

EXHIBIT B

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 I KNOW THAT'S THE ONE DR. BALAKRISHNAN FOCUSED ON
2 WHEN HE REGARDED HIS TESTIMONY ABOUT HOW THE
3 GINGERBREAD OPERATES WITH REGARD TO THE BALANCE
4 FUNCTIONALITY.

5 THE COURT: ANYTHING ELSE ON YOUR LIST?

6 MS. TUCHER: NOT UNLESS YOU HAVE
7 QUESTIONS, THANK YOU.

8 THE COURT: ALL RIGHT. THANK YOU.

9 MR. JOHNSON?

10 SO DID MY ORDER PERMIT SAMSUNG TO CHERRY
11 PICK CERTAIN VERSIONS OR WAS IT FAIRLY EXPLICIT?

12 MR. JOHNSON: THERE WASN'T ANY CHERRY
13 PICKING OF VERSIONS.

14 WITH RESPECT TO THE S2, THIS IS THE FIRST
15 TIME HEARING OF THE ISSUE WITH RESPECT TO THE S2 IN
16 PARTICULAR.

17 SO THIS SORT OF GOES BACK TO
18 YOUR HONOR'S, I THINK, POINT AT THE LAST HEARING AS
19 WELL WHICH WAS THE MEET AND CONFER PROCESS ON THE
20 FUNCTIONALITY OF THE SOURCE CODE DIDN'T START IN
21 MARCH, DIDN'T START IN FEBRUARY.

22 THIS STARTED IN THE FALL. AND THEY
23 SERVED DISCOVERY ON OCTOBER ON DESIGN AROUNDS THEN
24 THEY SERVED AN INTERROGATORY IN JANUARY ON DESIGN
25 AROUNDS. AND WE RESPONDED FEBRUARY 3RD, AND WE

1 ARTICULATED WHAT THE DESIGN AROUNDS WERE.

2 WITH RESPECT TO THE BLUE GLOW
3 APPLICATION, THEY'VE KNOWN ABOUT THE BLUE GLOW FOR
4 A WHILE AND THEIR EXPERTS, INCLUDING
5 DR. BALAKRISHNAN, HAS SAID HE DOESN'T NEED SOURCE
6 CODE TO DETERMINE WHETHER THAT'S INFRINGEMENT OR
7 NOT.

8 SO THIS IS A LITTLE BIT OF, I AGREE THAT
9 WE WERE BOUND TO PRODUCE SOURCE CODE AND WE
10 PRODUCED SOURCE CODE. BUT TO DETERMINE WHETHER
11 THERE'S INFRINGEMENT, YOU LOOK AT THE DEVICE AND
12 YOU SEE IF IT OPERATES ACCORDING TO THE CLAIMS IN
13 THE PATENT.

14 AND I DID DEPOSE DR. BALAKRISHNAN ON
15 FRIDAY AND I ASKED HIM ABOUT THE PRODUCTS BECAUSE I
16 COULDN'T TELL FROM HIS REPORT WHAT PHONE HE HAD.
17 HE DIDN'T BRING ANY OF THE PHONES TO HIS
18 DEPOSITION.

19 AND I ASKED HIM WHAT VERSION OF GALLERY
20 HE WAS LOOKING AT BECAUSE THERE ARE LOTS OF
21 DIFFERENT ITERATIONS WITHIN THE GALLERY APPLICATION
22 THAT THEY CLAIM ARE INFRINGING.

23 AND SOME OF THOSE WHEN YOU MOVE A PHOTO
24 FROM ONE PHOTO TO THE NEXT, THAT'S A DIFFERENT
25 INFRINGEMENT READING THAN WHEN YOU ZOOM IN ON A

1 PHOTOGRAPH AND YOU MOVE THE PHOTOGRAPH AROUND BY
2 ITSELF. THERE ARE DIFFERENT THEORYS EVEN WITHIN
3 THE GALLERY.

4 SO WHEN I WAS ASKING HIM ABOUT WHAT ARE
5 THE DIFFERENT VERSIONS HE WAS LOOKING AT BECAUSE IT
6 WASN'T IN HIS REPORT AND I WAS TRYING TO UNDERSTAND
7 WHAT CAPTIVATE PHONE HE HAD LOOKED AT AND I DIDN'T
8 HAVE ANY PROOF OF THAT.

