

COUNSEL LISTED ON SIGNATURE PAGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TOUCHSCREEN GESTURES LLC,
Plaintiff,
v.
HTC CORPORATION ET AL.,
Defendant.

Case No. 3:13-cv-01772-WHA

TOUCHSCREEN GESTURES LLC,
Plaintiff,
v.
GOOGLE INC.
Defendant.

Case No. 3:13-cv-02478-WHA

TOUCHSCREEN GESTURES LLC,
Plaintiff,
v.
SAMSUNG ELECTRONICS CO, LTD; ET AL,
Defendant.

Case No. 3:13-cv-02715-WHA

TOUCHSCREEN GESTURES LLC,
Plaintiff,
v.
VIEWSONIC CORPORATION,
Defendant.

Case No. 3:13-cv-02758-WHA

TOUCHSCREEN GESTURES LLC,
Plaintiff and Counterclaim Defendant,
v.
APPLE INC.
Defendant and Counterclaim Plaintiff.

Case No. 3:13-cv-02759-WHA

**STIPULATION AND ~~PROPOSED~~ ORDER REGARDING
ELECTRONIC DISCOVERY**

STIPULATION AND ~~PROPOSED~~ ORDER
REGARDING ELECTRONIC DISCOVERY

1 WHEREAS, pursuant to the parties' Joint Case Management Conference Statement and
2 following the discussion at the July 11, 2013 Case Management Conference, the parties have
3 met and conferred and agreed upon a proposed order regarding electronic discovery in the
4 above-captioned cases;

5 IT IS HEREBY STIPULATED by and between counsel for the parties that, subject to
6 the Court's approval, the attached [~~Proposed~~] Order Regarding Electronic Discovery shall
7 govern electronic discovery in these actions.

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10 Dated: July 17, 2013

Respectfully submitted,

11 /s/ Winston O. Huff

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ATTESTATION OF E-FILER

In compliance with Local Rule 5-1(i), the undersigned ECF user whose identification and password are being used to file this document, hereby attests that all signatories have concurred in the filing of this document.

/s/ Arjun H. Mehra
Arjun H. Mehra

1 **[PROPOSED] ORDER REGARDING ELECTRONIC DISCOVERY**

2 The Court ORDERS as follows:

3 1. This Order supplements all other discovery rules and orders. It streamlines
4 Electronically Stored Information (“ESI”) production to promote a “just, speedy, and
5 inexpensive determination” of this action, as required by Federal Rule of Civil Procedure 1.
6 This Order may be modified for good cause.¹

7 2. Costs will be shifted for disproportionate ESI production requests pursuant to
8 Federal Rule of Civil Procedure 26. Likewise, a party’s nonresponsive or dilatory discovery
9 tactics will be cost-shifting considerations.

10 3. A party’s meaningful compliance with this Order and efforts to promote
11 efficiency and reduce costs will be considered in cost-shifting determinations.

12 4. General ESI production requests under Federal Rules of Civil Procedure 34 and
13 45 shall not include metadata absent a showing of good cause. However, if the parties produce
14 emails, fields showing the date and time that the document was sent and received, as well as the
15 complete distribution list, shall generally be included in the production.

16 5. General ESI production requests under Federal Rules of Civil Procedure 34 and
17 45 shall not include email or other forms of electronic correspondence (collectively “email”) or
18 custodial ESI, except with respect to documents described in Paragraph 7 below. As used
19 herein, “custodial ESI” refers to ESI that is in the possession of an individual custodian, rather
20 than in central repositories. To obtain email or custodial ESI beyond the documents described
21 in Paragraph 8 below, the parties must propound specific email or custodial ESI production
22 requests.

23 6. Email or custodial ESI production requests, if any, shall only be propounded for
24 specific issues, rather than general discovery of a product or business.

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27 ¹ All limitations in this Order apply to Defendant Groups rather than to individual corporate entities,
28 regardless of whether that is expressly stated elsewhere.

1 7. Email or custodial ESI production requests, if any, shall be phased to occur after
2 the parties have exchanged and reviewed (1) initial disclosures and disclosures as required by
3 the Patent Local Rules Order and Discovery Order in this case; (2) basic documentation about
4 the Patents-in-Suit, the prior art, the design, development, operation, and marketing of the
5 accused functionalities, and the relevant finances; and (3) documents about prior knowledge,
6 communications, discussion with or between the parties, and documents relating to the Patents-
7 in-Suit. While this provision does not require the production of such information, the Court
8 encourages prompt and early production of this information to promote efficient and
9 economical streamlining of the case.

10 8. Following the production of documents in Paragraph 7 above, parties may serve
11 email or custodial ESI production requests. Such requests, if any, shall identify the custodian,
12 search terms, and time frame. The parties shall cooperate to identify the proper custodians,
13 proper search terms and proper timeframe.

