

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

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In re: VEHICLE TRACKING AND)	MDL No. 11-2249 (DWF/SER)
SECURITY SYSTEM ('844) PATENT)	
LITIGATION)	
_____)	
)	
This Document Relates to)	St. Paul, Minnesota
All Actions)	May 30, 2012
)	10:30 a.m.
)	

BEFORE **THE HONORABLE DONOVAN W. FRANK**
 UNITED STATES DISTRICT COURT JUDGE
 AND BEFORE **THE HONORABLE STEVEN E. RAU**
 UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

PRETRIAL CONFERENCE HEARING

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1 MR. LAVELLE: Your Honor, Joe Lavelle, DLA Piper
2 for Defendant BMW.

3 MR. WINLAND: Thomas Winland of Finnegan Henderson
4 on behalf of Defendant Toyota Motor Sales.

5 MR. BARNEY: James Barney, also with Finnegan
6 Henderson on behalf of Toyota Motor Sales.

7 THE HONORABLE JUDGE DONOVAN FRANK: And then we
8 have three counsel on the telephone. So, if you each want
9 to note your presence for the record we can start with Mr.
10 Rusnak. I probably mispronounced your name. And we can go
11 right down the line, actually perhaps four counsel. So, if
12 you want to note your respective presence for the record,
13 then we will proceed.

14 MR. RUSNAK: Good morning, Your Honor. It's Eric
15 Rusnak from K & L Gates, on behalf of Enfora, Inc..

16 THE HONORABLE JUDGE DONOVAN FRANK: Mr. Doyle?

17 MR. DOYLE: Good morning, Your Honor, Scott Doyle
18 and John DeFosse from Shearman & Sterling on behalf of
19 Mercedes-Benz, USA.

20 THE HONORABLE JUDGE DONOVAN FRANK: Then we have
21 someone here from Fleetmatics?

22 MR. DESAI: Yes, Your Honor, good morning. This
23 is Sam Desai from Frommer Lawrence & Haug on behalf of
24 Fleetmatics USA and SageQuest I.

25 THE HONORABLE JUDGE DONOVAN FRANK: And I would

1 just indicate for the lawyers in the courtroom that with
2 individuals listening in by phone, unless you speak into a
3 microphone, either one that is on counsel table or at the
4 podium, then they can't, the counsel on the phone won't be
5 able to hear you if you kind of drift away from the
6 microphone, just to keep that in mind.

7 Well, the record will first indicate that we met
8 in conference, as we have the last time you were all here
9 for approximately one hour. So why don't we begin with, we
10 had indicated in chambers, we meaning Judge Rau and myself,
11 that we would be filing a Scheduling Order that has more to
12 do with protocol. And I kind of gave myself away when I
13 said it will mirror in many respects the Pretrial Order No.
14 2 that was entered by me in the *Guidant* case, now way back
15 in 2006. But, you will see some similarities in that, and
16 we will be entering that Order.

17 Is there anyone on behalf of the Plaintiff, and we
18 will keep separately discussing how we are going to proceed
19 with the issue that has been, I guess, described as adequacy
20 of the infringement contentions. But, has anybody, Mr.
21 Farney on behalf of the Plaintiffs, anything further you
22 want to address as it relates to the Scheduling Order that
23 will go out, that also set up the dates for the next few
24 months with the exception of August that we will be meeting.
25 And so the date specifics are as we handed out a sheet to

1 everyone. And those will be incorporated into that final
2 scheduling order.

3 Does the Plaintiff have anything further they
4 would want to put on the record in that regard at this time?

5 MR. FARNEY: Nothing additional, Your Honor. But,
6 I can report back to you our agreement on the briefing
7 schedule that was --

8 THE HONORABLE JUDGE DONOVAN FRANK: Well, why
9 don't we do that? Now, that podium does go up for you, if
10 you would like that to go up.

