IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

FEDERAL TRADE COMMISSION, PLAINTIFF, VS. QUALCOMM INCORPORATED, DEFENDANT.	CV-17-00220-LHK SAN JOSE, CALIFORNIA NOVEMBER 15, 2017 PAGES 1-30

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE LUCY H. KOH
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: BY: JENNIFER MILICI
FEDERAL TRADE COMMISSION
600 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, DC 20580

FOR THE DEFENDANT: BY: GARY ANDREW BORNSTEIN
QUALCOMM CRAVATH, SWAINE AND MOORE
WORLDWIDE PLAZA
825 EIGHTH AVE.
NEW YORK, NY 10019

APPEARANCES CONTINUED ON THE NEXT PAGE

OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR
CERTIFICATE NUMBER 13185

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

SAN JOSE, CALIFORNIA NOVEMBER 15, 2017

P R O C E E D I N G S

(COURT CONVENED AT 2:26 P.M.)

02:26:55 THE CLERK: YOUR HONOR, CALLING CASE 17-CV-00220.

02:27:00 FEDERAL TRADE COMMISSION VERSUS QUALCOMM INCORPORATED.

02:27:03 COUNSEL, PLEASE COME FORWARD AND STATE YOUR APPEARANCES.

02:27:13 MS. MILICI: JENNIFER MILICI FOR THE FEDERAL TRADE

02:27:16 COMMISSION, WITH MY COLLEAGUE ELIZABETH GILLEN.

02:27:24 MR. BORNSTEIN: GOOD AFTERNOON, YOUR HONOR.

02:27:26 GARY BORNSTEIN FOR QUALCOMM, AND I'M JOINED BY BOB VAN

02:27:30 NEST AND YONATAN EVEN.

02:27:33 MR. VAN NEST: GOOD AFTERNOON, YOUR HONOR.

02:27:36 THE COURT: OKAY. GREAT. NOW I HAVE EVERYBODY.

02:27:39 ALL RIGHT. GOOD AFTERNOON.

02:27:41 OKAY. WELCOME TO EVERYBODY. IT LOOKS LIKE THERE ARE JUST

02:27:43 THREE ISSUES, SOME OF THEM I'M NOT FULLY CLEAR ON.

02:27:50 SO THE PARTIES PREVIOUSLY AGREED TO EXCHANGE PRIVILEGE

02:27:54 LOGS ON DECEMBER 19TH. SO I WASN'T SURE WHY QUALCOMM WANTS THE

02:28:00 FEDERAL TRADE COMMISSION TO PRODUCE ITS PRIVILEGE LOGS BY

02:28:03 NOVEMBER 22ND. AND DOES THAT ALSO APPLY TO QUALCOMM? OR YOU

02:28:07 WANT IT TO BE UNILATERAL?

02:28:08 MR. BORNSTEIN: WELL, YOUR HONOR, WE HAD NOT AGREED

02:28:10 ON A SPECIFIC DATE FOR EACH PARTY'S LOG. WE HAD AGREED TO A

02:28:16 DECEMBER 19TH DATE FOR THE PRODUCTION OF QUALCOMM'S LOG. THE

02:28:21 FTC PRODUCTION, ITSELF, IS ONLY ABOUT 3500 DOCUMENTS OR SO.

AND SO WE THOUGHT IT WAS REASONABLE FOR -- AND THEY HAVE COMPLETED, SUBSTANTIALLY COMPLETED, THE PRODUCTION OF THEIR DOCUMENTS.

SO WE THOUGHT IT WAS REASONABLE FOR THEM TO NOT SIT AND WAIT TO GIVE US THE LOG. SO WE REQUESTED THE NOVEMBER 22ND DATE.

THE COURT: I DON'T KNOW, NORMALLY THOSE ARE MUTUALLY EXCHANGED SO IT JUST SEEMS -- ANYWAY, DID YOU HAVE A RESPONSE?

MS. MILICI: I DID. THANK YOU, YOUR HONOR.

THAT WAS NOT OUR UNDERSTANDING OF THE AGREEMENT. AND I BELIEVE IN OUR LAST CASE MANAGEMENT STATEMENT WE EVEN REFERENCED AN AGREEMENT TO EXCHANGE PRIVILEGE LOGS.

SO THAT WAS OUR REACTION AS WELL IS THAT WE HAD AN AGREEMENT FOR MUTUAL EXCHANGE ON DECEMBER 19TH, AND WE HAVE NOT BEEN TOLD ANY REASON BY QUALCOMM FOR WHY IT NEEDS TO MODIFY THAT AGREEMENT OR ANY JUSTIFICATION TO MODIFY.

THE COURT: GIVE ME JUST A MOMENT, PLEASE. WHERE IS THAT? I'M LOOKING AT THE SEPTEMBER 6, 2017, JOINT CASE MANAGEMENT STATEMENT. I WAS UNDER THE IMPRESSION THAT IT WAS A MUTUAL EXCHANGE.

MS. MILICI: SORRY, I CAN'T FIND IT RIGHT THIS SECOND, BUT THERE WAS A REFERENCE THAT THE PARTIES HAD AGREED TO DISCUSS A MUTUAL DATE FOR THE EXCHANGE OF PRIVILEGE LOGS. AND WE SUBSEQUENTLY DID AGREE TO DECEMBER 19TH.

THE COURT: OKAY. WELL, I DON'T SEE ANY REASON FOR

THAT NOT TO BE A MUTUAL EXCHANGE. SO THEY WILL BE EXCHANGED ON THE 19TH OF DECEMBER.

LET'S GO TO THE OTHER ISSUES, PLEASE.

OKAY. I GUESS THE EASIER ONE WOULD BE THE TRIAL ISSUE. THERE'S NO BIFURCATION OF ISSUES. I'M GOING TO EXTEND THE LENGTH OF TRIAL TO TEN DAYS, AND WE CAN REVISIT LATER WHETHER IT NEEDS TO GO BEYOND THAT. SOUNDS LIKE IT'S STILL FAIRLY EARLY.

MR. BORNSTEIN: SO, YOUR HONOR, I APPRECIATE THE EXTRA TIME.

I WOULD JUST LIKE TO MAKE SURE, AND IT SOUNDS LIKE WHAT YOUR HONOR IS SAYING IS THAT THERE WILL BE AN OPPORTUNITY FOR US TO HAVE FURTHER DISCUSSION WITH THE COURT AT SOME POINT, SHOULD WE THINK IT IS NECESSARY.

I'M VERY MINDFUL THAT YOUR HONOR IS VERY CAREFUL WITH YOUR SCHEDULE, AND I JUST WOULD LIKE TO AVOID US GETTING INTO A POSITION WHERE THE PARTIES AGREE AND WANT TO MAKE A PRESENTATION TO THE COURT ABOUT EXTRA TIME AND THE COURT JUST DOESN'T HAVE ANYTHING AVAILABLE, WHICH IS WHY WE RAISED IT THIS EARLY.

THE COURT: WELL, I'M NOT GOING TO BIFURCATE, I'VE NEVER BIFURCATED EVER. I'M NOT GOING TO MAKE AN EXCEPTION TO THAT FOR THIS CASE.

I MEAN, IT SOUNDS LIKE YOU WANT 15 DAYS FOR LIABILITY AND THEN YOU ARE GOING TO WANT, I DON'T KNOW HOW MANY DAYS FOR

DAMAGES AND WHAT NOT, AND I'M NOT GOING TO AGREE TO THAT.

