

EXHIBIT A

Volume 10

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE JAMES WARE, CHIEF JUDGE

Mformation Technologies, Inc.,)	
)	
Plaintiff,)	
)	
v.)	No. C 08-4990 (JW)
)	
Research In Motion, Ltd.,)	
et al.,)	
)	
Defendants.)	San Francisco, California
)	Tuesday, July 3, 2012

TRANSCRIPT OF PROCEEDINGSAPPEARANCES:

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Also Present: Ray Dikun, RIM Vice-President

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Tuesday, July 3, 2012(9:00 a.m.)

(In open court; jury not present)

DEPUTY CLERK: Remain seated and come to order.

THE COURT: Good morning.

Very well. We're on the record out of the
presence of the jury.

I received some requests having to do with
matters that are coming up, but they don't deal with the
current witness, correct?

MR. MATUSCHAK: That's correct, your Honor.

MR. CHARFOOS: We do have one issue that relates
to the current witness, and I believe Mr. Matuschak has
another issue more generally relating to the trial.

THE COURT: So how long -- who is the current
witness, remind me.

MR. CHARFOOS: Julie Davis, RIM's damages expert.

THE COURT: I see. And how long will that be?

MR. CHARFOOS: The testimony? Or the argument
about what we need to argue about?

THE COURT: Is there an argument with respect to
that witness?

MR. CHARFOOS: There is.

THE COURT: All right, what's that motion?

MR. CHARFOOS: Your Honor, we had submitted to

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you last week Exhibit 853, which was the cost to
recreate the '917 patent. That particular document was
in fact created in the overall context of the Mesirow
valuation for the patent itself; and, therefore,
plaintiffs argue that it should be excluded under the
Court's motion in limine.

That document, however, was created by
Dr. Kushwaha himself. And although it was provided to
Mesirow, it was an independent analysis of the cost to
recreate the patent.

THE COURT: I'm sorry, what is a cost to recreate
a patent?

MR. CHARFOOS: It was his estimated amount of
time and effort put in to develop the '917 patent.
Which came to roughly a million dollars.

Now, Georgia-Pacific Factor No. 8 goes to the
overall profitability of the product. And I'm concerned
in particular, in addition to its relevance to the
analysis that Ms. Davis conducted, that Mr. Basu may
have left the jury with a misimpression that, if you
recall, Mformation had lost money in all the years
leading up to 2010, and Mr. Basu said that one of the
reasons they lost money was because they were
reinvesting in the company.

And he specifically says at page 409, starting at

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line 22: "You invest those years with your intellectual property, and once the revenue starts coming in, your losses turn into profit."

I don't want the jury to be left with the impression that Mformation has spent \$111 million investing in the '917 patent when it's only been a million. And, therefore, your Honor, we would ask that Ms. Davis be allowed to discuss 853, and that it be introduced into evidence.

MR. ARNTSEN: And your Honor, we think that this is part of the Court's ruling. With the third-party valuations, the Court said that damages for patent infringement are determined on the basis of a hypothetical negotiation at the time infringement began, citing the Unilaw case. The Court finds that third-party valuations at issue are not relevant and thus are in.

In particular, none of the reports at issue attempted to assess the value of the '917 patent at the time infringement began, none assumed the patent was both valid and infringed. Thus, admission of these reports is likely to confuse the jury by introducing a basis for evaluating damages that differs entirely from that the jury is being asked to apply.

And that's exactly the case with this document

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here. Essentially what it shows is the person here involved writing the software for Mformation's product. And it's got nothing to do with the damage determination. It's inappropriate for an expert to rely on it because it's counter to Federal Circuit law and this Court's in limine decision, and it would only confuse the jury.

THE COURT: You're offering it on damages?

MR. CHARFOOS: Yes, your Honor. Because it's relevant to, number one, the profitability of the product, as well as the relative value of that product. How much time and effort was put into creating it.

THE COURT: What product? The patent is not a product.

MR. CHARFOOS: But -- I'm sorry, I misspoke. It's the cost to recreate the '917 patent itself.

THE COURT: Well, how is that -- how is that relevant to damages? Because someone can come up with a patented idea very quickly and other people can take a long time. I've never thought about that as a damage issue.

MR. CHARFOOS: Again, the profitability of the commercial invention is one of the Georgia-Pacific Factors, and so to the extent that this document shows the profitability of the commercial invention, then that

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would go to Georgia-Pacific Factor No. 8. And you know, other courts, including the Federal Circuit, have allowed those kinds of inquiries into the profitability.

And again, Mr. Basu suggested that they're investing all of this money into their intellectual property, and I think it's important for the jury to understand that it did not cost \$111 million to create the '917 patent. It was \$1 million, according to Dr. Kushwaha's own analysis.

The other thing --

THE COURT: Okay. That the testimony you're trying to rebut was that it cost that to develop the '917 patent. And you can argue that those numbers are not the basis. The objection is sustained to using this for damages.

Now, it seems to me that there might be other purposes, but that is not one of the permissible purposes.

Anything else with respect to this witness?

By the way, I have the same kind of concern with respect to the rebuttal, but I guess I can wait on that. That's why I was asking about the timing.

MR. CHARFOOS: There is one other thing with respect to this witness, Mformation's counsel, and we've talked about this ahead of time, is intending to use

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some of the RIM's license agreements with Ms. Davis. These are very, very sensitive license agreements.

Number one, we would request that those agreements, to the extent that they're introduced into evidence, be brought in under seal.

And number two, your Honor, we would ask that you would close the courtroom for the discussion of RIM's license agreements. Mr. Arntsen -- and he can step in if I misrepresent -- has taken those license agreements and grouped them together in a single section of his cross-examination, and we'll notify the Court before he begins that, which will allow that time that the courtroom's closed to be limited and as short as possible.

THE COURT: Any objection?

MR. ARNTSEN: I have no objection.

THE COURT: Very well. So you have to alert the Court to that.

MR. CHARFOOS: We will alert the Court to that, yes, your Honor.

THE COURT: All right. Summon the jury.

MR. MATUSCHAK: Your Honor, we have -- we had one other issue. And that is, I don't know if it's common to you, but there was a -- a report to us last night that there was a contact between a member of the jury

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