UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

FEDERAL TRADE COMMISSION,	)	C-17-00220 LHK
PLAINTIFF,	)	SAN JOSE, CALIFORNIA
VS.	)	APRIL 19, 2017
QUALCOMM INCORPORATED, A DELAWARE CORPORATION,	)	PAGES 1-26
DEFENDANT.	)	

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: FEDERAL TRADE COMMISSION
BY: JENNIFER MILICI
600 PENNSYLVANIA AVENUE, NW
WASHINGTON, D.C. 20580

BY: JOSEPH R. BAKER
400 7TH STREET, SW
WASHINGTON, D.C. 20024

APPEARANCES CONTINUED ON NEXT PAGE

OFFICIAL COURT REPORTER: LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

APPEARANCES (CONTINUED)

FOR THE DEFENDANT:

CRAVATH, SWAINE & MOORE
BY: GARY A. BORNSTEIN
YONATAN EVEN
NICOLE PELES
825 EIGHTH AVENUE
NEW YORK, NEW YORK 10019

MORGAN, LEWIS & BOCKIUS
BY: GEOFFREY T. HOLTZ
RICHARD S. TAFFET

SAN JOSE, CALIFORNIA APRIL 19, 2017

P R O C E E D I N G S

(COURT CONVENED AT 10:28 A.M.)

THE COURT: GOOD MORNING AND WELCOME.

THE CLERK: PLEASE BE SEATED.

YOUR HONOR, WE'RE CALLING CASE NUMBER 17-CV-00220, FEDERAL TRADE COMMISSION VERSUS QUALCOMM INCORPORATED.

COUNSEL, PLEASE COME FORWARD AND STATE YOUR APPEARANCES.

MS. MILICI: JENNIFER MILICI FOR THE FTC.

MR. HOLTZ: I'LL GO FIRST.

GEOFFREY HOLTZ FOR QUALCOMM.

MR. BORNSTEIN: GARY BORNSTEIN FOR QUALCOMM, YOUR HONOR.

MR. BAKER: JOSEPH BAKER FOR THE FTC.

MR. EVEN: YONATAN EVEN FOR QUALCOMM.

THE COURT: I'M SORRY?

MR. EVEN: YONATAN EVEN FOR QUALCOMM.

MS. PELES: NICOLE PELES FOR QUALCOMM.

MR. TAFFET: RICHARD TAFFET FOR QUALCOMM AS WELL.

THE COURT: OKAY. GOOD MORNING AND WELCOME TO EVERYONE.

OKAY. DID YOU EXCHANGE INITIAL DISCLOSURES ON APRIL 12TH?

MR. BORNSTEIN: WE DID, YOUR HONOR.

MS. MILICI: WE DID.

THE COURT: OKAY. AND DID YOU ACTUALLY EXCHANGE

DOCUMENTS OR JUST LISTS OF CATEGORIES OF DOCUMENTS IN YOUR POSSESSION?

MS. MILICI: JUST LISTS OF CATEGORIES OF DOCUMENTS. WE DID NOT EXCHANGE DOCUMENTS WITH THE INITIAL DISCLOSURES.

MR. BORNSTEIN: AND WE'VE OBVIOUSLY PROVIDED A FAIRLY LARGE NUMBER OF DOCUMENTS IN THE PRE-COMPLAINT STAGE.

THE COURT: UNDERSTOOD. OKAY.

ALL RIGHT. SO WE HAVE A HEARING ON JUNE 15.

SO TELL ME ABOUT THE THIRD PARTY DISCOVERY. IS THAT DISCOVERY THAT WAS TAKEN OF QUALCOMM CONSUMERS, QUALCOMM COMPETITORS, OR --

MS. MILICI: SO THE THIRD PARTIES, IT WOULD INCLUDE BOTH CUSTOMERS AND COMPETITORS.

THE COURT: UM-HUM. OKAY. AND I WOULD ASSUME THAT QUALCOMM HAS ITS OWN DOCUMENTATION THAT IT'S EXCHANGED WITH ITS CUSTOMERS.

MR. BORNSTEIN: OVER THE COURSE OF TIME, SURE, THERE ARE INTERCHANGES WITH CUSTOMERS. WE DON'T HAVE ACCESS, OF COURSE, TO THE INTERNAL INFORMATION OF THE CUSTOMERS.

THE COURT: RIGHT.

OKAY. HAVE YOU REACHED AGREEMENT ON THE ADDITIONAL DEPOSITIONS THAT MAY BE NEEDED, OR SHOULD WE WAIT ON THAT ONE?

MR. BORNSTEIN: WE'VE NOT YET GOTTEN TO AGREEMENT ON THAT ONE, YOUR HONOR, AND I WOULD SUGGEST THAT IT WOULD BE USEFUL TO HAVE MORE INFORMATION TO BE ABLE TO HAVE AN

INTELLIGENT DISCUSSION WITH COUNSEL ABOUT THAT BEFORE WE SUGGEST SOMETHING TO THE COURT.

THE COURT: THAT'S FINE. THAT'S FINE.

NOW, YOU HAVE AGREED TO HAVE NO MORE THAN 20 INTERROGATORIES ON THE THIRD PARTIES; CORRECT?

MR. BORNSTEIN: YES.

MS. MILICI: YES.

THE COURT: OKAY, THAT'S FINE.

OTHERWISE, UNTIL YOU REQUEST ANY VARIATION, THE DISCOVERY LIMITS IN THE FEDERAL RULES OF CIVIL PROCEDURE WILL GOVERN THE CASE.

ALL RIGHT. NOW, JUDGE NATHANAEL COUSINS IS GOING TO BE THE DISCOVERY JUDGE FOR THE MDL, AND I THINK IT DOESN'T MAKE SENSE TO HAVE TWO DIFFERENT JUDGES, BECAUSE WE MAY HAVE INCONSISTENT RULINGS, SO HE'S ALSO GOING TO BE THE DISCOVERY JUDGE IN THE FTC CASE, IN YOUR CASE. ALL RIGHT? SO IF YOU WOULD PLEASE ALWAYS COMPLY WITH WHATEVER HIS REQUIREMENTS ARE FOR RAISING ANY DISCOVERY DISPUTES.

