

EXHIBIT 1

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FOR THE DEFENDANT: QUINN EMANUEL
BY: VICTORIA MAROULIS
KEVIN JOHNSON
555 TWIN DOLPHIN DRIVE, 5TH FL
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1 SAN JOSE, CALIFORNIA

MAY 2, 2012

2 P R O C E E D I N G S

3 (WHEREUPON, COURT CONVENED AND THE
4 FOLLOWING PROCEEDINGS WERE HELD:)

5 THE CLERK: CALLING CASE NUMBER
6 C-11-1846-LHK. APPLE, INC., VERSUS SAMSUNG
7 ELECTRONICS COMPANY LIMITED, ET AL.

8 MR. MCELHINNY: GOOD AFTERNOON,
9 YOUR HONOR.

10 HAROLD MCELHINNY, RICH HUNG AND
11 ALISON TUCHER ON BEHALF OF APPLE PLAINTIFFS.

12 MR. VERHOEVEN: GOOD AFTERNOON,
13 YOUR HONOR.

14 CHARLES VERHOEVEN. WITH ME IS MY PARTNER
15 KEVIN JOHNSON AND VICTORIA MAROULIS ON BEHALF OF
16 DEFENDANTS.

17 MR. JOHNSON: GOOD AFTERNOON, YOUR HONOR.

18 THE COURT: OKAY. GOOD AFTERNOON.

19 ALL RIGHT. WELL, THE NARROWING WAS NOT
20 GOOD ENOUGH SO I'M THINKING ABOUT CONTINUING THIS
21 TRIAL TO FALL. WE COULD DO IT 2013.

22 BUT IT'S SIMPLY NOT GOING TO BE POSSIBLE
23 FOR ONE JURY TO DO 7 -- 16 UTILITY PATENTS, SIX
24 DESIGN PATENTS, FIVE TRADE DRESSES, SIX TRADEMARKS,
25 AN ANTI-TRUST CASE AND ABOUT 37 ACCUSED DEVICES.

1 I THINK THAT'S CRUEL AND UNUSUAL
2 PUNISHMENT TO A JURY AND SO I'M NOT WILLING TO DO
3 IT.

4 SO I CAN EITHER JUST VACATE THE TRIAL
5 DATE AND WE CAN JUST HAVE A CONFERENCE, I CAN SET A
6 STATUS CONFERENCE FOR LATER AT THE END OF THE
7 SUMMER. I CAN VACATE THE SUMMARY JUDGEMENT
8 DEADLINES AS WELL. WHAT WOULD YOU LIKE TO DO?

9 MR. VERHOEVEN: YOU WOULD LIKE --

10 THE COURT: I MEANT NARROW AND THIS IS
11 NOT WHAT I GOT. SO I AM NOT IN THE MOOD TO
12 CONTINUE THIS. SO WE DON'T HAVE TO HAVE A TRIAL IN
13 JULY.

14 MR. MCELHINNY: I CAN EXPLAIN TO YOU WHY
15 WE THOUGHT WE HAD MET WHAT YOUR HONOR WANTED.

16 THE COURT: WELL, THAT'S FINE, BUT IT
17 DIDN'T, SO I'M VACATING THIS TRIAL DATE.

18 MR. MCELHINNY: BUT THEN WHAT I WOULD
19 APPRECIATE INSTEAD IS SOME GUIDANCE ABOUT WHAT
20 YOUR HONOR HAS IN MIND ABOUT WHAT WOULD LET US GO
21 TO TRIAL AND THEN ON FRIDAY WE WILL MEET THAT.

22 I TOLD YOU CLEARLY THE LAST TIME I WAS
23 HERE KEEPING THE TRIAL DATE IS OUR MOST IMPORTANT
24 THING. I'M NOT GOING TO WASTE YOUR TIME NOW
25 TRYING -- OR I WILL -- WHY WE THOUGHT THIS DID IT.

1 BUT IF IT DOESN'T, WE WILL MEET WHATEVER
2 YOUR HONOR HAS IN MIND. WE HAVE TO DO THAT.

3 THE COURT: I'VE HEARD REPEATEDLY HOW
4 MANY DECADES OF EXPERIENCE EVERYONE HAS. YOU TELL
5 ME YOU THINK A JURY WILL TAKE AND UNDERSTAND A CASE
6 WITH 37 ACCUSED PRODUCTS WITH 16 UTILITY PATENTS,
7 SIX DESIGN PATENTS, FIVE TRADE DRESS, SIX
8 TRADEMARK, AN ANTI-TRUST CASE?

9 YOU TELL ME. DO YOU THINK A JURY IS
10 GOING TO BE ABLE TO UNDERSTAND THAT, BE ABLE TO
11 COMPREHEND THAT, GIVE FAIR AND JUST RULINGS ON ALL
12 OF THOSE?

13 MR. MCELHINNY: THE ANSWER TO THAT
14 QUESTION IS I THINK IT CAN BE DONE. I THINK IT
15 WOULD BE BETTER TO BREAK IT INTO PARTS, BUT I HAVE
16 NOT BEEN ABLE TO CONVINCED YOUR HONOR TO DO THAT.

17 BUT AT LEAST IN OUR CASE --

18 THE COURT: PARTS MEANING WHAT? FOUR
19 TRIALS?

20 MR. MCELHINNY: WHAT WE HAD IN MIND WAS
21 TWO TRIALS. BUT YOU COULD DO IT IN THREE.

22 THE COURT: WELL, YOU ARE GOING TO HAVE
23 TO FIND ANOTHER JUDGE THEN BECAUSE I'M NOT GOING TO
24 DO THAT. IT'S NOT HAPPENING IN THIS COURTROOM.

