

Attachment B

Amanda Williamson

From: Ernst, Samuel [sernst@cov.com]
Sent: Thursday, September 08, 2011 8:20 PM
To: David Perlson
Cc: Anthony Pastor; Moto-Apple-SDFL; Fram, Robert; Haskett, Christine; Eppich, Christopher K; Goldstein, Danielle; Hawkinson, Matthew
Subject: RE: Apple/Motorola: Meet and Confer

David,

We discussed the length of the stay we are seeking on our call. We are seeking a stay until Motorola's standing deficiency is resolved, if it can be resolved.

You have all of the information regarding Motorola's standing. And we have provided the case law.

So as I said, we do have an objection to waiting until next week. Our client is expending enormous resources litigating toward final judgments that may be invalid if Motorola lacks standing.

Accordingly, we would ask that Motorola say whether it will agree to a stay, or we will commence our filing asking for that relief tomorrow.

From: David Perlson [mailto:davidperlson@quinnemanuel.com]
Sent: Thursday, September 08, 2011 6:07 PM
To: Ernst, Samuel
Cc: Anthony Pastor; Moto-Apple-SDFL; Fram, Robert; Haskett, Christine; Eppich, Christopher K; Goldstein, Danielle; Hawkinson, Matthew
Subject: Re: Apple/Motorola: Meet and Confer

Sam, while you may have not uttered the words "I agree" on the call you certainly left us all with the impression that you had no objection to our suggested timing. And you definitely made no unilateral demand to respond by noon pacific time as you did after the call.

You also still fail to provide any reason why the motion is so urgent that it must be filed tomorrow such that apple could not wait until even Monday or Tuesday next week. While you reference august 22 I think the first time you even mentioned any supposed standing issue or a stay was yesterday, and it took two emails from Tony before you even identified that much information after you first requested a meet and confer, suggesting no such urgency exists. Thus we again request that apple engage in a good faith meet and confer as required.

In all events, one question we have is just what length of stay will apple be seeking. On our call we didn't get a clear answer on that. In other words, until what occurs specifically will apple be seeking to stay the case? We may likely have further questions after we have received an answer to that question and after having had a chance to review the cases you have sent.

Thanks,

David

On Sep 8, 2011, at 4:45 PM, "Ernst, Samuel" <sernst@cov.com> wrote:

David,

I did not agree that we could wait until next week. You noted on the call that we said in this meet and confer that we intend to file this week and I said yes.

Moreover, I detailed the factual basis for the motion and have sent you our case law authority, as you requested.

And we have been requesting the Disclosure Letter in meet and confer since August 22.

Our client is prejudiced by expending resources litigating toward final judgments that may be in question if Motorola lacks standing.

I am available to talk again at any time now or tomorrow, but we will need to file tomorrow if Motorola does not have an answer.

-Sam

From: David Perlson [mailto:davidperlson@quinnemanuel.com]
Sent: Thursday, September 08, 2011 4:30 PM
To: Ernst, Samuel; Anthony Pastor
Cc: Moto-Apple-SDFL; Fram, Robert; Haskett, Christine; Eppich, Christopher K; Goldstein, Danielle; Hawkinson, Matthew
Subject: RE: Apple/Motorola: Meet and Confer

Sam, on the call, we explicitly indicated that we could not provide an answer by tomorrow as we would need to review your cited cases, discuss with the client, etc . . . , and also given the looming immediate deadlines in our Wisconsin case. We also indicated we may have follow up questions, including seeking more detail on the stay that Apple will be seeking. Thus, we stated we would not be able to respond with our position until next week. You raised no issue as to that timing on the call.

Now in your email, you issue an ultimatum that we must respond by noon tomorrow with our position or you will file. You do not indicate why Apple must file tomorrow, rather than allowing us time to evaluate and investigate the issue and get back to you next week as we said we would.

This does not comply with the good faith meet and confer provided by Local Rule 7.1(a)(3). While we obviously cannot prevent Apple from filing its motion on this unilateral timeline, it would be improper and we reserve the right to seek all available relief for Apple's failure to meet and confer as required.

