

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 10-23580-Civ-UNGARO

MOTOROLA MOBILITY, INC.,)
)
 Plaintiff,)
)
 -v-)
)
 APPLE, INC.,)
) Miami, Florida
 Defendant.) January 14, 2011
) 11:18 a.m.

TRANSCRIPT OF PLANNING & SCHEDULING CONFERENCE
BEFORE THE HONORABLE URSULA UNGARO
U.S. DISTRICT JUDGE

APPEARANCES:

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1 (Call to order of the Court)

2 THE COURT: So the case before the Court is Motorola
3 Mobility, Inc., versus Apple, 10-23580.

4 Who's here for Motorola?

5 MR. LUCAS: Good morning, Your Honor. Hal Lucas from
6 Astigarraga Davis.

7 MR. DeFRANCO: And Edward DeFranco from Quinn
8 Emmanuel, Your Honor.

9 THE COURT: Good morning.

10 MR. DeFRANCO: Good morning.

11 THE COURT: You can have a seat.

12 And who's here for Apple?

13 MR. PACE: Good morning, Your Honor. Chris Pace and
14 Matt Powers from Weil, Gotshal & Manges. We also have David
15 Melaugh here from Apple.

16 THE COURT: Okay. Fine. You can have a seat.

17 Well, you know, I don't usually bring people in for
18 these planning and scheduling conferences unless there's some
19 motion that's really troublesome before the Court. I think
20 the only motion that's pending in this case is Apple's motion
21 to transfer venue. And, of course, it hasn't been fully
22 briefed.

23 But it did catch my eye when I went over the planning
24 and scheduling report that there were all these other cases
25 pending in all these other jurisdictions, and I became

1 perplexed as to what Motorola and Apple were doing here.

2 After all, I don't think the Southern District of
3 Florida, not to take anything away from myself or my
4 colleagues, is known as a court with a great deal of
5 specialized expertise in the area of patent litigation.

6 So, what are we doing here?

7 MR. DeFRANCO: Well, they are a lot of fun, Your
8 Honor. I'll tell you that.

9 THE COURT: Is that what you do regularly?

10 MR. DeFRANCO: That's what I do, yes.

11 THE COURT: Okay.

12 MR. DeFRANCO: This is an area of specialty where,
13 you know, the cases often are complicated and time consuming.

14 THE COURT: Yes.

15 MR. DeFRANCO: So usually lawyers focus and
16 specialize in patent cases.

17 Also, I should say this area of technology in
18 general, there are lots of lawsuits and it's very common.
19 There are many companies in this business right now, U.S.,
20 foreign, Nokia, Apple, Motorola, HTC, you go down the list and
21 when you look at litigations involving these companies, it's
22 very common that there is a mosaic of cases in different
23 areas. This is not an unusual circumstance.

24 There are different reasons for that. There are some
25 courts, as Your Honor pointed out, that specialize or have

1 many patent cases, have lot of experience, they have local
2 patent rules, that sort of thing.

3 THE COURT: Well, why not the Western District of
4 Texas?

5 MR. DeFRANCO: Eastern. I just had a trial there
6 last year.

7 THE COURT: Or why not the District of Delaware, or
8 why not the District of Wyoming?

9 MR. DeFRANCO: Well, there are a number of reasons.
10 When you look where to file these cases, Your Honor -- and,
11 obviously, we just got their papers, we'll just be
12 responding -- one of the things they say is: Why here;
13 Motorola is not here. Well, Motorola is here.

14 THE COURT: Isn't Motorola everywhere?

15 MR. DeFRANCO: Well, not really. I mean, their
16 products are all over, as Apple's products are. But Motorola,
17 they have about a half dozen major facilities worldwide. One
18 is right here in Plantation and some of the technology at
19 issue in this case relates to work that has been done in
20 Plantation.

21 There are, obviously, a number of inventors on
22 Motorola's patents. Some of those inventors are located in
23 the Miami area and they're no longer with Motorola. So we'll
24 need some of those witnesses at trial. We'll go into detail
25 on all these issues as we continue to work through their

1 papers.

