

# Exhibit 4

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

APPLE INC., a California corporation,

Plaintiff,

v.

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,

Defendants.

Case No. 11-cv-01846-LHK

**EXPERT REPORT OF PETER W.  
BRESSLER, FIDSA**

**\*\*CONFIDENTIAL – CONTAINS MATERIAL DESIGNATED AS HIGHLY  
CONFIDENTIAL – ATTORNEYS’ EYES ONLY PURSUANT TO A PROTECTIVE  
ORDER\*\***

1           274. The minor differences between the design of the Vibrant and the design of the  
2 D'270 Patent are details that are insufficient to differentiate the overall impression given by the  
3 Vibrant from that given by the claimed design of the D'270 Patent. An ordinary observer's  
4 overall impression is created by the design as a whole; for the ordinary observer, changes in  
5 details that are clearly subordinate to the primary visual elements are insufficient to alter that  
6 overall impression.

7           275. In my opinion, the Vibrant design is substantially the same as the D'270 design  
8 and embodies that patented design. It is similarly my opinion that an ordinary observer would  
9 also find the Vibrant design to be substantially the same as the patented D'270 design.

#### 10           **XIV. APPLE PRACTICES THE CLAIM OF THE D'889 PATENT**

11           276. It is my opinion that the iPad 2 practices the claim of the D'889 Patent.













12           277. In forming this opinion, I reviewed the prosecution history of the D'889 Patent and  
13 analyzed and familiarized myself with the prior art cited therein.

14           278. To determine whether the iPad 2 practices the D'889 Patent, I compared Figures  
15 1–8 of the D'889 Patent with corresponding views of the iPad 2.<sup>67</sup>



16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27           <sup>67</sup> To ensure accuracy, my comparisons involving the Apple Products were done using actual devices rather  
28 than pictures of the Apple Products. I reserve the right to rely on the actual phones for purposes of trial testimony.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

<b>D'889 Patent Claim</b>	<b>Apple iPad 2</b>
 <p data-bbox="646 533 714 558"><b>FIG. 3</b></p>	
 <p data-bbox="646 848 714 873"><b>FIG. 4</b></p>	
 <p data-bbox="646 953 714 978"><b>FIG. 5</b></p>	
 <p data-bbox="646 1037 714 1062"><b>FIG. 6</b></p>	
 <p data-bbox="659 1131 721 1157"><b>FIG. 7</b></p>	
 <p data-bbox="659 1215 721 1241"><b>FIG. 8</b></p>	

279. The elements depicted in the D'889 Patent are present in the corresponding portions of the design of Apple's iPad 2. For instance, both the D'889 Patent and the iPad 2 have the same overall shape that is symmetrical both vertically and horizontally with four evenly rounded corners. Just like the D'889 Patent, the iPad 2 has a flat, clear front surface surrounded by a thin rim. In both the D'889 Patent and the iPad 2, the clear surface extends across to the perimeter of the front surface, which is substantially free of added adornment. Moreover, both the patented D'889 design and the iPad 2 have a rectangular display screen bordered by a mask centered behind the clear front surface. Both the patented D'889 design and the iPad 2 have a substantially flat back that curves upwards at the side to meet the front plane at an edge. Also, both the patented D'889 design and the iPad 2 have a thin profile.

1           280. Some minor differences exist between the iPad 2 and the patented D'889 design.  
2 For instance, the side profile of the iPad 2 is not quite as vertical as the side profile in the D'889  
3 design; and the iPad 2 is slightly thinner than the D'889 design.

4           281. These minor differences between the design of the iPad 2 and the design of the  
5 D'889 Patent are details that are insufficient to differentiate the overall impression given by the  
6 iPad 2 from that given by the claimed design of the D'889 Patent. An ordinary observer's overall  
7 impression is created by the design as a whole; for the ordinary observer, changes in details that  
8 are clearly subordinate to the primary visual elements are insufficient to alter that overall  
9 impression.

10           282. In my opinion, the iPad 2 design is substantially the same as the D'889 design and  
11 embodies that patented design. It is similarly my opinion that an ordinary observer purchasing a  
12 smartphone would also find the iPad 2 design to be substantially the same as the patented D'889  
13 design.

14 **XV. APPLE PRACTICES THE CLAIM OF THE D'087 PATENT**

15           283. It is my opinion that the following Apple products practice the claim of the D'087  
16 Patent: iPhone (original), iPhone 3G, and iPhone 3GS.

17           284. In forming this opinion, I reviewed the prosecution history of the D'087 Patent and  
18 analyzed and familiarized myself with the prior art cited therein.

19           285. To determine whether each of the Apple Products practices the D'087 Patent, I  
20 compared Figures 5-9, 11, 17 & 19 of the D'087 Patent with corresponding views of each of the  
21 Apple Products.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**XXI. SUPPLEMENTATION**

370. I reserve the right to supplement or amend this report if additional facts and information that affect my opinion become available. In particular, I understand that Samsung may serve an expert report concerning one or more of the issues addressed by this report. I may therefore supplement or amend my report or opinions in response to additional discovery or other events and may rebut the expert report submitted by Samsung.

**XXII. EXHIBITS TO BE USED**

371. I anticipate using as Exhibits during trial certain documents and things referenced or cited in this report or accompanying this report. I also anticipate using other demonstrative Exhibits or things at trial.

Dated: March 22, 2012

  
\_\_\_\_\_  
PETER BRESSLER