

EXHIBIT 1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

APPLE INC., A CALIFORNIA CORPORATION,)	C-11-01846 LHK
)	
)	SAN JOSE, CALIFORNIA
PLAINTIFF,)	
)	AUGUST 24, 2011
VS.)	
)	PAGES 1-90
SAMSUNG ELECTRONICS CO., LTD., A KOREAN BUSINESS ENTITY; SAMSUNG ELECTRONICS AMERICA, INC., A NEW YORK CORPORATION; SAMSUNG TELECOMMUNICATIONS AMERICA, LLC, A DELAWARE LIMITED LIABILITY COMPANY,)	
)	
)	
)	
)	
)	
)	
)	
DEFENDANTS.)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE LUCY H. KOH
UNITED STATES DISTRICT JUDGE

APPEARANCES ON NEXT PAGE

OFFICIAL COURT REPORTER: LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S :

FOR PLAINTIFF MORRISON & FOERSTER
APPLE: BY: HAROLD J. MCELHINNY,
MICHAEL A. JACOBS, AND
RICHARD S.J. HUNG
425 MARKET STREET
SAN FRANCISCO, CALIFORNIA 94105

FOR COUNTERCLAIMANT WILMER, CUTLER, PICKERING,
APPLE: HALE AND DORR
BY: WILLIAM F. LEE AND
MARK D. SELWYN

FOR APPLE: TAYLOR & COMPANY
BY: STEPHEN E. TAYLOR AND
STEPHEN MCG. BUNDY
ONE FERRY BUILDING, SUITE 355
SAN FRANCISCO, CALIFORNIA 94111

FOR THE DEFENDANT: QUINN, EMANUEL, URQUHART,
OLIVER & HEDGES
BY: KATHLEEN M. SULLIVAN
51 MADISON AVENUE, 22ND FLOOR
NEW YORK, NEW YORK 10010

BY: VICTORIA F. MAROULIS AND
KEVIN P.B. JOHNSON
555 TWIN DOLPHIN DRIVE
SUITE 560
REDWOOD SHORES, CALIFORNIA 94065

BY: MICHAEL T. ZELLER
865 SOUTH FIGUEROA STREET
10TH FLOOR
LOS ANGELES, CALIFORNIA 90017

1 DISCOVERY DISPUTES AS TO THE PRELIMINARY INJUNCTION
2 DISCOVERY?

3 MR. MCELHINNY: THERE'S MEETS AND CONFERS
4 AND STUFF GOING ON. I DON'T THINK THERE'S A -- I
5 DON'T THINK WE'VE GOT A MOTION.

6 MR. JOHNSON: WE DO, YOUR HONOR.

7 MR. MCELHINNY: WE DON'T HAVE ANY
8 DISCOVERY YET.

9 THE COURT: OKAY. THAT WILL GO TO
10 JUDGE GREWAL.

11 I'M GOING TO REQUIRE, AND I'M SURE HE
12 WOULD AGREE, THAT LEAD TRIAL COUNSEL HAVE TO MEET
13 IN PERSON TO MEET AND CONFER ON ANY DISCOVERY
14 DISPUTE BEFORE YOU FILE A MOTION. OKAY?

15 MR. MCELHINNY: THANK YOU, YOUR HONOR.

16 I HAVE YOUR -- I'M SORRY. I HAVE YOUR
17 DATE.

18 THE COURT: OKAY.

19 MR. MCELHINNY: WE CAN -- THE INVENTORS
20 AND THE PROSECUTING ATTORNEYS ON OR BEFORE
21 DECEMBER 1ST, YOUR HONOR.

22 THE COURT: WELL, THAT'S TOO LATE.

23 YOU'RE ASKING THEM TO FILE ALL THEIR CLAIM
24 CONSTRUCTION BRIEFS --

25 MR. MCELHINNY: I'M NOT SURE WHAT

1 INVENTORS OR PROSECUTING ATTORNEYS HAVE TO DO WITH
2 THE CLAIM CONSTRUCTION, YOUR HONOR.

3 THE COURT: LET ME HEAR FROM SAMSUNG.

4 WHAT'S YOUR DATE? AND IS THAT SOON
5 ENOUGH FOR YOU?

6 MR. JOHNSON: NO. THAT'S TOO LATE, YOUR
7 HONOR. I MEAN, IT HAS EVERYTHING TO DO WITH CLAIM
8 CONSTRUCTION.

9 I MEAN, TO THE POINT THAT -- YOU KNOW,
10 AS -- WELL, I CAN'T TALK ABOUT WHAT MR. ORDING
11 TESTIFIED SINCE IT'S UNDER SEAL, THEIR INVENTOR.

