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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

APPLE INC., A CALIFORNIA)	C-11-01846 LHK
CORPORATION,)	
)	SAN JOSE, CALIFORNIA
PLAINTIFF,)	
)	AUGUST 24, 2011
VS.)	
)	PAGES 1-90
SAMSUNG ELECTRONICS CO.,)	
LTD., A KOREAN BUSINESS)	
ENTITY; SAMSUNG)	
ELECTRONICS AMERICA,)	
INC., A NEW YORK)	
CORPORATION; SAMSUNG)	
TELECOMMUNICATIONS)	
AMERICA, LLC, A DELAWARE)	
LIMITED LIABILITY)	
COMPANY,)	
)	
DEFENDANTS.)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE LUCY H. KOH
UNITED STATES DISTRICT JUDGE

APPEARANCES ON NEXT PAGE

OFFICIAL COURT REPORTER: LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

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

FOR PLAINTIFF

MORRISON & FOERSTER

APPLE:

BY: HAROLD J. MCELHINNY,
MICHAEL A. JACOBS, AND
RICHARD S.J. HUNG

425 MARKET STREET
SAN FRANCISCO, CALIFORNIA 94105

FOR COUNTERCLAIMANT WILMER, CUTLER, PICKERING,

APPLE: HALE AND DORR

BY: WILLIAM F. LEE AND
MARK D. SELWYN

FOR APPLE:

TAYLOR & COMPANY
BY: STEPHEN E. TAYLOR AND
STEPHEN MCG. BUNDY

ONE FERRY BUILDING, SUITE 355
SAN FRANCISCO, CALIFORNIA 94111

FOR THE DEFENDANT:

QUINN, EMANUEL, URQUHART,
OLIVER & HEDGES

BY: KATHLEEN M. SULLIVAN
51 MADISON AVENUE, 22ND FLOOR
NEW YORK, NEW YORK 10010

BY: VICTORIA F. MAROULIS AND
KEVIN P.B. JOHNSON

555 TWIN DOLPHIN DRIVE
SUITE 560
REDWOOD SHORES, CALIFORNIA 94065

BY: MICHAEL T. ZELLER
865 SOUTH FIGUEROA STREET
10TH FLOOR
LOS ANGELES, CALIFORNIA 90017

1 SAN JOSE, CALIFORNIA AUGUST 24, 2011

2 P R O C E E D I N G S

3 (WHEREUPON, COURT CONVENED AND THE
4 FOLLOWING PROCEEDINGS WERE HELD:)

5 THE CLERK: CALLING CASE NUMBER 11-1846,
6 APPLE, INC. V. SAMSUNG ELECTRONICS, ON FOR MOTION
7 TO DISQUALIFY COUNSEL, MOTION FOR EXPEDITED TRIAL.

8 COUNSEL, PLEASE COME FORWARD AND STATE
9 YOUR APPEARANCES.

10 MR. MCELHINNY: GOOD AFTERNOON, YOUR
11 HONOR. HAROLD MCELHINNY, MIKE JACOBS, AND
12 RICHARD HUNG FOR APPLE AS PLAINTIFF.

13 MR. LEE: GOOD AFTERNOON, YOUR HONOR.
14 BILL LEE, AND MY PARTNER, MARK SELWYN, REPRESENTING
15 APPLE ON THE COUNTERCLAIMS AND OUR COUNTERCLAIMS IN
16 REPLY.

17 THE COURT: OKAY. GOOD AFTERNOON.

18 MS. SULLIVAN: GOOD AFTERNOON, YOUR
19 HONOR.

20 I'M SORRY.

21 MR. TAYLOR: GOOD MORNING, YOUR HONOR, OR
22 AFTERNOON, YOUR HONOR. STEPHEN TAYLOR REPRESENTING
23 APPLE IN CONNECTION WITH THE MOTION FOR
24 DISQUALIFICATION FOR BRIDGES & MAVRAKAKIS.

25 THE COURT: OKAY. IS MR. BUNDY WITH YOU?

1 MR. TAYLOR: HE IS WITH ME.

2 THE COURT: ALL RIGHT. THANK YOU.

3 MS. SULLIVAN: GOOD AFTERNOON, YOUR
4 HONOR. KATHLEEN SULLIVAN FROM QUINN EMANUEL FOR
5 SAMSUNG, TOGETHER WITH MY PARTNERS, KEVIN JOHNSON,
6 VICTORIA MAROULIS, AND MICHAEL ZELLER.

7 THE COURT: OKAY. GOOD AFTERNOON.

8 MR. JOHNSON: GOOD AFTERNOON, YOUR HONOR.

9 THE COURT: OKAY. LET'S HANDLE THE
10 DISQUALIFICATION MOTION FIRST AND THEN WE CAN
11 HANDLE THE MOTION FOR EXPEDITED TRIAL AND THE CMC.

12 SO I HAVE QUESTIONS FOR BOTH SIDES ON THE
13 DISQUALIFICATION MOTION, SO I THINK WE'LL JUST DO
14 PING PONG AND JUST GO BACK AND FORTH BETWEEN THE
15 TWO PARTIES.

16 LET ME FIRST ASK JUST SOME FACTUAL
17 QUESTIONS.

18 WHY DID BRIDGES NOT FILE THEIR NOTICE OF
19 APPEARANCE UNTIL JUNE 16TH OF 2011 IF APPLE HAD
20 HIRED BRIDGES ATTORNEYS TO WORK ON THE SAMSUNG
21 DISPUTE AS EARLY AS SPRING OF 2010?

22 MR. TAYLOR: MY UNDERSTANDING IS, YOUR
23 HONOR, THAT WHILE BRIDGES, MAVRAKAKIS WAS RETAINED
24 BY APPLE AND WAS HELPING APPLE ON THE ANDROID
25 RELATED DISPUTES, THAT IT WASN'T UNTIL THE FIRST

1 AMENDED COMPLAINT WAS FILED THAT THEY JOINED THIS
2 LITIGATION ON THE APPLE CLAIMS.

3 I BELIEVE IT HAD A LOT TO DO WITH THE
4 FACT THAT THE FIRM WAS SMALL AND WAS HEAVILY
5 INVOLVED IN THE ITC PROCEEDING AGAINST HTC.

6 BUT THEIR FIRST -- THEY FILED THEIR
7 NOTICE OF APPEARANCE WHEN THAT FIRST AMENDED
8 COMPLAINT WAS FILED.

9 THE COURT: OKAY.

10 MR. TAYLOR: THE THING --

11 THE COURT: OKAY. IT HAD NOTHING TO DO
12 WITH SAMSUNG'S OWN CASE OF FILING THE '604 PATENT?

13 MR. TAYLOR: NOTHING, YOUR HONOR.

14 THE COURT: OKAY. LET ME ASK A QUESTION
15 TO SAMSUNG.

16 IT SEEMS A LITTLE BIT HARD TO BELIEVE
17 THAT THE SAMSUNG REPRESENTATIVES AT THAT
18 NEGOTIATION MEETING BACK IN THE FALL OF 2010
19 WOULDN'T HAVE RECOGNIZED AT LEAST
20 MR. MICHAEL PIEJA, AND PERHAPS AT LEAST THE BRIDGES
21 FIRM AND THE POTENTIAL CONFLICT.

22 MS. SULLIVAN: SO, YOUR HONOR, FOR
23 SAMSUNG -- FIRST OF ALL, JUST TO PUT IT IN CONTEXT,
24 WHERE THERE IS THE POSSESSION OF CONFIDENTIAL
25 INFORMATION ON A SUBSTANTIALLY RELATED CASE, IT WAS

1 THE DUTY OF APPLE TO SEEK INFORMED -- IT WAS THE
2 DUTY OF BRIDGES TO SEEK INFORMED CONSENT FROM
3 SAMSUNG.

4 THE SUBSTANTIAL RELATIONSHIP SHOULD HAVE
5 PUT THE BURDEN ON THEM.

6 IT WAS NOT SAMSUNG'S BURDEN TO SMOKE OUT,
7 SO TO SPEAK, WHETHER THERE WAS A CONFLICT -- A
8 CONFLICTED COUNSEL WORKING FOR THE OTHER SIDE.

9 BUT TO YOUR HONOR'S QUESTION ABOUT PIEJA,
10 REMEMBER, HE WAS A VERY JUNIOR PERSON IN THE
11 ERICSSON MATTER WITH MINIMAL HOURS COMPARED TO THE
12 HOURS EXTENDED BY MR. BRIDGES, ESPECIALLY IN
13 CONNECTION WITH THE FRAND ISSUES, AND BY MR. LEVIN
14 IN CONNECTION WITH THE '604 PATENT. PIEJA WAS A
15 BIT PLAYER, VERY JUNIOR PERSON.

16 AND THE PEOPLE AT SAMSUNG AT THE MEETING
17 WERE FRONT LINE ENGINEERS, NOT NECESSARILY
18 FAMILIAR -- THEY WEREN'T LAWYERS FAMILIAR WITH THE
19 LITIGATION TEAM.

20 MR. BRIDGES WAS NOT PRESENT AT THE
21 MEETING. THAT WOULD HAVE BEEN A RED LINE.

22 AND MR. ROBERT MAVRAKAKIS, WHO WAS THERE,
23 HAD NOT BEEN INVOLVED IN ERICSSON.

24 SO WITH RESPECT, THERE WAS NO BASIS FOR
25 SAMSUNG TO INTUIT THAT, FROM THE PRESENCE OF THIS

1 VERY JUNIOR PERSON WHO THEY DIDN'T NECESSARILY
2 RECOGNIZE, THAT CONFLICTED COUNSEL WAS ACROSS THE
3 TABLE FROM THEM.

4 BUT WE REALLY DON'T THINK THAT WAS
5 SAMSUNG'S BURDEN IN THE FIRST PLACE. IT WAS
6 BRIDGES' DUTY TO SAMSUNG TO DISCLOSE THE CONFLICT
7 AND SEEK INFORMED WRITTEN CONSENT, NOT SAMSUNG'S
8 DUTY TO TRY TO FIGURE OUT WHETHER THERE WAS A
9 FAMILIAR FACE NOW WORKING FOR THE OTHER SIDE
10 ADVERSE IN A RELATED MATTER.

11 THE COURT: ISN'T THERE A LITTLE BIT OF A
12 TENSION -- THE OPENING MOTION SAYS MR. PIEJA DID A
13 LOT OF WORK AND INCLUDES HIS TOTAL BILLED HOURS,
14 BUT THEN THE REPLY SAYS, WELL, ACTUALLY, HE'S
15 REALLY A JUNIOR ASSOCIATE WHO DIDN'T DO A
16 SIGNIFICANT AMOUNT OF WORK.

17 SO WHICH ONE IS IT? WAS HE A SIGNIFICANT
18 PLAYER IN THE SAMSUNG LITIGATIONS THUS REQUIRING
19 DISQUALIFICATION, OR WAS HE A SMALL BIT PLAYER AND
20 THUS JUSTIFIES WHY THE CONFLICT WASN'T PERCEIVED
21 EARLIER?

22 MR. TAYLOR: WELL, ALL OF THE BRIDGES,
23 MAV LAWYERS I THINK WERE NOT SIGNIFICANT PLAYERS AS
24 YOUR HONOR WOULD KNOW FROM HAVING REVIEWED
25 MR. BRIDGES' DECLARATION WHERE HE SAYS HE WAS AT

1 LEAST A FOURTH TIER LAWYER HIMSELF.

2 BUT MR. PIEJA'S ROLE WAS MUCH LESS,
3 SIGNIFICANTLY MUCH LESS AS THE HOURS REFLECT.

4 IT IS TRUE, THOUGH, THAT HE IDENTIFIED
5 HIMSELF WITH THAT FIRM, WITH THE BRIDGES,
6 MAVRAKAKIS FIRM AT THAT MEETING THAT HE WAS HAVING
7 WITH SAMSUNG, AND WE THOUGHT IT WAS CLEAR TO THEM,
8 AND I THINK THE BRIDGES, MAVRAKAKIS FIRM THOUGHT IT
9 WAS CLEAR TO SAMSUNG, THAT THAT FIRM, THOSE
10 LAWYERS, WERE REPRESENTING APPLE ON SOMETHING VERY
11 UNRELATED TO ANYTHING THEY HAD DONE FOR SAMSUNG IN
12 CONNECTION WITH THE ERICSSON LITIGATION.

13 THE COURT: WELL, LET ME ASK, IT ALSO
14 SEEMS TO BE A LITTLE BIT HARD TO BELIEVE THAT APPLE
15 WOULD NOT BE ABLE TO PREDICT THAT SAMSUNG WOULD
16 ACTUALLY COUNTERCLAIM AND WOULD NOT GO ON THE
17 OFFENSIVE IN THIS KIND OF NUCLEAR WAR BETWEEN, YOU
18 KNOW, FIERCE COMPETITORS.

19 SO I FIND IT A LITTLE BIT HARD TO BELIEVE
20 THAT APPLE THINKS THAT IT CAN JUST GO ON THE
21 OFFENSIVE IN ONE SORT OF UNILATERAL WAY, AND
22 ANYTHING WHERE SAMSUNG GOES ON THE OFFENSIVE IS
23 TOTALLY UNRELATED AND SEPARATE.

24 ISN'T THIS WHAT HAPPENS IN THESE KINDS OF
25 CASES? THE DEFENSE ALWAYS GOES ON THE OFFENSIVE

1 AND COUNTERCLAIM WITH THEIR OWN I.P.

2 SO THIS IS SOMETHING THAT APPLE SHOULD
3 HAVE ANTICIPATED.

4 MR. TAYLOR: WELL, PERHAPS, YOUR HONOR,
5 BUT APPLE I THINK DID ANTICIPATE IT.

6 AND THE IRONY OF THIS MOTION, IF I MAY,
7 IS THAT I THINK THE BRIDGES, MAVRAKAKIS FIRM AND
8 APPLE CONDUCTED THEMSELVES EXACTLY IN COMPLIANCE
9 WITH THE RULE OF PROFESSIONAL CONDUCT 3-310(E) IN
10 THIS SENSE: THAT RULE SAYS THAT A MEMBER SHALL NOT
11 ACCEPT EMPLOYMENT IF THAT EMPLOYMENT WILL REQUIRE
12 THE DISCLOSURE, OR MIGHT INVOLVE THE DISCLOSURE, OF
13 CONFIDENTIAL INFORMATION RELATING TO A PRIOR
14 EMPLOYMENT.

15 SO YOU DON'T AGREE TO REPRESENT APPLE IN
16 THE APPLE-ANDROID LOOK AND FEEL MULTITOUCH CASE
17 AGAINST SAMSUNG IF YOU'VE HAD A PRIOR
18 REPRESENTATION FOR SAMSUNG WHICH IS SUBSTANTIALLY
19 RELATED TO THIS APPLE-ANDROID CLAIM.

20 APPLE COMES TO THE FIRM AND SAYS, "CAN
21 YOU HANDLE THIS MATTER? CAN YOU REPRESENT US ON
22 THE ANDROID MATTER, INCLUDING AGAINST SAMSUNG?"

23 THE FIRM SAYS, I THINK ENTIRELY
24 APPROPRIATELY, "WELL, LET'S LOOK AND SEE WHETHER
25 THERE'S ANY SUBSTANTIAL RELATIONSHIP BETWEEN THIS

1 ANDROID CASE AND WHAT WE DID FOUR YEARS AGO IN THE
2 ERICSSON CASE."

3 AND APPLYING CALIFORNIA LAW, I THINK
4 COMPLETELY CORRECTLY, WHAT THEY DECIDE IN COMPARING
5 THE CURRENT REQUEST FOR REPRESENTATION WITH THE
6 PRIOR REPRESENTATION IS IF -- AS THE FARRIS AND
7 OTHER CASES SAY, YOU LOOK FOR OVERLAP IN THE FACTS
8 AND THE LEGAL ISSUES AND THEY LOOK AND SAY, "IN
9 ERICSSON, WE WERE TALKING ABOUT STANDARDS PATENTS,
10 WE WERE TALKING ABOUT" --

11 THE COURT: BUT SUBJECT TO INTERFACE,
12 USER INTERFACE.

13 MR. TAYLOR: FRAND ISSUES, YES.

14 BUT I THINK THE KEY IN THIS CASE IS ABOUT
15 A USER INTERFACE THAT INVOLVES TOUCH SCREENS.

16 AND AS MR. BRIDGES SAYS, NOT ONLY DID
17 THESE PHONES THAT ARE AT ISSUE HERE NOT EXIST, BUT
18 NO ANDROID PHONE, AS FAR AS WE'RE AWARE OF, EXISTED
19 AT THE TIME THAT THEY WERE DOING THE REPRESENTATION
20 OF ERICSSON. NONE.

21 SO THE PHONE THAT THE BRIDGES, MAVRAKAKIS
22 FIRM WAS WORKING ON WHEN IT WAS DOING THE ERICSSON
23 CASE WAS NOT ONLY A WHOLE DIFFERENT GENERATION OF
24 PHONE, IT WAS BUILT ON AN ENTIRELY DIFFERENT
25 SOFTWARE PLATFORM.

1 MY UNDERSTANDING IS, AND THE RECORD WOULD
2 SHOW, THAT THE ANDROID SOFTWARE PLATFORM, FROM THE
3 VERY BOTTOM TO THE VERY TOP OF THE USER INTERFACE,
4 IS COMPLETELY INDEPENDENT AND SEPARATE FROM
5 ANYTHING IN THE OTHER CASE.

6 SO THE PHONES INVOLVED IN THIS CASE AND
7 THE TECHNOLOGY INVOLVED IN THIS CASE DIDN'T EXIST
8 AT THAT TIME.

9 THE PATENTS WERE DIFFERENT.

10 THE PRODUCTS WERE COMPLETELY DIFFERENT.
11 THERE WAS NO APPLE ISSUE IN THE ERICSSON CASE.

12 AND WHEN YOU LOOK AT THE MICROSOFT CASE
13 AND YOU LOOK AT THE CIBA-GEIGY CASE AND YOU LOOK AT
14 THE ARCTIC CAT CASE, THESE ARE PATENT CASES WHERE
15 SOMEONE TRIES TO DISQUALIFY SOMEONE FOR DOING
16 ANOTHER PATENT CASE IN THE SAME AREA OF
17 TECHNOLOGY -- LIKE IN THE MICROSOFT CASE ON THE
18 WIRELESS LAN CONNECTIONS, OR PATCHES, YOU KNOW,
19 INTERDERMAL PATCHES IN THE CASE OF THE CIBA-GEIGY
20 CASE -- AND THE COURT SAID THAT IS NOT, FOR
21 PURPOSES OF A SUBSTANTIAL RELATIONSHIP FOR AN
22 ETHICS VIOLATION AND FOR A CONFLICT OF INTEREST,
23 THAT IS NOT A SUBSTANTIALLY RELATED CASE.

24 TO BE SUBSTANTIALLY RELATED, YOU HAVE TO
25 SHOW THAT THERE IS OVERLAP SUCH THAT THE SAME

1 ISSUES, OR VERY, VERY SIMILAR ISSUES, ARISE.

2 I SEE IT THIS WAY --

3 THE COURT: BUT YOU WOULD CONCEDE THAT IF
4 THE COUNTERCLAIMS STAY IN THIS CASE, THE '604
5 PATENT IS A VERY OBVIOUS AND VERY BLATANT OVERLAP
6 AND SUBSTANTIAL REPRESENTATION BETWEEN WHAT BRIDGES
7 DID IN ERICSSON AND IT'S DOING NOW FOR APPLE?

8 MR. TAYLOR: WELL, THE -- THAT'S, I
9 THINK, THE FUNDAMENTAL ISSUE THAT THE MOTION
10 RAISES.

11 IF YOU'RE GOING TO ACCUSE A LAWYER OF
12 UNETHICAL CONDUCT OR CONFLICT OF INTEREST AND TRY
13 AND DEPRIVE A CLIENT OF THEIR LAWYER, IS IT OKAY,
14 IS IT PERMISSIBLE FOR A LAWYER TO SAY, "I CAN
15 ACCEPT THE REPRESENTATION YOU'RE ASKING ME TO
16 UNDERTAKE. YES, I CAN ACCEPT THAT."

