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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.)
) MARCH 6, 2012
SAMSUNG ELECTRONICS CO.)
LTD., ET AL,)
) PAGES 1-61
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
MIA MAZZA
NATHAN SABRI
425 MARKET STREET
SAN FRANCISCO, CA 94105

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

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

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SAN JOSE, CALIFORNIA MARCH 6, 2012

P R O C E E D I N G S

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

THE CLERK: YES, YOUR HONOR CALLING APPLE INC. VERSUS SAMSUNG ELECTRONICS COMPANY.

CASE NUMBER CV-11-1846.

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

COUNSEL, PLEASE STATE YOUR APPEARANCES.

MS. KASSABIAN: RACHEL KASSABIAN, VICKY MAROULIS AND JOBY MARTIN FOR SAMSUNG.

THE COURT: GOOD MORNING, COUNSEL.

MR. JACOBS: GOOD MORNING, YOUR HONOR.

MICHAEL JACOBS, MIA MAZZA, JASON BARTLETT AND NATHAN SABRI, MORRISON & FOERSTER, FOR APPLE.

THE COURT: GOOD MORNING TO YOU AS WELL.

ALL RIGHT. I HAVE TWO MOTIONS BEFORE ME. I WOULD LIKE TO START WITH THE APPLE MOTION REGARDING DEPOSITIONS.

MR. JACOBS, WHO IS GOING TO ARGUE THAT ONE FOR YOU?

MR. JACOBS: I WILL, YOUR HONOR.

YOUR HONOR, WE SEEK YOUR HELP IN BRINGING SOME ORDER TO THE DEPOSITION PROCESS. WE MADE A

1 SHOWING IN OUR PAPERS THAT THERE IS DISORDER, THAT
2 WE'RE NOT GETTING DOCUMENTS NOT ONLY BASED ON THE
3 TEN-DAY SHOWING WE MADE OR THE SIX-DAY SHOWING THAT
4 WE OFFERED AS A COMPROMISE SOME WEEKS AGO. AND NOT
5 EVEN THE FIVE DAYS THAT THE PARTIES AGREED TO BACK
6 IN SEPTEMBER, I BELIEVE IT WAS, NOR EVEN THE THREE
7 DAYS THAT APPLIED TO CERTAIN DEPOSITIONS IN
8 YOUR HONOR'S ORDERS.

9 AND MOST RECENTLY WE'VE HAD ADDITIONAL
10 DEPOSITIONS AND WE'VE HAD DOCUMENTS PRODUCED TO US
11 ONE DAY, TWO DAYS BEFORE IN KOREAN.

12 WE SHOWED IN OUR PAPERS, AND SAMSUNG DOES
13 NOT REBUT, THAT DEALING WITH KOREAN LANGUAGE
14 DOCUMENTS IN THIS DISPUTE OR FOREIGN LANGUAGE
15 DOCUMENTS TAKES MORE DAYS, MORE TIME, MORE
16 PROCESSING, MORE TRANSLATION THAN DEALING WITH
17 ENGLISH LANGUAGE DOCUMENTS. WE SHOWED THE ACTUAL
18 MECHANICS OF PROCESSING THE DOCUMENTS AND HOW WE
19 GOT TO OUR TEN-DAY REQUEST.

20 SO I THINK WE MADE OUR BASIC SHOWING THAT
21 THERE SHOULD BE -- THAT SAMSUNG SHOULD BE REQUIRED
22 TO PRODUCE TEN DAYS IN ADVANCE FOR KOREAN LANGUAGE
23 DOCUMENTS, FIVE DAYS IN ADVANCE FOR ENGLISH
24 LANGUAGE DOCUMENTS.

25 THE HARD ISSUE IS HERE WE ARE, IT'S -- WE

1 ARE WHERE WE ARE, AND WHY ARE WE EVEN STILL
2 BOTHERING WITH THIS MOTION?

3 AND THERE ARE TWO REASONS: ONE, I THINK
4 WE WILL HAVE SOME DEPOSITIONS THAT SPILL OVER INTO
5 THE COMING WEEKS. THEY WILL BE IMPORTANT
6 DEPOSITIONS. YOUR HONOR HAS BEFORE YOU CROSS
7 MOTIONS ON APEX DEPOSITIONS. AND SO THOSE WILL BE
8 DEPOSITIONS THAT WE'LL WANT TO HANDLE AS
9 EFFICIENTLY AS POSSIBLE.

10 IT'S POSSIBLE YOUR HONOR WOULD GIVE US,
11 OR SAMSUNG DEPENDING ON HOW THIS ALL WORKS OUT,
12 LIMITED TIME WITH THOSE DEponents, ALL THE MORE
13 REASON WE'LL NEED DOCUMENTS WELL IN ADVANCE SO WE
14 CAN PREPARE PROPERLY FOR THOSE DEPOSITIONS.

15 THE COURT: MR. JACOBS, LET ME ASK YOU
16 FOR CONTEXT, WHERE ARE YOU IN YOUR DEPOSITION
17 SCHEDULE?

18 I UNDERSTAND YOU HAVE ALL OF THREE OR
19 FOUR MORE DAYS LEFT OF THE FACT DISCOVERY PERIOD.
20 HAS EACH SIDE EXHAUSTED THE BULK OF ITS 250 HOURS,
21 OR WHERE DO THINGS STAND?

22 MR. JACOBS: WE HAVE NOT EXHAUSTED THE
23 HOURS. WE HAVE MORE DEPOSITIONS COMING, LITERALLY,
24 AS WE ARE SPEAKING.

25 I THINK IT'S FAIR TO SAY FOR BOTH SIDES

1 THAT WE'VE BROKEN THE BACK OF IT. WE HAVE TAKEN A
2 LOT OF DEPOSITIONS, SOME OF THEM VERY FRUSTRATING
3 DEPOSITIONS BECAUSE OF THIS ISSUE. SAMSUNG HAS
4 TAKEN, WHAT WAS OUR LAST COUNT, 50 --

5 MS. MAZZA: 70 SOMETHING.

6 MR. JACOBS: 70 IN THE NORTHERN DISTRICT.

7 SO WE HAVE THE PARALLEL PROCEEDING GOING
8 ON AS WELL IN THE ITC WHICH HAS A SOMEWHAT LATER
9 CUTOFF IN OUR CASE AGAINST SAMSUNG.

10 SO ONE REASON WE CAN MANAGE SOME OF THESE
11 ISSUES IS WE WILL LIKELY BE GETTING WITNESSES IN
12 THE COMING WEEKS ON THAT CASE AS WELL.

13 SO I THINK WE HAVE BROKEN THE BACK OF IT.
14 WE HAVE KEY DEPOSITIONS THAT WE NEED TO TAKE,
15 THAT'S THE APEX DEPOSITION MOTION THAT WE HAVE
16 FILED.

17 AND THEN I -- JUST TO ALERT YOU, WE'VE
18 GOT, AND I THINK YOU ALREADY REALIZED THIS, WE HAVE
19 A MOTION ON FOR DAMAGES RELATED PRODUCTION, THAT'S
20 TO ENFORCE A PREVIOUS ORDER OF THE COURT. THERE'S
21 SOME OTHER ORDERS OF THE COURT THAT WE ARE GOING TO
22 HAVE TO MOVE TO COMPEL COMPLIANCE WITH AND THAT MAY
23 SPAWN SOME LONG TAIL DEPOSITIONS.

24 BUT TO COME BACK TO WHERE YOU ASKED, I
25 THINK WE'VE REALLY DONE A LOT ON APPLE'S SIDE. WE

1 HAVE MOVED HEAVEN AND EARTH TO TRY TO ACCOMPLISH
2 THIS BY THE CUTOFF.

3 THE COURT: SO IN TERMS OF THE REMEDY
4 THAT YOU ARE SEEKING AT THIS POINT IN TIME, I THINK
5 YOU'VE INDICATED YOUR AGREEMENT THAT WE ARE AT A
6 DIFFERENT PLACE THAN PERHAPS WE ALL WERE WHEN YOU
7 FIRST FILED THIS MOTION.

8 WHAT EXACTLY ARE YOU ASKING ME TO ORDER?

9 MR. JACOBS: SO WE HAVE GIVEN SOME
10 FURTHER THOUGHT TO THAT QUESTION.

11 I THINK YOU SAW IN OUR REPLY THAT WE MADE
12 A PROPOSAL THAT HAD SOME PROVISION FOR ADDITIONAL
13 DEPOSITION TIME. LAST NIGHT, THIS MORNING MAYBE,
14 WE GOT A COUNTER PROPOSAL FROM SAMSUNG THAT HAD A
15 DIFFERENT VIEW OF HOW THAT WOULD BE TREATED.

16 WE CAN'T ACCEPT THAT PROPOSAL BUT IT DID
17 CAUSE US TO THINK HARDER ABOUT WHAT EXACTLY WE ARE
18 SEEKING.

19 I THINK THE BEST MODEL HERE IS WHAT
20 YOUR HONOR DID WITH THE JONY IVE DEPOSITION. AND
21 YOU MAY RECALL HIS DEPOSITION WAS TAKEN IN EARLY
22 DECEMBER AND SAMSUNG MADE A SHOWING, YOUR HONOR
23 FOUND, THAT SOME ADDITIONAL DOCUMENTS HAD BEEN
24 PRODUCED THAT GAVE THEM GOOD CAUSE TO REOPEN THAT
25 DEPOSITION.

1 YOUR HONOR GAVE THEM AN ADDITIONAL TWO
2 HOURS AND SAID YOU HAVE TO SEND A LETTER IN ADVANCE
3 THAT DETAILS THE TOPICS.

4 AND HIS DEPOSITION, IT HAPPENED, HAS BEEN
5 TAKEN IN THE ITC, SO YOUR HONOR SAID MAKE THAT WORK
6 SAMSUNG, LET'S DO IT ALL TOGETHER.

7 SO IT HAPPENED. THERE WERE TWO HOURS, IT
8 WAS FOCUSED AND THAT WAS THE RESOLUTION.

9 WE DON'T WANT TO BRING MORE MOTIONS TO
10 YOU. SO I THINK YOU WOULD HAVE TO SAY SOMETHING
11 VERY STRONG ABOUT THE PARTIES WORKING IN GOOD FAITH
12 TO --

13 THE COURT: DIDN'T I ALREADY SAY THAT
14 ONCE OR TWICE? IT DOESN'T SEEM TO HAVE WORKED.

15 MR. JACOBS: I REALIZE, YOUR HONOR.

16 SO OUR PROPOSAL THEN IF IT'S NOT GOING TO
17 BE IN GOOD FAITH IT'S GOT TO BE SOME SHOWING OF
18 NONCUMULATIVE DOCUMENT PRODUCTION IN A CONTEXT IN
19 WHICH SUBSTANTIAL COMPLIANCE WAS NOT ACCOMPLISHED
20 BY THE TIME SET BY THE ORDER.

21 LET SAY YOUR ORDER HAD PREVIOUSLY SET A
22 THREE-DAY DEADLINE AND WE IN FACT GOT,
23 OVERWHELMINGLY, THE SAMSUNG PRODUCTION FOR THAT
24 WITNESS A DAY BEFORE. AND THAT PRODUCTION WAS A --
25 THAT PRODUCTION OF DOCUMENTS A DAY BEFORE WAS

1 NONCUMULATIVE DOCUMENTS THAT HAD EARLIER BEEN
2 PRODUCED. IF THAT IS THE CASE, THEN WE SHOULD GET
3 ADDITIONAL TIME WITH THAT WITNESS.

4 THE COURT: ON THIS ISSUE OF A STANDARD
5 THAT OUGHT TO APPLY IN ORDERING A NEW DEPOSITION, I
6 LOOKED EAGERLY IN THE PAPERS FOR ANY CLUES AS TO
7 WHAT THESE DOCUMENTS PRODUCED, RELATED TO WHO THESE
8 WITNESSES WERE.

9 I DIDN'T SEE VERY MUCH ABOUT THAT. CAN
10 YOU TELL ME -- SURELY YOU DON'T NEED DEPOSITIONS OF
11 ALL OF THESE PEOPLE ALL OVER AGAIN.

12 WHO MATTERS HERE?

13 MR. JACOBS: THAT'S CORRECT.

14 AND ACTUALLY, I SHOULD ADD AN ELEMENT OF
15 THE PROPOSAL THAT SELF REGULATES HERE. WE DON'T
16 HAVE THAT MANY HOURS LEFT. AND OUR PROPOSAL WAS WE
17 NOT GET ADDITIONAL HOURS TO ACCOMPLISH THIS.

18 THAT WILL REGULATE THIS BECAUSE DEPENDING
19 ON HOW WE WORK OUT AS BETWEEN THE DEFENSIVE AND
20 OFFENSIVE CASES, WE HAVE TEN HOURS LEFT ON OUR SIDE
21 TO TAKE DEPOSITIONS.

22 SOME OF THEM ARE VERY IMPORTANT
23 DEPOSITIONS OF PEOPLE WHO WERE ACTUAL DECISION
24 MAKERS WHEN IT COMES TO THE DESIGN OF A PRODUCT.
25 SOME OF THEM WERE IMPLEMENTERS OF THE PRODUCTS WHO

1 WERE RESPONDING TO THAT DIRECTION. I DON'T HAVE A
2 GLOBAL GENERALIZATION FOR YOU AS TO THE WITNESSES
3 AS TO WHOM WE HAD A SERIOUS LATE PRODUCTION
4 PROBLEM. WE PROBABLY CAN DEVELOP THAT FOR YOU IF
5 YOU LIKE BUT I DON'T HAVE IT FOR YOU RIGHT NOW.