MR. BORNSTEIN: I UNDERSTAND THE COURT'S RULING ON THE BIFURCATION ISSUE.

WE DO HAVE, THOUGH, OBVIOUSLY A VERY SIGNIFICANT AMOUNT OF EVIDENCE THAT IS GOING TO NEED TO BE PRESENTED, AND I JUST WANT TO MAKE SURE, YOUR HONOR, THAT WE HAVE ADEQUATE TIME TO PRESENT OUR DEFENSE.

IF WE HAVE A TEN-DAY TRIAL, THAT'S FIVE DAYS FOR US AND SOME PORTION OF THAT, MAYBE TWO DAYS IS DEVOTED TO CROSS-EXAMINATION OF THE FTC'S WITNESSES, AND OPENINGS AND CLOSINGS, IF YOUR HONOR WANTS THEM.

SO THAT LEAVES US THREE DAYS TO PUT ON OUR QUALCOMM FACT WITNESSES, ANY THIRD PARTY FACT WITNESSES AND EXPERTS. IT STRIKES ME THAT THAT WOULD BE A VERY TIGHT TIME FRAME FOR US TO BE ABLE TO PRESENT AN ADEQUATE DEFENSE, BUT I APPRECIATE THE EXTRA TIME THE COURT HAS ARTICULATED JUST NOW. AND AS LONG AS THE COURT IS WILLING FOR US TO COME BACK AND REVISIT THIS AT SOME POINT IN THE FUTURE, I DON'T SEE ANY NEED TO PRESS THE ISSUE CURRENTLY, IF THE COURT IS NOT PREPARED TO GO FURTHER.

THE COURT: WELL, THERE ARE GOING TO BE VERY TIGHT TIME LIMITS ON OPENING AND CLOSING, IF IT'S NECESSARY, OR YOU MAY DECIDE YOU JUST WANT TO SUBMIT BRIEFING IN LIEU OF ACTUAL ORAL ARGUMENT, AND YOU MAY WANT TO DO THAT AS WELL FOR OPENING, I'M NOT SURE, THAT ACTUALLY MAY BE MORE HELPFUL TOO.

SO FOR TEN DAYS, THAT'S ABOUT ALMOST 55 HOURS OF

TRANSCRIPT TIME, WHICH I CONSIDER THAT TO BE A LOT. AND WHAT I WOULD DO IS IMPOSE VERY TIGHT TIME LIMITS. ANY TIME YOU ARE TALKING, THE TIME IS COUNTING TOWARDS YOUR ALLOTMENT OF TIME. 50 HOURS, I DON'T EVEN KNOW IF I HAVE ENOUGH BRAIN CELLS FOR MORE THAN 50 HOURS OF VERY COMPLICATED INFORMATION.

SO I WOULD HOPE THAT TEN DAYS WOULD BE SUFFICIENT. I MEAN AS THE CASE DEVELOPS, IF YOU THINK 11 DAYS MIGHT BE NECESSARY, BUT THIS IS A BENCH TRIAL, SO WE ARE NOT GOING TO HAVE ANY JURY SELECTION, WE'RE NOT GOING TO BE GIVING PRELIMINARY JURY INSTRUCTIONS OUT LOUD, READING THEM TO THE JURY. THERE WON'T BE ANY FINAL JURY INSTRUCTIONS READ TO THE JURY. THERE WILL BE A LOT OF TIME THAT WE DON'T HAVE TO ALOT FOR A BENCH TRIAL.

MR. BORNSTEIN: I HEAR WHERE YOUR HONOR IS.

AND WE WILL CONTINUE TO MEET AND CONFER WITH THE FTC ON THE ISSUE, IN THE EVENT THAT WE FEEL LIKE THE TIME THAT YOUR HONOR HAS ALLOTTED NOW, THE TEN DAYS, CONTINUES TO BE -- POSE A PROBLEM FOR US, WE WILL FIND AN OPPORTUNITY TO RAISE IT TO THE COURT IN THE FUTURE FOR YOUR HONOR'S CONSIDERATIONS BASED ON THE FACTS AT THE TIME.

THE COURT: THAT'S FINE. IF YOU THINK THAT TEN DAYS IS NOT ENOUGH AS WE GET CLOSER, THEN PLEASE RE-RAISE IT. BUT I WOULD HOPE, I MEAN, THAT REALLY WILL BE ABOUT 55 HOURS OF TRIAL TIME. I REALLY HOPE THAT THAT WOULD BE SUFFICIENT.

MR. BORNSTEIN: MESSAGE RECEIVED, YOUR HONOR.

THE COURT: SO, OKAY. ALL RIGHT. OKAY. THANK YOU

FOR THAT.

NOW, LET'S -- I JUST DIDN'T UNDERSTAND THE THIRD PARTY ISSUE. YOU KNOW, I DON'T UNDERSTAND THE NEGOTIATIONS, I DON'T UNDERSTAND -- I'M NOT REALLY CLEAR ON WHAT THIS DISPUTE IS. IS IT THAT YOU ARE WAITING TO HEAR FROM THIRD PARTIES? WHAT'S BEING NEGOTIATED? NOW I KNOW THE FTC, YOU WANT A CONCLUSION OF NEGOTIATIONS BY NOVEMBER 22ND, WHICH WOULD BE, WHAT, NEXT WEDNESDAY, IS THAT RIGHT?

WHAT DOES THAT MEAN? WHAT'S BEING NEGOTIATED? WHO IS NEGOTIATING?

MS. MILICI: SURE.

YOUR HONOR, AT THIS POINT I BELIEVE MORE THAN 50 THIRD PARTIES HAVE RECEIVED SUBPOENAS. A LARGE NUMBER OF THOSE WENT OUT IN JUNE AND EARLY JULY.

THE COURT: OKAY.

MS. MILICI: IN OCTOBER, WHEN WE WERE TRYING TO FIGURE OUT FROM THIRD PARTIES WHEN THEY WOULD BE COMPLETING THEIR PRODUCTIONS OF DOCUMENTS, WE WERE HEARING FROM THIRD PARTIES THAT THEY COULDN'T COMMIT TO A DATE BECAUSE THEY WERE STILL NEGOTIATING CUSTODIANS AND SEARCH TERMS WITH QUALCOMM.

SO AT THAT STAGE WE ASKED QUALCOMM TO AGREE WITH US THAT BOTH SIDES WOULD AIM TO COMPLETE ALL THEIR NEGOTIATIONS BY NOVEMBER 6TH, AND SUBMIT ANY OUTSTANDING ISSUES TO THE COURT, WITH THE AIM OF MAKING SURE THE THIRD PARTIES HAVE ENOUGH TIME TO SUBSTANTIALLY COMPLY WITH THEIR SUBPOENAS BY THE END OF

DECEMBER.

AND THE REASON THE END OF DECEMBER IS IMPORTANT TO US IS THAT WE HAVE FACT DISCOVERY CUTOFF AT THE END OF MARCH, AND ESI STIPULATION THAT SAYS THAT THE PARTIES GET 30 DAYS AFTER THE NONPARTY FINISHES PRODUCING DOCUMENTS BEFORE THE DEPOSITIONS CAN START.

