EXHIBIT 6

Mannheim Regional Court [Landgericht]
7th Civil Division
68149 Mannheim
Germany

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<tr><td>Our ref.</td><td>02426.40234 / 20190552.1
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</table>

11 October 2011

Reply Brief

in the matter of

Motorola Mobility Inc.

- Plaintiff -

File No.: 7 O 229/11
Opponent receives copies
H: 18 November 2011

v e r s u s

Apple Sales International

- Defendant –

Proc. rep.: Bardehle Pagenberg, Attorneys-at-Law, Munich

for patent infringement

we are responding to the statement of defense dated 19 August 2011 as follows:

With regard to the infringement of the Patent in Suit, the Defendant limits its defense to the alleged lack of implementation of feature c.1), according to which *"responsive to receiving the second message, transmitting (250) a third message (255) indicative of the second status"* occurs. As we will show in detail below, the Defendant's defense falls short because it is based

on an erroneous interpretation of the feature. If the feature is interpreted in a correct, function-oriented fashion with reference to the patent specification, there is no question that the method described by the Defendant itself implements all of the features of claim 1 of the Patent in Suit (Regarding the Infringement, **sub A**).

The proceedings should also not be suspended. Contrary to what the Defendant's statements suggest, Document NK5 does not even deal with the problem of synchronization of <u>multiple</u> receivers in the manner discussed by the Patent in Suit. This document is therefore neither damaging to novelty, nor does it render obvious the invention according to the Patent in Suit. Nor are any other grounds for nullity present (Regarding the Motion to Suspend, **sub B**).

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A.
Regarding the Infringement

I.
Status of the proceedings

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1.   The Defendant defends itself by stating that the synchronization method performed and offered for sale by the Defendant and described on page 7 *et seq.* of the statement of defense does not implement feature c.1) of claim 1 of the Patent in Suit.

2.   In the (authoritative) original English, feature c.1) reads as follows:

> „*in the wireless messaging infrastructure, responsive to receiving the second message, transmitting (250) a third message (255) indicative of the second status*"

3.   In this context, we would like to briefly reiterate the structure of this feature:

a)   The "second message" mentioned in the feature is sent by the receiver on which the status of a first message was changed in the context of the synchronization method according to the claim. The purpose of this process is to inform the wireless messaging infrastructure of the change in status of the first message.

b)   The third message is sent in turn by the wireless messaging infrastructure to at least one additional receiver in order to inform this other receiver of the change to the status of the first message.

4.   The Defendant now claims that an intermediate step (referred to as "queuing" until the receipt of another message), which we deny based on a lack of knowledge, occurs in its method before the sending of the third message and that the third message is therefore no longer sent *"responsive to"* the second message. This argument is based on an abridged and erroneous understanding of the feature *"responsive to."* Under II below, we will show why, even assuming the intermediate step alleged by the Defendant, it is indeed true that the third message is sent *"responsive to"* the second message. Under III we will show why the Defendant's objections to individual motions by the Plaintiff as well as the Defendant's right of action (cf. p. 2 *et seq.* of the statement of defense) are not applicable. First, however, we will respond under I to the Defendant's statements on page 4 (section III, "Disputed Actions") and page 6 (item 2) regarding the Defendant's infringement behavior.

II.
Accused Actions / Factual Background

1.   As already discussed in the complaint, the Plaintiff is taking action against the Defendant based on the Patent in Suit because the synchronization method offered and used by the Defendant implements all of the features of method claim 1 of the Patent in Suit. Moreover, the receiving devices offered by the Defendant for purposes of participating in said service (iPhone, iPad, iPod touch) are in indirect infringement of claim 1 of the Patent in Suit.

2.   In its complaint, the Plaintiff also showed, based on the description of the service on the Internet page www.apple.com/de, the circumstances supporting the patent infringement. In light of this fact, the Defendant's assertion that it is "in the dark" regarding the specific circumstances (page 4 of the statement of defense) is not comprehensible.

