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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

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CERTIFICATE NUMBER 9595
IRENE RODRIGUEZ, CSR, CRR
CERTIFICATE NUMBER 8074

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CROSS-EXAM BY MR. JACOBS P. 3012

MICHAEL WAGNER

DIRECT EXAM BY MR. PRICE P. 3018
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RAMAMIRTHAM SUKUMAR

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VINCENT O'BRIEN

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DAVID TEECE

DIRECT EXAM BY MS. MAROULIS P. 3123
CROSS-EXAM BY MR. MUELLER P. 3141

PLAINTIFF'S REBUTTAL:

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DIRECT EXAM BY MR. LEE P. 3164

EMILIE KIM

DIRECT EXAM BY MR. SELWYN P. 3173
CROSS-EXAM BY MR. JOHNSON P. 3185

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DIRECT EXAM BY MR. SELWYN P. 3220

MANI SRIVASTAVA

DIRECT EXAM BY MR. SELWYN P. 3287
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HYONG KIM

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SAN JOSE, CALIFORNIA AUGUST 16, 2012
P R O C E E D I N G S

(WHEREUPON, THE FOLLOWING PROCEEDINGS
WERE HELD OUT OF THE PRESENCE OF THE JURY:

THE COURT: A COUPLE OF ISSUES. THE
PROFFER OF MR. WAGNER ON HYPOTHETICAL DESIGN
AROUND, THAT LOOKS FINE. APPLE'S OBJECTION IS
OVERRULED.

WITH REGARD TO SAMSUNG'S PROPOSED
REDACTIONS TO DX 630 AND 631, 631 LOOKS FINE, BUT
ON 630, SOME OF THE TERMS OF THE LICENSE WERE
REDACTED, THE DURATION, AND THAT SHOULD BE
UNREDACTED.

MS. MAROULIS: THAT'S FINE, YOUR HONOR.
WE'LL GO WITH APPLE'S PROPOSED REDACTIONS, THE ONES
IN THE LAST COLUMN.

THE COURT: ALL RIGHT.

MS. MAROULIS: AND WITH THAT, YOUR HONOR,
PERMIT ME FOR A SECOND, WHEN WE SHOW 631 AND 630 TO
THE JURY, ONLY THE COURT, THE JURY AND THE WITNESS
WILL SEE THE FULL VERSION, AND THEN THE PUBLIC AND
OTHERS WILL BE GIVEN THE REDACTED VERSION.

THE COURT: THAT'S FINE.

OKAY. WITH REGARD TO THE EXHIBITS, HOW

1 DO YOU ALL PLAN TO DO THAT? ARE YOU GOING TO AGREE
2 ON -- ARE YOU GOING TO TAKE WHAT'S BEEN USED WITH
3 THE WITNESSES OR ARE YOU JUST GOING TO COME UP WITH
4 YOUR OWN NEW SET AND BRING THAT? DO YOU KNOW WHAT
5 I'M SAYING? I'D LIKE ONE COMPLETE SET OF
6 EVERYTHING IN THE BINDERS.

7 ARE YOU GOING TO BASICALLY MAKE A NEW ONE
8 THAT YOU STIPULATE TO, OR WHAT'S THE PROCESS?

9 MS. MAROULIS: WE'LL WORK TOGETHER.

10 MR. JACOBS, AND I JUST DISCUSSED THAT BEFORE THE
11 HEARING STARTED. WE'LL GET TOGETHER, FIGURE OUT A
12 SET, AND GIVE THE COURT ONE COMBINED SET.

13 THE COURT: OKAY. AND WHEN, WHEN --

14 MR. JACOBS: WE THOUGHT WE WOULD GET OUR
15 TEAMS TOGETHER ON SATURDAY TO GO OVER THE EXHIBITS
16 ONE BY ONE AND THEN REPORT BACK TO THE COURT.

17 DOES THAT WORK FOR YOU?

18 THE COURT: THAT'S FINE. I GUESS IF
19 THERE ARE ANY DISPUTES, WE'D NEED TO RESOLVE THEM
20 ON MONDAY, SO THEN DO YOU WANT TO JUST BRING THE
21 SET IN ON MONDAY, OR WHAT WOULD YOU PREFER?

22 MS. MAROULIS: YES, YOUR HONOR, WE'LL DO
23 THAT.

24 MR. JACOBS: THAT'S FINE.

25 THE COURT: SO THEN WE'LL DO JOINT

1 EXHIBITS AND JURY INSTRUCTION CONFERENCE ON MONDAY.

2 MS. MAROULIS: THANK YOU.

3 THE COURT: OKAY. ON THE EXHIBIT LIST,
4 THANK YOU FOR FILING A NEW ONE. FOR E-MAILS, CAN
5 YOU PUT DATES OF THE E-MAILS ON THERE, PLEASE?

6 MS. MAROULIS: YES.

7 THE COURT: OKAY. WHAT DID YOU ALL
8 DECIDE AS TO THE PHOTOGRAPHS OF YOUR WITNESSES?

9 THERE WAS THAT REQUEST FROM I THINK IT
10 WAS EE TIMES, WAS THAT IT, MR. RIVERA?

11 THE CLERK: EE TIMES, YES, YOUR HONOR.

12 THE COURT: FOR THE WITNESS PHOTOS, WHAT
13 DID YOU ALL DECIDE?

14 MR. JACOBS: OUR THOUGHT, YOUR HONOR, WAS
15 IT'S UP TO THE WITNESSES. IT'S THEIR EXPECTATIONS
16 THAT WE WERE MOST CONCERNED ABOUT. PEOPLE COME AND
17 TESTIFY, THEY KNOW THE GROUND RULES ARE THAT
18 THERE'S NO PHOTOGRAPHS IN THE COURTROOM, AT MOST
19 THEY WILL BE DRAWN MOST EXCELLENTLY BY THE
20 COURTROOM ARTIST.

21 SO IF THERE WERE SUCH A REQUEST THAT YOUR
22 HONOR WISHED US TO EXECUTE ON, WE WOULD GO BACK AND
23 TO THE WITNESSES AND ASK THEM IF THEY HAVE PROBLEMS
24 WITH THEIR PHOTOGRAPHS BEING PROVIDED TO THE MEDIA.

25 THE COURT: OKAY. I WOULD LIKE US TO NOT

1 BE THE INTERMEDIARY, SO CAN WE JUST TELL THE
2 JOURNALIST THAT HE SHOULD CONTACT THE PARTIES
3 DIRECTLY TO SEE IF ANY OF YOUR WITNESSES ARE
4 WILLING TO HAVE THEIR PHOTO PROVIDED?

5 MR. JACOBS: THAT'S PERFECT, YOUR HONOR.

6 THE COURT: IS THAT OKAY?

7 MR. JOHNSON: THAT'S FINE, YOUR HONOR.

8 THE COURT: ALL RIGHT. SO THAT'S WHAT
9 WE'LL DO.

10 AND I THINK THAT'S FAIR, BECAUSE THERE IS
11 NO PHOTOGRAPHING IN THE COURTHOUSE AND, YOU KNOW,
12 FOLKS ARE FREE TO SEE THE WITNESSES HERE IN THE
13 CEREMONIAL COURTROOM, AND ALSO THE OVERFLOW ROOM
14 HAS A VIDEO OF THE WITNESSES AS THEY'RE TESTIFYING.

15 SO, YOU KNOW, BASED ON OUR SPACE
16 CONSTRAINTS, WE'VE DONE WHAT WE CAN TO ALLOW AS
17 MANY PEOPLE AS POSSIBLE TO SEE THE WITNESSES AND
18 THEN IT'S REALLY UP TO THE WITNESSES THEMSELVES.

19 OKAY. WITH REGARD TO THE JURY
20 INSTRUCTIONS, ARE YOU STILL MEETING AND CONFERRING
21 ON A PROCESS, OR -- DO YOU WANT TO DISCUSS IT NOW?
22 I HAVE ALSO SOME THOUGHTS ABOUT WHAT WOULD BE MOST
23 HELPFUL.

24 THERE ARE CERTAIN INSTRUCTIONS THAT WERE
25 PROPOSED THAT MAY NO LONGER BE NECESSARY AND THAT

1 WOULD BE HELPFUL, AND I'LL JUST GIVE YOU TWO
2 EXAMPLES ON THE DESIGN PATENTS.

3 ONE IS INSTRUCTION NUMBER 37 ON STATUTORY
4 BARS. I THINK WHAT WOULD BE HELPFUL IS -- AND
5 MAYBE WE CAN DO THIS ON A ROLLING BASIS, IF I COULD
6 FILE A LIST OF WHAT THINGS WE NEED TO KNOW WHAT
7 EVIDENCE HAS BEEN INTRODUCED INTO THE RECORD TO
8 SUPPORT THE GIVING OF THIS INSTRUCTION, AND THEN
9 WHOEVER IT IS THAT WANTS THAT INSTRUCTION CAN GIVE
10 CITATIONS EITHER TO THE TRIAL TRANSCRIPTS OR TO
11 SPECIFIC EXHIBITS THAT SUPPORT THE GIVING AFTER
12 THAT INSTRUCTION.

13 SO JUST RIGHT OFF THE BAT, INSTRUCTION
14 NUMBER 37 ON STATUTORY BARS; INSTRUCTION NUMBER 36
15 ON THE DATE OF THE INVENTION OF THE DESIGN PATENT
16 BEING SOMETHING OTHER THAN THE FILING OF THE PATENT
17 APPLICATION.

18 SO I THINK 37 GOES TO SAMSUNG, 36 GOES TO
19 APPLE.

20 CAN YOU FILE, BY TIME -- I REALLY DON'T
21 RECALL ANYTHING COMING IN AS TO EITHER OF THESE
22 INSTRUCTIONS, AND I'M INCLINED NOT TO GIVE THEM.

23 BUT YOU CAN PERSUADE ME OTHERWISE IF YOU
24 CAN POINT TO SOMETHING THAT HAS COME IN THAT WOULD
25 BE RELEVANT TO THESE TWO.

1 SO CAN YOU FILE THAT BY -- WHAT TIME CAN
2 YOU FILE THAT BY? AND I DON'T REALLY NEED ANY
3 ARGUMENT. I JUST NEED, YOU KNOW, JULY 31, PAGE 7,
4 LINES WHATEVER TO WHATEVER, EXHIBIT, YOU KNOW, PX,
5 DX, WHATEVER. THAT'S ALL.

6 MR. JACOBS: WITH THIS ADVANCED NOTICE,
7 YOUR HONOR, WE CAN DO IT AT ANY TIME LATE TONIGHT
8 OR EARLY TOMORROW MORNING, WHATEVER YOU LIKE.

9 THE COURT: OKAY. CAN WE SAY TOMORROW
10 MORNING, AND WHAT WE CAN DO IS CONTINUE TO GIVE YOU
11 ALL NOTICE AS TO -- I THINK THAT WOULD BE -- I
12 MEAN, YOU'VE LAID OUT ALL OF YOUR PROPOSALS FOR
13 CHANGES THAT YOU WANT AND YOUR REASONS, SO I THINK
14 THAT'S COMPREHENSIVELY BRIEFED.

15 I THINK THE HARDER QUESTION IS GOING TO
16 BE, IS THIS REALLY AN INSTRUCTION THAT WE NEED TO
17 GIVE OR DOES IT NOW NEED TO BE TWEAKED BECAUSE THE
18 EVIDENCE CAME IN DIFFERENTLY OR DIDN'T COME IN.

19 SO WE CAN, ON THIS SORT OF ROLLING BASIS,
20 DO THAT AND ASK YOU TO THEN FILE A RESPONSE, AND IT
21 COULD BE THAT ULTIMATELY THESE ARE JUST ONES THAT
22 WILL BE WITHDRAWN.

23 I'M ALSO HAPPY IF YOU LET ME KNOW YOU'RE
24 WITHDRAWING THE PROPOSAL AS WELL.

25 SO WHY DON'T, AT LEAST FOR THESE TWO, CAN

1 YOU FILE SOMETHING BY 8:00 O'CLOCK TOMORROW,
2 PLEASE.

3 MR. JACOBS: YES, YOUR HONOR.

4 THE COURT: WHAT ELSE COMES TO MIND? YOU
5 ALL KNOW THESE CASES BETTER THAN I DO. WHAT ELSE
6 COMES TO MIND AS TO EITHER SOMETHING YOU'VE
7 PROPOSED THAT YOU'RE NOW SORT OF NOT PURSUING, OR
8 YOU THINK THE OTHER SIDE PROPOSED AND DOESN'T
9 APPEAR TO BE PURSUING ANYMORE? THAT'S KIND OF
10 ALONG THE LINES OF THESE, YOU KNOW, THE STATUTORY
11 BAR AND TRYING TO MOVE UP THE PRIORITY DATE ON THE
12 DESIGN PATENTS.

13 ANYTHING ELSE THAT YOU CAN THINK OF?

14 MR. JACOBS: I FLAGGED A FEW YESTERDAY.

15 THE COURT: AND I FORGET WHAT THEY WERE.

16 MR. JACOBS: BUT SOME OF THE SERVICES
17 HAVE EFFECTIVELY BEEN ABANDONED BY SAMSUNG.

18 OBVIOUSNESS -- WE -- THERE ARE A COUPLE OF THINGS
19 THAT ARE -- LET ME JUST STEP BACK FOR A MINUTE.

20 THERE ARE A COUPLE THINGS GOING ON HERE.
21 ONE IS WHAT INSTRUCTION DO YOU ISSUE; THE SECOND IS
22 THE NEXT ROUND OF JMOL'S; THE THIRD IS ANY MOTION
23 TO STRIKE ANY EVIDENCE --

24 THE COURT: THAT'S WHY I'M HOPING YOU ALL
25 WILL SETTLE BEFORE THE JMOL'S. I'M PATHOLOGICALLY

1 OPTIMISTIC THAT THIS WILL SETTLE.

2 MR. JACOBS: AND THEN I THINK WE GOT AN
3 ORDER FROM YOUR HONOR LAST NIGHT SUGGESTING THAT WE
4 ACCEPTED YOU SOMETHING SATURDAY MORNING ON
5 INSTRUCTIONS.

6 THE COURT: WELL, I WANTED TO KNOW, YOU
7 KNOW, AFTER ALL THE EVIDENCE IS IN BY THE END OF
8 FRIDAY, WHICH WE SHOULD BE ABLE TO DO IT, I WANTED
9 TO GET BOTH OF YOUR ASSESSMENT OF WHAT YOU THINK IS
10 NO LONGER IN THE CASE BASED ON WHAT YOU FEEL THE
11 OTHER SIDE HAS WAIVED OR ABANDONED OR WHAT YOU'RE
12 NO LONGER INTERESTED IN PURSUING.

13 WHAT ABOUT, DID YOU ALL TALK ABOUT
14 NARROWING THE CASE? ANY FURTHER NARROWING OF --

15 MR. JACOBS: WE NEED TO HAVE SOME MORE
16 INTERNAL DISCUSSIONS ON THAT, YOUR HONOR.

17 THE COURT: OKAY. WELL, I'M ALSO HOPING
18 THAT THERE COULD BE SOME HORSE TRADING GOING ON
19 BETWEEN THE PARTIES. I MEAN, ARE THERE SOME THINGS
20 THAT -- SOME TRADES THAT CAN BE MADE HERE? I MEAN,
21 NOW IS THE TIME BECAUSE OTHERWISE WE'RE GOING TO BE
22 DOING ALL THESE JURY INSTRUCTIONS FOR CLAIMS THAT
23 ARE GOING TO GO AWAY.

24 CAN WE SET A TIME BY WHICH YOU ALL WILL
25 HAVE -- YOU KNOW, I WANT TO FORCE A DECISION. IF

1 ANYTHING IS GOING TO GET DROPPED OUT, WE NEED TO
2 DROP IT OUT NOW.

3 MR. JACOBS: HOW ABOUT BY THE TIME OF
4 THAT FILING YOU ASKED US TO MAKE?

5 THE COURT: BY SATURDAY MORNING?

6 MR. JOHNSON: THAT'S FINE, YOUR HONOR.

7 THE COURT: OKAY. SO BY SATURDAY
8 MORNING, WHICH IS, WHAT, THE 18TH -- OKAY. SO BY
9 THE 18TH OF AUGUST AT 8:00 A.M., I WOULD LIKE A
10 STATEMENT THAT YOU'VE MET AND CONFERRED AND EITHER
11 THERE HAS BEEN SOME SUCCESSFUL HORSE TRADING AND
12 YOU'VE BEEN ABLE TO NARROW THE CASE A LITTLE
13 FURTHER, OR NOT.

14 NOW, LET ME GO BACK TO YOUR JOINT,
15 MR. JACOBS. SO YOUR INSTRUCTIONS, THOUGH, NEITHER
16 SIDE HAS WANTED SUPER DETAILED INSTRUCTIONS ON
17 OBVIOUSNESS AS TO THIS PATENT BASED ON THIS PRIOR
18 ART.

19 SO WHAT DOES IT MATTER? IF THERE ARE
20 GOING TO BE SOME OBVIOUSNESS DEFENSES TO SOME
21 PATENTS, DOES IT MATTER THAT, YOU KNOW, ONE SIDE IS
22 GOING FOR ANTICIPATION AND NOT GOING ON
23 OBVIOUSNESS?

24 MR. JACOBS: SO THE REASON I LINKED THE
25 TWO IS SUPPOSE WE PERSUADED YOUR HONOR THAT WE

1 SHOULD BE GIVEN A JMOL ON THEIR OBVIOUSNESS DEFENSE
2 ON UTILITY PATENTS BECAUSE THEY DIDN'T PUT IN ANY
3 EVIDENCE ON OBVIOUSNESS.

4 AND THEN I THINK YOUR HONOR WOULD TELL
5 THE JURY THAT AS TO THE APPLE UTILITY PATENTS,
6 THERE IS NO DEFENSE OF OBVIOUSNESS.

7 SIMILARLY IF WE WERE TO PREVAIL ON A JMOL
8 THAT, FOR EXAMPLE, A NON-INFRINGEMENT ARGUMENT WAS
9 CONSISTENT WITH THE COURT'S CLAIM CONSTRUCTION,
10 THEN I THINK WE WOULD EXPECT THAT THE COURT WOULD,
11 IN INSTRUCTING THE JURY, ADD SOME LANGUAGE TO THE
12 INSTRUCTION THAT SAYS THERE IS NO NON-INFRINGEMENT
13 DEFENSE OF THIS NATURE BECAUSE IT'S INCONSISTENT
14 WITH THE CLAIM CONSTRUCTION.

15 THAT WOULD BE THE -- IF WE WERE TO WALK
16 BACK FROM THE PRE-DELIBERATION JMOL'S THAT THE
17 COURT WOULD GRANT, CONCEIVABLY GRANT, THAT WOULD --
18 THAT WOULD BE EXPRESSED IN THE JURY INSTRUCTIONS IN
19 THAT WAY.

20 SO WHEN YOU ASKED -- SO THAT YOU'RE NOW
21 ASKING US THE QUESTION FROM THE STANDPOINT OF THE
22 JURY INSTRUCTIONS. IT'S REALLY, IN A WAY, THE SAME
23 QUESTION. WE'RE GOING TO BE ADVISING YOU THAT
24 THERE IS NO EVIDENCE TO SUPPORT AN INSTRUCTION ON A
25 PARTICULAR POINT. THAT IS, IN A SENSE, ASKING FOR

1 A JMOL ON A DEFENSE.

2 AND WE CAN DO IT WHATEVER WAY THE COURT
3 WANTS.

4 THE COURT: SO YOU'RE SAYING YOU'RE GOING
5 TO DO THAT TODAY AFTER SAMSUNG RESTS?

6 MR. JACOBS: WE WOULD DO THAT AFTER
7 SAMSUNG RESTS, THAT'S CORRECT.

8 WE WOULD ALSO DO IT, THE RULE -- THE
9 PRE-DELIBERATION JMOL IS YET ANOTHER STEP.

10 THE COURT: AND WHAT, WHAT DO YOU -- HAVE
11 YOU ALL TALKED ABOUT WHEN THAT TIMING IS GOING TO
12 BE?

13 MR. JACOBS: NO. BUT I WOULD IMAGINE --

14 THE COURT: WE'RE RUNNING OUT OF TIME.
15 WE NEED TO START SCHEDULING BETWEEN TODAY AND NEXT
16 TUESDAY NOW BECAUSE WE'RE RUNNING OUT OF TIME. SO
17 WHAT -- DO YOU WANT DO THAT ON MONDAY AFTER
18 EVERYONE'S BEEN ABLE TO FOCUS --

19 MR. JACOBS: MONDAY WOULD BE FINE, YOUR
20 HONOR.

21 OR WE COULD ALSO DO IT, DEPENDING ON HOW
22 THE SCHEDULE GOES, WE COULD ALSO DO IT AT THE CLOSE
23 OF EVIDENCE TOMORROW.

24 THE COURT: WELL, I THINK WHAT YOU FILE
25 ON SATURDAY MORNING MIGHT BE LARGELY SIMILAR IF

1 YOU'RE NOW SAYING -- AND I THINK IT WOULD BE
2 HELPFUL FOR THE END OF THE CASE JMOL'S FOR YOU ALL
3 TO DO A LITTLE BIT OF BRIEFING ON THAT.

4 BUT SAME THING OF GIVE THE OTHER SIDE AN
5 OPPORTUNITY TO CITE TO TRIAL TRANSCRIPTS AND
6 EXHIBITS WHERE EVIDENCE WAS PRESENTED ON THAT
7 POINT.

8 SO LET'S FIGURE OUT WHAT'S THE SCHEDULE
9 FOR THAT GOING TO BE? SO IF WE DO -- I THINK I
10 WOULD PREFER TO DO THE POST -- THE POST-EVIDENCE
11 JMOL ON MONDAY.

12 NOW, YOU'RE -- LET ME HEAR, YOU KNOW, AT
13 LEAST WITH -- I GUESS WAS IT MR. GRAY?

14 MR. JACOBS: YES.

15 THE COURT: I THINK I DID HEAR ALL
16 ANTICIPATION DEFENSES AND NOT OBVIOUSNESS. IS
17 THAT -- WHAT'S YOUR POSITION ON THAT? I MEAN, HE
18 WENT THROUGH AND SAID EVERY, YOU KNOW, NOMURA,
19 LAUNCHTILE, THESE ARE ALL -- YOU KNOW, EVERY CLAIM
20 LIMITATION, ANTICIPATION, ANTICIPATION,
21 ANTICIPATION. SO CAN I HEAR, WHAT IS YOUR VIEW ON
22 THAT?

23 MR. JOHNSON: I NEED TO CHECK THE
24 TRANSCRIPT ON THAT.

25 THE COURT: OH, THAT WAS MR. DEFRANCO.

1 MR. JOHNSON: PROFESSOR VAN DAM DID TALK
2 ABOUT OBVIOUSNESS. SO WITH RESPECT TO THE '381
3 PATENT, WE THINK THERE'S MORE THAN SUFFICIENT
4 EVIDENCE WITH RESPECT TO OBVIOUSNESS ON THAT. BUT
5 I'LL CONFER WITH MR. DEFRANCO AND REPORT BACK.

6 THE COURT: PLEASE. ALL RIGHT. SO LET'S
7 FIGURE OUT, FOR THE POST-EVIDENCE JMOL MOTIONS ON
8 MONDAY, I WOULD LIKE -- LET ME HEAR FROM YOU ALL AS
9 TO WHAT DATE -- YOU KNOW, I WOULD LIKE BASICALLY
10 THE MOVING PARTY TO PRESENT, IN TWO PAGES, DO IT IN
11 TWO PAGES OF JUST LAYING OUT WHAT YOU THINK WAS
12 ESSENTIALLY CONCEDED AND THEN GIVE THE OTHER SIDE
13 AN OPPORTUNITY TO -- AND I JUST WANT CITES TO TRIAL
14 TRANSCRIPTS AND EXHIBITS -- WHAT YOU FEEL LIKE HAS
15 BEEN ADDRESSED AND ESTABLISHED AND MADE A LEGALLY
16 SUFFICIENT EVIDENTIARY BASIS FOR RULING IN YOUR
17 FAVOR, FOR A FINDING IN YOUR FAVOR BY THE JURY.

18 SO WHEN CAN THAT TWO-PAGER BE FILED?
19 OBVIOUSLY THE SOONER THE BETTER FOR US, BECAUSE I'M
20 TRYING TO GET THE INSTRUCTIONS FILED ON SUNDAY. SO
21 WHAT --

22 MR. JACOBS: SO WE HAVE THE 8:00 A.M. ON
23 SATURDAY FILING.

24 THE COURT: YEAH.

25 MR. JACOBS: WHICH PARALLELS THIS IN MANY

1 MR. VERHOEVEN IS TALKING ABOUT.

2 MR. VERHOEVEN: IN OTHER WORDS, WE DON'T
3 HAVE TO STAND UP AND SAY WE MOVE AT THE END, WE CAN
4 MOVE THIS PROCESS AND THERE WILL BE NO WAIVER THAT
5 WE DIDN'T STAND UP AND IMMEDIATELY MAKE THE MOTION
6 IN THE COURTROOM.

7 THE COURT: I THINK THIS WOULD BE YOUR
8 MOTION. YOU CAN STYLE IT AS THIS IS YOUR MOTION
9 FOR JUDGMENT AS A MATTER OF LAW.

10 MR. VERHOEVEN: BELTS AND SUSPENDERS,
11 YOUR HONOR, I'M SAYING THERE'S THAT AGREEMENT THAT
12 THIS DOESN'T WAIVE THE PROCEDURE.

13 THE COURT: YES.

14 MR. JACOBS: I THINK I WOULD SAY YOU'RE
15 RESERVING THE POST-EVIDENCE RULE 50 MOTION TO THIS
16 PROCESS.

17 THE COURT: IS THAT SATISFACTORY TO YOU?

18 MR. VERHOEVEN: THAT'S FINE. I JUST WANT
19 TO MAKE SURE, AND I DON'T THINK THERE WILL BE IN
20 ISSUE, BUT THAT THERE'S NO ONE ARGUING THAT WE
21 DIDN'T -- THAT WE WAIVED, WE DIDN'T STAND UP AND
22 FORMALLY MOVE AT THE END OF THE EVIDENCE.

23 MR. JACOBS: THAT'S FINE, YOUR HONOR.

24 THE COURT: OKAY. ALL RIGHT.

25 MR. JACOBS: AND THEN CAN I JUST --

1 BECAUSE THIS IS A PRE -- THIS IS ONE OF THOSE
2 MANDATORY STEPS AND THERE ARE A LOT OF ISSUES --

3 THE COURT: YES.

4 MR. JACOBS: I THINK WE GET THE IDEA THAT
5 THIS IS NOT SUPPOSED TO BE ARGUMENTATIVE, IT'S A
6 HEADLINE, THERE'S NO EVIDENCE OF THIS, THERE'S NO
7 EVIDENCE ON THIS ISSUE.

8 THE COURT: YEAH.

9 MR. JACOBS: BUT I THINK TWO PAGES MAY --

10 THE COURT: THAT'S TOO SHORT?

11 MR. JACOBS: YES.

12 THE COURT: OKAY, THAT'S FINE. THIS IS
13 WHAT I WOULD -- MAYBE IN ADDITION TO SAYING, YOU
14 KNOW, NO EVIDENCE OF THIS, IT MIGHT BE GOOD TO AT
15 LEAST PINPOINT WHERE THIS WOULD HAVE COME OUT,
16 WHICH WITNESS WOULD HAVE ADDRESSED THIS ISSUE, OR
17 WHICH -- EITHER A WITNESS DIDN'T TESTIFY OR A
18 WITNESS WHO DID TESTIFY FAILED TO ADDRESS X, Y, Z
19 TOPIC OR FAILED TO TAKE X, Y, Z POSITION.

20 MR. JACOBS: I THINK THAT WOULD BE
21 HELPFUL TO THE COURT.

22 THE COURT: BUT I NEED A PAGE LIMIT IN
23 THIS CASE BECAUSE OTHERWISE --

24 MR. JACOBS: HOW ABOUT FIVE PAGES, YOUR
25 HONOR? I THINK WE GET THE SPIRIT OF WHAT YOU WANT

1 IN TERMS OF THE BRIEFING.

2 THE COURT: DOES THAT SOUND OKAY?

3 MR. VERHOEVEN: THAT'S ACCEPTABLE.

4 THE COURT: OKAY. SO FIVE PAGES, IT'S
5 GOING TO BE FILED BY -- DOES 8:00 O'CLOCK GIVE YOU
6 ENOUGH TIME? 8:00 O'CLOCK?

7 MR. VERHOEVEN: SUNDAY?

8 THE COURT: NO, THIS IS ACTUALLY FRIDAY
9 NIGHT.

10 MR. VERHOEVEN: HOW ABOUT SATURDAY
11 MORNING -- WE'LL JUST BE GETTING OUT OF COURT ON
12 FRIDAY, SO I WOULD SUGGEST 8:00 A.M. SATURDAY
13 MORNING AND THEN RESPONSE 8:00 A.M. SUNDAY MORNING,
14 YOUR HONOR.

15 AND I'M ASSUMING THAT WE WOULD HAVE
16 ARGUMENT ON THAT, YOUR HONOR?

17 THE COURT: ON MONDAY. MONDAY.

18 OKAY. SO -- ALL RIGHT. SO FILE YOUR
19 FIVE-PAGE JMOL MOTIONS ON SATURDAY, AUGUST THE --
20 IS THAT THE 18TH; CORRECT?

21 THE CLERK: YES, YOUR HONOR.

22 THE COURT: THANK YOU. AT 8:00 A.M.,
23 FIVE PAGES IN LENGTH; SUNDAY AT 8:00 A.M. FILE YOUR
24 JMOL OPPOSITIONS, AND REALLY JUST CITES, CITES TO
25 EVIDENCE.

1 SO TELL ME WHAT YOU THINK THE PAGE LIMIT
2 SHOULD BE ON THAT. IT JUST NEEDS TO BE DOABLE,
3 BECAUSE IF IT'S GOING TO BE LIKE ONE OF THESE --

4 MR. VERHOEVEN: FIVE PAGES.

5 THE COURT: FIVE PAGES?

6 MR. JACOBS: I THINK LET'S MAKE IT A
7 LITTLE LONGER, BUT JUST TO BE HELPFUL TO THE COURT,
8 WHAT I WOULD SUGGEST IS WE DO THE PIN CITES WITH
9 PARENTHETICALS AS TO WHAT TESTIMONY WE'RE TALKING
10 ABOUT, AND THEN THE COURT WILL BE ABLE TO SEE WHY
11 WE WERE CITING THAT PARTICULAR PORTION.

12 BUT IF WE ARE -- IF WE CONFINE OURSELVES
13 TO THAT FORM OF ARGUMENT, THE PAGE LIMIT WILL BE
14 LESS OF AN ISSUE, BUT I WOULD JUST SAY EIGHT PAGES
15 SO NOBODY IS OVERLY --

16 MR. VERHOEVEN: THAT'S FINE WITH ME, YOUR
17 HONOR.

18 THE COURT: OKAY. BUT I DON'T WANT IT TO
19 BE A SORT OF NIGHTMARE INTERROGATORY RESPONSE WHERE
20 YOU'RE JUST GIVING ME PAGES AND PAGES OF BATES
21 NUMBERS BECAUSE WE WON'T HAVE THE RESOURCES TO GO
22 THROUGH ALL OF THAT. SO YOUR ARGUMENT WILL BE
23 LOST.

24 OKAY. SO EIGHT PAGES ON SUNDAY, THAT
25 WILL BE ARGUED ON MONDAY.

1 HOW MANY INSTRUCTIONS DO YOU THINK ARE
2 AFFECTED BY THIS ISSUE OF WAIVER OR AN ARGUMENT,
3 ESSENTIALLY, BEING WITHDRAWN OR ABANDONED? IS THIS
4 A LOT OR IS IT GOING TO BE PRETTY MARGINAL?

5 MR. JACOBS: I THINK IT'S A FEW, YOUR
6 HONOR. BUT, HONESTLY, WHEN I GOT YOUR ORDER LAST
7 NIGHT SAYING DO THIS ON SATURDAY MORNING, I PUT
8 THIS ON THE "THINK ABOUT THIS" IN TIME FOR SATURDAY
9 MORNING. SO I'M NOT FULLY PREPARED ON THIS.

10 THE COURT: OKAY.

11 MR. JACOBS: I THINK THE OTHER ASPECT OF
12 THIS THAT I SHOULD JUST FLAG FOR YOUR HONOR IS
13 THIS: THE COURT SAID FOLLOW THE NORTHERN DISTRICT
14 MODEL AND THE NINTH CIRCUIT MODEL.

15 WHAT I DON'T -- WHAT WE COULDN'T TELL
16 FROM THE COURT'S DIRECTION ON THAT IS WHETHER THE
17 COURT NOW PLANS TO TRY AND CREATE SOMETHING THAT
18 HAS MORE OF A NARRATIVE FLOW FOR THE JURY OR JUST
19 STICK WITH THE MODEL INSTRUCTIONS.

20 AND THAT WAS ONE OF THE THINGS THAT WAS
21 WORRYING ME ABOUT THIS ISSUE WAS THAT IF THE COURT
22 WAS GOING TO DO MORE OF A NARRATIVE SET OF
23 INSTRUCTIONS, A LITTLE EASIER ON THE EARS, THEN
24 TAKING OUT INSTRUCTIONS MIGHT AFFECT THAT.

25 THE COURT: NO. I THINK ON THE TRADE

1 DRESS, I'M PRETTY MUCH GOING TO GO WITH THE NINTH
2 CIRCUIT MODEL INSTRUCTIONS.

3 ON THE UTILITY PATENTS, I MEAN, I KNOW
4 THAT YOU ALL STIPULATED TO -- YOU KNOW, WHATEVER
5 YOU ALL STIPULATED TO WILL BE USED.

6 BUT OTHERWISE I'LL -- I MEAN, WHERE EVER
7 THERE'S A MODEL INSTRUCTION, I'M GOING TO USE THE
8 MODEL INSTRUCTION, AND I'M NOT GOING TO USE SOME
9 FRANKENSTEIN HYBRID THAT HAS THE MODEL WITH, LIKE,
10 20 OTHER CASE CITES WHERE IT'S BEEN TWEAKED SO MANY
11 TIMES. I'M JUST GOING TO GO WITH THE MODEL IF
12 THERE'S A MODEL.

13 THE PROBLEM IS THAT THERE ISN'T A MODEL
14 FOR SOME OF THESE AND THAT'S, I THINK, GOING TO BE
15 THE MOST WORK.

16 SO BY 8:00 A.M. ON FRIDAY, YOU'LL FILE ON
17 THESE TWO ISSUES --

18 MR. VERHOEVEN: I THINK YOU MEAN
19 SATURDAY, YOUR HONOR.

20 THE COURT: OH, I'M SORRY. LET ME
21 CLARIFY.

22 ON INSTRUCTION NUMBERS 36 AND 37.

23 MR. VERHOEVEN: OH, OKAY.

24 THE COURT: YEAH, THAT'LL BE TOMORROW
25 MORNING.

1 AND THEN IT WOULD BE HELPFUL IF WE COULD
2 DO THIS ON A ROLLING BASIS. IF THERE ARE OTHERS AS
3 WE IDENTIFY ONES THAT LOOK LIKE THEY MAY NO LONGER
4 BE RELEVANT, WHAT WOULD BE A REASONABLE TIME FRAME
5 FOR YOU ALL TO, LIKE -- I ASSUME PROBABLY BY THE
6 END OF THE DAY I'LL HAVE SOME MORE.

7 SO WHAT IS A REASONABLE TIME FRAME? CAN
8 YOU DO THAT ALSO BY MAYBE TOMORROW? IF I GIVE YOU
9 A LIST AT THE END OF THE DAY TODAY, COULD YOU DO IT
10 BY TOMORROW NOON OR TOMORROW 1:00 O'CLOCK?

11 MR. JACOBS: WE WERE THINKING TOMORROW
12 AFTERNOON, YOUR HONOR, MAYBE 20 HOURS, 22 HOURS
13 AFTER WE GET IT FROM YOU.

14 THE COURT: IS THAT OKAY?

15 MR. VERHOEVEN: YES, YOUR HONOR.

16 THE COURT: WHY DON'T WE DO THAT? SO
17 WE'LL -- AND WE'LL PROBABLY JUST DO IT ON A ROLLING
18 BASIS JUST TO GIVE YOU TIME AND GIVE US TIME WITH
19 THESE. OKAY?

20 WHAT ELSE?

21 MS. MAROULIS: YOUR HONOR, BRIEFLY, LAST
22 NIGHT THE ORDER SUSTAINING OBJECTIONS TO DEPOSITION
23 TESTIMONY OF MR. LUTTON, SO WE WILL NOT BE PLAYING
24 THAT.

25 THE COURT: OKAY.

1 MS. MAROULIS: THAT'S A CHANGE TO OUR
2 TRIAL LIST. HOWEVER, WE DO NEED TO READ IN
3 RESPONSE TO INTERROGATORY 13, WHICH THE COURT
4 SUGGESTED.

5 THE COURT: YES.

6 MS. MAROULIS: AND AS A POINT OF
7 CLARIFICATION, THEIR INTERROGATORY RESPONSE ON THE
8 33(D) CITES TO THE BATES RANGE OF EXHIBIT 531. MAY
9 WE INTRODUCE AND MOVE INTO EVIDENCE EXHIBIT 531
10 THAT WAS PREVIOUSLY SUSTAINED?

11 THE COURT: WHAT IS 531? IS THAT THE
12 PRESENTATION?

13 MS. MAROULIS: THAT'S THE PRESENTATION.

14 MR. MUELLER: THAT'S EXACTLY WHAT YOUR
15 HONOR SAID THEY COULDN'T DO.

16 THE COURT: LET'S DO INTERROGATORY
17 KNOWLEDGE AND NOTICE ON, WHAT, SEPTEMBER --

18 MS. MAROULIS: IT'S SEPTEMBER 9, 2010.
19 BUT DO WE NOT GET TO READ THE PORTION WITH THE
20 BATES RANGE OR MOVE IT INTO EVIDENCE?

21 THE COURT: YOU CAN READ THE BATES RANGE
22 IN, BUT IF I'VE ALREADY RULED THAT THE DOCUMENT
23 ITSELF IS OUT, THEN I'M NOT GOING TO INTRODUCE THE
24 DOCUMENT.

25 MR. MUELLER: THANK YOU, YOUR HONOR.

1 THE COURT: THE WHOLE RESPONSE CAN GO IN.

2 MR. JOHNSON: AND, YOUR HONOR, THE
3 INTERROGATORY REFERS TO A BUNCH OF OTHER PATENTS
4 THAT ARE NOT INVOLVED IN THE LAWSUIT, SO PERHAPS WE
5 CAN JUST REACH AGREEMENT DURING A BREAK WITH APPLE,
6 REACH A STIPULATION, AND WE CAN READ A SENTENCE
7 THAT BASICALLY AFFECTS THE ONE PATENT THAT WE HAVE
8 IN MIND.

9 MR. LEE: WE'LL TALK AT THE BREAK.

10 THE COURT: THAT PROBABLY WOULD BE
11 EASIER. JUST DO A STIPULATION THAT, YOU KNOW,
12 APPLE STIPULATES THAT IT GOT NOTICE OF BLAH, BLAH,
13 BLAH ON SUCH AND SUCH A DATE. THAT WOULD BE
14 CLEANER. OKAY.

15 MR. LEE: YOUR HONOR, JUST ONE SCHEDULING
16 THING. WE HAD HAD DR. SRIVASTAVA FOLLOW -- BEFORE
17 MR. GIVARGIS. FOR SCHEDULING PURPOSES, WE'RE GOING
18 TO FLIP THEM.

19 THE COURT: YOU DIDN'T FILE A NEW LIST.
20 IS THAT T BECAUSE YOUR LIST IS THE SAME?

21 MR. LEE: YES.

22 THE COURT: OKAY. GIVE ME ONE SECOND.
23 YOU ARE SWITCHING --

24 MR. LEE: AFTER SAMSUNG RESTS --

25 THE COURT: OKAY.

1 MR. LEE: AND I HAD GIVEN YOU A LIST
2 YESTERDAY. SO IT WOULD BE --

3 THE COURT: BLEVINS, KIM, DOURISH,
4 GIVARGIS, AND MR. SRIVASTAVA.

5 MR. LEE: YES.

6 THE COURT: AND I ASSUME YOU'RE GOING TO
7 WANT TO DO A JMOL MOTION, OR RULE 50 MOTION, OR
8 NOT?

9 MR. LEE: I THINK PROBABLY, GIVEN WHAT
10 WE'RE DOING HERE, THIS WEEKEND, WHAT I'LL DO IS
11 WHEN THEY REST, I'LL STATE THE GROUNDS VERY QUICKLY
12 AND AS SPECIFICALLY AS I CAN, BUT THEN WE'LL
13 RESERVE IT FOR, IF THAT'S ALL RIGHT WITH YOUR
14 HONOR, AND WITH SAMSUNG, THEN WE'LL ADDRESS IT OVER
15 THE WEEKEND AS WELL.

16 THE COURT: NO. I THINK I'M GOING TO
17 RULE ON IT. I'M NOT -- I'M NOT LIKELY TO GRANT IT
18 ON ANYTHING, SO LET'S JUST RIP OFF THE BAND-AID NOW
19 AND KEEP GOING.

20 MR. LEE: OKAY.

21 THE COURT: OKAY?

22 MR. LEE: YEAH.

23 THE COURT: OKAY.

24 MR. PRICE: YOUR HONOR, A COUPLE THINGS
25 ON THE FIRST TWO WITNESSES.

1 THE COURT: YES.

2 MR. PRICE: MR. STEVENS, IN YOUR ORDER
3 LAST NIGHT, YOU TALKED ABOUT NOT BEING ABLE TO
4 TESTIFY ABOUT A PARTICULAR DEMONSTRATIVE BECAUSE HE
5 HASN'T ESTABLISHED THE PERSONAL KNOWLEDGE, AND JUST
6 A COUPLE OF THINGS.

7 ONE, THE FACT THAT HE WAS A 30(B)(6),
8 THAT'S JUST AN INTERROGATORY. IT HAS NO BEARING AT
9 ALL ON WHETHER HE SHOULD BE ABLE TO TESTIFY. HE
10 WASN'T THE 30(B)(6) ON SEC.

11 THE COURT: YOU KNOW, THIS IS
12 RECONSIDERATION. I'M GOING TO HAVE TO TIME IT.

13 MR. PRICE: WELL, LET ME JUST CLARIFY.

14 THE COURT: IT'S 9:00 O'CLOCK.

15 MR. PRICE: LET ME CLARIFY, HE CAN LAY
16 THE FOUNDATION FOR WHATEVER KNOWLEDGE HE HAS.

17 THE COURT: NO. MY CONCERN WAS THAT HE,
18 HE SAID THAT HE DIDN'T HAVE PERSONAL KNOWLEDGE OF
19 ANY FINANCIAL DOCUMENTS CREATED AT SEC, AND THAT'S
20 WHAT THIS IS, THIS IS AN SEC OPERATING EXPENSE
21 DOCUMENT. THAT WAS MY CONCERN.

22 MR. PRICE: I'M NOT GOING TO HAVE HIM
23 TESTIFY ABOUT WHAT KIND OF DOCUMENTS ARE CREATED
24 THERE, BUT HE DOES HAVE PERSONAL KNOWLEDGE OF HOW
25 DOCUMENTS ARE CREATED THERE BECAUSE HE WAS TRAINED.

1 THE COURT: THAT'S -- I'M NOT PERSUADED
2 BY THAT.

3 MR. PRICE: IT'S A DIFFERENT -- HE
4 DOESN'T KNOW DAY TO DAY WHAT HE LOOKED AT. WHAT HE
5 KNOWS IS HOW THE SYSTEM WORKS, BECAUSE --

6 THE COURT: HE SAID HE DIDN'T HAVE
7 PERSONAL KNOWLEDGE AS TO HOW THE FINANCIAL
8 DOCUMENTS ARE CREATED AT SEC.

9 MR. PRICE: HE SAID HE DOESN'T KNOW HOW
10 THEY'RE PREPARED, THAT'S TRUE.

11 THE COURT: I THINK THAT'S THE SAME
12 THING. SO MY RULING IS STILL THE SAME.

13 MR. PRICE: I'D ASK YOU TO LISTEN TO THE
14 QUESTIONS AND SUSTAIN THEM IF YOU THINK THAT --

15 THE COURT: HE SAID HE HAS KNOWLEDGE
16 GENERALLY ABOUT HOW THINGS ARE DONE.

17 MR. PRICE: RIGHT, THAT'S WHAT I'M
18 TALKING ABOUT.

19 THE COURT: THAT'S FINE. BUT IT CAN'T
20 APPLY TO THIS DOCUMENT BECAUSE HE SAID HE DOESN'T
21 HAVE PERSONAL KNOWLEDGE AS TO HOW FINANCIAL
22 DOCUMENTS ARE CREATED AT SEC. THE DOCUMENT FROM
23 WHAT I UNDERSTAND IS BROADER THAN SEC, AND THAT'S
24 FINE.

25 MR. PRICE: OKAY.

1 THE COURT: BUT IF IT'S SEC EXCLUSIVELY,
2 I DON'T THINK HE HAS PERSONAL KNOWLEDGE, AND I'M
3 STILL SUSTAINING THE OBJECTION.

4 MR. JACOBS: YOUR HONOR, I THINK HE JUST
5 BACK DOORED YOUR ORDER?

6 THE COURT: WHAT?

7 MR. JACOBS: HE MADE AN END RUN AROUND
8 YOUR ORDER. YOUR ORDER IS HE CAN'T SPEAK TO SEC,
9 AND FOR HIM TO SPEAK TO THE CONSOLIDATED FINANCIALS
10 IS TO SPEAK TO THE SEC.

11 THE COURT: YOU HAD NO OBJECTION TO THE
12 DOCUMENT THAT PRECEDED THE ONE YOU OBJECTED TO THAT
13 WAS ABOUT THE THREE DIFFERENT ENTITIES.

14 MR. JACOBS: THAT'S AS TO STA, YOUR
15 HONOR. HE CAN SPEAK TO STA FINANCIALS.

16 MR. PRICE: THEY DIDN'T OBJECT TO THE
17 CONSOLIDATED, EITHER.

18 THE COURT: BUT IN HIS DEPOSITION, HE DID
19 SAY HE GENERALLY KNOWS HOW THINGS ARE DONE. I
20 AGREE, I'M SUSTAINING AN OBJECTION TO ANY SEC
21 CREATED FINANCIAL DOCUMENT BECAUSE HE SAID HE HAS
22 NO PERSONAL KNOWLEDGE AS TO THAT.

23 MR. JACOBS: TERRIFIC.

24 THE COURT: BUT HE DID SAY I KNOW WHAT
25 THE GENERAL PRACTICE IS. SO I'M GOING TO ALLOW

1 THAT.

2 MR. JACOBS: "CREATED" IS THE OPERATIVE
3 WORD. I THINK THAT PREVENTS AN END RUN AROUND YOUR
4 ORDER.

5 MR. PRICE: JUST A CLARIFICATION ON
6 MR. WAGNER. YOU SAID YOU OVERRULED THE OBJECTION.
7 AND THAT CONCERNS THE OBJECTION OF HIM RELYING ON
8 SAMSUNG EMPLOYEES AS MR. MUSIKA RELIED ON --

9 THE COURT: WHAT'S YOUR VIEW ON THE
10 PROFFER THAT WAS FILED THIS MORNING?

11 MR. JACOBS: OUR VIEW ON THE PROFFER IS
12 THAT JUDGE GREWAL'S ORDER -- THERE WAS A DISCUSSION
13 BEFORE JUDGE GREWAL ABOUT WHETHER THERE WAS AN
14 EXCEPTION FOR HYPOTHETICAL DESIGN AROUNDS.

15 THEN THE ORDER ISSUES FROM JUDGE GREWAL
16 AND THE ORDER SAYS NO IF'S, AND'S, OR BUT'S,
17 THERE'S ONLY ONE EXCEPTION. MY ORDER DOESN'T APPLY
18 TO INJUNCTION PROCEEDINGS. SO OUR INTERPRETATION
19 OF THAT ORDER WAS HE SAYING YOU KNOW WHAT, I
20 THOUGHT ABOUT THIS HYPOTHETICAL ISSUE, THAT LOOKS
21 LIKE AN END RUN AROUND THE FORCE OF MY ORDER.

22 MS. MAROULIS: YOUR HONOR.

23 THE COURT: WELL, MR. WAGNER HAS SEVERAL
24 BASES, OBVIOUSLY HE CAN RELY ON MR. MUSIKA.
25 OBVIOUSLY HE CAN RELY ON THE TECHNICAL EXPERTS,

1 MR. JOHNSON AND MR. GRAY.

2 ARE YOU OBJECTING TO WAGE RATES?

3 MR. JACOBS: I'M SORRY.

4 THE COURT: HE SPOKE WITH SAMSUNG HR
5 ABOUT WAGE RATES.

6 MR. JACOBS: NO, YOUR HONOR. WAGE RATES
7 ON A STAND-ALONE BASIS ISN'T THE ISSUE. THE
8 QUESTION WAS IN LIGHT OF JUDGE GREWAL'S ORDER AND
9 YOUR HONOR'S AFFIRMANCE OF THAT, THEY SHOULD BE
10 ABLE TO TALK ABOUT HYPOTHETICAL DESIGN AROUNDS,
11 AND --

12 THE COURT: WELL, I'M SAYING THEY CAN.

13 MR. JACOBS: OKAY.

14 THE COURT: BASED ON MR. MUSIKA, BASED ON
15 JOHNSON AND GRAY, BASED ON THE HR PERSON WHO TALKED
16 ABOUT WAGE RATES, I THINK THAT'S ALL FINE.

17 I GUESS THE ONLY QUESTION IS THE
18 CONVERSATION WITH THE TWO ENGINEERS. I DON'T KNOW
19 WHAT THE BASIS OF THEIR INFORMATION WAS. THAT'S --
20 I MEAN, EVERYTHING ELSE IS FINE. YOU WANT TO
21 ADDRESS THESE TWO ENGINEERS SOLELY?

22 MR. JACOBS: IS THAT TO ME, YOUR HONOR.

23 THE COURT: YEAH.

24 MR. JACOBS: I THINK THAT'S INEXTRICABLY
25 LINKED WITH THE NON-PRODUCTION OF THE SOURCE CODE

1 AND SHOULD NOT BE A BASIS FOR THIS TESTIMONY.

2 THE COURT: WELL, I GUESS I JUST NEED A
3 LITTLE BIT MORE INFORMATION ON EXACTLY WHAT THEY
4 SAID. I MEAN, WHEN THEY SAID HYPOTHETICAL DESIGN
5 AROUND OF THESE SPECIFIC PATENTS, IT SOUNDS LESS
6 HYPOTHETICAL.

7 MR. PRICE: IT'S THE SAME THING WHICH
8 MR. MUSIKA DID FOR HIS DAMAGE CALCULATION. HE
9 TALKED TO APPLE'S FOLKS AND SAID HOW LONG WOULD IT
10 TAKE TO DESIGN AROUND THIS PATENT. THAT WAS THE
11 BASIS OF HIS DAMAGES. SO --

12 THE COURT: RIGHT, WELL, THEN I THINK
13 THAT IS GETTING INTO JUDGE GREWAL'S ORDER. SO I'M
14 GOING TO STRIKE IT AS TO J. PARK AND SUN-YOUNG YI,
15 BUT EVERYTHING ELSE IS FINE, JOHNSON, RELIANCE ON
16 GRAY, RELIANCE ON MUSIKA, RELIANCE ON THE HR
17 PERSON, THAT'S ALL FINE.

18 MR. PRICE: YOUR HONOR, JUST FOR THE TIME
19 THAT IT WOULD TAKE FOR THE DESIGN AROUND, HE DID NO
20 MORE THAN WHAT MR. MUSIKA DID. IT WAS FOR THE
21 SOURCE CODE. AND IT'S NOT BASED ON THE ACTUAL
22 DESIGN AROUND.

23 MR. JACOBS: YOUR HONOR, HAVING NOT
24 PRODUCED THE DESIGN AROUND, WHICH WOULD BE A -- THE
25 RELEVANT CODE WHICH WOULD BE A FACTUAL WAY FOR US

1 TO CHALLENGE A POSITED DESIGN AROUND ON THE PART OF
2 THE SAMSUNG EMPLOYEES, THEY SHOULD NOT BE ABLE TO
3 SAY, WELL, I CAN IMAGINE DESIGNING AROUND IN A
4 MONTH.

5 MR. PRICE: BUT THERE'S BASICALLY
6 AGREEMENT ON THE TIME FRAMES, TOO.

7 THE COURT: WELL, IT LOOKS LIKE THE ONLY
8 DISAGREEMENT IS ON THE LAST ONE, RIGHT, SIX MONTHS
9 VERSUS FOUR WEEKS?

10 MR. PRICE: YES.

11 THE COURT: THE OTHERS LOOK FAIRLY IN THE
12 SAME BALLPARK.

13 MR. PRICE: AND THAT DOES MAKE A
14 DIFFERENCE IN THE DAMAGES, BUT IT HAS NOTHING TO DO
15 WITH AN ACTUAL DESIGN AROUND IN THE SOURCE CODE.
16 IT'S JUST ENGINEERS SAYING WE BELIEVE THIS IS HOW
17 LONG IT WOULD TAKE, JUST AS APPLE'S DID.

18 THE COURT: I'M GOING TO ALLOW IT IN.

19 ALL RIGHT. 9:07 THOUGH.

20 MR. PRICE: YOUR HONOR, THIS IS
21 CLARIFICATION. IT WAS NOT -- IT REALLY WAS
22 CLARIFICATION. I DIDN'T KNOW WHAT YOU MEANT.

23 THE COURT: ALL RIGHT, FINE.

24 OKAY. ARE WE READY TO GO?

25 MR. PRICE: WE ARE, YES.

1 THE COURT: OKAY. CAN WE PLEASE BRING IN
2 OUR JURY?

3 THE CLERK: YES, YOUR HONOR.

4 (WHEREUPON, THE FOLLOWING PROCEEDINGS
5 WERE HELD IN THE PRESENCE OF THE JURY:)

6 THE COURT: ALL RIGHT. GOOD MORNING AND
7 WELCOME BACK. PLEASE TAKE A SEAT.

8 CALL YOUR NEXT WITNESS, PLEASE.

9 MR. PRICE: YOUR HONOR, WE CALL TIM
10 SHEPPARD.

11 THE COURT: ALL RIGHT. SIR, IF YOU WOULD
12 COME FORWARD.

13 THE CLERK: MR. SHEPPARD, PLEASE RAISE
14 YOUR RIGHT HAND.

15 **TIM SHEPPARD,**
16 BEING CALLED AS A WITNESS ON BEHALF OF THE
17 DEFENDANT, HAVING BEEN FIRST DULY SWORN, WAS
18 EXAMINED AND TESTIFIED AS FOLLOWS:

19 THE WITNESS: I SWEAR.

20 THE CLERK: THANK YOU. PLEASE BE SEATED.

21 THE COURT: ALL RIGHT. IT'S 9:08. GO
22 AHEAD, PLEASE.

23 **DIRECT EXAMINATION**

24 BY MR. PRICE:

25 Q MR. SHEPPARD, PLEASE TELL US WHO YOU WORK

1 WITH.

2 A I WORK FOR THE SAMSUNG TELECOMMUNICATIONS
3 AMERICA.

4 Q AND WHAT'S YOUR POSITION?

5 A I'M THE VICE-PRESIDENT OF FINANCE AND
6 OPERATIONS.

7 Q NOW, AS THE VICE-PRESIDENT OF FINANCE AND
8 OPERATIONS, ARE YOU FAMILIAR WITH THE ACCOUNTING
9 SYSTEMS PROCEDURES AT SAMSUNG TELECOMMUNICATIONS
10 AMERICA, SAMSUNG ELECTRONICS AMERICA, AND SAMSUNG
11 ELECTRONICS CORPORATION?

12 A YES.

13 MR. JACOBS: YOUR HONOR, COMPOUND AND
14 DIRECTLY IN VIOLATION OF YOUR ORDER.

15 MR. PRICE: THIS IS JUST WHAT WE TALKED
16 ABOUT, I'M GOING TO LAY THE FOUNDATION.

17 THE COURT: ALL RIGHT. LAY THE
18 FOUNDATION. GO AHEAD, PLEASE.

19 BY MR. PRICE:

20 Q THE ANSWER WAS YES, I BELIEVE. TELL ME, HOW
21 ARE YOU FAMILIAR WITH THE SYSTEMS?

22 A WE IMPLEMENTED A GLOBAL SYSTEM IN 2009 WHERE
23 WE TOOK ONE INSTANCE OF OUR STANDARD ACCOUNTING
24 PROCESSES AND PUT IN ONE SYSTEM.

25 IN 2010, WE ADOPTED A GLOBAL ACCOUNTING

1 STANDARD CALLED IFRS, AND THAT WAS IMPLEMENTED
2 GLOBALLY. IT'S A VERY COMMONLY USED ACCOUNTING
3 STANDARD.

4 Q AND SO IS THAT SORT OF THE EQUIVALENT OF WHAT
5 WE CALL GAAP HERE, INTERNATIONAL EQUIVALENT?

6 A IT IS. THERE'S ADDITIONALLY AN ADDITIONAL
7 PROCESS WHERE YOU'RE WORKING TOGETHER TO CREATE
8 COMMON ACCOUNTING STANDARDS.

9 SO ALMOST ALL U.S. ACCOUNTING STANDARDS
10 NOW IN THE LAST YEAR OR SO ACTUALLY ALSO CONFORM
11 WITH IFRS.

12 Q IS THERE A SYSTEM IN THIS ACCOUNTING TESTIMONY
13 USED CALLED S.A.P.?

14 A YES.

15 Q COULD YOU TELL US WHAT THAT IS?

16 A S.A.P. IS A VERY COMMONLY -- A VERY POPULAR
17 ACCOUNTING SYSTEM MADE BY A GERMAN COMPANY CALLED
18 S.A.P.

19 Q HOW IS IT IMPLEMENTED IN SAMSUNG? WHAT IS THE
20 S.A.P. OVERALL SYSTEM?

21 A THE S.A.P. IS AN ACCOUNTING SYSTEM THAT'S USED
22 TO DOCUMENT ALL YOUR FINANCIAL TRANSACTIONS, SO WE
23 USE IT FOR RECORDING YOUR SALES, YOUR EXPENSES, ALL
24 YOUR EMPLOYEE COSTS, EVERYTHING YOU POSSIBLY DO
25 FROM A FINANCIAL POINT OF VIEW.

1 Q AND ARE THOSE INPUT THROUGHOUT THE YEAR?

2 A THEY'RE INPUTTED DAY TO DAY AND MINUTE TO
3 MINUTE.

4 Q AND TO GET INFORMATION OUT OF THAT TESTIMONY,
5 HOW DO YOU DO THAT?

6 A THERE'S A COUPLE WAYS TO DO IT. THERE'S ONE
7 WAY YOU CAN LOOK UP SPECIFIC TRANSACTIONS ON LINE.
8 YOU CAN SIT AT YOUR COMPUTER AND LOG IN TO S.A.P.
9 AND SAY I WANT TO SEE X AMOUNT OF DATA.

10 IF YOU WANT TO DO A DEEPER ANALYSIS, YOU
11 MAY -- AND THIS IS A STANDARD FUNCTIONALITY IN
12 ALMOST ALL ACCOUNTING SYSTEMS, YOU CAN ACTUALLY
13 SAY, OKAY, EXTRACT A CERTAIN LARGER AMOUNT OF DATA
14 THAT WILL IMPORT DIRECTLY INTO EXCEL AND THEN YOU
15 CAN STUDY A LARGER SET OF DATA.

16 Q IF YOU LOOK AT EXHIBIT 676, YOU SEE IT LOOKS
17 LIKE AN EXCEL SPREADSHEET.

18 I THINK THERE'S A STIPULATION AS TO THIS,
19 YOUR HONOR, AND I MOVE 676 INTO EVIDENCE.

20 THE COURT: ANY OBJECTION?

21 MR. JACOBS: NO OBJECTION, YOUR HONOR.

22 THE COURT: ALL RIGHT. THAT'S ADMITTED.

23 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
24 676, HAVING BEEN PREVIOUSLY MARKED FOR
25 IDENTIFICATION, WAS ADMITTED INTO

1 EVIDENCE.)

2 BY MR. PRICE:

3 Q AND WERE YOU INVOLVED IN THE PREPARATION OF
4 THIS?

5 A YES, I WAS.

6 Q AND WHERE IS THE DATA -- WHERE DOES THE DATA
7 IN EXHIBIT 676 COME FROM?

8 A THIS COMES FROM THE S.A.P. SYSTEM THAT WE JUST
9 DISCUSSED.

10 Q NOW, IN THE S.A.P. SYSTEM, IF YOU DON'T ASK
11 FOR THE RIGHT MODEL OR WILL YOU GET THAT MODEL
12 INFORMATION?

13 A THE WAY THIS DATA CAME FROM THE S.A.P. SYSTEM,
14 YOU ACTUALLY HAVE TO EXTRACT THE DATA MODEL BY
15 MODEL, MONTH BY MONTH TO PULL THE DATA. AND THEN
16 THAT WAS PUT INTO THE SPREADSHEET AND THIS
17 SPREADSHEET SHOWS DATA MONTH BY MONTH FROM LEFT TO
18 RIGHT. IT'S A LITTLE HARD TO SEE. IT'S QUITE
19 SMALL.

20 Q NOW, WHAT WAS YOUR INVOLVEMENT IN PREPARING
21 THIS?

22 A MY INVOLVEMENT WAS TWO-FOLD. ONE WAS I SPENT
23 TIME MATCHING MY TEAMS IN THE U.S. EXTRACTED DATA
24 FOR THE TOP PART, WHICH IS FOR SAMSUNG
25 TELECOMMUNICATIONS AMERICA, STA.

1 AND THEN IN THE BOTTOM SECTION, THERE'S
2 DATA THAT CAME FROM -- THAT SHOWS THE MANUFACTURING
3 COSTS FOR PRODUCING PRODUCTS.

4 I ACTUALLY WENT TO KOREA AND MET WITH THE
5 GENTLEMAN THAT PRODUCED THIS DATA AND WE HAD
6 SEVERAL INTERACTIONS OVER A LONG PERIOD, SO I
7 UNDERSTOOD EXACTLY HOW THIS DATA WAS PRODUCED.

8 Q SO LET ME ASK YOU --

9 MR. JACOBS: YOUR HONOR, ON THE
10 FOUNDATION POINT, I THINK THE WITNESS HAS JUST
11 TESTIFIED TO LACK OF PERSONAL KNOWLEDGE.

12 MR. PRICE: I -- WELL, I'M NOT GOING TO
13 INTO THE QUESTIONS --

14 THE COURT: WHAT'S YOUR OBJECTION?
15 WHAT'S THE SPECIFIC OBJECTION?

16 MR. JACOBS: THE OBJECTION IS TO THE
17 WITNESS TESTIFYING TO SEC DATA AS A SOURCE OF THE
18 DATA PURSUANT TO THE COURT'S ORDER.

19 THE COURT: BUT YOU HAVEN'T HAD -- ARE
20 YOU OBJECTING TO THE SEC PORTION OF DX 676?

21 MR. JACOBS: AND HIS TESTIMONY ON IT.
22 YES, AND HIS TESTIMONY ON IT.

23 THE COURT: BUT YOU HAD NO OBJECTION TO
24 THE ADMISSION OF 676.

25 MR. PRICE: I HAVE NO -- I HAVE NOT ASKED

1 HIM QUESTIONS ABOUT THE SPECIFICS, JUST PROCEDURE.

2 MR. JACOBS: HIS TESTIMONY ON IT LACKS
3 FOUNDATION, YOUR HONOR.

4 THE COURT: WELL, 676 IS IN. I WILL
5 SUSTAIN ANY OBJECTION AS TO MR. SHEPPARD TESTIFYING
6 ABOUT SEC CREATED FINANCIAL DATA BECAUSE HE DOESN'T
7 HAVE PERSONAL KNOWLEDGE.

8 BY MR. PRICE:

9 Q AND TO BE CLEAR, YOU KNOW THE PROCEDURE THAT'S
10 USED TO EXTRACT THE DATA, YOU AREN'T INVOLVED IN
11 THAT YOURSELF?

12 A CORRECT.

13 Q AND IF WE COULD -- AND BY THE WAY, YOU SAID
14 YOU WERE INVOLVED IN THE PREPARATION OF THIS. WERE
15 THERE EARLIER VERSIONS OF 676?

16 A I BELIEVE SO. HANG ON. LET ME JUST CHECK ONE
17 THING. THE LATEST VERSION SHOULD GO THROUGH Q2,
18 2012, SO THE DATA GOES FROM, I BELIEVE, MIDDLE OF
19 2010 THROUGH Q2, 2012.

20 SO I BELIEVE THIS IS THE MOST RECENT ONE
21 WHICH IS USED I THINK IN JULY.

22 Q AND THERE WERE SOME FITS AND STARTS WHEN YOU
23 FIRST STARTED PUTTING THIS TOGETHER?

24 A YES. I BELIEVE THIS IS THE NINTH VERSION.

25 Q AND DOES THIS REFLECT REVENUE, COSTS OF THE

1 GOODS SOLD, AND OPERATING EXPENSES?

2 A IT DOES.

3 Q AND IF WE COULD LOOK AT EXHIBIT 753?

4 A YES.

5 Q AND DO YOU RECOGNIZE THIS AS SAMSUNG
6 ELECTRONICS CONSOLIDATED FINANCIAL STATEMENT?

7 A I DO.

8 MR. PRICE: MOVE 753 INTO EVIDENCE, YOUR
9 HONOR.

10 THE COURT: ANY OBJECTION?

11 MR. JACOBS: NO, YOUR HONOR.

12 THE COURT: IT'S ADMITTED.

13 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
14 753, HAVING BEEN PREVIOUSLY MARKED FOR
15 IDENTIFICATION, WAS ADMITTED INTO
16 EVIDENCE.)

17 MR. PRICE: CAN WE SHOW THE FIRST PAGE.
18 THIS IS THE FINANCIAL STATEMENTS.

19 Q AND THE SECOND PAGE -- ARE THESE FINANCIAL
20 STATEMENTS AUDITED?

21 A YES, THEY ARE, AND DISCOVERY IMPORTANT FOR
22 SAMSUNG TO HAVE AUDITED FINANCIALS. THE STOCK OF
23 THE COMPANY IS TRADED ON THREE GLOBAL EXCHANGES,
24 LONDON, SEOUL, AND LUXEMBURG.

25 Q AND IF YOU COULD LOOK AT 753.0 -- AND BY THE

1 WAY, IT'S AUDITED BY PRICEWATERHOUSECOOPERS, PWC?

2 A CORRECT.

3 Q IF YOU CAN LOOK AT 753.076, AND IF WE LOOK AT
4 31 SEGMENT INFORMATION.

5 A PAGE 75?

6 Q YEAH, PAGE 75. AT THE TOP IT SAYS 753.076.
7 THESE ARE SOME FINANCIAL NUMBERS AT THE SEGMENT
8 LEVEL OF SAMSUNG; CORRECT?

9 A CORRECT.

10 Q AND THERE'S A SECTION THERE THAT SAYS
11 TELECOMMUNICATIONS. WHAT SEGMENT IS THAT?

12 A THAT'S THE DIVISION THAT INCLUDES THE MOBILE
13 DIVISION. IT ALSO INCLUDES NETWORK DIVISION.

14 Q OKAY.

15 A SO ANYTHING TELECOMMUNICATIONS.

16 Q AND THAT WOULD INCLUDE ALL OF THE MOBILE HAND
17 PHONES OR SMARTPHONES THAT ARE BEING TALKED ABOUT
18 IN THIS TRIAL?

19 A YES.

20 Q AND IF WE LOOK -- THERE'S A SECTION THERE THAT
21 SAYS REVENUE FROM EXTERNAL CUSTOMERS, AND THIS IS
22 IN KOREAN WON. DO YOU SEE THAT?

23 A YES.

24 Q AND IS THAT REVENUE FROM THE CARRIERS, PEOPLE
25 THAT YOU SELL THE PHONES TO?

1 A SURE, PEOPLE LIKE VERIZON AND AT&T.

2 Q AS WELL AS OTHER PEOPLE?

3 A YEAH, THIS IS APPROXIMATELY 40 CARRIERS.

4 Q AND THEN WE HAVE, AT THE BOTTOM THERE,
5 OPERATING PROFIT AND LOSS. AND WE'LL HAVE SOMEONE
6 ELSE TALK ABOUT EXACTLY WHAT OPERATING PROFIT
7 MEANS, BUT YOU SEE THAT NUMBER THERE UNDER
8 OPERATING PROFIT AND LOSS?

9 A THE NUMBER THAT BEGINS WITH 8?

10 Q YES.

11 A YES.

12 Q OKAY. SO IF YOU LOOK AT THAT NUMBER AND THE
13 REVENUE, WHAT'S THE OPERATING MARGIN FOR THE
14 SEGMENT IN WHICH THESE PHONES ARE SOLD?

15 A I THINK, IF WE'RE LOOKING AT 2011, I THINK
16 THAT NUMBER IS, WITHOUT A CALCULATOR, IT'S ABOUT 15
17 PERCENT.

18 Q 15 PERCENT OPERATING MARGIN?

19 A YEAH.

20 Q AND FOR THE COMPANY AS A WHOLE, IF WE LOOK AT
21 THAT, WHICH IS AT PAGE 2, WHAT'S THE OPERATING
22 MARGIN FOR THE COMPANY AS A WHOLE?

23 A YOU CAN ALSO SEE IT ON THE RIGHT-LAND SIDE OF
24 THIS PAGE. THERE'S A CONSOLIDATED NUMBER. BUT THE
25 NUMBER IS APPROXIMATELY 10 PERCENT FOR THE WHOLE

1 COMPANY.

2 Q AND IF YOU LOOK AT EXHIBIT --

3 A WHICH IS THE 16 MILLION DIVIDED BY 165.

4 Q SO THE ENTIRE COMPANY, ABOUT 10 PERCENT, AND
5 THE TELECOMMUNICATIONS FOR THE HANDSETS WHERE SOLD,
6 THE OPERATING MARGIN IS ABOUT 15 FOR THAT YEAR?

7 A FOR THAT YEAR, YEAH.

8 Q AND DOES THAT VARY MUCH?

9 A YEAH, I THINK THE YEAR BEFORE IT WAS LOWER,
10 MAYBE 12. BUT SOMEWHERE AROUND 10 TO 12 PERCENT
11 HAS BEEN HISTORICAL NORMAL.

12 Q AND IF YOU LOOK AT 3960.003, THIS IS JUST SOME
13 OPERATING EXPENSE CATEGORIES FOR STA AND SEA. ARE
14 THESE THE KIND OF OPERATING EXPENSES THAT YOU WOULD
15 SEE AT STA AND -- AT THE TOP THERE, AND SEA.

16 MR. JACOBS: YOUR HONOR, OBJECTION. THIS
17 IS SHOWING SEC.

18 THE COURT: YES, THIS WAS SUSTAINED. IS
19 THAT UP? I SUSTAINED THAT. WHY IS THAT UP?

20 MR. PRICE: I ASKED FOR STA AND SEA.

21 THE COURT: OKAY. BUT WHY WAS THE SEC
22 ONE ON THE SCREEN? I SUSTAINED THE OBJECTION.

23 MR. PRICE: AND YOU DID, I'M NOT GOING
24 THERE. THAT WAS A MISTAKE.

25 THE COURT: OKAY.

1 MR. PRICE: THAT'S WHY I WAS CONFUSED. I
2 KEPT LOOKING FOR STA.

3 Q THESE ARE THE KIND OF EXPENSES THAT YOU HAVE
4 IN THOSE ENTITIES, OPERATING EXPENSES?

5 A YES, THEY ARE. AND THEY ACTUALLY MATCH THESE
6 CATEGORIES, THEY ALIGN QUITE WELL WITH THE INCOME
7 STATEMENT FROM THE SEC FINANCIALS ON PAGE 4. SO WE
8 CAN GO INTO MORE DETAIL IF YOU WANT TO, BUT --

9 Q I WOULD LOVE TO, BUT I'M ON THE CLOCK.

10 NO FURTHER QUESTIONS.

11 A OKAY. I UNDERSTAND.

12 THE COURT: IT'S 9:19.

13 **CROSS-EXAMINATION**

14 BY MR. JACOBS:

15 Q NINE VERSIONS, SIR?

16 A I BELIEVE IT WAS NINE.

17 Q NINE VERSIONS THAT SAMSUNG PRODUCED IN THE
18 COURSE OF THIS LITIGATION TO ENABLE APPLE'S EXPERT
19 TO ANALYZE THE PROFITABILITY ON THE ACCUSED PHONES?
20 SIR?

21 A I'M SORRY?

22 Q NINE VERSIONS OF THE DOCUMENTATION THAT
23 SAMSUNG PRODUCED DURING THE LITIGATION TO ENABLE
24 APPLE'S EXPERT TO ANALYZE THE QUESTION OF
25 PROFITABILITY ON THE SAMSUNG ACCUSED PHONES?

1 A I BELIEVE THE -- PROBABLY THE EASIEST WAY TO
2 ANSWER THAT IF YOU KIND OF WALK BACKWARDS --

3 Q I'M SORRY, SIR. WERE THERE NINE VERSIONS OF
4 THE DOCUMENTATION THAT SAMSUNG PRODUCED DURING THE
5 LITIGATION?

6 A I AGREE THAT -- I DID SAY, YES, THERE WERE
7 NINE VERSIONS.

8 Q AND THAT'S BECAUSE PREVIOUS VERSIONS WERE
9 RIDDLED WITH ERRORS; ISN'T THAT TRUE, SIR?

10 A SOME HAD SOME -- THERE WAS ACTUALLY KIND OF
11 TWO ISSUES HERE, I THINK. SO THREE -- LET ME TAKE
12 THAT BACK.

13 Q I'M SORRY, SIR. CAN YOU ANSWER YES OR NO?

14 A I'D RATHER WALK THROUGH THE NINE VERSIONS.

15 Q THAT I DIDN'T ASK YOU TO DO, SIR. CAN YOU
16 ANSWER WHETHER THERE WERE -- THE REASON THERE WERE
17 NINE VERSIONS IS THAT PREVIOUS VERSIONS HAD MANY
18 ERRORS IN THEM?

19 A OH, THAT'S A STRAIGHTFORWARD ANSWER. THAT'S
20 NOT THE REASON FOR NINE VERSIONS, NO.

21 Q IT'S NOT BECAUSE THEY HAD MANY ERRORS?

22 A NO, SIR. I THINK THE JULY VERSION WAS ASKED
23 FOR AND AGREED TO BY BOTH PARTIES TO PRODUCE THE Q2
24 DATA. THE VERSION BEFORE WAS UPDATED TO INCLUDE Q1
25 2012 DATA.

1 SO THE LAST TWO VERSIONS ALONE WERE
2 AGREED TO UPDATE MORE RECENT FINANCIAL DATA.

3 Q THAT'S A USEFUL CLARIFICATION. THE PREVIOUS
4 SEVEN VERSIONS, THE REASON THERE WAS A VERSION 2 AS
5 AGAINST A VERSION 1, THE REASON THAT THERE WAS A
6 VERSION 2 IS BECAUSE VERSION 1 HAD ERRORS; CORRECT,
7 SIR?

8 A NO. THE VERSION 2 WAS A REQUEST TO EXPLAIN
9 ONE OF THE SPECIFIC PRODUCTS TO SHOW WHICH THREE
10 CARRIERS THE PRODUCT WAS SOLD TO, THE TOTAL VALUE
11 FOR THAT PARTICULAR PRODUCT DIDN'T CHANGE AT ALL.
12 I DON'T THINK THERE WAS ANY CLARIFICATION ON THAT
13 OTHER THAN AN EXPLANATION TO SAY WHICH CARRIERS DID
14 YOU SELL THAT TO.

15 Q COULD WE SEE YOUR DEPOSITION TRANSCRIPT,
16 PLEASE, AT PAGE 168, LINE 18 TO 22, THE MARCH 30TH,
17 2012 DEPOSITION. QUESTION AT LINE 18.

18 "WELL, FOR EXAMPLE, THERE WAS ONE WE
19 DIDN'T TALK ABOUT WHERE YOU HAD TO FIX THE EXHIBIT
20 SO THAT THE SPREADSHEETS WOULD ADD ACROSS.

21 "DO YOU REMEMBER THAT?

22 "ANSWER: YES."

23 DID YOU GIVE THAT TESTIMONY IN RESPONSE
24 TO THAT QUESTION, SIR?

25 MR. PRICE: I OBJECT. THAT'S NOT

1 IMPEACHING BECAUSE IT DOESN'T RELATE TO THE VERSION
2 HE WAS ASKING ABOUT.

3 THE WITNESS: I BELIEVE THIS WAS --

4 MR. PRICE: HE ASKED ABOUT THE VERSIONS.

5 THE COURT: WHAT -- OVERRULED. GO AHEAD.

6 BY MR. JACOBS:

7 Q YOU DID GIVE THAT ANSWER TO THAT QUESTION,
8 CORRECT, SIR? JUST A YES OR NO AGAIN. I'M SORRY,
9 SIR?

10 A I'M TRYING TO CLARIFY WHICH VERSION OF THE
11 SPREADSHEET YOU'RE ASKING ABOUT.

12 Q THERE WERE ERRORS IN VERSIONS OF THE
13 SPREADSHEET THAT YOU PRODUCED TO APPLE DURING THE
14 COURSE OF THIS LITIGATION; CORRECT, SIR?

15 A I THINK SO. I THINK THIS IS THE -- THEY'RE
16 REFERRING TO THE FOURTH VERSION THAT HAD AN ERROR
17 IN ONE ROW THAT DIDN'T SUM UP TO THE TOTAL OF
18 ANYTHING. SO IT DIDN'T ACTUALLY IMPACT THE TOTALS
19 ON THE SPREADSHEET AT ALL, BUT IT DID LOOK ODD WHEN
20 YOU LOOKED AT THE ONE PAGE FOR THE PRODUCTS.

21 Q CAN YOU TAKE A LOOK AT EXHIBIT 180 IN YOUR
22 BINDER, PLEASE.

23 A WHICH BINDER IS IT IN?

24 Q IT SHOULD BE THE CROSS-EXAMINATION BINDER?

25 A I HAVE TWO.

1 Q DO YOU HAVE IT, SIR?

2 A I HAVE TWO BINDERS. WHICH ONE WOULD IT BE?

3 Q IT SHOULD BE MARKED ON THE TAB.

4 A WHICH ONE AGAIN?

5 Q 180.

6 A 180?

7 Q YES.

8 A I HAVE IT. SORRY. I'VE GOT IT. THERE'S MANY
9 TABS.

10 Q DO YOU SEE IT, SIR?

11 A YES.

12 Q IS THAT ONE OF THE SPREADSHEETS THAT SAMSUNG
13 PRODUCED DURING THE COURSE OF THIS LITIGATION? DO
14 YOU SEE THE SAM, NDCA AT THE BOTTOM, SIR?

15 A I DO.

16 Q AND IT IS ONE OF THE SPREADSHEETS; CORRECT,
17 SIR?

18 A I'M TRYING TO UNDERSTAND WHICH SPREADSHEET IT
19 IS. YES, IT IS.

20 MR. JACOBS: YOUR HONOR, WE MOVE 180 INTO
21 EVIDENCE.

22 THE COURT: ANY OBJECTION?

23 MR. PRICE: NO OBJECTION.

24 THE COURT: IT'S ADMITTED.

25 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER

1 180, HAVING BEEN PREVIOUSLY MARKED FOR
2 IDENTIFICATION, WAS ADMITTED INTO
3 EVIDENCE.)

4 MR. JACOBS: NO FURTHER QUESTIONS, SIR.

5 THE COURT: ALL RIGHT. ANY REDIRECT?

6 IT'S 9:25.

7 MR. PRICE: NO, YOUR HONOR.

8 THE COURT: MAY THIS WITNESS BE EXCUSED

9 AND IT IS SUBJECT TO RECALL OR NOT?

10 MR. PRICE: NO RECALL, YOUR HONOR.

11 MR. JACOBS: NO RECALL FROM US.

12 THE COURT: ALL RIGHT. YOU'RE EXCUSED.

13 ALL RIGHT. CALL YOUR NEXT WITNESS,

14 PLEASE.

15 MR. PRICE: CALL MICHAEL WAGNER.

16 THE CLERK: PLEASE RAISE YOUR RIGHT.

17 **MICHAEL WAGNER,**

18 BEING CALLED AS A WITNESS ON BEHALF OF THE

19 DEFENDANT, HAVING BEEN FIRST DULY SWORN, WAS

20 EXAMINED AND TESTIFIED AS FOLLOWS:

21 THE WITNESS: I DO.

22 THE CLERK: THANK YOU. PLEASE BE SEATED.

23 THE COURT: ALL RIGHT. TIME IS NOW 9:27.

24 GO AHEAD, PLEASE.

25 / / /

1 / / /

2 **DIRECT EXAMINATION**

3 BY MR. PRICE:

4 Q MR. WAGNER, YOU'VE BEEN HIRED AS AN EXPERT IN
5 THIS CASE?

6 A I HAVE.

7 Q AND YOU'RE MY LEAST FAVORITE EXPERT. YOU'RE
8 TESTIFYING ABOUT WHAT HAPPENS IF APPLE IS RIGHT AND
9 SAMSUNG IS WRONG ABOUT INFRINGEMENT STUFF; RIGHT?

10 A AT LEAST AS TO THE VALUE OF THESE PATENTS,
11 YES.

12 Q COULD YOU TELL US WHAT YOUR ASSIGNMENT WAS?

13 A MY ASSIGNMENT WAS TWO-FOLD. FIRST WAS TO
14 REVIEW THE REPORTS OF MR. MUSIKA, THE DAMAGE EXPERT
15 FOR APPLE, AND DETERMINE WHETHER I HAD ANY
16 CRITICISMS WITH HIS OPINIONS OR BASIS FOR OPINIONS.

17 AND THEN I ALSO WAS ASKED TO DO AN
18 INDEPENDENT CALCULATION OF DAMAGES IF LIABILITY IS
19 ESTABLISHED.

20 Q COULD YOU EXPLAIN TO THE JURY WHY YOU BELIEVE
21 YOU'RE QUALIFIED?

22 A STARTING WITH MY EDUCATION, I HAVE A
23 BACHELOR'S OF SCIENCE IN ENGINEERS FROM SANTA CLARA
24 UNIVERSITY WHICH I RECEIVED IN 1969.

25 I HAVE A MASTER'S IN BUSINESS

1 ADMINISTRATION FROM UCLA WHICH I RECEIVED IN 1971,
2 AND A JURIS DOCTORATE DEGREE FROM LOYOLA UNIVERSITY
3 SCHOOL OF LAW IN LOS ANGELES, WHICH I RECEIVED IN
4 1975.

5 THE LAST 36 YEARS I HAVE BEEN PRACTICING
6 IN THIS AREA OF CALCULATING DAMAGES IN COMMERCIAL
7 LITIGATION.

8 I WAS A PARTNER AT PRICEWATERHOUSE. I
9 WAS PARTNERS IN OTHER MAJOR FIRMS THAT DO THIS TYPE
10 OF WORK, PUBLICLY TRADED MANAGEMENT CONSULTING
11 FIRMS LIKE CHARLES RIVERS ASSOCIATES, AND ALSO
12 LITINOMICS, INCORPORATED, WHICH WAS THE LARGEST
13 PRIVATELY HELD FINANCIAL CONSULTING FIRM. IT
14 SPECIALIZES IN VALUING INTELLECTUAL PROPERTY.

15 I'M A CERTIFIED PUBLIC ACCOUNTANT IN THE
16 STATE OF CALIFORNIA, AND THOSE ARE MY BASIC
17 QUALIFICATIONS.

18 Q ARE YOU A MEMBER OF ANY ASSOCIATIONS AND HAVE
19 ANY LEADERSHIP POSITIONS IN THOSE ASSOCIATIONS?

20 A THE ONES THAT ARE RELEVANT HERE ARE
21 PRINCIPALLY THE AMERICAN INSTITUTE OF CERTIFIED
22 PUBLIC ACCOUNTS, WHICH BASICALLY GOVERNS THE
23 ACTIVITIES OF C.P.A.'S IN OUR COUNTRY, AND I'VE
24 SERVED A NUMBER OF LEADERSHIP ROLES IN THAT
25 ORGANIZATION.

1 PROBABLY THE MOST IMPORTANT IS THE
2 PRACTICE STANDARDS COMMITTEE FOR THE MANAGEMENT
3 CONSULTING DIVISION, AND I WAS ON THE COMMITTEE
4 WHEN WE SET THE STANDARDS FOR C.P.A.'S THAT DO THE
5 WORK THAT I'M DOING HERE AND LIKE MR. MUSIKA DID
6 WHEN HE TESTIFIED.

7 I ALSO SERVED ON THE INAUGURAL COMMITTEE
8 THAT SET THE STANDARDS TO HAVE A CERTIFICATE IN
9 FINANCIAL FORENSICS. IT'S CALLED ACFF. I WAS
10 NUMBER 23 IN THE COUNTRY TO GET THAT DESIGNATION.
11 THERE'S NOW OVER 5,000 C.P.A.'S WHO DO WORK IN THE
12 FORENSICS AREA IN LITIGATION.

13 AND I WAS THE PERSON WHO WAS ON THAT
14 COMMITTEE TO HELP SET THE STANDARD AND THE
15 QUALIFICATIONS YOU NEEDED TO GET THAT CREDENTIAL.

16 I WAS THE CO-EDITOR OF THE C.P.A. EXPERT
17 FOR A NUMBER OF YEARS, WHICH IS THE QUARTERLY
18 PUBLICATION FOR C.P.A.'S WHO EITHER DO BUSINESS
19 VALUATION OR LITIGATION SERVICES.

20 I SERVED ON THE LITIGATION SERVICES FOR
21 THE COMMITTEE FOR THE C.P.A., AND I WAS ALSO ON THE
22 AGENDA FOR THE NATIONAL COMMITTEE CONFERENCE FOR
23 FIVE YEARS.

24 Q AND DO YOU HAVE ANY PUBLICATIONS IN THE AREA?

25 A I HAVE 25 PROFESSIONAL PUBLICATIONS, 8 OF THEM

1 DEAL DIRECTLY WITH THE CALCULATION OF PATENT
2 DAMAGES.

3 Q NOW, I'D LIKE FIRST TO TURN TO YOUR OPINION --
4 OH, I'M SORRY, YOUR HONOR. FIRST WE'D
5 OFFER MR. WAGNER AS AN EXPERT.

6 MR. JACOBS: NO OBJECTION, YOUR HONOR.

7 THE COURT: SO CERTIFIED.

8 BY MR. PRICE:

9 Q FIRST I'D LIKE TO LOOK AT YOUR OPINION AS TO
10 MR. MUSIKA'S OPINION AND YOUR COMMENTS. AND
11 MR. MUSIKA GAVE AN OPINION AS TO WHAT HE SAID
12 SAMSUNG'S TOTAL PROFITS WERE IN THE EVENT THAT THE
13 JURY FINDS THAT ALL THE DESIGN AND TRADE DRESS
14 ALLEGATIONS GO APPLE'S WAY.

15 WHAT'S YOUR VIEW AS TO HIS OPINION OF
16 SAMSUNG'S TOTAL PROFIT?

17 A THAT HIS CALCULATION OF THE TOTAL PROFITS DID
18 NOT INCLUDE ALL OF THE COSTS IN ORDER TO DETERMINE
19 TOTAL PROFITS.

20 Q SO LET'S GO INTO THAT. IF YOU COULD EXPLAIN
21 THAT. AND IF YOU CAN PUT UP SLIDE 3965.004, AND
22 MAYBE YOU CAN EXPLAIN TO THE JURY WHAT YOUR VIEW OF
23 TOTAL PROFITS IS?