6 THE COURT: ALL RIGHT.

7 SO AGAIN, YOU WOULD SUGGEST THAT I, IN
8 LIGHT OF THIS PRODUCTION DELAY, ORDER ADDITIONAL
9 DEPOSITIONS AND ARTICULATE SOME STANDARD OF
10 MATERIALITY IN TERMS OF THE VOLUME PRODUCED PAST
11 THE DEADLINE, WHATEVER THAT DEADLINE MIGHT BE?

12 MR. JACOBS: SO I THINK THE RIGHT TEST
13 SHOULD BE: WAS THERE SUBSTANTIAL COMPLIANCE?

14 A LOT OF SAMSUNG'S RIPOSTE TO OUR MOTION IS
15 YOU2APPLE. THE FUNDAMENTAL DIFFERENCE ON THE
16 YOU2APPLE SIDE IS THAT WE ACHIEVED SUBSTANTIAL
17 COMPLIANCE WITH OUR PRODUCTION OBLIGATIONS IN
18 ADVANCE OF WHATEVER DEADLINE WAS APPLICABLE.

19 THE COURT: YOU ARE NOT URGING A STRICT
20 STANDARD THAT A SINGLE DOCUMENT WAS PRODUCED AFTER
21 THE DEADLINE.

22 MR. JACOBS: THAT'S EXACTLY RIGHT.

23 SO NON CUMULATIVENESS WAS OUR STANDARD. I
24 THINK THAT APPLIES MATERIALITY IN A WAY THAT WOULD
25 BE IMPORTANT TO AN ISSUE IN THE CASE.

1 THE -- LET ME SEE IF I LAID OUT ALL THE
2 ELEMENTS.

3 SO NONCUMULATIVE, SUBSTANTIAL COMPLIANCE
4 NOT ACHIEVED IN ADVANCE OF WHATEVER DEADLINE WAS
5 APPLICABLE OR IS APPLICABLE.

6 THE HOURS LIMIT IS STILL IN FORCE. WE
7 WOULD BE HAPPY IF WE -- TO HAVE AN OBLIGATION TO
8 SEND THEM A LETTER AND SAY, THESE ARE THE DOCUMENTS
9 WE ARE GOING TO ASK ABOUT. BECAUSE ACTUALLY GIVING
10 THEM THAT ADVANCE NOTICE SO THE WITNESS KNOWS --

11 THE COURT: YOU GET A BETTER PREPARED
12 WITNESS.

13 MR. JACOBS: IF THE WITNESS IS
14 SHILLY-SHALLYING ON THE DOCUMENTS, IT WON'T BE
15 BECAUSE THE WITNESS WAS SURPRISED ON THE DOCUMENTS.

16 SO I THINK THOSE ELEMENTS WOULD BE A
17 WORKABLE SOLUTION. WE DID ASK THAT THE WITNESSES
18 BE BROUGHT TO THE UNITED STATES UNDER THESE
19 CIRCUMSTANCES, THE SAMSUNG WITNESSES. AND GIVEN
20 THAT THE DEPOSITIONS, I EXPECT WOULD BE SHORT, THAT
21 SOUNDS LIKE A LOT OF TRAVEL TIME FOR A SHORT
22 DEPOSITION.

23 ON THE OTHER HAND, THIS REALLY IS A HUGE
24 PROBLEM THAT THEY'VE CREATED. AND WE THINK WE'VE
25 DOCUMENTED THAT WE DID THAT, THEREFORE THE BURDEN

1 SHOULD BE ON THEM.

2 THE COURT: WELL, I WILL GIVE YOU AN
3 OPPORTUNITY FOR REBUTTAL.

4 I WOULD LIKE TO HEAR FROM SAMSUNG FOR ALL
5 THE POINTS YOU HAVE RAISED.

6 MS. KASSABIAN, ARE YOU UP?

7 MS. KASSABIAN: I AM, YOUR HONOR.

8 THANK YOU.

9 SO I THINK YOUR QUESTIONS HERE THIS
10 MORNING, AGAIN, ARE ALL THE RIGHT ONES.

11 THOSE QUESTIONS SHOULD HAVE BEEN ANSWERED
12 IN A PROPERLY FILED AND NOTICED MOTION TO REOPEN
13 DOZENS OF FOREIGN DEPOSITIONS.

14 THAT MOTION HAS NOT BEEN FILED. SO IT IS
15 NOT PROPERLY BEFORE YOU. THE SITUATION IS NOT
16 NEARLY SO SIMPLE AS MR. JACOBS WOULD LIKE TO MAKE
17 IT SEEM.

18 SOME OF THESE STANDARDS HE JUST WENT
19 THROUGH THAT THEY WERE ADDITIONAL MATERIAL
20 DOCUMENTS, THAT THEY WERE NONCUMULATIVE, THAT THE
21 PARTIES HADN'T SUBSTANTIALLY COMPLIED. THIS IS THE
22 FIRST TIME I'M HEARING OF THIS STANDARD.

23 I AGREE THAT SOUNDS RIGHT, LET'S BRIEF
24 IT. INSTEAD WHAT HAS HAPPENED IS APPLE HAS MADE
25 THIS BLANKET DEMAND, THIS KNEE JERK REACTION SAYING

1 IF A SINGLE DOCUMENT -- THIS IS WHAT THEIR MOTION
2 SAYS, THE REPLY BRIEF -- IF THE SINGLE DOCUMENT WAS
3 PRODUCED LESS THAN TEN DAYS BEFORE A DEPOSITION,
4 YOU'VE GOT TO FLY THAT PERSON TO THE UNITED STATES
5 REGARDLESS OF THEIR RELEVANCE, REGARDLESS OF
6 WHETHER APPLE TOOK A GOOD DEPOSITION THE FIRST TIME
7 AND A MEANINGFUL ONE WITH WHAT IT DID HAVE,
8 REGARDLESS OF THAT WITNESS'S PERSONAL
9 CIRCUMSTANCES, REGARDLESS OF WHETHER ANY OF THE
10 ADDITIONAL DOCUMENTS WERE MERELY DUPES OF OTHER
11 DOCUMENTS THAT HAD BEEN PRODUCED BY OTHER
12 COLLEAGUES THAT HAD BEEN DEPOSED EARLIER.

13 THERE ARE SO MANY FACTORS THAT MUST BE
14 CONSIDERED BEFORE --

15 THE COURT: WELL, I THINK THEY ABANDONED
16 THAT POSITION IF THEY EVER TOOK IT.

17 SO LET'S TALK ABOUT WHAT'S NOW ON THE
18 TABLE.

19 MS. KASSABIAN: WHAT'S NOW ON THE TABLE
20 IS APPLE'S MOTION IS LARGELY MOOT AND SHOULD BE
21 DENIED.

22 NOW IT'S TRUE THAT THERE ARE A FEW
23 REMAINING DEPOSITIONS TO BE SCHEDULED, OR THAT HAVE
24 BEEN SCHEDULED AND HAVEN'T YET TAKEN PLACE.
25 THERE'S A HANDFUL OF THEM. I'M NOT INCLUDING

1 DEPOSITIONS TAKING PLACE RIGHT NOW AND TOMORROW
2 SINCE OBVIOUSLY THE 10 OR 5-DAY RULE WOULDN'T
3 AFFECT THOSE.

4 BUT CERTAINLY WITH RESPECT TO THE
5 DEPOSITIONS THAT WOULD NEED TO BE TAKEN, AS WE
6 POINTED OUT IN OUR OPPOSITION BRIEF, YOU KNOW, HAD
7 APPLE CONSULTED WITH US AND PROPERLY MET AND
8 CONFERRED, YOU KNOW, WE HAD TALKED ABOUT SOME
9 ALTERNATIVE, OUR OPPOSITION BRIEF SAYS, YOU KNOW,
10 HEY, WE WOULD BE WILLING TO AGREE TO A 5-DAY RULE
11 BUT IT'S GOT TO BE RECIPROCAL, AND IT HASN'T BEEN,
12 RIGHT?

13 SO TO THE EXTENT YOUR HONOR WANTS TO
14 ORDER SOMETHING ON THE ACTUAL MOTION THAT IS BEFORE
15 YOU PROPERLY ON THE PRODUCTION OF DOCUMENTS A
16 CERTAIN NUMBER OF DAYS IN ADVANCE OF DEPOSITIONS,
17 FIVE DAYS WHICH IS THE RULE THE PARTIES WERE BOTH
18 VOLUNTARILY AND COOPERATIVELY TRYING TO ABIDE BY
19 BACK LAST FALL WHEN THE INVENTOR DEPOSITION TOOK
20 PLACE, WOULD BE THE APPROPRIATE RULE FOR THE
21 PROSPECTIVE DEPOSITIONS.

22 AS TO PAST DEPOSITIONS THAT HAVE TAKEN
23 PLACE, THAT IS NOT BEFORE YOUR HONOR. SURELY APPLE
24 KNEW ON JANUARY 30TH, FIVE WEEKS AGO WHEN
25 YOUR HONOR DENIED THE MOTION TO SHORTEN TIME, THAT

1 THIS COULD BE AN ISSUE, RIGHT?

2 APPLE COULD HAVE IMMEDIATELY CALLED US
3 AND SAID OKAY, JUDGE GREWAL HAS EFFECTIVELY DENIED
4 THE VAST MAJORITY OF OUR MOTION TO COMPEL, LET'S
5 TALK ABOUT --

6 THE COURT: I DIDN'T DO ANY SUCH THING.
7 I DENIED MOTION FOR LEAVE TO FILE AN EXPEDITED
8 HEARING, I DIDN'T ADDRESS THE MERITS AT ALL.

9 MS. KASSABIAN: YOU DIDN'T.

10 BUT APPLE ADMITTED IN ITS PAPERS THAT IF
11 ITS MOTION TO SHORTEN WASN'T GRANTED, IT'S MOTION
12 TO COMPEL DOCUMENTS WOULD EFFECTIVELY BE MOOT.

13 SO APPLE KNEW THAT, IT ADMITTED THAT IN
14 ITS MOTION TO SHORTEN TIME, SHOULD HAVE PICKED UP
15 THE PHONE AND CALLED US AND SAID YOU KNOW WHAT,
16 LET'S TALK ABOUT WHAT ELSE WE CAN DO.

17 INSTEAD I THINK WHAT APPLE IS TRYING DO
18 IS SAY OKAY FINE, WE WILL TAKE ALL OF YOUR
19 WITNESSES AND THEN WE ARE GOING TO ASK AT A SECOND
20 PASS AT THEM, YOU KNOW, IN A BLANKET ORDER WITHOUT
21 LOOKING TO SEE WHETHER ANY OF THOSE DEPOSITIONS
22 NEED TO BE REOPENED, AND FRANKLY WITHOUT LOOKING TO
23 ITSELF AND SAYING OKAY, YOU KNOW, WE ACTUALLY HAVE
24 COMMITTED SOME OF THE SAME SUPPOSED SINS OF
25 PRODUCING DOCUMENTS AS FAST AS WE CAN BUT PERHAPS

1 NOT AS FAST AS OUR OPPONENTS WOULD LIKE. AND SO
2 WHATEVER WE DEMAND OF SAMSUNG WE MUST BE WILLING TO
3 AGREE TO OURSELVES.

4 AND SO FAR THEY HAVEN'T DONE THAT.

5 SO, YOU KNOW, IF I WERE IN YOUR HONOR'S
6 SHOES I THINK THAT IT IS REASONABLE THAT YOUR HONOR
7 HAD INDICATED IN TWO PRIORS ORDERS, WE ARE FINE
8 WITH THAT.

9 THE COURT: WHERE DID I INDICATE IN MY
10 PRIOR ORDER THAT THERE WAS A 3-DAY RULE?

11 I READ MY PRIOR ORDERS AS SETTING
12 DEADLINES FOR YOU TO COMPLY WITH MY ORDER, AND AT A
13 MINIMUM THEY WOULD BE PRODUCED NO LATER THAN THREE
14 DAYS BEFORE THE DEPOSITION.

15 MS. KASSABIAN: THAT'S RIGHT.

16 AND NEITHER PARTY --

17 THE COURT: I DIDN'T SET A 3-DAY STANDARD
18 FOR DEPOSITIONS AND DOCUMENTS, DID I?

19 MS. KASSABIAN: NO, BUT WHAT YOUR HONOR
20 DID IS YOUR HONOR CAME UP WITH THAT SUA SPONTE.

21 NEITHER PARTIES ON THOSE MOTIONS SAID,
22 YOUR HONOR, MAKE SURE YOU ORDER DOCUMENTS PRODUCED
23 THREE DAYS BEFORE THE DEPOSITION.

24 CLEARLY YOUR HONOR FELT THAT WAS A
25 REASONABLE AMOUNT OF TIME TO INSIST THAT DOCUMENTS

1 RELATED TO --

2 THE COURT: I THINK I CAN IMAGINE WHAT I
3 FELT IN MY OWN ORDER. I APPRECIATE THE SUGGESTION.

4 BUT THE FACT OF THE MATTER IS I DIDN'T
5 SET A 3-DAY RULE, DID I?

6 MS. KASSABIAN: WELL, WE THINK YOU DID.
7 WE THINK THAT YOUR GUIDANCE WAS THREE DAYS IS
8 REASONABLE.

9 NOW YOUR ORDER CERTAINLY DID NOT SAY WITH
10 RESPECT TO DOCUMENTS NOT SUBJECT TO THIS ORDER ALL
11 PARTIES MUST, YOU KNOW, SERVE DOCUMENTS NO LATER
12 THAN THREE DAYS IN ADVANCE. YOU DIDN'T.