BUT HE'S QUITE FAST IN RESOLVING THEM, SO I THINK THAT WILL ALSO HELP US IN KEEPING THE CASE MOVING.

LET'S TALK ABOUT YOUR PROTECTIVE ORDER. SO UNDER OUR PATENT LOCAL RULES, DISCOVERY CAN'T BE WITHHELD ON THE BASIS THAT THERE'S NO PROTECTIVE ORDER, AND WE HAVE TWO DIFFERENT SORT OF MODEL PROTECTIVE ORDERS IN OUR DISTRICT, ONE FOR YOUR GENERAL CIVIL CASE THAT ONLY HAS ONE LEVEL OF CONFIDENTIALITY,

AND THE STANDARD PROTECTIVE ORDER IN PATENT CASES THAT HAS THE TWO LEVELS. IT HAS ATTORNEYS' EYES ONLY, IT HAS PROSECUTION BAR.

SO I DON'T WANT THE ABSENCE OF A PROTECTIVE ORDER TO BE THE BASIS FOR WITHHOLDING OF ANY DISCOVERY, SO DO YOU WANT TO HAVE ONE OF THESE DEFAULTS BE YOUR DEFAULT UNTIL YOU STIPULATE TO ONE THAT HAS ALL THE CUSTOMIZED PROVISIONS THAT YOU WANT?

MS. MILICI: SO THE FTC SENT A DRAFT PROTECTIVE ORDER --

THE COURT: OKAY.

MS. MILICI: -- TO QUALCOMM ON APRIL 6TH.

THE COURT: OKAY.

MS. MILICI: WE HAVEN'T HEARD BACK. I THINK WE STARTED WITH THE MODEL PROTECTIVE ORDER FOR THE PATENT --

THE COURT: FOR PATENT CASES?

MS. MILICI: YES.

THE COURT: OKAY.

MS. MILICI: AND THEN WE MODIFIED IT SOMEWHAT. AMONG OTHER THINGS, THE MODEL ORDERS ARE WRITTEN PRIMARILY FOR COMMERCIAL PARTIES AND NOT FOR GOVERNMENT PLAINTIFFS, SO THERE WAS SOME MODIFICATION TO THE LANGUAGE.

THE COURT: SURE.

MS. MILICI: BUT THAT -- THAT DRAFT HAS BEEN WITH QUALCOMM FOR SOME TIME.

THE COURT: OKAY. SO I'D LIKE A DATE BY WHICH

QUALCOMM IS GOING TO RESPOND TO YOU, BECAUSE IT'S BEEN TWO WEEKS.

MR. BORNSTEIN: SURE. WE'LL RESPOND BY THE END OF THE WEEK, YOUR HONOR.

THE COURT: OKAY.

MR. BORNSTEIN: AND WE'VE TENTATIVELY AGREED WITH COUNSEL THAT WE WOULD PRESENT SOMETHING TO THE COURT BY NEXT WEEK.

THE COURT: OKAY. SO BY APRIL 21, QUALCOMM WILL RESPOND TO THE FTC'S APRIL 6TH DRAFT PROTECTIVE ORDER.

ALL RIGHT. AND THAT DOCUMENT CAN BE PRESENTED TO JUDGE COUSINS FOR SIGNATURE. OKAY?

AND SIMILARLY, IF YOU HAVE ANY DISPUTES ABOUT THE PROTECTIVE ORDER, THAT WOULD GO TO JUDGE COUSINS.

LET'S GIVE A DATE BY WHICH YOU'RE GOING TO DO THAT SO I CAN ALERT HIS CHAMBERS THAT THAT IS COMING AND THEY'LL BE ON THE LOOK OUT FOR IT AND CAN SIGN IT PROMPTLY IF YOU REACH A STIPULATION. WHEN IS THAT GOING TO BE FILED?

MR. BORNSTEIN: SO I WOULD SUGGEST THURSDAY IF THAT WORKS FOR COUNSEL, THE 27TH.

MS. MILICI: THAT'S FINE WITH THE FTC.

THE COURT: IF YOU NEEDED A LITTLE MORE TIME -- IF YOU'RE ONLY GOING TO GET QUALCOMM'S RESPONSE ON FRIDAY, THE 21ST --

MR. BORNSTEIN: WE CAN DO IT THE FOLLOWING WEEK.

HOWEVER MUCH TIME COUNSEL NEEDS.

MS. MILICI: I THINK WE CAN DO IT BY THE 27TH.

THE COURT: OKAY. I'LL JUST SAY APRIL 28TH.

DO YOU KNOW WHAT OBJECTIONS YOU MIGHT HAVE?

MR. BORNSTEIN: TO THE DRAFT THAT THE FTC PROVIDED?

THE COURT: YES.

MR. BORNSTEIN: YES. WE ARE CONCERNED ABOUT USING SOME OF THE PROVISIONS THAT ARE FROM THE PATENT MODEL ORDER --

THE COURT: UM-HUM.

MR. BORNSTEIN: -- WHICH WE THINK ARE MORE SUITED TO THE EXCHANGE OF TECHNICAL INFORMATION AS OPPOSED TO THE KIND OF COMMERCIAL INFORMATION THAT'S GOING TO BE AT ISSUE IN THIS CASE. THIS IS NOT A CASE THAT'S GOING TO INVOLVE THE EXCHANGE OF SOURCE CODE OR TECHNICAL INFORMATION LIKE MATTERS THAT HAVE BEEN BEFORE YOUR HONOR MANY TIMES.

AND SO WE HAVE SUGGESTIONS THAT WE'LL MAKE. THE PROPOSAL WE RECEIVED FROM THE FTC LOOKED A LITTLE BIT MORE LIKE THE STANDARD MODEL ORDER IN THIS COURT, ALTHOUGH WE DO AGREE WITH THE CONCEPT OF A TWO-TIER CONFIDENTIALITY.

THE COURT: SO WHAT IS THE CHANGE YOU'RE GOING TO RECOMMEND TO THE ATTORNEYS' EYES ONLY TIER?

