

1 **APPEARANCES (CONTINUED) :**

2 **FOR DEFENDANTS**

3 AGILITY IP LAW, LLP
4 149 COMMONWEALTH DRIVE
5 SUITE 1033
6 MENLO PARK, CA 94025

7 **BY: JAMES OTTESON, ESQUIRE**
8 **DAVID LANSKY, ESQUIRE**
9 **PHILIP MARSH, ESQUIRE**
10 **VINH PHAM, ESQUIRE**

11 KIRBY, NOONEN, LANCE & HOGE, LLP
12 DIAMOND VIEW TOWER
13 350 TENTH AVENUE - SUITE 1300
14 SAN DIEGO, CALIFORNIA 92101

15 **BY: CHARLES T. HOGE, ESQUIRE**

16 **ALSO PRESENT: VINCENT LAM**

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1 OFFICIAL ELECTRONIC SOUND PROCEEDINGS

2 TUESDAY; JANUARY 7, 2014; 1:37 P.M.

3
4 **THE COURT:** CALL THE MATTERS THAT HAVE BEEN SPECIALLY
5 SET.

6 **THE CLERK:** YES, YOUR HONOR. CALLING HTC
7 CORPORATION, ET AL., VERSUS TECHNOLOGIES PROPERTY, LIMITED, ET
8 AL. CASE NO. CV 08-882 PSG. MATTER ON FOR PLAINTIFF'S RENEWED
9 MOTION FOR ENTRY OF JUDGMENT AS A MATTER OF LAW AND PLAINTIFF'S
10 MOTION TO CORRECT OR AMEND THE JUDGMENT.

11 COUNSEL, PLEASE STATE YOUR APPEARANCES.

12 **MS. KEEFE:** GOOD AFTERNOON, YOUR HONOR. HEIDI KEEFE,
13 HERE THIS TIME FOR HTC CORPORATION. WITH ME ARE RON LEMIEUX,
14 KYLE CHEN, AND VINCE LAM FROM THE CLIENT.

15 **THE COURT:** GOOD AFTERNOON, AND GOOD AFTERNOON TO
16 EACH OF YOUR COLLEAGUES AS WELL.

17 **MR. OTTESON:** GOOD AFTERNOON, YOUR HONOR. JIM
18 OTTESON FROM AGILITY IP LAW APPEARING FOR DEFENDANTS. I'M
19 JOINED BY MY COLLEAGUES DAVID LANSKY, PHILIP MARSH, AND VINH
20 PHAM, AND -- CHARLIE, DO YOU WANT TO INTRODUCE YOURSELF?

21 **MR. HOGE:** GOOD AFTERNOON, YOUR HONOR. CHARLIE HOGE
22 (INAUDIBLE).

23 **THE COURT:** WELCOME BACK TO EACH OF YOU AS WELL.

24 **MR. OTTESON:** THANK YOU.

25 **THE COURT:** PLEASE HAVE A SEAT.

1 I UNDERSTAND WE HAVE A COUPLE OF MOTIONS TO DEAL WITH
2 THIS AFTERNOON. ONE IS THE MOTION FOR RENEWED JMOL, OR I
3 SHOULD SAY RENEWED MOTION FOR JMOL UNDER RULE 50(B). THEN WE
4 ALSO HAVE A MOTION REGARDING MY ENTRY OF JUDGMENT. THERE
5 APPEARS TO HAVE BEEN A MISTAKE IN WHAT THE APPROPRIATE
6 CORRECTION IS. I'D LIKE TO START WITH THE JMOL MOTION. I
7 THINK THAT'S THE RIGHT PLACE TO BEGIN. SO THIS IS THE -- THIS
8 SIDE OF THE ROOM; I GET THE PLAINTIFFS AND DEFENDANTS MIXED UP.
9 IT'S YOUR MOTION, MS. KEEFE. SO I'LL BEGIN WITH YOU.

10 **MS. KEEFE:** IT'S ALWAYS SO COMPLICATED, RIGHT? I AM
11 THE DECLARATORY JUDGMENT PLAINTIFF, BUT OSTENSIBLE DEFENDANT IN
12 THIS CASE, YOUR HONOR.

13 IF IT -- IF IT'S EASIER FOR YOUR HONOR -- AND I
14 HAVEN'T DISCUSSED THIS WITH THE OTHER SIDE YET, BUT REGARDING
15 THE MOTION REGARDING THE ORDER, I'M HAPPY TO SUBMIT ON THE
16 PAPERS. I THINK BOTH PARTIES AGREE THAT, YOU KNOW, PERHAPS
17 SOMETHING NEEDS TO BE DONE, AND IT'S UP TO YOUR HONOR. WE
18 DON'T NEED TO BELABOR THE FACT THAT THEY DON'T WANT TO SAY "WE
19 WON"; WE DON'T WANT TO SAY "WE DIDN'T," AND IT'S UP TO YOUR
20 HONOR.

21 **THE COURT:** OKAY. WELL, ON THAT ISSUE, IF THE FOLKS
22 FROM TPL AND PATRIOT WANT TO BE HEARD, I'LL CERTAINLY HEAR FROM
23 THEM AND THEN GIVE YOU A CHANCE FOR REBUTTAL. BUT WHY DON'T WE
24 FOCUS ON THE JMOL THEN?

25 **MS. KEEFE:** GREAT. AND ON THIS ONE, TOO, YOUR HONOR,

1 I THINK I'M GOING TO -- WELL, "SURPRISE" MAY BE THE WRONG WORD,
2 BUT I'D LOVE TO BE ABLE TO SURPRISE YOU BY SIMPLY SAYING THAT I
3 THINK OUR ARGUMENT IS VERY STRAIGHTFORWARD HERE. IF WE GO BACK
4 TO THE ISSUES THAT WERE PRESENTED TO YOUR HONOR BEFORE TRIAL --
5 WE ACTUALLY BROUGHT A MOTION FOR SUMMARY JUDGMENT OF
6 NON-INFRINGEMENT. AND, SPECIFICALLY, ON PAGE 11 --

7 **THE COURT:** I HAVE IT. I FLAGGED IT.

8 **MS. KEEFE:** -- OF YOUR HONOR'S ORDER --

9 **THE COURT:** YEP.

10 **MS. KEEFE:** -- YOUR HONOR ACTUALLY SAID.

11 "THE COURT AGREES WITH HTC THAT THE
12 DISPUTED LIMITATIONS ARE PROPERLY UNDERSTOOD
13 TO EXCLUDE ANY EXTERNAL CLOCK USED TO
14 GENERATE A SIGNAL. NEVERTHELESS, THERE
15 REMAINS A FACTUAL DISPUTE WHETHER HTC'S
16 PRODUCTS CONTAIN AN ON-CHIP RING OSCILLATOR
17 THAT IS SELF-GENERATING AND DOES NOT RELY ON
18 AN INPUT CONTROL TO DETERMINE ITS FREQUENCY."

19 THE RECORD AT TRIAL WAS UNDISPUTED THAT THE RING
20 OSCILLATOR IN ALL OF THE ACCUSED PRODUCTS IS A PHASE-LOCKED
21 LOOP. AND THAT PLL -- THE FREQUENCY OUTPUT BY THAT PLL IS WHAT
22 IS USED TO CLOCK THE CPU. AGAIN, UNDISPUTED.

23 IT'S ALSO UNDISPUTED THAT THE FREQUENCY GENERATED BY
24 THAT PLL RELIES ON AN OFF-CHIP CRYSTAL IN ORDER TO SET THE
25 FREQUENCY WHICH IS USED TO CLOCK THE CPU.