17 NOW, AT THE TIME BRIDGES, MAV SAID --
18 BRIDGES, MAVRAKAKIS SAID, "WE HAVE DONE OTHER WORK
19 FOR APPLE. YOU NEED TO UNDERSTAND THIS. IF SOME
20 OF THE STANDARDS MATERIAL, PATENTS OR THESE OTHER
21 ISSUES ARISE, WE WOULDN'T BE ABLE TO DO THAT. BUT
22 WE CAN DO THIS."

23 AND THE LAW IN CALIFORNIA IS THAT YOU CAN
24 DO THAT. THERE'S NO LIFETIME BAN ABOUT EVER BEING
25 ADVERSE TO A FORMER CLIENT.

1 THE BAN IS TWO THINGS: KEEP EVERYTHING
2 YOU LEARN CONFIDENTIAL, WE ALL DO THAT ALL THE TIME
3 FOR A FORMER CLIENT; AND SECONDLY, DON'T DO
4 SOMETHING THAT'S SO CLOSELY RELATED THAT IF YOU'RE
5 REPRESENTING THE CLIENT, YOUR DUTIES WILL BE
6 CONFLICTED.

7 SO IT'S LIKE THIS, AND IT'S PRETTY STARK
8 AND, I THINK, TANGIBLE. DON'T TAKE A
9 REPRESENTATION FOR APPLE THAT INVOLVES THE
10 STANDARDS PATENTS OR ANYTHING RELATING TO THOSE
11 PHONES OR THOSE TECHNOLOGY FOR THIS REASON: YOU
12 HAVE AN OBLIGATION TO SAMSUNG TO KEEP EVERYTHING
13 CONFIDENTIAL, EVERYTHING YOU LEARNED BACK IN --

14 THE COURT: I JUST -- I'M SORRY TO
15 INTERRUPT YOU.

16 MR. TAYLOR: SURE.

17 THE COURT: I JUST FIND IT HARD TO
18 BELIEVE THAT APPLE WOULD HIRE BRIDGES IN SPRING OF
19 2010 FOR THE DISPUTE WITH SAMSUNG AND NOT THINK IT
20 HAD AN ADVANTAGE THAT THESE BRIDGES LAWYERS HAD
21 PREVIOUSLY WORKED FOR SAMSUNG IN LITIGATION ON
22 THESE MOBILE PHONE PRODUCTS, AS THEY EXISTED AT THE
23 TIME, AND I UNDERSTAND WHAT YOU'RE SAYING, THAT
24 2006/2007 LOOKS DIFFERENT THAN 2010/2011.

25 I THINK APPLE ASSUMED THE RISK WHEN IT

1 HIRED THESE LAWYERS, PERHAPS THINKING IT AN
2 ADVANTAGE THAT THEY HAD REPRESENTED SAMSUNG, SO YOU
3 SUFFER THE CONSEQUENCE OF THE DISQUALIFICATION.

4 MR. TAYLOR: I THINK WHAT THE LAW IS, AND
5 THIS IS WHAT WE'RE SUBMITTING TO YOUR HONOR, IS
6 THAT CLIENTS AND LAWYERS MAY HAVE SEPARATE
7 REPRESENTATION. THEY MAY SAY, "YES, BRIDGES,
8 MAVRAKAKIS IS GOING TO COME IN AND REPRESENT US ON
9 THESE PATENTS, EVEN IF WE ANTICIPATE THAT THERE
10 WILL BE COUNTERCLAIMS. WE ARE GOING TO HAVE
11 SEPARATE COUNSEL FOR THOSE COUNTERCLAIMS," AS APPLE
12 HAS DONE HERE.

13 WILMER, HALE REPRESENTS APPLE ON THE
14 COUNTERCLAIMS.

15 BRIDGES, MAVRAKAKIS DOES NOTHING ON THE
16 COUNTERCLAIMS.

17 THE COURT: OKAY. BUT IT'S NOT REALISTIC
18 TO THINK THEY'RE NOT GOING TO COORDINATE ON
19 POSITIONS TO KNOW WHAT THE IMPLICATIONS ARE GOING
20 TO BE FOR INFRINGEMENT ARGUMENTS, FOR VALIDITY
21 ARGUMENTS, BOTH ON APPLE'S AFFIRMATIVE CASE AND ON
22 SAMSUNG'S COUNTERCLAIMS.

23 IT'S JUST NOT CREDIBLE THAT THERE'S NOT
24 GOING TO BE SOME COMMUNICATION TO COORDINATE TO
25 MAKE SURE THAT YOU'RE NOT TAKING A POSITION IN ONE

1 CASE THAT'S GOING TO UNDERMINE THE POSITION IN THE
2 OTHER CASE.

3 MR. TAYLOR: WELL, THERE'S -- IN THIS
4 MATTER, YOUR HONOR, THERE'S CERTAINLY NO EVIDENCE
5 OF ANY SUCH COORDINATION.

6 BRIDGES, MAVRAKAKIS HAS ETHICAL
7 OBLIGATIONS NOT TO GET INVOLVED IN THE
8 REPRESENTATION BASED ON RULE 3-310.

9 BRIDGES, MAVRAKAKIS HAS AN OBLIGATION NOT
10 TO DISCLOSE ANY CONFIDENTIAL INFORMATION.

11 AND THE COURT, EVEN IN ITS OWN DECISION
12 IN THE ORACLE CASE RECENTLY, POINTED TO AUTHORITIES
13 THAT SAY "WE WILL NOT SPECULATE ON WHETHER SOMEONE
14 MIGHT, AT SOME POINT, BREACH AN ETHICAL
15 OBLIGATION."

16 IT'S PARTICULARLY TRUE HERE WHEN THE TWO
17 MATTERS ARE INDEED VERY SEPARATE. THEY WERE FILED
18 AS SEPARATE CASES. THEY WERE ORIGINALLY NOT BEFORE
19 YOUR HONOR WHATSOEVER.

20 SAMSUNG THEN TOOK ADVANTAGE OF THE
21 OPPORTUNITY TO DISMISS AND REFILE HERE, AND IT'S
22 REALLY ONLY BECAUSE THEY TOOK THE ACTION THAT THEY
23 TOOK TO COMBINE TWO COMPLETELY UNRELATED CASES THAT
24 HAVE, FROM THE BEGINNING, DIFFERENT REPRESENTATION
25 FROM COUNSEL, THAT THEY'RE ABLE TO COME TO YOUR

1 HONOR AND MAKE THIS ARGUMENT.

2 AND THE CONCERN I HAVE IS THAT WHEN WE'RE
3 LOOKING AT CONFLICTS OF INTEREST, WE LOOK TO SEE AT
4 ONE THING: IS THERE A RELATIONSHIP IN THE LEGAL
5 ISSUES AND FACTUAL ISSUES IN THE FIRST
6 REPRESENTATION, THE ERICSSON REPRESENTATION, AND
7 THE REPRESENTATION, THE REPRESENTATION THAT
8 BRIDGES, MAVRAKAKIS AGREED TO TAKE, WHICH IS
9 LIMITED IN SCOPE?

10 IT'S LIMITED ONLY TO THE APPLE
11 AFFIRMATIVE CLAIMS HAVING TO DO WITH THE LOOK AND
12 FEEL AND MULTITOUCH SCREEN.

13 THE COURT: LET ME ASK -- I'M SORRY.

14 MR. TAYLOR: GO AHEAD.

15 THE COURT: GO AHEAD.

16 MR. TAYLOR: AND, YOUR HONOR, I THINK THE
17 LAW IN CALIFORNIA IS CLEAR THAT LAWYERS MAY, JUST
18 AS THEY DID IN THE HILLEBY CASE AND PLANT CASE AND
19 AS WE'VE SEEN IN OTHER CASES, LAWYERS MAY, DO, AND
20 SHOULD LIMIT THEIR REPRESENTATION SO THAT THEY
21 DON'T VIOLATE THESE ETHICAL CANONS AND GET
22 CONFLICTS OF INTEREST.

23 THE COURT: LET ME ASK MS. SULLIVAN, IT
24 DOES LOOK LIKE SORT OF SOME STRATEGIC OR TACTICAL
25 MANEUVERING FOR SAMSUNG TO FILE A SEPARATE CASE,

1 MAKE AN ADMINISTRATIVE MOTION TO HAVE IT RELATED,
2 AND THEN SAY, "OH, WAIT A MINUTE. I'M JUST GOING
3 TO DISMISS THAT CASE AND NOW I'M GOING TO ASSERT
4 ALL OF THAT SAME I.P. AS A COUNTERCLAIM IN APPLE'S
5 CASE."

6 MS. SULLIVAN: NOT AT ALL, YOUR HONOR.

7 IF YOU RECALL, IT WAS AT YOUR HONOR'S
8 INVITATION THAT WE FILED -- REFILED AS
9 COUNTERCLAIMS. IN THE MAY CONFERENCE WITH YOUR
10 HONOR, IT WAS YOUR HONOR'S SUGGESTION, AND WE
11 THOUGHT IT WAS APPROPRIATE.

12 THERE WAS NOTHING STRATEGIC ABOUT THIS.
13 APPLE SUED SAMSUNG, SAMSUNG WANTED TO MAKE AN
14 AGGRESSIVE MOVE BACK, WANTED TO FILE OUR CLAIMS
15 BEFORE WE HAD TO ANSWER APPLE'S CLAIMS. WE DID
16 THAT.

17 WHEN WE WERE CONFERRING WITH YOUR HONOR,
18 IT WAS YOUR HONOR'S OWN SUGGESTION THAT WE REFILE
19 THEM AS COUNTERCLAIMS, AND YOUR HONOR PROPERLY
20 RULED ON MAY 20TH THAT THEY ARE RELATED, AND
21 THEY'RE RELATED FOR REASONS THAT WERE OBVIOUS THEN,
22 AND I THINK WHAT MR. TAYLOR IS REALLY TRYING TO DO
23 HERE IS TO ASK YOU, OUTSIDE OF THE SCOPE OF THESE
24 MOTIONS, TO RECONSIDER YOUR DECISION ON THE MOTION
25 TO TREAT AS RELATED ON WHICH YOUR HONOR CORRECTLY

1 RULED THE CASES WERE RELATED.

2 BUT LET ME JUST GO BACK AND -- YOUR
3 HONOR, WE DO UNDERSTAND THAT ARGUING FOR A
4 DISQUALIFICATION IS A GRAVE MATTER. WE DO NOT DO
5 IT LIGHTLY. WE DO NOT THINK THIS IS A CLOSE CASE
6 FOR ALL THE REASONS THAT YOUR HONOR ALREADY GAVE.

7 AND LET ME START WITH THE POINT THAT YOUR
8 HONOR STARTED WITH, WHICH IS THAT IF THE '604
9 PATENT IS IN THE CASE THROUGH THE COUNTERCLAIMS,
10 WE'RE DONE BECAUSE THAT PATENT WAS INVOLVED IN
11 SONY-ERICSSON AND WAS THE SUBJECT OF THOUSANDS OF
12 HOURS OF WORK BY THE BRIDGES FIRM, AND THAT
13 ESTABLISHES AN ALMOST PER SE SUBSTANTIAL
14 RELATIONSHIP HERE.

15 BUT WHAT I WANT TO STRESS TO YOUR HONOR
16 IS THAT EVEN IF YOU WERE TO CONSIDER THE APPLE
17 CLAIMS SEPARATELY, YOU STILL MUST DISQUALIFY
18 BRIDGES & MAVRAKAKIS BECAUSE THEIR KNOWLEDGE
19 FROM -- OF CONFIDENTIAL INFORMATION, PRIVILEGED
20 INFORMATION, STRATEGIC DECISIONS BY SAMSUNG IN THE
21 SONY-ERICSSON LITIGATION IS SUBSTANTIALLY RELATED
22 TO APPLE'S CLAIMS AGAINST SAMSUNG.

23 IN OTHER WORDS, THE DISQUALIFICATION IS
24 OBVIOUS WITH RESPECT TO SAMSUNG'S COUNTERCLAIMS
25 AGAINST APPLE .

1 BUT IT EXISTS TO DISQUALIFY THE BRIDGES
2 FIRM EVEN WITH RESPECT TO APPLE'S CLAIMS. AND LET
3 ME EXPLAIN THAT.

4 MR. TAYLOR, AS IN THE PAPERS, KEEPS
5 SAYING, "OH, WELL, WE'RE IN A NEW WORLD."

6 THE COURT: WELL, THAT'S WHAT
7 MR. VERHOEVEN SAID AS WELL.

8 MS. SULLIVAN: WELL, HE HAD SOMETHING
9 ABOUT CABBAGES, YOUR HONOR, AND NONE OF THE REST OF
10 US IS FROM IOWA AND WE DIDN'T QUITE UNDERSTAND THAT
11 PEOPLE KEPT CABBAGES FOR SIX MONTHS IN IOWA.

12 BUT THE POINT IS THAT OF COURSE THE
13 TECHNOLOGY IS CHANGING, YOUR HONOR.

14 BUT LET'S TALK ABOUT THE WAYS IN WHICH
15 THE TECHNOLOGY IS CONTINUOUS.

16 SO SAMSUNG HAS BEEN MAKING MOBILE PHONES
17 FOR A LONG TIME, AND IN FACT, THE POINT OF THE
18 ANDROID PHONES, THEY'RE ALL MADE TO BE BACKWARD
19 COMPATIBLE WITH THE EARLIER MODELS.

20 THE CELL PHONES THAT SAMSUNG IS MAKING
21 AND THE CELL PHONES THAT WE ACCUSE APPLE OF
22 INFRINGING, THE PATENTS IN THE CELL PHONES THAT WE
23 ACCUSE APPLE OF INFRINGING ARE PART OF A CONTINUOUS
24 EVOLUTION THAT GOES BACK TO 2006 AND 2007, THE VERY
25 TIMEFRAME THAT THE BRIDGES FIRM WAS REPRESENTING

1 SAMSUNG.

2 AND YOUR HONOR, I NEED TO POINT YOU -- I
3 CAN POINT YOU TO A VERY SPECIFIC POINT IN THE APPLE
4 COMPLAINT AS AMENDED IN JUNE AGAINST SAMSUNG.

5 IF YOU LOOK AT PARAGRAPH 80 OF THE
6 AMENDED COMPLAINT, THE APPLE COMPLAINT IS ACCUSING
7 A PHONE THAT SAMSUNG INTRODUCED IN KOREA IN
8 DECEMBER OF 2006, THAT'S THE F700, AND THIS IS --
9 IF YOU LOOK AT COMPLAINT PARAGRAPH 80, THE F700,
10 ACCORDING TO THE TERMS OF THE AMENDED COMPLAINT
11 ITSELF, WAS INTRODUCED IN, A KOREAN VERSION, IN
12 DECEMBER OF 2006 AND WAS BEING DISCUSSED IN THE
13 UNITED STATES IN THE TIME PERIOD IN EARLY 2007 WHEN
14 THE IPHONE'S ABOUT TO BE INTRODUCED.

15 SO THERE'S CONTEMPORANEOUS TECHNOLOGY
16 THAT IS NOW BEING ACCUSED IN THIS CASE, EVEN IF YOU
17 JUST LOOK AT SAMSUNG VERSUS APPLE.

18 SO YOUR HONOR, TO BE CLEAR, WE THINK YOU
19 CORRECTLY RELATED THE CASES. THE CASES ARE
20 PROPERLY ONE CASE NOW.

21 THERE ARE TREMENDOUS MATTERS -- JUDICIAL
22 EFFICIENCIES THAT COME FROM TRYING THEM TOGETHER.

23 BUT THE DISQUALIFICATION HERE MUST OCCUR,
24 WHETHER YOU CONSIDER APPLE VERSUS SAMSUNG TOGETHER
25 OR SEPARATELY FROM SAMSUNG VERSUS APPLE.

1 AND, YOUR HONOR, IF I COULD JUST SAY A
2 FEW MORE WORDS ABOUT THE TECHNOLOGY?

3 THE POINT IS THAT THE CELL PHONE -- WE'RE
4 NOT TALKING HERE ABOUT SOME VAGUE KNOWLEDGE OF A
5 BROAD TECHNOLOGY.

6 WE'RE TALKING ABOUT THE EVOLUTION OF
7 SMART PHONES FROM 2006 AND 2007 TO THE PRESENT INTO
8 THEIR CURRENT FORM.

9 SO THIS IDEA THAT THERE'S A DISCONTINUOUS
10 LEDGE AND THAT ANDROID IS A NEW THING THAT CAME OUT
11 OF THE ETHER LONG AFTER BRIDGES WAS GONE FROM THE
12 SAMSUNG REPRESENTATION IS JUST INCORRECT.

13 YOU KNOW THAT'S NOT HOW TECHNOLOGY WORKS.
14 EVERY TECHNOLOGY BUILDS ON THE PRIORS.

15 AND TO HAVE THE LAWYERS WHO SAT WITH
16 SAMSUNG -- THE LAWYERS AT BRIDGES, MAVRAKAKIS WHO
17 SAT WITH SAMSUNG'S ENGINEERS AND DESIGNERS AND
18 LEARNED EVERYTHING ABOUT SAMSUNG'S TELEPHONE
19 DESIGNS IN 2006 AND 2007 TURN AROUND AND GO OVER TO
20 APPLE TO SUE SAMSUNG ON CELL PHONE PATENTS RELATING
21 TO SMART PHONES IS, IS SO CLEARLY SUBSTANTIALLY
22 RELATED, WITHOUT REGARD TO THE COUNTERCLAIMS, THAT
23 THIS IS AN EASY DISQUALIFICATION MOTION.

24 YOUR HONOR, AMONG THE ISSUES IN THIS CASE
25 WILL BE WHETHER THERE'S PRIOR ART THAT INVALIDATES

1 THE APPLE PATENTS THAT IT'S ASSERTING, AND AMONG
2 THE PRIOR ART MAY BE SAMSUNG'S OWN PRIOR ART.

3 AND THE IDEA THAT SOMEHOW YOU COULD
4 REPRESENT SAMSUNG, LEARN ALL ABOUT PRIOR ART THAT
5 MIGHT BE RELEVANT TO THE CURRENT INVALIDITY
6 DEFENSES, AND JUST SAY, "OH, NO, WE'RE NOT GOING TO
7 DISCLOSE ANY CONFIDENTIAL INFORMATION," IS, AS YOUR
8 HONOR SUGGESTED, WHOLLY UNREALISTIC.

9 OF COURSE THE LAWYERS HAVE TO COORDINATE
10 AS YOUR HONOR SUGGESTED.

11 WE THINK THE ONLY REMEDY THAT CAN WORK IS
12 DISQUALIFICATION BECAUSE THIS MENTAL SEVERANCE,
13 THIS MENTAL WALL THAT APPLE -- THAT BRIDGES IS
14 PROPOSING IS COMPLETELY UNWORKABLE.

15 THE LAWYERS IN THE TWO TEAMS HAVE TO
16 COORDINATE, THEY HAVE TO STRATEGIZE, THEY HAVE TO
17 BE IN THE SAME CASE MANAGEMENT CONFERENCES. THEY
18 HAVE TO BE IN THE SAME MEETS AND CONFERS.

19 THEY HAVE AN ETHICAL DUTY TO APPLE TO
20 TELL APPLE ANYTHING OUTSIDE THE IMMEDIATE SCOPE OF
21 THE REPRESENTATION THAT MIGHT AFFECT APPLE'S
22 INTERESTS.

23 IF THEY KNOW SOMETHING FROM THEIR SAMSUNG
24 REPRESENTATION, THEY'D BE VIOLATING THEIR ETHICAL
25 DUTY TO APPLE NOT TO TELL THEM.

1 SO THE IDEA THAT YOU CAN RELY ON THE
2 SCOPE OF REPRESENTATION TO CONFINE THE ETHICAL
3 DUTIES HERE IS UNREALISTIC.

4 WHAT IS GOING TO HAPPEN? HOW WOULD THE
5 COURT ENFORCE IT? THERE'S GOING TO BE A TELEPHONE
6 CONFERENCE WHERE THE BRIDGES LAWYERS SUDDENLY GO ON
7 MUTE FOR A FEW MINUTES -- SORRY -- GO ON HOLD FOR A
8 FEW MINUTE? OR SAY "WE'RE GOING TO DROP OFF THE
9 CALL," AND THEN THEY COME BACK ON?