11 MR. FARNEY: It's fine as it is. I shouldn't need
12 it to go up.

13 THE HONORABLE JUDGE DONOVAN FRANK: All right.

14 MR. FARNEY: If you would like me to provide you
15 with the dates?

16 THE HONORABLE JUDGE DONOVAN FRANK: Certainly.

17 MR. FARNEY: And Mr. Williams please listen to me
18 to make sure I get this correct. I think we have agreed to
19 provide the Defendants, so that we can make sure the
20 Protective Order is appropriate, whatever *Mansell* documents
21 we may have, produce them next Wednesday on the 6th. That
22 was one point.

23 We have agreed that we will provide Hyundai and
24 Toyota our preliminary infringement contentions as to them
25 on the 7th of June, Thursday the 7th, correct?

1 MR. CONRAD: By close of business.

2 MR. FARNEY: 5:00 central time, close of business.

3 And we have agreed that the Defendants that have current
4 pending letters with respect to our contentions, in other
5 words, other than Toyota and Hyundai, will provide the
6 motions that Your Honor has requested on the 15th of June.
7 And as to Toyota and Hyundai, they will have until the 22nd
8 of June.

9 Plaintiff will file its responsive briefs on
10 July 6th, and there will be no replies.

11 THE HONORABLE JUDGE DONOVAN FRANK: And for the
12 record, I indicated, we indicated in the conference that
13 July 6th, if we were able to -- if the parties were able to
14 work those dates out, which it appears you have and worked
15 back, that that would be sufficient for setting a time for
16 oral argument when you are all in town on July 11th. So,
17 thank you for that information.

18 MR. FARNEY: The Plaintiffs have nothing else.

19 THE HONORABLE JUDGE DONOVAN FRANK: All right.

20 MR. WILLIAMS: Your Honor, Doug Williams on behalf
21 of the Defendants. First thing I would like to clarify is
22 that with respect to the production of the *Mansell* documents
23 next week on the 6th, that we don't need to do anything
24 further with respect to the Protective Order, that the
25 Defendants have collectively agreed to abide by the *Mansell*

1 Court Protective Order that is already in place until such
2 time as Your Honor substitutes a new one. So, we shouldn't
3 have -- there should be no condition then on the production
4 of the documents on the 6th.

5 With that understanding, I think that the rest of
6 the dates as expressed by Mr. Farney are correct. And
7 Judge, perhaps as a point of clarification for the folks on
8 the line, maybe we could let them know what we have agreed
9 to and what we are doing.

10 THE HONORABLE JUDGE DONOVAN FRANK: Well, why
11 don't you go ahead and indicate what you believe will be
12 addressed, and I will give the Plaintiff the same -- I think
13 that is a good idea.

14 And by the way, for the record, unrelated to what
15 you just said, I will state that when Mr. Farney got up and
16 said, turned to you and said, you want to listen to make
17 sure you get the right dates, you did give him a nice
18 high-five with your hands. And I guess you have now
19 confirmed that.

20 But, if you want to indicate what you assume you
21 will be addressing, and then I will give Mr. Farney the same
22 opportunity. So then, you are correct, so then the counsel
23 on the phone probably are thinking, well, what exactly are
24 they talking about? Fair enough.

25 MR. WILLIAMS: Brief summary of what took place in

1 chambers, there will be no argument today with respect to
2 the letters that have been exchanged back and forth, but
3 rather on July the 11th, at our regularly scheduled status
4 conference for that particular day, we will also argue the
5 motions that the parties will file in accordance with the
6 following schedule.

7 You just heard the dates that were there before,
8 but next week on July 7th, the new Defendants, Hyundai and
9 Toyota will get their infringement contentions from the
10 Plaintiff. And then the parties, the Defendants will have a
11 briefing schedule to brief whatever they feel remains
12 inadequate about those contentions and what relief that they
13 would like as a result of that, as follows.

14 On June 15th, the Defendants, the non-Toyota,
15 non-Hyundai Defendants will provide their -- file their
16 briefs. On the 22nd, Hyundai and Toyota will file their
17 briefs. And then on the 6th of July, PJC will respond and
18 the Defendants waive their rights to any reply to that and
19 we will proceed without a reply brief to the arguments then
20 scheduled for the 11th of July. And I think that I have got
21 that correct?

22 (All counsel nodding in the affirmative.)

23 So then there would be no arguments today, as I
24 said before, on the letters that have been filed.

25 THE HONORABLE JUDGE DONOVAN FRANK: Mr. Farney,

1 does that square with your understanding?

