

Proctor Declaration

EXHIBIT 16

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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 6, 2012
VS.)	
)	VOLUME 4
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 931-1296
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DEFENDANTS.)	

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

APPEARANCES ON NEXT PAGE

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IRENE RODRIGUEZ, CSR, CRR
CERTIFICATE NUMBER 8074

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PLAINTIFF'S

JUSTIN DENISON

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AS-ON RECROSS-EXAM BY MR. LEE P. 977
AS-ON REDIRECT EXAM BY MR. QUINN P. 997

PETER BRESSLER

DIRECT EXAM BY MS. KREVANS P. 1002
CROSS-EXAM BY MR. VERHOEVEN P. 1098
REDIRECT EXAM BY MS. KREVANS P. 1236

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1 RIGHT-HAND CORNER. DIRECTLY BELOW THAT IS THE DATE
2 THAT THE PATENT WAS ISSUED. AND IF YOU FOLLOW DOWN
3 ON THE LEFT-HAND SIDE, YOU WILL SEE THE DATE THAT
4 IT WAS FILED. AND IF YOU READ CAREFULLY FURTHER,
5 YOU'LL SEE THAT IT MAY OR MAY NOT BE PART OF
6 SOMETHING THAT WAS FILED EARLIER.

7 AND THEN IN THE SECOND COLUMN, THERE'S
8 OTHER INFORMATION ON THERE, BUT THE SECOND COLUMN
9 CONTAINS, TO ME, THE REALLY IMPORTANT STUFF, WHICH
10 IS WHAT THE CLAIM IS AND THE DESCRIPTION OF THE
11 DRAWINGS IN THE PATENT.

12 Q BEFORE WE GET TO THE CLAIM, OVER ON THE
13 LEFT-HAND COLUMN, CAN YOU POINT OUT TO THE JURY
14 WHAT WAS THE DATE OF THE FIRST APPLICATION THAT WAS
15 FILED ON WHICH THIS PATENT ENDED UP BEING ISSUED,
16 THE EARLIEST DATE OF THE EARLIEST APPLICATION?

17 A IF YOU READ AT THE BOTTOM OF, I THINK, THE
18 NUMBER IS 60 WITH THE LITTLE PARENS ON THE LEFT, IF
19 YOU READ AT THE BOTTOM OF THAT, YOU'LL SEE THAT
20 THIS IS A DIVISION OF AN APPLICATION WHICH IS A
21 CONTINUATION, WHICH MEANS THAT THERE'S BEEN A LOT
22 OF THEM IN A ROW, WHICH WERE ORIGINALLY FILED ON
23 JANUARY 5TH OF 2007.

24 Q OKAY. LOOKING OVER ON THE RIGHT-HAND SIDE
25 THEN WHERE YOU SAID WE STARTED GETTING TO THE

1 IMPORTANT STUFF, DO YOU SEE THE PARAGRAPH -- THE
2 SENTENCE UNDER THE PARAGRAPH THAT'S HEADED CLAIM?

3 A YES.

4 Q WHAT DOES THE '677 PATENT SAY THAT IT CLAIMS?

5 A IT CLAIMS "THE ORNAMENTAL DESIGN OF AN
6 ELECTRONIC DEVICE, AS SHOWN AND DESCRIBED."

7 Q AND WHAT DO THE WORDS "AS SHOWN AND DESCRIBED"
8 REFER TO?

9 A THEY REFER TO A LIST OF THE DRAWINGS THAT COME
10 UNDER THE HEADING DESCRIPTION RIGHT BELOW, AND IN
11 THIS CASE AND IN MOST CASES, THERE ARE EIGHT
12 DRAWINGS OR FIGURES IS WHAT THEY CALL THEM, AND
13 THEN SOMETIMES THERE ARE ADDITIONAL SPECIFICATIONS
14 THAT ARE IN A PARAGRAPH BELOW THOSE 8. BUT IN THIS
15 CASE -- YEAH.

16 Q OKAY. SO LET'S KEEP THAT BLOWN UP FOR A
17 MOMENT, MR. LEE.

18 SO WE HAVE THE LIST OF EIGHT DRAWINGS,
19 AND THEN COULD WE LOOK AT THE TEXT THAT'S RIGHT
20 UNDER THAT LIST?

21 WHAT DOES THE TEXT THAT'S PART OF THE
22 DESCRIPTION OF THE D'677 UNDER THE LIST OF FIGURES
23 TELL US, MR. BRESSLER?

24 A IT TELLS US THAT THE "THE CLAIMED SURFACE OF
25 THE ELECTRONIC DEVICE IS ILLUSTRATED WITH A COLOR

1 DESIGNATION FOR THE COLOR BLACK," WHICH I THINK YOU
2 CAN EVEN SEE IN THE THREE-QUARTER VIEW.

3 Q OKAY. AND THE NEXT SENTENCE SAYS "THE
4 ELECTRONIC DEVICE IS NOT LIMITED TO THE SCALE SHOWN
5 HERE IN."

6 WHAT DOES THAT MEAN?

7 A AS A GENERAL RULE, RULE OF THUMB IN EXAMINING
8 DESIGN PATENTS, SIZE DOESN'T MATTER. WHATEVER THE
9 DRAWING IS, IT COULD BE ANY SIZE AS LONG AS, IF
10 IT'S NOT SPECIFIED OTHERWISE.

