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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 17, 2012
VS.	)	
	)	VOLUME 11
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 3387-3711
	)	
	)	
	)	
	)	
	)	
	)	
DEFENDANTS.	)	

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

APPEARANCES ON NEXT PAGE

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



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1 SAN JOSE, CALIFORNIA AUGUST 17, 2012

2 P R O C E E D I N G S

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

5 THE COURT: OKAY. I HAVE A FEW ISSUES,  
6 AND I KNOW YOU ALL PROBABLY MAY HAVE SOME ISSUES AS  
7 WELL.

8 SO FOR THE TEECE OBJECTIONS, I'LL FILE  
9 THE RULINGS ON THOSE TODAY. WE JUST DIDN'T HAVE  
10 TIME TO DO THEM YESTERDAY.

11 I'M ASSUMING IF WE CAN GET THOSE DONE BY  
12 LUNCH, IS THAT ENOUGH TIME?

13 MS. MAROULIS: THAT SHOULD BE FINE, YOUR  
14 HONOR.

15 THE COURT: ALL RIGHT. AND ON THE -- ON  
16 THE FIDLER TABLET, I'M GOING TO DENY THE RULE 50  
17 MOTION. THAT ISSUE SHOULD GO TO THE JURY.

18 AND THEN, YOU KNOW, WHOEVER WANTS TO CAN  
19 ALWAYS RENEW AND MAKE A RULE 50(B) MOTION DEPENDING  
20 ON WHAT THE JURY VERDICT IS.

21 LET ME ASK, I AM CURIOUS AS TO WHY APPLE  
22 DIDN'T RAISE THIS ISSUE BEFORE, EITHER IN A SUMMARY  
23 JUDGMENT MOTION OR A MOTION IN LIMINE OR HIGH  
24 PRIORITY OBJECTION.

25 WHY ARE WE NOT SEEING IT UNTIL NOW? I

1 MEAN, IF YOU REALLY THOUGHT IT WAS THE LAW OF THE  
2 CASE, THEN YOU WASTED ALL OF OUR TIME. WHY DID YOU  
3 WAIT?

4 MR. MCELHINNY: YOUR HONOR, WE MADE  
5 OBJECTIONS TO THE EVIDENCE THAT WERE OVERRULED.

6 THE COURT: BUT YOU NEVER MADE IT ON THE  
7 GROUNDS THAT YOU THOUGHT IT WAS ESSENTIALLY LEGAL  
8 ERROR TO EVEN CONSIDER THE FIDLER TABLET AS A  
9 PRIMARY REFERENCE. THAT OBJECTION WAS NEVER IN THE  
10 HIGH PRIORITY OBJECTIONS.

11 MR. MCELHINNY: YOUR HONOR, WE TRIED TO  
12 KEEP OUT ALL THE EVIDENCE OF THE FIDLER TABLET.

13 THE COURT: THAT WAS NEVER AN ARGUMENT  
14 THAT YOU MADE TO EXCLUDE IT.

15 MR. MCELHINNY: WELL, WE DIDN'T -- WE  
16 TRIED TO KEEP OUT THE EVIDENCE OF THE FIDLER  
17 TABLET. WHEN IT CAME IN -- WE DID THIS IN THE  
18 NORMAL ORDER. WE MOVED TO STRIKE THE ENTIRE  
19 TESTIMONY OF THEIR EXPERT.

20 I MEAN, IT'S A TIMELY OBJECTION.

21 THE COURT: WELL, I MEAN, IF YOU REALLY  
22 THOUGHT AS A MATTER OF LAW THAT YOU WOULD WIN, WHY  
23 DIDN'T YOU FILE A SUMMARY JUDGMENT MOTION? WE  
24 COULD HAVE HASHED THIS OUT MONTHS AGO, RIGHT? THE  
25 FEDERAL CIRCUIT'S DECISION WAS MAY 14TH.

1 OR A MOTION IN LIMINE, RIGHT? IF YOU  
2 REALLY THOUGHT IT WAS THE LAW OF THE CASE, THERE  
3 SHOULD HAVE BEEN A MOTION IN LIMINE AND WE COULD  
4 HAVE HASHED THIS OUT BACK IN JUNE.

5 MR. MCELHINNY: WE HAVE BEEN WORKING  
6 WITHIN THE CONSTRAINTS AND THE ORDER THAT THE JUDGE  
7 GAVE US IN TERMS OF WHAT THE MOTIONS IN LIMINE, THE  
8 TIMING --

9 THE COURT: I WOULD HAVE THOUGHT THIS  
10 WOULD BE AN IMPORTANT ONE FOR YOU ALL TO INCLUDE IN  
11 YOUR NINE OR TEN MOTIONS THAT YOU WERE ALLOWED TO  
12 BRING, I MEAN, COMPARED TO SOME OF THE OTHER STUFF  
13 YOU BROUGHT.

14 MR. MCELHINNY: I HEAR YOU, YOUR HONOR.  
15 I UNDERSTAND THAT. BUT THAT -- WE THOUGHT THE  
16 MOTIONS IN LIMINE THAT WE BROUGHT WERE IMPORTANT.  
17 WE THOUGHT THEY WENT TO ISSUES THAT WERE NOT AS  
18 CONCLUSIVE. THE TIMING OF THIS -- I MEAN, IT'S --

19 THE COURT: IT JUST SEEMS VERY STRANGE TO  
20 ME THAT WE'RE JUST HEARING THIS NOW. I MEAN, IF  
21 YOU REALLY THOUGHT THE LAW WAS SO CLEARCUT, I WOULD  
22 HAVE APPRECIATED HAD THIS BEEN BROUGHT UP SOONER.

23 MR. MCELHINNY: I UNDERSTAND THAT, YOUR  
24 HONOR.

25 THE COURT: ALL RIGHT. WELL -- OKAY. I

1 WOULD LIKE YOU ALL TO DO ANOTHER ATTEMPT AT A  
2 VERDICT FORM, YOU KNOW, JOINT, TO THE EXTENT YOU  
3 CAN MAKE IT JOINT, AND THEN I GUESS DISPUTED WHERE  
4 YOU DISAGREE, BECAUSE NOW THAT THE CASE HAS CHANGED  
5 SOMEWHAT BASED ON WHAT'S BEEN ADMITTED AT TRIAL, IT  
6 WOULD BE HELPFUL IF YOU ALL COULD MAKE ONE MORE CUT  
7 OF CUSTOMIZING IT BASED ON EVIDENCE THAT'S COME IN.

8 AND IF YOU WOULD, PLEASE, FILE IT AND  
9 ALSO E-MAIL A SOFT COPY TO THE LHK CRD E-MAIL SO  
10 THAT WE CAN TAKE IT FROM THERE.

11 WHEN -- I THINK IT WOULD BE HELPFUL FOR  
12 YOU ALL TO DO THIS AFTER YOU'VE HAD YOUR MEET AND  
13 CONFER TO SEE IF YOU CAN NARROW THE CLAIMS IN THE  
14 CASE. SO WOULD NOON TOMORROW BE OKAY? WOULD THAT  
15 GIVE YOU ENOUGH TIME? NOON TOMORROW?

16 MR. JACOBS: NOON TOMORROW IS FINE, YOUR  
17 HONOR.

18 MS. MAROULIS: THAT'S FINE.

19 THE COURT: OKAY. AND, YOU KNOW, SAME  
20 THING, IF YOU WOULD, PLEASE, IF IT'S JOINT WHERE  
21 IT'S STIPULATED TO, AND WHEREVER YOU HAVE  
22 DIFFERENCES, JUST MAKE IT CLEAR WHAT YOUR  
23 DISAGREEMENTS ARE AND WHAT YOUR REASONS ARE.

24 BUT I REALLY DON'T WANT THIS TO BE LARGER  
25 THAN 20 PAGES AT MOST. IS THAT DOABLE?



1 MS. MAROULIS: IS THAT A JOINT SUBMISSION  
2 OF THE PARTIES?

3 THE COURT: A JOINT SUBMISSION, PLEASE,  
4 YES.

5 SO THAT'S AUGUST 18TH, NOON.

6 OKAY. THIS WEEKEND I'LL FINALIZE THE  
7 EXHIBIT LIST AND JUST -- I'M MOSTLY GOING TO WORK  
8 ON THE ORDER ON THE LIMITING INSTRUCTIONS, SO WHEN  
9 CAN YOU SEND ME A -- YOU KNOW, FILE A FINAL HARD  
10 COPY, BUT ALSO IF YOU WOULD PLEASE E-MAIL ME A SOFT  
11 COPY SO I CAN MAKE THE CHANGES DIRECTLY ON THE  
12 LIMITING INSTRUCTIONS.

13 MS. MAROULIS: CAN WE HAVE UNTIL THE END  
14 OF TOMORROW, YOUR HONOR? IS THAT SUFFICIENT?

15 THE COURT: THAT'S FINE. CAN WE SAY -- I  
16 MEAN, WHAT TIME DO YOU NEED?

17 MS. MAROULIS: 8:00 P.M.?

18 THE COURT: THAT'S FINE. SO THAT'S 8:00  
19 P.M., HARD AND SOFT COPY, PLEASE.

20 NOW, WITH THE JURY INSTRUCTIONS, ACTUALLY  
21 THE RULE 20 HEARINGS HAVE ACTUALLY BEEN REALLY  
22 HELPFUL IN THINKING ABOUT THE JURY INSTRUCTIONS.

23 BUT WHAT WOULD ALSO BE HELPFUL IS IF YOU  
24 ALL COULD PROVIDE A SOFT COPY THAT'S RED LINED THAT  
25 IDENTIFIES WHERE YOU DEVIATED FROM THE MODEL RULES,



1 FILINGS TOMORROW, SEPARATE FILINGS OF JUST YOUR OWN  
2 PROPOSED DISPUTED INSTRUCTIONS AND YOUR OWN RED  
3 LINE OF WHERE YOU DEVIATE FROM THE MODEL. OKAY?

4 MR. JACOBS: THAT WILL BE THE -- AND JUST  
5 TO BE CLEAR, IT WILL BE THE MODEL RULE ON WHICH WE  
6 BASED OUR PROPOSED INSTRUCTION THAT YOU WANT TO SEE  
7 THE DEVIATION FROM?

8 THE COURT: RIGHT. I JUST WANT YOU TO  
9 RED LINE WHATEVER IS DIFFERENT FROM THE MODEL RULE,  
10 AND ONLY FOR YOUR DISPUTED INSTRUCTIONS.

11 SO WHAT -- TELL ME A TIME THAT WE'LL --

12 MR. JACOBS: WE CAN DO THAT BY 8:00 A.M.  
13 TOMORROW.

14 MS. MAROULIS: CAN WE HAVE A LITTLE BIT  
15 LONGER BECAUSE SOME OF THEM DEVIATIONS -- 10:00  
16 O'CLOCK?

17 THE COURT: 10:00 IN THE MORNING?

18 MS. MAROULIS: 10:00 O'CLOCK TOMORROW.

19 THE COURT: THAT'S FINE. THAT'S FINE.  
20 THAT'S 8-18 AT 10:00 IN THE MORNING.

21 AND IF YOU WOULD PLEASE, BOTH OF YOU, YOU  
22 KNOW, FILE A HARD COPY AND E-MAIL, PLEASE, A SOFT  
23 COPY.

24 OKAY. ON THE TRIAL TRANSCRIPTS, WOULD  
25 YOU PLEASE PROVIDE THREE MORE COPIES? THEY FIT

1 INTO ONE BINDER. CAN YOU PROVIDE THREE MORE COPIES  
2 AND INCLUDE YESTERDAY'S INSTRUCTIONS?

3 YESTERDAY APPLE PROVIDED US ONE. CAN  
4 SAMSUNG PROVIDE US TWO AND THEN APPLE PROVIDE US  
5 ONE MORE?

6 MS. MAROULIS: SURE, YOUR HONOR. WE  
7 PROVIDED ONE THIS MORNING.

8 THE COURT: OH, DID YOU? THEN CAN YOU  
9 EACH PROVIDE ONE MORE, PLEASE?

10 AND, MS. MAROULIS, DOES THAT ONE GO  
11 THROUGH YESTERDAY?

12 MS. MAROULIS: I BELIEVE SO.

13 THE COURT: PERFECT, PERFECT. OKAY.  
14 THEN CAN APPLE GIVE ME THE TRANSCRIPT FOR  
15 YESTERDAY, PLEASE?

16 MR. JACOBS: YOU BET, YOUR HONOR.

17 THE COURT: AND THEN ONE MORE, AND THEN  
18 I'D LIKE YOU TO INCLUDE THE TRANSCRIPT FROM TODAY.

19 SO -- ACTUALLY, IF YOU COULD, PLEASE, GO  
20 AHEAD AND PROVIDE US ONE MORE TODAY THAT GOES  
21 THROUGH YESTERDAY, AND THEN -- I GUESS PROBABLY  
22 IT'S EASIER TO JUST E-MAIL US A SCRUNCED VERSION  
23 FOR FOR TODAY, IF YOU WOULD, PLEASE. OKAY?

24 MS. MAROULIS: YES, YOUR HONOR.

25 THE COURT: OKAY. AND THEN THE ONLY

1 OTHER THING IS DO WE HAVE ALL THE PHOTOS OF ALL THE  
2 WITNESSES THAT HAVE COME IN THE LAST --

3 THE CLERK: YOUR HONOR, I JUST NEED  
4 HYONG KIM.

5 MS. MAROULIS: YES FOR SAMSUNG, YOUR  
6 HONOR.

7 THE COURT: OKAY. I DON'T HAVE ONE FOR  
8 EMILIE KIM OR HYONG KIM OR -- WHO ELSE DID THEY  
9 HAVE? I DON'T THINK I HAVE ONE FOR MR. GIVARGIS.  
10 OR DO WE HAVE THEM?

11 THE CLERK: YES, YOUR HONOR.

12 THE COURT: OH, OKAY.

13 THE CLERK: WE'RE JUST MISSING HYONG KIM.

14 THE COURT: OKAY. DO YOU HAVE HYONG KIM  
15 TODAY, MR. SELWYN OR MR. LEE?

16 MR. LEE: WE HAVE -- HE'S HERE, AND I  
17 THOUGHT WE HAD IT TAKEN YESTERDAY. WE DID HAVE IT  
18 TAKEN YESTERDAY, YOUR HONOR.

19 THE COURT: OH, OKAY. MAYBE WE HAVE IT  
20 AND WE --

21 MR. LEE: LET ME JUST CHECK, YOUR HONOR.

22 THE COURT: OKAY.

23 MR. LEE: YOUR HONOR, WE THOUGHT WE HAD  
24 DONE IT, BUT OUT OF AN ABUNDANCE OF CAUTION, WE'LL  
25 PRINT ADDITIONAL HARD COPIES.

1 THE COURT: OKAY.

2 MR. LEE: OKAY.

3 THE COURT: YES, BECAUSE I -- I ONLY  
4 HAVE -- I DON'T HAVE MR. BLEVINS EITHER, OR  
5 MR. DOURISH. BLEVINS, DOURISH, AND GIVARGIS, AND  
6 KIM, I DON'T HAVE THOSE FOUR. I DON'T KNOW WHAT  
7 THE JURY HAS.

8 THE CLERK: WE HAVE THOSE. THEY WERE  
9 PROVIDED TO THEM.

10 THE COURT: I'M SORRY?

11 THE CLERK: THEY WERE PROVIDED TO THEM.  
12 I JUST DON'T HAVE HYONG KIM.

13 THE COURT: OKAY. BUT I STILL DON'T HAVE  
14 GIVARGIS OR DOURISH.

15 THE CLERK: I'LL GIVE THOSE TO YOU.

16 THE COURT: OR BLEVINS.

17 MR. LEE: DO YOU HAVE THEM?

18 THE CLERK: YES.

19 THE COURT: SO THEN WE JUST NEED  
20 MR. HYONG KIM THEN.

21 I DON'T THINK THE JURORS HAVE HIM,  
22 EITHER; RIGHT?

23 THE CLERK: NO, YOUR HONOR.

24 THE COURT: OKAY. WHAT ELSE DO WE NEED  
25 TO --

1 MS. MAROULIS: YOUR HONOR, WE HAVE  
2 SEVERAL HOUSEKEEPING ITEMS THAT ARE JOINED. THE  
3 PARTIES WOULD LIKE TO PROPOSE THE FOLLOWING  
4 SCHEDULE FOR THE EXCHANGE OF CLOSING  
5 DEMONSTRATIVES.

6 THE COURT: OKAY.

7 MS. MAROULIS: WE'LL EXCHANGE THEM ON  
8 MONDAY AT 5:00 P.M. AND THEN FILE OBJECTIONS ON  
9 MONDAY AT 10:00 P.M. IS THAT ACCEPTABLE TO THE  
10 COURT?

11 THE COURT: SO THEN I HAVE TO DO THEM  
12 BETWEEN 11:00 P.M. AND 7:00 A.M.? THAT'S NOT  
13 IDEAL. THAT'S NOT IDEAL. CAN WE FIGURE SOMETHING  
14 ELSE OUT? I MEAN, IF YOU'RE ONLY FILING THEM AT  
15 10:00 P.M., THEN YOU'RE BASICALLY GIVING ME  
16 MIDNIGHT AND 2:00 A.M. TO WORK ON THEM.

17 CAN YOU ADVANCE BOTH OF THOSE TIMES.

18 MS. MAROULIS: YOUR HONOR, CAN WE DO  
19 MAYBE 2:00 P.M. FOR EXCHANGES AND THEN 6:00 P.M.  
20 FOR OBJECTIONS? IS THAT BETTER?

21 THE COURT: CAN WE SAY -- WHAT ABOUT  
22 11:00 A.M. AND 4:00 P.M.? IS THAT OKAY? IS THAT  
23 ALL RIGHT?

24 MR. JACOBS: YOUR HONOR, THE INTERPLAY  
25 HERE IS BETWEEN GETTING THE JURY INSTRUCTIONS AND

1 GETTING THE CLOSING SLIDES DONE, AND SO --

2 THE COURT: OH, I SEE. YOU'RE SAYING YOU  
3 MIGHT HAVE TO REVISE YOUR DEMONSTRATIVES BASED ON  
4 THE INSTRUCTION.

5 MR. JACOBS: THAT'S WHY WE DID IT --  
6 THAT'S WHY WE PROPOSED THE SCHEDULE WE DID. BUT I  
7 SUPPOSE WHAT WE CAN DO IS EXCHANGE WHAT WE CAN  
8 EXCHANGE AND THEN IF THERE ARE ANY LAST-MINUTE  
9 CHANGES, THOSE CAN BE RAISED SEPARATELY.

10 THE COURT: OKAY. WELL, CAN YOU FILE  
11 THEM BY 5:00 P.M., YOUR OBJECTIONS BY 5:00 P.M.,  
12 AND I DON'T CARE WHEN YOU EXCHANGE THE LISTS.  
13 WHATEVER WORKS FOR YOU ALL.

14 MS. MAROULIS: YES, YOUR HONOR.

15 THE COURT: OKAY. SO WHAT TIME SHOULD WE  
16 MEET ON MONDAY? SO WE NEED TO DISCUSS ANY  
17 DISAGREEMENTS YOU HAVE WITH THE LIMITING  
18 INSTRUCTIONS, DISCUSS ANY DISAGREEMENTS YOU HAVE  
19 ABOUT ACTUAL ADMITTED EVIDENCE, AND GO OVER THE  
20 JURY INSTRUCTIONS AND THEN I WILL NEED TO HAVE YOU  
21 COME BACK BECAUSE ONCE I MAKE THE REVISED SET, I  
22 WANT YOU TO LOOK AT THAT AGAIN AND SORT OF APPROVE  
23 THE FINAL VERSION.

24 SO I THINK WE'RE GOING TO HAVE TO MEET  
25 TWICE. SO WHAT -- WHAT TIME MAKES SENSE? IF I



1 DON'T FILE THE INSTRUCTIONS UNTIL SUNDAY EVENING,  
2 LET'S SAY -- IT'S HARD FOR ME TO SAY RIGHT NOW WHAT  
3 THE TIME WILL BE. SHOULD WE MEET AT, LIKE, 11:00,  
4 OR WHAT -- IS THAT TOO LATE? IS THAT TOO LATE FOR  
5 YOUR PREPARATION FOR CLOSINGS?

6 MS. MAROULIS: CAN WE DO IT A LITTLE BIT  
7 EARLIER, MAYBE 9:00 IN THE MORNING.

8 THE COURT: THAT'S FINE. BUT THEN YOU'LL  
9 BE LOOKING AT THE INSTRUCTIONS OVERNIGHT.

10 MS. MAROULIS: THAT'S FINE.

11 THE COURT: I'LL TRY TO FILE IT AS SOON  
12 AS POSSIBLE, BUT IT'S DIFFICULT. WITH 70 DISPUTED  
13 INSTRUCTIONS, I'M NOT SURE.

14 MS. MAROULIS: 10:00?

15 MR. JACOBS: 10:00 O'CLOCK WOULD BE GOOD,  
16 YOUR HONOR.

17 THE COURT: OKAY. SO LET'S MEET AT  
18 10:00, 10:00 A.M. ON MONDAY. WHY DON'T WE DO THE  
19 JURY INSTRUCTIONS FIRST, AND THAT WAY WE CAN WORK  
20 ON REVISING THEM AS WE'RE GOING OVER THE EXHIBITS  
21 AND THE EXHIBIT LIST.

22 OH, AND THE VERDICT FORM. WE'LL DO JURY  
23 INSTRUCTIONS FIRST, THEN THE VERDICT FORM, THEN THE  
24 EXHIBITS AND EXHIBIT LIST.

25 WHAT ELSE DO WE NEED TO DO? IS THERE

1 ANYTHING ELSE I'M NOT --

2 MS. MAROULIS: THIS IS NOT FOR MONDAY,  
3 BUT THE PARTIES AGREED TO RELABEL THE EXHIBITS WITH  
4 A SMALLER VERSION OF THE LABEL THAT OFFICIAL TEXT,  
5 SO WE'RE GOING TO BE DOING THAT THIS WEEK END  
6 BEFORE THEY GO TO THE JURY, AND WE'LL FILE A  
7 STATEMENT ABOUT THAT TODAY.

8 THE COURT: OKAY. AS LONG AS THERE'S A  
9 STIPULATION THAT EVERYONE BELIEVES THAT THESE ARE  
10 THE AUTHENTIC EXHIBITS THAT ARE ADMITTED DURING THE  
11 TRIAL, THAT'S COMPLETELY FINE.

12 MS. MAROULIS: THAT'S FINE, YOUR HONOR.  
13 THAT'S IT FOR MY LIST. AND THEN MR. PRICE WANTED  
14 TO ADDRESS BRIEFLY THE SCOPE OF ONE OF THE  
15 WITNESSES TODAY.

16 THE COURT: OKAY. GO AHEAD.

17 MR. PRICE: YOUR HONOR, THIS IS WITH  
18 RESPECT TO MR. MUSIKA. WE RECEIVED THE EXCHANGE OF  
19 WHAT THEY PLAN TO USE WITH HIM, AND, OF COURSE,  
20 THEY HAVE DEMONSTRATIVES AND EXHIBITS CONCERNING  
21 DR. O'BRIEN, WHICH MAKES SENSE BECAUSE HE WAS OUR  
22 AFFIRMATIVE DAMAGES EXPERT AND, OF COURSE, THEY  
23 NEED TO REBUT HIM.

24 BUT THEY ALSO INTEGRATED OR REFERENCED  
25 ALL OF THE EXHIBITS WITH RESPECT TO MR. MUSIKA'S

1 AFFIRMATIVE OPINION AND MR. WAGNER'S RESPONSE, AND  
2 THAT'S NOT PROPER REBUTTAL.

3 MR. MUSIKA, WHEN HE TOOK THE STAND,  
4 ADDRESSED MR. WAGNER'S CRITICISMS OF HIM AND  
5 MR. WAGNER'S OPINION. IF YOU RECALL, HE PUT UP  
6 THAT BILLION DOLLARS NUMBER.

7 AND SO WE WOULD REQUEST, AND WE THINK  
8 IT'S PROPER, THAT MR. MUSIKA ADDRESS WHAT HE --  
9 WHAT MR. O'BRIEN'S OPINION, OR DR. O'BRIEN'S  
10 OPINION, BUT THE EVIDENCE IS BASICALLY CLOSED AND  
11 IT'S IMPROPER REBUTTAL TO GO BACK AND GET  
12 MR. MUSIKA'S AFFIRMATIVE OPINION FOR APPLE'S CASE.

13 THE COURT: WELL, I GUESS IF THEY'RE  
14 RELYING ON THAT FOR REBUTTAL, IT'S DIFFICULT -- I  
15 GUESS I'M UNCLEAR, YOU'RE SAYING HE SHOULD ONLY BE  
16 ABLE TO RELY ON HIS REBUTTAL EXPERT REPORT?

17 MR. PRICE: WELL, ONE, THAT WOULD  
18 CERTAINLY BE TRUE. BUT NO, I'M SAYING HE CAN --  
19 THE SCOPE OF THE REBUTTAL IS HE SHOULD BE ABLE TO  
20 RESPOND TO DR. O'BRIEN, WHO'S OUR AFFIRMATIVE  
21 DAMAGES EXPERT, AND THERE'S BEEN NO REPLY AND OF  
22 COURSE THEY NEED TO RESPOND TO THAT.

23 WHAT I'M SAYING IS THEY'RE NOT ENTITLED  
24 TO --

25 THE COURT: BUT DR. WAGNER ALSO TESTIFIED

1 AS WELL IN YOUR DAMAGES CASE YESTERDAY, SO I GUESS  
2 I'M NOT CLEAR WHY MR. MUSIKA CAN'T REBUT THAT.

3 MR. PRICE: BECAUSE HE ALREADY HAS. THAT  
4 IS, WHEN HE TOOK THE STAND, HIS OPINION EMBRACED  
5 HIS OPINION AND HIS CRITICISMS OF MR. WAGNER AS  
6 USUALLY HAPPENS. AND THEN MR. WAGNER SAID, NO,  
7 THESE ARE MY CRITICISMS AND THEN GAVE HIS OPINION.  
8 THERE'S ALREADY BEEN CLASH ON THAT.

9 WHAT THERE HASN'T BEEN IS A RESPONSE  
10 TO --

11 THE COURT: NO, BUT THIS IS REBUTTAL. I  
12 MEAN, THE CLASH DOESN'T MEAN THAT IN YOUR OPENING  
13 CASE YOU DON'T HAVE -- I MEAN, THIS IS THE REBUTTAL  
14 CASE FOR APPLE ON ITS AFFIRMATIVE CASE. SO I  
15 DON'T --

16 MR. PRICE: IF THAT WERE THE LOGIC, YOUR  
17 HONOR, MR. WAGNER COULD COME BACK AND SAY I NOW GET  
18 TO RESPOND TO THE FIRST TIME TO MR. MUSIKA'S  
19 CRITICISM OF MY REPORT, WHICH I DON'T THINK YOU'D  
20 ALLOW, I'M NOT SURE WE'D HAVE TIME FOR IT ANYWAY,  
21 BY I -- THIS WOULD BE -- THAT WOULD BE THE LOGICAL  
22 EXTENT OF THAT. AND I'VE NEVER HAD A COURT THAT'S  
23 ALLOWED REBUTTAL TO THAT, TO THAT EXTENT AND THAT  
24 WOULD BE THE LOGICAL EXTENT.

25 MR. VERHOEVEN: IF I MIGHT JUST ADD TO

1 THAT --

2 THE COURT: I'M JUST CONFUSED.

3 MR. MUSIKA WAS APPLE'S DAMAGES EXPERT ON THEIR  
4 AFFIRMATIVE CASE. THIS IS NOW REBUTTAL IN APPLE'S  
5 AFFIRMATIVE CASE.

6 MS. KREVANS: THAT'S EXACTLY RIGHT, YOUR  
7 HONOR, AND ALL WE INTEND TO DO, AND WE HAVE SAVED A  
8 LITTLE BIT OF TIME TO DO THIS, WHICH WE'RE ENTITLED  
9 TO DO IS TO BRING HIM BACK AND HAVE HIM BRIEFLY  
10 RESPOND TO SOME SPECIFIC THINGS MR. WAGNER SAID ON  
11 THE STAND. EVERYTHING HE SAYS WILL BE DIRECTLY  
12 RESPONSIVE TO WHAT WE HEARD FROM MR. WAGNER. THIS  
13 IS OUR REBUTTAL CASE IN APPLE VERSUS SAMSUNG, AND  
14 WE'RE ENTITLED TO USE IT AS WE WANT TO.

15 THE COURT: THAT'S OVERRULED. OKAY.  
16 WHAT ELSE DO WE HAVE?

17 MR. MCELHINNY: ONE VERY TECHNICAL POINT,  
18 YOUR HONOR. AT THE CLOSE OF THE EVIDENCE  
19 YESTERDAY, I MADE A MOTION TO STRIKE MR. SHERMAN'S  
20 FOR USING THE WRONG APPROACH. IN YOUR HONOR'S  
21 MISCELLANEOUS ORDER LAST NIGHT, YOU DENIED SEVERAL  
22 RULE 50 MOTIONS, BUT YOU DID NOT SPECIFICALLY DENY  
23 MY MOTION TO STRIKE.

24 THE COURT: OH, YOU KNOW, THAT'S BECAUSE  
25 THE MOTION TO STRIKE WAS THE END OF THE RULE 50

1 MOTION, AND IT WAS FOCUSSED ON THE KOREAN PATENT  
2 AND THE LG PRADA, WHICH -- AND THEN I RESERVED THE  
3 FIDLER ISSUE.

4 MR. MCELHINNY: RIGHT. BUT IT ALSO HAD  
5 THIS LARGER ASPECT ABOUT NEVER TESTIFYING ABOUT A  
6 PRIMARY REFERENCE FOR A SECONDARY REFERENCE USING  
7 THE WRONG APPROACH. I JUST NEED A RULING FOR THE  
8 RECORD, YOUR HONOR.

9 THE COURT: ALL RIGHT. WELL, THAT'S  
10 DENIED, AND I WILL -- WHEN I DO THE ORDER ON FIDLER  
11 TODAY, I WILL INCLUDE THAT.

12 MR. MCELHINNY: THANK YOU, YOUR HONOR.

13 THE COURT: JUST SO THERE'S A DOCKET  
14 ENTRY AND IT'S CLEAR --

15 MR. MCELHINNY: THANK YOU, YOUR HONOR.

16 THE COURT: -- FOR THE FUTURE.

17 OKAY. SO LET ME JUST MAKE -- THE MOTION  
18 TO STRIKE ITAY SHERMAN'S TESTIMONY AND THE FIDLER  
19 TABLET IS DENIED.

20 NOW, IN SAMSUNG'S FILING LAST NIGHT, THEY  
21 SAID THEY'RE GOING TO GET THE MOCKUP, OR ONE OF THE  
22 MOCKUPS IN THROUGH BRESSLER. ARE YOU ALL GOING TO  
23 OBJECT TO THAT? DO WE NEED TO HASH THAT OUT NOW?  
24 I'D RATHER DO IT NOW BEFORE WE BRING THE JURY IN.

25 MS. KREVANS: I'M SORRY, YOUR HONOR. IN

1 SAMSUNG'S FILING THEY SAID THAT THEY WERE GOING TO  
2 ADMIT WHAT WITH MR. BRESSLER?

3 THE COURT: I'LL JUST -- SO I DON'T  
4 MISSTATE ANYTHING.

5 MS. KREVANS: IT'S A MIRACLE, BUT I  
6 ACTUALLY SLEPT LAST NIGHT, SO I MISSED SOME  
7 MIDNIGHT FILINGS HERE.

8 THE COURT: OKAY. SO THEY FILED -- GIVE  
9 ME ONE MINUTE.

10 (DISCUSSION OFF THE RECORD BETWEEN  
11 COUNSEL.)

12 THE COURT: THE FOOTNOTE 1 ON PAGE 2,  
13 DOCKET ENTRY 1794, THE JURY WILL ALSO MAKE ITS  
14 ULTIMATE DECISION WITH ACCESS TO A PHYSICAL REPLICA  
15 OF THE 1994 FIDLER TABLET, JX 1078, WHICH SAMSUNG  
16 INTENDS TO MOVE INTO EVIDENCE THROUGH MR. BRESSLER,  
17 WHO COMMISSIONED IT TO BE MADE AND CAN LAY  
18 FOUNDATION FOR IT AS AN ACCURATE FACSIMILE.

19 MS. KREVANS: SUBJECT TO OUR PRIOR  
20 OBJECTIONS ABOUT ANYTHING ABOUT FIDLER COMING IN,  
21 YOUR HONOR, WE HAVE NO OBJECTION TO THE REPLICA.  
22 IN FACT, WE WILL OFFER IT -- I WILL CUT THIS SHORT.

23 WE'LL OFFER IT THROUGH MR. BRESSLER IN  
24 HIS DIRECT AND WE CAN, IF YOU WILL STIPULATE TO ITS  
25 ADMISSION, THEN WE CAN MAKE IT QUICK AND SAVE SOME

1 TIME FOR THE JURY.

2 MR. ZELLER: WE'D LIKE TO TAKE ONE LAST  
3 LOOK AT IT JUST TO MAKE SURE.

4 MS. KREVANS: SURE.

5 THE COURT: DO YOU HAVE IT?

6 MS. KREVANS: IT'S HERE IN COURT.

7 THE COURT: ALL RIGHT. WHY DON'T -- IT'S  
8 NOT 9:00 YET, SO WHEREVER IT IS, CAN YOU SHOW IT TO  
9 MR. ZELLER SO WE CAN AT LEAST TAKE CARE OF ONE  
10 HOUSEKEEPING ISSUE.

11 THE COURT: I WAS GOING TO ASK MR. LEE,  
12 STILL NOT SMOKING CRACK TODAY, SIR?

13 MR. LEE: YOUR HONOR.

14 MS. KREVANS: YOUR HONOR, MR. LEE --

15 MR. LEE: MY 86-YEAR-OLD MOTHER E-MAILED  
16 LAST NIGHT, FIRST SHE WANTED TO KNOW WHAT CRACK  
17 WAS, AND WHEN I EXPLAINED IT, SHE WANTED TO KNOW IF  
18 I HAD STOPPED.

19 (LAUGHTER.)

20 MR. LEE: SO I'M GOOD WITH HER TODAY.

21 MR. MCELHINNY: THE E-MAILS HAVE BEEN  
22 COMING FAST, AND I GOT AN E-MAIL FROM MY DAUGHTER  
23 WHO'S A PUBLIC DEFENDER IN WASHINGTON WHO SAID, AS  
24 A GENERAL RULE, WHENEVER A JUDGE ASKS IF YOU'RE  
25 SMOKING CRACK, THE ANSWER IS, NO, MA'AM.



1 THE COURT: ARE YOU SATISFIED WITH THAT  
2 ONE, MR. ZELLER?

3 MR. ZELLER: YES, YOUR HONOR.

4 MS. KREVANS: THEY'VE SEEN IT BEFORE. WE  
5 JUST HAVE TO FIGURE OUT WHAT THE YELLOW-ISH GREEN  
6 STICKY ON THE BACK IS.

7 THE COURT: ALL RIGHT. ANYTHING ELSE?  
8 OTHERWISE WE CAN --

9 MR. JACOBS: YOUR HONOR, JUST TO FLAG, WE  
10 CAN DISCUSS THIS LATER, AND MAYBE THIS WAS IMPLICIT  
11 IN YOUR DISCUSSION OF WHAT'LL HAPPEN ON MONDAY, WE  
12 HAVE TALKED, SAMSUNG AND US, ABOUT WHETHER WE CAN  
13 FIGURE OUT A WAY TO AVOID INFORMAL OBJECTION  
14 PROCEDURE FOR THE JURY INSTRUCTIONS AND WE HAVEN'T  
15 COME UP WITH SOMETHING THAT WE'RE COMFORTABLE WITH.

16 SO WE WILL NEED -- WHEN WE GO THROUGH THE  
17 PROPOSED INSTRUCTIONS, TO STATE ON THE RECORD OUR  
18 OBJECTION TO THE PROPOSED INSTRUCTION AND GIVE  
19 THE -- AS THE RULE WOULD HAVE IT, GIVE THE COURT AN  
20 OPPORTUNITY TO HEAR THAT OBJECTION AND ADJUST.

21 THE COURT: WELL, I WOULD PRESUME YOU'RE  
22 GOING TO TAKE HOURS LISTING ALL OF YOUR OBJECTIONS  
23 TO THE INSTRUCTIONS, RIGHT?

24 MR. JACOBS: I DON'T KNOW THAT IT'LL  
25 ACTUALLY TAKE THAT LONG. WE'LL GO THROUGH THEM,

1 WE'LL HAVE HAD THE ONES YOU PROPOSED, AND WHERE WE  
2 THINK THAT THE PROPOSED INSTRUCTION DEPARTS AS A  
3 MATTER OF LAW FROM THE INSTRUCTIONS THAT WE'VE  
4 PROPOSED, WE'LL NOTE THAT ON THE RECORD AND STATE  
5 THE BASIS BRIEFLY FOR WHY AND THE COURT WILL SAY SO  
6 NOTED AND THEN WE'LL GO ON.

7 THE COURT: I THINK THAT'S GOING TO TAKE  
8 FOREVER. WE'RE NOT GOING TO GET OUT OF HERE ON  
9 MONDAY.

10 MS. MAROULIS: YOUR HONOR, WE'RE STILL  
11 CONTINUING TO LOOK FOR WAYS TO SHORT CIRCUIT THAT,  
12 BUT WHAT MR. JACOBS IS SAYING IS WE HAVEN'T YET  
13 COME UP WITH AN APPROPRIATE WAY TO DO THAT. WE  
14 MIGHT TODAY LATER.

15 THE COURT: OKAY. I'M JUST TRYING THIS  
16 THINK OF -- I GUESS THIS IS JUST THINKING OUT LOUD.  
17 WOULD IT BE BETTER TO HAVE YOU FILE SOMETHING, I  
18 JUST PROBABLY WON'T HAVE TIME TO READ IT AND THINK  
19 ABOUT IT BEFORE 10:00 A.M. ON MONDAY. BUT WOULD  
20 THAT SHORT CIRCUIT US NOT HAVING TO BE HERE FOR  
21 HOURS AND HOURS AND HAVE US REARGUE WHAT YOU'VE  
22 ALREADY FILED? AND IF YOU DO THAT, I'M GOING TO  
23 LIMIT YOU TO TEN PAGES BECAUSE I NEED TIME TO  
24 ABSORB IT IF YOU REALLY WANT IT TO HAVE ANY EFFECT.

25 WHAT DO YOU WANT TO DO?

1 (PAUSE IN PROCEEDINGS.)

2 MR. JACOBS: WE'LL TALK SOME MORE, YOUR  
3 HONOR, AND TRY TO FIGURE OUT SOMETHING. IT'S JUST  
4 LOOKING AT THE CASE LAW, WE REALLY DON'T FIND  
5 ANYTHING THAT GAVE US MUCH COMFORT HERE. THE RULE  
6 WAS AMENDED TO MAKE THIS REQUIREMENT EXPLICIT OF A  
7 FORMAL OBJECTION ON THE RECORD WITH AN OPPORTUNITY  
8 FOR THE COURT THEN TO ADJUST.

9 THE COURT: AND TO EVERY SINGLE ONE?  
10 BECAUSE YOU HAVE 70 DISPUTED INSTRUCTIONS, AND  
11 THAT'S GOING TO -- I COULD PUT A TIME LIMIT ON IT,  
12 BUT IS THAT GOING TO --

13 MR. JOHNSON: YOUR HONOR, I THINK WE'RE  
14 GOING TO BE ABLE TO REACH SOME SORT OF AGREEMENT IF  
15 WE JUST GET A LITTLE BIT MORE TIME TO TALK, MAYBE  
16 AT THE NEXT BREAK.

17 THE COURT: OKAY, YEAH. MAYBE BY THE END  
18 OF THE DAY, CAN YOU TELL ME HOW YOU WANT TO PROCEED  
19 ON MONDAY?

20 MR. JOHNSON: YES.

21 THE COURT: ALL RIGHT. ARE WE GOOD, OR  
22 DO WE NEED TO DO ANYTHING ELSE? I THINK WE NEED TO  
23 GIVE MS. SHORTRIDGE AND MS. RODRIGUEZ A HAND  
24 BECAUSE THEY HAVE BEEN WORKING AROUND THE CLOCK.  
25 AROUND THE CLOCK. ALL RIGHT. LET'S GO.

1 MR. LEE: YOUR HONOR, MIGHT I HAVE  
2 PROFESSOR KIM COME UP.

3 THE COURT: YES, PLEASE. IF YOU WOULD --  
4 I DON'T KNOW WHERE HE IS. HE CAN TAKE THE STAND,  
5 PLEASE.

6 (WHEREUPON, THE FOLLOWING PROCEEDINGS  
7 WERE HELD IN THE PRESENCE OF THE JURY:)

8 THE COURT: ALL RIGHT. GOOD MORNING.  
9 WELCOME BACK. EVERYONE PLEASE TAKE A SEAT.

10 WE'RE GOING TO CONTINUE WITH THE DIRECT  
11 EXAMINATION.

12 AND, SIR, YOU ARE SINGLE UNDER OATH. GO  
13 AHEAD, PLEASE.

14 **HYONG KIM,**  
15 BEING RECALLED AS A WITNESS ON BEHALF OF THE  
16 PLAINTIFF, HAVING BEEN PREVIOUSLY SWORN, WAS  
17 FURTHER EXAMINED AND TESTIFIED AS FOLLOWS:

18 MR. LEE: COULD I HAVE '516 PATENT?

19 THE COURT: TIME IS 9:05.

20 **DIRECT EXAMINATION**

21 BY MR. LEE:

22 Q PROFESSOR KIM, WHEN WE FINISHED YESTERDAY YOU  
23 HAD IDENTIFIED THE FIVE UPLINK CHANNELS OF 3GPP  
24 STANDARD, RELEASE 6.6. DO YOU REMEMBER THAT?

25 A YES.

1 Q I'M TRYING TO GET US ALL BACK ON THE SAME  
2 PAGE. I THINK I ASKED YOU RIGHT BEFORE WE  
3 FINISHED, WERE THE ENHANCED CHANNELS, THE ONES THAT  
4 HAVE THE E BEFORE THEM, KNOWN BEFORE THE '516  
5 PATENT?

6 A YES.

7 Q NOW, LET'S GO TO THE -- BEFORE I GO DIRECTLY  
8 TO THE CLAIMS, LET ME ASK YOU ABOUT THE '516  
9 PATENT.

10 IN SAMSUNG'S OPENING STATEMENT, SAMSUNG  
11 STATED THAT THE '516 PATENT IS A CORE INNOVATION  
12 AND ACHIEVED HIGH SPEED UPLINK COMMUNICATION.

13 DO YOU AGREE WITH THAT?

14 A NO, I DON'T.

15 Q WHY?

16 A THE FUNCTION THAT CARRIES OUT THE HIGH SPEED  
17 UPLINK CHANNEL IS DUE TO THE ENHANCED DATA CHANNEL  
18 THAT YOU HAVE. IT'S LIKE SIMILAR TO SAYING IF YOU  
19 HAVE A SPORTS CAR, BECAUSE YOU HAVE A PARTICULAR  
20 DESIGNER OF A BRAKE, THAT THE SPORT CAR GOES FAST.

21 WE ALL KNOW IT'S THE ENGINE THAT MAKES IT  
22 HAPPEN. SO SIMILARLY IN THIS UPLINK CHANNEL, WHAT  
23 MAKES THE HIGH SPEED IS THE ENHANCED DATA CHANNEL,  
24 NOT THE PARTICULAR WAY OF DOING POWER CONTROL.

25 Q SO LET'S TALK ABOUT THE '516 PATENT .

1 CAN I HAVE CLAIM 15 OF THE '516 PATENT,  
2 AND THIS IS WHAT THE JURY IS GOING TO BE ASKED TO  
3 CONSIDER.

4 DO YOU SEE CLAIM 15 OF THE '516 PATENT?

5 A YES.

6 Q CAN YOU GIVE US A VERY BRIEF DESCRIPTION OF  
7 WHAT CLAIM 15 ACTUALLY DESCRIBES?

8 A THE CLAIM 15 TALKS ABOUT HOW YOU DO A POWER  
9 CONTROL METHOD WHEN YOU HAVE TWO CHANNELS, TWO  
10 PARTICULAR CHANNELS.

11 Q DOES THE CLAIM REFER TO A FIRST CHANNEL?

12 A YES.

13 Q WHAT DOES IT SAY ABOUT THAT CHANNEL?

14 A IT SAYS THE FIRST CHANNEL DOES NOT SUPPORT  
15 HARQ, OR HYBRID AUTOMATIC REPEAT REQUEST.

16 Q AND WHAT DOES IT SAY ABOUT THE SECOND CHANNEL?

17 A IT SAYS THE SECOND CHANNEL DOES SUPPORT HARQ.

18 Q IS THERE ANY REFERENCE IN THE CLAIM TO CONTROL  
19 CHANNELS?

20 A NO.

21 Q NOW, LET'S LOOK AT THE NEXT SECTION OF THE  
22 CLAIM, WHICH BEGINS "A CONTROLLER FOR DETERMINING  
23 TRANSMIT POWER FACTORS FOR THE CHANNELS,  
24 DETERMINING IF TOTAL TRANSMIT POWER REQUIRED FOR  
25 TRANSMISSION OF THE CHANNELS EXCEEDS THE MAXIMUM

1 ALLOWED POWER."

2 DO YOU SEE THAT?

3 A YES.

4 Q DO YOU SEE THE REFERENCE TO THE WORD "THE  
5 CHANNELS"?

6 A YES.

7 Q AND YOU UNDERSTAND HER HONOR HAS SAID THAT  
8 THESE TERMS, OR THESE CLAIMS GET THEIR PLAIN AND  
9 ORDINARY MEANING?

10 A YES.

11 Q WHAT CHANNELS IS THE PHRASE "THE CHANNEL"  
12 REFERRING TO?

13 A THE CHANNEL IN THIS CLAIM IS REFERRING TO THE  
14 FIRST CHANNEL AND THE SECOND CHANNEL.

15 Q AND WHAT IS TOTAL TRANSMIT POWER AS THAT TERM  
16 IS USED IN THE CLAIM?

17 A THE TOTAL TRANSMIT POWER HERE IS REFERRING TO  
18 TOTAL TRANSMIT POWER OF THE FIRST CHANNEL AND THE  
19 SECOND CHANNEL.

20 Q CAN I HAVE PDX 35.7 ON THE SCREEN, PLEASE.

21 CAN YOU USE PDX 35.7 AND EXPLAIN TO THE  
22 LADIES AND GENTLEMEN OF THE JURY HOW A CLAIM  
23 DESCRIBES DETERMINING A TOTAL TRANSMIT POWER AND  
24 WHAT TO DO ABOUT IT?

25 A WELL, ACCORDING TO THE CLAIM, THE WAY YOU

1 COMPUTE THE TOTAL TRANSMIT POWER IS ADDING THE  
2 POWER OF THE FIRST CHANNEL AND THEN THE POWER OF  
3 THE SECOND CHANNEL.

4 Q ALL RIGHT. NOW, USING THAT INTERPRETATION OF  
5 THE CLAIM, YOU HAVE READ DR. WILLIAMS' TESTIMONY;  
6 CORRECT?

7 A YES.

8 Q AND ON CROSS-EXAMINATION, DID HE IDENTIFY THE  
9 FIRST AND SECOND CHANNELS?

10 A YES.

11 Q COULD I HAVE PDX 35.10 ON THE SCREEN.

12 AND USING 35.10, WOULD YOU EXPLAIN TO THE  
13 MEMBERS OF THE JURY WHAT DR. WILLIAMS SAID WERE HIS  
14 FIRST AND SECOND CHANNEL?

15 A ACCORDING TO DR. WILLIAMS, THE FIRST CHANNEL  
16 IS THE DPDCH, THAT'S THE DEDICATED PHYSICAL DATA  
17 CHANNEL, AND THE SECOND CHANNEL IS ENHANCED DPDCH.

18 Q ALL RIGHT. LET'S TAKE DR. WILLIAMS AT HIS  
19 WORD THAT THOSE ARE THE FIRST AND SECOND CHANNELS.

20 IF THOSE ARE THE FIRST AND SECOND  
21 CHANNELS, DO YOU AGREE WITH HIS CONCLUSION THAT  
22 APPLE'S PRODUCTS INFRINGE?

23 A NO, I DON'T.

24 Q WHY NOT?

25 A BECAUSE APPLE PRODUCT DOES NOT OBTAIN THE



1 TOTAL TRANSMIT POWER BY ADDING TWO CHANNELS, BUT IT  
2 ACTUALLY ADDS FIVE CHANNELS.

3 Q DO THE APPLE PRODUCTS FOLLOW THE 3GPP  
4 STANDARD?

5 A YES.

6 Q AND WHEN YOU READ DR. WILLIAMS' TESTIMONY, DID  
7 YOU READ THE PART WHERE I ASKED HIM WHETHER YOU'RE  
8 RUNNING ON TWO OR FIVE, DO YOU REMEMBER THAT?

9 A VAGUELY, BUT YES.

10 Q OKAY. LET'S LOOK AT THE STANDARD THEN.

11 COULD I HAVE JX 1083 ON THE SCREEN. IT'S  
12 IN VOLUME 1, TAB 2 OF YOUR NOTEBOOK OR YOU CAN LOOK  
13 AT IT ON THE SCREEN.

14 DO YOU SEE IT?

15 A YES.

16 Q CAN WE TURN TO PAGE 25.

17 AND THIS IS ALREADY IN EVIDENCE, YOUR  
18 HONOR.

19 DO YOU SEE SECTION 5.1.2.6?

20 A YES.

21 Q LET'S BRING UP THE SECOND PARAGRAPH WHICH I  
22 ASKED DR. WILLIAMS ABOUT.

23 DO YOU SEE THE REFERENCE TO TOTAL UE  
24 TRANSMIT POWER?

25 A YES.

1 Q WHAT IS TOTAL UE TRANSMIT POWER?

2 A THE UE STANDS FOR USER EQUIPMENT. THAT WOULD  
3 BE THE CELL PHONE OR SMARTPHONE THAT YOU HAVE, AND  
4 THE TOTAL TRANSMIT POWER WOULD BE THE TOTAL AMOUNT  
5 OF POWER THAT WOULD BE TRANSMITTED.

6 Q AND IN THE STANDARD, HOW MANY CHANNELS ARE  
7 ADDED TO GET TOTAL TRANSMIT POWER?

8 A FIVE CHANNELS.

9 Q AND HOW DO YOU KNOW THAT?

10 A BECAUSE THAT'S WHAT THE STANDARD DICTATES.

11 Q DID YOU ALSO REVIEW THE TESTIMONY OF INTEL'S  
12 ENGINEERS, ENGINEER MARKUS PALTIAN?

13 A YES.

14 Q WHAT DID HE SAY ABOUT THE NUMBER OF CHANNELS  
15 THAT WERE ADDED IN THE INTEL BASEBAND PROCESSOR?

16 A YES. HE STATED THAT THE INTEL BASEBAND  
17 PROCESSOR ADDED FIVE CHANNELS.

18 Q SO IF WE GO PDX 35.11, COULD YOU USE THIS  
19 DEMONSTRATIVE AND EXPLAIN TO THE JURY HOW THE 3GPP  
20 STANDARD AND THE BASEBAND PROCESSOR THAT APPLE BUYS  
21 FROM INTEL DETERMINES TOTAL TRANSMIT POWER?

22 A SO IN 3GPP STANDARD, THE TOTAL TRANSMIT POWER  
23 IS OBTAINED BY ADDING FIVE CHANNELS, THE FIVE  
24 CHANNELS THAT I STATED IN THE UPLINK, SUCH AS THE  
25 DPDCH, E-DPDCH, DPCCH, E-DPCCH, AND HS-DPCCH, SO

1 YOU ADD UP THE FIVE CHANNELS AND OBTAIN THE TOTAL  
2 TRANSMIT POWER.

3 Q AND A BASEBAND PROCESSOR OR A PRODUCT THAT  
4 ADDED UP THE FIVE CHANNELS TO DETERMINE TOTAL  
5 TRANSMIT POWER, WOULD THEY INFRINGE THE CLAIM OF  
6 THE PATENT?

7 A NO.

8 Q TURN, IF YOU WOULD, BRING UP PDX 35.14. WOULD  
9 YOU EXPLAIN TO US HOW THE STANDARD DIFFERS FROM  
10 WHAT IS IN THE CLAIM OF THE PATENT?

11 A THE CLAIM IN THE '516 PATENT ADDS TWO  
12 CHANNELS, DPDCH AND E-DPDCH TO OBTAIN THE TOTAL  
13 TRANSMIT POWER AS YOU SEE IT ON THE LEFT SIDE OF  
14 THE FIGURE.

15 ACCORDING TO THE STANDARD, 3GPP STANDARD,  
16 IT WILL ADD FIVE CHANNELS AS SHOWN ON THE RIGHT  
17 SIDE OF THE SLIDE. SO THEY ARE VERY DIFFERENT.

18 Q NOW, COULD I HAVE PDX 35.15.

19 USING THIS EXAMPLE, CAN YOU EXPLAIN TO  
20 THE JURY WHY THIS DIFFERENCE BETWEEN THE CLAIM AND  
21 THE STANDARD CAN HAVE -- CAN MAKE A DIFFERENCE IN  
22 OPERATION?

23 A SO THIS IS AN EXAMPLE WHERE YOU HAVE TO  
24 COMPARE THE TOTAL TRANSMIT POWER TO THE MAXIMUM  
25 ALLOWED POWER.

1 SO ON THE RIGHT SIDE, IF YOU ADD UP THE  
2 FIVE CHANNELS, IN THIS EXAMPLE, IT'S SHOWING THAT  
3 THE TOTAL TRANSMIT POWER IS EXCEEDED. IT'S LARGER  
4 THAN THE MAXIMUM ALLOWED POWER.

5 THEREFORE, ACCORDING TO THE STANDARD, IT  
6 HAS TO REDUCE THE POWER OF THE E-DPDCH.

7 ON THE OTHER HAND, IF YOU LOOK AT THE  
8 LEFT SIDE OF THE FIGURE, IF YOU'RE ADDING UP ONLY  
9 TWO CHANNELS, YOU WILL NOT EXCEED THE MAXIMUM  
10 ALLOWED POWER; THEREFORE, NO ACTION WOULD BE TAKEN.

11 SO TWO WILL FUNCTION VERY DIFFERENTLY.

12 Q AND THAT'S THE BASIS FOR YOUR OPINION THAT  
13 CLAIM 15 DOES NOT INFRINGE?

14 A THAT'S CORRECT.

15 Q SAMSUNG ALSO ASSERTS CLAIM 16. DO YOU HAVE AN  
16 OPINION AS TO WHETHER THAT'S INFRINGED?

17 A NO, THAT'S NOT INFRINGED.

18 Q AND FOR WHAT REASONS?

19 A BECAUSE CLAIM 16 IS A DEPENDENT ON CLAIM 15,  
20 SO FOR THE SAME REASON.

21 Q NOW, LET'S TURN TO THE QUESTION OF VALIDITY.

22 HAVE YOU REVIEWED THE ISSUE OF VALIDITY?

23 A YES.

24 Q WHAT HAVE YOU CONCLUDED?

25 A I CONCLUDED THAT THE PATENT'S INVALID.

1 Q AND WHAT PRIOR ART DO YOU BASE YOUR  
2 DETERMINATION ON?

3 A SO I'M BASING MY OPINION ON THE PRIOR ART THAT  
4 WAS STATED IN THE PATENT ITSELF, '516, AND THE  
5 PATENT APPLICATION BY HATTA, H-A-T-T-A.

6 Q LET'S LOOK AT THE FIRST PART, THE PRIOR ART  
7 THAT'S DESCRIBED IN THE PATENT.

8 COULD WE HAVE SAMSUNG'S DEMONSTRATIVE SDX  
9 3966.009 ON THE SCREEN.

10 NOW, THIS IS DR. WILLIAMS' DEMONSTRATIVE.  
11 DO YOU SEE THAT?

12 A YES.

13 Q ON THE LEFT-HAND SIDE IS FIGURE 5 FROM THE  
14 PATENT. DO YOU SEE THAT?

15 A YES.

16 Q HOW DOES THE PATENT LABEL FIGURE 5?

17 A IT SAYS PRIOR ART.

18 Q AND WHAT DOES FIGURE 5 SHOW ABOUT THE PRIOR  
19 ART?

20 A FIGURE 5 IS SHOWING WHEN YOU HAVE THOSE  
21 MULTIPLE CHANNEL, E-DPDCH, E-DPDCH, AND E-DPDCH  
22 THAT EXCEEDS THE MAXIMUM POWER, AS YOU SEE IN THAT,  
23 IN FIGURE 402, THAT IT WILL EQUALLY SCALE DOWN THE  
24 POWER OF EACH CHANNEL.

25 Q NOW, DOES FIGURE 5 DISCLOSE AN ENHANCED UPLINK

1 SERVICE?

2 A YES.

3 Q AND HOW DO YOU KNOW?

4 A BECAUSE IT HAS AN E-DPDCH CHANNEL ON IT.

5 Q DOES IT DISCLOSE THE USE OF CHANNELS  
6 SUPPORTING HARQ?

7 A YES.

8 Q HOW DO YOU KNOW?

9 A BECAUSE IT HAS THE E-DPDCH ON IT.

10 Q DOES IT DISCLOSE THE USE OF CHANNELS NOT  
11 SUPPORTING HARQ?

12 A YES.

13 Q AND I THINK YOU TOLD ME ALREADY, BUT ON THE  
14 LEFT-HAND SIDE, FIGURE 5, WHAT'S THE SCALING  
15 TECHNIQUE? WHAT'S THE FORMULA FOR REDUCING THINGS?

16 A SO YOU WOULD EQUALLY REDUCE POWER TO EACH  
17 CHANNEL, SO THAT'S WHY WE CALL IT EQUAL SCALING.  
18 SO THEY WILL BE REDUCING THE THREE CHANNELS EQUALLY  
19 TO MEET THE MAXIMUM POWER.

20 Q NOW, LET'S LOOK AT THE OTHER SIDE OF  
21 DR. WILLIAMS' SLIDE WHERE HE DESCRIBES THE  
22 SOLUTION. DO YOU SEE THAT ON THE RIGHT?

23 A YES.

24 Q WHAT IS THE SOLUTION? WHAT DOES HE SAY IS  
25 DIFFERENT?

1 A WELL, THE SOLUTION THAT HE SAYS IS INSTEAD OF  
2 EQUALLY SCALING ALL THE CHANNELS, YOU WOULD ONLY  
3 SCALE E-DPDCH CHANNEL AND MAINTAIN THE REST OF THE  
4 CHANNEL POWER.

5 Q SO INSTEAD OF REDUCING THEM ALL EQUALLY, YOU  
6 JUST REDUCE ONE?

7 A YES.

8 Q OKAY. NOW, LET'S TURN TO PX 100 IN YOUR  
9 BINDER. AND BEFORE IT'S PUT ON THE SCREEN, DO YOU  
10 SEE IT?

11 A YES.

12 Q WHAT IS IT?

13 A IT'S THE PATENT APPLICATION, JAPANESE PATENT  
14 APPLICATION BY HATTA.

15 MR. LEE: YOUR HONOR, WE OFFER PX 100.

16 THE COURT: ANY OBJECTION?

17 MR. VERHOEVEN: NO OBJECTION.

18 THE COURT: IT'S ADMITTED.

19 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER  
20 100, HAVING BEEN PREVIOUSLY MARKED FOR  
21 IDENTIFICATION, WAS ADMITTED INTO  
22 EVIDENCE.)

23 BY MR. LEE:

24 Q WHEN WAS THE HATTA REFERENCE PUBLISHED?

25 A JULY 5, 2002.

1 Q IS IT PRIOR ART TO THE '516 PATENT?

2 A YES.

3 Q DID THE PATENT OFFICE KNOW ABOUT HATTA?

4 A NO.

5 Q SO LET'S PUT UP PDX 35.16 AND COMPARE THE  
6 FIGURES OF HATTA TO DR. WILLIAMS' PROBLEM AND  
7 SOLUTION SLIDE.

8 DO YOU SEE I PUT DR. WILLIAMS' SLIDE AT  
9 THE TOP?

10 A YES.

11 Q AND HATTA AT THE BOTTOM?

12 A YES.

13 Q SO LET'S FOCUS ON THE BOTTOM. DO YOU SEE  
14 FIGURES 8 AND 5 OF HATTA?

15 A YES.

16 Q WHAT DOES IT SHOW?

17 A FIGURE 5 SHOWS THE UNEQUAL SCALING, JUST LIKE  
18 THE PATENT '516 IS TALKING ABOUT. WHAT HATTA  
19 TEACHES HERE IS THAT YOU CLASSIFY CHANNELS INTO  
20 DIFFERENT CLASSES, AND YOU WILL SCALE THEM  
21 DIFFERENTLY.

22 Q SO JUST SO THE RECORD IS CLEAR, FIGURE 8 OF  
23 HATTA SCALES ON WHAT BASIS? WHAT'S THE FORMULA?

24 A YES, FIGURE 8 IS ON EQUAL SCALING, JUST LIKE  
25 FIGURE 5 THAT YOU SAW.



1 Q AND FIGURE 5 IS ON WHAT BASIS?

2 A ON EQUAL SCALING. FIGURE 5 IS UNEQUAL  
3 SCALING. FIGURE 8 WOULD BE EQUAL SCALING.

4 Q AND DO YOU HAVE AN OPINION AS TO WHETHER THE  
5 PRIOR ART DESCRIBED IN HATTA ITSELF DISCLOSES EACH  
6 AND EVERY ELEMENT OF CLAIM 15 AND 16?

7 A YES.

8 Q DO YOU HAVE AN OPINION AS TO WHETHER IT WOULD  
9 HAVE BEEN OBVIOUS TO ONE OF ORDINARY SCALE IN THE  
10 ART TO COMBINE THESE TWO COMBINATIONS?

11 A YES, IF YOU LOOK AT THE PRIOR ART, FIGURE 5,  
12 AND THEN THE HATTA PATENT APPLICATION, IT'S QUITE  
13 OBVIOUS.

14 IF YOU THINK ABOUT CHANNELS THAT YOU HAVE  
15 IN 3GPP STANDARD, MULTIPLE CHANNELS YOU HAVE, YOU  
16 COULD EASILY CLASSIFY THE CHANNEL WITH A HARQ AND A  
17 CHANNEL WITHOUT THE HARQ.

18 SO HATTA TEACHES US THAT IF YOU CLASSIFY  
19 DIFFERENTLY, YOU WOULD SCALE POWER OF THOSE  
20 CHANNELS DIFFERENTLY.

21 Q ALL RIGHT. NOW, LET'S GO TO PDX 35.17, AND  
22 I'M GOING TO VERY QUICKLY MOVE YOU THROUGH EACH OF  
23 THE LIMITATIONS BECAUSE THAT'S ONE THING THAT WE'RE  
24 OBLIGATED DO AND IF THEY EFFECT YOUR OPINION.

25 DO YOU SEE THE FIRST ELEMENT THAT STARTS

1 WITH AN APPARATUS FOR TRANSMITTING DATA?

2 A YES.

3 Q IS THAT PRESENT IN THE PRIOR ART YOU JUST  
4 DESCRIBED?

5 A YES.

6 Q WHERE?

7 A WE SAW THAT IN FIGURE 5 OF THE PRIOR ART  
8 FIGURE.

9 Q OF THE PATENT?

10 A THE PATENT '516, YES.

11 Q THE NEXT ELEMENT REFERS TO A CONTROLLER FOR  
12 DETERMINING. DO YOU SEE THAT?

13 A YES.

14 Q WHERE DO YOU FIND THAT IN THE PRIOR ART?

15 A AGAIN, IN THE FIGURE 5 OF THE PATENT, '516.

16 Q THE THIRD ELEMENT SAYS SCALING DOWN THE  
17 TRANSMIT POWER. WHERE DO YOU FIND THAT IN THE  
18 PRIOR ART?

19 A YOU FIND THAT IN THE HATTA PATENT APPLICATION.

20 Q THE NEXT ELEMENT SAYS FIRST AND SECOND CHANNEL  
21 GENERATORS. DO YOU SEE THAT?

22 A YES.

23 Q AND WHERE IS THAT ELEMENT TAUGHT IN THE PRIOR  
24 ART?

25 A THAT WOULD BE IN FIGURE 4 AND FIGURE 5 OF THE

1 '516 PATENT, WHICH IS LABELED PRIOR ART.

2 Q LET'S LOOK AT FIGURE 4 OF THE '516 PATENT JUST  
3 FOR A SECOND.

4 THIS IS ALSO LABELED PRIOR ART IN THE  
5 PATENT?

6 A YES.

7 Q HOW DOES IT TEACH THIS ELEMENT?

8 A SO IT IS SHOWING THAT THE USE OF CHANNEL  
9 CODING, AS YOU SEE IN '305, THE CODING BLOCK, AND  
10 THEN THE MODULATOR '306, AND THEN AFTER THAT, YOU  
11 WILL BE TRANSMITTING THE SIGNAL.

12 Q LET'S LOOK AT THE LAST ELEMENT OF CLAIM 15,  
13 WHICH IS A GAIN SCALING UNIT. DO YOU SEE THAT?

14 A YES.

15 Q AND WHERE IS THAT IN THE PRIOR ART?

16 A THAT WOULD BE IN, AGAIN, FIGURE 4 AND FIGURE 5  
17 OF THE '516 PATENT.

18 Q SO DO YOU FIND EACH AND EVERY ELEMENT OF CLAIM  
19 15 IN THE PRIOR ART?

20 A YES.

21 Q LET'S LOOK BRIEFLY AT CLAIM 16, WHICH ADDS, AS  
22 DR. WILLIAMS POINTED OUT, THIS SLOT TO SLOT. DO  
23 YOU SEE THAT?

24 A YES.

25 Q WHERE IS THAT ELEMENT TAUGHT IN THE PRIOR ART?

1 A THAT IS TAUGHT IN FIGURE 5 OF THE '516 PATENT.

2 Q CAN I HAVE FIGURE 5 ON THE SCREEN, BECAUSE I  
3 DON'T THINK WE'VE POINTED THIS OUT TO THE JURY  
4 BEFORE.

5 WOULD YOU EXPLAIN TO THE JURY WHERE IN  
6 THE DIAGRAM THE PATENT LABELS PRIOR ART YOU CAN  
7 FIND SLOT TO SLOT?

8 A SO IF YOU LOOK AT FIGURE 5, THERE'S A T1, T2  
9 AND T3, THAT'S WHAT WE CALL SLOT IN WIRELESS  
10 COMMUNICATIONS, AND THEN YOU SEE AS THE CHANGE IS  
11 HAPPENING TO THE POWER, IT HAPPENS AT THE  
12 SLOT-BY-SLOT BASIS AS YOU SEE HERE.

13 Q NOW, LET ME TURN TO A RELATED CONCEPT. THE  
14 JURY WILL BE INSTRUCTED NEXT WEEK ON SOMETHING  
15 CALLED SECONDARY CONSIDERATIONS OF OBVIOUSNESS.  
16 THAT'S A LAWYER CONCEPT, BUT YOU'VE HEARD THEM  
17 BEFORE?

18 A YES.

19 Q AND I JUST WANT TO ASK YOU ABOUT THOSE  
20 CONCEPTS. DID YOU FIND ANY EVIDENCE THAT ANYONE  
21 HAD COPIED THE '516 PATENT?

22 A NO.

23 Q ANY EVIDENCE THAT PATENT HAD ENJOYED  
24 COMMERCIAL SUCCESS?

25 A NO.

1 Q ANY EVIDENCE THAT OTHERS HAD TRIED AND FAILED  
2 TO MAKE THE INVENTION OF THE '516 PATENT?

3 A NO.

4 Q AND ANY PRAISE IN THE INDUSTRY WITH TECHNICAL  
5 FIELDS FOR THE PATENT?

6 A NO.

7 Q NOW, LAST SUBJECT. TURN, IF YOU WOULD, TO PX  
8 104, WHICH IS VOLUME 2, TAB 8 OF YOUR NOTEBOOK. DO  
9 YOU SEE THIS?

