

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WISCONSIN

NOKIA CORPORATION,

Plaintiff,

v.

APPLE INC.,

Defendant.

Civil Action No. 10-CV-249

JURY TRIAL DEMANDED

APPLE INC.,

Counterclaim-Plaintiff,

v.

NOKIA CORPORATION and NOKIA
INC.,

Counterclaim-Defendants.

JOINT PRELIMINARY PRETRIAL CONFERENCE STATEMENT

Pursuant to Fed. R. Civ. P. 26(f) and this Court's Standing Order Governing Preliminary Pretrial Conferences, a discovery and case management conference was held on July 27, 2010, and was attended by counsel representing each party to this action. The parties submit this Joint Preliminary Pretrial Conference Statement in anticipation of the Telephone Preliminary Pretrial Conference set for August 3, 2010 at 9:00 a.m. C.D.T.

PROPOSED DISCOVERY PLAN

A. Case Schedule

The parties disagree on the proposed case schedule. The parties' positions on the proposed schedule are set forth below.

EVENT	NOKIA'S PROPOSAL	APPLE'S PROPOSAL
Apple's Reply to Transfer/Dismiss Motion	07/30/10	07/30/10
Initial Disclosures Under Rule 26(a)(1)	08/13/10	08/13/10
Parties to Exchange Terms that Need Construction	09/06/10	11/23/10
Deadline to Amend Pleadings Without Leave of Court	09/20/10	08/13/10
Exchange Proposed Claim Constructions for All Identified Terms	09/27/10	12/21/10
Parties to Meet and Confer About Proposed Claim Constructions	On or before 10/08/10	On or before 01/07/11
Parties' Opening Claim Construction Briefs	10/26/10	01/28/11
Parties' Responsive Claim Construction Briefs	11/23/10	02/18/11
Markman Hearing (if Requested by Court)	12/17/10	03/04/11
Opening Liability Expert Reports on Issues for Which the Party Bears the Burden of Proof	02/10/11	06/03/11
Rebuttal Liability Expert Reports on Issues for Which the Party Does Not Bear the Burden of Proof	03/10/11	07/01/11
Disclosure of Opinions of Counsel	03/10/11	03/11/11
Summary Judgment Motions	03/24/11	08/05/11
Summary Judgment Opposition Briefs	04/14/11	08/26/11
Summary Judgment Reply Briefs	04/28/11	09/09/11
Opening Damages Expert Report	05/16/11	10/28/11
Rebuttal Damages Expert Report	06/13/11	11/23/11
Settlement Letter	06/24/11	12/16/11
Discovery Cut-Off	07/01/11	12/23/11
Rule 26(a)(3) Disclosures and Motions in Limine, including Daubert Motions	07/08/11	01/06/12
Objections to Rule 26(a)(3) Disclosures, including deposition counter-designations, and Oppositions to	07/22/11	01/27/12

EVENT	NOKIA'S PROPOSAL	APPLE'S PROPOSAL
Motions in Limine/Daubert Motions		
Final Pretrial Conference	07/25/11	02/09/12
Trial Date	08/08/11	02/20/12

B. Changes To The Limitations on Discovery Imposed by the Federal Rules

The parties agree to adhere to the limitations on discovery set forth in the Federal Rules of Civil Procedure, except as set forth below or as further ordered by the Court:

1. Depositions

Each side will be limited to (i) 250 hours of on-the-record time to conduct 30(b)(1) depositions of the other side's employees and any third party depositions, and (ii) 50 hours of on-the-record time to conduct 30(b)(6) depositions of the other side. Each side may serve multiple 30(b)(6) deposition notices. Depositions under (30(b)(1)) are presumptively limited to 7 hours per witness, provided that in cases where a witness testifies primarily in a language other than English, the parties will confer in good faith to reach agreement regarding an extension of the deposition time. Each 30(b)(1) deposition will count for at least 4 hours against this limit, even if the actual deposition lasts fewer than 4 hours. Promptly after the parties serve their expert reports, the parties will confer in good faith in an effort to reach agreement regarding limits on expert deposition time.

The parties each reserve their right to seek relief from the Court to limit the length of any particular deposition or to take depositions in excess of the presumptive limits described above.

2. Interrogatories

The parties agree that each side may propound, in total, no more than fifty (50) interrogatories to the other side (including subparts). A single interrogatory may address more than one patent and more than one product. The parties agree to waive the requirement of Federal Rule of Civil Procedure 33(b)(3) that interrogatories be verified under oath.

3. Requests for Admission

The parties agree that each side may propound, in total, no more than fifty (50) requests for admission (including subparts) in accordance with Local Rule 26.1(b), except that this limitation shall not apply to requests for admission that are directed to the authenticity of documents or admissibility into evidence of documents.

4. Document Requests

There shall be no limit on the number of document requests that may be served by either side.

