

# **Proctor Declaration**

## **EXHIBIT 10**

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

APPLE INC., A CALIFORNIA	)	C-11-01846 LHK
CORPORATION,	)	
	)	SAN JOSE, CALIFORNIA
PLAINTIFF,	)	
	)	JULY 24, 2012
VS.	)	
	)	PAGES 1-87
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.	)	

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

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A P P E A R A N C E S :

FOR PLAINTIFF MORRISON & FOERSTER  
APPLE: BY: HAROLD J. MCELHINNY  
MICHAEL A. JACOBS  
RACHEL KREVANS  
425 MARKET STREET  
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FOR COUNTERCLAIMANT WILMER, CUTLER, PICKERING,  
APPLE: HALE AND DORR  
BY: WILLIAM F. LEE  
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BOSTON, MASSACHUSETTS 02109  
BY: MARK D. SELWYN  
950 PAGE MILL ROAD  
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FOR THE DEFENDANT: QUINN, EMANUEL, URQUHART,  
OLIVER & HEDGES  
BY: CHARLES K. VERHOEVEN  
50 CALIFORNIA STREET, 22ND FLOOR  
SAN FRANCISCO, CALIFORNIA 94111  
BY: VICTORIA F. MAROULIS,  
KEVIN P.B. JOHNSON  
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BY: MICHAEL T. ZELLER,  
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FOR INTERVENOR RAM, OLSON,  
REUTERS: CEREGHINO & KOPCZYNSKI  
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1 HIGHLY POLISHED OR REFLECTIVE SURFACES, AND THAT'S  
2 M.P.E.P. 1530.02, AND IT STATES VERY CLEARLY THAT  
3 OBLIQUE LINE SHADING MUST BE USED TO CLAIM THAT.  
4 THAT IS THE RULE, AND THAT IS WHAT THE PUBLIC'S  
5 ENTITLED TO RELY ON.

6 AND THEY HAVE -- YOUR HONOR, THEY HAVE  
7 FILED MULTIPLE DESIGN PATENTS FOR EACH VERSION OF  
8 THEIR IPHONE, MANY, MANY OF THEM, AND SOME OF THEM  
9 HAVE THOSE LINES.

10 THEY CHOSE TO FILE THIS ONE WHERE THEY  
11 DIDN'T FOLLOW THE RULES FOR CLAIMING A TRANSPARENT,  
12 TRANSLUCENT, OR HIGHLY POLISHED OR REFLECTIVE  
13 SURFACE.

14 NOW, TURNING TO THE ARGUMENT I HEARD, IT  
15 REALLY DOESN'T MAKE ANY SENSE IN THE CONTEXT OF  
16 DESIGN PATENTS, BECAUSE WHAT THEY'RE SAYING IS  
17 1530.02 SAYS YOU MUST USE OBLIQUE LINE SHADING TO  
18 CLAIM TRANSPARENT, BUT EVEN THOUGH WE DIDN'T DO  
19 THAT, WE'RE CLAIMING TRANSPARENT ON THIS DESIGN  
20 PATENT, THE '087.

21 BUT THAT'S TOTALLY INCONSISTENT WITH WHAT  
22 THE RULE SAYS, WHICH IS YOU MUST PUT THESE LINES ON  
23 THERE IF YOU'RE CLAIMING THAT.

24 THEY DIDN'T DO IT.

25 AND I DISAGREE THAT THAT MEANS THAT THEY

1 CAN THEN DISREGARD THIS RULE AND CLAIM ANYTHING  
2 THEY WANT FOR THAT SURFACE.

3 THE RULE SAYS IF YOU WANT THAT TO BE  
4 TRANSPARENT, TRANSLUCENT, OR HIGHLY POLISHED OR  
5 REFLECTIVE, THIS IS WHAT YOU MUST DO, AND THIS IS  
6 WHAT THEY COULD DO WHEN THEY WANTED TO DO THAT.

7 THEY HAVE OTHER PATENTS THEY COULD HAVE  
8 CHOSEN, THEY DIDN'T CHOOSE, THAT HAD THAT LINING ON  
9 OTHER DESIGNS FOR THEIR PHONES.

10 SO WE STRONGLY OBJECT TO THE  
11 INTERPRETATION IN THE DESIGN PATENT CONTEXT THAT  
12 YOU CAN DISREGARD M.P.E.P. 1530.02.