10 A YES.

11 Q WHAT IS IT?

12 A IT'S THE SAMSUNG PROPOSAL TO THE 3GPP STANDARD  
13 BY ONE OF THE INVENTORS OF THE '516 PATENT.

14 Q JUHO LEE?

15 A YES.

16 Q WHAT IS THE DATE OF THE DOCUMENT?

17 A JUNE 18TH, 2004.

18 MR. LEE: YOUR HONOR, WE OFFER PX 104.

19 THE COURT: ANY OBJECTION?

20 MR. VERHOEVEN: NO OBJECTION.

21 THE COURT: IT'S ADMITTED.

22 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER  
23 104, HAVING BEEN PREVIOUSLY MARKED FOR  
24 IDENTIFICATION, WAS ADMITTED INTO  
25 EVIDENCE.)

1 BY MR. LEE:

2 Q AND IF YOU TURN TO PAGE 3 OF THE DOCUMENT, DO  
3 YOU SEE ON PAGE 3 DIFFERENT ALTERNATIVE PROPOSAL TO  
4 THE 3 -- FOR DEALING WITH THE POWER CONTROL ISSUE?

5 A YES.

6 Q AND WHAT ARE THEY?

7 A SO THE FIRST ONE IT SAYS MUST SEND DATA OVER  
8 THE ENHANCED CHANNEL, MEANING YOU POWER DOWN THE  
9 ENTIRE CHANNEL.

10 SECOND ONE TALKS ABOUT REDUCING THE POWER  
11 OF THE ENHANCED DATA CHANNEL.

12 AND THE THIRD ONE TALKS ABOUT SCALE DOWN  
13 EQUALLY, TRANSMIT POWER OVER CHANNELS.

14 MR. LEE: THANK YOU PROFESSOR KIM.

15 NOTHING FURTHER, YOUR HONOR.

16 THE COURT: ALL RIGHT. TIME IS NOW 9:24.  
17 GO AHEAD, PLEASE.

18 **CROSS-EXAMINATION**

19 BY MR. VERHOEVEN:

20 Q GOOD MORNING.

21 A GOOD MORNING.

22 Q MY NAME IS CHARLES VERHOEVEN.

23 YOU -- DID YOU SEE DR. WILLIAMS TESTIMONY  
24 ON DIRECT AND CROSS?

25 A YES. I DIDN'T SEE IT. I READ IT.

1 Q YOU READ IT?

2 A YES.

3 Q AND YOU SAW HOW HE WENT THROUGH IN GREAT  
4 DETAIL HOW THE CLAIMS READ ON THE INTEL  
5 SPECIFICATION AND SOFTWARE? DO YOU REMEMBER THAT?

6 A YES.

7 Q IN YOUR DIRECT EXAMINATION, YOU DIDN'T ADDRESS  
8 ANY OF THE INTEL DOCUMENTS, DID YOU? YES OR NO?

9 A NO.

10 Q AND YOU DIDN'T ADDRESS THE INTEL SOURCE CODE,  
11 DID YOU?

12 A NO.

13 Q YOU DON'T DISPUTE THE ACCURACY OF  
14 DR. WILLIAMS' DESCRIPTION OF HOW THOSE DOCUMENTS  
15 SHOW THE OPERATION OF THE CHIP, DO YOU, SIR?

16 A I DON'T QUITE UNDERSTAND YOUR QUESTION.

17 Q COULD YOU READ THE QUESTION BACK, PLEASE.

18 (WHEREUPON, THE RECORD WAS READ BY THE  
19 COURT REPORTER.)

20 THE WITNESS: YEAH, I BELIEVE HE  
21 DESCRIBED THAT --

22 BY MR. VERHOEVEN:

23 Q YES OR NO, SIR?

24 A WAIT. I DON'T DISPUTE.

25 MR. VERHOEVEN: THANK YOU. NOTHING

1 FURTHER.

2 THE COURT: ALL RIGHT. TIME IS NOW 9:25.  
3 ANY REDIRECT?

4 **REDIRECT EXAMINATION**

5 BY MR. LEE:

6 Q PROFESSOR KIM, DID YOU REVIEW THE TESTIMONY OF  
7 THE INTEL ENGINEER WHERE HE SAID ALL CHANNELS ARE  
8 TOTALLED UP IN THE INTEL BASEBAND PROCESSOR?

9 A YES.

10 MR. LEE: NOTHING FURTHER, YOUR HONOR.

11 THE COURT: ALL RIGHT. MAY THIS WITNESS  
12 BE EXCLUDED AND IT IF SO, IS HE SUBJECT TO RECALL?

13 MR. LEE: HE IS, AND NOT SUBJECT TO  
14 RECALL.

15 THE COURT: DO YOU AGREE WITH THAT?

16 MR. VERHOEVEN: YES, YOUR HONOR.

17 THE COURT: ALL RIGHT. YOU MAY BE  
18 EXCUSED.

19 CALL YOUR NEXT WITNESS, PLEASE.

20 MR. LEE: YOUR HONOR, APPLE CALLS  
21 PROFESSOR KNIGHTLY. AND MR. MUELLER WILL PRESENT  
22 DR. KNIGHTLY.

23 THE COURT: ALL RIGHT. COME ON UP,  
24 PLEASE.

25 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.



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**EDWARD KNIGHTLY,**

BEING CALLED AS A WITNESS ON BEHALF OF THE  
PLAINTIFF, HAVING BEEN FIRST DULY SWORN, WAS  
EXAMINED AND TESTIFIED AS FOLLOWS:

THE WITNESS: I DO.

THE CLERK: THANK YOU. PLEASE BE SEATED.

THE COURT: ALL RIGHT. THE TIME IS NOW  
9:26. GO AHEAD.

THE CLERK: IF YOU CAN PLEASE STATE YOUR  
NAME AND SPELL IT FOR THE RECORD.

THE WITNESS: EDWARD WILLIAM KNIGHTLY.  
E-D-W-A-R-D, WILLIAM, W-I-L-L-I-A-M, KNIGHTLY,  
K-N-I-G-H-T-L-Y.

**DIRECT EXAMINATION**

BY MR. MUELLER:

Q GOOD MORNING, DR. KNIGHTLY.

A GOOD MORNING.

Q COULD YOU PLEASE INTRODUCE YOURSELF TO THE  
JURY?

A YES. MY NAME IS EDWARD KNIGHTLY, AND I LIVE  
IN HOUSTON, TEXAS.

Q AND, SIR, IF YOU WOULD SIT UP JUST A BIT  
TOWARDS THE MICROPHONE. THANK YOU.

DR. KNIGHTLY, HAVE YOU BEEN RETAINED BY  
APPLE AS AN EXPERT WITNESS IN THIS CASE?

1 A YES, I HAVE.

2 Q LET'S START BY GOING OVER YOUR EDUCATIONAL  
3 BACKGROUND IF WE COULD.

4 A ALL RIGHT.

5 Q COULD YOU PLEASE DESCRIBE IT FOR THE JURY?

6 A SO I RECEIVED MY BACHELOR'S DEGREE IN 1991  
7 FROM AUBURN UNIVERSITY AND MY MASTER AND PH.D. FROM  
8 THE UNIVERSITY OF CALIFORNIA AT BERKELEY IN '92 AND  
9 '96.

10 Q DR. KNIGHTLY, WHERE DO YOU WORK?

11 A I'M A PROFESSOR OF ELECTRICAL AND COMPUTER  
12 ENGINEERING AT RICE UNIVERSITY IN HOUSTON.

13 Q FOR HOW LONG HAVE YOU BEEN AT RICE UNIVERSITY?

14 A SINCE '96.

15 Q WHAT ARE YOUR DUTIES AT RICE?

16 A I TEACH COURSES, GRADUATE AND UNDERGRADUATE  
17 COURSES, I TEACH SENIOR LEVEL NETWORKING COURSES,  
18 AND ADVANCED WIRELESS NETWORKING COURSES AT THE  
19 GRADUATE LEVEL.

20 I ALSO TEACH PROJECT COURSES TO SENIORS  
21 ON WIRELESS NETWORKING FOR UNDERSERVED REGIONS FOR  
22 LOW COST WIRELESS, AND I ALSO RUN A RESEARCH GROUP  
23 WITH GRADUATE STUDENTS AND ENGINEERS.

24 Q COULD YOU PLEASE GIVE US AN OVERVIEW OF YOUR  
25 RESEARCH?

1 A YES. I HAVE TWO MAIN PROJECTS RIGHT NOW. ONE  
2 IS TERMED SUPER WI-FI WHERE WE'RE DEVELOPING  
3 TECHNOLOGY TO MAKE WI-FI GO FURTHER INSTEAD OF TENS  
4 OF FEET BY USING UHF BANDS, TV BANDS.

5 AND THE SECOND IS MULTI ANTENNA  
6 TECHNOLOGY WHERE WE'RE DEVELOPING TECHNIQUES FOR  
7 WI-FI TO BE ABLE TO GO TO MULTIPLE USERS  
8 SIMULTANEOUSLY.

9 Q DR. KNIGHTLY, DO YOU HAVE EXPERIENCE WITH REAL  
10 LIFE WIRELESS NETWORKS?

11 A YES. WE -- SINCE 2003, WE'VE DESIGNED AND  
12 OPERATE A WIRELESS NETWORK IN HOUSTON, TEXAS. THE  
13 NETWORK SERVES THOUSANDS OF USERS AND IT'S A  
14 PLATFORM FOR US TO DEMONSTRATE OUR RESEARCH FOR  
15 LOW-COST WIRELESS IN UNDERSERVED COMMUNITIES.

16 Q WHAT IS THIS CALLED?

17 A TECHNOLOGY FOR ALL WIRELESS.

18 Q IN ADDITION TO TECHNOLOGY FOR ALL, HAVE YOU  
19 BEEN INVOLVED IN ANY OTHER REAL LIFE WIRELESS  
20 NETWORKS?

21 A YES. WE'RE IN THE DESIGN PROCESS FOR A SUPER  
22 WI-FI DEPLOYMENT IN ARGENTINA, WHICH HAS MORE  
23 AVAILABLE UHF FREQUENCY SPECTRUM.

24 Q DR. KNIGHTLY, HAVE YOU AUTHORED ANY SCIENTIFIC  
25 PUBLICATIONS?

1 A YES, OVER 100 PAPERS AND REFEREED JOURNALS AND  
2 RESEARCH CONFERENCES.

3 Q AND HAVE YOU RECEIVED ANY AWARDS?

4 A YES. TWO AWARDS THAT ARE SHOWN ON THE SCREEN.  
5 ONE IS IEEE FELLOW, AND THAT'S THE INSTITUTE OF  
6 ELECTRICAL AND ELECTRONIC ENGINEERS. THAT'S AN  
7 AWARD GIVEN TO NO MORE THAN .1 PERCENT OF THE  
8 MEMBERS IN ANY ONE YEAR; AND SLOAN FELLOW IS AN  
9 AWARD FOR RESEARCH EXCELLENCE GIVEN TO 128  
10 RESEARCHERS ACROSS ALL AREAS FROM CHEMISTRY TO  
11 COMPUTER SCIENCE.

12 MR. MUELLER: YOUR HONOR, I MOVE  
13 DR. KNIGHTLY AS AN EXPERT IN WIRELESS COMMUNICATION  
14 SYSTEMS AND NETWORKING PROTOCOLS.

15 THE COURT: ANY OBJECTION?

16 MR. VERHOEVEN: NO OBJECTION, YOUR HONOR.

17 THE COURT: SO CERTIFIED. GO AHEAD,  
18 PLEASE.

19 BY MR. MUELLER:

20 Q DR. KNIGHTLY, WHAT ISSUES WERE YOU ASKED TO  
21 CONSIDER IN THIS CASE?

22 A I WAS ASKED TO CONSIDER THE '941 PATENT AND  
23 WHETHER OR NOT THE APPLE PRODUCTS INFRINGE, AND  
24 ALSO VALIDITY.

25 Q AND HAVE YOU REACHED ANY CONCLUSIONS?

1 A YES, I HAVE.

2 Q AND WHAT ARE THEY?

3 A THAT IS THAT THE '941 PATENT IS INVALID IN  
4 LIGHT OF PRIOR ART THAT I'LL BE DISCUSSING IN A FEW  
5 MINUTES, AND ALSO THAT THE APPLE PRODUCTS DO NOT  
6 INFRINGE.

7 Q COULD YOU GIVE US AN OVERVIEW OF THE WORK THAT  
8 YOU'VE DONE ON THIS CASE TO REACH THOSE  
9 CONCLUSIONS?

10 A YES. I'VE REVIEWED THE PATENT APPLICATION,  
11 THE FILE HISTORY, DOCUMENTS DESCRIBING INTEL SOURCE  
12 CODE, DOCUMENTS DESCRIBING THE STANDARD, AND ALL  
13 THAT EVIDENCE THAT I LISTED IN MY EXPERT REPORT.

14 Q AND HOW MANY HOURS HAVE YOU BEEN WORKING ON  
15 THE CASE?

16 A APPROXIMATELY 300.

17 Q HAVE YOU BEEN COMPENSATED FOR YOUR TIME?

18 A YES, I'VE BEEN COMPENSATED AT MY STANDARD RATE  
19 OF \$475 AN HOUR FOR A TOTAL OF ABOUT \$140,000.

20 Q SIR, AT A HIGH LEVEL, WHAT IS THE SUBJECT OF  
21 THE '941 PATENT?

22 A SO '941 ADDRESSES SEGMENTATION AND REASSEMBLY  
23 IN A WIRELESS NETWORK.

24 Q AND IF YOU NEED TO REFER TO IT, THIS IS JOINT  
25 EXHIBIT 1070 WHICH IS AT TAB 2 OF YOUR BINDER, AND

1 THAT'S THE '941 PATENT.

2 BEFORE WE GET INTO THE DETAILS, LET ME  
3 ASK YOU A FEW TECHNICAL CONCEPTS. AND LET ME BRING  
4 UP PDX 36.2. CAN YOU EXPLAIN TO THE JURY WHAT WE  
5 SEE HERE?

6 A SO THIS IS SHOWING A TRANSMITTER, THE USER  
7 EQUIPMENT THAT YOU'VE HEARD ABOUT BEFORE, AND THIS  
8 IS TRANSMITTING, IN THIS CASE IT'S AN IMAGE OR A  
9 VIDEO FRAME. AND WHEN THAT FRAME COMES FROM THE  
10 APPLICATION, IT'S PUT INTO WHAT'S CALLED AN SDU, OR  
11 A SERVICE DATA UNIT.

12 AND THEN IN MANY CASES THOSE FRAMES OR  
13 IMAGES ARE TOO LARGE TO BE SENT OVER THE WIRELESS  
14 NETWORK AS THEY ARE, SO THEY'VE GOT TO BE SEGMENTED  
15 OR DIVIDED INTO PROTOCOL DATA UNITS OR PDU'S.

16 SO THAT WHAT'S SHOWN IS OVER THE WIRELESS  
17 LINK IS THAT YOU'RE SEEING MANY PROTOCOL DATA UNITS  
18 WITH, IN ESSENCE, PART OF THE IMAGE, AND THAT'S  
19 SEGMENTATION; AND ON THE RECEIVER SIDE, THE WHOLE  
20 PROCESS IS REVERSED WITH REASSEMBLY WHERE THE  
21 RECEIVER PUTS IT ALL BACK TOGETHER.

22 MR. MUELLER: YOUR HONOR, MAY I APPROACH  
23 THE SCREEN, PLEASE?

24 THE COURT: GO AHEAD.

25 BY MR. MUELLER:

1 Q JUST TO TAKE THAT IN PIECES, DR. KNIGHTLY, THE  
2 ORIGINAL IMAGE IS A FLOWER.

3 A YES.

4 Q AND THAT FLOWER IS REPRESENTED IN SDU?

5 A YES, THAT FLOWER COMES IN A UNIT FROM THE  
6 HIGHER LAYERS AND WE'RE REFERRING TO THAT AS SDU.

7 Q AND CAN YOU EXPLAIN TO US ONE MORE TIME THE  
8 RELATIONSHIP BETWEEN THE SDU AND THESE PDU'S?

9 A YES. SO THE SDU'S, IF IT'S LARGER THAN THE  
10 PDU, IS BROKEN UP INTO SEGMENTS.

11 Q AND I'M SORRY, THE PROCESS OF BREAKING UP THE  
12 SDU IS CALLED?

13 A SEGMENTATION.

14 Q LET'S TAKE A LOOK AT PDX 36.4. WHAT DO WE SEE  
15 HERE?

16 A SO THIS IS A ZOOM IN OF ONE OF THOSE PDU'S.  
17 ON THE LEFT YOU'RE SEEING AN SDU WITH THE --  
18 REPRESENTING THE ENTIRE IMAGE AND THERE'S HEADER  
19 INFORMATION ON TOP OF THAT.

20 AND THEN THAT'S SHOWING DIVIDING INTO  
21 SOME OF THOSE PDU'S THAT I SHOWED GOING ACROSS THE  
22 WIRELESS AIR.

23 AND THEN EACH OF THOSE HAS A HEADER, AND  
24 THAT HEADER IS THE CONTROL INFORMATION THAT TELLS  
25 THE RECEIVER HOW TO RECONSTRUCT EVERYTHING THAT THE

1 TRANSMITTER DID.

2 Q DR. KNIGHTLY, ARE THERE TIMES WHEN AN SDU DOES  
3 NOT NEED TO BE SEGMENTED?

4 A YES. IF THE -- IF THE -- IF THE SDU IS  
5 SMALLER THAN THE PDU SIZE, THEN IT CAN BE FIT, OR  
6 SMALLER OR EQUAL, IT CAN BE FIT INTO A PDU AND  
7 DOESN'T GET SEGMENT THE.

8 Q LET'S GO TO 36.5, PLEASE. WHAT DO WE SEE  
9 HERE?

10 A SO HERE JUST SHOWING A SMALLER IMAGE THAT  
11 WHERE THE ENTIRE SDU DID NOT FIT INTO THE PDU, SO  
12 THE SMALLER IMAGE IS REPRESENTED BY AN EMOTICON.

13 SO IN THIS CASE, THE ENTIRE SDU  
14 REPRESENTED NOW BY THE EMOTICON FITS INTO THE PDU  
15 AND THERE'S EXTRA ROOM. SO THIS EXTRA ROOM HAS, IS  
16 JUST DUMMY BITS, WHEN IT'S REFERRED TO AS PADDING.

17 Q WHEN YOU SAY SUMMARY BITS, YOU'RE REFERRING TO  
18 THOSE ZEROS?

19 A YES.

20 Q AND THAT'S THE PADDING?

21 A YES.

22 Q LET'S GO TO THE NEXT SLIDE, PLEASE. WHAT DO  
23 WE SEE HERE, SIR?

24 A THIS IS A CASE WHERE AN ENTIRE SDU FIT INTO  
25 THE PDU, AND THEN RATHER THAN JUST SEND THOSE



1           PADDING BITS AND WASTE THOSE, THOSE BITS, NORMALLY  
2           ANOTHER SDU, IF THE APPLICATION HAS ONE READY, WILL  
3           BE SENT. SO THAT IS CALLED CONCATENATION.

4           Q        AND EACH OF THOSE SMILEY FACES REPRESENTS  
5           WHAT?

6           A        EACH REPRESENTS AN SDU.

7           Q        TWO SDU'S HERE?

8           A        YES.

9           Q        LET'S GO TO THE NEXT SLIDE, PLEASE.

10                   WHAT DO WE SEE HERE?

11           A        SO THIS IS THE THIRD CASE WHERE AN ENTIRE SDU  
12           FITS IN THE PDU AND IN THIS CASE IT EXACTLY FITS.

13           Q        REMIND US NOW, WE'VE SEEN THREE CASES. COULD  
14           YOU REPEAT WHAT THOSE THREE CASES ARE?

15           A        YES. SO THE THREE CASES ARE WHEN THERE'S  
16           PADDING, AND SO THAT MEANS THOSE DUMMY BITS WERE  
17           SENT WHEN THERE'S CONCATENATION IS NOT SDU IS  
18           STARTED AND THIS CASE HERE WHERE IT'S AN EXACT FIT.  
19           THOSE ARE THE THREE CASES WHERE THE SDU FITS.

20           Q        DR. KNIGHTLY, HOW LONG HAVE THESE THREE CASES  
21           BEEN KNOWN?

22           A        THESE CASES AND SEGMENTATION REASSEMBLY HAVE  
23           BEEN AROUND FOR DECADES IN TEXTBOOKS.

24           Q        NOW, YOU DISCUSSED ABOUT THE CONCEPT OF A  
25           HEADER, RIGHT?

1 A YES.

2 Q CAN YOU REMIND THE JURY WHAT THAT IS?

3 A SO THE HEADER CONTAINS THE CONTROL INFORMATION  
4 TO TELL THE RECEIVER WHAT TO DO.

5 Q I WANT TO TALK NOW ABOUT THE CONCEPT OF AN  
6 ALTERNATIVE E-BIT. DO YOU HAVE THAT IN MIND?

7 A YES.

8 Q WHAT IS IT?

9 A SO THERE ARE -- IN THE 3GPP STANDARD, THERE'S  
10 AN E-BIT, WHICH STANDS FOR AN EXTENSION BIT, AND  
11 THERE'S A SECOND WAY TO INTERPRET THAT E-BIT AND  
12 THAT'S THE ALTERNATIVE E-BIT INTERPRETATION. SO  
13 DIFFERENT WAYS TO INTERPRET THE ALTERNATIVE BIT IN  
14 THE STANDARD.

15 Q IS THIS PART OF THE HEADER?

16 A YES.

17 Q YOU REFERRED TO SOMETHING CALLED 3GPP. IS  
18 THAT SOMETIMES CALLED UMTS?

19 A YES.

20 Q THAT'S THE STANDARD THAT WAS DEVELOPED BY A  
21 GROUP CALLED ETSI AND OTHERS?

22 A THAT'S CORRECT.

23 Q DID YOU HEAR DR. WILLIAMS TESTIFY ON THE STAND  
24 ABOUT THE ALTERNATIVE E-BIT?

25 A YES, I DID.

1 Q DID YOU HEAR HIM SAY THE ALTERNATIVE E-BIT CAN  
2 REDUCE OVERHEAD?

3 A YES, I HEARD THAT.

4 Q DO YOU AGREE?

5 A IN SOME CASES IT REDUCES OVERHEAD, AND THAT'S  
6 THE ONE CASE OF THE EXACT MATCH. BUT IN OTHER  
7 CASES, WHEN THERE'S SEGMENTATION, IT ADDS OVERHEAD.  
8 IT ADDS LIFE FOR EVERY INTERMEDIATE SEGMENT, SO IF  
9 THERE'S A LARGE IMAGE OR VIDEO FRAME, IT CAN ADD  
10 MANY, MANY BYTES PER SDU.

11 Q SIR, LET'S TURN TO THE '941 PATENT AND I WANT  
12 TO EXPLORE THE ISSUE OF WHETHER THIS PATENT COVERS  
13 THE ALTERNATIVE E-BIT. LET'S BRING UP 36.9 WHICH  
14 SHOWS CLAIM 10 FROM THE PATENT. LET ME SHOW YOU ON  
15 THE THIRD CLAIM ELEMENT, WHICH IS HIGHLIGHTED.  
16 WHAT DOES THIS DESCRIBE?

17 A SO THIS IS A ONE BIT FIELD INDICATING WHETHER  
18 OR NOT THERE'S AN ENTIRE SDU IN THE DATA FIELD. SO  
19 WITH A SINGLE BIT, YOU CAN EITHER BE -- THAT IT  
20 DOES SOMETHING OR DOES NOT DO SOMETHING, SO THIS  
21 IS -- THAT SOMETHING IN THIS CASE IS WHETHER  
22 THERE'S AN ENTIRE SDU IN THE DATA FIELD.

23 Q LET'S GO TO THE NEXT SLIDE, PLEASE. THIS IS  
24 CLAIM 15, AND PLEASE EXPLAIN TO US WHAT WE SEE IN  
25 THE HIGHLIGHTED TEXT HERE?

1 A SO THIS IS THE RECEIVER SIDE CLAIM FOR THE  
2 REFEREE ASSEMBLING, AND SO THIS IS -- WHAT'S SHOWN  
3 FOR THESE REASSEMBLY CONTROLLER CHECKING THAT SAME  
4 ONE BIT FIELD.

5 Q AND IF YOU GO BACK TO THE PREVIOUS SLIDE FOR  
6 JUST A MOMENT.

7 YOUR HONOR, MAY I APPROACH?

8 THE COURT: GO AHEAD, PLEASE.

9 BY MR. MUELLER:

10 Q AGAIN, JUST SO WE'RE CLEAR, THAT REQUIRES AN  
11 ENTIRE SDU RIGHT?

12 A THAT'S CORRECT.

13 Q CLAIM 15 ALSO REQUIRED AN ENTIRE SDU?

14 A YES.

15 Q BOTH CLAIMS?

16 A YES.

17 Q WHAT IS THE PLANE AND ORDINARY MEANING OF THAT  
18 CLAIM TERM?

19 A THAT IT'S A WHOLE SDU, ONE THAT IS NOT  
20 SEGMENTED.

21 Q NOW, DR. WILLIAMS SAID THAT IN THE ALTERNATIVE  
22 E-BIT IN THE UMTS STANDARD, THERE'S A ONE BIT  
23 FIELD?

24 A YES.

25 Q DO YOU AGREE?

1 A NO, I DON'T.

2 Q WHY NOT?

3 A BECAUSE THE TWO, THE ONE BIT FIELD OF UMTS HAS  
4 A DIFFERENT FUNCTION THAN THE ONE BIT FIELD IN THE  
5 '941.

6 Q HAVE YOU PREPARED A DEMONSTRATIVE THAT  
7 COMPARES THE TWO?

8 A YES.

9 Q LET'S TAKE A LOOK AT PDX 36.12, PLEASE. AND  
10 WHAT DOES THIS SHOW?

11 A SO HERE YOU CAN SEE THE ONE BIT FIELD FOR THE  
12 '941 VERSUS THE 3GPP. SO BY, BY USING A SINGLE  
13 BIT, IT'S CALLING OUT ONE CASE VERSUS NOT THAT  
14 CASE.

15 SO YOU CAN SEE FROM THE '941 CLAIM ON  
16 TOP, THE BIT IS WHETHER OR NOT THE PDU CONTAINS AN  
17 ENTIRE SDU.

18 SO --

19 Q AND LET'S JUST TAKE THIS IN PLEASE. IF THE  
20 BIT IS 0 IN THE '941 PATENT CLAIMS, WHAT DOES THAT  
21 MEAN?

22 A RIGHT. SO THAT'S THE INDICATION WHERE AN  
23 ENTIRE SDU IS CONTAINED WITHIN THE PDU, AND THAT  
24 INCLUDES THOSE, THOSE THREE CASES THAT I DESCRIBED  
25 EARLIER. EACH OF THOSE HAS AN ENTIRE SDU IN THE

1 PDU.

2 Q SO IF IT'S ZERO IN THE '941, IT CAN BE ANY OF  
3 THOSE THREE?

4 A CORRECT.

5 Q WHAT IF IT'S ZERO IN THE UMTS OR 3GPP  
6 STANDARD?

7 A SO WITH THE ALTERNATIVE E-BIT, NOT THE NORMAL  
8 E-BIT, WITH THE ALTERNATIVE E-BIT, THAT BIT, WHEN  
9 IT'S SET TO ZERO, MEANS IT'S AN EXACT MATCH.

10 AND THE WAY THE STANDARD DEFINES AN EXACT  
11 MATCH IS THE WORDS THERE, COMPLETE SDU THAT IS NOT  
12 THOSE CASES ABOVE, IT'S NOT SEGMENTED AND IT'S NOT  
13 CONCATENATED AND IT'S NOT PADDED.

14 Q IT'S ALWAYS AN EXACT FIT IN THE STANDARD?

15 A CORRECT.

16 Q NOW, WHAT'S THE SIGNIFICANCE OF THIS  
17 DIFFERENCE?

18 A WELL, THE SIGNIFICANCE OF THE DIFFERENCE IS  
19 THAT IF A SENDER AND A RECEIVER WERE TRYING TO --  
20 ONE WAS USING THE '941 AND ONE WAS USING THE 3GPP,  
21 THEY WOULD MISINTERPRET WHAT THAT BIT MEANT AND IT  
22 WOULDN'T BE COMPATIBLE.

23 Q LET'S PUT THAT INTO REAL LIFE TERMS. IF A  
24 USER HAD A WIRELESS DEVICE THAT USED THE '941 --  
25 MAY I APPROACH? -- COULD IT COMMUNICATE WITH A

1 WIRELESS DEVICE USING THE UMTS?

2 A IF IT WAS TRYING TO USE THE ALTERNATIVE E-BIT  
3 IN UMTS, THE RECEIVER WOULD BE CONFUSED WHEN IT GOT  
4 A ZERO AS TO WHICH CASE IT CORRESPONDED TO.

5 Q LET'S GO BACK TO PDX 36.9. THIS IS CLAIM 10  
6 AGAIN.

7 NOW, DID YOU HEAR DR. WILLIAMS SAY THAT  
8 IN HIS VIEW, THE CLAIM REQUIRES ONLY AN ENTIRE SDU?

9 A YES.

10 Q AND DO YOU RECALL WHEN MR. LEE WROTE ONLY ON  
11 THE BOARD HERE?

12 A YES.

13 Q AND DR. WILLIAMS SAID HE AGREED WITH THAT?

14 A YES.

15 Q DO YOU AGREE?

16 A NO.

17 Q WHY NOT?

18 A WELL, THE "WORD" ONLY IS, IS NOT IN THE CLAIM,  
19 SO -- AND ADDING THAT WORD "ONLY" CHANGES THE  
20 MEANING OF THE CLAIM TO ACTUALLY INCLUDE THOSE  
21 CASES THAT WE TALKED ABOUT WITH CONCATENATION AND  
22 PADDING.

23 Q HOW DO THE WORDS AN ENTIRE SDU BECOME A PART  
24 OF THESE CLAIMS?

25 A IN THE FILE HISTORY, YOU CAN SEE THAT THE

1 PATENT OFFICE INITIALLY REJECTED THE SUBMITTED  
2 PATENT CLAIMS AND FORCED SAMSUNG TO ADD THAT WORD.

3 Q CAN YOU PLEASE TURN TO TAB 1 IN YOUR BINDER.  
4 THIS IS JX 1060. SIR, WHAT IS THIS?

5 A SO THIS IS THE FILE HISTORY OF THE '941  
6 PATENT.

7 Q AND CAN YOU EXPLAIN TO THE JURY WHAT A FILE  
8 HISTORY IS?

9 A YES. SO THE FILE HISTORY IS THE BACK AND  
10 FORTH BETWEEN SAMSUNG AND THE PATENT OFFICE WHERE  
11 IT CONTAINS THE INITIAL PATENT APPLICATION, IN THIS  
12 CASE, THAT WAS REJECTED, SO THE CLAIMS WERE  
13 AMENDED. SO ALL OF THAT BACK AND FORTH GOES IN THE  
14 FILE HISTORY.

15 MR. MUELLER: YOUR HONOR, I OFFER IT.

16 THE COURT: ANY OBJECTION?

17 MR. VERHOEVEN: NO OBJECTION.

18 THE COURT: IT'S ADMITTED.

19 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER  
20 1060, HAVING BEEN PREVIOUSLY MARKED FOR  
21 IDENTIFICATION, WAS ADMITTED INTO  
22 EVIDENCE.)

23 BY MR. MUELLER:

24 Q DR. KNIGHTLY, WHEN SAMSUNG FILED THE ORIGINAL  
25 PATENT APPLICATION FOR THE '941 PATENT, DID CLAIMS



1 10 AND 15 MENTION AN ENTIRE SDU?

2 A NO, THAT WAS NOT IN THE SUBMITTED CLAIM.

3 Q WHAT DID THE PATENT OFFICE DO WITH THE  
4 ORIGINAL CLAIMS?

5 A WELL, THE PATENT OFFICE WROTE THAT THE CLAIMS  
6 ARE OBVIOUS IN LIGHT OF A PRIOR ART REFERENCE,  
7 JIANG, J-I-A-N-G.

8 Q SO LET'S TURN TO PAGES 22 AND 23 OF THIS JOINT  
9 EXHIBIT 1060.

10 AND I'D LIKE, IF YOU COULD, FOR YOU TO  
11 EXPLAIN TO THE JURY WHAT WE SEE HERE?

12 A SO HERE YOU'RE SEEING THE ORIGINAL CLAIM AND  
13 THE WAY IT WAS AMENDED. SO IF YOU CAN SCROLL DOWN  
14 A LITTLE BIT TO CLAIM 10. I GUESS IT'S ON TWO  
15 PAGES. SO YOU CAN SEE THE ORIGINAL LANGUAGE AND  
16 THEN ADDED LANGUAGE IS UNDERLINED AND LANGUAGE  
17 REMOVED IS STRUCK.

18 MR. MUELLER: YOUR HONOR, AGAIN, MAY I  
19 APPROACH, PLEASE.

20 THE COURT: GO AHEAD.

21 BY MR. MUELLER:

22 Q DR. KNIGHTLY, DO YOU SEE HERE WHERE IT SAYS  
23 WHETHER THE PDU CONTAINS AN ENTIRE SDU IN THE DATE  
24 TO FIELD?

25 A YES.

1 Q WHAT IS THAT?

2 A BECAUSE IT'S UNDERLINED, THAT MEANS IT WAS  
3 ADDED AFTER THE REJECTION OF OBVIOUSNESS OVER  
4 JIANG.

5 Q LET'S TURN TO PAGES 28 AND 29 OF THE SAME  
6 DOCUMENT. AND LET ME DIRECT YOUR ATTENTION TO THE  
7 PARAGRAPH STARTS JIANG DISCLOSES. DO YOU SEE THAT?

8 A YES.

9 Q WHAT DO WE SEE HERE?

10 A YES. SO IF YOU LOOK AT THE LAST SENTENCE  
11 THERE, THE "MOREOVER," SO THEY'RE SAYING THAT  
12 MOREOVER, YEAH, RIGHT THERE, MOREOVER, JIANG  
13 DISCLOSES THAT IF A SINGLE SDU COMPLETELY FILLS AN  
14 SDU ARRAY, SO THAT'S SAYING AN EXACT MATCH, THEN  
15 THE EXTENSION BIT WOULD BE ZERO, THEREBY INDICATING  
16 THAT NO LENGTH INDICATOR OR NO MORE HEADER  
17 INFORMATION IS PRESENT.

18 SO THEY'RE BASICALLY SAYING THAT THAT'S  
19 WHAT JIANG DOES, BUT SAMSUNG'S AMENDED CLAIM IS  
20 DIFFERENT AND IF YOU LOOK IN THE TEXT ABOVE, THE  
21 APPLICANTS RECITE, I THINK IT'S THE SAME PAGE,  
22 YEAH, THE APPLICANTS, HOWEVER, RECITE THEN THEY'RE  
23 SAYING THEY'RE RECITING A BIT FOR AN ENTIRE --  
24 WHETHER OR NOT AN ENTIRE SDU IS IN THE DATA FIELD.

25 Q HOW DOES SAMSUNG'S STATEMENT HERE TO THE

1 PATENT OFFICE RELATE TO YOUR UNDERSTANDING OF THE  
2 CLAIM?

3 A WELL, IT'S CRITICAL BECAUSE THEY'RE STATING  
4 THAT THEY DO NOT HAVE A BIT THAT INDICATES AN EXACT  
5 MATCH THAT A SINGLE SDU COMPLETELY FILLS.

6 Q IN SUM, DR. KNIGHTLY, WHAT IS YOUR OPINION AS  
7 TO WHETHER THE '941 PATENT COVERS THE ALTERNATIVE  
8 E-BIT IN THE UMTS STANDARD?

9 A MY OPINION IS THAT IT DOES NOT, THAT THE BITS  
10 HAVE OTHER MEANINGS.

11 Q LET'S TURN TO THE SUBJECT OF VALIDITY. HAVE  
12 YOU FORMED AN OPINION ON THAT SUBJECT?

13 A YES, I HAVE.

14 Q WHAT IS IT?

15 A THAT THE '941 CLAIMS ARE INVALID OF PRIOR ART  
16 REFERENCE THAT APPEARED ABOUT SEVEN YEARS EARLIER.

17 Q WHICH REFERENCE?

18 A AGARWAL.

19 Q LET'S TAKE A LOOK AT TAB 5 IN YOUR BINDER.  
20 THIS IS PX 97. WHAT IS IT?

21 A THIS IS A PATENT BY AGARWAL, PATENT '658, THAT  
22 ALSO ADDRESSES SEGMENTATION REASSEMBLY.

23 MR. MUELLER: YOUR HONOR, I OFFER IT.

24 THE COURT: ANY OBJECTION?

25 MR. VERHOEVEN: NO OBJECTION.

1 THE COURT: IT'S ADMITTED.

2 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER  
3 97, HAVING BEEN PREVIOUSLY MARKED FOR  
4 IDENTIFICATION, WAS ADMITTED INTO  
5 EVIDENCE.)

6 BY MR. MUELLER:

7 Q DR. KNIGHTLY, WHAT WAS THE FILING DATE FOR THE  
8 AGARWAL PATENT?

9 A JULY 15TH, 1998.

10 Q IS AGARWAL PRIOR ART TO THE '941 PATENT?

11 A YES, AS I MENTIONED, ABOUT SEVEN YEARS.

12 Q NOW, DURING THE PROSECUTION OR THE REVIEW BY  
13 THE PATENT OFFICE OF THE '941 PATENT, WAS AGARWAL  
14 CONSIDERED?

15 A NO, THE PATENT OFFICE DID NOT KNOW ABOUT THIS  
16 REFERENCE.

17 Q WHAT IS THE SUBJECT OF THE AGARWAL PATENT  
18 GENERALLY?

19 A AS YOU CAN SEE IN THE TITLE, IT'S ADDRESSING A  
20 SEGMENTATION AND REASSEMBLY IN SATELLITE AND  
21 WIRELESS NETWORKS.

22 Q DOES AGARWAL DESCRIBE SEGMENTATION IN THE  
23 SPECIFIC CONTEXT OF MOBILE COMMUNICATIONS?

24 A YES, IT DOES. IT ADDRESSES BOTH SATELLITE AND  
25 INDUSTRIAL WIRELESS NETWORKS WHICH, OF COURSE, CAN

1 BE MOBILE.

2 Q LET'S LOOK AT COLUMN 12, LINES 17 THROUGH 22.  
3 AND IF WE CAN PUT THAT ON THE SCREEN, PLEASE.

4 LINES 17 THROUGH 22. THANKS.

5 DR. KNIGHTLY, WHAT DO WE SEE HERE?

6 A THIS IS A RECOGNITION BY THE INVENTORS OF THE  
7 658 THAT, THAT IN WIRELESS NETWORKS, RESOURCES ARE  
8 SCARCE, SO THERE'S A NEED TO MINIMIZE THE OVERHEAD  
9 WHILE PERFORMING SEGMENTATION REASSEMBLY.

10 Q LET'S BRING UP FIGURES 7A AND 7B AND LET'S  
11 START WITH SEARCH A.

12 DR. KNIGHTLY, WHAT DO WE SEE HERE?

13 A SO THIS IS ONE OF THE FIGURES IN THE PATENT  
14 THAT'S USED THROUGHOUT THE TEXT, AND BASICALLY YOU  
15 CAN SEE THAT YOU HAVE A USER FRAME ON THE LEFT THAT  
16 WILL GET SEGMENTED, SO IT'S SHOWING THOSE TWO  
17 SEGMENTS FOR THIS PARTICULAR EXAMPLE ON THE RIGHT,  
18 ILLUSTRATING SEGMENTATION FUNCTION.

19 Q AND WHAT DO WE SEE IN 7B?

20 A 7B GIVES AN EXAMPLE OF A SDU FORMAT THAT  
21 AGARWAL USES AND THE HEADER INFORMATION SHOWN ON  
22 THE TOP.

23 Q DOES AGARWAL DISCLOSE A ONE BIT FIELD AS IN  
24 THE '941?

25 A YES. SO IF YOU -- THE THIRD BIT OF THE FIELD,

1 SO THE THIRD BOX FROM THE LEFT IS A BIT THAT  
2 INDICATES WHETHER OR NOT THERE'S AN ENTIRE SDU IN  
3 THE DATA FIELD.

4 Q DOES AGARWAL DISCLOSE A LENGTH INDICATOR?

5 A YES. YOU CAN SEE THAT THERE'S A FIELD NAMED  
6 TOTAL LENGTH THAT'S UP ON TOP, AND THEN LENGTH  
7 INDICATOR, AS IN THE '941, ALSO CONTAIN CODE  
8 INFORMATION, FOR EXAMPLE, PREDEFINED CODES FOR A  
9 MIDDLE SEGMENT, AND THAT'S DONE IN THE TWO FIELDS  
10 LABELS F AND L.

11 Q DOES AGARWAL DISCLOSE A LENGTH INDICATOR WITH  
12 A PREDEFINED VALUE?

13 A YES. SO IF F AND L ARE -- SO F MEANS FIRST, L  
14 MEANS LAST, SO IF FL IS 00, IT'S NOT A FIRST, IT'S  
15 NOT A LAST, THAT MEANS IT'S INTERMEDIATE. SO  
16 THAT'S A PREDEFINED VALUE FOR INTERMEDIATE.

17 Q DR. KNIGHTLY, DO YOU SEE WHERE THERE'S AN  
18 ACRONYM PKTSQNU?

19 A YES.

20 Q WHAT IS THAT?

21 A THAT'S PACKET SEQUENCE NUMBER.

22 Q LET'S TURN TO COLUMN 11, LINES 61 THROUGH 64,  
23 AND IF WE COULD, COULD WE ALSO BRING UP FIGURE 11A  
24 ALONG SIDE THOSE.

25 AGAIN, COLUMN 11, LINES 61 TO 64.

1 DR. KNIGHTLY, CAN YOU JUST MARK IT, CAN YOU EXPLAIN  
2 THIS PASSAGE IN THAT FIGURE?

3 A RIGHT. SO THIS IS A FLOW CHART OF HOW THE  
4 TRANSMITTER TAKES A CELL OR A PACKET FROM A HIGHER  
5 LAYER AND DOES A CHECK AND SAYS, IS THIS PACKET A  
6 MINIMUM SIZE?

7 AND IT GIVES AN EXAMPLE IN THE TEXT ABOUT  
8 THAT MINIMUM BEING 53 BYTES. SO IT LOOKS FOR IT  
9 BEING EXACTLY 53 BYTES.

10 IF IT'S NOT, THEN IT -- IF IT'S NOT THE  
11 MINIMUM, THEN IT HAS TO BE SEGMENTED BECAUSE IN  
12 THAT CASE IT WOULD BE LARGER, SO IT'S GOT TO BE  
13 SEGMENTED INTO MULTIPLE SEGMENTS. IF IT IS THE  
14 MINIMUM, THEN THERE'S NO SEGMENTATION AND THE  
15 ENTIRE SDU DOES FIT AND SO THAT'S TRANSMITTED.

16 Q DR. KNIGHTLY, HAVE YOU CONSIDERED WHETHER THIS  
17 PATENT, THE AGARWAL REFERENCE, DISCLOSES EACH AND  
18 EVERY LIMITATION OF CLAIMS 10 AND 15 OF THE '941?

19 A YES, I HAVE CONSIDERED THAT AND IT DOES.

20 Q I'M SORRY. WHAT'S YOUR OPINION?

21 A AND IT DOES.

22 Q LET'S START WITH CLAIM 10, AND WE'LL WALK  
23 THROUGH IT QUICKLY LIMITATION BY LIMITATION.

24 AND LET'S TURN TO PDX 36.15, PLEASE.

25 THE PREAMBLE STATES AN APPARATUS FOR

1 TRANSMITTING DATA IN A MOBILE COMMUNICATION SYSTEM.

2 IS THAT PRESENT IN AGARWAL?

3 A YES, IT DOES. AS I MENTIONED, IT'S WIRELESS  
4 NETWORKS AND SATELLITE WIRELESS NETWORKS ARE  
5 MOBILE.

6 Q NEXT ELEMENT BEGINS A TRANSMISSION BUFFER FOR  
7 RECEIVING AN SDU.

8 AND THEN IT CONTINUES. IS THAT ELEMENT  
9 DISCLOSED IN AGARWAL?

10 A YES. SO IT HAS THE BUFFERING AND WE SAW IN  
11 THE FLOW CHART THAT IT WOULD SEE THAT AND THEN MAKE  
12 THAT DETERMINATION THAT, YES OR NO WHETHER IT IS  
13 SEGMENTED OR NOT.

14 Q NEXT ELEMENT IS A TRANSMISSION BUFFER FOR  
15 RECEIVING A SERVICE DATA UNIT. IS THAT ELEMENT  
16 PRESENT OR DISCLOSED IN AGARWAL?

17 A THAT WAS THE ONE I WAS JUST REFERRING TO.

18 Q I'M SORRY. I MISSPOKE. THE NEXT ONE IS A  
19 HEADER INSERT?

20 A YES. SO THE HEADER INSERT WE JUST WENT  
21 THROUGH EARLIER THE DIFFERENT PARTS OF THE HEADER,  
22 THE SEQUENCE NUMBER, THE ONE BIT FIELD, LENGTH.

23 Q NEXT ELEMENT IS A ONE BIT FIELD HEADER. IS  
24 THAT PRESENT IN AGARWAL?

25 A YES. SO THAT ONE BIT, THAT THIRD BIT OF THE



1           HEADER, THAT'S THE ONE BIT FIELD THAT'S SET TO  
2           WHETHER OR NOT THERE'S AN ENTIRE SDU.

3           Q        AND THE NEXT LIMITATION IS A LENGTH INDICATOR  
4           INSERTER. IS THAT DISCLOSED IN AGARWAL?

5           A        YES. WE ALSO DISCUSSED THAT, THAT LENGTH  
6           INDICATOR, AS WELL AS THE PREDEFINED VALUES.

7           Q        FINAL ELEMENT OF CLAIM 10 IS A TRANSMITTER FOR  
8           SENDING PDU'S TO RECEIVER. IS THAT DISCLOSED IN  
9           AGARWAL?

10          A        YES. SO THE SYSTEM TRANSMITS OVER THE  
11          WIRELESS NETWORK AFTER THOSE STEPS.

12          Q        LET'S TURN TO CLAIM 15 IF WE COULD. THE  
13          PREAMBLE SAYS, "AN APPARATUS FOR RECEIVING DATA IN  
14          A MOBILE COMMUNICATIONS SYSTEM." WE'LL PUT THIS ON  
15          THE SCREEN. IT'S PDX 36.22. IS THAT PRESENT IN  
16          AGARWAL, THE PREAMBLE LIMITATION?

17          A        YES. SO FOR THE SAME REASON, IT'S THE -- IT'S  
18          A MOBILE COMMUNICATION SYSTEM, YES.

19          Q        AND ARE THE OTHER LIMITATIONS LISTED HERE IN  
20          PDX 36.22 PRESENT IN AGARWAL, AND COULD YOU EXPLAIN  
21          BRIEFLY HOW, IF SO?

22          A        YES. SO CLAIM 15 IS A RECEIVER SIDE ANALOG  
23          FOR THE SENDER SIDE IN CLAIM 10.

24                    SO AGARWAL ALSO DOES THE RECEIVER SIDE  
25          AFTER IT'S SEGMENTED, PUTTING EVERYTHING BACK

1 TOGETHER AS IN THIS CLAIM.

2 Q DR. KNIGHTLY, IN SUM, WHAT IS YOUR OPINION ON  
3 THE VALIDITY OF THIS PATENT?

4 A THAT THE '941 CLAIMS ARE INVALID IN LIGHT OF  
5 AGARWAL.

6 Q JUST A FEW MORE QUESTIONS.

7 LET'S TURN BACK TO THE ALTERNATIVE E-BIT  
8 IN THE UMTS STANDARD, AND I WANT TO PUT THIS INTO  
9 CONTEXT.

10 HOW LARGE IS THE UMTS STANDARD?

11 A THOUSANDS OF PAGES OF DOCUMENTS.

12 Q AND HOW MUCH OF THE STANDARD IS DEVOTED TO THE  
13 ALTERNATIVE E-BIT?

14 A ABOUT A PAGE.

15 Q NOW, AT THE TIME THE ALTERNATIVE E-BIT WAS  
16 ADOPTED BY THE UMTS WORKING GROUPS, WERE THERE  
17 ALTERNATIVES?

18 A YES, THERE WERE.

19 Q WHAT WERE THEY?

20 A WELL, ONE ALTERNATIVE IS OTHER HEADER  
21 STRUCTURES, SUCH AS WHAT WE JUST SAW, THAT THERE  
22 ARE OTHER WAYS TO, TO DEFINE HEADERS AS AGARWAL  
23 DID.

24 AND THEN ANOTHER ALTERNATIVE IS TO USE  
25 THE ORIGINAL E-BIT INTERPRETATION.

1 Q NOW, FOR A PRODUCT LIKE THE IPHONE OR THE  
2 IPAD, DO THOSE PRODUCTS CONTROL WHETHER THE E-BIT  
3 IS USED?

4 A NO, THEY DON'T.

5 Q WHO DOES?

6 A THE NETWORK SERVICE PROVIDER, SUCH AS AT&T,  
7 DECIDES WHETHER OR NOT THE ALTERNATIVE E-BIT IS  
8 USED BECAUSE IT'S AN OPTION TO THE PROVIDER WHETHER  
9 TO USE THE NORMAL E-BIT OR TO TURN ON THIS OPTION  
10 FOR ALTERNATIVE E-BIT.

11 Q NOW, FOR THE PRODUCTS ACCUSED IN THIS CASE,  
12 WHICH CARRIER IS THE RELEVANT CARRIER?

13 A AT&T.

14 Q HAVE YOU SEEN ANY EVIDENCE THAT AT&T USES THE  
15 ALTERNATIVE E-BIT?

16 A I'VE SEEN NO EVIDENCE THAT THEY EVER TURN IT  
17 ON.

18 Q FINALLY, JUST SO WE'RE CLEAR, WHAT IS YOUR  
19 OPINION AS TO WHETHER OR NOT THE '941 PATENT COVERS  
20 THE ALTERNATIVE E-BIT?

21 A MY OPINION IS THAT IT DOES NOT.

22 MR. MUELLER: NO FURTHER QUESTIONS.

23 THANK YOU.

24 THE COURT: ALL RIGHT. TIME IS NOW 9:54.

25 GO AHEAD, PLEASE.

**CROSS-EXAMINATION**

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BY MR. VERHOEVEN:

Q GOOD MORNING, DR. KNIGHTLY.

A GOOD MORNING.

Q IN YOUR DIRECT EXAMINATION -- LET ME BACK UP.  
WERE YOU HERE FOR DR. WILLIAMS' TESTIMONY?

A YES.

Q OKAY. AND YOU HEARD HIM TESTIFY EXTENSIVELY  
ABOUT THE INTEL SPECIFICATION?

A THE --

Q YES?

A INTEL SOURCE CODE.

Q AND THE SOURCE CODE. DO YOU REMEMBER HIM  
TALKING ABOUT THE DOCUMENTS AND SOURCE CODE? HE  
WENT THROUGH IT IN GREAT DETAIL?

A YES.

Q IN YOUR EXAMINATION, YOU DIDN'T MENTION IT?

A I REVIEWED SCORED, BUT I DIDN'T TALK ABOUT IT.

Q YOU DIDN'T GO THROUGH IT, DID YOU?

A NOT TODAY.

Q YOU DON'T DISPUTE THE ACCURACY OF DR.  
WILLIAMS' DESCRIPTIONS OF HOW THE INTEL CHIP WORKS,  
DO YOU, SIR?

A I AGREE WITH THE STEPS IN THE INTEL CODE, YES.

Q SO CAN WE PUT UP PDX 36.9? NOW, IN YOUR

1 DIRECT EXAMINATION, YOU FOCUSSED IN PART ON THIS  
2 PHRASE AN ENTIRE SDU IN THE DATA FIELD. DO YOU  
3 REMEMBER THAT?

4 A YES.

5 Q NOW, SIR, ISN'T IT TRUE THAT SOMETIMES THE  
6 APPLE ACCUSED PRODUCTS TRANSMIT AN ENTIRE SDU? YES  
7 OR NO, SIR? SOMETIMES THEY DO THAT, DON'T THEY?

8 A WHEN THEY'RE RUNNING THE, THE -- WELL, DO YOU  
9 MEAN WITH OR WITHOUT THE 3G -- THE ALTERNATE E-BIT.

10 Q CAN YOU ANSWER MY QUESTION?

11 A WELL --

12 Q ISN'T IT TRUE THAT SOMETIMES THE APPLE ACCUSED  
13 PRODUCTS TRANSMIT AN ENTIRE SDU? YES OR NO?

14 A WITHOUT THE ALTERNATIVE E-BIT, DEFINITELY,  
15 YES.

16 Q AND SOMETIMES, IF YOU'RE INFRINGING, YOU'RE  
17 STILL INFRINGING, ISN'T THAT TRUE?

18 A OH, WELL, THERE ISN'T THAT BIT, SO THEY HAPPEN  
19 TO HALF AN ENTIRE SDU, BUT NOT WITH THAT BIT.

20 Q IF SOMETIMES THEY'RE TRANSMITTING AN ENTIRE  
21 SDU, THEY'RE TRANSMITTING AN ENTIRE SDU; CORRECT?

22 A YES, BUT NOT WITH THAT BIT INDICATED.

23 Q AND IF YOU'RE INFRINGING SOMETIMES, YOU'RE  
24 STILL INFRINGING; RIGHT?

25 A THEY'RE NOT INFRINGING.

1 Q WOULD YOU AGREE WITH ME, SIR, AS A LEGAL  
2 PRINCIPLE, IS IT YOUR UNDERSTANDING OF THE RULES OF  
3 THE ROAD, THAT IF SOMETIMES YOU'RE INFRINGING,  
4 YOU'RE STILL INFRINGING?

5 A I BELIEVE THAT'S CORRECT.

6 MR. VERHOEVEN: NO FURTHER QUESTIONS.

7 THE COURT: THE TIME IS NOW 9:57. GO  
8 AHEAD.

9 **REDIRECT EXAMINATION**

10 BY MR. MUELLER:

11 Q DR. KNIGHTLY, DO THE APPLE PRODUCTS EVER  
12 INFRINGE?

13 A NO.

14 Q WHY NOT?

15 A BECAUSE THEY DON'T HAVE THE ONE BIT FIELD  
16 THAT'S IN THE CLAIM.

17 MR. MUELLER: THANK YOU. NO FURTHER  
18 QUESTIONS.

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

21 MR. VERHOEVEN: YES.

22 MR. LEE: YES, NOT SUBJECT TO RECALL.

23 THE COURT: NOT SUBJECT TO RECALL, RIGHT?

24 MR. LEE: NOT SUBJECT TO RECALL.

25 THE COURT: OKAY. YOU ARE EXCUSED.

1 CALL YOUR NEXT WITNESS, PLEASE.

2 MS. KREVANS: YOUR HONOR, APPLE CALLS  
3 DR. SUSAN KARE.

4 THE COURT: OKAY.

5 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

6 **SUSAN KARE,**

7 BEING RECALLED AS A WITNESS ON BEHALF OF THE  
8 PLAINTIFF, HAVING BEEN PREVIOUSLY SWORN, WAS  
9 EXAMINED AND TESTIFIED AS FOLLOWS:

10 THE WITNESS: YES.

11 THE CLERK: THANK YOU. PLEASE BE SEATED.

12 THE COURT: ALL RIGHT. TIME IS 9:58. GO  
13 AHEAD, PLEASE.

14 **DIRECT EXAMINATION**

15 BY MS. KREVANS:

16 Q GOOD MORNING, DR. KARE.

17 A GOOD MORNING.

18 Q YOU HAVEN'T BEEN HERE FOR THE LAST FEW DAYS;  
19 RIGHT?

20 A NO.

21 Q ARE YOU AWARE THAT A COUPLE OF DAYS AGO, A --  
22 MS. WANG, WHO IS A DESIGNER FOR SAMSUNG, TESTIFIED  
23 WITH RESPECT TO ICONS THAT IN PARTICULAR FOR TOUCH  
24 PHONES, THE TOUCH AREA MUST BE DEFINED, AND SO  
25 THAT'S WHY IN THE BACKGROUND WE HAVE ROUNDED

1       SQUARES PLACED AND ALSO WE HAVE THE BACKGROUND BOX  
2       RIGHT BEHIND THE ICONS BECAUSE WITHOUT THOSE  
3       BACKGROUND ICONS, IT WOULD BE -- IT WOULD SEEM AS  
4       IF THE ICON ITSELF IS VERY SMALL AND ALSO IN ORDER  
5       TO GIVE SOME COLOR, OR BRING OUT THE COLOR OF THE  
6       BACKGROUND ICONS WERE NECESSARY, WHERE THE  
7       BACKGROUND BOXES WERE NECESSARY.

8                   HAVE YOU REVIEWED THAT TESTIMONY?

9       A       YES.

10       Q       DO YOU AGREE WITH MS. WONG, THE SAMSUNG  
11       DESIGNER?

12       A       NO. 100 PERCENT NO.

13       Q       AND WHY DO YOU DISAGREE?

14       A       BECAUSE ON A TOUCHSCREEN, WHAT'S IMPORTANT IS  
15       THAT THERE'S A TARGET FOR YOUR FINGER, AND THAT  
16       DOESN'T NEED TO BE ENCLOSED IN A FENCE.

17                   IF YOU HAVE SOMETHING TO AIM AT, AND AT  
18       TIMES IT MIGHT BE AN ADVANTAGE JUST TO HAVE MORE  
19       SPACE SEPARATING THOSE TARGETS.

20                   BUT IT'S AN OPTION, NOT A REQUIREMENT.

21       Q       SO JUST SO WE'RE CLEAR, CAN YOU TELL THE JURY  
22       WHETHER, IN YOUR VIEW AS A DESIGNER, IT IS OR IS  
23       NOT NECESSARY FOR ICONS, ON A TOUCHSCREEN ON A  
24       SMARTPHONE, TO BE ENCLOSED IN A CONTAINER?

25       A       NO .



1 Q IT'S NOT NECESSARY?

2 A NOT NECESSARY.

3 Q IF -- CAN YOU TELL US WHETHER OR NOT, IF A  
4 DESIGNER CHOSE TO ENCLOSE ICONS IN A CONTAINER, THE  
5 CONTAINER NECESSARILY HAS TO BE GENERALLY  
6 RECTANGULAR IN SHAPE?

7 A THAT IS NOT NECESSARY, NO.

8 Q WHY IS THAT NOT NECESSARY?

9 A BECAUSE IF YOU CHOOSE TO USE A CONTAINER,  
10 WHICH I THINK FREQUENTLY IS A WAY, A METAPHOR FOR A  
11 REAL WORLD BUTTON, WHICH COULD BE A GOOD THING THAT  
12 PEOPLE ARE FAMILIAR WITH PRESSING A BUTTON, BUT  
13 JUST LIKE IN THE WORLD, THERE'S ALL KINDS OF OVALS  
14 AND SQUARES AND CIRCLES ON BLENDER AND TOASTERS AND  
15 MICROWAVES. ANY OF THOSE COULD BE RENDERED ON A  
16 TOUCHSCREEN.

17 Q SO YOU'RE SAYING THE METAPHORICAL BUTTON, IT  
18 COULD BE IN A VARIETY OF SHAPES?

19 A YES.

20 Q AND IF THE DESIGNER OF A SCREEN FOR A  
21 TOUCHSCREEN DISPLAY FOR A SMARTPHONE DID DECIDE TO  
22 USE A CONTAINER OF SOME SHAPE OR OTHER, DOES IT  
23 HAVE TO BE COLORED?

24 A NO. SOMETIMES BLACK AND WHITE IS STRONG AND  
25 TERRIFIC.

1 Q OKAY. LET'S TALK ABOUT ONE PARTICULAR ICON  
2 FOR A MOMENT, THE PHONE ICON.

3 CAN YOU TELL US WHETHER OR NOT A DESIGNER  
4 WHO'S DESIGNING A TOUCHSCREEN FOR A SMARTPHONE,  
5 WHEN THEY GET TO THE PHONE ICON, HAS TO HAVE A  
6 PICTURE OF A TELEPHONE HANDSET ON IT?

7 A NO, NOT NECESSARY.

8 Q WHAT OTHER KINDS OF THINGS COULD THEY DO?

9 A WELL, IT COULD BE A PAD OF NUMBERS; IT COULD  
10 BE A SHAPE OF A GENERIC PHONE; COULD BE -- I'M SURE  
11 THERE'S EVEN THINGS THAT WE HAVEN'T USED THAT MIGHT  
12 WORK THAT WOULD MEAN COMMUNICATE WITH A PHONE  
13 BECAUSE IT'S REALLY ABOUT MAKING A CALL, NOT A  
14 PARTICULAR PHYSICAL OBJECT.

15 Q LET'S SAY THEY DID TRY TO USE, DECIDE TO USE A  
16 PICTURE, SOME KIND OF GRAPHIC OF A HANDSET. DOES  
17 IT HAVE TO BE THAT RETRO STYLE YOU TALKED ABOUT  
18 LAST TIME YOU WERE HERE?

19 A I THINK IT COULD BE STYLIZED SO IT ISN'T SO  
20 EXACTLY IN THE SHAPE OF THAT RETRO PHONE.

21 Q AND DOES IT HAVE TO BE IN A PARTICULAR  
22 POSITION IF YOU CHOSE TO USE A HANDSET?

23 A IT DOESN'T HAVE TO BE.

24 Q OKAY. I'D LIKE TO SHOW YOU A SMARTPHONE  
25 CALLED THE PANTECH HOTSHOT WHICH HAS BEEN MARKED AS

1 EXHIBIT PX 2277.

2 AND, YOUR HONOR, THIS IS A REBUTTAL  
3 EXHIBIT, AND ALTHOUGH THESE WERE NOT SUBJECT TO THE  
4 200 LIMIT, IN ORDER TO RESPECT THE LIMIT, WE'RE  
5 INTERESTING TO TAKE AN EXHIBIT OFF OF OUR ORIGINAL  
6 LIST, SO WE WON'T GO OVER 200 BY MARKING THIS.

7 THE COURT: OKAY.

8 BY MS. KREVANS:

9 Q OKAY. WHAT ARE WE LOOKING AT RIGHT NOW ON THE  
10 SCREEN, DR. KARE?

11 A THIS IS A SMARTPHONE APPLICATION SCREEN  
12 WITH -- IT'S INTERESTING BECAUSE THERE'S A MIX OF  
13 ICON SHAPES.

14 AT THE TOP, THERE'S FOUR ROWS OF THREE  
15 ICONS, AND AT THE BOTTOM, THERE'S FOUR ICONS. SO  
16 IT'S KIND OF A DIFFERENT GRID ON TOP AND BOTTOM.

17 Q OKAY.

18 MS. KREVANS: YOUR HONOR, WE WOULD MOVE  
19 PX 2277, THE PANTECH HOTSHOT INTO EVIDENCE.

20 THE COURT: ANY OBJECTION?

21 MR. VERHOEVEN: NO OBJECTION, YOUR HONOR.

22 THE COURT: IT'S ADMITTED.

23 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER  
24 2277, HAVING BEEN PREVIOUSLY MARKED FOR  
25 IDENTIFICATION, WAS ADMITTED INTO

1 EVIDENCE.)

2 BY MS. KREVANS:

3 Q DR. KARE, DOES THE SCREEN DISPLAY ON THE  
4 PANTECH HOTSHOT HAVE THE CONSISTENT ICON STYLE  
5 DESCRIBED BY MS. WONG?

6 A NO.

7 MR. VERHOEVEN: OBJECTION, LEADING.

8 THE COURT: SUSTAINED.

9 BY MS. KREVANS:

10 Q CAN YOU TELL US WHETHER OR NOT, DR. KARE, THE  
11 SCREEN DISPLAY ON THE PANTECH HOTSHOT HAS THE  
12 CONSISTENT ICON STYLE THAT MS. WONG TALKED ABOUT?

13 MR. VERHOEVEN: SAME OBJECTION.

14 THE COURT: OVERRULED.

15 THE WITNESS: THE ICONS ON -- AT THE TOP  
16 OF THIS SCREEN DON'T HAVE A CONSISTENT SHAPE.  
17 THEY'RE -- THERE'S A MIX OF SHAPES.

18 BY MS. KREVANS:

19 Q OKAY.

20 A SO THEY'RE NOT IN CONTAINERS, AND, YOU KNOW,  
21 THEY'RE ROUND, PUZZLE SHAPED.

22 Q WHAT DO YOU SEE IN TERMS OF THE COLOR CHOICES  
23 THAT HAVE BEEN MADE WITH RESPECT TO THE PANTECH  
24 HOTSHOT?

25 A YOU KNOW, THEY HAVE SOME PRIMARY COLORS AND

1           THEY'RE -- THE ICONS AT THE TOP HAVE COLORS, BUT  
2           THE ICONS AT THE BOTTOM OF THE SCREEN WHERE THERE'S  
3           THE FOUR IN A ROW ARE NOT COLOR, AND THEY'RE  
4           TREATED DIFFERENTLY THAN THE ICONS AT THE TOP.

5           Q        OKAY. LET ME ASK YOU, DR. KARE, I KNOW YOU'RE  
6           LEANING INTO THE SCREEN SO YOU CAN SEE IT, IF YOU  
7           CAN PULL THE MIKE A LITTLE CLOSER TO YOUR MOUTH SO  
8           WE CAN ALL HEAR YOU, THAT WOULD BE GREAT.

9           A        SORRY.

10          Q        WHAT'S THE PHONE ICON ON THE PANTECH HOTSHOT?

11          A        IT'S LABELED KEYPAD AND IT'S A LITTLE GRID OF  
12          NUMBERS.

13          Q        LET ME SHOW YOU ANOTHER SMARTPHONE. THIS ONE  
14          IS CALLED THE BLACKBERRY STORM. IT'S BEEN MARKED  
15          FOR IDENTIFICATION AS EXHIBIT PX 2278.

16                   MR. VERHOEVEN: YOUR HONOR, THIS IS  
17          MR. VERHOEVEN. YOU CAN'T SEE ME BECAUSE OF ALL THE  
18          PEOPLE.

19                   FOR THE RECORD, WE'RE SHOWING THESE  
20          IMAGES AND I THINK THEY'RE NOT CASTING ANY  
21          ASPERSIONS, BUT WE'RE GOING TO A SPECIFIC SCREEN ON  
22          EACH OF THESE PHONES AND WE SHOULD PROBABLY PUT  
23          WHAT SCREEN THEY'RE SHOWING IN THE RECORD.

24                   MS. KREVANS: YOUR HONOR, I THOUGHT I HAD  
25          DONE THAT.

1 Q LET ME ASK, DR. KARE, ARE WE LOOKING AT THE  
2 APPLICATIONS SCREENS OF EACH OF THOSE PHONES,  
3 DR. KARE?

4 A YES.

5 MS. KREVANS: YOUR HONOR, WE WOULD  
6 MOVE THIS EXHIBIT 2278.

7 WE WOULD MOVE 2278, WHICH IS THE  
8 BLACKBERRY STORM INTO EVIDENCE, AND, AGAIN, WE WILL  
9 TAKE ONE EXHIBIT OFF OF OUR ORIGINAL LIST TO MAKE  
10 ROOM FOR THIS.

11 MR. VERHOEVEN: NO OBJECTION, YOUR HONOR.

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

13 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER  
14 2278, HAVING BEEN PREVIOUSLY MARKED FOR  
15 IDENTIFICATION, WAS ADMITTED INTO  
16 EVIDENCE.)

17 BY MS. KREVANS:

18 Q CAN YOU TELL THE JURY, WITH RESPECT TO THE  
19 BLACKBERRY STORM, DR. KARE, WHETHER OR NOT THIS  
20 APPLICATION SCREEN DISPLAY HAS THE CONSISTENT ICON  
21 STYLE DESCRIBED BY MS. WONG?

22 A NO, IT DOESN'T.

23 Q WHAT DOES IT HAVE?

24 A IT HAS ALMOST MONOCHROMATIC ICONS WITH SOME  
25 FLAT COLOR ACCENTS.

1 SO I THINK WHAT JUMPS OUT IS THE ICONS  
2 ARE IRREGULAR SHAPED, THERE'S NOT MUCH COLOR,  
3 THEY'RE ALL STYLIZED, SO THAT'S WHAT UNIFIES THOSE  
4 ICONS.

5 THEY ARE ON REALLY SUBTLE BUTTON  
6 BACKGROUNDS THAT ARE SHARP CORNERED RECTANGLES THAT  
7 ABUTTED EACH OTHER WITH NO SPACE IN BETWEEN.