24 A TOTAL PROFITS IS THE DIFFERENCE, IT'S THE
25 DIFFERENCE BETWEEN ALL THE REVENUES THAT ARE

1 BROUGHT INTO THE COMPANY AS A RESULT OF THE
2 ALLEGEDLY INFRINGING PRODUCTS, LESS ALL OF THE
3 COSTS IN ORDER TO MAKE THOSE PRODUCTS AND SELL
4 THOSE PRODUCTS.

5 AND YOU SUBTRACT THE COST OF REVENUES AND
6 YOU GET TOTAL PROFITS.

7 Q NOW, LET'S TALK AND FOCUS ON THEIR TOTAL COST
8 AREA, AND IF WE COULD PUT UP 3965.005.

9 AND PERHAPS YOU CAN EXPLAIN TO US WHAT
10 YOU INCLUDE IN TOTAL COSTS?

11 A THE COSTS THAT I BELIEVE ARE APPROPRIATE ARE
12 THE COST OF GOODS SOLD, WHICH ARE THE COSTS TO
13 ACTUALLY MANUFACTURE THE INFRINGING OR ALLEGEDLY
14 INFRINGING SMARTPHONES AND TABLETS BUT ALSO THE
15 OPERATING EXPENSES THAT ARE NECESSARY TO SELL THOSE
16 PHONES.

17 YOU CAN'T SELL A PHONE JUST BECAUSE
18 YOU'VE MADE IT. YOU HAVE TO MARKET IT, YOU'VE GOT
19 TO SELL IT, YOU HAVE TO HAVE DEVELOPED IT
20 ORIGINALLY TO ACTUALLY MAKE IT INTO A PRODUCT, AND
21 THEN YOU HAVE TO HAVE AN UMBRELLA ORGANIZATION THAT
22 ORGANIZES ALL OF THOSE ACTIVITIES.

23 Q SO PERHAPS YOU CAN EXPLAIN THEN THE OPERATING
24 EXPENSES THAT YOU HAVE HERE, SALES EXPENSES,
25 MARKING, ET CETERA, SO THE JURY CAN HAVE AN

1 UNDERSTANDING AS TO WHAT THE NATURE IS OF THOSE
2 EXPENSES?

3 A STARTING WITH THE FIRST ONE, SALES EXPENSE, AS
4 YOU JUST HEARD, THERE ARE 40 CARRIERS WHO ARE
5 CUSTOMERS FOR THOSE PRODUCTS IN THE UNITED STATES.

6 SAMSUNG HAS TO SEND PEOPLE OUT TO THOSE
7 CARRIERS. THERE ARE ALL KINDS OF COMPETITORS FOR
8 THE LIMITED SALE SPACE IN THE CARRIER STORES.

9 SO SAMSUNG HAS TO ACTIVELY GET IN THERE
10 AND TELL THESE CARRIERS WHY THEY SHOULD BE CARRYING
11 THEIR PHONES VERSUS APPLE PHONE OR HTC PHONE OR LG
12 PHONE. SO THOSE ARE SELLING EXPENSES.

13 Q IS IT YOUR UNDERSTANDING THAT IT IS CUSTOMARY
14 THAT SAMSUNG WOULD HAVE AN EMPLOYEE THAT'S DEVOTED
15 TO ONE PHONE, LIKE THE DROID CHARGE?

16 A NO. NORMALLY THEY'RE SELLING A WHOLE PRODUCT
17 LINE FOR THE COMPANY.

18 Q AND SO HOW ARE EXPENSES THEN ALLOCATED FOR A
19 SALESMAN LIKE THAT?

20 A WELL, IF YOU WANT TO ALLOCATE TO A PARTICULAR
21 PRODUCT, YOU'D HAVE TO ALLOCATE THAT TIME BECAUSE
22 THAT SALESPERSON DOESN'T ONLY JUST SELL, SAY, AN
23 EPIC 4G. THEY MAY BE SELLING MANY OF THE OTHER
24 MODELS THAT ARE NOT ACCUSED IN THIS CASE AND YOU
25 HAVE TO ALLOCATE IT BASED ON EITHER TIME OR SOME

1 REASONABLE BASIS LIKE REVENUES.

2 Q AND IF YOU COULD EXPLAIN THE MARKETING AND THE
3 R&D EXPENSES IN GENERAL, AND ADMINISTRATIVE?

4 A MARKETING AND GENERAL, YOU AGAIN HAVE TO GET
5 CUSTOMERS AWARE THAT YOU HAVE A PRODUCT. IT'S
6 MAINLY TV ADVERTISING, BILLBOARDS, MAGAZINE ADS,
7 THAT TYPE OF INFORMATION.

8 AND I'VE BEEN WATCHING THE OLYMPICS, OR I
9 DID, AND EVERY CITE I WOULD SEE THREE DIFFERENT
10 SAMSUNG ADS BEING RUN PROMOTING THEIR GALAXY
11 PHONES. THAT COST MONEY, A LOT OF MONEY. THAT
12 COST IS NECESSARY TO BE SUCCESSFUL IN THE
13 MARKETPLACE.

14 AND R&D, YOU HAVE TO DEVELOP THIS VERY
15 COMPLICATED TECHNOLOGY PRODUCT. THESE ARE THE MOST
16 COMPLICATED CONSUMER PRODUCTS IN THE MARKETPLACE.
17 THERE'S ALL KINDS OF EFFORTS TO DEVELOP THE RIGHT
18 CHIPS, THE RIGHT INTEGRATED CIRCUITS, DETERMINE
19 WHAT FEATURES GO INTO IT, ALL OF THOSE THINGS TAKE
20 A LOT OF TIME AND EXPENSE TO DO AND THOSE COSTS ARE
21 NECESSARY OR YOU'D NEVER SELL A PHONE.

22 AND, FINALLY, GENERAL ADMINISTRATIVE IS
23 YOU, AGAIN, YOU NEED AN ORGANIZATION THAT CAN
24 MANAGE ALL OF THESE ACTIVITIES IN ORDER TO SELL A
25 PHONE.

1 Q LET ME ASK YOU, DID MR. MUSIKA, IN HIS
2 CALCULATIONS, DEDUCT THESE EXPENSES, SALES,
3 MARKETING, R&D?

4 A NOT ONE PENNY.

5 Q SO NOT A PENNY OF ADVERTISING?

6 A NO.

7 Q NOT A PENNY OF RESEARCH AND DEVELOPMENT?

8 A NO.

9 Q LET ME ASK YOU, YOU'VE SEEN APPLE'S 10-K'S,
10 THEIR FINANCIALS?

11 A I HAVE.

12 Q AND DO THEY DEDUCT THESE EXPENSES ON THEIR
13 FINANCIALS?

14 A THEY CERTAINLY DO.

15 Q IF WE COULD LOOK AT EXHIBIT 754.502. 754 IS A
16 NUMBER OF, A NUMBER OF FORM 10-K'S, AND I'M GOING
17 TO CALL YOUR ATTENTION TO ACTUALLY 754.501, OR 502.

18 A THERE'S A REASON I COULDN'T FIND IT. IT WAS
19 ON THE FLOOR.

20 I'VE GOT IT.

21 Q DO YOU SEE THIS IS APPLE'S 10-K FOR THE PERIOD
22 ENDING SEPTEMBER 24, 2011?

23 A CORRECT.

24 MR. PRICE: AND, YOUR HONOR, I'LL MOVE
25 PAGE 2 INTO EVIDENCE.

1 THE COURT: OKAY. NO OBJECTION; RIGHT?
2 IT'S ADMITTED.

3 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
4 754.502, PAGE 2, HAVING BEEN PREVIOUSLY
5 MARKED FOR IDENTIFICATION, WAS ADMITTED
6 INTO EVIDENCE.)

7 BY MR. PRICE:

8 Q IF WE CAN LOOK AT 754.545, IS THIS APPLE'S
9 CONSOLIDATED STATEMENTS OF OPERATIONS?

10 A IT IS.

11 Q AND IF WE CAN BLOW THAT UP.

12 COULD YOU EXPLAIN TO THE JURY WHAT YOU'RE
13 TALKING ABOUT IN DEDUCTING THE OPERATING EXPENSES
14 FROM INCOME TO GET TOTAL PROFIT?

15 A WELL, IT STARTS AT NET SALES, WHICH ARE THE
16 REVENUES, AND THEN IT SUBTRACTS COST OF GOODS SOLD
17 TO GET GROSS MARGIN, AND THAT IS WHAT IS GROSS
18 MARGIN, WHICH MR. MUSIKA CALLED TOTAL PROFIT, WHICH
19 IS NOT TOTAL PROFIT.

20 THEN YOU HAVE THE LINES THE OPERATING
21 EXPENSES WHICH THEY HAVE COLLAPSED INTO TWO GENERAL
22 CATEGORIES, RESEARCH AND DEVELOPMENT, AND THEN
23 SELLING, GENERAL AND ADMINISTRATIVE, AND YOU
24 SUBTRACT THOSE COSTS AND YOU GET TOTAL OPERATING
25 EXPENSES AND TOTAL OPERATING INCOME.

1 AND THAT IS WHERE YOU GET THE TOTAL
2 PROFITS FROM THEIR OPERATIONS.

3 Q AND IF YOU GO BELOW THAT, IT HAS COME FROM
4 PROVISIONS OR INCOME TAXES. IS APPLE TAXED ON THE,
5 THE GROSS MARGIN?

6 A NO. THEY'RE TAXED ON THEIR PROFIT BEFORE
7 TAXES WHICH SUBTRACTS ALL APPROPRIATE EXPENSES.

8 Q AND THIS HAS ADDITIONAL SUBTRACTION, OTHER
9 INCOME AND EXPENSE, WHAT IS THAT RELATED TO?

10 A THAT NORMALLY IS INTEREST INCOME OR INTEREST
11 EXPENSE IF THEY BORROWED MONEY IN ORDER TO DO THEIR
12 BUSINESS.

13 Q AND YOU ALSO LOOKED AT SAMSUNG'S AUDITED
14 CONSOLIDATED FINANCIALS?

15 A I HAVE. THEY DO EXACTLY THE SAME THING.

16 THE COURT: CAN I AND HAVE A QUICK
17 CLARIFICATION. YOU MOVED PAGE 2 INTO EVIDENCE. DO
18 YOU WANT THIS PAGE?

19 MR. PRICE: YES, YOUR HONOR.

20 THE COURT: PAGE 2 IS A SUMMARY.

21 MR. JACOBS: YOUR HONOR, WE SHOULD HAVE
22 THE WHOLE THING IN.

23 THE COURT: YOU'LL HAVE TO MOVE IT IN
24 YOUR CASE. LET ME HEAR WHAT MR. PRICE WANTS.

25 MR. PRICE: YES, PAGE 545.

1 THE COURT: OKAY. THAT'S THE ONLY PAGE,
2 RIGHT.

3 MR. PRICE: AND IF WE CAN FIGURE OUT THE
4 BATES RANGE OF THE WHOLE DOCUMENT, I HAVE NO
5 OBJECTION.

6 BY MR. PRICE:

7 Q NOW, IF YOU'D LOOK AT EXHIBIT 676, WHICH WAS
8 JUST ADMITTED INTO EVIDENCE, THAT'S THAT
9 SPREADSHEET, DID YOU LOOK AT -- DID YOU LOOK AT A
10 SPREADSHEET -- THAT WAS JUST TESTIMONY ABOUT
11 SAMSUNG SPREADSHEET THAT HAD THE, THE INCOME,
12 COSTS, ET CETERA, OF THE PRODUCTS THAT ARE AT ISSUE
13 HERE.

14 A I DID.

15 Q AND DID YOU -- FIRST OF ALL, LET ME ASK YOU,
16 IS -- YOU'VE READ MR. MUSIKA'S REPORT?

17 A I HAVE.

18 Q WAS THIS THE SAME SPREADSHEET THAT HE WAS
19 USING?

20 A HE USED A SIMILAR ONE, BUT THE NUMBERS THAT HE
21 SELECTED HAVE THE SAME NUMBERS THAT THIS ONE HAS.

22 Q YOU SAID THEY HAVE THE SAME NUMBERS. IS IT
23 THE SPREADSHEET THAT YOU GET THE NUMBER FOR INCOME
24 ON THESE PRODUCTS?

25 A FOR REVENUE AND COSTS OF GOODS SOLD.

1 Q I'M SORRY. SO FOR REVENUE, THAT CAME FROM
2 THIS; CORRECT?

3 A YES.

4 Q AND YOU -- YOU SAID MR. MUSIKA DEDUCTED COSTS
5 OF GOODS SOLD. WAS THAT OBTAINED FROM THIS SAME
6 DOCUMENT?

7 A IT WOULD BE THE SAME NUMBERS, YES.

8 Q AND DO YOU ALSO GET OPERATING EXPENSES FROM
9 THIS DOCUMENT?

10 A YOU DO.

11 Q AND DID MR. MUSIKA USE ANY OF THOSE OPERATING
12 EXPENSES FROM THIS DOCUMENT?

13 A HE DID NOT.

14 Q NOW, DID YOU, IN YOUR PROFESSIONAL OPINION,
15 FIND THE INFORMATION IN THIS TO BE RELIABLE?

16 A I DID.

17 Q AND IF WE CAN PUT UP EXHIBIT 3965.008, PERHAPS
18 YOU CAN EXPLAIN WHY USING THIS?

19 A WELL, THE FIRST THING I FOUND IS THIS IS VERY
20 DETAILED FINANCIAL INFORMATION. COMPANIES DON'T
21 PROVIDE THIS TYPE OF INFORMATION IN THEIR AUDITED
22 FINANCIAL STATEMENTS. THEY DON'T GIVE YOU
23 MONTH-BY-MONTH COST INFORMATION FOR INDIVIDUAL
24 PRODUCTS THEY SELL. SO YOU CAN'T TIE THIS TO AN
25 AUDITED FINANCIAL STATEMENT.

1 BUT IT COMES FROM A RELIABLE ACTING
2 SYSTEM, AND THAT IS THIS S.A.P. SYSTEM. S.A.P. IS
3 THE LARGEST PROVIDER OF SOFTWARE IN THE WORLD TO
4 BUSINESSES. THEY HAVE MORE ACCOUNTING SOFTWARE IN
5 THE MAJOR COMPANIES IN THE WORLD. IT HAS
6 INTEGRITY.

7 PRICEWATERHOUSECOOPERS, A FIRM I USED TO
8 BE A PARTNER IN, AND SO DOES MR. MUSIKA, RELIED ON
9 THAT DATA TO PROVIDE THE FINANCIAL STATEMENTS. SO
10 IT COMES FROM A RELIABLE SOURCE.

11 AND AS FAR AS THE METHODS OF ALLOCATION,
12 THEY ARE TYPICAL THAT I SEE AT COMPANIES OVER MY
13 CAREER. THEY USE THE SAME GENERAL METHODOLOGY THAT
14 APPLE USES TO ALLOCATE COMMON COSTS. SO I HAVE NO
15 PROBLEM WITH THE WAY THEY ALLOCATED COSTS.

16 AND THEN, FINALLY, THE RESULTS OF THIS
17 ANALYSIS ARE CONSISTENT WITH SAMSUNG'S FINANCIAL
18 STATEMENTS IN GENERAL.

19 Q NOW, THIS SPREADSHEET GOES OVER 115 PAGES?

20 A IT'S 115 PAGES THAT YOU CAN'T EVEN READ
21 BECAUSE IT'S SO COMPRESSED. IF YOU REALLY WANTED
22 TO MAKE IT READABLE, IT WOULD PROBABLY BE A COUPLE
23 HUNDRED PAGES OR MORE THAN THAT.

24 Q AND WHICH YOU SAID THAT THE METHOD OF
25 ALLOCATION IS SIMILAR TO WHAT APPLE DOES, HOW DOES

1 APPLE ALLOCATE ITS OPERATING COSTS?

2 A WHEN THEY CAN DIRECTLY ATTRIBUTE IT TO A
3 PRODUCT LINE, THEY DON'T EVER ALLOCATE TO A
4 PRODUCT, LIKE ONE OF THEIR MODELS BUT THEY DO HAVE
5 PRODUCT LINE FINANCIALS FOR THE IPHONE AND FOR THE
6 IPAD.

7 BUT WHEN THEY ALLOCATE TO THOSE PRODUCT
8 LINE FINANCIALS, IF THEY CAN DIRECTLY ATTRIBUTE,
9 SAY, R&D ENGINEER ONLY WORKED ON THE IPAD, THEY
10 DIRECTLY ATTRIBUTE IT TO IT.

11 IF IT'S AN ENGINEER THAT HAS COMMON
12 TASKS, THEY WOULD HAVE SOME TYPE OF ALLOCATION
13 BASED ON EITHER TIME OR SPACE OR SOME OTHER DRIVER
14 OF, MEASURE OF THAT ACTIVITY. AND IF THEY CAN'T DO
15 ANY OF THOSE THINGS, THEY USE REVENUE, AND THAT'S
16 EXACTLY WHAT SAMSUNG DOES AS WELL.

17 Q SO NOW USING THE OPERATING COSTS AND
18 SUBTRACTING THEM FROM THE REVENUE TO GET THE
19 OPERATING INCOME, DID YOU MAKE A CALCULATION AS TO
20 WHAT SAMSUNG'S TOTAL PROFITS WERE ON THE PHONES
21 THAT ARE AT ISSUE HERE?

22 A I DID FOR A NUMBER OF DIFFERENT PERIODS OF
23 TIME.

24 Q AND IF YOU LOOK AT EXHIBIT 781, IS THAT A
25 SUMMARY OF YOUR CALCULATIONS WHICH, DEPENDING UPON

1 THE DATE OF NOTICE --

2 A YES.

3 MR. PRICE: YOUR HONOR, I MOVE EXHIBIT
4 781 INTO EVIDENCE.

5 THE COURT: ANY OBJECTION?

6 MR. JACOBS: NO OBJECTION, YOUR HONOR.

7 THE COURT: IT'S ADMITTED.

8 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
9 781, HAVING BEEN PREVIOUSLY MARKED FOR
10 IDENTIFICATION, WAS ADMITTED INTO
11 EVIDENCE.)

12 BY MR. PRICE:

13 Q AND IF WE LOOK AT THE FIRST PAGE, AND WE DO
14 HAVE A -- IF YOU ADD UP ALL THIS, WE COME TO ABOUT
15 518 MILLION. DO YOU SEE THAT?

16 A I ROUNDED 519, BUT YES.

17 Q OKAY, 519. AND THERE ARE THE EARLIEST DATES
18 OF NOTICE HERE, AND I JUST WANT TO SEE WHAT WE'RE
19 TALKING ABOUT. YOU WERE ASKED TO ASSUME CERTAIN
20 THINGS ABOUT DATES OF NOTICE; CORRECT?

21 A YES. I HAVE NO INFORMATION AS TO WHEN ACTUAL
22 NOTICE OCCURRED. I WAS TOLD TO USE THESE DATES.
23 APRIL 15TH, 2011 IS THE DATE OF THE FILING OF THE
24 COMPLAINT. AND THERE ARE A COUPLE PRODUCTS THAT
25 ARE JUNE 16TH, 2011, AND THAT'S BASED ON FILING OF

1 THE AMENDED COMPLAINT.

2 Q SO IF WE CAN PUT UP, AND MAKE THIS A LITTLE
3 CLEARER, SDX 3965.009.

4 SO THIS TAKES THAT SAME THING AND PUTS
5 COMPLAINT OR AMENDED COMPLAINT?

6 A IT DOES.

7 Q THERE ARE A FEW THAT SAY NOT ACCUSED. WHAT'S
8 THAT RELATE TO?

9 A THAT THESE PARTICULAR PRODUCTS ARE ACCUSED OF
10 OTHER PATENT INFRINGEMENT IN THIS CASE, THE UTILITY
11 PATENTS, BUT THEY'RE NOT ACCUSED OF DESIGN PATENTS
12 OR TRADE DRESS INFRINGEMENT.

13 AND IT'S ONLY PATENTS THAT ARE ACCUSED OF
14 EITHER THE TRADE DRESS INFRINGEMENT OR DESIGN
15 PATENT INFRINGEMENT WHERE YOU CAN ASK FOR SAMSUNG'S
16 PROFITS.

17 Q OKAY. AND SO WHEN YOU DO ALL YOUR ADDITION
18 HERE, GIVEN THESE DATES OF NOTICE, IF YOU CAN BLOW
19 THAT UP, YOU COME UP TO 518,706,851; CORRECT?

20 A I DO. THAT'S THROUGH JUNE 30TH, 2012.

21 Q UNLIKE ME, DID YOU CHECK THE MATH?

22 A I DID CHECK THIS MATH.

23 Q NOW, YOU ALSO GIVE OTHER NUMBERS DEPENDING
24 UPON OTHER DATES OF NOTICE IN CASE THE JURY WANTS
25 TO LOOK AT THAT, RIGHT, IN EXHIBIT 781?

1 A I DID.

2 Q SO IF THERE'S A CONCLUSION THAT THERE WAS
3 NOTICE ON AN EARLIER DATE, THEY COULD USE THOSE
4 OTHER CHARTS?

5 A THEY COULD, OR THEY COULD COMBINE THEM IF THEY
6 FIND SOMETHING DIFFERENT THAN THE THREE SCENARIOS
7 THAT I HAVE DERIVED IN THE SCHEDULE.

8 Q NOW, LET'S SWITCH FROM SAMSUNG'S TOTAL PROFIT
9 TO THE ISSUE OF LOST PROFITS.

10 AND MR. MUSIKA GAVE AN OPINION ON WHAT
11 LOST PROFITS WOULD BE IN THIS CASE.

12 DO YOU HAVE CRITICISMS OF HIS ANALYSIS OF
13 LOST PROFITS, THAT IS, THE PROFITS APPLE LOST?

14 A I DO.

15 Q AND IF WE CAN PUT UP SDX 3965.010. AND WE
16 HAVE HERE THE ACCUSED FEATURES WERE REMOVED FROM
17 SAMSUNG'S PRODUCTS, AND WE HAVE APPLE WOULD NOT
18 HAVE MADE ADDITIONAL SALES.

19 SO LET ME ASK YOU, MR. MUSIKA WAS TALKING
20 ABOUT A BUT-FOR WORLD WHERE, WHERE SAMSUNG PRODUCTS
21 DID NOT HAVE THE ACCUSED FEATURES.

22 OKAY. DO YOU HAVE ANY CRITICISMS OF HIS
23 ANALYSIS OF THAT BUT-FOR WORLD?

24 A I DO, AND I DON'T BELIEVE THAT HE REALLY DID
25 ANALYZE A PROBLEM BUT-FOR WORLD. THE WORLD THAT WE

1 HAVE TO FIGURE OUT WHAT WOULD HAVE HAPPENED IS A
2 WORLD WHERE SAMSUNG IS STILL GOING TO COMPETE
3 VIGOROUSLY IN THIS MARKETPLACE.

4 THE ONLY THING IS THEY'RE NOT GOING TO
5 HAVE THE FEATURES ENABLED BY THE UTILITY PATENTS,
6 AND THEY'RE GOING TO HAVE DESIGNS THAT DO NOT
7 INFRINGE THE DESIGN PATENTS OR THE TRADE DRESS.

8 AND WE HAVE TO FIGURE OUT WHAT WOULD HAVE
9 HAPPENED IN THAT WORLD. I DON'T THINK MR. MUSIKA
10 PROPERLY ADDRESSED THAT WORLD.

11 Q SO LET'S TALK ABOUT THAT. AND IF WE GO TO THE
12 NEXT SLIDE, WE'VE GOT THE PATENTS CAN BE DESIGNED
13 AROUND.

14 WHAT DO YOU MEAN BY THAT?

15 A HE EVEN ADMITS THAT THESE PATENTS CAN BE
16 DESIGNED AROUND. HE HAS ESTIMATES, SOME WE
17 ACTUALLY AGREE ON, SOME I THINK HIS PERIODS ARE
18 LONGER BASED ON THE INFORMATION I RECEIVED THAT IT
19 WOULD HAVE TAKEN.

20 BUT HE HAS ONE CRITICAL ASSUMPTION IN HIS
21 DESIGN-AROUND ANALYSIS. HE ASSUMES SAMSUNG WOULD
22 JUST EXIT THE MARKET, THEY WOULDN'T HAVE ANY
23 PRODUCT TO SELL IN THAT DESIGN-AROUND PERIOD.

24 I DON'T THINK THAT'S REASONABLE. I THINK
25 SAMSUNG WOULD HAVE STAYED IN THE MARKETPLACE, THEY

1 MAY NOT HAVE HAD CERTAIN FEATURES WHICH, A MONTH
2 LATER, THEY UPDATED AND PUT INTO THEIR PHONES, BUT
3 THEY WOULD STILL BE IN THE MARKETPLACE COMPETING
4 WITH THEIR PRODUCTS.

5 Q AND FOR THE DESIGN AROUND, COULD YOU TELL US
6 WHAT THAT IS, WHAT IS A DESIGN AROUND?

7 A A DESIGN AROUND IS EITHER YOU JUST DESIGN OUT
8 THE INFRINGING FEATURE IF IT'S NOT A FEATURE THAT'S
9 REALLY IMPORTANT TO THE CUSTOMERS OR YOU FIND
10 ANOTHER WAY OF DOING IT.

11 AS AN EXAMPLE, BOUNCE BACK, THAT GIVES
12 YOU NO INDICATION THAT YOU'RE AT THE END OF AN
13 ELECTRONIC DOCUMENT. THERE'S OTHER WAYS TO NOTIFY
14 YOU OF DOING THAT. SO THEY MAY JUST USE SOME OTHER
15 METHOD TO NOTIFY YOU THAT YOU'RE AT THE END OF A
16 FILE.

17 Q LET ME ASK YOU SPECIFICALLY ABOUT THE DESIGN
18 AROUND ON APPLE SPECIFIC DESIGNS ON THEIR PATENTS.

19 WOULD THERE BE DESIGN AROUNDS FOR THAT AS
20 WELL?

21 A WELL, CERTAINLY. SAMSUNG HAS MANY PHONES,
22 SMARTPHONES IN THE MARKETPLACE THAT AREN'T ACCUSED
23 OF ANY TRADE DRESS OR DESIGN PATENT INFRINGEMENT.

24 THEY COULD HAVE JUST MOVED TO THOSE
25 DESIGNS. THEY'VE ALREADY CREATED THEM. THEY

1 EXIST.

2 SAMSUNG CURRENTLY HAS 103 MODELS IN THE
3 UNITED STATES. THEY COME OUT WITH MORE THAN ONE A
4 WEEK. THEY COULD HAVE COME OUT WITH JUST A
5 DIFFERENT PACKAGE TO PUT THEIR TECHNOLOGY INTO.

6 Q SO, FOR EXAMPLE, I'M GOING TO SHOW YOU EXHIBIT
7 1018 FOR IDENTIFICATION, WHICH APPEARS TO BE A
8 NEXUS S. DO YOU HAVE THAT IN FRONT OF YOU?

9 A I DO.

10 Q AND DO YOU RECOGNIZE THAT AS A GALAXY NEXUS S?

11 A I DO.

12 MR. PRICE: YOUR HONOR, MOVE EXHIBIT 1018
13 INTO EVIDENCE.

14 THE COURT: OKAY. NO OBJECTION, RIGHT?
15 IT'S ADMITTED.

16 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
17 1018, HAVING BEEN PREVIOUSLY MARKED FOR
18 IDENTIFICATION, WAS ADMITTED INTO
19 EVIDENCE.)

20 THE COURT: GO AHEAD.

21 BY MR. PRICE:

22 Q SO, FOR EXAMPLE, THIS IS NOT AN ACCUSED PHONE.
23 THIS THE KIND OF DESIGN THAT SAMSUNG COULD GO TO?

24 A RIGHT. THEY'VE ACTUALLY DESIGNED THIS PHONE
25 AND THIS PHONE DOES NOT INFRINGE ANY OF WHAT'S

1 BEING ALLEGED IN THIS CASE AS FAR AS PATENTS OR
2 TRADE DRESS. THEY COULD HAVE USED THIS DESIGN FOR
3 THE INFRINGING PHONES.

4 Q SO, FOR EXAMPLE, SUPPOSE THE JURY CONCLUDES
5 THAT SOME PHONES WOULD INFRINGE -- THIS IS WHY I
6 HATE TO HAVE YOU UP HERE, I HAVE TO ASSUME THESE
7 THINGS -- BUT ASSUME THAT SOME PHONES INFRINGE AND
8 OTHERS DON'T, FOR EXAMPLE, THE DROID, WHICH IS
9 1025, OR THE CAPTIVATE -- I'M SORRY, THE CAPTIVATE,
10 WHICH IS -- YEAH, DROID WHICH IS 1025 WHICH IS
11 CAPTIVATE, WHICH IS 1011, WHICH THE JURY HAS SEEN A
12 NUMBER OF TIMES.

13 SO, FOR EXAMPLE, IF THEY DECIDE THOSE
14 HARD CASE DESIGNS ARE NOT INFRINGED, BUT OTHERS
15 ARE, HOW WOULD THAT AFFECT YOUR OPINION ON WHETHER
16 OR NOT THERE ARE DESIGN AROUNDS?

17 A WELL, THESE THEN WOULD BE COMMERCIALY
18 ACCEPTABLE ALTERNATIVES, DESIGNS THAT COULD HAVE
19 BEEN USED INSTEAD OF THE INFRINGING DESIGNS.

20 Q NOW, CONTINUING IN THIS BUT-FOR WORLD, IF WE
21 CAN GO TO THE NEXT SLIDE, YOU HAVE ABSENCE OF THESE
22 FEATURES WOULD NOT DRIVE CUSTOMERS TO APPLE. IS
23 THAT YOUR OPINION?

24 A BASED ON THE EVIDENCE I REVIEWED, THAT IS
25 CORRECT.

1 Q OKAY. AND COULD YOU EXPLAIN TO THE JURY
2 WHAT'S THE BASIS OF THE OPINION THAT, THAT A
3 CUSTOMER WHO HAD BOUGHT A SAMSUNG OR AN ANDROID
4 WOULD NOT GO TO APPLE IN THE ABSENCE OF THESE
5 FEATURES?

6 A WELL, DURING THIS PERIOD OF TIME, J.D. POWERS
7 AND ASSOCIATES DID AN INDEPENDENT STUDY OF CUSTOMER
8 SATISFACTION FOR THE SMARTPHONE INDUSTRY IN 2011,
9 AND THEY LOOK AT ALL THE DIFFERENT FEATURES THAT
10 CONSUMERS THINK ARE IMPORTANT.

11 AND THEY HAD 25 DIFFERENT FEATURES,
12 INCLUDING THE 5 BASIC BUCKETS. ONE BUCKET IS
13 ACTUALLY PHYSICAL DESIGN, WHICH IS RELATED TO THE
14 PATENTS IN SUIT.

15 THERE'S A LOT MORE IN THERE BESIDES JUST
16 THE PATENTS IN SUIT. AND WHEN YOU LOOK AT THAT,
17 AND THEY'VE PUT AN APPLE AGAINST ALL THE MAJOR
18 COMPETITORS, APPLE REMAINED NUMBER ONE IN PHYSICAL
19 DESIGN IN THEIR STYLE OF THEIR PHONES DURING THIS
20 TIME PERIOD.

21 SAMSUNG ACTUALLY RATED BELOW THE INDUSTRY
22 AVERAGE, SO IF YOU FIND THAT SAMSUNG INFRINGED THE
23 DESIGN PATENTS THAT ARE IN THIS CASE, THAT IS NOT
24 ACTUALLY THE MOST IMPORTANT DESIGN ELEMENT THAT
25 APPLE HAS, AND THEY HAVE MANY OTHER DESIGN PATENTS

1 THAT ARE NOT ASSERTED IN THIS CASE. SO THAT TELLS
2 ME THAT WHAT THE SPECIFIC DESIGN THAT'S AT ISSUE IN
3 THIS CASE ISN'T WHAT'S DRIVING DEMAND OR DRIVING
4 CUSTOMERS FROM SAMSUNG TO APPLE IF SAMSUNG DIDN'T
5 HAVE THESE FINE FEATURES.

6 Q IF YOU'RE CHOOSING -- IF THE BEST DESIGN IS
7 IMPORTANT TO YOU, APPLE RATED HIGHER?

8 A THEY RANKED HIGHER DURING THIS TIME PERIOD.

9 Q OKAY. LET'S TALK, THEN, ABOUT THIS GROUP OF
10 PEOPLE WHO BOUGHT THE SAMSUNG PHONES THAT ARE
11 ALLEGED TO BE INFRINGED.

12 WHAT DID THE DATA TELL YOU AS TO THAT
13 GROUP OF PEOPLE AS OPPOSED TO THE OVERALL
14 POPULATION WOULD SWITCH TO AN APPLE PHONE?

15 A THAT'S A GOOD QUESTION. THAT'S THE CONSUMERS
16 WE HAVE TO TRY TO UNDERSTAND WHAT THEIR BEHAVIOR
17 WOULD HAVE BEEN. WE KNOW IN THE REAL WORLD THEY
18 ACTUALLY CHOSE AN ANDROID PHONE AND A SAMSUNG PHONE
19 ON THAT PLATFORM INSTEAD OF GOING TO APPLE.

20 SO YOU HAD TO LOOK AT THEIR BEHAVIOR AND
21 WHAT THEY NEED AND WANT AND DESIRE IN THEIR PHONES.

22 Q AND IF YOU LOOK AT EXHIBIT 572, WHICH IS IN
23 EVIDENCE, PARTICULARLY PAGE 82, DID APPLE DO
24 STUDIES OF ANDROID PURCHASERS TO SEE WHAT WAS
25 IMPORTANT TO THEM?

1 A THEY DO.

2 Q IF YOU CAN PUT 572.082 AND BLOW THAT UP, AND
3 WHAT PERCENTAGE OF SAMPLE PURCHASERS, BEING AN
4 ANDROID PHONES DIDN'T CONSIDER APPLE?

5 A 75 PERCENT. THE VAST MAJORITY DIDN'T THINK
6 ABOUT APPLE AS A REALISTIC ALTERNATIVE WHEN THEY
7 MADE THEIR DECISION.

8 Q YOU SEE HERE THAT TALKS ABOUT 25 PERCENT
9 CONSIDERED AN IPHONE?

10 A THAT'S CORRECT.

11 Q AND OF THOSE TWO, WHO EVEN CONSIDERED AN
12 IPHONE, YOU KNOW, WHAT KIND OF FEATURES WERE
13 IMPORTANT TO THEM?

14 A WELL, IT'S THE FEATURES THAT ARE LISTED IN THE
15 REST OF THIS CHART, AND NONE OF THEM HAVE ANYTHING
16 TO DO WITH DESIGN.

17 THEY HAVE TO DO WITH FUNCTIONALITY AND
18 CARRIERS AND THINGS LIKE THAT AND BRAND, NOTHING TO
19 DO WITH THE PHYSICAL APPEARANCE OF THE PHONE THAT
20 THEY BOUGHT.

21 Q FOR EXAMPLE, PREFERRED LARGER SCREEN, THAT WAS
22 ONE OF THE ITEMS; RIGHT?

23 A THEY WOULD, YES.

24 Q THIS GPS NAVIGATION, WAS THAT SOMETHING WHICH
25 APPLE HAD AT THE TIME?

1 A WELL, AT SOME POINT THEY DID NOT. EVENTUALLY
2 THEY DID GET IT. BUT, AGAIN, THE ANDROID PROVIDERS
3 HAD AN ADVANTAGE DURING SOME PARTS OF THIS PERIOD
4 OF TIME THAT WE'RE TALKING ABOUT BECAUSE THEY COULD
5 OFFER THAT FUNCTIONALITY.

6 Q MR. WAGNER, IN THIS CASE, HAVE YOU SEEN ANY
7 ANALYSIS, ANY STUDY DONE THAT ASKED WHAT ANDROID OR
8 SAMSUNG PHONE OWNERS WOULD DO IF THEY DIDN'T HAVE
9 CERTAIN FEATURES IN THEIR PHONE, THAT IS, WHETHER
10 OR NOT THEY WOULD LEAVE SAMSUNG OR ANDROID FOR
11 APPLE BECAUSE OF THESE SPECIFIC FEATURES?

12 A NO. AND THAT TYPE OF STUDY COULD HAVE BEEN
13 DONE, BUT NO ONE HAS ASKED THAT QUESTION IN THIS
14 CASE. NO ONE HAS GIVEN EITHER MR. MUSIKA OR MYSELF
15 THE INFORMATION WE WOULD NEED TO REALLY DETERMINE
16 DAMAGES.

17 Q BY THE WAY, WHEN YOU'RE TALKING ABOUT J.D.
18 POWERS STUDY, WERE YOU TALKING ABOUT EXHIBIT 69?

19 A IF THAT'S THE MARCH 2011 STUDY, YES. I CAN'T
20 FIND IT IN THESE BINDERS.

21 Q OKAY.

22 YOUR HONOR, I MOVE EXHIBIT 69 INTO
23 EVIDENCE. IT'S THE FIRST PAGE OF THE J.D. POWERS
24 STUDY.

25 THE COURT: SURE. ANY OBJECTION?

1 MR. JACOBS: NO, YOUR HONOR.

2 THE COURT: IT'S ADMITTED.

3 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
4 69, HAVING BEEN PREVIOUSLY MARKED FOR
5 IDENTIFICATION, WAS ADMITTED INTO
6 EVIDENCE.)

7 BY MR. PRICE:

8 Q NOW, YOU SAW MR. MUSIKA ALSO PRESENTED A
9 CHART, IF YOU CAN LOOK AT FLOOR B9, WHICH SHOWED
10 SAMSUNG'S MARKET SHARE, AND IT KIND OF SHOWED IT
11 INCREASING AND IT SHOWED PHONES, GALAXY S PHONES.

12 DO YOU AGREE OR DISAGREE WITH THE
13 SUGGESTION BY MR. MUSIKA THAT SAMSUNG'S MARKET
14 SHARE INCREASED BECAUSE OF ANYTHING TO DO WITH THE
15 PATENTS OR -- AT ISSUE IN THIS CASE?

16 A NO. THIS DOESN'T TELL YOU ANYTHING ABOUT WHY
17 THAT RED BAR IS GOING UP DURING THAT TIME PERIOD,
18 AND TO MAKE THIS EVEN RELEVANT TO THE CASE, YOU
19 NEED TO UNDERSTAND THAT.

20 AND MR. MUSIKA DID NO ANALYSIS ABOUT WHY
21 SAMSUNG'S MARKET SHARE INCREASED. HE GIVES THIS
22 IMPRESSION IT'S BECAUSE THEY INTRODUCED THIS ONE
23 PHONE. THERE'S A LOT MORE TO THE STORY.

24 Q SUCH AS?

25 A WELL, FIRST OFF, YOU SHOULDN'T EVEN HAVE THE

1 LINE THAT HE DREW. YOU SHOULD HAVE THE LINE OF THE
2 INFRINGING PHONES RATHER THAN ALL OF THEIR PHONES.
3 THIS IS MISLEADING. THIS ISN'T ACTUALLY WHAT WOULD
4 BE CAUSED BY WHAT'S ALLEGED IN THIS CASE. THERE'S
5 MORE INFORMATION HERE THAN YOU SHOULD HAVE. SO
6 THAT'S THE FIRST PROBLEM.

7 THE SECOND PROBLEM IS HE IGNORES THE FACT
8 THAT SAMSUNG IS DRIVING TECHNOLOGY IN THIS SPACE.
9 THEY'RE KNOWN AS HAVING THE FASTEST PROCESSOR, THE
10 BRIGHTEST SCREENS, THEY HAVE ALL KINDS OF
11 FUNCTIONALITY. THEY LED IN 3G AND 4G. THAT'S WHY
12 THEY'RE DOING WELL. IT HAS NOTHING TO DO WITH
13 WHAT'S AT ISSUE IN THIS CASE.

14 Q AND WHEN YOU LOOK AT THE CHART THAT WAS
15 ACTUALLY IN MR. MUSIKA'S REPORT, AND IF WE CAN KIND
16 OF GO TO THAT FROM HERE USING, I THINK IT'S 39 --
17 3909.59, LET'S SHOW THE FULL INFORMATION. 3909.59.

18 SO IF WE CHANGE THE SCALE AND SHOW THIS
19 OTHER DATA, WHAT IS THIS OTHER DATA?

20 A THE OTHER DATA IS WHAT'S HAPPENING TO APPLE'S
21 MARKET SHARE DURING THE SAME TIME PERIOD.

22 Q AND WE DO SEE PEAKS IN APPLE'S MARKET DATA.
23 WHAT'S THAT A RESULT OF?

24 A SOME OF IT HAS TO DO WITH SEASONALITY, BUT THE
25 MAIN THING IS WHEN DOES APPLE INTRODUCE A NEW

1 PRODUCT? UNLIKE SAMSUNG WHO INTRODUCED A NEW
2 SMARTPHONE FOR A PARTICULAR SUBNET OF MARKET ALMOST
3 WEEKLY, APPLE ONLY INTRODUCED A NEW PRODUCT ONCE A
4 YEAR, THE PHONE IS HERE, AND YOU HAVE TO WAIT A
5 YEAR.

6 THAT'S WHY THERE'S THIS INCREDIBLE SPIKE
7 THAT GOES UP AT THE END, BUT THEY'RE NOT INCREASING
8 MARKET SHARE DURING MOST OF THIS PERIOD BECAUSE
9 THEY HAVE NOTHING NEW TO SELL.

10 Q LET'S GO BACK TO 3965.010. IF WE CAN JUST PUT
11 UP THE FULL CHART NOW. WE KIND OF TALKED ABOUT
12 GROUPS OF FEATURES DRIVING DEMAND. WE HAVE A
13 SECTION HERE, APPLE LACKED CAPACITY, HOW DOES THAT
14 EFFECT YOUR OPINION?

15 A I DIDN'T TALK ABOUT GROUPS OF FEATURES DRIVE
16 DEMAND.

17 Q I'M SORRY. TALK.

18 A AGAIN, THIS IS A VERY COMPLICATED DECISION
19 PROCESS TO BUY THESE PHONES. THERE ISN'T ONE
20 FEATURE THAT DRIVES DEMAND. I DO AGREE THAT DESIGN
21 IS ONE OF THE FACTORS THAT YOU SHOULD CONSIDER.

22 BUT WHAT YOU'RE REALLY BUYING IS
23 TECHNOLOGY. YOU'RE NOT BUYING A PHYSICAL DESIGN.
24 I'VE NEVER SEEN A PRODUCT THAT HAS MORE TECHNOLOGY
25 IN IT THAN A SMARTPHONE.

1 AND SO THAT'S WHAT YOU'RE LOOKING AT.
2 AND PEOPLE BUY PHONES BECAUSE OF THE INTERNET
3 CAPABILITY, THEY CAN DO THEIR WEB BROWSING, THEY
4 WANT IT FAST. SAMSUNG HAS GREAT PROCESSORS TO DO
5 THAT.

6 THEY WANT TO DO E-MAIL, THEY WANT TO TAKE
7 PICTURES WITH A CAMERA, THEY WANT TO DOWNLOAD GAMES
8 IF THEY REALLY WANT TO MAKE THE DEVICE FUN FOR
9 THEM. IT'S A MULTIFUNCTIONAL DEVICE. THAT'S WHAT
10 THEY'RE BUYING, NOT JUST DESIGN.

11 Q AND YOU HAVE APPLE LACKED CAPACITY. WHAT'S
12 THAT REFERRING TO?

13 A WELL, DURING CONCERN PERIODS OF MR. MUSIKA
14 LOST DAMAGES STUDY, APPLE COULDN'T SELL ONE MORE OF
15 THEIR PRODUCT THAN THEY ACTUALLY SOLD BECAUSE THEIR
16 CAPACITY WAS STRAINED.

17 WHEN THE IPHONE 4 CAME OUT, YOU SAW THAT
18 SPIKE, WHAT WAS HAPPENING WAS THEY COULDN'T MEET
19 THE DEMAND THEY HAD IN THE REAL WORLD. THEY
20 COULDN'T HAVE SOLD ANOTHER 2 MILLION UNITS IN THIS
21 PERIOD. THEY COULD NOT HAVE DONE IT. AND THERE'S
22 PLENTY OF DOCUMENTATION BOTH FROM APPLE AND THE
23 PRESS THAT INDICATED THAT. AND THAT WAS BETWEEN
24 JUNE OF 2010 AND SEPTEMBER OF 2010.

25 AND AS FAR AS THE TABLETS, AGAIN, WHEN

1 THEY INTRODUCED THE IPAD 2, THEY COULD NOT SELL
2 ENOUGH PRODUCT. TIM COOK, THEIR CEO, TO PUBLIC
3 INVESTORS STATED WE HAVE THE MOTHER OF ALL
4 BACKLOGS. HOW COULD THEY HAVE SOLD ANOTHER IPAD 2
5 DURING THIS DAMAGES PERIOD? THEY COULDN'T EVEN
6 MEET THE DEMAND WITH THE COMPETITION WITH SAMSUNG.
7 SO THERE SHOULD BE NO LOST PROFITS DURING THAT
8 PERIOD OF TIME.

9 Q NOW, LET ME ASK YOU TO ASSUME THAT THERE WOULD
10 BE CUSTOMERS THAT WOULD SAY, I DON'T HAVE
11 BOUNCEBACK, I'M GOING TO SWITCH TO AN APPLE.

12 DO YOU HAVE ANY DISAGREEMENTS WITH
13 MR. MUSIKA'S CALCULATIONS OF THE WAY HE DID PROFITS
14 FOR APPLE, ASSUMING THERE WAS A SWITCH?

15 A I DO. I THINK HE'S OVERSTATED THE ACTUAL
16 PROFITS THAT WOULD HAVE BEEN EARNED.

17 Q AND IF WE CAN LOOK AT 3965.011. AND THE FIRST
18 POINT HERE, IT SAYS, USES WORLDWIDE PRICES INSTEAD
19 OF U.S. PRICES?

20 A WHAT I'M TALKING ABOUT IS APPLE DOESN'T
21 PRODUCE THE INFORMATION ON A PERIODIC BASIS THAT
22 YOU WOULD NEED TO DO THE CALCULATIONS IN THIS CASE.
23 THIS CASE IS ABOUT THE U.S. MARKET. APPLE ONLY
24 PRODUCES INFORMATION ON A PRODUCT LINE BASIS ON
25 WORLDWIDE SALES, BUT IT DOES PRODUCE INFORMATION TO

1 THEIR MANAGEMENT AS TO U.S. PRICES, U.S. UNITS,
2 WORLDWIDE PRICES AND WORLDWIDE UNITS.

3 AND MR. MUSIKA USED THE WORLDWIDE PRICES
4 INSTEAD OF U.S. PRICES, AND THEY ARE HIGHER THAN
5 U.S. PRICES. THAT OVERSTATES HIS DAMAGE CLAIM IN
6 THE U.S.

7 Q SO IF WE CAN LOOK AT 3965.013, AND COULD YOU
8 TELL US WHAT WE'RE LOOKING AT HERE?

9 A WELL, THE TOP PART OF IT IS INFORMATION
10 STRAIGHT OUT OF THE WORK PAPERS THAT SUPPORT
11 MR. MUSIKA'S CALCULATIONS, AND THE BOTTOM PART I'VE
12 GIVEN YOU THE INFORMATION THAT'S THE AVERAGE PRICES
13 IN THE U.S. VERSUS WORLDWIDE FOR THE IPHONE DURING
14 2010 AND 2011.

15 AND YOU CAN SEE IN 2010, THE WORLDWIDE
16 AVERAGE PRICE IS \$630.82. FOR THE U.S. IN THIS
17 PERIOD, IT'S ONLY \$567.78.

18 AND IN 2011, THE WORLDWIDE PRICE IS
19 \$651.32. WHERE IN THE U.S., THE AVERAGE PRICE IS
20 ONLY \$615.87. HE SHOULD HAVE USED U.S. PRICES.

21 Q AND BY USING THE HIGHER SELLING PRICE, YOU GET
22 MORE PROFITS?

23 A CORRECT, YOU HAVE A HIGHER PROFIT MARGIN.

24 Q AND DID HE HAVE THE INFORMATION WHERE HE COULD
25 HAVE CALCULATED THE U.S. AVERAGE PRICE AS OPPOSED

1 TO WORLDWIDE?

2 A HE DID. I GOT THIS INFORMATION RIGHT OUT OF
3 HIS WORK PAPERS. HE HAD THE INFORMATION.

4 Q NOW, IF WE GO BACK TO 3965.011, ALSO GO TO THE
5 NEXT ONE, WE HAVE GOT FAILS TO ADJUST FOR APPLE'S
6 HIGHER PRICES. WHAT ARE YOU TALKING ABOUT HERE?

7 A WHAT I'M TALKING ABOUT IS A FUNDAMENTAL
8 ECONOMIC PRINCIPAL. IF YOU TOOK ECON IN COLLEGE,
9 ECON 101, THE FIRST THING YOU LEARN IS THE HIGHER
10 THE PRICE, THE LOWER QUANTITY YOU SELL. IT'S THE
11 BASIC LAW OF DEMAND. THERE'S A THING CALLED PRICE
12 ELASTICITY. IF YOU RAISE YOUR PRICE, YOU'RE GOING
13 TO SELL FEWER UNITS.

14 HE HAS USED APPLE'S PRICES, HIGHER PRICES
15 THAN SAMSUNG'S PRICES AND ASSUMED THERE WILL BE NO
16 PRICE ELASTICITY, AND THESE CUSTOMERS IN THE REAL
17 WORLD WHO PAY A LOWER PRICE FOR SAMSUNG PHONES WHEN
18 THEY SWITCH WOULD PAY A HIGHER PRICE FOR APPLE.
19 NOT EVERYONE WOULD BE WILLING TO DO THAT, AND HE
20 DID NOT CONSIDER THAT FACT.

21 Q YOU WERE HERE WHEN HE TESTIFIED; CORRECT?

22 A I WAS.

23 Q AND THERE WAS SOME DISCUSSION ABOUT WHAT A
24 CONSUMER WOULD ACTUALLY PAY FOR AN IPHONE VERSUS
25 SAMSUNG PHONES, AND I'M GOING TO PLACE UP FOR YOU

1 WHAT IS NOW IN EVIDENCE AS 69.24, WHICH IS FROM
2 THAT J.D. POWERS STUDY. AND IF YOU BLOW UP THE
3 BOTTOM.

4 COULD YOU TELL US WHAT THIS SHOWS ON THE
5 BOTTOM OF THE PAGE?

6 A WHAT THIS SHOWS IS THE ACTUAL CONSUMER, AFTER
7 THE SUBSIDY OF THE CARRIERS. ON AVERAGE WHEN J.D.
8 POWERS STUDIED, THE AVERAGE APPLE CUSTOMER PAID
9 \$206.

10 IF YOU GO OVER TO THE LAST BAR, OR SECOND
11 TO LAST BAR ON THE RIGHT, THE SAMSUNG AVERAGE
12 CUSTOMER ONLY PAID \$139. THAT'S A BIG DIFFERENCE
13 TO MOST CONSUMERS.

14 AND WHAT MR. MUSIKA IS TELLING YOU IS
15 THAT IN THIS BUT-FOR WORLD, THESE PEOPLE THAT PAID
16 AN AVERAGE PAID \$139 WOULD BE WILLING TO PAY \$206
17 WITHOUT ANY REDUCTION IN QUANTITY. THAT IS NOT
18 REASONABLE.

19 Q NOW, LET ME ASK YOU ABOUT THE IPAD. IS THERE
20 ANY CARRIER SUBSIDY FOR THE IPAD VERSUS THE GALAXY
21 TAB?

22 A NO, THERE IS NOT.

23 Q IS THERE A PRICE DIFFERENCE BETWEEN THOSE TWO?

24 A WELL, PARTICULARLY FOR THE DAMAGE PERIOD FOR
25 LOST PROFITS BETWEEN THE SEVEN INCH PRODUCT THAT

1 SAMSUNG WAS SELLING AND THE PRODUCT THAT IS
2 ALLEGEDLY GOING TO BE NOW SOLD IN THE BUT-FOR
3 WORLD, APPLE'S IPAD, THERE'S ABOUT A \$240 PRICE
4 DIFFERENCE FOR EACH OF THOSE.

5 Q LET ME ASK YOU, MR. MUSIKA ASSUMES THAT SOME
6 PEOPLE WOULD SWITCH FROM SAMSUNG SEVEN INCH TABLET
7 TO APPLE'S TEN INCH TABLET IF THESE FEATURES WERE
8 TAKEN AWAY.

9 A HE DOES.

10 Q AND WHAT'S YOUR OPINION ABOUT THAT?

11 A WELL, THERE ARE SOME PEOPLE THAT ACTUALLY BUY
12 A PRODUCT BECAUSE OF ITS SIZE. THEY WANT A SEVEN
13 INCH TABLET. APPLE IN THIS TIME PERIOD DID NOT
14 OFFER THAT, ALTHOUGH ON THE ANDROID PLATFORM, THERE
15 WERE OTHER SEVEN INCH ALTERNATIVES.

16 Q SO WHAT WOULD THAT SUGGEST?

17 A IT WOULD SUGGEST IF SAMSUNG COULD NOT MAKE
18 THESE SALES THAT SOMEONE ELSE WOULD PICK IT UP. IT
19 WOULDN'T HAVE BEEN APPLE, AT A LOWER PRICE AND THE
20 SIZE THE CUSTOMER WANTED.

21 Q I WANT TO SWITCH TO ANOTHER TOPIC NOW -- AND
22 BY THE WAY, THE EFFECT OF THE PRICE, THE EXCESS
23 PRICE, WHAT EFFECT DOES THAT HAVE ON YOUR
24 CALCULATIONS ON WHAT LOST PROFITS ONE?

25 A THE AVERAGE IS 16 TO 19 PERCENT, BUT THERE'S

1 ANOTHER MISTAKE THAT I THINK HE MADE, AND THIS IS
2 JUST A JUDGMENT, THAT HE DIDN'T INCLUDE ANY
3 INCREMENTAL MARKETING EXPENSES FOR APPLE TO SELL
4 THESE ADDITIONAL PRODUCTS. I THINK THERE WOULD
5 HAVE BEEN MORE MARKETING EXPENSE. A LOT OF THESE
6 CUSTOMERS WERE CARRIERS THAT DIDN'T CARRY THE
7 IPHONE. SO YOU HAVE TO GET TO THOSE CUSTOMERS AND
8 NOW WE ADD ANOTHER 3 PERCENT. OVERALL, I THINK
9 HE'S OVERSTATED HIS PROFIT MARGIN BY ABOUT 20
10 PERCENT.

11 Q AND THAT ASSUMES PEOPLE WOULD HAVE ACTUALLY
12 GONE TO APPLE BECAUSE OF THESE?

13 A THOSE ARE FOR THE CUSTOMERS WHO WOULD ACTUALLY
14 GO TO APPLE.

15 Q AND NOW I WANT TO TALK ABOUT A REASONABLE
16 ROYALTY CALCULATION WHICH RELIES ON THIS
17 HYPOTHETICAL NEGOTIATION, AND MR. MUSIKA SAID THAT
18 HE GAVE A REASONABLE ROYALTY NUMBER OF \$24 FOR, I
19 THINK, THE DESIGN AND DO YOU HAVE ANY COMMENTS ON
20 THAT?

21 A YEAH. I THINK THAT WAY OVERSTATES WHAT SHOULD
22 BE PAID, AND THE MAIN REASON IS THE METHODOLOGY HE
23 USED TO GET THAT. IT'S BASICALLY HIS MEASURE OF
24 THE TOTAL BRAND VALUE OF APPLE IN THE PRODUCT THAT
25 IS THEY SELL. SAMSUNG DIDN'T TAKE THE WHOLE BRAND

1 VALUE OF APPLE. THEY TOOK SOME SPECIFIC LIMITED
2 DESIGN PATENTS. BRAND VALUE INCLUDES A LOT MORE
3 THAN DESIGN. IT INCLUDES TRADEMARKS, IT INCLUDES
4 EVERYTHING THAT MAKES YOU ATTRACTED TO APPLE.
5 THEIR LOGO, THE LITTLE APPLE WITH THE BITE, THEIR
6 NAME, ALL THAT IS IN THAT BRAND VALUE.

7 AND THAT IS JUST A WAY OVERSTATEMENT OF
8 WHAT'S BEING -- WHAT'S ALLEGEDLY TAKEN IN THIS
9 CASE. SO I THINK THAT DRAMATICALLY OVERSTATES THE
10 VALUE OF ANY DESIGN THAT SAMSUNG ALLEGEDLY TOOK IN
11 THIS CASE.

12 Q IN OTHER WORDS, \$24 HE USES, ASSUMING THERE IS
13 INFRINGEMENT, THAT WOULD INCLUDE BEING ABLE TO USE
14 THE BITTEN APPLE AND THE APPLE NAME AND EVERYTHING
15 APPLE?

16 A AND ALL THE OTHER DESIGN PATENTS AND TRADE
17 DRESS AND TRADEMARKS THAT APPLE HAS.

18 Q NOW, DID YOU DO A CALCULATION OF WHAT YOU
19 THOUGHT WAS A REASONABLE ROYALTY?

20 A I DID.

21 Q AND WHAT WAS THAT BASED ON?

22 A THAT WAS BASED ON MY INTERVIEW OF ENGINEERS AT
23 SAMSUNG AND PEOPLE IN HUMAN RESOURCES TO GIVE ME
24 ESTIMATES AS TO THE TIME TO DESIGN AROUND AND ALSO
25 THE COST OF THOSE ENGINEERS.

1 Q AND 3965.016, THIS IS ON THE HYPOTHETICAL
2 NEGOTIATION, WE'RE TALKING ABOUT GEORGIA PACIFIC
3 FACTORS AND WHAT'S THE KEY FACT THAT YOU FOCUSED
4 ON?

5 A THE KEY THAT I FOCUSED ON, AFTER MY ANALYSIS,
6 IS WHAT IS THE NEXT BEST ALTERNATIVE TO SAMSUNG?
7 HERE'S APPLE COMING IN AND SAYING WE WANT HUNDREDS
8 OF MILLIONS OF DOLLARS FROM YOU. THEY WOULD PAY
9 THAT IF THAT WAS THEIR ONLY CHOICE.

10 BUT IF THEY HAVE A CHOICE, THEY WOULD GO
11 BACK TO APPLE AND SAY TO THE NEGOTIATING TABLE AND
12 SAY YOU'RE ASKING TOO MUCH, BECAUSE IF YOU ASK THAT
13 MUCH, I'M GOING TO CHANGE MY PRODUCT AND I WILL NOT
14 PRACTICE YOUR PATENTS AND YOU GET A ZERO IS WHAT
15 YOU GET.

16 AND THE COST OF ME DOING THAT IS THE MOST
17 THAT I WOULD BE WILLING TO PAY YOU. THAT'S WHAT
18 HAPPENS IN THE REAL WORLD. THAT'S WHAT SHOULD
19 HAPPEN IN THIS HYPOTHETICAL NEGOTIATION.

20 Q DID YOU THEN ESTIMATE SAMSUNG'S COSTS TO
21 DESIGN AROUND? AND WE CAN LOOK AT CHART 3965.020.

22 COULD YOU EXPLAIN TO US WHAT THIS SHOWS?

23 A YEAH, THIS IS JUST THE RESULT OF THE
24 INFORMATION I RECEIVED FROM SAMSUNG ABOUT THE
25 AMOUNT OF TIME IT WOULD TAKE TO DESIGN AROUND THESE

1 THREE UTILITY PATENTS, RANKING FROM TWO WEEKS AND
2 TWO DAYS FOR THE '163 PATENT TO FOUR WEEKS AND
3 THREE DAYS FOR THE '381 PATENT, AND I'VE GOT THIS
4 FROM A NUMBER OF ENGINEERS AND DESIGNERS THAT WOULD
5 TAKE AND WHAT SAMSUNG PAYS THESE PEOPLE AT A FULLY
6 BURDENED RATE AND THEN MULTIPLIED THESE HOURS TIMES
7 THAT RATE TO GIVE THE FIGURES IN THE RIGHT-HAND
8 COLUMN.

9 Q AND THEN THE TOTAL AMOUNT WOULD BE 27,300 FOR
10 THE DESIGN AROUND COSTS?

11 A THAT'S CORRECT, FOR THESE THREE UTILITY
12 PATENTS.

13 Q BY THE WAY, DID MR. MUSIKA USE THE SAME
14 METHODOLOGY IN CALCULATING HIS TIME FOR DESIGN
15 AROUND?

16 A YES, HE DIDN'T USE IT FOR LOST PROFITS, I MEAN
17 FOR REASONABLE ROYALTY. HE USED IT FOR LOST
18 PROFITS. BUT HE DID EXACTLY THE SAME THING I DID.
19 HE TALKED TO APPLE ENGINEERS TO FIGURE OUT HOW LONG
20 IT WOULD TAKE. HE NEVER COSTED IT OUT BECAUSE HE
21 DIDN'T USE IT FOR HIS REASONABLE ROYALTY
22 CALCULATION.

23 Q AND HERE ON THE '915, THE '381, YOU HAVE FOUR
24 WEEKS, FOUR WEEKS AND THREE DAYS. WAS THERE ANY
25 DISAGREEMENT BETWEEN YOU AND MR. MUSIKA AS TO THE

1 DESIGN-AROUND TIMES FOR THOSE?

2 A WELL, NOT FOR THE '381, BUT THERE WAS FOR THE
3 '915. I BELIEVE HE WAS TOLD THAT WOULD TAKE ABOUT
4 SIX TO EIGHT MONTHS.

5 Q YOU HAVE FOUR WEEKS AND THREE DAYS, OR TWO
6 DAYS. THAT'S KIND OF PRECISE. WHAT'S THAT ABOUT?

7 A COULD YOU REPEAT YOUR QUESTION.

8 Q WHY IS THAT SO PRECISE, FOUR WEEKS AND THREE
9 DAYS, FOUR WEEKS AND TWO DAYS?

10 A I ASKED THEM TO GIVE ME A PRECISE ESTIMATE,
11 THIS IS MY INSTRUCTION TO THEM, IF YOU'RE GOING TO
12 BE OUT OF THE MARKET AND THERE WOULD BE A PROBLEM
13 SELLING THE PRODUCTS, PUT YOUR BEST PEOPLE ON THIS
14 PRODUCT, WHAT TIME WOULD IT TAKE YOU TO DO IT AND
15 THESE ARE THE ESTIMATES I GOT.

16 Q AND THESE ARE BASICALLY SOFTWARE CHANGES;
17 CORRECT?

18 A CORRECT.

19 Q SO, MR. WAGNER, GETTING BACK, DID YOU SEE
20 EVIDENCE IN THIS CASE FOR THE BUT-FOR SCENARIO THAT
21 IF A SAMSUNG PHONE DID NOT HAVE FEATURES THAT ARE
22 ACCUSED IN THIS CASE THAT CUSTOMERS WOULD GO FROM
23 THE ANDROID PLATFORM TO IPHONE BECAUSE OF THE
24 FEATURES?

25 A I DID NOT.

1 MR. PRICE: ONE SECOND.

2 NO FURTHER QUESTIONS.

3 THE COURT: ALL RIGHT. THE TIME IS
4 10:09. GO AHEAD, PLEASE.

5 **CROSS-EXAMINATION**

6 BY MR. JACOBS:

7 Q LET'S JUST START, MR. WAGNER, WHERE MR. PRICE
8 LEFT OFF. WE'RE NOT JUST TALKING ABOUT PEOPLE
9 LEAVING SAMSUNG; CORRECT, SIR?

10 A WELL, IT'S LEAVING SAMSUNG AND THEN WHERE DO
11 THEY GO. I AGREE WITH THAT.

12 Q BUT WE'RE ALSO TALKING ABOUT FIRST-TIME BUYERS;
13 CORRECT, SIR?

14 A I DON'T THINK SO.

15 Q YOU DON'T THINK WE'RE EVER TALKING IN THIS
16 CASE WHEN YOU TALK ABOUT LOST PROFITS, FOR EXAMPLE,
17 YOU'RE NOT TALKING ABOUT SOMEBODY ENTERING THE
18 SMARTPHONE MARKET FOR THE FIRST TIME AND MAKING A
19 CHOICE?

20 A I'M SORRY. YEAH, I BELIEVE IT'S PROBABLY SOME
21 OF THESE 2 MILLION PURCHASERS, THIS WAS THE FIRST
22 TIME THEY BOUGHT A SMARTPHONE FROM SAMSUNG. I'M
23 SORRY, I AGREE WITH YOU.

24 Q WHEN WE TALK ABOUT LEAVING SAMSUNG AND TRYING
25 TO EXTRACT SOMEBODY FROM THE SAMSUNG OR ANDROID

1 CUSTOMER BASE AND DRAW THEM TO APPLE, THAT'S A MUCH
2 TOUGHER PROPOSITION THAN HAVING SOMEONE ENTER THE
3 STORE, MAKE A CHOICE OVER HERE, THIS BEAUTIFUL
4 APPLE PRODUCT AND MAYBE A SAMSUNG PRODUCT THAT'S
5 NOT SO BEAUTIFUL, THAT'S A DIFFERENT SCENARIO,
6 ISN'T IT, SIR?

7 A I AGREE WITH THAT.

8 Q NOW, LET'S TALK ABOUT THE DATA THAT YOU RELIED
9 ON FOR YOUR CALCULATIONS. IT'S TRUE, SIR, THAT YOU
10 HAD A LOT OF DIFFICULTY GETTING INFORMATION FROM
11 SAMSUNG?

12 A THAT'S TRUE.

13 Q IN FACT, THE WHOLE PROCESS OF GETTING
14 INFORMATION FROM SAMSUNG FOR YOU TO DO YOUR WORK ON
15 THE CASE YOU RECALL AS BEING VERY DIFFICULT?

16 A I AGREE WITH THAT. I SAID THAT AT MY
17 DEPOSITION, AND I'LL SAY IT AGAIN TODAY.

18 Q NOW, YOU'RE THE EXPERT THAT SAMSUNG HAS
19 RETAINED TO TRY AND HELP IT DO A CALCULATION THAT
20 WILL REDUCE THE DAMAGES; CORRECT, SIR?

21 A THAT'S THEIR -- THAT WOULD BE IN THEIR BEST
22 INTERESTS, YES.

23 Q AND EVEN AS TO YOU, SAMSUNG'S RETAINED EXPERT,
24 YOU HAD DIFFICULTY GETTING INFORMATION FROM
25 SAMSUNG; CORRECT, SIR?

1 A FOR THE THIRD TIME, YES.

2 Q NOW, YOU HAD TO FILE A CORRECTED VERSION OF
3 YOUR INITIAL EXPERT REPORT ON APRIL 20, 2012; TRUE,
4 SIR?

5 A I DID, THAT WAS BEFORE I DID MY INITIAL
6 REPORT.

7 Q AND THAT'S BECAUSE THERE WAS KIND OF A MAD
8 RUSH AT THE END TO GET THE DATA THAT YOU NEEDED TO
9 EVEN TO PREPARE A REPORT; CORRECT, SIR?

10 A YEAH, I DIDN'T KNOW WHAT I WAS REBUTTING UNTIL
11 THREE WEEKS BEFORE MY REPORT WAS DUE BASED ON THE
12 SCHEDULE OF THIS CASE. I HAD THREE WEEKS TO DO ALL
13 MY WORK.

14 THIS IS AN ENORMOUS AMOUNT OF WORK TO DO
15 IN THREE WEEKS, AND, YES, MY STAFF WAS PRESSED TO
16 GET EVERYTHING DONE AND EVERYTHING CHECKED AND WE
17 MADE SOME, I WOULD SAY, MECHANICAL ERRORS IN THE
18 INITIAL REPORT.

19 Q I THINK YOUR STAFF DID A TERRIFIC JOB, SIR. I
20 WAS REALLY TALKING ABOUT DATA FROM SAMSUNG.

21 A I'M SORRY.

22 Q THE DATA FROM SAMSUNG CAME IN LATE, DIDN'T IT,
23 SIR?

24 A YEAH, BUT I DIDN'T ASK FOR IT UNTIL I
25 UNDERSTOOD WHAT I WAS ADDRESSING. IT'S NOT LIKE I

1 STARTED MY ENGAGEMENT IN JANUARY OF 2011. I DIDN'T
2 REALLY START MY WORK IN EARNEST UNTIL MARCH 22ND,
3 WHEN MR. MUSIKA TOLD ME WHAT I HAD TO ADDRESS. IT
4 WAS STILL COMPRESSED IN THAT THREE-WEEK TIME
5 PERIOD.

6 Q BUT YOU'RE AWARE THAT WELL BEFORE THAT REPORT
7 HAD COME IN, BECAUSE AFTER ALL, MR. MUSIKA HAS TO
8 LOOK AT SAMSUNG DATA, TOO, DOESN'T HE, SIR?

9 A HE DOES.

10 Q SO THE DATA THAT SAMSUNG HAS TO PRODUCE, IT'S
11 NOT JUST BEING PRODUCED AFTER MR. MUSIKA'S REPORT
12 COMES IN, IS IT, SIR?

13 A YOU'RE CORRECT.

14 Q SO THERE'S MONTHS FOR SAMSUNG TO GATHER THE
15 INFORMATION NECESSARY FOR BOTH MR. MUSIKA AND YOU
16 TO DO YOUR WORK AND THAT DATA CAME IN VERY LATE,
17 DIDN'T IT, SIR?

18 A TO YOUR COMPOUND QUESTION, YES, AND YES.

19 Q AND IN PARTICULAR THERE'S THIS DATA CALLED TAB
20 6 DATA; IS THAT TRUE, SIR?

21 A YES, THAT'S THE U.S. FINANCIAL STATEMENT.

22 Q AND YOU DIDN'T RECEIVE THAT DATA UNTIL VERY
23 LATE, ISN'T THAT TRUE, SIR?

24 A I THINK IT WAS THE NIGHT BEFORE MY REPORT WAS
25 DUE.

1 Q NOW, LET'S TALK ABOUT THE ALLOCATION
2 SPREADSHEETS THAT YOU WERE DISCUSSING WITH
3 SAMSUNG'S COUNSEL. THESE ARE THE SPREADSHEETS THAT
4 PURPORT TO SHOW INDIRECT COSTS ALLOCATED TO
5 PRODUCTS; TRUE, SIR?

6 A THAT'S TRUE.

7 Q NOW, THOSE SPREADSHEETS, THEY WERE CREATED
8 SOLELY FOR PURPOSES OF THIS LITIGATION. TRUE, SIR?

9 A THEY WERE, BECAUSE THIS TYPE OF INFORMATION IS
10 NEVER PRODUCED IN THE NORMAL COURSE OF BUSINESS.

11 Q AND ON THIS INFORMATION, THIS PARTICULAR
12 INFORMATION, THIS ALLOCATION OF COST DATA TO
13 PRODUCTS, YOU AND YOUR STAFF MADE NO INDEPENDENT
14 EFFORT TO DETERMINE THAT THAT INFORMATION WAS A
15 DIRECT EXTRACT FROM THE S.A.P. SYSTEM. TRUE, SIR?

16 A THAT IS TRUE. I RELIED UPON MY CLIENT.

17 Q AND YOU WERE NOT ABLE OR CHOSE -- ACTUALLY,
18 I'LL JUST ASK IT. YOU DID NOT TIE THOSE
19 SPREADSHEETS TO INTERNAL REPORTS PROVIDED TO
20 MANAGEMENT. TRUE, SIR?

21 A I COULDN'T. YOU'RE ASKING ME TO DO SOMETHING
22 THAT'S IMPOSSIBLE. THEY NEVER PRODUCED THIS TYPE
23 OF REPORT TO MANAGEMENT, SO YOU COULDN'T MAKE THE
24 TYPE OF COMPARISON YOU ASKED ME TO MAKE.

25 Q YOU COULD SEE IT SUMMED UP, ALLOCATED, AND

1 UNALLOCATED COST. YOU COULD HAVE DONE THAT
2 ANALYSIS, TRUE, SIR?

3 A NOT PRODUCT BY PRODUCT THAT WAS IN THAT
4 REPORT, NO, BECAUSE THAT'S NEVER BEEN PRODUCED
5 EVER, IN THE HISTORY OF SAMSUNG, BEFORE THIS CASE.
6 BUT THEY NEEDED TO DO IT FOR PURPOSES OF THIS CASE.

7 Q LET ME JUST ASK YOU, SIR, ONCE AGAIN, WHETHER
8 OR NOT YOU THOUGHT IT WAS APPROPRIATE OR NECESSARY,
9 DID YOU OR YOUR STAFF TAKE ANY ACTION TO TRY TO TIE
10 THE INFORMATION THAT YOU HAD RECEIVED AND THAT YOU
11 WERE RELYING ON TO OTHER INTERNAL FINANCIAL
12 DOCUMENTS, SUCH AS INTERNAL REPORTS TO MANAGEMENT?

13 A NO. I DIDN'T DO THAT.

14 Q AND THE SAME ANSWER WITH RESPECT TO ANY
15 EXTERNAL REPORTING. TRUE, SIR?

16 A THAT'S TRUE.

17 Q AND WITH RESPECT TO SAMSUNG'S ALLOCATIONS OF
18 COSTS TO PRODUCTS, YOU MADE NO INDEPENDENT EFFORT
19 TO CHECK ANY MANUALS OR PROCEDURES TO SEE HOW THAT
20 WAS DONE?

21 A I DID NOT LOOK AT THEIR CONTROLLER'S PROCEDURE
22 MANUAL, THAT IS CORRECT.

23 Q YOU DIDN'T CHECK THAT THE ALLOCATIONS WERE
24 EXECUTED PROPERLY?

25 A THAT'S TRUE. I RELIED UPON MY CLIENT.

1 Q OR THAT THE ALLOCATIONS WERE CONSISTENTLY
2 APPLIED?

3 A I KNEW BASED ON READING DEPOSITION TESTIMONY
4 AND READING THE DECLARATION OF MR. SHEPPARD AND THE
5 TESTIMONY HE JUST GAVE IS THAT THEY PREPARE THEIR
6 FINANCIAL INFORMATION IN ACCORDANCE WITH
7 INTERNATIONAL FINANCIAL REPORTING STANDARDS, AND
8 GAAP, AND I KNOW THOSE REQUIRE CONSISTENT
9 APPLICATIONS. SO I WOULD KNOW THEY WOULD DO THAT.
10 I WOULDN'T HAVE TO CHECK.

11 Q BUT THIS ISN'T THOSE -- THAT IS THE -- WE'RE
12 NOT TALKING ABOUT THE GAAP ACTING OR IFRS
13 ACCOUNTING DOCUMENTS. WE'RE TALKING ABOUT
14 DOCUMENTS SPECIFICALLY CREATED FOR THIS LITIGATION.
15 TRUE, SIR?

16 A THAT'S TRUE, YES.

17 Q AND YOU DID NO INDEPENDENT CHECK OF WHETHER
18 THOSE ALLOCATIONS, THE ALLOCATIONS OF COSTS TO
19 PRODUCTS WERE CONSISTENTLY APPLIED?

20 A THAT'S TRUE.

21 Q AND YOU UNDERSTAND THAT THE JURY MAY HEAR AN
22 INSTRUCTION ON THIS QUESTION ABOUT HOW COSTS HAVE
23 TO BE ALLOCATED. TRUE, SIR?

24 A YOU'RE TELLING ME SOMETHING I DON'T KNOW, BUT
25 I GUESS THAT COULD HAPPEN, YES.

1 Q NOW, FROM THE ACCOUNTING PERSPECTIVE, YOU HAVE
2 NO REASON TO BELIEVE THAT APPLE'S DAMAGES AWARD
3 SHOULD BE LIMITED TO ONLY THE PROFITS AT STA AND
4 SEA; CORRECT, SIR?

5 A CLEARLY NOT. YOU HAVE -- THAT'S AN
6 ALTERNATIVE REVENUE. YOU HAVE OTHER REMEDIES.

7 Q NOW, YOU DID AN ALTERNATIVE CALCULATION AND
8 YOU DISCUSSED IT WITH SAMSUNG'S CALCULATION, AND
9 JUST TO CLARIFY, WE'VE GOT THREE BUCKETS HERE.
10 WE'VE GOT SAMSUNG'S PROFITS, WE'VE GOT APPLE'S LOST
11 PROFITS AND WE'VE GOT REASONABLE ROYALTY. TRUE,
12 SIR?

13 A THAT'S TRUE.

14 Q AND YOU DID AN ALTERNATIVE CALCULATION OF
15 SAMSUNG'S PROFITS, OR WHAT MR. MUSIKA CALLED
16 SAMSUNG'S UNJUST ENRICHMENT. TRUE, SIR?

17 A I DID.

18 Q AND THAT ALTERNATIVE CALCULATION WAS \$519
19 MILLION. IS THAT TRUE, SIR?

20 A ROUNDING THE MILLIONS, THAT IS CORRECT.

21 Q AND ONE OF THE KEY ASSUMPTIONS THERE IS THE
22 START DATE BASED ON -- ON YOUR CHART WHEN THE
23 COMPLAINT WAS FILED FOR MOST OF THE PRODUCTS.
24 TRUE, SIR?

25 A THAT'S TRUE.

1 Q AND THE OTHER KEY ASSUMPTION IS THAT YOUR
2 ASSESSMENT OF SAMSUNG'S PROFITS ATTRIBUTABLE TO THE
3 INFRINGING PRODUCTS IS CORRECT. TRUE, SIR?

4 A I AGREE WITH THAT.

5 Q AND JUST TO MAKE THIS KIND OF EASY FOR THE
6 JURY, YOUR CALCULATION OF SAMSUNG'S -- OF SAMSUNG'S
7 PROFITS WAS WHAT PERCENT?

8 A FOR THAT CALCULATION, IT'S ABOUT 12 PERCENT.

9 Q AND WHETHER MR. MUSIKA'S CALCULATION OF
10 SAMSUNG'S PROFITS, THE PERCENTAGE, THE
11 CORRESPONDING PERCENTAGE, WAS ABOUT 35.9 PERCENT.
12 IS THAT TRUE, SIR?

13 A I THOUGHT IT WAS 35.5, BUT YOU MAY BE RIGHT.

14 Q I'LL TAKE 35.5. IF YOU APPLY MR. MUSIKA'S
15 CALCULATION OF SAMSUNG'S PROFITABILITY TO ALL THE
16 OTHER INFORMATION ON WHICH YOU REPLIED FOR YOUR
17 \$519 MILLION CALCULATION, WHAT NUMBER DO YOU GET?

18 A I HAVEN'T MADE THE CALCULATION. IF YOU MADE
19 THE CALCULATION, AND FOR ONCE YOU GUYS DO IT RIGHT,
20 BECAUSE YOU GUYS ALWAYS SEEM TO DO IT WRONG -- I'M
21 SORRY. IN MR. SHEPPARD'S DEPOSITION, WHEN YOU
22 TRIED TO RECREATE HIS INFORMATION, YOU MADE A \$900
23 MILLION MISTAKE.

24 MR. JACOBS: I'M SORRY, YOUR HONOR. I
25 MOVE TO STRIKE.

1 Q I'M ASKING YOU FOR A SIMPLE CALCULATION, SIR.

2 A I'VE TOLD YOU I'VE NOT DONE IT. TELL ME WHAT
3 THE NUMBERS ARE, AND IF IT'S RIGHT I'LL AGREE WITH
4 YOUR NUMBERS.

5 Q IF MR. MUSIKA'S CALCULATION OF SAMSUNG'S
6 PROFITABILITY IS ABOUT 35.5 PERCENT AND YOUR
7 CALCULATION IS 12-PLUS PERCENT, IF YOU TAKE YOUR
8 500 MILLION PLUS NUMBER, YOU WOULD MULTIPLY IT BY
9 ABOUT TWO AND A HALF TIMES TO COME UP WITH THE
10 CORRESPONDING CALCULATION USING MR. MUSIKA'S
11 PROFITABILITY ANALYSIS AND YOUR START DATES, TRUE,
12 SIR?

13 A I THINK IT WOULD BE CLOSER TO THREE THAN TWO
14 AND A HALF, BUT YES.

15 Q APPROXIMATELY \$1.396 BILLION; TRUE, SIR?

16 A I WOULD BELIEVE THAT'S THE CORRECT NUMBER.

17 Q NOW, I JUST WANT TO BE SURE THAT THE TESTIMONY
18 ON THIS WAS CLEAR.

19 FOR THE REASONABLE ROYALTY ANALYSIS, YOUR
20 ASSESSMENT IS -- WE'RE NOT SUPPOSED TO ADD 0'S TO
21 THAT, ARE WE, SIR? IT'S LITERALLY IN THE THOUSANDS
22 OF DOLLARS?

23 A IT IS. THESE ARE JUST SOFTWARE CHANGES.

24 Q NOW, YOU ANALYZED SAMSUNG INTERNAL DOCUMENTS
25 TO DETERMINE WHETHER THERE WAS, IN FACT, DEMAND FOR

1 THE PATENTED FEATURES. TRUE, SIR?

2 A I DID.

3 Q AND ONE OF THOSE DOCUMENTS WAS AN E-MAIL DATED
4 2000 -- FROM 2010 THAT TALKED ABOUT BROWSER
5 SCROLLING AND THE LATEX EFFECT. TRUE, SIR?

6 A I REMEMBER THAT DOCUMENT.

7 Q CAN WE SEE -- CAN YOU LOOK AT PLAINTIFF'S
8 EXHIBIT 186, PLEASE, IN YOUR BINDER. AND CAN WE --
9 YOUR HONOR, I OFFER 186 INTO EVIDENCE.

10 THE COURT: ANY OBJECTION?

11 MR. PRICE: NO FOUNDATION, YOUR HONOR.

12 MR. JACOBS: I'VE JUST LAID IT, YOUR
13 HONOR.

14 THE COURT: ADMITTED.

15 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
16 186, HAVING BEEN PREVIOUSLY MARKED FOR
17 IDENTIFICATION, WAS ADMITTED INTO
18 EVIDENCE.)

19 THE COURT: GO AHEAD.

20 MR. JACOBS: AND CAN WE HIGHLIGHT
21 PARAGRAPH 2.

22 Q AND DO YOU SEE IN THIS E-MAIL, SAMSUNG IS
23 DISCUSSING THE FACT THAT THEY HAVE LEFT OUT THE
24 LATEX EFFECT OF HAVING THE SCREEN FOLLOW ALONG AND
25 THEN RETURNING WHEN YOU'RE MOVING PAST THE EDGE?

1 DO YOU SEE THAT, SIR?

2 A I DO.

3 Q AND IT SAYS -- AND THEN YOU SEE IT SAYS,
4 "REFER TO THE IPAD."

5 DO YOU SEE THAT, SIR?

6 A I DO.

7 Q AND YOUR TESTIMONY IS THAT THE REASONABLE
8 ROYALTY ON THE '381 RUBBER BANDING PATENT IS IN THE
9 THOUSANDS OF DOLLARS?

10 A IT'S ABOUT \$10,000. I THINK IT'S 11,000.

11 Q LET'S LOOK AT ANOTHER DOCUMENT THAT YOU LOOKED
12 AT. IT'S PX 195 IN YOUR BINDER. YOU LOOKED AT
13 THIS DOCUMENT IN DOING YOUR WORK. TRUE, SIR?

14 A I'LL LOOK AT IT ON THE SCREEN BECAUSE I DON'T
15 HAVE ANY OF THESE DOCUMENTS IN FRONT OF ME.

16 Q I'M SORRY. TAKE A LOOK AT THE SCREEN, SIR?

17 A I'M LOOKING, AND I DON'T THINK IT'S SUPPOSED
18 TO BE NUMERICAL SEQUENCE, AND I DON'T SEE 195 OR
19 THE LAST ONE YOU GAVE ME.

20 Q THE WHITE BINDER, SIR?

21 A I DON'T HAVE A WHITE BINDER.

22 MR. JACOBS: MAY I APPROACH, YOUR HONOR.

23 THE COURT: PLEASE, GO AHEAD.

24 THE WITNESS: I'M SORRY. IT WAS ON THE
25 FLOOR. MY APOLOGIES.

1 BY MR. JACOBS:

2 Q WE'RE ALL MOVING QUICKLY, SIR.

3 A I KNOW.

4 Q OKAY. PLEASE LOOK AT 195.

5 A I'M THERE.

6 Q DID YOU EXAMINE THIS DOCUMENT IN THE COURSE OF
7 YOUR WORK?

8 A I'M NOT RECALLING SEEING IT, NO.

9 Q YOU HAVE A PORTION OF YOUR REPORT WHERE YOU
10 LIST THE BATES RANGES OF SAMSUNG DOCUMENTS THAT YOU
11 LOOKED AT. I'LL REPRESENT TO YOU, SIR, THAT THIS
12 EXHIBIT IS LISTED IN THAT APPENDIX TO YOUR REPORT.

13 A WELL, I'LL TELL YOU WHAT I DID IS WE PRODUCED
14 TO YOU EVERY DOCUMENT THAT EITHER I OR MY STAFF
15 LOOKED AT, AND THAT'S WHAT WE CALL DOUR DOCUMENTS
16 CONSIDERED LIST.

17 THE DOCUMENTS THAT I RELIED UPON FOR MY
18 OPINION ARE FOOTNOTED IN 14 VOLUMES THAT ARE
19 ATTACHED TO MY REPORT. UNLESS THIS WAS FOOTNOTED,
20 I CAN TELL YOU MIKE WAGNER DID NOT LOOK AT IT.

21 Q BUT YOUR STAFF SUBMITTED AN APPENDIX WITH YOUR
22 REPORT OF ALL DOCUMENTS THAT YOU AND YOUR STAFF
23 LOOKED AT; IS THAT TRUE, SIR?

24 A THAT'S WHY I'M CERTAIN THAT WE RECEIVED THIS
25 INFORMATION.

1 MR. JACOBS: WE MOVE 195 INTO EVIDENCE,
2 YOUR HONOR.

3 MR. PRICE: SAME OBJECTION, YOUR HONOR.

4 THE COURT: ALL RIGHT. IT'S ADMITTED.

5 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
6 195, HAVING BEEN PREVIOUSLY MARKED FOR
7 IDENTIFICATION, WAS ADMITTED INTO
8 EVIDENCE.)

9 BY MR. JACOBS:

10 Q SO THIS IS EXHIBIT 195, AND DO YOU SEE IT SAYS
11 "WITH REGARDS TO BOUNCE, WE USE THE MASS SPRING
12 DAMPER MODEL AND OBTAINED THE BOUNCE EFFECT THAT IS
13 SIMILAR TO THE IPAD."

14 DO YOU SEE THAT, SIR?

15 A I DO.

16 Q AND THEN IF YOU LOOK ON THE NEXT PAGE, WHICH
17 IS ACTUALLY A PREVIOUS E-MAIL IN THE STRING,
18 ACTUALLY 606, MR. LEE.

19 A TWO PAGES.

20 Q DO YOU SEE THERE'S A DISCUSSION ABOUT, AMONG
21 THE SAMSUNG ENGINEERS IN OCTOBER OF 2010 ABOUT HOW
22 COMPARED TO OUR COMPETITOR'S PRODUCT, YOU KNOW WELL
23 WHICH ONE, AND THEN SOME SYMBOL, IT IS STILL NOT
24 SATISFACTORY.

25 DO YOU SEE THAT, SIR?

1 A I DO.

2 Q AND SO THE SAMSUNG ENGINEERS ARE TALKING AMONG
3 THEMSELVES ABOUT HOW TO GET THE BOUNCE EFFECT IN
4 THE SAMSUNG PRODUCTS TO BE BETTER AND EQUAL TO THE
5 APPLE PRODUCTS. TRUE, SIR?

6 A I BELIEVE THAT'S A REASONABLE INTERPRETATION.

7 Q AND THEN ONE MORE, SIR. WE'RE GOING TO TAKE A
8 LOOK AT EXHIBIT 35. DO YOU SEE THAT ONE, SIR?

9 A I DO.

10 Q AND THAT'S ABOUT ICONS; TRUE, SIR?

11 A IT IS.

12 Q AND YOU LOOKED AT THAT DOCUMENT, OR YOU OR
13 YOUR STAFF LOOKED AT THAT DOCUMENT?

14 A IF SOMEONE AT MY FIRM DID, IT WAS MY STAFF.

15 MR. JACOBS: I OFFER IT INTO EVIDENCE,
16 YOUR HONOR.

17 MR. PRICE: SAME OBJECTION.

18 THE COURT: ALL RIGHT. IT'S ADMITTED.

19 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
20 35, HAVING BEEN PREVIOUSLY MARKED FOR
21 IDENTIFICATION, WAS ADMITTED INTO
22 EVIDENCE.)

