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

APPLE, INC.,) C-11-01846-LHK
)
PLAINTIFF,) FEBRUARY 17, 2012
)
V.)
)
SAMSUNG ELECTRONICS) PAGES 1 - 29
COMPANY, LTD., ET AL.,)
)
DEFENDANTS.)
-----)

THE PROCEEDINGS WERE HELD BEFORE
THE HONORABLE UNITED STATES DISTRICT
MAGISTRATE JUDGE PAUL S. GREWAL

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

FOR THE PLAINTIFF: MORRISON & FOERSTER
TELEPHONICALLY BY: HAROLD J. MCELHINNY
425 MARKET STREET
SAN FRANCISCO, CALIFORNIA 94105

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

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

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

FOR THE DEFENDANTS: QUINN, EMANUEL, URQUHART &
TELEPHONICALLY SULLIVAN
BY: RACHEL KASSABIAN
VICTORIA F. MAROULIS
555 TWIN DOLPHIN DRIVE
5TH FLOOR
REDWOOD SHORES, CALIFORNIA 94065

1 SAN JOSE, CALIFORNIA FEBRUARY 17, 2012

2

P R O C E E D I N G S

3

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

6 THE COURT: MR. RIVERA, WOULD YOU CALL
7 OUR FIRST MATTER ON THIS AFTERNOON'S CALENDAR.

8 THE CLERK: YES, YOUR HONOR.

9 CALLING APPLE V. SAMSUNG ELECTRONICS, ET
10 AL., CASE NUMBER CV-11-1846.

11 MATTER ON FOR HEARING ON APPLE IS MOTION
12 TO SHORTEN TIME FOR BRIEFING AND HEARING ON APPLE'S
13 MOTION TO COMPEL.

14 COUNSEL, PLEASE STATE YOUR APPEARANCES.

15 MR. MCELHINNY: GOOD AFTERNOON, YOUR
16 HONOR. THIS IS HAROLD MCELHINNY WITH MORRISON AND
17 FOERSTER FOR APPLE.

18 THE COURT: MR. MCELHINNY, GOOD
19 AFTERNOON, SIR.

20 AND FOR SAMSUNG?

21 MS. MAROULIS: THIS IS VICTORIA MAROULIS
22 FOR SAMSUNG FROM QUINN EMANUEL. I APOLOGIZE FOR
23 THE QUALITY OF THE RECEPTION. I'M CALLING YOU FROM
24 SEOUL, KOREA.

25 THE COURT: ALL RIGHT. GOOD AFTERNOON OR

1 GOOD MORNING AS THE CASE MAY BE.

2 COUNSEL, I HAVE RECEIVED AND REVIEWED A
3 REQUEST FROM APPLE FOR EXPEDITED CONSIDERATION OF
4 ITS MOTION TO COMPEL.

5 I HAVE ALSO RECEIVED AND REVIEWED AN
6 OPPOSITION THAT SAMSUNG FILED SHORTLY THEREAFTER.

7 MR. MCELHINNY, I'LL START WITH YOU. I
8 TAKE IT MY EARLIER ORDER WASN'T TERRIBLY CLEAR
9 ABOUT MY ATTITUDE REGARDING EXPEDITED CONSIDERATION
10 IN THIS CASE AND WHAT YOU ALL HAVE DONE WITH THAT
11 OPPORTUNITY.

12 WHY ARE YOU FILING THIS AND WHY SHOULD I
13 NOT CONSIDER IT TO BE A, PERHAPS, AT LEAST A
14 DISREGARD OF THE MESSAGE THAT I WAS TRYING TO SEND
15 EARLIER?

16 MR. MCELHINNY: WE ARE -- WE DID RECEIVE
17 YOUR EARLIER ORDER, YOUR HONOR.

18 WE CONSIDERED IT VERY -- WE UNDERSTAND --
19 I THINK WE UNDERSTOOD YOUR MESSAGE PERFECTLY.

20 THE COURT: WELL, APPARENTLY NOT
21 PERFECTLY ENOUGH BECAUSE I NOW HAVE YET ANOTHER
22 REQUEST FOR EXPEDITED CONSIDERATION. SO WHY SHOULD
23 I ENTERTAIN THIS?

24 MR. MCELHINNY: FIRST, WE HAVE FILED
25 OTHER MOTIONS SINCE YOUR ORDER IN WHICH WE HAVE NOT

1 ASKED FOR EXPEDITED TIME. AND THE REASONS WE
2 THOUGHT IT WAS JUSTIFIED TO ASK FOR EXPEDITED TIME
3 IN THIS CASE ON THIS PARTICULAR MOTION IS BECAUSE
4 THE NATURE OF THE ISSUE, WHICH IS WITH 13 WITNESSES
5 BEING WITHHELD FROM DEPOSITION, WITH THE TIME THAT
6 IS REMAINING FOR US TO TAKE DISCOVERY, WE CAN'T GET
7 AN ORDER -- WE CAN'T GET A MOTION OUT IN A
8 REGULARLY NOTICED TIME UNTIL AFTER THE DATE.

9 THE COURT: ARE THERE 13 WITNESSES IN
10 DISPUTE NOW OR 14? I HAD READ YOUR PAPERS TO
11 SUGGEST THAT THERE WERE 14 WITNESSES.

12 MR. MCELHINNY: I'VE GOT. LET ME SEE.
13 I'M SORRY. THEY JUST GAVE ME THE NUMBER.

14 I'M SORRY, YOUR HONOR. YOU'RE RIGHT,
15 THERE ARE 14 WITNESSES IN DISPUTE.

16 THE COURT: ALL RIGHT.

17 MR. MCELHINNY: THE NATURE -- AND PLEASE
18 LET ME FINISH BECAUSE I KNOW THIS IS THE MOST
19 IMPORTANT QUESTION, BUT THERE ARE TWO ISSUES. WHAT
20 IS UNIQUE ABOUT THIS IS THAT WE HAVE A CERTAIN
21 NUMBER OF HOURS OF DEPOSITION BUDGETED AND UNTIL WE
22 KNOW WHETHER OR NOT IF WE USE THAT TIME AND THEN
23 FIND OUT WE GET THESE WITNESSES, THEN WE WON'T HAVE
24 IT AVAILABLE.