13 BUT WE TOOK YOUR GUIDANCE FROM YOUR PRIOR
14 ORDER AND WE'VE USED THAT AS A FLOOR. NOW THAT
15 DOESN'T MEAN THAT WE'RE SITTING ON DOCUMENTS AND
16 HANDING THEM OVER ON DAY 3.

17 IN FACT, AS YOU WILL SEE FROM THE PAPERS
18 THERE ARE MANY INSTANCES, AT LEAST 20 OF THE
19 DEPOSITIONS OF SAMSUNG EMPLOYEES, THE DOCUMENTS
20 WERE PRODUCED MORE THAN 10 DAYS IN ADVANCE OF THE
21 RELEVANT DEPOSITION. IN SOME INSTANCES IT'S WEEKS,
22 IN SOME INSTANCES IT'S EVEN MONTHS.

23 THE COURT: AND IN SOME INSTANCES YOU
24 PRODUCED LESS THAN THREE DAYS.

25 MS. KASSABIAN: ABSOLUTELY.

1 AND TRY AS WE MIGHT, WE HAVE MADE
2 MISTAKES BECAUSE OF TECHNICAL ISSUES.

3 THE COURT: WELL, WHAT REMEDY HAVE YOU
4 OFFERED IN EACH OF THOSE INSTANCES TO ADDRESS THE
5 PREJUDICE OF APPLE FOR GETTING DOCUMENTS LESS THAN
6 THREE DAYS IN ADVANCE?

7 MS. KASSABIAN: AS EARLY AS JANUARY 16TH
8 I HAVE TRIED TO ENGAGE APPLE IN THAT DISCUSSION
9 UNSUCCESSFULLY.

10 I SPECIFICALLY CALLED THAT OUT AND SAID,
11 LOOK, THIS IS AN ISSUE ON BOTH SIDES, WHAT ARE WE
12 GOING TO DO TO FIX THAT?

13 THE COURT: SO WHAT DID YOU OFFER TO
14 THEM?

15 MS. KASSABIAN: I SAID, LET'S TALK ABOUT
16 WHAT WE COULD DO, WHETHER IT BE REOPENING
17 DEPOSITIONS, WHETHER IT BE HORSE TRADING, WHETHER
18 IT BE -- I SUPPOSE THERE'S A VARIETY OF OPTIONS,
19 BUT THE RESPONSE I GOT WAS, NO THANK YOU, WE ARE
20 FILING OUR MOTION.

21 AND IT WASN'T UNTIL SIX WEEKS LATER, SIX
22 WEEKS AFTER I RAISED THE ISSUE ON FEBRUARY 23RD, 10
23 HOURS BEFORE THEY FILED THE REPLY BRIEF ON ITS
24 MOTIONS TO COMPEL DOCUMENTS THAT IT FIRST RAISED
25 THE SPECTOR OF REOPENING DEPOSITIONS.

1 I SHOULD MENTION, YOUR HONOR, MY
2 COLLEAGUE REMINDS ME IN THE INSTANCES WHERE
3 DOCUMENTS COULD NOT BE PRODUCED MORE THAN THREE
4 DAYS IN ADVANCE, EITHER AT THE DEPOSITION OR IN
5 ADVANCE OF THE DEPOSITION, IN SEVERAL INSTANCES WE
6 OFFERED TO CONTINUE THAT DEPOSITION SO THAT THEY
7 COULD HAVE A FEW MORE DAYS TO LOOK AT DOCUMENTS,
8 AND OFTEN TIMES APPLE DECLINED.

9 I THINK THERE WAS ONE INSTANCE WHERE THEY
10 ACCEPTED OUR OFFER. AND MANY INSTANCES WHERE THEY
11 SAID, NO THANK YOU, WE ARE GOING TO PROCEED. THEY
12 DID SO AT THEIR OWN RISK.

13 SO THE POINT IS THIS IS SOMETHING THAT
14 NEEDS TO BE MEANINGFULLY DISCUSSED BY THE PARTIES.
15 IT'S AN ISSUE ON BOTH SIDES. IT'S NOT ONE-SIDED
16 IT'S NOT ANYONE SITTING ON DOCUMENTS INTENTIONALLY.
17 IT'S THE PARTIES DOING THEIR VERY BEST TO COMPLY
18 WITH AN UNBELIEVABLY EXPEDITED PRETRIAL SCHEDULE
19 AND A MASSIVE AMOUNT OF DEPOSITIONS NOTICED AROUND
20 THE WORLD.

21 EVERYONE HERE I THINK IS DOING THE VERY
22 BEST THEY CAN. BOTH SIDES HAVE FACED TECHNICAL
23 GLITCHES. BOTH SIDES HAD FOUND DOCUMENTS
24 INADVERTENTLY LATER THAN THEY WOULD HAVE PREFERRED,
25 NOT THE FULL PRODUCTION BUT SOME ADDITIONAL

1 DOCUMENTS FROM VARIOUS WITNESSES.

2 THESE THINGS HAPPEN IN THIS TYPE OF
3 LITIGATION. AND THAT NEEDS TO BE WORKED OUT WITH
4 THE PARTIES BECAUSE IT IS COMPLETELY RECIPROCAL,
5 NOT BROUGHT TO YOUR HONOR AS A ONE-SIDED DISPUTE IN
6 A FEW SENTENCES TOSSED INTO A REPLY BRIEF ON A
7 MOTION TO COMPEL DOCUMENTS.

8 THE COURT: WELL, SINCE YOU BROUGHT UP
9 YOUR EFFORTS TO ENGAGE APPLE ON THIS ISSUE WEEKS
10 AND WEEKS AGO, CUTTING THROUGH ALL OF THIS, WHAT
11 WOULD YOU PROPOSE AS A REASONABLE COMPROMISE FOR
12 BOTH SIDES TO ADDRESS THE PROBLEM OF LATE
13 PRODUCTION?

14 MS. KASSABIAN: I THINK YOUR HONOR IS
15 COMPLETELY RIGHT THAT AN INSTANCE OF LATE
16 PRODUCTION DOES NOT MEAN THAT DEPOSITION NEEDS TO
17 BE REOPENED.

18 THE PARTIES NEED TO SIT DOWN, APPLE HAS
19 NOT GIVEN US ANY INDICATION THAT THEY'VE DONE THIS.
20 WE ARE DOING IT RIGHT NOW ON OUR SIDE WITH RESPECT
21 TO THE MANY, MANY TENS OF THOUSANDS OF DOCUMENTS
22 THAT WE RECEIVED AFTER WE DEPOSED APPLE'S INVENTORS
23 MANY WEEKS AND MONTHS AFTER.

24 WE ARE GOING THROUGH THOSE LISTS AND
25 FIGURING OUT, OKAY, IS THIS REALLY PREJUDICIAL?

1 ARE THESE ADDITIONAL DOCUMENTS MATERIAL? WERE WE
2 UNABLE TO GET WHAT WE NEEDED FROM THE DEPONENT THE
3 FIRST TIME AROUND? THAT'S THE EXERCISE THAT APPLE
4 NEEDS TO UNDERTAKE AS WELL.

5 THE PARTIES CAN THEN COME TOGETHER AND
6 SAY ALL RIGHT, HERE'S OUR SHORT LIST OF WHO WE
7 REALLY WOULD LIKE ANOTHER CRACK AT BASED ON THE
8 LATE PRODUCED DOCUMENTS SPECIFIC CATEGORIES OF LATE
9 PRODUCED DOCUMENTS AND THEN HORSE TRADE.

10 IT'S REALLY NOT ROCKET SCIENCE. THAT
11 NEEDS TO HAPPEN AND IT HASN'T BECAUSE --

12 THE COURT: SO HOW DO I MAKE THAT HAPPEN?
13 YOU ALL APPARENTLY HAVE BEEN UNABLE TO MANAGE THIS
14 ON YOUR OWN FOR SEVERAL WEEKS AND MONTHS.

15 MS. KASSABIAN: I THINK YOU NEED TO BE
16 MORE SPECIFIC, YOUR HONOR.

17 THE COURT: TELL ME WHAT YOU WANT ME TO
18 BE SPECIFIC ABOUT.

19 MS. KASSABIAN: ISSUE AN ORDER SAYING THE
20 PARTIES NEED TO GET TOGETHER.

21 THE COURT: I'VE ALREADY SAID THAT. I'VE
22 SAID THAT DOZENS OF TIMES IN THIS CASE THAT YOU ALL
23 NEED TO GET TOGETHER AT THE HIGHEST LEVEL AND TRY
24 TO WORK THIS OUT.

25 THE PRESIDING JUDGE HAS SAID THIS DOZENS

1 OF TIMES AND HERE WE ALL ARE.

2 AND I'M WELL AWARE THIS IS JUST THE
3 LATEST ROUND OF MOTIONS. I HAVE MANY MORE ALREADY
4 SITTING ON MY DOCKET THAT ARE COMING IN THE NEXT
5 FEW WEEKS.

6 WHAT CAN I SPECIFICALLY DO? WHAT WOULD
7 YOU HAVE ME DO?

8 MS. KASSABIAN: FIRST OF ALL, DENY
9 APPLE'S MOTION. YOU NEED TO SEND THE MESSAGE THAT
10 THE ANSWER IS NOT TO RUN TO YOUR HONOR, THE ANSWER
11 IS TO RUN TO US FIRST.

12 SECOND OF ALL I WOULD ORDER THE PARTIES
13 TO GET TOGETHER AT A SPECIFIC DATE, A SPECIFIC
14 TIME --

15 THE COURT: HOW ABOUT RIGHT NOW WHILE
16 WE'RE ALL TOGETHER?

17 MS. KASSABIAN: WE CAN DO THAT.

18 THE COURT: SO FOLLOW ME.

19 MS. KASSABIAN: WE ARE TALKING ABOUT 50
20 TO 70 DEPOSITIONS PER SIDE, I DON'T WANT TO WASTE
21 YOUR HONOR'S TIME.

22 THE COURT: YOU ALREADY MANAGED TO WASTE
23 ENOUGH OF IT ON THIS ISSUE, SO LET'S TRY TO GET
24 SOMETHING DONE.

25 MY POINT IS WE ARE ALL HERE. THE PROCESS

1 THAT I THOUGHT JUDGE KOH HAD LAID OUT MONTHS AGO
2 HAS OBVIOUSLY BROKEN DOWN.

3 WHAT CAN WE DO WHILE WE ARE ALL HERE
4 SPENDING YOUR CLIENT'S MONEY AND YOUR TIME TO GET
5 THIS THING RESOLVED?

6 MS. KASSABIAN: AS I SAID, I THINK THE
7 PARTIES NEED TO GO THROUGH THEIR LIST OF
8 DEPOSITIONS. IF APPLE HAS THAT INFORMATION, IF
9 THEY ARE READY TO DO THAT WE CAN STEP OUT INTO THE
10 ATTORNEY LOUNGE RIGHT NOW AND DO THAT.

11 THE COURT: I BELIEVE IT MAY HAVE BEEN IN
12 MS. MAZZA'S DECLARATION, THERE'S A LIST OF ANY
13 NUMBER OF SAMSUNG DEPONENTS OF DOCUMENTS PRODUCED
14 LATE ACCORDING TO APPLE.

15 MS. KASSABIAN: RIGHT. AND THAT'S NOT
16 THE ISSUE, BOTH SIDES HAVE THAT PROBLEM.

17 THE ISSUE IS --

18 THE COURT: BUT THEY ARE THE ONLY ONES
19 WHO BROUGHT A MOTION, RIGHT?

20 MS. KASSABIAN: WELL, THAT'S BECAUSE WE
21 ARE TRYING NOT TO WASTE YOUR TIME. WE ARE TRYING
22 TO ENGAGE IN A MORE THOUGHTFUL PROCESS AND SEND TO
23 APPLE AT A MEET AND CONFER, A SPECIFIC LIST OF
24 DEPONENTS WE WANT AND A SPECIFIC BASIS FOR THEM,
25 NOT THE KIND OF BROAD BRUSH, WE WANT IT ALL.

1 THE COURT: SO WHEN ARE YOU GOING TO SEND
2 APPLE THAT LIST?

3 MS. KASSABIAN: I CAN SEND IT TO APPLE AS
4 EARLY AS -- I WILL HAVE TO CHECK WITH MY TEAM WHO
5 IS WORKING ON IT, BUT I THINK NEXT WEEK.

6 AND APPLE NEEDS TO SEND US THAT LETTER
7 BECAUSE THERE ARE PROBABLY DEONENTS IF THEY REALLY
8 SAT AND THOUGHT ABOUT IT, IF THEY REALLY LOOK AT
9 THE DOCUMENTS, THEY ARE CUMULATIVE OR THEY ARE
10 UNNECESSARY. THAT EXERCISE HAS TO HAPPEN.

11 AND MAYBE A WAY TO HANDLE THIS IS FOR
12 YOUR HONOR TO SET A DEADLINE FOR THE PARTIES TO
13 EXCHANGE THESE LETTERS AND TO AGREE RECIPROCALLY TO
14 AN EQUAL AMOUNT OF REOPENED DEPOSITIONS, YOU KNOW,
15 BASED UPON, YOU KNOW, PROVIDING SOME SORT OF A
16 CONCRETE BASIS AND HORSE TRADING AS TO THE NUMBERS.

17 THE COURT: SO DO YOU AGREE OF THE
18 PRINCIPLE THAT FURTHER DEPOSITIONS ARE APPROPRIATE
19 IN LIGHT OF LATE PRODUCTIONS?

