOULDN'T THEY BE ABLE TO GET SOME
INFORMATION ON THAT?

MR. MCELHINNY: I THINK THERE ARE TWO
ANSWERS TO THAT.

ONE, YOUR HONOR, IN FAIRNESS, IS ENGAGING
IN THE EXACT SAME SPECULATION THAT THEY ARE. WE DO
NOT ISSUE PRERELEASES. WE DON'T GIVE INFORMATION
TO THE PRESS.

THERE'S NOT A FACT IN THEIR PAPERS THAT'S
NOT SIMPLY HISTORICAL ABOUT WHEN WE'RE GOING TO
RELEASE SOMETHING, WHAT IT'S LIKELY TO BE, AND
THAT'S BECAUSE OF THE NATURE -- WE DO BUSINESS A
DIFFERENT WAY AND SO THERE'S NO WAY IN FAIRNESS TO
PREDICT WHENEVER WE'RE GOING TO DO A RELEASE OF
ANYTHING.

THE COURT: WHAT ABOUT THEIR ARGUMENT
THAT THERE NEEDS TO BE CO-EXISTENCE IN THE MARKET
IN ORDER FOR YOU TO -- AND, AND IF YOU STOP

14:46:10 1 SELLING, YOU KNOW, AND MAKE IT A LEGACY VERSION, I
14:46:12 2 MEAN, TELL ME ABOUT THE LEGACY VERSION? WHAT -- DO
14:46:16 3 THEY, IN FACT, STOP BEING SOLD RIGHT BEFORE THE
14:46:18 4 RELEASE OF THE NEXT GENERATION?

14:46:20 5 MR. MCELHINNY: THEY DO NOT, YOUR HONOR.
14:46:21 6 IN FAIRNESS, LET ME JUST ANSWER YOUR
14:46:23 7 QUESTION DIRECTLY.

14:46:24 8 THE COURT: YES.

14:46:25 9 MR. MCELHINNY: WHICH IS A LOT OF CASES
14:46:26 10 GOT CITED. I'M SURE YOU LOOKED AT THEM ALL. THERE
14:46:29 11 IS NOT A CASE THAT HAS EVER ORDERED THE PLAINTIFF
14:46:34 12 TO PRODUCE FUTURE PRODUCT PLANNING DESIGNS IN ORDER
14:46:39 13 TO BE ABLE TO ASSERT ITS INTELLECTUAL PROPERTY
14:46:41 14 RIGHTS. IT HAS NEVER HAPPENED.

14:46:45 15 AND WE WOULD ARGUE THAT IT WOULD BE SUCH
14:46:47 16 A BURDEN ON PLAINTIFFS. THE PEOPLE WHO DRAFTED THE
14:46:51 17 LANHAM ACT WHO WERE TRYING TO PROTECT INVESTORS
14:46:53 18 WOULD FIND THAT, WOULD FIND THAT A TERRIBLE
14:46:57 19 DISADVANTAGE TO A PLAINTIFF IF THAT WAS GOING TO BE
14:47:01 20 ONE OF THE COSTS.

14:47:02 21 AND THE REASON FOR IT IS THE LOGIC OF
14:47:05 22 THESE ACTS. IF YOU LOOK AT TRADE DRESS, TO BE
14:47:07 23 CLEAR, THEY'RE NOT SAYING THEY NEED IT FOR A PATENT
14:47:09 24 CASE. THEY'RE NOT SAYING THEY NEED IT FOR A
14:47:12 25 TRADEMARK CASE.

14:47:14 1 ALL OF THEIR ARGUMENTS GO TO TRADE DRESS.
14:47:16 2 AND EVERY CASE THAT HAS BEEN CITED TO
14:47:18 3 YOU, EVERY CASE THAT EXISTS ON TRADE DRESS LOOKS AT
14:47:21 4 THE HISTORICAL BEHAVIOR OF THE PERSON WHO WAS
14:47:24 5 ASSERTING THE TRADE DRESS.

14:47:25 6 IT GOES BACK, BECAUSE WHAT WE HAVE TO
14:47:28 7 PROVE IS, ONE, THAT WE HAVE DONE SOMETHING
14:47:30 8 DISTINCTIVE; AND, TWO, THAT THE MARKET HAS REACTED
14:47:34 9 TO IT IN A WAY THAT IT'S GOT AN ACQUIRED
14:47:36 10 DISTINCTIVENESS AND THAT THAT THEN BECOMES OUR
14:47:39 11 LEGAL RIGHT THAT WE CAN ASSERT.

14:47:41 12 BUT THAT IS ENTIRELY HISTORICAL.

14:47:45 13 AND SO ALL OF THE CASES THAT HAVE BEEN
14:47:47 14 CITED TO YOUR HONOR RELY ON -- AND PARTICULARLY IN
14:47:51 15 THE AREA IN WHICH THEY TALKED ABOUT WHICH IS
14:47:54 16 WHETHER OR NOT THERE IS THIS CONTINUITY, IT LOOKS
14:47:58 17 AT THE HISTORICAL PRODUCTS THAT HAVE BEEN MARKETED.

