

Pierce Declaration

EXHIBIT 2

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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,)	
)	JULY 31, 2012
VS.)	
)	VOLUME 2
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 283-555
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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
60 STATE STREET
BOSTON, MASSACHUSETTS 02109

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

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
555 TWIN DOLPHIN DRIVE
SUITE 560
REDWOOD SHORES, CALIFORNIA 94065

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

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1 ALREADY HAS THE PERSPECTIVE SET UP AND THE VIEWS IN
2 A WAY THAT YOU CAN SORT OF ADD IN LAVISH DETAIL
3 UPON THEM.

4 Q AND WHAT DO THE SKETCHES ON THIS PARTICULAR
5 DOCUMENT, PX 163, TO WHAT DO THEY RELATE?

6 A THESE ARE SKETCHES OF IPHONE IDEAS.

7 MR. MCELHINNY: YOUR HONOR, I WOULD MOVE
8 PX 163, PLEASE.

9 MR. VERHOEVEN: NO OBJECTION, YOUR HONOR.

10 THE COURT: ALL RIGHT. SO ADMITTED.

11 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
12 163, HAVING BEEN PREVIOUSLY MARKED FOR
13 IDENTIFICATION, WAS ADMITTED INTO
14 EVIDENCE.)

15 BY MR. MCELHINNY:

16 Q SIR, IF YOU'D OPEN YOUR BINDER TO PX 164.

17 A YES, I SEE IT.

18 Q WHAT IS PX 164?

19 A THE FIRST PAGE IS A SCREEN SHOT OF A
20 DIRECTORY, WHICH IS THE CAD FILE DATABASE. IT
21 LISTS DATE MODIFIED, WHICH MEANS THE LAST DATE THAT
22 YOU WORKED ON THIS PARTICULAR FILE.

23 AND ALSO A CODE NAME, A THREAD.

24 BASICALLY, THAT HELPS YOU FIND IT IN THE DATABASE.

25 SUBSEQUENT PAGES ARE SCREEN SHOTS OF

1 THESE CAD MODELS.

2 Q YOU MENTIONED IN AN EARLIER ANSWER, YOU SAID
3 SOMETHING ABOUT A CAD OUTPUT. IS THIS WHAT YOU
4 WERE REFERRING TO AS A CAD OUTPUT?

5 A YES. THERE ARE VARYING DEGREES OF
6 SOPHISTICATION. THIS IS A FAIRLY CRUDE SET OF WHAT
7 I WOULD CALL CAD OUTPUT.

8 Q CAN YOU TELL, BY LOOKING AT THE DIRECTORY, THE
9 DATE OF THESE DRAWINGS?

10 A MARCH 15TH, 2006.

11 Q AND, SIR, DO YOU -- DO YOU WORK WITH THE --
12 LET ME ASK YOU THIS: DO YOU PERSONALLY OPERATE THE
13 CAD SYSTEM?

14 A NO, I DO NOT.

15 Q WHO DOES THE CAD DRAWINGS AT APPLE?

16 A WE HAVE A DEDICATED TEAM OF CAD SCULPTORS.
17 THERE ARE A FEW DESIGNERS THAT ARE CAPABLE OF
18 CREATING CAD THEMSELVES, BUT IT'S NOT A
19 REQUIREMENT. IN FACT, MOST OF US DON'T.

20 IT'S -- IT REALLY IS A SKILL THAT YOU
21 NEED TO DEDICATE SIGNIFICANT TIME TO JUST TO
22 UNDERSTAND THE CRAFT OF CAD.

23 SO WE PREFER OUR DESIGNERS TO BE
24 THINKING, SO WE HAVE A DEDICATED TEAM FOR THIS.

25 MR. MCELHINNY: YOUR HONOR, I WOULD MOVE

1 PX 164 INTO EVIDENCE.

2 MR. VERHOEVEN: NO OBJECTION, YOUR HONOR.

3 THE COURT: SO ADMITTED.

4 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
5 164, HAVING BEEN PREVIOUSLY MARKED FOR
6 IDENTIFICATION, WAS ADMITTED INTO
7 EVIDENCE.)

8 BY MR. MCELHINNY:

9 Q SO AFTER CAD MODELS, WHAT COMES NEXT, SIR, IN
10 A DESIGN PROCESS, ASSUMING THAT YOU WERE GOING
11 LINEARLY AS OPPOSED TO JUMPING BACKWARDS?

