

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

TECSEC, INCORPORATED,	.	Civil Action No. 1:10cv115
	.	
Plaintiff,	.	
	.	
vs.	.	Alexandria, Virginia
	.	November 18, 2016
SAS INSTITUTE, INC., et al.,	.	10:04 a.m.
	.	
Defendants.	.	
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TRANSCRIPT OF STATUS HEARING
BEFORE THE HONORABLE LEONIE M. BRINKEMA
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR TECSEC, INCORPORATED:	MICHAEL A. OAKES, ESQ. Hunton & Williams 1900 K Street, N.W. Washington, D.C. 20006-1109
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FOR ADOBE SYSTEMS INCORPORATED:	CHARLENE M. MORROW, ESQ. PHILLIP J. HAACK, ESQ. Fenwick & West LLP 801 California Street Mountain View, CA 94041 and CRAIG C. REILLY, ESQ. Law Office of Craig C. Reilly 111 Oronoco Street Alexandria, VA 22314
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OFFICIAL COURT REPORTER:	ANNELIESE J. THOMSON, RDR, CRR U.S. District Court, Fifth Floor 401 Courthouse Square Alexandria, VA 22314 (703)299-8595
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COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

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P R O C E E D I N G S

THE CLERK: Civil Action 10-115, TecSec, Inc. v. International Business Machines Corporation, et al. Would counsel please note their appearances for the record.

MR. OAKES: Good morning, Your Honor.

THE COURT: Good morning.

MR. OAKES: Michael Oakes from Hunton & Williams for the plaintiff, TecSec, Inc.

THE COURT: All right, Mr. Oakes.

MR. REILLY: Good morning, Your Honor. For the defendant Adobe, Craig Reilly, together with my cocounsel, Charlene Morrow and Phil Haack. Thank you.

THE COURT: All right. And the other defendants are not here.

MR. REILLY: That's correct, Your Honor.

THE COURT: All right, that's fine.

Well, counsel, as you know, the Fourth -- the Federal Circuit has reversed us for the second time and remanded the case, and so we're here to -- for a status hearing.

Mr. Oakes, I think I want to hear from you. In terms of the status of the case -- and when I say the case, I am speaking actually right now specifically as to Adobe, but we know that there are obviously other defendants who are in the, in the wings -- has anything changed in light of the Federal Circuit's rulings?

1 MR. OAKES: There are -- the Federal Circuit did make
2 some claim construction rulings --

3 THE COURT: Right.

4 MR. OAKES: -- and so, you know, the parties will
5 obviously need to both address those in any future proceedings
6 here.

7 We do have some discovery that's still needed going
8 forward. It has not changed our outlook on the infringement
9 part of the case. I don't know if it has impacted the
10 defendant's view of the case.

11 THE COURT: Well, I rather assumed that after the
12 remand, that you-all would have been talking to see whether
13 anything has changed in light of the fact that both sides now
14 know -- or have more certainty as to how at least most of the
15 claims that are at issue are going to be construed.

16 MR. OAKES: Absolutely. We have discussed the status
17 somewhat. I think we still are of the view that we have a
18 strong infringement case, especially in light of the Federal
19 Circuit's claim constructions. I think the defendants have a
20 view on validity that they plan to address, but other than
21 that, I think we're both of the view that more discovery is
22 needed.

23 We need additional discovery because the summary
24 judgment motion was filed sort of at the pre-discovery stage.
25 We still need discovery on the infringement issues that were

1 not addressed by the summary judgment motion as well as on
2 damages-related issues, and so there will be additional
3 discovery needed going forward, but again, I think based on the
4 Federal Circuit's ruling and the construction of the claims,
5 our infringement case has been strengthened at this point, and
6 we're looking to go forward on that at this time.

7 THE COURT: All right. So in other words, there have
8 been no discussions or even preliminary overtures as to
9 resolving the dispute?

10 MR. OAKES: I -- not, not directly between TecSec and
11 Adobe, no, Your Honor.

12 THE COURT: All right. Now, there are other -- I
13 don't know if we have other -- I mean, there are other people
14 in the courtroom -- if we have counsel for any of the other
15 defendants here. Have you reached out to any of the other
16 parties in this case?