SO WORKING BACKWARDS, WE NEED THIRD PARTIES TO COMPLETE PRODUCTIONS BY THE END OF THE YEAR, AND THE ONLY WAY WE COULD SEE TO HAVE THAT HAPPEN WAS FOR THE PARTIES TO CONCLUDE THEIR NEGOTIATIONS.

QUALCOMM REFUSED THAT REQUEST, AND SO WE ARE PUTTING IT TO THE COURT THAT, YOU KNOW, AT SOME POINT THIS PROCESS HAS TO END SO THAT WE CAN MEET OUR OBLIGATIONS UNDER THE SCHEDULE.

THE COURT: OKAY. OF THE 50 THIRD-PARTIES, HOW MANY HAVE PRODUCED DOCUMENTS?

MS. MILICI: I DON'T HAVE THAT NUMBER IN FRONT OF ME. AND IN ADDITION, I WOULD SAY THAT AS TO THE NEGOTIATIONS, QUALCOMM IS NEGOTIATING WITH THE THIRD PARTIES SEPARATELY. SO I DON'T NECESSARILY KNOW ALL OF THE DETAILS OF THEIR NEGOTIATIONS.

CERTAINLY, SOME THIRD PARTIES HAVE STARTED PRODUCING DOCUMENTS, BUT -- AND I'M HAPPY TO PROVIDE A REPORT IF THAT'S SOMETHING THAT WOULD BE HELPFUL TO THE COURT.

THE COURT: AND HOW DOES THAT WORK? THEY ARE PRODUCING DOCUMENTS TO QUALCOMM AND QUALCOMM IS PRODUCING THEM

TO THE FTC? OR THIRD PARTIES ARE PRODUCING THEM TO BOTH SIDES OR WHAT'S THE SITUATION?

MS. MILICI: I THINK, GENERALLY, THEY ARE PRODUCING THEM TO BOTH SIDES. IN THE RARE INSTANCE THAT THEY AREN'T, WE ARE THEN PRODUCING THEM TO EACH OTHER.

THE COURT: OKAY.

MR. BORNSTEIN: AND IF IT'S HELPFUL, YOUR HONOR --

THE COURT: I'M SORRY TO INTERRUPT YOU. WHOSE SUBPOENAS ARE THESE, BOTH SIDES?

MS. MILICI: YES, YOUR HONOR.

THE COURT: I SEE.

AND ARE YOU STILL NEGOTIATING WITH YOUR SUBPOENAED PARTIES OR NOT? YOU COMPLIED WITH YOUR OWN DEADLINES?

MS. MILICI: I THINK FOR THE MOST PART OUR NEGOTIATIONS HAVE COMPLETED. I DON'T BELIEVE THERE'S ANY THIRD PARTIES WAITING FOR INFORMATION FROM US TO START REVIEW AND PRODUCTION.

THE COURT: I SEE.

AND THEN -- BUT YOU DON'T KNOW HOW MANY OF YOUR SUBPOENAED THIRD PARTIES HAVE PRODUCED TO YOU AT THIS POINT.

MS. MILICI: NO, IT WOULD BE THE SAME NUMBER AS I PRODUCED TO QUALCOMM BECAUSE THEY ARE BEING PRODUCED TO BOTH PARTIES, BUT I DON'T HAVE THOSE NUMBERS IN FRONT OF ME.

THE COURT: SO THE 50 SUBPOENAS IS TOTAL BOTH SIDES; IS THAT RIGHT?

MS. MILICI: YES.

THE COURT: I SEE. OKAY. BUT YOU HAVE GOTTEN SOME DOCUMENT PRODUCTIONS FROM PARTIES YOU'VE SUBPOENAED.

MS. MILICI: YES.

THE COURT: OKAY. ALL RIGHT.

OKAY. THEN LET ME HEAR FROM QUALCOMM. I AM CONCERNED, I HAVE THIS PROBLEM IN OTHER CASES WHERE, YOU KNOW, YOU HAVE TO GET THE SEARCH TERMS AGREED TO AND THE CUSTODIANS, OTHERWISE THIS LONG PROCESS OF COLLECTION AND REVIEW AND PRODUCTION WILL GET DELAYED.

MR. BORNSTEIN: RIGHT.

SO YOUR HONOR, WE HAVE BEEN WORKING EXTREMELY HARD WITH THE THIRD PARTIES. WE HAVE BEEN BEFORE JUDGE COUSINS A NUMBER OF TIMES, INCLUDING AS RECENTLY AS THIS AFTERNOON --

THE COURT: OKAY.

MR. BORNSTEIN: -- ON ISSUES WHERE WE HAVE BEEN ATTEMPTING TO GET THIRD PARTIES TO COMPLY WITH OUR SUBPOENAS.

THE COURT: OKAY.

MR. BORNSTEIN: AND THERE IS A TREMENDOUS NUMBER OF PEOPLE SPENDING A TREMENDOUS NUMBER OF HOURS TRYING TO MAKE THAT HAPPEN. WE HAVE BEEN ENCOUNTERING RESISTANCE FROM SOME OF THESE THIRD PARTIES, SOME OF WHOM ARE ACTIVELY IN COORDINATING LITIGATION STRATEGY WITH THE FTC PURSUANT TO COMMON INTEREST AGREEMENTS.

WE HAVE BEEN NEGOTIATING, I THINK PRETTY SUCCESSFULLY WITH

ALL OF THESE FOLKS, AND INCIDENTALLY THERE ARE 50 OR SO PARTIES, AS COUNSEL SAID, SOME OF WHOM WERE SUBPOENAED BY US, SOME BY THEM, MOST BOTH PARTIES HAVE SUBPOENAED.

THE COURT: OH, YOU BOTH HAVE SUBPOENAED THE SAME PARTIES.

MR. BORNSTEIN: YES. IN MOST INSTANCES, WE SERVED THE SAME PARTY WITH NONIDENTICAL REQUESTS.

THE COURT: I WAS GOING TO ASK HOW MUCH OVERLAP THERE IS.

MR. BORNSTEIN: THERE IS SOME OVERLAP, BUT NOT COMPLETE.

AND SO WE'VE GOTTEN, IN RESPONSE TO YOUR HONOR'S QUESTION, THERE ARE 24 OF THE THIRD PARTIES WHO HAVE BEGUN PRODUCTION. WE'VE GOTTEN OVER 230,000 OR SO DOCUMENTS. ANOTHER 20 OR SO HAVE PROMISED TO BEGIN PRODUCTION IN THE VERY NEAR FUTURE.

AND ONE OF THE THINGS THAT WE HAVE BEEN DOING VERY AGGRESSIVELY IS TRYING TO GET THE KIND OF SUBSTANTIAL COMPLETION DATE THAT COUNSEL IS TALKING ABOUT.

AND WE HAVE BEEN IN FRONT OF JUDGE COUSINS WHO, BY THE WAY HAS BEEN VERY RESPONSIVE ON THESE MOTIONS, HE'S BEEN VERY QUICK TO GET TO US AND VERY QUICK TO RULE.

SO WE HAVE BEEN TAKING ADVANTAGE OF THAT VERY HELPFUL RESOURCE TO GET THE THIRD PARTIES TO PRODUCE AND TO COMPLY AND AS I SAID WE WERE JUST THERE WITH APPLE THIS AFTERNOON.

