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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

APPLE INC., A CALIFORNIA CORPORATION,	)	C-11-01846 LHK
	)	
	)	SAN JOSE, CALIFORNIA
PLAINTIFF,	)	
	)	AUGUST 16, 2012
VS.	)	
	)	VOLUME 10
SAMSUNG ELECTRONICS CO., LTD., A KOREAN BUSINESS ENTITY; SAMSUNG ELECTRONICS AMERICA, INC., A NEW YORK CORPORATION; SAMSUNG TELECOMMUNICATIONS AMERICA, LLC, A DELAWARE LIMITED LIABILITY COMPANY,	)	PAGES 2966-3386
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DEFENDANTS.	)	

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE LUCY H. KOH  
UNITED STATES DISTRICT JUDGE

APPEARANCES ON NEXT PAGE

OFFICIAL COURT REPORTER: LEE-ANNE SHORTRIDGE, CSR, CRR  
CERTIFICATE NUMBER 9595  
IRENE RODRIGUEZ, CSR, CRR  
CERTIFICATE NUMBER 8074

1 USED FOR TRADE DRESS VIOLATIONS?

2 A YES. AND, AGAIN, WE CAN SEE IN THE  
3 ENUMERATION, ONE, DEFENDANT'S PROFITS, THAT WOULD  
4 BE SAMSUNG AGAIN; AND DAMAGES SUSTAINED BY  
5 PLAINTIFF, THAT WOULD BE LOST PROFITS; AND COSTS OF  
6 THE ACTION. I'M NOT GIVING ANY OPINION ON THAT  
7 THIRD PIECE.

8 Q AND IF WE COULD SEE SLIDE 34B.74. THIS ONE IS  
9 JUST HEADED PATENT DAMAGES.

10 WHAT IS THIS TEST?

11 A YES. AND THIS TEST BASICALLY SAYS THAT UNDER  
12 A UTILITY PATENT, THE PATENTEE IS ENTITLED TO  
13 DAMAGES ADEQUATE TO COMPENSATE FOR INFRINGEMENT,  
14 BUT UNDER NO EVENT LESS THAN A REASONABLE ROYALTY.

15 SO THAT'S WHY YOU USE THOSE TWO FORMS,  
16 LOST PROFITS OR, IN THE ALTERNATIVE, A REASONABLE  
17 ROYALTY.

18 Q OKAY. YOU'VE TALKED, MR. MUSIKA, ABOUT THREE  
19 DIFFERENT FORMS OF DAMAGES AND 22 MILLION PHONES  
20 AND TABLETS.

21 DID YOU DO ANYTHING TO MAKE SURE THAT YOU  
22 WERE NOT DOUBLE COUNTING THE DAMAGES FOR ANY ONE OF  
23 THOSE PHONES AND TABLETS?

24 A I DID.

25 Q WHAT DID YOU DO?

1 A WELL, IT'S -- IT'S -- IT'S EASY TO VISUALIZE,  
2 BUT IT'S HARD TO IMAGINE.

3 BUT THE CALCULATION REALLY HAD TO BE DONE  
4 ON A PHONE-BY-PHONE, TABLET-BY-TABLET BASIS. EACH  
5 PHONE, EACH TABLET DESERVES OR GETS ITS OWN DAMAGE,  
6 AND SO THAT CALCULATION HAD TO BE DONE INDIVIDUALLY  
7 ON EACH ONE OF THOSE PRODUCTS.

8 Q AND HOW DID YOU DECIDE, FOR EACH ONE OF THOSE  
9 PRODUCTS, WHICH OF THE THREE DIFFERENT KINDS OF  
10 DAMAGES YOU DESCRIBED SHOULD BE ASSIGNED TO IT?

11 A WELL, THERE WERE SEVERAL CRITERIA. ONE WE  
12 JUST WENT THROUGH, WHICH IS THE FORM OF DAMAGES.

13 ANOTHER WOULD BE THE TIME PERIOD IN  
14 WHICH -- NOT ALL SALES OCCURRED AT THE SAME TIME.  
15 THEY OCCURRED AT DIFFERENT TIMES.

16 AND NOT ALL THE INTELLECTUAL PROPERTY,  
17 WHETHER IT WAS A UTILITY PATENT OR A DESIGN PATENT,  
18 THEY DIDN'T ALL ISSUE AT ONCE. SO THEY ISSUED AT  
19 VARIOUS POINTS IN TIME.