23 MR. JACOBS: CAN WE HAVE 35 UP, PLEASE.

24 Q 35 IS PASSING ON SOME COMMENTS FROM AT&T ABOUT
25 SAMSUNG'S ICONS. DO YOU SEE THAT, SIR?

1 A I HAVEN'T HAD A CHANCE TO READ IT, BUT I'M
2 ASSUMING THAT'S WHAT THIS ADDRESSES.

3 Q IT SAYS, "IN ADDITION TO THIS, WE ALSO WANTED
4 TO SHARE SOME FEEDBACK COMPARING ICONS WE HAVE
5 IMPLEMENTED PROPOSED FOR ETERNITY/GENIE VERSUS
6 IPHONE." DO YOU SEE THAT?

7 A I DO.

8 Q AT&T COMMENTS REGARDING OUR PROPOSED ICONS
9 THAT THEY APPEAR VERY CARTOONISH, ANIMATED, WHICH
10 IS EQUAL IF WE'RE TARGETING A MORE YOUTHFUL TWEEN
11 AUDIENCE, ICONS ARE COLORFUL, VIBRANT, HOWEVER,
12 THEY ARE IN CONTAINED SQUARE WHICH APPEAR MORE
13 ORGANIZED AND CONSISTENT.

14 DO YOU SEE THAT, SIR?

15 A I DO.

16 Q AND YOUR TESTIMONY IS THAT THERE IS NO
17 REASONABLE ROYALTY VALUE THAT CAN BE ATTRIBUTED TO
18 APPLE'S ICON DESIGNS?

19 A NO, I DIDN'T SAY NO. YOU CAN DESIGN AROUND
20 THESE AND GET A SIMILAR PRODUCT WITH SIMILAR
21 FEATURES AND THAT'S THE MOST YOU WOULD PAY IS WHAT
22 MY OPINION IS.

23 MR. JACOBS: THANK YOU VERY MUCH, SIR.

24 THE COURT: ALL RIGHT. THE TIME IS NOW
25 10:25.

1 MR. PRICE: YES.

2 THE COURT: OKAY. GO AHEAD.

3 **REDIRECT EXAMINATION**

4 BY MR. PRICE:

5 Q YOU WERE TALKING ABOUT PERCENTAGE OF YOUR
6 CALCULATIONS COMPARED TO MR. MUSIKA'S CALCULATIONS,
7 AND I'D LIKE TO PUT, IF WE CAN, THE SAMSUNG
8 FINANCIALS.

9 IF WE CAN PUT UP -- MAYBE WE CAN DO THIS
10 BY MEMORY. YOU WERE HERE WHEN MR. SHEPPARD
11 TESTIFIED?

12 A I WAS.

13 Q AND YOU SAW HE TALKED ABOUT THE SAMSUNG
14 CONSOLIDATED FINANCIALS. DO YOU REMEMBER THAT?

15 A I DO.

16 Q AND SAMSUNG CONSOLIDATED, COULD YOU EXPLAIN TO
17 US, IS THAT THE COMBINATION OF EVERYTHING?

18 A THAT'S EVERYTHING. IT'S ROLLED UP INTO THEIR
19 TOTAL COMPANY'S FINANCIALS OR BUSINESS SEGMENT,
20 WHICH WAS ALSO SHOWN.

21 Q AND FROM THAT, YOU COULD GET THE PERCENTAGE OF
22 OPERATING PROFIT COMPARED TO REVENUES; CORRECT?

23 A YOU COULD.

24 Q OKAY. AND YOU HEARD MR. SHEPPARD TESTIFY AS
25 TO WHAT THAT PERCENTAGE WAS IN 2011?

1 A IT WAS 15 PERCENT, AND IT WAS 11 PERCENT IN
2 2010.

3 Q OKAY. AND ALSO ON THAT SAMSUNG FINANCIAL, IT
4 WENT DOWN TO THE LEVEL OF THE OPERATING SEGMENT
5 TELECOMMUNICATIONS IN WHICH THESE PHONES ARE SOLD;
6 CORRECT?

7 A YES.

8 Q AND FROM THAT SEGMENT, YOU COULD ALSO GET
9 REVENUE FROM THE EXTERNAL CUSTOMERS AND YOU COULD
10 COMPARE THAT TO THE OVERALL REVENUE; CORRECT?

11 A YOU CAN, AND THAT'S WHAT WE JUST DID.

12 Q AND WHAT WAS THAT -- OKAY. WHAT YOU GAVE US
13 WAS THE -- WAS THAT SEGMENT OF PROFIT MARGIN?

14 A CORRECT, YES.

15 Q 15 PERCENT. AND IF YOU WENT UP TO THE ENTIRE
16 COMPANY AND COMPARED REVENUE TO OPERATING INCOME,
17 WHAT PERCENTAGE WAS THAT?

18 A THAT'S 10 PERCENT FOR THE OVERALL COMPANY.

19 Q OKAY. SO 10 PERCENT FOR THE COMPANY, IT'S 15
20 PERCENT FOR THE, FOR TELECOMMUNICATIONS WITH THOSE
21 PHONES ARE SOLD, RIGHT?

22 A 11 TO 15 PERCENT.

23 Q AND WHAT YOU DID, USING MORE DETAILED
24 INFORMATION, WAS TRY TO ARRIVE AT THE OPERATING
25 INCOME FOR THESE SPECIFIC PHONES?

1 A THAT'S TRUE.

2 Q OKAY. AND WHAT PERCENTAGE DID YOU HAVE FOR
3 THAT?

4 A FOR THE -- THE CALCULATION THAT I SHOWED TO
5 THE JURY, 12 PERCENT.

6 Q OKAY. AND SO LOOKING AT SAMSUNG'S AUDITED
7 FINANCIALS, WHAT DOES THAT TELL YOU ABOUT YOUR
8 CALCULATION OF THE OPERATING NUMBER?

9 A WELL, WHEN I LOOK AT ALL THREE PIECES OF
10 INFORMATION, MINE APPEARS TO BE REASONABLE, AND IT
11 APPEARS THAT TELECOMMUNICATIONS IS A MORE
12 PROFITABLE BUSINESS TO SAMSUNG THAN A LOT OF THEIR
13 OTHER BUSINESSES.

14 Q AND WHAT DOES THAT TELL YOU ABOUT MR. MUSIKA'S
15 MUCH, MUCH, MUCH HIGHER NUMBER?

16 A WELL, HE'S ONLY LOOKING AT GROSS MARGIN. I
17 WOULD EXPECT THAT TO BE MUCH LARGER.

18 MR. PRICE: THANK YOU.

19 THE COURT: ALL RIGHT. THE TIME IS NOW
20 10:28. IS THERE ANY REDIRECT?

21 MR. JACOBS: NO, YOUR HONOR.

22 THE COURT: ALL RIGHT. MAY THIS WITNESS
23 BE EXCUSED AND IS IT SUBJECT TO RECALL?

24 MR. JACOBS: NO RECALL FROM US, YOUR
25 HONOR.

1 THE COURT: OKAY. WHAT ABOUT YOU?

2 MR. PRICE: POSSIBLE RECALL, BUT I DOUBT
3 IT.

4 THE COURT: I'LL GO AHEAD AND SAY SUBJECT
5 TO RECALL JUST IN CASE. YOU ARE EXCUSED.

6 THE WITNESS: THANK YOU, YOUR HONOR.

7 THE COURT: SHOULD WE TAKE OUR BREAK NOW.
8 IT'S 10:29.

9 MR. JACOBS: YES, YOUR HONOR.

10 THE COURT: OKAY. WHY DON'T WE DO THAT.
11 PLEASE KEEP AN OPEN MIND, PLEASE DON'T DISCUSS THE
12 CASE WITH ANYONE AND PLEASE DON'T READ ABOUT THE
13 CASE OR DO ANY OF YOUR OWN RESEARCH. OKAY. THANK
14 YOU. WE'LL JUST TAKE A 15-MINUTE BREAK.

15 YOU CAN LEAVE YOUR NOTEBOOKS ON YOUR
16 CHAIRS, AND MR. RIVERA WILL PASS OUT THE PHOTOS OF
17 OUR LAST TWO WITNESSES AND JUST LEAVE THEM ON YOUR
18 BOOKS, OKAY, ON YOUR CHAIR. THANK YOU.

19 AND THEN WE HAVE THE COKE ZERO AND
20 REGULAR COKE AND POTATO CHIPS THAT WERE REQUESTED.

21 (WHEREUPON, THE FOLLOWING PROCEEDINGS
22 WERE HELD OUT OF THE PRESENCE OF THE JURY:)

23 THE COURT: ALL RIGHT. THE RECORD SHOULD
24 REFLECT THE JURORS HAVE LEFT THE COURTROOM. I JUST
25 HAVE ONE REQUEST.

1 MY 3965.020 WAS DIFFERENT THAN THE ONE
2 THAT WAS ON THE SCREEN, SO I JUST WANT TO MAKE SURE
3 WE GET THE ONE THAT WAS ON THE SCREEN THAT WAS
4 ADMITTED -- IT WASN'T ADMITTED, BUT AT LEAST IT WAS
5 SHOWN.

6 MR. PRICE: FOR THE RECORD, YES, WE'LL
7 LODGE IT.

8 THE COURT: OKAY. AND CAN YOU GIVE ME A
9 NEW ONE, TOO, JUST FOR MY OWN.

10 MR. PRICE: YES.

11 THE COURT: I'M TRYING TO KEEP A SET OF
12 EVERYTHING AS WELL.

13 MR. PRICE: WE WILL.

14 THE COURT: THE ONLY THING THAT WAS
15 DIFFERENT WAS THE TIME FOR THE DESIGN AROUND ON
16 '163 AND '915.

17 MR. PRICE: I THINK THEY WERE MISMATCHED.

18 THE COURT: YES. WELL, ONE HAD FOUR
19 WEEKS, TWO WEEKS, TWO DAYS AND THE OTHER ONE WAS
20 FOUR WEEKS, TWO DAYS. CAN I GET THE NEW ONE FOR MY
21 OWN SET?

22 MR. PRICE: YES.

23 THE COURT: ALL RIGHT. LET'S TAKE OUR
24 BREAK NOW. THANK YOU.

25 (WHEREUPON, A RECESS WAS TAKEN.)

1 (WHEREUPON, THE FOLLOWING PROCEEDINGS
2 WERE HELD OUT OF THE PRESENCE OF THE JURY:)

3 THE COURT: ALL RIGHT. WELCOME BACK. GO
4 AHEAD AND PLEASE TAKE A SEAT. LET ME TAKE CARE OF
5 ONE HOUSEKEEPING MATTER.

6 SO THIS MORNING 75 PAGES OF OBJECTIONS
7 AND RESPONSES TO 22 WITNESSES WAS FILED BY THE
8 PARTIES.

9 WE HAVE BASICALLY ABOUT EIGHT HOURS LEFT.
10 I THINK WE'LL DO ANOTHER FOUR TODAY. YOU HAVE FOUR
11 HOURS TOMORROW. COME ON. YOU'RE NOT GOING TO CALL
12 22 WITNESSES. THE 22 WITNESSES DOESN'T EVEN
13 INCLUDE THE THREE SAMSUNG WITNESSES AND THE 6 APPLE
14 WITNESSES THAT YOU REALLY HAVE ON YOUR LIST.

15 SO ARE YOU REALLY GOING TO CALL 22
16 WITNESSES IN 4 HOURS TOMORROW? NOW, IT LOOKS LIKE
17 YOU ALL DON'T EVEN HAVE OBJECTIONS TO THE SAME
18 PEOPLE, I DON'T KNOW IF YOU DON'T HAVE ANY
19 OBJECTIONS, WHETHER THERE WAS SOME MISCOMMUNICATION
20 BETWEEN THE PARTIES.

21 WHAT'S GOING ON?

22 MR. SELWYN: YOUR HONOR, DO I KNOW THAT
23 FOR APPLE, THERE WERE A NUMBER OF WITNESSES FOR
24 WHICH WE LODGED NO OBJECTIONS? WE TRIED TO KEEP IT
25 TO A MINIMUM. SO, THEREFORE, FOR A NUMBER OF THEM,

1 YOU WILL NOT FIND OBJECTIONS.

2 THE COURT: NO. YOU LODGED OBJECTIONS
3 AND RESPONSES TO 22 WITNESSES. SAMSUNG RESPONDED
4 AND OBJECTED TO 16. SO, IN FACT, YOU OVER-OBJECTED
5 TO SIX.

6 MR. SELWYN: FOR EACH OF THE WITNESSES,
7 THE PARTIES WOULD HAVE AS MANY AS TWO HIGH PRIORITY
8 OBJECTIONS.

9 THE COURT: NO, YOU OBJECTED TO AGNETTA.
10 SAMSUNG DID NOT HAVE ANY OBJECTIONS OR RESPONSES TO
11 AGNETTA, TO DONALDSON, TO KIM, TO KNIGHTLY,
12 WILLIAMS, OR YANG.

13 SAMSUNG HAD NO OBJECTIONS OR RESPONSES TO
14 THOSE SIX WITNESSES AND APPLE DID.

15 WHY IS THAT? AGNETTA, DONALDSON, KIM,
16 KNIGHTLY, WILLIAMS AND YANG.

17 MR. SELWYN: I BELIEVE THAT WAS OUR
18 OBJECTIONS TO CROSS-EXHIBITS IDENTIFIED FOR THOSE
19 WITNESSES.

20 THE COURT: AND THOSE ARE DIFFERENT THAN
21 THE ONES I'VE ALREADY RULED ON? BECAUSE I'VE
22 ALREADY RULED ON AGNETTA, WILLIAMS, YANG, I DON'T
23 RECALL KNIGHTLY, AND I'M NOT SURE WHICH ONE, IS IF
24 THIS IS KIM OR EMILIE KIM OR SOMEBODY ELSE.

25 MR. SELWYN: THAT'S AN EXPERT.

1 THE COURT: OH, THE ONE FROM CARNEGIE
2 MELLON.

3 MR. SELWYN: YES.

4 MR. LEE: AND WILLIAMS AND YANG ARE
5 DISCLOSED FROM THEIR LAST LIST, AND THAT'S WHY
6 THERE ARE NEW WITNESSES.

7 MS. MAROULIS: YOUR HONOR, THE REASON FOR
8 AGNETTA IS WE DECIDED NOT TO PLAY IN THE INTEREST
9 OF TIME, SO APPLE DECIDED TO GO AHEAD AND DESIGNATE
10 IN THEIR CASE. AND THAT'S WHY YOU SEE THAT, BUT WE
11 DON'T HAVE TIME.

12 THE COURT: WHAT ABOUT DONALDSON? COME
13 ON. THIS IS NOT REALISTIC. WITH THE NINE
14 WITNESSES THAT YOU HAVE SET TODAY, THIS IS AN
15 UNREALISTIC LIST FOR TOMORROW. OKAY. COME ON.
16 COME ON.

17 MR. LEE: YOUR HONOR --

18 THE COURT: I'M GOING TO START DEDUCTING
19 FROM YOUR CLOSING ARGUMENT TIME. THIS IS
20 RIDICULOUS. SO 75 PAGES WHEN WE HAVE TO DO JURY
21 INSTRUCTIONS AND VERDICT FORM AND YOUR ADVERSE
22 INFERENCE MOTIONS, AND I COUNTED UP YESTERDAY THERE
23 ARE ACTUALLY SIX OR SEVEN MOTIONS TO SEAL INTEL OR
24 IBM JUST FILED MOTION FOR CLARIFICATION LAST NIGHT.

25 I MEAN, COME ON.

1 MR. LEE: YOUR HONOR, I DON'T KNOW
2 ANYTHING ABOUT INTEL --

3 THE COURT: I HAVE PAGES SEVENTY-FIVE
4 PAGES. YOU WANT ME TO DO AN ORDER ON 75 PAGES
5 TONIGHT WHEN, UNLESS YOU'RE SMOKING CRACK, YOU KNOW
6 THAT THESE WITNESSES ARE NOT GOING TO BE CALLED.

7 WHY ARE YOU DOING THIS? YOU'VE GOT NINE
8 WITNESSES. YOU'VE GOT EIGHT HOURS LEFT. WHY ARE
9 YOU DOING THIS? WHO IS REALLY GOING TO BE CALLING
10 ALL THESE WITNESSES WHEN YOU'RE GOING TO HAVE LESS
11 THAN 4 HOURS TOMORROW.

12 MR. LEE: YOUR HONOR, FIRST, I'M NOT
13 SMOKING CRACK. I CAN PROMISE YOU THAT.

14 THE SECOND THING IS THIS. WE HAVE --
15 WE'RE STARTING OUR ENTIRE RESPONSE TO THEIR
16 OFFENSIVE CASE SOME TIME BEFORE 12:00 O'CLOCK
17 TODAY., AND PUTTING ON OUR AFFIRMATIVE CASE.

18 WE HAVE IT TIMED OUT SO THAT THE
19 WITNESSES THAT WE'RE GOING TO CALL, THERE -- FOR
20 INSTANCE, THERE ARE 4 OR 5 DEPOSITIONS THAT ARE
21 GOING TO TAKE, IN TOTAL, 15 MINUTES.

22 THERE ARE A SERIES OF WITNESSES THAT ARE
23 ONLY GOING TO TAKE TEN MINUTES. MR. BLEVINS IS
24 ONE, HE IS ONLY FIVE. WE HAVE IT TIMED OUT SO THAT
25 IN THE 7 HOURS, 6 HOURS AND 59 MINUTES THAT YOU

1 LEFT US --

2 THE COURT: YOU HAVE 6 HOURS AND 36
3 MINUTES LEFT.

4 MR. LEE: YEAH, THE 6 HOURS AND 59
5 MINUTES THAT WE HAD YESTERDAY, THAT WE WOULD GET IT
6 DONE WITH 15 OR 20 MINUTES TO SPARE.

7 IF WE'RE OFF, WE'RE OFF.

8 THE COURT: SO YOU'RE GOING TO GET
9 THROUGH ALL SIX OF YOUR WITNESSES TODAY AFTER
10 SAMSUNG GETS THROUGH ALL THREE OF THEIR WITNESSES?

11 MR. LEE: WE SHOULD BE ABLE TO GET --
12 GIVEN HOW MUCH TIME SAMSUNG HAS LEFT TO CROSS THEM,
13 YOUR HONOR, WE SHOULD BE ABLE TO GET THROUGH THOSE
14 WITNESSES TODAY.

15 THE COURT: THIS IS NOT -- THIS IS NOT --
16 COME ON. SO 22 WITNESSES WHEN YOU'RE GOING TO HAVE
17 MAYBE 4 HOURS LEFT TOMORROW?

18 MR. LEE: THEY'RE NOT ALL OUR WITNESSES.
19 SOME OF THEM ARE THEIRS, YOUR HONOR.

20 THE COURT: OKAY. WELL, SAMSUNG AT THIS
21 POINT HAS AN HOUR AND 35 MINUTES LEFT. THEY HAVE
22 TO GET THREE DAMAGES EXPERTS ON.

23 SO HOW MANY WITNESSES HAVE YOU DESIGNATED
24 FOR YOUR REBUTTAL CASE IN THE HOUR AND 36 MINUTES
25 YOU HAVE -- NO, HOUR AND 35 MINUTES, EXCUSE ME, YOU

1 HAVE LEFT WHEN YOU'VE GOT THREE DAMAGES EXPERTS
2 THAT YOU'VE GOT TO GET ON IN YOUR CASE.

3 MR. VERHOEVEN: YOUR HONOR --

4 THE COURT: IS THIS REALISTIC.

5 MR. VERHOEVEN: YOUR HONOR, WE HAVE TWO.
6 WE MAY HAVE HAD THREE, BUT WE'VE NARROWED IT DOWN
7 TO TWO BECAUSE OF TODAY FOR OUR REBUTTAL CASE.

8 THE COURT: YOU HAVE WILLIAMS AND YANG.

9 MR. VERHOEVEN: YES.

10 THE COURT: SO ALL OF THOSE OTHER 20
11 WITNESSES ARE APPLE WITNESSES THAT YOU'RE GOING TO
12 GET ON IN THE LESS THAN 4 HOURS THAT YOU HAVE LEFT
13 TOMORROW.

14 MR. LEE: YOUR HONOR, I DON'T HAVE -- CAN
15 I BORROW THAT LIST FOR A SECOND?

16 THE COURT: WELL, I'M GOING TO GIVE YOU
17 THE 75 PAGES OF BRIEFING THE PARTIES FILED AT 10:30
18 WANTING OBJECTIONS TO BE RULED ON FOR 22 WITNESSES
19 WHEN WE HAVE LESS THAN A FULL DAY OF TRIAL LEFT FOR
20 TOMORROW.

21 MR. LEE: YOUR HONOR, AS I LOOK AT THE
22 LIST, THERE ARE A NUMBER OF THESE PEOPLE WHO WILL
23 TESTIFY TODAY. THERE ARE --

24 THE COURT: OKAY. THIS IS THE LIST.
25 AGNETTA.

1 MR. LEE: THAT'S THEIRS.

2 THE COURT: BALAKRISHNAN, BRESSLER,
3 DONALDSON, HONG, KARE, KIM, KNIGHTLY, LEE, MUSIKA,
4 ORDOVER, ROSENBROCK, ROSSI, SINGH, STRINGER, TEECE,
5 TEKSLER, WALKER, WILLIAMS, YANG, AND YEO.

6 MR. LEE: SO ABOUT FOUR OR FIVE OF THEM
7 ARE THEIRS.

8 THE COURT: THEY SAID THAT WILLIAMS AND
9 YANG ARE THEIRS.

10 MR. LEE: AGNETTA IS ON THEIR LIST. NO,
11 AGNETTA IS OFF THE LIST, I'M FINDING IT OUT.

12 THE COURT: I UNDERSTOOD MS. MAROULIS
13 SAID THAT APPLE HAS NOW DESIGNATED AGNETTA AS A
14 WITNESS IN YOUR CASE.

15 MR. LEE: A VERY BRIEF DEPOSITION THAT
16 WILL BE IN 15 MINUTES I TOLD YOU ABOUT.

17 YOUR HONOR, WE HAVE TIMED OUT THESE
18 DEPOSITION EXCERPTS. THERE ARE 6 -- 5 OR 6 OF THEM
19 THAT WILL TAKE 15 MINUTES, AT LEAST ON OUR CLOCK,
20 BUT THERE ARE IMPORTANT PARTS OF THE FRAND CASE
21 WE'VE BEEN WAITING TO PRESENT.

22 THE COURT: YOU'RE TELLING ME YOU'RE
23 GOING TO GET 22 WITNESSES IN WHEN NONE OF THESE
24 PEOPLE, FROM WHAT I CAN TELL, MAYBE WITH THE
25 EXCEPTION OF MS. KIM, I DON'T KNOW -- YOU SAID

1 THAT'S THE PROFESSOR FROM CARNEGIE MELLON.

2 NONE OF THESE, OTHER THAN I'M GOING TO
3 TAKE OUT WILLIAMS AND YANG, WHO ARE THE SAMSUNG
4 REBUTTAL WITNESSES, THESE 20 WITNESSES ARE ON TOP
5 OF TONY BLEVINS, EMILIE KIM, PAUL DOURISH, MANI
6 SRIVASTAVA, TONY GIVARGIS, AND DAN DZUBAN.

7 SO IT'S GOING TO BE 28 WITNESSES IN THE,
8 WHAT, 28 WITNESSES IN THE 6 HOURS AND 36 MINUTES
9 YOU HAVE LEFT AND YOU ALSO NEED TO CROSS 3 DAMAGES
10 EXPERTS ON SAMSUNG'S SIDE.

11 MR. LEE: YOUR HONOR, IF I COULD? THE
12 WITNESSES WHO WE'RE GOING TO CALL ARE THE ONES I
13 GAVE YOU THIS MORNING. WE ARE GOING TO CALL
14 MR. DONALDSON TOMORROW, MR. KIM TOMORROW,
15 MR. KNIGHTLY TOMORROW. THERE WILL BE SOME
16 DEPOSITION DESIGNATIONS. THESE OTHER PEOPLE WERE
17 DISCLOSED AS PART OF THE REBUTTAL CASE ON THE APPLE
18 OFFENSIVE CASE.

19 UNTIL SAMSUNG RESTS, WE HAVE NO IDEA
20 WHICH ONES THAT MR. MCELHINNY AND MR. JACOBS AND
21 MS. KREVANS WILL CALL, AND WE HAD TO DISCLOSE THEM
22 BEFORE. WE HAD TO DISCLOSE THEM TWO DAYS AGO.

23 THE COURT: OKAY. YOU KNOW, SUKUMAR,
24 RICE, TEECE IS LICENSING, O'BRIEN, DAMAGES. OKAY.

25 SO WHAT MORE DO YOU NEED TO KNOW ABOUT

1 WHETHER THEY'RE GOING TO PUT ON ANYONE ON ANYTHING
2 TECHNICAL OR ANY -- IT'S NOT -- YOU KNOW WHO
3 SUKUMAR, O'BRIEN, AND TEECE ARE. WE ALL KNOW WHO
4 THESE PEOPLE ARE.

5 MR. JACOBS: YOUR HONOR --

6 THE COURT: SO WHO DO YOU NEED ON THIS
7 LIST? I'M NOT GOING TO BE RUNNING AROUND TRYING TO
8 GET THROUGH 75 PAGES OF BRIEFING ON PEOPLE THAT WE
9 ALL KNOW ARE NOT TESTIFYING IN THIS TRIAL.

10 MR. JACOBS: SO LET'S DISTINGUISH TWO
11 THINGS. ONE IS HOW WE'RE GOING TO MANAGE THE
12 TIME --

13 THE COURT: I'M CAUGHT -- I'M KILLING
14 TIME BECAUSE WE'RE WASTING THE JURY'S TIME BECAUSE
15 YOU ALL ARE BEING UNREASONABLE. ALL RIGHT. IT'S
16 10:50. APPLE'S TIME. GO AHEAD.

17 MR. JACOBS: WE WOULD WAIVE THE -- WE
18 WOULD WAIVE THE HIGH PRIORITY OBJECTIONS, YOUR
19 HONOR. WE'D RATHER JUST GET OUR WITNESSES ON AND
20 OFF. WE DIDN'T MEAN TO BURDEN THE COURT.

21 THE COURT: YOU FILED 75 PAGES OF
22 BRIEFING.

23 MR. LEE: BECAUSE WE HAD TO.

24 THE COURT: I'M SUPPOSED TO RULE ON
25 OBJECTIONS TO 22 WITNESSES TONIGHT IN ADDITION TO

1 GETTING THE JURY INSTRUCTION AND THE VERDICT FORM
2 AND ALL THE OTHER MOTIONS THAT THIRD PARTIES AND
3 THE PARTIES IN THIS CASE HAVE FILED. OKAY. SO
4 WHAT ARE YOU TALKING ABOUT YOU DON'T WANT TO BURDEN
5 THE COURT?

6 MR. JACOBS: I'M SAYING WE'LL WAIVE OUR
7 HIGH PRIORITY OBJECTIONS.

8 THE COURT: SO WHAT, SO WE'RE GOING TO
9 FIGHT THIS OUT WITH THE JURY AND YOU'RE GOING TO
10 MAKE ALL THESE TIMELINESS DISCLOSURE OBJECTIONS,
11 AND I WON'T HAVE TIME TO LOOK IT UP.

12 MR. LEE: NO.

13 THE COURT: INTERROGATORY OR EXPERT
14 REPORT OR WHATEVER IT IS. I MEAN, COME ON. WHO
15 ARE YOU REALLY GOING TO CALL FROM THIS LIST.
16 YOU'VE GOT SIX-AND-A-HALF HOURS LEFT.

17 MR. JACOBS: AND, YOUR HONOR, WE HAVE A
18 CHART, AND IT'S ALL TIMED OUT. IT MAY BE THAT
19 WE'RE OFF BY A MINUTE OR TWO. THIS MORNING WE WERE
20 DONE ON OUR TIME ALLOCATIONS. I WAS A MINUTE OVER.

21 THE COURT: SO YOU REALLY THINK YOU'RE
22 GOING TO GET 20 WITNESSES ON TOMORROW SEPARATE FROM
23 THE 9 THAT WE ALREADY KNOW ABOUT.

24 MR. JACOBS: YES.

25 MR. LEE: AND, YOUR HONOR, I THINK AT THE

1 END OF THE PRESENTATION BY MR. O'BRIEN, SUKUMAR AND
2 TEECE, THE QUESTION OF WHETHER WE'RE GOING TO NEED
3 MR. ROSSI OR MR. TEKSLER WILL BECOME CLEAR. WE'LL
4 TELL YOU RIGHT AWAY, BUT THESE ARE DISCLOSURES WE
5 HAD TO MAKE UNDER YOUR PROCEDURES AND WE MADE THEM.
6 AND WE'LL WITHDRAW THEM.

7 THE COURT: SO WHO ELSE IS QUESTIONABLE
8 OTHER THAN ROSSI AND TEKSLER.

9 MR. JACOBS: YOUR HONOR, IN LIGHT OF THE,
10 OF WHAT HAPPENED THIS MORNING, WE WILL NOT CALL
11 MR. STRINGER AS A REBUTTAL WITNESS.

12 THE COURT: OKAY. WHAT ELSE?

13 MR. LEE: AND WE WILL LET YOU KNOW ABOUT
14 MR. TEKSLER AND MR. ROSSI AS SOON AS THEY REST.

15 THE COURT: ALL RIGHT.

16 MR. LEE: AND MR. AGNETTA IS OUT.

17 THE COURT: SO I AM NOT GOING TO HAVE
18 ANYONE RUNNING AROUND LOOKING UP ON OBJECTIONS IN
19 RESPONSES TO STRINGER.

20 MR. JACOBS: CORRECT, YOUR HONOR.

21 MR. LEE: AND I WOULD HOLD ON ROSSI AND
22 TEKSLER, AND WE WILL LET YOU KNOW AS SOON AS THEY
23 REST, WHICH SHOULD BE IN THE NEXT HOUR.

24 THE COURT: WHO ELSE? THERE'S GOT TO BE
25 MORE PEOPLE IN THIS CATEGORY. I'M NOT CONVINCED

1 THAT WE'RE GOING TO HAVE 29 WITNESSES IN LESS THAN
2 EIGHT HOURS.

3 MR. VERHOEVEN: WHILE THEY'RE LOOKING,
4 YOUR HONOR, THERE'S -- ON THAT LIST I BELIEVE IS
5 DR. KARE AND THEY'RE CHARACTERIZING HER AS A
6 REBUTTAL WITNESS, BUT THERE'S NOT -- IT'S NOT
7 PROPER REBUTTAL, SO WE WOULD OBJECT TO THAT WITNESS
8 BECAUSE THIS IS SUPPOSED TO BE REBUTTAL AND THERE'S
9 NOTHING FOR HER TO REBUT.

10 THE COURT: WELL, THERE HAS BEEN
11 TESTIMONY ON THE ICONS.

12 MR. JACOBS: EXACTLY, YOUR HONOR.

13 THE COURT: SO I DISAGREE WITH THAT.

14 BUT WHO ELSE? WHO ELSE IS NOT REALLY --
15 WHO ELSE IS BORDERLINE, BECAUSE I KNOW THERE ARE
16 MORE BORDERLINE PEOPLE ON THIS LIST OTHER THAN
17 STRINGER, TEKSLER, AND ROSSI.

18 MR. JACOBS: AGNETTA IS A VERY SHORT
19 DEPOSITION CLIP, YOUR HONOR, BUT IT GOES TO ONE OF
20 THEIR PRIOR ART WITNESSES.

21 MR. LEE: THE LIVE WITNESSES, YOUR HONOR,
22 MR. DONALDSON, PROFESSOR KIM, PROFESSOR KNIGHTLY,
23 MR. MUSIKA, PROFESSOR ORDOVER.

24 THE COURT: YOU SAID MUSIKA AND WHO ELSE
25 IS LIVE? ORDOVER?

1 MR. LEE: ORDOVER.

2 THE COURT: HE'S LIVE, OR SHE'S LIVE.

3 MR. LEE: HE IS LIVE.

4 THE COURT: OKAY.

5 MR. LEE: MR. WALKER IS LIVE.

6 BALAKRISHNAN IS LIVE, BRESSLER IS LIVE, KARE IS
7 LIVE, AND SINGH IS LIVE.

8 THE COURT: OKAY. I'M GOING TO WANT A
9 PROPER --

10 MR. LEE: YOUR HONOR, THESE ARE YOURS.

11 THE COURT: I'M GOING TO THINK OF AIR
12 PROPER REMEDY. IF IT TURNS OUT THAT I WILL NOT DO
13 75 PAGES OF OBJECTIONS FOR PEOPLE WHO ARE NOT
14 REALISTICALLY EXPECTED TO BE CALLED, THEN I'M GOING
15 TO THINK ABOUT THE PROPER TAX FOR THAT.

16 ALL RIGHT. BRING OUT OUR JURY, PLEASE.

17 THE CLERK: YES, YOUR HONOR.

18 (WHEREUPON, THE FOLLOWING PROCEEDINGS
19 WERE HELD IN THE PRESENCE OF THE JURY:)

20 THE COURT: ALL RIGHT. WELCOME BACK.

21 CALL YOUR NEXT WITNESS, PLEASE.

22 MR. JOHNSON: YOUR HONOR, WE'RE GOING TO
23 START BY READING AN INTERROGATORY AND RESPONSE INTO
24 THE RECORD THAT THE PARTIES HAVE AGREED TO.

25 THE COURT: GO AHEAD, PLEASE. GIVE ME

1 ONE QUICK SECOND. ALL RIGHT. THANK YOU. IT'S
2 11:00 O'CLOCK. GO AHEAD, PLEASE.

3 MR. JOHNSON: THANK YOU. DURING THE
4 COURSE OF DISCOVERY, SAMSUNG SERVED THE FOLLOWING
5 INTERROGATORY. IT SAYS, QUOTE, "SEPARATELY FOR
6 EACH OF THE SAMSUNG PATENTS IN SUIT, IDENTIFY THE
7 DATE APPLE FIRST BECAME AWARE OF EACH PATENT, THE
8 PERSONS AT APPLE WHO FIRST BECAME AWARE OF EACH
9 PATENT, AND THE DETAILED CIRCUMSTANCES BY WHICH
10 EACH PERSON BECAME AWARE OF EACH PATENT."

11 AND THE RESPONSE: "CONSISTENT WITH ITS
12 RESPONSE TO INTERROGATORY 13, APPLE STIPULATES THAT
13 DURING A MEETING BETWEEN APPLE AND SAMSUNG
14 REPRESENTATIVES ON SEPTEMBER 9TH, 2010, SAMSUNG
15 LISTED THE FOLLOWING SAMSUNG PATENTS IN SUIT IN A
16 POWERPOINT PRESENTATION: U.S. PATENT NUMBERS
17 7,447,516; 7,577,460; AND 7,675,941."

18 THANK YOU, YOUR HONOR.

19 THE COURT: OKAY. THANK YOU. GO AHEAD
20 AND CALL YOUR NEXT WITNESS, PLEASE.

21 MS. MAROULIS: YOUR HONOR, SAMSUNG CALLS
22 DR. RAMAMIRTHAM SUKUMAR.

23 THE COURT: OKAY.

24 THE CLERK: MR. SUKUMAR, PLEASE RAISE
25 YOUR RIGHT HAND.

1 / / /

2 **RAMAMIRTHAM SUKUMAR,**

3 BEING CALLED AS A WITNESS ON BEHALF OF THE
4 DEFENDANT, HAVING BEEN FIRST DULY SWORN, WAS
5 EXAMINED AND TESTIFIED AS FOLLOWS:

6 THE WITNESS: YES, I DO.

7 THE CLERK: THANK YOU. PLEASE BE SEATED.

8 **DIRECT EXAMINATION**

9 BY MS. MAROULIS:

10 Q GOOD MORNING, DURING SUKUMAR. CAN YOU PLEASE
11 SELL TELL THE JURY WHAT YOU DO OR TO A LIVING?

12 A I'M CHIEF EXECUTIVE OFFICER FOR OPTIMAL
13 STRATEGICS GROUP.

14 Q WHAT DOES OPTIMAL STRATEGICS GROUP DO?

15 A THIS IS A COMPANY THAT DOES MARKET RESEARCH
16 SURVEYS, MARKETING AND STRATEGY CONSULTING.

17 Q WHAT IS YOUR FIELD OF EXPERTISE?

18 A I -- MY AREA OF EXPERTISE IS IN MARKET
19 RESEARCH AND DOING SURVEYS AND MARKETING AND
20 STRATEGY.

21 Q HOW MANY SURVEYS HAVE YOU DONE IN YOUR CAREER?

22 A IN THE LAST FIVE YEARS, I'VE DONE MORE THAN
23 300 SURVEYS.

24 Q WHAT IS YOUR FORMAL EDUCATION, SIR?

25 A I RECEIVED A PH.D. IN MARKING AND STATISTICS

1 FROM THE UNIVERSITY OF PITTSBURGH IN 1990, AND
2 SINCE 1995, I'VE BEEN INVOLVED IN SURVEY RESEARCH.

3 Q HAVE YOU TAUGHT AT ANY UNIVERSITIES?

4 A I'VE TAUGHT AT SEVERAL, UNIVERSITY OF HOUSTON,
5 RICE UNIVERSITY, THUNDERBIRD, WHICH IS A BUSINESS
6 SCHOOL IN PHOENIX, UNIVERSITY OF MARYLAND, COLLEGE
7 PARK, AND AT RUTGERS.

8 MS. MAROULIS: YOUR HONOR, WE TENDER
9 DR. SUKUMAR AS AN EXPERT IN CONSUMER MARKETING
10 RESEARCH.

11 MR. SELWYN: NO OBJECTION.

12 THE COURT: NO OBJECTION. SO CERTIFIED.
13 BY MS. MAROULIS:

14 Q SIR, WHAT ASSIGNMENT DID YOU RECEIVE IN THIS
15 CASE?

16 A I WAS ASKED BY COUNSEL AND BY DR. VINCE
17 O'BRIEN TO CONDUCT A USAGE STUDY ON THREE SAMSUNG
18 PATENTS AND ALSO TO UNDERSTAND THE WILLINGNESS TO
19 PAY OR WHAT WE CALL MARKET VALUE OF THESE
20 ATTRIBUTES IN THE PATENTS.

21 Q LET'S TAKE A LOOK AT SDX 3925 ON THE SCREEN
22 AND IN YOUR BINDER.

23 DOES THIS SLIDE REPRESENT THE SUMMARY OF
24 YOUR ANALYSIS?

25 A THIS SLIDE REPRESENTS ANALYSIS FROM THE

1 CONSUMER RESEARCH THAT WE HAD DONE.

2 Q CAN YOU PLEASE SUMMARIZE FOR THE JURY WHAT
3 THIS SLIDE REPRESENTS?

4 A IT ESSENTIALLY SAYS THAT 63.9 PERCENT OF
5 IPHONE USERS USE THE E-MAIL PHOTO FEATURE; 54.9
6 PERCENT OF THE IPAD USERS USE THE E-MAIL PHOTO
7 FEATURE; AND 43.9 PERCENT OF THE IPOD TOUCH USERS
8 USE THE E-MAIL PHOTO FEATURE.

9 SIMILARLY ON LINE 4 THERE, 42 PERCENT OF
10 THE IPHONE USERS IS THE PHOTO GALLERY BOOKMARK; 50
11 PERCENT OF THE IPAD USERS USE THE PHOTO GALLERY
12 BOOKMARK; AND 38.1 PERCENT OF THE IPOD TOUCH USERS
13 USE THE PHOTO GALLERY BOOKMARK.

14 THE MUSIC IN BACKGROUND FEATURE, 65.4
15 PERCENT OF THE CONSUMER THAT IS WE SURVEYED USE THE
16 MUSIC IN BACKGROUND FEATURE.

17 Q CAN YOU BRIEFLY DESCRIBE FOR US HOW THE SURVEY
18 WAS CONDUCTED?

19 A FIRST, THE SURVEY WAS DESIGNED, TO DESIGN THE
20 SURVEY, WE HAD CONVERSATIONS WITH COUNSEL AND
21 FOLLOWING THAT, WE CONDUCTED A PILOT TEST. THE
22 PURPOSE OF THE PILOT TEST IS TO MAKE SURE THAT
23 CONSUMERS WERE TAKING THIS SURVEY AND UNDERSTOOD
24 THE SURVEY, UNDERSTAND THE FEATURES DESCRIBED IN
25 THE SURVEY.

1 AFTER THAT PILOT TEST IS DONE, WE
2 RELEASED THE SURVEY TO A LARGE SAMPLE OF
3 INDIVIDUALS IN THE U.S. POPULATION.

4 SO THIS SAMPLE HAS TO BE REPRESENTATIVE
5 OF THE U.S. POPULATION. THEY GO THROUGH THE SURVEY
6 TO TAKE EVERY QUESTION, IF THEY MEET THE CRITERIA
7 TO PARTICIPATE IN THE SURVEY, THEY GET TO TAKE THE
8 REST OF THE SURVEY, THE MAIN PART, THE MAIN BODY OF
9 THE SURVEY. THEY COMPLETE THE SURVEY. THE RESULTS
10 OBTAINED AND THEN THE RESULTS ARE ANALYZED FROM
11 THERE.

12 Q THANK YOU, DR. SUKUMAR. DID YOU PROVIDE THOSE
13 RESULTS TO DR. O'BRIEN FOR HIS ANALYSIS?

14 A YES, I DO.

15 MS. MAROULIS: I PASS THE WITNESS.

16 THE COURT: ALL RIGHT. 11:05. GO AHEAD,
17 PLEASE.

18 **CROSS-EXAMINATION**

19 BY MR. SELWYN:

20 Q GOOD MORNING, DR. SUKUMAR.

21 A GOOD MORNING.

22 Q DR. SUKUMAR, YOU HAVEN'T TOLD THE JURY ANY OF
23 THE ACTUAL QUESTIONS YOU ASKED THE SURVEY
24 RESPONDENTS; CORRECT?

25 A WELL, I HAVEN'T BEEN ASKED THAT, SO OBVIOUSLY

1 I HAVEN'T TOLD THEM THE SPECIFICS.

2 Q AND WOULD YOU AGREE WITH ME THAT YOU TRIED AS
3 BEST YOU COULD TO ACCURATELY DESCRIBE IN THE SURVEY
4 THE FEATURES THAT SAMSUNG CLAIMS TO BE COVERED BY
5 ITS PATENTS?

6 A I'M NOT A PATENT ATTORNEY, SO I WOULD SAY I
7 HAVE TO RELY ON THE DESCRIPTIONS OF THESE FEATURES,
8 AND I DID WHAT I THINK IS THE MOST APPROPRIATE.

9 Q FAIR ENOUGH. BUT IT WAS IMPORTANT TO YOUR
10 SURVEY THAT THE QUESTIONS ACCURATELY DESCRIBE THE
11 FEATURES AS COUNSEL HAS DESCRIBED THEM; CORRECT?

12 A IT'S, IT'S MORE IMPORTANT THAT THE QUESTIONS
13 BE UNDERSTOOD APPROPRIATELY BY THE CONSUMERS WHO
14 WERE TAKING THE SURVEY.

15 Q NOW, YOU DIDN'T READ ANY OF THE PATENTS IN
16 THIS CASE; CORRECT?

17 A I MENTIONED THAT I'M NOT A PATENT EXPERT.

18 Q AND ONE OF THE FEATURES THAT YOU SURVEYED IS
19 WHAT YOU DESCRIBED AS E-MAIL PHOTO; CORRECT?

20 A THAT'S CORRECT.

21 Q NOW, ARE YOU CONFIDENT THAT YOU DESCRIBED THIS
22 FEATURE TO SURVEY RESPONDENTS IN A WAY THAT'S
23 FAITHFUL TO HOW SAMSUNG HAS DESCRIBED THIS FEATURE
24 TO THE JURY?

25 A I BELIEVE SO.

1 Q AND ARE YOU AS CONFIDENT IN THE WAY YOU
2 DESCRIBED E-MAIL PHOTO AS YOU ARE IN THE WAY THAT
3 YOU DESCRIBED ALL THE FEATURES THAT YOU SURVEYED?

4 A YES, I AM.

5 Q SO LET'S LOOK AT HOW YOU DESCRIBED THE E-MAIL
6 PHOTO FEATURE TO SURVEY RESPONDENTS. CAN WE HAVE
7 PAGE 31 OF YOUR SURVEY ON THE SCREEN?

8 MS. MAROULIS: COUNSEL, WHAT ARE YOU
9 REFERRING TO? WHAT EXHIBIT?

10 MR. SELWYN: SURE. IN THE BINDER AT TAB
11 1, PAGE 31, IT'S EXHIBIT G TO DR. SUKUMAR'S REPORT.

12 Q SO YOU DESCRIBED THE SURVEY, AND THE E-MAIL
13 PHOTO FEATURE AS, QUOTE, HE ABILITY TO TAKE A PHOTO
14 ON THE IPHONE AND SEND ANY OF THE PICTURES STORED
15 ON THE IPHONE IN THE BODY OF AN E-MAIL, AS OPPOSED
16 TO ATTACHING THE PHOTO TO THE E-MAIL WHICH THEN HAS
17 TO BE SEPARATELY OPENED.

18 CORRECT?

19 MS. MAROULIS: COUNSEL, MAY I APPROACH TO
20 HELP THE WITNESS WITH THE BINDER WHICH IS ON THE
21 FLOOR?

22 MR. SELWYN: CERTAINLY. I APOLOGIZE,
23 SIR.

24 Q IT'S TAB 1, PAGE 31 OF YOUR REPORT, AND IT'S
25 ON THE SCREEN.

1 A YES.

2 Q THAT'S HOW YOU DESCRIBED THE E-MAIL PHOTO
3 FEATURE TO THOSE WHO COMPLETED THE SURVEY; RIGHT?

4 A THAT'S CORRECT.

5 Q NOW, LET'S LOOK AT HOW MR. VERHOEVEN DESCRIBED
6 THIS PATENT IN HIS OPENING, IF WE CAN. CAN WE HAVE
7 SAMSUNG'S OPENING SLIDE 145.

8 MS. MAROULIS: OBJECTION, ARGUMENTATIVE.
9 NO FOUNDATION.

10 THE COURT: OVERRULED. GO AHEAD.

11 BY MR. SELWYN:

12 Q DID SAMSUNG'S COUNSEL EVER DESCRIBE THE E-MAIL
13 PHOTO FEATURE TO YOU AS INVOLVING THREE FUNCTIONS?

14 A NO.

15 Q YOUR SURVEY DID NOT DESCRIBE THE E-MAIL PHOTO
16 FEATURE AS INVOLVING SENDING AN E-MAIL WITH A
17 MESSAGE ONLY; CORRECT?

18 A THAT'S CORRECT.

19 Q YOUR SURVEY DID NOT DESCRIBE THE E-MAIL PHOTO
20 FEATURE AS INVOLVING GRAPHICALLY GOING THROUGH
21 PHOTOS; CORRECT?

22 A THAT'S CORRECT.

23 Q NOW, TO MEASURE CUSTOMER USAGE, YOUR SURVEY
24 ASKED A SINGLE QUESTION FOR EACH FEATURE; CORRECT?

25 A THAT'S CORRECT.

1 Q AND IF YOU LOOK BACK AT PAGE 31 -- WITH WE
2 HAVE THAT BACK ON THE SCREEN -- ACTUALLY, LET'S GO
3 TO PAGE 32 OF YOUR REPORT. DO YOU SEE ON PAGE 32,
4 THERE'S A COPY OF THE QUESTION THAT YOU ASKED THE
5 SURVEY RESPONDENTS, HAVE YOU USED THE PHOTO GALLERY
6 BOOKMARK FEATURE ON YOUR IPHONE? DID YOU ASK THAT
7 QUESTION OF THEM?

8 A YES.

9 Q AND THAT QUESTION DOESN'T TELL YOU ANYTHING
10 ABOUT HOW OFTEN THE SURVEY RESPONDENTS USE THE
11 FEATURE; CORRECT?

12 A WELL, THAT WAS NOT THE INTENT OF THIS
13 QUESTION. THE INTENT OF THIS QUESTION WAS
14 LITERALLY TO SEE IF THEY EVER USED IT EVEN ONCE TO
15 EXPERIENCE WITH THE FEATURE ONE WOULD EXPECT TO GET
16 AT WHAT WE NEED TO KNOW, WHICH IS DID THEY EVER USE
17 THE FEATURE ITSELF.

18 Q LET'S BE CLEAR, IF SOMEBODY BOUGHT THE PHONE,
19 USE THE FEATURE ONCE, NEVER USED IT AGAIN, THEY
20 WOULD ANSWER YES TO THAT QUESTION; CORRECT?

21 A YES.

22 Q AND THE RESULTS OF THE USAGE QUESTION DON'T
23 TELL US ANYTHING ABOUT THE VALUE OF THE FEATURE TO
24 SURVEY RESPONDENTS; CORRECT?

25 A THAT WAS PART OF THE CONJOINT EXERCISE. IF

1 YOU EXPERIENCED IT AND YOU USED IT, YOU SHOULD BE
2 ABLE TO VALUE IT CORRECTLY.

3 Q BUT, SIR, THE ANSWER TO THE QUESTION ON USAGE
4 DOESN'T TELL YOU ANYTHING ABOUT THE VALUE; CORRECT?

5 A NOT DIRECTLY IN THIS QUESTION.

6 MR. SELWYN: THANK YOU. NO FURTHER
7 QUESTIONS.

8 THE COURT: ALL RIGHT. THE TIME IS NOW
9 11:10. GO AHEAD, PLEASE.

10 MS. MAROULIS: NO REDIRECT, YOUR HONOR.

11 SAMSUNG NOW CALLS DR. VINCE O'BRIEN TO
12 THE STAND.

13 THE COURT: OKAY. MAY THIS WITNESS BE
14 EXCUSED AND IS IT SUBJECT TO RECALL OR NOT?

15 MS. MAROULIS: HE IS EXCUSED AND HE IS
16 NOT SUBJECT TO RECALL.

17 THE COURT: OKAY. ALL RIGHT. YOU ARE
18 EXCUSED.

19 THE WITNESS: THANK YOU.

20 THE COURT: MR. O'BRIEN, PLEASE STAND AND
21 RAISE YOUR RIGHT HAND.

22 **VINCENT O'BRIEN,**
23 BEING CALLED AS A WITNESS ON BEHALF OF THE
24 DEFENDANT, HAVING BEEN FIRST DULY SWORN, WAS
25 EXAMINED AND TESTIFIED AS FOLLOWS:

1 THE WITNESS: I DO.

2 THE CLERK: THANK YOU.

3 **DIRECT EXAMINATION**

4 BY MS. MAROULIS:

5 Q GOOD MORNING, DR. O'BRIEN. CAN YOU PLEASE
6 TELL THE JURY WHAT YOU DO FOR A LIVING?

7 THE COURT: IT'S 11:11.

8 THE WITNESS: I DO ECONOMIC ANALYSIS AND
9 ECONOMIC DAMAGES FOR COMPANIES WHO ARE INVOLVED IN
10 LITIGATION OR REGULATORY MATTERS.

11 BY MS. MAROULIS:

12 Q WHAT IS YOUR EDUCATIONAL BACKGROUND, SIR?

13 A I HAVE A BACHELOR'S OF SCIENCE IN ELECTRICAL
14 ENGINEERING FROM THE UNIVERSITY OF ILLINOIS WITH
15 HIGH HONORS.

16 I HAVE A MASTER'S AND A DOCTORATE IN
17 BUSINESS ADMINISTRATION FROM HARVARD.

18 Q CAN YOU VERY BRIEFLY SUMMARIZE YOUR EMPLOYMENT
19 EXPERIENCE.

20 A YES. I WORKED AT, DURING THE MASTER'S AND
21 DOCTORATES, I WORKED FOR MCDONNELL DOUGLAS IN THEIR
22 SPACE DIVISION IN HUNTINGTON, CALIFORNIA WHILE WE
23 WERE PUTTING A MAN ON THE MOON.

24 WHILE I WAS GETTING MY DOCTORATE, I
25 WORKED AS A RESEARCH FELLOW FOR HARVARD WHERE I

1 WROTE CASES AND I TAUGHT A FEW CLASSES.

2 AFTER THAT I WENT TO WORK AS A CORPORATE
3 ECONOMIST FOR BETHLEHEM STEEL CORPORATION IN
4 BETHLEHEM, PENNSYLVANIA WHERE I FORECAST THE U.S.
5 ECONOMY AND THE DEMAND FOR STEEL IN THE U.S.
6 ECONOMY.

7 AFTER THAT, I WENT TO WORK WITH SOME
8 PROFESSORS IN BOSTON THAT I HAD BEEN A STUDENT
9 UNDER AND WAS SENT TO SAN FRANCISCO ON A BIG
10 ANTITRUST CASE TO DO LITIGATION WORK.

11 AND I'VE BEEN DOING THE SAME EVER SINCE.
12 THAT WAS BACK AROUND 1979. AND I'VE BEEN DOING IT
13 IN LARGE FIRMS AND IN FIRMS I FOUNDED AND WAS THE
14 PRINCIPAL OF.

15 Q SIR, HAVE YOU BEEN PUBLISHED IN THE FIELD OF
16 ECONOMIC ANALYSIS?

17 A I PUBLISHED A NUMBER OF THINGS ON AN
18 ECONOMIC -- IN PARTICULAR, ECONOMIC DAMAGES,
19 INCLUDING A -- THE CHAPTER ON PATENT INFRINGEMENT
20 DAMAGES IN THE LITIGATION SERVICES HANDBOOK, WHICH
21 IS THE LEADING GUIDE FOR PRACTITIONERS IN THIS
22 AREA.

23 Q HOW MANY TIMES HAVE YOU TESTIFIED AS AN EXPERT
24 IN ECONOMIC ANALYSIS IN U.S. AND OTHER COURTS?

25 A IN U.S. COURTS AND COURTS OVERSEAS, I'VE

1 TESTIFIED AT LEAST 66 TIMES.

2 Q HAVE YOU TESTIFIED IN ANY OTHER IMPORTANT
3 PROCEEDINGS?

4 A YES, I'VE TESTIFIED BEFORE REGULATORY AGENCIES
5 OF THE VARIOUS STATES. I'VE TESTIFIED BEFORE
6 COMMITTEES OF THE UNITED STATES HOUSE, AND THE
7 UNITED STATES SENATE.

8 Q AND HAVE YOU WORKED FOR ANY BRANCHS OF
9 GOVERNMENT?

10 A YES. I HAVE WORKED, BEEN RETAINED BY THE U.S.
11 DEPARTMENT OF JUSTICE IN A COUPLE MATTERS, AND I'VE
12 BEEN RETAINED BY THE STATE OF CALIFORNIA IN SOME
13 MATTERS AS WELL, TO DO ECONOMIC ANALYSIS.

14 MS. MAROULIS: YOUR HONOR, WE TENDER
15 DR. VINCE O'BRIEN AS AN EXPERT IN ECONOMIC ANALYSIS
16 AND COMPUTATION OF DAMAGES.

17 MR. SELWYN: NO OBJECTION.

18 THE COURT: SO CERTIFIED. GO AHEAD.

19 BY MS. MAROULIS:

20 Q DR. O'BRIEN, WHAT WAS YOUR ASSIGNMENT IN THIS
21 CASE?

22 A I WAS ASKED TO CALCULATE DAMAGES, IF ANY, FOR
23 APPLE'S INFRINGEMENT OF THE SAMSUNG THREE FEATURED
24 PATENTS THAT ARE EMBEDDED IN THE APPLE PRODUCTS.

25 Q WHAT TYPE OF DAMAGES DID YOU CALCULATE?

1 A I DETERMINED THERE WERE NO LOST PROFITS, SO
2 THAT MEANS FOR A PATENT HOLDER THAT THEY'RE
3 ENTITLED TO ANY REASONABLE ROYALTY FOR THE USE OF
4 THEIR INVENTION.

5 Q WHAT IS THE AMOUNT OF THE REASONABLE ROYALTY
6 YOU CALCULATED IN THAT PART OF YOUR ANALYSIS?

7 A ROUNDING OFF, 22.8 MILLION, THAT'S MILLION,
8 DOLLARS.

9 Q LET'S TAKE A LOOK AT SDX 3956.004. WHAT DOES
10 THIS CHART REPRESENT?

11 A THIS -- THE FIRST THING I HAD TO DO WAS TO
12 DETERMINE WHICH PRODUCTS INFRINGE WHICH PATENTS,
13 AND I GOT THAT FROM THE PLEADINGS IN THIS CASE.

14 FOR EXAMPLE, WE HAVE DOWN ON THE
15 LEFT-HAND SIDE HERE -- THERE IT IS, THE PATENT,
16 ACROSS THE TOP, WE HAVE THE DEVICES. AND A
17 CHECKMARK MEANS THAT THAT PATENT, THAT DEVICE IS
18 ALLEGED TO INFRINGE THAT PARTICULAR PATENT.

19 Q SO, FOR EXAMPLE, FOR '460 PATENT, PLEASE READ
20 INTO THE RECORD THE PRODUCTS YOU ANALYZED TO
21 DETERMINE DAMAGES?

22 A YES. THE ALLEGED INFRINGING PRODUCTS ARE THE
23 IPHONE 3G, 3GS, 4, THE IPAD 2, AND THE FOURTH
24 GENERATION OF THE IPAD TOUCH.

25 FOR THE '893, THE PHOTO GALLERY BOOKMARK

1 PATENT, THE ALLEGED INFRINGING DEVICES ARE THE 3GS,
2 THE 4, ON THE IPHONE, THE IPAD 2, AND THE IPOD
3 TOUCH FOURTH GENERATION.

4 AND FOR THE '711 MUSIC IN THE BACKGROUND
5 WITH AN INDICATOR, THE ORIGINAL IPHONE, THE 3G, THE
6 3GS, AND THE 4 IPHONE ARE THE DEVICES THAT ARE
7 ALLEGED TO HAVE INFRINGED.

8 Q LOOKING AT THESE PRODUCTS, HOW DID YOU
9 DETERMINE THE BASE OF YOUR CALCULATION OF
10 REASONABLE ROYALTY DAMAGES?

11 A I'M SORRY.

12 Q HOW DID YOU DETERMINE THE BASE OF THE
13 CALCULATION OF YOUR REASONABLE ROYALTY DAMAGES?

14 A DID YOU SAY THE DATE?

15 Q THE BASE, BASE, THE ROYALTY BASE.

16 A OH, THE ROYALTY BASE. THAT I GOT FROM THE
17 RECORDS OF APPLE.

18 Q AND HOW -- WHAT TEST DID YOU USE TO DETERMINE
19 THE REASONABLE ROYALTY IN THIS CASE?

20 A I USED A SERIES OF FACTORS THAT REFERS TO
21 OUTLINED IN A CASE CALLED GEORGIA PACIFIC. THERE
22 WERE 15 OF THESE FACTORS.

23 Q LET'S TAKE A LOOK AT 3956.006. ARE THESE THE
24 FACTORS THAT YOU LOOKED AT, THE GEORGIA PACIFIC
25 ANALYSIS?

1 A YES, THESE ARE THE 15 FACTORS.

2 Q AND IS IT COMMON THAT NOT EVERY SINGLE FACTOR
3 APPLIES IN YOUR ANALYSIS?

4 A RIGHT. IN EVERY -- IT'S NOT EVEN EXPECTED
5 THAT EVERY FACTOR WOULD APPLY IN EVERY CASE.

6 Q LET'S TALK ABOUT FACTOR NUMBER 2. DID YOU
7 CONSIDER THAT FACTOR?

8 A YES. I TRIED -- AT LEAST I TRIED TO CONSIDER
9 THAT FACTOR.

10 Q WHAT IS FACTOR NUMBER 2?

11 A FACTOR 2 IS ANY RATES THAT APPLE MIGHT PAY TO
12 OTHERS TO LICENSE PATENTS IN THIS FIELD.

13 UNFORTUNATELY, THOUGH, THE PRODUCTION
14 REALLY WASN'T FORTHCOMING OR RELIABLE AND I HAD
15 TO -- I WASN'T ABLE TO DO MUCH WITH THAT.

16 Q HOW MANY VERSIONS OF THE ROYALTY CHART DID
17 APPLE PRODUCE TO YOU IN THIS CASE FOR YOU TO
18 CONSIDER?

19 A YOU KNOW, THERE WAS ONE IMPORTANT CHART THAT
20 LISTED ALL OF THE ROYALTIES IT ACTUALLY PAID.
21 THERE WERE EIGHT DIFFERENT VERSIONS OF THEM
22 PRODUCED OVER A COUPLE MONTHS THAT -- THE LAST
23 VERSION WAS PRODUCED A DAY BEFORE MY REPORT WAS DUE
24 AND IT INCLUDED ROUGHLY SEVEN TIMES MORE ROYALTIES
25 THAN THE FIRST ONE I HAD.

1 SO, YOU KNOW, IT WAS QUITE DIFFERENT THAN
2 WHAT WE HAD SEEN BEFORE.

3 AND THERE WERE THINGS ON THERE THAT, YOU
4 KNOW, PAYMENTS SHOWN ON THERE TO PEOPLE WHO WE DID
5 NOT HAVE THE LICENSES FOR, AND THERE WERE PAYMENTS
6 ON THERE THAT LOOKED LIKE RUNNING ROYALTIES WHEN
7 THE LICENSES THEMSELVES WERE LUMP SUM.

8 SO IF -- TO MY OPINION, IT WAS
9 INCONSISTENT, INCOMPLETE, AND UNRELIABLE.

10 Q WERE YOU ABLE TO GLEAN ANYTHING USEFUL AT ALL
11 FROM APPLE'S FINANCIAL PRODUCTION?

12 A YES. I MEAN, I COULD ADD UP WHAT THEY DID
13 PRODUCE, AND IT SHOWED THAT APPLE HAS PAID A LOT OF
14 ROYALTIES, \$1.4 BILLION IN ROYALTIES TO AT LEAST
15 90-SOME COMPANIES FOR THE USE OF THEIR PATENTS AND
16 OTHER INTELLECTUAL PROPERTY.

17 Q DR. O'BRIEN, TURNING YOUR ATTENTION FROM
18 APPLE'S LICENSES TO SAMSUNG PATENTS, DID YOU
19 CONSIDER THE BENEFIT OF VALUE CONFERRED BY SAMSUNG
20 FEATURE PATENTS?

21 A YES, THAT'S NUMBER 9 AND 10 ON THIS LIST. AND
22 THIS IS WHERE REALLY THE VALUE OF ANY PATENT COMES
23 FROM, AND IN THIS CASE IT'S REALLY FROM THE
24 CONSUMER .

25 WHAT IS THE CONSUMER WILLING TO PAY FOR A

1 PARTICULAR FEATURE OR HOW MUCH ARE THEY WILLING TO
2 VALUE THAT FEATURE?

3 SO I LOOKED AT THAT.

4 Q AND HOW DID YOU LOOK AT THAT?

5 A WELL, WE'RE FORTUNATE HERE IN THAT THE
6 FEATURES ENABLED BY THESE PATENTS ARE VERY SIMILAR
7 TO THE APPLICATIONS THAT APPLE SELLS ON ITS ITUNES
8 STORES FOR PEOPLE TO DOWNLOAD. A LOT OF THOSE
9 THINGS ARE, YOU DOWNLOAD IT, AND IT GETS TO DO ONE
10 MORE THING OR DO ONE MORE THING NICELY.

11 SO I LOOKED AT THE APPLICATIONS THAT, YOU
12 KNOW, WHAT THEY SOLD FOR IN THE MARKETPLACE.

13 Q WHAT WAS THE PRICE POINT THAT YOU TOOK FOR
14 YOUR ANALYSIS?

15 A WELL, I -- THE AVERAGE APPLICATION IS
16 PURCHASED AT A DOLLAR 44 ACCORDING TO SOME DATA I
17 LOOKED AT. APPLE PRICES, AND THESE ARE APPLE'S
18 PRICES, STARTING AT 99 CENTS, THEY GO TO 1.99 ALL
19 THE WAY UP TO \$30. I CHOSE THE MINIMUM NUMBER, THE
20 99 CENTS NUMBER.

21 Q WHY DID YOU CHOOSE THE MINIMUM NUMBER?

22 A WELL, FIRST, THERE ARE A LOFT APPLICATIONS
23 SOLD FOR THAT THAT DO, INDEED, HAVE -- ENABLE
24 FEATURES ON THE PHONE AND ENHANCEMENTS TO THE PHONE
25 OR THE IPAD.

1 AND, TWO, I WANTED TO BE CONSERVATIVE. I
2 WANTED TO START WITH THE LOWEST NUMBER I COULD
3 START WITH.

4 Q OKAY. SIR, TURNING YOUR ATTENTION TO FACTOR
5 12, THE PORTION OF THE PROFIT OR SELLING PRICE, HOW
6 DID THIS FACTOR AFFECT YOUR ROYALTY ANALYSIS?

7 A THIS IS ANOTHER IMPORTANT THING BECAUSE OF THE
8 99 CENTS VALUE THAT THE CONSUMERS WOULD PLACE ON
9 THE APPLICATION, SOME OF THAT SHOULD GO TO SAMSUNG
10 AND SOME SHOULD GO TO APPLE.

11 WELL, APPLE, WHEN IT WORKS WITH THE
12 DEVELOPER OF AN APPLICATION, THEY GIVE 70 PERCENT
13 TO THE DEVELOPER AND THEY KEEP 30 PERCENT.

14 BUT I LOOKED AT THIS, AND I SAID, WELL,
15 APPLE IS JUST GOING TO HAVE THE PATENT. THEY'RE
16 GOING TO HAVE TO WRITE THE CODE, IMPLEMENT IT ON
17 THE DEVICE, THEY'RE GOING TO HAVE TO MAINTAIN IT
18 AFTERWARDS. SO THEY'RE MORE LIKE THE DEVELOPER.

19 SO I GAVE 70 PERCENT OF THE 99 CENTS TO
20 APPLE AND THEN THAT LEFT 30 PERCENT OF THE 99 CENTS
21 AVAILABLE TO SAMSUNG.

22 Q DR. O'BRIEN, THE 14 FACTORS, THE OPINIONS OF
23 OTHER EXPERTS, DID YOU CONSULT OR COLLABORATE WITH
24 OTHER EXPERTS IN THE CASE TO PRODUCE YOUR ANALYSIS?

25 A YES, I DID. I TALKED AT LENGTH WITH DR. YANG,

1 WHO HAS TESTIFIED ON THE TECHNICAL DESCRIPTIONS IN
2 THE PATENTS HERE EARLIER FOR SAMSUNG; AND I TALKED
3 AND RELIED UPON SOME WORK DONE BY DR. SUKUMAR, WHO
4 JUST TESTIFIED.

5 Q LET'S TAKE A LOOK AT SDX 3956.008. DOES THIS
6 SLIDE REPRESENT THE USAGE DATA THAT YOU OBTAINED
7 FROM DR. SUKUMAR?

8 A RIGHT. I HAD DR. SUKUMAR DO A SURVEY AND
9 THESE ARE THE PERCENTAGE OF USE, ACTUAL USE OF THE
10 FEATURE THAT IS ENABLED BY THE PATENT ON THE LEFT.

11 Q OKAY. TURNING NOW TO FACTOR 15 OF THE
12 HYPOTHETICAL NEGOTIATION, HOW DID YOU BRING ALL OF
13 THESE DIFFERENT FACTORS TOGETHER?

14 A FACTOR 15 IS THE HYPOTHETICAL NEGOTIATION
15 WHERE YOU CAN IMAGINE THE PARTIES SITTING DOWN BACK
16 AT THE FIRST INFRINGEMENT AND NEGOTIATING A
17 LICENSE, AND THIS IS THE KIND OF INFORMATION THAT
18 THEY WOULD HAVE.

19 SO I PULLED THAT TOGETHER, I BASICALLY
20 TOOK THE 99 CENTS, MULTIPLIED BY THE 30 PERCENT,
21 AND THEN I ADJUSTED THAT DOWNWARD TO TAKE INTO
22 ACCOUNT THAT NOT EVERYBODY USED THE FEATURE BY THE
23 PERCENTAGES WE JUST SAW.

24 Q LET'S TAKE A LOOK AT SDX 3956.022. DOES THAT
25 SLIDE REPRESENT THE ANALYSIS YOU JUST TESTIFIED

1 ABOUT?

2 A YES, THAT'S THE FORMULA I USED FOR EACH
3 ALLEGED INFRINGING DEVICE ON EACH PATENT.

4 Q AND WHAT ROYALTY RATE DID YOU ARRIVE AT USING
5 THIS FORMULA?

6 A I ARRANGED AT A RATE FROM 11 CENTS TO 19 CENTS
7 PER DEVICE SOLD.

8 Q LET'S TAKE A LOOK AT SDX 3956.13. DOES THIS
9 SLIDE SUMMARIZE THE ROYALTY RATES THAT YOU CAME UP
10 WITH IN YOUR ANALYSIS?

11 A YES. THE DEVICES ARE LISTED AT THE TOP AND
12 THE PATENTS ON THE LEFT AND, FOR EXAMPLE, THE
13 IPHONE FOR USE OF THE E-MAIL PHOTO PATENT IS 19
14 CENTS PER IPHONE SOLD.

15 Q CAN YOU READ THE REST OF THE NUMBERS IN,
16 PLEASE?

17 A SURE, IF YOU'D LIKE.

18 FOR THE '460 PATENT, THE IPHONE IS 19
19 CENTS, THE IPAD IS 16 CENTS, THE IPOD IS 13 CENTS.

20 FOR THE '893, THE PHOTO GALLERY BOOKMARK,
21 THE IPHONE IS 12 CENTS; THE IPAD IS 15 CENTS; THE
22 IPAD IS 11 -- THE IPOD, EXCUSE ME, IS 11 CENTS.

23 AND FOR THE '711, MUSIC IN THE BACKGROUND
24 WITH AN INDICATOR, IT'S -- THE IPHONE IS 19 CENTS.

25 Q OKAY, SIR. LET'S TURN TO EXHIBIT SDX 3956.016

1 IN YOUR BINDER.

2 DOES THIS SLIDE REPRESENT YOUR
3 CALCULATIONS APPLYING THE ROYALTY RATE TO THE
4 ROYALTY BASE THAT YOU CALCULATED?

5 A RIGHT. WHEN I ADDED UP ALL OF THE UNITS
6 ACTUALLY SOLD AND MULTIPLIED BY THOSE CENTS NUMBER
7 THAT IS WE JUST LOOKED AT, THESE ARE THE TOTAL
8 DAMAGES I GET.

9 Q AND SIR, CAN YOU READ THEM INTO THE RECORD AS
10 TO EACH OF THE PATENTS?

11 A SURE. FOR THE '460 E-MAIL PHOTO, THE IPHONE
12 IS \$8,848,598; THE IPAD IS 3,056,693 CENTS; THE
13 IPOD IS \$2,734,076.

14 FOR THE '893 PHOTO GALLERY BOOKMARK, IT'S
15 \$1,964,627; IPAD, \$2,001,390; THE IPOD, \$1,179,095.

16 FOR THE '711, MUSIC IN THE BACKGROUND,
17 IT'S \$3,059,205.

18 THE TOTAL IS IN THE LOWER RIGHT-HAND
19 COLUMN, THAT ADDS UP TO 22,843,684.

20 Q SIR, YOUR CALCULATIONS OF ROYALTIES ARE
21 PENNIES ON THE DOLLAR; RIGHT?

22 A YEAH.

23 Q WHY SO LOW?

24 A WELL, THESE ARE NICE FEATURES, THEY'RE
25 ACTUALLY DESIRABLE FEATURES FOR APPLE AND APPLE HAS

1 INDICATED THAT MUCH. BUT THEY'RE ONE OF MANY
2 FEATURES ON THE PHONE, AND THERE ARE A LOT OF
3 THINGS THAT PEOPLE BUY THESE PHONES FOR, AND THE
4 TOTAL AMOUNT 22 MILLION FALLS WITHIN THE RANGE, AT
5 LEAST OF THE DATA WE'VE GOT, OF WHAT THEY'RE PAYING
6 TO OTHER PEOPLE. SO THESE ARE TYPICAL.

7 MS. MAROULIS: THANK YOU, DR. O'BRIEN. I
8 PASS THE WITNESS.

9 THE COURT: OKAY. TIME IS NOW 11:25. GO
10 AHEAD, PLEASE.

11 **CROSS-EXAMINATION**

12 BY MR. SELWYN:

13 Q DR. O'BRIEN, GOOD MORNING, SIR.

14 A GOOD MORNING.

15 Q DR. O'BRIEN, ONE OF THE GEORGIA PACIFIC
16 FACTORS FOR DETERMINING A REASONABLE ROYALTY IS
17 WHETHER THE PATENTEE, HERE SAMSUNG, PRACTICES THE
18 ASSERTED PATENTS; CORRECT?

19 A THAT'S ONE OF THE FACTORS, YES.

20 Q AND YOU DON'T HAVE ANY IDEA WHETHER SAMSUNG
21 PRACTICES ANY OF THE ASSERTED PATENTS; CORRECT?

22 A WELL, IT'S -- I UNDERSTAND THAT THEY DON'T
23 PRACTICE SOME OF THEM.

24 Q WELL, YOU DIDN'T MAKE ANY INVESTIGATION;
25 CORRECT?

1 A NO.

2 Q IN FACT, AS OF THE TIME YOU SIGNED YOUR
3 REPORT, YOU HAD NEVER USED A SAMSUNG SMARTPHONE;
4 CORRECT?

5 A CORRECT. I DIDN'T LOOK AT THAT BECAUSE THE --

6 Q SIR, THE ANSWER IS CORRECT?

7 A THAT'S A FACTOR --

8 Q TO MY QUESTION?

9 A I'M SORRY. I'M TRYING TO EXPLAIN.

10 Q YOUR COUNSEL CAN ASK YOU QUESTIONS TO EXPLAIN.

11 NOW, IN REACHING YOUR CONCLUSIONS, SIR,
12 YOU CONSIDERED THE TESTIMONY OF MR. PENDLETON OF
13 SAMSUNG; CORRECT?

14 A YES.

15 Q HE'S SAMSUNG'S CHIEF MARKETING OFFICER FOR
16 SAMSUNG MOBILE PRODUCTS; CORRECT?

17 A I BELIEVE SO.

18 Q FAIR TO SAY HE KNOWS MORE ABOUT MARKETING OF
19 SAMSUNG PRODUCTS THAN YOU DO, SIR?

20 A I WOULD THINK SO.

21 Q IS IT CORRECT THAT HE TESTIFIED THAT THE
22 FEATURES OF THE THREE PATENTS ON WHICH YOU'RE
23 OFFERING A DAMAGES OPINION DON'T SEEM THAT
24 IMPORTANT AND THERE WOULD BE NO VALUE TO
25 ADVERTISING THOSE FEATURES, CORRECT?

1 MS. MAROULIS: OBJECTION, MISSTATEMENT.

2 THE COURT: OVERRULED.

3 THE WITNESS: I'M NOT SURE WHAT HE SAID.

4 BY MR. SELWYN:

5 Q CAN WE HAVE YOUR DEPOSITION, PLEASE, PAGE 224,
6 LINES 12 TO 19. IT'S IN YOUR BINDER, SIR, AT TAB
7 2?

8 A YOU MEAN ONE OF THE WHITE BINDERS.

9 Q IT SHOULD BE THE FIRST ONE. VOLUME 1, TAB 2,
10 AND IF YOU TURN, PLEASE, SIR TO PAGE 224 AND IT'S
11 ON THE SCREEN.

12 BRING UP 12 THROUGH 19, PLEASE, ON THE
13 SCREEN.

14 WERE YOU ASKED THIS QUESTION AND GIVE
15 THIS ANSWER:

16 "QUESTION: AND DID YOU REVIEW
17 MR. PENDLETON'S TESTIMONY THAT SAMSUNG DOES NOT
18 CONDUCT MARKETING RESEARCH OR MARKETING CAMPAIGNS
19 CONCERNING THE FUNCTIONALITY OF THE FIVE FEATURE
20 PATENTS BECAUSE SUCH MARKETING WOULD NOT BE
21 WARRANTED BECAUSE THE FEATURES DON'T SEEM THAT
22 IMPORTANT AND THERE WOULD BE NO VALUE TO
23 ADVERTISING THOSE FEATURES?

24 "ANSWER: YES, I DID."

25 WERE YOU ASKED THAT QUESTION AND DID YOU

1 GIVE THAT ANSWER?

2 A YES.

3 MS. MAROULIS: OBJECTION, NOT PROPER
4 IMPEACHMENT.

5 THE COURT: OVERRULED.

6 BY MR. SELWYN:

7 Q I WANT TO ASK YOU SOME QUESTIONS ABOUT EACH
8 COMPONENT OF YOUR ROYALTY FORMULA, IF I MAY.

9 YOU REVIEWED MORE THAN 50 APPLE AND
10 SAMSUNG LICENSE AGREEMENTS IN CONNECTION WITH YOUR
11 WORK IN THIS CASE; RIGHT?

12 A YEAH. ROUGHLY 30 APPLE LICENSES, YEAH.

13 Q AND WOULD YOU AGREE WITH ME, SIR, THAT NONE OF
14 THEM INCLUDED IN THE ROYALTY FORMULA THE PRICE OF
15 AN APP AS AN ELEMENT?

16 A THEY WOULDN'T DO THAT, NO.

17 Q WOULD YOU AGREE WITH ME, SIR, THAT NONE OF
18 THEM INCLUDED A ROYALTY FORMULA THAT USED A
19 CUSTOMER USAGE PERCENTAGE AS AN ELEMENT?

20 A NO. THIS IS THE KIND OF THING YOU WOULDN'T
21 HAVE IN A FORMULA. IT'S WHAT YOU WOULD HAVE IN A
22 NEGOTIATION WHEN PEOPLE TALK BACK AND FORTH. BUT
23 IN A PATENT, OR IN A LICENSE, YOU WOULDN'T PUT A
24 FORMULA LIKE THAT IN THERE.

25 Q LET ME ASK YOU ABOUT THAT. IN REACHING YOUR

1 ROYALTY OPINION, DID YOU SPEAK WITH ANYONE AT
2 SAMSUNG ABOUT ITS LICENSING PRACTICES OR POLICIES?

3 A NO.

4 Q SO YOU DIDN'T ASK ANYONE AT SAMSUNG WHETHER
5 YOUR FORMULA MADE ANY REAL WORLD SENSE; CORRECT?

6 A I DIDN'T ASK -- I DIDN'T TALK TO THEM -- THE
7 HYPOTHETICAL, YOU'RE SUPPOSED TO ENVISION THAT THE
8 PARTIES ARE SIMILAR TO THE PARTIES IN THE
9 LITIGATION, BUT NOT THE SAME PARTIES.

10 SO I DIDN'T TALK TO THEM.

11 Q YOU DIDN'T ASK ANYBODY AT SAMSUNG ABOUT ANY
12 LICENSE NEGOTIATION THAT THEY HAD EVER DONE;
13 CORRECT?

14 A NO.

15 Q NOW, LET ME ASK YOU A LITTLE BIT ABOUT THE
16 FIRST ELEMENT OF YOUR FORMULA, THE PRICE OF AN APP.

17 ONE OF DEPOSITIONS YOU REVIEWED WAS THAT
18 OF MR. JUN WON LEE; CORRECT?

19 A YES.

20 Q SAMSUNG'S DIRECTOR OF LICENSING; CORRECT?

21 A YES.

22 Q FAIR TO SAY THAT MR. LEE KNOWS MORE ABOUT
23 SAMSUNG'S LICENSING PRACTICES THAN YOU DO?

24 A YES.

25 Q AND HE TESTIFIED INDEED THAT SAMSUNG HAD NEVER

1 CONSIDERED, NEVER CONSIDERED USING THE PRICE OF AN
2 APP AS A FACTOR IN DETERMINING A ROYALTY?

3 A WELL, HE SAID IT HAD NEVER COME UP, THAT THEY
4 HAD NEVER DONE A LICENSE FOR A SINGLE PATENT THAT
5 WOULD BE LIKE AN APP. HE SAID THAT THEY HAD ALWAYS
6 DONE CROSS-LICENSES FOR PORTFOLIOS.

7 Q LET ME ASK YOU ABOUT YOUR SECOND ELEMENT, THIS
8 30/70 SPLIT. YOU CAN'T IDENTIFY ANY PATENT LICENSE
9 NEGOTIATIONS WHERE THE LICENSOR AND LICENSEE AGREED
10 TO SUCH A SPLIT; CORRECT?

11 A NO.

12 Q NOW LET'S TURN TO THE 30 ELEMENT OF YOUR
13 FORMULA, PLEASE?

14 A I MEAN, THAT INFORMATION WOULDN'T BE AVAILABLE
15 TO ME, SO I COULDN'T.

16 Q WELL, YOU DIDN'T ASK. YOU DIDN'T SPEAK WITH
17 ANYBODY AT SAMSUNG; CORRECT?

18 A NO. I'VE SPOKEN TO OTHER PEOPLE AND THEY
19 OFTEN TALK ABOUT PERCENTAGE SPLIT. THAT'S PRETTY
20 COMMON. I JUST USED APPLE'S OWN DATA OF 70/30 WHEN
21 I DECIDED MY SPLIT, AND I GAVE THE MAJORITY TO
22 APPLE.

23 Q LET ME ASK YOU ABOUT THE THIRD ELEMENT OF YOUR
24 FORMULA, THAT'S THE USAGE FORMULA; CORRECT?

25 A YES.

1 Q AND YOU WERE IN THE COURTROOM A FEW MOMENTS
2 AGO WHEN DR. SUKUMAR TESTIFIED; CORRECT?

3 A YES, I WAS.

4 Q YOU DIDN'T INDEPENDENTLY VERIFY ANY OF HIS
5 USAGE RESULTS; CORRECT?

6 A NO. I RELIED UPON DR. SUKUMAR'S SURVEY.

7 Q AND YOU MADE NO ATTEMPT TO DETERMINE WHETHER
8 HIS RESULTS ARE OF SUFFICIENT ACCURACY; CORRECT?

9 A I WORKED WITH HIM CAREFULLY IN FORMULATING THE
10 QUESTIONS. I TALKED WITH HIM AFTER HE DID THE
11 PILOT SURVEY, AND I LOOKED AT HIS FINAL RESULTS,
12 INCLUDING HIS CONFIDENCE STATISTICS, AND I DID DO
13 THAT.

14 Q SIR, CAN YOU ANSWER MY QUESTION. MY QUESTION
15 IS --

16 A I'M SORRY, WHAT WAS IT?

17 Q YOU HAVE MADE NO ATTEMPT TO DETERMINE WHETHER
18 DR. SUKUMAR'S RESULTS ARE OF SUFFICIENT ACCURACY,
19 CORRECT?

20 A I THOUGHT THAT I -- I LEARNED THAT WE WANT
21 ABOUT IT THE PROPER WAY. THAT GOES TO ACCURACY, I
22 BELIEVE.

23 Q LET'S SEE WHAT YOU SAID AT YOUR DEPOSITION.
24 CAN WE HAVE DR. O'BRIEN'S DEPOSITION AT 117, LINES
25 7 THROUGH 12. WERE YOU ASKED THIS QUESTION AND DID

1 YOU GIVE THIS ANSWER, SIR:

2 "QUESTION: SO AM I CORRECT THAT YOU'VE
3 MADE NO ATTEMPT TO DETERMINE WHETHER DR. SUKUMAR'S
4 RESULTS ARE OF SUFFICIENT ACCURACY?

5 "ANSWER: I'VE MADE NO INDEPENDENT TEST
6 OR ANALYSIS OF THAT QUESTION."

7 WERE YOU ASKED THAT QUESTION AND DID YOU
8 GIVE THAT ANSWER?

9 A YES, AND THE ANSWER SAID INDEPENDENT TEST. I
10 WORKED WITH HIM ON THAT ISSUE. I DIDN'T DO A
11 SEPARATE INDEPENDENT TEST BECAUSE HE'S THE EXPERT
12 ON SURVEY.

13 Q LET ME ASK YOU THIS, SIR. WOULD YOU AGREE
14 WITH ME THAT WITHOUT DR. SUKUMAR'S SURVEY RESULTS,
15 IF YOU WERE TO DETERMINE THAT DR. SUKUMAR ASKED THE
16 WRONG QUESTIONS OF THE RESPONDENTS AND THAT THE
17 RESULTS ARE NOT RELIABLE, IF YOU DIDN'T ASK THAT,
18 YOU WOULDN'T BE ABLE TO CALCULATE REASONABLE
19 ROYALTY DAMAGES; CORRECT?

20 A WELL, I THINK THE JURY WOULD BE ABLE TO,
21 CORRECT.

22 Q BUT YOU DIDN'T, CORRECT?

23 A PARDON.

24 Q BUT DID YOU NOT, CORRECT?

25 A I DID NOT WHAT?

1 Q YOUR ROYALTY FORMULA RELIES AS A COMPONENT ON
2 USAGE, CORRECT?

3 A RIGHT. THE JURY WOULD HAVE TO TAKE THE 30
4 CENTS BASICALLY THAT SAMSUNG WOULD HAVE AND DECIDE
5 HOW MUCH THAT WOULD TRANSLATE INTO A ROYALTY RATE
6 PER UNIT.

7 Q LAST SUBJECT, SIR. YOUR OPENING REPORT, THAT
8 REPORT CONTAINED A SIGNIFICANT MISTAKE, DIDN'T IT?

9 A IT WAS A MISTAKE, YES. THERE WAS A -- FOR
10 THOSE WHO USE EXCEL, THERE HAD BEEN A CELL
11 REFERENCE THAT WAS OFF.

12 Q WELL, IT WASN'T JUST OFF. YOU MADE A \$3.9
13 MILLION CALCULATION ERROR, DIDN'T YOU?

14 A NO. IT WAS A CELL REFERENCE THAT WAS OFF.
15 THAT DID ADD UP TO \$3.9 MILLION, YES. ANYONE WHO'S
16 USED EXCEL KNOWS IT'S VERY EASY TO DO THAT.
17 NORMALLY WE WOULD AUDIT THESE. BUT WE GOT THIS
18 MAJOR PRODUCTION ON LICENSING THE DAY BEFORE MY
19 REPORT WAS DUE. THAT'S NORMALLY WHEN WE WILL BE
20 AUDITING THESE THINGS.

21 BUT THEIR PRODUCTION KEPT US FROM PUTTING
22 SOMEONE ON THAT AND AUDITING THAT. SO IT CAME IN,
23 THE ERROR WAS POINTED OUT BY MR. MUSIKA, WE
24 CORRECTED IT BEFORE MY DEPOSITION, I WALKED IN AND
25 GAVE THEM A CHART, WHICH IS OUR STANDARD PRACTICE.

1 IF THERE'S ANYTHING LIKE THAT, WE'LL FIX IT.

2 Q SIR, THE ERROR OCCURRED BECAUSE YOU DID NOT
3 PERFORM YOUR USUAL QUALITY CONTROL PROCEDURES FOR
4 THE REPORT; CORRECT?

5 A RIGHT. WE WERE UNABLE TO DO THAT BECAUSE OF
6 THE LATE PRODUCTION OF APPLE.

7 Q WELL, ISN'T IT TRUE, SIR, THAT THE REASON YOU
8 DID NOT CONDUCT YOUR USUAL QUALITY CONTROL
9 PROCEDURE IS BECAUSE YOU RAN OUT OF TIME AND HAD
10 OTHER COMMITMENTS?

