

EXHIBIT 7

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CATCH CURVE, INC.,	)	
Plaintiff and	)	
Counterclaim Defendant,	)	
-vs-	)	Civil Action File
INTEGRATED GLOBAL CONCEPTS,	)	No. 1:06-cv-2199-AT
INC.,	)	
Defendant and	)	
Counterclaim Plaintiff,	)	
INTEGRATED GLOBAL CONCEPTS, INC.,	)	
Counterclaim Plaintiff,	)	
-vs-	)	
J2 GLOBAL COMMUNICATIONS, INC.,	)	
ET AL.,	)	
Counterclaim Defendants.	)	

Transcript of Telephone Conference Proceedings
Before the Honorable Amy Totenberg
United States District Court Judge
Thursday, May 3, 2012

APPEARANCES:

ON BEHALF OF THE PLAINTIFF/COUNTERCLAIM DEFENDANT:

Brian R. England, Esq.
Dan R. Gresham, Esq.

ON BEHALF OF THE DEFENDANT/COUNTERCLAIM PLAINTIFF:

James Heiser, Esq.
Robert J. Schneider, Esq.
Michael J. Powell, Esq.

Elise Smith Evans, RMR, CRR
Official Court Reporter
United States District Court
Atlanta, Georgia

1 (Thursday, May 3, 2012; Atlanta, Georgia.)

2 THE COURT: Good afternoon. Thank you for your
3 patience.

4 Could we get everyone just to do a bit of a roll call
5 so we can understand who's on the phone? And, then, it's been a
6 long day here, so would everyone, each time you speak, be sure to
7 identify yourselves so the court reporter can catch who's
8 speaking?

9 MR. POWELL: Your Honor, this is Mike Powell, local
10 counsel for Integrated Global Concepts.

11 MR. GRESHAM: This is Dan Gresham, local counsel for
12 Catch Curve and j2.

13 MR. ENGLAND: This is Brian England from Sullivan &
14 Cromwell calling from Los Angeles on behalf of j2.

15 MR. HEISER: This is Jim Heiser from Chapman and Cutler
16 calling from Chicago on behalf of IGC.

17 MR. SCHNEIDER: Also in Chicago, Bob Schneider on
18 behalf of IGC.

19 THE COURT: Okay. Anybody else?

20 MR. ENGLAND: Your Honor, this is Brian England from
21 Sullivan & Cromwell.

22 I have Eddie Johnson here who works with us on the
23 case, but has not appeared formally in the case.

24 THE COURT: All right. Very good.

25 All right. All right. So, it appears there are two

1 major issues and that they really are ones connected to IGC's
2 counterclaims. So, the first one is the scope of time. Is that
3 right?

4 UNIDENTIFIED COUNSEL: That's correct.

5 UNIDENTIFIED COUNSEL: That's correct.

6 THE COURT: I'm sorry. Remember just to identify
7 yourself when you're talking.

8 THE COURT REPORTER: Who was that that just spoke?

9 MR. ENGLAND: Brian England. And somebody else said
10 the same thing I did.

11 THE COURT: All right. Very good.

12 Okay. Now, as I understand it on the -- IGC wants to
13 go past 2009 and Catch Curve says nothing past 2009 is relevant.
14 And I'm -- and part of -- as I understand it again, part of Catch
15 Curve's argument why nothing is relevant after that time is --
16 well, at least with respect to the year 2010, that after the --
17 the D.C. court, federal court, ruled that no further lawsuits
18 were brought?

19 MR. ENGLAND: This is Brian England, Your Honor.

20 That's correct. Following the federal circuit's ruling
21 with respect to the scope of the patents, the licensing program
22 for the -- and all efforts to enforce these patents with the
23 exception of this IGC litigation has ceased, and there have been
24 no more efforts to license those patents, certainly that I'm
25 aware of. And, so, that's why we believe information that would

1 be gathered by the search terms for those time frames would be
2 outside the scope, but not relevant and very burdensome.

3 THE COURT: Is it correct, though, that you brought an
4 additional claim after 2010 against IGC?

5 MR. ENGLAND: Well, this claim has been pending before
6 that time. It's been pending since I believe 2006. This case
7 has remained pending, but we have not filed new claims on these
8 patents against anyone.

9 THE COURT: Because what I'm looking at is in the April
10 30th letter submitted by Mr. Heiser on the third paragraph it
11 says: Notwithstanding this ruling, j2 has continued to pursue
12 IGC. Further, in November 2011, j2 charged IGC with infringing
13 patents which are not even mentioned in its complaint.

