
From: Noonan, Martin
Sent: Thursday, June 18, 2015 5:46 PM
To: Jeff Eichmann; Christin Cho
Cc: Culpepper, Ross; Walters, Chad; Kubehl, Doug; Smith, Karina; Grissum, Morgan; Parrish, Bryan; EXT Smith, Melissa (T-Mobile); Pennington, Ed; jpennington@sgrlaw.com; Pandit, Sid; Scruggs, Stephanie D.; EXT Jones, Mike; Gardner, Allen; Charley; EXT Rambin, Jeffrey; Julien Adams; Bunt, R.; DeRieux, Betty; MoFo-TracBeam; Simon Franzini; Rahebi, Bitá; Wiener, Christopher J.
Subject: RE: DCO proposal

Jeff: I am writing on behalf of Defendants regarding the DCO issues that the Court directed the parties to meet and confer about in the June 2 Order. Following our initial call last Thursday, you sent Defendants a "DCO Proposal" on Tuesday, which we discussed yesterday. As we informed you during our call yesterday, Defendants do not believe that 80 asserted claims is a reasonable number. Moreover, we need a much longer extension than 17 days to serve our respective Invalidity Contentions (IVCs) than the July 16 deadline set forth in Plaintiff's DCO Proposal. While we are resigned to asking the Court to resolve the "number of asserted claims" issue on Tuesday, we are hopeful that the parties can at least work out a reasonable compromise on the IVC deadline(s). Below is a summary of where we think we stand on various issues:

1. Number of Asserted Claims. As discussed below, we seem to be at an impasse on this issue, but please let us know if you have any other proposals you would like us to consider.

- In the June 2 Order, the Court "ORDERED [Plaintiff] to elect a reasonable number of asserted claims within three weeks" (i.e., by June 23). Quite simply, we don't think that 80 claims is anywhere near reasonable given the sheer length of the claims of the patents in suit (some of which run for more than a column).
 - Under the circumstances, we would agree to 40 claims, although we don't agree that number is reasonable given that TracBeam initially asserted less than half that number in prior litigation and eventually dropped to 2 or 3 per remaining defendant by the time of expert reports.
- Plaintiff's initial assertion of 140+ claims against T-Mobile and 120 claims against Apple appears to have been designed to run up our clients' expenses and impose maximum prejudice upon Defendants as they prepare their IVCs, and this tactic has certainly accomplished both apparent objectives.
 - Dropping to 80 claims doesn't ameliorate the great burden on Defendants; in fact, expecting Defendants to prepare and serve quality IVCs focused on a reduced universe of claims a little more than 3 weeks after finding out what those claims are is unrealistic.
- *Unless TracBeam is willing to agree to assert a reasonable (or, more accurately, less unreasonable) number of claims on June 23, Defendants will ask the Court to resolve that dispute.*

2. IVC Deadline. A July 16 IVC deadline is unworkable from Defendants' perspective. As discussed, there would appear to be two alternatives: [a] phased IVCs which would treat July 16 (or thereabouts) as the deadline for provisional IVCs to be followed by supplementation around the time of Defendants' Preliminary Election of Prior Art in October, and [b] a more meaningful extension to mid-to-late September (albeit with no automatic supplementation) – here are some comments on these two alternatives:

- [a] Please let us know if Plaintiff would be amenable to a phased IVC proposal whereby Defendants serve provisional IVCs approximately 4 weeks after Plaintiff asserts a reasonable number of asserted claims, with Defendants then being permitted to supplement their IVCs in mid-October to provide streamlined contentions regarding the up-to-32 asserted claims to be elected during Plaintiff's Preliminary Election in mid-September.
 - If the parties reach agreement on what constitutes a reasonable number of asserted claims on June 23, the provisional IVCs would be directed to the claims then asserted by Plaintiff and would be served in mid-to-late July (i.e., close in time to Plaintiff's July 16 proposal).

Conference ID: 6909
Password: 703

Jeff

From: Ross.Culpepper@bakerbotts.com [mailto:Ross.Culpepper@bakerbotts.com]
Sent: Wednesday, June 17, 2015 11:35 AM
To: Jeff Eichmann; mnoonen@mofo.com; Christin Cho
Cc: chad.walters@bakerbotts.com; doug.kubehl@bakerbotts.com; karina.smith@bakerbotts.com; Morgan.Grissum@bakerbotts.com; bryan.parrish@bakerbotts.com; melissa@gillamsmithlaw.com; epennington@sgrlaw.com; jpennington@sgrlaw.com; spandit@sgrlaw.com; sscruggs@sgrlaw.com; mikejones@potterminton.com; allengardner@potterminton.com; charley@pbatyler.com; jrambin@capshawlaw.com; Julien Adams; rcbunt@pbatyler.com; ederieux@capshawlaw.com; Mofo_TracBeam@mofo.com; Simon Franzini; BRahebi@mofo.com
Subject: RE: DCO proposal

Jeff,

That works for T-Mobile and Apple. Let us know what dial-in to use.