10 HOW WOULD THE COURT POSSIBLY ENFORCE THE
11 SUPPOSED MENTAL POLICING OF THE SUPPOSED MENTAL
12 WALL?

13 CALIFORNIA LAW, AS YOUR HONOR WELL KNOWS,
14 DOES NOT EVEN RESPECT ETHICAL WALLS THAT ARE
15 FORMALIZED WITHIN A FIRM AS A BASIS FOR UNDOING A
16 DISQUALIFICATION WHEN THERE IS A SUBSTANTIAL
17 RELATIONSHIP AND THE POSSESSION OF CONFIDENTIAL
18 INFORMATION.

19 HOW COULD AN INFORMAL, METAPHYSICAL,
20 MENTAL WALL POSSIBLY SUFFICE AS A REMEDY HERE?

21 SO YOUR HONOR IS ABSOLUTELY CORRECT.
22 THERE'S GOING TO BE COORDINATION BETWEEN THE TEAMS,
23 AND THERE'S GOING TO -- THERE'S GOING TO BE
24 KNOWLEDGE THAT'S IMPORTED TO THE APPLE TEAM FROM
25 THE BRIDGES FOLKS THAT IS CONFIDENTIAL AND VIOLATES

1 SAMSUNG'S RIGHTS, UNDER THE ETHICAL RULES, TO HAVE
2 A DUTY OF LOYALTY FROM ITS FORMER EMPLOYEES.

3 APPLE -- BRIDGES OWES A DUTY TO ITS
4 FORMER CLIENT, SAMSUNG. IT OWES A DUTY TO ITS
5 CURRENT CLIENT, APPLE.

6 IT CANNOT PERFORM THOSE DUTIES WITHOUT
7 THE PROPHYLACTIC OF A DISQUALIFICATION HERE.

8 AND THAT DOESN'T PREJUDICE APPLE IN ANY
9 WAY. THEY HAVE EXTRAORDINARILY ABLE COUNSEL, AS
10 YOUR HONOR -- IN MORRISON & FOERSTER AND IN WILMER,
11 HALE ON THE COUNTERCLAIMS. THEY'RE NOT GOING TO BE
12 PREJUDICED.

13 AS YOUR HONOR NOTED, BRIDGES WAS VERY
14 LATE TO THE TABLE. WHY WERE THEY BROUGHT IN SO
15 LATE. WHY DID THEY FILE THEIR NOTICE OF APPEARANCE
16 SO LATE? THEY WERE BUSY? I DON'T THINK SO.

17 THE NOTION THAT A LATE COMER IS
18 INDISPENSABLE TO THE REPRESENTATION OF A VERY WELL
19 REPRESENTED AND ABLY REPRESENTED CLIENT IS
20 EXTREMELY UNPERSUASIVE.

21 SO -- AND I JUST WANTED TO ANSWER YOUR
22 HONOR'S LAST QUESTION ABOUT PIEJA, WHICH I DIDN'T
23 WANT TO GO UNANSWERED.

24 PIEJA DID BILL A LOT OF TIME BEHIND THE
25 SCENES, BUT HE WAS NOT SOMEONE WHO INTERFACED WITH

1 THE SAMSUNG EMPLOYEES, SO THE PEOPLE THAT WERE IN
2 THE SEPTEMBER 2010 MEETING WOULD NOT HAVE
3 RECOGNIZED HIM, SO WE DON'T THINK THERE'S ANY
4 WAIVER OF THEIR ARGUMENT.

5 THE COURT: LET ME ASK, A CASE THAT APPLE
6 RELIES A LOT ON IN ITS OPPOSITION IS THE HILLEBY
7 CASE, AND IN THE HILLEBY CASE, HILLEBY WAS GIVEN
8 THE CHOICE, "YOU CAN KEEP TOWNSEND & TOWNSEND, BUT
9 IF YOU DO, YOU HAVE TO GIVE UP ALL OF YOUR DEFENSES
10 THAT ATTACK THE PATENT THAT," WHAT IS IT, MR. SEKA
11 OR THE OTHER ATTORNEY, MR. HESLIN, ACTUALLY
12 PROSECUTED THE PATENT.

13 SO WHAT IF I GAVE YOU THAT CHOICE, THAT,
14 OKAY, YOU CAN KEEP BRIDGES, BUT YOU'RE GOING TO
15 HAVE TO GIVE UP YOUR FAIR AND NON-DISCRIMINATORY,
16 ALL YOUR FRAND AND OTHER DEFENSES, ANTITRUST
17 DEFENSES ABOUT FAILURE TO MAKE THE PROPER
18 DISCLOSURES TOWARD THE STANDARD SETTING, ET CETERA,
19 ET CETERA? ARE YOU GOING TO MAKE THAT CHOICE, TO
20 KEEP BRIDGES BUT GIVE UP ALL OF THOSE DEFENSES THAT
21 THE BRIDGES ATTORNEYS WOULD HAVE WORKED ON IN THE
22 ERICSSON LITIGATION?

23 MR. TAYLOR: NO, YOUR HONOR, I DON'T
24 THINK WE'RE GOING TO MAKE THAT CHOICE, NOR, WITH
25 ALL DUE RESPECT, DO I THINK THAT'S WHAT HILLEBY

1 STANDS FOR OR SAYS.

2 WHAT HILLEBY SAYS IS THAT THE LAWYERS IN
3 THE BRIDGES, MAV SITUATION HERE CAN LIMIT THEIR
4 REPRESENTATION TO ONLY REPRESENTING THE CLIENT ON
5 COUNTERCLAIMS THAT ARE NOT RELATED TO WHAT THEY DID
6 BEFORE.

7 IF THERE ARE SOME COUNTERCLAIMS WHICH ARE
8 RELATED TO WHAT THOSE LAWYERS DID BEFORE, THEY MAY
9 NOT REPRESENT THE CLIENT.

10 EITHER THEY GET NEW COUNSEL, OR THE
11 CLIENT HAS TO DECIDE TO LET THOSE CLAIMS GO
12 FORWARD.

13 BUT THAT FIRM CANNOT REPRESENT -- THAT'S
14 ALL THE COURT SAID -- CANNOT REPRESENT THE CLIENT
15 ON CLAIMS THAT ARE RELATED TO SOMETHING THEY DID
16 BEFORE.

17 SO THAT WOULD BE THE SITUATION HERE WHERE
18 IT'S AS IF BRIDGES, MAV DID NOT HAVE A LIMITED
19 SCOPE OF REPRESENTATION AND IF THEY SAID, "WE ARE
20 ACTUALLY REPRESENTING APPLE IN CONNECTION WITH SOME
21 PART OF THE '604 OR SOMETHING ELSE," THIS COURT
22 COULD THEN SAY, "YOU HAVE TO GET SEPARATE COUNSEL
23 FOR THAT, OR YOU HAVE TO GIVE UP THOSE CLAIMS IF
24 YOU WANT BRIDGES, MAV TO CONTINUE TO REPRESENT
25 YOU."

1 BUT WHAT'S KEY IN THE CASE IS THEY SAID,
2 "IF YOU," BRIDGES MAV, THE EQUIVALENT, "IF YOU'RE
3 REPRESENTING YOUR CLIENT, EVEN ON A COUNTERCLAIM,
4 EVEN IN THE SAME CASE, ON SOMETHING THAT'S NOT
5 RELATED TO ANYTHING YOU DID BEFORE, YOU STAY IN THE
6 CASE. YOU MAY LIMIT YOUR REPRESENTATION THAT WAY
7 TO AVOID A CONFLICT."

8 THE IRONY HERE IS MS. SULLIVAN'S ONLY
9 TODAY ABLE TO MAKE HER LEAD ARGUMENT ABOUT THE
10 RELATIONSHIP BETWEEN THE ERICSSON CASE AND THIS
11 CASE BECAUSE OF ACTION THAT SAMSUNG TOOK TO PUT
12 THEM TOGETHER. THEY WERE TWO SEPARATE CASES.

13 THAT RAISES NO ISSUE OF SUBSTANTIAL
14 RELATIONSHIP AND BRIDGES, MAV. BRIDGES, MAV WAS
15 ONLY IN ONE CASE.

16 SAMSUNG AND -- EXCUSE ME -- APPLE WAS
17 REPRESENTED VERY ABLY IN THE OTHER CASE BY WILMER,
18 HALE.

19 THERE WAS NO SUBSTANTIAL RELATIONSHIP
20 BETWEEN THOSE TWO CLAIMS UNTIL SAMSUNG THREW THEM
21 TOGETHER BY DISMISSING THEIR ACTION AND FILING THEM
22 BOTH IN THIS ACTION.

23 THERE IS NO CASE IN CALIFORNIA, AND THAT
24 IS THE LAW THAT YOUR HONOR IS FOLLOWING, THAT SAYS
25 WHAT YOU DO IS YOU COMPARE WHAT A LAWYER DID BEFORE

1 TO EVERYTHING THAT'S IN THE CASE, PARTICULARLY WHEN
2 THE OTHER PARTY HAS COMPLETE CONTROL OVER WHAT YOU
3 CAN PUT IN THE CASE.

4 THINK OF WHAT THAT WOULD MEAN. IF YOU
5 HAD A PARTY UP HERE THAT WORKED, AT SOME POINT IN
6 THEIR PAST, ON SOME ASPECT OF SOME PIECE OF
7 LITIGATION, IF AGGRESSIVE AND CREATIVE COUNSEL CAN
8 GO FIND SOME COUNTERCLAIM SOMEPLACE TO PUT IN THAT
9 CASE, EVEN THOUGH THE LAWYER IS NOT DOING ANY WORK
10 ON THAT, NOT REPRESENTING THEM ON THAT, IF THAT
11 STRATEGIC AND TACTICAL MANEUVER CAN SUCCEED IN
12 COSTING THE CLIENT THIS LAWYER WHO PROPERLY
13 ACCEPTED REPRESENTATION, WHO'S PROPERLY LIMITED THE
14 SCOPE OF HIS OR HER REPRESENTATION, IF THAT
15 STRATEGIC MANEUVER COULD DO THAT, THIS COURT WILL
16 SEE MANY MORE MOTIONS FOR DISQUALIFICATION, BECAUSE
17 IT'S NOT A HARD THING TO DO TO LOAD UP A CASE WITH
18 A COUNTERCLAIM THAT WOULD CREATE THAT KIND OF A
19 PROBLEM.

20 THAT'S WHY CALIFORNIA COURTS SAY THE ONE
21 THING, IS THE PRIOR REPRESENTATION SUBSTANTIALLY
22 SIMILAR TO THE CURRENT REPRESENTATION, TO WHAT
23 BRIDGES, MAV HAS AGREED TO DO AND IS DOING?

24 CAN BRIDGES, MAV LIMIT THIS? YES, THEY
25 CAN LIMIT IT.

1 THAT'S WHAT HILLEBY SAYS. THAT'S WHAT
2 PLANT SAYS. THAT'S WHAT THE OTHER AUTHORITIES THAT
3 WE HAVE CITED IN THE PROPOSED RULE SAY IN THE
4 COMMENTARY.

5 AND LAWYERS LIMIT THEIR REPRESENTATION
6 ALL THE TIME IN ORDER TO STAY WITHIN THE ETHICAL
7 BOUNDARIES.

8 THE ONLY THING THAT'S CHANGING THAT --
9 AND SAMSUNG'S LEAD ARGUMENT IS A MISSTATEMENT OF
10 THE LAW. YOU DO NOT COMPARE WHAT BRIDGES, MAV DID
11 BEFORE TO WHAT'S GOING ON IN A CASE THAT SEPARATE
12 COUNSEL ARE SEPARATELY HANDLING ON AN EVIDENTIARY
13 RECORD WHERE BRIDGES, MAV -- AND THERE'S NO
14 CONTRADICTION TO THIS -- SAYS "WE ARE NOT DOING ANY
15 WORK ON THE PART THAT'S RELATED. WE ARE ONLY DOING
16 THE UNRELATED PART. WE'RE ONLY DOING WORK WITHIN
17 THE SCOPE OF OUR LIMITED REPRESENTATION. THERE'S
18 ANOTHER FIRM, THEY WERE ORIGINALLY HIRED TO DO IT,
19 THEY'RE STILL HIRED TO DO IT."

20 THE COURT: LET ME ASK A QUESTION.

21 MR. TAYLOR: SURE.

22 THE COURT: HOW DO YOU DO THE ETHICAL
23 WALL WITHIN APPLE ITSELF? I SEE WHAT YOU'RE SAYING
24 ABOUT WILMER, HALE VERSUS BRIDGES.

25 BUT ARE YOU GOING TO HAVE DIFFERENT APPLE

1 IN-HOUSE ATTORNEYS FOR THE SAMSUNG AFFIRMATIVE CASE
2 VERSUS THE APPLE AFFIRMATIVE CASE?

3 I MEAN, HOW -- IT'S VERY FEASIBLE TO
4 THINK THAT THE APPLE IN-HOUSE ATTORNEYS ARE GOING
5 TO HEAR SOME INFORMATION FROM BRIDGES THAT COULD
6 BLEED OVER AND TAINT THE OTHER SIDE.

7 SO WHAT KIND OF ETHICAL WALL ARE YOU
8 GOING TO HAVE IN-HOUSE?

9 MR. TAYLOR: I THINK, YOUR HONOR, THAT AN
10 ETHICAL WALL IS NOT REQUIRED, AND I THINK THAT FOR
11 THIS REASON, NOR APPROPRIATE.

12 FIRST OF ALL, ETHICAL WALLS REALLY EXIST
13 ONLY WHEN YOU'RE TALKING ABOUT A SITUATION WITHIN
14 LAW FIRMS WHERE YOU HAVE PEOPLE WITH FIDUCIARY
15 DUTIES TO EACH OTHER, THEY'RE ALL PRESUMED TO HAVE
16 CONFIDENTIAL INFORMATION OF THE OTHER PERSON, AND
17 YOU'RE TRYING TO FIND A WAY TO OVERCOME THAT
18 PRESUMPTION.

19 AS YOUR HONOR INDICATED IN THE ORACLE
20 DECISION THAT CAME DOWN LAST MONTH, WE DON'T
21 PRESUME THAT BETWEEN CO-COUNSEL OR BETWEEN COUNSEL
22 AND A CLIENT THAT THEY'RE GOING TO VIOLATE THEIR
23 ETHICAL DUTIES AND THEY'RE GOING TO DISCLOSE
24 CONFIDENTIAL INFORMATION. WE DON'T PRESUME THAT.
25 THERE'S NO EVIDENCE OF THAT IN THIS RECORD.

1 THERE'S ALSO EVIDENCE IN THE RECORD THAT
2 FROM THE BEGINNING, APPLE HAS UNDERSTOOD THAT
3 BRIDGES, MAV IS NOT TO CONTRIBUTE, NOT TO HAVE
4 ANYTHING TO DO WITH THE -- WITH ANYTHING HAVING TO
5 DO WITH THE SAMSUNG PATENTS OR THOSE STANDARDS
6 PATENTS OR FRAND AND THEY HAVE NOT.

7 THAT'S WHAT APPLE SAYS. THAT'S WHAT THE
8 COUNSEL IN THE CASE SAY. THAT'S WHAT BRIDGE, MAV
9 HAS DONE.

10 AND THAT IS BRIDGES, MAV'S ETHICAL
11 RESPONSIBILITY, NOT TO MAKE ANY AFFIRMATIVE
12 CONTRIBUTION, NOT TO DO ANYTHING ON THAT CASE.

13 AND AS WE INDICATED TO YOUR HONOR,
14 ALTHOUGH IT'S NOT NECESSARY, IF THE COURT WOULD
15 LIKE THE FIRM TO CONFIRM THAT IT WILL ABIDE BY THAT
16 OBLIGATION, NOT UNDERTAKE TO REPRESENT APPLE IN
17 CONNECTION WITH ANYTHING ON THE SAMSUNG CLAIMS, THE
18 FIRM IS WILLING TO HAVE THE COURT ENTER AN ORDER
19 THAT SAYS "YOU SHALL NOT REPRESENT APPLE IN
20 CONNECTION WITH ANY OF THE SAMSUNG CLAIMS, ANY OF
21 THE CLAIMS THAT ARE NOW THE COUNTERCLAIMS."

22 SO THAT THEY NOT ONLY HAVE THE ETHICAL
23 OBLIGATION NOT TO DO IT, BUT THEY ALSO HAVE THE
24 POWER OF THE COURT AND CONTEMPT OF COURT IN THE
25 EVENT THAT THEY ARE TO VIOLATE IT.

1 THEY HAVEN'T VIOLATED IT. THERE'S NO
2 EVIDENCE THAT THEY WILL.

3 AND HERE WE HAVE SEPARATE COUNSEL WHO'S
4 HANDLING THAT CASE AND TAKING CARE OF THAT CASE.

5 THERE'S ONE OTHER ISSUE I'D LIKE TO
6 RAISE, AND I THANK YOUR HONOR FOR YOUR PATIENCE.

7 YOUR HONOR SUGGESTED THAT IT'S IMPOSSIBLE
8 THAT MAYBE MR. BRIDGES OR SOME OTHER MEMBER OF THE
9 FIRM DOESN'T HAVE SOME INFORMATION THAT MAY BE
10 RELEVANT.

11 IT'S A REALLY IMPORTANT POINT, BECAUSE IT
12 SUGGESTS -- AND SAMSUNG MAKES THIS POINT -- THAT
13 THERE IS SOME LIFE OR THERE IS SOME VITALITY IN
14 CALIFORNIA TO THIS GENERAL NOTION THAT YOU HAVE
15 INFORMATION ABOUT SOMEBODY'S PLAYBOOK OR HOW PEOPLE
16 DO THINGS.

17 THAT IS SIMPLY NOT THE LAW OF CALIFORNIA.
18 THERE IS NO GENERAL PLAYBOOK LAW IN CALIFORNIA.

19 AND WE CITED IN OUR BRIEFS, YOU KNOW, THE
20 BANNING RANCH CASE AND A WHOLE SERIES OF CASES THAT
21 SAY THAT OVER AND OVER AGAIN.

22 THE ONLY TIME THE COURTS DECIDE AND
23 PRESUME THAT SOMEONE MAY HAVE SOME INFORMATION THAT
24 THEY WOULD CONVEY AND USE IT FOR DISQUALIFICATION
25 IS WHEN SOMEONE HAS HAD ACCESS -- WE HAVE THE

1 FARRIS CASE WHERE WE HAVE A LAWYER WITH TEN YEARS
2 OF EXPERIENCE WITH AN INSURANCE COMPANY HANDLING
3 226 CASES WHERE THAT LAWYER ACTUALLY WROTE THE
4 PRACTICES FOR THE CLAIMS HANDLING PROCEDURES AND
5 DID THE TRAINING THAT WAS GOING TO BE AT ISSUE IN
6 LITIGATION THAT HE WANTED TO HANDLE AGAINST THE
7 INSURANCE COMPANY.

8 WE HAVE THE OLIVER CASE, WHICH IS VERY
9 DIFFERENT.

10 WE HAVE HERE, YOU KNOW, MR. BRIDGES, WHO,
11 BY HIS OWN INDICATION, IS -- HAS THREE LAWYERS
12 SENIOR TO HIM, THERE ARE 20 LAWYERS ON THE CASE, HE
13 HAS NO ONE-ON-ONE COMMUNICATIONS WITH THE DECISION
14 MAKER AT SAMSUNG, HE'S NOT INVOLVED IN SETTLEMENT,
15 HE'S NOT INVOLVED WITH ANY OF THAT.

16 AND IF SOMEONE LIKE MR. BRIDGES CAN BE
17 FOUND TO HAVE, IN SOME MANNER, INFORMATION THAT
18 COULD RESULT IN HIS BEING DISQUALIFIED FROM HAVING
19 BEEN A JUNIOR PARTNER WORKING ON A CASE WHERE
20 THERE'S NO EVIDENCE THAT HE LEARNED ANYTHING, AND
21 THEY HAVE -- THE BURDEN'S ON SAMSUNG.

