

EXHIBIT D

April 25, 2012

Writer's Direct Contact
415.268.6024
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By Email (dianehutnyan@quinnemanuel.com)

Diane Hutnyan
Quinn Emanuel
865 S. Figueroa St., 10th Floor
Los Angeles, California 90017

Re: *Apple v. Samsung*, Case No. 11-cv-1846-LHK (PSG) (N.D. Cal.)

Dear Diane:

This letter responds to yours sent to us last night, April 24, at 10:57 PM Pacific Time.

As we advised in our immediate response email (copy attached, providing Bates numbers), your letter misstates the scope of Apple's production of deposition transcripts pursuant to the Court's April 12 Order. Apple has fully complied with the April 12 Order regarding production of transcripts, including by producing transcripts of depositions taken after the close of discovery in this case and transcripts of depositions taken after the witness's deposition in this case. Apple has not, however, re-produced deposition transcripts that Apple had already produced or "deemed produced" pursuant to the agreement of the parties. (*See* Email from D. Hutnyan to M. Mazza dtd April 13, 2012 at 3:36 PM Pacific Time.)

Apple is disturbed by your statement, made in last night's letter, that the April 12 Order does not "limit the individuals that Samsung may depose to the Apple employees whose transcripts are now belatedly being produced." Apple does not understand the Court's Order as supplying Samsung with a "blank check" to depose any five people it desires. The Order specifically cited and relied on Samsung's request for "a court order allowing Samsung to . . . take the deposition of witnesses whose transcripts in other matters were produced late." (Dkt. No. 867 at 7.) Apple's understanding of the Order is that it allows Samsung to take up to five additional depositions *that are justified by prejudice caused by the late production of deposition transcripts*. (*Id.* at 10.)

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Because prejudice is the touchstone, the April 12 Order does not authorize Samsung to re-open the deposition of any Apple witness based on the production of a transcript for a deposition that post-dates the witness's deposition in this case. This includes, for example, all of the depositions taken in the ITC 796 action. All of those depositions were taken *after, if not during*, the witness's deposition in this case.¹ Obviously, Samsung suffered no prejudice from Apple's failure to produce those transcripts earlier. The transcripts did not exist at the time the witness was deposed in this case.

If you are unable to provide us by 5 p.m. this evening with the names of any Apple witnesses you would like to re-depose, please at least advise us today whether you disagree with any part of Apple's interpretation of the April 12 Order.

Sincerely,

/s/ Mia Mazza

Mia Mazza

Encl.

cc: S. Calvin Walden
Peter Kolovos

¹ The meet-and-confer correspondence documents that this sequencing was strictly required by Samsung when the depositions of overlapping ITC and N.D. Cal. witnesses were being scheduled.

Mazza, Mia

From: Mazza, Mia
Sent: Tuesday, April 24, 2012 11:38 PM
To: Diane Hutnyan
Cc: AppleMoFo; 'WH Apple Samsung NDCal Service'; Samsung v. Apple
Subject: RE: Apple v. Samsung Co., Case No. 11-cv-1846 LHK (N.D. Cal.): Correspondence re April 12 Court Order

Diane:

I wanted to get right back to you to clear up what appear to be a few misunderstandings on Samsung's part.

First, the list attached to my letter to you of earlier today is a subset of the deposition transcripts produced by Apple pursuant to the April 12 Order. Your team is directed to Apple's productions of April 17 and 20, 2012 at APLNDC003107336-3122498 and APLNDC-Y0000239399-251389.

Second, in producing deposition transcripts pursuant to the April 12 Order Apple did not re-produce duplicate copies of deposition transcripts Apple had already produced during the discovery period. For example, Apple has not re-produced the Motorola ITC 750 deposition transcripts of John Elias (APLNDC0001251403), Martin Grunthner (APLNDC0001251230), Steven Hotelling (APLNDC0001251506), Brian Huppi (APLNDC0001251998), Eric Jue (APLNDC0001246240), Chris Krah (APLNDC0001248909), Chip Lutton (APLNDC0001249107), Josh Strickon (APLNDC0001244550), Boris Teksler (APLNDC0001220501), or Wayne Westerman (APLNDC0001251285).

Third, the parties agreed on April 15, pursuant to your suggestion, that "796 deposition transcripts are immediately deemed produced in this action." (Email from D. Hutnyan to M. Mazza dtd April 13, 2012, 3:36 p.m.) Therefore, Apple completed its production of ITC 796 deposition transcripts on that date.

There is nothing deficient about Apple's production of deposition transcripts last week pursuant to the April 12 Order. Please do not delay in advising us of any additional Apple employee depositions that Samsung requests to be taken under the April 12 Order. We continue to request that you provide us with any and all names tomorrow.

Regards,

Mia Mazza
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4/25/2012

From: Brad Goldberg [mailto:BradGoldberg@quinnemanuel.com]
Sent: Tuesday, April 24, 2012 10:57 PM
To: Mazza, Mia
Cc: AppleMoFo; 'WH Apple Samsung NDCal Service'; Samsung v. Apple; Diane Hutnyan
Subject: Apple v. Samsung Co., Case No. 11-cv-1846 LHK (N.D. Cal.): Correspondence re April 12 Court Order

Mia,

Please see the attached correspondence from Diane Hutnyan.

Regards,

Brad Goldberg
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