

EXHIBIT A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Volume 10
Page 1870 - 2046

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
BEFORE THE HONORABLE JAMES WARE, CHIEF JUDGE

Mformation Technologies, Inc.,
Plaintiff,
v.
Research In Motion, Ltd.,
et al.,
Defendants.

No. C 08-4990 (JW)
San Francisco, California
Tuesday, July 3, 2012

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff: Foley & Lardner, LLP
 3579 Valley Centre Drive
 Suite 300
 San Diego, California 92130
BY: AMAR L. THAKUR
 LISA MARIE NOLLER
 SHAWN E. MCDONALD
 ALLEN A. ARNTSEN
 RUBEN RODRIGUES

Also Present: Rakesh Kushwaha, MTO, CEO

Connie Kuhl, Certified Realtime Reporter
Official Reporter - USDC (415) 431-2020

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES (cont.):

For Defendant: WilmerHale
 305 South Grand Avenue
 Suite 2100
 Los Angeles, California 90071
BY: MARK G. MATUSCHAK
 ANDREW B. GROSSMAN

 Kirkland & Ellis, LLP
 300 North LaSalle
 Chicago, Illinois 60654
BY: LINDA S. DeBRUIN
 AARON D. CHARFOOS
 TIFFANY PATRICE CUNNINGHAM
 FERLILLA VICTORIA ROBERSON
 MARIA A. MARAS
 MICHAEL DALEY KARSON

Also Present: Ray Dikun, RIM Vice-President

Connie Kuhl, Certified Realtime Reporter
Official Reporter - USDC (415) 431-2020

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Tuesday, July 3, 2012

(9:00 a.m.)

(In open court; jury not present)

DEPUTY CLERK: Remain seated and come to order.

THE COURT: Good morning.

Very well. We're on the record out of the presence of the jury.

I received some requests having to do with matters that are coming up, but they don't deal with the current witness, correct?

MR. MATUSCHAK: That's correct, your Honor.

MR. CHARFOOS: We do have one issue that relates to the current witness, and I believe Mr. Matuschak has another issue more generally relating to the trial.

THE COURT: So how long -- who is the current witness, remind me.

MR. CHARFOOS: Julie Davis, RIM's damages expert.

THE COURT: I see. And how long will that be?

MR. CHARFOOS: The testimony? Or the argument about what we need to argue about?

THE COURT: Is there an argument with respect to that witness?

MR. CHARFOOS: There is.

THE COURT: All right, what's that motion?

MR. CHARFOOS: Your Honor, we had submitted to

Connie Kuhl, Certified Realtime Reporter
Official Reporter - USDC (415) 431-2020

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

you last week Exhibit 853, which was the cost to recreate the '917 patent. That particular document was in fact created in the overall context of the Mesriow valuation for the patent itself; and, therefore, plaintiffs argue that it should be excluded under the Court's motion in limine.

That document, however, was created by Dr. Kushwaha himself. And although it was provided to Mesriow, it was an independent analysis of the cost to recreate the patent.

THE COURT: I'm sorry, what is a cost to recreate a patent?

MR. CHARFOOS: It was his estimated amount of time and effort put in to develop the '917 patent. Which came to roughly a million dollars.

Now, Georgia-Pacific Factor No. 8 goes to the overall profitability of the product. And I'm concerned in particular, in addition to its relevance to the analysis that Ms. Davis conducted, that Mr. Basu may have left the jury with a misimpression that, if you recall, Mformation had lost money in all the years leading up to 2010, and Mr. Basu said that one of the reasons they lost money was because they were reinvesting in the company.

And he specifically says at page 409, starting at

Connie Kuhl, Certified Realtime Reporter
Official Reporter - USDC (415) 431-2020

1 line 22: "You invest those years with your intellectual
2 property, and once the revenue starts coming in, your
3 losses turn into profit."

4 I don't want the jury to be left with the
5 impression that Mformation has spent \$111 million
6 investing in the '917 patent when it's only been a
7 million. And, therefore, your Honor, we would ask that
8 Ms. Davis be allowed to discuss 853, and that it be
9 introduced into evidence.