2 Another consideration is, you know, speed of time to
3 trial. I mean, patent technology moves faster and faster
4 obviously, right. Patent cases, historically, in some
5 jurisdictions have a tendency to drag out, and, you know,
6 there are jurisdictions where the docket is such that, you
7 know, you have the opportunity to get a case to trial more
8 quickly.

9 Now, you know, a broad overview, they say, well,
10 let's get everything in one jurisdiction. And again, as we'll
11 explain in our papers, there are very good reasons why the
12 cases have split out and are where they are right now.

13 Just for one example, in Delaware we filed a
14 declaratory judgment action on 12 of their patents saying we
15 don't infringe those patents. That's what's at issue in
16 Delaware. We did that for a very specific reason, because
17 those same patents are in front of the same judge in other
18 cases that, you know, after we filed our case, our case got
19 assigned to Judge Sleet, who's hearing other cases on those
20 very same patents. It makes perfect sense for one judge to
21 deal with the same group of patents, right. That's perfect
22 judicial economy.

23 They say, well, let's put everything in one
24 jurisdiction. I'm not sure if they would have a problem if it
25 call came to Florida. They say Wisconsin. But that would be

1 in both directions over 30 patents.

2 I've been doing this for over 20 years. I don't
3 remember ever seeing a case that came close to having that
4 number of patents.

5 THE COURT: There are a lot of patents in this case.
6 There are 12 patents?

7 MR. DeFRANCO: There are 12 patents in this case and
8 that is a large case, and, you know, it's manageable in one
9 jurisdiction. I don't mean to belittle the amount of work
10 it's going to be on Your Honor, but it is manageable. But to
11 say, well, we're going to take three cases, and we have a
12 different view --

13 THE COURT: Well, how many patents are in the
14 Wisconsin litigation, before we even get to the issue of how
15 related the patents are? How many patents are in Wisconsin?

16 MR. DeFRANCO: There are 12 patents in Wisconsin as
17 well, if I have that right. No, I'm sorry. There are nine
18 patents in Wisconsin. There are 12 in Delaware, 12 here.

19 THE COURT: And the declaratory judgment -- you've
20 moved --

21 MR. DeFRANCO: So we now have, putting aside another
22 forum, the International Trade Commission --

23 THE COURT: Yes, right.

24 MR. DeFRANCO: -- we have competing cases.

25 THE COURT: Right. How many patents are there?

1 MR. DeFRANCO: This is the Lawyers Full Employment
2 Act.

3 THE COURT: Yes, it seems to be.

4 How many patents are in front of the International
5 Trade Commission?

6 MR. DeFRANCO: In there, you know, you can't file a
7 counterclaim. So we have our action. They have their
8 action.

9 THE COURT: Are those infringement claims? What are
10 those? I have no idea what this body is or what it does.

11 MR. DeFRANCO: The International Trade Commission is,
12 just in two minutes, it was established decades ago. It's
13 meant to protect basically -- and I'm not an expert in this
14 area, so don't hold me to this -- but very generally, it's
15 meant to protect domestic industry. In other words, it looks
16 to see what's coming across the border and whether that
17 infringes U.S. patents, and, if so, it prevents importation.

18 The difference between the ITC and the District Court
19 is an injunction there is automatic relief. If infringement
20 is found, if a violation is found, you cannot bring in the
21 goods that violate the patents. That's it. It's done. No
22 damages. You don't get monetary damages. So it's different
23 than a District Court. Obviously, in District Court, there's
24 an analysis, a four-factor test about whether an injunction is
25 appropriate and all that sort of thing and you can get

1 monetary damages.

2 THE COURT: So the way it works is, so, here we have
3 two U.S. companies, but they manufacture their products
4 abroad, or at least some of their products abroad. So the way
5 it works then is that the International Trade Commission has
6 the power to stop those goods that are manufactured abroad
7 from crossing the border.

8 MR. DeFRANCO: Exactly, Your Honor.

9 THE COURT: So it doesn't do anything, though, about
10 patent infringement in this country or that's irrelevant
11 because the goes are only being produced abroad?

