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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.)
) APRIL 9, 2012
SAMSUNG ELECTRONICS CO.)
LTD., ET AL,)
) PAGES 1-189
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: ALLISON TUCHER
NATHAN SABRI
JOBY MARTIN
425 MARKET STREET
SAN FRANCISCO, CA 94105

FOR THE DEFENDANT: QUINN EMANUEL
BY: VICTORIA MAROULIS
SARA JENKINS
555 TWIN DOLPHIN DRIVE, 5TH FL
REDWOOD SHORES, CA 94065

(APPEARANCES CONTINUED ON THE NEXT PAGE)

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

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FOR THE PLAINTIFF: MORRISON & FOERSTER, LLP
BY: ERIK OLSON
755 PAGE MILL ROAD
PALO ALTO, CA 94304

FOR THE DEFENDANT: QUINN EMANUEL
BY: DIANE HUTNYAN
ANTHONY ALDEN
CURRAN WALKER
865 S. FIGUEROA ST., 10TH FLOOR
LOS ANGELES, CALIFORNIA 90017

1 SAN JOSE, CALIFORNIA

APRIL 9, 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 COURT: MR. RIVERA, WOULD YOU CALL
6 MATTER ON THIS MORNING'S CALENDAR.

7 THE CLERK: YES, YOUR HONOR.

8 CALLING APPLE INC. VERSUS SAMSUNG
9 ELECTRONICS. CASE NUMBER CV-11-1846.

10 MATTER ON FOR APPLE'S RULE FOR 37 (B) (2)
11 MOTION AND SAMSUNG'S MOTIONS TO COMPEL.

12 COUNSEL, PLEASE STATE YOUR APPEARANCES.

13 MS. TUCHER: GOOD MORNING, YOUR HONOR.

14 ALLISON TUCHER FROM MORRISON & FOERSTER
15 ON BEHALF OF APPLE, INC.

16 AND WITH ME TODAY IS MY PARTNER
17 ERIK OLSON AND NATE SABRI.

18 THE COURT: GOOD MORNING, COUNSEL.

19 MS. MAROULIS: GOOD MORNING, YOUR HONOR.

20 VICTORIA MAROULIS, COUNSEL FOR SAMSUNG.

21 WITH ME ARE MY PARTNERS DIANE HUTNYAN AND
22 ANTHONY ALDEN, AND OUR ASSOCIATE TEAM MEMBERS SARA
23 JENKINS WHO WILL BE ARGUING TODAY AND JOBY MARTIN
24 AND CURRAN WALKER.

25 THE COURT: GOOD MORNING TO YOU AND YOUR

1 TEAM AS WELL, MS. MAROULIS.

2 ALL RIGHT, COUNSEL. I HAVE ON MY
3 CALENDAR THREE MOTIONS. A MOTION FROM APPLE FOR
4 SANCTIONS AND TWO MOTIONS TO COMPEL FILED BY
5 SAMSUNG.

6 BEFORE WE TURN TO THE SUBSTANCE OF THE
7 THREE MOTIONS I WANTED TO JUST BETTER UNDERSTAND A
8 COUPLE OF LATE SUBMISSIONS THAT I RECEIVED ON
9 FRIDAY AND OVER THE WEEKEND.

10 MS. MAROULIS, I WILL START WITH YOU, WITH
11 YOUR INDULGENCE.

12 COULD YOU EXPLAIN TO ME WHY MY STAFF WAS
13 ASKED TO CONSIDER PAPERS FILED ON A SATURDAY BEFORE
14 A MONDAY HEARING?

15 MS. MAROULIS: YOUR HONOR, WE APOLOGIZE
16 FOR LATE SUBMISSION. THERE ARE TWO SEPARATE
17 THINGS.

18 ONE WAS OUR IN CAMERA SUBMISSION OF
19 TRANSCRIPTS. AND WHAT WE ARE HOPING TO DO IS TO
20 NEGOTIATE WITH APPLE SUBMISSION OF THE TRANSCRIPTS
21 ON THE RECORD SO THEY ARE PART OF THE RECORD. AND
22 WE WEREN'T ABLE TO DO SO, SO APPLE IS REFUSING TO
23 PROVIDE THEM BUT WAS WILLING TO PROVIDE THEM IN
24 CAMERA.

25 SO WE THOUGHT FOR THE COURT TO FULLY

1 CONSIDER THE MOTION AFTER THE HEARING AND THE
2 PLEADINGS THE COURT WOULD NEED TO ACTUALLY CONSULT
3 THE DEPOSITIONS.

4 WITH RESPECT TO THE SANCTIONS MOTION, WE
5 HAD SEVERAL LATE DEPOSITIONS ON THE 30TH AND 31ST
6 THAT WERE PART OF YOUR HONOR'S PRIOR ORDERS OF --

7 THE COURT: SO OVER, I DON'T KNOW 9,
8 10 DAYS AGO.

9 MS. MAROULIS: YOUR HONOR, ABOUT A WEEK.
10 AND WE DID NOT GET THE TRANSCRIPTS UNTIL THE 2ND OR
11 3RD OF APRIL. SO WE PUT TOGETHER THE SUBMISSIONS
12 AS QUICKLY AS WE COULD AND WE THOUGHT IT WOULD BE
13 MORE APPROPRIATE TO GIVE NOTICE TO APPLE BY FILING
14 THEM RATHER THAN BRING THIS MATTER UP AT THE
15 HEARING.

16 THE COURT: COULDN'T THAT HAVE BEEN DONE
17 BEFORE THE SATURDAY BEFORE THE HEARING?

18 MY ONLY POINT IS MY OPPORTUNITY TO
19 PROPERLY CONSIDER THE PAPERS, TO SAY NOTHING OF THE
20 OPPOSING PARTIES, IS PRETTY LIMITED.

21 AND I WOULD JUST THINK SOMETHING FILED ON
22 A SATURDAY BEFORE A MONDAY MORNING HEARING ISN'T
23 REALLY GIVING ME A FULL AND FAIR OPPORTUNITY TO
24 CONSIDER EVIDENCE THAT'S NOW ON THE RECORD AND I
25 WILL JUST HAVE TO INFORM MY DECISION.

1 SO I'M MERELY MAKING THE OBSERVATION.
2 WITH RESPECT TO THE REQUEST FOR IN CAMERA
3 HEARING, I UNDERSTAND THAT WAS IN CAMERA BECAUSE
4 APPLE HAS REFUSED TO PERMIT YOU TO FILE IT UNDER
5 SEAL; IS THAT CORRECT?

6 MS. MAROULIS: THAT'S CORRECT,
7 YOUR HONOR.

8 AND AS WE ARE GOING TO ARGUE YOU WILL
9 HEAR FROM MS. HUTNYAN LATER, WE DON'T BELIEVE IT'S
10 APPROPRIATE BUT WE NEEDED TO PROVIDE IT TO THE
11 COURT.

12 THE COURT: WHY IS APPLE OBJECTING TO
13 SUBMITTING MATERIALS UNDER SEAL?

14 MS. TUCHER: YOUR HONOR, BECAUSE SAMSUNG
15 HAS TOLD US THAT IF THEY SUBMIT THESE MATTERS UNDER
16 SEAL IN THIS CASE, THEY THEN FEEL THEY ARE FREE TO
17 SHARE THEM WITH THEIR EXPERTS IN THIS CASE, AND
18 PRESUMABLY HAVING INFORMED OF THE OPINIONS THE
19 EXPERTS WOULD RENDER IN THE CASE, AND THAT'S IN
20 VIOLATION OF THE AGREEMENT BETWEEN THE PARTIES THE
21 DEPOSITIONS TAKEN IN THE ITC WOULD NOT BE
22 ADMISSIBLE AND USED IN THIS CASE IN ANY WAY.

23 THE COURT: HOW WOULD A MOTION TO SUBMIT
24 UNDER SEAL JUSTIFY -- I HAVEN'T SEEN YOUR ITC
25 PROTECTIVE ORDER -- HOW COULD THAT POSSIBLY JUSTIFY

1 SHARING MATERIALS WITH INDIVIDUALS WHO AREN'T
2 OTHERWISE COVERED BY AN ORDER?

3 MS. TUCHER: YOUR HONOR, WE DON'T THINK
4 THAT IT DOES AND MR. SABRI IS PREPARED IN ARGUING
5 THE MOTION TODAY TO ADDRESS THAT POINT WITH YOU
6 BECAUSE SAMSUNG HAS TOLD US THEY THINK IT DOES, WE
7 WANT TO MAKE CLEAR IN THE NEGOTIATIONS LEADING UP
8 TO THIS THAT WE WEREN'T AGREEING TO THAT.

9 WE DID OFFER, SO IF THEY FELT YOU NEEDED
10 TO SEE THE TRANSCRIPTS TO HAVE THE TRANSCRIPTS
11 MS. MAROULIS OBSERVES, THAT THEY COULD BE IN CAMERA
12 WITH YOU.

13 BUT ACTUALLY WE DIDN'T AGREE TO WHAT
14 HAPPENED OVER THE WEEKEND BECAUSE WHEN WE MADE THAT
15 OFFER THEY GAVE US A LIST. WE ASKED FOR 24 HOURS
16 NOTICE OF WHATEVER IT WAS THEY WANTED TO SUBMIT IN
17 CAMERA AND THEY WROTE TO US BACK A BETTER SAYING
18 HERE'S THE LIST BUT WE REJECT YOUR OFFER.

19 WHAT THEY LODGED OVER THE WEEKEND IS
20 ACTUALLY A SET OF TRANSCRIPTS THAT'S MUCH LARGER OR
21 AT LEAST DIFFERENT INCLUDING SOME THAT WEREN'T ON
22 THEIR LIST AND OBVIOUSLY WE DIDN'T HAVE THE 24-HOUR
23 NOTICE.

24 THE COURT: WELL, NORMALLY IN CAMERA
25 SUBMISSIONS ARE LIMITED TO SUBMISSIONS WHICH ONE

1 SIDE WISHES TO PRECLUDE THE OTHER SIDE FROM SEEING,
2 I THINK WE ALL UNDERSTAND THAT.

3 SO WHEN I RECEIVE WORD THAT I AM BEING
4 ASKED TO HANDLE DOCUMENTS IN CAMERA THAT NOT ONLY
5 YOU HAVE SEEN, YOU WERE THERE, WHY WOULDN'T YOUR
6 POSITION SIMPLY BE SUBMIT THEM UNDER SEAL BUT DON'T
7 SHARE THEM WITH YOUR EXPERTS?

8 MS. TUCHER: YOUR HONOR, WE DID MAKE
9 CLEAR THAT THE MOST IMPORTANT THING TO US IS THEY
10 NOT BE SHARED WITH THE EXPERTS.

11 THE COURT: SO YOU DON'T HAVE ANY
12 OBJECTION OR DIDN'T HAVE ANY OBJECTION OF THEM
13 SIMPLY FILING THEM UNDER SEAL?

14 MS. TUCHER: AS LONG AS THEY ARE NOT
15 SHARED WITH THE EXPERTS.

16 MS. HUTNYAN: YOUR HONOR, WE AGREED TO
17 THAT. THIS IS THE FIRST TIME HEARING THAT IT WAS
18 NO PROBLEM.

19 THE COURT: WELL, WHATEVER AGREEMENT WAS
20 REACHED OR NOT REACHED, I HAVE A BUNCH OF DOCUMENTS
21 SITTING IN CHAMBERS THAT AREN'T ON THE DOCKET THAT
22 AREN'T PROPERLY TRACKED.

23 I THINK YOU ALL ARE WELL AWARE THAT THE
24 SECRECY OF PROCEEDINGS IN THIS CASE HAS BEEN A
25 TOPIC OF SOME INTEREST TO SOME OUTSIDE OF THIS

1 MATTER, AND I CAN'T IMAGINE A MORE DIFFICULT
2 CHALLENGE FOR ANYONE OUTSIDE THIS COURT THAN
3 GETTING ACCESS TO INFORMATION THAT'S SITTING IN MY
4 CHAMBERS THAT ISN'T EVEN ON THE DOCKET.

5 I ONLY MAKE ALL THESE POINTS TO EMPHASIZE
6 THAT THIS CASE IS CHALLENGING ENOUGH AS IT IS
7 WITHOUT HAVING TO HANDLE DOCUMENTS SUBMITTED ON THE
8 WEEKEND IN CHAMBERS FORCING THIS COURT'S STAFF TO
9 MANAGE THAT IS, I THINK, PUTTING THEM TO A TASK
10 THAT ISN'T NECESSARY TO THE RESOLUTION OF THESE
11 MATTERS.

12 MS. HUTNYAN: YOUR HONOR, I COMPLETELY
13 AGREE, THAT'S WHY WE HAD A PROBLEM WITH THE IN
14 CAMERA SUBMISSION, WE THOUGHT IT WAS INAPPROPRIATE.

15 THE COURT: WELL, WHY NOT SUBMIT ON
16 FRIDAY? WERE THESE MATERIALS -- WERE YOU ONLY
17 AWARE OF THEIR SIGNIFICANCE ON A FRIDAY?

18 MS. HUTNYAN: WE GAVE THE 24-HOUR NOTICE
19 AND WE SUBMITTED THEM AS SOON AS WE COULD.

20 WE WERE A LITTLE BIT HESITANT TO DO IT
21 BECAUSE IT REALLY ISN'T PROPER. I MEAN, AS YOU
22 STATED IT NORMALLY IS RESERVED FOR SOMETHING THAT
23 THE OTHER PARTY CAN'T SEE. AND NORMALLY YOU WOULD
24 MOVE TO LEAVE, MOVE FOR LEAVE TO SUBMIT THOSE
25 ITEMS.

1 THE COURT: SO WHY DIDN'T YOU REQUEST
2 RELIEF FROM THIS POSITION APPLE IS TAKING, IF YOU
3 BELIEVE TO BE OBJECTIONABLE, WEDNESDAY, TUESDAY,
4 MONDAY RATHER THAN SUBMITTING THEM SIMPLY ON AN IN
5 CAMERA BASIS ON FRIDAY?

6 MS. HUTNYAN: WE WERE NOT PERMITTED TO
7 MOVE TO COMPEL THEM, TO MOVE TO COMPEL THEM.

8 THE COURT: YOU HAD DOCUMENTS YOU WANTED
9 ME TO SEE.

10 MS. HUTNYAN: YES.

11 THE COURT: YOU BELIEVE THEY WERE
12 IMPORTANT FOR MY UNDERSTANDING OF THE ISSUES.

13 WHAT I DON'T UNDERSTAND IS WHY WERE THEY
14 ONLY SUBMITTED TO THE COURT ON FRIDAY, THE LAST
15 BUSINESS DAY BEFORE THIS HEARING? WHY NOT SUBMIT
16 THEM EARLIER IN THE WEEK, FOR EXAMPLE, SO THAT I
17 COULD CONSIDER THEM IN A MORE TIMELY MANNER?

18 MS. HUTNYAN: I THINK THEY ARE KIND OF
19 ICING ON THE CAKE.

20 THE COURT: RIGHT. BUT OUR LOCAL RULES
21 DON'T PROVIDE FOR SUBMISSION OF ICING ON THE CAKE
22 THE DAY BEFORE A HEARING.

23 MS. HUTNYAN: IF YOU COULD JUST PERMIT ME
24 A MOMENT.

25 WE WANT THEM IN THE RECORD. WE BELIEVE

1 THAT ONE OF THE REASONS WHY THE IN CAMERA
2 SUBMISSION IS OBJECTIONABLE AND PROBLEMATIC IN A
3 CASE WHERE APPLE AGREED TO A PROTECTIVE ORDER HERE
4 AND AGREED THAT THE PROTECTIVE ORDER WOULD PROTECT
5 ITS TRADE SECRETS.

6 IN THIS CASE WE BELIEVE IN CAMERA
7 SUBMISSION IS PROPER FOR THE REASON THAT IT DOES
8 NOT PUT THE DOCUMENTS IN THE RECORD.

9 THE COURT: SO WHY NOT SIMPLY FILE THEM
10 TOGETHER WITH YOUR REPLY BRIEF?

11 MS. HUTNYAN: WE COULDN'T FILE THEM
12 BECAUSE WE WERE TOLD WE WERE NOT ABLE TO FILE THEM.

13 THE COURT: SO WHY NOT ASK FOR RELIEF THE
14 NEXT DAY? WHY WAIT UNTIL THE FRIDAY THE DAY BEFORE
15 THE HEARING ESSENTIALLY TO SUBMIT THEM IN CAMERA?
16 WHAT ACCOUNTS FOR THAT DELAY? YOUR REPLY WASN'T
17 FILED FRIDAY, RIGHT?

18 MS. HUTNYAN: NO. I GUESS I DIDN'T -- I
19 WAS HESITANT TO DO IT BECAUSE IT WAS AN UNUSUAL
20 PROCEDURE.

21 I'VE NEVER IN MY CAREER SEEN AN IN CAMERA
22 SUBMISSION BEFORE AND I WANTED TO MAKE SURE WE WERE
23 NOT VIOLATING THE RULE. I HAD PEOPLE LOOKING AT
24 THE ISSUE OF WHETHER WE COULD DO THIS WITH CONSENT
25 AND WE WENT AHEAD AND SUBMITTED THEM WITH THE IDEA

1 THAT YOUR HONOR COULD PUT THEM IN THE RECORD, BUT
2 WE STATED IN OUR REPLY BRIEF WHY, WE DESCRIBED AT A
3 GENERAL LEVEL WITHOUT GETTING INTO THE SUBSTANCE OF
4 THE TRANSCRIPTS THE THINGS WE THOUGHT ESTABLISHED
5 THE TECHNOLOGICAL NEXUS.

6 SO WE THOUGHT THIS WOULD BE -- IF YOU
7 FLIP THROUGH THEM YOU CAN SEE IPHONE, IPHONE,
8 IPHONE --

9 THE COURT: I'M NOT QUIBBLING WITH THE
10 MERIT OF YOUR SUBMISSION, I'M SIMPLY POINTING OUT
11 THAT IN ORDER FOR ME TO CONSIDER THAT AND WEIGH
12 THAT AGAINST THE OTHER SIDE, RECEIVING THEM
13 SOMETIME THE DAY BEFORE, ARGUABLY IN VIOLATION OF
14 OUR LOCAL RULES, WOULD BE HELPFUL.

15 MS. HUTNYAN: I TOTALLY UNDERSTAND.

16 AND MY PLAN WAS TO FLAG A FEW FOR YOU SO THAT
17 I COULD ACTUALLY POINT YOU TO A FEW THINGS TO SHOW
18 TECHNOLOGICAL NEXUS AND WOULD GIVE YOU
19 SUFFICIENT --

20 THE COURT: AND IF I HAD HAD THAT WHEN
21 YOU SUBMITTED YOUR REPLY OR PERHAPS A DAY LATER IT
22 WOULD BE MORE EFFECTIVE IS MY ONLY POINT.

23 ALL RIGHT. NOW I WANT TO UNDERSTAND WHAT
24 THE OBJECTION IS FROM APPLE UNDER THE TERMS OF THE
25 ITC. IS IT SIMPLY THAT THEIR EXPERTS HAD ACCESS TO

1 THIS?

2 MS. TUCHER: YOUR HONOR, I'M GOING TO LET
3 MR. SABRI, HE'S PREPARED TO ARGUE THE MOTION
4 ADDRESSING THAT POINT.

5 THE COURT: I WOULD LIKE TO GET TO THE
6 MOTIONS THEMSELVES.

7 MR. OLSON: YES, YOUR HONOR. I WOULD
8 QUICKLY MAKE ONE EXTRA POINT.

9 AFTER THE IN CAMERA DISCUSSION FAILED,
10 WHAT APPLE ALSO OFFERED IS, YOUR WHOLE PURPOSE
11 SAMSUNG, IS TO SHOW THESE TRANSCRIPTS TO THIS COURT
12 AND ARGUE THEY HAVE A TECHNOLOGICAL NEXUS.

13 SO WE SAID WE ARE NOT COMFORTABLE IF THEY
14 FILED THEM UNDER SEAL THAT WOULD ENABLE ANYBODY WHO
15 SIGNED ONTO THE ND CAL PROTECTIVE ORDER TO VIEW
16 THEM AND USE THEM.

17 SO HOW ABOUT THIS, FILE THE COVER PAGES,
18 YOU CAN SHOW THE COURT ALL THESE TRANSCRIPTS EXIST.
19 WE WILL STIPULATE THERE'S A TECHNOLOGICAL NEXUS SO
20 THEN YOU CAN FILE UNDER SEAL THE COVER PAGES, THE
21 FIRST PAGES OF EACH TRANSCRIPT. WE JUST DON'T WANT
22 A HUGE STACK OF ITC TRANSCRIPTS BEING FILED AND
23 BEING ABLE TO BE USED IN THIS PROCEEDING.

24 SAMSUNG ALSO REJECTED THAT. THEN WAITED
25 UNTIL FRIDAY AND OVER THE WEEKEND TO FILE --

1 THE COURT: RIGHT.

2 BUT IF YOUR BEEF IS HOW THEY ARE USING
3 THE MATERIALS WITH THEIR EXPERT, IT SEEMS TO ME
4 THAT'S THE OBJECTION TO MAKE. IT'S NOT AN
5 OBJECTION THAT ESSENTIALLY FORCES A SUBMISSION IN
6 CAMERA TO A POINT WHERE AGAIN WE NOW HAVE DOCUMENTS
7 FLOATING AROUND.

8 YOU ALL DO THIS WAY MORE THAN I DO. YOU
9 UNDERSTAND THE CHALLENGE OF A COURT MANAGING
10 DOCUMENTS IN CAMERA, PARTICULARLY THE VOLUME YOU
11 ALL GENERATE.

12 SO WHAT I DON'T UNDERSTAND IS WHY NOT
13 OBJECT TO THEIR PROPOSED USE OF THE DOCUMENTS WITH
14 THEIR EXPERTS BUT PERMIT, AS I BELIEVE YOU WOULD
15 OTHERWISE BE REQUIRED TO FILING THESE DOCUMENTS
16 UNDER SEAL.

17 MR. OLSON: YOUR HONOR, WE FELT THAT WHAT
18 SAMSUNG REPORTED TO US ON ITC DISCOVERY CALLS IS
19 THE MOMENT THESE ARE FILED UNDER SEAL IN THIS CASE
20 WE ARE FREE TOO SHOW THEM ANYBODY SIGNED UNDER THE
21 ND CAL EXCLUDEING EXPERTS.

22 THE COURT: IS THE ATTORNEY WHO MADE THAT
23 CALL ON YOUR SIDE IN THE ITC PROCEEDING ALSO
24 ATTORNEY OF RECORD IN THIS CASE?

25 MR. OLSON: YES, SIR.

1 THE COURT: ALL RIGHT.

2 MS. HUTNYAN: YOUR HONOR, IF I MAY JUST
3 ADD ONE POINT?

4 THE COURT: SURE.

5 MS. HUTNYAN: THESE ARE TRANSCRIPTS THAT
6 WERE ORDERED PRODUCED BY THE COURT, YOU, IN
7 DECEMBER. THERE'S NO REASON WHY THESE DOCUMENTS
8 WHICH SHOULD HAVE BEEN PRODUCED LONG AGO SHOULD NOT
9 BE SIMPLY FILED UNDER SEAL.

10 IT BLOWS MY MIND THAT WE ARE HAVING A
11 DISCUSSION ABOUT IN CAMERA REVIEW OR ABOUT WHAT
12 EXPERTS CAN SEE THESE TRANSCRIPTS BECAUSE THEY WERE
13 ORDERED BY YOU TO BE PRODUCED FOR ALL PURPOSES IN
14 THIS ACTION IN DECEMBER.

15 THE COURT: ALL RIGHT.

16 WELL, I SUSPECT WE HAVE A DIFFERENCE OF
17 OPINION IN THE ROOM ABOUT THAT SUBJECT.

18 SO LET'S TURN TO THOSE ISSUES.

19 I WANT TO START WITH THE MOTION FOR
20 SANCTIONS BY APPLE.

21 WHO IS GOING TO ARGUE THAT ONE FOR YOU,
22 COUNSEL?

23 MS. TUCHER: THANK YOU, YOUR HONOR.

24 ALLISON TUCHER.

25 MY PARTNER HAROLD MCELHINNY WAS BEFORE

1 YOU TWO WEEKS AGO SEEKING SANCTIONS BECAUSE SAMSUNG
2 HAD TOLD US THINGS THAT WEREN'T TRUE AND THEN KEPT
3 FROM US THE DOCUMENTS THAT ENABLED US TO FIND THE
4 TRUTH. BECAUSE SAMSUNG HAD VIOLATED YOUR ORDERS,
5 AND THEN COME IN HERE AND SOUGHT TO JUSTIFY THEIR
6 BEHAVIOR BY WILLFULLY MISREADING YOUR ORDERS.

7 I'M HERE FOR EXACTLY THE SAME REASON BUT
8 IN THIS CASE IT'S NOT ABOUT PI DISCOVERY BUT ABOUT
9 DAMAGES.

10 YOUR ORDER WAS SHORT BUT CLEAR, SAMSUNG
11 HAD TOLD YOU THAT OUR DISCOVERY MOTION WAS MOOT AND
12 THAT THEY WOULD GIVE US ALL THE FINANCIAL
13 INFORMATION THAT APPLE SOUGHT. YOU ORDERED THEM TO
14 DO JUST THAT AND THEY DIDN'T.

15 AND BECAUSE WE ARE GOING TO BE TALKING
16 ABOUT AEO INFORMATION I WOULD LIKE TO HAND UP A
17 BINDER OF MATERIAL THAT HAS NOT JUST THE TEXT OF
18 THE ORDER BUT THE MATERIALS I WANT TO USE TO
19 SUMMARIZE FOR YOU HOW IT IS THAT SAMSUNG HAS FAILED
20 TO COMPLY WITH YOUR ORDER AND HOW IT IS THAT
21 PREJUDICES APPLE IN PREPARATION OF OUR DAMAGES IN
22 THIS CASE.

23 THE COURT: YOU MAY HAND UP --

24 MS. MAROULIS: COUNSEL, DOES THIS CONTAIN
25 INFORMATION NOT IN THE RECORD?

1 MS. TUCHER: YES. THIS IS A BINDER THAT
2 HAS IN IT SOME DEMONSTRATIVES, SOME INFORMATION
3 THAT IS IN THE RECORD AND SOME INFORMATION THAT IS
4 NOT IN THE RECORD. BUT THE INFORMATION THAT'S NOT
5 IN THE RECORD ALL POSTDATES THE REPLY IN THIS CASE.

6 AND I WILL BE ASKING EITHER THAT THE
7 BINDER BE ADMITTED INTO EVIDENCE OR THAT WE BE
8 GIVEN LEAVE AT THE CLOSE OF THE HEARING TO FILE ON
9 THE RECORD UNDER SEAL THOSE PORTIONS OF THE BINDER
10 THAT POSTDATE THE REPLY AND THAT ARE NOT IN THE
11 RECORD.

12 MS. MAROULIS: YOUR HONOR, I HAVE AN
13 OBJECTION TO USE OF DEMONSTRATIVES THAT WEREN'T
14 PREVIOUSLY DISCLOSED IN ANY KIND OF NEW INFORMATION
15 WHETHER IT'S ATTORNEY ARGUMENT OR EXHIBITS. WE
16 WILL DO OUR BEST TO RESPOND TO THEM IN THE
17 ARGUMENTS BUT THEY WEREN'T PROVIDED TO US.

18 THE COURT: ALL RIGHT.

19 WELL, I WANT TO GET TO THE SUBSTANCE OF
20 THESE DISPUTES, I REALLY DO. I DON'T WANT TO GET
21 INTO ANCILLARY DISPUTES ABOUT WHAT'S PUBLIC AND
22 WHAT'S NOT.

23 I WILL CONSIDER WHAT'S IN THIS BINDER BUT
24 I'M GOING TO TELL YOU RIGHT NOW THAT I'M NOT GOING
25 TO CLEAR THE COURTROOM, AND IF I NEED TO ASK A

1 QUESTION ABOUT WHAT'S IN THIS BINDER I'M GOING TO
2 DO IT WITHOUT CLEARING THE COURTROOM. WE ARE GOING
3 TO PROCEED ON THAT BASIS.

4 SO LET'S TURN TO THE MERITS.

5 MS. TUCHER: THANK YOU, YOUR HONOR I
6 WOULD LIKE TO START BY TURNING TO TAB 1 WHICH IS A
7 SHORT EXPERT FROM YOUR JANUARY 27TH ORDER, AND IN
8 PARTICULAR HIGHLIGHTS THE LANGUAGE THAT WE THINK
9 CONTROLS THIS CASE.

10 THAT SAMSUNG HAD AGREED TO SUPPLEMENT ITS
11 PRODUCTION AND PROVIDE RESPONSIVE DOCUMENTS TO ALL
12 OF THE CATEGORIES LISTED BY APPLE.

13 THE CATEGORIES THAT APPLE HAD LISTED WERE
14 TWO PAGES OF SPECIFIC DOCUMENTS. THEY ARE ACTUALLY
15 JUST AT THE LAST FEW PAGES OF THE BINDER. BUT YOU
16 MAY VERY WELL RECALL IN OUR PROPOSED ORDER WHEN WE
17 ORIGINALLY FILED THIS MOTION, WE WERE VERY SPECIFIC
18 ABOUT WHAT IT WAS THAT WE WANTED AND WE UNDERSTOOD
19 YOUR ORDER TO BE ORDERING SAMSUNG TO DO WHAT THEY
20 HAD TOLD THIS COURT THEY WERE PREPARED TO DO WHICH
21 IS TO PRODUCE ALL OF THOSE DOCUMENTS.

22 NOW SAMSUNG HAS ARGUED IN ITS PAPERS THAT
23 "ALL" IN FACT DOES NOT MEAN ALL BUT MEANS ONLY WHAT
24 SAMSUNG HAD OFFERED IN A LETTER TO PRODUCE. AND IN
25 SOME BULLET POINTS IN THEIR OPPOSITION TO COMPEL.

1 SO I HAVE HIGHLIGHTED THE LANGUAGE THERE
2 ON PAGE 14 OF THEIR OPPOSITION THAT WE UNDERSTAND
3 YOUR ORDER TO BE CITING TO. THE HEADING THAT
4 SAMSUNG HAS ALREADY PRODUCED OR AGREED TO PRODUCE
5 ALL OF THE FINANCIAL INFORMATION THAT APPLE
6 REQUESTS, A STATEMENT THAT THEY MAKE ESSENTIALLY
7 TWICE THAT THEY WILL DO THAT BY FEBRUARY 3RD.

8 I ALSO, BEHIND TAB 2 HAVE A TIMELINE THAT
9 SUMMARIZES WHAT THE RECORD SHOWS ACTUALLY HAPPENED
10 AFTER YOUR ORDER.

11 ON FEBRUARY 3RD WE GOT A SPREADSHEET WITH
12 FINANCIAL INFORMATION AND A HANDFUL OF OTHER
13 DOCUMENTS. WE UNDERSTOOD THIS TO BE WOEFULLY
14 INADEQUATE AND FIRED OFF A LETTER TO WHICH SAMSUNG
15 RESPONDED TELLING US THAT THEY THOUGHT THAT THEY
16 WERE DONE AND HAD PRODUCED EVERYTHING THEY NEEDED
17 TO PRODUCE BY THE 13TH OF FEBRUARY.

18 SO DEPOSITIONS ENSUED. BUT BEFORE THAT
19 WE THEN GOT ON FEBRUARY 28TH A NEW VERSION OF THE
20 SPREADSHEET. ON MARCH 8TH ANOTHER NEW VERSION OF
21 THE SPREADSHEET. A FEW DAYS AFTER THAT AN
22 OPPOSITION TELLING THIS COURT THAT THE DATA WAS ALL
23 ACCURATE AND COMES DIRECTLY FROM THE DATABASE.

24 BUT ON MARCH 21ST YET ANOTHER CORRECTED
25 SPREADSHEET, AND ON MARCH 29TH ANOTHER CORRECTED

1 SPREADSHEET.

2 I SUBMIT THE FACT WE HAD TO HAVE FIVE
3 VERSIONS OF THE SPREADSHEET IS EVIDENCE THAT WHAT
4 WE GOT FEBRUARY 3RD WAS NOT ACCURATE AND COMPLETE.

5 BUT THERE'S ACTUALLY A LOT MORE WE CAN
6 TALK ABOUT ABOUT THE PROBLEMS WITH PRODUCTION. IF
7 YOU LOOK BEHIND TAB 3 THEY SUMMARIZED THE PROBLEMS
8 WITH WHAT WE GOT ON FEBRUARY 3RD.

9 FOCUSING PARTICULARLY ON THE SPREADSHEET
10 DATA. THE FIRST PROBLEM WAS THAT THEY GAVE US A
11 TOTAL PAGE UP FRONT THAT DIDN'T ADD TO THE PAGES
12 BEHIND IT WHAT WERE PRODUCT SPECIFIC. SO WE KNEW
13 THERE WAS SOME KIND OF MATH ERROR AT A MINIMUM.

14 SECOND PROBLEM IS THAT THERE WERE SEVEN
15 ACCUSED PRODUCTS THAT THEY GAVE US NO DATA FOR.
16 AND I'VE LISTED THEM HERE. THE FIRST FOUR OF THESE
17 THEY HAVE SUBSEQUENTLY IN REVISIONS OF THE
18 SPREADSHEET GIVEN US DATA, ALTHOUGH IN SOME CASES
19 NOT IN VERY USEABLE FORMS.

20 BUT THE LAST THREE OF THE PRODUCTS LISTED
21 HERE, THE S2, THE AT&T CELLS WITH THE NAME S2
22 SKYROCKET, THE S2 THAT SPRINT SELLS WITH THE NAME
23 S2 EPIC 4G TOUCH, AND THE GALAXY TAB 10.1 IN THE
24 LTE VERSION AS ITS PROVIDED THROUGH ALL DIFFERENT
25 SALES CHANNELS. THEY HAVE STILL TO THIS DAY NOT

1 PROVIDED US ANY SALES DATA ON THESE ACCUSED
2 PRODUCTS.

3 THEIR ARGUMENT IS THEY THINK THEY AREN'T
4 ACCUSED PRODUCTS. BUT IF YOU LOOK NOT JUST AT OUR
5 COMPLAINT BUT IN OUR -- IN THE COURT ORDERED
6 INFRINGEMENT CONTENTIONS YOU WILL SEE WE LISTED THE
7 S2 AS AN INFRINGED PRODUCT.

8 NOW IT'S TRUE WE DIDN'T BREAK OUT THE
9 DIFFERENT CARRIER NAMES. WE SAID S2 IN OUR
10 COMPLAINT AND INFRINGEMENT CONTENTIONS BECAUSE AT
11 THAT TIME THE S2 HADN'T BEEN INTRODUCED INTO THE
12 UNITED STATES AT ANY CARRIER. BUT AFTER IT CAME
13 OUT AT VARIOUS CARRIERS OVER THE COURSE OF THE
14 FALL, WE UPDATED OUR INTERROGATORY RESPONSE AND
15 LISTED ALL THE DIFFERENT VARIANTS OF THE S2.

16 AND THEY GAVE US SOME S2 DATA SO THEY
17 SEEMED TO ACKNOWLEDGED SOME S2'S ARE IN THE CASE,
18 BUT THEY PROVIDED NO EXPLANATION AT ALL FOR WHY
19 SOME ARE IN THE CASE AND SOME ARE NOT IN THE CASE
20 EXCEPT SOME OF THE S2'S ARE MORE EXPENSIVE THAN
21 OTHERS WHICH DOESN'T SEEM TO ME ADEQUATE GROUNDS
22 FOR DECIDING THAT WHY WE SHOULDN'T HAVE A CLAIM FOR
23 DAMAGES.

24 THE COURT: SO IF I UNDERSTAND WHAT YOU
25 ARE SAYING CORRECTLY, SITTING HERE TODAY YOU STILL

1 HAVEN'T RECEIVED ANY TOP LINE REVENUE DATA FOR
2 SALES OF THE GALAXY S2 TO SPRINT, FOR EXAMPLE?

3 MS. TUCHER: THAT'S RIGHT.

4 THE COURT: SAME IS TRUE FOR AT&T?

5 MS. TUCHER: YES. EXCEPT THAT THERE ARE
6 TWO VERSIONS OF THE S2. ONE IS CALLED S2 AND ONE
7 IS S2 SKYROCKET. THEY GAVE US DATA THE ONE FOR THE
8 S2 BUT NOT FOR THE ONE CALLED S2 SKYROCKET.

9 THE COURT: AND THEIR EXPLANATION FOR
10 THIS TO YOU HAS BEEN WHAT?

11 MS. TUCHER: THAT IT'S NOT AN ACCUSED
12 PRODUCT IN THE CASE.

13 THE COURT: EVEN THOUGH YOU IDENTIFY THE
14 S2 IN YOUR COMPLAINT?

15 MS. TUCHER: YES, YOUR HONOR.

16 THE COURT: AND IN INTERROGATORY
17 RESPONSES.

18 MS. TUCHER: AND IN -- I WOULD SAY YES,
19 BUT THE INTERROGATORY RESPONSE SPECIFICALLY LISTING
20 THE VARIOUS VERSIONS DIDN'T COME UNTIL LATER, IT
21 WAS THE COURT ORDERED INFRINGEMENT CONTENTIONS THAT
22 LISTED THE S2.

23 THE COURT: OKAY.

24 MS. TUCHER: AND SIMILARLY YOUR HONOR, ON
25 THE TAB 10.1, THE TAB 10.1 IS SOLD IN A WIFI

1 VERSION. IT'S SOLD IN AN LTE VERSION, AND IN OUR
2 INFRINGEMENT CONTENTIONS WE ACCUSE THE TAB 10.1.
3 WE DIDN'T SPECIFY WHETHER IT WOULD BE WIFI OR --

4 THE COURT: I TAKE IT THE DESIGN OF THE
5 PRODUCT ISN'T IMPLICATED BY ITS WIFI OR 4G
6 FUNCTIONALITY.

7 MS. TUCHER: NO, THAT'S CORRECT.

8 I HAVE NO IDEA WHY THEY DECIDED WE ARE
9 ENTITLED TO DAMAGES ONLY ON THE WIFI VERSION.

10 ALSO STILL TO THIS DAY WE HAVE A PROBLEM
11 WITH THE SPREADSHEET THEY HAVE GIVEN US IN ITS
12 LATEST VERSION DOES NOT ADD DOWN.

13 THIS IS AN ISSUE BECAUSE IT'S -- THE
14 SPREADSHEET SAYS IT'S A CONSOLIDATED SPREADSHEET.
15 IT ISN'T. IT'S A COMBINED SPREADSHEET THAT ADDS
16 DATA FOR ALL THE PRODUCTS FOR ALL THREE ENTITIES
17 BUT IT DOESN'T TRACE THE SAME PRODUCT OVER TIME THE
18 WAY ONE WOULD DO IF ONE WAS ACTUALLY MAKING A
19 CONSOLIDATED SPREADSHEET.

20 THE WAY THEY DO THEIR OWN INTERNAL
21 REPORTING FOR CONSOLIDATED NUMBERS.

22 SO THAT'S A PROBLEM THAT OUR DAMAGES
23 EXPERT FACES WHEN HE ANALYZES THE DATA.

24 THEY ALSO DON'T LIST DATA BY CARRIER.
25 WHY IS THAT A PROBLEM? WELL, FOR OUR DAMAGES

1 ANALYSIS BECAUSE APPLE HAS A DIFFERENT -- WE HAVE A
2 DIFFERENT DAMAGES ANALYSIS BY CARRIER BECAUSE WE
3 HAVE A DIFFERENT MARKET SHARE WITH EACH OF THE
4 DIFFERENT CARRIERS. SO IN ORDER TO DO LOST PROFITS
5 WE HAVE TO KNOW WHICH CARRIER THEY SOLD TO.

6 THE COURT: ARE YOU CLAIMING LOST PROFITS
7 FOR EACH OF THE CARRIERS IN DISPUTE IN THE U.S.?

8 MS. TUCHER: YOUR HONOR, WE ARE CLAIMING
9 LOST PROFITS AS TO AT LEAST SOME OF THEM. I CAN'T
10 TELL YOU OFF THE TOP OF MY HEAD WHETHER IT'S AS TO
11 ALL OF THEM.

12 MR. SABRI: YOUR HONOR, IT'S AS TO ALL OF
13 THEM, ALTHOUGH IN DIFFERENT PROPORTIONS AS TO
14 DIFFERENT CARRIERS.

15 THE COURT: AND DIFFERENT MARKET SHARES.

16 MR. SABRI: MARKET SHARES, EXACTLY.

17 MS. TUCHER: THE OTHER REASON IT'S A
18 PROBLEM AS YOU ASKED ABOUT CARRIERS IN THE U.S.,
19 WHEN THEY GAVE US THIS DATA WE HAD ASKED FOR U.S.
20 AND GLOBAL DATA BECAUSE WE THINK WE NEED BOTH ON
21 ANALYZE THIS PROPERLY. WE DIDN'T INTEND FOR THEM
22 TO PUT IT ALL IN ONE LINE ITEM.

23 ON THE S2 HERCULES, THE T-MOBILE VERSION,
24 WHEN WE TRIED TO DO THE ANALYSIS ON THAT WE FIND
25 THE LINE ITEM FOR S2 THAT INCLUDES THE HERCULES

1 INCLUDES SEVERAL OTHER S2 VARIANTS SOLD IN CANADA
2 OR SOMETHING LIKE THAT.

3 AND, YOU KNOW, IF THEY WANT TO GIVE US
4 DAMAGES FOR SALES IN CANADA, THAT'S GREAT.

5 THE COURT: YOU WON'T OBJECT TO THAT.

6 MS. TUCHER: WE WOULDN'T.

7 BUT IF THEY WANT TO CROSS-EXAMINATION OUR
8 EXPERT ON THE INADEQUACY OF HIS ANALYSIS BECAUSE
9 HE'S CONFLATED U.S. AND CANADIAN SALES, I DO OBJECT
10 TO THAT.

