

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE HAYWOOD S. GILLIAM, JR., JUDGE

IXI MOBILE (R&D) LTD.,)	
ET AL.)	
)	
PLAINTIFFS,)	NO. C-15-3752 HSG
)	
VS.)	THURSDAY, FEBRUARY 21, 2019
)	
SAMSUNG ELECTRONICS)	OAKLAND, CALIFORNIA
CO., LTD., ET AL.,)	
)	MOTION TO LIFT STAY
DEFENDANTS.)	
)	
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IXI MOBILE (R&D) LTD.,)	
ET AL.)	
)	
PLAINTIFFS,)	NO. C-15-3755 HSG
)	
VS.)	THURSDAY, FEBRUARY 21, 2019
)	
APPLE, INC.,)	OAKLAND, CALIFORNIA
)	
)	MOTION TO LIFT STAY
DEFENDANTS.)	
)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

APPEARANCES :

FOR PLAINTIFFS: CALDWELL CASSADY CURRY
2101 CEDAR SPRINGS RD., STE. 1000
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BY: JASON D. CASSADY, ESQUIRE
R. SETH REICH JR., ESQUIRE

(APPEARANCES CONTINUED)

REPORTED BY: DIANE E. SKILLMAN, CSR 4909, RPR, FCRR
OFFICIAL COURT REPORTER

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FOR PLAINTIFFS:

HOPKINS & CARLEY
70 SOUTH FIRST STREET
SAN JOSE, CALIFORNIA 95113
BY: JOHN V. PICONE III, ESQUIRE

**FOR DEFENDANT
SAMSUNG:**

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601 LEXINGTON AVENUE
NEW YORK, NEW YORK 10022
BY: TODD M. FRIEDMAN, ESQUIRE

KIRKLAND & ELLIS LLP
300 NORTH LASALLE STREET
CHICAGO, ILLINOIS 60654
BY: DAVID ROKACH, ESQUIRE

**FOR DEFENDANT
APPLE:**

SIMPSON THACHER & BARTLETT, LLP
2475 HANOVER STREET
PALO ALTO, CALIFORNIA 94307
BY: BUZZ FRAHN, ESQUIRE
MIKE MOREY, ESQUIRE

1 THURSDAY, FEBRUARY 21, 2019

2:02 P.M.

2 P R O C E E D I N G S

3 **THE CLERK:** CALLING C-15-3752, IXI MOBILE LIMITED, ET
4 AL. VERSUS SAMSUNG ELECTRONICS, LIMITED, ET AL. AS WELL AS
5 C-15-3755 IXI MOBILE LIMITED, ET AL. VERSUS APPLE, INC.

6 PLEASE STEP FORWARD AND STATE YOUR APPEARANCES FOR THE
7 RECORD, PLEASE.

8 **MR. FRAHN:** BUZZ FRAHN OF SIMPSON THATCHER FOR THE
9 DEFENDANT APPLE. I'M JOINED BY MY COLLEAGUE MIKE MOREY.

10 **THE COURT:** GOOD AFTERNOON.

11 **MR. FRIEDMAN:** GOOD AFTERNOON, YOUR HONOR. TODD
12 FRIEDMAN FROM KIRKLAND & ELLIS ON BEHALF OF SAMSUNG. AND WITH
13 ME IS MY COLLEAGUE DAVID ROKACH ALSO FROM KIRKLAND & ELLIS.

14 **THE COURT:** GOOD AFTERNOON.

15 **MR. PICONE:** GOOD AFTERNOON, YOUR HONOR. JOHN
16 PICONE, HOPKINS & CARLEY, ON BEHALF OF THE PLAINTIFF.

17 **THE COURT:** GOOD AFTERNOON.

18 **MR. CASSADY:** AFTERNOON, YOUR HONOR. JASON CASSADY
19 OF CALDWELL CASSADY & CURRY ON BEHALF OF PLAINTIFF. ALSO WITH
20 ME MY ASSOCIATE SETH REICH.

21 **THE COURT:** GOOD AFTERNOON.

22 ALL RIGHT. IS THAT IT? SO WE ARE HERE FOR A HEARING ON
23 THE MOTION TO LIFT THE STAY. AND THEN WE HAVE TO TALK ABOUT
24 WHAT HAPPENS NEXT IF I DO LIFT THE STAY.