14 MR. ENGLAND: Well, this is Brian England again, Your
15 Honor.

16 What that's referring to, I believe, is that when we
17 provided the detailed infringement contentions, we included
18 contentions that ran on the continuation patents to this family.

19 THE COURT: All right.

20 MR. ENGLAND: But it has not --

21 THE COURT: Try again --

22 MR. ENGLAND: -- filed a new lawsuit against anyone.
23 Just this same lawsuit from 2006.

24 THE COURT: So, you're just simply saying that these
25 were -- there were no new claims added?

1 MR. ENGLAND: That's the same patent claim. It's
2 just -- it was expanding -- we were asked to provide detailed
3 infringement contentions, so we did that for the patents. And,
4 then, we did it for the patents that were the same continuation,
5 in part -- same family of patents, so that we had given a
6 complete scope of infringement contentions.

7 THE COURT: All right. Let me hear from IGC about
8 that.

9 MR. HEISER: Your Honor, this is Jim Heiser from
10 Chapman and Cutler.

11 I just want to take a step back. This isn't a
12 situation where IGC is asking j2 to review a large number of
13 documents. The question is that j2 won't even collect the data
14 to see whether there are a large number of hits or a large number
15 of documents that have to be reviewed. So, we don't know whether
16 we're talking about ten documents, a thousand, 100,000. The
17 problem is that they won't even collect that to determine what
18 the burden is.

19 And, so, you know, we would certainly accommodate if
20 there was a large number of hits -- and we've done this
21 throughout the process so far -- you know, a way to narrow that,
22 narrow the search, to focus it on whatever is relevant since
23 2009. But I don't think it's fair, you know, to even discuss
24 with -- what the burden is until we know what the actual, you
25 know, burden would be on j2.

1 MR. ENGLAND: Your Honor, this is Brian England.

2 The burden is that this is a huge burden to collect
3 that data, given its very low, if not complete irrelevancy to the
4 case.

5 THE COURT: Well, Mr. Heiser, explain to me what they
6 would be looking for. Tell me what you had in mind, because I'm
7 having to sort of reacquaint myself with the case after we
8 attempted mediation. So, just remind me what you think this
9 would mean that wouldn't be so burdensome at this juncture.

10 MR. HEISER: Well, sure. Your Honor, there's really
11 two large tracks to this case now. The first is the patent side,
12 and that deals with from our standpoint what's called the
13 exceptional case argument. And that goes to the -- j2's conduct
14 after the federal circuit ruled in the case. And namely, that is
15 charging us with infringement contentions.

16 I'm not -- I don't necessarily agree with Mr. England's
17 characterization about, you know, these patents not being
18 mentioned in the case. They have to be in the complaint in order
19 for that to have any kind of a basis for a claim against IGC.
20 And, so, I think that, you know, with respect to that issue
21 alone, you know, we have relevant ESI from after the federal
22 circuit ruled.

23 Second, you know, the infringement contentions that
24 they served deal with something called fax-to-fax. So, they've
25 sort of changed -- sort of changed the story from where we were

1 originally and they've said that we have sort of an antiquated
2 fax-to-fax system in our operations. And the concern there is
3 that they licensed these patents from -- they licensed our
4 technology in the year 2000. And, so, we think that the decision
5 to change the story, to charge us with fax-to-fax infringement,
6 which happened sometime in 2010 or 2011, you know, is going to be
7 relevant to our exceptional case argument.

8 And, then, separate and apart from the patent side are
9 the Handgard claims which the Court has upheld. And with respect
10 to those, you know, there's been a lot of acquisitions. You
11 know, one of the key issues in our case is the market share that
12 j2 has, market power. They've made two of the largest
13 acquisitions in the market in 2010. Both of those were
14 defendants on these patents. And, so, I think it goes to sort of
15 the scheme of monopolizing the market.

16 And, finally, you know, I think that there's also this
17 aspect of the counterclaim that the scheme is ongoing where the
18 patents are -- they've leveraged other patents that they own to
19 sue IGC and other competitors in the market in order to
20 monopolize. And IGC was actually just sued, and I think that's
21 what the Court was getting at initially, that j2 filed a new
22 patent infringement lawsuit against us on some of their own
23 patents in the Central District of California.

