

EXHIBIT 1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
3 SAN JOSE DIVISION

4 APPLE, INC,) CV-11-1846-LHK
5)
6 PLAINTIFF,) SAN JOSE, CALIFORNIA
7)
8 VS.)
9) APRIL 24, 2012
SAMSUNG ELECTRONICS, CO.)
LTD., ET AL,)
DEFENDANT.) PAGES 1-51

10
11 TRANSCRIPT OF PROCEEDINGS
12 BEFORE THE HONORABLE PAUL S. GREWAL
13 UNITED STATES DISTRICT JUDGE

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

15
16 FOR THE PLAINTIFF: MORRISON & FOERSTER, LLP
17 BY: ALISON TUCHER
18 RICHARD HUNG
19 MARC PERNICK
425 MARKET STREET
SAN FRANCISCO, CA 94105

20 FOR THE DEFENDANT: QUINN EMANUEL
21 BY: KEVIN JOHNSON
22 MELISSA CHAN
555 TWIN DOLPHIN DRIVE, STE 560
REDWOOD SHORES, CA 94065

23
24
25 OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR
CERTIFICATE NUMBER 13185

1 SAN JOSE, CALIFORNIA

APRIL 24, 2012

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: MR. RIVERA, WOULD YOU CALL
6 THE NEXT MATTER ON THIS MORNING'S CALENDAR.

7 THE CLERK: YES, YOUR HONOR.

8 CALLING APPLE, INC. VERSUS SAMSUNG
9 ELECTRONICS COMPANY, ET AL.

10 CASE CV-11-1846. MATTER ON FOR
11 PLAINTIFF'S RULE 37 (B) (2) MOTION.

12 COUNSEL, PLEASE COME FORWARD AND STATE
13 YOUR APPEARANCES.

14 MR. JOHNSON: GOOD MORNING, YOUR HONOR.
15 KEVIN JOHNSON. AND WITH ME IS MELISSA
16 CHAN FROM QUINN EMANUEL ON BEHALF OF SAMSUNG.

17 THE COURT: MR. JOHNSON, GOOD MORNING
18 SIR.

19 MS. TUCHER: GOOD MORNING, YOUR HONOR.
20 ALLISON TUCHER FROM MORRISON & FOERSTER.
21 WITH ME TODAY ARE MY PARTNERS RICH HUNG AND
22 MARC PERNICK.

23 THE COURT: MS. TUCHER, GOOD MORNING TO
24 YOU AS WELL.

25 ALL RIGHT. THE LATEST IN THE SERIES OF

1 MOTIONS FOR SANCTIONS.

2 I TAKE IT YOU ALL SAW MY ORDER THAT I
3 ISSUED LAST EVENING. I DON'T WANT TO RE PLOW OLD
4 GROUND, BUT I HOPE THAT GIVES YOU AT LEAST SOME
5 SENSE OF WHERE I'M AT GENERALLY IN THIS CASE
6 REGARDING COMPLIANCE WITH MY ORDERS.

7 THIS IS APPLE'S MOTION SO I WILL START
8 WITH YOU MS. TUCHER.

9 MS. TUCHER: THANK YOU, YOUR HONOR.

10 APPLE HAS ALLEGED CONTINUING INFRINGEMENT
11 IN THIS CASE. THAT MEANS WE HAVE TO PROVE NOT ONLY
12 THAT SAMSUNG INFRINGES OUR PATENTS ON THE DAY THAT
13 IT RELEASES A NEW PRODUCT, BUT ALSO THAT IT
14 CONTINUES TO INFRINGE OUR PATENTS AS IT UPDATES THE
15 SOFTWARE OVER THE WEEKS AND MONTHS THE PRODUCTS
16 REMAIN ON THE MARKET.

17 BECAUSE WE NEED THAT SOFTWARE WE ISSUED
18 REQUEST FOR PRODUCTION AND THEN WE GOT AN ORDER
19 FROM THIS COURT IN DECEMBER OF LAST YEAR REQUIRING
20 SAMSUNG TO PRODUCE ALL VERSIONS OF SOURCE CODE ON
21 ALL OF THE ACCUSED PRODUCTS, AT LEAST --

22 THE COURT: DID I SAY ALL VERSIONS?

23 MS. TUCHER: NO.

24 WHAT YOU SAID WAS THAT SAMSUNG WAS
25 REQUIRED TO PRODUCE THE SOURCE CODE THAT APPLE

1 HAD -- LET ME GIVE YOU THE EXACT LANGUAGE.

2 SAMSUNG SHALL PRODUCE THE SOURCE CODE
3 REQUESTED BY APPLE'S MOTION, WITH AN EXCEPTION, AND
4 THE EXCEPTION WENT TO -- SORRY, IT WAS SOURCE CODE
5 AND TECHNICAL DOCUMENTS. THEN IT WAS AN EXCEPTION
6 THAT WENT TO TECHNICAL DOCUMENTS AS TO WHICH THERE
7 HAD BEEN NO MEET AND CONFER.

