

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

APPLE INC., A CALIFORNIA)	C-11-01846 LHK
CORPORATION,)	
)	SAN JOSE, CALIFORNIA
PLAINTIFF,)	
)	JULY 18, 2012
VS.)	
)	PAGES 1-146
SAMSUNG ELECTRONICS CO.,)	
LTD., A KOREAN BUSINESS)	
ENTITY; SAMSUNG)	
ELECTRONICS AMERICA,)	
INC., A NEW YORK)	
CORPORATION; SAMSUNG)	
TELECOMMUNICATIONS)	
AMERICA, LLC, A DELAWARE)	
LIMITED LIABILITY)	
COMPANY,)	
)	
DEFENDANTS.)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE LUCY H. KOH
UNITED STATES DISTRICT JUDGE

APPEARANCES ON NEXT PAGE

OFFICIAL COURT REPORTER: LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

1 SAN JOSE, CALIFORNIA JULY 18, 2012

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

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

5 THE CLERK: CALLING CASE NUMBER
6 C-11-01846 LHK, APPLE INCORPORATED VERSUS SAMSUNG
7 ELECTRONICS COMPANY LIMITED, ET AL.

8 (PAUSE IN PROCEEDINGS.)

9 MR. MCELHINNY: GOOD AFTERNOON, YOUR
10 HONOR. HAROLD MCELHINNY AND MICHAEL JACOBS ON
11 BEHALF OF APPLE. AND I WOULD ALSO LIKE TO
12 INTRODUCE MY PARTNER, RACHEL KREVANS, WHO WILL BE
13 JOINING US IN PART OF THE TRIAL.

14 MS. KREVANS: GOOD AFTERNOON, YOUR HONOR.

15 THE COURT: GOOD AFTERNOON.

16 MR. LEE: GOOD AFTERNOON, YOUR HONOR.
17 BILL LEE AND MARK SELWYN FROM WILMER HALE FOR
18 APPLE.

19 MR. VERHOEVEN: GOOD AFTERNOON, YOUR
20 HONOR. CHARLES VERHOEVEN, AND WITH ME ARE MY
21 PARTNERS, KEVIN JOHNSON, MICHAEL ZELLER,
22 WILLIAM PRICE, AND VICTORIA MAROULIS FROM QUINN,
23 EMANUEL ON BEHALF OF SAMSUNG.

24 THE COURT: OKAY. GOOD AFTERNOON.

25 MR. OLSON: GOOD AFTERNOON, YOUR HONOR.

1 AND THIS IS NEW TO THE RECORD -- WE ASKED HIM, AND
2 THIS IS AT PAGE 68 TO 69, QUOTE, "AND YOU'RE NOT
3 TRYING TO GENERALIZE ACROSS ALL PRODUCTS OR SAY
4 THAT ONE PRODUCT IS REPRESENTATIVE OF ALL THE OTHER
5 PRODUCTS; RIGHT?"

6 "ANSWER: I'M NOT SAYING THAT ANY ONE
7 PRODUCT IS REPRESENTATIVE OF ALL THE PRODUCTS.

8 "AND I WILL NOTE THAT AS FAR AS THE
9 ANDROID VERSIONS ARE CONCERNED, THOSE ARE
10 REPRESENTATIVE VERSIONS OF THE SOURCE CODE I LOOKED
11 AT INDICATED BY SAMSUNG TO BE REPRESENTATIVE OF THE
12 DIFFERENT VERSIONS OF THE DIFFERENT -- PARTICULAR
13 DIFFERENT VERSIONS OF ANDROID."

14 THE ISSUE WE HAVE IS THAT NEITHER ONE OF
15 THEIR EXPERTS HAS OFFERED SPECIFIC AND SUBSTANTIAL
16 EVIDENCE ABOUT WHY ANY PARTICULAR PRODUCT IS
17 REPRESENTATIVE OR BEHAVES SIMILARLY TO ALL THE
18 OTHER PRODUCTS.

19 AND THAT'S JUST -- THAT'S JUST NOT IN HIS
20 REPORT. THAT'S NOT IN HIS -- IT WASN'T TESTIFIED
21 ABOUT IN HIS DEPOSITION.

22 AND SO THAT'S WHY WE FILED THE MOTION IN
23 LIMINE IS THAT THERE -- THEY HAVE NOT CARRIED THE
24 BURDEN TO ESTABLISH THAT ANY OF THESE ARE, IN FACT,
25 REPRESENTATIVE OF WHAT THEY VIEW TO BE SIMILARLY

1 SITUATED OR SIMILARLY BEHAVING PRODUCTS.

2 THE COURT: WHEN -- HOW IS THE DAMAGES
3 ANALYSIS DONE? IS THERE DIFFERENT -- ARE THERE
4 DIFFERENT ROYALTY RATES AND DIFFERENT LOST PROFITS
5 CALCULATIONS BY PRODUCT? OR EVERYTHING --

6 MR. JACOBS: YES.

7 THE COURT: I SEE. OKAY.

8 MR. JACOBS: BUT I THINK THERE'S A MIS --
9 SO WE -- UNABLE TO REACH AGREEMENT ON
10 REPRESENTATIVE PRODUCTS, NATURALLY OUR EXPERT DOES
11 NOT TESTIFY, "I'M DOING THIS ON THE BASIS OF A
12 REPRESENTATIVE PRODUCTS APPROACH."

