NOKIA CORPORATION v. APPLE INC.

Doc. 1 Att. 8

Exhibit 7

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From: Kale, Rohan <Rohan.Kale@alston.com>
Sent: Thursday, May 05, 2011 10:00 PM
To: Byron Pickard
Cc: David Cornwell; Maria Cabico; Hannah J. Robinson; Hemminger, Steve; Newton, Mike
Subject: RE: Apple Subpoenas

Byron,

We continue to be disappointed by your refusal to comply with subpoenas that seek highly relevant, non-privileged testimony on issues that directly affect the patents involved in an ongoing litigation between Apple and Nokia. Messrs. Sterne, Perry, Coller, and Bezos were subpoenaed in their individual capacities as percipient fact witness that have non-privileged personal knowledge of events that transpired at the reexamination interviews for the 854 and 703 patents. While your offer to present a Rule 30(b)(6) designee is puzzling, it is an explicit acknowledgement that these individuals, who would be the source of the facts testified to by the 30(b)(6) witness, possess non-privileged properly discoverable facts. Your explanation that if it were converted to a 30(b)(6) notice so you could narrow the topics to avoid privileged areas makes no sense. If, during the course of our deposition of any one of the individuals, a question is asked that seeks what you believe to be privileged material, you can interpose your privilege objection preventing the disclosure of the information absent a court order. The subpoenas are directed to the individuals who have personal knowledge of actual facts and not to the law firm Sterne Kessler Goldstein & Fox. Nokia is entitled to select the discovery method for obtaining relevant information and it has elected to obtain those facts directly from the witnesses mouths, not filtered through a corporate representative.

I am also disappointed that you have mischaracterized our conversation during the meet and confer. As I told you on the phone, Nokia has a right to seek discovery related to the reexamination proceedings for the 854 and 703 patents. Specifically, as I also told you on the phone, Nokia has a right to obtain the details as to the events that transpired during the reexamination interviews, including what was said to the examiner directly from the person who said it. Is it really your position that Apple's non-privileged, public disclosure as to the scope of the patents to the PTO is not relevant? If so, we disagree. You also seem to suggest that Nokia's use of this information is limited to an inequitable conduct defense. If so, again, we disagree. As you are well aware, the scope of discovery is broad and Nokia is entitled to all of Apple's agents' non-privileged disclosures relating to the 854 and 703 patents, whether or not those facts reside with Apple's lawyers.

In addition, the details of the events at the reexamination interview are not in the public domain. The terse and overly simplified interview summaries, prepared entirely by Apple's own counsel, are hardly sufficient to explain in detail the non-privileged discussion that occurred at the interviews. To suggest that we are not entitled to these depositions because Nokia can depose the patent examiner is a frivolous position. Since not everyone will recall the same things, Nokia is entitled to depose everyone that was present, the Examiner **and** Apple's representatives.

Nokia has never withdrawn the subpoenas. While we continued to attempt to elicit dates for the depositions after the witnesses refused to appear, it was only in an effort to avoid having to seek judicial intervention. As such, each of the witnesses are in contempt for their unilateral decisions not to appear without first seeking a protective order or quashing the subpoenas required by Rule 45. Your statement that you will seek to quash the subpoenas after the date required for appearance is untimely.

Best Regards,

Rohan Kale
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From: Byron Pickard [mailto:bpickard@skgf.com]
Sent: Wednesday, May 04, 2011 4:56 PM
To: Kale, Rohan
Cc: David Cornwell; Maria Cabico; Hannah J. Robinson; Hemminger, Steve; Newton, Mike
Subject: RE: Apple Subpoenas

Dear Rohan,

Yesterday, we served documents in response to Nokia's second set of subpoenas. As for the depositions, we cannot provide the witnesses for depositions. Unfortunately, Nokia rejected our earlier proposal to narrow the scope of the depositions and to proceed with a deposition under Rule 30(b)(6), which would have allowed us to identify any topics that would not touch on privileged or attorney-work-product information. This proposal was generous; as stated in our objections, Nokia is not entitled to depose Apple's attorneys.

1. The depositions will touch on, if not be entirely directed to, issues and facts that are protected by the attorney-client privilege or the work-product doctrine.

2. We see little or no relevance for the information you seek. For example, I understand your client is not asserting any inequitable-conduct defense in the litigation—even if it were to allege an inequitable-conduct defense, this discovery would be premature because the reexaminations are not concluded. And when I asked you in our phone conversation to identify how the discovery you seek is relevant to your case, you did not articulate why the depositions seek relevant information but instead responded that the depositions seek information relevant to "all of the issues" in your lawsuit. I asked you to be more specific, but you did not provide a single specific example as to why the information you seek is relevant to your lawsuit. You also have declined to narrow the scope of the discovery you seek, despite my invitations to do so.

3. It appears the information you are interested in is available through non-privileged sources. Your email focused on the communications made at the interviews with the Office. That information is either already in the public domain or can be discovered through non-privileged sources. For example, the publicly available file histories at the PTO contain or will contain interview summaries filed by the Office and by counsel for Apple. The slide presentations used by Apple's counsel at the interviews to guide the discussion are also part of the file histories of the reexaminations. It also appears that you have not attempted to depose the examiners present at the interviews.

4. Given these facts, your client is not entitled depose Apple's counsel in these reexaminations. *See, e.g. Shelton v. American Motors Corp.*, 805 F.2d 1323 (8th Cir. 1986).

The proper course is for Nokia to withdraw the subpoenas. Please confirm by Friday May 6, 2011, Nokia will withdraw its deposition subpoenas. Otherwise, we will file a motion seeking to quash the subpoenas and enter a protective order.

Regards,

Byron

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