11 A THAT'S THE -- THAT'S EXACTLY WHAT I JUST SAID.

12 MR. SELWYN: THANK YOU, SIR. NO FURTHER
13 QUESTIONS.

14 THE COURT: ALL RIGHT. THE TIME IS 1133.
15 ANY REDIRECT.

16 MS. MAROULIS: NO REDIRECT. YOUR HONOR,
17 WE CALL DR. DAVID TEECE AS OUR NEXT WITNESS.

18 THE COURT: ALL RIGHT. HE'S EXCUSED NOT
19 SUBJECT TO RECALL.

20 MS. MAROULIS: CORRECT, NOT SUBJECT TO
21 RECALL.

22 THE COURT: OKAY. YOU'RE EXCUSED.

23 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

24 **DAVID TEECE,**

25 BEING CALLED AS A WITNESS ON BEHALF OF THE

1 DEFENDANT, HAVING BEEN FIRST DULY SWORN, WAS
2 EXAMINED AND TESTIFIED AS FOLLOWS:

3 THE WITNESS: I DO.

4 THE CLERK: THANK YOU. PLEASE BE SEATED.

5 THE COURT: TIME IS NOW 11:34. GO AHEAD,
6 PLEASE.

7 THE CLERK: PLEASE STATE JURY FULL NAME
8 AND SPELL IT FOR THE RECORD.

9 **DIRECT EXAMINATION**

10 BY MS. MAROULIS:

11 Q GOOD MORNING, DR. TEECE. CAN YOU STATE YOUR
12 FULL NAME FOR THE RECORD?

13 A YES, DAVID JOHN TEECE.

14 Q CAN YOU PLEASE TELL THE JURY WHAT YOU DO FOR A
15 LIVING?

16 A I'M A CHAIRED PROFESSOR AT THE UNIVERSITY OF
17 CALIFORNIA AT BERKELEY WHERE I ALSO DIRECT THE
18 INSTITUTE FOR INNOVATION, AND I'M ALSO CHAIRMAN OF
19 THE BERKELEY RESEARCH GROUP.

20 Q WHAT ARE THE SUBJECTS OF YOUR TEACHING AND
21 RESEARCH?

22 A PRIMARY FOCUS IS ON INNOVATION AND
23 TECHNOLOGICAL CHANGE. BIG EMPHASIS ON LICENSING
24 AND PUBLIC POLICY, INCLUDING COMPETITION POLICY.

25 Q COULD YOU PLEASE SUMMARIZE BRIEFLY YOUR FORMAL

1 EDUCATION?

2 A YES. I HAVE A PH.D. IN ECONOMICS FROM THE
3 UNIVERSITY OF PENNSYLVANIA. I TAUGHT AT STANFORD
4 FOR FIVE YEARS, AND CAME TO BERKELEY IN '82, AND
5 I'VE BEEN AN ACTIVE SCHOLAR.

6 Q HAVE YOU PUBLISHED ANY PUBLICATIONS IN YOUR
7 FIELD?

8 A YES. I HAVE OVER 200 ARTICLES AND MORE THAN A
9 DOZEN BOOKS, MANY OF WHICH FOCUS ON INNOVATION,
10 TECHNOLOGICAL CHANGE, AND COMPETITION, HOW FIRMS
11 BUILD COMPETITIVE ADVANTAGE IN A CHANGING GLOBAL
12 ECONOMY.

13 Q SIR, HAVE YOU PREVIOUSLY SERVED AS AN EXPERT
14 IN THE FIELD OF ECONOMIC ANALYSIS AND COMPUTATION
15 OF DAMAGES?

16 A YES, I HAVE.

17 Q HOW MANY TIMES APPROXIMATELY?

18 A OH, AT LEAST 50.

19 MS. MAROULIS: YOUR HONOR, I TENDER
20 DR. TEECE AS AN EXPERT IN ECONOMIC ANALYSIS AND
21 COMPUTATION OF PATENT DAMAGES.

22 MR. MUELLER: NO OBJECTION.

23 THE COURT: OKAY. SO CERTIFIED.

24 BY MS. MAROULIS:

25 Q DR. TEECE, WHAT WAS YOUR ASSIGNMENT IN THIS

1 CASE?

2 A I WAS ASKED TO COMPUTE THE REASONABLE ROYALTY
3 DAMAGES DUE SAMSUNG FROM APPLE FOR USE OF ITS UMTS
4 PATENTS.

5 Q AND THOSE ARE '941 AND '516 PATENTS?

6 A THAT IS CORRECT.

7 Q HAVE YOU PREPARED A SLIDE TO SUMMARIZE YOUR
8 CALCULATION?

9 A I HAVE.

10 Q LET'S TAKE A LOOK AT SDX 3963.005.

11 DR. TEECE, WHAT DOES THIS SLIDE
12 ILLUSTRATE?

13 A THE HIGHLIGHTED YELLOW IS THE REASONABLE
14 ROYALTY RATES THAT I HAVE DETERMINED ARE
15 APPLICABLE. IT'S A RANGE. AT A MINIMUM END IT'S 2
16 PERCENT. AT THE UPPER END IS 2.75 PERCENT OF NET
17 SALES.

18 ON THE LEFT I HAVE THE INFRINGING SALES
19 OF IPHONES AND IPADS, 12.23 BILLION OF IPHONES, AND
20 2.29 BILLION OF IPADS.

21 AND THAT LEADS ME TO A TOTAL DAMAGES
22 NUMBER ON THE FAR RIGHT WHICH RANGES FROM, AT THE
23 LOW END, 290 MILLION, AT THE RIGHT HAND, 399
24 MILLION.

25 Q SIR, HOW DO YOU CALCULATE THESE REASONABLE

1 ROYALTY AMOUNTS THAT ARE LISTED ON THIS CHART?

2 A WELL, I -- SINCE THERE WAS NO LICENSE ENTERED
3 INTO BETWEEN APPLE AND SAMSUNG, I HAD TO GO THROUGH
4 AN EXERCISE TO FIGURE OUT WHAT THEY MIGHT HAVE
5 AGREED UPON IF THERE WAS A NEGOTIATION BACK AT
6 ABOUT THE TIME OF FIRST INFRINGEMENT.

7 SO I SET UP SOMETHING CALLED THE
8 HYPOTHETICAL NEGOTIATION AS A FRAMEWORK FOR
9 DETERMINING WHAT THE REASONABLE ROYALTIES BASE
10 WOULD BE.

11 Q AND WHAT IS THE BASE THAT YOU HAVE USED FOR
12 THE PURPOSES OF THIS ANALYSIS.

13 A YES, THE ROYALTY BASE, BECAUSE IF YOU HAVE A
14 RATE, IT'S NO GOOD TO YOU WITHOUT A BASE, THE BASE
15 IS THE NET SALES OF THE INFRINGING PRODUCTS, AND
16 THE NET SALES ARE BASICALLY THE SALES NUMBERS MINUS
17 A FEW RETURNS. SO IT'S BASICALLY THE SALES OR
18 REVENUE NUMBERS FOR THE PRODUCTS IN QUESTION.

19 Q WHAT PERIOD OF TIME DID YOU ASSUME FOR THE
20 PURPOSES OF THIS ANALYSIS IN CALCULATING THE
21 ROYALTY BASE?

22 A THE DATES ARE AT THE TOP THERE FOR. FOR THE
23 IPHONE, IT WAS POST SEPTEMBER 9TH, 2010. FOR THE
24 IPADS, IT WAS POST APRIL 27TH, 2011.

25 Q SIR, LET'S TAKE THESE COMPONENTS ONE AT A

1 TIME .

2 TURNING TO THE ROYALTY BASE , HOW DID YOU
3 DETERMINE THE NET SALES PRICE OF A PRODUCT WAS THE
4 APPROPRIATE ROYALTY BASE?

5 A WELL , I LOOKED AT TWO THINGS . ONE IS INDUSTRY
6 PRACTICE . IT'S VERY COMMON TO STATE A LICENSE AS A
7 PERIOD OF TIME OF THE SALES PRICE OF THE PRODUCT .

8 SECONDLY , IN THIS CASE I LOOKED AT UMTS
9 TECHNOLOGY AND HOW IT IMPACTED SALES OF THE PRODUCT
10 AND TOOK THAT INTO ACCOUNT AS WELL .

11 Q DID YOU PREPARE ANY SLIDES TO ILLUSTRATE THE
12 VALUE CONFERRED BY THE UMTS TECHNOLOGY?

13 A I DID .

14 Q LET'S TAKE A LOOK AT SDX 3963.006 , PLEASE .

15 CAN YOU PLEASE DESCRIBE FOR THE JURY WHAT
16 THESE SLIDES ILLUSTRATE .

17 A YES . I TRIED TO GET A CONTROL OR AN
18 EXPERIMENT AFTER EXPERIMENT , IF YOU WILL , FOR
19 WHAT'S REALLY THE VALUE OF UMTS TECHNOLOGIES
20 EMBEDDED IN THE APPLE PRODUCTS .

21 AND FORTUNATELY THE IPOD TOUCH IS A
22 PRODUCT IN THE MARKET THAT HAS MOST OF THE FEATURES
23 IN THE IPHONE BUT WITHOUT THE PHONE FEATURE AND
24 WITHOUT THE CONNECTIVITY ASSOCIATED WITH UMTS
25 TECHNOLOGY .

1 AND AS YOU CAN SEE, THERE'S A SIGNIFICANT
2 PRICE PREMIUM BETWEEN THE IPOD AND THE IPHONE. IN
3 FACT, FOR THE TWO DIFFERENT MODELS I LOOKED AT,
4 IT'S EXACTLY 400, THAT'S APPLE'S PRICING, THAT'S
5 NOT TAKING INTO ACCOUNT ANY SERVICE DISCOUNTS OR
6 DISCOUNTS YOU MAY GET THROUGH A SERVICE PROVIDER.

7 BUT THERE'S A VERY SUBSTANTIAL PRICE
8 PREMIUM ASSOCIATED WITH THE UMTS TECHNOLOGY WHICH I
9 THINK IS WELL CAPTURED BY LOOKING AT THAT PRICE
10 DIFFERENTIAL.

11 Q AND HAVE YOU PREPARED ANY ADDITIONAL SLIDES
12 WITH RESPECT TO THE IPAD PRODUCT?

13 A YES. SO I'VE DONE A SIMILAR COMPARISON WITH
14 RESPECT TO THE IPAD.

15 Q LET'S TAKE A LOOK AT 3963.07.

16 A YES. THE PRICE DIFFERENCE IS NOT QUITE AS
17 GREAT, BUT IF YOU LOOK AT AN IPAD THAT'S JUST GOT
18 THE WI-FI FEATURES OR THE ONE WITH UMTS, THEN
19 THERE'S A \$177 OR \$180 DIFFERENCE IN PRICE BY
20 HAVING THAT EXTRA FUNCTIONALITY ASSOCIATED WITH THE
21 UMTS TECHNOLOGY.

22 Q THANK YOU, SIR.

23 TURNING NOW TO ROYALTY RATES, HOW DID YOU
24 DETERMINE THAT THE ROYALTY RATES SHOULD BE BETWEEN
25 2 PERCENT AND TWO AND THREE QUARTERS PERCENT?

1 DX 630 INTO EVIDENCE.

2 THE COURT: ANY OBJECTION?

3 MR. MUELLER: NO OBJECTION.

4 THE COURT: IT'S ADMITTED.

5 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
6 630, HAVING BEEN PREVIOUSLY MARKED FOR
7 IDENTIFICATION, WAS ADMITTED INTO
8 EVIDENCE.)

9 BY MS. MAROULIS:

10 Q SIR, TURNING YOUR ATTENTION TO ROW 12 OF
11 CONFIDENTIAL EXHIBIT DX 630, HAVE YOU CONSIDERED
12 THIS LICENSE THAT I'M POINTING YOU TO IN YOUR
13 ANALYSIS?

14 A YES, I HAVE.

15 Q WHEN DID THE PARTIES ENTER INTO THIS LICENSE?

16 A THIS ONE WAS ENTERED INTO IN 2004.

17 Q WHAT IS BEING LICENSED HERE?

18 A A NUMBER OF TECHNOLOGIES, INCLUDING UMTS
19 TECHNOLOGY.

20 Q AND WHERE DID THE JURY FIND THE FINANCIAL
21 TERMS OF THE AGREEMENT?

22 A IN THE COLUMN SECOND FROM THE RIGHT.

23 Q OKAY. DID THOSE TERMS SUPPORT YOUR CONCLUSION
24 THAT THE NET SALE PRICE IS THE APPROPRIATE ROYALTY
25 BASE FOR ASSESSING REASONABLE ROYALTY?

1 A YES, IT DOES. IT'S --

2 Q IT SUPPORT --

3 A UNDER THE PAYMENTS SECTION THERE, YES, YOU CAN
4 HIGHLIGHT IT ON THE TOP LINE, BUT IT'S A PERIOD OF
5 TIME OF NET SELLING PRICE THAT IS IDENTIFIED THERE
6 THAT GIVES ME A CLUE, AT LEAST WITH RESPECT TO THAT
7 PARTICULAR PROVIDER OF UMTS TECHNOLOGY, AS TO WHAT
8 A REASONABLE ROYALTY RATE IS. IT'S EXPRESSED AS A
9 PERIOD OF TIME OF NET SALES.

10 Q AND DOES IT SUPPORT YOUR ROYALTY RATE AS WELL?

11 A YES. IT'S ABOVE THE ROYALTY RATE RANGE THAT I
12 HAVE CHOSEN, BUT IT CERTAINLY IS CONSISTENT WITH
13 THE HIGH END OF IT.

14 Q PLEASE TAKE A LOOK AT ROW 29 OF DX 630. HAVE
15 YOU CONSIDERED THIS LICENSE IN SUPPORTING YOUR
16 ANALYSIS?

17 A YES, I HAVE.

18 Q HOW DOES THIS LICENSE SUPPORT YOUR
19 DETERMINATION OF ROYALTY BASE AND ROYALTY RATE?

20 A WELL, ONCE AGAIN, IF YOU LOOK AT THE PAYMENTS
21 SECTION, THERE IS A REASONABLE -- OR THERE IS A
22 ROYALTY RATE AS A PERIOD OF TIME OF SALES IT'S
23 SPECIFIED.

24 MAYBE YOU CAN HIGHLIGHT THAT. AND IT IS
25 WITHIN THE RANGE, THERE'S A NUMBER IN THE MIDDLE,

1 THERE'S A PERCENTAGE. IT'S A PERCENTAGE OF NET
2 SALES. THERE'S A NUMBER THERE THAT IS WITHIN MY
3 RANGE THAT I DESCRIBED EARLIER TO THE JURY.

4 Q OKAY. YOU CAN TAKE DOWN THE EXHIBIT.

5 DOES THIS EXHIBIT SET FORTH THE ROYALTY
6 RATE FOR SAMSUNG'S ESSENTIAL PATENTS?

7 A NO, IT DOESN'T. THESE ARE WHAT SAMSUNG HAS
8 PAID FOR THE USE OF OTHER PEOPLE'S TS TECHNOLOGY,
9 SO IT'S NOT IDEAL, BUT I THINK IT'S INDICATIVE.

10 Q CAN YOU DESCRIBE HOW IT'S NONETHELESS RELEVANT
11 TO YOUR ANALYSIS?

12 A HOW IT IS RELEVANT TO MY ANALYSIS?

13 Q YES.

14 A YES, I MEAN, THERE'S A GENERAL MARKETPLACE OUT
15 THERE FOR TECHNOLOGY, AND WHETHER YOU'RE THE BUYER
16 OR THE SELLER FOR UMTS TECHNOLOGY, THEY TEND TO GO
17 DOWN IN APPROXIMATELY THE SAME RANGE.

18 Q SO HOW MANY SAMSUNG CROSS-LICENSES HAVE YOU
19 ANALYZED IN THIS CASE?

20 A WELL, I WAS ABLE TO GET SOME INFORMATION ON
21 TWO SAMSUNG CROSS-LICENSES WHERE SAMSUNG WAS
22 LICENSING OUT ITS UMTS TECHNOLOGY. THE ONES I
23 LOOKED AT, THOSE WERE LICENSING IN. BUT I WAS ABLE
24 TO GET INFORMATION ON TWO LICENSES WHERE SAMSUNG
25 WAS LICENSING OUT ITS UMTS.

1 Q WE'RE GOING TO SHOW TO THE JURY NOW THE
2 CONFIDENTIAL DEMONSTRATIVE 3963.019. ONCE THE JURY
3 SEES THAT, AND WE CANNOT SHOW IT TO THE REST OF THE
4 WORLD, CAN YOU PLEASE EXPLAIN THIS SLIDE TO THE
5 JURY?

6 A YES. THE FIRST POINT I'VE GOT TO GET ACROSS
7 IS THAT MOST LICENSES ARE, IN FACT, CROSS-LICENSES,
8 BY WHICH I MEAN ONE PARTY WILL LICENSE OUT
9 TECHNOLOGY AND THEY WILL LICENSE BACK IN
10 TECHNOLOGY.

11 MONEY IS USED AS A BALANCING PAYMENT, BUT
12 THE PRIMARY CONSIDERATION IN GOING BACK AND FORTH
13 ISN'T MONEY. IT'S INTELLECTUAL PROPERTY RIGHTS.
14 IT'S CALLED A CROSS-LICENSE.

15 SO THE CHALLENGE HERE IS FOR ME TO FIGURE
16 OUT, BECAUSE I'M LOOKING AT CALCULATING DAMAGES,
17 WHAT APPLE WOULD PAY SAMSUNG FOR ONE LICENSE, I'VE
18 GOT TO TRY AND FIGURE OUT FROM THE CROSS-LICENSE
19 WHAT THE VALUE OF THE ONE-WAY LICENSE WOULD BE. SO
20 THERE'S A SIMPLE EQUATION HERE.

21 Q SIR, IF I MAY REMIND YOU NOT TO MENTION THE
22 NUMBERS PUBLICLY?

23 A OKAY.

24 Q THERE'S SOME THIRD PARTIES IN THE AUDIENCE?

25 A OKAY.

1 Q GO AHEAD.

2 A BASICALLY IF I KNOW THE ROYALTY BASE, WHICH I
3 DO IN THIS CASE, AND IF I KNOW WHAT THE STANDARD
4 ROYALTY RATE IS FOR THE OTHER PARTY, I CAN ESTIMATE
5 WHAT SAMSUNG'S RATE IS IF I ALSO KNOW WHAT THE
6 BALANCING PAYMENT IS.

7 SO IN THIS CASE, I'VE JUST SET UP THE
8 PROBLEM. I'M TRYING TO FIGURE OUT WHAT SAMSUNG'S
9 IMPLIED RATE IS, AND THAT'S A SIMPLE EQUATION THAT
10 I LOOKED AT, AND THE NEXT SLIDE GIVES THE ANSWER.

11 Q LET'S TAKE A LOOK AT THE NEXT CONFIDENTIAL
12 SLIDE, 3963.020. DOES THIS SLIDE SHOW THE ROYALTY
13 RATE THAT YOU ANALYZED?

14 A YES, THAT IS THE IMPLIED OR ESTIMATED RATE
15 THAT I GET FROM THAT PIECE OF ANALYSIS, THREE
16 PERCENTAGE POINTS OF NET SALES, WHICH IS SLIGHTLY
17 ABOVE MY RANGE OF 2 TO 2.75.

18 Q IS THIS NUMBER CONSISTENT WITH THE INDUSTRY
19 LICENSES YOU LOOKED AT EARLIER?

20 A IT IS.

21 Q SIR, HAVE YOU PREPARED A SLIDE SHOWING WHAT
22 SAMSUNG PROVIDED TO THE -- IN THE CROSS-LICENSE TO
23 THE OTHER SIDE?

24 A YES.

25 Q AND IS THAT THE SLIDE, CONFIDENTIAL SLIDE

1 3963.022?

2 A YES.

3 Q CAN YOU PLEASE EXPLAIN TO THE JURY WHAT YOU
4 EXPRESSED IN THIS SLIDE WITHOUT MENTIONING THE
5 NUMBERS?

6 A YES, THIS ANALYTICAL FRAMEWORK ALSO ENABLES ME
7 TO VALUE THE LICENSING RIGHTS THAT ARE TRADED AND
8 TO SHOW IT IN COMPARISON TO THE BALANCING PAYMENTS.

9 AND AS YOU CAN SEE, THE PAYMENT IN KIND,
10 IF YOU WILL, OF INTELLECTUAL PROPERTY RIGHTS IS WAY
11 GREATER THAN THE BALANCING PAYMENTS.

12 SO I OFTEN SPEAK OF THE BALANCING
13 PAYMENT, THE CASH AMOUNT THAT TRADES HANDS HERE AS
14 JUST THE TIP OF THE ICEBERG.

15 MY CHALLENGE, OF COURSE, HERE IS TO
16 FIGURE OUT THE VALUE OF THE ICEBERG, NOT JUST THE
17 TIP.

18 Q WHAT IS THE PRIMARY VALUE THAT SAMSUNG WAS
19 PROVIDING TO ITS COUNTER PARTIES IN ITS LICENSING
20 AGREEMENT?

21 A THE PRIMARY VALUE IN A CROSS-LICENSE, AND
22 CERTAINLY IN THE CASE OF SAMSUNG'S CROSS-LICENSES,
23 I BELIEVE WAS THE LICENSING RIGHT.

24 Q AND HOW DOES THE BALANCING RATE COMPARE TO THE
25 VALUE OF THE PATENT RIGHTS PROVIDED BY SAMSUNG?

1 A IT'S LOW IN COMPARISON.

2 Q DID YOU PREPARE, SIR, EXHIBIT DX 631 TO
3 EXPLAIN YOUR ANALYSIS?

4 A YES.

5 Q CAN YOU PLEASE CONFIRM IN YOUR BINDER THAT DX
6 631, CONFIDENTIAL EXHIBIT, IS WHAT YOU PREPARED.

7 A YES.

8 MS. MAROULIS: YOUR HONOR, WE MOVE DX 631
9 UNDER SEAL, REDACTED, INTO EVIDENCE.

10 THE COURT: ANY OBJECTION?

11 MR. MUELLER: NO OBJECTION, YOUR HONOR.

12 THE COURT: ALL RIGHT. IT'S ADMITTED.

13 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
14 631, HAVING BEEN PREVIOUSLY MARKED FOR
15 IDENTIFICATION, WAS ADMITTED INTO
16 EVIDENCE.)

17 BY MS. MAROULIS:

18 Q SIR, DID YOU PREPARE ANOTHER SLIDE TO
19 ILLUSTRATE A DIFFERENT CROSS-LICENSE AT 3963.024?

20 A I DID.

21 Q LET'S TAKE A LOOK, JUST FOR THE JURY, AT THIS
22 SLIDE. CAN YOU PLEASE EXPLAIN, WITHOUT REFERENCE
23 TO THE NUMBERS, WHAT IS DEPICTED THERE?

24 A YES. THIS IS A CROSS-LICENSE WITH ANOTHER
25 PARTY WHERE I WAS LIKEWISE ABLE TO DETERMINE THE

1 ROYALTY BASE, AND I WAS ALSO ABLE TO DETERMINE THE
2 STANDARD RATE FOR THE OTHER PARTY, AS WELL AS THE
3 BALANCING PAYMENT, AND TOOK IN MATHEMATICALLY FOR
4 THIS TO GET AN ESTIMATE OF SAMSUNG'S RIGHT RATE.

5 Q LET'S TURN TO THE NEXT CONTENTION SLIDE. IS
6 THAT THE ROYALTY RATES THAT YOU ANALYZED?

7 A YES. YOU NEED TO CHANGE THE SLIDE THERE, I
8 THINK.

9 Q IT'S 3963.021. IT'S 025. I'M SORRY.

10 A YES. SO THE ESTIMATED RATE THERE IS 1.74,
11 WHICH IS SLIGHTLY BELOW THE LOW END OF MY 2 TO 2.75
12 RANGE.

13 Q OKAY. THANK YOU, RYAN.

14 WE CAN TAKE THOSE DOWN.

15 DR. TEECE, HOW DID YOU ACCOUNT FOR THE
16 FACT THAT THERE ARE TWO PATENTS AT ISSUE HERE AND
17 THESE AGREEMENTS COVER MORE THAN TWO PATENTS?

18 A YES, I'M COGNIZANT OF THE FACT THAT THIS
19 HYPOTHETICAL LICENSE WOULD BE FOR TWO PATENTS, AND
20 TYPICALLY WITH A CROSS-LICENSE, YOU'RE LICENSING A
21 MUCH LARGER PORTFOLIO. BUT WHAT STUDIES SHOW IS
22 THAT THE VOLUME OF ANY PORTFOLIO, OR GROUPING OF
23 LICENSES USUALLY COMES DOWN TO THE VALUE OF ONE,
24 TWO, OR THREE OR A HANDFUL SO THAT A SMALL
25 PERCENTAGE OF THE PATENTS IN A LICENSE ARE REALLY

1 WHAT DRIVES VALUE IN MOST INSTANCES.

2 Q LET'S TAKE A LOOK AT SLIDE 3963.027. DOES
3 THIS SLIDE SUMMARIZE WHAT YOU JUST EXPLAINED ABOUT
4 THE VALUE?

5 A YES. WHAT I'M DOING IN THIS CHART IS LOOKING
6 AT SOME WHAT ARE CALLED PLUS FACTORS OR MINUS
7 FACTORS, THINGS THAT WOULD TEND TO PRESS THE RATE
8 DOWNWARDS OR RAISE IT UPWARDS.

9 AND IF I BEGIN AT THE BOTTOM THERE, I'M
10 COMPARING A BENCHMARK OF A MARKETPLACE LICENSE AND
11 I'M SAYING, OKAY, HOW DOES THAT INFORM ME WITH
12 RESPECT TO WHAT THE DAMAGES RATE WOULD BE HERE,
13 WHAT THE REASONABLE ROYALTY RATE WOULD BE AND I'M
14 SAYING SINCE THIS IS NOT A FULL PORTFOLIO, THIS
15 WOULD BE SOME DISCOUNT. THAT'S WHY THERE'S THE RED
16 MINUS SIGN. BUT AT THE SAME TIME THERE'S TWO
17 OFFSETS FACTORS THAT I THINK FULLY ACCOUNT FOR THAT
18 DISCOUNT OR ESSENTIALLY NEUTRALIZE IT.

19 Q THANK YOU, SIR. YOU HEARD DR. O'BRIEN HERE
20 TESTIFYING ABOUT GEORGIA PACIFIC ANALYSIS. DID YOU
21 DO ONE AS WELL?

22 A I DID. BUT CAN I FIRST EXPLAIN THESE OTHER
23 FACTORS.

24 Q YES, GO AHEAD.

25 A OKAY. THE OTHER FACTORS, HERE I'M REQUIRED TO

1 ASSUME THE PATENTS ARE VALID AND INFRINGED.
2 TECHNICALLY WHEN THERE'S A MARKET TRANSACTION, YOU
3 DON'T KNOW FOR SURE IF THE PATENTS ARE VALID AND
4 INFRINGED, SO LICENSES, WHAT YOU OBSERVE IN THE
5 BUSINESS WORLD ARE DISCOUNTED RATES BECAUSE YOU'RE
6 UNCLEAR ABOUT VALIDITY AND INFRINGEMENT.

7 HERE IN THE COURTROOM, WE KNOW THE
8 ANSWER. SO THAT WOULD BE A PLUS FACTOR.

9 AND THEN ALSO THE LICENSING QUESTION
10 WOULD BE A U.S. ONLY LICENSE, AND THEY TYPICALLY
11 COMMAND A PREMIUM OVER A WORLDWIDE LICENSE BECAUSE
12 THE ROYALTY BASE WILL BE SMALLER.

13 Q THANK YOU, SIR. TURNING TO MY QUESTION OF
14 GEORGIA PACIFIC ANALYSIS, DID YOU CONDUCT ONE AS
15 WELL?

16 A YES, I DID.

17 Q AND DID CONDUCTING GEORGIA PACIFIC ANALYSIS
18 CONFIRM YOUR FINDINGS THROUGH THE MARKET DATA
19 RESEARCH THAT YOU PERFORMED?

20 A YES, THE GENERAL FRAMEWORK I'M USING IS
21 GEORGIA PACIFIC, BUT I DID LOOK AT SOME OTHER
22 FACTORS SUGGESTED IN THE FRAMEWORK, AND I DO
23 BELIEVE THAT THEY'RE CONFIRMATORY.

24 Q CAN YOU GIVE US A FEW FACTORS THAT YOU LOOKED
25 AT AND BRIEFLY SUMMARIZE THEM FOR THE JURY?

1 A ONE THING YOU'RE ASKED TO LOOK IS WHETHER
2 THERE ARE ANY CONVOYED SALES, WHETHER THERE'S
3 PROFITABILITY ATTACHED TO THE PRODUCTS IN QUESTION,
4 AND I THINK IT'S WELL KNOWN THAT THE IPHONE AND THE
5 IPOD ARE VERY PROFITABLE PRODUCTS.

6 IT'S WELL KNOWN THAT THERE'S PASS
7 THROUGH, OR THAT SUCCESS WITH THE IPHONE AND THE
8 IPAD, SALES FROM THE ITUNES AND THE APP STORE AND
9 SO ON AND SO FORTH.

10 SO I THINK THERE ARE SOME OTHER PLUS
11 FACTORS IN GEORGIA PACIFIC. SO I TOOK COMFORT FROM
12 THOSE OTHER FACTORS.

13 CRITICALLY, GEORGIA PACIFIC REQUIRES YOU
14 TO ASK THIS FUNDAMENTAL QUESTION, WHAT WOULD BE THE
15 REASONABLE ROYALTY IN A HYPOTHETICAL NEGOTIATION IF
16 THE PARTIES HAD ACTUALLY NEGOTIATED RATHER THAN
17 INFRINGED, AND THAT IS THE LINCHPIN OF MY ANALYSIS.

18 Q SIR, TO SUMMARIZE, WHAT ARE THE DAMAGES THAT
19 APPLE WILL OWE TO SAMSUNG IF IT IS FOUND TO
20 INFRINGE SAMSUNG'S STANDARDS PATENTS?

21 A IF YOU GO BACK TO MY FIRST SLIDE.

22 Q 3963.005?

23 A YEAH. AND I'VE GIVEN A RANGE THERE FROM 290
24 MILLION TO 300 MILLION.

25 MS. MAROULIS: THANK YOU, SIR. I PASS

1 THE WITNESS.

2 THE COURT: OKAY. IT IS NOW 11:54. GO
3 AHEAD, PLEASE.

4 **CROSS-EXAMINATION**

5 BY MR. MUELLER:

6 Q GOOD MORNING, DR. TEECE.

7 A GOOD MORNING.

8 Q MY NAME IS JOE MUELLER. I'M GOING TO ASK YOU
9 A FEW QUESTIONS.

10 A CERTAINLY.

11 Q THE FIRST QUESTION IS YOU HAVE NEVER
12 NEGOTIATED A PATENT LICENSE AS A PRINCIPAL
13 NEGOTIATOR; CORRECT?

14 A THAT'S CORRECT.

15 Q NOW, YOU'RE HERE TODAY TO DISCUSS TWO PATENTS;
16 CORRECT?

17 A YES.

18 Q I NOTICED DURING YOUR DIRECT EXAMINATION YOU
19 DIDN'T USE THE WORD "FRAND;" CORRECT?

20 A CORRECT.

21 Q YOU KNOW WHAT THAT WORD MEANS?

22 A YES, I DO.

23 Q IT MEANS FAIR, REASONABLE, AND
24 NON-DISCRIMINATORY LICENSING; CORRECT?

25 A THAT'S RIGHT.

1 Q IS THAT RIGHT?

2 A THAT'S RIGHT. THE MIDDLE WORD, THE SECOND
3 LETTER IS R, REASONABLE, WHICH IS WHAT I'VE DONE.

4 Q AND FRAND PATENTS ARE A SPECIAL CATEGORY OF
5 PATENTS; CORRECT?

6 A WELL, FRAND LICENSING ARRANGEMENTS ARE -- CAN
7 BE, YES.

8 Q AND COMPANIES MAKE FRAND COMMITMENTS AS PART
9 OF A SPECIAL PROCESS CALLED STANDARDS SETTING;
10 CORRECT.

11 A THAT'S CORRECT.

12 MS. MAROULIS: OBJECTION, YOUR HONOR.
13 THIS IS A DIFFERENT PART OF THE CASE THAT HASN'T
14 STARTED YET.

15 MR. MUELLER: YOUR HONOR, IT'S NOT.
16 THESE ARE TWO FRAND PATENTS, THE EXACT ISSUE HE
17 TESTIFIED ON.

18 THE COURT: I'LL ALLOW LIMITED
19 QUESTIONING, BUT THIS SHOULD BE SAVED FOR YOUR
20 CASE.

21 BY MR. MUELLER:

22 Q DR. TEECE, LET'S BE CLEAR. YOU'RE HERE TO
23 TESTIFY ON TWO PATENTS; CORRECT?

24 A CORRECT.

25 Q AND SAMSUNG HAS MADE A FRAND COMMITMENT FOR

1 BOTH; CORRECT?

2 A A COMMITMENT TO LICENSE ON REASONABLE TERMS,
3 THAT'S CORRECT.

4 Q AND THAT FRAND COMMITMENT MUST BE CONSIDERED
5 AS PART OF ANALYZING DAMAGES FOR THOSE TWO PATENTS;
6 CORRECT?

7 A YES.

8 Q SO THE FRAND COMMITMENT IS PRECISELY RELEVANT
9 TO THE ISSUES YOU JUST TESTIFIED ABOUT; CORRECT?

10 A IN PARTICULAR WHAT FRAND DOES IS REQUIRE YOU
11 TO LICENSE, SO, YES, I'M ACTUALLY VALUING A
12 LICENSE. I'M ASSUMING THAT THERE'S A LICENSE.

13 Q BUT, SIR, YOU AGREE IT'S RELEVANT; CORRECT?

14 A YES.

15 Q AND YOU DIDN'T MENTION IT; CORRECT?

16 A I -- I MENTIONED THE WORD REASONABLE, WHICH IS
17 THE SAME AS IN THE FRAND CONCEPT IN MY VIEW.

18 Q SIR, YOU DIDN'T USE THE WORD FRAND?

19 A CORRECT.

20 Q NOW, YOU'RE NOT HERE TO DISCUSS DESIGN
21 PATENTS; CORRECT?

22 A CORRECT.

23 Q YOU'RE NOT HERE TO DISCUSS TRADE DRESS;
24 CORRECT?

25 A CORRECT.

1 Q LET'S TURN IN YOUR BINDER, IF WE COULD, TO PX
2 80, WHICH I BELIEVE IS TAB 5.

3 MS. MAROULIS: COUNSEL, CAN I HAVE A
4 BINDER.

5 MR. MUELLER: I'M SORRY. I THOUGHT YOU
6 HAD IT.

7 THE WITNESS: OKAY.

8 BY MR. MUELLER:

9 Q YOU'VE SEEN THIS BEFORE; CORRECT?

10 A YES.

11 Q THIS IS A LETTER FROM SAMSUNG TO APPLE;
12 CORRECT?

13 A YES.

14 Q DATED JULY 25TH, 2011; CORRECT?

15 A THAT'S RIGHT.

16 MR. MUELLER: YOUR HONOR, I OFFER IT.

17 THE COURT: ANY OBJECTION?

18 MS. MAROULIS: AGAIN, SAME OBJECTION,
19 THIS IS A DIFFERENT PART OF THE CASE.

20 THE COURT: IT'S ADMITTED.

21 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
22 80, HAVING BEEN PREVIOUSLY MARKED FOR
23 IDENTIFICATION, WAS ADMITTED INTO
24 EVIDENCE.)

25 BY MR. MUELLER:

1 Q DR. TEECE, IN THIS LETTER, SAMSUNG, WHICH
2 WE'LL PUT ON THE SCREEN, SAMSUNG PROPOSED TERMS, OR
3 REQUESTED TERMS FROM APPLE FOR ITS FRAND PATENT
4 PORTFOLIO FOR UMTS; CORRECT?

5 A YES.

6 Q AND THAT'S OFFERED COVERING THE ENTIRE
7 PORTFOLIO; CORRECT?

8 A OF THE UMTS, QUESTION.

9 Q AND YOU'VE ESTIMATED THAT PORTFOLIO AS 86
10 PATENTS; CORRECT?

11 A SOMETHING IN THAT ORDER, YES.

12 Q AND SAMSUNG PROPOSED TO APPLE A 2.4 PERCENT
13 ROYALTY; CORRECT?

14 A THAT'S RIGHT.

15 Q FOR THE ENTIRE PORTFOLIO; CORRECT?

16 A YES.

17 Q AND YOU'RE HERE TODAY ON TWO; CORRECT?

18 A YES, ON A GEORGIA PACIFIC ANALYSIS, I WANT TO
19 BE CLEAR, IT'S NOT QUITE FRAND, BECAUSE WITH FRAND
20 YOU DON'T KNOW FOR SURE IF THE PATENTS ARE VALID
21 AND INFRINGED; WITH GEORGIA PACIFIC, YOU DO.

22 Q SIR, SAMSUNG MADE FRAND COMMITMENTS FOR THE
23 VERY TWO PATENTS THAT YOU'RE HERE TODAY TO TALK
24 ABOUT; CORRECT?

25 A CORRECT.

1 Q AND THOSE TWO PATENTS ARE WITHIN THE SCOPE OF
2 THE PORTFOLIO PROPOSED THAT SAMSUNG MADE; CORRECT?

3 A THAT IS RIGHT.

4 Q ALONG WITH 84 OTHERS; CORRECT?

5 A THAT IS RIGHT.

6 Q THIS LETTER WAS SENT IN JULY OF 2011; CORRECT?

7 A YES.

8 Q THAT'S THE FIRST TIME YOU'VE SEEN SAMSUNG
9 PROPOSE TERMS FOR ITS UMTS PATENT TO SAMSUNG;
10 CORRECT?

11 A THAT'S RIGHT.

12 Q NOT IN 2010; CORRECT?

13 A CORRECT, YES.

14 Q NOT IN 2009; CORRECT?

15 A THAT IS CORRECT.

16 Q NOT IN 2008; CORRECT?

17 A THAT IS CORRECT.

18 Q NOT IN 2007; CORRECT?

19 A CORRECT.

20 Q FIRST TIME WAS JULY OF 2011; CORRECT?

21 A I BELIEVE SO.

22 Q AFTER THIS LITIGATION BEGAN; CORRECT?

23 A YES.

24 MR. MUELLER: YOUR HONOR, THIS MIGHT BE A
25 GOOD TIME TO BREAK FOR LUNCH.

1 THE COURT: ARE YOU DONE OR DO YOU --

2 MR. MUELLER: I WANT TO CHANGE SUBJECTS.

3 I HAVE ABOUT TEN MORE MINUTES.

4 THE COURT: OH. WHY DON'T YOU GO ANOTHER

5 MINUTE OR TWO.

6 MR. MUELLER: SURE.

7 Q NOW, YOU HAVE NO INFORMATION AS TO HOW THE

8 SAMSUNG 2.4 PERCENT WAS CALCULATED; CORRECT?

9 A YOU MEAN THE -- THIS NUMBER MENTIONED IN 24

10 LETTER HERE?

11 Q THAT'S EXACTLY RIGHT, SIR?

12 A THAT'S CORRECT.

13 Q AND SAMSUNG HAS NEVER HAD A PUBLISHED UMTS

14 RATE; CORRECT?

15 A I THINK THAT'S RIGHT.

16 Q YOU DON'T KNOW WHETHER SAMSUNG OFFERED ANYONE

17 ELSE, OR REQUESTED FROM ANYONE ELSE, 2.4 PERCENT;

18 CORRECT?

19 A I DON'T KNOW FOR SURE.

20 Q YOU DON'T KNOW, YOU'VE SEEN NO EVIDENCE TO

21 SUGGEST THAT SAMSUNG HAS ASKED ANY OTHER COMPANY,

22 BESIDES APPLE, FOR THIS 2.4 PERCENT ROYALTY;

23 CORRECT?

24 A THAT'S CORRECT.

25 Q IN FACT, ASIDE FROM THIS LETTER, YOU HAVEN'T

1 SEEN A SHRED OF PAPER CONNECTING THE 2.4 PERCENT
2 ROYALTY TO THE SAMSUNG UMTS FRAND PORTFOLIO;
3 CORRECT?

4 A I DON'T THINK SO.

5 Q YOU DON'T THINK YOU HAVE; CORRECT?

6 A WHEN YOU SAY CONNECTING IT TO THE PORTFOLIO,
7 WHAT DO YOU MEAN BY THAT?

8 Q YOU'VE SEEN NOT A SHRED OF PAPER FROM SAMSUNG
9 FILES CONNECTING THE 2.4 PERCENT; CORRECT?

10 MS. MAROULIS: OBJECTION, VAGUE.

11 THE WITNESS: I'M NOT QUITE SURE WHAT YOU
12 MEAN.

13 BY MR MUELLER:

14 Q SIR, HAVE YOU EVER SEEN A DOCUMENT FROM
15 SAMSUNG THAT SAYS OUR PORTFOLIO IS WORTH 2.4
16 PERCENT?

17 A NO.

18 Q WHAT YOU DID IN THIS CASE YOU LOOKED AT THE
19 SAMSUNG LICENSES; CORRECT?

20 A YES.

21 Q AND YOU APPLIED THAT EQUATION WHICH YOU SHOWED
22 THE JURY ON THEIR SCREENS; CORRECT?

23 A I DID.

24 Q AND USING THAT EQUATION, YOU ATTEMPTED TO
25 ESTIMATE HOW MUCH SAMSUNG LICENSE RIGHTS THAT IT

1 HAD CONVEYED WERE WORTH; CORRECT?

2 A YES.

3 Q NOW, YOU NEVER CHECKED WITH SAMSUNG TO SEE IF
4 THAT WAS ACTUALLY CONSISTENT WITH THE REAL
5 NEGOTIATIONS; CORRECT?

6 A CORRECT.

7 Q USING YOUR EQUATION, YOU DERIVED NUMBERS, YOU
8 SHOWED THEM TO THE JURY ON THEIR SCREENS FOR WHAT
9 THE MONETARY VALUE OF THOSE LICENSES WAS; CORRECT?

10 A WHEN YOU SAY, "THE MONETARY VALUE," IF YOU HAD
11 TO CONVERT A CROSS-LICENSE INTO A UNILATERAL
12 LICENSE, YES, I'VE DERIVED A REASONABLE ROYALTY
13 RATE.

14 Q WE CAN AGREE ON THIS --

15 THE COURT: IT'S 12:01. LET'S GO AHEAD.

16 MR. MUELLER: NO PROBLEM, YOUR HONOR.

17 THE COURT: 12:01. WE'RE GOING TO BREAK
18 FOR LUNCH FOR ONE HOUR. PLEASE DO NOT TALK TO
19 ANYONE, PLEASE KEEP AN OPEN MIND, AND DO NOT DO ANY
20 RESEARCH ABOUT THE CASE. OKAY. THANK YOU. PLEASE
21 LEAVE YOUR BINDERS IN THE JURY ROOM.

22 (WHEREUPON, THE FOLLOWING PROCEEDINGS
23 WERE HELD OUT OF THE PRESENCE OF THE JURY:)

24 THE COURT: ALL RIGHT. THANK YOU ALL.
25 WE'LL SEE YOU BACK AT 1:00 O'CLOCK.

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AFTERNOON SESSION

(WHEREUPON, THE FOLLOWING PROCEEDINGS WERE HELD OUT OF THE PRESENCE OF THE JURY:)

MS. MAROULIS: YOUR HONOR, CAN WE RAISE TWO ISSUES?

THE COURT: YES, WHAT'S THAT?

MS. MAROULIS: WE WOULD LIKE TO LODGE SOME DEPOSITION CLIPS THAT WERE PLAYED PREVIOUSLY, AND I GAVE THEM TO COUNSEL FOR APPLE AND THEY'RE CHECKING TO MAKE SURE THAT THEIR RECORDS ARE THE SAME.

THE COURT: OKAY. JUST REMIND ME, PLEASE, IN CASE I FORGET.

MS. MAROULIS: AND ONE MORE THING, YOUR HONOR.

WE UNDERSTAND, FOR APPELLATE PURPOSES, WE NEED TO SUBMIT, AT THE END OF THE CASE, OFFERS OF PROOF OF THE EVIDENCE THAT WE WERE UNABLE TO PUT IN. IF WE CAN THAT BY TUESDAY, THE SAME AS WE WERE DOING BEFORE.

THE COURT: THAT'S FINE. TUESDAY IS THE 21ST.

MS. MAROULIS: THANK YOU, YOUR HONOR.

THE COURT: THAT'S PERFECTLY FINE. I'LL

1 ADD THAT TO MY -- TELL ME WHAT THIS IS AGAIN,
2 PLEASE. I'LL PUT IT IN MY MISCELLANEOUS ORDER FOR
3 TONIGHT.

4 MS. MAROULIS: IT'S OFFERS OF PROOF ON
5 EVIDENCE THAT WE WERE UNABLE TO PRESENT.

6 MR. LEE: I'M SORRY. CAN I ASK, IS THIS
7 EVIDENCE THAT WAS EXCLUDED AND THIS IS AN OFFER OF
8 PROOF ON EXCLUDED EVIDENCE, OR OTHER EVIDENCE? I
9 WASN'T UNCLEAR.

10 THE COURT: NO. THE EXCLUDED ONES THEY
11 WERE ALREADY GOING TO FILE ON TUESDAY.

12 MS. MAROULIS: CORRECT.

13 THE COURT: SO WHAT IS IT THAT'S
14 DIFFERENT FROM WHAT YOU WERE ALREADY GOING TO FILE
15 ON TUESDAY?

16 MS. MAROULIS: YES, YOUR HONOR. IT'S TWO
17 BATCHES, ONE IS EXCLUDED EVIDENCE, AND ONE IS THERE
18 WERE SEVERAL WITNESSES WE WERE GOING TO CALL BUT WE
19 WERE NOT ABLE TO DUE TO TIME CONSTRAINTS. WE'LL
20 PUT IN VERY SHORT PARAGRAPH ON WHAT IT IS.

21 THE COURT: ALL RIGHT. DO YOU HAVE ANY
22 OBJECTION TO THAT?

23 MR. LEE: NOT AS A PROFFER. I'M NOT SURE
24 WHAT THE ISSUE IS RELEVANT TO. BUT IF YOU WERE
25 WANTING TO DO IT AS A PROFFER --

1 MS. MAROULIS: WE'LL FILE IT AS A PROFFER
2 FOR APPELLATE PURPOSES.

3 THE COURT: I THINK IN RE: CATS, I WILL
4 BE UPHELD FOR TIME LIMITS. I'M NOT CONCERNED.

5 MR. LEE: WE'RE NOT, EITHER.

6 MS. MAROULIS: THANK YOU.

7 THE COURT: THANK YOU VERY MUCH. PLEASE
8 TAKE A SEAT. OKAY.

9 (WHEREUPON, THE FOLLOWING PROCEEDINGS
10 WERE HELD IN THE PRESENCE OF THE JURY:)

11 THE COURT: PLEASE TAKE A SEAT. IT'S
12 1:05.

13 MR. MUELLER: MAY I PROCEED, YOUR HONOR?

14 THE COURT: PLEASE, GO AHEAD.

15 BY MR. MUELLER:

16 Q GOOD AFTERNOON, DR. TEECE.

17 A GOOD AFTERNOON.

18 Q DR. TEECE, FOR YOUR WORK ON THIS CASE YOU
19 LOOKED AT OVER 30 SAMSUNG LICENSES; IS THAT
20 CORRECT?

21 A THAT'S CORRECT.

22 Q AND AS YOU EXPLAINED TO THE JURY, YOU APPLIED
23 YOUR EQUATIONS TO TWO; CORRECT?

24 A THAT IS CORRECT.

25 Q NOW, OUT OF ALL THOSE OVER 30 LICENSES, WE CAN

1 AGREE ON THIS: NO ONE HAS PAID SAMSUNG A PENNY IN
2 MONEY PAYMENTS FOR ITS FRAND PATENTS; CORRECT?

3 A MOST OF THEM ARE CROSS-LICENCES, SO THE
4 PAYMENT IS INCOMING IN OTHER INTELLECTUAL PROPERTY
5 RIGHTS.

6 Q BUT, SIR, IN TERMS OF MONEY PAYMENTS, NO ONE
7 HAS PAID SAMSUNG A PENNY?

8 A THAT'S CORRECT.

9 Q NOW, YOU SHOWED THE JURY A SLIDE EARLIER IN
10 WHICH YOU ATTEMPTED TO PUT A VALUE ON UMTS. DO YOU
11 RECALL THAT?

12 A WHICH ONE HAVE YOU GOT IN MIND?

13 Q SURE. IF YOU CAN PUT UP SDX 3963.006.

14 DO YOU RECALL THIS DOCUMENT?

15 A YES.

16 Q AND ALSO 007?

17 A THAT'S RIGHT.

18 Q AND IN THESE TWO SLIDES, YOU ATTEMPTED TO
19 DETERMINE THE PREMIUM, AS YOU PUT IT, FOR UMTS;
20 CORRECT?

21 A YES, TO GIVE SOME INSIGHT INTO THAT.

22 Q AND UMTS IS A STANDARD; CORRECT?

23 A YES.

24 Q NOW, UMTS WAS DEVELOPED BY DOZENS OF
25 COMPANIES; CORRECT?

1 A THAT'S CORRECT.

2 Q AND THOSE COMPANIES HAVE DECLARED THOUSANDS OF
3 PATENTS THAT ARE ESSENTIAL TO UMTS; CORRECT?

4 A YES. THERE'S A LOT OF PATENTS THERE.

5 Q YOU'RE HERE ON TWO; CORRECT?

6 A YES, THAT'S RIGHT.

7 Q NOW, FROM A TECHNICAL PERSPECTIVE, YOU HAVE NO
8 IDEA HOW VALUABLE THOSE TWO ARE; CORRECT?

9 A I UNDERSTAND FROM THE TECHNICAL EXPERTS THAT
10 THEY'RE IMPORTANT, AND, IN FACT, I'VE CALCULATED
11 WHAT I THINK A REASONABLE ROYALTY RATE IS FOR THEM.

12 Q BUT YOU YOURSELF DON'T KNOW HOW VALUABLE THEY
13 ARE; CORRECT?

14 A I'M NOT A TECHNICAL EXPERT.

15 Q AND YOU HAVE NO IDEA IF THEY'RE A BIG PART OF
16 UMTS; CORRECT?

17 A I UNDERSTAND THAT THEY ARE AT LEAST DECLARED
18 ESSENTIAL.

19 Q NOW, DECLARED ESSENTIAL MEANS DECLARED BY THE
20 OWNER; CORRECT?

21 A THAT'S RIGHT.

22 Q IN THIS CASE DECLARED BY SAMSUNG; CORRECT?

23 A THAT'S CORRECT.

24 Q NO ONE HAS TESTED THAT PROPOSITION WHETHER
25 THEY'RE TRULY ESSENTIAL UNTIL THE LADIES AND

1 GENTLEMEN OF THE JURY DO; CORRECT?

2 A I DON'T UNDERSTAND THAT ANYONE HAS SUBMITTED
3 AROUND THEM. AS FAR AS I KNOW, THERE'S NO EVIDENCE
4 OF WORK AROUND.

5 Q SIR, MY QUESTION WAS, NO ONE HAS MADE A
6 DETERMINATION AS TO WHETHER THESE TWO PATENTS ARE,
7 IN FACT, ESSENTIAL UNTIL THE JURY DOES; CORRECT?

8 A AND THAT WILL BE CORRECT.

9 Q AND YOU DON'T KNOW ONE WAY OR THE OTHER IF
10 THEY'RE ESSENTIAL; CORRECT?

11 A THEY'RE DECLARED ESSENTIAL.

12 Q SIR, YOU DON'T KNOW YOURSELF IF THEY'RE TRULY
13 ESSENTIAL?

14 A THAT IS RIGHT.

15 Q NOW, APPLE BROUGHT, TO SPEAK TO THE JURY,
16 THEIR DIRECTOR OF LICENSING AND HIS NAME IS
17 BORIS TEKSLER; RIGHT?

18 A I BELIEVE SO.

19 Q AND SAMSUNG HAS ITS OWN LICENSING EXECUTIVES;
20 CORRECT?

21 A THAT'S RIGHT.

22 Q NOT ONE OF THEM HAS SAID A WORD TO THIS JURY;
23 CORRECT?

24 A I HAVEN'T MONITORED EVERYTHING. I DON'T KNOW
25 FOR SURE.

1 Q YOU'VE SEEN NO EVIDENCE OF THAT; CORRECT?

2 A THAT'S RIGHT.

3 Q AND YOU YOURSELF HAVE SAID NOT A WORD TO THEM
4 EITHER; CORRECT?

5 A THAT IS CORRECT.

6 Q NOW, LET'S TURN ON THE ELMO, IF WE COULD.

7 SIR, WE LOOKED AT THE SAMSUNG PORTFOLIO,
8 REQUEST TO APPLE FROM JULY OF 2011; CORRECT?

9 A THAT'S RIGHT.

10 Q AND BASED ON YOUR ESTIMATE, THAT COVERED A
11 PORTFOLIO OF 86 PATENTS; CORRECT?

12 A I BELIEVE THAT'S RIGHT.

13 Q SO I'M GOING TO WRITE THE NUMBER 86. NOW,
14 THAT 86 INCLUDED THE TWO IN THIS CASE; CORRECT?

15 A THAT'S RIGHT.

16 Q SO I'M GOING TO WRITE 84 PLUS 2.

17 NOW, IN RETURN, SAMSUNG REQUESTED 2.4
18 PERCENT OF THE ENTIRE PRICE OF EACH IPHONE AND IPAD
19 COVERED BY THE PROPOSAL; CORRECT?

20 A THAT WAS AN OPENING POSITION, YES.

21 Q WHEN YOU SAY IT WAS AN OPENING POSITION, THAT
22 WAS THE ONLY POSITION THAT SAMSUNG HAS TAKEN;
23 CORRECT?

24 A WELL, THEN THERE'S NEGOTIATION IN MY
25 UNDERSTANDING. BUT THERE ALWAYS HAS TO BE A

1 STARTING PLACE.

2 Q SIR, THERE'S NEVER BEEN ANOTHER OFFER;
3 CORRECT?

4 A THAT'S MY UNDERSTANDING.

5 Q 2.4 PERCENT OF THE SALES PRICE OF THE ENTIRE
6 DEVICE; CORRECT?

7 A YES, NET SALES PRICE.

8 Q FOR 86 PATENTS, INCLUDING THESE TWO; CORRECT?

9 A YES.

10 Q AND IN THIS CASE, YOU'RE HERE ON ONLY TWO;
11 CORRECT?

12 A THAT'S RIGHT.

13 Q YET, YOU'VE TOLD THIS JURY THE APPROPRIATE
14 ROYALTY IS 2.4 PERCENT; CORRECT?

15 A IT'S A RANGE BETWEEN, FOR DAMAGES PURPOSES,
16 WHICH WHAT I'M LOOKING AT, BETWEEN 2 AND 2.75.

17 Q FAIR ENOUGH. 2 TO 2.75; CORRECT?

18 A FOR PATENTS PROVEN TO BE VALID AND INFRINGED,
19 YES.

20 Q ON THE HIGH END, THAT'S ACTUALLY HIGHER THAN
21 THE PORTFOLIO RATE THAT SAMSUNG PROPOSED; CORRECT?

22 A ON THE HIGH END, CORRECT.

23 Q NOW, YOU'VE ACTUALLY SAID THAT IF THIS JURY
24 FINDS ONLY ONE PATENT, ONE PATENT TO BE TRULY
25 ESSENTIAL, THE RATE WOULD BE THE SAME; CORRECT?

1 A YES. THAT'S OFTEN THE CASE BECAUSE, AS I
2 SAID, THE VOLUME OF THE PORTFOLIO IS VERY MUCH A
3 FUNCTION OF ONE OR TWO IMPORTANT PATENTS.

4 Q AND BOTH SAMSUNG'S ORIGINAL PORTFOLIO PROPOSAL
5 AND YOUR OPINION TODAY IS BASED ON THE ENTIRE PRICE
6 OF THE DEVICE; CORRECT?

7 A WELL, IT REFERENCES THE ENTIRE PRICE. IT
8 TAKES THAT INTO ACCOUNT. IF IT WAS A SMALLER
9 NUMBER, THEN YOU WOULD USE A HIGHER ROYALTY RATE.

10 Q BUT YOU'RE SAYING 2 TO 2.75 PERCENT OF THE
11 ENTIRE PRICE; CORRECT?

12 A YES.

13 Q NOT JUST THE PRICE OF THE BASEBAND PROCESSOR;
14 CORRECT?

15 A THAT IS CORRECT.

16 Q AND YOU UNDERSTAND THAT ONLY COSTS TEN BUCKS;
17 CORRECT?

18 A IF YOU DON'T COUNT THE I.P. IN IT, WHICH IS A
19 BIG ERROR IN MY VIEW, BUT IF YOU LEAVE THE I.P.
20 ALONGSIDE --

21 Q SIR, APPLE PAYS ABOUT TEN BUCKS; RIGHT?

22 A NO. THEY PAY A LOT MORE BECAUSE IT HAS PAY
23 MILLIONS OF DOLLARS TO GET ACCESS TO OTHER PEOPLE'S
24 TECHNOLOGY.

25 Q WE'LL SOON HEAR FROM AN APPLE WITNESS NAMED

1 TONY BLEVINS WHO'S GOING TO EXPLAIN THAT TO THE
2 JURY.

3 FOR RIGHT NOW, SIR, YOUR OPINION OF 2 TO
4 2.75 OF THE ENTIRE PRICE IS WHAT YOU'RE
5 RECOMMENDING TO THIS JURY FOR EVEN JUST ONE PATENT;
6 CORRECT?

7 A YES.

8 Q NOW, IF WE COMPARE THAT TO THE ORIGINAL
9 PORTFOLIO REQUEST, THE NUMBER OF PATENTS HAS GONE
10 DOWN; CORRECT?

11 A YES.

12 Q WE'VE GONE FROM 86 TO 1; CORRECT?

13 A YES.

14 Q AND 85 HAVE BEEN TAKEN AWAY; CORRECT?

15 A YES.

16 Q YET, ON THE HIGH END, YOUR ROYALTY WENT UP;
17 CORRECT?

18 A WENT UP FROM WHAT?

19 Q 2.4 PERCENT IS LESS THAN 2.7; CORRECT?

20 A YES, I CERTAINLY AGREE WITH THAT.

21 Q SO YOUR OPINION -- UNDER YOUR OPINION, APPLE
22 WOULD BE PAYING MORE FOR 85 FEWER PATENTS; CORRECT?

23 A IF IT WAS PAYING AT THE HIGH END. IF IT WAS
24 PAYING AT THE LOW END, IT WOULD BE PAYING LESS.

25 Q SIR, ON THE HIGH END, APPLE WOULD BE PAYING

1 MORE IN ROYALTIES FOR 85 FEWER PATENTS; CORRECT?

2 A I ALREADY SAID YES.

3 Q AND THAT'S YOUR BEST JUDGMENT AS TO WHAT'S
4 FAIR AND REASONABLE; CORRECT?

5 A GIVEN THAT WE'RE TALKING ABOUT PATENTS THAT
6 ARE PROVEN TO BE VALID AND INFRINGED, THEY'RE NOT
7 JUST ORDINARY PATENTS. THEY'RE ONES PROVEN VALID
8 AND INFRINGED FOR A U.S. ONLY LICENSE, WHICH
9 COMMANDS A PREMIUM.

10 Q SIR, THAT'S YOUR BEST JUDGMENT; CORRECT?

11 A IT IS.

12 MR. MUELLER: NO FURTHER QUESTIONS.

13 THE COURT: ALL RIGHT.

14 MS. MAROULIS: NO REDIRECT, YOUR HONOR.

15 THE COURT: ALL RIGHT. TIME IS NOW 1:13.

16 ALL RIGHT. IS THIS WITNESS EXCUSED AND
17 IS IT SUBJECT TO RECALL OR NOT?

18 MS. MAROULIS: HE'S SUBJECT TO RECALL.

19 THE COURT: OH, OKAY.

20 MR. MUELLER: YES.

21 THE COURT: OH, OKAY. THEN YOU ARE
22 EXCUSED SUBJECT TO RECALL.

23 THE WITNESS: THANK YOU.

24 MR. VERHOEVEN: YOUR HONOR, AT THIS POINT
25 THE SAMSUNG ENTITIES REST WITH THREE RESERVATIONS.

1 EXCUSE ME, YOUR HONOR.

2 THE FIRST IS THERE'S AN AGREEMENT BETWEEN
3 THE PARTIES WITH RESPECT TO EMILIE KIM THAT OUR
4 AFFIRMATIVE QUESTIONS WILL BE HANDLED IN THEIR
5 REBUTTAL CASE.

6 THE COURT: OKAY.

7 MR. VERHOEVEN: SECONDLY, THE EXHIBITS
8 WE'RE AGREEING TO, WE'LL WORK ON THOSE AND CLARIFY
9 THOSE, THE DEMONSTRATIVE ISSUES AND THESE OTHER
10 THINGS AND CLEANING UP THE EXHIBIT ISSUES THAT
11 WE'RE STILL GOING TO BE DOING.

12 THE COURT: OKAY.

13 MR. VERHOEVEN: AND, OF COURSE, THE THIRD
14 RESERVATION IS OUR REBUTTAL TO THE CASE THEY'RE
15 GOING TO PRESENT.

16 THE COURT: RIGHT, WHICH YOU'LL HAVE A
17 CHANCE TO DO.

18 MR. VERHOEVEN: OTHERWISE, WITH THOSE
19 RESERVATIONS, WE REST OUR CASE.

20 THE COURT: OKAY. NOW, I ASSUME NOW
21 YOU'D LIKE TO HAVE OUR DISCUSSION; CORRECT?

22 MR. LEE: WE CAN, OR --

23 MR. VERHOEVEN: WE CONFERRED.

24 THE COURT: WHAT WOULD YOU LIKE TO DO?

25 MR. VERHOEVEN: YOUR HONOR, THE PROCESS

1 THAT WE DISCUSSED EARLIER THIS MORNING ABOUT
2 SUBMITTING THE WRITINGS AND --

3 MR. LEE: WE CAN DO WHATEVER YOUR HONOR
4 WANTS. WE CAN DO IT NOW. IF -- GIVEN YOUR HONOR'S
5 INCLINATION, WE COULD ACTUALLY USE THE JURY'S TIME
6 TO PROCEED WITH THE EVIDENCE AND DO IT AT 4:30 OR
7 WE COULD DO IT IN THE SATURDAY FILING.

8 THE COURT: WE CAN DO IT AT 4:30.

9 MR. VERHOEVEN: WE CAN -- YES, WE CAN.

10 THE COURT: LET'S DO IT AT 4:30. I WILL
11 NOTE IN THE RECORD THAT YOU'VE MADE YOUR MOTION.
12 WE'LL JUST ARGUE IT AT 4:30.

13 MR. MCELHINNY: AND THAT'S FOR BOTH --
14 BOTH SIDES OF THE APPLE CASE, YOUR HONOR. I HAVE
15 MOTIONS TO MAKE AS WELL AT 4:30. YOU CAN HEAR THEM
16 AT 4:30.

17 THE COURT: OH, I SEE. OKAY. YOU BOTH
18 ARE MAKING MOTIONS?

19 MR. MCELHINNY: YES, YOUR HONOR.

20 THE COURT: OKAY. WE'LL HANDLE THAT AT
21 4:30.

22 ALL RIGHT. IT'S NOW 1:15.

23 MR. LEE: I JUST NEED TO GET THE WITNESS,
24 YOUR HONOR. HE'S OUTSIDE THE ROOM.

25 THE COURT: OH, OKAY.

1 MR. LEE: YOUR HONOR, YOU GOT THE MESSAGE
2 ON THE WITNESSES.

3 THE COURT: I DID. DOES SAMSUNG HAVE
4 THAT MESSAGE?

5 MR. LEE: YES.

6 THE COURT: OKAY. LET ME ASK, IS
7 MR. TEECE GOING TO BE CALLED AGAIN, BECAUSE HE IS
8 STILL ON THAT LIST AND THE OBJECTIONS WERE TO HIS
9 DIRECT BY SAMSUNG, WHICH --

10 MS. MAROULIS: YES, YOUR HONOR. WE -- IT
11 DEPENDS ON HOW MUCH TIME WE HAVE. WE MAY NOT BE
12 ABLE TO CALL HIM.

13 THE COURT: OH, SO HE'S A REBUTTAL?

14 MS. MAROULIS: YEAH. HE HAS A SECOND
15 SUBJECT WHERE HE'S REBUTTING.

16 THE COURT: OH, OKAY. SO YOURS -- ALL
17 RIGHT. SO HE'S STILL ON THE LIST THEN.

18 MS. MAROULIS: YES.

19 THE COURT: OKAY.

20 MR. LEE: AND I THINK NOT ON THAT LIST
21 WAS -- THERE WAS A SONY WITNESS, BUT I THINK THAT'S
22 BEEN ELIMINATED BECAUSE OF YOUR HONOR'S RULING LAST
23 NIGHT, SO THAT TAKES YET ANOTHER ONE OFF.

24 THE COURT: I DON'T THINK HE WAS ON THIS
25 LIST.

1 MR. LEE: HE'S NOT ON THAT LIST.

2 THE COURT: BECAUSE HE'S TESTIFYING
3 TODAY.

4 MR. LEE: HE'S NOT GOING TO TESTIFY. I
5 THINK YOUR HONOR'S RULING HAS ELIMINATED THE NEED
6 FOR THAT.

7 THE COURT: OH, OKAY. ALL RIGHT.

8 MR. LEE: YOUR HONOR, APPLE CALLS TONY
9 BLEVINS.

10 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

11 **TONY BLEVINS,**

12 BEING CALLED AS A WITNESS ON BEHALF OF THE
13 PLAINTIFF, HAVING BEEN FIRST DULY SWORN, WAS
14 EXAMINED AND TESTIFIED AS FOLLOWS:

15 THE WITNESS: YES, I DO.

16 THE CLERK: THANK YOU. PLEASE STATE YOUR
17 FULL NAME FOR THE RECORD.

18 THE COURT: TIME IS NOW 1:17. GO AHEAD.

19 THE WITNESS: MY NAME IS TONY JACKSON
20 BLEVINS.

21 **DIRECT EXAMINATION**

22 BY MR. LEE:

23 Q GOOD AFTERNOON, MR. BLEVINS.

24 A GOOD AFTERNOON.

25 Q WHAT IS YOUR CURRENT POSITION?

1 A VICE-PRESIDENT OF PROCUREMENT AT APPLE.

2 Q WHEN DID YOU JOIN APPLE?

3 A I JOINED APPLE IN AUGUST OF 2000, SO
4 APPROXIMATELY 12 YEARS.

5 Q SINCE JOINING APPLE, WHAT POSITIONS HAVE YOU
6 HELD?

7 A I JOINED APPLE AS DIRECTOR OF CORPORATE
8 PROCUREMENT. I BECAME ONE OF THE INAUGURAL MEMBERS
9 OF OUR IPOD TEAM IN 2001. I WAS RESPONSIBLE FOR
10 GLOBAL LOGISTICS AND TRANSPORTATION EFFECTIVE
11 AROUND 2005 WHERE I WAS PROMOTED TO SENIOR DIRECTOR
12 OF OPERATIONS. AND THEN FINALLY I WAS PROMOTED TO
13 VICE-PRESIDENT OF PROCUREMENT ABOUT OCTOBER OF LAST
14 YEAR.

15 Q WHAT ARE YOUR CURRENT RESPONSIBILITIES?

16 A MY RESPONSIBILITIES ARE ACQUIRING NECESSARY
17 COMPONENTS, MATERIALS AND MANUFACTURING SERVICES
18 NEEDED TO BUILD CERTAIN APPLE PRODUCTS WHICH
19 INCLUDE IPODS, IPADS, AND IPHONES.

20 Q HOW MANY PEOPLE REPORT TO YOU?

21 A THERE ARE CURRENTLY APPROXIMATELY 300 PEOPLE
22 IN MY ORGANIZATION.

23 YOUR HONOR, MAY I APPROACH?

24 THE COURT: YES, PLEASE.

25 BY MR. LEE:

1 Q LET ME SHOW YOU WHAT'S BEEN MARKED AS PDX 59,
2 AND WOULD YOU TELL THE LADIES AND GENTLEMEN OF THE
3 JURY JUST WHAT THIS IS?

4 A THIS IS AN IPHONE 4.

5 Q NOW, DO YOU KNOW WHAT A BASEBAND PROCESSOR IS?

6 A YES, I DO.

7 Q WHAT DOES THE BASEBAND PROCESSOR DO IN THE
8 APPLE PRODUCTS?

9 A IN SIMPLEST TERMS, THE BASEBAND PROCESSOR IS A
10 DEVICE THAT COMMUNICATES WITH CELLULAR NETWORKS.

11 Q WHICH APPLE PRODUCTS USE BASEBAND PROCESSORS?

12 A ALL OF OUR IPHONES USE BASEBAND PROCESSORS AND
13 CERTAIN MODELS OF OUR IPADS, THOSE THAT HAVE
14 CELLULAR CONNECTIVITY.

15 Q DOES APPLE ACQUIRE ITS BASEBAND PROCESSORS
16 FROM OTHER COMPANIES?

17 A YES, WE DO.

18 Q FOR THE IPHONE 3G, THE IPHONE 3GS, THE IPHONE
19 4, THE IPAD AND THE IPAD 2, WHO SELLS YOU THE
20 BASEBAND PROCESSORS THAT APPLE USES?

21 A IN EACH OF THOSE --

22 MR. PRICE: OBJECTION, VAGUE AS TO TIME.

23 THE COURT: ALL RIGHT. WOULD YOU --
24 SUSTAINED.

25 BY MR. LEE:

1 Q WHO -- I'D LIKE YOU TO FOCUS ON THE PERIOD
2 FROM TODAY. WHO SELLS THE BASEBAND PROCESSORS TO
3 APPLE TODAY?

4 A AS OF TODAY, WE HAVE TWO SUPPLIERS FOR
5 BASEBAND PROCESSOR. THEY ARE INTEL AND QUALCOMM.

6 Q AND FOR THE IPHONE 3G, THE IPHONE 3GS, THE
7 IPHONE 4, THE IPAD AND THE IPAD 2, WHO HAS PROVIDED
8 YOU BASEBAND PROCESSOR?

9 A IN EACH OF THOSE CASES, INTEL HAS BEEN OUR
10 ONLY PROVIDER.

11 Q IF YOU TOOK THE PDX 59 APART, WOULD YOU FIND
12 THIS MOTHERBOARD, PDX 60?

13 A THAT IS CORRECT.

14 Q IF I MAY APPROACH?

15 A THAT IS THE MAJOR LOGIC BOARD FOR THE IPHONE
16 4.

17 Q AND IF YOU COULD IDENTIFY FOR THE LADIES AND
18 GENTLEMEN JUST WHERE THEY WOULD FIND THE BASEBAND
19 PROCESSOR. MAYBE YOU CAN HOLD IT UP, AND THEN IF
20 THERE'S SOMETHING THAT WOULD HELP IDENTIFY IT?

21 A THE BASEBAND PROCESSOR IS ESSENTIALLY HERE
22 (INDICATING).

23 MR. LEE: MAY I PUBLISH THIS TO THE JURY,
24 YOUR HONOR.

25 THE COURT: ANY OBJECTION?

1 MR. PRICE: NO OBJECTION.

2 THE COURT: ALL RIGHT. THEY'RE BOTH
3 ADMITTED.

4 IS PDX 59 ALREADY ADMITTED?

5 MR. LEE: PDX 59 IS A DEMONSTRATIVE, YOUR
6 HONOR. WE'D OFFER IT NOW. THEY'RE BOTH
7 DEMONSTRATIVES ONLY.

8 THE COURT: THEY'RE NOT COMING IN. OKAY.
9 GO AHEAD.

10 BY MR. LEE:

11 Q WHILE THAT'S BEING PASSED AROUND, MR. BLEVINS,
12 HOW MANY PARTS ARE THERE IN THE IPHONE?

13 A IT DEPENDS ON THE MODEL, BUT THERE ARE AROUND
14 850 TO 900 PARTS ON THE MAJOR LOGIC BOARD, AND THEN
15 THERE'S AN ADDITIONAL 100 PARTS THAT ARE REQUIRED
16 FOR ASSEMBLY. SO 900 TO 1,000 PARTS TOTAL.

17 Q AND HOW MUCH DOES THAT BASEBAND PROCESSOR THAT
18 IS IN THE IPHONE COST?

19 A THE PRICE ACTUALLY VARIED BY QUARTER, BUT AS A
20 ROUGH NUMBER TO USE AS A WEIGHTED AVERAGE, ABOUT 12
21 U.S. DOLLARS EACH FOR THE CHIPSET.

22 Q AND THAT'S WHAT YOU PAY INTEL?

23 A THAT IS CORRECT.

24 Q WHERE IS INTEL BASED?

25 A THEY ARE BASED IN SANTA CLARA, CALIFORNIA.

1 Q TURN, IF YOU WOULD, IN YOUR BINDER TO
2 PLAINTIFF'S EXHIBIT 78. DO YOU HAVE THAT?

3 A YES, I DO.

4 Q CAN YOU TELL US WHAT IS IN PLAINTIFF'S EXHIBIT
5 78?

6 A THIS IS A VERY TYPICAL INVOICE THAT APPLE
7 WOULD ISSUE TO APPLE -- OR THAT INTEL WOULD ISSUE
8 TO APPLE FOR PARTS.

9 MR. LEE: YOUR HONOR, WE OFFER
10 PLAINTIFF'S EXHIBIT 78.

11 THE COURT: ANY OBJECTION?

12 MR. PRICE: NO OBJECTION.

13 THE COURT: IT'S ADMITTED.

14 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
15 78, HAVING BEEN PREVIOUSLY MARKED FOR
16 IDENTIFICATION, WAS ADMITTED INTO
17 EVIDENCE.)

18 BY MR. LEE:

19 Q DO YOU SEE THE REFERENCE TO INTEL AMERICAS?

20 A YES.

21 Q WHAT IS INTEL AMERICAS.

22 MR. PRICE: LACK OF FOUNDATION.

23 BY MR. LEE:

24 Q DO YOU KNOW WHAT INTEL AMERICAS IS?

25 A YES, I DO.

1 Q WHAT IS INTEL AMERICAS?

2 A INTEL AMERICAS IS A SALES SUBSIDIARY OF INTEL
3 WHOSE FUNCTION IT IS TO SEND INVOICES AND COLLECT
4 PAYMENTS FOR INTEL PRODUCTS.

5 Q AND DO THE INVOICES IN EXHIBIT 78, ARE THEY
6 REPRESENTATIVE OF THE INVOICES THAT APPLE RECEIVES
7 FROM INTEL AMERICAS?

8 MR. PRICE: OBJECTION, LEADING.

9 THE WITNESS: THESE INVOICES.

10 THE COURT: OVERRULED.

11 THE WITNESS: ARE VERY TYPICAL?

12 BY MR. LEE:

13 Q LET'S FOCUS JUST ON THE FIRST PAGE OF THE
14 INVOICE. WHO DOES IT SHOW AS BEING BILLED FOR THE
15 SHIP ITSELF?

16 A APPLE.

17 Q AND WHERE DOES IT SHOW THE CHIPS ARE BEING
18 SOLD?

19 A APPLE.

20 Q AND DOES IT SHOW WHERE APPLE MUST SEND PAYMENT
21 FOR THE CHIPS?

22 A YES.

23 Q LET ME DIRECT YOUR ATTENTION TO THE COLUMN
24 THAT SAYS INTEL PRODUCT. INTEL PRODUCT. WHAT IS
25 THE PRODUCT THAT'S BEING --

1 A THE TRADE NAME INTEL USES FOR THIS CHIPSET IS
2 PMB 8878, SO THIS IS A REFERENCE TO THAT PARTICULAR
3 PRODUCT.

4 Q AND LOOKING AT THE INVOICE, CAN YOU TELL US
5 THE PRICE OF THE BASEBAND PROCESSOR?

6 A IN THIS PARTICULAR CASE, WE WERE CHARGED 9.09
7 EACH FOR 30,000 UNITS.

8 Q WOULD YOU TURN TO THE FOURTH PAGE OF EXHIBIT
9 78, WHICH HAS THE BATES STAMP NUMBERING 3908 IN THE
10 RIGHT-HAND COLUMN. DO YOU HAVE THAT?

11 A YES, I DO.

12 Q DOES THAT FOLLOW THE SAME FORMAT AS THE PAGE
13 THE JURORS JUST LOOKED AT?

14 A IT DOES FOLLOW THE SAME FORMAT, YES.

15 Q WHAT IS THE INTEL PRODUCT THAT IS SOLD TO
16 APPLE?

17 A IN THIS CASE IT'S THE INTEL PRODUCT THAT THEY
18 CALL PMB 9801.

19 Q WHAT WAS THE PRICE THAT YOU PAID TO INTEL?

20 A IN THIS CASE THE PRICE FOR THAT PARTICULAR
21 ASIC WAS 6.78 EACH.

22 MR. LEE: NOTHING FURTHER, YOUR HONOR,
23 AND I'LL RETRIEVE THE --

24 THE COURT: THE DEMONSTRATIVES.

25 MR. LEE: YES.

1 THE COURT: ALL RIGHT. 1:23. GO AHEAD,
2 PLEASE.

3 MR. PRICE: NO QUESTIONS.

4 THE COURT: OKAY. MAY THIS WITNESS BE
5 EXCUSED.

6 MR. LEE: THIS WITNESS MAY BE EXCUSED. I
7 DON'T THINK SUBJECT TO RECALL.

8 THE COURT: SUBJECT TO RECALL OR NOT.

9 MR. LEE: NO, NOT SUBJECT TO RECALL.

10 THE COURT: THEN HE MAY BE EXCUSED.

11 MR. LEE: YOUR HONOR, APPLE CALLS EMILIE
12 KIM AS ITS NEXT WITNESS. AND, YOUR HONOR,
13 MR. SELWYN WILL PRESENT MS. KIM.

14 THE COURT: I'M SORRY.

15 MR. LEE: MR. SELWYN WILL PRESENT
16 MS. KIM.

17 THE COURT: OH, OKAY.

18 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

19 **EMILIE KIM,**

20 BEING CALLED AS A WITNESS ON BEHALF OF THE
21 PLAINTIFF, HAVING BEEN FIRST DULY SWORN, WAS
22 EXAMINED AND TESTIFIED AS FOLLOWS:

23 THE WITNESS: YES.

24 THE CLERK: THANK YOU. PLEASE BE SEATED.
25 PLEASE STATE YOUR FULL NAME.

1 THE COURT: THE TIME IS NOW 1:25.

2 GO AHEAD.

3 **DIRECT EXAMINATION**

4 BY MR. SELWYN:

5 Q GOOD AFTERNOON. COULD YOU PLEASE INTRODUCE
6 YOURSELF TO THE JURY AND TELL US WHERE YOU WORK.

7 A MY NAME IS EMILIE KIM, AND I WORK AT A
8 START-UP CALLED PATH.

9 Q MS. KIM, IF YOU WOULDN'T MIND MOVING A LITTLE
10 CLOSER TO THE MICROPHONE.

11 WHAT KIND OF A COMPANY IS PATH?

12 A PATH IS AN INTERNET SOCIAL NETWORKING
13 START-UP.

14 Q WHERE DID YOU WORK BEFORE PATH?

15 A I WORKED AT APPLE.

16 Q WHEN DID YOU WORK AT APPLE?

17 A I STARTED FULL TIME IN 2005.

18 Q WHEN DID YOU LEAVE APPLE?

19 A LAST MONTH.

20 Q CAN YOU TELL US A LITTLE BIT ABOUT WHY YOU
21 DECIDED TO LEAVE?

22 A I HAD THE OPPORTUNITY TO WORK AT A START-UP.

23 Q CAN YOU BRIEFLY DESCRIBE YOUR EDUCATIONAL
24 BACKGROUND FOR THE JURY?

25 A I RECEIVED MY BACHELOR'S OF SCIENCE IN

1 ELECTRICAL ENGINEERING AND COMPUTER SCIENCE FROM
2 THE MASSACHUSETTS INSTITUTE OF TECHNOLOGY IN 2005;
3 AND I ALSO RECEIVED MY MASTER'S OF ENGINEERING,
4 ALSO IN ELECTRICAL ENGINEERING AND COMPUTER
5 SCIENCE, FROM M.I.T. IN 2009.

6 Q TELL US A LITTLE BIT ABOUT WHAT YOU DID AT
7 APPLE.

8 A I WAS A SOFTWARE ENGINEER.

9 Q IN WHAT GROUP?

10 A I STARTED OUT IN THE DEVELOPER TOOLS
11 ORGANIZATION, AND THEN I MOVED TO THE IOS
12 ORGANIZATION.

13 Q AND WHEN YOU WERE IN THE IOS ORGANIZATION,
14 WHAT TEAMS OR PROJECTS DID YOU WORK ON?

15 A I WORKED ON THE PHOTOS AND CAMERA APP.

16 Q WHAT IS AN APP?

17 A AN APP IS SHORT FOR APPLICATION. IT'S KIND OF
18 LIKE A COMPUTER PROGRAM.

19 Q CAN YOU GIVE US SOME EXAMPLES OF AN APP?

20 A SURE. ONE EXAMPLE WOULD BE LIKE A WEATHER
21 APP, WHICH TELLS YOU THE WEATHER FOR A GIVEN
22 LOCATION.

23 ANOTHER EXAMPLE MIGHT BE A STOCK APP
24 WHICH GIVES YOU STOCK INFORMATION.

25 Q NOW, CAN USERS ADD APPS TO APPLE PRODUCTS?

1 A YES, USERS CAN DOWNLOAD APPS FROM THE APPLE
2 APP STORE.

3 Q AND CAN USERS DELETE APPS FROM THEIR APPLE
4 PRODUCTS?

5 A YES, THE USERS CAN DELETE APPS THAT THEY GOT
6 FROM THE APP STORE.

7 Q LET ME ASK YOU A LITTLE BIT ABOUT THE TWO APPS
8 ON WHICH YOU WORKED.

9 WHAT IS THE CAMERA APP?

10 A THE CAMERA APP ALLOW USERS TO TAKE PHOTOS AND
11 VIDEOS, AS WELL AS VIEW THE PHOTOS AND VIDEOS THAT
12 THEY HAVE PREVIOUSLY TAKEN WITH THE CAMERA APP, AND
13 SHARE THOSE PHOTOS AND VIDEOS.

14 Q AND WHAT IS THE PHOTOS APP?

15 A THE PHOTOS APP ALLOWS THE USER TO VIEW PHOTOS
16 AND VIDEOS, AS WELL AS EDIT AND SHARE PHOTOS AND
17 VIDEOS.

18 Q AND TELL US HOW LONG YOU WORKED ON THE CAMERA
19 AND PHOTOS APP.

20 A I WORKED FOR ABOUT THREE YEARS ON THE PHOTOS
21 AND CAMERA APP.

22 Q DURING THOSE THREE YEARS, DID YOU HAVE ANY
23 ROLE IN WRITING CODE FOR THOSE APPS?

24 A YES.

25 Q ROUGHLY HOW MANY LINES OF CODE ARE ASSOCIATED

1 WITH THE CAMERA AND PHOTOS APP?

2 A A COUPLE HUNDRED THOUSAND LINES OF CODE.

3 Q DOES THE PHOTOS APP ALLOW USERS TO SHARE
4 PHOTOS?

5 A YES.

6 Q HOW?

7 A ONE EXAMPLE IS THROUGH E-MAIL.

8 Q AND DOES THE CAMERA APP ALSO ALLOW USERS TO
9 SHARE PHOTOS?

10 A YES.

11 Q HAVE YOU PREPARED A VIDEO TO SHOW HOW THE
12 PHOTOS APP ALLOWS USERS TO SHARE PHOTOS?

13 A YES.

14 Q CAN WE HAVE PDX 53.10 ON THE SCREEN.

15 AND AS WE PLAY THE VIDEO, CAN YOU
16 DESCRIBE WHAT WE'RE SEEING?

17 A SURE. THIS IS AN IPHONE 4. I'VE LAUNCHED THE
18 PHOTOS APP. AND YOU'LL SEE A LIST OF PHOTO ALBUMS.
19 I'M SELECTING THE VACATION PHOTO ALBUM AND I'M
20 SELECTING THIS PHOTO.

21 NOW, THERE'S A SHARE BUTTON AT THE BOTTOM
22 WHICH I'VE TAPPED AND NOW I'M TAPPING THE E-MAIL
23 PHOTO BUTTON, AND YOU CAN SEE THAT A MAIL SHEET
24 COMES UP AND THE PHOTO IS NOW ATTACHED TO THE
25 E-MAIL.

1 Q CAN USERS RUN MULTIPLE APPS AT THE SAME TIME
2 ON APPLE PRODUCTS?

3 A YES. THAT'S A FEATURE CALLED MULTITASKING.

4 Q AND WHAT IS MULTITASKING?

5 A MULTITASKING MEANS YOU CAN SEND APPS TO THE
6 BACKGROUND AND THEY KIND OF SIT THERE IN A FROZEN
7 STATE WHILE THE USER INTERACTS WITH A DIFFERENT APP
8 IN THE FOREGROUND.

9 Q LET'S SAY THE USER IS VIEWING A PICTURE OF A
10 TREE IN A PHOTOS APP. IF A USER THEN WANTS TO TAKE
11 A PICTURE, WHAT DOES SHE HAVE TO DO?

12 A THE USER WOULD SEND THE PHOTOS APP TO THE
13 BACKGROUND AND THEN LAUNCH USE THE CAMERA APP.

14 Q HAVE YOU ALSO PREPARED A VIDEO DEMONSTRATING
15 THAT FUNCTION?

16 A YES.

17 Q CAN WE HAVE PLEASE PDX 53.2.

18 AND AGAIN, CAN YOU DESCRIBE WHAT THIS IS?

19 A SURE. YOU CAN SEE HERE I'VE SELECTED A PHOTO
20 OF TREES AND I'VE SENT THAT TO THE BACKGROUND AND
21 I'VE LAUNCHED THE CAMERA APP AND CAN NOW TAKE A
22 PICTURE.

23 Q WHAT HAPPENS TO THE PHOTOS APP WHEN THE CAMERA
24 APP IS LAUNCHED?

25 A THE PHOTOS APP GOES INTO THE BACKGROUND AND IS

1 BASICALLY IN A FROZEN STATE WHILE THE CAMERA APP IS
2 LAUNCHED.

3 Q WHAT DO YOU MEAN BY "A FROZEN STATE"?

4 A BY FROZEN STATE I MEAN IT'S STILL PRESENT IN
5 MEMORY, BUT THE CODE ISN'T EXECUTING. THE USER
6 CAN'T INTERACT WITH THAT APP.

7 Q AND THEN WHAT HAPPENS TO THE APP WHEN IT
8 RETURNS TO THE FOREGROUND?

9 A WHEN IT RETURNS TO THE FOREGROUND, THE APP
10 BASICALLY BECOMES UNFROZEN AND THE USER CAN START
11 INTERACTING WITH THE APP AGAIN.

12 Q ARE THERE CIRCUMSTANCES UNDER WHICH THE APP
13 WILL NOT RETURN TO THE FOREGROUND FROM THE FROZEN
14 STATE?

15 A YES.

16 Q TELL US WHEN.

17 A ONE EXAMPLE WILL BE IF THE DEVICE IS RUNNING
18 LOW ON MEMORY, THEN THE DEVICE WILL AUTOMATICALLY
19 GO THROUGH AND KILL APPLICATIONS IN THE BACKGROUND
20 TO FREE UP MEMORY FOR THE APP THAT THE USER IS
21 CURRENTLY USING.

22 Q TO TAKE THE EXAMPLE THAT YOU JUST SHOWED THE
23 JURY, IF THE USER LEAVES THE PHOTOS APP TO TAKE A
24 PICTURE AND THEN RETURNS TO THE PHOTOS APP, WILL
25 THE USER ALWAYS RETURN TO THE SAME IMAGE?

1 A NO, NOT ALWAYS.

2 Q WHY NOT?

3 A FOR EXAMPLE, WITH THAT MEMORY SITUATION THAT I
4 DESCRIBED, IF THE PHOTOS APP IS KILLED WHILE THE
5 CAMERA APP IS UP AND RUNNING, THEN THE USER WILL
6 NOT RETURN TO THAT PICTURE OF THE TREES.