13 THE PUBLIC HAS A RIGHT TO RELY ON THESE  
14 RULES AND TO LOOK AND SAY, OKAY, THEY PUT DOTTED  
15 LINES AROUND THE BACK, THAT MEANS THEY'RE NOT  
16 CLAIMING THE BACK.

17 OKAY. THEY PUT THESE OBLIQUE LINE  
18 SHADINGS ON ONE OF THEIR PATENTES. THAT MEANS IT'S  
19 GOT THE TRANSLUCENT SURFACE OR SHINY SURFACE.

20 HERE THEY DIDN'T DO IT. THAT MEANS IT  
21 DOESN'T HAVE IT.

22 AND I THINK WE'RE ENTITLED AND THE PUBLIC  
23 IS ENTITLED TO RELY ON THAT AND THEY SHOULDN'T BE  
24 ABLE TO CIRCUMVENT THE RULES FOR HOW THEY DRAW  
25 THEIR PATENT.

1 IT'S THEIR PROCEEDING, IT'S EX PARTE,  
2 THEY'RE SUPPOSED TO FOLLOW THE RULES AND IT'S NOT  
3 THIS COURT'S JOB TO FIX THAT.

4 THE COURT: LET ME ASK YOU, WITH REGARD  
5 TO THE '087 ON THE PHONES, APPLE'S PROPOSED  
6 ADDITIONAL LANGUAGE THAT THE -- EVEN IF THE USE OF  
7 THE SCREEN IS FUNCTIONAL, THE PLACEMENT, SHAPE, AND  
8 DIMENSION OF THE SCREEN ISN'T FUNCTIONAL AND THAT  
9 CAN BE PART OF THE CLAIMED DESIGN.

10 WHAT'S SAMSUNG'S POSITION ON THAT  
11 ADDITIONAL LANGUAGE?

12 MR. VERHOEVEN: WELL, WHAT OUR POSITION  
13 IS, IS THAT THE -- WE'VE ASKED THE COURT -- THIS IS  
14 ON SLIDE 16 FOR YOUR CONVENIENCE, YOUR HONOR, IF  
15 YOU WANT TO LOOK -- ON THE FUNCTIONALITY PART TO  
16 RULE THAT THE '087 DID NOT GIVE APPLE RIGHTS TO THE  
17 SIZE THAT CAN BE HANDHELD, A LARGE SCREEN ON THE  
18 FRONT FACE OF A SMARTPHONE, OR A SPEAKER ON THE  
19 UPPER PORTION OF THE FRONT FACE.

20 THIS IS HOW WE READ THE LAW. WHEN WHAT  
21 THEY'RE ASKING FOR IS FOR YOU TO ADD WORDS TO THIS  
22 THAT MAKE IT SOUND LIKE -- YOU'LL HAVE TO READ IT  
23 TO ME AGAIN, YOUR HONOR.

24 THE COURT: IT WAS THAT EVEN IF THE USE  
25 OF THE SCREEN IS FUNCTIONAL, THAT THE SHAPE, THE

1 PLACEMENT, AND THE DIMENSIONS OF THE SCREEN ARE NOT  
2 FUNCTIONAL. THAT WAS APPLE'S PROPOSAL.

3 MR. VERHOEVEN: IT -- I THINK THAT'S  
4 ARGUMENTATIVE, YOUR HONOR.

5 I MEAN, WHAT THEY'RE PROPOSING FOR A  
6 CONSTRUCTION, IF YOU LOOK AT SLIDE 16, IS AN  
7 AFFIRMATIVE DESCRIPTION THAT'S USED IN CONJUNCTION  
8 WITH THE FIGURES, AND THEN WE'RE CALLING OUT  
9 ASPECTS OF THE DESIGN THAT ARE FUNCTIONAL.

10 AND WHAT THEY'RE DOING IS THEY'RE TAKING  
11 THAT AND TRYING TO TURN IT INTO A NEGATIVE AND MAKE  
12 IT SOUND LIKE IT'S NOT FUNCTIONAL OR THAT  
13 FUNCTIONALITY IS LIMITED SOMEWHERE.

14 SO WE DO HAVE A PROBLEM WITH THE WAY  
15 THAT'S WORDED.

16 THE COURT: LET ME -- THIS IS THE LAST  
17 QUESTION ON THE CLAIM CONSTRUCTION.

18 LET ME ASK APPLE. SO WITH AT LEAST -- I  
19 MEAN, WITH SEVERAL OF THESE DESIGN PATENTS, THERE'S  
20 UNFORTUNATE INCONSISTENCY OR SLOPPINESS IN HOW IT'S  
21 DONE.