12 A IF WE FIND THAT WE AGREE, THAT WE WANT TO
13 PURSUE AN IDEA THAT WE SEE IN THE CAD SURFACES IN
14 PHYSICAL FORM, WE MODEL IT, WHICH IS TO CNC,
15 COMPUTER NUMERICALLY CONTROLLED.

16 THAT IS THREE OR FIVE MACHINING, WHICH
17 ESSENTIALLY CUTS FROM A SOLID BLOCK A PHYSICAL
18 LIKENESS OF WHAT WE BUILD IN CAD.

19 Q THIS PROCESS THAT YOU'VE DESCRIBED FOR US, IS
20 THAT AN ACCURATE DESCRIPTION OF THE PROCESS THAT
21 LED TO THE ORIGINAL IPHONE?

22 A YES.

23 Q AND IS IT AN ACCURATE DESCRIPTION OF THE
24 PROCESS THAT LED TO THE IPAD?

25 A YES.

1 Q LET'S TALK ABOUT THE IPHONE FOR A MINUTE.

2 WHAT -- IF YOU CAN DESCRIBE IT FOR US,
3 WHAT, IF ANYTHING, WERE YOU TRYING TO ACHIEVE IN
4 DESIGNING THE IPHONE?

5 A WE -- WE WERE LOOKING FOR A NEW, ORIGINAL, AND
6 BEAUTIFUL OBJECT, SOMETHING THAT WOULD REALLY WOW
7 THE WORLD.

8 WE WERE ENTERING A CATEGORY THAT WE'D
9 NEVER PARTICIPATED IN BEFORE, AND THE CATEGORY THAT
10 WE DID NOT ENJOY. THERE WERE NO CELL PHONES THAT
11 WE LOVED.

12 SO THIS WAS SOMETHING THAT WE REALLY
13 CARED DEEPLY AND PASSIONATELY ABOUT, PRODUCING
14 SOMETHING FOR OURSELVES.

15 WE -- AS ALWAYS, WE WANTED TO CREATE
16 SOMETHING THAT SEEMED SO, SO WONDERFUL THAT YOU,
17 YOU CAN'T IMAGINE HOW YOU COULD FOLLOW IT.

18 OF COURSE, YOU CAN BECAUSE IF YOU LOOK AT
19 THE HISTORY OF OUR PRODUCTS, WE'VE DONE THAT TIME
20 AND TIME AGAIN.

21 BUT YOU WANT TO CREATE THE SIMPLEST,
22 PUREST MANIFESTATION OF WHAT THAT OBJECT CAN BE,
23 SOMETHING THAT PEOPLE CAN LOVE.

24 Q DO YOU RECALL APPROXIMATELY HOW LONG YOU
25 WORKED ON THE DESIGN OF THE IPHONE?

1 A I HAVE NO IDEA. I'D HAVE TO LOOK AT
2 DOCUMENTATION FOR THIS. BUT IT WAS A LONG TIME.

3 Q YEARS?

4 A I THINK SO.

5 Q LET ME SHOW YOU PX 165.

6 MAY I APPROACH, YOUR HONOR?

7 THE COURT: YES.

8 MR. MCELHINNY: (HANDING).

9 THE WITNESS: THANK YOU.

10 BY MR. MCELHINNY:

11 Q WHAT IS PX 165, SIR?

12 A THIS IS ONE OF THE EARLY MODELS THAT WE BUILT
13 ON M68, WHICH WAS A CODE NAME THAT WE USED FOR THE
14 ORIGINAL IPHONE.

15 Q I'M SORRY. THAT'S M68?

16 A THAT'S CORRECT.

17 Q WHEN YOU SAY "WE BUILT THIS MODEL," WHO ARE
18 YOU TALKING ABOUT?

19 A "WE" BEING THE INDUSTRIAL DESIGN GROUP, WHICH
20 WOULD INCLUDE THE CAD AND THE MODEL MAKING TEAMS.

21 Q AND IS THIS MODEL THAT YOU'RE LOOKING AT, WAS
22 THIS ORIGINAL APPLE WORK?

23 A ABSOLUTELY, YES.

24 MR. MCELHINNY: YOUR HONOR, I WOULD MOVE
25 EXHIBIT PX 165 INTO EVIDENCE.

1 MR. VERHOEVEN: I HAVE A POINT OF
2 QUESTION.

3 CAN I CONFER WITH COUNSEL?

4 THE COURT: YES, GO AHEAD, PLEASE.

5 (DISCUSSION OFF THE RECORD BETWEEN
6 COUNSEL.)