20 MS. KASSABIAN: I THINK THAT APPLE HAS
21 NOT MADE THAT SHOWING WHATSOEVER.

22 THE COURT: NO, I'M ASKING FOR YOUR
23 POSITION.

24 MS. KASSABIAN: IT ABSOLUTELY CAN BE,
25 DEPENDING ON THE CIRCUMSTANCES WITHOUT QUESTION, IF

1 DOCUMENTS -- THOUSANDS OF DOCUMENTS IN AN
2 INVENTOR'S FILES ARE PRODUCED TWO MONTHS AFTER WE
3 DEPOSED THE INVENTOR, WITHOUT QUESTION THAT CAN BE
4 PREJUDICIAL. BUT YOU HAVE TO UNDERTAKE THE
5 EXERCISE OF LOOKING AT THE DOCUMENTS, LOOKING AT
6 THE DEPOSITION AND FIGURING OUT IF YOU NEED MORE
7 AND IF SO IN WHAT RESPECT.

8 NOT SIMPLY SAYING, JUST BECAUSE SOMETHING
9 WAS PRODUCED LATE WE AUTOMATICALLY GET TO FLY THAT
10 PERSON HALFWAY AROUND THE WORLD AND MAKE THEM SIT
11 THROUGH ANOTHER WASTEFUL DEPOSITION. THAT'S NOT
12 THE PROPER EXERCISE.

13 THE COURT: WELL, IF TENS OF THOUSANDS OF
14 PAGES OF DOCUMENTS NON CUMULATIVE, NON REDUNDANT
15 DOCUMENTS ARE PRODUCED AFTER A DEPOSITION HAS TAKEN
16 PLACE, WOULD YOU AGREE THAT THAT'S AN APPROPRIATE
17 BASIS UPON WHICH TO ORDER A LIMITED FURTHER
18 DEPOSITION?

19 MS. KASSABIAN: IF A SHOWING HAS BEEN
20 MADE.

21 IT MAY BE -- FOR INSTANCE, STRATEGICALLY
22 THE PARTIES DECIDE WELL, GIVEN OUR LIMITED NUMBER
23 OF HOURS WHILE WE COULD ARGUABLY ASK FOR THE
24 PARTICULAR DEPOSITION BE REOPENED, WE WOULD RATHER
25 HAVE THIS OTHER ONE.

1 TOUGH CHOICES HAVE TO BE MADE. NO ONE IS
2 GOING TO GET EVERYTHING THEY WANT ON THIS SCHEDULE
3 THAT WE ARE OPERATING UNDER. SO THERE HAS TO BE
4 SOME DISCRETION APPLIED AND SOME STRATEGIC
5 DECISIONS MADE. THAT HAS NOT HAPPENED AT ALL ON
6 APPLE'S SIDE, IT'S NOT ANYWHERE IN THEIR PAPERS.

7 AND WE'RE HERE, YOUR HONOR, WASTING YOUR
8 TIME BECAUSE APPLE FILED A MOTION, NOT BECAUSE
9 SAMSUNG DID.

10 THE COURT: WELL, I BELIEVE WE HAVE A
11 MOTION FROM SAMSUNG BEFORE ME.

12 MS. KASSABIAN: THAT IS EXTREMELY
13 MERITORIOUS AND IT DOESN'T RELATE TO THIS ISSUE.

14 THE COURT: I'M SURE IT IS, IN YOUR VIEW.

15 BUT ON THIS PARTICULAR SUBJECT, IT SEEMS
16 TO ME THAT WHAT YOU ARE SUGGESTING IS THAT WHEN A
17 PARTY NOTICES A DEPOSITION, TAKES THE DEPOSITION,
18 AND PERHAPS DAYS AFTER THE FACT RECEIVES DOCUMENTS
19 RELATING TO THAT WITNESS, THE PARTY TAKING THE
20 DEPOSITION HAS THE BURDEN AND THE UNDERTAKING OF AN
21 EXERCISE TO EVALUATE, THEN WHAT ADDITIONAL
22 DEPOSITIONS ARE APPROPRIATE?

23 MS. KASSABIAN: SO THAT --

24 THE COURT: THAT THE PARTY THAT PRODUCED
25 THE DOCUMENTS LATE BY ITS OWN ADMISSION, ACCORDING

1 TO ITS OWN STANDARD, HAS NO RESPONSIBILITY IN THAT
2 CIRCUMSTANCE TO ENGAGE THE OTHER SIDE AND SAY, WE
3 KNOW WE ARE LATE, WE KNEW WE BLEW OUR DEADLINE, WE
4 KNOW WE VIOLATED THE JUDGE'S ORDER AND HERE'S HOW
5 WE ARE PROPOSING TO MAKE THIS RIGHT.

6 MS. KASSABIAN: I HAVE THREE RESPONSES TO
7 THAT.

8 NUMBER ONE, YES, THE PARTIES SHOULD
9 PROPOSE A SOLUTION, AND IN MANY INSTANCES WHERE WE
10 HAD A LATE PRODUCTION WE DID.

11 SOMETIMES APPLE ENGAGED US IN THAT,
12 SOMETIMES THEY DIDN'T.

13 APPLE, IN ITS LATE PRODUCTIONS, HAS NEVER
14 SAID VOLUNTARILY, BY THE WAY, WE WILL AGREE TO LET
15 YOU HAVE MORE TIME WITH THIS WITNESS. THEY'VE
16 NEVER SAID THAT. THEY SHOULD SAY THAT, THEY
17 HAVEN'T YET, THE PARTIES NEED TO WORK THAT OUT.

18 SECONDLY, AS FAR AS PRODUCING THE
19 DOCUMENTS AFTER THE DEPOSITION, ONLY APPLE HAS DONE
20 THAT. SAMSUNG HASN'T --

21 THE COURT: YOU'VE NEVER DONE THAT?

22 MS. KASSABIAN: I DON'T BELIEVE THAT HAS
23 HAPPENED IN THIS CASE.

24 THE COURT: IS THAT CORRECT?

25 MS. KASSABIAN: THAT'S CORRECT.

1 THE COURT: SO YOU ARE DISPUTING THE
2 FACTS THAT WERE SUBMITTED IN MS. MAZZA'S
3 DECLARATION?

4 MS. KASSABIAN: I DON'T THINK MS. MAZZA
5 SAYS THAT.

6 SHE SAYS CERTAIN DOCUMENTS WERE PRODUCED
7 DURING DEPOSITIONS WITH RESPECT TO HEONBAE KIM, I
8 BELIEVE, AND THERE MIGHT HAVE BEEN ONE OR TWO
9 ANOTHERS. IT'S A DIZZYING ARRAY OF WITNESSES,
10 YOUR HONOR.

11 WE SUBMITTED A CHART THAT REFLECTS ALL
12 THE INFORMATION. SHE POINTS TO ONE DEPOSITION
13 WHERE WE PRODUCED DOCUMENTS FOUR HOURS BEFORE THE
14 DEPOSITION, THAT'S TRUE. THAT'S NOT AFTER, THAT'S
15 BEFORE.

16 AND THERE WAS ANOTHER INSTANCE WITH
17 MS. KIM WHERE DOCUMENTS WERE PRODUCED DURING HER
18 DEPOSITION.

19 I DON'T THINK THERE'S ANYTHING IN THE
20 CHART POINTING TO DOCUMENTS AFTER THE DEPOSITION.
21 WHAT SHE SAYS INSTEAD IS, HEY SAMSUNG, IN A
22 DIFFERENT CASE, IN THE ITC PROCEEDINGS, SAMSUNG
23 PRODUCED SOME DOCUMENTS IN RESPONSE TO ITC DOCUMENT
24 REQUESTS AFTER THAT WITNESS HAD BEEN DEPOSED IN THE
25 NDCA CASE.

1 THAT'S A COMPLETE RED HERRING. THAT WAS
2 NOT AN NDCA PRODUCTION. THERE WERE DIFFERENT
3 PATENTS, DIFFERENT PRODUCTS AT ISSUE. SOME WERE
4 OVERLAPPING WITNESSES

5 THE COURT: I WILL ACCEPT YOUR
6 REPRESENTATION IF I GO BACK AND LOOK AND SEE IF
7 THAT REPRESENTATION IS NOT CORRECT I WILL DEAL WITH
8 IT.

9 MS. KASSABIAN: WELL, YOUR HONOR, I'M NOT
10 TRYING TO MISSTATE ANYTHING, THERE ARE MANY CHARTS
11 AT ISSUE.

12 I CAN TAKE A MOMENT TO LOOK AT THEM, BUT
13 MY UNDERSTANDING IS THE ONLY DOCUMENTS IN THIS CASE
14 THAT HAVE BEEN PRODUCED COMPLETELY AFTER A
15 DEPOSITION HAS BEEN TAKEN IS ON APPLE'S SIDE WHERE
16 THEY PRODUCED TENS OF THOUSANDS OF DOCUMENTS AFTER
17 THEIR INVENTOR DEPOSITIONS.

18 WHAT THEY'RE COMPLAINING ABOUT SAMSUNG'S
19 NDCA PRODUCTIONS IS THAT THEY HAVE COME TOO CLOSE
20 IN TIME TO THE DEPOSITION AND IN SOME INSTANCES
21 ADDITIONAL SUPPLEMENTAL PRODUCTIONS HAVE BEEN
22 DURING THE DEPOSITIONS.

23 I DON'T THINK THEY POINTED TO ANY
24 INSTANCES ANY WHERE DOCUMENTS WERE PRODUCED
25 LITERALLY AFTER AN NDCA DEPOSITION EXCEPT THE ACUTE

1 ARGUMENT THAT DOCUMENTS PRODUCED IN AN ENTIRELY
2 DIFFERENT ACTION, THE ITC ACTIONS, SOMEHOW ARE
3 IMPUTED AS RELEVANT AND RESPONSIVE IN THE NDCA, AND
4 THEY HAVEN'T WITH THAT SHOWING.

5 THE COURT: AND YOU ARE TELLING ME THAT
6 DOCUMENTS PRODUCED IN THE ITC ACTION HAVE NOT BEEN
7 DEEMED PRODUCED IN THIS CASE UNDER AN AGREEMENT
8 BETWEEN THE PARTIES?

9 MS. KASSABIAN: THEY ABSOLUTELY HAVE.

10 THE COURT: SO WHAT DOES IT MATTER IF
11 THAT'S AN ITC BATES STAMP ON THE DOCUMENT THAT WERE
12 PRODUCED AFTER THE DEPOSITION -- WERE PRODUCED
13 AFTER THE DEPOSITION.

14 MS. KASSABIAN: BECAUSE THEY ARE
15 RESPONSIVE TO ISSUES THAT ARE ONLY PRESENT IN THE
16 ITC ACTIONS. WHO CARES, RIGHT?

17 IN THIS CASE, IN THE NDCA CASE, WE RAN
18 SEARCH TERMS BASED ON RELEVANT ISSUES AND RELEVANT
19 PRODUCTS IN THIS CASE, WE DISCLOSED THOSE SEARCH
20 TERMS TO APPLE. APPLE HASN'T COMPLAINED ABOUT
21 THEM.

22 WE DID CUSTODIAL PULLS FOR THOSE
23 WITNESSES AND PRODUCED THOSE DOCUMENTS. THERE'S A
24 SEPARATE TEAM OF LAWYERS WORKING ON THE ITC ACTIONS
25 WITH SEPARATE DOCUMENTS, SEPARATE ISSUES, SOME

1 OVERLAPPING WITNESSES.

2 AND THE FACT THAT --

3 THE COURT: AND SOME OVERLAPPING ISSUES.

4 MS. KASSABIAN: I SUSPECT. I I'M NOT ON
5 THOSE CASES, BUT SUSPECT THERE MAY BE SOME.

6 BUT APPLE IN ITS SUPPLEMENTAL REPLY BRIEF
7 IS, YOU KNOW, SILENT ON THE NOTION OF THE ISSUE OF
8 WHETHER THOSE ADDITIONAL PRODUCTIONS HAVE ANYTHING
9 TO DO WITH THIS CASE.

10 I DIDN'T HAVE A CHANCE IN THE 24 HOURS
11 SINCE I RECEIVED THE SUPPLEMENTAL BRIEF TO PULL
12 THOSE DOCUMENTS AND SEE, BUT THE POINT IS THOSE
13 WERE NOT THE SEARCHES RUN BY THE NDCA TEAM IN THE
14 NDCA ACTION.

15 THE FACT THAT THERE ARE OTHER ISSUES THAT
16 THE WITNESS MIGHT BE RELEVANT TO IN THE ITC CASE IS
17 WHETHER THERE WERE DIFFERENT APPLE PATENTS AT ISSUE
18 AND SOME DIFFERENT PRODUCTS AT ISSUE IS ENTIRELY
19 UNREMARKABLE, AND IT JUST GOES TO SHOW THAT THEY
20 MUST NOT HAVE BEEN ABLE TO FIND ANY EXAMPLES WHERE
21 SAMSUNG PRODUCED DOCUMENTS AFTER THE DEPOSITION IN
22 THE NDCA PRODUCTION BECAUSE THEY RESORTED TO
23 POINTING TO ITC PRODUCTIONS.

24 IT'S CUTE, BUT IT'S INACCURATE AND IT'S
25 NOT A BASIS TO REOPEN AN NDCA DEPOSITION.

1 THE COURT: ALL RIGHT.

2 ANYTHING FURTHER ON THE ISSUE OF
3 DEPOSITIONS, MS. KASSABIAN?

4 MS. KASSABIAN: NOT UNLESS YOU HAVE ANY
5 OTHER QUESTIONS, YOUR HONOR.

6 THE COURT: THANK YOU VERY MUCH.

7 MR. JACOBS, ANY BRIEF REBUTTAL?

8 MR. JACOBS: NOTHING ABOUT THIS IS CUTE,
9 YOUR HONOR. IT'S A VERY SERIOUS PROBLEM. AND
10 THE FRIVOLITY WITH WHICH IT IS TREATED IS ITSELF
11 VERY DISCONCERTING.