3.   The Defendant further remarks on page 6 of the statement of defense that the passages cited by the Plaintiff in the complaint cannot be found on the web sites cited. If that is the case, then this is solely due to such passages having been removed. We have attached screen captures of the web site, www.apple.com/de, as

in which the passages cited in the complaint may be found. We assume that the Defendant will not dispute that these screen captures were taken from the web site.

III.
Interpretation and Subsumption

As mentioned at the outset, the Defendant is of the opinion that the intermediate step of "queuing" it asserts removes the third (synchronization) message from the teaching of the patent. This is not the case, because a function-oriented interpretation of the Patent in Suit unquestionably shows that delays of this type do not contradict the assumption that the delayed action occurs *"responsive to"* another event. On the contrary, the Patent in Suit even discloses such a *"message queuing"* in the context of a preferred embodiment.

1.   The Synchronization Method Described by the Defendant

a)   The Defendant describes the sending of the third message in its synchronization procedure on page 8 of the statement of defense (item 8). According to this description, the third message is allegedly not sent immediately to the other receiving device, but rather is only sent after the receipt of a second e-mail:

> *"The first status is stored on the IMAP server and is not transmitted to the second device until a second e-mail is received from the SMTP server (cf. step 1 above)."*

b)   First, the Plaintiff disputes this intermediate step of "queuing" until the receipt of an additional e-mail based on a lack of knowledge. Ultimately, however, that is not relevant because – as will be shown below – even a third message that has been "on hold" is sent *"responsive to"* the receipt of the second message by the wireless messaging infrastructure.

c)   The Defendant also asserts that the IMAP server, before sending the third message to the additional receiving device, also first transmits a *"tap on the shoulder"* and then sends the third message to the receiver after the receiver has

responded to the *"tap on the shoulder"*. This alleged – and contested – *"tap on the shoulder"* and response would, even if one assumed for the sake of the argument that it does take place, not change anything about the implementation of feature c.1) by the disputed method.

2.   Interpretation of the Patent in Suit

The Defendant apparently wishes the feature *"responsive to"* to be understood to mean that only a third message that is sent immediately and without delay after the receipt of the second message should be considered in accordance with the patent. This interpretation misses the point of the teaching of the patent and moreover is even in contradiction of a preferred embodiment of the Patent in Suit.

a)   Wording

The clear claim language merely requires that the third message is sent "responsive to", i.e. as a response to the second message. It does not say "immediately after receipt of the second message" as the defendant wants to read the claim. From the wording alone, "responsive to" merely requires a causal connection and no time immediacy, which would be completely undefined for one skilled in the art. This is also elucidated by the technical function of this feature.

(1)   The feature *"responsive to"* must be construed as is appropriate in view of the technical function intended for the feature according to the concept of the invention as disclosed (cf. BGH [Federal Court of Justice] GRUR [Journal of Intellectual Property and Copyright Law] 2009, 655 – mounting plate [Trägerplatte]).

(2)   The background and the technical problem of the Patent in Suit are disclosed in particular in paragraphs [0003] and [0004] of the specification, which state the following:

„[0003] […] *Thus, it is feasible for a user to leave a pager on twenty-four hours per day to assure continuous reception of*

> *paging messaging while also maintaining an acceptable battery life.*
> [0004] *However, a problem arises when the user has multiple pagers which are left continuously on. [...] Thus, what is needed is a way to have message status changes made on any of the user's pagers automatically made on the user's other pagers."*

(3)   Therefore, a method for the <u>automatic synchronization</u> of message statuses is to be provided particularly for cases when multiple mobile receiving devices are switched on at the same time. However, the term "automatic" synchronization is not a synonym for "immediate" or "undelayed" synchronization, as the Defendant apparently wants it to be understood. As evidenced by the specification, it is not important to the patent that the synchronization of the various devices should occur in the most rapid manner possible. Synchronization should be merely "automatic" and therefore occur particularly without requiring action by the user (cf. paragraph [0005] as well: *"However, the user of several pagers would be inconvenienced with having to change the configuration information stored in each of the pagers."*).

