

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

APPLE INC., a California Corporation,)	Case No.: 5:12-cv-00630-LHK (PSG)
)	
Plaintiff,)	ORDER SETTING MEET-AND-
v.)	CONFER
)	
SAMSUNG ELECTRONICS CO., LTD., a)	(Re: Docket Nos. 877-4, 878-4, 880-5,
Korean corporation; SAMSUNG)	882-3, 962-4, 963-3, 964-25, 965-4, 1009-
ELECTRONICS AMERICA, INC., a New York)	4, 1011-6, 1017-3, 1018-4)
corporation; and SAMSUNG)	
TELECOMMUNICATIONS AMERICA, LLC,)	
a Delaware limited liability company,)	
)	
Defendants.)	
)	

Before he spoke of houses divided, proclaimed emancipation and saved our union, Abraham Lincoln was just another trial lawyer in the woods of Illinois. A decade before he was elected president, Lincoln wrote to his fellow lawyers: "Discourage litigation. Persuade your neighbors to compromise whenever you can. As a peacemaker, the lawyer has superior opportunity of being a good man. There will still be business enough."

1 Thinking further about yesterday's hearing, the undersigned can only wonder at how often
2 Lincoln's advice about compromise has been ignored in this case. However quaint or naive it may
3 sound today, it is still advice worth taking. At the hearing, the parties argued challenges to the
4 expert reports of Dr. Min, Dr. Schofeld, Mr. Parulski, Dr. Snoren, Dr. Mowrey, Dr. Fujja, Dr.
5 Storer, Dr. Taylor, Dr. Chase, Dr. Rinard, Dr. Jeffay, Dr. Greenberg and Dr. Wigdor. That was not
6 remarkable; parties in patent cases challenge expert reports all the time. It was remarkable,
7 however, the number of times that counsel stood up to decry an inconsistency with their opponent's
8 prior contentions, only to be replaced by a colleague defending that same party's own
9 inconsistencies. Accusations of false statements, intentional withholdings, ambushes, and
10 detachments from reality passed as easily as small talk about the weather. There was no indication
11 that either side's counsel meaningfully considered any compromise whatsoever in their purported
12 meet-and-confer.
13

14 And so counsel shall try again. This court would be truly astounded if attorneys of this
15 caliber were incapable of reaching a compromise to resolve at least some of the challenges now
16 before the court. In that spirit, any counsel that wishes to present summary judgment arguments of
17 any kind to Judge Koh tomorrow at 1:30 p.m. shall appear for a further meet-and-confer in the jury
18 room of the undersigned at 8:30 a.m. The topic for discussion will be what deals can be cut
19 regarding any of the pending expert report challenges. Before heading down the hall to see Judge
20 Koh, counsel shall appear in the courtroom to report on their progress. Depending on the report
21 tendered, the undersigned will consider whether further meet-and-confer will be required.
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23 **IT IS SO ORDERED.**

24 Dated: December 11, 2013

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26  _____

27 PAUL S. GREWAL
28 United States Magistrate Judge