SO OUR OVERALL DESIRE IS ABSOLUTELY TO GET THESE THIRD

PARTIES MOVING AS QUICKLY AS THEY CAN AND TO GET THE DOCUMENTS PRODUCED. WE THINK SEE EYE TO EYE WITH THE FTC ON THAT. OUR CONCERN IS THAT SETTING AN ARTIFICIAL DEADLINE FOR ENDING THE NEGOTIATIONS AND AN ARTIFICIAL DEADLINE FOR BRIEFING ANYTHING THAT REMAINS OUTSTANDING WITH JUDGE COUSINS, IS GOING TO SHUT DOWN THE SUCCESS THAT WE'VE HAD IN NEGOTIATING WITH PEOPLE AND IS GOING TO HAVE THE THIRD PARTIES CLAM UP, BE MORE RESISTANT TO THE DISCOVERY THAT THEY HAVE BEEN WILLING TO GIVE US.

THEY ARE GOING TO SAY, LOOK, WE'VE GOT AN ARTIFICIAL END DATE, LET'S JUST BRIEF IT ALL INSTEAD OF ALLOWING THE NEGOTIATION PROCESS TO CONTINUE. AND WE ARE NOT IN A SITUATION, AND WE WOULD SHARE THE CONCERN IF WE HAD 50 THIRD PARTIES WHO WERE GOING TO BE PRODUCING DOCUMENTS IN LATE DECEMBER AND INTO JANUARY. THAT'S JUST NOT WHERE WE ARE.

MOST OF THE THIRD PARTIES HAVE EITHER BEEN ORDERED BY JUDGE COUSINS OR HAVE STIPULATED OR OTHERWISE INDICATED TO US THAT THEY WOULD BE COMPLETING PRODUCTION IN THIS CALENDAR YEAR. AND SOME OF THEM BY DECEMBER 1ST OR DECEMBER 15TH.

SO THERE'S REALLY, I THINK, JUST A SMALL NUMBER THAT ARE OUTSTANDING. AND FRANKLY, WE HAVE NOT DESPITE SEVERAL REQUESTS TO THE FTC, BEEN TOLD WHO IT IS WHO HAS BEEN COMPLAINING ABOUT QUALCOMM NOT BEING SUFFICIENTLY DILIGENT OR AGGRESSIVE IN THIS. IT'S NOT CERTAINLY OUR EXPERIENCE THAT WE HAVE BEEN LETTING THE THIRD PARTIES LIE FALLOW.

WE HAVE BEEN EXTREMELY ACTIVE IN PURSUING THE THIRD

PARTIES AND AS NECESSARY BRINGING THEM FOR JUDGE COUSINS'S CONSIDERATION.

SO WE THINK IT WOULD BE A DISRUPTION TO THE PROCESS TO HAVE AN ARTIFICIAL DEADLINE SET TO GET ALL OF THIS WORKED OUT BECAUSE WE THINK WE ARE GOING THERE ON OUR OWN AND WE THINK WE CAN GET THERE THROUGH NEGOTIATIONS AND WITH THE ABLE ASSISTANCE OF JUDGE COUSINS ON INDIVIDUAL CIRCUMSTANCES, AS WE HAVE BEEN SO FAR.

MS. MILICI: YOUR HONOR, IF I COULD RESPOND TO ONE ARGUMENT THAT COUNSEL IS MAKING.

THE COURT: OKAY.

MS. MILICI: JUST TO BE CLEAR, QUALCOMM HAS BROUGHT DISPUTES TO JUDGE COUSINS ONLY ABOUT APPLE AND INTEL, THE REST OF THE THIRD PARTIES IN THIS CASE, THE NEGOTIATIONS HAVE NOT INVOLVED ANY, THE COURT IN ANY WAY.

AND AS FAR AS STIPULATIONS TO COMPLETE PRODUCTION, WE HAVEN'T SEEN THEM.

SO AS FAR AS I KNOW, THERE ARE A SUBSTANTIAL NUMBER OF THIRD PARTIES WHO HAVEN'T MADE ANY FIRM COMMITMENT FOR WHEN THEY ARE GOING TO COMPLETE PRODUCTIONS.

AND YOU KNOW, JUST TO GIVE A COUPLE OF EXAMPLES, WE UNDERSTAND FROM BLACKBERRY THAT BLACKBERRY HADN'T HEARD FROM QUALCOMM SINCE AUGUST, AND THEN JUST TEN DAYS AGO, QUALCOMM CALLED THEM UP AND GAVE THEM A LARGE NUMBER OF REQUESTS.

SO I THINK IT'S NOT TRUE THAT QUALCOMM HAS BEEN COMPLETELY

DILIGENT. AND I ALSO THINK THAT IT'S NOT NECESSARILY THE POINT. WHETHER QUALCOMM HAS BEEN COMPLETELY DILIGENT IN THE PAST OR NOT, THIS IS A PROCESS THAT HAS TO COME TO AN END.

WE HAVE A LOGISTICAL ISSUE OF THE THIRD PARTIES HAVE TO FINISH PRODUCING DOCUMENTS SO THAT WE CAN TAKE THEIR DEPOSITIONS.

AND FROM OUR PERSPECTIVE, HAVING A DEADLINE ARBITRARY OR NOT, HELPS THAT PROCESS ALONG. IF THIS IS A DEADLINE FOR SUBMITTING THINGS TO THE COURT, IT WILL CAUSE THOSE NEGOTIATIONS TO REACH AN END.

THE COURT: OKAY. WELL, I AM GOING TO IMPOSE A DEADLINE. WE HAVE A FACT DISCOVERY CUTOFF OF MARCH 30TH, AND MY CONCERN IS THAT WE HAVE THE HOLIDAYS COMING UP AND THEN THEY WILL HAVE TO DO THE COLLECTION.

I MEAN, SEARCH TERMS HAVEN'T EVEN BEEN AGREED UPON OR CUSTODIANS, THEN WE ARE EARLY IN THE PROCESS. THEY WILL HAVE TO DO THE COLLECTION, THEY WILL HAVE TO DO THE REVIEW, THEY WILL HAVE TO DO THE PRODUCTION AND DO THE REVIEW, THEN THERE WILL HAVE TO BE DEPOSITIONS.

AND MY CONCERN IS WE ARE APPROACHING THANKSGIVING AND THIS IS A MARCH 30TH CUTOFF. SO I'M GOING TO MAKE A PROPOSAL, AND I WILL ALLOW EVERYONE TO BE HEARD.

I WOULD PROPOSE A DEADLINE TO CONCLUDE THIRD PARTY NEGOTIATIONS OF NOVEMBER 29TH RATHER THAN THE WEDNESDAY THEREFORE THANKSGIVING.

DEADLINE TO BRIEF DISPUTES, DECEMBER 15TH. DEADLINE TO PRODUCE PRIVILEGE LOGS, WE'VE ALREADY DEALT WITH THAT ISSUE, IS DECEMBER 19TH.

AND I WILL SET A FURTHER CMC FOR, ONE MINUTE, PLEASE. WELL, THE DEADLINE TO COMPLETE THIRD PARTY PRODUCTION OF JANUARY 7TH. AND I WOULD WANT THE CMC AFTER THAT DATE SO THAT YOU CAN REPORT BACK TO ME AS TO WHAT HAPPENED.