22 SOME OF THE, YOU KNOW, PICTURES OF THE  
23 BACK FACE HAVE THE OPAQUE LINE SHADING, SOME OF  
24 THEM DON'T. YOU KNOW, SOME OF THEM THAT HAVE THE  
25 BROKEN LINES -- HAVE THE BROKEN LINE DISCLAIMER,

1 SOME OF THEM DON'T. SOME OF THEM -- IT'S -- WHAT  
2 AM I SUPPOSED TO MAKE OF THIS OTHER THAN, YOU KNOW,  
3 THERE MAY HAVE BEEN SOME UNFORTUNATE PROSECUTION  
4 HERE?

5 MS. KREVANS: SO I THINK THE FIRST THING  
6 THAT'S KEY TO REMEMBER HERE IS THAT VERY FEW OF THE  
7 SUPPOSED RULES THAT SAMSUNG CITES IN THEIR BRIEF  
8 FOR HOW THINGS ARE TO BE UNDERSTOOD WHEN THEY ARE  
9 DRAWN FOR DESIGN PATENTS ARE ACTUALLY HARD AND FAST  
10 RULES.

11 IN FACT, THE ONLY ONE IS THIS ONE ABOUT  
12 IF YOU WANT TO SPECIFICALLY CLAIM, LIMIT YOUR  
13 DEVICE TO A SURFACE THAT IS TRANSLUCENT,  
14 TRANSPARENT, ET CETERA, YOU MUST USE -- BECAUSE THE  
15 M.P.E.P. USES THE WORD "MUST" -- YOU MUST USE  
16 OBLIQUE LINES.

17 THE OTHER THINGS THAT HAVE BEEN TALKED  
18 ABOUT HERE, LIKE THE DOTTED LINES, THE DASHED  
19 LINES, THOSE ARE GUIDELINES. THEY SAY "MAY."  
20 THEY'RE SUGGESTIONS. YOU STILL HAVE TO LOOK AT THE  
21 CONTEXT.

22 AND WHAT WE HAVE HERE IS WE HAVE PATENTS  
23 THAT HAVE SOMEWHAT DIFFERENT STATEMENTS IN  
24 DIFFERENT CONTEXTS. SO THE '305 AND THE '087  
25 EXPLICITLY STATE RIGHT ON THE PATENTS, ON BROKEN



1 LINES, THAT THE BROKEN LINES IN THE FIGURES FORM NO  
2 PART OF THE CLAIM'S DESIGN.

3 THE '677 ACTUALLY SAID THAT AS WELL, AND  
4 DUE TO AN ERROR BEFORE IT WAS PRINTED BY THE PATENT  
5 OFFICE, THAT PARAGRAPH THAT HAD THAT LANGUAGE GOT  
6 LEFT OUT.

7 BUT IT'S THERE IN THE PROSECUTION HISTORY  
8 AND THERE'S NO QUESTION THAT WAS THE INTENT, SO WE  
9 THINK THE '677 SHOULD BE TREATED JUST LIKE THE '305  
10 AND THE '087, AND WE'VE CITED THAT PART OF THE  
11 PROSECUTION HISTORY IN OUR BRIEF.

12 WITH RESPECT TO THE '889, THERE'S A  
13 DIFFERENT ISSUE BECAUSE RATHER THAN A GENERAL  
14 STATEMENT, THERE'S A STATEMENT AND A DESCRIPTION OF  
15 THE SINGLE FIGURE, FIGURE 9, THAT SAYS, "IN FIGURE  
16 9, THE DOTTED LINES SHOW ENVIRONMENT. THEY'RE NOT  
17 PART OF THE CLAIMED DESIGN." IT'S A STATEMENT  
18 THAT'S ONLY ABOUT FIGURE 9, AND THE LAW ABOUT  
19 DOTTED AND BROKEN LINES IS YOU HAVE TO LOOK TO  
20 SEE --

21 THE COURT: BUT FIGURE 9 IS A LITTLE BIT  
22 CONFUSING -- I'M SORRY TO INTERRUPT YOU -- BECAUSE  
23 THE MAN IS IN A BROKEN LINE AND THEN THERE'S A  
24 BROKEN LINE ON THE TABLET.