5. Discovery of Electronically Stored Information

The parties are in the process of negotiating a Joint Stipulation Regarding Electronic Discovery and Service in *Nokia Corp. v. Apple Inc.*, No. 09-CV-791 (D. Del., filed Oct. 22, 2009), governing the format of electronic production, the production of paper files, and

other related matters. The parties agree that that the provisions of that stipulation will be applicable in this case.

Apple proposes that all documents produced in *Nokia Corp. v. Apple Inc.*, No. 09-CV-791 (D. Del., filed Oct. 22, 2009), *Nokia Corp. v. Apple Inc.*, No. 09-CV-1002 (D. Del., filed Dec. 29, 2009), *In re Certain Mobile Communications and Computer Devices and Components Thereof*, Investigation No. 337-TA-701 (International Trade Commission, initiated Dec. 29, 2009), and *In re Certain Mobile Communications and Computer Devices and Components Thereof*, Investigation No. 337-TA-704 (International Trade Commission, initiated Jan. 15, 2010), are deemed produced in this case and may be used for any purpose as though they were produced in this case.

In view of the large number of documents produced in the other cases listed above, Nokia opposes this proposal and would prefer that the parties produce only those documents in this case that are relevant to the issues of this particular case.

C. Other Information Requested In Standing Order

1. Nature of the Case

This is a patent infringement case currently involving twelve patents (five asserted by Nokia, and seven asserted by Apple).

Nokia Corporation filed its Complaint for patent infringement against Apple on May 7, 2010. In its Complaint, Nokia Corporation alleges that Apple Inc. infringes U.S. Patent Nos. 6,373,345 (“the ‘345 patent”), 6,348,894 (“the ‘894 patent”), 6,603,431 (“the ‘431 patent”), 6,317,083 (“the ‘083 patent”), and 7,558,696 (“the ‘696 patent”) (collectively, the “asserted Nokia patents”).

Per agreement of the parties and orders of the Court, Apple filed its Answer and Counterclaims on June 28, 2010. In its counterclaims, Apple alleges that Nokia Corporation and Nokia Inc. (collectively, "Nokia") infringe U.S. Patent Nos. 5,946,647 (the '647 patent"), 5,612,719 ("the '719 patent"), 7,710,290 ("the '290 patent"), 7,380,116 ("the '116 patent"), 7,054,981 ("the '981 patent"), 5,379,430 ("the '430 patent"), and 7,355,905 ("the '905 patent") (collectively, the "asserted Apple patents"). Apple also has also asserted counterclaims for declaratory judgment of noninfringement and invalidity of each of the asserted Nokia patents.

Each party alleges that it has been harmed by the other party's infringement and seeks an injunction and damages. Each party denies infringing the patents asserted against it, and alleges that the asserted patents are invalid. Apple also seeks a declaratory judgment that Nokia's patents are not infringed and invalid.

2. Names of Related Cases

The following U.S. District Court cases and International Trade Commission Investigations are pending between Nokia, Apple and/or HTC (High Tech Computer Corp.):

1. *Nokia Corp. v. Apple Inc.*, No. 09-CV-791 (D. Del., filed Oct. 22, 2009)
2. *Nokia Corp. v. Apple Inc.*, No. 09-CV-1002 (D. Del., filed Dec. 29, 2009)
3. *In re Certain Mobile Communications and Computer Devices and Components Thereof*, Investigation No. 337-TA-701 (International Trade Commission, initiated Dec. 29, 2009)

4. *In re Certain Mobile Communications and Computer Devices and Components Thereof*, Investigation No. 337-TA-704 (International Trade Commission, initiated Jan. 15, 2010)
5. *Apple Inc. et al. v. High Tech Computer Corp.*, No. 10-CV-166 (D. Del., filed Mar. 2, 2010)
6. *Apple Inc. v. High Tech Computer Corp.*, No. 10-CV-167 (D. Del., filed Mar. 2, 2010)
7. *Apple Inc. v. High Tech Computer Corp.*, No. 10-CV-544 (D. Del., filed June 21, 2010)

On June 29, 2010, Apple filed a motion to transfer this case to Delaware, to permit consolidation of this case and the five pending cases referenced above. Nokia opposed this motion on July 20, 2010. In the briefing on the transfer motion, the parties discuss these cases, including the extent to which each party contends they are related to the present case.

3. Material Factual and Legal Issues to be Resolved at Trial

Without distinguishing between those issues to be decided by the Court and those to be decided by the jury, the parties anticipate the trial will encompass the following legal and factual issues:

- a. Whether the asserted claims of the patents-in-suit are infringed;
- b. Whether the asserted claims of the patents-in-suit are invalid;
- c. Whether liability and/or relief is barred and/or limited under principles of estoppel, laches, or other statutory bars to the recovery of damages;
- d. Whether an injunction should issue;

- e. Whether either party has willfully infringed the asserted claims of the patents-in-suit; and
- f. The amount of damages if any claim of the patents-in-suit is found to be infringed, valid and enforceable.