Thanks,
Ross

Ross Culpepper | Baker Botts L.L.P. ■ | ross.culpepper@bakerbotts.com | 214.953.6543 office | 214.934.8604 cell | 214.661.4543 fax
| www.bakerbotts.com

From: Jeff Eichmann [mailto:jeff@dovellaw.com]
Sent: Wednesday, June 17, 2015 1:04 PM
To: Culpepper, Ross; Noonon, Martin; Christin Cho
Cc: Walters, Chad; Kubehl, Doug; Smith, Karina; Grissum, Morgan; Parrish, Bryan; EXT Smith, Melissa (T-Mobile); Pennington, Ed; jpennington@sgrlaw.com; Pandit, Sid; Scruggs, Stephanie D.; EXT Jones, Mike; Gardner, Allen; Charley; EXT Ramin, Jeffrey; Julien Adams; Bunt, R.; DeRieux, Betty; Mofo_TracBeam@mofo.com; Simon Franzini; BRahebi@mofo.com
Subject: RE: DCO proposal

Ross,

How about 2pm PT?

Jeff

From: Ross.Culpepper@bakerbotts.com [mailto:Ross.Culpepper@bakerbotts.com]
Sent: Wednesday, June 17, 2015 9:09 AM
To: Jeff Eichmann; mnoonen@mofo.com; Christin Cho
Cc: chad.walters@bakerbotts.com; doug.kubehl@bakerbotts.com; karina.smith@bakerbotts.com; Morgan.Grissum@bakerbotts.com; bryan.parrish@bakerbotts.com; melissa@gillamsmithlaw.com; epennington@sgrlaw.com; jpennington@sgrlaw.com; spandit@sgrlaw.com; sscruggs@sgrlaw.com; mikejones@potterminton.com; allengardner@potterminton.com; charley@pbatyler.com; jrambin@capshawlaw.com; Julien Adams; rcbunt@pbatyler.com; ederieux@capshawlaw.com; Mofo_TracBeam@mofo.com; Simon Franzini; BRahebi@mofo.com
Subject: RE: DCO proposal

Jeff,

Thanks,
Ross

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| www.bakerbotts.com

From: Jeff Eichmann [<mailto:jeff@dovellaw.com>]
Sent: Wednesday, June 17, 2015 10:35 AM
To: Culpepper, Ross; Noonan, Martin; Christin Cho
Cc: Walters, Chad; Kubehl, Doug; Smith, Karina; Grissum, Morgan; Parrish, Bryan; EXT Smith, Melissa (T-Mobile); Pennington, Ed; jpennington@sgrlaw.com; Pandit, Sid; Scruggs, Stephanie D.; EXT Jones, Mike; Gardner, Allen; Charley; EXT Rambin, Jeffrey; Julien Adams; Bunt, R.; DeRieux, Betty; Mofo_TracBeam@mofo.com; Simon Franzini; BRahebi@mofo.com
Subject: RE: DCO proposal

Ross,

Tomorrow will be tough. I have a deposition in the morning in CA followed immediately by a flight to NY the rest of the day. Can we touch base this afternoon?

Jeff

From: Ross.Culpepper@bakerbotts.com [<mailto:Ross.Culpepper@bakerbotts.com>]
Sent: Wednesday, June 17, 2015 8:33 AM
To: Jeff Eichmann; mnoonen@mofo.com; Christin Cho
Cc: chad.walters@bakerbotts.com; doug.kubehl@bakerbotts.com; karina.smith@bakerbotts.com; Morgan.Grissum@bakerbotts.com; bryan.parrish@bakerbotts.com; melissa@gillamsmithlaw.com; epennington@sgrlaw.com; jpennington@sgrlaw.com; spandit@sgrlaw.com; sscruggs@sgrlaw.com; mikejones@potterminton.com; allengardner@potterminton.com; charley@pbatyler.com; jrambin@capshawlaw.com; Julien Adams; rcbunt@pbatyler.com; ederieux@capshawlaw.com; Mofo_TracBeam@mofo.com; Simon Franzini; BRahebi@mofo.com
Subject: RE: DCO proposal

Jeff,

Can you let us know your availability tomorrow for a meet and confer to discuss your DCO proposal?