8 Q OKAY. GOING BACK TO THE HOTSHOT FOR A MOMENT,  
9 ARE THERE CONTAINERS ON THE HOTSHOT SCREEN?

10 A NO.

11 Q OKAY. LET ME SHOW YOU ONE MORE.

12 A THEY'RE NOT CONSISTENT -- JUST TO BE REALLY  
13 CLEAR, THERE'S NOT A CONSISTENT CONTAINER SHAPE.

14 Q OKAY. WHERE DO YOU SEE CONTAINERS?

15 A THERE ARE A COUPLE ICONS, MY VERIZON AND MEDIA  
16 CENTER, THAT ARE RECTANGULAR THAT LOOK MORE LIKE  
17 BUTTONS. BUT THAT'S NOT THE MAJORITY AND IT'S NOT  
18 CONSISTENT.

19 Q OKAY. LET'S LOOK AT ONE MORE, AND THIS IS PX  
20 158-A, WHICH IS IN EVIDENCE.

21 SO IF WE COULD SWITCH BACK, THOMAS, TO  
22 YOUR SCREEN.

23 DR. KARE, CAN YOU TELL THE JURY WHETHER  
24 OR NOT THE APPLICATION SCREENS OF THE BLACKBERRY  
25 TORCH 9850, WHICH IS SHOWN ON 158-A, HAVE THE

1 CONSISTENT ICON STYLE TALKED ABOUT BY MS. WANG?

2 A NO.

3 Q DO THEY HAVE CONTAINERS?

4 A NO.

5 Q JUST LOOKING AT THESE TWO AND THINKING ABOUT  
6 THE OTHER TWO THAT WE JUST SAW, THE PANTECH HOTSHOT  
7 APPLICATION SCREEN AND THE BLACKBERRY STORM, DO ANY  
8 OF THESE SCREEN DISPLAYS HAVE DESIGNS THAT ARE  
9 SUBSTANTIALLY SIMILAR TO THE D'305 PATENT DESIGN  
10 AND THE IPHONE HOME SCREEN?

11 A NO.

12 MS. KREVANS: NOTHING FURTHER, YOUR  
13 HONOR.

14 THE COURT: ALL RIGHT. THE TIME IS  
15 10:09.

16 GO AHEAD, PLEASE.

17 **CROSS-EXAMINATION**

18 BY MR. VERHOEVEN:

19 Q GOOD MORNING, DR. KARE. GOOD TO SEE YOU  
20 AGAIN?

21 A GOOD MORNING.

22 Q NOW, ON YOUR DIRECT EXAMINATION THIS MORNING,  
23 YOU REFERRED SEVERAL TIMES TO WHAT YOU FELT WAS  
24 NECESSARY OR NOT NECESSARY. DO YOU REMEMBER THAT?

25 A YES.



1 Q BUT DIDN'T YOU TELL THIS JURY LAST WEEK THAT  
2 YOU DIDN'T INVESTIGATE THE FUNCTIONALITY OF ICONS  
3 AS PART OF YOUR EXPERT WORK?

4 A THE SCOPE OF WHAT I WAS ASKED TO DO FOR THIS  
5 PROJECT WAS OVERALL VISUAL IMPRESSION.

6 Q LET'S SEE WHAT YOU SAID ON THE 7TH OF AUGUST.  
7 CAN WE BRING UP TRIAL TRANSCRIPT FROM AUGUST 7TH,  
8 PAGE 1470, LINES 2 THROUGH -- 12 THROUGH 16.

9 CAN YOU HIGHLIGHT THAT.

10 I BELIEVE I ASKED YOU, "IS IT FAIR TO SAY  
11 THAT YOU DIDN'T INVESTIGATE THE FUNCTIONALITY OF  
12 THE ICONS AND HOW THEY WORK AND HOW A USER WOULD  
13 INTERACT WITH THEM AS PART OF YOUR ANALYSIS?"

14 AND I BELIEVE YOUR ANSWER WAS YES.

15 IS THAT RIGHT?

16 A YES.

17 Q YOU DIDN'T CONSIDER HOW THEY WORK, DID YOU?

18 A NOT TO COMPARE WHETHER THERE WAS SUBSTANTIAL  
19 VISUAL SIMILARITY.

20 Q AND YOU DIDN'T COMPARE -- YOU DIDN'T CONSIDER,  
21 AS PART OF YOUR ANALYSIS FOR YOUR EXPERT OPINION,  
22 HOW A USER WOULD INTERACT WITH THOSE ICONS WAS PART  
23 OF YOUR ANALYSIS, DID YOU?

24 A NO.

25 Q BUT NOW YOU'RE UP HERE TELLING US WHAT IS AND

1 ISN'T NECESSARY FOR A USER?

2 A I WAS ASKED WHAT WAS -- WHAT WERE LIMITS OF  
3 THE VISUAL, VISUAL INCARNATION OF DIFFERENT ICONS  
4 AND HOW -- WHETHER THOSE ICONS HAVE TO LOOK A  
5 CERTAIN WAY.

6 Q WELL, IT'S FAIR TO SAY, DR. KARE, THAT AS PART  
7 OF WHAT YOU WERE RETAINED TO DO AND THE ANALYSIS  
8 YOU ACTUALLY DID, YOU DID NOT CONSIDER, FROM A  
9 FUNCTIONAL STANDPOINT, WHAT IS OR IS NOT NECESSARY  
10 FOR THE USER; RIGHT?

11 A RIGHT.

12 MR. VERHOEVEN: THANK YOU. NO FURTHER  
13 QUESTIONS.

14 THE COURT: ALL RIGHT. THE TIME IS NOW  
15 10:11.

16 IS THERE ANY REDIRECT, OR MAY THIS  
17 WITNESS BE EXCUSED? AND I ASSUME IT'S NOT SUBJECT  
18 TO RECALL.

19 MS. KREVANS: SHE MAY, AND SHE IS NOT,  
20 YOUR HONOR.

21 THE COURT: ALL RIGHT. YOU ARE EXCUSED.

22 MR. LEE: YOUR HONOR, APPLE CALLS  
23 DR. MICHAEL WALKER.

24 THE COURT: OKAY. IF YOU ALL WANT TO  
25 STAND UP AND STRETCH WHILE WE'RE MOVING, PLEASE

1 FEEL FREE TO DO THAT.

2 THAT'S TO EVERYONE IF YOU WANT TO STAND  
3 UP AND STRETCH A BIT.

4 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

5 **MICHAEL WALKER,**

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: ALL RIGHT. IT'S 10:12. GO  
12 AHEAD, PLEASE.

13 **DIRECT EXAMINATION**

14 BY MR. MUELLER:

15 Q GOOD MORNING, DR. WALKER. COULD YOU PLEASE  
16 INTRODUCE YOURSELF TO THE JURY BY TELLING THEM YOUR  
17 NAME AND WHERE YOU LIVE?

18 A GOOD MORNING. MY NAME IS MICHAEL WALKER, AND  
19 I LIVE IN NEWBURY IN THE UNITED KINGDOM.

20 Q AND, DR. WALKER, IF YOU COULD SIT A LITTLE BIT  
21 CLOSER TO THE MICROPHONE, PLEASE.

22 DR. WALKER, HAVE YOU BEEN RETAINED BY  
23 APPLE AS AN EXPERT WITNESS IN THIS CASE?

24 A YES, I HAVE.

25 Q CAN YOU PLEASE SUMMARIZE YOUR EDUCATIONAL

1 BACKGROUND FOR THE JURY?

2 A YES, I RECEIVED AN HONOR'S DEGREE IN  
3 MATHEMATICS FROM THE UNIVERSITY OF LONDON; PH.D.  
4 FROM THE SAME UNIVERSITY; AND A FEW YEARS LATER I  
5 DID A FURTHER POST-DOCTORATE DEGREE AT THE  
6 UNIVERSITY IN GERMANY.

7 Q DR. WALKER, HAVE YOU EVER WORKED IN THE  
8 TELECOMMUNICATIONS INDUSTRY?

9 A YES, I HAVE, FOR ABOUT 25 YEARS.

10 Q COULD YOU BRIEFLY REVIEW THE POSITIONS YOU'VE  
11 HELD?

12 A YES. I STARTED IN THE TELECOMMUNICATIONS  
13 INDUSTRY BY WORKING FOR RACAL ELECTRONICS.

14 Q AND COULD YOU SPELL THAT?

15 A R-A-C-A-L ELECTRONICS. RACAL ELECTRONICS WAS  
16 A LARGE COMMUNICATIONS COMPANY SPECIALIZING IN  
17 MILITARY COMMUNICATIONS IN THE UK.

18 I THEN WENT ON TO WORK FOR VODOFONE AND  
19 VODOFONE IS THE WORLD'S LARGEST MOBILE CELLULAR  
20 OPERATOR.

21 Q NOW, AT SOME POINT DID YOU LEAVE VODOFONE?

22 A YES. I LEFT VODOFONE IN 2009. I RETIRED END  
23 OF AUGUST 2009.

24 Q AND WHERE DO YOU WORK TODAY?

25 A TODAY I WORK AT KING'S COLLEGE, LONDON.

1 Q WHAT IS YOUR POSITION AT KING'S COLLEGE?

2 A AT KING'S COLLEGE I HEAD THE SCHOOL OF NATURAL  
3 AND MATHEMATICAL LICENSES.

4 Q WHAT ARE YOUR RESPONSIBILITIES, DR. WALKER, AS  
5 HEAD OF SCHOOL?

6 A TO DIRECT THE SCHOOL IN TERMS OF ITS RESEARCH  
7 AND ITS TEACHING.

8 Q DR. WALKER, ARE YOU FAMILIAR WITH THE CONCEPT  
9 OF STANDARDS?

10 A YES, I'M VERY FAMILIAR WITH STANDARDS.

11 Q WHAT IS A STANDARD?

12 A BASICALLY FOR A TECHNICAL STANDARD, IT IS A  
13 COLLECTION OF SPECIFICATIONS WHICH, IF YOU BUILD A  
14 PRODUCT CONFORMING PRECISELY TO THAT SET OF  
15 SPECIFICATIONS, THEN IT WILL INTERWORK WITH ANY  
16 OTHER PRODUCT BUILT BY ANY OTHER COMPANY THAT  
17 CONFORMS AS WELL TO THAT SET OF SPECIFICATIONS.

18 Q ARE YOU FAMILIAR WITH AN ORGANIZATION CALLED  
19 THE EUROPEAN TELECOMMUNICATIONS STANDARD INSTITUTE,  
20 OR ETSI?

21 A YES, I'M VERY FAMILIAR WITH ETSI.

22 Q WHAT IS ETSI?

23 A IT'S A EASTERN BODY, IT'S ONE OF THREE  
24 STANDARDS. SO IT'S TASKED TO CREATE  
25 TELECOMMUNICATIONS STANDARDS FOR EUROPE.

1 Q HAVE YOU BEEN PERSONALLY INVOLVED WITH ETSI?

2 A YES, I'VE BEEN PERSONALLY INVOLVED WITH ETSI  
3 SINCE IT BEGAN.

4 Q WHEN DID IT BEGIN?

5 A IN 1988.

6 Q AND YOU'VE BEEN INVOLVED SINCE THE BEGINNING?

7 A YES, I HAVE.

8 Q CAN YOU GIVE US AN OVERVIEW OF THE LEADERSHIP  
9 POSITIONS THAT YOU'VE HELD AT ETSI?

10 A YES. I'VE HELD LEADERSHIP POSITIONS AS  
11 CHAIRMAN OF THREE TECHNICAL BODIES, BODIES  
12 RESPONSIBLE FOR DEVELOPING TECHNICAL  
13 SPECIFICATIONS, AND I WAS ALSO FOR THREE YEARS  
14 CHAIRMAN OF THE ETSI BOARD.

15 Q ARE YOU FAMILIAR WITH A DOCUMENT CALLED THE  
16 ETSI INTELLECTUAL PROPERTY RIGHTS POLICY?

17 A YES, I AM. THAT'S THE ETSI I.P. POLICY. IT'S  
18 FUNDAMENTAL TO THE WORKING OF ETSI.

19 Q AND HAVE YOU EVER HAD ANY PERSONAL INVOLVEMENT  
20 IN ADMINISTERS THAT IPR POLICY?

21 A YES. AS CHAIRMAN OF THE TECHNICAL BODY, YOU  
22 ARE REQUIRED AT THE BEGINNING OF EVERY MEETING TO  
23 DO WHAT'S CALLED A CALL FOR IPR'S, WHICH IS A  
24 FUNDAMENTAL PART OF THE POLICY. AND IT IS ASKING  
25 THE PEOPLE PRESENT, THE PARTICIPANTS AT THE

1 MEETING, THAT IF THEIR COMPANIES HAVE IPR THAT IS  
2 RELATED TO THE PROPOSALS THAT THEY'RE NOW MAKING TO  
3 THE MEETING, THEN THEY SHOULD DECLARE THAT IPR.

4 Q NOW, ARE PATENTS A FORM OF IPR?

5 A PATENTS ARE A FORM OF IPR, YES.

6 Q AND THE CALL FOR IPR WOULD APPLY TO PATENTS?

7 A IT WOULD APPLY TO PATENTS AND PATENT  
8 APPLICATIONS.

9 Q DR. WALKER, HAVE YOU RECEIVED ANY HONORS OR  
10 AWARDS FOR YOUR WORK IN THE TELECOMMUNICATIONS  
11 FIELD?

12 A YES. I WAS APPOINTED AN OFFICER OF THE ORDER  
13 OF THE BRITISH EMPIRE IN 2009.

14 Q WHAT DOES IT MEAN TO BE APPOINTED AN OFFICER  
15 OF THE ORDER OF THE BRITISH EMPIRE?

16 A THAT'S AN HONOR CONFERRED BY THE MONARCH FOR  
17 SERVICES TO THE NATION, AND IN MY CASE, IT WAS  
18 SERVICES TO THE TELECOMMUNICATIONS INDUSTRY.

19 MR. MUELLER: YOUR HONOR, AT THIS POINT I  
20 OFFER DR. WALKER AS AN EXPERT IN THE FIELD OF  
21 TELECOMMUNICATIONS STANDARDS AND IPR POLICY,  
22 INCLUDING ETSI.

23 MR. VERHOEVEN: NO FURTHER OBJECTION,  
24 YOUR HONOR.

25 THE COURT: ALL RIGHT. HE'S SO

1 CERTIFIED. GO AHEAD, PLEASE.

2 BY MR. MUELLER:

3 Q DR. WALKER, WHAT STANDARDS HAS ETSI DEVELOPED  
4 FOR WIRELESS COMMUNICATIONS?

5 A SO FOR WIRELESS COMMUNICATIONS, ETSI HAS  
6 DEVELOPED THE 3G -- THE GSM STANDARD, WHICH IS THE  
7 SECOND GENERATION TECHNOLOGY USED BY THE MAJORITY  
8 OF PEOPLE, SOMETHING LIKE 80 PERCENT OF TELEPHONE  
9 USERS, MOBILE TELEPHONE USERS IN THE WORLD. IT HAS  
10 DEVELOPED SOME CORDLESS COMMUNICATION STANDARDS,  
11 ONE IN PARTICULAR. IT'S DEVELOPED THE UMTS  
12 STANDARD. AND IT'S NOW WORKING ON THE LTE AND THE  
13 LTE ADVANCED STANDARDS.

14 Q NOW, YOU MENTIONED THE UMTS STANDARD. CAN YOU  
15 GIVE US AN IDEA, HOW BIG IS THAT STANDARD?

16 A I THINK SOMEONE DESCRIBED IT THIS MORNING.  
17 IT'S SEVERAL THOUSANDS OF SPECIFICATIONS. SO IF  
18 YOU WERE TO PUT THEM IN BINDERS, EACH ABOUT A  
19 CENTIMETER LONG, I THINK YOU'RE TALKING ABOUT 10  
20 METERS OR SO OF SPECIFICATIONS. SO 30 FEET OR SO.  
21 IT'S A SIGNIFICANT PIECE OF WORK.

22 Q AND HOW MANY COMPANIES WERE INVOLVED IN  
23 CREATING THAT STANDARD?

24 A OH, GOSH. HUNDREDS OF COMPANIES. EVERY --  
25 PRETTY WELL EVERY TELECOMMUNICATIONS MANUFACTURERS,



1 EVERY TELECOMMUNICATIONS OPERATOR, AND BY THE VAST  
2 MAJORITY OF TELECOMMUNICATIONS REGULATORS IN THE  
3 WORLD ARE INVOLVED IN THE CREATION OF THAT.

4 Q IS SAMSUNG A MEMBER OF ETSI?

5 A YES, SAMSUNG IS A MEMBER.

6 Q IS APPLE A MEMBER OF ETSI?

7 A APPLE ALSO IS A MEMBER.

8 Q NOW, ARE YOU FAMILIAR WITH SOMETHING CALLED A  
9 WORKING GROUP?

10 A YES, I AM.

11 Q CAN YOU DESCRIBE THE JURY THE ROLE OF A  
12 WORKING GROUP AT ETSI?

13 A LET ME EXPLAIN THAT. WHEN ETSI DECIDES IT'S  
14 GOING TO CREATE A STANDARD IN A PARTICULAR AREA,  
15 THAT STANDARD WILL CONSIST OF AN OUTLINE OF MANY  
16 SPECIFICATIONS, EACH DEALING WITH A DIFFERENT  
17 ASPECT OF THE STANDARD.

18 SO IT WILL DIVIDE UP ALL THE  
19 SPECIFICATIONS THAT NEED TO BE DONE INTO GROUPS AND  
20 WORKING GROUPS WILL BE ASSIGNED TO COMPLETE THE  
21 SPECIFICATION IN PARTICULAR AREAS.

22 SO A WORKING GROUP WILL BE CONSISTENT OF  
23 A COLLECTION OF PEOPLE FROM DIFFERENT COMPANIES  
24 THAT HAVE EXPERTISE IN THE PARTICULAR AREA AND THAT  
25 PARTICULAR AREA WILL THEN REPRESENT A SET OF

1 SPECIFICATIONS THAT WILL MAKE UP THE STANDARD.

2 Q WHEN THE WORKING GROUP'S WORK IS DONE, WHAT IS  
3 THEIR END PRODUCT?

4 A THEIR END PRODUCT IS, IS THE, THAT PART OF THE  
5 STANDARD THAT THEY'RE RESPONSIBLE FOR.

6 Q WHERE, SIR, IF AT ALL, DO PATENTS FIT IN THIS  
7 PROCESS?

8 A WELL, WHERE PATENTS FIT IN, IN THE FOLLOWING  
9 WAY. THE STANDARD IS DEVELOPED BY CONSENSUS, SO  
10 THE PEOPLE THAT COME ALONG ARE WORKING IN THE  
11 WORKING GROUPS, COMING FROM COMPANIES AND THEY'RE  
12 BRINGING THE IDEAS THAT ARE BEING DEVELOPED WITHIN  
13 THOSE COMPANIES TO CONTRIBUTE TO THE STANDARD.

14 NOW, WHEN THEY COME ALONG, THE COMPANY  
15 MAY HAVE IPR ASSOCIATED WITH THE IDEAS THEY'RE  
16 BRINGING ALONG. SO THE PROPOSALS MADE CONTAIN IPR  
17 THAT THE COMPANY HAS.

18 Q DR. WALKER, ARE YOU FAMILIAR WITH THE CONCEPT  
19 OF AN ESSENTIAL PATENT?

20 A YES, I AM FAMILIAR WITH THAT.

21 Q AND AT ETSI, WHAT DOES THAT MEAN?

22 A THAT MEANS THAT AN ESSENTIAL PATENT OR  
23 ESSENTIAL IPR MEANS THAT THERE IS IPR IN STANDARDS,  
24 SO THE PATENT RELATED TO IPR IN THE STANDARD,  
25 WHEREBY IT IS IMPOSSIBLE, TECHNICALLY IMPOSSIBLE TO

1 IMPLEMENT THE STANDARD WITHOUT INFRINGING OR USING  
2 THAT IPR. THERE'S NO WAY AROUND IT. YOU WILL HAVE  
3 TO USE THAT IPR IF YOU WANT TO DO A PRODUCT  
4 CONFORMING TO THAT STANDARD.

5 Q NOW, DOES ETSI AS AN ORGANIZATION MAKE  
6 DETERMINATIONS AS TO WHICH PATENTS ARE ESSENTIAL  
7 AND WHICH ARE NOT?

8 A NO. THE MEMBERSHIP MAKES THAT DETERMINATION.  
9 THERE'S NO FORMAL PROCESS OF DETERMINING WHETHER A  
10 PATENT OR WHETHER IT'S ESSENTIAL OR EVEN WHETHER  
11 IT'S VALID.

12 Q AND SO WHEN A PATENT IS DECLARED ESSENTIAL,  
13 WHAT DOES THAT MEAN?

14 A THAT MEANS THAT THE COMPANY CONCERNED HAS SAID  
15 THIS PATENT READS ON TO THE STANDARD, OR THIS  
16 PATENT APPLICATION READS ON TO THE STANDARD AND IT  
17 IS READING ON AS IPR IN AN ESSENTIAL WAY, THAT IS  
18 TO SAY, YOU CAN'T IMPLEMENT THE STANDARD WITHOUT  
19 USING MY IPR. AND THAT'S A TRUST. THE MEMBERSHIP  
20 BRINGS THOSE STATEMENTS TO ETSI ON A TRUST BASIS.

21 Q AND IF A PATENT IS DECLARED ESSENTIAL, DOES  
22 THAT MEAN IT NECESSARILY IS ESSENTIAL?

23 A NO, NOT AT ALL. IN FACT, THERE ARE PROBABLY  
24 QUITE A LOT OF PATENTS THERE THAT AREN'T ESSENTIAL,  
25 BECAUSE YOU ARE ENCOURAGED TO DECLARE ANY IPR THAT

1 YOU BELIEVE MAY BECOME ESSENTIAL TO THE STANDARD,  
2 WHICH SORT OF ENCOURAGES AN OVER DECLARATION.

3 SO THERE PROBABLY ARE PATENTS THAT HAVE  
4 BEEN DECLARED THAT ARE NOT ESSENTIAL.

5 Q LET'S TURN, IF WE COULD, SIR, TO TAB 1 OF YOUR  
6 BINDER, WHICH IS PLAINTIFF'S EXHIBIT 74.

7 DO YOU RECOGNIZE THAT?

8 A YES, I DO. IT'S THE 1997 VERSION OF THE ETSI  
9 IPR POLICY.

10 MR. MUELLER: YOUR HONOR, I OFFER THIS AS  
11 PLAINTIFF'S EXHIBIT 74.

12 THE COURT: ANY OBJECTION?

13 MR. VERHOEVEN: NO, YOUR HONOR.

14 THE COURT: IT'S ADMITTED.

15 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER  
16 74, HAVING BEEN PREVIOUSLY MARKED FOR  
17 IDENTIFICATION, WAS ADMITTED INTO  
18 EVIDENCE.)

19 BY MR. MUELLER:

20 Q DR. WALKER, THIS IS THE ETSI INTELLECTUAL  
21 PROPERTY RIGHTS POLICY AS OF 1997.

22 DOES THIS POLICY EXPLAIN ITS OBJECTIVES?

23 A YES, IT DOES. AND IF YOU TURN THE PAGE IN  
24 SECTION 3 OF THE POLICY --

25 Q AND IF WE COULD BLOW UP CLAUSE 3, COULD YOU

1 EXPLAIN WHAT WE SEE?

2 A YES. IN GENERAL TERMS, THE OBJECTIVES OF THE  
3 IPR POLICY ARE TO ENSURE THAT IPR THAT'S IN A  
4 STANDARD CAN'T BE USED TO, OR SHOULDN'T BE USED TO  
5 ACTUALLY PROHIBIT THE USE OF THAT STANDARD.

6 SO IT SHOULDN'T BE A BARRIER TO THE  
7 ADOPTION OF THAT STANDARD.

8 Q SIR, LET ME FOCUS YOUR ACTION, IF I COULD, ON  
9 THE LAST SENTENCE IN SECTION 3.1. DO YOU SEE WHERE  
10 IT STATES, QUOTE, IN ACHIEVING THIS OBJECTIVE, THE  
11 ETSI IPR POLICY SEEKS A BALANCE BETWEEN THE NEEDS  
12 OF STANDARDIZATION FOR PUBLIC USE IN THE FIELD OF  
13 TELECOMMUNICATIONS AND THE RIGHTS OF THE OWNERS OF  
14 IPR'S. DO YOU SEE THAT?

15 A YES, I DO.

16 Q HOW DOES THE ETSI IPR POLICY ATTEMPT TO  
17 ACHIEVE THIS BALANCE?

18 A IT ACHIEVES IT BY ENSURING THAT IF YOU HAVE  
19 IPR IN THE POLICY AND YOU DECLARE -- IN THE  
20 STANDARD AND YOU ASSERT THAT IPR IN THE STANDARD,  
21 THEN YOU WILL GAIN -- YOU WILL BE -- YOU WILL HAVE  
22 THE RIGHT TO ASK FOR ROYALTIES UNDER FRAND TERMS.

23 ON THE OTHER SIDE, IT REQUIRES DISCLOSURE  
24 OF THE IPR SO THAT -- SO IF YOU -- IF YOU ARE GOING  
25 TO IMPLEMENT THE STANDARD, THEN YOU KNOW THAT YOU

1 CAN ACHIEVE, YOU CAN OBTAIN A ROYALTY TO THE IPR.

2 Q LET'S TAKE A LOOK AT CLAUSE 6 FROM THE SAME  
3 DOCUMENT, EXHIBIT 74.

4 AND, DR. WALKER, CAN YOU EXPLAIN WHAT WE  
5 SEE HERE?

6 A YES. CLAUSE 6 IS THE FRAND TERMS, SO WHAT IT  
7 ESSENTIALLY SAYS IS IF YOU HAVE IPR IN THE  
8 STANDARD, THEN YOU SHOULD MAKE IT AVAILABLE TO  
9 ANYBODY WHO WISHES TO IMPLEMENT THE STANDARD UNDER  
10 FRAND TERMS.

11 THAT IS THE COMMITMENT THAT YOU AS A  
12 MEMBER OF ETSI WILL MAKE.

13 Q NOW, UNDER THIS FRAND PROVISION, WHAT DOES THE  
14 PATENT OWNER GET?

15 A WELL, THE PATENT OWNER GETS, IF HE HAS FRAND  
16 ON IPR WHICH IS ESSENTIAL TO WORKING WITH THAT  
17 STANDARD, THEN ANYBODY WHO WISHES TO IMPLEMENT THE  
18 STANDARD IS REQUIRED TO COME AND GET A LICENSE  
19 UNDER FRAND TERMS FROM THE OWNER OF THAT IPR.

20 Q AND UNDER THIS FRAND BARGAIN, WHAT DOES THE  
21 PATENT OWNER GIVE UP?

22 A HE GIVES UP THE RIGHT TO DO ANYTHING ELSE WITH  
23 THE IPR IN THE CONTEXT OF THAT STANDARD, OTHER THAN  
24 TO LICENSE IT FOR PEOPLE TO BE ABLE TO USE IT AND  
25 LICENSE IT UNDER FRAND TERMS.

1 Q LET'S TURN TO CLAUSE 4, IF WE COULD, OF THE  
2 SAME DOCUMENT. AND DR. WALKER, WHAT DOES CLAUSE 4  
3 DESCRIBE?

4 A CLAUSE 4 IS THE OTHER PART OF THE POLICY, AND  
5 THAT IS THE REQUIREMENT TO DISCLOSE THE IPR THAT  
6 YOU HAVE IN YOUR -- IN THE STANDARD.

7 Q AND IF I COULD FOCUS YOUR ATTENTION,  
8 DR. WALKER, ON THE LAST SENTENCE IN SECTION 4.1,  
9 WHICH STATES, QUOTE, "IN PARTICULAR, A MEMBER  
10 SUBMITTING A TECHNICAL PROPOSAL FOR A STANDARD  
11 SHALL, ON A BONA FIDE BASIS, DRAW THE ATTENTION OF  
12 ETSI TO ANY OF THAT MEMBER'S IPR WHICH MIGHT BE  
13 ESSENTIAL IF THAT PROPOSAL IS ADOPTED."

14 AND CAN YOU EXPLAIN TO THE JURY WHAT THAT  
15 SENTENCE MEANS?

16 A SO THAT, THAT'S PARTICULARLY RELATED TO THE,  
17 TO THOSE ORGANIZATIONS OR PEOPLE THAT ARE COMING  
18 ALONG AND ARE MAKING CONTRIBUTIONS AND THEY'RE  
19 LAYING ON THE TABLE SOLUTIONS TO PROBLEMS. AND  
20 THEIR SOLUTIONS MAY HAVE IPR ASSOCIATED WITH THEM  
21 THAT THEIR COMPANY HAS, AND WHAT THAT IS SAYING IS  
22 IF YOUR PROPOSAL IS ADOPTED, YOU SHOULD DECLARE THE  
23 IPR THAT YOU HAVE IN THAT PROPOSAL.

24 Q WHAT IS THE PURPOSE OF THIS PROVISION, SIR?

25 A SO THE PURPOSE OF THE PROVISION IS THAT, THAT

1 YOU DO A PICTURE AT THE END OF THE DAY OF ALL OF  
2 THE IPR THAT IS READING ON TO THE STANDARD AND YOU  
3 HAVE THAT PICTURE BUILDING UP AS PROPOSALS ARE  
4 ADOPTED.

5 Q DR. WALKER, AS A FORMAL MATTER, HOW ARE THESE  
6 DISCLOSURES MADE?

7 A FORMALLY THE ORGANIZATIONS, THE COMPANIES CAN  
8 FILL IN A FORM DETAILING THE IPR THAT THEY HAVE,  
9 THE SPECIFICATION THAT IT READS ON, DOWN TO THE  
10 DETAILED SECTION OF THE SPECIFICATION THAT IT READS  
11 ON, AND THEN THEY SUBMIT THAT TO ETSI, AND THERE  
12 HAVE BEEN THOUSANDS OF THESE DISCLOSES MADE.

13 Q IN PIECES OF PAPER?

14 A IN PIECES OF PAPER THAT ARE THEN RECORDED IN  
15 THE ETSI DATABASE. SO THEY'RE ELECTRICALLY  
16 ACCESSIBLE.

17 Q DO CERTAIN OF THESE DISCLOSURES REFER TO  
18 PARTICULAR PATENTS OR PARTICULAR APPLICATIONS?

19 A ALL OF THOSE DISCLOSURES REFER TO PARTICULAR  
20 PATENTS, PATENT APPLICATIONS, AND SPECIFIC PARTS OF  
21 THE STANDARD.

22 Q NOW, SIR, ARE YOU ALSO FAMILIAR WITH SOMETHING  
23 CALLED A GENERAL FRAND COMMITMENT?

24 A YES, I AM FAMILIAR WITH THAT.

25 Q AND CAN YOU EXPLAIN WHAT THAT IS?



1           A        YES.    THAT'S A COMMITMENT THAT THE ETSI ASKS  
2           ITS MEMBERS IF THEY CAN COMMIT TO WHICH BASICALLY  
3           SAYS -- IT'S ASKING THE MEMBERS TO SAY, LOOK, I  
4           DON'T KNOW AT THE MOMENT WHAT IPR I MAY HAVE THAT  
5           READS ON THIS STANDARD, BUT WHATEVER IT IS, I WILL  
6           DEFINITELY LICENSE IT UNDER FRAND TERMS.

7                        SO IT'S A COMMITMENT TO LICENSE WHATEVER  
8           IPR YOU DO PUT INTO THE STANDARD.   IT MAY BE AT THE  
9           END OF THE DAY YOU DON'T BRING ANY IPR INTO THE  
10          STANDARD, BUT YOU ARE AT LEAST COMMITTING WHATEVER  
11          YOU DO BRING, YOU WILL LICENSE UNDER FRAND TERMS.

12          Q        DR. WALKER, DOES MAKING THIS GENERAL FRAND  
13          COMMITMENT SATISFY THE DISCLOSURE OBLIGATIONS OF  
14          CLAUSE 4?

15          A        NO, IT DOESN'T ADDRESS THAT AT ALL.

16          Q        WHY NOT?

17          A        BECAUSE IT IS A GENERAL THING THAT SAYS IF I  
18          BRING IPR TO THE TABLE, I WILL LICENSE IT.   IT  
19          DOESN'T SAY ANYTHING ABOUT THE SPECIFICS OF THE  
20          IPR, WHERE THE IPR PLAYS ONTO THE STANDARDS AT ALL.

21                       MR. MUELLER:   YOUR HONOR, I'M ABOUT TO  
22          SWITCH SUBJECTS.   THIS MIGHT BE A GOOD TIME FOR THE  
23          MORNING BREAK.

24                       THE COURT:   LET'S GO AHEAD AND TAKE A  
25          BREAK.   IT'S ABOUT 10:28.   WE'VE BEEN GOING FOR

1 ABOUT 8:30, SO I NEED TO GIVE MS. SHORTRIDGE A  
2 BREAK. IT'S 10:28. WE'LL TAKE A BREAK UNTIL  
3 10:45.

4 SO, AGAIN, PLEASE KEEP AN OPEN MIND,  
5 DON'T DO ANY RESEARCH, PLEASE DON'T DISCUSS THE  
6 CASE WITH ANYONE.

7 YOU CAN LEAVE YOUR NOTEBOOKS ON THE  
8 CHAIRS AND MR. RIVERA IS GOING TO PASS OUT THE  
9 PHOTOS OF THE LAST FEW WITNESSES, AND HE'LL LEAVE  
10 IT ON YOUR CHAIRS.

11 OKAY. THANK YOU FOR YOUR SERVICE AND  
12 YOUR PATIENCE.

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

15 THE COURT: ALL RIGHT. THANK YOU  
16 EVERYONE. THE JURORS HAVE LEFT THE COURTROOM.

17 (WHEREUPON, A RECESS WAS TAKEN.)

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

20 MR. VERHOEVEN: YOUR HONOR, ONE THING  
21 REAL QUICK.

22 THE COURT: OKAY.

23 MR. VERHOEVEN: OUR STOPWATCH AND WHATNOT  
24 DON'T EXACTLY SYNC UP WITH THE WAY YOU'RE KEEPING  
25 TIME, SO I WAS GOING TO ASK IF YOU COULD JUST LET

1 US KNOW WHAT WE HAVE 25 MINUTES LEFT. WOULD THAT  
2 BE OKAY?

3 THE COURT: YEAH, SURE. I WILL TELL YOU  
4 YOUR TOTALS RIGHT NOW. APPLE HAS USED UP 22 HOURS  
5 AND 27 MINUTES, SO YOU HAVE ROUGHLY 2 AND A HALF  
6 HOURS LEFT. AND SAMSUNG HAS USED UP 24 HOUR AND 23  
7 MINUTES. SO YOU HAVE 37 MINUTES LEFT.

8 MR. VERHOEVEN: IF YOU COULD JUST RAISE  
9 YOUR HAND OR TELL US WHEN WE'RE AT 25 MINUTES?

10 THE COURT: OKAY. I WILL DO THAT.

11 I DON'T KNOW IF YOUR CASE VIEWS ARE  
12 WORKING. MINE STOPPED IN THE MORNING. YOURS TOO,  
13 OR NOT?

14 MR. VERHOEVEN: OURS IS WORKING.

15 THE COURT: I WAS TOLD THAT IT MIGHT BE  
16 HELPFUL, IF YOU DON'T NEED YOUR CELL PHONE, IF YOU  
17 COULD PLEASE TURN IT OFF, AND ALSO IF YOU'RE USING  
18 A BLUE TOOTH MOUSE, ACTUALLY IF YOU DON'T NEED  
19 THAT, THAT MIGHT BE HELPFUL. I THINK THERE ARE TOO  
20 MANY SIGNALS IN HERE AND EVERYTHING IS CUTTING OUT.

21 IF YOU WOULDN'T MIND -- OBVIOUSLY  
22 JOURNALISTS NEED IT, BUT IF YOU WOULDN'T MIND  
23 TURNING IT OFF, WE'D APPRECIATE IT.

24 ALL RIGHT. ANYTHING ELSE? NO?

25 OKAY. MR. RIVERA, PLEASE BRING OUR JURY

1 BACK.

2 (WHEREUPON, THE FOLLOWING PROCEEDINGS  
3 WERE HELD IN THE PRESENCE OF THE JURY:)

4 THE COURT: OKAY. WELCOME BACK. IT'S --  
5 PLEASE TAKE A SEAT.

6 IT'S 10:50. GO AHEAD, PLEASE.

7 MR. MUELLER: THANK YOU, YOUR HONOR.

8 Q DR. WALKER, LET'S GO BACK TO PLAINTIFF'S  
9 EXHIBIT 74 FOR JUST A MOMENT. THIS IS THE 1997  
10 ETSI POLICY; IS THAT RIGHT?

11 A THAT'S CORRECT.

12 Q NOW, YOU DISCUSSED BEFORE THE BREAK TWO  
13 PROVISIONS THAT HELPED IMPLEMENT THE OBJECTIVE OF  
14 THIS POLICY. FIRST IS CLAUSE 6. LET'S TAKE A LOOK  
15 AT THAT, PLEASE?

16 A THAT'S CORRECT.

17 Q CAN YOU JUST REMIND THE JURY WHAT DOES FRAND  
18 STAND FOR?

19 A FAIR, REASONABLE AND NON-DISCRIMINATORY.

20 Q AND THIS IS THE PROVISION FOR FRAND?

21 A THAT IS THE PROVISION FOR FRAND, YES, THE  
22 TERMS UNDER WHICH YOU WILL LICENSE YOUR IPR.

23 Q NOW LET'S TURN TO CLAUSE 4. THIS IS THE  
24 DISCLOSURE PROVISION, DR. WALKER?

25 A THIS IS THE DISCLOSURE PROVISION, CORRECT.

1 Q AND LET'S FOCUS AGAIN ON THAT LAST SENTENCE IN  
2 SECTION 4.1, STATING "IN PARTICULAR, A MEMBER  
3 SUBMITTING A TECHNICAL PROPOSAL FOR A STANDARD  
4 SHALL, ON A BONA FIDE BASIS, DRAW THE ATTENTION OF  
5 ETSI TO ANY OF THAT MEMBER'S IPR WHICH MIGHT BE  
6 ESSENTIAL IF THAT PROPOSAL IS ADOPTED."

7 I JUST WANT TO ASK YOU A COUPLE OF  
8 QUESTIONS ABOUT THIS LANGUAGE. MIGHT BE ESSENTIAL,  
9 WHAT DOES THAT MEAN?

10 A THAT MEANS IT COULD BE ESSENTIAL. IT HAS A  
11 CHANCE OF BECOMING ESSENTIAL.

12 Q DID IT REQUIRE ACTUAL ESSENTIALITY?

13 A NO.

14 Q IF THAT PROPOSAL IS ADOPTED, WHAT DOES THAT  
15 MEAN IN TERMS OF TIMING?

16 A FOR THIS TO HAVE A MEANING, THAT MEANS YOU  
17 SHOULD MAKE THAT DISCLOSURE PRIOR TO ADOPTION  
18 ACTUALLY HAPPENING. AFTERWARDS, IT'S ALREADY  
19 ADOPTED.

20 Q AND COULD YOU EXPLAIN TO THE JURY, AS A  
21 PROCESS MATTER, WHEN DOES ETSI MEET THE DECISION TO  
22 ADOPT A STANDARD?

23 A OKAY. WE WILL GO THROUGH THIS IN SPECIFICS,  
24 BUT THERE IS A WHOLE SEQUENCE OF EVENTS THAT LEADS  
25 TO A POINT WHERE ETSI SAYS, "THIS PROPOSAL IS NOW

1           FORMALLY ADOPTED INTO THE SPECIFICATION."

2           Q       AND IF WE CAN PUT CLAUSE 4.1 UP ON THE SCREEN  
3           JUST ONE MORE TIME.

4                       WHAT DOES THAT LAST SENTENCE REQUIRE  
5           BEFORE ADOPTION BY MEMBERS MAKING PROPOSALS?

6           A       SORRY.    COULD YOU REPEAT THAT AGAIN?

7           Q       SURE.    YOU JUST DESCRIBED FOR THE JURY THE  
8           ADOPTION PROCESS.   WHAT DOES THAT RULE REQUIRE FOR  
9           MEMBERS MAKING PROPOSALS?

10          A       THAT IF YOU HAVE IPR THAT RELATES TO THAT  
11          PROPOSAL, THEN BEFORE THAT PROPOSAL IS ADOPTED, OR  
12          IF YOU BELIEVE IT'S GOING TO BE ADOPTED, THEN YOU  
13          SHOULD DISCLOSE THAT IPR TO ETSI.

14          Q       NOW I WANT TO FOCUS ON THE TWO SAMSUNG PATENTS  
15          IN THIS CASE THAT SAMSUNG HAS DECLARED ESSENTIAL TO  
16          UMTS, THE '941 AND '516.

17                       DR. WALKER, HAVE YOU CONDUCTED ANY  
18          INVESTIGATION WITH RESPECT TO THOSE TWO PATENTS?

19          A       YES, I HAVE.

20          Q       CAN YOU EXPLAIN TO THE JURY WHAT YOU DID?

21          A       I LOOKED AT THE PROPOSAL THAT IS ETSI HAD,  
22          THAT SAMSUNG HAD MADE TO 3GPP, THAT THEY RELATED TO  
23          THESE PATENTS AND THEN I, I LOOKED AT THE PROPOSALS  
24          WHEN THEY WERE CREATED, WHEN THEY WERE TRANSFORMED  
25          INTO WHAT ARE CALLED CHANGING ADDRESS, THAT MEANS

1 TO CHANGE EXISTING STATE OF THE STANDARD, WHEN THEY  
2 WERE ACCEPTED, WHEN THEY WERE PUBLISHED, AND WHAT  
3 DECLARATION SAMSUNG MADE WITH REGARD TO THE, THE  
4 PROPOSALS, THE IPR RELATED TO THOSE PROPOSALS AND  
5 HOW SAMSUNG RELATED THE PATENT APPLICATIONS AND THE  
6 PROPOSALS AND THEIR ADOPTION INTO THE STANDARD.

7 Q NOW, DR. WALKER, DID YOU UNDERTAKE ANY  
8 ANALYSIS AS TO WHETHER OR NOT THE PATENTS ARE TRULY  
9 ESSENTIAL TO UMTS?

10 A NO, I DIDN'T DO THAT AT ALL.

11 Q AND DID YOU UNDERTAKE ANY ANALYSIS INTO THE  
12 VALIDITY OF THESE PATENTS?

13 A NO, I DID NOT.

14 Q THAT WAS THE SUBJECT OF DR. KIM AND DR.  
15 KNIGHTLY'S TESTIMONY?

16 A THAT IS CORRECT, AND I MERELY ACCEPTED THAT  
17 THEY WERE ON THE BASIS OF SAMSUNG MAKING THAT CLAIM  
18 WHEN IT DECLARED THE IPR.

19 Q NOW, YOU FOCUSSED ON DISCLOSURE ISSUES. DID  
20 YOU REACH ANY CONCLUSIONS AS TO WHETHER SAMSUNG  
21 TIMELY DISCLOSED THESE TWO PATENTS?

22 A YES. I BELIEVE IN BOTH CASES, I CONCLUDED IN  
23 BOTH CASES THAT THEY DID NOT.

24 Q LET'S START WITH THE '941 PATENT, AND PLEASE  
25 TURN TO TAB 2, JOINT EXHIBIT 1070. IS THIS THE

1 '941 PATENT?

2 A THAT IS, YES.

3 Q LET ME DIRECT YOUR ATTENTION TO THE UPPER LEFT  
4 CORNER, UPPER LEFT OF THE FIRST PAGE WHERE IT LISTS  
5 FOREIGN APPLICATION PRIORITY DATA. DO YOU SEE  
6 THAT?

7 A YES, I SEE THAT.

8 Q AND WHAT IS LISTED THERE, SIR?

9 A SO WHAT IS LISTED THERE IS A PATENT  
10 APPLICATION MADE IN KOREA ON THE 4TH OF MAY, 2005.

11 Q AND SAMSUNG WAS CLAIMING PRIOR TO THAT  
12 APPLICATION?

13 A AND SAMSUNG, IN ITS PATENT APPLICATION IN THE  
14 U.S., IS CLAIMING PRIORITY TO THAT APPLICATION,  
15 YES.

16 Q AND WHAT'S THE DATE ON THAT SCREEN  
17 APPLICATION?

18 A THE 4TH OF MAY, 2005.

19 Q NOW, LET'S PUT UP PDX 45.2, WHICH IS A TIME  
20 LINE, AND I'D LIKE YOU TO WALK US THROUGH THE  
21 CHRONOLOGY STEP BY STEP, AND I'M GOING TO START  
22 HERE WITH THE FILING OF KOREAN PATENT ON MAY 4TH,  
23 2005. OKAY?

24 A CORRECT.

25 Q LET'S TURN TO TAB 3, IF WE COULD, WHICH IS



1 JOINT EXHIBIT 1085. WHAT IS THIS?

2 A THIS IS A PROPOSAL MADE BY SAMSUNG TO A  
3 WORKING GROUP MEETING AND THE WORKING GROUP IS  
4 RECALLED RAN2, THE MEETING TOOK PLACE BETWEEN THE  
5 9TH AND THE 13TH OF MAY 2005, IN ATHENS, AND THIS  
6 IS A PROPOSAL FOR A CHANGE TO THE EXISTING VERSION  
7 OF THE SPECIFICATION WHICH IS RELATED PRECISELY TO  
8 THE PATENTS, THE PATENT THAT WE HAVE JUST LOOKED  
9 AT.

10 MR. MUELLER: YOUR HONOR, I OFFER JOINT  
11 EXHIBIT 1085.

12 THE COURT: ANY OBJECTION?

13 MR. VERHOEVEN: NO OBJECTION, YOUR HONOR.

14 THE COURT: IT'S ADMITTED.

15 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER  
16 1085, HAVING BEEN PREVIOUSLY MARKED FOR  
17 IDENTIFICATION, WAS ADMITTED INTO  
18 EVIDENCE.)

19 BY MR. MUELLER:

20 Q AND DR. WALKER, REMIND US, WHAT WAS THE DATE?

21 A THE DATE OF THIS, IT WAS SUBMITTED TO THE  
22 MEETING WHICH TOOK PLACE BETWEEN THE 9TH AND THE  
23 13TH OF MAY, 2005.

24 Q PLEASE TURN TO TAB 4 OF YOUR BINDER, WHICH IS  
25 PLAINTIFF'S EXHIBIT 101.

1                   WHAT IS THIS?

2           A        THIS IS A CHANGE REQUEST WHICH IS RELATED TO  
3           THAT PROPOSAL. I NEED TO EXPLAIN A LITTLE BIT WHAT  
4           A CHANGE REQUEST IS.

5                   AT THIS STAGE OF THE DEVELOPMENT OF THE  
6           SPECIFICATION, THEY ALREADY ARE STABLE. WE WERE  
7           TALKING ABOUT VERSION 6 OF THE, RELEASE 6 OF THE  
8           SET OF SPECIFICATIONS.

9                   SO ANY CHANGE THAT YOU WANTED TO MAKE NOW  
10          TO THE SPECIFICATION HAD TO BE SPELLED OUT IN GREAT  
11          DETAIL. IT WAS A WORD-FOR-WORD IDENTIFICATION OF  
12          WHAT YOU WANTED TO CHANGE, AND THE PROCESS OF  
13          GETTING THAT CHANGE AGREED WAS VERY FORMAL. YOU  
14          HAD TO CREATE A CHANGE REQUEST. THAT CHANGE  
15          REQUEST HAD TO BE AGREED BY THE WORKING GROUP. IF  
16          THE WORKING GROUP AGREED WITH IT, IT HAD TO GO TO A  
17          PLENARY, AND THE PLENARY HAD TO AGREE. SHALL I  
18          EXPLAIN?

19                   THE COURT: PLENARY.

20                   THE WITNESS: SHALL I EXPLAIN?

21          BY MR. MUELLER:

22          Q        PLEASE DO. IF YOU COULD, SIR, EXPLAIN THAT?

23          A        SO A PLENARY SESSION IS THE -- I TALKED ABOUT  
24          THIS WORKING GROUP 1 OF THE ACCESS NETWORK GROUP  
25          THAT WAS DEALING WITH THIS PROPOSAL, AND THERE ARE

1 A NUMBER OF WORKING GROUPS, ONE, TWO, THREE, FOUR,  
2 AND THEY ALL CAME TOGETHER IN THIS PLENARY SESSION  
3 WHICH WAS THE RAN, THE OVERALL RADIO ACCESS NETWORK  
4 BODY RESPONSIBLE FOR THE SPECIFICATIONS. SO  
5 THEY'RE WORKING GROUPS THAT WERE PUTTING TOGETHER,  
6 AND IT WAS THAT BODY THAT WOULD FORMALLY SAY WE  
7 ACCEPT THIS CHANGE REQUEST, AND IT WILL THEN  
8 CAUSE -- CREATE A CHANGE IN THE SPECIFICATIONS.

9 MR. MUELLER: YOUR HONOR, I OFFER  
10 PLAINTIFF'S EXHIBIT 101?

11 THE COURT: ANY OBJECTION?

12 MR. VERHOEVEN: NO OBJECTION.

13 THE COURT: THAT'S ADMITTED.

14 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER  
15 101, HAVING BEEN PREVIOUSLY MARKED FOR  
16 IDENTIFICATION, WAS ADMITTED INTO  
17 EVIDENCE.)

18 BY MR. MUELLER:

19 Q DR. WALKER, WHAT SPECIFICATION, WHAT UMTS  
20 SPECIFICATION IN PARTICULAR DOES THIS CHANGE  
21 REQUEST RELATE TO?

22 A SO THIS RELATES TO A SPECIFICATION 322 IN THE  
23 25 SERIES, AND THE 25 SERIES IS ABOUT THE RADIO  
24 ACCESS NETWORK.

25 AND IT'S RELATING TO THE CURRENT VERSION

1 OF THAT SPECIFICATION, WHICH IS VERSION 6.3. SO  
2 IT'S LOOKING TO CHANGE VERSION 6.3.

3 AND THIS IS THE TEXT IN THIS DOCUMENT  
4 DETAILING PRECISELY WITH WHAT THE CHANGE IS.

5 Q WHAT DATE WAS THIS SUBMITTED?

6 A THIS WAS SUBMITTED TO THE WORKING GROUP  
7 SOMEWHERE IN BETWEEN THE 9TH AND THE 13TH OF MAY.

8 Q SO LET'S ADD THE SAMSUNG PROPOSALS OF MAY  
9 19TH -- MAY 9TH THROUGH 13TH TO OUR TIMELINE.

10 PLEASE TURN TO TAB 5, EXHIBIT 72. WHAT  
11 IS THIS?

12 A THIS IS THE REPORT OF THE WORKING GROUP  
13 MEETING THAT THAT CHANGE REQUEST WAS SUBMITTED TO.

14 MR. MUELLER: YOUR HONOR, I OFFER IT,  
15 PLAINTIFF'S EXHIBIT 72.

16 MR. VERHOEVEN: NO OBJECTION, YOUR HONOR.

17 THE COURT: IT'S ADMITTED.

18 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER  
19 72, HAVING BEEN PREVIOUSLY MARKED FOR  
20 IDENTIFICATION, WAS ADMITTED INTO  
21 EVIDENCE.)

22 BY MR. MUELLER:

23 Q THIS REFLECTS A MEETING, DR. WALKER?

24 A YES. THIS IS THE REPORT ON THE -- THE  
25 APPROVED MINUTES OF THE MEETING THAT WE HAVE JUST

1 BEEN DISCUSSING.

2 Q NOW, DID ANY OF THE NAMED INVENTORS FROM  
3 SAMSUNG'S '941 PATENT ATTEND THIS MEETING?

4 A YES, THEY DID. AT LEAST ONE OF THEM ATTENDED,  
5 MR. VAN DER VELDE.

6 Q LET ME DIRECT YOU TO PAGE 39, IF I COULD. DO  
7 YOU SEE WHERE IT LISTS A PROPOSAL BY SAMSUNG NEAR  
8 THE TOP OF THE PAGE?

9 A PAGE 39.

10 Q PAGE 39, PLEASE, SIR.

11 A YES, I DO.

12 Q WHAT DOES THIS SHOW?

13 A THE RT 05131, THIS IS THE CHANGE REQUEST THAT  
14 WE HAVE JUST BEEN -- IDENTIFYING A CHANGE REQUEST  
15 THAT WE HAVE JUST SEEN OR WHAT HAPPENED AT THE  
16 MEETING.

17 THIS WAS A FAIRLY LENGTHY DISCUSSION. IT  
18 COULDN'T BE AGREED PRECISELY AT THAT MEETING, SO  
19 THE PEOPLE THAT WERE DISCUSSING IT WERE ASKED TO  
20 SETTLE THE MATTER OFFLINE WHILE USING WHAT'S CALLED  
21 THE REFLECTOR, WHICH IS THE MEANS OF COMMUNICATION,  
22 COMMUNICATING ELECTRONICALLY USED WITHIN ETSI.

23 THEY DID THAT, AND THEY WERE GIVEN UNTIL  
24 THE 18TH OF MAY TO MAKE A DECISION AND ON THE 18TH  
25 OF MAY, THEY DECIDED THAT THEY WOULD RECOMMEND THAT

1 THE CHANGE REQUEST BE ACCEPTED.

2 Q SO TO BE CLEAR, THE PROPOSAL WAS ACCEPTED ON  
3 MAY 18TH, 2005?

4 A SO IT WAS ACCEPTED BY THE WORKING GROUP ON THE  
5 18TH OF MAY 2005.

6 Q AND THAT'S THE SAMSUNG PROPOSAL?

7 A AND THAT'S THE SAMSUNG CHANGE REQUEST, YES.

8 Q LET'S PUT THAT ON OUR TIMELINE AS PDX 45.4.

9 AND LET'S TURN IF WE COULD, PLEASE, SIR,  
10 TO TAB 6, PLAINTIFF'S EXHIBIT 84. WHAT DO WE FIND  
11 HERE?

12 A SO IN -- UNDER THIS TAB WE FIND, FOR TWO OF  
13 THE SERIES OF SPECIFICATION, THE LIST, AND IN  
14 PARTICULAR HERE ON THE FIRST PAGE IT'S 25214. THIS  
15 IS THE HISTORY OF THE EVOLUTION OF THAT  
16 SPECIFICATION THROUGH VARIOUS RELEASES AND THROUGH  
17 VARIOUS VERSIONS.

18 MR. MUELLER: YOUR HONOR, WE OFFER IT.

19 MR. VERHOEVEN: NO OBJECTION, YOUR HONOR.

20 THE COURT: IT'S ADMITTED.

21 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER  
22 84, HAVING BEEN PREVIOUSLY MARKED FOR  
23 IDENTIFICATION, WAS ADMITTED INTO  
24 EVIDENCE.)

25 BY MR. MUELLER:

1 Q THIS TABLE REFERS TO A FREEZE MEETING IN THE  
2 SECOND COLUMN. WHAT IS THAT?

3 A THAT'S THE MEETING AT WHICH THE CHANGE  
4 REQUEST, ANYTHING THAT MODIFIED THE EXISTING  
5 SPECIFICATION, WOULD TAKE PLACE.

6 Q ON THE VERY NEXT PAGE, 84.5, LET ME DIRECT  
7 YOUR ATTENTION TO AN ENTRY NOTATED REL-6, VERSION  
8 6.4.0.

9 DO YOU SEE THAT, SIR?

10 A YES, I DO.

11 Q WHAT DOES IT REFER TO?

12 A SO THIS REFERS TO THE RADIO PLENARY MEETING  
13 NUMBER 26, AND THAT -- THAT APPROVED ALL THE CHANGE  
14 REQUESTS THAT WERE MADE TO VERSION 6.3 OF THE 214  
15 SPECIFICATION, AND THAT THEN BECAME VERSION 6.4.  
16 THERE'S A DATE BESIDE THAT 6.4, AND THAT IS THE  
17 AVAILABILITY DATE, AND THAT IS THE DATE THAT ETSI  
18 CONSIDERS AS THE OFFICIAL PUBLICATION OF THAT  
19 SPECIFICATION, THAT VERSION OF THE SPECIFICATION.

20 Q AND WHAT DATE WAS THAT MEETING?

21 A THAT MEETING WAS -- THE 5TH OF THE FIRST  
22 2000 -- THE AVAILABILITY DATE WAS THE 5TH OF  
23 JANUARY 2005.

24 BUT THE MEETING TOOK PLACE, IF YOU FLIP  
25 OVER A COUPLE OF PAGES, BECAUSE WE'RE TALKING ABOUT

1 MEETING NUMBER 26, SO MEETING NUMBER 26, THE  
2 PLENARY MEETING, THAT'S RECORDED -- I THINK THAT  
3 WAS THE QUEBEC MEETING, SO RECORDED ON PAGE 2 OF 3  
4 OF THE EXHIBIT, AND THAT TOOK PLACE BETWEEN THE 3RD  
5 AND -- THE 1ST AND THE 3RD OF JUNE 2005.

6 Q SO LET'S ADD THAT TO OUR TIMELINE AS PDX 45.5.

7 AND, DR. WALKER, COULD YOU PLEASE EXPLAIN  
8 TO THE JURY THE SIGNIFICANCE OF THAT EVENT THAT  
9 OCCURRED ON JUNE 1ST THROUGH 3RD, 2005?

10 A THAT WAS THE DATE AT WHICH THAT -- WHAT WAS AN  
11 INITIAL PROPOSAL FROM SAMSUNG, WHICH WAS RELATED TO  
12 THE PATENT THAT WE'RE LOOKING AT, WAS FORMALLY  
13 ADOPTED INTO THE SPECIFICATION BY THE BODY  
14 RESPONSIBLE FOR THE CHANGES AND THE EVOLUTION OF  
15 THAT SPECIFICATION.

16 Q AND, SIR --

17 A IT IS NOW A PART OF THE SPECIFICATION WHICH  
18 WILL BECOME THE STANDARD FOR UMTS.

19 Q AND, SIR, FROM A DISCLOSURE PERSPECTIVE, WHAT  
20 WAS SAMSUNG'S OBLIGATION AS OF THAT DATE?

21 A THIS IS THE ADOPTION DATE, SO DISCLOSURE  
22 SHOULD HAVE TAKEN PLACE BEFORE OR ON THAT ADOPTION  
23 DATE.

24 Q BY THAT DATE, HAD SAMSUNG DISCLOSED ANY MEMBER  
25 OF THE '941 PATENT FAMILY?



1 A NO, IT HAD NOT.

2 Q DID SAMSUNG LATER DISCLOSE ANY MEMBER?

3 A OH, YES, IT DID.

4 Q I'M SORRY, SIR. WE HAD TALKED OVER?

5 A YES, IT DID.

6 Q WHEN? LET'S TURN TO TAB 7, PLEASE,  
7 PLAINTIFF'S EXHIBIT 122. WHAT DO WE SEE HERE?

8 A A RECORD, A SCREEN SHOT OF THE ETSI DATABASE  
9 OF THE PATENT DISCLOSURE MADE BY -- SOME OF THE  
10 PATENT DISCLOSURES MADE BY SAMSUNG.

11 Q AND, DR. WALKER, IF YOU TURN TO THE PAGE  
12 LABELS 122.44, DO YOU SEE THE APPLICATION FOR THE  
13 '941 PATENT LISTED AT THE BOTTOM RIGHT-HAND SIDE?

14 A YES, I DO. IT'S THE LAST, IT'S THAT LAST ROW  
15 OF THE TABLE.

16 MR. MUELLER: YOUR HONOR, I OFFER  
17 PLAINTIFF'S EXHIBIT 122.

18 MR. VERHOEVEN: NO OBJECTION.

19 THE COURT: THAT'S ADMITTED.

20 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER  
21 122, HAVING BEEN PREVIOUSLY MARKED FOR  
22 IDENTIFICATION, WAS ADMITTED INTO  
23 EVIDENCE.)

24 BY MR. MUELLER:

25 Q DR. WALKER, WHAT WAS THE DATE OF THE SAMSUNG

1 DISCLOSURE?

2 A SO THE -- I, PERHAPS, SHOULD JUST EXPLAIN WHAT  
3 THE DISCLOSURE SAYS. THE DISCLOSURE, I THINK IT'S  
4 IMPORTANT TO NOTE, IT REFERENCES ON THE RIGHT-HAND  
5 SIDE THAT ON THE COLUMN THE APPLICATION, THE U.S.  
6 APPLICATION, THAT'S THE APPLICATION NUMBER. THAT  
7 IS ALSO RELATED THEN TO, THROUGH THIS TO THE KOREAN  
8 APPLICATION, WHICH IS THE NUMBER IN THE FIFTH --  
9 THE SIXTH COLUMN.

10 IT IDENTIFIES THE SPECIFICATION TO WHICH  
11 IT BELONGS, SO 322. IT RELATES -- IT IDENTIFIES  
12 THE PARAGRAPHS, THE DETAILED PARAGRAPHS OF THAT  
13 SPECIFICATION, AND IT IDENTIFIES THE VERSION  
14 NUMBER.

15 NOW, ACTUALLY, THE VERSION NUMBER IS  
16 INCORRECT BECAUSE THIS WAS ACTUALLY, THE MINUTES OF  
17 THE MEETING WAS ACTUALLY ADOPTED FOR VERSION 6.4,  
18 ALTHOUGH IN HERE IT SAYS 6.9.

19 Q NOW, DR. WALKER, IF YOU GO BACK A FEW PAGES TO  
20 122.41, AND LET ME KNOW WHEN YOU'RE THERE?

21 A I'M THERE.

22 Q WHAT IS THE DATE THAT SAMSUNG MADE THIS  
23 DISCLOSURE TO ETSI?

24 A SO THIS DISCLOSURE WAS MADE, AS STATED HERE,  
25 TO ETSI ON THE 7TH OF AUGUST, 2007.

1 Q LET'S ADD THAT TO OUR CHRONOLOGY AS PDX 45.6.

2 DR. WALKER, WITH THE CHRONOLOGY THAT WE  
3 SEE ON THE SCREEN, WHAT IS YOUR OPINION AS TO  
4 WHETHER SAMSUNG COMPLIED WITH ITS DISCLOSURE  
5 OBLIGATIONS WITH RESPECT TO THE '941 PATENT?

6 A I DO NOT CONSIDER THAT THEY, THAT THEY DID  
7 COMPLY WITH THE OBLIGATIONS THAT'S IN PARAGRAPH 4.1  
8 OF THE ETSI POLICY.

9 THEY SHOULD HAVE DISCLOSED PRIOR TO THE  
10 ADOPTION, WHICH WAS IN JUNE OF 2005.

11 Q SIR, LET'S TURN TO THE '516 PATENT, IF WE  
12 COULD. IS THAT THE SECOND PATENT THAT YOU ANALYZED  
13 IN THIS CASE?

14 A THAT'S CORRECT.

15 Q AND HAVE YOU UNDERTAKEN A SIMILAR  
16 INVESTIGATION INTO THE EVENTS THAT LED TO THE  
17 RELEVANT PROVISION OF ETSI'S UMTS SPECIFICATION?

18 A YES, I DID. THAT'S A MIRROR IMAGE OF THE  
19 PREVIOUS INVESTIGATION.

20 Q LET'S LOOK AT TAB 8 WHICH IS THE PATENT  
21 ITSELF, JOINT EXHIBIT 1073. DO YOU SEE THAT, SIR?

22 A YES, I DO.

23 Q LET'S PUT IT ON THE SCREEN AND COULD YOU  
24 EXPLAIN TO THE JURY WHAT WE SEE IN THE FOREIGN  
25 PRIORITY DATE FOR THIS PATENT?

1 A YES. SO THE FOREIGN APPLICATION PRIORITY DATE  
2 LISTS FIVE KOREAN PATENTS, PATENT APPLICATIONS THAT  
3 WERE MADE BETWEEN THE 9TH OF JUNE 2004 AND APRIL  
4 7TH, 2005.

5 AND THEY'RE INCLUDED BY REFERENCE IN THIS  
6 U.S. PATENT.

7 Q SIR, YOU SAID YOU'VE DONE A SIMILAR  
8 INVESTIGATION INTO THE WORKING GROUP EVENTS?

9 A THAT IS CORRECT.

10 Q AND TO TRY TO SHORTEN THIS UP A LITTLE BIT,  
11 COULD YOU PLEASE LOOK THROUGH TABS 9, 10, AND 11  
12 AND TELL US, AS A GROUP, WHAT THOSE DOCUMENTS ARE.

13 A SO 9 IS THE, IS AN E-MAIL THAT COVERS A PAPER,  
14 ONE OF A NUMBER OF PAPERS, PROPOSALS THAT SAMSUNG  
15 THEN SUBMITTED TO A WORKING GROUP WHICH RELATES TO  
16 THE STANDARD -- TO THE PATENT --

17 Q PAUSE RIGHT THERE, SIR. THAT'S PLAINTIFF'S  
18 EXHIBIT 193?

19 A THAT'S EXHIBIT 193.

20 Q THE SAMSUNG PROPOSAL?

21 A THAT'S CORRECT.

22 MR. MUELLER: YOUR HONOR, I OFFER IT.

23 MR. VERHOEVEN: NO OBJECTION.

24 THE COURT: IT'S ADMITTED.

25 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER

1                   193, HAVING BEEN PREVIOUSLY MARKED FOR  
2                   IDENTIFICATION, WAS ADMITTED INTO  
3                   EVIDENCE.)

4                   BY MR. MUELLER:

5                   Q       TAB 10 IS JOINT EXHIBIT 1084. CAN YOU BRIEFLY  
6                   DESCRIBE WHAT WE FIND THERE?

7                   A       SO TAB 10 IS THE CHANGE REQUEST, WHICH IS NOW  
8                   THE FORMAL FORMULATION OF THAT PROPOSAL MADE BY  
9                   SAMSUNG. NOW WITH A NUMBER OF OTHER COMPANIES  
10                  JOINING IN, CREATING THAT CHANGE REQUEST, FOUR OR  
11                  FIVE OTHERS.

12                  THE CHANGE REQUEST IS TO DOCUMENT 214 IN  
13                  THE 25 SERIES, AND THE VERSION THAT IT WOULD AFFECT  
14                  IS THE 6.5 VERSION.

15                  MR. MUELLER: YOUR HONOR, I OFFER  
16                  PLAINTIFF'S EXHIBIT -- I'M SORRY, JOINT EXHIBIT  
17                  1084.

18                  MR. VERHOEVEN: NO OBJECTION, YOUR HONOR.

19                  THE COURT: IT'S ADMITTED.

20                  (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER  
21                  1084, HAVING BEEN PREVIOUSLY MARKED FOR  
22                  IDENTIFICATION, WAS ADMITTED INTO  
23                  EVIDENCE.)

24                  BY MR. MUELLER:

25                  Q       TAB 11, DR. WALKER, WHAT DO WE FIND THERE?

1 THIS IS PLAINTIFF'S EXHIBIT 70?

2 A IN THAT TAB WE FIND THE REPORT OF THE MEETING  
3 AND THAT CHANGE REQUEST WAS DISCUSSED AND SUBMITTED  
4 TO.

5 MR. MUELLER: YOUR HONOR, I OFFER  
6 PLAINTIFF'S EXHIBIT 70.

7 MR. VERHOEVEN: NO OBJECTION.

8 THE COURT: IT'S ADMITTED.

9 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER  
10 70, HAVING BEEN PREVIOUSLY MARKED FOR  
11 IDENTIFICATION, WAS ADMITTED INTO  
12 EVIDENCE.)

13 BY MR. MUELLER:

14 Q PLEASE TURN IF YOU COULD, SIR, TO TAB 6, WHICH  
15 IS PLAINTIFF'S EXHIBIT 84.

16 WHAT IS THIS?

17 A SO TAB 6 IS THE, IS THE HISTORY OF THE, OF THE  
18 SPECIFICATION WITH VARIOUS RELEASES.

19 Q NOW IF WE COULD, IF WE CAN TURN TO TAB 7,  
20 PLAINTIFF'S EXHIBIT 122. CAN YOU PLEASE EXPLAIN  
21 WHAT WE SEE THERE?

22 A IN TAB 7 WE SEE THE IPR DISCLOSURE, A SERIES  
23 OF IPR DISCLOSURES MADE BY SAMSUNG.

24 SO THESE ARE IMAGES FROM THE ETSI  
25 WEBSITE.

1 Q LET'S TURN TO TAB 12, SIR. WHAT DO WE FIND AT  
2 TAB 12?

3 A AT TAB 12 IN MY BINDER WE FIND THE SLIDE YOU  
4 PUT UP ABOUT MY BACKGROUND AT THE VERY BEGINNING.

5 Q I'M SORRY. I HAVE THE TAB WRONG.

6 LET'S PUT UP PDX 45.12, IF WE CAN, AND  
7 YOU WALKED THROUGH SOME DOCUMENTS FOR US. COULD  
8 YOU JUST BRIEFLY SUMMARIZE THE FULL CHRONOLOGY OF  
9 THE EVENTS THAT YOU'VE INVESTIGATED.