22 THERE'S NO EVIDENCE THAT HE LEARNED
23 ANYTHING OF ANY SIGNIFICANT, YOU KNOW, CONFIDENTIAL
24 NATURE.

25 AND MORE IMPORTANTLY, THE BURDEN IS ON

1 SAMSUNG TO DEMONSTRATE THAT WHATEVER HE LEARNED, IF
2 IT WAS CONFIDENTIAL, THEY HAVE TO DEMONSTRATE THAT
3 IT WAS MATERIAL IN THIS SENSE: THAT IT DIRECTLY
4 RELATED TO AN ISSUE IN THIS CASE WHERE THEY'RE
5 REPRESENTING -- DIRECTLY RELATED TO THE ANDROID
6 CASE; AND/OR THAT IT'S OF CRITICAL IMPORTANCE.

7 AND THAT'S A BIG STANDARD, AND IF YOUR
8 HONOR REVIEWS THE FOUST CASE, YOU'LL SEE THAT IT
9 IS -- IN CALIFORNIA, TO DISQUALIFY A LAWYER WHO
10 HAS -- WHERE THERE'S NO OVERLAP BETWEEN THE TWO
11 MATTERS WHERE THEY'VE ACCEPTED REPRESENTATION
12 BECAUSE THEY KNOW SOMETHING FROM THEIR PAST
13 REPRESENTATION IS A VERY, VERY DIFFICULT THING TO
14 DO AND THERE'S NO WAY THE LAW, WE WOULD SUBMIT,
15 WOULD APPLY TO SOMEONE, ON THIS EVIDENTIARY RECORD,
16 FOR WHAT MR. BRIDGES' ROLE WAS IN THIS CASE.

17 SO I AM CONCERNED, AND I THINK THAT APPLE
18 IS AND I THINK THE COURT SHOULD BE, TOO, OF THE
19 IMPLICATIONS OF GRANTING A MOTION TO DISQUALIFY ON
20 THIS PARTICULAR MATTER ON THIS RECORD GIVEN
21 CALIFORNIA LAW ON THE ISSUE, AND WE'VE TRIED TO
22 ADDRESS IT AS CLEARLY AS WE COULD IN OUR BRIEF.

23 IT REALLY DOES ALLOW A PARTY TO TAKE
24 TREMENDOUS TACTICAL ADVANTAGE OF A MOTION TO
25 DISQUALIFY BY THEIR OWN STRATEGIC DECISION MAKING

1 OF PUTTING THESE CLAIMS IN THIS CASE WHERE THEY
2 WERE NOT IN THE FIRST PLACE.

3 THE COURT: LET ME -- I JUST HAVE A
4 CLARIFICATION AND I WOULD LIKE TO WRAP THIS UP
5 BECAUSE I ALSO HAVE A FINAL PRETRIAL CONFERENCE IN
6 ANOTHER CASE TODAY.

7 I JUST WAS UNCLEAR ON -- IN SAMSUNG'S
8 MOTION, MUCH WAS MADE OF THE DICAM AND SPANSION
9 LITIGATIONS. THAT LARGELY SEEMS TO HAVE BEEN SORT
10 OF IGNORED IN THE REPLY.

11 EXACTLY WHAT'S SAMSUNG'S POSITION ON
12 THOSE? DO YOU THINK THAT'S AN INDEPENDENT BASIS IN
13 YOUR VIEW FOR A DISQUALIFICATION, OR ARE YOU SORT
14 OF WALKING AWAY FROM THAT? OR TELL ME WHAT YOUR
15 POSITION IS ON THOSE TWO.

16 MS. SULLIVAN: YOUR HONOR, WE'RE RELYING
17 PRINCIPALLY ON THE SONY-ERICSSON LITIGATION. WE
18 THINK THAT CREATES AN OBVIOUS CONFLICT WITH RESPECT
19 TO THE COUNTERCLAIMS, THE FRAND, IF THE
20 COUNTERCLAIMS REMAIN IN.

21 BUT IF I COULD TAKE JUST A MINUTE TO
22 RESPOND TO MR. TAYLOR, YOUR HONOR?

23 THE -- APPLE HAS CONCEDED THE SUBSTANTIAL
24 RELATIONSHIP BETWEEN THE '604 PATENT AND THE FRAND
25 ISSUES AND THE COUNTERCLAIMS.

1 WE DON'T -- THEREFORE, THE POSSESSION OF
2 CONFIDENTIAL INFORMATION IS CONCLUSIVELY PRESUMED
3 UNDER CALIFORNIA LAW.

4 SAMSUNG HAS NO OBLIGATION TO PROVE THAT
5 THEY POSSESSED CONFIDENTIAL INFORMATION WITH
6 RESPECT TO THOSE ISSUES IN THE COUNTERCLAIMS.

7 SO IF THE COUNTERCLAIMS STAY IN THE CASE
8 AND YOUR HONOR PROPERLY FOUND THE CASES, THE CLAIMS
9 RELATED AND THEY ARE NOW ONE CASE, WE'RE DONE.
10 THERE'S DISQUALIFICATION THAT HAS TO FOLLOW BECAUSE
11 THEIR PROPOSED MENTAL WALL IS UNWORKABLE. AND
12 YOUR HONOR, HILLEBY IS AN OLD CASE. IT'S 1992. IT
13 DIDN'T CITE CALIFORNIA LAW. IT INVOLVED A PARTNER
14 WHO HAD SOME OTHER PARTNER IN THE FIRM INVOLVED IN
15 THE PROSECUTION.

16 THAT'S A FAR CRY FROM MR. BRIDGES, WHO
17 WAS THE LITIGATOR FOR SAMSUNG, WHO TURNS AROUND TO
18 BECOME THE LITIGATOR FOR APPLE.

19 AND I, WITH ALL DUE RESPECT, CAN'T CREDIT
20 MR. TAYLOR'S NOTION THAT HE WAS JUST A JUNIOR
21 PARTNER.

22 JUNIOR PARTNERS POSSESS PLENTY OF
23 KNOWLEDGE, OFTEN MORE THAN THE SENIOR PARTNERS IN A
24 CASE. SO THAT'S NOT A PERSUASIVE ARGUMENT.

25 BUT CRUCIALLY, HILLEBY DID NOT TALK ABOUT

1 THE LATER CASES IN WHICH CALIFORNIA COURTS HAVE
2 REJECTED ETHICAL WALLS.

3 SO IF FORMAL ETHICAL WALLS HAVE BEEN
4 REJECTED AS A GROUND FOR PRESERVING -- PREVENTING
5 CONFLICTS OF INTEREST, A MENTAL WALL CERTAINLY
6 CAN'T SUFFICE.

7 AND HILLEBY DIDN'T DISCUSS THOSE LATER
8 CASES WHICH ARE CITED IN OUR BRIEF.

9 THE COURT: IT ALSO SAID THE NINTH
10 CIRCUIT HASN'T APPROVED ETHICAL WALLS ANYWAY.

11 MS. SULLIVAN: CORRECT, YOUR HONOR.

12 SO THE NOTION THAT -- WE'RE A FAR CRY
13 FROM HILLEBY AS AN AUTHORITY HERE.

14 BUT YOUR HONOR, THE MOST IMPORTANT POINT
15 I WANT TO MAKE IS WE THINK WE WIN SO EASILY WHEN
16 THE COUNTERCLAIMS STAY IN THE CASE, GIVEN THE
17 CONCESSION OF THE SUBSTANTIAL RELATIONSHIP HERE,
18 BECAUSE OF THE UNWORKABILITY AND UNSUSTAINABILITY
19 OF THE MENTAL WALL.

20 BUT I WANT TO STRESS TO YOUR HONOR THAT
21 IT'S A CANARD TO SAY THAT WE BROUGHT THE CONFLICT
22 INTO THE CASE BY ASSERTING, PROPERLY, A RELATED
23 COUNTERCLAIM IN THIS CASE AT YOUR HONOR'S
24 INVITATION, BECAUSE THE CONFLICT EXISTS EVEN AS TO
25 APPLE VERSUS SAMSUNG.

1 APPLE IS ACCUSING SAMSUNG NOT JUST OF --
2 THEIR CLAIMS ARE NOT JUST DIRECTED AT THE ANDROID
3 PHONES. THEY'RE DIRECTED AT THE LOOK AND FEEL OF
4 SAMSUNG'S PHONES, NOT JUST AT THE TECHNICAL
5 FEATURES, BUT AT THE LOOK AND FEEL.

6 BRIDGES & MAVRAKAKIS WERE PRIVY TO
7 SAMSUNG'S TECHNOLOGY, ENGINEERS, PRIVILEGED AND
8 CONFIDENTIAL INFORMATION IN 2006 AND 2007 WITH
9 RESPECT TO THE LOOK AND FEEL OF SAMSUNG'S PHONES.

10 SO THEY HAVE CONFIDENTIAL INFORMATION
11 WITH RESPECT TO APPLE'S CLAIMS ABOUT APPLE'S
12 PATENTS RELEVANT TO SAMSUNG'S PRODUCTS.

13 SO IT'S NOT THE COUNTERCLAIMS THAT BRING
14 THE CONFLICT OF INTEREST TO THIS CASE. THAT
15 CONFLICT OF INTEREST IS THERE BECAUSE OF ERICSSON
16 AND THE KNOWLEDGE THAT WAS GAINED IN THE ERICSSON
17 REPRESENTATION ON WHICH WE PRINCIPALLY RELY THAT
18 CONFLICTS THEM OUT OF TURNING AROUND, CROSSING THE
19 STREET, GOING OVER TO APPLE AND SAYING, "NOW LET'S
20 SUE OUR FORMER CLIENT ON THE LOOK AND FEEL OF ITS
21 PHONES THAT WE LEARNED ABOUT FROM ITS ENGINEERS IN
22 THE COURSE OF OUR REPRESENTATION."

23 THAT IS NOT SOMETHING THAT'S CLOSE.
24 THERE SHOULD HAVE BEEN A REQUEST FOR INFORMED
25 WRITTEN CONSENT.

1 IT WAS NOT PROPER FOR BRIDGES &
2 MAVRAKAKIS TO APPOINT THEMSELVES THE JUDGES OF AN
3 ETHICAL CONFLICT.

4 IT IS THEIR DUTY TO FIND OUT WHETHER
5 THEIR CLIENT ABSOLVES THEM OF THE CONFLICT.

6 SAMSUNG WAS NOT GIVEN THAT OPPORTUNITY,
7 AND WE SHOULDN'T EVEN HAVE TO ENGAGE IN SUCH A
8 PROTRACTED DIALOG ABOUT SUCH A CLEAR VIOLATION.

9 DISQUALIFICATION IS THE ONLY REMEDY HERE
10 BECAUSE THE MENTAL WALL WON'T WORK.

11 THE COURT: OKAY. I WOULD LIKE TO WRAP
12 THIS UP.

13 DO YOU WANT TO SAY SOMETHING? IF SO,
14 I'LL GIVE YOU A MINUTE.

15 MR. TAYLOR: YOUR HONOR, JUST TWO QUICK
16 THINGS AND THEN I'M DONE.

17 THE COURT: OKAY.

18 MR. TAYLOR: ONE IS I DO -- I WOULD LIKE
19 TO SAY AGAIN THAT IF THE COURT PERMITS SAMSUNG TO
20 DEPRIVE APPLE OF COUNSEL AND DISQUALIFIES
21 BRIDGES, MAV IN THIS CASE WHEN THEY ARE OTHERWISE
22 UNDISQUALIFIABLE, AND I BELIEVE THEY ARE, EXCEPT
23 FOR WHAT SAMSUNG DECIDES TO PUT IN THE CASE THAT
24 CREATES A CONFLICT, WE HAVE THE KIND OF TACTICAL
25 ABUSE THAT THE MARLOW CASE TALKS ABOUT, YOUR HONOR

1 TALKS ABOUT, WHERE MOTIONS FOR DISQUALIFICATION
2 NEED TO BE JUDGED WITH STRICT SCRUTINY BECAUSE THEY
3 ARE SO SUSCEPTIBLE TO BEING USED BY PEOPLE, IN THIS
4 CASE, FUTURE CASES AND OTHER CASES, TO BRING A
5 COUNTERCLAIM IN FOR OTHER STRATEGIC REASONS, IT
6 DOESN'T MATTER WHAT THE REASON IS, AND THEN USE
7 THAT, TURN AROUND AND USE THAT TO DISQUALIFY A
8 PARTIES' COUNSEL WHEN THAT IS NOT THE STANDARD.

9 IT'S NOT THE COMPARISON BETWEEN -- AS
10 RULE 310 SAYS, YOU COMPARE THE EMPLOYMENT THAT WAS
11 ACCEPTED WITH THE EMPLOYMENT THAT WAS PREVIOUSLY
12 ENTERED. THAT'S THE ONLY ETHICAL OBLIGATION, NOT
13 TO REMAIN CLEAR FROM ANYTHING THAT THE OTHER PARTY
14 MAY BRING INTO THE CASE.

15 THE SECOND THING IS IF I CAN, YOUR HONOR,
16 I SUGGESTED THAT BOTH APPLE AND BRIDGES, MAV WOULD
17 BE WILLING TO HAVE THE COURT ENTER AN ORDER SIMPLY
18 CONFIRMING WHAT THEIR ETHICAL OBLIGATIONS ARE.

19 IF YOUR HONOR WOULDN'T MIND, I WOULD LIKE
20 JUST TO SUBMIT THAT TO YOUR HONOR FOR YOUR HONOR'S
21 CONSIDERATION.

22 I'VE GIVEN A COPY TO OPPOSING COUNSEL.

23 THE COURT: HAVE YOU FILED IT?

24 MR. TAYLOR: I HAVE NOT.

25 THE COURT: OKAY. IT NEEDS TO BE FILED.

1 MR. TAYLOR: OKAY.

2 AND UNLESS YOUR HONOR HAS ANY OTHER

3 QUESTIONS --

4 OR PROFESSOR, DO YOU HAVE ANYTHING TO

5 ADD?

6 I THINK THAT I WOULD JUST URGE THE COURT

7 TO DENY THE MOTION FOR THE REASONS THAT WE'VE

8 SUGGESTED.

9 THE COURT: OKAY. THANK YOU. THANK YOU

10 BOTH.

11 LET'S GO TO THE MOTION FOR EXPEDITED

12 TRIAL AND THE CMC PORTION OF THE CASE.

13 LET ME ASK APPLE, WHY ISN'T YOUR PENDING

14 PRELIMINARY INJUNCTION MOTION SUFFICIENT TO PROTECT

15 YOUR INTEREST? YOU'VE GOT -- IF YOU DO GET A

16 PRELIMINARY INJUNCTION, THAT'S ESSENTIALLY THE

17 RELIEF THAT YOU WOULD GET IF YOU WERE TO GO TO

18 TRIAL, SO WHY ARE YOU ENTITLED TO BOTH?

19 MR. MCELHINNY: I -- THERE'S TWO ANSWERS

20 TO THAT, YOUR HONOR.

21 THE COURT: YEAH.

22 MR. MCELHINNY: BOTH OF WHICH ARE

23 ACCURATE.

24 ONE IS YOU -- AGAIN, YOU HAVE TO

25 UNDERSTAND THE CONTEXT. YOUR HONOR MENTIONED -- I

1 MEAN, YOU CLEARLY DO UNDERSTAND THE CONTEXT OF
2 WHAT'S GOING ON HERE, WHICH IS THIS IS A CASE
3 THAT'S LARGER THAN THE UNITED STATES.

4 I MEAN, IT'S GOING ON ACROSS THE WORLD IN
5 ALMOST EVERY COUNTRY IN TERMS OF A CONCERTED EFFORT
6 BY SAMSUNG TO, AS WE SAY, COPY, USE THE APPLE
7 ENTREE IN ORDER TO GET INTO THE MARKETPLACE, CREATE
8 MARKET SHARE, AND TO DO THAT WITHOUT REGARD TO OUR
9 INTELLECTUAL PROPERTY.

10 AND PART OF THAT STRATEGY, WHICH TO US IS
11 AS CLEAR AS DAY, PART OF THAT STRATEGY IS TO OUTFRAN
12 AND OUTMANEUVER THE ABILITY OF THE COURT SYSTEMS TO
13 CATCH THEM.

14 I -- IT'S A VERY SOPHISTICATED
15 COMBINATION OF WHAT I WOULD CALL WHACK-A-MOLE AND
16 CATCH US IF YOU CAN.

17 AND IN ALL OF THE COURTS SO FAR, IN THE
18 COUNTRIES THAT HAVE AN I.P. REGIMEN, ALL OF THEM
19 ARE MOVING AS EXPEDITIOUSLY AS POSSIBLE TO SORT OF
20 CATCH UP WITH THAT.

21 AND SO WE'VE HAD PROCEEDINGS IN
22 AUSTRALIA, WE'VE HAD PROCEEDINGS IN GERMANY, WE'VE
23 HAD PROCEEDINGS IN THE NETHERLANDS.

24 AND IN EVERY ONE OF THOSE COUNTRIES,
25 ALTHOUGH THE LAW IS DIFFERENT AND THE PROCESS, IT'S

1 CERTAINLY NOT PRECEDENTIAL IN ANY WAY, BUT IN EVERY
2 ONE OF THOSE COUNTRIES, THE RESULTS OF THOSE
3 HEARINGS HAVE BEEN A LIMITATION ON SAMSUNG'S
4 ABILITY TO MARKET.

5 AND IN EVERY CASE WE'VE SEEN AN
6 INSTANTANEOUS RESPONSE FROM SAMSUNG EITHER TO MOVE
7 INTO THE NEXT ADJOINING COUNTRY WHERE THE
8 PRELIMINARY INJUNCTION DOESN'T WORK, OR TO RELEASE
9 SLIGHTLY DIFFERENT PHONES --

10 THE COURT: HOW MANY INJUNCTIONS HAVE YOU
11 GOTTEN?

12 MR. MCELHINNY: TO BE CLEAR, THERE WAS A
13 STIPULATED AGREEMENT IN AUSTRALIA BY WHICH SAMSUNG
14 AGREED NOT TO RELEASE THE PRODUCT THAT WAS
15 CHALLENGED; THERE WAS AN INJUNCTION THAT WAS ISSUED
16 BY A GERMAN COURT THAT WAS OF PAN EUROPEAN EXPOSURE
17 THAT -- WHERE A CHALLENGE TO JURISDICTION WAS THEN
18 WITHDRAWN SO THAT IT ONLY COVERS GERMANY; AND THERE
19 WAS AN INJUNCTION ISSUED THIS MORNING IN THE
20 NETHERLANDS THAT RESTRICTS THREE NETHERLANDS
21 ENTITIES.

22 THE COURT: WHAT DOES THAT MEAN, IT
23 RESTRICTS THREE NETHERLANDS ENTITIES?

24 MR. MCELHINNY: THE EUROPEAN COURTS HAVE
25 A JURISDICTIONAL ISSUE ABOUT ENJOINING SAMSUNG

1 ITSELF, SO THEY ENJOIN THE COMPANIES THAT DO
2 BUSINESS IN THEIR JURISDICTIONS.

3 BUT SAMSUNG ISSUED A PRESS RELEASE THIS
4 MORNING SAYING, "YEAH, YOU GOT YOUR PRELIMINARY
5 INJUNCTION IN THE NETHERLANDS."

6 BUT IT'S NOT GOING TO DO US ANY GOOD
7 BECAUSE THEY HAVE OTHER COMPANIES THAT CAN DO THE
8 DISTRIBUTION AND THEY RELEASED FOUR DIFFERENT
9 PHONES TODAY.

10 IT'S LITERALLY A QUESTION -- AND TO JUST
11 BRING IT HOME SO THAT YOUR HONOR WILL SEE IT, WE
12 LITIGATED, BEFORE YOUR HONOR, THE SCHEDULE AT WHICH
13 WE COULD GET TO A PRELIMINARY INJUNCTION, AND WE
14 ASKED FOR A FAST ONE AND SAMSUNG ASKED FOR A SLOWER
15 ONE, AND YOUR HONOR GAVE A REASONABLE BASIS TO DO
16 THAT AND SORT OF AN EXTENDED BRIEFING SCHEDULE.