10 MR. ARNTSEN: And your Honor, we think that this
11 is part of the Court's ruling. With the third-party
12 valuations, the Court said that damages for patent
13 infringement are determined on the basis of a
14 hypothetical negotiation at the time infringement began,
15 citing the Unilaw case. The Court finds that
16 third-party valuations at issue are not relevant and
17 thus are in.

18 In particular, none of the reports at issue
19 attempted to assess the value of the '917 patent at the
20 time infringement began, none assumed the patent was
21 both valid and infringed. Thus, admission of these
22 reports is likely to confuse the jury by introducing a
23 basis for evaluating damages that differs entirely from
24 that the jury is being asked to apply.

25 And that's exactly the case with this document

Connie Kuhl, Certified Realtime Reporter
Official Reporter - USDC (415) 431-2020

1 here. Essentially what it shows is the person here
2 involved writing the software for Mformation's product.
3 And it's got nothing to do with the damage
4 determination. It's inappropriate for an expert to rely
5 on it because it's counter to Federal Circuit law and
6 this Court's in limine decision, and it would only
7 confuse the jury.

8 THE COURT: You're offering it on damages?

9 MR. CHARFOOS: Yes, your Honor. Because it's
10 relevant to, number one, the profitability of the
11 product, as well as the relative value of that product.
12 How much time and effort was put into creating it.

13 THE COURT: What product? The patent is not a
14 product.

15 MR. CHARFOOS: But -- I'm sorry, I misspoke.
16 It's the cost to recreate the '917 patent itself.

17 THE COURT: Well, how is that -- how is that
18 relevant to damages? Because someone can come up with a
19 patented idea very quickly and other people can take a
20 long time. I've never thought about that as a damage
21 issue.

22 MR. CHARFOOS: Again, the profitability of the
23 commercial invention is one of the Georgia-Pacific
24 Factors, and so to the extent that this document shows
25 the profitability of the commercial invention, then that

Connie Kuhl, Certified Realtime Reporter
Official Reporter - USDC (415) 431-2020

1 would go to Georgia-Pacific Factor No. 8. And you know,
2 other courts, including the Federal Circuit, have
3 allowed those kinds of inquiries into the profitability.

4 And again, Mr. Basu suggested that they're
5 investing all of this money into their intellectual
6 property, and I think it's important for the jury to
7 understand that it did not cost \$111 million to create
8 the '917 patent. It was \$1 million, according to
9 Dr. Kushwaha's own analysis.

10 The other thing --

11 THE COURT: Okay. That the testimony you're
12 trying to rebut was that it cost that to develop
13 the '917 patent. And you can argue that those numbers
14 are not the basis. The objection is sustained to using
15 this for damages.

16 Now, it seems to me that there might be other
17 purposes, but that is not one of the permissible
18 purposes.

19 Anything else with respect to this witness?

20 By the way, I have the same kind of concern with
21 respect to the rebuttal, but I guess I can wait on that.
22 That's why I was asking about the timing.

23 MR. CHARFOOS: There is one other thing with
24 respect to this witness, Mformation's counsel, and we've
25 talked about this ahead of time, is intending to use

Connie Kuhl, Certified Realtime Reporter
Official Reporter - USDC (415) 431-2020

1 some of the RIM's license agreements with Ms. Davis.
2 These are very, very sensitive license agreements.

3 Number one, we would request that those
4 agreements, to the extent that they're introduced into
5 evidence, be brought in under seal.

6 And number two, your Honor, we would ask that you
7 would close the courtroom for the discussion of RIM's
8 license agreements. Mr. Arntsen -- and he can step in
9 if I misrepresent -- has taken those license agreements
10 and grouped them together in a single section of his
11 cross-examination, and we'll notify the Court before he
12 begins that, which will allow that time that the
13 courtroom's closed to be limited and as short as
14 possible.

15 THE COURT: Any objection?

16 MR. ARNTSEN: I have no objection.

17 THE COURT: Very well. So you have to alert the
18 Court to that.

19 MR. CHARFOOS: We will alert the Court to that,
20 yes, your Honor.

21 THE COURT: All right. Summon the jury.

22 MR. MATUSCHAK: Your Honor, we have -- we had one
23 other issue. And that is, I don't know if it's common
24 to you, but there was a -- a report to us last night
25 that there was a contact between a member of the jury

Connie Kuhl, Certified Realtime Reporter
Official Reporter - USDC (415) 431-2020