

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

NOKIA CORPORATION,

Plaintiff,

v.

APPLE INC.,

Defendant.

C.A. No. 09-791-GMS

APPLE INC.,

Counterclaim-Plaintiff,

v.

NOKIA CORPORATION and NOKIA INC.,

Counterclaim-Defendants.

JOINT STATUS REPORT

In accordance with the Court's March 11, 2010 Amended Order (D.I. 24), counsel for Nokia Corporation and Nokia Inc. (collectively "Nokia") and counsel for Apple Inc. ("Apple") submit this Joint Status Report in preparation for the Status and Scheduling Conference on April 9, 2010 at 11:00 a.m.

I. JURISDICTION AND VENUE

The parties agree that the Court has jurisdiction over the subject matter of, and the parties to, this action, and that venue is proper in this Court. All parties have been served. However, to the extent Apple seeks a declaration regarding the validity, infringement, essentiality, or

appropriate FRAND compensation for patents Nokia has not accused Apple of infringing in this litigation, Nokia denies that the Court has jurisdiction over such claims.

II. SUBSTANCE OF ACTION

On October 22, 2009, Nokia filed this action against Apple for alleged infringement of ten Nokia U.S. patents: 5,946,651; 5,802,465; 5,862,178; 6,359,904; 6,694,135; 6,775,548; 6,882,727; 7,009,940; 7,403,621; 7,092,672 (the “Nokia patents”). (D.I. 1.) The accused Apple products include Apple’s iPhone, iPhone 3G, and iPhone 3GS. Nokia has declared the Nokia patents as essential to certain wireless standards and is requesting FRAND compensation for Apple’s alleged infringement.

On December 11, 2009, Apple filed an Answer and Counterclaims denying infringement and asserting counterclaims against Nokia for alleged willful infringement of thirteen Apple patents, violations of the California Unfair Competition Statute § 17200, breach of contract, promissory estoppel, and various declaratory relief. (D.I. 14.) On February 19, 2010, Apple filed a First Amended Answer and Counterclaims for alleged willful infringement of nine Apple patents,¹ breach of contract, promissory estoppel, violation of Section 2 of the Sherman Act, and various declaratory relief, including a judicial declaration that Nokia has misused its allegedly standards-essential patents. (D.I. 21.) There are currently nine Apple patents for which Apple is alleging infringement: 5,634,074; 5,555,369; 6,239,795; 5,315,703; 6,189,034; 7,469,381; 5,455,854; 7,383,453; and 5,848,105 (the “Apple patents”). Apple is accusing Nokia products having USB functionality; Carbide.c++, applications developed using Carbide.c++, and

¹ Four of the Apple patents asserted in its original Answer and Counterclaims were asserted by Apple against Nokia in ITC Investigation No. 337-704. Pursuant to the Stipulation and Order for Amended Pleadings (D.I. 20), Apple omitted these four patents from its First Amended Answer and Counterclaims and re-asserted them as counterclaims in C.A. No. 09-1002 (which is now stayed).

phones having applications developed using Carbid.c++; Nokia handsets using the Series 40, S60, Maemo, and/or Symbian platforms; and Nokia handsets having GSM functionality.

On March 11, 2010, Nokia responded to Apple's counterclaims with a motion seeking dismissal of Apple's non-patent claims for failure to state claims upon which relief can be granted. Apple filed its opposition to Nokia's motion on March 29, 2010.

III. IDENTIFICATION OF ISSUES

A. Nokia's Position

The issues to be decided in this action include the following:

1. Apple's alleged infringement of the Nokia patents.
2. The validity of the Nokia patents.
3. The amount of FRAND compensation allegedly owed to Nokia by Apple for infringement of the Nokia patents, and any other appropriate relief.
4. Whether Apple's Amended Answer and Counterclaims states a claim for violation of section 2 of the Sherman Act.
5. Whether Apple's Amended Answer and Counterclaims states a claim for breach of contract.
6. Whether Apple's Amended Answer and Counterclaims states a claim for promissory estoppel.
7. Whether Apple's various requests for declaratory relief improperly overlap Apple's substantive claims.
8. Nokia's alleged infringement of the Apple patents.
9. The amount of damages under the U.S. Patent Act allegedly owed to Apple by Nokia.