25 SO, I MEAN, WHAT IS THAT DISCLAIMER

1 APPLYING TO? A HUMAN BEING OR TO THE INSET IN THE  
2 TABLET SCREEN?

3 MR. VERHOEVEN: THEY CAN ARGUE THAT NO  
4 HUMAN BEING CAN USE IT, BUT WE DIDN'T HEAR THAT.

5 (LAUGHTER.)

6 MS. KREVANS: DURING THE PROSECUTION,  
7 THERE WAS A BACK AND FORTH BETWEEN THE PATENT  
8 OFFICE AND THE APPLICANT AND THE PATENT OFFICE SAID  
9 "YOU NEED TO PUT THAT STATEMENT ABOUT FIGURE 9 SO  
10 IT'S CLEAR THAT THAT MAN AND HIS DOTTED LINE IN  
11 WHICH IT APPEARS IN THE DESIGN IS JUST, THE WHOLE  
12 THING IS JUST SHOWING ENVIRONMENT." BUT WHAT'S  
13 REALLY CLEAR IS IT'S ONLY ABOUT FIGURE 9.

14 AND THE CASE LAW, WHICH WE HAVE CITED TO  
15 YOUR HONOR IN OUR BRIEFS, MAKES IT ABSOLUTELY CLEAR  
16 THAT UNLESS THERE IS AN EXPLICIT STATEMENT THAT  
17 DOTTED LINES ARE SUPPOSED TO SHOW DISCLAIMER, THEY  
18 DON'T.

19 AND THAT'S WHY IN SOME CIRCUMSTANCES,  
20 LIKE THE DASH LINES THAT ARE UNDERNEATH THE SCREEN  
21 THAT YOUR HONOR HAS ALREADY FOUND WITH RESPECT TO  
22 THE TABLET, SHOW WHERE THE DISPLAY AREA IS AND THE  
23 WHOLE FRONT FACE OF THE TABLET.

24 THOSE DASH LINES MEAN SOMETHING DIFFERENT  
25 BECAUSE THERE'S NOTHING TO SUGGEST THAT THEY ARE A

1 DISCLAIMER AND, ABSENT CLEAR EVIDENCE OF A  
2 DISCLAIMER, THOSE DOTTED OR BROKEN LINES DON'T MEAN  
3 A DISCLAIMER.

4 I -- WITH RESPECT TO THE CROSS HATCHING  
5 ON THE BACK AND THE PERSPECTIVE VIEW OF THE '889  
6 TABLET --

7 THE COURT: UM-HUM.

8 MS. KREVANS: -- THOSE CROSS HATCHES,  
9 WHICH SAMSUNG SAYS MUST MEAN IT'S TRANSLUCENT, ET  
10 CETERA, REGARDLESS OF CONTEXT, DON'T ACTUALLY MEAN  
11 THAT.

12 THAT RESULT IS NOT COMPELLED, AND PART OF  
13 THE WAY YOU KNOW THAT IS THERE ARE SIX OTHER  
14 FIGURES IN THE PATENT THAT ALSO SHOW THE BACK VIEW,  
15 AT LEAST IN PART, AND NONE OF THEM HAVE IT.

16 IN FACT, WHEN YOU SEE THE PLANNED VIEW OF  
17 THE BACK, WHAT THERE IS IS INSTEAD CONTOUR LINES  
18 AROUND THE OUTSIDE.

19 WE THINK THE BEST INTERPRETATION OF THOSE  
20 OBLIQUE LINES IN THE PERSPECTIVE VIEW OF THE BACK  
21 IS TO SHOW THAT IT'S FLAT, BECAUSE OTHERWISE YOU  
22 COULDN'T TELL FROM THE PERSPECTIVE VIEW.

23 IN THE PLANNED VIEW, THERE ARE CONTOUR  
24 LINES THAT SHOW YOU THAT IT'S FLAT, AND SO THE REST  
25 TELLS YOU THAT IT'S FLAT.

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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT  
REPORTER 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 MY SHORTHAND NOTES TAKEN AS  
SUCH OFFICIAL COURT REPORTER OF THE PROCEEDINGS  
HEREINBEFORE ENTITLED AND REDUCED BY COMPUTER-AIDED  
TRANSCRIPTION TO THE BEST OF MY ABILITY.

/s/

\_\_\_\_\_  
LEE-ANNE SHORTRIDGE, CSR, CRR  
CERTIFICATE NUMBER 9595

DATED: JULY 25, 2012