24 And, so I think that, you know, when we look at all of
25 these -- you know, these things together, certainly it meets the

1 relevance standard. And, so, without any way to actually
2 evaluate j2's burden, because they won't even collect the data,
3 they haven't really articulated what the burden of that is.
4 Really, all that entails is having their IT department image a
5 hard drive and then run IGC's proposed search terms to determine
6 what that burden is.

7 So, I think that when you look at a lot of these other
8 issues -- and I'll just note finally that, you know, this is
9 really just j2's position on the merits that they, you know,
10 stopped the licensing and whathave you. We've tried to confirm
11 that with them and I don't think that, you know, they've made any
12 representations to that effect. And, you know, I think that
13 there's a lot of concerns there. One I'll just note is that the
14 Comodo case, which they complain about as a search term, you
15 know, they say that they weren't -- that they never sued Comodo
16 for infringement. But what we've been (unintelligible) is that
17 they filed a lawsuit in this court, case number 2007-cv-489
18 against Comodo. So, I think that there's definitely some
19 concerns with the relative burden.

20 And, so, for those reasons I think that they should be
21 ordered to collect the post-2009 at least ESI.

22 THE COURT: Well, what I'm just -- and I'm sorry. Just
23 having walked out of a sentencing hearing, my -- I may not be
24 as -- functioning on as many wheels as I need to here. But
25 I'm -- tell me specifically, you know, what this means. And --

1 if I were having to do the search that you're asking for, what --
2 what is the specific items that you are looking for, what are the
3 search terms that you're asking for, and -- so that I can
4 understand the argument of burdensomeness or not.

5 MR. HEISER: Well, that's just the thing, Your Honor,
6 is if we don't have to evaluate what the burden is because j2
7 won't tell us the number of search hits. They won't collect the
8 data so we can make that determination.

9 MR. ENGLAND: Your Honor, this is Brian England. Maybe
10 it would be useful for me to jump in here for just a second.

11 THE COURT: All right. Go ahead.

12 MR. ENGLAND: The first thing is just a quick point of
13 clarification. Mr. Heiser is correct that j2 did acquire Venali
14 and Protus. However, neither one of those companies were
15 defendants in lawsuits alleging these patents at the time of the
16 acquisitions. In fact, the Protus case had been dismissed years
17 before. And the Venali case is the case in which the federal
18 circuit ruled on the construction of these patents. So, that
19 case had also been taken care of significant amount of time
20 before the acquisitions. And that's our point about this -- this
21 having stopped.

22 Second of all, as to the burden, this is a large number
23 of custodians and they are proposing -- their search term list, I
24 believe, is approximately 200 search terms long. So, there is
25 a -- it's not just one hard drive to get. It's a lot of hard

1 drives. It's very expensive to do that. And it does impose a
2 large burden. And, again, given the relevance of the -- the low
3 relevance that these documents would have to a scheme, as they
4 call it a quote-unquote scheme, that ended by the end of 2009.

5 THE COURT: Why wouldn't 2010 at very minimum be a more
6 appropriate date? When was the decision of the federal circuit?

7 MR. ENGLAND: January 2010. I don't have it in front
8 of me, but I believe that's the date.

9 MR. HEISER: Your Honor, the concern there -- and,
10 again, this idea that Protus and the Venali acquisition, that's
11 just j2's position on the merits. It doesn't have anything to do
12 with whether we should be entitled to discovery. You know, they
13 have to articulate to the Court a specific burden, like IGC is
14 asking them to review millions of documents, but they can't do
15 that because they haven't even collected it. You know, this idea
16 that there's a large number of custodians is important, too,
17 because, you know, we don't even -- we don't even have an
18 agreement. We can't even get them to really articulate to us,
19 you know, a final number of custodians that we're talking about.

20 We are absolutely amenable to, you know, working with
21 them to narrow this -- this search, whether it's between time
22 periods or whathave you, but I don't think it's fair to sort of
23 cut us off from discovery just based on j2's position that the
24 Protus and the Venali, for example, acquisitions didn't have
25 anything to do with them being sued. That's our theory of the

1 case was that they were sued on these patents and then they were
2 sued on other patents. And that's what's happening to us right
3 now.

4 And, so, I just -- I just can't get past -- even if we
5 assume a burden on j2, it was a publicly traded company. And IGC
6 has five employees and it's a tiny company. Even if we assume
7 that, you know, I still don't think that changes the fact that,
8 you know, it's relevant to our theory of the case.