10. Whether injunctive relief against Nokia is available based on its alleged infringement of the Apple patents.

B. Apple's Position

The issues to be decided in this action include the following:

1. Whether Nokia has breached its FRAND commitments by refusing to offer Apple FRAND terms to license patents Nokia claims are essential to various standards.
2. Whether Nokia is estopped from not honoring its promises to various SSOs that it would license its purported essential patents on FRAND terms.
3. Whether Nokia willfully acquired and/or maintained monopoly power as a result of its wrongful course of conduct including conduct before SSOs.
4. Whether Apple has suffered antitrust injury as a result of Nokia's unlawful monopolization.
5. Whether the terms which Nokia has offered Apple for its license to Nokia's purported essential patents are fair, reasonable, and nondiscriminatory.
6. Whether, as a result of Nokia's FRAND commitments, its remedy is limited to seeking a FRAND royalty.
7. Whether Nokia's conduct before standards-setting organizations constitutes misuse of its purported standards-essential patents.
8. Whether Nokia's conduct before standards-setting organizations gives rise to a waiver of any right to enforce its purported standards-essential patents.

9. Whether any party infringes or has infringed any of the patents-in-suit.
10. Whether any infringement by Nokia has been willful.
11. Whether each of the patents-in-suit is valid and enforceable.
12. Whether any party is entitled to prevail on any affirmative defense.
13. The amount of any party's damages for any infringement of any valid and enforceable claim.
14. Whether any party is entitled to attorneys' fees and costs pursuant to 35 U.S.C. § 285.

IV. NARROWING OF ISSUES

A. Nokia's Position

On March 11, 2010, Nokia moved to dismiss Apple's non-patent counterclaims for failure to state claims. The granting of Nokia's motion to dismiss would properly focus this case and allow it to be efficiently resolved. If the Court denies Nokia's motion to dismiss, Nokia may seek to amend its Complaint to add non-patent claims. Nokia believes judicial efficiency would be promoted by bifurcating Apple's antitrust-related claims.

B. Apple's Position

Apple believes judicial efficiency would be promoted by allowing discovery on all claims to proceed simultaneously, but bifurcating the case for trial such that Apple's contract, promissory estoppel, and related declaratory judgment claim that Nokia has not offered FRAND terms are tried first, at a time convenient for the Court in approximately mid-2011 (if any such time is available), with the antitrust and various patent infringement claims to be tried second, at a time convenient for the Court in mid-2012. The contract claim depends only on the existence of a contract (which Apple believes Nokia will not dispute) and evidence concerning whether

license terms demanded by Nokia were unfair, unreasonable, and/or discriminatory. Apple will shortly be filing a motion to bifurcate its contract claims for trial, which will explain Apple's position in detail.

With respect to trial of the patent and antitrust claims, the parties have proposed a status conference in November 2011 – after the close of discovery and after the submission of letters (if any) seeking permission to file summary judgment motions – at which time a fair and efficient trial plan can be developed.

V. RELIEF

A. Nokia's Request of Relief

As set forth in the Complaint, Nokia requests that the Court determine the amount of FRAND compensation that Apple owes Nokia to compensate it for Apple's acts of infringement, and any other appropriate relief. Nokia further seeks recovery of its attorneys' fees and costs due to the exceptional nature of this case, in accordance with 35 U.S.C. § 285. Nokia asks that the Court declare that Apple take nothing by its counterclaims against Nokia and that it dismiss the counterclaims with prejudice and adjudge Apple's patents not infringed and invalid.

B. Apple's Request of Relief

Apple seeks the following relief:

1. Dismissal of Nokia's complaint in its entirety, with prejudice;
2. Judgment in favor of Apple and against Nokia;
3. Judgment that Nokia is liable for breach of contract (Count I), promissory estoppel (Count II), and violation of Section 2 of the Sherman Act, 15 U.S.C. § 2 (Count III);

4. Pursuant to Section 4 of the Clayton Act, 15 U.S.C. § 15, judgment against Nokia for treble the amount of Apple's damages, an injunction barring Nokia from demanding from Apple non-FRAND terms for Nokia's purportedly essential patents, and an award to Apple of all reasonable attorneys' fees and costs;
5. Judgment declaring that the terms offered by Nokia to Apple to license patents it claims are essential to implement GSM, GPRS, EDGE, UMTS, and WLAN standards, including the patents at issue in the Complaint, are not FRAND terms;
6. Judgment declaring that Nokia is not entitled under any circumstances to seek injunctive relief preventing Apple from practicing the GSM, GPRS, EDGE, UMTS, and WLAN standards;
7. Judgment declaring that Nokia's purported essential patents, including the patents-in-suit, are unenforceable by virtue of Nokia's patent misuse;
8. A declaration that Apple has not infringed, and is not infringing, any valid claim of the Nokia patents-in-suit;
9. A declaration that one or more claims of each of the Nokia patents-in-suit is invalid, void, and/or unenforceable against Apple;
10. A declaration that Nokia has infringed one or more claims of each of the Apple patents-in-suit;
11. A declaration that Nokia's infringement of one or more claims of the Apple patents-in-suit is and/or has been willful;