11 Q SO THE DRAWINGS DON'T PURPORT TO REPRESENT
12 WHAT THE ACTUAL SIZE OF THE DEVICE MIGHT BE?

13 A CORRECT, UNLESS THERE IS SOME REFERENCE IN THE
14 PATENT THAT GIVES YOU AN UNDERSTANDING OF THAT
15 SIZE.

16 Q OKAY. CAN WE LOOK AT YOUR SLIDE PDX 26.4.

17 WHAT HAVE YOU SET OUT ON PDX 26.4,
18 MR. BRESSLER?

19 A WHAT I'VE DONE HERE IS PUT TOGETHER A SLIDE
20 THAT SHOWS ALL OF THE VIEWS THAT YOU WOULD SEE ON
21 THE SEVERAL PAGES OF THE DESIGN PATENT INTO ONE
22 SHEET SO THAT THEY'RE EASIER TO SEE ALL AT ONE
23 TIME.

24 Q OKAY. SO THESE ARE THE EIGHT FIGURES THAT WE
25 JUST LOOKED AT IN THE LIST?

1 A CORRECT.

2 Q OKAY. USING THESE EIGHT FIGURES OF THE '677
3 PATENT, CAN YOU WALK THE JURY THROUGH THE DESIGN
4 THAT IS CLAIMED BY THESE PICTURES?

5 A YES. PERHAPS SINCE IT WAS JUST DISCUSSED, YOU
6 CAN SEE FROM THE SHADING THAT WHAT'S BEING CLAIMED
7 IN THIS DESIGN IS THE FRONT FACE OF AN ELECTRONIC
8 DEVICE THAT IS BLACK IN COLOR.

9 IF YOU NOTICE THE DIAGONAL LINES, OR
10 DIAGONAL HATCHING THAT RUNS FROM ONE CORNER TO THE
11 OTHER, OR ALL THE WAY ACROSS THE FRONT FACE, THOSE
12 ARE A CONVENTION FOR INDICATING THAT IT'S
13 REFLECTIVE OR TRANSPARENT OR TRANSLUCENT.

14 AND IN THIS PARTICULAR CASE, I SEE THAT
15 IT'S TRANSPARENT BECAUSE YOU CAN SEE AT A
16 RECTANGULAR, OR WHAT WE'RE PRESUMING TO BE A
17 DISPLAY AREA THAT IS CENTERED IN THAT RECTANGULAR
18 FIELD THAT'S DEFINED THAT IT GOES END TO END ACROSS
19 THE FACE AS TRANSPARENT.

20 Q AND WHAT FIGURE ARE WE LOOKING AT HERE,
21 MR. BRESSLER?

22 A I'M SORRY. WE ARE -- I TEND TO TALK OFF OF
23 FIGURE 1 BECAUSE TO ME, ALL OF THE ELEMENTS ARE
24 SEEN IN THERE.

25 BUT FOR REFERENCING THE THINGS I'M

1 SAYING, YOU COULD ALSO LOOK AT FIGURE 3 THAT SHOWS
2 IT ON A STRAIGHT ON VIEW.

3 BUT YOU SHOULDN'T NOT LOOK AT THE OTHER
4 VIEWS BECAUSE, FOR INSTANCE, FIGURE 5 AND 8 AND 7
5 AND 6 SHOW THE SIDE AND END VIEWS, AND BECAUSE
6 THERE IS A SINGLE, SOLID LINE THERE, THOSE ARE
7 INDICATING THAT ALL IT'S CLAIMING IS THAT FRONT
8 FACE. OKAY.

9 AND THE OTHER CONVENTION IS THAT THE
10 BROKEN LINES, OR WHAT YOU MIGHT CALL DOTTED LINES,
11 THAT ARE SHOWING OTHER ILLUSTRATED PORTIONS ARE
12 ILLUSTRATING PORTIONS OF WHAT MIGHT BE A DESIGN BUT
13 ARE NOT BEING CLAIMED IN THIS PATENT.

14 SO THE ONLY THING BEING CLAIMED IS THE
15 AREA IN THE SOLID LINES.

16 A COUPLE OTHER DETAILS THAT I WANTED TO
17 POINT OUT, WHICH YOU CAN SEE BOTH IN FIGURE 3 AND
18 FIGURE 1.

19 AS I MENTIONED, THERE IS THIS
20 RECTANGULAR, I THINK I MENTIONED, THERE'S A
21 RECTANGULAR DISPLAY AREA CENTERED IN THE DEVICE
22 THAT HAS LATERAL BORDERS ON EITHER SIDE THAT ARE
23 THIN ON THE SIDE AND THEN THEY'RE WIDER ON THE TOP
24 AND BOTTOM, AND THERE IS A LOZENGE SHAPED EAR SLOT,
25 BASICALLY, OR RECEIVER SLOT IN THE UPPER BORDER

1 AREA.

2 AND THE DOTTED LINES ARE EVEN A LITTLE
3 BIT ON THE FACE THERE WHERE THEY'RE DEFINING AN
4 AREA THAT'S NOT BEING CLAIMED.

5 SO WHEN YOU LOOK AT THIS FACE, IT DOESN'T
6 MATTER TO YOU WHAT IS IN THAT SPACE BECAUSE NOTHING
7 IS BEING CLAIMED THERE.