9 THE COURT: Well, let's talk a little bit about the
10 other dispute which seems to be centrally connected to this,
11 which is just about the claims themselves, I guess. Is that
12 right? All right.

13 UNIDENTIFIED COUNSEL: You mean --

14 THE COURT: I'm sorry. You're just breaking up. Just
15 one moment.

16 What -- let me get a better understanding as to why
17 Catch Curve won't provide information as to other companies it
18 may have had contact with regarding claims of patent
19 infringement.

20 MR. ENGLAND: Well, this is Brian England, Your Honor.

21 I'm not sure I understand your question because I don't
22 think that's what we've said. What we've said was we objected to
23 including companies on the search terms that are not even
24 remotely involved with the fax space in any way; for example, 29
25 of those companies that are not -- not related or participating

1 in the fax market in any way. And, so, we think that including
2 those in the search terms and in the expanded set of data to be
3 collected will produce a huge number of hits and is a very
4 burdensome thing, when there has yet to have been an articulation
5 that I'm aware of as to how companies that are not even in this
6 space could be relevant, which is the first step to justifying
7 the discovery.

8 MR. HEISER: Your Honor, this is Jim Heiser.

9 I mean, again, we have the same situation where we're
10 speculating about whether there's a burden for j2. What I would
11 propose is on the search terms, which is what we've always been
12 amenable to doing, that j2 collect the data. And, then, if what
13 Mr. England is saying plays out -- I mean, part of the issue,
14 too, is that, you know, we have to define who was in the relevant
15 market and who is not. And that's something that we're going to
16 work with with expert witnesses and try to make a determination
17 based on the information that we get in discovery whether they
18 should be included or excluded. We know that these are companies
19 that were acquired by j2, and we have to make a determination in
20 part because j2 might assert to us that these should be included
21 and that they changed the relevant market or changed j2's share
22 of that market.

23 So, I mean, again, we're evaluating this in a vacuum.
24 But I think that, you know, going forward with respect to search
25 terms, you know, we can always discuss that or discuss narrowing

1 those in a way -- and I should point out, Your Honor, that we've
2 basically agreed to everything that j2 has asked of us so far,
3 you know, from our standpoint. And, you know, I just think that,
4 you know, when we talk about relative burden, you know, I feel
5 like we can get past the search terms dispute if we can just not
6 evaluate these things in a vacuum. And -- I mean, this is my
7 first time really having to fight about search terms in this
8 manner. You know, I feel like, you know, we -- there's just --
9 there just can't be enough of a showing of a burden until the
10 data is actually collected.

11 MR. ENGLAND: Your Honor, this is Brian England again.

12 If I could very briefly respond, because I think it's
13 not quite wholly accurate to say that it's in a vacuum, and I'll
14 be happy to tell the Court why. As we have made clear numerous
15 times in filings with the Court, j2 has in fact already litigated
16 these claims multiple times here in the Central District of
17 California. So, we are well aware of what the volume of
18 documents and the burden would be. In fact, we have been
19 prepared since right after we got the document requests -- I
20 believe there's about 90 of them approximately from IGC -- to
21 produce almost a million pages of documents that were already
22 produced in the identical litigation here. So, we have a very
23 good sense as to what the volume was. And of those, that's a
24 subset of the documents that were collected and reviewed.

25 So, the burden here is in fact enormous. It is not a

1 small -- this is not just a small universe of documents. We're
2 not talking about one custodian with one hard drive. The
3 responsive documents in the identical litigation were
4 approximately a million pages of responsive documents. So, it's
5 not quite clear as -- or fair to say it's in a vacuum.

6 We've presented all of that information. We're
7 prepared to produce all of that information immediately, and
8 which would help get us a long ways down the road where we could
9 then determine whether or not there's any relevance to these
10 other documents, which again we submit there is not.

11 MR. HEISER: Your Honor, just real briefly. Jim
12 Heiser.

13 Again, that's the whole purpose of the protocol. That
14 was where we started in January when we tried to broach this
15 subject was to prevent this scenario where we had a million
16 documents from another case. We're trying to propose search
17 terms. So, on the one hand j2 says it's too burdensome to run
18 our search terms, you know, and then on the other we get this
19 argument that there's this cache of documents that we can just
20 turn over. I just don't think it -- I think that the thing to
21 do, the fairest -- the most fairest thing to do is to order j2 to
22 collect the 2009 data, allow the parties to confer about the
23 search terms, and, you know, see if we even have a real dispute
24 here.