1 IN FACT, THERE WERE EQUATIONS THAT WERE PUT UP ON THE
2 BOARD, AGAIN UNDISPUTED, THAT THE CLOCK FREQUENCY EQUALS THE
3 FREQUENCY OF TCXO TIMES L TIMES 2, WHERE TCXO IS THE SIGNAL
4 GENERATED BY THE OFF-CHIP CRYSTAL. ALL OF THE EVIDENCE THAT
5 CAME IN SUPPORTED THAT, ABSOLUTELY UNCONTROVERTED.

6 THE ONLY QUESTION SEEMS TO BE THE DEFINITION OF
7 GENERATED, BUT THAT'S NOT THE APPROPRIATE QUESTION TO BE
8 LOOKING AT. WE HAVE TO LOOK AT WHAT YOUR HONOR SAID WERE THE
9 FACTUAL QUESTIONS THAT MAY OR MAY NOT RISE DURING THE TRIAL.
10 YOUR HONOR SAID IF AN OFF-CHIP SIGNAL IS USED TO CLOCK THE CPU,
11 THEN IT'S OUTSIDE OF THE CLAIM. THAT WAS THE FACTUAL PREDICATE
12 THAT THE TRIAL WAS BASED ON, AND THERE IS NO DISPUTE THAT THE
13 PLL'S AS USED IN ALL OF THE PRODUCTS REFERENCED AN OFF-CHIP
14 SIGNAL IN ORDER TO SET THE FREQUENCY WHICH IS OUTPUT TO CLOCK
15 THE CPU. PERIOD, END OF STORY.

16 THE ONLY THING THAT COMES UP IN THE OPPOSITION IS THE
17 SAME THING THAT WE'VE SEEN OVER AND OVER AGAIN, WHICH IS THIS
18 POSSIBLE HYPOTHETICAL OF A RING THAT COULD RUN BY ITSELF. BUT
19 THE PROBLEM IS NONE OF THE PRODUCTS THAT WERE AT ISSUE IN THIS
20 CASE WORKED THAT WAY, NOR WAS THERE ANY EVIDENCE THAT THEY EVER
21 DID. INSTEAD, ALL OF THE EVIDENCE, BOTH FROM THEIR EXPERT,
22 FROM OURS, AND FROM ALL OF THE FACT WITNESSES REGARDING THE TI,
23 QUALCOM CHIPS ALL SAID THESE ARE TRADITIONAL PHASE-LOCK LOOPS.
24 THEY RELY ON THE OFF-CHIP CRYSTAL TO SET THE FREQUENCY WHICH IS
25 THEN USED TO CONTROL THE COMPUTER CLOCK.

1 **THE COURT:** IF I COULD, MS. KEEFE, LET ME ASK YOU A
2 COUPLE OF QUESTIONS.

3 FIRST OF ALL, ARE WE ALL IN AGREEMENT HERE THAT I GOT
4 THE CONSTRUCTION RIGHT? I'LL ASK MR. OTTESON FOR HIS VIEW, BUT
5 WOULD YOU AGREE THAT MY CONSTRUCTION WAS CORRECT?

6 **MS. KEEFE:** I STILL PREFER THE CONSTRUCTION WHICH WE
7 OFFERED, WHICH INCLUDED BOTH A SENTENCE -- YOU KNOW, WHAT YOU
8 DID AT TRIAL AND WHAT YOU DID AS THE JURY INSTRUCTION WAS YOU
9 GAVE A CONSTRUCTION BASED SOLELY ON THE FIRST SENTENCE OF THE
10 SUMMARY JUDGMENT ORDER. WE HAD ASKED YOUR HONOR TO INCLUDE THE
11 NEGATIVE PREDICATE, WHICH WAS BASICALLY, "AND DOES NOT," AND
12 YOUR HONOR SAID, NO, BUT YOU'RE PRESERVED, YOU CAN RAISE THAT
13 ISSUE AGAIN LATER IF YOU WANT TO.

14 I DO THINK THAT EVEN UNDER THE CONSTRUCTION THAT YOUR
15 HONOR GAVE, EVERYTHING WORKS OUT. I STILL BELIEVE THAT A MORE
16 APPROPRIATE CONSTRUCTION WOULD HAVE INCLUDED THE NEGATIVE,
17 WHICH CLEARLY DEMONSTRATED THE PRIOR ART THAT THEY WERE TRYING
18 TO OVERCOME AT THE PATENT OFFICE WHICH INCLUDED ANY TIME THAT
19 AN OFF-CHIP SIGNAL WAS USED TO CLOCK THE CPU IN ANY MANNER.
20 AND I THINK THAT WOULD HAVE MADE IT CLEARER FOR THE JURY. AND
21 I THINK THEN THE JURY MAY NOT HAVE HAD TO ASK YOUR HONOR WHAT
22 DOES THE WORD "GENERATE" MEAN. SO WE MAY HAVE CLEARED THAT
23 ISSUE UP A LITTLE BIT WITH THAT EXTRA SENTENCE.

24 HOWEVER, EVEN UNDER THE CONSTRUCTION THAT YOUR HONOR
25 GAVE, THE QUESTION THAT WAS ASKED AND THE DENIAL OF SUMMARY

1 JUDGMENT WAS ANSWERED IN THE -- I DON'T KNOW WHETHER IT'S
2 NEGATIVE OR POSITIVE, BUT THE POINT IS WE WIN, WHICH IS THAT AN
3 OFF-CHIP SIGNAL WAS USED TO CLOCK THE CPU.

4 **THE COURT:** ALL RIGHT. LET ME NEXT ASK YOU, IN YOUR
5 OPENING COMMENTS, YOU YOURSELF REFERRED TO REFERENCING THE
6 OFF-CHIP CRYSTAL, SETTING THE FREQUENCY, SELF-GENERATING THE
7 FREQUENCY, CLOCKING THE CPU. WE HAVE ANY NUMBER OF DIFFERENT
8 TERMS BEING USED TO REFER TO WHAT'S COMING OUT OF THE PLL AND
9 HOW DOES THAT COMPARE TO WHAT'S GOING IN. RECOGNIZING THAT YOU
10 TAKE A DIFFERENT VIEW, AS YOU'RE ENTITLED TO, OF THE PARTICULAR
11 CONSTRUCTION I ADOPTED, HAVING GIVEN THE JURY THAT
12 CONSTRUCTION, WHAT IS THERE FOR ME TO DO WHEN THERE WAS CLEARLY
13 TESTIMONY, PERHAPS MIXED TESTIMONY, FROM DR. OKLOBDZIJA, BUT AT
14 LEAST OTHER TESTIMONY FROM OTHER WITNESSES WHICH SEEMED TO
15 SUPPORT THE VERDICT THAT WAS RETURNED?

16 **MS. KEEFE:** I DISAGREE COMPLETELY, YOUR HONOR. THERE
17 WAS NO TESTIMONY THAT SUPPORTED IT. WHAT THERE WAS FROM
18 DR. OKLOBDZIJA WAS TESTIMONY THAT SAID YOU COULD HYPOTHETICALLY
19 HAVE A RING OSCILLATOR THAT, ONCE YOU APPLIED POWER TO IT, IT
20 WOULD RUN BY ITSELF. BUT WHEN ASKED DID THAT HAPPEN IN THESE
21 CASES, HE NEVER SAID YES, BECAUSE HE COULDN'T, BECAUSE HE
22 DIDN'T TEST THAT. INSTEAD --

23 **THE COURT:** MY MEMORY IS A LITTLE VAGUE, BUT I SEEM
24 TO RECALL DR. OKLOBDZIJA USING THAT AS AN EXAMPLE OR AN
25 ARGUMENT THAT, IN FACT, BECAUSE THAT COULD BE TRUE, THE

1 EXTERNAL CRYSTAL WAS NOT, IN FACT, GENERATING THE SIGNAL AS THE
2 CONSTRUCTION REQUIRES. WASN'T THAT WHAT HE WAS REALLY SAYING?

