

# Exhibit 5

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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

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

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

1           39.       Moreover, the Fidler 1994 mockup lacks biaxial symmetry, includes added  
2 adornments on the front surface, and includes a number of slots and notches along its perimeter.  
3 It also includes a hatch on the back secured by four screws.

4           40.       Based on the contrast in overall visual impression, it is my opinion that the  
5 ordinary observer would not find the Fidler 1994 mockup substantially the same as the D'889  
6 design.

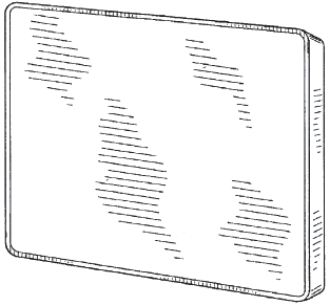
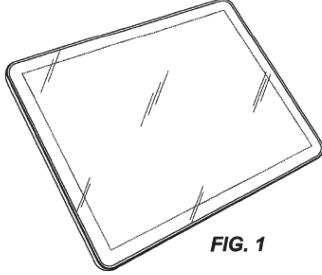
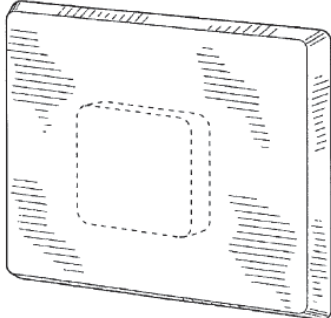
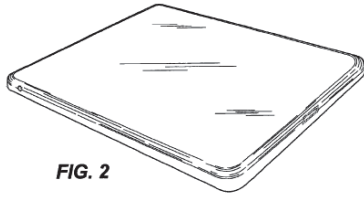

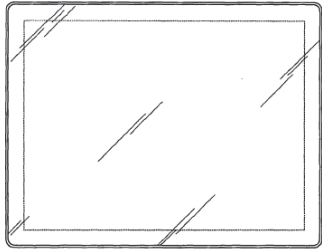
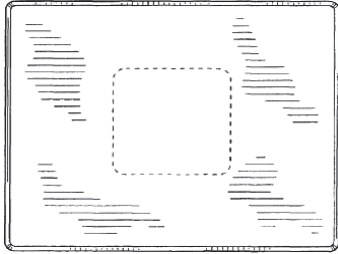
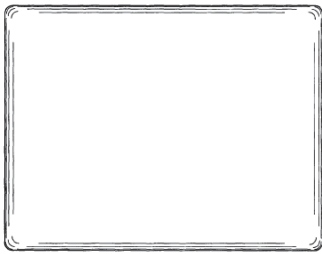
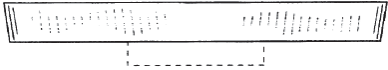




7           41.       **Fidler 1997 Plexiglas Sheet.** Mr. Sherman alleges that a sheet of Plexiglas  
8 material marked as Exhibit 267 to Mr. Fidler's deposition constitutes an anticipating prior art  
9 design to the D'889 patent. I have inspected this sheet of Plexiglas, along with photographs of it  
10 taken during inspections, and disagree with Mr. Sherman. As Mr. Fidler testified during his  
11 deposition, this was merely a "blank rectangle with round corners" made of Plexiglas used to test  
12 user preference for portrait or landscape orientation during a mall survey. (Fidler Dep. at 138:16-  
13 139:23; 307:11-311:9 (Sep. 23, 2011).) Moreover, Mr. Fidler indicated that Exhibit 267 was a  
14 replica actually different in form factor from the original Plexiglas sheet that was used in 1997.  
15 (*Id.* at 308:3-14.)

16           42.       Accordingly, this sheet of Plexiglas is merely that—it is not a tablet design. To  
17 belabor the point, it does not include a clear sheet of material over the entire front surface because  
18 the Exhibit is a single sheet of Plexiglas with no separate surface layer. The Exhibit does not  
19 include a body that rounds up at the sides to form a thin rim around the front surface, because it is  
20 a single sheet of Plexiglas with no design for a body, rim, or front surface.

21           43.       It is my opinion that the ordinary observer would not find this sheet of Plexiglas  
22 to be substantially the same as the D'889 design for an electronic device.

23           44.       **D500,037 ("the D'037 patent")**. Mr. Sherman also asserts that the D'037 patent  
24 constitutes an anticipatory reference against the D'889 patent. I disagree. In particular, the  
25 D'037 design lacks distinctive features of the D'889 patent—an edge-to-edge transparent front  
26 surface and an underlying rectangular element that marks even borders all the way around the  
27 perimeter of the device. In contrast, the D'037 patent merely uses straight surface shading to  
28 indicate a continuous front surface. No oblique lines are used in the D'037 patent to indicate that

1 its front surface is entirely transparent. And no lines are used to mark a rectangular element  
 2 underneath a transparent front surface.

D500,037	D'889 Patent
	 <p>FIG. 1</p>
	 <p>FIG. 2</p>
	 <p>FIG. 3</p>
	 <p>FIG. 4</p>
	 <p>FIG. 5</p>  <p>FIG. 6</p>
	 <p>FIG. 7</p>

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**V. SUPPLEMENTATION**

426. I reserve the right to supplement this report with new information and/or documents that may be discovered or produced in this case, or to address any new arguments offered by Samsung.

Dated: April 16, 2012



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Peter W. Bressler