20 SO IT'S REALLY THE INTERSECTION OF WHEN  
21 SOMETHING WAS SOLD, WHICH FORM OF DAMAGES -- WHICH  
22 FORM OF INTELLECTUAL PROPERTY IT IS ACCUSED OF, AND  
23 THEN MAKING THAT CALCULATION ON, AGAIN, A  
24 UNIT-BY-UNIT BASIS.

25 Q OKAY. COULD WE SEE SLIDE 34B.56.

1                   WHAT HAVE YOU DEPICTED ON THIS SLIDE,  
2                   MR. MUSIKA?

3                   A        I THINK THIS IS GOING TO HELP SHOW AND EXPLAIN  
4                   WHAT I WAS JUST BRIEFLY TRYING TO EXPLAIN.

5                                I'VE GOT 22 PHONES AT THE TOP, AND THINK  
6                   OF THESE AS EITHER PHONES OR TABLETS, IT DOESN'T  
7                   MATTER.    BUT EACH ONE OF THOSE REPRESENTS A MILLION  
8                   UNITS TO TRY AND KEEP US ORIENTED ON THE 22 MILLION  
9                   TOTAL UNITS.

10                               AND SO AS WE JUST WENT THROUGH, I HAVE  
11                   THREE FORMS OF DAMAGE.    EACH ONE OF THOSE PHONES,  
12                   EACH ONE OF THOSE 22 MILLION PHONES, HAS TO GO IN  
13                   ONE OF THOSE CATEGORIES, BUT NOT TWO CATEGORIES.  
14                   IF WE PUT IT IN TWO CATEGORIES, THEN WE'RE GOING TO  
15                   END UP WITH DOUBLE COUNTING.

16                   Q        OKAY.    CAN YOU JUST WALK US THROUGH,  
17                   UNDERSTANDING THIS IS A SIMPLIFICATION, WALK US  
18                   THROUGH THE ALLOCATION THAT YOU MADE.

19                   A        WELL, THE ALLOCATION THAT I MADE WAS I, I  
20                   FIRST -- I THINK THE NEXT SLIDE IS GOING TO SHOW  
21                   THE AMOUNT OF 17 MILLION UNITS SHOULD SLIDE DOWN,  
22                   AND I CALCULATED THEM AS SAMSUNG'S PROFITS.    THAT'S  
23                   THE UNJUST GAIN.    SO I'M USING THAT FORM OF DAMAGES  
24                   FOR APPROXIMATELY 17 MILLION OF THE TOTAL 22  
25                   MILLION.

1 Q OKAY. HOW MANY OF THE 5 MILLION LEFT DID YOU  
2 PUT IN THE APPLE LOST PROFITS DAMAGES CATEGORY?

3 A I PUT TWO INTO THE LOST PROFITS CATEGORY, SO  
4 WE SHOULD HAVE TWO OF THOSE SLIDE DOWN, AND 2  
5 MILLION, APPROXIMATELY, COME DOWN THERE.

6 AND THAT, OF COURSE, LEAVES THE 3  
7 MILLION, AND YOU CAN OF COURSE GUESS WHERE THOSE  
8 GO, DOWN TO THE REASONABLE ROYALTY.

9 AND WE CAN SEE VERY CLEARLY THAT NO  
10 INDIVIDUAL PRODUCT HAS HAD MORE THAN ONE DAMAGE  
11 CALCULATED ON IT.

12 Q OKAY. THAT LOOKED EASY.

13 CAN YOU DESCRIBE FOR THE JURY THE ACTUAL  
14 AMOUNT OF EFFORT THAT IT TOOK TO MAKE THESE  
15 ALLOCATIONS AND THEN MAKE THOSE ONE, ONE PHONE BY  
16 ONE TABLET DAMAGES CALCULATIONS THAT YOU MADE.

17 A IT -- I CAN ASSURE YOU, IT'S NOT ME SITTING AT  
18 A DESK WITH A CALCULATOR DOING 22 MILLION  
19 CALCULATIONS.

20 IN FACT, BECAUSE OF THE VARIOUS  
21 COMBINATIONS, THERE ARE LITERALLY HUNDREDS OF  
22 MILLIONS OF CALCULATIONS, AND SO THE ONLY WAY,  
23 PRACTICALLY, TO DO THIS IS TO WRITE A COMPUTER  
24 PROGRAM.