13 WHAT HE TESTIFIED IS, "I'VE LOOKED IN
14 DETAIL AT THIS PRODUCT, IT'S ANDROID X.Y.Z, I KNOW
15 THIS OTHER PRODUCT HAS THE VERY SAME WORKINGS OF
16 ANDROID IN IT AND I'VE LOOKED AT IT AND I SEE THE
17 SAME BEHAVIOR AND I, THEREFORE, CONCLUDE THAT WITH
18 THE SAME SOURCE CODE AND WITH THE SAME BEHAVIOR, IT
19 INFRINGES THE SAME WAY."

20 SO THEY HAVE THE FOUNDATIONAL INFORMATION
21 FOR A REPRESENTATIVE PRODUCT STIPULATION IF THEY
22 WERE WILLING TO TRY THE CASE ON REPRESENTATIVE
23 PRODUCTS.

24 I THINK IT'S A STRATEGIC MOVE ON
25 SAMSUNG'S PART TO TRY AND OVERLOAD THE SYSTEM THAT

1 HAS HELD US UP, NOT ANY LACK OF TECHNICAL DETAIL
2 FROM OUR EXPERTS.

3 MR. JOHNSON: IT'S NOT A STRATEGIC MOVE
4 ON OUR PART. THEIR EXPERTS SIMPLY HAVEN'T CARRIED
5 THE BURDEN AND ESTABLISHED THAT ANY OF THESE WERE
6 REPRESENTATIVE.

7 AND WHEN WE TOOK THE DEPOSITION OF
8 DR. BALAKRISHNAN LAST WEEK, HE WENT FURTHER AND HE
9 ESTABLISHED THAT HE NEEDS -- HE WASN'T -- EVEN IF
10 HE HAD THE SAME VERSION OF ANDROID, HE SAID THAT
11 WASN'T ENOUGH. WE HAVE TO ESTABLISH THAT THE CODE
12 ON EACH PRODUCT WAS IDENTICAL.

13 AND HE HASN'T DONE THAT AND THAT WAS THE
14 BASIS FOR OUR MOTION FROM THE BEGINNING.

15 THE COURT: IS THERE ANY -- IS THERE ANY
16 HORSE TRADING THAT CAN HAPPEN HERE? IS THERE
17 SOMETHING THAT SAMSUNG WANTS OF APPLE AND YOU CAN
18 JUST SORT OF DO A HORSE TRADE ON -- I WOULD LIKE
19 THE NUMBER OF PRODUCTS TO GO DOWN.

20 I SEE BOTH SIDES' POINT AS TO WHY YOU
21 EACH HAVE A VALID POSITION.

22 CAN WE WORK OUT SOME DEAL WHERE THERE'S
23 SOMETHING THAT YOU WANT THAT THEY GIVE A LITTLE AND
24 THEN YOU GIVE A LITTLE ON THE PRODUCTS SO THAT EACH
25 SIDE FEELS SOMEWHAT SATISFIED?

1 MR. JOHNSON: WE CAN GO BACK AND TRY,
2 YOUR HONOR. WE HAVE BEEN -- BETWEEN NOW AND WHEN
3 WE SEE YOU IN THE CASE TUESDAY.

4 THE COURT: OKAY. COULD YOU FILE
5 SOMETHING ON MONDAY, THEN, ON IF YOU'RE ABLE TO
6 NARROW THE PRODUCTS IN EXCHANGE FOR SOMETHING ELSE,
7 OR -- YOU KNOW, THERE ARE PROBABLY OTHER THINGS
8 GOING ON HERE THAT I DON'T KNOW ABOUT THAT MAYBE
9 YOU CAN WORK OUT SOME AGREEMENT.

10 MR. JACOBS: WE'LL TAKE A SHOT IT, YOUR
11 HONOR.

12 MR. JOHNSON: WE'LL TRY.

13 THE COURT: OKAY. NOW, WE'VE GOT TO TALK
14 ABOUT WITNESSES.

15 SAMSUNG HAS 192 WITNESSES ON ITS WILL
16 CALL LIST AND HAS 118 DEPONENTS FOR WHICH YOU MAY
17 DESIGNATE DEPOSITION EXCERPTS.

18 APPLE HAS 33 ON THE WILL CALL LIST, 17 ON
19 THE MAY CALL LIST, AND 90 DEPONENTS FOR WHOM YOU
20 MAY DESIGNATE DEPOSITION EXCERPTS.

21 OBVIOUSLY -- DO I NEED TO SAY ANYTHING
22 MORE ON THIS? I MEAN, THIS IS -- THIS IS NOT
23 REALISTIC.

24 SO IF YOU ALL DON'T BRING IT DOWN, THEN I
25 WILL JUST IMPOSE MY OWN NUMBERS. DO YOU WANT ME TO

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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/

LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

DATED: JULY 20, 2012