

01:48

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

FINTIV, INC.

*
*

VS.

* CIVIL ACTION NO. A-19-CV-1238

APPLE, INC.

* November 5, 2020

BEFORE THE HONORABLE ALAN D ALBRIGHT, JUDGE PRESIDING
TELEPHONIC HEARING

APPEARANCES:

For the Plaintiff:

Andy W. Tindel, Esq.
Mann Tindel Thompson
300 W. Main St.
Henderson, TX 75652

Jonathan K. Waldrop, Esq.
Paul G. Williams, Esq.
Darcy L. Jones, Esq.
Heather S. Kim, Esq.
ThucMinh Nguyen, Esq.
Kasowitz Benson Torres LLP
333 Twin Dolphin Drive, Suite 200
Redwood Shores, CA 94065

For Defendant Apple:

Claudia Wilson Frost, Esq.
Jeff Quilici, Esq.
Orrick, Herrington & Sutcliffe LLP
609 Main, 40th Floor
Houston, TX 77002

Travis Jensen, Esq.
Orrick, Herrington & Sutcliffe LLP
1000 Marsh Road
Menlo Park, CA 94025-1015

J. Stephen Ravel, Esq.
John R. Johnson, Esq.
Kelly Hart & Hallman LLP
303 Colorado, Suite 2000
Austin, TX 78701

Court Reporter:

Kristie M. Davis
United States District Court
PO Box 20994
Waco, Texas 76702-0994

1 Proceedings recorded by mechanical stenography, transcript
02:32 2 produced by computer-aided transcription.

02:32 3 (November 5, 2020, 2:32 p.m.)

02:32 4 DEPUTY CLERK: Telephonic hearing in Civil Action
02:32 5 1:19-CV-1238, styled Fintiv, Incorporated versus Apple
02:32 6 Incorporated.

02:32 7 THE COURT: If I could hear announcements from counsel,
02:32 8 whoever's going to be speaking, please.

02:32 9 MR. TINDEL: Yeah. Good afternoon, Your Honor. This is
02:32 10 Andy Tindel here on behalf of the plaintiff Fintiv, and with us
02:32 11 on the call, Kasowitz' firm, are our lead counsel Jonathan
02:32 12 Waldrop, Darcy Jones, Paul Williams, Minh Nguyen and
02:32 13 Heather Kim, and I believe Ms. Kim and Mr. Waldrop will be our
02:32 14 principal speakers today.

02:32 15 THE COURT: If I could hear from counsel for the
02:32 16 defendant. Mr. Ravel?

02:32 17 MR. RAVEL: Your Honor, it's Steve Ravel for defendant
02:33 18 Apple along with two of our client reps, Natalie Pous and
02:33 19 Amy Walters. From Orrick we have Claudia Frost, the leader of
02:33 20 our team, Travis Jensen, Jeff Quilici, and I think consistent
02:33 21 with Mr. Earle's note of about five or ten minutes ago, I'm
02:33 22 going to turn it over to Ms. Frost for a discussion of the AEO
02:33 23 issue.

02:33 24 THE COURT: Okay. I'll turn to Mr. Waldrop. What issues
02:33 25 do we need to take up for you, and have they been adequately --

02:33 1 I want to take up issues that the other side has had an
02:33 2 opportunity to prepare for. So I will let you police yourself
02:33 3 in that regard.

02:33 4 MR. WALDROP: Good afternoon, Your Honor. This is
02:33 5 Jon Waldrop, Your Honor. Thank you for your time. I'm going
02:33 6 to turn it over to my colleague Heather Kim, but we will be
02:33 7 mindful that in -- make sure that there's no undue prejudice to
02:33 8 Apple and will stick to what we can and seek the Court's
02:34 9 guidance at a later date on issues that we cannot work with
02:34 10 them.

02:34 11 Heather, I'll turn it over to you.

02:34 12 THE COURT: Okay.