SO I WOULD PROBABLY SUGGEST MAYBE MID-JANUARY FOR THE FURTHER CMC.

LET ME ASK MS. MASON. I KNOW THAT THERE IS A CMC IN THE MDL ON JANUARY 3RD, BUT I DON'T THINK THERE'S A NEED TO HAVE THESE CASES ON THE SAME DAY. AND I THINK IT'S MORE IMPORTANT FOR ME TO FIND OUT WHETHER THESE DEADLINES HAVE BEEN COMPLIED WITH.

SO I THINK MAYBE THE 17TH, I DON'T KNOW, I KNOW OUR DAYS ARE ALL IMPACTED.

THE CLERK: YOUR HONOR, UNFORTUNATELY THE 17TH IS PROBABLY THE WORST DATE.

THE COURT: OH, OKAY. WELL, JANUARY 7TH IS ACTUALLY A SUNDAY, SO THAT'S ACTUALLY A BAD DAY ANYWAY.

IF I SET IT ON JANUARY 12TH FOR THE PRODUCTION, DOES THAT GIVE ENOUGH TIME FOR DIGESTION AND REVIEW OF THE THIRD PARTY DOCUMENTS AND DEPOSITIONS?

MY CONCERN IS THAT IF THERE ARE 50, TRYING TO DO 50 DEPOSITIONS IN MARCH IS GOING TO BE EXTREMELY DIFFICULT.

MR. BORNSTEIN: AS I NOTED, YOUR HONOR, MOST OF THE THIRD PARTIES ARE GOING TO FINISH IN DECEMBER, BASED ON EITHER REPRESENTATIONS THAT THEY HAVE MADE TO US OR ORDERS OR STIPULATIONS THAT HAVE BEEN BEFORE JUDGE COUSINS.

SO I DON'T THINK WE ARE GOING TO BE IN A WORLD WHERE WE HAVE 50 THIRD PARTIES WHO -- I HOPE ARE NOT IN THE WORLD WHERE WE HAVE 50 THIRD PARTIES WHO ARE COMPLETING ON JANUARY 12TH.

I THINK THERE'S GOING TO BE A SMALL NUMBER WHO ARE LEFT AT THAT POINT. I CERTAINLY HOPE THAT TO BE THE CASE.

AND IF --

THE COURT: I WILL SAY JANUARY 5TH THEN. IF IT'S ONLY A FEW PARTIES, THEN IT'S NOT GOING TO MATTER MUCH.

LET'S DO NOVEMBER 29TH TO CONCLUDE THIRD PARTY NEGOTIATIONS.

DECEMBER 15TH TO BRIEF ANY DISPUTES.

JANUARY 5TH TO COMPLETE PRODUCTION.

MR. BORNSTEIN: YOUR HONOR, MAY I MAKE ONE OBSERVATION ON THE SCHEDULE?

THE COURT: YES.

MR. BORNSTEIN: SO IF WE HAVE A DECEMBER 15TH DAY FOR BRIEFING --

THE COURT: YES.

MR. BORNSTEIN: -- I WOULD SUGGEST WE MAY NOT NEED THE CONCLUSION OF NEGOTIATION DATE. WE WILL CERTAINLY ENDEAVOR TO BE DONE BY THE 29TH.

MY WHOLE CONCERN HERE HAS BEEN HAVING A DATE THAT WOULD ARTIFICIALLY CUT OFF OUR OPPORTUNITY TO NEGOTIATE AND REACH AGREEMENT WITH PEOPLE AND AVOID HAVING TO BRING IT TO COURT.

SO IF WE HAVE A DATE WHERE WE MUST BRIEF, IF THE DISCUSSIONS HAPPEN TO GO INTO THE FIRST WEEK OF DECEMBER OR THE SECOND WEEK OF DECEMBER --

THE COURT: WELL, THEN YOU JUST DON'T FILE YOUR MOTION.

I MEAN, I THINK IT'S HELPFUL, I'VE HAD THIS PROBLEM IN OTHER CASES TO BE EQUALLY DISAPPOINTED TO FIND OUT PEOPLE ARE STILL NEGOTIATING SEARCH TERMS TEN MONTHS LATER AND THE COLLECTION HASN'T EVEN BEEN DONE YET. EVEN IF THE COLLECTION HAS BEEN DONE, THEY HAVEN'T RUN THE SEARCH TERMS ON WHAT'S BEEN COLLECTED, AND IT IS A PROBLEM.

MR. BORNSTEIN: TO BE CLEAR, YOUR HONOR, WE HAVE FOR, AGAIN, MOST -- WITH THE EXCEPTION OF ONE SET OF THIRD PARTIES THAT I CAN THINK OF WHO ARE NEGOTIATING WITH US JOINTLY, WE HAVE REACHED CUSTODIAN SEARCH TERM AGREEMENTS WITH VIRTUALLY EVERYBODY. SO THAT, TOO, IS NOT --

THE COURT: WELL THEN, I COULD SET THE DEADLINE ON NOVEMBER 22ND THEN, IF YOU ONLY HAVE A FEW YOU NEED TO AGREE WITH, RIGHT? BECAUSE YOU'VE ALREADY DONE IT WITH VIRTUALLY EVERYBODY ELSE.

THEN I WILL ADVANCE IT TO NOVEMBER 22ND IF IT'S REALLY THAT SMALL IN NUMBER.

MR. BORNSTEIN: WELL AGAIN, THE PROBLEM YOUR HONOR, ISN'T HOW MANY WE ARE NEGOTIATING WITH, IT'S ARTIFICIALLY CUTTING IT OFF. THAT'S REALLY OUR CONCERN.

IF WE HAVE THE BRIEFING DATE, I THINK THAT WILL ACCOMPLISH GETTING EVERYTHING RESOLVED. I HATE THE PROSPECT OF NOT BEING ABLE TO CONTINUE TALKING TO PEOPLE AND HAVE HAVING THEM SAY LOOK, WE ARE DONE, WE ARE NOT WILLING TO TALK TO YOU BECAUSE THE COURT SAID THIS IS THE DATE WE HAVE TO BE FINISHED, THAT'S ALL.

AND I DON'T WANT TO LEAVE THE MISIMPRESSION THAT WE HAVE 20, 30 PARTIES WHO HAVEN'T COME UP WITH CUSTODIANS.

BUT WE ARE HAPPY TO OBVIOUSLY TAKE THE COURT'S DIRECTION ON THE 29TH AND 15TH, IF THAT'S THE COURT'S PREFERENCE. AND IF WE ARE ABLE TO CONTINUE TALKING TO PEOPLE AFTER THE 29TH AND COME TO AGREEMENT, THEN AS YOU SAID WE WON'T FILE OUR MOTION.

THE COURT: THEN YOU WON'T FILE YOUR MOTION.

I WOULD PREFER TO SET SOME DEADLINES.

SO LET'S HAVE THE DEADLINE TO CONCLUDE THIRD PARTY NEGOTIATIONS BE NOVEMBER 29TH.

THE DEADLINE TO BRIEF DISPUTES REGARDING THIRD PARTY DISCOVERY BE DECEMBER 15TH.

AND THE DEADLINE TO COMPLETE THIRD PARTY PRODUCTION BE JANUARY 5TH.

