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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

APPLE INC., A CALIFORNIA CORPORATION,	)	C-11-01846 LHK
	)	
	)	SAN JOSE, CALIFORNIA
PLAINTIFF,	)	
	)	MAY 12, 2011
VS.	)	
	)	PAGES 1-52
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,	)	
	)	
	)	
	)	
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	)	
	)	
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

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

FOR THE PLAINTIFF: MORRISON & FOERSTER  
BY: HAROLD J. MCELHINNY,  
MICHAEL A. JACOBS,  
JASON R. BARTLETT, AND  
GRANT L. KIM  
425 MARKET STREET  
SAN FRANCISCO, CALIFORNIA 94105

ALSO PRESENT: MAUREEN MCCALL AND JAMES WITT

FOR THE DEFENDANT: QUINN, EMANUEL, URQUHART,  
OLIVER & HEDGES  
BY: CHARLES K. VERHOEVEN AND  
ERIK C. OLSON  
50 CALIFORNIA STREET, 22ND FLOOR  
SAN FRANCISCO, CALIFORNIA 94111  
  
BY: VICTORIA F. MAROULIS AND  
KEVIN P.B. JOHNSON  
555 TWIN DOLPHIN DRIVE  
SUITE 560  
REDWOOD SHORES, CALIFORNIA 94065

1 THE COURT: YES.

2 MR. VERHOEVEN: IF WE'RE GOING TO HAVE  
3 EXPEDITED DISCOVERY FOR THE EXPRESS PURPOSE OF THEM  
4 FILING A MOTION FOR PRELIMINARY INJUNCTION, WHICH  
5 WE OPPOSE, YOUR HONOR, BUT IF THAT'S WHAT'S GOING  
6 TO HAPPEN, IN ALL FAIRNESS, SHOULDN'T THAT  
7 DISCOVERY BE RECIPROCAL?

8 AND I WOULD REQUEST -- I DON'T KNOW  
9 WHETHER WE WOULD GO TO THE MAGISTRATE BECAUSE I  
10 KNOW THE MAGISTRATE'S BEEN ASSIGNED, BUT THERE ARE  
11 THINGS THAT WE FAIRLY SHOULD BE ENTITLED TO GET,  
12 THROUGH DISCOVERY, TO OPPOSE A PRELIMINARY  
13 INJUNCTION, SUCH AS ANY EVIDENCE THEY HAVE OF ANY  
14 CONFUSION, OR LACK OF CONFUSION, BETWEEN THESE  
15 PRODUCTS AND APPLE PRODUCTS; ANY DOCUMENTS  
16 CONCERNING GOOD WILL; LOSS OF GOOD WILL; MARKET  
17 SHARE; REPUTATION TO APPLE THROUGH THE INTRODUCTION  
18 OF THESE.

19 IF THEY'VE DONE RESEARCH SURVEYS OR  
20 STUDIES RELATING TO LIKELIHOOD OF CONFUSION, WE  
21 WOULD BE ENTITLED TO THOSE IF WE WERE TO FAIRLY  
22 OPPOSE A PRELIMINARY INJUNCTION MOTION.

23 THE COURT: WHAT'S YOUR RESPONSE TO THAT?

24 MR. MCELHINNY: MY RESPONSE TO THAT, YOUR  
25 HONOR, IS THAT THE RULES SET OUT THE BASIS FOR

1 THIS.

2 THERE'S BEEN NO REQUEST -- I MEAN, WE  
3 FILED THREE BRIEFS HERE. THERE'S BEEN NO REQUEST.

4 THE WAY DISCOVERY STARTS IN THIS  
5 DISTRICT, WHICH IS A MEET AND CONFER ABOUT WHAT  
6 THEY REASONABLY NEED, IF THEY'RE GOING TO NEED IT  
7 TO OPPOSE AN INJUNCTION AND IF IT'S REASONABLE AND  
8 IF YOUR HONOR IS GOING TO GIVE IT TO THEM, WE'LL  
9 RESOLVE THAT.

10 I HAVE SAID NOW TWICE THAT WE'RE WILLING  
11 TO LIVE BY THE RULES THAT YOU SET FOR US, BECAUSE  
12 WE WANT AN INJUNCTION HERE AND WE'RE NOT GOING TO  
13 GET AN INJUNCTION HERE IF WE'RE NOT RECIPROCAL IN  
14 DISCOVERY. I UNDERSTAND THAT.