25 IF WE SAVE THE TIME FOR THESE WITNESSES

1 AND THEN DON'T GET THESE WITNESSES, WE WILL HAVE
2 LOST THE TIME. THAT'S A STRATEGIC CONSIDERATION.

3 BUT THE REASON -- THE UNDERLYING REASON
4 IN TERMS OF UNDERSTANDING YOUR ORDER, WHAT I TOOK
5 AWAY FROM YOUR ORDER WAS THAT YOU WOULD NOT GIVE US
6 PRIORITY BECAUSE YOU DIDN'T THINK THAT WE WERE
7 DOING A THOROUGH AND ADEQUATE JOB OF MEETING AND
8 CONFERRING AND RESOLVING THESE KINDS OF ISSUES.

9 AND WHAT WE SET OUT IN OUR MOTION PAPERS
10 FOR YOU TO UNDERSTAND IS THAT WE HAVE MET AND
11 CONFERRED ABOUT THIS NOT JUST ONCE BUT TWICE. IN
12 BETWEEN THE FIRST MEETING AND THE SECOND MEETING,
13 WE LITERALLY SENT OUT OUR MOTION PAPERS TO SAMSUNG
14 AND SAID HERE IS OUR JUSTIFICATION FOR EACH ONE OF
15 THESE EXPERTS -- NOT EXPERTS BUT WITNESSES.

16 WE LITERALLY LAID IT ALL OUT FOR THEM AND
17 SAID THIS IS WHAT WE WILL BRING TO THE COURT AND WE
18 STILL HAVE NOT BEEN ABLE TO RESOLVE THIS.

19 THE IDEA THAT MEETING AND -- I MEAN, THEY
20 TOOK -- TO BE FAIR, THEY TOOK THREE WITNESSES OFF
21 AND WE DROPPED SIX. THERE WAS PROGRESS MADE, BUT
22 IT'S NOT GOING TO GO ANY FURTHER WITHOUT AN ORDER
23 FROM YOUR HONOR.

24 AND WE ARE IN THE POSITION THAT THE
25 PLAINTIFFS -- OF TRYING TO HOLD ON TO OUR TRIAL

1 DATE. IN ORDER TO DO THAT WE HAVE TO HOLD ON TO
2 THE DISCOVERY DATE, AND WE'RE FACING A SITUATION OF
3 JUST AN ABSOLUTE REFUSAL TO PRODUCE, AS YOUR HONOR
4 WILL SEE IF YOU HAVE TIME TO SEE THE PAPERS, THE
5 MOST CENTRAL WITNESSES IN THE CASE.

6 AND --

7 THE COURT: WHEN WERE THESE DEPOSITION
8 NOTICES SERVED?

9 MR. MCELHINNY: THEY WERE SERVED -- WELL,
10 THEY WERE SERVED A LONG TIME AGO.

11 THE COURT: HOW LONG AGO?

12 MR. MCELHINNY: PRIOR TO FEBRUARY 3RD,
13 BECAUSE IT WAS FEBRUARY 3RD, THAT I KNOW IN TERMS
14 OF THE CHRONOLOGY THAT I KNOW THAT WE WERE TOLD
15 THEY WOULD NOT BE PRESENTED.

16 THE COURT: WELL, I'M ASKING FOR MORE
17 PRECISE INFORMATION, MR. MCELHINNY, ONLY BECAUSE IF
18 YOU SERVED THESE NOTICES AS FAR BACK AS, WHAT,
19 DECEMBER, NOVEMBER, HOW FAR BACK ARE WE TALKING
20 ABOUT HERE?

21 MR. MCELHINNY: I'M SORRY. I WALKED OUT
22 OF A DEPOSITION. I'M ACTUALLY AT THE QUINN EMANUEL
23 LAW OFFICES, AND I DON'T HAVE THAT SPECIFIC DATE.

24 THE COURT: DO YOU HAVE A SENSE OF IT?

25 HERE'S MY POINT, IF THE DEPOSITIONS WERE

1 NOTICED MONTHS AND MONTHS AND MONTHS AGO, SO FAR
2 AGO, PERHAPS, THAT YOU CAN'T RECALL EXACTLY WHEN,
3 WHY WASN'T THIS ISSUE JOINED WEEKS AGO IF NOT
4 MONTHS AGO?

5 MR. MCELHINNY: AND, AGAIN, A FAIR
6 QUESTION. BUT THE REASON FOR THAT WAS BECAUSE THE
7 MEET AND CONFER REQUIREMENTS THAT THE COURT HAS PUT
8 US -- IN OTHER WORDS, THEY SERVED US A LETTER. WE
9 MET AND CONFERRED AT A LOWER LEVEL. WE FINALLY GOT
10 THIS AT A LEAD COUNSEL MEET AND CONFER WITH
11 MR. VERHOEVEN AND MYSELF. WE SAT DOWN AND TRIED TO
12 RESOLVE HOW TO DO THIS.

13 AND WE AGREED, WE, MORRISON, AGREED TO
14 SERVE THEM WITH A LETTER SETTING OUT IN GREAT
15 DETAIL, AND, IN FACT, THE DOCUMENTS THAT CALLED
16 THESE PEOPLE'S NAMES OUT AND WHY THEY WERE
17 REQUIRED. WE SENT THEM A 13-PAGE LETTER. AND WE
18 THEN HAD ANOTHER MEET AND CONFER MEETING IN ORDER
19 TO DISCUSS THAT LETTER. WE HAD THAT ON THE 14TH.

20 AND WHEN THEY SAID, YOU KNOW, THEY WERE
21 NOT GOING TO DO IT, WE FILED THIS MOTION. BUT,
22 JUDGE, IF YOU READ THEIR PAPERS, THEIR POSITION IS
23 THAT THE MEET AND CONFER PROCESS IS NOT OVER YET.
24 THEIR POSITION IS THAT WE HAVE NOT EVEN MET AND
25 CONFERRED WITH THEM EVEN IN GOOD FAITH.