7 MR. VERHOEVEN: SUBJECT TO YOUR HONOR'S
8 RULING, YOUR HONOR'S ALREADY RULED ON THESE
9 DOCUMENTS -- I DON'T KNOW IF WE CAN HAVE A
10 SIDE-BAR, YOUR HONOR. I JUST WANT TO MAKE SURE I
11 DON'T WAIVE ANYTHING.

12 THE COURT: OKAY. I THOUGHT THIS WAS
13 WORKED OUT BEFORE THE JURY CAME OUT.

14 LET'S DO THAT. UNFORTUNATELY, THE
15 MICROPHONE IS NOT WORKING, SO WE'LL HAVE TO
16 MEMORIALIZE IT AFTER.

17 LET'S GO AHEAD.

18 MR. VERHOEVEN: THAT'S OKAY.

19 (SIDE-BAR DISCUSSION OFF THE RECORD.)

20 THE COURT: OKAY. THE -- I UNDERSTAND
21 THAT THE SAME OBJECTION WAS RESERVED, BUT IT'S
22 OVERRULED.

23 THIS IS ADMITTED.

24 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
25 165, HAVING BEEN PREVIOUSLY MARKED FOR

1 IDENTIFICATION, WAS ADMITTED INTO
2 EVIDENCE.)

3 THE COURT: GO AHEAD.

4 MR. MCELHINNY: THANK YOU, YOUR HONOR.
5 MAY I PUBLISH THIS TO THE JURY?

6 THE COURT: GO AHEAD.

7 (PAUSE IN PROCEEDINGS.)

8 BY MR. MCELHINNY:

9 Q MR. STRINGER, LET ME SHOW YOU AN EXHIBIT
10 THAT'S BEEN MARKED AS PX 166 (HANDING).

11 A YES.

12 Q WHAT IS THAT DEVICE, SIR?

13 A THIS IS ALSO AN EARLY IPHONE MODEL, ALSO UNDER
14 ITSELF CODE NAME M68.

15 Q IS IT THE SAME OR DIFFERENT THAN THE 165?

16 A SIMILAR, BUT DIFFERENT.

17 Q OKAY. AND WHAT DOES IT SAY ON THE BACK OF IT,
18 SIR?

19 A APPLE PROTO 1015 -- OH, IPOD.

20 Q AND WHY DOES IT SAY IPOD ON A PROTOTYPE OF AN
21 IPHONE, SIR?

22 A ONE OF TWO REASONS. EITHER WE HAD NOT YET
23 COINED THE TERM "IPHONE" AND WE WANTED TO SEE
24 SOMETHING GRAPHICALLY REPRESENTED ON THE BACK; OR
25 WE WERE TRYING TO DISGUISE ITS IPHONE IDENTITY.

1 A THE ENTIRE DESIGN TEAM, OR AT LEAST A
2 SUBSTANTIAL PORTION, THOSE THAT COULD BE THERE,
3 WERE AT THE APPLE STORE IN SAN FRANCISCO.

4 Q AND WHY WERE YOU THERE?

5 A WE WERE EXCITED. WE HAD SOMETHING NEW. THERE
6 WAS AN INCREDIBLE BUZZ. PEOPLE WERE ANTICIPATING
7 SOMETHING, I THINK, STARTING WITH THE SEQUENCE OF
8 EVENTS.

9 BUT WE ANNOUNCED IT. PEOPLE KNEW THAT
10 THERE WAS SOMETHING COMING THAT THEY WANTED.

11 AND THERE WAS AN ENORMOUS CROWD OUTSIDE.
12 WE WANTED TO FEEL THAT ENTHUSIASM AND SEE PEOPLE,
13 SEE THEIR EYES WHEN THEY GET THESE NEW PRODUCTS,
14 THE FIRST PEOPLE TO GET THEM.