10 A SO THE FULL CHRONOLOGY IS THE ORIGINAL PATENT  
11 APPLICATIONS, THE SCREEN AND U.S. PATENT  
12 APPLICATION, THE FACT THAT THEY'RE RELATED.

13 THEN THE PROPOSAL MADE BY SAMSUNG THAT  
14 RELATES TO THAT TO THE CHANGE, TO CREATE A CHANGE  
15 IN THE CURRENT VERSION OF THE SPECIFICATION.

16 THE EMBODIMENT OF THAT PROPOSAL IN A  
17 FORMAL CHANGE REQUEST, THE ADOPTION OF THAT CHANGE  
18 REQUEST BY FIRST THE WORKING GROUP AND THEN THE  
19 PLENARY OF THE RADIO ACCESS NETWORK AND WHEN IT  
20 THEN FINALLY BECAME A CHANGE TO THE EXISTING  
21 VERSION OF THE SPECIFICATION, WHICH WAS 6.4,  
22 CREATED THE NEW 6.5.

23 AND THEN FINALLY THE DECLARATION -- THE  
24 DISCLOSURE THAT SAMSUNG MADE OF THE IPR.

25 MR. MUELLER: YOUR HONOR, MAY I APPROACH

1 THE SCREEN?

2 THE COURT: YES.

3 BY MR. MUELLER:

4 Q SO, DR. WALKER, JUST SO WE'RE CLEAR, THIS  
5 CHRONOLOGY STARTS WITH THE KOREAN APPLICATION THAT  
6 SAMSUNG FILED?

7 A THAT'S CORRECT.

8 Q AND CONTINUES THROUGH PROPOSALS MADE BY  
9 SAMSUNG TO ETSI?

10 A THAT IS CORRECT.

11 Q AND CAN YOU EXPLAIN TO THE JURY THE  
12 SIGNIFICANCE OF THAT JUNE 1ST THROUGH 3RD, 2005  
13 DATE?

14 A SO THIS IS THE DATE AT WHICH THE PROPOSAL WAS  
15 ADOPTED AND BECAME THEN A PART OF THE CURRENT -- OF  
16 THE STANDARD OF THAT -- AT THAT POINT IN TIME.

17 Q LET'S TURN BACK TO TAB 7 IN YOUR BINDER,  
18 PLAINTIFF'S EXHIBIT 122.

19 A YES.

20 Q PLEASE TURN TO PAGE 122.32.

21 A YES, I HAVE THAT PAGE.

22 Q AND DO YOU SEE ANY REFERENCE ON THIS PAGE TO  
23 THE U.S. APPLICATION THAT LED TO THE '516 PATENT?

24 A YES, I DO. THIS IS -- I'M LOOKING, CREATED  
25 PAGE -- THIS IS THE SECOND COLUMN DOWN.



1 Q AND, SIR, IS THIS THE DISCLOSURE THAT SAMSUNG  
2 MADE --

3 A SO THIS IS --

4 Q I'M SORRY. THIS IS THE DISCLOSURE THAT  
5 SAMSUNG MADE TO ETSI?

6 A THIS IS THE DISCLOSURE THAT SAMSUNG MADE TO  
7 ETSI, AND AS YOU CAN SEE, IT IDENTIFIES THE U.S.  
8 PATENT APPLICATION, '181, THE KOREAN APPLICATION,  
9 423,000, THE PARTICULAR SPECIFICATION, THAT IT WAS  
10 AFFECTING, '214, THE ACTUAL PARAGRAPHS THAT WERE  
11 AFFECTED, IN THIS CASE JUST ONE, AND THE VERSION  
12 THAT IT WAS NOW ADOPTED INTO.

13 Q AND IF YOU GO BACK, SIR, TO THE PAGE ENDING,  
14 IN THE BATES NUMBER AT THE BOTTOM, 9415, WHAT WAS  
15 THE DATE ON WHICH THIS DISCLOSURE WAS MADE?

16 A SO THE DATE ON WHICH THIS DISCLOSURE WAS MADE  
17 WAS THE 16TH OF MAY, 2006.

18 Q LET'S ADD THAT TO OUR TIMELINE AT PDX 43.12,  
19 AND IF YOU LOOK AT THAT, HERE WE HAVE THE  
20 DISCLOSURE ON MAY 16TH, 2006. IS THAT CORRECT,  
21 SIR?

22 A THAT'S CORRECT.

23 MR. MUELLER: YOUR HONOR, COULD MAY I  
24 APPROACH ONE MORE TIME.

25 THE COURT: GO AHEAD.

1 BY MR. MUELLER:

2 Q DR. WALKER, HAVE YOU SEEN ANY EVIDENCE THAT  
3 SAMSUNG DISCLOSED THIS PATENT NUMBER TO ETSI BEFORE  
4 JUNE 1ST, 2005?

5 A NONE WHATSOEVER.

6 Q WHEN WAS THE DISCLOSURE MADE?

7 A THE DISCLOSURE WAS MADE ON THE 16TH OF MAY,  
8 2006.

9 Q DR. WALKER, GIVEN THIS CHRONOLOGY, DO YOU HAVE  
10 AN OPINION AS TO WHETHER SAMSUNG COMPLIED WITH ITS  
11 DISCLOSURE OBLIGATIONS WITH RESPECT TO THE '516  
12 PATENT?

13 A MY OPINION IS THAT IT DID NOT COMPLY WITH THE  
14 OBLIGATION BECAUSE IT SHOULD HAVE DISCLOSED BEFORE  
15 ADOPTION.

16 MR. MUELLER: THANK YOU, SIR. I HAVE NO  
17 FURTHER QUESTIONS.

18 THE COURT: ALL RIGHT. THE TIME IS NOW  
19 11:16.

20 PLEASE GO AHEAD. 11:17. GO AHEAD.

21 MR. VERHOEVEN: THANK YOU, YOUR HONOR.

22 **CROSS-EXAMINATION**

23 BY MR. VERHOEVEN:

24 Q GOOD MORNING, DR. WALKER.

25 A GOOD MORNING.

1 Q AS YOU MAY HAVE NOTICED, WE'RE UNDER SOME  
2 STRICT TIME LIMITS SO IF, AS I'M ASKING YOU  
3 QUESTIONS, IF YOU CAN FAIRLY ANSWER YES OR NO, I'D  
4 APPRECIATE YOU DOING THAT. OKAY?

5 A OKAY.

6 Q NOW, SIR, ISN'T IT TRUE THAT TO FALL WITHIN  
7 THE ETSI IPR POLICY, AN INTELLECTUAL PROPERTY RIGHT  
8 NEEDS TO MEET ETSI'S DEFINITION OF IPR?

9 A THAT IS CORRECT.

10 Q CAN WE PUT UP SDX 3916, SLIDE 12. AND THIS IS  
11 THE DEFINITION I HAVE ON THE SCREEN THAT ETSI HAS  
12 FOR IPR; RIGHT?

13 A THAT'S CORRECT.

14 Q AND IT SAYS, "IPR SHALL MEAN ANY INTELLECTUAL  
15 PROPERTY RIGHT CONFERRED BY STATUTE LAW INCLUDING  
16 APPLICATIONS THEREFORE OTHER THAN TRADEMARKS."

17 AND THEN IT CONTINUES, SIR, "FOR THE  
18 AVOIDANCE OF DOUBT, RIGHTS RELATING TO GET-UP,  
19 CONFIDENTIAL INFORMATION, TRADE SECRETS OR THE LIKE  
20 ARE EXCLUDED FROM THE DEFINITION OF IPR."

21 DO YOU SEE THAT, SIR?

22 A YES, I DO.

23 Q NOW, SO ONE OF THE THINGS THAT'S EXCLUDED FROM  
24 IPR IS CONFIDENTIAL INFORMATION; RIGHT?

25 A THAT IS CORRECT. IT'S NOT IPR.

1 Q AND IF WE CAN PUT UP PDX 45.6. THIS IS YOUR  
2 SLIDE.

3 YOU REFERRED TO THE SAMSUNG KOREAN PATENT  
4 APPLICATION; RIGHT?

5 A YES, I DID.

6 Q BUT YOU DON'T -- YOU DIDN'T EVEN READ THAT  
7 APPLICATION, DID YOU?

8 A THAT IS CORRECT.

9 Q YOU DON'T KNOW WHETHER IT'S CONFIDENTIAL, DO  
10 YOU?

11 A I DON'T KNOW WHETHER THEY MADE A CONFIDENTIAL  
12 APPLICATION WITH REGARD TO THAT PATENT, NO.

13 Q NOW, THE JURY, THEY SAW A VIDEO AT THE  
14 BEGINNING OF THIS TRIAL THAT TALKED ABOUT THE  
15 UNITED STATES, HOW WHEN YOU FILE PATENT  
16 APPLICATIONS THEY'RE INITIALLY CONFIDENTIAL.

17 ISN'T IT TRUE, SIR, THAT THE SAME IS TRUE  
18 IN THE KOREAN PATENT SYSTEM, THEY'RE CONFIDENTIAL?

19 A I BELIEVE YOU CAN REQUEST THAT TO BE THE CASE,  
20 YES.

21 Q AND IF THEY'RE CONFIDENTIAL, IT'S NOT WITHIN  
22 THE DEFINITION OF IPR AND THERE'S NO DUTY TO  
23 DISCLOSE. ISN'T THAT TRUE, SIR?

24 A NO, BECAUSE YOU CAN'T USE IT THEN WITHIN THE  
25 CONTEXT OF ETSI, BECAUSE IF YOU WISH TO --

1 Q IT'S NOT IPR UNDER THE DEFINITION, IS IT, SIR?

2 A IT'S NOT IPR.

3 Q NOW, I'LL DIRECT YOUR ATTENTION TO EXHIBIT 613  
4 IN YOUR BINDER. ARE YOU THERE?

5 A NO. 613?

6 Q 613.

7 MR. LEE: HE'S LOOKING AT OUR BINDER.

8 THE COURT: IT'S THE BLACK --

9 THE WITNESS: I HAVE IT. YES, THANK YOU.

10 BY MR. VERHOEVEN:

11 Q OKAY. YOU'VE SEEN THIS DOCUMENT BEFORE,  
12 RIGHT?

13 A YES, THE ETSI GUIDE ON IPR, YES.

14 MR. VERHOEVEN: YOUR HONOR, WE MOVE  
15 DEFENDANT'S EXHIBIT 613 INTO EVIDENCE.

16 MR. MUELLER: NO OBJECTION.

17 THE COURT: IT'S ADMITTED.

18 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER  
19 613, HAVING BEEN PREVIOUSLY MARKED FOR  
20 IDENTIFICATION, WAS ADMITTED INTO  
21 EVIDENCE.)

22 BY MR. VERHOEVEN:

23 Q I'LL DIRECT YOUR ATTENTION TO PAGE 8. HERE --  
24 CAN WE PULL OUT THIS BOTTOM PORTION, SECTION 2.

25 THIS IS THE GUIDELINE; RIGHT?

1 A THAT IS CORRECT.

2 Q AND IT'S THE IMPORTANCE OF TIMELY DISCLOSURE  
3 OF ESSENTIAL IPR'S IS THE SECTION; RIGHT?

4 A THAT IS CORRECT.

5 Q AND NOTE 1, DEFINITIONS FOR TIMELINESS OR  
6 TIMELY CANNOT BE AGREED BECAUSE SUCH DEFINITIONS  
7 WOULD CONSTITUTE A CHANGE TO THE POLICY.

8 DO YOU SEE THAT, SIR? IS THAT WHAT THAT  
9 SAYS?

10 A THAT IS CORRECT, THAT SAYS THAT.

11 Q AND -- BUT THERE IS A DESCRIPTION OF  
12 INTENTIONAL DELAY. DO YOU SEE THAT, SIR?

13 A YES, I DO SEE THAT.

14 Q AN INTENTIONAL DELAY ARISES WHEN IT CAN BE  
15 DEMONSTRATED THAT AN ETSI MEMBER HAS DELIBERATELY  
16 WITHHELD IPR DISCLOSURES SIGNIFICANTLY BEYOND WHAT  
17 WOULD BE EXPECTED FROM NORMAL CONSIDERATIONS OF  
18 TIME LIMITS.

19 RIGHT?

20 A THAT IS CORRECT.

21 Q YOU'RE NOT OFFERING AN OPINION HERE TODAY THAT  
22 SAMSUNG DELIBERATELY OR INTENTIONALLY DELAYED, ARE  
23 YOU, SIR?

24 A I HAVE NOT USED THOSE WORDS, NO.

25 Q AND YOU'RE NOT OFFERING THAT OPINION, ARE YOU,

1 SIR?

2 A NO, I AM NOT.

3 Q NOW, YOU HAVE A TECHNICAL BACKGROUND, RIGHT?

4 A I DO HAVE A TECHNICAL BACKGROUND, YES.

5 Q A PH.D. IN MATHEMATICS?

6 A YES.

7 Q AND FROM 2001 TO 2009, YOU WERE GROUP RESEARCH  
8 AND DEVELOPMENT DIRECTOR FOR THE VODAFONE GROUP OF  
9 COMPANIES; RIGHT?

10 A THAT IS CORRECT.

11 Q AND YOU'VE BEEN INVOLVED IN ETSI SINCE 1988  
12 THROUGH YOUR WORK AT VODAFONE; RIGHT?

13 A THAT IS CORRECT.

14 Q AND YOU STARTED OUT BY PARTICIPATING IN THESE  
15 TECHNICAL WORKING GROUPS THAT YOU WERE TALKING  
16 ABOUT. DO YOU REMEMBER?

17 A THAT'S CORRECT, YES.

18 Q AND YOU WERE -- YOU WENT TO MANY OF THESE;  
19 RIGHT?

20 A YES, I DID.

21 Q AND IN ALL OF THOSE MEETINGS WHERE YOU  
22 ATTENDED AS A MEMBER OF THE WORKING GROUP, NEVER  
23 ONCE DID ANYBODY RAISE THEIR HAND AND SAY, HEY,  
24 I'VE GOT ESSENTIAL IPR. CORRECT?

25 A THAT IS CORRECT.

1 Q NOW, ETSI ENCOURAGES COMPANIES LIKE SAMSUNG TO  
2 MAKE A GENERAL IPR DECLARATION AS PART OF A CALL  
3 FOR IPR'S; RIGHT?

4 A THAT'S CORRECT, ALL COMPANIES ARE ASKED TO DO  
5 THAT.

6 Q AND, IN FACT, IN DECEMBER OF 1998, SAMSUNG  
7 SUBMITTED A GENERAL IPR LICENSING DECLARATION TO  
8 ETSI, DIDN'T IT?

9 A THEY DID, YES, INDEED.

10 Q TURN TO EXHIBIT 549.

11 CAN WE PUT THAT --

12 AND I WOULD MOVE THIS INTO EVIDENCE, YOUR  
13 HONOR.

14 MR. MUELLER: NO OBJECTION.

15 THE COURT: IT'S ADMITTED.

16 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER  
17 549, HAVING BEEN PREVIOUSLY MARKED FOR  
18 IDENTIFICATION, WAS ADMITTED INTO  
19 EVIDENCE.)

20 MR. VERHOEVEN: CAN WE PUT IT ON THE  
21 SCREEN.

22 Q NOW, THIS IS DECEMBER 1998; RIGHT?

23 A CORRECT.

24 Q AND DO YOU SEE HERE IT SAYS SEC, THAT'S THE  
25 SAMSUNG COMPANY WHO'S A DEFENDANT IN THIS CASE;



1 RIGHT?

2 A YES.

3 Q SEC IS PREPARED TO GRANT LICENSES TO ITS  
4 SPECIAL IPR'S ON A FAIR, REASONABLE, AND  
5 NON-DISCRIMINATORY BASIS IN ACCORDANCE WITH THE  
6 TERMS AND CONDITIONS SET FORTH IN CLAUSE 6.1 OF THE  
7 ETSI IPR POLICY.

8 DO YOU SEE THAT?

9 A CORRECT.

10 Q SO SAMSUNG SAID TO ALL THESE MEMBERS OF ETSI,  
11 HEY, IF SOMETHING BECOMES ESSENTIAL IN THE FUTURE,  
12 WE'RE LETTING YOU KNOW IN ADVANCE, WE WILL LICENSE  
13 THAT ON FAIR, REASONABLE, AND NON-DISCRIMINATORY  
14 TERMS. ISN'T THAT WHAT THAT'S SAYING?

15 A THAT IS CORRECT. MANY COMPANIES DID THAT.

16 Q NOW, LET'S GO BACK TO PDX 45.6.

17 NOW, YOU'VE GOT A TIME LINE HERE, SIR,  
18 BUT YOU DIDN'T PUT ON THE TIMELINE THIS GENERAL  
19 DECLARATION THAT SAMSUNG MADE; ISN'T THAT TRUE,  
20 SIR?

21 A THAT IS TRUE. THIS TIMELINE RELATED TO  
22 DISCLOSURE.

23 Q SIR, IF YOU COULD PLEASE ANSWER MY QUESTION.

24 A YES, I HAVE.

25 Q YOU DIDN'T PUT IT ON THE TIMELINE, DID YOU?

1 A NO, I HAVE NOT.

2 Q IN FACT, THAT WOULD BE WAY BEFORE ANY OF THESE  
3 ITEMS ON THE TIMELINE; CORRECT?

4 A THAT IS CORRECT. BUT IT'S NOT RELATED TO  
5 DISCLOSURE. THESE ARE THE DISCLOSURE EVENTS.

6 Q NOW --

7 A YOU CITED CLAUSE 6.1.

8 Q NOW, SIR, SIR, I'M ON THE CLOCK.

9 YOU WERE HERE TODAY. YOU SAW THE  
10 TESTIMONY OF DR. KIM; RIGHT?

11 A I DID, YES.

12 Q AND DR. KNIGHTLY?

13 A YES, I DID.

14 Q AND YOU HEARD BOTH OF THEM TESTIFY THAT THESE  
15 TWO PATENTS, THE '941 AND THE '516 PATENTS, ARE NOT  
16 ESSENTIAL.

17 A YES, I DID.

18 Q DIDN'T YOU, SIR?

19 A I DID HEAR THEM SAY THAT.

20 Q AND ISN'T IT TRUE IF A PATENT IS NOT  
21 ESSENTIAL, AS APPLE'S OWN SWORN EXPERTS SAID, THEN  
22 THERE'S ABSOLUTELY NO DISCLOSURE OBLIGATION, IS  
23 THERE, SIR?

24 A YOU ONLY HAVE TO BELIEVE IT LIKELY TO BE  
25 ESSENTIAL.

1 Q NOW, YOU TALKED A LITTLE BIT ABOUT FRAND.  
2 ISN'T IT TRUE, SIR, YOU HAVE NO OPINION TO PRESENT  
3 TO THIS JURY WITH RESPECT TO WHETHER SAMSUNG HAS  
4 MADE A FRAND OFFER OR NOT?

5 A I'M DEALING WITH DISCLOSURE AT THE MOMENT,  
6 YES.

7 Q SO THE ANSWER IS YES?

8 A YES.

9 Q LET'S GO BACK TO THE IPR POLICY. CAN WE PUT  
10 UP SDX 3916.2. ETSI HAS A SECTION 14 IN THE ETSI  
11 IPR POLICY CALLED VIOLATION OF POLICY. YES OR NO?

12 A YES, IT HAS.

13 Q IT SAYS, "ANY VIOLATION OF THE POLICY BY A  
14 MEMBER SHALL BE DEEMED TO BE A BREACH BY THAT  
15 MEMBER OF ITS OBLIGATIONS TO ETSI. THE ETSI  
16 GENERAL ASSEMBLY SHALL HAVE THE AUTHORITY TO DECIDE  
17 THE ACTION TO BE TAKEN, IF ANY, AGAINST THE MEMBER  
18 IN BREACH IN ACCORDANCE WITH ETSI STATUTES."

19 DO YOU SEE THAT, SIR?

20 A YES, I DO.

21 Q YOU HAVE NO OPINION AS TO WHETHER OR NOT,  
22 UNDER SECTION 14, SAMSUNG VIOLATED THE ETSI POLICY;  
23 CORRECT?

24 A CORRECT. AS FAR AS I KNOW, NO PROCESS HAS  
25 TAKEN PLACE WITHIN ETSI TO DECIDE THAT.

1 Q IF YOU CAN ANSWER ME YES OR NO ON THAT?

2 A YES, I HAVE NO OPINION AS TO THE HYPOTHETICAL  
3 QUESTION.

4 Q YOU HAVE NO OPINION AS TO WHETHER OR NOT  
5 SECTION 14 -- LET ME REPHRASE. YOU HAVE NO OPINION  
6 AS TO WHETHER OR NOT, UNDER SECTION 14, SAMSUNG  
7 VIOLATED THE ETSI POLICY?

8 A THAT'S CORRECT. SECTION 14 DOESN'T MEAN --

9 Q EXCUSE ME, SIR. IS THAT A YES?

10 A THAT IS A YES BECAUSE --

11 MR. VERHOEVEN: THANK YOU, SIR.

12 YOUR HONOR, PASS THE WITNESS.

13 THE COURT: ALL RIGHT. THE TIME IS  
14 11:27. GO AHEAD, PLEASE.

15 **REDIRECT EXAMINATION**

16 BY MR. MUELLER:

17 Q TO YOUR KNOWLEDGE, HAS ETSI CONDUCTED ANY  
18 INVESTIGATION INTO SAMSUNG'S DISCLOSURE PRACTICES?

19 A NO, THEY HAVE NOT.

20 MR. MUELLER: NOW -- MAY I APPROACH THE  
21 WITNESS, YOUR HONOR?

22 THE COURT: GO AHEAD, PLEASE.

23 BY MR. MUELLER:

24 Q I'M HANDING YOU PLAINTIFF'S EXHIBIT 75.

25 MR. VERHOEVEN REFERRED YOU TO THE ETSI GUIDE. IS

1 THIS ANOTHER VERSION OF THAT GUIDE?

2 A I DIDN'T NOTICE THE ACTUAL VERSION THAT WAS  
3 PRESENTED, BUT THIS IS A VERSION, YES.

4 MR. MUELLER: YOUR HONOR, I OFFER IT.

5 THE COURT: ANY OBJECTION?

6 MR. VERHOEVEN: I'VE JUST BEEN HANDED  
7 THIS JUST NOW, YOUR HONOR. I NEED TO CHECK TO SEE  
8 WHAT IT IS. WE HAVE TO CHECK, YOUR HONOR. WE  
9 DON'T BELIEVE THIS WAS DISCLOSED IN THE EXAMINATION  
10 EXHIBITS.

11 MR. MUELLER: YOUR HONOR, I'M RAISING IT  
12 BECAUSE IT WAS RAISED ON CROSS AS A NEW SUBJECT.

13 MR. VERHOEVEN: NO, THIS DOCUMENT WAS  
14 NOT, YOUR HONOR.

15 THE COURT: ALL RIGHT. MOVE ONTO  
16 SOMETHING ELSE.

17 MR. MUELLER: OKAY, THAT'S FINE.

18 Q DR. WALKER, DOES A GENERAL DECLARATION SATISFY  
19 THE SPECIFIC DISCLOSURE OBLIGATIONS UNDER CLAUSE 4.

20 MR. VERHOEVEN: OBJECTION, LEADING.

21 THE COURT: OVERRULED.

22 BY MR. MUELLER:

23 Q YOU CAN ANSWER, SIR?

24 A NO, IT DOESN'T BECAUSE IT DOESN'T ADDRESS  
25 DISCLOSURE.

1 Q NEXT SUBJECT, DR. WALKER. MR. VERHOEVEN ASKED  
2 YOU SOME QUESTIONS ABOUT CONFIDENTIALITY. DO YOU  
3 RECALL THAT?

4 A YES, I DO.

5 Q LET'S TAKE A LOOK AT THE ETSI IPR POLICY FROM  
6 1997, WHICH YOU HAVE BEFORE YOU. PLEASE TURN, IF  
7 YOU COULD, SIR, TO PROVISION 10 AND LET'S PUT THAT  
8 ON THE SCREEN.

9 SIR, WHAT DOES THIS PROVISION SAY?

10 MR. VERHOEVEN: OBJECTION. OUTSIDE OF  
11 SCOPE OF THIS WITNESS'S REPORT.

12 MR. MUELLER: YOUR HONOR, IT'S NOT. IT  
13 WAS DIRECTLY WITHIN THE SCOPE OF THE  
14 CONFIDENTIALITY CROSS-EXAMINATION THAT WE JUST  
15 HEARD ABOUT.

16 THE COURT: OVERRULED. GO AHEAD.

17 THE WITNESS: WHAT THIS SAYS IS THAT IF  
18 YOU HAVE INFORMATION THAT YOU BELIEVE IS  
19 CONFIDENTIAL AND YOU WISH TO MAKE IT, CREATE A  
20 PROPOSAL FROM IT AND BRING IT TO ETSI, THEN YOU  
21 HAVE TO MARK IT AS CONFIDENTIAL. IT HAS TO BE IN  
22 WRITING. YOU HAVE TO TAKE IT TO THE CHAIRMAN OF  
23 THE, OF THE TECHNICAL GROUP. HE HAS TO AGREE THAT  
24 YOU CAN NOW SUBMIT IT TO THAT TECHNICAL BODY. THE  
25 TECHNICAL BODY WILL MAINTAIN CONFIDENTIALITY. BUT

1 THAT IS THE LIMIT.

2 BY MR. MUELLER:

3 Q DR. WALKER, HAVE YOU SEEN ANY EVIDENCE THAT  
4 SAMSUNG FOLLOWED THIS PROVISION?

5 A ABSOLUTELY NOT. ALL THEIR DOCUMENTS THAT I  
6 HAVE SEEN, THEY WERE SUBMITTED WITHOUT ANY  
7 CONFIDENTIAL MARKINGS WHATSOEVER.

8 Q AND, DR. WALKER, YOU WALKED US THROUGH THE  
9 WORKING GROUP MEETINGS. WERE THOSE PUBLIC OR  
10 CONFIDENTIAL MEETINGS?

11 A ALL OF THOSE MEETINGS, 3GPP MEETINGS, ALL OF  
12 THE REPORTS, ALL OF THE DOCUMENTATION IS PUBLIC.

13 Q INCLUDING THE SAMSUNG PROPOSALS?

14 A INCLUDING THE SAMSUNG PROPOSALS.

15 Q LAST QUESTION, DR. WALKER. IF WE LOOK AT  
16 CLAUSE 4, MR. VERHOEVEN ASKED YOU SOME QUESTIONS  
17 ABOUT THE WORD "TIMELY."

18 I WANT TO FOCUS YOUR ATTENTION ON THAT  
19 SECOND SENTENCE, CLAUSE 4.1, "A MEMBER SUBMITTING A  
20 TECHNICAL PROPOSAL FOR A STANDARD SHALL, ON A BONA  
21 FIDE BASIS, DRAW THE ATTENTION OF ETSI TO ANY OF  
22 THAT MEMBER'S IPR WHICH MIGHT BE ESSENTIAL IF THAT  
23 PROPOSAL IS ADOPTED."

24 WHAT IS YOUR VIEW ON THE TIMING  
25 REQUIREMENT OF THAT SENTENCE?

1           A        THAT IF YOU BELIEVE THAT YOUR PROPOSAL  
2                   CONTAINS IPR THAT MAY BE ESSENTIAL, THEN YOU SHOULD  
3                   DISCLOSE IT BEFORE OR AT THE POINT OF WHICH THAT  
4                   PROPOSAL IS ADOPTED.

5           Q        AND, SIR, IN YOUR OPINION, DID SAMSUNG COMPLY  
6                   WITH THAT PROPOSAL?

7           A        IN NEITHER CASE DID THEY COMPLY WITH IT.

8                   MR. MUELLER: I HAVE NOTHING FURTHER.

9                   THE COURT: ALL RIGHT. IT'S 11:30. ANY  
10                  RE CROSS.

11                  MR. VERHOEVEN: JUST ONE SECOND, YOUR  
12                  HONOR.

13                  THE COURT: OKAY.

14                  (PAUSE IN PROCEEDINGS.)

15                  MR. VERHOEVEN: YOUR HONOR, IN THE  
16                  INTEREST OF TIME, I'M NOT GOING TO HAVE ANY FURTHER  
17                  EXAMINATION.

18                  THE COURT: ALL RIGHT. MAY THIS WITNESS  
19                  BE EXCUSED AND IS IT SUBJECT TO RECALL OR NOT?

20                  MR. MUELLER: NOT SUBJECT TO RECALL, YOUR  
21                  HONOR.

22                  THE COURT: OKAY. YOU MAY BE EXCUSED.

23                  CALL YOUR NEXT WITNESS, PLEASE.

24                  MR. LEE: YOUR HONOR, APPLE CALLS  
25                  MR. DONALDSON.



1 THE COURT: OKAY. IF ANYONE WANTS TO  
2 STAND UP AND STRETCH DURING THE TRANSITION TIME,  
3 PLEASE DO SO.

4 DO WE HAVE PHOTOS OR ANYBODY.

5 MR. MUELLER: WE'VE TAKEN THEM, YOUR  
6 HONOR. WE'LL PASS THEM UP OF THE I THINK THEY'RE  
7 BEING PRINTED.

8 MR. LEE: THERE THEY ARE, YOUR HONOR.

9 THE COURT: GO AHEAD AND PASS THEM OUT.

10 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

11 **RICHARD DONALDSON,**

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: I DO.

16 THE CLERK: THANK YOU. PLEASE BE SEATED.

17 THE COURT: CAN YOU PASS THE PHOTOGRAPHS.

18 I WANT PEOPLE TO WRITE NOTES ON THE  
19 PHOTOS AND IF YOU GIVE THEM TO US LATE, THEY DON'T  
20 GET TO WRITE NOTES ON THE PHOTOS.

21 MR. MUELLER: SORRY, YOUR HONOR.

22 **DIRECT EXAMINATION**

23 BY MR. MUELLER:

24 Q GOOD MORNING, MR. DONALDSON. COULD YOU PLEASE  
25 INTRODUCE YOURSELF TO THE JURY.

1 A YES. MY NAME IS RICHARD DONALDSON.

2 THE COURT: TIME IS 11:32.

3 THE WITNESS: I LIVE IN PLANO, TEXAS.

4 BY MR. MUELLER:

5 Q HAVE YOU BEEN RETAINED BY APPLE AS AN EXPERT  
6 WITNESS IN THIS CASE?

7 A YES, SIR, I HAVE.

8 Q COULD YOU BRIEFLY SUMMARIZE YOUR EDUCATION AND  
9 PROFESSIONAL BACKGROUND?

10 A YES. I HAVE A DEGREE IN ELECTRICAL  
11 ENGINEERING; I HAVE A LAW DEGREE FROM ST. LOUIS  
12 UNIVERSITY; AND THEN I HAVE A MASTER'S OF LAW  
13 DEGREE FROM GEORGE WASHINGTON UNIVERSITY WHERE I  
14 SPECIALIZED IN PATENT AND TRADE REGULATION.

15 Q WHAT IS YOUR PROFESSIONAL BACKGROUND, SIR?

16 A YES, FROM MY WORK WITH RESPECT TO PATENTS, I  
17 WENT TO WORK FOR TEXAS INSTRUMENTS IN 1969 AS A  
18 PATENT ATTORNEY. I WORKED THERE FOR 31 YEARS,  
19 FOCUSED MOST OF MY TIME AS THE CHIEF LICENSING  
20 PERSON AT TEXAS INSTRUMENTS.

21 I BECAME GENERAL PATENT COUNSEL AND  
22 RETIRED FROM TEXAS INSTRUMENTS IN 2000 AS GENERAL  
23 PATENT COUNSEL AND SENIOR VICE PRESIDENT OF TEXAS  
24 INSTRUMENTS.

25 Q SIR, HOW MANY LICENSES HAVE YOU NEGOTIATED AS

1 A PRINCIPAL NEGOTIATOR?

2 A THAT WOULD BE IN THE HUNDREDS.

3 Q AND HAVE YOU NEGOTIATED LICENSES THAT COVER  
4 SOMETHING KNOWN AS FAIR, REASONABLE, AND  
5 NON-DISCRIMINATORY COMMITTED PATENTS, OR FRAND  
6 PATENTS?

7 A YES, SIR, I HAVE.

8 Q CAN YOU EXPLAIN BRIEFLY?

9 A MANY OF THE LICENSES, IN FACT, MOST OF THE  
10 LICENSES THAT I NEGOTIATED WOULD INCLUDE PATENTS  
11 RELATED TO FRAND.

12 I ALSO, SINCE RETIRING FROM TEXAS  
13 INSTRUMENTS, HAVE BEEN IN LICENSING CONSULTING, AND  
14 IN CONSULTING WITH OTHER COMPANIES. I'VE ACTUALLY  
15 DONE NEGOTIATIONS INVOLVING FRAND PATENTS.

16 AND I'VE ALSO SERVED AS A WITNESS, OR AS  
17 AN EXPERT IN PATENT LITIGATION WHERE FRAND PATENTS  
18 WERE ASSERTED.

19 MR. MUELLER: YOUR HONOR, I OFFER  
20 MR. DONALDSON AS AN EXPERT IN PATENT LICENSING,  
21 INCLUDING FRAND PATENT LICENSING.

22 MS. MAROULIS: NO OBJECTION.

23 THE COURT: ALL RIGHT. HE IS CERTIFIED.  
24 GO AHEAD, PLEASE.

25 BY MR. MUELLER:

1 Q MR. DONALDSON, CAN YOU BRIEFLY SUMMARIZE ANY  
2 DIFFERENCES THAT, IN YOUR OPINION, DISTINGUISH  
3 FRAND PATENTS FROM OTHER PATENTS?

4 A YES, THERE ARE SEVERAL, MANY DISTINCTIONS, AND  
5 I HAVE A SLIDE THAT --

6 Q LET'S PUT IT UP. PDX 49.2, PLEASE. WHAT DO  
7 WE SEE HERE?

8 A THIS SLIDE SHOWS THREE AREAS OF MATERIAL  
9 DIFFERENCES BETWEEN HOW YOU GO ABOUT LICENSES WHAT  
10 YOUR RIGHTS ARE WITH RESPECT TO LICENSES PATENTS  
11 THAT ARE SUBJECT TO FRAND OBLIGATIONS AND PATENTS  
12 THAT ARE NOT SUBJECT TO THAT.

13 Q FIRST ROW REFERS TO EXCLUSIVE USE. CAN YOU  
14 EXPLAIN?

15 A WELL, YES. THE FRAND PATENTS, AS EXPLAINED  
16 EARLIER TODAY, THEY RELATE TO PATENTS THAT ARE  
17 GENERATED WITH RESPECT TO AN INDUSTRY STANDARD,  
18 SUCH AS UMTS.

19 AND ONE OF THE PURPOSES OF THAT STANDARD  
20 IS WIDE DISTRIBUTION OR USE THROUGHOUT THE  
21 INDUSTRY.

22 SO COMPANIES WHO OBTAIN PATENTS RELATING  
23 TO THAT SPECIFICATION SIGN AN UNDERTAKING THAT THEY  
24 WILL LICENSE IT TO ANYONE WHO WANTS A LICENSE  
25 UNDERSTOOD IT, AND THAT MEANS THEY DO NOT HAVE

1 EXCLUSIVE USE.

2 WHEREAS IF YOU GO TO THE NON-FRAND  
3 PATENTS, THAT'S ONE OF THE PRIMARY RIGHTS OF A  
4 PATENT OWNER IS TO HAVE EXCLUSIVE USE OF THAT  
5 PATENT.

6 Q SECOND ROW REFERS TO FREEDOM TO DETERMINE  
7 ROYALTY AMOUNT. CAN YOU EXPLAIN TO THE JURY WHAT  
8 THAT MEANS?

9 A YES. WITH RESPECT TO THESE FRAND PATENTS,  
10 COMPANIES WHO OWN SUCH A PATENT ARE UNDER SOME  
11 MATERIAL LIMITATIONS OR RESTRICTIONS OF WHAT WE CAN  
12 DO WHEN THEY LICENSE THAT PATENT.

13 AND IN PARTICULAR, THEY ARE COMMITTING  
14 THEMSELVES TO SAY THEY WILL LICENSE THESE PATENTS  
15 UNDER FAIR, REASONABLE, EXAMINE NON-DISCRIMINATORY  
16 TERMS, WHICH ARE VERY SIGNIFICANT LIMITATIONS.

17 WHEREAS IF YOU GO TO OTHER PATENTS, THERE  
18 ARE NO RESTRICTIONS. YOU CAN LICENSE AT WHATEVER  
19 THE MARKET WILL BEAR.

20 Q LAST ROW REFERS TO DISTINGUISHING PRODUCTS  
21 FROM COMPETITORS. CAN YOU EXPLAIN THAT, PLEASE?

22 A WELL, AGAIN, WHEN YOU LOOK AT THE PATENTS THAT  
23 RELATE TO THESE SPECIFICATIONS THAT ARE SUBJECT TO  
24 THESE FRAND OBLIGATIONS, YOU HAVE MADE A COMMITMENT  
25 AS A PATENT OWNER TO LICENSE IT TO ANYONE WHO WANTS

1 A LICENSE. SO YOU CANNOT DISTINGUISH ANY PRODUCT  
2 FROM ANOTHER PRODUCT BECAUSE THEY ALL HAVE A RIGHT  
3 TO USE ALL OF THE FRAND PATENTS.

4 WHEREAS OTHER PATENTS, THESE ARE  
5 SOMETIMES SOME OF THE MOST IMPORTANT PATENTS THAT A  
6 COMPANY CAN OWN BECAUSE THEY COVER THE BELLS AND  
7 THE WHISTLES OF A PRODUCT. THEY COVER FEATURES  
8 THAT WILL DISTINGUISH YOUR PRODUCT FROM A  
9 COMPETITOR'S PRODUCT. AND YOU CAN KEEP THOSE  
10 FEATURES JUST TO YOURS AND NOT LICENSE THEM AT ALL,  
11 OR WHEN YOU DO LICENSE IT, YOU CAN GET  
12 SUBSTANTIALLY HIGHER ROYALTIES, IN MY EXPERIENCE,  
13 THAN WHAT YOU WOULD GET FROM A FRAND-RELATED  
14 PATENT.

15 Q SIR, IF YOU COULD TURN TO TAB 2 IN YOUR  
16 BINDER, THIS IS PX 80, THE SAMSUNG PORTFOLIO  
17 PROPOSAL THAT THE JURY HEARD ABOUT YESTERDAY FROM  
18 DR. TEECE.

19 DO YOU HAVE AN OPINION AS TO WHETHER THIS  
20 PORTFOLIO PROPOSAL MET SAMSUNG'S REQUIREMENTS OF  
21 FRAND LICENSING?

22 A YES, IN MY OPINION, IT DOES NOT MEET THE  
23 REQUIREMENTS TO LICENSE UNDER FRAND TERMS.

24 Q CAN YOU EXPLAIN WHY NOT, SIR?

25 A BECAUSE THE ROYALTY BASE THAT IS USED AND THE

1 ROYALTY RATE THAT IS USED TO CALCULATE THE  
2 ROYALTIES ARE NOT REASONABLE. THEY'RE NOT FAIR AND  
3 REASONABLE.

4 Q AND JUST SO WE'RE CLEAR, WHEN YOU REFER TO THE  
5 RATE AND THE BASE, ARE YOU REFERRING TO 2.4 PERCENT  
6 OF THE PRICE OF EACH APPLE PRODUCT?

7 A THAT IS CORRECT.

8 Q AND THE RATE IS 2.4 PERCENT?

9 A AND THE BASE IS THE ENTIRE PRICE, SELLING  
10 PRICE OF ONE OF THE ACCUSED PRODUCTS, LIKE THE  
11 IPHONE.

12 Q NOW, LET'S FOCUS FIRST ON THE BASE. DO YOU  
13 HAVE AN OPINION AS TO WHETHER OR NOT THE BASE IN  
14 THE SAMSUNG PROPOSAL COMPLIED WITH FRAND?

15 A YES, I BELIEVE IT DOES NOT APPLY TO FRAND.

16 Q AND WHY NOT, SIR?

17 A BECAUSE IN LICENSING, WHEN YOU ARE LICENSING A  
18 PATENT, YOU PRIMARILY, WHEN YOU SELECT THE ROYALTY  
19 BASE, ARE LOOKING FOR SOMETHING THAT MOST CLOSELY  
20 RELATES TO THE SCOPE OF THE PATENT.

21 HERE WE'RE TALKING ABOUT TWO PATENTS THAT  
22 COVER UMTS, THEY COVER CELL PHONE APPLICATIONS.

23 THE IPHONE, OR THE IPOD THAT ARE ACCUSED,  
24 THEY COVER MANY, MANY OTHER FEATURES. IN FACT, THE  
25 ONLY CAPABILITY, WHAT PROVIDES THE CAPABILITY IN

1           THESE PRODUCTS IS THE UMTS CHIPSET, OR THE BASEBAND  
2           CONTROLLER, WHICH IS JUST ONE SMALL PART OF THE  
3           PHONE.

4                           AND THAT WOULD BE A MORE REASONABLE  
5           BASIS, BECAUSE OTHERWISE YOU'RE OBTAINING ROYALTIES  
6           ON VALUE COMPLETELY UNRELATED TO YOUR PATENT.

7           Q       NOW, SIR, WERE YOU HERE YESTERDAY FOR THE  
8           TESTIMONY OF TONY BLEVINS FROM APPLE?

9           A       YES, I WAS.

10          Q       AND DID YOU HEAR HIM DISCUSS HOW MUCH APPLE  
11          PAYS FOR THE BASEBAND PROCESSORS AND THE PRODUCTS  
12          ACCUSED?

13          A       YES. AS I RECALL HE TESTIFIED THAT APPLE  
14          PURCHASES THESE BASEBAND CONTROLLER FROM INTEL AND  
15          THE PRICE IS BETWEEN \$6 AND \$10 PER UNIT.

16          Q       HOW DOES THAT COMPARE TO THE ROYALTIES THAT  
17          SAMSUNG WAS DEMANDING UNDER THIS PROPOSAL?

18          A       WELL, SAMSUNG IS APPLYING, IN THIS PROPOSAL A  
19          ROYALTY OF 2.4 PERCENT TO A PRODUCT THAT SELLS FOR  
20          \$600, WHERE THE CAPABILITY TO DO THE CELL PHONE,  
21          THE UMTS CHIPSET, SELLS FOR \$6 TO \$12. I THINK \$12  
22          IS WHAT HE USED.

23          Q       AND DO YOU KNOW HOW MUCH THE SAMSUNG ROYALTY  
24          WOULD TRANSLATE INTO IN DOLLARS AND CENTS?

25          A       YES, UNDER SAMSUNG'S PROPOSAL, IT WOULD BE



1 OVER \$14 FOR EACH PRODUCT.

2 Q AS COMPARED TO WHAT PRICE FOR THE BASEBAND?

3 A BETWEEN \$6 AND \$12.

4 Q NOW, WHAT DOES THE N-D IN FRAND STANDS FOR?

5 A IT STANDS FOR NON-DISCRIMINATORY.

6 Q WAS SAMSUNG PROPOSAL NON-DISCRIMINATORY?

7 A NO, I BELIEVE IT IS DISCRIMINATORY.

8 Q COULD YOU EXPLAIN?

9 A SURE. BECAUSE THE FUNCTIONALITY THAT THESE  
10 PATENTS RELATE TO IS CELL PHONE CAPABILITY. THAT'S  
11 PROVIDED BY THE UMTS CHIP THAT SELLS FOR \$6 TO \$12.

12 SO IF A COMPANY, ONE COMPANY BUILDS JUST  
13 A STANDARD CELL PHONE, SELLING FOR MAYBE \$100, THEY  
14 WOULD PAY 2.4 PERCENT UNDER THAT EXAMPLE, OR \$2.04.

15 BUT IF YOU APPLY THE 2.4 PERCENT TO THE  
16 ENTIRE PRICE OF AN APPLE SMARTPHONE, THAT'S \$600,  
17 THAT'S OVER \$14 FOR CAPABILITIES AND  
18 FUNCTIONALITIES UNRELATED TO THE CELL PHONE.

19 Q AND YOU VIEW THAT AS DISCRIMINATORY?

20 A YES, I CERTAINLY DO.

21 Q NOW, LET'S SWITCH GEARS FOR A MOMENT. I WANT  
22 TO ASK YOU TO TURN TO TAB 3 IN YOUR BINDER. THIS  
23 IS A REDACTED VERSION OF A LICENSE AGREEMENT. THE  
24 JURY WILL HAVE THE FULL VERSION, BUT THE PUBLIC  
25 WILL HAVE A REDACTED VERSION OF THIS AGREEMENT.

1 DO YOU RECOGNIZE IT?

2 A YES, I DO.

3 Q WHAT IS IT?

4 A THIS IS A LICENSE AGREEMENT BETWEEN SAMSUNG  
5 AND INTEL THAT REALLY RELATES TO A BROAD RANGE OF  
6 INTEGRATED CIRCUITS, BUT IT'S A LICENSE THAT WOULD  
7 INCLUDE A BASEBAND CONTROLLER.

8 Q BETWEEN INTEL?

9 MS. MAROULIS: YOUR HONOR, OBJECTION WITH  
10 REFERENCE TO PRIOR PRETRIAL ORDER AS TO THE SCOPE  
11 OF MR. DONALDSON'S TESTIMONY.

12 MR. MUELLER: YOUR HONOR, I'M GOING TO  
13 ASK ONLY ABOUT MR. DONALDSON'S UNDERSTANDING AS TO  
14 HOW PARTICULAR TERMS ARE COMMONLY UNDERSTOOD IN THE  
15 ENTRY. THAT'S PRECISELY WHAT YOU ALLOWED IN DOCKET  
16 ENTRY 1157 ON JUNE 30TH.

17 THE COURT: GO AHEAD.

18 Q MR. DONALDSON, DO YOU HAVE PERSONAL EXPERIENCE  
19 LICENSING IN THE SEMICONDUCTOR INDUSTRY?

20 A YES. MOST OF MY CAREER AT T.I. WAS DOING JUST  
21 THAT.

22 Q LET'S TAKE A LOOK AT SECTION 31(A)(1), WHICH  
23 IS PART OF THE MATERIALS IN THIS LICENSE AGREEMENT.

24 AND, YOUR HONOR, BEFORE I DO, I OFFER  
25 THIS.

1 THE COURT: ANY OBJECTION, MS. MAROULIS?

2 MS. MAROULIS: NO OBJECTION OTHER THAN

3 STATED.

4 THE COURT: IT'S ADMITTED.

5 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER

6 81, HAVING BEEN PREVIOUSLY MARKED FOR

7 IDENTIFICATION, WAS ADMITTED INTO

8 EVIDENCE.)

9 BY MR. MUELLER:

10 Q THIS IS THE REDACTED VERSION. I'M GOING TO  
11 ASK YOU TO TURN TO THIS SECTION, WHICH IS SOMETHING  
12 THE PUBLIC CAN SEE, AND DO YOU SEE WHERE IT SAYS  
13 SUBJECT TO THE TERMS AND CONDITIONS OF THIS  
14 AGREEMENT, SAMSUNG HERE BY GRANTS TO INTEL A  
15 NONEXCLUSIVE, NON TRANSFERRABLE, ROYALTY-FREE  
16 WORLDWIDE LICENSE, WITHOUT THE RIGHT TO SUBLICENSE,  
17 UNDER SAMSUNG'S PATENTS TO MAKE, USE, SELL,  
18 DIRECTLY OR INDIRECTLY, OFFER TO SELL, IMPORT, OR  
19 OTHERWISE DISPOSE OF ALL INTEL LICENSED PRODUCTS.

20 DO YOU SEE THAT, SIR?

21 A I DO.

22 Q DO YOU SEE IT SAYS ROYALTY-FREE?

23 A I DO.

24 Q WHAT DOES THAT MEAN WITH RESPECT TO WHAT INTEL  
25 OWED SAMSUNG IN TERMS OF MONEY?

1 MS. MAROULIS: OBJECTION, CALLS FOR LEGAL  
2 CONCLUSION.

3 MR. MUELLER: YOUR HONOR, AGAIN, I'M  
4 ASKING ABOUT HOW SOMEONE IN THE INDUSTRY WOULD  
5 UNDERSTAND THESE TERMS.

6 THE COURT: OVERRULED.

7 GO AHEAD.

8 THE WITNESS: I WAS INVOLVED IN  
9 NEGOTIATING A NUMBER OF ROYALTY-FREE CROSS LICENSES  
10 OF THIS NATURE, AND IT'S JUST WHAT IT SAYS. WHAT  
11 PEOPLE UNDERSTOOD, THAT NO MONEY CHANGES HANDS  
12 BETWEEN THE PARTIES.

13 Q NOW, YOU'VE REVIEWED OTHER SAMSUNG AGREEMENTS;  
14 IS THAT RIGHT?

15 A I HAVE.

16 Q HAVE YOU SEEN ANY EVIDENCE THAT ANYONE HAS  
17 PAID SAMSUNG MONEY FOR ITS UMTS PORTFOLIO?

18 A NO, I HAVE NOT.

19 Q LET'S FOCUS ON THIS PROVISION. DO YOU SEE  
20 WHERE IT SAYS MAKE, USE, SELL, DIRECTLY OR  
21 INDIRECTLY. CAN YOU EXPLAIN HOW THOSE TERMS ARE  
22 COMMONLY UNDERSTOOD IN THE SEMICONDUCTOR INDUSTRY?

23 MS. MAROULIS: OBJECTION.

24 THE COURT: OVERRULED.

25 THE WITNESS: THIS IS UNDERSTOOD AND USED

1 TO DEFINE THE RIGHTS THAT A LICENSEE HAS WITH  
2 RESPECT TO LICENSES THAT HE TAKES.

3 SO THESE ARE SEPARATE RIGHTS, AND THEY  
4 CAN BE LICENSED SEPARATELY AND OFTEN ARE. YOU HAVE  
5 THE RIGHT TO MAKE, AS SPECIFIED HERE, YOU HAVE THE  
6 RIGHT TO MAKE A PRODUCT USING THOSE PATENTS, THE  
7 RIGHT TO USE IT, A SEPARATE RIGHT TO SELL, EITHER  
8 DIRECTLY OR INDIRECTLY, AND OFFER TO SELL, IMPORT,  
9 OR OTHERWISE DISPOSE THEM. THEY'RE ALL SEPARATE  
10 RIGHTS THAT CAN BE SEPARATELY LICENSED.

11 BY MR. MUELLER:

12 Q CAN I FOCUS YOUR ATTENTION ON DIRECTLY OR  
13 INDIRECTLY. HOW IS THAT TERM UNDERSTOOD?

14 A THIS IS OFTEN USED, IT RELATES TO THE RIGHT TO  
15 SELL AND FOR LARGE COMPANIES THAT MIGHT HAVE A  
16 NUMBER OF SUBSIDIARIES OR MIGHT MAKE PRODUCTS THAT  
17 YOU WANT TO SELL THROUGH DISTRIBUTORS, THEY WANT TO  
18 BE SURE THAT THE RIGHT TO SELL IS SUFFICIENTLY  
19 BROAD TO ENTITLE THEM TO USE THESE DIFFERENT FORMS  
20 OF DISTRIBUTION IN SELLING PRODUCTS.

21 Q AND JUST SO WE'RE CLEAR, THESE ARE ALL RIGHTS  
22 THAT SAMSUNG GAVE TO INTEL WITH RESPECT TO  
23 SAMSUNG'S PATENTS?

24 A THAT IS CORRECT.

25 Q LET'S PUT THIS ASIDE AND GO BACK TO THE

1 SAMSUNG PROPOSAL, PX 80. WE DISCUSSED THE ROYALTY  
2 BASE EARLIER, THE PRICE OF THE PHONE OR THE IPAD?

3 A YES.

4 Q NOW, I WANTED TO FOCUS ON THE RATE, 2.4  
5 PERCENT. DO YOU HAVE AN OPINION AS TO WHETHER THAT  
6 RATE COMPLIED WITH FRAND?

7 A YES, I HAVE AN OPINION AND I DO NOT BELIEVE  
8 THAT IT DOES.

9 Q WHY NOT?

10 A WELL, WHEN YOU LOOK AT THE RATE AND COMBINE  
11 THAT WITH THE BASE THAT IT'S APPLIED TO, AS I  
12 MENTIONED EARLIER, THAT'S OVER \$14 PER UNIT. AND  
13 UNDER THIS PROPOSAL, THIS WAS FOR THE ENTIRE  
14 PORTFOLIO OF SAMSUNG'S UMTS PATENTS, PATENTS THAT  
15 THEY SAY ARE USED IN PHONES THAT COMPLY WITH THE  
16 UMTS.

17 WELL, SAMSUNG OWNS ABOUT -- THEIR PATENTS  
18 CONSTITUTE ABOUT 5 PERCENT OF THE NEARLY 2,000  
19 PATENTS THAT OTHER COMPANIES HAVE SAID COVER THIS  
20 SAME SPECIFICATION.

21 SO IF OTHER COMPANIES CHOSE THE SAME  
22 APPROACH AS SAMSUNG, IF THEY -- IF THIS WERE  
23 DETERMINED THAT, YES, THIS IS A REASONABLE ROYALTY,  
24 THEN THE TOTAL AMOUNT OF ROYALTY ON SOMETHING LIKE  
25 AN IPHONE WOULD BE ABOUT 50 PERCENT .

1                   AND FROM A BUSINESS PERSPECTIVE, AND, YOU  
2                   KNOW, THIS RATE IS SOMETHING THAT REASONABLE  
3                   BUSINESS PEOPLE SHOULD BE WHAT THEY WOULD  
4                   NEGOTIATE, THIS WOULD BE TOTALLY UNREASONABLE.  
5                   IT'S NOT FAIR OR REASONABLE BECAUSE YOU COULD NOT  
6                   BE SUCCESSFUL IN THE MARKET.

7                   Q        JUST A COUPLE FINAL QUESTIONS, SIR.  DID YOU  
8                   UNDERTAKE ANY ANALYSIS IN THIS CASE AS TO WHETHER  
9                   SAMSUNG HAS TRULY ESSENTIAL PATENTS FOR UMTS?

10                  A        NO, I DID NOT.

11                  Q        IS THAT A SUBJECT FOR THE TECHNICAL EXPERT  
12                  ITSELF?

13                  A        IT IS.

14                  Q        WERE YOU HERE YESTERDAY FOR PROFESSOR TEECE'S  
15                  TESTIMONY?

16                  A        I WAS.

17                  Q        THIS PROPOSAL LAST YEAR BY SAMSUNG COVERED THE  
18                  PORTFOLIO; IS THAT RIGHT?

19                  A        THAT IS CORRECT.

20                  Q        HOW MANY PATENTS WAS DR. TEECE HERE ON?

21                  A        JUST TWO.

22                  Q        AND WHAT WAS HIS VIEW ON WHAT A REASONABLE  
23                  ROYALTY IS?

24                  A        WELL, HE HAD A RANGE THAT WOULD BE EVEN HIGHER  
25                  THAN WAS ASKED FOR, FOR THE ENTIRE PORTFOLIO FOR

1 JUST TWO PATENTS. IT WOULD BE, AT HIS UPPER RANGE,  
2 HIGHER THAN THE \$14 THAT -- FOR THE ENTIRE  
3 PORTFOLIO.

4 Q AND, SIR, IS DR. TEECE'S OPINION CONSISTENT  
5 WITH FRAND?

6 A ABSOLUTELY NOT.

7 MR. MUELLER: NOTHING FURTHER.

8 THE COURT: ALL RIGHT. THE TIME IS  
9 11:47.

10 MS. MAROULIS: YOUR HONOR, IN THE  
11 INTEREST OF TIME, NO CROSS.

12 THE COURT: OKAY. MAY THIS WITNESS BE  
13 EXCUSED AND IS IT SUBJECT TO RECALL?

14 MR. MUELLER: NOT SUBJECT TO RECALL.  
15 THANK YOU, YOUR HONOR.

16 THE COURT: OKAY. THEN YOU ARE EXCUSED.  
17 CALL YOUR NEXT WITNESS, PLEASE.

18 MR. LEE: YOUR HONOR, THE NEXT THING  
19 WE'RE GOING TO DO IS PLAY A DEPOSITION CLIP OF  
20 MR. AHN, AND WE HAVE A BOARD THAT HAS HIS TITLE AND  
21 NAME FOR THE JURY.

22 THE COURT: OKAY.

23 MR. LEE: AND IF I CAN JUST HAVE A  
24 MINUTE, WE'RE TRYING TO -- WE'VE SHORTENED IT A  
25 LITTLE, AND I WANT TO MAKE SURE I HAVE THE



1 SHORTENED VERSION.

2 THE COURT: OKAY.

3 (PAUSE IN PROCEEDINGS.)

4 MR. MUELLER: YOUR HONOR, MAY I LODGE  
5 THIS.

6 THE COURT: YES, THAT IS THE --

7 MR. MUELLER: THIS IS THE AHN TESTIMONY.

8 THE COURT: OH, OKAY. SO WHAT'S THE  
9 NUMBER?

10 MR. MUELLER: THIS IS, I'M NOT SURE.  
11 IT'S 218, PLAINTIFF'S EXHIBIT 218, YOUR HONOR.

12 THE COURT: OKAY. 218. ALL RIGHT.  
13 THAT'S LODGED.

14 MR. MUELLER: MAY I HAND IT UP, YOUR  
15 HONOR.

16 THE COURT: YES.

17 MR. LEE: AND YOUR HONOR, WE JUST PUT UP  
18 A PLACARD THAT SAYS THAT DR. AHN IS THE HEAD OF THE  
19 I.P. CENTER OF SAMSUNG ELECTRONICS. I THINK WE'RE  
20 READY.

21 THE COURT: 11:48. PLEASE GO.

22 (WHEREUPON, THE VIDEOTAPED DEPOSITION OF  
23 SEUNG-HO AHN WAS PLAYED IN OPEN COURT OFF THE  
24 RECORD.)

25 MR. LEE: YOUR HONOR, THAT COMPLETES THE

1 CLIP. AND THE NEXT THING WE'LL DO IS SHOW ANOTHER  
2 DEPOSITION CLIP OF MR. LEE FROM SAMSUNG.

3 THE COURT: OKAY.

4 MR. LEE: I'M GOING TO LODGE PX 219,  
5 WHICH IS THE TRANSCRIPT OF THE CLIP. IT'S FOR  
6 MR. JUN, J-U-N, WON, W-O-N, LEE.

7 THE COURT: ALL RIGHT. THE DEPO ENDED AT  
8 11:54. AND THIS IS PX 219?

9 MR. LEE: YES, YOUR HONOR.

10 THE COURT: MS. MAROULIS, DO YOU ONE OUR  
11 COPY?

12 MS. MAROULIS: THAT'S FINE. I KNOW WHAT  
13 THEY PREVIOUSLY DESIGNATED.

14 THE COURT: OKAY. WHAT'S THE PROBLEM?  
15 WHAT'S GOING ON HERE?

16 MR. LEE: I JUST WANT TO MAKE SURE WE  
17 HAVE THE RIGHT NAME.

18 THE COURT: OH.

19 MR. LEE: WHY DON'T WE PLAY THE CLIP.  
20 THE NAME IS ON THE SCREEN ANYWAY.

21 THE COURT: OKAY. 11:55.

22 **(WHEREUPON, THE VIDEOTAPED DEPOSITION OF**  
23 **JUN WON LEE WAS PLAYED IN OPEN COURT OFF THE**  
24 **RECORD.)**

25 THE COURT: ALL RIGHT. IT'S 12:04.

1 I THINK WE SHOULD PROBABLY TAKE OUR LUNCH  
2 BREAK.

3 MR. LEE: I AGREE.

4 THE COURT: OKAY. IT IS 12:04, AND WE  
5 ACTUALLY -- I HAVE TO TALK WITH THE ATTORNEYS, BUT  
6 YOU WILL PROBABLY BE LEAVING EARLY TODAY BECAUSE  
7 WE'RE PROBABLY DOWN TO LESS THAN TWO HOURS OF TIME  
8 LEFT. OKAY? JUST FOR YOUR OWN PLANNING FOR TODAY,  
9 THERE COULD BE SOMETHING UNEXPECTED, BUT I THINK  
10 YOU'LL BE LEAVING EARLY.

11 SO, AGAIN, PLEASE KEEP AN OPEN MIND. DO  
12 NOT DO ANY RESEARCH. PLEASE DO NOT DISCUSS THE  
13 CASE WITH ANYONE. PLEASE DON'T READ ANYTHING ABOUT  
14 THE CASE.

15 ALL RIGHT. THANK YOU.

16 IF YOU WOULD GO AHEAD AND LEAVE YOUR  
17 JUROR BOOKS IN THE JURY ROOM.

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

20 THE COURT: OKAY. PLEASE TAKE A SEAT.

21 THE RECORD SHOULD REFLECT THE JURORS HAVE  
22 LEFT THE COURTROOM.

23 LET ME JUST GIVE YOU YOUR TIME LIMITS.  
24 APPLE HAS USED 23 HOURS AND 31 MINUTES, SO YOU HAVE  
25 AN HOUR AND 29 MINUTES LEFT.

1 SAMSUNG HAS USED 24 HOURS AND 34 MINUTES.  
2 SO YOU HAVE 26 MINUTES LEFT. SO I'M NOT GOING TO  
3 GIVE YOU THE 25 MINUTE. IT JUST MIGHT DISRUPT THE  
4 PROCEEDINGS.

5 OKAY. SO THAT'S IT FOR TIME.

6 LET ME ASK, ARE WE GOING TO HAVE ANOTHER  
7 ROUND OF RULE 50 MOTIONS AFTER APPLE RESTS, OR HOW  
8 DO YOU WANT TO PROCEED TODAY?

9 MR. VERHOEVEN: WHATEVER YOUR HONOR  
10 WANTS, BUT I THOUGHT THAT WHAT WE'D WORKED OUT WITH  
11 THE PROCEDURE, WE COULD DEAL WITH THAT ON MONDAY,  
12 AND THAT NO ONE WOULD ARGUE THAT THERE WILL BE A  
13 WAIVER.

14 IF YOU WOULD LIKE THAT, TO DO IT ORALLY  
15 ON MONDAY AND DO ANOTHER ONE ON MONDAY, WE CAN DO  
16 THAT, TOO.

17 THE COURT: WELL, HOW EXTENSIVE IS THE  
18 ONE AFTER APPLE RESTS? BECAUSE I DON'T WANT TO  
19 REHASH, REALLY, ANYTHING THAT WE'VE ALREADY COVERED  
20 IN THE FIRST TWO ROUNDS OF RULE 50 MOTION. I'M  
21 ASSUMING IT'S MORE GOING TO BE ON APPLE'S  
22 AFFIRMATIVE DEFENSES.

23 MR. VERHOEVEN: THAT'S RIGHT, YOUR HONOR.  
24 WE MIGHT SAY SOMETHING LIKE "WE AGAIN ASSERT WHAT  
25 WE ASSERTED PREVIOUSLY."

1 THE COURT: YES, THAT'S FINE.

2 MR. VERHOEVEN: BUT WE WOULD FOCUS ON THE  
3 NEW STUFF.

4 THE COURT: ALL RIGHT. SO I'M  
5 ASSUMING -- I JUST THINK THE RULE 50 HEARINGS ARE  
6 HELPING ME WITH THE JURY INSTRUCTIONS ACTUALLY.

7 MR. VERHOEVEN: OKAY.

8 THE COURT: SINCE YOU ALL KNOW THE CASE  
9 FAR BETTER AND IT'S HELPFUL TO HEAR WHAT THE LEGAL  
10 ISSUES ARE AND WHAT THE RELEVANT EVIDENCE IS.

11 CAN WE LIMIT THAT DISCUSSION TO -- WE  
12 HAVE THE TIME BECAUSE, YOU KNOW, WE'RE BASICALLY  
13 DOWN TO ABOUT TWO HOURS, A LITTLE LESS THAN TWO  
14 HOURS.

15 MR. VERHOEVEN: I THINK WE'LL TRY TO DO  
16 WHAT MR. LEE DID YESTERDAY AND IF YOUR HONOR HAS  
17 FURTHER QUESTIONS AND WANTS TO HEAR FROM THE OTHER  
18 SIDE OR FROM US, THEN YOUR HONOR CAN BASICALLY  
19 DICTATE HOW LONG IT WILL TAKE.

20 THE COURT: OKAY.

21 WHAT WERE YOU GOING TO SAY?

22 MR. MCELHINNY: ALL I WAS GOING TO SAY IS  
23 WE'RE GLAD TO PARTICIPATE IN THAT, BUT WE ARE  
24 RELYING ON THE ORDER THAT YOUR HONOR ISSUED LAST  
25 NIGHT ABOUT SORT OF THE FINAL ROUND OF RULE 50

1 MOTIONS .

2 THE COURT: OH, YEAH. YOU'RE NOT WAIVING  
3 ANYTHING.

4 MR. MCELHINNY: THANK YOU.

5 THE COURT: I ASSUME THAT'S GOING TO BE  
6 MUCH MORE COMPREHENSIVE BECAUSE YOU'LL ACTUALLY BE  
7 ABLE TO CITE TO EVIDENCE.

8 BUT THIS IS -- I JUST WOULD LIKE TO KEEP  
9 OUR PROCESS GOING. SO LET'S PLAN ON, AFTER -- I  
10 ASSUME YOU'RE NOT GOING TO CALL -- THERE WAS A  
11 WITNESS I EXCLUDED, I THINK HE'S UP NEXT. YOU'RE  
12 NOT GOING TO CALL HIM, RIGHT?

13 MR. LEE: I'M NOT CALLING ANYBODY YOU  
14 EXCLUDED FOR SURE.

15 THE COURT: BUT YOU'RE NOT CALLING  
16 ROSENBROCK?

17 MR. LEE: NO.

18 THE COURT: SO WHO ELSE -- HE'S A NO. SO  
19 THEN YOU'RE GOING ORDOVER, BRESSLER, SINGH,  
20 BALAKRISHNAN, AND MUSIKA?

21 MR. LEE: YES.

22 THE COURT: OKAY. AND THEN YOU'RE GOING  
23 TO REST?

24 MR. LEE: YES.

25 THE COURT: OKAY. ALL RIGHT.

1 WELL, IT MAY BE THAT WE SHOULD TAKE OUR  
2 BREAK AFTER YOU REST AND WE CAN HANDLE THE RULE 50,  
3 HOPEFULLY, IN TEN MINUTES, AND THEN COME BACK AND  
4 FINISH UP WITH SAMSUNG'S REBUTTAL CASE.

5 DOES THAT SOUND OKAY?

6 MR. VERHOEVEN: IT SOUNDS FINE UNLESS  
7 THERE'S GOING TO BE ANOTHER ROUND OF RULE 50 AFTER  
8 REBUTTAL, IN WHICH CASE MAYBE WE SHOULD COMBINE  
9 THEM.

10 THE COURT: MAYBE THAT MAKES SENSE.

11 MR. JACOBS: I THINK WE'RE GETTING A  
12 LITTLE CONFUSED.

13 WE HAVE THE PROCESS THAT WILL START  
14 TOMORROW WITH THE WRITTEN MOTIONS, AND THAT IS THE  
15 PRE-DELIBERATION RULE 50(A) MOTION, AND UNLESS YOUR  
16 HONOR REALLY WANTS TO HAVE SUCCESSIVE ORAL ROUNDS,  
17 THAT'S WHAT WE'RE ALL LOOKING FORWARD TO IS I THINK  
18 THE NEXT STEP.

19 THE COURT: WELL, I WOULDN'T MIND A MINI  
20 QUICK NOTES VERSION.

21 MR. VERHOEVEN: I WOULD SUGGEST WE DO  
22 THAT AT THE CLOSE, AT THE END RATHER THAN HAVE TWO  
23 SESSIONS, YOUR HONOR.

24 THE COURT: THAT'S FINE.

25 MR. LEE: IT ALSO GETS THEM OUT EARLIER.

1 THE COURT: THAT'S FINE. AND THEN THEY  
2 CAN BE OUT EARLIER ON FRIDAY AFTERNOON.

3 SO WHY DON'T WE WAIT? AFTER APPLE  
4 CLOSES, THEN I'LL JUST STATE THAT -- OR YOU WANT TO  
5 JUST ON THE RECORD NOW AND SAY YOU'RE MAKING YOUR  
6 RULE 50 MOTION AND WE'LL JUST ARGUE BOTH AFTER?