MR. BORNSTEIN: THE -- I DON'T HAVE A COMPLETE LIST FOR THE COURT, BUT THE PRIMARY ONE THAT HAS BEEN GIVING US TROUBLE, WHICH WE'VE BEEN TRYING TO FIGURE OUT HOW TO MAKE A PROPOSAL ON, IS THE PROVISION THAT WOULD REQUIRE US TO GIVE

NOTICE TO THIRD PARTIES OF OUR INTENT TO SHARE INFORMATION WITH IN-HOUSE COUNSEL AT QUALCOMM, PEOPLE RESPONSIBLE FOR SUPERVISING THE LITIGATION.

THE COURT: UM-HUM.

MR. BORNSTEIN: AND THEN IF WE RECEIVE AN OBJECTION FROM THE THIRD PARTY, THE PROPOSAL IN THE DRAFT THAT WE RECEIVED IS THAT WE WOULD HAVE TO COME TO COURT TO MAKE A MOTION IN ORDER TO RECEIVE PERMISSION TO SHARE INFORMATION WITH THE ATTORNEYS AT QUALCOMM RESPONSIBLE FOR SUPERVISING THE LITIGATION.

THE COURT: UM-HUM.

MR. BORNSTEIN: AND THAT STRIKES US AS A SIGNIFICANTLY BURDENSOME AND UNNECESSARY PROCESS FOR COMMERCIAL INFORMATION, NOT TECHNICAL INFORMATION, AND FOR SHARING THAT INFORMATION WITH PEOPLE WHO HAVE LITIGATION RESPONSIBILITIES AND NOT EITHER TECHNICAL OR COMMERCIAL BUSINESS RESPONSIBILITIES. SO THAT'S THE PRIMARY CHANGE THAT I THINK WE'LL BE SUGGESTING.

THERE WILL BE A FEW OTHERS, AND I WOULD HAVE TO TAKE A LOOK AT THE DOCUMENTS TO GIVE YOUR HONOR A MORE COMPLETE LIST RIGHT NOW.

THE COURT: SO WHAT IS YOUR SUGGESTION THEN? THAT THE THIRD PARTY HAS TO MOVE TO QUASH IT OR FOR SOME TYPE OF A PROTECTION SO THAT IT'S NOT VIEWED BY QUALCOMM IN-HOUSE COUNSEL WHO DON'T DO LICENSING?

MR. BORNSTEIN: SO OUR SUGGESTION WITH RESPECT TO THE THIRD PARTY INFORMATION IS -- REALLY COMES IN TWO STEPS. THERE'S THE THIRD PARTY INFORMATION THAT IS CURRENTLY IN THE POSSESSION OF THE FTC THAT WE WOULD LIKE TO GET ACCESS TO PROMPTLY, AND THEN THERE'S THE THIRD PARTY INFORMATION WE MAY GET THROUGH SUPPLEMENTAL OR ADDITIONAL DISCOVERY DOWN THE LINE.

IN EITHER CASE, WHAT WE WOULD LIKE TO HAVE IS OBVIOUSLY OUTSIDE COUNSEL BEING ABLE TO SEE THE DOCUMENTS, AS WELL AS A DESIGNATED SET OF IN-HOUSE QUALCOMM LAWYERS WITH RESPONSIBILITY FOR THE LITIGATION WHO ARE PERMITTED TO SEE THE MATERIALS SO THAT THEY CAN EXERCISE THEIR RESPONSIBILITIES TO THE COMPANY TO SUPERVISE THE CASE.

THE COURT: AND THEN YOU'LL HAVE SOMETHING LIKE A PROSECUTION BAR, THAT THEY CANNOT THEN BE CONTRACT NEGOTIATORS AND LICENSING ATTORNEYS? BECAUSE I DO THINK THAT WOULD CAUSE PROBLEMS FOR THESE THIRD PARTIES WHO MAY HAVE TO NEGOTIATE A LICENSE WITH QUALCOMM.

MS. MILICI: AND I THINK THAT'S OUR CONCERN IS THAT A LOT OF THE THIRD PARTIES, YOU KNOW, DEPEND ON QUALCOMM FOR THEIR CHIPSET SUPPLY, YOU KNOW, AND/OR ARE COMPETITORS.

AND SO THERE'S SOME CONCERN THAT QUALCOMM ATTORNEYS MIGHT HAVE BUSINESS RESPONSIBILITIES THAT ARE IMPLICATED IN THE FUTURE.

THE COURT: SO I THINK IF YOU'RE ONLY GOING TO GET THEIR RESPONSE, I ASSUME PROBABLY LATE IN THE DAY ON

APRIL 21ST, THERE'S NO WAY THIS IS GOING TO GET RESOLVED BY THE 27TH.

MS. MILICI: OKAY.

THE COURT: AND I THINK THAT IT WOULD BE THE FTC'S RESPONSIBILITY TO REPRESENT THE INTERESTS OF THE THIRD PARTIES IN THIS PROTECTIVE ORDER. RIGHT?

MS. MILICI: I THINK THAT'S RIGHT.

THE COURT: SO -- WHY DON'T YOU TRY TO FILE THAT BY MAY 5TH, AND THEN IF YOU NEED TO HAVE IT LITIGATED, HAVE JUDGE COUSINS DECIDE ANY DISPUTE ON THAT QUESTION. OKAY? SO MAY 5 OF 2017, PLEASE.

ALL RIGHT. SO THAT'S THE PROTECTIVE ORDER. THANK YOU FOR THE PROGRESS THAT BOTH SIDES HAVE MADE ON PUSHING AT LEAST THAT FORWARD.

SO LET'S GO TO THE MAIN EVENT, WHICH IS THE SCHEDULE.

I'M TRYING TO THINK IF THERE'S ANYTHING ELSE HERE.

I AM NOT GOING TO STAY DISCOVERY, SO WHETHER IT'S A LIMITED DISCOVERY REQUEST -- LIMITED STAY REQUEST OR A BROAD ONE, I'M NOT GOING TO STAY DISCOVERY.

SO LET ME HEAR, THOUGH, WHAT IS QUALCOMM'S -- I'M SORRY -- WHAT IS THE FTC'S POSITION ON QUALCOMM'S REQUEST? DO YOU AGREE THEY PROVIDE A NON-PUBLIC CASE FILE, OR DISAGREE AS TO DELAYING THIRD PARTY DISCOVERY?