15 Q AND WHAT DID YOU OBSERVE WHEN THE DOORS
16 OPENED, SIR?

17 A MAYHEM. IT WAS LIKE A CARNIVAL.

18 Q AND WHAT WAS YOUR REACTION TO THAT?

19 A OVERWHELMED. WE WERE OBVIOUSLY VERY, VERY
20 PROUD. WE'D WORKED REALLY HARD. IT WAS -- THERE
21 WAS AN ENORMOUS NUMBER OF PEOPLE THAT PUT IN
22 PERSONAL SACRIFICE AND IT WAS PAYING OFF IN SPADES.
23 IT WAS A BEAUTIFUL DAY.

24 MR. MCELHINNY: WOULD THIS BE A GOOD
25 TIME, YOUR HONOR?

1 THE COURT: THAT'S FINE. IT'S 3:29.

2 JUST A TEN-MINUTE BREAK, SEVENTH INNING
3 STRETCH SO PEOPLE CAN STAND UP AND USE THE REST
4 ROOM.

5 OKAY. THANK YOU.

6 (WHEREUPON, A RECESS WAS TAKEN.)

7 THE COURT: ALL RIGHT. THE TIME IS NOW
8 3:43.

9 PLEASE GO AHEAD.

10 MR. MCELHINNY: THANK YOU, YOUR HONOR.

11 BOY, YOU TAKE A BREAK AND THE NITPICKERS
12 JUMP ALL OVER YOU.

13 Q LET ME GO BACK TO SOMETHING TO MAKE SURE WE'VE
14 GOT IT RIGHT IN THE RECORD. IF YOU WOULD LOOK,
15 PLEASE, AT JX 1043.

16 A YES.

17 Q THIS IS THE '677 PATENT?

18 A THAT'S RIGHT.

19 Q I ASKED YOU WHICH IPHONES INCORPORATED THIS
20 DESIGN, AND WHAT WAS YOUR ANSWER, SIR?

21 A I BELIEVE MY ANSWER WAS ALL IPHONES.

22 Q DID YOU SAY TODAY OR TO DATE?

23 A TO DATE.

24 Q TO DATE. THANK YOU.

25 AND THEN MY MISTAKE. WHEN YOU WENT TO

1 THE OPENING OF THE ORIGINAL IPHONE, WAS THAT IN THE
2 SUMMER OF 2007?

3 A I DON'T RECALL THAT.

4 Q OKAY. HAS THE APPLE -- HAS THE DESIGN OF THE
5 IPHONE RECEIVED ANY PROFESSIONAL AWARDS FOR DESIGN?

6 A IT'S RECEIVED MANY. AWARDS ARE NOT OUR
7 MOTIVATION. IT'S NOT WHY WE GET UP IN THE MORNING.
8 BUT IT'S CERTAINLY SOMETHING WE DON'T MIND.

9 THE ONLY ONE THAT REALLY WAS OF ANY REAL
10 IMPORTANCE TO MYSELF IS THE DNAD, AND WE RECEIVED A
11 GOLD PENCIL FOR THAT.

12 Q WHAT IS DNAD?

13 A DESIGNERS AND ART DIRECTORS.

14 Q AND WHY IS THAT SIGNIFICANT TO YOU, SIR?

15 A WE JUST HAVE A HIGH REGARD FOR THE JURY
16 SELECTION PROCESS FOR THAT. WE HAVE A PEER JUDGING
17 COMMITTEE AND IT'S A VERY CREDIBLE AWARD.

18 Q DO YOU KNOW WHETHER OR NOT YOUR DESIGNS FOR
19 YOUR PRODUCTS HAVE BEEN MADE PARTS OF DISPLAYS IN
20 MUSEUMS?

21 A YEAH. I'VE SEEN OUR PRODUCTS AT S.F. MOMA;
22 I'VE SEEN THEM AT THE SMITHSONIAN IN WASHINGTON.

23 I KNOW THERE'S NUMEROUS OTHERS. I DON'T
24 SEEK THEM OUT, BUT IT'S FLATTERING TO KNOW THAT
25 THEY'RE THERE.

1 Q HAS YOUR DESIGN GROUP RECEIVED AWARDS FOR THE
2 DESIGN OF THE IPAD?

3 A YES, AGAIN, IT'S RECEIVED THE DNAD, AMONGST
4 OTHERS.

5 Q SIR, HAVE YOU EVER BECOME AWARE THAT OTHER
6 PHONE MAKERS STARTED USING DESIGNS THAT WERE
7 SIMILAR TO YOURS?

8 MR. VERHOEVEN: OBJECTION. LEADING.

9 THE COURT: SUSTAINED.

10 BY MR. MCELHINNY:

11 Q SIR, TO YOUR KNOWLEDGE, DO YOU UNDERSTAND
12 WHETHER OR NOT OTHER PHONE MAKERS, AFTER THE IPHONE
13 WAS ISSUED, STARTED TO USE THAT DESIGN?

