

Proctor Declaration

EXHIBIT 5

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

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 15, 2012
VS.)	
)	VOLUME 9
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 2651-2965
)	
)	
)	
)	
)	
)	
)	
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

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

2 FOR PLAINTIFF MORRISON & FOERSTER
APPLE: BY: HAROLD J. MCELHINNY
3 MICHAEL A. JACOBS
RACHEL KREVANS
4 425 MARKET STREET
SAN FRANCISCO, CALIFORNIA 94105
5

6 FOR COUNTERCLAIMANT WILMER, CUTLER, PICKERING,
APPLE: HALE AND DORR
7 BY: WILLIAM F. LEE
60 STATE STREET
8 BOSTON, MASSACHUSETTS 02109

9 BY: MARK D. SELWYN
950 PAGE MILL ROAD
10 PALO ALTO, CALIFORNIA 94304

11 FOR THE DEFENDANT: QUINN, EMANUEL, URQUHART,
OLIVER & HEDGES
12 BY: CHARLES K. VERHOEVEN
ALBERT P. BEDECARRE
13 50 CALIFORNIA STREET, 22ND FLOOR
SAN FRANCISCO, CALIFORNIA 94111

14 BY: VICTORIA F. MAROULIS
15 KEVIN P.B. JOHNSON
555 TWIN DOLPHIN DRIVE
16 SUITE 560
REDWOOD SHORES, CALIFORNIA 94065

17 BY: MICHAEL T. ZELLER
18 WILLIAM C. PRICE
JOHN B. QUINN
19 865 SOUTH FIGUEROA STREET
10TH FLOOR
20 LOS ANGELES, CALIFORNIA 90017

21 FOR INTERVENOR RAM, OLSON,
REUTERS: CEREGHINO & KOPCZYNSKI
22 BY: KARL OLSON
555 MONTGOMERY STREET, SUITE 820
23 SAN FRANCISCO, CALIFORNIA 94111

24 INTERPRETERS: JAMES YIM VICTORY
25 ANN PARK
ALBERT KIM

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

INDEX OF WITNESSES

DEFENDANT'S

MARKUS PALTIAN

VIDEO DEPOSITION PLAYED P. 2670
P. 2671

ANDRE ZORN

VIDEO DEPOSITION PLAYED P. 2671
P. 2672

TIM ARTHUR WILLIAMS

DIRECT EXAM BY MR. VERHOEVEN P. 2676
CROSS-EXAM BY MR. LEE P. 2739

JIN SOO KIM

DIRECT EXAM BY MR. QUINN P. 2787
CROSS-EXAM BY MR. MCELHINNY P. 2821
REDIRECT EXAM BY MR. QUINN P. 2833

RICHARD HOWARTH

DIRECT EXAM BY MR. PRICE P. 2838
CROSS-EXAM BY MR. MCELHINNY P. 2842

ANDRIES VAN DAM

DIRECT EXAM BY MR. JOHNSON P. 2845
CROSS-EXAM BY MS. KREVANS P. 2873
REDIRECT EXAM BY MR. JOHNSON P. 2883
RECROSS-EXAM BY MS. KREVANS P. 2884

STEPHEN GRAY

DIRECT EXAM BY MR. DEFRANCO P. 2893
CROSS-EXAM BY MR. JACOBS P. 2924

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

INDEX OF EXHIBITS

MARKED

ADMITTED

PLAINTIFF'S

2011		2669
43		2828
42		2829

DEFENDANT'S

636		2673
635		2674
1083		2674
557		2675
1073		2682
3966.104	2697	
3966.105	2703	
3966.106	2705	2705
1070		2711
107		2721
3666.108		2730
635-A & 635-B		2733
685		2764
3973.009		2804
684.001		2820
3973.010		2820
621-A		2837
2627		2839
712		2841
717		2842
3964.015A		2860
2964.026 - 038		2864
655		2883
655 & 548		2886
550		2903
561		2917
1081		2920

1 ENLARGED AND CENTERED, SO THAT MEANS THAT CLAIM 50D
2 AND E ARE MET, AND F FOR THAT MATTER.

3 AND IN ADDITION, ONCE THAT -- ONCE THE
4 TILE HAS BEEN ENLARGED AND CENTERED, THE ADJACENT
5 TILES AROUND IT ARE AVAILABLE, THE USER THEN HAS
6 THE OPPORTUNITY TO SELECT THOSE ADJACENT TILES,
7 WHICH THAT TILE WILL NOW BE CENTERED AND ENLARGED
8 AS WELL. SO MUCH LIKE LAUNCHTILE, THE AGNETTA
9 PATENT PERFORMS THE SAME OPERATIONS AND SAME
10 FUNCTIONS.