12 IN OUR DECLARATIONS WE SOUGHT TO BE JUST
13 AS FACTUAL AS WE COULD BE ABOUT EACH ASPECT OF WHAT
14 WE WERE SEEKING AND WHAT HAD HAPPENED.

15 SO FOR EXAMPLE, MS. KASSABIAN PAINTS WITH
16 A VERY BROAD BRUSH ABOUT THE THOUSANDS OF INVENTOR
17 DOCUMENTS THAT WERE PRODUCED AFTER THEIR
18 DEPOSITIONS.

19 WE RAN OUR DISCLOSED SEARCH TERMS DURING
20 THE DEPOSITION PROCESS FOR THOSE INVENTORS.
21 SAMSUNG ASKED US AFTER THE DEPOSITIONS TO RUN MORE
22 SEARCHES. AND IN THE SPIRIT OF ACCOMMODATION, WE
23 RAN MORE SEARCH TERMS AND PRODUCED ADDITIONAL
24 DOCUMENTS.

25 THOSE CIRCUMSTANCES ARE VERY DIFFERENT

1 FROM THE CIRCUMSTANCES WE'VE BEEN FACING IN KOREA
2 GETTING DOCUMENTS IN KOREAN MOMENTS BEFORE THE
3 DEPOSITION -- JUST THE OTHER DAY, A DAY BEFORE THE
4 DEPOSITION.

5 WHAT HAPPENED AFTER WE FILED OUR MOTION
6 WAS WE ACTUALLY SAW SAMSUNG GETTING ITS ACT
7 TOGETHER AND GETTING US -- IN THE PERIOD RIGHT
8 AFTER THE MOTION WAS FILED IT LOOKED LIKE WE WERE
9 GOING TO BE OKAY. IN FACT, WE EVEN TALKED AMONG
10 OURSELVES, MAYBE WE CAN STIPULATE AROUND THIS,
11 MAYBE FILING THE MOTION HAD THE EFFECT WE SAW.

12 AND THEN IT DETERIORATED AGAIN AND THAT'S
13 WHEN WE REALIZED WE NEEDED ADDITIONAL REMEDIAL
14 ASSISTANCE.

15 AND THE CHART THAT WE HAVE GIVEN YOU
16 DOCUMENTS THAT PROCESS.

17 BELIEVE ME, I TOTALLY UNDERSTAND, I
18 SYMPATHIZE, I SHARE YOUR FRUSTRATION. WE HAVE BEEN
19 TEEING THESE MOTIONS UP IN AS ORDERLY A WAY AS WE
20 CAN DOING EVERYTHING WE CAN ON THE MEET AND CONFER
21 SIDE TO RESOLVE THEM. HAROLD MCELHINNY COULDN'T BE
22 HERE TODAY BUT HE HAS MET SEVERAL TIMES WITH
23 CHARLIE VERHOVEN. WE'VE DONE WHAT WE CAN TO TRY TO
24 RESOLVE THIS AMONG OURSELVES.

25 I BELIEVE THAT SEVERAL THINGS ARE GOING

1 ON HERE. SAMSUNG ITSELF HAS NEVER FIGURED OUT,
2 NOTWITHSTANDING THE LITIGATION ITS IN, HAS NOT
3 INTRODUCED ORDERLY DOCUMENT PRODUCTION PROCESSES
4 INTO ITS LITIGATION SYSTEM.

5 SAMSUNG'S LEGAL STRATEGY IN THIS CASE IS
6 TO MAKE THIS DISCOVERY AS PROLONGED AND DELAYED AS
7 POSSIBLE SO THAT THEY CAN FILE A MOTION WE'VE BEEN
8 WARNING ABOUT SINCE LAST MAY TO MOVE OFF THE TRIAL
9 DATE.

10 WE ARE DOING EVERYTHING WE CAN CONSISTENT
11 WITH EVERY DIRECTION YOU GIVE US TO PUT THIS GROUP
12 OF PEOPLE, INCLUDING YOUR HONOR, IN THE MODE OF
13 HELPING JUDGE KOH GET THIS CASE TO TRIAL BY AUGUST,
14 AND THAT'S BY JULY 31ST, AND THAT'S ALL WE SEEK.

15 THE COURT: ON THAT SAME POINT, COULD YOU
16 SHARE WITH ME, HAS JUDGE KOH SET ANY LIMITS FOR
17 TRIAL IN TERMS OF THE NUMBER OF HOURS?

18 MR. JACOBS: YES.

19 THE COURT: ROUGHLY, I'M NOT GOING HOLD
20 ANYBODY TO IT.

21 MR. JACOBS: I BELIEVE -- WE ARE VERY
22 CONSCIENCE OF THIS, IT'S A THREE-WEEK TRIAL, CLAIMS
23 AND COUNTERCLAIMS.

24 THE COURT: ALL RIGHT.

25 SO IF IT'S A THREE-WEEK TRIAL, HOW MANY

1 WITNESSES DO YOU POSSIBLY EXPECT TO TESTIFY?

2 MR. JACOBS: IT WILL BE A VERY TIGHT,
3 EFFICIENT TRIAL. IT WILL BE BASED ON THE DOCUMENTS
4 AND THE DEPOSITION TESTIMONY AS INTRODUCED AS
5 EFFICIENTLY AS POSSIBLE.

6 WE WOULD HAVE BOTH AN OPPORTUNITY AND A
7 CHALLENGE IN THIS TRIAL. THE OPPORTUNITY IS THAT
8 THE EVIDENCE WE'VE DEVELOPED OF SAMSUNG'S
9 INTENTIONAL COPYING, DOWN TO THE VERY FEATURES THAT
10 WE ARE TALKING ABOUT IN THIS DISPUTE, IS MASSIVE.
11 TRACING IT ALL THE WAY THROUGH IS A CHALLENGE.

12 SO IF YOU HAVE A DOCUMENT THAT SAYS DO
13 IT, TRACING IT THROUGH TO SHOW THAT IT WAS DONE AND
14 THAT THERE'S CAUSATION, ET CETERA, THAT IS A BIT OF
15 A CHALLENGE FOR US, BUT IT'S ALSO AN OPPORTUNITY
16 BECAUSE THERE'S NO QUESTION OF HOW THIS ALL
17 HAPPENED. YOU'VE SEEN SOME DOCUMENTS ALREADY, IT'S
18 QUITE INCULPATORY OF SAMSUNG'S CONDUCT.

19 BUT THAT'S WHAT WE'RE TRYING DO THROUGH
20 THIS DEPOSITION PROCESS IS FIGURE OUT EXACTLY WHAT
21 HAPPENED SO WE CAN TELL THE STORY AT TRIAL IN THE
22 MOST EFFICIENT AND COMPELLING WAY.

23 THE COURT: WHERE I'M GOING WITH ALL OF
24 THIS IS IF IT'S A THREE-WEEK TRIAL, WE'RE NOT
25 TALKING ABOUT DOZENS AND DOZENS OF WITNESSES.

1 MR. JACOBS: THAT'S CORRECT.

2 THE COURT: SO AT THE END OF THE DAY WITH
3 ALL THE DISCOVERY THAT'S BEEN UNLEASHED WE ARE
4 TALKING ABOUT A HANDFUL OF PEOPLE AND A HANDFUL OF
5 DOCUMENTS, JUST LIKE EVERY OTHER CASE IN THIS
6 COURT.

7 SO WHY, EVEN THOUGH YOU HAVE BEEN
8 AUTHORIZED TO TAKE THESE HUNDREDS OF HOURS OF
9 DEPOSITIONS, YOU HAVE BEEN APPEAR TO BE SEEKING RE
10 DEPOSITION OF MANY WITNESSES.

11 WHY WOULD IT MAKE SENSE FOR ME TO UNLEASH
12 THAT WHEN IT WOULD SEEM TO ME THAT THERE MAY -- AT
13 MOST, THERE WOULD BE A HANDFUL OF PEOPLE WHO ARE
14 TRULY IMPORTANT TO YOUR CASE.

15 MR. JACOBS: I THINK THE BEST ANSWER TO
16 THAT IS WHAT I GAVE EARLIER.

17 WE HAVE AN HOURS LIMIT. WE HAVE BEEN
18 USING THOSE HOURS EFFICIENTLY. SO MANY OF THE
19 DEPOSITIONS WE HAVE TAKEN ARE TWO HOURS OF KOREAN
20 LANGUAGE WHICH TRANSLATES TO ONE HOUR OF DEPOSITION
21 TIME.

22 UNDER THE PARTY'S ARRANGEMENT WE ARE
23 AUTHENTICATING THE DOCUMENTS BECAUSE SAMSUNG
24 REFUSED TO STIPULATE TO AUTHENTICATION. THAT'S THE
25 PRIMARY PURPOSE OF MANY OF THESE DEPOSITIONS TO GET

1 THE DOCUMENTS IN ADMISSIBLE FORM SO THAT WE CAN
2 INTRODUCE THEM AND HAVE SOMEBODY EXPLAIN WHAT THEY
3 ARE ALL ABOUT.

4 I DON'T WANT TO -- WE DO HAVE A HIGHLY
5 CONFIDENTIAL PROTECTIVE ORDER. I DON'T WANT TO GET
6 TOO MUCH INTO DETAIL, BUT WE LEARNED IMPORTANT AND
7 CULPATORY FACTS AS WE BUILT THE RECORD, INCLUDING A
8 WHOLE OFFICE THAT'S ABOUT THIS WHOLE PROJECT OF
9 COPING APPLE ONLY IN THE LAST COUPLE OF WEEKS.

10 AND SO PART OF OUR STRATEGY AS WE HURDLE
11 OURSELVES AT THE CUTOFF IS TO MAKE SURE WE GET THE
12 RECORD DEVELOPED ON THAT OFFICE.

13 THE COURT: SO IF I WERE TO AGREE THAT
14 SOME FURTHER DEPOSITIONS WERE APPROPRIATE, WHY
15 WOULDN'T IT MAKE SENSE FOR ME TO SIMPLY SAY YOU
16 KNOW WHAT, YOU CAN TAKE FIVE OF THESE WITNESSES,
17 MAYBE TEN, AND MAYBE YOU CAN TAKE A TOTAL
18 DEPOSITION, THE TOTAL NUMBER OF HOURS FOR THOSE
19 DEPOSITIONS SHALL NOT EXCEED TEN HOURS.

20 WHY NOT FOCUS FURTHER DEPOSITIONS IN THAT
21 WAY?

22 MR. JACOBS: I THINK I WOULD -- I THINK
23 THAT'S A PERFECTLY PRACTICAL OUTCOME, YOUR HONOR.
24 WE WOULD WORK WITH WHATEVER YOU GAVE US.

25 I THINK IF WE HAD 15, 20, IF IT'S --

1 FIRST OF ALL, UNDERSTAND OUR TRANSLATION OF HOURS
2 FROM KOREAN LANGUAGE INTO ENGLISH IS 2 TO 1.

3 I THINK IF WE HAD 20 HOURS TO DO THAT IN
4 AND TEN WITNESSES, WE COULD WORK WITH THAT. WE
5 WOULD MAKE THOSE HARD, STRATEGIC CALLS TO MAKE
6 THOSE AS USEFUL AS POSSIBLE.

7 THE COURT: THANK YOU, MR. JACOBS.

8 MS. KASSABIAN, ANY FINAL POINT?

9 MS. KASSABIAN: JUST A FEW, YOUR HONOR.

10 AS I SAT IN THE HALL BEFORE COMING IN
11 THIS MORNING I TRIED TO STEP OUT OF MY OWN ROLE AND
12 STEP OUT OF WHAT I IMAGINE APPLE'S ROLE WOULD BE
13 AND THINK ABOUT WHERE YOU MIGHT END UP ON THIS
14 MOTION, AND WHAT YOU JUST SAID IS EXACTLY WHERE I
15 THOUGHT YOU MIGHT GO.

16 THE COURT: SO ARE YOU SAYING WE ARE OF A
17 LIKE MIND, MS. KASSABIAN?

18 MS. KASSABIAN: PERHAPS. I WOULD BE
19 FLATTERED IF YOU THINK SO.

20 BUT IN ANY EVENT, I THINK THAT'S THE
21 RIGHT CALL. IF THERE'S GOING TO BE AN ORDER HERE
22 AND NOT A DENIAL OF APPLE'S MOTION FOR FAILURE TO
23 LAY THE FOUNDATION, MAKE A SHOWING AND MEET AND
24 CONFER, I THINK A RECIPROCAL ORDER SAYING OKAY,
25 EACH SIDE YOU'VE GOT TO MAKE SOME HARD DECISIONS,

1 PICK THE FIVE PEOPLE YOU REALLY WANT WHOSE
2 DOCUMENTS YOU THINK WERE NOT TIMELY PRODUCED AND
3 TAKE THOSE ADDITIONAL FIVE DEPOSITIONS IN, SAY, TEN
4 HOURS.

5 AND OBVIOUSLY THAT WOULD FACTOR IN THE
6 FACT THAT FOR KOREAN WITNESSES APPLE GETS DOUBLE
7 THAT, BUT SOME OF THESE WITNESSES WILL BE ENGLISH
8 SPEAKING IF THEY CHOOSE TO PUT ON THEIR LIST OF
9 FIVE.

10 SO AGAIN, IF THERE'S GOING TO BE AN
11 ORDER, I THINK THAT'S THE RIGHT CALL.

12 JUST A FEW -- TO THE EXTENT YOUR HONOR
13 WAS PERSUADED BY ANYTHING THAT MR. JACOBS SAID JUST
14 NOW, I JUST WANTED TO REBUT JUST TO SAY THAT
15 APPLE'S TARDY PRODUCTIONS ARE DIFFERENT, DIFFERENT
16 CIRCUMSTANCES, IS ACTUALLY BESIDE THE POINT.