25 AND SO OVER THE LAST YEAR AND A HALF TO

1 TWO YEARS, I HAVE HAD A TEAM OF 20 PEOPLE,  
2 ECONOMISTS, PROGRAMMERS, STATISTICIANS AND C.P.A.'S  
3 DEVELOPING A MODEL THAT IS DYNAMIC ENOUGH TO TAKE  
4 IN ALL 22 MILLION AND MAKE CHANGES AND ADJUSTMENTS,  
5 SINCE THIS PROCESS WENT ON FOR A YEAR AND A HALF,  
6 AS NEW PRODUCTS CAME IN AND WENT OUT.

7 AND ABOUT 7,000 TOTAL PROFESSIONAL HOURS  
8 WERE DEDICATED TOWARDS THE CREATION AND OPERATION  
9 OF THAT COMPUTER MODEL.

10 Q THAT SOUNDS EXPENSIVE. WAS IT EXPENSIVE?

11 A IT WAS VERY EXPENSIVE.

12 Q WHAT DID IT COST TOTAL FOR YOUR TEAM OF 23  
13 PEOPLE?

14 A 20 PEOPLE, OVER MORE THAN A YEAR AND A HALF,  
15 THAT 7,000 HOURS, WAS APPROXIMATELY \$1,750,000.

16 Q OKAY. LET'S GO BACK TO THE FIRST CATEGORY YOU  
17 TALKED ABOUT, THE SAMSUNG PROFIT CATEGORY.

18 ONCE YOU HAD ALLOCATED 17 MILLION PHONES  
19 AND TABLETS TOTAL INTO THAT CATEGORY, WHAT WAS THE  
20 NEXT STEP IN DETERMINING THE DAMAGES FOR THOSE 17  
21 MILLION DEVICES?

22 A WELL, IT'S, IT'S MAKING THE ACTUAL  
23 CALCULATIONS. IT'S FIGURING OUT HOW MUCH -- WE NOW  
24 KNOW THE UNITS, BUT HOW MUCH DID SAMSUNG ACTUALLY  
25 MAKE ON THOSE 17 MILLION?

1 DIRECTLY ATTRIBUTABLE TO THE PRODUCTION AND/OR SALE  
2 OF THE ACCUSED DEVICES.

3 AND THIS IS -- AGAIN, THIS ISN'T MY  
4 CONSTRUCTION. THIS IS REALLY GENERALLY ACCEPTED  
5 ACCOUNTING PRINCIPALS AND THIS IS DIRECTLY FROM  
6 THEIR STATEMENTS.

7 AND THAT GETS US, IF WE DEDUCT THE COST  
8 OF GOODS SOLD FROM THE SALES, WE GET A GROSS PROFIT  
9 NUMBER AND PERCENTAGE.

10 Q AND WHAT'S THE GROSS PROFIT PERCENTAGE?

11 A GROSS PROFIT PERCENTAGE IS, IN THIS STATEMENT  
12 IS 39.2 PERCENT.

13 Q WHAT WAS THE AVERAGE GROSS PROFIT AMOUNT THAT  
14 YOU FOUND IN SAMSUNG'S FINANCIAL RECORDS FOR THE \$8  
15 BILLION IN SALES OF THE ACCUSED PRODUCTS IN THE  
16 UNITED STATES?

17 A ALL RIGHT. THE ACCUSED PRODUCTS HAVE SLIGHTLY  
18 LOWER GROSS PROFIT PERCENTAGE. PER MY  
19 RECOLLECTION, THE OVERALL GROSS PROFIT PERCENTAGE  
20 ON JUST THE ACCUSED PRODUCTS WAS APPROXIMATELY 35.5  
21 PERCENT.

22 Q OKAY. YOU SAID A COUPLE MINUTES AGO THAT IF  
23 WE MOVE DOWN THIS SAME PAGE OF EXHIBIT 28, WE'RE  
24 GOING TO SEE SOME OTHER KINDS OF EXPENSES.

25 A YES.



# Apple's Damages Based on Samsung's Phone and Tablet Sales

**SAMSUNG'S PROFITS**



**\$ 2.481 B**

**APPLE'S LOST PROFITS**

**REASONABLE ROYALTIES**



# Apple's Damages Based on Samsung's Phone and Tablet Sales

**SAMSUNG'S PROFITS**



**\$ 2.241 B**

**APPLE'S LOST PROFITS**



**\$ 488.8 M**

**REASONABLE ROYALTIES**



**\$ 21.24 M**