11 SO THAT'S WHY SALES BY CARRIER MATTERS.

12 AND THEN OF COURSE BECAUSE ALTHOUGH THEY
13 TELL YOU THAT THE DATA COMES DIRECT FROM THEIR
14 ACCOUNTING SYSTEM, IT COMES DIRECT FROM THEIR
15 ACCOUNTING SYSTEM THEN GETS ADDED, SUBTRACTED AND
16 MOVED AROUND.

17 SO BECAUSE OF THAT WE CAN'T COMPARE IT TO
18 ANY PUBLISHED DATA INCLUDING ANY DATA IN THEIR
19 FINANCIAL RECORDS THEY'VE PROVIDED US. SO WE CAN'T
20 CROSS CHECK IT. AND WE HAVE SOME TRUST ISSUES,
21 SHALL WE SAY, SOME NEED TO CROSS VERIFY.
22 UNEXPLAINED RESULTS FOR COSTS OF GOODS SOLD AND
23 LACK OF DETAIL AS TO COST OF GOODS SOLD AND
24 EXPENSES.

25 AS YOU KNOW FOR OUR DAMAGES CLAIM WE HAVE

1 A RIGHT TO SAMSUNG A PROFITS. THEIR ENTIRE PROFITS
2 ON ACCUSED PRODUCTS. AND SO COST OF GOODS SOLD
3 MATTERS.

4 IF THEY CAN MAKE THEIR COSTS OF GOOD SOLD
5 LARGER, THEIR PROFITS ARE SMALLER AND OUR DAMAGES
6 CLAIM IS SMALLER ACCORDINGLY. AND WE WILL TALK
7 ABOUT ONE PARTICULAR PLACE WHERE THEY DID THAT TO
8 APPLE'S GREAT DETRIMENT IN A MOMENT. BUT RIGHT
9 HERE I'M TRYING TO MAKE THE BROADER POINT THAT THE
10 LACK OF DETAIL AND LACK OF TRANSPARENCY IS A
11 PROBLEM FOR US IN UNDERSTANDING THE COST OF GOODS
12 SOLD LINE ITEM.

13 ON THE NEXT PAGE I'M NOT GOING TO USE ANY
14 NUMBERS, THEY ARE IN RED BECAUSE THEY ARE HIGHLY
15 CONFIDENTIAL. BUT YOU CAN SEE THAT WHAT THEY, AND
16 I JUST WANT TO SAY THE TAB 4 PRESENTATION, THE
17 FIRST BULLET POINT HERE, THIS IS ABOUT WHAT THEY
18 REFER TO AS A MINOR MODIFICATION BECAUSE OF A
19 FOREIGN SUBSIDIARY OF SAMSUNG KOREA. AND THEY
20 THOUGHT THAT IT WOULD BE PROPER TO MOVE WHAT WE
21 CONSIDER PROFITS THAT WE HAVE A RIGHT TO INTO THIS
22 CHINESE SUBSIDIARY.

23 THE COURT: IS IT CHINESE OR KOREAN?

24 MS. TUCHER: I BELIEVE IT'S CHINESE.

25 IN ANY EVENT, NOT ONLY DO WE DISAGREE

1 WITH THEM ON THE LAW, AND I CAN GIVE YOU A CASE FOR
2 WHY WE THINK WE'RE RIGHT ON THE LAW, BUT WE ARE
3 ABSOLUTELY CERTAIN THAT THIS LEGAL DISPUTE BETWEEN
4 THE PARTIES IS NOT SOMETHING THAT SHOULD BE DECIDED
5 UNILATERALLY BY SAMSUNG BY SIMPLY DENYING US THE
6 DATA.

7 SO THE SIZE OF WHAT SAMSUNG HAS DONE WITH
8 THEIR SHIFT ON COST OF GOODS SOLD IS A SIGNIFICANT
9 PORTION, LET'S JUST SAY, OF SAMSUNG'S PROFITS IN
10 2011. AND A SIGNIFICANT PORTION OF WHAT APPLE IS
11 SEEKING IS DAMAGES IN THIS CASE.

12 THE COURT: IF THEY HAVEN'T GIVEN YOU --
13 I'M SORRY FOR INTERRUPTING YOU, COUNSEL. BUT IF
14 THEY HAVEN'T GIVEN YOU THE DATA, HOW ARE YOU ABLE
15 TO QUANTIFY THE MAGNITUDE OF WHAT YOU LABEL AS THE
16 OBFUSCATION.

17 MS. TUCHER: I WANT TO ANSWER THAT
18 QUESTION BY ASKING YOU TO TURN TO TAB 5 WHICH IS A
19 PAGE FROM OUR EXPERT FROM OUR EXPERT'S REPORT.

20 AND I SHOULD ANSWER YOUR QUESTION FIRST
21 BY SAYING THAT AS TO THIS PARTICULAR ADJUSTMENT WE
22 FEEL WE HAVE ADEQUATELY QUANTIFIED IT, AND IF NEED
23 BE WE WILL ARGUE FROM DATA WE HAVE BASED ON THE
24 REPORT THAT'S BEFORE YOU.

25 BUT THE PROBLEM IS THIS IS JUST THE ONE

1 THAT WE KNOW ABOUT ALREADY. AND WE DON'T KNOW WHAT
2 ELSE WE HAVEN'T FOUND THAT COULD BE OF SIMILAR
3 MAGNITUDE OR OTHERWISE.

4 SO ON THIS PARTICULAR EXHIBIT OF
5 TERRY MUSIKA EXPERT REPORT, THAT'S APPLE'S DAMAGES
6 EXPERT, YOU SEE A SUMMARY FIRST OF ALL OF THE
7 FEBRUARY 29TH VERSION, SO VERSION TWO OF THEIR
8 SPREADSHEET AS TO SALES AND COSTS OF GOOD SOLD.
9 THEN BELOW THAT YOU SEE A SUMMARY OF THE MARCH 8TH
10 VERSION. SO VERSION THREE OF THEIR SPREADSHEET.

11 AND MANY THINGS CHANGED BETWEEN VERSION
12 TWO AND VERSION THREE. ONE OF THE THINGS THAT
13 CHANGED IS THEY SAID OOPS, IT'S TRUE WE NEVER GAVE
14 YOU HERCULES THE T-MOBILE VERSION OF THE S2, THAT
15 PART WAS ACTUALLY UNINTENTIONAL, WE WILL ADD THAT
16 IN NOW. WE ADDED THAT TO THE MIDDLE PART OF THE
17 PAGE.

18 BUT THE OTHER THING THEY DID WAS TO DO
19 THIS SIGNIFICANT MOVING OF PROFITS OUT OF THE
20 AMERICAN ENTITY AND INTO THE CHINESE SUB WHERE THEY
21 THINK WE WON'T HAVE A RIGHT TO COLLECT THEM.

22 AND TO SHOW YOU HOW THAT WORKS IF YOU
23 LOOK AT THE -- AND TO ALSO SUBSTANTIATE THIS IS
24 INDEED ALL DATA THAT COMES STRAIGHT FROM THE
25 RECORD.

1 IF YOU LOOK AT THE COST OF GOODS SOLD
2 HIGHLIGHTED IN YELLOW YOU WILL FIND THEY CORRESPOND
3 FROM THE FEBRUARY 29TH SPREADSHEET TO DATA THAT'S
4 HIGHLIGHTED BEHIND TAB B FOR THE MARCH 8TH
5 SPREADSHEET TO DATA THAT'S HIGHLIGHTED BEHIND TAB D
6 AND THEN TAB C.

7 AND BASED ON -- AND THE SPREADSHEETS DO
8 IT 2010 AND 2011. SO ON THE RIGHT-HAND COLUMN WE
9 SUM UP FOR THOSE TWO YEARS. AND IF YOU LOOK AT
10 COST OF GOODS SOLD BASED ON THE SPREADSHEET OF
11 FEBRUARY 29TH, AND COMPARE IT TO THE COST OF GOODS
12 SOLD THAT'S HIGHLIGHTED IN PURPLE FROM THE
13 MARCH 8TH VERSION THAT'S AFTER WE BACKED OUT THE
14 DIFFERENCE FROM HERCULES, YOU WILL SEE HOW MUCH
15 MONEY IS MISSING.

16 SO THAT'S WHERE WE GET OUR NUMBER FROM
17 AND THAT'S THE ANALYSIS THAT OUR EXPERT HAS TO DO
18 TO FIND THIS ONE CHANGE IN THEIR SPREADSHEET OVER
19 THE COURSE OF THE WEEKS AFTER THE FEBRUARY 3RD
20 PRODUCTION THAT YOUR HONOR ORDERED.

21 I WOULD ALSO LIKE TO ASK THE COURT TO,
22 AND WE WILL GO NOW AT A QUICKER PACE THROUGH THE
23 OTHER TABS HERE. IF YOU LOOK AT TAB 6, THIS IS A
24 DEPOSITION EXPERT FROM THE TESTIMONY OF A SAMSUNG
25 CAREER WITNESS WHO WAS TESTIFYING ABOUT THE

1 SPREADSHEET ON THE 10TH OF MARCH AND WHO WAS
2 INSTRUCTED NOT TO ANSWER ABOUT THE VERSION OF THE
3 SPREADSHEET THAT SAMSUNG PRODUCED ON FEBRUARY 3RD
4 COMPLIANCE IN RESPONSE TO THE COURT'S ORDER, NOR
5 WAS HE ALLOWED TO TESTIFY ABOUT, AND SPECIFICALLY
6 THIS IS ABOUT COST OF GOODS SOLD IN THAT
7 SPREADSHEET --

8 THE COURT: YOU ARE REFERRING TO PAGE 92
9 AND 93 OF TAB 6?

10 MS. TUCHER: YES.

11 THE COURT: SO THE OBJECTION I'M READING
12 ON THOSE PAGES INDICATES THAT HE WAS INSTRUCTED NOT
13 TO ANSWER IF THE ANSWER WOULD REVEAL PRIVILEGED
14 COMMUNICATIONS. HE THEN PROCEEDS TO GIVE AN
15 ANSWER. SO WHAT'S THE CONCERN YOU ARE RAISING?

16 MS. TUCHER: LET ME GO THROUGH THIS A
17 LITTLE MORE SLOWLY THEN, I'M SORRY.

18 ON PAGE 92, I SHOULD TELL YOU ONE OF THE
19 DIFFERENCES ON FEBRUARY 3RD THEY GAVE US A MINIMAL
20 AMOUNT OF DETAIL ABOUT COST OF GOODS SOLD. THEY
21 BROKE OUT MANUFACTURING AND MATERIAL COSTS. AND IN
22 SUBSEQUENT VERSIONS OF THE SPREADSHEET, INCLUDING
23 THE ONE WE HAVE TODAY, THEY'VE COLLAPSED THAT. AND
24 THEY'VE COLLAPSED THAT BECAUSE THEY DON'T WANT US
25 TO KNOW EACH THAT MUCH ABOUT WE SPLIT UP OUR COST

1 OF GOODS SOLD BECAUSE WE THINK IT'S TOO
2 CONFIDENTIAL.

3 SO ON THE FIRST PAGE OF 92 --

4 THE COURT: SO YOU ASKED FOR THAT
5 ALLOCATION IN SUBSEQUENT VERSIONS AND YOU WERE
6 DENIED IT?

7 MS. TUCHER: IT'S A LITTLE DIFFERENT FROM
8 THAT.

9 WE ASKED FOR A FULL BREAK OUT AND WE GOT
10 AN INITIAL BREAK OUT ON FEBRUARY 3RD THAT HAD JUST
11 THOSE TWO CATEGORIES, THEN AFTER THAT THEY
12 COLLAPSED THAT AND THEY DIDN'T GIVE US ANYTHING.

13 WE STILL ASKED FOR IT IN FULL AND THEY
14 DIDN'T GIVE US ANYTHING.

15 THE COURT: SO AS TO THE SUBSEQUENT
16 VERSIONS OF THE SPREADSHEET WHEN YOU REQUESTED AT A
17 MINIMUM THAT THE MATERIAL COSTS AND MANUFACTURING
18 EXPENSES BE ALLOCATED APPROPRIATELY, WAS SAMSUNG'S
19 RESPONSE NO, WE ARE NOT GIVING YOU THAT AND THE
20 REASON FOR THAT IS IT'S TOO CONFIDENTIAL? IS THAT
21 YOUR POSITION?

22 MS. TUCHER: YES, YOUR HONOR. AND I'M
23 SEEKING CONFIRMATION FROM MR. OLSON.

24 THE COURT: MR. OLSON, IS THAT WHAT YOU
25 ARE TOLD BY SAMSUNG?

1 MR. OLSON: SO AGAIN, LET ME BE CLEAR.
2 WE ASKED FOR ALL THE REMAINING DETAILS ABOUT TEN
3 LINES FROM THE GENERAL LEDGER ON COST OF GOODS
4 SOLD. IN RESPONSE TO THAT THEY SAID NO, YOU GET
5 WHAT YOU GET, ONE LINE.

6 AND AT THE DEPOSITION OF THE MR. SIMMS --
7 THE COURT: WELL, INITIALLY THEY GAVE YOU
8 TWO LINES.

9 MR. OLSON: THEY GAVE US TWO LINES THEN
10 COLLAPSED IT DOWN TO ONE IN EVERY VERSION
11 THEREAFTER. WE HAVE, SINCE THAT TIME, REPEATEDLY
12 ASKED FOR WE WANT ALL TEN LINES.

13 I DO NOT BELIEVE WE WILL HAVE A LETTER
14 THAT SPECIFICALLY SAYS GIVE US BACK JUST THE TWO
15 LINES. WE'VE ALWAYS ASKED FOR TEN LINES.

16 AT THE DEPOSITION WE ASKED REPEATEDLY,
17 WHAT'S MORE BEHIND THAT, WHAT MORE CAN WE GET? AND
18 HE SAID INFORMATION IS TOO CONFIDENTIAL.

19 THE COURT: THE WITNESS TOLD YOU THIS?

20 MR. OLSON: CORRECT.

21 THE COURT: SO DID YOU EVER PUT IT TO
22 COUNSEL THAT, LOOK, THIS CONFIDENTIALITY OBJECTION
23 IS BOGUS. GIVE US THE ALLOCATIONS AS WE ORIGINALLY
24 REQUESTED. DO YOU EVER ASK THEM THAT?

25 MR. OLSON: YES.

1 ON MARCH 10TH AT THE DEPOSITION AFTER THE
2 92 AND 93, WE THEN -- I WENT ON TO TRY TO ASK THE
3 QUESTION IN OTHER WAYS TO GET THE INFORMATION. HE
4 AGAIN SAID, NO I WON'T ANSWER THAT.

5 AND THEN ON PAGE 99 OF THAT TRANSCRIPT
6 WHICH IS ALSO IN YOUR MATERIALS, WE I SPECIFICALLY
7 HAD ASKED THAT MR. STEIGER WHO WAS THE COUNSEL FOR
8 QUINN EMANUEL, TALK TO THE WITNESS AND PROVIDE US
9 ANSWERS.

10 HE CONFIRMS ON 99 AND 100 THAT IN FACT
11 HE'S INSTRUCTING HIM NOT TO ANSWER. THEY MADE A
12 POINT OF THAT LATER IN THE DEPOSITION. HE CAME
13 BACK AND MADE A REQUEST AND SAID WELL, MAYBE WE
14 WILL ASK IT, ALLOW HIM TO ASK OTHER QUESTIONS ON
15 THAT SUBJECT. THIS IS APPROXIMATELY 116, I CAN
16 FIND THE EXACT CITE FOR YOU.

17 I THEN WENT BACK AGAIN AT 120, I'LL GET
18 YOU THE SPECIFIC CITATION BEFORE IT'S OVER, AND
19 AGAIN ASKS THE QUESTION AND AGAIN GOT AN
20 INSTRUCTION NOT TO ANSWER.

21 SO IT HAPPENED TWICE MARCH 10TH.

22 ON MARCH 31ST WE DEPOSED HIM AGAIN, ASKED
23 THE QUESTION AGAIN, CAN I ASK HIM MORE QUESTIONS
24 ABOUT THE COST OF GOODS SOLD CALCULATION, MATERIAL
25 COST, HOW IT'S CALCULATED, ET CETERA. THEY AGAIN

1 INSTRUCTED HIM NOT TO ANSWER. THEY AGAIN SAID WE
2 WILL BE INSTRUCTING HIM TO NOT ANSWER ON
3 MARCH 31ST.

4 IF YOU WILL GIVE ME A MOMENT, I WILL HAND
5 UP THE CITATIONS TO ALL OF THAT IF YOU WISH.

6 THE COURT: THANK YOU.

7 YOU MAY PROCEED.

8 MS. TUCHER: THANK YOU, YOUR HONOR.

9 MR. OLSON SHARED WITH YOU THE ONLY OTHER
10 INFORMATION I WANTED TO SHARE ON THAT TAB.

11 SO IF WE CHANGE TO TAB 7, THIS IS AGAIN
12 THE TESTIMONY OF MR. SIMMS FROM STC AND HE'S
13 ACKNOWLEDGING ERRORS IN VERSION THREE OF SAMSUNG'S
14 SPREADSHEET.

15 SO THIS IS THE VERSION OF THE SPREADSHEET
16 THAT SAMSUNG TOLD THIS COURT IN THEIR OPPOSITION
17 PAPERS WAS ACCURATE AND YET HERE IN DEPOSITION
18 TESTIMONY WHEN CROSS-EXAMINED THEY HAD TO
19 ACKNOWLEDGE ACTUALLY IT'S NOT.

20 SIMILARLY, TAB 8 IS MR. SHEPPARD. HE IS
21 CONTROLLER AT ONE OF THE AMERICAN ENTITIES, AND
22 WHEN HE WAS DEPOSED HE ALSO HAD TO ACKNOWLEDGE THAT
23 IN THE STATEMENT THAT, IN THE DECLARATION HE
24 PROVIDED TO THIS COURT WITH THE OPPOSITION PAPERS
25 IN RESPONSE TO OUR SANCTIONS MOTION THAT HE MADE

1 MISTAKES.

2 IN THAT PARTICULAR CASE ONE OF THE
3 MISTAKES HE MADE WAS THAT THE THERE WAS ONLY ONE
4 VERSION OF THE S2 IN THE DATA HE GAVE US AND THAT
5 SAMSUNG ARGUED WELL, WE GAVE THEM TWO VERSIONS OF
6 THE S2 IN THE DATA.

7 TAB 9 IS THE TESTIMONY OF MR. SIMMS, AND
8 THIS IS ABOUT THE GALAXY S2 AGAIN.

9 THE COURT: MS. TUCHER, I APOLOGIZE AGAIN
10 FOR INTERRUPTING.

11 CAN YOU REMIND ME AGAIN WHAT POSITION
12 MR. SIMMS HOLDS?

13 MS. TUCHER: MR. SIMMS IS A LOW LEVEL
14 MANAGER WHO REPORTS TO, WHAT IS THE TITLE OF THE --
15 WOULD YOU ANSWER THAT, I THINK I GAVE THE WRONG
16 ANSWER.

17 MR. OLSON: HE'S THE VICE PRESIDENT WHO
18 IS IN CHARGE OF SOMETHING CALLED A MANAGEMENT
19 SUPPORT GROUP. HE REPORTS TO A MR. PARK. MR. PARK
20 REPORTS TO JK SHIN, I BELIEVE IT IS, BUT HE WAS ONE
21 OF THE INDIVIDUALS IN THE APEX MOTION.

22 THE COURT: THE HEARING WE HAD.

23 MR. OLSON: CORRECT.

24 SO HE'S APPROXIMATELY THREE DOWN FROM
25 THAT AND IN CHARGE OF ABOUT 20 EMPLOYEES IN A

1 FINANCE AND MANAGEMENT SUPPORT FUNCTION.

2 THE COURT: AND MR. SIMMS, WAS HE
3 APPEARING IN HIS 30(B)(6) CAPACITY AT THESE
4 DEPOSITIONS?

5 MR. OLSON: CORRECT.

6 SOLELY, INCLUDING SPECIFICALLY IN HIS
7 30(B)(6) CAPACITY SPECIFICALLY ON A NOTICE DIRECTED
8 SOLELY TO THESE SPREADSHEETS.

9 THE COURT: PRESUMABLY HE WAS IDENTIFIED
10 AS THE GUY WHO ACTUALLY KNOWS WHAT THESE
11 SPREADSHEETS SAY.

12 MS. TUCHER: YES, YOUR HONOR.

13 THIS WAS AFTER MR. SHEPPARD WAS
14 QUESTIONED IN HIS 30(B)(6) CAPACITY ABOUT THE
15 SPREADSHEETS AT AN EARLIER TIME AND TESTIFIED HE
16 DIDN'T ACTUALLY KNOW ANYTHING ABOUT THEM BESIDES
17 WHAT HE HAD LEARNED IN A FEW MINUTES OF PREPARING
18 FOR HIS DEPOSITION.

19 AND SO MOVING THROUGH TO TAB 9 ON THE
20 GALAXY S2, IT MAY BE THAT WHEN SAMSUNG GETS UP HERE
21 THEY ARGUE THAT THERE IS A DIFFERENCE OF SOME SORT
22 BETWEEN THE GALAXY S2'S THAT THEY HAVE ACKNOWLEDGED
23 THAT ARE IN THE CASE AND THE GALAXY S2'S THAT THEY
24 REFUSE TO ACKNOWLEDGE ARE IN THE CASE. BUT I
25 THOUGHT IT WAS IMPORTANT FOR YOU TO SEE HOW THE

1 SAMSUNG WITNESS ASKED ABOUT THIS RESPONDED.

2 WHEN ASKED WHY WASN'T THE GALAXY S2
3 SKYROCKET INCLUDED HE SAID, I WAS REQUESTED BY
4 COUNSEL NOT TO INCLUDE IT. HE DIDN'T SAY, I DIDN'T
5 THINK OF THAT AS AN S2, NEVERMIND THE WAY WE --

6 MS. MAROULIS: YOUR HONOR, WE ARE READING
7 FROM THE HIGHLY CONFIDENTIAL TRANSCRIPTS. I WOULD
8 APPRECIATE IF COUNSEL REFERS THE COURT TO THE TABS
9 AS OPPOSED TO --

10 MS. TUCHER: I APOLOGIZE, YOUR HONOR.

11 I WOULD SAY ONLY THAT WITH REGARD TO THE
12 EPIC, WHEN SAMSUNG'S WITNESS WAS ASKED ABOUT THE
13 EPIC YOU WILL SEE HOW HE RESPONDED IF YOU LOOK AT
14 PAGE 281, LINE 19 THROUGH 21.

15 AND I SUBMIT THAT THAT IS NOT THE
16 TESTIMONY OF A MAN WHO DOESN'T THINK THE GALAXY S2
17 EPIC IS AN S2.

18 THE COURT: SO AGAIN, SO I'M CLEAR AS THE
19 TO STATE OF AFFAIRS TODAY, ARE YOU SAYING THAT
20 SITTING HERE TODAY YOU DO NOT HAVE REVENUE DATA FOR
21 THE GALAXY S2 SKYROCKET OR THE GALAXY S2 EPIC?

22 MS. TUCHER: THAT'S RIGHT, YOUR HONOR.
23 NOR COST DATA, NOR PROFIT DATA.

24 THE COURT: AND WHEN YOU RAISE THESE
25 ISSUES IN MEET AND CONFER WITH OPPOSING COUNSEL

1 THEY'VE TOLD YOU THAT WHAT?

2 MS. TUCHER: THEY AREN'T ACCUSED
3 PRODUCTS.

4 THE COURT: AND THEIR BASIS FOR THAT? I
5 WILL HEAR FROM THEM DIRECTLY, OF COURSE.

6 MS. TUCHER: THEY SAY THE INTERROGATORY
7 RESPONSE I MENTIONED TO YOU WHERE WE INCLUDED ALL
8 THE DIFFERENT VERSIONS OF THE S2 BY NAME AND SAID
9 EXACTLY HOW IT WORKED OUT.

10 THEY SAID THAT WASN'T FILED BEFORE OUR
11 DAMAGES MOTION WAS FILED, WHICH IS TRUE, WE THOUGHT
12 WE HAD ENOUGH WITH THE FACT THAT THEY WERE IN OUR
13 INFRINGEMENT CONTENTIONS AND WE WERE WAITING TO SEE
14 UNTIL ALL THE VERSIONS WERE OUT.

15 AND I SHOULD SAY THERE'S ONE VERSION OF
16 THE S2 THAT WE HAVEN'T SOUGHT DAMAGES DATA FROM
17 THEM ON AND IT'S THE VERSION THAT CAME OUT AROUND
18 THE TIME WE FILED OUR MOTION.

19 WE DON'T FAULT THEM FOR NOT GIVING THE
20 DATA ON PRODUCTS THEY ARE NOT RELEASING. BUT THE
21 PRODUCTS THEY HAVEN'T GIVEN US DATA ON THAT ARE
22 SUBJECT TO OUR MOTION WERE RELEASED LAST FALL.

23 THE COURT: I WAS GOING ASK YOU, YOU MAY
24 HAVE JUST ANSWERED MY QUESTION. THE SKYROCKET, THE
25 EPIC, WHEN WERE THE PRODUCTS RELEASED INTO THE U.S.

1 MARKET?

2 MS. TUCHER: YOUR HONOR, WE HAVE THE
3 ANSWER TO THAT IN OUR REPLY PAPERS. AND I CAN TELL
4 YOU THE ORDER.

5 I CAN TELL YOU THAT OF THE FOUR S2'S
6 THERE ARE TWO THEY HAVE GIVEN US DATA ON AND TWO
7 THEY HAVEN'T. ONE THEY GAVE US DATA ON, TWO THEY
8 DIDN'T, AND ONE THEY GAVE US DATA ON.

9 SO IT'S NOT ABOUT LATENESS. ONE OF THE
10 DATA IS THE FOURTH TO BE RELEASED.

11 THE COURT: EACH OF THE FOUR PRODUCTS WAS
12 RELEASED AT LEAST AS OF DECEMBER OF LAST YEAR.

13 MS. TUCHER: OH, YES.

14 YOUR HONOR, I BELIEVE THE DATES WERE
15 AROUND OCTOBER, BUT I JUST DON'T WANT TO GET IT
16 WRONG. MAYBE IT WAS SEPTEMBER AND OCTOBER
17 RESPECTIVELY.

18 AND THEN THE OTHER THING THAT THEY HAVE
19 SAID TO US IN MEET AND CONFER. THEY'VE SHOWN US AN
20 UNSIGNED STIPULATION THAT THE PARTIES WERE
21 NEGOTIATING ABOUT WHETHER CERTAIN ADDITIONAL
22 PRODUCTS WOULD BE ADDED INTO IN CASE.

23 FOR EXAMPLE, WOULD THE NEW NEXUS PRODUCT
24 THAT SAMSUNG RELEASED BE ADDED INTO THE CASE. AND
25 IN THE END IT WASN'T, AND IN THE END WE BROUGHT A

1 NEW CASE.

2 BUT IN THAT STIPULATION THERE'S LANGUAGE
3 ABOUT, YOU KNOW, WE WANT TO ADD NEW PRODUCTS TO THE
4 CASE AND PERHAPS NEW CLAIMS.

5 AND TWO OF THE VERSIONS OF THE S2 ARE
6 MENTIONED IN THIS UNSIGNED STIPULATION. AND
7 WHETHER THAT'S BECAUSE WE WANTED TO ADD ADDITIONAL
8 CLAIMS AGAINST THOSE TWO PRODUCTS, I'M NOT SURE,
9 BUT I DO KNOW THAT IT WAS A NEGOTIATION BETWEEN
10 PARTIES THAT NEVER WENT ANYWHERE, IT WAS NEVER
11 RESOLVED. SO I FAIL TO SEE HOW AN UNSIGNED
12 NEGOTIATION DOCUMENT OF THAT KIND COULD IN ANY WAY
13 DETRACT FROM THE FACT THAT THE S2 WAS ALREADY IN
14 OUR INFRINGEMENT CONTENTIONS AND AMENDED COMPLAINT.

15 THE COURT: WERE THEY IN YOUR CONTENTIONS
16 IN THE AMENDED COMPLAINT AT THE TIME THE
17 STIPULATION WAS NEGOTIATED?

18 MS. TUCHER: OH YES, BECAUSE THE AMENDED
19 COMPLAINT DATES BACK TO LAST SPRING AND THE
20 STIPULATIONS, CERTIFICATE INFRINGEMENT CONTENTIONS
21 WERE MONTHS AGO.

22 TAB 10 IS HERE BECAUSE SAMSUNG MADE A
23 POINT IN THEIR OPPOSITION ABOUT THE FACT THAT THE
24 DATA WAS EXTRACTED FROM ITS DATABASE AS IF THE FACT
25 THE DATA CAME FROM ITS DATABASE SOMEHOW MEANT IT

1 WAS NOT MANIPULATED OR MASSAGED.

2 I DON'T CARE WHETHER WE USE THE VERB
3 MANIPULATED OR MASSAGED OR IF WE SAY THEY DID MATH.
4 THEY ADMIT THEY DID MATH IN THE DATA THEY PULLED
5 OUT OF THEIR DATABASE.

6 WE GOT NUMBERS IN OUR SPREADSHEET IN THE
7 SPREADSHEET THEY PRODUCED TO US THAT WEREN'T IN
8 THEIR DATABASE. THEY ARE COMBINATIONS OF NUMBERS
9 THAT ARE IN THE DATABASE, ADDITION, SUBTRACTION,
10 THAT SORT OF THING. FORMULAS.

11 SO IF YOU LOOK AT THE DEPOSITION
12 TRANSCRIPT BEHIND TAB 10, WE HAVE SOUGHT TO MAKE
13 CLEAR THAT THERE ARE FORMULAS INVOLVED.

14 THE COURT: IS THERE SOMETHING INHERENTLY
15 IMPROPER IN USING FORMULAS TO REPRESENT THE DATA
16 PRODUCED?

17 MS. TUCHER: THERE IS IN IT'S DONE TO
18 OBSCURE WHAT THE DATA IS THAT'S ACTUALLY IN THEIR
19 DATABASE. AND IF WE NEED THE DATA AT THE LEVEL
20 THAT'S IN THEIR DATABASE.

21 SO THE NEXT TAB ACTUALLY GIVES US A GOOD
22 EXAMPLE OF THAT. I MENTIONED TO YOU THAT SOME OF
23 THE DATA STREAMS WE GOT ON A PER PRODUCT BASIS IN
24 FACT INTERMIXED MULTIPLE PRODUCTS IN A WAY WE THINK
25 THE DATA IS USEFUL.

1 THE COURT: AS YOU TURN TO THE NEXT
2 QUESTION ON MY MIND, WHICH IS YOUR COMPLAINT HERE
3 ON THE TOPIC THAT THEY HAVE CONSOLIDATED MULTIPLE
4 PRODUCTS INTO A TOP LEVEL NUMBER WITHOUT PROVIDING
5 YOU ACCESS AS TO THE ALLOCATION AMONG THE DIFFERENT
6 PRODUCTS, IS THAT BASICALLY IT?

7 MS. TUCHER: THAT IS ONE OF OUR
8 COMPLAINTS, YES.

9 THE COURT: I UNDERSTAND. YOU HAVE
10 OTHERS, BUT ON THIS PARTICULAR POINT.

11 MS. TUCHER: ON THE POINT OF
12 PRODUCT-BY-PRODUCT DATA, YES. BUT AS TO COST OF
13 GOODS SOLD THEY HAVE ALSO MADE A LOT OF LINE ITEMS
14 IN COST OF GOODS SOLD AND GIVEN US THE TOP LINE
15 COST OF GOODS SOLD NUMBER.

16 THE COURT: I DON'T PRETEND TO HAVE THE
17 EXPERTISE THAT OTHERS IN THIS ROOM DO BUT ARE COST
18 OF GOODS SOLD GENERALLY ALLOCATED ON A
19 PRODUCT-BY-PRODUCT BASIS?

20 MS. TUCHER: WE KNOW THAT THEY HAVE THE
21 DATA ON A PRODUCT-BY-PRODUCT BASIS FROM WHICH WE
22 COULD CALCULATE COST OF GOODS SOLD.

23 FOR EXAMPLE, YOU START WITH THE COST OF
24 BILL OF MATERIALS, TO TALK ABOUT ANOTHER DOCUMENT
25 WE'VE ASKED FOR. HOW MUCH DOES IT COST TO BUY EACH

1 OF THE THINGS THAT GOES INTO MAKING ONE OF THESE.

2 THEN YOU ADD OTHER KINDS OF COSTS THAT
3 ARE SPECIFIC TO THE MANUFACTURE OF THAT PRODUCT.
4 AND WHEN YOU ADD ALL THAT, THAT'S THE COST OF GOODS
5 SOLD. THEN THE OTHER THING YOU HAVE TO DO WE CALL
6 THEM UNALLOCATED EXPENSES.

7 THE COURT: G AND A, THAT TYPE OF THING.

8 MS. TUCHER: YEAH.

9 SO THEY ARE BOTH COSTS AND EXPENSES WHERE
10 WE WANT DETAIL AND WE DIDN'T GET IT. AND BEHIND
11 TAB 11 ARE SOME OF THE SPREADSHEETS THAT SHOW
12 COMBINATIONS OF PRODUCTS BEING REPORTED TO THE
13 OTHER.

14 SO FOR EXAMPLE, THE FIRST ONE IS AN S2
15 WHERE THEY COMBINED 1, 2, 3, 6 DIFFERENT SKU
16 NUMBERS. ONE OF THESE SKU NUMBERS IS THE -- IS A
17 VERSION OF THE S2 THAT WE THINK WE'RE ENTITLED TO
18 DAMAGES ON.

19 WE SUSPECT THAT WHEN CROSS-EXAMINING
20 TERRY MUSIKA, THEY WILL WANT TO KNOW WHY HE THINKS
21 WE DESERVE DAMAGES AS TO THE OTHERS. AND IT WOULD
22 CERTAINLY BE HELPFUL TO US IF WE HAD IT SO THAT WE
23 COULD PREPARE A ROBUST DEFENSE TO THAT SORT OF
24 ANALYSIS.

25 THE COURT: SO IS YOUR QUESTION TO

1 SAMSUNG THEN SIMPLY, TELL US HOW THESE LINE ITEMS
2 BREAK DOWN BY STOCK KEEPING, OR WHAT MORE
3 SPECIFICALLY ARE YOU ASKING?

4 MS. TUCHER: GIVE US BY SKU THE ACCUSED
5 PRODUCTS. WE WANT ONE LINE ITEM BY SKU FOR EVERY
6 ACCUSED PRODUCT.

7 THE COURT: I DON'T PRETEND TO UNDERSTAND
8 SAMSUNG'S BUSINESS IN ANY KIND OF LEVEL OF DETAIL
9 LIKE THEY DO OR PERHAPS YOU DO, BUT IT HAS BEEN MY
10 EXPERIENCE THAT MULTIPLE SKU'S ROLL UP IN THESE
11 LEDGERS IN INDIVIDUAL PRODUCT LINES, IS THAT
12 CORRECT IN THIS CASE? IS THAT ACCURATE IN THIS
13 CASE? SO THERE'S NOT A SINGLE SKU FOR A GIVEN
14 PRODUCT BUT PERHAPS MULTIPLE SKU'S DEPENDING HOW
15 THE PRODUCTS ARE MARKETED.

16 MS. TUCHER: THAT MAY BE FOR EXAMPLE THE
17 TAB 10.1.

18 THE COURT: YOU DON'T KNOW BECAUSE YOU
19 DON'T HAVE THE DATA.

20 MS. TUCHER: I DON'T KNOW. THEY MAY ROLL
21 IT UP ANY NUMBER OF DIFFERENT WAYS.

22 BUT WE KNOW THEY DO HAVE AND THAT THEY
23 CAN GET THE DATA THAT WE NEED.

24 SO LET ME AT THIS POINT FLIP TO TAB 14
25 THEN WE WILL COME BACK BECAUSE I WANT TO TELL YOU

1 WHAT EXACTLY IT IS THAT WE WANT, GIVEN THAT WE HAVE
2 THE TWO-PAGE LIST OF THINGS THAT WE ASKED FOR LAST
3 TIME AROUND AND THAT WE UNDERSTAND YOU HAVE ORDERED
4 THEM TO PRODUCE AND WE DIDN'T GET MANY OF.

5 SO WE TRY TO BOIL IT DOWN TO BE SPECIFIC.
6 THE REMEDY WE ARE SEEKING HERE IS NUMBER ONE,
7 COMPLETE PRODUCTION OF DOCUMENTS SO WE CAN DO A
8 PROPER DAMAGES ANALYSIS.

9 AND WE ARE NOT UNHAPPY WITH GETTING
10 SPREADSHEETS WE JUST WANT SPREADSHEETS, WE WANT
11 THEM TO REPORT UNITS REVENUES COST OF GOODS SOLD,
12 OPERATING EXPENSES AND OPERATING PROFITS.

13 AND THOSE WERE ALL THINGS THAT WE ASKED
14 FOR BEFORE AND THAT WE UNDERSTOOD YOU ORDERED BY
15 FEBRUARY 3RD. AND WE WANT THEM TO BE ON A
16 CONSOLIDATED BASIS FOR ALL THE U.S. PRODUCTS.

17 THE COURT: SO YOU WANT ALL THE U.S.
18 PRODUCTS CONSOLIDATED INTO A SINGLE LINE ITEM?

19 MS. TUCHER: CONSOLIDATED AS TO THE THREE
20 SAMSUNG ENTITIES. AND WE WANT THEM NOT TO COMBINE
21 BUT TO DO WHAT ACCOUNTANTS CALL CONSOLIDATING AS TO
22 DIFFERENT ENTITIES WHEN THEY GIVE US THE DATA FOR
23 ANY SINGLE PRODUCT. WE WANT IT FOR ALL PRODUCTS IN
24 THE CASE, WE'VE TALKED ABOUT THAT. WE WANT IT
25 INDIVIDUALLY BY SKU NUMBER, THAT'S IN ORDER TO BE

1 ABLE TO BE ABLE TO TELL ARE WE TALKING ABOUT THE S2
2 HERCULES SOLD THROUGH T-MOBILE OR A DIFFERENT S2.

3 THE COURT: BUT RECOGNIZING THOUGH THAT
4 AGAIN, TO MY KNOWLEDGE THERE'S NO SUCH THING AS A
5 COST OF GOODS SOLD AVAILABLE ON A PER SKU BASIS, IS
6 THERE?

7 MS. TUCHER: I THINK THEY DO HAVE THAT.

8 THE COURT: MR. OLSON IS STANDING UP. DO
9 YOU WISH TO SUPPLEMENT?

10 MR. OLSON: YEAH. I CAN ON BOTH POINTS.

11 SO ABSOLUTELY THERE'S A COST OF GOODS
12 SOLD BY SKU. BOTH THERE'S A PORTION OF ANY COST OF
13 GOODS SOLD THAT IS NONMATERIAL COSTS BUT IT'S A
14 VERY SMALL PORTION AS MR. SIMMS ACKNOWLEDGED

15 MS. MAROULIS: MR. OLSON, AGAIN, I WOULD
16 APPRECIATE IF YOU DON'T DIVULGE CONFIDENTIAL
17 PROTECTIVE ORDER INFORMATION.

18 MR. OLSON: THERE IS DATA ON COST OF
19 GOODS SOLD BY SKU AVAILABLE. IT'S ALSO POSSIBLE TO
20 DO IT ON A CONSOLIDATED BASIS AS LONG AS YOU HAVE A
21 SINGLE PRODUCT SOLD IN ONE COUNTRY.

22 THE COURT: ALL RIGHT.

23 BEFORE I GOT DISTRACTED I ACTUALLY HAD A
24 QUESTION ABOUT YOUR USE IN YOUR PAPERS, APPLE'S USE
25 OF THE TERM CONSOLIDATED.

1 COULD YOU JUST EXPLAIN OR ELABORATE WHAT
2 YOU MEAN WHEN YOU SAY "CONSOLIDATED" BECAUSE I'M
3 NOT SURE I'M NECESSARILY APPRECIATING THE
4 IMPORTANCE OF THE TERM.

5 MS. TUCHER: IT'S AN ACCOUNTING TERM AND
6 I'M NOT AN ACCOUNTANT.

7 THE COURT: NEITHER AM I, SO LET'S SEE IF
8 WE CAN FIGURE THIS OUT.

9 MS. TUCHER: THE WAY THIS WORKS IS THAT
10 SAMSUNG HAS A SUBSIDIARY MANUFACTURE A PRODUCT THAT
11 SAMSUNG KOREA OR THAT SUBSIDIARY, WE WON'T BE
12 SPECIFIC ABOUT EXACTLY HOW, SELLS TO STA OR ITS
13 COUNTERPART TO THE AMERICAN SUBSIDIARY.

14 THEN THE AMERICAN SUBSIDIARY AFTER MAYBE
15 A COUPLE OF MONTHS SELLS THAT PRODUCT TO AT&T,
16 LET'S SAY WHO THEN SELLS IT TO THE CONSUMER AND SO
17 ON.

18 SO WE NEED TO FIGURE OUT WHAT THE COST OF
19 GOODS SOLD FOR THE PRODUCT THAT GETS SOLD TO AT&T
20 IS. AND IN ORDER TO DO THAT WE HAVE TO KNOW HOW
21 MUCH DID IT COST SAMSUNG KOREA OR ITS SUBSIDIARY TO
22 MAKE THAT PRODUCT.

23 AND THEN SORT OF BE ABLE TO FOLLOW THAT
24 PRODUCT AND THE COST ASSOCIATED WITH IT AS IT GOES
25 ON THE JOURNEY WITH THE DIFFERENT CORPORATE

1 ENTITIES.

2 AND ONE OF THE THINGS THAT MAKES IT
3 COMPLICATED IS AS IT GOES ON ITS JOURNEY THROUGH
4 THE CORPORATE ENTITIES SAMSUNG KEEPS A SET OF BOOKS
5 THAT IN SAMSUNG'S VIEW ACCURATELY RECORDS THE COSTS
6 AND THEREFORE THE PROFITS THAT EACH OF THESE
7 ENTITIES EARNS.

