

Exhibit 32

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

FRACTUS	*	Civil Docket No.
	*	6:09-CV-203
VS.	*	Tyler, Texas
	*	
	*	May 20, 2011
SAMSUNG ELECTRONICS, CO., LTD.,	*	
ET AL	*	8:30 A.M.

TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE LEONARD DAVIS
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFFS:	MR. MAX TRIBBLE, JR. Susman Godfrey 1000 Louisiana Street Suite 5100 Houston, TX 77002
	MR. MICHAEL HEIM MR. LESLIE PAYNE Heim Payne & Chorush 600 Travis St., Suite 6710 Houston, TX 77002
	MR. JUSTIN NELSON MS. GENEVIEVE VOSE Susman Godfrey 1201 Third Avenue Suite 3800 Seattle, WA 98101

APPEARANCES CONTINUED ON NEXT PAGE:

COURT REPORTERS:	MS. SUSAN SIMMONS, CSR MS. JUDITH WERLINGER, CSR Official Court Reporter 100 East Houston, Suite 125 Marshall, TX 75670 903/935-3868
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(Proceedings recorded by mechanical stenography,
transcript produced on CAT system.)

1 Was Samsung aware in 2006, while it was still doing
2 business with Fractus, that Fractus was already building
3 this nice jury story of infringement of the multilevel
4 patent?

5 A. This is the first time that I'm hearing it.

6 Q. And that is a Samsung phone that's contained
7 on Exhibit 172; is that correct?

8 A. Yes, it is.

9 Q. And at that time, Fractus and Samsung were
10 still doing business together?

11 A. Yes.

12 Q. And never told you that they were -- had it in
13 mind all along to sue us three years later?

14 A. That's right. We never heard anything like
15 that.

16 MR. BARTA: Pass the witness.

17 THE COURT: All right. Cross-exam.

18 CROSS-EXAMINATION

19 BY MR. NELSON:

20 Q. Good afternoon, Mr. Kim -- or good morning
21 still.

22 A. Yes.

23 Q. You understand that once a lawsuit has been
24 filed, every party has an obligation to preserve
25 relevant documents, correct?

1 A. Yes, I do.

2 Q. Your e-mails continued to delete after 14 days
3 even after this lawsuit was filed and after we had given
4 notice about you personally to Samsung, correct?

5 A. Well, system-wise. It is system-wise. The
6 system itself would -- is such way that it -- those were
7 deleted within 14 days, unless there's a request to
8 preserve these documents. And if these documents are
9 documents that are considered to be important, and those
10 would be preserved, though.

11 MR. NELSON: First of all, could you
12 please tell the witness, if he can answer my question
13 yes or no, we have very limited time, so I would
14 appreciate yes or no answers, if he can.

15 A. Yes.

16 Q. (By Mr. Nelson) The answer is: Yes, your
17 e-mails continued to be destroyed after 14 days even
18 after we let Samsung know about you personally, correct?

19 A. No.

20 MR. NELSON: Could we bring up the
21 JungMin Ro deposition, Page 61, Line 22?

22 Q. (By Mr. Nelson) This was a corporate testimony
23 from Samsung. She stated: For the custodians listed,
24 has the automatic deletion function in mySingle been
25 suspended?

1 ANSWER: No.

2 Is that correct, or was she not telling the
3 truth?

4 A. Yes. That's the way she answered it.

5 Q. Thank you.

6 It's also true, Mr. Kim, that when a Samsung
7 employee changes computers, that computer is wiped
8 clean, correct?

9 A. Well, yes.

10 Q. Do you know --

11 MR. NELSON: Well, let's bring up
12 Plaintiff's Exhibit 114, please. And let's go -- on the
13 first page there. Yeah. Jae-Ki Jung.

14 Q. (By Mr. Nelson) Mr. Kim, do you know Jae-Ki
15 Jung?

16 A. I don't know this person very well.

17 MR. NELSON: If we go to the following
18 page, please. Next page. Next page. Blow up the date,
19 please.

20 Q. (By Mr. Nelson) This is an offer and
21 acceptance of Fractus antennas, and it was accepted by
22 Mr. Jae-Ki Jung, correct?

23 A. Yes, that's right.

24 MR. NELSON: Next page, please.

25 Q. (By Mr. Nelson) And at the bottom, it states

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FOR THE PLAINTIFFS: MR. MAX TRIBBLE, JR.
Susman Godfrey
1000 Louisiana Street
Suite 5100
Houston, TX 77002

MR. MICHAEL HEIM
MR. LESLIE PAYNE
Heim Payne & Chorush
600 Travis St., Suite 6710
Houston, TX 77002

MR. JUSTIN NELSON
MS. GENEVIEVE VOSE
Susman Godfrey
1201 Third Avenue
Suite 3800
Seattle, WA 98101

APPEARANCES CONTINUED ON NEXT PAGE:

COURT REPORTERS: MS. SUSAN SIMMONS, CSR
MS. JUDITH WERLINGER, CSR
Official Court Reporter
100 East Houston, Suite 125
Marshall, TX 75670
903/935-3868

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transcript produced on CAT system.)