8 Q AND ARE YOU REFERRING THERE TO THE WHITE
9 CIRCLE INSIDE THE DOTTED LINES?

10 A YES.

11 Q OKAY. WHAT DO THESE FIGURES TELL YOU ABOUT
12 THE SHAPE OF THE FRONT FACE OF THE DEVICE THAT'S
13 CLAIMED?

14 A IT'S INDICATING THAT THE SHAPE OF THE FRONT
15 FACE OF THIS DEVICE IS A VERY SPECIFIC RECTANGULAR
16 PROPORTION AS INDICATED ON THE DRAWINGS, AS YOU CAN
17 SEE PERHAPS IN FIGURE 3, THE LENGTH AND WIDTH
18 PROPORTION IN COMPARISON TO THE CURVES ON THE
19 CORNERS, THAT'S TO PROVIDE A VERY SPECIFIC
20 IMPRESSION OR DESIGN.

21 Q NOW, I'D LIKE YOU TO TURN TO THE '087 PATENT,
22 THAT IS EXHIBIT JX 1041 IN YOUR BINDER.

23 AND FOR THE RECORD, I THINK THIS IS
24 ALREADY ADMITTED, YOUR HONOR.

25 COULD YOU LOOK AT THE '087 PATENT? AND

1 LOOKING SPECIFICALLY AT THE FIRST PRINTED PAGE,
2 TELL THE JURY WHEN THIS PATENT WAS ISSUED AND WHEN
3 IT WAS FIRST APPLIED FOR.

4 A THIS PATENT WAS ISSUED ON MAY 26TH, 2009. AND
5 IT WAS FIRST APPLIED FOR IN THE PARENS 63 ON
6 JANUARY 5TH, 2007.

7 Q OKAY. COULD YOU TURN TO THE NEXT PAGE AND TO
8 THE SECTION HEADED CLAIM. AND TELL THE JURY WHAT
9 IS THE DESIGN THAT IS CLAIMED IN THE '087 PATENT?

10 A AGAIN, THERE IS A SINGLE CLAIM IN THE PATENT,
11 WHICH IS "THE ORNAMENTAL DESIGN OF AN ELECTRONIC
12 DEVICE SUBSTANTIALLY AS SHOWN AND DESCRIBED," AND
13 THEN THERE'S THE LIST OF FIGURES OR DRAWINGS THAT
14 YOU'RE GOING TO SEE IN THE REST OF THE PATENT.

15 Q NOW, IN THIS PATENT, THERE'S A MUCH LONGER
16 LIST OF DRAWINGS, RIGHT.

17 A YES.

18 Q THERE'S NOT -- INSTEAD OF EIGHT, THERE ARE 48?

19 A CORRECT.

20 Q CAN YOU EXPLAIN TO US WHY THERE ARE 48
21 DRAWINGS RATHER THAN 8 DRAWINGS IN THIS PATENT?

22 A THIS PATENT COVERS SEVEN DIFFERENT VERSIONS,
23 OR COMBINATIONS OF ELEMENTS, OF DIFFERENT DESIGNS
24 WHICH ARE CALLED EMBODIMENTS, AND ALL OF THOSE
25 EMBODIMENTS ARE COVERED BY THE PATENT, BUT THEY'RE

1 COVERED SEPARATELY.

2 Q AND EACH OF THEM HAS EIGHT DRAWINGS?

3 A I'M SORRY. EACH OF THEM HAS EIGHT DRAWINGS,
4 FIGURES 1 THROUGH 8, THEN FIGURES 9 THROUGH 16, ET
5 CETERA, FOR SIX DIFFERENT VERSIONS.

6 Q SO 6 TIMES 8 IS 48?

7 A YES.

8 Q SO 48 FIGURES IS 6 EMBODIMENTS?

9 A CORRECT.

10 Q OKAY. COULD WE LOOK AT THE SECOND EMBODIMENT?

11 AND, THOMAS, IF YOU COULD PUT UP ON THE
12 SCREEN SIDE BY SIDE THE PAGES THAT SHOW THE EIGHT
13 FIGURES FOR THE SECOND EMBODIMENT, WHICH IS FIGURES
14 9 THROUGH 16.

15 AND YOU'LL FIND THOSE IN YOUR BINDER AS
16 WELL, MR. BRESSLER?

17 A YES, I HAVE THEM.

18 Q SO COULD WE SEE THE ACTUAL FIGURES.

19 GREAT.

20 USING THE DRAWINGS THAT ARE INCORPORATED
21 INTO THE CLAIMS OF THE '087 PATENT, COULD YOU WALK
22 THE JURY THROUGH THE DESIGN THAT IS CLAIMED BY
23 THESE FIGURES?

24 A YES.

25 THIS DESIGN IS CLAIMING THE FRONT FACE,

1 THE FLAT FRONT FACE AND THE BEZEL OF AN ELECTRONIC
2 DEVICE. AS YOU CAN SEE BY THE BROKEN LINES, AGAIN,
3 IT'S NOT CLAIMING THE BODY. IT'S CLAIMING THE
4 BEZEL AND THE FRONT FACE.

5 THAT FRONT FACE IS A RECTANGULAR DESIGN
6 WITH ROUNDED CORNERS IN THE PROPORTIONS AND THE
7 SCALE, LENGTH TO WIDTH AND PROPORTIONAL RATIOS THAT
8 ARE BEING SHOWN HERE IN THE DRAWING.

9 AND IT INCLUDES A RECTANGULAR DISPLAY, AS
10 DID THE OTHER PATENT, WITH NARROW BORDERS ON EITHER
11 SIDE AND WIDER BORDERS TOP AND BOTTOM.