8 THOSE NUMBERS ARE NOT NECESSARILY THE
9 NUMBERS THAT GET REPORTED TO THE UNITED STATES
10 GOVERNMENT FOR PURPOSES OF PAYING TAXES. THEY CAN
11 DO IT DIFFERENTLY. THEY WORK THAT OUT WITH THE
12 IRS, WE AREN'T COMMENTING ON THAT. BUT AS A RESULT
13 OF THAT THEY CAN, THROUGH TRANSFER PRICING, THEY
14 CAN MOVE AROUND WHERE THE PROFITS ACTUALLY OCCUR.
15 AND UNDER THE LAW WE ARE ENTITLED TO THE PROFITS
16 THEY EARN NOT THE PROFITS THEY REPORT TO THE IRS.

17 SO WE WANT TO BE ABLE TO FOLLOW THE COSTS
18 OF THAT VERY SPECIFIC PRODUCT AS IT GOES THROUGH
19 THE CHANNEL THROUGH THE ENTITIES TO BE ABLE TO
20 FIGURE OUT WHAT THE PROFIT ON THAT PRODUCT IS.

21 IT SOUNDS VERY COMPLICATED BUT IT'S
22 ACTUALLY THE WAY THEY KEEP THEIR BOOKS.

23 THE COURT: I SUSPECT IT'S SIMILAR TO HOW
24 YOUR CLIENT KEEPS ITS BOOKS.

25 MS. TUCHER: THAT I CAN'T COMMENT ON

1 RIGHT NOW, BUT I CAN TELL YOU THAT ON TAB 12 WE
2 HAVE AN EXAMPLE OF HOW IN SAMSUNG'S BOOKS HOW THEY
3 KEEP THIS DATA.

4 EXHIBIT 1926 IS A DOCUMENT YOU DON'T
5 ACTUALLY HAVE TO READ AND GET TO THE BOTTOM OF.
6 BUT BEHIND IT IS TESTIMONY FROM MR. SHEPPARD, THE
7 STA CONTROLLER. AND HE TALKS ABOUT, HE SAYS
8 EXHIBIT 1926 IS A DOCUMENT THAT HE HAD PULLED SO HE
9 COULD CHECK THE ACCURACY OF THE DATA THEY PROVIDED
10 US IN THE SPREADSHEET.

11 WE SAID WE NEED MORE OF THOSE, MORE DATA
12 AT THE LEVEL OF EXHIBIT 1926 SO THAT WE CAN CHECK
13 THE ACCURACY OF THE DATA SAMSUNG PROVIDED IN THE
14 SPREADSHEET. SO THAT'S THE PURPOSE OF TAB 12.

15 AND IN TAB 13 WE ASKED IN ORDER TO FIND
16 OUT WHETHER THERE WAS A DOABLE TASK WE ASKED, WHAT
17 WILL IT TAKE TO DO THIS. AND THEY TOLD US IF YOU
18 GO TO PAGE 156, LINE 6 AND 7 HOW LONG IT WOULD TAKE
19 FOR THEM TO PULL THE DATA THAT WE THINK WE NEED AND
20 THAT WE ARE ENTITLED TO TO CHECK THE ACCURACY OF
21 THE SPREADSHEET THEY ARE GIVING US.

22 THE COURT: IF I COULD GO BACK TO THE
23 EARLIER DISCUSSION WE HAD AROUND CONSOLIDATION, I'M
24 NOT SURE I GOT THE ANSWER I WAS LOOKING FOR OR
25 EXPECTED.

1 WHEN YOU ARE SAYING THEN THAT YOU WANT
2 CONSOLIDATED, YOU WANT THIS DATA ON A CONSOLIDATED
3 BASIS, YOU ARE ACTUALLY SAYING CONSOLIDATED AS
4 ACROSS THREE SEPARATE SAMSUNG ENTITIES?

5 MS. TUCHER: IT ACTUALLY ENDS UP BEING
6 ACROSS TWO ENTITIES BECAUSE SAMSUNG KOREA SELLS
7 EITHER THROUGH STA OR THROUGH THE OTHER AMERICAN
8 SUBSIDIARY DEPENDING WHETHER IT'S PHONES OR TABS.

9 SO WE WANT CONSOLIDATED ACROSS BOTH OF
10 THOSE ENTITIES, THE DATA.

11 THE COURT: BOTH OF THESE MEANING THE TWO
12 SAMSUNG ENTITIES AUTHORIZED TO SELL THE PRODUCT
13 HERE IN THE UNITED STATES.

14 MS. TUCHER: WE WANT IT CONSOLIDATED FROM
15 SAMSUNG KOREA THROUGH ITS SUBSIDIARIES EITHER STA
16 OR THE OTHER ONE.

17 WHAT WE ARE CONSOLIDATING IS SAMSUNG
18 KOREA AND ONE SUBSIDIARY IN EACH CASE.

19 THE COURT: IN EACH CASE, AND THERE ARE
20 TWO CASES?

21 MS. TUCHER: EXACTLY.

22 THE COURT: ALL RIGHT.

23 MS. TUCHER: SO GOING BACK TO TAB 14 IN
24 SPECIFYING EXACTLY WHAT WE THINK WE'RE ENTITLED TO
25 IN THIS SPREADSHEET, WE THINK NOW THAT WE HAVE

1 EXHIBIT 1926 AND NOW THAT SAMSUNG HAS TOLD US THAT
2 IT DOESN'T TAKE THAT LONG TO PRODUCE THE DATA IN
3 THE FORM AT THE LEVEL OF EXHIBIT 1926, THAT WE
4 SHOULD JUST SPECIFY, AND 1926 IS A DOCUMENT THAT
5 COMES FROM STA FROM THE AMERICAN SUB.

6 SO I DON'T KNOW EXACTLY WHAT THE KOREAN
7 COMPANY'S COUNTERPART DOCUMENT LOOKS LIKE, BUT IF
8 YOU SAY YOU WANT THE DOCUMENT AT THE EQUIVALENT
9 LEVEL, AND THE MANUFACTURING SUB OF STC IN ORDER TO
10 BE ABLE --

11 THE COURT: WHAT'S A PRUNI REPORT?

12 MS. TUCHER: THAT GOES BACK TO THE COST
13 DATA, AND I'M NOT SURE HOW MUCH I'M ALLOWED TO SAY
14 IN RESPONSE WITHOUT GETTING IN TROUBLE WITH MY
15 FRIENDS AT SAMSUNG OVER THE CONFIDENTIALITY.

16 BUT I CAN SAY IT HAS DATA ABOUT SALES
17 THAT HAVE ALREADY OCCURRED THAT WOULD BE HELPFUL TO
18 US IN -- AND I SHOULD ALSO SAY IT'S A REPORT THAT
19 EXISTS.

20 WE ARE NOT ASKING FOR ANYTHING TO BE
21 CREATED. AND THAT GOES THROUGH, YOU KNOW, 20
22 LEVELS OF REVIEW AND BACK IN KOREA AND HAS LOTS OF
23 SIGNATURES, PEOPLE HAVE VERIFIED IT'S ACCURATE
24 DATA.

25 THE COURT: WHY ARE THE BUSINESS PLANS

1 NECESSARY?

2 MS. TUCHER: YOUR HONOR, THE BUSINESS
3 PLANS HELP US TO SEE WHAT 2012 IS SUPPOSED TO LOOK
4 LIKE IN SAMSUNG'S EYES.

5 IT WAS PART OF WHAT YOU ORDERED PRODUCED
6 ON FEBRUARY 3RD AND THEY'VE GIVEN THEM TO US IN
7 REDACTED FORM, THEY JUST TOOK OUT A LOT OF THE
8 INFORMATION.

9 THE COURT: CAN YOU TELL WHAT'S BEEN
10 REDACTED EVEN IF YOU DON'T KNOW EXACTLY?

11 MS. TUCHER: WE CAN TELL MUCH OF THE
12 SUBSTANCE OF THE REPORTS.

13 THE COURT: ALL RIGHT.

14 MS. TUCHER: SO THOSE ARE THE DOCUMENTS
15 AND DATA THAT WE BELIEVE SHOULD HAVE BEEN PRODUCED
16 FEBRUARY 3RD AND THAT WE WOULD LIKE TO HAVE
17 PRODUCED AS THE FIRST ITEM IN OUR ASK HERE AS A
18 RESULT OF THE VIOLATION OF YOUR FEBRUARY 3RD ORDER.

19 WE THINK WE WILL NEED A LITTLE BIT OF
20 TIME WITH A WITNESS TO MAKE SURE WE UNDERSTAND THE
21 DATA CORRECTLY. WE UNDERSTAND DISCOVERY IS CLOSED,
22 SO RATHER THAN ASKING FOR A NEW 30 (B) (6) DEPONENT
23 YOU'VE ALREADY ORDERED THAT JOSEPH CHUNG BE MADE
24 AVAILABLE. HE'S -- BECAUSE OF HIS POSITION AS CFO
25 AT STA, WE THINK IN A POSITION TO ANSWER QUESTIONS

1 IF WE COULD HAVE A COUPLE OF EXTRA HOURS WITH HIM.

2 WE'VE ASKED THAT WE BE ALLOWED TO USE THE
3 NEW DATA THAT WE GET FROM SAMSUNG WITHOUT FILING
4 SUPPLEMENTAL EXPERT REPORT. THE REASON FOR THAT IS
5 THAT OUR ORIGINAL EXPERT REPORT IS IN. WE ARE
6 GOING TO SOON GET THEIR RESPONSE TO THAT.

7 OUR DAMAGES EXPERT IS DUE TO BE DEPOSED
8 SOME TIME THIS MONTH, THE LAST DATE FOR EXPERT
9 DEPOSITIONS IS THE 27TH OF APRIL.

10 WE DON'T THINK IT'S FAIR TO ALLOW SAMSUNG
11 TWO BITES AT THE APPLE, TWO OPPORTUNITIES TO
12 CROSS-EXAMINE OUR DAMAGES EXPERT AS A BENEFIT OF
13 THEIR OWN VIOLATION OF YOU'RE ORDER.

14 THE COURT: SO WOULDN'T A BETTER WAY TO
15 SOLVE THAT PROBLEM BE TO SIMPLY DELAY HIS
16 DEPOSITION AND HAVE HIM DEPOSED ONCE AFTER A
17 SUPPLEMENTAL REPORT IS TENDERED?

18 MS. TUCHER: YOUR HONOR, I UNDERSTAND
19 THAT THAT IS AN ALTERNATIVE.

20 WE HAVE BEEN DOING EVERYTHING WE CAN TO
21 STICK WITH THE SCHEDULE THAT JUDGE KOH SET IN THIS
22 CASE BECAUSE IT'S NOT IN APPLE'S INTEREST TO SEE
23 ANYTHING DELAYED. BUT I JUST WANT TO MAKE SURE YOU
24 KNEW THAT APRIL 27TH IS THE --

25 THE COURT: I'M JUST THINKING OF

1 JUDGE KOH'S INTEREST IN MANAGING A TRIAL WITH
2 TESTIMONY THAT WASN'T DISCLOSED IN A REPORT, THAT
3 GETS AWFULLY DIFFICULT.

4 MS. TUCHER: I UNDERSTAND YOUR POINT, BUT
5 I THINK THAT SAMSUNG IS THE PARTY THAT HAS PUT US
6 IN THAT POSITION AND AT SOME LEVEL IT'S SAMSUNG'S
7 RESPONSIBILITY TO COPE WITH THE CONSEQUENCES.

8 WE'VE ALSO ASKED THAT SAMSUNG BE REQUIRED
9 TO LIVE WITH THE RESULTS OF ITS FEBRUARY 3RD
10 PRODUCTION. AND THE REASON THAT THAT MATTERS IS
11 BECAUSE OF THE BIG NUMBER THAT I SHOWED YOU THAT
12 THEY HAVE MOVED FROM, THEY PULLED OUT PROFITS AND
13 MOVED INTO COSTS. AND THEY DID THAT AFTER
14 FEBRUARY 3RD. AND WE THINK IT WAS ILLEGITIMATE BUT
15 WE THINK THEY SHOULD BE REQUIRED TO LIVE WITH WHAT
16 THEY GAVE US AS THE DATE YOU HAD ORDERED IT.

17 THE COURT: I APOLOGIZE FOR JUMPING
18 AROUND A BIT ON THIS, BUT IS IT FAIR FOR ME TO
19 UNDERSTAND THAT ALL OF THIS INFORMATION YOU BELIEVE
20 SHOULD HAVE BEEN PRODUCED AND EITHER WASN'T OR WAS
21 PRODUCED FAR TOO LATE, ALL RELATES TO YOUR CLAIM
22 FOR PROFITS ALONE, OR DOES THIS IMPLICATE ANY OF
23 YOUR OTHER BUCKET LIST OF DAMAGES, FOR LACK OF A
24 BETTER TERM?

25 MS. TUCHER: I THINK IT IS MOST DIRECTLY

1 IS RESPONSIVE TO OUR ASK FOR INFRINGEMENT DAMAGES,
2 BUT I DON'T KNOW HOW THEY INTEND TO PUT THEIR CASE
3 TOGETHER AND WHAT LINES OF ATTACK THEY INTEND TO
4 LAUNCH ON OUR DAMAGES EXPERT, SO I DON'T THINK
5 THAT'S THE ONLY REASON WE NEED THE INFORMATION.
6 BUT THAT'S CERTAINLY A GOOD UNDERSTANDING OF WHY
7 IT'S ABSOLUTELY CRUCIAL.

8 AND FINALLY, WE WOULD ASK AS WE DID TWO
9 WEEKS AGO FOR A FINDING FROM YOUR HONOR THAT
10 SAMSUNG MATERIALLY VIOLATED YOUR ORDER BY NOT
11 GIVING US ANY OF THIS DATA.

12 THE COURT: ALL RIGHT.

13 MS. TUCHER: UNLESS YOU HAVE QUESTIONS.

14 THE COURT: SO I THINK YOU ANSWERED THE
15 QUESTIONS I HAVE AT THIS TIME.

16 THANK YOU VERY MUCH.

17 MS. TUCHER: THANK YOU VERY MUCH.

18 THE COURT: MS. MAROULIS.

19 MS. MAROULIS: GOOD MORNING AGAIN,
20 YOUR HONOR.

21 THE COURT: GOOD MORNING.

22 MS. MAROULIS: BEFORE I PROCEED WITH MY
23 ARGUMENT ABOUT WHY SANCTIONS ARE NOT WARRANTED AND
24 WHY THE ORDER WAS NOT VIOLATED, I WANTED TO ADDRESS
25 THE QUESTION THAT SEEMS TO TROUBLE YOUR HONOR WHICH

1 IS WHAT HAPPENED TO THE THREE MODELS THAT APPLE
2 SAYS WERE NEVER PROVIDED THEM INFORMATION ON?

3 THE THREE MODELS AT ISSUE ARE NOT PART OF
4 THIS CASE. AND HERE'S HOW THIS TRANSPIRED. IF
5 YOUR HONOR INDULGES ME TO GIVE YOU PROCEDURAL
6 HISTORY HERE --

7 THE COURT: GO AHEAD.

8 MS. MAROULIS: APPLE SERVED ITS
9 INFRINGEMENT CONTENTIONS IN SEPTEMBER. THEREAFTER
10 BOTH COMPANIES ISSUED THROUGH PRODUCTS, YOU CAN
11 CALL THEM NEW PRODUCTS, NEW MODELS APPLE CAME OUT
12 WITH, IPHONE 4S AND SAMSUNG CAME OUT WITH
13 ADDITIONAL PRODUCTS.

14 STARTING ABOUT LATE NOVEMBER THE PARTIES
15 STARTED NEGOTIATING ADDING THOSE NEW PRODUCTS TO
16 THE CASE. SAMSUNG WANTED TO ADD FOUR AND APPLE
17 WANTED TO ADD ANYWHERE BETWEEN 36 MODELS THAT I
18 STARTED WITH TO WHAT LATER BECAME FIVE OR SIX
19 MODELS.

20 WE NEGOTIATED FOR TWO MONTHS AND
21 ULTIMATELY THE STIPULATION WE PUT ON THE RECORD
22 BEFORE YOUR HONOR REFLECTS THE ALMOST FINAL
23 AGREEMENT BETWEEN THE PARTIES WHERE 4S WOULD BE
24 ADDED TO SAMSUNG TO ASSERT INFRINGEMENT, AND FIVE
25 OR SIX PRODUCTS WOULD BE ADDED FOR APPLE.

1 AND THE THREE MODELS AT ISSUE HERE AT
2 LEAST TWO OF THEM WERE IN THAT STIPULATION.
3 ULTIMATELY THE NEGOTIATIONS BROKE DOWN. WE FELT
4 THAT APPLE MISLEAD US ULTIMATELY AND FORCED US TO
5 MOVE BEFORE JUDGE KOH TO ADD 4S.

6 AND AS YOUR HONOR MAY KNOW JUDGE KOH
7 RECENTLY ISSUED AN ORDER SAYING 4S IS NOT IN THE
8 CASE AND IT'S TOO LATE TO ADD PRODUCTS THAT WOULD
9 IMPACT THE TRIAL.

10 ON OUR END, SAMSUNG, WE UNDERSTOOD THE
11 PRODUCTS APPLE SOUGHT TO ADD WERE THE NOT IN THE
12 CASE OTHERWISE WHY WOULD THEY BE ADDING THEM IN THE
13 STIPULATION, WHY WOULD WE HAVE TWO MONTHS OF
14 NEGOTIATIONS.

15 I WAS PERSONALLY INVOLVED IN THAT,
16 MR. JACOBS AND MR. HUNG WERE INVOLVED ON THE OTHER
17 SIDE. THAT WAS A PIECE OF INFORMATION THAT LEAD US
18 TO BELIEVE THEY ARE NOT PART OF THE CASE.

19 THE SECOND PIECE OF INFORMATION IS THAT
20 ON MARCH 4, APPLE SERVED AMENDED INTERROGATORIES
21 FOR THE FIRST TIME ADDING THESE MODELS INTO THE
22 CASE AS ACCUSED PRODUCTS.

23 WHY IS THAT IMPORTANT? THAT'S IMPORTANT
24 BECAUSE WE ARE TALKING HERE ABOUT COMPLIANCE WITH
25 JANUARY 27TH ORDER, COMPLIANCE ON FEBRUARY 3RD.

1 OBVIOUSLY, IF THEY ARE ADDING THINGS AS ACCUSED
2 PRODUCTS LATER ON, NOT ONLY IS IT NOT LEGITIMATE
3 BECAUSE THEY DIDN'T SEEK LEAVE OF COURT LIKE WE
4 DID, IT DEMONSTRATES THEY THEMSELVES DID NOT THINK
5 THE PRODUCTS WERE IN.

6 I WANTED TO START WITH THIS BECAUSE
7 YOUR HONOR ASKED POINTED QUESTIONS ABOUT US NOT
8 PROVIDING THE DATA. THAT'S THE BASIS OF WHY
9 SAMSUNG DID NOT PROVIDE THE DATA.

10 THE COURT: I BELIEVE YOU INDICATED THAT
11 THOSE FACTS PERTAIN TO TWO OF THE THREE PRODUCTS
12 THAT WE WERE TALKING ABOUT. SO WHAT ABOUT THE
13 THIRD? WAS THAT ALSO THE SUBJECT OF THIS FAILED
14 EFFORT STIPULATION?

15 MS. MAROULIS: YOUR HONOR, I DON'T
16 BELIEVE THE THIRD ONE WAS SUBJECT TO THE
17 STIPULATION BUT THE THIRD WAS ADDED INTO THE
18 INTERROGATORY ON MARCH 4TH.

19 THE COURT: ALL RIGHT.

20 MS. MAROULIS: SO IT WAS BASICALLY --
21 WHAT I DID HERE IS I EXPLAINED TO YOUR HONOR THE
22 PROCEDURE AND WHY WE BELIEVE THIS IS NOT PART OF
23 THE CASE AND WHY WE PROPERLY SOUGHT THE LEAVE OF
24 COURT TO ADD PRODUCTS AND WERE DENIED IT AND APPLE
25 ENGAGED IN SELF HELP AND ADDED PRODUCTS WITHOUT

1 SEEKING LEAVE OF COURT. WE WILL ADDRESS THOSE
2 ISSUES LATER AS NEEDED BEFORE JUDGE KOH.

3 BUT THE REASONS PERTINENT TODAY IS WE
4 DIDN'T WANT YOUR HONOR TO THINK WE ARE DISREGARDING
5 THE ORDER IN ANY RESPECT. AND THIS IS ONE OF THE
6 ASPECTS THAT CAME UP IN THE ARGUMENT.

7 SO GOING BACK TO THE OVERALL MOTION THAT
8 APPLE PRESENTED --

9 THE COURT: I WANT TO GO BACK AND ALLOW
10 YOU TO MAKE THOSE REMARKS, MS. MAROULIS. I JUST
11 WANT TO UNDERSTAND WHAT YOU WOULD SUGGEST I DO.

12 SO IN ORDER TO RESOLVE THIS ISSUE IT
13 SEEMS TO ME I HAVE TO WEIGH IN ON WHETHER OR NOT
14 THESE PRODUCTS ARE IN FACT PART OF THIS CASE; IS
15 THAT FAIR?

16 MS. MAROULIS: YES, YOUR HONOR.

17 BUT TO THE EXTENT THAT THE COURT DEEMS
18 THAT THEY ARE PART OF THE CASE AND ORDERS US TO
19 SUPPLEMENT, IT SHOULD NOT BE A SANCTIONS MOTION IN
20 A SENSE BECAUSE IF THE PRODUCT IS NOT IN THE CASE
21 AND ARE LATER ADDED BY THE CASE.

22 IN OTHER WORDS, IF YOUR HONOR DEEMS THEM
23 ADDED TO THE CASE AND DECIDES THAT IT'S NOT PART OF
24 THE CASE, WE SHOULD BE ABLE TO SUPPLEMENT. IT
25 CANNOT BE A VIOLATION OF THE ORDER TO GIVE DATA ON

1 THE PRODUCTS THAT WERE NOT PART OF THE CASE
2 PREVIOUSLY TO THE ORDER.

3 THE COURT: AND WERE ANY FILINGS
4 SUBMITTED BY APPLE BEFORE MY ORDER THAT INDICATED
5 THAT ANY VERSION OF THE S2 FOR EXAMPLE IS AN
6 ACCUSED PRODUCT IN THIS CASE?

7 MS. MAROULIS: THEY DID NOT IDENTIFY THE
8 SPECIFIC MODELS THAT THEY ARE SEEKING HERE. S2
9 ITSELF WAS IN THE DRAFT ADDENDUM OR IN THE ADDENDUM
10 THEY SUBMITTED WITH THE WITH THE INFRINGEMENT
11 CONTENTIONS IN SEPTEMBER. AND IT WAS IN A DRAFT
12 FORM BECAUSE IT WAS NOT YET ON THE MARKET. THEN IT
13 CAME ON THE MARKET.

14 BUT ANOTHER THING YOUR HONOR THAT'S
15 IMPORTANT TO UNDERSTAND BECAUSE THIS IS A CASE THAT
16 HAS BOTH PATENT CLAIMS AND A SOFT IP, THESE MODELS
17 ARE DIFFERENT FROM EACH OTHER. PARTIES CAN ARGUE
18 WHETHER THEY ARE DIFFERENT IN MATERIAL RESPECTS OR
19 NOT, BUT BECAUSE SOME OF THE ACCUSATIONS GIVEN TO
20 THE SHAPE OF THE HARDWARE, DEPTH OF THE BEZEL,
21 VARIOUS THINGS THAT COULD BE PERCEPTIBLE, THEY ARE
22 DIFFERENT FROM EACH OTHER.

23 SO ADDING PRODUCTS AT LATE DATE DOES
24 PREJUDICE SAMSUNG IN A VARIETY OF WAYS IN ADDITION
25 TO THE FACT THAT THEY WERE NOT SUBJECT TO THE COURT

1 ORDER ON JANUARY 27TH.

2 THE COURT: SO BEFORE THE 27TH ORDER, IF
3 I UNDERSTAND WHAT YOU ARE TELLING ME, THERE WASN'T
4 ANYTHING FROM APPLE WHICH INDICATED THAT, FOR
5 EXAMPLE, THE T-MOBILE VERSION OF THE S2 THE
6 HERCULES WAS A PRODUCT THAT WAS ACCUSED OF
7 INFRINGING ONE OR MORE OF THE ASSERTED PATENTS IN
8 THIS CASE.

9 MS. MAROULIS: YOUR HONOR, HERCULES IS
10 NOT ONE OF THE MODELS WE ARE OBJECTING TO.

11 THE COURT: I'M SORRY, SKYROCKET.

12 MS. MAROULIS: THAT'S CORRECT,
13 YOUR HONOR.

14 WE DID NOT HAVE NOTICE PRIOR TO
15 SKYROCKET. THE ONLY NOTICE WE HAD WAS IN THOSE
16 DISCUSSIONS AND STIPULATIONS AND THAT'S WHY WE
17 ATTACHED THE STIPULATION.

18 I KNOW COUNSEL SAYS IT SHOULD BE
19 DISREGARDED BECAUSE IT DIDN'T AMOUNT TO ANYTHING,
20 IT IS AN INDICATION OF PARTIES' POSITION AND NOTICE
21 THEREOF.

22 THE COURT: SO AS TO THESE PRODUCTS WHICH
23 YOU BELIEVE HAS BEEN IMPROPERLY IDENTIFIED AS BEING
24 PART OF THIS CASE, ARE THOSE PRODUCTS AT ISSUE IN
25 THE FOLLOWING CASE? HAVE THEY BEEN IDENTIFIED

1 SPECIFICALLY?

2 MS. MAROULIS: I DON'T KNOW OFF HAND YOUR
3 HONOR.

4 SO GALAXY NEXUS IS WHICH IS ONE OF THE
5 ITEMS IN THE NEGOTIATION STIPULATION. BUT I CANNOT
6 TELL YOU STANDING HERE RIGHT NOW ACCURATELY WHETHER
7 SKYROCKET, EPIC 4G TOUCH AND THE LTE VERSION ARE.

8 I'M GOING TO ASK MY COLLEAGUES TO SEARCH
9 THE RECORD SO WE CAN GIVE YOU AN ACCURATE ANSWER.

10 THE COURT: WHILE THEY ARE DOING THAT,
11 AND I APPRECIATE THEIR EFFORTS, THE REASON I'M
12 ASKING IS AT SOME POINT IF THE PRODUCTS ARE ACCUSED
13 IN THE FOLLOWING CASE WHICH IS A CASE ASSIGNED TO
14 JUDGE KOH, WE ARE GOING TO BE BACK HERE ARGUING
15 OVER THE SAME DATA.

16 SO IF IT'S GOING TO BE PRODUCED SIX
17 MONTHS FROM NOW OR TODAY, WHY NOT JUST PRODUCE IT
18 TODAY?

19 MS. MAROULIS: YOUR HONOR, I WANT TO BE
20 CLEAR IF THE COURT ORDERS US TO PRODUCE IT WE WILL
21 PRODUCE IT.

22 THE COURT: YOU ARE HERE DEFENDING
23 YOURSELF AGAINST A CHARGE YOU VIOLATED MY ORDER.

24 MS. MAROULIS: THAT'S RIGHT.

25 SO WE ARE FOCUSED ON THE SCOPE OF THE

1 ORDER AND WHAT THE ORDER REQUIRED US TO DO. IF
2 THERE'S A SEPARATE MOTION TO COMPEL RECORDS,
3 OBVIOUSLY WE ARE SUBJECT TO THE COURT'S ORDER AND
4 PROCEDURE ACCORDINGLY.

5 THAT'S A GOOD PLACE TO SEGWAY BACK TO THE
6 SANCTIONS INQUIRY, WHICH IS WHAT IS THE SCOPE OF
7 THIS ORDER AND HAS THE PARTY COMPLIED WITH THE
8 ORDER?

9 WHEN WE WERE BEFORE YOUR HONOR ON THE
10 JANUARY 19TH HEARING WE EXPLAINED TO YOUR HONOR
11 THAT SHORTLY BEFORE APPLE MOVED TO COMPEL THE
12 FINANCIAL DOCUMENTS, THE PARTIES ATTEMPTED TO
13 ENGAGE IN A MEET AND CONFER DISCUSSION.

14 JANUARY 10TH LETTER WHICH IS REFERENCED
15 IN YOUR HONOR'S ORDER REPEATEDLY WAS SAMSUNG'S
16 ATTEMPT TO COMPROMISE TO AVERT MOTION PRACTICE.

17 IN THAT JANUARY 10TH LETTER THIS WAS A
18 VARIETY OF DOCUMENT CATEGORIES WE ADDRESSED. ONE
19 OF THEM WAS FINANCIAL RECORDS.

20 WITH RESPECT TO FINANCIAL RECORDS, WE
21 BROKE OUT SIX DIFFERENT CATEGORIES WHICH WE WERE
22 WILLING TO PRODUCE INFORMATION ON AND WHICH WE
23 THOUGHT IT WAS FAIR FOR APPLE TO ASK.

24 WHEN APPLE LATER MOVED TO COMPEL A DAY
25 LATER AFTER, REJECTING OUR OFFER, IN TO THE MOTION

1 WE STATED THE SAME SIX CATEGORIES. THOSE
2 CATEGORIES ARE LISTED AT SAMSUNG'S OPPOSITION TO
3 MOTION TO COMPEL ON PAGE 14.

4 AND FINALLY, WHEN WE APPEARED BEFORE YOU
5 AT THE HEARING, COUNSEL REITERATED THAT THAT WAS
6 OUR OFFER AND THAT IS WHAT WE WERE PLANNING TO
7 PRODUCE. SIX DISCREET CATEGORIES THAT WERE BROAD,
8 NOT EXHAUSTIVELY WHAT APPLE WAS SEEKING IN THAT
9 PROPOSED ORDER.

10 WHEN YOUR HONOR ISSUED THE ORDER WE READ
11 IT AND STARTED COMPLYING WITH IT. AND THE ORDER
12 SPECIFICALLY AT FOOTNOTE 34 REFERENCED THE PROFFER
13 THAT WE MADE THE IN THE JANUARY 10TH LATER AND WHAT
14 WE TOLD THE COURT IN OUR OPPOSITION.

15 SPECIFICALLY, PAGE 15 OF THE ORDER AND
16 FOOTNOTE 34 SAYS SEE DOCKET 642 AT 14 WHICH IS
17 OPPOSITION TO THE MOTION TO COMPEL. AND DOCKET
18 NUMBER 642-1 EXHIBIT 1 WHICH IS OUR JANUARY 10TH
19 LETTER.

20 SO IN ALL THESE THREE DIFFERENT
21 PRESENTATIONS, THE JANUARY 10TH LETTER, OPPOSITION
22 TO MOTION TO COMPEL AND THE HEARING ITSELF, SAMSUNG
23 WAS VERY CONSISTENT IN WHAT SAMSUNG WAS WILLING TO
24 PRODUCE. AND THAT WAS SIX DIFFERENT CATEGORIES OF
25 DAMAGES RELATED DATA.

1 ONE OF THEM IT ENDED UP WE DID NOT HAVE
2 ANY NON PRIVILEGED DOCUMENTS. SO WHEN WE DID
3 PRODUCE DOCUMENTS ON FEBRUARY 3RD AND BEFORE, WE
4 ACTUALLY PRODUCED THEM IN FIVE CATEGORIES. BUT WE
5 EXPLAINED TO APPLE, I DON'T THINK THAT PART HAS
6 BEEN CHALLENGED HERE, THAT WE DID NOT HAVE ANY NON
7 PRIVILEGED EVALUATIONS OF THE PATENTS IN SUIT.

8 APPLE DISAGREED WITH OUR INTERPRETATION
9 OF THE ORDER. BUT THEY DID NOT SEEK ANY KIND OF
10 CLARIFICATION FROM THE COURTS. INSTEAD THEY FILED
11 THIS MOTION FOR SANCTIONS.

12 THERE'S NO QUESTION, YOUR HONOR, THAT AS
13 TO THOSE SIX CATEGORIES SAMSUNG COMPLIED AND
14 SAMSUNG PRODUCED THE DATA IN VARIOUS FORMS THAT IT
15 TOLD THE COURT IT WOULD PRODUCE.

16 THE COURT: SO MS. MAROULIS, IS IT FAIR
17 THEN FOR ME TO UNDERSTAND THAT AS TO ANY
18 INFORMATION WHICH EXTENDS BEYOND THOSE SIX
19 CATEGORIES AND YET FALLS WITHIN THE SCOPE OF THAT
20 APPLE IS NOW SEEKING FROM SAMSUNG IS NOT COMPLIANT;
21 IS THAT FAIR?

22 MS. MAROULIS: YOUR HONOR, IF IT'S
23 OUTSIDE THOSE SIX CATEGORIES WE UNDERSTAND IT TO BE
24 OUTSIDE THE ORDER.

25 SO A LOT OF WHAT WE HEARD TODAY SEEMS

1 LIKE A MOTION TO COMPEL A NEW SET OF DOCUMENTS.

2 THE COURT: FAIR ENOUGH. WE WILL ADDRESS
3 THAT ISSUE IN DUE COURSE.

4 BUT I WANT TO MAKE SURE I UNDERSTAND. IS
5 IS IT CORRECT FOR ME TO UNDERSTAND THAT TO THE
6 EXTENT APPLE IS ASKING FOR ANYTHING MORE THAN THOSE
7 SIX CATEGORIES, IT HAS NOT RECEIVED THAT
8 INFORMATION FROM SAMSUNG.

9 MS. MAROULIS: GENERALLY YES, YOUR HONOR,
10 THERE MIGHT BE DOCUMENTS.

11 THE COURT: SURE SOME THINGS MAY OVERLAP.

12 MS. MAROULIS: YES, ABSOLUTELY.

13 WE PRODUCED 12,000 PAGES OF FINANCIAL
14 DATA FROM THE ITC PROCEEDINGS WHERE WE HAVE CROSS
15 USE AGREEMENT.

16 I CANNOT SPEAK FOR EVERY PAGE OF IT BUT
17 GENERALLY SPEAKING BECAUSE OUR UNDERSTANDING OF THE
18 ORDER IS LIMITED TO THOSE SIX CATEGORIES, BUT IF
19 THERE'S SPECIFIC DOCUMENT THAT IS APPLE IS SEEKING
20 TODAY AND WE BELIEVE ARE NOT PART OF THE ARE ORDER,
21 WE LIKELY DID NOT PRODUCE THEM UNLESS IT WAS ALSO
22 RESPONSIVE TO OTHER CATEGORIES.

23 AND HERE YOUR HONOR, IT'S IMPORTANT TO
24 NOTE THAT AFTER THE MOTION PRACTICE OR CERTAINLY
25 AFTER THE JANUARY 27TH ORDER, APPLE SERVED ANOTHER

1 SET OF DOCUMENT REQUESTS. AND THOSE DOCUMENT
2 REQUESTS APPLE WAS VERY SPECIFIC THEY WANTED
3 PRELIMINARY REPORTS, THEY WANTED FLUX REPORTS, THEY
4 WANTED CONSOLIDATED PROFITS.

5 THE COURT: ARE YOU IN A POSITION TO TELL
6 ME WHAT A PRUNI REPORT IS?

7 MS. MAROULIS: YOUR HONOR, I DON'T WANT
8 TO GO INTO A CONFIDENTIAL MATTER, BUT IT'S MY
9 UNDERSTANDING IT'S AN AD HOC REPORT PREPARED FOR
10 MANAGEMENT'S CONSIDERATION. AND I THINK IT'S
11 FUTURE FORECASTING NOT ACTUALS AS OPPOSED TO WHAT
12 WE HAVE PRODUCED, AND WE HAVE PRODUCED ACTUALS.

13 AND I'M TRYING TO BE VERY CAREFUL HERE
14 BECAUSE IT'S CONFIDENTIAL.

15 THE COURT: I UNDERSTAND.

16 MS. MAROULIS: MY COLLEAGUE CORRECTED ME,
17 IT'S NOT AD HOC, IT'S MORE REGULAR, BUT IT'S NOT
18 PART OF THE AUDITED STATEMENTS.

19 THE COURT: IT'S NOT SOMETHING THAT WOULD
20 BE SUBMITTED -- IT'S A MANAGEMENT REPORT.

21 MS. MAROULIS: THAT'S CORRECT,
22 YOUR HONOR.

23 SO THE FACT THAT APPLE LATER SERVED
24 SPECIFIC DOCUMENT REQUESTS ASKING FOR ALL THE
25 DIFFERENT DOCUMENTS DEMONSTRATES THAT THEY WERE NOT

1 PART OF THE ORIGINAL MOTION PRACTICE.

2 AND I APOLOGIZE YOUR HONOR AGAIN, BUT
3 SINCE YOUR HONOR DID ASK THE QUESTION, MY
4 COLLEAGUES INFORM ME THAT SKYROCKET AND EPIC ARE
5 ACCUSED IN CASE TWO THAT YOUR HONOR WILL BE --

6 THE COURT: SO WE ARE GOING DEALING WITH
7 THIS AT SOME POINT OR ANOTHER.

8 MS. MAROULIS: THAT APPEARS TO BE
9 CORRECT, FOR THE RECORD.

10 SO GOING BACK TO WHAT WAS AND WAS NOT
11 WITHIN THE SCOPE OF THE ORDER OF.

12 SO HOW DID SAMSUNG COMPLY WITH THE ORDER
13 IN THE SIX CATEGORIES OF DOCUMENTS IT PRODUCED?

14 FIRST OF ALL, WHILE THE SPREADSHEET WAS
15 THE FOCUS OF COUNSEL'S ARGUMENT, THAT IS NOT THE
16 ONLY FINANCIAL DOCUMENT WE HAVE PRODUCED. AND I
17 RECALL MR. MCELHINNY TWO WEEKS AGO THEY SAY THEY
18 PRODUCED ONE PAGE. THAT'S NOT PROPER. IT'S NOT A
19 ONE PAGE, IT'S MULTIPLE PAGES DOCUMENT WITH ALL THE
20 ATTACHMENTS AND ALL THE WORKSHEETS.

21 BUT MORE IMPORTANTLY, THAT IS NOT THE
22 ONLY DOCUMENT WE HAVE PRODUCED. WE PRODUCED
23 ADDITIONAL SALES REPORTS, CLOSING REPORTS, VARIOUS
24 CARRIER DOCUMENTS THAT SHOW WHO IS SELLING WHAT.

25 WE HAVE ATTACHED OUR MOTION PAPERS THE

1 DECLARATION OF JOBY MARTIN, THE LIST OF SOME OF THE
2 FINANCIAL DOCUMENTS AND IN OUR BRIEFS WE EXPLAIN
3 WHAT OTHER DOCUMENTS WE HAVE. SO IT'S ABSOLUTELY
4 CLEAR THE SPREADSHEET SENT IS THE ONLY DOCUMENT
5 APPLE RECEIVED.

6 THE COURT: IS IT ALSO CLEAR THAT NONE OF
7 THE INFORMATION IN ANY OF THOSE DOCUMENTS PROVIDES
8 APPLE WITH THE INFORMATION THEY ARE SEEKING BY THIS
9 MOTION AND WHICH EXTENDS OUTSIDE OF THE SCOPE OF
10 THOSE SIX CATEGORIES?

11 MS. MAROULIS: YES AND NO. FOR SOME OF IT
12 YES, FOR SOME OF IT NO.

13 FOR EXAMPLE COST AND BILL OF MATERIALS
14 ARE NOT PART OF IT, FLUX REPORTS ARE PROBABLY NOT,
15 BUT VARIOUS OTHER DATA THAT THEY ARE CLAIMING THEY
16 DON'T HAVE CAN BE CALCULATED BY TAKING EXISTING
17 DOCUMENTS WITH THE SUPPORT OF THE DEPOSITION
18 TESTIMONY, AND YOUR HONOR SHOULDN'T UNDERSTAND THAT
19 NOW MR. SIMMS WHO IS A VERY HIGH LEVEL EXECUTIVE
20 WHICH MR. OLSON CONCEDED WAS DEPOSED TWICE AND
21 MR. SHEPPARD WAS DEPOSED THREE TIMES IN THIS CASE
22 ALONE, NOT COUNTING ITC.

23 SO NOT ONLY HAVE WE PRODUCED ENORMOUS
24 AMOUNTS OF DOCUMENTS AND FINANCIAL TOPICS, APPLE
25 FOLKS HAVE NOW HAD BETWEEN 5 AND 7 OPPORTUNITIES TO

1 SPEAK WITH OUR VARIOUS FINANCE PEOPLE WHO ARE VERY
2 HIGH LEVEL INDIVIDUALS.

3 THEY WILL ALSO HAVE AN OPPORTUNITY SPEAK
4 WITH THE CFO OF STA, MR. CHUNG, PURSUANT TO THE
5 APEX ORDER.

6 SO THERE'S BEEN NO SHORTAGE OF
7 OPPORTUNITY --

8 THE COURT: I'M GLAD SAMSUNG VIEWS IT AS
9 AN OPPORTUNITY, I APPRECIATE THAT CHARACTERIZATION.

10 I DIDN'T MEAN TO INTERRUPT YOU THOUGH, GO
11 ON.

12 MS. MAROULIS: YOUR HONOR, THE POINT
13 BEING HERE IS THAT A LOT OF ARGUMENTS YOU HEARD
14 TODAY WAS HOW THEY ARE GOING TO ARGUE THEIR DAMAGES
15 CASE. AND I SUBMIT THAT'S NOT A PROPER FORM HERE
16 NOW. A LOT OF IT IS SUBSTANTIVE.

17 HOW DO YOU COUNT PROFITS? DO YOU GO WITH
18 CONSOLIDATED OR OTHERS? THERE'S GOING TO BE
19 DISPUTES BETWEEN THE PARTIES AS TO HOW TO CALCULATE
20 DAMAGES, AND THEY ARE GOING TAKE FORMS OF VARIOUS
21 MOTION PRACTICE OR CROSS-EXAMINATION OF EXPERTS AT
22 TRIAL.