(4)   This functional understanding should also be the basis for the feature of *"responsive to"* in conjunction with the sending of the third message. When the server sends a synchronization message to the other receiving device without the user or his receiving device needing to initiate such a synchronization message, then the sending of this third message occurs *"responsive to"* the second message. In this regard, it is irrelevant whether the third message is sent immediately after receipt of the second message or only after receipt of an additional e-mail. The sending of the third message is "automatic" in both cases; neither the user nor the further terminal device needs to initiate anything in this instance.

b)   The Patent in Suit Does Not Teach Undelayed Synchronization

(1)   The fact that the Patent in Suit does not apply to undelayed synchronization, but rather exclusively to an automatic synchronization –

in the sense discussed above – may also be seen from the exemplary embodiment shown in Fig. 1, in which the change in status in the first receiver is only transmitted to the messaging infrastructure after an intentional delay.

(2)   In this context, we would like to refer again to the wording of features a.1) and a.2), which describe the change in status of the first message and the transmission of the second message:

> „*in one transceiver of the plurality of transceivers, changing the first status of the first message to a second status responsive to an input to the one transceiver, and transmitting a second message indicative of the second status*"

(3)   The second status of the message, which is also sent to the wireless messaging infrastructure, consequently occurs *"responsive to"* the input on the receiving device. According to the Defendant's understanding of the feature *"responsive to,"* the change in status would have to occur immediately after the input by the user, and this status would have to be sent directly to the messaging infrastructure.

(4)   However, quite contrary to the Defendant's understanding, the Patent in Suit considers it advantageous for the change in status not to be made immediately, but rather for a certain delay to be built in. In this regard, the description of the exemplary embodiment shown in Fig. 1 is described as follows:

> „[0018] *[…] During a delay 230, additional changes to message status can occur. The duration of delay 230 is a predetermined time period such as a typical display time out interval where the pager enters a low power mode when message displaying is ended. Other status changes that can occur during the delay 230 include changes to protected or deleted status. After delay 230, the status of the message received by pager 130 is transmitted in step 235 via a second message, that is, message 240.*
> *[…]*
> [0022] *Furthermore, delay 230 has the advantage of reducing the number status change transmissions. […]*"

(5)   Consequently, the patent does not consider it necessary for the individual steps of the synchronization to always occur immediately and without delay. Rather, the technical purpose – namely that of automatic synchronization – can also be achieved with delays in transmission. As may be seen from the citation above, the patent even considers delays to be advantageous because delays can be used to reduce the number of status change messages.

(6)   Moreover, the citations above also explicitly show that the patent does not understand the feature *"responsive to"* in the sense of an immediate and undelayed reaction. Although the second status, which is also sent to the messaging infrastructure in this fashion, changes *"responsive to"* the input, it is possible according to the specification for multiple different inputs to be "collected" during the delay phase. In spite of this intentional delay, the patent considers the change in status to be *"responsive to"* precisely because it occurs <u>as a result of</u> the user's input, notwithstanding any delays. In the same way, the sending of the third message in feature c.2) is *"responsive to"* because it occurs <u>as a result of</u> the receipt of the second message.

c)   The Patent in Suit Includes "Message Queuing" in the Preferred Embodiment

(1)   Although the statements above are a sufficient discussion of the issue of the interpretation of feature c.2), we would like to note that the Patent in Suit even quite explicitly incorporates "message queuing" on the level of communication between the wireless messaging infrastructure and the receiver into the patent by reference.

(2)   Paragraph [0012] states as follows with regard to a preferred embodiment:

> „[0012] *[...] The invention preferably operates with the Motorola Re-Flex^{TM} two-way wireless paging system infrastructure and*

> *protocol described in detail in the following United States patents assigned to the assignee of the present invention: U.S. Patent No. 5,475,863 entitled "Method and Apparatus for Identifying a Transmitter in a Radio Communication System" issued December 12, 1995 to Simpson et al. [...]".*

We have attached the patent referred to for the preferred embodiment as

- Exhibit KP2 K 4 -.

Column 7, line 18 *et seq.* and column 17, line 12 *et seq.* of US 5,475,863 describe how the wireless messaging infrastructure caches the messages to the mobile receiving devices in a "message queue" until the queue is sufficiently full that the predetermined threshold value is reached.