17 MR. OAKES: I have spoken to counsel for, I believe
18 they represent Cisco and Oracle, who is trying to coordinate on
19 behalf of the remaining defendants. I think after -- there was
20 some uncertainty as to whether or not this status conference
21 was intended for Adobe or everyone, and I think once they heard
22 that we spoke with the clerk and indicated that only Adobe
23 needed to appear, they -- I think they maybe backed off for the
24 time being.

25 THE COURT: All right. Well, I read the opinion

1 carefully, and I know that you requested that another judge
2 take the case, and I take those requests very seriously in
3 terms of I understand that the, you know, the appearance of
4 impartiality is as important as actual impartiality, and
5 although I have no ill feelings towards TecSec, I must say in
6 this particular case, I really do have a very strong belief
7 that despite the Federal Circuit seeing it differently, that my
8 constructions were appropriate, and so I have decided in this
9 case that I'm actually going to reassign this case to a
10 different judge.

11 And I spoke with Judge O'Grady, who is one of our
12 more senior patent-experienced attorneys -- judges, and he's
13 very interested and willing to take the case, and so I am going
14 to recuse myself and have this case reassigned to Judge O'Grady
15 unless I hear any objection from you-all.

16 MR. OAKES: Not from TecSec, Your Honor.

17 THE COURT: How about from --

18 MS. MORROW: No objection, Your Honor.

19 THE COURT: All right, I think that's better.

20 And I'm also going to just alert him -- I mean, he's
21 obviously -- I don't know if he's actually read the opinion yet
22 or not, but the issue about whether the other defendants should
23 all be brought in now and just get this case wrapped up once
24 and for all may make some sense. It will be ultimately up to
25 him to decide how he wants to do that. So I'm going to enter

1 an order today that arranges that.

2 And the only reason I didn't tell you this ahead of
3 time, number one, I wanted to get on the record that there was
4 no objection to change of judge; and the other issue is I
5 wasn't sure whether, because it's not uncommon when a case is
6 remanded from the Federal Circuit, because the posture of the
7 case is then different and people have a certain degree of
8 certainty, that settlement happens; and so that's the only
9 reason I did not immediately advise you that I read that
10 opinion carefully and thought about it and decided it would be
11 better to have a different judge take it for the next step.

12 Having said that, I want you to know that the
13 magistrate judges here are -- and I think you-all have had
14 experience with them -- are very good at settling cases, and I
15 would certainly also, since I know this case somewhat, would
16 also be perfectly willing to sit down with you-all if you
17 needed just a third party to look at the case, but in any case,
18 that's what we're going to do.

19 So I would suggest strongly, Mr. Oakes, that you may
20 reach out to the other defendants and talk to them.

21 MR. OAKES: We will, Your Honor.

22 THE COURT: And then -- and if there are any
23 indications that you may be settling either with defendants or
24 either on some issues to both cut down on some of the costs
25 that's costing both sides to keep this litigation going, I

1 think that would be quite wise. All right?

2 MR. OAKES: Yes, Your Honor.

3 THE COURT: Is there anything else you need me to
4 address at this point? So Judge O'Grady will be the person who
5 will decide about how much discovery -- you know, again, it
6 would be best if both sides could sit down and propose to him
7 whatever additional discovery is needed. All right?

8 MR. OAKES: Yes, Your Honor.

9 THE COURT: Anything further?

10 MS. MORROW: Nothing further, Your Honor.

11 THE COURT: All right, then we'll recess court for
12 the day. Have a good Thanksgiving.

13 MS. MORROW: Thank you, Your Honor.

14 MR. REILLY: Thank you, Your Honor.

15 (Which were all the proceedings
16 had at this time.)

17

18 CERTIFICATE OF THE REPORTER

19 I certify that the foregoing is a correct transcript of
20 the record of proceedings in the above-entitled matter.

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/s/
Anneliese J. Thomson

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