

Auto-Delete Leads to Failure to Preserve Evidence

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In a patent infringement suit by Apple, Inc. against Samsung Electronics Co, LTD, Apple filed a motion for an adverse inference jury instruction based on Samsung's alleged spoliation – the failure to preserve relevant evidence.

The court, in addressing Apple's motion, reiterated a party's obligation to preserve evidence from the moment that litigation is reasonably anticipated, including identifying, locating and maintaining information that is "relevant to specific, predictable and identifiable litigation."

Samsung's corporate email system includes auto-delete functionality whereby email is automatically deleted within fourteen days, unless an individual employee manually chooses to retain a message or group of messages for a longer period of time. In August 2010, Apple provided Samsung with information regarding Samsung's potential infringement of certain patents held by Apple. Soon after, Samsung sent an email to certain of its employees stating that there was "a reasonable likelihood of future patent litigation between Samsung and Apple" and requesting that employees "preserve any and all such documents that may be relevant to the issues" in the potential litigation. Apple filed its lawsuit against Samsung in April 2011. After being sued, Samsung sent out another communication to a larger group of employees about preserving documents and held various meetings to explain the company's obligations.

Samsung argued that its duty to preserve did not arise until after Apple filed its lawsuit in April 2011. The court disagreed, finding that the duty began in August 2010 and that Samsung had "ample notice that the evidence was potentially relevant to litigation." Samsung's failure to disable the auto-delete functionality was a key factor in the court's decision. The court granted Apple's motion in part, ordering that the jury be instructed as follows:

"Samsung has failed to prevent the destruction of relevant evidence for Apple's use in this litigation...I instruct you, as a matter of law, that Samsung failed to preserve evidence after its duty to preserve arose...You also may presume that Apple has met its burden of proving the following two elements by a preponderance of the evidence: first, that relevant evidence was destroyed after the duty to preserve arose...and second, the lost evidence was favorable to Apple."

If litigation against your organization is reasonably foreseeable, ignoring the necessary steps to preserve relevant evidence can be a costly mistake.

>> Review the court's decision.