25 HAVING REVIEWED THE PAPERS, I'LL HEAR FROM THE PARTIES

1 BRIEFLY, BUT I THINK THE PLAINTIFFS SUMMED IT UP VERY WELL
2 WHEN THEY SAID ENOUGH IS ENOUGH. I FEEL THIS IS A TEXTBOOK
3 EXAMPLE OF THE FAILURE OF GOOD INTENTIONS IN STAYING A CASE
4 PENDING THE RESOLUTION OF IPR. AND NOW WE HAVE A CIRCUMSTANCE
5 WHERE THE INITIAL IPR IS COMPLETED AND AT SOME LEVEL IT HAD
6 THE DESIRED EFFECT, AND THEN IT SLIMMED THE CASE DOWN TO ONE
7 ASSERTED CLAIM, BUT IN THE MEANTIME THERE WAS AN EX PARTE
8 REEXAMINATION AND THEN SCORES OF OTHER CLAIMS HAVE NOW BEEN
9 GENERATED. IT REMAINS TO BE SEEN WHETHER THOSE WILL BE ADDED
10 TO THIS CASE VIA AMENDMENT, AND THAT WOULD NEED TO BE DONE BY
11 A MOTION, BUT THERE'S NO PROSPECT REALISTICALLY OF
12 STREAMLINING OR HONESTLY A TIMELY RESOLUTION OF THIS CASE AT
13 THIS POINT.

14 WE COULD END UP WITH THIS CASE STAYED FOR ANOTHER THREE
15 YEARS. AND ON BALANCE, I THINK IT'S TIME TO MOVE THIS CASE
16 FORWARD. AND THE FACTS THAT MOTIVATED THE STAY WHEN I ENTERED
17 IT, WELL INTENTIONED AS THEY WERE, HAVE JUST NOT BORNE OUT AND
18 THE BALANCE HAS SHIFTED. WE NEED TO RESOLVE THIS CASE. IT'S
19 GOING TO TAKE POTENTIALLY YEARS TO RESOLVE AS IT IS EVEN FROM
20 NOW.

21 THAT'S MY VERY STRONG IMPRESSION. I WILL LET ANYONE MAKE
22 A RECORD THAT YOU'D LIKE TO.

23 **MR. FRAHN:** YOUR HONOR, BUZZ FRAHN FOR APPLE. AND
24 SINCE YOU SORT OF STATED THE TENTATIVE IN A WAY THAT IS
25 ADVERSE TO US, IF IT'S OKAY, I WILL START.

1 I WOULD URGE YOUR HONOR TO MAYBE CONSIDER AN ALTERNATIVE
2 OUTCOME, AND HERE'S WHY. OF THE 41 CLAIMS THAT WERE
3 ORIGINALLY ASSERTED IN THIS CASE, 40 OF THEM ARE DEAD. THE
4 41ST IS TERMINALLY ILL. IT HAS BEEN REJECTED ON FOUR SEPARATE
5 GROUNDS. THAT'S CLAIM 10 OF THE '532 PATENT. AND THAT REEXAM
6 IS GOING TO PLAY OUT IN THE NEAR FUTURE.

7 ON THE SCORES OF CLAIMS THAT IXI RECEIVED THROUGH ITS EX
8 PARTE REVIVAL OF THE '033 AFTER THAT HAD BEEN COMPLETELY
9 KILLED AS TO ALL OF ITS ASSERTED CLAIMS, WE ARE GOING TO KNOW
10 FROM THE PTAB BY JUNE WHETHER THE IPR'S THAT APPLE FILED AS
11 SOON AS IT POSSIBLY COULD, NINE MONTHS FROM THE ISSUANCE OF
12 THOSE CLAIMS, WE WILL KNOW BY JUNE WHETHER THOSE WOULD BE
13 INSTITUTED OR NOT.

14 THE CONCERNS ABOUT JUDICIAL EFFICIENCY, WASTE OF
15 RESOURCES, AND INCONSISTENT RESULTS WOULD BE EQUALLY PRESENT
16 NOW AS THEY WERE WHEN THE COURT ENTERED THE ORIGINAL STAY. IF
17 THE COURT IS TO ADJUDICATE INVALIDITY ISSUES ON THOSE SCORES
18 OF CLAIMS WHILE A PARALLEL PROCEEDING IS GOING ON AT THE PTAB,
19 IT CERTAINLY RISKS WASTING A LOT OF YOUR TIME AND A LOT OF THE
20 PARTIES' TIME AS WELL IF THE PTAB COMES OUT TO A RESOLUTION,
21 AS WE THINK THEY WILL, TO REJECT THOSE CLAIMS.

22 SO I WOULD URGE THE COURT TO MAINTAIN THE STAY, YOU KNOW,
23 AT LEAST UNTIL WE HAVE FURTHER INSIGHT IN THE SHORT-TERM WITH
24 WHAT'S GOING TO HAPPEN AT THE PATENT OFFICE.

25 **THE COURT:** I THINK THAT'S THE PROBLEM. THE THEORY,

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