1 BUT WE'RE TRAPPED IN THIS CYCLE OF HAVING
2 TO DECIDE WHEN WE HAVE MET AND CONFERRED
3 SUFFICIENTLY SO THAT THAT WON'T BE THE RESULT. I
4 MEAN, IF WE DON'T GO THROUGH THE WHOLE MOTION
5 PROCESS AND FIND THAT YOUR HONOR DISAGREES WITH
6 THAT.

7 THE COURT: WELL, BUT THE PROBLEM THAT
8 YOU'RE DESCRIBING, MR. MCELHINNY, IS, AGAIN, THE
9 CONSTRAINTS IMPOSED BY THE LEAD COUNSEL ON THE MEET
10 AND CONFER REQUIREMENTS, I DON'T KNOW HOW MANY
11 TIMES I HAVE SAID THIS IN HEARINGS IN THIS CASE,
12 WHY HAVE YOU ALL NOT ATTEMPTED TO SEEK RELIEF FROM
13 JUDGE KOH ON THIS, SIR? SHE IMPOSED THE ORDER,
14 SIR.

15 I HAVE RAISED THE POSSIBILITY OF SEEKING
16 RELIEF FROM HER HALF A DOZEN TIMES. AND YET OVER
17 AND OVER AGAIN WHEN EXPEDITED RELIEF IS REQUESTED
18 I'M TOLD ABOUT THE PAIN AND SUFFERING IMPOSED BY
19 JUDGE KOH'S REQUIREMENTS, AND ALL OF WHICH MAY BE
20 LEGITIMATE, AND YET THAT'S THE ORDER OF THE
21 PRESIDING JUDGE.

22 MR. MCELHINNY: I'M SORRY, YOUR HONOR. I
23 WAS NOT CLEAR ABOUT IT. I'M NOT TALKING ABOUT THE
24 SCHEDULING REQUIREMENT. I'M NOT TALKING ABOUT THE
25 MEET AND CONFER REQUIREMENT.

1 I'M TALKING ABOUT THE FACT THAT WE HAVE
2 LOST EITHER TWO OR THREE MOTIONS IN FRONT OF YOUR
3 HONOR BECAUSE AFTER WE THOUGHT WE HAD MET AND
4 CONFERRED AND AFTER IT WAS BRIEFED, YOUR HONOR
5 DETERMINED THAT WE HAD NOT SUFFICIENTLY MET AND
6 CONFERRED.

7 SO IN THIS -- THAT'S WHAT I'M TALKING
8 ABOUT HERE. WE DID NOT WANT TO COME IN FRONT OF
9 YOUR HONOR WITH A PROCESS THAT YOUR HONOR WOULD
10 THINK HAD BEEN INSUFFICIENT.

11 SO THIS PROCESS, AS I SAY, MR. VERHOEVEN
12 AND I HAVE MET IN PERSON ON THIS TWICE, AND WE
13 EXCHANGED 13-PAGE LETTERS ON THIS.

14 THE PROCESS WE HAVE BEEN THOROUGH, BUT
15 THAT PROCESS TOOK THE TIME FROM FEBRUARY 3RD, UNTIL
16 OUR LAST MEET AND CONFER, WHICH WAS FEBRUARY 14TH.

17 THE COURT: AND DOESN'T THAT SUGGEST,
18 MR. MCELHINNY, THAT IF THIS LENGTHY PROCESS HAD
19 BEEN INITIATED WEEKS AGO, RATHER THAN, SAY, ON
20 FEBRUARY 3RD, YOU MIGHT NOT FACE THE TIME
21 CONSTRAINT YOU FACE RIGHT NOW?

22 MR. MCELHINNY: IN FAIRNESS, YOUR HONOR,
23 WE WERE TOLD ON FEBRUARY 3RD, THAT THESE WITNESSES
24 WOULD NOT BE PRESENTED.

25 THE COURT: AND, AGAIN, IF YOU SERVE THE

1 NOTICES AS FAR BACK AS LAST YEAR, NOVEMBER I'M
2 GUESSING, PERHAPS, I DON'T HAVE THE INFORMATION IN
3 FRONT OF ME, WOULDN'T YOU HAVE GOTTEN THAT
4 INFORMATION SOONER OR MORE QUICKLY IF YOU HAD
5 ENGAGED AND SIMPLY ASKED SAMSUNG, ARE YOU GOING TO
6 TENDER THE WITNESS OR NOT?

7 MR. MCELHINNY: IN FAIRNESS, YOUR HONOR,
8 THE ANSWER IS THAT WE DID THAT. WE GOT DATES FOR
9 SOME. WE HAVE BEEN GETTING DATES ON A ROLLING
10 BASIS. WE ESCALATED THIS, AND THAT'S WHY WE GOT A
11 LETTER ON FEBRUARY 3RD.

12 WE HAVE BEEN PUSHING THIS CONSISTENTLY
13 AGAINST THE POSITION THAT WE'RE NOT DOING ENOUGH
14 MEETING AND CONFERRING, WE'RE NOT PROVIDING ENOUGH
15 INFORMATION, WE HAVE TO TAKE LOWER LEVEL PEOPLE
16 FIRST, WE HAVE TO TAKE 30(B)(6) DEPOSITIONS FIRST.

17 IT HAS BEEN A CONCERTED STALLING CAMPAIGN
18 THAT WE HAVE TO FIGURE OUT WHAT IS THE RIGHT TIME
19 THAT YOUR HONOR IS GOING TO AGREE THAT WE HAVE DONE
20 ENOUGH PROCESS. AND, THAT IS, WE WERE NOT
21 COMFORTABLE THAT THAT CAN BE FINISHED IN THE LAST
22 MEET AND CONFER.

