

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO. LTD., SAMSUNG ELECTRONICS

AMERICA, INC. AND APPLE, INC.,

Petitioners

v.

NEONODE SMARTPHONE LLC,

Patent Owner

Case IPR2021-00145

U.S. Patent No. 8,812,993

DECLARATION OF JAKOB FALKMAN

1. I, Jakob Falkman, declare as follows:
2. I am over 18 years of age and, if I am called upon to do so, I would be competent to do testify as to the matters set forth herein.
3. I am a lawyer admitted to practice in the courts of Sweden, and a partner at the law firm of Advokatfirman Hammarskiöld & Co in Stockholm, Sweden.
4. I have 28 years of experience as a practicing lawyer, whereof three years practice at court as law clerk, between 1993-1995 at Södra Roslags District Court in Stockholm, and during two sessions of in total one year with Svea Court of Appeal in Stockholm. I have had employments with law firms in Stockholm since 1997, including a secondment with Clifford Chance in London.
5. I am knowledgeable and experienced regarding the practice and procedures involved with the enforcement in Sweden of discovery sought by parties to litigation in United States District Court. I have served as local counsel for U.S. parties or law firms in connection with such matters on at least five occasions and have in other professional roles (e.g. as counsel to Swedish parties being involved in or otherwise concerned by such matters) closely followed such matters on at least five occasions. I have in this particular case also made detailed investigations into the current status of dealings with these matters and the

applicable waiting times for decisions as it currently stands at the relevant district court,

6. Sweden is a party to the Hague Convention on the Taking of Evidence Abroad in Civil and Commercial Matters (the “Convention”). Swedish courts will not enforce discovery served by parties to U.S. civil and commercial disputes unless a proper request for the enforcement of such discovery has been submitted to the Division for Criminal Cases and International Judicial Cooperation of the Ministry of Justice of Sweden pursuant to the Convention.

7. Typically, requests by parties to U.S. litigation for enforcement of discovery in Sweden pursuant to the Convention are submitted to the Ministry of Justice by means of a Letter of Request.

8. The contents of a Letter of Request are governed by the Convention, and include such items as the names of the persons to be examined, the questions to be put to the persons to be examined or a statement of the subject matter about which they are to be examined, and the documents or other property to be inspected, as well as relevant themes of proof.

9. Typically, after a Letter of Request has been received by the Ministry of Justice, the Letter of Request will be forwarded to the Swedish judicial authority with jurisdiction over the matter, typically being the district court with jurisdiction over the particular witness person or the person otherwise to provide evidence.

The judicial authority will examine the Letter or Request and determine whether it appears to comply with the Convention and with all declarations and reservations filed by Sweden in connection with the Convention.

10. Sweden has, pursuant to Article 23 of the Convention, filed a declaration stating that “Letters of Request issued for the purpose of obtaining pre-trial discovery of documents as known in common law countries will not be executed.”

11. Further, Sweden has, again pursuant to Article 23 of the Convention, filed a declaration stating:

The Swedish Government understands “Letters of Request issued for the purpose of pre-trial discovery of documents” for the purposes of the foregoing Declaration as including any Letter of Request which requires a person:

- a. to state what documents relevant to the proceedings to which the Letter of Request relates are, or have been, in his possession, custody or power;
or
- b. to produce any documents other than particular documents specified in the Letter of Request, which are likely to be in his possession, custody or power.

12. Accordingly, if the competent Swedish judicial authority determines that a request for production of documents attached to a Letter of Request was “issued for the purpose of pre-trial discovery of documents,” the judicial authority will not execute the Letter of Request.

13. In addition, even if the Letter of Request is determined to be proper under Sweden’s declarations to the Convention, Swedish procedural rules apply to the execution of the request. Pursuant to those rules, someone who is in possession of a document that can be assumed to be of importance as evidence is obliged to produce the document (Chapter 38, §2 of the Swedish Code on Judicial Procedure [Sw: rättegångsbalken]). This requires that the party seeking to obtain the documents specify (i) which documents are to be produced, and (ii) what is to be proven with each document. To the extent a document cannot be precisely specified, it can suffice to request a certain category of documents or all documents of relevance to a closely described theme of proof.

14. If the competent Swedish judicial authority determines that a request for production of documents attached to a Letter of Request fails to specify precisely the documents to be produced, or to identify precise themes of proof or a narrowly-defined category of documents, the judicial authority will not execute the Letter of Request.

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