7 MR. VERHOEVEN: FINE.

8 MR. LEE: THAT'S FINE.

9 THE COURT: OKAY. NOW, THERE WAS ONE  
10 THING I ALSO WANTED TO CORRECT, AND THIS WAS A  
11 WALKER EXHIBIT.

12 I DON'T HAVE PDX 45.13, WHICH WAS THE  
13 LAST ONE SHOWN. I HAVE PDX 45.12, WHICH HAS THE  
14 MAY 16TH, 2006 DATE.

15 SO I JUST WANT TO MAKE SHOULD WHEN YOU  
16 ALL FIGURE OUT WHAT DEMONSTRATIVES WERE SHOWN TO  
17 THE JURY AND WHAT'S GOING TO BE IN THE COURT FILE  
18 FOR APPEAL THAT YOU USE THE RIGHT ONE.

19 MR. MUELLER: WE'LL CHECK ON THAT, YOUR  
20 HONOR.

21 THE COURT: DOES THAT MAKE SENSE?

22 MR. MUELLER: THAT MAKES PERFECT SENSE.

23 THE COURT: WHAT YOU SHOWED LOOKED LIKE  
24 MY 45.12, BUT YOU HAD IT IN AS .13 AND I DON'T HAVE  
25 A .13 IN MINE.



1 MR. MUELLER: I FORGET WHICH IS WHICH,  
2 BUT WE'LL CHECK AND MAKE SURE TO GET THE RIGHT ONE.

3 THE COURT: OKAY, YEAH. IT'S JUST THE  
4 ONE DOESN'T HAVE THE FINAL MAY 16TH, '06 DATE AND  
5 THE OTHER ONE DOES.

6 SO MAKE SURE FOR THE RECORD THE RIGHT  
7 SLIDES GO INTO THE FILE.

8 MR. MUELLER: WE'LL DO.

9 THE COURT: OKAY. WHAT ELSE DO WE HAVE  
10 TO COVER?

11 MR. JACOBS: JUST KIND OF A HOUSEKEEPING  
12 ITEM.

13 LET ME PUT IT ON YOUR RADAR SCREEN AND  
14 WE'LL FIGURE OUT WHEN WE CAN DO IT.

15 THE COURT: OKAY.

16 MR. JACOBS: WE ARE VERY CLOSE TO A  
17 STIPULATION ON THE CLEANING OF THE DEVICES AND THE  
18 ATTACHMENT A SMALLER LABEL. I THINK WE'RE FIGURING  
19 OUT THE EXACT LIST OF DEVICES TO WHICH THE NEW  
20 LABEL WILL BE APPLIED.

21 THE COURT: OKAY.

22 MR. JACOBS: SO THAT CAN BE DONE, MAYBE  
23 EVEN A STIPULATION FINALIZED.

24 WE'LL START AT LUNCH OR WE'LL FIGURE  
25 OUT, WHEN, AT THE COURT'S CONVENIENCE, TO

1 ACCOMMODATE SAMSUNG'S DESIRE TO HAVE SMALLER LABELS  
2 ON THE PHONES.

3 MR. VERHOEVEN: I WOULD SAY WE MIGHT NEED  
4 THE PHONES THIS AFTERNOON, SO I DON'T WANT TO HAVE  
5 THEM OUT.

6 MR. JACOBS: NO, NO. THEY'RE NOT BEING  
7 TAKEN AWAY.

8 WE HAVE A REQUEST, WHICH WE'VE ASKED  
9 SAMSUNG TO ACCOMMODATE, AND THEY HAVEN'T HAD FULL  
10 TIME TO DELIBERATE ON THIS, BUT I'D LIKE TO PUT IT  
11 ON YOUR RADAR SCREEN SO IF WE NEED TO RERAISE IT,  
12 YOU CAN START THINKING ABOUT IT.

13 WE'VE SAID FROM THE BEGINNING THE JURY  
14 WOULD HAVE THE PHONES TO EXAMINE, AND IN ORDER TO  
15 EXAMINE THE PHONES IN OPERATION, THEY NEED A LINK.

16 THE PHONES DON'T HAVE CELLULAR LINKS, BUT  
17 THEY HAVE THE POTENTIAL FOR WI-FI LINKS, AND WE  
18 WOULD LIKE THE JURY TO BE GIVEN A LITTLE CARD THAT  
19 SAYS HOW TO GET WI-FI ACCESS.

20 AND ALSO TO BE ADVISED NOT TO ACCEPT  
21 UPDATES TO THE PHONES.

22 SO WE'VE ASKED SAMSUNG TO CONSIDER THAT,  
23 AND IF THEY REJECT IT, WE'LL BE ASKING YOU FOR THAT  
24 PERMISSION.

25 MR. VERHOEVEN: THIS IS THE FIRST I

1 PERSONALLY HAVE HEARD OF IT. I'M NOT SAYING OTHER  
2 PARTS OF THE TEAM HAVEN'T.

3 BUT ONE THING TO FLAG, SINCE THAT'S  
4 MENTIONED, IS IF YOU HAVE THE THINGS TURNED ON WITH  
5 WI-FI THAT CONNECTS TO THE INTERNET, TECHNOLOGY  
6 THESE DAYS WILL SEND SOFTWARE UPDATES TO THOSE  
7 PHONES AND MAY CHANGE THE FUNCTIONALITY OF THOSE  
8 PHONES.

9 SO I JUST NEED TO CONSIDER THAT BECAUSE  
10 WE DON'T WANT ANY OVER-THE-AIR UPDATES. THAT COULD  
11 BE A REALLY BIG PROBLEM.

12 THE COURT: RIGHT.

13 MR. VERHOEVEN: ESPECIALLY BECAUSE SOME  
14 OF THE, YOU KNOW -- WELL, WE CAN TALK ABOUT IT.

15 YOU KNOW, THERE'S SOME DESIGN AROUND  
16 ACTIVITY THAT HAPPENS WITH OVER-THE-AIR UPDATES, SO  
17 YOU DON'T WANT THAT TO GET IN THE PHONES.

18 THE COURT: OKAY. I HOPE YOU ALL CAN  
19 WORK THIS OUT.

20 MR. VERHOEVEN: YES.

21 MR. JACOBS: AND IF WE CAN'T, THERE WILL  
22 BE AN INTERPLAY WITH OTHER DECISIONS THAT YOU'RE  
23 MAKING IS THAT SOME OF THE INFRINGEMENT THAT WE  
24 DEMONSTRATED WAS BY VIDEO ON FUNCTIONS THAT REQUIRE  
25 WI-FI ACCESS.

1 SO, FOR EXAMPLE, FOR THE BROWSER  
2 APPLICATION, IF THE VIDEO -- IF THEY DON'T HAVE THE  
3 VIDEO, THEN THEY NEED TO BE ABLE TO USE THE PHONE.

4 THE COURT: OH, I SEE. WELL, HOPEFULLY  
5 YOU ALL CAN WORK OUT SOME AGREEMENT.

6 MR. VERHOEVEN: IT WAS THEIR CHOICE TO  
7 PRESENT THE EVIDENCE THE WAY THEY CHOSE TO WITH  
8 DEMONSTRATIVES, YOUR HONOR.

9 AND I'M VERY CONCERNED ABOUT OVER-THE-AIR  
10 UPDATES. THEY SHOULD BE, TOO, BECAUSE, FRANKLY,  
11 THERE'S DESIGN AROUND IN OVER-THE-AIR UPDATES THAT  
12 I THINK HAVE HAPPENED THAT IF THEY GET ON TO THOSE  
13 PHONES, OR --

14 THE COURT: WHAT DO THEY NEED THE WI-FI  
15 FOR? JUST BROWSER ACCESS?

16 MR. JACOBS: THAT'S MY UNDERSTANDING,  
17 YOUR HONOR.

18 AND THERE IS -- MR. VERHOEVEN IS  
19 INCORRECT. WE DID -- WE PRESENTED THAT EVIDENCE OF  
20 INFRINGEMENT NOT THROUGH A PDX, BUT THROUGH A PX,  
21 AND WE MOVED THOSE VIDEOS THAT OUR EXPERT HAD MADE  
22 INTO EVIDENCE. SO --

23 THE COURT: WELL, WHY DON'T YOU ALL WORK  
24 IT OUT? IT SEEMS LIKE THERE SHOULD BE A SOLUTION  
25 THERE IF IT ONLY HAS TO DO WITH THE BROWSER.

1                   OKAY.   SO WE'LL TAKE OUR BREAK AND I'LL  
2                   SEE YOU BACK AT 1:00 O'CLOCK.

3                   MR. JACOBS:   THANK YOU, YOUR HONOR.

4                   THE COURT:    THANK YOU.

5                   (WHEREUPON, THE LUNCH RECESS WAS TAKEN.)

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1 OF A -- IT CREATES THE IMPRESSION THAT THERE ARE  
2 ACTUALLY FIVE AND NOT THREE TRADE DRESSES.

3 WHAT'S THE SITUATION HERE?

4 MR. JACOBS: WE HAVE SEVERAL UNREGISTERED  
5 TRADE DRESSES, YOUR HONOR, ON THE IPHONES THAT WE  
6 ARTICULATED IN THE COMPLAINT AND IN THE MATERIALS  
7 THAT WERE PROVIDED TO THE COURT.

8 THE COURT: WELL, IT'S NOT CLEAR.

9 AND THEN EITHER THE VERDICT FORM OR THE  
10 JURY INSTRUCTION TALKS ABOUT THE IPAD TRADE DRESS  
11 BEING DIFFERENT FROM THE IPAD 2 TRADE DRESS AND  
12 IT'S NOT CLEAR. SO I NEED -- I WOULD LIKE, I DON'T  
13 KNOW IF YOU ALL COULD HAVE YOUR TEAMS FILE --  
14 IDEALLY, IT'S A LITTLE BIT EASIER ON SAMSUNG'S  
15 ACCUSED PATENTS THAN THE APPLE PRODUCTS, BECAUSE ON  
16 THE APPLE ALLEGATIONS, IT'S REALLY NOT CLEAR WHICH  
17 PRODUCT IS BEING ACCUSED OF WHICH TRADE DRESS.

18 MR. JACOBS: THE CLEAREST EXHIBIT THAT  
19 THE JURY WILL HAVE IS IN MR. MUSIKA'S REPORT, PX  
20 25, AND THAT HAS THE MATRIX.

21 THE COURT: OKAY. BUT DOES THAT BREAK  
22 DOWN ALL THE DIFFERENT TRADE DRESSES?

23 MR. JACOBS: I'LL HAVE TO CHECK.

24 MS. KREVANS: IT DOES, YOUR HONOR, IT'S  
25 PX 25-A1 AT THE THIRD PAGE, AND IT HAS A COLUMN FOR

1 EACH PIECE OF I.P., INCLUDING THE FOUR TRADE  
2 DRESSES, AND THEN A LINE THAT GOES ACROSS WITH THE  
3 PRODUCTS. WE HAVE IT ON THE SCREEN.

4 THE COURT: TELL ME WHAT THE -- OKAY.  
5 LET ME ASK IF YOU ALL COULD GIVE US, THEN, THE  
6 CORRESPONDING EXHIBIT NUMBERS TO THOSE 28 DEVICES.

7 DO YOU -- IS THERE ANY DISAGREEMENT FROM  
8 SAMSUNG AS TO THE CATEGORIZATION OF WHAT THESE  
9 DIFFERENT PRODUCTS ARE?

10 MS. MAROULIS: YOUR HONOR, WE'LL HAVE TO  
11 REVIEW THE EXHIBIT AGAIN BECAUSE THERE WERE SOME  
12 MOTIONS IN LIMINE IN BETWEEN, SO SOME PRODUCTS WERE  
13 EXCLUDED FOR SOME PURPOSES. SO WE WILL CHECK.

14 THE COURT: OKAY.

15 MS. MAROULIS: THERE WAS A RULE 50  
16 GRANTED AT LEAST AS TO THE I9000.

17 THE COURT: I KNOW. SO WHAT WOULD BE  
18 HELPFUL ACTUALLY IS IF YOU ALL COULD UPDATE THIS  
19 CHART, THAT WOULD BE VERY HELPFUL. JUST BECAUSE  
20 THE JURY INSTRUCTIONS ARE VERY CONFUSING ON --

21 MS. MAROULIS: AND, YOUR HONOR, I ASSUME  
22 THAT WE'RE GOING TO HAVE A CHART THAT'S PART OF THE  
23 JURY INSTRUCTIONS, THAT'S NOT USING MR. MUSIKA'S  
24 CHART, BECAUSE WE DON'T WANT TO BE ADOPTING --

25 THE COURT: IDEALLY, IF YOU COULD



1 STIPULATE TO SOMETHING, THAT WOULD BE HELPFUL.

2 MR. JOHNSON: I THINK WE'LL TRY AND REACH  
3 AGREEMENT WITH APPLE AND SEE IF WE CAN PUT  
4 SOMETHING TOGETHER.

5 THE COURT: THAT WOULD BE VERY HELPFUL  
6 BECAUSE RIGHT NOW, THE VERDICT FORM, TRADE DRESS IS  
7 ALL LUMPED TOGETHER, AND I AGREE WITH SAMSUNG'S  
8 OBJECTIONS THAT IT NEEDS TO BE MORE SPECIFIC  
9 BECAUSE, YOU KNOW, WE'RE NOT GOING TO KNOW WHAT THE  
10 JURY IS FINDING UNLESS IT'S BROKEN DOWN.

11 SO HOW QUICKLY DO YOU THINK YOU CAN GET A  
12 CHART LIKE THIS TOGETHER THAT'S UPDATED?

13 MS. KREVANS: YOUR HONOR, I'M NOT -- I  
14 DON'T WANT TO SPEAK TOO QUICKLY, BECAUSE I'M NOT  
15 SURE WHAT WE MIGHT HEAR FROM SAMSUNG, BUT I DON'T  
16 THINK THERE'S ANY REASON WE COULDN'T SUBMIT THIS  
17 TOMORROW, AND WE COULD MAKE IT A LITTLE BIT BIGGER  
18 BECAUSE IT'S A LITTLE SMALL.

19 THE COURT: RIGHT, BUT I GRANTED RULE 50  
20 ON AT LEAST THREE OF THESE, THE I9100, THE I9000 AS  
21 TO THE TWO U.S. SUBSIDIARIES, AS WELL AS THE THIRD  
22 COLUMN. SO THAT NEEDS TO BE CLARIFIED.

23 AND I'M NOT REALLY EVEN CLEAR, IS IT EVEN  
24 CLEAR WHICH ONES ARE SUBJECT TO INDUCEMENT CLAIMS  
25 VERSUS CONTRIBUTORY CLAIMS VERSUS --

1 MS. KREVANS: THIS CHART DOES NOT CAPTURE  
2 THAT INFORMATION, YOUR HONOR, AND WITH RESPECT TO  
3 RULE 50, WHICH HAD TO DO WITH SOME ENTITIES, BUT  
4 NOT ALL HAVING THE INFRINGEMENT ALLEGATIONS  
5 DISMISSED AGAINST THEM, IT DOESN'T CAPTURE THAT  
6 INFORMATION. IT'S SIMPLY A SUMMARY OF WHICH  
7 PRODUCTS ARE ACCUSED OF WHICH PIECE OF I.P.

8 THE COURT: THAT'S FINE FOR THE PURPOSES  
9 OF, YOU KNOW, THIS TYPE OF GRAPHIC. BUT FOR THE  
10 JURY INSTRUCTIONS AND THE VERDICT FORM, I WILL NEED  
11 THAT INFORMATION SOMEHOW COLLATED IN AN EASILY  
12 ACCESSIBLE FORM.

13 MR. JOHNSON: AND I THINK WE CAN TRY AND  
14 SUBMIT SOMETHING TOMORROW MORNING BY 10:00 O'CLOCK  
15 BECAUSE I THINK IT'S GOING TO BE DONE IN CONNECTION  
16 WITH THE WHOLE RED LINE PROCEDURE ANYWAY.

17 THE COURT: OKAY. THAT'S FOR CREATING A  
18 CHART. BUT IS THERE ANY -- DOES APPLE NOT HAVE  
19 THIS INFORMATION READY AVAILABLE OF WHAT YOU'VE  
20 ACCUSED OF WHAT?

21 MR. JACOBS: THIS IS --

22 THE COURT: I NEED TO KNOW LITERAL VERSUS  
23 CONTRIBUTORY VERSUS INDUCEMENT.

24 MR. JACOBS: THEY'RE ALL ACCUSED OF  
25 DIRECT INFRINGEMENT, YOUR HONOR. THE CLAIM AGAINST

1 SEC IS A CLAIM FOR BOTH INDUCED AND DIRECT  
2 INFRINGEMENT.

3 THE COURT: INDIRECT AND DIRECT, OKAY.

4 MR. JACOBS: INDUCED AND DIRECT, AND THE  
5 DIRECT INFRINGEMENT CLAIM IS NOT WITH STANDING  
6 THEIR ARGUMENT THAT IT'S FOB IN SEOUL, OR WHEREVER  
7 IT IS IN KOREA, IT'S STILL DIRECTED TO THE  
8 UNITED STATES, AND SO THERE'S A DIRECT INFRINGEMENT  
9 CLAIM AND THERE'S AN INDUCEMENT CLAIM AGAINST SEC  
10 BECAUSE THEY INDUCED THEIR SUBSIDIARIES TO SELL  
11 THESE INFRINGING PRODUCTS.

12 THE COURT: OKAY. IT'S A DIRECT  
13 INFRINGEMENT CLAIM AS TO THE TWO U.S. SUBSIDIARIES.

14 MR. JACOBS: CORRECT.

15 THE COURT: AND ARE YOU -- DID YOU MAKE A  
16 D.O.E. CLAIM AT ALL, OR THIS IS ALL LITERALLY  
17 INFRINGEMENT.

18 MS. MAROULIS: WE'RE DISPUTING WHETHER  
19 THEY MADE A DEO CLAIM.

20 THE COURT: THINGS LIKE THIS, I NEED TO  
21 KNOW BECAUSE WE'RE DOWN TO THE WIRE TRYING TO GET  
22 JURY INSTRUCTIONS AND A VERDICT FORM.

23 WHAT CAN I GET -- I WANT TO GET SOMETHING  
24 AS SOON AS POSSIBLE AS TO EXACTLY WHAT'S BEING  
25 ACCUSED OF WHAT SO THAT WE CAN, YOU KNOW, KEEP

1 GOING ON THE VERDICT FORM AND THE JURY  
2 INSTRUCTIONS.

3 MR. JOHNSON: YOUR HONOR, JUST TO POINT  
4 OUT ONE OTHER ISSUE WITH THIS CHART, AS WE TALKED  
5 ABOUT YESTERDAY, EVEN, FOR EXAMPLE, ON THE '381  
6 PATENT, THIS CHART DOESN'T BREAK OUT WHAT  
7 APPLICATION IS REALLY ACCUSED. FOR EXAMPLE, IS IT  
8 THE GALLERY APPLICATION? IS IT THE BROWSER? OR IS  
9 IT THE CONTACTS LIST? AND EACH ONE OF THESE  
10 PRODUCTS, THEY ACCUSE DIFFERENT APPLICATIONS WITHIN  
11 EACH PRODUCT. SO EVEN MORE COMPLICATED THAN THIS  
12 CHART.

13 MR. JACOBS: YOUR HONOR, SAMSUNG COULD  
14 SPIN THIS INTO AN INFINITELY COMPLICATED CHART IF  
15 WE LET THEM.

16 WE'RE ACCUSING THE PHONE. WE'RE ACCUSING  
17 THE PHONE ON SEVERAL APPLICATIONS AND THAT SHOULD  
18 BE SUFFICIENT.

19 THE COURT: SO THERE ARE ONLY FOUR TRADE  
20 DRESSES. IS THAT RIGHT? THREE ON THE PHONES AND  
21 ONE ON THE TAB?

22 MR. JACOBS: THAT'S CORRECT, YOUR HONOR.

23 THE COURT: OKAY. NOW, WHERE DO YOU  
24 HAVE -- DO YOU HAVE A DESCRIPTION, OBVIOUSLY FOR  
25 THE REGISTERED ONE, THAT'S FINE. BUT FOR THE THREE

1 UNREGISTERED ONES --

2 MR. JACOBS: THAT'S IN THE JURY BINDER,  
3 YOUR HONOR. WE SUBMITTED THE TEXTUAL DESCRIPTION  
4 OF WHAT THAT TRADE DRESS, THOSE TRADE DRESSES ARE.

5 THE COURT: OKAY. BUT IS IT JUST LIKE --  
6 YOU KNOW, WHAT I'VE SEEN SO FAR, IT'S BEEN A  
7 LUMPING OF THE PHONE TRADE DRESS AND A LUMPING OF  
8 THE TABLET TRADE DRESS. HOW -- IS IT BROKEN DOWN  
9 BY THE SPECIFIC FOUR THAT YOU HAVE?

10 MR. JACOBS: YES, YOUR HONOR.

11 THE COURT: OKAY. OKAY. ALL RIGHT.  
12 WELL, WHATEVER YOU CAN PROVIDE TO ME AS SOON AS  
13 POSSIBLE WOULD BE MUCH APPRECIATED BECAUSE WE'RE  
14 GOING TO BE WORKING TONIGHT AND ALL DAY TOMORROW ON  
15 THE VERDICT FORM AND JURY INSTRUCTIONS.

16 IF YOU'RE TELLING ME YOU CAN'T GET THIS  
17 CHART DONE UNTIL TOMORROW MORNING, THAT'S FINE.  
18 BUT IF THERE'S ANY FURTHER CLARIFICATION YOU CAN  
19 PROVIDE SOONER, THAT WOULD BE MUCH APPRECIATED.

20 MS. MAROULIS: WE WILL TRY TO GET  
21 TOGETHER WITH APPLE IN THE EVENING AND SEE IF WE  
22 CAN TAKE THE CHART AND UPDATE IT PER THE  
23 DEVELOPMENTS.

24 THE COURT: OKAY. BUT OTHERWISE PAGE 3  
25 OF 16? IS THAT RIGHT? OKAY.

1 MR. JACOBS: THANK YOU, YOUR HONOR.

2 THE COURT: ALL RIGHT. THANK YOU. ALL  
3 RIGHT. LET'S GO AHEAD WITH YOUR NEXT WITNESS.

4 MR. MUELLER: BEFORE WE DO, WE HAVE A  
5 REVISED SET OF MICHAEL WALKER EXHIBITS.

6 THE COURT: OKAY. AND YOU CORRECTED THAT  
7 LAST PAGE OR TWO?

8 MR. MUELLER: YES, AND I PROVIDED A SET  
9 TO MR. VERHOEVEN.

10 THE COURT: ALL RIGHT. THEN LET'S  
11 PLEASE -- SO YOU'RE NOT GOING TO DO A.13.

12 MR. MUELLER: THERE WAS A MISNUMBERING,  
13 BUT IT HAS THE SLIDE YOU WERE REFERRING TO, THE  
14 LAST EVENT.

15 THE COURT: OKAY. WELL, THIS IS WHAT I  
16 HAD IN MY BINDER. IT'S JUST THAT WHAT YOU HAD ON  
17 THE SCREEN SAID .13.

18 MR. MUELLER: I THINK THE NUMBERS WERE  
19 MISNUMBERED, BUT WE CAN PUT THAT AS 13 IF THAT  
20 WOULD BE HELPFUL.

21 THE COURT: IT'S FINE. AS LONG AS THE  
22 RECORD IS CLEAR THAT WHAT YOU'VE GIVEN ME IS .12 IS  
23 WHAT WAS REFERENCED AS .13 ON THE SCREEN, THAT'S  
24 FINE.

25 MR. MUELLER: IT IS.

1 THE COURT: OKAY. THAT'S FINE.

2 (WHEREUPON, THE FOLLOWING PROCEEDINGS  
3 WERE HELD IN THE PRESENCE OF THE JURY:)

4 THE COURT: ALL RIGHT. WELCOME BACK.  
5 PLEASE TAKE A SEAT.

6 AND PLEASE CALL YOUR NEXT WITNESS.

7 MR. LEE: YOUR HONOR, APPLE CALLS  
8 PROFESSOR JANUSZ ORDOVER, AND I BELIEVE -- I HOPE  
9 YOUR HONOR HAS A PICTURE.

10 THE COURT: YES.

11 MR. LEE: AND I THINK THE JURORS HAVE THE  
12 PICTURE.

13 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

14 **JANUSZ ORDOVER,**

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

18 THE WITNESS: YES.

19 THE CLERK: THANK YOU. PLEASE BE SEATED.

20 THE COURT: ALL RIGHT. TIME IS 1:25. GO  
21 AHEAD, PLEASE.

22 **DIRECT EXAMINATION**

23 BY MR. MUELLER:

24 Q GOOD AFTERNOON, DR. ORDOVER.

25 A GOOD AFTERNOON.

1 Q CAN YOU PLEASE TELL THE JURY WHO YOU ARE?

2 A MY NAME IS JANUSZ ORDOVER AND I RESIDE AT 131  
3 HEMLOCK HILL ROAD, NEW CANAAN, CONNECTICUT.

4 Q DR. ORDOVER, HAVE YOU BEEN RETAINED BY APPLE  
5 AS AN EXPERT WITNESS IN THIS CASE?

6 A YES.

7 Q LET'S PUT PDX 44.1 ON THE SCREEN. AND CAN YOU  
8 PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND?

9 A WELL, THAT'S A SUMMARY OF IT, BUT I'LL POINT  
10 OUT A COUPLE OF HIGHLIGHTS, I GUESS. I RECEIVED A  
11 PH.D. IN ECONOMICS WITH HIGHEST DISTINCTION FROM  
12 COLUMBIA UNIVERSITY IN 1973, AND I HAVE BEEN AT  
13 NEW YORK UNIVERSITY SINCE THEN, 39 YEARS OF  
14 TEACHING AT NYU.

15 DURING THE PERIOD, I ALSO SERVED AS THE  
16 DEPUTY ASSISTANT ATTORNEY GENERAL FOR ECONOMICS IN  
17 THE DEPARTMENT OF JUSTICE, ANTITRUST DIVISION.  
18 BASICALLY THAT'S THE POSITION OF A CHIEF ECONOMIST  
19 IN THE ANTITRUST DIVISION, BUT ALSO IN THE JUSTICE  
20 DEPARTMENT.

21 Q DR. -- I'M SORRY.

22 A OTHER ACTIVITIES I PERFORMED AS WELL THAT ARE  
23 ON THIS DEMONSTRATIVE.

24 Q WHEN YOU WERE WORKING FOR THE DEPARTMENT OF  
25 JUSTICE, DID YOU CONSIDER ANY COMPETITION ECONOMICS



1 ISSUES?

2 A THAT WAS MY JOB. PRETTY MUCH AS THE CHIEF  
3 ECONOMIST, DEPUTY ASSISTANT IN GENERAL FOR  
4 ECONOMICS, I WAS RESPONSIBLE FOR FORMULATING THE  
5 ECONOMICS POLICY OF THE DEPARTMENT, AND I WAS ALSO  
6 RESPONSIBLE FOR DEALING WITH OTHER BRANCHS OF THE  
7 GOVERNMENT, SUCH AS THE FEDERAL TRADE COMMISSION,  
8 WHICH ALSO DEALS WITH COMPETITION ISSUES. SO I WAS  
9 IN THE MIDST OF ALL OF IT.

10 Q DR. ORDOVER, DO YOU HAVE ANY EXPERIENCE  
11 ANALYZING COMPETITION ECONOMICS IN THE WIRELESS  
12 COMMUNICATION INDUSTRY?

13 A WELL, I HAVE MANY YEARS OF EXPERIENCE IN THE  
14 TELECOMMUNICATIONS INDUSTRY IN GENERAL. IN FACT, I  
15 WAS A RESEARCHER AT BELL LABORATORIES MANY YEARS  
16 AGO WHEN THEY STILL EXISTED.

17 AND SINCE THAT TIME, I HAVE WORKED ON A  
18 NUMBER OF MATTERS, INCLUDING ADVISING FEDERAL  
19 COMMUNICATIONS COMMISSION, ADVERTISING MOBILE  
20 CARRIERS IN THE UNITED STATES, AUSTRALIA, INDIA,  
21 AND SO ON AND SO FORTH.

22 YES, THE ANSWER IS I'VE DONE PLENTY OF  
23 WORK IN THE MOBILE SECTOR AND TELECOMMUNICATIONS  
24 SECTOR.

25 MR. MUELLER: YOUR HONOR, AT THIS POINT I

1 OFFER DR. ORDOVER AS AN EXPERT IN COMPETITION,  
2 INCLUDING IN THE WIRELESS COMMUNICATION INDUSTRY.

3 MR. VERHOEVEN: NO OBJECTION.

4 THE COURT: SO CERTIFIED. GO AHEAD,  
5 PLEASE.

6 BY MR. MUELLER:

7 Q DR. ORDOVER, ARE YOU FAMILIAR WITH THE ROLE OF  
8 STANDARDS IN THE WIRELESS INDUSTRY?

9 A YES, I'M QUITE FAMILIAR WITH THOSE, AND  
10 PROFESSOR WALKER GAVE A VERY NICE DISCUSSION OF IT,  
11 SO I WON'T BELABOR THE ISSUE.

12 BUT JUST TO RAISE THE ECONOMIC SIDE OF  
13 THE CIRCUMSTANCE, FROM THE ECONOMICS PERSPECTIVE,  
14 STANDARDS ARE BOTH A HUGE BENEFIT, AND ALSO A  
15 POTENTIAL RISK.

16 ON THE BENEFIT SIDE, WE HAVE THE BENEFITS  
17 OF SCALING ECONOMICS, WHICH IS THAT WHEN THE  
18 STANDARD IS ESTABLISHED, FOR EXAMPLE, UMTS OR CDMA,  
19 MANUFACTURERS OF HANDSETS WILL BE ASSURED THAT  
20 THEIR HANDSET WILL WORK ON A PARTICULAR NETWORK FOR  
21 WHICH IT IS DESIGNED, AS OPPOSED TO NEEDING TO  
22 DESIGN SEPARATE HANDSETS FOR EVERY NETWORK ON WHICH  
23 THOSE HANDSET CAN RIDE. SO SCALE ECONOMIES MEAN  
24 REDUCTION IN THE AVERAGE COST. IF THE VOLUME GOES  
25 UP, THERE'S A HUGE BENEFIT TO THE CONSUMERS.

1 Q SO LET'S PAUSE THERE. THOSE ARE THE BENEFITS.  
2 FROM AN ECONOMIC PERSPECTIVE, DOES STANDARD SETTING  
3 PRESENT ANY RISKS?

4 A YES. IT PRESENTS A VARIETY OF RISKS, BUT  
5 TODAY, BECAUSE OF SHORTNESS OF TIME AND THE SUBJECT  
6 MATTER OF THIS LITIGATION, I'M JUST GOING TO  
7 DISCUSS ONE OF THEM, AND THAT IS WHAT ECONOMISTS  
8 REFER TO AS THE HOLD UP RISK, OR IT'S THE RISK OF  
9 RENT EXTRACTION.

10 THERE ARE A VARIETY OF TERMS FOR THE SAME  
11 CONCEPT, WHICH IS TO SAY THAT ONCE THE PARTICULAR  
12 TECHNOLOGY IS ADOPTED IN A STANDARD, THE OWNER OF  
13 THE TECHNOLOGY HAS INCREASED THE ABILITY TO OVER  
14 PRICE IT TO THOSE WHO NEED IT RELATIVE TO WHAT THE  
15 PRICE WOULD HAVE BEEN BEFORE THE STANDARD IS SET.

16 AND THAT'S A KEY CONCEPT THAT MOTIVATES  
17 PRETTY MUCH ALL OF THE WORK THAT I HAVE DONE IN  
18 THIS CASE.

19 Q DR. ORDOVER, HAVE YOU PREPARED A DEMONSTRATIVE  
20 TO HELP ILLUSTRATE THIS CONCEPT OF HOLD UP?

21 A YES, IT'S A VERY SIMPLE EXAMPLE, BUT HOPEFULLY  
22 IT WILL GET US ON THE SAME PLAYING FIELD.

23 Q SO LET'S PUT UP PDX 44.2, AND COULD YOU  
24 EXPLAIN WHAT WE SEE?

25 A I THINK ACTUALLY THIS IS AN EXAMPLE THAT WAS

1 ALREADY IN THE RECORD.

2 WHAT I HAVE ILLUSTRATED ON IT IS THE  
3 SITUATION FOR THE STANDARD IS DETERMINED, AND  
4 HERE'S A STANDARD THAT DEALS WITH  
5 THE CONNECTIVITY OF A DEVICE, A TOASTER, A  
6 REFRIGERATOR, YOUR P.C. TO THE ELECTRICAL NETWORK.  
7 SO IT'S THE EXACT ANALOG TO THE WAY THE MOBILE  
8 HANDSETS COMMUNICATE WITH THE MOBILE NETWORK.

9 Q LET ME JUST PAUSE YOU RIGHT THERE.

10 A SURE.

11 Q THE TOP OF THIS DEMONSTRATIVE, JUST SO THE  
12 RECORD IS CLEAR, WE SEE THREE ELECTRICAL OUTLETS  
13 AND THREE PLUGS, AND THAT'S LABELED PRE-STANDARD.

14 WHAT ARE YOU INTENDING TO SHOW THERE?

15 A WHAT I'M INTENDING TO SHOW IS UNDER THAT --  
16 THAT'S WHAT ALLUDED TO, AND THAT IS THAT BEFORE THE  
17 STANDARD IS SET, HOMES CAN BE EQUIPPED WITH EITHER  
18 ONE OF THOSE THREE ALTERNATIVE PLUGS.

19 AND THAT OBVIOUSLY MAKES IT HIGHLY  
20 COMPETITIVE ENVIRONMENT FROM THE STANDPOINT OF  
21 PEOPLE WHO OWN THE PLUG TECHNOLOGY BECAUSE THEY'RE  
22 TRYING TO SELL THE TECHNOLOGY THEY HAVE TO TOASTER  
23 MAKERS AND THE OTHER APPLIANCE MAKERS AND SO ON AND  
24 SO FORTH. IT'S A VERY COMPETING UNDER LICENSING  
25 TERMS OF THE TECHNOLOGY TO THOSE WHO NEEDED IT.

1           AND, HOWEVER, THERE'S A BIG INCONVENIENCE  
2           FOR THAT, BECAUSE IF YOU BUY A TOASTER AT SEARS AND  
3           YOU BRING IT HOME AND IT TURNS OUT THAT IT DOESN'T  
4           FIT THE PLUG. WELL, YOU WASTED YOUR MONEY, OR AT  
5           LEAST YOUR TIME.

6           SO THE STANDARD IS SET.

7           Q       AND LET'S TALK ABOUT POST-STANDARD. ON THE  
8           SCREEN WE HAVE THOSE SAME THREE PLUGS WITH A  
9           CHECKMARK NEXT TO ONE AND X'S NEXT TO THE OTHER.  
10          WHAT DO YOU MEAN BY THAT?

11          A       WELL, WHAT I MEAN BY THAT, ONCE THE STANDARD  
12          IS SET THROUGH WHATEVER MEANS, STANDARD SETTING  
13          ORGANIZATIONS IN THE BUILDING TRADES, THEY WILL DO  
14          THAT, THE TWO ALTERNATIVE TYPES OF PLUGS ARE NO  
15          LONGER AVAILABLE FOR PURCHASE IN THE, LET'S SAY THE  
16          UNITED STATES, BECAUSE THESE PLUGS NO LONGER WILL  
17          FIT THE RECEPTACLES IN WHICH THEY WERE DESIGNED.

18                 SOME OF THEM YOU CAN BUY IN EUROPE OR  
19          CONTINENTAL EUROPE OR UK, BUT IN THE UNITED STATES  
20          WE ARE DOWN TO THE PLUG DESIGN ON THE LEFT.

21                 AND WHAT HAS HAPPENED IS WHATEVER  
22          COMPETITION THERE MAY HAVE EXISTED BETWEEN THE  
23          OWNERS OF THOSE TECHNOLOGIES TO GET THE TECHNOLOGY  
24          INTO THE HANDS OF THE APPLIANCE SUPPLIERS, THAT  
25          TECHNOLOGY IS NOW A MONOPOLIST IN THIS NARROW

1 MARKET OF THE TECHNOLOGY FOR CONNECTIVITY.

2 Q AND, SIR, IF YOU COULD, HOW DOES THIS EXAMPLE  
3 RELATE TO WHAT YOU DESCRIBED AS HOLD UP?

4 A WELL, THE WAY THAT IT RELATES, AND AGAIN,  
5 PRETTY MUCH STRAIGHTFORWARD TYPE OF CONNECTION THAT  
6 I'M MAKING, AND THAT IS THAT IF THERE WAS  
7 COMPETITION AND ONE OF THE -- THE GREEN PLUG  
8 MANUFACTURER TRIED TO RAISE THE PRICE RELATIVE TO  
9 WHAT THE RIVALS WERE CHARGING, WHICH WOULD LOSE  
10 BUSINESS.

11 HOWEVER, NOW, IF THE PRICE -- IF THE  
12 GREEN TECHNOLOGY GETS OVERPRICED, PEOPLE HAVE  
13 NOWHERE TO GO BECAUSE YOU NEED TO HAVE THAT TYPE OF  
14 PLUG-IN ORDER TO USE THE TOASTER.

15 THAT GIVES THE MANUFACTURER THE ABILITY,  
16 INCREASED ABILITY TO MANIPULATE PRICE RELATIVE TO  
17 THE PRE-STANDARD LEVEL.

18 Q NOW, SIR, ARE YOU FAMILIAR WITH AN  
19 ORGANIZATION CALLED THE EUROPEAN TELECOMMUNICATIONS  
20 STANDARDS INSTITUTE, OR ETSI?

21 A YES.

22 Q AND ARE YOU FAMILIAR WITH THE ETSI  
23 INTELLECTUAL PROPERTY RIGHTS POLICY?

24 A YES, I AM.

25 Q LET'S PUT UP PDX 44.3. THIS QUOTES TWO

1 SECTIONS FROM THE ETSI IPR POLICY, CLAUSE 4 AND  
2 CLAUSE 6.

3 ARE YOU FAMILIAR WITH THESE PROVISIONS?

4 A YES, THOSE WERE DISCUSSED ACTUALLY THIS  
5 MORNING EXTENSIVELY.

6 Q ARE THESE BINDING ON THE ETSI MEMBERSHIP?

7 A THAT'S MY UNDERSTANDING.

8 Q FIRST RULE RELATES TO DISCLOSURE OF  
9 INTELLECTUAL PROPERTY RIGHTS. FROM AN ECONOMIC  
10 PERSPECTIVE, WHAT IS THE PURPOSE OF THIS PROVISION?

11 A WELL, I SEE THAT PROVISION AS BEING REALLY  
12 DIRECTED TOWARDS INFORMING THE STANDARD SETTING  
13 BODY WHAT KIND OF TECHNOLOGIES ARE AVAILABLE AND  
14 WHAT KIND OF INTELLECTUAL PROPERTY RIGHTS ATTACH TO  
15 THESE ALTERNATIVE TECHNOLOGIES.

16 Q THE SECOND RULE, CLAUSE 6, IS WHAT DR. WALKER  
17 REFERRED TO AS THE FRAND PROVISION; IS THAT RIGHT?

18 A YES, THAT'S WHAT IT IS.

19 Q WHAT ARE THE ECONOMIC IMPLICATIONS OF THE  
20 FRAND PROVISION?

21 A WELL, THAT, I THINK, IS A BIT AT THE HARD OF  
22 THE HOLD UP, BECAUSE WHAT FRAND TRIES TO IMPLEMENT  
23 IS THE KIND OF RESTRICTION THAT IS A COMPETITIVE  
24 MARKET WOULD IMPOSE ON THE OWNER OF TECHNOLOGY ONCE  
25 THE STANDARD IS DETERMINED. ONCE IT'S FROZEN,

1           THERE IS NO CHOICE. YOU HAVE TO USE THE TECHNOLOGY  
2           THAT IS IN THE STANDARD AND THE FRAND PROVISIONS,  
3           THEY REALLY TRY TO MIMIC WHAT THE MARKET,  
4           COMPETITIVE MARKET WILL DELIVER. THEY CANNOT  
5           ALWAYS DO THAT, BUT THAT'S WHAT THEY TRY TO  
6           ACCOMPLISH.

7           Q       NOW, SIR, WERE YOU HERE THIS MORNING FOR  
8           DR. WALKER'S TESTIMONY REGARDING WHETHER SAMSUNG  
9           COMPLIED WITH THE DISCLOSURE PROVISION, CLAUSE 4?

10          A       YES.

11          Q       AND WERE YOU HERE THIS MORNING FOR  
12          MR. DONALDSON'S TESTIMONY REGARDING WHETHER SAMSUNG  
13          COMPLIED WITH THE FRAND PROVISION, CLAUSE 6?

14          A       YES.

15          Q       NOW, THE LADIES AND GENTLEMEN OF THE JURY WILL  
16          NEED TO DECIDE FOR THEMSELVES WHETHER THEY AGREE  
17          WITH DR. WALKER AND MR. DONALDSON.

18                   BUT FOR PURPOSES OF THE QUESTIONS I'M  
19          ABOUT TO ASK YOU, I WANT YOU TO ASSUME THEY DO  
20          AGREE.

21                   DO YOU HAVE THAT IN MIND?

22          A       YES.

23          Q       IF DR. WALKER AND MR. DONALDSON ARE CORRECT,  
24          WHAT ARE THE ECONOMIC CONSEQUENCES?

25          A       WELL, LET ME SUMMARIZE THEM AND SORT OF GO



1 THROUGH THE TILE. I THINK THE FIRST CONCEPT WAS  
2 THAT SAMSUNG'S CONDUCT DISTORTED THE DECISION  
3 MAKING PROCESS AT ETSI.

4 SECOND, THAT DISTORTION HAS LED TO A  
5 CHOICE OF TECHNOLOGY THAT MAY NOT HAVE BEEN CHOSEN  
6 BUT FOR ITS CONDUCT.

7 NUMBER THREE, IT ENABLED SAMSUNG'S  
8 TECHNOLOGY TO BE INTRODUCED, AT LEAST THEY CLAIM IT  
9 HAS BEEN INTRODUCED, BECOME PART OF THE STANDARD.  
10 THEY THINK OF THEMSELVES AS STANDARD ESSENTIAL  
11 TECHNOLOGIES.

12 AS A FINAL STEP, BECAUSE THEY ARE NOW  
13 STANDARD, PROCEED TO SELL STANDARD ESSENTIAL  
14 TECHNOLOGIES FOR THESE TWO TYPES OF FEATURES THAT  
15 UMTS IMPLEMENTS, THEY HAVE ACQUIRED WHAT I CALL THE  
16 HOLDUP POWER, THE PATENT OWNER HOLDUP POWER, AND  
17 THAT IS THE RISK THAT THE STANDARD SETTING CREATES,  
18 AND THAT'S THE RISK THAT THE PROVISION 6.1 IS  
19 SUPPOSED TO CONTROL.

20 Q DR. ORDOVER, AS AN ECONOMIST, HOW DO YOU  
21 MEASURE THE TYPES OF CONSEQUENCES THAT YOU'VE  
22 DESCRIBED?

23 A WELL, THE -- FIRST OF ALL, YOU CAN LOOK AT THE  
24 CONSEQUENCES AN INCENTIVE TO INNOVATE, YOU CAN LOOK  
25 AT THE CONSEQUENCES OF THE PRICING OF THE

1 TECHNOLOGY, WHICH IS CRITICAL INPUT INTO THE COST  
2 OF MANUFACTURING THESE HANDSETS.

3 YOU CAN LOOK AT THE OVERALL PRICING IN  
4 THE MARKETPLACE, AND IN PARTICULAR, THE QUESTION  
5 BECOMES THAT OF WHETHER YOU HAVE SEEN AN EMERGENCE  
6 OF MARKET POWER OR MONOPOLY POWER IN THE HANDS OF  
7 THE FIRM THAT IS SUPPLYING THE TECHNOLOGY.

8 Q NOW, SIR, ARE YOU FAMILIAR WITH A CONCEPT  
9 CALLED A TECHNOLOGY MARKET?

10 A YES, I AM.

11 Q WHAT IS A TECHNOLOGY MARKET?

12 A WELL, THE PLACE, THE SOURCE CODE FOR IT, THAT  
13 IDEA; IN THE UNITED STATES DEPARTMENT OF JUSTICE  
14 FEDERAL TRADE COMMISSION GUIDELINES FOR LICENSING  
15 OF INTELLECTUAL PROPERTY.

16 AND THESE GUIDELINES DESCRIBE THE  
17 TECHNOLOGY MARKET AS CONSISTING OF TECHNOLOGIES  
18 THAT A REASONABLE GROUP SUBSTITUTES FOR EACH OTHER.  
19 THEY DON'T HAVE TO BE PERFECT SUBSTITUTES, BUT THEY  
20 HAVE TO BE GOOD ENOUGH SUBSTITUTES SO THAT IN THE  
21 MARKETPLACE, IF ALL OF THEM ARE PRESENT, THEY WILL  
22 PRESS DOWN ON THE PRICE OF THE TECHNOLOGY, WHICH IS  
23 THE LICENSE PRICES.

24 GOING BACK TO THE PLUGS, THE TECHNOLOGY  
25 MARKET WOULD CONSIST OF THE THREE TYPES OF PLUG

1 SOLUTIONS, BUT AFTER THE STANDARD IS SET, IT'S  
2 GOING TO BE ONLY ONE TECHNOLOGY IN THE RELEVANT  
3 MARKET.

4 Q NOW, COULD YOU EXPLAIN TO THE JURY, PLEASE,  
5 THE DIFFERENCE BETWEEN THE TECHNOLOGY MARKET ON THE  
6 ONE HAND AND A PRODUCT MARKET ON THE OTHER?

7 A YES. JUST SOME OF THE EXAMPLES I'M GOING TO  
8 USE THE ONE THAT I USE IN MY CLASS. SO YOU MAY  
9 HAVE A MARKET FOR TECHNOLOGIES TO MAKE JAM. THAT  
10 TECHNOLOGY MARKET IS BASICALLY, IN THE OLDEN DAYS  
11 YOU WOULD TAKE THE CHERRIES AND YOU COULD COOK THEM  
12 DOWN IN THE POT. BUT THESE DAYS, OF COURSE THIS IS  
13 NOT THE WAY JAM IS MADE. AT THE SAME TIME, THERE  
14 IS A DOWNSTREAM MARKET FOR JAM. THERE ARE MANY  
15 FIRMS PRODUCING JAM AND THEY COMPETE ON TOP OF THE  
16 TECHNOLOGY WITH THEIR OWN INNOVATIONS.

17 SO IN THE TECHNOLOGY MARKET, WE HAVE  
18 COMPETING JAM MAKING TECHNOLOGIES, AND ON THE LOWER  
19 LEVEL, WHICH IS CALLED THE DOWNSTREAM MARKET IN  
20 ECONOMICS, WE HAVE JAMS.

21 AND HOPEFULLY THERE'S A VIBRANT  
22 COMPETITION UPSTREAM AND THE TECHNOLOGY MARKET AND  
23 HOPEFULLY THERE IS VIBRANT COMPETITION IN THE  
24 DOWNSTREAM MARKET, WHICH IS THE JAMS .

25 Q NOW, SIR, FOR SAMSUNG'S '516 AND '941 PATENTS,

1 HAVE YOU ATTEMPTED TO DETERMINE RELEVANT TECHNOLOGY  
2 MARKETS?

3 A YES. I THINK THERE WAS RELEVANT TESTIMONY BY  
4 DR. KIM AND KNIGHTLY WHICH DESCRIBE THE RELEVANT  
5 TECHNOLOGIES AS CENTERING ON THE TECHNOLOGIES THAT  
6 SAMSUNG SPONSORED INTO THE STANDARD, AND ALL THE  
7 OTHER TECHNOLOGIES THAT COULD HAVE PERFORMED THE  
8 FEATURES ON WHICH THOSE TECHNOLOGIES READ.

9 Q NOW, ARE YOU REFERRING TO TECHNICAL  
10 ALTERNATIVES?

11 A YES, I AM REFERRING TO TECHNICAL ALTERNATIVES,  
12 AND I'M REMINDING MYSELF, AND EVERYONE ELSE, THAT  
13 THESE TECHNICAL ALTERNATIVES DO NOT HAVE TO BE  
14 PERFECT SUBSTITUTES, BUT THEY HAVE TO BE GOOD  
15 ENOUGH SUBSTITUTES THAT PRIOR TO STANDARDIZATION,  
16 THEY COULD HAVE BEEN REASONABLE ALTERNATIVES FROM  
17 THE STANDPOINT OF THE DESIGNER OF THE STANDARD.

18 Q NOW, YOU WERE HERE FOR THE TESTIMONY OF  
19 DR. KIM AND DR. KNIGHTLY?

20 A YES.

21 Q ON THE ISSUE OF TECHNICAL ALTERNATIVES, WE'RE  
22 GOING TO LET THE JURY EVALUATE THE TESTIMONY OF  
23 DR. KIM AND DR. KNIGHTLY AND I'M NOT GOING TO ASK  
24 YOU ABOUT THOSE TECHNICAL ISSUES, OKAY?

25 A OKAY. THAT'S GOOD.

1 Q IF YOU COULD, THOUGH, THE TECHNOLOGY MARKETS  
2 THAT YOU'VE DESCRIBED, WHAT IS THE GEOGRAPHIC SCOPE  
3 OF THOSE MARKETS?

4 A I THINK IT'S COMMONLY RECOGNIZED, BY  
5 ECONOMISTS AND INTELLECTUAL PROPERTY LICENSES  
6 GUIDELINES THAT I REFERENCED ALREADY, THEY  
7 GENERALLY REFER TO TECHNOLOGY MARKETS AS BEING  
8 GLOBAL.

9 NOW, WHAT IS A TECHNOLOGY MARKET? WELL,  
10 AS I SAID, IT'S A MARKET THAT CONSISTS OF THE  
11 ALTERNATIVE TECHNOLOGIES FOR A PARTICULAR FEATURE,  
12 AND IT'S QUITE CLEAR THAT THESE TECHNOLOGIES CAN BE  
13 PROCURED FROM ANYWHERE IN THE WORLD.

14 THESE -- THESE ARE RECOGNIZED BY ETSI,  
15 WHICH IS INVITING PARTICIPATION OF FIRMS LOCATED IN  
16 EVERY CONCEIVABLE COUNTRY OF THE WORLD. IT IS  
17 NOT -- EVEN THOUGH IT'S A EUROPEAN ORGANIZATION, WE  
18 KNOW THAT MEMBERS ARE GLOBAL FIRMS OR INTERNATIONAL  
19 FIRMS.

20 AND, THEREFORE, I WOULD SAY THAT THE  
21 TECHNOLOGY MARKET IS GLOBAL, UNLIKE THE MARKET FOR  
22 HAIRCUTS. IF YOU LIVE IN SAN JOSE, YOU'RE NOT  
23 LIKELY GOING TO SPEND LOTS OF MONEY TO GO TO  
24 SAN FRANCISCO FOR A HAIRCUT, ALTHOUGH SOME PEOPLE  
25 HAVE BEEN KNOWN TO DO THAT.

1                   SO THE POINT I'M MAKING THAT HOW BROAD IS  
2                   THE GEOGRAPHIC MARKET DEPENDS ON THE PRODUCT,  
3                   DEPENDS ON THE -- ON HOW COSTLY IT IS TO GET IT  
4                   FROM SOMEWHERE ELSE, WHETHER THE QUALITY AS IT  
5                   TRAVELS LONG DISTANCES, NONE OF THAT HAPPENS TO  
6                   TECHNOLOGY. IT'S FREE TO TRANSPORT. IT WAS AS  
7                   GOOD AS IT WAS IN KOREA WHEN IT GOT TO THE  
8                   UNITED STATES.

9                   Q       NOW, SIR, JUST TO WE'RE CLEAR, YOU'RE DEFINING  
10                   YOUR TECHNOLOGY MARKETS BY REFERENCE TO FEATURES IN  
11                   THE STANDARD?

12                   A       YES, THE TECHNOLOGY MARKETS IN THIS CASE ARE  
13                   COEXTENSIVE, YOU CAN THINK OF IT THAT WAY, WITH THE  
14                   ACTUAL FEATURES THAT I'M DESCRIBING IN THOSE  
15                   RELEASES THAT PROFESSOR WALKER WALKED US THROUGH  
16                   THIS MORNING.

17                   Q       NOW, DO YOU HAVE AN OPINION AS TO WHETHER  
18                   SAMSUNG ACQUIRED MONOPOLY POWER IN PARTICULAR  
19                   TECHNOLOGY MARKETS?

20                   A       YES. BUT BEFORE I EXPLAIN, LET ME STAND BACK  
21                   FOR A MOMENT AND MAKE A DISTINCTION BETWEEN MARKET  
22                   POWER AND MONOPOLY POWER.

23                               MANY FIRMS HAVE MARKET POWER IN THE  
24                   ECONOMY. WHAT DOES THAT MEAN? THEY CAN MANIPULATE  
25                   THEIR PRICES UP AND DOWN A LITTLE BIT WITHOUT

1 GAINING ALL OF THE BUSINESS FROM EVERYBODY OR  
2 LOSING ALL OF THE BUSINESS.

3 SO THE FACT THAT YOU CAN HAVE SOME  
4 FLEXIBILITY IN YOUR PRICING IS DEFINED IN ECONOMICS  
5 AS MARKET POWER.

6 WHAT DO I MEAN BY MONOPOLY POWER? WELL,  
7 MONOPOLY POWER IS SOMETHING GREATER THAN THAT, IT  
8 IS THE ABILITY TO RAISE PROFITABLY, AND THAT'S THE  
9 KEY THING, PROFITABLY THE PRICE ABOVE THE BENCHMARK  
10 OR COMPETITIVE LEVEL WITHOUT LOSING THE BUSINESS  
11 EITHER TO THE EXISTING FIRMS OR INVITING ENOUGH NEW  
12 ENTRANTS TO TAKE THE BUSINESS AWAY FROM YOU. SO IT  
13 HAS TO BE A SIGNIFICANT INCREASE FOR A PERSISTENT  
14 PERIOD.

15 Q HAS SAMSUNG EXERCISED MONOPOLY POWER?

16 A WELL, IT GAINED MONOPOLY PRESENCE IN THESE TWO  
17 TECHNOLOGY MARKETS, AND I THINK AS WE HEARD FROM  
18 MR. DONALDSON, IT HAS ACTED IN A WAY THAT, THAT  
19 EVIDENCES THAT IT HAS GAINED MONOPOLY POWER BY  
20 VIRTUE OF MAKING LICENSING DEMANDS TO SAMSUNG -- TO  
21 APPLE, AND ONLY TO APPLE, ACTUALLY, THAT ARE  
22 INCONSISTENT WITH THE FRAND PRINCIPLE.

23 THAT, TO ME, EVIDENCES THAT THEY'VE  
24 GAINED MONOPOLY POWER BECAUSE NOBODY CAN NOW TAKE  
25 THEM OUT OF THE STANDARD UP UNTIL SUCH TIME AS THE

1 A NEW VERSION OF THE STAMPED IS DESIGNED.

2 Q SIR, ARE YOU OFFERING ANY OPINION WHETHER  
3 SAMSUNG HAS PATENTS THAT ARE TRULY ESSENTIAL TO  
4 UMTS?

5 A NO, I'M NOT.

6 Q FROM AN ECONOMIC STANDARD, DOES IT MATTER TO  
7 YOUR ANALYSIS?

8 A NO, IT DOES NOT. AND THAT'S A DELICATE POINT.  
9 THE POINT IS THAT EVEN THOUGH IT IS NOT CLEAR  
10 WHETHER ANY ONE OF THOSE PATENTS ACTUALLY IS  
11 ESSENTIAL, WHETHER ANY ONE OF THOSE PATENTS IS  
12 ACTUALLY VALID OR THAT ANY ONE OF THOSE PATENTS  
13 ACTUALLY ARE INFRINGED, THE MERE PRESENCE IN THE  
14 STANDARD CREATE ITSELF A VERY POTENT EFFECT ON HOW  
15 PEOPLE ACT AND HOW THEY PERCEIVE THE FIRM'S ABILITY  
16 TO CONTROL PRICE AND OVERCHARGE FOR THE TECHNOLOGY.

17 WHY? BECAUSE IT'S HUMANLY IMPOSSIBLE FOR  
18 ANYONE, BE IT SAMSUNG OR BE IT APPLE, TO GO TO EACH  
19 AND EVERY FIRM THAT OWNS THESE ESSENTIAL PATENTS  
20 AND GET THEM. THERE ARE NOW 1,800 OR SO ESSENTIAL  
21 PATENTS IN THE CURRENT VERSION OF UMTS. HOW ON  
22 EARTH CAN YOU RUN YOUR BUSINESS IF YOU HAVE TO DO  
23 THAT FROM ONE FIRM TO ANOTHER? YOU WILL NEVER GET  
24 GOING.

25 SO THE BEAUTY OF THE STANDARD IS THAT IT



1 MORE OR LESS TELLS YOU, UNDER FRAND, IF YOU WANT TO  
2 IMPLEMENT THE STANDARD, YOU'RE GOING TO GET THE  
3 TECHNOLOGY ON THESE FRAND RIGHTS.

4 Q JUST A COUPLE MORE QUESTIONS. IN YOUR OPINION  
5 AS AN ECONOMIST, HAS SAMSUNG EXERCISED THE MONOPOLY  
6 POWER YOU'VE DESCRIBED?

7 A I THINK THIS IS JUST A REPEAT OF MY PRIOR  
8 ANSWER, AND THAT IS THE FACT THAT IT HAS BEEN --  
9 THAT IT CAN CHARGE, OR ATTEMPT TO CHARGE THE  
10 NON-FRAND RATES TO SAMSUNG IS WHAT ECONOMISTS CALL  
11 A DIRECT PROOF OF MARKET OR MONOPOLY POWER, AND IN  
12 THIS PARTICULAR CASE, THERE IS AT LEAST --  
13 MR. DONALDSON CONCLUDED THAT WHAT THEY ARE ASKING  
14 FOR IS TOTALLY WAY OUT OF LINE WITH FRAND, WHAT  
15 FRAND REQUEST WOULD BE, WHICH FRAND REQUEST IS, IN  
16 FACT, MIMICKING, AS I PUT IT EARLIER TO YOU, IT  
17 WOULD MIMIC THE COMPETITIVE MARKETPLACE AND ENABLE  
18 SAMSUNG TO CHARGE FOR ITS TECHNOLOGIES.

19 Q LAST QUESTION. HAS APPLE BEEN HARMED?

20 A YES. WELL, FIRST OF ALL, APPLE HAS TO SPEND  
21 MONEY DEFENDING ITS -- DEFENDING ITSELF IN COURTS  
22 ON THESE PATENT ISSUES.

23 BUT TO ME, MORE IMPORTANTLY, I THINK, IS  
24 THE FACT THAT IT'S POTENTIALLY FACING WHAT  
25 PROFESSOR TEECE CHARACTERIZED AS A FRAND DEMAND FOR

1 SOMETHING LIKE \$350 MILLION FOR PAST USE OF THE  
2 TECHNOLOGY, AND OBVIOUSLY FORWARD-LOOKING TAX PER  
3 UNIT OF THE DEVICE GOING ALL THE WAY UP TO 14  
4 SOMETHING DOLLARS BASED ON THE 2.4 PERCENT DEMANDED  
5 LICENSE FEE.

6 MR. MUELLER: THANK YOU, SIR. I HAVE NO  
7 FURTHER QUESTIONS.

8 THE COURT: ALL RIGHT. THE TIME IS NOW  
9 1:47. CROSS?

10 MR. VERHOEVEN: IN THE INTEREST OF TIME,  
11 NO CROSS, YOUR HONOR.

12 THE COURT: ALL RIGHT. MAY THIS WITNESS  
13 BE EXCUSED AND IS IT SUBJECT TO RECALL MR. MUELLER  
14 OR MR. LEE.

15 MR. MUELLER: NO, YOUR HONOR.

16 THE COURT: ALL RIGHT. YOU ARE EXCUSED.

17 THE WITNESS: THANK YOU.

18 THE COURT: PLEASE CALL YOUR NEXT  
19 WITNESS.

20 MS. KREVANS: WE JUST HAVE TO BRING SOME  
21 DEVICES UP, YOUR HONOR.

22 THE COURT: NO PROBLEM. IF YOU'D LIKE TO  
23 STAND UP AND STRETCH, NOW IS THE TIME TO DO IT,  
24 PLEASE.

25 (PAUSE IN PROCEEDINGS.)

1 THE CLERK: PLEASE STAND AND RAISE YOUR  
2 RIGHT HAND.

3 **PETER BRESSLER,**  
4 BEING RECALLED AS A WITNESS ON BEHALF OF THE  
5 PLAINTIFF, HAVING BEEN PREVIOUSLY SWORN, WAS  
6 EXAMINED AND TESTIFIED AS FOLLOWS:

7 THE WITNESS: YES, I DO.

8 THE CLERK: THANK YOU. PLEASE BE SEATED.

9 THE COURT: THE TIME IS 1:50. GO AHEAD,  
10 PLEASE.

11 **DIRECT EXAMINATION**

12 BY MS. KREVANS:

13 Q GOOD AFTERNOON, MR. BRESSLER.

14 A GOOD AFTERNOON.

15 Q WERE YOU HERE IN COURT ON TUESDAY TO HEAR  
16 TESTIMONY FROM MR. SHERMAN, WHO WAS ONE OF THE  
17 SAMSUNG WITNESSES?

18 A YES.

19 Q AND DO YOU RECALL THAT HE TESTIFIED THAT THE  
20 APPLE IPHONE AND IPAD DESIGN PATENTS WERE INVALID?

21 A YES.

22 Q BECAUSE HE THOUGHT THEY WERE OBVIOUS.

23 A YES.

24 Q DO YOU AGREE WITH THOSE OPINIONS?

25 A NO.

1 Q ALL RIGHT. LET'S TALK ABOUT WHY.

2 FIRST A BACKGROUND QUESTION. DO YOU HAVE  
3 AN OPINION ABOUT THE DEFINITION OF WHO WOULD HAVE  
4 BEEN A PERSON OF ORDINARY SKILL IN THE FIELD OF THE  
5 APPLE DESIGN PATENTS IN THE TIME PERIOD THAT THE  
6 PATENT WAS FILED?

7 A YES. I BELIEVE A PERSON OF ORDINARY SKILL  
8 WOULD HAVE BEEN ONE WITH AT LEAST A BACHELOR'S  
9 DEGREE IN INDUSTRIAL DESIGN OR PRODUCT DESIGN, AND  
10 WOULD HAVE PRACTICED IN INDUSTRIAL DESIGN,  
11 INCLUDING THE DESIGN OF ELECTRONIC PRODUCTS, FOR AT  
12 LEAST TWO YEARS.

13 Q LET'S LOOK AT SOME OF THE PATENTS AND DEVICES  
14 THAT MR. SHERMAN TALKED ABOUT.

15 AND WHY DON'T WE START WITH THE JP'383  
16 WHICH, FOR THE RECORD, WAS DX 728. CAN WE PUT UP  
17 SLIDE PDX 26.78. DO YOU NEED YOUR GLASSES,  
18 MR. BRESSLER?

19 A YES.

20 Q COULD YOU EXPLAIN TO THE JURY WHAT, IN YOUR  
21 VIEW, ARE THE DIFFERENCES OF WHAT A PERSON OF  
22 ORDINARY SKILL WOULD SEE BETWEEN THE DESIGN OF THE  
23 JP'383 ON ONE HAND AND APPLE'S '087 AND '677  
24 PATENTS ON THE OTHER HAND?

25 A YES, A DESIGNER OF ORDINARY SKILL WOULD

1 NOTE -- I'LL TAKE THE '677 FIRST -- THAT THE FACE  
2 OF --

3 Q ACTUALLY, LET ME STOP YOU FOR A SECOND.

4 A YES.

5 Q THESE TWO FIGURES OUT OF THE '383 PATENT, CAN  
6 YOU EXPLAIN TO US WHAT EACH OF THEM ARE, STARTING  
7 WITH ONE ON THE LEFT?

8 A OF COURSE. THESE ARE FIGURES DIRECTLY FROM  
9 THE '383 PATENT, AND THEY ARE ILLUSTRATIONS FROM  
10 THE PATENT THAT SHOW THE CLEAR TRANSPARENT COVER  
11 THAT IS CLAIMED IN THE PATENT, AND THE UNIT THAT  
12 THAT COVER IS DESIGNED TO COVER ON THE RIGHT.

13 Q OKAY. ARE THERE SOME DRAWINGS IN THE PATENT  
14 WHERE THE COVER AND THE DEVICE ARE ACTUALLY SHOWN  
15 TOGETHER WITH THE DEVICE INSIDE THE COVER?

16 A YES, MOST OF THE DRAWINGS ARE.

17 Q OKAY. HERE THEY'RE SEPARATE?

18 A HERE THEY'RE SEPARATE, YES.

19 Q COULD YOU, USING THESE DRAWINGS, EXPLAIN TO  
20 THE JURY THE DIFFERENCES BETWEEN THE '383 DESIGN  
21 AND THE '087 AND 677 DESIGNS?

22 A YES. IF I WERE TO START WITH THE '677, I  
23 THINK ONE CAN SEE THAT THE FRONT FACE IS NOT  
24 TRANSPARENT ALL THE WAY EDGE TO EDGE, ALL THE WAY  
25 AROUND.

1 I THINK ONE CAN SEE THAT THE FRONT FACE  
2 IS NOT BLACK.

3 ONE CAN ALSO SEE THAT THERE IS NO SPEAKER  
4 SLOT, AND IF ONE WERE TO BE LOOKING AT A FRONT  
5 VIEW, ONE WOULD SEE THAT THE DESIGN IS NOT THE SAME  
6 PROPORTION OF HEIGHT TO WIDTH AS THE '677.

7 PROGRESSING TO THE '087, THIS DEVICE HAS  
8 NO BEZEL AND THERE ARE NO BORDERS ON EITHER SIDE OF  
9 THIS ONE.

10 Q THE DEVICE THAT IS SHOWN ON THE RIGHT, THE  
11 LEFT-HAND SIDE OF THE CASE, DOES IT HAVE A, DOES IT  
12 HAVE A FRONT FACE WHICH IS THE SAME MATERIAL ALL  
13 THE WAY ACROSS EDGE TO EDGE?

14 A NO, IT DOES NOT HAVE A CONTINUOUS TRANSPARENT  
15 FRONT FACE.

16 Q NOW, MR. SHERMAN TESTIFIED THAT HE THOUGHT,  
17 LOOKING AT THESE DRAWINGS, THAT THE '383 PATENT'S  
18 ELECTRONIC DEVICE HAD A BEZEL. CAN YOU EXPLAIN WHY  
19 YOU DISAGREE WITH THAT?

20 A I DISAGREE WITH THAT BECAUSE THE TWO LINES  
21 THAT YOU SEE, AND I'VE CREATED SOME EXAMPLES TO  
22 ILLUSTRATE WHY I DISAGREE -- THE TWO LINES THAT YOU  
23 SEE I BELIEVE REPRESENT THE ARTIST'S DESCRIPTION OF  
24 HOW THE FRONT SURFACE CONNECTS TO A CURVE AND THEN  
25 CONNECTS AGAIN TO THE SIDE OF THE TOP SURFACE. SO

1 IT'S ACTUALLY DESCRIBING THE SURFACE GOING TO THE  
2 SIDE.

3 Q OKAY. JUST SO IT'S CLEAR WHAT YOU'RE TALKING  
4 ABOUT, MR. BRESSLER, I'M GOING TO GO OVER TO THE  
5 SCREEN. I MAY NOT BE TALL ENOUGH FOR THIS?

6 A I CAN DO IT WITH A POINTER.

7 Q AM I POINTING TO THE TWO LINES YOU'RE TALKING  
8 ABOUT?

9 A THOSE ARE THE TWO LINES I'M TALKING ABOUT,  
10 YES.

11 Q LET'S -- COULD YOU SEE PDX 26.82? WHAT IS  
12 26.82, MR. BRESSLER?

13 A THIS IS A VIEW, AGAIN, OF A FIGURE FROM THE  
14 PATENT THAT SHOWS A SIDE VIEW OF THE DEVICE WITH  
15 ITS COVER ON, SO I'VE INCLUDED ARROWS TO INDICATE  
16 WHICH LINE IS THE LINE OF THE COVER AND WHICH LINE  
17 IS THE LINE OF THE FRONT FACE OF THE DEVICE.

