Motorola Mobility, Inc. v. Apple, Inc. Doc. 143

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

Case No. 1:10-cv-23580-UU

MOTOROLA MOBILITY, INC.,

Plaintiff,

v.

APPLE INC.,

Defendant.

JURY TRIAL DEMANDED

APPLE INC.,

Counterclaim Plaintiff,

v.

MOTOROLA, INC. and
MOTOROLA MOBILITY, INC.,

Counterclaim Defendants.

MOTOROLA'S OPPOSITION TO APPLE'S MOTION TO EXTEND LENGTH OF *MARKMAN* HEARING

During the Tutorial hearing, the Court asked the parties whether two days or three days would be sufficient for the *Markman* hearing. At that time, **both** Apple and Motorola agreed that two days would be sufficient time. Counsel for Apple stated, "I think two will be sufficient. I think there will be two. I think we can assume two full days." (10/6/11 Transcript at 208:5-7). Indeed, as confirmed at the September 7, 2011 teleconference, the parties previously had agreed that only **three hours** for each side would be sufficient time for presentations on the terms at issue at the *Markman* hearing. (9/7/11 Transcript at 6:7-12, 7:8-13).

Yet, on Saturday, October 8, 2011, Apple changed course and demanded Motorola let Apple know "ASAP" whether Motorola would agree to the schedule of three truncated days it requests in the instant motion. *See* Exhibit 1. Motorola responded the next day, Sunday, indicating it continued to believe the two days the parties had agreed was sufficient. *Id.* Yet,

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Motorola also asked Apple to explain why Apple believed that two days no longer was sufficient and to meet and confer on the subject. *Id*. In its response on Monday afternoon, Apple failed to explain why it was seeking additional time. *Id.* Motorola again asked to meet and confer and for a substantive explanation of Apple's position. *Id.* The next day, Apple again refused to meet and confer (*id.*), and filed the present motion a few minutes later. Apple's failure to meet and confer is alone grounds for denial.[1] *See* S.D. Fla. L.R. 7.1(a).

In any event, as the parties previously agreed, a two-day *Markman* hearing will provide both parties ample time to address all of the disputed terms. A two-day *Markman* hearing would mean that each side would get approximately 5.5 hours per side – almost <u>double</u> the 3 hours per side the parties previously had agreed. Also, several of the disputed terms share similar facts and/or legal arguments. For instance, one of the key disputes concerning "listing means" and "listing interface means" is whether the structure of those terms requires software. Motorola has been working to focus its arguments and narrow the issue, so as to be respectful of the Court's time. There is no reason why Apple cannot do the same.

Further, Apple's new proposed schedule is not an efficient use of the Court's or parties' time. For while Apple's proposed "extension" adds an extra day, it also reduces the hours of each day to 10 a.m. to 4 p.m. (whereas the tutorial hearing went from 10 a.m. to 6 p.m.). Thus, under Apple's proposed extension with the truncated days, the parties actually only would receive two-to-three more hours of argument.

Further, Motorola's preparations have been made under the assumption that the *Markman* hearing would last only two days. Motorola's local counsel has a client meeting scheduled for the morning of October 19, and would not be able to attend part or all of the third day. Thus, it would be prejudicial to Motorola to change the length of the *Markman* hearing at this time.

Accordingly, Apple's motion should be denied, and the *Markman* hearing should proceed for two days as the parties previously agreed.

[1] Apple similarly refused to meet in good faith regarding its recent Motion to Stay. *See* Motorola's Opposition to Defendant's Motion to Stay, dated September 28, 2011 (Dkt. No. 121), at 6.

Therefore, Motorola respectfully requests that the Court deny Apple's motion for an extension of the length of the *Markman* hearing.

Dated: October 12, 2011

Respectfully submitted,

MOTOROLA SOLUTIONS, INC. (f/k/a MOTOROLA, INC.) AND MOTOROLA MOBILITY, INC.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 12, 2011, I served the foregoing document via electronic mail on all counsel of record identified on the attached Service List.

/s/ Edward M. Mullins
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United States District Court, Southern District of Florida

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