

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

APPLE INC. and NeXT SOFTWARE)	
INC. (f/k/a NeXT COMPUTER, INC.),)	
)	
<i>Plaintiffs,</i>)	No. 1:11-cv-08540
)	
v.)	
)	Judge Richard A. Posner.
MOTOROLA, INC. and MOTOROLA)	
MOBILITY, INC.,)	
)	
<i>Defendants.</i>)	

ORDER OF APRIL 26, 2012

Apple’s motion to substitute Dr. Heegard for Dr. Cimini is denied. If the medical problems of Dr. Cimini’s wife should turn out to justify his not testifying at trial, I am willing to consider the substitution of Heegard for Cimini. But the motion to substitute is premature: Dr. Cimini’s scheduling conflict remains in the “evaluating the possibility” stage (to borrow Apple’s words), and until Cimini is deposed Motorola can’t reasonably be expected to determine whether it would be prejudiced at trial by Apple’s proposed substitution. Nor does Apple’s motion stop there; it also asks for the identical relief that I denied three days ago: a prohibition against Motorola’s deposing Cimini. My order of April 23 directed Apple to produce him for deposition whether or not it intended to move to substitute Dr. Heegard for him at trial. Apple is now attempting to use the medical problem of Cimini’s wife to block the deposition.

Apple filed the motion in violation of my Friday motion rule. Its excuse for the violation—that Cimini is scheduled to be deposed on Friday, May 4—is disingenuous. Had Apple filed its motion this Friday (tomorrow), Motorola would have responded on Monday, April 30, and I would have ruled on it well in advance of the deposition. There was no emergency.

I deny the second half of Apple's motion (seeking prohibition of the deposition) as frivolous and the first half (seeking substitution) as untimely. I've had my fill of frivolous filings by Apple. The next such motion, and I shall forbid it to file any motions without first moving for leave to file.

A handwritten signature in black ink, appearing to read "Richard A. Posner". The signature is fluid and cursive, with a prominent initial "R" and a long, sweeping underline.

United States Circuit Judge

April 26, 2012