8 BY TECHNICAL DOCUMENTS, SOME OF THESE
9 HAVE RELATION TO SOURCE CODE.

10 SO FOR EXAMPLE, WE ASKED FOR VERSION LOGS
11 THAT WOULD ENABLE US TO TELL WHEN DIFFERENT
12 VERSIONS OF SOURCE CODE WERE IMPLEMENTED.

13 BUT YOUR HONOR'S ORDER WAS QUITE CLEAR
14 INCLUDING IN A FOOTNOTE BY REQUEST NUMBER, THE
15 REQUESTS THAT WERE EXEMPTED BECAUSE THEY DIDN'T
16 INVOLVE MEET AND CONFER, IT LOOKS TO US AS THOUGH
17 YOU TOOK THAT LIST STRAIGHT FROM A SAMSUNG
18 DECLARATION PROVIDED BY MR. CHAN.

19 AND IN THAT DECLARATION, PARAGRAPH 21 OF
20 THE DECLARATION WHERE MR. CHAN LISTS EXACTLY THAT
21 SAME LIST OF REQUESTS FOR PRODUCTION THAT APPEAR IN
22 THE FOOTNOTE OF YOUR ORDER, HE REFERS TO THESE
23 REQUESTS AS NON SOURCE CODE DOCUMENTS.

24 INDEED, THEY ARE, AND THAT'S WHY NOTHING
25 IN THE EXEMPTION WITH THE EXCEPTION OF YOUR

1 DECEMBER ORDER APPLIES TO THE SOURCE CODE.

2 HAVING SECURED THE ORDER, WE THEN GOT
3 FROM SAMSUNG A SINGLE VERSION OF SOFTWARE FOR
4 ALMOST EVERY ONE OF THE PHONES THAT HAD BEEN
5 RELEASED. AND I SAY ALMOST EVERY ONE ONLY BECAUSE
6 THERE'S A COMPLICATION WITH REGARD TO THE S2.

7 YOU WILL REMEMBER --

8 THE COURT: EXPLAIN THAT TO ME.

9 MS. TUCHER: YOU WILL REMEMBER THAT WE
10 ACCUSED THE S2 OF INFRINGING OUR UTILITY PATENTS
11 AND THAT SAMSUNG RELEASED THE S2 IN MANY DIFFERENT
12 VARIANTS OR MANY DIFFERENT VERSIONS.

13 IT RELEASED IN SEPTEMBER OF 2011 A
14 VERSION TO -- SORRY, SEPTEMBER WAS THE S2 EPIC 4G
15 TOUCH, WHICH IS A SPRINT PHONE. AND THEN IN
16 OCTOBER IT RELEASED THE AT&T VERSION OF THE GALAXY
17 S2. AND THE T-MOBILE VERSION OF THE GALAXY S2.

18 THEN IT WENT ON LATER IN THE FALL TO
19 RELEASE FURTHER VERSIONS THROUGH OTHER CARRIERS AND
20 A SECOND AT&T VERSION.

21 SO THE REASON THIS IS IMPORTANT IS THAT
22 IF SAMSUNG HAD DONE WHAT IT SAID IT WAS DOING IN
23 PRODUCING ONE, IN PRODUCING THE FIRST VERSION OF
24 SOFTWARE FOR EACH OF THE PHONES, YOU WOULD EXPECT
25 THAT THEY EITHER HAD GIVEN US THE GALAXY S2 EPIC 4G

1 TOUCH AND EXPECTED US TO VIEW THAT AS SOFTWARE
2 REPRESENTATIVE OF ALL THE S2'S OR THAT THEY HAVE
3 GIVEN US SOFTWARE FOR EACH OF THE DIFFERENT
4 VARIANTS OF EACH OF THE DIFFERENT CARRIERS SO THAT
5 WE COULD ANALYZE EACH OF THOSE.