18 Q COULD WE SEE 26.85. WHAT ARE WE LOOKING AT  
19 NOW, MR. BRESSLER?

20 A WHAT WE'RE LOOKING AT NOW IS TWO DEPICTIONS.  
21 ONE IS A FIGURE DIRECTLY FROM THE '087 --

22 MR. VERHOEVEN: YOUR HONOR, I OBJECT TO  
23 THIS SLIDE. IT'S MISLEADING.

24 MS. KREVANS: YOUR HONOR, I THINK IF THE  
25 WITNESS EXPLAINS THIS, HE CAN EXPLAIN EXACTLY WHAT

1 WHAT IT IS AND WHY IT'S NOT MISLEADING.

2 THE COURT: GO AHEAD. IT'S OVERRULED.

3 BY MS. KREVANS:

4 Q WHAT'S ON THE LEFT, MR. BRESSLER?

5 A WHAT'S ON THE LEFT IS THE SIDE VIEW DEPICTING  
6 CLEARLY THE VISUAL REPRESENTATION OF THE BEZEL THAT  
7 IS ON THE FRONT OF THE '087 PATENT.

8 Q WHAT'S ON THE RIGHT?

9 A WHAT IS ON THE RIGHT IS THE SAME VIEW THAT I  
10 SHOWED YOU JUST A MOMENT AGO. HOWEVER, I'VE MOVED  
11 THE COVER OFF THE FACE OF THE UNIT SO THAT YOU CAN  
12 SEE THE LINES THAT DEPICT THE UNIT.

13 Q SO LET'S JUST GO BACK --

14 MR. VERHOEVEN: I OBJECT TO THAT QUESTION  
15 AND ANSWER AS MISLEADING. THE WITNESS IS  
16 MANIPULATING THE IMAGE, YOUR HONOR.

17 THE COURT: OVERRULED.

18 YOU WILL HAVE TIME TO CROSS.

19 GO AHEAD.

20 BY MS. KREVANS:

21 Q LET'S GO BACK TO THE PREVIOUS SLIDE SO THIS IS  
22 CLEAR TO THE JURY, MR. BRESSLER. 26.82, PLEASE.

23 COULD YOU EXPLAIN TO US HOW 26.82 RELATES  
24 TO 26.85, THE SLIDE YOU JUST SHOWED?

25 A YES. AS YOU'LL RECALL FROM THE INITIAL SLIDE,



1           THERE ARE TWO PIECES. ONE IS THE UNIT ITSELF,  
2           WHICH YOU SEE THE ARROW POINTING TO A DEVICE. THE  
3           OTHER IS A TRANSPARENT COVER, WHICH THAT OUTSIDE  
4           LINE REPRESENTS.

5           Q       LET'S GO BACK TO 26.85. WHICH IS THE DEVICE,  
6           WHICH IS THE COVER, MR. BRESSLER?

7           A       THE COVER IS THE PARALLEL LINES, SIMPLY MOVED  
8           AWAY FROM THE SIDE VIEW OF THE DEVICE, SO THAT -- I  
9           WISH I HAD A POINTER, THE -- THE -- THAT'S THE --  
10          OKAY, THAT'S THE COVER.

11                       THE RIGHT-HAND LINE ON THE DEVICE IS THE  
12          FRONT FACE OF THE DEVICE, AS IT WAS IN THE SLIDE  
13          BEFORE.

14                       AND IF, IN FACT, IT HAD A BEZEL AS THE  
15          '087 DOES, YOU WOULD SEE A SECOND LINE OFFSET TO  
16          THE LEFT OF THAT RIGHT-HAND FACE, AND, THEREFORE,  
17          AS A SIGNER OF ORDINARY SKILL IN THE ART, I READ  
18          THIS AS NOT HAVING A BEZEL, BUT, IN FACT, HAVING A  
19          CURVATURE THAT GOES FROM THE FRONT TO THE SIDE.

20                       MS. KREVANS: OKAY. YOUR HONOR, MAY I  
21          GIVE THE WITNESS A POINTER?

22                       THE COURT: THAT'S FINE. GO AHEAD,  
23          PLEASE.

24          BY MS. KREVANS:

25          Q       AND COULD WE PUT BACK UP SLIDE 26 -- PDX

1 26.78.

2 A THANK YOU.

3 Q ON THE RIGHT SIDE OF 26.78, MR. BRESSLER, YOU  
4 TOLD US THAT NOW WE'RE LOOKING AT JUST THE  
5 ELECTRONIC DEVICE?

6 A CORRECT.

7 Q NO COVER?

8 A CORRECT.

9 Q COULD YOU EXPLAIN TO US WHAT THOSE TWO  
10 PARALLEL LINES ON THE FRONT THAT YOU IDENTIFIED  
11 EARLIER REPRESENT?

12 A YES. AND I'M GOING TO REST THE POINTER ON  
13 HERE SO IT DOESN'T BOUNCE AROUND TOO MUCH.

14 THIS LINE, THE ONE THAT GOES DIRECTLY  
15 AROUND THE FACE, AND THIS LINE, THE ONE THAT IS  
16 OFFSET BEHIND IT -- I'M SORRY I'M BOUNCING --  
17 OFFSET BEHIND IT ARE SHOWING THE EXTENTS OF THE  
18 CURVATURE THAT GOES FROM THE SIDE TO THE FACE.

19 I CAN EVEN SHOW ANOTHER EXAMPLE THAT I  
20 BROUGHT IF YOU WISH.

21 Q OKAY. WHAT ARE YOU HOLDING IN YOUR HAND,  
22 MR. BRESSLER?

23 A THIS IS A PENCIL CUP FROM MY OFFICE.

24 MR. VERHOEVEN: YOUR HONOR, WE'VE NEVER  
25 SEEN THIS BEFORE.

1 MS. KREVANS: WE DISCLOSED IT, YOUR  
2 HONOR, AS A DEMONSTRATIVE.

3 MR. VERHOEVEN: IT'S NOT IN HIS EXPERT  
4 REPORT OR IN DISCOVERY.

5 MS. KREVANS: IT JUST ILLUSTRATES A  
6 CURVE. IF YOU WON'T ALLOW IT, I'LL MOVE ON.

7 THE COURT: ALL RIGHT. MOVE ON, PLEASE.  
8 SUSTAINED.

9 BY MS. KREVANS:

10 Q COULD YOU TURN TO ANOTHER PIECE OF ART THAT  
11 MR. SHERMAN TESTIFIED ABOUT, THE '638 PATENT.

12 AND COULD WE SEE PDX 26.87.

13 A IF I MAY ABOUT THE LAST QUESTION?

14 Q WE'RE GOING TO -- WE'RE ON A CLOCK,  
15 MR. BRESSLER.

16 A I'M SORRY.

17 Q I ONLY HAVE SO MUCH TIME WITH YOU, SO WE HAVE  
18 TO MAKE SURE WE COVER EVERYTHING.

19 ON THE JP 683 PATENT, 26.87, COULD YOU  
20 PLEASE SUMMARIZE FOR THE JURY THE DIFFERENCES  
21 BETWEEN THIS DESIGN AND THE '677 AND '087 PATENTS?

22 A YES. I BELIEVE THE '638 PATENT IS  
23 SUBSTANTIALLY DIFFERENT FROM EITHER OF THOSE TWO  
24 PATENTS MOST DRAMATICALLY BECAUSE THE FRONT FACE IS  
25 NOT FLAT, WHICH CREATES AN EXTRAORDINARILY

1 DIFFERENT OVERALL IMPRESSION.

2 IN ADDITION TO THAT, IT IS NOT DRAWN  
3 DEPICTING A TRANSPARENT FACE AROUND THE DISPLAY,  
4 NOR IS IT DEPICTING BLACK.

5 THERE IS A SMALLER SPEAKER SLOT THAT IS  
6 UP AT THE VERY TOP EDGE, WHICH IS NOT CERTAINLY THE  
7 SAME.

8 AND THE FRAME AROUND IT IS A TAPE PERKED  
9 ENCLOSURE THAT IS THINNER AT THE TOP AND AT THE  
10 BOTTOM THAN IT IS PRESENTING WIDER WHERE THE  
11 DISPLAY IS PROTRUDING FROM THE FRONT.

12 Q CAN WE SEE 26.92.

13 A THIS --

14 Q WHAT IS THIS, MR. BRESSLER?

15 A THIS, I THINK, MAKES A CLEARER UNDERSTANDING  
16 OF THE SIDE, WHICH IS THE SIDE VIEW DIRECTLY FROM  
17 THE PATENT COMPARED TO A SIDE VIEW FROM THE '087,  
18 AND THESE ARE BOTH THE FRONT FACES FACING EACH  
19 OTHER, I THINK YOU CAN SEE WHERE THE ARROWS ARE,  
20 THAT THE FRONT FACE OF THE '638 VERY CLEARLY BENDS  
21 BACK AWAY FROM THE DISPLAY TOWARD THE BACK OF THE  
22 PHONE.

23 Q DO YOU AGREE --

24 A SO IT'S DEFINITELY NOT FLAT.

25 Q DO YOU AGREE WITH MR. SHERMAN THAT THE FACT

1 THAT THE FRONT FACE OF THE '638 DESIGN THAT WE'RE  
2 LOOKING AT IS NOT FLAT IS A RELATIVELY MINOR  
3 DIFFERENCE?

4 A NO. I BELIEVE THE EFFORT THAT IT TAKES TO  
5 DESIGN A PHONE TO HAVE THE PARTICULAR APPEARANCE,  
6 THAT THAT RAISED DISPLAY WOULD PROVIDE, IS  
7 SIGNIFICANTLY DIFFERENT FROM THAT OF A FULLY FLAT  
8 FACE SURFACE AND NOT BE CHANGED LIGHTLY.

9 Q COULD WE LOOK AT THE THIRD PATENT THAT  
10 MR. SHERMAN TALKED ABOUT, THE KR'547, WHICH IS PDX  
11 46.7. AND COULD WE SEE SLIDE 26.94.

12 COULD YOU SUMMARIZE FOR THE JURY THE  
13 DIFFERENCES THAT AN ORDINARY OBSERVER OR PERSON OF  
14 ORDINARY SKILL WOULD SEE BETWEEN THE '547 PATENT  
15 AND THE DESIGNS OF THE '087 AND '677 PATENTS?

16 A YES. YES, THIS IS A THREE-QUARTER ERICSSON  
17 QUARTER VIEW FROM THE PATENT AND WHAT IT DEPICTS IS  
18 THE FRONT FACE OF A DEVICE THAT IS NOT BLACK, IT IS  
19 NOT SPECIFIED TO BE TRANSPARENT ANYWHERE BUT IN THE  
20 DISPLAY. THERE IS A -- IT HAPPENS TO HAVE A SQUARE  
21 FORM FACTOR AND POINTIER CORNERS, BUT MORE TELLING  
22 IS IT HAS CONCENTRIC RINGS THAT GO TO A BAND OR A  
23 BELT LINE THAT GO AROUND IT, AND IT HAS A SMALLER  
24 DISPLAY WHICH, THEREFORE, HAS WIDER BORDERS WHICH  
25 PROVIDES A VERY DIFFERENT OVERALL IMPRESSION THAN

1 THE BORDERS -- THAN THE NARROWER FIXED BORDERS AND  
2 THE ALMOST FULL-FACED DISPLAY OF THE '677 AND THE  
3 '087.

4 Q LET'S TALK ABOUT THE LAST PHONE DESIGN THAT  
5 MR. SHERMAN TALKED ABOUT. HE TALKED ABOUT THIS ONE  
6 ONLY WITH RESPECT TO THE '677, AND THAT IS THE LG  
7 PRADA PHONE. IT'S JX 1093, AND I THINK YOU HAVE IT  
8 UP THERE.

9 IF WE CAN PUT UP 26.95, PLEASE, MR. LEE.  
10 WE HAVE THE PICTURE, BUT YOU HAVE THE ACTUAL PHONE  
11 THERE, MR. BRESSLER. HOLD IT UP SO THE JURY CAN  
12 SEE. AND COULD YOU TELL THE JURY WHAT DIFFERENCES  
13 AN ORDINARY PERSON IN THIS FIELD WOULD SEE BETWEEN  
14 THE PRADA DESIGN AND THE '677 PATENT DESIGN?

15 A I THINK THAT AN ORDINARY PERSON AND A DESIGNER  
16 OF NORMAL SKILL WOULD NOTICE THAT THE LENGTH AND  
17 WIDTH ARE IN DIFFERENT PROPORTION, I.E., IT'S  
18 LONGER AND NARROWER.

19 THEY WOULD NOTICE THAT THE DISPLAY IS  
20 SMALL WITH WIDER BORDERS AND THERE GIVES A  
21 DIFFERENT ALL OVER IMPRESSION. AND IT'S NOT  
22 CENTERED.

23 AND THEN THEY WOULD NOTICE, PROBABLY  
24 FIRST, THEY WOULD NOTICE THAT THERE'S A VERY LARGE  
25 KEY TRAVERSING THE BOTTOM OF THE FACE, THEREFORE,

1 IT DOESN'T HAVE A CONTINUOUS SURFACE EDGE TO EDGE.

2 Q IN YOUR OPINION, DO ANY OF THE FOUR ITEMS WE  
3 JUST DISCUSSED, THESE FOUR PHONE DESIGNS, PROVIDE  
4 AN OVERALL APPEARANCE THAT IS BASICALLY THE SAME AS  
5 THE '087 OR '677 DESIGN?

6 A NO, I BELIEVE THEY DO NOT.

7 Q IN YOUR OPINION, ARE ANY OF THESE FOUR ITEMS A  
8 DESIGN THAT COULD BE CONSIDERED A PRIMARY  
9 REFERENCE, AS YOU UNDERSTAND THE TEST, FOR PURPOSES  
10 OF ASSESSING OBVIOUSNESS OF THE '087 OR '677  
11 PATENT?

12 MR. VERHOEVEN: OBJECTION. LEADING.

13 THE COURT: OVERRULED.

14 GO AHEAD.

15 THE WITNESS: NO. I BELIEVE THAT THESE  
16 ARE DIFFERENT ENOUGH FROM THE PATENTS THAT THEY  
17 COULD NOT BE USED AS A PRIMARY REFERENCE IN AN  
18 OBVIOUSNESS EVALUATION.

19 BY MS. KREVANS:

20 Q IN YOUR OPINION, COULD ANY OF THESE FOUR PHONE  
21 DESIGNS BE COMBINED WITH ANOTHER ONE OF THE FOUR,  
22 UNDER THE PROPER LEGAL TEST, TO RENDER EITHER THE  
23 '087 PATENT OR THE '677 PATENT OBVIOUS?

24 A THE LEGAL TEST SUGGESTS YOU HAVE TO HAVE A  
25 PRIMARY REFERENCE TO USE, AND AS A RESULT, YOU

1           COULDN'T MIX THESE UP IF NONE OF THEM ARE PRIMARY  
2           REFERENCES.

3                         IN ADDITION TO THAT, THEY REALLY LOOK  
4           VERY DIFFERENT FROM EACH OTHER AND VERY DIFFERENT  
5           FROM THE PATENTS.

6                         SO THERE REALLY AREN'T ELEMENTS THAT  
7           WOULD SUGGEST, WITHOUT USING HINDSIGHT, HOW TO PUT  
8           THEM TOGETHER TO GET WHERE YOU WANT TO GO.

9           Q         LET'S TURN TO THE IPAD THAT IS THE '889 PATENT  
10          DESIGN.

11                        DO YOU HAVE IN FRONT OF YOU PX 1078?  
12          THAT IS THE FIDLER TABLET REPLICA. DO YOU HAVE IT  
13          THERE?

14          A         YES.

15          Q         COULD YOU TELL US WHAT PX 1078 IS,  
16          MR. BRESSLER?

17          A         YES, THIS IS A DUPLICATE THAT I HAD CREATED OF  
18          MR. FIDLER'S ORIGINAL TABLET, THE 1994 VERSION THAT  
19          HE USED IN HIS VIDEOS THAT YOU'VE SEEN.

20          Q         IS THIS AN ACCURATE DUPLICATE OF THE ORIGINAL  
21          MOCKUP THAT IS IN MR. FIDLER'S POSSESSION?

22          A         I WENT TO MISSOURI WITH A MODEL MAKER AND A  
23          LASER SCANNER AND DIGITIZED THE SURFACE OF THIS  
24          MODEL, PHOTOGRAPHED THEM, MEASURED THEM TO ASSURE  
25          THAT WE COULD FABRICATE IT TO BE EXACTLY THE SAME,



1 RIGHT DOWN TO THE SCRATCHES AND THE PAINT.

2 MS. KREVANS: YOUR HONOR, WE WOULD MOVE  
3 PX 1078 INTO EVIDENCE, SUBJECT TO OUR PRIOR  
4 OBJECTIONS ON THIS TOPIC.

5 THE COURT: MR. VERHOEVEN?

6 MR. VERHOEVEN: YOUR HONOR, YES. WE  
7 WOULD -- WE HAVE NO OBJECTION, BUT WOULD JUST NOTE  
8 THAT THIS IS HOW THE TABLET LOOKED AS OF THIS YEAR,  
9 NOT IN 1994.

10 OTHER THAN THAT CLARIFICATION, WE DON'T  
11 OBJECT TO IT GOING INTO EVIDENCE.

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

13 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER  
14 1078, HAVING BEEN PREVIOUSLY MARKED FOR  
15 IDENTIFICATION, WAS ADMITTED INTO  
16 EVIDENCE.)

17 BY MS. KREVANS:

18 Q COULD YOU HOLD THE REPLICA UP SO THE JURY CAN  
19 SEE IT, AND COULD YOU EXPLAIN TO THE JURY WHAT  
20 DIFFERENCES, IF ANY, YOU SEE BETWEEN THE DESIGN OF  
21 THIS FIDLER TABLET MOCKUP AND THE '889 DESIGN.

22 A I SEE THEM AS BEING VERY, VERY DIFFERENT.

23 RIGHT OFF THE BAT, YOU CAN SEE THAT THE  
24 TRANSPARENT FRONT SURFACE DOES NOT GO EDGE TO EDGE  
25 ALL THE WAY ACROSS THE FRONT TO MEET A NARROW RIM.

1           YOU CAN SEE THAT THIS HAS A RAISED FRAME  
2           AROUND THE DISPLAY THAT IS NOT OF EQUAL BORDER,  
3           BECAUSE IT'S WIDER AT THE BOTTOM.

4           IF YOU LOOK AT THE EDGES OF IT, YOU CAN  
5           SEE THAT IT HAS CUTOUTS FOR A STYLUS AND FOR MEMORY  
6           CARDS THAT MAKE THAT DETAIL MUCH MORE COMPLEX THAN  
7           THE '889.

8           AND IF YOU LOOK AT THE BACK AND SIDES,  
9           YOU'LL SEE THAT THE BACK HAS A PANEL ON IT, SO IT  
10          ISN'T COMPLETELY FLAT, AND IT DOESN'T CURVE UP  
11          AROUND THE SIDES TO MEET AN EDGE. IT CURVES ALL  
12          THE WAY AROUND THE SIDES AND, THEREFORE, IT DOES  
13          NOT, IN MY OPINION, LOOK BASICALLY THE SAME AS THE  
14          '889 PATENT.

15          MS. KREVANS: YOUR HONOR, MAY I SHOW THE  
16          REPLICA TO THE JURY?

17          THE COURT: THAT'S FINE.

18          BY MS. KREVANS:

19          Q       DO YOU HAVE THE TC1000, WHICH IS JX 1074 UP  
20          THERE, MR. BRESSLER?

21          A       I DO.

22          Q       COULD YOU TELL THE JURY WHAT DIFFERENCES, IF  
23          ANY, YOU BELIEVE A PERSON OF ORDINARY SKILL WOULD  
24          SEE BETWEEN THE DESIGN OF THE COMPAQ TC1000 AND THE  
25          '889 DESIGN, BRIEFLY ?

1           A        AGAIN, I WOULD POINT OUT THAT THE TC1000 DOES  
2                   NOT HAVE A TRANSPARENT FACE THAT RUNS -- A  
3                   TRANSPARENT SURFACE THAT RUNS TOTALLY EDGE TO EDGE  
4                   ALL THE WAY ACROSS THE FACE TO A NARROW RIM.

5                           I WOULD POINT OUT THAT THIS HAS MULTIPLE  
6                   BANDS AROUND THE DISPLAY THAT ARE NOT EQUAL.

7                           I WOULD POINT OUT THAT THERE IS A RADIUS  
8                   OR CURVED FRAME AROUND THE EDGE THAT IS DIFFERENT  
9                   THAN THE '889 PATENT.

10                           AND YOU'LL NOTICE THAT THERE IS A LOT OF  
11                   DETAIL AROUND THE SIDE AND DETAIL ON THE BACK THAT  
12                   ARE CLEARLY NOT DEPICTING WHAT'S IN THE '889  
13                   PATENT.

14           Q        OKAY. IS, IN YOUR OPINION, EITHER THE FIDLER  
15                   OR THE TC1000 A PROPER PRIMARY REFERENCE WITH  
16                   RESPECT TO WHETHER THE '889 PATENT DESIGN IS  
17                   OBVIOUS?

18           A        I DO NOT BELIEVE EITHER OF THESE ARE PRIMARY  
19                   REFERENCES.

20           Q        IN YOUR OPINION, COULD YOU COMBINE, COULD A  
21                   PERSON OF ORDINARY SCHOOL PROPERLY COMBINE THE  
22                   FIDLER TABLET AND THE TC1000 YOU HAVE IN YOUR HAND  
23                   AND RENDER THE '889 PATENT OBVIOUS?

24           A        IT'S MY UNDERSTANDING UNDER THE TEST THAT IF  
25                   THEY DON'T QUALIFY AS A PRIMARY REFERENCE, THEN YOU

1 CAN'T COMBINE THEM.

2 BUT ON TOP OF THAT, THEY BOTH LOOK SO  
3 DIFFERENT FROM ONE AUTO AND FROM THE PATENT THAT  
4 I'M NOT SURE WHERE I WOULD START TO COMBINE THEM.

5 Q COULD WE SEE PDX 26.96. DO YOU RECALL  
6 MR. SHERMAN TESTIFYING THAT HE FOUND THAT SEVEN  
7 DESIGN FEATURES OF THE APPLE PATENTS WERE, IN HIS  
8 WORD, FUNCTIONAL?

9 A YES.

10 Q I'VE SET THE SEVEN OF THEM OUT ON THIS SLIDE.  
11 IN YOUR OPINION, ARE ANY OF THESE ELEMENTS OF ANY  
12 OF THE APPLE DESIGN PATENTS DICTATED BY FUNCTION?

13 A I DO NOT BELIEVE ANY OF THESE ARE DICTATED BY  
14 FUNCTION AS THEY ARE REPRESENTED IN THE DESIGNS.

15 Q BRIEFLY, AGAIN, CAN YOU TELL US WHY NOT?

16 A BECAUSE THERE ARE ALTERNATIVE DESIGNS  
17 AVAILABLE FOR EVERY ONE OF THESE ITEMS IN PRODUCTS  
18 ON THE MARKET, AND, FRANKLY, IN PRIOR ART.

19 Q OKAY. I WANT YOU TO STEP BACK FOR A MOMENT,  
20 MR. BRESSLER. PUT YOURSELF BACK IN 2007.

21 WHAT WAS YOUR REACTION WHEN YOU FIRST SAW  
22 THE DESIGN OF THE IPHONE IN 2007?

23 MR. VERHOEVEN: OBJECTION, YOUR HONOR.  
24 THAT'S OUTSIDE OF SCOPE OF HIS REPORT. THAT'S NOT  
25 IN HIS REPORT AT ALL.

1 MS. KREVANS: YOUR HONOR, IT'S HIS  
2 ASSESSMENT OF THE DESIGN AS A DESIGNER.

3 THE COURT: OVERRULED.

4 THE WITNESS: I, FRANKLY, WAS SURPRISED  
5 AT HOW BEAUTIFUL OF A DESIGN I THOUGHT IT WAS, AND  
6 AS A DESIGNER, FRANKLY, WAS ENVIOUS THAT I HADN'T  
7 DESIGNED IT.

8 BY MS. KREVANS:

9 Q DID YOU, IN CONNECTION WITH YOUR REPORT,  
10 INVESTIGATE THE REACTION OF THE GENERAL PUBLIC AND  
11 REVIEWERS OF PUBLIC IN THIS CASE DEVICES TO THE  
12 DESIGN OF THE IPHONE WHEN IT CAME OUT IN 2007.

13 A YES.

14 MR. VERHOEVEN: OBJECTION, RELEVANCE.

15 MS. KREVANS: SECONDARY CONSIDERATION,  
16 YOUR HONOR.

17 THE COURT: YOU HAD OVERRULED.

18 THE WITNESS: I FOUND A LARGE NUMBER OF  
19 MAGAZINE ARTICLES, PRINT ARTICLES, AWARDS THAT WERE  
20 PRESENTED, A HUGE AMOUNT OF CLAIMS, YOU MIGHT EVEN  
21 CALL A CLAIMER.

22 BY MS. KREVANS:

23 Q AND HOW, IF AT ALL, MR. BRESSLER, DOES THAT  
24 RELATE TO YOUR VIEW THAT THE DESIGNS OF THE IPHONE  
25 PATENTS ARE NOT OBVIOUS?

1 A IN MY EXPERIENCE AS A DESIGNER, A DESIGN  
2 COMING OUT DOESN'T HAVE THAT KIND OF IMPACT UNLESS  
3 IT'S TRULY UNIQUE AND NOT OBVIOUS.

4 MS. KREVANS: NOTHING FURTHER, YOUR  
5 HONOR.

6 THE COURT: ALL RIGHT. THE TIME IS NOW  
7 2:13. GO AHEAD, PLEASE.

8 MR. VERHOEVEN: THANK YOU, YOUR HONOR.  
9 CAN WE PUT UP SDX 3927.001.

10 **CROSS-EXAMINATION**

11 BY MR. VERHOEVEN:

12 Q THIS IS A SLIDE WE LOOKED AT EARLIER WHEN I  
13 WAS CROSS-EXAMINING YOU?

14 MS. KREVANS: OBJECTION, YOUR HONOR.

15 MR. VERHOEVEN: YOUR HONOR, IF WE'RE  
16 GOING TO HAVE OBJECTIONS TO A SLIDE THAT'S ALREADY  
17 BEEN USED AND TAKING MY TIME.

18 THE COURT: GO AHEAD, OVERRULED.

19 MS. KREVANS: YOUR HONOR, IF I MAY --

20 MR. VERHOEVEN: CAN THIS GO OUT OF THEIR  
21 TIME, YOUR HONOR.

22 THE COURT: OVERRULED. GO, PLEASE.

23 MR. VERHOEVEN: THANK YOU.

24 Q THIS IS A SLIDE I ASKED YOU ABOUT LAST TIME  
25 YOU TESTIFIED; RIGHT?

1 A CORRECT.

2 Q AND ON THE LEFT WE HAVE THESE PRIOR ART  
3 REFERENCES AND WE HAVE THE LG PRADA, DO YOU SEE  
4 THAT?

5 A I SEE THAT.

6 Q ALL THESE PRIOR ART DEVICES HAVE A RECTANGULAR  
7 SHAPE WITH ROUNDED CORNERS; RIGHT?

8 A THAT'S WHAT I SAID LAST TIME, USE.

9 Q THE USE OF A RECTANGULAR SHAPE WITH ROUNDED  
10 CORNERS FOR AN ELECTRONIC DEVICE, THAT'S NOT  
11 SOMETHING APPLE OWNS, IS IT, SIR?

12 A THAT GENERAL DESCRIPTION CERTAINLY IS NOT.  
13 THE SPECIFIC DESIGN THAT THEY PRODUCED IS.

14 Q THAT ELEMENT IS NOT SOMETHING THAT APPLE OWNS,  
15 IS IT, SIR?

16 A I'M NOT SURE I UNDERSTAND THE QUESTION.

17 Q RECTANGULAR SHAPE WITH ROUNDED CORNERS, DOES  
18 APPLE OWN THAT?

19 A APPLE OWNS A -- THE DESIGN OF THE PHONE WITH A  
20 RECTANGULAR SHAPE AS DEPICTED IN THEIR PATENT WITH  
21 ROUNDED CORNERS.

22 Q CAN WE PLAY MR. BRESSLER'S APRIL 24TH, 2000  
23 TELEPHONE DEPOSITION, PAGE 176, LINES 18 THROUGH  
24 85.

25 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN

1 OPEN COURT OFF THE RECORD.)

2 BY MR. VERHOEVEN:

3 Q AND THE USE OF A LARGE -- GO BACK TO THE  
4 SLIDE, PLEASE. EACH OF THESE HAS A LARGE DISPLAY  
5 SCREEN; RIGHT?

6 A THEY'RE DIFFERENT SIZES.

7 Q BUT THEY'RE ALL LARGE DISPLAY SCREENS, AREN'T  
8 THEY, SIR?

9 A COMPARED TO WHAT?

10 Q YOU DON'T CONCEDE THESE ARE LARGE DISPLAY  
11 SCREENS?

12 A I WOULD SAY SOME OF THEM ARE LARGE AND SOME OF  
13 THEM ARE NOT, YES.

14 Q WHICH ONE IS NOT LARGE?

15 A THE 547 I DO NOT BELIEVE IS AS LARGE AS THE  
16 '087.

17 Q OKAY. SO THESE THREE AT LEAST YOU'LL AGREE  
18 ARE LARGE, THE JP'638, JP'383, AND THE LG PRADA?

19 A THEY ARE LARGE RELATIVE TO THE DESIGNS THEY'RE  
20 IN, YES.

21 Q THE USE OF A LARGE DISPLAY SCREEN ON AN  
22 ELECTRONIC DEVICE IS NOT SOMETHING THAT'S  
23 PROPRIETARY TO APPLE, IS IT, SIR?

24 A I'M SORRY. THE WAY YOU'RE ASKING THAT  
25 QUESTION IS NOT APPROPRIATE TO THE EVALUATION I



1 DID.

2 Q LET'S PLAY YOUR DEPOSITION, APRIL 24TH, 2012,  
3 PAGE 177, LINES 1 THROUGH 5.

4 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN  
5 OPEN COURT OFF THE RECORD.)

6 BY MR. VERHOEVEN:

7 Q NOW, THAT WAS TRUE TESTIMONY WHEN YOU GAVE IT  
8 AT YOUR DEPOSITION, WASN'T IT, SIR?

9 A AS I UNDERSTAND THE QUESTIONS AT THE TIME,  
10 YES.

11 Q NOW, WHEN YOU'RE LOOKING AT THE '889 PATENT,  
12 THE TABLET DESIGN PATENT -- ARE YOU WITH ME?

13 A I AM.

14 Q YOU NOTICED A LOT OF LITTLE DIFFERENCES;  
15 RIGHT?

16 A A LOT OF LITTLE DIFFERENCES OF WHAT?

17 Q IN THE FIDLER TABLET VERSUS THE '889?

18 A I THOUGHT THEY WERE SUBSTANTIAL DIFFERENCES.

19 Q AND, IN FACT, WHEN YOU COMPARED THE '888 TO  
20 THE INITIAL IPAD, IT WAS YOUR BELIEF IT'S NOT AN  
21 EMBODIMENT, RIGHT?

22 A BECAUSE OF THE SHAPE.

23 Q SO YOU DIDN'T THINK IT WAS AN EMBODIMENT OF  
24 THE '889 PATENT; RIGHT?

25 A THAT REALLY HAS NOT BEEN PART OF MY

1 EVALUATION.

2 Q IS THAT YOUR OPINION?

3 A NO.

4 Q OKAY. LET'S PLAY FROM YOUR DEPOSITION, APRIL  
5 24TH, 2012, PAGE 121, LINES 6 THROUGH 13.

6 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN  
7 OPEN COURT OFF THE RECORD.)

8 MR. VERHOEVEN: I'LL JUST READ IT, BUT I  
9 DON'T THINK THEY WOULD SEE THEM AS BEING  
10 SUBSTANTIALLY THE SAME.

11 Q YOU SAID THAT, RIGHT, IN ANSWER TO THAT  
12 QUESTION AT YOUR DEPOSITION?

13 A I DID. AND I SAID THE WORD SIGNIFICANT  
14 SIMILARITIES.

15 Q BUT DID YOU NOT THINK THEY WERE SUBSTANTIALLY  
16 THE SAME. WAS THAT A MISTAKE AT YOUR DEPOSITION?

17 A NO, THAT'S WHAT I SAID.

18 Q OKAY. AND YOU STAND BY IT?

19 A I BELIEVE THAT THE BACK OF THE ORIGINAL IPAD  
20 DOES NOT HAVE THE SAME SHAPES THAT THE '889  
21 SUGGESTS.

22 Q YOU AGREE THAT YOU APPLIED THE SAME TEST FOR  
23 INVALIDITY AS YOU APPLY FOR INFRINGEMENT, YOU APPLY  
24 THE ORDINARY OBSERVER TEST; RIGHT, SIR?

25 A I APPLIED THE ORDINARY OBSERVER TEST, IF, IN

1 FACT, I FOUND IN THE CONSTRUCTIONS THAT AS A  
2 DESIGNER OF THE ORDINARY SKILL I FELT WERE CLOSE TO  
3 OR PRIMARY REFERENCES FOR THE PATENTS, AND I --

4 Q SO IF?

5 A I DON'T BELIEVE ANY OF THEM ARE.

6 Q IF LITTLE DETAILS LIKE THE BEZEL WIDTH OR THE  
7 LOCATION OF THE SPEAKER ARE IMPORTANT FOR  
8 INVALIDITY, THEY'RE JUST AS IMPORTANT FOR  
9 NON-INFRINGEMENT, AREN'T THEY, SIR?

10 A YES. BUT I BELIEVE IT ALL COMES DOWN TO THE  
11 OVERALL IMPRESSION.

12 MR. VERHOEVEN: THANK YOU, SIR.

13 PASS THE WITNESS.

14 THE COURT: ALL RIGHT. 2:18.

15 MS. KREVANS: NO REDIRECT YOUR HONOR.

16 THE COURT: ALL RIGHT. IS THIS WITNESS  
17 EXCUSED AND NOT SUBJECT TO RECALL.

18 MS. KREVANS: HE IS EXCUSED AND NOT  
19 SUBJECT TO RECALL.

20 THE COURT: ALL RIGHT. YOU ARE EXCUSED.

21 THE WITNESS: THANK YOU.

22 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

23 **KARAN SINGH,**

24 BEING CALLED AS A WITNESS ON BEHALF OF THE  
25 PLAINTIFF, HAVING BEEN FIRST DULY SWORN, WAS

1 EXAMINED AND TESTIFIED AS FOLLOWS:

2 THE WITNESS: I DO.

3 THE CLERK: THANK YOU. PLEASE BE SEATED.

4 MR. JACOBS: YOUR HONOR, APPLE CALLS DR.  
5 KARAN SINGH IN REBUTTAL.

6 THE COURT: OKAY. TIME IS 2:18. GO  
7 AHEAD, PLEASE.

8 **DIRECT EXAMINATION**

9 BY MR. JACOBS:

10 Q WELCOME BACK, DR. SINGH. THE JURY HEARD  
11 WEDNESDAY FROM A MR. GRAY ON BEHALF OF SAMSUNG THAT  
12 LAUNCHTILE AND AGNETTA, A PATENT WITH AGNETTA AS  
13 THE INVENTOR, EACH OF THEM SEPARATELY ANTICIPATE  
14 CLAIM 50 OF THE '163 PATENT.

15 ARE YOU AWARE OF THAT TESTIMONY?

16 A SURE. I WAS IN COURT. I READ HIS TRANSCRIPT.  
17 I SAW THE SLIDES.

18 Q DO YOU AGREE WITH MR. GRAY?

19 A NO, I DO NOT.

20 Q AND BEFORE WE GET INTO THE DETAILS, LET'S TAKE  
21 KIND OF A HIGH LEVEL LOOK AT THIS. ARE CLAIM 50 OF  
22 THE '163 PATENT ON ONE HAND AND LAUNCHTILE AND  
23 AGNETTA, THE REFERENCES MR. GRAY TALKED ABOUT, ARE  
24 THEY EVEN DIRECTED TO THE SAME PROBLEM?

25 A NO, NOT AT ALL. ONE, THE '163 DEALS WITH

1 FACILITATING THE NAVIGATION AND READABILITY OF THE  
2 STRUCTURED ELECTRONIC DOCUMENTS, LIKE WEB PAGES.  
3 IF WE LOOK AT THE VIDEO OF THE '163 ON THE APPLE  
4 IPHONE AGAIN, YOU SEE TAPPING ON BOXES.

5 AND THEN THIS ENTIRE DOCUMENT BEING  
6 ENLARGED AND CENTERED TO IMPROVE THE READABILITY OF  
7 THAT DOCUMENT.

8 LAUNCHTILE AND AGNETTA, ON THE OTHER  
9 HAND, DEAL WITH A COMPLETELY DIFFERENT PROBLEM,  
10 WHICH IS INTERACTING WITH AND LAUNCHING APPLICATION  
11 ICONS, SORT OF LIKE THE APPLICATION ICONS FOR  
12 LAUNCHING PROGRAMS THAT YOU SEE ON A COMPUTER DESK  
13 TOP.

14 Q SO DO LAUNCHTILE AND AGNETTA ENLARGE AND  
15 TRANSLATE A STRUCTURED ELECTRONIC DOCUMENT?

16 A NO, NOT AT ALL. AND CERTAINLY NOT THE WAY THE  
17 '163 TALKS ABOUT. THEY ESSENTIALLY REPLACE THE  
18 CONCEPT. THEY PROVIDE DIFFERENT CONTENT.

19 Q SO DO -- DOES LAUNCHTILE DISCLOSE INSTRUCTIONS  
20 FOR DISPLAYING AT LEAST A PORTION OF A STRUCTURED  
21 ELECTRONIC DOCUMENT?

22 A UM --

23 Q CAN WE HAVE PDX 29.29, PLEASE?

24 A NO, THEY DON'T. JUST LOOKING AT THE CLAIM  
25 ELEMENTS OVER HERE, LAUNCHTILE, AND AGNETTA,

1           BASICALLY ARE A COLLECTION OF APPLICATION TILES.  
2           ARBITRARILY GROUPING THEY WILL TOGETHER AND CALLING  
3           THEM -- YOU CAN'T CONSTRUE THEM AS A SINGLE  
4           DOCUMENT AS SUCH.

5           Q        AND DOES -- AND HOW ABOUT THOSE REFERENCES AS  
6           AGAINST ELEMENT H? DO THEY HAVE INSTRUCTIONS FOR  
7           ENLARGING AND TRANSLATING?

8           A        WELL, FIRSTLY --

9                       MR. DEFRANCO: OBJECTION, YOUR HONOR. I  
10           KNOW TIME IS SHORT, BUT WE'RE LEADING.

11                      MR. JACOBS: THAT'S NOT LEADING, YOUR  
12           HONOR. I'M ASKING WHETHER THEY HAVE THAT.

13                      THE COURT: OVERRULED. GO AHEAD.

14                      THE WITNESS: WELL, CLEARLY, THERE IS NO  
15           STRUCTURED ELECTRONIC DOCUMENT, SO CLAIM H IS NOT  
16           MET.

17                      BUT EVEN IF YOU WILL ASSUME THAT THERE IS  
18           SOME KIND OF A STRUCTURED ELECTRONIC DOCUMENT, AS  
19           YOU WILL SEE IN THIS VIDEO, IF WE PLAY A VIDEO OF  
20           THE LAUNCHTILE APPLICATION, THIS APPLICATION, YOU  
21           LOOK AT THESE 36 TILES AND YOU CLICK ON THEM, IT  
22           REPLACES THE CONTENT THAT YOU SEE OVER HERE WITH  
23           THESE FOUR TILES THAT ARE COMPLETELY DIFFERENT. IF  
24           WE PLAY IT ONE MORE TIME, YOU FOCUS ON THE  
25           TELEPHONE. YOU SEE -- OOPS. YOU FOCUS ON THE

1 TELEPHONE, YOU SEE JUST AN ICON, AND THEN YOU HAVE  
2 A LIST OF MISSED CALLS AND SO ON.

3 SAME THING WITH THE E-MAIL APPLICATION.  
4 THESE ARE COMPLETELY DIFFERENT PIECES OF CONTENT.  
5 I'VE SEEN IT IN THE CODE.

6 Q NOW LET'S TAKE A LOOK AT ELEMENT J, PDX 29.29  
7 AGAIN, PLEASE. AND DOES LAUNCHTILE HAVE THIS  
8 ELEMENT IN RESPONSE TO DETECTING THE SECOND GESTURE  
9 AGAIN TRANSLATING THE STRUCTURED ELECTRONIC  
10 DOCUMENT?

11 A ABSOLUTELY NOT. AGAIN, THERE'S NO STRUCTURED  
12 ELECTRONIC DOCUMENT. BUT IF YOU WILL ZOOM IT,  
13 WE'LL SEE IN THIS VIDEO -- NOW, GIVEN THOSE FOUR  
14 TILES WHEN YOU CLICK, WHAT'S ACTUALLY HAPPENING IS  
15 THAT WHOLE APPLICATION IS LAUNCHED. THIS IS NOT  
16 THE CONTENT. THIS IS NOT THE DOCUMENT AT ALL.

17 THIS IS AN APPLICATION, NOW YOU CAN  
18 INTERACT WITH THIS APPLICATION. YOU CAN READ YOUR  
19 E-MAILS. YOU CAN RESPOND TO THEM.

20 IT'S IN NO WAY, YOU KNOW, THE ORIGINAL  
21 STRUCTURED ELECTRONIC DOCUMENT, IF ANYTHING.

22 SO WE'RE REALLY TRYING TO SHOEHORN, YOU  
23 KNOW, ONE PIECE OF FUNCTIONALITY INTO A SET OF  
24 CLAIMS.

25 Q LET'S TAKE A LOOK NOW, FOR JUST A MOMENT, AT

1 AGNETTA, THE 632 PATENT. CAN WE HAVE FIGURE 3 OF  
2 561, PLEASE. IT'S 561.14 THERE. THERE WE GO.  
3 WHAT'S GOING ON IN AGNETTA. CAN YOU COMPARE THAT  
4 TO LAUNCHTILE?

5 A WELL, AGNETTA IS SIMILAR, AS MR. GRAY HIMSELF  
6 TESTIFIED, THERE ARE APPLICATION TILES. THE PATENT  
7 TALKS ABOUT A SET OF TILES, THERE'S THIS ACTIVE  
8 TILE THAT YOU SEE. IF YOU LOOK AT THE PATENT  
9 SPECIFICATION, IT CLEARLY TALKS ABOUT A SET OF  
10 TILES, NOT AN ELECTRONIC DOCUMENT IN ANY WAY.  
11 THERE ARE A BUNCH OF INDEPENDENT TILES. AND IT'S  
12 ALL OVER THE PATENT. SO CLEARLY ELEMENT E WHERE WE  
13 HAVE A STRUCTURED ELECTRONIC DOCUMENT IS NOT MET.

14 IF YOU LOOK AT THE NEXT, THE SAME CLAIM  
15 ELEMENT, I BELIEVE IT'S CLAIM ELEMENT H, SAME  
16 THING. YOU CAN -- YOU CAN CLICK AND CHOOSE TO MAKE  
17 ONE OF THE TILES ACTIVE.

18 BUT YOU CLICK ON IT AND IT ENLARGES AND  
19 CENTERS THAT TILE AS MR. GRAY HIMSELF TESTIFIED,  
20 NOT THE ENTIRE STRUCTURED ELECTRONIC DOCUMENT AS  
21 THE CLAIM OVER HERE REQUIRES.

22 AND IF YOU LOOK AT THE NEXT CLAIM  
23 ELEMENT, CLAIM ELEMENT J, AGAIN, YOU CAN REPLACE  
24 YOUR CURRENTLY ACTIVE TILE WITH A DIFFERENT TILE  
25 THAT THEN BECOMES THE ACTIVE TILE.



1           BUT THAT IS CERTAINLY NOT TRANSLATING ANY  
2           KIND OF STRUCTURED ELECTRONIC DOCUMENT AS THE, AS  
3           THE CLAIM LANGUAGE OVER HERE REQUIRES.

4           Q       THANK YOU. LET'S NOW TURN TO ANOTHER PRIOR  
5           ART REFERENCE THAT MR. GRAY TALKED ABOUT, THE  
6           ROBBINS '349 PATENT. HE SAID THAT ANTICIPATES  
7           CLAIM 50 OF THE '163 PATENT. IS THAT RIGHT?

8           A       NO, THAT'S NOT RIGHT AT ALL. MR. GRAY ONLY  
9           BREEZED THROUGH A SLIDE WITH AN IMAGE OF A MAP AND,  
10          AND SOME CLAIM ELEMENTS.

11                    ESSENTIALLY JUST LIKE LAUNCHTILE AND  
12          AGNETTA, ROBBINS SOLVES A COMPLETELY DIFFERENT  
13          PROBLEM. WHAT IT TAKES IS AN ELECTRONIC DOCUMENT,  
14          ANY ELECTRONIC DOCUMENT, WHETHER IT HAS ANY  
15          STRUCTURE OR NOT IS IRRELEVANT.

16                    WHAT IT DOES IS ON TOP OF THAT, IT  
17          IMPOSES THIS ARBITRARY GRID STRUCTURE, THIS  
18          SEGMENTATION. IT IMPOSES THIS SEGMENTATION JUST  
19          LIKE IF YOU LOOK AT THE MAPS IN AN ATLAS, THERE ARE  
20          THESE NUMBERED INDICES THAT DEFINE SECTIONS OF A  
21          MAP.

22                    AND THEN IT USES THESE SEGMENTS TO  
23          NAVIGATE THAT DOCUMENT, A COMPLETELY DIFFERENT  
24          PROBLEM.

25                    THE RESULT OF THAT IS THAT IF YOU LOOK AT

1 THE CLAIM ELEMENTS OF CLAIM 50 OF THE '163, YOU  
2 WILL SEE THAT ALL THESE ELEMENTS THAT TALK ABOUT  
3 BOXES, THEY CLEARLY ARE NOT MET BECAUSE A BOX OVER  
4 HERE IS A PIECE OF STRUCTURE FROM A STRUCTURED  
5 ELECTRONIC DOCUMENT. IT IS INSIDE. IT IS INHERENT  
6 TO THAT STRUCTURED ELECTRONIC DOCUMENT. IT'S NOT  
7 SOME SQUARES OR GRID LINES THAT YOU MIGHT CHOOSE TO  
8 DRAW ON TOP OF THEM.

9 AND SO SIMPLY JUST TAKING THAT, ALL THE  
10 ELEMENTS FROM G TO J ARE JUST SIMPLY NOT MET.

11 Q WOULD ANY OF THESE, LAUNCHTILE, AGNETTA, OR  
12 ROBBINS MAKE CLAIM 50 OF THE '163 PATENT OBVIOUS?

13 A NO, ABSOLUTELY NOT. AS I'VE SAID, THEY'RE  
14 ADDRESSING DIFFERENT PROBLEMS FROM FACILITATING THE  
15 NAVIGATION AND READABILITY OF STRUCTURED ELECTRONIC  
16 DOCUMENTS, THEY OPERATE DIFFERENT FUNCTIONALLY.  
17 THEY DO NOT IN ANY WAY MAKE APPLE'S INVENTION  
18 OBVIOUS.

19 AND BESIDES, MR. GRAY HAS OFFERED  
20 ABSOLUTELY NO CLUE AS TO HOW OR WHY THEY MIGHT MAKE  
21 IT OBVIOUS.

22 Q NOW, TURNING TO THE INFRINGEMENT ISSUES THAT  
23 MR. GRAY TALKED ABOUT, HE INSERTED THIS IDEA OF  
24 NESTED BOXES . DO YOU RECALL THAT TESTIMONY?

25 A YES, I DO. BUT HE DID NOT SAY THAT CLAIM 50

1 WAS -- THAT SAMSUNG DID NOT INFRINGE IT.

2 Q WHAT DID YOU UNDERSTAND HIM TO BE KIND OF  
3 TRYING TO HINT AT?

4 A I GUESS HE WAS TRYING TO PLAY WITH SOME  
5 AMBIGUITY OF WORDS --

6 MR. DEFRANCO: OBJECTION, YOUR HONOR, AS  
7 NOT PROPER REBUTTAL FOR INFRINGEMENT.

8 MR. JACOBS: HE'S RESPONDING TO THE  
9 TESTIMONY AT TRIAL, YOUR HONOR.

10 MR. DEFRANCO: THAT DOESN'T MEAN IT'S  
11 PROPER REBUTTAL. WHEN THEY PUT ON THEIR CASE, WE  
12 RESPONDED TO THEIR CASE.

13 THE COURT: ALL RIGHT. OVERRULED. LET'S  
14 KEEP THIS TRIAL GOING, OKAY?

15 THE WITNESS: QUITE SIMPLY FOR THREE  
16 REASONS. YOU LOOK AT THIS PLURALITY OF BOX  
17 CONTENT, ALL IT'S SAYING IS PLURALITY IS MORE THAN  
18 ONE. LATER IN THE CLAIMS THERE'S A FIRST BOX AND A  
19 SECOND BOX AND SO THERE'S MORE THAN ONE BOX. THESE  
20 ARE DIFFERENT. AND THE MAIN PATENT FIGURE ACTUALLY  
21 SHOWS YOU MULTIPLE BOXES THAT ARE NEXT TO EACH  
22 OTHER. THEY'RE NOT NESTED.

23 BUT --

24 BY MR. JACOBS:

25 Q LET'S PAUSE THERE. LET'S TAKE A LOOK AT

1 1046.14, FIGURE 5C?

2 A YEAH, THIS IS THAT FIGURE.

3 Q ACTUALLY, 5A?

4 A THIS IS ACTUALLY 5A WHICH SHOWS A BUNCH OF  
5 BOXES.

6 Q LET'S GO TO .14, MR. LEE.

7 THE COURT: IS HE DOING NON-INFRINGEMENT?

8 MR. DEFRANCO: YES, YOUR HONOR, THIS IS  
9 COMPLETELY IMPROPER.

10 MR. JACOBS: HE'S RESPONDING TO  
11 MR. GRAY'S NESTED BOXES ARGUMENT.

12 MR. DEFRANCO: THAT'S NOT REBUTTAL IS,  
13 YOUR HONOR.

14 THE COURT: THE REBUTTAL SHOULD ONLY BE  
15 ON VALIDITY.

16 MR. JACOBS: FINE, YOUR HONOR.

17 THE WITNESS: FINE.

18 BY MR. JACOBS:

19 Q LET'S TURN TO DIAMONDTOUCH AND THE '915  
20 PATENT, SO WE'RE SWITCHING PATENTS NOW AND WE'RE  
21 LOOKING AT DIAMONDTOUCH AND THE '915.

22 YOU HEARD MR. GRAY'S TESTIMONY THAT  
23 DIAMONDTOUCH ANTICIPATES CLAIM 8 OF THE '915  
24 PATENT?

25 A SURE, HE TESTIFIED IT. BUT HE ONLY

1 CONCLUSIVELY PROVED WITH HIS TRIAL TESTIMONY THAT  
2 ELEMENT B, ONE -- THE CREATING AN EVENT OBJECT WAS  
3 ACTUALLY, ACTUALLY PRESENT AND MET BY THE  
4 DIAMONDTOUCH, ONE, ONE OUT OF SIX ELEMENTS.

5 Q AND WHY DO YOU BELIEVE THAT THE OTHER ELEMENTS  
6 ARE NOT PRESENT?

7 A WELL, LET'S GO THROUGH THEM. THE DIAMONDTOUCH  
8 IS CERTAINLY NOT A TOUCH SENSITIVE DISPLAY THAT IS  
9 INTEGRATED WITH A DATA PROCESSING SYSTEM. IT'S NOT  
10 EVEN A TOUCH SENSITIVE DISPLAY. IT'S A PLASTIC  
11 TOUCH SURFACE ON WHICH YOU CAN PROJECT SOME IMAGES.

12 AND IT'S NOT AN INTEGRATED -- IT'S  
13 CERTAINLY NOT AN INTEGRATED DEVICE, AS IS, AS IS  
14 DESCRIBED BY THE '915 PATENT. THE '915 PATENT  
15 INDICATES THAT IT SHOULD BE A SINGLE DEVICE. THERE  
16 ARE FIGURES IN THE PATENT, IF WE CAN LOOK AT A  
17 COUPLE, THAT MAKE IT VERY CLEAR WHAT SORT OF A  
18 DEVICE IT SHOULD BE.

19 THERE ARE EXAMPLES.

20 Q CAN WE LOOK AT 1044.6, MR. LEE.

21 A SO THERE -- THERE ARE EXAMPLES AND -- AND  
22 1044.33.

23 Q SO WHAT ARE THE EXAMPLES IN THE PATENT OF AN  
24 INTEGRATED DEVICE OF THE SORT THAT YOU'RE  
25 DESCRIBING?

1 A WELL, SMARTPHONES, TABLETS, THERE'S A GOOD  
2 ILLUSTRATIVE LIST. YOU'RE LOOKING AT SOMETHING  
3 OVER HERE AND THAT'S CERTAINLY NOT THE  
4 DIAMONDTOUCH. WE'VE ALL SEEN IT OVER HERE. IT'S A  
5 COLLECTION OF A NUMBER OF DISTINCT DEVICES.

6 Q SO WHAT ABOUT ELEMENT C ON PDX 29.7. IS THAT  
7 PRESENT IN DIAMONDTOUCH?

8 A NO, THAT'S NOT, EITHER. AS WE HEARD IN  
9 MR. FORLINES TRIAL TESTIMONY, MR. FORLINES IS THE  
10 AUTHOR OF THE FRACTAL ZOOM PROGRAM THAT MR. GRAY  
11 USES. IN THIS CASE, TWO FINGER SCALE THE OBJECT OR  
12 PERFORM A GESTURE OPERATION, AND EVERYTHING ELSE  
13 SCROLLS IT. SO YOU PUT THREE FINGERS DOWN AND  
14 IT'LL STRICTLY SCROLLS THE OBJECT.

15 CLAIM ELEMENT C SAYS ONE FINGER SCROLL,  
16 TWO OR MORE SCALES IT, OR GESTURES. YOU PUT THREE  
17 FINGERS DOWN, THREE IS GREATER THAN TWO, IT SHOULD  
18 SCALE. IT SCROLLS.

19 Q NOW, LET'S BRIEFLY TALK ABOUT E AND F AS IT  
20 RELATES TO DIAMONDTOUCH.

21 A WELL, THE OPERATIVE WORD HERE IS A VIEW  
22 ASSOCIATED WITH THE EVENT OBJECT. IN MY  
23 INFRINGEMENT TESTIMONY, I CLEARLY POINTED OUT A  
24 VIEW ON THAT CONTROLS A WEB BROWSER, HOW IT'S  
25 ASSOCIATED WITH AN EVENT OBJECT.

1 MR. GRAY DID NOT DISCLOSE ANY KIND OF  
2 VIEW OBJECT IN ANY WAY, OR THAT IT WAS ASSOCIATED  
3 WITH THE DIAMONDTOUCH EVENT OBJECT.

4 SO I DON'T BELIEVE HE'S BORNE THE BURDEN  
5 OF PROVING E OR F AT ALL.

6 Q NOW, IF WE SUM UP, THEN, ON DIAMONDTOUCH, IS  
7 DIAMONDTOUCH EVEN CLOSE TO THIS CLAIM?

8 A NOT AT ALL. IT MEETS ONE OF SIX CLAIM  
9 ELEMENTS.

10 Q LET'S TURN NOW TO NOMURA, WHICH WAS THE OTHER  
11 REFERENCE THAT MR. GRAY SPENT A FEW MINUTES ON.

12 CAN YOU EXPLAIN WHY YOU -- WHAT YOUR VIEW  
13 IS OF MR. GRAY'S TESTIMONY ABOUT THE NOMURA, THE  
14 JAPANESE PATENT APPLICATION AND WHETHER IT  
15 ANTICIPATES CLAIM 8 OF THE '915 PATENT?

16 A WELL, IT WAS A PATENT APPLICATION. THERE ARE  
17 THREE VERY IMPORTANT ASPECTS OF CLAIM 8. IF WE CAN  
18 PUT CLAIM 8 UP AGAIN.

19 THERE'S EVENTS, OBJECTS AND VIEWS. THE  
20 NOMURA PATENT APPLICATION DISCLOSES ABSOLUTELY NONE  
21 OF THEM.

22 Q NOW, YOU MAY RECALL THAT MR. GRAY SAID THAT  
23 THE EVENT OBJECT WAS INHERENT IN NOMURA. DO YOU  
24 AGREE WITH THAT TESTIMONY?

25 A NO, ABSOLUTELY NOT . ANY PERSON OF ORDINARY

1 SKILL THE IN ART WOULD KNOW THAT THERE ARE A NUMBER  
2 OF VIABLE ALTERNATIVES TO THESE, THESE ARE  
3 PROGRAMMING CONSTRUCTING THAT ARE IMPORTANT. YOU  
4 CAN EASILY REPLACE EVENTS WITH, WITH POLLING IN A  
5 DEVICE. YOU CAN -- PROCEDURAL PROGRAMMING AND  
6 LANGUAGES CAN REPLACE OBJECTS, CAN BE USED INSTEAD  
7 OF OBJECTS, AND YOU CAN HAVE A SINGLE BLOCK OF  
8 DISPLAY LOGIC INSTEAD OF, INSTEAD OF VIEWS.

9 AND, IN FACT, THERE -- IF YOU READ  
10 NOMURA, THERE IS LOTS OF EVIDENCE THAT WOULD MAKE  
11 YOU BELIEVE THAT, IN FACT, THESE OTHER ALTERNATIVES  
12 ARE PROBABLY THE BEST WAY TO IMPLEMENT SUCH, SUCH  
13 AN INVENTION.

14 Q SO DOES NOMURA -- IS THE DIFFERENCE, THE LACK  
15 OF AN EVENT OBJECT IN NOMURA, IS THAT A SIGNIFICANT  
16 DIFFERENCE OR A SMALL ONE?

17 A ABSOLUTELY. LOOK AT THE CLAIM ELEMENTS,  
18 WHEREVER YOU SEE THE WORD EVENT, WHERE YOU SEE THE  
19 WORD OBJECT, WHERE YOU SEE THE WORD VIEW, THOSE  
20 ELEMENTS ARE NOT MET. THAT'S A, B -- NO, NOT A.  
21 SORRY. B, C, E, AND F.

22 Q SO ABSOLUTELY SIGNIFICANT OR NOT SIGNIFICANT,  
23 SIR?

24 A ABSOLUTELY SIGNIFICANT.

25 Q VERY GOOD. NOW LET ME JUST VERY BRIEFLY, THE



1 JEFFERSON HAN SYSTEM, DID MR. GRAY MAKE AN  
2 INVALIDITY SHOWING ABOUT THE JEFFERSON HAN SYSTEM,  
3 THE KIND OF THE DEVICE THE WITH HANDS --  
4 A MR. GRAY SHOWED A VIDEO. HE SHOWED A VIDEO.  
5 BY NOW I THINK WE'VE ALL SORT OF SEEN THAT FOUR OF  
6 THE '915 PATENT, CLAIM 8, A CERTAIN AMOUNT OF RIGOR  
7 IN TERMS OF CODE ANALYSIS IS NECESSARY. THERE ARE  
8 PROGRAMMING CONSTRUCTS HERE.

9 MR. GRAY SHOWED ABSOLUTELY NO CODE. I  
10 HAVE LOOKED AT THE CODE AND, I DID NOT FIND ANY OF  
11 THOSE CLAIM -- THOSE CONSTRUCTS CONCLUSIVELY MET.

12 AND MR. GRAY SHOWED A VIDEO. BY ITSELF,  
13 THE VIDEO ACTUALLY DOESN'T TELL YOU ANYTHING ABOUT  
14 THESE CLAIM ELEMENTS.

15 MR. DEFRANCO: OBJECTION, YOUR HONOR.  
16 OUTSIDE THE SCOPE. THERE'S NO CODE IN DR. SINGH'S  
17 REPORT.

18 MR. JACOBS: CAN HE JUST FINISH THE  
19 ANSWER, YOUR HONOR? I THINK HE'S DONE.

20 THE COURT: I'M GOING TO STRIKE THE  
21 REFERENCE TO THE CODE.

22 BUT GO AHEAD.

23 THE WITNESS: WELL, THE VIDEO BY ITSELF  
24 DOES NOT -- CANNOT TELL YOU ANYTHING ABOUT EVENT  
25 OBJECTS. IT CANNOT TELL YOU ANYTHING ABOUT VIEWS.

1 IT CANNOT TELL YOU ANYTHING ABOUT A LOT OF THESE  
2 ELEMENTS.

3 WHAT IT CAN TELL YOU ACTUALLY IS THAT ONE  
4 OF THE ELEMENTS, A, IS ACTUALLY NOT MET. IF YOU  
5 LOOK AT THE VIDEO ITSELF, YOU CAN CLEARLY SEE THAT  
6 HAN'S SYSTEM, LIKE THE DIAMONDTOUCH, IS NOT AN  
7 INTEGRATED SYSTEM TOUCHSCREEN, COMPUTER TOUCHSCREEN  
8 AT ALL. THERE'S LED'S, THERE'S DISPLAYS, THERE'S  
9 ALL KINDS OF STUFF. AND HAN HAS ADMITTED TO THIS  
10 IN DEPOSITION TESTIMONY.

11 BY MR. JACOBS:

12 Q DO YOU SEE JX 1048 AND 1049 IN YOUR BINDER,  
13 THE FILE HISTORIES FOR THE '915 AND THE '163  
14 PATENT?

15 A JX, CAN YOU TELL ME AGAIN.

16 MR. JACOBS: YOUR HONOR, THESE ARE ON THE  
17 JOINT EXHIBIT LIST. THEY'RE THE FILE HISTORIES FOR  
18 THE TWO PATENTS AND WE'D OFFER THEM.

19 THE COURT: ANY OBJECTION?

20 MR. DEFRANCO: NO, YOUR HONOR.

21 THE COURT: ALL RIGHT. THEY'RE ADMITTED.

22 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBERS  
23 1048 AND 1049, HAVING BEEN PREVIOUSLY  
24 MARKED FOR IDENTIFICATION, WERE ADMITTED  
25 INTO EVIDENCE.)

1 MR. JACOBS: THANK YOU VERY MUCH,  
2 DR. SINGH.

3 THE COURT: ALL RIGHT. IT'S 2:37.

4 MR. DEFRANCO: NO QUESTIONS, YOUR HONOR.

5 THE COURT: ALL RIGHT. IS THIS WITNESS  
6 EXCUSED NOT SUBJECT TO RECALL, RIGHT?

7 MR. JACOBS: YES, YOUR HONOR.

8 THE COURT: ALL RIGHT. YOU ARE EXCUSED.

9 MR. JACOBS: YOUR HONOR, WE CALL  
10 DR. RAVIN BALAKRISHNAN IN REBUTTAL.

11 THE COURT: DO YOU WANT TO TAKE A QUICK  
12 STAND UP EVERYONE?

13 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

14 **RAVIN BALAKRISHNAN,**  
15 BEING CALLED AS A WITNESS ON BEHALF OF THE  
16 PLAINTIFF, HAVING BEEN FIRST DULY SWORN, WAS  
17 EXAMINED AND TESTIFIED AS FOLLOWS:

18 THE WITNESS: I DO.

19 THE CLERK: THANK YOU. PLEASE BE SEATED.

20 THE COURT: ALL RIGHT. 238. PLEASE GO  
21 AHEAD.

22 **DIRECT EXAMINATION**

23 BY MR. JACOBS:

24 Q DR. BALAKRISHNAN, DID YOU REVIEW DR. VAN DAM'S  
25 TESTIMONY ON THE '381 PATENT?

1 A YES, I DID.

2 Q DID HE EVEN TESTIFY ABOUT NON-INFRINGEMENT?

3 A NO, HE DID NOT.

4 Q DID YOU SEE ANY TESTIMONY FROM ANY WITNESS ON  
5 THE SAMSUNG SIDE ABOUT NON-INFRINGEMENT?

6 A NOT IN THIS TRIAL.

7 MR. JOHNSON: YOUR HONOR, OBJECTION, YOUR  
8 HONOR.

9 BY MR. JACOBS:

10 Q TURNING TO THE PRIOR ART IN THIS CASE --

11 MR. JOHNSON: I KNOW WE'RE TRYING TO GO  
12 FAST.

13 THE COURT: OBJECTION IS SUSTAINED.

14 MR. JOHNSON: I ASK THAT HIS ANSWERS BE  
15 STRUCK.

16 THE COURT: IT'S STRICKEN. GO AHEAD,  
17 PLEASE.

18 MR. JOHNSON: THANK YOU.

19 BY MR. JACOBS:

20 Q TURNING TO THE ALLEGED PRIOR ART IN THIS CASE,  
21 DID DR. VAN DAM TESTIFY ABOUT SOURCE CODE FOR  
22 DIAMONDTouch OR LAUNCHTile?

23 A NO, HE DID NOT.

24 Q DID YOU REVIEW THE SOURCE CODE FOR THOSE PRIOR  
25 ART REFERENCES?

1 A YES, I DID.

2 Q WHY DID YOU DO SO?

3 A I DID THAT BECAUSE IN BOTH THOSE SYSTEMS,  
4 DIAMONDTOUCH AND LAUNCHTILE, IT WAS NOT IMMEDIATELY  
5 APPARENT TO ME THAT IT WAS MEETING ALL ELEMENTS OF  
6 THE CLAIM OF CLAIM 19.

7 Q LET'S HAVE CLAIM 19 UP ONE MORE TIME. THE  
8 JURY HAS PROBABLY GOT THIS SUBMITTED TO MEMORY.  
9 BASED ON YOUR ANALYSIS, DO TABLECLOTH AND  
10 LAUNCHTILE MEET THE LIMITATIONS OF CLAIM 19?

11 A THEY DO NOT.

12 Q LET'S FOCUS ON TABLECLOTH. WHY DOES  
13 TABLECLOTH NOT MEET THE LIMITATIONS OF CLAIM 19?

14 A TABLECLOTH DOES NOT MEET THE LIMITATIONS FOR  
15 CLAIM 19 FOR SEVERAL OF THE LIMITATIONS.

16 Q CAN YOU GO THROUGH THOSE, PLEASE, QUICKLY?

17 A SURE. IN THE FIRST CASE, IT IS A -- THE  
18 ELECTRONIC DOCUMENT THAT DR. VAN DAM POINTED TO IN  
19 HIS DEMONSTRATION OF TABLECLOTH ACTUALLY CONSISTS  
20 OF TWO IMAGES, AND IF YOU SEE THE VIDEO, YOU CAN  
21 SEE THE TWO IMAGES OF THE SAME DESK TOP IMAGE BEING  
22 REPEATED. SO THAT'S NOT A SINGLE ELECTRONIC  
23 DOCUMENT.

24 Q CAN WE SEE SDX 3964.013, PLEASE.

25 A AS YOU CAN SEE HERE, THIS IS A FIRST IMAGE.

1 IT'S A WINDOWS DESK TOP. AND AS THE USER SCROLLS,  
2 ANOTHER -- WELL, NOW, YEAH, NOW ANOTHER COPY OF  
3 THAT IMAGE, IT'S A DIFFERENT IMAGE OF THAT WINDOWS  
4 DESK TOP SHOWS UP AND THEN IT SCROLLS BEYOND THAT,  
5 THAT SECOND IMAGE.

6 SO IT IS ACTUALLY, AT BEST, TWO  
7 ELECTRONIC DOCUMENTS, NOT A SINGLE ELECTRONIC  
8 DOCUMENT.

9 AND I LOOKED AT THE CODE TO CONFIRM THIS,  
10 JUST TO MAKE SURE THAT THAT IS, INDEED, TRUE.

11 Q CAN WE HAVE --

12 A THAT IT ACTUALLY CONFIRMED THAT.

13 Q CAN WE HAVE DX 655.001. IS THIS THE CODE YOU  
14 REVIEWED, SIR?

15 A THIS IS THE, THE PAGE AND A HALF OF CODE THAT  
16 MAKES UP THIS TABLECLOTH APPLICATION, AND I  
17 REVIEWED THE WHOLE THING. AND I'D LIKE TO POINT  
18 YOU TO A FEW IMPORTANT POINTS.

