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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 Quillici, 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



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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

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