2 MR. FARNEY: It does, Your Honor. The only point
3 that I think I would add, we discussed in chambers that if
4 on the 15th when we receive their briefs, if we are
5 surprised that they've raised a lot of additional issues,
6 that we can at least raise it with the Court that we might
7 need to adjust the schedule. I don't anticipate that
8 happening, but I wanted to state --

9 THE HONORABLE JUDGE DONOVAN FRANK: I will just
10 confirm that that is accurate. And I will also indicate, I
11 think in fairness to all of the lawyers, although no one has
12 brought it up, so I think no one is particularly concerned
13 about it, which is a good thing, but I will just indicate
14 for the record that it may well be that one or more parties,
15 and what I mean by that is the Plaintiff and perhaps the
16 Defendant, that one or more parties may believe that this
17 may not be entirely necessary; that they have said what they
18 need to say in the letter briefs.

19 And I think in fairness to all of the lawyers I
20 will just note that what we had said back during the
21 conference is that the Court wanted to proceed in this way,
22 although we certainly commend the lawyers. For once, we
23 kind of said, here is how we want to proceed. You've come
24 up with, it seems like, a workable briefing schedule so we
25 can move this along and hear everybody out on the 11th.

1 And then as we get the -- as we get the briefing,
2 you can expect to hear from chambers on -- we will just set
3 up the oral argument schedule for that date, because we will
4 have that in the context of any agenda items, apart from
5 that, that you want on for that day. So, that will all be
6 set up before you roll into town on the 11th. So, we
7 appreciate that.

8 Judge Rau, did you have anything on those? All
9 right.

10 MR. WILLIAMS: Your Honor, I misspoke. I misspoke
11 with respect to the due date for the infringement
12 contentions for Hyundai and Toyota. That should be June
13 7th. I think I said July 7th. So, next week, June 7th, is
14 the due date, not July 7th.

15 THE HONORABLE JUDGE DONOVAN FRANK: I wished I
16 could say that I caught that, and I was just going to sit
17 tight and see if anybody else did, but that wouldn't be
18 quite accurate. Thank you. Mr. Farney, you wanted to say
19 something?

20 MR. FARNEY: I would like to say that I heard him
21 and just stayed silent, but I actually heard June, so I
22 didn't pay any attention to it.

23 One procedural question I have. Since there is
24 quite a voluminous set of contentions and so forth you have
25 already been provided, when we file these motions in

1 oppositions to you, do you want us to re-file with the
2 exhibits and contentions, or simply cite to the ones that
3 were put in the letter briefs?

4 THE HONORABLE JUDGE DONOVAN FRANK: I think you
5 could just cite to them, and as long as the cite is
6 self-explanatory, there would be no reason to redo the whole
7 thing.

8 MR. FARNEY: That is what I was thinking, that we
9 weren't floating with paper.

10 THE HONORABLE MAGISTRATE JUDGE RAU: Right. You
11 have docket numbers for all of those things and simply
12 reciting that is sufficient.

13 THE HONORABLE JUDGE DONOVAN FRANK: It should take
14 care of that.

15 MR. FARNEY: All right, we will do that.

16 THE HONORABLE JUDGE DONOVAN FRANK: And we
17 indicated for the counsel on the phone, we indicated that no
18 later than Friday, but could be as soon as today or tomorrow
19 that we will file this scheduling order that we will put
20 these things in place with these dates, some protocols for
21 setting agendas from month to month, as well as the dates,
22 themselves. And so that will be e-filed sometime this week.

23 Does anyone on behalf of the Plaintiff want to
24 give any updates for the record on the tagalong cases? I
25 just want to make sure that I don't -- if there is

1 something, because we did discuss it, you are free to say
2 whatever you would like to.

3 MR. FARNEY: With Toyota and Hyundai now in the
4 MDL, there is only one other party -- I use that term sort
5 of loosely. We originally sued a company called PAR, and
6 then an affiliated company, there is an ORBCOMM who provide
7 telematics devices that we contend infringe.