3 **MS. KEEFE:** I DON'T BELIEVE SO. AGAIN, WHAT HE WAS
4 SAYING WAS THAT YOU CAN HAVE A SIMPLE RING OSCILLATOR, BUT WHAT
5 HE ADMITTED OVER AND OVER AGAIN IS THAT THE SIGNAL THAT
6 ACTUALLY IS USED TO GENERATE -- SORRY -- THE SIGNAL THAT IS
7 USED TO CLOCK THE CPU, AND TO MAINTAIN THAT FREQUENCY AND TO
8 MAINTAIN THE CLOCK FREQUENCY HAS TO RELY ON THE INPUT SIGNAL
9 FROM THE OFF-CHIP CRYSTAL. HE SAID THAT OVER AND OVER AGAIN.

10 NEVER ONCE DID YOU HEAR HIM SAY, YES, IT'S POSSIBLE
11 THAT IF YOU TAKE EVERYTHING ELSE OUT, IN THESE DEVICES THERE
12 WILL BE A SIGNAL THAT CLOCKS THE CPU ABSENT THE USE OF THE
13 OFF-CHIP FREQUENCY. HE NEVER SAID THAT. THERE WAS QUIBBLING
14 ABOUT WHETHER OR NOT THE OFF-CHIP SIGNAL WAS USED TO MULTIPLY
15 OR DIVIDE THE SIGNAL. THERE WAS QUIBBLING ABOUT WHETHER OR NOT
16 IT TAMPED DOWN OR SPED IT UP. BUT THERE WAS NO DISPUTE THAT IT
17 WAS ABSOLUTELY, IN FACT, USED BY THE COMPUTER. IT WAS
18 BASICALLY WHAT WAS CLOCKING THE COMPUTER. I'M SORRY. NOT
19 BASICALLY. IT WAS WHAT WAS BEING USED TO CLOCK THE COMPUTER.

20 **THE COURT:** WHAT ABOUT THE TESTIMONY FROM
21 MR. GAFFORD, FOR EXAMPLE, WASN'T THERE AT LEAST SOME SUGGESTION
22 IN HIS TESTIMONY THAT A REASONABLE JURY COULD REPLY UPON THAT
23 THE RING OSCILLATOR'S GENERATING THE CLOCK PERIOD END STUMP?

24 **MS. KEEFE:** NO, ABSOLUTELY NOT. AGAIN, MR. GAFFORD
25 SAID THAT DESPITE THE FACT THAT IT'S POSSIBLE OCCASIONALLY THAT

1 A RING OSCILLATOR COULD GENERATE A SIGNAL, THAT WASN'T WHAT WAS
2 HAPPENING IN THE PRODUCTS THAT WERE AT ISSUE IN THE CASE. ALL
3 OF THE PRODUCTS AT ISSUE IN THE CASE ONLY OPERATED AFTER
4 RECEIVING AN INPUT SIGNAL FROM OFF THE CHIP IN ORDER TO THEN
5 CREATE A SIGNAL THAT WAS USED TO CLOCK THE CPU'S.

6 **THE COURT:** NOW WE'VE GOT A CREATED SIGNAL. NOW I'M
7 UP TO FIVE WAYS TO CHARACTERIZE WHAT'S COMING OFF THE PLL.

8 WHAT I'M TRYING TO FIGURE OUT IS, MY CONSTRUCTION --
9 AGAIN, OTHERS WILL WEIGH IN ON THIS, I'M SURE, IN TIME. BUT MY
10 CONSTRUCTION PRETTY CLEARLY SAYS THAT THE ISSUE IS: IS THE
11 SIGNAL GENERATED ON CHIP, WITHOUT REFERENCE TO WHAT'S OFF CHIP,
12 REGARDLESS OF WHAT OTHER ROLE THE OFF-CHIP CRYSTAL MAY PLAY AND
13 WHAT'S OUTPUT FROM THE PLL. AND IF THAT'S TRUE, I GUESS I'M
14 STILL STRUGGLING WITH WHAT DR. OKLOBDZIJA TESTIFIED TO, HOWEVER
15 HE MAY HAVE UNDERMINED THE TESTIMONY ELSEWHERE.

16 **MS. KEEFE:** AGAIN, YOUR HONOR, "GENERATE" MEANS
17 BRINGING A BEAM. THE SIGNAL THAT IS USED TO CLOCK THE CPU DOES
18 NOT EXIST BUT FOR THE EXISTENCE OF THE OFF-CHIP CRYSTAL'S
19 INPUT. THERE IS NOTHING TO CLOCK THE CPU WITH IF YOU DON'T
20 REFERENCE THE OFF-CHIP CRYSTAL. IT'S THE WHOLE IDEA OF A
21 PHASE-LOCKED LOOP. IT HAS TO BE LOCKED. IT'S THAT SIGNAL
22 THAT'S BEING USED TO CLOCK THE CPU.

23 **THE COURT:** SEE, THAT'S WHAT I THOUGHT DR. OKLOBDZIJA
24 WAS GETTING AT. I THOUGHT WHAT HE WAS SAYING WAS -- IT'S AN
25 EXISTENTIAL QUESTION ULTIMATELY. WHAT DOES IT MEAN TO GENERATE

1 AND WHAT DOES IT MEAN TO RELY UPON? THOSE ARE THE TERMS THAT,
2 OF COURSE, FALL FROM MY CONSTRUCTION.

3 I THOUGHT WHAT DR. OKLOBDZIJA WAS SAYING WAS BECAUSE
4 ONE COULD REMOVE THE CRYSTAL AND STILL SEE A SIGNAL -- GRANTED,
5 THAT WASN'T HOW THESE PRODUCTS OPERATE -- BUT BECAUSE THAT
6 COULD BE DONE, THAT AT LEAST SUGGESTED TO HIM THAT THE CRYSTAL
7 WASN'T BEING USED TO GENERATE THE SIGNAL.

8 **MS. KEEFE:** BUT, YOUR HONOR, THAT'S IMMATERIAL,
9 ABSOLUTELY IMMATERIAL.

10 **THE COURT:** OKAY. TELL ME WHY.

11 **MS. KEEFE:** THERE IS NOT A SINGLE FACT, NOT A SINGLE
12 PIECE OF EVIDENCE THAT THAT'S HOW ANY OF THE CHIPS IN THIS CASE
13 OPERATED. INSTEAD, EVEN DR. OKLOBDZIJA AGREED THAT ALL OF THE
14 CHIPS IN THIS CASE RELIED ON THE FORMULA WHICH TAKES INTO
15 ACCOUNT THE OFF-CHIP CRYSTAL IN ORDER TO GENERATE THE SIGNAL
16 THAT CLOCKS THE CPU. IF IT DOESN'T EXIST, CPU DOESN'T GET
17 CLOCKED. HE WAS TALKING ABOUT, WELL, MAYBE, HYPOTHETICALLY,
18 SOMEWHERE THERE COULD HAVE BEEN A RING OSCILLATOR THAT DID
19 THAT. BUT THAT WOULDN'T BE THE PHASE-LOCKED LOOP THAT EXISTED
20 IN THE ACCUSED DEVICES.

21 AND WHEN SPECIFICALLY ASKED WHETHER OR NOT HE EVER
22 RAN THAT TEST, HE SAID, NO, HE DIDN'T. WE DID RUN THAT TEST,
23 AND WE HAD TESTIMONY THAT SAYS THAT -- FROM THE PEOPLE WHO
24 DESIGNED THESE DEVICES SAYING IT SIMPLY WOULDN'T WORK THAT WAY;
25 IT WOULDN'T WORK TO SIMPLY HAVE A SIGNAL ABSENT THE SIGNAL OFF

1 OF THE CHIP.

2 SO IN THIS CASE, AGAIN, THERE WAS NO EVIDENCE THAT
3 ANY OF THE PRODUCTS THAT WERE BEING ACCUSED OF INFRINGEMENT
4 EVER OPERATED ABSENT THE USE OF THE OFF-CHIP CRYSTAL TO CLOCK
5 THE CPU.