9 SO TO GO BACK, WE WERE ORDERED TO PRODUCE
10 SOURCE CODE, AND I DO THINK THERE'S AN IMPORTANT
11 EXCEPTION IN YOUR HONOR'S DECEMBER 22ND ORDER THAT
12 SAID PRODUCE THE SOURCE CODE BY DECEMBER 31ST.

13 WE PRODUCED THE AS RELEASED SOURCE CODE
14 FOR ALL OF THE PRODUCTS THAT WERE ACCUSED.

15 DR. BALAKRISHNAN, WHEN I DID DEPOSE HIM, I DON'T
16 HAVE THE BENEFIT OF HAVING THE OTHER PARTS OF THE
17 TRANSCRIPT HERE, BUT HE SAID THE AS RELEASED CODE
18 IS WHAT'S IMPORTANT, IT'S WHAT HE'S CONSIDERED.
19 THEY'VE HAD A PERSON, THEY HAD CODE REVIEWERS IN
20 OUR OFFICE SINCE DECEMBER EVERY DAY, SATURDAYS AND
21 SUNDAYS INCLUDING THIS PAST WEEKEND LOOKING AT THE
22 SOURCE CODE.

23 WE PRODUCED SOMETHING ON THE ORDER OF 50
24 MILLION PAGES OF CODE AS BACK IN DECEMBER 31ST.

25 THERE WAS A SUBSEQUENT ORDER, YOUR HONOR,

1 WHERE APPLE MOVED TO COMPEL DOCUMENTS RELATED TO
2 THE EVOLUTION, THE FEATURES AND THE UPDATES OF THE
3 SOFTWARE. AND WE THEN COLLECTED THAT INFORMATION
4 AND PRODUCED THE INFORMATION THAT RELATES TO THE
5 VERSION CHANGES.

6 AND IN -- YOUR HONOR, FROM JANUARY 27TH
7 YOU ASKED, YOU PROVIDED BASICALLY AN ALTERNATIVE
8 AND YOU SAID IN ORDER TO AVOID SOME OF THE BURDEN
9 ASSOCIATED WITH IT, PARTIES CAN AGREE TO REACH SOME
10 SORT OF STIPULATION.

11 AND WE SAW THAT AS A REAL RESPONSIBILITY.
12 WE STARTED NEGOTIATING WITH THEM RIGHT AWAY.

13 THEY DID REQUIRE FROM THE VERY BEGINNING,
14 YOUR HONOR, THAT SAMSUNG STIPULATE TO THE FACT THAT
15 SOMEHOW SAMSUNG HAD VIOLATED THE COURT'S
16 DECEMBER 22ND ORDER IN THE INITIAL STIP THAT THEY
17 SENT TO US.

18 AND EVEN IN THE LETTER THAT'S ATTACHED TO
19 EXHIBIT -- IT'S EXHIBIT 2 TO THE BRIGGS DECLARATION
20 FROM MR. PERNICK, HE SAYS IN PARAGRAPH 2:

21 "SAMSUNG CANNOT MOOT THIS ASPECT OF APPLE'S MOTION
22 UNLESS IT FORMALLY AGREES TO THIS IN A STIPULATION.

23
24 WE UNDERSTAND THAT SAMSUNG DOES AGREE
25 THAT IT HAS VIOLATED THE ORDER AND THEREFORE

1 SUGGEST ADDING THIS TO THE STIPULATION UNDER THE
2 DISCUSSION WITHOUT SUCH A PROVISION, APPLE'S MOTION
3 COULD NEVER BE MOOT."

4 AND HE GOES ON TO SAY, "THAT AS A GENERAL
5 MATTER, APPLE'S PROPOSED STIPULATION WAS NEVER
6 INTENDED TO RESOLVE ALL OF THE DISPUTES. "

7 THE COURT: AND WHEN WAS THAT
8 COMMUNICATION SENT?

9 MR. JOHNSON: MARCH 16TH.

10 THIS IS HARDLY NEGOTIATING IN GOOD FAITH
11 WITH RESPECT TO THE STIPULATION. IT'S CERTAINLY
12 NOT BAD FAITH ON SAMSUNG'S PART.