17 THE FACT THAT APPLE JUST DIDN'T UNDERTAKE
18 THE RIGHT SEARCH PARAMETERS IN TERMS OF THE DATE
19 RESTRICTIONS THEY APPLIED IN THE FIRST INSTANCE
20 DOES NOT EXCUSE THE LATE PRODUCTION, AND IT ALSO
21 DOES NOT CHANGE THE PREJUDICE TO SAMSUNG OF NOT
22 HAVING THOSE DOCUMENTS IN TIME FOR THE DEPOSITIONS.

23 I ALSO TAKE ISSUE WITH MR. JACOBS'S CLAIM
24 THAT APPLE HAS DONE EVERYTHING THEY CAN TO RESOLVE
25 THIS ISSUE INCLUDING LEAD COUNSEL MEET AND CONFERS.

1 THAT'S COMPLETELY INCORRECT.

2 NEVER ONCE DURING ANY COUNSEL MEET AND
3 CONFER, AND I'VE ATTENDED THEM ALL IN THE PAST FIVE
4 MONTHS, HAS APPLE EVER MENTIONED IT WANTED TO
5 REOPEN DEPOSITIONS, NOT ONCE.

6 THE VERY FIRST TIME APPLE RAISED THAT
7 ISSUE WAS IN A LETTER IT SENT FRIDAY AFTERNOON,
8 FEBRUARY 23RD RIGHT BEFORE IT FILED ITS REPLY
9 BRIEF. THAT JUST IS NOT MEANINGFUL MEET AND CONFER
10 BY ANY STRETCH OF THE IMAGINATION.

11 THE COURT: SHALL WE TURN TO YOUR MOTION?

12 MS. KASSABIAN: AND YOUR HONOR,
13 SUBMITTED. YES, THANK YOU, YOUR HONOR.

14 THE COURT: MS. MAROULIS.

15 MS. MAROULIS: GOOD MORNING, YOUR HONOR.

16 THE COURT: GOOD MORNING.

17 MS. MAROULIS: I WANT TO PICK UP WHERE
18 YOUR HONOR TOUCHED BRIEFLY WHICH IS WE HAVE A TRIAL
19 APPROACHING AND WE ONLY HAVE ABOUT 13 COURT DAYS
20 WHICH IS TRANSLATED TO THREE WEEKS.

21 SO OUR MOTION HERE IS INTENDED TO
22 SIMPLIFY ISSUES FOR TRIAL WHICH IS WHAT OUR PAPER
23 IS FOR.

24 THE CORE ISSUE IN THE DESIGN SIDE OF
25 APPLE'S CASE IS THE SCOPE OF APPLE'S PATENTS. IT'S

1 GOING TO BE A BIG ISSUE IN TRIAL AND IT HAS BEEN A
2 BIG ISSUE ALREADY.

3 THE RELEVANCE OF OUR CASE CANNOT BE
4 QUESTIONED, AND HERE'S THE BASIC SUMMARY OF WHAT'S
5 GOING ON. WHEN COMPARING ITS OWN DESIGNS TO
6 SAMSUNG'S PRODUCTS, APPLE READS ITS PATENTS VERY
7 BROADLY AND SAYS THAT NO DIFFERENCES BETWEEN ITS
8 DESIGNS AND SAMSUNG'S PRODUCTS CAN POSSIBLY BE
9 SEEN.

10 THE COURT: IT'S NOT ATYPICAL OF
11 PATENTEES IN CASES OF THIS NATURE.

12 MS. MAROULIS: THAT'S TRUE, YOUR HONOR,
13 BUT THERE'S A DIFFERENCE BETWEEN UTILITIES PATENTS
14 AND DESIGN PATENTS AND THEY ARE A LOT LES PRECISE
15 HERE.

16 WHAT APPLE IS DOING IN THEIR MOTION FOR
17 PRELIMINARY INJUNCTION AND IN THE COMPLAINT AND
18 MR. JACOBS IS SAYING HERE TALKING ABOUT ALLEGATIONS
19 OF COPYING, THEY ARE CONSTANTLY SAYING THAT YOUR
20 PRODUCTS ARE THE SAME AS OUR DESIGNS AND THERE'S NO
21 DIFFERENCE.

22 WHEN WE TURN TO THE OTHER SIDE TO THE
23 INVALIDITY SIDE AND PRESENT PRIOR ART THAT'S
24 INCREDIBLY CLOSE IF NOT IDENTICAL TO WHAT APPLE PUT
25 FORWARD HERE IN THE DESIGN PATENTS, THEY SAY

1 THERE'S A HUGE DIFFERENCE BETWEEN THOSE TWO, THE
2 RADIUS OF THE CURVATURE IS DIFFERENT, THE THICKNESS
3 OF THE PENCIL IS DIFFERENT, EVERYTHING WAS
4 DIFFERENT.

5 THE RFA'S THAT WERE PROPOUNDED ARE
6 INTENDED TO PIN THEM DOWN ON THE SCOPE OF THEIR
7 PATENTS. AND THERE ARE BASICALLY THREE ISSUES THAT
8 ARE RELEVANT TO THIS MOTION.

9 A, ARE THEY RELEVANT TO THE SCOPE OF THE
10 PATENT, WHICH IS GOING TO BE AN IMPORTANT ISSUE IN
11 TRIAL WITH JUDGE KOH.

12 B, WHETHER THEY PROPERLY APPLY LAW TO
13 FACTS AS REQUIRED BY THE PLAIN BLACK LETTER RULE OF
14 RULE 36.

15 AND FINALLY, WHERE APPLE'S MINOR AND
16 BELATED OBJECTIONS OF AMBIGUITY, HYPOTHETICAL
17 QUESTIONS AND BURDEN CAN BE REJECTED. AND THE
18 ANSWER TO ALL OF THOSE IS YES.

19 SO WITH RESPECT TO RELEVANCE, THAT I WILL
20 NOT BELABOR IT BECAUSE THEY DIDN'T OBJECT TO ACTUAL
21 OBJECTIONS ON RELEVANCE BECAUSE THEY COULDN'T.

22 BASICALLY WHAT IT COMES DOWN TO IS THIS:
23 IF THEY ADMIT AND SAY THAT THESE ARE ESSENTIALLY
24 SIMILAR OR SUBSTANTIALLY THE SAME AS THE TEST
25 REQUIRES, THEY ARE GOING TO HAVE INVALIDITY

1 PROBLEMS. AND WE ARE GOING TO SHOW ANYTHING
2 RANGING FROM DOUBLE PATENT TO LYING TO THE PATENT
3 OFFICE.

4 IF THEY ADMIT THAT THEY ARE SUBSTANTIALLY
5 NOT THE SAME, AS THEY PROBABLY ARE --

6 THE COURT: THEN YOU HAVE INFRINGEMENT
7 RIGHTS.

8 MS. MAROULIS: WE HAVE INFRINGEMENT
9 ISSUES, WHICH IS WHY WE PROPOUNDED THE EXTREMELY
10 NARROW AND TARGETED DISCOVERY. BECAUSE,
11 YOUR HONOR, DISCOVERY IS NOT A PROCESS ONTO ITSELF.

12 THE COURT: YOU COULD HAVE FOOLED ME IN
13 THIS CASE.

14 MS. MAROULIS: IT'S DESIGNED TO LEAD TO
15 AN ORDERLY, SHORT AND PROPERLY PRESENTED TRIAL,
16 WHEN AS YOUR HONOR YOURSELF SAID, WE ARE ONLY GOING
17 TO HAVE THIS MANY WITNESSES TO PUT ON AND THIS MANY
18 DAYS TO DO IT IN.

19 THE SECOND ISSUE IS WHAT THEY SPENT THE
20 BULK OF THEIR OPPOSITION ON WHICH IS, IS THIS
21 CALLED FOR A CONCLUSION OR IS THIS THE PROPER
22 APPLICATION OF LOGICAL FACTS?

23 FIRST OF ALL, WE CITED AMPLE AUTHORITY OF
24 DIFFERENT CASES WHERE THE COURTS APPROVE VERY
25 SIMILAR LAW TO FACTS.

1 IT MIGHT BE THAT SOME OF THE CASES FROM
2 COME FROM A DIFFERENT FIELD OR GENERA. IT COULD BE
3 POLICE BRUTALITY CASES AND WHAT DOES IT MEAN TO ACT
4 UNDER THE COLOR OF LAW? WHAT DOES IT MEAN TO
5 ENGAGED IN FIDUCIARY DUTY OR HAVE A DUTY TO INFORM
6 A MEDICAL ESTABLISHMENT OR SOMETHING.

7 BUT THE PRINCIPLE IS THE SAME WHICH IS
8 THERE'S AN APPLICATION OF LAW TO THE FACTS, AND YOU
9 KNOW THE FACTS.

10 HERE WE ARE TALKING ABOUT APPLE AND IT'S
11 OWN PATENTS. WE ARE NOT TALKING ABOUT SOMEBODY
12 ELSE'S PATENTS, WE'RE NOT TALKING ABOUT
13 HYPOTHETICAL PATENTS. IT'S NOT AS IF I WOULD COME
14 IN AND DRAW SOME DESIGNS AND SHOW IT TO THE WITNESS
15 AND ARE THEY SIMILAR OR ARE THEY NOT.

16 THESE ARE APPLE'S PATENTS. AND WHEN
17 APPLE APPLIED FOR THOSE PATENTS TO THE PATENT
18 OFFICE IT HAD TO MAKE AN INTERNAL DETERMINATION.
19 IS THIS NEW? WELL, I HAVE A BASIS TO STICK A
20 PATENT FROM THE PATENT OFFICE ON THIS RECORD. AND
21 IT APPARENTLY MADE THAT DETERMINATION.

22 BUT NOW WE'RE ASKING THEM TO MAKE THE
23 SAME ADMISSION IN THE RFA CONTEXT AND THEY ARE
24 SAYING NO, THEY CANNOT DO THAT.

25 AND MORE IMPORTANTLY, APPLE HAS DONE THIS

1 REPEATEDLY, THE VERY COMPARISON THEY SAY THEY
2 CANNOT MAKE IN THE PRELIMINARY INJUNCTION PAPERS
3 AND THE COMPLAINT.

4 IF YOU LOOK AT THE PRELIMINARY INJUNCTION
5 PAPERS, THEY HAVE TESTIMONY OF COOPER WOODRING WHO
6 SAYS THIS DESIGN IS SUBSTANTIALLY THE SAME AS THIS
7 SAMSUNG PRODUCT. HE GOES THROUGH ALL THE PRODUCTS
8 AND SAYS THEY ARE SUBSTANTIALLY THE SAME.

9 THEY ARE SAYING ESSENTIALLY THE SAME
10 THING IN THEIR COMPLAINT WHEN THEY'RE PUTTING
11 PICTURES TOGETHER AND MAKING CLAIMS. THEY ARE
12 SAYING THAT EVERY TIME THEY COME INTO YOUR
13 COURTROOM THERE'S ALLEGED COPING. BASICALLY THEY
14 MADE THE DETERMINATION TO THEMSELVES BUT THEY
15 REFUSE TO STATE IT IN THE ADMISSIBLE BINDING WAY
16 THAT YOU ARE SEEKING.

17 THEIR OTHER OBJECTIONS ARE VARIED BUT
18 NONE OF THEM ARE REALLY PARTICULARLY MERITORIOUS.

19 ONE IS AMBIGUITY. WITH THE DEFINITIONS
20 THAT WERE PROVIDED, THE FACT THAT THEY KNOW WHAT AN
21 ORDINARY OBSERVER TEST COMES, FROM
22 EGYPTIAN GODDESS. THEY CANNOT POSSIBLY BE
23 CONFUSED.

24 BUT EQUALLY IMPORTANT, AS THIS COURT
25 PREVIOUSLY NOTED, IF YOU DON'T UNDERSTAND SOMETHING

1 THEN SEEK CLARIFICATION.

2 AND THIS IS SOMETHING WHICH I'M SURE
3 YOUR HONOR HAS BEEN FRUSTRATED WHICH IS THE PARTIES
4 ABILITY TO MEET AND CONFER TO SHORT CIRCUIT SOME OF
5 THESE.

6 WE HAD A MEETING ON THIS ISSUE AND IT WAS
7 TOLD TO US FLATLY THAT NO, WE WILL NOT DO IT. THEY
8 DIDN'T SAY WE WILL DO IT IF YOU EXPLAINED TO US
9 WHAT YOU MEANT OR WE'LL DO IT IN SOME
10 CIRCUMSTANCES, THEY JUST SAID NO, WE ARE NOT GOING
11 TO DO IT UNDER ANY CIRCUMSTANCES.

12 SO AMBIGUITY IS NOT A REAL OBJECTION.

13 THE COURT: MS. MAROULIS, LET ME ASK
14 YOU, READING THE CASE LAW UNDER OR APPLYING RULE
15 36, IT SEEMS LIKE ALL OF THESE OBJECTIONS IN THIS
16 DISPUTE ON THIS TOPIC CAN BE BOILED DOWN TO REALLY
17 A SIMPLE QUESTION.

18 IS IT REASONABLE FOR APPLE TO ANSWER
19 THESE QUESTIONS? CAN APPLE DO SO AFTER A
20 REASONABLE INQUIRY?

21 WHAT ARE YOUR THOUGHTS ON THAT? DO YOU
22 HAVE ANY GUIDANCE FOR ME, ANY CASES EVEN IN THE
23 CONTEXT OF A PATENT OR NONPATENT?