12 BUT BASICALLY THE INVENTORS ARE GOING TO
13 TESTIFY ABOUT PRIOR ART THAT THEY'RE AWARE OF;
14 THEY'RE GOING TO TESTIFY ABOUT UNENFORCEABILITY
15 ISSUES AS WELL; THEY'RE GOING TO TESTIFY ABOUT THE
16 SCOPE OF THE CLAIMS WITH RESPECT TO THE PRIOR ART.

17 THAT'S THE REASON WE TOOK MR. ORDING'S
18 DEPOSITION IN THE CONTEXT OF THE PRELIMINARY
19 INJUNCTION HEARING, AND WE -- AS WE SPELLED OUT IN
20 OUR PAPERS, WE LEARNED A LOT OF IMPORTANT
21 INFORMATION THAT AFFECTS THE CLAIM CONSTRUCTION OF
22 THE TERMS THAT ARE INVOLVED IN THAT -- ON THE '381
23 PATENT; WE LEARNED FACTS ASSOCIATED WITH
24 INDEFINITENESS, WHICH ALSO SHOULD BE CONSIDERED --
25 AT LEAST LOOKED AT IN THE CONTEXT OF CLAIM

1 CONSTRUCTION.

2 SO I'M NOT LOOKING TO DELAY THINGS THAT
3 ARE TOO FAR.

4 BUT AT THIS POINT, THERE ARE 32
5 INVENTORS. IF THE FIRST DATE I GET FROM THEM IS
6 DECEMBER AND I HAVE TO DO ALL THE CLAIM
7 CONSTRUCTION BEFORE THEN AND HAVE THE CLAIM
8 CONSTRUCTION HEARING, YOU KNOW, THE FIRST -- IN THE
9 MIDDLE PART OF JANUARY, THAT PUTS ME AT A SEVERE
10 PREJUDICE.

11 THE COURT: WELL, THESE ARE COMPLETION
12 DATES. THESE AREN'T BEGINNING DATES.

13 MR. MCELHINNY: THAT'S CORRECT, YOUR
14 HONOR.

15 THE COURT: I'M ASSUMING IT'S HAPPENING
16 BEFORE. THERE'S NO WAY YOU CAN HAVE 32 PEOPLE
17 DEPOSED --

18 MR. MCELHINNY: YOUR HONOR, I ALWAYS GET
19 IN TROUBLE WITH THESE THINGS, BUT TO BE REALISTIC
20 AND NOT TAKE YOUR TIME RIGHT NOW, THERE WILL COME A
21 TIME AT THE END OF PROCESS THAT YOUR HONOR HAS SET
22 WHERE SAMSUNG WILL FILE A MOTION TO CONTINUE THE
23 TRIAL DATE. THEY WILL SAY THEY DIDN'T GET THE
24 DISCOVERY THEY NEEDED AND THEY DIDN'T GET
25 DEPOSITIONS AND THEY DIDN'T GET WHATEVER.

1 AND AT THAT TIME YOU'RE GOING TO BE
2 LOOKING AT WHETHER OR NOT WE DID WHAT THEY NEEDED
3 IN ORDER TO GET READY. THAT'S JUST GOING TO
4 HAPPEN.

5 AND AS OPPOSED TO TRY TO HAMMER THIS OUT
6 RIGHT NOW, I THINK YOU -- WE UNDERSTAND WHAT YOUR
7 HONOR WANTS AND, YOU KNOW, I WOULD LIKE TO HAVE A
8 LITTLE BIT OF, YOU KNOW, TRUST HERE.

9 MR. JOHNSON: UNDER THE CURRENT SCHEDULE,
10 YOUR HONOR, THE CLOSE OF CLAIM CONSTRUCTION
11 DISCOVERY IS NOVEMBER 28TH.

12 LET'S PUSH BACK THE DATES BY EVEN A
13 COUPLE OF, JUST A COUPLE OF MONTHS, WHICH
14 SHOULDN'T -- WHETHER THE TRIAL IS IN JULY OR
15 AUGUST OR SEPTEMBER OF NEXT YEAR, YOU KNOW, I --
16 THERE CAN'T BE ANY PREJUDICE WITH RESPECT TO TWO
17 MONTHS.

