

# **EXHIBIT 5**

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BY E-MAIL

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Re: *Motorola Mobility, Inc. v. Apple, Inc.* (SDFL), Case No. 1:10cv023580-Civ-UU

Dear David,

I write to address the numerous deficiencies in Motorola Mobility, Inc.'s ("Motorola's") responses to Apple, Inc.'s ("Apple's") First, Second, Third, and Fourth Sets of Requests for Production of Documents and Things as well as Apple's First and Second Sets of Interrogatories.

As a preliminary matter, while Apple has attempted to produce documents that are only responsive to document requests to this action using a "FL-Apple" prefix, Motorola's document productions have all used the same "MOTO-APPLE" prefix. To the extent that any Motorola documents were specifically produced in response to requests served by Apple in this action, please identify those Bates ranges. By way of example, any documents produced by Motorola regarding the accused set top boxes are not relevant to any other pending litigation between the parties. Please identify such documents by November 11, 2011.

#### **A. Deficiencies in Responses to Document Requests**

Motorola has failed to respond adequately (or at all) to many of Apple's requests for production. Notably, we have yet to receive Motorola's responses Apple's Fourth Set of Requests for Production, served on May 20, 2011. Please serve those immediately or confirm that Motorola has already produced documents responsive to those requests.

##### *1. Motorola's Refusal to Produce Documents*

Motorola has refused to produce documents in response to Request for Production Nos. 13, 23, and 47-49. For example, Request for Production No. 23 asks for:

All documents and things concerning the initial offer for sale, initial manufacture, initial use, initial sale, initial public use, initial shipment,

initial announcement, initial disclosure, and initial publication of each embodiment of any invention claimed in the Motorola Mobility Patents-in-Suit.

There should be no dispute that Request No. 23 is relevant to the validity of the Motorola Patents-in-Suit, and Motorola has provided no good-faith basis for refusing to respond. Similarly, each of the aforementioned requests calls for information relevant to the parties' claims and defenses in this matter and are likely to lead to the discovery of admissible information. Please confirm that Motorola will promptly produce such documents and, in any event, by no later than November 11, 2011.

2. *No Basis For Motorola's Purported Lack of Understanding of Apple's Requests*

Motorola responds to Request for Production Nos. 15-18, 27, 34-37, and 41-42 by agreeing to produce documents only "to the extent that Motorola understands this request." For example, Request for Production No. 15 asks for:

All documents and things concerning the personnel and employment history for each of the named inventors of the Motorola Mobility Patents-in-Suit, including resumes or curriculum vitae.

Motorola, however, fails to identify what it believes to be confusing about this request. This request is straightforward and simply asks for documents related to the personnel and employment history for each of the named inventors of the Motorola Patents-in-Suit, including resumes or curriculum vitae. Motorola's responses to Apple's Request for Production Nos. 15-18, 27, 34-37, and 41-42 state that "*to the extent Motorola understands this Request*, Motorola will produce non-privileged, relevant documents, responsive to this request, if any, that are in Motorola's possession, custody or control."

Similarly, Motorola's responses to Request for Production Nos. 5-9, 21-22, 24, and 39 ask for a meet-and-confer "to understand [the Request's] meaning." For example, Request for Production No. 8 simply asks for:

Documents referring or relating to comparisons between the Motorola Accused Products and products of other companies, including but not limited to Apple's products.

Motorola's responses to this and other straightforward requests caveat that "after meeting and conferring with Apple in a good faith effort to narrow the scope of this Request and to *understand its meaning*, at an appropriate time thereafter, Mobility will produce non-privileged, relevant documents, responsive to this Request, if any, that are in Mobility's possession, custody or control."

Please clarify your understanding and identify what questions you have, if any, concerning the scope of the aforementioned requests. I am generally available to meet and confer with you regarding any questions concerning scope this week. In any event, because Motorola has not contested that each of Apple's requests calls for information relevant to the parties' claims and defenses in this matter and

are likely to lead to the discovery of admissible information, Motorola should promptly produce the responsive documents at least within the scope of its understanding of these requests.

3. *Motorola's Inappropriate Limitation on the Timing of Its Production*

Motorola's responses to Request for Production Nos. 11-12, 18-19, 25-26, and 28 state that Motorola will only produce the relevant documents at an unspecified "appropriate" time. For example, Request No. 11 asks for:

All documents and things concerning Your awareness of the Apple Patents-in-Suit, including but not limited to Your first awareness of each of the Apple Patents-in-Suit and first awareness that Apple believed You infringe the Apple Patents-in-Suit.

Motorola responded that "*at an appropriate time*, Mobility will produce non-privileged, relevant documents, responsive to this Request, if any, that are in Mobility's possession, custody or control." Similarly, Motorola's responses to Request for Production Nos. 5-9 and 21-22 ask for a meet-and-confer, and "at an appropriate time thereafter," the relevant documents will be produced.

Motorola fails to explain why it believes these requests are premature and why documents should not be produced immediately. Each of these requests calls for information relevant to the parties' claims and defenses in this matter and are likely to lead to the discovery of admissible information. Accordingly, Motorola must promptly produce documents responsive to these Requests for Production or explain why it is refusing to do so.

4. *Motorola's Attempts to Unilaterally Narrow the Scope of Apple's Requests*

In its responses to Requests for Production Nos. 2-10, 21-22, 24, 31, 39, 43, and 46, Motorola asks for a meet-and-confer "to narrow the scope" of the request. Please clarify in writing exactly how Motorola proposes to narrow the scope of each of these requests prior to our meet and confer. Also, please be prepared to discuss why Motorola believes the scope of these Requests need to be narrowed and when the requested documents will be produced.

**B. Deficiencies in Responses to Interrogatories**

I also write to address numerous deficiencies in Motorola's responses to Apple's interrogatories.

1. *Motorola's Failure to Respond*

Motorola's responses to Interrogatory Nos. 7, 8, 14, and 15 state that Motorola "is still investigating the claims and defenses at issue in this case" and will provide responses "on the timeframe set by the Court" or "after it has had an opportunity to seek discovery." I note that Apple's First Set of Interrogatories was served December 29, 2010—over ten months ago, and its Second Set of Interrogatories was served February 24, 2011—over seven months ago, and yet many of Apple's interrogatories still remain unanswered. Motorola has had ample time to respond. Please serve substantive responses to these interrogatories by no later than November 11, 2011.

2. *Motorola's Failure to Supplement*

Additionally, Motorola stated in response to Interrogatory Nos. 3, 6, 12, and 13 that it had “not yet completed its discovery and investigation of the facts” relating to the interrogatories and would supplement its response “at the appropriate time and as its investigation continues.” This was over seven months ago; yet, to date, only two interrogatory responses have been supplemented. Motorola has had ample time to supplement its responses to Apple’s interrogatories. Please serve supplemental responses to these interrogatories by no later than November 11, 2011.

Please do not hesitate to contact me if you have any questions. I am generally available to meet and confer this week.

Best regards,



J.H. Ho

cc: Counsel of Record