6 **THE COURT:** HERE'S WHAT DR. OKLOBDZIJA SAYS AT -- I
7 DON'T KNOW -- PAGE 565, LINES 22 TO 25:

8 "QUESTION: DOES ANY ON-CHIP
9 COMPONENT RELY ON THE OFF-CHIP CRYSTAL TO
10 GENERATE A CLOCK SIGNAL?

11 "ANSWER: NO."

12 I DON'T KNOW IF I WOULD AGREE WITH HIM OR NOT, BUT
13 THE JURY SEEMED TO HAVE LIKED THAT TESTIMONY OR COULD HAVE
14 RELIED ON IT. WHY ISN'T THAT SUFFICIENT?

15 **MS. KEEFE:** BUT WHEN CROSS-EXAMINED FOR THAT, HE
16 ADMITTED THAT, YES, IT DOES TAKE INTO ACCOUNT THE OFF-CHIP
17 CRYSTAL. THE FACT THAT HE'S TRYING TO PLAY GAMES WITH THE WORD
18 "RELY" OR SOMETHING LIKE THAT, HE HAS -- HE ADDUCES ABSOLUTELY
19 NO EVIDENCE THAT EVER THERE IS A SIGNAL BEING OUTPUT FROM THE
20 CHIP IN ORDER TO CLOCK THE CPU THAT HAS NOT USED THE OFF-CHIP
21 CRYSTAL, AND THAT'S WHAT THIS WHOLE CASE FOCUSED ON.

22 YOUR HONOR KNOWS. THAT WAS EXACTLY WHAT WAS BEING
23 OVERCOME IN THE PROSECUTION HISTORY. IN MAGAR AND IN SHEETS
24 WHAT WE HAD WAS THE PATENT OWNER SAYING OVER AND OVER AGAIN,
25 I'M DIFFERENT FROM THOSE GUYS BECAUSE I'M ALLOWED TO RUN FREE;

1 I AM ALLOWED NOT TO BE TAMPED DOWN BY SOMEBODY OFF THE CHIP;
2 I'M ALLOWED TO JUST GO ALL ON THE CHIP; NOT LISTENING TO ANYONE
3 ELSE. AND YOUR HONOR HEARD ME SAY A NUMBER OF TIMES, THEY JUST
4 DON'T WANT TO TAKE ORDERS FROM ANYONE; THEY WANT TO BE
5 INDEPENDENT.

6 ALL OF THE EVIDENCE IN THIS CASE PRESENTED TO THE
7 JURY, ALL OF THE EVIDENCE EVEN FROM DR. OKLOBDZIJA, WAS ALL OF
8 THE PHASE-LOCKED LOOP CRYSTALS -- AND I URGE YOUR HONOR TO GO
9 BACK TO THAT VERY LANGUAGE -- THE PHASE-LOCKED LOOP THAT'S
10 BEING USED IN THE ACCUSED DEVICES, THEY'RE LOCKED BY AN
11 OFF-CHIP CRYSTAL. THEY'RE BEING TOLD WHAT TO DO BEFORE THEY
12 EXPORT, IF YOU WILL -- I'LL GIVE YOU A WHOLE DIFFERENT WORD --
13 THEIR SIGNAL TO THE CPU IN ORDER TO CLOCK IT.

14 **THE COURT:** NOW WE'RE UP TO SEVEN.

15 **MS. KEEFE:** BUT YOU UNDERSTAND WHAT -- I'M TRYING TO
16 AVOID THE --

17 **THE COURT:** I TAKE YOUR POINT.

18 **MS. KEEFE:** -- CHARGE WORDS.

19 **THE COURT:** I TAKE YOUR POINT.

20 IF I COULD, THOUGH, I JUST WANT TO MAKE SURE I HEAR
21 YOU ON THIS. AS I READ DR. OKLOBDZIJA'S TRANSCRIPT, AS I
22 REMEMBER HIS TESTIMONY FOUR MONTHS AGO, SOMETHING LIKE THAT, HE
23 SAID A LOT OF THINGS, AND I GRANT YOU THAT HE MAKES CERTAIN
24 ADMISSIONS WHICH CERTAINLY WOULD SUPPORT A VERDICT GOING THE
25 OTHER WAY. BUT PUTTING ASIDE DR. OKLOBDZIJA FOR THE MOMENT,

1 WHEN WE HAVE A WITNESS, PARTICULARLY AN EXPERT, WITNESS OFFER
2 TESTIMONY THAT PERHAPS IS UNDERMINED BY LATER
3 CROSS-EXAMINATION, PERHAPS IS INCONSISTENT WITH STUFF THAT CAME
4 BEFORE, IS THE STATEMENT ITSELF IN THE TRANSCRIPT AND AS
5 PRESENTED THE JURY ENOUGH TO PROVIDE THAT SUBSTANTIAL EVIDENCE
6 THAT IS THE STANDARD UNDER RULE 50? I TEND TO THINK THE ANSWER
7 IS YES, BUT YOU SEEM TO HAVE A PRETTY STRONG VIEW OF THE
8 CONTRARY.

9 **MS. KEEFE:** I HAVE AN EXTREMELY STRONG VIEW TO THE
10 CONTRARY, YOUR HONOR. I BELIEVE, AGAIN, IF WE GO BACK TO WHAT
11 YOUR HONOR WAS ASKING US REGARDING SUMMARY JUDGMENT, YOU SAID
12 THAT IT WAS ONLY A FACTUAL QUESTION ON WHETHER OR NOT THERE WAS
13 RELIANCE ON THE OFF-CHIP CRYSTAL IN ORDER TO CLOCK THE CPU.
14 THERE IS NO DISPUTE THAT THE OFF-CHIP CRYSTAL WAS RELIED ON IN
15 ORDER TO CLOCK THE CPU. THAT'S THE APPROPRIATE QUESTION.
16 THAT'S THE QUESTION YOUR HONOR ASKED US TO TRY. IT'S CERTAINLY
17 THE QUESTION WE TRIED. IT'S THE QUESTION OF WHAT OKLOBDZIJA,
18 DR. OKLOBDZIJA, WAS ASKED. HE ADMITTED IT'S A FORMULA, YES, IT
19 USES THAT SIGNAL.

20 AGAIN, THERE WAS QUIBBLING ON WHETHER IT WAS
21 MULTIPLIED, DIVIDED, BUFFERED, SPED UP, BUT IT DOESN'T MATTER.
22 IT WAS USED BY THE ON-CHIP CRYSTAL IN ORDER TO CLOCK THE CPU.
23 WITHOUT IT, THERE WOULDN'T BE A SIGNAL.

24 AND THE ONLY THING THAT DR. OKLOBDZIJA SAID WAS,
25 WELL, MAYBE IT COULD HAVE WORKED, IT COULD HAVE DONE THAT BY

1 ITSELF. BUT WHEN SPECIFICALLY ASKED, DID YOU TEST IT AND DID
2 IT DO IT IN THESE DEVICES, HE ANSWERED NO. INSTEAD HE ANSWERED
3 THAT, IN POINT OF FACT, THE PLL'S IN THESE DEVICES DID RELY ON
4 THOSE VERY FORMULAS THAT WE'VE TALKED ABOUT AND THE EVIDENCE
5 THAT WAS ADDUCED AT TRIAL INDICATING THAT THE OFF-CHIP CRYSTAL
6 WAS ALWAYS USED TO CLOCK THE CPU.