23 IT DOESN'T PROBABLY SURPRISE YOUR HONOR
24 THAT THE PARTIES DON'T SEE EYE TO EYE ABOUT HOW TO
25 COUNT PROFITS, DAMAGES AND ALLOCATIONS.

1 BUT THE IMPORTANT POINT HERE IS THAT WE
2 ARE HERE ON A MOTION FOR SANCTIONS. THEY ARE
3 SAYING WE VIOLATED THE COURT'S ORDER AND WE HAVE
4 NOT. WE HAVE PRODUCED DATA AND WE HAVE PRODUCED
5 EVIDENCE.

6 AND GETTING BACK NOW FROM --

7 THE COURT: MS. MAROULIS, I'M SORRY AGAIN
8 FOR INTERRUPTING, I KEEP DOING THAT. BUT YOU RAISE
9 A LOT OF IMPORTANT POINTS I NEED TO FLUSH OUT.

10 IS THE FUNDAMENTAL PROBLEM HERE, JUST TO
11 UP LEVEL ALL OF THIS, THAT I WAS WOEFULLY DEFICIENT
12 IN ARTICULATING EXACTLY WHAT IT WAS YOU WERE TO
13 PRODUCE?

14 MS. MAROULIS: YOUR HONOR, WE DON'T
15 BELIEVE YOU WERE DEFICIENT BECAUSE IN CITING TO OUR
16 FEBRUARY, JANUARY 10TH LETTER IN OUR OPPOSITION YOU
17 REFERENCED THE PROFFER THAT SAMSUNG MADE TO THE
18 COURT. WE ACTUALLY THINK IT'S VERY CLEAR.

19 THE COURT: AND IF MY UNDERSTANDING WAS
20 THAT WAS SAMSUNG'S PROFFER MAPPED OR WAS
21 COEXTENSIVE WITH WHAT APPLE WAS SEEKING BY THAT
22 MOTION, YOU ARE TELLING ME TODAY MY UNDERSTANDING
23 OF WAS INCORRECT?

24 MS. MAROULIS: YOUR HONOR, I DON'T THINK
25 THAT'S CORRECT BECAUSE THEY SUBMITTED A 3 OR 4 PAGE

1 PROPOSED ORDER WITH THEIR MOTION TO COMPEL ON MANY
2 DIFFERENT CATEGORIES BESIDES FINANCIAL. AND IN THE
3 COURSE OF THE HEARING THERE WAS GIVE AND TAKE BY
4 COUNSEL AND THE COURT'S UNDERSTANDING, AND WE
5 UNDERSTOOD THE COURT TO ADOPT OUR PROFFER AS TO THE
6 FINANCIAL DOCUMENTS IN THE JANUARY 10TH LETTER.
7 BECAUSE THAT IS QUITE A BIT OF INFORMATION.

8 AGAIN, WHEN WE ARE TALKING ABOUT
9 SPREADSHEET, I DON'T WANT US TO BE HUNG UP ON THE
10 FACT IT'S ONE SPREADSHEET EVEN THOUGH IT'S A
11 HUNDRED PAGES. IT'S A SPREADSHEET THAT ASSIMILATES
12 INFORMATION FROM A DATABASE, A DATABASE KEPT IN THE
13 ORDINARY COURSE OF BUSINESS. AND IT'S A
14 SPREADSHEET THAT THEY THEMSELVES ASKED US FOR.

15 IN HIS DEPOSITION IN SUPPORT OF APPLE'S
16 MOTION TO COMPEL, MR. OLSON SWORE UNDER PENALTY OF
17 PERJURY THAT IN HIS EXPERIENCE COMPANIES HAVE THESE
18 DATABASES YOU CAN QUERY THEM AND PRODUCE THE
19 REPORTS BY THE PUSH OF THE BUTTON.

20 SAMSUNG PREPARED SUCH --

21 THE COURT: IT'S TRUE, THESE REPORTS ARE
22 PRODUCED ALL THE TIME IN AN ELECTRONIC FORMAT.

23 MS. MAROULIS: RIGHT.

24 THE COURT: IT MAY NOT BE ONE BUTTON YOU
25 HAVE PUSH, OR HOWEVER MANY.

1 MS. MAROULIS: IT'S MORE THAN ONE BUTTON.
2 YOUR HONOR ASKED THE QUESTION OF OPPOSING
3 COUNSEL WHETHER IF THERE'S ANYTHING WRONG WITH THE
4 FORMULA, AND NO THERE'S NOT. PEOPLE CAN ASK HOW
5 THE FORMULA WAS DERIVED OR WHAT FORMULA WAS
6 APPLIED --

7 THE COURT: DID YOU HAVE ANY OBJECTION TO
8 TENDERING OF THAT INFORMATION TO APPLE WHEN THEY
9 PUT IT TO YOU?

10 MS. MAROULIS: I DON'T BELIEVE WE
11 OBJECTED TO THOSE QUESTIONS IN DEPOSITION.

12 I WAS NOT PRESENT IN MR. SHEPPARD OR
13 MR. SIMMS' DEPOSITIONS.

14 SO, MR. ALDEN?

15 MR. ALDEN: I DON'T BELIEVE SO,
16 YOUR HONOR.

17 THE COURT: MR. SIMMS SURE SEEMS TO HAVE
18 BEEN INSTRUCTED NOT TO ANSWER AS TO HOW TO ALLOCATE
19 THE BREAKDOWN IN MATERIAL OF MANUFACTURING COSTS;
20 WHY WAS THAT SO? HOW IS THAT AN OBJECTIONABLE
21 QUESTION IN A DEPOSITION? IT MAY NOT BE SOMETHING
22 YOU AGREE WITH, HOW IS IT OBJECTIONABLE?

23 MS. MAROULIS: YOUR HONOR, MR. SIMMS
24 ANSWERED THE OTHER QUESTIONS AND HE TESTIFIED THAT
25 HE DIDN'T BELIEVE THAT AFFECTED ANY OF THE TOTALS

1 AND ANY OF THE ITEMS IN THE SPREADSHEET.

2 THE COURT: SO ISN'T IT THE RIGHT ANSWER
3 THEN, I DON'T KNOW, OR YES OR NO?

4 WHAT'S THE BASIS FOR TELLING A WITNESS
5 NOT TO ANSWER A QUESTION ON THAT POINT? IS THERE
6 ONE?

7 MS. MAROULIS: YOUR HONOR, THIS IS VERY
8 SENSITIVE, CONFIDENTIAL INFORMATION, AND I CONCEDE
9 IT'S PRIVILEGED.

10 THE COURT: YOU CAN SEE THAT THE
11 CONFIDENTIALITY OF THE RESPONSE IS NOT AN
12 APPROPRIATE BASIS TO INSTRUCT A WITNESS NOT TO
13 ANSWER, RIGHT?

14 MS. MAROULIS: YOUR HONOR, IT'S NOT WHAT
15 WE USUALLY DO AND I THINK THAT'S THE ONLY --

16 THE COURT: SO WOULD YOU AGREE IT WAS AN
17 IMPROPER INSTRUCTION?

18 MS. MAROULIS: IT WAS AN INSTRUCTION
19 INTENDED TO PRESERVE THE CONFIDENTIALITY OF
20 INFORMATION THAT THE WITNESS TESTIFIED DID NOT
21 AFFECT THE INFORMATION IN THE SPREADSHEET.

22 THE COURT: SO WAS IT IMPROPER?

23 MS. MAROULIS: YOUR HONOR, WE'VE HAD SOME
24 DEPOSITION TESTIMONY HERE IN THIS CASE WHERE
25 PARTIES AGREED WHERE AN INSTRUCTION OF

1 CONFIDENTIALITY GROUNDS WAS APPROPRIATE. AND THE
2 SPECIFIC CATEGORY I'M THINKING ABOUT IS FUTURE
3 PRODUCTS.

4 THE COURT: BUT THIS QUESTION ISN'T
5 DIRECTED TO FUTURE PRODUCTS.

6 MS. MAROULIS: THAT'S CORRECT,
7 YOUR HONOR.

8 I'M TRYING TO THINK WHETHER IT'S ALWAYS
9 INAPPROPRIATE. AND IN THIS CASE WE'VE HAD
10 SITUATIONS WHERE PARTIES AGREE, IN THIS CASE
11 THERE'S NO AGREEMENT, WHERE CONFIDENTIALITY
12 INSTRUCTION IS OKAY.

13 THE COURT: SO IT MAY HAVE BEEN OKAY IN
14 OTHER CONTEXTS, BUT I'M ASKING IN THIS CONTEXT.

15 WAS IT PROPER FOR YOUR COLLEAGUE TO TELL
16 THIS WITNESS TO NOT ANSWER A QUESTION ABOUT COST
17 ALLOCATION?

18 MS. MAROULIS: YOUR HONOR, IT WOULD HAVE
19 BEEN EASIER TO STAND HERE IF THERE WAS NO
20 SANCTIONS, BUT THE INSTRUCTION WAS GIVEN BASED ON
21 THE WITNESS'S SENSE OF HOW CONFIDENTIAL THIS
22 INFORMATION IS AND WHETHER IT'S NECESSARY OR NOT.

23 THE COURT: SO CAN YOU TELL ME WHETHER IT
24 WAS PROPER OR NOT IN YOUR VIEW?

25 MS. MAROULIS: I THINK IT WAS APPROPRIATE

1 UNDER THE CIRCUMSTANCES.

2 THE COURT: ON WHAT BASIS IS IT
3 APPROPRIATE TO INSTRUCT A WITNESS NOT TO ANSWER A
4 QUESTION ON HOW ON TO ALLOCATE LINES ON THE
5 FINANCIAL SPREADSHEET; WHERE IS THAT ANYWHERE IN
6 THE FEDERAL RULES?

7 MS. MAROULIS: YOUR HONOR, APPLE REFUSED
8 TO ANSWER QUESTIONS --

9 THE COURT: THEY MAY HAVE MADE THEIR OWN
10 MISTAKES BUT I'M ASKING ABOUT THIS PARTICULAR
11 CIRCUMSTANCE.

12 WAS IT A MISTAKE, WAS IT IMPROPER FOR AN
13 ATTORNEY TO INSTRUCT A WITNESS IN A DEPOSITION NOT
14 TO ANSWER A QUESTION ON COST ALLOCATION?

15 MS. MAROULIS: I DON'T THINK IT WAS
16 IMPROPER, BUT I WISH WE HAD THE ANSWER ON THE
17 RECORD.

18 THE COURT: SO YOU THINK IT WAS PROPER?

19 MS. MAROULIS: AGAIN, YOUR HONOR,
20 SOMETIMES THE INSTRUCTIONS ARE DONE ON A
21 CONFIDENTIALITY BASIS.

22 THE COURT: ALL RIGHT. LET'S MOVE ON.

23 MS. MAROULIS: AND THIS WAS ONE OF THEM.

24 GOING BACK TO FEBRUARY, THE SPREADSHEETS,
25 ONE OF THE IMPORTANT POINTS TO MAKE HERE IS THAT

1 AFTER WE PRODUCED THE INITIAL SPREADSHEET, APPLE
2 COMPLAINED ABOUT LACK OF DETAIL.

3 WE BELIEVE THAT SAMSUNG COMPLIED WITH THE
4 COURT ORDER ON THE LEVEL OF DETAIL IT PROVIDED.
5 HOWEVER, IN ORDER TO AMELIORATE ANY FUTURE
6 DISPUTES, WE HAVE AGREED TO PROVIDE ADDITIONAL
7 DETAIL.

8 SO YOU HEARD ABOUT SEVERAL SUPPLEMENTAL
9 SPREADSHEETS, AND IT'S TRUE THAT AT LEAST ONE OF
10 THEM WAS TO CORRECT ERROR BECAUSE WE LEFT OFF ONE
11 ACCUSED PRODUCT. IT WAS INADVERTENT. WE DON'T
12 THINK IT RAISES TO THE LEVEL OF A VIOLATION. AS
13 SOON AS WE SPOTTED THAT WE PUT THAT PART BACK IN.

14 YOUR HONOR ASKED ABOUT BEFORE, OTHER
15 SUPPLEMENTATION OF THE SPREADSHEETS HAD TO DO WITH
16 BREAKING OUT MORE DATA. THEY COMPLAINED ABOUT
17 EXPENSES NOT BEING BROKEN OUT. WE PRODUCED
18 SPREADSHEETS THAT HAD BROKEN OUT INSURANCE, LABOR,
19 ET CETERA, VARIOUS OTHER EXPENSES. THEY COMPLAINED
20 THAT A COUPLE OF MODELS WERE ROLLED INTO ONE AND WE
21 ESSENTIALLY BROKE THEM OUT.

22 I COULD GO, IF YOUR HONOR WANTED, THROUGH
23 ALL THE DIFFERENT VERSIONS OF THE SPREADSHEETS BUT
24 I THINK MORE IMPORTANTLY WHAT IT IS, IS THAT WE
25 SHOULD NOT BE PENALIZED FOR TRYING TO GIVE APPLE

1 THE DETAIL THEY WANTED EVEN THOUGH WE DID NOT
2 BELIEVE THE DETAIL WAS APPROPRIATE OR --

3 THE COURT: SO MS. MAROULIS, IS IT YOUR
4 POSITION THEN THAT THE INFORMATION TENDERED AS OF
5 THE DEADLINE OF FEBRUARY 23RD DEADLINE WAS FULLY
6 COMPLIANT WITH MY ORDER?

7 MS. MAROULIS: YOUR HONOR, IT WAS FULLY
8 COMPLIANT WITH YOUR ORDER WITH ONE VERY SMALL
9 EXCEPTION. IT LEFT OFF ONE MODEL WHICH I THINK WE
10 ADDED FEBRUARY 10TH.

11 THE COURT: ALL RIGHT.

12 MS. MAROULIS: I DON'T THINK APPLE ARGUED
13 THAT PARTICULAR --

14 THE COURT: LET'S PUT THAT ADDITIONAL
15 MODEL OR OMITTED MODEL TO THE SIDE. IT SHOULD HAVE
16 BEEN INCLUDED, IT WASN'T. YOU'VE ACKNOWLEDGED THAT
17 I ACCEPT THAT ACKNOWLEDGEMENT.

18 OTHER THAN THAT WERE THERE ANY OTHER
19 ERRORS OR SHORTCOMINGS IN THE PRODUCTION AS OF
20 FEBRUARY 3RD?

21 MS. MAROULIS: YOUR HONOR, THERE WERE NO
22 SHORTCOMINGS.

23 THERE'S AN ISSUE OF THE FOREIGN
24 SUBSIDIARY PROFITS THAT WAS RAISED AND THAT'S AN
25 ISSUE WHERE THEY'RE FRAMING US AS SOMEHOW HIDING

1 IT.

2 BASICALLY THE ORIGINAL SPREADSHEET
3 INCLUDED THAT. IT SHOULDN'T HAVE INCLUDED THAT
4 BECAUSE IT'S SOMEBODY ELSE'S PROFITS. BUT ONCE
5 THAT WAS DISCOVERED, THAT WAS REMOVED. HOWEVER
6 THEY HAVE IT, THEY HAVE THE FEBRUARY 3RD
7 SPREADSHEET SO THEY KNOW ABOUT THIS, NO ONE IS
8 HIDING THE EXISTENCE OF THAT NUMBER OR THOSE
9 PROFITS AND THEY ARE FREE TO ARGUE AND THEY'LL
10 ARGUE LATER ON AT TRIAL THAT THIS SHOULD BE COUNTED
11 FOR THEM NOT FOR US.

12 THE COURT: BUT THAT INFORMATION WAS NOT
13 PRODUCED IN ANY OF THE SUBSEQUENT VERSIONS,
14 CORRECT?

15 MS. MAROULIS: IT WAS TAKEN OUT OF THE
16 SPREADSHEET, CORRECT.

17 THE COURT: WHEN THEY TOLD YOU WE WOULD
18 LIKE IT BACK IN, WHAT'S YOUR OBJECTION?

19 MS. MAROULIS: OUR OBJECTION IS THAT IT'S
20 NOT PROPER BECAUSE IT'S NOT PROFITS OF AN ENTITY
21 THAT'S AN ACCUSED DEFENDANT IN THIS CASE.

22 THE COURT: RIGHT.

23 SO YOU HAVE A DISPUTE ON THE MERITS AS TO
24 WHETHER THOSE PROFITS ARE PROPERLY COUNTED IN A
25 U.S. FOCUSED DAMAGES MODEL. BUT FOR PURPOSES OF

1 DISCOVERY ONCE THEY EXPLAIN TO YOU, WE WOULD LIKE
2 TO TAKE A DIFFERENT POSITION IN OUR EXPERT REPORTS
3 AND AT TRIAL, WHAT'S YOUR OBJECTION TO PRODUCING
4 IT?

5 MS. MAROULIS: IN THE SENSE OF WHAT THEY
6 PRODUCED ON FEBRUARY 3RD, IT WAS IN THE SPREADSHEET
7 IT WAS JUST TAKEN OUT OF IT.

8 SO MY UNDERSTANDING IS THAT MR. MUSIKA
9 ACTUALLY ARE RELIES ON IT AND USES THAT NUMBER.

10 THE COURT: SURE.

11 HE DIDN'T GET ANY INFORMATION AFTER
12 FEBRUARY 3RD, SO WHAT WAS YOUR OBJECTION TO SIMPLY
13 PUTTING IT BACK IN WHEN THEY ASKED YOU FOR IT?
14 THEY DID ASK YOU FOR IT, RIGHT?

15 MS. MAROULIS: THEY ARGUED THEY ARE
16 ENTITLED THOSE PROFITS AND WE ARGUE THEY ARE NOT.

17 THE COURT: RIGHT.

18 SO HOW CAN YOU HAVE A SUBSTANTIVE DEBATE
19 ABOUT THAT ISSUE WITHOUT GIVING THEM THE
20 INFORMATION AND ALLOW THAT DEBATE TO TAKE PLACE?

21 MS. MAROULIS: I'M SORRY, YOUR HONOR, I'M
22 HAVING TROUBLE FIGURING OUT THE QUESTION. IS THE
23 ISSUE --

24 THE COURT: YEAH. LET ME REFRAME THE
25 QUESTION BECAUSE PERHAPS I'M BEING UTTERLY UNCLEAR.

1 PRIOR TO FEBRUARY 3RD YOU GAVE A VERSION
2 OF THE SPREADSHEET WHICH INCLUDED INFORMATION ABOUT
3 A PARTICULAR SAMSUNG ENTITY.

4 AFTER FEBRUARY 3RD MULTIPLE VERSIONS OF
5 THAT SAME SPREADSHEET WAS PRODUCED BY SAMSUNG. AND
6 YET IN NONE OF THOSE SUBSEQUENT VERSIONS WAS THAT
7 FOREIGN ENTITY'S DATA INCLUDED, EVEN THOUGH APPLE
8 SPECIFICALLY ASKED YOU FOR IT AND EXPLAINED YOU
9 THEY WERE ASKING FOR IT BECAUSE THEY WISHED TO MAKE
10 A CLAIM AS TO THOSE PROFITS ASSOCIATED WITH THAT
11 ENTITY, SO WHY WOULDN'T YOU SIMPLY PRODUCE IT?

12 MS. MAROULIS: OKAY.

13 YOUR HONOR, I'M ACTUALLY CORRECTED BY MY
14 PARTNER MR. ALDEN WHO SAYS APPLE DID NOT ASK US TO
15 RE INCLUDE THAT NUMBER.

16 THE COURT: SO THE FIRST YOU HEARD OF
17 THIS WAS IN THE MOTION THAT WAS FILED IN THIS
18 COURT?

19 MR. ALDEN: YOUR HONOR, IF I MAY.

20 THE COURT: GO AHEAD.

21 MR. ALDEN: SAMSUNG PRODUCED A VERSION OF
22 THE SPREADSHEET ON FEBRUARY 3RD THAT INCLUDED THE
23 DATA FROM THE CHINESE MANUFACTURING SUBSIDIARIES.

24 IT THEN PRODUCED A REVISED VERSION ON
25 FEBRUARY 28TH THAT ALSO INCLUDED THAT DATA.

1 IT WAS SUBSEQUENTLY DISCOVERED THAT THE
2 DATA THAT WAS PROVIDED FOR DEFENDANT STC DID NOT
3 JUST INCLUDE STC'S DATA BUT THE DATA OF TWO CHINESE
4 MANUFACTURING SUBSIDIARIES.

5 SO IN THE SUBSEQUENT VERSION WE ZEROED
6 OUT THE PROFITS OF THOSE SUBSIDIARIES BECAUSE IT'S
7 APPLE'S POSITION, AS YOUR HONOR NOTED, THAT APPLE
8 IS NOT ENTITLED TO THOSE PROFITS.

9 HOWEVER, APPLE HAS THE SAME DATA AND IN
10 FACT HAS NEVER REQUESTED THAT WE ADD THAT DATA BACK
11 IN.

12 I BELIEVE APPLE'S POINT IS, WHICH
13 OBVIOUSLY WE DISAGREE WITH, APPLE'S POINT IS WE
14 CAN'T RELY ON THE SPREADSHEETS BECAUSE THEY'VE
15 REMOVED DATA FROM IT AND WE DO NOT KNOW WHAT ELSE
16 THEY'VE REMOVED.

17 I DON'T THINK THAT --

18 THE COURT: SO IF THE DATA THAT'S IN
19 DISPUTE ON THIS POINT HASN'T CHANGED, IF I
20 UNDERSTAND YOU, WHAT'S THE OBJECTION TO JUST GIVING
21 THEM WHAT THEY ASK FOR IN THE SUBSEQUENT VERSIONS?

22 MR. ALDEN: YOUR HONOR, I DON'T THINK WE
23 WOULD HAVE, I WOULD NEED TO CONSULT WITH THE
24 CLIENT, BUT I DON'T THINK WE WOULD HAVE A PROBLEM,
25 FOR EXAMPLE, ADDING A LINE TO THE SPREADSHEET THAT

1 WE'VE PRODUCED THAT PUTS BACK IN OR SHOWS
2 SEPARATELY THE CHINESE MANUFACTURING SUBSIDIARY'S
3 PROFIT BECAUSE IT'S DATA THEY ALREADY HAVE. IT
4 WOULD JUST BE SHOWN ON THE LATEST VERSION OF THE
5 SPREADSHEET.

6 THE COURT: RIGHT. PRODUCED SUBJECT TO
7 CERTIFICATION OR VERIFICATION THAT THE INFORMATION
8 IS ACCURATE.

9 MR. ALDEN: YES, YOUR HONOR.

10 THE COURT: OKAY. SO THERE IS NO
11 OBJECTION HERE. YOU ARE HAPPY TO PRODUCE THAT
12 INFORMATION TO THEM?

13 MR. ALDEN: YES.

14 MS. MAROULIS: THEY ALREADY HAVE THE
15 INFORMATION.

16 THE COURT: I UNDERSTAND.

17 THEY ARE APPARENTLY UNSATISFIED AND WOULD
18 LIKE TO HAVE THE INFORMATION IN A SINGLE
19 SPREADSHEET OR A SINGLE VERSION OF THE SPREADSHEET.

20 WHAT'S THE OBJECTION TO SIMPLY GIVING IT
21 TO THEM?

22 MS. MAROULIS: WE CAN GIVE THAT,
23 YOUR HONOR.

24 THIS STILL GOES BACK TO WHAT I WAS GOING
25 TO TOUCH ON AT THE VERY END OF THE ARGUMENT ABOUT

1 REMEDIES THEY SEEK. BUT ONE OF THE REMEDIES I
2 UNDERSTAND THEM TO SEEK IS THAT YOUR HONOR ORDERED
3 A WHOLE BUNCH OF NEW DOCUMENTS PRODUCED AND THEY
4 GET TO USE THEM BUT WE DO NOT.

5 THE COURT: WE WILL GET TO THAT IN A
6 MOMENT.

7 BUT ON THIS POINT, IF I UNDERSTAND YOUR
8 POSITION, YOU DON'T HAVE ANY OBJECTION TO PRODUCING
9 THE INFORMATION RELATED TO THE CHINESE ENTITIES
10 THAT WAS PRODUCED IN THE FIRST VERSION OR TWO OF
11 THIS DOCUMENT?

12 MS. MAROULIS: YES, YOUR HONOR. WITH ONE
13 IMPORTANT CLARIFICATION WHICH IS WE COULD PRODUCE
14 IT BUT THAT CANNOT BE A VIOLATION -- IT BEING IN OR
15 OUT CANNOT BE A VIOLATION OF THE COURT'S ORDER OF
16 JANUARY 27TH BECAUSE THE ORDER APPLIED TO THE
17 DEFENDANTS IN THIS CASE NOT FOREIGN SUBSIDIARIES.

18 SO THEM HAVING IT OR NOT HAVING IT OR
19 ADDING IT BACK SHOULD NOT BE SOMETHING THAT AFFECTS
20 YOUR HONOR'S ANALYSIS OF WHETHER THE COURT ORDER
21 HAS BEEN VIOLATED.

22 AND IN SOME WAYS --

23 THE COURT: SO IT'S YOUR --

24 MS. MAROULIS: SO IN SOME --

25 THE COURT: NO, GO AHEAD. I INTERRUPTED

1 YOU.

2 MS. MAROULIS: IN SOME WAYS A LOT OF WHAT
3 YOUR HONOR HEARD TODAY FROM COUNSEL FOR APPLE AND
4 BY NECESSITY FROM ME HAS TO GO TO THE MERITS OF THE
5 DAMAGES CASE WHICH IS WHAT SHOULD BE COUNTED BY
6 WHOM AND WHEN AND AT WHAT STAGE, WHAT'S PROPER AND
7 WHAT'S NOT.

8 AND I SUBMIT, YOUR HONOR, THAT'S NOT A
9 PROPER INQUIRY ON A MOTION WHERE SAMSUNG IS ACCUSED
10 OF VIOLATING A COURT ORDER WHEN THE SOLE ISSUE
11 SHOULD BE WHAT'S THE SCOPE OF THE ORDER COMPLIED
12 WITH. WHICH I SUBMIT WE DID.

13 THE COURT: ALL RIGHT.

14 SO ON THIS ISSUE OF THE PROFITS
15 ASSOCIATED, OR THE DATA I WILL SAY ASSOCIATED WITH
16 THE CHINESE ENTITY, YOUR POSITION HAS BEEN YOUR
17 EARLY PRODUCTION IS NOTWITHSTANDING, THIS DATA IS
18 NOT RELEVANT BECAUSE IT RELATES TO AN ENTITY OTHER
19 THAN THOSE ACCUSED OF INFRINGEMENT IN THIS CASE.

20 MS. MAROULIS: THAT'S CORRECT,
21 YOUR HONOR.

22 THE COURT: THEY HAVE EXPLAINED I THINK
23 MULTIPLE TIMES THAT THEY UNDERSTAND PERFECTLY WELL
24 WHO IS THE DEFENDANT AND WHO IS NOT IN THIS CASE,
25 AND YET UNDER THEIR ECONOMIC THEORY, THE PROFITS

1 ASSOCIATED WITH THE CHINESE ENTITY ARE FAIR GAME,
2 RIGHT?

3 SO HAVING RECEIVED THAT EXPLANATION, AND
4 YOU ARE RIGHT, WE ARE HERE IN A DISCOVERY POSTURE
5 WE ARE NOT HERE ON THE MERITS, WHY WOULDN'T THE
6 RESPONSE TO THAT BE, OF COURSE YES, HERE'S THE
7 INFORMATION, IN FACT WE GAVE IT TO YOU ONCE OR
8 MAYBE TWICE, BUT WE HAVE NO PROBLEM GIVING IT TO
9 YOU A THIRD OR FOURTH TIME, SURE.

10 MS. MAROULIS: YOUR HONOR, POSSIBLY IT'S
11 BECAUSE WE DO NOT WANT TO CONCEDE IN ANY WAY THE
12 PROPRIETY OF DAMAGES ANALYSIS ON THAT NUMBER.

13 THE COURT: RIGHT.

14 BUT ONE MAKES AN ARGUMENT ON THE
15 PROPRIETY OF THAT CLAIM IN RESPONSE OR IN PURSUIT
16 OF A DAUBERT MOTION OR CROSS-EXAMINATION OF THE
17 WITNESS, BUT YOU DON'T DO THAT IN DISCOVERY, RIGHT?

18 MS. MAROULIS: THAT'S CORRECT,
19 YOUR HONOR.

20 AND THAT'S ACTUALLY OUR POINT AS WELL
21 WHICH IS A LOT OF COMPLAINTS WE HEARD TODAY ARE
22 COMPLAINTS THAT APPLE CAN AND WILL AND I'M SURE
23 ADDRESS IN THE CROSS-EXAMINATION AT TRIAL.

24 THE COMPLAINTS WERE HEARD ABOUT VARIOUS
25 VERSIONS OF SPREADSHEETS, WHAT WAS IN OR WHAT WAS

1 OUT AND ALLEGED ERRORS. THAT'S SOMETHING WE WILL
2 CONFRONT OUR WITNESSES WITH.

3 THEY NOW HAVE 5 TO 7 DEPOSITION
4 TRANSCRIPTS AND I'M SURE THEY WILL EAGERLY
5 CROSS-EXAMINE THE WITNESSES AT TRIAL USING THE
6 TRANSCRIPTS AND USING THE SPREADSHEETS.

7 THIS DOES NOT GO TO WHETHER SAMSUNG
8 COMPLIED WITH THE ORDER. THIS GOES TO APPLE'S
9 DISAGREEMENT OF THE LEVEL OF DATA OR WHAT'S IN THE
10 DATA OR HOW THE DATA CAN BE USED. AS MOST LIKELY
11 EVIDENCED BY THIS ISSUE OF THE ALLOCATION OF THE
12 FOREIGN SUBSIDIARY.

13 THE COURT: MS. MAROULIS, WHAT IS YOUR
14 OBJECTION TO PRODUCING DOCUMENTS ALONG THE LINES OF
15 SHEPPARD EXHIBIT 1926? THIS IS THE CONSOLIDATED
16 PACKAGE DOCUMENT WHICH IS TAB 12 OF THE MATERIALS
17 APPLE GAVE ME.

18 MS. MAROULIS: YOUR HONOR, I'M INFORMED
19 WE ACTUALLY PRODUCED THESE DOCUMENTS PREVIOUSLY.

20 THE COURT: WELL, I UNDERSTAND THAT THIS
21 DOCUMENT WAS PRODUCED.

22 MS. MAROULIS: NOT JUST THIS ONE BUT
23 OTHERS LIKE IT.

24 THE COURT: SO YOU HAVE NO OBJECTION?

25 MS. MAROULIS: WE DON'T HAVE OBJECTION TO

1 -- I BELIEVE WE DON'T HAVE OBJECTION TO PRODUCING
2 IT.

3 I HAVEN'T HAD A CHANCE TO CONSULT WITH MY
4 CLIENT, BUT AGAIN, I WANT TO MAKE CLEAR TO THE
5 EXTENT THERE'S NOW REQUESTS FOR DOCUMENTS IN THIS
6 MOTION THAT READS LIKE A MOTION TO COMPEL. THAT
7 SHOULD BE DETERMINED BY A DIFFERENT STANDARD THAN A
8 MOTION FOR SANCTIONS.

9 THE COURT: WELL, HERE'S MY POINT:
10 LOOKING AT SHEPPARD 1926, IS THERE REALLY ANY
11 SERIOUS QUESTION THAT SHOULD HAVE BEEN PRODUCED IN
12 RESPONSE TO THE ORIGINAL RFP TO SAY NOTHING OF MY
13 ORIGINAL DISCOVERY ORDER?

14 MS. MAROULIS: YOUR HONOR, I CANNOT, NOT
15 BEING AN ACCOUNTING EXPERT AND HAVING THIS HOISTED
16 ON ME BEFORE ARGUMENT WITHOUT AN ABILITY TO CHECK
17 ON WHAT THIS DOCUMENT IS, I CANNOT ANSWER YOUR
18 QUESTION AS TO WHETHER IT WAS PRODUCED IN RFP OR
19 NOT.

20 I DON'T BELIEVE IT FALLS INTO THE
21 CATEGORIES WE AGREED TO PRODUCE, BUT I'M VERY
22 UNCOMFORTABLE MAKING THE DECISION WITHOUT HAVING AN
23 OPPORTUNITY TO READ THE DOCUMENT.

24 AND I'M ALSO INFORMED WE PRODUCED THOSE
25 AND I SEE THEY HAVE AN ITC NUMBER ON THEM. I KNOW

1 OUR PRODUCTION IS FAIRLY WIDE RANGED IN THE ITC AND
2 I DON'T KNOW WHEN WE PRODUCED IT, HOW MANY, AND
3 WHETHER IT WAS BEFORE OR AFTER FEBRUARY 3RD.

4 THE COURT: RIGHT.

5 I'M TRYING TO UNDERSTAND SAMSUNG'S
6 INTERPRETATION OF MY ORDER. AND I ASK ABOUT THIS
7 PARTICULAR DOCUMENT BECAUSE IT WOULD SEEM TO ME
8 READING MY ORDER AND LOOKING AT THIS DOCUMENT, THAT
9 THIS DOCUMENT FALLS KIND OF SQUARELY WITHIN THE
10 SCOPE OF THE ORDER.

11 SO IF IT TURNS OUT THAT DOCUMENTS OF THIS
12 TYPE WERE NOT PRODUCED BY FEBRUARY 3RD, IT WOULD
13 SEEM TO ME SAMSUNG DID NOT COMPLY AND I WANT TO
14 MAKE SURE I UNDERSTAND WHETHER YOU AGREE WITH THAT
15 ASSESSMENT OR NOT.

16 MS. MAROULIS: YOUR HONOR, WHEN WE
17 PREPARED THE PRODUCTION IN RESPONSE TO THE ORDER BY
18 FEBRUARY 3RD, IT WAS OUR UNDERSTANDING THAT WE
19 OBLIGATED OURSELVES AND THE COURT OBLIGATED US BY
20 THE ORDER TO PRODUCE CATEGORIES OF DOCUMENTS THAT
21 WE DISCUSSED.

22 THERE PROBABLY ARE SOME DOCUMENTS
23 THROUGHOUT THE COMPANY, SOME AD HOC REPORTS OR
24 SPREADSHEETS ATTACHED TO E-MAILS THAT WOULD BE OF
25 THE TYPE OF DOCUMENTS HERE. BUT WHAT WE

1 UNDERSTOOD, WE WERE BASICALLY PRODUCING DOCUMENTS
2 WITHIN THOSE CATEGORIES SUFFICIENT FOR APPLE TO
3 CALCULATE ITS DAMAGES CLAIM.

4 AGAIN, I APOLOGIZE YOUR HONOR FOR NOT
5 BEING ABLE TO QUICKLY GIVE YOU THIS REPORT NOR CAN
6 I TELL YOU WHETHER IT WAS PRODUCED BEFORE OR AFTER
7 FEBRUARY 3RD.

8 THE COURT: SO WHEN MR. SHEPPARD
9 TESTIFIES AT SOME LENGTH ABOUT WHAT HE AND HIS TEAM
10 CAN OR CANNOT DO WITHIN A CERTAIN PERIOD OF TIME,
11 WOULD YOU AGREE THAT THE BURDEN OF PRODUCING THE
12 MATERIAL IS NOT ALL THAT SIGNIFICANT GIVEN THE
13 CENTRALITY OF THE CLAIM?

14 MS. MAROULIS: YOUR HONOR, I BELIEVE THE
15 TESTIMONY WAS THAT IT WOULD TAKE THREE OF HIS TEAM
16 MEMBERS TWO WEEKS. AND APPLE REPEATEDLY ARGUED
17 THAT SOMETHING A LOT LESS BURDENSOME IS BURDENSOME.

18 BUT MORE TO THE POINT HERE, YOUR HONOR'S
19 ORDER CAME OUT ON JANUARY 27TH AND THE DEADLINE WAS
20 FEBRUARY 3RD.

21 SO CERTAINLY IF THIS DOCUMENT WERE WITHIN
22 THE ORDER, THAT COULD NOT HAVE HAPPENED BECAUSE TO
23 ASSEMBLE THE INFORMATION WHICH SHEPPARD SUGGESTED
24 IT WOULD TAKE SEVERAL PEOPLE SEVERAL WEEKS. AND
25 YES IT'S POSSIBLE, DOABLE, OBVIOUSLY.

1 AND YOUR HONOR, AGAIN, I WANT TO GO BACK
2 TO THE SPREADSHEET SITUATION WHICH IS THAT
3 SPREADSHEET CONTAINED AMOUNTS OF DATA. IT'S DATA
4 THAT COMES FROM AN AUDITED DATABASE, IT'S DATA THAT
5 --

6 THE COURT: THIS IS -- I DON'T NEED TO
7 KNOW, BUT IF YOU HAPPEN TO KNOW, DOES THIS HAPPEN
8 TO BE AN SAP OR ORACLE DATABASE?

9 MS. MAROULIS: I'M NOT SURE.

10 THE COURT: IS IT A FINANCIAL PACKAGE
11 LICENSED BY A LARGE SCALE ENTERPRISE RESOURCE?

12 MS. MAROULIS: YES.

13 THE COURT: I GET IT. OKAY.

14 SO WE ARE TALKING ABOUT SOME TYPE OF ERP
15 SYSTEM.

16 MS. MAROULIS: RIGHT.

17 YOUR HONOR, IT'S AN ACCEPTED SYSTEM
18 BECAUSE APPLE IS RELYING ON VARIOUS CASES IN THEIR
19 MOTION AND THERE WAS A CASE WHERE SOMEBODY DID A
20 ONE PAGE SPREADSHEET AND JOTTED DOWN THREE BULLETS
21 AND THE COURT SAID THAT'S NOT SUFFICIENT.

22 WHAT WE ARE TALKING ABOUT HERE IS WE ARE
23 TALKING ABOUT A DATABASE THAT IS EXTENSIVE THAT'S
24 APPROVED THAT MANY OTHER LARGE COMPANIES USE FOR
25 THEIR BUSINESS. AND THAT'S WHERE THEY STORE

1 HUNDREDS AND THOUSANDS OF PIECES OF DATA AND
2 FINANCES. AND THIS IS THE DATABASE THAT THEY USE
3 BOTH FOR BUSINESS PURPOSES AND IF NEEDED FOR
4 PURPOSES LIKE THIS.

5 RATHER THAN BEING WHAT APPLE CALLS
6 LITIGATION INSPIRED DOCUMENTS, IT'S AN OUTTAKE FROM
7 THE DATABASE. AND IT'S A METHOD APPROVED NOT JUST
8 IN PATENT CASES BUT ANY OTHER JUDICIAL CASES, AND
9 THAT'S WHAT PEOPLE DO BECAUSE MOST COMPANIES DON'T
10 KEEP FINANCIALS ON A PRODUCT-BY-PRODUCT BASIS.
11 WHICH IS WHAT LITIGATION TYPICALLY RESOLVES AROUND.

12 MOST COMPANIES HAVE THESE THINGS ROLLED
13 UP TO DIVISIONS OR UNITS OR SOMETHING MORE MACRO,
14 AND WHEN YOU NEED MICRO, SOMETIMES YOU NEED TO GO
15 TO DATABASE.

16 SO IN PRODUCING THIS INFORMATION WE
17 PRODUCED TO THEM DATA ON REVENUES, PROFITS, SALES.
18 AND IF IT'S THE INFORMATION THAT THEY ASK FOR, IT'S
19 THE INFORMATION WE AGREED DO PRODUCE.

20 AND IT'S VERY EXTENSIVE INFORMATION, IT'S
21 A LOT OF DATA GOES INTO THIS SPREADSHEET BECAUSE A
22 LOT OF DATA RESIDES IN THAT DATABASE.

23 IN OUR SUPPLEMENTAL PLEADING WE PUT
24 TOGETHER A DECLARATION THAT DESCRIBED THE EFFORT
25 INVOLVED IN THAT. YOUR HONOR, I DON'T KNOW IF IT'S

1 EVEN STRICTLY NECESSARY BECAUSE IT'S A BUSINESS
2 RECORD THAT COMES FROM THE DATABASE OF BUSINESS
3 RECORDS.

4 BUT TO THE EXTENT THERE'S ANY QUESTION OF
5 THE CARE IN WHICH IT WAS ASSEMBLED AND WHAT WENT
6 INTO IT, WE HAVE THE DECLARATION OF MR. KIM
7 ADDRESSING THAT.

8 SO YOUR HONOR, I KNOW THAT WE HAVE
9 SEVERAL OTHER MOTIONS SO I WOULD LIKE TO PROCEED
10 NOW TO THE FINAL PIECE OF APPLE'S MOTION WHICH IS
11 THE REMEDIES THEY SEEK.

12 AND NONE OF THE CASES THAT THEY RELY ON
13 ARE REMOTELY SIMILAR TO THIS CASE. IN ALL THE
14 CASES THAT APPLE RELIES ON, THERE WAS SOME REALLY
15 GROSS, WOEFUL MISCONDUCT INVOLVED.

16 THERE WERE INDIVIDUALS WHO DIDN'T SHOW UP
17 TO COURT HEARING, THERE WERE INDIVIDUALS WHO DIDN'T
18 PAY SANCTIONS MOTIONS. THERE WERE PEOPLE WHO SENT
19 THREATENING E-MAIL TO ADVERSARY, MADE DEFAMATORY
20 STATEMENTS, AND THERE WERE PEOPLE WHOSE COMPLAINTS
21 WERE DISMISSED PRIOR TO THAT SANCTIONS MOTION
22 BECAUSE OF THEIR CONDUCT.

23 SO WE ARE ON A COMPLETELY DIFFERENT
24 PLANE. SAMSUNG'S GOOD FAITH PRODUCTIONS AND
25 DEALINGS WITH THIS ORDER AND WITH APPLE AND SHOWING

1 THAT AFTER WE PRODUCED WHAT WE NEEDED TO PRODUCE WE
2 CONTINUED TO SUPPLEMENT CANNOT POSSIBLY BE ON PAR
3 WITH THESE CONDUCTS.