3. Description of Any Pleading Amendments That a Party Intends to Make

Nokia may amend the Complaint to add 2 or 3 additional patents. If Nokia adds additional patents to the case, Apple may also assert additional patents as counterclaims (as well as any other causes of action raised by Nokia's amended pleadings).

4. Identity of Any New Parties

No new parties are contemplated at this time.

5. Estimated Length of Time Required for Trial

Nokia estimates that this case can be tried in 15 days.

Apple estimates that this case will require a minimum of 24 trial days (two days per patent).

6. Other Items

a. Electronic Service

The parties agree that service by electronic means shall be allowed as set forth in Fed. R. Civ. P. 5(b)(2)(D) and that such service shall be complete upon transmission, provided that the sender does not receive any indication that such electronic transmission was unsuccessful. The parties agree that such service by electronic means shall be deemed to have the same effect as by-hand service on the same date, if transmitted at or before 5:00 p.m. Central Time to the following email addresses:

For Nokia: Nokia-Apple.Wisconsin@alston.com; JCScheller@michaelbest.com

For Apple: WHNokiaApple249ServiceList@wilmerhale.com

If such service by electronic means is transmitted at or after 5:01 p.m. Central Time, then it shall be deemed to have the same effect as by-hand service completed on the following day. To be clear, Parties shall not have any additional time for responding to documents served by electronic mail in accordance with the above, *e.g.*, as provided in FRCP 6(d).

b. Electronic Copies

The parties agree that copies of all written discovery requests shall be provided and/or served electronically in editable form and that copies of all proposed findings of fact and responses thereto as required by the Court's standing order shall be provided and/or served electronically in editable form.

c. Protective Order

The parties are working on a proposed Protective Order governing the production

and use of confidential information and will submit the proposed order for consideration by the Court.

d. Claim Construction

The parties agree to cooperate to resolve issues of claims construction by stipulation, where possible. For claim terms upon which they cannot agree to a proper construction, the parties shall submit briefs to the Court according to the schedule entered.

e. Discovery from Outside Consultants

The Parties agree that they will not seek drafts of expert reports, declarations, affidavits, or notes taken by experts retained to testify in this case, whether those reports, declarations, affidavits, or notes relate to this Action, to any prior investigation, litigation or proceeding which was disclosed to the parties, or to any currently pending investigation, litigation or proceeding involving any of the Parties to this Action.¹ The Parties further agree that they will not seek documents relating to communications between such experts and counsel, including e-mail communications, whether generated in connection with this Action, a prior litigation, or any currently pending investigation, litigation or proceeding involving any of the Parties to this Action, except for documents, information and things included in or attached to such communications that are directly relied upon by the expert in his or her expert report, declaration, affidavit, or testimony.

The Parties agree not to inquire at deposition or trial as to the contents of drafts of

¹ For purposes of this Paragraph, “any currently pending investigation, litigation or proceeding involving two or more of the Parties in this Action” includes: *In the Matter of Certain Electronic Devices, Including Mobile Phones, Portable Music Players, and Computers*, 337-TA-701; *In the Matter of Certain Mobile Communications and Computer Devices and Components Thereof*, 337-TA-704; *Nokia v. Apple*, Case No. 10-cv-00249 (W.D. Wis.); *Nokia v. Apple*, Case No. 09-cv-791 (D. Del.); and *Nokia v. Apple*, Case No. 09-cv-1002 (D. Del.).

expert reports, declarations or affidavits, nor notes pertaining thereto, whether drafted in connection with this Action, a prior litigation, or any currently pending investigation, litigation or proceeding involving two or more of the Parties to this Action, and that the Parties will not inquire at deposition or at trial as to the expert's communications, written or oral, with counsel, whether generated in connection with this Action, a prior litigation, or any currently pending investigation, litigation or proceeding involving two or more of the Parties to this Action, except to the extent that the expert explicitly references or cites information from counsel in his or her expert report, declaration, affidavit, or testimony.

The Parties will, however, identify and produce copies of any documents referenced or cited by the expert in his or her expert report. Furthermore, nothing in this Paragraph is intended to restrict the Parties' ability to (i) inquire into the basis of any of the opinions expressed by any experts in his or her report, declaration, or affidavit, including the manner by which such opinions were reached, and information considered in reaching such opinions; (ii) otherwise inquire into the process by which an expert report, affidavit or declaration was drafted, provided that, in so doing, the Parties may not discover the contents of any such drafts of expert reports, declarations or affidavits, nor notes pertaining thereto; or (iii) obtain reports, testimony, or other discovery or evidence produced in any prior litigation or any currently pending investigation, litigation or proceeding involving two or more of the Parties to this case.

Dated this 29th day of July, 2010

Respectfully submitted,

/s/Michael J. Newton

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