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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.)
) SEPTEMBER 28, 2011
SAMSUNG ELECTRONICS CO.,)
LTD., ET AL,)
) PAGES 1-87
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
BY: WESLEY OVERSON
RICHARD HUNG
MINN CHUNG
MICHAEL JACOBS
425 MARKET STREET
SAN FRANCISCO, CA 94105

FOR THE DEFENDANT: QUINN EMANUEL
BY: VICTORIA MAROULIS
BRETT ARNOLD
KEVIN JOHNSON
555 TWIN DOLPHIN DRIVE, 5TH FL
REDWOOD SHORES, CA 94065

OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR
CERTIFICATE NUMBER 13185

1 SAN JOSE, CALIFORNIA SEPTEMBER 28, 2011

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

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

5 THE COURT: GOOD MORNING. PLEASE HAVE A
6 SEAT.

7 MR. RIVERA, WHENEVER YOU ARE READY, WOULD
8 YOU CALL THE MATTER ON THIS MORNING'S CALENDAR

9 THE CLERK: YES, YOUR HONOR.

10 CALLING APPLE, INC. VERSUS SAMSUNG
11 ELECTRONICS, ET AL. CASE NUMBER CV-11-1846.

12 COUNSEL, PLEASE STATE YOUR APPEARANCES.

13 MR. OVERSON: WESLEY OVERSON ON BEHALF OF
14 APPLE, INC.

15 THE COURT: MR OVERSON, GOOD MORNING,
16 SIR.

17 MS. MAROULIS: VICTORIA MAROULIS WITH
18 QUINN EMANUEL ON BEHALF OF SAMSUNG.

19 AND WITH ME IS MR. KEVIN JOHNSON ALSO FOR
20 SAMSUNG AND BRETT ARNOLD.

21 THE COURT: ALL RIGHT.

22 WELCOME BACK, MS. MAROULIS.

23 GOOD MORNING, GENTLEMAN.

24 MR. OVERSON: YOUR HONOR, MAY I ALSO
25 INTRODUCE MR. JACOBS, MR. HUNG AND MR. MINN CHUNG.

1 SAMSUNG HAS ALREADY PRODUCED AND WHICH WE BELIEVE
2 THE COMPLAINTS ARE WARRANTED.

3 AND THERE'S ONE CATEGORY OF DOCUMENTS
4 THAT SAMSUNG BELIEVES IS IN DISPUTE, THE ONLY ONE
5 IN DISPUTE AND THAT'S THE DOCUMENTS GOING TO THE
6 CUSTOMER CONFUSION OR ALLEGED CONFUSION.

7 SO WITH RESPECT TO THE FIRST SET OF
8 ISSUES WHICH IS FOUR DIFFERENT CATEGORIES OF
9 DOCUMENTS, WE BELIEVE THAT THE RECORD IS CLEAR FROM
10 THE JENKINS DECLARATION AND FROM OUR BRIEF AND
11 OTHERWISE THAT WE'VE PRODUCED DOCUMENTS AFTER
12 REASONABLE SEARCH THAT ANSWER THESE REQUESTS.

13 THE COURT: IS IT YOUR POSITION YOU HAVE
14 PRODUCED ALL DOCUMENTS WHICH HAVE BEEN IDENTIFIED
15 AFTER A REASONABLE SEARCH?

16 MS. MAROULIS: YOUR HONOR, IT'S ALWAYS
17 HARD TO SAY ALL DOCUMENTS WITH A COMPANY OF THAT
18 SIZE.

19 THE COURT: THAT'S WHY I'M ASKING.

20 MS. MAROULIS: I THINK NOBODY CAN MAKE A
21 REPRESENTATION.

22 BUT IT'S CLEAR FROM OUR DECLARATIONS THAT
23 WE'VE CONDUCTED THE SEARCH AND WE CAME UP WITH A
24 NUMBER OF DOCUMENTS. THERE'S A NUMBER OF DOCUMENTS
25 THAT APPLE COUNSEL RIDICULED, BUT THOSE DOCUMENTS

1 COME FROM THE DESIGNER FILES OF SAMSUNG EMPLOYEES
2 AND THEY WERE THEMSELVES INQUIRING DEPOSITIONS
3 ABOUT SOURCE OF INSPIRATION.

4 SO THOSE ARE THE DOCUMENTS THAT PROVIDE
5 SOURCE OF INSPIRATION.

6 THE COURT: REALLY? THE EXTERIOR OF A
7 BUILDING WAS SOURCE OF INSPIRATION FOR ONE OF THE
8 PRODUCTS?

9 MS. MAROULIS: APPARENTLY THIS IS THE WAY
10 DESIGNERS COLLECT IDEAS.

11 THE COURT: THAT'S YOUR POSITION? THAT'S
12 WHAT THEY ARE TELLING YOU?

13 MS. MAROULIS: YOUR HONOR, IT COMES FROM
14 THE DESIGNERS' FILES DIRECTLY AND I WOULD RATHER
15 NOT GO FURTHER INTO THAT TO AVOID PROTECTIVE ORDER
16 ISSUES.

17 THE COURT: ALL RIGHT.

18 MS. MAROULIS: AMONG THE DOCUMENTS WE
19 PRODUCED ARE A LOT OF CATEGORIES THAT EXHAUSTIVELY
20 ADDRESS THE ISSUE OF -- FOR EXAMPLE, TWO WEEKS AGO
21 WE WERE BEFORE YOUR HONOR AND APPLE COUNSEL WAS
22 MAKING ARGUMENT THAT CAD TIMES ARE THE AND ALL AND
23 BE ALL.