(3)   Therefore, it is evidenced that a caching of the third message in a "message queue" does not stand in the way of the implementation of the feature *"responsive to"* because otherwise a preferred embodiment would not be in line with the patent's teaching.

3.   Subsumption

On the basis of the correct interpretation discussed above, there can therefore be no doubt that feature c.2) is implemented by the synchronization method described by the Defendant.

a)   The IMAP server sends the synchronization message – consequently the "third message" – as a result of the receipt of the second message that indicates the status change. Although, assuming the Defendant's claim is accurate that a delay occurs until the receipt of another e-mail, the fact nonetheless remains that a synchronization message is sent responsive to receipt of a second message.

b)   For the sake of completeness, it should be mentioned here that the Defendant's statement that the other receivers must query the update (page 9 of the statement of defense) is not capable of casting doubt on the patent infringement. The fact that a messaging protocol may provide for the prior reaction of the addressed

receiver to a *"tap on the shoulder"* to be a precondition for the sending of a message by the infrastructure (i.e. the fact that the message need not necessarily be a "blind transmission") was self-evident and taken as read by the skilled practitioner at the time of priority, and is today as well.

c)   All features of claim 1 of the Patent in Suit have therefore been implemented.

IV.
Regarding the Plaintiff's Motions

1.   Right of Action

With regard to the Defendant placing the Plaintiff's right of action in doubt, we refer to statements made in the complaint. We are submitting a (partially redacted) excerpt from the "Confirmatory Patent Assignment" between the prior proprietor, Motorola Inc., and the Plaintiff as

- Exhibit KP2 K 5 -.

In item 1.(iii) of this document, Motorola also assigns all claims for damages arising from prior infringement behavior. The Patent in Suit is attached at the point indicated as Annex A as an IP right covered by the agreement.

2.   Offering the Protected Method for Sale

a)   The Defendant claims that the present action is unfounded with regard to the demand that the Defendant cease to offer the protected method for sale (page 2 of the statement of defense). The Defendant claims that, in order for the pleading to be well-founded, it is necessary for *"the Defendant to display the willingness to grant a usage license for the method in dispute for the Patent in Suit."*

b)   It is unclear what the Defendant's aim is here, however. In fact, the expression of willingness to grant the necessary consent and recognition to the performance of the method represents offering of a method. The fact that the Defendant is offering its synchronization method is undisputed, however.

3. **General Prohibition in Cases of Direct Infringement**

a) The Defendant claims that an obstacle to the requested general prohibition with regard to the indirectly infringing receiving devices is the fact that said devices may also be used in a non-infringing way.

b) In making this argument, the Defendant ignores the fact that the Plaintiff is not basing the general prohibition on the notion that the devices cannot be used in a non-infringing way. Rather, the Plaintiff is claiming that it would not be necessary to design the devices for the purpose of performing the patented method in order for the devices to be used in the public domain.

c) This view, which the Court has already used as a basis in many other proceedings, corresponds to the view formulated by the Düsseldorf Regional Court in its published decision *Wall Panels [Wandpaneele]* (Fifth Court of First Instance [InstGE 5], 173, 178). According to this decision, a general prohibition may be declared if it is possible to make deviations by means of which the disputed embodiments are deprived solely of their suitability for patent-infringing use. Such a deviation would be possible for the Defendant's devices by quite simply not performing the method of the patent.

4. **Cumulative Presentation of Evidence**

a) Finally, the Defendant asserts that the cumulative assertion of evidence presented according to the Plaintiff's motions B.I.2.a) and e) goes too far.

b) Although it is argued that the demanding party generally cannot demand multiple pieces of evidence for the same subject matter one after the other, this is not relevant in view of the motions cited, regardless of whether one holds this opinion. With motion B.I.2.a), the Plaintiff demands the presentation of evidence for deliveries and, with motion B.I.2.e), the Plaintiff demands the same for advertising. In this regard, however, the identity of the subject matter is already not present because delivery and advertisement are quite plainly not different stages of the same process.

The complaint is therefore valid in this regard as well, and is thus fully valid.