8 It turns out that they entered into a complicated
9 corporate transaction where there is another entity now
10 involved called SkyBitz. And we have had some back and
11 forth with the party as to who the correct party is. And we
12 were filing an Amended Complaint to address that. And so I
13 think it will all be addressed in the next couple of weeks
14 at which point they would then be moved into the MDL, if we
15 don't resolve the matter with them, which we are close to
16 doing. So, that is the only other tagalong party. And the
17 Plaintiff does not at present anticipate any other parties
18 being added into the MDL.

19 THE HONORABLE JUDGE DONOVAN FRANK: Thank you.
20 Does the Defense have anything they wish to respond to in
21 that regard?

22 MR. WILLIAMS: No, Your Honor.

23 THE HONORABLE JUDGE DONOVAN FRANK: And the reason
24 I asked about it -- I perhaps would have even if we didn't
25 have additional counsel on the phone is, unlike some other

1 cases in a positive way, it appears -- and of course I can't
2 hold anybody to this, whether it is from the Plaintiffs side
3 of the aisle or the Defendants side of the aisle. It
4 appears it is unlikely that an issue will come up by anyone
5 saying, well, we are going to have to have separate
6 scheduling orders in place, because party so and so, we
7 shouldn't have to hold up this piece of the case or this
8 issue or this discovery so that somebody else can catch up.
9 It looks like we are all close enough in time in the stage
10 of the case where maybe in everyone's interest that issue
11 may not come up. In the unlikely event it does, we will
12 deal with it, because that sometimes is an issue that arises
13 both in an MDL context and where you have individual cases
14 in one area, in one jurisdiction, or maybe in the same
15 jurisdiction, and a class action going in another. So, I
16 think that probably bodes well for everyone.

17 Judge Rau, do you want to put anything on the
18 record, just to confirm -- I will leave that up to you, of
19 course, with respect to any discussions that we initiated
20 back in conference on timing for settlement? And let me
21 give you the mike, or the folks won't hear what you say.

22 THE HONORABLE MAGISTRATE JUDGE RAU: What I would
23 like is next July when we meet, for the parties to
24 collectively confer with each other about how they would
25 structure any settlement discussions in terms of timing and

1 the mechanics. So, what I want you to do is confer with
2 each other about whether there are discrete groups that
3 should be involved in settlements, whether we need to phase
4 these settlements, what previous settlement agreements you
5 have entered into and what those licensing agreements look
6 like, as well as whatever settlement sums, and the like, and
7 whether you even need my urging. You seem to be getting a
8 lot of them done. And perhaps by simply giving you a
9 deadline or a suggestion that perhaps in October and
10 November we may be convening for the purpose of settling
11 what remains of the cases might push you over the edge. I
12 don't know. But, in terms of timing, that is what I am
13 thinking of, and then I will leave to you sort of some of
14 the mechanics of it and how you think we can best do that.
15 Okay?

16 THE HONORABLE JUDGE DONOVAN FRANK: One thing I
17 would say in that regard that pertains, usually less, less
18 so in an MDL context than it does if we had one freestanding
19 case, say, in our jurisdiction, occasionally it comes up
20 where one or all parties will say -- and sometimes they
21 agree on what that issue or those issues are, sometimes they
22 don't. They will say the following. And I would probably
23 say it is not likely to come up here, but we shall see. The
24 parties may say, well, it would really be helpful if the
25 Court would decide the following issue, because until that

1 gets decided, it is difficult to settle certain issues or
2 all of the issues. And we will just indicate that obviously
3 there are different issues and limitations, given the scope
4 of an MDL and the applicable law, and the scope of our
5 involvement. But, if there are such issues and we can be of
6 assistance there, we would be glad to do it. Other than
7 that, we will just play the hand out.

8 I think I mentioned unrelated to the settlement
9 piece, maybe one of the first times we met, that a trend
10 with MDLs nowadays, and it may have no bearing whatsoever at
11 this early stage of the case, is most of us -- it is not a
12 requirement by the MDL Panel, but most of us volunteer to
13 say to the Panel because of the criticisms in the home
14 districts if a case comes back in two or three years saying,
15 well, now it is back. What has everybody been doing? Most
16 of us volunteer to stay with the case, even if that means
17 going to Texas or wherever it may be, we will stay with the
18 panel. And of course, it takes certain orders to be in
19 place, but most of us will say we will agree to follow the
20 case back to its origin if need be.