25 THE COURT: All right. I missed something there, then.

1 You say order -- aren't they already going to be producing the
2 2009 data?

3 MR. HEISER: The pre -- as we understand it, the
4 pre-2009 data was collected from another case where they went
5 through this with different search terms. So, that production,
6 it could be over-inclusive and under-inclusive because, you know,
7 their position is that, you know, it's the same case. But it's
8 really not the same case.

9 And, you know, we have a lot of separate issues in this
10 case with respect to changes that have happened in the market
11 after 2009. We have the fact that they basically licensed our
12 software. I feel like, you know, that's -- that's the reason why
13 we do an ESI protocol is we come to a determination that, you
14 know -- we come to a determination that -- you know, what the
15 appropriate scope is for this case.

16 MR. ENGLAND: Your Honor, this is Brian England.

17 Your question was correct. Our dates include the 2009
18 dates, that's up through the end of 2009.

19 THE COURT: So, is there -- am I -- is there a dispute
20 as to whether you're going to do a new run or not? Are you
21 saying you won't do a new run, Mr. England?

22 MR. ENGLAND: Well, if you -- what you mean by new run,
23 the dispute is that we believe that the data through -- up
24 through the end of 2009 is what contains all of the potentially
25 relevant stuff. We -- what we are opposing is being forced to go

1 pull 2011 and '12 and '10 materials on the grounds that that is
2 burdensome and there's no relevance shown to that. We have the
3 documents up to 2009, and prior to the dispute that arose about
4 whether or not that was -- was sufficient, we were prepared to
5 produce almost a million pages of documents immediately.

6 THE COURT: Well, I just -- what I heard Mr. Heiser
7 saying was that you wanted to give him the documents or -- and
8 the -- the results of the search from another case, but you were
9 not willing to do it for their search terms, which doesn't -- I'm
10 not sure that's really what he intended to say, but that's what I
11 heard.

12 Mr. Heiser?

13 MR. HEISER: That's correct, Your Honor. It -- you
14 know, it could be over-inclusive and under-inclusive. And, you
15 know, we don't want a lot of stuff that we don't think is
16 relevant to our case, but at the same time, we want to capture
17 things that are relevant to our case and that, you know, every
18 piece of litigation should be treated differently. And we've
19 offered again to work with them on the search terms to try to
20 limit the burden, you know, of (unintelligible) going to have to
21 redo with respect to the -- the prior production. But at the
22 same time, we think that we're entitled to a protocol for this
23 case that covers through that post-2009 series.

24 MR. ENGLAND: Your Honor, I think -- this is Brian
25 England again.

1 I think maybe I misspoke and need to clarify. We have
2 agreed to run their -- the new agreed-upon search terms through
3 the old database, make sure that it collects everything that it
4 would. The -- I will represent to the Court that the document
5 requests from the two cases are almost identical and are hugely
6 overlapping, if they're not perfectly identical. But we are
7 willing to run the new IGC search terms over our date --
8 collective database just to make sure that no potentially
9 responsive document was not previously produced. And we remain
10 willing to do that.

11 What I'm saying is that in some ways it's not useful to
12 do that because it is already going to be a subset of what we're
13 already prepared to produce to them. But we are willing to do
14 that and limit the production to take out documents we would have
15 otherwise produced that they now say would not be hit by their
16 search terms. We are happy to do that. The dispute really
17 focuses on the 2010, '11, and now '12 data.

18 THE COURT: Well, as I understood the submissions, your
19 position was -- meaning Catch Curve's position, was that you had
20 not brought any claims against any other entities. Why -- if
21 that's so, why would you not certify that and, I would say, not
22 just have that as to litigation, but any demand letters?

23 MR. ENGLAND: Your Honor, I am happy to confirm with
24 them, and I'll even do a double-check to make sure. But I am
25 unaware of any lawsuit brought after the federal court -- after

1 the federal circuit ruled on these patents, any lawsuit that was
2 brought enforcing these patents. And I should know about it if
3 there was one, and I'm unaware of it. But I'm happy to do
4 another confirmation of that and to provide Mr. Schneider and Mr.
5 Heiser with written confirmation of that fact.

