

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION

JAGUAR LAND ROVER LIMITED, )  
)  
Plaintiff, )  
v. ) Civil Action No.:  
) 2:18cv320  
BENTLEY MOTORS LIMITED, )  
)  
Defendant. )

TRANSCRIPT OF PROCEEDINGS

(Status Hearing)

Norfolk, Virginia  
September 17, 2019

BEFORE: THE HONORABLE MARK S. DAVIS  
United States District Judge

Appearances:

LATHAM & WATKINS, LLP  
By: CLEMENT JOSEPH NAPLES

-- and --

TROUTMAN SANDERS LLP  
By: KATHLEEN MICHELLE KNUDSEN  
Counsel for Plaintiff

HAUG PARTNERS LLP  
By: EDGAR HAUG  
ROBERT COLLETTI

-- and --

WILEY REIN LLP  
By: KRYSTAL BRUNNER SWENDSBOE  
Counsel for Defendant

P R O C E E D I N G S

(Proceedings commenced at 10:04 a.m. as follows:)

COURTROOM DEPUTY CLERK: In Case No. 2:18cv320, Jaguar Land Rover Limited v. Bentley Motors Limited, et al.

Counsel for the plaintiff, are you ready to proceed?

MS. SWENDSBOE: We are. Thank Your Honor. Kathleen Knudsen on behalf of the plaintiff, introducing my colleague, Mr. Clem Naples.

MR. NAPLES: Good morning, Your Honor.

THE COURT: All right. Good morning.

COURTROOM DEPUTY CLERK: Counsel for the defendant, are you ready to proceed?

MS. SWENDSBOE: Good morning, Your Honor. Krystal Swendsboe on behalf of Bentley defendants. With me today are co-counsel Ed Haug and Mr. Colletti. Mr. Haug will be making today's presentation.

MR. HAUG: Good morning.

THE COURT: Good morning to all of you. Thank you very much.

Well, Counsel, I have received your proposed joint discovery plan, and of course noted with interest the portion of it that refers to the filing on August 16th and August 23rd of petitions with the PTAB. And as you can probably imagine, when

1 I saw that my thoughts went to, well, shouldn't this matter be  
2 stayed pending the -- at least the decision, that initial  
3 decision about the petition. So I'm happy to hear from you all  
4 on that, perhaps, as a first issue to address. So Mr. Naples,  
5 why don't you go ahead and start?

6 MR. NAPLES: Good morning, Your Honor.

7 THE COURT: Good morning.

8 MR. NAPLES: Clem Naples from Latham Watkins for the  
9 plaintiff, Jaguar Land Rover.

10 So I understand the Court's interest in potentially  
11 staying the cases pending the IPRs, and I wanted to give the  
12 Court some context to the case. I think there's a number of  
13 good reasons that the Court should not stay the case. And I  
14 think most of the cases that you see out there these days,  
15 there's very, very few that will stay, preinstitution anyway,  
16 which is obviously where we are, but I understand the Court's  
17 interest in it.

18 So this Court -- this case really goes back many  
19 years. Back in February 2016, Bentley decided to put out a new  
20 vehicle, Bentayga. And the Jaguar Land Rover team saw it and  
21 thought, oh, this is an interesting vehicle, this is their first  
22 off-road vehicle, they saw the Terrain Response System and  
23 realized very quickly that they were infringing on Jaguar Land  
24 Rover's patent. So they sent a letter and they said we saw your  
25 Terrain Response system and we appreciate -- you must have

1 really liked the Range Rover system, but you're copying it and  
2 you're infringing our patent. So there's some back-and-forth  
3 back then, Your Honor. And Bentley identify some prior art and  
4 Jaguar Land Rover then put the patent back into reissue to  
5 address that prior art, and the patent came out of reissue in  
6 June -- let's see, May of 2018. And Bentley still refused to  
7 stop using the technology. So we brought this case, this is  
8 back in June, 2018. The other thing I want to mention Your  
9 Honor, is all this back-and-forth between the parties -- and I'm  
10 sure Bentley will come up with something in this case -- but  
11 we've never heard a non-infringement argument from them about  
12 this patent. There's been the 101 motion they filed, now they  
13 filed the IPRs. Like I said, I doubt they're not going to come  
14 up with something, but they have never said they don't infringe  
15 in all this back-and-forth. So we filed the case.

16 THE COURT: So let me ask this: Is there -- you're  
17 giving me sort of an overall view. You're got suggesting that  
18 their failure to assert non-infringement is a reason not to  
19 stay, you're just kind of giving me an overview or --

20 MR. NAPLES: Yes. No. I mean, I think --

21 THE COURT: If you're suggesting that it has something  
22 to do with the stay, tell me why.

23 MR. NAPLES: I'm going to tie it all together for Your  
24 Honor. I think one, it's to provide context to you. Two, this  
25 case has been going on for a while, and the idea of us staying

1 now doesn't make any sense for other reasons as well. But I  
2 think that's important context that they have been kind of  
3 pushing this case out over and over and over.

4           So the first thing they did, Your Honor, is they filed  
5 this 101 motion back in October of 2018. And that slowed the  
6 case down for about eight months while the parties briefed it  
7 and the Court decided it. And of course as you know, Your  
8 Honor, they lost that motion.

9           Now we are here, you know, just back in August of this  
10 year they filed these two IPRs. So we took a look at the two  
11 IPRs, Your Honor, and all of the primary references in those  
12 IPRs were known to Bentley back in 2016 and 2017. So they could  
13 have filed these IPRs before we filed suit, but they certainly  
14 could have filed them on the day they filed suit. If they had  
15 done that, we would be 14 months into the IPRs. Rather than do  
16 that, they waited until the 101 motion got resolved, they waited  
17 until basically the last minute when they would have been barred  
18 from filing, to file these.

19           THE COURT: Madam Clerk?

20           (Court and courtroom deputy conferred.)

21           THE COURT: Go ahead.

22           MR. NAPLES: So because they waited so long -- and  
23 they didn't have to, they could have filed this, you know, over  
24 a year ago -- they waited so long, now we're in a situation  
25 where the trial in this case against competitors would happen

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