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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
GREENEVILLE

DENTSPLY INTERNATIONAL,	.	DOCKET NO. CV-2-14-196
INC. AND TULSA DENTAL	.	
PRODUCTS LLC D/B/A TULSA	.	
DENTAL SPECIALTIES,	.	
	.	
PLAINTIFFS,	.	
	.	
VS.	.	GREENEVILLE, TN
	.	NOVEMBER 26, 2014
US ENDODONTICS, LLC,	.	9:16 A.M.
	.	VOLUME II
DEFENDANT.	.	
	.	
.	

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE J. RONNIE GREER
UNITED STATES DISTRICT JUDGE



1 APPEARANCES:

2 FOR THE PLAINTIFFS:

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22 COURT REPORTER:

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PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY, TRANSCRIPT
PRODUCED BY COMPUTER.

1 (CALL TO ORDER OF THE COURT AT 9:16 A.M.)

2 THE COURT: GOOD MORNING. I HOPE YOU ALL HAD A
3 GOOD NIGHT LAST NIGHT. SOMETIMES OUT-OF-TOWN LAWYERS TELL
4 ME IT'S SO QUIET IN GREENEVILLE, THEY CAN'T SLEEP.
5 HOPEFULLY YOU DIDN'T EXPERIENCE THE SAME PROBLEM.

6 ALL RIGHT. I UNDERSTAND THERE'S A PRELIMINARY
7 ISSUE BEFORE WE GO FORWARD THIS MORNING?

8 MR. GINSBERG: YOUR HONOR, I DO HAVE A COUPLE
9 OF PRELIMINARY HOUSEKEEPING MATTERS.

10 THE COURT: YES.

11 MR. GINSBERG: ONE OF WHICH CONCERNS THE
12 EXHIBITS.

13 THE COURT: I GAVE THAT SOME THOUGHT OVERNIGHT,
14 GO AHEAD.

15 MR. GINSBERG: ONE OF THE THINGS IS I THINK
16 YOUR HONOR MOVED 100 TO 127 INTO EVIDENCE, THAT WAS A
17 CROSS EXAMINATION BINDER THAT WAS NOT INTENDED TO BE MOVED
18 INTO EVIDENCE, SO WE WOULD JUST --

19 THE COURT: LET ME TELL YOU WHAT MY THOUGHT IS
20 NOW THAT I, I WENT BACK AND LOOKED AT WHAT YOU HAD FILED
21 AS ATTACHMENTS TO VARIOUS PLEADINGS AND WHAT'S IN THE
22 RECORD AND WHAT'S NOT. AS FAR AS I CAN TELL, THERE ARE --
23 WAS IT FOUR OR FIVE THAT I ADMITTED CONDITIONALLY FOR THE
24 PLAINTIFFS? EITHER FOUR OR FIVE EXHIBITS.

25 MS. MILLER: YEAH, FOUR OR FIVE.

1 THE CLERK: I BELIEVE THERE WAS FIVE, YOUR
2 HONOR.

3 THE COURT: FIVE, AND THERE WAS ONE ON THE
4 DEFENDANT'S OFFER. HERE'S WHAT I'D SUGGEST TO YOU, I
5 THINK THE SUGGESTION YESTERDAY THAT YOU GIVE ME A CROSS
6 REFERENCE, A GUIDE TO FIND THOSE IN THE RECORD, AND THEN
7 PUT THAT IN THE RECORD SO THE SIXTH CIRCUIT WILL HAVE THE
8 SAME GUIDE IS APPROPRIATE. JUST TELL ME WHERE I WILL FIND
9 IN THE RECORD THE DOCUMENT BEHIND TAB 7 IN THIS NOTEBOOK,
10 FOR INSTANCE, AND THERE ARE MANY DUPLICATES IN HERE, AND
11 THEN THE NOTEBOOKS DON'T NEED TO BE ADMITTED INTO EVI-
12 DENCE; AND AS FAR AS THE SIX EXHIBITS THAT WERE NEW THAT
13 HAD NOT BEEN DISCLOSED THAT HAD BEEN ADMITTED CONDITION-
14 ALLY, BEFORE YOU LEAVE, YOU NEED TO MAKE SURE THAT MS.
15 HOPSON HAS EACH OF THOSE, AND WE WILL NUMBER THOSE 1
16 THROUGH 6 AS EXHIBITS, HEARING EXHIBITS. DOES THAT MAKE
17 SENSE?

18 MR. GINSBERG: IT DOES, YOUR HONOR. WOULD YOU
19 LIKE THE CROSS REFERENCE BEFORE YOU LEAVE OR IS THAT
20 SOMETHING --

21 THE COURT: NO, THAT'S SOMETHING YOU CAN
22 PREPARE. IF THE WEATHER FORECAST IS RIGHT, YOU MAY NEED
23 TO BE ANXIOUS TO GET OUT OF TOWN.

24 MR. GINSBERG: OR WE MAY HAVE TIME.

25 THE COURT: YEAH, OR YOU MAY HAVE TIME.

1 MR. GINSBERG: YOUR HONOR, THERE WAS SOMETHING
2 I WANTED TO BRING UP DURING DR. SINCLAIR'S TESTIMONY
3 YESTERDAY, SO MAY I APPROACH THE PODIUM?

4 THE COURT: YES, YOU MAY.

5 MR. GINSBERG: SO THIS CONCERNS DR. SINCLAIR'S
6 OPINIONS THAT HE PROVIDED YESTERDAY CONCERNING CLAIMS,
7 DEPENDENT CLAIMS OF THE '773 PATENT. NOW, BEFORE
8 YESTERDAY DR. SINCLAIR DID NOT PROVIDE AN INFRINGEMENT
9 ANALYSIS OF THE '773 PATENT OTHER THAN CLAIM 1. IF YOU
10 LOOK AT HIS EXPERT REPORT THAT WAS SUBMITTED, HE SPECIFI-
11 CALLY SAID THAT HE WAS FOCUSING HIS ANALYSIS ON CLAIM 1 OF
12 THE '773 PATENT, SO THERE WAS NO REASON FOR US ENDODONTICS
13 TO PROVIDE ANY ADDITIONAL NON-INFRINGEMENT POSITION OTHER
14 THAN CLAIM 1.

15 WHAT MR. LIEBERMAN POINTED TO YESTERDAY IN
16 PARAGRAPH 32 IS DR. SINCLAIR SAID, "I RESERVE THE RIGHT TO
17 ADDRESS ADDITIONAL CLAIMS IN THE FUTURE IF NECESSARY."
18 WELL, IT WAS NOT NECESSARY BECAUSE IT WAS NEVER RAISED
19 BEFORE. SO THIS SHOULD NOT BE A MOVING TARGET. THERE ARE
20 17 CLAIMS IN THE '773 PATENT. NOW THEY PICK A FEW DEPEN-
21 DENT CLAIMS THAT WE DID NOT HAVE TIME TO ADDRESS. THEY'RE
22 SEEKING, THEY'RE ESSENTIALLY SEEKING AN UNUSUAL AND
23 EXTREME STEP TO SHUT DOWN US ENDODONTICS, AND THEY SHOULD
24 NOT BE ABLE TO CHANGE THE TARGET HERE AT THIS LATE HOUR.

25 THE COURT: I ALSO LOOKED AT IT LAST NIGHT.

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