12. A preliminary and permanent injunction prohibiting Nokia, its subsidiaries, divisions, agents, servants, employees, and those in privity with Nokia from infringing, contributing to the infringement of, and inducing infringement of the Apple patents-in-suit, and for further proper injunctive relief;
13. Award to Apple damages for Nokia's infringement with interest, as well as costs (including expert fees), disbursements, and reasonable attorneys' fees incurred in this action, including 35 U.S.C. § 285; and
14. Award treble damages to Apple pursuant to 35 U.S.C. § 284.

VI. AMENDMENT OF PLEADINGS

A. Nokia's Position

If the Court allows Apple's non-patent counterclaims to proceed in light of Nokia's pending motion to dismiss, Nokia may seek to amend its pleadings to assert its own non-patent claims against Apple. Accordingly, the Court should allow Nokia to freely amend its Complaint until at least the date Nokia's answer is due to Apple's counterclaims under Rule 12(a)(4)(A). Otherwise, all other amendments to the pleadings should be by motion and filed by July 2, 2010, with the exception that amendments made to plead inequitable conduct may be made later without undue delay by motion upon an appropriate showing that facts giving rise to such a claim were newly discovered.

B. Apple's Position

Unless the Court orders otherwise, all motions to amend the pleadings shall be filed by July 2, 2010, with the exception that amendments made to plead inequitable conduct may be made no later than 30 days before the end of fact discovery.

VII. JOINDER OF PARTIES

The parties are not aware of any additional parties that need to or should be joined in this action at this time, but reserve the right to join additional parties by stipulation or by leave of the Court should the need arise.

VIII. DISCOVERY

A. Nokia's Statement Regarding Discovery

Nokia will require discovery concerning, among other things, the accused Apple products; the development, design, structure and operation of the accused Apple products; the sales, revenue, profits and marketing associated with the accused Apple products; Apple's knowledge of the Nokia patents and any analysis or opinions concerning the Nokia patents; Apple license agreements concerning the accused products and related technology and other factors affecting the measure and extent of damages; Apple's negotiations with Nokia; the bases for Apple's defenses to Nokia's claims of infringement; the Apple patents; the conception and development of the subject matter of the Apple patents; the design, development, manufacture, commercialization, marketing, and sale of any embodiments of the Apple patents; licensing related to the Apple patents; prosecution of the applications for the Apple patents; prior art relating to the Apple patents; and the bases for Apple's claims of infringement.

If the Court denies Nokia's motion to dismiss, the following additional discovery would be necessary. Discovery into the market, Apple's market share, market power, monopolistic practices, anti-competitive behavior, unfair and deceptive trade practices, fraudulent statements, standards setting misconduct, and false advertising.

B. Apple's Statement Regarding Discovery

Apple will require discovery concerning, among other things, the accused Nokia products; the development, design, structure, and operation of the accused Nokia products; the sales, revenue, profits, and marketing associated with the accused Nokia products; Nokia's knowledge of the Apple patents and any analysis or opinions concerning the Apple patents; Nokia license agreements concerning the accused products and related technology and other factors affecting the measure and extent of damages; Nokia's negotiations with Apple; the bases for any Nokia defenses to Apple's claims of infringement; the Nokia patents; the conception, reduction to practice, and development of the subject matter of the Nokia patents; the design, development, manufacture, commercialization, marketing, and sale of any embodiments of the Nokia patents; licensing related to the Nokia patents; prosecution of the applications for the Nokia patents; prior art related to the Nokia patents; the bases for Nokia's claims of infringement; Nokia's licenses for its purported standards-essential IPR; Nokia's participation in ETSI and IEEE; Nokia's promotion of its technologies for incorporation into ETSI and IEEE standards; Nokia's research and development of standards-essential technology; Nokia's understanding of what constitutes FRAND terms; the relevant markets and competition and competitors within those markets; competition between the parties, including Nokia's attempt to develop products competitive with the iPhone; alternative technologies to those covered by Nokia's purported essential patents; Nokia's declarations of its purported essential patents; and comparisons and/or analyses of sales of mobile wireless devices.

C. Documents and Electronically Stored Information

The parties will continue to meet and confer on the scope of discovery of documents and electronically stored information pursuant to Federal Rule of Civil Procedure 26(f) and will exchange proposals regarding such.