14:48:00 18 NO ONE HAS EVER SAID IN ORDER TO GET AN
14:48:03 19 INJUNCTION IN A TRADE DRESS CASE YOU HAVE TO
14:48:06 20 PROMISE THAT YOU WILL NOT CHANGE THIS IN THE FUTURE
14:48:08 21 OR THAT YOU WILL LOOK AT YOUR FUTURE PLANNING OR
14:48:11 22 ANYTHING LIKE THAT.

14:48:13 23 THEY LOOK AT THE FACTS THAT EXIST AS OF
14:48:15 24 THE TIME OF THE INJUNCTION. THE ROSE ART CASE
14:48:17 25 SPECIFICALLY SAYS THAT THE PLAINTIFF CAN PICK THE

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14:49:01 16
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PRODUCTS THAT THEY ARE ALLEGING ARE THE TRADE
DRESS, WHICH IS WHAT WE HAVE DONE.

AND THE ANSWER TO YOUR HONOR'S QUESTION,
QUITE SIMPLY, IS IF AT THE TIME THAT THIS
INJUNCTION CAME OUT WE WERE NOT COMPETING WITH
THEM, THAT WOULD BE A DEFENSE.

BUT TO SPECULATE ABOUT WHETHER IT MIGHT
HAPPEN OR WHATEVER HAPPENS AND TO GIVE THEM
LITERALLY WHAT IS THE MOST SECRETLY REGARDED
INFORMATION IN OUR COMPANY, TO SPECULATE ABOUT WHAT
THE MARKET IS GOING TO LOOK LIKE A MONTH FROM NOW
LITERALLY WOULD BE PRECEDENT SETTING AND HUGELY
DAMAGING TO US.

THE COURT: OKAY. SO WHEN IS THE END OF
LIFE FOR THE PRODUCTS?

OKAY. YOU'RE SAYING IT'S NOT BEFORE THE
RELEASE OF THE NEXT GENERATION, BUT HOW LONG IS THE
PREVIOUS GENERATION SOLD?

MR. MCELHINNY: WE'RE SAYING ALL OF THE
PRODUCTS THAT WE HAVE ASSERTED AS THE BASIS OF OUR
TRADE DRESS ARE TODAY IN THE MARKET AND COMPETE
AGAINST SAMSUNG'S PRODUCTS.

AND OBVIOUSLY IN ORDER TO WIN OUR
PRELIMINARY INJUNCTION, WE WILL HAVE TO PROVE THAT.

THE COURT: WHY DID YOUR -- YOUR

14:49:37 1 DISCOVERY LETTER SAYS, YOU KNOW, WE'LL BE HAPPY TO
14:49:40 2 GIVE YOU DISCOVERY THAT YOU NEED, SAMSUNG, FOR THE
14:49:46 3 P.I. MOTION AFTER WE FILE OUR MOTION.

14:49:48 4 THAT JUST SEEMS TO BE UNREASONABLE TO ME.

14:49:51 5 MR. MCELHINNY: IT WAS INTENDED TO BE
14:49:52 6 REASONABLE, YOUR HONOR.

14:49:53 7 JUST TO TAKE, IN MY EXPERIENCE, THE WAY
14:49:55 8 THESE THINGS WORK IS THAT THE MOTION GETS FILED.
14:49:58 9 THE DEFENDANT DECIDES WHAT DISCOVERY THEY NEED.
14:50:00 10 THERE'S AN AGREEMENT AS TO WHAT DISCOVERY THEY GET
14:50:02 11 AND WHAT THE SYMMETRICAL DISCOVERY.

14:50:04 12 JUST NOW WHEN YOU ASKED COUNSEL WHAT HIS
14:50:07 13 FUTURE DISCOVERY WOULD BE, HE LAID OUT EXACTLY THAT
14:50:11 14 PATTERN. HE SAID WE NEED TO SEE THE MOTION, THEN
14:50:13 15 WE'LL SEE WHO THE DECLARANTS WERE.

14:50:15 16 AND SO WE -- THE LETTER ASSUMES THAT, BUT
14:50:19 17 I BELIEVE THERE'S A FOLLOW-UP LETTER THAT SAID, YOU
14:50:21 18 KNOW, IF YOU WANT TO START EARLIER, YOU SAID THIS,
14:50:24 19 WE AGREED THAT WE WILL EXPEDITE THE RELEVANT
14:50:27 20 DISCOVERY AND THE ANSWER TO THAT WAS WE DON'T WANT
14:50:29 21 TO TALK ABOUT THAT. WE DON'T WANT TO TALK ABOUT
14:50:32 22 ANY DISCOVERY EXCEPT THIS PARTICULAR MOTION.

14:50:37 23 AND WE REMAINED, AS I TOLD YOU THE LAST
14:50:39 24 TIME, YOUR HONOR, IT IS IN OUR INTEREST TO EXPEDITE
14:50:41 25 THE DISCOVERY IN ORDER TO GET OUR PRELIMINARY

14:50:43 1 INJUNCTION AND WE'RE -- WE REMAIN OPEN TO THOSE
14:50:47 2 MEET AND CONFER.

14:50:47 3 THE COURT: WHAT, YOU KNOW, ABOUT
14:50:52 4 SAMSUNG'S ARGUMENT THAT, WELL, A HIGHLY
14:50:54 5 CONFIDENTIAL OUTSIDE COUNSEL EYES ONLY DESIGNATION
14:50:57 6 WAS SUFFICIENT TO AVOID PREJUDICING SAMSUNG IN
14:51:01 7 RELEASE OF PRERELEASE PRODUCTS BUT THAT DOESN'T
14:51:04 8 APPLY TO APPLE. THAT'S INSUFFICIENT TO AVOID ANY
14:51:07 9 SUBSTANTIAL PREJUDICE TO APPLE?

