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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
NATHAN SABRI
JOBY MARTIN
425 MARKET STREET
SAN FRANCISCO, CA 94105

FOR THE DEFENDANT: QUINN EMANUEL
BY: VICTORIA MAROULIS
SARA JENKINS
555 TWIN DOLPHIN DRIVE, 5TH FL
REDWOOD SHORES, CA 94065

(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
BY: ERIK OLSON
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FOR THE DEFENDANT: QUINN EMANUEL
BY: DIANE HUTNYAN
ANTHONY ALDEN
CURRAN WALKER
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LOS ANGELES, CALIFORNIA 90017

1 NECESSARY?

2 MS. TUCHER: YOUR HONOR, THE BUSINESS
3 PLANS HELP US TO SEE WHAT 2012 IS SUPPOSED TO LOOK
4 LIKE IN SAMSUNG'S EYES.

5 IT WAS PART OF WHAT YOU ORDERED PRODUCED
6 ON FEBRUARY 3RD AND THEY'VE GIVEN THEM TO US IN
7 REDACTED FORM, THEY JUST TOOK OUT A LOT OF THE
8 INFORMATION.

9 THE COURT: CAN YOU TELL WHAT'S BEEN
10 REDACTED EVEN IF YOU DON'T KNOW EXACTLY?

11 MS. TUCHER: WE CAN TELL MUCH OF THE
12 SUBSTANCE OF THE REPORTS.

13 THE COURT: ALL RIGHT.

14 MS. TUCHER: SO THOSE ARE THE DOCUMENTS
15 AND DATA THAT WE BELIEVE SHOULD HAVE BEEN PRODUCED
16 FEBRUARY 3RD AND THAT WE WOULD LIKE TO HAVE
17 PRODUCED AS THE FIRST ITEM IN OUR ASK HERE AS A
18 RESULT OF THE VIOLATION OF YOUR FEBRUARY 3RD ORDER.

19 WE THINK WE WILL NEED A LITTLE BIT OF
20 TIME WITH A WITNESS TO MAKE SURE WE UNDERSTAND THE
21 DATA CORRECTLY. WE UNDERSTAND DISCOVERY IS CLOSED,
22 SO RATHER THAN ASKING FOR A NEW 30(B)(6) DEPONENT
23 YOU'VE ALREADY ORDERED THAT JOSEPH CHUNG BE MADE
24 AVAILABLE. HE'S -- BECAUSE OF HIS POSITION AS CFO
25 AT STA, WE THINK IN A POSITION TO ANSWER QUESTIONS

1 IF WE COULD HAVE A COUPLE OF EXTRA HOURS WITH HIM.

2 WE'VE ASKED THAT WE BE ALLOWED TO USE THE
3 NEW DATA THAT WE GET FROM SAMSUNG WITHOUT FILING
4 SUPPLEMENTAL EXPERT REPORT. THE REASON FOR THAT IS
5 THAT OUR ORIGINAL EXPERT REPORT IS IN. WE ARE
6 GOING TO SOON GET THEIR RESPONSE TO THAT.

7 OUR DAMAGES EXPERT IS DUE TO BE DEPOSED
8 SOME TIME THIS MONTH, THE LAST DATE FOR EXPERT
9 DEPOSITIONS IS THE 27TH OF APRIL.

10 WE DON'T THINK IT'S FAIR TO ALLOW SAMSUNG
11 TWO BITES AT THE APPLE, TWO OPPORTUNITIES TO
12 CROSS-EXAMINE OUR DAMAGES EXPERT AS A BENEFIT OF
13 THEIR OWN VIOLATION OF YOU'RE ORDER.

14 THE COURT: SO WOULDN'T A BETTER WAY TO
15 SOLVE THAT PROBLEM BE TO SIMPLY DELAY HIS
16 DEPOSITION AND HAVE HIM DEPOSED ONCE AFTER A
17 SUPPLEMENTAL REPORT IS TENDERED?