7 Q HAVE YOU ALSO PREPARED A VIDEO OF THAT?

8 A YES.

9 Q CAN WE PLEASE HAVE PDX 53.3.

10 AND DESCRIBE WHAT WE'RE SEEING AS WE RUN
11 THE VIDEO.

12 A SURE. SO HERE YOU CAN SEE AT THE END OF THE
13 PREVIOUS VIDEO, I LAUNCHED THE CAMERA APP, AND
14 AFTER PREVIOUSLY SELECTING A PHOTO OF THE TREES IN
15 THE PHOTOS APP, AND NOW I'M GOING TO LAUNCH THREE
16 VIDEO GAMES ON THIS IPAD.

17 THE SEQUENCES HAVE BEEN SHORTENED, THE
18 FLASH SCREENS ARE QUITE LONG FOR THE VIDEO GAMES.

19 BUT THEN AFTER THE THIRD GAME, I'VE
20 LAUNCHED THE CAMERA APP AGAIN AND THEN NOW I'M
21 GOING TO TAKE A PICTURE OF THIS USB CABLE.

22 SO I'VE TAKEN A PICTURE OF THE USB CABLE
23 IN THE CAMERA APP.

24 AND THEN NOW I'M SENDING THE CAMERA APP
25 TO THE BACKGROUND, AND NOW WHEN I LAUNCH THE PHOTOS

1 APP, YOU'LL RECALL I WAS SEEING A PICTURE OF THE
2 TREES, AND NOW THAT PICTURE IS NO LONGER VISIBLE.

3 Q WHY DIDN'T YOU RETURN TO THE PICTURE OF THE
4 TREES?

5 A IN THIS CASE, THE APP WAS RUNNING LOW ON
6 MEMORY AS THE VIDEO GAMES WERE BEING LAUNCHED, SO
7 THE PHOTOS APP WAS KILLED IN THE BACKGROUND.

8 Q ARE THERE ANY OTHER EVENTS THAT WOULD CAUSE
9 THE APPLE PRODUCTS TO NOT RETURN TO THE LAST VIEWED
10 IMAGE?

11 A YES. FOR EXAMPLE, THE USER COULD POWER OFF
12 THE DEVICE OR THE DEVICE COULD RUN OUT OF BATTERY,
13 AND IN THAT CASE THE PHOTOS APP WOULD NOT RETURN TO
14 THE PICTURE OF THE TREES.

15 ALSO, FOR EXAMPLE, IF THE USER HAD SYNCED
16 THAT PHOTO THROUGH ITUNES AND THEN, WHILE THE
17 PHOTOS APP WAS IN THE BACKGROUND, DECIDED TO UNSYNC
18 THAT PHOTO, THE PICTURE WOULD NO LONGER BE THERE.

19 Q DOES THE IPHONE HAVE ANY FEATURES OR FUNCTIONS
20 REFERRED TO AS A MODE?

21 A YES.

22 Q CAN YOU GIVE US AN EXAMPLE?

23 A SURE. ONE EXAMPLE IS AIRPLANE MODE. WHEN THE
24 USER GET ON AN AIRPLANE, THEY CAN TURN ON THE
25 AIRPLANE MODE, WHICH TURNS OFF THE CELLULAR

1 SIGNALS.

2 Q WHAT IS THE DIFFERENCE BETWEEN AN APP AND A
3 MODE?

4 A AN APP IS LIKE AN IMMERSIVE ENVIRONMENT FOR
5 THE USER. THEY CAN INTERACT WITH AN APP AND DO
6 LOTS OF DIFFERENT THINGS, AND AN APP CAN EVEN
7 CONTAIN MODES, WHEREAS A MODE IS ESSENTIALLY KIND
8 OF LIKE A STATE.

9 Q LET'S RETURN TO THE TOPIC OF VIEWING PHOTOS.
10 CAN YOU REMIND US HOW THE USER MAY VIEW PHOTOS FROM
11 THE PHOTOS APP?

12 A SURE. THE USER CAN SELECT A PHOTO ALBUM ON
13 THEIR DEVICE, AND THEY'RE PRESENTED WITH A
14 THUMBNAIL GRID OF PHOTOS. THEY CAN THEN SELECT ONE
15 OF THE PHOTOS AND VIEW IT IN FULL SCREEN.

16 Q AND WHEN A USER IS VIEWING A PHOTO IN FULL
17 SCREEN IN THE PHOTOS APP, CAN SHE THEN VIEW OTHER
18 PHOTOS IN THE ALBUM?

19 A YES.

20 Q HOW?

21 A IN IOS 4, THERE ARE ARROW BUTTONS THAT THE
22 USER CAN USE TO NAVIGATE TO OTHER PHOTOS IN THE
23 ALBUM, AS WELL AS SELECTING OTHER PHOTOS IN THE
24 ALBUM.

25 Q HAS THE WAY IN WHICH THE USER CAN VIEW THE

1 PREVIOUS AND NEXT PHOTOS IN APPLE PRODUCTS CHANGED
2 BETWEEN THE VERSION OF IOS CALLED IOS 4 AND THE
3 VERSION CALLED IOS 5?

4 A YES. IN IOS 5, THE ARROW BUTTONS ARE NO
5 LONGER PRESENT.

6 Q AND HAVE YOU PREPARED A VIDEO TO DEMONSTRATE
7 THIS?

8 A YES.

9 Q CAN WE HAVE PDX 53.6, PLEASE.

10 A HERE I'VE LAUNCHED THE PHOTOS APP AND I'VE
11 SELECTED THE PHOTO ALBUM CALLED VACATION AND I'VE
12 SELECTED A PHOTO, AND NOW YOU CAN SEE I TAPPED THE
13 BACK ARROW BUTTON TO GO TO THE PREVIOUS PHOTO AND
14 THE NEXT ARROW TO GO BACK TO MY FIRST PHOTO.

15 Q AND WHAT CHANGES WERE MADE FROM IOS 4 TO IOS 5
16 FOR THIS FEATURE?

17 A IN IOS 5 THOSE ARROW BUTTONS WERE REMOVED.

18 Q DO THE PHOTOS AND CAMERA APPS LOOK DIFFERENT
19 WHEN THEY MOVE BETWEEN PHOTOS IN THE OLDER LEFT AND
20 RIGHT ARROW SYSTEM AS COMPARED WITH THE SWIPING
21 SYSTEM?

22 A YES. WHEN THE USER USES THE ARROW BUTTONS TO
23 NAVIGATE BETWEEN PHOTOS, THE OLD PHOTO INSTANTLY
24 DISAPPEARS AS THE NEW PHOTO INSTANTLY APPEARS IN
25 ITS PLACE.

1 SO WHEN THE USER SWIPES THROUGH THE
2 PHOTOS -- WHEN THE USER SWIPES BETWEEN PHOTOS, THE
3 OLD PHOTO ANIMATES OFF SCREEN AS THE NEW PHOTO
4 ANIMATES ON SCREEN AT THE SAME TIME.

5 Q COULD WE HAVE PDX 53.7? AS WE PLAY THIS
6 VIDEO, CAN YOU EXPLAIN WHAT WE'RE SEEING?

7 A SURE. HERE YOU CAN SEE I'VE SELECTED THIS
8 PICTURE AND NOW I'M SWIPING BACK TO LOOK AT THE
9 PREVIOUS PICTURE AND SWIPING TO LOOK BACK AT THE
10 FIRST PICTURE AGAIN.

11 Q LAST TOPIC. LET'S TURN TO THE TOPIC OF
12 E-MAILING PHOTOS.

13 SUPPOSE A USER WANTS TO E-MAIL ONE OF HER
14 PHOTOS TO A FRIEND. HOW DOES SHE DO THAT?

15 A THE USER WOULD SELECT THE PHOTO THAT SHE WANTS
16 TO E-MAIL AND THEN TAP THE SHARE BUTTON, TAP THE
17 E-MAIL PHOTO BUTTON, AND THEN A MAIL SHEET WILL
18 COME UP WITH THE PHOTO ATTACHED TO THE E-MAIL AND
19 SHE CAN BEGIN WRITING HER E-MAIL.

20 Q AFTER A USER HAS SELECTED A PHOTO AND STARTS
21 WRITING THE E-MAIL, CAN THE USER THEN SELECT OTHER
22 PHOTOS TO E-MAIL?

23 A NO, NOT WITHOUT LEAVING THE E-MAIL.

24 Q CAN THE USER SCROLL THROUGH OTHER PHOTOS TO
25 SEE IF THERE MIGHT BE OTHER PHOTOS THAT SHE WANTS

1 TO SEND IN THE SAME E-MAIL?

2 A NO, NOT WITHOUT LEAVING THE E-MAIL.

3 Q AND HAVE YOU PREPARED A VIDEO TO HELP
4 DEMONSTRATE THIS AS WELL?

5 A YES.

6 Q CAN WE PLEASE HAVE PDX 53.9.

7 PLEASE EXPLAIN.

8 A SO HERE I'M LAUNCHING THE PHOTOS APP, AND THEN
9 A LIST OF PHOTO ALBUMS ON THE DEVICE WILL APPEAR.

10 I'VE SELECTED THE VACATION PHOTO ALBUM
11 AND NOW I'VE SELECTED A PHOTO. I'M TAPPING THE
12 SHARE BUTTON AT THE BOTTOM, AND NOW THE E-MAIL
13 PHOTO BUTTON, AND YOU CAN SEE THE MAIL SHEET COMING
14 UP WITH THE PHOTO ATTACHED TO THE E-MAIL.

15 AND NOW YOU CAN SEE I'M TRYING TO
16 NAVIGATE TO OTHER PHOTOS, BUT I CAN'T. I'M STUCK
17 IN THE E-MAIL.

18 Q IN THE CAMERA APP, WOULD A USER BE ABLE TO
19 SELECT OTHER PHOTOS AFTER CHOOSING TO E-MAIL A
20 PHOTO?

21 A NO. IT BEHAVES THE SAME AS THE PHOTOS APP.

22 MR. SELWYN: THANK YOU, MS. KIM.

23 NO FURTHER QUESTIONS.

24 THE COURT: ALL RIGHT. IT'S 1:30.

25 ANY CROSS?

1 GO AHEAD, PLEASE.

2 MR. JOHNSON: THANK YOU, YOUR HONOR.

3 **CROSS-EXAMINATION**

4 BY MR. JOHNSON:

5 Q GOOD AFTERNOON, MS. KIM. I'M KEVIN JOHNSON.
6 JUST A COUPLE OF QUESTIONS.

7 BEFORE SELLING ITS IPHONES, IPADS, AND
8 IPOD TOUCHES TO THE PUBLIC, APPLE TESTS THOSE
9 PRODUCTS TO MAKE SURE THAT A USER CAN SEND AN
10 E-MAIL, E-MAIL A PHOTO, AND ACTUALLY SCROLL THROUGH
11 THE PHOTOS; RIGHT?

12 A YES.

13 Q LET ME -- YOU SHOULD HAVE A BINDER IN FRONT OF
14 YOU THAT'S BLACK. I WANT TO DIRECT YOUR ATTENTION
15 TO DX 647.

16 YOU RECOGNIZE THIS; RIGHT? LET ME JUST
17 ASK YOU, WHAT IS THIS?

18 A I RECOGNIZE THIS KIND OF E-MAIL, AND IT LOOKS
19 LIKE A -- THE REPORT FOR QUICK LOOK TESTS.

20 MR. JOHNSON: YOUR HONOR, WE MOVE FOR
21 ADMISSION OF DX 647.

22 MR. SELWYN: NO OBJECTION.

23 THE COURT: NO OBJECTION. OKAY. 647 IS
24 ADMITTED.

25 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER

1 647, HAVING BEEN PREVIOUSLY MARKED FOR
2 IDENTIFICATION, WAS ADMITTED INTO
3 EVIDENCE.)

4 BY MR. JOHNSON:

5 Q AND, MS. KIM, CAN YOU ALSO LOOK AT EXHIBIT
6 648, PLEASE? AND WHAT'S THIS, PLEASE?

7 A THIS ALSO LOOKS LIKE A KIND OF E-MAIL FOR A
8 QUICK LOOK REPORTS.

9 MR. JOHNSON: YOUR HONOR, WE'D ASK THAT
10 EXHIBIT 648 BE MOVED IN EVIDENCE.

11 THE COURT: ANY OBJECTION?

12 MR. SELWYN: NO OBJECTION.

13 THE COURT: IT'S ADMITTED.

14 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
15 648, HAVING BEEN PREVIOUSLY MARKED FOR
16 IDENTIFICATION, WAS ADMITTED INTO
17 EVIDENCE.)

18 BY MR. JOHNSON:

19 Q MS. KIM, DURING THE VIDEO THAT WE SAW, YOU
20 SHOWED AN INSTANCE FOR THE IPOD AND I THINK THE
21 IPAD WHERE, AFTER YOU'D TAKEN A PHOTO, IT DIDN'T
22 RETURN TO THE SAME PHOTO IN THE GALLERY. DO YOU
23 REMEMBER THAT?

24 A YES.

25 Q NOW, THERE ARE PLENTY OF INSTANCES WHERE IT

1 DOES RETURN TO THE SAME PHOTO; RIGHT?

2 A IT CAN RETURN TO THE SAME PHOTO.

3 Q AND YOU'RE AWARE THAT IT DOES; RIGHT?

4 A IN SOME CASES, YES.

5 MR. JOHNSON: OKAY. THANK YOU VERY MUCH.

6 NO FURTHER QUESTIONS, YOUR HONOR.

7 THE COURT: ALL RIGHT. 1:38.

8 IS THERE ANY REDIRECT?

9 MR. SELWYN: NO, YOUR HONOR.

10 THE COURT: ALL RIGHT. MAY THIS WITNESS
11 BE EXCUSED, AND IS IT SUBJECT TO RECALL OR NOT?

12 MR. LEE: I THINK --

13 MR. SELWYN: SHE MAY BE EXCUSED AND IS
14 NOT SUBJECT TO RECALL.

15 THE COURT: DO YOU AGREE WITH THAT?

16 MR. JOHNSON: YES, YOUR HONOR.

17 THE COURT: ALL RIGHT. THEN YOU MAY BE
18 EXCUSED.

19 MR. LEE: YOUR HONOR, APPLE NOW CALLS
20 PROFESSOR DOURISH, WHO I THINK IS NEXT ON THE LIST
21 WE GAVE YOUR HONOR.

22 THE COURT: OKAY. GO AHEAD, PLEASE.

23 MR. LEE: MR. SELWYN IS GOING TO DO THE
24 HONORS AGAIN, YOUR HONOR.

25 THE COURT: OKAY.

1 THE CLERK: MR. DOURISH, PLEASE STAND AND
2 RAISE YOUR RIGHT HAND.

3 **PAUL DOURISH,**
4 BEING CALLED AS A WITNESS ON BEHALF OF THE
5 PLAINTIFF, HAVING BEEN FIRST DULY SWORN, WAS
6 EXAMINED AND TESTIFIED AS FOLLOWS:

7 THE WITNESS: I DO.

8 THE CLERK: THANK YOU. PLEASE BE SEATED.

9 THE COURT: TIME IS 1:38.

10 GO AHEAD, PLEASE. 1:39. GO AHEAD.

11 **DIRECT EXAMINATION**

12 BY MR. SELWYN:

13 Q GOOD AFTERNOON, SIR. WOULD YOU PLEASE
14 INTRODUCE YOURSELF TO THE JURY AND TELL US WHERE
15 YOU WORK?

16 A MY NAME IS PAUL DOURISH. I'M A PROFESSOR IN
17 THE SCHOOL OF INFORMATION AND COMPUTER SCIENCES AT
18 UNIVERSITY OF CALIFORNIA IRVINE.

19 Q AND PROFESSOR DOURISH, IF YOU COULD MOVE A
20 LITTLE BIT CLOSER TO YOUR MICROPHONE, THAT WOULD BE
21 GREAT. THANK YOU.

22 HAVE YOU BEEN RETAINED AS AN EXPERT BY
23 APPLE IN THIS CASE?

24 A I HAVE.

25 Q FOR WHICH PATENT HAVE YOU BEEN ASKED TO OFFER

1 OPINIONS?

2 A THE '893 PATENT.

3 Q WOULD YOU PLEASE SUMMARIZE YOUR EDUCATIONAL
4 BACKGROUND FOR THE JURY?

5 A I RECEIVED A BACHELOR OF SCIENCE WITH HONORS
6 IN ARTIFICIAL INTELLIGENCE AND COMPUTER SCIENCE
7 FROM THE UNIVERSITY OF EDINBURGH IN 1989, AND A
8 PH.D. IN COMPUTER SCIENCE FROM THE UNIVERSITY OF
9 LONDON IN 1996.

10 Q WHAT DID YOU DO AFTER YOU EARNED YOUR PH.D.?

11 A THEN I MOVED TO CALIFORNIA TO TAKE UP A
12 POSITION WITH APPLE.

13 Q WHAT TYPE OF WORK DID YOU DO AT APPLE?

14 A I WORKED IN APPLE RESEARCH LABS WHERE WE
15 CONDUCTED ADVANCED RESEARCH INTO SOFTWARE
16 ARCHITECTURES FOR USER INTERFACES AND INTERACTIVE
17 SYSTEMS.

18 Q HOW LONG DID YOU WORK AT APPLE?

19 A I WAS THERE FOR APPROXIMATELY ONE YEAR.

20 Q WHAT DID YOU DO NEXT?

21 A THEN I MOVED UP THE ROAD TO PALO ALTO TO A
22 RESEARCH POSITION AT XEROX PARK.

23 Q WHAT IS XEROX PARK?

24 A XEROX PARK IS AN ADVANCED RESEARCH LABORATORY
25 OWNED BY THE XEROX CORPORATION. IT'S ONE OF THE

1 PREEMINENT COMPUTER SCIENCE RESEARCH LABS IN THE
2 WORLD.

3 Q WHEN DID YOU JOIN THE FACULTY AT THE
4 UNIVERSITY OF CALIFORNIA AT IRVINE?

5 A I JOINED U.C. IRVINE IN 2000 AS AN ASSISTANT
6 PROFESSOR; I WAS PROMOTED TO ASSOCIATE PROFESSOR
7 WITH TENURE IN 2002; AND THEN FULL PROFESSOR IN
8 2006.

9 Q WHAT HAS BEEN THE FOCUS OF YOUR RESEARCH AT
10 THE UNIVERSITY?

11 A I WORKED ON A WIDE VARIETY OF THINGS, BUT MY
12 PRIMARY RESEARCH IS AROUND THE USER EXPERIENCE
13 ASSOCIATED WITH MOBILE AND UBIQUITOUS COMPUTING,
14 INCLUDING SOME WORK SPECIFICALLY FOCUSSED ON HOW
15 PEOPLE CAN CAPTURE AND SHARE DIGITAL IMAGES ON
16 MOBILE PHONES.

17 Q HAVE YOU AUTHORED ANY BOOKS OR ACADEMIC
18 PUBLICATIONS OVER THE COURSE OF YOUR CAREER?

19 A I 'VE PUBLISHED OVER 100 PAPERS IN PEER
20 REVIEWED CONFERENCES AND JOURNALS, CONTRIBUTED
21 SEVERAL BOOK CHAPTERS, AND WRITTEN TWO BOOKS.

22 Q AND ARE YOU A NAMED INVENTOR ON ANY PATENTS?

23 A I 'M AN INVENTOR ON 19 PATENTS FROM MY TIME AT
24 XEROX.

25 Q HAVE YOU EVER TESTIFIED IN COURT BEFORE ?

1 A NO, NEVER.

2 Q HOW MANY YEARS HAVE YOU BEEN STUDYING,
3 TEACHING, AND WORKING IN THE FIELD OF USER
4 INTERFACE TECHNOLOGY?

5 A OVER 20 YEARS.

6 MR. SELWYN: YOUR HONOR, WE OFFER
7 DR. DOURISH AS AN EXPERT IN THE FIELD OF USER
8 INTERFACE TECHNOLOGY FOR COMPUTER-BASED EMBEDDED
9 SYSTEMS.

10 MR. JOHNSON: NO OBJECTION.

11 THE COURT: ALL RIGHT. SO HE'S SO
12 CERTIFIED.

13 BY MR. SELWYN:

14 Q ARE YOU BEING PAID FOR YOUR WORK IN THIS CASE?

15 A I AM.

16 Q AT WHAT RATE?

17 A AT \$400 AN HOUR.

18 Q APPROXIMATELY HOW MANY HOURS HAVE YOU WORKED
19 ON THIS MATTER?

20 A OVER 200 HOURS.

21 Q WHAT ISSUES HAVE YOU BEEN ASKED TO CONSIDER IN
22 THIS CASE?

23 A I WAS ASKED TO CONSIDER THE VALIDITY OF CLAIM
24 10 OF THE '893 PATENT AND WHETHER PARTICULAR APPLE
25 PRODUCTS MIGHT INFRINGE.

1 Q WHAT MATERIALS DID YOU CONSIDER IN REACHING
2 YOUR OPINION?

3 A I LOOKED AT THE '893 PATENT ITSELF AND ITS
4 PROSECUTION HISTORY; AT A NUMBER OF PIECES OF
5 RELATED PRIOR ART; I HAVE LOOKED AT THE DEPOSITION
6 TESTIMONY OF MS. KIM AND OTHER APPLE ENGINEERS;
7 ALSO THE EXPERT REPORTS OF WOODWARD YANG.

8 I'VE ALSO REVIEWED SOURCE CODE AND
9 EXAMINED THE APPLE PRODUCTS THEMSELVES.

10 Q AND JUST VERY BRIEFLY, WHAT CONCLUSIONS DID
11 YOU REACH REGARDING WHETHER THE ACCUSED APPLE
12 PRODUCTS INFRINGE CLAIM 10 AND WHETHER CLAIM 10 IS
13 VALID?

14 A THE APPLE PRODUCTS DO NOT INFRINGE CLAIM 10
15 AND CLAIM 10 IS NOT VALID.

16 Q LET ME ASK YOU SOME QUESTIONS ABOUT THE
17 TECHNOLOGY DESCRIBED IN THE '893 PATENT.

18 FIRST, CAN YOU EXPLAIN TO US WHAT A
19 DIGITAL IMAGE PROCESSING APPARATUS IS?

20 A IN TERMS OF THE '893 PATENT, A DIGITAL IMAGE
21 PROCESSING APPARATUS IS ANY APPARATUS THAT CAN
22 CAPTURE AND DISPLAY AND STORE IMAGES IN A DIGITAL
23 FORMAT.

24 Q AND WHAT EXAMPLES OF A DIGITAL IMAGING
25 PROCESS -- PARDON ME.

1 WHAT EXAMPLES OF A DIGITAL IMAGE
2 PROCESSING APPARATUS DOES THE PATENT PROVIDE?

3 A TWO. A DIGITAL CAMERA AND A CAMERA PHONE.

4 Q AND DOES THE PATENT CLAIM TO HAVE INVENTED THE
5 FIRST DIGITAL CAMERA OR CAMERA PHONE?

6 A NO. THEY WERE BOTH WELL KNOWN AT THE TIME.

7 Q AND DOES THE PATENT DISCUSS PRIOR ART FOR
8 DIGITAL CAMERAS THAT EXISTED BEFORE THE PATENT WAS
9 FILED?

10 A YES. THE BACKGROUND SECTION OF THE PATENT
11 DESCRIBES PRIOR ART DIGITAL CAMERAS.

12 Q CAN WE PLEASE HAVE COLUMN 1, LINES 37 THROUGH
13 38 OF THE '893 PATENT ON THE SCREEN.

14 DO YOU SEE THERE THAT THE '893 PATENT
15 REFERS TO A REPRODUCING MODE OR STORAGE IMAGE
16 DISPLAY MODE FOR THE CONVENTION DIGITAL CAMERA?

17 A YES.

18 Q WHAT IS A MODE?

19 A A MODE IS A DISTINCT SET OF OPERATIONS OR
20 SETTING OF A DEVICE OR AN APPLICATION. SO IT'S A
21 WAY YOU CAN CHOOSE WHICH PART OF THE FUNCTIONALITY
22 YOU WANT TO MAKE USE OF.

23 Q HOW MANY DIFFERENT MODES CAN A DEVICE BE IN
24 ANY ONE TIME?

25 A MODES OCCUR IN SETS AND THEY'RE NORMALLY

1 MUTUALLY EXCLUSIVE, WHICH MEANS YOU CAN ONLY BE IN
2 ONE MODE AT A TIME.

3 Q LET'S LOOK IF WE CAN AT PDX 42.4. CAN YOU
4 EXPLAIN WHAT'S SHOWN HERE, PLEASE?

5 A SO THIS IS A GRAPHIC OF AN AM/FM RADIO AND IT
6 EMBODIES THIS IDEA OF MODES. SO THE AM/FM RADIO
7 HAS TWO MODES HERE. IT HAS AN FM MODE, SO YOU CAN
8 CHOOSE A STATION IN THE FM BAND. IT HAS AN AM MODE
9 SO YOU CAN CHOOSE A STATION IN AM BAND.

10 BUT IT CAN ONLY BE IN ONE OF THOSE MODES
11 AT A TIME.

12 Q LET'S LOOK BACK AT THE PATENT, COLUMN 1, LINES
13 37 AND 38.

14 DO YOU SEE THE REFERENCE TO A REPRODUCING
15 MODE OR A STORED IMAGE DISPLAY MODE?

16 A YES.

17 Q WHAT ARE THEY?

18 A IN TERMS OF THE PATENT, THOSE ARE A MODE IN
19 WHICH IT WILL DISPLAY AN IMAGE THAT'S BEEN STORED
20 ON IT.

21 Q AND IF WE GO DOWN TO LINE 48, DO YOU SEE THE
22 PATENT REFERS TO A PHOTOGRAPHING MODE?

23 A YES.

24 Q WHAT IS THAT?

25 A THAT'S A MODE IN WHICH THE DIGITAL IMAGE

1 PROCESSING APPARATUS CAN CAPTURE NEW IMAGES.

2 Q LET'S LOOK AT FIGURE 1 OF THE PATENT, PLEASE.
3 WHAT IS SHOWN HERE?

4 A SO THIS IS A DIGITAL IMAGE PROCESSING
5 APPARATUS, OR THE BACK OF THE DIGITAL CAMERA THAT
6 EMBODIES THE INVENTION OF THE '893 PATENT.

7 Q DOES THE DIGITAL CAMERA SHOWN IN FIGURE 1 HAVE
8 ANY FEATURE RELATES TO A PHOTOGRAPHING MODE?

9 A YES --

10 MR. JOHNSON: OBJECTION, LEADING.

11 THE COURT: OVERRULED.

12 THE WITNESS: YES. IN FACT, IT HAS
13 SEVERAL PHOTOGRAPHING MODES. IT HAS A NIGHT
14 PHOTOGRAPHING MODE, A PORTRAIT PHOTOGRAPHING MODE,
15 A PROGRAM PHOTOGRAPHING MODE, AND I BELIEVE IT'S
16 CALLED THE SIMPLE PHOTOGRAPHING MODE.

17 AND YOU CAN SELECT AMONGST THOSE USING A
18 THING CALLED A MODE DIAL THAT'S PRESENTED AT THE
19 TOP OF THAT FIGURE AND LABELED AS 14.

20 BY MR. SELWYN:

21 Q WHAT IS A GENERAL PURPOSE COMPUTING DEVICE?

22 A A GENERAL PURPOSE COMPUTING DEVICE IS ONE THAT
23 IS POWERFUL ENOUGH TO BE ABLE TO RUN ANY KIND OF
24 APPLICATION YOU WANT TO INSTALL.

25 SO YOU CAN DOWNLOAD AND INSTALL SOFTWARE

1 PROGRAMS THAT CAN EXTEND THE FUNCTIONALITY OF THE
2 DEVICE BY LETTING IT DO THINGS THAT IT HADN'T
3 NECESSARILY BEEN DESIGNED INTO IT OR CONCEIVED OF
4 WHEN IT WAS DESIGNED.

5 Q AND COULD YOU GIVE THE JURY A FEW EXAMPLES OF
6 A GENERAL PURPOSE COMPUTING DEVICE?

7 A SURE. YOUR TYPICAL DESKTOP COMPUTER WOULD BE
8 A GENERAL PURPOSE COMPUTING DEVICE BECAUSE YOU CAN
9 INSTALL APPS ON IT. ALSO A LAPTOP OR A SMARTPHONE.

10 Q ARE CONVENTIONAL DIGITAL CAMERAS A TYPE OF
11 COMPUTING DEVICE?

12 A CONVENTIONAL DIGITAL CAMERAS ARE NOT. THEY
13 DON'T HAVE ENOUGH CAPACITY TO BE ABLE TO RUN
14 APPLICATIONS.

15 Q WHAT IS AN APPLICATION?

16 A SO AN APPLICATION IS A PIECE OF SOFTWARE, A
17 SOFTWARE PROGRAM THAT YOU CAN INSTALL ON TO A
18 GENERAL PURPOSE COMPUTING DEVICE, AND THAT ALLOWS
19 USERS TO EXECUTE DIFFERENT KINDS OF FUNCTIONS.

20 Q IS AN APP THE SAME OR DIFFERENT FROM A MODE?

21 A OH, APPS ARE QUITE DIFFERENT FROM MODES.

22 SO AS I SAID, A MODE IS A DISTINCT STATE
23 OF OPERATION OR A SETTING OF A DEVICE OR AN
24 APPLICATION, SO IT'S USED TO CHOOSE AMONGST
25 PREDEFINED FUNCTIONALITY THAT'S ALREADY

1 INCORPORATED INTO THE DEVICE OR THE APPLICATION
2 THAT IT'S A MODE OF.

3 AN APPLICATION, ON THE OTHER HAND, SORT
4 OF EXTENDS THE FUNCTIONALITY AND LETS YOU DO NEW
5 THINGS. SO THEY'RE QUITE DIFFERENT.

6 Q LET'S LOOK, IF WE COULD, AT SLIDE PDX 42.5.
7 WHAT DO WE SEE ON THIS SLIDE?

8 A THIS SHOWS TWO OF THE APPLE DEVICES IN
9 QUESTION THAT I WAS ASKED TO EXAMINE WITH RESPECT
10 TO '893, AN IPHONE 3GS AND AN IPHONE 4.

11 AND IN PARTICULAR WHAT'S HIGHLIGHTED HERE
12 IN RED ARE THE SWITCHES ON THE SIDES OF THOSE
13 DEVICES THAT ALLOW YOU TO SWITCH BETWEEN A SILENT
14 MODE AND NON-SILENT MODE.

15 Q NOW THAT WE'VE COVERED SOME OF THE TECHNOLOGY
16 BACKGROUND, LET'S TURN, IF WE COULD, TO YOUR
17 NON-INFRINGEMENT OPINION.

18 CAN YOU REMIND US WHICH APPLE PRODUCTS
19 SAMSUNG HAS ACCUSED OF INFRINGING CLAIM 10?

20 A THERE ARE FOUR, SO THE IPHONE 3GS AND IPHONE 4
21 THAT ARE ILLUSTRATED THERE, ALSO THE FOURTH
22 GENERATION IPOD TOUCH, AND THE IPAD 2.

23 Q WHAT IS YOUR OPINION REGARDING WHETHER THESE
24 APPLE PRODUCTS INFRINGE CLAIM 10?

25 A THEY DO NOT INFRINGE CLAIM 10.

1 Q ARE THERE ANY DIFFERENCES AMONG THE FOUR APPLE
2 PRODUCTS THAT ARE RELEVANT TO YOUR NON-INFRINGEMENT
3 ANALYSIS?

4 A NO.

5 Q WHAT IS THE CAMERA APP?

6 A THE CAMERA APP IS AN APPLICATION THAT RUNS ON
7 THE APPLE DEVICES AND SO IT'S A PIECE OF SOFTWARE
8 THAT CONTROLS THE CAMERA HARDWARE THAT'S
9 INCORPORATED INTO THE DEVICES, AND IT ALLOWS A USER
10 TO TAKE PHOTOGRAPHS.

11 Q WHAT IS THE PHOTOS APP?

12 A THE PHOTOS APP IS A SEPARATE PROGRAM THAT ALSO
13 RUNS ON THOSE DEVICES AND IT ALLOWS USERS TO VIEW
14 PHOTOGRAPHS THAT HAVE BEEN STORED ON THE DEVICE.

15 Q I WANT TO FOCUS YOUR ATTENTION NOW ON THE
16 CLAIM LANGUAGE. IF WE CAN HAVE CLAIM 10 ON THE
17 SCREEN AND IN PARTICULAR THE LIMITATION THAT BEGINS
18 CONTROLLER CONNECTED.

19 CAN YOU EXPLAIN TO THE JURY IN GENERAL
20 TERMS WHAT THIS LIMITATION INVOLVES?

21 A SO THIS LIMITATION SAYS THAT THE CONTROLLER,
22 WHICH IS ESSENTIALLY THE BRAINS OF THE DIGITAL
23 IMAGE PROCESSING APPARATUS, CAN OPERATE IN TWO
24 SEPARATE MODES, THE PHOTOGRAPHING MODE THAT WE
25 DISCUSSED IN WHICH NEW PHOTOGRAPHS CAN BE TAKEN AND

1 STORED, AND ALSO A STORED IMAGE DISPLAY MODE IN
2 WHICH IMAGES THAT HAVE ALREADY BEEN STORED IN THE
3 DEVICE CAN BE DISPLAYED ON ITS SCREEN.

4 Q DO THE ACCUSED APPLE PRODUCTS HAVE THE CLAIMED
5 PHOTOGRAPHING MODE?

6 A NO.

7 Q WHY NOT?

8 A WELL, THE -- THE APPLE PRODUCTS HAVE A CAMERA
9 APP THAT PROVIDES THE FUNCTIONALITY THAT LETS YOU
10 TAKE PICTURES. IT DOESN'T HAVE A MODE.

11 Q DO THE ACCUSED APPLE PRODUCTS HAVE THE CLAIMED
12 STORED IMAGE DISPLAY MODE?

13 A NO, THEY DO NOT.

14 Q AND, AGAIN, WHY NOT?

15 A AGAIN, FOR THE SAME REASON. THEY HAVE A
16 PHOTOS APP THAT ALLOWS YOU TO VIEW PHOTOGRAPHS THAT
17 HAVE BEEN STORED, BUT THE DEVICES DON'T HAVE A
18 STORED IMAGE DISPLAY MODE.

19 Q NOW I WANT TO GO DOWN TO THE NEXT LIMITATION
20 THAT BEGINS WHEREUPON THE USER, AND LET ME FIRST
21 FOCUS YOUR ATTENTION ON THE TERM MODE SWITCHING
22 OPERATION.

23 IN GENERAL TERMS, CAN YOU EXPLAIN TO US
24 WHAT THIS WHEREIN LIMITATION INVOLVES?

25 A SO THIS SAYS FIRST THAT YOU SHOULD BE ABLE

1 TO -- THIS SAYS THAT YOU SHOULD BE ABLE TO SWITCH
2 FROM THE STORED IMAGE DISPLAY MODE TO THE
3 PHOTOGRAPHING MODE AND THEN BACK AGAIN WITH THE
4 MODE SWITCHING OPERATION.

5 Q DO THE ACCUSED APPLE PRODUCTS ALLOW A USER TO
6 SWITCH BETWEEN THE CAMERA APP AND PHOTO APP?

7 A YES, THEY DO.

8 Q DOES THE SWITCHING ABILITY SATISFY THE MODE
9 SWITCHING OPERATION?

10 A NO, IT DOES NOT BECAUSE, AGAIN, THE APPS AND
11 MODES ARE DIFFERENT, SO SWITCHING AMONGST APPS IS
12 NOT THE SAME AS SWITCHING AMONGST MODES.

13 Q LET'S TURN TO THE PART OF THAT WHEREIN CLAUSE
14 THAT HAS THE WORDS IRRESPECTIVE OF THE DURATION.
15 CAN YOU HIGHLIGHT THAT?

16 WHAT DOES THAT INVOLVE?

17 A SO THIS SAYS THAT WHEN YOU PERFORM THAT MODE
18 SWITCHING OPERATION, AND IN PARTICULAR WHEN YOU GO
19 FROM THE STORED IMAGE DISPLAY MODE TO THE
20 PHOTOGRAPHING MODE AND BACK AGAIN, YOU WILL ALWAYS
21 BE PRESENTED WITH EXACTLY THE SAME IMAGE, AND
22 THAT'S THE IMAGE THAT YOU WERE LAST LOOKING AT, THE
23 IMAGE YOU WERE LOOKING AT IN THE STORED IMAGE
24 DISPLAY MODE BEFORE YOU SWITCHED AWAY.

25 Q DO THE ACCUSED PRODUCTS SATISFY IRRESPECTIVE

1 OF THE DURATION REQUIREMENT?

2 A NO, THEY DON'T.

3 Q WHY NOT?

4 A THERE ARE A NUMBER OF CIRCUMSTANCES UNDER
5 WHICH WHEN YOU SWITCH FROM THE CAMERAS APP TO THE
6 PHOTO APP YOU ARE NOT GOING TO BE PRESENTED WITH
7 THE SAME IMAGE THAT YOU WERE VIEWING BEFORE YOU
8 LEFT.

9 Q CAN YOU GIVE THE JURY SOME EXAMPLES?

10 A WELL, ONE OF THOSE CIRCUMSTANCES IS WHEN THE
11 OPERATING SYSTEM HAS CLOSED DOWN THE APPLICATION,
12 TERMINATED THE APPLICATION SINCE YOU WERE LAST
13 THERE, IN THIS CASE TERMINATED THE PHOTOS
14 APPLICATION.

15 ALTHOUGH THE PRODUCTS ARE, ARE POWERFUL
16 ENOUGH TO RUN APPLICATIONS, THEY DON'T -- THEY
17 DON'T HAVE INFINITE CAPACITY. THEY ONLY HAVE SO
18 MUCH MEMORY AND SO MUCH PROCESSOR TIME.

19 AND SO THE OPERATING SYSTEM MIGHT CHOOSE
20 TO CLOSE DOWN SOME APPLICATIONS THAT AREN'T
21 CURRENTLY ACTIVE IN THE FOREGROUND ON THE SCREEN IN
22 ORDER TO FREE UP RESOURCES THAT CAN BE USED BY
23 APPLICATIONS THAT YOU'RE USING RIGHT NOW.

24 SO YOU MIGHT HAVE THE CIRCUMSTANCE IN
25 WHICH, SINCE YOU WERE LAST USING THE PHOTOS APP, IT

1 HAD BEEN TERMINATED BY THE OPERATING SYSTEM, AND IF
2 THAT WERE TO HAPPEN, THEN YOU WOULDN'T BE ABLE TO
3 SEE THE LAST VIEWED -- THE LAST VIEWED IMAGE IS
4 THE -- IS NOT THE ONE THAT YOU WOULD SEE WHEN YOU
5 WENT BACK IN. IT WOULDN'T BE THERE.

6 Q ARE THERE ANY OTHER EXAMPLES?

7 A YES. ANOTHER EXAMPLE WOULD BE IF YOU WERE TO
8 SYNC YOUR DEVICE WITH ITUNES, THAT CAN CAUSE
9 PHOTOGRAPHS TO BE DELETED, INCLUDING PERHAPS THE
10 PHOTOGRAPH THAT YOU WERE LAST VIEWING.

11 AND IF THAT WERE TO HAPPEN, THEN CLEARLY,
12 SINCE THE PHOTOGRAPH IS NO LONGER THERE, WHEN YOU
13 RETURN TO THE PHOTOS APP, YOU WOULDN'T -- THEY
14 WOULDN'T BE THERE TO BE PRESENTED TO YOU.

15 Q HAVE YOU REVIEWED APPLE'S SOURCE CODE IN
16 REACHING YOUR NON-INFRINGEMENT OPINION?

17 A I HAVE, YES.

18 Q HOW MUCH TIME DID YOU SPEND DOING THAT?

19 A PROBABLY 18 HOURS.

20 Q IF YOU WOULD, SIR, PLEASE TURN TO TAB 2 IN
21 YOUR BINDER, WHICH IS PX 121. WHAT IS PX 121?

22 A THIS IS -- THIS IS A REFERENCE TO THE SOURCE
23 CODE THAT I REVIEWED.

24 MR. SELWYN: YOUR HONOR, I OFFER PX 121.

25 THE COURT: ANY OBJECTION?

1 MR. JOHNSON: NO, YOUR HONOR.

2 THE COURT: IT'S ADMITTED.

3 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
4 121, HAVING BEEN PREVIOUSLY MARKED FOR
5 IDENTIFICATION, WAS ADMITTED INTO
6 EVIDENCE.)

7 BY MR. SELWYN:

8 Q WHAT DID YOU LEARN ABOUT THE OPERATION OF THE
9 CAMERAS APP AND THE PHOTOS APP WHEN YOU WERE
10 REVIEWING THE SOURCE CODE?

11 A I FOUND PLACES IN THE SOURCE CODE WHERE IT
12 REFERS TO CIRCUMSTANCES I JUST DESCRIBED, FOR
13 EXAMPLE, A CIRCUMSTANCE UNDER WHICH WHEN YOU RETURN
14 TO THE PHOTOS APP, THE PHOTO YOU WANTED TO VIEW IS
15 NO LONGER AVAILABLE BECAUSE IT'S BEEN REMOVED
16 THROUGH A SYNCHING OPERATION.

17 Q CAN WE HAVE, PLEASE, PDX 42.6 ON THE
18 NON-PUBLIC SCREENS. THIS IS APPLE SOURCE CODE.

19 CAN YOU EXPLAIN WHAT THIS DEMONSTRATIVE
20 SHOWS?

21 A SO WHAT WE'RE SEEING HERE ARE FOUR BRIEF
22 EXCERPTS OF CODE THAT ARE WRITTEN IN THE OBJECTIVE
23 C PROGRAMMING LANGUAGE IN WHICH APPS ON THE, ON THE
24 IPHONE AND APPLE PRODUCTS ARE WRITTEN.

25 AND THIS IS CODE THAT SPECIFICALLY

1 RESPONDS TO THE EVENTS THAT ARE INDICATING THAT A
2 PHOTOGRAPH ALBUM THAT YOU'RE REVIEWING IN THE
3 PHOTOS APP HAS BEEN CHANGED IN SOME WAY.

4 SO THE VERY TOP SNIPPET SHOWS YOU THAT
5 THIS IS A MESSAGE CALLED ALBUM DID CHANGE, WHICH IS
6 THE MESSAGE THAT IS SENT TO THE SOFTWARE TO SAY,
7 HEY, THE ALBUM'S CHANGED, YOU NEED TO DO SOMETHING.

8 WE CAN SEE IN THE SECOND SNIPPET ONE OF
9 THE WAYS IT RESPONDS TO THAT IS IT SENDS A MESSAGE
10 TO ITSELF, WHICH IS CALLED PROCESS ALBUM CHANGE
11 WITH ITEMS, SO THAT MEANS, OKAY, NOW WE HAVE TO
12 PROCESS THIS CIRCUMSTANCE THAT'S ARISEN THAT AN
13 ALBUM HAS CHANGED.

14 WE SEE THAT IN THE FOURTH SEGMENT, HERE'S
15 THE PART OF THE CODE WHERE IT SAYS I'M NOW GOING TO
16 PROCESS THIS ALBUM DID CHANGE WITH ITEMS EVENT.

17 AND YOU CAN SEE A COMMENT, THAT'S THE
18 THING MARKED WITH TWO SLASHES THAT A PROGRAMMER HAS
19 ADDED, WHICH SAYS THIS HANDLE IS ADDED AND DELETED
20 PHOTOS.

21 SO THIS IS THE PLACE IN THE CODE WHERE IT
22 RESPONDS TO ADDED AND DELETED PHOTOS.

23 AND THEN PART OF THE CODE THAT IMPLEMENTS
24 THAT METHOD IS IN THE FOURTH SEGMENT, AND SO
25 THERE'S TWO LINES HERE, THE FIRST ONE SAYS, I

1 BETTER UPDATE MY INDEXES TO RESPOND TO THE FACT
2 THIS HAS CHANGED, I'M GOING TO UPDATE MY POINTERS
3 THAT TELL ME WHAT PHOTOGRAPH I'M LOOKING AT.

4 AND THEN IF YOU LOOK DOWN AT THE END, IT
5 SAYS, IF CURRENT INDEX EQUALS NOT FOUND, SO THAT
6 MEANS IF THE PHOTOGRAPH I WAS LOOKING AT CURRENTLY
7 IS NO LONGER AVAILABLE, THEN IT SAYS SET CURRENT
8 INDEX TO ZERO.

9 SO THIS IS A CIRCUMSTANCE THAT I NEED TO
10 DO SOMETHING ABOUT THE PHOTOGRAPH THAT I WOULD
11 OTHERWISE PUT ON THE SCREEN, IT'S NOT HERE ANYMORE.

12 Q SO CAN YOU SUMMARIZE FOR THE JURY THE REASONS
13 THAT YOU CONCLUDED THAT THE APPLE PRODUCTS DO NOT
14 INFRINGE CLAIM 10?

15 A SO THERE ARE THREE REASONS. THE FIRST REASON
16 IS THE APPLE PRODUCTS DON'T HAVE A REPRODUCING MODE
17 AND THUS -- SORRY, A STORED IMAGE DISPLAY MODE AND
18 A PHOTOGRAPHING MODE IN THE TERMS OF CLAIM 10.

19 THE SECOND OF CONSEQUENCE IS WE DON'T
20 HAVE A MODE SWITCHING OPERATION BETWEEN THOSE
21 MODES.

22 AND THE THIRD IS THAT THE APPLE PRODUCTS
23 DO NOT ALWAYS PRESENT THE MOST RECENTLY VIEWED
24 IMAGE, IRRESPECTIVE OF THE DURATION.

25 Q LET'S TURN TO YOUR INVALIDITY OPINION. WHAT

1 IS YOUR OPINION REGARDING WHETHER CLAIM 10 IS
2 VALID?

3 A CLAIM 10 IS NOT VALID ON THE BASIS OF A PRIOR
4 PATENT TO LG ELECTRONICS.

5 Q COULD YOU PLEASE TURN, SIR, TO TAB 3 IN YOUR
6 BINDER WHERE YOU'LL FIND PX 112. CAN YOU TELL US
7 WHAT THAT DOCUMENT IS?

8 A SO THIS IS THE ENGLISH TRANSLATION OF A KOREAN
9 PATENT ISSUED TO LG ELECTRONICS.

10 Q WHEN WAS THAT PATENT PUBLISHED?

11 A FEBRUARY OF 2004.

12 MR. SELWYN: YOUR HONOR, I OFFER PX 112.

13 THE COURT: ANY OBJECTION?

14 MR. JOHNSON: I'M SORRY. NO OBJECTION.

15 THE COURT: ALL RIGHT. IT'S ADMITTED.

16 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
17 112, HAVING BEEN PREVIOUSLY MARKED FOR
18 IDENTIFICATION, WAS ADMITTED INTO
19 EVIDENCE.)

20 BY MR. SELWYN:

21 Q WAS THE LG PATENT BEFORE THE U.S. PATENT
22 OFFICE DURING THE PROSECUTION OF THE '893 PATENT?

23 A NO, IT WASN'T.

24 Q HOW DO YOU KNOW?

25 A WELL, FIRST I REVIEWED THE PROSECUTION

1 HISTORY, WHICH IS WHAT SHOWS WHAT PATENTS WERE
2 BEING LOOKED AT WHEN THE '893 PATENT WAS EXAMINED,
3 AND THE LG PATENT DOES NOT APPEAR THERE.

4 Q DID YOU COMPARE THE LG PATENT TO CLAIM 10 OF
5 THE '893 PATENT?

6 A YES, I DID.

7 Q WHAT IS THE SUBJECT MATTER OF THE LG PATENT?

8 A SO THE LG PATENT IS AN INVENTION FOR CAMERA
9 PHONES, AND IN PARTICULAR IT'S FOCUSSED ON FINDING
10 CONVENIENT WAYS TO LET PEOPLE LOOK AT THE
11 PHOTOGRAPHS THAT THEY HAVE STORED ON THEIR CAMERA
12 PHONE.

13 Q AND YOU'LL SEE WE HAVE THE ABSTRACT ON THE
14 SCREEN. WHAT DOES THE ABSTRACT OF THE LG PATENT
15 TELL US ABOUT THE SUBJECT MATTER OF THE PATENT?

16 A SO THOSE FIRST TWO LINES OF THE ABSTRACT
17 CAPTURE IT VERY NICELY. IT SAYS THIS INVENTION
18 CONCERNS A MOBILE PHONE WITH CAMERA FUNCTIONALITY,
19 AND IT SAYS IT'S PARTICULARLY CONCERNED WITH A WAY
20 TO DISPLAY PHOTOS THAT'S BEEN DESIGNED FOR
21 CONVENIENT AND SPEEDY VIEW OF PHOTOS.

22 Q WHAT DOES IT SAY ABOUT WHICH PHOTO IS
23 DISPLAYED TO THE USER?

24 A IT EXPLAINS THERE'S A NUMBER OF CHOICES YOU
25 CAN MAKE, AND ONE OF THOSE CHOICES WOULD BE TO

1 DISPLAY FIRST ON ENTERING THE STORED IMAGE DISPLAY
2 MODE THE PHOTOGRAPH THAT WAS MOST RECENTLY VIEWED.

3 Q CAN WE HAVE, PLEASE, SLIDE PDX 42.8.

4 CAN YOU EXPLAIN WHAT THIS PORTION OF THE
5 PATENT SHOWS?

6 A SO THIS IS A PARAGRAPH THAT'S BEEN TAKEN FROM
7 PAGE 4 OF THE KOREAN PATENT, AND THIS IS WHERE IT
8 EXPLAINS WHAT PHOTOGRAPH YOU MIGHT CHOOSE TO PUT ON
9 THE SCREEN AT FIRST WHEN YOU ENTER THE STORED IMAGE
10 DISPLAY MODE.

11 AND IT SAYS THE FIRST -- ACTUALLY IT SAYS
12 THE FIST, THAT A TYPO -- THE FIRST PHOTOGRAPH
13 DISPLAYED CAN SIMPLY BE THE ONE THAT'S BEEN STORED
14 THE LONGEST OR THE ONE THAT HAS THE EARLIEST STORED
15 NUMBER OR IT COULD BE -- I'LL START FROM THE
16 BEGINNING.

17 THE FIRST PHOTOGRAPH DISPLAYED CAN SIMPLY
18 BE THE ONE THAT'S BEEN STORED THE LONGEST OR THE
19 ONE HAVING THE EARLIEST STORED ADDRESS NUMBER, OR
20 IT COULD BE THAT THE VIEWS CAN START FROM THE
21 PHOTOGRAPH THAT WAS LAST VIEWED.

22 Q LET'S BRING UP PDX 42.9, WHICH IS THE CLAIM
23 CHART THAT WE USE TO KEEP TRACK OF THE CLAIM AS WE
24 COMPARE IT AGAINST THE LG PATENTS, AND LET'S START
25 WITH THE PREAMBLE.

1 DOES THE LG PATENT DISCLOSE, QUOTE, "A
2 DIGITAL IMAGE PROCESSING APPARATUS"?

3 A IT DOES, YES.

4 Q WHY?

5 A WELL, CAN WE LOOK ON THE NEXT SLIDE. I
6 PREPARED A SLIDE THAT SHOULD SHOW US THIS.

7 Q IS THIS SLIDE PDX 42.10?

8 A SO THE VERY FIRST LINE HERE TELLS US IT'S
9 ABOUT A CAMERA PHONE, AND THAT'S A DIGITAL IMAGE
10 PROCESS APPARATUS, AND WE CAN SEE A DRAWING HERE
11 THAT SHOWS US A CAMERA PHONE AND THAT MEETS THE
12 CLAIM LANGUAGE.

13 Q LET'S GO TO THE NEXT LIMITATION, AN OPTICAL
14 SYSTEM FOR RECEIVING A LIGHT REFLECTED FROM A
15 SUBJECT.

16 DOES THE LG PATENT HAVE THAT?

17 A YES, IT DOES.

18 Q CAN WE HAVE PDX 42.12 ON THE SCREEN?

19 CAN YOU EXPLAIN YOUR OPINION ABOUT THIS
20 LIMITATION?

21 A SURE. SO THIS TELLS US THAT THE INVENTION IS
22 DIRECTED TOWARDS DEVICES THAT HAVE CAMERAS,
23 EITHER -- CAMERAS ASSOCIATED WITH THEM AND
24 INTERNALLY CONNECTED TO THEM.

25 SO THAT LAST LINE SAYS MOBILE PHONES WITH

1 DETACHABLE CAMERA OR INTERNALLY INSTALLED CAMERAS
2 ARE ALREADY COMMERCIALIZED, AND A CAMERA CONTAINS
3 AN OPTICAL SYSTEM FOR RECEIVING LIGHT REFLECTED
4 FROM A SUBJECT.

5 Q LET'S GO TO THE NEXT LIMITATION, WHICH BEGINS
6 A PHOTO ELECTRIC CONVERSION MODULE. DO YOU SEE
7 THAT?

8 A YES.

9 Q DOES THE LG PATENT HAVE THAT?

10 A IT DOES.

11 Q CAN WE HAVE PDX 42.14.

12 AND CAN YOU EXPLAIN WHERE IN THE LG
13 PATENT WE CAN FIND THE LIMITATION DIRECTED TO A
14 PHOTO ELECTRIC CONVERSION MODULE?

15 A SO WE FIND THAT ON THE SECOND OF THESE THREE
16 LINES. IT IS -- THESE ARE THE SAME LINES WE WERE
17 JUST LOOKING AT FROM PAGE 2 OF THE PATENT WHERE IT
18 SAYS THAT MOBILE PHONE CAN BE USED AS A DIGITAL
19 CAMERA BY MOUNTING AN IMAGE SENSOR RELATED MODULE
20 AND AN IMAGE SENSOR PHOTO ELECTRONIC CONVERSION
21 MODULE.

22 Q LET'S LOOK AT THE NEXT LIMITATION. IT SAYS A
23 RECORDING MEDIUM FOR STORING AN IMAGE DATA IN AN
24 IMAGE FILE. WHAT IS THAT?

25 A A RECORDING MEDIUM IS ANY TECHNOLOGY THAT CAN

1 RECORD AND STORE DIGITAL IMAGES, SO IT MIGHT BE
2 MEMORY OR A COMPACT FLASH CARD OR A HARD DRIVE.

3 Q DOES THE LG PATENT DISCLOSE THAT LIMITATION?

4 A YES.

5 Q WHERE?

6 A IF WE LOOK ON THE NEXT SLIDE, THERE ARE MANY
7 PLACES IN THE LG PATENT THAT TALK ABOUT THE
8 RECORDING MEDIUM, AND IN PARTICULAR THEY TALK ABOUT
9 MEMORY, SO IT SAYS EXPANDED MEMORY ON THAT VERY
10 FIRST LINE THERE.

11 AND THEN IN THAT SECOND PARAGRAPH THAT
12 WE'VE GOT, IN THE FIRST SEGMENT IT SAYS PHOTOGRAPH
13 TAKEN BY THE USE OF THE AFOREMENTIONED CAMERA KEY
14 OR STORED IN THE MOBILE PHONE'S MEMORY.

15 SO HERE WE HAVE A RECORDING MEDIUM STORED
16 IMAGE.

17 Q LET'S GO TO THE NEXT LIMITATION, A DISPLAY
18 SCREEN FOR DISPLAYING THE IMAGE DATA. CAN WE FIND
19 THAT IN THE LG PATENT?

20 A YES, WE CAN.

21 Q CAN WE HAVE PDX 42.18.

22 CAN YOU EXPLAIN YOUR OPINION WITH RESPECT
23 TO THIS LIMITATION?

24 A SO WE SEE IN DRAWING 1 HERE, HERE'S THE
25 ILLUSTRATION OF THE MOBILE PHONE AND THERE'S A VERY

1 PROMINENT DISPLAY SCREEN.

2 THE DISPLAY SCREEN IS ALSO MENTIONED IN
3 THE TEXT HERE AND ON PAGE 2 AND ON PAGE 4 SUCH AS
4 THE TEXT THAT SAYS AS ILLUSTRATED IN DRAWING 1,
5 WHEN MOBILE PHONE IS FLIPPED OPEN, THE CAMERA IS
6 COMPRISED OF A DISPLAY AREA.

7 Q DOES THE LG PATENT DISCLOSE A CONTROLLER?

8 A YES, IT DOES.

9 Q WHAT IS A CONTROLLER?

10 A SO A CONTROLLER, AS I SAID A MINUTE AGO, IS
11 SORT OF THE BRAINS OF THE DIGITAL CAMERA, OR THE
12 MOBILE PHONE HERE.

13 Q AND WHERE WOULD WE FIND THE CONTROLLER IN THE
14 LG PATENT?

15 A IF WE, IF WE MOVE ON TO ANOTHER -- YES, THE
16 NEXT SLIDE.

17 Q LET'S GO TO PDX 42.20?

18 A YEAH. SO WE FIND THAT RIGHT IN THAT FIRST
19 LINE THERE, ATTRIBUTED TO THE MOBILE PHONE'S
20 DISPLAY CAPABILITIES, INTERNAL PROCESSING
21 CAPABILITIES, EXPANDED MEMORY. AND INTERNAL
22 PROCESSING CAPABILITIES, THOSE ARE THE CAPABILITIES
23 OF A CONTROL.

24 Q LET'S PAUSE ON THIS LIMITATION BECAUSE IT
25 REQUIRES MORE THAN JUST A CONTROLLER. IT SAYS A

1 CONTROLLER CONNECTED WITH THE PHOTOGRAPHIC
2 CONVERSION MODULE, PHOTO MEDIUM AND DISPLAY SCREEN.
3 DID YOU FIND THAT IN THE LG PATENT?

4 A YES, THAT'S HERE IN THE LG PATENT.

5 SO THE CONTROLLER, AS I SAID, IS SORT OF
6 THE BRAINS OF THE IMAGE PROCESSING APPARATUS. IT'S
7 THE PART THAT CONTROLS EVERYTHING ELSE AND MAKES IT
8 WORK.

9 IF THE CONTROLLER WERE NOT CONNECTED TO
10 AND IN COMMUNICATION WITH MEMORY AND IN
11 COMMUNICATION WITH A CONVERSION MODULE, IT WOULDN'T
12 BE ABLE TO TAKE A PHOTOGRAPH AT ALL. SO THAT'S HOW
13 IT ALL WORKS.

14 Q LET'S GO TO THE NEXT LIMITATION, WHICH BEGINS
15 A CONTROLLER BEING OPERATIVE. WE'RE NOW ON
16 LIMITATION F. IN YOUR OPINION, DOES THE LG PATENT
17 HAVE THAT LIMITATION?

18 A YES, IT DOES.

19 Q CAN WE HAVE THE NEXT DEMONSTRATIVE, PLEASE.
20 WHERE DOES THE LG PATENT DISCLOSE THAT LIMITATION?

21 A SO THIS PATENT -- THIS LIMITATION IS THE ONE
22 THAT TALKS ABOUT THESE TWO MODES, THE PHOTOGRAPHING
23 MODE AND THE IMAGE DISPLAY MODE.

24 AND THE TEXT THAT WE HAVE HERE SHOWS US
25 THESE TWO MODES UNDER THE DIRECTION OF THE

1 CONTROLLER.

2 SO THE, THE FIRST TEXT FROM PAGE 2, IF
3 YOU LOOK AT THAT BOTTOM LINE, IT SAYS PHOTOGRAPHS
4 TAKEN BY USE OF THE AFOREMENTIONED CAMERA KEY ARE
5 STORED IN THE MOBILE PHONE'S MEMORY. SO THAT'S
6 WHERE WE FIND THE PHOTOGRAPHING MODE.

7 Q SO WHERE DOES THE LG PATENT DISCLOSE THE PHOTO
8 IMAGE DISPLAYED LIMITATION?

9 A SO THE SECOND TEXT SEGMENT I PUT ON THE SLIDE
10 DISCLOSES THE STORED IMAGE DISPLAY MODE. SO, FOR
11 INSTANCE, IF WE READ THAT BOTTOM PARAGRAPH, IT SAYS
12 SECOND SLIDE SHOW MENU IS SELECTED ON THE SCREEN
13 WITH THE SHORTCUT MENUS AND THE FIRST PHOTOGRAPH
14 STORED IN THE MEMORY IS IMMEDIATELY DISPLAYED ON
15 THE SCREEN. SO THAT IS THE -- THAT'S THE STORED
16 IMAGE DISPLAY MODE THERE.

17 Q AND IF WE CAN GO BACK TO OUR CLAIM CHART. SO
18 WE'RE NOW AT THE LAST ELEMENT, ELEMENT G. DOES THE
19 LG PATENT DISCLOSE THE MODE SWITCHING OPERATION OF
20 CLAIM 10?

21 A YES, IT DOES.

22 Q CAN WE HAVE THESE PDX 42.24 ON THE SCREEN?

23 CAN YOU EXPLAIN, WITH RESPECT TO THIS
24 SLIDE, WHERE YOU'LL FIND THE MODE SWITCHING
25 OPERATION?

1 A SO ACTUALLY THE ILLUSTRATION HERE, FIGURE 3,
2 SHOWS US MODE SWITCHING. IT SHOWS HOW WE START UP
3 THE IMAGE DISPLAY MODE, EITHER THE REGULAR VIEW
4 PHOTOGRAPH VERSION OR THE SLIDE SHOW VERSION.

5 AND IF WE LOOK AT THE TEXT, THAT FIRST
6 PARAGRAPH THERE, IT TELLS US HOW TO USE THE MENUS
7 IN ORDER TO SELECT THE VIEW PHOTOGRAPH MODE, AND
8 ONCE THE PHOTOGRAPHS HAVE BEEN SELECTED, IT SAYS
9 THEN THE CORRESPONDING PHOTOGRAPHS APPEAR ON THE
10 SCREEN.

11 SO WE'RE GETTING THE, THE SWITCHING INTO
12 THE STORED IMAGE DISPLAY MODE THERE.

13 Q DOES THE LG PATENT DISCLOSE SHOWING THE MOST
14 RECENTLY VIEWED IMAGE BEING DISPLAYED WHEN THE USER
15 RETURNS TO THE STORED IMAGE DISPLAY MODE?

16 A YES, IT DOES.

17 Q WHERE CAN WE FIND THAT?

18 A SO THE SECOND PARAGRAPH THAT I CONCLUDED FROM
19 PAGE 4, THE ONE THAT BEGINS NOW IF THE SEC, THAT
20 PARAGRAPH SHOWS US EXACTLY THIS.

21 SO THE TEXT TO LOOK AT IS THE TEXT IN THE
22 SECOND HALF OF THAT PARAGRAPH, THIS IS TEXT WE SAW
23 A MOMENT AGO WHERE IT SAYS A FIRST PHOTOGRAPH
24 DISPLAYED CAN SIMPLY BE THE ONE THAT'S BEEN STORED
25 THE LONGEST OR THE ONE HAVING THE EARLIEST STORED

1 ADDRESS NUMBER, OR IT COULD BE THAT VIEWING CAN
2 START FROM THE PHOTOGRAPH THAT WAS LAST VIEWED BY
3 THE VIEWER, SO THE LAST VIEWED IMAGE.

4 Q THE LAST QUESTION WITH RESPECT TO THIS
5 LIMITATION. DOES THE LG PATENT DISCLOSE
6 IRRESPECTIVE OF THE DURATION LIMITATION?

7 A IT DISCLOSES IT UNDER DR. YANG'S
8 INTERPRETATION.

9 Q CAN YOU EXPLAIN?

10 A SO DR. YANG ARGUES THAT, THAT IRRESPECTIVE OF
11 THE DURATION MEANS THAT THERE'S NO DEPENDENCE ON
12 TIME. THERE'S NO TIMER OR OTHER DEPENDENCE ON TIME
13 THAT WILL DETERMINE WHICH PHOTOGRAPH SHOULD BE
14 DISPLAYED WHEN YOU ENTER STORED IMAGE DISPLAY MODE.

15 AND THE PARAGRAPH I JUST READ IS THE ONE
16 THAT SHOWS HOW A DECISION WILL BE MADE ABOUT WHAT
17 PHOTOGRAPH SHOULD BE SHOWN, AND AS YOU CAN SEE,
18 THERE'S NO DEPENDENCE ON TIME IN THERE.

19 SO UNDER DR. YANG'S INTERPRETATION, THAT
20 DOES MEET, OR DISCLOSE IRRESPECTIVE OF THE
21 DURATION.

22 Q TO SUMMARIZE, WHAT IS YOUR CONCLUSION
23 REGARDING THE LG PATENT?

24 A THE LG PATENT DISCLOSES ALL THE LIMITATIONS OF
25 CLAIM 10.

1 Q HAVE YOU FORMED ANY OPINION AS TO WHETHER
2 CLAIM 10 IS OBVIOUS?

3 A YEAH. YES. MY OPINION IS THAT CLAIM 10, EVEN
4 IF WE DECIDED THAT THE LG PATENT DIDN'T DISCLOSE
5 ONE LIMITATION OR ANOTHER, IT STILL RENDERS THE
6 CLAIM 10 OBVIOUS TO SOMEBODY WHO WAS WORKING IN
7 THIS AREA AND DEVELOPING A SYSTEM OF THIS SORT.

8 Q COULD YOU EXPLAIN YOUR OPINION, PLEASE?

9 A WELL, THE LG PATENT MAKES CLEAR THAT DIGITAL
10 IMAGE PROCESSING APPARATUSES ALREADY EXISTED, LIKE
11 CAMERA PHONES.

12 AND IT MAKES CLEAR, TOO, THAT THEY HAVE
13 ALL THE COMPONENTS, THE OPTICAL SYSTEM AND THE
14 CONTROLLER AND YOUR RECORDING MEDIUM AND SO FORTH.

15 AND IT ALSO SHOWS US THAT YOU COULD --
16 AND YOU COULD HAVE BOTH A PHOTOGRAPHING MODE AND A
17 STORED IMAGE DISPLAY MODE IN THE SAME DEVICE AND
18 THAT WOULD BE SOMETHING THAT YOU WOULD WANT TO DO.

19 AND IN PARTICULAR, THAT THOSE TWO
20 FUNCTIONS MIGHT BE IMPLEMENTED USING MODES.

21 AND -- AND FURTHER, THROUGH THE
22 DISCUSSION OF MODE SWITCHING, IT MAKES CLEAR IF YOU
23 HAVE THOSE MODES, YOU HAVE TO BE ABLE TO SWITCH
24 AMONGST THEM, SWITCH FROM ONE TO THE OTHER AND
25 BACK.

1 AND, FINALLY, IT ALSO MAKES OBVIOUS THE
2 IDEA THAT THERE'S, WELL, ONLY A FINITE NUMBER OF
3 CHOICES YOU CAN MAKE FOR WHICH IMAGE SHOULD BE ON
4 THE SCREEN WHEN YOU RETURN TO THE PHOTOGRAPHING --
5 TO THE IMAGE DISPLAY MODE, AND THAT ONE AMONGST
6 THOSE CHOICES IS TO DISPLAY THE IMAGE THAT WAS LAST
7 VIEWED.

8 AND, YOU KNOW, IT ALSO TELLS US THAT
9 THERE'S, THERE'S NO PARTICULAR -- THAT THAT'S
10 ALWAYS A SENSIBLE CHOICE, THAT WE COULD ALWAYS, WE
11 SHOULD ALWAYS -- THAT'S ALWAYS ONE OF THE CHOICES
12 THAT WE MIGHT WANT TO MAKE ANY TIME THAT WE ENTERED
13 MODE. SO IT REALLY SORT OF RENDERS ALL THE
14 ELEMENTS OF CLAIM 10 OBVIOUS.

15 Q IN REACHING YOUR OBVIOUSNESS OPINION, DID YOU
16 CONSIDER WHETHER THERE EXISTS ANY SO-CALLED
17 SECONDARY CONSIDERATIONS OF NON-OBVIOUSNESS? AND
18 I'M REFERRING HERE TO THINGS LIKE COPYING,
19 COMMERCIAL SUCCESS, PRAISE IN THE INDUSTRY.

20 A YES, I DID.

21 Q AND DID YOU FIND ANY EVIDENCE OF ANY OF THOSE
22 FACTORS?

23 A I FOUND NO EVIDENCE OF ANY OF THOSE SECONDARY
24 CONSIDERATIONS OF NON-OBVIOUSNESS, AND SAMSUNG
25 HASN'T PRESENTED ANY THAT ARE SORT OF TIED TO THE

1 SPECIFIC LIMITATIONS OF CLAIM 10.

2 MR. SELWYN: THANK YOU. NO FURTHER
3 QUESTIONS.

4 THE COURT: ALL RIGHT. TIME IS NOW 2:11.
5 GO AHEAD, PLEASE.

6 MR. JOHNSON: YOUR HONOR, IN THE INTEREST
7 OF TIME, NO QUESTIONS.

8 THE COURT: OH, OKAY. ALL RIGHT.

9 THEN IS THIS WITNESS EXCUSED AND IS IT
10 SUBJECT TO RECALL OR NOT?

11 MR. SELWYN: HE IS EXCUSED. HE IS
12 SUBJECT TO RECALL.

13 THE COURT: HE IS SUBJECT TO RECALL.

14 OKAY. YOU ARE EXCUSED SUBJECT TO RECALL.

15 THE WITNESS: THANK YOU.

16 THE COURT: ALL RIGHT. CALL YOUR NEXT
17 WITNESS, PLEASE.

18 MR. LEE: YOUR HONOR, APPLE CALLS
19 PROFESSOR GIVARGIS. IF WE CAN JUST HAVE A MINUTE
20 TO SWAP THE NOTEBOOKS OUT.

21 THE COURT: OKAY. THAT'S FINE. THAT'S
22 FINE.

23 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

24 **TONY GIVARGIS,**
25 BEING CALLED AS A WITNESS ON BEHALF OF THE

1 PLAINTIFF, HAVING BEEN FIRST DULY SWORN, WAS
2 EXAMINED AND TESTIFIED AS FOLLOWS:

3 THE WITNESS: YES, I DO.

4 THE CLERK: THANK YOU. PLEASE BE SEATED.

5 THE COURT: THE TIME IS 2:12.

6 GO AHEAD, PLEASE.

7 MR. SELWYN: THANK YOU, YOUR HONOR.

8 **DIRECT EXAMINATION**

9 BY MR. SELWYN:

10 Q GOOD AFTERNOON, SIR. COULD YOU PLEASE
11 INTRODUCE YOURSELF TO THE JURY?

12 A GOOD AFTERNOON. MY NAME IS TONY GIVARGIS.

13 Q SIR, WHERE DO YOU WORK?

14 A I WORK AT U.C. IRVINE.

15 Q AND WHAT DO YOU DO AT U.C. IRVINE?

16 A I AM A FULL PROFESSOR IN THE DEPARTMENT OF
17 COMPUTER SCIENCE. I'M ALSO THE ASSOCIATE DEAN FOR
18 STUDENT AFFAIRS.

19 Q HAVE YOU BEEN RETAINED BY APPLE AS AN EXPERT
20 IN THIS CASE?

21 A YES.

22 Q ON WHICH PATENT, PLEASE?

23 A ON THE '711 PATENT.

24 Q WOULD YOU BRIEFLY DESCRIBE FOR THE JURY YOUR
25 EDUCATIONAL BACKGROUND?

1 A YES. I HOLD A B.S. IN COMPUTER SCIENCE THAT I
2 GOT FROM U.C. RIVERSIDE. I ALSO OBTAINED A
3 DOCTORATE DEGREE IN COMPUTER SCIENCE FROM U.C.
4 RIVERSIDE IN 2001.

5 Q WHAT POSITIONS HAVE YOU HELD OVER TIME AT THE
6 UNIVERSITY? TELL US A LITTLE BIT ABOUT WHAT YOU'VE
7 DONE.

8 A YES. WHEN I FIRST JOINED U.C. IRVINE, I WAS
9 AN ASSISTANT PROFESSOR IN 2001. I BECAME ASSOCIATE
10 PROFESSOR IN 2006, AND A FULL PROFESSOR IN 2009.

11 I'M ALSO CURRENTLY SERVING AS ASSOCIATE
12 DEAN FOR STUDENT AFFAIRS.

13 Q WHAT DO YOU TEACH?

14 A I TEACH COURSES RELATED TO EMBEDDED SYSTEMS.

15 Q TELL US WHAT AN EMBEDDED SYSTEM IS.

16 A THAT'S A DEVICE THAT, IN ADDITION TO HARDWARE
17 AND ELECTRICAL COMPONENTS, ALSO HAS A COMPUTER
18 INSIDE OF IT, AND THE COMPUTER RUNS THINGS LIKE
19 APPLICATIONS AND OPERATIONS OF THE PHONE, OF THE
20 DEVICE.

21 Q WHAT IS THE FOCUS OF YOUR RESEARCH AT THE
22 UNIVERSITY?

23 A I ALSO DO RESEARCH IN THE AREA OF EMBEDDED
24 SYSTEMS.

25 Q AND LET ME ASK YOU TO BE A BIT MODEST. HAVE

1 YOU WON ANY AWARDS?

2 A YES, I HAVE WON AN AWARD, A COUPLE OF AWARDS
3 FOR MY TEACHING. I HAVE WON A NUMBER OF AWARDS FOR
4 BEST PAPERS. AND I HAVE ALSO WON A NUMBER OF
5 AWARDS IN THE FORM OF RESEARCH GRANTS FROM THE
6 NATIONAL SCIENCE FOUNDATION.

7 Q ARE YOU AUTHORED ACADEMIC PUBLICATIONS IN THE
8 FIELD OF COMPUTER SCIENCE?

9 A YES. I HAVE OVER 70 PEER REVIEWED CONFERENCE
10 AND JOURNAL PUBLICATIONS. I HAVE ALSO CO-AUTHORED
11 TWO TEXTBOOKS ON EMBEDDED SYSTEMS AS WELL.

12 Q ARE ANY OF YOUR PUBLICATIONS RELEVANT TO THE
13 '711 PATENT THAT WE'RE TALKING ABOUT TODAY?

14 A YES, MANY OF MY PUBLICATIONS WOULD BE RELEVANT
15 TO THE '711 PATENT BECAUSE THEY DEAL WITH EMBEDDED
16 DEVICES, SUCH AS CELL PHONES.

17 ONE IN PARTICULAR WAS CO-AUTHORED WITH MY
18 STUDENT, HARDER NICOLE, AND ALSO IS LISTED ON THE
19 FACE OF THE '711 PATENT.

20 Q IF WE COULD PULL UP THE FRONT PAGE OF THE '711
21 PATENT, CAN YOU IDENTIFY FOR US WHICH PAPER IS
22 YOURS?

23 A YES. ACTUALLY, I THINK IT'S ON BACK. THIS --
24 THIS PAGE ACTUALLY IS CALLED SYNTHESIS OF TIME
25 CONSTRAINTS, MULTITASKING IMBEDDED SOFTWARE.

1 Q ARE YOU A NAMED INVENTOR ON ANY U.S. PATENTS?

2 A YES.

3 Q IN WHICH FIELDS ARE YOUR PATENT?

4 A I'M AN INVENTOR ON TEN PATENTS AND THEY'RE
5 MOSTLY RELATED TO SOFTWARE AND SOFTWARE EMBEDDED
6 SYSTEMS OF VARIOUS DESIGNS.

7 MR. SELWYN: YOUR HONOR, WE OFFER
8 DR. GIVARGIS AS AN EXPERT IN THE FIELD OF SOFTWARE
9 DESIGN AND EMBEDDED SYSTEMS.

10 THE COURT: ANY OBJECTION?

11 MR. DEFRANCO: NO, YOUR HONOR.

12 THE COURT: ALL RIGHT. SO CERTIFIED.

13 BY MR. SELWYN:

14 Q WHAT WAS YOUR ASSIGNMENT FOR THIS CASE?

15 A I WAS ASKED TO OFFER AN EXPERT OPINION ON
16 WHETHER THE APPLE PRODUCTS INFRINGE THE '711
17 PATENT, AND ALSO IF THE '711 PATENT IS VALID.

18 Q ARE YOU BEING PAID BY APPLE?

19 A YES.

20 Q WHAT IS YOUR HOURLY RATE?

21 A IT'S \$275 AN HOUR.

22 Q AND APPROXIMATELY HOW MANY HOURS HAVE YOU
23 WORKED ON THE CASE TO DATE?

24 A TO DATE, APPROXIMATELY 400 HOURS.

25 Q IS THIS THE FIRST TIME THAT YOU'VE TESTIFIED

1 IN A COURTROOM?

2 A YES.

3 Q VERY BRIEFLY, WHAT OPINIONS DID YOU REACH ON
4 INFRINGEMENT AND VALIDITY OF THE '711 PATENT?

5 A ON INFRINGEMENT, THE APPLE PRODUCTS DO NOT
6 INFRINGE THE '711 PATENT. AND THE '711 PATENT,
7 CLAIM 9 IS INVALID.

8 Q WHAT MATERIALS DID YOU CONSIDER IN REACHING
9 YOUR OPINIONS?

10 A I REVIEWED THE PATENT ITSELF, THE FILE HISTORY
11 OF THE PATENT, AND ALL OF THE REFERENCES THAT I'VE
12 CITED IN MY REPORTS, INCLUDING THINGS SUCH AS
13 PUBLICATIONS AND SOURCE CODE REVIEW.

14 Q AND AT A HIGH LEVEL, CAN YOU EXPLAIN TO THE
15 JURY WHAT THE SUBJECT MATTER OF THIS PATENT IS
16 ABOUT?

17 A YES. THE '711 PATENT DESCRIBES PORTABLE
18 MOBILE PHONE THAT IS CAPABLE OF PLAYING MUSIC,
19 CAPABLE OF MULTITASKING, AND ALSO ALLOWS YOU TO
20 LISTEN TO MUSIC WHILE OPERATING SOME OTHER FUNCTION
21 OF THE PHONE.

22 Q BEFORE WE GET INTO THE DETAILS, LET ME ASK YOU
23 ABOUT SOME OF THE TECHNICAL CONCEPTS.

24 FIRST QUESTION. WHAT IS MULTITASKING?

25 A MULTITASKING IS THE ABILITY TO PERFORM

1 MULTIPLE FUNCTIONS ON THE PHONE AT THE SAME TIME.

2 Q HOW LONG HAS MULTITASKING IN COMPUTER DEVICES
3 EXISTED?

4 A MULTITASKING ON A COMPUTER DEVICE GOES BACK TO
5 THE EARLY '60S, EARLY DAYS OF COMPUTING.

6 Q AND HOW ABOUT IF WE FOCUS ON MOBILE PHONES?
7 HOW LONG HAVE MOBILE PHONES HAD MULTITASKING
8 CAPABILITIES?

9 A SINCE THE LATE 90S.

10 Q CAN WE HAVE CLAIM 9 ON THE SCREEN. AND DO YOU
11 SEE THE TERM -- APPLETS?

12 A YES.

13 Q CAN WE HIGHLIGHT THAT, PLEASE. WHAT IS AN
14 APPLETS?

15 A THE COURT HAS OFFERED A DEFINITION FOR THE
16 TERM "APPLETS."

17 Q CAN WE HAVE THE COURT'S CLAIM CONSTRUCTION ON
18 THE SCREEN, PLEASE. HOW HAS THE COURT DEFINED
19 APPLETS AS USED IN CLAIM 9?

20 A THE COURT HAS DEFINED AN APPLETS TO MEAN AN
21 APPLICATION DESIGNED TO RUN WITHIN AN APPLICATION
22 MODULE.

23 Q UNDER THE COURT'S DEFINITION, DOES IT MATTER
24 IF THE APPLETS IS DESIGNED FOR A PARTICULAR
25 OPERATING SYSTEM?

1 A NO, IT DOES NOT.

2 Q WHAT DOES IT MEAN FOR AN APPLICATION TO RUN
3 WITHIN AN APPLICATION MODULE?

4 A IT MEANS THAT THE APPLLET, OR THIS APPLICATION
5 REQUIRES THE APPLICATION MODULE IN ORDER TO RUN.
6 IT REQUIRES THE APPLICATION MODULE TO PROVIDE ALL
7 OF THE RESOURCES NECESSARY TO RUN THE APPLLET.

8 Q OKAY. CAN WE HAVE PDX 43.6 ON THE SCREEN.
9 NOW, CAN YOU EXPLAIN THE RELATIONSHIP APPLLET AND
10 APPLICATION MODULE WITH RESPECT TO THIS
11 DEMONSTRATIVE?

12 A YES. HERE YOU SEE THE HARDWARE SYSTEM, AND AN
13 OPERATING SYSTEM OF THAT DEVICE, AND YOU SEE AN
14 APPLICATION MODULE, THAT'S RUN ON THIS DEVICE, AND
15 WITHIN IT YOU HAVE AN APPLLET. THE APPLLET IS
16 RUNNING WITHIN THE APPLICATION MODULE.

17 Q SO I WANT TO MAKE SURE THAT WE ALL UNDERSTAND
18 THE TERMS. WHAT DO YOU MEAN BY HARDWARE?

19 A BY HARDWARE, I MEAN THE PROCESSOR, THE
20 MEMORIES AND OTHER CHIPS THAT ARE ON THE LOGIC
21 BOARD OR THE MOTHERBOARD. I BELIEVE THERE WAS A
22 LOGIC BOARD THAT WAS PASSED AROUND EARLIER. SO
23 THAT WOULD BE THE HARDWARE.

24 Q AND WHAT DO YOU MEAN BY OPERATING SYSTEM?

25 A THE OPERATING SYSTEM IS A LAYER OF SOFTWARE

1 THAT ALLOWS AN APPLICATION TO RUN ON THE HARDWARE.

2 Q CAN YOU GIVE US AN EXAMPLE?

3 A A HARDWARE COULD BE MOBILE PHONE, SUCH AS AN
4 IPHONE, AND AN OPERATING SYSTEM COULD BE SOMETHING
5 LIKE THE IOS OPERATING SYSTEM.

6 Q WHAT HAPPENS IF YOU TAKE THE APPLLET OUT OF THE
7 APPLICATION MODULE?

8 A IT WILL NOT RUN, AND AS THIS ILLUSTRATION
9 EMPHASIZES THAT POINT. IF YOU TAKE THE APPLLET
10 OUTSIDE OF THE APPLICATION MODULE, THE APPLLET
11 CANNOT RUN.

12 Q CAN YOU EXPLAIN WHY?

13 A WELL, THE APPLICATION MODULE PROVIDES ALL OF
14 THE RESOURCES, ALL OF THE, THE ENVIRONMENT FOR THIS
15 APPLLET TO RUN.

16 AND WITHOUT THE APPLICATION MODULE, THE
17 APPLLET CANNOT GAIN ACCESS TO THE RESOURCES OF THE
18 DEVICE THROUGH THE HARDWARE.

19 Q SO WE'RE GOING TO BE TALKING A LITTLE BIT MORE
20 ABOUT APPLETS, BUT I THINK IT'S NOW TIME TO DIVE
21 INTO YOUR NON-INFRINGEMENT OPINION. CAN YOU REMIND
22 US WHAT APPLE PRODUCTS SAMSUNG ALLEGES INFRINGE THE
23 '711 PATENT?

24 A YES, THE IPHONE 3G, THE IPHONE 3GS, THE IPHONE
25 4, AND THE IPOD TOUCH FOURTH GENERATION.

1 Q AND LET'S LOOK AGAIN AT CLAIM 9 ON THE SCREEN.
2 CAN YOU GIVE US AN OVERVIEW OF WHAT CLAIM 9
3 DESCRIBES?

4 A ROUGHLY SPEAKING, CLAIM 9 DESCRIBES A PORTABLE
5 POCKET SIZED MOBILE COMMUNICATION DEVICE THAT IS
6 CAPABLE OF PLAYING MP3 MUSIC, ITS CAPABLE OF
7 MULTITASKING, AND IT'S ALSO -- IT ALLOWS YOU TO
8 LISTEN TO MUSIC WHILE PERFORMING SOME OTHER
9 FUNCTION OF THE PHONE. AND IT HAS TO DO THAT WITH
10 PARTICULAR PROGRAMMING STYLE CALLED APPLETS.

11 Q WHAT IS THE BASIS FOR YOUR OPINION THAT THE
12 APPLE PRODUCTS DO NOT INFRINGE CLAIM 9?

13 A THERE ARE TWO REASONS. THE APPLE PRODUCTS
14 MAKE NO USE OF APPLETS. THEY DO NOT USE APPLETS
15 FOR MUSIC PLAY BACK.

16 AND THE SECOND REASON IS THAT THE APPLE
17 PRODUCTS DO NOT HAVE AN MP3 MODE, WHICH IS REQUIRED
18 BY THE CLAIM LANGUAGE.

19 Q OKAY. LET ME ASK YOU ABOUT THE FIRST REASON
20 FOR YOUR NON-INFRINGEMENT OPINION RELATING TO
21 APPLETS.

22 DID YOU APPLY THE COURT'S CLAIM
23 CONSTRUCTION OF APPLETS IN YOUR ANALYSIS?

24 A YES.

25 Q DO THE APPLE DEVICES USE APPLETS FOR PLAYING

1 MUSIC?

2 A THE APPLE PRODUCTS -- DEVICES DO NOT USE
3 APPLETS. THEY USE STANDALONE APPLICATIONS FOR
4 MUSIC PLAYING.

5 Q HOW DO YOU KNOW?

6 A I'VE SPENT SEVERAL DAYS LOOKING AT THE SOURCE
7 CODE OF THE ACCUSED DEVICES. IN ADDITION, I SPENT
8 ANOTHER DAY, AN EXTRA DAY SPECIFICALLY LOOKING AT
9 THE SOURCE CODE FILES THAT WERE LISTED, EVEN THOUGH
10 HE DID NOT POINT OUT THE APPLET WITHIN THAT CODE,
11 AND IN THE APPLE PRODUCTS, THERE'S ABSOLUTELY NO
12 USE OF APPLETS FOR THE PURPOSE OF MUSIC PLAY.

13 Q BASED UPON YOUR REVIEW OF THE APPLE SOURCE
14 CODE AND OTHER MATERIALS THAT YOU REVIEWED, WHAT
15 DID YOU LEARN ABOUT THE ARCHITECTURE OF THE APPLE
16 CODE RELEVANT TO CLAIM 9?

17 A WELL, THE ARCHITECTURE OF, OF THE -- AND I
18 BELIEVE IN THE NEXT SLIDE I HAVE A DEMONSTRATIVE
19 FOR THAT.

20 Q CAN WE HAVE PDX 43.8. GO AHEAD?

21 A THE ARCHITECTURE OF THE APPLE PRODUCTS LOOKS
22 LIKE WHAT'S ILLUSTRATED IN THIS SLIDE. THERE ARE
23 TWO APPLICATIONS, THE MUSIC APPLICATION, WHICH IS
24 RESPONSIBLE FOR MANAGING THE MUSIC LIBRARY, IT'S
25 RESPONSIBLE FOR ALLOWING TO BUILD PLAY LISTS --

1 THE COURT: CAN I ASK, CAN YOU KEEP IT
2 DOWN? I'VE BEEN HEARING THIS LOW HUM OF
3 CONVERSATION. KEEP IT DOWN. IF YOU NEED TO TALK,
4 STEP OUTSIDE, PLEASE.

5 GO AHEAD.

6 THE WITNESS: AND IT'S BASICALLY THE
7 MUSIC APP IS RESPONSIBLE FOR ALL THE FUNCTIONS THAT
8 YOU APPLY TO MUSIC FILES.

9 AND ANOTHER APPLICATION, ANOTHER
10 STANDALONE APPLICATION, THE MEDIA SERVER D, IS
11 RESPONSIBLE FOR ACTUALLY PLAY BACK OF MUSIC.

12 IN FACT, THE MEDIA SERVER D APPLICATION
13 IS RESPONSIBLE FOR ALL OF THE SOUND THAT COMES OUT
14 OF THE IPHONE DEVICE.