23 THE COURT: NOW, WHY -- LET'S ASSUME
24 YOU'RE RIGHT ON ALL OF THOSE POINTS. WHY DON'T THE
25 LOCAL RULES AND THEIR PROVISION FOR RELIEF AFTER

1 THE CLOSE OF FACT DISCOVERY MITIGATE THE PREJUDICE
2 THAT YOU'RE POINTING TO JUSTIFY THIS EXPEDITED
3 REQUEST?

4 MR. MCELHINNY: BECAUSE IN THE LAST TWO
5 MEET AND CONFERS, THE ISSUE HAS STARTED TO COME UP
6 FROM THE SAMSUNG SIDE ABOUT BECAUSE OF THE PROBLEMS
7 WITH DISCOVERY AND DELAYS, IT'S CLEAR THAT THERE'S
8 GOING TO HAVE TO BE A MOTION TO PUSH OUT DATES AND
9 TO PUSH OUT TRIAL DATES.

10 AND THE ISSUE HERE THAT I'M VERY WORRIED
11 ABOUT IS THAT IF WE GET POST-DISCOVERY RELIEF HERE,
12 THAT THAT WILL TRIGGER THE AVALANCHE THAT BECAUSE
13 THIS INFORMATION WAS SO CRITICAL, IT WILL MOVE THE
14 DATES OF THE EXPERT REPORTS, IT'S PART FROM MY
15 PERSPECTIVE, WHICH, YOUR HONOR, I UNDERSTAND YOU
16 CAN'T SEE FULLY, BUT IT IS A VERY CALCULATED
17 STRATEGY THAT I PREDICTED FOR JUDGE KOH THE SECOND
18 TIME WE WERE HERE ABOUT UNDOING THE ORDER
19 EXPEDITING THE TRIAL.

20 THE COURT: ALL RIGHT. MS. MAROULIS, DO
21 YOU WANT TO SPEAK TO THIS?

22 FIRST OF ALL, WHERE IS MR. VERHOEVEN?

23 MS. MAROULIS: YOUR HONOR, WE WERE NOT
24 ABLE TO OBTAIN MR. VERHOEVEN QUICKLY ENOUGH FOR
25 THIS CALL. I WILL RESPOND BRIEFLY, AND THAT IS, WE

1 TOOK YOUR HONOR'S ORDER FROM THE LAST HEARING VERY
2 SERIOUSLY. WE HAVE A LOT OF PROBLEMS WITH APPLE'S
3 DISCOVERY. AND WE HAVE NOT FILED THOSE MOTIONS ON
4 AN EXPEDITED SCHEDULE BECAUSE WE UNDERSTOOD THE
5 COURT TO SAY WE HAVE TO WAIT IN LINE.

6 WE ARE PREPARING AND WE WILL BE FILING
7 TODAY A MOTION FOR PROTECTIVE ORDER FOR THOSE
8 WITNESSES AND WE HAVE PUT THEM ON A NORMAL
9 SCHEDULE, AND WE SUBMIT THEY SHOULD BE HEARD
10 TOGETHER, BOTH OUR MOTION AND THEIR MOTION.

11 THEY HAVE NOT BEEN ABLE TO JUSTIFY WHY
12 THEY SHOULD IGNORE YOUR HONOR'S ADMONITIONS, WHICH
13 WE HAVE TAKEN SERIOUSLY AND HAVE NOT BROUGHT A
14 WHOLE NEW WRATH OF OTHER DISPUTES BEFORE THE COURT
15 ON THE SHORTENED SCHEDULE.

16 WE DISAGREE WITH COUNSEL'S
17 CHARACTERIZATION ABOUT STALLING. THAT'S NOT THE
18 CASE AT ALL.

19 APPLE HAS SERVED MORE THAN 80 DEPOSITIONS
20 ON US IN THE LAST MONTH AND A HALF. I DON'T HAVE
21 THE EXACT NUMBERS HERE WITH ME, BUT WE HAVE BEEN
22 DOING WHAT EVERYONE DILIGENTLY COULD. WE HAVE A
23 LARGE NUMBER OF ATTORNEYS IN KOREA HERE, AND WE
24 HAVE DONE EVERYTHING WE CAN TO EXPEDITE ALL OF THE
25 DEPOSITION SCHEDULES AND PROCESSING. THIS IS AN

1 IMPORTANT APEX ISSUE, AND WE SHOULD ALSO NOT BE
2 FORCED TO GIVE UP OUR RIGHTS AND DO THAT.

3 THE COURT: WHEN DID YOU FIRST EXPLAIN TO
4 APPLE THAT YOU WOULD NOT BE TENDERING ANY OF THESE
5 14 WITNESSES?

6 MS. MAROULIS: WHEN DID WE TELL THEM? I
7 UNDERSTOOD THAT WE TOLD THEM ON FEBRUARY 3RD, AS TO
8 MOST OF THEM, AND THEN I BELIEVE IN JANUARY THERE
9 WERE 12 OF THEM THAT THEY --

10 THE COURT: I CAN'T UNDERSTAND YOU,
11 MS. MAROULIS AND THE TRANSCRIPT IS GOING TO BE
12 TERRIBLY MUDDLED. AND I CAN'T UNDERSTAND. SO
13 UNFORTUNATELY YOUR CONNECTION IS PREVENTING THIS.

14 MS. KASSABIAN: YOUR HONOR?

15 THE COURT: YES, MA'AM. GO AHEAD. WHO
16 IS SPEAKING?

17 MS. KASSABIAN: SORRY FOR THE
18 INTERRUPTION. THIS IS RACHEL KASSABIAN.

19 IS MY CONNECTION OKAY.

20 THE COURT: YES, IT'S FINE,
21 MS. KASSABIAN. GO AHEAD.

22 MS. KASSABIAN: SO I JUST WANTED TO POINT
23 OUT A FEW FACTS. WE RECEIVED DEPOSITION NOTICES
24 FROM APPLE ON THESE APEX WITNESSES HAVE STRADDLED
25 IN BETWEEN DECEMBER 6TH, 2011, THROUGH AS LATE AS

1 JANUARY 28TH, 2012.

2 ON THE EARLIER NOTICES, YOUR HONOR, WE
3 AGREE THAT IF THIS WAS SUCH A PRESSING ISSUE FOR
4 APPLE, THEY SHOULD HAVE ESCALATED THIS ISSUE MANY,
5 MANY, MANY WEEKS AGO, NOT ON FEBRUARY 16TH.