25 SO YOU ARE FREE TO SUE IN ANOTHER VENUE

1 AND GET FIVE OR SIX TRIALS AND GET ALL ACCUSED
2 DEVICES AND PATENTS YOU WANT BUT IT'S NOT HAPPENING
3 HERE.

4 MR. MCELHINNY: I UNDERSTAND THAT,
5 YOUR HONOR.

6 BUT THE ANSWER TO YOUR QUESTION AT LEAST
7 ON OUR CASE, WE'VE GOT OUR CASE AND WE HAVE THE
8 CROSS COMPLAINT. AND IN OUR CASE THE VAST MAJORITY
9 OF WHAT WE ARE TALKING ABOUT HAS TO DO WITH
10 DESIGNS. THE VAST MAJORITY AND THE FACT THAT THERE
11 ARE A LARGE NUMBER OF ACCUSED DEVICES IS BECAUSE
12 THE PHONES KEEP COMING OUT.

13 IF I COULD START -- LET ME TELL YOU AT
14 LEAST WHAT WE ARE TRYING TO ACCOMPLISH. WHICH IS
15 WE ARE DRIVEN IN THIS CASE BY REMEDIES.

16 IN OTHER WORDS, WE BROUGHT THIS CASE TO
17 GET INJUNCTIVE RELIEF TO TAKE ALL THE ACCUSED
18 DEVICES OFF THE MARKET. IN THE MEANTIME WE HAVE
19 SUFFERED DAMAGES IN THE MULTIPLE OF BILLIONS OF
20 DOLLARS.

21 THE COURT: YOU HAVE SEVEN UTILITY
22 PATENTS THAT YOU ARE ASSERTING. SAMSUNG IS
23 ASSERTING NINE. HOW WOULD ANY JURY BE ABLE TO DEAL
24 WITH THAT MUCH?

25 MR. MCELHINNY: AT LEAST -- AGAIN,

1 SPEAKING FROM OUR CASE, THE ANSWER TO THAT IS I
2 THINK THE REAL QUESTION IS HOW MANY CLAIMS THEY'RE
3 BEING ASKED TO APPLY.

4 AND ON THE UTILITY PATENTS, WITH NOW ONE
5 EXCEPTION, THEY ARE ALL GRAPHIC INTERFACE PATENTS.
6 THEY ARE PATENTS THAT GO TO THE RUBBER BANDING
7 EFFECT. THEY ARE PATENTS THAT GO TO THE SWEEP.

8 TO ME AT LEAST, THE CONCEPTUAL VISION I
9 HAVE OF THIS CASE IS ONE OF LOOK AND FEEL. IT IS
10 HOW ALL OF THE ACCUSED DEVICES LOOK AND FEEL
11 EXACTLY LIKE THE IPHONE AND THE IPAD.

12 AND WHEN YOU ASKED YOURSELF WHY THEY DO
13 THAT, IT BREAKS DOWN INTO QUITE UNDERSTANDABLE
14 ELEMENTS WHICH IS THE DESIGN OF THE DEVICE AND HOW
15 IT OPERATES AS THE USER LOOKS AT IT

16 THE COURT: ALL RIGHT.

17 WELL, I'M NOT HEARING THE ANSWER TO MY
18 QUESTION.

19 DO YOU WANT ME TO JUST VACATE IT AND WE
20 CAN SET THE FIRST TRIAL FOR 2013, SECOND TRIAL FOR
21 2014, THIRD TRIAL FOR 2015? I CAN DO IT THAT WAY.

22 BUT IF YOU ARE GOING TO TRIAL IN JULY
23 THIS IS NOT GOING TO BE ACCEPTABLE AND SAME FOR
24 SAMSUNG.

25 SO EITHER I NEED FURTHER NARROWING OF

1 THIS CASE, AND I WANT SPECIFICALLY WHICH CLAIMS YOU
2 ARE GOING TO BE ASSERTING, OR I'M GOING TO VACATE
3 THE TRIAL. WE DON'T HAVE TO GO TO TRIAL IN JULY.
4 I DON'T THINK THIS CASE IS READY FOR TRIAL IN JULY
5 IF YOU WANT TO GO FORWARD WITH THIS MUCH. I DON'T
6 THINK IT'S POSSIBLE

7 MR. MCELHINNY: THE ANSWER IS I WOULD
8 LIKE TO TAKE THE SECOND OPTION.

9 THE COURT: OKAY. SO WHEN ARE YOU GOING
10 TO DO THAT? I WANTED THIS TO BE THE DATE.

11 MR. MCELHINNY: I UNDERSTAND.

12 I'M NOT GOING TO ASK FOR BEYOND FRIDAY TO
13 GET IT TO YOU. BUT I DON'T THINK YOU ARE GOING TO
14 GIVE ME MANY MORE CHANCES BEYOND FRIDAY, SO I WOULD
15 LIKE SOME GUIDANCE.

16 TO BE CLEAR, WHEN YOUR HONOR IS LOOKING
17 AT THE ENTIRE CASE WHICH IS APPROPRIATE, SO YOU ARE
18 LOOKING AT NINE SAMSUNG PATENTS AND A 136 CLAIMS
19 THERE, SAMSUNG HAS NO INTEREST IN REDUCING THE
20 COMPLEXITY.

21 YOU ASKED US TO REDUCE MOTIONS, THEY
22 INCREASED THEM. THEY HAVE NO INTEREST IN HOLDING
23 THE TRIAL DATE. SO THE LEVERAGE OF THE TRIAL DATE
24 WORKS ONLY AGAINST MY CLIENT. AND AS I'VE TOLD
25 YOU, WE WILL DO WHATEVER WE NEED TO DO TO HOLD THE

1 TRIAL DATE.

2 AND TO THE EXTENT IF YOU HAVE A BALLPARK
3 IN MIND ABOUT WHAT WE NEED TO COME BACK WITH I
4 WOULD APPRECIATE THAT GUIDANCE BECAUSE I DON'T WANT
5 TO MISS IT AGAIN.