12 AND IT SHOWS THAT RECTANGULAR FRONT FACE
13 AREA AS NOT HAVING ANY SPECIFICATION. IT DOESN'T
14 HAVE DIAGONAL CROSS ACTION, IT DOESN'T HAVE
15 SHEETING. SO THAT FLAT FRONT SURFACE COULD BE ANY
16 COLOR. IT COULD BE TRANSPARENT. IT COULD BE
17 ANYTHING. NOTHING IS BEING SPECIFIED.

18 THE OTHER PART OF IT TO NOTICE IS IN THE
19 SIDE VIEWS THAT, AGAIN, THIS IS SPECIFYING A FRONT
20 FACE AND BEZEL THAT ARE ABSOLUTELY FLAT.

21 MS. KREVANS: YOUR HONOR, MAY I APPROACH
22 THE WITNESS AND HAND HIM SOME OF THE PHONES --

23 THE COURT: YES.

24 MS. KREVANS: -- HE HAS TO TALK ABOUT?

25 THE WITNESS: THANK YOU.

1 THE COURT: LET'S BREAK AT 10:25. OKAY?

2 THANK YOU.

3 BY MS. KREVANS:

4 Q MR. BRESSLER, I'VE HANDED YOU FOUR PHONES, THE
5 ORIGINAL IPHONE; THE 3G; THE 3GS; AND THE IPHONE 4.

6 THOSE ARE EXHIBITS JX 1000, 1001, 1002
7 AND 1003, ALL IN EVIDENCE, YOUR HONOR.

8 DID YOU STUDY THESE IPHONES FOR THIS
9 CASE?

10 A I DID.

11 Q OKAY. COULD YOU LOOK AT PX 8 IN YOUR BINDER.
12 THAT'S GOING TO BE BACK CLOSER TO THE FRONT. WHAT
13 IS PX 8, MR. BRESSLER?

14 A PX 8 IS A PHOTOGRAPHIC PRESENTATION OF ALL OF
15 THE VIEWS OF ALL OF THE PHONES THAT YOU PRESENTED
16 TO ME.

17 Q SO PX 8 SHOWS A COLLECTION OF PHOTOS OF ALL
18 THE DIFFERENT VIEWS OF THE FOUR IPHONES THAT I JUST
19 GAVE YOU, THE ORIGINAL, 3G, 3GS, AND 4?

20 A CORRECT. AND THEY'RE IN VIEWS THAT YOU MIGHT
21 SEE THEM -- SEE A DESIGN THAT IS SIMILAR TO THEM IN
22 THE PATENT.

23 Q OKAY.

24 YOUR HONOR, WE'D MOVE THE ADMISSION OF PX
25 8.

1 THE COURT: ANY OBJECTION?

2 MR. VERHOEVEN: IT'S A DEMONSTRATIVE,
3 YOUR HONOR, SO MY UNDERSTANDING IS DEMONSTRATIVES
4 SHOULDN'T BE INTRODUCED INTO EVIDENCE.

5 MS. KREVANS: YOUR HONOR, IT'S NOT A
6 DEMONSTRATIVE. IT WAS OFFERED AS AN EXHIBIT.
7 THERE WERE OBJECTIONS THAT WERE MADE PREVIOUSLY
8 THAT YOUR HONOR HAS OVERRULED.

9 THE COURT: IT'S ADMITTED.

10 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 8,
11 HAVING BEEN PREVIOUSLY MARKED FOR
12 IDENTIFICATION, WAS ADMITTED INTO
13 EVIDENCE.)

14 THE COURT: GO AHEAD.

15 BY MS. KREVANS:

16 Q DID YOU REACH ANY CONCLUSIONS, MR. BRESSLER,
17 ABOUT WHETHER THE DESIGNS OF THE IPHONE ARE ANY OF
18 THE IPHONES IN FRONT OF YOU WERE THE DESIGN OF THE
19 D'677 PATENT?

20 A YES. I BELIEVE ALL OF THESE PHONES ARE
21 SUBSTANTIALLY THE SAME AS THE '677 PATENT.

22 Q OKAY. COULD WE SEE YOUR SLIDE 26.5, PLEASE,
23 MR. LEE.

24 WHAT HAVE YOU DEPICTED ON YOUR SLIDE
25 26.5?

1 A 26.5 IS EFFECTIVELY A FOUR-WAY COMPARISON, IF
2 YOU WILL, THAT SHOWS ALL OF THE FIGURES OF THE '677
3 DESIGN PATENT, AND IT SHOWS THE CORRESPONDING VIEWS
4 OF EACH OF THE ORIGINAL IPHONE, THE 3G AND 3GS AND
5 THE 4.

6 I THINK IT ILLUSTRATES FAIRLY CLEARLY
7 THAT ALL OF THEM EMBODY THE DESIGN THAT YOU SEE IN
8 THE '677 PATENT.

9 Q OKAY. LET ME ASK YOU A QUESTION ON ONE
10 SPECIFIC ASPECT OF THIS DESIGN.

11 DOES THE -- DO THE DRAWINGS IN THE D'677
12 PATENT TELL YOU WHETHER THE MATERIAL THAT'S THE
13 SURFACE OF THE FLAT FRONT FACE YOU DESCRIBED IS THE
14 SAME MATERIAL, EDGE TO EDGE, ACROSS THE WHOLE FACE?

15 A YES, IT DOES.

16 AS I MENTIONED IN MY DESCRIPTION OF THE
17 '677 PATENT, THE DIAGONAL LINE, IF YOU LOOK AT
18 THEM, I THINK I POINTED IT OUT, GO FROM ONE
19 DIAGONAL CORNER TO THE OTHER ALL THE WAY,
20 UNINTERRUPTED, ACROSS, AND THAT FRONT DIAGONAL
21 CROSS ACTION SHOWS THAT IT GOES ALL THE WAY ACROSS
22 THE FACE.