I AM FULLY INTENT ON STAYING ON SCHEDULE AND HAVING THIS FACT DISCOVERY CUTOFF REMAIN MARCH 30TH.

AS FAR AS THE CMC THEN, IT SOUNDS LIKE WHAT DATE LOOKED BETTER? YOU SAID THE 17TH IS WORSE?

THE CLERK: YES, YOUR HONOR. THE 24TH IS AVAILABLE.

THE COURT: ARE YOU AVAILABLE THAT DAY?

MS. MILICI: YES, YOUR HONOR.

MR. BORNSTEIN: I AM YOUR HONOR.

THE COURT: OKAY. ALL RIGHT. THEN LET'S SET THE FURTHER CMC, PLEASE, FOR JANUARY 24TH.

OKAY. WHAT ELSE? ANYTHING -- THOSE WERE THE ONLY ISSUES I SAW IN YOUR STATEMENT. AND OBVIOUSLY, IF THERE'S NO ISSUE THAT WE NEED TO DISCUSS ON THE 24TH, I WILL JUST CONTINUE IT OUT TO ANOTHER LATER DATE.

MS. MILICI: YOUR HONOR, WE HAVE TWO MORE ISSUES THAT RELATE TO THE SCHEDULE.

AND THE FIRST IS THAT AS I MENTIONED THE ESI STIPULATION HAS A 30-DAY WAITING PERIOD FROM THE CLOSE OF THE THIRD PARTY'S -- FROM THE COMPLETION OF THEIR PRODUCTION TO THE DEPOSITION.

AND AGAIN, WE ARE KIND OF IN A LOGISTICAL ISSUE HERE. SO WE HAVE ASKED TO MODIFY THAT TO CHANGE THAT TO TWO WEEKS. AND QUALCOMM HAS DISAGREES WITH THAT.

BUT WE DO THINK THAT IT WILL HELP US MEET THE MARCH 30TH DEADLINE IF IT'S 14 DAYS FROM THE COMPLETION OF PRODUCTION TO THE DEPOSITION.

THE COURT: BUT WHO SIGNED THAT ESI ORDER? WAS THAT

JUDGE COUSINS? WOULD HE BE THE MORE APPROPRIATE TO MAKE THAT REQUEST TO? IF HE'S HANDLING SOMETHING, I DON'T WANT TO STEP IN.

MS. MILICI: SURE.

THE COURT: UNLESS THERE'S AN OBJECTION TO A RULING THAT HE'S MADE. WAS HE THE ONE? I PROBABLY HAVE IT IN MY FILE.

MS. MILICI: I BELIEVE THAT'S CORRECT, YOUR HONOR. AND WE ARE HAPPY TO BRING IT TO JUDGE COUSINS.

THE COURT: I THINK THAT PROBABLY WOULD BE BEST.

OKAY. WHAT ELSE? ANYTHING ELSE?

MS. MILICI: YOUR HONOR, ONE OTHER ISSUE RELATING TO THE SCHEDULE, WHICH IS THAT QUALCOMM HAS RECENTLY TOLD THE FTC THAT IT INTENDS TO PRODUCE DOCUMENTS AFTER THE DATE THAT WE AGREED ON FOR SUBSTANTIAL COMPLETION OF THEIR OWN PRODUCTION.

THEY'VE PROPOSED, OR NOT PROPOSED, THEY'VE SAID THAT THEY ARE GOING TO PRODUCE ADDITIONAL DOCUMENTS FROM TWO CUSTODIANS FOR A PERIOD UP THROUGH THE END OF SEPTEMBER, AND THAT THEY WOULD TRY TO FINISH THOSE PRODUCTIONS BY THE END OF THE YEAR.

AGAIN, WE HAVE MULTIPLE CONCERNS WITH THIS AND IT MIGHT BE APPROPRIATE TO BRING THOSE TO JUDGE COUSINS IN THE FIRST PLACE, BUT I WANTED TO FLAG IT FOR YOUR HONOR.

THE COURT: WHAT WAS THE SUBSTANTIAL COMPLETION DEADLINE, YOU SAID SEPTEMBER?

MS. MILICI: NOVEMBER 28TH.

THE COURT: OH, SO THEY JUST WANT ONE MORE MONTH.

MS. MILICI: THEY WANT ONE MORE MONTH. BUT AGAIN, THIS IS A LOGISTICAL ISSUE WITH DEPOSITIONS, YOU KNOW, WE WERE HOPING TO AT LEAST START QUALCOMM DEPOSITIONS IN DECEMBER, GIVEN THE SCHEDULING THAT WE WILL HAVE TO DEAL WITH.

THE COURT: I'M SORRY TO INTERRUPT YOU, WHAT WAS THE SUBSTANTIAL COMPLETION DATE?

MS. MILICI: NOVEMBER 28TH IS THE AGREED DATE.

THE COURT: SO NEXT TUESDAY. SO WHEN ARE YOU GOING TO -- WHY CAN'T YOU MEET YOUR AGREED UPON SUBSTANTIAL COMPLETION DATE?

MR. BORNSTEIN: WE ABSOLUTELY CAN AND WILL, YOUR HONOR. WE ARE MEETING THE NOVEMBER 28TH DEADLINE FOR THE DOCUMENTS WE AGREED TO PRODUCE BY NOVEMBER 28TH.

WE HAD A DISCUSSION AND AN AGREEMENT WHICH APPEARS IN THE SEPTEMBER 6TH CASE MANAGEMENT CONFERENCE, IT'S ON PAGE 7, YOUR HONOR, WHICH RELATES TO DOCUMENTS THAT ARE OUTSIDE OF THE TIME FRAME THAT WE AGREED TO COMPLETE PRODUCTION BY NOVEMBER 28TH.

WHAT THIS IS, YOUR HONOR, IS WE THINK IT'S NECESSARY AND APPROPRIATE TO UPDATE THE PRODUCTION PAST THE CUTOFF DATE FOR DOCUMENTS THAT WE'VE PRODUCED SO FAR, GIVEN THE FTC IS REQUESTING INJUNCTIVE RELIEF.

WE THINK IT'S IMPORTANT FOR THE COURT TO HAVE ADDITIONAL INFORMATION ABOUT THE CURRENT STATE OF THE COMPETITION IN THE

MARKET. AND SO WE'VE IDENTIFIED CUSTODIANS WHO WE BELIEVE ARE MOST RELEVANT TO ISSUES AROUND THE STATE OF COMPETITION IN THE MARKETS THAT THE FTC HAS ALLEGED.

AND SO OUR INTENTION WAS TO PROVIDE ADDITIONAL DOCUMENTS OVER AND ABOVE THOSE THAT WE HAD AGREED TO PRODUCE BY NOVEMBER 28TH, AND TO DO THAT AS QUICKLY AS WE CAN.

THE COURT: I WANT A DEADLINE WHEN ARE YOU GOING TO PRODUCE THAT.

MR. BORNSTEIN: SURE.

THE DATE I HAD SUGGESTED TO COUNSEL WAS DECEMBER 31ST, AND WE WILL DO OUR VERY BEST TO STICK TO THAT.

THE COURT: I THINK THAT'S TOO LATE. THAT'S TOO LATE. I WANT TO KEEP THE MARCH 30TH DISCOVERY CUTOFF.

MR. BORNSTEIN: I UNDERSTAND THAT, YOUR HONOR.