6 AND AS TO THE LATER NOTICED DEPOSITIONS,
7 YOU KNOW, THOSE APPEAR TO BE, YOU KNOW, UNTIMELY.

8 IF THIS WAS SUCH AN IMPORTANT ISSUE, THEY
9 SHOULD HAVE SERVED THOSE SOONER.

10 AS FAR AS WHEN DID SAMSUNG RAISE THESE
11 OBJECTIONS, AS I MENTIONED IN MY DECLARATION FILED
12 YESTERDAY, THIS WAS FIRST DISCUSSED ON JANUARY 5TH,
13 THE ISSUES WAS RAISED AT ONE OF THE LEAD COUNSEL'S
14 MEET AND CONFER --

15 THE COURT: I'M SORRY FOR INTERRUPTING
16 YOU, MS. KASSABIAN, BUT DID MR. VERHOEVEN EXPLAIN
17 ON JANUARY 5TH, OR THEREABOUTS, THAT THESE
18 WITNESSES WOULD NOT BE APPEARING FOR DEPOSITION?

19 MS. KASSABIAN: WELL, AS OF JANUARY 5TH,
20 NOT ALL OF THOSE NOTICES HAD EVEN BEEN SERVED BUT
21 ON THAT DATE I WAS THERE AND I DO RECALL THAT WE
22 RAISED THE ISSUE, HEY, SOME OF THESE DEPOSITIONS
23 ARE GOING TO BE APEX AND WE ARE GOING TO HAVE
24 OBJECTIONS.

25 ON JANUARY 13TH, WE SENT A LETTER TO

1 APPLE REGARDING ONE OF THE EARLIEST NOTICED APEX
2 DEPOSITIONS AND THAT WAS AN SPA CHIEF EXECUTIVE
3 OFFICER DALE SOHN, AND WE SENT THAT LETTER ON
4 JANUARY 13TH.

5 APPLE DID NOT RESPOND FOR THREE WEEKS
6 UNTIL FEBRUARY 9TH, TO THAT LETTER.

7 SO THE ADDITIONAL APEX DEPOSITION NOTICES
8 HAD TRICKLED IN, AS I SAID, IN MID- TO LATE JANUARY
9 AND THOSE -- WE FORMALLY RESPONDED IN WRITING TO
10 THOSE ON FEBRUARY 3RD, I BELIEVE, THAT IS THE DATE
11 THAT OUR LETTER WENT OUT.

12 AND, AGAIN, IT'S NOW FEBRUARY, YOU KNOW,
13 16TH, 17TH.

14 SO WE AGREE WITH YOUR HONOR THAT THE
15 PARTIES SHOULD GET IN LINE ON THIS ONE. WE DON'T
16 THINK THAT CAUSE HAS BEEN SHOWN TO SHORTEN TIME.

17 THE COURT: I TAKE IT THAT IF I WERE TO
18 ULTIMATELY GRANT APPLE'S MOTION AND ORDER THE
19 DEPOSITIONS OF ALL 14 OF THESE INDIVIDUALS, SAMSUNG
20 WOULD HAVE NO OBJECTIONS IF THOSE DEPOSITIONS COULD
21 ONLY BE TAKEN AFTER THE CURRENT DEADLINE FOR FACT
22 DISCOVERY.

23 MS. KASSABIAN: YOUR HONOR, I DON'T THINK
24 THAT WE WILL -- WE WILL FOLLOW WHATEVER ORDER YOUR
25 HONOR ISSUES.

1 THE COURT: WELL, I HOPE THAT'S TRUE.
2 BUT LET ME ASK YOU, WHAT IS YOUR POSITION IF I'M
3 NOT ABLE TO AFFORD RELIEF AS REQUESTED BY APPLE
4 UNTIL AFTER THE CLOSE OF FACT DISCOVERY?

5 WILL THERE BE ANY OBJECTION TO THOSE
6 DEPOSITIONS GOING FORWARD, EVEN THOUGH THEY'RE
7 AFTER THAT DATE?

8 MS. MAROULIS: VICTORIA MAROULIS. IF
9 YOUR HONOR GRANTS, WE WILL RESPECTFULLY PROVIDE THE
10 WITNESSES AFTER THE CUT OFF.

11 THE COURT: ALL RIGHT. MS. KASSABIAN,
12 I'M GOING TO ADDRESS THIS TO YOU ONLY BECAUSE I'M
13 HAVING TROUBLE WITH MS. MAROULIS'S CONNECTION.

14 IS IT REALLY SAMSUNG'S VIEW THAT 14
15 SEPARATE WITNESSES ALL QUALIFY AS APEX WITNESSES?

16 IT'S DIFFICULT TO SQUARE WITH MY
17 UNDERSTANDING OF WHAT AN APEX IS.

18 MS. KASSABIAN: I UNDERSTAND YOUR
19 CONCERN, YOUR HONOR, AND IT IS. WE INITIALLY
20 IDENTIFIED MORE WITNESSES THAT APPEARED TO FALL
21 WITHIN THE APEX CATEGORY, AND WE HAVE SINCE BEEN
22 DROPPING OUR APEX OBJECTIONS TO AS MANY OF THESE
23 PEOPLE AS WE CAN.

24 THE COURT: WHAT IS YOUR VIEW OF WHAT AN
25 APEX IS? I'M CURIOUS.

1 MS. KASSABIAN: WELL, YOUR HONOR, UNDER
2 THE CASE LAW APEX MOTIONS HAVE BEEN GRANTED FOR
3 VICE PRESIDENT TITLE AND HIGHER. I DON'T THINK THE
4 TITLE IS ANY SORT OF A MAGIC --

5 THE COURT: THAT WOULD ENCOMPASS,
6 PERHAPS, DOZENS AND DOZENS AND HUNDREDS OF PEOPLE
7 AT SAMSUNG, WOULDN'T IT?

8 MS. KASSABIAN: ABSOLUTELY. YOUR HONOR,
9 THE COMPANY HAS 190,000 EMPLOYEES. WE DID NOT
10 CONTROL WHO APPLE CHOSE TO NOTICE, BUT TRUTH BE
11 TOLD, THEY HAD NOTICED -- ABOUT ONE IN FIVE OF
12 THEIR DEPOSITION NOTICES HAVE BEEN DIRECTED TO
13 VARIOUS SENIOR LEVEL PERSONNEL. THEY ARE DEPOSING
14 MANY VP'S AND THEY ARE DEPOSING EVP'S AND SVP'S AS
15 WELL. WE ARE NOT OBJECTING TO EVERY SINGLE
16 DEPOSITION NOTICE THAT WENT TO A VP OR HIGHER.