7 **THE COURT:** ALL RIGHT. I THINK I UNDERSTAND YOUR
8 POSITION.

9 **MS. KEEFE:** THANK YOU, YOUR HONOR.

10 **THE COURT:** MR. OTTESON.

11 **MR. OTTESON:** THANK YOU, YOUR HONOR. I FEEL KIND OF
12 LIKE *GROUNDHOG DAY*. I FEEL LIKE THIS IS AN ISSUE THAT WE HAVE
13 BEEN OVER REPEATEDLY, AND FROM THE COURT'S QUESTIONS I THINK
14 YOU REALLY UNDERSTAND THEM. THIS IS REALLY A CLAIMS
15 CONSTRUCTION ISSUE. THEY DON'T LIKE THE CLAIM CONSTRUCTION.
16 OBVIOUSLY, WE GOT THE SUMMARY JUDGMENT ORDER FROM YOUR HONOR
17 SHORTLY BEFORE TRIAL, AND THEY MADE AN EMERGENCY MOTION TO
18 MODIFY THE JURY INSTRUCTIONS. AND --

19 **THE COURT:** AS I RECALL, MR. OTTESON, I THINK -- I
20 BELIEVE I GAVE THEM PART, BUT NOT ALL OF THE RELIEF THEY
21 SOUGHT, CORRECT?

22 **MR. OTTESON:** CORRECT.

23 **THE COURT:** I DID MODIFY THE CONSTRUCTION TO SOME
24 DEGREE.

25 **MR. OTTESON:** YES.

1 **THE COURT:** AT LEAST AS PROVIDED TO THE JURY.

2 **MR. OTTESON:** I ACTUALLY DO BELIEVE THAT YOU'RE ALL
3 OVER THIS ISSUE. I MEAN, YOU KNOW EXACTLY WHERE I'M GOING WITH
4 THIS, WHICH IS THEY ASKED FOR TWO MODIFICATIONS TO THE JURY
5 INSTRUCTIONS. YOU LARGELY GAVE THEM ONE OF THOSE, AND IT HAD
6 TO DO WITH -- I'LL GET THE EXACT LANGUAGE HERE THAT YOUR HONOR
7 ADOPTED.

8 "THE TERM 'ENTIRE OSCILLATOR' IN
9 CLAIMS 6 AND 13 IS PROPERLY UNDERSTOOD TO
10 EXCLUDE ANY EXTERNAL CLOCK USED TO GENERATE
11 THE SIGNAL USED TO CLOCK THE CPU."

12 SO YOU GAVE THEM THAT. AND WHAT THEY'RE REALLY
13 TRYING TO ARGUE NOW IS THAT THEY WISH THE CONSTRUCTION WOULD
14 HAVE ALSO INCLUDED THIS OTHER THING THEY WERE ASKING FOR, WHICH
15 IS THAT AN ACCUSED PRODUCT CAN INFRINGE ONLY IF IT DOES NOT
16 RELY ON AN INPUT CONTROL TO DETERMINE ITS FREQUENCY.

17 **THE COURT:** WHICH WAS MY LANGUAGE FROM THE SUMMARY
18 JUDGMENT ORDER.

19 **MR. OTTESON:** RIGHT, RIGHT. AND THAT'S WHY THEY
20 BROUGHT THEIR EMERGENCY MOTION TO MODIFY THE JURY INSTRUCTIONS
21 RIGHT BEFORE TRIAL.

22 AND IF YOU'LL RECALL, WE STOOD HERE BEFORE TRIAL AND
23 I TOLD YOUR HONOR, HEY, YOU KNOW, THERE'S A BIG DIFFERENCE
24 BETWEEN A GENERATION OF A CLOCK SIGNAL AND SETTING ITS
25 FREQUENCY. AND I SAID, IF WHAT YOUR CONSTRUCTION MEANS IN THE

1 SUMMARY JUDGMENT ORDER IS THAT AN EXTERNAL CLOCK OR AN EXTERNAL
2 CRYSTAL CAN'T BE USED TO -- FOR FREQUENCY REGULATION, THEN I
3 LOSE AND WE SHOULDN'T GO TO TRIAL.

4 SO WHAT HAPPENED AS A RESULT OF THAT -- AND THIS IS
5 AN ARGUMENT THAT'S BEEN MADE REPEATEDLY, LIKE I SAID, FOUR OR
6 FIVE TIMES NOW -- IS THAT YOU ADOPTED ONE PART OF WHAT THEY
7 SOUGHT, WHICH HAS TO DO WITH NOT USING AN EXTERNAL CRYSTAL TO
8 GENERATE A CLOCK SIGNAL, BUT REJECTED THEIR REQUEST FOR
9 SOMETHING THAT WOULD PROHIBIT THE USE OF AN EXTERNAL CLOCK OR
10 SIGNAL FOR FREQUENCY REGULATION. THAT WAS REJECTED.

11 THAT'S A CLAIM CONSTRUCTION ISSUE, AS THE COURT HAS
12 ALREADY RECOGNIZED IN ITS QUESTIONING OF MS. KEEFE. IF THEY
13 DON'T LIKE IT, THEY CAN TAKE IT TO THE FEDERAL CIRCUIT. THAT'S
14 FINE. I'M SURE WE'LL HAVE DISCUSSIONS ABOUT CLAIM CONSTRUCTION
15 AT THE FEDERAL CIRCUIT.

16 BUT THIS IS A RULE 50(B) MOTION. RIGHT? AND FOR A
17 RULE 50(B) MOTION, THE QUESTION IS WHETHER THERE WAS
18 SUBSTANTIAL EVIDENCE TO SUPPORT THE JURY'S VERDICT, AND I THINK
19 ALSO THE COURT'S ALREADY RECOGNIZED THERE DEFINITELY WAS.

20 DR. OKLOBDZIJA WHEN HE WAS ASKED POINT BLANK -- AND
21 YOU ALREADY KNOW WHERE IT IS IN THE TRANSCRIPT. I MEAN, I WAS
22 GOING TO POINT YOU TO IT. YOU ALREADY KNEW WHERE IT WAS. HE
23 WAS ASKED IF THE EXTERNAL CRYSTAL WAS USED TO GENERATE THE
24 CLOCK SIGNAL THAT IS USED TO CLOCK THE CPU, AND HE SAID NO,
25 IT'S NOT.

1 AND, IN FACT, THERE WAS LOTS OF TESTIMONY AT TRIAL --
2 AND I'M SURE YOU RECALL A LOT OF IT, AND WE'VE CITED IT IN OUR
3 PAPERS, TOO -- THAT THE RING OSCILLATOR THAT IS IN THE PLL IS
4 WHAT GENERATES THE CLOCK SIGNAL THAT CLOCKS THE CPU. ALL THAT
5 OTHER STUFF IN THE PLL IS USED FOR FREQUENCY CONTROL. IT'S
6 USED TO TRY TO KEEP THAT FREQUENCY OF THE CLOCK SIGNAL WITHIN
7 RANGE, BUT FREQUENCY IS A -- IS A CHARACTERISTIC OF A CLOCK
8 SIGNAL. IT'S NOT PART AND PARCEL OF A CLOCK SIGNAL BEING
9 GENERATED.

