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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
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FOR THE DEFENDANT: QUINN EMANUEL
BY: VICTORIA MAROULIS
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(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
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FOR THE DEFENDANT: QUINN EMANUEL
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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?

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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