Thanks,
Ross

Ross Culpepper | Baker Botts L.L.P. ■ | ross.culpepper@bakerbotts.com | 214.953.6543 office | 214.984.8604 cell | 214.661.4543 fax
| www.bakerbotts.com

From: Jeff Eichmann [<mailto:jeff@dovellaw.com>]
Sent: Tuesday, June 16, 2015 10:03 AM
To: Noonan, Martin; Christin Cho
Cc: Culpepper, Ross; Walters, Chad; Kubehl, Doug; Smith, Karina; Grissum, Morgan; Parrish, Bryan; EXT Smith, Melissa (T-Mobile); Pennington, Ed; 'jpennington@sgrlaw.com'; Pandit, Sid; Scruggs, Stephanie D.; EXT Jones, Mike; Gardner, Allen; Charley; EXT Rambin, Jeffrey; Julien Adams; Bunt, R.; DeRieux, Betty; MoFo-TracBeam; Simon Franzini; Rahebi, Bitu
Subject: DCO proposal

Martin,

See attached re the DCO.

Thanks
Jeff

From: Noonon, Martin [<mailto:MNoonen@mofo.com>]

Sent: Monday, June 15, 2015 9:40 PM

To: Jeff Eichmann; Christin Cho

Cc: 'Ross.Culpepper@bakerbotts.com'; 'chad.walters@bakerbotts.com'; 'doug.kubehl@bakerbotts.com'; 'karina.smith@bakerbotts.com'; 'Morgan.Grissum@bakerbotts.com'; 'bryan.parrish@bakerbotts.com'; 'melissa@gillamsmithlaw.com'; 'epennington@sgrlaw.com'; 'jpennington@sgrlaw.com'; 'spandit@sgrlaw.com'; 'sscrudds@sgrlaw.com'; 'mikejones@potterminton.com'; 'allengardner@potterminton.com'; 'charley@pbatyler.com'; 'jrambin@capshawlaw.com'; Julien Adams; 'rcbunt@pbatyler.com'; 'ederieux@capshawlaw.com'; MoFo-TracBeam; Simon Franzini; Rahebi, Bit

Subject: RE: TracBeam lawsuit: meet and confer re Court's order

Jeff: Following up on our Thursday call, just confirming that Plaintiff is putting together the revised Discovery Order that is due tomorrow. Please circulate that for Defendants' review along with any proposal you may have on the outstanding DCO issues. We can then set up a follow-up call to discuss remaining issues. Thanks. Martin

From: Noonon, Martin

Sent: Thursday, June 11, 2015 10:07 AM

To: Jeff Eichmann; Christin Cho

Cc: Ross.Culpepper@bakerbotts.com; chad.walters@bakerbotts.com; doug.kubehl@bakerbotts.com; karina.smith@bakerbotts.com; Morgan.Grissum@bakerbotts.com; bryan.parrish@bakerbotts.com; melissa@gillamsmithlaw.com; epennington@sgrlaw.com; jpennington@sgrlaw.com; spandit@sgrlaw.com; sscrudds@sgrlaw.com; mikejones@potterminton.com; allengardner@potterminton.com; charley@pbatyler.com; jrambin@capshawlaw.com; Julien Adams; rcbunt@pbatyler.com; ederieux@capshawlaw.com; MoFo-TracBeam; Simon Franzini; Rahebi, Bit

Subject: RE: TracBeam lawsuit: meet and confer re Court's order

Jeff: That timing (1PM Pacific / 3PM Central / 4PM Eastern) works for Defendants. Please circulate a dial-in and we'll talk to you then. Thanks. Martin

From: Jeff Eichmann [<mailto:jeff@dovellaw.com>]

Sent: Thursday, June 11, 2015 9:35 AM

To: Noonon, Martin; Christin Cho

Cc: Ross.Culpepper@bakerbotts.com; chad.walters@bakerbotts.com; doug.kubehl@bakerbotts.com; karina.smith@bakerbotts.com; Morgan.Grissum@bakerbotts.com; bryan.parrish@bakerbotts.com; melissa@gillamsmithlaw.com; epennington@sgrlaw.com; jpennington@sgrlaw.com; spandit@sgrlaw.com; sscrudds@sgrlaw.com; mikejones@potterminton.com; allengardner@potterminton.com; charley@pbatyler.com; jrambin@capshawlaw.com; Julien Adams; rcbunt@pbatyler.com; ederieux@capshawlaw.com; MoFo-TracBeam; Simon Franzini; Rahebi, Bit

Subject: RE: TracBeam lawsuit: meet and confer re Court's order

Martin, Ross:

Would 1pm PT / 4pm ET work for you all today?

Jeff

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