19 THE FIRST ONE IS SOMEWHERE, I THINK IT'S  
20 LINE 7 ONWARDS, YES, THOSE TWO LINES RIGHT THERE.  
21 IF YOU CAN SEE THERE, WHAT IT'S DOING IS ADDING AN  
22 OBSERVER, IN OTHER WORDS, A PIECE OF CODE THAT  
23 LOOKS AT WHAT HAPPENS WHEN A PARTICULAR IMAGE IS  
24 BEING INTERACTED WITH, AND YOU CAN SEE IT DOES THAT  
25 FOR TWO DIFFERENT IMAGES. THE FIRST ONE IS CALLED

1 IMAGE ONE UNDERSCORE MC AND THE SECOND ONE IS  
2 CALLED IMAGE 2 UNDERSCORE MC.

3 SO INDEED THERE ARE TWO IMAGES IN THIS  
4 TABLECLOTH APPLICATIONS AND IT'S ADDING  
5 FUNCTIONALITY TO OBSERVE USER INPUT ON THOSE TWO  
6 IMAGES.

7 Q I'D LIKE TO SHOW YOU ONE OF DR. VAN DAM'S  
8 PRESENTATION SLIDES. CAN WE SEE 3694.034 DO YOU  
9 RECALL THIS?

10 A YES, I DO.

11 Q WHAT'S NOTABLE ABOUT THE CLAIM THAT TABLECLOTH  
12 ANTICIPATES THE '381 PATENT?

13 A WHAT'S NOTABLE ABOUT THIS IN CONJUNCTION WITH  
14 DR. VAN DAM'S TESTIMONY IS THAT HE HAS INDICATED  
15 THAT THIS CLAIM ELEMENT IS MET. BUT, IN FACT, HE  
16 ONLY DISCUSSED THE FIRST HALF OF THIS CLAIM  
17 ELEMENT.

18 THE SECOND HALF, WHICH STARTS WITH IN  
19 RESPONSE TO IS ACTUALLY COVERED UP BY THE IMAGE AND  
20 HE DIDN'T TALK ABOUT THAT SECOND HALF OF THE CLAIM  
21 ELEMENT AT ALL AND THAT TURNS OUT TO BE AN  
22 IMPORTANT PART OF THIS CLAIM.

23 Q IN FACT, DOES TABLECLOTH ON THE DIAMONDTOUCH  
24 HAVE INSTRUCTIONS THAT ACT IN RESPONSE TO THE EDGE  
25 OF THE DOCUMENT BEING REACHED?

1 A NO, THEY DO NOT.

2 Q WHAT INSTEAD DO THE TABLECLOTH INSTRUCTIONS  
3 DO?

4 A THE TABLECLOTH INSTRUCTIONS, THEY DO NOT DEAL  
5 WITH WHAT HAPPENS IN RESPONSE TO AN EDGE. ALL THEY  
6 DO IS ANY TIME THE FINGER IS LIFTED OFF THE TABLE,  
7 IT JUST SIMPLY RECENTERS THE IMAGE. IT JUST ALWAYS  
8 GOES UP, WHETHER OR NOT -- IT ALWAYS GOES BACK TO  
9 THE FIRST IMAGE, WHETHER OR NOT YOU'VE GONE PAST  
10 THE EDGE. AND I CONFIRMED THIS IN THE SOURCE CODE  
11 AS WELL.

12 Q AND WHAT ABOUT THE LIMITATION UNTIL THE AREA  
13 BEYOND THE EDGE IS NO LONGER DISPLAYED. DOES  
14 TABLECLOTH MEET THAT LIMITATION?

15 A NO, IT DOES NOT MEET THAT LIMITATION, FOR  
16 ESSENTIALLY THE SAME REASON. ONCE THE AREA BEYOND  
17 THE EDGE IS NO LONGER DISPLAYED, IT DOESN'T STOP,  
18 IT KEEPS GOING ALL THE WAY BACK TO THE ORIGINAL  
19 FIRST IMAGE THAT WAS SHOWN.

20 Q LET'S TURN TOE LAUNCHTILE. CAN WE HAVE SDP  
21 3964.045? DOES LAUNCHTILE EMBODY THE ELEMENTS IN  
22 RESPONSE TO THE EDGE OF THE ELECTRONIC DOCUMENT  
23 BEING REACHED?

24 A NO, IT DOES NOT.

25 Q AND WHY DO YOU SAY THAT, SIR?



1 A FOR THE REASON THAT I LOOKED AT THE SOURCE  
2 CODE AND IN LAUNCHTILE, WHAT HAPPENS, EVERY TIME  
3 YOU RELEASE YOUR FINGER FROM THE DEVICE, FROM THE  
4 TOUCH PAD, IT SIMPLY GOES BACK, IT RECENTERS THE  
5 DOCUMENT TO THE CLOSER BLUE CIRCLE, AS I THINK  
6 DR. BEDERSON, WHO'S THE CREATOR OF THE LAUNCHTILE  
7 TESTIMONY TESTIFIED, THE TEST THAT IT DOES IS IT  
8 DETERMINES HOW FAR AWAY FROM THAT CENTER IT IS. IF  
9 IT'S A SIXTH OF THE WAY OR LESS, IT GOES BACK TO  
10 THAT ORIGINAL BLUE CIRCLE.

11 IF IT'S MORE THAN A SIXTH OF THE WAY, IT  
12 GOES TO THE NEXT SET OF TILES.

13 Q SO INSTEAD OF DETECTING THE EDGE OF THE  
14 ELECTRONIC DOCUMENT, WHAT IS IT RESPONDING TO?

15 A IT'S SIMPLY RESPONDING TO THE CENTER. IT'S  
16 REALLY A RECENTERING ALGORITHM. IT DOESN'T  
17 ACTUALLY CHECK THAT IT'S REACHED THE EDGE OF ANY  
18 DOCUMENT.

19 Q LET'S LOOK AT PDX 41. DOES LAUNCHTILE SOLVE  
20 THE FROZEN SCREEN PROPERTY?

21 A NO, IT EMBODIES THE FROZEN SCREEN PROBLEM.  
22 THAT OCCURS WHEN YOU HIT THE EDGE OF THE DOCUMENT  
23 AND THE SCREEN JUST STOPS MOVING, AND IF YOU LOOK  
24 AT LAUNCHTILE, IF WE CAN PLAY THIS VIDEO, YOU CAN  
25 SEE YOU GO TO THE EDGE OF THE DOCUMENT, THE EDGE OF

1 THE TILES THERE, IT SIMPLY STOPS. IT'S FROZEN.

2 Q AND DOES IT SOLVE THE DESERT FOG PROBLEM?

3 A NO, IT DOESN'T SOLVE THE DESERT FOG PROBLEM  
4 EITHER. THAT'S ONE WHEN YOU CAN TAKE THE DOCUMENT  
5 COMPLETELY OFF THE SCREEN. SO HERE IS THE E-MAIL  
6 APPLICATION OFF LAUNCHTILE, AND AS THE VIDEO WILL  
7 SHOW, YOU CAN SCROLL THE LIST OF E-MAILS COMPLETELY  
8 OFF THE SCREEN.

9 Q CAN YOU TAKE APPARENTLY A LOOK, PLEASE, AT JX  
10 1047 IN YOUR BINDER. THIS IS THE PROSECUTION  
11 HISTORY FOR THE '381 PATENT?

12 A OKAY. YOU HAVE IT UP ON THE SCREEN.

13 MR. JACOBS: CAN WE MOVE 1047 INTO  
14 EVIDENCE, YOUR HONOR.

15 THE COURT: ANY OBJECTION?

16 MR. JOHNSON: NO, YOUR HONOR.

17 THE COURT: IT'S ADMITTED.

18 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER  
19 1047, HAVING BEEN PREVIOUSLY MARKED FOR  
20 IDENTIFICATION, WAS ADMITTED INTO  
21 EVIDENCE.)

22 BY MR. JACOBS:

23 Q IF YOU LOOK AT THE '381 PATENT AGAIN,  
24 DR. BALAKRISHNAN, CAN YOU WALK US THREE THE RELATED  
25 APPLICATION DATA ON THAT DOCUMENT. THIS WOULD BE

1 JX 1045?

2 A SURE. THE PERTINENT ISSUE HERE IS THAT THE  
3 PROVISIONAL APPLICATION WAS FILED, AND IN  
4 PARTICULAR, THERE WAS ONE FILED IN JANUARY, JANUARY  
5 2007, AND THAT'S THE ONE THAT IS OF INTEREST HERE  
6 BECAUSE THE -- ALL THE FUNCTIONALITY IN CLAIM 9 WAS  
7 DISCLOSED IN THAT EARLIER PROVISIONAL APPLICATION  
8 AS THE FILE HISTORY SHOWS.

9 Q DR. VAN DAM TESTIFIED THAT HE THOUGHT THE PTO  
10 MADE A MISTAKE IN ISSUING THIS PATENT. DO YOU  
11 RECALL THAT TESTIMONY?

12 A YES, I DO.

13 Q HAS ANYONE ELSE MADE THAT ALLEGATION?

14 A YES, SOME OTHER PARTIES MADE THAT ALLEGATION  
15 AND REQUESTED A RE-EXAMINATION --

16 MR. JOHNSON: OBJECTION, YOUR HONOR, THIS  
17 GOES RIGHT TO YOUR HONOR'S RULING ON THE  
18 RE-EXAMINATION PROCEEDINGS.

19 MR. JACOBS: IT DOESN'T, YOUR HONOR.  
20 THIS ONE WAS CONCLUDED.

21 MR. JOHNSON: YOUR HONOR, SAME OBJECTION.

22 THE COURT: SUSTAINED. LET'S MOVE ON.

23 MR. JACOBS: NO FURTHER QUESTIONS,

24 DR. BALAKRISHNAN. THANK YOU.

25 THE WITNESS: THANK YOU.

1 THE COURT: ALL RIGHT. 2:46. ANY CROSS?

2 MR. JOHNSON: NO QUESTIONS, YOUR HONOR.

3 THE COURT: OKAY. YOU ARE EXCUSED. AND  
4 I ASSUME IT'S NOT SUBJECT TO RECALL; CORRECT?

5 MR. JACOBS: CAN WE JUST HAVE A MINUTE,  
6 YOUR HONOR?

7 THE COURT: YES.

8 (PAUSE IN PROCEEDINGS.)

9 MR. LEE: YOUR HONOR, HE'S EXCUSED NOT  
10 SUBJECT TO RECALL.

11 THE COURT: HE IS EXCUSED AND NOT SUBJECT  
12 TO RECALL.

13 YES.

14 MR. LEE: AND IF WE CAN STOP FOR THE  
15 AFTERNOON BREAK, WE CAN RESOLVE THE QUESTION THAT  
16 WE WERE TALKING ABOUT OVER HERE DURING THE BREAK.

17 THE COURT: ALL RIGHT. APPLE HAS 16  
18 MINUTES LEFT IN THIS CASE.

19 MR. MCELHINNY: AND SIX MORE WITNESSES,  
20 YOUR HONOR. MAYBE LESS.

21 MR. LEE: I HAVE A WAY TO DESCRIBE THAT,  
22 YOUR HONOR.

23 THE COURT: OKAY. ALL RIGHT. IT'S 2:47.  
24 LET'S GO AHEAD AND TAKE OUR AFTERNOON BREAK.

25 I WILL JUST TELL YOU THAT APPLE HAS 16

1 MINUTES LEFT. I'LL RECONFIRM MY CALCULATIONS IN A  
2 MINUTE, AND SAMSUNG HAS 20 MINUTES LEFT. SO WE ARE  
3 DEFINITELY GOING TO BE FINISHING AT LEAST THE  
4 EVIDENCE PORTION OF THIS TRIAL TODAY AND YOU'LL BE  
5 GOING HOME AS SOON AS WE DO. OKAY?

6 BUT THEN YOU ARE GOING TO HAVE THE DAY  
7 OFF ON MONDAY, BUT THEN TUESDAY MORNING, WE'LL DO  
8 THE JURY INSTRUCTIONS, CLOSINGS AND THEN YOU START  
9 DELIBERATING IF THERE'S TIME. OKAY? ALL RIGHT.  
10 THANK YOU.

11 AGAIN, PLEASE KEEP AN OPEN MIND, DON'T  
12 DISCUSS THE CASE WITH ANYONE, PLEASE DON'T READ OR  
13 RESEARCH ABOUT THE CASE. AND YOU CAN JUST LEAVE  
14 YOUR JURY BOOKS ON YOUR CHAIR. THANK YOU.

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

17 THE COURT: OKAY. PLEASE TAKE A SEAT.  
18 I'M JUST CONFIRMING HOW MUCH TIME YOU HAVE, AND I  
19 DO CONFIRM THAT IT'S 16 MINUTES. OKAY.

20 MR. MCELHINNY: THANK YOU, YOUR HONOR.

21 THE COURT: NOW, IF YOU ASK A  
22 NON-INFRINGEMENT QUESTION OF MR. MUSIKA, I'M GOING  
23 TO HAVE TO SANCTION YOU, OKAY. THAT'S IT.

24 ALL RIGHT. WHAT ELSE? LET'S TAKE OUR  
25 BREAK NOW. THANK YOU.

1 (WHEREUPON, A RECESS WAS TAKEN.)

2 THE COURT: OKAY. WELCOME BACK. PLEASE  
3 TAKE A SEAT.

4 APPARENTLY WE GOT A REQUEST, MR. RIVERA  
5 DID, FROM SOMEONE FROM THE MEDIA THAT IF THERE IS A  
6 VERDICT, THEY REQUESTED THAT WE DELAY AN HOUR SO  
7 THAT PEOPLE CAN SHOW UP. I REALLY THINK THAT WOULD  
8 BE BURDENSOME. I'M NOT SURE WHO MADE THAT REQUEST.

9 THE WITNESS: I DO.

10 THE COURT: OKAY. CAN IT BE LESS THAN AN  
11 HOUR, BECAUSE THAT'S AN AWFULLY LONG TIME TO MAKE  
12 THE JURY WAIT.

13 AUDIENCE: THAT'S FINE. ANY ADVANCED  
14 NOTICE.

15 THE COURT: WHAT WE WERE PLANING TO DO, I  
16 DON'T KNOW WHAT'S THE BEST WAY TO STAY IN TOUCH  
17 WITH PEOPLE, THE FIRST ONE TO MAKE SURE THAT THE  
18 TEAMS, IF YOU PUT A LIST TOGETHER OF WHO YOU WANT  
19 US TO CONTACT AS SOON AS THERE'S A JURY NOTE OR  
20 SOMETHING, CAN YOU DO THAT WITH ALL YOUR BEST  
21 CONTACT NUMBERS.

22 IT'LL TAKE SOME TIME FOR US JUST TO  
23 ASSEMBLE EVERYBODY ANYWAY, I HOPE IT WON'T TAKE AN  
24 HOUR, SO I'LL HAVE A LITTLE BIT OF NOTICE. WHAT  
25 SHOULD WE DO, JUST -- WE COULD E-FILE SOMETHING

1 SAYING WE RECEIVED JURY NOTE NUMBER 3. WOULD THAT  
2 BE HELPFUL? HE CAN ALSO DO A PHONE TREE.

3 MR. MINTZ IS HERE FROM THE MERCURY NEWS.  
4 WE CAN NOTIFY AND HE CAN LET -- HE'S THE ONE THAT'S  
5 BASED IN THIS COURTHOUSE, IF HE CAN LET FOLKS KNOW,  
6 JUST IN CASE ECF MAY SOME DOWN, IT HAS IN THE PAST,  
7 AND THAT WAY WE CAN STILL COMMUNICATE WITH YOU.

8 THE WITNESS: E-MAIL ME.

9 THE COURT: WE DON'T WANT TO BE  
10 RESPONSIBLE FOR E-MAILING EVERYBODY. WE COULD LET  
11 MR. MINTZ KNOW AND IF YOU ALL COULD WORK IT OUT.

12 THE WITNESS: YES, WE'LL WORK ON IT,  
13 JUDGE.

14 AUDIENCE: IS BETTER THAN PHONE TREE.

15 THE COURT: IS MS. PARKER-BROWN WILL BE  
16 BACK NEXT WEEK, AND SHE'LL E-MAIL MR. MINTZ. WE  
17 CAN ALSO FILE THINGS ON ECF SINCE YOU'RE PROBABLY  
18 ALSO GETTING ECF NOTICES, AND MAYBE IT WOULD BE  
19 EASIER -- WE CAN JUST E-FILE WHEN THE JURY STARTED  
20 EACH DAY AND WHEN THEY'VE LEFT, AND IF THERE'S EVER  
21 A NOTE OR A VERDICT, WE'LL JUST DO A CLERK'S  
22 NOTICE.

23 AUDIENCE: THANK YOU VERY MUCH.

24 THE COURT: YOU CAN FIND THAT, BETWEEN  
25 THAT AND THE E-MAIL TREE, I THINK WE SHOULD BE

1 OKAY.

2 THE WITNESS: THANK YOU.

3 THE COURT: ALL RIGHT. LET'S GO AHEAD  
4 AND FINISH UP THEN.

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

7 THE COURT: WELCOME BACK. WE'RE IN OUR  
8 LAST 36 MINUTES.

9 ALL RIGHT. MR. LEE.

10 MR. LEE: APPLE RESTS, YOUR HONOR.

11 THE COURT: OH, OKAY. ALL RIGHT.

12 MR. PRICE: WE SAVED TIME FOR ME.

13 THE COURT: ALL RIGHT. THEN IT'S 3:07.  
14 LET'S GO BACK THEN TO SAMSUNG. WHO WOULD YOU LIKE  
15 TO CALL?

16 MS. MAROULIS: YOUR HONOR, SAMSUNG CALLS  
17 DR. DAVID TEECE.

18 THE COURT: YOU KNOW, JUST BELTS AND  
19 SUSPENDERS, WE'RE GOING TO RESWEAR IN EVERYONE LIKE  
20 WE DID WITH THE OTHER WITNESSES. OKAY.

21 MS. MAROULIS: YES.

22 THE COURT: PLEASE RAISE YOUR RIGHT HAND.

23 **DAVID TEECE,**  
24 BEING RECALLED AS A WITNESS ON BEHALF OF THE  
25 DEFENDANTS, HAVING BEEN PREVIOUSLY SWORN, WAS



1 EXAMINED AND TESTIFIED AS FOLLOWS:

2 THE WITNESS: I DO.

3 THE CLERK: THANK YOU. PLEASE BE SEATED.

4 THE COURT: ALL RIGHT. TIME IS NOW 3:08,  
5 GO AHEAD, PLEASE WITH YOUR DIRECT.

6 **DIRECT EXAMINATION**

7 BY MS. MAROULIS:

8 Q WELCOME BACK. DO YOU AGREE WITH THE TESTIMONY  
9 OF DR. WALKER THAT DISCLOSURE TO ETSI AFTER THE  
10 ADOPTION OF THE STANDARD IS UNTIMELY?

11 A NO. BASED ON WHAT I'VE OBSERVED FROM THE  
12 PUBLIC DATABASE OF ETSI, I DON'T.

13 Q HAVE YOU CONDUCTED AN EMPIRICAL STUDY OF HOW  
14 THE PARTICIPANTS IN ETSI DISCLOSE THEIR IPR'S TO  
15 ETSI?

16 A I HAVE.

17 Q LET'S TAKE A LOOK AT SDX 3975.006. IS THIS  
18 THE SLIDE THAT YOU PREPARED TO SUMMARIZE YOUR  
19 FINDINGS?

20 MR. LEE: YOUR HONOR, I OBJECT. THIS WAS  
21 EXCLUDED.

22 MS. MAROULIS: YOUR HONOR, THE OBJECTION  
23 WAS OVERRULED, I BELIEVE.

24 MR. LEE: NO. IT WAS SUSTAINED AS TO 06  
25 AND THEY WERE ALLOWED TO SHOW WHAT WAS 01 TO 05

1 ONLY.

2 THE COURT: ALL RIGHT. LET ME SEE.

3 MS. MAROULIS: YOUR HONOR, I'LL MOVE ON  
4 TO 05 WHILE IT'S BEING CHECKED BY MY LEAGUES.

5 THE COURT: OKAY.

6 BY MS. MAROULIS:

7 Q LET'S TAKE A LOOK AT 3975.005. WHAT DOES THIS  
8 SLIDE REPRESENT, MR. TEECE?

9 A THIS IS ONE YEAR, 2011, WHERE I WENT INTO THE  
10 PUBLIC DATABASE THAT DR. WALKER REFERRED TO AND I  
11 MEASURED IN DAYS THE TIME FROM THE ADOPTION OF THE  
12 STANDARD TO THE DISCLOSURE BY THREE PARTIES HERE OF  
13 INTELLECTUAL PROPERTY POTENTIAL AND AS YOU CAN SEE  
14 FOR APPLE, THAT TIME LAPSE WAS ABOUT 250 DAYS ON  
15 AVERAGE.

16 FOR HTC, IT WAS ABOUT 700 DAYS ON  
17 AVERAGE. AND FOR NOKIA, IT WAS ACTUALLY NORTH OF A  
18 THOUSAND DAYS ON AVERAGE. SO WE'RE NOT TALKING  
19 DAYS, WE'RE ACTUALLY TALKING MONTHS AND YEARS.

20 Q HAVE YOU ALSO STUDIED SUCH PARTICIPANTS AS  
21 ERICSSON AND MOTOROLA FOR THE PURPOSE OF THIS  
22 ANALYSIS?

23 A YES.

24 Q AND DID THEY EXHIBIT SIMILAR DELAYS?

25 A YES.

1 Q DO YOU RECALL WHAT DELAYS THEY EXHIBITED ON  
2 AVERAGE?

3 A I DON'T RECALL THE NUMBER. BUT WE'RE TALKING  
4 WEEKS AND MONTHS AND SOMETIMES YEAR.

5 Q DR. TEECE, HOW DOES THIS EMPIRICAL STUDY  
6 EFFECT YOUR ANALYSIS OF THE TIME LIMITS OF THE  
7 DISCLOSURE TO ETSI?

8 A WELL, WITH RESPECT TO RULES, AS AN ECONOMIST,  
9 I LOOK AT THE WAY PEOPLE BEHAVE. THAT TELLS ME THE  
10 MOST ABOUT WHAT THE RULES ARE. AND THIS IS THE WAY  
11 THAT PARTICIPANTS BEHAVE. THEY DON'T DISCLOSE, OR  
12 THEY DON'T CERTAINLY HARDLY EVER DISCLOSE BEFORE  
13 THE PATENTS ARE ISSUES.

14 MR. LEE: I OBJECT, YOUR HONOR. THAT'S  
15 BEYOND WHAT YOUR HONOR ALLOWED. HE WAS ALLOWED TO  
16 DISCUSS THE DELAYS. THERE'S NO FOUNDATION FOR --

17 MS. MAROULIS: YOUR HONOR, THERE WAS  
18 OBJECTIONS TO TWO SPECIFIC EXHIBITS, BOTH WERE  
19 OVERRULED BY YOUR ORDER.

20 THE COURT: I KNOW. THE OBJECTION SO  
21 THIS SLIDE WAS OVERRULED. SO.

22 MR. LEE: RIGHT, AND I HAVEN'T OBJECTED  
23 TO THAT THAT. THIS TIME I BELIEVE HE'S GOING  
24 BEYOND THIS NOW AND TALK ABOUT WHEN THEY DISCLOSE.  
25 THESE SLIDES DON'T SHOW ANYTHING ABOUT DISCLOSURE.

1 NOW HE'S GIVING OPINION ON WHEN THEY DISCLOSE.  
2 THERE'S NOTHING BEFORE THE COURT ABOUT THAT AND  
3 THERE'S NOTHING --

4 THE COURT: OVERRULED. I'M GOING TO LET  
5 YOU CROSS. GO AHEAD, PLEASE.  
6 BY MS. MAROULIS:

7 Q DR. TEECE, HOW DOES THIS EMPIRICAL STUDY  
8 AFFECT YOUR ANALYSIS. FINISH YOUR ANSWER, PLEASE.

9 A IT SHOWS THAT THE PRACTICE AT ETSI IS THAT  
10 COMPANIES FREQUENTLY PROVIDE INFORMATION ABOUT  
11 PATENTS CONSIDERABLY AFTER THE STANDARDS ARE  
12 ISSUED.

13 Q THANK YOU, DR. TEECE. YOU HEARD MR. DONALDSON  
14 TESTIFY ABOUT THE FRAND OFFER THAT SAMSUNG MADE TO  
15 APPLE. WERE YOU HERE?

16 A I WAS.

17 Q AND IN HIS OPINION, THE RATE THAT SAMSUNG  
18 OFFERED TO APPLE WAS NOT FAIR AND REASONABLE. DO  
19 YOU AGREE WITH THAT OPINION?

20 A NO, I DON'T.

21 Q WHY DO YOU DISAGREE WITH MR. DONALDSON?

22 A ONE, IT WAS IN THE RANGE OF RATES THAT I'VE  
23 OBSERVED FROM OTHER COMPANIES; AND, TWO, THE LETTER  
24 SPECIFICALLY WAS AN INVITATION TO CONSIDER A  
25 CROSS-LICENSE, WHICH IF THAT NEGOTIATION HAD BEEN

1 PURSUED, COULD HAVE RESULTED THAT THE RATE GOING  
2 AWAY AND POSSIBLY JUST A BALANCING PAYMENT.

3 Q WHAT TYPICALLY HAPPENS ONCE SUCH AN OFFER IS  
4 MADE?

5 A IT'S USUALLY RESPONDED TO.

6 Q TO YOUR KNOWLEDGE, HAS APPLE EVER RESPONDED TO  
7 SAMSUNG WITH A COUNTER OFFER OF ROYALTY RATES?

8 A NOT TO MY KNOWLEDGE.

9 Q DR. TEECE, MR. DONALDSON ALSO TESTIFIED THAT  
10 THE BASE USED IN THE SAMSUNG OFFER LETTER WAS NOT  
11 FRAND.

12 DO YOU AGREE WITH THAT CONCLUSION?

13 A I DISAGREE WITH THAT CONCLUSION.

14 Q WHY DO YOU DISAGREE WITH THAT CONCLUSION?

15 A HE BELIEVED THE BASE SHOULD BE THE BASEBAND  
16 CHIP AND I LOOKED AT ALL -- ALL THE LICENSES I  
17 LOOKED AT, NOBODY ELSE USED THE BASEBAND CHIP. IT  
18 WAS REFERRING EITHER TO SET SALES OR SOME UNIT  
19 SALES MEASURE.

20 Q SIR, WHAT ARE YOU RELYING ON WHEN YOU SAY THAT  
21 YOU LOOKED AT LICENSES AND HAVE NOT SEEN THE  
22 BASEBAND CHIP USED AS A MEASURE OF BASE?

23 A I LOOKED AT SAMSUNG'S LICENSES, NOKIA'S  
24 LICENSES, AND A NUMBER OF OTHERS REPORTED IN THE  
25 PUBLIC DATABASES.

1 Q THANK YOU, SIR.

2 WHAT ABOUT -- YOU WERE HERE ALSO FOR  
3 DR. ORDOVER'S PRESENTATION; CORRECT?

4 A I WAS.

5 Q WHAT IS YOUR OPINION WITH REGARD TO THE MARKET  
6 DEFINITION PROPOSED BY DR. ORDOVER?

7 A VERY UNUSUAL, HIS DEFINITION IS VERY UNUSUAL.

8 AND NOR DID HE DO WHAT AN ECONOMIST IS  
9 SUPPOSED TO DO TO ESTABLISH A MARKET, WHICH IS LOOK  
10 FOR COMMERCIALLY VIABLE SUBSTITUTES. HE WAS VERY  
11 CLEAR IN HIS REPORT THAT HE ASSUMED THAT THERE WAS  
12 SUBSTITUTES WHEN, IN FACT, ECONOMIC ANALYSIS  
13 REQUIRES THAT YOU PROVE THAT THERE ARE SUBSTITUTES.

14 Q WHAT IS THE RELEVANCE OF IDENTIFYING  
15 SUBSTITUTES TO DEFINING THE MARKET?

16 A YOU CANNOT DEFINE AN ANTITRUST MARKET, OR A  
17 RELEVANT ANTITRUST MARKET WITHOUT DOING A CAREFUL  
18 ECONOMIC ANALYSIS OF THE SUBSTITUTES THAT ARE  
19 AVAILABLE.

20 Q WHAT TYPE OF DATA DOES AN ECONOMIST ANALYZE TO  
21 ESTABLISH THAT ONE TECHNOLOGY CAN SUBSTITUTE FOR  
22 ANOTHER?

23 A YOU LOOK AT COST DATA, PERFORMANCE DATA, YOU  
24 WANT TO SHOW THAT ECONOMICALLY THESE VARIOUS  
25 TECHNOLOGIES CAN BE SUBSTITUTED. IT'S NOT ENOUGH

1 FOR A TECHNICAL PERSON TO SAY MAYBE THEY WILL BE  
2 TECHNICALLY SIMILAR. THEY HAVE TO BE ECONOMICALLY  
3 AND COMMERCIALY SIMILAR.

4 Q DID DR. ORDOVER LOOK AT THAT DATA IDENTIFIED  
5 WHAT TECHNOLOGIES HE TALKED ABOUT AS SUBSTITUTE  
6 ITSELF?

7 A HE DID NOT.

8 Q WHAT DATA DID HE LOOK?

9 A HE LOOKED AT VARIOUS INFORMATION BY TECHNICAL  
10 EXPERTS WHICH WAS COMPLETELY BEREFT OF ANY ECONOMIC  
11 ANALYSIS.

12 Q THEN HOW DOES HE GO ABOUT DEFINING THE MARKET  
13 DEFINITION?

14 A IN ESSENCE HE ASSUMES HIS MARKET BASED ON THE  
15 SCOPE OF THE PATENT.

16 Q IS THIS APPROACH CONSISTENT WITH ECONOMIC  
17 PRINCIPLES AS YOU UNDERSTAND THEM?

18 A IT IS NOT.

19 Q WHAT ARE THE IMPLICATIONS OF ADOPTING THIS  
20 MARKET DEFINITION PROPOSED BY DR. ORDOVER?

21 A BASICALLY HE ASSUMES HIS RESULT, THAT THERE IS  
22 MONOPOLY POWER BECAUSE HE HASN'T DONE THE  
23 BACKGROUND WORK THAT'S NECESSARY TO ESTABLISH THAT  
24 THERE ARE COMMERCIALY VIABLE SUBSTITUTES.

25 Q AND WHAT IS THE CONSEQUENCE OF THAT FOR THE

1 MARKET PARTICIPANTS IN THE STANDARD SETTING  
2 ORGANIZATIONS?

3 A IF THE DESIGNER'S CORRECT, EVERYBODY IS A  
4 MONOPOLIST. ANYBODY WITH A PATENT IS A MONOPOLIST  
5 AND THERE'S THOUSANDS OF MONOPOLISTS OUT THERE  
6 WHICH IS CLEARLY, IN MY VIEW, NOT CORRECT WHY.

7 Q SIR, HAS SAMSUNG LICENSED ITS STANDARD  
8 ESSENTIAL PATENTS TO OTHER COMPANIES?

9 A I BELIEVE SO, YES.

10 Q AND HAVE YOU TESTIFIED YESTERDAY REGARDING  
11 SAMSUNG'S LICENSING OF THESE PATENTS TO OTHER  
12 COMPANIES?

13 A YES.

14 Q IS IT CORRECT THAT EXHIBIT 630 CONTAINS THE  
15 INFORMATION REGARDING THAT?

16 A IT DOES.

17 Q TO YOUR KNOWLEDGE, IS APPLE PAYING ANYTHING TO  
18 SAMSUNG FOR SAMSUNG'S DECLARED ESSENTIAL PATENTS?

19 A NOT TO MY KNOWLEDGE.

20 MS. MAROULIS: ONE MINUTE, YOUR HONOR.

21 YOUR HONOR, THIS WITNESS CAN BE EXCUSED,  
22 OR PASS THE WITNESS.

23 MR. LEE: I'D LIKE TO ASK A FEW  
24 QUESTIONS.

25 THE COURT: ALL RIGHT. 3:16. GO AHEAD.



**CROSS-EXAMINATION**

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BY MR. LEE:

Q DR. TEECE, I NOTICE YOU NEGLECTED TO TELL THE JURY ABOUT YOUR EXPERIENCE WITH ETSI. WHAT POSITIONS HAVE YOU HELD AT ETSI?

A I DIDN'T NEGLECT TO TELL THEM BECAUSE I HAVE NOT HAD A POSITION AT ETSI.

Q OH. EVER?

A THAT IS CORRECT.

Q HAVE YOU EVER BEEN TO A 3GPP MEETING?

A NO, I HAVE NOT.

Q HAVE YOU EVER BEEN TO A 3GPP WORKING GROUP?

A NOPE.

Q HAVE YOU EVER SUBMITTED A PROPOSAL TO ETSI?

A NOPE.

Q SO UNLIKE DR. WALKER, WHO'S THE CHAIRMAN, YOU HAVE NO EXPERIENCE WITH ETSI; CORRECT?

A I'VE OBSERVED IN THE PUBLIC DATABASES THE FILINGS OF VARIOUS COMPANIES. I'VE DONE ANALYSIS ON THE PUBLIC DATABASES.

Q MY QUESTION WAS DIFFERENT, SIR. OTHER THAN GOING TO A PUBLIC DATABASE AND ANALYZING PUBLICLY AVAILABLE INFORMATION, YOU HAVE NO EXPERIENCE WITH ETSI, PERIOD? RIGHT?

A I HAVE NO DIRECT PARTICIPATORY EXPERIENCE. I

1 STUDIED ETSI AS A SCHOLAR.

2 Q OKAY. NOW, SIR, YOU UNDERSTAND THAT IN THIS  
3 CASE APPLE ALLEGES THAT SAMSUNG FAILED TO COMPLY  
4 WITH ITS ETSI, WITH THE ETSI IPR POLICY; CORRECT?

5 A YES.

6 Q AND AS YOU TESTIFIED AT YOUR DEPOSITION, YOU  
7 HAVE NO OPINION ON THAT ISSUE, DO YOU?

8 MS. MAROULIS: OBJECTION. MISLEADING.

9 BY MR. LEE:

10 Q WELL, LET ME ASK IT THIS WAY: DO YOU HAVE AN  
11 OPINION ON THAT ISSUE?

12 A I GAVE YOU AN OPINION WITH RESPECT TO WHAT I  
13 OBSERVED AND THE BEHAVIOR OF THE PARTIES, AND SO I  
14 INFER FROM THAT THAT THE -- THAT SINCE DELAYS ARE  
15 UBIQUITOUS, THAT THE RULE CAN'T BE QUITE WHAT IT'S  
16 BEING REPRESENTED BY DR. ORDOVER.

17 Q LET'S SEE WHAT YOU SAID AT YOUR DEPOSITION.  
18 CAN I HAVE PAGE 427, LINES 7 TO 13.

19 I'M NOT SURE, I WANT YOU TO HELP ME WITH  
20 THIS, WHAT YOU OBSERVED FROM UBIQUITOUS BEHAVIOR.  
21 THE LADIES AND GENTLEMEN OF THE JURY HAVE TO  
22 TIED --

23 MS. MAROULIS: OBJECTION TO COUNSEL  
24 TESTIFYING.

25 THE COURT: OVERRULED.

1 BY MR. LEE:

2 Q -- DOES SAMSUNG VIOLATE THE RULES, AND YOU  
3 WERE ASKED, QUESTION, AND ARE YOU OFFERING ON  
4 OPINION THAT IN REGARD TO ANY OR ALL OF THE 7  
5 PATENTS HERE, SAMSUNG ON A BONE FIDE BASIS DREW THE  
6 ATTENTION OF ETSI TO ANY OF ITS IPR WHICH MIGHT BE  
7 SPECIAL TO ANY PROPOSAL THAT IT MADE.

8 "ANSWER: NO. AS I SAID BEFORE, MY  
9 TESTIMONY WILL RELATE TO INDUSTRY PRACTICE."

10 MS. MAROULIS: OBJECTION, NOT PROPER  
11 IMPEACHMENT. CONSISTENT WITH THE WITNESS'S  
12 STATEMENT.

13 THE COURT: OVERRULED. GO AHEAD, PLEASE.

14 BY MR. LEE:

15 Q WERE YOU ASKED THAT QUESTION AND DID YOU GIVE  
16 THAT ANSWER UNDER OATH, SIR?

17 A I DID.

18 Q ALL RIGHT. NOW, I WANT TO ASK YOU ABOUT  
19 SOMETHING ELSE YOU SAID TO THE LADIES AND GENTLEMEN  
20 OF THE JURY, WHICH WAS THE QUESTION OF WHETHER  
21 PEOPLE DISCLOSE THEIR IPR BEFORE A PROPOSAL WAS  
22 ADOPTED.

23 IT'S TRUE, IS IT NOT, SIR, THAT YOU HAVE  
24 NO EVIDENCE, AND YOU'RE NOT AWARE OF ANY SPECIFIC  
25 INSTANCE WHERE SOMEONE MADE A PROPOSAL TO ETSI AND

1 FAILED TO DISCLOSE THEIR PATENTS UNTIL AFTER THE  
2 PROPOSAL WAS ADOPTED; CORRECT?

3 A CAN I HAVE THAT BACK, PLEASE.

4 Q SURE. I'LL BREAK IT DOWN FOR YOU. I WANT TO  
5 TAKE A SITUATION WHERE AN ETSI MEMBER IS MAKING A  
6 PROPOSAL, YOU KNOW THAT CAN HAPPEN, CORRECT?

7 A YES.

8 Q I WANT YOU TO TAKE THE SITUATION WHERE THEY  
9 HAVE A PATENT, OR A PATENT APPLICATION, DO YOU HAVE  
10 THAT IN MIND?

11 A YES.

12 Q AND I WANT YOU TO TAKE THE SITUATION WHERE  
13 THEY DON'T DISCLOSE IT UNTIL AFTER THE STANDARD HAS  
14 BEEN ADOPTED.

15 DO YOU HAVE THAT IN MIND?

16 A YES.

17 Q NOW, THE FACT OF THE MATTER IS YOU DON'T KNOW  
18 ONE WAY OR ANOTHER OF ANY SPECIFIC INSTANCES WHERE  
19 SOMEONE MADE A PROPOSAL, DISCLOSED AND DISCLOSED  
20 BEFORE IT WAS FIXED; CORRECT?

21 A I DON'T HAVE SPECIFIC INFORMATION. I'VE GOT  
22 THE DATA THAT I REFERRED TO AND PRESENTED EARLIER.

23 Q AND YOU HAVE NO SPECIFIC INSTANCES WHERE  
24 PEOPLE, OTHER THAN SAMSUNG, MADE A PROPOSAL, HAD A  
25 PATENT AND DIDN'T DISCLOSE UNTIL LATER; CORRECT?

1 A I HAVE NO SPECIFIC INSTANCES.

2 Q AND, IN FACT, DR. TEECE, THE ONLY SPECIFIC  
3 INSTANCES YOU'VE LOOKED AT ARE THE ONES THAT DR.  
4 WALKER TESTIFIED ABOUT; CORRECT?

5 A IN TERMS OF SPECIFICS, YES, I'VE LOOKED --  
6 WHAT I SHOWED YOU WAS THE AGGREGATE DATA WHICH  
7 TELLS A COMPELLING STORY.

8 Q DR. TEECE, MY QUESTION WAS DIFFERENT. I'M  
9 TRYING TO LOOK AT THE SPECIFIC QUESTION OF WHETHER  
10 SOMEONE BROKE THE RULES.

11 DR. WALKER PUT TWO CHRONOLOGIES ON THE  
12 BOARD FOR TWO PATENTS?

13 A YES.

14 Q YOU HAVE NO REASON TO DISAGREE WITH THOSE  
15 CHRONOLOGIES; CORRECT?

16 A CORRECT.

17 MR. LEE: THANK YOU, SIR. NOTHING  
18 FURTHER.

19 THE COURT: ALL RIGHT. TIME IS NOW 3:21.  
20 ANY REDIRECT?

21 MS. MAROULIS: YOUR HONOR, NO REDIRECT.

22 BUT FOR THE RECORD, COUNSEL STATED THAT  
23 THIS WAS EXCLUDED. THIS EXHIBIT WAS NOT SUBJECT TO  
24 YOUR ORDER. THE RECORD SHOULD REFLECT THAT.

25 MR. LEE: NO. YOUR HONOR, CAN WE TAKE A

1 LOOK AT THIS?

2 MR. VERHOEVEN: WE DON'T HAVE TIME.

3 THE COURT: WE DON'T HAVE TIME.

4 MR. VERHOEVEN: SAMSUNG RECALLS

5 DR. WILLIAMS.

6 THE CLERK: RAISE YOUR RIGHT HAND,

7 PLEASE.

8 **TIM WILLIAMS,**

9 BEING RECALLED AS A WITNESS ON BEHALF OF THE

10 DEFENDANT, HAVING BEEN PREVIOUSLY SWORN, WAS

11 EXAMINED AND TESTIFIED AS FOLLOWS:

12 THE WITNESS: I DO.

13 THE CLERK: THANK YOU. PLEASE BE SEATED.

14 **DIRECT EXAMINATION**

15 BY MR. VERHOEVEN:

16 Q GOOD AFTERNOON, DR. WILLIAMS.

17 THE COURT: TIME IS 321. GO AHEAD,

18 PLEASE.

19 THE WITNESS: GOOD AFTERNOON.

20 BY MR. VERHOEVEN:

21 Q YOU HEARD DR. KIM AND DR. KNIGHTLY TESTIFY

22 WITH RESPECT TO VALIDITY OF THE '516 PATENT AND THE

23 '941 PATENT THIS MORNING?

24 A YES, I DID.

25 Q HE ALSO TESTIFIED ABOUT INFRINGEMENT. YOU'VE

1 ALREADY PROVIDED YOUR OPINION ON THAT, SO I'M NOT  
2 GOING TO ASK YOU ANY QUESTIONS ON INFRINGEMENT.  
3 LET'S TALK ABOUT THE VALIDITY OPINIONS. ON THE  
4 '516 PATENT, DR. KIM, HE IDENTIFIED THE HATTA  
5 REFERENCE. CAN WE PUT UP PX 1002. DO YOU REMEMBER  
6 THE HATTA REFERENCE, SIR?

7 A YES, I DO.

8 Q DO YOU REMEMBER DR. KIM TESTIFIED IT WAS HIS  
9 OPINION THAT THAT REFERENCE RENDERS THE '516 PATENT  
10 OBVIOUS?

11 A YES, I DO.

12 Q DO YOU AGREE OR DISAGREE WITH HIS OPINION?

13 A I DISAGREE FOR THREE REASONS. THE FIRST IS  
14 HATTA IS TALKING ABOUT THE POWER AMPLIFIER IN A  
15 BASE STATION, NOT THE MOBILE DEVICE.

16 SO AS I SHOWED EARLIER THIS WEEK, IN THAT  
17 GRAPHIC WITH THE BASE STATION AND MULTIPLE MOBILES,  
18 THE BASE STATION WAS TALKING TO MULTIPLE MOBILES AT  
19 ONE TIME. THE MOBILE IS ONLY TALKING TO A SINGLE  
20 BASE STATION AT A TIME. SO IT'S AN ENTIRELY  
21 DIFFERENT PROBLEM.

22 ALSO, WITHIN HATTA, THERE'S NO HARQ  
23 CHANNEL. THERE'S NO E-DPDCH CHANNEL. AND ALSO IN  
24 HATTA, IF WE LOOK AT DR. KIM'S SLIDE FROM EARLIER  
25 TODAY.

1 Q CAN WE PUT UP PDX 35.16?

2 A DR. KIM PUT UP THIS SLIDE, IF YOU LOOK ON THE  
3 BOTTOM, THIS RED RECTANGLE IS ACTUALLY SCALING THE  
4 VOICE CHANNEL. THAT'S THE PROBLEM THAT THE '516  
5 WAS SOLVING. SO HATTA ACTUALLY IS CAUSING THE  
6 PROBLEM THAT THE '516 SOLVES.

7 Q NOW, DR. KIM REFERENCED PRIOR ART FIGURES FROM  
8 THE '516 PATENTS, FIGURES 5 AND 6, AND SAID, WELL,  
9 YOU COULD COMBINE THOSE AND GET THE INVENTION IF  
10 YOU COMBINE THEM WITH HATTA. DO YOU REMEMBER THAT?

11 A YES.

12 Q DO YOU AGREE WITH THAT OPINION?

13 A ABSOLUTELY NOT.

14 Q EXPLAIN TO THE JURY WHY?

15 A HATTA IS DESCRIBING A PROBLEM. FIGURES 4 AND  
16 5 ARE DESCRIBING A PROBLEM. IF YOU COMBINE TWO  
17 PROBLEMS TOGETHER, YOU DON'T GET A SOLUTION.

18 Q ALL RIGHT. LET'S TURN QUICKLY TO THE '941  
19 PATENT, DR. KNIGHTLY'S TESTIMONY, HE TESTIFIED AS  
20 TO THE '658 PATENT, PX 97.1. DO YOU REMEMBER THAT,  
21 SIR?

22 A YES.

23 Q AND HE TESTIFIED THAT IN HIS OPINION, THE '658  
24 PATENT ANTICIPATED THE '941 PATENT . DO YOU  
25 REMEMBER THAT TESTIMONY?



1 A YES, I DO.

2 Q DO YOU AGREE OR DISAGREE?

3 A I DISAGREE. AGARWAL IS ABOUT A FIXED  
4 COMMUNICATION FACILITY THAT TALKS TO A SATELLITE.  
5 SO AGARWAL IS ABOUT BIG SATELLITE ANTENNAS AND  
6 CEMENT BUILDINGS AND AGARWAL WAS NOT ABOUT A MOBILE  
7 COMMUNICATION SYSTEM.

8 ALSO, IF YOU LOOK AT THE PACKET  
9 HEADERS --

10 Q LET'S PUT UP PX 97.9 FIGURE 8A, BLOW IT UP.  
11 HE SHOWED THIS DURING HIS TESTIMONY; RIGHT?

12 A HE SHOWED PACKET HEADERS, YES.

13 Q YEAH.

14 A IF YOU LOOK AT THE PACKET HEADERS IN AGARWAL,  
15 THERE'S NO ONE BIT FIELD, WHICH IS CALLED OUT IN  
16 THE CLAIMS OF THE PATENT. THERE'S NO SERIAL  
17 NUMBER. AND THERE'S NO LENGTH INDICATOR FIELD.

18 Q SO IN YOUR OPINION, ARE EITHER OF THESE  
19 PATENTS INVALIDATED BASED ON THE TESTIMONY YOU'VE  
20 HEARD?

21 A ABSOLUTELY NOT.

22 MR. VERHOEVEN: THANK YOU, SIR. NO  
23 FURTHER QUESTIONS AT THIS TIME.

24 THE COURT: ALL RIGHT. TIME IS 3:25.  
25 ANY CROSS?

1 MR. LEE: CAN I HAVE PDX 35.16 ON THE  
2 SCREEN, PLEASE.

3 **CROSS-EXAMINATION**

4 BY MR. LEE:

5 Q DR. WILLIAMS, YOUR SLIDE IS ON THE TOP HALF OF  
6 THIS PDX; CORRECT?

7 A CORRECT.

8 Q ON THE LEFT IT'S FIGURE 5 OF THE PATENT;  
9 CORRECT?

10 A YES.

11 Q IT'S LABELED PRIOR ART; CORRECT?

12 A IT IS LABELED PRIOR ART. HOWEVER, IF YOU READ  
13 THE SPECIFICATION OF THE '516.

14 Q DR. WILLIAMS, IS IT LABELED PRIOR ART?

15 A HOWEVER, IF YOU READ THE SPECIFICATION OF THE  
16 '516, THE SPECIFICATION CLEARLY IDENTIFIES THE  
17 PRIOR ART ASPECT OF THIS DRAWING AS EQUAL SCALING  
18 OF THE CHANNELS.

19 Q DR. WILLIAMS, MR. VERHOEVEN ASKED OUR  
20 WITNESSES RESPECTFULLY TO ANSWER YES OR NO. I'M  
21 GOING TO DO THE SAME TO YOU, ONLY BECAUSE WE'RE  
22 NEAR THE END OF THE TRIAL.

23 MY QUESTION IS PRETTY SIMPLE. IS IT  
24 LABELED PRIOR ART?

25 A IT'S LABELED PRIOR ART, BUT THE PRIOR ART

1 ASPECT OF THIS DRAWING IS THE EQUAL SCALING OF THE  
2 CHANNELS.

3 Q SO --

4 A NOT THE EXTRUSION --

5 Q JUST TELL THE LADIES AND GENTLEMEN OF THE  
6 JURY, IS THIS FIGURE PRIOR ART OR NOT?

7 A THIS FIGURE IS PRIOR ART WITH RESPECT TO THE  
8 EQUAL SCALING OF THE CHANNELS, NOT THE INCLUSION OF  
9 THE E-DPDCH CHANNEL THAT DR. KIM TALKED ABOUT THIS  
10 MORNING.

11 Q AND FIGURE 4, WHICH IS LABELED PRIOR ART, IS  
12 NOT PRIOR ART EITHER?

13 A LET'S LOOK AT IT.

14 Q SURE. FIGURE 4. THAT SAYS PRIOR ART, TOO,  
15 YES OR NO?

16 A THIS SHOWS THE EQUAL SCALING WOULD BE  
17 PERFORMED.

18 Q DR. WILLIAMS, DOES IT SAY PRIOR ART OR NOT?

19 A THE WORDS PRIOR ART ARE THERE.

20 Q OKAY.

21 A YES.

22 Q AND THE PATENTEE, YOU KNOW THAT SAMSUNG WROTE  
23 THOSE WORDS THERE; CORRECT?

24 A YES. BUT THE INVENTORS ALL TESTIFIED THAT  
25 THEIR INVENTION WAS WITH REGARDS TO SCALING THE

1 HARQ CHANNEL OVER THE NON-HARQ CHANNEL.

2 Q DR. WILLIAMS, THE '941 PATENT, THE OTHER  
3 PATENT YOU TESTIFIED ABOUT JUST A MINUTE AGO?

4 A YES.

5 Q THAT'S THE ALTERNATIVE E-BIT PATENT; CORRECT?

6 A YES.

7 Q BUT YOU HAD NEVER HEARD OF UNTIL THE LAWYERS  
8 CALLED YOU IN THIS CASE; CORRECT?

9 A YES. BUT IT'S PART OF THE STANDARD.

10 Q ALL RIGHT. NOW, YOU TOLD US THAT YOU BELIEVE  
11 IN A STRONG PATENT SYSTEM; CORRECT? DO YOU  
12 REMEMBER THAT?

13 A THAT'S WHAT I WOULD LIKE TO LEAVE AS A LEGACY  
14 TO MY CHILDREN, YES.

15 Q SURE. THAT APPLIES TO APPLE'S PATENTS.

16 MR. VERHOEVEN: OBJECTION. BEYOND OF  
17 SCOPE OF MY DIRECT EXAM.

18 THE COURT: SUSTAINED.

19 BY MR. LEE:

20 Q WE JUST TALKED ABOUT THE SAMSUNG PATENTS;  
21 CORRECT?

22 A I'M SORRY.

23 Q YOU JUST TALKED ABOUT THE VALIDITY OF THE  
24 SAMSUNG PATENTS?

25 A I DID.

1 Q CORRECT?

2 A YES.

3 Q AND BEYOND THE OPINIONS YOU'VE JUST OFFERED,  
4 YOU'VE OFFERED NO OTHER OPINIONS ON THE VALIDITY OF  
5 THE PATENTS; CORRECT?

6 A NOT IN COURT TODAY.

7 MR. LEE: THANK YOU.

8 THE COURT: ALL RIGHT. TIME IS 3:28.  
9 ANY REDIRECT?

10 MR. VERHOEVEN: NO.

11 THE COURT: NO? ALL RIGHT. THE WITNESS  
12 MAY BE EXCUSED. ALL RIGHT. APPLE HAS GOT SIX  
13 MINUTES -- ACTUALLY YOU BOTH HAVE SIX MINUTES LEFT.

14 MR. JOHNSON: I DON'T KNOW WHAT TO DO  
15 WITH ALL THAT TIME.

16 THE COURT: AND I WILL STOP YOU WHEN YOUR  
17 TIME IS UP. NO EXTENSIONS, OKAY?

18 MR. LEE: YOU GO FIRST.

19 MR. JOHNSON: I FEEL LIKE I HAVE A BATON.

20 THE COURT: THE OLYMPIC TORCH IS BEING  
21 PASSED.

22 MR. JOHNSON: YOUR HONOR, SAMSUNG IS  
23 GOING TO CALL DR. WOODWARD YANG AS OUR LAST  
24 WITNESS, AND JUST WHILE HE'S TAKING THE STAND, I'M  
25 GOING TO READ INTO THE RECORD REQUEST FOR ADMISSION

1 NUMBER 1966, WHICH WAS A --

2 THE COURT: ALL RIGHT. 3:29. THAT WILL  
3 COUNT TOWARDS YOUR TIME.

4 MR. JOHNSON: SO THE QUESTION WAS ASKED  
5 OF APPLE, "ADMIT THAT HUNGFUJIN PRECISION  
6 ELECTRONICS," A COMPANY LIMITED IN CHINA, "RECEIVES  
7 INTEL BASEBAND PROCESSORS ON BEHALF OF APPLE."

8 APPLE'S RESPONSE: "APPLE ADMITS REQUEST  
9 NUMBER 1966."

10 THANK YOU. DR. YANG --

11 THE COURT: OH, LET ME STOP YOUR TIME,  
12 3:29. I'M STOPPING YOUR TIME. WE'RE JUST  
13 RESWEARING PEOPLE IN. BELTS AND SUSPENDERS.

14 THE COURT: PLEASE RAISE YOUR RIGHT HAND.

15 **WOODWARD YANG,**  
16 BEING RECALLED AS A WITNESS ON BEHALF OF THE  
17 DEFENDANT, HAVING BEEN PREVIOUSLY SWORN, WAS  
18 EXAMINED AND TESTIFIED AS FOLLOWS:

19 THE WITNESS: YES, I DO.

20 THE COURT: THANK YOU. PLEASE BE SEATED.

21 ALL RIGHT. IT'S 3:29, GO AHEAD, PLEASE  
22 MUCH.

23 MR. JOHNSON: BRIAN, CAN WE PUT UP PDX  
24 42.4, PLEASE.

25 / / /

**DIRECT EXAMINATION**

1  
2 BY MR. JOHNSON:

3 Q THIS WAS A DEMONSTRATIVE, DR. YANG, THAT WAS  
4 USED WITH DR. DOURISH, AND I WANT TO ASK YOU, THEY  
5 PUT UP A PICTURE OF THE AM/FM RADIO. DO YOU THINK  
6 THIS WAS A PROPER ANALOGY?

7 A THIS IS AN IMPROPER ANALOGY. THIS IS A VERY  
8 SIMPLE DEVICE, IT HAS ONE FUNCTIONALITY, WHEREAS  
9 THE PATENTS --

10 MR. LEE: YOUR HONOR, I OBJECT. THIS IS  
11 INFRINGEMENT.

12 MR. JOHNSON: NO, IT'S NOT. IT'S IN THE  
13 CONTEXT OF VALIDITY.

14 THE COURT: OVERRULED. GO AHEAD, PLEASE.

15 THE WITNESS: THIS SPEAKS SPECIFICALLY  
16 TO -- THIS IS A VERY SIMPLE DEVICE, IT HAS ONE  
17 FUNCTIONALITY, WHEREAS THE PATENTS ARE TALKING  
18 ABOUT COMPLEX DEVICES. THESE ARE DEVICES THAT ARE  
19 CAMERAS, PHONES, MP3 PLAYERS TOGETHER.

20 SO WHEN YOU LOOK AT THEM, YOU NEED TO  
21 CONSIDER THE MODE HAS MANY SWITCHES AND WHEN YOU  
22 CONSIDER WHAT A MODE IS CALLED, YOU NEED TO  
23 CONSIDER HOW ALL THOSE SWITCHES ARE SET.

24 SO, IN FACT, THE PATENTS ARE TALKING  
25 ABOUT APPS OR APPLICATION PROGRAMS THAT RUN ON

1 THESE DEVICES AND WHEN THOSE DEVICES RUN, THEY HAVE  
2 MODES.

3 BY MR. JOHNSON:

4 Q DR. DOURISH ALSO TALKED ABOUT THE LG PATENT  
5 APPLICATION. RYAN, CAN WE PLEASE PUT UP 42.24.

6 DOES THE LG PATENT APPLICATION SATISFY  
7 THE LAST LIMITATION OF CLAIM 10 OF THE '893 PATENT,  
8 THE BOOKMARKING PATENT?

9 A NO, THIS PATENT APPLICATION DOES NOT SATISFY  
10 THE LAST LIMITATION OF THE '893 PATENT. THE LAST  
11 LIMITATION OF THE '893 PATENT SPECIFICALLY SAYS YOU  
12 HAVE TO GO FROM A DISPLAY MODE TO A CAMERA  
13 PHOTOGRAPHING MODE BACK TO THE DISPLAY MODE TO SEE  
14 THE BOOKMARK.

15 IN FACT, WHEN YOU READ THIS OVER HERE,  
16 IT'S JUST TALKING ABOUT WHAT'S GOING ON BETWEEN  
17 DIFFERENT DISPLAY MODES. THERE IS NO TALK ABOUT  
18 GOING FROM THE DISPLAY MODE TO A CAMERA MODE BACK  
19 TO THE DISPLAY MODE. THAT'S MUSIC.

20 Q LET'S TALK ABOUT THE BACKGROUND MUSIC PATENT,  
21 THE '711 PATENT. APPLE'S EXPERT, DR. GIVARGIS,  
22 SAID THE K700 PHONE RENDERS THE '711 PATENT OBVIOUS  
23 AND IT WASN'T REVIEWED BY THE PATENT OFFICE. DO  
24 YOU AGREE?

25 A I AGREE THAT THEY DIDN'T LOOK AT THE 700



1           PHONE.    BUT THE PATENT OFFICE ACTUALLY CONSIDERED A  
2           MORE ADVANCED PHONE, WHICH IS CALLED THE K750, AND  
3           THE PATENT OFFICE SPECIFICALLY HAD THE USER MANUAL  
4           FOR THAT.

5                         AND THE FUNCTIONALITIES AND CAPABILITIES  
6           OF THE PHONE ARE EXACTLY THE SAME.    AND, IN FACT,  
7           THE THING THAT'S MISSING FROM THE K750 AND K700 IS  
8           THE IMPORTANT PART ABOUT A CONTROLLER GENERATING A  
9           MUSIC BACKGROUND PLAY OBJECT.

10           Q       DO YOU AGREE WITH DR. GIVARGIS THAT THE WONG  
11           PATENT PROVIDES MOTIVATION TO INCLUDE AN APPLETS?

12           A       NO, NOT AT ALL.    THE WONG PATENT IS ACTUALLY  
13           FROM SUN MICROSYSTEMS, THE PEOPLE WHO WROTE JAVA,  
14           SO IT'S ALL ABOUT JAVA APPLICATIONS AND JAVA  
15           APPLETS.

16                         AND SPECIFICALLY THE PATENT OFFICE HAD  
17           SEVERAL REFERENCES DISCUSSING JAVA APPLICATIONS AND  
18           JAVA APPLETS IN THERE AS WELL, AND JAVA  
19           APPLICATIONS AND JAVA APPLETS, AS WE KNOW, ARE  
20           DIFFERENT FROM THE APPLETS THAT WE HAVE IN THE '711  
21           PATENT.

22                         THE APPLETS WE HAVE IN THE '711 PATENT, AS  
23           WE KNOW THE COURT HAS DEFINED FOR US, IS AN  
24           APPLICATION DESIGNED TO RUN WITHIN AN APPLICATION  
25           MODULE.

1 Q LET'S TALK ABOUT THE '460 PATENT. IN LOOKING  
2 AT THE VALIDITY OF THE '460 PATENT, WHAT'S YOUR  
3 OPINION ABOUT WHETHER THE PATENT REQUIRES THAT THE  
4 THREE CORE FUNCTIONS BE PERFORMED IN A CERTAIN  
5 SEQUENCE?

6 A THE THREE CORE FUNCTIONS, AS I EXPLAINED MANY  
7 TIMESM CAN BE PERFORMED IN ANY ORDER. AND IN  
8 PARTICULAR, I BELIEVE THAT THERE WAS ACTUALLY CLAIM  
9 1, IF I COULD HAVE THAT UP, I DON'T KNOW -- THERE  
10 WAS THIS IMPLICATION THAT WHEN YOU LOOKED AT THE  
11 SECOND E-MAIL MODE, YOU WOULD SEE AN IMAGE, AND THE  
12 IDEA THAT AFTER YOU SAW THAT IMAGE, YOU HAVE TO  
13 IMMEDIATELY SEQUENTIALLY SCROLL THROUGH THE IMAGES,  
14 AND THERE'S AN IMPLICATION THAT C NEEDS TO  
15 IMMEDIATELY FOLLOW B.

16 IN FACT, THAT'S NOT TRUE AT ALL. IN  
17 FACT, IF YOU LOOK AT THIS, AND YOU CAN SEE THAT  
18 IMAGE AND YOU CAN SEE OTHER IMAGES OVER HERE.

19 YOU CAN ALSO IMAGINE THAT LOGICALLY THIS  
20 COULD MAKE SENSE IF C WERE TO FOLLOW E OR IF C WERE  
21 TO COME BEFORE B.

22 IN FACT, IF YOU LOOK AT THE PATENT  
23 SPECIFICATION IN FIGURE 8, THE FLOW CHART THAT THEY  
24 SHOW ACTUALLY SHOWS THE SCROLLING OF IMAGES  
25 OCCURRING BEFORE ENTERING THE SECOND E-MAIL

1 TRANSMISSION MODE.

2 Q NOW, DR. SRIVASTAVA, APPLE'S EXPERT, COMBINED  
3 THREE DIFFERENT REFERENCES, THE SUSO, HARRIS, AND  
4 YOSHIDA REFERENCE TO SAY THE '460 PATENT WAS  
5 OBVIOUS. DO YOU AGREE WITH HIS OPINION?

6 A I ABSOLUTELY DISAGREE. THE FIRST TWO PATENTS,  
7 THE SUSO PATENT AND HARRIS PATENT ACTUALLY DO NOT  
8 DISCLOSE A SECOND E-MAIL TRANSMISSION MODE WHERE  
9 YOU CAN ACTUALLY SEE THE PICTURE AND COMPOSE A  
10 MESSAGE THAT YOU WANT TO SEND.

11 AND THEN HE SAYS THAT THE YOSHIDA PATENT  
12 ACTUALLY HAS THIS. BUT IF YOU LOOK AT WHAT HE  
13 DISPLAYED UP FOR THE YOSHIDA PATENT, HE'S -- IT'S  
14 NOT DISPLAYING THE IMAGE. IT'S ACTUALLY JUST  
15 ATTACHING AN IMAGE FILE, SO THE IMAGE IS NOT  
16 VISIBLE IN THE E-MAIL THAT YOU'RE SENDING. SO THIS  
17 IS NOT A SECOND E-MAIL TRANSMISSION MODE.

18 MR. JOHNSON: YOUR HONOR, NO FURTHER  
19 QUESTIONS.

20 THE COURT: ALL RIGHT. THE TIME IS  
21 EXPIRED. THANK YOU.

22 MR. JOHNSON: I CROSSED THE FINISH LINE.

23 THE COURT: YES, THAT'S LIGHT.

24 ALL RIGHT. MR. LEE, YOU'VE GOT SIX  
25 MINUTES.

1 MR. LEE: I'M GOING TO TRY TO FOLLOW  
2 ACROSS THE FINISH LINE.

3 THE COURT: 3:34. GO AHEAD.

4 **CROSS-EXAMINATION**

5 BY MR. LEE:

6 Q DR. YANG, LET'S GO A LITTLE BIT SLOW SO THE  
7 JURY GETS IT. ON THE '711 PATENT, IS IT YOUR  
8 TESTIMONY TO THIS JURY THAT THE PATENT OFFICE  
9 ACTUALLY HAD A K700 PHONE?

10 A NO. I BELIEVE I SAID THEY HAD THE K750 USER  
11 MANUAL.

12 Q THEY DIDN'T HAVE ANY PHONE AT ALL; CORRECT?

13 A THEY HAD THE K750 USER MANUAL, WHICH SHOWS THE  
14 SAME FUNCTIONALITY AS THE K700 AND K750.

15 Q DR. YANG, DID THEY HAVE THE PHONE OR NOT?

16 A THEY HAD THE SAME USER MANUAL WHICH HAS THE  
17 SAME FUNCTIONALITY AS THE K700.

18 Q THAT'S A NO, RIGHT? THEY DIDN'T HAVE THE  
19 PHONE?

20 A NO.

21 Q OKAY. NOW, TURN, IF YOU WOULD, IN YOUR BINDER  
22 TO VOLUME 1, TAB 4.

23 A VOLUME 1, TAB 4. IT'S A WHITE BINDER? OR --

24 MR. LEE: WHITE BINDER? WHITE BINDER,  
25 YES.

1 Q AND YOU'LL FIND THE FILE HISTORY OF THE '460  
2 PATENT?

3 A OKAY.

4 Q DO YOU SEE THAT? YOU REVIEWED THAT; CORRECT?

5 A YES. I PRESUME THAT YOU'RE REPRESENTING THIS  
6 CORRECTLY. YOU DON'T WANT ME TO LOOK THROUGH  
7 EVERYTHING.

8 Q THAT'S JX 1066?

9 A YES.

10 MR. LEE: WE OFFER IT, YOUR HONOR.

11 THE COURT: ANY OBJECTION?

12 MR. JOHNSON: YOUR HONOR, I THINK IT'S  
13 BEEN OFFERED FOR PURPOSES OF INFRINGEMENT THIS  
14 MORNING.

15 MR. LEE: NO, THIS IS -- THIS GOES TO THE  
16 INVALIDITY TESTIMONY, THE FILE HISTORY.

17 THE COURT: THE FILE HISTORY OF THE '460.  
18 IT'S ADMITTED.

19 MR. LEE: IT'S A JOINT EXHIBIT.

20 MR. JOHNSON: I DIDN'T ASK ANY QUESTIONS  
21 ABOUT THE FILE HISTORY. IT'S OUTSIDE THE SCOPE,  
22 YOUR HONOR.

23 MR. LEE: THAT IS THE FILE HISTORY OF THE  
24 PATENT THAT HE JUST GAVE INVALIDITY ON.

25 THE COURT: IT'S ADMITTED.

1 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER  
2 1066, HAVING BEEN PREVIOUSLY MARKED FOR  
3 IDENTIFICATION, WAS ADMITTED INTO  
4 EVIDENCE.)

5 BY MR. LEE:

6 Q NOW, JUST A COUPLE MORE QUESTIONS. DR. YANG,  
7 YOU UNDERSTAND THAT THERE'S A CONCEPT CALLED  
8 SECONDARY CONSIDERATION; CORRECT?

9 A YES.

10 Q SECONDARY CONSIDERATIONS ARE REAL WORLD THINGS  
11 JURORS CAN LOOK AT TO FIGURE OUT IF THERE'S BEEN AN  
12 INVENTION OR NOT; CORRECT?

13 A YES.

14 Q RIGHT. SO ONE OF THE REAL WORLD THINGS YOU  
15 CAN LOOK AT IS WHETHER A PRODUCT, BASED UPON THE  
16 INVENTION, HAS BEEN COMMERCIALY SUCCESSFUL;  
17 CORRECT?

18 A THAT IS A SECONDARY CONSIDERATION, YES.

19 Q BUT WE KNOW FOR THE '893, THE '460 AND THE  
20 '711 THAT AS FAR AS YOU KNOW, SAMSUNG TOOK THE  
21 POSITION IN THIS CASE THAT IT HAD NO PRODUCT,  
22 SUCCESSFUL OR OTHERWISE, THAT PRACTICED THESE  
23 PATENTS; CORRECT?