17 WHAT WE ARE OBJECTING TO ARE NOTICES
18 GOING TO VERY, VERY SENIOR PERSONNEL WHERE THERE IS
19 LITTLE OR NO CONNECTION BETWEEN THAT PERSON AND
20 THIS CASE.

21 AND, YOUR HONOR, I THINK WHEN WE OPPOSED
22 THIS MOTION, I THINK YOU'LL SEE THAT IN TRUE FORM.
23 WE DON'T HAVE THOSE OPPOSITION PAPERS TOGETHER
24 RIGHT NOW TO PRESENT THEM TO YOU ORALLY, BUT WE'RE
25 TALKING ABOUT EXECUTIVES WITH HUNDREDS AND TENS OF

1 THOUSANDS OF EMPLOYEES BELOW THEM WHO ARE FAR MORE
2 SUITABLE DEPOSITION CANDIDATES.

3 THE COURT: I'M CURIOUS, AFTER APPLE
4 REQUESTED A MEET AND CONFER AMONG LEAD COUNSEL ON
5 THIS ISSUE, HOW LONG -- HOW MANY DAYS DID IT TAKE
6 MR. VERHOEVEN TO MAKE HIMSELF AVAILABLE?

7 MS. KASSABIAN: THAT -- I BELIEVE THAT
8 THEIR FEBRUARY 9TH LETTER MADE THAT REQUEST, AND WE
9 ALL GOT TOGETHER ON FEBRUARY 14TH.

10 THE COURT: SO FEBRUARY 9TH, WAS THE
11 FIRST TIME THAT COUNSEL REQUESTED A LEAD COUNSEL
12 MEET AND CONFER ON THESE 14?

13 MS. KASSABIAN: THAT'S MY RECOLLECTION,
14 BUT I WOULD HAVE TO CHECK ALL OF THE CORRESPONDENCE
15 TO CONFIRM THAT.

16 THE COURT: ALL RIGHT. MR. MCELHINNY, DO
17 YOU WISH TO RESPOND TO ANY OF THESE POINTS?

18 MR. MCELHINNY: JUST BRIEFLY TWO THINGS.
19 THE MOST IMPORTANT, YOUR HONOR, I APPRECIATE YOU
20 ASKING ABOUT A REPRESENTATION ABOUT MAKING
21 WITNESSES AVAILABLE.

22 THE REPRESENTATION THAT WOULD BE MOST
23 HELPFUL TO US WOULD BE A REPRESENTATION THAT THEY
24 WON'T RELY ON THE POST-DISCOVERY, DISCOVERY TO MOVE
25 FOR CONTINUATIONS THE OTHER DATES IN THE TRIAL.

1 BUT ON THE MERITS OF THIS, IN THE WAY
2 THAT SAMSUNG WAS RESPONDING WAS THAT THEY WERE
3 GIVING US ROLLING DATES FOR DEPOSITIONS.

4 AND WHEN WE SAID GIVE US ALL OF THE
5 DATES, THEY SAID WE'RE GOING TO GIVE THEM TO YOU ON
6 A ROLLING BASIS. THERE WILL BE OBJECTIONS LATER
7 ON.

8 WE HAD OUR FIRST MEET AND CONFER ON THIS
9 AND AGREED TO A DATE BY WHICH ALL OF THE OBJECTIONS
10 WOULD BE MADE CLEAR. WE GOT THAT ON FEBRUARY 3RD.

11 MR. VERHOEVEN AND I -- MR. VERHOEVEN HAS
12 BEEN AVAILABLE. SO WE MET AND CONFERRED SINCE
13 FEBRUARY 3RD, TWICE. ACTUALLY MET AND CONFERRED
14 THREE TIMES IN PERSON, BUT THIS HAS BEEN ON THE
15 AGENDA TWICE.

16 AT THE FIRST MEETING WE SAID THAT WE WILL
17 GIVE YOU THE 13 PAGES. THE REASON WE'RE DEPOSING
18 THESE PEOPLE IS BECAUSE THE DECISIONS TO MAKE THESE
19 COPIES OF APPLE WERE MADE AT THIS LEVEL.

20 WE HAVE WITNESS TESTIMONY THAT SAYS THAT
21 THIS PERSON MADE THE DECISION. WE HAVE DOCUMENTS
22 FROM THEM. WE LAID IT ALL OUT IN THE 13-PAGE
23 DOCUMENT SO THAT WHEN WE MET ON THE 14TH THEY COULD
24 MAKE A GO OR NO-GO DECISION.

25 THEY JUST TOLD YOU, I JUST HEARD

1 MS. MAROULIS, THAT THEY'RE FILING THEIR
2 COUNTER-MOTION OR PROTECTIVE ORDER MOTION ON
3 MONDAY. SO THEY HAVE ALL OF THE FACTS. THEY HAVE
4 IT ALL LAID OUT. THEY'RE READY TO GO.

5 THE REAL ISSUE IS WHETHER OR NOT WE MET
6 WHAT I KNEW WAS GOING TO BE A VERY, VERY HIGH
7 BURDEN ON YOUR PART ON THE WILLINGNESS TO HEAR THIS
8 MOTION ON AN EXPEDITED BASIS, AND WE THOUGHT IN
9 GOOD FAITH THAT WE HAD A VERY STRONG ARGUMENT TO
10 MAKE, AND WE HOPED THAT YOUR HONOR WOULD AGREE WITH
11 THAT.