11 Q AND WHAT IS YOUR YOUR OPINION OF THE VALIDITY
12 OF CLAIM 50 OF THE '163 PATENT IN VIEW OF THE
13 AGNETTA REFERENCE, SIR?

14 A I BELIEVE THE AGNETTA REFERENCE INVALIDATES
15 CLAIM 50 BECAUSE IT MEETS ALL THE CLAIM
16 LIMITATIONS.

17 Q WE HAVE ONE MORE TO DO, THE ROBBINS PATENT.
18 IT SHOULD BE IN YOUR BINDER AGAIN. IT'S '349
19 PATENT. DO YOU SEE THAT THERE, SIR? IT'S EXHIBIT
20 DX 1081.

21 AND, RYAN, WHILE WE'RE DOING THAT, CAN
22 YOU PLEASE PUT UP THE SUMMARY SLIDE FOR THAT
23 REFERENCE.

24 A I DO. I SEE EXHIBIT 1081 AND IT IS THE '349
25 OR ROBBINS PATENT.

1 Q IS THAT THE ROBBINS PATENT THAT YOU ANALYZED
2 IN YOUR WORK IN THIS CASE?

3 A IT IS.

4 MR. DEFRANCO: YOUR HONOR, WE WOULD MOVE
5 EXHIBIT DX 1081 INTO EVIDENCE, PLEASE.

6 THE COURT: ANY OBJECTION?

7 MR. JACOBS: IS THAT THE PATENT?

8 THE COURT: YES, IT IS.

9 MR. JACOBS: NO OBJECTION.

10 THE COURT: IT'S ADMITTED.

11 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
12 1081, HAVING BEEN PREVIOUSLY MARKED FOR
13 IDENTIFICATION, WAS ADMITTED INTO
14 EVIDENCE.)

15 THE COURT: GO AHEAD, PLEASE.

16 BY MR. DEFRANCO:

17 Q MR. GRAY, ONE MORE TIME. WE'RE ALMOST DONE.
18 WOULD YOU PLEASE DO THE SAME. TAKE US THROUGH EACH
19 ELEMENT IN CLAIM 50 OF THE '163 PATENT AND TELL US
20 WHERE IN YOUR OPINION THAT IS FOUND IN THE ROBBINS
21 '349 PRIOR ART PATENT.

22 A SO THE ROBBINS PATENT, AGAIN, IS A ZOOM
23 PATENT. IT IS DIRECTED TO PORTABLE ELECTRONIC
24 DEVICES. AGAIN, THERE'S A MAP APPLICATION
25 UNDERNEATH IT. THE ROBBINS PATENT AGAIN BEING

1 DIRECTED TO A PORTABLE ELECTRONIC DOCUMENT HAS
2 PROCESSOR AND A TOUCHSCREEN AND A VARIETY -- AND
3 MEMORY AND INSTRUCTIONS THAT PERFORM VARIOUS
4 OPERATIONS.

5 IN THIS PARTICULAR CASE, WHAT HAPPENS IS,
6 IN THIS EXAMPLE THAT'S SHOWN HERE, THE SCREEN IS
7 DIVIDED INTO THREE-BY-THREE MATRIX THAT OVERLAPS,
8 AND WE'LL TALK A LITTLE BIT ABOUT WHY THAT
9 OVERLAPS.

10 THE USER THEN CAN SELECT ANY OF THOSE
11 SEGMENTS AND THOSE SEGMENTS THEN BECOME CENTERED
12 AND ENLARGED ON THE DISPLAY SCREEN.

13 IF YOU NOTICE ON THE -- IF YOU TAKE THE
14 UPPER RIGHT-HAND SEGMENT, THERE'S A SMALL RECTANGLE
15 TO THE LEFT-HAND SIDE OF THAT SEGMENT. THE
16 SELECTION OF THAT SEGMENT NOW ALLOWS THE, THE USER
17 INTERFACE TO MOVE TO THE ADJACENT SEGMENT AND HAVE
18 THAT BE CENTERED AND ENLARGED AS WELL.

19 SO THE PATENT MEETS THE LIMITATIONS OF
20 THE FIRST PART OF 50A AND B BECAUSE IT IS A
21 STRUCTURED -- IT'S A PORTABLE ELECTRONIC DEVICE.
22 IT ALLOWS FOR THE ENLARGEMENT OF THE DOCUMENTS,
23 THAT'S 50C. IT ALLOWS FOR SELECTION OF THE SECOND,
24 A SECOND SPACE, AND THEN THE ENLARGEMENT AND
25 CENTERING OF THAT. SO IT MEETS ALL THE LIMITATIONS

1 OF THE CLAIM AS WELL.

2 Q AND, IN YOUR VIEW, IS CLAIM 50 INVALID IN VIEW
3 OF THIS REFERENCE?

4 A AGAIN, ROBBINS AS WELL, THIS CLAIM COVERS ALL
5 OF THE CLAIM LIMITATIONS OF '163, CLAIM 50, AND
6 CONSEQUENTLY IS -- INVALIDATES IT AS WELL.