24 MS. MAROULIS: YOUR HONOR, IT IS
25 REASONABLE FOR APPLE TO ANSWER BECAUSE THERE ARE

1 CASES THAT SAY THAT TO THE EXTENT YOU CAN CONSULT
2 YOURSELF OR EVEN YOUR EXPERT, WE CITED THE CASE BUT
3 I DO NOT REMEMBER THE NAME IN OUR BRIEF. YOU CAN
4 FIGURE OUT THE INFORMATION BY KNOWING YOURSELF OR
5 CONSULTING THE EXPERT, THAT'S REASONABLE.

6 THERE'S A CASE THAT YOUR HONOR DECIDED,
7 OBVIOUSLY A DIFFERENT CONTEXT, IT HAD TO DO WITH
8 DOOR MEASUREMENTS. AND THE POINT WAS THE PARTIES
9 SAID WELL, WE DON'T KNOW BECAUSE IT HAPPENED THREE
10 YEARS AGO. AND THE ANSWER WAS WELL, YOU CAN GO
11 MEASURE YOUR DOOR NOW AND FIGURE OUT IF SOMETHING
12 CHANGED.

13 SO IT IS REASONABLE FOR APPLE TO SIT DOWN
14 WITH ITS OWN PATENTS LOOK AT THEMSELVES AND SAY, I
15 THINK THIS IS SUBSTANTIALLY THE SAME OR I THINK
16 IT'S NOT SUBSTANTIALLY THE SAME

17 THE COURT: IS IT REALLY ANALOGOUS FOR ME
18 TO TELL A BURRITO SHOP TO GO BUY ITSELF A TAPE
19 MEASURE AND FIGURE OUT HOW TALL THE SINK IS? IS
20 THAT REALLY ANALOGOUS TO A SITUATION HERE WHERE YOU
21 ARE ASKING THEM TO BRING IN, ESSENTIALLY, THE
22 ENTIRE LITIGATION TEAM.

23 LET'S BE HONEST HOW THESE THINGS ARE
24 REALLY ANSWERED AND EVALUATE DOZENS AND DOZENS OF
25 REFERENCES FOR SIMILARITY.

1 MS. MAROULIS: YOUR HONOR, THIS GOES TO
2 THE ISSUE OF BURDEN, AND THEY RAISED THE ISSUE OF
3 BURDEN. BUT I BELIEVE THAT APPLE IS ILL SUITED TO
4 COMPLAIN ABOUT THE BURDEN BECAUSE OF THE KIND OF
5 BURDEN THEY ARE IMPOSING ON SAMSUNG QUITE FRANKLY.

6 THEY SERVED 16 OR 1700 RFA'S, THOUSANDS
7 OF DOCUMENT REQUESTS, PROPOUNDED A HUNDRED NOTICES
8 OF DEPOSITIONS.

9 A WEEK OR TWO AFTER THEY CAME TO YOUR
10 COURTROOM SEEKING TO QUASH THE SINGLE NOTICE OF
11 MOTION, THE 30(B)(6) RULE, THEY SERVED EIGHT MORE
12 NOTICES AND NOW WE HAVE 300 TOPICS WE RESPONDED TO.

13 SO YES, IT'S A LOT MORE BURDENSOME THAN
14 ASKING THE BURRITO SHOP TO MEASURE ITS DOOR, BUT
15 THIS IS A MUCH BIGGER LITIGANT WITH A LOT MORE
16 RESOURCES WHO, BY THEIR OWN CHOICE, UNLEASHED THE
17 WAVE OF ENORMOUS DISCOVERY ON THE OTHER PARTY AND
18 ON THE COURT BECAUSE ITS DEMANDS AND INSATIABLE
19 REQUESTS ARE LEADING US TO BE HERE.

20 THAT'S PARTLY WHAT THE FIRST MOTION IS
21 ABOUT AND MANY OTHERS THAT CAME BEFORE YOU OR WILL
22 COME BEFORE YOU AGAIN.

23 THERE ARE A COUPLE OF CASES IN OUR PAPERS
24 THAT, I BELIEVE IT'S THE JOVANOVICH CASE THAT'S
25 MORE CLOSELY ALIGNED. IT'S A PATENT CASE AND I

1 THINK THE COURT SAID THAT IT'S APPROPRIATE TO APPLY
2 THE CLAIMS SCOPE TO FACTS.

3 SO THE QUESTION WAS WHETHER YOU CAN MAKE
4 AN ADMISSION ABOUT WHETHER SOMETHING IS PRIOR ART,
5 AND THE COURT SAID YES, YOU COULD.

6 THE COURT: SO -- AND I APPRECIATE YOUR
7 HIGHLIGHTING THE DIFFERENCE BETWEEN DESIGNS UTILITY
8 PATENTS HERE.

9 LET'S ASSUME WE ARE TALKING ABOUT A
10 UTILITY PATENT FOR THE MOMENT. I UNDERSTAND WE'RE
11 NOT, BUT LET'S ASSUME THAT WE ARE.

12 DO YOU BELIEVE THAT RULE 36 AUTHORIZES A
13 PARTY LIKE SAMSUNG TO SAY, TELL ME YES OR NO, ADMIT
14 OR DENY WHETHER THIS LIMITATION IS DISCLOSED IN
15 THIS PRIOR ART REFERENCE.

16 MS. MAROULIS: YOUR HONOR, THERE'S
17 CERTAINLY CASES SUPPORTING A PROPOSITION THAT YOU
18 CAN PROPOUND AN RFA SAYING, WAS THIS LIMITATION --
19 DOES THIS APPEAR IN THE PRIOR ART. OR THE MORE
20 COMMON VARIETY IS, WAS THIS PARTICULAR LIMITATION
21 KNOWN BEFORE A CRITICAL DATE? BECAUSE THAT'S MORE
22 FACTUAL, SOMETHING KNOWN EVEN THOUGH IT LEADS
23 ULTIMATELY TO INVALIDITY.

24 BUT I WANT TO MAKE SURE I ANSWER YOUR
25 QUESTION THAT BRINGS US BACK TO THE DESIGN PATENTS.

1 AND THE DESIGN PATENTS, WHY THIS IS KIND
2 OF A DIFFERENT BREED IN ITS OWN RIGHT. THE
3 ORDINARY OBSERVER TESTS IN EGYPTIAN GODDESS
4 BASICALLY PRESUPPOSES YOU CAN LOOK AT THE DESIGN IN
5 THE PRODUCT AND COMPARE THEM. SOMETIMES IT'S DONE
6 BY SOMEONE LIKE MR. WOODRING OR OUR EXPERT
7 MR. SHERMAN, OR IT CAN POTENTIALLY BE DONE NOT BY
8 AN EXPERT.

9 THERE'S NO BRIGHT LINE RULE THERE, AND
10 UNFORTUNATELY THE DESIGN IS NOT NEARLY AS DEVELOPED
11 AS THE UTILITY, SO WE HAVE LESS PRECEDENT TO FALL
12 BACK ON THAT.

13 BUT WHAT IS CLEAR IS THESE ARE PICTURES,
14 THERE'S NO SPECIFIC CLAIM. SO ONE OF THE ARGUMENTS
15 IS WELL, WE DON'T KNOW WHICH CLAIM YOU WANT US TO
16 COMPARE; THERE'S NO CLAIMS, RIGHT. THERE'S ONE
17 CLAIM AND IT BASICALLY GOES BACK TO THE PICTURE.

18 AND WHAT WE ARE TRYING TO SHOW HERE IS
19 THAT APPLE HAS A HUGE DESIGN PORTFOLIO AND IT
20 PATENTED ITS DESIGNS FROM EVERY WHICH WAY, AND SOME
21 OF THESE DESIGNS QUITE FRANKLY, SOME OF THE PATENTS
22 ARE OVERLAPPING.

23 SO THEY ARE TRYING TO DISTANCE THEMSELVES
24 AND ONLY FOCUS THE COURT ON THE HANDFUL OF PATENTS
25 IN THIS CASE, BUT THAT'S NOT PROPER.

1 AND IN PART BECAUSE WHEN WE DO CLAIMS
2 CONSTRUCTION IN UTILITY PATENTS, WE LOOK AT
3 INTRINSIC EVIDENCE, EXTRINSIC, AND IT'S A DIFFERENT
4 PROCESS OF CONSTRUING CLAIMS AND DESIGN CONCEPTS.

5 AND WE NEED TO A, EXCLUDE EVERYTHING
6 THAT'S PRIOR ART; AND B, TAKE OUT FUNCTIONALITY.
7 SO IT'S A SLIGHTLY DIFFERENT ANALYSIS.

8 BUT TO GO BACK TO YOUR HONOR'S QUESTION,
9 YES, THERE ARE CASES THAT SUPPORT THE PROPOSITION
10 YOU CAN ADMIT OR DENY SOMETHING IS OR IS NOT PRIOR
11 ART.

12 THE COURT: ALL RIGHT.

13 NOW LET'S ASSUME FOR THE MOMENT THAT I
14 ORDER APPLE TO RESPOND TO YOUR RFA'S AND THE
15 RESPONSE BACK TO EACH OF THESE DOZENS OF PAIRS, IS
16 HOW I'VE LOOKED AT IT ANYWAY, IS DENY, DENY, DENY,
17 DENY, OKAY.

18 THE CONSEQUENCE FOR THAT DENIAL, EXPLAIN
19 TO ME THE NEXT STEP. I'M TRYING TO THINK A MOVE OR
20 TWO AHEAD HERE. WHERE DOES IT GO IF THEY COME BACK
21 AND HIT YOU ABOUT A BUNCH OF DENIALS?

22 MS. MAROULIS: SO IF THEY ARE SAYING THE
23 TWO DESIGNS ARE NOT SUBSTANTIALLY THE SAME AND WE
24 CAREFULLY COMPARED THEM --

25 THE COURT: I SUSPECTED THAT WASN'T BY

1 ACCIDENT.

2 MS. MAROULIS: YES, YOUR HONOR.

3 SO IF -- THERE ARE TWO PATENTS THAT TO US
4 LOOK IDENTICAL, AND THEY'RE SAYING THEY ARE
5 COMPLETELY DIFFERENT. THE DIFFERENCE BETWEEN
6 SAMSUNG'S PRODUCT AND EITHER OF THOSE TWO PATENTS
7 IS TREMENDOUS.

8 THIS IS SOMETHING THAT WE CAN TAKE TO
9 JUDGE KOH ON SUMMARY JUDGEMENT OR WE CAN TAKE IT TO
10 THE JURY AT TRIAL DEPENDING HOW THAT DEVELOPS WITH
11 THE DESIGN PATENT SIDE OF THINGS.

12 THIS IS THE NARROWING WE WERE TALKING
13 ABOUT. AND NOT NECESSARILY THAT WE ARE GOING TO
14 TAKE ALL HUNDRED PAIRS, BUT THERE COULD BE THREE OR
15 FOUR PAIRS THAT COULD BE DISPOSITIVE OF THIS CASE.

16 JUST TO MAKE SURE I ROUNDED UP ALL THE
17 POINTS, ANOTHER OBJECTION THEY RAISE WAS THAT THIS
18 IS THE HYPOTHETICAL QUESTION. AND IN FACT IT'S NOT
19 A HYPOTHETICAL QUESTION. THE CASES APPLE RELIES ON
20 HAVE TRUE HYPOTHETICALS.

21 FOR EXAMPLE, THERE WAS A
22 GODIVA CHOCOLATIER CASE WHERE THE QUESTION WAS --
23 INVOLVED A HYPOTHETICAL RETAIL AND A HYPOTHETICAL
24 CUSTOMER. OBVIOUSLY APPLE IS A REAL COMPANY.

25 THE COURT: SO YOU'RE NOT MAKING UP

1 PATENTS HERE, YOU ARE POINTING TO THE ASSERTED
2 PATENT AND OTHER --

3 MS. MAROULIS: OTHER PATENTS OWNED BY
4 APPLE, NOT JUST ANY PATENT.

5 THE COURT: AND THEY ARE IN THE
6 PORTFOLIO.

7 MS. MAROULIS: EXACTLY.

8 THAT'S AN IMPORTANT DISTINCTION BECAUSE
9 IF IT'S ANOTHER PATENT, THEY POTENTIALLY COULD HAVE
10 HAD AN ISSUE SAYING IT'S BEYOND OUR INFORMATION, WE
11 DON'T HAVE ENOUGH INFORMATION TO ANSWER.

12 BUT BEFORE YOU APPLY FOR ANY PATENT OR
13 UTILITY OR DESIGN YOU HAVE TO HAVE GOOD FAITH THAT
14 THE PATENT IS NEW AND UNIQUE AND COME FROM
15 SOMETHING BEFORE NOT FROM SOMEONE ELSE.

16 SO THAT PRETTY MUCH IS THE SUM TOTAL OF
17 THE ARGUMENTS. IT'S A SIMPLE BUT VERY IMPORTANT
18 MOTION, YOUR HONOR.

19 I WILL RESERVE SOME TIME FOR REBUTTAL.

20 THE COURT: ALL RIGHT. THANK YOU.

21 MR. JACOBS.

22 MR. JACOBS: YOUR HONOR, I WOULD LIKE TO
23 START WITH THE DECISIONAL LAW BECAUSE WE HAVE A
24 DECISION FROM JUDGE ILLSTON THAT I THINK IS QUITE
25 ON POINT AND TILTS VERY MUCH AGAINST THE USE OF

1 RFA'S FOR THIS KIND OF PURPOSE.

2 SO JUST IN CASE YOU HADN'T HAD A CHANCE
3 TO LOOK AT IT, THIS IS THE GEM ACQUISITION CO. CASE
4 FROM 2010.

5 AND AT THE END OF THAT DECISION,
6 JUDGE ILLSTON ACTUALLY DECIDED TWO THINGS THAT ARE
7 RELEVANT TO THIS DISPUTE.

8 ONE IS THAT A CONTRACT PROVISION AS
9 APPLIED TO, YOU KNOW, WHAT DOES THIS CONTRACT
10 PROVISION MEAN IN LIGHT OF THE EVIDENCE? AND THE
11 ADMISSION DIRECTED TO THAT WAS A REQUEST FOR A
12 LEGAL CONCLUSION.