14 9. Each requesting party shall limit its email or custodial ESI production requests, if
15 any, to a total of seven custodians per producing party for all such requests. The parties may
16 jointly agree to modify this limit without the Court's leave. The Court shall consider contested
17 requests for up to five additional custodians per producing party, upon showing a distinct need
18 based on the size, complexity, and issues of this specific case. Should a party serve email or
19 custodial ESI production requests for additional custodians beyond the limits agreed to by the
20 parties or granted by the Court pursuant to this paragraph, the requesting party shall bear all
21 reasonable costs caused by such additional discovery.

22 10. Each requesting party shall limit its email or custodial ESI production requests, if
23 any, to a total of seven search terms per custodian per party. The parties may jointly agree to
24 modify this limit without the Court's leave. The Court shall consider contested requests for up
25 to five additional search terms per custodian, upon showing a distinct need based on the size,
26 complexity, and issues of this specific case. The search terms shall be narrowly tailored to
27 particular issues. Indiscriminate terms, such as the producing company's name or its product
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1 name, are inappropriate unless combined with narrowing search criteria that sufficiently reduce
2 the risk of overproduction. A conjunctive combination of multiple words or phrases (*e.g.*,
3 “computer” and “system”) narrows the search and shall count as a single search term. A
4 disjunctive combination of multiple words or phrases (*e.g.*, “computer” or “system”) broadens
5 the search, and thus each word or phrase shall count as a separate search term unless they are
6 variants of the same word. Use of narrowing search criteria (*e.g.*, “and,” “but not,” “w/x”) is
7 encouraged to limit the production and shall be considered when determining whether to shift
8 costs for disproportionate discovery. Should a party serve email or custodial ESI production
9 requests with search terms beyond the limits agreed to by the parties or granted by the Court
10 pursuant to this paragraph, the requesting party shall bear all reasonable costs caused by such
11 additional discovery.

12 11. The receiving party shall not use ESI that the producing party asserts is attorney-
13 client privileged or work product protected to challenge the privilege or protection.

14 12. Pursuant to Federal Rule of Evidence 502(d), the inadvertent production of a
15 privileged or work product protected ESI is not a waiver in the pending case or in any other
16 federal or state proceeding.

17 13. The mere production of ESI in a litigation as part of a mass production shall not
18 itself constitute a waiver for any purpose.

19 14. Production of ESI in accordance with this Order excludes data that is not
20 reasonably accessible because of undue burden or cost (*e.g.*, backup tapes intended for disaster-
21 recovery purposes; legacy data leftover from obsolete systems that cannot be retrieved on the
22 successor systems; deleted data remaining in fragmented form that requires some type of
23 forensic inspection to restore and retrieve it).

24 15. Notwithstanding any other provisions herein, metadata (as used herein to refer to
25 electronically stored information about a document that does not appear on the face of the
26 original document if emailed or printed), or any back-up materials (*i.e.*, materials retained
27 primarily for back-up or disaster recovery purposes) need not be searched or produced absent a
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1 Court order upon showing of good cause and neither the producing party nor the receiving party
2 need deviate from any practice it normally follows with regard to preservation of such materials
3 (e.g., regularly schedule deletion of voicemail, archiving electronic data without associated
4 metadata, recycling of back-up tapes conducted in the ordinary course of a party's business
5 operation is permitted), except upon a showing of good cause. The following locations will not
6 be searched under any circumstances, and as such need not be preserved, absent a Court order
7 upon showing of good cause: personal digital assistants; mobile phones; voicemail and other
8 audio systems; instant messaging logs; video; residual, fragmented, damaged, permanently
9 deleted, and/or unallocated data; automated disaster recovery backup systems; and/or materials
10 retained in tape, disks (including floppy disk and optical disk), SAN, or similar formats
11 primarily for back-up or disaster recovery purposes, as well as archives stored on computer
12 servers, external hard drives, thumb drives, notebooks, or personal computer hard drives that are
13 created for disaster recovery purposes or not used as reference materials in the ordinary course
14 of a party's business operations. In addition, the parties agree that with respect to documents
15 that automatically "autosave," only the most recent version of such documents need be
16 searched.

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18 16. The producing party need not employ forensic data collection or tracking
19 methods and technologies, but instead may make electronic copies for collection and processing
20 purposes using widely-accepted methods or methods described in manufacturers' and/or
21 programmers' instructions, help menus, websites, and the like (e.g., .pst's, .zip's, etc.), except
22 when and to the extent there is good cause to believe specific, material concerns about
23 authenticity exist with respect to specific documents and materials. If receiving party believes
24 that there is such good cause, then the producing party and the receiving party shall meet and
25 confer in good faith to determine the extent to which forensic and other data associated with the
26 specific documents and materials should be produced.

27 **IT IS SO ORDERED.**

28 Dated: July 22, 2013.



William Alsup
United States District Judge