14:51:10 10 MR. MCELHINNY: WHAT IS FAIR IS APPLYING
14:51:11 11 THE SAME THREE STANDARDS TO US THAT YOUR HONOR
14:51:13 12 APPLIED IN THE MOTION. AND WHAT YOU LOOKED AT WAS
14:51:16 13 IMMINENCE OF RELEASE, WHAT YOU LOOKED AT WAS
14:51:22 14 DIRECT -- RELEVANCE WASN'T ENOUGH. YOU ASKED FOR
14:51:24 15 DIRECT RELEVANCE OF THE PRELIMINARY INJUNCTION
14:51:26 16 MOTION, AND THEN UNDER PREJUDICE, YOU LOOKED AT
14:51:29 17 EXACTLY THIS ISSUE.

14:51:31 18 AND WHAT YOU SAID WAS, SAMSUNG'S CLAIMS
14:51:34 19 OF PREJUDICE WERE UNDERCUT BECAUSE THEY ARE DOING
14:51:37 20 THEIR OWN PRERELEASES, THEY ARE PUTTING OUT THE
14:51:40 21 SAMPLES IN THE MARKET.

14:51:42 22 WE SHOWED YOU THE PICTURES AND YOU SAID
14:51:44 23 THE CONCLUSION WAS FOR THEM TO BE CLAIMING THIS IS
14:51:47 24 CONFIDENTIAL AT THE SAME TIME THAT THEY ARE SEEDING
14:51:50 25 THE MARKET WITH THIS STUFF UNDERCUT THEIR CLAIMS OF

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14:52:08 9
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PREJUDICE.

THE COURT: LET ME ASK --

MR. MCELHINNY: I NEED TO ANSWER YOUR QUESTION DIRECTLY.

THE COURT: GO AHEAD.

MR. MCELHINNY: INFORMATION ABOUT WHAT APPLE'S FUTURE PRODUCTS LOOKED LIKE CANNOT BE POLICED. WE WILL BE DEALING WITH EXPERTS. THE FIRM ON THE OTHER SIDE IS IN FOUR OTHER LAWSUITS, SAME LAWYERS AGAINST APPLE FOR OTHER CLIENTS.

THE KNOWLEDGE OF WHAT THESE PRODUCTS LOOK LIKE CANNOT BE POLICED. A PROTECTIVE ORDER, MORE PEOPLE AT APPLE WILL HAVE TO GET IT. I'LL GET IT. I DON'T HAVE IT RIGHT NOW.

THERE'S JUST A UNIVERSE OF PEOPLE THAT WOULD GET ACCESS TO THIS INFORMATION, ANY ONE OF WHOM WOULD HAVE THE POWER TO LEAK IT IN A WAY THAT WOULD BE COMPLETELY UNTRACEABLE.

BUT YOUR HONOR KNOWS FROM THE ARTICLES THAT YOU HAVE SEEN THAT THERE'S A WHOLE BLOGOSPHERE OF PEOPLE OUT THERE DOING EVERYTHING THEY CAN TO FIND OUT ABOUT APPLE'S PRERELEASE. THAT IS OUR CHARISMA.

AND IT'S POLICED, AS YOU KNOW FROM THE DECLARATIONS, THOROUGHLY WITHIN APPLE AND THIS

14:52:52 1 WOULD PUT IT IN A WAY THAT WE COULDN'T PROVE IT
14:52:55 2 HAPPENED, LEAKS WOULD SHOW, AND YOUR HONOR WOULD
14:52:57 3 NEVER TO BE ABLE TO TELL. TOO MANY PEOPLE WOULD
14:53:01 4 HAVE HAD ACCESS.

14:53:03 5 THE COURT: AND YOU'RE SAYING WEEKS OF
14:53:06 6 SAMSUNG'S PRERELEASES DOESN'T MATTER BECAUSE THEY
14:53:10 7 ARE LEAKING IT ANY WAY? IS THAT YOUR POSITION?

14:53:10 8 MR. MCELHINNY: I'M SAYING YOUR HONOR DID
14:53:13 9 A BALANCE AND WHAT WAS -- SAMSUNG DIDN'T HAVE
14:53:17 10 DECLARATIONS THAT WE HAD THAT SAID THE PRODUCT
14:53:18 11 INFORMATION IS PROTECTED WITHIN THEIR COMPANY. IT
14:53:20 12 DIDN'T HAVE ANY DECLARATIONS AT ALL ABOUT HOW
14:53:22 13 CLOSELY IT WAS PROTECTED.

14:53:23 14 BUT WHAT WE SHOWED YOU WAS THAT THEY WERE
14:53:26 15 FLYING REPORTERS TO SPAIN AND HANDING THE PRODUCTS
14:53:28 16 OUT.

14:53:29 17 THREE OF THE FIVE PRODUCTS OF THE RESULTS
14:53:31 18 OF YOUR ORDER HAVE ALREADY BEEN RELEASED. THEY'RE
14:53:33 19 NOT SECRET NOW AT ALL.