12 MR. DeFRANCO: Well, if it's purely U.S. activity, if
13 something is made in Plantation and --

14 THE COURT: Sometimes things are made in Plantation
15 and they're also made in China.

16 MR. DeFRANCO: Well, that's exactly the point, Your
17 Honor. You can have a case that goes over a cell phone in its
18 entirety. You can have a case that goes after a chip that's
19 imported.

20 THE COURT: So what's the relationship between the
21 patents in front of the International Trade Commission and the
22 patents that are being litigated in Wisconsin, here and in
23 Delaware?

24 MR. DeFRANCO: I would say, you know, they're
25 generally different areas of technology. Again, there are

1 different reasons why parties would file cases in that forum
2 versus in a District Court.

3 So, to get back to your original question, Apple has
4 filed three patents in that case in their ITC action and we
5 have filed six patents in our own action.

6 THE COURT: And none of those patents are the same as
7 the patents in the Wisconsin litigation or here.

8 MR. DeFRANCO: All different.

9 THE COURT: Or Delaware.

10 MR. DeFRANCO: Just one more footnote. Because you
11 don't get damages in the ITC, what you do is you file a
12 companion District Court case, but that gets stayed. It's a
13 placeholder for damages, in essence, and there's a statutory
14 right for a defendant to seek a stay.

15 THE COURT: So those companion District Court cases
16 are where?

17 MR. DeFRANCO: There's one in Wisconsin. That's been
18 stayed by agreement of the parties. It's actually a combined
19 case dealing with all of those patents, I believe, and that's
20 been stayed by agreement of the parties.

21 THE COURT: And that's in front of a different judge
22 in Wisconsin.

23 MR. DeFRANCO: That is in front of the same judge as
24 the case here, I believe.

25 THE COURT: Okay. So he's got how many patents did

1 you say in litigation apart from the ITC?

2 MR. DeFRANCO: It's Judge Crabb, Your Honor, in
3 Wisconsin, and she has nine patents.

4 THE COURT: And then she has the ITC cases, the
5 placeholder cases.

6 MR. DeFRANCO: I believe she also has, yes, but it
7 has been stayed. There are two judges in Wisconsin and there
8 are other cases between different parties there. But I
9 believe she has the stayed action. But in any case, that
10 action is stayed.

11 THE COURT: I thought you just mentioned another
12 case, Judge Steel?

13 MR. DeFRANCO: Judge Sleet.

14 THE COURT: Sleet.

15 MR. DeFRANCO: He's in Delaware.

16 THE COURT: Oh, in Delaware. Sorry.

17 MR. DeFRANCO: My point with respect to Judge Sleet
18 is we filed this action saying we don't infringe 12 patents in
19 Delaware because Judge Sleet already had cases involving those
20 same patents. So that makes perfect sense. The same judge,
21 same patents. He's going to rule on, you know --

22 THE COURT: So, what I'm trying to understand -- I
23 mean, I haven't looked at the patents themselves because, you
24 know, I don't have the time to read patents, you know, at
25 will. But in any event, I get the impression that these

1 patents represent -- this is probably not patent
2 terminology -- different strains of technology that go into
3 single operating systems. Right? So, we have different
4 technological mechanisms that go into the iPad, or different
5 technologically strains that go into the iPhone. Is that the
6 idea?

7 MR. DeFRANCO: Yes, Your Honor.

8 THE COURT: And we're dealing with iPad, iPhone and
9 what else? iPad and iPhone?

10 MR. DeFRANCO: Those are some of the products. On
11 Apple's side there's the iPod Touch. They are music players,
12 that sort of thing. There's several phones on Motorola's
13 side, such as the DROID X.

14 THE COURT: Right. So does this relate to Android or
15 not? Android is an operating system, right?

16 MR. DeFRANCO: Exactly. Just like your computer has
17 an operating system, phones have operating systems. Phones
18 are very similar to miniature computers today obviously.

19 THE COURT: Right.

20 MR. DeFRANCO: You'll see in our papers, Your
21 Honor --

22 THE COURT: So does all of this relate to the Android
23 operating system?

24 MR. DeFRANCO: No, for different reasons. First,
25 they've asserted patents in an entirely different area that

1 aren't at issue in the case in Wisconsin, for example.

