

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Robert E. Blackburn**

Civil Action No. 12-cv-01096-REB-CBS

POTTER VOICE TECHNOLOGIES LLC,

Plaintiff,

vs.

GOOGLE, INC.,
HTC AMERICA, INC.,
SAMSUNG TELECOMMUNICATIONS AMERICA, LLC
SONY MOBILE COMMUNICATIONS (USA) INC.,
LG ELECTRONICS MOBILECOMM U.S.A., INC.,
MOTOROLA MOBILITY LLC.,
ZTE (USA) INC.,
KYOCERA COMMUNICATIONS, INC.,
SHARP ELECTRONICS CORPORATION,
HUAWEI DEVICE USA INC.,
PANTECH WIRELESS, INC.,
RESEARCH IN MOTION LIMITED,
RESEARCH IN MOTION CORPORATION,
MICROSOFT CORPORATION, and
NOKIA, INC.,

Defendants.

ORDER CONCERNING APPOINTMENT OF MASTER

Blackburn, J.

This matter is before the court on the following: (1) the **Defendants' Response To the Court's Order Concerning Appointment of Master** [#482]¹ filed June 15,

¹ “[#482]” is an example of the convention I use to identify the docket number assigned to a specific paper by the court's case management and electronic case filing system (CM/ECF). I use this convention throughout this order.

2015; (2) the **Plaintiff's Response To Order Concerning Appointment of Master** [#483] filed June 15, 2015.

The patent in suit concerns technology that is highly specialized and technical. Given that circumstance, it is likely that a master with education and skill in the technical areas addressed in the patent in suit will be able to assist the court with various upcoming tasks, including (1) entry of scheduling orders; (2) management of discovery; (3) additional claim construction, if necessary; (4) determination of which additional parties, if any, should be severed or are entitled to severance; (5) recommendations on dispositive motions, if any; and (6) determination of the number and order of trials, including the identification of defendants who will participate in each trial. Under FED. R. CIV. P. 53(a)(1), these circumstances are sufficient to merit and permit the appointment of a master for these purposes. Previously, the court gave notice to the parties of the intent of the court to appoint a master. FED. R. CIV. P. 53(b)(1). The parties consent to the appointment of a master; however, the plaintiff and defendants nominated different candidates to serve as master.

The defendants nominate two candidates: (1) Professor Bernard Chao, an associate professor with tenure at the Sturm College of Law at the University of Denver; and (2) Lawrence D. Graham, an attorney with Lowe Graham Jones in Seattle, Washington. Given the knowledge, education, and experience of these two individuals, as stated in their Curriculum Vitae [#482-1 & 482-2], I find and conclude that they both have the education, experience, and skill in the technical areas addressed in the patent in suit and are well-suited to act as a master for the purposes outlined above. Thus, I indicate my tentative and conditional inclination to appoint either Professor Chao or Mr.

Graham as Master in this case.

Under Fed. R. Civ. P. 53(b)(3)(A), a court may not issue an order appointing a master until after the master “files an affidavit disclosing whether there is any ground for disqualification under 28 U.S.C. § 455.” In addition, the court will not appoint a person as master unless that person expresses a willingness to serve in that capacity. Given these requirements, I direct the proposed masters, Professor Bernard Chao and Mr. Graham, to file, with the assistance of counsel for the defendants, a brief statement indicating whether they will accept an appointment to serve as a master in this case. If either candidate is willing to accept appointment, I direct him to file an affidavit which satisfies the requirements of Fed. R. Civ. P. 53(b)(3)(A).

THEREFORE, IT IS ORDERED as follows:

1. That by **September 23, 2015**, the proposed masters, Professor Bernard Chao, an associate professor with tenure at the Sturm College of Law at the University of Denver; and Lawrence D. Graham, an attorney with Lowe Graham Jones in Seattle, Washington, each shall file a brief statement indicating whether he will accept an appointment by this court to serve as a master in this case;

2. That if either proposed master is willing to accept such an appointment, then by **September 23, 2015**, the proposed master shall file, through counsel for the defendants, an affidavit which satisfies the requirements of Fed. R. Civ. P. 53(b)(3)(A);
and

3. That if such an affidavit is filed by the proposed master and there is no ground for disqualification, then the court shall issue an order appointing one of these two candidates to serve as master in this case.

Dated September 14, 2015, at Denver, Colorado.

BY THE COURT:



Robert E. Blackburn
United States District Judge