14:53:35 20 AND THE OTHER TWO HAVE BEEN A SAMPLE.

14:53:39 21 SO THE DIFFERENCE -- I MEAN, YOUR HONOR'S
14:53:41 22 ORDER OF THE RELEASE IS IMMINENT AND SAMSUNG IS
14:53:46 23 ALREADY WELL INTO A MARKETING CAMPAIGN WHICH IS
14:53:48 24 WHERE THEY DO BUSINESS DIFFERENTLY AS YOUR
14:53:50 25 JUSTIFICATION FOR GIVING US THE PART OF WHAT WE

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ASKED FOR THAT YOU GAVE US.

AND ALL I'M SAYING IS IF YOU APPLY EXACTLY -- SAUCE FOR THE GOOSE AND SAUCE FOR THE GANDER AND IF YOU APPLY EXACTLY THAT SAME TEST, YOU COME UP TO A CONCLUSION IN OUR CASE BECAUSE THE FACTS ARE HERE.

THE COURT: LET ME ASK, IF THIS DOES GO BY WAY OF A P.I. MOTION, WHAT IS THE HARM GOING TO BE? IT SEEMS UNLIKELY THAT ANYBODY WOULD ACTUALLY BUY A SAMSUNG PRODUCT AND BE CONFUSED AND THINK, IN FACT, THAT THEY ARE BUYING AN APPLE PRODUCT.

SO I FIND LOST SALES TO BE REALLY HARD TO BELIEVE HERE.

SO WHAT IS IT GOING TO BE?

MR. MCELHINNY: IT WILL BE A COMBINATION OF THINGS. IT WILL, IN FACT, BE LOST SALES. BUT IT ALSO WILL BE A --

THE COURT: YOU'RE GOING TO ASSERT THAT PEOPLE BOUGHT A SAMSUNG PRODUCT THINKING THAT IT WAS ACTUALLY AN APPLE PRODUCT?

MR. MCELHINNY: I BELIEVE IN GENERAL IT'S GOING TO FALL INTO THREE AREAS: EITHER THAT'S GOING TO BE PART OF IT.

THE COURT: OKAY.

MR. MCELHINNY: TWO, THAT PEOPLE ARE

14:54:48 1 GOING TO BELIEVE THAT SAMSUNG HAD AUTHORITY FROM
14:54:52 2 APPLE TO USE APPLE'S IP, AND, THEREFORE, THERE WAS
14:54:55 3 AN ENDORSEMENT.

14:54:56 4 AND, THREE, WE'RE GOING TO DEMONSTRATE
14:54:59 5 THAT ONE WAY TO ATTACK APPLE IS BY MAKING ITS
14:55:06 6 DESIGNS GENERIC BY BROADENING THEM TO THE POINT OF
14:55:09 7 THE UNIQUENESS AND THE SPECIAL APPLICATION TO APPLE
14:55:11 8 NO LONGER APPLIES BECAUSE YOU CAN'T TELL THE
14:55:14 9 DIFFERENCE ANY MORE.

14:55:18 10 AND THAT OBVIOUSLY WILL BE IRREPARABLE.

14:55:28 11 THE COURT: WITH REGARD TO THE VALIDITY,
14:55:31 12 IF WE END UP HAVING IN THE P.I. MOTION LOOK AT
14:55:36 13 VALIDITY OF THE MARKS, THE DESIGN PATENTS, WHAT ARE
14:55:40 14 YOU GOING TO DO? ARE YOU GOING TO HAVE EXPERTS?

14:55:42 15 MR. MCELHINNY: WE WILL CERTAINLY --
14:55:44 16 AGAIN, THERE'S A LONG WAY TO GO BETWEEN THIS AND
14:55:49 17 THE MOTION, BUT OBVIOUSLY WE'RE GOING TO TRY TO
14:55:52 18 CRAFT, IF WE FILE THE PRELIMINARY INJUNCTION, A
14:55:55 19 MOTION THAT IS DIRECT, SORT OF PARED DOWN AND GIVES
14:56:01 20 US THE LARGEST -- WE'RE NOT GOING TO ASSERT ALL OF
14:56:04 21 OUR RIGHTS OBVIOUSLY.

14:56:05 22 AND SO THERE ARE INSTANCES WITH THE
14:56:08 23 TRADEMARKS WHERE WE WILL HAVE PRESUMPTIONS OF
14:56:10 24 VALIDITY, WE HAVE DESIGN PATENTS THAT WILL HAVE
14:56:13 25 PRESUMPTIONS OF VALIDITY, BUT THERE WILL BE EXPERTS

14:56:16 1 AS WELL BOTH IN TERMS OF THE LIABILITY ISSUES AND
14:56:18 2 THE IRREPARABLE INJURY.

14:56:20 3 THE COURT: LET ME ASK MR. VERHOEVEN, NOW
14:56:23 4 THAT THE IPAD 2 WAS JUST RELEASED IN MARCH, ISN'T
14:56:28 5 IT A BIT SPECULATIVE TO SAY -- I MEAN, YOU YOURSELF
14:56:33 6 SAY THEY SEEM TO DO LIKE ONE A YEAR. WHY SHOULD WE
14:56:37 7 BELIEVE THAT THEY ARE GOING TO DO TWO THIS YEAR?