14 MR. VERHOEVEN: OBJECTION.

15 THE COURT: WHAT'S THE BASIS?

16 MR. VERHOEVEN: IMPROPER OPINION
17 TESTIMONY FROM A PERCIPIENT WITNESS, YOUR HONOR.

18 THE COURT: OVERRULED.

19 GO AHEAD.

20 BY MR. MCELHINNY:

21 Q DO YOU HAVE THE QUESTION IN MIND?

22 A COULD YOU REPEAT THE QUESTION?

23 Q I CAN'T, BUT THE -- WELL, I'LL GIVE IT BACK TO
24 YOU.

25 AFTER THE IPHONE CAME OUT, DID YOU EVER

1 COME TO A DETERMINATION, IN YOUR OWN HEAD, ABOUT
2 WHETHER OR NOT OTHER COMPETITORS WERE USING YOUR
3 DESIGNS?

4 A YES. WE'VE BEEN RIPPED OFF. IT'S PLAIN TO
5 SEE.

6 Q BY WHOM, SIR?

7 A SAMSUNG IN PARTICULAR.

8 Q AND WHAT IS YOUR REACTION TO THAT AS AN
9 ARTIST?

10 A IT'S OFFENSIVE. AS I WAS EXPLAINING, IT'S A
11 HUGE LEAP OF IMAGINATION TO COME UP WITH SOMETHING
12 ENTIRELY NEW. THAT'S SOMETHING THAT WE DID.

13 IT'S A PROCESS BY WHICH YOU HAVE TO
14 DISMISS EVERYTHING YOU KNOW, TRY TO FORGET
15 EVERYTHING YOU KNOW, WHICH MAKES IT VERY DIFFICULT,
16 BECAUSE IF YOU PAY ATTENTION TO THE COMPETITION,
17 YOU END UP FOLLOWING.

18 AND THAT'S NOT WHAT WE DO. WE WANTED TO
19 CREATE ORIGINALITY. IT'S A VERY DIFFICULT PROCESS.
20 IT TAKES A HUGE AMOUNT OF TIME AND RESOURCES AND
21 CONVICTION TO DO SO.

22 SO WE -- WE WERE OFFENDED.

23 MR. MCELHINNY: NOTHING FURTHER AT THIS
24 TIME, YOUR HONOR.

25 THE COURT: ALL RIGHT. IT'S NOW 3:48.

1 CROSS-EXAMINATION, PLEASE.

2 (PAUSE IN PROCEEDINGS.)

3 MR. VERHOEVEN: ONE SECOND, YOUR HONOR,
4 AS I GET ORGANIZED IF THAT'S OKAY.

5 THE COURT: ALL RIGHT.

6 (PAUSE IN PROCEEDINGS.)

7 MR. VERHOEVEN: CAN I HAVE JUST ONE
8 SECOND, YOUR HONOR, AND I'LL BE READY.

9 (DISCUSSION OFF THE RECORD BETWEEN
10 DEFENSE COUNSEL.)

11 MR. VERHOEVEN: THANK YOU, YOUR HONOR.
12 MAY I PROCEED?

13 THE COURT: PLEASE. IT'S 3:49.
14 GO AHEAD.

15 **CROSS-EXAMINATION**

16 BY MR. VERHOEVEN:

17 Q GOOD AFTERNOON, MR. STRINGER.

18 A GOOD AFTERNOON.

19 Q GOOD TO SEE YOU AGAIN.

20 I'D LIKE TO START BY PUTTING UP THE '087
21 PATENT, WHICH IS JX 1041.

22 CAN WE HAND OUT THE CROSS BINDER?

23 MAY I APPROACH, YOUR HONOR?

24 THE COURT: PLEASE, GO AHEAD.

25 MR. VERHOEVEN: THIS IS OUR EXHIBITS

1 (HANDING).