15 THE MEDIA SERVER, THE APPLICATION STARTS
16 RUNNING THE MOMENT YOU POWER UP THE DEVICE, AND IT
17 REMAINS RUNNING FOR THE ENTIRE DURATION THAT THE
18 DEVICE IS POWERED UP. THESE APPLICATIONS DO
19 COMMUNICATE AND SEND MESSAGES.

20 BY MR. SELWYN:

21 Q IS THE MUSIC APP AN APPLETT?

22 A THE MUSIC APP IS NOT AN APPLETT.

23 Q WHY NOT?

24 A IT IS NOT AN APPLETT BECAUSE IT'S NOT DESIGNED
25 TO RUN WITHIN AN APPLICATION MODULE. IT'S A

1 STANDALONE APPLICATION THAT RUNS ON ITS OWN.

2 Q IS MEDIA SERVER D AN APPLETT?

3 A NO.

4 Q WHY NOT?

5 A MEDIA SERVER D IS A STANDALONE APPLICATION,
6 AND IT IS NOT DESIGNED TO HAVE AN APPLETT RUN WITHIN
7 IT. THAT WOULDN'T BE POSSIBLE.

8 Q IS MEDIA SERVER D AN APPLICATION MODULE?

9 A MEDIA SERVER D IS NOT AN APPLICATION MODULE
10 FOR THE SAME REASON. IT'S NOT DESIGNED TO HAVE AN
11 APPLETT RUN WITHIN IT.

12 Q HAVE YOU PREPARED A SLIDE TO HELP COMPARE THE
13 ARCHITECTURE OF THE APPLE CODE TO AN ARCHITECTURE
14 THAT USES APPLETT?

15 A YES.

16 Q CAN WE HAVE PDX 43.9, AND CAN YOU EXPLAIN YOUR
17 OPINION WITH RESPECT TO THIS SLIDE?

18 A YES. THESE ARE THE TWO, THE TWO
19 ARCHITECTURES, SOFTWARE ARCHITECTURES THAT WE'VE
20 BEEN TALKING ABOUT.

21 ON THE RIGHT WE HAVE THE APPLE
22 ARCHITECTURE WHERE YOU HAVE STANDALONE
23 APPLICATIONS, APPLICATIONS THAT RUN DIRECTLY ON THE
24 HARDWARE.

25 AND ON THE LEFT YOU HAVE THIS '711

1 ARCHITECTURE, WHICH IS AN APPLETT RUNNING WITHIN AN
2 APPLICATION MODULE.

3 THESE TWO ARCHITECTURES ARE VERY
4 DIFFERENT, AND A PERSON WHO'S KNOWLEDGEABLE ABOUT
5 SOFTWARE SYSTEMS SHOULD BE ABLE TO, AS A MATTER OF
6 FACT, NOT OPINION, AND THE CODE AND BE ABLE TO TELL
7 IF A SYSTEM IS USING THE RIGHT ARCHITECTURE OR THE
8 LEFT ARCHITECTURE.

9 Q I WANT TO TURN NOW TO THE SECOND REASON YOU
10 GAVE FOR NON-INFRINGEMENT. CAN YOU REMIND US WHAT
11 THAT WAS?

12 A YES. THE SECOND REASON HAD TO DO WITH THE
13 APPLE PRODUCTS NOT HAVING AN MP3 MODE.

14 Q LET'S TURN BACK TO THE CLAIM LANGUAGE. WE
15 HAVE CLAIM 9 ON THE SCREEN. WHAT REQUIREMENTS DOES
16 CLAIM 9 HAVE WITH RESPECT TO MP3 MODE?

17 A CLAIM 9 HAS THREE PLACES WHERE IT REQUIRES AN
18 MP3 MODE. IT REQUIRES THE ABILITY TO SELECT AN MP3
19 MODE, IT REQUIRES THE ABILITY TO PLAY MUSIC IN AN
20 MP3 MODE, AND IT ALSO HAS THE REQUIREMENT OF
21 SWITCHING FROM THE MP3 MODE TO A STANDBY MODE.

22 Q NOW, WHAT IS AN MP3 MODE?

23 A A MODE IS A STATE OF OPERATION OF THE DEVICE,
24 AS IT'S BEEN ALREADY TALKED ABOUT.

25 AND AN MP3 MODE IS A STATE OF THE DEVICE

1 WHERE THE DEVICE IS PLACING MP3.

2 Q NOW, THE APPLE PRODUCTS PLAY MUSIC, DON'T
3 THEY?

4 A YES.

5 Q SO HOW DO THEY PLAY MUSIC WITHOUT USING AN MP3
6 MODE?

7 A THEY USE APPLICATIONS FOR PLAYING MUSIC. THEY
8 USE APPS.

9 Q LET'S TURN NOW TO YOUR INVALIDITY OPINION.
10 AGAIN, REMIND US WHAT YOUR OPINION IS?

11 A CLAIM 9 OF THE '711 PATENT IS NOT VALID.

12 Q CAN YOU SUMMARIZE FOR US THE BASIS OF YOUR
13 OPINION?

14 A YES. CLAIM 9 OF THE '711 PATENT WOULD HAVE
15 BEEN OBVIOUS TO A PERSON OF ORDINARY SKILL IN THE
16 ART PRIOR TO 2005 BECAUSE OF PRIOR ART, INCLUDING
17 SONY ERICSSON K700I DEVICE.

18 Q SO TAKE US BACK, IF YOU COULD, TO 2005 FOR A
19 MOMENT.

20 WHAT WAS THE STATE OF THE ART FOR MOBILE
21 PHONES WITH MUSIC PLAYERS IN 2005?

22 A PRIOR TO 2005, MOBILE PHONES COULD DO
23 MULTITASKING. THEY COULD PLAY MUSIC. AND THEY DID
24 ALLOW YOU TO PLAY MUSIC WHILE LISTENING TO PHONE --
25 TO LISTEN TO MUSIC WHILE OPERATING SOME OTHER

1 FUNCTION OF THE PHONE.

2 Q LET ME HAND YOU WHAT'S BEEN MARKED AS --

3 MAY I, YOUR HONOR?

4 THE COURT: YES, PLEASE, GO AHEAD.

5 BY MR. SELWYN:

6 Q I'VE HANDED YOU WHAT'S BEEN MARKED AS PX 125.

7 DO YOU RECOGNIZE IT?

8 A YES.

9 Q WHAT IS IT?

10 A THIS IS THE SONY ERICSSON K700I DEVICE THAT I
11 TALKED ABOUT.

12 MR. SELWYN: YOUR HONOR, I OFFER PX 125.

13 THE COURT: ANY OBJECTION?

14 MR. DEFRANCO: NO OBJECTION.

15 THE COURT: IT'S ADMITTED.

16 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
17 125, HAVING BEEN PREVIOUSLY MARKED FOR
18 IDENTIFICATION, WAS ADMITTED INTO
19 EVIDENCE.)

20 BY MR. SELWYN:

21 Q WHEN DID THE PX -- WHEN DID WHAT'S BEEN MARKED
22 AS PX 125 THE SONY K700I DEVICE GO ON SALE OR
23 BECOME PUBLICLY AVAILABLE?

24 A IN 2004.

25 Q HOW DO YOU KNOW?

1 A FOR THREE REASONS. THERE WERE A COUPLE OF
2 NEWS RELEASES BY SONY THAT TALKED ABOUT THE SONY
3 ERICSSON K700I, AND THE MANUAL OF THIS PHONE ALSO
4 MENTIONS THE DATE 2004. AND ALSO SONY PROVIDED
5 SALES NUMBERS FOR 2004 THAT SHOWED SOME UNITS WERE
6 SOLD IN THE U.S. N 2004.

7 Q AND TURN YOUR BINDER, PLEASE, TO TAB 3, WHICH
8 IS PX 117.

9 A YES.

10 Q AND WHAT ARE THOSE DOCUMENTS?

11 A THESE ARE THE PRESS RELEASES THAT I TALKED
12 ABOUT. THIS PARTICULAR PRESS RELEASE IS SONY
13 ERICSSON UNVEILING THE K700 CAMERA PHONE IN
14 MARCH OF 2004.

15 Q AND IF YOU TURN TO THE -- TO THE THIRD PAGE OF
16 PX 117, WHAT DO YOU FIND?

17 A THIS IS THE SECOND PRESS RELEASE. THIS IS
18 ALSO FROM SONY ERICSSON WHEN THE K700 CAMERA PHONE
19 IN ATLANTA, IT SHOWCASES THE UNIT.

20 MR. SELWYN: YOUR HONOR, I OFFER PX 117.

21 THE COURT: ANY OBJECTION.

22 MR. DEFRANCO: NO, YOUR HONOR.

23 THE COURT: THAT'S ADMITTED.

24 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
25 117, HAVING BEEN PREVIOUSLY MARKED FOR

1 IDENTIFICATION, WAS ADMITTED INTO
2 EVIDENCE.)

3 BY MR. SELWYN:

4 Q WHAT IS THE DATE ON EACH OF THE PRESS
5 RELEASES?

6 A ON THE ONE THAT'S BEING DISPLAYED NOW, IT SAYS
7 MARCH 21ST, 2004.

8 Q NOW, IF YOU WOULD, PLEASE, SIR, TURN TO TAB 4
9 OF YOUR NOTEBOOK. DO YOU RECOGNIZE THAT DOCUMENT?

10 A YES.

11 Q WHAT IS IT?

12 A THIS IS THE OWNER'S MANUAL OF THE SONY
13 INTERROGATORY RESPONSE ERICSSON K700I PHONE.

14 MR. SELWYN: YOUR HONOR, WE OFFER PX 116.

15 THE COURT: ANY OBJECTION?

16 MR. JOHNSON: NO, YOUR HONOR.

17 THE COURT: IT'S ADMITTED.

18 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
19 116, HAVING BEEN PREVIOUSLY MARKED FOR
20 IDENTIFICATION, WAS ADMITTED INTO
21 EVIDENCE.)

22 MR. SELWYN: IF WE CAN SHOW THE DATE OF
23 PUBLICATION ON THE SCREEN, PLEASE.

24 Q WHAT IS THE DATE OF PUBLICATION SHOWN ON THIS?

25 A I BELIEVE IT IS MARCH 2004.

1 Q NOW, SIR, IF YOU WOULD TURN TO TAB 5 IN YOUR
2 NOTEBOOK. CAN YOU TELL US WHAT THESE DOCUMENTS
3 ARE.

4 A YES. THIS IS THE SALES RECORD PROVIDED BY
5 SONY.

6 MR. SELWYN: YOUR HONOR, WE OFFER PX 113.

7 THE COURT: THAT'S NOT THE AFFIDAVIT, IS
8 IT?

9 MR. SELWYN: NO.

10 THE COURT: THAT'S WHAT I SAW ON MY
11 SCREEN. PX 113, WHAT IS THAT?

12 MR. SELWYN: WE REMOVED THE AFFIDAVIT
13 FROM WHAT'S IN THE BINDER, AND WE'LL REPLACE THE
14 EXHIBIT TO REMOVE THE AFFIDAVIT.

15 THE COURT: OKAY. I SEE IT. ANY
16 OBJECTION?

17 MR. DEFRANCO: NO, YOUR HONOR.

18 THE COURT: I'M GOING TO ADMIT IT.

19 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
20 113, HAVING BEEN PREVIOUSLY MARKED FOR
21 IDENTIFICATION, WAS ADMITTED INTO
22 EVIDENCE.)

23 BY MR. SELWYN:

24 Q WE HAVE UP ON THE SCREEN THE FIRST PAGE OF THE
25 DOCUMENT. WHAT DOES THIS SHOW?

1 A THIS SHOWS THAT THE K700I DEVICE WAS SOLD IN
2 2004. IT SHOWS THE NUMBER OF UNITS SOLD IN 2004.

3 Q AND YOU HAVE THE SONY K700I IN FRONT OF YOU,
4 RIGHT?

5 A YES.

6 MR. SELWYN: YOUR HONOR, MAY I PUBLISH
7 THAT TO THE JURY?

8 THE COURT: GO AHEAD, PLEASE.

9 BY MR. SELWYN:

10 Q CAN YOU BRIEFLY DESCRIBE THE FEATURES OF THE
11 SONY K700I?

12 A THE SONY K700I IS A POCKET SIZED PHONE. IT
13 DOES ALLOW YOU TO PERFORM MULTITASKING. IT DOES
14 PLAY MP3 MUSIC AND IT ALLOWS YOU TO LISTEN TO MUSIC
15 WHILE OPERATING OTHER FUNCTIONS OF THE PHONE.

16 Q WAS THE SONY K700I CONSIDERED BY THE PATENT
17 OFFICE WHEN REVIEWING THE APPLICATION FOR THE '711
18 PATENT?

19 A NO.

20 Q HOW DO YOU KNOW?

21 A IT IS NOT LISTED ON THE '711 PATENT, AND IT IS
22 ALSO NOT IN THE FILE HISTORY.

23 Q HAVE YOU PREPARED A VIDEO TO DEMONSTRATE THE
24 FEATURES OF THE SONY K700I?

25 A YES.

1 Q CAN WE HAVE, PLEASE, PX 43.11, AND WE'LL PLAY
2 THIS AND AS WE DO, WOULD YOU PLEASE NARRATE FOR US.

3 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN
4 OPEN COURT OFF THE RECORD.)

5 THE WITNESS: YES. THIS IS A VIDEO I
6 MADE OF THE K700I PHONE. I'M GOING TO SHOW YOU HOW
7 THIS DEVICE TEACHES OR DETERMINES MANY OF THE SPECS
8 AS DESCRIBED IN THE CLAIM 9 OF THE '711 PATENT.

9 I JUST POWERED IT UP AND THE UNIT IS NOW
10 ENTERING STANDBY MODE.

11 I'M GOING TO GO TO THE MENU SYSTEM TO
12 SELECT THE MUSIC PLAYER. WE CAN SEE THAT THERE'S A
13 BOX AROUND THE MUSIC PLAYER ICON, AND I SELECT THAT
14 AND THE MUSIC PLAYER APPLICATION LAUNCHES.

15 I CAN SCROLL THROUGH A LIST OF SONGS,
16 SELECT A PARTICULAR SONG FOR PLAY BACK. THE SONG
17 IS PLAYING. I CAN GO THROUGH A NUMBER OF STEPS TO
18 GO BACK TO THE STANDBY MODE. I WILL PRESS
19 MINIMIZE, AND I'LL GO BACK TO THE STANDBY MODE.

20 FROM THE STANDBY MODE, I CAN OPERATE ANY
21 NUMBER OF FUNCTIONS. I'M GOING TO SHOW YOU THREE
22 DIFFERENT FUNCTIONS OF THE PHONE, CONTACTS, I'LL
23 SCROLL THROUGH A LIST OF CONTACTS. I CAN DO THINGS
24 LIKE SEND A MESSAGE, VIEW SOMETHING AS A CONNECT,
25 EDIT THE CONTACT, I CAN DO THINGS LIKE SEND AN

1 E-MAIL. THE MUSIC IS PLAYING, OF COURSE.

2 BACK TO THE STANDBY MODE. AND FROM THE
3 STANDBY MODE, I CAN GO TO SOME OTHER FUNCTION, LIKE
4 CALENDAR. NOTICE THAT NO MATTER WHAT FUNCTION OF
5 THE PHONE I'M OPERATING, THE MUSIC INDICATOR ON TOP
6 SHOWS THAT MUSIC IS PLAYING.

7 I CAN CHANGE THE VIEW OF THE CALENDAR.
8 BACK TO THE STANDBY MODE, AND STILL THE INDICATOR
9 THAT INDICATES MUSIC IS PLAYING IS DISPLAYED ON
10 TOP.

11 I'M GOING TO SHOW YOU ONE FINAL FUNCTION
12 OF THE PHONE. I'LL SELECT THE STOP WATCH FUNCTION.
13 THAT IS GOING.

14 AND BACK TO THE STANDBY MODE.

15 Q OKAY. SO NOW I'D LIKE YOU TO COMPARE THE SONY
16 K700I AGAINST CLAIM 9, AND LET'S PUT UP CHECKLIST
17 OF THE ELEMENTS OF CLAIM 9 SO WE CAN KEEP TRACK OF
18 WHERE WE ARE.

19 CAN WE HAVE PDX 43.13. SO LET'S START
20 WITH THE PREAMBLE, A MULTITASKING APPARATUS IN A
21 POCKET SIZED MOBILE COMMUNICATION DEVICE, INCLUDING
22 AN MP3 PLAYING CAPABILITY. DOES THE SONY K700I
23 HAVE THOSE FUNCTIONS?

24 A YES. AND IF YOU WOULD GO TO THE NEXT SLIDE,
25 HERE I HAVE SCREEN SHOTS OF THE SAME VIDEO THAT I

1 JUST PLAYED FOR YOU THAT SHOWS THAT THE SONY K700I
2 IS A POCKET SIZED MOBILE COMMUNICATION DEVICE. IT
3 HAS MP3 PLAYING CAPABILITIES, AND IT'S ALSO
4 MULTITASKING. HE SHOWED YOU THREE DIFFERENT
5 FUNCTIONS.

6 Q LET'S GO TO ELEMENT A. ELEMENT A REQUIRES A
7 CONTROLLER FOR PERFORMING CERTAIN FUNCTIONS. DO
8 YOU SEE THAT?

9 A YES.

10 Q WHAT IS A CONTROLLER?

11 A A CONTROLLER IS A PROCESSOR. IT IS WHAT RUNS
12 THE APPLICATIONS.

13 Q DOES THE SONY K700I HAVE A CONTROLLER?

14 A YES.

15 Q HOW DO YOU KNOW?

16 A I TOOK ONE APART, LOOKED AT THE LOGIC BOARD.
17 IT HAS A PROCESSOR.

18 Q ELEMENT A ALSO REQUIRES GENERATING A MUSIC
19 PLAYGROUND PLAY OBJECT WHERE IN THE BASIC
20 PLAYGROUND PLAY OBJECT HAS THE APPLICATION MODE.
21 DOES IT HAVE THAT ELEMENT?

22 A YES, IN THIS SCREEN, YOU SEE THERE IS AN ICON
23 THAT REPRESENTS THE MUSIC PLAY, THE MUSIC PLAYER,
24 AND YOU SAW ME SELECT THAT, THAT IT STARTED PLAYING
25 MUSIC IN THE BACKGROUND.

1 Q LET'S TURN NOW TO ELEMENT B. CAN WE HAVE PDX
2 43.18. DOES THE SONY K700I INCLUDE AT LEAST ONE
3 APPLETT WITH CLAIMED FUNCTION?

4 A I DON'T KNOW. I COULD NOT DETERMINE THAT.

5 Q WHY NOT?

6 A TO DETERMINE THAT, I WOULD NEED TO LOOK AT THE
7 SOFTWARE OF THE SONY.

8 Q SO WE'LL LEAVE THAT BOX BLANK, AND LET'S MOVE
9 ON TO THE NEXT ELEMENT.

10 PROVIDING AN INTERFACE FOR MUSIC PLAY BY
11 THE MUSIC PLAYGROUND PLAY OBJECT. DOES THE SONY
12 K700I HAVE THAT ELEMENT?

13 A YES, I ALREADY SHOWED IT HAS A MUSIC
14 BACKGROUND PLAY OBJECT, AND IT HAS BUTTONS THAT I
15 WAS PRESSING TO OPERATE THE USER INTERFACE.

16 Q LET'S GO TO ELEMENT D. SELECTING AN MP3 MODE
17 IN A POCKET SIZED MOBILE COMMUNICATION DEVICE USING
18 THE INTERFACE. WHERE DO WE SEE THAT IN THE SONY
19 K700I?

20 A YES, YOU SAW ME, BY CLICKING THE ICON, IT
21 LAUNCHED THIS APPLICATION FROM WHICH I COULD
22 ACTUALLY SELECT AN MP3 FILE AND FILE THAT FILE. IT
23 DOES HAVE THIS ELEMENT.

24 Q NEXT IS ELEMENT E, FOR SELECTING AND PLAYING A
25 MUSIC FILE IN THE POCKET SIZED MOBILE COMMUNICATION

1 DEVICE IN THE MP3 MODE.

2 DOES THE SONY K700I MEET THAT
3 REQUIREMENT?

4 A YES, THOSE FILES ON THAT LIST, THEY'RE ALL MP3
5 FILES. THAT'S INDICATED IN THE ZOOM FIGURE. THE
6 SCREEN SHOT IS FROM THE VIDEO. AND IT IS CAPABLE
7 OF PLAYING MP3 FILES.

8 Q CAN WE HAVE PDX 43.20, ELEMENT F. DOES THE
9 SONY K700I HAVE THE ELEMENT OF SWITCHING FROM THE
10 MP3 MODE TO A STANDBY MODE WHILE THE PLAYING OF THE
11 MUSIC FILE CONTINUES?

12 A YES. THESE SCREEN SHOTS FROM THE VIDEO SHOW
13 YOU THAT I WENT THROUGH A FEW, BUTTON PRESSES TO
14 MINIMIZE THE APPLICATION AND GO BACK TO THE STANDBY
15 MODE.

16 Q LET'S GO TO ELEMENT G, SELECTING AND
17 PERFORMING AT LEAST ONE FUNCTION OF THE POCKET
18 SIZED MOBILE COMMUNICATION DEVICE FROM THE STANDBY
19 MODE WHILE THE PLAYING OF THE MUSIC FILE CONTINUES.

20 WHERE DO WE FIND THAT IN THE SONY K700I?

21 A IN THE VIDEO I SHOWED YOU THREE DIFFERENT
22 FUNCTIONS, SCREEN SHOTS OF EACH ONE OF THOSE
23 FUNCTIONS WHILE THE MUSIC WAS PLAYING, AND THE SONY
24 K700 DOES ALLOW TO YOU DO THIS.

25 Q CAN WE HAVE PDX 43.22. DOES THE SONY K700I

1 HAVE A DISPLAY UNIT FOR DISPLAYING AN INDICATION
2 THAT THE MUSIC FILE IS BEING PLAYED IN THE STANDBY
3 MODE?

4 A YES. IN THE STANDBY MODE, I POINTED OUT THE
5 INDICATION. IT'S ALSO ZOOMED IN THIS PICTURE.
6 THERE'S AN INDICATION AT THE TOP OF THE SCREEN THAT
7 SLOWS THAT THE MUSIC IS PLAYING.

8 Q LAST ELEMENT, PDX 43.23. DOES THE SONY K700I
9 CONTINUE TO DISPLAY THE INDICATION THAT THE MUSIC
10 FILE IS BEING PLAYED WHILE PERFORMING THE SELECTED
11 FUNCTION?

12 A YES. IN ALL THOSE THREE MODES, OR ALL THOSE
13 THREE APPLICATIONS THAT I SHOWED YOU, CALENDAR,
14 STOP WATCH, AND CONTACTS, THAT INDICATION ON TOP OF
15 THE SCREEN WAS THERE.

16 Q LET'S RECAP FOR A MOMENT. CAN WE HAVE PDX
17 43.24. WE'VE CHECKED OFF EVERY ELEMENT FOR CLAIM 9
18 EXCEPT FOR THE APPLETT ONE, RIGHT?

19 A YES.

20 Q IN YOUR OPINION, WOULD THE USE OF AN APPLETT
21 HAVE BEEN OBVIOUS TO A PERSON OF ORDINARY SKILL IN
22 THE ART IN 2005?

23 A YES.

24 Q WHY?

25 A APPLETT WERE WELL KNOWN PRIOR TO 2005. THEY

1 OFFERED A NUMBER OF ADVANTAGES THAT WOULD HAVE BEEN
2 VERY USEFUL TO TAKE, TO EMPLOY IN A CELL PHONE.

3 Q WHAT ADVANTAGES?

4 A THOSE WOULD BE, TWO EXAMPLES WOULD BE
5 PORTABILITY AND SECURITY.

6 Q WHAT DO YOU MEAN BY SECURITY AND HOW DO
7 APPLETS HELP WITH THAT?

8 A WELL, BY SECURITY, I MEAN BEING CAREFUL ABOUT
9 AN APPLICATION GAINING ACCESS TO AN APPLICATION
10 THAT'S POSSIBLY MALICIOUS OR BUGGING GAINING ACCESS
11 TO THE DATA STORED ON THE DEVICE, AND APPLETS HELP
12 BY THE FACT THAT THEY RUN WITHIN AN APPLICATION
13 MODULE, IT ALLOWS THE APPLICATION MODULE TO SERVE
14 AS A LAYER OF PROTECTION. IT LIMITS THE ACCESS OF
15 THE APPLETT TO THE DEVICE.

16 Q DO YOU HAVE ANY OTHER BASIS FOR YOUR
17 CONCLUSION THAT IT WOULD HAVE BEEN OBVIOUS FOR A
18 PERSON OF ORDINARY SKILL TO USE AN APPLETT FOR
19 BACKGROUND MUSIC PLAY IN A MOBILE PHONE?

20 A YES, THERE'S A PATENT BY WONG, W-O-N-G, THAT
21 TEACHES THE USEFULNESS OF APPLETT FOR MOBILE
22 DEVICES.

23 Q COULD YOU TURN TO TAB 6 IN YOUR BINDER. DO
24 YOU RECOGNIZE -- WHICH IS PX 91. DO YOU RECOGNIZE
25 THAT?

1 A YES.

2 Q WHAT IS IT?

3 A THIS IS THE PATENT TO WONG.

4 MR. SELWYN: YOUR HONOR, WE OFFER PX 91.

5 THE COURT: ANY OBJECTION?

6 MR. DEFRANCO: NO, YOUR HONOR.

7 THE COURT: IT'S ADMITTED.

8 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER

9 91, HAVING BEEN PREVIOUSLY MARKED FOR

10 IDENTIFICATION, WAS ADMITTED INTO

11 EVIDENCE.)

12 BY MR. SELWYN:

13 Q WHEN WAS THE WONG PATENT PUBLISHED?

14 A THE DATE OF THE WONG PATENT IS OCTOBER 24TH,
15 2002.

16 Q AND WAS THE WONG PATENT CONSIDERED BY THE
17 PATENT OFFICE DURING THE PROSECUTION OF THE '711
18 PATENT?

19 A NO.

20 Q WHAT DOES THE WONG PATENT DISCLOSE?

21 A WELL, THE WONG PATENT TALKS ABOUT THE JAVA
22 MEDIA FRAMEWORK SPECIFICALLY INTENDED FOR MOBILE
23 PHONES, AND I HAVE A DEMONSTRATIVE FOR THAT IF WE
24 CAN GO TO THE NEXT SLIDE.

25 Q CAN WE HAVE PDX 43.28.

1 A YES. IN THIS SLIDE WE SEE THAT IN PARAGRAPH 1
2 OF THE WONG PATENT, IT TALKS ABOUT MULTIMEDIA
3 FRAMEWORK INTENDED FOR MOBILE DEVICES, PARAGRAPH 2
4 DESCRIBES THIS IN MORE DETAIL. IT SPECIFICALLY
5 TALKS ABOUT SMALLER PROGRAMS KNOWN AS APPLETS.

6 AND IF YOU WERE TO GO TO THE NEXT SLIDE,
7 YOU SEE THAT IT ALSO TALKS ABOUT THE JMF, THE JAVA
8 MULTIMEDIA FRAMEWORK, IS CAPABLE OF FRAMEWORK AND
9 MP3 AUDIO FILES.

10 Q IN YOUR OPINION, WOULD A PERSON OF ORDINARY
11 SKILL IN THE ART IN 2005 HAVE BEEN MOTIVATED THAT
12 COMBINE THE TEACHINGS OF WONG WITH THE SONY K700I
13 DEVICE?

14 A YES. WONG DOES TALK ABOUT JAVA AS BEING A
15 VERY USEFUL ENVIRONMENT FOR MOBILE PHONES. IT THEN
16 TALKS ABOUT THIS FRAMEWORK, THIS MULTIMEDIA
17 FRAMEWORK THAT ALLOWS YOU TO, IN ESSENCE, WRITE
18 APPLETS OR JAVA APPLICATIONS THAT RUN ON MOBILE
19 PHONES AND THAT ARE CAPABLE OF PLAYING WAVE FILES
20 OR MP3 FILES. THAT WOULD HAVE BEEN EXACTLY THE
21 KIND OF THINGS WONG WOULD HAVE NEEDED IN A CELL
22 PHONE.

23 Q LET'S SUM UP . WHAT'S YOUR OPINION REGARDING
24 WHETHER THE SONY K700I WHEN COMBINED WITH THE WONG
25 PATENT, HOW THAT AFFECTS THIS PATENT?

1 A THE COMBINATION OF THE SONY PHONE AND THE WONG
2 PATENT DO MAKE ALL OF THE CLAIM ELEMENTS OBVIOUS.

3 AND ALL OF THE LIMITATIONS OF THE CLAIM
4 WILL BE COVERED BY THESE TWO REFERENCES.

5 Q DID YOU CONSIDER, AS PART OF YOUR OBVIOUSNESS
6 ANALYSIS, WHETHER THERE WERE ANY SO-CALLED
7 SECONDARY CONSIDERATIONS OF NON-OBVIOUSNESS, WHICH
8 IS COMMERCIAL SUCCESS, PRAISE IN THE INDUSTRY, LONG
9 FELT NEED AND SUCH?

10 A YES.

11 Q AND WHAT DID YOU FIND?

12 A I DID NOT FIND ANYTHING THAT WOULD HAVE BEEN,
13 THAT WOULD HAVE SUGGESTED THAT THE CLAIM 9 OF THE
14 '711 PATENT WOULD HAVE BEEN A COMMERCIAL SUCCESS.

15 MR. SELWYN: NO FURTHER QUESTIONS.

16 THE COURT: ALL RIGHT. THE TIME IS NOW
17 2:43. IS THERE GOING TO BE ANY CROSS?

18 MR. DEFRANCO: DUE TO TIME CONSTRAINTS,
19 NO, YOUR HONOR.

20 THE COURT: ALL RIGHT. IS THERE GOING TO
21 BE ANY REDIRECT, I ASSUME NOT. THIS WITNESS IS
22 EXCUSED SUBJECT TO RECALL OR NOT.

23 MR. SELWYN: SUBJECT TO RECALL.

24 THE COURT: OKAY. THEN YOU ARE EXCUSED
25 SUBJECT TO RECALL.

1 OKAY. WE'RE GOING TO TAKE A 15-MINUTE
2 BREAK.

3 MR. SELWYN: YOUR HONOR, ONE HOUSEKEEPING
4 MATTER. I NEGLECTED TO MOVE INTO EVIDENCE WITH
5 RESPECT TO THE '893 PATENT, PX 112, WHICH IS THE LG
6 PATENT, AND PX 121, WHICH IS THE APPLE SOURCE CODE.

7 THE COURT: OKAY. PX 112 I ACTUALLY DID
8 ADMIT THAT.

9 MR. SELWYN: OKAY.

10 THE COURT: WHAT WAS THE OTHER NUMBER?

11 MR. SELWYN: PX 121 WAS THE APPLE SOURCE
12 CODE.

13 THE COURT: AND I ACTUALLY ADMITTED THAT.
14 THAT WAS JUST THE BATES NUMBERS OF RANGES OF CODE
15 THAT HE REVIEWED, RIGHT?

16 MR. SELWYN: RIGHT.

17 THE COURT: THAT WAS ADMITTED.

18 MR. SELWYN: THANK YOU, YOUR HONOR.

19 THE COURT: OKAY. AGAIN, PLEASE KEEP AN
20 OPEN MIND AND DON'T DO ANY RESEARCH OR DISCUSS THE
21 CASE. WE'LL TAKE A 15-MINUTE BREAK. YOU CAN LEAVE
22 THE BINDERS ON YOUR CHAIRS.

23 THANK YOU.

24 (WHEREUPON, THE FOLLOWING PROCEEDINGS
25 WERE HELD OUT OF THE PRESENCE OF THE JURY:)

1 THE COURT: ALL RIGHT. THE RECORD SHOULD
2 REFLECT THAT THE JURORS HAVE LEFT THE COURTROOM.
3 PLEASE TAKE A SEAT. I WANT TO STATE SOMETHING ON
4 THE RECORD.

5 YOU KNOW, I AM NOT GOING TO ALLOW THE
6 PARTIES TO FILE AN OFFER OF PROOF THAT THEY WERE
7 UNABLE TO PRESENT ANY WITNESSES BECAUSE OF THE TIME
8 LIMITATIONS.

9 THIS IS ALL PART OF THE RECORD, BUT AS OF
10 AUGUST 6TH, IN APPLE'S AFFIRMATIVE CASE, APPLE HAD
11 USED 5 HOURS AND 42 MINUTES, SAMSUNG HAD USED 6
12 HOURS AND 27 MINUTES DURING ITS CROSS-EXAMINATION
13 OF APPLE'S WITNESSES. BY AUGUST 7TH, APPLE HAD
14 USED 9 HOURS AND 9 MINUTES, SAMSUNG HAD USED 9
15 HOURS AND 1 MINUTE.

16 BY AUGUST 10TH, APPLE HAD USED 11 HOURS
17 AND 35 MINUTES, SAMSUNG HAD USED 12 HOURS AND 16
18 MINUTES TO CROSS APPLE'S WITNESSES AND APPLE'S
19 AFFIRMATIVE CASE.

20 AT THE CLOSE OF APPLE'S CASE, APPLE HAD
21 USED 13 HOURS AND 37 MINUTES AND SAMSUNG HAD USED
22 13 HOURS AND 50 MINUTES. SO SAMSUNG MADE A
23 STRATEGIC DECISION TO SPEND MORE TIME TO
24 CROSS-EXAMINE APPLE WITNESSES DURING APPLE'S
25 AFFIRMATIVE CASE THAN APPLE USED TO PRESENT ITS

1 AFFIRMATIVE CASE.

2 SO I'M NOT GOING TO ALLOW THE PARTIES TO
3 FILE SOMETHING THAT SAYS THAT YOU WERE UNABLE TO
4 PRESENT WITNESSES BECAUSE I THINK YOU MADE A
5 STRATEGIC DECISION, I HAVE MADE VERY CLEAR THAT
6 THERE WOULD BE TIME LIMITS IN THIS CASE, NO
7 EXTENSIONS WOULD BE GRANTED, SO YOU HAD TO MAKE A
8 CALCULATION AND BE DISCIPLINED ABOUT HOW YOUR TIME
9 WAS SPENT.

10 SO I'M NOT GOING TO ALLOW THAT BRIEFING
11 AND ALL THE TIMES ARE AS PART OF THE RECORD, BUT
12 SAMSUNG MADE A CHOICE TO USE ALMOST 14 OF ITS 25
13 HOURS CROSS-EXAMINING APPLE'S WITNESSES DURING
14 APPLE'S CASE.

15 SO I MAKE A FINDING THAT I DO NOT THINK
16 IT IS APPROPRIATE THAT SAMSUNG WAS PREVENTED FROM
17 OFFERING MORE OF ITS OWN WITNESSES' TESTIMONY BY
18 THESE TIME LIMITS.

19 IT IS A RESULT OF APPLE'S CHOICE TO USE
20 14 HOURS OUT OF 25 HOURS THAT IT WAS ALLOTTED TO
21 CROSS-EXAMINE APPLE'S WITNESSES IN APPLE'S
22 AFFIRMATIVE CASE.

23 NOW, I MAKE THE FINDING THAT ANY
24 INABILITY OF APPLE -- OF SAMSUNG TO PRESENT MORE
25 WITNESSES WAS BECAUSE OF ITS OWN DECISIONS ABOUT

1 ITS TIME ALLOCATION.

2 NOW, WHAT ELSE?

3 MR. LEE: YOUR HONOR, AT THE PACE WE'RE
4 GOING, WE'RE GOING TO EXHAUST OUR LIST OF SEVEN
5 THAT WE DISCLOSED.

6 THE COURT: OKAY.

7 MR. LEE: SO WE WOULD --

8 THE COURT: SO WHAT HAPPENED WITH DZUBAN?
9 AFTER I ISSUED MY ORDER, IT WAS NO LONGER NECESSARY
10 TO CALL THAT WITNESS?

11 MR. LEE: YES.

12 SO I INFORMED MR. VERHOEVEN THAT IF WE
13 EXHAUST OUR LIST OF SEVEN, WHICH IT LOOKS LIKE WE
14 WILL --

15 THE COURT: OKAY.

16 MR. LEE: -- WE WILL HAVE -- PROFESSOR
17 KIM AND PROFESSOR KNIGHTLY, WHO ARE THE NEXT TWO IN
18 ORDER ON OUR LIST ARE READY TO GO.

19 THE COURT: LET'S DO IT.

20 NOW, OKAY. YOU TOLD ME THAT YOU ARE NOT
21 CALLING AGNETTA OR HONG OR ROSSI OR STRINGER OR
22 TEKSLER OR YEO. IS THAT CORRECT?

23 MR. LEE: CORRECT.

24 THE COURT: ALL RIGHT. SO WE ARE NOT
25 GOING TO ISSUE ANY RULINGS AS TO THOSE SIX

1 WITNESSES.

2 MR. LEE: THERE MAY BE ONE MORE, YOUR
3 HONOR.

4 THE COURT: THERE'S ONE MORE THAT YOU'RE
5 TAKING OFF?

6 MR. LEE: THERE WAS ONE MORE, YOUR HONOR,
7 AND I WAS CONFUSED. IT'S NOT ON THE LIST. SO
8 THOSE ARE THE SIX. THAT'S RIGHT.

9 THE COURT: OKAY. ARE THERE ANY MORE
10 THAT YOU'RE NOT GOING TO CALL THAT YOU KNOW NOW?

11 MR. LEE: NO.

12 THE COURT: OKAY. ALL RIGHT. SO WHO DID
13 YOU SAY? SO DZUBAN, I DIDN'T SEE A STIPULATION AS
14 WELL, SO THERE'S NO CHALLENGE, THAT WE DON'T NEED A
15 SONY CUSTODIAN OF RECORD, IS THAT RIGHT?

16 MR. SELWYN: YOUR HONOR JUST ADMITTED ALL
17 THE EVIDENCE WE WOULD HAVE PUT IN THROUGH THAT
18 WITNESS.

19 THE COURT: OKAY.

20 MR. LEE: SO WE'LL GO TO PROFESSOR
21 SRIVASTAVA.

22 THE COURT: BECAUSE MY ORDER SAID THAT HE
23 STILL HAD TO TESTIFY UNLESS THERE WAS GOING TO BE A
24 STIPULATION, BUT I GUESS THERE WAS AN AGREEMENT OF
25 THE PARTIES THAT HE DIDN'T NEED TO BE HERE. THAT'S

1 FINE.

2 OKAY. WHAT ABOUT SRIVASTAVA? IS THAT
3 THE PERSON COMING OR NOT.

4 MR. LEE: HE'S NEXT, AND THEN WE HAVE
5 PROFESSOR KIM AND PROFESSOR KNIGHTLY READY TO GO.
6 AND IF WE GET THROUGH ALL THREE OF THOSE, WHICH I
7 THINK WE MIGHT, THAT WILL LEAVE US WITH AT LEAST AT
8 OUR END, EIGHT LIVE WITNESSES TOMORROW AND THREE
9 SHORT ONES BY DEPOSITION, NO MORE THAN 15 MINUTES
10 TOTAL.

11 THE COURT: ALL RIGHT. GIVE ME THE LIST
12 AGAIN. WHO IS -- WHO IS -- IT'S SRIVASTAVA AND WHO
13 ELSE? KIM AND THEN KNIGHTLY?

14 MR. LEE: YEAH. KIM, KNIGHTLY, AND THEN
15 I THINK THAT WILL TAKE US TO THE END OF THE DAY,
16 BUT IF IT DOESN'T, DR. WALKER.

17 THE COURT: OKAY.

18 MR. LEE: MR. DONALDSON, PROFESSOR
19 ORDOVER. THAT CERTAINLY WILL GET US UNTIL
20 TOMORROW.

21 THE COURT: OKAY. WE HAVE TO ARGUE THE
22 JMOL MOTIONS AT 4:30. I WOULD LIKE A PREVIEW. IS
23 IT MOSTLY JUST THE -- YOU'RE GOING TO ARGUE NO
24 OBVIOUSNESS DEFENSE WAS MADE AS TO CERTAIN OF THE
25 PATENTS OR WHAT.

1 MR. LEE: YOUR HONOR, THE WAY I THOUGHT I
2 WOULD DO IT, IT MIGHT -- AND I HEARD WHAT YOUR
3 HONOR SAID THIS MORNING ABOUT YOUR INCLINATION. I
4 THINK FOR EACH OF THE PATENTS, THERE ARE SOME
5 DISCRETE ISSUES THAT ACTUALLY ARE APPROPRIATE FOR
6 JMOL. FOR INSTANCE, NO INDUCED INFRINGEMENT, NO
7 CONTRIBUTORY INFRINGEMENT, NO DOCTRINE OF
8 EQUIVALENTS, AND I THINK THOSE ARE ONES THAT YOUR
9 HONOR COULD ACT ON. FOR INSTANCE, ON THE FIVE
10 SAMSUNG PATENTS, I THINK THERE WAS A DOCTRINE OF
11 EQUIVALENTS OPINION OFFERED ONLY ON THE '460.

12 BUT ON THE OTHER FOUR PATENTS, WE WOULD
13 MOVE FOR JMOL ON THE DOCTRINE OF EQUIVALENTS. ON
14 FOUR OF THE PATENTS, AT LEAST BY MY TAKE, THERE WAS
15 NO --

16 THE COURT: OKAY. I'M SORRY. LET'S
17 BREAK IT UP. LET ME HEAR FROM SAMSUNG. WHAT'S
18 YOUR POSITION ON WHETHER YOU INTRODUCED ANY
19 EVIDENCE OF DOCTRINE OF EQUIVALENTS ON THE OTHER
20 FOUR PATENTS.

21 MR. GOLDSTEIN: WITH RESPECT TO THE '893
22 AND '711, WE AGREE. WITH RESPECT TO THE FEATURE
23 PATENTS.

24 THE COURT: OKAY.

25 MR. GOLDSTEIN: ON THE STANDARDS PATENTS,

1 I WOULD HAVE TO ASK.

2 MR. LEE: OKAY.

3 THE COURT: I'M SORRY, I COULDN'T HEAR
4 THE LAST PART.

5 MR. LEE: I THINK THERE'S A DIFFERENT
6 QUINN LAWYER FOR THE '516 AND '941, THE DECLARED
7 ESSENTIAL PATENTS.

8 MR. GOLDSTEIN: THAT'S RIGHT.

9 MR. LEE: BUT I'M 100 PERCENT SURE THERE
10 WAS --

11 THE COURT: GIVE ME THOSE LAST TWO, '941
12 AND WHAT WAS THE OTHER PATENT NUMBER.

13 MR. LEE: I THINK, YOUR HONOR, '516,
14 '941, '711, AND --

15 THE COURT: I HEARD ON THE '711 '893, I
16 HEARD THAT THERE WAS AGREEMENT.

17 MR. LEE: RIGHT.

18 THE COURT: SO IT WILL BE GRANTED AS TO
19 THAT.

20 MR. LEE: I'M INFORMED, YOUR HONOR,
21 THERE'S AGREEMENT ON EVERYTHING BUT THE '460.

22 THE COURT: OKAY. SO THERE'S AN
23 AGREEMENT ON THAT. OKAY. THEN WHAT ELSE?

24 MR. LEE: THEN, YOUR HONOR, THE OTHER
25 ONE --

1 THE COURT: YOU SAID NO INDUCEMENT.

2 MR. LEE: NO INDUCEMENT.

3 THE COURT: AS TO WHICH PATENTS?

4 MR. LEE: THERE ARE -- FOR THE '516.

5 THE COURT: YEAH.

6 MR. LEE: THE '941, THE '711, AND THE
7 '893, I THINK THERE WAS NO EVIDENCE OF INDUCED OR
8 CONTRIBUTORY INFRINGEMENT.

9 THE COURT: OKAY. WHAT'S SAMSUNG'S VIEW
10 ON THAT? ARE YOU STILL PURSUING THOSE THEORIES OR
11 NOT?

12 MR. GOLDSTEIN: NO, YOUR HONOR. ONLY
13 WITH RESPECT TO THE '460.

14 THE COURT: OKAY. ALL RIGHT. OKAY.

15 MR. LEE: AND THEN, YOUR HONOR, AS A
16 PREVIEW FOR 4:30, I THINK THOSE ARE THE ONES THAT
17 WE --

18 THE COURT: WELL, I WAS THINKING I WOULD
19 LIKE YOU TO GO AHEAD AND SAY IT NOW AND IF I NEED
20 TO DO ANY FURTHER RESEARCH, NOW IS MY TIME.

21 MR. LEE: LET ME DO THIS. I THINK, YOUR
22 HONOR, FOR ALL FIVE OF THE PATENTS, WHILE THERE WAS
23 EVIDENCE OF NOTICE AS A RESULT OF THE STIPULATION,
24 I DON'T THINK THAT THERE IS EVIDENCE SUFFICIENT TO
25 GO TO THE JURY ON WILLFULNESS FOR ANY OF THE FIVE.

1 THERE'S NOTHING OTHER THAN NOTICE. AND
2 THERE'S NO EVIDENCE COPYING OR ANYTHING ELSE UNDER
3 SEAGATE THAT WOULD ALLOW THE WILLFULNESS ISSUE TO
4 GO TO THE JURY.

5 THE COURT: LET ME HEAR FROM SAMSUNG ON
6 THAT. I DISAGREE WITH YOU ON THAT.

7 MS. MAROULIS: YOUR HONOR, WE DISAGREE AS
8 WELL. WILLFULNESS IS A FACTUAL ISSUE FOR THE JURY
9 AND CERTAINLY THERE WAS NOT, AND NOT ONLY WAS THERE
10 PRE-SUIT NOTICE, BUT THERE WAS NOTICE IN THE SUIT,
11 PRE-SUIT NOTICE, AND POST-SUIT NOTICE IN THE FORM
12 OF INFRINGEMENT CONTENTIONS WHICH WERE INTRODUCED
13 THROUGH DR. YANG AND OTHERS.

14 THE COURT: ALL RIGHT. I'M DENYING THE
15 RULE 50 ON WILLFULNESS AS TO ALL FIVE PATENTS.
16 OKAY?

17 MR. LEE: ALL RIGHT. AND THEN, YOUR
18 HONOR.

19 THE COURT: WHAT ELSE YOU GOT?

20 MR. LEE: I EXPECT YOU'LL DENY THIS, BUT
21 JUST SO I CAN MAKE MY RECORD.

22 THE COURT: GO AHEAD.

23 MR. LEE: AND QUICKLY ON THE '516 PATENT,
24 WE WOULD MOVE FOR JMOL OF NO LITERAL INFRINGEMENT.
25 DR. WILLIAMS TESTIFIED HIS INTERPRETATION OF THE

1 CLAIM WAS ADDING A FIRST CHANNEL AND A SECOND
2 CHANNEL TO GET THE TOTAL TRANSMIT POWER, AND THERE
3 IS NO EVIDENCE THAT THE ACCUSED PRODUCTS FOR THE
4 STANDARD DOES THAT.

5 FOR THE '941 PATENT, DR. WILLIAMS'
6 TESTIMONY WAS BASED ON HIS OPINION OR HIS
7 INTERPRETATION THAT ONE OF ORDINARY -- I'M SORRY,
8 THAT THE PLAIN MEANING OF AN ENTIRE SDU IS ONLY AN
9 ENTIRE SDU, THAT'S, WE SUBMIT, INCORRECT AS A
10 MATTER OF LAW. HE HAS NO OPINION OTHERWISE.

11 ON THE '460 PATENT, TWO THINGS, YOUR
12 HONOR. DR. YANG'S OPINION IS THAT THERE IS NO
13 ORDER OF STEPS TO THE FIVE STEPS OF THE '460
14 PATENT. YET HE CONCEDED ON CROSS-EXAMINATION THAT
15 STEP A HAD TO PRECEDE STEP D, STEP B HAD TO PRECEDE
16 STEP E.

17 AND THAT IF STEP C, WHICH YOUR HONOR MAY
18 RECALL HAS THE LANGUAGE AN IMAGE IN STEP B AND
19 OTHER IMAGES IN STEP C, THAT IF THERE, IN FACT, WAS
20 AN ORDER, HE HAD NO OPINION. AND FOR THAT REASON,
21 WE WOULD MOVE FOR JMOL ON THE '460.

22 ON THE '711, WE WOULD MOVE FOR JMOL ON
23 THE BASIS THAT DR. YANG'S UNSPECIFIC OPINION AS TO
24 WHAT AN APPLETT IS -- AND I'M NOT GOING TO REVISIT
25 WHAT YOUR HONOR SAID BEFORE -- IS INSUFFICIENT FOR

1 ANY REASONABLE JUROR TO FIND THAT THERE IS, IN
2 FACT, AN APPLETT IN THE ACCUSED PRODUCTS.

3 THE COURT: OKAY. AND YOU'RE NOT MOVING
4 AS TO THE '893, OR YOU ARE?

5 MR. LEE: NO. I THINK AS -- AS TO THE
6 '893, OUR JUDGMENT IS THAT THERE'S ENOUGH EVIDENCE
7 FOR THE JURY TO DECIDE THE ISSUES EXCEPT FOR
8 WILLFULNESS, AND INDUCED INFRINGEMENT.

9 THE COURT: ALL RIGHT.

10 MR. LEE: AND CONTRIBUTORY.

11 THE COURT: ALL RIGHT. SO I'M --

12 MR. LEE: YOUR HONOR, THE LATTER --
13 MR. MCELHINNY REMINDS ME, AS TO THE LATTER ON THE
14 '893, IT WOULD BE SUBJECT TO THE MOTION THAT WE
15 WOULD MAKE AT THE END OF ALL THE EVIDENCE, BUT FOR
16 NOW, THOSE ARE OUR POSITIONS.

17 THE COURT: OKAY. SO THIS IS MY RULING
18 ON THE RULE 50 MOTION. THE MOTION IS DENIED WITH
19 REGARD TO INFRINGEMENT OF THE '516, '941, '460, AND
20 '711. I THINK SAMSUNG HAS PRESENTED SUFFICIENT
21 EVIDENTIARY BASIS FOR A REASONABLE JURY TO FIND IN
22 THEIR FAVOR. I'M DENYING AS TO WILLFULNESS ON ALL
23 FIVE PATENTS.

24 NO MOTION WAS MADE AS TO INDUCEMENT OR
25 CONTRIBUTORY INFRINGEMENT OR DOCTRINE OF

1 EQUIVALENTS ON THE '460, RIGHT? YOU DIDN'T MAKE A
2 RULE 50 MOTION?

3 MR. LEE: I ACTUALLY -- YOUR HONOR, I MAY
4 HAVE MISSPOKE. BUT THERE IS A MOTION BOTH, AS TO
5 BOTH. I THINK THE FAIR READING OF THE RECORD IS
6 THAT SAMSUNG DID OFFER EVIDENCE ON AN ACT OF DIRECT
7 INFRINGEMENT. BUT AS TO INDUCED INFRINGEMENT,
8 OTHER THAN PUTTING IN AN APPLE USER'S MANUAL,
9 THERE'S NO EVIDENCE THAT WOULD SATISFY DSU AND THE
10 SPECIFIC INTENT REQUIREMENT, THERE'S NO EVIDENCE OF
11 SPECIFIC CONTRIBUTORY INFRINGEMENT ON THAT PATENT.

12 THE COURT: OKAY. LET ME JUST -- MY
13 NOTES ARE REALLY MESSY HERE. SO YOU ARE MAKING A
14 RULE 50 MOTION AS TO THE '460 ON INDUCEMENT AND
15 CONTRIBUTORY INFRINGEMENT?

16 MR. LEE: I AM, YOUR HONOR.

17 THE COURT: ALL RIGHT. THAT'S DENIED. I
18 DO THINK THAT SAMSUNG HAS PRESENTED A LEGALLY
19 SUFFICIENT EVIDENTIARY BASIS FOR A REASONABLE JURY
20 TO RULE IN THEIR FAVOR.

21 YOU'RE NOT MAKING A D.O.E. CLAIM, BUT YOU
22 ARE MOVING FOR JUDGMENT AS A MATTER OF LAW WITH
23 REGARD TO THE DOCTRINE OF EQUIVALENTS AS TO THE
24 '893, '711, '941, AND '516 PATENTS. SAMSUNG
25 CONCEDES THE POINT THAT THAT RULE 11 MOTION IS

1 GRANTED.

2 AND WITH REGARD TO YOUR MOTION REGARDING
3 CONTRIBUTORY INFRINGEMENT AND INDUCEMENT OF
4 INFRINGEMENT AS TO THE '516, '941, '711, '893,
5 THAT'S CONCEDED AS WELL BY SAMSUNG, SO YOUR MOTION
6 IS GRANTED.

7 OKAY. DOES THAT TAKE CARE OF YOUR --

8 MR. LEE: I THINK, YOUR HONOR --

9 THE COURT: -- RULE 50?

10 MR. LEE: I THINK AS TO THE FOUR 60 --

11 MR. GOLDSTEIN: THAT'S CORRECT.

12 THE COURT: I'M SORRY. SAY THAT AGAIN.

13 MR. LEE: AS TO THE '460 PATENT, YOUR
14 HONOR, WE'RE ALSO IN AGREEMENT THAT THERE SHOULD BE
15 JMOL OF NO CONTRIBUTORY INFRINGEMENT.

16 THE COURT: ON THE '460, I DENIED YOUR
17 JMOL ON INDUCEMENT.

18 MR. LEE: ON INDUCEMENT, RIGHT.

19 THE COURT: OKAY.

20 MR. LEE: BUT THERE IS NO -- THERE'S
21 AGREEMENT THAT THE JMOL SHOULD ENTER ON
22 CONTRIBUTORY.

23 THE COURT: I SEE. SAMSUNG'S CONCEDING
24 THAT POINT?

25 MR. LEE: I BELIEVE SO.

1 MR. GOLDSTEIN: YES.

2 THE COURT: OKAY. ALL RIGHT. SO THE
3 RULE 50 IS GRANTED. LET ME JUST MAKE SURE, BECAUSE
4 I'VE GOT TO DO AN ORDER.

5 RULE 50 IS GRANTED AS TO BOTH
6 CONTRIBUTORY INFRINGEMENT AND INDUCEMENT ON THE
7 '516, '941, '711, AND '893.

8 IT IS GRANTED AS TO CONTRIBUTORY
9 INFRINGEMENT ON THE '460, DENIED AS TO INDUCEMENT.

10 AND IT'S GRANTED AS TO THE DOCTRINE OF
11 EQUIVALENTS FOR THE '893, '711, '941, AND '516.

12 IT'S DENIED AS TO WILLFULNESS AS TO ALL
13 FIVE PATENTS, AND IT'S DENIED AS TO LITERAL
14 INFRINGEMENT. IT'S DENIED AS TO LITERAL
15 INFRINGEMENT AS TO THE '516, '941, '460, AND '711.

16 IS THAT ACCURATELY STATED?

17 MR. LEE: THAT IS. YOUR HONOR, IF I CAN
18 ADD ONE SENTENCE, ONLY BECAUSE I THINK I HAVE TO
19 MAKE MY RECORD.

20 ON THE WILLFULNESS ISSUE, IT'S OUR
21 POSITION THAT NOTICE IS NOT ENOUGH, BUT I
22 UNDERSTAND YOUR HONOR'S RULING.

23 THE COURT: OKAY. I THINK ON THE RECORD
24 THERE'S MORE THAN NOTICE, BUT WE MIGHT DISAGREE ON
25 THAT POINT.

1 OKAY. AND YOU DID NOT MAKE A RULE 50
2 MOTION ON THE ISSUE OF LITERAL INFRINGEMENT AS TO
3 THE '893 AT THIS TIME.

4 MR. LEE: AT THIS TIME.

5 THE COURT: GOT IT.

6 MR. LEE: CORRECT, YOUR HONOR.

7 THE COURT: OKAY. LET'S GET THESE OUT OF
8 THE WAY. ALL RIGHT. WHAT YOU GOT, MR. MCELHINNY?

9 MR. MCELHINNY: IS THIS A PREVIEW, YOUR
10 HONOR, OR AM I GOING TO --

11 THE COURT: THIS IS IT. UNLESS I NEED TO
12 THINK ABOUT IT, IN WHICH CASE I'M GOING TO HAVE TO
13 TAKE IT UNDER SUBMISSION.

14 MR. MCELHINNY: SO I'M CLEAR ON THE
15 PROCESS, WE ARE GOING TO MAKE A MORE FORMAL RULE 50
16 MOTION AT THE CLOSE OF THE EVIDENCE.

17 THE COURT: UNDERSTOOD.

18 MR. MCELHINNY: BUT I WANTED TO MAKE A
19 TARGETED MOTION FOR YOUR HONOR.

20 THE COURT: GO AHEAD.

21 MR. MCELHINNY: THE FIRST HE ONE IS A
22 MOTION TO STRIKE, AND WE WANT TO STRIKE THE
23 TESTIMONY OF SAMSUNG'S EXPERT ITAY SHERMAN.

24 MR. SHERMAN TESTIFIED ON OBVIOUSNESS,
25 PURPORTED TO TESTIFY ON OBVIOUSNESS OF THE APPLE

1 DESIGN PATENTS, BUT IN HIS TESTIMONY, HE DID NOT
2 USE THE LEGAL STANDARD THAT IS REQUIRED. HE DID
3 NOT IDENTIFY ANY PRIMARY REFERENCE, HE NEVER
4 IDENTIFIED A SECONDARY REFERENCE. AND AS TO THE
5 PHONES, HE NEVER TESTIFIED THAT ANY PERSON OF
6 ORDINARY SKILL WOULD BE MOTIVATED TO COMBINE ANY
7 TWO REFERENCES.

8 HE ALSO USED, AS ALLEGED PRIOR ART, THE
9 FIDLER TABLET, THE LG -- THE FIDLER TABLET, WHICH
10 THE FEDERAL CIRCUIT HAS ALREADY RULED CANNOT BE
11 HELD AS A PREFERENCE. HE RELIED ON THE LG PRADA,
12 WHICH THERE IS NO PRIOR -- THERE IS NO EVIDENCE
13 THAT IT IS PRIOR ART. IT'S NEVER BEEN SOLD IN THE
14 UNITED STATES.

15 AND HE RELIED ON THE KOREAN D'547 PATENT,
16 WHICH IS NOT PRIOR ART.

17 AND IF LEFT --

18 THE COURT: WHY IS THE KOREAN PATENT NOT
19 PRIOR ART?

20 MR. MCELHINNY: IT'S NOT PRIOR ART
21 BECAUSE IT WAS PUBLISHED LESS THAN A YEAR BEFORE
22 THE CRITICAL DATE OF THE PATENTS AT ISSUE.

23 THE COURT: AND GIVE ME THAT NUMBER
24 AGAIN. D'547?

25 MR. MCELHINNY: D'547.

1 THE COURT: LESS THAN A YEAR BEFORE
2 CRITICAL DATE.

3 NOW, ARE YOU SAYING THE CRITICAL DATE IS
4 SOME EARLIER DATE THAT I DON'T THINK YOU PROVED OR
5 YOU'RE SAYING THE CRITICAL DATE IS THE PATENT
6 APPLICATION DATE.

7 MR. MCELHINNY: WE ARE SAYING THAT IN THE
8 TESTIMONY OF CHRIS STRINGER, AS CORROBORATED BY THE
9 APPLE CAD DIRECTORY, CAD DIRECTORY, APPLE'S DESIGN
10 WAS COMPLETED BY APRIL OF 2006. THAT ACTUALLY WILL
11 TIE TO ONE OF THE THINGS WE HAVE TO FILE WITH YOUR
12 HONOR TOMORROW MORNING.

13 THE COURT: OKAY.

14 MR. MCELHINNY: BUT THE OVERALL GIST OF
15 THIS MOTION IS THAT WHILE HE TESTIFIED AT GREAT
16 LENGTH, HE NEVER APPLIED THE TESTS THAT THE FEDERAL
17 CIRCUIT REQUIRED HIM TO APPLY.

18 IN THIS CASE, THE FEDERAL CIRCUIT HAS
19 TOLD US THAT THE PROPER APPROACH IS TO IDENTIFY A
20 PRIMARY REFERENCE, A SECONDARY REFERENCES, AND THEN
21 TESTIFY WHAT A PERSON OF ORDINARY SKILL WOULD BE
22 MOTIVATED TO COMBINE THOSE, AND HE NEVER MENTIONED
23 ANY OF THOSE WORDS.

24 THE COURT: ALL RIGHT. THAT'S THE EXTENT
25 OF YOUR MOTION.

1 MR. MCELHINNY: THAT'S THE MOTION TO
2 STRIKE, YOUR HONOR. I HAVE SOME RULE 50 -- DO YOU
3 WANT THE WHOLE LIST?

4 THE COURT: YES, GO AHEAD.

5 MR. MCELHINNY: OKAY. WE ARE MOVING FOR
6 A JMOI OF INFRINGEMENT UNDER THE D'087 PATENT. I
7 CAN GIVE YOU THE LIST, YOUR HONOR, IT'S ONE, TWO,
8 THREE, FOUR -- FIVE SPECIFIC MODELS. AND THAT IS
9 BASED ON THE FACT THAT NO EVIDENCE OF
10 NON-INFRINGEMENT WAS PRESENTED. TO REMIND YOUR
11 HONOR --

12 THE COURT: WHAT ARE THOSE?

13 MR. MCELHINNY: THE MODELS ARE THE
14 GALAXY S I9000, THE GALAXY S II AT&T, THE
15 GALAXY S II I9000, THE GALAXY S II EPIC 4G TOUCH,
16 AND THE GALAXY S II SKYROCKET.

17 TO REMIND YOUR HONOR OF THE HISTORY HERE,
18 FOR LATE DISCLOSURE REASONS, SAMSUNG WAS RESTRICTED
19 TO NON-INFRINGEMENT TESTIMONY TO JUST THREE MODELS,
20 AND SO THEY PRESENTED NO EVIDENCE WHATSOEVER THAT
21 ANY OF THOSE MODELS -- THAT DENIED INFRINGEMENT
22 THAT WE PROVED IN OUR CASE IN CHIEF.

23 DO YOU WANT ME TO MOVE ON TO MY NEXT ONE?

24 THE COURT: WHAT'S YOUR NEXT ONE?

25 MR. MCELHINNY: INFRINGEMENT OF THE D'677

1 BY THE FASCINATE, THE GALAXY ACE, THE GALAXY S II
2 AT&T, THE GALAXY S II I9000, I9000, THE GALAXY S II
3 -- I CAN'T READ MY OWN HANDWRITING -- T-MOBILE, THE
4 GALAXY S II SKYROCKET, THE GALAXY S SHOWCASE, AND
5 THE GALAXY MEMORIZE, AND THAT'S ON THE SAME BASIS
6 AS THE FORMER. ALL OF THEIR NON-INFRINGEMENT
7 EVIDENCE WAS LIMITED TO THE THREE MODELS THAT THEY
8 WERE ALLOWED TO PUT IN EVIDENCE.

9 THE COURT: WAIT. THE I9000 WAS SUBJECT
10 TO THE, TO MY RULE 50 ORDER?

11 MR. MCELHINNY: IT IS, YOUR HONOR.

12 THE COURT: SO YOU'RE STUCK WITH
13 INDUCEMENT, RIGHT?

14 MR. MCELHINNY: WE ARE STUCK --

15 THE COURT: BY SEC?

16 MR. MCELHINNY: NO, NO, YOUR HONOR. SEC
17 HAS SOLD DIRECTLY INTO THE UNITED STATES. THERE IS
18 EVIDENCE THAT SEC SELLS DIRECTLY TO ITS SUBSIDIARY,
19 SHIPS INTO THE UNITED STATES. THAT'S DIRECT
20 INFRINGEMENT.

21 THE COURT: ALL RIGHT. WHAT'S YOUR OTHER
22 MOTION?

23 MR. MCELHINNY: WE WOULD MAKE A MOTION
24 THAT THE D'087 AND THE D'677 ARE NOT INVALID FOR
25 FUNCTIONALITY REASONS AND WE DO THAT ON TWO BASES.

1 THERE WAS NO TESTIMONY AT ANY TIME BY ANY
2 WITNESS THAT THE OVERALL DESIGNS AS SET FORTH IN
3 THOSE PATENTS WAS DICTATED BY FUNCTION. AND THERE
4 WAS NO EXPERT TESTIMONY PRESENTED AT ALL ON THE
5 FUNCTIONALITY ISSUE.

6 THE COURT: WHAT ELSE? ANYTHING ELSE?

7 MR. MCELHINNY: YES, YOUR HONOR. I'M
8 SORRY. THERE'S A LIST HERE. WE MOVE FOR JUDGMENT
9 AS A MATTER OF LAW THAT THE '381 PATENT, THE RUBBER
10 BANDING PATENT WAS INFRINGED. THERE WAS NO
11 NON-INFRINGEMENT TESTIMONY PRESENTED AT ALL, NO
12 EXPERT OPINED ON NON-INFRINGEMENT.

13 THE COURT: WHAT ELSE?

14 MR. MCELHINNY: WE MOVE THAT THE '381
15 PATENT WAS -- WAS NOT PROVEN NOT INVALID BY CLEAR
16 AND CONVINCING EVIDENCE. PROFESSOR VAN DAM SPOKE
17 TO THE PATENT, BUT HE DID NOT TESTIFY ABOUT THE
18 REQUIREMENT THAT A DEVICE RESPOND, QUOTE, IN
19 RESPONSE TO THE EDGE OF THE ELECTRONIC DOCUMENT
20 BEING REACHED."

21 THE COURT: ALL RIGHT. THAT'S DENIED.
22 WHAT ELSE?

23 MR. MCELHINNY: ON THE '163, YOUR HONOR,
24 WHICH IS THE DOUBLE TAP TO ZOOM, WE MOVE FOR JMO
25 OF INFRINGEMENT ON THE GROUND THAT THERE WAS NO

1 CONTRARY TESTIMONY. MR. GRAY TESTIFIED, BUT HE DID
2 NOT TESTIFY TO ANY EXTENT THAT THE SAMSUNG DEVICES
3 DID NOT PERFORM THE '163 PATENT.

4 THE COURT: WHAT ELSE? IS THAT IT?

5 MR. MCELHINNY: NO, YOUR HONOR. I'M
6 SORRY. WE MOVE FOR JUDGMENT AS A MATTER OF LAW
7 THAT THE '163 PATENT IS NOT INDEFINITE. THERE WAS
8 AN ARGUMENT MADE BY MR. GRAY TO THE JURY ABOUT
9 CERTAIN LANGUAGE BEING AMBIGUITY, AMBIGUOUS, AND
10 YOUR HONOR HAS ALREADY CONSTRUED THE PATENT. IT
11 WOULD BE INAPPROPRIATE TO SUBMIT THE QUESTION OF
12 DEFINITENESS TO THE JURY.

13 WE MOVE FOR JUDGMENT AS A MATTER OF LAW
14 THAT THE '915 PATENT WAS INFRINGED. THERE WAS
15 TESTIMONY ABOUT THE POSSIBILITY, WHICH WE DENIED,
16 BUT IT'S A DISPUTED QUESTION OF FACT, ABOUT WHETHER
17 OR NOT IT IS POSSIBLE IN A SAMSUNG DEVICE TO SCROLL
18 USING TWO FINGERS SIMULTANEOUSLY, BUT NO SPECIFIC
19 ACCUSED DEVICE, SAMSUNG DEVICE WAS EVER IDENTIFIED,
20 DESPITE THE QUESTION, THAT PERFORMED -- THAT
21 ALLEGEDLY PERFORMS THIS TWO FINGER SCROLL FUNCTION.

22 SO NO TESTIMONY WAS EVER GIVEN THAT ANY
23 OF THE ACCUSED DEVICES DOES NOT INFRINGE THE
24 PATENT.

25 WE MOVE FOR JUDGMENT AS A MATTER OF LAW

1 THAT THE '915 PATENT IS NOT OBVIOUS ON THE GROUNDS
2 THAT MR. GRAY MADE IT CLEAR THAT HE DID NOT HAVE
3 ANY OBVIOUSNESS TESTIMONY TO SUPPORT ANY
4 OBVIOUSNESS DEFENSE.

5 AND, FINALLY, WE MOVE THAT NONE OF OUR
6 TRADE DRESS ALLEGATIONS IS INVALID FOR
7 FUNCTIONALITY. THE EVIDENCE IS UNCONTESTED THAT
8 THERE ARE NUMEROUS ALTERNATIVE DESIGNS AVAILABLE.
9 BUT MORE IMPORTANTLY, NO WITNESS TESTIFIED THAT THE
10 OVERALL DESIGN, THAT THE DESIGN AS A WHOLE WAS
11 FUNCTIONAL.

12 THE COURT: WELL, THAT'S DENIED. I THINK
13 MR. JIN SOO KIM TALKED ABOUT THE FUNCTIONALITY OF
14 THE, OF THE GALAXY TABS AND SINCE ALL REASONABLE
15 INFERENCES HAVE TO BE DRAWN IN FAVOR OF THE
16 NON-MOVING PARTY, THAT'S DENIED.

17 MR. MCELHINNY: IF I COULD JUST -- OKAY.

18 THE COURT: YEAH.

19 MR. MCELHINNY: AS WE HEARD HIS
20 TESTIMONY, HE WAS ASKED QUESTIONS ON AN
21 ELEMENT-BY-ELEMENT BASIS.

22 THE COURT: RIGHT, BUT THE JURY CAN INFER
23 THE WHOLE OVERALL -- I UNDERSTAND.

24 MR. MCELHINNY: YES, YOUR HONOR. YOU
25 UNDERSTAND OUR MOTION.

1 THE COURT: I UNDERSTAND. BUT THAT ONE
2 IS DENIED.

3 MR. MCELHINNY: THANK YOU, YOUR HONOR.

4 THE COURT: ALL RIGHT. LET ME -- LET'S
5 DO THE EASIER ONES FIRST.

6 LET ME HEAR -- MAYBE WE SHOULD GO THROUGH
7 THE LIST HERE. HOW ABOUT ON MR. SHERMAN, DO YOU
8 WANT TO RESPOND TO THAT, PLEASE?

9 MR. ZELLER: YES, YOUR HONOR. AND JUST
10 FOR THE RECORD, SAMSUNG DOES MAKE A CROSS-MOTION
11 FOR, UNDER RULE 50.

12 THE COURT: OKAY.

13 MR. ZELLER: INVALIDITY AS TO THE DESIGN
14 PATENTS AND APPLE'S ASSERTED TRADE DRESS.

15 THE COURT: OKAY.

16 MR. ZELLER: WE ALSO RENEW OUR SAME
17 GROUNDS EARLIER FOR RECORD PRESERVATION PURPOSES AS
18 WE HAD ASSERTED EARLY ON IN THE RULE 50 MOTION. WE
19 OBVIOUSLY DON'T INTEND TO REHASH THAT, BUT JUST FOR
20 PURPOSES OF PRESERVATION OF THE RECORD, YOUR HONOR.

21 THE COURT: THAT'S FINE. YOU'RE RENEWING
22 YOUR PREVIOUS RULE 50.

23 MR. ZELLER: CORRECT, AS WELL AS
24 EXPANDING TO INCLUDE INVALIDITY.

25 MR. MCELHINNY: I MAY JUST --

1 THE COURT: YOU'RE MOVING ON INVALIDITY
2 OF TRADE DRESS AND DESIGN PATENTS.

3 MR. MCELHINNY: MAY I NOTE FOR THE RECORD
4 THAT HE CAN'T MAKE A JMOL ON INVALIDITY ISSUES. WE
5 HAVEN'T HAD A CHANCE TO PRESENT OUR CASE.

6 THE COURT: THAT'S A GOOD POINT. I MEAN,
7 THIS IS NOW THEIR --

8 MR. MCELHINNY: IT'S A PROCEDURAL ISSUE.

9 MR. ZELLER: JUST TO BE CLEAR, TO BE MORE
10 PRECISE ABOUT IT, APPLE BEARS THE BURDEN OF PROOF
11 ON CERTAIN ASPECTS OF TRADE DRESS. FOR THE
12 UNREGISTERED TRADE DRESS, APPLE BEARS THE BURDEN OF
13 PROVING NON-FUNCTIONALITY. SO THAT -- AGAIN,
14 THAT'S WHY WE'RE DOING IT OUT OF AN ABUNDANCE OF
15 CAUTION. I DON'T WANT TO BELABOR IT.

16 WITH RESPECT TO THE SHERMAN MOTION, I
17 ASSUME THE COURT'S ASKING ABOUT THE MOTION TO
18 STRIKE.

19 THE COURT: WELL, LET ME -- WITH REGARD
20 TO YOUR MOTION FOR A FINDING AS A MATTER OF LAW
21 THAT THE APPLE TRADE DRESS AND DESIGN PATENTS ARE
22 INVALID, I'M DENYING THAT.

23 I DO THINK THERE IS LEGALLY SUFFICIENT
24 EVIDENCE FOR A REASONABLE JURY TO FIND IN APPLE'S
25 FAVOR, SO THAT'S DENIED.

1 AND YOUR RENEWED --

2 MR. ZELLER: THANK YOU, YOUR HONOR.

3 THE COURT: -- RULE 50 MOTION IS DENIED.

4 YES, IF YOU COULD PLEASE GO TO THE MOTION
5 TO STRIKE.

6 MR. ZELLER: I THINK THE ALLEGATION HAS
7 TWO COMPONENTS TO IT, ONE IS THAT HE DID NOT
8 ADDRESS THE LEVEL OF ORDINARY SKILL IN THE ART IN
9 THE CONTEXT OF HIS OPINIONS, AND, IN FACT, HIS
10 TESTIMONY WAS VERY EXPLICIT. WHEN IT WAS, WHEN IT
11 WAS PROVIDED, HE WAS VERY CLEAR, WHEN HE SAID THAT
12 IT WOULD BE OBVIOUS TO ONE OF ORDINARY SKILL IN THE
13 ART TO COMBINE THESE REFERENCES AND COME UP WITH
14 THE SAME DESIGN AS SHOWN IN THE DESIGN PATENTS.

15 SO HE ACTUALLY DID USE THOSE WORDS, EVEN
16 APART FROM THE FACT THAT OBVIOUSLY WE BRIEFED AND
17 ARGUED THIS IN THE DAUBERT CONTEXT, YOUR HONOR.
18 THERE'S NO REQUIREMENT --

19 THE COURT: BUT LET ME ASK YOU A MORE
20 SPECIFIC QUESTION.

21 MR. ZELLER: UM-HUM.

22 THE COURT: WHAT DO YOU THINK ABOUT
23 APPLE'S ARGUMENT ON THE FIDLER TABLET? I AGREE
24 WITH SAMSUNG ON THE FIDLER TABLET. THE FEDERAL
25 CIRCUIT BASICALLY REVERSED ME ON THAT. WHAT'S YOUR

1 VIEW ON THAT ISSUE?

2 MR. ZELLER: WELL, YOUR HONOR, WE DON'T
3 AGREE WITH THAT PERSPECTIVE. LET ME START WITH
4 THIS, YOUR HONOR.

5 THE COURT: UM-HUM.

6 MR. ZELLER: OBVIOUSLY THAT WAS IN THE
7 CONTEXT OF THE PRELIMINARY INJUNCTION.

8 THE COURT: OKAY.

9 MR. ZELLER: AND WHAT WE'RE DEALING WITH
10 HERE IS, OF COURSE, WITH A JURY AND THE COURT HAS
11 PROPERLY, WE THINK, PREVIOUSLY OBSERVED THAT EVEN
12 AS TO THOSE RULINGS BY THE FEDERAL CIRCUIT AS IT
13 DEALS WITH ART, THAT WE'RE ENTITLED TO A JURY
14 DETERMINATION ON THOSE.

15 AND THE COURT HAS ACTUALLY SPOKEN
16 SPECIFICALLY TO THIS ISSUE PREVIOUSLY IN
17 CONNECTION, FOR EXAMPLE, WITH THE JP'638.

18 AND WE BELIEVE THAT THAT ALSO APPLIES
19 HERE. THE JURY ULTIMATELY IS THE ONE THAT, THAT
20 GETS TO DECIDE ISSUES LIKE CREDIBILITY, THE COURT
21 IS NOW --

22 THE COURT: LET ME ASK YOU A QUESTION.
23 WHAT EVIDENCE IS THERE THAT THE LG PRADA IS PRIOR
24 ART. I KNOW THAT'S BEEN AN ISSUE IN DISPUTE, AND I
25 REALLY DON'T THINK EITHER SIDE HAS PUT ANY EVIDENCE

1 IN ONE WAY OR THE OTHER ON THE DATE, OTHER THAN AN
2 EXPERT WITNESS KIND OF ASSUMING IT.

3 MR. ZELLER: WELL, MR. SHERMAN DIDN'T
4 ASSUME IT. HE ACTUALLY TESTIFIED IT WAS FROM LATE
5 2006. HE DIDN'T SAY HOW HE KNEW THAT.

6 MR. ZELLER: HE DID, YOUR HONOR. HE SAID
7 HE SAW ANNOUNCEMENTS, HE SAW PRESS. I CAN GET THAT
8 TESTIMONY. BUT HE DID REFERENCE THAT THERE WERE
9 ARTICLES AND OTHER PUBLIC ANNOUNCEMENTS THAT HE
10 SAW.

11 WHAT I WOULD ALSO SAY, YOUR HONOR --

12 THE COURT: YOU KNOW WHAT, LET ME DO
13 THIS. I'M GOING TO HAVE TO -- I'LL GO BACK AND
14 LOOK AT THE SHERMAN TRANSCRIPT. LET ME JUST -- CAN
15 YOU GIVE ME A POINT OR TWO ON SOME OF THESE OTHERS,
16 AND I'M GOING TO GO BACK AND HAVE TO LOOK AT THE
17 TESTIMONY, AND I DO WANT US TO TAKE OUR BREAK AND I
18 DO WANT THE JURY TO GET ANOTHER AT LEAST HOUR OF
19 TESTIMONY IN.

20 MR. ZELLER: SURE.

21 THE COURT: SO WHAT -- ON
22 NON-INFRINGEMENT, ON THESE FIVE DEVICES, AS FAR AS
23 THE '087.

24 MR. ZELLER: IF I CAN BACK UP FOR JUST A
25 MOMENT, YOUR HONOR. ONE OTHER POINT ON THE LG

1 PRADA AS PRIOR ART. JUST TO REMIND THE COURT, THE
2 COURT ALSO PREVIOUSLY RULED, IN THIS PARTICULAR
3 CONTEXT, THAT A JURY WOULD BE ENTITLED TO
4 DISBELIEVE APPLE'S CLAIMED CONCEPTION DATE AND
5 SIMPLY GO OFF OF THE FILING DATE.

6 IT WAS MR. STRINGER AND THESE FILES, AS
7 APPLE'S COUNSEL POINTS OUT, THAT THEY'RE RELYING
8 UPON FOR, FOR AN EARLIER CONCEPTION AND REDUCTION
9 TO PRACTICE DATE, AND THE JURY IS ENTITLED TO
10 DISBELIEVE THAT.

11 BY THE WAY, I'D EVEN NOTE THAT THE CAD
12 FILES --

13 THE COURT: CAN WE JUMP TO THE 80 -- I'LL
14 ALLOW MORE ARGUMENT ON THIS AT 4:30, I JUST KIND OF
15 WANT A PREVIEW AND THEN TAKE A BREAK AND WE'LL KEEP
16 GOING.

17 MR. ZELLER: I'LL GO THROUGH IT BRIEF,
18 YOUR HONOR.

19 THE COURT: SURE.

20 MR. ZELLER: I THINK THIS IS TRUE OF ALL
21 OF THE NON-INFRINGEMENT ARGUMENTS.

22 THE COURT: OKAY.

23 MR. ZELLER: WHICH IS THE STANDARD, OF
24 COURSE, IS THE ORDINARY OBSERVER STANDARD UNDER
25 GORHAM, AND UNDER THE FEDERAL CIRCUIT BRAUN CASE,

1 THE FEDERAL CIRCUIT HAS SAID THAT A JURY IS
2 ENTITLED TO ESSENTIALLY ACT AS THE ORDINARY
3 OBSERVER. THEIR COLLECTIVE EXPERIENCE IS SUCH THAT
4 THEY CAN ACT AS THE ORDINARY OBSERVER.

5 THEY'RE ENTITLED TO COMPARE WHATEVER THEY
6 WANT. THEY CAN COMPARE, UNDER THE LAW, THEY CAN
7 COMPARE THE DESIGN PATENTS TO OUR DEVICES, AS WELL
8 AS, OF COURSE, THE CLAIMED COMMERCIAL EMBODIMENTS,
9 SUCH AS THE IPHONE AND THE IPAD.

10 AND THEY'RE ENTITLED TO MAKE THEIR OWN
11 JUDGMENT AS TO WHETHER OR NOT THE ORDINARY OBSERVER
12 WOULD BE DECEIVED IN THE PURCHASING CONTEXT
13 THINKING THAT THEY'RE SUBSTANTIALLY THE SAME.

14 THE COURT: OKAY.

15 MR. ZELLER: SO REGARDLESS OF THE
16 FORMALLY AND TECHNICALITIES THAT APPLE WANTS TO
17 ARGUE ABOUT WHAT WE CAN AND CANNOT SAY.

18 THE COURT: YEAH.

19 MR. ZELLER: THE JURY IS THE ONE THAT
20 GETS TO MAKE THE DETERMINATION AS TO THE OVERALL
21 IMPRESSION THAT THEY MAKE AND THEY'RE FREE TO MAKE
22 THAT DETERMINATION.

23 THE COURT: OKAY. LET'S GO TO -- WHAT
24 ABOUT THE FUNCTIONALITY ON '087 AND '677, JUST
25 REMIND ME.

1 MR. ZELLER: I THINK YOUR HONOR HAS PUT
2 IT EXACTLY RIGHT PREVIOUSLY. WE PUT IN SUBSTANTIAL
3 EVIDENCE, BOTH THROUGH OUR EXPERTS, OUR FACT
4 WITNESSES, OUR DOCUMENTS, AND APPLE'S OWN WITNESSES
5 ABOUT FUNCTIONALITY. AND THE JURY IS CERTAINLY
6 ENTITLED TO INFER FROM THAT THAT THE TOTALITY OF
7 THESE ARE, IN FACT, DICTATED BY FUNCTION, ESSENTIAL
8 TO THE USE AND PURPOSE.

9 THE COURT: AND DO YOU BELIEVE EXPERT
10 TESTIMONY HAS TO BE GIVEN ON THIS POINT?

11 MR. ZELLER: I DO NOT, YOUR HONOR. I
12 BELIEVE THAT BASED ON CERTAINLY THE FACTS THAT HAVE
13 BEEN ADDUCED HERE THAT THE JURY CAN DRAW THAT
14 CONCLUSION, PARTICULARLY GIVEN THE FACT THAT THESE
15 DESIGN PATENTS, YOU KNOW, AS THE COURT IS AWARE,
16 PRINCIPALLY CLAIM A RECTANGULAR DISPLAY. THAT'S
17 THE OVERALL VISUAL IMPRESSION THAT'S GIVEN BY
18 THESE.

19 AND THERE'S -- THERE CAN'T BE A SERIOUS
20 DISPUTE THAT THAT ASPECT IS FUNCTIONALITY.

21 THE COURT: I'M PROBABLY GOING TO DENY
22 THIS ONE, SO LET'S MOVE ON.

23 MR. ZELLER: SURE.

24 THE COURT: WHAT ABOUT, JUST WHAT'S YOUR
25 RESPONSE ON '381, NO NON-INFRINGEMENT TESTIMONY,

1 AND -- WELL, LET'S DO THAT ONE FIRST.

2 MR. ZELLER: I'LL TURN THAT OVER TO
3 MR. JOHNSON.

4 MR. JOHNSON: DR. BALAKRISHNAN, YOU
5 RECALL WHEN I CROSS-EXAMINED HIM AND TOOK HIM
6 THROUGH THE CLAIM LIMITATIONS, HE ADMITTED THAT
7 THERE'S THIS BEHAVIOR HOLD STILL THAT WE BELIEVE
8 DOESN'T MEET THE CLAIM LIMITATIONS. THE CLAIM
9 LIMITATIONS TALK ABOUT BOUNCE BACK. THERE IS A
10 DISPUTE, I THINK, BETWEEN THE PARTIES AS TO WHETHER
11 IT NEEDS TO ALWAYS BOUNCE BACK OR NOT. IT'S A
12 CLAIM -- IT'S A CLAIM CONSTRUCTION ISSUE. BUT THIS
13 IS, THIS IS AN ISSUE THAT IS, OUR NON-INFRINGEMENT
14 DEFENSE THAT CUTS ACROSS ALL THE PRODUCTS.

15 AND I -- HE ADMITTED ON THE STAND THAT
16 HOLD STILL, WHEN PRACTICING HOLD STILL DOESN'T
17 INFRINGE, SO I THINK THERE'S A REASONABLE BASIS FOR
18 THAT TO GO TO THE JURY.

19 THE COURT: DID YOU HAVE VIDEO ON THE
20 HOLD STILL FOR ALL OF THE ACCUSED PRODUCTS?

21 MR. JOHNSON: YES, WE DID.

22 THE COURT: I'M PROBABLY GOING TO DENY
23 THAT ONE.

24 MR. MCELHINNY: EXCUSE ME, YOUR HONOR,
25 THE HOLD STILL THAT THEY SHOWED ON THE VIDEO WAS

1 NOT IDENTIFIED FOR A PARTICULAR PRODUCT AND IT WAS
2 ONLY IN ONE APPLICATION. THE SYSTEM WAS THAT
3 SEVERAL APPLICATIONS INFRINGE AND THEY WERE NOT
4 ABLE TO SHOW THE HOLD STILL IN ALL OF THE
5 INFRINGING APPLICATIONS AND IT ONLY TAKES ONE.

6 THE COURT: ALL RIGHT. DO YOU WANT TO
7 RESPOND TO THAT?

8 MR. JOHNSON: I BELIEVE WE DID, YOUR
9 HONOR. WE CAN GO BACK AND LOOK, BUT --

10 THE COURT: NO, I THINK IT WAS ONLY IN
11 ONE APPLICATION, THERE WAS AT LEAST ONE APPLICATION
12 WHERE MR. BALAKRISHNAN CLAIMED THAT HOLD STILL WAS
13 PRESENT.

14 MR. JOHNSON: WELL, I CAN GO BACK AND
15 TAKE A LOOK WITH RESPECT TO IT.

16 THE COURT: ALL RIGHT. I'LL GO BACK AND
17 TAKE A LOOK AS WELL.

18 NOW, WHAT ABOUT, WERE THERE OR WERE THERE
19 NOT, I'M GOING TO HAVE TO GO BACK, VIDEO OF HOLD
20 STILL ON ALL THESE PRODUCTS OR JUST ONE?

21 MR. JOHNSON: ALL OF THEM.

22 THE COURT: OKAY.

23 MR. JOHNSON: I PUT UP ALL THE SLIDES OF
24 THE FOUR BY FOUR.

25 THE COURT: CAN WE GO TO DOUBLE TAP TO

1 ZOOM. DO YOU WANT TO RESPOND TO THE INDEFINITENESS
2 AND NON-INFRINGEMENT ARGUMENT THAT MR. MCELHINNY
3 JUST MADE?

4 MR. DEFRANCO: YES, YOUR HONOR. DR. GRAY
5 TESTIFIED DURING EXAMINATION THAT PLAINTIFFS DID
6 NOT PUT IN SUFFICIENT PROOF TO SHOW THAT THE
7 SUBSTANTIALLY CENTERED TERM WAS MET, AND AS YOU
8 REMEMBER, THEIR EXPERT TESTIFIED THAT YOU COULD
9 LINE UP 50 DIFFERENT PERSONS OF ORDINARY SKILL AND
10 YOU MIGHT GET A DIFFERENT ANSWER FROM EACH. THERE
11 WAS NO CLEAR STANDARD. SO THAT DIDN'T MEET HIS
12 BURDEN TO PROVE INFRINGEMENT WITH RESPECT TO THAT
13 CLAIM LIMITATION.