14:56:39 8 MR. VERHOEVEN: THERE'S AN ARTICLE IN THE
14:56:40 9 "WALL STREET JOURNAL" THIS MORNING SAYING THAT THEY
14:56:42 10 THINK THAT THE ANALYSTS ARE EXPECTING THEM TO
14:56:46 11 RELEASE ANOTHER PAD IN THE FALL.

14:56:48 12 THE POINT IS THAT WE SHOULD BE ENTITLED
14:56:50 13 TO DISCOVERY SO IT'S RECIPROCAL SO THAT WE CAN
14:56:55 14 PREPARE JUST LIKE THEY'RE ALLEGEDLY PREPARED FOR
14:56:57 15 THEIR PRELIMINARY INJUNCTION MOTION.

14:56:59 16 SO THE PHONE IS DUE OUT ANY DAY NOW,
14:57:01 17 ACCORDING TO FORECASTS. THEY WON'T TELL US AND
14:57:05 18 THEY WON'T EVEN TELL YOUR HONOR. THEY KNOW WHEN
14:57:06 19 THEY'RE COMING OUT WITH THEIR NEW PRODUCT AND THEY
14:57:08 20 WON'T TELL YOU AND THEY WON'T TELL US EITHER.

14:57:11 21 IF I MIGHT, YOUR HONOR, I REALLY WOULD
14:57:13 22 LIKE TO ADDRESS SOME OF THESE POINTS THAT
14:57:15 23 MR. MCELHINNY MADE AS WELL.

14:57:17 24 SHOULD I DO THAT NOW?

14:57:18 25 THE COURT: YES. I'M JUST GOING TO GIVE

14:57:20 1 YOU A VERY QUICK, IF YOU COULD, TIMEFRAME. I WANT
14:57:23 2 YOU SPECIFICALLY TO ADDRESS THEIR POINT WHICH IS,
14:57:27 3 LOOK, IF THE APPLE PRODUCTS ARE NOT BEING SOLD AT
14:57:30 4 THE TIME, THEN THE P.I. MOTION LOSES OR LET'S SAY
14:57:33 5 HYPOTHETICALLY A P.I. WAS ACTUALLY ISSUED, THE
14:57:37 6 MOMENT THEY STOPPED SELLING THE PRODUCT THAT IS,
14:57:41 7 YOU KNOW, ALLEGEDLY BEING CONFUSED WITH YOURS, THEN
14:57:44 8 THE P.I. IS GOING TO EXPIRE AND BE TERMINATED.

14:57:47 9 MR. VERHOEVEN: EXACTLY. I'LL ADDRESS
14:57:48 10 THAT RIGHT NOW.

14:57:49 11 THE COURT: GO AHEAD.

14:57:49 12 MR. VERHOEVEN: YOUR HONOR, BASICALLY THE
14:57:50 13 MAIN POINT THAT THEY MAKE ON RELEVANCE IN THEIR
14:57:53 14 MOTION IS THAT, OH, THIS WAS ABOUT THE FUTURE AND
14:57:56 15 THE FUTURE IS NOT RELEVANT.

14:57:57 16 WELL, THAT IS 180 DEGREES OPPOSITE OF THE
14:58:02 17 POSITION THAT THEY TOOK WHEN THEY SOUGHT EXPEDITED
14:58:06 18 DISCOVERY OF SAMSUNG'S FUTURE PRODUCTS.

14:58:08 19 AND I MADE THE POINT, YOUR HONOR, AT THAT
14:58:09 20 HEARING, THE RECIPROCAL POINT WHICH IS IF WE HAVE
14:58:13 21 NOT RELEASED THE PRODUCT YET AS A MATTER OF BLACK
14:58:16 22 LETTER LAW, IT CAN'T CONSTITUTE ANY SORT OF TRADE
14:58:19 23 DRESS OR INFRINGEMENT AND IT'S NOT RELEASED AND
14:58:21 24 IT'S NOT ON THE MARKET.

14:58:22 25 BUT THEY CAME BACK AND SAID WE NEED TO

14:58:24 1 GET READY FOR A PRELIMINARY INJUNCTION MOTION AND
14:58:26 2 WE KNOW THAT THEY'RE GOING TO RELEASE A FUTURE
14:58:30 3 PRODUCT AND WE WANT TO SEE IT IN ADVANCE SO WE CAN
14:58:32 4 GET READY AND ALL WE'RE SEEKING HERE IS THE SAME
14:58:35 5 THING SO WE CAN GET READY.

14:58:36 6 NOW, IF THEY FILED THEIR P.I. MOTION
14:58:39 7 BEFORE THE GALAXY S2, WHICH IS ACTUALLY RELEASED
14:58:44 8 WHICH WON'T BE UNTIL THE FALL OF 2011, THEY CAN'T
14:58:47 9 ACCUSE THE GALAXY S2.

14:58:50 10 BUT YOUR HONOR HAS ORDERED US TODAY TO
14:58:52 11 PRODUCE THE GALAXY S2 FOR THEM SO THEY CAN GET
14:58:56 12 READY FOR THEIR PRELIMINARY INJUNCTION MOTION. ALL
14:58:58 13 WE'RE SEEKING IS PARITY.