17 BUT LAST SUNDAY, YOUR HONOR, LAST
18 SUNDAY -- IF I CAN PRESENT THIS, I MEAN, THE
19 EVIDENCE IN THIS CASE COMES DOWN SO FAST -- LAST
20 SUNDAY, SAMSUNG, WITH BEST BUY, INAUGURATED A
21 PROGRAM WHERE THEY ARE NOW GIVING AWAY THEIR
22 TABLETS, THE THING THAT WE ARE CHALLENGING IN YOUR
23 PRELIMINARY INJUNCTION MOTION THAT WON'T BE HEARD
24 UNTIL OCTOBER, THEY ARE FLOODING THE MARKET WITH
25 THEM FOR FREE TO ANYONE WHO BUYS ONE OF THEIR

1 TELEVISIONS BECAUSE THEY UNDERSTAND MARKETING, THEY
2 UNDERSTAND MARKET SHARE, THEY UNDERSTAND TYING A
3 PRODUCT TO CUSTOMERS WHO WILL NOT MOVE FROM THAT
4 PRODUCT.

5 AND THEY ARE MOVING FASTER THAN THIS
6 COURT CAN MOVE IN ORDER TO ESTABLISH A MARKET SHARE
7 AND A POSITION THAT CANNOT BE UNDONE.

8 SO THE FIRST ANSWER TO YOUR HONOR'S
9 QUESTION IS THAT PRELIMINARY INJUNCTIONS GO TO
10 SPECIFIC PRODUCTS, THEY'RE TARGETED, THEY COME
11 AFTER A COMPLETE HEARING, BUT THEY COME OUT WITH A
12 RELATIVELY LIMITED ORDER.

13 AND BECAUSE OF THE NATURE OF THE PRODUCTS
14 THAT ARE AT ISSUE IN THIS CASE, SAMSUNG CAN CHANGE
15 THE NUMBER OF PHONES, THEY HAVE PRODUCTS THAT THEY
16 HAVEN'T EVEN RELEASED YET THAT ARE NOT THE SUBJECT
17 OF A PRELIMINARY INJUNCTION THAT THEY CAN RELEASE A
18 WEEK LATER. THEY CAN MOVE FASTER THAN YOU CAN,
19 FRANKLY.

20 AND SO WHILE A PRELIMINARY INJUNCTION
21 ESTABLISHES RULES, IT DISRUPTS THEM, IT ESTABLISHES
22 THE WILLINGNESS OF THE COURT TO ENFORCE OUR RIGHTS,
23 IT DOES NOT, BECAUSE OF THE WAY SAMSUNG LOOKS AT
24 THESE CASES -- SAMSUNG IS BIGGER THAN ANY COUNTRY,
25 YOUR HONOR -- AND BECAUSE OF THE WAY SAMSUNG LOOKS

1 AT THESE CASES, IT CAN TAKE LITTLE LOSSES, IT CAN
2 TAKE LITTLE ORDERS HERE AND THERE, AND IT CAN STILL
3 ACCOMPLISH ITS LARGER MISSION, WHICH IS TO
4 GENERICIZE THE APPLE PRODUCT. THAT'S ANSWER ONE.

5 ANSWER TWO, AS YOUR HONOR KNOWS, THE
6 DISADVANTAGE TO A MOVING PARTY LIKE US IS THAT
7 PRELIMINARY INJUNCTIONS SHIFT THE BURDENS.

8 AND SO WE HAD THIS DIALOGUE EARLIER WHERE
9 YOU WERE TALKING ABOUT YOU'RE NOT GOING TO MOVE ON
10 A UTILITY PATENT AND THOSE ARE VERY DIFFICULT AND
11 THOSE ARE TRUE BECAUSE THE BURDENS SHIFT.

12 THE NATURE OF OUR COMPLAINT, AND THE
13 REASON WE DRAFTED IT AS A COMPLAINT, IS BECAUSE THE
14 APPLE PRODUCTS, THE PHONE AND THE TABLET, THEY'RE
15 NOT A SINGLE PATENT, THEY'RE NOT A SINGLE DESIGN,
16 THEY'RE NOT A SINGLE ELEMENT.

17 WHAT THEY ARE IS A PRODUCT THAT INVOLVES
18 A GARDEN OF NOVEL INVENTION.

19 AND WE FIRMLY BELIEVE THAT IF, IN FACT --
20 THAT THE ONLY WAY TO STOP THIS, THE ONLY WAY THAT
21 IS GOING TO HAVE A PRACTICAL EFFECT ON SAMSUNG IS
22 TO HAVE A JURY IN THE UNITED STATES HEAR ALL THE
23 EVIDENCE ON ALL OF THE I.P. THAT WE HAVE ASSERTED
24 AND TO COME FORTH WITH A VERDICT ENFORCED BY THIS
25 COURT AS A PERMANENT INJUNCTION THAT ESTABLISHES

1 OUR RIGHTS TO THE FULL SPECTRUM OF THE INTELLECTUAL
2 PROPERTY THAT WE'VE ASSERTED.

3 IF WE KEEP GOING -- WE HAVE TO GO WITH
4 RIFLE SHOTS. WE'RE NOT ABANDONING THAT BECAUSE
5 WE'VE GOT THEM AND BECAUSE WE THINK THEY'RE STRONG.

6 BUT RIFLE SHOTS ARE NOT GOING TO BRING
7 DOWN THIS STRATOSPHERIC BOMBER WHICH IS DROPPING
8 THESE PRODUCTS ALL OVER THE WORLD. WE'RE NOT GOING
9 TO BE ABLE TO DO THAT WITH A SMALL WEAPON. WE
10 NEED -- WE NEED A JUDGMENT AND WE NEED A VERDICT.

11 THE COURT: HAVE ANY OF THE CASES IN THE
12 OTHER JURISDICTIONS SETTLED?

13 MR. MCELHINNY: THEY'RE -- NO. THE
14 ANSWER TO YOUR QUESTION IS NO.

15 THE COURT: OKAY. DO YOU HAVE TRIAL
16 DATES IN ANY OF THE OTHER JURISDICTIONS?

17 MR. MCELHINNY: NOW YOU'RE TESTING ME.

18 THE COURT: OKAY.

19 MR. MCELHINNY: MY UNDERSTANDING IN
20 AUSTRALIA -- MY UNDERSTANDING IS THAT IN AUSTRALIA,
21 IT'S BEING HELD UP BECAUSE SAMSUNG HAS SAID THEY'RE
22 NOT GOING TO MARKET.

23 SO PROBABLY NOTHING WILL GO FORWARD THERE
24 UNTIL SAMSUNG GIVES NOTICE THAT THEY'RE GOING TO
25 PUT THEIR PRODUCT OUT.

1 I BELIEVE THERE'S A HEARING -- THERE'S A
2 HEARING ON THE MERITS THAT'S SCHEDULED FOR GERMANY,
3 BUT FRANKLY, I'M NOT ENOUGH OF AN EXPERT TO KNOW
4 WHETHER IT'S A FULL TRIAL ON THE MERITS OR IT'S A
5 FURTHER TRIAL ON THE PRELIMINARY INJUNCTION.

6 BUT I THINK THE ANSWER --

7 THE COURT: IS IT THE SAME PRODUCTS IN
8 EACH JURISDICTION THAT'S BEING ACCUSED?

9 MR. MCELHINNY: IT IS.

10 THE COURT: IS IT THE SAME I.P., JUST
11 THE, YOU KNOW, EUROPEAN EQUIVALENT OR THE
12 AUSTRALIAN EQUIVALENT?

13 MR. MCELHINNY: THESE ARE REALLY SIMPLE
14 QUESTIONS AND YOU'D THINK I COULD GIVE YOU A SAMPLE
15 ANSWER.

16 THE ANSWER IS THE PRODUCTS ARE SIMILAR,
17 BUT THEY'RE NOT THE SAME BECAUSE SAMSUNG HAS THE
18 ABILITY TO CHANGE THEM FROM JURISDICTION TO
19 JURISDICTION.

20 IN AUSTRALIA, THEY SAID, "YOU'RE
21 CHALLENGING THIS PRODUCT, SO WE WILL NOT RELEASE
22 THAT PRODUCT."

23 BUT A WEEK LATER, THEY ISSUED -- THEN
24 THEY ISSUED A PRESS RELEASE SAYING, "WE WERE NEVER
25 GOING TO ISSUE THAT PRODUCT IN AUSTRALIA ANYWAY,"

1 AND A WEEK LATER THEY RELEASED THE SAME PRODUCT IN
2 NEW ZEALAND.

3 THE I.P. IS ALL SORT OF -- YOU KNOW, IS
4 ALL DIFFERENT IN THE SENSE THAT IT'S ALL THE SAME
5 BASIC PATENTS, BUT THEY HAVE BEEN PROSECUTED IN
6 PARALLEL AND SO THE CLAIMS ARE NOT EXACTLY THE
7 SAME.

8 THE ANSWER IS GLOBALLY, GLOBALLY, APPLE
9 IS ASSERTING, I THINK, IN EXCESS OF 70 UTILITY AND
10 DESIGN PATENTS.

11 SO YOU WILL NOT --

12 THE COURT: WHAT ABOUT --

13 MR. MCELHINNY: SO THERE WILL NOT BE
14 RULINGS FROM ANY FOREIGN COURT, I BELIEVE, THAT
15 SOMEONE WILL COME IN HERE AND ANSWER THE QUESTIONS
16 THAT WERE PRESENTED TO YOUR HONOR BECAUSE THE LAW
17 WILL BE SLIGHTLY DIFFERENT.

18 AND THAT'S NOT REALLY MY POINT.

19 MY POINT IS THAT IN EVERY JURISDICTION,
20 SO FAR, SUBJECT TO WHATEVER CREDIT YOU GIVE A
21 STIPULATION, THAT THE COURTS HAVE CONCLUDED THAT
22 SAMSUNG IS VIOLATING THE INTELLECTUAL PROPERTY
23 RIGHTS OF APPLE IN THAT JURISDICTION.

24 THE COURT: HAVE YOU RECEIVED DISCOVERY
25 IN THESE OTHER JURISDICTIONS? I KNOW GERMANY

1 REALLY DOESN'T HAVE DISCOVERY.

2 MR. MCELHINNY: THEY DON'T HAVE BROAD
3 DISCOVERY. THE BROADEST DISCOVERY THAT WE'VE
4 GOTTEN, FRANKLY, AND IT'S BEEN FAIRLY -- IT'S BEEN
5 ONE-SIDED BUT IT'S BEEN QUITE EXTENSIVE SO FAR --
6 HAS BEEN THE PRELIMINARY INJUNCTION DISCOVERY HERE.

7 WE HOPE IT WILL BE EQUALLY BROAD STARTING
8 TOMORROW.

9 THE COURT: OKAY. WHY DIDN'T YOU SEEK A
10 PRELIMINARY INJUNCTION AS TO ALL OF YOUR CLAIMS?

11 MR. MCELHINNY: AGAIN, THERE'S A COUPLE
12 OF REASONS.

13 IF YOUR HONOR REMEMBERS BACK, OUR
14 ORIGINAL MOTION FOR EXPEDITED DISCOVERY OF THE
15 PRODUCTS CHALLENGED FIVE PRODUCTS. THREE OF THOSE
16 WERE RELEASED. TWO OF THEM HAVE NOT YET BEEN
17 RELEASED.

18 THERE'S A LOT OF -- YOU KNOW, WE'VE DONE
19 THIS BEFORE. THERE'S STUFF IN THE PRESS SAYING
20 THEY'RE GOING TO GET RELEASED, BUT SAMSUNG CONTROLS
21 THE RELEASE DATE AND THEY HAVE NOT BEEN RELEASED
22 YET.

23 SO WE HAVE NOT CHALLENGED, HERE, PRODUCTS
24 THAT HAVE NOT BEEN RELEASED. THAT'S PART OF THE
25 ANSWER.

1 THE OTHER ANSWER IS A LARGE NUMBER OF
2 THE -- WE'RE ALL AWARE OF THE STANDARDS THAT THE
3 FEDERAL CIRCUIT APPLIES FOR UTILITY PATENTS ON, ON
4 PRELIMINARY INJUNCTION AND SO WE CHOSE, WE CHOSE
5 THE UTILITY PATENT THAT HAD BEEN THROUGH
6 RE-EXAMINATION AND HAD, YOU KNOW, GONE FORWARD
7 WITHOUT, YOU KNOW, SERIOUS CHALLENGE TO THE NEED OF
8 A MARKMAN HEARING.

9 WE PICKED THE PATENT THAT WE THOUGHT WE
10 COULD CONVINCED YOUR HONOR THAT WE MET THE STANDARD
11 UNDER.

12 BUT THAT'S ACTUALLY MY POINT.
13 PRELIMINARY INJUNCTIONS ARE NOT A SUBSTITUTE FOR A
14 TRIAL ON THE MERITS IN A PERIOD OF TIME WHEN THE
15 BURDENS ARE AS THEY SHOULD BE, WHEN ALL OF THE
16 EVIDENCE COMES IN, IN A PERIOD OF TIME THAT
17 ACTUALLY ALLOWS SOMEBODY TO CATCH SOMEBODY WHO'S
18 TRYING TO MOVE FASTER THAN THE JUDICIAL SYSTEM.

19 WE FILED PRELIMINARY INJUNCTIONS, AND THE
20 ANSWER IS, OH, THAT'S AN EXTRAORDINARY REMEDY, YOU
21 SHOULD ONLY BE GIVEN -- I MEAN, WE DON'T DENY ANY
22 OF THAT. WE THINK WE MEET THAT STANDARD FOR THE
23 ONES WE'VE CHOSEN ON THE PRELIMINARY INJUNCTION.

24 BUT ON THE OTHERS, WE'RE ENTITLED TO OUR
25 PRESUMPTIONS OF VALIDITY. WE'RE ENTITLED TO PUT IN

1 EVIDENCE. THERE MAY BE A NEED FOR A CLAIM
2 CONSTRUCTION ON SOME.

3 AND THE ONLY WAY TO DO THAT IS WITH AN
4 EXPEDITED TRIAL, AGAIN, AS YOUR HONOR SUGGESTED.

5 THE COURT: ALL RIGHT. LET ME HEAR FROM
6 SAMSUNG ON WHAT YOUR VIEW IS.

7 MS. SULLIVAN: THANK YOU, YOUR HONOR.

8 THIS CASE IS TOO COMPLEX TO BE EXPEDITED
9 AND APPLE HAS SHOWN NO LEGITIMATE REASON FOR
10 URGENCY.

11 AS YOUR HONOR'S QUESTIONS SUGGEST, AN
12 EXPEDITION WOULD GRAVELY PREJUDICE SAMSUNG.

13 LET'S RETURN TO HOW EXTRAORDINARY THIS
14 MOTION TO EXPEDITE IS.

15 APPLE PROPOSES A SCHEDULE THAT WOULD
16 DEPART FROM THE CAREFUL, ORDERLY NORTHERN DISTRICT
17 PATENT CASE RULES BY SETTING A TRIAL FOR THEIR
18 PATENTS TO OCCUR IN MARCH OF 2012, WHILE ALLOWING
19 SAMSUNG TO COME TO TRIAL ON ITS PATENTS IN JUNE OF
20 2013, AN EXTRAORDINARY DISPARITY AND ONE THAT, IN
21 THE ACCELERATION OF THE APPLE PATENTS, WOULD
22 VIOLATE THE ORDERLY PROCESSES THAT THE NORTHERN
23 DISTRICT OF CALIFORNIA RULES PROVIDE FOR.

24 NOW, YOUR HONOR, THE POINT OF THE RULES
25 IS TO MAKE SURE THAT THERE'S ADEQUATE TIME, AND

1 ADEQUATE TIME IS NEEDED.

2 WE'VE JUST FILED A LONG, SUBSTANTIVE
3 OPPOSITION TO THE MOTION FOR PRELIMINARY INJUNCTION
4 THAT YOUR HONOR WILL CONSIDER IN DUE COURSE.

5 BUT IN THE COURSE OF THE INVESTIGATION
6 THAT WE DID IN CONNECTION WITH THAT OPPOSITION, WE
7 DISCOVERED PRIOR ART COMING FROM JAPAN THAT WAS NOT
8 DISCLOSED BY APPLE TO THE PATENT OFFICE. IT'S
9 DISCUSSED IN OUR OPPOSITION TO THE PRELIMINARY
10 INJUNCTION MOTION AT PAGES 3 AND 7.

11 THAT'S THE KIND OF EXAMPLE OF WHY TIME IS
12 NEEDED FOR ORDERLY DEVELOPMENT OF CASES.

13 AND EVEN JUST STICKING TO APPLE'S CLAIMS,
14 YOUR HONOR, THE TIME NEEDED FOR DISCOVERY FAR
15 OUTSTRIPS THE SUPPOSED EXPEDITED SCHEDULE.

16 WE WOULD -- WE NEED TIME FOR -- IF WE
17 JUST LOOK AT THE UTILITY AND DESIGN PATENTS THAT
18 APPLE HAS ASSERTED, THERE ARE 32 INVENTORS AND SIX
19 PROSECUTING LAWYERS FOR WHOM WE NEED DEPOSITIONS,
20 SO 38 DEPOSITIONS ARE NEEDED.

21 THE TIME TABLE THAT APPLE PROPOSES IS SO
22 TRUNCATED IT DOESN'T ALLOW PROPER TIME.

23 SO THE TIME TABLE THAT THE RULES
24 ESTABLISH IS THERE FOR A REASON. IT'S TO ALLOW
25 ADEQUATE TIME FOR PEOPLE TO DEVELOP THEIR CLAIMS,

1 AND I'M NOT EVEN TALKING HERE ABOUT THE
2 COUNTERCLAIMS.

3 SO, YOUR HONOR, THE FIRST POINT IS WE
4 WOULD BE PREJUDICED BY THIS ASYMMETRICAL SCHEDULE
5 AND BY THE DELAY IN OUR CLAIMS THAT APPLE PROPOSES,
6 AND THEIR SCHEDULE IS WILDLY UNREALISTIC, AND
7 THEY'VE PROPOSED NO REASON FOR IT.

8 YOUR HONOR, IN THE ITC, IT'S 18 MONTHS,
9 NOT SEVEN MONTHS TO TRIAL UNDER CURRENT CALENDAR.

10 THIS IS SUCH AN EXTRAORDINARY EXPEDITION
11 MOTION, IT HAS NO PRECEDENT THAT WE'RE AWARE OF.

12 NOW, YOUR HONOR, AS YOU SUGGESTED,
13 THERE'S NO REASON FOR URGENCY HERE. APPLE HAD ITS
14 CHANCE TO MOVE FOR A P.I., AND WHAT DID IT DO? IT
15 MOVED FOR A PARTIAL P.I. ON ONLY A SUBSECTION OF
16 PATENTS, NOT THE PATENTS ON WHICH THEY SOUGHT
17 EXPEDITED DISCOVERY, NOT THE FUTURE PATENTS, BUT ON
18 A SUBSECTION OF PATENTS.

19 AND WHAT'S THE NEW REASON FOR URGENCY?
20 MR. MCELHINNY SUGGESTS THAT SOMEHOW THIS IS SOME
21 NEW SORT OF AMBUSH.

22 BUT THE FEATURES THAT ARE BEING
23 CHALLENGED IN THESE NEW PHONES HAVE BEEN IN
24 EXISTENCE IN SAMSUNG PHONES FOR A LONG TIME. THE
25 LOOK AND FEEL IS NOT NEW. THE LOOK AND FEEL THAT'S

1 BEING CHALLENGED ON THE NEW PHONE IS THE SAME THING
2 THAT WAS IN SAMSUNG PHONES OF WHICH APPLE WAS AWARE
3 A LONG TIME AGO.

4 THEY WERE AWARE IN THE GALAXY S PHONE
5 INTRODUCED IN KOREA AS OF MARCH 2010. THEY WAITED
6 A YEAR TO FILE SUIT.

7 THEY FILED TWO AND A HALF -- THEY WAITED
8 TWO AND A HALF MONTHS AFTER THE COMPLAINT TO FILE
9 FOR THE P.I., AND THEN THEY FILED FOR A PARTIAL
10 P.I.