4 THE COURT: SO MS. MAROULIS, WHAT WOULD
5 YOU SUGGEST IS THE APPROPRIATE SANCTION TO COUNSEL
6 WHO REPEATEDLY INSTRUCTED A WITNESS NOT TO ANSWER
7 ON THE BASIS OTHER THAN PRIVILEGE OR HARASSMENT?

8 WHAT SHOULD THIS COURT DO IN ORDER TO
9 MOTIVATE AND INCENT THE RIGHT BEHAVIOR IN
10 DEPOSITIONS LIKE THE TYPE THAT WE SEE IN THIS
11 DISTRICT ALL THE TIME?

12 MS. MAROULIS: YOUR HONOR, IF YOUR HONOR
13 FINDS THAT SOME QUESTIONS WERE NOT ANSWERED WHEN
14 THEY SHOULD HAVE BEEN, YOUR HONOR CAN COMPEL THE
15 ANSWER TO THE QUESTIONS.

16 THE COURT: IT WOULD SEEM TO ME WE ARE
17 PAST THAT STAGE, RIGHT?

18 COMPELLING COMPLIANCE WITH THE RULE IS
19 ONE THING. SANCTIONING A PARTY FOR VIOLATING A
20 PRETTY WELL ESTABLISHED NORM OF DEPOSITION PRACTICE
21 IS ANOTHER.

22 I'M CURIOUS, WHAT WOULD YOU SUGGEST THIS
23 COURT CONSIDER AS AN APPROPRIATE SANCTION FOR THAT
24 VERY NARROW ACT?

25 MS. MAROULIS: YOUR HONOR, WHILE I DON'T

1 AGREE THAT WE VIOLATED THE ORDER, BUT TO THE EXTENT
2 THERE IS A QUESTION OF WHAT HAS TO BE DONE ABOUT
3 THAT, I SAY THAT RE DEPOSITION OF THE WITNESS IN
4 ORDER TO ANSWER THE QUESTIONS IS WHAT I WOULD
5 SUGGEST.

6 GETTING BACK TO APPLE'S SANCTIONS
7 REQUEST, NONE OF THE CASES THEY CITE IN THEIR
8 PAPERS HAVE SUPPORT FOR WHAT THEY ASKED FOR HERE.
9 WHICH IS THEY WANT NO LESS THAN TO STRIP SAMSUNG OF
10 CONSTITUTIONAL RIGHTS TO CROSS-EXAMINATION.

11 WHAT THEY WANT IS THEY WANT TO ADD
12 ADDITIONAL DOCUMENTS THAT WERE NEVER ORDERED
13 PRODUCED IN THE FIRST PLACE AND IF THEY ARE ORDERED
14 TO PRODUCE, THE EXPERT CAN USE THEM, CAN RELY ON
15 THEM WITHOUT SUBMITTING EXPERT REPORTS AND CAN
16 TESTIFY AT TRIAL WITHOUT SAMSUNG'S ABILITY TO
17 CROSS-EXAMINE THEM.

18 THE COURT: LET'S ASSUME I SHARE YOUR
19 CONCERN ABOUT, IF NOT THE CONSTITUTIONALITY, AT
20 LEAST THE FAIR NECESSARY OF THAT TYPE OF REMEDY.

21 WHAT IS THE APPROPRIATE REMEDY IN A
22 SITUATION WHERE A PARTY FAILS TO PRODUCE DOCUMENTS
23 ORDERED BY A COURT, EXPERT REPORTS ARE TENDERED,
24 DEPOSITIONS ARE HAPPENING, WHAT SHOULD BE THE RIGHT
25 SOLUTION TO THAT PROBLEM? ASSUMING THERE IS A

1 PROBLEM, I UNDERSTAND YOU DON'T BELIEVE THERE IS
2 ANY PROBLEM.

3 MS. MAROULIS: YOUR HONOR, ASSUMING IF
4 YOUR HONOR FINDS THERE WAS A PROBLEM THEN WE WOULD
5 NEED TO PRODUCE ADDITIONAL DATA. THEIR EXPERT CAN
6 SUBMIT SUPPLEMENTAL REPORT AND WE WOULD NEED TO
7 DEPOSE HIM ON THE SUPPLEMENTAL REPORT.

8 THIS IS A VERY TIGHT SCHEDULE. WE ARE
9 FACING FAR MORE PREJUDICE THAN THEY HAVE. WE
10 SUBMITTED UNDER MOTION, TO SEAL THE REPORT OF THEIR
11 DAMAGES EXPERT. IT'S A VERY EXTENSIVE REPORT, I
12 DID NOT TALK ABOUT IT HERE BUT HE CLEARLY DID NOT
13 SEEM VERY HAMSTRUNG BY ANYTHING WE'VE DONE. HE HAS
14 NUMBERS, EXHIBITS, ANALYSIS, HE'S ANALYZED ALL
15 KINDS WAS DATA.

16 SO I SUBMIT TO YOUR HONOR THAT THE
17 IMPORTANT POINT OF INQUIRY SANCTIONS MOTION
18 PREJUDICE, AND THERE'S NO PREJUDICE THERE, BUT TO
19 YOUR QUESTION OF WHAT SHOULD THE APPROPRIATE
20 SANCTION BE IF WE ARE ORDERED TO PRODUCE MORE AND
21 IF THERE'S A DETERMINATION WE SHOULD HAVE PRODUCED
22 MORE, HE CAN DO A SUPPLEMENTAL REPORT AND WE ARE
23 GOING TO HAVE TO DEPOSE HIM WHILE WE ARE DOING
24 EVERYTHING ELSE AT THE SAME TIME WHICH IS VERY
25 BURDENSOME RIGHT NOW IN THIS CASE WHEN WE HAVE 50

1 TO 60 EXPERT DEPOSITIONS COMING UP.

2 SO THAT WOULD BE MY RESPONSE TO
3 YOUR HONOR'S SPECIFIC QUESTION.

4 THE COURT: ALL RIGHT.

5 WELL, WE DO HAVE OTHER MOTIONS TO TEND
6 TO. UNLESS THERE'S ANYTHING FURTHER, I WILL TAKE
7 ONE LAST POINT THEN I REALLY NEED TO MOVE ON.

8 MS. MAROULIS: YOUR HONOR, DO YOU HAVE
9 ANY SPECIFIC QUESTIONS FROM ME? I COVERED MOST OF
10 WHAT I PLAN TO --

11 THE COURT: I HAVE ONE LAST QUESTION.

12 YOU'VE BEEN VERY PATIENT IN ANSWERING MY
13 MANY QUESTIONS THUS FAR. BUT ONE LAST QUESTION I
14 HAVE FOR YOU ON THIS TOPIC, WHY DID YOU REDACT THE
15 BUSINESS PLANS AND WHAT OBJECTION WOULD YOU HAVE TO
16 PRODUCING UN REDACTED VERSIONS?

17 MS. MAROULIS: I NEED TO CONSULT
18 MR. ALDEN BECAUSE WE'VE REDACTED SOME DOCUMENTS FOR
19 FUTURE PRODUCTS.

20 OKAY. IT IS MY UNDERSTANDING,
21 YOUR HONOR, THAT WHAT WAS REDACTED WAS FORECAST FOR
22 FUTURE, NOT THE ACTUAL NUMBERS. AND WE HAVE
23 PRODUCED THE ACTUAL NUMBERS AND THAT'S WHAT THEY
24 NEED FOR THE DAMAGES.

25 THE COURT: WHAT'S THE BASIS FOR

1 OBJECTING OR FOR REFUSING TO PRODUCE FORECASTED
2 REVENUE?

3 IN MANY WAYS ISN'T THAT THE MOST
4 IMPORTANT RELEVANT INFORMATION IN THE DAMAGES, THE
5 FORECAST OF WHAT YOUR EXPECTATIONS WERE AT A
6 PARTICULAR GIVEN POINT IN TIME?

7 MS. MAROULIS: YOUR HONOR, THE PARTIES
8 WERE PRETTY CAREFUL IN THIS CASE TO NOT GO INTO THE
9 FUTURE.

10 FOR EXAMPLE, WE WERE DENIED AN
11 OPPORTUNITY TO QUESTION ANYONE ABOUT FUTURE
12 FORECAST IN PRICING, I BELIEVE. AT LEAST IN ONE
13 DEPOSITION I PERSONALLY TOOK I WASN'T ALLOWED TO GO
14 INTO THE PRICING OF THE FUTURE.

15 THE COURT: OKAY.

16 SO AGAIN, LET'S ASSUME FOR THE MOMENT
17 APPLE COMMITTED A GRIEVOUS SIN AS WELL; WHAT'S THE
18 EXPLANATION OR JUSTIFICATION FOR YOURS?

19 MS. MAROULIS: IT'S -- YOUR HONOR,
20 BECAUSE THERE ARE TWO COMPETITORS AND WE ARE
21 CONCERNED ABOUT CONFIDENTIALITY. THE FUTURE
22 CONDUCT OF THE PARTIES IN THE FUTURE AND PRODUCTS
23 FORECASTS WE ARE JUST MORE CAREFUL ABOUT.

24 THE COURT: ALL RIGHT.

25 MS. MAROULIS: THAT WAS THE INFORMATION

1 WE REDACTED. I APPRECIATE YOUR HONOR LISTENING.

2 THE COURT: THANK YOU, MS. MAROULIS. I
3 APPRECIATE IT.

4 BRIEF REBUTTAL, THEN WE NEED TO TURN TO
5 THE OTHER MOTIONS.

6 MS. TUCHER: THANK YOU, YOUR HONOR.

7 I WAS FLOORED TO HEAR THE PHRASE THAT THE
8 S2 WAS LATER ADDED TO THE CASE WITH AN
9 INTERROGATORY RESPONSE AMENDED ON MARCH 4TH. AND
10 THE COMPARISON TO THE IPHONE 4S I THINK IS INAPT.

11 WHAT JUDGE KOH DID IN RULING THAT THE
12 IPHONE 4S WAS NOT PART OF THIS CASE WAS TO RULE IT
13 WAS TOO LATE FOR SAMSUNG TO AMEND IT'S INFRINGEMENT
14 CONTENTIONS.

15 WE ARE ARGUING HERE PRECISELY THAT IT'S
16 THE INFRINGEMENT CONTENTIONS THAT APPLE FILED THAT
17 MAKE CLEAR THAT THE S2 WAS IN THE CASE.

18 MS. MAROULIS SAYS, WELL, NOT ALL S2 ARE
19 THE SAME BUT SHE DIDN'T GIVE YOU A BASIS FOR
20 DISTINGUISHING AMONG S2'S EXCEPT TWO OF THEM
21 HAPPENED TO BE MENTIONED IN THE NEGOTIATION HISTORY
22 ABOUT SOMETHING THAT WAS NEVER FINALLY RESOLVED.

23 THE COURT: ARE EITHER OF THESE VERSIONS
24 OF THE S2 ACCUSED IN THE FOLLOW-ON CASE?

25 MS. TUCHER: I DO KNOW THAT NONE OF

1 THE -- THE FOLLOW-ON CASE, NONE OF THE SAME
2 INTELLECTUAL PROPERTY THAT'S IN THIS CASE.

3 THE COURT: DIFFERENT PATENTS, I GET
4 THAT. BUT WHAT ABOUT PRODUCT?

5 MS. TUCHER: I DON'T THINK INFRINGEMENT
6 CONTENTIONS HAVE BEEN FILED IN THE NEW CASE YET.
7 SO I DON'T THINK WE CAN GIVE YOU A DEFINITIVE
8 ANSWER ON THAT.

9 THE COURT: DID YOU IDENTIFY THEM IN THE
10 COMPLAINT?

11 MS. TUCHER: I DON'T KNOW THE ANSWER TO
12 THAT.

13 THE OTHER THING IS MS. MAROULIS DID NOT
14 EVEN MENTION THE TAB 10.1 OR PROVIDE AN EXPLANATION
15 FOR WHY WE WERE ENTITLED TO DAMAGES ONLY AS TO THE
16 WIFI VERSION AND NOT THE LTE VERSION OF THE TAB
17 10.1.

18 I ALSO WANTED TO REMOVE FROM YOUR
19 SHOULDERS ANY RESPONSIBILITY FOR SAMSUNG'S
20 MISUNDERSTANDING WITH YOUR ORDER.

21 I READ VERY CLEARLY THERE THAT IT'S THE
22 CATEGORIES APPLE LISTED THAT SAMSUNG WAS ORDERED TO
23 PRODUCE DATA ON. AND THE PLACE THAT APPLE LISTED
24 CATEGORIES IS IN OUR PROPOSED ORDER FOR THE DAMAGES
25 MOTION YOU WERE RULING ON THERE.

1 SO I DON'T SEE HOW THEY COULD INTERPRET A
2 FOOTNOTE THAT HAD ONLY CITATIONS TO REFERENCES AS
3 IN ANY WAY COUNTERMANDING THE CLEAR LANGUAGE OF THE
4 ORDER.

5 BUT MOREOVER, IF YOU LOOK AT THE
6 OPPOSITION THAT THEY FILED WHICH IS ONE OF THE TWO
7 DOCUMENTS YOU REFERENCED, THERE'S UNEQUIVOCAL
8 LANGUAGE IN THAT OPPOSITION, IN FACT IN BOLD AND IN
9 HEADLINES, ABOUT HOW THEY WILL GIVE ALL OF THE
10 DOCUMENTS APPLE HAS ASKED FOR.

11 SO I DON'T THINK MS. MAROULIS'S ATTEMPTS
12 TO SAY THAT MY REQUEST HERE FOR ADDITIONAL
13 DOCUMENTS ARE A NEW MOTION TO COMPEL ARE AT ALL
14 WELL FOUNDED.

15 SHE ALSO REFERENCED THE ORAL ARGUMENT
16 BETWEEN THE PARTIES. AND WHILE I WASN'T HERE, I
17 HAVE READ THE TRANSCRIPT AND I DID SEE DISCUSSION
18 OF BILLS AND MATERIALS IN THE CONTEXT OF FINANCIAL
19 DOCUMENTS AND DID SEE THAT ON HER SIDE COUNSEL SAID
20 WELL, WE THINK IT'S OVER KILL. BUT HE FOLLOWED IT
21 IMMEDIATELY WITH THE LINE, WE WILL LOOK FOR THEM.

22 SO I DON'T SEE HOW BASED ON THE ORAL
23 ARGUMENT, BASED ON THE FILES OR BASED ON YOUR ORDER
24 THEY COULD SAY IN GOOD FAITH THAT THEY THOUGHT IN A
25 MEET AND CONFER LETTER THEY WROTE SOMEHOW MET THE

1 METES AND BOUNDS OF WHAT THEY WERE OBLIGATED TO
2 PRODUCE IN RESPONSE TO YOUR ORDER.

3 JUST A NARROW POINT NOW, YOU KNOW THE
4 INCLUDED FORECAST, I WANT TO MAKE SURE YOU KNOW
5 THEY INCLUDE ACTUALS NOT JUST FORECASTS.

6 WHILE THEY MAY NOT BE PUBLICLY REPORTED,
7 THEY DO GO ALL THE WAY UP THE CHAIN IN SAMSUNG
8 KOREA SO THEIR NUMBERS ARE RELIED UPON --

9 THE COURT: THEY ARE NUMBERS THAT MATTER.

10 MS. TUCHER: THEY ARE NUMBERS THAT
11 MATTER, THEY ARE NUMBERS THAT HAVE BEEN GIVEN A
12 WHOLE LOT MORE REVIEW AND THOUGHT THAN THE NUMBERS
13 PROVIDED IN THE SPREADSHEET.

14 AND WHILE WE HAVE NO OBJECTION TO A
15 SPREADSHEET, OR I WOULDN'T HAVE SPOKEN SO MUCH
16 ABOUT THIS MORNING, WE DON'T THINK THAT'S A
17 SUBSTITUTE FOR PROVIDING A REPORT THAT ALREADY
18 EXISTS.

19 AND FINALLY ON THE QUESTION OF REMEDY, I
20 WANT TO POINT OUT WE DIDN'T ASK FOR PRECLUSIVE
21 SANCTIONS HERE. I WOULDN'T BE OPPOSED IF
22 YOUR HONOR WANTED TO SAY AN APPROPRIATE SANCTION
23 FOR THEIR BEHAVIOR, AND THEY MAY NOT CONTEST
24 MR. MUSIKA'S DAMAGES ANALYSIS, BUT I'M NOT ASKING
25 FOR THAT AND IT'S BECAUSE OF THAT THAT I DON'T

1 THINK WE HAVE TO PROVE ANYTHING BEYOND WHAT WE'VE
2 ALREADY PROVEN IN TERMS OF THEIR MISCONDUCT IN THIS
3 CASE.

4 AND ALSO IF YOUR HONOR DECIDES THAT YOU
5 WANT TO ORDER SUPPLEMENTAL REPORT FOR MR. MUSIKA, I
6 WOULD ASK YOU TO ALSO ORDER THAT SUPPLEMENTAL
7 REPORTS FROM THE DAMAGES EXPERTS ON THEIR SIDE,
8 INCLUDING AT A MINIMUM AN EXPERT BY THE NAME OF
9 O'BRIEN AND AN EXPERT BY THE NAME TIES.

10 AND WE HAVEN'T RECEIVED THEIR REBUTTAL
11 REPORTS, SO I DON'T KNOW IF THERE ARE OTHERS. BUT
12 ANY KIND OF EXPERT ON THE SAMSUNG SIDE THAT DOES
13 DAMAGES ANALYSIS SHOULD BE REQUIRED TO FILE A
14 SUPPLEMENTAL REPORT.

15 THE COURT: I DON'T WANT TO PUT WORDS IN
16 YOUR MOUTH, BUT WOULDN'T YOU PREFER THERE NOT BE A
17 REPORT AND SIMPLY WE WOULD BE ABLE TO EXCLUDE ANY
18 TESTIMONY ON THAT SUBJECT AT TRIAL ON THE BASIS
19 THAT THEY DIDN'T CLOSE THEY WEREN'T AUTHORIZED TO
20 DISCLOSE?

21 MS. TUCHER: YOUR HONOR, I WOULD
22 CERTAINLY GO BACK TO MY ORIGINAL THAT THEY BE
23 REQUIRED TO KEEP THEIR TESTIMONY LIMITED, AND THAT
24 WOULD BE FACT AND EXPERT TESTIMONY LIMITED TO WHAT
25 THEY PRODUCED BY FEBRUARY 3RD.

1 I DON'T WANT TO DETRACT FROM THAT. I HAD
2 IN SOME SENSE YOU WEREN'T GOING GIVE ME EVERYTHING
3 I ASKED FOR, BUT I WANT TO MAKE CLEAR THAT IF YOU
4 DECIDE WHETHER YOU THINK IT'S APPROPRIATE, THEY
5 HAVE EXPERTS ON THEIR SIDE THAT SUBMITTED REPORTS
6 THAT MAY NEED SUPPLEMENTING.

7 TO THE EXTENT YOU WERE PRESSING ON THE
8 QUESTION OF THE FOREIGN SUBSIDIARY DATA THAT WAS
9 GIVEN TO US AND THEN TAKEN OUT, IT'S NOT JUST THAT
10 WE SAW IT ONCE, AND THAT WE KNOW EVERYTHING WE NEED
11 TO KNOW, WE NEVER GOT DATA WITH REGARD TO THE
12 HERCULES PRODUCT BECAUSE THAT CORRECTION CAME
13 LATER. AND WE, OF COURSE, DIDN'T GET AN
14 OPPORTUNITY TO EXAMINE THE WITNESS ON IT BECAUSE
15 THAT WAS THE INSTRUCTION NOT TO ANSWER.

16 THE COURT: ALL RIGHT.

17 THANK YOU VERY MUCH.

18 ALL RIGHT. WELL, WE HAVE TWO OTHER
19 MOTIONS TO ADDRESS. I DO NEED TO GIVE THE COURT
20 REPORTER A BREAK, SO WHY DON'T WE STAND IN RECESS
21 FOR TEN MINUTES.

22 WE WILL TAKE THIS UP AT 12:00 AND KEEP
23 GOING.

24 (WHEREUPON A RECESS WAS TAKEN.)

25 THE COURT: I WANT TO TURN NEXT TO

1 SAMSUNG'S MOTION TO, AND IN PARTICULAR THE MOTION
2 TO COMPEL REGARDING COMPLIANCE WITH MY DECEMBER
3 22ND ORDER, TRANSCRIPTS OF MATERIALS, ET CETERA.

4 SO WHO WILL BE ARGUING ON BEHALF OF THE
5 MATTER PARTIES THIS MOTION?

6 MS. HUTNYAN: I WILL, YOUR HONOR.

7 MS. TUCHER: BEFORE WE TURN TO THAT CAN I
8 JUST RAISE ONE THING LEFT OVER BEFORE THE BREAK?

9 I MENTIONED BUT FORGOT TO COME BACK TO
10 THE MATERIALS THAT WERE IN THE BINDER THAT I HANDED
11 UP THAT WERE NOT IN THE RECORD BECAUSE THEY
12 POSTDATED REPLY. I MAY SEEK ORALLY HERE NOW THE
13 COURT'S LEAVE TO FILE UNDER SEAL JUST THOSE
14 SEGMENTS WITHOUT COMMENT?

15 THE COURT: YOU MAY SEEK LEAVE. I'M
16 GOING TO DENY THAT REQUEST.

17 I'M NOT TAKING ANY OF THESE LATE
18 SUBMISSIONS. YOU GUYS ALL KNOW HOW TO FILE THE
19 STUFF ON TIME. IF YOU WANT TO MAKE THAT REQUEST,
20 YOU NEED TO FILE IT AS SOON AS IT BECOMES AVAILABLE
21 OR CLEAR THAT YOU NEED TO DO IT. AND YOU NEED TO
22 DO IT ON THE RECORD. I CAN'T JUST HANDLE THESE
23 THINGS ON THE FLY.

24 MS. TUCHER: THANK YOU, YOUR HONOR.

25 THE COURT: GOOD AFTERNOON.

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MS. HUTNYAN: GOOD AFTERNOON.

I WOULD LIKE TO FIRST START WITH THE MOTION TO ENFORCE. AND THIS IS WITH RESPECT TO THE COURT'S DECEMBER 22ND ORDER. THAT ORDER ON PAGE 5 SAYS THAT THE COURT FINDS APPLE'S PROPOSED DEFINITION OF TECHNOLOGICAL NEXUS TO BE AN APPROPRIATE MEASURE UNDER THE BALANCING PROVISIONS OF THE FEDERAL RULE OF CIVIL PROCEDURE 26 (B) (2) (C) (3) FOR THE PRODUCTION OF RELEVANT EMPLOYEE TESTIMONY FROM OTHER ACTIONS.

AND THE COURT INDICATED THAT APPLE SHOULD APPLY IN THIS STANDARD AND COMPLETE ITS PRODUCTION OF ALL RESPONSIVE TRANSCRIPTS AND NO LATER THAN JANUARY 15TH, 2012.

THE FOOTNOTE THAT WAS DROPPED FROM THE QUOTED TECHNOLOGICAL NEXUS TO BE APPLIED TO THESE CASES IS QUOTED FROM APPLE'S OPPOSITION AND IT SAYS, "APPLE INTERPRETS TECHNOLOGICAL NEXUS TO INCLUDE PRIOR CASES INVOLVING THE PATENTS IN SUIT OR PATENTS COVERING THE SAME OR SIMILAR TECHNOLOGIES, FEATURES OR DESIGNS AS THE PATENTS IN SUIT."

THE COURT: SEEMS TO BE A COMMON THEME TODAY. WHEN I CITE FOOTNOTES TO REPRESENTATIONS

1 FROM THE PARTIES, I GET MYSELF INTO ALL KINDS OF
2 TROUBLE; WOULDN'T YOU AGREE?

3 MS. HUTNYAN: I DON'T THINK YOU'RE THE
4 ONE IN TROUBLE, YOUR HONOR.

5 THE COURT: IT SURE FEELS THAT WAY, BUT
6 GO ON.

7 MS. HUTNYAN: NOT AT ALL.

8 AND I THINK THIS IS THE CLEAR STANDARD.
9 AS A MATTER OF FACT, APPLE ARGUED WHEN IT SUGGESTED
10 THIS STANDARD TO YOU THAT IT WAS A CLEAR STANDARD
11 FOR THE PARTIES TO FOLLOW. AND YET THE COMPLIANCE
12 WITH THAT CLEAR STANDARD HAS BEEN PROBLEMATIC.

13 I KNOW OF NINE IDENTIFYING CASES THESE
14 ARE ONES WE IDENTIFIED BY NAME TO APPLE AS ONES
15 THAT WE BELIEVE HAD A TECHNOLOGICAL NEXUS. WE KNOW
16 THERE ARE OTHERS AND WE THINK THAT ALL RESPONSIVE
17 TRANSCRIPTS SHOULD BE COMPELLED FROM CASES FROM
18 CASES WITH THE TECHNOLOGICAL NEXUS, THAT'S THE COPY
19 OF THE ORDER.

20 BUT LOOKING AT THE NINE WE IDENTIFIED AND
21 EXHAUSTIVELY MET AND CONFERRED OVER. THE NOKIA
22 CASE, DELAWARE 791, ONE OF THE PATENTS IN SUIT IN
23 THIS ACTION IS THE SAME AS ONE OF THE PATENTS IN
24 SUIT IN THIS ACTION. CLEARLY TECHNOLOGICAL NEXUS.

25 WE GOT ONE DEPOSITION TRANSCRIPT, AND A

1 COUPLE OF OTHER THINGS, ONE OF THE OPPOSITION BRIEF
2 REGARDING BIFURCATION. BUT WE ARE MISSING CLAIM
3 CONSTRUCTION, BRIEFING, INVALIDITY CONTENTIONS, ALL
4 KINDS OF DOCUMENTS.

5 THE COURT: LET ME INTERRUPT YOU THERE
6 COUNSEL, SO I CAN FOLLOW YOUR POINT.

7 IN THE DELAWARE ACTION AT LEAST ONE OF
8 THE PATENTS IN SUIT IS A PATENT IN SUIT IN THIS
9 CASE, CORRECT?

10 MS. HUTNYAN: CORRECT.

11 THE COURT: OKAY.

12 AND IN THAT DELAWARE ACTION, CLAIMS
13 CONSTRUCTION BRIEFING WAS SUBMITTED BY APPLE; IS
14 THAT RIGHT?

15 MS. HUTNYAN: I DO NOT KNOW BECAUSE THESE
16 AREN'T SAMSUNG'S CASES THESE ARE APPLE'S CASES
17 AGAINST OTHER ENTITIES.

18 SO I'VE SORT OF INADVERTENTLY CONFUSED
19 ISSUES BY JUMPING OFF THE DEPOSITION TRANSCRIPTS.
20 SO IF YOU WOULD ALLOW ME TO CORRECT THAT.

21 LET ME TALK ABOUT DEPOSITION TRANSCRIPTS
22 FIRST, THAT'S WHAT IT IS AS TO THE SCOPE OF THE
23 ORDER, EMPLOYEE DEPOSITION TRANSCRIPTS. OKAY. WE
24 GOT ONE. AND MOTOROLA APPLE VERSUS MOTOROLA,
25 WISCONSIN 662 ACTION WE GOT THREE DEPOSITIONS.

1 A REVIEW OF PACER SHOWS THE FOLLOWING
2 INDIVIDUALS PERTINENT TO THIS ACTION. BY THE WAY,
3 THAT ALSO SHARES PATENTS IN SUIT WITH THIS ONE,
4 SHI, BOULE, ORDING, BLUMENBERG, CHAUDRI, GANATRA,
5 LUTTON, HERZ WERE ALSO DEPOSED BUT WE DID NOT
6 RECEIVE THOSE TRANSCRIPTS.

7 AND APPLE V. HTC, WE RECEIVED ZERO
8 TRANSCRIPTS, THAT WAS THE 167 CASE. IN THE --

9 THE COURT: IN THE APPLE HTC LITIGATION
10 WAS A PATENT AT ISSUE THAT IS AT ISSUE IN THIS
11 CASE?

12 MS. HUTNYAN: YES.

13 THE COURT: YOU'VE RECEIVED ZERO
14 TRANSCRIPTS.

15 MS. HUTNYAN: YES.

16 AND IN APPLE V. HTC, THE 797
17 INVESTIGATION, THE TWO CASES SHARE THREE PATENTS IN
18 SUIT. AND ONE DEPOSITION WAS PRODUCED.

19 IN SAMSUNG ITC '796, THIS IS THE CASE
20 THAT WE MADE THE IN CAMERA SUBMISSION ON,
21 YOUR HONOR. AND WE WOULD DIRECT THE COURT TO MAKE
22 IT SIMPLER, EXHIBIT F OF MY DECLARATION WHICH WAS
23 SUBMITTED, IT WAS A SUPPLEMENTAL DECLARATION TO THE
24 REPLY.

25 AND THERE WE TOOK INFORMATION FROM THE

1 FACE PAGES OF THE PATENTS IN SUIT OF BOTH CASES AND
2 SHOWED HOW THEY ARE THE SAME INVENTORS, THEY ARE
3 THE SAME PRIOR ART IDENTIFIED, THE SAME COMMERCIAL
4 EMBODIMENTS, THE SAME EVERYTHING. AND WE GOT
5 EXACTLY NOTHING FROM THE 796 CASE.

6 IN ELAN V. APPLE, 1531, THAT ONE HAD
7 SIMILAR PATENTS, SIMILAR TECHNOLOGIES WHICH WAS
8 PART OF THE DEFINITION HERE. AND WE DID NOT
9 RECEIVE --

10 THE COURT: THIS IS THE ND CAL CASE?

11 MS. HUTNYAN: THIS IS THE IN ELAN V.
12 APPLE, ND CAL.

13 THE COURT: IT'S A CASE I HAVE SOME PART
14 WHICH IS WHY I ASK.

15 IF WE COULD CUT TO THE CHASE HERE BECAUSE
16 OUR TIME IS LIMITED.

17 THERE ARE A BUNCH OF CASES OUT THERE THAT
18 YOU THINK ARE STRONG AND BEAR IRREFUTABLE
19 TECHNOLOGICAL NEXUS TO THIS CASE. THEY PRODUCED A
20 SMATTERING OF DEPOSITION TRANSCRIPTS FROM THOSE
21 CASES, MY ORDER NOTWITHSTANDING, IS THEIR ONLY
22 JUSTIFICATION WAS SOMEHOW MY ORDER WAS LIMITED TO
23 TECHNICAL DEFINITIONS THIS THOSE CASES; IS THAT
24 BASICALLY IT?

25 MS. HUTNYAN: THERE ARE A NUMBER OF

1 EXCUSES.

2 ONE IS THAT THE ORDER WAS LIMITED TO ONLY
3 THE TRANSCRIPTS OF PEOPLE WHO WERE WITNESSES IN
4 THIS CASE MEANING THE ND CAL CASE. AND THERE WAS
5 NO SUCH LIMITATION.

6 OF COURSE IF STEVE JOBS TESTIFIED IN ONE
7 OF THOSE OTHER CASES ABOUT THE DESIGN OF THE
8 IPHONE, THE FACT HE'S TESTIFIED HERE MEANS THAT
9 DEPOSITION IS STILL PERTINENT. IT'S STILL APPLE'S
10 STATEMENTS, SO THAT WAS DEFINITELY APPLIED, THAT'S
11 THE DECLARATION, AND HE SPECIFICALLY DESCRIBES HOW
12 HE LIMITED IT TO THE INDIVIDUALS THAT WERE
13 CURRENTLY WITNESSES IN THIS CASE.

14 AND IN ADDITION, THERE WAS ALSO A LETTER
15 THAT WAS NOTIFIED TO THAT AS TO THE PERSONS HAVING
16 AN INDIVIDUAL TECHNOLOGICAL NEXUS AND THAT WAS AN
17 ADDITIONAL LIMITATION THAT WAS APPLIED.

18 SO I THINK THAT WOULD COUNT FOR THE
19 SITUATION WHERE WE ACTUALLY DID GET SOME
20 TRANSCRIPTS FROM SOME OF THESE ACTIONS.

21 THE COURT: BUT IT WOULD ALSO EXPLAIN
22 WHY, FOR EXAMPLE, YOU RECEIVED NO DEPOSITION
23 TRANSCRIPTS FROM PEOPLE IN THE FINANCE DEPARTMENT,
24 FOR EXAMPLE.

25 MS. HUTNYAN: RIGHT.

1 AND THERE SEEMS TO BE -- YES, WE WERE
2 NOTIFIED THAT BUCKLEY, BECAUSE HE WAS A FINANCIAL
3 GUY, HIS DEPOSITION WAS NOT PRODUCED BECAUSE IT WAS
4 DEEMED TO BE, SOMEHOW HE DIDN'T PERSONALLY HAVE A
5 TECHNOLOGICAL NEXUS.

6 I DON'T THINK THAT'S THE TEST. HE'S
7 TALKING ABOUT NUMBERS ASSOCIATED WITH THE IPHONE,
8 THEN OBVIOUSLY THAT'S PERTINENT HERE. AND THE
9 WHOLE POINT OF HAVING THE TECHNOLOGICAL NEXUS
10 STANDARD THAT APPLE ARGUED FOR AND THE COURT
11 ACCEPTED IS BECAUSE THAT WOULD DICTATE WHAT THE
12 REALM OF RELEVANT DISCOVERY WOULD BE, THAT YOU
13 COULD IDENTIFY WHICH CASES HAD THIS NEXUS THEN YOU
14 WOULD LOOK AND SEE WITHIN THAT CASE WHICH THINGS
15 ARE RELEVANT HERE.

16 I MEAN REALLY, IT'S RELEVANCE, BUT THAT
17 WAS A WAY OF SPECIFYING WHAT WE ALL UNDERSTOOD THAT
18 TO BE.

19 AND WE THINK APPLE HAS FALLEN SHORT AND
20 THEY NEED TO BRING THEMSELVES INTO IMMEDIATE
21 COMPLIANCE.

22 WE'VE BEEN REALLY PREJUDICED,
23 PARTICULARLY BY THE 796 TRANSCRIPTS WHICH I THINK
24 THIS IS REALLY PROBLEMATIC IN THAT WE WERE NOT ABLE
25 TO USE THE '796 INFORMATION IN OUR EXPERT REPORTS

1 AND CROSS USE FROM THAT CASE TO THIS ONE HAS BEEN
2 ACCEPTED BY APPLE.

3 INDEED, MR. SABRI TOLD YOU EARLIER THEY
4 HAVE ALL BUT STIPULATED, THEY OFFERED TO STIPULATE
5 THAT CASE HAS A TECHNOLOGICAL NEXUS TO THIS ONE.
6 THEY AGREED TO THE USE OF DOCUMENTS THAT WERE
7 PRODUCED IN THE '796 TO BE USED IN THE ND CAL.
8 THEY AGREED TO DOCUMENTS THAT WERE PRODUCED HERE TO
9 BE USED IN '796. THEY AGREED TO USE OF THE DEPO'S
10 IN ND CAL TO BE USED IN '796.

11 AND -- BUT THE ONE CROSS USE, THE ONE
12 AREA THAT THEY DON'T WANT TO SHARE THESE
13 TRANSCRIPTS IS FROM '796 INTO ND CAL. AND YET IN
14 THE MUSIKA REPORT THAT WE HEARD SO MUCH ABOUT HE
15 INCLUDED TWO SAMSUNG TRANSCRIPT REFERENCES FROM THE
16 '796 CASE.

17 IT SHOWS YOU THERE'S CLEARLY A
18 TECHNOLOGICAL NEXUS. THEY AGREED THERE'S A
19 TECHNOLOGICAL NEXUS, AND YET WE DON'T HAVE A SINGLE
20 TRANSCRIPT. SO WE REALLY NEED THOSE TO BE ORDERED
21 AGAIN AS SOON AS POSSIBLE.

22 THE COURT: PERHAPS YOU COULD REFRESH MY
23 RECOLLECTION ON AN ISSUE.

24 AS I RECALL FROM THE ORAL ARGUMENT WE
25 HAD, I GUESS IT WAS BACK IN DECEMBER IF I'M

1 THINKING BACK CORRECTLY ON THIS ISSUE, THE
2 JUSTIFICATION OR YOUR EXPLANATION, YOUR BEING
3 SAMSUNG'S EXPLANATION, FOR WHY YOU NEEDED THIS
4 STUFF WAS THAT IN THESE OTHER CASES THAT BORE SOME
5 TECHNICAL RELEVANCE TO THIS CASE, APPLE WAS PERHAPS
6 IN A POSITION TO TAKE POSITIONS ON THE APPROPRIATE
7 SCOPE OF THE PATENTS THAT BORE SOME RESEMBLANCE TO
8 THE PATENTS IN SUIT HERE; IS THAT BASICALLY RIGHT?

9 MS. HUTNYAN: YES, YOUR HONOR.

10 THE COURT: OKAY.

11 SO IN THE EARLIER CASE THEN, FOR EXAMPLE,
12 APPLE MIGHT HAVE SAID THAT THE 949 MEANT THIS AND
13 IN THIS CASE THEY ARE SAYING IT MEANS SOMETHING
14 LIKE THIS -- FOR THE RECORD I'M GESTURING NARROW
15 AND WIDE.

16 IS THAT BASICALLY THE RATIONAL BEHIND
17 THIS REQUEST?

18 MS. HUTNYAN: YES, INDEED, THAT'S EXACTLY
19 WHAT'S HAPPENED.

20 THE COURT: HAVEN'T I -- IN FACT, I'M
21 PRETTY SURE I KNOW THE ANSWER TO THIS. I'VE
22 ADDRESSED THIS GENERAL NOTION IN EARLIER ORDERS
23 WITH RESPECT TO THE INTERROGATORY, OR I GUESS IT
24 WAS AN RFA ORDER I ISSUED FAIRLY RECENTLY.

25 DIDN'T I ADDRESS THIS ISSUE OF THE

1 RELEVANCE OR MATERIALITY OF POSITIONS TAKEN IN
2 OTHER CASES AND HOW THOSE POSITIONS MIGHT BEAR ON
3 THE APPROPRIATE SCOPE OF THESE?

4 MS. HUTNYAN: I BELIEVE YOU DID ADDRESS
5 THAT; YES, YOUR HONOR.

6 THESE GO TO THE SCOPE OF THE PATENTS.
7 THEY DISCUSS THE PRIOR ART. THEY GO TO NOVELTY,
8 VALIDITY, ALL OF THESE ISSUES ARE BASICALLY A
9 MIRROR IMAGE TO THE OTHER CASES.

10 THE COURT: ALL RIGHT.

11 GO ON. I INTERRUPTED YOU. I APOLOGIZE.

12 MS. HUTNYAN: OKAY.

13 SO I GUESS I WOULD LIKE TO HEAR FROM
14 APPLE AS TO WHETHER THEY THINK THERE'S NOT A
15 TECHNOLOGICAL NEXUS.

16 THAT WAS ABSENT FROM THEIR BRIEF, AND YET
17 THERE WERE DISCUSSIONS THAT THE PROTECTIVE ORDER
18 SOMEHOW IN BOTH THE ITC AND IN THIS CASE BARRED
19 APPLE'S OWN USE OF THESE TRANSCRIPTS HERE IN ND
20 CAL. AND THAT'S JUST NOT THE CASE.

21 ITC PROTECTIVE ORDER DOESN'T ADDRESS IT
22 AT ALL. AND THE ND CAL PROTECTIVE ORDER SAYS WE
23 AGREED TO CROSS USE OF DOCUMENTS AND WE ARE -- BUT
24 THE FOLLOWING SENTENCE SAYS, "THE PARTIES CAN
25 ALWAYS SEEK OTHER TYPES OF DISCOVERY TO BE CROSS

1 USED IN THE ACTIONS BY THE USE OF DOCUMENT
2 REQUESTS."

3 SO WE GOT THE DOCUMENT REQUEST, WE GOT AN
4 ORDER FROM YOUR HONOR IN DECEMBER AND YET THEY ARE
5 NOT PRODUCED.

6 SO I WOULD LIKE TO RESERVE TIME TO FIGURE
7 OUT WHAT MY RESPONSE IS TO HOW THESE THINGS
8 COULDN'T HAVE BEEN PRODUCED BECAUSE THEY JUST DON'T
9 SEE HOW, USING YOUR HONOR'S WORDS, THERE'S A
10 LEGITIMATE DIFFERENCE OF OPINION HERE AS FAR AS THE
11 STANDARD.

12 THESE ARE VERY CLEAR. AND THERE MAY BE
13 OTHER CASES THAT ARE IN THE GREY AREA SOMEWHERE,
14 BUT I SUBMIT THAT THE NINE THAT WE HAVE SUBMITTED,
15 SEVEN OF WHICH HAVE THE EXACT SAME PATENTS IN SUIT
16 SHARED BETWEEN THE TWO, AND '796 WHICH HAS AN
17 EXTREMELY CLEAR NEXUS TO WHICH THEY STIPULATED --

18 THE COURT: BEFORE I ALLOW YOU TO REST,
19 AND I WILL GIVE YOU AN OPPORTUNITY FOR REBUTTAL, I
20 AM INTERESTED IN YOUR VIEW OF THE APPROPRIATE
21 REMEDY HERE.

22 ARE YOU SEEKING TO COMPEL, OBVIOUSLY,
23 PRODUCTION OF THESE TRANSCRIPTS AND OTHER
24 MATERIALS?

25 YOU IDENTIFIED ONE TYPE OF PREJUDICE YOU

1 BELIEVE YOU SUFFERED, YOUR EXPERTS DIDN'T HAVE THIS
2 STUFF WHEN THEY RENDERED THEIR OPINIONS, ARE YOU
3 SEEKING ANY REMEDY AT THIS TIME OTHER THAN
4 PRODUCTION OF THE MATERIALS AND TRANSCRIPTS?

5 MS. HUTNYAN: YES. AT THIS TIME,
6 YOUR HONOR, WE ARE SEEKING AN OPPORTUNITY TO DO
7 ANOTHER SUPPLEMENTAL REPORT THAT WOULD INCLUDE THIS
8 INFORMATION SO THAT WE CAN USE IT.