I MEAN, I'M GOING TO BE JUST FRANK HERE. I ISSUED AN ORDER THAT SAID THERE WILL BE NO STAY OF DISCOVERY, AND THEN I

INVITED QUALCOMM TO PROPOSE A SHORTER CASE SCHEDULE, AND THEN I WAS, FRANKLY, DISAPPOINTED THAT YOUR JOINT CASE MANAGEMENT STATEMENT THEN COMES BACK AND ASKS FOR ANOTHER DISCOVERY STAY, ALBEIT MORE LIMITED THAN YOUR FIRST REQUEST.

BUT I HOPE THAT'S NOT AN INDICATION OF HOW YOU INTEND TO LITIGATE THIS CASE, BECAUSE I'M GOING TO BE DISAPPOINTED IF I ISSUE AN ORDER THAT, YOU KNOW, SAYS "THE COURT DENIES DEFENDANT'S REQUEST THAT DISCOVERY BE DEFERRED UNTIL AFTER THE COURT HAS RULED ON DEFENDANT'S PENDING RULE 12(B)(6) MOTION TO DISMISS. THERE WILL BE NO STAY OF DISCOVERY."

AND THEN WITHIN THREE DAYS, TWO BUSINESS DAYS, I GET ANOTHER DISCOVERY STAY REQUEST. IT'S -- IT'S DISAPPOINTING. I'LL PUT IT THAT WAY.

SO I HOPE, WHEN I MAKE A RULING, I'M NOT THEN FOLLOWED UP BY THE SAME REQUEST JUST SLIGHTLY MORE LIMITED GOING FORWARD.

MR. BORNSTEIN: YOUR HONOR, THAT --

THE COURT: YEAH.

MR. BORNSTEIN: -- IS ABSOLUTELY NOT HOW WE INTEND TO LITIGATE, AND I APOLOGIZE --

THE COURT: YEAH.

MR. BORNSTEIN: -- FOR UPSETTING OR DISAPPOINTING THE COURT I THINK WAS THE WORD THAT YOU USED.

THE COURT: YEAH.

MR. BORNSTEIN: OUR CONCERN, WHAT MOTIVATED THIS --

THE COURT: YES.

MR. BORNSTEIN: -- JUST SO THAT I'M SURE I GET THE OPPORTUNITY TO EXPLAIN AND APOLOGIZE FOR THIS, IS THAT WE ARE VERY WILLING TO START AND GO AHEAD AND MAKE DISCOVERY TO THE FTC, THE INFORMATION IT SEEKS FROM US.

BUT WE, RIGHT NOW, ARE NOT IN A POSITION WHERE WE CAN GO SERVE DISCOVERY REQUESTS ON THIRD PARTIES IN AN INFORMED WAY. IF WE GO OUT AND WE SERVE A BUNCH OF DISCOVERY REQUESTS ON THIRD PARTIES, IT'S GOING TO ASK FOR INFORMATION THAT'S ALREADY IN THE RECORD. IT'S GOING TO BE DUPLICATIVE OF THE INFORMATION WE WOULD GET FROM THE FTC CASE FILE.

WE'RE NOT GOING TO BE ABLE TO BE AS EFFICIENT AND INFORMED IN SEEKING WHAT WE NEED OR IN COORDINATING THE THIRD PARTY DISCOVERY WITH THE FTC WHICH HAS A HEAD START IN THE PROCESS.

ALL WE'RE LOOKING TO DO IS TO BEGIN THE DISCOVERY PROCESS FROM THE SAME PLACE SO THAT WE CAN GET TO THE STARTING LINE AND THEN HAVE A DISCOVERY PROCESS THAT IS FAIR AND BALANCED ON BOTH SIDES WHERE WE ACTUALLY HAVE THE RECORD SO WE CAN CRAFT OUR REQUESTS, AND THEN WE CAN COORDINATE WITH THE FTC IN TERMS OF HOW THE DISCOVERY WILL GO WITH THE THIRD PARTIES SO THERE ARE NOT SUCCESSIVE REQUESTS FOR DOCUMENTS, SO THERE'S JUST ONE DEPOSITION OF ANY INDIVIDUAL OR THIRD PARTY WHO WE'RE ABLE TO HAVE THE MATERIAL IN ADVANCE AND BE PREPARED FOR THAT.

SO THAT WAS THE MOTIVATION.

THE COURT: UM-HUM.

MR. BORNSTEIN: I TRULY APOLOGIZE IF THAT, A, WASN'T

CLEAR; AND, B, IF YOU FELT THAT WE WERE UNDERCUTTING YOUR ORDER, WHICH WAS ABSOLUTELY NOT OUR INTENT, YOUR HONOR.

THE COURT: WHAT IS THE FTC'S POSITION?

MS. MILICI: WELL --

THE COURT: I'M NOT GOING TO STAY IT. I'M NOT GOING TO BIFURCATE DISCOVERY.

BUT TELL ME YOUR POSITION ON THEIR OTHER REQUESTS.

MS. MILICI: OKAY. SO ONE OF THE -- THE FIRST PROPOSAL THAT QUALCOMM MADE WAS THAT WE PRODUCE THE THIRD PARTY MATERIALS IMMEDIATELY.

THE COURT: UM-HUM.

MS. MILICI: WE CAN'T DO THAT, BOTH UNDER THE REGULATIONS THAT GOVERN THE FTC, THAT'S 16 C.F.R. 410(G), WHICH SAYS WE CAN'T PRODUCE THIRD PARTY MATERIALS UNTIL, UNTIL A PROTECTIVE ORDER IS IN PLACE, AND THAT WE HAVE TO GIVE THIRD PARTIES THE OPPORTUNITY TO COME TO COURT AND SEEK ADDITIONAL PROTECTIONS.

THAT'S COMPLETELY CONSISTENT WITH THE MODEL PROTECTIVE ORDERS OF THIS COURT. BOTH THE PATENT MODEL PROTECTIVE ORDER AND THE STANDARD PROTECTIVE ORDER SAY THAT WHEN A PARTY SEEKS THIRD PARTY DOCUMENTS FROM ANOTHER PARTY, THE THIRD PARTY HAS TO BE NOTIFIED AND GIVEN A COPY OF THE PROTECTIVE ORDER AND THE DOCUMENT REQUEST AND THEN GIVEN A CHANCE TO COME TO COURT AND SEEK PROTECTION FOR ITS DOCUMENTS.