11 AS YOUR HONOR SUGGESTS, THAT REALLY
12 UNDERCUTS ANY ARGUMENT FOR URGENCY HERE.

13 YOUR HONOR PROPERLY DENIED THE EARLIER
14 EFFORTS TO EXPEDITE. THEY TRIED TO EXPEDITE
15 DISCOVERY. THEY TRIED TO DENY US THE CHANCE TO
16 HAVE APPROPRIATE AND ORDERLY BRIEFING ON THE P.I.
17 MOTION. YOU REJECTED THE MOTION FOR EXPEDITED
18 BRIEFING ON THAT.

19 AND FINALLY, YOUR HONOR, WE'D REFER YOU
20 TO OUR OPPOSITION TO THE MOTION FOR PRELIMINARY
21 INJUNCTION. WE GO AT GREAT LENGTH TO DESCRIBE TO
22 YOU WHY THERE IS NO IRREPARABLE HARM HERE TO APPLE.

23 SO FOR THE SAME REASONS AS THERE'S NO
24 IRREPARABLE HARM JUSTIFYING THE PRELIMINARY
25 INJUNCTION, THERE'S NO REASON FOR EXPEDITION HERE.

1 SO YOUR HONOR, I THINK IF -- I'M NOT SURE
2 WHETHER WE SHOULD BE FLATTERED THAT SAMSUNG WAS
3 SAID TO BE BIGGER THAN A COUNTRY, OR I DARE SAY
4 CONCERNED AT THE VERY SERIOUS AND REALLY RATHER
5 SURPRISING ALLEGATIONS THAT MR. MCELHINNY JUST MADE
6 OFF THE CUFF ABOUT THE NATURE OF SAMSUNG'S PRODUCT
7 DEVELOPMENT.

8 BUT I THINK AT A MINIMUM, WE NEED TO
9 CORRECT A COUPLE OF PLAIN MISSTATEMENTS THAT WERE
10 MADE, SO I'D LIKE TO ASK MR. JOHNSON TO RESPOND ON
11 THE NETHERLANDS INJUNCTION FOR A MOMENT.

12 MR. JOHNSON: VERY QUICKLY, YOUR HONOR.

13 JUST TO CLARIFY THE RECORD, THERE WAS A
14 PRELIMINARY OPINION THAT CAME DOWN FROM THE COURT
15 IN THE NETHERLANDS THIS MORNING. THERE'S NO
16 PRELIMINARY INJUNCTION.

17 THERE'S A DATE OF OCTOBER 13TH IN THE
18 NETHERLANDS WHEN THERE MAY BE SOME FUTURE FINDING
19 BY THE COURT.

20 BUT IN ESSENCE, THE NETHERLANDS' OPINION
21 WAS A VICTORY FOR SAMSUNG. THERE WERE THREE
22 UTILITY PATENTS INVOLVED THERE, AND THERE WERE SIX
23 DESIGN PATENTS INVOLVED THERE, SO NINE PATENTS.

24 EIGHT OUT OF THE NINE PATENTS WERE FOUND
25 TO BE EITHER INVALID OR NOT INFRINGED.

1 AND THE ONES THAT OVERLAP, THAT HAVE
2 NETHERLANDS COUNTERPARTS TO THE U.S. DESIGN PATENTS
3 THAT ARE AT ISSUE IN THIS CASE, WERE FOUND BY THE
4 COURT TO BE NOT INFRINGED.

5 THE ONE PATENT THAT WAS FOUND TO BE
6 INFRINGED -- THERE WERE THREE PHONES THAT WERE
7 FOUND TO BE INFRINGED AND, FRANKLY, THAT ONE PATENT
8 DOESN'T HAVE ANY COUNTERPART IN THE UNITED STATES
9 AND IS NOT AT ISSUE IN THIS CASE.

10 THE THREE PHONES THAT WERE FOUND TO BE
11 INFRINGED, THERE WERE THREE PHONES, AND YET, THE
12 TAB IN THE NETHERLANDS, THE GALAXY TAB WAS FOUND
13 NOT TO BE INFRINGED OF THAT SAME PATENT.

14 SO SAMSUNG'S POSITION, WHICH WAS ALSO
15 INCLUDED IN THE PRESS RELEASE, IS THAT IT'S VERY
16 EASY TO FIX THOSE THREE PHONES TO PUT IN THE DESIGN
17 FROM THE GALAXY TAB.

18 AND SO THERE'S -- FROM SAMSUNG'S
19 STANDPOINT, BY THE OCTOBER 13TH DATE, THERE WILL BE
20 A NOT -- THERE WILL BE A SERIES OF PRODUCTS THAT
21 WILL HAVE BEEN FOUND BY THE COURT TO BE NOT
22 INFRINGED.

23 SO THE NETHERLANDS WAS A VICTORY.

24 GERMANY, THERE'S A HEARING ON THE
25 PRELIMINARY INJUNCTION ISSUE, FRANKLY, TOMORROW.

1 AND AUSTRALIA, THERE WAS A STIPULATION BY
2 THE PARTIES. BECAUSE SAMSUNG NEVER HAD ANY
3 INTENTION OF INTRODUCING THE GALAXY TAB THAT WAS AT
4 ISSUE IN THE APPLE PRELIMINARY INJUNCTION PAPERS IN
5 AUSTRALIA, SO RATHER THAN FIGHT THAT PARTICULAR
6 ISSUE, SAMSUNG STIPULATED TO NOT BRINGING THAT
7 PRODUCT IN.

8 SO WITH RESPECT TO THE STATEMENTS THAT
9 THESE ARE VICTORIES AND THEY'RE RIFLE SHOTS THAT
10 HAVE TO OCCUR AROUND THE WORLD, BY AND LARGE,
11 SAMSUNG HAS FARED VERY WELL WITH RESPECT TO THE
12 LITIGATIONS AROUND THE WORLD.

13 AND WHERE APPLE HAS LOST IN THE FORUM
14 PROCEEDINGS, IT'S THE SAME OR ALMOST IDENTICAL
15 DESIGN RIGHTS THAT ARE AT ISSUE IN THE U.S. CASE.

16 WHERE APPLE HAS WON IN THE NETHERLANDS,
17 THERE'S NO U.S. EQUIVALENT TO THAT PATENT.

18 SO I JUST WANTED TO CLEAR THAT UP.

19 AND FINALLY, THE OTHER STATEMENT THAT I
20 WANTED TO CLEAR UP FROM MS. SULLIVAN WAS THE ITC
21 CASES, ACTUALLY THE TARGET DATES ARE 16 MONTHS AND
22 18 MONTHS OUT.

23 THE HEARINGS ARE ACTUALLY NOT UNTIL MAY
24 AND JUNE OF NEXT YEAR, BUT THE TARGET DATES IN
25 THOSE CASES ARE 16 MONTHS AND 18 MONTHS OUT.

1 SO AFTER THE HEARINGS OCCUR IN THE EARLY
2 PART OF NEXT SUMMER, THEN AFTERWARDS, AS YOUR HONOR
3 KNOWS, THERE WILL BE SOME POST-TRIAL BRIEFING AND
4 THE PERIOD IN WHICH AN INITIAL DETERMINATION IS
5 MADE BY THE ALJ'S.

6 THOSE HEARINGS ARE GOING TO PROCEED.

7 AND THE TARGET DATES, LIKE I SAID, IN
8 THOSE ARE 16 AND 18 MONTHS, NOTHING CLOSE TO A
9 MARCH 2012 TRIAL DATE.

10 MR. MCELHINNY: BULLET POINTS, IF I MAY,
11 YOUR HONOR?

12 THE COURT: OKAY, VERY BRIEFLY.

13 MR. MCELHINNY: MR. JOHNSON'S SPEECH THAT
14 HE JUST GAVE YOU IS THE REASON WHY WE NEED A TRIAL
15 ON THE MERITS, THAT THEY ARE NOT -- THEY ARE NOT
16 FREE TO DISTRIBUTE PRODUCT IN AUSTRALIA, THEY ARE
17 NOT FREE TO DISTRIBUTE PRODUCT IN GERMANY.

18 THE INJUNCTION THAT WAS ISSUED THIS
19 MORNING IS AN INJUNCTION THAT HAS BEEN STAYED UNTIL
20 OCTOBER.

21 AND HE JUST TOLD YOU THAT SAMSUNG IS
22 WINNING ALL OF THESE CASES.

23 WHEN YOUR HONOR ISSUES A PRELIMINARY
24 INJUNCTION IN THIS CASE, THEY WILL ISSUE AN -- A
25 PRESS RELEASE THAT DECLARES A VICTORY AND THEY WILL

1 FIGURE OUT SOME WAY TO GET AROUND THAT SPECIFIC
2 ORDER.

3 BUT IT WILL NOT STOP THEIR STRATEGY.

4 ON THE PATENT RULES, AGAIN, FOR ALL OF US
5 WHO ARE INVOLVED IN THE PATENT RULE COMMITTEES THAT
6 PUT THEM TOGETHER, WE CAN ALL HEAR JUDGE WHYTE SAY
7 OVER AND OVER AND OVER, IF YOU READ THE RESPONSES
8 TO QUESTIONS WHERE THEY SAID THESE WILL BECOME A
9 STRAIGHT JACKET, JUDGES WILL HAVE TO FOLLOW THE
10 RULES, NO ONE WILL EVER CHANGE, JUDGE WHYTE USED TO
11 SAY OVER AND OVER, "READ RULE 1-3. THERE'S A
12 REASON WHY IT'S THE FIRST RULE, BECAUSE IT SAYS THE
13 JUDGES IN THIS DISTRICT WILL ALTER THESE RULES TO
14 MEET THE NEEDS OF PARTICULAR CASES."

15 THE ASYMMETRICAL PROPOSAL FOR TRIALS IS
16 ASYMMETRICAL BECAUSE IT'S WHAT SAMSUNG ASKED FOR.

17 SAMSUNG HAS NEVER ASKED FOR EXPEDITION.
18 SAMSUNG DIDN'T ASK TO HAVE ITS CASE AND OUR
19 COUNTERCLAIMS TO GO EARLY. SAMSUNG IS UNDER NO
20 TIME PRESSURE.

21 SO WE AGREED TO THEIR SCHEDULE FOR THEIR
22 CASE.

23 BUT WE DO NOT AGREE, AND I -- IF I HEARD
24 HER CORRECTLY THIS MORNING, THEY HAD NO TACTICAL
25 REASON FOR DOING IT, THEY HAD NO STRATEGIC REASON

1 FOR DOING IT, BUT THE REASON THEY JOINED THESE
2 CASES WAS BECAUSE YOUR HONOR TOLD THEM TO DO.
3 THAT'S WHAT SHE TOLD YOU ON THE DISQUALIFICATION
4 MOTION.

5 AND IF YOU TOLD THEM TO DO IT, YOU CAN
6 TELL THEM NOT TO DO IT, TOO. WE DON'T NEED TO
7 FORCE THEM INTO SOME EXPEDITED SCHEDULE THAT THEY
8 DON'T WANT TO DO.

9 BUT WE NEED IT AND THAT'S WHY WE'RE
10 ASKING FOR IT.

11 THE COURT: I DIDN'T TELL THEM TO DO IT.

12 MR. MCELHINNY: I KNOW, YOUR HONOR.

13 THE COURT: I ASKED IF THEY WERE GOING TO
14 DO IT.

15 MR. MCELHINNY: AND I WAS BEING -- I WAS
16 BEING -- THE RECORD SHOULD REFLECT THAT I
17 UNDERSTOOD THAT PERFECTLY AND THAT WAS THE POINT I
18 WAS TRYING TO MAKE.

19 BUT SHE DID SAY THAT THEY DIDN'T DO IT
20 FOR ANY TACTICAL REASON THAT THEY NEEDED IT FOR.

21 ON THE ITC, TO BE CLEAR ON THE CORRECTION
22 THAT WAS MADE TO HER ARGUMENT, WHILE TELLING YOU
23 THAT THEY CAN'T POSSIBLY TRY THIS CASE IN SIX TO
24 EIGHT MONTHS, THEY FILED AN ITC ACTION IN WHICH THE
25 TRIAL WILL OCCUR WITHIN TEN MONTHS.

1 THE DECISION COMES LATER, BUT THEY ARE
2 PREPARED -- YOUR HONOR HAS A LOT OF EXPERIENCE
3 HERE. WE'RE ALL BIG FIRMS. IF YOUR HONOR TOLD US
4 THAT WE WERE GOING TO TRIAL 90 DAYS FROM TODAY, WE
5 COULD DO THAT.

6 WE'RE NOT ASKING FOR THAT. WE'RE ASKING
7 FOR NEXT MAY, OR APRIL I THINK.

8 AND THERE'S JUST NOTHING IN THIS CASE
9 THAT'S INSURMOUNTABLE TO MAKE THAT TRUE.

10 THE UNITED STATES IS A LEADER IN THE
11 PROTECTION OF INTELLECTUAL PROPERTY.

12 THE NORTHERN DISTRICT IS THE LEADER.
13 WE'VE CITED TO YOUR HONOR CASES WHERE NORTHERN
14 DISTRICT JUDGES HAVE SAID, IN CASES OF I.P. RIGHTS
15 BEING CHALLENGED, THE COURTS CAN RESPOND. THEY CAN
16 STEP UP AND PREDICT -- PROTECT THE LEGITIMATE
17 INTERESTS.

18 WE THINK WE HAVE DEMONSTRATED TO YOUR
19 HONOR THE POSITION THAT APPLE HOLDS, ITS ICONIC
20 POSITION BECAUSE OF ITS DESIGN AND ITS PRODUCTS,
21 AND THAT -- WHAT APPLE HAS ACCOMPLISHED, WHICH IS
22 RECOGNIZED WORLDWIDE, DESERVES TO BE PROTECTED AND
23 THE ONLY WAY TO PROTECT IT IS TO DECIDE THE LEGAL
24 ISSUES THAT ARE BEING CHALLENGED HERE.

25 THANK YOU.

1 THE COURT: ALL RIGHT. WE'RE GOING TO
2 TALK ABOUT THE CASE SCHEDULE.

3 LET ME TALK ABOUT MY FAVORITE TOPIC,
4 WHICH IS ALTERNATIVE DISPUTE RESOLUTION.

5 BOTH SIDES EXPRESSED AN INTEREST IN DOING
6 PRIVATE MEDIATION, BUT YOU SAID AT THE TIME AND ON
7 A DATE WHEN YOU THOUGHT IT WOULD BE APPROPRIATE.

8 WHEN IS THAT? WHEN IS THAT?

9 MR. MCELHINNY: THE ANSWER --

10 THE COURT: WHY IS THAT NOT NOW?

11 MR. MCELHINNY: IT IS NOT NOW BECAUSE THE
12 PARTIES ARE SO FAR DIVIDED ON THE LEGAL ISSUES THAT
13 ARE PRESENTED HERE.

14 AS YOUR HONOR KNOWS, SOMETIMES YOU HAVE
15 TO DECIDE SOME KEY LEGAL ISSUES BECAUSE THE
16 PARTIES, THEY CAN'T TALK AROUND THAT GAP.

17 THE COURT: AND WHAT IS THAT? IS THAT
18 THE P.I. MOTION? IS THAT A MARKMAN RULING? WHAT
19 IS THAT? IS THAT SUMMARY JUDGMENT?

20 MR. MCELHINNY: I DON'T KNOW THE ANSWER
21 TO THAT, YOUR HONOR.

22 THE COURT: OKAY. WHAT ABOUT FROM
23 SAMSUNG? WHEN --

24 MR. JOHNSON: FROM SAMSUNG'S STANDPOINT,
25 YOUR HONOR, WE ARE -- WE'RE WILLING AND ABLE TO

1 PARTICIPATE, YOU KNOW, SO -- WE DON'T -- WE'RE
2 HEARING FROM APPLE'S STANDPOINT THEY DON'T WANT TO
3 TALK.

4 BUT, YOU KNOW, I'M ALWAYS OF THE BELIEF
5 THAT IT MAKES SENSE TO TALK AND SEE IF THERE'S ANY
6 POTENTIAL TO RESOLVE THE DISPUTE.

7 THE COURT: THAT SOUNDED PRETTY AMENABLE
8 TO ME.

9 MR. MCELHINNY: YOUR HONOR, I HAVE NO
10 INFORMATION BEYOND WHAT I TOLD YOU.

11 I MEAN, THEY KNOW WHERE WE LIVE.

12 THE COURT: ALL RIGHT. WELL, I'M
13 DISAPPOINTED TO HEAR THAT.

14 NOW, THERE WASN'T -- THERE WAS SORT OF A
15 HINT OF A SEVERANCE ISSUE, BUT THERE WAS NO
16 SEVERANCE MOTION.

17 AT THIS POINT I'M KEEPING THIS ALL AS ONE
18 BIG CASE AND WE'RE GOING TO DO CLAIM CONSTRUCTION,
19 BUT IT'S GOING TO BE LIMITED TO TEN TERMS.

20 AND TO THE EXTENT THE PARTIES CAN AGREE,
21 THOSE WILL BE THE TEN TERMS.

22 TO THE EXTENT THAT YOU CANNOT, EACH SIDE
23 WILL JUST GET TO PICK YOUR OWN.

24 HOPEFULLY THERE WILL BE SOME THAT YOU'LL
25 AGREE TO. IF NOT, EACH SIDE WILL GET FIVE.

1 AND WE'LL DO CLAIM CONSTRUCTION ON THOSE
2 TEN; WE'LL GO THROUGH SUMMARY JUDGMENT ON THOSE
3 TEN; WE'LL GO THROUGH TRIAL ON THOSE TEN.

4 I'M NOT, AT THIS POINT, COMMITTING TO
5 HAVING A SECOND PHASE OR SECOND ROUND OF CLAIM
6 CONSTRUCTION, SUMMARY JUDGMENT, TRIAL.

7 BUT WHAT I WOULD LIKE IS TO HAVE A VERY
8 NARROW CASE GO TO A JURY, AND SO WHAT I'M GOING TO
9 DO WITH REGARD TO -- WELL, LET'S TALK ABOUT
10 DISCOVERY.

11 BOTH SIDES DIDN'T WANT LIMITS ON REQUESTS
12 FOR PRODUCTION OR ADMISSIONS, THAT'S FINE; IT'LL BE
13 80 INTERROGATORIES PER SIDE; AND 250 HOURS OF
14 DEPOSITION, EACH SIDE, EXCLUDING EXPERTS AND THIRD
15 PARTY WITNESSES, AND SEVEN HOUR LIMITS PER
16 DEPOSITION.

17 I THINK THOSE WERE YOUR ONLY DISCOVERY
18 DISPUTES. DOES THAT SOUND RIGHT? LET ME JUST
19 CHECK YOUR --

20 MR. JOHNSON: I THINK THAT'S CORRECT,
21 YOUR HONOR.

22 THE COURT: OKAY. ALL RIGHT. SO THAT
23 WILL BE THE DISCOVERY LIMITS AND ALL CASES, BOTH
24 THE APPLE AFFIRMATIVE CASE AND THE SAMSUNG
25 COUNTERCLAIMS, ARE GOING TOGETHER AND THOSE ARE THE

1 LIMITS FOR BOTH CASES.

2 WITH REGARD TO SCHEDULING, THIS IS WHAT
3 I'M GOING TO PROPOSE. I MEAN, WE'VE ALREADY HAD
4 EXPEDITED DISCOVERY. WE'LL ALREADY, TO SOME
5 EXTENT, HAVE SOME CLAIM CONSTRUCTION IN THE
6 PRELIMINARY INJUNCTION MOTION. YOU'VE ALREADY EVEN
7 HAD SOME CLAIM CONSTRUCTION DISCOVERY IN THE
8 PRELIMINARY INJUNCTION DISCOVERY.

9 SO I WOULD LIKE TO HAVE A MORE
10 EXPEDITIOUS SCHEDULE, BUT NOT THE ONE THAT APPLE
11 SUGGESTED BECAUSE I JUST DON'T THINK THAT'S
12 FEASIBLE CONSIDERING THE COMPLEXITY AND ALL OF THE
13 INTELLECTUAL PROPERTY RIGHTS THAT HAVE BEEN
14 ASSERTED IN THIS CASE.

