

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

**Case No. 1:10cv023580-Civ-UU**

MOTOROLA MOBILITY, INC.,

Plaintiff,

v.

APPLE INC.,

Defendant.

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APPLE INC.,

Counterclaim Plaintiff,

v.

MOTOROLA, INC. and  
MOTOROLA MOBILITY, INC.,

Counterclaim Defendants.

**JURY TRIAL DEMANDED**

**JOINT PLANNING AND SCHEDULING REPORT**

Pursuant to Federal Rule of Civil Procedure 26(f) and this Court's October 25, 2010 Order Setting Planning and Scheduling Conference (Dkt No. 8), counsel for Plaintiff/Counterclaim Defendant Motorola Mobility, Inc. and Counterclaim Defendant Motorola Inc. (hereinafter "Motorola") met and conferred with counsel for Defendant/Counterclaim Plaintiff Apple, Inc. ("Apple") on Tuesday, December 21, 2010 regarding a discovery plan and case schedule. Attending for Motorola were Edward J. DeFranco, David A. Nelson, Edward M. Mullins, and Peter G. Hawkins. Attending for Apple were Steven S. Cherensky and Patricia Young. The parties exchanged Initial

Disclosures pursuant to Fed R. Civ. P. 26(a)(1) on Friday, December 17, 2010. The parties have agreed to refrain from exchanging disclosures pursuant to Fed. R. Civ. P. 26(a)(2) at this time, and instead propose a deadline for making such disclosures in the proposed schedule in ¶5 below.

The parties submit this Joint Planning and Scheduling Report.

**1. A Plain Statement of the Nature of the Claim and any Counterclaims**

This is an action for patent infringement. The Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a). Motorola Mobility, Inc. asserts six patents against Apple, namely U.S. Patent Nos. 5,710,987, 5,765,119, 5,958,006, 6,008,737, 6,101,531, and 6,377,161. Apple asserts six patents against Motorola, Inc. and Motorola Mobility, Inc. as counterclaims and seeks declaratory relief, namely U.S. Patent Nos. 5,583,560, 5,594,509, 5,621,456, 6,282,646, 7,380,116, and 7,657,849. Motorola's and Motorola Mobility's responses to Apple's counterclaims were filed on December 13, 2010.

**2. A Brief Summary of the Facts which are Uncontested or which can be Stipulated to without Discovery**

The parties are unaware of any facts which are uncontested or can be stipulated to without discovery at this time.

**3. A Brief Summary of the issues as Presently Known**

The following are the issues as presently known:

- (a) The proper construction of the claims of the patents asserted by the parties;
- (b) Whether any of the patents asserted by Motorola Mobility, Inc. are infringed by any of Apple's products;

- (c) Whether any of the patents asserted by Apple are infringed by any of Motorola, Inc.'s and/or Motorola Mobility Inc.'s products;
- (d) Whether Motorola, Inc. is a proper party to this action;
- (e) Whether any of the patents asserted are invalid or unenforceable;
- (f) Whether any injunction(s) should issue;
- (g) If one or more of the patents asserted are infringed and not invalid or unenforceable, what damages and/or other relief would be appropriate;
- (h) If one or more of the patents asserted are infringed, whether such infringement was willful and deliberate;
- (i) If any infringement of the patents asserted was willful and deliberate, whether increased damages should be awarded;
- (j) Whether either party is entitled to attorney's fees under 35 U.S.C. § 285 or costs.

**4. Whether Discovery Should be Conducted in Phases or Limited to**

**Particular Issues**

The parties believe that discovery should not be conducted in phases or limited to particular issues.

**5. A detailed schedule of discovery for each party**

**Motorola's Proposal:** Motorola proposes the Standard Track in which discovery will be completed within 180 to 269 days after the Scheduling Order. Motorola's scheduling proposal is appropriate for the number of asserted patents and accused products in this action. For example, Motorola's patents and the accused features in Apple's products relate to discrete but related technologies, such as wireless

synchronization of email, email summary and filtering, wireless control of email filters, address information exchange, concealed antennas, and controlling usage of wireless applications. Similarly, at least five of the six Apple patents at issue purport to relate to information display on mobile devices or set-top boxes.

While there are several other patent cases pending between the parties, Motorola's scheduling proposal is consistent with the schedules entered in those actions. There is no conflict between the schedule proposed by Motorola and the deadlines in the other actions between the parties – Motorola's proposed trial date in this action (December 9, 2011) does not conflict with the trial date in the Wisconsin action (April 30, 2012) or the hearing date in the International Trade Commission action (July 25-29, 2011). Apple generally refers to conflicts with intermediate dates in the schedules but Motorola disagrees. In addition, the firms involved in these cases are large and are certainly accustomed to having teams that can handle multiple cases at one time.

