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**COURT ORDERS PROPOSED CLAIM CONSTRUCTIONS TO BE WRITTEN IN PLAIN ENGLISH**

## Intellectual Property Client Alert

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*In Apple Inc. v. Motorola, Inc.*, Civil Action No. 11-8540 (N.D. Ill. Mar. 10, 2012), Seventh Circuit Judge Richard A. Posner, sitting as a District Court Judge in a patent infringement case, issued a rare order requiring the parties to submit proposed claim constructions in “ordinary English.”

Patents offer the right to exclude all others from making, selling, using, importing or offering for sale, but only for articles and methods that fall within the claimed subject matter. Because of the complexities of technology, such claimed subject matter is often written in highly technical language that a jury must carefully parse through in order to understand. Courts have held that the meaning of such claims is a question of law, and so a judge is ultimately responsible for providing an understanding of the meaning of the claims to a jury. Courts typically require the parties to the controversy to propose each party’s version of how the claims should be construed and then a judge decides what the disputed claim terms mean. Then, the trial takes place using the court’s construction. Nevertheless, the court will frequently use parts of each party’s construction to create the court’s interpretation, which is then used by the jury in its deliberations.

The Court in the *Apple* case was concerned that “many of the proposed claims constructions [proposed by the parties] are not in language intelligible to jurors.” The Court went on to write, “There is no point in giving jurors stuff they won’t understand. The jury (actually juries) will not consist of patent lawyers and computer scientists or engineers unless the parties stipulate to a ‘blue ribbon’ jury; I would welcome their doing so but am not optimistic. No doubt the court-appointed experts could explain opaque claims constructions to the jurors, but that would waste a lot of trial time.” Judge Posner ordered the constructions “to be in ordinary English intelligible to persons having no scientific or technical background.”

This decision highlights the tension in complex patent cases – the need to be scientifically accurate and precise in construing claim terms while at the same time making the issues understandable to a lay judge and jury. It will be interesting to see how the parties in the *Apple* case comply with Judge Posner’s Order.

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