15 BUT THIS IS WHAT I'D LIKE TO PROPOSE, AND
16 I'LL GIVE YOU EACH A CHANCE TO RESPOND: SO INITIAL
17 DISCLOSURES WILL BE DUE SEPTEMBER 7TH, TWO WEEKS
18 FROM TODAY AS ACCORDING TO THE FEDERAL RULES OF
19 CIVIL PROCEDURE; HAVE YOUR INFRINGEMENT CONTENTIONS
20 DUE ON SEPTEMBER 7TH AS WELL; INVALIDITY
21 CONTENTIONS, OCTOBER 7TH; EXCHANGE PRELIMINARY
22 CLAIM CONSTRUCTION OCTOBER 17TH; EXCHANGE CLAIM
23 TERMS OCTOBER 31ST; FILE YOUR JOINT CLAIM
24 CONSTRUCTION, PREHEARING STATEMENT NOVEMBER 14TH;
25 THE DEADLINE TO AMEND THE PLEADINGS IS ALSO GOING

1 TO BE NOVEMBER 14TH; AND THE CLOSE OF CLAIM
2 CONSTRUCTION DISCOVERY IS NOVEMBER 28TH.

3 ALL RIGHT. SO OPENING CLAIM CONSTRUCTION
4 BRIEF WILL BE DECEMBER 8TH; OPPOSITION,
5 DECEMBER 22ND; REPLIES, DECEMBER 29TH.

6 WE CAN HAVE A TUTORIAL -- LET ME ASK
7 MS. GARCIA IF YOU WOULD CHECK THE WEEK OF
8 JANUARY 19TH, 2012, PLEASE. IF YOU COULD CHECK
9 THAT THURSDAY AND SEE IF THE LAW AND MOTION IS
10 HEAVY.

11 THE CLERK: YOU DON'T HAVE ANYTHING SET
12 AT THAT TIME.

13 THE COURT: OH, OKAY. WHAT ABOUT FOR --
14 WHAT ABOUT THE WEEK BEFORE? CAN YOU CHECK THE 12TH
15 AS WELL, THE 12TH AND THE 19TH?

16 THE CLERK: ONE MATTER IS SET FOR THE
17 12TH.

18 THE COURT: AND WHICH CASE IS THAT?

19 THE CLERK: MINSHALL.

20 THE COURT: OH, OKAY. THAT'S AN ERISA
21 CASE.

22 (DISCUSSION OFF THE RECORD BETWEEN THE
23 COURT AND THE CLERK.)

24 THE COURT: THAT'S OKAY. THIS IS WHAT
25 I'LL DO: I'LL SET A HALF DAY TUTORIAL ON MONDAY,

1 JANUARY 16TH OF 2012. LET'S SET IT IN THE
2 AFTERNOON FROM 1:30 TO 4:30.

3 AND THEN I'LL SET THE CLAIM CONSTRUCTION
4 HEARING FOR THAT FRIDAY, JANUARY 20TH OF 2012 -- I
5 WOULD LIKE TO JUST SET THAT --

6 (DISCUSSION OFF THE RECORD BETWEEN THE
7 COURT AND THE CLERK.)

8 THE COURT: ALL RIGHT. WHY DON'T I SET
9 THAT, THEN, ON THE -- I'LL SET IT ON THE 17TH AND
10 SET THE CLAIM CONSTRUCTION ON THE 20TH, AND I WON'T
11 SET ANY LAW AND MOTION THAT WEEK. THAT'LL BE THE
12 20TH, WHICH IS FRIDAY, AND WE'LL START AT 10:00.

13 I WOULD JUST LIKE TO DO IT FOR FOUR
14 HOURS, SO 10:00 TO 12:00, AND THEN 1:00 TO 3:00.

15 NOW, I CAN SET THE FACT DISCOVERY CUT OFF
16 SOONER, OTHERWISE I'D SET IT FOR MARCH 8TH OF 2012.
17 WHY DON'T -- I'LL KEEP THAT DATE, MARCH 8TH OF
18 2012; INITIAL EXPERT REPORTS, MARCH 22ND OF 2012;
19 REBUTTAL, APRIL 16TH; CLOSE OF EXPERT DISCOVERY,
20 I'LL SAY APRIL 27TH OF 2012; FILE YOUR DISPOSITIVE
21 MOTIONS ON MAY 3RD; HEARING WILL BE JUNE 7TH AT
22 1:30; PRETRIAL CONFERENCE, JULY 18TH AT 2:00
23 O'CLOCK; AND THE TRIAL ON MONDAY, JULY 30TH AT
24 9:00 A.M.

25 AND I'LL JUST PUT IT IN, FOR NOW, AS A 13

1 DAY ESTIMATE, BUT WE CAN FINE TUNE THAT LATER.

2 DOES ANYONE WANT TO BE HEARD ON THIS
3 SCHEDULE? SO IT'S MORE EXPEDITED, BUT I THINK IT
4 STILL PROVIDES ENOUGH TIME. I'M EXPEDITING IT
5 BECAUSE WE HAVE ALREADY HAD SOME, QUITE A BIT OF
6 DISCOVERY FOR THE P.I. MOTION.

7 MR. LEE: YES, BILL LEE FROM WILMER,
8 HALE.

9 THE COURT: YES.

10 MR. LEE: THE SCHEDULE IS FINE, YOUR
11 HONOR, FROM OUR COLLECTIVE POINT OF VIEW. I HAVE
12 JUST ONE QUESTION.

13 THE COURT: YES.

14 MR. LEE: YOUR HONOR SAID THERE WOULD BE
15 TEN CLAIM TERMS WITH THE HOPE OF NARROWING THE
16 PATENTS AND THE CLAIMS TO ACTUALLY BE TRIED
17 BEGINNING ON JULY 30TH.

18 IS THAT SOMETHING YOUR HONOR CONTEMPLATES
19 WILL HAPPEN DURING THE COURSE OF THE PROCESS OF
20 IDENTIFYING THE CLAIM TERMS AND NARROWING THE
21 CLAIMS DOWN BY US WORKING TOGETHER?

22 THE COURT: YES. SO WHEN YOU HAVE TO
23 MEET AND CONFER -- AFTER YOU EXCHANGE YOUR PROPOSED
24 CLAIM TERMS AND YOU HAVE TO MEET AND CONFER TO
25 NARROW THOSE TEN TERMS, IF YOU REACH AGREEMENT ON

1 SOME, THEN THOSE WILL OBVIOUSLY BE PART OF THE TEN,
2 AND WHATEVER YOU DON'T, YOU'LL HAVE TO JUST SPLIT
3 IT WHERE YOU GET TO PICK SOME AND YOU GET TO PICK
4 SOME.

5 MR. LEE: AND JUST HYPOTHETICALLY, YOUR
6 HONOR, LET'S SAY THERE'S A PATENT AND WE AGREE UPON
7 WHAT THE CLAIM TERMS MEAN, BUT WE'D LIKE TO HAVE
8 THAT PATENT BE PART OF THE TRIAL. IS THAT
9 SOMETHING WE'LL RESOLVE WITH YOUR HONOR DURING THE
10 COURSE OF THE MARKMAN, SUMMARY JUDGMENT, PRETRIAL
11 PROCEEDING?

12 THE COURT: WAIT. YOU'RE SAYING THAT
13 THERE'S NO DISPUTE AS TO THE CLAIM TERM'S --

14 MR. LEE: RIGHT. I GUESS --

15 THE COURT: -- CONSTRUCTION, BUT YOU
16 STILL WANT IT TO BE PART OF THE TRIAL?

17 MR. LEE: YEAH. I COULD CONTEMPLATE THAT
18 THERE WILL BE CERTAIN CLAIMS THAT HAVE BEEN
19 ASSERTED, LIKE THE CONTRACT CLAIMS, BUT ALSO THERE
20 MAY BE PATENT CLAIMS WHERE WE AGREED ON WHAT THE
21 CLAIM TERMS MEAN, BUT EITHER OR BOTH OF US WANT
22 THEM TO BE PART OF THE TRIAL.

23 NOW, IF WE AGREE THAT WE'LL AGREE, WE'LL
24 COME TO YOUR HONOR AND SAY WE AGREE.

25 BUT HYPOTHETICALLY, I COULD SEE A

1 SITUATION WHERE WE HAVE NO DISPUTE AS TO WHAT THE
2 CLAIM TERMS MEAN AS A MATTER OF MARKMAN CLAIM
3 CONSTRUCTION --

4 THE COURT: UM-HUM.

5 MR. LEE: -- BUT WE MIGHT HAVE A DISPUTE
6 AS TO WHETHER THIS IS ONE OF THE, YOU KNOW, 19
7 PATENTS YOUR HONOR SHOULD CONSIDER PARING DOWN FOR
8 PURPOSES OF THE TRIAL.

9 NOW, MAYBE THE THING TO DO IS LET US GO
10 THROUGH THE MEET AND CONFER ON THE CLAIM
11 CONSTRUCTION PROCESS, LET US CONFER AS TO WHETHER
12 MY HYPOTHETICAL EVEN EXISTS, AND THEN WE COME BACK
13 TO YOUR HONOR AT THAT POINT IN TIME.

14 THE COURT: I WOULD PREFER THAT. I'M
15 NOT, AT THIS POINT, LIMITING THE TRIAL TO WHAT YOU
16 ACTUALLY HAVE CONSTRUED IF THAT'S THE QUESTION.

17 MR. LEE: THAT WAS MY QUESTION.

18 THE COURT: BUT I WOULD WANT -- EXCUSE
19 ME -- I WOULD WANT, BEFORE THE TRIAL, THAT WE COME
20 TO SOME AGREEMENT AS TO WHAT THE VERY NARROW ISSUES
21 ARE GOING TO BE.

22 AND AT THIS POINT I THINK IT'S PREMATURE
23 TO NARROW THE SCOPE UNTIL YOU HAVE MORE DISCOVERY,
24 YOU HAVE MORE INFORMATION, AND YOU HAVE MORE
25 RULINGS.

1 BUT AT THAT POINT -- AT THE POINT OF
2 TRIAL, WE'RE GOING TO PICK JUST VERY NARROWLY.

3 IT'S NOT GOING TO BE 19 PATENTS GOING TO
4 TRIAL. IT'S NOT GOING TO BE ALL THE -- DO YOU SEE
5 WHAT I'M SAYING?

6 MR. LEE: I UNDERSTAND. FAIR ENOUGH.
7 FAIR ENOUGH.

8 AND I THINK WE'LL BE ABLE TO CRYSTALIZE
9 THINGS BETTER FOR YOUR HONOR, BECAUSE DEPENDING
10 UPON WHICH PATENTS THEY WANT TO ASSERT, THAT WILL
11 PERHAPS NECESSARILY BRING ALONG SOME OF THE OTHER
12 ISSUES.

13 BUT THAT'S SOMETHING THAT WE OUGHT TO BE
14 ABLE TO WORK OUT SOME TIME DURING THE NEXT SIX
15 MONTHS OR SO.

16 THE COURT: BUT THE TEN MEANS TEN.

17 MR. LEE: GOT IT.

18 THE COURT: OKAY? SO I DON'T WANT A
19 WHOLE CLAIM THAT'S, LIKE, FOUR PARAGRAPHS LONG AND
20 YOU'RE SAYING THAT'S THE WHOLE TERM. I REALLY WANT
21 NARROW, JUST TEN TERMS.

22 AND WE'LL DECIDE AFTER THE TRIAL WHETHER
23 WE NEED TO DO ROUND TWO OF THIS WHOLE PROCESS. I'M
24 HOPING NOT.

25 MR. LEE: FAIR ENOUGH. GOT IT.

1 MR. JOHNSON: AND YOUR HONOR, JUST
2 QUICKLY?

3 THE COURT: YES?

4 MR. JOHNSON: WITH RESPECT TO THE
5 DISCOVERY THAT HAS ALREADY HAPPENED, I JUST WANT TO
6 POINT OUT, OBVIOUSLY, THAT THE DISCOVERY HAS ONLY
7 BEEN WITH RESPECT TO ONE UTILITY PATENT THAT APPLE
8 HAS ASSERTED.

9 THERE'S SEVEN OTHER UTILITY PATENTS, OF
10 WHICH WE'VE RECEIVED NO DISCOVERY AT THIS POINT,
11 AND WE HAVE ISSUES EVEN WITH THE SCOPE OF DISCOVERY
12 THAT WE'VE RECEIVED SO FAR, IN ADDITION TO THE FACT
13 THAT THERE ARE FOUR OTHER DESIGN PATENTS THAT WE
14 DON'T HAVE DISCOVERY ON YET.

15 SO MY POINT IS THAT THERE'S STILL --
16 THESE ARE -- THIS IS OBVIOUSLY A BIG CASE WITH A
17 LOT OF PATENTS IN IT.

18 WITH A MARKMAN -- WITH US STARTING TO
19 CHOOSE MARKMAN TERMS AND PROCEEDING TO CLAIM
20 CONSTRUCTION IN OCTOBER AND NOVEMBER, I UNDERSTAND
21 AND OBVIOUSLY WE'RE GOING TO BE FOCUSSED DOWN THE
22 CASE ULTIMATELY FOR TRIAL, BUT AT LEAST AT THE
23 BEGINNING, WE HAVE TO GET THE DISCOVERY FROM THEM.

24 THERE ARE 32 INVENTORS JUST ON THEIR SIDE
25 WITH RESPECT TO THE PATENTS. THERE ARE ANOTHER

1 SEVEN LAWYERS THAT PROSECUTED THE PATENTS ON THEIR
2 SIDE.

3 I'M CONCERNED ABOUT THE TIME. AND I
4 UNDERSTAND YOUR HONOR'S DESIRE TO EXPEDITE AT SOME
5 POINT AND MOVE THINGS FORWARD, BUT UNDER THIS
6 SCHEDULE, IT DOESN'T -- IT DOESN'T LEAVE US, I
7 THINK, SUFFICIENT TIME TO PUT TOGETHER THE DEFENSES
8 THAT WE NEED IN ORDER TO PROPERLY FOCUS THE CASE.

9 AND I'M PARTICULARLY CONCERNED ABOUT
10 MOVING FORWARD WITH RESPECT TO CLAIM CONSTRUCTION
11 AND NOT HAVING THE BENEFIT OF ALL THE DEPOSITIONS
12 THAT NEED TO OCCUR AND THE PRIOR ART THAT NEEDS TO
13 OCCUR AND, YOU KNOW, LOOKING AT THE FOREIGN
14 COUNTERPARTS THAT EXIST EVERYWHERE ELSE AND
15 UNDERSTANDING WHAT'S BEEN GOING ON IN THE FOREIGN
16 PROSECUTIONS.

17 THE COURT: WELL, IF THESE CASES -- I'M
18 SORRY TO INTERRUPT YOU -- HAVE BEEN GOING ON SINCE
19 SEPTEMBER 2010, I ASSUME YOU'VE ALREADY BEEN
20 SEARCHING FOR PRIOR ART FOR THE LAST YEAR AT LEAST.

21 MR. JOHNSON: BUT THESE PATENTS ARE
22 DIFFERENT, AND THEY'RE -- AND NOW THEY'RE -- YOU
23 KNOW, WE DON'T HAVE THEIR INFRINGEMENT CONTENTIONS
24 YET, BUT WHEN I GET THEIR INFRINGEMENT CONTENTIONS,
25 THAT'S OBVIOUSLY -- DEPENDING ON HOW BROADLY THEY

1 CONSTRUE THINGS, IT'S GOING TO TURN US -- I MEAN,
2 IT MAY UNLEASH ADDITIONAL PRIOR ART.

3 SO I'M CONCERNED ABOUT HOW TIGHT THIS
4 SCHEDULE IS, AND PARTICULARLY WHEN WE GET WITH
5 RESPECT TO SOME OF THE DATES ON THE BACK END OF THE
6 SCHEDULE THAT HAVE US, FOR EXAMPLE, FILING
7 DISPOSITIVE MOTIONS A WEEK AFTER THE CLOSE OF
8 EXPERT DISCOVERY.

9 AND I DO THINK THAT THAT'S AN OPPORTUNITY
10 FOR US TO REALLY FOCUS THE CASE AND FIGURE OUT
11 REALLY ON BOTH SIDES WHAT ARE THE STRENGTHS AND
12 WEAKNESSES AND WHAT'S ACTUALLY GOING TO GET TRIED.

13 I THINK THAT'S AN IMPORTANT TIME FOR THE
14 PARTIES TO FIGURE OUT WHAT DISPOSITIVE MOTIONS ARE
15 GOING TO BE FILED AND THEN COME TO YOUR HONOR WITH,
16 WITH THE -- YOU KNOW, ULTIMATELY WITH WHAT THE
17 BEST, WHAT THE BEST THEORIES ARE GOING TO BE AND
18 WHAT'S GOING TO ACTUALLY GET TRIED.

19 SO COMPRESSING IT ON THE BACK END AS WELL
20 WITH RESPECT TO DISPOSITIVE MOTIONS, I'D ASK FOR A
21 LITTLE BIT MORE TIME IN THAT RESPECT.

22 THE COURT: ALL RIGHT. WELL, BEFORE I DO
23 THAT, LET ME ASK, APPLE, YOU WANTED THIS FAST.

24 WHY DON'T YOU GIVE YOUR INFRINGEMENT
25 CONTENTIONS ON MONDAY?

1 MR. MCELHINNY: YES.

2 THE COURT: ARE YOU GOING TO DO THAT?

3 MR. MCELHINNY: YES.

4 THE COURT: HOW QUICKLY CAN YOU DO THAT?

5 CAN YOU DO IT FRIDAY? GIVE ME A SOONER DATE. GIVE

6 ME INITIAL DISCLOSURES VERY QUICKLY. YOU WANTED

7 THIS, YOU'RE GOING TO GET IT.

8 MR. MCELHINNY: YES, YOUR HONOR.

9 THE COURT: WHEN CAN YOU DO YOUR INITIAL

10 DISCLOSURES? YOU WANT TO DO THEM ON FRIDAY?

11 I'M GOING TO LET SAMSUNG KEEP

12 SEPTEMBER 7TH AS THEIR DATE. THEY GET THE FULL 14

13 DAYS PROVIDED BY THE CIVIL RULES OF PROCEDURE.

14 WHERE ARE WE? WE'RE AUGUST 24TH.

15 HOW QUICKLY CAN APPLE GET ITS INITIAL

16 DISCLOSURES AND INFRINGEMENT CONTENTIONS?

17 MR. MCELHINNY: WE CAN GIVE THEM ON

18 FRIDAY, YOUR HONOR.

19 THE COURT: OKAY. SO AUGUST 26TH IS

20 GOING TO BE THE DATE JUST FOR APPLE FOR

21 INFRINGEMENT CONTENTIONS AND FOR INITIAL

22 DISCLOSURES.

23 NOW, ARE YOU GOING TO BE MAKING A

24 DOCUMENT PRODUCTION WITH YOUR INITIAL DISCLOSURES,

25 OR ONLY A LISTING OF CATEGORIES OF DOCUMENTS?

1 MR. MCELHINNY: NO, YOUR HONOR. WE'RE
2 GOING TO PRODUCE DOCUMENTS ON FRIDAY AS WELL.

3 THE COURT: OKAY.

4 MR. MCELHINNY: CAN I --

5 THE COURT: NOW, I THINK THAT -- I THINK
6 MR. JOHNSON'S RAISED A GOOD POINT. HOW IS HE GOING
7 TO GET ALL THESE DEPOSITIONS IN TIME?

8 IF YOU WANT TO KEEP THIS DATE, I THINK
9 APPLE'S GOING TO HAVE TO AGREE THAT RATHER THAN
10 GETTING THE NORMAL 30 DAYS TO RESPOND TO ANY
11 DISCOVERY, YOU'RE GOING TO DO IT ON A MUCH MORE
12 EXPEDITED BASIS.

13 OTHERWISE I AM GOING TO MOVE THIS CLAIM
14 CONSTRUCTION DATE SOMEWHAT.

15 MR. LEE: WELL, YOUR HONOR, WE'LL DO
16 WHATEVER WE NEED TO DO TO KEEP THE DATES.

17 BUT LET ME MAKE ONE POINT JUST TO MAKE
18 SURE THAT THE PLAYING FIELD IS EVEN HERE.

19 THE COURT: YEAH.

20 MR. LEE: THERE ARE FOUR PATENTS THAT ARE
21 GOING TO BE IN THIS CASE. THE FOUR LATEST PATENTS
22 ASSERTED ARE PATENTS THAT SAMSUNG ASSERTED ON
23 JUNE 30TH.