14 DR. GRAY ALSO SAID THAT DR. SINGH DID NOT
15 MEET HIS BURDEN WITH RESPECT TO THE REQUIREMENT
16 THAT A BOX BE DETERMINED FROM A PLURALITY OF BOXES.
17 HIS TESTIMONY ON THAT WAS CLEAR. HE CERTAINLY DID
18 NOT CARRY HIS BURDEN AS TO WHAT THAT TERM WOULD
19 MEAN AND HOW THAT WOULD BE APPLIED AGAINST THE
20 ACCUSED PRODUCTS.

21 THE COURT: OKAY. WHAT ABOUT -- WHAT
22 ABOUT -- I'M NOT SURE, WAS THE INDEFINITENESS
23 ARGUMENT ABOUT THIS PLURALITY OF BOXES, OR --

24 MR. DEFRANCO: THAT WAS -- YOU KNOW, THAT
25 WAS A SEPARATE ISSUE WITH RESPECT TO SUBSTANTIALLY

1 CENTERED, YOUR HONOR, THAT PLAINTIFF'S EXPERT WAS
2 NOT ABLE TO CLEARLY ENUNCIATE WHAT THAT WOULD MEAN
3 TO ONE OF ORDINARY SKILL IN THE ART, SO HE WAS NOT
4 ABLE TO CLEARLY APPLY THAT AND MEET HIS BURDEN TO
5 PROVE INFRINGEMENT GIVEN THAT HE WASN'T ABLE TO
6 ESTABLISH --

7 THE COURT: IS THERE A PARTICULAR PART OF
8 MR. GRAY'S TESTIMONY I SHOULD LOOK AT FOR THIS
9 INDEFINITENESS ISSUE?

10 MR. DEFRANCO: I WOULD LOOK, YOUR HONOR,
11 FOR EXAMPLE, TO THE TRIAL TRANSCRIPT AT 2922.

12 THE COURT: OKAY.

13 MR. DEFRANCO: PRETTY MUCH AT THE
14 BEGINNING OF THAT PAGE, AND IT CARRIES OVER TO THE
15 FOLLOWING PAGE OF THE TRANSCRIPT.

16 THE COURT: OKAY. THANK YOU. ALL RIGHT.

17 MR. MCELHINNY: MAY I JUST ADDRESS ONE
18 LITTLE ISSUE, YOUR HONOR?

19 THE COURT: YEAH, THAT WAS IT FOR YOURS.
20 YOU DON'T HAVE ANY MORE RIGHT, MR. MCELHINNY?

21 MR. MCELHINNY: I GAVE YOU MY COMPLETE
22 LIST.

23 THE COURT: GOOD, OKAY.

24 MR. MCELHINNY: JUST ON THAT ONE LAST
25 ISSUE ABOUT WHAT MR. GRAY SAID ABOUT OUR EXPERT,

1 YOUR HONOR HAS ALREADY DENIED JMOL FOR
2 NON-INFRINGEMENT. YOUR HONOR MADE A RULING THAT WE
3 PRESENTED ENOUGH EVIDENCE TO GO TO THE JURY ON
4 INFRINGEMENT.

5 SAMSUNG CANNOT DEFEAT INFRINGEMENT BY
6 HAVING THEIR EXPERT DISAGREE WITH YOUR RULING. IF
7 THEY WERE GOING TO PROVE NON-INFRINGEMENT, THEY HAD
8 TO BRING FORWARD AFFIRMATIVE TESTIMONY TO SAY THAT
9 THEIR DEVICE DID NOT PRACTICE THE CLAIM AND
10 MR. GRAY DID NOT DO THAT. HE GAVE -- HE GAVE US --
11 HAD HE BEEN JUDGE, HE WOULD HAVE GRANTED THE JMOL
12 MOTION, BUT YOUR HONOR DID NOT.

13 MR. DEFRANCO: WELL, THAT'S NOT EXACTLY
14 CORRECT, YOUR HONOR. HE DID IT IN THE CONTEXT OF
15 HIS OWN NON-INFRINGEMENT ANALYSIS AND COMMENTED ON
16 APPLE'S EXPERT'S ANALYSIS. THAT'S COMPLETELY
17 APPROPRIATE.

18 THE COURT: ALL RIGHT. OKAY. THANK YOU.
19 THIS IS HELPFUL.

20 LET'S GO -- WHAT WERE YOU GOING TO SAY?

21 MR. MCELHINNY: I'M SORRY. I WAS
22 STANDING UP FOR YOUR HONOR.

23 THE COURT: OKAY. SO I WILL GIVE YOU
24 FURTHER -- WELL, LET ME TAKE A LOOK AT THIS AND IF
25 I NEED TO HEAR MORE FROM YOU, WE'LL TALK ABOUT IT

1 AT 4:30 AFTER OUR JURY LEAVES, UT THANK YOU. I
2 APPRECIATE THE HEAD UP. MY CASE VIEW WAS DOWN. I
3 DON'T KNOW IF YOU ALL HAD CASE VIEW? DID YOU HAVE
4 CASE VIEW?

5 MR. DEFRANCO: I'M SORRY, YOUR HONOR, ONE
6 MORE THING THAT I -- MIGHT I ADD ONE MORE THING.

7 THE COURT: PLEASE, GO AHEAD.

8 MR. DEFRANCO: ALSO, DR. GRAY TESTIFIED,
9 YOU KNOW, AND THERE WAS QUESTIONING ABOUT
10 NON-INFRINGEMENT AN INVALID PATENT. OF COURSE THAT
11 PLAYS INTO OUR OPPOSITION TO THEIR JMOL AS WELL.

12 MR. MCELHINNY: I'D JUST LIKE TO NOTE
13 THAT'S THE BEST THEY GOT, YOUR HONOR.

14 THE COURT: ALL RIGHT. OKAY. WHAT I'M
15 GOING TO DO IS -- DID YOU ALL PROVIDE THE HARD COPY
16 OF THE TRIAL TRANSCRIPTS. I PUT THAT IN MY ORDER
17 LAST NIGHT.

18 MR. JACOBS: LET US CHECK FOR THAT.

19 THE COURT: OKAY. WHAT I'D LIKE TO DO IS
20 WHEN WE COME BACK AT 4:30, IF YOU HAVE SPECIFIC
21 PAGES, I WANT TO LINE ALL THE BINDERS UP AND LOOK
22 AND CONFIRM FOR MYSELF. IF THERE'S ANYTHING
23 OUTSTANDING. OKAY? ALL RIGHT. IF YOU DIDN'T DO
24 IT, IF YOU COULD DO IT DURING THE BREAK, PLEASE.

25 MR. JACOBS: YES, YOUR HONOR.

1 THE COURT: OKAY. THANK YOU.

2 MR. MCELHINNY: WHAT TIME WOULD YOU LIKE
3 US BACK, YOUR HONOR?

4 THE COURT: OH, BOY. OUR JURY IS
5 WAITING, HUH. ALL RIGHT. LET'S TAKE 15 MINUTE
6 BREAK.

7 (WHEREUPON, A RECESS WAS TAKEN.)

8 (WHEREUPON, THE FOLLOWING PROCEEDINGS
9 WERE HELD OUT OF THE PRESENCE OF THE JURY:)

10 THE COURT: OKAY. WELCOME BACK. WOULD
11 YOU BRING IN OUR JURY, PLEASE.

12 THE CLERK: YES, YOUR HONOR.

13 THE COURT: THANK YOU.

14 (WHEREUPON, THE FOLLOWING PROCEEDINGS
15 WERE HELD IN THE PRESENCE OF THE JURY:)

16 THE COURT: OKAY. WELCOME BACK. PLEASE
17 TAKE A SEAT AGAIN.

18 **MANI SRIVASTAVA,**

19 BEING CALLED AS A WITNESS ON BEHALF OF THE
20 PLAINTIFF, HAVING BEEN FIRST DULY SWORN, WAS
21 EXAMINED AND TESTIFIED AS FOLLOWS:

22 THE WITNESS: YES, I DO.

23 THE CLERK: THANK YOU. PLEASE BE SEATED.

24 THE COURT: THE TIME IS NOW OFF ON THIS
25 ONE AS WELL, LEE-ANNE. ALL RIGHT. THE TIME IS

1 OFF. IT IS, THIS IS A LITTLE BIT FAST. IT'S 3:49.

2 GO AHEAD. WE SHOULD DO THE TRANSCRIPT.

3 COURT REPORTER: IT'S 3:46.

4 THE COURT: OKAY. GO AHEAD.

5 MR. SELWYN: THANK YOU, YOUR HONOR.

6 **DIRECT EXAMINATION**

7 BY MR. SELWYN:

8 Q GOOD AFTERNOON.

9 A SO I'M --

10 Q WOULD YOU PLEASE INTRODUCE YOURSELF AND TELL
11 US WHERE YOU WORK, SIR?

12 A MY NAME IS MANI BHUSHAN SRIVASTAVA, AND I'M A
13 PROFESSOR AT UCLA. THAT'S UNIVERSITY OF
14 CALIFORNIA, LOS ANGELES.

15 Q AND IF YOU COULD JUST MOVE A LITTLE BIT CLOSER
16 TO YOUR MIKE.

17 WHAT DO YOU DO AT UCLA?

18 A I'M A PROFESSOR IN ELECTRICAL ENGINEERING AND
19 COMPUTER SCIENCE DEPARTMENT.

20 Q HAVE YOU BEEN RETAINED BY APPLE AS AN EXPERT
21 WITNESS IN THIS CASE?

22 A YES, I HAVE BEEN.

23 Q ON WHICH PATENT?

24 A THE '460.

25 Q IS THIS YOUR FIRST TIME TESTIFYING IN COURT?

1 A YES, IT IS.

2 Q CAN YOU TELL THE JURY A LITTLE BIT ABOUT YOUR
3 EDUCATIONAL BACKGROUND?

4 A SURE. I DID MY GRADUATE WORK AT ELECTRICAL
5 ENGINEERS AT INDIAN INSTITUTE OF TECHNOLOGY,
6 KHARAGPUR.

7 I MOVED IN 1985 TO THE BAY AREA TO U.C.
8 BERKELEY, MASTER AND PH.D., BOTH OF THEM IN
9 ELECTRICAL ENGINEER AND COMPUTER SCIENCE IN 1987
10 AND 1992 RESPECTIVELY.

11 Q WHEN DID YOU JOIN UCLA?

12 A EARLY 1997.

13 Q WHAT POSITIONS HAVE YOU HELD AT THE
14 UNIVERSITY?

15 A I STARTED OUT AS AN ASSISTANT PROFESSOR AND
16 OBTAINED MY TENURE IN 1998, THEN BECAME ASSOCIATE
17 PROFESSOR AND THEN IN 2003 I WAS PROMOTED TO FULL
18 PROFESSOR. I ALSO SERVED AS VICE CHAIR OF
19 ELECTRICAL ENGINEERING DEPARTMENT. THAT WAS FROM
20 2011 THROUGH 2011.

21 Q WHAT HAS BEEN THE FOCUS OF YOUR RESEARCH AT
22 UCLA?

23 A MY RESEARCH HAS ON MOBILE AND WIRELESS
24 COMPUTING AND COMMUNICATION SYSTEMS AND EMBEDDED
25 SYSTEMS.

1 AS AN EXAMPLE, SOME OF MY RESEARCH HAS
2 FOCUSSED ON PORTABLE WIRELESS TERMINALS FOR USE BY
3 SOLDIERS IN THE U.S. ARMY, WHICH EXCHANGE
4 MULTIMEDIA INFORMATION.

5 Q HAVE YOU AUTHORED ANY ACADEMIC BOOKS OR
6 PUBLICATIONS?

7 A YES, I HAVE.

8 Q HOW MANY?

9 A APPROXIMATELY 250.

10 Q AND TELL US A LITTLE BIT ABOUT ON WHAT
11 SUBJECTS THESE PUBLICATIONS HAVE BEEN ON?

12 A YES, THEY HAVE BEEN ON MY RESEARCH IN MOBILE
13 AND WIRELESS COMPUTING SYSTEMS AND COMPUTING
14 SYSTEMS.

15 Q DO YOU TEACH?

16 A YES, I DO.

17 Q WHAT SUBJECTS DO YOU TEACH?

18 A AT THE GRADUATE LEVEL, I TEACH COURSES ON
19 MOBILE COMPUTING AND WIRELESS NETWORKS, EMBEDDED
20 SYSTEMS. AT UNDERGRADUATE DIGITAL DESIGN AND
21 ROBOTICS SYSTEMS.

22 Q HAVE YOU BEEN NAMED AS AN INVENTOR ON ANY
23 PATENTS?

24 A YES. I HAVE BEEN LISTED AS CO-INVENTOR ON
25 FIVE PATENTS. THEY WERE FROM MY WORK AT BELL LABS

1 PRIOR TO JOINING UCLA.

2 Q HAVE YOU RECEIVED ANY AWARDS?

3 A YES, I'VE BEEN FORTUNATE TO RECEIVE SOME, ONE
4 THAT I WAS PARTICULARLY PLEASED BY IS I WAS ELECTED
5 AS A FELLOW OF THE IEEE, THAT'S THE LEADING
6 PROFESSIONAL SOCIETY FOR ELECTRONICS AND ELECTRICAL
7 ENGINEERS.

8 ANOTHER ONE I WOULD MENTION IS I WAS
9 SELECTED AS THE HEAD IN CHIEF FOR IEEE TRANSACTIONS
10 ON MOBILE COMPUTING, WHICH IS THE LEADING JOURNAL
11 IN MOBILE COMPUTING.

12 Q AND HOW MANY YEARS HAVE YOU BEEN ENGAGED AND
13 WORKED AND RESEARCHED AND TEACHING IN THE FIELD OF
14 MOBILE TECHNOLOGY?

15 A ROUGHLY 22 YEARS.

16 MR. SELWYN: WE OFFER DR. SRIVASTAVA AS
17 AN EXPERT IN THE FIELD OF MOBILE COMPUTING.

18 THE COURT: ANY OBJECTION?

19 MR. JOHNSON: NO, YOUR HONOR.

20 THE COURT: ALL RIGHT. SO CERTIFIED.

21 BY MR. SELWYN:

22 Q ARE YOU BEING PAID FOR YOUR TIME WORKING IN
23 THIS CASE?

24 A YES, I AM.

25 Q WHAT HOURLY RATE?

1 A IT IS \$425.

2 Q AND APPROXIMATELY HOW MANY HOURS HAVE YOU
3 WORKED ON THIS CASE TO INDICT?

4 A THUS FAR AROUND 225.

5 Q WHAT WAS YOUR ASSIGNMENT IN THIS CASE?

6 A I WAS ASKED TO PROVIDE MY EXPERT OPINION ON
7 WHETHER OR NOT THE '460 PATENT IS VALID, AS WELL AS
8 WHETHER CERTAIN APPLE PRODUCTS INFRINGE ON THAT
9 PATENT.

10 Q WHAT MATERIALS DID YOU CONSIDER IN REACHING
11 YOUR OPINIONS?

12 A WELL, OF COURSE THE '460 PATENT ITSELF, ITS
13 PROSECUTION HISTORY. I ALSO EXAMINED THE PRIOR
14 ART, A FEW PATENTS, AS WELL AS VARIOUS DOCUMENTS
15 FROM BOTH SIDES, SUCH AS DEPOSITION TRANSCRIPT,
16 EXPERT REPORTS AND SUCH.

17 I ALSO EXAMINED CERTAIN APPLE SOURCE CODE
18 AS WELL.

19 Q HAVE YOU REACHED AN OPINION AS TO WHETHER OR
20 NOT THE APPLE PRODUCTS INFRINGE THE '460 PATENT AND
21 WHETHER THAT PATENT IS VALID?

22 A YES, I HAVE.

23 Q WHAT IS YOUR OPINION?

24 A THE '460 PATENT IS NOT VALID AND THE APPLE
25 PRODUCTS DO NOT INFRINGE ON THAT PATENT.

1 Q CAN YOU TELL US, AT A HIGH LEVEL, WHAT THE
2 SUBJECT MATTER IS OF THE '460 PATENT?

3 A THE '460 PATENT IS ABOUT A NETWORK CONSISTING
4 OF SEVERAL STEPS FOR A USER OF A DEVICE THAT HAS
5 BOTH PHONE AND CAMERA FUNCTIONS TO BE ABLE TO SEND
6 AN E-MAIL WITH A MESSAGE ONLY, AN E-MAIL WITH A
7 MESSAGE AND AN IMAGE, AS WELL AS TO SCROLL-THROUGH
8 IMAGES ON THE DEVICE.

9 Q NOW, I'D LIKE, IF YOU COULD, TO ROLL BACK THE
10 CLOCK FOR US A LITTLE BIT TO THE TIME THAT SAMSUNG
11 APPLIED FOR THE '460 PATENT, FEBRUARY OF 1999.

12 WHAT TECHNOLOGIES EXISTED AS OF THAT TIME
13 RELEVANT NOT '460 PATENT?

14 A THERE WERE THREE, A CELLULAR TELEPHONE,
15 DIGITAL PHOTOGRAPHING, AND MOBILE COMPUTER.

16 Q BRIEFLY, WHAT WAS THE STATE OF CELL PHONE
17 TECHNOLOGY AS OF FEBRUARY 1999?

18 A WELL, CELL PHONES EXISTED. BY THAT TIME, THEY
19 HAD ADOPTED DIGITAL TECHNOLOGY, AND AS A RESULT,
20 BEYOND JUST MAKING PHONE CALLS, THEY COULD ALSO
21 HANDLE OTHER TYPES OF DATA. SO, FOR EXAMPLE, WE
22 COULD SEND E-MAIL, WE COULD SEND TEXTS, WE COULD DO
23 OTHER FUNCTIONS.

24 MOREOVER, ON THE DEVICE ITSELF, YOU HAD
25 FUNCTIONS LIKE CALENDARING, CONTACT LIST, THAT SORT

1 OF THING.

2 Q WHAT WAS THE STATE OF DIGITAL PHOTOGRAPHY AS
3 OF FEBRUARY 1999?

4 A SO, AGAIN, DIGITAL CAMERAS EXISTED. BENEFITS
5 OF IT WAS TAKING PHOTOS IN A DIGITAL FORM VERSUS
6 SIMPLY TAKING IMAGES. A USER COULD ALSO EDIT THEM,
7 BROWSE THROUGH THEM, DO OTHER FUNCTIONS ON THEM,
8 E-MAIL THEM, FOR EXAMPLE.

9 MOREOVER, AS A RESULT OF DIGITAL
10 TECHNOLOGY, THE CAMERA MODELS THEMSELVES HAD BECOME
11 SMALL ENOUGH SO THAT THEY COULD BE INCORPORATED
12 INTO OTHER DEVICES, NOT JUST STAND ALONE. FOR
13 EXAMPLE, THEY COULD BE PART OF A PHONE OR PDA,
14 THINGS LIKE THAT.

15 Q WHAT WAS THE STATE OF PORTABLE COMPUTING AS OF
16 FEBRUARY 1999?

17 A WELL, A VARIETY OF PORTABLE COMPUTERS EXISTED.
18 LAPTOPS, OBVIOUSLY. IN MID-'90S, THERE WERE
19 PERSONAL DIGITAL ASSISTANTS WERE VERY POPULAR.
20 SOME OF YOU MAY RECALL A PALM PILOT, WHICH WAS VERY
21 POPULAR IN THE MID-'90S.

22 ESSENTIALLY ON THE SMALL COMPUTERS YOU
23 COULD DO A VARIETY OF FUNCTIONS WHICH WERE TYPICAL
24 OF COMPUTING, SEND AN E-MAIL, BROWSING THROUGH
25 DOCUMENTS, THINGS LIKE THAT.

1 Q LET'S TURN TO THE PATENT. CAN WE HAVE CLAIM 1
2 ON THE SCREEN. CAN YOU GIVE US AN OVERVIEW OF WHAT
3 CLAIM 1 DESCRIBES?

4 A SO CLAIM 1 DESCRIBES A SPECIFIC METHOD, WHICH
5 IS BASED ON THE USER MODES AND SUB-MODES, SO THAT A
6 USER OF THE DEVICE THAT IS BOTH PHONE AND CAMERA
7 FUNCTIONS IN THE PHONE, COULD DO, FOR INSTANCE,
8 SENDING E-MAIL WITH A MESSAGE ONLY, SEND AN E-MAIL
9 WITH JUST A MESSAGE AND AN IMAGE, AS WELL AS SCROLL
10 THROUGH IMAGES WHICH ARE ON THE DEVICE.

11 Q WHAT IS A MODE AS USED IN THE PATENT?

12 A SO A MODE IS A DISTINCT STATE OF OPERATION OR
13 SETTING FOR A DEVICE OR OF AN APPLICATION. IT'S
14 BEST ILLUSTRATED BY AN EXAMPLE.

15 AS YOU CAN SEE, THIS CLAIM REFERS THE
16 PORTABLE PHONE MODE UNDER ELEMENT A AND HAS A
17 REFERENCE TO A CAMERA MODE UNDER ELEMENT B.

18 SO THESE ARE EXAMPLES OF MODES WHEN THE
19 DEVICE IS IN THE PORTABLE PHONE MODE, YOU HAVE
20 PHONE FUNCTIONS. WHEN IT'S IN THE CAMERA ROAD, YOU
21 HAVE CAMERA RELATED FUNCTIONS AND THERE'S A SWITCH
22 WHEN THE USER MOVES THE DEVICE BETWEEN THE TWO
23 MODES.

24 Q LET'S LOOK AT FIGURE 6 OF THE '460 PATENT ON
25 THE SCREEN. WHAT MODES ARE SHOWN IN FIGURE 6?

1 A YES. SO I WOULD REQUEST THAT WE HIGHLIGHT A
2 COUPLE OF BOXES. BOX 602, WHICH SHOWS THE PORTABLE
3 PHONE MODE, AND IF YOU COULD GO DOWN AND BOX 614
4 WHICH SHOWS THE CAMERA MODE. AND YOU WILL SEE THAT
5 BOX 612 REFERS TO THE CAMERA ON A SWITCH THAT I
6 JUST MENTIONED WITHIN WHICH THE DEVICE MOVES FROM
7 ONE MODE TO THE OTHER.

8 Q HOW DOES THE PATENT DESCRIBE THE PORTABLE
9 PHONE MODE?

10 A IN THE PORTABLE PHONE MODE, THE PHONE RELATED
11 FUNCTIONS ARE DONE, SO RELATED TO RECEIVE PHONE
12 CALL, MAKE PHONE CALLS, THINGS LIKE THAT.

13 Q CAN THE USER TAKE A PHOTO FROM THE PORTABLE
14 PHONE MODE OF THE '460 PATENT?

15 A NO, HE CANNOT BECAUSE THE USER HAS TO TURN
16 THAT SWITCH ON, MOVE TO THE CAMERA MODE TO BE ABLE
17 TO DO THAT.

18 Q WHAT DOES FIGURE 6 TELL US ABOUT THE CAMERA
19 MODE?

20 A WELL, IN THE CAMERA MODE, IF YOU CAN GO DOWN
21 THE FIGURE A LITTLE BIT, IN THE CAMERA MODE, THE
22 CAMERA HAS TURNED ON AND THEN A CAMERA RELATED
23 FUNCTIONS, TAKING A PHOTO, BROWSING THROUGH THE
24 PHOTOS THAT WERE TAKEN, CAN BE PERFORMED.

25 AND, AGAIN, BECAUSE OF THE SWITCH IN THAT

1 MODE, THE USER CANNOT MAKE PHONE CALLS. IT'S IN
2 CAMERA MODE.

3 Q CAN THE DEVICE BE IN MORE THAN ONE MODE AT
4 ONCE?

5 A NO, IT CANNOT.

6 Q HOW DO YOU KNOW?

7 A WELL, THAT SWITCH THAT I REFERRED TO, SO IN
8 THIS FIGURE, YOU SEE THAT HOW WHEN THE USER TURNS
9 THAT SWITCH ON, IT MOVES FROM PHONE TO CAMERA MODE.
10 THERE IS ANOTHER FIGURE IN THE PATENT, FIGURE 8,
11 WHETHER THE DEVICE HAPPENS WHEN THE USER TURNS THE
12 SWITCH OFF, IT RETURNS BACK TO THE PHONE MODE.

13 Q OKAY. LET'S TURN NOW TO YOUR NON-INFRINGEMENT
14 OPINION. CAN YOU REMIND US FIRST WHAT THE ACCUSED
15 PRODUCTS ARE?

16 A THERE ARE FIVE PRODUCTS. THE IPHONE 3G, THE
17 IPHONE 3GS, THE IPHONE 4, THE IPOD TOUCH FOURTH
18 GENERATION, AND THE IPAD 2.

19 Q COULD YOU GIVE US AN OVERVIEW OF THE REASONS
20 WHY YOU BELIEVE APPLE PRODUCTS DO NOT INFRINGE
21 CLAIM 1.

22 A WELL, THERE ARE THREE REASONS: FIRSTLY, APPLE
23 PRODUCTS ARE SIMPLY INCAPABLE OF PERFORMING THE
24 STEPS IN THE ORDER THAT THE CLAIM LANGUAGE OF THE
25 CLAIM REQUIRES;

1 SECONDLY, CURRENT APPLE PRODUCTS DO NOT
2 HAVE THE SCROLL KEY, WHICH IS MENTIONED IN ELEMENT
3 C OF THE CLAIM; AND,

4 FINALLY, APPLE PRODUCTS ORGANIZE THEIR
5 CAMERA AND PHONE FUNCTIONS USING A NEW WAY, APPS OR
6 APPLICATIONS, AS OPPOSED TO MODES THAT THE '460
7 PATENT USES.

8 Q CAN WE HAVE PDX 52.2 BACK ON THE SCREEN, WHICH
9 IS CLAIM 1.

10 DO YOU HAVE AN OPINION WHETHER THE FIVE
11 ELEMENTS DESCRIBED IN CLAIM 1 MUST OCCUR IN A
12 CERTAIN ORDER?

13 A YES, I DO.

14 Q WHAT IS THAT?

15 A WELL, ELEMENT A AND B MUST OCCUR IN ORDER, AND
16 ELEMENT B, C, AND E MUST OCCUR IN ORDER.

17 Q NOW, I WANT TO GO THROUGH THIS SLOWLY WITH
18 YOU.

19 WHAT ORDER IS REQUIRED BETWEEN ELEMENTS A
20 AND D?

21 A WELL, A MUST HAPPEN BEFORE D.

22 Q WHY?

23 A SO IF YOU LOOK AT ELEMENT A, THIS IS WHERE THE
24 USER STARTS TO COMPROMISE AN E-MAIL, JUST WITH THE
25 MESSAGE, AND ELEMENT D IS ABOUT THE TRANSMISSION OF

1 THAT E-MAIL. SO OBVIOUSLY WE HAVE TO COMPROMISE IT
2 BEFORE THE E-MAIL CAN BE SENT, SO A HAS TO BE
3 BEFORE D.

4 Q DOES DR. YANG AGREE WITH YOU ON THAT POINT?

5 A YES, HE DOES.

6 Q WHAT ORDER IS REQUIRED BETWEEN ELEMENTS B, C,
7 AND E?

8 A ELEMENT B MUST HAPPEN BEFORE C AND C MUST
9 HAPPEN BEFORE E.

10 Q WHY?

11 A WELL, AN EXAMPLE. ELEMENT B IS ABOUT THE USER
12 IS STARTING TO COMPOSE AN E-MAIL WHICH HAS THE
13 LATEST IMAGE IN IT TAKEN FROM THE CAMERA. AND
14 ELEMENT E IS ABOUT SENDING THAT E-MAIL. OBVIOUSLY
15 B HAS TO HAPPEN BEFORE E.

16 NOW, LET'S FOCUS ON C. AND I WOULD
17 REQUEST THAT WE HIGHLIGHT A COUPLE OF PHRASES ON
18 HERE. SO FIRSTLY, HIGHLIGHT THE PHRASE OTHER
19 IMAGES AND ELEMENT C, AND I WOULD ALSO LIKE THAT WE
20 HIGHLIGHT DISPLAY AN IMAGE. SO CAN WE HIGHLIGHT AN
21 IMAGE IN ELEMENT B, TOWARD ATTENTION THE --

22 Q SO JUST TO SLOW YOU DOWN A MOMENT, DOCTOR,
23 WE'RE HIGHLIGHTING DISPLAYING AN IMAGE IN ELEMENT
24 B; CORRECT?

25 A THAT'S CORRECT.

1 Q AND WE'VE ALSO HIGHLIGHTED OTHER IMAGES IN
2 ELEMENT C; IS THAT CORRECT?

3 A YES.

4 Q SO NOW WOULD YOU EXPLAIN TO US WHERE ELEMENT C
5 FITS INTO THIS?

6 A RIGHT. SO PLAIN MEANING OF OTHER IMAGES HAS
7 TO BE WITH REFERENCE TO SOMETHING ELSE, WHICH YOU
8 HAVE DONE PREVIOUSLY, AND THAT'S WHEN THAT'S
9 CAPTURED. SO CLEARLY LOGICALLY C HAS TO FOLLOW B.
10 OTHERWISE OTHER IMAGES WON'T MAKE ANY SENSE.

11 FURTHERMORE, C HAS TO BE BEFORE E, AND
12 THE REASON FOR THAT IS IF C IS STANDALONE, THAT
13 MEANS YOU ARE GOING TO BE BROWSING MOVING THROUGH
14 THESE IMAGES, BUT THAT WOULD HAVE NOTHING TO DO
15 WITH THE STATED PURPOSE OF THIS CLAIM, WHICH IS IN
16 THE VERY PREAMBLE, A DATA TRANSMISSION METHOD.

17 STEP C HAS TO HAVE SOMETHING TO DO WITH
18 DATA TRANSMISSION METHOD, SO THAT IMPLIES THAT C
19 HAS TO COME BEFORE E.

20 Q LET ME ASK YOU NOW ABOUT THE APPLE PRODUCTS.
21 CAN THE APPLE PRODUCTS PERFORM THE ELEMENTS IN THE
22 ORDER REQUIRED BY CLAIM 1?

23 A NO, THEY CANNOT.

24 Q WHY NOT?

25 A WELL, APPLE PRODUCTS SIMPLY CANNOT DO STEP C,

1 ELEMENT C AFTER ELEMENT B.

2 Q CAN WE HAVE PDX 52.3 ON THE SCREEN, PLEASE.

3 CAN YOU USE PDX 52.3 TO EXPLAIN YOUR
4 OPINION THAT THE APPLE PRODUCTS CANNOT PERFORM THE
5 STEPS IN THE ORDER REQUIRED BY CLAIM 1?

6 A YES. SO WHAT YOU SEE ON THE SCREEN HERE IS
7 HOW THE SCREEN ON THE DEVICE LOOKS AFTER THE USER
8 HAS BEGUN TO COMPOSE AN E-MAIL IN WHICH THERE IS AN
9 IMAGE TO IT.

10 AND NORMALLY YOU DON'T SEE ANY SCROLL
11 KEYS HERE, BUT ACTUALLY THERE'S NO WAY YOU CAN
12 SCROLL THE IMAGES WHILE YOU ARE IN THIS VIEW. SO
13 STEP C SIMPLY CAN'T BE PERFORMED.

14 Q WERE YOU IN COURT WHEN DR. YANG TESTIFIED THAT
15 ELEMENT C COULD BE PERFORMED IN ANY ORDER AND AT
16 ANY TIME?

17 A YES, I WAS.

18 Q DO YOU AGREE WITH THAT?

19 A NO, I DO NOT.

20 Q WHY NOT?

21 A AS I MENTIONED A SHORT WHILE AGO, IF STEP C IS
22 A STAND ALONE FUNCTION, OPERATION, THEN IT WOULD
23 HAVE NOTHING TO DO WITH DATA TRANSMISSION METHOD,
24 WHICH IS WHAT THIS CLAIM IS ABOUT.

25 Q LET'S RETURN TO CLAIM 1 AND LET ME ASK YOU

1 ABOUT THE SECOND BASIS OF YOUR NON-INFRINGEMENT
2 OPINION?

3 A THE SECOND BASIS IS THAT CURRENT APPLE
4 PRODUCTS DO NOT HAVE THE SCROLL KEYS.

5 Q WHY NOT?

6 A THEY USE NEWER, MORE SOPHISTICATED METHOD
7 CALLED SWIPING.

8 Q CAN WE HAVE PDX 52.4 ON THE SCREEN, PLEASE.
9 CAN YOU EXPLAIN THIS SLIDE, PLEASE.

10 A YES. SO THIS SHOWS PRECISELY THE POINT I JUST
11 MADE, THAT CURRENT APPLE PRODUCTS, AND THAT'S THE
12 MIDDLE COLUMN IN THIS FIGURE, THEY DO NOT HAVE
13 THOSE ARROW BUTTONS WHICH CORRESPOND TO THE SCROLL
14 KEYS. THEY INSTEAD HAVE ONLY SWIPING.

15 I WOULD ALSO MENTION THAT IPAD 2 ACTUALLY
16 NEVER HAD THE ARROW BUTTONS, EVEN IN THE PREVIOUS
17 VERSION OF THE IOS OPERATING SYSTEM THAT RUNS ON
18 THESE DEVICES.

19 Q DID YOU HEAR DR. YANG TESTIFY THAT SWIPING, IN
20 HIS OPINION, MEETS THE SCROLL KEY LIMITATION UNDER
21 SO THE SO-CALLED DOCTRINE OF EQUIVALENTS?

22 A YES, I HEARD HIM SAY THAT.

23 Q DO YOU AGREE WITH THAT?

24 A NO, I DO NOT.

25 Q CAN WE HAVE VIDEO 50 -- PARDON ME, PDX 53.6 ON

1 THE SCREEN.

2 AS WE PLAY THIS, CAN YOU EXPLAIN WHAT
3 WE'RE SEEING?

4 A YES. SO THIS IS A VIDEO WE ALSO SAW IN
5 MS. KIM'S TESTIMONY THAT SHOWS HOW USING THE LEFT
6 AND RIGHT ARROW, YOU CAN MOVE THROUGH THE PREVIOUS
7 OR NEXT IMAGE, AND THEY MAY MAKE CHANGES AS YOU
8 WILL NOTICE.

9 Q NOW LET'S LOOK AT VIDEO PDX 53.7, AND AGAIN
10 CAN YOU EXPLAIN WHAT WE'RE SEEING?

11 A IN THIS ONE YOU WILL SEE THE USER USING
12 SWIPING TO MOVE THE PREVIOUS IMAGE, AND THERE'S AN
13 IMAGE THAT GOES ON WHERE IT SLIDES AND IT DEPENDS
14 UPON THE WAY THE USER TOUCHES THE PICTURE, THE
15 SPEED AND THE DISTANCE OF THE MOVEMENT OF THE
16 FINGER.

17 Q SO NOW I WANT TO PUT A LITTLE BIT MORE MEAT ON
18 THE BONES HERE OF HOW DO YOU COMPARE SWIPING WITH
19 SCROLL KEYS. DOES SWIPING PERFORM SUBSTANTIALLY
20 THE SAME FUNCTION AS SCROLL KEYS?

21 A NO, IT DOES NOT. WE JUST SAW THAT SWIPING
22 PROVIDES ANIMATION AS THE USER IS MOVING, AND THE
23 PURPOSE BEHIND THAT IS TO GIVE THE USER A MORE
24 NATURAL PHYSICAL INTERFACE WITH THE DEVICE, AS
25 OPPOSED TO TAPPING ON THE KEYS.

1 Q DOES SWIPING PERFORM IN SUBSTANTIALLY THE SAME
2 WAY AS SCROLL KEYS?

3 A NO, IT DOES NOT. TO PERFORM THAT ANIMATION,
4 THE UNDERLYING SOFTWARE, THE IOS SOFTWARE, HAS TO
5 DO THOSE FUNCTIONS CORRESPONDING TO THAT IMAGE.

6 AND MOREOVER, I ALSO EXAMINED THE SOURCE
7 CODE FOR THE OLDER APPLE DEVICES WHERE THEY ALSO
8 HAD THE ARROW KEYS, AND THE INTERACTION OF THE
9 APPLICATION WITH THE UNDERLYING OPERATING SYSTEM
10 WAS TOTALLY DIFFERENT. IT INVOLVED A DIFFERENT SET
11 OF FUNCTIONS, METHODS TO DO THAT. SO NO.

12 Q HOW MUCH TIME DID YOU SPEND REVIEWING THE
13 SOURCE CODE?

14 A ROUGHLY I WOULD SAY 12 TO 14 HOURS OVER TWO
15 DAYS THAT I WAS THERE.

16 Q DOES SWIPING HAVE SUBSTANTIALLY THE SAME
17 RESULT AS SCROLL KEYS?

18 A NO, IT DOESN'T.

19 Q WHY?

20 A IT CERTAINLY CAN MOVE TO THE NEXT OR PREVIOUS
21 IMAGE, BUT ALSO IF I CAN PUT UP ANOTHER VIDEO TO
22 SHOW --

23 Q LET'S HAVE PDX 53.8 ON THE SCREEN.

24 CAN YOU EXPLAIN WHAT'S HAPPENING IN THIS
25 VIDEO?

1 A SO YOU WILL SEE THAT HERE THE USER SWIPES, BUT
2 LOOKS AT THE NEXT PHOTO AND THEN CHANGES THEIR MIND
3 AND THE PHOTO SNAPS BACK.

4 AND THE IDEA IS THAT IF YOU'RE LOOKING
5 FOR A PHOTO AND WHEN YOU REALIZE THE NEXT PHOTO IS
6 NOT THE ONE YOU WANT, YOU CAN JUST CHANGE YOUR MIND
7 AND SNAP BACK.

8 WITH ARROWS YOU SIMPLY CANNOT DO IT. IT
9 WILL MOVE TO THE NEXT ONE.

10 Q SO WE'VE TALKED ABOUT THE ORDER OF STEPS.
11 WE'VE TALKED ABOUT SCROLL KEYS.

12 NOW I WANT TO TURN TO THE THIRD BASIS FOR
13 YOUR NON-INFRINGEMENT OPINION. CAN YOU REMIND US
14 WHAT THAT IS?

15 A APPLE PRODUCTS ORGANIZE THEIR CAMERA AND PHONE
16 FUNCTIONS USING A TOTALLY NEW WAY OF APPS AS
17 OPPOSED TO THE MODES THAT THE '460 DEVICE USES.

18 Q ARE APPS THE SAME THING OR DIFFERENT FROM
19 MODES?

20 A THEY ARE DIFFERENT.

21 Q HOW ARE THEY DIFFERENT?

22 A WELL, APPS ARE STAND ALONE SOFTWARE PROGRAMS.
23 THEY PROVIDE THE USER SOME FUNCTIONS. THEY PROVIDE
24 SEVERAL BENEFITS TO THE USER IN THAT THEY'RE
25 IMPLEMENTED DIFFERENTLY.

1 Q CAN WE PUT PDX 52.2 SHOWING CLAIM 1 BACK ON
2 THE SCREEN. ON THIS ISSUE OF APPS VERSUS MODES,
3 WHICH ELEMENTS OF CLAIM 1 HAVE YOU CONCLUDED ARE
4 MISSING FROM THE APPLE PRODUCTS?

5 A WELL, APPLE PRODUCTS DO NOT HAVE THE PORTABLE
6 PHONE MODE; THEY DO NOT HAVE A CAMERA MODE; THEY DO
7 NOT HAVE THE FIRST E-MAIL TRANSMISSION SUB-MODE;
8 THEY DO NOT HAVE THE SECOND E-MAIL TRANSMISSION
9 SUB-MODE; THEY DO NOT HAVE THE DISPLAY SUB-MODE.

10 Q WERE YOU PRESENT IN COURT WHEN DR. YANG
11 TESTIFIED THAT THE APPLE PRODUCTS HAVE MODES AS
12 CLAIMED IN THE '460 PATENT?

13 A YES, I WAS.

14 Q DO YOU AGREE OR DISAGREE WITH HIM ON THAT?

15 A I DISAGREE. THEY DO NOT HAVE THE MODES TALKED
16 ABOUT IN '460.

17 Q DID YOU HEAR DR. YANG TESTIFY THAT IT IS
18 APPLE'S POSITION THAT THERE ARE NO MODES IN APPLE'S
19 PRODUCTS?

20 A YES, I HEARD HIM SAY THAT.

21 Q AND IS IT YOUR TESTIMONY THAT THERE ARE NO
22 MODES IN THE APPLE PRODUCTS?

23 A NOT AT ALL. THESE DEVICES DO HAVE MODES, JUST
24 NOT THE MODES THAT ARE DESCRIBED IN '460. WE OFTEN
25 SEE THE LITTLE SWITCH ON THE SIDE OF PHONES, FOR

1 EXAMPLE, SILENT MODE OR TYPICALLY THEY PROVIDE YOU
2 WITH THINGS LIKE AIRPLANE MODE.

3 SO CERTAINLY IT HAS MODES, BUT NOT THE
4 ONES IN THE '460.

5 Q NOW I WANT TO TURN TO YOUR INVALIDITY OPINION,
6 AND WE'RE GOING TO BE TALKING ABOUT A FEW DIFFERENT
7 REFERENCES, SO I WANT TO MAKE SURE WE GO THROUGH
8 THIS SLOWLY.

9 BRIEFLY, WHAT IS THE BASIS FOR YOUR
10 CONCLUSION THAT CLAIM 1 IS INVALID?

11 A THE PRIOR ART I EXAMINED, AND SPECIFICALLY
12 THREE PRIOR ART PATENTS, THE SO-CALLED SUSO, HARRIS
13 AND YOSHIDA PATENTS WHICH, IN COMBINATION, MAKE
14 CLAIM 1 OF '460 OBVIOUS FOR SOMEONE OF SKILL IN THE
15 ART.

16 Q WE'RE GOING TO TALK ABOUT EACH OF THOSE THREE
17 REFERENCES SEPARATELY, BUT BEFORE WE DO THAT, CAN
18 YOU TELL US HOW THOSE REFERENCES RELATE TO ONE
19 ANOTHER?

20 A WELL, THERE ARE OTHER CAMERA PHONES ACTUALLY,
21 AND IN FACT, GREAT EXAMPLES OF THE THREE
22 TECHNOLOGIES I MENTIONED EARLIER, CELLULAR
23 TELEPHONE, DIGITAL CAMERA, AND MOBILE COMPUTING
24 WHILE THEY WERE CONVERGING PRIOR TO THE '460
25 PATENT.

1 Q LET'S TURN NOW TO THAT PRIOR ART. COULD YOU
2 LOOK IN YOUR BINDER AT TAB 3. DO YOU RECOGNIZE
3 THAT?

4 A YES, I DO.

5 Q WHAT IS IT T?

6 A THAT'S THE SUSO PATENT THAT I JUST MENTIONED.

7 Q WHAT IS THE TITLE OF THAT PATENT?

8 A IT READS "INFORMATION COMMUNICATION TERMINAL
9 DEVICE."

10 MR. SELWYN: YOUR HONOR, WE OFFER PX 119,
11 THE SUSO PATENT.

12 THE COURT: ANY OBJECTION?

13 MR. JOHNSON: NO, YOUR HONOR.

14 THE COURT: IT'S ADMITTED.

15 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
16 119, HAVING BEEN PREVIOUSLY MARKED FOR
17 IDENTIFICATION, WAS ADMITTED INTO
18 EVIDENCE.)

19 MR. SELWYN: COULD WE HAVE FIGURES 8A AND
20 B FROM THE SUSO PATENT ON THE SCREEN.

21 Q AND GENERALLY WHAT DOES THE SUSO PATENT
22 DESCRIBE?

23 A WELL, IT DESCRIBES A CAMERA PHONE, AND YOU CAN
24 SEE FROM THIS FIGURE THAT IT HAS BOTH SORT OF A
25 PHONE FUNCTIONALITY AND IT HAS A CAMERA FUNCTION

1 WHERE YOU SEE THE IMAGE IN THE RIGHT-HAND VIEW.

2 Q NOW TURN IN YOUR BINDER TO TAB 4. CAN YOU
3 TELL US WHAT THAT DOCUMENT IS?

4 A THAT'S THE HARRIS PATENT.

5 MR. SELWYN: YOUR HONOR, WE OFFER THE
6 HARRIS PATENT, PX 118.

7 THE COURT: ANY OBJECTION.

8 MR. JOHNSON: NO OBJECTION.

9 THE COURT: IT'S ADMITTED.

10 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
11 118, HAVING BEEN PREVIOUSLY MARKED FOR
12 IDENTIFICATION, WAS ADMITTED INTO
13 EVIDENCE.)

14 MR. SELWYN: CAN WE SHOW FIGURE 8 FROM
15 THE HARRIS PATENT ON THE SCREEN?

16 Q AND CAN YOU TELL US GENERALLY WHAT THE HARRIS
17 PATENT DESCRIBES?

18 A IT TOO DESCRIBES A CAMERA PHONE. YOU SEE A
19 CAMERA, BEING IN THE CAMERA MODE WHERE IT'S SHOWING
20 THE IMAGES. THERE'S ALSO A LITTLE BUTTON WHICH IS
21 A SOFT KEY TO GO BACK TO THE PHONE FUNCTION.

22 Q NOW TURN TO TAB 5 IN YOUR BINDER. DO YOU
23 RECOGNIZE THAT DOCUMENT?

24 A YES, I DO.

25 Q WHAT IS IT?

1 A THAT'S THE YOSHIDA PATENT THAT I MENTIONED.

2 MR. SELWYN: YOUR HONOR, WE OFFER PX 120,
3 THE YOSHIDA PATENT.

4 THE COURT: ANY OBJECTION?

5 MR. JOHNSON: NO OBJECTION.

6 THE COURT: IT'S ADMITTED.

7 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
8 120, HAVING BEEN PREVIOUSLY MARKED FOR
9 IDENTIFICATION, WAS ADMITTED INTO
10 EVIDENCE.)

11 MR. SELWYN: CAN WE HAVE FIGURE 1.

12 Q WHAT DOES THE YOSHIDA PATENT DESCRIBE?

13 A THIS IS THE CAMERA PHONE. IT HAS CAMERA,
14 PHONE, BOTH.

15 Q BRIEFLY, CAN YOU DESCRIBE WHY YOU BELIEVE THE
16 YOSHIDA, SUSO AND HARRIS REFERENCES RENDER CLAIM 1
17 OBVIOUS?

18 A THEY TOGETHER TEACH US EVERY ELEMENT OF THE
19 '460, CLAIM 1, AND THEREFORE WOULD HAVE BEEN
20 OBVIOUS FOR SOMEONE OF SKILL IN THE ART TO COMBINE
21 THEM.

22 Q WHY WOULD ONE OF ORDINARY SKILL IN THE ART
23 HAVE COMBINED THOSE THREE PATENTS?

24 A SO I ALREADY REFERRED TO HOW THE THREE
25 TECHNOLOGIES ARE CONVERGING, AND YOU CAN SEE THAT

1 ALL THESE THREE DEVICES, THE CLAIM DEVICES WITH
2 CAMERA AND PHONE FUNCTIONS.

3 THE MOTIVATION ALSO COMES FROM
4 CONVENIENCE FOR THE USER. YOU DON'T WANT TO CARRY
5 TWO DIFFERENT CAMERA PHONES AND DIFFERENT
6 FUNCTIONS.

7 BY COMBINING THE THREE, YOU BASICALLY
8 GIVE A LOWER COST, MORE CONVENIENCE FOR THE USER.

9 Q DID THE PATENT OFFICE CONSIDER ANY OF THESE
10 THREE REFERENCES WHEN IT ALLOWED THE '460 PATENT?

11 A YES, THEY DID.

12 Q WHICH ONES?

13 A THE SUSO AND HARRIS PATENTS.

14 Q SO LET'S WALK THROUGH CLAIM 1, AND I WANT TO
15 FIRST FOCUS ON THE TWO PATENTS THAT THE PATENT
16 OFFICE CONSIDERED, SUSO AND HARRIS.

17 CAN WE HAVE PDX 52.6 ON THE SCREEN.

18 DO SUSO OR HARRIS DESCRIBE THE PREAMBLE
19 OF CLAIM 1, WHICH BEGINS A DATA TRANSMITTING
20 METHOD?

21 A YES, THEY DO. IF YOU SEE SUSO ON THE
22 LEFT-HAND SIDE, FIGURE 8 FROM THE SUSO PATENT, AND
23 YOU SEE IT HAS BOTH PHONE AND CAMERA FUNCTIONS.

24 ON THE RIGHT-HAND SIDE, I WOULD ACTUALLY
25 REQUEST THAT WE HIGHLIGHT A FEW PHRASES, THE

1 TELEPHONE MODE, WHICH IS IN THE MIDDLE, AND ALSO
2 CAMERA MODE AT THE VERY BOTTOM.

3 SO THE HARRIS PATENT ALSO DESCRIBES THE
4 DEVICE WHICH HAS BOTH THESE FUNCTIONS.

5 Q CAN WE HAVE THE NEXT DEMONSTRATIVE, PDX 52.8.

6 DO SUSO OR HARRIS DESCRIBE ELEMENT A OF
7 CLAIM 1, ENTERING A FIRST E-MAIL TRANSMISSION
8 SUB-MODE AND SO FORTH?

9 A YES, HARRIS DOES THAT.

10 Q WHERE?

11 A SO ON THIS SLIDE, WHAT YOU SEE IS A FIGURE,
12 FIGURE 11 FROM THE HARRIS PATENT, AND SOME TEXT
13 THAT I'VE DRAWN FROM THE HARRIS PATENT.

14 AND TO EXPLAIN, LET'S HIGHLIGHT A FEW
15 PHRASES. RADIO TELEPHONE, RIGHT THERE; AND THEN IF
16 WE CAN GO DOWN A LITTLE BIT, PERSONAL DIGITAL
17 ASSISTANT MODE; AND FINALLY, STORED NOTE VIA
18 ELECTRONIC MAIL.

19 SO THIS IS A DEVICE TO MAKE PHONE CALLS
20 AND THEN FROM ANOTHER MODE YOU CAN SEND AN
21 ELECTRONIC MAIL.

22 Q CAN WE GO BACK TO THE CLAIM LANGUAGE, PLEASE.

23 SO NOW WE'RE AT ELEMENT B. ARE YOU
24 RELYING ON SUSO OR HARRIS FOR ELEMENT B?

25 A NO, I'M RELYING ON YOSHIDA.

1 Q OKAY. SO WE'LL GET BACK TO YOSHIDA.

2 LET'S GO TO THE THIRD ELEMENT, ELEMENT C.

3 CAN WE HAVE PDX 52.10 ON THE SCREEN.

4 DO SUSO OR HARRIS DESCRIBE ELEMENT C OF
5 SEQUENTIALLY DISPLAYING OTHER IMAGED STORED IN A
6 MEMORY THROUGH THE USE OF SCROLL KEYS?

7 A SUSO DOES THAT, AND AS YOU CAN SEE FROM THIS
8 FIGURE AND TEXT, I WOULD REQUEST WE HIGHLIGHT THE
9 PHRASE CURSOR/SCROLL, AND ALSO DRAW YOUR ATTENTION
10 TO THE LEFT AND RIGHT ARROW BUTTONS IN THE FIGURE.

11 SO IT HAS THE SCROLL KEYS USING WHICH THE
12 USER CAN MOVE BACK AND FORTH.

13 Q LET'S TURN NOW TO ELEMENT D.

14 CAN WE HAVE PDX 52.12?

15 DO SUSO OR HARRIS DESCRIBE TRANSMITTING
16 THE ADDRESS OF THE OTHER PARTY AND A MESSAGE
17 RECEIVED THROUGH USER INTERFACE IN THE FIRST E-MAIL
18 TRANSMISSION SUB-MODE?

19 A YES. HARRIS DOES THAT, AND I WOULD REQUEST
20 HIGHLIGHTING SEND A NOTE VIA ELECTRONIC MAIL. SO
21 THIS DEVICE IS CAPABLE OF SENDING ELECTRONIC MAIL
22 TO SOME RECIPIENT'S ADDRESS.

23 YOU WILL ALSO SEE THAT THE FIGURE ITSELF
24 VALIDATES THAT THOSE ARE SHOWN. THERE'S A SEND
25 NOTE ELEMENT AS WELL.

1 Q LET'S GO BACK NOW TO OUR CLAIM CHART. SO WE
2 HAVE TWO ELEMENTS REMAINING, ELEMENTS B AND ELEMENT
3 E; CORRECT?

4 A THAT IS CORRECT.

5 Q SO LET'S TURN NOW TO THE YOSHIDA REFERENCE.
6 DID THE PATENT OFFICE CONSIDER YOSHIDA BEFORE IT
7 ALLOWED THE '460 PATENT?

8 A NO, THEY DID NOT.

9 Q SO LET'S START WITH ELEMENT B, WHICH WE
10 SKIPPED OVER BEFORE, WHICH AGAIN IS ENTERING A
11 SECOND E-MAIL TRANSMISSION SUB-MODE UPON REQUEST.

12 CAN WE HAVE PDX 52.14 ON THE SCREEN?

13 WHERE DOES YOSHIDA DISCLOSE ELEMENT B?

14 A SO FIRST BEFORE EXPLANATION, I WILL EXPECT
15 ELEMENT B TO HAVE THAT, SO THIS SLIDE FOCUSES ON
16 THE FIRST PART OF THAT ELEMENT B.

17 AND WHAT WE HAVE IS FIGURE 4 AND SOME
18 TEXT. THAT'S THE TEXT. I WOULD REQUEST SOME
19 PHRASES BE HIGHLIGHTED. SO THE PHRASE CAMERA MODE,
20 WHICH IS AT THE VERY TOP; I WOULD ALSO REQUEST
21 HIGHLIGHTING THE PLAYBACK FUNCTION, WHICH IS RIGHT
22 THERE; AND THEN FINALLY, ELECTRONIC MAIL.

23 AND WHAT THIS IS DESCRIBING IS A DEVICE
24 WHERE THE CAMERA MODE, YOU CAN GO INTO THIS
25 PLAYBACK FUNCTION WHERE YOU SEE THE IMAGES, AND

1 THEN YOU CAN SEND THAT IMAGE BY ELECTRONIC MAIL.

2 YOU WILL ALSO SEE THAT IN THE FIGURE
3 UNDER THE VIEW MENU, YOU HAVE A MAIL THERE.

4 Q DOES YOSHIDA DISCLOSE DISPLAYING THE MOST
5 RECENTLY CAPTURED IMAGE?

6 A YES, IT DOES. IF WE CAN MOVE TO THE NEXT
7 SLIDE?

8 SO HERE WHAT WE HAVE IS FIGURE 10 FROM
9 YOSHIDA AND A CORRESPONDING FIGURE. AGAIN, TO HELP
10 EXPLAIN, I WOULD REQUEST HIGHLIGHTING A FEW PHRASES
11 UP HERE.

12 FIRST LET'S HIGHLIGHT AN IMAGE
13 IMMEDIATELY IT HAS BEEN PHOTOGRAPHED. THAT WAS
14 LOST IN TRANSLATION, BUT THAT DESCRIBES A METHOD
15 FOR TAKING A PHOTO.

16 LET'S ALSO HIGHLIGHT, GOING FURTHER DOWN,
17 THE TRANSFER OF IMAGE INFORMATION BY THE USER OF
18 ELECTRONIC MAIL, SO LET'S HIGHLIGHT ELECTRONIC
19 MAIL.

20 SO WHAT THIS DESCRIBES IS A DEVICE WHERE
21 YOU ARE ABLE TO SEND AN E-MAIL IMAGE. THE FIGURE
22 VALIDATES IT.

23 THE BOX AT THE VERY TOP, THAT DIAMOND
24 SHAPED BOX LABELED S551 TALKS ABOUT THE MOST
25 RECENTLY CAPTURED IMAGE, AND THE BOX AT THE VERY

1 BOTTOM IN THE MIDDLE BOX, S558, TALKS ABOUT THE
2 MAIL TRANSMISSION PROCESS, AND THIS MAIL THAT'S
3 BEING DISPLAYED ON THE SCREEN IS WHAT BOX S558
4 SHOWS.

5 Q LET'S TURN NOW TO THE LAST ELEMENT OF THE
6 CLAIM. DOES YOSHIDA DISCLOSE THE LAST TRANSMITTING
7 ELEMENT, ELEMENT E?

8 A YES, IT DOES.

9 Q CAN WE HAVE, PLEASE, PDX 52.17 ON THE SCREEN?
10 TELL US, PLEASE, WHERE DOES YOSHIDA
11 DISCLOSE THE LAST TRANSMITTING ELEMENT?

12 A RIGHT. SO I HAVE TAKEN TWO PIECES OF TEXT
13 FROM THE PATENT. SO IN THAT TOP BOX, LET'S
14 HIGHLIGHT THE PHRASE THE ADDRESS OF THE MAIL, WHICH
15 IS IN THE MIDDLE LINE.

16 AND THEN NEXT ALSO, FROM THE BOTTOM TEXT,
17 LET'S HIGHLIGHT THE TEXT OF THE MAIL, WHICH IS
18 LINES TWO AND THREE, AND LET'S ALSO HIGHLIGHT
19 ATTACH AN IMAGE FILE, WHICH IS FOUR FROM THE
20 BOTTOM.

21 AND WHAT THIS IS DESCRIBING IS HOW THE
22 RECIPIENT'S ADDRESS IS SPECIFIED, AN E-MAIL IS
23 SENT, WHICH HAS A TEXT, ALONG WITH AN ATTACHED
24 IMAGE.

25 Q IN REACHING YOUR INVALIDITY OPINION, DID YOU

1 CONSIDER ANY SECONDARY CONSIDERATIONS OF
2 NON-OBVIOUSNESS?

3 A YES, I DID.

4 Q DID YOU FIND ANY EVIDENCE WHETHER ANYONE
5 COPIED THE '460 PATENT?

6 A NO.

7 Q DID YOU SEE ANY EVIDENCE ONE WAY OR THE OTHER
8 ABOUT WHETHER THE '460 PATENT HAD ENJOYED
9 COMMERCIAL SUCCESS?

10 A NO, I DID NOT FIND ANY.

11 Q ARE YOU AWARE OF ANY EVIDENCE SHOWING THAT
12 ANYONE HAD TRIED AND FAILED TO MAKE THE METHODS AND
13 CLAIMS IN THE '460 PATENT?

14 A NO, I'M NOT AWARE.

15 Q AND ARE YOU AWARE OF ANY EVIDENCE THAT ANYONE
16 HAS EVER EXPRESSED ANY PRAISE OR CLAIM FOR THE '460
17 PATENT IN THE INDUSTRY?

18 A NO.

19 Q HOW DO THESE SECONDARY CONSIDERATIONS AFFECT
20 YOUR OPINION?

21 A BY THE WAY -- FROM WHAT I STATED, THAT THE
22 '460 PATENT IS OBVIOUS IN LIGHT OF THE PRIOR ART.

23 MR. SELWYN: THANK YOU. NO FURTHER
24 QUESTIONS.

25 THE COURT: ALL RIGHT. THE TIME IS NOW

1 4:20. ANY CROSS?

2 MR. JOHNSON: YOUR HONOR, MAY I HAND OUT
3 JUST A BINDER BRIEFLY?

4 THE COURT: PLEASE, GO AHEAD.

5 MR. JOHNSON: MAY I APPROACH?

6 THE COURT: PLEASE.

7 GO AHEAD, PLEASE. IT'S 4:20.

8 **CROSS-EXAMINATION**

9 BY MR. JOHNSON:

10 Q DR. SRIVASTAVA, THE ACCUSED APPLE PRODUCTS
11 HAVE A CAMERA MODE; RIGHT?

12 A NOT THE CAMERA MODE DESCRIBED IN THE '460, NO.

13 Q DO YOU REMEMBER YOU WERE DEPOSED IN THIS CASE?

14 A YES.

15 Q YOUR DEPOSITION TESTIMONY IS IN FRONT OF YOU
16 IN THE BINDER AT THE BACK.

17 A YES.

18 Q IF YOU COULD PULL UP PAGE 179, LINES 16 TO 21.

19 A PAGE WHAT NUMBER?

20 Q 179, LINES 16 TO 21.

21 A WHICH TAB FOR THAT, PLEASE?

22 Q DEPOSITION. IT'S AT THE BACK.

23 A OKAY. AND WHICH LINE TO YOU WANT ME TO GO TO?

24 Q PAGE 179, LINES 16 TO 21.

25 A PAGE 179.

1 Q DO YOU SEE LINES 16 TO 21?

2 A YES.

3 Q THE QUESTION IS, "SO APPLE IS DESCRIBING THE
4 CAMERA FUNCTION WITHIN THE CAMERA APP AS HAVING A
5 CAMERA MODE; RIGHT?

6 "ANSWER: THAT CAMERA APP HAVING A CAMERA
7 MODE.

8 "QUESTION: RIGHT?"

9 YOUR ANSWER: "YEAH."

10 DO YOU SEE THAT?

11 A YEAH.

12 Q WAS THAT YOUR TESTIMONY?

13 A YES.

14 Q YOU STAND BY THAT TESTIMONY; RIGHT?

15 A ABSOLUTELY.

16 Q NOW, YOU'D ALSO AGREE THAT THE ACCUSED APPLE
17 PRODUCTS HAVE A PHOTO BROWSING MODE; RIGHT?

18 A YOU CAN BROWSE PHOTOS.

19 Q THEY HAVE A PHOTO BROWSING MODE, SIR, DON'T
20 THEY?

21 A AGAIN, IN THE PHOTO APP, YOU CAN BROWSE
22 PHOTOS. THERE IS A SCREEN IMAGE.

23 Q SIR, THEY HAVE A PHOTO BROWSING MODE, DON'T
24 THEY?

25 A NO, I DON'T QUITE AGREE WITH YOU.

1 Q OKAY. LET ME TURN YOUR ATTENTION TO PAGE 146
2 OF YOUR DEPOSITION, LINE 23 TO 147, LINE 1.

3 A 146?

4 Q YES, PLEASE. LINE 23.

5 A YES.

6 Q YOU SAY: "I MEAN, WERE YOU TO TAP THAT IMAGE,
7 THE CAMERA APP WOULD THEN -- WOULD THEN LET YOU
8 SEQUENTIALLY SCROLL THROUGH THE PICTURES THAT ARE
9 STORED IN MEMORY THAT HAVE BEEN TAKEN BY THE CAMERA
10 AND NOT DELETED.

11 "ANSWER: YES, IF I WERE TO PRESS THAT
12 ICON, THEN SUBSEQUENTLY IN THE PHOTO BROWSING MODE,
13 I CAN."

14 THAT WAS YOUR TESTIMONY WHEN YOU WERE
15 DEPOSED; RIGHT?

16 A YES.

17 Q AND YOU STAND BY THAT TESTIMONY, DON'T YOU?

18 A YES.

19 Q NOW, THE SUSO AND HARRIS REFERENCES THAT YOU
20 TALKED ABOUT WITH RESPECT TO VALIDITY, THOSE WERE
21 CONSIDERED BY THE PATENT OFFICE, WEREN'T THEY?

22 A THEY WERE, YES.

23 Q AND THE PATENT OFFICE FOUND THEM TO BE
24 DIFFERENT FROM THE '460 PATENT; ISN'T THAT TRUE?

25 A I'M NOT SURE WHAT YOU MEAN BY "DIFFERENT."

1 Q THE '460 PATENT ISSUED OVER THE SUSO AND
2 HARRIS REFERENCES, DIDN'T IT?

3 A THAT'S CORRECT.

4 MR. JOHNSON: THANK YOU. NO FURTHER
5 QUESTIONS.

6 THE COURT: ALL RIGHT. IT'S 4:23.

7 ANY REDIRECT?

8 MR. SELWYN: VERY BRIEFLY.

9 THE COURT: GO AHEAD, PLEASE.

10 **REDIRECT EXAMINATION**

11 BY MR. SELWYN:

12 Q SIR, DOES ANY MODE IN THE CAMERA APP
13 CORRESPOND TO ANY OF THE MODES CLAIMED IN THE '460
14 PATENT?

15 A NO, IT DOES NOT.

16 Q WHY?

17 A WELL, FIRST, THE CAMERA APP CAN RUN
18 CONCURRENTLY WITH OTHER APPS, WITH THE PHONE APP,
19 FOR EXAMPLE.

20 THE MODES IN THE '460 PATENT ARE -- YOU
21 CAN BE IN ONE OR THE OTHER, NOT AT THE SAME TIME.
22 SO THEY'RE DIFFERENT FROM MODES DESCRIBED THE '460.

23 MR. SELWYN: THANK YOU. NOTHING FURTHER.

24 THE COURT: ALL RIGHT. TIME IS NOW 4:23.

25 IS THIS WITNESS EXCUSED AND IS IT SUBJECT

1 TO RECALL?

2 MR. SELWYN: THIS WITNESS IS EXCUSED, NOT
3 SUBJECT TO RECALL.

4 AND YOUR HONOR, I MISSPOKE BEFORE WITH
5 RESPECT TO OUR LAST TWO WITNESSES. DR. DOURISH AND
6 DR. GIVARGIS, WE DON'T NEED THEM AGAIN. THEY'RE
7 NOT SUBJECT TO RECALL BY US.

8 THE COURT: OKAY.

9 MR. SELWYN: SO THEY CAN BE EXCUSED.

10 THE COURT: ALL RIGHT. AND NOT SUBJECT
11 TO RECALL FROM SAMSUNG'S PERSPECTIVE AS WELL;
12 RIGHT?

13 MR. JOHNSON: THAT'S CORRECT, YOUR HONOR.

14 THE COURT: OKAY. YOU ARE EXCUSED.

15 CALL YOUR NEXT WITNESS, PLEASE.

16 MR. LEE: YOUR HONOR, APPLE CALLS
17 PROFESSOR HYONG KIM.

18 IF WE CAN JUST HAVE A MINUTE TO GET THE
19 BINDERS UP?

20 THE COURT: GO AHEAD.

21 MR. LEE: YOUR HONOR, JUST SO I KNOW WHEN
22 TO STOP, IS THIS CLOCK ON TIME WITH YOURS?

23 THE COURT: UM, I HAVE 4:24.

24 MR. LEE: OKAY.

25 THE COURT: I DON'T KNOW IF THE JURORS

1 WANT TO GO AN EXTRA FIVE MINUTES TODAY.

2 MR. LEE: ALL RIGHT. I'LL TRY TO GO TEN.

3 THE COURT: OKAY.

4 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

5 **HYONG KIM,**

6 BEING CALLED AS A WITNESS ON BEHALF OF THE

7 PLAINTIFF, HAVING BEEN FIRST DULY SWORN, WAS

8 EXAMINED AND TESTIFIED AS FOLLOWS:

9 THE WITNESS: I DO.

10 THE CLERK: THANK YOU. PLEASE BE SEATED.

11 THE COURT: TIME IS 4:25. GO AHEAD.

12 **DIRECT EXAMINATION**

13 BY MR. LEE:

14 Q WOULD YOU SIT UP AND TALK INTO THE MICROPHONE?

15 GOOD AFTERNOON, PROFESSOR KIM. WOULD YOU

16 INTRODUCE YOURSELF TO THE JURY?

17 A MY NAME IS HYONG KIM, AND I LIVE IN

18 PITTSBURGH, PENNSYLVANIA.

19 Q HAVE YOU BEEN RETAINED BY APPLE AS AN EXPERT

20 WITNESS IN THIS CASE?

21 A YES.

22 Q LET ME PUT UP ON THE SCREEN PDX 35.1. THIS

23 DESCRIBES YOUR BACKGROUND; CORRECT?

24 A YES.

25 Q WHERE DO YOU WORK TODAY?

1 A I WORK AT CARNEGIE MELLON UNIVERSITY.

2 Q WHAT IS YOUR POSITION AT CARNEGIE MELLON
3 UNIVERSITY?

4 A I'M A PERKINS PROFESSOR OF ELECTRICAL AND
5 COMPUTER ENGINEERING.

6 Q HOW LONG HAVE YOU BEEN AT CARNEGIE MELLON?

7 A TWENTY-THREE YEARS.

8 Q AND ARE YOU A FULL PROFESSOR?

9 A YES.

10 Q WHEN DID YOU BECOME A FULL PROFESSOR?

11 A 1999.

12 Q DO YOU TEACH AT CARNEGIE MELLON?

13 A YES.

14 Q WHAT DO YOU TEACH?

15 A I TEACH UNDERGRADUATE COURSE IN
16 TELECOMMUNICATION NETWORKS, AND GRADUATE COURSES IN
17 NETWORK, ADVANCED NETWORKS.

18 Q WHAT KIND OF RESEARCH HAVE YOU DONE?

19 A I DO RESEARCH IN SWITCHING SYSTEMS, THAT'S THE
20 NETWORK SWITCHING SYSTEM, AND TELECOMMUNICATION
21 NETWORK, CONTROLLER MANAGEMENT AND WIRELESS NETWORK
22 AND RESOURCE ALLOCATIONS.

23 Q OTHER THAN BEING A PROFESSOR, HAVE YOU HELD
24 ANY OTHER POSITIONS THE CARNEGIE MELLON?

25 A YES. I WAS DIRECTOR OF THE CYLAB KOREA FROM

1 2004 TO 2007.

2 Q WHAT WAS CYLAB KOREA AT CARNEGIE MELLON?

3 A IT WAS A RESEARCH INSTITUTE THAT WE CARRIED
4 OUT RESEARCH IN NETWORK SECURITY, AND IT WAS FUNDED
5 BY THE KOREAN GOVERNMENT.

6 Q CAN YOU SUMMARIZE YOUR EDUCATIONAL BACKGROUND
7 FOR US?

8 A I OBTAINED BACHELOR OF ENGINEERING FROM MCGILL
9 UNIVERSITY IN 1984, IT'S BEEN A WHILE, AND A
10 MASTER'S DEGREE AND PH.D. DEGREE FROM THE
11 UNIVERSITY OF TORONTO, 1987, AND 1990, ALL IN
12 ELECTRICAL ENGINEERING.

13 Q HAVE YOU AUTHORED ANY SCIENTIFIC PUBLICATIONS?

14 A YES.

15 Q ABOUT HOW MANY?

16 A OVER A HUNDRED.

17 Q WOULD ANY BE IN PEER REVIEWED JOURNALS?

18 A YES, THEY WERE ALL PEER REVIEWED.

19 Q DO YOU HAVE ANY PATENTS?

20 A YES.

21 Q HOW MANY?

22 A TWELVE.

23 Q ARE ANY OF YOUR PATENTS LICENSED?

24 A YES. ONE OF THEM WAS LICENSED TO ADVANCED
25 MICRODEVICES AND SAMSUNG ELECTRONICS.

1 Q TO SAMSUNG?

2 A YES.

3 Q NOW, HAVE YOU RECEIVED ANY FUNDING FOR YOUR
4 RESEARCH?

5 A YES.

6 Q WHAT GOVERNMENT AGENCIES HAVE SPONSORED YOUR
7 RESEARCH?

8 A NATIONAL SCIENCE FOUNDATION AND THE DEPARTMENT
9 OF DEFENSE AND SO ON.

10 Q HAVE ANY COMPANIES FUNDED YOUR RESEARCH?

11 A YES.

12 Q WHAT COMPANIES?

13 A H-P, INTEL, CISCO, NORTEL, LG, SAMSUNG, AND SO
14 ON.

15 Q SAMSUNG HAS FUNDED YOUR RESEARCH IN THE PAST?

16 A YES, IN THE PAST.

17 Q IN ADDITION TO BEING A PROFESSOR, DO YOU HAVE
18 ANY EXPERIENCE IN PRIVATE INDUSTRY?

19 A YES.

20 Q WHAT EXPERIENCE DO YOU HAVE?

21 A I HAD TWO START-UP COMPANIES, ONE IS CALLED
22 SCALABLE NETWORKS, THAT WAS FOUNDED IN 1995, AND WE
23 DEVELOPED FAST ETHERNET SWITCHING SYSTEM.

24 AND IN THE YEAR 2000, I FOUNDED A COMPANY
25 CALLED ACCELIGHT NETWORKS, WHICH DEVELOPED OPTICAL

1 SWITCHING SYSTEMS.

2 MR. LEE: YOUR HONOR, I OFFER PROFESSOR
3 KIM AS AN EXPERT IN WIRELESS COMMUNICATIONS AND
4 NETWORKS.

5 MR. VERHOEVEN: NO OBJECTION.

6 THE COURT: ALL RIGHT. SO CERTIFIED.

7 BY MR. LEE:

8 Q DR. -- PROFESSOR KIM, HAVE YOU EVER TESTIFIED
9 BEFORE?

10 A NO.

11 Q ARE YOU BEING COMPENSATED FOR YOUR TIME
12 WORKING ON THIS CASE?

13 A YES.

14 Q WHAT'S YOUR HOURLY RATE?

15 A IT'S \$450.

16 Q AND HOW MANY HOURS HAVE YOU WORKED ON THIS
17 CASE SO FAR?

18 A ABOUT 500 HOURS.

19 Q WHAT OPINIONS HAVE YOU REACHED?

20 A MY OPINION IS '516 PATENT IS INVALID AND THE
21 APPLE PRODUCT DOES NOT INFRINGE THAT PATENT.

22 Q NOW, HAVE YOU HAD AN OPPORTUNITY TO READ
23 DR. WILLIAMS' DIRECT AND CROSS-EXAMINATION
24 YESTERDAY IN THIS COURTROOM?

25 A YES, I READ THEM.

1 Q YOU WERE NOT ABLE TO BE PRESENT; CORRECT?

2 A NO, I WASN'T HERE.

3 Q ALL RIGHT. AT A VERY HIGH LEVEL, WHAT IS THE
4 '516 PATENT ABOUT?

5 A THE '516 PATENT IS ABOUT A PARTICULAR OR
6 SPECIFIC WAY OF DOING THE POWER CONTROL IN WIRELESS
7 NETWORKS.

8 Q SO LET'S SEE IF WE CAN EXPLAIN SOME OF THESE
9 CONCEPTS IN A LITTLE BIT MORE DETAIL.

10 CAN I HAVE PDX 35.2 ON THE SCREEN,
11 PLEASE?

12 DO YOU SEE PDX 35.2?

13 A YES.

14 Q CAN YOU EXPLAIN TO US WHAT'S SHOWN ON THIS
15 SLIDE?

16 A SO IT'S SHOWING TWO ELEMENTS IN THE WIRELESS
17 NETWORK, ONE IS THE HANDSET OR THE MOBILE TERMINAL,
18 OR USER EQUIPMENT WE'LL CALL IT, THAT'S BASICALLY
19 YOUR CELL PHONE; AND THERE'S THE BASE STATION,
20 THAT'S THE ANTENNA WITH ROUND CIRCLES. THAT'S THE
21 BASE STATION THAT'S CONNECTED TO THE NETWORK, FOR
22 INSTANCE, THE INTERNET OR TELECOMMUNICATION
23 NETWORK.

24 Q WHAT ARE THE UPLINK AND DOWNLINK?

25 A THE RED ARROW THAT YOU SEE THAT SAYS UPLINK

1 CONSISTS OF CHANNELS THAT TRANSMIT DATA FROM YOUR
2 HANDSET TO THE BASE STATION.

3 AND THE DOWNLINK THAT YOU SEE, THE GRAY
4 ARROW THAT YOU SEE ON THE SLIDE CONSISTS OF A
5 CHANNEL THAT TRANSMIT DATA FROM BASE STATION TO THE
6 HANDSET.

7 Q WHAT ARE CHANNELS?

8 A CHANNELS IS, IS A PART OF THE SPECTRUM. YOU
9 CAN THINK OF IT AS A PIPE WHERE YOU SEND THE DATA
10 THROUGH THE PARTICULAR PIPE, AND IN THIS CASE,
11 UPLINK WILL HAVE THAT PIPE THAT SENDS DATA FROM THE
12 HANDSET TO THE BASE STATION.

13 Q ARE THERE DIFFERENT TYPES OF CHANNELS?

14 A YES.

15 Q WHAT TYPES OF CHANNELS?

16 A BROADLY, THERE ARE TWO DIFFERENT TYPES. ONE
17 IS A DATA CHANNEL AND ANOTHER ONE IS CONTROL
18 CHANNEL.

19 Q WHAT IS A DATA CHANNEL?

20 A DATA CHANNEL IS WHERE YOU SEND USER DATA OR
21 YOU GET THE DATA FROM THE INTERNET, FOR INSTANCE.

22 SO IF YOU ARE TO TALK ON THE PHONE OR
23 UPLOADING A PICTURE TO YOUR FACEBOOK, FOR INSTANCE,
24 IT WILL USE A DATA CHANNEL, UPLINK DATA CHANNEL TO
25 SEND THE CHANNEL TO THE NETWORK.

1 Q WHAT IS A CONTROL CHANNEL?

2 A SO CONTROL CHANNEL IS TO SET UP THE DATA
3 CHANNEL OR TEAR DOWN THE DATA CHANNEL AND MAINTAIN
4 THE DATA CHANNEL.

5 Q DO YOU NEED POWER TO TRANSFER INFORMATION OVER
6 THE CHANNEL AS YOU'VE JUST DESCRIBED?

7 A YES, YOU NEED POWER FOR EACH OF THOSE
8 CHANNELS.

9 Q CAN A MOBILE PHONE, MY MOBILE PHONE, TRANSMIT
10 ANY AMOUNT OF POWER?

11 A NO. YOU WILL HAVE LIMITED POWER.

12 Q WHAT DETERMINES THE LIMIT ON THE POWER IN MY
13 MOBILE PHONE DEVICE?

14 A WELL, FIRST OF ALL, THE PHONE ITSELF WILL HAVE
15 A LIMIT.

16 BUT FROM THE WIRELESS NETWORK STANDPOINT,
17 THE NETWORK WILL DICTATE HOW MUCH POWER YOU CAN USE
18 TO TRANSMIT THOSE CHANNELS.

19 Q SO THERE WILL BE A MAXIMUM POWER?

20 A YES.

21 Q AND IF YOU GET TO THE MAXIMUM OR EXCEED IT,
22 ARE THERE DIFFERENT WAYS TO REDUCE IT?

23 A YES, THERE'S VARIOUS WAYS YOU CAN REDUCE IT.

24 ONE WAY IS NOT SEND ANYTHING THROUGH THE
25 CHANNEL, WHICH MEANS YOU'LL POWER DOWN ALL THE

1 CHANNELS.

2 ANOTHER WAY IS YOU COULD EQUALLY SCALE
3 DOWN CHANNELS TO THE MAXIMUM POWER.

4 OR YOU COULD SCALE DOWN IN A DIFFERENTIAL
5 FASHION SO THAT SOME OF THE CHANNELS WOULD SCALE
6 DOWN AND SOME WOULD NOT.

7 Q DID YOU READ MY CROSS-EXAMINATION OF
8 DR. WILLIAMS WHERE I WAS ASKING HIM WHETHER TWO
9 CHANNELS WERE ADDED OR MORE CHANNELS WERE ADDED?

10 A YES.

11 Q ALL RIGHT. SO LET'S SEE IF WE CAN HELP THE
12 JURY WITH THIS. ARE YOU FAMILIAR WITH THE 3GPP
13 STANDARD?

14 A YES.

15 Q ARE YOU FAMILIAR WITH 3GPP RELEASE 6.6?

16 A YES.

17 Q COULD WE HAVE PDX 35.3 ON THE SCREEN?

18 NOW, 3GPP RELEASE 6.6 IS WHAT
19 DR. WILLIAMS WAS TALKING ABOUT; CORRECT?

20 A YES.

21 Q LET'S SEE IF WE CAN HELP THE JURY UNDERSTAND
22 JUST HOW MANY CHANNELS THERE ARE.

23 DO YOU SEE THIS DIAGRAM?

24 A YES.

25 Q ALL RIGHT. HOW MANY CHANNELS ARE THERE? OR

1 WHAT DOES THAT DIAGRAM DEPICT?

2 A WELL, THIS DIAGRAM IS SHOWING YOU THE CHANNELS
3 THAT YOU HAVE IN THE UPLINK.

4 Q AND HOW MANY ARE THERE?

5 A THERE ARE FIVE.

6 Q WHAT ARE THEY? START WITH DPDCH AND TELL US
7 WHAT THE FIVE CHANNELS ARE.

8 A SO THE FIRST DPDCH STANDS FOR DEDICATED
9 PHYSICAL DATA CHANNEL.

10 AND THE SECOND ONE IS DEDICATED PHYSICAL
11 CONTROL CHANNEL, SO THAT'S THE CHANNEL USUALLY USED
12 TO TRANSMIT CHOICE.

13 SO THE ONES -- AS I SAID EARLIER, THE
14 FIRST ONE, DPDCH CHANNEL IS DATA CHANNEL WHERE YOUR
15 DATA WILL GO; AND DPCCH CHANNEL IS THE CONTROL
16 CHANNEL WHERE YOUR CONTROL INFORMATION WILL GO.

17 Q WHAT IS THE THIRD CHANNEL?

18 A THIRD CHANNEL IS HIGH SPEED DEDICATED PHYSICAL
19 CONTROL CHANNEL. THAT IS THE CONTROL CHANNEL FOR
20 DATA THAT YOU ARE SENDING FROM NETWORK TO THE
21 MOBILE DEVICE, TO YOUR HANDSET.

22 Q WHEN WAS THIS THIRD CHANNEL ADDED TO THE
23 STANDARD?

24 A 2002.

25 Q WHAT ARE THE LAST TWO CHANNELS?

1 A LAST TWO CHANNEL IS THE E -- THE E-PDCH AND
2 E-DPDCH, SO E STANDS FOR ENHANCED, THAT'S THE HIGH
3 SPEED DATA CHANNEL E-DPDCH, AND THEN THE E-PDCH IS
4 THE CONTROL CHANNEL FOR E-DPDCH, THE OTHER CHANNEL.

5 Q AND WHEN WERE THESE ENHANCED CHANNELS ADDED TO
6 THE STANDARD?

7 A 2002.

8 Q NOW E-DPDCH CHANNEL REFERS TO SOMETHING CALLED
9 HARQ?

10 A YES.

11 Q WHAT IS HARQ IN GENERAL TERMS?

12 A SO HARQ IS A PROTOCOL THAT YOU USE IN A
13 NETWORK TO CORRECT ERROR, OR WHEN THE DATA IS
14 TRANSMITTED AND THERE'S AN ERROR IN THE DATA, YOU
15 WILL USE A HARQ TO GET THE RIGHT DATA, AND THAT
16 HARQ STANDS FOR HYBRID AUTOMATIC REPEAT REQUEST.

17 MR. LEE: YOUR HONOR, I THINK I'VE RUN MY
18 FIVE MINUTES OVER.

19 THE COURT: OKAY. IT'S NOW 4:35.

20 OKAY. WE'RE GOING TO END FOR THE DAY.
21 WE HAVE, IN TERMS OF EVIDENCE FOR TOMORROW, LESS
22 THAN FIVE HOURS LEFT, SO WE WILL FINISH THE
23 EVIDENCE PORTION TOMORROW AND THEN I'LL HAVE A
24 BETTER UPDATE AT THE END OF TOMORROW ABOUT -- I
25 STILL THINK YOU'RE PROBABLY GOING TO HAVE MONDAY

1 OFF, AND THEN TUESDAY WILL STILL BE A LONG DAY OF
2 READING THROUGH ALL THE JURY INSTRUCTIONS AND
3 HAVING ALL FOUR HOURS OF CLOSING.

4 OKAY? ALL RIGHT. SO THANK YOU FOR YOUR
5 PATIENCE AND YOUR SERVICE.

6 IF YOU WOULD LEAVE, PLEASE, YOUR JURY
7 NOTEBOOKS IN THE JURY ROOM.

8 AGAIN, PLEASE KEEP AN OPEN MIND, DON'T DO
9 ANY RESEARCH, DON'T DISCUSS THE CASE WITH ANYONE,
10 DON'T READ ABOUT THE CASE.

11 ALL RIGHT. THANK YOU.

12 (WHEREUPON, THE FOLLOWING PROCEEDINGS
13 WERE HELD OUT OF THE PRESENCE OF THE JURY:)

14 THE COURT: OKAY. YOU MAY STEP DOWN.

15 OKAY. SO LET ME GIVE YOU THE TIME TOTALS
16 FOR THE DAY. OKAY. APPLE HAS USED 21 HOURS AND 7
17 MINUTES, SO YOU HAVE 3 HOURS AND 53 MINUTES LEFT
18 FOR TOMORROW.

19 SAMSUNG HAS USED 24 HOURS AND 14 MINUTES,
20 SO YOU HAVE 46 MINUTES LEFT FOR TOMORROW. SO WE
21 REALLY SHOULD BE ABLE TO FINISH.

22 SO WHY DON'T WE TAKE JUST A FIVE MINUTE
23 BREAK AND THEY'LL WE'LL COME BACK FOR THE REST OF
24 THE JMOL DISCUSSION. OKAY?

25 ALL RIGHT. THANK YOU.

1 (WHEREUPON, A RECESS WAS TAKEN.)

2 (WHEREUPON, THE FOLLOWING PROCEEDINGS
3 WERE HELD OUT OF THE PRESENCE OF THE JURY:)

4 THE COURT: OKAY. ALL RIGHT. OH, PLEASE
5 BE SEATED.

6 SO I HAD ALREADY RULED ON MR. LEE'S
7 MOTIONS BEFORE. LET'S GO THROUGH MR. MCELHINNY'S
8 MOTIONS.

9 ON THE D'087, D'677 WITH REGARD TO THE
10 FIVE MODELS YOU IDENTIFIED FOR THE D'087 AND THE
11 EIGHT MODELS YOU IDENTIFIED FOR THE D'677, I AGREE
12 WITH, I THINK IT WAS MR. ZELLER WHO ARGUED THAT THE
13 JURORS CAN ACT AS ORDINARY OBSERVERS AND THAT'S
14 SUPPORTED BY CATALINA LIGHTING, 295 F.3D 1287.

15 SO THAT JMOL MOTION IS DENIED.

16 WITH REGARD TO WHETHER SUFFICIENT
17 EVIDENCE HAD BEEN PRESENTED WITH REGARD TO
18 INVALIDITY BECAUSE OF FUNCTIONALITY AS TO THE D'087
19 AND THE D'677, IN ADDITION TO THE FACT WITNESSES
20 WHO TESTIFIED, AT LEAST ONE OF WHOM I ALREADY
21 MENTIONED BEFORE, THAT WAS MR. JIN SOO KIM,
22 MR. SHERMAN DID PROVIDE TESTIMONY ON THAT.

23 THE COURT FINDS THAT THERE WOULD BE A
24 LEGALLY SUFFICIENT EVIDENTIARY BASIS FOR A
25 REASONABLE JURY TO FIND IN SAMSUNG'S FAVOR.

1 WITH REGARD TO THE '163 DOUBLE TAP TO
2 ZOOM, ON THE INDEFINITENESS ISSUE, I'M NOT CLEAR ON
3 WHAT MR. MCELHINNY'S POSITION IS BECAUSE IT DOES
4 LOOK LIKE THE EXPERT, MR. GRAY, MADE A VERY VALID
5 INDEFINITENESS POINT ON SUBSTANTIALLY CENTERED, AND
6 I'M DENYING BOTH THE JMOL MOTION AS TO
7 INDEFINITENESS, AS WELL AS TO INFRINGEMENT.

8 MR. MCELHINNY: MAY I, JUST ON THE
9 INDEFINITENESS?

10 THE COURT: YEAH.

11 MR. MCELHINNY: JUST TO MAKE MY POSITION
12 CLEAR, YOUR HONOR.

13 THE COURT: SURE.

14 MR. MCELHINNY: THERE ARE LEGION FEDERAL
15 CASES, FEDERAL AND CIRCUIT CASES THAT HOLD THAT THE
16 ISSUE OF INDEFINITENESS IS A QUESTION OF LAW FOR
17 THE COURT TO DETERMINE ON CLAIM CONSTRUCTION AND
18 NOT AN ISSUE TO BE SUBMITTED TO THE JURY.

19 SO MY POSITION ON THAT MOTION
20 SPECIFICALLY WAS THAT IT DOESN'T MATTER WHAT THEIR
21 EXPERT SAYS, THAT YOUR HONOR HAS ALREADY CONSTRUED
22 THE CLAIM, SUBMITTED A CLAIM CONSTRUCTION TO THE
23 JURY, AND THEN THE QUESTION OF INDEFINITENESS
24 SHOULD NOT GO TO THEM.