15 THE COURT: OKAY. SO I'M HEARING THAT  
16 YOU ARE WILLING, THEN, TO AGREE TO SOME EXPEDITED  
17 PRODUCTION OF YOUR OWN.

18 MR. MCELHINNY: YES. THE ANSWER TO THAT  
19 IS YES, AS YOUR HONOR STATES IT.

20 CAN I SUGGEST, ON THE DEPOSITION ISSUE --

21 THE COURT: YES.

22 MR. MCELHINNY: -- THAT WE WILL ACCEPT  
23 THEIR GOOD FAITH IF THEY GIVE US A PERSON THAT  
24 THEY'RE GOING TO CERTIFY AS, YOU KNOW,  
25 KNOWLEDGEABLE ON THESE AREAS, WE WILL TAKE IT AS A

1 THE COURT: -- YOU WOULD NEED TO SHOW  
2 WHATEVER --

3 MR. MCELHINNY: I AGREE.

4 THE COURT: -- WAS PRODUCED TO YOUR  
5 IN-HOUSE COUNSEL.

6 MR. MCELHINNY: I AGREE.

7 THE COURT: IF YOU'VE ALREADY GOT IT,  
8 YOU'VE GOT IT, RIGHT?

9 MR. MCELHINNY: I AGREE WITH YOUR HONOR.  
10 I MISUNDERSTOOD. I AGREE WITH YOUR  
11 HONOR.

12 THE COURT: ALL RIGHT. OKAY. WELL,  
13 THAT'S STILL MY -- YOU KNOW, I -- THIS IS WHAT I'M  
14 GOING TO DO: I'M GOING TO GO AHEAD AND I THINK --  
15 I DON'T WANT TO BE OVERWHELMED WITH PAPER, SO I  
16 THINK WE NEED TO SET A FURTHER CMC OR SOMETHING,  
17 BECAUSE OTHERWISE I THINK A LOT OF INTERIM MOTIONS  
18 WILL PROBABLY BE FILED.

19 SO AT THIS POINT I WOULD GO AHEAD AND  
20 ORDER THAT ONE SAMPLE, THE PACKAGE AND THE PACKAGE  
21 INSERT, BE PRODUCED WITHIN 30 DAYS PURSUANT TO THE  
22 PATENT LOCAL RULE 2-2'S INTERIM MODEL PROTECTIVE  
23 ORDER, WITH NO IN-HOUSE COUNSEL REVIEW AT ALL AND  
24 THE PATENT PROSECUTION BAR AS STRICT AS SAMSUNG  
25 WANTS; NO INDIVIDUAL DEPOSITION OR 30(B)(6); AND NO

1           MARKETING MATERIALS.

2                   NOW, IF SOMETHING CHANGES, I GUESS YOU  
3           COULD COME BACK AND ASK.

4                   AT THIS POINT, I DON'T THINK THAT  
5           SAMSUNG'S REQUEST FOR MUTUAL DISCOVERY IS RIPE, BUT  
6           YOU CAN PURSUE THAT FOR SOME TYPE OF RECIPROCAL  
7           DISCOVERY.

8                   AND WHY DON'T WE SET A TIME, LIKE A  
9           FURTHER CMC MAYBE -- OR I GUESS WE CAN JUST WAIT  
10          AND SEE WHAT, IF ANYTHING, GETS FILED AND THEN  
11          WE'LL SET IT THEN. BUT I JUST ANTICIPATE THAT  
12          THERE MAY BE ISSUES.

13                   MR. MCELHINNY:   MAY I --

14                   THE COURT:    OKAY?

15                   MR. MCELHINNY:   MAY I INQUIRE, YOUR  
16          HONOR?

17                   THE COURT:    YES.

18                   MR. MCELHINNY:   AGAIN, I'M IN THE SAME  
19          MINDSET THAT I DON'T KNOW OF ANY OTHER ISSUES.

20                   THE COURT:    YES.

21                   MR. MCELHINNY:   BUT WE GOT AN ORDER  
22          ASSIGNING DISCOVERY MATTERS IN THIS CASE TO  
23          MAGISTRATE JUDGE GREWAL.

24                   THE COURT:    WELL, SINCE I'VE ISSUED THIS  
25          ORDER, IF THERE'S ANY FOLLOW-UP REGARDING THIS

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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/

\_\_\_\_\_  
LEE-ANNE SHORTRIDGE, CSR, CRR  
CERTIFICATE NUMBER 9595