SO THAT'S THE PROCESS THAT WE'LL NEED TO FOLLOW HERE. WE

CANNOT PRODUCE THEM IMMEDIATELY. THE THIRD PARTIES ARE ENTITLED TO APPEAR BEFORE THE COURT AND MAKE THEIR ARGUMENTS.

IT'S FOR THAT REASON THAT, YOU KNOW, THE SCHEDULE THAT QUALCOMM PROPOSES IS INDEFINITE. IT'S THAT FACT DISCOVERY CONTINUES FOR 12 MONTHS AFTER TWO MONTHS AFTER THEY GET THE FTC'S DOCUMENTS. WE'RE OPPOSED TO ANY INDEFINITE SCHEDULE FOR FACT DISCOVERY. AND, IN FACT, I KNOW THAT JUST A WEEK AGO, QUALCOMM PROPOSED A FACT DISCOVERY PERIOD THAT'S JUST STRAIGHT OUT 15 MONTHS, AND SO THIS IS A NEW POSITION SINCE THEN.

YOU KNOW, IN ADDITION, I DON'T SEE THE NEED TO STAY ALL THE THIRD PARTY DISCOVERY WHILE QUALCOMM REVIEWS DOCUMENTS. THERE ARE CERTAINLY A NUMBER OF THIRD PARTIES WHO WE WOULD BE SEEKING DISCOVERY FROM WHO DID NOT PRODUCE ANY DOCUMENTS DURING THE FTC'S INVESTIGATION, AND I DON'T SEE ANY REASON TO STAY DISCOVERY AS TO THOSE THIRD PARTIES.

THE COURT: I'M WONDERING IF THERE'S ANY SORT OF EXPEDITING PERHAPS MULTIPLE TRACKS, WHETHER YOU CAN INFORM QUALCOMM AS TO WHICH THIRD PARTIES YOU OBTAINED NO DISCOVERY FROM SO THEN THEY CAN START FRESH KNOWING THAT THERE'S NO DUPLICATION POSSIBLE. WOULD YOU BE OPPOSED TO PROVIDING THAT INFORMATION?

OR EVEN JUST SAYING -- I'M NOT FAMILIAR WITH 16 C.F.R. 410(G), SO I DON'T KNOW IF YOU CAN SAY AT LEAST HERE'S THE LIST, AND WE CAN PROBABLY GUESS THEM NOW WHO THEY ARE. BUT, YOU KNOW, HERE'S A LIST OF WHO WE HAVE OBTAINED DISCOVERY FROM,

AND SO THEN QUALCOMM CAN KNOW, WELL, EVERYONE ELSE WAS NOT INVOLVED OR DIDN'T PRODUCE DOCUMENTS AND THEY CAN START FRESH WITH THOSE.

IS THAT POSSIBLE?

AND I WOULD ASSUME, AT LEAST FOR THE CUSTOMERS, A LOT OF THAT IS GOING TO BE DOCUMENTS THAT QUALCOMM ALREADY HAS. QUALCOMM MAY HAVE GENERATED THE E-MAILS, DRAFTS, WHATNOT.

PRESUMABLY THAT CAN BE PRODUCED ON AN EXPEDITED BASIS EVEN IF, YOU KNOW, MORE INTERNAL DOCUMENTS THAT QUALCOMM WOULDN'T HAVE COULD BE ON A SEPARATE TRACK.

I'M JUST WONDERING, IS THERE ANY SORT OF EXPEDITING THAT COULD BE DONE, OR SOME INFORMATION YOU CAN PROVIDE CONSISTENT WITH YOUR C.F.R. OBLIGATIONS THAT WOULD AT LEAST ASSIST QUALCOMM IN PUSHING THE BALL FORWARD?

MS. MILICI: SO I THINK PART OF THE PROBLEM HERE IS THE HOLD UP ON THE PROTECTIVE ORDER.

THE COURT: OKAY.

MS. MILICI: TYPICALLY WE DON'T, YOU KNOW, IDENTIFY SUBMITTERS, COMPANIES THAT SUBMIT DOCUMENTS DURING AN INVESTIGATION, YOU KNOW, ON THE PUBLIC RECORD OR TO THE ATTORNEY OF THE INVESTIGATION.

THE COURT: OKAY.

MS. MILICI: SO WE WOULD WANT SOME PROTECTIVE ORDER IN PLACE BEFORE, YOU KNOW, DOING THE NEGATIVE. IF WE'RE GOING TO IDENTIFY ANYBODY WHO DIDN'T, WE'RE IDENTIFYING EVERYONE WHO

DID.

THE COURT: RIGHT.

MS. MILICI: BUT AS TO YOUR POINT OF, YOU KNOW, ONCE THAT'S HAPPENED, COULD WE PRODUCE -- MAKE A LIMITED PRODUCTION OF DOCUMENTS THAT, YOU KNOW, QUALCOMM SHOULD ALREADY HAVE BECAUSE THEY'RE COMMUNICATIONS WITH QUALCOMM, I MEAN, THAT WOULD TAKE A LOT OF WORK ON OUR BEHALF TO IDENTIFY THOSE DOCUMENTS.

THE COURT: UM-HUM.

MS. MILICI: I'M NOT SUGGESTING THAT IT CAN'T BE DONE, BUT IT MIGHT NOT BE MORE EFFICIENT.

THE COURT: UM-HUM. ALL RIGHT.

WELL, I'M WONDERING IF YOU CAN AT LEAST START, IN YOUR COMMUNICATIONS WITH THE THIRD PARTIES, TO NOTIFY THEM OF WHAT'S COMING. I MEAN, YOU MAY EVEN WANT TO CONSULT WITH THEM ON THE PROTECTIVE ORDER TO PROCEED TO WORK OUT THE MECHANISM THAT WILL WORK SO THAT IT DOES NOT GET BOGGED DOWN IN A LOT OF LITIGATION, WHICH NOBODY WANTS.

SO IT COULD BE THAT YOU COULD JUST START DOING SOME OF THE LEGWORK NOW.