2 THE COURT: Wisconsin is only concerned with the
3 Android operating system?

4 MR. DeFRANCO: Wisconsin is a cell phone case. One
5 of the differences between -- let me just not lose my first
6 train of thought.

7 So, they've sued on six patents. Three of them --

8 THE COURT: Six patents where?

9 MR. DeFRANCO: Here.

10 THE COURT: Okay.

11 MR. DeFRANCO: Three of them don't relate to cell
12 phones. They relate to set top boxes, software and set top
13 boxes.

14 THE COURT: What's a set top box?

15 MR. DeFRANCO: Set top box is a cable television
16 box. If you have cable TV at home, it's got a box on the TV.
17 That's a set top box. Completely different area of
18 technology. They sued us on three of those patents.

19 THE COURT: You're the plaintiff, right? So, in a
20 nutshell tell me what the patents are that you've sued on here
21 and then tell me what the patents are that they have
22 counterclaimed on.

23 MR. DeFRANCO: You know, the patents that we've sued
24 here, Your Honor, again, they relate to different aspects --

25 THE COURT: Of?

1 MR. DeFRANCO: Of cell phone technology, pure cell
2 phone technology. For example, one of the patents relates to
3 the antenna configuration on a phone. Another patent relates
4 to the handling of messages, for example, how to file messages
5 automatically. A couple of the patents relate to dealing with
6 e-mail filters on a cell phone. Another patent relates to
7 synching data between your cell phone and a computer.

8 Now, the good news is the patents here that have
9 asserted, I'd say at least some of them don't get down to the
10 nitty operating system level of detail. Some of them relate
11 to, you know, applications and software above the operating
12 system level. That's a brief overview of the patents that
13 Motorola has asserted here.

14 In terms of the counterclaim patents that Apple has
15 asserted, as I mentioned, three of them relate to set top
16 boxes, and, you know, they're fairly basic. You know, the
17 program guide, when you use cable TV, you'll scroll to the
18 program guide. They relate to program guide features, I
19 think, very generally, is the overview. They don't get into
20 very hard core detail.

21 THE COURT: This is Apple's patents.

22 MR. DeFRANCO: These are Apple's patents now I'm
23 talking about.

24 THE COURT: So would you say these are permissive
25 counterclaims?

1 MR. DeFRANCO: Oh, yes, they're absolutely permissive
2 counterclaims.

3 And that's one of the points, Your Honor. I don't
4 have the phrase they use in mine. But, you know, they allude
5 to, you know, our trying to figure -- using these foreigners, to
6 further our litigation strategy. But, you know, if you look
7 at the dates in the filings, you know, we filed in Florida, in
8 early October; then they filed in Wisconsin at the end of
9 October; and then they filed counterclaims here on these
10 patents we're discussing in late November.

11 So, there's been a change in position or strategy on
12 their side, because they could have filed these counterclaim
13 patents just as easily in Wisconsin. We're not fighting
14 jurisdiction in Wisconsin. As they point out in their papers,
15 you know, they filed there. We added our patents to that
16 action. So they could have filed these patents in Wisconsin.

17 I don't know what's led to their change of heart
18 since, you know, they filed the Wisconsin action. But, again,
19 you know, if you compare --

20 THE COURT: I'm sorry. And it's just very confusing
21 to me.

22 So, in Wisconsin are the patents that you're
23 litigating there also cell phone technology?

24 MR. DeFRANCO: Yes, Your Honor, they're cell phone
25 technology.

1 THE COURT: So, why split it up?

2 MR. DeFRANCO: No set top boxes. Set top boxes are
3 here.

4 THE COURT: That's Apple's counterclaim.

5 MR. DeFRANCO: Completely different. Yes.

6 THE COURT: Okay. But why did you split up the cell
7 phone technology patents?

8 MR. DeFRANCO: There's a number of reasons. First,
9 again, to have this many patents that they're saying happened
10 in one jurisdiction, I've never seen a case of that size.

11 THE COURT: Okay. But you could have filed two
12 cases. I assume they have blind filing in Wisconsin, right.
13 So you could have filed two cases in Wisconsin. They could
14 have fallen before two different district judge. Then the
15 judges themselves could have gotten together and decided do we
16 want to do this together, do we want to do this separately.
17 But everybody would have been like in the same forum.