9 AND THEN, YOU KNOW, SOME LEEWAY TO DEAL
10 WITH THAT WHETHER IT'S DEPOSITIONS OR ADDITIONAL
11 RESPONSES. I MEAN, WE JUST NEED THIS STUFF, WE
12 NEEDED IT BEFORE.

13 AND SO I THINK THE PROPER INITIAL REMEDY
14 AT LEAST IS TO ALLOW -- ORDER IT, THEN ALLOW US TO
15 USE IT SO WE ARE NOT SUFFERING FROM THE FACT THAT
16 THE DEADLINES HAVE PASSED.

17 THE COURT: WHEN YOU SAY THAT I SHOULD
18 ALLOW YOU TO USE IT, ARE YOU SUGGESTING THAT MY
19 ORDER INCLUDE A SPECIFIC PROVISION AUTHORIZING
20 SAMSUNG TO SERVE SUPPLEMENTAL REPORTS, AND SHOULD I
21 FURTHER CONSIDER THE IMPACT OF THAT ON DEPOSITION
22 SCHEDULES AND SO FORTH?

23 MS. HUTNYAN: YES.

24 WHAT WE'RE ASKING MORE SPECIFICALLY WOULD
25 BE TO ALLOW US TO DO SUPPLEMENTAL EXPERT REPORTS

1 AND ALSO TO ALLOW US TO RE DEPOSE PEOPLE IF THERE
2 ARE ISSUES THAT SHOULD BE ADDRESSED --

3 THE COURT: I'M GLAD YOU BROUGHT UP THE
4 DEPOSITION ISSUE BECAUSE -- MAYBE I BROUGHT IT UP,
5 I'M GLAD YOU TURNED TO IT BECAUSE THAT'S WHAT I'M
6 STRUGGLING WITH.

7 LET'S ASSUME FOR THE MOMENT I AGREE WITH
8 YOU SOME MATERIALS SHOULD HAVE BEEN PRODUCED AND
9 WEREN'T. I'M HAVING THE SAME STRUGGLE THAT I HAD
10 IN THE EARLIER MOTION WHICH IS, HOW DO I FIX ALL OF
11 THIS WITHOUT PUTTING AT RISK THE VERY PRECISE
12 SCHEDULE THAT JUDGE KOH HAS MADE ABUNDANTLY CLEAR
13 SHE DOESN'T WANT TO MESS WITH, AND FOR GOOD REASON;
14 HOW DO I DO THAT?

15 MS. HUTNYAN: WELL, I THINK THERE ARE --
16 I THINK IF THERE IS AN ORDER TO BASICALLY PRODUCE
17 THE THINGS IMMEDIATELY, I MEAN, WE'VE HAD MONTHS
18 AND MONTHS FOR COMPLIANCE I DON'T SEE WHY THESE
19 THINGS CAN'T BE PRODUCED IMMEDIATELY.

20 THEN MAKE A SHORT DEADLINE ALLOWING THE
21 USE OF THE SUPPLEMENTAL REPORT AND, YOU KNOW, A
22 FAIRLY BRIEF DEADLINE FOR A RESPONSE. AND WE HAVE,
23 I THINK IT'S 60 OR 70 EXPERT DEPOSITIONS GOING
24 FORWARD IN A SHORT PERIOD.

25 I MEAN, IMMEDIATE COMPLIANCE WOULD GET US

1 PRETTY CLOSE TO THE MARK.

2 THE COURT: HAVE EXPERT DEPOSITIONS
3 COMMENCED?

4 MS. MAROULIS: NOT YET, YOUR HONOR.

5 THE REBUTTAL REPORTS ARE DUE THE 17TH, 16TH
6 AND --

7 THE COURT: AND EXPERT DEPOSITIONS ARE
8 REQUIRED TO BE COMPLETED BY THE 30TH OR
9 THEREABOUTS?

10 MS. MAROULIS: BY APRIL 27TH.

11 THE COURT: SO EVEN LESS TIME.

12 MS. MAROULIS: AN AMBITIOUS SCHEDULE.

13 THE COURT: SO WITHIN TEN DAYS YOU ARE TO
14 COMPLETE 50 TO 60 DEPOSITIONS OF EXPERTS; IS THAT
15 RIGHT?

16 MS. MAROULIS: THAT'S CORRECT, ACCORDING
17 TO THE CURRENT SCHEDULE.

18 THE COURT: SO WITHIN THOSE TEN DAYS, I
19 AM TO ORDER FURTHER SUPPLEMENTAL REPORTS, PERHAPS
20 ADDITIONAL FACT DEPOSITIONS TO TAKE PLACE, AND THEN
21 CONSIDER WHEN EXPERT DEPOSITIONS OUGHT TO BE
22 COMPLETED ALL WITHOUT MESSING WITH JUDGE KOH'S
23 SCHEDULE?

24 MS. HUTNYAN: WELL, YOUR HONOR, I THINK
25 WE SHOULD BE GIVEN LEAVE TO DO THE THINGS WE THINK

1 ARE APPROPRIATE TO REMEDY THIS.

2 THE COURT: THAT'S WHAT I'M TRYING TO
3 EXPLORE HERE. WHAT SPECIFICALLY ARE YOU ASKING ME
4 TO ORDER?

5 MS. HUTNYAN: WELL, I GUESS IT WOULD
6 DEPEND ON WHAT YOU ORDER. IF IT'S ALL OF THE
7 CASES, YOU KNOW, THAT WOULD GIVE ME A DIFFERENT
8 IDEA OF WHAT THE SCOPE MIGHT BE IN TERMS OF WHAT WE
9 NOW HAVE AND HAVE TO DEAL WITH.

10 BUT WE ARE ALREADY DEALING WITH AN
11 EXCRUCIATINGLY TIGHT SCHEDULE. SO I DON'T THINK
12 THE REMEDY IS TO NOT ORDER IT, AND YOU KNOW,
13 BECAUSE IT'S TOO TIGHT. IT'S ALREADY VERY TIGHT
14 AND I THINK WE JUST NEED TO NOT HAVE THIS DELAY
15 ANYMORE AND WE SHOULDN'T BE PREJUDICED ANYMORE.

16 WE HAVE SUFFERED THE FACT THAT THEY DID
17 NOT PRODUCE THESE THINGS THAT WERE CLEARLY SET OUT
18 IN AN ORDER THAT YOU GAVE THEM.

19 SO SAMSUNG SHOULDN'T BE PUNISHED FOR
20 THAT.

21 THE COURT: ARE THERE ANY CASES OR
22 WITNESSES WHO ARE PARTICULARLY IMPORTANT TO YOU
23 THAT MATTER MORE THAN OTHERS?

24 MS. HUTNYAN: '796 IS INCREDIBLY
25 IMPORTANT.

1 AND I APOLOGIZE AGAIN FOR THE IN CAMERA
2 SUBMISSION, I WAS A BIT AT A LOSS IN TERMS OF DOING
3 THAT, AND ESPECIALLY WHEN THEY WENT AHEAD AND USED
4 OUR CONFIDENTIAL DEPOSITION TRANSCRIPTS, VIOLATED
5 THE ITC PROTECTIVE ORDER USING THEM WITH THEIR
6 EXPERT REPORTS. TO HEAR NOW THAT THE ONLY
7 IMPEDIMENT WAS WHO WAS GOING TO SHOW OUR EXPERTS,
8 WHICH I TOLD THEM BEFORE WE WEREN'T GOING TO DO, WE
9 REALLY SHOULD HAVE HAD THOSE FILED UNDER SEAL.

10 THE PROPER WAY TO DO THAT WOULD BE TO
11 FILE THEM UNDER SEAL ON THE REPLY BRIEF. THAT'S
12 WHAT WE ASKED THEM TO DO AND THEY REFUSED, SO WE
13 DID THE WHOLE IN CAMERA SUBMISSION DETOUR AND NOW
14 WE'VE LANDED IN A PLACE WHERE YOUR HONOR DOESN'T
15 WANT TO PUT THEM IN THE RECORD.

16 THESE '796 TRANSCRIPTS ARE SO PROBATIVE.
17 WE HAVE CROSS-USE GOING EVERY WHICH WAY BETWEEN THE
18 TWO CASES BECAUSE CLEARLY THERE'S A TECHNOLOGICAL
19 NEXUS.

20 THE ONE WAY IS THE WAY THAT APPLE DOESN'T
21 WANT TO THEM TO COME IN, FROM THE '796,
22 PARTICULARLY THE DESIGN SIDE INTO THIS CASE BECAUSE
23 THE --

24 THE COURT: I APOLOGIZE, I INTERRUPTED
25 YOU ONCE AGAIN.

1 IF I UNDERSTAND WHAT YOU'RE SAYING
2 CORRECTLY IN THE ITC ACTION, THERE'S NO PROBLEM
3 WITH USING THE DEPOSITION TRANSCRIPTS FROM THIS
4 CASE; IS THAT WHAT YOU ARE SAYING?

5 MS. HUTNYAN: IN THE ITC PROTECTIVE ORDER
6 APPLE DOES NOT HAVE ANY LIMITATION AS TO WHAT IT
7 CAN DO WITH ITS OWN CONFIDENTIAL INFORMATION.
8 THAT'S HOW, FOR EXAMPLE, IT CAN AGREE TO THE USE OF
9 DOCUMENTS THAT WERE PRODUCED THERE, AND THEN ARE
10 PUT UNDER THAT PROTECTIVE ORDER. THEY CAN SAY
11 YEAH, YOU CAN USE THEM IN ND CAL, WHICH IS INDEED
12 WHAT THEY DID.

13 SO THEY DON'T HAVE A LIMITATION. WE HAVE
14 A LIMITATION BECAUSE IT'S NOT OUR CONFIDENTIAL
15 INFORMATION. IT SAYS YOU ARE NOT SUPPOSED TO USE
16 IT OUTSIDE OF THE ITC PURPOSES.

17 THE COURT: I UNDERSTAND THAT.

18 BUT IN THE ITC ACTION, ARE THERE ANY
19 LIMITATIONS ON THE COMMISSION OR THE ADMINISTRATIVE
20 LAW JUDGE IN THE FIRST INSTANCE CONSIDERING A
21 DEPOSITION TRANSCRIPT TAKEN FROM THIS CASE?

22 MS. HUTNYAN: NO.

23 THE COURT: OKAY.

24 SO --

25 MS. HUTNYAN: THE DEPOSITIONS ARE BEING

1 CROSS USED, YOUR HONOR, YES.

2 THE COURT: THAT WAY?

3 MS. HUTNYAN: YES, THAT WAY.

4 THE COURT: BUT WHAT YOU ARE SAYING IS
5 THEY CAN'T BE USED THIS WAY.

6 MS. HUTNYAN: APPLE WILL NOT AGREE TO IT.

7 THE COURT: WELL, YOU WANTED TO RESERVE
8 TIME FOR REBUTTAL. I'M HAPPY TO ALLOW YOU TO DO
9 THAT.

10 ARE THERE OTHER POINTS YOU WISH TO MAKE?

11 MS. HUTNYAN: YES.

12 I WOULD LIKE TO TURN BACK TO THE OTHER
13 DOCUMENTS, THE MOTION TO COMPEL PORTION. AND WHAT
14 WE ASKED FOR IN THE MOTION TO COMPEL, YOUR HONOR,
15 IS TO TAKE THE SAME TECHNOLOGICAL NEXUS STANDARD,
16 WE BELIEVE IT'S THE RIGHT ONE, IF IT'S APPLIED
17 CORRECTLY AND APPLY THAT TO THE OTHER THINGS IN
18 THOSE CASES, WHETHER IT'S NON-EMPLOYEE DEPOSITION
19 TRANSCRIPTS, WITNESS STATEMENTS, AFFIDAVITS, EXPERT
20 REPORTS, DECS, CLAIM CONSTRUCTION BRIEFS, COURT
21 RULINGS, INVALIDITY CONTENTIONS AND INFRINGEMENT
22 CONTENTIONS, MATERIALS PRESENTED IN TUTORIALS,
23 ASSERTED PRIOR ART, WRITTEN DISCOVERY,
24 INTERROGATORY RESPONSES, ET CETERA, RESPONSES
25 THERETO, BRIEFING FOR DISPOSITIVE MOTIONS; ALL OF

1 THOSE THINGS ARE CERTAINLY DOCUMENTS IN WHICH APPLE
2 HAS TAKEN POSITIONS ON THE SAME PATENTS IN SUIT.

3 SO THERE'S ABSOLUTELY NO REASON WHY, IF
4 YOU ASSUME OR UNDERSTAND THAT THE CASES HAVE A
5 TECHNOLOGICAL NEXUS, WHY THOSE THINGS WOULD NOT BE
6 RELEVANT.

7 INDEED THEY ARE VERY RELEVANT TO NARROW
8 THE ISSUES IN THIS SUIT BECAUSE YOU ARE NARROWING
9 THE POSITIONS TO DEAL WITH THEM. IT'S ANOTHER
10 THING WE THINK SHOULD HAVE BEEN PRODUCED A LONG
11 TIME AGO.

12 THE COURT: AND IS NOKIA THE ONLY THIRD
13 PARTY THAT'S OBJECTING? AM I WRONG IN THAT
14 UNDERSTANDING?

15 MS. HUTNYAN: LET ME GET THIS RIGHT.

16 SO NOKIA HAS AGREED, IT HAS CONSENTED TO
17 A SPECIFIC LIST OF MATERIALS THAT IT SAID WAS
18 BASICALLY EVERYTHING IN THAT CASE THAT IT THOUGHT
19 WAS PERTINENT, AND I TOOK THAT REPRESENTATION.

20 SO WE HAVE CONSENT FROM NOKIA, WE HAVE
21 CONSENT FROM ATMEL, GOOGLE, AND MOTOROLA IS THE
22 ONLY ONE THAT DID NOT GIVE CONSENT THEY SAID THEY
23 HAVEN'T HAVE ENOUGH INFORMATION TO MAKE THAT
24 DETERMINATION.

25 BUT MANY OF THOSE MATERIALS WERE REDACTED

1 ALREADY BY APPLE. IT WAS ACTUALLY PRODUCED IN
2 ANTICIPATION OF YOUR ORIGINAL DECEMBER 22ND ORDER.
3 AND THOSE MATERIALS, AS YOU MAY RECALL THAT'S HOW
4 THE CONFIDENTIALITY ISSUE POPPED UP INITIALLY, WERE
5 THESE REDACTIONS.

6 SO WE DON'T THAT. BUT ALL OF THE OTHERS
7 GAVE CONSENT AND YET THERE'S STILL ATMEL, CBI THAT
8 HAS BEEN REDACTED FROM THE MATERIALS PRODUCED.
9 THERE'S GOOGLE INFORMATION THAT'S STILL REDACTED.

10 AND THE ANSWER THAT WE GOT FROM APPLE IN
11 ITS BRIEF WAS THAT THEY NEVER AGREED TO REDACT
12 THINGS FROM THE BRIEFS. THAT IT WAS OUR MISSION TO
13 GET THE CONSENTS FROM THE THIRD PARTIES, AND WHEN
14 WE QUOTE "FAILED" IN OUR MISSION, THEY NEVER AGREED
15 TO REDACT ANYTHING.

16 THE COURT: THEY ARE SAYING IT'S ALL OR
17 NONE.

18 MS. HUTNYAN: WELL, THE THING IS THE
19 STUFF THEY ALREADY REDACTED -- SO THEY OBVIOUSLY
20 AGREED TO REDACT IT, AND THE OTHER STUFF DOESN'T
21 NEED TO BE REDACTED BECAUSE WE GOT FULL CONSENT.
22 WE DIDN'T FAIL AT ALL, WE GOT IT.

23 FEBRUARY 10TH I RECEIVED A LETTER FROM
24 APPLE SAYING AS SOON AS YOU GET THE CONSENTS WE
25 WILL PROMPTLY PRODUCE THOSE DOCUMENTS.

1 AND YET WHEN I GOT THE CONSENTS NINE DAYS
2 LATER, I GOT SOME OF THEM NINE DAYS LATER, AND SOME
3 TRAILED OUT A LITTLE BIT, BUT WHEN I GOT THEM THEY
4 STILL WOULDN'T PRODUCE THEM.

5 THE COURT: ALL RIGHT.

6 LET'S HEAR FROM APPLE ON THIS.

7 MS. HUTNYAN: THANK YOU, YOUR HONOR.

8 MR. SABRI: THANK YOU, YOUR HONOR.

9 NATHAN SABRI FOR APPLE.

10 THE COURT: MR. SABRI, GOOD AFTERNOON.

11 MR. SABRI: GOOD AFTERNOON.

12 I'LL START WITH THE MOTION TO ENFORCE
13 UNLESS YOUR HONOR WISHES ME TO START ELSEWHERE.

14 THE COURT: YOU MAY START WHEREVER YOU
15 WISH.

16 MR. SABRI: I WILL READ FROM THE SAME
17 ORDER THAT MS. HUTNYAN READ FROM, BUT I WILL START
18 A LITTLE BIT EARLIER ON THE HEADING WHICH SHE
19 EXCLUDED.

20 "TRANSCRIPTS OF PRIOR DEPOSITION
21 TESTIMONY OF APPLE WITNESSES TESTIFYING IN THEIR
22 CAPACITY."

23 WHAT SAMSUNG IS NOW TRYING TO DO IS
24 EXPAND ITS DECEMBER MOTION AND THUS EXPAND THE
25 COURT'S ORDER IN SEVERAL DIFFERENT DIRECTIONS AT

1 THE SAME TIME.

2 FIRST, I WILL BACK UP. AS YOUR HONOR MAY
3 HAVE REMEMBERED FROM THIS BRIEFING AND THE
4 ARGUMENT, SAMSUNG MOVED AFTER MEETING AND
5 CONFERRING ON PRIOR TESTIMONY FROM APPLE'S INVENTOR
6 WITNESSES AND IN THE DECLARATION THAT MS. HUTNYAN
7 FILED IN SUPPORT OF THAT MOTION, THAT'S THE MEET
8 AND CONFER HISTORY THAT IS SET OUT. THAT THE
9 DECLARATION -- THIS IS AT DOCKET -- THIS MIGHT HAVE
10 BEEN FILED UNDER SEAL, THE DEC IN SUPPORT OF
11 DECEMBER MOTION SAYS SAMSUNG'S COUNSEL REQUESTED
12 PRIOR DEPOSITION TRANSCRIPTS FOR INVENTOR
13 WITNESSES, RELEVANCE OF PRIOR TESTIMONY OF
14 INVENTORS, AND APPLE REFUSED TO PRODUCE THOSE.

15 THE COURT: SO IS IT YOUR POSITION,
16 COUNSEL, MY ORDER WAS LIMITED TO INTENTIONS?

17 MR. SABRI: NO NOT ALL. I'M TRYING TO
18 GIVE THIS FOR THE BACKGROUND.

19 APPLE THEN BROADENED IT'S MOTION, BUT THE
20 KEY HERE IS APPLE WITNESSES. IN SAMSUNG'S MOTION
21 IT JUSTIFIED THIS PRODUCTION BY POINTING TO, AS
22 YOUR HONOR NOTED, THE DISCUSSIONS OF SCOPE OF
23 PATENTS.

24 SAMSUNG POINTED TO IMPEACHMENT PURPOSES,
25 IN FACT THE MAIN CASE SAMSUNG CITED IN SUPPORT OF

1 ITS MOTION WAS A CASE THAT WOULD NOT ALLOW
2 PRODUCTION OF PRIOR DEPOSITION TESTIMONY WHERE THE
3 DEPONENTS WERE NOT WITNESSES IN THE CASE AT ISSUE.

4 THE WHOLE THRUST OF THAT MOTION AND ORDER
5 WAS PRIOR TESTIMONY OF APPLE WITNESSES, NOT ALL
6 EMPLOYEES.

7 SO THAT'S THE ONE DIRECTION SAMSUNG IS
8 NOW ATTEMPTING TO EXPAND

9 THE COURT: I WANT TO UNDERSTAND APPLE'S
10 VIEW.

11 ARE YOU TELLING ME MY ORDER LIMITS
12 APPLE'S OBLIGATION TO THOSE INDIVIDUALS WHO WILL
13 TESTIFY AT TRIAL?

14 MR. SABRI: OR WHO WERE DEPOSED IN THIS
15 CASE.

16 THE COURT: IS THERE ANY LANGUAGE IN MY
17 ORDER THAT YOU CAN POINT ME TO THAT SUPPORTS THAT
18 POSITION?

19 MR. SABRI: WITNESSES, WE BELIEVE IS
20 CLEAR, YOUR HONOR.

21 APPLE'S -- PRIOR DEPOSITION OF APPLE
22 WITNESSES TESTIFYING IN AN EMPLOYEE CAPACITY.

23 THE COURT: SO YOUR POSITION IS WHEN I
24 SAID WITNESSES I MEANT WITNESSES IN THIS CASE, I.E.
25 DEPOSITION WITNESSES OR TRIAL WITNESSES, I WASN'T

1 REFERRING FOR EXAMPLE TO DEPOSITION WITNESSES IN
2 THE PRIOR CASE?

3 MR. SABRI: YES, YOUR HONOR.

4 WE DO BELIEVE THAT IS WHAT THE ORDER
5 REFERRED TO. AND WE BELIEVE THE ORDER READ IN THE
6 CONTEXT OF THE MOTION WOULD ONLY HAVE GONE THAT
7 FAR.

8 THE COURT: DON'T YOU AGREE, COUNSEL,
9 THAT THERE'S NO BURDEN OBJECTION HERE, NO SERIOUS
10 BURDEN OBJECTION ON APPLE'S PART. YOU CAN PRODUCE
11 THE MATERIALS FAIRLY QUICKLY IF YOU HAD TO.

12 MR. SABRI: PRODUCTION OF ALL EMPLOYEES
13 WOULD BE SIGNIFICANTLY MORE BURDENSOME. ONE
14 ITEM --

15 THE COURT: YOU DON'T HAVE A DATABASE AT
16 MORRISON & FOERSTER THAT HAS ALL OF THESE
17 DEPOSITION TRANSCRIPTS AVAILABLE TO YOU?

18 MR. SABRI: WE DO FOR WITNESSES.
19 APPLE'S DATABASE -- SO AS WE EXPLAINED IN THE
20 BRIEFING, APPLE STORES THESE TRANSCRIPTS ON A
21 WITNESS-BY-WITNESS BASIS.

22 SO WHEN WE SEARCH FOR TRANSCRIPTS WE
23 DON'T GO NOKIA DELAWARE, LET'S PULL ALL
24 TRANSCRIPTS, WE SAY WITH WHO ARE THE PEOPLE WE
25 NEED.

1 THE COURT: RIGHT. SO YOU GO GET THE
2 LIST OF PEOPLE WHO TESTIFIED IN NOKIA, DELAWARE AND
3 PULL EACH ONE MANUALLY, RIGHT?

4 MR. SABRI: WE COULD DO THAT EXTRA STEP.

5 HOWEVER, WHAT WAS DISCUSSED IN THE
6 EARLIER ARGUMENT, WHAT WE ARE HERE ON IS A MOTION
7 TO ENFORCE THE PRIOR ORDER, NOT A MOTION TO COMPEL.

8 THE PARTIES HAVE NOT MET AND CONFERRED ON
9 THE POINT THAT YOUR HONOR IS DISCUSSING NOW. THE
10 ISSUE HAS NEVER BEEN BRIEFED OVER WHETHER SUCH A
11 BROAD PRODUCTION --

12 THE COURT: SO LET'S TALK ABOUT THE
13 ANALYSIS. OUR TIME IS LIMITED.

14 WHAT OBJECTION HAS APPLE HAD IN PRODUCING
15 TRANSCRIPTS FROM INDIVIDUALS OTHER THAN THOSE THAT
16 THEY HAVE ALREADY PRODUCED?

17 WHAT'S THE PROBLEM? THERE'S A DEPOSITION
18 TRANSCRIPT SITTING IN AN APPLE DATABASE AS I SPEAK
19 THAT YOU CAN PRODUCE IN ABOUT 10 MINUTES, I
20 SUSPECT, MAYBE 20. SO THERE'S NO BURDEN OBJECTION.

21 WHAT IS THE OBJECTION TO PRODUCING,
22 SUBJECT TO THE PROTECTIVE ORDER IN THIS LITIGATION
23 OF ALL THE BELLS AND WHISTLES, WHAT'S YOUR
24 OBJECTION?

25 MR. SABRI: THE ONLY OBJECTIONS, YOUR

1 HONOR, WOULD BE WITHOUT SEEING WHO THE EMPLOYEES
2 AND THE PRIOR WITNESSES ARE, I DON'T THE WHAT THE
3 RELEVANCE WOULD BE.

4 THE COURT: SO YOU DIDN'T EVALUATE THAT
5 ISSUE BEFORE YOU TOOK THE POSITION OR IN FILING
6 YOUR OPPOSITION TO THIS MOTION?

7 MR. SABRI: WE BELIEVE IT WOULD BE
8 BURDENSOME.

9 WELL, LET ME TAKE A QUICK SIDE STEP --

10 THE COURT: WHAT'S THE BURDEN OF
11 PRODUCING A DEPOSITION TRANSCRIPT OR EVEN A
12 THOUSAND OF THEM FROM A DATABASE?

13 MR. SABRI: I HAVE TO SAY, WHAT I DON'T
14 KNOW YOUR HONOR IS WHETHER THERE EVEN WOULD BE ANY
15 OTHER TRANSCRIPTS THAT WOULD NEED TO BE PRODUCED,
16 IF THERE ARE OTHER RELEVANT TRANSCRIPTS. LET
17 ME TELL YOU WHY. THIS IS GOING TO SOUND LIKE A
18 DETOUR, BUT I THINK IF YOU WILL INDULGE ME YOU WILL
19 SEE WHY.

20 THE COURT: PROCEED AT YOUR PERIL.

21 GO AHEAD.

22 MR. SABRI: MS. HUTNYAN LISTED A FEW
23 PROCEEDINGS, AND I BELIEVE THE IMPRESSION THAT HAS
24 BEEN GIVEN IS APPLE HAS SIMPLY NOT PRODUCED ANY
25 TRANSCRIPTS OR HAS PRODUCED HARDLY ANY TRANSCRIPTS

1 FROM THESE RELATED PROCEEDINGS, AND THAT'S
2 FACTUALLY WRONG.

3 THE COURT: WELL, WHAT ABOUT THE '796?

4 MR. SABRI: '796, I WILL TURN TO THAT IN
5 A MOMENT, IF I MAY.

6 WE BELIEVE THE '796 IS A WHOLE SEPARATE
7 ISSUE. IT IS NOT A PREDICTION, AN OF ISSUE OF
8 PRODUCTION OF THE '796 CASE, IT'S SOLELY AN ISSUE
9 OF USE.

10 BUT BEFORE I TURN TO THAT --

11 THE COURT: WHAT'S THE DIFFERENCE BETWEEN
12 PRODUCTION AND USE?

13 MR. SABRI: BOTH PARTIES AGREED -- IT'S
14 NOT JUST APPLE, BOTH PARTIES AGREED AT THE OUTSET
15 OF THESE CASES THAT THEY WOULD NOT USE DEPOSITION
16 TRANSCRIPTS FROM THE ITC '796 CASE IN THIS CASE.

17 AND THERE'S A CRITICAL REASON FOR THAT
18 DISTINCTION, AND THAT IS JUDGE KOH IMPLEMENTED A
19 250-HOUR DEPOSITION IN THIS CASE. THERE ARE NO
20 LIMITS IN THE ITC.

21 SO APPLE ABIDED BY THAT LIMIT, MADE TOUGH
22 CALLS, WHO SHOULD WE DEPOSE, WHAT SHOULD WE ASK
23 THEM, LET'S KEEP OURSELVES WITHIN THE 250-HOUR
24 LIMIT. SAMSUNG APPARENTLY DID NOT.

25 WHAT WE ENDED UP SEEING IS IN MANY DESIGN

1 DEPOSITIONS IN THE ITC, SAMSUNG ASKING QUESTIONS
2 THAT WERE SOLELY RELATED TO THE NORTHERN DISTRICT
3 OF CALIFORNIA.

4 APPLE'S COUNSEL HAD TO OBJECT ON THE
5 RECORD, AND IT SEEMS NOW THAT THE PLAN ALL ALONG
6 WAS IN CONTRAVENTION OF THE PARTY'S AGREEMENT FOR
7 SAMSUNG AT THE LAST MINUTE TO SAY, LET'S TRY TO USE
8 ALL OF THAT DEPOSITION FROM THE ITC, THE UNLIMITED
9 AMOUNT IN THIS CASE.

10 SO NUMBER ONE, IT'S JUST A VIOLATION OF
11 THE PARTY'S AGREEMENT.

12 NUMBER TWO, WE KNOW SAMSUNG HAS THESE --
13 THE COURT: I APOLOGIZE FOR INTERRUPTING
14 YOU.

15 IF I GO BACK AND READ THROUGH THE MYRIAD
16 OF MEET AND CONFER LETTERS AND EXCHANGES YOU ALL
17 HAVE GIVEN ME TO CONSIDER, YOU ARE TELLING ME
18 SOMEWHERE IN THAT PILE, THIS ONE, MAYBE THIS ONE,
19 THERE'S A DOCUMENT WHERE YOU ALL AGREE WITHOUT
20 CATEGORY, WITHOUT EXCEPTION THAT THE DEPOSITIONS
21 THAT WERE TAKEN IN THE ITC MAY NOT BE USED IN THIS
22 CASE?

23 MR. SABRI: I DON'T KNOW IF IT'S REDUCED
24 TO A LETTER. WHAT I DO KNOW IS --

25 THE COURT: SO IF IT'S NOT IN WRITING --

1 MR. SABRI: SO IT WAS REDUCED -- WE DO
2 HAVE A MEMORIALIZATION OF IT WHICH IS WHAT YOU ARE
3 LOOKING FOR, THE PROTECTIVE ORDERS THAT WERE
4 PROPOSED IN THIS CASE BY BOTH SIDES.

5 SO MS. HUTNYAN BEGAN WITH THE ND CAL
6 PROTECTIVE ORDER. SHE SAID WE AGREED TO CROSS USE
7 OF DOCUMENTS AND WE CAN SEEK MORE.

8 WHAT SHE LEFT OUT, IT'S THE SENTENCE
9 RIGHT AFTER, "WE AGREE TO CROSS USE OF DOCUMENTS"
10 AND THIS PROVISION DOES NOT APPLY TO TRANSCRIPTS.
11 THAT WAS IN WHAT BOTH PARTIES PROPOSED IN JANUARY.

12 THE REASON BEHIND THAT LANGUAGE WAS THIS
13 AGREEMENT THAT I'VE JUST BEEN DISCUSSING. I DON'T
14 KNOW TO WHAT EXTENT THAT AGREEMENT WAS, OVER THE
15 PHONE OR VIA E-MAIL AND LETTERS. I DO KNOW IT WAS
16 VERY CLEAR THERE'S A LIMIT IN THIS CASE, THERE'S NO
17 LIMIT IN THAT CASE. WE JUST CAN'T AGREE TO HAVE
18 ALL DEPOSITION TESTIMONY FROM AN UNLIMITED SOURCE
19 APPLY IN A CASE WHERE THERE IS A LIMIT.

20 SO APPLE ABIDED BY THE LIMIT, MADE TOUGH
21 CALLS, AND NOW SAMSUNG WANTS TO AVOID THE
22 CONSEQUENCES OF THOSE TOUGH CALLS AND THAT
23 AGREEMENT.

24 THE COURT: SO I WANT TO MAKE SURE I
25 UNDERSTAND APPLE'S POSITION.

1 REALLY, YOUR ONLY OBJECTION TO PRODUCING
2 THE TRANSCRIPTS THAT ARE ESSENTIALLY BURDENLESS IS
3 THAT IT WOULD BREAK THE DEAL YOU CUT WITH SAMSUNG?

4 MR. SABRI: IT WOULD BREAK THE DEAL. IT
5 WOULD ALLOW SAMSUNG TO GET THIS BENEFIT OF AN
6 IMMENSE SOURCE OF DEPOSITION AT THE END OF THE
7 GAME. IT'S CHANGING THE RULES AFTER THE CLOSE OF
8 DISCOVERY THAT BOTH PARTIES OPERATED UNDER. AND IT
9 ALLOWS SAMSUNG TO REAP THE BENEFITS OF IMPROPER USE
10 OF THAT PROCEEDING FOR THAT CASE.

11 SO WHAT WE'VE SEEN IS QUESTIONS ASKED IN
12 ITC DEPOSITIONS THAT RELATES SOLELY TO ND CAL.

13 WHAT WE SAW AFTER JUDGE KOH DENIED THE
14 REQUEST FOR ADMINISTRATIVE RELIEF, AS YOUR HONOR
15 MAY KNOW, DISCOVERY MUST END RELEVANCE COULD BE A
16 LIMITLESS -- A BOTTOMLESS PIT, THAT'S NOT HER
17 LANGUAGE, THAT'S MY PARAPHRASE.

18 THEN WE SAW WAS A WHOLESAL DUMPING OF
19 THE LETTERS FROM THIS CASE TO THE ITC CASE WHERE IN
20 A SPAN OF THREE DAYS, EIGHT LETTERS, 40 CATEGORIES
21 OF DOCUMENTS ALL FROM THE NORTHERN DISTRICT OF
22 CALIFORNIA --

23 THE COURT: IS IT REALLY TRUE THAT THE
24 ITC DOESN'T IMPOSE ANY LIMITS, DO THEY AGREE WITH
25 THAT CHARACTERIZATION?

1 MR. SABRI: I BELIEVE THEY WOULD. THERE
2 ARE NO LIMITS ON THE DEPOSITION HOURS IN THAT CASE.

3 THE COURT: WELL, THERE MAY NOT BE ANY
4 LIMITS ON THE NUMBER OF HOURS SO LONG AS THE
5 DEPOSITIONS ARE OTHERWISE APPROPRIATE IN THIS CASE.

6 THE ITC DOESN'T ALLOW YOU TO JUST START
7 TAKING DEPOSITIONS WILLY NILLY.

8 MR. SABRI: SURE. A LIMIT OF REASON,
9 THIS IS TRUE.

10 HOWEVER WHEN YOU HAVE, AS WE DO, HUNDREDS
11 OF DEPOSITIONS GOING ON, MANY, MANY DIFFERENT
12 PATENTS, IT IS THE LIMIT OF REASON -- IT'S NOT EVEN
13 A LIMIT OF REASON, IT'S A LIMIT OF HOW MANY HOURS
14 ARE IN EACH DAY AND HOW MANY DAYS DO WE HAVE BEFORE
15 THE CLOSE OF DISCOVERY.

16 AND WHAT YOU SAW IS BECAUSE THERE'S NO
17 HOURS COUNT, THE 250-HOUR LIMIT SEEMS PRETTY HIGH.

18 THE COURT: IT IS HIGH, WOULDN'T YOU
19 AGREE?

20 MR. SABRI: I WOULD AGREE.

21 THE COURT: YOU WOULD AGREE JUDGE KOH WAS
22 EXTREMELY GENEROUS IN PERMITTING THE PARTIES
23 DISCOVERY IN THIS CASE?

24 MR. SABRI: I WOULD ABSOLUTELY AGREE.

25 AND YET BOTH PARTIES STILL USED A GREAT

1 NUMBER OF HOURS WITHIN THAT LIMIT. THOSE MANY
2 HOURS, GIVEN HOW MANY DEONENTS WE HAVE, REQUIRED
3 TOUGH CALLS.

4 NO SUCH TOUGH CALLS NEEDED TO BE MADE IN
5 THE ITC. EVERY DEONENT WHO HAD A RELEVANT
6 RELATIONSHIP COULD BE QUESTIONED.

7 THE COURT: SO IF JUDGE KOH AND HER JURY
8 ARE ULTIMATELY TASKED AT GETTING AT THE TRUTH,
9 FIGURING OUT WHETHER OR NOT THE ACCUSED PRODUCTS
10 FOLLOWED THE SCOPE OF YOUR CLAIMS AND THERE'S
11 TESTIMONY ON THAT VERY SUBJECT, THE SCOPE OF THOSE
12 CLAIMS SITTING THERE IN AN APPLE DATABASE TODAY,
13 YOU ARE SAYING WE HAD A DEAL, IT SHOULDN'T SEE THE
14 LIGHT OF DAY, THE JURY SHOULDN'T GET TO CONSIDER
15 THAT.

16 MR. SABRI: IF SAMSUNG WISHES TO MAKE A
17 USE ARGUMENT FOR PURE IMPEACHMENT USE, THAT'S A
18 SEPARATE QUESTION.

19 THE COURT: WHY DON'T YOU ANSWER THE
20 QUESTION THEN; COULD THEY DO THAT?

21 MR. SABRI: COULD THEY --

22 THE COURT: SHOULD THEY BE ABLE TO.

23 MR. SABRI: I BELIEVE IT WOULD DEPEND ON
24 WHETHER IT'S A TRUE IMPEACHMENT POINT.

25 THE COURT: SO IN ORDER TO REACH THAT

1 QUESTION THEY WOULD HAVE TO HAVE THE TRANSCRIPT IN
2 HAND.

3 MR. SABRI: AND OF COURSE THEY DO,
4 YOUR HONOR. THIS IS WHAT WE SEE FROM THE IN CAMERA
5 SUBMISSION.

6 WHAT SAMSUNG IS DOING IS SAYING THESE
7 DOCUMENTS --

8 THE COURT: YOU ARE TALKING ABOUT THE
9 '796.

10 I HAVE BEEN TOLD THERE ARE OTHER CASES IN
11 WHICH THE PATENTS AT ISSUE IN THIS CASE WERE AT
12 ISSUE IN THE OTHER CASES.

13 DOES SAMSUNG HAVE ACCESS TO THAT?

14 MR. SABRI: I BELIEVE SAMSUNG DOES HAVE
15 ACCESS.

16 BEFORE WE TURN TO THE '796, WHAT I WANT
17 TO POINT OUT ON THE OTHER PROCEEDINGS, FOR EXAMPLE,
18 I WILL CHOOSE MOTOROLA WISCONSIN BECAUSE THAT'S ONE
19 MS. HUTNYAN LISTED.

20 SHE SAYS WE ONLY HAVE THREE TRANSCRIPTS
21 AND THEN SHE LISTED OFF A SERIES OF NAMES.

22 WELL, I'VE SEEN THE LIST. WE'VE PRODUCED
23 11 TRANSCRIPTS, AND I DIDN'T CATCH THE FIRST ONE
24 SHE LISTED, BUT WE PRODUCED THE TRANSCRIPTS FOR
25 EVERY SINGLE OTHER PERSON SHE LISTED.

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SO AS TO --

THE COURT: BECAUSE THEY WERE A WITNESS
IN THIS CASE, UNDER YOUR DEFINITION?

MR. SABRI: AND THERE WAS -- IN SOME
CASES THERE WAS BROADER PRODUCTION THAN THAT.

WE BELIEVE THE ORDER ONLY GOES TO WITNESSES
BECAUSE THAT'S ALL SAMSUNG MOVED FOR, THAT'S ALL
THE PARTIES HAD MET AND CONFERRED UPON. BUT APPLE
HAS ALSO PRODUCED, EVEN BEFORE THIS ORDER AND AFTER
THIS ORDER, OTHER RELEVANT TRANSCRIPTS IT HAD
IDENTIFIED.

IF IT IDENTIFIED A TRANSCRIPT WHERE THE
PATENTS WERE DISCUSSED BY ANYBODY, IT ABSOLUTELY
WOULD HAVE PRODUCED THE TRANSCRIPT IF RELEVANT,
AGAIN FROM NON '796. THERE'S NO RISK OF ABUSE, OF
COURSE, IN OTHER PROCEEDINGS WHERE SAMSUNG WAS NOT
INVOLVED, THEREFORE THE PARTIES HAVE BOTH GENERALLY
PRODUCED THOSE SORTS OF TRANSCRIPTS.

'796 IS DIFFERENT, HAS THE SAME PARTY,
THE SAME COUNSEL, HAS THEM. IN FACT, SAMSUNG
RECEIVES THE TRANSCRIPTS AT THE EXACT SAME TIME AS
APPLE. IT'S ALMOST LIKE IF A THIRD PARTY WERE TO
PRODUCE DOCUMENTS TO BOTH SIDES AT THE SAME TIME
UNDER THE THIRD PARTY'S BATES LABEL, THEN ONE SIDE
SAYS WE WANT YOU TO PRODUCE THOSE TO US NOW UNDER A

1 DIFFERENT BATES LABEL.

2 IT'S ODD, SO WE WOULD ASK WHY.

3 AND HERE THE "WHY" IS SAMSUNG KNOWS IF WE
4 REPRODUCE THESE DOCUMENTS, THESE TRANSCRIPTS
5 RATHER, SAMSUNG ALREADY HAS -- SAMSUNG CAN THEN USE
6 ALL OF THAT DEPOSITION TESTIMONY, CIRCUMVENT THE
7 250-HOUR DEPOSITION LIMIT, CIRCUMVENT THE PARTIES'
8 AGREEMENT NOT TO USE THE TRANSCRIPT.

9 AND THAT'S NOT A FAIR APPROACH. THAT'S
10 NOT SOMETHING THAT SHOULD BE DONE AT THE VERY, VERY
11 END OF DISCOVERY.

12 THE COURT: ALL RIGHT.

13 LET'S FOCUS ON THE '796 FOR A MOMENT
14 SINCE YOU REDIRECTED MY ATTENTION THERE.

15 HYPOTHETICALLY, LET'S SAY SAMSUNG HAS A
16 TRANSCRIPT TODAY THAT SPEAKS TO THE VERY ISSUE THE
17 JURY IS GOING TO CONSIDER WHICH IS HOW TO APPLY THE
18 SCOPE OF THESE CLAIMS TO THE ACCUSED PRODUCTS,
19 OKAY.

20 YOUR VIEW IS BECAUSE YOU HAD A DEAL, THEY
21 SHOULDN'T BE ALLOWED TO USE IT TO PRESENT THAT
22 INFORMATION TO THE JURY?