13 THE COURT: SO IF YOU HAD A PROBLEM
14 NEGOTIATING THE STIPULATION WHY DIDN'T YOU FOLLOW
15 MY GUIDANCE IN FOOTNOTE 25 TO SEEK RELIEF?

16 IN OTHER WORDS, I THOUGHT IN MY
17 JANUARY 27TH ORDER I WAS PRETTY EXPLICIT THAT THE
18 STIPULATION WAS PROVIDED AS AN ALTERNATIVE TO
19 MITIGATE THE BURDEN IN COMPLYING WITH MY ORDER AND
20 IF THERE WAS A PROBLEM WITH APPLE'S GOOD FAITH IN
21 REACHING THE STIPULATION, YOU SHOULD SEEK GUIDANCE
22 FROM THE COURT.

23 TO MY KNOWLEDGE, SAMSUNG DIDN'T DO THAT;
24 WHY NOT?

25 MR. JOHNSON: YOUR HONOR, THEY HAD FILED

1 A MOTION FOR SANCTIONS ALREADY. THEY FILED A
2 MOTION FOR SANCTIONS ON MARCH 9TH WITHOUT EVER
3 MEETING AND CONFERRING.

4 WE THOUGHT WE WERE STILL NEGOTIATING WITH
5 THEM. THEY DON'T MEET AND CONFER. THE NEXT THING
6 WE KNOW THEY FILE A MOTION FOR SANCTIONS. WE
7 DISCUSS INTERNALLY, CONTINUE TO DISCUSS INTERNALLY
8 THE REPRESENTATIVE PRODUCTS OR FUNCTIONALITY
9 ISSUES.

10 WE CALL THEM BACK UP AND THIS IS THE
11 LETTER WE GET BACK SAYING THERE'S NO WAY WE ARE
12 GOING TO AGREE TO IT UNLESS YOU -- UNLESS YOU
13 STIPULATE TO THE FACT THAT WE'VE, THAT SAMSUNG HAS
14 VIOLATED THE DECEMBER 22ND ORDER.

15 AT THAT POINT WE WERE, FROM MY
16 STANDPOINT, WE WERE IN BETWEEN. HOW WERE WE TO
17 THEN BRING THIS TO YOUR HONOR'S ATTENTION?

18 THE COURT: I MEAN, YOU ALL HAVE SHOWN A
19 FAIRLY EXPANSIVE CREATIVITY IN COMING UP WITH
20 MOTIONS AND PLEADINGS TO GET MY ATTENTION AT ALL
21 DAYS AND HOURS OF THE WEEK.

22 HERE'S WHAT I'M STRUGGLING WITH
23 MR. JOHNSON, LET'S GO BACK TO DECEMBER 22ND.

24 I THOUGHT THIS WAS A PRETTY SPARTAN
25 COMMAND. PRODUCE THE SOURCE CODE AND TECHNICAL

1 DOCUMENTS REQUESTED BY APPLE'S MOTION WITH ONE
2 EXCEPTION. THE EXCEPTION DOESN'T APPLY TO
3 VERSIONS, SO HOW AM I TO READ SAMSUNG'S PRODUCTION
4 AS OF DECEMBER 31ST, 2011, AS ANYTHING OTHER THAN A
5 VIOLATION OF THAT SPECIFIC COMMAND?

6 MR. JOHNSON: BECAUSE WE PRODUCED, WE
7 PRODUCED THE SOURCE CODE IN THE TECHNICAL DOCUMENTS
8 REQUESTED BY APPLE'S MOTION.