MS. MILICI: AND TO BE CLEAR, WE HAVE.

THE COURT: OKAY, GOOD.

MS. MILICI: YOU KNOW, THE -- THE NOTICE THAT HASN'T BEEN PROVIDED TO THE THIRD PARTIES IS THE NOTICE THAT'S CALLED FOR IN THE MODEL PROTECTIVE ORDER, WHICH IS HERE'S THE DOCUMENT

REQUEST, HERE'S THE PROTECTIVE ORDER, HERE'S THE TIMEFRAME IN WHICH YOU NEED TO SEEK ADDITIONAL PROTECTION. WE KIND OF CAN'T GIVE THAT NOTICE UNTIL THERE'S A PROTECTIVE ORDER.

BUT, YOU KNOW, CERTAINLY WE CAN GIVE NOTICE THAT THIS ISSUE HAS ARISEN.

THE COURT: WELL, LET ME ASK QUALCOMM, YOU GOT THE DRAFT ON APRIL 6TH. CAN YOU EXPEDITE IN GIVING YOUR COMMENTS SO WE CAN TRY TO -- I MEAN, I'M HAPPY TO MOVE THIS BACK TO APRIL 27TH IF THAT IS HELPFUL.

I'M JUST CONCERNED THAT IF YOU DON'T GET QUALCOMM'S POSITION UNTIL THE END OF THE DAY ON FRIDAY, THE 21ST, THE 27TH MIGHT BE TIGHT. BUT MAYBE IT'S NOT. YOU ALL HAVE ALREADY BEEN THINKING ABOUT THIS.

MR. BORNSTEIN: SO, YOUR HONOR, WE'LL DO WHATEVER WE CAN TO GET IT TO COUNSEL AS QUICKLY AS WE CAN. AND IF --

THE COURT: CAN YOU DO IT TODAY? THAT WOULD HELP.

MR. BORNSTEIN: I DON'T THINK I CAN DO IT TODAY, YOUR HONOR.

THE COURT: OKAY. WELL, HOW ABOUT TOMORROW?

MR. BORNSTEIN: WE WILL DO IT TOMORROW IF THAT NEEDS TO HAPPEN, ABSOLUTELY.

THE COURT: OKAY. SO THAT WOULD BE THE 20TH.

DO YOU STILL THINK ONE WEEK IS ENOUGH TIME?

MS. MILICI: I MEAN, I THINK WE CAN DO IT IN ONE WEEK IF -- WITH SUFFICIENT MOTIVATION.

THE COURT: OKAY. ALL RIGHT. WELL, THEN, I'LL MOVE YOUR DATE TO FILE EITHER A STIPULATED PROTECTIVE ORDER OR A PROTECTIVE ORDER DISPUTE -- WELL, YOU'LL HAVE TO CHECK WITH JUDGE COUSINS. FIND OUT WHAT HIS REQUIREMENTS ARE. I CAN'T REMEMBER IF HE HAS A -- I'M SURE HE HAS A MEET AND CONFER OBLIGATION BEFORE YOU CAN FILE, BUT I JUST DON'T RECALL WHAT THE SPECIFICS ARE BEFORE FILING WITH HIM.

BUT APRIL 27TH WILL BE YOUR DEADLINE ONE WAY OR THE OTHER. OKAY?

MR. BORNSTEIN: OKAY. AND I -- YOU KNOW, THE PROTECTIVE ORDER, I THINK YOUR HONOR, IF I MAY, THE -- WILL ADDRESS SOME OF THE CONCERNS THAT COUNSEL WAS EXPRESSING ABOUT THIS BEING AN INDEFINITE PERIOD.

WE'RE NOT SEEKING AN INDEFINITE PERIOD. WHAT WE ENVISION IS THAT THERE WOULD BE AN ORDERLY PROCESS WHERE THE NOTICE UNDER 410(G) OF THE C.F.R. WOULD BE GIVEN; THERE WOULD BE AN OPPORTUNITY FOR THE THIRD PARTIES TO RAISE WHATEVER CONCERNS THEY HAVE; THERE WOULD BE A PERIOD OF TIME FOR THOSE CONCERNS TO BE ADDRESSED BY THE COURT, WHICH CAN BE ON -- IN WHATEVER SCHEDULE IS APPROPRIATE THAT YOUR HONOR OR JUDGE COUSINS DEEMS APPROPRIATE; AND THEN WE WOULD GET THE MATERIALS.

IT WOULDN'T DRAG ON FOREVER, AND I'M CONCERNED ABOUT THE POSSIBILITY THAT COUNSEL WAS SUGGESTING IT WILL DRAG ON FOREVER.

THAT'S OUR REAL CONCERN IS THAT WE HAVE A BACK END DATE ON

WHEN FACT DISCOVERY MUST END, BUT WE HAVE AN INDEFINITE PERIOD OF TIME BEFORE WE KNOW WHAT THE FULL RECORD IS THAT WE'RE TAKING DISCOVERY ON. THAT'S OUR REAL CONCERN. WE JUST WANT SOME PREDICTABILITY IN TERMS OF WHEN WE'LL GET DOCUMENTS AND THEN HAVE ENOUGH TIME WITH THOSE DOCUMENTS TO BE ABLE TO CONDUCT DISCOVERY.

THE COURT: ALL RIGHT. WELL, I'M NOT GOING TO LET THIS CASE DRAG ON, SO -- OKAY. SO LET'S GO THROUGH THE SCHEDULE.

I WOULD LIKE TO -- THIS COMPLAINT WAS FILED IN JANUARY OF 2017, SO I WOULD LIKE THE TRIAL TO BE WITHIN TWO YEARS, SO I AM GOING TO WORK BACKWARDS.

I AM GOING TO PROPOSE AN EIGHT DAY -- I DO THINK IT'S EIGHT DAYS. I MEAN, THIS IS A BENCH TRIAL, SO IT MAY BE LESS, BUT I DON'T KNOW HOW MANY DIFFERENT WITNESSES WOULD BE CALLED.

WHAT DO YOU THINK THE ESTIMATE IS?

