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

FINTIV, INC.

*

VS.

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* 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:

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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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