B.
Regarding the Motion to Suspend

The Defendant's alternative motion to suspend the proceedings until the final decision in the nullity proceedings initiated by Apple Retail Germany GmbH against the Patent in Suit should be denied as well. Document NK5 cited by the Defendant/Plaintiff as vital challenge in the nullity action is neither damaging to novelty (see **sub I**), nor does it render the invention according to the patent obvious, either alone or in combination with Document NK6 (see **sub II**). Nor are any other grounds for nullity discernible (see **sub III**).

I.
Novelty

It is in accordance with established precedent at the trial-court level and in higher courts for a suspension of the infringement proceedings to be considered at the trial-court level only if it is highly likely for the Patent in Suit to be nullified due to the nullity action (cf. BGH, GRUR 1987, 284 – Transport Vehicle; Düsseldorf Regional Court, BIPMZ 1995, 121). This is particularly due to the fact that suspension represents a significant detriment to the rights of the patent proprietor, particularly the time-limited motion for injunctive relief, due to the long duration of proceedings in nullity actions.

1.   **General scope of disclosure of NK5**

a)   First, we dispute that Document NK5 even belongs to the prior art to be considered. In particular, we dispute that the public had access to this document. The Defendant simply remarked in this context that this document contains the notation *"Distribution of this memo is unlimited."* However, the Defendant has not shown any facts that indicate whether and to whom this document was even made accessible.

b)   Ultimately, however, that is not relevant here because the document, due to its disclosure, is not able to cast doubts on the patentability of the Patent in Suit. NK5 is based on a quite different technical problem and therefore has a

fundamentally different aim than the Patent in Suit. As discussed above, the aim of the Patent in Suit is to provide a method for the automatic synchronization of multiple receivers in a wireless messaging infrastructure, particularly such that are turned on at the same time. In contrast, Document NK5 deals with a mail system in which the users access a central repository using so-called workstations. The repository stores a global mail status and the individual workstations have their own local memory for the mail status. This document describes how the local mail status <u>of one individual workstation</u> is synchronized with the global status of the repository. In contrast, the document does not spend a single word discussing an <u>automatic synchronization of all workstations</u>.

c)   As will be shown below, contrary to the Defendant's assertions, there are a great many features of the Patent in Suit that have <u>not</u> been anticipated.

2.   Not Damaging to Novelty

a)   No Disclosure of a Method for the Synchronization of Message Information Among a Group of Receivers

(1)   As discussed above, NK5 does not disclose a method for the synchronization of message information among a <u>group of receivers</u>; rather, it is limited to synchronization of the mail status of <u>a single workstation with the that of a repository</u>. Nothing is disclosed regarding the synchronization of a group of receivers. This is not surprising because NK5 is based on a system in which, although a user may have a plurality of workstations, the user does not use them at the same time.

(2)   Rather, the document approaches the problem of synchronization in the context of the user being able to make changes to the mail status while his workstation is not connected to the repository and therefore not to the central mail status. This fact becomes particularly clear from the following citation regarding the motive for synchronization:

      "5.2 Synchronization

> *Some workstations tend to be small and fairly portable; the likelihood of their always being connected to a network is relatively small. This is another reason for each client's maintaining a local copy of a user's mail state. The user can then manipulate the local mail state while not connected to the network (and the repository). This immediately brings up the problem of synchronization between local and global mail state.* […]"

(3)   Thereafter, NK5 discusses exclusively how the local mail status on this one workstation can be synchronized with the global mail status of the repository. In contrast, the issue of whether and to what extent synchronization occurs with the user's other workstations is not discussed in the document at all.

b)   No Disclosure of a Wireless Messaging Infrastructure

Moreover, NK5 also does not disclose a wireless messaging infrastructure in the sense of features a), b), and c), which even the Defendant must admit.

c)   No Disclosure of Sending a Third Message Responsive to the Receipt of the Second Message

(1)   In particular, NK5 also does not contain any disclosure in the sense of feature c.1) that a third message indicating the second status is transmitted to a transceiver in the messaging infrastructure responsive to the receipt of the second message from another receiver.