9 THE COURT: SO EVERY VERSION WAS PRODUCED
10 BY THE 31ST.

11 MR. JOHNSON: NOT -- LET'S BACK UP.

12 THE COURT: BECAUSE THEIR MOTION WAS NOT
13 LIMITED TO PARTICULAR VERSIONS, WAS IT?

14 MR. JOHNSON: NO, I THINK IT WAS.
15 THEIR MOTION, WHEN YOU GO BACK AND YOU LOOK AT WHAT
16 THEY WERE ASKING FOR -- AND BY THE WAY, IT'S ALSO
17 WHEN YOU LOOK AT WHAT THEY ARE ASKING FOR IN THEIR
18 JANUARY MOTION WHERE THEY SPECIFICALLY, AS
19 YOUR HONOR POINTS OUT IN YOUR JANUARY ORDER TO LOOK
20 AT THE 14 CATEGORIES OF DOCUMENTS IN THEIR PROPOSED
21 ORDER, THEY SPECIFICALLY ASK FOR THE PROPOSED ORDER
22 WHICH IS DOCKET NUMBER 616. THEY ASK FOR THE
23 DESIGN AROUND DOCUMENTATION AND THEY ASK FOR THE
24 VERSIONS OF THE CODE.

25 WHEN YOU LOOK AT CATEGORIES, FOR EXAMPLE

1 A THROUGH R, THEY'RE SPECIFICALLY ASKING FOR THE
2 FEATURES, YOU KNOW, CHANGES MADE TO EACH VERSION OF
3 THE SOFTWARE FIRM WEAR PROGRAM OR OTHER SYSTEMS.

4 THE COURT: WAS THIS A PROPOSED ORDER
5 SUBMITTED IN CONNECTION WITH THE --

6 MR. JOHNSON: WITH THE JANUARY MOTION TO
7 COMPEL.

8 THE COURT: OKAY. SO LET'S GO BACK TO
9 DECEMBER.

10 APPLE FILES A MOTION IN ADVANCE OF
11 DECEMBER, I SHOULD SAY ORDER. THEY INCLUDE A --
12 PRESUMABLY THEY INCLUDE A PROPOSED ORDER. DID THAT
13 PROPOSED ORDER INDICATE THAT THE ASK WAS FOR LESS
14 THAN ALL VARIATIONS?

15 MR. JOHNSON: THEY SENT A NARROW SCOPE,
16 THE MOTION POINTS OUT THE NARROWED SCOPE OF
17 REQUESTED CATEGORIES ON DECEMBER 6TH. THEIR NARROW
18 SCOPE DOESN'T ASK FOR EACH AND EVERY VERSION OF THE
19 SOFTWARE.

20 IN FACT, YOU KNOW, SAMSUNG OPERATES
21 DIFFERENTLY THAN APPLE DOES IN THE SENSE THAT THERE
22 ARE LITERALLY HUNDREDS AND HUNDREDS OF VERSIONS OF
23 THE CODE THAT WITH RESPECT TO EACH CARRIER
24 SOMETIMES THEY UPDATE THE CODE, 2, 3 TIMES A DAY
25 AND IT'S DELIVERED OVER THE AIR.

1 SO WITH RESPECT TO THE FUNCTIONALITY OF
2 THE ACCUSED PRODUCTS OF THE ACCUSED FEATURES IN THE
3 PATENTS, WE PROVIDED THE CODE AS IT WAS CONTAINED
4 ON THE 27 PRODUCTS THAT WAS IN EXISTENCE.

5 WE PRODUCED IT ON DECEMBER 31ST. AND WE
6 WERE WILLING TO STIPULATE THAT THE FUNCTIONALITY,
7 THE ACCUSED FEATURES WAS BASICALLY THE SAME FOR
8 EVERYTHING ELSE EXCEPT FOR THE THREE DESIGN AROUNDS
9 FOR THE '381 PATENT THE '891 AND THE '163 PATENT.

10 AND THOSE WERE PRODUCED. THE '381 DESIGN
11 AROUND CODE WAS PRODUCED JANUARY 23RD. AND THEY --
12 IT SOUNDS LIKE IT MAY HAVE EVEN BEEN PRODUCED WHEN
13 COUNSEL WAS REFERRING TO THE S2, T-MOBILE VERSION
14 HAVING BLUE GLOW, IT SOUNDS LIKE THEY HAD THAT BY
15 DECEMBER 31ST, SO MAYBE THEY EVEN HAD THE BLUE GLOW
16 DESIGN AROUND BY DECEMBER 31ST FOR THE SOURCE CODE.