THE COURT: AND IF THEY ARE GOING TO GET A DOCUMENT DUMP ON NEW YEARS EVE THAT THEY ARE GOING TO HAVE TO DIGEST AND ANALYZE AND PREPARE FOR DEPOSITIONS, AND THERE MAY BE UP TO 50 THIRD PARTY DEPOSITIONS, THAT'S TOO LATE, I WANT THAT PRODUCED BY THE 14TH OF DECEMBER.

MR. BORNSTEIN: WE WILL INVESTIGATE THAT, YOUR HONOR.

THE GIST OF IT'S CLEAR. WE ARE TALKING ABOUT TWO CUSTODIANS, NOT A BIG DOCUMENT DUMP, AND ONLY FOR A FEW MONTHS OF TIME. SO IT SHOULD BE A RELATIVELY --

THE COURT: SO THEN WHY DO YOU NEED 31 PLUS TWO WEEKS?

MR. BORNSTEIN: BECAUSE WE ARE WORKING ON GETTING THE PRIVILEGE LOG, WE HAVE TO COLLECT THE DOCUMENTS, WE HAVE TO GO THROUGH THEM. BUT WE WILL MAKE EVERY EFFORT TO GET THEM BY THE DATES YOUR HONOR SUGGESTED.

THE COURT: THERE ARE FOUR LAW FIRMS, FIVE LAW FIRMS WORKING ON THIS. MORGAN LEWIS, QUINN EMANUEL, KECKER VAN NEST, CRAVATH SWAINE, BINGHAM MCCUTCHEN -- I DON'T KNOW IF THEY ARE STILL INVOLVED OR NOT.

MR. BORNSTEIN: THEY ARE MORGAN LEWIS NOW.

THE COURT: THEY ARE MORGAN LEWIS.

ALL RIGHT. WELL, MORGAN LEWIS, QUINN EMANUEL, KEKER VAN NEST, YOU HAVE FOUR LAW FIRMS ON THIS, I THINK SOMEONE CAN DO THE PRIVILEGE LOG AND SOMEONE CAN DO THE COLLECTION AND PRODUCTION.

SO I WANT TO -- YOU KNOW, I JUST REALLY WANT TO KEEP OUR CASE SCHEDULE. AND SO, UNFORTUNATELY, I THINK I'M GOING TO HAVE TO IMPOSE SOME DEADLINES JUST TO MAKE SURE THAT WE CAN STAY ON TRACK.

MR. BORNSTEIN: WE WILL GET THOSE TWO CUSTODIANS PRODUCED BY THAT DATE.

THE COURT: ALL RIGHT. THANK YOU.

MS. MILICI: AND YOUR HONOR, TO BE CLEAR, WHAT'S HAPPENED HERE IS THAT QUALCOMM, IN A LETTER TO INTEL, REPRESENTED THAT INTEL SHOULD BE PRODUCING DOCUMENTS FOR A PERIOD UP THROUGH THE END OF SEPTEMBER, BECAUSE THAT'S HIGHLY

RELEVANT TO THEIR DEFENSES BECAUSE THAT PERIOD OF TIME IS HIGHLY RELEVANT TO QUALCOMM'S DEFENSES.

THAT IS THE FIRST WE'VE HEARD ABOUT THAT. UP UNTIL WHEN WE SAW THAT LETTER, WHICH WAS SOME TIME IN MID-OCTOBER, QUALCOMM WAS TAKING THE POSITION THAT IT DOES NOT HAVE TO REFRESH ANY OF ITS CUSTODIANS AND THE COLLECTION LAST, WHATEVER IT WAS, APRIL OR MAY, WAS SUFFICIENT.

THEY HAVE NOW COME BACK TO US AND SAID, WELL, WE ARE GOING TO REFRESH, BUT ONLY FOR THESE TWO CUSTODIANS BECAUSE THESE DOCUMENTS ARE RELEVANT TO OUR DEFENSE.

THEY HAVEN'T TOLD US WHAT THAT DEFENSE IS, THEY HAVEN'T ARTICULATED IT. WE DON'T HAVE ANY WAY OF KNOWING WHETHER THAT ADDITIONAL PRODUCTION IS SUFFICIENT TO GIVE US DISCOVERY ABOUT THAT DEFENSE.

SO WE ARE CONCERNED ABOUT THEM PRODUCING ANYTHING OUTSIDE OF THE PERIOD THAT WE AGREED ON. BUT WE ARE ALSO CONCERNED ABOUT THE SCOPE OF THIS PRODUCTION. AND IN ADDITION, WHETHER THEY ARE GOING TO DO IT AGAIN. ARE THEY GOING TO COME BACK IN JANUARY AND SAY WELL, SOMETHING HAPPENED IN DECEMBER THAT'S RELEVANT TO OUR DEFENSES, WE ARE GOING TO PRODUCE MORE DOCUMENTS FROM MORE CUSTODIANS. THERE HAS TO BE AN END.

MR. BORNSTEIN: WELL, YOUR HONOR, WE HAD --

THE COURT: I'M SORRY, I'M SORRY TO INTERRUPT YOU.

MR. BORNSTEIN: NO, PLEASE.

THE COURT: I GUESS I DON'T UNDERSTAND.

YOU DON'T WANT DOCUMENTS BEYOND APRIL OF 2017? OR YOU WANT ALL DOCUMENTS BEYOND 2017 SO IT'S NOT CHERRY PICKING, JUST A FEW CUSTODIANS THAT MAY BE FAVORABLE AND THEN NOT PRODUCE ANYTHING BEYOND APRIL THAT WOULD BE UNFAVORABLE TO QUALCOMM.

MS. MILICI: EXACTLY, YOUR HONOR.

AND FRANKLY, WE DON'T HAVE ENOUGH INFORMATION ABOUT WHAT IT IS THEY ARE TRYING TO SHOW WITH THESE REFRESHED CUSTODIANS, BUT IT SEEMS TO ME THAT THEY HAVE BEEN REFUSING TO REFRESH ANYBODY ELSE, AND THEY COME TO US AND SAY, WE ARE GOING TO REFRESH THESE TWO AND NOT ANYBODY ELSE, AND THAT STRIKES ME AS CHERRY PICKING, AS YOUR HONOR SAID.

MR. BORNSTEIN: YOUR HONOR, THIS IS NOT AN ACCURATE REFLECTION OF THE CONVERSATIONS THAT WE HAVE BEEN HAVING. WE NEVER SAID WE WOULDN'T DISCUSS ANYBODY ELSE.

WE RECEIVED A LETTER THIS MORNING FROM THE FTC ASKING US FURTHER QUESTIONS ABOUT THIS ISSUE.

IN THE CMC STATEMENT WE FILED WITH YOUR HONOR FOR THIS CONFERENCE, WE INDICATED WE WERE MEETING AND CONFERRING ON THIS ISSUE. AND WE ARE HAPPY TO CONTINUE DOING THAT, WE THINK WE SHOULD CONTINUE DOING IS THAT BEFORE REACHING A PREMATURE CONCLUSION ON WHAT'S GOING TO HAPPEN.

THE COURT: I'M SORRY TO INTERRUPT YOU.

SO FOR THIRD PARTIES, ARE YOU ASKING FOR DOCUMENTS THROUGH SEPTEMBER 2017, BUT YOUR PRODUCTION IS LIMITED TO APRIL OF

2017?