David

From: Ernst, Samuel [mailto:sernst@cov.com]
Sent: Thursday, September 08, 2011 2:47 PM
To: Anthony Pastor
Cc: Moto-Apple-SDFL; Fram, Robert; Haskett, Christine; Eppich, Christopher K; Goldstein, Danielle; Hawkinson, Matthew
Subject: RE: Apple/Motorola: Meet and Confer

Tony,

As you requested, attached are the case citations:

Sicom Systems Ltd. v. Agilent Techs., Inc., 427 F.3d 971 (Fed. Cir. 2005).

Intellectual Prop. Dev., Inc. v. TCI Cablevision of Cal., Inc., 248 F.3d 1333 (Fed. Cir. 2001)

Propat Int'l Corp. v. Rpost, 473 F.3d 1187 (Fed. Cir. 2007)

Zenith Elecs. Corp. v. Exzec Inc., 876 F.Supp. 175 (N.D. Ill. 1995)

Enhanced Security Research, LLC v. Cisco Systems, Inc., 2010 WL 2573953 (D. Del. June 25, 2010)

Abbott Labs. v. Diamedix Corp., 47 F.3d 1128 (Fed. Cir. 1995)

Morrow v. Microsoft, 499 F.3d 1332 (Fed. Cir. 2007)

Please let us know tomorrow by 12 noon whether or not Motorola will oppose a stay; we will file our motion at that time.

Best regards,

Sam

From: Anthony Pastor [mailto:anthonypastor@quinnemanuel.com]
Sent: Thursday, September 08, 2011 1:46 PM
To: Ernst, Samuel
Cc: Moto-Apple-SDFL; Fram, Robert; Haskett, Christine; Eppich, Christopher K; Goldstein, Danielle; Hawkinson, Matthew
Subject: Re: Apple/Motorola: Meet and Confer

Please use the following conference call number for our 2 pm call.

Call in Number: [866-939-8416](tel:866-939-8416)

Participant Code: [9185269](tel:9185269)

Thanks,

Tony

On Sep 7, 2011, at 12:50 PM, "Ernst, Samuel" <sernst@cov.com> wrote:

Tony,

Thursday at 2 p.m. will work for me. I will call you at your office unless there is a different number you would prefer I call.

Our motion relates to Motorola's lack of standing to enforce its patents in light of the rights in those patents it has ceded to Google, and would ask for a stay of the litigation until that situation is resolved.

Best,

Sam

From: Anthony Pastor
[mailto:anthonypastor@quinnemanuel.com]
Sent: Tuesday, September 06, 2011 7:43 PM
To: Ernst, Samuel
Cc: Moto-Apple-SDFL; Fram, Robert; Haskett, Christine; Eppich, Christopher K; Goldstein, Danielle; Hawkinson, Matthew
Subject: Re: Apple/Motorola: Meet and Confer

Sam-

Thank you, but your cryptic response still does not provide me with any real information concerning your "potential motion."

Can you please provide me with the exact nature and factual basis of the motion so that I can be prepared for the meet & confer?

Also, I will need to push the time for the meet & confer to Thursday. 2 pm still works for me.

Thanks,

Tony

On Sep 6, 2011, at 5:30 PM, "Ernst, Samuel" <sernst@cov.com> wrote:

The potential motion is related to the effect on the litigation of Google's acquisition of Motorola and documents related to the acquisition. May I call you at your office at 2 p.m. Pacific tomorrow?

From: Anthony Pastor
[mailto:anthonypastor@quinnemanuel.com]
Sent: Tuesday, September 06, 2011
5:18 PM
To: Ernst, Samuel
Cc: Moto-Apple-SDFL; Fram, Robert; Haskett, Christine; Eppich, Christopher K; Goldstein, Danielle; Hawkinson, Matthew
Subject: Re: Apple/Motorola: Meet and Confer

Yes. Please tell me the subject matter of the motion.

How about 2 pm?

On Sep 6, 2011, at 5:13 PM, "Ernst, Samuel" to <sernst@cov.com> wrote:

Tony,

We are writing to inquire if you are available for a pre-motion meet-and-confer pursuant to Local Rule 7.1(a)(3) related to a motion we intend to file in the Florida case this week. Do you or anyone on your team have availability for a call tomorrow?

Best,

Sam

Sam Ernst, Attorney,
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