6 THE COURT: WELL, AS FAR AS ANY -- IT
7 DEPENDS ON WHAT COMBINATION YOU ARE GOING TO DO.
8 BUT I WOULD THINK ON A UTILITY PATENT, AT MOST --
9 WELL, I WOULD LIMIT IT, I GUESS, TO EVEN CLAIM
10 TERMS. I THINK THREE OR FOUR IS PROBABLY THE MOST
11 THAT CAN BE DONE, AT THE MOST.

12 37 ACCUSED PRODUCTS? THAT'S TOO MANY.

13 MR. MCELHINNY: MAY I JUST BE HEARD --

14 THE COURT: AT THIS POINT I'M NOT GOING
15 TO GIVE YOU EXACT LIMITS. I SUSPECT IF I DO THAT
16 THEN ON APPEAL YOU'RE BOTH GOING TO ARGUE THAT I
17 VIOLATED YOUR DUE PROCESS RIGHTS IN NOT LETTING YOU
18 BRING YOUR CASE.

19 BUT IT NEEDS TO BE VERY MANAGEABLE FOR A
20 JURY TO UNDERSTAND. AND I THINK WHAT YOU BOTH
21 SIDES HAVE PRESENTED IS NOT THERE.

22 SO IF IT REMAINS LIKE THIS SCOPE THEN I'M
23 JUST GOING TO VACATE IT.

24 MR. MCELHINNY: I AM HEARING YOU LOUDLY
25 AND CLEARLY.

1 THE COURT: YEAH.

2 SO THEN TELL ME WHEN BOTH SIDES -- AND I
3 DON'T WANT JUST YOUR LISTING OF WE'LL DISMISS, YOU
4 KNOW, I WANT IT TO BE MORE IN THE AFFIRMATIVE. WE
5 ARE PLANNING GO TO TRIAL ON CLAIM 2 OF PATENT
6 WHATEVER. I WANT IT TO BE VERY SPECIFIC, VERSUS,
7 THIS IS WHAT WE ARE WILLING TO DISMISS.

8 I WANT TO KNOW WHAT EXACTLY YOU WANT TO
9 PRESENT TO THE JURY AND HAVE THE JURY DECIDE.

10 SO ARE YOU GOING TO MEET AND CONFER
11 TOMORROW? I MEAN, AT FIRST I THOUGHT WELL MAYBE
12 YOU WANT TO DO SOME NARROWING AFTER SUMMARY
13 JUDGEMENT, BUT APPLE IS NOT EVEN FILING ANY SUMMARY
14 JUDGEMENT MOTIONS. SO THERE'S NOT REALLY ANY MORE
15 GUIDANCE YOU ARE WAITING ON FROM THE COURT TO
16 NARROW YOUR CASE.

17 SAMSUNG IS GOING TO GO ON SOME INVALIDITY
18 SUMMARY JUDGEMENT, MAYBE THAT MIGHT NARROW THE CASE
19 AND FUNCTIONALITY OF THE TRADE DRESS TRADEMARK, BUT
20 I DON'T SEE ANY MORE NARROWING FROM APPLE'S
21 PERSPECTIVE.

22 MR. MCELHINNY: WELL, I THINK IT FULLY
23 WORKS THE OPPOSITE WAY, YOUR HONOR.

24 WE WOULD NARROW THE RESPONSE IF THEY --
25 IF YOUR HONOR ALLOWED THEM TO FILE SUMMARY

1 JUDGEMENT MOTIONS, THEN OBVIOUSLY WE WOULD NARROW
2 IN RESPONSE TO WHATEVER HAPPENED ON THEIR SUMMARY
3 JUDGEMENT MOTIONS.

4 THE FACT THAT WE ARE NOT FILING ANY
5 DOESN'T -- WE ARE NOT FILING AFFIRMATIVE ONES, BUT
6 IN ORDER TO REDUCE THE PAPERWORK WE ARE NOT
7 CHALLENGING THE SAMSUNG PATENTS, WE WILL BE
8 PREPARED TO DO THAT AT TRIAL.

9 THE COURT: WELL, I'M -- I WOULD LIKE TO
10 SET ANOTHER DATE THEN FOR YOU ALL TO MEET AND
11 CONFER. AND I DON'T WANT THESE, WE CALL THEM AT
12 9:00 AND THEY DIDN'T RESPOND TO 8:30, THIS BACK AND
13 FORTH. I WOULD JUST LIKE THE DISCUSSION TO BE HEAD
14 TO NARROW THIS CASE FURTHER IF YOU WANT A TRIAL
15 THIS SUMMER.

16 AND IF YOU DON'T WANT A TRIAL THIS SUMMER
17 THEN THAT'S FINE. I'M PERFECTLY FINE WITH HAVING
18 THIS CASE KEEP CHURNING FOR A COUPLE OF YEARS YOU
19 CAN GET MORE DISCOVERY YOU CAN DESIGNATE MORE
20 EXPERTS YOU CAN PRODUCE MORE EXPERT REPORTS.

21 BUT IF YOU WANT TO GO TO TRIAL I NEED TO
22 SEE FURTHER NARROWING. SO ARE YOU GOING TO DO THAT
23 BY FRIDAY?

24 MR. MCELHINNY: ACTUALLY, NOW I WOULD
25 LIKE TO MOVE IT TO MONDAY, YOUR HONOR, IF YOU ARE

1 GOING TO WANT THE SPECIFIC CLAIMS.

2 THE COURT: THAT'S FINE.

3 MR. MCELHINNY: MAY I ASK JUST A
4 CLARIFICATION? WHEN YOU SAY THREE CLAIM TERMS, ARE
5 YOU TALKING ABOUT SPECIFIC CLAIMS?