14:59:00 14 THEY'RE GOING TO RELEASE A NEW PHONE IN
14:59:02 15 THE FALL. THEY WON'T TELL US THAT, BUT I THINK BY
14:59:04 16 THE FALL THEY'RE GOING TO HAVE A NEW PHONE AND
14:59:07 17 THERE'S ALL KINDS OF SPECULATION AS TO WHAT IT'S
14:59:09 18 GOING TO BE.

14:59:10 19 WE KNOW THE IPHONE 4 IS DRAMATICALLY
14:59:13 20 DIFFERENT IN DESIGN AND LOOK THAN THE IPHONE 3.

14:59:16 21 WE KNOW THAT THE IPAD 2 IS DRAMATICALLY
14:59:19 22 DIFFERENT IN SCOPE AND SHAPE AND FORM AND DESIGN
14:59:23 23 THAN THE FIRST PAD.

14:59:25 24 AND WE SUSPECT THAT THESE NEW PRODUCTS
14:59:29 25 THAT ARE GOING TO BE COMPETING ON THE MARKETPLACE

14:59:32 1 WITH THESE FUTURE PRODUCTS, NOT CURRENT PRODUCTS,
14:59:37 2 FUTURE PRODUCTS OF SAMSUNG ARE GOING TO HURT THEIR
14:59:40 3 CASE BECAUSE THEY'RE GOING TO BE A LOT DIFFERENT
14:59:42 4 AND THAT'S GOING TO BE THE SUBJECT OF THEIR
14:59:43 5 MARKETING CAMPAIGN IN THE FALL.

14:59:45 6 AND THAT'S GOING TO BE VERY CRITICAL TO
14:59:47 7 ANY PRELIMINARY INJUNCTION MOTION, BOTH ON THE
14:59:49 8 MERITS, ARE THESE THINGS GOING TO CONFUSE THE
14:59:52 9 CONSUMER? AND ALSO AS TO IRREPARABLE HARM AND
14:59:55 10 BALANCE OF HARM.

14:59:56 11 IF THEY'RE -- IF THEIR FOCUS IN THE
14:59:59 12 MARKETPLACE, YOU KNOW, THESE PHONES, THEY HAVE A
15:00:01 13 SHELF LIFE, THEY'RE LIKE CABBAGE, YOU HAVE A SHELF
15:00:04 14 LIKE OF SIX MONTHS TO A YEAR MAX.

15:00:07 15 THE NOTION THAT THEY'RE GOING TO BE
15:00:10 16 IRREPARABLY HARMED BECAUSE OF THE IPHONE 3 WHICH
15:00:14 17 SELLS FOR 59 BUCKS AND IS GOING TO A COMPLETELY
15:00:17 18 DIFFERENT MARKET SEGMENT THAN THE 4G TURBO CHARGED
15:00:26 19 VERY EXPENSIVE IPHONES IS LUDICROUS.

15:00:28 20 THE ONLY WAY THEY'RE GOING TO BE ABLE TO
15:00:30 21 SHOW ANY SORT OF HARM IS BY COMPARING THEIR
15:00:32 22 CURRENTLY ON-THE-MARKET PRODUCTS TO THE CURRENTLY
15:00:35 23 ON-THE-MARKET PRODUCTS IN THE FALL THAT SAMSUNG
15:00:37 24 HAS.

15:00:38 25 SO THAT'S WHY WE NEED -- IF YOU, IF YOU

15:00:41 1 GIVE THEM THE ARGUMENT THAT, HEY, WE NEED YOU TO
15:00:44 2 GET READY, EVEN THOUGH THEY'RE NOT FUTURE, THE SAME
15:00:47 3 ARGUMENT APPLIES TO US AND THAT'S REALLY THEIR ONLY
15:00:50 4 ARGUMENT ON RELEVANCE, YOUR HONOR.

15:00:51 5 IF WE ASSUME THAT THE APPLE PHONE NEXT
15:00:58 6 GENERATION IS ON THE MARKET AND IS WHAT THEY'RE
15:01:00 7 FILING THEIR P.I. ON, AND IS BEING COMPARED TO, FOR
15:01:04 8 EXAMPLE, THE GALAXY S2 PHONE, THEN THERE'S
15:01:09 9 ABSOLUTELY NO ARGUMENT THAT THEY COULD MAKE THAT AS
15:01:11 10 TO RELEVANCE OF THE NEXT GENERATION IPHONE.

15:01:14 11 THEY'RE NOT -- THEY CITE, YOUR HONOR,
15:01:17 12 THE -- A COUPLE OF CASES WHERE THEY SAY THEY GET TO
15:01:20 13 PICK AND CHOOSE WHAT TRADE DRESS THEY ASSERT.

15:01:24 14 WELL, THOSE CASES, YOUR HONOR, ARE CASES
15:01:26 15 ABOUT PAST PRODUCTS AND ABOUT THE SITUATION WHERE A
15:01:29 16 PLAINTIFF HAS FIVE MODELS AND THEY SUED FOR TRADE
15:01:33 17 DRESS INFRINGEMENT OF ONE OF THE FIVE MODELS AND IS
15:01:38 18 IT OKAY FOR THEM TO JUST PICK THAT ONE MODEL AND
15:01:40 19 NOT THE OTHERS?

