

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BEFORE HONORABLE DANA M. SABRAW, JUDGE PRESIDING

WI-LAN INC.,

PLAINTIFF,

VS.

APPLE INC.,

DEFENDANT.

AND ALL RELATED
COUNTERCLAIMS.

)
)
) CASE NO. 14CV2235-DMS
) 14CV1507-DMS
)
)
)

) SAN DIEGO, CALIFORNIA
) WEDNESDAY AUGUST 1, 2018
) 9:00 A.M. CALENDAR
)
)
)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
JURY TRIAL/DAY SEVEN
VOLUME VII-A

REPORTED BY:

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1 SAN DIEGO, CALIFORNIA - WEDNESDAY, AUGUST 1, 2018 - 8:45 A.M.

2 * * *

3 (WHEREUPON THE FOLLOWING PROCEEDINGS WERE HELD
4 IN OPEN COURT, OUT OF THE HEARING OF THE JURY)

5 **THE CLERK:** NO. 1 ON CALENDAR, CASE NO. 14CV2236,
6 APPLE VERSUS WI-LAN; ON FOR JURY TRIAL, DAY SEVEN.

7 **THE COURT:** GOOD MORNING. WE HAVE COUNSEL AND
8 PARTIES. WE ARE OUTSIDE OF THE PRESENCE OF THE JURY.
9 ON THE JURY INSTRUCTIONS, WAS THERE AN ISSUE?

10 **MR. ALLCOCK:** YES, YOUR HONOR.
11 I THINK IT IS AN INADVERTENT TRANSCRIPTION ERROR.
12 SO HERE ARE THE INSTRUCTIONS THAT WERE FORWARDED TO
13 THE PARTIES A COUPLE OF DAYS AGO.

14 **THE COURT:** YES.

15 **MR. ALLCOCK:** AND YOU WILL NOTICE THE SUBSCRIBER
16 UNIT AND CONNECTIONS INSTRUCTIONS ARE THOSE THAT WE HAVE BEEN
17 USING AND ARE DIRECTLY OUT OF THE COURT'S CLAIM CONSTRUCTION
18 ORDER. THERE WAS, YESTERDAY, SOME DISCUSSION OF REFORMATTING.

19 **THE COURT:** YES.

20 **MR. ALLCOCK:** SO LAST NIGHT THIS IS THE THING THAT
21 WE GOT, AND IT INTRODUCES, IN PARENTHESES AND UNDERLINING,
22 SOMETHING THAT HAS NEVER BEEN PART OF THE CONSTRUCTION.

23 I THINK IT CAME IN KIND OF AS A FORMATTING ERROR
24 PROBABLY, BUT IT WAS CERTAINLY NOT DISCUSSED.

25 **THE COURT:** RIGHT.

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1 **MR. ALLCOCK:** OBVIOUSLY, IT IS AN IMPORTANT
2 DIFFERENCE THAT WE THINK ABSOLUTELY NEEDS TO BE REMOVED.

3 **THE COURT:** ALL I WAS TRYING TO DO IS ADD THE
4 UNDERLINING THAT MS. GIBSON WANTED. SO I AM NOT SURE HOW THAT
5 HAPPENED. I JUST ASKED MY SECRETARY TO MAKE THAT HAPPEN, SO
6 IT ACTUALLY IMPORTED.

7 **MR. SCHUBERT:** CAN I ADDRESS THAT, YOUR HONOR?

8 **THE COURT:** YES.

9 **MR. SCHUBERT:** NO, THAT IS NOT CORRECT. WE PROPOSED
10 THIS CLARIFICATION ON THE CONSTRUCTION. THE LANGUAGE IS
11 DIRECTLY OUT OF YOUR CLARIFICATION ORDER THAT YOU GAVE, THAT
12 IS THE EXACT LANGUAGE THAT YOU GAVE.

13 AND WE THINK IT IS IMPORTANT THAT THE JURY HAVE YOUR
14 CLARIFICATION THAT THE SUBSCRIBER UNIT CAN BE A COMPONENT OF A
15 CELLULAR PHONE. THAT IS THE EXACT LANGUAGE OUT OF YOUR
16 HONOR'S CLARIFICATION ORDER.

17 **MR. ALLCOCK:** SO, YOUR HONOR, HERE IS THE
18 INSTRUCTION THAT THE COURT SENT AROUND TWO DAYS AGO. THIS IS
19 THE CONSTRUCTION THAT HAS BEEN USED IN THIS TRIAL FROM THE
20 VERY BEGINNING BY EVER WITNESS.

21 EARLIER THEY PROPOSED THE ADDITION OF THAT
22 UNDERLINED LANGUAGE. THAT UNDERLINED LANGUAGE COMES FROM THE
23 CLARIFICATION ORDER THAT THE COURT ISSUED IN THE PRIOR CASE.
24 IT HAS NEVER BEEN PART OF THE CLAIM CONSTRUCTION IN THIS CASE.

25 BUT, MORE IMPORTANTLY, IT HAS NEVER BEEN SHOWN TO

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1 THE JURY. THE CLAIM CONSTRUCTION THAT HAS BEEN USED FOR THIS
2 ENTIRE CASE IS THE ONE HERE, AND THE FIRST TIME THAT
3 UNDERLINING SHOWED UP WAS LAST NIGHT.

4 **THE COURT:** THAT'S ALL TRUE.

5 **MR. SCHUBERT:** YOUR HONOR, I THINK IT IS IMPORTANT
6 THAT WE HAVE THE CLARIFICATION HERE. WE HAD THREE HOURS OF
7 TESTIMONY ABOUT HOW THE PATENTS RELATE TO FIXED WIMAX. THIS
8 IS DIRECTLY WHAT YOUR HONOR SAID. I THINK IT IS IMPORTANT
9 THAT THE JURY GET YOUR CLARIFICATION THAT THIS SUBSCRIBER UNIT
10 CAN BE A COMPONENT OF A CELLULAR PHONE.

11 WE HAD MULTIPLE HEARINGS ON THIS. YOUR HONOR SAID
12 THAT THIS IS WHAT YOU CLARIFIED, THE CONSTRUCTION, TO INCLUDE
13 THAT. WE SENT AROUND A PROPOSAL FOR A HANDOUT OF THE CLAIM
14 CONSTRUCTION TERMS. AND WE THOUGHT -- WE THOUGHT YOUR HONOR
15 WAS ADOPTING WHAT HAD ALREADY BEEN SAID IN THE CLARIFICATION
16 ORDER. THAT IS DIRECTLY FROM WHAT YOU SAID. YOU SAID THAT
17 WAS PART -- THAT WAS A CLARIFICATION OF THE CONSTRUCTION.

18 I THINK IT IS FAIR THAT THE JURY SEES THAT SO THERE
19 IS NO MISLEADING. THERE HAS BEEN A LOT OF TESTIMONY HERE THAT
20 OUR PATENTS RELATE TO FIXED DEVICES. IT IS IMPORTANT THAT
21 THAT CLARIFICATION BE GIVEN TO THE JURY. THAT IS DIRECTLY
22 FROM YOUR ORDER, YOUR HONOR.

23 **THE COURT:** I AM GOING TO REMOVE IT JUST BECAUSE, IN
24 FAIRNESS TO BOTH SIDES, IT SHOULD HAVE BEEN PART OF THE
25 CONSTRUED CLAIMS FROM THE BEGINNING RATHER THAN AT THE VERY

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