10 AND I THINK YOUR HONOR'S RULINGS RECOGNIZE THAT.
11 THEY WANT TO REARGUE CLAIM CONSTRUCTION. I MEAN, I CAN CITE
12 YOU A WHOLE BUNCH OF EVIDENCE, YOU KNOW, FROM THE TRANSCRIPT
13 ABOUT HOW IT'S THE RING OSCILLATOR THAT GENERATES THE CLOCK
14 SIGNAL. AND, IN FACT, WE CITED TESTIMONY FROM MR. GAFFORD IN
15 OUR PAPERS WHERE HE RECOGNIZED THAT, HEY, THIS RING OSCILLATOR
16 HERE IS WHAT'S GOING AT 200 GIGAHERTZ -- TWO GIGAHERTZ, WHICH
17 IS 100 TIMES FASTER THAN THE REFERENCE CLOCK SIGNAL COMING FROM
18 THE EXTERNAL CRYSTAL. SO -- AND WHAT'S CLOCKING THE CPU IS
19 THAT TWO GIGAHERTZ SIGNAL THAT'S COMING OUT OF THE RING
20 OSCILLATOR.

21 SO THERE'S LOTS OF EVIDENCE ON THAT, I THINK YOUR
22 HONOR WELL UNDERSTANDS THAT. SO I DON'T THINK I REALLY NEED TO
23 BELABOR THE POINT. IF YOU HAVE ANY SPECIFIC QUESTIONS, I'M
24 HAPPY TO ANSWER THOSE. BUT I THINK YOUR QUESTIONS TO COUNSEL
25 HAVE ALREADY INDICATED YOU UNDERSTAND WHAT THE ISSUES ARE.

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1 **THE COURT:** I THINK I LARGELY HAVE YOUR POSITION IN
2 HAND, MR. OTTESON. I DID HAVE ONE -- JUST ONE OR TWO QUESTIONS
3 ON THIS SUBJECT.

4 THE FIRST IS, I WAS CONCERNED THIS TERM, WAY BACK
5 WHEN AND THEN CONSIDERING THE REQUEST FOR TESTIMONY ADJUSTMENT
6 TO MY CONSTRUCTION, I WAS PRETTY MUCH FOCUSED ON -- I GUESS
7 IT'S MAGAR AND SHEETS WAS THE REFERENCE WE WERE TALKING ABOUT?

8 **MR. OTTESON:** YES.

9 **THE COURT:** AND, AGAIN, THE DISTINCTION I WAS TRYING
10 TO DRAW WAS BETWEEN -- YOU'VE USED THE TERM "REGULATE." I
11 GUESS I USE THE TERM -- WELL, I USE THE TERM "RELY." YOU'VE
12 ALSO USED THE TERM "CONTROL."

13 **MR. OTTESON:** SURE.

14 **THE COURT:** BUT THE DISTINCTION BETWEEN ESSENTIALLY
15 TEEING UP -- I'LL ADD A NINTH TERM -- TEEING UP THE SIGNAL AND
16 THEN DOING SOMETHING WITH IT, AS I UNDERSTAND THE TESTIMONY IN
17 THIS CASE, THERE IS AT LEAST THAT ONE LINE FROM DR. OKLOBDZIJA
18 AT THE VERY LEAST WHERE HE SAYS EXPLICITLY, WITHOUT
19 QUALIFICATION, THAT CRYSTAL IS NOT PLAYING ANY PART IN THE
20 GENERATION OF THE SIGNAL; THE SIGNAL IS ENTIRELY
21 SELF-GENERATED. THAT'S WHAT HE WAS SAYING, CORRECT?

22 **MR. OTTESON:** YES.

23 **THE COURT:** OKAY.

24 **MR. OTTESON:** THAT'S TRUE.

25 **THE COURT:** WHETHER OR NOT IT'S TRUE FROM OUR

1 PERSPECTIVE, THE JURY DECIDED IT WAS TRUE.

2 **MR. OTTESON:** RIGHT, RIGHT. THE JURY WEIGHED ALL --
3 THE JURY WEIGHED ALL OF THAT EVIDENCE. AND HE DIDN'T SAY THAT
4 JUST ONCE, HE SAID THAT MULTIPLE TIMES. HE SAID THIS RING
5 OSCILLATOR IN THE PLL IS WHAT GENERATES THIS VERY, VERY FAST
6 CLOCK SIGNAL.

7 THE EXTERNAL CRYSTAL IS NOT GENERATING THE CLOCK
8 SIGNAL, AND IT'S NOT INVOLVED IN GENERATION OF THE CLOCK
9 SIGNAL. IT'S USED TO SET, CONTROL, REGULATE -- HOWEVER YOU
10 WANT TO SAY -- THE FREQUENCY OF THE CLOCK SIGNAL.

11 AND THE POINT IS HERE, YOU KNOW, WE'RE LOOKING AT THE
12 SUBSTANTIAL EVIDENCE STANDARD, BECAUSE THIS IS A RULE 50(B)
13 MOTION. THERE WAS LOTS OF EVIDENCE ABOUT THAT. JUST BECAUSE
14 THEY DON'T LIKE OR AGREE WITH THE EVIDENCE THAT WE OFFERED,
15 INCLUDING EVIDENCE FROM THEIR OWN EXPERT, TOO, MR. GAFFORD, IS
16 NOT REALLY RELEVANT TO THE COURT'S CONSIDERATION OF THEIR
17 MOTION. THE FACT OF THE MATTER IS THERE WAS LOTS OF EVIDENCE
18 FOR THE JURY TO CONCLUDE THAT, HEY, RING OSCILLATOR DOES
19 GENERATE THAT CLOCK SIGNAL, AND, IN FACT, IT IS ANALOGOUS TO A
20 FERRARI STUCK BEHIND A MOTOR HOME GOING ON A WINDING MOUNTAIN
21 ROAD WHERE THE MOTOR HOME IS GOING 50. SO IS THE SPEED OF THE
22 FERRARI BEING LIMITED? YEAH, IT'S BEING LIMITED OR REGULATED
23 BY THAT MOTOR HOME.

24 **THE COURT:** OR CONTROLLED.

25 **MR. OTTESON:** OR CONTROLLED. BUT IS IT BEING

1 GENERATED BY THE MOTOR HOME? ABSOLUTELY NOT.

2 AND ALSO, YOU KNOW, THE ANALOGY IS EVEN BETTER THAN
3 THAT, BECAUSE THE TESTIMONY FROM TRIAL WAS THAT THE RING
4 OSCILLATOR FREQUENCY WAS ACTUALLY LIKE A HUNDRED TIMES FASTER
5 THAN THE EXTERNAL CRYSTAL. SO THAT WOULD BE LIKE THE MOTOR
6 HOME LIMITING IT TO 50 MILES PER HOUR WHEN IN REALITY YOU HAVE
7 TO UNDERSTAND THAT THE FERRARI IS ACTUALLY GOING 5,000 MILES AN
8 HOUR, A HUNDRED TIMES FASTER.

9 **THE COURT:** RIGHT. RIGHT. IT'S A GOVERNOR THEN?

10 **MR. OTTESON:** IT'S A GOVERNOR.

11 **THE COURT:** OKAY.

12 **MR. OTTESON:** RIGHT. BUT IT CERTAINLY DOESN'T
13 GENERATE THE CLOCK SIGNAL. THERE WAS LOTS OF EVIDENCE ON THAT.
14 I REALLY THINK THE COURT HAS GOT IT RIGHT AND UNDERSTANDS THE
15 ISSUES.

16 AGAIN, THIS IS A RULE 50(B) MOTION. THIS IS NOT TO
17 REHASH CLAIM CONSTRUCTION AND TALK ABOUT SHEETS AND MAGAR
18 AGAIN. I MEAN MAGAR -- WITH MAGAR THE CLOCK SIGNAL WAS
19 GENERATED BY AN EXTERNAL CRYSTAL. THAT'S NOT WHAT THESE CHIPS
20 DO IN THE HTC PRODUCTS.

21 **THE COURT:** LAST QUESTION FOR YOU, MR. OTTESON. ARE
22 YOU HAPPY SUBMITTING ON THE SECOND MOTION ON THE PAPERS, OR
23 WOULD YOU LIKE TO BE HEARD ON THAT? I'LL GIVE YOU A CHANCE.