6 MR. HEISER: Your Honor, it's not just the filing of a
7 lawsuit, but rather targeting people with demand letters. And I
8 just want to go back again, you know, to our theory of the case,
9 which is that it's not just the AudioFAX patents, but leveraging
10 patents such as how we've been sued in California now on a second
11 set of patents after -- like, for example, a lot of these folks
12 settled in the Georgia litigation and then they were sued again
13 in sort of this wave. And that's what happened to Venali and
14 Protus, which is that they were sued and they either settled or
15 took a license or fought for a long time. And, then, they get
16 out of the case in Georgia on the AudioFAX patents, which are the
17 patents-in-suit here, and then they're hit again on other patents
18 out in California or in some other venue. And that's -- and
19 that's where I think the distinction is.

20 But specifically, you know, it's not just litigation,
21 but, you know, whether they targeted, they sent demand letters,
22 they threatened, because this litigation has all been a public
23 record. They see what --

24 THE COURT: Yeah. I understand that, and I didn't --
25 and that's what precisely I said, why couldn't they verify

1 exactly who they had sent demand letters to. Are you wanting
2 more than demand letters?

3 MR. HEISER: Right, Your Honor, because I think that,
4 you know, again we're looking at this in a vacuum. Without
5 knowing what the search terms -- what the number of hits are, we
6 don't know what relevant ESI is. So, we've clearly agreed to
7 search parameters that we think are going to return putatively
8 relevant documents. If there are a lot of those for post-2009,
9 you know, again, it's -- it just shows that there's more there
10 than what we're looking for.

11 THE COURT: All right. Try to be very concrete with
12 me. Okay? Give me an example of what you're saying here,
13 because I'm -- I'm struggling. And I -- I understand -- and I,
14 relatively speaking, understand your theory of the case. But I
15 just -- what I don't understand is why we -- why couldn't there
16 be just a general discovery request, independent of the ESI
17 protocol, requesting Catch Curve to identify every entity with
18 which it has made a -- to which it has made a -- any form of
19 demand in connection with any -- whatever the patents are that
20 you are concerned with that fit your theory of the case, and then
21 go from there.

22 MR. HEISER: Well, Judge, I don't think that would
23 capture what is relevant, Your Honor.

24 THE COURT: All right. Well, then, that's why I'm
25 trying to get you -- I realize I'm missing something, so just

1 concretely kind of take me through that and explain to me what
2 would produce that type of information.

3 MR. HEISER: Well, presumably, j2's management have had
4 discussions about how to formulate litigation strategy against
5 IGC. They have licensing agents that go out and target people to
6 determine whether they're going to be acquired or whether they're
7 going to take a license with the patent. You know, all of
8 that -- and I'm not just talking about on the AudioFAX patents,
9 but on the j2 patents and the Bobo patents, there's also what led
10 up to -- again, I don't want to lose sight of the pending
11 infringement portion of the case. You know, we're still charged
12 with patent infringement on these cases -- on these patents.
13 And, so, we're still entitled to discovery in terms of what led
14 up to the decision to charge us with this new fax-to-fax theory
15 in 2011, you know, why we had to devote resources to patents that
16 aren't patents-in-suit.

17 All of that electronic discovery, the e-mails and other
18 evidence, you know, I think it's -- it goes to -- it goes to
19 support our exceptional case arguments and it goes to support our
20 antitrust claims. And, so, when we talk about relevance, I
21 mean -- I mean, it's not like we have to prove our case in
22 this -- in this discovery motion. I think it's -- you know, just
23 from what we've discussed, I mean, you can see we have a dispute
24 here.

25 THE COURT: No, I understand --

1 MR. ENGLAND: Your Honor, this is Brian England. If I
2 might briefly interject.

3 THE COURT: Yes.

4 MR. ENGLAND: When I said I would identify everyone who
5 had been sued on the Catch Curve patents, I meant to include your
6 proviso that sued or sent the cease and desist letter of any kind
7 on the Catch Curve patents. I will do both of those. I did not
8 mean to inadvertently include those. I mean, as for the rest of
9 this -- of the description that Mr. Heiser just gave you, the
10 overwhelming majority of the types of document that he has -- I
11 hypothesize might exist would all be privileged anyway and
12 wouldn't be producible or discoverable in any event. Certainly
13 all of the discussions about j2's management and their lawyers
14 and their agents about how to license the patents.

15 Now, again -- but to be clear, there are no such
16 communications with respect to the AudioFAX patents post-2009
17 because the program terminated with the finding by the federal
18 circuit.

19 MR. HEISER: I mean, we're still subject to litigation
20 on this, Your Honor. I don't think you can accept their
21 representation that there's no third-party communications. And
22 we've gone -- we're so far beyond, you know, a relevance
23 discussion.