18 MR. DeFRANCO: Well, you know, we could have and they
19 could have, and, you know, as I said, there are reasons to do
20 that and not to do that but --

21 THE COURT: Where are the inventors in the Wisconsin
22 action?

23 MR. DeFRANCO: Well, you know, that's a good question
24 and an interesting point. It's different than here. We have
25 inventors locally here. There are, you know, fewer ties

1 directly to Wisconsin than there are Florida. There's no
2 inventors in Wisconsin.

3 THE COURT: Does Motorola have manufacturing
4 facilities in Wisconsin?

5 MR. DeFRANCO: No, no manufacturing facilities, fewer
6 employees.

7 THE COURT: How did everybody find their way to
8 Wisconsin?

9 MR. DeFRANCO: You know, just straight to the point,
10 Your Honor, it's how you started out this hearing. There are
11 some jurisdictions that do handle patent cases more
12 frequently.

13 I think the time to trial in Wisconsin, very
14 generally, may have slowed down because they have an awful lot
15 of cases there. They had a judge who retired recently.

16 So, you know, all these things are taken into account
17 in terms of, you know, the magnitude of the case.

18 THE COURT: Well, we have a little problem here, but
19 that's all right. Do you know that? We have a little problem
20 here. We have three vacancies -- we will have three vacancies
21 by the end of the month.

22 MR. DeFRANCO: I understand, Your Honor.

23 THE COURT: Okay. Go ahead. I'm sorry. That's sort
24 of a beside-the-point issue.

25 MR. DeFRANCO: Yeah. I mean, we'll lay it out in the

1 papers. There are contacts with Motorola facilities here.

2 THE COURT: So you chose Wisconsin because Wisconsin
3 has patent expertise.

4 MR. DeFRANCO: Well, you know, that was one
5 consideration. Time to trial was another consideration.

6 You know, as they point out, we originally filed in
7 Illinois. They chose Madison, Wisconsin, and we said, well,
8 we're fine to have a reasonable side case there. So we added
9 our patents there. Again, I don't know why they choose to
10 counterclaim --

11 THE COURT: Well, why did you start out in Illinois?

12 MR. DeFRANCO: You know, a number of reasons. There
13 were more Motorola witnesses there. But when it comes to
14 transfer issues, obviously, courts don't look to where party
15 witnesses are located.

16 But I do want to answer your question before I miss
17 it, Your Honor, about the difference in technology. There is
18 a line of difference between the Motorola patents that are
19 being asserted in Wisconsin versus the patents here.

20 THE COURT: But they are both cell phone technology,
21 in very broad terms.

22 MR. DeFRANCO: In very broad terms, you know, cell
23 phones are a common area of product against which these
24 patents are asserted, yes. But there is a difference in the
25 technology.

1 The Wisconsin patents are all what is known as
2 essential patents. There are technical standards, you know,
3 in the field, like a Wi-Fi standard. If you have a wireless
4 printer or a wireless device, there are standards that set
5 forth whether patents are essential to practice that
6 standard.

7 I can't say that's the case with respect to every
8 patent there. But generally, that's the group of patents, at
9 least the number of which relate to standards. So that's a
10 difference between the patents here and the patents in this
11 case.

12 So those group into, you know, patents that relate
13 to -- a couple of those relate to the 802.11. Others relate
14 to the communication protocol 2G or 3G that are used to
15 communicate between phones. So we'll lay this out in more
16 detail in our papers.

17 But we think there is a definite difference between
18 the groups of Motorola patents technologywise that are
19 involved in the two cases. So we think our split is a
20 reasonable one.

21 Now, when they came back and they filed their
22 counterclaims here, as I said, three are entirely unrelated.
23 The set top boxes are completely different. There is one
24 patent that's an interface. It's a slide-to-unlock feature
25 that you use on your phone. I'd say that there is some

1 overlap. There are some interface type patents that they've
2 asserted in Wisconsin. So I'm not going to say there's no
3 overlap with respect to their patents.

4 But overall, we don't think that that trumps the
5 usual transfer analysis and the other considerations about
6 where the witnesses are located and those sorts of things,
7 which we'll obviously put in our papers.