12 THE COURT: LET ME ASK YOU ALL, I'M
13 LOOKING AT MY DOCKET RIGHT NOW AND I SEE ANY NUMBER
14 OF MOTIONS ON TOP OF THE MANY MOTIONS THAT YOU
15 ALREADY FILED REQUESTING RELIEF FROM THIS COURT ON
16 DISCOVERY MATTERS.

17 I SEE, OF COURSE, APPLE'S MOTION TO
18 COMPEL 14 ADDITIONAL DEPOSITIONS.

19 I ALSO SEE MOTIONS THAT HAVE BEEN FILED
20 BY APPLE FOR SANCTIONS AND FEES AND COSTS AND SO
21 FORTH.

22 SAMSUNG FOR ITS PART HAS MOTIONS ON MY
23 DOCKET TO COMPEL, RESPONSES, AND EXPERT ACCESS TO
24 INFORMATION PRODUCED UNDER THE PROTECTIVE ORDER,
25 AND I SEE AN APPLE MOTION TO COMPEL TIMELY

1 PRODUCTION TO FOREIGN LANGUAGE DOCUMENTS .

2 DOESN'T THIS LAUNDRY LIST OF REQUEST AND
3 NEED ON BOTH SIDES SUGGEST THAT THERE IS SOME HORSE
4 TRADING LEFT TO BE DONE HERE?

5 I MEAN, I DON'T UNDERSTAND WHY. YOU ALL
6 HAVE NEEDS, YOU ALL HAVE ISSUES, MATERIALS THAT YOU
7 BELIEVE ARE ESSENTIAL TO YOUR CASE BUT NEITHER ONE
8 OF YOU IS GOING TO GET EVERYTHING YOU WANT.

9 SO, FOR EXAMPLE, HAVE YOU TALKED ABOUT
10 TRADING RESPONSES TO SAMSUNG'S RFA'S IN EXCHANGE
11 FOR A CERTAIN NUMBER OF APEX DEPOSITIONS? DID THAT
12 SUBJECT COME UP IN THE MEETING BETWEEN
13 MR. MCELHINNY AND MR. VERHOEVEN?

14 MR. MCELHINNY: THIS IS MCELHINNY, YOUR
15 HONOR. WE HAVE RESOLVED ISSUES.

16 THE COURT: WHAT IS AN EXAMPLE OF AN
17 ISSUE THAT YOU RESOLVED IN THE LAST MEET AND
18 CONFER? I'M CURIOUS?

19 MR. MCELHINNY: TWO THAT I CAN THINK OF.
20 WE ARE IN THE PROCESS -- WE HAVE SET UP A PROCESS,
21 WE'RE ATTEMPTING TO RESOLVE THE OBJECTIONS TO
22 EXPERTS.

23 THE COURT: THAT DOESN'T SOUND LIKE A
24 RESOLUTION. THAT SOUNDS LIKE YOU'RE IN THE MIDDLE
25 OF TALKING.

1 MR. MCELHINNY: NO, NO. IT TURNED OUT TO
2 BE -- I THINK IT'S GOING TO BE A RESOLUTION, YOUR
3 HONOR.

4 I MEAN, IT GOT VERY CLOSE IN THE MEET AND
5 CONFER, AND, INDEED, IT COULD BE CARRIED OUT IN THE
6 SUBSEQUENT PHONE CONVERSATION WHICH HAPPENED
7 YESTERDAY WAITING ON GETTING APPROVAL.

8 WE ALSO RESOLVED -- IN THE MEET AND
9 CONFER WHEN WE MET ON THE 14TH, WE HAD 15 ITEMS ON
10 OUR LIST. SAMSUNG HAD CLOSE TO, I THINK, 25 OR 30
11 ON THEIR LIST.

12 AND I BELIEVE FROM MY LIST, I THINK WE
13 RESOLVED A THIRD OF THEM.

14 BUT WHAT I REALLY WANTED TO SAY IS THAT
15 WHAT IS MISSING IN YOUR ANALYSIS.

16 THE COURT: TELL ME WHAT I'M MISSING IN
17 MY ANALYSIS.

18 MR. MCELHINNY: WHAT IS MISSING IN YOUR
19 ANALYSIS IS THE CONCEPT THAT BOTH PARTIES HAVE AN
20 EQUAL INTEREST IN RESOLVING THESE THINGS ACCORDING
21 TO THE DATES THAT ARE CURRENTLY SET.

22 AND SAMSUNG DOES NOT HAVE THAT INTEREST?

23 THE COURT: AND ON WHAT BASIS DO YOU MAKE
24 THAT CLAIM?

25 MR. MCELHINNY: THIRTY YEARS OF

1 EXPERIENCE AND WATCHING THE LETTERS AND MEET AND
2 CONFER AND THE THINGS THAT THEY HAVE SAID TO ME IN
3 THE MEET AND CONFER PROCESS AND UNDERSTANDING THE
4 IMPORTANCE IN THIS CASE OF GETTING THE TRIAL DATE
5 MOVED BY SAMSUNG.

6 THE COURT: ALL RIGHT. MS. KASSABIAN,
7 DID YOU HEAR MR. VERHOEVEN MAKE ANY PROPOSALS TO
8 TRADE, FOR EXAMPLE, ACCESS FOR MR. LUCENDI FOR A
9 COUPLE OF EXTRA APEX DEPOSITIONS? WAS THAT KIND OF
10 PROPOSAL MADE DURING THIS DISCUSSION THAT TOOK
11 PLACE?

12 MS. KASSABIAN: YOUR HONOR, WE WOULD
13 WELCOME AND EMBRACE THE NOTION OF HORSE TRADING.
14 WE HAVE NOT GOTTEN ANYWHERE ON THAT FRONT.

15 THERE HAVE BEEN -- FOR INSTANCE, BOTH
16 SIDES HAVE MADE OBJECTIONS TO EACH OTHER'S EXPERTS
17 ON VARIOUS GROUNDS, THAT'S AN AREA OF HORSE
18 TRADING. THERE'S APEX DEPOSITIONS ON BOTH SIDES.
19 THAT IS AN AREA. WE HAVE RAISED THAT ISSUE.