D. Discovery Limitations

The parties agree to adhere to the limitations on discovery set forth in the Federal Rules of Civil Procedure, except as set forth below or as further ordered by the Court:

Depositions:

Each side will be limited to (i) 250 hours of on-the-record time to conduct 30(b)(1) depositions of the other side's employees and any third party depositions, and (ii) 50 hours of on-the-record time to conduct 30(b)(6) depositions of the other side. Depositions of non-expert individuals (30(b)(1)) are presumptively limited to 7 hours per witness, provided that in cases where a witness testifies primarily in a language other than English, the parties will confer in good faith to reach agreement regarding an extension of the deposition time. Each 30(b)(1) deposition will count for at least 4 hours against this limit, even if the actual deposition lasts fewer than 4 hours. Promptly after the parties serve their expert reports, the parties will confer in good faith in an effort to reach agreement regarding limits on expert deposition time. The parties each reserve their right to seek relief from the Court to limit the length of any particular deposition or to take depositions in excess of the presumptive limits described above.

Interrogatories:

The parties agree that each side may propound, in total, no more than fifty (50) interrogatories to the other side (including subparts) in accordance with Local Rule 26.1(b). A single interrogatory may address more than one patent and more than one product.

Requests for Admission:

The parties agree that each side may propound, in total, no more than fifty (50) requests for admission (including subparts) in accordance with Local Rule 26.1(b), except that this limitation shall not apply to requests for admission that are directed to the authenticity of documents or admissibility into evidence of such documents.

Document Requests:

There shall be no limit on the number of document requests that may be served by either side.

E. Schedule

The parties propose the following schedules:

<i>Event</i>	<i>Proposed Date</i>
Rule 26(a)(1) Initial Disclosures	4/26/10
Amend Pleadings or Join Parties ²	7/2/10
Exchange Proposed Claim Terms for Construction	11/5/10
Exchange Proposed Constructions	12/10/10
Submit Joint Claim Construction Chart	12/20/10
Opening Claim Construction Briefs	2/1/11
Responsive Claim Construction Briefs	3/1/11
Technology Tutorial (date set at discretion of the Court)	March 2011
Claim Construction Hearing (date set at discretion of the Court)	March 2011
Completion of Fact Discovery	7/15/11
Opening Expert Reports (burden of proof)	8/15/11
Rebuttal Expert Reports	9/15/11
Letters Seeking Permission to File Summary Judgment Motions	10/3/11
Responsive Letters Regarding Summary Judgment Motions	10/17/11
Reply Letters Regarding Summary Judgment Motions	10/31/11
Completion of Expert Discovery	11/11/11
Summary Judgment and Initial Pre-trial Status Conference (date set at discretion of the Court)	November 2011
Summary Judgment Motions and Opening Briefs (if permitted)	12/16/11
Responsive Summary Judgment Briefs	1/16/12
Reply Summary Judgment Briefs	1/30/12
Motions <i>in Limine</i> Briefing	March-April 2012
Submission of Joint Proposed Pretrial Order	April 2012
Pretrial Conference (date set at discretion of the Court)	May 2012
Trial (date set at discretion of the Court)	June 2012

² The parties have certain disagreements about amendments to pleadings set forth in Section VI above.

IX. ESTIMATED TRIAL LENGTH

A. Nokia's Statement on Trial Length

Nokia estimates that it will take approximately thirty (30) days to try all issues if Apple's non-patent claims remain in the case.

B. Apple's Statement on Trial Length

Apple proposes that Counts I, II, and IV of Apple's Counterclaims should be ready for trial in about one year, and estimates that approximately four (4) days of trial will be required for these claims. Apple proposes that a separate trial be held on the remaining claims, and that approximately thirty (30) days of trial time be allotted with respect to the patents to be tried, and approximately seven (7) days of trial time be allotted with respect to its Sherman Act and patent misuse claims.

X. JURY TRIAL

Both parties have requested a jury trial on all issues that are so triable to a jury.

XI. SETTLEMENT

The parties have had formal settlement discussions before and after the filing of the lawsuit. The parties believe that discussing settlement before the Magistrate Judge and/or mediator would be appropriate.

XII. OTHER MATTERS

A. Claim Construction Briefing

Given that there are nineteen patents-in-suit, the parties request that they be permitted forty (40) pages for their opening and answering claim construction briefs.

B. Protective Order

Because confidential information will have to be exchanged in this action, the parties agree that a protective order will be necessary and will attempt to agree on the form of such an order.

XIII. CONFIRMATION OF RULE 26(F) CONFERENCE

Counsel for the parties have conferred about each of the above matters.

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