15:01:41 20 THE ANALOGY TO THIS CASE, YOUR HONOR,
15:01:43 21 WOULD BE IF THEY SUED US ON THE IPHONE 3 BUT NOT
15:01:45 22 THE IPHONE 4 ALREADY IN THE MARKETPLACE, AND WE
15:01:48 23 WERE SAYING THEY DON'T HAVE THE DISTINCTIVE TRADE
15:01:53 24 DRESS ON THE IPHONE 3 BECAUSE THE IPHONE 4 IS
15:01:55 25 DIFFERENT, THAT'S WHAT THOSE CASES ARE ABOUT.

15:01:57 1 THEY HAVE NOTHING TO DO WITH THIS
15:01:59 2 SITUATION. APPLE IS CERTAINLY NOT SAYING WE HAVE
15:02:02 3 MADE A DECISION AND WE'LL REPRESENT TO THE COURT
15:02:04 4 THAT WE WILL NOT SUE AND ASSERT OUR INTELLECTUAL
15:02:08 5 PROPERTY ON THE NEXT GENERATION IPHONE AGAINST
15:02:10 6 SAMSUNG. OF COURSE NOT.

15:02:16 7 THEY PLAINLY INTEND TO. SO THOSE CASES
15:02:18 8 HAVE NO MERIT TO THIS PARTICULAR CASE.

15:02:20 9 SO WHEN YOU LOOK AT WHAT IS THE COURT
15:02:24 10 REQUIRED TO DO IF THEY FILE A P.I. MOTION AS TO
15:02:27 11 THESE FUTURE PRODUCTS? THE COURT IS GOING TO --
15:02:31 12 WHAT WE'LL HAVE TO DO TO DEFEND OURSELVES IS GO OUT
15:02:35 13 AND DO SURVEYS AND DO A COMPARISON OF THE CURRENT
15:02:37 14 PHONES ON THE MARKETPLACE PROBABLY IN THE FALL.

15:02:40 15 AND THEY HAVE GOT -- THEY'RE GOING TO GET
15:02:43 16 A HEAD START BY GETTING THE SAMSUNG ADVANCED PHONES
15:02:47 17 TODAY UNDER THEIR MOTION FOR EXPEDITED DISCOVERY
15:02:50 18 AND ALL WE'RE ASKING IS FOR PARITY. WE SHOULD GET
15:02:53 19 THE SAME THING.

15:02:54 20 NOW, IF THEY FILE A MOTION AND THE
15:02:57 21 SAMSUNG PHONE IS NOT ON THE MARKET, THEY WON'T BE
15:03:00 22 ABLE TO SUE FOR TRADE DRESS. THEY'RE MAKING THE
15:03:03 23 INVERSE POINT.

15:03:04 24 IF THEY MAKE THE POINT AND THEN THEIR
15:03:07 25 NEXT GENERATION IPHONE IS ON THE MARKET, THEN THAT

15:03:09 1 WON'T BE A RELEVANT FACTOR. BUT YET THEY CLAIM
15:03:12 2 THAT THEY'RE ENTITLED TO GET FUTURE PRODUCTS THAT
15:03:14 3 ARE NOT ON THE MARKET IN ADVANCE, AND WE ARE NOT.
15:03:19 4 THAT'S NOT PARITY.

15:03:20 5 I'M NOT FINISHED. THAT'S NOT PARITY AND
15:03:23 6 THAT'S NOT RECIPROCITY AND YOUR HONOR PUT THEM ON
15:03:28 7 NOTICE THAT YOUR HONOR WOULD GIVE THEM RECIPROCITY.

15:03:32 8 A COUPLE OF BRIEF POINTS.

15:03:34 9 THE COURT: VERY BRIEF.

15:03:35 10 MR. VERHOEVEN: HE SAID, WELL, WE
15:03:36 11 SHOULDN'T BE ENTITLED TO ANYTHING UNTIL THEY FILE
15:03:39 12 THEIR MOTION. 180 DEGREES THE OPPOSITE OF WHAT HE
15:03:39 13 REPRESENTED TO THIS COURT.

15:03:41 14 I WAS THE ONE AT THE LAST HEARING SAYING
15:03:43 15 TO YOUR HONOR THEY HAVEN'T FILED THE MOTION AND
15:03:45 16 THEY SHOULDN'T GET ANY DISCOVERY BEFORE THEY FILE
15:03:47 17 THE MOTION AND THEY SAID, WELL, WE NEED IT IN
15:03:49 18 ADVANCE.

15:03:49 19 OKAY. WELL, BY THE SAME TOKEN WE NEED A
15:03:52 20 VERY LIMITED RECIPROCAL AND EXACTLY RECIPROCAL
15:03:57 21 DISCOVERY IN ADVANCE. THEY SHOULD NOT BE HEARD NOW
15:04:00 22 AFTER HAVING SUCCESSFULLY MADE THE ARGUMENT THAT WE
15:04:03 23 NEED IT IN ADVANCE ARGUMENT TO OBTAIN EXPEDITED
15:04:05 24 DISCOVERY AND GOT IT BASED ON THAT THE ARGUMENT TO
15:04:09 25 MAKE THE DIAMETRICALLY OPPOSITE ARGUMENT NOW TO

15:04:13 1 PREVENT US FROM ACHIEVING PARITY AND DISCOVERY.

15:04:15 2 REALLY BRIEFLY ON THE CONFIDENTIALITY
15:04:21 3 ISSUE. A COMPLETE MISCHARACTERIZATION OF YOUR
15:04:23 4 HONOR'S ORDER.