17 THE OTHER TWO SOURCE CODE VERSIONS WERE
18 PRODUCED AT THE END OF DISCOVERY RIGHT AFTER, JUST
19 AS APPLE PRODUCED 250,000 PAGES OF DOCUMENTS AFTER
20 THE CLOSE OF DISCOVERY.

21 THERE WAS A BIG RUSH TO PRODUCE A LOT OF
22 DOCUMENTS AT THE END OF DISCOVERY.

23 AND WHAT THEY --

24 THE COURT: SO JUST ON THOSE POINTS THEN,
25 IS IT ACCURATE FOR ME TO UNDERSTAND THAT AT LEAST

1 AS TO THOSE TWO VERSIONS, THOSE VERSIONS WERE NOT
2 PRODUCED BY THE 31ST?

3 MR. JOHNSON: RIGHT. THEY WERE NOT
4 PRODUCED BY THE 31ST.

5 AND YOUR HONOR -- THEY WERE IN A PRODUCT
6 THAT WASN'T RELEASED. WE DIDN'T HAVE THE SOURCE
7 CODE FOR THOSE TWO VERSIONS, THE DESIGN AROUNDS FOR
8 THE '891 AND THE '163. WE DIDN'T HAVE THEM BY
9 DECEMBER 31ST.

10 THE COURT: AND WHY IS THAT?

11 MR. JOHNSON: BECAUSE AS BEST AS WE WERE
12 ABLE TO TELL, IT WASN'T RELEASED UNTIL THE EARLIEST
13 WE CAN SEE IS DECEMBER 23RD. WE DIDN'T KNOW ABOUT
14 IT UNTIL AFTER DECEMBER 31ST.

15 AND SO WE DIDN'T HAVE THAT THE UNTIL SOME
16 TIME AFTER DECEMBER 31ST.

17 THE COURT: WHEN YOU SAY "WE" DO YOU MEAN
18 YOU AS OUTSIDE COUNSEL AS OPPOSED TO YOUR CLIENT?
19 YOUR CLIENT OBVIOUSLY HAD THE CODE WELL IN ADVANCE
20 OF THE 31ST.

21 MR. JOHNSON: I DON'T THINK THEY HAD IT
22 WELL IN ADVANCE OF DECEMBER 31ST. I DON'T KNOW
23 SPECIFICALLY.

24 ALL I KNOW IS THAT IT WAS RELEASED.
25 THERE WAS A PRODUCT THAT HAD A RELEASED VERSION OF

1 THE '891 AND '163 DESIGN AROUND CODE. THAT PRODUCT
2 WAS RELEASED DECEMBER 23RD.

3 I DON'T KNOW WHICH ENTITY HAD IT. A LOT
4 OF THIS IS DONE OUTSIDE OF THE UNITED STATES. IT'S
5 DONE OUTSIDE OF KOREA AS WELL.

6 THE COURT: OKAY.

7 SO -- I WANT TO MAKE SURE. I'M
8 STRUGGLING, AS YOU CAN TELL, TO UNDERSTAND WHAT THE
9 FACTS ARE LET ALONE THE IMPLICATIONS OF THOSE
10 FACTS.

11 AM I ACCURATE IN UNDERSTANDING THAT AT
12 LEAST AS OF DECEMBER 31ST, 2011, WHICH IS MY
13 DEADLINE, THERE WERE TWO VERSIONS OF PRODUCTS AT
14 LEAST TWO VERSIONS OF PRODUCT IN THE MARKETPLACE
15 FOR WHICH NO SOURCE CODE WAS PRODUCED, WHETHER IT'S
16 JUSTIFIED, WHETHER IT'S PERFECTLY REASONABLE,
17 WHETHER YOU TRIED AS HARD AS YOU COULD, IS THAT AN
18 ACCURATE UNDERSTANDING?

19 MR. JOHNSON: I THINK THAT'S ACCURATE.

20 THE COURT: OKAY.

21 SO AS TO ANY OTHER VERSIONS IN COMMERCIAL
22 RELEASE AS OF THE 31ST WERE THERE ANY OTHER
23 VERSIONS OF CODE FOR WHICH NO SOURCE WAS PRODUCED
24 TO APPLE BY MY DEADLINE.