Apple's proposed schedule (with trial delayed until July 2012) attempts to delay this action well beyond the trial and hearing dates in the other actions between the parties, presumably to gain a strategic advantage. Furthermore, as explained below, this action was filed several weeks before Apple filed its later action in the Western District of Wisconsin. Thus, there is no reason to delay the trial of this action beyond the trial date in the Wisconsin second-filed action.

**Apple's Proposal:** Apple proposes the Complex Track in which discovery will be completed within 270 to 365 days after the Scheduling Order. Apple's scheduling proposal takes into consideration the complexity of the case due to the twelve patents-in-suit and the dozens of accused products. As described in ¶10 below, there are also a

number of other patent cases pending between Apple and Motorola regarding similar accused products. Given that the U.S. International Trade Commission and the Western District of Wisconsin have already issued scheduling orders in those cases between Apple and Motorola, Apple's proposed schedule also seeks to minimize scheduling conflicts with already scheduled hearings and trials between the parties. While Motorola focuses on the fact that there is no specific conflict with respect to their proposal and the trial dates in the other actions, there are a number of intermediate dates among the various cases between the parties which lead to scheduling conflicts and overlaps under Motorola's proposal, and it is Motorola that created those conflicts by filing patent infringement actions in four different jurisdictions at the same time.

The parties propose the following deadlines:

Event	Date(s) proposed by Motorola and Motorola Mobility	Date(s) proposed by Apple Inc.
Filing	October 6, 2010	
Planning and Scheduling Conference	January 14, 2011	
Deadline to Amend Pleadings	January 28, 2011	
Deadline to Add Additional Parties	January 28, 2011	
Deadline for Parties to Submit Joint Proposed Protective Order	January 28, 2011	
Deadline to Disclose Initial Infringement Contentions and Asserted Claims	February 25, 2011	March 18, 2011
Deadline to Disclose Initial Invalidity and Unenforceability Contentions	March 18, 2011	April 20, 2011
Deadline to Exchange List of Claim Terms and Proposed Constructions	April 1, 2011	May 27, 2011
Deadline for Disclosures Pursuant to Rule 26(a)(2)	April 15, 2011	June 10, 2011
Deadline for parties to file joint claim construction statement	April 15, 2011	June 10, 2011

Event	Date(s) proposed by Motorola and Motorola Mobility	Date(s) proposed by Apple Inc.
Deadline to File Opening Claim Construction Brief	April 22, 2011	June 24, 2011
Deadline to File Responsive Claim Construction Brief	May 13, 2011	July 29, 2011
Claim Construction Hearing (if granted)	May 27, 2011	September 14, 2011
Deadline to File Opening Expert Reports (Liability/Damages)	July 8, 2011	November 4, 2011
Deadline to File Rebuttal Expert Reports (Liability/Damages)	August 12, 2011	December 16, 2011
End of Discovery	August 26, 2011	January 17, 2012
Deadline to File Motions for Summary Judgment	September 2, 2011	February 24, 2012
Deadline for filing all other pretrial motions	September 9, 2011	March 2, 2012
Deadline for all Rule 26 Disclosures	October 7, 2011	March 30, 2012
Deadline for all Rule 26 Objections	October 21, 2011	May 25, 2012
<i>In limine</i> motions filed and served	November 4, 2011	April 13, 2012
Oppositions to <i>in limine</i> motions filed and served	November 11, 2011	May 25, 2012
Final pre-trial conference	December 2, 2011	June 25, 2012
Trial	December 9, 2011	July 9, 2012

**6. Proposed deadlines for joinder of other parties and to amend the pleadings, to file and hear motions and to complete discovery**

Per ¶5, the parties propose January 28, 2011 as the deadline to add additional parties and to amend the pleadings

**Motorola's Proposal:** Motorola proposes April, 22, 2011 and May 13, 2011 as the deadlines to file Opening and Responsive Claim Construction briefs, respectively, and September 2, 2011 as the deadline to file Motions for Summary Judgment. Motorola also proposes August 26, 2011 as the deadline to complete discovery,

November 4, 2011, as the deadline to file and serve all motions *in limine*, and November 11, 2011 as the deadline to file and serve all oppositions to motions *in limine*.

**Apple's Proposal:** Per ¶5, Apple proposes June 24, 2011 and July 29, 2011 as the deadlines to file Opening and Responsive Claim Construction briefs, respectively, and February 24, 2012 as the deadline to file Motions for Summary Judgment. Apple proposes January 17, 2012 as the deadline to complete discovery, April 13, 2012 as the deadline to file and serve all motions *in limine*, and May 25, 2012 as the deadline to file and serve all oppositions to motions *in limine*.