MR. BORNSTEIN: WE'VE BEEN NEGOTIATING THAT WITH THE THIRD PARTIES.

TYPICALLY, THE THIRD PARTIES HAVE TAKEN THE POSITION THAT THEY WILL PRODUCE ONLY THROUGH THE DATE OF THE SUBPOENA THAT THEY RECEIVED.

AND FOR INTEL, THAT WAS A SUBSEQUENT SUBPOENA, SO THAT IS THE REASON WE WERE SEEKING DOCUMENTS, AND THEY ULTIMATELY AGREED TO PRODUCE DOCUMENTS THROUGH THE SEPTEMBER TIME PERIOD.

FOR OUR OWN PRODUCTION, WE HAD AGREED WITH THE FTC TO PRODUCE THROUGH THE CUTOFF DATE ON WHICH WE HAD COLLECTED. AND IT IS OUR VIEW THAT IT'S GOING TO BE IMPORTANT TO THE COURT TO HAVE ADDITIONAL INFORMATION ABOUT HOW THE MARKET HAS DEVELOPED BETWEEN THE TIME OF THAT CUTOFF DATE AND THE TIME OF THE TRIAL. SO THE COURT CAN CONSIDER THE ISSUES AND FASHION ANY RELIEF THE COURT MAY ULTIMATELY DEEM TO BE WARRANTED. WE HOPE WE WILL GET THERE.

THE COURT: I DON'T WANT CHERRY PICKED DATA OR CHERRY PICKED DISCOVERY. WHAT'S THE CUTOFF DATE? APRIL?

MS. MILICI: I'M NOT SURE THAT QUALCOMM EVER TOLD US WHAT THEIR COLLECTION DATES WERE.

AND JUST TO BE CLEAR, THE FTC NEVER AGREED THAT THAT WAS THE END OF THEIR OBLIGATIONS, WAS THROUGH THE DATE OF THEIR LAST COLLECTION.

WE HAVE CONSISTENTLY SAID WE EITHER -- IF YOU ARE GOING TO

PRESENT EVIDENCE FROM AN ADDITIONAL TIME FRAME, THEN THE COLLECTION THAT YOU'VE DONE WOULDN'T BE SUFFICIENT.

MR. BORNSTEIN: AND WE HAVE A PROCESS FOR DEALING THAT, YOUR HONOR.

THE COURT: WHAT'S YOUR COLLECTION CUTOFF? WHEN WAS YOUR COLLECTION --

MR. BORNSTEIN: I DON'T HAVE THE SPECIFIC DATE, I THINK IT'S ACTUALLY SOMEWHAT VARYING BY CUSTODIAN.

WE CAN CERTAINLY GET THAT TO THE COURT, BUT IT'S, ROUGHLY SPEAKING, IT WAS IN LATE SPRING, EARLY SUMMER, I BELIEVE.

AND SO WE DO THINK, THOUGH, THAT IT WILL BE APPROPRIATE TO PRESENT EVIDENCE TO THE COURT AT TRIAL ON THINGS THAT HAPPENED AFTER THE MIDDLE OF 2017. WE ARE GOING TO HAVE AN IPHONE 11 OR WHATEVER THEY MAY CALL IT, SOME TIME NEXT YEAR, AND IT WOULD BE VERY STRANGE --

THE COURT: BUT THEN I WANT THE FULL DISCOVERY, I DON'T WANT TWO CHERRY PICKED CUSTODIANS.

MR. BORNSTEIN: WELL, I THINK YOUR HONOR, WE OUGHT TO NEGOTIATE THE SCOPE, THAT'S WHAT I WANT TO DO WITH COUNSEL, THAT'S WHAT WE WERE PLANNING ON DOING, AND NOW I'M SORT OF BEING SANDBAGGED HERE WITH AN EFFORT TO GET A RULING FROM THE COURT BEFORE WE'VE HAD AN OPPORTUNITY TO MEET AND CONFER AND BEFORE I'VE EVEN GOTTEN A PROPOSAL FROM COUNSEL ON WHAT THEY THINK IS APPROPRIATE TO DO.

THE COURT: ALL RIGHT. LET'S SET A DATE BY WHICH YOU

ARE GOING TO FILE A CASE MANAGEMENT STATEMENT TO GIVE ME AN UPDATE ON THIS ISSUE. I THINK THAT'S FAIR.

MR. BORNSTEIN: THANK YOU, YOUR HONOR.

THE COURT: WHEN IS THAT GOING TO BE?

MR. BORNSTEIN: SO I THINK WE CAN DO THAT FIRST WEEK OF DECEMBER.

MS. MILICI: I THINK WE COULD DO IT SOONER THAN THAT, AND I DO THINK THAT THIS IS AN ISSUE THAT NEEDS TO BE RESOLVED BECAUSE IT POTENTIALLY HAS AN IMPACT ON THE SCHEDULE. AND AS YOUR HONOR SAID, WE ARE WORKING VERY HARD TO KEEP THE MARCH 30TH DEADLINE.

THE COURT: I THINK DECEMBER 8TH IS FINE.

SO PLEASE FILE A SUPPLEMENTAL JOINT CASE MANAGEMENT STATEMENT BY DECEMBER 8TH. JUST LET ME KNOW WHAT THE STATUS OF THIS ISSUE.

I DON'T WANT THE PLAINTIFF TO BE SANDBAGGING AND EXPLOITING THE CMC'S TO GET A LOT OF THINGS THAT YOU HAVEN'T ALREADY MET AND CONFERRED ABOUT OR THAT ARE NOT RIPE.

MS. MILICI: YOUR HONOR, WE HAVE MET AND CONFERRED ABOUT THIS. WE DID JUST RECEIVE THIS PROPOSAL FROM THEM, A SPECIFIC PROPOSAL. AND YOU KNOW, MY ISSUE IS REALLY TRYING TO KEEP THE SCHEDULE.

THE COURT: ALL RIGHT. WELL, FILE A DECEMBER 8, 2017, A JOINT CASE MANAGEMENT STATEMENT, PLEASE, THAT GIVES ME AN UPDATE ON QUALCOMM'S PRODUCTION.

03:02:06 WHAT ELSE, ANYTHING ELSE?

03:02:08 MR. BORNSTEIN: NOT FROM QUALCOMM, YOUR HONOR.

03:02:10 MS. MILICI: NOT FROM PLAINTIFFS.

03:02:11 THE COURT: ALL RIGHT. THANK YOU ALL VERY MUCH.

03:02:13 THANK YOU.

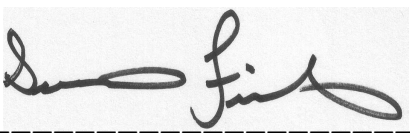
03:02:13 MR. BORNSTEIN: THANK YOU, YOUR HONOR.

03:02:14 (THE PROCEEDINGS WERE CONCLUDED AT 3:02 P.M.)

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, CONSTITUTES A TRUE, FULL AND CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS SUCH OFFICIAL COURT REPORTER OF THE PROCEEDINGS HEREINBEFORE ENTITLED AND REDUCED BY COMPUTER-AIDED TRANSCRIPTION TO THE BEST OF MY ABILITY.



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SUMMER A. FISHER, CSR, CRR
CERTIFICATE NUMBER 13185 DATED: 11/16/17