18 MS. TUCHER: YOUR HONOR, I UNDERSTAND
19 THAT THAT IS AN ALTERNATIVE.

20 WE HAVE BEEN DOING EVERYTHING WE CAN TO
21 STICK WITH THE SCHEDULE THAT JUDGE KOH SET IN THIS
22 CASE BECAUSE IT'S NOT IN APPLE'S INTEREST TO SEE
23 ANYTHING DELAYED. BUT I JUST WANT TO MAKE SURE YOU
24 KNEW THAT APRIL 27TH IS THE --

25 THE COURT: I'M JUST THINKING OF

1 JUDGE KOH'S INTEREST IN MANAGING A TRIAL WITH
2 TESTIMONY THAT WASN'T DISCLOSED IN A REPORT, THAT
3 GETS AWFULLY DIFFICULT.

4 MS. TUCHER: I UNDERSTAND YOUR POINT, BUT
5 I THINK THAT SAMSUNG IS THE PARTY THAT HAS PUT US
6 IN THAT POSITION AND AT SOME LEVEL IT'S SAMSUNG'S
7 RESPONSIBILITY TO COPE WITH THE CONSEQUENCES.

8 WE'VE ALSO ASKED THAT SAMSUNG BE REQUIRED
9 TO LIVE WITH THE RESULTS OF ITS FEBRUARY 3RD
10 PRODUCTION. AND THE REASON THAT THAT MATTERS IS
11 BECAUSE OF THE BIG NUMBER THAT I SHOWED YOU THAT
12 THEY HAVE MOVED FROM, THEY PULLED OUT PROFITS AND
13 MOVED INTO COSTS. AND THEY DID THAT AFTER
14 FEBRUARY 3RD. AND WE THINK IT WAS ILLEGITIMATE BUT
15 WE THINK THEY SHOULD BE REQUIRED TO LIVE WITH WHAT
16 THEY GAVE US AS THE DATE YOU HAD ORDERED IT.

17 THE COURT: I APOLOGIZE FOR JUMPING
18 AROUND A BIT ON THIS, BUT IS IT FAIR FOR ME TO
19 UNDERSTAND THAT ALL OF THIS INFORMATION YOU BELIEVE
20 SHOULD HAVE BEEN PRODUCED AND EITHER WASN'T OR WAS
21 PRODUCED FAR TOO LATE, ALL RELATES TO YOUR CLAIM
22 FOR PROFITS ALONE, OR DOES THIS IMPLICATE ANY OF
23 YOUR OTHER BUCKET LIST OF DAMAGES, FOR LACK OF A
24 BETTER TERM?

25 MS. TUCHER: I THINK IT IS MOST DIRECTLY

1 PART OF THE ORIGINAL MOTION PRACTICE.

2 AND I APOLOGIZE YOUR HONOR AGAIN, BUT
3 SINCE YOUR HONOR DID ASK THE QUESTION, MY
4 COLLEAGUES INFORM ME THAT SKYROCKET AND EPIC ARE
5 ACCUSED IN CASE TWO THAT YOUR HONOR WILL BE --

6 THE COURT: SO WE ARE GOING DEALING WITH
7 THIS AT SOME POINT OR ANOTHER.

8 MS. MAROULIS: THAT APPEARS TO BE
9 CORRECT, FOR THE RECORD.

10 SO GOING BACK TO WHAT WAS AND WAS NOT
11 WITHIN THE SCOPE OF THE ORDER OF.

12 SO HOW DID SAMSUNG COMPLY WITH THE ORDER
13 IN THE SIX CATEGORIES OF DOCUMENTS IT PRODUCED?

14 FIRST OF ALL, WHILE THE SPREADSHEET WAS
15 THE FOCUS OF COUNSEL'S ARGUMENT, THAT IS NOT THE
16 ONLY FINANCIAL DOCUMENT WE HAVE PRODUCED. AND I
17 RECALL MR. MCELHINNY TWO WEEKS AGO THEY SAY THEY
18 PRODUCED ONE PAGE. THAT'S NOT PROPER. IT'S NOT A
19 ONE PAGE, IT'S MULTIPLE PAGES DOCUMENT WITH ALL THE
20 ATTACHMENTS AND ALL THE WORKSHEETS.

21 BUT MORE IMPORTANTLY, THAT IS NOT THE
22 ONLY DOCUMENT WE HAVE PRODUCED. WE PRODUCED
23 ADDITIONAL SALES REPORTS, CLOSING REPORTS, VARIOUS
24 CARRIER DOCUMENTS THAT SHOW WHO IS SELLING WHAT.