24 WE PRODUCED THE CAD FILES. THEY HAVE OUR
25 CAD FILES. THE CAD FILES SPAN BACK, THEY CAN LOOK

1 AT ITERATIONS OF DESIGN AND MAKE CONCLUSIONS.

2 THE COURT: WHAT ABOUT SKETCHBOOKS? YOU
3 WERE VERY PERSUASIVE IN EXPLAINING THE SIGNIFICANCE
4 OF SKETCHBOOKS.

5 MS. MAROULIS: YOUR HONOR, THE SKETCHBOOK
6 BELONG TO THE INVENTORS OF THE PATENTS.

7 THE COURT: THEY DON'T HAVE SIMILAR
8 SKETCHBOOKS?

9 MS. MAROULIS: WE DON'T HAVE SIMILAR
10 SKETCHBOOKS. WE HAVE LOOSE NOTES AND PRESENTATIONS
11 THAT HAVE BEEN PRODUCED.

12 SO IN THE JENKINS DECLARATION THERE'S A
13 LIST OF DIFFERENT CATEGORIES OF DESIGN DOCUMENTS
14 THAT HAVE BEEN PRODUCED.

15 BUT WHAT YOUR HONOR FOCUSED ON EARLIER
16 CORRECTLY IS THAT REQUEST 1 ACTUALLY DOESN'T GO TO
17 ALL DESIGN DOCUMENTS, IT GOES TO DOCUMENTS WHERE
18 THERE WAS ANY COMPARISON OF THE TIMES.

19 SO IN THE PRODUCTION AS A WHOLE, WE
20 PRODUCED DOCUMENTS REGARDING MARKET ANALYSIS OF
21 APPLE PRODUCTS INCLUDING DOCUMENTS LOOKING AT THE
22 INTERNALS OF THE IPHONES, THE TEAR DOWNS. SO THOSE
23 DOCUMENTS WERE IN THE PRODUCTION.

24 BUT IN PRODUCING OUR DESIGN DOCUMENTS WE
25 ARE NOT OBLIGATED TO MANUFACTURE DOCUMENTS THAT

1 DON'T EXIST. THEY ARE LOOKING FOR A SMOKING GUN
2 DOCUMENT, A DOCUMENT THAT SAYS WE COPIED SOMETHING
3 FROM APPLE. WE DON'T HAVE THOSE DOCUMENTS.

4 WE HAVE TAKEN A 30(B)(6) DEPOSITION LAST
5 WEEK --

6 THE COURT: WELL, JUST TO BE PRECISE,
7 THEIR POSITION, THEIR REPRESENTATIONS THAT YOU HAVE
8 NOT IDENTIFIED ANY SUCH DOCUMENTS BASED ON THE
9 INVESTIGATION YOU HAVE DONE TODAY.

10 I THINK YOU JUST TOLD ME EARLIER YOU
11 CAN'T STAND HERE AND MAKE A REPRESENTATION THAT NO
12 SUCH DOCUMENT EXISTS OF YOUR CLIENT BECAUSE YOU
13 DON'T KNOW.

14 MS. MAROULIS: THAT'S CORRECT,
15 YOUR HONOR.

16 BUT I DO WANT TO TALK BRIEFLY ABOUT THE
17 30(B)(6) DEPOSITION OF A SAMSUNG REPRESENTATIVE WHO
18 ASKS SPECIFICALLY WHETHER HE INTERVIEWED THE
19 DESIGNERS OF THE PRODUCTS AT ISSUE.

20 HE TESTIFIED HE SPOKE WITH ALL OF THEM
21 AND INQUIRED EXTENSIVELY WHETHER ANY OF THEM
22 CONSIDERED APPLE PRODUCTS WHEN DESIGNING THEIR
23 PRODUCTS, NOT JUST COPYING, BUT ANY CONSIDERATION
24 OF FRAME OF REFERENCE. THEY TESTIFIED THEY HAVE
25 NOT.

1 THE COURT: SO HE SPOKE WITH EACH OF
2 THESE 13 INDIVIDUALS?

3 MS. MAROULIS: HE SPOKE WITH MAYBE 7 OR 8
4 INDIVIDUALS, HE SPOKE WITH PRINCIPAL DESIGNERS FOR
5 ALL OF THE FOUR PRODUCTS AT ISSUE.

6 THE COURT: IT IS TRUE THOUGH, IS IT NOT,
7 THAT THERE WERE 13 PEOPLE IDENTIFIED IN YOUR
8 INTERROGATORY IN 26(A) RESPONSES?

9 MS. MAROULIS: THINKING BACK ACTUALLY, HE
10 HAS TALKED TO EVERYONE WHO WAS IDENTIFIED IN
11 INTERROGATORY 1 RESPONSE. BUT I CANNOT SAY
12 STANDING HERE NOW HE TALKED TO EVERYONE IN THE
13 INITIAL DISCLOSURES. THAT'S THE DIFFERENCE. BUT
14 HE DID SPEAK WITH INDIVIDUALS FROM INTERROGATORY 1.

15 THE COURT: ALL RIGHT.

16 SO AS TO INTERROGATORY 1, OR ANY OF THE
17 OTHER INDIVIDUALS IN 26(A) RESPONSES, HAVE
18 DOCUMENTS BEEN COLLECTED?

19 MS. MAROULIS: DOCUMENTS HAVE BEEN
20 COLLECTED FROM INDIVIDUALS LISTED IN THE
21 INTERROGATORY 1 TO THE EXTENT THEY HAD THEM, AND
22 ADDITIONAL INDIVIDUALS TOO. THE DOCUMENT EFFORTS
23 WERE FAIRLY WIDE RANGING.

24 THE COURT: OKAY.

25 MS. MAROULIS: AND HERE IF YOUR HONOR

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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