6 THE COURT: WELL, I GUESS THAT'S WHY I'M
7 NOT INCLINED TO SAY IN THE ABSTRACT EXACTLY HOW
8 MANY CLAIMS BECAUSE IF YOU'RE ASKING FOR THE JURY
9 TO CONSTRUE SEVEN TERMS OUT OF ONE CLAIM, THEN
10 THAT'S DIFFERENT.

11 LET ME SEE, INSTEAD OF PUTTING THE ONUS
12 ON ME TO DEFINE YOUR CASE, MAKE YOUR PROPOSAL OF A
13 MUCH MORE NARROWED CASE THAT A JURY CAN ABSORB AND
14 UNDERSTAND AND FAIRLY ADJUDICATE AND THEN WE CAN
15 TALK FURTHER.

16 MR. MCELHINNY: THANK YOU, YOUR HONOR.

17 THE COURT: I NEED TO KNOW WHAT CLAIMS
18 YOU ARE ASSERTING AND WHAT TERMS WITHIN THAT CLAIM
19 THE JURY WILL NEED -- WILL BE THE MOST IN DISPUTE.

20 MR. MCELHINNY: THANK YOU, YOUR HONOR.

21 THE COURT: OKAY.

22 MR. MCELHINNY: IF I COULD JUST REPEAT
23 ONCE MORE, I KNOW YOUR HONOR KNOWS THIS.

24 WE ARE THE ONLY PARTY THAT WANTS TO GO TO
25 TRIAL THIS SUMMER. SAMSUNG HAS NO INTEREST IN

1 GOING TO TRIAL THIS SUMMER. THEY HAVE BEEN TELLING
2 YOU THAT SINCE THE FIRST TIME WE HAD A CASE
3 MANAGEMENT CONFERENCE.

4 SO THIS LEVERAGE WORKS ON US AND WE WILL
5 DO EVERYTHING WE CAN TO KEEP THE TRIAL DATE BUT IT
6 DOESN'T WORK ON BOTH PARTIES.

7 THE COURT: WELL, IF SAMSUNG IS
8 UNREASONABLE IN LIMITING ITS CASE THEN I MIGHT JUST
9 MAKE MY OWN DECISION ABOUT WHICH OF ITS TERMS ARE
10 GOING TO TRIAL AND WHICH OF ITS CLAIMS ARE GOING TO
11 TRIAL, SO I HOPE IT DOESN'T GET TO THAT.

12 MR. VERHOEVEN: YES, YOUR HONOR.

13 WE ARE HOPING FOR A MUCH NARROWER CASE
14 AND WE HAVE INDICATED TO YOUR HONOR THAT WE WILL
15 REDUCE THE NUMBER OF PATENTS WE HAVE ASSERTED.

16 AND IF WE CAN GET TOGETHER WITH THEM FOR
17 REDUCTION IN PARODY, I WILL REPRESENT TO YOU THAT
18 WE WILL BE WILLING TO REDUCE OUR CASE.

19 THE PROBLEM IS WE WOULD BE SUBSTANTIALLY
20 PREJUDICED IF THEY ARE GOING ON 30 PLUS IPA SETS
21 AND WE REDUCE DOWN TO TWO, AS YOUR HONOR I'M SURE
22 CAN APPRECIATE, SO IT'S SORT OF A NEGOTIATION.

23 AND YOUR HONOR, AS I RECALL IN THE LAST
24 HEARING VERY CLEARLY SET -- INDICATED THAT THE
25 TRIAL DATE WAS DEPENDENT UPON REDUCTION AND WE ARE

1 PERFECTLY WILLING TO DO THAT BUT IT HAS TO BE
2 BILATERAL.

3 THE COURT: WELL, I THINK IT HAS TO BE
4 BILATERAL JUST BECAUSE I DON'T THINK A JURY WILL BE
5 ABLE TO REALLY COMPREHEND AND GIVE YOU A FAIR
6 DECISION AND ABSORB ALL THE INFORMATION YOU ARE
7 PROVIDING.

8 MR. VERHOEVEN: YES, YOUR HONOR.

9 THE COURT: SO I WANT THAT FILED BY
10 MAY 7TH.

11 NOW ASSUMING THIS IS GOING FORWARD WHICH
12 I HAVEN'T MADE A DECISION AT THIS POINT, NOW APPLE
13 HAS FILED A MOTION FOR ADVERSE INFERENCE JURY
14 INSTRUCTIONS DUE TO SAMSUNG'S SPOILIATION OF
15 EVIDENCE, IS THEIR MOTION.

16 I THINK THAT THAT IS MORE APPROPRIATELY
17 DECIDED BY JUDGE GREWAL. I'VE QUICKLY REVIEWED
18 THIS AND HE IS MORE FAMILIAR WITH WHAT E-MAILS MAY
19 OR MAY NOT HAVE BEEN RETAINED AND WHETHER IT WAS OR
20 WAS NOT IN COMPLIANCE WITH HIS ORDERS

21 MR. MCELHINNY: MAY I BE HEARD BRIEFLY ON
22 THAT?

23 THE COURT: YES.

24 MR. MCELHINNY: THE REASON WE FILED IT
25 WITH YOU, TWO REASONS.

1 ONE BECAUSE WE WERE ASKING FOR A JURY
2 INSTRUCTION.

3 BUT TWO, ALSO IN THE PREVIOUS SANCTIONS
4 MOTION THAT JUDGE GREWAL ISSUED HE ACTUALLY
5 MENTIONED IN THERE THAT HE WAS VERY UNCOMFORTABLE
6 WITH GETTING INTO YOUR JURISDICTION IN TERMS OF
7 ADVERSE INFERENCES AND THINGS THAT WOULD AFFECT THE
8 TRIAL.

9 SO WE WILL GO WHEREVER YOU WANT US TO GO,
10 BUT IF YOU ARE GOING TO MAKE A REFERENCE WE WOULD
11 ASK YOU TO MAKE IT CLEAR TO JUDGE GREWAL THAT HE
12 HAS THE AUTHORITY, YOU'VE GIVEN HIM THE AUTHORITY
13 TO DO THIS.

