

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

ARNOUSE DIGITAL DEVICES CORP.)

VS) CASE NO: 5:11-CV-155

)

MOTOROLA MOBILITY, INC.) HEARING ON MOTION TO
DISMISS

)

BEFORE: HONORABLE CHRISTINA REISS
CHIEF JUDGE

APPEARANCES: LAWRENCE H. MEIER, ESQUIRE
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DATE: February 8, 2012

TRANSCRIBED BY: Anne Marie Henry, RPR
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1 (The Court opened at 2:30 p.m.)

2 THE CLERK: Your Honor, the matter before the
3 Court is civil number 11-155, Arnouse Digital Devices
4 Corporation versus Motorola Mobility, Inc.. Present on
5 behalf of the plaintiff are Lawrence Meier and R. Bradford
6 Fawley. Present for the defendant is Samuel Hoar, Junior.
7 And we are here for a hearing on defendant's motion to
8 dismiss.

9 THE COURT: Mr. Hoar, you have filed today two
10 motions for Pro Hac Vice.

11 MR. HOAR: Well, one motion, two applicants, Your
12 Honor.

13 THE COURT: Two applicants. All right.

14 MR. HOAR: One of whom is here. And I devoutly
15 hope you'll grant the motion today because otherwise you're
16 going to find the oral argument to be sadly lacking.

17 THE COURT: All right. Well, if you wanted it
18 granted today you should have filed it previously, but we're
19 all here now so I have had enough time to review these. I
20 understand they were filed in Burlington too; correct?

21 MR. HOAR: They were filed, yeah, the hard copies
22 were filed today. I only got the affidavits, actually I
23 think I got the affidavits on Monday, Your Honor, but I
24 spent yesterday in our Supreme Court.

25 THE COURT: All right.

1 MR. HOAR: I do apologize for the lateness in
2 time.

3 THE COURT: All right. Any opposition to the
4 motions?

5 MR. FAWLEY: No, Your Honor.

6 THE COURT: All right. The Court's going to grant
7 the application for Pro Hac Vice admission for Stephen D.
8 Moore and Matias Ferrario.

9 MR. HOAR: Yes.

10 THE COURT: Both are granted. And so we're going
11 to proceed. So some thoughts I had before we hear your oral
12 arguments is obviously I am wondering about the Court's
13 power to take judicial notice of how a smartphone works,
14 what it's composed of, how it docks in a docking station,
15 what you call a lapdock. I don't think it seems to me to be
16 very similar to the parts of a snowman. I didn't see any
17 cases that I thought were comparable to that.

18 With regard to the plaintiff's claim I didn't see
19 disputed claim terms. I didn't see that there was an
20 argument that a smartphone should be equated to another
21 term. And so I was wondering where we got the dispute about
22 claim construction necessitating a Markman hearing. And
23 plaintiff has attached materials to its opposition. We
24 wouldn't defeat a motion to dismiss on that basis, but it
25 looks to me that we may be outside the pleadings.

1 The defendant nonetheless contends that a simple
2 review of the patent which was attached to plaintiff's
3 complaint would be enough for the Court to deduce that there
4 was not a plausible claim for relief here. I did look at
5 the patent. I was struck by, among other things, a summary
6 of it, which described a computer that operated -- was about
7 the size of a credit card. You could put it in your wallet
8 and then, you know, you put it into a docking station
9 neither of them kind of operated independently and wondered
10 if plausibility was an issue here.

11 So those are some preliminary thoughts. And I
12 hope you'll address them in your arguments. And we'll start
13 with the moving party which is the defendant.

14 MR. MOORE: Thank you, Your Honor. Steve Moore
15 from Motorola Mobility. Would you like me to argue from the
16 podium?

17 THE COURT: Where ever you are most comfortable is
18 fine with me.

19 MR. MOORE: Thank you. Your Honor, if I might I
20 would like to address your first area of concern which is
21 the question of judicial notice because this is a little bit
22 different than a lot of 12(b)(6) motions where we're not
23 contending that there's a failure to identify a product at
24 issue which sometimes is the basis for these motions.

25 We are really attacking the plausibility element

1 that is lacking here and it is required under the Supreme
2 Court decisions.

3 The judicial notice issue I think frankly is no
4 longer on the table in view of the plaintiff's admission.
5 The only thing, and I don't dispute that snowmans and
6 smartphones aren't quite the same thing, but we're asking
7 for judicial notice for a very narrow thing. That is, you
8 know, not all the complex inter-weavings of a smartphone and
9 how it might dock to various things, but the simple point
10 that smartphones, just like any cell phone, have input and
11 output means. All that means is they have keyboards, they
12 have key pads, they have touch screens, speakers,
13 microphones, buttons, otherwise they would simply be a brick
14 that you couldn't talk into or send an e-mail from. That
15 was the only simple point that we were asking the Court to
16 take judicial notice of.

17 I think that's mute now because in the plaintiff's
18 response they have admitted that, as they must really, that
19 this is the case, that the accused Motorola smartphones here
20 have input and output means as indeed they do.

21 THE COURT: So you're saying they made a judicial
22 admission, the facts have been conclusively established
23 because if we're still on a true issue of judicial notice I
24 don't think you could find in this jurisdiction that it's
25 commonly known that smartphones have input and output means.

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