24 **MR. OTTESON:** I THINK WE WANT TO BE HEARD VERY
25 BRIEFLY.

1 **THE COURT:** OKAY. I'LL HEAR FROM YOU. I'LL
2 CERTAINLY GIVE MS. KEEFE A CHANCE TO RESPOND. DO YOU WANT ONE
3 OF YOUR COLLEAGUES TO SPEAK?

4 MR. LANSKY, YOU'RE STANDING UP.

5 **MR. OTTESON:** YES. MR. LANSKY IS PREPARED ON THAT
6 ONE, YOUR HONOR. THANK YOU.

7 **THE COURT:** SURE.

8 **MR. OTTESON:** I WANT TO GIVE HIM THE CHANCE --

9 **THE COURT:** SURE.

10 **MR. LANSKY:** THANK YOU, YOUR HONOR. I'LL BE VERY
11 BRIEF BECAUSE I THINK THIS IS A VERY SIMPLE ISSUE.

12 IN A JOINT REQUEST TO DISMISS FOLLOWING THE GRANT OF
13 PARTIAL SUMMARY JUDGMENT, THE PARTIES AGREED THAT CERTAIN
14 LANGUAGE WOULD BE INCORPORATED INTO A JUDGMENT. AND WE'RE
15 SIMPLY SAYING THAT LANGUAGE SHOULD BE INCORPORATED AS THE
16 PARTIES AGREED AND NOTHING ELSE. WE DON'T WANT TO CHARACTERIZE
17 THE JUDGMENT ONE WAY OR ANOTHER.

18 **THE COURT:** MR. LANSKY, YOU AND YOUR COLLEAGUES ON
19 THE OTHER SIDE ALL SEEM TO AGREE I NEED TO DO SOMETHING HERE.
20 I DID NOT FOLLOW THE ORDER THAT I SIGNED, AND I DO NEED TO MAKE
21 CLEAR THAT THE JUDGMENT COVERS THE OTHER PATENT, RIGHT?

22 **MR. LANSKY:** THAT'S CORRECT. AND IF YOU WOULD LOOK
23 AT THE JOINT REQUEST TO DISMISS, PARAGRAPH 4 SAYS THAT THE
24 LANGUAGE -- LET'S SEE.

25 "THE PROVISIONS OF THIS ORDER SHALL

1 BE INCORPORATED INTO ANY FINAL JUDGMENT
2 ENTERED IN THE ACTION."

3 AND THAT'S ALL WE'RE ASKING HAPPENS. WE DON'T WANT
4 TO CHARACTERIZE IT, OBVIOUSLY, AS A JUDGMENT FOR HTC, BECAUSE
5 THEY DID NOT PREVAIL ON EVERYTHING. THERE WERE CLAIMS
6 REMAINING AFTER PARTIAL SUMMARY JUDGMENT, AND THOSE CLAIMS HAD
7 VALUE IF THEY WERE TO BE ADJUDICATED. THERE WASN'T -- THEY DID
8 NOT GET A DECLARATION OF NON-INFRINGEMENT.

9 **THE COURT:** BUT DO THEY REALLY NEED ANY OF THAT STUFF
10 WHEN, AS THINGS PLAYED OUT, THEY GOT ALL THE EFFECTIVE RELIEF
11 THEY WOULD HAVE RECEIVED HAD I ULTIMATELY RESOLVED THE QUESTION
12 OF VALIDITY INFRINGEMENT?

13 **MR. LANSKY:** WELL, YOUR HONOR, THERE'S ACTUALLY VALUE
14 IN THE INFRINGEMENT DECISION. HAD THERE BEEN A FINDING OF
15 INFRINGEMENT, EVEN WITHOUT DAMAGES, THAT COULD HAVE BEEN USED,
16 FOR INSTANCE, IF OTHER PRODUCTS CAME OUT USING THAT SAME
17 TECHNOLOGY, AND THAT WOULD HAVE BEEN VERY VALUABLE TO EITHER
18 SIDE TO HAVE AN ADJUDICATION.

19 **THE COURT:** CERTAINLY I WOULD IMAGINE THAT A FINDING
20 OF INVALIDITY WOULD BE VERY DAMAGING TO YOUR CLIENT IN TERMS OF
21 WHAT THEY MIGHT DOING DO MOVING FORWARD, RIGHT?

22 **MR. LANSKY:** THAT'S CORRECT, YOUR HONOR.

23 **THE COURT:** OKAY. I THINK I UNDERSTAND THIS.

24 **MR. LANSKY:** THANK YOU, YOUR HONOR.

25 **THE COURT:** THANK YOU.

1 MS. KEEFE, DO YOU WANT TO ADD ANYTHING TO THAT?

2 **MS. KEEFE:** TO THE LAST POINT, YOUR HONOR, ALL I
3 WOULD SAY IS WE AGREED -- THE PARTIES AGREED NOT TO TRY THE
4 CASE BECAUSE THERE WAS NOTHING TO TRY. I MEAN, IT WOULD HAVE
5 BEEN A WASTE OF TIME. SO TO HOLD TO THIS NOTION THAT WE DIDN'T
6 PREVAIL, I THINK, IS A LITTLE BIT FORM OVER SUBSTANCE, AND SO
7 THAT'S WHY WE PROPOSED THE LANGUAGE WE PROPOSED. IT HAS THE
8 EFFECT OF THE FACT THAT WE PREVAILED, AND THERE ARE
9 RAMIFICATIONS TO THAT, AND SO WE DESERVE TO HAVE THAT IN AN
10 ORDER.

11 **THE COURT:** I'M GLAD YOU BROUGHT THAT LAST POINT UP,
12 BECAUSE IT SEEMS TO ME ONE WAY I COULD RESOLVE THIS ISSUE WOULD
13 BE TO ADOPT, PERHAPS, THE MORE NEUTRAL LANGUAGE ABOUT WHO
14 PREVAILED AND IN WHOSE FAVOR, BUT LEAVE FOR ANOTHER DAY THE
15 QUESTION OF THAT -- WOULD THAT BE ACCEPTABLE TO YOU?

16 **MS. KEEFE:** I WOULD BE FINE WITH THAT, YOUR HONOR,
17 ABSOLUTELY. AND, OBVIOUSLY, THAT'S AN ISSUE THAT ONLY COMES UP
18 IF IT COMES UP IN THE CONTEXT OF COSTS OR ANYTHING LIKE THAT,
19 AND WE CAN DEAL WITH THAT LATER. THE PART THAT HAS TO BE
20 REMEDIED IS THAT THE JUDGMENT HAS TO REFLECT 890.

21 BUT THE POINTS THAT WE'RE ARGUING ABOUT RIGHT NOW --
22 I MEAN, OBVIOUSLY, WE PREFER OUR LANGUAGE, THEY PREFER THEIR
23 LANGUAGE. THEY'RE ACTUALLY PROBABLY BOTH ACCURATE, BUT YOUR
24 HONOR IS GOING TO HAVE TO EVENTUALLY DEAL WITH WHAT THAT
25 LANGUAGE MEANS LATER ANYWAY, AND WE CAN RESOLVE THAT THEN.

1 **THE COURT:** UNLESS YOU SETTLE.

2 **MS. KEEFE:** I TRIED ONCE, YOUR HONOR, BUT IT HASN'T
3 HAPPENED YET, SO...

4 **THE COURT:** OKAY. ALL RIGHT.

5 **MS. KEEFE:** THE ONLY OTHER THING I WANTED TO DO --

6 **THE COURT:** YOUR LAST POINT. GO AHEAD.

7 **MS. KEEFE:** VERY LAST POINT.