23 Q OKAY. DID YOU DO A SIMILAR ANALYSIS TO
24 DETERMINE WHETHER ANY OF THE FOUR IPHONES I GAVE
25 YOU INCORPORATE THE DESIGN OR EMBODY THE DESIGN OF

1 ORDER, BUT IT WILL BE ADMISSIBLE FOR ALTERNATIVE
2 DESIGN.

3 I'M GOING TO ASK MR. VERHOEVEN PLEASE NOT
4 TO CROSS THE LINE INTO INVALIDITY AND OBVIOUSNESS
5 SINCE THAT'S BEEN EXCLUDED.

6 THE DEMONSTRATIVES, I'M GOING TO RESERVE
7 AND GIVE YOU A RULING ON THAT LATER, SO IF YOU
8 COULD MAKE THAT TOWARDS THE END OF YOUR CROSS, I'D
9 APPRECIATE IT.

10 NOW, WITH REGARD TO THE LG CHOCOLATE,
11 IT'S NOT PRIOR ART, BUT IT CAN BE USED FOR OTHER
12 PURPOSES. WE CAN HAVE A LIMITING INSTRUCTION IF
13 NECESSARY.

14 THE LG PRADA, THAT WAS RAISED IN APPLE'S
15 MOTION IN LIMINE NUMBER 3, AND THERE IS A FACTUAL
16 DISPUTE AS TO WHETHER IT WAS, IN FACT, SOLD IN THE
17 U.S. OR NOT AND WHETHER, IN FACT, IT IS OR IS NOT
18 PRIOR ART. SO SAMSUNG CAN USE THAT.

19 MS. KREVANS: YOUR HONOR, WITH RESPECT TO
20 THE SPECIFIC DOCUMENT THAT RAISED THIS ISSUE, THIS
21 DOCUMENT HAS NEVER BEEN PRODUCED OR DISCLOSED
22 BEFORE, SO INDEPENDENT OF WHETHER THEY CAN TALK
23 ABOUT THOSE DEVICES, WE DON'T THINK THEY CAN USE
24 THIS DOCUMENT BECAUSE --

25 THE COURT: OKAY. WELL, THEN, LET ME

1 HEAR FROM SAMSUNG. GIVE ME THE DOCUMENT PRODUCTION
2 NUMBER.

3 I DON'T SEE THAT THIS IS BATES LABELED AT
4 ALL.

5 MR. VERHOEVEN: YES, YOUR HONOR. THIS
6 IS -- THIS IS SIMPLY POTENTIALLY GOING TO BE USED
7 FOR IMPEACHMENT, OR TO REFRESH THE WITNESSES
8 RECOLLECTION.

9 YOUR HONOR HAS DIRECTED US THAT FOR ANY
10 POTENTIAL IMPEACHMENT EXHIBITS, WE NEEDED TO
11 EXCHANGE THEM WITH THE OTHER SIDE.

12 SO THIS KIND OF FALLS UNDER THAT.

13 THE COURT: ALL RIGHT. THEN IT'S
14 EXCLUDED. ALL RIGHT. OKAY. LET'S GO FORWARD
15 THEN. OKAY. THANK YOU.

16 (WHEREUPON, THE FOLLOWING PROCEEDINGS
17 WERE HELD IN THE PRESENCE OF THE JURY:)

18 THE COURT: I APOLOGIZE FOR THE DELAY.

19 IT'S NOW 11:19. GO AHEAD, PLEASE.

20 BY MS. KREVANS:

21 Q MR. BRESSLER, I'D LIKE YOU TO TURN TO EXHIBIT
22 JX 1040 IN YOUR BINDER, YOU SHOULD FIND IT
23 SOMEWHERE NEAR THE BACK.

24 FOR THE RECORD, 1040 IS ALREADY IN
25 EVIDENCE.

1 YOU READ MEANS THAT APPLE WASN'T TRYING TO DISCLAIM
2 THE MAN SHOWING THIS PICTURE ACTUALLY HOLDING THE
3 DEVICE?

4 A CORRECT.

5 Q BUT THE DEVICE AND THE UTILITY IS WHAT'S
6 CLAIMED?

7 A YES.

8 Q OKAY. LET'S LOOK AT YOUR SLIDE PDX 26.6. IS
9 THIS THE FIRST -- IN FACT, THIS IS ALL OF THE
10 FIGURES OF THE '889 PATENT?

11 A YES. THIS IS A SLIDE INCLUDING ALL THE
12 FIGURES.

13 Q OKAY. USING THESE FIGURES OF THE '889 PATENT,
14 CAN YOU WALK THE JURY THROUGH THE DESIGN THAT IS
15 CLAIMED AND SHOWN IN THESE FIGURES?

16 A YES. THIS DESIGN INCLUDES AN ELECTRONIC
17 DEVICE THAT HAS A FLAT, TRANSPARENT, AS YOU CAN SEE
18 BY THE DIAGONAL LINES, AND SHINY, FLAT SURFACE THAT
19 GOES IN A RECTANGULAR FORM AS SHOWN IN THE DRAWING
20 FROM EDGE TO EDGE ACROSS THE FRONT OF THE DEVICE.

21 IT MEETS A THIN EDGE AT THE BORDER AND
22 YOU CAN SEE THROUGH THAT CLEAR MATERIAL A BORDER
23 THAT GOES AROUND THE DISPLAY THAT IS OF EQUAL WIDTH
24 ALL THE WAY AROUND.