14 THE COURT: I'VE SPOKEN WITH HIM AND HE
15 SAID HE INCLUDED THAT, NOT TO STEP ON MY TOES, BUT
16 FOR CERTAIN ISSUES IF HE HAS THE INSTITUTIONAL
17 KNOWLEDGE OF HAVING BEEN WITH YOU ALL THROUGH ALL
18 OF THESE DISCOVERY MOTIONS, THEN I THINK IT MAKES
19 THE MOST SENSE FOR THAT TO GO TO HIM.

20 NOW I'M PLANNING AND WILL GO THROUGH THIS
21 ASSUMING THE TRIAL STAYS ON TRACK, ON KEEPING ALL
22 THE DAUBERT MOTIONS ALL THE MOTIONS IN LIMINE,
23 SUMMARY JUDGEMENT, AND WE CAN TALK ABOUT ANY
24 FURTHER CLAIM CONSTRUCTION FOR THE DESIGN PATENTS.

25 BUT FROM MY REVIEW OF THIS MOTION, AND I

1 HAVE SPOKEN WITH HIM AND AS LONG AS I GIVE A CLEAR
2 REFERRAL, HE IS FINE --

3 MR. MCELHINNY: GREAT. THEN WE ARE TOO,
4 YOUR HONOR.

5 THE COURT: -- WITH TAKING THIS.

6 OKAY. SO THE MOTION FOR ADVERSE
7 INFERENCE JURY INSTRUCTION WILL GO TO JUDGE GREWAL,
8 AND I'VE ALREADY SPOKEN WITH HIM.

9 IN ADDITION, I UNDERSTAND BOTH SIDES WANT
10 TO FILE A MOTION TO STRIKE FOR LATE DISCLOSED
11 DISCOVERY/THEORIES.

12 IF IT'S CONCERNING WHETHER DISCOVERY IS
13 TIMELY PRODUCED OR NOT, IT SHOULD GO TO
14 JUDGE GREWAL SINCE HE'S HEARD ALL THE DISCOVERY
15 MOTIONS IN THIS CASE.

16 AND I HAVE SPOKEN WITH HIM AND HE'S MORE
17 THAN HAPPY TO TAKE THOSE. I ASSUME THERE'S GOING
18 TO BE JUST ONE PER SIDE, I'M ONLY GOING TO ALLOW
19 ONE PER SIDE.

20 MR. MCELHINNY: THAT'S ALL WE WANT,
21 YOUR HONOR.

22 THE COURT: SO THOSE WILL GO BEFORE
23 JUDGE GREWAL AS WELL.

24 ONE EACH. HE SAID FOLLOW THE LOCAL RULES
25 IN TERMS OF LENGTH OF BRIEFING.

1 ON THE DAUBERT MOTIONS EACH SIDE WILL
2 HAVE 25 PAGES FOR BOTH OPENING AND OPPOSITION AND
3 15 PAGE REPLY.

4 FOR MOTIONS IN LIMINE THE MAXIMUM WILL BE
5 TEN MOTIONS PER SIDE AND YOU WILL HAVE 30 PAGES FOR
6 MOTIONS AND OPPOSITIONS. NO REPLIES.

7 WITH REGARD TO THE DESIGN PATENT CLAIM
8 CONSTRUCTION ISSUE, I'M NOT CLEAR ON WHAT IT IS
9 THAT NEEDS TO BE CONSTRUED. I CAN EITHER SET AN
10 ABBREVIATED SHORTENED BRIEFING SCHEDULE FOR THIS
11 AND HAVE THIS HEARD ON THE PRETRIAL CONFERENCE,
12 THAT'S MY INCLINATION, 15 PAGES OPENING, 15 PAGES
13 OPPOSITION, 5 PAGE REPLY, BUT I JUST WASN'T CLEAR
14 ON WHAT IT IS YOU ARE SAYING NEEDS CONSTRUCTION.

15 DO YOU HAVE ANY MORE ON THAT ISSUE?

16 MR. VERHOEVEN: YES, YOUR HONOR.

17 I WILL GIVE YOU THE MORE. BUT ON THE
18 SCHEDULING, I WAS ACTUALLY THINKING PERHAPS WE
19 COULD SCHEDULE IT FOR THE SAME TIME AS THE SUMMARY
20 JUDGEMENT HEARING THAT'S ALREADY GOING TO BE ON
21 YOUR CALENDAR I THINK, YOUR HONOR, JUNE 21ST. I
22 DON'T KNOW IF THAT WORKS FOR YOUR HONOR OR NOT.

23 AND TO ANSWER THE QUESTION, UNDER THE
24 CASE LAW -- THERE'S NOT A LOT OF CASE LAW ON DESIGN
25 PATENTS AS YOUR HONOR KNOWS, BUT UNDER EGYPTIAN

1 GODDESS IT'S CLEAR CONSTRUCTION ISSUES FOR DESIGN
2 PATENTS AS WELL AS UTILITY PATENTS ARE A MATTER OF
3 LAW FOR THE JUDGE AND NOT FOR THE JURY.

4 THE COURT: WHAT ARE THE SPECIFIC DESIGN
5 FEATURES THAT YOU WANT TO CONSTRUE?

6 MR. VERHOEVEN: WELL, THE MOST IMPORTANT
7 ASPECT IS DISTINGUISHING BETWEEN FEATURES OF THE
8 CLAIMED DESIGN THAT ARE ORNAMENTAL AS OPPOSED TO
9 THOSE THAT ARE FUNCTIONAL WHICH IS REFERRED TO IN
10 EGYPTIAN GODDESS AND IN THE RICHARDSON CASE,
11 YOUR HONOR.