18 THEY DELAYED TWO AND A HALF MONTHS WHEN
19 THEY BROUGHT THE PRELIMINARY INJUNCTION MOTION.

20 AND AS I MENTIONED, YOUR HONOR, THE REAL
21 ISSUE THAT I SEE IS ALSO ON THE BACK END WITH
22 RESPECT TO DISPOSITIVE MOTIONS.

23 GIVING US A WEEK AFTER THE CLOSE OF
24 REBUTTAL -- OF EXPERT DISCOVERY TO FILE MOTIONS ON,
25 AT THAT POINT, WHICH COULD BE, YOU KNOW, 15 APPLE

1 PATENTS AND THERE WILL BE 12 --

2 THE COURT: OKAY. I'M SORRY. I'VE GOT
3 TO CUT THIS OFF.

4 APPLE, YOU'RE GOING TO HAVE YOUR
5 INVENTORS AND PROSECUTING ATTORNEYS DEPOSED BY
6 NOVEMBER 1; AND SAMSUNG WILL BE DECEMBER 1. OKAY?

7 AS FAR AS THE LAST DAY TO FILE
8 DISPOSITIVE MOTIONS -- ALL RIGHT. I CAN -- I'LL
9 MOVE THAT TO MAY 17TH, 2012, AND THE HEARING ON
10 DISPOSITIVE MOTIONS WILL BE JUNE 21, 2012 AT 1:30.

11 OKAY? THE PRETRIAL CONFERENCE AND THE
12 JURY TRIAL DATES REMAIN.

13 ANYTHING ELSE?

14 MR. LEE: NO, YOUR HONOR.

15 THE COURT: LET ME ASK ONE LAST QUICK
16 QUESTION. IS APPLE WILLING TO AGREE TO A SHORTER
17 TIMEFRAME TO RESPOND TO DISCOVERY REQUESTS THAN 30
18 DAYS?

19 MR. MCELHINNY: AGAIN, IF IT WAS MUTUAL,
20 WE WOULD DO IT, YOUR HONOR.

21 MR. LEE: SURE.

22 MR. MCELHINNY: JUST -- I MEAN, JUST LET
23 ME --

24 THE COURT: YEAH.

25 MR. MCELHINNY: THEY'VE NEVER ASKED FOR

1 AN EXPEDITED TRIAL AND YOUR HONOR HAS GIVEN THEM AN
2 EXPEDITED TRIAL AS WELL, AND THAT'S FINE, BUT NOW
3 WE'RE BOTH IN THE SAME BOAT HERE EXCEPT THAT
4 THEY'VE HAD DISCOVERY AND WE HAVEN'T HAD ANY.

5 THE COURT: SO LET ME ASK WHETHER SAMSUNG
6 IS WILLING TO SHORTEN THE TIMEFRAME TO RESPOND TO
7 WRITTEN DISCOVERY REQUESTS.

8 MR. JOHNSON: I THINK IT'S SOMETHING THAT
9 WE COULD MEET AND CONFER WITH THEM ABOUT AND SEE IF
10 THERE'S A TIME -- YOU KNOW, I'M OPEN TO SOME PERIOD
11 OF POTENTIALLY EXPEDITING, BUT AT THIS POINT, NOT
12 ANYTHING BEYOND -- I MEAN, LIKE I SAID, THEY MOVED
13 TO EXPEDITE, SO I THINK THEY SHOULD RESPOND TO THE
14 DISCOVERY MORE QUICKLY.

15 BUT I'M WILLING TO MEET AND CONFER WITH
16 THEM AND SEE IF WE CAN COME UP WITH SOMETHING.

17 MR. MCELHINNY: I AGREE WITH MR. JOHNSON,
18 ACTUALLY. NOW THAT YOU'VE GIVEN US DATES, WE'LL
19 WORK ALL THIS STUFF OUT.

20 THE COURT: OKAY. YOU KNOW, IF YOU DON'T
21 WORK IT OUT, THEN THERE ARE GOING TO BE PROBABLY
22 CONSEQUENCES THAT BOTH SIDES DON'T WANT, SO I HOPE
23 YOU WORK IT OUT.

24 MR. MCELHINNY: THANK YOU, YOUR HONOR.

25 THE COURT: OKAY. LET'S HAVE A FOLLOW-UP