25 AND THEN IF YOU LOOK -- I WAS LOOKING AT

1 FIGURES 1 AND 3.

2 IF YOU THEN LOOK AT THE OTHER FIGURES,
3 YOU CAN SEE THAT THE BACK OF THE PRODUCT IS FLAT
4 AND THAT -- OR THE BACK OF THE DESIGN IS FLAT AND
5 THAT THE SLIDES CURVE UP TO MEET THE FRONT FROM THE
6 BACK.

7 Q AND WHAT DO THE FIGURES OF THE '889 PATENT
8 TELL US ABOUT THE OVERALL SHAPE OF THE FRONT OF THE
9 DEVICE?

10 A THE OVERALL SHAPE OF THE FRONT OF THE DEVICE
11 IS A RECTANGLE IN THE PROPORTION THAT'S SHOWN IN
12 THE DESIGN.

13 Q WHAT DO YOU MEAN BY "PROPORTION"?

14 A THE LENGTH TO WIDTH RELATIONSHIP SHOULD BE --
15 SHOULD BE SEEN AS THIS OVERALL DESIGN.

16 AND IT HAS CORNERS THAT ARE RADIUS.

17 Q NOW, IF I'VE DONE THIS RIGHT, MR. BRESSLER,
18 ONE OF THE MANY DEVICES ON THE TABLE IN FRONT OF
19 YOU SHOULD BE THE IPAD 2, WHICH IS JX 1005. THERE
20 ARE MANY THINGS THERE.

21 HAVE YOU FOUND JX 1005?

22 A I'M JUST CHECKING THE STICKER. YES.

23 Q OKAY. AND CAN WE SEE PDX 26.7?

24 WHAT HAVE YOU DEPICTED IN SLIDE 26.7?

25 A THIS IS A COMPARISON OF THE '889 PATENT AND

1 THE IPAD 2 .

2 Q AND WHAT DID YOU CONCLUDE FROM COMPARING THE
3 '889 PATENT TO THE IPAD 2 ?

4 A I CONCLUDED THAT THE DESIGN OF THE IPAD 2 IS
5 SUBSTANTIALLY THE SAME AS THE DESIGN '889 AND WOULD
6 BE IN THE EYES OF THE ORDINARY OBSERVER .

7 Q SO APPLE'S OWN IPAD 2 PRODUCT IS USING THE
8 DESIGN OF APPLE'S PATENT ?

9 A YES .

10 Q OKAY . LET'S TURN TO SAMSUNG'S PRODUCTS , AND
11 I'D LIKE YOU TO GO FIRST TO EXHIBIT PX 7 IN YOUR
12 BINDER .

13 YOU CAN PUT THE IPAD 2 ASIDE FOR NOW .

14 WHAT IS EXHIBIT PX 7 ?

15 A EXHIBIT PX 7 IS A PHOTOGRAPHIC COMPILATION OF
16 ALL OF THE SAMSUNG -- OF ALL OF THE SAMSUNG PHONES
17 THAT WERE CONSIDERED IN THIS CASE .

18 Q OKAY . WHEN YOU SAY "CONSIDERED," DO YOU MEAN
19 CONSIDERED BY YOU ?

20 A THESE WERE THE ONES THAT WERE REVIEWED BY ME
21 RELATIVE TO THE DESIGN PATENTS .

22 MS. KREVANS: OKAY . YOUR HONOR , I'D MOVE
23 PX 7 INTO EVIDENCE .

24 MR. VERHOEVEN: NO FURTHER OBJECTION .

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

1 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 7,
2 HAVING BEEN PREVIOUSLY MARKED FOR
3 IDENTIFICATION, WAS ADMITTED INTO
4 EVIDENCE.)

5 BY MS. KREVANS:

6 Q OKAY. ALSO ON THE TABLE IN FRONT OF YOU
7 SHOULD BE EXHIBIT JX 1019, WHICH SHOULD BE THE
8 GALAXY S 4G.

9 A YES.

10 Q DO YOU HAVE THAT, MR. BRESSLER?

11 A I DO.

12 Q IS THIS ONE OF THE SAMSUNG PHONES THAT YOU
13 ANALYZED?

14 A IT IS.

15 Q AND WHAT CONCLUSION DID YOU COME TO ABOUT
16 WHETHER THE GALAXY S 4G INFRINGED EITHER THE D'677
17 OR D'087 PATENT?

18 A IT'S MY OPINION THAT THIS PHONE, THE DESIGN OF
19 THIS PHONE WOULD BE CONSIDERED SUBSTANTIALLY THE
20 SAME AS THE DESIGN OF THE '087 AND '677 PATENTS BY
21 AN ORDINARY OBSERVER.