8 MR. OTTESON CONTINUES TO IGNORE THE TEMPORAL ISSUES,
9 THE CLAIMS THEMSELVES -- AND I HAVE TO GO BACK TO THEM BECAUSE
10 THEY ARE WHAT DICTATES IN THIS CASE. THE CLAIMS REQUIRE AN
11 ENTIRE OSCILLATOR DISPOSED -- I AM LOOKING AT CLAIM 13 --

12 **THE COURT:** I HAVE IT, YEP.

13 **MS. KEEFE:** -- FIRST ELEMENT.

14 "AN ENTIRE OSCILLATOR DISPOSED UPON
15 SAID INTEGRATED CIRCUIT SUBSTRATE AND
16 CONNECTED TO SAID CENTRAL PROCESSING UNIT,
17 SAID OSCILLATOR CLOCKING SAID CENTRAL
18 PROCESSING UNIT AT A CLOCK RATE..."

19 GOING ON AND ON AND ON.

20 IT'S NOT ANY SIGNAL THAT'S GENERATING.

21 **THE COURT:** IT'S THE CLOCK SIGNAL.

22 **MS. KEEFE:** IT'S THE CLOCK SIGNAL THAT CLOCKS THE
23 CPU. AND MR. OTTESON JUST ADMITTED TO YOU THAT, YEAH, IT'S 400
24 TIMES FASTER, OR WHATEVER IT IS. BUT ALL OF THE EVIDENCE
25 ADDUCED AT TRIAL, EVERY SINGLE BIT OF IT, SAID EVEN THOUGH

1 THERE MAY BE A SIGNAL, THAT IS NOT THE SIGNAL THAT IS USED TO
2 CLOCK THE CPU; IT'S ONLY THE ONE AS MODIFIED, THEREFORE, NOT
3 GENERATED UNTIL IT USES THE SIGNAL THAT COMES OFF THE CHIP.

4 AND THAT'S WHAT I WOULD WANT TO LEAVE YOUR HONOR
5 WITH. GO BACK TO THE CLAIMS AND REALIZE IT'S NOT ANY SIGNAL.
6 IT'S NOT THE FACT THAT THE RING OSCILLATOR COULD GENERATE A
7 SIGNAL OR DID. IT'S THE FACT THAT THE SIGNAL THAT CLOCKS THE
8 CPU HAS TO USE THE OFF-CHIP SIGNAL. THAT WAS WHAT ALL THE
9 EVIDENCE AT TRIAL WAS.

10 **THE COURT:** ALL RIGHT.

11 **MS. KEEFE:** THANK YOU, YOUR HONOR.

12 **THE COURT:** THANK YOU.

13 I APPRECIATE THE ARGUMENTS TODAY. I'LL GET AN ORDER
14 OUT ON THESE TWO ISSUES AS QUICKLY AS I CAN. I DID BRING UP
15 THE SUBJECT OF SETTLEMENT. MIGHT IT BE HELPFUL TO THE PARTIES
16 TO HAVE THE SERVICES OF ONE OF MY COLLEAGUES TO ASSIST IN ANY
17 FURTHER DISCUSSIONS?

18 **MS. KEEFE:** MY CLIENT JUST NODDED HIS HEAD SURE.

19 **MR. OTTESON:** YES, WE WOULD NOT BE AVERSE TO THAT.

20 **THE COURT:** I ASKED A POOR QUESTION, SO LET ME
21 WITHDRAW IT AND ASK ANOTHER ONE.

22 I DON'T WANT TO PUT YOU THROUGH AN EXERCISE THAT
23 TAKES UP TIME AND MONEY FOR NO PURPOSE, BUT IF YOU THINK IT
24 WOULD BE USEFUL, I CAN CERTAINLY CALL UPON ONE OF MY COLLEAGUES
25 TO SIT DOWN WITH YOU FOR AN HOUR OR A DAY OR WHATEVER IT WOULD

1 TAKE.

2 **MR. OTTESON:** I DON'T HAVE MY CLIENT HERE TODAY.
3 MS. KEEFE DOES. SO I'D LIKE TALK TO THEM. I MEAN, I WOULD
4 DEFINITELY ENCOURAGE THEM TO DO THAT, BUT I'D LIKE TO TALK TO
5 THEM FIRST.

6 **THE COURT:** MR. HUNT, WHAT DO YOU THINK?

7 **MR. HOGE:** I THINK WE WOULD CERTAINLY AGREE.

8 (UNINTELLIGIBLE).

9 **THE COURT:** OKAY. WHAT DO YOU THINK, MS. KEEFE?

10 **MS. KEEFE:** AGAIN, YOUR HONOR, MY CLIENT INDICATES
11 THAT THEY WOULD, IN FACT, BE INTERESTED. I MEAN, ONE OF THE
12 PROBLEMS MY CLIENT HAS FELT IS IT'S ALWAYS BEEN KIND OF A
13 MOVING TARGET, AND SOMETIMES GETTING EVERYBODY BACK IN A ROOM
14 TOGETHER, ESPECIALLY IN LIGH --

15 **THE COURT:** WE HAVE A VERDICT NOW. PRESUMABLY THAT
16 FIXES THINGS --

17 **MS. KEEFE:** -- ESPECIALLY IN LIGHT OF ALL THAT, IT
18 MAY BE HELPFUL.

19 **THE COURT:** LET ME SUGGEST THIS. I OFFER THIS
20 SINCERELY AND I DON'T DO THIS IN EVERY CASE BECAUSE, FRANKLY,
21 MY COLLEAGUES' TIME IS TOO VALUABLE.

22 BUT IN LIGHT OF WHAT I'VE HEARD HERE TODAY, AND
23 SUBJECT TO MR. OTTESON CONFIRMING WITH HIS CLIENT, WHAT I WOULD
24 LIKE YOU ALL TO DO IS GET ON THE PHONE IN THE NEXT FEW DAYS AND
25 FIGURE OUT IS THIS SOMETHING YOU WANT TO DO. IF IT IS, IF YOU

1 HAVE A PARTICULAR MAGISTRATE JUDGE HERE THAT YOU WOULD LIKE TO
2 WORK WITH, I'M CERTAINLY HAPPY TO REACH OUT TO THEM. IF YOU
3 ARE OPEN TO ANY JUDGE, I AM HAPPY TO FIND SOMEONE ON A MORE
4 EXPEDITED BASIS. THOUGH, I DO WANT TO BE HELPFUL, IF I CAN.
5 SO WHY DON'T YOU TALK AND LET ME KNOW IF I CAN BE OF SERVICE?

6 **MR. OTTESON:** THAT'S GREAT.

7 **MS. KEEFE:** HAPPY TO DO SO. HAVEN'T GOTTEN A CHANCE
8 TO TALK TO MR. OTTESON ENOUGH LATELY.

9 **THE COURT:** HERE'S YOUR CHANCE FOR THAT CUP OF
10 COFFEE.

11 ALL RIGHT. THE MATTERS ARE SUBMITTED. HAVE A GOOD
12 AFTERNOON.

13 (PROCEEDINGS CONCLUDED AT 2:07 P.M.)
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I CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT
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PROCEEDINGS TAKEN ON THE DATE AND TIME PREVIOUSLY STATED IN THE
ABOVE MATTER.

I FURTHER CERTIFY THAT I AM NEITHER COUNSEL FOR,
RELATED TO, NOR EMPLOYED BY ANY OF THE PARTIES TO THE ACTION IN
WHICH THIS HEARING WAS TAKEN; AND, FURTHER, THAT I AM NOT
FINANCIALLY NOR OTHERWISE INTERESTED IN THE OUTCOME OF THE
ACTION.



JOAN MARIE COLUMBINI

MONDAY, MARCH 3, 2014