21 Now, an issue that -- well, does anyone have
22 anything they want to respond to anything that Judge Rau
23 said? On behalf of Plaintiff?

24 MR. FARNEY: No, Your Honor. The only suggestion
25 I would make is that if the Court is willing to come to

1 Texas for trial, you might condition that on it not
2 happening in the summer. We don't have quite the pleasant
3 summer that you are having, here. It is about 100 degrees
4 in Austin right now.

5 THE HONORABLE JUDGE DONOVAN FRANK: Usually people
6 make the same request about not coming here in the middle of
7 winter, although last winter was about as mild as mild could
8 be for Minnesota standards.

9 Anything on behalf of the Defense?

10 MR. WILLIAMS: No, Your Honor.

11 THE HONORABLE JUDGE DONOVAN FRANK: Now, one thing
12 that I don't think I mentioned in the conference, but it
13 came up informally, and we were studying our notes,
14 including with my lawyer/law clerk there, too, is I would
15 like to get in everyone's interest -- it is less critical in
16 a case like this, frankly speaking, where there is -- unlike
17 a case where there may be hundreds of parties, and really
18 the number isn't so important, of say, plaintiffs who aren't
19 aware of a case, have no access to a lawyer, and getting up
20 a description of the case. The website has been up for some
21 time under our MDL in our District. But, I had mentioned,
22 and then kind of dropped the ball on seeking input from the
23 parties on putting an introductory, or it could say
24 introduction, description, summary. We are already putting
25 the orders up and minutes on the website. But, as a

1 description of the case.

2 And our notes seem to suggest that with reference
3 to the joint Rule 26(f) report, that one or all parties may
4 have given kind of general approval or affirmation to the
5 concise, as it is described, description of the case under
6 parenthesis (a) on page 1. It begins on page 1, and then
7 goes, it has concise factual summary of Plaintiffs, concise
8 factual summary of Defendants, claims and defenses.

9 I had mentioned that, and it is docket number 42.
10 But, with or without additional input, or with, if you wish,
11 I think it is our responsibility to get something up on that
12 website. So, I wouldn't need an answer today if you
13 thought, well, you didn't bring it up and we would like to
14 more carefully review this. And no, we can't agree that
15 that is the way it should go up, or let's give us some time,
16 you know.

17 If the Plaintiff has a recollection and has a
18 view, I will certainly hear it, otherwise we won't spend a
19 lot of time on that today. But, I do sometime in the near
20 future want to get something up on the website and usually
21 seek input from all counsel so they agree that there is a
22 fair description and summary on the website for the general
23 public having a look-see.

24 So, does the Plaintiff have a view?

25 MR. FARNEY: Your Honor, I believe Mr. Florey has

1 a copy of it. He is glancing at it now. And if you can
2 give me just a minute to glance at it?

3 THE HONORABLE JUDGE DONOVAN FRANK: There it is.

4 MR. FARNEY: He is a very quick reader, but if you
5 give me just a second to read it --

6 THE HONORABLE JUDGE DONOVAN FRANK: Right, and
7 again it may be unfair to one or all of you to say, well, do
8 we all have to go up or down today? No. But, I had raised
9 it informally at one of the last hearings and didn't
10 follow-up on it, frankly.

11 And frankly, if we would have entered out our
12 protocol order, we would have had a paragraph in there to
13 say, let's agree on a --

14 MR. FARNEY: I'm sorry, what is in the 26(f)
15 statement is fine with us, Your Honor.

16 MR. WILLIAMS: Your Honor, what I would propose to
17 do is that with respect to the folks that are on the phone,
18 and also for Hyundai and Toyota who have not yet had a
19 chance to observe or respond to that, if we could have until
20 next Monday when we have our regularly-scheduled
21 conferences, the Joint Defense Group conferences to go over
22 that, and then we will get back to you by close of business
23 on Monday, next Monday with our agreement, or with a
24 proposal?