(2)   The Defendant's citations from section 6 of NK5 (cf. page 20 et seq. of the statement of defense) are unable to elucidate where the Defendant claims to find the disclosure of this feature in the document. In fact, NK5 does not contain any disclosure whatsoever in this regard. Quite to the contrary, synchronization – which in any case is described only from the viewpoint of a single workstation – is not described as an automatic process, but rather as a process in which the client, i.e., the workstation, is able to access the necessary information.

(3)   NK5, Section 5.2 (Synchronization), paragraph four reads as follows:

> *"When a client connects to the repository, it executes a DMSP 'fetch-changed-descriptors' operation. This causes the repository to return a list of all descriptors on that client's update list."*

In other words, the client who logs into the repository accesses the synchronization data. It is clear that there is no question of disclosure of any sort of automatic synchronization.

(4)   The following citation from section 6 cited by the Defendant in its statement of defense (p. 20) also cannot be used to establish disclosure that is damaging to the novelty of feature c.2). On the contrary, despite the use of the term *"automatically"* this citation clarifies even further that NK5 does not anticipate synchronization in the sense of the teaching of the Patent in Suit.

> *"Depending on the mail reader implementation, Fred will either have to execute a 'synchronize' command periodically or the client will synchronize for him automatically ever so often."*

(5)   The citation describes that in cases of an existing connection with the server synchronization – which, it should be noted, is still being described only with regard to the relationship of one workstation to the repository – occurs in that the user himself regularly inputs a command to that effect or in that the client (i.e., the workstation) regularly automatically synchronizes for the user. However, automatic synchronization in the sense of the teaching of the Patent in Suit has the precondition that the messaging infrastructure – applied to NK5, the repository – sends the synchronization messages and the receiver does not need to "go get" them.

(6)   Feature c.2) is consequently also not disclosed. The novelty of the Patent in Suit is not damaged by NK5.

II.
Inventive Step

Because in the Court's ruling procedure the suspension of an infringement proceeding merely due to the possibility of a lack of inventive step is considered only in exceptional cases, any statements on this issue are fundamentally unnecessary. Nevertheless, we will discuss briefly below why Document NK5, neither alone nor in combination with Document NK6, renders obvious the invention on which the Patent in Suit is based.

1.   This is true simply for the reason that the synchronization method with the existing connection to the repository proposed in NK5 leads one away from the teaching of the Patent in Suit and is the diametrical opposite thereof. NK5 describes synchronization either by means of the regular input of a command by the user or by regular synchronization by the client, i.e., the workstation. For this purpose, as shown above, the workstation must regularly send queries to the repository. If no changes have occurred in the global mail status between two queries, then the query was superfluous.

2.   In contrast, the superfluous query or sending of a message is precisely what is prevented by the Patent in Suit. Only when the status of a message is changed by a receiving device and said status change is reported to the messaging infrastructure does the infrastructure send a third message (synchronization message) to the additional receiving device. Such a conscious reduction in messages and queries is desirable in a wireless infrastructure with its mobile receiving devices because, if the receiving devices were to regularly – and ultimately superfluously – send queries to the infrastructure, this would increase power consumption and reduce battery life. NK5 leads away from this solution and does not render it obvious at all.

III.
No Other Grounds for Nullity

1.   For the sake of completeness, we would like to mention that the patentability of the Patent in Suit has also not been placed in doubt in view of the other prior art cited in the nullity action. Documents NK7 through NK 16, which are also cited in the nullity action, represent even more distant prior art than NK5. In particular, prior art NK7 – on whose

public accessibility the plaintiff to the nullity action presented nothing, such public accessibility being contested by way of precaution – does particularly not disclose a synchronization of multiple "clients" nor a wireless message infrastructure; consequently a whole range of features of the patent in suit is not anticipated. For this reason, the Defendant has also refrained from making statements about these documents in its statement of defense. None of these documents is damaging to the novelty, nor do they render the patented teaching obvious.

2.   The patent in suit is without a doubt patentable. No other grounds for nullity were asserted against claim 1 of the Patent in Suit, which is the object of the present proceedings. Consequently, a suspension of the proceedings is out of the question.

(Dr. Jan Ebersohl)
Attorney at Law

Exhibits
KP2 K 3 to KP2 K 5