25 MR. JOHNSON: I'M SORRY, COULD YOU REPEAT

1 THAT .

2 THE COURT: SURE .

3 I WANT TO UNDERSTAND WHETHER THERE ARE
4 ANY OTHER VERSIONS OF THE CODE WHICH WERE IN
5 COMMERCIAL RELEASE AS OF THE 31ST FOR WHICH NO COPY
6 WAS PRODUCED TO APPLE .

7 MR. JOHNSON: WELL, THEIR VERSIONS .

8 THAT'S WHAT I'M SAYING THERE ARE VERSIONS OF
9 CODE THAT WERE DELIVERED AFTER DECEMBER 31ST. THEY
10 MAY CHANGE A COLOR OF A PARTICULAR WIDGET HERE, IT
11 HAS NOTHING TO DO WITH THE FUNCTIONALITY. SO THERE
12 ARE HUNDREDS OF THESE VERSIONS .

13 THE COURT: SO THERE ARE HUNDREDS OF
14 VERSIONS OF THE CODE THAT WERE IN COMMERCIAL
15 RELEASE AS OF THE 31ST FOR WHICH NO COPY WAS
16 PRODUCED TO APPLE .

17 MR. JOHNSON: WE GAVE THEM A LOG
18 DESCRIBING ALL THE CHANGES THAT WERE MADE TO THE
19 CODE .

20 THE COURT: RIGHT. BUT WAS A COPY OF
21 THAT CODE PRODUCED BY THE 31ST?

22 MR. JOHNSON: WELL, SOME OF THAT CODE
23 WASN'T IN EXISTENCE AT THE 31ST .

24 THE COURT: LET'S TALK ABOUT THE CODE
25 THAT WAS IN EXISTENCE .

1 YOU AGREED WITH ME THERE ARE AT LEAST TWO
2 VERSIONS OF CODE WHICH WERE IN COMMERCIAL RELEASE
3 AS OF THE 31ST FOR WHICH NO COPY WAS PRODUCED TO
4 APPLE.

5 WHAT I'M TRYING TO UNDERSTAND IS WHAT IS
6 THE UNIVERSE OF ADDITIONAL VERSIONS OF CODE IN
7 COMMERCIAL RELEASE OF THE 31ST FOR WHICH NO COPY
8 WAS PRODUCED BY THAT DATE. HUNDREDS? DOZENS?

9 MR. JOHNSON: I DON'T KNOW THE ANSWER TO
10 THAT FOR SURE.

11 NOW, WITH RESPECT TO THE ACCUSED
12 FUNCTIONALITY OF THOSE FEATURES, FOR THE VERSIONS
13 OF THE CODE, THEY OPERATED THE SAME WAY. AND
14 THAT'S WHAT WE TOLD APPLE AND THAT'S WHAT APPLE'S
15 EXPERT BELIEVES AND THAT'S WHAT SAMSUNG BELIEVES.

16 SO WITH RESPECT TO -- THE ONLY CHANGE
17 WITH RESPECT TO THE EIGHT PATENTS THE UTILITY
18 PATENTS THAT HAVE BEEN ACCUSED THE ONLY CHANGE THAT
19 IS HAVE OCCURRED WITH RESPECT TO THE DESIGN AROUND
20 FOR THE '381 WHICH THEY HAVE KNOWN ABOUT, THEIR
21 EXPERT HAS KNOWN ABOUT, IT'S IN THE EXPERT REPORT,
22 HE TESTIFIED ABOUT IT, THERE'S NO PREJUDICE WITH
23 RESPECT TO THAT.

24 THE COURT: SO WE WILL GET TO PREJUDICE
25 IN A MOMENT.

1 AND THAT'S JUST SIMPLY NOT THE CASE AND
2 IT'S PARTICULARLY WITH RESPECT TO THE THREE DESIGN
3 AROUNDS.

4 THEY ESSENTIALLY WANT THE COURT TO FIND
5 THAT THE PRODUCT THAT IS HAVE THE DESIGN AROUNDS IN
6 THEM OPERATE THE SAME DAY THE PRODUCTS THAT DON'T
7 HAVE THE DESIGN AROUNDS IN THEM. AND THAT'S
8 PREJUDICIAL AND SIMPLY NOT FAIR AT THIS POINT.