20 I KNOW SPECIFICALLY ON APEX ISSUES THAT
21 WAS RAISED BY ME, I BELIEVE, ON OUR FEBRUARY 14TH
22 MEETING I HAD ASKED IS APPLE GOING TO RESPOND ON
23 THE TIM COOK DEPOSITION OR SOME OF THEIR OTHER
24 SENIOR FOLKS?

25 AND I WAS TOLD THEY ARE STILL CONSIDERING

1 THAT.

2 WE WOULD LOVE TO TALK ABOUT HORSE
3 TRADING, AND I THINK THAT'S THE RIGHT MOVE, YOUR
4 HONOR, AND IF APPLE IS WILLING TO DISCUSS THAT MORE
5 SERIOUSLY, WE ABSOLUTELY ARE AS WELL.

6 THE COURT: LET ME ASK YOU,
7 MS. KASSABIAN, WOULD YOU BE WILLING TO TRADE
8 RESPONSES TO YOUR RFA'S FOR, SAY, SIX OF THESE
9 PROPOSED DEPOSITIONS? WILL YOU MAKE THAT TRADE
10 RIGHT NOW?

11 MS. KASSABIAN: WELL, YOUR HONOR, I DID
12 NOT PERSONALLY HANDLE THE RFA ISSUE. I WOULD NEED
13 TO CONSULT WITH MY TEAM TO FIND OUT, YOU KNOW, HOW
14 SIGNIFICANT IS THAT ISSUE. I DON'T THINK THAT I
15 CAN MAKE THAT STATEMENT RIGHT NOW.

16 THE COURT: WOULD YOU BE WILLING TO
17 TRADE, SAY, ACCESS FOR MR. LUCENDI (PHONETIC) IN
18 EXCHANGE FOR A CERTAIN NUMBER OF APEX DEPOS? DID
19 YOU WORK ON THAT ISSUE?

20 MS. KASSABIAN: WELL, ALSO LUCENDI I'M
21 NOT THE LEAD PERSON AT MY FIRM FOR WORKING ON THAT.
22 SO I WOULD ASK IF I COULD CONSULT WITH MY TEAM
23 BEFORE WE COULD TALK ABOUT THAT.

24 I WOULD SAY THAT IT'S PROBABLY BETTER TO
25 MAKE HORSE TRADES OFF APPLES AND APPLES AND

1 EXPERTS, YOU KNOW, IN ONE COLUMN, AND DEPOSITIONS
2 IN ANOTHER COLUMN, WRITTEN DISCOVERY RESPONSES IN
3 ANOTHER COLUMN.

4 AND I'D BE HAPPY TO, YOU KNOW, SET UP A
5 MEETING WHERE THE PARTIES CAN SPECIFICALLY TALK
6 ABOUT THAT, BUT, YOU KNOW, OFF THE TOP OF MY HEAD
7 OFF, THE TOP OF THIS CALL, I DON'T THINK THAT I
8 CAN, YOU KNOW, AGREE TO THAT WITHOUT CONFERRING
9 WITH MY TEAM.

10 THE COURT: YOU MAY BE RIGHT ABOUT THAT,
11 BUT YOU'VE GOT ME ON THE PHONE NOW.

12 YOU KNOW, MAY BE I'M JUST BEING WISHFUL
13 ABOUT ALL OF THIS. IT'S JUST, I DON'T HAVE 30
14 YEARS OF EXPERIENCE, I DON'T CLAIM TO HAVE THAT,
15 BUT I HAVE A FEW AND IN MY MORE LIMITED EXPERIENCE,
16 IT SEEMS TO ME THAT LAWYERS CAN WORK OUT SOME DEALS
17 AND OCCASIONALLY WHERE THERE'S JUST THAT FINAL
18 IMPASSE YOU COME TO THE COURT.

19 BUT HERE IN THIS CASE THE DEFAULT SEEMS
20 TO BE, WELL, IF YOU'RE NOT WILLING TO SURRENDER,
21 I'M GOING TO GO TAKE IT TO JUDGE KOH OR JUDGE
22 GREWAL. I DON'T UNDERSTAND THAT AT ALL. I DON'T
23 UNDERSTAND IT AT ALL.

24 MS. KASSABIAN: YOUR HONOR, WE WOULD BE
25 HAPPY TO MAKE OURSELVES AVAILABLE IN A POSSIBLE

1 HORSE TRADING MEET AND CONFER SESSION WITH APPLE
2 RIGHT AWAY. I THINK THAT WOULD BE A GREAT IDEA.

3 THE COURT: I'M ON THE PHONE RIGHT NOW.
4 CAN WE DO IT WHILE I'M ON THE PHONE?

5 MS. KASSABIAN: WELL, I JUST DON'T HAVE
6 THE AUTHORITY WITHOUT SPEAKING TO MY PARTNERS WHO
7 ARE IN CHARGE OF THOSE ISSUES, I DON'T HAVE THE
8 AUTHORITY, OR THE KNOWLEDGE, QUITE FRANKLY, TO KNOW
9 WHAT WE CAN LIVE WITH AND WHAT WE CAN'T. I
10 APOLOGIZE FOR THAT.

11 THE COURT: ALL RIGHT. MR. MCELHINNY,
12 ANYTHING FURTHER YOU WISH TO SAY?

13 MR. MCELHINNY: NO. THANK YOU, YOUR
14 HONOR, FOR HEARING US OUT.

15 THE COURT: MS. KASSABIAN, MS. MAROULIS,
16 ANYTHING FURTHER FROM YOU?

17 MS. MAROULIS: NO, YOUR HONOR. THANK
18 YOU.

19 THE COURT: ALL RIGHT. YOU'LL HAVE AN
20 ORDER FROM ME SHORTLY ON THE MOTION FOR LEAVE TO
21 FILE THE EXPEDITED RELIEF REQUEST. THANK YOU.

22 MR. MCELHINNY: THANK YOU, YOUR HONOR.

23 THE COURT: THE MATTER IS SUBMITTED.
24 HAVE A GOOD DAY.

25 MS. KASSABIAN: YOU, TOO. BYE.

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(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: MARCH 7, 2012