8 THE COURT: Okay. Look, I don't have unlimited
9 time. I just sort of wanted to preview this.

10 I have to say that, in terms of scheduling, I'm
11 inclined to go with Apple's proposed schedule. But you've
12 talked for a long time and I didn't set aside a long time for
13 this hearing. So, let me just let Apple tell me what it is
14 they want to tell me this morning since you've sort of had the
15 floor.

16 MR. POWERS: Thank you, Your Honor.

17 THE COURT: Excuse me one second.

18 Okay. Go ahead.

19 MR. POWERS: Thank you, Your Honor. Matt Powers for
20 Apple.

21 Unless you want an argument on the motion to
22 transfer, my understanding is you do not --

23 THE COURT: Well, I wanted to kind of get oriented to
24 it. You know, you can imagine my enthusiasm at having been
25 assigned this case.

1 MR. POWERS: I can, Your Honor.

2 THE COURT: Okay.

3 MR. POWERS: I think responding at the level, as I
4 understand your question, what we are seeking is to transfer
5 this action to the venue where both parties have decided to
6 consolidate most of their disputes.

7 THE COURT: Well, I can't, you know, govern what
8 the -- is it the Western District of Wisconsin does if the
9 case were transferred. Right. It would land with some judge,
10 maybe with Judge -- what's his name -- Sleet?

11 MR. DeFRANCO: Yes, Your Honor.

12 THE COURT: Judge Sleet or Judge --

13 MR. DeFRANCO: Crabb, Your Honor.

14 THE COURT: Right, or some other judge.

15 MR. POWERS: All of that is certainly possible.
16 You're right. That would be up to the Wisconsin Court to
17 decide how you to deal with that case, and those
18 considerations, as you alluded, different judges in different
19 courts deal with a case of different size and however they
20 want to do it, and that's really their decision how to do it.

21 Just a high-level point is both sides voluntarily put
22 the bulk of their patents into Wisconsin. And, so, in our
23 view --

24 THE COURT: Which seems a little odd, right.

25 Apparently Motorola has no greater association with Wisconsin

1 than they do here. And in fact they're saying actually they
2 have more connection here than they do to Wisconsin.

3 So, what was wrong with Illinois?

4 MR. POWERS: That was their decision. They
5 originally filed two cases in Illinois -- one was the
6 companion placeholder case and one was another case -- and
7 they moved both of those voluntarily to Wisconsin.

8 THE COURT: In response to the fact that Apple had
9 filed in Wisconsin.

10 MR. POWERS: Exactly. And Illinois is their home
11 turf. That's where they're based. And, so, they gave up two
12 lawsuits in their hometown and then agreed to move them into
13 Wisconsin to consolidate them. And our point is why don't we
14 do that with these as well.

15 THE COURT: Well, I have to say this Court seems to
16 be the outlier. It seems to have been the victim of some
17 forum shopping.

18 MR. POWERS: The only other point that I would make,
19 Your Honor, is that -- you asked about what the overlap is --

20 THE COURT: Right.

21 MR. POWERS: -- between all these various cases, and
22 that's obviously a critical issue on any transfer motion.

23 THE COURT: Right.

24 And what do you say also as you're addressing that to
25 what he said about your throwing in these unrelated patents?

1 MR. POWERS: It is certainly true that set top boxes
2 are not an accused product in the Wisconsin case. But
3 phones -- they have to look at it both ways, right -- the
4 phone technology that we're talking about, much of which is
5 focused on the interface -- most of these are touchscreen
6 phones and a lot of the technology that's at issue both here
7 and there is the touchscreen aspects of the iPhone phone and
8 the Android type phones. That issue is certainly present in
9 Wisconsin and certainly present here.

10 In terms of accused products, iPhone, iPad, other
11 similar products from Apple, are at issue here and they are at
12 issue in Wisconsin as well. In terms of their accused
13 products, their accused phones are at issue here, their
14 accused phones are at issue in Wisconsin, and, in addition,
15 the set top boxes are also at issue here.