9 WE PRODUCED THE SOURCE CODE FOR THE
10 PHONES WITH RESPECT TO THE DESIGN AROUNDS IN
11 ADVANCE OF WHEN THEY HAD THEIR EXPERT REPORTS DUE.

12 AND BEFORE THE CLOSE OF DISCOVERY, WITH
13 RESPECT TO THE '381, AND RIGHT AT THE CLOSE OF
14 DISCOVERY WITH THE OTHER TWO PATENTS.

15 THE COURT: WERE ANY OF THE THREE DESIGN
16 AROUNDS THAT YOU ARE REFERRING TO, WERE ANY OF THEM
17 IN COMMERCIAL RELEASE BEFORE DECEMBER 23RD?

18 MR. JOHNSON: YES. THE BLUE GLOW.

19 THE COURT: OKAY.

20 AND WAS THE BLUE GLOW CODE PRODUCED BY
21 THE 31ST?

22 MR. JOHNSON: I DON'T KNOW THE ANSWER TO
23 THAT. I'M HEARING COUNSEL'S --

24 THE COURT: WELL, ISN'T THAT KIND OF THE
25 OPERATIVE QUESTION HERE?

1 MR. JOHNSON: HEARING COUNSEL'S
2 REPRESENTATION TODAY THAT WE PRODUCED CODE FOR THE
3 S2 T-MOBILE TELLS ME, THAT WAS DONE BY
4 DECEMBER 31ST TELLS ME IT WAS PRODUCED BY
5 DECEMBER 31ST.

6 NOW I DON'T KNOW THE ANSWER WITH RESPECT
7 TO THE SPECIFIC QUESTION. I WAS COMING HERE TODAY
8 THINKING THAT THE FIRST SOURCE CODE PRODUCED FOR
9 THE BLUE GLOW WAS PRODUCED ON JANUARY 23RD.

10 THE COURT: IF THAT'S THE CASE, WOULD YOU
11 AGREE THAT WOULD BE A VIOLATION OF MY ORDER?

12 MR. JOHNSON: NO, YOUR HONOR, BECAUSE
13 WITH RESPECT TO THE ORDER, I GO BACK TO YOUR ORDER,
14 YOUR ORDER SAYS, PRODUCE SOURCE CODE AND TECHNICAL
15 DOCUMENTS REQUESTED BY APPLE'S MOTION.

16 THE DOCUMENTS REQUESTED BY APPLE'S MOTION
17 WERE NOT ALL VERSIONS OF THE SOURCE CODE. AND IN
18 FACT THE -- WHAT HAPPENED AFTER THAT WITH RESPECT
19 TO THE MOTION TO COMPEL THAT APPLE BROUGHT IN
20 JANUARY AND THE SUBSEQUENT MEET AND CONFERS
21 ASSOCIATED WITH THAT THROUGH THE LEAD COUNSEL
22 ARRANGEMENTS, AND THE SUBSEQUENT DISCOVERY THAT
23 THEY SERVED WITH RESPECT TO DESIGN AROUNDS IN
24 JANUARY, ALL ESTABLISH THAT THEY KNEW ABOUT THE
25 BLUE GLOW, WE KNEW ABOUT THE BLUE GLOW BUT THAT

1 ITSELF, NOT TO MENTION THAT COUNSEL HAS NO
2 DOCUMENTARY EVIDENCE TO SUPPORT HIS ALLEGATION THAT
3 WE SOMEHOW GAVE UP A BIG PART OF WHAT WE HAD ASKED
4 FOR.

5 THANK YOU, YOUR HONOR

6 THE COURT: THANK YOU VERY MUCH.

7 THE MATTER IS SUBMITTED. YOU WILL HAVE
8 AN ORDER FROM ME SHORTLY.

9 HAVE A GOOD DAY.

10 (WHEREUPON, THE PROCEEDINGS IN THIS
11 MATTER WERE CONCLUDED.)

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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