24 THE COURT: All right. Well, I'm going to go offline
25 for a minute or two and look at your letter again. So, just be

1 aware that if I can -- when I go offline, I can still hear you,
2 so don't have any private conversations --

3 MR. HEISER: Thank you, Your Honor.

4 THE COURT: -- that you wouldn't want me to hear.

5 Okay?

6 MR. ENGLAND: Thank you, Your Honor.

7 (A pause in the proceeding was had.)

8 THE COURT: Mr. England?

9 MR. ENGLAND: Yes.

10 THE COURT: Why wouldn't it be relevant to look at
11 post-2009 conduct since j2 has filed this new patent infringement
12 lawsuit in the Central District of California?

13 MR. ENGLAND: Well, it might be relevant, Your Honor,
14 in that case there, but the case that was just filed here in the
15 Central District of California in approximately the last two
16 weeks could not have been the basis on which IGC has been
17 asserting its monopolization claims for the past four years. So,
18 it would not be relevant in the case in Georgia. Now, maybe at
19 some point those cases will converge, but -- sorry. I think
20 someone started to --

21 THE COURT: Let me --

22 MR. HEISER: I'm sorry.

23 THE COURT: Go ahead, Mr. Heiser. I was just trying to
24 explain that if -- we can't talk over each other because then no
25 one can -- no one's voice comes through, so just be careful on

1 that. Go ahead, Mr. Heiser.

2 MR. HEISER: Sorry, Brian. Were you finished?

3 MR. ENGLAND: I believe so. Go ahead.

4 MR. HEISER: Okay. Your Honor, I would just point out
5 that, you know, that's not actually a correct statement. We were
6 targeted on these patents in 2002, 2003, and -- but to your
7 substantive point, I mean, I think that's the issue. If they're
8 willing to produce the -- this post-2009 information in the other
9 case, there's really no -- no net burden to j2 to produce it now.

10 MR. ENGLAND: Your Honor, this is Brian England again.

11 Two quick things. First, I don't -- I'm not sure what
12 they mean by targeted by these patents in 2002, but these patents
13 were -- many of them were in re-exam, the j2 patents, during that
14 time and there was no active litigation over them while they were
15 stayed pending re-exam.

16 And, second, there may or may not be relevant to these
17 documents in the -- in the j2 cases. It depends entirely on what
18 claims IGC brings. They have not yet responded to the complaint,
19 so any speculation on that is really just speculation at this
20 point. We have not -- we don't know what those would be. But as
21 it pertains to this lawsuit, that's why we believe that post --
22 all 2010 forward, post-2009 documents, are irrelevant to the
23 allegations regarding a alleged monopolization scheme that ended
24 in 2009.

25 MR. HEISER: And, finally, Your Honor, this is just --

1 that's just -- and I don't want to repeat anything I've said
2 previously, but the j2 patents and the Bobo patents have always
3 been an issue in this case. It's paragraph 90 -- and 89 and 90
4 in our counterclaim. It goes back to what I said before about
5 the waves of litigation and how that is part of the scheme to
6 monopolize. And I feel like from a discovery standpoint and a
7 relevance standpoint, you know, we may disagree on the merits,
8 and we definitely do, but from a discovery standpoint, I think
9 that that establishes that at least it's relevant.

10 THE COURT: Okay. What I want to do at this juncture
11 is this. First of all, Catch Curve should verify what companies
12 they have filed any type of patent litigation against from 2009
13 forward. And if you haven't filed any, that's fine. If you have
14 some -- but this should not be a difficult thing. And I don't
15 mean just filing actual lawsuits, but demand letters. I am sure
16 that that exists. And, so, let's understand what the universe
17 looks like here.

18 And just -- and if there's litigation as well that
19 ensued, then that should be indicated on your little -- on the
20 chart. And that should -- counsel should submit that and
21 consider it a -- something that has been properly verified by an
22 individual in the -- in the company and represents an honest and
23 full search.

24 I'm finding the letters at this juncture, other than --
25 not sufficient to help me really make a final decision here. So,

1 I think it would be probably helpful if I could get a -- a
2 coordinated admission that -- where IGC would state the issue.
3 Please try to provide me a little more concrete understanding of
4 your theory of why something is -- I know you think it's a done
5 deal and clear why it's relevant, but how it spins out, how it's
6 relevant, how it would -- why it's essential, and just give me a
7 few concrete examples, because I'm not living and breathing this
8 case like you all are. And, so, some concrete examples would be
9 very helpful. And, then, I would like, following that, the --
10 the response from Catch Curve.