16 THE COURT: Okay. Do you want to say anything else?
17 Because he's about to start talking again.

18 MR. POWERS: I think we've covered what I understood,
19 Your Honor, we were interested in this morning.

20 THE COURT: Okay. So, as it turns out, I have
21 another ten minutes or so. So, what do you want to say?

22 MR. DeFRANCO: Well, just two points. No dispute
23 that Libertyville in Illinois is another major Motorola
24 location. No question about that. But again, I don't want to
25 belittle the Motorola tie to Florida and Plantation and that

1 facility.

2 Your Honor said forum shopping, which makes me a
3 little nervous. But, you know --

4 THE COURT: But that's what you did.

5 MR. DeFRANCO: Well, we filed --

6 THE COURT: In fact, you even told me, in essence,
7 that's what you did, right? You looked at -- actually I still
8 don't understand why you came -- the fact that the inventors
9 are here is not very persuasive to me, and you haven't told
10 me -- you told me Motorola has a presence in Plantation, but
11 you haven't told me what they do in Plantation. So I still
12 don't really know why you came here, but that's okay.

13 MR. DeFRANCO: Well, you know, I want to make sure --
14 you know, we just got their papers, Your Honor. There is some
15 phone technology development going on in Plantation that uses
16 the Android system. But I don't want to speak to that too
17 much because I want to make sure that I have the facts 110
18 percent correct.

19 THE COURT: Well, I'm sure Motorola must have
20 development working going on a lot of places.

21 MR. DeFRANCO: Well, yeah. As I mentioned, my
22 understanding is six major facilities. But if I gave you the
23 impression of forum shopping, there's no difference what the
24 parties did here in terms of what plaintiffs do in every case,
25 which is, you know, Apple --

1 THE COURT: Well, maybe that's common in patent
2 cases, forum shopping.

3 MR. DeFRANCO: Sure. Where's is Apple's hometown?
4 They didn't file in California, right? I mean, they didn't
5 file in Silicon Valley. They decided to go to Wisconsin
6 first. That was their first move.

7 What we're faced with now, Your Honor, what I should
8 make clear is -- and we have to take into account the history
9 here, why Apple filed permissive counterclaims here and not in
10 Wisconsin, what was the strategy there -- but looking at the
11 traditional transfer analysis, convenience of parties and
12 witnesses, all of that sort of thing, and figure out should
13 the cases stay or should the cases go. And that's what the
14 Wisconsin Judge, Judge Crabb, is doing now, because she has
15 motion papers.

16 THE COURT: Well, I don't know. Maybe they should go
17 to California or Illinois.

18 MR. DeFRANCO: Well, don't be intimidated. I don't
19 want to give you the wrong impression about this particular
20 patent case, Your Honor.

21 THE COURT: If I were to grant the motion to
22 transfer, I don't have to say Wisconsin, right? I could say
23 California. I could say Illinois.

24 MR. DeFRANCO: Well, you know, it's interesting
25 because, you know, they want to go back to Wisconsin now and,

1 you know, we'll be here --

2 THE COURT: Well, that's true, and their papers are
3 addressed to Wisconsin. Their papers are not addressed to
4 Illinois or to California. So that, of course, handicaps me
5 in evaluating whether there is some other forum that might be
6 appropriate other than Wisconsin. But maybe you want to
7 address that as an alternative in the event that I were
8 disposed to get rid of the case, meaning you in your
9 response.

10 MR. DeFRANCO: Yes, Your Honor. I understand.

11 THE COURT: Right.

12 MR. DeFRANCO: And is there anything that -- I don't
13 want to give you a bad feeling about patent cases in general.

14 THE COURT: No, no, I don't have a bad feeling about
15 patent cases. I just have been able to avoid them in my 24
16 years on the bench. And this one seems to be kind of the
17 mother of all patent cases. And I have no engineering
18 background. I know nothing about electrical engineering. I
19 know nothing about information technology.

20 MR. DeFRANCO: Well, it's interesting, Your Honor.
21 You know, as you know, we have a Markman proceeding --

22 THE COURT: Yes, I know.

23 MR. DeFRANCO: You know all of that.

24 THE COURT: Which is, to me, baffling in and of
25 itself. I can't understand why it even exists. I have gone

1 through Markman hearings before and it's puzzling to me. Why
2 not just let the jury figure out what the parties -- I mean,
3 in every other case the parties state the claims. Why it's
4 necessary for the court to restate the claims is baffling to
5 me.