25 THE HONORABLE JUDGE DONOVAN FRANK: That is fine.

1 Then whatever you send us, if you would send to Plaintiffs
2 counsel --

3 MR. WILLIAMS: Absolutely.

4 THE HONORABLE JUDGE DONOVAN FRANK: Then in the
5 event, whether it is unlikely or not that you say, well, we
6 agree on everything but this, if one of you has a strong
7 view that, well this should be in and they oppose it, just
8 put that in any submission. And so we will have everything
9 from both of you if there is an issue. There may not be.

10 And so then we will go ahead and make a decision
11 to get something up on the website. Like I said, this case
12 is less critical, because unlike the other MDLs I have had,
13 I haven't had a phone call necessarily -- that does not
14 necessarily mean there are no issues at all, but unlike
15 prior MDLs, we will get calls or an accusation made that,
16 well, when was somebody going to inform us of the case? And
17 we haven't had that and probably won't have it here just
18 because of the nature of who all of the parties are.

19 It is not likely to come up as it does when there
20 are stand-alone individual entities who are not businesses.
21 So, that sounds like a good plan. We will go with that
22 timeline. Mr. Farney, is that agreeable?

23 MR. FARNEY: Yes, Your Honor, that is fine.

24 THE HONORABLE JUDGE DONOVAN FRANK: All right.

25 Now, let me go to the Plaintiff, then. I don't believe that

1 other than signing off on that stipulation as we discussed,
2 that the order was submitted by Plaintiff and then -- is it
3 Xata? I could have mispronounced it, and I discussed a
4 modification to paragraph 3 just accepting responsibility if
5 there is any discovery that is needed, because something
6 changes, whether that comes from Plaintiffs' side of the
7 aisle or defendants, that I would just -- I will modify that
8 language to say that it will come through the Court here.

9 I think it is our responsibility to work with the
10 parties. So, if we can avoid having either party utilizing
11 the Rule 45, the whole third-party subpoena process, both in
12 an MDL and non-MDL conference can get quite cumbersome and
13 can get expensive depending upon the reaction of certain
14 parties or their counsel.

15 We will go ahead and get that taken care of today,
16 unless counsel for Plaintiff or for Xata wants to be heard
17 on that, we will go ahead and get that filed today.

18 Anything further by Plaintiffs counsel?

19 MR. FARNEY: Your Honor, no, that is fine with us.
20 The only comment I would make to the Court is that we do
21 anticipate having a limited amount of discovery with some of
22 those third parties. We explained that to Xata. We agreed
23 that we will go to Xata first for any of that and if they
24 have it, we are happy to get it from them.

25 But, I think there are some things, particularly

1 some sales information, some things like that that we need
2 from those third parties that will be pretty limited, as
3 limited as we can make it, but there will be some. I didn't
4 want to imply by this agreement that there won't be some.
5 And Xata is aware of it.

6 THE HONORABLE JUDGE DONOVAN FRANK: All right.

7 MR. FLOREY: Yes, Your Honor. And we don't agree
8 that customer sales information is relevant, but we have
9 agreed in general that to the extent the Plaintiff has a
10 limited targeted discovery request, we will consider it.
11 And we agree that if we are unable to resolve that
12 difference we will bring it to Your Honors to resolve the
13 dispute rather than using the Rule 45 process. That is
14 acceptable.

15 THE HONORABLE JUDGE DONOVAN FRANK: And we will
16 give you, you know, expedited access to the Court, here, so
17 you won't get a response saying, we will see you in
18 six weeks, or something like that. That won't happen.

19 MR. FLOREY: Thank you very much.

20 THE HONORABLE JUDGE DONOVAN FRANK: All right. I
21 will start then with the Plaintiff. Are there other agenda
22 items you would like to put before the Court, whether it was
23 something that happened back there or something that did not
24 happen back there?

25 MR. FARNEY: No, Your Honor, Plaintiff doesn't

1 have anything else.

2 THE HONORABLE JUDGE DONOVAN FRANK: For the
3 Defense?

4 MR. WILLIAMS: No, Your Honor.

5 THE HONORABLE JUDGE DONOVAN FRANK: And for the
6 counsel on the telephone, is there anything that you would
7 like to inquire of the Court of? Or that assumes you have
8 been able to hear everything that has occurred here. Any of
9 you have any requests or issues you want to bring to the
10 Court's attention?