25 WE HAVE ATTACHED OUR MOTION PAPERS THE

1 DECLARATION OF JOBY MARTIN, THE LIST OF SOME OF THE
2 FINANCIAL DOCUMENTS AND IN OUR BRIEFS WE EXPLAIN
3 WHAT OTHER DOCUMENTS WE HAVE. SO IT'S ABSOLUTELY
4 CLEAR THE SPREADSHEET SENT IS THE ONLY DOCUMENT
5 APPLE RECEIVED.

6 THE COURT: IS IT ALSO CLEAR THAT NONE OF
7 THE INFORMATION IN ANY OF THOSE DOCUMENTS PROVIDES
8 APPLE WITH THE INFORMATION THEY ARE SEEKING BY THIS
9 MOTION AND WHICH EXTENDS OUTSIDE OF THE SCOPE OF
10 THOSE SIX CATEGORIES?

11 MS. MAROULIS: YES AND NO. FOR SOME OF IT
12 YES, FOR SOME OF IT NO.

13 FOR EXAMPLE COST AND BILL OF MATERIALS
14 ARE NOT PART OF IT, FLUX REPORTS ARE PROBABLY NOT,
15 BUT VARIOUS OTHER DATA THAT THEY ARE CLAIMING THEY
16 DON'T HAVE CAN BE CALCULATED BY TAKING EXISTING
17 DOCUMENTS WITH THE SUPPORT OF THE DEPOSITION
18 TESTIMONY, AND YOUR HONOR SHOULDN'T UNDERSTAND THAT
19 NOW MR. SIMMS WHO IS A VERY HIGH LEVEL EXECUTIVE
20 WHICH MR. OLSON CONCEDED WAS DEPOSED TWICE AND
21 MR. SHEPPARD WAS DEPOSED THREE TIMES IN THIS CASE
22 ALONE, NOT COUNTING ITC.

23 SO NOT ONLY HAVE WE PRODUCED ENORMOUS
24 AMOUNTS OF DOCUMENTS AND FINANCIAL TOPICS, APPLE
25 FOLKS HAVE NOW HAD BETWEEN 5 AND 7 OPPORTUNITIES TO

1 SPEAK WITH OUR VARIOUS FINANCE PEOPLE WHO ARE VERY
2 HIGH LEVEL INDIVIDUALS.

3 THEY WILL ALSO HAVE AN OPPORTUNITY SPEAK
4 WITH THE CFO OF STA, MR. CHUNG, PURSUANT TO THE
5 APEX ORDER.

6 SO THERE'S BEEN NO SHORTAGE OF
7 OPPORTUNITY --

8 THE COURT: I'M GLAD SAMSUNG VIEWS IT AS
9 AN OPPORTUNITY, I APPRECIATE THAT CHARACTERIZATION.

10 I DIDN'T MEAN TO INTERRUPT YOU THOUGH, GO
11 ON.

12 MS. MAROULIS: YOUR HONOR, THE POINT
13 BEING HERE IS THAT A LOT OF ARGUMENTS YOU HEARD
14 TODAY WAS HOW THEY ARE GOING TO ARGUE THEIR DAMAGES
15 CASE. AND I SUBMIT THAT'S NOT A PROPER FORM HERE
16 NOW. A LOT OF IT IS SUBSTANTIVE.

17 HOW DO YOU COUNT PROFITS? DO YOU GO WITH
18 CONSOLIDATED OR OTHERS? THERE'S GOING TO BE
19 DISPUTES BETWEEN THE PARTIES AS TO HOW TO CALCULATE
20 DAMAGES, AND THEY ARE GOING TAKE FORMS OF VARIOUS
21 MOTION PRACTICE OR CROSS-EXAMINATION OF EXPERTS AT
22 TRIAL.

23 IT DOESN'T PROBABLY SURPRISE YOUR HONOR
24 THAT THE PARTIES DON'T SEE EYE TO EYE ABOUT HOW TO
25 COUNT PROFITS, DAMAGES AND ALLOCATIONS.

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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

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