MR. BORNSTEIN: THE INITIAL DISCLOSURES, YOUR HONOR, THAT WE RECEIVED FROM THE FTC HAVE 39 QUALCOMM EMPLOYEES AND 44 THIRD PARTIES, THIRD PARTY ENTITIES --

THE COURT: UM-HUM.

MR. BORNSTEIN: -- WHICH STRIKES ME THAT THIS IS GOING TO BE A VERY LARGE DISCOVERY PERIOD AND A LARGE TRIAL.

THE COURT: OKAY. SO WHAT DO YOU THINK? IF WE GET -- WELL, I THINK WITHOUT A JURY, WE'LL GET EVEN MORE -- WE'LL GET PROBABLY FIVE HOURS AND 45 MINUTES OF TRANSCRIPT TIME

EVERY DAY, MAYBE EVEN SIX HOURS BECAUSE THERE WILL BE FEWER OF THE TYPES OF DISCUSSIONS WITHOUT A JURY. SO HOW MANY DAYS DO YOU THINK?

MR. BORNSTEIN: WELL, COUNSEL AND I HAVE NOT HAD THE OPPORTUNITY TO CONFER ON THE SUBJECT.

THE COURT: UM-HUM.

MR. BORNSTEIN: WOULD IT BE ACCEPTABLE TO YOUR HONOR IF WE HAVE THAT OPPORTUNITY TO DO THAT BEFORE WE GET BACK TO THE COURT?

THE COURT: THAT'S FINE. AND, YOU KNOW, IT FRANKLY DOESN'T MATTER. I JUST NEED TO SET THE START DATE. WE CAN END AT WHATEVER POINT YOU WANT TO. BUT I WOULD SET TIME LIMITS.

MR. BORNSTEIN: OF COURSE.

THE COURT: SO I'LL SAY FOR NOW, ASSUMING WE GET FIVE AND A HALF HOURS OF TRANSCRIPT TIME EACH DAY, I WOULD ASSUME -- LET'S SAY YOU EACH GOT 25 HOURS, OR EVEN 20, 20 TO 25 HOURS OF EVIDENCE. SAY YOU GOT, WHAT, 40 MINUTES EACH FOR OPENING, AN HOUR AND A HALF IF YOU THINK NECESSARY, ALTHOUGH I THINK AN HOUR WOULD BE BETTER. WHAT ABOUT AN HOUR FOR CLOSING AND 45 MINUTES FOR OPENING, 20 HOURS OF EVIDENCE EACH?

OKAY. WE HAVE NO JURY SELECTION. WE'VE GOT NO JURY INSTRUCTIONS, SO WE DON'T NEED TO SAVE ANY TIME FOR THAT.

SO WHAT DOES THAT WORK OUT TO BE?

(PAUSE IN PROCEEDINGS.)

THE COURT: ROUGHLY 44 HOURS, SO THAT'S ABOUT EIGHT

DAYS.

MS. MILICI: YOUR HONOR, THAT TIME MIGHT BE TIGHT, BUT I'M ASSUMING THAT WE COULD ADDRESS THAT LATER IF THAT --

THE COURT: YEAH, WE CAN FINE TUNE THIS LATER.

MS. MILICI: OKAY.

THE COURT: IT'S NOT -- I'LL PUT IT NOW FOR NINE DAYS. BUT I REALLY THINK THAT -- YOU KNOW, I'M GOING TO GO AHEAD AND PUT IT FOR EIGHT NOW. WE CAN FINE TUNE IT LATER. BUT THERE WILL BE STRICT TIME LIMITS, SO -- BUT AS THE CASE DEVELOPS, YOU CAN LET ME KNOW WHAT'S MORE REALISTIC OR NOT.

OKAY. SO THAT WILL BE STARTING JANUARY 4TH OF 2019 AT 9:00 O'CLOCK; WE'LL HAVE THE FINAL PRETRIAL CONFERENCE DECEMBER 13, 2018, AT 1:30; WE'LL HAVE A HEARING ON DISPOSITIVE MOTIONS OCTOBER 18 OF 2018 AT 1:30.

AND THE REASON WHY I PUT IN TWO MONTHS IS THAT IF IT'S A GRANT IN PART OR A GRANT IN FULL, I NEED TO GIVE YOU A WRITTEN ORDER THAT YOU CAN APPEAL AND, YOU KNOW, IT MAY TAKE AT LEAST A MONTH AFTER THE HEARING TO GET THAT OUT.

AND THEN UNDER MY STANDING ORDER, YOU'LL NEED TO MEET AND CONFER 21 DAYS IN ADVANCE OF THE PRETRIAL CONFERENCE AND FILE YOUR PRETRIAL DOCUMENTS 14 AND 10 DAYS BEFORE THE PRETRIAL CONFERENCE.

SO THAT JUST BUILDS IN A MONTH TO GET THE ORDER OUT, AND THEN A MONTH FOR YOU TO DO ALL THE PRETRIAL PREP BEFORE THE PRETRIAL CONFERENCE. AND THAT WAY YOU'RE NOT HAVING TO ARGUE

MOTIONS IN LIMINE IN THE ALTERNATIVE AND YOU'LL HAVE A RULING IN HAND AND A BETTER SENSE OF THE SCOPE OF THE CASE.

OKAY. SO BUILDING IN THE SORT OF -- HMM. WHAT ABOUT SEPTEMBER 28TH, 2018, FOR THE DAUBERT REPLIES AND SUMMARY JUDGMENT REPLIES -- THIS MIGHT BE A LITTLE -- HOW MANY WEEKS IS THAT?

(PAUSE IN PROCEEDINGS.)

THE COURT: OKAY. SO SEPTEMBER 28TH, 2018, IS THE DATE FOR SUMMARY JUDGMENT AND DAUBERT REPLIES; SEPTEMBER 10TH OF 2018 IS THE DATE FOR SUMMARY JUDGMENT AND DAUBERT OPPOSITIONS; AUGUST 10TH, 2018, IS THE LAST DAY TO FILE DISPOSITIVE MOTIONS AND DAUBERT MOTIONS.