6 THE COURT: I TAKE IT YOUR POINT IS THEY
7 DID NOT.

8 MS. TUCHER: THEY DIDN'T.

9 INSTEAD, THEY THOSE THE T-MOBILE VERSION
10 OF THE S2 AND THEY GAVE US A SINGLE VERSION OF THAT
11 ONLY.

12 SO THE REASON THAT MATTERS IS THAT WHEN
13 WE GET TO THE APPROPRIATE SANCTION FOR THEIR
14 VIOLATION OF YOUR ORDER, THE QUESTION IS HOW DO WE
15 FILL IN THE GAPS?

16 AND FIRST, I WANT TO JUST ESTABLISH THE
17 IMPORTANCE OF FILLING IN THE GAPS. IT'S NOT JUST
18 HYPOTHETICAL THAT SOMEHOW SAMSUNG IS GOING TO
19 ATTACK APPLE'S PROOF ON THE GROUNDS THAT WE CAN
20 ONLY PROVE INFRINGEMENT BASED ON A SINGLE PHONE, SO
21 HOW CAN APPLE MAINTAIN CONTINUING INFRINGEMENT.

22 ON THE RUBBER BANDING PATENT WE HAVE AN
23 EXPERT BY THE NAME OF ROBERT BALAKRISHNAN. HE WAS
24 CROSS-EXAMINED, ONE OF THE EXPERT DEPOSITIONS THAT
25 TOOK PLACE JUST LAST FRIDAY.

1 AND IN THAT DEPOSITION FOR THREE PAGES OF
2 TRANSCRIPT THE QUESTIONS GO ON.

3 WELL, AS TO THE CAPTIVATE, HOW MANY DID
4 YOU LOOK AT?

5 I LOOKED AT JUST ONE. I LOOKED AT ONE, I
6 FOUND INFRINGEMENT. I LOOKED AT THE CODE.

7 WELL THEN, SO YOU CAN'T OPINE AS TO
8 WHETHER ANY OF THE OTHER MILLIONS OF CAPTIVATES WE
9 SOLD INFRINGE, CAN YOU?

10 IT GOES ON PAGE AFTER PAGE, AND I HAVE
11 THE TRANSCRIPT IF YOU WANT TO SEE IT.

12 THE COURT: I WOULD LIKE TO SEE IT.

13 MS. TUCHER: OKAY. I HAVE MULTIPLE
14 COPIES OF THIS. LET ME HAND UP ONE FOR YOUR HONOR.

15 AND I BELIEVE, YOUR HONOR, THE LAWYER WHO
16 TOOK THIS DEPOSITION IS IN THE COURTROOM, IT'S
17 MR. JOHNSON.

18 IF I COULD PASS ONE HERE.

19 THE COURT: SO IF YOU COULD DIRECT ME TO
20 THE PORTION OF THE TESTIMONY.

21 MS. TUCHER: YES.

22 STARTING ON PAGE 70 AT LINE 15.

23 YOU DO NOT HAVE AN OPINION THAT ALL
24 SAMSUNG CAPTIVATE PHONES USING THE GALLERY
25 APPLICATION INFRINGE THE '381 PATENT, RIGHT?

1 SO THE '381 PATENT IS THE RUBBER BAND
2 PATENT. AND IT GOES ON FOR SEVERAL PAGES.

3 THEN I WOULD DIRECT YOUR ATTENTION
4 SPECIFICALLY TO PAGE 72, LINE 16.

5 BUT IF THERE ARE, A CERTAIN NUMBER,
6 MILLIONS OF CAPTIVATES THAT HAVE A DIFFERENT
7 VERSION OF GALLERY ON IT, YOU ARE NOT ACCUSING
8 THOSE MILLIONS OF OTHER PRODUCTS OF INFRINGING
9 BECAUSE YOU HAVEN'T LOOKED AT THEM.

10 AND OF COURSE OUR EXPERT WAS HONEST IN
11 ANSWERING THE QUESTION THAT HE CAN'T SAY ABOUT THE
12 OTHER MILLIONS OF CAPTIVATES WHETHER THEY INFRINGE
13 THE WAY THE ONE HE EXAMINED DOES BECAUSE HE DOESN'T
14 HAVE THE CODE.