13 OF COURSE THE ARGUMENT WOULD HAVE BEEN
14 JUST THE SAME, LOOK, YOU KNOW WHAT YOU THINK THE
15 CONTRACT MEANT, ANSWER THE QUESTION. WHAT DO YOU
16 THINK THE CONTRACT MEANS?

17 BUT SHE SAID NO, THAT'S NOT A PROPER
18 SUBJECT FOR AN RFA.

19 AND THEN PERHAPS EVEN MORE IMPORTANTLY,
20 GIVEN THE WAY SAMSUNG HAS KEYED UP THIS MOTION,
21 IT'S ALL ABOUT THE TRIAL AND WHAT THEY WANT TO
22 PROVE AT TRIAL, JUDGE ILLSTON SAID A REQUEST FOR
23 ADMISSION SHOULD NOT BE USED TO ESTABLISH FACTS
24 WHICH ARE OBVIOUSLY IN DISPUTE.

25 SO WHAT SAMSUNG HAS DONE IS USED THE FACT

1 THAT RFA'S ARE UNLIMITED TO ESSENTIALLY TRY TO GET
2 OUR LEGAL POSITION ON HOW OUR ENTIRE DESIGN PATENT
3 PORTFOLIO AS IT RELATED TO THE DESIGN PATENTS IN
4 SUIT.

5 HOW DOES IT ALL FIT TOGETHER?

6 IT'S A COMPLICATED QUESTION. THEY IGNORE
7 MANY OF THE COMPLICATIONS. MANY OF THE DESIGN
8 PATENTS HAVE THE SAME FILING DATE.

9 SO THEY ARE IN THE SENSE DIVISIONALS OF
10 EACH OTHER. SO WHAT DOES IT MEAN FOR US TO ADMIT
11 THAT THEY ARE SUBSTANTIALLY THE SAME DESIGN WHEN
12 THEY HAVE THE SAME FILING DATE?

13 THE COURT: SO WHY ADMIT THAT FACT AND
14 THEN ARGUE THE LAW IN RESPONSE TO AN APPROPRIATE
15 MOTION THAT SAMSUNG WOULD BRING?

16 MR. JACOBS: BECAUSE THEN YOU ARE BEING
17 ASKED TO PUT THE WHOLE SPECTRUM OF DESIGN PATENTS
18 AGAINST THE WALL IN THIS CASE AND SAY, THIS IS
19 SUBSTANTIALLY THE SAME, THIS IS NOT.

20 AND THAT IS VERY MUCH A QUESTION THAT IS
21 GOING TO BE INFORMED BY PROGRESS OF THE LITIGATION.

22 WE ALREADY HAVE SOME GUIDANCE FROM
23 JUDGE KOH IN THE PRELIMINARY INJUNCTION CONTEXT OF
24 ABOUT WHAT IS SUBSTANTIALLY THE SAME AND WHAT IS
25 NOT.

1 BUT IT'S ULTIMATELY -- I THINK OUR USUAL
2 LEGAL CATEGORIES HERE DON'T REALLY APPLY TO THIS.
3 IT'S VERY MUCH A, WHAT DOES THE FACT FINDER THINK
4 OF THIS WHEN THE FACT FINDER IS PRESENTED WITH THE
5 ARRAY OF EVIDENCE?

6 IN THE CONTEXT IN WHICH THE ARRAY OF
7 EVIDENCE IS PRESENTED, IT'S ONE OF THOSE ULTIMATE
8 TRIAL ISSUES. TAKE IN ALL OF THIS INFORMATION
9 LADIES AND GENTLEMEN AND YOU TELL US, IS THIS
10 DESIGN OF THE SAMSUNG PHONE SUBSTANTIALLY SIMILAR
11 TO THE DESIGN CAPTURED BY THIS DESIGN PATENT?

12 TAKING INTO THE ACCOUNT THE COMMERCIAL
13 SUCCESS OF THE IPHONE, IS THIS DESIGN PATENT REALLY
14 RENDERED INVALID? THE APPLE DESIGN PATENT REALLY
15 RENDERED INVALID BY THIS PIECE OF PUTATIVE PRIOR
16 ART?

17 THE COURT: BUT THEY ARE NOT REALLY
18 ASKING ABOUT WHAT YOU THINK THE FACT FINDER WILL
19 FIND, THEY ARE ASKING WHAT YOU THINK, RIGHT?

20 SO TO USE YOUR LAST EXAMPLE, WHY NOT
21 SIMPLY DENY IT?

22 MR. JACOBS: WE'VE PAUSED ON THAT. WHY
23 NOT JUST DENY, DENY. THEY HAVE DONE THE PAIR THING
24 AND IT'S TWO HUNDRED -- HOW MANY COMPARISONS 286 --
25 226 COMPARISONS. SO THE BURDEN HERE IS A HUGE

1 PROBLEM.

2 LET ME BACK UP A SECOND. IF THEY HAD
3 SAID LOOK, HERE ARE 10 LEADING PRIOR ART REFERENCES
4 TELL US ADMIT/DENY IF YOU THINK THIS IS
5 SUBSTANTIALLY THE SAME DESIGN.

6 WELL, THAT IS THE ANALYSIS WE WILL HAVE
7 TO DO, THAT WOULD HAVE BEEN A DIFFERENT QUESTION.

8 THIS IS THE INTERNALS OF THE APPLE PATENT
9 PORTFOLIO AND THE ARCANE OF APPLYING FOR DESIGN
10 PATENTS IN THE PTO WHETHER YOU CAN GET A DESIGN
11 PATENT ON THE IMPROVEMENT OF A DESIGN EVEN IF THAT
12 IMPROVEMENT IS VERY SIMILAR TO THE ORIGINAL DESIGN.

13 SO THEY ARE ASKING US TO MAKE SOME LEGAL,
14 WHAT ARE I THINK ARE LEGAL CONCLUSIONS ABOUT THE
15 DESIGN PATENTS IN THIS LITIGATION THAT MIGHT HAVE
16 AN IMPACT ON DOWNSTREAM LITIGATION BECAUSE THEY ARE
17 BEING ASKED TO TAKE THIS DESIGN PATENT WHERE THIS
18 ONE OVER HERE, B IS NOT IN THIS CASE, AND TELL US
19 WHETHER B IS SUBSTANTIALLY SIMILAR TO A IN ORDER TO
20 CATCH US IN INCONSISTENCIES. THAT JUST STRIKES US
21 AS AN INVASION OF THE PURPOSE OF RFA'S.

22 ACCORDING TO JUDGE ILLSTON'S DECISION, I
23 THINK THE RIGHT WAY TO THINK ABOUT RFA'S, THEY
24 REALLY AREN'T DESIGNED TO MAKE LIFE MORE
25 COMPLICATED FOR EVERYBODY, THEY ARE DESIGNED TO

1 SIMPLIFY LIFE.

2 WE HAVE PROPOUNDED A LOT OF RFA'S BECAUSE
3 WE ARE TRYING GET THESE DOCUMENTS AUTHENTICATED.
4 THE 30(B)(6) NOTICE YOU REFERRED TO, THOSE ARE
5 TOPIC-BY-TOPIC. TELL US ABOUT THIS DOCUMENT
6 BECAUSE WE ASKED WITNESS WHOSE NAME IS ON THE
7 DOCUMENT AND THE WITNESS SAYS, I DON'T KNOW
8 ANYTHING ABOUT IT.

9 SO THAT'S WHAT'S GOING ON WITH OUR USE OF
10 RFA'S. AND WITH THE SUPPOSED BURDEN I THINK WE
11 COUNT THEM AS A THOUSAND MORE RFA'S THAN WE DO, SO
12 WE ARE LOSING THAT ARM'S RACE.

13 I THINK I COME BACK TO JUDGE ILLSTON'S
14 DECISION. I THINK WE HAVE VERY STRONG GUIDANCE IN
15 THIS DISTRICT ON PROPER USE OF RFA'S.

16 THE COURT: ALL RIGHT. THANK YOU.

17 MS. MAROULIS, ANY REBUTTAL?

18 MS. MAROULIS: YES, YOUR HONOR.

19 JUDGE ILLSTON'S CASE DOES NOT APPLY TO THE
20 SITUATION HERE. JUDGE ILLSTON'S CASE, SHE RULED
21 THAT CONTRACTURAL INTERPRETATION OR -- WHAT THE
22 INTERPRETATION IS WAS NOT A PROPER DECISION.

23 HERE WE ARE NOT ACTUALLY ASKING APPLE'S VIEW
24 ON WHAT THE STANDARD IS. WE KNOW WHAT THE STANDARD
25 IS, IT'S IN EGYPTIAN GODDESS AND WAS ADOPTED BY

1 JUDGE KOH. WE DON'T NEED THEM TO TELL US WHAT THAT
2 IS.

3 WHAT WE'RE ASKING FOR IS SIMILAR TO WHAT
4 THEY ARE ASKING LOTS OF OUR WITNESSES IN
5 DEPOSITION. WHAT APPLE IS DOING IS THEY ARE
6 PUTTING IN FRONT OF SAMSUNG WITNESSES TWO PHONES,
7 MOST OF THE WITNESSES HAVE NEVER SEEN THE PHONE,
8 AND THEY SAY HEY, IS THIS SIMILAR? IS THIS SIMILAR
9 TO THAT?

10 THAT'S WHAT THEY ARE DOING IN
11 DEPOSITIONS, BECAUSE FOR THEIR PURPOSES APPLE IS
12 FINDING THIS RELEVANT, RIGHT.

13 WHEN THE SHOE IS ON THE OTHER FOOT AND
14 THEY ARE ASKED TO COMMENT ON THEIR OWN PATENTS IN A
15 SIMILAR CONTEXT, SOMEHOW IT'S BOTH BURDENSOME AND
16 INAPPROPRIATE LEGAL CONCLUSION.

17 INCIDENTALLY, THE 10 PATENTS OFFERED THAT
18 CAME HERE WAS NOT OFFERED DURING THE LEAD COUNSEL
19 MEET AND CONFER OR ANY OTHER MEET AND CONFER.
20 THAT'S NOT GOING TO BE SUFFICIENT, BUT THAT'S NOT
21 SOMETHING WE EVER HEARD BEFORE AND THAT'S PART OF
22 THE PROBLEM HERE.

23 AND THEN FINALLY, YOUR HONOR, I WANTED TO
24 HIGHLIGHT ONE OF THE 1900 OR 1600 RFA'S THAT APPLE
25 SERVED ON US, AND BASICALLY THEY ARE ASKING SAMSUNG

1 TO ADMIT THAT PMB, PARTICULAR BASEBAND CHIP,
2 SUBSTANTIALLY EMBODIES CERTAIN PATENTS AS THAT TERM
3 IS USED IN THE QUANTA COMPUTER CASE.

4 SO THEY ARE PROPOUNDING RFA'S THAT
5 ACTUALLY HAVE LEGAL CASES IN THEM. AND AT THE SAME
6 TIME THEY ARE SAYING THIS IS INAPPROPRIATE AND
7 BURDENSOME.

8 AND AGAIN, I RETURN TO THE QUESTION OF
9 BURDEN WHICH IS IN SOME CASES IT WOULD BE
10 BURDENSOME, IN THIS CASE APPLE SHOULD BE HELD TO A
11 DIFFERENT STANDARD THAT A LOT OF LITIGANTS IN THESE
12 POLICE BRUTALITY CASES OR MEDICAL RECORDS CASES.

13 AND IN FACT IN THEIR OPPOSITION BRIEF
14 THEY ADMIT THAT THE GRIMES CASE AND THE OTHER CASE
15 THAT WE CITE ARE APPROPRIATE RFA'S, THEY JUST SAY
16 THE SCOPE OF THEM IS DIFFERENT, WHICH IS TWO OR
17 THREE RFA'S VERSUS A HUNDRED.

18 BUT THAT IS A DIFFERENCE IN LITIGANTS IN
19 THEIR STATUTE AS WELL.

20 THE COURT: ALL RIGHT. THANK YOU.

21 MR. JACOBS: REALLY BRIEFLY, YOUR HONOR.
22 I REALIZE I DIDN'T ANSWER YOUR QUESTION. YOU ASKED
23 ABOUT DENIAL.

24 AND WHAT'S LURKING IN THIS QUESTION IS
25 WHAT IS THE LEGAL IMPACT OF A DENIAL OF AN RFA.

1 AND THAT'S WHY WE DIDN'T JUST DENY AND WE DECIDED
2 TO CONFRONT THIS FRONTALLY AND SAY THESE RFA'S ARE
3 APPROPRIATE.

4 THE COURT: WHAT IS THE LEGAL --

5 MR. JACOBS: WELL, IN SOME CASES THEY SAY
6 RFA'S ARE ADMISSIBLE, BUT THAT'S NOT SOMETHING I
7 WOULD BET APPLE'S DESIGN PATENT PORTFOLIO ON.

8 THE COURT: ALL RIGHT. THE MOTION IS
9 SUBMITTED.

10 I APPRECIATE YOUR ARGUMENTS TODAY. YOU
11 WILL HAVE YOUR ORDER SHORTLY.

12 (WHEREUPON, THE PROCEEDINGS IN THIS
13 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