



August 3, 2012

Sanctions for Spoliation of Evidence in *Apple v. Samsung Patent Infringement Case*: Why Sending a Litigation Hold Notice is Not Enough

Last week, U.S. Magistrate Judge Paul Grewal of the Northern District of California issued an order for adverse inference jury instructions against Samsung for **spoliation of evidence** in the patent infringement case, *Apple Inc. v. Samsung Electronics Co., LTD, et al.*, No. C 11-1846 LHK (PSG), 2012 U.S. Dist. LEXIS 103958 (N.D. Cal. July 25, 2012). The important message is **sending out a litigation hold notice is not enough**. Litigants must **also ensure that the scope of the hold and distribution list is sufficient, disable any auto-delete IT features making it easier for custodians to comply with the hold, and monitor the custodians' preservation efforts**.

In this case, Judge Grewal held that Samsung failed to adequately preserve relevant e-mail in three respects. First, shortly after Apple notified them of the anticipation of litigation and seven months before the complaint was filed, Samsung issued a litigation hold to 27 employees listing ten discreet categories of potentially relevant documents. There was no further action taken by the company or its counsel over the next seven months. Second, Samsung did not suspend the biweekly auto-delete feature on their proprietary e-mail system; instead those subject to the hold would have to save each relevant e-mail within the two week window before each purge cycle. Third, after Apple filed suit, Samsung again issued a litigation hold and this time to 2700 employees, but still did not monitor the custodians' preservation efforts. Accordingly, the court found that Samsung acted with "conscious disregard" of its obligations violating its duty to preserve relevant documents. *Id.* at *54. Judge Grewal stated "[t]he discovery process in our federal courts is anything but perfect. **The burden to the parties** and to the courts in cases such as this **can be extraordinary ... But it is no answer to that burden simply to leave in place an adjudicated spoliation tool and** for seven months and [sic] **take almost no steps to avoid spoliation** beyond telling employees not to allow what will otherwise certainly happen." *Id.* at *68.