7 Q SHIFTING GEARS BRIEFLY TO INFRINGEMENT,
8 NON-INFRINGEMENT ISSUE, YOU'VE HEARD THE TERM
9 "SUBSTANTIALLY CENTERED." IS THAT CORRECT?

10 A RIGHT. ONE OF THE CLAIM ELEMENTS HERE, 50F,
11 FOR EXAMPLE, REFERS TO SOMETHING BEING
12 SUBSTANTIALLY CENTERED.

13 Q AND WHAT IS YOUR VIEW ON THAT, SIR?

14 A IN MY OPINION, THE TERM "SUBSTANTIALLY
15 CENTERED" IS AN AMBIGUOUS TERM. I -- PART OF WHAT
16 A PATENT DOES IS PROVIDE INFORMATION TO AN ENGINEER
17 TO ALLOW THEM TO UNDERSTAND THE SCOPE OF THE PATENT
18 SO THAT THEY CAN AVOID INFRINGING THE PATENT.

19 I DON'T KNOW WHEN SOMETHING IS

20 SUBSTANTIALLY CENTER. I KNOW WHEN SOMETHING IS
21 FULLY CENTERED OR NOT CENTERED, BUT "SUBSTANTIALLY
22 CENTERED" IS AMBIGUOUS.

23 HOW WOULD A PATENT -- HOW WOULD AN
24 ENGINEER UNDERSTAND HOW TO MAKE SOMETHING
25 SUBSTANTIALLY CENTERED OR NOT? SO IN MY OPINION,

1 "SUBSTANTIALLY CENTERED" IS AN AMBIGUOUS TERM.

2 Q AND, FINALLY, SIR, WITH RESPECT TO ELEMENT E,
3 DETERMINING A FIRST BOX IN THE PLURALITY OF BOXES
4 AT THE LOCATION OF THE FIRST GESTURE, CAN YOU GIVE
5 US YOUR OPINION AS IT RELATES TO INFRINGEMENT ON
6 THAT ELEMENT?

7 A AGAIN, 50E TALKS ABOUT IDENTIFYING A BOX IN
8 PLURALITY OF BOXES AT THE LOCATION OF THE FIRST
9 GESTURE.

10 WHAT THAT SEEMS TO INTEND, AT LEAST THE
11 WAY I READ THIS CLAIM THE FIRST TIME I READ IT, WAS
12 THAT THERE ARE A PLURALITY OF BOXES.

13 IF YOU THINK ABOUT NESTED BOXES WHERE
14 THERE ARE MULTIPLE BOXES THAT ARE NESTED AND THE
15 USER SELECTS A BOX OR A SPACE, SOME LOCATION WITHIN
16 THAT NESTED BOX, WHAT HAPPENS IS THE SYSTEM WOULD
17 THEN NEED TO DETERMINE WHICH ONE OF THOSE NESTED
18 BOXES THE USER WAS ACTUALLY INTENDING TO HAVE
19 CENTERED AND ENLARGED.

20 SIMILARLY TO THE WAY LAUNCHTILE WORKS.
21 IF YOU RECALL LAUNCHTILE, YOU CAN SELECT ANY ONE OF
22 THE FOUR IN THE QUAD TILES AND THAT WHOLE QUAD TILE
23 GETS ENLARGED AND CENTERED.

24 AGAIN, I'M NOT SEEING ANY EVIDENCE AT ALL
25 SUPPLIED, OR ANYTHING IN ANY OF THE REPORTS THAT

1 INDICATE HOW THE ACCUSED PRODUCTS MEET THE
2 LIMITATION OF SELECTING A -- SOMETHING IN A
3 PLURALITY OF BOXES. SO, AGAIN, I'M NOT SEEING IT.