11 This can be a 20 page document. Ten pages of it can be
12 from each of you. Do you think that you can get across what you
13 need to in that page -- amount of pages?

14 MR. ENGLAND: I'm sorry, Your Honor. This is Brian
15 England. You broke up right as you said that. I couldn't hear
16 how many pages you said.

17 THE COURT: Twenty. Ten pages for each side. Do you
18 think you can get across what you need to?

19 MR. ENGLAND: From our position, yes, we can.

20 MR. HEISER: Certainly, Your Honor.

21 THE COURT: Okay. All right. And that way I can sort
22 of have each position together and a concrete example. And if
23 you end up needing a few more pages, let us know, but I --
24 hopefully that will do it.

25 Can the names of the companies be provided within 10

1 days?

2 MR. ENGLAND: This is Brian England.

3 Yes, Your Honor. Within 10 days we will provide a list
4 as you requested.

5 THE COURT: And if that helps, once it's provided, to
6 resolve any portion of this, obviously let us know. So, why
7 don't you -- all right. If you could get that to us on -- on
8 Thursday the 17th, and the -- which makes the other -- the
9 listing of the companies due -- all right. Well, let me -- then,
10 why don't you have the -- just simply let's make it then due on
11 Friday instead, Friday the 11th, and then the -- that makes a
12 more sensible schedule.

13 MR. ENGLAND: Your Honor, this is Brian England.

14 I'm sorry. I'm a little confused. You want us to
15 provide the list of the names to them by the 11th?

16 THE COURT: Right.

17 MR. ENGLAND: And, then, they'll provide us with their
18 portion of the joint submission and then we'll respond to that?

19 THE COURT: No. I'm hoping that you can collaborate on
20 it so that you just start working on the joint -- that they
21 should -- you can do internally whatever schedule you want, but
22 I'm hoping to have in my hands the joint submission by the 17th.

23 MR. ENGLAND: Okay. We'll work with the parties to
24 make sure that that's done.

25 THE COURT: Okay.

1 MR. ENGLAND: That's not a problem.

2 MR. POWELL: And, Your Honor, this is Mike Powell for
3 IGC local counsel.

4 On the 10 pages, do you want that in the form of
5 letters -- the way we've done it now is single spaced -- or do
6 you want it more in a pleading form?

7 THE COURT: Well, I'd like you to file it on the
8 record, and I'm -- so I think that you have to have it in a
9 pleading form. But if -- I'll give you permission, if you want
10 to use a 12 point rather than 13 point so that you don't have any
11 problems with space.

12 MR. ENGLAND: And, Your Honor, this is Brian England.

13 I understood you to mean to say that the parties -- you
14 wanted the parties to do a joint submission where IGC would set
15 out its position and then in the same document --

16 THE COURT: That's right.

17 MR. ENGLAND: -- Catch Curve would do that.

18 THE COURT: That's right.

19 MR. ENGLAND: Okay.

20 THE COURT: So I have both of your positions together.

21 MR. ENGLAND: And did you mean 5 pages each for a total
22 of 10 or 10 pages each?

23 THE COURT: No. I meant each of you will have 10 pages
24 within a 20 page document.

25 MR. ENGLAND: All right. My apologies for the --

1 THE COURT: No, that's all right. And I realize that's
2 very rough. And, you know -- let me put it this way, that should
3 be the objective. If you go over a little bit, that's fine. But
4 that should be the objective. Okay?

5 MR. ENGLAND: Thank you. I don't think it will be a
6 problem.

7 THE COURT: Because I'm trying not to drown in this,
8 but I am also trying to get a little more concrete sense of how
9 this is playing out than I could get from the submissions so far.
10 And I'll keep the submissions as well to help me understand where
11 you're at. All right?

12 MR. ENGLAND: Okay.

13 THE COURT: Thank you very much.

14 (End of proceedings.)

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1 UNITED STATES DISTRICT COURT

2 NORTHERN DISTRICT OF GEORGIA

3 CERTIFICATE OF REPORTER

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5
6 I do hereby certify that the foregoing pages are a true
7 and correct transcript of the proceedings taken down by me in the
8 case aforesaid.

9 This the 7th day of May, 2012.

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13 ELISE SMITH EVANS, RMR, CRR
14 OFFICIAL COURT REPORTER
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ELISE SMITH EVANS, RMR, CRR