NOW, YOU CAN FILE ANY DISPOSITIVE MOTIONS EARLIER, BUT I USUALLY LIMIT DISPOSITIVE MOTIONS TO ONE PER SIDE IN THE WHOLE CASE. YOU CAN FILE IT ANY TIME, BUT I DISCOURAGE YOU FILING IT PREMATURELY BECAUSE THEN WE'LL JUST GET A 56(D) OPPOSITION AND IT'LL BE A WASTE OF TIME. SO THERE'S ONE PER SIDE IN THE WHOLE CASE. THAT'S AUGUST 10.

THEN THE CLOSE OF EXPERT DISCOVERY IS JULY 20TH, 2018; PLAINTIFF'S REBUTTAL EXPERT REPORTS, JUNE 22; DEFENDANT'S EXPERT REPORTS, MAY 25; PLAINTIFF'S OPENING EXPERT REPORTS, APRIL 20TH OF 2018; CLOSE OF FACT DISCOVERY, MARCH 30TH OF 2018; AND WE HAVE THE HEARING ON THE MOTION TO DISMISS SET FOR JUNE 15, 2017, AND YOU ALL HAVE STIPULATED TO THE BRIEFING SCHEDULE, SO I THINK THAT'S FINE.

WE HAVE A REPLY DATE OF JUNE 2ND; AN OPPOSITION DATE OF MAY 12; AND WE SET APRIL 27TH AS THE FILING DATE FOR THE PROTECTIVE ORDER.

I WOULD SET A FURTHER CMC FOR AFTER THE HEARING SO YOU HAVE THE ORDER IN HAND. WHAT ABOUT JULY 19, 2017, AT 2:00 O'CLOCK?

MS. MILICI: THAT'S FINE FOR THE FTC, YOUR HONOR. THANK YOU.

MR. BORNSTEIN: YOUR HONOR, MAY I ASK YOUR PERMISSION TO LOOK AT MY PHONE TO MAKE SURE THAT I'M NOT SUPPOSED TO BE WITH MY KIDS THAT WEEK ON A VACATION?

THE COURT: YES, PLEASE.

MR. BORNSTEIN: OKAY. THANK YOU.

THE COURT: PLEASE.

(PAUSE IN PROCEEDINGS.)

MR. BORNSTEIN: YES, THAT'S FINE, YOUR HONOR.

I APOLOGIZE FOR HAVING TO DO THAT.

THE COURT: OKAY. NO, NO, NO PROBLEM.

OKAY. DO YOU NEED ME TO REPEAT THE SCHEDULE? WE'LL ISSUE A CASE MANAGEMENT ORDER WITH ALL THESE DATES IN IT, BUT I'M HAPPY TO REPEAT IT BECAUSE THIS IS A LOT OF -- THIS IS A LONG LIST OF DATES.

MS. MILICI: I THINK WE'VE GOT IT.

MR. BORNSTEIN: I THINK WE HAVE IT.

THE COURT: OKAY. ALL RIGHT.

MR. BORNSTEIN: THANK YOU.

THE COURT: I'M SORRY. GO AHEAD.

MR. BORNSTEIN: I WAS JUST GOING TO -- I WANTED TO PUT ONE ISSUE ON THE TABLE THAT MAY COME UP IN THE FUTURE, JUST SO THERE ARE NO SURPRISES IF WE HAVE TO SPEAK WITH COUNSEL OR WITH THE COURT ABOUT THIS AT SOME POINT.

THE COURT: OKAY.

MR. BORNSTEIN: BUT AS WE NOTED, THERE'S A VERY LARGE NUMBER OF THIRD PARTIES THAT ARE OVERSEAS THAT WILL COMPLICATE THE DISCOVERY PROCESS, AND SO I JUST WANTED TO RAISE THE POSSIBILITY THAT IF WE REACH THE END OF FACT DISCOVERY AND THERE'S A DELAY IN GETTING INFORMATION BECAUSE OF HAGUE CONVENTION PROCESSES, I HOPE THE COURT WILL INDULGE US IN BEING ABLE TO CONTINUE TO RECEIVE THE INFORMATION AND TAKE FACT DISCOVERY THAT -- WHERE THE DELAY IS CAUSED BY ISSUES THAT ARE OUT OF OUR CONTROL, LIKE THE HAGUE CONVENTION PROCESSES.

THE COURT: I'LL CERTAINLY CONSIDER ANY ISSUES THAT COME UP. I WILL EXPECT FULL DILIGENCE, THOUGH.

MR. BORNSTEIN: OF COURSE, YOUR HONOR.

THE COURT: AND IF IT TURNS OUT THAT A HAGUE CONVENTION REQUEST, YOU KNOW, WAS MADE TO GERMANY, OR ANY COUNTRY THAT TAKES A REALLY LONG TIME, LIKE TWO WEEKS BEFORE FACT DISCOVERY CUTOFF, I MAY NOT BE THAT SYMPATHETIC.

MR. BORNSTEIN: NO.

THE COURT: SO AS LONG AS THERE'S BEEN FULL

DILIGENCE, THEN, YES, I AM NOT GOING TO DISADVANTAGE A PARTY BECAUSE THEY'RE STILL WAITING FOR SOME EMBASSY TO -- YOU KNOW, YOU'RE STILL WAITING ON LETTERS ROGATORY OR, YOU KNOW, SOME PROCESS STILL HAS NOT TAKEN PLACE IN A FOREIGN COUNTRY.

MR. BORNSTEIN: THANK YOU, YOUR HONOR. I APPRECIATE THAT. WE WILL, OF COURSE, BE DILIGENT IN PURSUING THAT.

THE COURT: OKAY. WHAT ELSE? ANYTHING ELSE TODAY?

MS. MILICI: NOT FOR THE FTC.

MR. BORNSTEIN: NO, WE DON'T HAVE ANYTHING, EITHER, YOUR HONOR. THANK YOU.

THE COURT: OKAY. ALL RIGHT. THANK YOU ALL VERY MUCH.

MS. MILICI: THANK YOU, YOUR HONOR.

THE COURT: OKAY. THANK YOU.

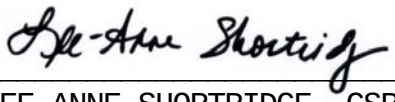
THE CLERK: COURT IS ADJOURNED.

(THE PROCEEDINGS WERE CONCLUDED AT 11:00 A.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, IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.



LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

DATED: APRIL 25, 2017