**7. Proposed approximate dates for final pre-trial conferences and trial.**

**Motorola's Proposal:** Per ¶5, Motorola proposes December 2, 2011 as the date for final pre-trial conference and December 9, 2011 as the date for trial.

**Apple's Proposal:** Per ¶5, Apple proposes June 25, 2012 as the date for final pre-trial conference and July 9, 2012 as the date for trial.

**8. Projected time necessary for trial and a statement of whether the case is jury or non-jury trial.**

The parties agree to a jury trial.

**Motorola's Proposal:** Motorola expects the trial to be completed in two weeks.

**Apple's Proposal:** Given that there are twelve patents-in-suit and dozens of accused products at issue in the case, Apple expects that three weeks will be required for trial.

**9. A list of all pending motions, whether each motion is "ripe" for review, the date each motion became ripe, and a summary of the parties' respective positions with respect to each ripe motion.**

There are currently no motions pending before the Court.

**10. Any unique legal or factual aspects of the case requiring special consideration by the Court**

This case is one of multiple cases related to Motorola's and Apple's patents that have been filed in various district courts and tribunals.

**Illinois Action.** On October 6, 2010, Motorola Mobility filed two patent infringement complaints in Cases Nos. 1:10-cv-06381 and 1:10-cv-06385 in the United States District Court for the Northern District of Illinois. On November 9, 2010, Motorola Mobility voluntarily dismissed both of these actions pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and asserted the patents at issue as counterclaims in Case No. 3:10-cv-00662-BBC and Case No. 3:10-cv-00661-BBC, discussed below.

**Motorola ITC Action.** On October 6, 2010, Motorola Mobility filed a complaint with the U.S. International Trade Commission ("ITC") seeking institution of an investigation, naming Apple as the proposed respondent and alleging infringement of six patents. Notice of institution of that investigation (Inv. No. 337-TA-745) was published in the Federal Register on November 8, 2010. Apple filed its response to the complaint on December 1, 2010.

**Delaware Action.** On October 8, 2010, Motorola Mobility filed a complaint seeking declaratory judgment relief against Apple and NeXT in the United States District Court for the District of Delaware, Case No. 1:10-cv-00867-GMS. Motorola Mobility seeks declaratory relief of non-infringement and invalidity of U.S. Patent Nos. 5,455,599, 5,481,721, 5,519,867, 5,566,337, 5,915,131, 5,929,852, 5,946,647, 5,969,705, 6,275,983, 6,343,263, 6,424,354, and RE 39,486. On December 2, 2010 Apple and NeXT filed a



motion to dismiss or, in the alternative, to transfer that case to the Western District of Wisconsin. That motion is currently pending. On December 20, 2010, Motorola Mobility filed an opposition to Apple's motion to dismiss or, in the alternative, transfer in the Delaware Action.

**Apple ITC Action.** On October 29, 2010, Apple filed a complaint with the ITC seeking institution of an investigation, naming Motorola and Motorola Mobility as the proposed respondents and alleging infringement of three patents. Notice of institution of that investigation (Inv. No. 337-TA-750) was published in the Federal Register on November 30, 2010.

**Wisconsin Action.** On October 29, 2010, Apple filed two patent infringement actions in the United States District Court for the Western District of Wisconsin, Case Nos. 3:10-cv-00661-BBC and 3:10-cv-00662-BBC. In Case No. 3:10-cv-00661-BBC, Apple asserts the three patents at issue in Inv. No. 337-TA-750. Motorola has counterclaimed to assert the six patents at issue in Inv. No. 337-TA-745. That case is stayed pending the resolution of the concurrent ITC investigations pursuant to 28 U.S.C. § 1659(a).

In Case No. 3:10-cv-00662-BBC, Apple filed an Amended Complaint on December 2, 2010, asserting U.S. Patent Nos. 5,838,315, 6,493,002, and 7,479,949 in addition to the twelve patents from Motorola's declaratory judgment action in Delaware, against Motorola. On November 9, 2010, Motorola and Motorola Mobility filed its answer and counterclaims, seeking declaratory relief and asserting six of its own patents, namely U.S. Patent Nos. 5,311,516, 5,319,712, 5,490,230, 5,572,193, 6,175,559, and 6,359,898, against Apple. Apple's responses to Motorola's and Motorola Mobility's

counterclaims were filed on December 3, 2010. On December 23, 2010, Motorola filed a motion to dismiss Apple's claims relating to the twelve patents at issue in Motorola Mobility's declaratory judgment action in Delaware or, in the alternative, to sever and transfer such claims to Delaware.

