

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BEFORE HONORABLE DANA M. SABRAW, JUDGE PRESIDING

QUALCOMM INCORPORATED,
PLAINTIFF,

VS.

APPLE INCORPORATED,
DEFENDANT.

AND RELATED COUNTERCLAIM

)
)
) CASE NO. 17CV1375-DMS
)
)
)

)
) SAN DIEGO, CALIFORNIA
) TUESDAY MARCH 5, 2019
) 9:00 A.M. CALENDAR
)
)
)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
JURY TRIAL/DAY TWO
VOLUME 2-A

REPORTED BY:

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QUALCOMM EXHIBIT 2003

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1 SAN DIEGO, CALIFORNIA - TUESDAY, MARCH 5, 2019 - 8:47 A.M.

2 * * *

3 **THE CLERK:** NO. 1 CALENDAR, CASE NO. 17CV1375,
4 QUALCOMM INCORPORATED VERSUS APPLE INCORPORATED; ON FOR JURY
5 TRIAL, DAY TWO.

6 **THE COURT:** GOOD MORNING.

7 **MS. BROOKS:** GOOD MORNING, YOUR HONOR.

8 **MR. NELSON:** GOOD MORNING, YOUR HONOR.

9 **THE COURT:** WE HAVE ALL COUNSEL PRESENT. WE ARE
10 OUTSIDE OF THE PRESENCE OF THE JURY.

11 I READ ALL OF THE BRIEFING ON THIS ISSUE RELATING TO
12 PX 66.

13 MR. PAK, MS. DE ANDRADE WILL BE -- DOES SHE REMEMBER
14 THIS?

15 **MR. PAK:** YES.

16 **THE COURT:** SO SHE IS GOING TO BE TESTIFYING TO THE
17 SUBSTANCE OF PX 66 --

18 **MR. PAK:** CORRECT, YOUR HONOR.

19 **THE COURT:** -- BASED ON HER OWN MEMORY.

20 **MR. PAK:** CORRECT, YOUR HONOR.

21 **THE COURT:** AND THEN PX 6 WOULD SERVE IN MANY WAYS
22 TO CORROBORATE WHAT SHE IS GOING TO TESTIFY TO.

23 **MR. PAK:** THAT'S RIGHT, YOUR HONOR.

24 **THE COURT:** AND I UNDERSTAND THE OBJECTION THAT
25 DOCUMENT ITSELF IS HEARSAY. BUT APPLE WILL CERTAINLY HAVE AN

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1 OPPORTUNITY TO CROSS-EXAMINE MS. DE ANDRADE ABOUT THE
2 SUBSTANCE OF THIS MEETING AND HER RECOLLECTION OF WHAT WAS
3 DISCUSSED, WHICH APPARENTLY IS CONSISTENT WITH WHAT IS IN THE
4 DOCUMENT.

5 **MR. PAK:** THAT'S RIGHT, YOUR HONOR.

6 **THE COURT:** AND THEN ON THE SPECIFIC OBJECTION TO
7 WHETHER OR NOT THIS DOCUMENT QUALIFIES AS A BUSINESS RECORD,
8 THE STIPULATION GOES A LONG WAY TO MEETING AT LEAST, IT WOULD
9 APPEAR, THE FIRST TWO ELEMENTS OF 803(6). DO YOU AGREE?

10 IT SEEMS THAT WITH THE STIPULATION THERE AREN'T
11 ISSUES OF AUTHENTICITY OR THAT THIS WAS PREPARED AS PART OF A
12 REGULARLY CONDUCTED BUSINESS ACTIVITY.

13 **MS. FRAZIER:** YOUR HONOR, WE BELIEVE THE
14 STIPULATION, WE DON'T DISPUTE THAT IT COMES FROM QUALCOMM'S
15 FILES, WE DO DISPUTE THAT IT WAS PART OF A REGULAR CONDUCTED
16 BUSINESS ACTIVITY WITHIN THE SCOPE OF THE RULE.

17 **THE COURT:** THIS CASE, IT DOESN'T FIT WITHIN ALL OF
18 THE CASES. MS. DE ANDRADE IS NOT A CUSTODIAN. IT APPEARS
19 THIS -- FROM WHAT I AM UNDERSTANDING THIS MAY BE AN ISOLATED
20 INCIDENT WHERE THESE MEETINGS WERE HAPPENING, AND THEN THIS
21 ONE INDIVIDUAL, MR. WILKIE, INSTRUCTS THE OTHER INDIVIDUAL,
22 RAVI SOORDELU, TO TAKE NOTES. SO IN THAT RESPECT QUALCOMM IS
23 ARGUING IT IS PART OF AT LEAST THIS REGULARLY CONDUCTED
24 BUSINESS ACTIVITY TO MEMORIALIZE THIS SET OF MEETINGS.

25 **MR. PAK:** THAT'S RIGHT, YOUR HONOR. AND I THINK ONE

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1 OF THE CASES THAT APPLE CITED IN ITS TRIAL BRIEF, THIS IS THE
2 CIRRUS LOGIC CASE, SPECIFICALLY STATES THAT NOTES COULD COME
3 IN IF INDEPENDENTLY CORROBORATED, SUCH AS TESTIMONY FROM THE
4 PARTIES WHO PARTICIPATED IN THE CONVERSATIONS DESCRIBED IN THE
5 NOTES.

6 I THINK THAT, YOU KNOW, UNLIKE SOME OF THE REGULAR
7 CASES THAT WE SEE IN TERMS OF NOTE TAKING, WE HAVE HIGHLY
8 SPECIALIZED PARTICULARIZED TESTIMONY FROM THE WITNESS,
9 INCLUDING EMAILS INSTRUCTING THAT THESE NOTES BE TAKEN AS PART
10 OF THAT REGULAR CONDUCT OF BUSINESS, INTERACTION WITH APPLE.
11 AND THESE ARE THESE NOTES.

12 SO I THINK WITH THE STIPULATION AND WITH THE
13 TESTIMONY AND THE EMAIL INDICATING THAT THESE WERE NOTES TAKEN
14 FOR THE SPECIAL PURPOSE OF HAVING MEETINGS WITH APPLE AT THE
15 INSTRUCTION OF THE SUPERVISOR, AND I THINK SHE CAN
16 CORROBORATE -- THE WITNESS CAN CORROBORATE ALL OF THAT, THAT
17 THIS IS A BUSINESS RECORD.

18 **THE COURT:** SOME OF THE CASES APPLE FOCUSES ON ARE
19 THE TRADITIONAL TYPE OF TESTIMONY WHERE SOMEONE IS FAMILIAR
20 WITH THE BUSINESS'S RECORDKEEPING PRACTICES; THAT IS NOT
21 MS. DE ANDRADE. BUT WHAT SHE CAN SAY IS WILKIE MADE THE ORDER
22 AND THEN THIS OTHER GENTLEMAN FOLLOWED AND MEMORIALIZED IT,
23 AND I HEARD ALL OF THAT. I WAS THERE, THIS WAS WHAT HAPPENED.

24 **MR. PAK:** ABSOLUTELY, YOUR HONOR. AND THAT IS THE
25 CIRRUS LOGIC CASE.

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