15 THE COURT: ALL RIGHT.

16 MS. TUCHER: SO, THE RELIEF THAT WE ARE
17 SEEKING HERE IS, FIRST OF ALL, A FINDING THAT THEY
18 VIOLATED YOUR HONOR'S ORDER BECAUSE WE BELIEVE IT'S
19 PART OF A PRACTICE OF SAMSUNG DECIDING UNILATERALLY
20 WHAT DISCOVERY APPLE IS ENTITLED TO, AND WE BELIEVE
21 THAT'S RELEVANT FOR OTHER ISSUES IN THIS CASE.

22 SECOND, WE WOULD ASK THE COURT TO PROVIDE
23 WHAT SAMSUNG SHOULD HAVE PROVIDED IN BY WAY OF A
24 STIPULATION, AND THAT IS TO DEEM REPRESENTATIVE THE
25 SOURCE CODE THAT THEY DID PROVIDE.

1 AND THE ONE PLACE WE HAVE TO MAKE MORE
2 COMPLICATED WHAT SHOULD BE SIMPLE AND
3 STRAIGHTFORWARD IS WITH REGARD TO THE S2. BECAUSE
4 THE S2 SOURCE CODE THAT THEY GAVE US ON THE
5 T-MOBILE IS NOT REPRESENTATIVE OF THE S2 SOURCE
6 CODE WITH REGARD TO THE RUBBER BANDING FUNCTION
7 ONLY BECAUSE THE T-MOBILE VERSION, WHEN IT WAS
8 RELEASED, HAD A DESIGN AROUND, A BLUE GLOW DESIGN
9 AROUND.

10 AND WE ARE NOT EVEN ACCUSING THE
11 T-MOBILE --

12 THE COURT: AND IS THAT BECAUSE THE
13 T-MOBILE RELEASE OF THE PRODUCT CAME OUT AFTER THE
14 COMPLAINT WAS FILED?

15 MS. TUCHER: ALL OF THE VERSIONS OF THE
16 S2 CAME OUT AFTER THE COMPLAINT WERE FILED.

17 THEY CAME OUT IN SEPTEMBER, OCTOBER AND LATER
18 DATES IN 2011. AND OUR COMPLAINT DATES TO APRIL
19 AND THE INFRINGEMENT CONTENTIONS --

20 THE COURT: SO AS TO THE S -- I THINK I'M
21 FINALLY CATCHING UP TO WHERE YOU WERE EIGHT MINUTES
22 AGO.

23 YOU ARE TELLING ME, I THINK, THAT THE
24 T-MOBILE VERSION OF THE S2, IS THE ONLY VERSION FOR
25 WHICH CODE HAS BEEN PRODUCED.

1 AND AS BEST YOU CAN TELL, IT'S ACTUALLY A
2 VERSION WHICH DOESN'T PRACTICE THIS PARTICULAR
3 INVENTION BECAUSE OF DESIGN AROUND; IS THAT FAIR?

4 MS. TUCHER: THAT'S RIGHT.

5 IT IS REPRESENTATIVE OF OTHER ASPECTS OF
6 THE UNDERSTOOD CODE AND OUR OTHER PATENTS, BUT AS
7 TO THE RUBBER BANDING FUNCTIONALITY EITHER WE NEED
8 SAMSUNG TO PRODUCE THE FIRST S2 CODE, THE EPIC 4G
9 TOUCH S2 AS IT WAS RELEASED AND HAVE THAT DEEMED
10 REPRESENTATIVE OR WE NEED TO BE ABLE TO LOOK TO
11 OTHER PHONES THAT USE THE SAME SOURCE CODE.

12 SO FOR EXAMPLE, THE EPIC 4G S2 PHONE AND
13 THE AT&T S2 VERSION WERE RELEASED FROM ANDROID
14 GINGERBREAD 2.3.

15 AND WE HAVE GINGERBREAD PHONES THAT WE
16 HAVE LOOKED AT AND BALAKRISHNAN HAD TESTIFIED
17 ABOUT.

18 THE COURT: SO YOU HAPPILY TAKE THE
19 GINGERBREAD RELEASED AS REPRESENTATIVE OF THIS
20 PARTICULAR VERSION?

21 MS. TUCHER: THAT'S RIGHT.

22 SO FOR EXAMPLE, THE EXHIBIT 4G, IT MUST
23 HAVE BEEN A LAWYER WHO NAMED THAT PHONE BUT IT'S
24 ACTUALLY CALLED THE EXHIBIT 4G. SO THE EXHIBIT 4G
25 OR OTHER GINGERBREAD PHONE COULD BE DEEMED