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- PORTION UNDER SEAL -

- VOLUME 5 -

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF DELAWARE

- - -

MOBILEMEDIA IDEAS LLC, : CIVIL ACTION
:
Plaintiff, :
:
vs. :
:
APPLE INC, :
:
Defendant. : NO. 10-258-SLR

- - -

Wilmington, Delaware
Monday, September 19, 2016
8:15 o'clock, a.m.

- - -

BEFORE: HONORABLE SUE L. ROBINSON, U.S.D.C.J., and a jury

- - -

APPEARANCES:

MORRIS, NICHOLS, ARSHT & TUNNELL LLP
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-and-

Valerie J. Gunning
Official Court Reporter

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P R O C E E D I N G S

*** (A portion of the transcript is under seal.)

(Proceedings commenced in the courtroom,
beginning at 8:15 a.m.)

THE COURT: Good morning, counsel.

(Counsel respond, "Good morning, your Honor.")

THE COURT: I had a minute to review your
proposed revisions. Certainly the ones that are agreed to
will be incorporated into our final set.

I think there are two revisions that are not
agreed to, and why don't we go to those first, and then if
there are any other issues that need to be addressed before
we start trial, we could do that.

So I believe the first one is on page 25. And I
will just hear remarks from both sides.

MR. BAUER: I think, your Honor, you see exactly
what the issue is. With everything that has happened, they
now want to add to the instruction that the limitation has
to be identical, and we just, you know, with everything that
has been happening now, to add an instruction to the jury
that the structure has to be identical to the structure that
you've pointed to just creates just one more level of total

1 uncertainty.

2 So our suggestion is, and it does not change the
3 substance, it just changes that word, is to put the period
4 at the end of the structures that you, you know, the
5 described structures that I defined earlier as performing
6 the function, period. And we don't need to go on to say
7 identical to the structures. Right? Just simply say, the
8 referred structures are the structure that I defined
9 earlier, and I think if you say the identical structures.

10 The alternative is to add a sentence, which I
11 think we've been asking or suggesting, that says, you are
12 not -- you, the jury, are not limited to the exact structure
13 in the patent, which I think is probably necessary, would be
14 very helpful given the way the arguments have been coming
15 in.

16 MR. MUELLER: Good morning, your Honor. May I
17 proceed?

18 THE COURT: Yes.

19 MR. MUELLER: Your Honor, I won't belabor it. I
20 know we've got to get started. I will just describe our
21 position.

22 The only dispute is to the word "identical."
23 This new suggestion I just heard for the first time, and
24 obviously we oppose that. That's an incorrect statement of
25 the law. I think the only dispute that we discussed in the

1 repeated meet and confers is this word "identical." The
2 remainder of this instruction is agreed on and we have no
3 dispute.

4 On the word "identical," I will just state our
5 position for the record. That is the law. The case law,
6 black letter case law requires that for means-plus-function
7 limitations, and I will just give you two examples. This is
8 from Cross Medical versus Medtronic Somafor, 424 F. 3d.,
9 1293 at 1315.

10 And I will quote: "Literal infringement of the
11 112, Paragraph 6 limitation requires that the relevant
12 structure in the accused device perform the identical
13 function recited in the claim and be identical or equivalent
14 to the corresponding structure in the specification."

15 Now, that or equivalent language is, of course,
16 black letter means-plus-function doctrine, but they're not
17 making an equivalents case and they dropped all references
18 to equivalents yesterday. So although the standard
19 instruction for means-plus-function infringement does
20 include equivalent, they have dropped that portion of their
21 case, and so what we're left with is the remaining black
22 letter law, which requires identical structure.

23 That is the law. There's no -- I don't think
24 there's a single Federal Circuit case that says otherwise.
25 The Model Jury Instructions issued this year by the Federal

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