22 Q SO THIS IS A PHONE THAT YOU FOUND INFRINGING?

23 A I FOUND IT INFRINGING, YES.

24 Q OKAY. LET'S START WITH THE '677. CAN WE LOOK
25 AT YOUR SLIDE PDX 26.11?

1 Q WITH RESPECT TO THE ACCUSED PRODUCT, THE BACK
2 HOUSING IS NOT A SINGLE -- A SINGLE, SEAMLESS
3 VESSEL, IS IT, SIR?

4 A NO, IT'S NOT. I BELIEVE IT GIVES THE
5 IMPRESSION OF ONE.

6 Q THANK YOU, SIR.

7 A BUT I DON'T BELIEVE IT IS.

8 Q IF YOU LOOK AT THE BACK -- ACTUALLY, LET'S GO
9 TO SDX 3784.

10 AND YOUR HONOR, MAY I APPROACH TO HAND
11 THE TAB TO THE JURY?

12 THE COURT: YES, PLEASE GO AHEAD.

13 MR. VERHOEVEN: THANK YOU.

14 SO FOR THE RECORD, I'VE HANDED PHYSICAL
15 EXHIBIT JX 1038 TO THE JURY TO INSPECT. THAT'S THE
16 GALAXY TAB 10.1.

17 Q AND ON THE SCREEN, SLIDE SDX 3784, WE'VE GOT
18 SOME IMAGES OF THAT SAME TAB 10.1 BLOWN UP SO
19 PEOPLE CAN SEE.

20 SO I'M GOING TO REFER TO THESE IMAGES
21 WHILE THE JURY IS -- JURORS ARE LOOKING AT THE
22 PHYSICAL PRODUCT. OKAY?

23 A SURE.

24 Q SO IF YOU LOOK AT THE ACCUSED PRODUCT, YOU'LL
25 SEE -- IF YOU'RE LOOKING AT THE BACK, THERE'S AT

1 LEAST TWO PIECES; RIGHT?

2 A YES.

3 Q AND THERE'S A SEAM THAT GOES ALONG THE BACK
4 AND PROTRUDES DOWN UNDER -- I GUESS THAT'S A
5 CAMERA. IS THAT A CAMERA?

6 A I BELIEVE SO.

7 Q AND THEN THAT WHOLE ASSEMBLY -- LET'S GO TO
8 SDX 3785 -- ALSO FORMS A RIM BETWEEN THE FRONT
9 GLASS SURFACE AND THE BACK SURFACE, THERE'S A WHOLE
10 RIM STRUCTURE THAT GOES ALL THE WAY AROUND THE TAB
11 BETWEEN THOSE TWO; RIGHT?

12 A I SEE THAT.

13 Q THERE'S NO RIM BETWEEN THE BACK HOUSING AND
14 THE FRONT GLASS IN THE '889 DESIGN PATENT. TRUE?

15 A THAT'S TRUE.

16 Q AND THERE'S NO SEAM THAT GOES ALONG THE BACK
17 SEPARATING TWO PORTIONS OF THE BACK HOUSING IS
18 THERE, SIR, ON THE '889?

19 A NO.

20 Q BUT THERE IS ON THE GALAXY TAB 10.1; RIGHT?

21 A IT'S AN ABSOLUTELY FLUSH SEAM, YES, THAT MAKES
22 IT APPEAR TO BE A CONTINUOUS SURFACE.

23 Q YOU'RE SAYING IN THE PHOTO, AN OBSERVER
24 LOOKING AT THIS WOULD THINK THIS IS A CONTINUOUS
25 SURFACE, THIS SILVER COLOR THAT CHANGES COLOR

1 TWO-TONE TO A BLACK COLOR?

2 A I THINK THEIR PERCEPTION WOULD BE THAT IT'S
3 ALL THE SAME SHAPE, PARTICULARLY IF THERE WASN'T
4 ANY CHANGE IN COLOR, WHICH ON A DESIGN PATENT THERE
5 ISN'T.

6 Q WELL, MR. STRINGER DIDN'T TALK ABOUT THE
7 BACK -- WE CAN GO BACK TO SDX 3790. EXCUSE ME.
8 3789.

9 MR. STRINGER DIDN'T TALK ABOUT THE SAME
10 SHAPE OR TWO DIFFERENT PIECES OF THE HOUSING. HE
11 SAYS THE "OBJECTIVES WERE TO REDUCE THE PRODUCT TO
12 WHAT WAS ESSENTIALLY A SINGLE, SEAMLESS VESSEL,"
13 AND THERE'S NO SEAMS AT ALL VISIBLE ON THE '889;
14 RIGHT?

15 A I BELIEVE THAT WAS HIS DESIGN, YES.

16 Q AND THE TAB 10.1 IS NOT A SINGLE, SEAMLESS
17 VESSEL WITH A REAR HOUSING, IS IT, SIR?

18 A NO. BUT IT APPEARS TO BE.

19 Q LET'S GO TO SDX 3787.

20 NOW, THIS IS JUST A SLIDE WITH THE GALAXY
21 TAB 10 ON THE RIGHT AND IMAGES FROM THE '889 PATENT
22 ON THE LEFT.

23 DO YOU SEE THAT, SIR?

24 A I DO.

25 Q NOW, YOU KNEW, WHEN YOU FORMED YOUR

1 OPINIONS -- WITHDRAW THE QUESTION.

2 DO YOU SEE THESE LINES ON THE BACK?

3 A I DO.

4 Q CAN YOU TELL THE JURORS WHAT THAT -- WELL,
5 WITHDRAW THE QUESTION AGAIN.

6 IS IT FAIR TO REFER TO THAT AS OBLIQUE
7 LINE SHADING?

8 A THAT'S ONE WAY TO VIEW IT, YES.

9 Q THAT'S WHAT IT'S CALLED; RIGHT?

10 A I BELIEVE SO.

11 Q RIGHT. AND WHEN YOU FORMED YOUR OPINIONS FOR
12 THE '889 PATENT, YOU KNEW THAT OBLIQUE LINE SHADING
13 MUST BE USED TO SHOW TRANSPARENT, TRANSLUCENT, AND
14 HIGHLY POLISHED SURFACES; RIGHT?