4 MR. DEFRANCO: MY TIME IS UP. THANK YOU,
5 SIR.

6 THE COURT: ALL RIGHT. THE TIME IS NOW
7 4:20. GO AHEAD, PLEASE, WITH ANY CROSS.

8 **CROSS-EXAMINATION**

9 BY MR. JACOBS:

10 Q GOOD AFTERNOON, MR. GRAY.

11 A GOOD AFTERNOON.

12 Q NOW, YOUR TESTIMONY ON THE SUBJECT OF
13 INVALIDITY WAS PREMISED ON THE IDEA OF
14 ANTICIPATION; CORRECT, SIR?

15 A THAT'S CORRECT.

16 Q AND ANTICIPATION IS ALL YOU SPOKE TO; CORRECT?

17 A THAT'S CORRECT.

18 Q AND ANTICIPATION REQUIRES THAT EVERY ELEMENT,
19 THE JURY HAS HEARD THIS MANTRA, EVERY ELEMENT OF
20 THE CLAIM BE PRESENT IN THE PROPOSED INVALIDATING
21 REFERENCE; CORRECT, SIR?

22 A THAT'S CORRECT.

23 Q AND SO IF THE JURY --

24 A WELL, WITH A POSSIBLE EXCEPTION THERE. IT IS
25 EITHER -- IT IS EITHER COVERED OR IS INHERENTLY IN

1 THE REFERENCE.

2 Q AND SO IF THE JURY FINDS THAT IN -- WHEN IT
3 COMES TO INVALIDITY, IF ANY ELEMENT OF THE CLAIM IS
4 NOT PRESENT IN THE PROPOSED INVALIDATING REFERENCE,
5 THEN YOUR OPINION SHOULD BE REJECTED; CORRECT, SIR?

6 A AGAIN, WITH THE PROVISIO THAT IF IT IS AN
7 ELEMENT THAT IS INHERENT OR IMPLIED, THAT'S MY
8 UNDERSTANDING.

9 Q OTHERWISE YOU AGREE WITH ME, YOUR OPINION
10 RISES AND FALLS ON THE IDEA OF -- THERE'S NO CLOSE
11 HERE, YOU EITHER GOT IT, EVERY ELEMENT IS PRESENT,
12 OR YOU DON'T. CORRECT, SIR?

13 A EITHER EVERY ELEMENT IS PRESENT OR IT IS
14 INHERENT AS IS REQUIRED.

15 Q NOW, I LISTENED CAREFULLY TO THE ANSWER TO THE
16 QUESTION ABOUT YOUR ROLE IN LITIGATION SUPPORT OVER
17 THE LAST COUPLE YEARS, AND YOU SAID YOU SPENT SOME
18 TIME DOING LITIGATION SUPPORT.

19 WHAT DID YOU MEAN BY "SOME TIME," SIR?

20 A WELL, ACTUALLY SINCE, STARTING IN 1984, I DID
21 SOME LITIGATION SUPPORT, AND THROUGHOUT MY CAREER
22 AS AN ENGINEER, I PERIODICALLY DID LITIGATION
23 SUPPORT ASSIGNMENTS. SO IT'S BEEN OVER A LONG
24 TIME, SINCE 1984.

25 Q BUT OVER THE LAST COUPLE OF YEARS, ALMOST ALL

1 OF YOUR TIME HAS BEEN SPENT DOING LITIGATION
2 SUPPORT; CORRECT, SIR?

3 A I THINK OVER THE LAST FEW YEARS THE MAJORITY
4 OF MY CONSULTING WORK HAS BEEN WITH RESPECT TO
5 LITIGATION SUPPORT, YES.

6 Q AND IN THIS PARTICULAR CASE -- AGAIN, THE JURY
7 HAS HEARD A LOT ABOUT EXPERT COMPENSATION -- YOU'VE
8 MADE ABOUT \$200,000; CORRECT, SIR?

9 A I THINK THAT SOUNDS HIGH, BUT IT COULD BE. I
10 DON'T KNOW THE EXACT NUMBER, BUT IT MAY BE.

11 Q AND YOUR BACKGROUND, SIR, IS IN ECONOMICS;
12 CORRECT? THAT WAS YOUR UNDERGRADUATE DEGREE?

13 A THAT'S CORRECT.

14 Q NO FORMAL TRAINING IN THE SENSE OF ADVANCED
15 DEGREES IN COMPUTER SCIENCE OR ENGINEERING?

16 A THAT'S CORRECT.

17 Q AND YOU NEVER TOOK A COURSE IN OBJECT ORIENTED
18 PROGRAMMING?

19 A THAT'S A QUESTION? YES, I HAVE NOT TAKEN ANY
20 FORMAL COURSES IN OBJECT ORIENTATION. I'M AN
21 ENGINEER. I WAS WORKING, DOING THE WORK, BUT, YES,
22 I'VE NOT TAKEN ANY OBJECT ORIENTED COURSES.

23 Q AND SINCE THE DATE OF THE INTRODUCTION OF THE
24 IPHONE, JUST TO PICK A POINT IN TIME, YOU HAVEN'T
25 DONE ANY PROGRAMMING FOR TOUCH SENSITIVE DEVICES?

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

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 15, 2012