24 A COULD YOU REPEAT THE QUESTION AGAIN? I THINK  
25 IT'S VERY IMPORTANT.

1 Q SURE.

2 A I THINK IT'S VERY IMPORTANT.

3 Q DID YOU REMEMBER THE INFRINGEMENT CONTENTIONS  
4 THAT YOU SAW AT THE BEGINNING OF YOUR EXAMINATION?

5 A SOME OF THE DOCUMENTS I HAD SEEN BEFORE. SOME  
6 I HAD NOT.

7 Q AND DO YOU REMEMBER SEEING WHAT SAMSUNG SAID  
8 ABOUT WHETHER IT HAD PHONES THAT USED THESE  
9 INVENTIONS?

10 A WHICH INVENTIONS ARE YOU SPEAKING ABOUT?

11 Q THE '460 AND THE '893.

12 A AH, OKAY. YES.

13 Q AND THERE WERE NO SAMSUNG PHONES, SUCCESSFUL  
14 OR OTHERWISE, THAT USED THOSE PATENTS AS SAMSUNG  
15 DISCLOSED TO THIS COURT; CORRECT?

16 A THAT PARTICULAR DOCUMENT WAS A SMALL SECTION  
17 OF THE NUMBER OF PHONES THAT SAMSUNG PRODUCES. AND  
18 SO THEY SHOWED -- THEY DIDN'T SHOW THAT THEY WERE  
19 USING THOSE INVENTIONS IN THOSE PARTICULAR PHONES.

20 BUT I HAVE NO IDEA ABOUT ALL THE OTHER  
21 PHONES THAT SAMSUNG PRODUCTS.

22 Q FAIR ENOUGH. YOU HAVE NO IDEA ABOUT ALL THE  
23 OTHER PHONES; CORRECT?

24 A YES.

25 MR. LEE: NOTHING FURTHER, YOUR HONOR.

1 THE COURT: YOU HAVE ONE MINUTE.

2 MR. LEE: I'M CEDING IT.

3 MR. PRICE: TO US?

4 THE COURT: THANK YOU VERY MUCH. YOU'RE  
5 EXCUSED.

6 AND WE ARE DONE WITH THE EVIDENCE PORTION  
7 OF THIS TRIAL. I'M GOING TO EXCUSE YOU FOR THE  
8 DAY. YOU HAVE MONDAY OFF.

9 WE WILL SEE YOU ON TUESDAY AT 9:00  
10 O'CLOCK FOR JURY INSTRUCTIONS AND CLOSING AND THEN  
11 YOU WILL START DELIBERATING.

12 SAME ADMONITION ALL THE TIME. PLEASE  
13 KEEP AN OPEN MIND. PLEASE DO NOT RESEARCH THE  
14 CASE, DO NOT READ ABOUT THE CASE, PLEASE DO NOT  
15 DISCUSS THE CASE WITH ANYONE. OKAY. WE'LL SEE YOU  
16 BACK HERE TUESDAY MORNING. THANK YOU FOR YOUR  
17 PATIENCE AND YOUR SERVICE.

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

20 THE COURT: THE RECORD SHOULD REFLECT THE  
21 JURORS HAVE LEFT THE COURTROOM. DR. YANG, YOU MAY  
22 STEP DOWN.

23 THE WITNESS: THANK YOU.

24 THE COURT: PLEASE TAKE A SEAT. WHY  
25 DON'T WE TAKE A FIVE MINUTE BREAK BEFORE WE HAVE



1 OUR RULE 50 CONFERENCE AND I ALSO WOULD LIKE TO  
2 KNOW IF YOU HAVE ANY MORE THOUGHTS ABOUT HOW YOU  
3 WANT TO HANDLE THE JURY INSTRUCTION OBJECTIONS.  
4 OKAY. LET'S TAKE A FIVE MINUTE BREAK. THANK YOU.

5 (WHEREUPON, A RECESS WAS TAKEN.)

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

8 THE COURT: OKAY. LET'S COME BACK. WITH  
9 REGARD TO CLEANING THE PHONES, AS LONG AS THERE'S A  
10 STIPULATION OF THE PARTIES, IF YOU WANT TO TAKE  
11 THEM OFF SITE AND BRING THEM BACK, THAT'S TOTALLY  
12 FINE. BUT I CAN'T LET EITHER PARTY COME BACK TO  
13 CHAMBERS. I DON'T THINK THAT WOULD BE APPROPRIATE.  
14 SO IF YOU WANT TO TAKE IT OFF SITE, THAT'S FINE  
15 WITH ME.

16 MR. JACOBS: I THINK WE WOULD PREFER TO  
17 KEEP EVERYTHING IN THE COURTROOM IF THAT'S THE  
18 COURT'S PLAN, BUT WE'LL TRY TO WORK OUT A TIME ON  
19 MONDAY.

20 THE COURT: THAT'S FINE. IF FOLKS WANT  
21 TO CLEAN THEM NOW, THAT'S FINE, TOO.

22 MR. JACOBS: WE'RE SUPERVISING, YOUR  
23 HONOR. SO IT'S A GROUP EFFORT.

24 THE COURT: ALL RIGHT. THAT'S FINE.

25 OKAY. SO LET'S GO -- LET'S DO FIRST ANY

1 RULE 50 MOTIONS AFTER SAMSUNG'S DEFENSIVE CASE TO  
2 APPLE'S AFFIRMATIVE CASE AND SAMSUNG'S AFFIRMATIVE  
3 CASE.

4 WHO WANTS TO MAKE A MOTION? ANYBODY?  
5 OH, I'M SORRY. WE ALREADY DID THAT.

6 MS. MAROULIS: I THOUGHT WE WERE GOING TO  
7 GO FOR THE WHOLE CASE, SO IT'S THE END OF THE CASE  
8 MOTION.

9 THE COURT: NO, I THINK WE SHOULD -- WE  
10 SHOULD -- OKAY. LET'S DO ANY RULE 50 MOTIONS AFTER  
11 APPLE'S REBUTTAL CASE ON ITS AFFIRMATIVE CASE, AND  
12 APPLE'S DEFENSIVE CASE TO SAMSUNG'S AFFIRMATIVE  
13 CASE.

14 WHO WANTS TO MAKE A MOTION?

15 MS. MAROULIS: YOUR HONOR, FIRST OF ALL,  
16 SAMSUNG RENEWS ALL OF ITS PRIOR JMOL MOTIONS  
17 PREVIOUSLY ARGUED.

18 THE COURT: OKAY.

19 MS. MAROULIS: IN ADDITION, WE MOVE ON  
20 ALL OF OUR OFFENSIVE PATENTS, AND SPECIFICALLY WE  
21 MOVE ON THE FACT THAT APPLE DID NOT ESTABLISH  
22 ANTICIPATION OR OBVIOUSNESS OF ALL OF THE PATENTS  
23 WE ASSERTED, WHICH IS FIVE OF THEM.

24 GOING THROUGH EACH PATENT SPECIFICALLY,  
25 WHEN ON THE '460 PATENT, THERE WAS NO EVIDENCE OF

1 ANTICIPATION, SO THAT SHOULD BE A RULE 50 FINDING.

2 AND APPLE HAS NOT PRESENTED SUFFICIENT  
3 EVIDENCE OF OBVIOUSNESS.

4 SAME THING WITH '893 PATENT, THERE'S NO  
5 SUFFICIENT EVIDENCE OF ANTICIPATION OR OBVIOUSNESS.

6 WITH RESPECT TO '711 PATENT, NO EVIDENCE  
7 AT ALL WAS PRESENTED AS TO ANTICIPATION AND NOT  
8 SUFFICIENT EVIDENCE TO ESTABLISH OBVIOUSNESS.

9 MOVING ON TO THE STANDARDS PATENTS, WITH  
10 RESPECT TO THE '516 PATENT, THERE WAS NO EVIDENCE  
11 PRESENTED AT ALL FOR ANTICIPATION, AND APPLE CANNOT  
12 AND DID NOT MEET THEIR BURDEN OF OBVIOUSNESS WITH  
13 THE HATTA APPLICATION ALONE, OR IN COMBINATION WITH  
14 VARIOUS FIGURES OF THE '516 PATENT.

15 WITH RESPECT TO THE '941 PATENT, APPLE  
16 CANNOT AND DID NOT MEET THEIR BURDEN OF  
17 ANTICIPATION OR OBVIOUSNESS BASED UPON THE AGARWAL  
18 PRIOR ART, WHICH IS THE '658 PATENT.

19 IF YOUR HONOR WOULD PERMIT, WE WILL MOVE  
20 TO OTHER OF APPLE'S DEFENSES, SPECIFICALLY APPLE  
21 HAS NOT ESTABLISHED AND MET ITS BURDEN ON THE  
22 DEFENSE OF EXHAUSTION.

23 THERE ARE TWO REASONS WHY THEY HAVE NOT  
24 DONE SO. FIRST OF ALL, THERE'S NOT BEEN NO  
25 EVIDENCE THAT THE SALE IS AUTHORIZED AND TAKES

1 PLACE IN THE UNITED STATES. THE CASE LAW, SUCH AS  
2 MINEBEA VERSUS PAPST, AND OTHER CASES, ESTABLISH  
3 THAT THE AUTHORIZED SALE HAS TO HAPPEN IN THE  
4 UNITED STATES. THERE WAS NO SUCH EVIDENCE AND, IN  
5 FACT, SAMSUNG ESTABLISHED BY REFERENCE TO THE  
6 REQUEST FOR ADMISSION THAT THE DELIVERY OF CHIPS IS  
7 TAKEN IN CHINA AND NOT IN THE UNITED STATES.

8 SECONDLY, THERE'S NO EVIDENCE, DIRECT OR  
9 INDIRECT, THAT THE INTEL -- THAT INTEL CORPORATION  
10 SUPPLIES THE CHIPS TO APPLE AND THERE IS NO  
11 EVIDENCE THAT INTEL WAS AUTHORIZED AND COULD  
12 UNDERGO OR EXTEND RIGHTS TO ANY OF ITS  
13 SUBSIDIARIES.

14 FOR THOSE REASONS, WE RESPECTFULLY MOVE  
15 FOR A RULE 50 ON EXHAUSTION.

16 WITH RESPECT TO APPLE'S ANTITRUST CLAIM,  
17 THERE ARE FOUR OR FIVE SEPARATE GROUNDS WHICH WE'LL  
18 BRIEF IN OUR SUBMISSION YOUR HONOR TOMORROW, BUT  
19 WE'LL ENUMERATE THEM BRIEFLY. APPLE FAILED TO  
20 ESTABLISH INJURY. IN FACT, THEY FAILED TO PRESENT  
21 EVIDENCE OF AN ANTITRUST MARKET THROUGH THE VERY  
22 INSUFFICIENT TESTIMONY OF DR. ORDOVER. THERE WAS  
23 NO EVIDENCE OF MONOPOLY POWER OR NO EVIDENCE OF  
24 SAMSUNG RAISING PRICES.

25 FURTHERMORE, THERE WAS NO DAMAGES. IF

1 YOUR HONOR RECALLS, WE DISCUSSED THAT IN THE  
2 CONTEXT OF THE SUMMARY JUDGMENT, AND AT THAT POINT  
3 YOUR HONOR THOUGHT THAT APPLE STILL COULD GO TO THE  
4 JURY AND PRESENT SOME EVIDENCE. BUT WHAT WE SAW  
5 HERE WAS THAT THERE WAS NO PROOF THAT THE ANTITRUST  
6 AMOUNTED TO ANTICOMPETITIVE SCHEME OR SHAM  
7 LITIGATION, WHICH ARE THE ONLY TWO LITIGATIONS  
8 WHERE YOU CAN SEEK LITIGATION COSTS AS DAMAGES.

9 IN ADDITION TO THAT, THEY HAVEN'T  
10 PRESENTED LITIGATION COSTS AT ALL. SO ALL THE  
11 CASES THAT THEY CITED TO YOUR HONOR AS PART OF THE  
12 SUMMARY JUDGMENT, THEY HAVE NOT MET THEIR BURDEN  
13 AND PROVEN IT BEFORE THE JURY.

14 AS IT STANDS HOW, THE JURY HAS NO TOOLS  
15 TO ESTABLISH ANY DAMAGES ON THE ANTITRUST AND  
16 DAMAGES IS AN INTEGRAL PART OF THE CLAIM.

17 APPLE FAILED TO PROFFER ANY EVIDENCE OF  
18 ANTICOMPETITIVE CONDUCT. WHILE THERE WAS SOME  
19 EXPERT TESTIMONY ON THE SUBJECT OF THE 2.4 ROYALTY  
20 RATE, THERE WAS NO TESTIMONY THAT SAMSUNG INTENDED  
21 AT THE TIME IT WAS MEETING ITS FRAND OBLIGATIONS IN  
22 DISCLOSURE IN 1998, 2006, AND 2007, THAT THERE WAS  
23 NO GOOD FAILURE TO LICENSE.

24 IN FACT, BOTH THROUGH DR. TEECE'S  
25 TESTIMONY AND EXHIBIT 630 THAT COMPILES LICENSES

1 AND LICENSING HISTORY FROM THE INDUSTRY, THERE'S  
2 SUFFICIENT EVIDENCE THAT THERE WAS NO  
3 ANTICOMPETITIVE CONDUCT AT ALL.

4 MOVING ON FROM ANTITRUST AND EXHAUSTION  
5 TO OTHER DEFENSES, APPLE FAILED TO MEET ITS BURDEN  
6 ON WAIVER, UNCLEAN HANDS AND BREACH OF CONTRACT.

7 THERE WAS NO EVIDENCE OF ANY KIND THAT  
8 THERE WAS A SPECIFIC, THAT THERE WAS ANY INTENT OR  
9 ANY KIND OF MONOPOLISTIC SCHEME, WHICH IS WHAT THE  
10 CASES OR THE SUBJECT REQUIRE.

11 AND THE ONLY EVIDENCE THAT THERE WAS, WAS  
12 THAT SAMSUNG DISCLOSED ITS PATENTS TO ETSI AND THIS  
13 WAS ALL FROM DR. TEECE'S TESTIMONY. THE TIMING,  
14 WHICH WAS NOT IN ANY WAY DIFFERENT FROM OTHER  
15 INDUSTRY PARTICIPANTS.

16 SIMILARLY ON THE EQUITABLE ESTOPPEL,  
17 THERE WAS NOT SUFFICIENT EVIDENCE TO SHOW THAT AND  
18 THE DEFENSE SHOULD BE REJECTED.

19 IF YOUR HONOR WOULD LIKE ME TO COVER ANY  
20 OF THOSE GROUNDS IN GREAT DETAIL, I CAN, BUT THAT'S  
21 THE VERY SHORT VERSION SUMMARY OF THE -- OF OUR  
22 OFFENSIVE MOTIONS ON RULE 50.

23 THE COURT: LET ME ASK, I THOUGHT THAT IT  
24 WAS ONLY THE EXHAUSTION, THE BREACH OF CONTRACT,  
25 ANTITRUST THAT WERE BEING -- THAT A WAIVER WERE

1 BEING CLAIMED HERE.

2 I DON'T RECALL UNCLEAN HANDS OR EQUITABLE  
3 ESTOPPEL. WHAT'S THE SITUATION WITH THAT?

4 MS. MAROULIS: I THINK APPLE IS STILL --  
5 THEY WERE ORIGINALLY CLAIMING EQUITABLE ESTOPPEL.  
6 WE HAD SOME DISCUSSIONS ABOUT JURY INSTRUCTIONS ON  
7 THAT. IF THEY'RE WITHDRAWING THE CLAIM --

8 MR. LEE: THEY'RE BOTH IN THE PROPOSED  
9 JURY INSTRUCTIONS, YOUR HONOR.

10 MS. MAROULIS: BUT WE BELIEVE IT SHOULD  
11 NOT GO TO THE JURY BECAUSE IT SHOULD BE RULE 50'D  
12 OUT.

13 THE COURT: I SEE.

14 MS. MAROULIS: AND IN PARTICULAR, IT  
15 WOULD BE HELPFUL IF YOUR HONOR POINTED TO A  
16 SPECIFIC ELEMENT THAT YOU WANT US TO BRIEF IN OUR  
17 SUBMISSION TODAY WITH MORE DETAIL OR SUPPLY MORE  
18 TRANSCRIPT CITES.

19 THE COURT: WELL, LET ME HEAR FROM  
20 MR. LEE, ARE YOU GOING TO CONCEDE ON, YOU KNOW, AT  
21 LEAST SOME OF THE PATENTS, I DID ONLY HEAR AN  
22 OBVIOUSNESS ARGUMENT AND NOT AN ANTICIPATION  
23 ARGUMENT. IF YOU'RE GOING TO CONCEDE IT, WE CAN  
24 TAKE CARE OF IT RIGHT NOW.

25 MR. LEE: THAT'S CORRECT, YOUR HONOR, ON

1 THE '460 PATENT AND THE '516, THERE WAS ONLY AN  
2 OBVIOUSNESS DEFENSE.

3 THE COURT: OKAY.

4 MR. LEE: SO THERE'S NO ANTICIPATION.

5 THE COURT: ALL RIGHT. AS TO '460 AND  
6 '516?

7 MR. LEE: RIGHT. BUT AS TO ALL -- THE  
8 OTHER THREE PATENTS, WE PRESENTED A LIMITATION BY  
9 LIMITATION ANTICIPATION ANALYSIS AND AS TO ALL FIVE  
10 WE PRESENTED OBVIOUSNESS TESTIMONY, LIMITATION BY  
11 LIMITATION.

12 THE COURT: OKAY. WHY DON'T YOU --

13 MR. JOHNSON: SORRY, MR. LEE. '711, I  
14 DON'T THINK YOU PRESENTED ANYTHING ON ANTICIPATION.

15 MR. LEE: IT'S OBVIOUSNESS. SO '711  
16 ALSO, YOUR HONOR. '460, '516, AND '711.

17 THE COURT: ALL RIGHT. NO ANTICIPATION  
18 ON THE '460, THE '711, AND THE '516.

19 MR. LEE: CORRECT.

20 THE COURT: OKAY. ALL RIGHT. NOW, DO  
21 YOU WANT TO ADDRESS, ON THIS EXHAUSTION ISSUE, I  
22 KNOW YOU HAD THAT INTEL INVOICE THAT DID HAVE --

23 MR. LEE: THERE'S ACTUALLY --

24 THE COURT: ANY LESS --

25 MR. LEE: THERE'S THIS IN THE REGULAR,



1 YOUR HONOR. FIRST, THE LICENSE AGREEMENT ITSELF  
2 HAS GONE IN TODAY THROUGH MR. DONALDSON.

3 THE COURT: UM-HUM.

4 MR. LEE: IN ADDITION, MR. DONALDSON GAVE  
5 THE TESTIMONY THAT YOU ALLOWED HIM TO GIVE ON HOW  
6 ONE OF EXPERIENCE IN THE FIELD WOULD INTERPRET THE  
7 LICENSE AGREEMENT.

8 MR. BLEVINS THEN TESTIFIED, PUT THE  
9 INVOICES IN AND TESTIFIED TO WHY THE INVOICES WERE  
10 ISSUED FROM, WHERE THE PAYMENT WAS MADE TO.

11 THE COURT: UM-HUM.

12 MR. LEE: THE LOCATION OF THE BUYER, AND  
13 ALL OF THAT IS RELEVANT TO THE QUESTION OF WHERE  
14 THE SALE TOOK PLACE. SO THERE'S -- I WOULD SAY  
15 THIS ACTUALLY, THE ONLY THING THEY HAVE IS THE  
16 POINT OF DELIVERY.

17 THE COURT: UM-HUM.

18 MR. LEE: EVERYTHING ELSE THAT'S IN THE  
19 RECORD IS UNITED STATES-BASED.

20 AND MR. BLEVINS WASN'T CROSS-EXAMINED ON  
21 THAT AT ALL.

22 SO THAT -- I THINK THAT IS MORE THAN  
23 ENOUGH TO GO TO THE JURY ON THAT ISSUE.

24 THE COURT: UM-HUM.

25 MR. LEE: I THINK, AS YOUR HONOR KNOWS,

1 IT'S NOT A SINGLE FACTOR THAT DETERMINES WHETHER  
2 THERE'S A U.S. SALE OR NOT.

3 THE COURT: UM-HUM.

4 MR. LEE: SO I -- FOR THAT REASON, I  
5 THINK THE RULE 50 MOTION ON EXHAUSTION SHOULD BE  
6 DENIED.

7 AND I CAN ADDRESS THE OTHERS IF YOU WANT.

8 THE COURT: AND THE LANGUAGE THAT  
9 MR. MUELLER HAD MR. DONALDSON WALK THROUGH THE  
10 AGREEMENT, IT DID HAVE RIGHTS GOING TO THE  
11 SUBSIDIARIES; RIGHT?

12 MR. LEE: YES.

13 THE COURT: ALL RIGHT. NOW, ON  
14 ANTITRUST, ARE YOU GOING FOR ONE DOLLAR NOMINAL  
15 DAMAGES.

16 MR. LEE: NO, NO. WE ACTUALLY PUT IN, IT  
17 ENDED UP THAT EVERY SINGLE EXPERT PUT IN THEIR  
18 HOURLY RATE AND NUMBER OF HOURS, BUT WE WERE GOING  
19 TO PUT THOSE IN IN ANY EVENT, FOR THE STANDARD  
20 ESSENTIAL EXPERTS THAT WE WOULD. WE ARE SEEKING  
21 NOMINAL DAMAGES, WE'VE PUT IN EVIDENCE OF ABOUT A  
22 HALF A MILLION DOLLARS IN DAMAGES.

23 THE COURT: SO WHO IS THAT? DR. KIM?

24 MR. LEE: DR. KIM AND DR. KNIGHTLY.

25 THE COURT: SO THAT'S IT FOR WHAT YOU'RE



1 RECORD NOW IN THE FORM OF A PROPOSAL, THE INVENTORS  
2 ACTUALLY GO TO THE MEETING, MAKE A PROPOSAL, THE  
3 EVIDENCE ESTABLISHES THAT AT EVERY MEETING THERE'S  
4 A CALL FOR IPR, WE'RE NOT SAYING THE INVENTOR HAS  
5 TO MAKE THE DISCLOSURE.

6 THEN THERE'S NO DISCLOSURE, SAMSUNG  
7 CONTINUES TO PARTICIPATE, THE STANDARD GETS FROZEN,  
8 AND THEN YEARS LATER, SEVERAL YEARS LATER, THE  
9 PATENT IS DISCLOSED.

10 BUT THERE'S MORE THAN JUST A CHRONOLOGY,  
11 BECAUSE AS THE TESTIMONY OF SAMSUNG'S OWN SENIOR  
12 EXECUTIVES SHOW. MR. LEE SAID DISCLOSING BEFORE  
13 THE PROPOSAL WAS FROZEN WOULD BE STUPID, ALTHOUGH  
14 THAT'S EXACTLY WHAT RULE 4.1 REQUIRES, AND DR. AHN  
15 SAID HE KNEW OF NO EFFORTS THAT WERE MADE TO COMPLY  
16 WITH FRAND.

17 AND THERE'S MORE THERE, YOUR HONOR, BUT  
18 COLLECTIVELY, THAT IS ENOUGH TO -- COMPARED WITH  
19 WHAT THE FEDERAL CIRCUIT HAS DONE IN BROADCOM AND  
20 QUALCOMM TO BE A WAIVER, IT'S SUFFICIENT FOR  
21 WAIVER, EQUITABLE ESTOPPEL, AND UNCLEAN HANDS.

22 AND WITH DR. ORDOVER'S TESTIMONY ABOUT  
23 THE MARKET, WHICH YOUR HONOR HAS ADDRESSED IN  
24 RULING ON A COUPLE OF MOTIONS TO DISMISS, THERE IS  
25 PROOF, ALMOST UNREBUTTED, OF TECHNOLOGY MARKETS,

1 CONDUCT, ANTICOMPETITIVE CONDUCT, TAKING CONTROL OF  
2 THOSE TECHNOLOGY MARKETS, AN AFFECT ON THE  
3 MARKETPLACE, AN AFFECT ON US, AND THEN DAMAGES,  
4 MAYBE THE SMALLEST AMOUNT IN THE CASE, BUT STILL  
5 DAMAGES.

6 THE COURT: OKAY. ALL RIGHT. SO  
7 MS. MAROULIS, I'M GOING TO DENY THE RULE 50 WITH  
8 THE EXCEPTION TO ANTICIPATION AS TO THE '460, '711,  
9 AND '516.

10 I'LL GIVE YOU ONE LAST CHANCE IF THERE'S  
11 ANYTHING YOU WANT TO SORT OF SAY IN REBUTTAL TO  
12 WHAT MR. LEE JUST SAID.

13 MS. MAROULIS: SURE, YOUR HONOR. A FEW  
14 POINTS, AS TO THE EXHAUSTION. I WANTED TO READ  
15 INTO THE RECORD THE CASES THAT GOVERN THE FACT THAT  
16 WHERE A SALE TAKES PLACE IS THE DISPOSITIVE FACTOR,  
17 WHICH IS MINEBEA VERSUS PAPST, 444 F.SUPP 2D 68,  
18 CORNELL RESEARCH FOUNDATION VERSUS HEWLETT-PACKARD,  
19 AND I THINK THERE ARE ADDITIONAL CASES IN OUR JURY  
20 INSTRUCTIONS AND WE'LL PUT IT IN THE ACTUAL  
21 BRIEFING.

22 THE COURT: UM-HUM.

23 MS. MAROULIS: WITH RESPECT TO THE  
24 ANTITRUST, I RETURN TO MY POINT THAT TO EVEN  
25 ESTABLISH INJURY IN FACT AS PART OF THE LITIGATION

1 COSTS, YOU HAVE TO MEET ONE OF TWO CONDITIONS,  
2 EITHER IT'S ANTICOMPETITIVE SCHEME, IT IS THE  
3 RAMBUS VERSUS HYNIX CASE, OR SHAM LITIGATION, THE  
4 HANDGARDS CASE. THEY HAVEN'T ATTEMPTED TO  
5 ESTABLISH ANY OF THOSE. SO THE FACT THAT THEY  
6 MIGHT HAVE COSTS IN THIS LITIGATION IS NOT  
7 SUFFICIENT. FOR LITIGATION TO BE THE BASIS OF  
8 INJURY IN FACT, IT HAS TO BE ONE OF THOSE TWO  
9 CONDITIONS AND THEY HAVEN'T MET EITHER OF THEM.

10 WITH RESPECT TO EXPERT TESTIMONY, IT'S --  
11 I DO REMEMBER THEM ASKING SOME QUESTIONS TO EXPERTS  
12 ABOUT PAYMENT, BUT THEY PUT NO DOCUMENTARY EVIDENCE  
13 INTO THE RECORD AND THIS IS ONE OF THE LEAST  
14 DOCUMENTED CLAIMS IN TERMS OF WHAT COSTS THEY  
15 SUFFERED AT ALL.

16 AND, YOUR HONOR --  
17 THE COURT: BUT THEY COULD GET A NOMINAL  
18 DAMAGE OF A DOLLAR.

19 MS. MAROULIS: BUT THEY STILL HAVE TO  
20 ESTABLISH INJURY, IN FACT, AND THEY HAVE NOT  
21 ESTABLISHED THAT UNDER THE ANTITRUST LAW.

22 AND, YOUR HONOR, BEFORE I SIT DOWN, I  
23 NEGLECTED TO MENTION TWO OTHER GROUNDS ON WHICH WE  
24 NEED TO MOVE.

25 THE COURT: OKAY.

1 MS. MAROULIS: WHICH IS APPLE DID NOT  
2 PRESENT ANY REBUTTAL EVIDENCE TO THE DAMAGES  
3 CALCULATIONS OF DR. O'BRIEN AND DR. TEECE.

4 AND WITH RESPECT TO DR. O'BRIEN'S  
5 CALCULATION, THERE WAS NO WITNESS AT ALL, SO THAT  
6 SHOULD BE A RULE 50 MOTION FOR SURE. WITH RESPECT  
7 TO DR. TEECE, THERE WAS ONLY MR. DONALDSON WHO  
8 GENERALLY CRITICIZED THE RATE, BUT HE DID NOT REBUT  
9 DAMAGES IN THE WAY DAMAGES CONSPIRATORS TYPICALLY  
10 DO. HE DIDN'T DO A GEORGIA PACIFIC ANALYSIS, OR AT  
11 LEAST HE ACTUALLY DID IN HIS REPORT, BUT HE DIDN'T  
12 TESTIFY ABOUT IT HERE. SO WE HAVE NO REBUTTAL OF  
13 ANY KIND TO THE TWO SAMSUNG DAMAGES EXPERTS THAT WE  
14 PUT ON IN OUR CASE, THEREFORE, THE RULE 50 MOTION  
15 WOULD BE APPROPRIATE AS TO BOTH OF THOSE.

16 THE COURT: ALL RIGHT.

17 MR. LEE: YOUR HONOR, I'LL BE BRIEF. ON  
18 THE ANTITRUST ISSUE THAT MS. MAROULIS JUST RAISED,  
19 YOUR HONOR ACTUALLY RULED ON THAT AND CAME OUT  
20 CONTRARY IN YOUR SECOND RULING ON THE MOTION TO  
21 DISMISS IN TERMS OF WHAT CONSTITUTES A SECTION 2  
22 SHERMAN ACT CLAIM IN THIS CONTEXT.

23 AS TO DAMAGES, I RESPECTFULLY DISAGREE.  
24 MR. O'BRIEN WAS CROSS-EXAMINED BY MR. SELWYN,  
25 CROSS-EXAMINED ON HIS BASES, AND WE'RE GOING TO BE

1 ABLE TO ARGUE TO THE JURY, MR. O'BRIEN SAID IT'S 29  
2 MILLION DOLLARS FOR THESE PATENTS THAT HAVE NEVER  
3 RESULTED IN A PRODUCT. MR. WAGNER SAID IT'S \$27  
4 THOUSAND FOR THE APPLE PATENTS THAT GO TO THIS  
5 NOMINALLY SUCCESSFUL PRODUCT. WHO ARE YOU GOING TO  
6 BELIEVE?

7 THE CROSS-EXAMINATION, PLUS MR. WAGNER'S  
8 TESTIMONY ITSELF, IS ENOUGH TO CREATE A TRIABLE  
9 ISSUE FOR THE JURY.

10 AND AS TO MR. TEECE, WHO JUST POINTED OUT  
11 THE 2.4 PERCENT, MR. -- THE COMBINATION OF  
12 MR. MUELLER'S CROSS-EXAMINATION WHERE HE SHOWED  
13 THAT MR. TEECE'S ROYALTIES RATES WERE ONE PATENT AT  
14 THE HIGH END IS ACTUALLY HIGHER THAN THE RATE THAT  
15 SAMSUNG OFFERED FOR A PORTFOLIO OF 86 PATENTS, PLUS  
16 MR. DONALDSON'S CRITICISM OF THE RATE, BOTH IN  
17 TERMS OF RATE AND BASE IS SUFFICIENT TO CREATE AN  
18 ISSUE FOR THE JURY.

19 THE COURT: OKAY. ALL THE MOTIONS ARE  
20 DENIED WITH THE EXCEPTION OF ANTICIPATION TO '460,  
21 '711 AND '516. I DO FIND THERE IS A REASONABLE  
22 BASIS FOR A REASONABLE JURY TO RULE IN REGARD TO  
23 APPLE'S FAVOR WITH REGARD TO ALL THE ISSUES FOR  
24 WHICH I'VE DENIED A RULE 50 MOTION.

25 ALL RIGHT. LET'S GO TO, WE'RE NOW AT THE



1 END OF SAMSUNG'S REBUTTAL CASE. WHO WANTS TO --

2 MR. LEE: YOUR HONOR, IF IT'S THE END OF  
3 SAMSUNG'S REBUTTAL CASE, WHICH IS REALLY THE END OF  
4 THE CASE, YOU HAVE A JOINT REQUEST IF WE COULD JUST  
5 DO THAT TOMORROW AS PART OF THE FILING. SO THERE'S  
6 NOT GOING TO BE RULE 50 MOTIONS THAT GO TO ALL OF  
7 THE EVIDENCE.

8 THE COURT: WELL, BUT I WOULD LIKE --  
9 IT'S JUST HELPFUL IN WORKING ON THE JURY  
10 INSTRUCTIONS AND THE VERDICT FORM TO GET A PREVIEW  
11 OF WHAT YOUR ARGUMENTS ARE. OBVIOUSLY I UNDERSTAND  
12 YOU'RE PROBABLY GOING TO REPEAT WHAT'S LARGELY  
13 ALREADY BEEN ARGUED AND IT'S GOING TO BE FULL WITH  
14 CITATIONS.

15 BUT IF THERE ARE ANY NEW, SPECIFIC ISSUES  
16 THAT WOULD HAVE BEEN APPROPRIATE TO RAISE MORE, YOU  
17 KNOW, WITHIN THE SCOPE OF FOLLOWING SAMSUNG'S  
18 REBUTTAL CASE, I'D LIKE TO AT LEAST HEAR WHAT YOU  
19 HAVE TO SAY. IS IT JUST THE SAME THINGS YOU'VE  
20 ALREADY SAID?

21 MR. LEE: I THINK FROM OUR PERSPECTIVE,  
22 YOUR HONOR, IT WOULD BE BASICALLY THE MOTIONS THAT  
23 WE MADE AT THE END OF SAMSUNG'S AFFIRMATIVE CASE  
24 AND WE'D JUST BE MOVING -- WE'D BE MAKING THE SAME  
25 MOTIONS AT THE END OF THEIR REBUTTAL CASE.

1                   THERE PROBABLY WILL BE SOME MOTIONS ON  
2                   OUR END, EVEN ON THE ISSUES AS TO WHICH WE BEAR THE  
3                   BURDEN OF PROOF.

4                   BUT THERE ARE ISSUES THAT SAMSUNG HAS  
5                   RAISED, YOUR HONOR HAS DENIED THAT IT'S ENOUGH TO  
6                   GO TO THE JURY, BUT I THINK WE HAVE TO MAKE A  
7                   RECORD. IN TERMS OF ANYTHING THAT'S NEW --

8                   THE COURT: YES.

9                   MR. LEE: THAT WOULD HELP YOU WITH THE  
10                  INSTRUCTIONS, I DON'T THINK THERE IS ANY.

11                  THE COURT: OKAY. LET ME -- DO YOU AGREE  
12                  WITH THAT, MR. ZELLER OR MR. VERHOEVEN?

13                  MR. VERHOEVEN: YES.

14                  MR. ZELLER: JUST --

15                  (DISCUSSION OFF THE RECORD BETWEEN  
16                  DEFENSE COUNSEL.)

17                  MR. ZELLER: WE THINK WE'RE ALL ON THE  
18                  SAME PAGE, YOUR HONOR, BUT TO MAKE IT EXPLICIT ON  
19                  THE RECORD, IT'S OUR UNDERSTANDING THAT WE ARE  
20                  PRESERVED AS TO THE REMAINDER OF GROUPS AS TO THE  
21                  INVALIDITY OF TRADE DRESS, VARIOUS TRADE DRESSES  
22                  THAT HAVE BEEN ASSERTED, AS WELL AS THE DESIGN  
23                  PATENTS.

24                  THE COURT: RIGHT. I'M ASSUMING THAT IN  
25                  YOUR FILING ON SATURDAY MORNING YOU'RE GOING TO BE

1 MAKING YOUR RULE 50 MOTION AS TO THE WHOLE CASE.

2 MR. VERHOEVEN: THAT'S RIGHT, YOUR HONOR.  
3 AND I AGREE WITH MR. LEE THAT THERE'S NOTHING NEW  
4 TO BE RAISED TODAY.

5 THE COURT: OKAY.

6 MR. VERHOEVEN: THAT WE HAVEN'T -- EXCUSE  
7 ME -- THAT COUNSEL FOR APPLE HASN'T ALREADY RAISED.

8 THE COURT: OKAY. ALL RIGHT. OKAY THEN.  
9 WHAT ELSE? OH, WHAT DID YOU ALL THINK ABOUT HOW WE  
10 HANDLE YOUR PRESERVATION OF YOUR OBJECTIONS TO THE  
11 JURY INSTRUCTIONS?

12 MR. JACOBS: WE DIDN'T HAVE AS MUCH TIME  
13 TO CONSULT ON THIS AS I THINK THE COURT WOULD HAVE  
14 LIKED. HERE'S MY PROPOSAL, WHICH I THINK WILL MEET  
15 BOTH SEEDS NEEDS.

16 WORKING BACKWARDS, WE NEED AN OPPORTUNITY  
17 TO OBJECT ON THE RECORD TO THE COURT'S PROPOSAL  
18 FINAL JURY INSTRUCTIONS. IF WHAT THE COURT ISSUES  
19 ON SUNDAY NIGHT DON'T CHANGE AS A RESULT OF WHAT WE  
20 DO ON MONDAY, THEN WHAT WE DO ON MONDAY IS THAT  
21 OPPORTUNITY.

22 I HAVE A FEELING WHAT THE COURT HAS IN  
23 MIND FOR MONDAY IS ACTUALLY SOMETHING OF A  
24 DISCUSSION OF THE INSTRUCTIONS UNDER SOME GROUND  
25 RULES THAT BOUND THAT DISCUSSION AND DON'T TURN IT

1 INTO SOMETHING ENDLESS.

2 IF THAT'S THE CASE, WHAT WE WOULD PROPOSE  
3 IS THAT WE OBJECT IN WRITING TO THE COURT'S FINAL  
4 INSTRUCTIONS WHEN THOSE, WHEN THOSE COME OUT AND  
5 BEFORE THEY'RE ACTUALLY GIVEN TO THE JURY. WE'LL  
6 HAVE TO SEE WHAT THAT ACTUAL MOMENT IS.

7 ON MONDAY, WE WOULD EACH PICK A NUMBER,  
8 OR THE COURT WOULD PICK A NUMBER OF HIGH PRIORITY  
9 OBJECTIONS THAT THE PARTIES COULD DISCUSS WITH THE  
10 COURT, AND WE'D GET THROUGH THAT LIST UNTIL THE  
11 COURT SAID, YOU KNOW WHAT, THIS IS ENOUGH. AS LONG  
12 AS WE HAVE THE OPPORTUNITY TO OBJECT ON THE RECORD  
13 TO THE COURT'S FINAL INSTRUCTIONS, I BELIEVE WE  
14 WILL HAVE PRESERVED ANY CLAIM OF INSTRUCTIONAL  
15 ERROR.

16 THE COURT: WELL, IF YOU'RE GOING TO FILE  
17 SOMETHING, THEN I WOULD PREFER THAT YOU FILE IT  
18 EARLY IN THE MORNING AND THAT I HAVE ALL MORNING TO  
19 REVIEW IT AND THEN WE JUST MEET IN THE AFTERNOON  
20 AND I CAN TELL YOU AT THAT POINT WHICH ONES I'M  
21 ACTUALLY WAVERING OR UNCLEAR OR CONFUSED ABOUT.

22 AND WE CAN DISCUSS THOSE.

23 AND THEN THERE REALLY DOESN'T A NEED, IF  
24 YOU'VE ALREADY PRESERVED YOUR OBJECTION IN WRITING,  
25 FOR YOU TO REARGUE IT. SO I'D LIKE TO DO IT THE

1 WAY I DO MY HEARINGS, WHICH IS I JUST ASK WHAT I'M  
2 INTERESTED IN AND I DON'T WANT YOUR SET  
3 PRESENTATION, THE WAY I DO MY HEARINGS. IS THAT  
4 ACCEPTABLE OR NOT?

5 MR. JACOBS: I THINK IT'S CLOSE.

6 THE COURT: YOU DON'T GET TWO SHOTS, YOU  
7 DON'T GET TO PUT IT IN WRITING AND THEN ARGUE IT.  
8 WE DON'T HAVE TIME, UNLESS YOU WANT ME TO PUSH THIS  
9 OFF A WEEK, WE DON'T HAVE TIME FOR YOU TO GET A  
10 THIRD AND A FOURTH SHOT AT THIS.

11 I'M GIVING YOU A THIRD SHOT TO DO IT IN  
12 WRITING AND WE'LL HAVE A HEARING, AND I'LL RUN IT  
13 LIKE I RUN MY HEARINGS. THERE'S SPECIFIC QUESTIONS  
14 I WILL HAVE AND I'LL ASK YOU ABOUT. BUT IF I'VE  
15 ALREADY DECIDED AND YOU HAVE FOR THE THIRD TIME PUT  
16 IT IN WRITING, THAT'S ENOUGH, OKAY.

17 MR. JACOBS: SO THAT'S PERFECT. WE'LL  
18 OBJECT IN WRITING ON WHATEVER SCHEDULE YOU SET  
19 BASED ON WHEN YOU, HOW MANY HOURS YOU GIVE US AFTER  
20 YOU DELIVER YOUR INSTRUCTIONS TO US. THAT WOULD  
21 FORM THE BASIS FOR ANY DISCUSSION THAT YOU NEED,  
22 YOU SET THE AGENDA FOR ON MONDAY, BUT THEN WE NEED  
23 A CHANCE, JUST A PLACEHOLDER, YOUR HONOR, TO FILE A  
24 SET OF OBJECTIONS TO THE FINAL SET OF INSTRUCTIONS.

25 THE COURT: WELL, I NEED TO PUT A PAGE

1           LIMIT ON IT BECAUSE THERE'S NO WAY, IF YOU FILE,  
2           YOU KNOW, YOUR LAST -- FIRST FILING WAS 400 PAGE.  
3           THIS ONE IS 300 PAGES. I WON'T BE ABLE TO ABSORB  
4           THAT IN THE MORNING.

5                   MR. JACOBS: WE'RE TALKING ABOUT THE  
6           MONDAY, THE --

7                   THE COURT: WHATEVER YOU FILE IN THE  
8           MORNING, IT REALLY -- I MEAN, IF YOU WANT IT TO  
9           HAVE ANY INFLUENCE ON FILING INSTRUCTIONS, IT NEEDS  
10          TO BE COMPACT ENOUGH THAT I CAN DIGEST IT AND CASES  
11          NEED TO BE REVIEWED AGAIN.

12                   MR. JACOBS: SURE.

13                   THE COURT: WHAT WOULD YOU LIKE TO DO?

14                   MR. VERHOEVEN: I AGREE WITH MR. JACOBS,  
15          WE HAVEN'T HAD QUITE ENOUGH TIME TO MEET AND  
16          CONFER, BUT THE IDEA THAT WE WOULD FILE A MASSIVE  
17          DOCUMENT IN THE MIDDLE OF THE NIGHT WITH A WHOLE  
18          BUNCH OF OBJECTIONS IS NOT GOING TO BE PRODUCTIVE  
19          FOR MONDAY, I DON'T THINK, YOUR HONOR.

20                   AS I SAID BEFORE, WHATEVER YOUR HONOR IS  
21          WILLING TO GIVE US, BUT A NUMBER OF H-P-O'S,  
22          PRIORITY OBJECTIONS, THAT WE COULD THEN PUT LIMIT  
23          ON THE AMOUNT OF TIME THAT THERE'S GOING TO BE  
24          ARGUMENT, SIMILAR TO THE EXHIBITS.

25                   THE COURT: BUT I NEED TO KNOW FOR YOUR

1 RECORD, I'M SORRY TO INTERRUPT, BUT DO YOU NEED TO  
2 DO MORE OBJECTIONS THAN JUST HIGH PRIORITY ONES?

3 MR. VERHOEVEN: YEAH, BUT WHAT WE COULD  
4 DO, THIS IS JUST A FORMALITY. I DON'T KNOW IF  
5 MR. JACOBS -- WE COULD PROBABLY COME BACK ON THE  
6 RECORD AND IN HALF AN HOUR READ, JUST READ, YOU  
7 KNOW, SO THAT WE CAN COVER OURSELVES FOR PURPOSES  
8 OF APPEAL, YOU KNOW, WE HAVEN'T HAD A CHANCE TO  
9 TALK ABOUT THIS, BUT RATHER THAN DO ANOTHER FILING,  
10 WE CAN JUST COME BACK, I DON'T KNOW HOW LONG IT'LL  
11 TAKE TO READ IT --

12 THE COURT: LET ME ASK, DID YOU ALL DO  
13 RESEARCH? WHY DON'T YOU INCORPORATE BY REFERENCE  
14 YOUR 700 PAGES OF OBJECTIONS YOU HAVE ALREADY  
15 FILED.

16 I DON'T UNDERSTAND. WHY CAN'T YOU JUST  
17 SAY, WE INCORPORATE BY REFERENCE OUR 700 PAGES OF  
18 OBJECTIONS THAT HAVE ALREADY BEEN FILED, AND HERE  
19 IS JUST, YOU KNOW, 10 THAT WE FIND TO BE MOST  
20 CRITICAL TO OUR CASE AND WE WANT TO TRY TO CONVINC  
21 YOU TO MAKE THE CHANGE OR SOMETHING LIKE THAT.

22 MR. VERHOEVEN: RIGHT. SO, YOUR HONOR, I  
23 THINK THERE'S TWO THINGS THAT WE'RE JUGGLING. ONE  
24 IS HAVING A PRODUCTIVE JURY INSTRUCTION SESSION.

25 IN MY OPINION, A FILING THAT LISTS ALL OF

1 THE OBJECTIONS WILL NOT BE HELPFUL. SO A LIMIT ON  
2 H-P-O'S, HOWEVER MANY YOU PICK, ALL THE OTHER ONES  
3 YOU RULE ON THE PAPERS. ON THOSE H-P-O'S, WE'LL  
4 DECIDE WHAT WE REALLY CARE ABOUT AND THEN WE CAN  
5 ARGUE THOSE AT OUR INSTRUCTION CONFERENCE. SO  
6 THAT'S THE FIRST TRANCHE.

7 AND THEN WHAT I THINK WHAT MR. JACOBS IS  
8 TALKING ABOUT IS AFTER --

9 THE COURT: HE'S TALKING ABOUT ANOTHER  
10 SEVERAL HUNDRED PAGES.

11 MR. JACOBS: NO, NO. I THINK WE'RE  
12 TALKING ABOUT A CHART ACTUALLY, AGAIN, THE LAST  
13 FILING WE WOULD MAKE AFTER THE COURT.

14 MR. VERHOEVEN: AFTER YOU'VE RULED.

15 MR. JACOBS: AFTER YOU'VE RULED, AFTER  
16 YOU'VE DECIDED THESE ARE THE COURT'S INSTRUCTIONS,  
17 WE WOULD FILE A CHART THAT JUST ENUMERATES THE  
18 OBJECTIONS THAT WE ARE CARRYING FORWARD BECAUSE YOU  
19 HAVE NOT RULED IN OUR FAVOR, AND THAT WOULD BE THE  
20 DOCUMENT THEN THAT WE WOULD POINT TO, TO SAY THAT  
21 WE HAD PRESERVED OUR OBJECTION TO YOUR FINAL SET OF  
22 INSTRUCTIONS, AND WE WOULD NOT BE EXPECTING THE  
23 COURT, IN PRACTICAL REALITY, WE WOULD NOT BE  
24 EXPECTING THE COURT TO DO MUCH WITH THAT CHART.

25 THE COURT: WELL, I NEED A PAGE LIMIT,



1 BECAUSE YOU'VE DISAGREED ON 70 OF YOUR  
2 INSTRUCTIONS, SO I'M NOT GOING TO HAVE YOU ALL  
3 FILING 200 PAGES ON MONDAY.

4 MR. JACOBS: WELL, THIS IS THE -- I'M  
5 TALKING ABOUT THE LAST FILING, AND WE'RE -- AND  
6 WHATEVER YOU WANT ON THE FIRST FILING WE'LL DO,  
7 WHATEVER YOU WOULD FIND HELPFUL TO GET YOU --

8 THE COURT: OH, YOU'RE SAYING AFTER I'VE  
9 FINALIZED THE INSTRUCTIONS, YOU'RE GOING TO LOB  
10 IN --

11 MR. VERHOEVEN: YEAH, THAT'S WHAT WE'RE  
12 TALKING ABOUT HERE. THERE'S TWO TRANCHES WHERE  
13 INSTEAD OF A BIG ARGUMENT, WHERE I THINK H-P-O  
14 WOULD BE USEFUL INSTEAD OF A THOUSAND OBJECTIONS,  
15 THAT PROCEDURE HAS WORKED WELL ON FOCUSING THE  
16 PARTIES OF WHAT THEY CARE ABOUT INSTEAD OF THREE  
17 HOURS OF GOING THROUGH EVERY SINGLE INSTRUCTION, SO  
18 I WOULD URGE THE COURT TO DO THAT FOR THE  
19 CONFERENCE.

20 THEN AFTER YOUR HONOR ISSUES THE FINAL  
21 SET, WHICH WILL BE LATER IN THE DAY, THAT'S A  
22 SECOND THING WHICH IS JUST PRESERVATION OF OUR  
23 APPEAL RIGHTS, AND WE DON'T NEED TO ARGUE ANYTHING,  
24 WE DON'T NEED TO -- WE JUST NEED TO PUT SOMETHING  
25 IN THE RECORD BECAUSE THE RULE SAYS YOU HAVE TO DO

1 THAT. THAT'S THE ONLY THING. SO THAT CAN BE DONE  
2 IN A VERY SHORT DOCUMENT, REALLY. WE JUST HAVE TO  
3 IDENTIFY IT.

4 MR. JACOBS: WE HAVE TO ENUMERATE IN THE  
5 CHART THE ERROR WE'RE CLAIMING AND THE -- AND THE  
6 INSTRUCTION WE GAVE THAT IT WAS THE CORRECT  
7 INSTRUCTION, OR THAT WE PROFFERED.

8 THE COURT: OKAY. I GUESS THAT SOUNDS  
9 FINE. IN ADDITION TO YOUR HIGH PRIORITY ONES, I  
10 THINK I'LL JUST HAVE SOME THAT I JUST NEED  
11 CLARIFICATION, SO WE'LL NEED TO SPEND TIME ON THAT  
12 AS WELL.

13 MR. VERHOEVEN: OF COURSE.

14 MR. JACOBS: AND WE'RE GETTING YOUR  
15 ORDERS THAT SAY I NEED SOME HELP ON THIS, SO I  
16 THINK WE HAVE ONE DUE --

17 THE COURT: 8:00 P.M. TONIGHT, YES.

18 MR. JACOBS: YES.

19 THE COURT: OKAY. ALL RIGHT. WELL, IF  
20 YOU'RE GOING TO -- WHEN CAN YOU FILE? I MEAN,  
21 OBVIOUSLY IF WE CAN GET THE JURY INSTRUCTIONS DONE  
22 BEFORE SUNDAY NIGHT, WE WILL -- BUT WHEN CAN YOU  
23 FILE YOUR HIGH PRIORITY OBJECTIONS? I THINK MAYBE  
24 WE SHOULD MOVE THE HEARING TO LATER THAN 10:00 A.M.  
25 JUST SO THAT WHATEVER YOU FILE CAN REALLY BE

1 THOUGHTFULLY ENGAGED WITH AND NOT HURRIED.

2 MS. MAROULIS: YOUR HONOR, WOULD YOU LIKE  
3 TO DO THE HEARING AT 1:00 O'CLOCK AND HAVE THE  
4 FILING AT LIKE 8:00 OR 9:00 IN THE MORNING?

5 THE COURT: THAT WOULD BE OKAY. I'M  
6 HOPING -- WILL THAT GIVE US ENOUGH TIME? I MAY BE  
7 GIVING YOU THE FINAL FINAL INSTRUCTIONS MUCH LATER  
8 ON MONDAY NIGHT, WHICH IS GOING TO CUT IN ON YOUR  
9 TIME TO PREPARE FOR YOUR CLOSING.

10 MR. VERHOEVEN: WHAT'S THE EARLIEST -- I  
11 THINK 1:00 MIGHT BE TOO LATE, EVEN THOUGH I  
12 SUGGESTED MS. MAROULIS SAY IT, SOMETHING LIKE MAYBE  
13 11:00 O'CLOCK.

14 THE COURT: YEAH, WE COULD DO THAT. HOW  
15 EARLY CAN YOU FILE YOUR HIGH PRIORITY OBJECTIONS?

16 MS. MAROULIS: 8:00 IN THE MORNING?

17 MR. JACOBS: WE CAN DO WHATEVER YOU NEED  
18 US TO DO, YOUR HONOR. IT'S SOME HOURS AFTER WE GET  
19 THE INSTRUCTIONS IN PRACTICAL REALITY TO DIGEST  
20 WHAT YOU'VE DONE, PICK OUR HIGH PRIORITIES AND GIVE  
21 YOU SOMETHING COGENT IN THE BRIEFING.

22 THE COURT: WHAT TIME DID YOU FILE YOUR  
23 RESPONSES TO 36 AND 37? I DIDN'T GET THEM BEFORE  
24 THIS MORNING. I GOT SAMSUNG.

25 MS. MAROULIS: IT WAS ABOUT 8:15 FOR US,

1 OR 8:16.

2 THE COURT: I GOT SAMSUNG'S.

3 MR. JACOBS: WE WERE 10 MINUTES OFF, 12  
4 MINUTES OFF, SOMETHING LIKE THAT.

5 THE COURT: ALL RIGHT.

6 MR. VERHOEVEN: PERHAPS --

7 THE COURT: WELL, WHATEVER DEADLINE IS  
8 SET, I NEED IT TO BE OBSERVED BECAUSE I DIDN'T GET  
9 HERE UNTIL A LITTLE AFTER 8:30 AND I HAD NOT GOTTEN  
10 APPLE'S.

11 MR. VERHOEVEN: PERHAPS, YOUR HONOR, YOU  
12 COULD EXERCISE YOUR DISCRETION AND WHEN YOU FIGURE  
13 OUT WHEN YOU'RE GOING TO GET YOUR INSTRUCTIONS OUT,  
14 YOU CAN PICK A REASONABLE TIME.

15 BUT THAT'S SORT OF AN UNKNOWN FACTOR.

16 THE COURT: THAT'S TRUE. I COULD -- AS  
17 SOON AS WE GET THEM OUT, WE CAN PROPOSE A TIME.

18 MR. VERHOEVEN: HOW MUCH TIME DO WE NEED?

19 THE COURT: WE CAN E-MAIL YOU ALL AND SAY  
20 IF WE CAN GET THEM OUT LET'S SAY BY 3:00 O'CLOCK IN  
21 THE AFTERNOON.

22 MR. JACOBS: DIFFERENT.

23 MR. VERHOEVEN: THEN IT'LL BE A WHOLE  
24 DIFFERENT SCENARIO.

25 THE COURT: SO HOW MUCH TIME IN TERMS OF

1 HOURS? TEN HOURS?

2 MR. VERHOEVEN: MR. JACOBS SUGGESTED TEN  
3 HOURS, WHICH IS GREAT FOR US, AS LONG AS IT WORKS  
4 LOGISTICALLY. SO -- OBVIOUSLY IF IT DOESN'T COME  
5 OUT UNTIL MIDNIGHT ON SUNDAY, TEN HOURS -- WELL,  
6 THAT MIGHT WORK. NO, IT WOULDN'T WORK BECAUSE WE'D  
7 BE FILING OUR H-P-O'S AT 10:00 IN THE MORNING AND  
8 YOU WOULDN'T HAVE ENOUGH TIME. SO IT DEPENDS ON  
9 WHETHER YOUR HONOR GETS THEM OUT. IF WE COULD GET  
10 TEN HOURS, THAT WOULD BE GREAT. IF THAT'S NOT  
11 REASONABLE, WE WOULD ASK FOR A REASONABLE PERIOD OF  
12 TIME.

13 THE COURT: ALL RIGHT. WHY DON'T WE DO  
14 THIS, THEN. I'LL -- AND I'M SORRY I DON'T HAVE A  
15 GOOD ESTIMATE RIGHT NOW AS TO WHEN THOSE WILL BE  
16 FILED, BUT I'LL TRY TO GIVE YOU TEN HOURS, AND WHAT  
17 I THINK WHAT I WILL DO THEN, IF YOU'RE FLEXIBLE ALL  
18 DAY ON MONDAY, MAYBE WHEN I FILE THEM, I CAN MAKE A  
19 PROPOSAL, AND THEN -- AND WE'LL PUT THE PROPOSAL IN  
20 THE INSTRUCTIONS AND YOU ALL CAN LET ME KNOW  
21 WHETHER THAT'S GOING TO WORK FOR YOU OR NOT.

22 I WOULD LIKE -- BECAUSE I'M ASSUMING  
23 YOU'RE ALSO GOING TO HAVE OBJECTIONS TO THE VERDICT  
24 FORM, RIGHT? OR NOT?

25 MR. VERHOEVEN: POSSIBLY.

1 THE COURT: SO I THINK I WILL NEED AT  
2 LEAST TWO TO THREE HOUR, THREE PREFERABLY WITH YOUR  
3 HIGH PRIORITY OBJECTIONS TO THE JURY INSTRUCTIONS  
4 AND THE VERDICT FORMS.

5 SO WHY DON'T WE PLAN ON MEETING AT NOON  
6 WITH THE IDEA OF -- WELL, HOPEFULLY YOU'LL FILE AT  
7 8:00 A.M. ON MONDAY YOUR OBJECTIONS AND THAT I WILL  
8 TRY TO GET YOU, AS EARLY AS POSSIBLE ON SUNDAY  
9 AFTERNOON, HOPEFULLY THE JURY INSTRUCTIONS AND  
10 DRAFT VERDICT FORM, BUT IT MAY BE -- AND IF IT'S  
11 LATER, WE'LL PUSH EVERYTHING BACK.

12 MR. JACOBS: THANK YOU, YOUR HONOR.

13 THE COURT: ALL RIGHT.

14 MR. VERHOEVEN: AND JUST ONE THING ON THE  
15 CHARGING CONFERENCE, YOUR HONOR.

16 WE'RE GOING TO HAVE A LOT OF THINGS IN  
17 THE AIR WHEN WE'RE GETTING READY FOR CLOSINGS AND  
18 WHATNOT. SO I WONDER IF IT'S OKAY WITH THE COURT,  
19 FOR EXAMPLE, MAYBE I WON'T BE ABLE TO BE THERE, I'M  
20 NOT SURE, OR SOME PARTS OF OUR TEAM AREN'T THERE.

21 THE COURT: THAT'S FINE. WHATEVER YOU  
22 NEED TO DO TO PREPARE FOR TUESDAY.

23 BUT LET'S PUT A LIMIT ON THE HIGH  
24 PRIORITY OBJECTIONS.

25 SO I THINK PROBABLY -- A NUMERICAL LIMIT

1 IS BETTER THAN THE PAGE LIMIT.

2 MR. VERHOEVEN: I THINK WE HAVE 70  
3 DISPUTED INSTRUCTIONS, SO THAT'S THE UNIVERSE, AND  
4 WHAT WE NEED IS A REASONABLE SUBSET OF THAT.

5 THE COURT: CAN WE SAY FIVE EACH? IS  
6 THAT TOO SMALL?

7 MR. JACOBS: SO 10 EACH WITH A 20-PAGE  
8 PAGE LIMIT.

9 THE COURT: SO 8 EACH WITH A 16-PAGE PAGE  
10 LIMIT.

11 MR. JACOBS: I THINK THAT'S WHAT'S CALLED  
12 HORSE TRADING.

13 THE COURT: YEAH.

14 MR. VERHOEVEN: I'M SORRY, WHAT WAS THAT?

15 THE COURT: SO 8 EACH, SO IT'LL BE 16  
16 TOTAL, A PRETTY SIGNIFICANT CHUNK OUT OF THE 70,  
17 AND YOU GET LIKE BASICALLY TWO PAGES HER OBJECTION,  
18 16 PAGES.

19 MR. JACOBS: AND I THINK -- WE WON'T TRY  
20 AND MEET -- WE'LL FILE ON THE EIGHT THAT WE WANT  
21 AND THE OTHER SIDE WILL RESPOND AND VICE-VERSA.  
22 WE'LL COME INTO THE HEARING.

23 THE COURT: TO ARGUE, YEAH. I'M ASSUMING  
24 IT'S LARGELY GOING TO BE THE SAME AS WHAT YOU'VE  
25 ALREADY FILED, RIGHT?

1 MR. JACOBS: IT SHOULD BE, YOUR HONOR. I  
2 THINK WE'VE EXHAUSTIVELY RESEARCHED THESE.

3 MS. MAROULIS: WE MAY PICK DIFFERENT  
4 EIGHT.

5 THE COURT: RIGHT, BUT DO YOU ANTICIPATE  
6 NEW LEGAL ARGUMENTS ARISING? BECAUSE YOU'VE  
7 ALREADY BRIEFED IT TWICE. SO THERE WON'T BE ANY  
8 SURPRISES.

9 MR. VERHOEVEN: THESE WILL BE AN  
10 INDICATION TO YOU OF THE ONES THAT WE'D LIKE TO  
11 PRESENT ARGUMENT ON. THAT'S THE WHOLE IDEA BEHIND  
12 THE H-P-O PROCESS.

13 THE COURT: NOW, THERE MAY BE SOME THAT  
14 HAVE TECHNICAL ERRORS, LIKE THE PATENT NUMBER IS  
15 OFF OR SOMETHING LIKE THAT. YOU CAN JUST TELL ME  
16 ORALLY AT THE HEARING.

17 MR. JACOBS: OKAY.

18 THE COURT: JUST TO CLEAN UP ANY  
19 MISTAKES. OKAY. WHAT ELSE? IS THERE IN THIS CASE  
20 ELSE THAT WE NEED TO PLAN AHEAD ON?

21 SO IF WE NEED TO REACH YOU THIS WEEKEND,  
22 EVERYONE, WE'LL JUST E-MAIL YOU?

23 ANYTHING ELSE?

24 MR. JACOBS: WE'RE STILL GOING TO TRY TO  
25 WORK OUT OUR DEAL ON THE PHONES. AND WE MAY HAVE



1 TO DISCUSS THAT WITH YOU ON MONDAY FINALLY BECAUSE  
2 THE JURY WILL START DELIBERATING ON TUESDAY.

3 THE COURT: WHAT IS THE DROP-DEAD TIME  
4 THAT YOU NEED TO HAVE EVERYTHING RESOLVED TO GET  
5 YOUR CLOSINGS PREPARED?

6 MR. VERHOEVEN: WELL, YOU KNOW, ONE THING  
7 WE CAN DO, YOUR HONOR, IS AGREE THAT WE CAN MAKE  
8 DEMONSTRATIVES WITH THE JURY INSTRUCTIONS AS LONG  
9 AS THEY'RE JUST FAITHFULLY DEPICTING THEM, AND WE  
10 WOULDN'T HAVE TO WORRY ABOUT THE DISCLOSURE  
11 AGREEMENT WE HAVE FOR THOSE SLIDES.

12 SO IF THE INSTRUCTIONS DON'T COME OUT  
13 UNTIL AFTER WE EXCHANGE OUR CLOSING SLIDES, THEN WE  
14 COULD MODIFY THOSE SLIDES AND ADD SOME INSTRUCTIONS  
15 AND WHATNOT.

16 MR. JACOBS: THAT'S A GOOD IDEA, YOUR  
17 HONOR, BECAUSE I THINK THAT'S THE PART THAT WILL BE  
18 UNSTABLE THROUGH MONDAY.

19 THE COURT: SO YOU'RE NOT GOING TO  
20 PREVIEW ANY OBJECTIONS BEFORE YOUR PRESENTATIONS?

21 MR. JACOBS: NO. WE'LL FIGURE OUT A TIME  
22 TO EXCHANGE ALL SLIDES EXCEPT THOSE THAT WOULD BE  
23 DEPENDENT ON --

24 MR. VERHOEVEN: EXACTLY.

25 MR. JACOBS: THAT WOULD BE A REPRODUCTION

1 OF THE INSTRUCTIONS.

2 THE COURT: OKAY.

3 MR. VERHOEVEN: BUT THE SOONER WE GET  
4 THEM, OBVIOUSLY THE BETTER, BECAUSE EVEN DOING  
5 THAT, ADJUSTING TAKES SOME TIME.

6 THE COURT: WELL, I'M HOPING THAT AFTER  
7 YOU GET IT ON SUNDAY, AT LEAST HOPEFULLY A BIG  
8 CHUNK WILL BE STABLE, BUT THE PROBLEM IS THE ONES  
9 THAT WILL MOVE ARE THE ONES THAT YOU PROBABLY CARE  
10 ABOUT.

11 SO WHAT TIME WILL YOU GIVE ME YOUR  
12 OBJECTIONS TO YOUR DEMONSTRATIVES?

13 MS. MAROULIS: YOU WANTED IT BY 5:00  
14 O'CLOCK ON MONDAY.

15 THE COURT: THAT MIGHT HAVE TO MOVE NOW.

16 MR. VERHOEVEN: THAT'S POSSIBLE, OR WHAT  
17 WE COULD DO IS WE COULD DEAL WITH THOSE INDEPENDENT  
18 OF THE INSTRUCTIONS AND THEN WE COULD HAVE ANOTHER  
19 AGREEMENT THAT IF WE HAVE TO MODIFY SLIDES BECAUSE  
20 WE LOST AN INSTRUCTION WE WERE HOPING TO WIN OR  
21 WHATNOT, WE COULD HAVE A MUCH SMALLER TRANCHE THAT  
22 WE COULD JUST EXCHANGE AND TRY TO WORK OUT AND THEN  
23 PERHAPS THERE WOULD BE A HANDFUL, FOUR OR FIVE, WE  
24 HAVE TO DEAL WITH IN THE MORNING.

25 THE COURT: LET PUT A TIME LIMIT ON IT.

1 WHAT ABOUT LIKE 8:00 O'CLOCK OR 9:00 O'CLOCK?

2 MR. JACOBS: ON MONDAY NIGHT.

3 THE COURT: YEAH, SO IT'LL BE SET AT 5:00  
4 O'CLOCK, AND THEN IF SOMETHING SHIFTS, IT'LL BE  
5 8:00 O'CLOCK.

6 MR. VERHOEVEN: I WOULD GREATLY PREFER  
7 8:00 O'CLOCK INSTEAD OF 9:00.

8 THE COURT: MAYBE WE SHOULD JUST SAY 8:00  
9 -- NO, IF IT'S GOING TO COME IN BASICALLY, 5:00  
10 O'CLOCK AND 8:00 O'CLOCK.

11 SO WHAT ELSE? ANYTHING ELSE WE NEED TO  
12 WORK OUT IN ANY OTHER HOUSEKEEPING.

13 MS. MAROULIS: YOUR HONOR, WHAT TIME DO  
14 YOU NEED US HERE ON TUESDAY, 8:30 OR 9:00?

15 THE COURT: WE SHOULD SAY 8:30 JUST IN  
16 CASE SOMETHING SUDDENLY COMES UP. AND I'M SORRY  
17 THAT I'VE MADE YOU ALL WAIT A NUMBER OF TIMES ON  
18 SEVERAL TRIAL DAYS AND NOT COME OUT UNTIL 8:45, BUT  
19 8:30 JUST IN CASE THERE'S ANY LAST-MINUTE ISSUE.

20 MR. JACOBS: NO PROBLEM, YOUR HONOR.  
21 WE'VE BEEN GETTING HERE EARLY JUST TO GET SETTLED  
22 IN.

23 I THINK YOUR HONOR SAID THAT YOU WOULD BE  
24 INSTRUCTING --

25 THE COURT: BEFORE CLOSING, YES. AND I'M

1 GOING TO GIVE THEM A HARD COPY SO THEY CAN FACT  
2 CHECK YOU WHEN YOU'RE ARGUING.

3 YEAH. SO WE'LL GIVE THEM A THREE-HOLE  
4 PUNCHED COPY THEY CAN PUT IN THEIR JURY BINDERS.

5 ANYTHING ELSE?

6 MR. JACOBS: YOUR HONOR, WE DISCUSSED THE  
7 JURY BINDER EARLIER, AND I JUST WANTED TO MAKE SURE  
8 THE JURY BINDER ITSELF IS LODGED AND IN THE RECORD,  
9 THE MATERIALS THAT HAVE BEEN PROVIDED TO THEM. CAN  
10 WE --

11 THE CLERK: IT IS, YOUR HONOR.

12 THE COURT: IT HAS BEEN LODGED.

13 THE CLERK: YES.

14 THE COURT: OKAY.

15 (DISCUSSION OFF THE RECORD BETWEEN THE  
16 COURT AND THE CLERK.)

17 THE COURT: OKAY, YES. YES, IT IS.

18 MR. RIVERA TELLS ME IT IS LODGED.

19 MR. JACOBS: THANK YOU.

20 THE COURT: WHAT ELSE? ANYTHING ELSE?

21 MR. VERHOEVEN: NOTHING FROM SAMSUNG,  
22 YOUR HONOR.

23 MR. JACOBS: NO, YOUR HONOR.

24 THE COURT: OKAY. THANK YOU. SO WE'LL  
25 GET YOU THE INSTRUCTIONS ON SUNDAY.

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MR. VERHOEVEN: THANK YOU, YOUR HONOR.

THE COURT: THANK YOU.

MR. MCELHINNY: THANK YOU, YOUR HONOR.

(WHEREUPON, THE EVENING RECESS WAS  
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 17, 2012