11 Maybe I should go right down the line so everybody
12 doesn't speak at once. Maybe in the same order you
13 introduced yourselves, anything that you would like to
14 address to the Court or to the parties this morning?

15 MR. RUSNAK: Your Honor, this is Eric Rusnak with
16 K & L Gates. I don't have anything. Thank you.

17 THE HONORABLE JUDGE DONOVAN FRANK: All right.
18 Anyone else on behalf of your clients?

19 MR. DESAI: Your Honor, this is Sam Desai for
20 Fleetmatics and SageQuest. We were able to hear everything
21 today and we don't have anything further.

22 THE HONORABLE JUDGE DONOVAN FRANK: All right.

23 MR. DOYLE: Your Honor, this is Scott Doyle and
24 John DeFosse, of Shearman & Sterling. It sounds like you
25 did all the heavy lifting in chambers. And we heard

1 everything and we appreciate it, and we have nothing to add.

2 THE HONORABLE JUDGE DONOVAN FRANK: And I am sure
3 you can tell -- you can get a sense of it here in the
4 courtroom that obviously some of these things they will make
5 sure they keep you apprised at, because that benefits
6 everyone. Judge Rau, do you have anything else?

7 THE HONORABLE MAGISTRATE JUDGE RAU: I have
8 nothing further.

9 THE HONORABLE JUDGE DONOVAN FRANK: I would like
10 to -- I appreciate the parties taking the time between the
11 in chambers conference and the courtroom of working out what
12 I think is a manageable schedule for July 11th.

13 We will get the orders out, both the Stipulated
14 Order and then the Scheduling Order that really sets up some
15 of the protocols, and most of it everyone is working with.
16 So, I don't think there will be any issues there.

17 The Court doesn't have anything else, unless
18 either party does, and I think you have indicated not.

19 I don't want to create an issue where there isn't
20 one before we adjourn, but I want to acknowledge out of
21 respect, and it may not be the lawyers today on the phone,
22 but I do acknowledge, and whether we should make a change
23 sometime in the future, whether it is by phone, or we do
24 frankly speaking have the video capability and I know
25 sometimes Judge Fallon and others have been using that on

1 MDLs.

2 I don't know if I had the request recently, but I
3 have had the request -- I didn't have it on the Guidant case
4 where whether or not lawyers could participate -- and I
5 admit I didn't consult Plaintiffs or any of the Defendants,
6 and we may have had a request a couple of months ago, maybe
7 it wasn't a request, but saying here is the Judge's
8 position. And no, we won't have people connected in by
9 telephone for the in chambers conference.

10 Now, reasonable people might differ on that, but
11 that has been kind of the position I have taken -- maybe I
12 am just showing my age, who knows -- on the theory, I will
13 be candid about it, that I think it is easier to get to know
14 the lawyers and people are more free speaking if we are in
15 chambers, even though everybody knows they come into this
16 courtroom and repeat whatever was said in chambers.

17 But, maybe a time will come in one of these
18 conferences where if whether it is one of you on the phone
19 today or counsel say, well, frankly speaking, Judge, we
20 don't think that is a reasonable position. We would like to
21 be buzzed in when you are sitting back there in chambers.
22 We do have the capability of doing that. I do acknowledge
23 that has been our general approach.

24 So, I guess if anyone feels strongly in the
25 conferences to come, that someone should be able to phone in

1 and take part in some way on the in-chamber conferences,
2 then I guess I will hear from you. So, and either I will
3 say yes or no or maybe. So, thank you all.

4 Absent anything further, we will stand adjourned.
5 You can expect to hear from us in the near future. And for
6 those of you who are here from out of town, safe travels,
7 everyone. We are adjourned. Thank you.

8 (Adjournment.)

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12 I, Jeanne M. Anderson, certify that the foregoing
13 is a correct transcript from the record of proceedings in
14 the above-entitled matter.

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17 Certified by: s/ Jeanne M. Anderson
18 Jeanne M. Anderson, RMR-RPR
19 Official Court Reporter
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