15:04:24 5 YOUR HONOR DID NOTICE THAT IN OUR IN PART
15:04:30 6 OUR CLAIMS OF CONFIDENTIALITY DON'T CARRY THAT MUCH
15:04:35 7 WEIGHT BECAUSE WE'RE DISCLOSING SOME OF OUR
15:04:37 8 PRODUCTS OR THEY'RE ABOUT TO BE RELEASED.

15:04:40 9 BUT YOUR ORDER COVERS PRODUCTS THAT ARE
15:04:42 10 NOT GOING TO BE RELEASED TO THE EARLIEST IN THE
15:04:45 11 FALL AND YOUR HONOR ORDERED THOSE PRODUCED.

15:04:47 12 YOUR HONOR NEVER SAID THAT, AS FAR AS I
15:04:49 13 CAN RECALL, THAT CONFIDENTIALITY CONCERNS OF
15:04:52 14 SAMSUNG DON'T MATTER BECAUSE SAMSUNG IS, QUOTE,
15:04:55 15 "WELL INTO ITS AD CAMPAIGN." THAT'S JUST NOT IN
15:04:58 16 THE ORDER.

15:04:58 17 APPARENTLY APPLE THINKS IT'S A DOUBLE
15:05:01 18 STANDARD AND APPLE'S CONFIDENTIAL INFORMATION IS
15:05:04 19 MORE CONFIDENTIAL THAN SAMSUNG'S CONFIDENTIAL
15:05:08 20 INFORMATION AND THAT'S JUST NOT THE WAY THE LAW
15:05:10 21 WORKS.

15:05:11 22 APPARENTLY APPLE SAYS ITS CONFIDENCE
15:05:14 23 CAN'T BE POLICED BUT SAMSUNG'S CAN.

15:05:16 24 IT'S A DOUBLE STANDARD. WE OPPOSED THEIR
15:05:20 25 MOTION FOR EXPEDITED DISCOVERY BUT PUT A PLACE

15:05:23 1 HOLDER IN THAT WHAT WE -- WHAT IN FAIRNESS, IF YOUR
15:05:26 2 HONOR ORDERED IT, THEN THAT DISCOVERY SHOULD BE
15:05:30 3 RECIPROCAL, AND THAT'S ALL WE'RE ASKING FOR.

15:05:32 4 OUR REQUESTS ARE NARROW AND THEY'RE
15:05:34 5 LIMITED TO EXACTLY TO THE UNIVERSE OF WHAT YOUR
15:05:36 6 HONOR GRANTED FOR THE PLAINTIFF, AND WE HAVE AGREED
15:05:38 7 TO A PROTECTIVE ORDER FOR DEALING WITH THE
15:05:43 8 CONFIDENTIAL INFORMATION OF SAMSUNG'S CRITICAL
15:05:45 9 PRODUCTS THAT ARE NOT PUBLIC YET AND THAT SHOULD BE
15:05:48 10 JUST AS GOOD FOR APPLE.

15:05:49 11 NOBODY IS GOING TO SEE IT EXCEPT OUTSIDE
15:05:52 12 COUNSEL AND IT'S VERY LIMITED AND THERE'S A
15:05:54 13 PROSECUTION -- AND IT'S JUST LIKE YOUR HONOR TOLD
15:05:56 14 US. WE HAVE GOT THAT SIGNED AND IT'S AGREED TO.
15:05:59 15 SO THERE SHOULD BE NO PROBLEM THERE.

15:06:01 16 SO IN SUMMARY, YOUR HONOR, ALL WE WANT IS
15:06:04 17 FAIRNESS AND RECIPROCITY HERE AND WE THINK WE
15:06:08 18 SHOULD BE ENTITLED TO IT.

15:06:09 19 MR. MCELHINNY: THREE BRIEF --

15:06:11 20 THE COURT: LET ME ASK, WHAT IS THE
15:06:12 21 TIMING OF THE P.I.?

15:06:14 22 MR. MCELHINNY: IF WE FILE A P.I., WE
15:06:17 23 EXPECT TO DO IT WITHIN THE NEXT 30 DAYS, YOUR
15:06:20 24 HONOR.

15:06:20 25 JUST THREE VERY BRIEFLY.

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THE COURT: I DO HAVE OTHER CASES AND
THEY ARE VERY PATIENTLY WAITING.

MR. MCELHINNY: LET ME SAY TWO THINGS.

THE COURT: VERY SHORT TWO THINGS.

MR. MCELHINNY: IF WE FILE A PRELIMINARY
INJUNCTION IT WILL BE BASED ON OUR PRODUCTS
CURRENTLY IN THE MARKET AND ONLY THOSE PRODUCTS.

AND, TWO, ON THE DISCOVERY POINT, KIM
EXHIBIT 2 IS OUR LETTER WHERE WE SAID WE WILL TALK
TO YOU ABOUT DISCOVERY NOW OR FOLLOWING THE FILING
OF THE PRELIMINARY INJUNCTION.

THANK YOU, YOUR HONOR.

THE COURT: OKAY. THANK YOU ALL VERY
MUCH.

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

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CERTIFICATE OF REPORTER

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

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

/S/

IRENE RODRIGUEZ, CSR, CRR
CERTIFICATE NUMBER 8074

DATED: JUNE 20, 2011