

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

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ANCORA TECHNOLOGIES, INC. *
*
VS. * January 26, 2021
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LG ELECTRONICS, INC., ET AL *
* CIVIL ACTION NO. AU-20-CV-34
SAMSUNG ELECTRONICS CO., LTD, *
ET AL *

BEFORE THE HONORABLE ALAN D ALBRIGHT, JUDGE PRESIDING
DISCOVERY HEARING (via Zoom)

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02:35 1 (January 26, 2021, 2:35 p.m.)

02:36 2 DEPUTY CLERK: Discovery hearing in Civil Action
02:36 3 1:20-CV-34, styled Ancora Technologies, Incorporated versus
02:36 4 LG Electronics, Incorporated, and others.

02:36 5 THE COURT: If I could have announcements from counsel
02:36 6 starting with plaintiff.

02:36 7 MR. HEALY: Thank you. This is Mr. Healy on behalf of
02:36 8 Ancora.

02:36 9 MS. CHIAVIELLO: Good afternoon, Your Honor. You also
02:36 10 have Elizabeth Chiaviello from Morgan Lewis on behalf of LG.
02:36 11 With me I have Winn Carter, Collin Park, Tom Davis, and
02:36 12 observing from Morgan Lewis is Melissa Navin.

02:36 13 THE COURT: And who will be speaking today?

02:36 14 MS. CHIAVIELLO: Today you actually have me, Your Honor.

02:36 15 THE COURT: Well, what an honor. That's great. I -- it
02:36 16 certainly was worth coming into the office to get to do that.

02:37 17 So we have a couple of issues to take up. The first one
02:37 18 we need to take up is defendant is seeking relief with respect
02:37 19 to the OTA update. I'm happy to hear from LG on that.

02:37 20 MR. HEALY: And, Your Honor, it's actually plaintiff
02:37 21 that's seeking relief, but I'm happy to go in whatever order
02:37 22 you like.

02:37 23 THE COURT: Plaintiff's seeking relief and defendant is
02:37 24 opposing. I'm sorry. I got that backwards.

02:37 25 Happy to hear -- let me hear then from the plaintiff as to

02:37 1 what it is that you want, and I'll hear from the defendant as
02:37 2 to why you should not get it.

02:37 3 MR. HEALY: Yes, Your Honor. Thank you.

02:37 4 And I know we have limited time so I'll try and be very
02:37 5 brief.

02:37 6 Your Honor knows that we've raised the issue of the
02:37 7 download statistics several times with the Court. We've been
02:37 8 appreciative of the help that the Court has given us, including
02:37 9 most recently ordering LG to produce some ESI and also make
02:38 10 some certain witnesses available. And I say that only because
02:38 11 at the most recent hearing Your Honor told us, look, go depose
02:38 12 the witnesses. Find out if there is statistics to be had, if
02:38 13 there are and LG won't give those to you, you know, come back
02:38 14 to me and we'll talk about it.

02:38 15 And, frankly, that's the situation we're now in, Your
02:38 16 Honor. We deposed a number of LG witnesses. Two in particular
02:38 17 testified that LG retains OTA statistics of the kind that we're
02:38 18 looking for for at least two years. These are sort of detailed
02:38 19 OTA statistics.

02:38 20 And so they had those for at least two years.

02:38 21 And we also in the course of the ESI have located various
02:38 22 documents that show, you know, they're called take-rate reports
02:38 23 that were being sent by LG to various U.S. carriers that
02:38 24 include similar information.

02:38 25 So we said to LG, "Look, your own witnesses, your own

02:38 1 documents show that you have this data for at least two years.

02:38 2 Please produce that data at least to us."

02:38 3 LG said, "Well, why is it relevant, you know. If we go
02:38 4 back two years from today, you know, we're outside of the
02:39 5 infringement period," and we said, "Fair enough."

02:39 6 You know, again, our understanding is that LG is going to
02:39 7 argue in this case, you know, that we have an obligation to
02:39 8 show some -- provide information, you know, evidence with
02:39 9 respect to the frequency of which the updates were actually
02:39 10 installed or not installed. And so we said, "Look, you know,
02:39 11 your position is you don't have any of this information, you
02:39 12 know, back beyond December of 2018. If you're, nevertheless,
02:39 13 going to make this argument, you know, we'd like whatever
02:39 14 information you have so that our expert can look at it. He can
02:39 15 compare it to the -- you know, the few examples of within
02:39 16 infringing time period evidence we have and see if he can do
02:39 17 some sort of analysis to come up with a historical take rate or
02:39 18 historical OTA update rate."

02:39 19 You know, there's also publicly-available information that
02:39 20 their expert's been relying on. So he just wanted to compare,
02:39 21 you know, that general information with whatever specific
02:39 22 information we could get and see if we can, you know, come up
02:39 23 with the best evidence we can under the circumstances, you
02:39 24 know, again accepting LG's representations at face value.

02:39 25 We also told LG: If you're not intending to make this

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