12 THE COURT: YEAH, NO.

13 I'M NOT ASKING ABOUT THE LAW, I'M ASKING
14 WHAT ARE THE SPECIFIC FEATURES THAT YOU'RE
15 REQUESTING BE CONSTRUED?

16 MR. VERHOEVEN: WHAT WE WOULD DO IS WE
17 WOULD ASK FOR YOUR HONOR'S RULES AS A MATTER OF LAW
18 AS TO WHICH FEATURES ARE FUNCTIONAL, AND I'M NOT
19 PREPARED TO GIVE YOU A LIST OF THOSE RIGHT NOW,
20 YOUR HONOR.

21 BUT BEFORE IT GOES TO THE JURY FOR THE
22 JURY TO ASSESS INFRINGEMENT OR VALIDITY WE BELIEVE
23 IT WOULD BE APPROPRIATE FOR THE COURT TO ADDRESS
24 THOSE ISSUES SO THAT THE JURY HAS GUIDANCE ON THAT.

25 OTHERWISE, WE ARE GOING TO BE -- THEY ARE

1 GOING TO HAVE NO GUIDANCE AND WE ARE GOING TO HAVE
2 A SITUATION WHERE PEOPLE ARE GOING TO BE -- FOR
3 EXAMPLE, IN THE EXPERT REPORTS AND EXPERT DISCOVERY
4 THAT WAS RECENTLY TAKEN, IT IS OUR BELIEF THAT THE
5 MULTIPLE EXPERTS THAT APPLE HAS DISCLOSED HAVE
6 BASICALLY PUNTED ON THIS ISSUE OF JUST SAYING, HEY
7 IT LOOKS THE SAME, AND THEY HAVEN'T ADDRESSED WHICH
8 ASPECTS ARE FUNCTIONAL OR NOT.

9 JUST AS IN UTILITY PATENTS WHERE YOU NEED
10 TO HAVE CONSTRUCTION OF THE CLAIMS IN ORDER TO
11 PROVIDE GUIDANCE TO THE JURY AS TO THE METES AND
12 BOUNDS OF THE PROPERTY RIGHT. SIMILARLY, IN THE
13 DESIGN PATENTS, ALTHOUGH GRANTED THEY ARE DIFFERENT
14 THAN UTILITY PATENTS, THE JURY STILL NEEDS GUIDANCE
15 FROM THE COURT AS TO WHAT ARE THE PURELY FUNCTIONAL
16 ASPECTS, SUCH AS YOUR HONOR, A ROUNDED RECTANGLE
17 GEOMETRIC SHAPE, IS IT FUNCTIONAL OR IS IT NOT?

18 THE COURT: I'M SORRY, LET ME INTERRUPT
19 YOU.

20 MR. VERHOEVEN: YES, YOUR HONOR.

21 THE COURT: WILL THE FEDERAL CIRCUIT
22 PRELIMINARY INJUNCTION RULING GIVE US ANY GUIDANCE
23 ON THIS?

24 MR. VERHOEVEN: IT MAY VERY WELL.

25 THE COURT: OKAY. DO WE HAVE A SENSE OF

1 WHEN THAT'S -- THEY INDICATE WHEN THEY MIGHT ISSUE
2 A RULING?

3 MR. MCELHINNY: NOT AT ALL, YOUR HONOR.

4 MR. VERHOEVEN: I THINK IT COULD BE ANY
5 DAY, YOUR HONOR.

6 THE COURT: OKAY. ALL RIGHT.

7 WELL, THIS IS WHAT I'M GOING TO PROPOSE.
8 A 15 PAGE OPENING BRIEF DUE JUNE 12TH. A 15 PAGE
9 RESPONSE DUE JUNE 26TH. A 5 PAGE REPLY DUE
10 JULY 30TH, AND I WILL HEAR THIS ON JULY 18TH AT THE
11 PRETRIAL CONFERENCE.

12 MR. VERHOEVEN: IS THERE ANY CHANCE,
13 YOUR HONOR, GIVEN THERE ARE SEVEN DIFFERENT DESIGN
14 PATENTS THAT WE COULD HAVE 20 PAGES IN OUR OPENING
15 BRIEF?

16 THE COURT: I'M JUST CONCERNED THAT I'M
17 NOT SURE I WILL HAVE THE BANDWIDTH AT YOUR PRETRIAL
18 CONFERENCE TO RULE ON THE HUNDREDS OF PAGES OF
19 MOTIONS IN LIMINE, THAT'S MY CONCERN.

20 NOW THE DAUBERT WILL BE DECIDED, THE
21 DAUBERT MOTIONS WILL BE DECIDED WITH THE SUMMARY
22 JUDGEMENTS ON JUNE 21ST.

23 MR. VERHOEVEN: ONE SUGGESTION I HAVE IF
24 I MAY BE HEARD, YOUR HONOR.

25 THE COURT: YES, SIR, PLEASE.

1 MR. VERHOEVEN: PERHAPS IT WOULD MAKE
2 SENSE TO FILE THE PAPERS ON CLAIM CONSTRUCTION WITH
3 THE HOPE THAT THERE'S A RULING TO GIVE THE COURT
4 GUIDANCE OR TO THE EXTENT THERE IS GUIDANCE BEFORE
5 JUNE 21ST.

6 BUT IF THERE'S NOT THEN WE COULD
7 RESCHEDULE THAT. I'M JUST A LITTLE CONCERNED
8 ABOUT, I'M NOT SURE IF I HEARD YOU SAY YOU WERE
9 THINKING ABOUT SCHEDULING IT FOR THE PRETRIAL
10 CONFERENCE.

11 I'M CONCERNED THAT'S SO CLOSE TO TRIAL IT
12 WOULD BE MORE HELPFUL FOR US AT LEAST IF FOR TRIAL
13 PREPARATION PURPOSES A RULING SOONER THAN THAT.