**Apple's Proposal:** Given the number of patents and the number of jurisdictions in which cases are pending between Motorola and Apple, Apple has requested that Motorola consider a consolidation of all cases to a single venue for adjudication. Because there is already a schedule in the Western District of Wisconsin case, and there is already a pending motion to transfer the Delaware case to Wisconsin, Apple has suggested a transfer of the pending district court cases to the Western District of Wisconsin. Given the complexity of the cases, Apple believes that in the interest of judicial efficiency, the pending District Court between Apple and Motorola, including the case before this Court, should be transferred to the Western District of Wisconsin. Accordingly, Apple may file a motion to transfer this case to the Western District of Wisconsin.

**Motorola's Response:** Motorola does not believe that consolidation is appropriate. Both parties have chosen to litigate in this district with their asserted patent claims, as Apple has filed counterclaims in this action. The counterclaims relating to Apple's patents were permissive, not compulsory, and thus Apple has waived any basis to object to improper or inconvenient venue. Motorola will fully respond to any motion to transfer filed by Apple in this District.

In addition, Apple's reference to the complexity of the cases weighs against transfer and consolidation, not in favor of it. This action was filed several weeks before

Apple filed its later action in the Western District of Wisconsin. Thus, there is no reason to transfer this first-filed action to Wisconsin for consolidation with Apple's second-filed action.

**11. Any potential need for references to a special master or magistrate**

The parties consent to the use of a magistrate judge to resolve discovery disputes.

**12. The status and likelihood of settlement.**

The parties have engaged in settlement discussions before the filing of this action, but were unsuccessful in reaching a satisfactory arrangement. Because this case is in its infancy, the parties cannot determine the likelihood of settlement at this time.

**13. Such other matters as are required by Local Rule 16.1(B) and as may aid the Court in setting the case for status or pretrial conference and in the fair and expeditious administration and disposition of this action.**

Pursuant to Local Rule 16.1(B) and Fed. R. Civ. P. 26(f) the parties agree that the following may aid the court in setting the case for status or pretrial conference:

**a) Protective Order**

The parties will submit to the Court a proposed Protective Order governing the production and use of confidential information to be produced.

**b) Discovery Limits**

The parties agree that discovery shall be governed by the Federal Rules of Civil Procedure, with the exceptions that:

- (1) there shall be a total of 30 interrogatories permitted per side;
- (2) with regard to Rule 30(b)(6) depositions, the parties agree that each side shall be limited to 50 hours total of 30(b)(6) testimony. The parties agree to use all

reasonable efforts to coordinate the scheduling of the 30(b)(6) depositions to coincide with depositions taken of individuals in their personal capacity, to minimize inconveniencing the witnesses. In addition, the parties shall meet and confer in good faith regarding the number and scope of 30(b)(6) topics in order to minimize any undue burden. The parties agree that 30(b)(6) testimony and depositions of expert witnesses shall not count toward the deposition limit. The parties agree that the seven-hour limit set forth in the Federal Rules shall be the presumptive time limit for each deposition, although the parties agree to make reasonable accommodations for additional time, as necessary;

(3) there shall be a total of 200 requests for production permitted per side;

(4) there shall be a total of 100 requests for admission permitted per side, excluding requests for admission that are solely for purposes of authenticating documents.

(5) there shall be a total of 40 depositions permitted per side, excluding 30(b)(6) testimony and depositions of expert witnesses. Also, notwithstanding this agreement, either party can seek leave of court to exceed these agreed upon limits for good cause shown.

**c) Expert Discovery**

The parties agree that, consistent with the 2010 amendments to Federal Rule of Civil Procedure 26, communications with experts and drafts of expert reports are not discoverable. The parties further agree that materials relied upon by experts in forming opinions expressed in final expert reports shall be discoverable.

**d) Electronic Service**

The parties hereby consent in writing that service by electronic means shall be allowed as set forth in Federal Rule of Civil Procedure 5(b)(2)(E) and that such service shall be deemed complete upon transmission, provided that the sender does not receive any indication that such electronic transmission was unsuccessful. The parties agree that a document is deemed served on a particular day if sent by midnight ET on that calendar day; otherwise it is deemed served on the next calendar day. The parties will meet and confer regarding service lists.

**e) Document Production**

The parties agree to produce all documents electronically and are conferring regarding the logistics to ensure that such production occurs in a mutually-agreeable format. The parties further agree that production of any electronic source code will be done by making such source code available for inspection in a mutually agreeable manner. The parties will meet and confer regarding specific procedures to allow counsel and expert consultants access to such source code.

Dated: December 29, 2010

Respectfully Submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that on December 29, 2010, I caused the foregoing document to be electronically filed with the Clerk of Court using the ECF system, which will make this document available to all counsel of record for viewing and downloading from the ECF system.

/s/ Edward M. Mullins  
Edward M. Mullins

**SERVICE LIST**

*Motorola Mobility, Inc. v. Apple, Inc.*  
Case No.: 1:10-23580-CIV-UNGARO/Simonton  
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