

# **Exhibit A**

**Hearing Transcript: May 18, 2011**

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF NEW MEXICO  
3 STC.UNM,

4 Plaintiff,

5 vs. CV-10-01077-RB-WDS

6 INTEL CORPORATION,

7 Defendant.

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9 Transcript of Motion Hearing before THE  
10 HONORABLE W. DANIEL SCHNEIDER, United States Magistrate  
11 Judge, held in Albuquerque, Bernalillo County, New Mexico,  
12 commencing on Wednesday, May 18, 2011, at 9:00 a.m.

13 A P P E A R A N C E S

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## 1 A P P E A R A N C E S (Continued)

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1                   You can't -- it's not proper under the statute or  
2 the policy that the courts have recognized that is inherent  
3 in the statute to apply that concept to the sales that  
4 happened after the patent has expired, because under the  
5 statute and under the policies of the Patent Act, we  
6 encourage people to use technology that's disclosed in  
7 patents after the patent has expired.

8                   So there is no case. We could look all day  
9 long -- and we have looked hard, and the plaintiffs have  
10 looked too. There is no case that sort of says: Okay, I'm  
11 going to allow you to pay or to tax, in a reasonable  
12 royalty context, sales that are going to happen after the  
13 patent expires.

14                   The accelerated market entry cases are addressing  
15 actual harm that might come to the patentee's business  
16 after the patent has expired because of an infringement  
17 that took place before it expired.

18                   So, for example, could you imagine two  
19 competitors who have a long lead time to kind of get their  
20 business ramped up before they start selling something.  
21 And if infringement in the context of research and  
22 development happens with the infringer before the patent  
23 expires, that could allow them to get in a position to  
24 actually compete with the patentee and cost them sales  
25 after the patent has expired.

1                   So it's a causal tie between the one and the  
2 other, and all you're doing is trying to find out when the  
3 lost sales took place. It's a completely different concept  
4 than the reasonable royalty calculation and doesn't have  
5 any bearing. There would be cases if it did.

6                   There are a couple of cases that the defendant --  
7 or the plaintiffs, rather -- have cited, that I think are  
8 helpful in underscoring this distinction. In the Merck  
9 case, which was the first case that they cited for their  
10 argument that: Hey, we ought to be able to have a  
11 reasonable royalty, you know, that's going to be applied to  
12 sales and the sales that you are going to make in the  
13 future because of this research on 10 and 14 nanometers  
14 that happened before the patent expires.

15                   So the Merck case, 434 F. Supp. 2d at 257, a 2006  
16 case, had a number of different theories in the case, and  
17 one of the theories was: Hey, we're entitled to a  
18 reasonable royalty for your stuff that's going to happen  
19 after the patent expires.

20                   The Court actually granted summary judgment on  
21 that and said: No. But with respect to the lost profits  
22 component of your model, stuff where you can actually  
23 prove that you're losing sales, the case law does say  
24 accelerated market entry is a viable theory. And so that  
25 went forward.

1                   So there's a case where we had both of these  
2 things in play, and you don't tax post-expiration sales  
3 under a reasonable royalty theory. That's what the Merck  
4 case stands for.

5                   The BIC Leisure products case is another case  
6 that they cited in their papers, which actually if you go  
7 through the opinion, distinguishes a line of Supreme Court  
8 cases that caution courts against allowing remedies or  
9 effects or license agreements to apply after a patent has  
10 expired, where you're trying to cause people to continue to  
11 pay royalties on sales for things that happened after the  
12 patent expired.

13                  The Supreme Court said: That's wrong.

14                  The BIC Court said: Well, we recognize that rule  
15 that the Supreme Court has. It doesn't apply in the  
16 accelerated market entry lost products context, however,  
17 because what we're doing there is simply trying to figure  
18 out what the pre-expiration infringement did in the way of  
19 damage to the patentee's business.

20                  So, again, they are different concepts, and  
21 that's the reason why, when we looked at this, we couldn't  
22 figure out really fundamentally a legitimate reason why  
23 they would need the research information at the nodes 10  
24 and 14, because it doesn't factor into anything that's  
25 going to make a practical difference in the case.