15 A YES.

16 Q SO WHAT THIS IS TELLING US IS THAT THE BACK OF
17 THE '889 PATENT IS A SHINY SURFACE?

18 A I BELIEVE SO.

19 Q NOW, IF YOU LOOK AT THE TAB, AND I DON'T
20 KNOW -- DID WE -- MAYBE WE CAN PASS IT OUT ONE MORE
21 TIME SO THE JURORS CAN SEE.

22 A I BELIEVE THE TERM I WOULD USE WOULD NOT BE
23 SHINY. IT WAS BE REFLECTIVE.

24 Q MS. KHAN, IF WE COULD JUST HAND THAT TO THE
25 JURORS SO THEY CAN PASS IT AROUND ONE MORE TIME.

1 NOW, WHEN YOU LOOK AT THE BACK SURFACE OF
2 THE GALAXY TAB 10.1, IT IS NOT A SHINY SURFACE, IS
3 IT?

4 A IT IS NOT SHINY. IT'S REFLECTIVE.

5 Q IT'S BRUSHED MATTE FINISH, ISN'T IT, SIR?

6 A IT'S OVER THERE.

7 Q DO YOU NEED TO LOOK AT IT?

8 A WELL, IT'S -- I DON'T KNOW IF THAT ONE IS
9 BRUSHED. I KNOW ONE OF THEM IS BRUSHED. I KNOW
10 ONE OF THEM IS PAINTED. THEY ALL HAVE SOME DEGREE
11 OF REFLECTIVITY.

12 Q AS SOON AS THE JURORS ARE DONE, I'LL SHOW IT
13 TO YOU. OKAY.

14 YOU DO KNOW WHAT A BRUSHED, MATTE FINISH
15 IS; RIGHT?

16 A YES.

17 Q AND A BRUSHED, MATTE FINISH IS NOT THE SAME AS
18 A TRANSPARENT OR HIGHLY POLISHED SURFACE, IS IT?

19 A NO. BUT IT IS A REFLECTIVE SURFACE.

20 Q SO THE ANSWER IS NO; RIGHT?

21 A IT'S NOT THE WORDS YOU USED, THAT'S CORRECT.

22 Q IT'S NOT A TRANSPARENT, TRANSLUCENT, OR HIGHLY
23 POLISHED SURFACE, IS IT, A BRUSHED MATTE SURFACE?

24 A I'M NOT SURE IT'S HIGHLY POLISHED. I BELIEVE
25 IT'S REFLECTIVE.

1 MR. VERHOEVEN: YOUR HONOR, MAY I
2 APPROACH?

3 THE WITNESS: AND I DO BELIEVE THAT THIS
4 IS REFLECTIVE.

5 MR. VERHOEVEN: MAY I APPROACH?

6 THE COURT: PLEASE, GO AHEAD.

7 BY MR. VERHOEVEN:

8 Q OKAY. WHEN YOU HOLD THIS UP AND LOOK AT IT,
9 CAN YOU SEE YOUR REFLECTION IN IT, SIR?

10 A NO, I CAN'T SEE MY REFLECTION.

11 Q BUT YOU'RE SAYING IT'S REFLECTIVE?

12 A I CAN SEE LIGHTS REFLECTING OFF OF IT.

13 Q WELL, YOU CAN SEE LIGHT REFLECTING ON ANY
14 SURFACE, CAN'T YOU, SIR?

15 A PRETTY MUCH.

16 Q YOU CAN SEE LIGHT REFLECTING OFF A BRUSHED
17 MATTE FINISH, CAN'T YOU, SIR?

18 A I BELIEVE SO.

19 Q BUT YOU'D AGREE THAT THAT PRODUCT RIGHT THERE,
20 THE BACK IS A BRUSHED, MATTE SURFACE?

21 A YES.

22 Q AND IT'S TWO --

23 A I BELIEVE IT'S A BRUSHED SURFACE. I DON'T
24 KNOW IF I'D QUALIFY IT AS MATTE.

25 Q YOU CAN'T SEE YOUR FACE IN IT?

1 A YES, I CAN'T SEE MY FACE IN IT.

2 Q IN FACT, IT'S TWO-TONED; RIGHT?

3 A YES. BUT THAT DOESN'T MATTER IN A DESIGN
4 PATENT.

5 Q TELL THE JURORS WHAT COLORS YOU SEE ON THE
6 BACK.

7 A I BELIEVE THERE IS A LIGHT GRAY AND A SLIGHTLY
8 DARKER GRAY.

9 Q OKAY. YOU CAN PUT THAT DOWN. THANKS.

10 MR. BRESSLER, APPLE IS PAYING YOU TO
11 TESTIFY AS THEIR EXPERT WITNESS IN THIS CASE;
12 RIGHT?

13 A YES, THEY ARE.

14 Q HOW MUCH ARE YOU BEING PAID PER HOUR?

15 A \$400.

16 Q HOW MUCH MONEY HAS APPLE PAID YOU SO FAR?

17 A SO FAR?

18 Q YES.

19 A FOR THIS CASE, ABOUT \$75,000.

20 Q YOU ADVERTISE YOURSELF ON THE INTERNET AS AN
21 EXPERT WITNESS; CORRECT?

22 A I BELIEVE I'M LISTED ON THE IDSA WEBSITE
23 HAVING TAKEN A CERTIFICATION COURSE.

24 Q SO IS THAT YES?

25 A I GUESS IN THAT ONE PLACE, YES.

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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 6, 2012