23 MR. SABRI: I DO NOT THINK SAMSUNG SHOULD
24 BE ALLOWED TO USE THAT.

25 THE TRANSCRIPT SAMSUNG POINTED TO, AS FAR

1 AS I'M AWARE, THE RELEVANT WITNESSES WERE ALSO
2 DEPOSED IN THE NORTHERN DISTRICT OF CALIFORNIA, AND
3 SAMSUNG HAD PLENTY OF OPPORTUNITY TO EXPLORE ANY
4 ISSUES IT WISHED WITHIN THE HOURS LIMIT.

5 SO FOR IT TO INSTEAD SHIFT THOSE ISSUES
6 INTO ANOTHER CASE WHERE IT KNEW THE PARTIES HAVE
7 AGREED NOT TO USE THOSE TRANSCRIPTS AND THEN SAY
8 NOW WE SHOULD BE ABLE TO USE IT BECAUSE WE THINK
9 IT'S RELEVANT, THE QUESTIONS COULD HAVE BEEN ASKED
10 HERE. IF IT DOES COME UP LATER, IT WILL BE
11 ADDRESSED AT THAT TIME.

12 BUT IN ANY EVENT, WE DON'T BELIEVE THAT'S
13 AN ISSUE OF COURT'S ORDER IN DECEMBER. WE DON'T
14 BELIEVE IT'S AN ISSUE OF PRODUCTION, AND THAT'S
15 WHAT SAMSUNG IS ASKING FOR.

16 THE COURT: AND FORGIVE ME IF YOU'VE
17 ALREADY ANSWERED THIS QUESTION, WHY WAS MY ORDER
18 LIMITED ONLY TO WITNESSES THAT BORE A TECHNOLOGICAL
19 NEXUS, THE ISSUE IN DISPUTE IN THIS CASE?

20 FOR EXAMPLE, THE INDIVIDUAL MANAGER IN
21 THE FINANCE DEPARTMENT AT APPLE TESTIFIED IN ONE OF
22 THESE OTHER CASES, WHY SHOULDN'T THAT TRANSCRIPT BE
23 PRODUCED IN THIS CASE?

24 MR. SABRI: WELL, REALLY, IT'S THAT THE
25 DEFINITION OF TECHNOLOGICAL NEXUS IS INEXTRICABLY

1 RELATED TO THE IDENTITY OF THE WITNESS. SO --

2 THE COURT: WAS THAT DEFINITION OFFERED
3 TO ME BACK IN DECEMBER WITH RESPECT TO WITNESSES OR
4 TO CASES?

5 MR. SABRI: SO IT IS WITH RESPECT TO
6 CASES, YOUR HONOR.

7 HOWEVER, IN ORDER TO IDENTIFY WHETHER THE
8 CASE IS RELATED, WE DO THINK THE COURT'S DEFINITION
9 CLEARLY LOOKS TO THE WITNESS AT ISSUE.

10 THE COURT: SO IF I APPLIED, AND I THINK
11 I DID, YOUR DEFINITION TO A GIVEN CASE AND THE CASE
12 SATISFIED THE TECHNOLOGICAL NEXUS REQUIREMENT,
13 OKAY, LET'S ASSUME THERE'S NO DISPUTE ABOUT THAT.
14 AND SOMEBODY IN THE FINANCE DEPARTMENT IN THAT CASE
15 TESTIFIED, IS THERE ANY LEGITIMATE REASON NOT TO
16 PRODUCE THAT TRANSCRIPT IN THIS CASE?

17 MR. SABRI: YOUR HONOR, I DON'T THINK THE
18 PERSON THAT IS IN THE FINANCE DEPARTMENT WOULD MEET
19 THE DEFINITION.

20 THE COURT: NO, NO, NO, YOU ARE RIGHT.

21 THEY MAY NOT MEET THE DEFINITION OF THE
22 TECHNOLOGICAL NEXUS IF THAT DEFINITION WERE
23 PROPERLY APPLIED ON WITNESS-BY-WITNESS.

24 WE ARE GOING DOWN FROM THE PRODUCT LINE
25 LEVEL TO THE SKU LEVEL. IF WE ARE DOWN TO THE

1 LEVEL OF THE WITNESSES, OKAY, AND WE'VE ALREADY
2 ESTABLISHED THAT THE CASE BARES A TECHNOLOGICAL
3 NEXUS TO THIS CASE, WHAT'S APPLE'S BASIS OR
4 ARGUMENT THAT MY ORDER ALLOWED APPLE NOT TO PRODUCE
5 THAT TRANSCRIPT?

6 MR. SABRI: YOUR HONOR, BECAUSE THE
7 QUESTION IS, DOES THE CASE HAVE A TECHNOLOGICAL
8 NEXUS WITH RESPECT TO THE INDIVIDUAL AT ISSUE?

9 THE COURT: IS THAT THE QUESTION? IS
10 THAT THE QUESTION I ANSWERED IN MY ORDER? SKU
11 NUMBERS?

12 MR. SABRI: WE BELIEVE IT IS, YOUR HONOR.

13 SO THE DEFINITION -- I'M GOING TO TURN TO
14 A FOOTNOTE, I KNOW YOU MADE THE COMMENT --

15 THE COURT: I'M THE ONE WHO PUTS THE
16 FOOTNOTES IN, SO YOU ALL SHOULD FEEL FREE TO CITE
17 TO THEM.

18 MR. SABRI: THE DEFINITION EXPLAINS WITH
19 RESPECT TO THE DESIGN PATENT INVENTORS, THEN THE
20 DEFINITION IS LISTED, WITH RESPECT TO THE UTILITY
21 PATENT INVENTORS, AND THEN THE DEFINITION IS
22 LISTED.

23 AND THE FOCUS HERE, AS YOUR HONOR NOTED,
24 WAS SCOPE OF PATENTS. SO WHEN ONE LOOKS AT THE
25 CASE, ONE CAN'T ASK DOES THIS HAVE A NEXUS IN THE

1 ABSTRACT. ONE MUST ASK, DOES THIS HAVE A NEXUS
2 WITH RESPECT TO THE WITNESSES AT ISSUE?

3 NOW APPLE DID GO WELL BEYOND INVENTORS.
4 APPLE PRODUCED PRODUCT DESIGN TRANSCRIPTS, PRODUCT
5 MARKETING TRANSCRIPTS. APPLE -- THE OTHER POINT I
6 NOTED IS PRIOR TESTIMONY. APPLE PRODUCED MORE THAN
7 JUST PRIOR TESTIMONY, APPLE PRODUCED SUBSEQUENT
8 TESTIMONY.

9 AND AS YOUR HONOR MAY HAVE NOTED IN THE
10 OPPOSITION, AFTER SAMSUNG ASKED APPLE TO REVISIT
11 ITS PRODUCTION OF TRANSCRIPTS, APPLE PRODUCED
12 TRANSCRIPTS THAT HAD COME ABOUT FROM DEPOSITIONS
13 AFTER JANUARY 15TH.

14 SO CLEARLY SUBSEQUENT TESTIMONY WELL
15 AFTER THE ORDER HAD ISSUED.

16 SO APPLE DID GO WELL BEYOND THIS. BUT
17 THE ORDER ITSELF DOES, WE BELIEVE, CLEARLY REQUIRE
18 A DEFINITION OF NEXUS TO BE APPLIED IN TERMS OF THE
19 WITNESS AT ISSUE.

20 THE COURT: SO LET'S ASSUME YOU GOT ME ON
21 THAT ONE AND MY ORDER WAS AT NARROWLY DRAFTED AS
22 YOU SUGGEST IT WAS.

23 PRACTICALLY, WHAT IS THE PROBLEM WITH
24 PRODUCING SOME CONTROLLER'S DEPOSITION TRANSCRIPT
25 FOR A DELAWARE LITIGATION IN THIS CASE SUBJECT TO A

1 PROTECTIVE ORDER AND EVERYTHING ELSE?

2 MR. SABRI: SO FINANCIAL TESTIMONY,
3 YOUR HONOR, NOT AN IMMENSE PRACTICAL PROBLEM,
4 CORRECT.

5 WE DON'T THINK THERE'S RELEVANCE, WE
6 DON'T THINK THAT WOULD FALL WITHIN SAMSUNG'S MOTION
7 WHICH WAS FOR SCOPE OF THE PATENTS.

8 THE COURT: NO, BUT YOU ALL BROUGHT A
9 DISPUTE TO ME AND ASKED ME TO DRAW A LINE.

10 WHEN YOU DRAW A LINE, SOMETIMES THINGS
11 FALL ON ONE SIDE OR THE OTHER THAT COULD BE ARGUED
12 THE OTHER WAY.

13 THE PROBLEM I SEEM TO BE HAVING HERE IS
14 THAT WHENEVER I DRAW THE LINE YOU THEN ARGUE ABOUT
15 WHAT THE LINE MEANS, WHERE THE LINE IS, HOW WIDE OR
16 NARROW THE LINE IS -- AND I APOLOGIZE, I AM GOING
17 OFF A LITTLE QUICKLY.

18 IN THIS PARTICULAR INSTANCE I JUST DON'T
19 UNDERSTAND WHY IT ISN'T APPLE'S INTEREST TO ARGUE
20 AND FIGHT AND SPEND THE MONEY AND INDULGE THE TIME
21 AND EFFORT OF BOTH OF YOUR CLIENT AND THE COURT
22 OVER CERTAIN TRANSCRIPTS THAT REALLY DON'T SEEM TO
23 MAKE ALL THAT MUCH OF A DIFFERENCE TO YOUR
24 POSITION, DO THEY? IF THEY ARE IRRELEVANT, WHAT DO
25 YOU CARE?

1 MR. SABRI: YOUR HONOR, THE MEET AND
2 CONFER HISTORY, AND THE REAL FIGHT HERE WASN'T
3 CERTAINLY FINANCIALS, THAT EXPLAINS WHY APPLE
4 DIDN'T PRODUCE CERTAIN FINANCIAL TRANSCRIPTS. IT'S
5 NOT THAT OUR WHOLE OPPOSITION IS ON THAT, IN FACT
6 THAT'S DEFINITELY A SIDE POINT.

7 THE COURT: SO MR. BUCKLEY, FOR EXAMPLE,
8 THERE WAS NO REAL SERIOUS BEEF HERE WITH PRODUCING
9 HIS DEPO TRANSCRIPT, WAS THERE?

10 MR. SABRI: THAT'S NOT A HUGE BEEF,
11 YOUR HONOR.

12 THE EXPLANATION IS WHY WE DON'T BELIEVE
13 IT FELL WITHIN THE CONFINES OF THIS ORDER, AND WE
14 EXPLAINED TO SAMSUNG WHY THEY HADN'T BEEN PRODUCED.

15 THE REAL FIGHT IS THE '796 LITIGATION
16 WHICH WE SAY IS NOT AN ISSUE OF PRODUCTION AND
17 SAMSUNG SHOULDN'T BE ALLOWED TO CIRCUMVENT WHAT
18 I'VE OUTLINED TO YOUR HONOR.

19 AND THEN OF COURSE APPLE WITNESSES, APPLE
20 DOESN'T BELIEVE IT SHOULD BE REQUIRED TO DIG UP
21 THROUGH ALL OF ITS EMPLOYEES, LOOK THROUGH ALL OF
22 THOSE POSSIBLY RELATED PROCEEDINGS AND PRODUCE ALL
23 OF THOSE TRANSCRIPTS.

24 THE COURT: IF I WERE TO REQUEST COPIES
25 OF THE TRANSCRIPTS IN THE '796 AND TRANSCRIPTS OF

1 DEPOSITIONS APPLE TOOK AND I WERE TO DIG THROUGH
2 THOSE PAGES LINE BY LINE, ARE YOU TELLING ME I
3 WOULDN'T FIND ANY INSTANCES IN WHICH APPLE
4 QUESTIONED WHICH ARGUABLY FELL OUTSIDE OF THE SCOPE
5 OF THE '796 WERE RELEVANT TO THIS CASE?

6 MR. SABRI: I DON'T KNOW, YOUR HONOR.

7 WHAT I DO KNOW IS YOU WOULD SEE SAMSUNG
8 QUESTIONING, RELATED TO THIS CASE AND ON NEARLY
9 EVERY DESIGN TRANSCRIPT, AN OBJECTION ON THE RECORD
10 BY APPLE'S COUNSEL SAYING THIS IS IMPROPER.

11 THE COURT: ALL RIGHT.

12 ANYTHING FURTHER, COUNSEL?

13 MR. SABRI: IF I COULD BRIEFLY ADDRESS
14 THE DOCUMENT ISSUE, YOUR HONOR.

15 THIS IS THE MOTION TO COMPEL PORTION.
16 THE REAL PROBLEM HERE IS TIMING AND THE FACT THAT
17 SAMSUNG, AS NOTED IN THE BRIEFING, HAS NOT RECEIVED
18 FULL CONSENT FOR ANY OF THE PROCEEDINGS AT ISSUE.

19 SO THE FULL CHAIN HERE, AND I WILL BE
20 QUICK ABOUT THIS, SAMSUNG IN DECEMBER THE COURT
21 NOTED SAMSUNG WILL SEEK CONSENT FROM THIRD PARTIES.
22 THERE WAS NO MOTION TO COMPEL ON THE OTHER
23 PROCEEDINGS AT THE TIME FOR DOCUMENTS.

24 SAMSUNG THEN WAITED UNTIL FEBRUARY TO
25 BEGIN SEEKING CONSENT. AND WHAT WE SAW IS

1 COMPLICATED REDACTION INSTRUCTIONS BEGINNING, NOT
2 ENDING, BEGINNING THREE WEEKS BEFORE THE CLOSE OF
3 DISCOVERY.

4 HTC PRESENTS AN EXAMPLE OF THE KIND OF
5 AWKWARD POSITION SAMSUNG SEEKS TO PUT APPLE INTO.

6 FIRST, THREE WEEKS BEFORE THE CLOSE OF
7 DISCOVERY SAMSUNG SAYS, HTC, WE DON'T KNOW THE
8 ANSWER YET. SAMSUNG'S COUNSEL, MIND YOU, IS ALSO
9 COUNSEL FOR HTC AND GOOGLE AND MOTOROLA.

10 TWO WEEKS BEFORE THE CLOSE OF DISCOVERY
11 SAMSUNG SENDS A LETTER THAT SAYS, HTC WILL NOT
12 CONSENT, SO GO THROUGH AND MAKE SURE YOU'VE
13 REDACTED HTC INFORMATION AND PRODUCE THE DOCUMENTS.

14 THEN A WEEK LATER, A WEEK BEFORE THE
15 CLOSE OF DISCOVERY, SAMSUNG SAYS NEVERMIND, HTC
16 DOES CONSENT.

17 SO NOW ONE WEEK BEFORE THE CLOSE OF
18 DISCOVERY, GO THROUGH ALL THOSE MATERIALS, UN
19 REDACT ALL HTC INFORMATION, BUT YOU CAN'T JUST DO
20 THAT BECAUSE GOOGLE HAS LIMITED CONSENT. GOOGLE
21 SAYS THIS CBI YOU CAN PRODUCE, THESE OTHER TYPES OF
22 CBI YOU CAN'T.

23 NOKIA SAYS THESE THREE SPECIFIC DOCUMENTS
24 YOU CAN PRODUCE, REDACT EVERYTHING ELSE.

25 SO WHAT SAMSUNG SEEKS TO FORCE APPLE TO

1 DO AT THE VERY END OF DISCOVERY IS GO THROUGH AND
2 ENSURE THAT FOR PARTIES THAT HAVE NO CLIENT
3 RELATIONSHIP TO APPLE'S COUNSEL, THAT HAVEN'T EVEN
4 GIVEN THESE COMPLICATED, IN SOME CASES OR LIMITED
5 IN OTHER CASES, REDACTION INSTRUCTIONS DIRECTLY TO
6 APPLE'S COUNSEL, APPLE MAKE SURE THAT YOU APPLY
7 THOSE ACCURATELY, BECAUSE IF YOU DON'T, WHAT
8 SAMSUNG DOESN'T OF COURSE EXPLORE BUT IS THE
9 LOGICAL NEXT STEP, APPLE IS GOING TO BE EXPOSED TO
10 A CLAIM FROM THOSE OTHER PARTIES.

11 THAT'S WHAT APPLE WOULD NOT AGREE TO.
12 APPLE SAID IF YOU GET CONSENTS, OF COURSE WE CAN
13 JUST GIVE YOU THE UN REDACTED DOCUMENTS, WE HAVE
14 NOTHING TO WORRY ABOUT. THAT WAS IN FEBRUARY.

15 WHAT WE FIND IS IN MARCH WE ARE BEING
16 ASKED TO GO THROUGH VOLUMINOUS DOCUMENTS AND
17 DETERMINE WHAT WE CAN AND CAN'T PRODUCE. THAT'S
18 TOO MUCH RISK, TOO MUCH BURDEN. THE TIMING IS
19 UNFAIR. WE WOULD URGE THE MOTION BE DENIED AS WELL
20 AS THE MOTION TO DISMISS.

21 THE COURT: ALL RIGHT.

22 THANK YOU VERY MUCH.

23 MR. SABRI: THANK YOU, YOUR HONOR.

24 MS. TUCHER: IF I COULD ADD ONE QUICK
25 NOTE TO MR. SABRI'S VERY GOOD ARGUMENT HERE.

1 IF YOU ARE INCLINED TO ORDER APPLE TO
2 PRODUCE FOR EXAMPLE A SINGLE DEPOSITION OF
3 MR. BUCKLEY IN A PREVIOUS CASE, DEPOSITION
4 TRANSCRIPT, I WOULD URGE YOU NOT TO ADD THE
5 SUPPLEMENTAL RELIEF THAT MS. HUTNYAN ASKED FOR
6 INVOLVING DEPOSITIONS IN THIS CASE.

7 AND I WILL GIVE YOU, FOR EXAMPLE, ANOTHER
8 EXAMPLE FROM THE '796. THEY WERE GRANTED IN THE
9 '796 AN OPPORTUNITY TO TAKE A DEPOSITION AFTER THE
10 CLOSE OF FACT DISCOVERY BECAUSE OF SOMETHING THAT
11 HAPPENED THERE.

12 AND IT WAS SUPPOSED TO BE ON ONE VERY
13 SPECIFIC TOPIC. IT WAS AN INVENTOR OF THE TOUCH
14 HEURISTICS PATENT, AND THEY SAID THEY NEEDED IT TO
15 UNDERSTAND THE INVENTOR'S TESTIMONY ON THE TOUCH
16 HEURISTIC'S PATENT. THEN THEY USED THE ENTIRE
17 DEPOSITION TIME THEY WERE GRANTED TO ASK QUESTIONS
18 ABOUT COMPLETELY UNRELATED ISSUES.

19 AND THERE'S NOTHING TO PREVENT THAT FROM
20 HAPPENING HERE BECAUSE WE'RE NOT GOING TO BE
21 INSTRUCTING WITNESSES TO ANSWER QUESTIONS POSED BY
22 SAMSUNG.

23 SO PLEASE DON'T AT THIS LATE STAGE GRANT
24 ADDITIONAL DEPOSITION TIME REGARDLESS IF YOU GRANT
25 TRANSCRIPTS.

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THE COURT: THANK YOU.

MS. HUTNYAN, ANY REBUTTAL?

MS. HUTNYAN: THANK YOU, YOUR HONOR.

TO RESPOND TO ONE OF YOUR HONOR'S
QUESTIONS, YES, APPLE DEFINITELY ASKED QUESTIONS
THAT WOULD BE APPROPRIATE IN ND CAL AND ITC
DEPOSITIONS AND VICE VERSA. THEY HAVE AGREED TO
CROSS USE EVERY WHICH WAY.

AND THE REASON WHY THEY'RE FIGHTING SO
HARD, TO REFERENCE ONE OF YOUR OTHER QUESTIONS AND
BECAUSE THIS STUFF IS REALLY, REALLY PROBATIVE, IT
CHANGES THE SCOPE OF THIS CASE. AND THAT'S WHY WE
WENT AHEAD AND DID THIS IN CAMERA THING, AND I KNOW
YOU ARE NOT HAPPY WITH ME ABOUT THAT BUT IT'S
IMPORTANT TO THE RECORD --

THE COURT: I HAVE NO OTHER BEEF WITH
YOU, COUNSEL, I'M THINKING ABOUT THE BURDEN THAT IS
POSED TO MY STAFF AND THIS COURT.

I'M HAPPY TO READ YOUR MATERIALS, I ENJOY
IT, BUT MY STAFF HAS LIMITS, AND THAT'S WHY THERE
WAS THIS ISSUE.

MS. HUTNYAN: I APPRECIATE THAT, YOUR
HONOR.

AND IF I CAN CORRECT IT, IF YOU WILL
ALLOW ME TO FILE IT UNDER SEAL LIKE I SHOULD HAVE

1 BEEN ABLE TO, THEN I WILL FIX IT --

2 THE COURT: I THINK WE CROSSED THAT.

3 MS. HUTNYAN: COUNSEL ARGUED IT WAS NOT
4 FAIR TO ALLOWS US TO USE THE THINGS YOU REQUIRED TO
5 BE PRODUCED BACK IN DECEMBER BECAUSE IT'S NOW THE
6 END OF DISCOVERY.

7 IT'S ALL THE MORE FAIR THAT WE SHOULD
8 HAVE BEEN USING IT ALL ALONG. WE SHOULD HAVE BEEN
9 USING IT ALL ALONG.

10 WHAT THEY ARE TRYING DO HERE IS TO
11 OBSCURE THE TRUTH. APPLE LIKES TO FILE SUITS ALL
12 OVER THE WORLD AND SAY DIFFERENT THINGS IN
13 DIFFERENT PLACES AND THEN USE THE PROTECTIVE ORDERS
14 IN AN ABUSIVE WAY TO HIDE THEIR OWN CONFIDENTIAL
15 INFORMATION.

16 AND THAT'S WHAT THIGH ARE DOING HERE.
17 IT'S THE SAME DOCUMENTS, RIGHT? THEY ARE ALLOWED
18 TO -- WE ALL AGREE THAT DOCUMENTS PRODUCED IN ONE
19 ACTION COULD BE USED IN THE OTHER ONE BOTH
20 DIRECTIONS.

21 SO HOW CAN WE -- HOW CAN WE IMAGINE THAT
22 THE TESTIMONY ISN'T OBVIOUSLY GOING TO BE RELEVANT
23 IN BOTH ACTIONS AS WELL?

24 THERE ARE PICTURES IN OUR BRIEF OF THE
25 DESIGNS THAT ARE AT ISSUE IN THE TWO CASES. YOU

1 SEE THINGS THAT LOOK LIKE IPHONES. THEY ARE
2 CLAIMING RECTANGULAR, ROUND-EDGED DESIGNS.

3 THOSE ARE -- THAT ISSUE IS IN BOTH CASES.
4 THE PRIOR ART, THE D889.

5 THE COURT: SO WHY DID YOU AGREE TO THIS
6 LIMITATION IN THE PROTECTIVE ORDER?

7 MS. HUTNYAN: WE DIDN'T AGREE TO THE A
8 LIMITATION, THAT'S ABSOLUTELY FALSE.

9 ALL WE SAID IS WE WERE NEGOTIATING THE
10 PROTECTIVE ORDER AND WE WERE TRYING TO FIND AREAS
11 WHERE WE COULD AGREE TO A PROVISION.

12 WE AGREE THAT DOCUMENTS COULD COME ACROSS
13 BOTH WAYS. WITH DEPOSITIONS IT WAS US THAT WAS
14 CONCERNED ABOUT THE 250-HOUR LIMIT BEING ABUSED.

15 SO WE SAID IT'S THE BEGINNING OF THE
16 CASE, YOU KNOW WHAT, WE WILL JUST DO THAT ON AN
17 ISSUE-BY-ISSUE BASIS. AND WE ARE GOING TO -- WE
18 NEED TO HAVE THE PROVISION IN THERE WHICH FOLLOWS
19 THE STATEMENT THAT TRANSCRIPTS DON'T GET
20 AUTOMATICALLY PRODUCED PURSUANT TO THE PROTECTIVE
21 ORDER, IT SAYS, BUT THE PARTIES CAN CERTAINLY SEEK
22 THOSE OTHER FORMS OF DISCOVERY THROUGH DOCUMENT
23 REQUESTS.

24 WE PUT THAT IN BECAUSE WE KNEW SOME WOULD
25 BE PERTINENT, BUT WE DIDN'T WANT PEOPLE GOING

1 AROUND THE RESTRICTIONS.

2 NOW THE DISCOVERY IS CLOSED IN BOTH THE
3 ACTIONS. THIS WHOLE DISCUSSION ABOUT THE
4 250 HOURS, IT'S JUST HIDING EVIDENCE, YOUR HONOR.

5 OF COURSE, IF THERE'S RELEVANT EVIDENCE
6 AND TESTIMONY FROM INVENTORS ON THEIR DESIGNS AND
7 WHY THEY CAME UP WITH DIFFERENT THINGS, IF THEY
8 TOLD THAT STORY AND IT WAS DIFFERENT IN ITC, IT
9 SHOULD BE PRODUCED HERE. AND IT'S NOT CHANGING
10 ANYTHING WITH RESPECT TO THE 250-HOUR LIMIT.

11 THE LIMIT, OF COURSE, WAS MEANT TO
12 BENEFIT WITNESSES SO THAT WITNESSES WOULD NOT HAVE
13 TO SPEND A WHOLE BUNCH MORE TIME, AND IT HAS
14 NOTHING TO DO WITH TIME TRYING TO PREVENT EVIDENCE
15 FROM COMING IN.

16 INDEED, MR. TESSLER WHO WE WERE TOLD WE
17 COULDN'T GET HIS DEPOSITION IN ND CAL BECAUSE WE
18 HAD ENOUGH LICENSING TESTIMONY IN '796.

19 ALSO IN TERMS OF THE TIMING AND HOW IT'S
20 NOT FAIR TO ALLOW US TO USE THESE THINGS THAT YOU
21 SAID LONG AGO WE SHOULD BE ABLE TO HAVE USED,
22 APPLE FILED A MOTION TO COMPEL AFTER THIS MOTION
23 AND IT DEALT WITH ITEMS FROM RELATED PROCEEDINGS.

24 AND YOU KNOW WHAT, WE AGREED TO THAT. WE
25 ARE GOING TO BE PROBABLY STIPULATING TO ALL OF IT.

1 THE COURT: I NOTICED YOU HAVEN'T FILED
2 THAT STIPULATION YET.

3 MS. MAROULIS: WE HAVEN'T, BUT IT'S IN
4 THE WORKS, YOUR HONOR.

5 MS. HUTNYAN: IT'S EMINENT.

6 THE COURT: I LOOK FORWARD TO RECEIVING
7 IT.

8 GO ON.

9 MS. HUTNYAN: BECAUSE IT'S RELEVANT,
10 OKAY. AND IT WAS MUCH LATER. AND THAT MOTION
11 COULD HAVE BEEN BROUGHT EARLIER, BUT IT WASN'T.

12 IN TERMS OF THE SCOPE OF THE ORDER WITH
13 RESPECT TO WITNESSES, AND I'M READING FROM APPLE'S
14 OPPOSITION BRIEF -- THIS IS ON PAGE 20 OF ITS
15 ORIGINAL OPPOSITION BRIEF FILED DECEMBER 15TH,
16 2011.

17 "MOREOVER APPLE'S REQUESTED RELIEF, WHICH
18 DEMANDS APPLE PRODUCE ALL PRIOR TESTIMONY OF APPLE
19 WITNESSES, IS BROADER THAN SAMSUNG'S DOCUMENT
20 REQUEST."

21 AT THE TIME, THE DISCUSSION WASN'T ABOUT
22 WITNESSES IN THIS CASE, THEY WERE COMPLAINING THAT
23 WE WERE ASKING FOR ALL WITNESSES.

24 AND SO --

25 THE COURT: TO WHICH YOUR RESPONSE IS

1 YES.

2 MS. HUTNYAN: WE ARE ASKING FOR ALL
3 RELEVANT WITNESSES, YOUR HONOR.

4 IF IT'S SOMETHING THAT -- YOU KNOW, IF
5 IT'S A TECHNOLOGICAL NEXUS, LET'S SAY IT HAS THREE
6 PATENTS IN IT AND TWO OF THEM ESTABLISH THE BASIS
7 FOR THE TECHNOLOGICAL NEXUS AND ONE HAS NOTHING TO
8 DO WITH THE ISSUES IN THIS CASE, WE'RE NOT SAYING
9 THAT NEEDS TO BE PRODUCED. WE NEVER SAID THAT
10 NEEDED TO BE PRODUCED, BUT CERTAINLY ALL
11 RELEVANT TRANSCRIPTS SHOULD BE PRODUCED. AND IF
12 THEY HAVE TECHNOLOGICAL NEXUS, OR YOU KNOW, OR IF
13 IT'S THE FINANCE GUY AND HE'S TALKING ABOUT IPHONE
14 REVENUES, THAT HAS MET THE STANDARD.

15 THIS WHOLE ARGUMENT ABOUT HOW THIS -- THE
16 BRIEFING WAS REALLY MUCH NARROWER, IT'S SIMPLY NOT
17 TRUE. I'VE LOOKED BACK AT THE BRIEFING.

18 THE COURT: I MUST TURN TO THE THIRD
19 MOTION BECAUSE OUR TIME REALLY IS RUNNING SHORT.

20 I JUST HAVE ONE LAST QUESTION FOR YOU,
21 WHICH IS THE THIRD PARTY CONSENT MECHANISM.

22 DID I MAKE YET ANOTHER MISTAKE IN
23 ASSUMING THAT PROCESS WILL GO RELATIVELY SMOOTHLY?
24 AS I SIT HERE AND LISTEN TO YOU ALL ARGUE THIS, I
25 THINK WHY ON EARTH WOULD ANY PARTY CONSENT TO

1 ANYTHING?

2 HOW COULD IT POSSIBLY BE IN THEIR
3 INTEREST TO ALLOW THEIR INFORMATION TO BE PRODUCED
4 INT HIS CASE?

5 SO WAS THAT JUST ANOTHER MISTAKE ON MY
6 PART?

7 MS. HUTNYAN: WELL, IT WASN'T --

8 THE COURT: I CAN TAKE IT, GO AHEAD.

9 MS. HUTNYAN: IT HAS CREATED SOME ISSUES.
10 AND I CAN EXPLAIN THAT.

11 THERE'S NOTHING WRONG WITH THINKING THAT
12 THE THIRD PARTIES WILL GIVE CONSENT. THEY IN FACT
13 DO ALL THE TIME. AND WE GET THOSE REQUESTS FROM
14 OTHER LITIGANTS ALL THE TIME AND WE DEAL WITH IT
15 BECAUSE, YOU KNOW, WE ALL AVAIL OURSELVES OF THE
16 COURTS AND SO YOU DEAL WITH THESE AND YOU LOOK AT
17 IT. AND IF IT'S SOMETHING THAT IS IN ANOTHER ONE
18 OF OUR ACTIONS OR WHATEVER, YOU MAKE THAT CALCULUS
19 AND YOU DETERMINE WHAT THOSE MATERIALS ARE AND IF
20 YOU NEED CONSENT OR NOT, AND IF NOT THERE'S MOTION
21 PRACTICE, SO IT WORKS ITSELF OUT.

22 BUT HERE WHAT APPLE HAS DONE IS THEY HAVE
23 TRIED TO TAKE ADVANTAGE OF THE FACT THAT WE
24 REPRESENT A NUMBER OF THESE OTHER ENTITIES. AND
25 THAT CREATES A LEVEL OF COMPLEXITY BECAUSE AS

1 COUNSEL FOR SAMSUNG AND FOR SOME OF THE OTHER
2 ENTITIES, MY FIRM IS THEN PUT IN THE POSITION OF
3 TRYING TO NEGOTIATE --

4 THE COURT: AGAINST YOURSELF.

5 MS. HUTNYAN: -- AGAINST YOURSELF.

6 AND SO THAT'S WHY IT TAKES TIME TO DO.

7 NOW AS FAR AS WE WAITED, WE DIDN'T WAIT.

8 IN FACT, WE DIDN'T EVEN FIND OUT UNTIL FEBRUARY 6TH
9 THAT SOME OF THESE THIRD PARTY ENTITIES WERE AT
10 ISSUE, BECAUSE APPLE DIDN'T TELL US. WE FIND OUT,
11 JUMPED ALL OVER IT AND GOT THE CONSENTS.

12 SO, YOU KNOW, THIS OTHER SORT OF
13 PROCEDURE THAT HAS BEEN SUGGESTED OF NOW
14 MR. VERHOEVEN CAN TAKE THE PILE ON HIS DESK ON ONE
15 SIDE AND FLIP IT OVER TO THE OTHER SIDE, YOU WOULD
16 BE VIOLATING THE PROTECTIVE ORDER IN DOING THAT
17 THEN WE WOULD BE IN THE POSITION OF A CONFLICT
18 SITUATION.

19 AND IT'S JUST ANOTHER OBSTACLE TO
20 SOMETHING THAT JUST NEEDS TO BE PRODUCED. AND THE
21 IDEA THAT '796 IS NOT AN ISSUE OF PRODUCTION, IT
22 WAS WHEN YOU WROTE THE ORDER. YOU SAID IT NEEDED
23 TO BE PRODUCED AND IT NEEDS TO BE PRODUCED. IT
24 ABSOLUTELY IS PRODUCTION. IT'S NOT ABOUT CROSS USE
25 OR ANYBODY SQUARING OFF OF CERTAIN KINDS OF

1 EVIDENCE, THAT DIDN'T HAPPEN.

2 THE COURT: ALL RIGHT.

3 THANK YOU VERY MUCH.

4 LET'S TURN TO THE FINAL MOTION. WHO WILL
5 BE ARGUING ON BEHALF OF SAMSUNG?

6 MS. JENKINS: YOUR HONOR, I'M SARA
7 JENKINS.

8 THE COURT: MS. JENKINS, GOOD AFTERNOON.

9 MS. JENKINS: SO THE MOTION THAT I'M
10 PRESENTING TODAY IS ACTUALLY A VERY TARGETED
11 MOTION. IT SET A VERY DISCREET SET OF DOCUMENTS.
12 AND THE DOCUMENTS WE'RE LOOKING FOR ARE DESIGN
13 PATENT APPLICATIONS THAT RELATE TO THE PRODUCTS
14 THAT APPLE HAS PUT AT ISSUE IN THIS CASE BY
15 CLAIMING THAT THOSE PRODUCTS ARE EMBODIMENTS OF THE
16 PATENTS AT ISSUE IN THIS CASE.

17 THE DOCUMENTS ARE HIGHLY RELEVANT TO
18 SAMSUNG'S DEFENSES AND THEY SHOULD BE PRODUCED
19 IMMEDIATELY.

20 APPLE HAS TOLD YOU US THEY HAVE SOME
21 CONFIDENTIALITY CONCERNS REGARDING THESE DOCUMENTS
22 BUT THOSE CAN BE COVERED BY THE PROTECTIVE ORDER.

23 AND APPLE HASN'T MADE ANY COLORABLE CLAIM
24 THAT THERE'S A BURDEN TO PRODUCE THESE DOCUMENTS SO
25 THEY SHOULD BE PRODUCED RIGHT AWAY.

1 I WOULD FIRST GO TO TALK ABOUT THE
2 RELEVANCE OF THESE DOCUMENTS IN THIS CASE. AND
3 THEY ARE RELEVANT IN MANY DIFFERENT WAYS.

4 THE FIRST IS I WOULD TALK ABOUT THE SCOPE
5 OF THE PATENTS AT ISSUE IN THIS CASE.

6 SO --

7 THE COURT: THIS IS THE SAME ISSUE WE
8 HAVE BEEN TALKING ABOUT ALL MORNING, RIGHT?

9 MS. JENKINS: IT IS. SO IF YOU WANT TO
10 CUT ME OFF, PLEASE GO AHEAD.

11 THE COURT: NO, NO, I DON'T WANT TO CUT
12 YOU OFF, I WANT TO MAKE SURE I'M ON THE SAME PAGE
13 AS YOU.

14 MS. JENKINS: FOR INSTANCE THE, '889
15 PATENT WHICH IS AT ISSUE IN THIS CASE, IT'S A
16 DESIGN PATENT FOR AN ELECTRONIC DEVICE.

17 APPLE CLAIMS THAT THIS PATENT IS EMBODIED
18 BY THE IPAD 2. THIS PATENT WAS FILED BACK IN 2004.

19 IF YOUR HONOR WOULD LIKE I CAN PASS UP A
20 COPY OF IT SO YOU CAN TAKE A LOOK AT IT OR I CAN
21 JUST TELL YOU, BUT BASICALLY IS HAS IMAGES OF A
22 RECTANGLE ON THE SCREEN -- THIS IS THE DESIGN
23 PATENT.

24 SO OUR POINT IS IF APPLE HAS SUBSEQUENTLY
25 FILED DESIGN PATENT APPLICATIONS THAT WOULD BE

1 EMBODIED BY THE IPAD 2, THAT WOULD NECESSARILY
2 NARROW THE SCOPE OF THE D889 PATENT. AND THAT IS
3 BECAUSE WHATEVER THEY CLAIM IN THE NEW PATENT --

4 THE COURT: SO AS TO AVOID AN INVALIDITY
5 ISSUE OR OBVIOUSNESS TYPE ISSUE.

6 MS. JENKINS: YES.

7 AND SO IF FOR INSTANCE THEY HAVE A NEW
8 PATENT APPLICATION THAT CLAIMS THAT THE BEZEL IS
9 SLIGHTLY WIDER, THEY WILL BE CLAIMING THIS IS A NEW
10 DESIGN WORTHY OF NEW PATENT PROTECTION THAT THE
11 BEZEL IS LARGER.

12 IF THAT'S TRUE, THEY SHOULDN'T BE ALLOWED
13 TO COME BACK INTO THIS COURT AND ARGUE, OH SAMSUNG
14 INFRINGES EVEN THOUGH THEIR BEZEL ISN'T THE SAME AS
15 WHAT'S HERE IN THE PATENT APPLICATION.

16 SO ANY FUTURE PATENT APPLICATIONS WOULD
17 DEFINITELY GO TO SCOPE.

18 IT'S ALSO VERY LIKELY THAT THE D889
19 PATENT WOULD BE LISTED AS PRIOR ART IN ANY
20 SUBSEQUENT PATENT APPLICATIONS THAT WERE SUBMITTED
21 TO THE PATENT OFFICE THAT ALSO EMBODIED THE IPAD 2.

22 AND IF SO WE WOULD EXPECT TO SEE THAT
23 THERE COULD BE REJECTIONS FROM THE PATENT OFFICE
24 BASED ON THAT REFERENCE AND THEN APPLE WOULD NEED
25 TO MAKE STATEMENTS REGARDING WHAT EXACTLY IS

1 COVERED BY THE '889 TO TRY TO OVER COME THAT
2 REFERENCE.

3 THE COURT: OR NOT. YOU DON'T KNOW THAT.

4 MS. JENKINS: NO, WE DON'T KNOW BECAUSE
5 WE HAVEN'T SEEN THEM.

6 THE COURT: LET ME ASK YOU THIS, COUNSEL.

7 IF I AGREE WITH YOU AND ORDER THIS
8 PRODUCTION AND IT TURNS OUT THAT APPLE'S POSITIONS
9 BEFORE THE PATENT AND TRADEMARK OFFICE ARE ENTIRELY
10 CONSISTENT WITH THE POSITIONS THEY ARE TAKING HERE
11 TODAY, WOULD SAMSUNG OBJECT TO THEIR INTRODUCTION
12 OR PRESENTATION TO THE JURY?

13 MS. JENKINS: IF IT'S PROBATIVE IN SOME
14 OTHER WAY, I DON'T IMAGINE THAT WE WOULD. I DON'T
15 KNOW HOW THAT WOULD BE PROBATIVE, BUT YES, I THINK
16 THAT WOULD BE FINE.

17 ANY NEW DESIGN PATENT APPLICATIONS ARE
18 ALSO HIGHLY RELEVANT TO THE ISSUES OF EMBODIMENT IN
19 THIS CASE WHICH IS GOING TO BE HOTLY CONTESTED FOR
20 THE D889 AND POSSIBLY OTHERS.

21 APPLE CLAIMS THE D889 IS EMBODIED BY THE
22 IPAD 2, SAMSUNG DOESN'T AGREE WITH THAT.

23 AND SO TO BE ABLE TO LOOK AT ANY
24 SUBSEQUENTLY FILED APPLICATIONS THAT THEY ALSO
25 CLAIM ARE EMBODIED BY THE '889 WOULD BE VERY USEFUL

1 FOR SAMSUNG TO TRY AND SHOW LISTEN THAT THIS ONE IS
2 NOT THE SAME, THIS NEW ONE LOOKS LIKE THE IPAD 2,
3 YOU CAN TELL IT'S THE IPAD 2, THE OLD ONE IT'S NOT
4 THE SAME THING, IT COMPLETELY DIFFERENT, IT DOESN'T
5 MEET THE TEST FOR EMBODIMENT.

6 THE COURT: SO IF WE WERE TALKING ABOUT
7 ANY OLD KIND OF DOCUMENT, THE RELEVANCE HERE WOULD
8 NOT BE A SERIOUS QUESTION. BUT WE ARE TALKING
9 ABOUT MATERIALS WHICH THE USPTO HAS DETERMINED ARE
10 BEST KEPT CONFIDENTIAL AT LEAST FOR A CERTAIN
11 PERIOD OF TIME.

12 HOW DO I SQUARE YOUR REQUEST WITH THE
13 ADMINISTRATIVE AGENCY'S DETERMINATION OF THE
14 CONFIDENTIALITY IN THE PROSECUTION PROCESS IS AN
15 IMPORTANT AND WORTHY CONSIDERATION?

16 MS. JENKINS: WELL, THE RULES BY THE PTO
17 WERE NEVER MEANT TO GOVERN THE COURTS. COURTS CAN
18 ORDER THESE ARE PRODUCED, THAT'S MADE CLEAR IN ALL
19 THE CASES WE CITED AS WELL AS THE CASES THAT APPLE
20 CITED ON THIS MOTION.