02:34 13 MS. KIM: Good afternoon, Your Honor. Thank you for
02:34 14 taking our call today.

02:34 15 This is just as a segment that we missed on Monday, and so
02:34 16 we appreciate you making the time for us on such quick notice.

02:34 17 Today we're prepared to talk about the schedule, which we
02:34 18 only have one date that we are still disputing, and the
02:34 19 deposition hours, which we've gone back and forth with Apple on
02:34 20 a few times. That issue is the most pressing as it is
02:34 21 backlogging the depositions we need to complete by the fact
02:34 22 discovery close of December 11th. We are prepared to argue
02:34 23 those issues and bring those up to the Court today, Your Honor.

02:34 24 THE COURT: Okay. Happy to hear them.

02:34 25 MS. KIM: Great. I think we can start with the first

02:34 1 issue of the schedule. We've agreed with Apple on every
02:34 2 deadline except for the deadline for opening expert reports and
02:34 3 the deadline for Apple to narrow the number of prior art
02:35 4 references at issue. Those dates are going to be the same.
02:35 5 Currently Apple is proposing a December 23rd deadline, and we
02:35 6 would like to have that set to January 6th. Our reasoning for
02:35 7 that is to give the parties the same amount of time for the
02:35 8 previous deadline. For Fintiv that would be between the close
02:35 9 of fact discovery and the deadline to submit opening expert
02:35 10 reports would be 25 days, and the date for Apple to submit
02:35 11 their rebuttal expert reports after the opening reports go in
02:35 12 would be 24 days. We can make that even and go 24 and 25 and
02:35 13 give Apple an extra day if that would be helpful, but we did it
02:35 14 that way because with the January 5th deadline we'd be going
02:35 15 through Christmas and the new year holiday and so we proposed a
02:35 16 25 day for us and 24 days for them.

02:35 17 THE COURT: Okay. Any response to that?

02:35 18 MS. FROST: Yes, Your Honor. It's Claudia Frost for
02:36 19 Apple. Good afternoon.

02:36 20 THE COURT: Good afternoon.

02:36 21 MS. FROST: And thank you for hearing us today.

02:36 22 I do have an issue in regard to the schedule sort of --
02:36 23 it's a table-setting issue that we raised in our e-mail to
02:36 24 Mr. Earle this morning that I think does impact the overall
02:36 25 schedule and will let us know for sure whether we just have the

02:36 1 one issue that Ms. Kim outlined or actually we have another
02:36 2 issue. If I may address that sort of table-setting issue
02:36 3 first, I think that would help everyone.

02:36 4 The table-setting issue we set forth in our e-mail this
02:36 5 morning pertains to a claim construction issue, in particular
02:36 6 the -- in -- a few weeks ago I think -- I was looking for the
02:36 7 date, but I can't find it -- a few weeks ago Mr. Tindel raised
02:36 8 an issue with the Court about a clarification of a prior claim
02:37 9 construction term that the Court had construed in November of
02:37 10 2019, and they're potentially requesting some clarification
02:37 11 about that. The Court gave Fintiv an opportunity to submit a
02:37 12 letter explaining what term it wanted clarification on and why.
02:37 13 Fintiv responded that it would do so, but it hasn't submitted
02:37 14 any letters, and a few weeks have gone by. Nor does Fintiv's
02:37 15 proposed schedule contain any dates for additional claim
02:37 16 construction or clarification proceedings, and we want to make
02:37 17 sure that this issue is not going to raise its head again and
02:37 18 that there's not going to be any further claim construction
02:37 19 proceedings in the case so that we can get a schedule that we
02:37 20 can all live with and rely on. If that's not going to come up,
02:37 21 then I agree with Ms. Kim. We have the one issue about the
02:37 22 expert reports, and I'll address that now.

02:38 23 THE COURT: Okay.

02:38 24 MS. FROST: The issue on the expert reports is pretty
02:38 25 straightforward. What Fintiv is proposing is a schedule that

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.