24 WE'RE GOING TO HAVE TO SUBMIT OUR
25 INFRINGEMENT CONTENTIONS ON THOSE PATENTS, WHICH

1 CAME INTO THE CASE FOR THE FIRST TIME ABOUT 30 DAYS
2 AGO, 40 DAYS AGO, BY OCTOBER 7TH.

3 BOTH OF US, IN ORDER TO GET THIS
4 RESOLVED, ARE GOING TO HAVE TO SUFFER A LITTLE BIT
5 OF PAIN AND GO A LITTLE BIT FASTER.

6 AND THE REASON WE NEED TO DO IT, YOUR
7 HONOR, NOT TO REITERATE WHAT MR. MCELHINNY SAID OR
8 TO REVISIT THE ARGUMENT THAT MS. SULLIVAN AND
9 MR. MCELHINNY HAD, BUT MR. VERHOEVEN IS RIGHT, THE
10 TECHNOLOGY IN THIS FIELD HAS THE LIFE OF A CABBAGE,
11 WHETHER YOU'RE FROM IOWA OR BOSTON OR FROM
12 SAN FRANCISCO.

13 THE REASON THAT WE NEED AN EARLY
14 DETERMINATION -- AND JULY NEXT YEAR IS AN EARLY
15 DETERMINATION -- IS SO THAT NO PARTY, SAMSUNG OR
16 APPLE, CONVINCES THE COURT TO DELAY PROCEEDINGS SO
17 THAT THERE ARE FOUR OR FIVE CROPS OF CABBAGES
18 BEFORE WE GET TO A FINAL DETERMINATION AND THAT
19 FINAL DETERMINATION IS NOTHING ABOUT YESTERDAY'S
20 TECHNOLOGY AND YESTERDAY'S DOLLARS.

21 BOTH OF US ARE GOING TO HAVE TO BASICALLY
22 SUCK IT UP AND GO FASTER.

23 AND THE FOUR PATENTS --

24 THE COURT: BUT YOU INITIATED THE WAR, SO
25 IT'S PROBABLY MORE APPROPRIATE FOR YOU TO HAVE TO

1 SUFFER THE --

2 MR. LEE: YOUR HONOR, THE QUESTION OF WHO
3 INITIATED THE WAR IS OPEN TO DISCUSSION AND IT'S
4 PROBABLY THE SUBJECT OF SOME DEBATE.

5 BUT IF YOUR HONOR CONSIDERS THIS, THE
6 '771 PATENT, THE '460 PATENT, THE '893 PATENT, AND
7 THE '871 PATENT, THE FIRST TIME THAT WE KNEW THEY
8 WERE IN THE CASE WAS 40 DAYS AGO, 50 DAYS AGO.

9 WE'RE GOING TO GET INFRINGEMENT
10 CONTENTIONS ON SEPTEMBER 7TH, SO I'M GOING TO BE IN
11 EXACTLY THE SAME SITUATION THAT MR. JOHNSON IS
12 GOING TO BE IN.

13 WE'LL GET OUR INVALIDITY CONTENTIONS IN
14 BY OCTOBER 7TH SO WE CAN HAVE THE MARKMAN HEARING.

15 WHY? BECAUSE WE THINK COLLECTIVELY WE
16 NEED TO GET THESE ISSUES RESOLVED NEXT JULY.

17 THE COURT: WELL, THAT STILL DOESN'T
18 ANSWER MY QUESTION. HOW QUICKLY -- MR. JOHNSON IS
19 CORRECT, THE EXPEDITED DISCOVERY HAS LARGELY BEEN
20 ONE-SIDED. IT'S BEEN GETTING THE SAMSUNG DISCOVERY
21 FOR THE APPLE P.I. MOTION.

22 MR. MCELHINNY: NO. IT'S EXACTLY THE
23 OPPOSITE, YOUR HONOR. THEY'VE HAD DISCOVERY.
24 WE'VE HAD NONE.

25 MR. JOHNSON: YOUR HONOR, WE DID NOT ASK

1 FOR THIS CASE TO BE EXPEDITED.

2 THE COURT: I KNOW.

3 MR. LEE: YEAH, THAT'S ACTUALLY -- THAT
4 ACTUALLY IS THE POINT.

5 MR. JOHNSON: AND SO -- AND NOW FOR US --
6 IF THE GOAL IS ULTIMATELY TO TRY THIS CASE AND
7 FIGURE OUT WHAT ACTUALLY GETS TRIED AND STREAMLINE
8 IT, THEN WE HAVE TO BE IN A SITUATION, AND THEY --
9 AND THEY DID FILE THIS CASE FIRST.

10 I MEAN, SO WE HAVE TO BE IN A SITUATION
11 WHERE WE CAN TAKE THE INVENTOR DEPOSITIONS -- I'D
12 LIKE TO HEAR WHEN I'M GOING TO GET THE INVENTOR --

13 THE COURT: I'M SORRY TO INTERRUPT YOU.

14 MR. JOHNSON: GO AHEAD.

15 THE COURT: LET'S AT LEAST GIVE US A
16 COMMITMENT ON THE INVENTORS. I THINK APPLE HAS TO
17 BE SOMEWHAT ACCOMMODATING HERE. AT LEAST YOUR
18 INVENTORS AND --

19 MR. JOHNSON, WHAT ELSE?

20 MR. JOHNSON: INVENTORS, PROSECUTING
21 LAWYERS.

22 YOU KNOW, WE WERE TOLD THERE WERE NO
23 DESIGN -- THERE WERE NO INVENTOR'S NOTEBOOKS DURING
24 THE PRELIMINARY INJUNCTION DISCOVERY PROCEEDINGS.

25 WE TOOK A DEPOSITION. WE FIGURED OUT

1 THAT THERE ARE NOTEBOOKS.

2 SO, YOU KNOW, I UNDERSTAND THEY'RE SAYING
3 THEY PRODUCED DOCUMENTS --

4 THE COURT: LET ME GET A COMMITMENT FROM
5 APPLE ON THE INVENTORS AND PROSECUTORS.

6 MR. LEE: CAN WE GET A MUTUAL COMMITMENT,
7 YOUR HONOR? BECAUSE IF WE'RE IN THE SAME
8 SITUATION, LET'S HAVE A MUTUAL COMMITMENT THAT
9 WE'LL GIVE THEM OUR INVENTORS, THE PROSECUTING
10 ATTORNEYS. LET'S GET IT BACK FROM THEM AS WELL.

11 THE COURT: ALL RIGHT. BUT I'M ACTUALLY
12 OKAY WITH THIS NOT BEING PERFECTLY SYMMETRICAL AND
13 HAVING APPLE GIVE AN EARLIER DATE FROM SAMSUNG.

14 SO GIVE ME A DATE.

15 MR. MCELHINNY: I'M SORRY. I'M SORRY. I
16 GOT LOST.

17 YOU WERE TALKING ABOUT LESS THAN 30 DAYS
18 NOTICE. WHAT SPECIFICALLY DO YOU NEED A DATE FOR?

19 THE COURT: WELL, THERE ARE A COUPLE OF
20 ISSUES HERE. ONE IS I WANT A COMMITMENT DATE BY
21 WHICH THE INVENTORS AND PROSECUTORS WILL BE
22 DEPOSED, WHEN THE APPLE FOLKS WILL BE.

23 AND THEN I'LL HAVE A DATE, A COMMITMENT
24 OF A COMPLETION DATE FROM SAMSUNG.

25 THE OTHER QUESTION WAS WHETHER APPLE

1 WOULD AGREE TO A LESSER PERIOD THAN 30 DAYS FOR
2 DISCOVERY RESPONSES.

3 AND I'M REALLY SORRY TO MY NEXT CASE, THE
4 QUALITY INVESTMENT VERSUS SERRANO ELECTRIC AND
5 PETERSON POWER, I'M VERY SORRY THAT YOU'RE HAVING
6 TO WAIT. THANK YOU FOR YOUR PATIENCE.

7 MR. MCELHINNY: WE'RE CHECKING THAT DATE.

8 CAN I ASK JUST A TECHNICAL --

9 THE COURT: YES.

10 MR. MCELHINNY: -- AS WE SAY IN THE
11 TRADE, HOUSEKEEPING QUESTION?

12 THE COURT: YES.

13 MR. MCELHINNY: AT THE BEGINNING OF THIS
14 CASE, YOU SAID THAT YOU WERE GOING TO USE
15 MAGISTRATE GREWAL FOR DISCOVERY MATTERS.

16 THE COURT: UM-HUM.

17 MR. MCELHINNY: AND THEN YOU HAVE KEPT
18 WITH YOURSELF THE DISCOVERY MATTERS, IF ANY, THAT
19 ARISE CONCERNING THE PRELIMINARY INJUNCTION.

20 THE COURT: UM-HUM.

21 MR. MCELHINNY: SO THAT WE'RE NOT
22 CONFUSED, DO YOU STILL ANTICIPATE A TRANSFER THERE?
23 AND IF SO, HOW WILL WE KNOW WHEN TO START DOING
24 THAT? THAT'S THE QUESTION I HAVE.

25 THE COURT: WELL, DO YOU HAVE ANY

1 DISCOVERY DISPUTES AS TO THE PRELIMINARY INJUNCTION
2 DISCOVERY?

3 MR. MCELHINNY: THERE'S MEETS AND CONFERS
4 AND STUFF GOING ON. I DON'T THINK THERE'S A -- I
5 DON'T THINK WE'VE GOT A MOTION.

6 MR. JOHNSON: WE DO, YOUR HONOR.

7 MR. MCELHINNY: WE DON'T HAVE ANY
8 DISCOVERY YET.

9 THE COURT: OKAY. THAT WILL GO TO
10 JUDGE GREWAL.

11 I'M GOING TO REQUIRE, AND I'M SURE HE
12 WOULD AGREE, THAT LEAD TRIAL COUNSEL HAVE TO MEET
13 IN PERSON TO MEET AND CONFER ON ANY DISCOVERY
14 DISPUTE BEFORE YOU FILE A MOTION. OKAY?

15 MR. MCELHINNY: THANK YOU, YOUR HONOR.

16 I HAVE YOUR -- I'M SORRY. I HAVE YOUR
17 DATE.

18 THE COURT: OKAY.

19 MR. MCELHINNY: WE CAN -- THE INVENTORS
20 AND THE PROSECUTING ATTORNEYS ON OR BEFORE
21 DECEMBER 1ST, YOUR HONOR.

22 THE COURT: WELL, THAT'S TOO LATE.
23 YOU'RE ASKING THEM TO FILE ALL THEIR CLAIM
24 CONSTRUCTION BRIEFS --

25 MR. MCELHINNY: I'M NOT SURE WHAT

1 INVENTORS OR PROSECUTING ATTORNEYS HAVE TO DO WITH
2 THE CLAIM CONSTRUCTION, YOUR HONOR.

3 THE COURT: LET ME HEAR FROM SAMSUNG.

4 WHAT'S YOUR DATE? AND IS THAT SOON
5 ENOUGH FOR YOU?

6 MR. JOHNSON: NO. THAT'S TOO LATE, YOUR
7 HONOR. I MEAN, IT HAS EVERYTHING TO DO WITH CLAIM
8 CONSTRUCTION.

9 I MEAN, TO THE POINT THAT -- YOU KNOW,
10 AS -- WELL, I CAN'T TALK ABOUT WHAT MR. ORDING
11 TESTIFIED SINCE IT'S UNDER SEAL, THEIR INVENTOR.

12 BUT BASICALLY THE INVENTORS ARE GOING TO
13 TESTIFY ABOUT PRIOR ART THAT THEY'RE AWARE OF;
14 THEY'RE GOING TO TESTIFY ABOUT UNENFORCEABILITY
15 ISSUES AS WELL; THEY'RE GOING TO TESTIFY ABOUT THE
16 SCOPE OF THE CLAIMS WITH RESPECT TO THE PRIOR ART.

17 THAT'S THE REASON WE TOOK MR. ORDING'S
18 DEPOSITION IN THE CONTEXT OF THE PRELIMINARY
19 INJUNCTION HEARING, AND WE -- AS WE SPELLED OUT IN
20 OUR PAPERS, WE LEARNED A LOT OF IMPORTANT
21 INFORMATION THAT AFFECTS THE CLAIM CONSTRUCTION OF
22 THE TERMS THAT ARE INVOLVED IN THAT -- ON THE '381
23 PATENT; WE LEARNED FACTS ASSOCIATED WITH
24 INDEFINITENESS, WHICH ALSO SHOULD BE CONSIDERED --
25 AT LEAST LOOKED AT IN THE CONTEXT OF CLAIM

1 CONSTRUCTION.

2 SO I'M NOT LOOKING TO DELAY THINGS THAT
3 ARE TOO FAR.

4 BUT AT THIS POINT, THERE ARE 32
5 INVENTORS. IF THE FIRST DATE I GET FROM THEM IS
6 DECEMBER AND I HAVE TO DO ALL THE CLAIM
7 CONSTRUCTION BEFORE THEN AND HAVE THE CLAIM
8 CONSTRUCTION HEARING, YOU KNOW, THE FIRST -- IN THE
9 MIDDLE PART OF JANUARY, THAT PUTS ME AT A SEVERE
10 PREJUDICE.

11 THE COURT: WELL, THESE ARE COMPLETION
12 DATES. THESE AREN'T BEGINNING DATES.

13 MR. MCELHINNY: THAT'S CORRECT, YOUR
14 HONOR.

15 THE COURT: I'M ASSUMING IT'S HAPPENING
16 BEFORE. THERE'S NO WAY YOU CAN HAVE 32 PEOPLE
17 DEPOSED --

18 MR. MCELHINNY: YOUR HONOR, I ALWAYS GET
19 IN TROUBLE WITH THESE THINGS, BUT TO BE REALISTIC
20 AND NOT TAKE YOUR TIME RIGHT NOW, THERE WILL COME A
21 TIME AT THE END OF PROCESS THAT YOUR HONOR HAS SET
22 WHERE SAMSUNG WILL FILE A MOTION TO CONTINUE THE
23 TRIAL DATE. THEY WILL SAY THEY DIDN'T GET THE
24 DISCOVERY THEY NEEDED AND THEY DIDN'T GET
25 DEPOSITIONS AND THEY DIDN'T GET WHATEVER.

1 AND AT THAT TIME YOU'RE GOING TO BE
2 LOOKING AT WHETHER OR NOT WE DID WHAT THEY NEEDED
3 IN ORDER TO GET READY. THAT'S JUST GOING TO
4 HAPPEN.

5 AND AS OPPOSED TO TRY TO HAMMER THIS OUT
6 RIGHT NOW, I THINK YOU -- WE UNDERSTAND WHAT YOUR
7 HONOR WANTS AND, YOU KNOW, I WOULD LIKE TO HAVE A
8 LITTLE BIT OF, YOU KNOW, TRUST HERE.

9 MR. JOHNSON: UNDER THE CURRENT SCHEDULE,
10 YOUR HONOR, THE CLOSE OF CLAIM CONSTRUCTION
11 DISCOVERY IS NOVEMBER 28TH.

12 LET'S PUSH BACK THE DATES BY EVEN A
13 COUPLE OF, JUST A COUPLE OF MONTHS, WHICH
14 SHOULDN'T -- WHETHER THE TRIAL IS IN JULY OR
15 AUGUST OR SEPTEMBER OF NEXT YEAR, YOU KNOW, I --
16 THERE CAN'T BE ANY PREJUDICE WITH RESPECT TO TWO
17 MONTHS.

18 THEY DELAYED TWO AND A HALF MONTHS WHEN
19 THEY BROUGHT THE PRELIMINARY INJUNCTION MOTION.

20 AND AS I MENTIONED, YOUR HONOR, THE REAL
21 ISSUE THAT I SEE IS ALSO ON THE BACK END WITH
22 RESPECT TO DISPOSITIVE MOTIONS.

23 GIVING US A WEEK AFTER THE CLOSE OF
24 REBUTTAL -- OF EXPERT DISCOVERY TO FILE MOTIONS ON,
25 AT THAT POINT, WHICH COULD BE, YOU KNOW, 15 APPLE

1 PATENTS AND THERE WILL BE 12 --

2 THE COURT: OKAY. I'M SORRY. I'VE GOT
3 TO CUT THIS OFF.

4 APPLE, YOU'RE GOING TO HAVE YOUR
5 INVENTORS AND PROSECUTING ATTORNEYS DEPOSED BY
6 NOVEMBER 1; AND SAMSUNG WILL BE DECEMBER 1. OKAY?

7 AS FAR AS THE LAST DAY TO FILE
8 DISPOSITIVE MOTIONS -- ALL RIGHT. I CAN -- I'LL
9 MOVE THAT TO MAY 17TH, 2012, AND THE HEARING ON
10 DISPOSITIVE MOTIONS WILL BE JUNE 21, 2012 AT 1:30.

11 OKAY? THE PRETRIAL CONFERENCE AND THE
12 JURY TRIAL DATES REMAIN.

13 ANYTHING ELSE?

14 MR. LEE: NO, YOUR HONOR.

15 THE COURT: LET ME ASK ONE LAST QUICK
16 QUESTION. IS APPLE WILLING TO AGREE TO A SHORTER
17 TIMEFRAME TO RESPOND TO DISCOVERY REQUESTS THAN 30
18 DAYS?

19 MR. MCELHINNY: AGAIN, IF IT WAS MUTUAL,
20 WE WOULD DO IT, YOUR HONOR.

21 MR. LEE: SURE.

22 MR. MCELHINNY: JUST -- I MEAN, JUST LET
23 ME --

24 THE COURT: YEAH.

25 MR. MCELHINNY: THEY'VE NEVER ASKED FOR

1 AN EXPEDITED TRIAL AND YOUR HONOR HAS GIVEN THEM AN
2 EXPEDITED TRIAL AS WELL, AND THAT'S FINE, BUT NOW
3 WE'RE BOTH IN THE SAME BOAT HERE EXCEPT THAT
4 THEY'VE HAD DISCOVERY AND WE HAVEN'T HAD ANY.

5 THE COURT: SO LET ME ASK WHETHER SAMSUNG
6 IS WILLING TO SHORTEN THE TIMEFRAME TO RESPOND TO
7 WRITTEN DISCOVERY REQUESTS.

8 MR. JOHNSON: I THINK IT'S SOMETHING THAT
9 WE COULD MEET AND CONFER WITH THEM ABOUT AND SEE IF
10 THERE'S A TIME -- YOU KNOW, I'M OPEN TO SOME PERIOD
11 OF POTENTIALLY EXPEDITING, BUT AT THIS POINT, NOT
12 ANYTHING BEYOND -- I MEAN, LIKE I SAID, THEY MOVED
13 TO EXPEDITE, SO I THINK THEY SHOULD RESPOND TO THE
14 DISCOVERY MORE QUICKLY.

15 BUT I'M WILLING TO MEET AND CONFER WITH
16 THEM AND SEE IF WE CAN COME UP WITH SOMETHING.

17 MR. MCELHINNY: I AGREE WITH MR. JOHNSON,
18 ACTUALLY. NOW THAT YOU'VE GIVEN US DATES, WE'LL
19 WORK ALL THIS STUFF OUT.

20 THE COURT: OKAY. YOU KNOW, IF YOU DON'T
21 WORK IT OUT, THEN THERE ARE GOING TO BE PROBABLY
22 CONSEQUENCES THAT BOTH SIDES DON'T WANT, SO I HOPE
23 YOU WORK IT OUT.

24 MR. MCELHINNY: THANK YOU, YOUR HONOR.

25 THE COURT: OKAY. LET'S HAVE A FOLLOW-UP

1 CMC ON OCTOBER 13TH AFTER THE PRELIMINARY
2 INJUNCTION HEARING.

3 IS THERE ANYTHING ELSE THAT WE HAVE TO DO
4 TODAY?

5 MR. MCELHINNY: NO. THANK YOU, YOUR
6 HONOR.

7 THE COURT: NO? OKAY. ALL RIGHT.
8 THANK YOU. I'LL SEE YOU ALL IN OCTOBER.

9 MR. JOHNSON: THANK YOU, YOUR HONOR.

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.

/S/

LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595