21 AND WHAT THE COURTS SAY IS YOU DO A
22 BALANCING TEST, THE PROBATIVENESS AND THE NECESSITY
23 OF THE ONE SIDE WHO WANTS THE DOCUMENTS IN GETTING
24 THEM VERSUS ANY CONFIDENTIALITY CONCERNS ON THE
25 OTHER SIDE, AND YOU MUST TAKE INTO ACCOUNT ANYTHING

1 THAT COULD BE DONE TO ALLEVIATE THOSE
2 CONFIDENTIALITY CONCERNS.

3 THE COURT: BUT I DO HAVE TO GIVE SOME
4 CONSIDERATION, DON'T I, TO THE FACT THAT, AS
5 YOURSELF YOU DESCRIBED IT, THERE IS A BALANCE.

6 SO THE ADMINISTRATIVE AGENCY'S INTEREST
7 HERE IS WORTHY OF CONSIDERATION, IS IT NOT? I HAVE
8 TO AT LEAST CONSIDER THAT, DON'T I?

9 MS. JENKINS: I THINK IN THE BALANCING
10 TEST YOU NEED TO CONSIDER WHETHER OR NOT THERE'S A
11 TRUE CONFIDENTIALITY CONCERN.

12 AND HERE I WOULD SAY THAT IT'S VERY
13 SMALL, IT'S A NEGLIGIBLE --

14 THE COURT: BECAUSE THE IPAD 2 IS ALREADY
15 A PRODUCT OUT ON THE MARKET, INDEED A RAPIDLY AGING
16 PRODUCT.

17 MS JENKINS: YES.

18 AND THAT'S ONE REASON IS THAT FOR ALL OF
19 THE PATENT APPLICATIONS WE WOULD BE ASKING FOR --
20 WE ARE ASKING FOR SUBSEQUENT APPLICATIONS OF
21 SOMETHING THAT HAS ALREADY BEEN RELEASED TO MARKET.

22 THE COURT: AND ON THAT TOPIC YOU
23 HIGHLIGHTED THE IPAD 2.

24 APPLE SEEMS TO THINK YOUR REQUESTS ARE
25 LIMITED TO THE IPAD 2; IS THAT CORRECT?

1 MS. JENKINS: NO, THAT'S NOT CORRECT.

2 AND I THINK THEY TALK ABOUT ALL THE
3 OTHERS IN THEIR OPPOSITION AS WELL. SO I THINK
4 THEY ACKNOWLEDGE WE ARE ASKING FOR THE OTHER
5 PRODUCTS WHICH WOULD BE -- IT'S THE PRODUCTS THEY
6 CLAIM ARE EMBODIED BY THE PATENTS AT ISSUE HERE.

7 SO IT'S DIFFERENT ITERATIONS OF THE
8 IPHONE, THE IPOD TOUCH AND THE IPAD.

9 AND JUST TO GO BACK TO THE ISSUE OF
10 CONFIDENTIALITY, ONE POINT IS YES, THESE HAVE
11 ALREADY BEEN RELEASED TO THE MARKET. WITH THE
12 DESIGN PATENT, THE ONLY ISSUE IS THE EXTERNAL
13 APPEARANCE AND ORNAMENTATION OF THE PRODUCT.

14 AND SO WE'RE NOT LOOKING UNDER THE HOOD.
15 WE ARE NOT TRYING TO LOOK AT ANY TRADE SECRETS. IF
16 THE IPAD 2 HAS ALREADY BEEN RELEASED, PRESUMABLY
17 I'LL GO BUY IT, LOOK AT IT AND SEE ANYTHING THAT
18 WOULD BE CONTAINED IN THE APPLICATION FOR THE
19 DESIGN PATENT.

20 THE COURT: EXCEPT THAT YOU ALL ARE
21 SAYING THE IPAD 2 IS NOT AN EMBODIMENT OF THE '889,
22 RIGHT?

23 MS. JENKINS: THAT'S TRUE. BUT WE
24 ALREADY HAVE THE '889.

25 THE ADDITIONAL PATENT APPLICATIONS WE

1 WOULD BE ASKING FOR WOULD BE EMBODIMENTS OF THE
2 IPAD 2 THAT THEY ARE CLAIMING.

3 THE COURT: AND I APPRECIATE THAT
4 CLARIFICATION.

5 SO THE DETERMINATION OF WHETHER APPLE IS
6 CLAIMING THE IPAD 2 EMBODIES THESE OTHER PENDING
7 APPLICATIONS, WHERE WOULD ONE GO OR HOW WOULD I
8 CRAFT AN ORDER TO ESTABLISH A CLEAR LINE ABOUT
9 THAT?

10 MS. JENKINS: I THINK --

11 THE COURT: IS IT SOMEWHERE IN THE
12 PROSECUTION HISTORY ITSELF WHERE ONE WOULD SEE A
13 REPRESENTATION FROM APPLE, FOR EXAMPLE, THAT THIS
14 PATENT APPLICATION IS EMBODIED IN THIS PRODUCT?

15 MS. JENKINS: YOU MAY SEE THAT IN SOME.
16 I DON'T THINK YOU WOULD NECESSARILY SEE THAT IN
17 ALL.

18 I DON'T KNOW THAT THERE'S A CLEAR CUT
19 DEFINITION THAT YOU CAN PUT IN AN ORDER, BUT THESE
20 ARE THE KINDS OF DETERMINATIONS --

21 THE COURT: PARTICULARLY, IF I PUT IT IN
22 A FOOTNOTE, RIGHT?

23 MS. JENKINS: THESE ARE THE KINDS OF
24 DETERMINATIONS WE ARE MAKING AS WE REVIEW DOCUMENTS
25 OF WHETHER IT SHOULD BE PRODUCED OR NOT.

1 SOMEONE COULD LOOK AT IT, DOES IT LOOK
2 LIKE A TABLET COMPUTER, DOES IT LOOK LIKE THE IPAD
3 2, IF SO PRODUCE IT.

4 IF IT LOOKS LIKE SOME OTHER DESIGN THAT
5 APPLE IS WORKING ON THAT DOESN'T HAVE AN ISSUE IN
6 THIS CASE, NO NEED TO PRODUCE.

7 SO THE OTHER CONFIDENTIALITY CONCERNS
8 THAT APPLE HAS EXPRESSED CAN ALL BE COVERED BY THE
9 PROTECTIVE ORDER.

10 ALL OF THE RELEVANT PROVISIONS IN THE
11 PROTECTIVE ORDER THAT WOULD BE RELEVANT TO THIS
12 ISSUE, APPLE AGREED TO. THE PARTIES CAME TO AN
13 AGREEMENT ON ALMOST ALL PROTECTIVE ORDER ISSUES.

14 THE COURT: SO NONE OF YOUR PATENT
15 SECURITIES, NONE OF YOUR COMPETITIVE DECISION
16 MAKERS WOULD SEE THIS STUFF, IT WOULD BE PEOPLE ON
17 THE OUTSIDE.

18 MS. JENKINS: MY FIRM DOESN'T DO ANY
19 PATENT PROSECUTION, BUT UNDER THE PROTECTIVE ORDER
20 NO, WE ARE BOUND NOT TO BE INVOLVED IN PATENT
21 PROSECUTION OR IN THE COMPETITIVE DECISION MAKING.

22 THE COURT: ALL RIGHT.

23 THANK YOU VERY MUCH, COUNSEL.

24 MS. JENKINS: THANK YOU.

25 MS. TUCHER: GOOD AFTERNOON, YOUR HONOR.

1 THE COURT: GOOD AFTERNOON.

2 MS. TUCHER: I THINK THERE'S A BROAD
3 VERSION AND A NARROW VERSION OF SAMSUNG'S MOTION
4 AND I WANT TO START WITH THE BROAD VERSION.

5 THE NARROW VERSION IS THE IPAD 2 ISSUE AND I
6 THINK THAT MERITS SPECIAL DISCUSSION.

7 BUT AS WE UNDERSTAND THEIR MOTION, THEY
8 HAVE SOUGHT, THEY'VE NARROWED IT TO DESIGN PATENTS
9 IN THEIR BRIEFING, IF NOT IN THE ORIGINAL REQUEST.
10 AND THEY'VE NARROWED IT TO PRODUCTS THAT ARE
11 ALREADY RELEASED IN THEIR SUBSEQUENT BRIEFING IF
12 NOT IN THEIR ORIGINAL REQUEST. AND THAT'S ACTUALLY
13 A VERY IMPORTANT RESTRICTION TO APPLE BECAUSE OF
14 THE SENSITIVITY ON PART OF BOTH SIDES ABOUT
15 PRODUCTS THAT ARE NOT RELEASED.

16 SO IF THERE'S ANY ORDER THAT COMES OUT OF
17 IT, IT'S IMPORTANT WE CAPTURE BOTH DESIGNS THAT ARE
18 PRODUCTS THAT ARE NOT RELEASED.

19 ALSO, APPLE HAS ALREADY PRODUCED ALL OF
20 ITS PATENTS AND PROSECUTION HISTORIES FOR ALL OF
21 ITS DESIGN PATENTS WHERE THE PATENT HAS ISSUED, SO
22 IT IS JUST ON --

23 THE COURT: WE ARE TALKING ABOUT STUFF
24 THAT ISN'T PUBLICLY AVAILABLE.

25 MS. TUCHER: THAT'S RIGHT.

1 AND AS YOUR HONOR NOTES AND APPRECIATES,
2 THAT'S NOT JUST THE STANDARD, RELEVANCY STANDARD OF
3 DISCOVERY, BUT RATHER A HEIGHTENED RELEVANCE
4 STANDARD.

5 THEY HAVE TO SHOW A CONVINCING NECESSITY
6 FOR THE MATERIALS AND BALANCE IT AGAINST THE HARM.

7 SO I WANT TO TALK ABOUT BOTH WHAT THEY
8 HAVE BEEN ABLE TO SHOW AND WHAT THE HARM IS.

9 AS FOR WHAT THEY HAVE BEEN ABLE TO SHOW,
10 I THINK THEY HAVE ARGUMENTS ON THE IPAD 2 WHICH WE
11 ARE GOING GET TO IN A FEW MINUTES. BUT ON THE
12 OTHER PRODUCTS, WE HAVEN'T HEARD ANY REAL
13 EXPLANATION FOR WHAT THEY THINK THEY ARE GOING FIND
14 JUST BY SEEING WHAT IT IS APPLE IS SEEKING TO
15 PATENT. EITHER BECAUSE THE PATENTS RELATE TO THE
16 PATENTS IN SUIT OR BECAUSE THE PATENTS RELATE TO
17 PRODUCTS THAT EMBODY THE PATENTS IN SUIT.

18 AND I ACTUALLY HAVE A BIG PROBLEM WITH
19 THIS SECOND PIECE ABOUT PATENTS THAT RELATE TO
20 PRODUCTS THAT EMBODY THE PATENTS IN SUIT.

21 IT'S NOT HARD TO FIND OUT WHICH PRODUCTS
22 EMBODY THE PATENTS IN SUIT AS APPLE HAS ENTERED
23 INTERROGATORIES ON THAT QUESTION. BUT IT IS HARD
24 TO SAY WHICH RELEVANT, UNPUBLISHED PATENT
25 APPLICATIONS DOES THAT SOMEHOW LEAD US TO.

1 BECAUSE TO TAKE A CONCRETE EXAMPLE,
2 COUNSEL FOR SAMSUNG HELD UP THE PATENT FOR THE BODY
3 OF THE TABLET AND SAID, WE WANT THINGS THAT ARE
4 RELATED TO THIS.

5 WELL, WHAT IF -- THIS IS STRICTLY
6 HYPOTHETICAL, WHAT IF APPLE IS PURSUING A PATENT ON
7 SOMETHING RELATING TO THE GRAPHICALLY USER
8 INTERFACE ON THE IPAD 2?

9 YOU COULD SAY CERTAINLY THAT THAT IS A
10 PATENT RELATED TO THE PRODUCT THAT THE IPAD 2 THAT
11 WE SAID EMBODIES THE TABLET PATENT IN SUIT.

12 BUT CLEARLY THERE'S NO NEED FOR APPLE TO
13 PRODUCE THAT HYPOTHETICAL, UNPUBLISHED APPLICATION
14 IN ORDER FOR SAMSUNG TO -- IT HAS NO RELEVANCE TO
15 THE CASE.

16 SO THERE'S NO REASON FOR SAMSUNG TO --
17 THE COURT: WHY WOULDN'T IT HAVE
18 RELEVANCE? I DON'T FOLLOW IT.

19 IF THERE'S A PENDING APPLICATION WHICH
20 CLAIMS A DESIGN ON A PRODUCT WHICH APPLE HAS
21 CLEARLY INDICATED EMBODIES A PATENT IN SUIT IN THIS
22 CASE, HOW WOULD IT NOT BE RELEVANT TO THE ISSUES IN
23 DISPUTE?

24 MS. TUCHER: BECAUSE THE DESIGN PATENT IS
25 NOT ON THE PRODUCT IN TOTAL, IT'S ON A SPECIFIC

1 ASPECT OF THE PRODUCT.

2 IT MIGHT BE THE WAY THE MAIN BODY OF THE
3 PRODUCT IS SHAPED. IT MIGHT BE THE SHAPE OF THE
4 CONNECTION CORDS. IT MIGHT BE THE --

5 THE COURT: IT MIGHT BE THE GRAPHICAL
6 INTERFACE.

7 MS. TUCHER: IT MIGHT BE THE PICTURE OF
8 THE GRAPHICAL USER INTERFACE.

9 SO MY POINT IS THE GRAPHICAL USER
10 INTERFACE ON THE IPAD 2 IS NOT RELATED TO THE
11 TABLET DESIGN. THAT EXPLAINS WHY -- THAT SAMSUNG
12 HAS ARGUED IS THE REASON WHY THEY SHOULD BE ABLE TO
13 GET ALL UNPUBLISHED PATENT APPLICATIONS RELATING TO
14 THE IPAD 2.

15 THE COURT: SO LET'S SAY YOU HAVE AN
16 UNPUBLISHED DESIGN PATENT APPLICATION ON THE SHAPE
17 AND COLOR OF THE CHARGING CORD, OKAY.

18 MS. TUCHER: GOOD EXAMPLE.

19 THE COURT: ALL RIGHT.

20 I GET YOUR POINT THAT THAT HAS VERY
21 LITTLE TO DO WITH ANY OF THE DESIGNS THAT ARE AT
22 ISSUE IN THIS CASE.

23 BUT LET'S TALK ABOUT THE DESIGNS THAT ARE
24 AT ISSUE IN THIS CASE.

25 MS. TUCHER: OKAY.

1 THE COURT: TO THE EXTENT THERE ARE
2 PENDING APPLICATIONS WHICH ADDRESS THE VERY SAME
3 DESIGN FEATURES THAT ARE BEING ASSERTED HERE, WHY
4 ISN'T THAT AT LEAST DISCOVERABLE?

5 MS. TUCHER: IT HELPS WE ARE NARROWING IT
6 TO THE VERY SAME DESIGN FEATURES.

7 SO LET'S TAKE, AGAIN, A STRICTLY
8 HYPOTHETICAL PATENT APPLICATION THAT RELATES TO THE
9 TABLET DESIGNS IN SUIT HERE, IN THAT IT ALSO CLAIMS
10 SOME ASPECTS OF THE BODY OF THE IPAD 2.

11 HOW MANY ASPECTS OF THE BODY OF THE IPAD
12 2 DOES IT HAVE TO CLAIM IN ORDER FOR IT TO BE
13 RELATED? DOES IT HAVE TO BE THE FACE, THE SIDES,
14 THE EDGES? DOES IT HAVE BE TO ALL OF THEM?

15 THE COURT: YOU MAKE AN EXCELLENT POINT.
16 SO WHY NOT ERR ON THE SIDE OF DISCLOSURE AND
17 TRANSPARENCY?

18 MS. TUCHER: AND THE ANSWER TO THAT IS
19 THE HEIGHTENED RELEVANCE STANDARD THAT PERTAINS IN
20 THIS CASE BECAUSE OF THE FACT THAT THESE ARE
21 UNPUBLISHED PATENT APPLICATIONS. THERE'S A
22 CONGRESSIONALLY MANDATED INTEREST IN ALL UN
23 PUBLISHED PATENT APPLICATIONS REMAINING
24 CONFIDENTIAL. AND IT'S ACTUALLY PARTICULARLY
25 STRONG IN THE CONTEXT OF DESIGN PATENTS.

1 SO FOR EXAMPLE YOU MENTIONED THAT PATENT
2 APPLICATIONS REMAIN, AT LEAST FOR A TIME,
3 CONFIDENTIAL. FOR DESIGN PATENTS, THAT TIME
4 DOESN'T END UNLESS AND UNTIL THE PATENT ISSUES.

5 SO ALL OF THE PATENTS WE ARE DISCUSSING
6 ARE PATENTS THAT, ACCORDING TO THE CONGRESSIONAL
7 MANDATE, ARE TO REMAIN CONFIDENTIAL.

8 THE COURT: WHAT IS THE -- I MEAN THIS
9 SINCERELY, AND I'M EAGER TO HEAR SAMSUNG'S VIEW,
10 WHAT IS THE UNDERLYING PURPOSE OF THAT? I'VE NEVER
11 UNDERSTOOD.

12 WHY DID CONGRESS, AS YOU PUT IT, I'M NOT
13 SURE IT WAS CONGRESS OR IF IT WAS THE
14 ADMINISTRATIVE AGENCY, BUT WHY DID WASHINGTON THINK
15 IT WAS SO IMPORTANT WE KEEP THE APPLICATIONS SECRET
16 FOR A PERIOD OF TIME?

17 MS. TUCHER: SO IT'S IMPORTANT FOR PATENT
18 APPLICATIONS TO BE SECRET FOR A PERIOD OF TIME
19 BECAUSE ONLY WHEN THE APPLICATION PROCESS HAS
20 CONCLUDED AND THE PARTY SAYS YES, PLEASE ISSUE THAT
21 PATENT OR NO I'VE DECIDED NOT TO HAVE YOU ISSUE THE
22 PATENT, IF THAT'S THE PATENT YOU ARE GOING TO GIVE
23 ME, ONLY AT THAT TIME DOES A PARTY MAKE THE CHOICE
24 WHETHER TO DISCLOSE WHAT ARE ITS MOST CONFIDENTIAL
25 TRADE SECRETS TO THE WORLD BY TAKING A PATENT OR

1 NOT TO BY DECIDING TO ABANDON A PATENT APPLICATION.

2 THE COURT: SO EX-ANTE I CAN UNDERSTAND
3 THAT INTEREST IN PROTECTING THE TRADE SECRETS OF A
4 COMPANY AS IT MAKES COMMERCIAL DECISIONS ABOUT WHAT
5 OR WHAT NOT TO PURSUE IN THE MARKET. BUT ONCE THE
6 PRODUCT IS OUT THERE, WHAT INTEREST IS THERE IN
7 PROTECTING THAT INFORMATION IN THE CONTEXT OF A
8 HOTLY CONTESTED PATENT DISPUTE?

9 MS. TUCHER: IT'S CERTAINLY TRUE THAT THE
10 INTEREST IS STRONGER WHEN THE PRODUCT IS NOT OUT
11 THERE. BUT EVEN WHEN THE PRODUCT HAS BEEN RELEASED
12 THERE'S AN INTEREST AND THERE'S A FAIRNESS ISSUE.

13 SO TO TAKE THE EXAMPLE OF THE IPAD 2
14 WHICH SAMSUNG RAISED, THEY SURMISE THAT APPLE HAS
15 ONE OR MORE PATENTS ON SOME ASPECTS OF THE IPAD 2.
16 BUT THEY DON'T KNOW WHAT ASPECTS. THEY DON'T KNOW
17 WHETHER CERTAIN PIECES OF THE BODY STYLE, CERTAIN
18 OTHER THINGS, CERTAIN COLORS, CERTAIN SHAPES --

19 THE COURT: THE CHARGING CORD, THEY DON'T
20 KNOW.

21 MS. TUCHER: EXACTLY.

22 THEY DON'T KNOW AND THEY DON'T HAVE A
23 RIGHT TO KNOW BECAUSE WE DON'T KNOW THAT ABOUT
24 THEIR PRODUCTS AND BECAUSE COMPANIES THAT ARE NOT
25 BEFORE YOU IN THIS LITIGATION DON'T KNOW.

1 THE COURT: WHAT ABOUT THE PROTECTIVE
2 ORDER, DOESN'T THAT SOLVE YOUR PROBLEM?

3 MS. TUCHER: IT DOESN'T.

4 AND THE REASON THAT IT DOESN'T IS BECAUSE
5 SAMSUNG'S COUNSEL HAS BEEN CLEAR WITH US THAT THEY
6 ARE ADVISING SAMSUNG ON DESIGN-AROUNDS FOR THE
7 PATENTS IN SUIT.

8 THE COURT: THEY ARE TRYING TO AVOID
9 STEPPING ON YOUR PROPERTY, ISN'T THAT WHAT YOU
10 WANT?

11 MS. TUCHER: WE DO WISH --

12 THE COURT: WHAT BETTER WAY TO ACCOMPLISH
13 THAT OBJECTIVE THAN TO PRODUCE THIS UNDER THE TERMS
14 OF THE PROTECTIVE ORDER.

15 MS. TUCHER: THE REASON IT'S NOT
16 APPROPRIATE TO DO THAT HERE IS BECAUSE WE ARE
17 TALKING ABOUT THINGS THAT AREN'T YET APPLE'S
18 PROPERTY. WE ARE TALKING ABOUT PATENTS THAT
19 HAVEN'T ISSUED.

20 AS FOR PATENTS THAT HAVE ISSUED, WE WANT
21 THEM TO KNOW ABOUT THEM, WE WANT THEM TO --

22 THE COURT: IF WE ARE TALKING ABOUT
23 PRODUCTS IN THE MARKET, PENDING DESIGN APPLICATIONS
24 FOR PRODUCTS IN THE MARKET, WHAT POSSIBLE -- AND WE
25 ARE TALKING ABOUT FEATURES WHICH ARE AT ISSUE IN

1 THIS CASE, DON'T YOU WANT THEM TO AVOID YOUR
2 PROPERTY, OR ARE YOU REALLY TRYING TO GET THEM TO
3 STEP ON THE PROPERTY THEN HIT THEM?

4 MS. TUCHER: NO, WE DON'T HAVE TO DO
5 THAT. WE HAVE A TRADE SECRET CASE. THEY KNOW WHAT
6 OUR PROPERTY IS, THEY KNOW THEY HAVE TO STAY AWAY
7 FROM IT.

8 THIS IS A SEPARATE QUESTION. THIS IS
9 WHETHER THEY DESERVE TO KNOW AS TO THE DESIGN
10 RIGHT, WHAT APPLE IN THE FUTURE HOPES AND INTENDS
11 TO GET AS PROPERTY.

12 AND I CAN'T THINK OF ANY REASON WHY
13 SAMSUNG GETS TO KNOW THAT ABOUT APPLE'S
14 INTELLECTUAL PROPERTY TO BE WHEN APPLE DOESN'T GET
15 TO KNOW THAT ABOUT SAMSUNG.

16 THE COURT: BECAUSE YOU ARE SUING THEM ON
17 THE PATENTS AND THE JURY IS GOING TO HAVE TO
18 STRUGGLE WITH THE VERY COMPLICATED QUESTION OF HOW
19 APPROPRIATELY TO UNDERSTAND THE SCOPE OF THE
20 CLAIMS.

21 SO WHY NOT -- AND BY THE WAY, THIS
22 PROTECTIVE ORDER IS GOING TO BE FASCINATING TO SEE
23 HOW YOU ALL MANAGE THIS AT TRIAL, BUT THAT'S A
24 SEPARATE ISSUE FOR ANOTHER DAY.

25 SO WHY NOT SAY THE RIGHT BALANCE TO

1 STRIKE HERE IS, FINE, LET'S TALK ABOUT PRODUCTS IN
2 THE MARKET. FINE, LET'S TALK ABOUT FEATURES THAT
3 ARE ACCUSED IN THIS CASE. BUT AS TO THOSE PRODUCTS
4 AND THOSE FEATURES, WHY SHOULDN'T SAMSUNG OUTSIDE
5 COUNSEL BE ABLE TO UNDERSTAND HOW ITS CLIENT CAN
6 AVOID YOUR PROPERTY LINE?

7 MS. TUCHER: SO IT HELPS US THAT YOU ARE
8 NARROWING IT, BUT IT'S STILL IMPROPER BECAUSE IT'S
9 NOT RECIPROCAL AS TO THESE TWO PARTIES OR AS TO ANY
10 OTHER PARTIES.

11 THE COURT: I WOULDN'T HAVE A PARTICULAR
12 BEEF IF YOU HAD SERVED A REQUEST AND THEY WERE
13 OBJECTING AND YOU MOVED IN ALL OF THAT.

14 BUT I HAVE A NARROW DISPUTE HERE AND I'M
15 TRYING TO UNDERSTAND WHAT THE PROBLEM IS IN
16 ALLOWING THEM ON AN OUTSIDE COUNSEL ONLY BASIS TO
17 UNDERSTAND WHAT POSITIONS YOU'VE TAKEN WHEN THE
18 ONLY JUSTIFICATION I'VE HEARD IS WELL, THAT MIGHT
19 ALLOW THEM TO AVOID INFRINGEMENT.

20 MS. TUCHER: WELL, THE PROBLEM IS THIS IS
21 A CASE WHERE THE PRODUCTS HAVE, WHERE SAMSUNG
22 COUNSEL SAYS THE PRODUCTS HAVE A THE LIFE TIME OF
23 CABBAGE.

24 THIS IS A CASE WHERE TIME REALLY MATTERS.
25 SO YOU ARE TALKING ABOUT GIVING THEM NOTICE NOW OF

1 PATENTS THAT AREN'T GOING TO ISSUE UNTIL LATER. SO
2 WHY SHOULD SAMSUNG HAVE THAT NOTICE WHEN THE MAKERS
3 OF THE --

4 THE COURT: BECAUSE YOU HAVEN'T SUED
5 THEM, AT LEAST TO MY KNOWLEDGE.

6 MS. TUCHER: WHY IS IT THAT HAVING
7 INFRINGED OUR EXISTING INTELLECTUAL PROPERTY GIVES
8 SAMSUNG AN ADVANTAGE IN UNDERSTANDING THE SCOPE OF
9 OUR FUTURE INTELLECTUAL PROPERTY?

10 THE COURT: BECAUSE THEY HAVE TO DEFEND
11 THEMSELVES IN THE CASE AND THE JURY HAS TO WRESTLE
12 WITH THAT.

13 MR. SABRI: WELL THEN LET'S TURN TO
14 WHETHER THERE'S ANY ADVANTAGE IN THEIR ATTEMPT TO
15 DEFEND THEMSELVES IN THE CASE FROM THE EVIDENCE
16 THAT THEY CLAIM TO SEEK.

17 COUNSEL SAID THAT IT'S IMPORTANT TO KNOW
18 WHAT PATENTS APPLE HAS SOUGHT BECAUSE THAT WOULD
19 NARROW THE SCOPE OF THE OLDER PATENTS.

20 DESIGN PATENTS DON'T WORK THAT WAY. YOU
21 CAN'T NARROW THE SCOPE OF A 2004 PATENT BY APPLYING
22 FOR A PATENT FIVE YEARS LATER -- I GUESS IT'S EIGHT
23 YEARS LATER.

24 SO BECAUSE WE SUED ON AN OLDER PATENT AND
25 THEY ARE SEEKING DISCOVERY OF THE NEWER PATENTS,

1 THERE'S NOTHING USEFUL IN WHAT THEY HAVEN'T SEEN
2 YET BECAUSE WE CAN'T MODIFY THE SCOPE OF THE PATENT
3 IN SUIT, BY WHAT WE SAY LATER.

4 THE COURT: I UNDERSTAND YOU MIGHT NOT BE
5 ABLE TO DISCLAIM, IN THE CLASSIC SENSE OF PATENT
6 PROSECUTION THE SCOPE OF THE SUBSEQUENT
7 APPLICATION, BUT SURELY THE POSITIONS YOU TAKE ON
8 WHAT THAT ISSUE CLAIM MEANS ARE MATERIAL TO A COURT
9 CONSTRUCTION OR PAST CONSTRUCTION, I GET THAT, OF
10 THAT CLAIM, BUT ALSO TO A JURY'S RESPONSIBILITY TO
11 UNDERSTAND WHETHER THIS CLAIM MAPS ON THIS ACCUSED
12 PRODUCT.

13 ISN'T THAT AT LEAST MATERIAL?

14 MS. TUCHER: WELL, ONE ACCUSED PRODUCT,
15 LET'S TAKE FOR EXAMPLE THE IPAD 2, CAN BOTH EMBODY
16 THE 2004 DESIGN AND EMBODY A HYPOTHETICAL FUTURE,
17 LET'S CALL IT IPAD 2 BODY SHAPE PATENT WHICH SEEMS
18 TO BE THE PROTOTYPE OF WHAT THEY HOPE TO FIND.

19 THE COURT: SURE. I AGREE WITH YOU THAT
20 THOSE TWO EMBODIMENTS ARE NOT NECESSARILY
21 CONSISTENT WITH ONE ANOTHER. INDEED, THAT'S
22 PERHAPS WHY APPLE CONTINUES TO SEEK DESIGN
23 PROTECTION ON PRODUCTS THAT HAVE ALREADY BEEN
24 RELEASED IN THE MARKET.

25 BUT I DON'T QUITE UNDERSTAND HOW IT COULD

1 NOT BE DISCOVERABLE TO UNDERSTAND WHAT POSITIONS
2 APPLE IS TAKING ON THE SAME FEATURES IN RELEASED
3 PRODUCTS.

4 MS. TUCHER: WELL, THE ONLY POSITION WE
5 TAKE IS THAT WE FILE FOR AN APPLICATION.

6 THE COURT: RIGHT.

7 MS. TUCHER: WE DON'T IN THAT APPLICATION
8 COMMENT ON THE PRIOR ART.

9 THERE'S A STATEMENT IN SAMSUNG'S BRIEFING
10 SUGGESTING OTHERWISE. BUT YOU'RE NOT --

11 THE COURT: BUT YOU ARE REPRESENTING AND
12 QUITE STRICTLY THAT THERE'S NOVELTY IN THIS
13 APPLICATION, RIGHT?

14 MS. TUCHER: THAT THERE'S A GOOD FAITH
15 BASIS FOR BELIEVING THERE'S NOVELTY.

16 BUT AGAIN, TO TAKE OUR IPAD 2 EXAMPLE,
17 JUST BECAUSE THERE'S A GOOD FAITH BASIS FOR
18 BELIEVING THAT THERE'S NOVELTY IN A HYPOTHETICAL
19 PATENT THAT LOOKS JUST LIKE THE IPAD 2 BODY STYLE,
20 THAT DOESN'T MEAN ANYTHING ABOUT WHETHER THE 2004
21 DESIGN IS VALID OR INVALID. BECAUSE THE SCOPE OF
22 THE PROTECTION OF THE 2004 DESIGN IS DETERMINED
23 BASED ON WHAT WAS THE STATE OF THE ART IN 2004.

24 AND NOTHING THAT HAPPENS IN 2011 AND 2012
25 CAN CHANGE WHAT WAS THE STATE OF THE ART IN 2004.

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AND EVEN IF APPLE DECIDES IN --

THE COURT: I UNDERSTAND THAT. WHAT WE ARE TALKING ABOUT THOUGH IS A PRODUCT RELEASED IN 2011 OR 2012, WHY WOULDN'T APPLE'S POSITIONS IN SUBSEQUENT PROSECUTIONS ILLUMINATE ITS BELIEF OR ITS POSITION AS TO THE PROPER SCOPE OF THAT CLAIM NECESSARILY BY FILING THAT LATER APPLICATION YOU'RE TELLING THE PATENT OFFICE, AREN'T YOU, THAT THIS APPLICATION IS PATENTABLY DISTINCT OVER THE EARLIER PATENT.

SO WHY WOULDN'T THAT INFORM OR ILLUMINATE, PARTICULARLY THE DISCOVERY STAGE, FORGET ABOUT TRIAL, WE ARE AT DISCOVERY AT THIS POINT.

WHY WOULDN'T THAT ILLUMINATE THE QUESTION OF HOW BROADLY TO UNDERSTAND THIS CLAIM WHEN YOU ARE APPLYING TO SAMSUNG'S PRODUCT?

MS. TUCHER: WITH DESIGN PATENTS IT CAN BE LIKE A VENN DIAGRAM WHERE THE 2004 PATENT HAS A SCOPE THAT IS BROAD ENOUGH TO INCLUDE SOMETHING THAT IS LATER APPLIED FOR IN A NARROWER PATENT.

THAT'S WHY I'M TALKING ABOUT A VENN DIAGRAM JUST IN THE SENSE THAT IT'S A SUBSET OF WHAT IT COULD BE THEORETICALLY OF WHAT APPLE APPLIES FOR TO IN 2011 OR 2012 IS A SUBSET OF

1 WHAT'S COVERED AND CLAIMED BY THE OLDER PATENT.

2 THE COURT: AND I WILL PROFESS MY
3 IGNORANCE ON DESIGN PATENT PROSECUTION, IT'S NOT
4 SOMETHING I HAD ANY EXPERIENCE WITH.

5 IN PROSECUTING A DESIGN PATENT
6 APPLICATION, ARE THERE NOT OFFICE ACTIONS AND
7 POSITIONS TAKEN DURING THE PROSECUTION ABOUT THE
8 SCOPE OF THE CLAIM?

9 MS. TUCHER: THERE ARE -- THERE IS SOME
10 GIVE AND TAKE SOMETIMES WITH THE APPLICANT AND THE
11 OFFICE.

12 THE COURT: ISN'T THAT GIVE AND TAKE WHAT
13 WE ARE TALKING ABOUT HERE?

14 MS. TUCHER: WELL, WHAT I WANT TO SAY IS
15 THAT IT IS QUITE DIFFERENT FROM UTILITY PATENTS,
16 AND THERE'S NO REQUIREMENT FOR EXPLAINING HOW YOU
17 DIFFER FROM A PARTICULAR PIECE OF PRIOR ART.

18 THE COURT: SO ONE RIGHT NOW COULD ARGUE
19 IN RESPONSE TO IN INITIAL OFFICE ACTION OR
20 REJECTING THE CLAIM AS NOT BEING PATENTABLY
21 DISTINCT OVER PRIOR ART?

22 MS. TUCHER: I THINK THE ANSWER IS
23 PROBABLY ONE COULD.

24 THE COURT: SO IF ONE COULD, WHY NOT
25 PRODUCE THE MATERIAL AND SEE WHERE THE CHIPS FALL?

1 MS. TUCHER: WELL, I GUESS THE ANSWER TO
2 THAT IS THE HEIGHTENED RELEVANCE STANDARD.

3 IF YOU WERE TO SAY THAT THE REASON THAT
4 THIS IS RELEVANT IS NOT BECAUSE OF THE APPLICATION
5 ITSELF, WHICH IS WHAT I UNDERSTOOD SAMSUNG TO BE
6 ARGUING, BUT BECAUSE OF SOME STATEMENT IN THE
7 PROSECUTION HISTORY SPECIFICALLY DISTINGUISHING THE
8 UNPUBLISHED APPLICATION FROM ONE OF THE PATENTS IN
9 SUIT.

10 THAT IS A MUCH, MUCH NARROWER ORDER AND
11 THAT WOULD REQUIRE APPLE TO REVIEW ITS PROSECUTION
12 HISTORIES OF PENDING PATENTS FOR PRODUCTS THAT HAVE
13 ALREADY BEEN RELEASED IN THE MARKET AND BLAH, BLAH,
14 BLAH, AND TO SEE IF THERE'S ANY SUCH DISTINCTIONS
15 DRAWN.

16 BUT THAT'S A VERY DIFFERENT ORDER FROM
17 WHAT WE ARE IN HERE FOR.

18 THE COURT: WELL, IT SEEMS TO ME THAT AT
19 LEAST AS TO THAT NARROW PIECE, HOWEVER YOU
20 CHARACTERIZE THE HEIGHTENED RELEVANCY STANDARD,
21 APPLE'S POSITION ON WHAT ITS EARLIER PATENTS COVER
22 ON A GIVEN FEATURE ARE AT LEAST MATERIAL TO THE
23 QUESTION OF WHETHER THAT SAME PATENT READS ON OR
24 APPLIES TO THE PRODUCTS AT ISSUE IN THIS CASE,
25 RIGHT?

1 MS. TUCHER: I'LL GRANT YOU THAT AS TO
2 THE PRODUCTS -- AS TO ANY EXPLICIT COMMENTS ABOUT
3 THE PATENTS THAT ARE AT ISSUE IN THIS CASE.

4 ALL THE ARGUMENT SO FAR HAS BEEN THE MERE FACT
5 THAT WE APPLIED FOR A PATENT THAT EMBODIES A
6 PRODUCT THAT'S AT ISSUE -- THAT ALSO EMBODIES A
7 PATENT AT ISSUE IN THIS CASE SOMEHOW MAKES THE
8 ENTIRE PATENT APPLICATION AND PROSECUTION HISTORY
9 DISCOVERABLE, AND THAT SEEMS TO ME HUGELY
10 OVERBROAD.

11 THE COURT: THANK YOU VERY MUCH COUNSEL.
12 ANY REBUTTAL?

13 MS. JENKINS: YES, YOUR HONOR.

14 I WILL MAKE THIS SHORT. BUT JUST TO
15 TOUCH ON A FEW POINTS THAT SHE MADE, WE WERE MAKING
16 AN EXAMPLE OUT OF THE IPAD 2 AND THE D889. THOSE
17 SAME ARGUMENTS WOULD APPLY IF APPLE HAD SUBSEQUENT
18 PATENT APPLICATIONS FOR THE DESIGN OF THE IPHONE 4
19 OR ANY OF THE OTHER IPHONES, AND THAT IT WOULD THEN
20 NECESSARILY NARROW THE SCOPE OF THE PREVIOUS
21 APPLIED FOR PATENT.

22 THE COURT: A SUBSEQUENT DESIGN PATENT ON
23 THE CHARGING COURT, RIGHT?

24 MS. JENKINS: NO, THAT'S NOT AT ISSUE
25 HERE.

1 SOME OF THE OTHER ISSUES YOU BRING UP AS
2 HYPOTHETICALS COULD BE ISSUES IN THIS CASE, SO IT'S
3 POSSIBLE SOMETHING LIKE THAT COULD BE.

4 ALSO, THE D'889 PATENT THEY ARE SAYING
5 JUST THE BODY FORM OF IT. IF YOU LOOK AT IT IT
6 ACTUALLY SHOWS ALL DIFFERENT VIEWS, THE FRONT,
7 BACK, ALL FOUR SIDES, THE SCREEN ARE ALL CLAIMED ON
8 THE D889.

9 SO IT WOULD BE HARD TO IMAGINE THAT A
10 SUBSEQUENT PATENT APPLICATION THAT ACTUALLY
11 EMBODIED THE IPAD 2 AND NOT JUST THE CHARGING CORD
12 WOULD NOT BE RELEVANT TO THE D889 PATENT.

13 AND I THINK IT'S -- THERE'S A SIMILAR
14 THEME WITH THIS MOTION THAN THE LAST ONE YOU HEARD
15 FROM US IS THAT APPLE IS BASICALLY SAYING THEY CAN
16 SAY ONE THING TO ONE PARTY BUT IT SHOULD NEVER COME
17 BACK THAT THEY HAVE TO ANSWER TO IT IN ANOTHER
18 ACTION.

19 HERE THEY WANT TO BE ABLE TO HEAR
20 SOMETHING FROM THE PATENT OFFICE IN ORDER TO GET
21 BROAD PATENTS IN A VERY LARGE PATENT PORTFOLIO.
22 THEY DON'T WANT HAVE TO DEFEND THAT IN THIS ACTION
23 AND TELL THE JURY OH, EVEN THOUGH WE SAID THIS IS A
24 NEW, NOVEL, ORIGINAL, NONOBVIOUS, NEW SUBSEQUENT
25 PATENT APPLICATION, YOU SHOULDN'T BE ABLE TO USE

1 THAT IN COURT TO TRY TO CONSTRUE THE CLAIM OF THE
2 OLDER PATENT.

3 THE COURT: IS IT FAIR FOR ME TO
4 UNDERSTAND, COUNSEL, THAT WHAT YOU ARE REALLY
5 FOCUSED ON -- I KNOW I UNDERSTAND YOU WANT A BUNCH
6 OF STUFF, THEY ARE SAYING YOU GO GET NONE OF IT,
7 YOU ALL ARE ASKING ME TO DRAW ANOTHER LINE.

8 IS IT FAIR FOR ME TO UNDERSTAND YOU ARE
9 PARTICULARLY FOCUSED ON THE REPRESENTATIONS APPLE
10 HAS MADE DURING THE PROSECUTION OF THESE SUBSEQUENT
11 PATENTS? THAT IS THE MOST PROBATIVE, THE MOST
12 MATERIAL VEIN OF INFORMATION YOU SEEK?

13 MS. JENKINS: YES.

14 IF YOU'RE REFERRING TO THE PATENT
15 APPLICATION THEN THE PROSECUTION HISTORY, YES,
16 THAT'S WHAT WE ARE SEEKING.

17 THE COURT: ALL RIGHT.

18 THANK YOU VERY MUCH.

19 ALL RIGHT, THE MOTIONS ARE SUBMITTED. I
20 APPRECIATE THE ARGUMENTS TODAY. YOU WILL HAVE AN
21 ORDER FROM ME AS SOON AS I CAN GET ONE OUT.

22 WHILE WE ARE ON THE RECORD, I JUST WANT
23 TO THANK COUNSEL IN PARTICULAR FOR ACCEPTING MY
24 CONDITION FOR SPECIALLY SETTING THIS HEARING. I DO
25 FEEL IT'S VALUABLE.

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THANK YOU.

(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.

SUMMER A. FISHER, CSR, CRR
CERTIFICATE NUMBER 13185

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