14 THE COURT: WELL, I'M NOT EVEN SURE
15 CONSTRUCTION IS NECESSARY.

16 MR. MCELHINNY: TO BE CLEAR, I HAVE BEEN
17 QUIET. OUR POSITION IS THIS MAY WORK FOR THE
18 COURT, BUT THAT EGYPTIAN GODDESS MADE IT CLEAR THAT
19 CLAIM CONSTRUCTION OF DESIGN PATENTS IS NO LONGER
20 FAVORED.

21 IT'S ONE OF THE CHANGES THE CASE MADE.
22 IT MAY NOT BE REVERSIBLE TO DO IT, BUT THE GUIDANCE
23 TO THE DISTRICT COURTS WAS THAT'S NOT THE WAY TO GO
24 WITH DESIGN PATENTS.

25 THE COURT: RIGHT.

1 BUT IT DOES SAY THAT IF THERE'S SOME
2 GUIDANCE WHETHER IT'S A JURY INSTRUCTION OR
3 SOMETHING, THE COURT SHOULD DO THAT. I AGREE WITH
4 YOU THAT GENERALLY DESIGN PATENTS SPEAK FOR
5 THEMSELVES AND THE CIRCUIT IS NOT ENCOURAGING US TO
6 CONSTRUE THEM.

7 MR. VERHOEVEN: YOUR HONOR, I'M QUOTING
8 FROM EGYPTIAN GODDESS IT SAYS -- THIS IS 543 F.3D
9 665 AT PAGE 680.

10 AND IT TALKS ABOUT THE TRIAL COURT CAN
11 USEFULLY GUIDE THE FINDER OF FACTS BY ADDRESSING A
12 NUMBER OF OTHER ISSUES THAT BEAR ON THE SCOPE OF
13 THE CLAIM.

14 THEN IT CALLS OUT SPECIFICALLY --

15 THE COURT: I'VE GOT IT.

16 THOSE INCLUDE SUCH MATTERS AS DESCRIBING
17 THE ROLE OF PARTICULAR CONVENTIONS AND DESIGN
18 PATENT DRAFTING SUCH AS THE ROLE OF BROKEN LINES,
19 ET CETERA.

20 MR. VERHOEVEN: THAT LAST BIT.

21 THE COURT: I HEAR YOU. I HEAR YOU.

22 BUT WITHOUT YOU TELLING ME WHAT IT IS
23 THAT YOU BELIEVE NEEDS CONSTRUCTION, IT'S DIFFICULT
24 FOR ME IN THE ABSTRACT TO SAY YES I'M GOING TO
25 CONSTRUE IT OR NOT.

1 MR. VERHOEVEN: WE'RE GENERALLY --
2 FOCUSSED ON THE LAST CLAUSE OF THAT SENTENCE WHICH
3 IS THE DISTINCTION BETWEEN THE ORNAMENTAL AND THE
4 PURELY FUNCTIONAL.

5 AND I BELIEVE THAT WOULD BE HELPFUL FOR
6 THE JURY ESPECIALLY IN THIS CASE.

7 BUT IF WE BRIEFED THIS IN ACCORDANCE WITH
8 APPEARING ON JUNE 21ST AND THEN IF WE COULD MOVE IT
9 IF THE FEDERAL CIRCUIT HADN'T RULED OR IF THEY DID
10 WE COULD FILE A SUPPLEMENTAL TWO-PAGE STATEMENT OF
11 HOW WE THINK THAT ADDRESSES THINGS, I DON'T KNOW IF
12 THAT WOULD ADDRESS YOUR CONCERNS IN TERMS OF
13 TIMING, YOUR HONOR.

14 THE COURT: WELL, MY CONCERN IS I HAVE A
15 WHOLE OTHER PRELIMINARY INJUNCTION MOTION IN THE
16 SECOND CASE. AND I KNOW HOW MUCH WORK THAT TOOK
17 THE FIRST TIME AROUND.

18 AND I HAVE OTHER MATTERS AS WELL THAT ARE
19 SCHEDULED THROUGHOUT JUNE. SO I JUST THINK
20 CAPACITY WISE, PROBABLY JULY WOULD BE BETTER ON
21 THAT ISSUE.

22 MR. VERHOEVEN: I UNDERSTAND, YOUR HONOR.

23 THE COURT: I'M EXPECTING THIS PI IS
24 GOING TO BE QUITE A BIG TASK.

25 MR. VERHOEVEN: I UNDERSTAND, YOUR HONOR.

1 THE COURT: LIKE THE LAST TIME AROUND.

2 SO THAT WOULD BE MY PREFERENCE. I WISH I
3 COULD EXPEDITE IT FOR YOU BUT I'M THINKING IT JUST
4 MIGHT NOT BE POSSIBLE TO DO THAT.

5 SO I WOULD LIKE 15 PAGE OPENING
6 JUNE 12TH, 15 PAGE RESPONSE, JUNE 26TH AND 5 PAGE
7 REPLY JULY 3RD.

8 AND WHAT I WOULD LIKE TO DO IS AT THIS
9 POINT I THINK MORE CMC'S ARE BETTER JUST TO KEEP A
10 TIGHT CONTROL OF THINGS. SO I WOULD LIKE TO HAVE A
11 CMC WHEN YOU ALL COME IN, I GUESS IT'S DIFFERENT
12 COUNSEL BUT THE SAME PARTIES, ON JUNE 7TH.

13 MR. VERHOEVEN: YES, YOUR HONOR.

14 THE COURT: WHEN YOU ARE HERE FOR THE PI
15 THEN WE CAN REFINE SOME OF THESE ISSUES.

16 MR. VERHOEVEN: JUST SO IT'S A LITTLE BIT
17 OF BACKGROUND, YOUR HONOR, THERE ARE TWO ITC CASES
18 INVOLVING THE SAME PARTIES, APPLE AND SAMSUNG, THAT
19 ARE CURRENTLY SCHEDULED FOR TRIAL. IN
20 FACT, THEY WILL BOTH BE IN TRIAL JUNE 7TH IN
21 ADDITION TO THE PI HEARING, AND THAT'S WHY WE HAVE
22 A WHOLE DIFFERENT TEAM HANDLING THE PI AND THE CMC
23 FOR THE LATER FILED CASE TODAY.