6 MR. DeFRANCO: Well, I can speak to that, if you
7 want, in a minute.

8 THE COURT: Go ahead.

9 MR. DeFRANCO: Well, you know, 20, 30 years ago, I
10 guess, now the Federal Circuit decided what terms mean is a
11 matter of law. It's not an issue of fact for a jury to
12 decide. It used to happen exactly the way Your Honor said.
13 Everything went to the jury to decide in one proceeding.

14 THE COURT: To me it seems like it should be up to
15 the parties to describe the claims. It's a matter of
16 adequacy. If you can't describe the claims to the jury in a
17 way for the jury to evaluate the claims, too bad. But that's
18 not the way it is. The way it is is I have to describe the
19 claims, and I probably cannot do a better job than you. Why
20 would I be in a better position to describe the claims than
21 you?

22 MR. DeFRANCO: Well, it's our job, Your Honor, and,
23 you know, it's our job to make it simple, right, and
24 understandable, right, because we live this technology.

25 THE COURT: Right.

1 MR. DeFRANCO: We have a number of patents here, but,
2 you know, we're supposed to cooperate and reduce the number of
3 claims at issue and the number of terms at issue, keep it
4 simple and present it; because if we can't present a simple
5 case to the jury once Your Honor decides on what the terms
6 mean, then we're not doing our job, neither of us. We've all
7 litigated a lot of cases, right. When it comes time to
8 present it to the jury, whoever presents it simply and clearly
9 wins, right. That's the point.

10 So, at the end of the day, regardless of what we say
11 here about overlap and complexity and all that, we both are
12 experienced enough to have the same goal, no question, which
13 is focus this case down, present it to Your Honor simply and
14 clearly at Markman, and do the same when it comes time for
15 trial. That's what the case is all about. So, you know, at
16 the Markman hearing it's in both of our interests to not
17 present monster briefs and overwhelming issues.

18 THE COURT: So let's talk about a scheduling issue,
19 though. I'm inclined to go with Apple's schedule.

20 So, how much time do you think we need to set aside
21 for the Markman hearing? How much court time is that going to
22 take in this case? What does Apple say?

23 MR. POWERS: I think one day should cover it.

24 THE COURT: One day, really?

25 MR. POWERS: Yes.

1 THE COURT: Okay. What do you think?

2 MR. DeFRANCO: You know, Your Honor, it's certainly
3 manageable in the day. The question is, you know, sometimes
4 judges ask for tutorials, like on a disk, a video beforehand.
5 Sometimes they like to get that before the Markman hearing and
6 then go into the disputes.

7 So it could run, you know, longer than a day if you'd
8 like to hear -- we'll give you as much background as you'd
9 like to make you feel comfortable with the technology. So it
10 could run longer than a day.

11 There are outlier cases. I don't think it's common
12 to have witnesses at Markman hearings. Sometimes experts
13 testify. But I think that's less common.

14 So I would say one day is fine, but leave open the
15 possibility, if Your Honor decides you want more in the way of
16 tutorials, we could do it in a day and a half or two days to
17 take you through each patent with nice PowerPoints and little
18 videos and make you a lover of technology.

19 THE COURT: Yes. I can imagine that PowerPoint is an
20 important tool in these cases.

21 MR. DeFRANCO: Yes, Your Honor.

22 THE COURT: Okay. All right. Well, we're going to
23 go ahead and issue the scheduling order. But, of course, I'm
24 going to be interested to see the briefing on the motion to
25 transfer venue and we'll be taking a close look at that

1 motion.

2 MR. DeFRANCO: Yes, Your Honor. Thank you.

3 THE COURT: Okay. Thank you.

4 MR. PACE: Thank you, Your Honor.

5 MR. POWERS: Thank you, Your Honor.

6 (Recessed at 11:51 a.m.)

7 * * * * *

8 C E R T I F I C A T E

9
10 I certify that the foregoing is a correct transcript
11 from the record of proceedings in the above-entitled matter.

12
13 January 19, 2011

/s/ William G. Romanishin

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