APPEARANCES CONTINUED:

FOR THE PLAINTIFFS:

MS. VICTORIA COOK
Susman Godfrey
1901 Avenue of the Stars
Suite 950
Los Angeles, CA 90067

MR. T. JOHN WARD, JR.
Ward & Smith Law Firm
P.O. Box 1231
Longview, TX 75606

FOR THE DEFENDANTS:
SAMSUNG

MR. MICHAEL BARTA
MR. MICHAEL CALHOON
Baker Botts
1299 Pennsylvania Ave NW
Washington, DC 20004

MR. NEIL SIROTA
MR. ERIC FARAGI
MR. CHANG SIK KIM
Baker Botts
30 Rockefeller Plaza
44th Floor
New York, NY 10112

MR. MIKE JONES
Potter Minton
110 North College
Suite 500
Tyler, TX 75710

1 pulled the wool over their eyes. We put a 2006 slide in
2 a 2005 deck. Again, pretty poor job of manipulating
3 evidence, but it's an evaluation of the 1995 patent,
4 Fractus' 1995 patent. There was never any report, any
5 feedback from Samsung of any complaints about our
6 patents at issue starting from the 1999 patent
7 application.

8 Go to Slide 4.

9 Again, here we are drawing polygons,
10 identifying our patent application to them. That's in
11 evidence as Plaintiff's Exhibit 224. You saw where we
12 stamped our patent number on the planar inverted-F
13 antenna. That's a PIFA antenna.

14 Nothing from Samsung saying: Wait a
15 minute, Fractus. What are y'all doing? Why are you
16 stamping this product this way? Your patent doesn't
17 cover it.

18 Nothing. They continued to buy our
19 products. Not a word about: Hey, your patents don't
20 cover this. No confusion to them. The only confusion
21 comes when it's time to own up and pay for using our
22 property.

23 And then the lawyers want to put a lot of
24 documents together from our files -- nothing from
25 Samsung's files, right? It's easier to tell a story

1 when you've got a clean slate. When you delete your
2 e-mails every 14 days, you deep six reports, pretty easy
3 to get in here and spin a story to a jury. If there's
4 any jury stories going on, I think it's coming from
5 Samsung's table, not from Fractus'.

6 Samsung on these defenses. You know, we
7 had -- obviousness, until about 30 minutes ago, was in
8 the case. That was -- that was what they were telling
9 us, that these patents were obvious.

10 It's kind of like nailing Jello to a wall
11 to get them to light on a story, because Mr. Barta just
12 said: Give up on obviousness. You got us cornered
13 there. I'm not going to stand up in front of the jury,
14 and on one hand, say: Well, Cohen has everything, and
15 on the other hand, tell them what's missing.

16 We finally pin them down, and what do
17 they do? Cohen has everything. Obviousness is the
18 easiest one to answer now. They've conceded that these
19 patents were not obvious. He wouldn't even make the
20 argument to you, not with a straight face.

21 So enablement and written description
22 have popped up. These are, again, defenses that had no
23 air time during -- during the case at all. No witness
24 testified about it. You heard nothing from their
25 expert, Dr. Best, who would be one of ordinary skill in

1 including Samsung, who has the largest market share, but
2 they don't want to play by the rules. No license from
3 Samsung to any intellectual property covering any
4 hardware on any cell phone device. Think about that.
5 Not one in evidence. None.

6 That's their position. Take it. Use it.
7 Maybe a jury will stick you. Maybe you'll have to pay
8 down the road after some appeals. That's their business
9 model.

10 Because, you know, this afternoon when
11 y'all come back with a verdict, there's going to be a
12 phone call from Mr. Kim, and Mr. Kim's going to be
13 calling Korea. They're going to be waking up, and he's
14 going to say: You know what? It worked. Keep deleting
15 the e-mails. Keep deep sixing the reports. Don't
16 produce documents, because juries won't hold us
17 responsible.

18 Or it could be another phone call. Time
19 to change the way we do business. If we're going to
20 compete in the largest market in the world and sell our
21 cell phones and make money, we're going to have to
22 respect duly issued United States patents.

23 And you-all are going to get to make the
24 decision about which one of those phone calls gets made,
25 and we hope you make that right decision.

1 THE COURT: Thank you. We're adjourned.
2 (Court adjourned.)

3 * * * *

4

5

6 CERTIFICATION

7

8 I HEREBY CERTIFY that the foregoing is a
9 true and correct transcript from the stenographic notes
10 of the proceedings in the above-entitled matter to the
11 best of my ability.

12

13

14

15 /s/_____
16 SUSAN SIMMONS, CSR
17 Official Court Reporter
State of Texas No.: 267
Expiration Date: 12/31/10

Date

18

19

20 /s/_____
21 JUDITH WERLINGER, CSR
22 Deputy Official Court Reporter
State of Texas No.: 731
Expiration Date: 12/31/10

Date

23

24

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