24 THE COURT: OKAY.

25 MR. VERHOEVEN: BECAUSE YOU SHOULD BE

1 DEALING WITH THE PEOPLE THAT YOU WILL BE DEALING
2 WITH AT THE PI, I ASSUME.

3 SO WE WON'T BE ABLE PHYSICALLY TO BE HERE
4 ON THE 7TH.

5 THE COURT: OKAY. THAT'S FINE.

6 WE WILL KEEP THEN THE NEXT CMC JUNE 21ST
7 WHICH IS WHEN WE ARE HAVING THE SUMMARY JUDGEMENT
8 HEARING. THAT'S FINE.

9 MR. VERHOEVEN: AND YOUR HONOR, I'M
10 ASSUMING THAT YOU WILL INDICATE QUICKLY TO US
11 WHETHER THE SUPPOSED NARROWING THAT'S GOING TO
12 OCCUR IS ACCEPTABLE AND THE DATES ARE STILL ON NEXT
13 WEEK OR WITHIN -- IS THERE SOME TIME FRAME WE
14 SHOULD LOOK FOR?

15 THE COURT: WELL, AT THIS POINT WE SHOULD
16 KEEP JULY 30TH ON YOUR CALENDARS.

17 MR. VERHOEVEN: I'M JUST WONDERING IF WE
18 SHOULD HAVE A CMC NEXT WEEK OR SOMETHING.

19 THE COURT: WHEN DO YOUR ITC TRIALS
20 START?

21 MR. VERHOEVEN: THE 30TH OF MAY. WE WILL
22 HAVE TO LEAVE FOR WASHINGTON THE WEEK BEFORE THAT.

23 THE COURT: OKAY. THE WEEK OF THE 21ST?

24 MR. VERHOEVEN: CORRECT, YOUR HONOR.

25 THE COURT: I KNOW MAY 9TH IS REALLY FULL

1 BUT THAT LOOKS LIKE THAT'S PROBABLY THE ONLY DAY,
2 RIGHT, THAT THEY COULD COME BACK IN.

3 YOU KNOW, AS MUCH AS I ENJOY SEEING YOU
4 ALL, I'M NOT GOING TO SCHEDULE A CMC FOR NEXT WEEK.
5 I WILL LOOK AT WHAT YOU HAVE TO FILE.

6 I WILL SEE YOU THE 21ST OF JUNE. IS
7 THERE ANYTHING ELSE THAT WE NEED TO DISCUSS? I
8 THINK THAT WAS IT BASED ON THE CASE MANAGEMENT
9 STATEMENTS.

10 MR. VERHOEVEN: I HAVE NOTHING ELSE,
11 YOUR HONOR.

12 MR. MCELHINNY: ON THE SPOILIATION MOTION
13 YOUR HONOR, YOU WILL REFER THAT TO THE MAGISTRATE
14 JUDGE AND WE WILL SET A HEARING DATE; IS THAT
15 RIGHT?

16 THE COURT: YES, I'M REFERRING YOUR RULE
17 37(C)(1) MOTIONS TO STRIKE FOR UNTIMELY DISCOVERY
18 AND YOUR MOTION FOR ADVERSE INFERENCE JURY
19 INSTRUCTION TO JUDGE GREWAL.

20 MR. VERHOEVEN: AND SO YOU KNOW,
21 YOUR HONOR, WE INTEND TO REQUEST A DIFFERENT DATE
22 THAN THE 7TH FOR THE SAME REASON THAT THE 7TH
23 WOULDN'T WORK FOR US FOR A CMC.

24 THE COURT: NOW THAT THESE ARE OFF MY
25 CALENDAR FOR THE 7TH, YOU WILL HAVE TO SCHEDULE

1 THOSE WITH JUDGE GREWAL WITH MR. RIVERA.

2 IF THE TRIAL DOES GO FORWARD I'M NOT
3 GOING TO GO TO THE NINTH CIRCUIT JUDICIAL
4 CONFERENCE. SO THE WEEK OF, WHAT IS THAT,
5 APRIL 13TH; IS THAT RIGHT?

6 AUGUST 13TH WE WILL BE IN TRIAL THAT FULL
7 WEEK. AUGUST 13TH THROUGH THE 17TH I'M NOT GOING
8 TO THE CIRCUIT CONFERENCE. SO THAT WILL BE A
9 FIVE-DAY TRIAL WEEK.

10 OKAY. WHAT ELSE?

11 MR. VERHOEVEN: I THINK PREVIOUSLY YOU
12 TOLD US WE WERE LIMITED TO 25 HOURS. IS THAT WHAT
13 YOU JUST SAID, YOUR HONOR?

14 THE COURT: NO, IT WILL MEAN THAT YOU ALL
15 WILL END SOONER SO I CAN START MY CRIMINAL TRIALS
16 SOONER. I HAVE ANOTHER CRIMINAL TRIAL STARTING
17 AFTER YOU ALL.

18 MR. VERHOEVEN: I HAVE NOTHING FURTHER.

19 MR. MCELHINNY: NOTHING FURTHER IN THIS
20 CASE, YOUR HONOR.

21 THE COURT: ANYTHING ELSE? ALL RIGHT.

22 THANK YOU.

23 (WHEREUPON, THE PROCEEDINGS IN THIS
24 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.

/s/ _____
SUMMER A. FISHER, CSR, CRR
CERTIFICATE NUMBER 13185

DATED: MAY 11, 2012