25 THE COURT: WELL, WHAT -- WHAT -- I GUESS

1 I'M UNCLEAR. ARE YOU ASKING THAT HIS TESTIMONY ON
2 PAGES 2922 THROUGH 2924 BE STRICKEN? OR YOU'RE
3 JUST SAYING DON'T ASK A QUESTION ON THIS ISSUE WITH
4 REGARD -- ON THE VERDICT FORM? OR THAT WE'RE TO
5 GIVE A JURY INSTRUCTION THAT SAYS THAT THE JURY
6 CANNOT TAKE SUBSTANTIALLY CENTERED BEING AN
7 AMBIGUOUS TERM INTO ACCOUNT FOR EITHER VALIDITY OR
8 INFRINGEMENT OF THE PATENT? WHICH ONE IS YOUR --

9 MR. MCELHINNY: I WOULD BE SAYING --

10 THE COURT: WHICH --

11 MR. MCELHINNY: I THINK -- THE QUESTION
12 IS WHAT I'M SAYING, AND THEN THE QUESTION OF WHAT
13 ARE THE EFFECTS OF WHAT I'M SAYING?

14 WHAT I'M SAYING IS, AS A MATTER OF LAW,
15 THE CLAIM IS INDEFINITE. THE TIME TO CHALLENGE THE
16 INDEFINITENESS WAS AT CLAIM CONSTRUCTION. IT
17 DIDN'T HAPPEN.

18 SO CERTAINLY AS A RESULT OF THAT, I MEAN,
19 IF THEY WANT TO MAKE A JMOL ON THAT TO YOU AND LET
20 YOU DETERMINE IT, YOU GET TO DECIDE THAT, NOT THE
21 JURY IS WHAT I'M SAYING.

22 THE COURT: OKAY.

23 MR. MCELHINNY: SO AS A RESULT OF THAT,
24 AT A MINIMUM, THE QUESTION SHOULD NOT BE SUBMITTED
25 TO THE JURY.

1 BUT IN LIGHT OF THE TESTIMONY AND IN
2 LIGHT OF THE ATTEMPT TO INTRODUCE THAT ISSUE, WE'LL
3 ALSO ASK YOUR HONOR TO INSTRUCT THE JURY THAT YOU
4 ARE THE ONE WHO DECIDES WHETHER A CLAIM IS
5 AMBIGUOUS AND YOU HAVE NOT DECIDED -- YOU HAVE
6 DECIDED -- YOU HAVE NOT RULED THAT THIS ONE IS
7 AMBIGUOUS.

8 BUT THAT QUESTION IS FOR YOU AND NOT FOR
9 THEM, AND THAT THEY ARE SUPPOSED TO APPLY THE PLAIN
10 AND ORDINARY MEANING OF THE TERM.

11 THE COURT: ALL RIGHT. LET ME -- DO YOU
12 WANT TO ADDRESS THAT?

13 MR. DEFRANCO: YES, YOUR HONOR.

14 YOU KNOW, THE -- IT'S A LITTLE BIT, IT
15 SEEMS, OF SIDE-STEPPING THEIR FAILURE OF DR. SINGH
16 TO MEET HIS BURDEN TO ESTABLISH INFRINGEMENT.

17 HE WAS ASKED ON CROSS-EXAMINATION ABOUT
18 HIS ANALYSIS WITH RESPECT TO SUBSTANTIALLY
19 CENTERED. WE HEARD TESTIMONY ABOUT THERE COULD BE
20 DIFFERENCES OF OPINIONS AMONG THOSE WHO ARE SKILLED
21 IN THE ART. HE ADMITTED THERE WERE NO PARAMETERS
22 SET FORTH IN THE CLAIM OR IN THE PATENT.

23 IT UNDERCUT --

24 THE COURT: BUT YOU AGREE THAT
25 INDEFINITENESS IS NOT AN ISSUE FOR THE JURY?

1 MR. DEFRANCO: I'M NOT SAYING IT IS, YOUR
2 HONOR.

3 I'M SAYING THAT IT'S A FAILURE OF PROOF
4 ON HIS INFRINGEMENT ANALYSIS. WHEN HE WAS ASKED
5 DIRECTLY ABOUT HIS APPLICATION OF THAT TERM, HIS
6 INTERPRETATION OF ONE SKILLED IN THE ART, HOW HE
7 APPLIED IT TO THE INFRINGEMENT ANALYSIS, THEY
8 DIDN'T MEET THEIR BURDEN.

9 SO THEY CAN'T GET AWAY FROM THAT BY
10 SAYING, WELL, NOW IT'S A CLAIM CONSTRUCTION
11 INDEFINITENESS ARGUMENT THAT WE SHOULD HAVE BROUGHT
12 UP BEFORE.

13 IT CAME OUT ON CROSS-EXAMINATION OF THEIR
14 OWN EXPERT THAT HE COULDN'T ESTABLISH INFRINGEMENT
15 BASED ON THE WORK THAT HE DID IN THE CASE.

16 THAT IS WHAT MR. GRAY WAS RESPONDING TO.
17 HE SAID EXACTLY THAT, YES, HE AGREED THAT ONE OF
18 SKILL IN THE ART COULD NOT DETERMINE WHETHER THIS
19 CLAIM IS PRACTICED OR NOT.

20 THE COURT: WELL, I'M GOING TO DENY A
21 JMOL MOTION BASED ON -- THE JMOL MOTION FOR A
22 FINDING OF INFRINGEMENT, AND WHY DON'T YOU PROPOSE
23 A JURY INSTRUCTION ON THE INDEFINITENESS ISSUE. I
24 THINK THAT IS APPROPRIATE.

25 MR. DEFRANCO: THAT'S FINE, YOUR HONOR.

1 THANK YOU.

2 THE COURT: CAN YOU ALL STIPULATE TO A
3 JURY INSTRUCTION ON INDEFINITENESS FOR THE '163?

4 MR. VERHOEVEN: WE'LL USE THE MODEL.

5 MR. DEFRANCO: YES, WE WOULD PROPOSE
6 USING THE MODEL, YOUR HONOR. I DON'T THINK THERE
7 SHOULD BE ANY DISPUTE ON THIS.

8 THE COURT: ALL RIGHT. WELL, I MEAN,
9 THERE ARE A COUPLE OF DIFFERENT MODELS, YOU KNOW,
10 FED CIRCUIT BAR ASSOCIATION, NORTHERN DISTRICT OF
11 CALIFORNIA. I MEAN, IF YOU'RE JUST GOING TO GIVE
12 ME CARTE BLANCHE TO PICK ONE THAT I LIKE, I'LL DO
13 IT.

14 MR. DEFRANCO: WE'LL DO OUR BEST TO WORK
15 IT OUT --

16 THE COURT: OKAY.

17 MR. DEFRANCO: -- WITH THE OTHER SIDE,
18 YOUR HONOR.

19 THE COURT: ALL RIGHT.

20 MR. MCELHINNY, DO YOU WANT TO BE HEARD?
21 I AGREE WITH YOU THAT INDEFINITENESS IS NOT A JURY
22 ISSUE.

23 I'M RULING AGAINST YOU ON YOUR
24 INFRINGEMENT JMOL.

25 BUT WHAT ABOUT JUST HANDLING IT BY WAY OF

1 A JURY INSTRUCTION AND YOU CAN WORK WITH
2 MR. DEFRANCO AND THE SAMSUNG TEAM ON SOME KIND OF
3 PROPOSAL?

4 MR. MCELHINNY: YOUR HONOR, YOU HAVE
5 ALREADY -- BECAUSE THE PARTIES HAVE TRIED TO DO
6 THIS, MR. DEFRANCO MAY NOT BE AWARE OF THIS -- YOU
7 ALREADY HAVE COMPETING INSTRUCTIONS AND OUR
8 OBJECTION BECAUSE THEIR PROPOSED INSTRUCTION
9 SUBMITS THE ISSUE TO THE JURY.

10 THE COURT: ON THIS PARTICULAR ISSUE OF
11 THE '677?

12 MR. MCELHINNY: ON THE ISSUE OF
13 INDEFINITENESS, YES, YOUR HONOR.

14 THE COURT: OKAY. NOT SPECIFICALLY -- DO
15 YOU WANT ONE SPECIFICALLY THAT CALLS OUT THIS
16 PATENT, THIS PARTICULAR TERM, THIS PARTICULAR
17 EXPERT'S TESTIMONY, OR DO YOU WANT JUST A GENERIC?

18 MR. MCELHINNY: WE WOULD LIKE TO PROPOSE
19 A CURATIVE INSTRUCTION THAT WOULD REMOVE -- SO THE
20 JURY UNDERSTANDS WHO WILL BE DECIDING THAT ISSUE.

21 THE COURT: OKAY. SO WHEN IS THAT GOING
22 TO BE SUBMITTED?

23 MR. MCELHINNY: TOMORROW, YOUR HONOR.

24 THE COURT: OKAY. WHAT -- CAN YOU DO
25 EITHER A JOINT OR A DISPUTED ONE?

1 MR. MCELHINNY: WE WILL, YOUR HONOR.

2 MR. DEFRANCO: WHY DON'T WE PUT SOMETHING
3 TOGETHER FOR YOUR HONOR?

4 THE COURT: PLEASE, PLEASE. AND I'M
5 GOING TO PUT A PAGE LIMIT ON IT.

6 BUT IF YOU WOULD, PLEASE, IF YOU DISAGREE
7 WITH THE OTHER SIDE'S, GIVE AN EXPLANATION OF WHY
8 YOURS SHOULD BE ADOPTED EITHER WAY.

9 WHAT TIME CAN YOU DO THAT?

10 MR. MCELHINNY: 1:00 O'CLOCK IN THE
11 AFTERNOON FOR US, YOUR HONOR. WE CAN DO IT -- IF
12 THEY CAN DO IT, WE CAN DO IT BY 1:00.

13 THE COURT: IS THAT OKAY, 1:00 O'CLOCK?

14 MR. DEFRANCO: YES, YOUR HONOR.

15 THE COURT: OKAY. SO 1:00 O'CLOCK ON --
16 IS THAT THE 17TH -- ON THE QUESTION OF
17 SUBSTANTIALLY CENTERED, '163.

18 AND -- IT'S DR. GRAY, RIGHT?

19 MR. DEFRANCO: MR. GRAY.

20 THE COURT: OKAY, MR. GRAY'S TESTIMONY.

21 ALL RIGHT. LET ME HEAR, AND I KNOW
22 MR. JOHNSON STARTED TO ADDRESS IT, WHAT WAS YOUR
23 RESPONSE ON THE '381, THAT THE HOLD STILL WAS ONLY
24 SHOWN IN, YOU KNOW, ONE OF THE THREE ACCUSED
25 APPLICATIONS AND THAT THAT'S NOT SUFFICIENT?

1 AND I DON'T RECALL ANY TESTIMONY THAT
2 IT'S ACTUALLY PRESENT IN ALL THREE APPLICATIONS.

3 MR. JOHNSON: YES. SO LET ME BACK UP A
4 SECOND.

5 THE COURT: OKAY.

6 MR. JOHNSON: BECAUSE WHAT WE HEARD WHEN
7 THEY MADE THEIR CASE, WHEN WE MOVED FOR JUDGMENT AS
8 A MATTER OF LAW AT THE END OF THEIR CASE AND IT WAS
9 DENIED, WAS DR. BALAKRISHNAN'S TESTIMONY THAT WE
10 THINK IS INSUFFICIENT FROM -- AS A MATTER OF LAW
11 BECAUSE HE DIDN'T GO THROUGH AN ELEMENT-BY-ELEMENT
12 ANALYSIS ON THE '381 PATENT AND COMPARE IT TO EACH
13 AND EVERY PRODUCT.

14 WHAT WE SAW UP THERE -- WE NEVER THE
15 WHOLE THING UP THERE AT ONCE. WE NEVER SAW IT
16 COMPARED TO ALL THE ACCUSED PRODUCTS.

17 WHAT WE SAW WAS ONE PRODUCT THAT WAS UP
18 THERE. HE ADMITTED THAT -- OR WHEN GOING
19 THROUGH -- EVEN IN HIS DIRECT TESTIMONY, HE ONLY
20 PUT IN THE SOURCE CODE ON GALLERY AND BROWSER.
21 THERE WAS NOTHING IN THERE FOR CONTACTS.

22 HE PUT UP THE VARIOUS PRODUCTS, DESCRIBED
23 SORT OF THEIR OPERATION, BUT DIDN'T DO THE
24 CLAIM-BY-CLAIM ANALYSIS THAT WE THINK IS REQUIRED.

25 THE COURT: UM-HUM.

1 MR. JOHNSON: SO THERE'S AN INSUFFICIENCY
2 OF PROOF FROM THE VERY BEGINNING THAT WE THINK THIS
3 JURY OUGHT TO BE ABLE TO WEIGH AND DECIDE WHETHER
4 THEY'VE MET THEIR BURDEN, WHETHER IT'S GALLERY,
5 CONTACTS, OR ANY OTHER ALLEGATIONS WITH RESPECT TO
6 THE '381.

7 BUT IT GOES BEYOND THAT, BECAUSE I THEN
8 TOOK HIM THROUGH AND HE ADMITTED THAT VERSIONS VARY
9 FOR THESE PRODUCTS, AND AS WE SAW, THERE'S A
10 GALLERY TAB 7.0 THAT HAD HARD STILL AND HOLD STILL,
11 YOU KNOW, IF YOU REMEMBER THAT.

12 AND THERE WAS ANOTHER -- THERE WAS
13 ANOTHER VERSION OF THAT THAT DIDN'T HAVE THAT
14 PARTICULAR FUNCTIONALITY.

15 THE COURT: UM-HUM.

16 MR. JOHNSON: SO THESE PRODUCTS ALL VARY,
17 WHICH IS WHAT I'VE BEEN TRYING TO SAY FROM THE
18 BEGINNING, AND MANAGING WITHIN THE CONFINES OF THE
19 SOURCE CODE ISSUES.

20 THE COURT: UM-HUM.

21 MR. JOHNSON: HE ADMITTED IN HIS DIRECT
22 TESTIMONY -- AND THIS IS PAGE 1728 OF THE
23 TRANSCRIPT, LINES 19 TO 24 -- HE LOOKED AT FOUR
24 VERSIONS OF SOURCE CODE.

25 WE PRODUCED MORE THAN FOUR. WE PRODUCED

1 ONE FOR EACH OF THE ACCUSED PRODUCTS.

2 WHEN I WAS CROSS-EXAMINING HIM, I ASKED
3 HIM IF HE LOOKED AT THE HOLD STILL SOURCE CODE AND
4 HE SAID HE HAD NOT LOOKED AT THE HOLD STILL SOURCE
5 CODE.

6 THE HOLD STILL IS IN THE GALLERY
7 APPLICATION. IT'S NOT IN THE CONTEXT, PER SE, THAT
8 WE WENT THROUGH IT WITH HIM.

9 THE COURT: UM-HUM.

10 MR. JOHNSON: BUT IT'S THE SAME ISSUE AS
11 THERE. HE -- IN HIS ANALYSIS, HE PROVIDED -- EVEN
12 AT BARE BOTTOM SORT OF ANALYSIS, HE PROVIDED ONLY
13 ANALYSIS WITH RESPECT TO THE FASCINATE, THE
14 GALAXY S II AND THE GALAXY S 4G. THOSE WERE WHAT
15 WE SAW UP ON THE SCREEN.

16 HE DIDN'T WALK THROUGH AND COMPARE THAT
17 TO THE CLAIM LANGUAGE.

18 ULTIMATELY THIS JURY IS ENTITLED TO TAKE
19 THE PRODUCTS -- AND THOSE ARE DEMONSTRATIVES, YOUR
20 HONOR, WHICH YOUR HONOR HAS NOW SAID ARE NOT GOING
21 INTO THE JURY ROOM.

22 THIS JURY IS ENTITLED TO TAKE THE
23 PRODUCTS INTO THE JURY ROOM AND EVALUATE WHETHER
24 EACH AND EVERY ONE OF THESE LIMITATIONS IS MET BY
25 EACH AND EVERY ONE OF THE PRODUCTS THAT ARE AT

1 ISSUE.

2 AND I'M HAPPY TO PROVIDE ADDITIONAL SITES
3 THAT I THINK ARE HELPFUL OR LAY IT OUT IN A BRIEF,
4 BUT WE THINK WE'VE MET OUR BURDEN WITH RESPECT TO
5 NON-INFRINGEMENT FOR EACH OF THE ACCUSED PRODUCTS.

6 THE COURT: UM-HUM.

7 MR. JOHNSON: THEY HAVEN'T MET THEIR
8 BURDEN ON INFRINGEMENT IS MY MAIN POINT.

9 BUT WE'VE MORE THAN ESTABLISHED THAT
10 THERE ARE -- THAT A REASONABLE JURY COULD DIFFER ON
11 WHETHER THEY -- WHETHER THERE'S INFRINGEMENT OR NOT
12 ON THESE --

13 THE COURT: UM-HUM.

14 MR. JOHNSON: -- FOR EACH OF THE ACCUSED
15 PRODUCTS AND EACH OF THE ACCUSED APPLICATIONS
16 WITHIN THE PRODUCTS.

17 AND YOU MAY RECALL, EVEN AT SLIDE -- AT
18 1783 OF THE TRANSCRIPT, I ASKED DR. BALAKRISHNAN
19 ABOUT WHETHER THERE ARE VERSIONS OF THE BOUNCE THAT
20 DON'T INFRINGE AND HE SAID YES, THERE ARE VERSIONS
21 OF THE BOUNCE.

22 FOR EXAMPLE, WHEN YOU REACH THE BORDER,
23 YOU LIFT YOUR FINGER, AND IF IT BOUNCES BACK TO THE
24 CENTER, THAT DOESN'T INFRINGE.

25 AND THAT IS -- THAT'S ANOTHER ISSUE THAT

1 THE JURY IS ENTITLED TO WEIGH WITH RESPECT TO EACH
2 OF THESE APPLICATIONS BECAUSE THERE ARE BOUNCE
3 FEATURES EVEN IN THE ACCUSED PRODUCTS THAT, EVEN
4 UNDER THEIR THEORY, DON'T INFRINGE FOR EACH OF THE
5 APPLICATIONS.

6 AND THAT'S AT LINES 1 THROUGH 20 OF PAGE
7 1783 OF THE TRANSCRIPT.

8 THE COURT: OKAY. 1783 -- EXCUSE ME --
9 LINES 1 THROUGH 20?

10 MR. JOHNSON: RIGHT, 1 TO 20.

11 THE COURT: ALL RIGHT. I'M NOT AS
12 PERSUADED BY THAT PARTICULAR EXCERPT.

13 MR. MCELHINNY: MAY I --

14 THE COURT: BUT LET ME HEAR FROM
15 MR. MCELHINNY.

16 WHY SHOULDN'T THIS GO TO THE JURY.

17 MR. JOHNSON: THE POINT --

18 THE COURT: I'M SUPPOSED TO DRAW ALL
19 INFERENCES IN FAVOR OF THE NON-MOVING PARTY, WHICH
20 IS WHAT I DID WHEN THE MOTION WAS MADE AGAINST YOUR
21 CASE, AND I THINK THIS SHOULD GO TO THE JURY.

22 MR. MCELHINNY: I UNDERSTAND. I
23 UNDERSTAND THE BURDEN I HAVE. I UNDERSTAND HOW
24 THIS -- BUT IN THIS CASE --

25 THE COURT: UM-HUM.

1 MR. MCELHINNY: -- I HOPE YOU UNDERSTAND
2 THAT MR. JOHNSON DID NOT ANSWER YOUR QUESTION. HE
3 WANTED TO TALK ABOUT HIS JMOL. HE WANTED TO TALK
4 ABOUT WHETHER THE PROOF WAS SUFFICIENT AND REARGUE
5 HIS JMOL.

6 AND THEN HE GAVE YOU EXAMPLES OF
7 SITUATIONS WHERE IT MIGHT NOT BOUNCE.

8 BUT LET'S FIGURE OUT THE ISSUE. WHAT
9 DR. BALAKRISHNAN HAD TO PROVE WAS THAT THE BOUNCE
10 IS EXHIBITED IN EVERY ONE OF THESE DEVICES, AND HE
11 DID THAT.

12 THE FACT THAT IN SOME SITUATIONS IT MIGHT
13 NOT BOUNCE IS NOT A DEFENSE TO INFRINGEMENT.

14 AND THE KEY TESTIMONY, YOUR HONOR, IS AT
15 PAGE 1756 AND 1757 AND IT DEALS WITH BOTH ISSUES
16 THAT WE'VE TALKED ABOUT, ABOUT THE FACT THAT IT'S
17 ONLY IN THE GALLERY APPLICATION, IT'S NOT IN ALL
18 APPLICATIONS, AND EVEN IN THE DEVICES WHERE IT
19 SOMETIMES HAPPENS IN THE GALLERY, IT DOESN'T
20 ALWAYS -- IT DOESN'T USUALLY HAPPEN. MORE
21 FREQUENTLY IT BOUNCES. THE DEVICES ALWAYS
22 INFRINGE.

23 AND I, I WILL REFER YOU TO 1756 AND 1757.

24 THE COURT: AND WHO IS THIS? IS THIS
25 DR. BALAKRISHNAN?

1 MR. MCELHINNY: THIS IS DR. BALAKRISHNAN.
2 HE'S THE ONLY PERSON WHO TESTIFIED AT ALL ABOUT
3 THIS ALLEGED DEFENSE.

4 NOW, I WANT TO GIVE YOU A CHANCE TO READ
5 THAT, BUT I WANT TO ANSWER YOUR QUESTION ABOUT WHY
6 YOU SHOULD DO THIS.

7 (PAUSE IN PROCEEDINGS.)

8 THE COURT: OKAY. GO AHEAD.

9 MR. MCELHINNY: YOU SHOULD DO THIS FOR
10 THE REASONS THAT, THAT WE HAVE BEEN IN DIALOGUE
11 FROM THE VERY BEGINNING OF THIS, WHICH IS THIS IS A
12 COMPLEX CASE. WE'RE LOOKING FOR WAYS TO MAKE IT
13 EASIER ON THE JURY.

14 YOU HAVE ASKED US IF THERE ARE ISSUES
15 THAT CAN BE WITHDRAWN, AND THIS IS AN ISSUE IN
16 WHICH THEY HAD AN OPPORTUNITY TO PUT ON A DEFENSE
17 IN THEIR CASE. THEY DIDN'T CALL A SINGLE WITNESS.

18 THEIR ONLY SITUATION -- THEIR ONLY
19 ARGUMENT HERE IS THAT ON CROSS-EXAMINATION OF OUR
20 WITNESS THEY SOMEHOW PUT IN A DEFENSE AND, AS THIS
21 DIALOGUE SHOWS, THEY DID NOT.

22 AND SO WE, WE TAKE AN ISSUE AWAY FROM THE
23 JURY THAT THEY DON'T HAVE TO DECIDE. WE MAKE IT
24 EASIER FOR THEM.

25 AND IT'S THE CORRECT ANSWER. IT IS --

1 THERE -- TO HAVE THEM IN THERE TRYING TO GUESS
2 ABOUT SOMETHING IN WHICH THERE IS NO EVIDENCE,
3 THAT'S THE PURPOSE OF RULE 50.

4 MR. JOHNSON: YOUR HONOR, I WANT TO GO
5 BACK.

6 HE ACCUSED 22 PRODUCTS. HE WALKED
7 THROUGH DEMONSTRATIVES FOR ONE PRODUCT. HE WAVED
8 HIS HAND AT 21 OTHER PRODUCTS, NEVER ON AN
9 ELEMENT-BY-ELEMENT BASIS.

10 WE ARGUED FROM THE BEGINNING THAT HE
11 DIDN'T CARRY HIS BURDEN IN ESTABLISHING, ON AN
12 ELEMENT-BY-ELEMENT BASIS, THAT ALL THE ACCUSED
13 PRODUCTS MEET THE LIMITATIONS, WHICH IS WHAT HE WAS
14 REQUIRED TO DO.

15 IT'S AN INSUFFICIENCY OF PROOF ASPECT,
16 FIRST AND FOREMOST, AND THEY DID NOT CARRY THEIR
17 BURDEN.

18 SECOND, ON CROSS-EXAMINATION, I ELICITED
19 KEY ADMISSIONS FROM HIM ABOUT THE FACT THAT THERE
20 ARE -- THAT THESE THINGS OPERATE DIFFERENTLY, AND
21 THEY DO OPERATE DIFFERENTLY.

22 THEY'RE DIFFERENT VERSIONS OF THE CODE,
23 CODE THAT WAS PRODUCED DURING THE COURSE OF
24 DISCOVERY, AND REASONABLE JURORS CAN DIFFER AS TO
25 WHETHER EACH AND EVERY ONE OF THESE APPLICATIONS

1 WITHIN EACH ONE OF THESE 21 PRODUCTS INFRINGE THE
2 CLAIM LIMITATION.

3 THEY HAVEN'T CARRIED THEIR BURDEN. HE
4 ADMITTED DURING CROSS-EXAMINATION THAT CERTAIN KEY
5 LIMITATIONS WERE MISSING.

6 HOLD STILL IS, IN FACT, SOMETHING THAT'S
7 PRESENT. PUTTING ASIDE MR. MCELHINNY'S ARGUMENT,
8 IT'S SOMETHING THAT'S PRESENT AND HE ADMITTED THAT
9 HE DIDN'T CONSIDER IT.

10 I MEAN, WHETHER THE JURORS -- HOW THE
11 JURORS DECIDE THIS ISSUE ULTIMATELY IS A QUESTION
12 FOR THE JURORS AND THEY SHOULD BE PERMITTED TO LOOK
13 AT ALL THE PRODUCTS AND DO THEIR OWN ANALYSIS.

14 MR. MCELHINNY: IN FAIRNESS, YOUR HONOR,
15 YOU HAVE HEARD ENOUGH ORAL ARGUMENTS TO KNOW THAT
16 MR. JOHNSON IS APPARENTLY ADDRESSING EVERYTHING
17 EXCEPT FOR THE QUESTION THAT YOU'RE THINKING ABOUT.
18 HE WANTS TO ARGUE HIS JMOL ABOUT WHETHER OR NOT YOU
19 CAN DO EXAMPLES, AND YOU CAN TALK ABOUT THAT.

20 BUT THE TESTIMONY IS HERE AND THIS IS ALL
21 THEY HAVE. THIS WAS THEIR ENTIRE DEFENSE AND IT
22 FAILS BECAUSE IT DOESN'T GO TO EVERY APPLICATION,
23 AND IT DOESN'T ALWAYS HAPPEN.

24 MR. JOHNSON: WHY DID HE NOT PUT UP
25 SOURCE CODE FOR THE CONTACTS? WHY DID HE PUT UP A

1 DEMONSTRATIVE FOR ONLY THE GALLERY AND THE BROWSER?

2 HE DIDN'T MEET HIS BURDEN. AND I
3 ELICITED IN CROSS-EXAMINATION THAT HE DIDN'T MEET
4 HIS BURDEN.

5 MR. VERHOEVEN: YOUR HONOR, THIS IS
6 MR. VERHOEVEN. CAN I JUST MAKE ONE POINT HERE TOO?

7 THE COURT: PLEASE, GO AHEAD.

8 MR. VERHOEVEN: I'M A LITTLE BIT
9 SURPRISED THAT WE'RE EVEN ARGUING THIS BECAUSE IT'S
10 THEIR BURDEN OF PROOF.

11 BUT BASICALLY IF YOU FOLLOW THE LOGIC OF
12 WHAT MR. MCELHINNY IS SAYING, HE'S SAYING THAT,
13 WELL, IN ORDER FOR YOU TO GRANT THIS, YOU WOULD
14 HAVE TO FIND THAT NO REASONABLE JUROR COULD FIND
15 THAT THEY HAVEN'T MET THEIR BURDEN OF PROOF ON 22
16 PRODUCTS WHERE, WITH RESPECT TO 21 OF THEM, THE
17 ONLY EVIDENCE IS INADMISSIBLE DEMONSTRATIVE VIDEOS
18 THAT WERE FLASHED BEFORE THE JURY'S EYES.

19 AND THE ONLY WAY, UNDER THE LAW, THAT YOU
20 CAN GRANT A JMOL IN THE SITUATION WHERE THEY HAVE
21 THE BURDEN OF PROOF WOULD BE TO FIND NO REASONABLE
22 JURY COULD FIND THEY FAILED TO MEET THAT BURDEN OF
23 PROOF AND SO, THEREFORE, WE'RE REQUIRED TO COME UP
24 WITH SOMETHING ELSE BEYOND THAT, EVEN SETTING ASIDE
25 THE ISSUES THAT MR. MCELHINNY IS RAISING.

1 AND THERE'S NO WAY THE EVIDENCE SUPPORTS,
2 GIVEN WHAT THE DIRECT TESTIMONY WAS, THE NOTION
3 THAT NO REASONABLE JURY -- AND YOU HAVE TO TAKE THE
4 INFERENCES IN OUR FAVOR, YOUR HONOR -- THAT NO
5 REASONABLE JURY COULD SAY, HEY, THAT WASN'T ENOUGH.

6 FLASHING VIDEOS OF 20 PHONES WITH NO
7 ELEMENT-BY-ELEMENT ANALYSIS, THE DEMONSTRATIVES
8 AREN'T EVEN IN EVIDENCE, THERE'S JUST -- IT'S NOT
9 EVEN A CLOSE QUESTION TO SAY TAKING INFERENCES IN
10 OUR FAVOR THAT NO REASONABLE JURY COULD FIND THEY
11 FAILED TO MEET THEIR BURDEN OF PROOF.

12 OF COURSE A REASONABLE JURY COULD FIND
13 THAT AND, THEREFORE, THE JMOL MUST BE DENIED.

14 THE COURT: WELL, I'M DENYING THE JMOL ON
15 THAT ISSUE. I ALREADY DENIED IT AS TO INVALIDITY.

16 LET'S TALK ABOUT THE TWO FINGER SCROLLING
17 SIMULTANEOUSLY ON THE '915. I THINK THAT
18 MR. GRAY'S TESTIMONY AT -- I SHOULD TAB THIS -- AT
19 PAGE 2912, LINES 2 THROUGH 19 IS SUFFICIENT. HE
20 DOES SAY THAT HE LOOKED AT ALL THE SAMSUNG ACCUSED
21 PRODUCTS AND FOUND THAT TO BE PRESENT.

22 NOW, WHAT HE SAID ON OBVIOUSNESS, I WILL
23 SAY, IS PRETTY DARN LEAN. IT'S 2907, LINES 19
24 THROUGH 25. BUT I'M, I'M INCLINED TO DENY THE
25 JMOL.

1 BUT THAT'S THE ONLY THING I COULD FIND ON
2 OBVIOUSNESS AS TO THE '915, PAGE 2907, LINES 19
3 THROUGH 25.

4 IF THERE'S SOMETHING ELSE THAT I SHOULD
5 BE LOOKING AT, MR. DEFRANCO, JUST LET ME KNOW. I
6 WANT TO KEEP TABS ON ALL THESE SECTIONS BECAUSE I
7 KNOW IT'LL BE COMING UP FOR THE NEXT ROUND OF JMOL
8 AND THE JURY INSTRUCTIONS AND WHATNOT.

9 IS THERE ANYTHING ELSE I SHOULD BE
10 LOOKING AT OTHER THAN THAT SECTION?

11 MR. DEFRANCO: NOT IN THE TRANSCRIPT,
12 YOUR HONOR, BUT I DID WANT TO CITE TWO CASES IF I
13 MIGHT JUST VERY BRIEFLY?

14 THE COURT: PLEASE, GO AHEAD.

15 MR. DEFRANCO: THIS IS PERFECT WEB AT 587
16 F.3D 1324, AND THE SITE IS AT 1329.

17 THE COURT: I'M SORRY. CAN YOU REPEAT
18 THAT ONE MORE TIME? 594 F.3D --

19 MR. DEFRANCO: 587 F.3D, 1324.

20 THE COURT: OKAY.

21 MR. DEFRANCO: AND I'M READING FROM 1329.

22 THE COURT: OKAY.

23 MR. DEFRANCO: AND IT SAYS, "THUS, THE
24 SUPREME COURT INSTRUCTED THAT FIND FACTORS MAY USE
25 COMMON SENSE IN ADDITION TO RECORD EVIDENCE."

1 IT GOES ON TO SAY, "NOR ARE EXPERT
2 OPINIONS ALWAYS A PREREQUISITE, FOR IN MANY PATENT
3 CASES EXPERT TESTIMONY WILL NOT BE NECESSARY
4 BECAUSE THE TECHNOLOGY WILL BE EASILY
5 UNDERSTANDABLE WITHOUT THE NEED FOR EXPERT
6 EXPLANATORY TESTIMONY."

7 AND IT GOES ON TO SAY THAT, IN THE
8 CONTEXT OF OBVIOUSNESS, "WE THEREFORE HOLD THAT
9 WHILE AN ANALYSIS OF AN OBVIOUSNESS ALWAYS DEPENDS
10 ON EVIDENCE THAT SUPPORTS THE REQUIRED GRAHAM
11 FACTUAL FINDING, IT MAY ALSO INCLUDE RECOURSE TO
12 LOGIC, JUDGMENT, AND COMMON SENSE AVAILABLE."

13 AND THEN THERE'S ANOTHER CASE, YOUR
14 HONOR. IT'S SIMLINE AND THIS IS AT 211 WEST LAW
15 715233.

16 THE COURT: 715 --

17 MR. DEFRANCO: 233. AND I'M READING FROM
18 246, I BELIEVE.

19 AGAIN IN THE CONTEXT OF OBVIOUSNESS, THIS
20 IS THE FEDERAL CIRCUIT SAYING, "THE OBVIOUSNESS
21 ANALYSIS MAY INCLUDE RECOURSE BY THE FACT FINDER,
22 AGAIN THE JURY, TO LOGIC, JUDGMENT, AND COMMON
23 SENSE AVAILABLE TO THE PERSON OF ORDINARY SKILL IN
24 THE ART THAT DOES NOT NECESSARILY REQUIRE
25 EXPLANATION IN ANY REFERENCE OR EXPERT OPINION. BY

1 EXTENSION, EXPERT REPORTS, EVEN CREDIBLE EXPERT
2 REPORTS, ARE NOT REQUIRED WHERE THE UNDERLYING
3 FACTUAL CONSIDERATIONS ARE RESOLVED BY RESORT TO
4 COMMON SENSE. HERE THE TECHNOLOGY IS EASILY
5 UNDERSTANDABLE, EVEN WITHOUT THE ASSISTANCE OF
6 EXPERT OPINION."

7 AND I THINK THE BACKDROP FOR THESE CASES,
8 YOUR HONOR, THE AMOUNT OF TIME IT WOULD TAKE FOR
9 EXPERTS TO GO THROUGH EVERY PERMUTATION AND SAY,
10 WELL, IF YOU DON'T FIND IT LITERALLY IN THE PRIOR
11 ART, THERE WOULD BE OBVIOUSNESS -- IT WOULD BE
12 OBVIOUS, ESPECIALLY IN THE CONTEXT WHEN WE'RE
13 DEALING WITH TECHNOLOGY THAT THE JURY CAN SEE FOR
14 THEMSELVES, THEY CAN MAKE THEIR OWN DETERMINATION
15 BASED ON THE EVIDENCE WHETHER ONE OF ORDINARY
16 SKILL, IF THEY WERE SITTING IN THEIR SHOES, THEY
17 WOULD BE ABLE TO COMBINE THE REFERENCES, OR WITHIN
18 A REFERENCE ITSELF FIND THAT THAT FEATURE, MINOR
19 DEVIATIONS THAT AN EXPERT SAY REMOVE THE PRIOR ART,
20 WHETHER THAT FEATURE WOULD HAVE BEEN OBVIOUS TO ONE
21 OF ORDINARY SKILL.

22 THAT'S EXACTLY WHAT THESE CASES ARE
23 SAYING, SO WE WOULD CITE THESE CASES IN ADDITION TO
24 THE TESTIMONY THAT YOUR HONOR MENTIONED.

25 THE COURT: ALL RIGHT. I'M DENYING THE

1 JMOL ON THAT ISSUE. SO I THINK I'VE DENIED THE
2 JMOL AS TO EVERYTHING.

3 LET'S GET TO THE MOTION TO STRIKE WHICH,
4 UNFORTUNATELY, IS A LITTLE BIT TRICKIER.

5 WITH REGARD TO THE LG PRADA, IT WAS, AS I
6 REMEMBERED FROM THE TESTIMONY YESTERDAY, WHERE
7 DR. SHERMAN THOUGHT THAT IT HAD BEEN SOLD IN 2006
8 OR PRIOR TO 2006, BUT THERE'S NO CORROBORATION OF
9 WHAT HE SAID.

10 SO MY ONLY CONCERN IS THAT WITHOUT ANY
11 CORROBORATION, I DON'T KNOW IF HIS, YOU KNOW, ONE
12 SENTENCE ANSWER WILL SUFFICIENTLY -- AND THIS HAS
13 BEEN A DISPUTE THAT'S BEEN GOING ON FOR QUITE SOME
14 TIME IN THIS CASE, WHETHER THAT'S PRIOR ART.

15 MR. ZELLER: THERE IS SOME ADDITIONAL
16 CORROBORATION, YOUR HONOR.

17 THE COURT: YEAH, WHERE IS IT?

18 MR. ZELLER: JUST FOR RECORD PURPOSES,
19 MR. SHERMAN'S TESTIMONY WAS ALSO AS TO HIS PERSONAL
20 KNOWLEDGE WHEN HE SAID IT WAS LATE 2006.

21 BUT ALSO I WOULD DIRECT THE COURT TO TWO
22 ADDITIONAL PIECES OF EVIDENCE.

23 THE COURT: OKAY.

24 MR. ZELLER: AND JUST FOR TIME PERIOD
25 REFERENCE, THE D'677 FILING DATE IS NOVEMBER 18TH,

1 2008, AND THE D'087 FILING DATE IS JULY 30TH, 2007.

2 THE COURT: OKAY.

3 MR. ZELLER: THE COURT MAY RECALL THAT WE
4 PUT INTO EVIDENCE THE -- AND THIS WAS THROUGH
5 MR. HOWARTH -- THAT BARCELONA FAIR DOCUMENT THAT
6 THE PARTIES STIPULATED HAD A DATE OF FEBRUARY OF
7 2007.

8 THE COURT: OKAY. CAN I STOP YOU RIGHT
9 THERE, THOUGH?

10 WE DID GO BACK AND LOOK AT THE STRINGER
11 TESTIMONY AND HIS TESTIMONY IS CORROBORATED BY A
12 CAD, CAD DRAWING OF THE FRONT FACE OF THE BEZEL OF
13 THE PHONE, AND IT IS DATED APRIL 20TH OF 2006.

14 SO --

15 MR. ZELLER: AND I CAN DEFINITELY ADDRESS
16 THAT, YOUR HONOR.

17 MR. MCELHINNY: YOUR HONOR, CAN I JUST
18 INTERRUPT TO MAKE SURE WE'RE ADDRESSING THE CORRECT
19 ISSUE?

20 THE COURT: WHAT ARE WE --

21 MR. MCELHINNY: BECAUSE THE ARGUMENT HERE
22 IS THAT THE LG PRADA PHONE IS THE PRIOR ART.

23 THE COURT: UM-HUM.

24 MR. MCELHINNY: NOT ARTICLES.

25 MR. ZELLER: IF I MAY, YOUR HONOR? I

1 HADN'T ACTUALLY FINISHED.

2 MR. MCELHINNY: SO WHAT THEY HAVE TO
3 PROVE TO GET IT IN AS PRIOR ART IS THEY HAVE TO
4 PROVE THAT THE PHYSICAL PHONE WAS MADE, USED, OR
5 SOLD IN THE UNITED STATES.

6 AND MR. SHERMAN, HIS TESTIMONY IS AT PAGE
7 2586, HE SIMPLY SAYS THE PHONE WAS DISCLOSED. HE
8 DOESN'T TALK ABOUT WHERE. HE DOESN'T -- MR. ZELLER
9 IS ABOUT TO TALK TO YOU ABOUT SOMETHING IN
10 BARCELONA.

11 NONE OF THAT MAKES ANY DIFFERENCE BECAUSE
12 THEY --

13 THE COURT: LET ME LET MR. ZELLER --

14 MR. ZELLER: IF I COULD --

15 THE COURT: 2586, THAT'S HIS -- YEAH, I
16 SEE THAT.

17 MR. ZELLER: AND IF I CAN WALK THROUGH
18 THE EVIDENCE BEFORE PERHAPS ENGAGING IN MORE BACK
19 AND FORTH WITH COUNSEL.

20 DX 2627, WHICH WAS STIPULATED HAS A
21 FEBRUARY OF 2007 DATE, HAS IMAGES OF THE LG PRADA,
22 FOR EXAMPLE, AT .042.

23 THE COURT: WAIT. DX?

24 MR. ZELLER: 2627. WE CAN ALSO PUT IT UP
25 ON THE SCREEN.

1 THE COURT: ONE SECOND, PLEASE.

2 YOU KNOW, I DON'T HAVE THAT IN MY -- OH,
3 THAT WAS ONE OF THE LATER ADDED ONES.

4 MR. ZELLER: YES, YOUR HONOR. IT WAS
5 INTRODUCED THROUGH MR. HOWARTH. I THINK IT WAS
6 YESTERDAY. WE'RE PROBABLY ALL LOSING TRACK OF
7 DAYS.

8 THE COURT: OKAY.

9 MR. ZELLER: BUT IT'S THIS ONE. IF WE
10 CAN GO TO THE FIRST PAGE, PLEASE.

11 THE COURT: GIVE ME ONE SECOND. LET ME
12 FIND MY OWN VERSION. IT'S 2627?

13 MR. ZELLER: CORRECT, 2627.

14 THE COURT: OKAY.

15 MR. ZELLER: AND THE PARTIES ALL AGREE
16 THIS HAS A FEBRUARY 2007 DATE ON IT.

17 THE COURT: OKAY.

18 MR. ZELLER: THAT WAS STIPULATED TO.

19 AND THIS, FIRST OF ALL, BEATS THE FILING
20 DATES ON THE FACE OF THESE DESIGN PATENTS.

21 BUT EVEN IF IT DIDN'T, THE FACT IS THE
22 JURY COULD INFER THAT THERE WAS AN EARLIER DATE.

23 AND IT'S CERTAINLY NOT CORRECT THAT
24 SOMETHING THAT IS PUBLICLY DISCLOSED IN A FOREIGN
25 COUNTRY OR SOLD IN A FOREIGN COUNTRY CAN'T BE PRIOR

1 ART. I'M UNAWARE OF ANY HOLDING FOR THAT.

2 BUT I'LL GET TO A FURTHER POINT, YOUR
3 HONOR, WHICH IS THAT THERE'S AN ADDITIONAL PIECE OF
4 EVIDENCE THAT ACTUALLY TAKES US BACK TO JULY 6TH OF
5 2006, AND WE ALREADY HAVE IN EVIDENCE EXHIBIT 727,
6 WHICH IS THE KR'547 PIECE OF PRIOR ART. THIS WAS
7 PUBLISHED AS OF JULY 6TH, 2006. THIS IS -- THIS IS
8 THE CORRESPONDING DESIGN PATENT FOR THE PRADA, THE
9 LG PRADA.

10 THE COURT: I THINK IT DOES HAVE TO BE
11 SOLD IN THE U.S. ISN'T THAT WHAT THE AMERICA
12 DEFENSE ACT CHANGED, THAT THINGS ARE NOW GOING TO
13 BE WORLDWIDE FOR PRIOR ART? CORRECT ME IF I'M
14 WRONG.

15 MR. ZELLER: WELL, NO. THAT'S NOT MY
16 UNDERSTANDING OF THE LAW. I CAN CERTAINLY FIND
17 SOME CASES.

18 I WASN'T PREPARED TO ADDRESS THAT.
19 MR. MCELHINNY HASN'T RAISED THAT AS BEING AN ISSUE.
20 HE WAS MORE ARGUING ABOUT DATES.

21 BUT I CAN CERTAINLY FIND AUTHORITY FOR
22 THAT.

23 BUT I WOULD ALSO SAY, YOUR HONOR, JUST TO
24 GO BACK TO APPLE'S OWN ARGUMENT --

25 THE COURT: WHY DON'T WE PULL IT UP?

1 WHO'S GOT THE PATENT? THIS IS EASILY -- WE CAN
2 FIND THAT EASILY.

3 MR. ZELLER: I'M SORRY. WHICH ONE?

4 THE COURT: WHO'S GOT, WHAT IS THAT,
5 102 --

6 MR. LEE: 102.

7 MR. ZELLER: 102.

8 THE COURT: WE DON'T HAVE TO HAVE
9 RESEARCH ON THIS ISSUE. WE CAN PULL UP THE
10 STATUTE. DOESN'T IT HAVE TO BE SOLD IN THE U.S.
11 WITHIN A YEAR OF THE PRIORITY DATE?

12 MR. ZELLER: I'D HAVE TO GET THE
13 LANGUAGE, YOUR HONOR.

14 THE COURT: DOES ANYONE HAVE 102(G),
15 PLEASE? IT MAY NOT BE (G). WHAT IS IT?

16 MR. LEE: I THINK IT'S (A) OR (B). (B),
17 I THINK.

18 THE COURT: WELL, IF SOMEONE CAN GET
19 THAT.

20 MR. ZELLER: AND IF I COULD JUST MAKE A
21 FACTUAL POINT, YOUR HONOR?

22 WE'LL GET THAT SECTION, BUT THE FACTUAL
23 POINT, YOUR HONOR, AS THE COURT WILL RECALL, IS
24 THAT APPLE ITSELF --

25 THE COURT: I WANT TO -- YOU KNOW, I WANT

1 TO KNOW. 2627, IS THIS RELEVANT OR NOT? IT'S
2 BARCELONA. SO I NEED TO KNOW.

3 I THOUGHT EVEN THE PUBLICATION -- I MEAN,
4 YOU ALL CAN CORRECT ME. I MAY JUST BE WRONG.

5 MR. VERHOEVEN: YOUR HONOR, THIS IS
6 MR. VERHOEVEN.

7 A PUBLICATION, AS WE'RE LOOKING FOR THE
8 REPORT --

9 THE COURT: SURE. THERE IT IS. THANK
10 YOU.

11 MR. VERHOEVEN: I WAS GOING TO SAY, YOUR
12 HONOR, A PUBLICATION IS NOT SUBJECT TO THOSE
13 LIMITATIONS. IT CAN BE ANYWHERE.

14 MR. ZELLER: RIGHT. 102(A). THE
15 INVENTION WAS KNOWN OR USED BY OTHERS IN THIS
16 COUNTRY, OR PATENTED OR DESCRIBED IN A PRINTED
17 PUBLICATION IN THIS OR A FOREIGN COUNTRY, BEFORE
18 THE INVENTION THEREOF BY THE APPLICANT FOR A
19 PATENT.

20 AND, YOUR HONOR, THE APPLE DOCUMENT
21 ITSELF THAT'S HERE IN EVIDENCE, THIS BARCELONA
22 DOCUMENT, GIVEN THAT IT'S IN APPLE'S POSSESSION,
23 ONE COULD CERTAINLY INFER THAT IN ITSELF IS A
24 PRINTED PUBLICATION DESCRIBING IT.

25 BUT CERTAINLY IT FALLS INTO THE CATEGORY

1 OF THE INVENTION WAS KNOWN BY OTHERS IN THIS
2 COUNTRY.

3 SO THE JURY CAN CERTAINLY INFER FROM
4 APPLE'S CREATION OF THIS DOCUMENT ITSELF THAT IT IS
5 ONE OF THE PARTIES THAT KNEW OF THIS INVENTION
6 ITSELF DIRECTLY.

7 THE COURT: UM-HUM.

8 MR. MCELHINNY: YOUR HONOR?

9 THE COURT: YEAH.

10 MR. MCELHINNY: WE'RE CHANGING THE PRIOR
11 ART NOW. THE PRIOR ART THAT WAS IDENTIFIED PRIOR
12 TO TRIAL, THE PRIOR ART THAT WAS IN THE EXPERT
13 REPORTS WAS THE PHONE ITSELF.

14 THE COURT: RIGHT.

15 MR. MCELHINNY: THAT'S THE PRIOR ART THAT
16 WAS SHOWN. THAT'S THE PRIOR ART THAT WAS CLAIMED.
17 THAT'S THE PRIOR ART THAT'S IN THE CONTENTIONS.

18 AND THE PHONE ITSELF HAS TO BE USED IN
19 THE UNITED STATES.

20 AND WHAT THEY'RE TRYING TO DO NOW IS
21 CHANGE THEIR PRIOR ART DESIGNATION TO THIS OTHER
22 DOCUMENT.

23 BUT THE PHONE ITSELF WAS SHOWN TO THE
24 JURY.

25 MR. ZELLER: THAT'S NOT CORRECT. ALL

1 WE'RE ARGUING ABOUT IS WHAT CORROBORATES THE DATE.

2 THE COURT: WELL, THE THING THAT EXISTED
3 DURING ALL THOSE MOTIONS IN LIMINE WAS THE PHONE
4 ITSELF. WOULD YOU AGREE?

5 THAT'S WHY THIS EXHIBIT HAS SUCH A LATE
6 NUMBER, 2627, BECAUSE IT WAS ADDED LATE. THERE WAS
7 AN OBJECTION TO THIS AND I ALLOWED IT. I THINK I
8 JUST LET YOU SUBSTITUTE IN ANOTHER EXHIBIT.

9 BUT THERE WAS AN OBJECTION FROM APPLE
10 THAT THIS WAS A LATE DISCLOSED DOCUMENT, BUT IT'S
11 AN APPLE DOCUMENT, SO I THINK IT'S AN ADMISSION.

12 MR. ZELLER: AND I WOULD ALSO REMIND YOUR
13 HONOR, ON THE MOTION IN LIMINE, WE DID POINT TO THE
14 FACT THAT THERE WERE ARTICLES AND OTHER
15 PUBLICATIONS THAT SUPPORTED MR. SHERMAN'S OPINION.

16 THE COURT: BUT NOT THIS ONE.

17 MR. ZELLER: I UNDERSTAND. BUT I'M JUST
18 POINTING OUT TO THE COURT THAT FOR PURPOSES OF THE
19 MOTION IN LIMINE, IT WASN'T SIMPLY AS THOUGH WE
20 JUST SIMPLY ASSERTED IT.

21 WE POINTED TO ARTICLES. MR. SHERMAN DID
22 TRY AND LAY A FOUNDATION.

23 THE COURT: OKAY. WHICH ONES? WHICH
24 ONES WERE THOSE? WERE THOSE THE ONES THAT WERE
25 STRICKEN?

1 MR. ZELLER: NO, THEY WERE NOT STRICKEN,
2 YOUR HONOR. I BELIEVE THE OBJECTION WAS SIMPLY
3 THAT HE WAS RELYING ON THESE ARTICLES TO
4 SUBSTANTIATE HIS DATES.

5 THE COURT: OKAY.

6 MR. ZELLER: AND MR. VERHOEVEN LAID
7 ADDITIONAL FOUNDATION WHERE HE SAID THAT HE
8 ACTUALLY KNEW.

9 I MEAN, MR. SHERMAN, OF COURSE, IS
10 SOMEBODY WHO'S BEEN IN THE INDUSTRY FOR MANY YEARS.

11 THE COURT: BUT YOU'RE NOT RELYING ON THE
12 DOCUMENTS THAT YOU CLAIM. YOU'RE RELYING ON THE
13 MOTION IN LIMINE. I CERTAINLY, IN THE MOTION IN
14 LIMINE, DID NOT SEE THIS DOCUMENT. I WOULD HAVE
15 REMEMBERED IT.

16 MR. ZELLER: RIGHT. YOUR HONOR, THE
17 ONLY --

18 THE COURT: ARE YOU RELYING ON ANY OF THE
19 DOCUMENTS THAT YOU RELIED ON THE MOTION IN LIMINE?
20 I THOUGHT IT WAS THE PHONE. LET ME CHECK MY NOTES.

21 MR. ZELLER: I BELIEVE THAT MR. MCELHINNY
22 IS SIMPLY CONTINUING TO MIX AND MATCH ARGUMENTS
23 ONCE HE LOSES.

24 THE FACT IS THAT THIS STARTED OFF AS A
25 CONVERSATION ABOUT WHAT THE DATE WAS, WAS THERE

1 CORROBORATION FOR THE DATE?

2 WE HAVE DIRECT WITNESS TESTIMONY THAT
3 IT'S LATE 2006 FOR THE PHONE. WE HAVE APPLE'S OWN
4 DOCUMENTS CORROBORATING THAT DATE. THAT SHOULD BE
5 SUFFICIENT TO GO TO THE JURY.

6 I'M NOT NOW ARGUING THAT THERE IS SOME
7 SEPARATE PIECE OF PRIOR ART AS A RESULT OF THAT.
8 THE PHONE IS AND CONTINUES TO BE THE PRIOR ART.

9 BUT THERE IS EVIDENCE, RECORD EVIDENCE
10 THAT WOULD ALLOW THIS JURY TO FIND THAT THAT PHONE
11 WAS, IN FACT, PUBLIC, WAS KNOWN, UNDER 102(A), AS
12 OF LATE 2006, OR CERTAINLY BEFORE THE FILING DATES
13 FOR THE TWO DESIGN PATENTS AT ISSUE.

14 THE COURT: ALL RIGHT. THAT SOUNDS RIGHT
15 TO ME.

16 MR. MCELHINNY: YOUR HONOR?

17 THE COURT: YEAH.

18 MR. MCELHINNY: AGAIN --

19 THE COURT: WHAT WAS YOUR ISSUE ABOUT THE
20 EARLIER DATE? IS THAT THE APRIL 20TH, 2006 DATE OR
21 NO?

22 MR. MCELHINNY: NOW THAT WE'RE ON THE
23 PHONE, NOW THAT WE'VE GOTTEN BACK TO THE FACT THAT
24 WE'RE TALKING ABOUT THE PHONE, MR. SHERMAN DID NOT
25 TESTIFY BASED ON ANYTHING. HE SIMPLY DID NOT SAY

1 THAT THAT PHONE WAS MADE, USED, OR AVAILABLE OR ON
2 SALE IN THE UNITED STATES.

3 ALL HE SAID, HIS TESTIMONY IS RIGHT
4 THERE, IS THE PHONE WAS DISCLOSED IN 2006. THAT'S
5 ALL HE SAID.

6 AND THIS IS A MAN FROM ISRAEL. I MEAN,
7 THERE WAS NO TYING THAT TO THE UNITED STATES.

8 THIS IS SOMETHING THEY HAVE TO PROVE BY
9 CLEAR AND CONVINCING EVIDENCE, AND THEY DON'T EVEN
10 HAVE -- THEY CAN'T FIND THE WORDS IN THE TRANSCRIPT
11 THAT THIS PHONE WAS FOR SALE IN THE UNITED STATES
12 BECAUSE NO ONE SAID THAT.

13 MR. ZELLER: YOUR HONOR, I WOULD REMIND
14 THE COURT THAT APPLE --

15 THE COURT: WELL, I'M -- I THINK THIS
16 ISSUE SHOULD GO TO THE JURY. OKAY?

17 NOW, LET'S TALK ABOUT -- SO WHAT IS THE
18 ISSUE -- TELL ME WHAT WAS THE ISSUE YOU WERE
19 DRAWING ABOUT CHRIS STRINGER AND THE CAD DIRECTORY,
20 BECAUSE I OBVIOUSLY GOT IT WRONG THEN.

21 MR. ZELLER: NO, YOUR HONOR.

22 THE COURT: THAT'S MR. MCELHINNY'S ISSUE.

23 MR. ZELLER: WE AGREE THAT MR. STRINGER
24 TESTIFIED IN NO CONCLUSORY WAY AS TO THIS 2006
25 CONCEPTION DATE. HE DID UTTER THOSE WORDS.

1 AND HE ALSO POINTED TO THESE CAD
2 DRAWINGS.

3 THE COURT: OKAY.

4 MR. ZELLER: AND WHAT I WOULD SAY IN
5 RESPONSE, YOUR HONOR, IS THAT, FIRST OF ALL, WITH
6 RESPECT TO THE --

7 THE COURT: LOOK AT THE D'547. THE
8 KOREAN PATENT HAS A FILING DATE OF JULY 6TH, 2006,
9 AND IF YOU'RE SAYING YOU AGREE TO THE APRIL 20TH,
10 2006 PRIORITY DATE, THEN THE KOREAN PATENT IS AFTER
11 THAT. RIGHT? SO WHY IS THAT STILL PRIOR ART?

12 MR. ZELLER: WELL, BECAUSE, YOUR HONOR,
13 AS THE COURT HAS RULED PREVIOUSLY, THE JURY IS
14 ENTITLED TO DISREGARD, OR FIND NOT CREDIBLE,
15 MR. STRINGER'S TESTIMONY OF THE EARLIER CONCEPTION
16 DATE AND TO SIMPLY GO OFF OF THE FILING DATE.

17 MR. VERHOEVEN: YOUR HONOR, LET ME --
18 YOUR HONOR, IT'S THEIR BURDEN OF PROOF IF THEY WANT
19 TO GO BACK BEFORE THE FILING DATE. THERE'S
20 SPECIFIC LAW ON THAT.

21 THE COURT: UM-HUM.

22 MR. VERHOEVEN: AND SO THIS IS SORT OF
23 LIKE WHAT I WAS TALKING ABOUT WITH THE
24 NON-INFRINGEMENT ISSUE.

25 SO IT'S OUR BURDEN OF PROOF TO PROVE

1 INVALIDITY.

2 BUT IF THE PATENTEE WANTS TO GET A
3 PRIORITY DATE THAT PRECEDES THE FILING DATE, THE
4 SPECIFIC LAW ON THAT, THEY ACTUALLY HAVE TO PROVE
5 BY CLEAR AND CONVINCING EVIDENCE THAT THEY CAN GO
6 BACK AND THAT THEY WERE DILIGENT AND WHATNOT.

7 AND SO WITH RESPECT TO YOUR QUESTION ON
8 MR. STRINGER'S EVIDENCE, WE'RE ENTITLED, AGAIN, TO
9 GET THE BENEFIT OF ALL INFERENCES, AND CLEARLY A
10 REASONABLE JURY COULD FIND THAT MR. STRINGER DID
11 NOT CARRY THE DAY IN PROVING, BY CLEAR AND
12 CONVINCING EVIDENCE, THAT THEY MET THE STANDARD,
13 WHICH I'M GOING TO CONFESS I DON'T REMEMBER EVERY
14 SINGLE ELEMENT OF THE STANDARD, BUT I DO KNOW IT'S
15 THEIR BURDEN OF PROOF TO MOVE THAT DATE BACK.

16 THE COURT: UM-HUM.

17 MR. VERHOEVEN: AND SO CLEARLY A
18 REASONABLE JURY COULD FIND, HEY, THERE'S A --
19 THERE'S A -- THEY DIDN'T.

20 AND JUST AS CLEARLY, THERE'S A FACT ISSUE
21 HERE. THIS IS A FACT ISSUE.

22 THE COURT: ALL RIGHT.

23 MR. ZELLER: AND I WOULD --

24 MR. LEE: YOUR HONOR, MR. MCELHINNY ASKED
25 ME TO SAY ONE THING.

1 THE COURT: WHAT'S THAT?

2 MR. LEE: THE ISSUE THAT MR. VERHOEVEN
3 JUST ADDRESSED IS ADDRESSED BY THE FEDERAL CIRCUIT
4 IN A CASE CALLED POWER OASIS. AND THE BURDENS
5 ACTUALLY DON'T SHIFT THAT WAY. I KNOW BECAUSE I
6 ARGUED IT. THAT IS A CASE THAT ADDRESSES THIS
7 ISSUE.

8 MR. ZELLER: IF I MAY POINT OUT SOME
9 SPECIFICS, YOUR HONOR?

10 THE COURT, IN DOCKET -- THIS IS 1563 AT
11 PAGE 6, ALREADY RULED THAT THE JURY CAN CHOOSE NOT
12 TO CREDIT MR. STRINGER'S TESTIMONY AS THE CREATION
13 DATE. THAT'S NUMBER ONE IN TERMS OF THE LAW.

14 AND NUMBER TWO, THE ONLY -- EVEN WITH
15 REFERENCE TO THESE CAD DRAWINGS, THE ONLY THING
16 ACTUALLY TYING THE CAD DRAWINGS TO THE DATE THAT
17 APPLE IS CLAIMING FOR 2006 IS MR. STRINGER'S
18 TESTIMONY.

19 THE DOCUMENT ITSELF DOESN'T SHOW THE
20 CONNECTION BETWEEN THE CAD IMAGES AND THE DATES.

21 THE ONLY WAY THAT THE JURY COULD ACTUALLY
22 RELY ON THOSE CAD FILES WOULD BE TO CREDIT
23 MR. STRINGER'S TESTIMONY WHEN IT IS NOT REQUIRED TO
24 DO.

25 THE COURT: THAT'S FINE. LET'S NOT ARGUE

1 THIS ANYMORE. OKAY? THAT'S DENIED.

2 MR. ZELLER: SURE.

3 THE COURT: OKAY. NOW, I THINK THE
4 FIDLER TABLET ACTUALLY RAISES THE TRICKIEST ISSUE
5 ACTUALLY, BECAUSE, I MEAN, THE FEDERAL CIRCUIT
6 WAS -- I MEAN, UNLIKE ON THE OTHER DESIGN PATENTS,
7 THEY WERE PRETTY AFFIRMATIVE, PRETTY CLEAR.

8 "AS A MATTER OF LAW, "WE HOLD THAT THE
9 DISTRICT COURT ERRED IN FINDING THAT THE FIDLER
10 TABLET CREATED THE SAME VISUAL IMPRESSION AS THE
11 D'889 PATENT. BASED ON THE DIFFERENCES BETWEEN THE
12 FIDLER TABLET AND THE D'889 DESIGN, WE HOLD THAT
13 THE FIDLER TABLET DOES NOT GIVE THE SAME VISUAL
14 IMPRESSION AS THE D'889 PATENT AND, THEREFORE, THE
15 DISTRICT COURT ERRED IN LOOKING TO FIDLER AS THE
16 PRIMARY REFERENCE AGAINST THE D'889 PATENT.

17 "WHEN THOSE VISUAL IMPRESSIONS ARE
18 COMPARED, IT BECOME APPARENT THAT THE FIDLER
19 REFERENCE, WITH OR WITHOUT THE TC1000, CANNOT SERVE
20 TO RENDER THE D'889 PATENT INVALID FOR
21 OBVIOUSNESS."

22 AND THEN IT SAYS, "IN THE ALTERNATIVE,
23 SAMSUNG URGES US TO CONSIDER SEVERAL OTHER TABLET
24 AND TABLET-LIKE DESIGNS AS SUITABLE PRIMARY
25 REFERENCES. ALL OF THOSE REFERENCES CONSIST OF

1 RECTANGULAR DESIGNS WITH ROUNDED CORNERS DOMINATED
2 BY A DISPLAY AREA, BUT THOSE DESIGNS ALL SUFFER
3 FROM THE SAME PROBLEMS AS THE FIDLER REFERENCE."

4 IT GOES ON TO SAY, "THE OFFERED DESIGNS
5 DO NOT CREATE THE SAME VISUAL IMPRESSION AS APPLE'S
6 CLAIMED DESIGNED AND, THUS, DO NOT QUALIFY AS
7 PRIMARY REFERENCES.

8 "IN THE ABSENCE OF A QUALIFYING PRIMARY
9 REFERENCE, WE HOLD THAT THE DISTRICT COURT ERRED IN
10 CONCLUDING THAT THERE IS LIKELY TO BE A SUBSTANTIAL
11 QUESTION AS TO THE VALIDITY OF THE D'889 PATENT."

12 SO THIS, I THINK, IS THE HARDEST OF ALL
13 THE ISSUES THAT HAVE BEEN RAISED IN THAT IT KIND OF
14 LOOKS LIKE THE FEDERAL CIRCUIT WAS SORT OF SAYING,
15 AS A MATTER OF LAW, THEY DON'T THINK FIDLER CAN
16 SERVE AS A PRIMARY REFERENCE.

17 AND YOUR EXPERT YESTERDAY WAS DOING THE
18 SAME THING OF FIDLER PLUS TC1000.

19 SO, YOU KNOW, WE'VE LOOKED AT THE CASES
20 THAT YOU ALL HAVE CITED ON YOUR JURY INSTRUCTIONS
21 ON THIS POINT, THAT A PRELIMINARY INJUNCTION RULING
22 IS DIFFERENT AND SHOULDN'T BE BINDING.

23 BUT THIS IS A LITTLE BIT OF A TRICKIER
24 ISSUE BECAUSE THE FEDERAL CIRCUIT MAKES IT SEEM
25 LIKE, AS A MATTER OF LAW, THIS COMBINATION OF

1 FIDLER AND TC1000 CAN'T BE A PRIMARY AND SECONDARY
2 REFERENCE.

3 AND THIS IS REALLY THE ISSUE THAT GIVES
4 ME THE MOST TROUBLE OUT OF EVERYTHING WE'VE TALKED
5 ABOUT. AND I'M SORRY TO MAKE EVERYONE GO SO LATE,
6 BUT THIS IS THE MOST TROUBLESOME ONE.

7 MR. ZELLER: AND I UNDERSTAND THE COURT'S
8 CONCERN BASED ON THAT DECISION, AND I APPRECIATE
9 THE POINT.

10 WHAT I WOULD SAY IS THIS, YOUR HONOR. OF
11 COURSE WE START WITH THE PREMISE, AND THE COURT
12 ITSELF HAS ACKNOWLEDGED, THAT PRELIMINARY
13 INJUNCTION RULINGS ARE NOT BINDING.

14 AND THEY'RE NOT EVEN BINDING AS TO LEGAL
15 ISSUES, CLAIM CONSTRUCTION AND THE LIKE.

16 WHAT I WOULD ALSO SAY, YOUR HONOR, IS WE
17 DO HAVE A DIFFERENT, FULLER FACTUAL RECORD. WHAT
18 WE HAVE NOW IS LIVE TESTIMONY OF WITNESSES. WE
19 HAVE LIVE TESTIMONY CONCERNING WHAT THE SKILL IN
20 THE ART IS. WE HAVE THOSE KINDS OF ISSUES.

21 THE COURT: BUT '889, YOU'RE STILL
22 RELYING ON FIDLER AND TC1000. THAT'S MY CONCERN.

23 MR. ZELLER: WELL, I UNDERSTAND.

24 THE COURT: I MEAN, DESPITE THE
25 TESTIMONY, IT'S ULTIMATELY STILL THE OVERALL VISUAL

1 IMPRESSION OF FIDLER, AND THAT HASN'T CHANGED AND,
2 YOU KNOW, I -- I WENT YOUR WAY ON THE PRELIMINARY
3 INJUNCTION, BUT, I MEAN, THE FEDERAL CIRCUIT WAS
4 PRETTY CLEAR THAT THEY DON'T THINK THAT IF YOU HAVE
5 AN EMBEDDED, YOU KNOW, DISPLAY IN A FRAME THAT THAT
6 CREATES THE SAME VISUAL IMPRESSION, AND THEIR
7 LANGUAGE IS VERY DEFINITIVE.

8 I'M SORRY. I'M VERY TIRED RIGHT NOW.

9 BUT TELL ME, WHAT -- TELL ME HOW I MAKE
10 SENSE OF THIS FEDERAL CIRCUIT DECISION.

11 MR. ZELLER: WELL, ONE THING IS WE DO
12 HAVE EVIDENCE OF RECORD, AND THIS IS -- THIS IS
13 DIFFERENT FROM WHAT WAS THERE ON THE PRELIMINARY
14 INJUNCTION. THE VIDEOS HAVE BEEN PLAYED OF
15 MR. FIDLER'S TESTIMONY.

16 THE COURT: I DON'T THINK THAT WOULD HAVE
17 CHANGED MY MIND THOUGH.

18 MR. ZELLER: WELL, I THINK IT DOES IN
19 THIS RESPECT, YOUR HONOR.

20 THE COURT: HOW'S THAT?

21 MR. ZELLER: HE TESTIFIED THAT HE
22 ACTUALLY DID HAVE COMMUNICATIONS WITH APPLE.

23 HE ALSO TALKED ABOUT HOW WHAT HE --

24 THE COURT: BUT THAT WOULDN'T CHANGE THE
25 VISUAL IMPRESSION THAT IT CREATES, RIGHT? I MEAN,

1 THAT'S --

2 MR. ZELLER: HE SAID THAT HIS -- WHAT HE
3 ENVISIONED WAS A FLAT TABLET.

4 THE COURT: UM-HUM.

5 MR. ZELLER: THAT IS WHAT HE SAID. THAT
6 IS WHAT HE TESTIFIED TO. HE SAID HE MADE
7 DRAWINGS --

8 THE COURT: OKAY.

9 MR. ZELLER: -- THAT HAD A FLAT SURFACE.
10 AND SO THAT, THAT'S THE KIND OF
11 ADDITIONAL FACTUAL EVIDENCE, RECORD, THAT WE NOW
12 HAVE IN FRONT OF THE JURY.

13 I WOULD ALSO POINT OUT, YOUR HONOR, THAT
14 SORT OF THE SAME POINT ABOUT CATALINA LIGHTING AND
15 BRAUN, WHICH IS THIS JURY IS ENTITLED, BECAUSE THEY
16 ARE A POOL OF ORDINARY OBSERVERS, THEY'RE ENTITLED
17 TO DRAW THEIR OWN INFERENCES, DRAW THEIR OWN
18 CONCLUSION.

19 AND, YOU KNOW, AND THERE'S A FULLER
20 FACTUAL RECORD AS WELL --

21 THE COURT: YEAH.

22 MR. ZELLER: -- ON THE --

23 THE COURT: BUT IF I'M NOT PERSUADED BY
24 THE CASES THAT YOU CITED FOR YOUR JURY INSTRUCTION
25 ON THIS POINT, DO YOU HAVE ANYTHING ELSE THAT I CAN

1 LOOK AT TO --

2 MR. ZELLER: YOU'RE TALKING ABOUT THE
3 JURY -- I'M SORRY. YOU'RE TALKING ABOUT THE CASES
4 THAT DEAL WITH THE NON-BINDING EFFECT?

5 THE COURT: YEAH. WHY THIS SHOULD STILL
6 GO TO A JURY EVEN IF THERE'S BEEN A PRELIMINARY
7 INJUNCTION RULING ON IT? IS THERE ANYTHING THAT I
8 CAN LOOK TO?

9 MR. VERHOEVEN: WE'LL TAKE A LOOK AT IT,
10 YOUR HONOR.

11 BUT I JUST WANT TO SAY, AND I'M SURE YOU
12 UNDERSTAND THIS --

13 THE COURT: YEAH.

14 MR. VERHOEVEN: -- THE STANDARD OF REVIEW
15 THAT THE FEDERAL CIRCUIT WAS ENGAGING IN WAS DE
16 NOVO REVIEW OF YOUR HONOR.

17 THE COURT: UM-HUM.

18 MR. VERHOEVEN: THE ISSUE, THE STANDARD
19 YOU'RE LOOKING AT --

20 THE COURT: YEAH.

21 MR. VERHOEVEN: -- IS YOU ARE THE
22 DECIDER. YOU'RE THE DECIDER ON LIKELIHOOD OF
23 SUCCESS. THAT'S THE STANDARD AND YOU ARE THE
24 DECIDER AND THEY ARE REVIEWING YOU DE NOVO.

25 THE STANDARD WE'RE LOOKING AT FOR A JMOL

1 IS --

2 THE COURT: UM-HUM.

3 MR. VERHOEVEN: -- ASSUMING EVERY
4 INFERENCE IN OUR FAVOR --

5 THE COURT: UM-HUM.

6 MR. VERHOEVEN: -- COULD ANY REASONABLE
7 JURY REACH THIS CONCLUSION?

8 AND I UNDERSTAND THE LANGUAGE IN THE
9 FEDERAL CIRCUIT'S OPINION SEEMS PRETTY MANDATORY,
10 SEEMS PRETTY UNQUALIFIED.

11 THE COURT: IT SEEMS LIKE, AS A MATTER OF
12 LAW, THEY'RE SAYING THIS IS IT.

13 MR. VERHOEVEN: BUT THEY DIDN'T SAY THAT.

14 THE COURT: THEY SAID IT MORE SO HERE
15 THAN THEY DID ON THE PHONE DESIGN PATENTS.

16 MR. VERHOEVEN: I WOULD SUBMIT, YOUR
17 HONOR, THAT THEIR STATEMENTS SHOULD BE TAKEN IN THE
18 CONTEXT THAT THEY'RE REVIEWING THIS COURT DE NOVO
19 AND THAT THIS COURT WAS THE DECIDER.

20 AND SO THERE WAS NO REASON, IN THEIR
21 OPINION, FOR THEM TO BE TALKING ABOUT WHAT A
22 REASONABLE JURY COULD OR COULDN'T DO.

23 THEY WERE ACTING AS A DECIDER, AS IF THEY
24 WERE THE DECIDER, AND THAT'S A DIFFERENT STANDARD,
25 YOUR HONOR, THAN IF THIS -- FOR EXAMPLE, YOUR

1 HONOR, IF THIS WENT TO THE JURY --

2 THE COURT: YEAH.

3 MR. VERHOEVEN: -- AND THE JURY -- AND
4 MR. ZELLER IS RIGHT, THERE'S ADDITIONAL -- THERE'S
5 ADDITIONAL EVIDENCE IN THE RECORD.

6 BUT IF THIS GOES TO THE JURY AND THE JURY
7 WERE TO SAY, "HEY, THE '889 IS INVALID," OKAY, AND
8 THEN YOU HAD A POST-TRIAL MOTION, YOUR STANDARD
9 WOULD NOT BE TO BE THE DECIDER.

10 YOUR STANDARD WOULD BE, COULD ANY
11 REASONABLE JUROR, JURY, HAVE MADE THESE FINDINGS?

12 THE COURT: UM-HUM.

13 MR. VERHOEVEN: AND I WOULD SUBMIT WITH
14 RESPECT, YOUR HONOR, IF YOU LOOK AT THE FEDERAL
15 CIRCUIT OPINION, IT DOESN'T TALK ABOUT THAT
16 STANDARD AT ALL.

17 AND WE ARE ENTITLED, UNDER THE SEVENTH
18 AMENDMENT, TO A JURY TRIAL ON THIS ISSUE.

19 THE COURT: UM-HUM.

20 MR. VERHOEVEN: YOU KNOW, IF THEY WANTED
21 TO MAKE A MOTION FOR SUMMARY JUDGMENT --

22 THE COURT: UM-HUM.

23 MR. VERHOEVEN: -- THEN THEY WOULD HAVE
24 HAD TO DO THAT AND THEY WOULD HAVE TO APPLY THAT
25 STANDARD AND YOU WOULD BE DOING THAT.

1 AND THAT'S -- AND SO IT'S A DIFFERENT --
2 IT'S A WHOLE DIFFERENT PROCEDURAL FRAMEWORK.

3 THE COURT: YEAH.

4 MR. VERHOEVEN: AND, SURE, THEIR LANGUAGE
5 WAS NOT SUPER QUALIFIED, BUT IT WAS IN THE CONTEXT,
6 YOUR HONOR --

7 THE COURT: IT WAS NOT.

8 MR. VERHOEVEN: IT WAS IN THE CONTEXT,
9 YOUR HONOR, OF REVIEWING THE DECIDER, WHICH WAS
10 YOU.

11 THE COURT: YEAH.

12 MR. VERHOEVEN: AND AFFORDING ZERO
13 DEFERENCE, WHICH IS THE STANDARD OF REVIEW ON A
14 PRELIMINARY INJUNCTION --

15 MR. MCELHINNY: EXCUSE ME, YOUR HONOR.

16 MR. VERHOEVEN: AND SO THERE -- EXCUSE
17 ME.

18 THEY'RE SAYING TO THE DISTRICT COURT,
19 THIS IS -- IF WE'RE THE DECIDER, THIS IS WHAT WE
20 DECIDE.

21 THAT IS COMPLETELY DIFFERENT THAN THE
22 STANDARD OF REVIEW -- IF WE HAD A JURY VERDICT AND
23 IT CAME UP TO THE APPEAL THAT WAY, THE STANDARD
24 THEY WOULD BE LOOKING AT WOULD NOT BE DE NOVO. IT
25 WOULD BE, COULD ANY REASONABLE JURY HAVE FOUND

1 THIS? AND IT WOULD BE ON A MUCH LARGER RECORD,
2 YOUR HONOR, AS WELL.

3 SO WE WOULD SUBMIT THAT, NOTWITHSTANDING
4 THESE STATEMENTS, WE'RE STILL ENTITLED TO A JURY
5 TRIAL. THE SEVENTH AMENDMENT STILL APPLIES HERE.

6 THE COURT: UM-HUM.

7 MR. VERHOEVEN: AND IF YOU USE THE
8 REQUISITE STANDARDS HERE AND GIVE US THE INFERENCES
9 WE'RE ENTITLED TO --

10 THE COURT: UM-HUM.

11 MR. VERHOEVEN: -- IT'S NOT A QUESTION OF
12 HAVE WE PRESENTED EVIDENCE. WE HAVE PRESENTED
13 EVIDENCE.

14 THE COURT: UM-HUM.

15 MR. VERHOEVEN: AND SO YOU HAVE TO GIVE
16 US, UNDER THE STANDARD, THE INFERENCE --

17 THE COURT: UM-HUM.

18 MR. VERHOEVEN: -- THAT THE JURORS BUY
19 OUR EVIDENCE AND OUR ARGUMENTS.

20 THE COURT: UM-HUM.

21 MR. VERHOEVEN: AND IF YOU DO THAT, I
22 WOULD SUBMIT WE'RE ENTITLED TO TAKE THIS TO THE
23 JURY.

24 MR. MCELHINNY: MAY I MAKE TWO SMALL
25 POINTS?

1 THE COURT: VERY SMALL.

2 MR. MCELHINNY: THE STANDARD OF REVIEW OF
3 A PRELIMINARY INJUNCTION, YOUR HONOR, IS ABUSE OF
4 DISCRETION. IT IS THE MOST DEFERENTIAL STANDARD OF
5 REVIEW.

6 I DON'T KNOW ON WHAT BASIS MR. VERHOEVEN
7 COULD STAND HERE AND SAY IT'S DE NOVO. IT'S ABUSE
8 OF DISCRETION.

9 AND TWO, THE LANGUAGE THAT YOU'RE
10 FOCUSSED ON -- AND THIS IS WHY IT'S SO KEY AND THIS
11 IS WHY IT'S TIED TO MY OVERALL MOTION, IS WHAT THEY
12 SAID WAS --

13 THE COURT: I THINK THE REASONABLE WHY
14 YOU THOUGHT THAT WAS IT IS ABUSE OF DISCRETION, BUT
15 IT FELT LIKE DE NOVO.

16 MR. VERHOEVEN: WELL, I DISAGREE THAT
17 ABUSE OF DISCRETION IS THE --

18 THE COURT: IT FELT LIKE DE NOVO TO ME.
19 GO AHEAD.

20 MR. MCELHINNY: AND WHAT THEY SAID WAS
21 THAT THE FIDLER TABLET -- THIS IS WHY THIS IS MY
22 LARGER OBJECTION TO MR. SHERMAN BECAUSE HIS
23 TESTIMONY HERE DOESN'T SAY WHAT'S A PRIMARY
24 REFERENCE AND WHAT'S A SECONDARY -- BUT WHAT THEY
25 SAID SO CLEARLY AT THE FEDERAL CIRCUIT IS THIS

1 CANNOT BE A PRIMARY REFERENCE.

2 AND IF IT CANNOT BE A PRIMARY REFERENCE,
3 WHAT HE HAD IN HIS HEAD, WHAT HE WAS GOING TO DO IN
4 THE FUTURE, WHAT ELSE YOU WOULD LOOK TO, THAT'S THE
5 KEY TO THIS ANALYSIS.

6 YOU HAVE TO HAVE -- YOU CAN'T DO ANYTHING
7 IF YOU DON'T HAVE A PRIMARY REFERENCE.

8 AND THE FEDERAL CIRCUIT SAID, AS YOUR
9 HONOR SAID, THAT RESULT CAN'T CHANGE NO MATTER HOW
10 MANY LOWER COURTS OR JURIES LOOK AT IT. THE
11 FEDERAL CIRCUIT HAS SAID THAT CANNOT BE A PRIMARY
12 REFERENCE.

13 THE COURT: ALL RIGHT. LET ME THINK
14 ABOUT THIS. THIS IS THE ONE THAT, THAT GIVES ME
15 THE MOST PAUSE.

16 I'VE HAD POOR MS. SHORTRIDGE GOING ALL
17 DAY, SO I'D LIKE TO BRING THIS TO A CLOSE. LET ME
18 THINK ABOUT THIS ONE FURTHER, PLEASE.

19 MR. ZELLER: AND WE WOULD LIKE THE
20 OPPORTUNITY TO GO AND SEE IF WE CAN FIND SOME
21 ADDITIONAL CASES IN ADDITION TO WHAT WE'VE ALREADY
22 CITED.

23 THE COURT: OKAY.

24 MR. ZELLER: WE DON'T INTEND TO FLOOD THE
25 COURT WITH A BUNCH OF CITATIONS, BUT IF THERE'S

1 SOMETHING THAT --

2 THE COURT: SURE. CAN I PUT A PAGE
3 LIMIT? CAN I GIVE YOU EACH ONE PAGE?

4 MR. VERHOEVEN: YES.

5 THE COURT: AND CAN YOU GIVE ME A TIME BY
6 WHICH YOU'LL FILE IT, BECAUSE I'D LIKE TO GIVE YOU
7 A DECISION TOMORROW MORNING.

8 I KNOW WE'RE ALL JUST EXHAUSTED. WHAT
9 TIME? WHAT TIME CAN YOU DO THAT.

10 MS. MAROULIS: 9:00 O'CLOCK?

11 THE COURT: BECAUSE WE'LL NEED SOME TIME
12 ONCE YOU GIVE US SOME CITES TO ACTUALLY LOOK IT UP
13 AND WE'VE GOT TO DO YOUR 16 OBJECTIONS AND
14 EVERYTHING ELSE TONIGHT.

15 MR. VERHOEVEN: WHAT'S THE LATEST YOU CAN
16 GET IT, YOUR HONOR? IT'S 6:00 O'CLOCK ALREADY.

17 THE COURT: I KNOW. I'M SORRY. CAN YOU
18 DO 8:00 O'CLOCK? WOULD THAT BE ALL RIGHT?

19 MR. VERHOEVEN: WE CAN TRY, YOUR HONOR.
20 THAT'S TWO HOURS.

21 THE COURT: AND I JUST WANT ONE OR TWO
22 CITES OR SOMETHING. THAT WOULD BE GREAT.

23 OKAY? ALL RIGHT. THANK YOU. THANK YOU
24 ALL.

25 MS. MAROULIS: YOUR HONOR, ONE QUICK

1 ISSUE. AND I'M SORRY TO RAISE IT THIS LATE, BUT WE
2 KEPT VERY CLOSE COUNT OF THE TIME TODAY BECAUSE WE
3 ONLY HAVE THIS MUCH LEFT, AND WE HAVE 54 MINUTES.

4 AND I CAN RUN YOU THROUGH OUR WITNESS
5 COUNTS SO WE CAN COMPARE IT TO THE COURT'S.

6 THE COURT: SURE. THIS IS WHAT I HAVE
7 FOR TODAY.

8 I HAD MR. PRICE WITH SHEPARD, 9:08 TO
9 9:20, WHICH I COUNT AS 13 MINUTES.

10 MS. MAROULIS: WE HAD 12.

11 THE COURT: MR. WAGNER'S DIRECT 9:27 TO
12 10:09, AND I COUNTED IT AS 43 MINUTES; THE WAGNER
13 DIRECT BY MR. PRICE, 10:25 TO 10:28, I COUNT THAT
14 AS 4 MINUTES; THE SUKUMAR DIRECT BY MS. MAROULIS,
15 11:02 TO 11:05, I COUNT THAT AS 4 MINUTES; THE
16 O'BRIEN DIRECT BY MS. MAROULIS, 11:11 TO 11:25, I
17 COUNT THAT AS 15 MINUTES; THE TEECE DIRECT BY
18 MS. MAROULIS, 11:34 TO 11:54, I COUNT THAT AS 21
19 MINUTES; THE -- NEXT I HAVE THE KIM CROSS BY
20 MR. JOHNSON, 3 MINUTES. LET ME SEE IF THAT ALSO
21 MATCHES UP.

22 AND THEN I DO A SEPARATE TALLY FOR EACH
23 PARTY. SO I HAVE THE SHEPARD DIRECT WAS 13
24 MINUTES; THE WAGNER DIRECT WAS 43 MINUTES; THE
25 WAGNER REDIRECT WAS 4 MINUTES; THE READING OF THE

1 INTERROGATORY WAS 2 MINUTES; THE SUKUMAR DIRECT WAS
2 4 MINUTES; THE O'BRIEN DIRECT WAS 15 MINUTES; THE
3 TEECE DIRECT WAS 21 MINUTES; THE KIM CROSS WAS 3
4 MINUTES; AND THE SRIVASTAVA CROSS WAS 4 MINUTES.

5 MS. MAROULIS: SO YOUR HONOR, WE'RE OFF
6 BY ONE MINUTE ON EACH OF THEM.

7 THE COURT: ON EVERYTHING?

8 MS. MAROULIS: YES.

9 THE COURT: I COUNT THE MINUTES, SO IF
10 YOU'RE JUST SAYING -- LET ME GIVE YOU AN EXAMPLE.
11 OKAY. I'LL GIVE YOU AN EXAMPLE. THE SUKUMAR
12 DIRECT, 11:02 TO 11:05, IF YOU SAY 5 MINUS 2 IS 3,
13 I COUNT 2, 3, 4, 5.

14 DO YOU SEE WHAT I'M SAYING? I'M NOT JUST
15 COUNTING 5 MINUS 2 IS EQUAL TO 3. I COUNT ALL THE
16 MINUTES THAT ARE USED, SO THAT MIGHT BE WHY WE'RE
17 COMING OFF A MINUTE.

18 MR. VERHOEVEN: WE'RE JUST USING A
19 STOPWATCH AND WE ACTUALLY COUNTED FROM THE MINUTE
20 YOU SAY THE TIME UNTIL THE MINUTE WE FINISH, AND
21 THAT'S WHAT WE'VE BEEN DOING.

22 MR. LEE: I THINK WE FIGURED OUT, YOUR
23 HONOR, THAT YOU'RE DOING WHAT YOU SAID.

24 THE COURT: I'VE BEEN DOING THIS THE
25 WHOLE WAY THROUGH. YOU CAN LOOK AT MY RECORDS IF

1 YOU WANT. IF YOU USE THE MINUTE, IT COUNTS.

2 MR. JACOBS: AND IT'S BEEN APPLIED
3 EQUALLY, YOUR HONOR.

4 THE COURT: THE WAY I'VE BEEN DOING IT
5 THE WHOLE TIME.

6 BUT, I MEAN, I STILL HAVE -- YOU HAVE 46
7 MINUTES LEFT. OKAY?

8 MS. MAROULIS: THANK YOU, YOUR HONOR.

9 THE COURT: ALL RIGHT. THANK YOU. THANK
10 YOU EVERYBODY.

11 MR. ZELLER: THANK YOU EVERYBODY.

12 (WHEREUPON, THE EVENING RECESS WAS
13 TAKEN.)

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CERTIFICATE OF REPORTERS

WE, THE UNDERSIGNED OFFICIAL COURT REPORTERS OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, CONSTITUTES A TRUE, FULL AND CORRECT TRANSCRIPT OF OUR SHORTHAND NOTES TAKEN AS SUCH OFFICIAL COURT REPORTERS OF THE PROCEEDINGS HEREINBEFORE ENTITLED AND REDUCED BY COMPUTER-AIDED TRANSCRIPTION TO THE BEST OF OUR ABILITY.

/S/

LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

/S/

IRENE RODRIGUEZ, CSR, CRR
CERTIFICATE NUMBER 8074

DATED: AUGUST 16, 2012