2 Q IF WE COULD GO TO THE NEXT PAGE AND
3 HIGHLIGHT -- NO, NO, NO. PLEASE GO BACK TO THE
4 PAGE, THE FRONT PAGE. GO TO THE NEXT PAGE. KEEP
5 GOING. ONE MORE. ONE MORE.

6 ALL RIGHT. YOU TESTIFIED ON DIRECT ABOUT
7 THE '087 DESIGN PATENT, SIR; CORRECT?

8 A YES.

9 Q AND YOU ARE ONE OF THE INVENTORS LISTED ON
10 THAT PATENT; CORRECT?

11 A YES.

12 Q AND THE '087 DESIGN PATENT IS EMBODIED BY THE
13 INITIAL IPHONE; IS THAT RIGHT?

14 A YES.

15 Q OKAY. AND DO YOU SEE HERE ON FIGURE 3 -- I'M
16 POINTING ON THE BIG SCREEN IF YOU WANT TO LOOK AT
17 MY POINTER. LOOK AT FIGURE 3.

18 A YES.

19 Q THAT'S THE FRONT FACE OF THE DESIGN; IS THAT
20 CORRECT?

21 A THAT IS CORRECT.

22 Q AND I WANT TO MAKE SURE I GET THE RIGHT
23 FIGURE. IT'S FIGURE 11, PLEASE, ON PAGE 433.

24 THIS IS ANOTHER DEPICTION, BUT THIS ONE
25 DOESN'T CLAIM THE CIRCULAR HOME BUTTON. DO YOU SEE

1 THAT?

2 A YES.

3 Q DO YOU UNDERSTAND THAT THE LINES HERE MEANS
4 IT'S NOT BEING CLAIMED?

5 A THAT'S CORRECT.

6 Q AND THEN FIGURE 15 AND 16 ARE SIDE VIEWS OF
7 THAT SAME DESIGN PATENT; IS THAT RIGHT?

8 A YES.

9 Q OKAY. NOW I'M GOING TO ASK YOU A FEW
10 QUESTIONS ABOUT THE DESIGN ELEMENTS WITH RESPECT TO
11 THE '087 PATENT. OKAY?

12 IN YOUR VIEW, ONE IMPORTANT DESIGN ASPECT
13 OF THE '087 PATENT, AND THE INITIAL IPHONE, WAS
14 THAT IT HAD FOUR EVENLY RADIUS CORNERS; CORRECT?

15 A YES.

16 Q AND THAT'S DEPICTED RIGHT HERE ON EACH OF
17 THESE CORNERS IN FIGURE 11; CORRECT?

18 A YES.

19 Q ANOTHER IMPORTANT DESIGN FEATURE WITH RESPECT
20 TO THE INITIAL IPHONE AND THE '087 PATENT WAS THAT
21 IT HAD THIS CONTINUOUS RIM, OR BEZEL I THINK IS THE
22 WORD YOU USED. IS THAT RIGHT?

23 A YES.

24 Q AND YOU AGREE WITH ME, THAT WAS AN IMPORTANT
25 ASPECT OF THIS DESIGN; RIGHT?

1 WERE LOOKING AT, PLEASE.

2 AND AGAIN, LOOKING AT FIGURE 16 AND 15,
3 THE SIDE VIEWS, POSITIONING -- AN IMPORTANT DESIGN
4 ELEMENT HERE WAS POSITIONING THE GLASS FLUSH WITH
5 THE BEZEL; RIGHT?

6 A YES.

7 Q EVEN THOUGH THAT MIGHT PRESENT SOME
8 MANUFACTURING DIFFICULTIES; CORRECT?

9 A I AGREE.

10 Q OKAY. NOW, LET'S TURN TO THE FRONT FACE --
11 ACTUALLY, CAN WE GO BACK A PAGE, PLEASE. ONE MORE.

12 LET'S GO TO THE '677 PATENT, WHICH SHOULD
13 BE IN YOUR BINDER. I'M SORRY, '678.

14 I APOLOGIZE, YOUR HONOR.

15 (PAUSE IN PROCEEDINGS.)

16 MR. VERHOEVEN: HERE IT IS. IT'S IN YOUR
17 BINDER AT 1043.

18 MR. MCELHINNY: WHAT EXHIBIT ARE YOU ON?

19 MR. VERHOEVEN: IT'S JOINT TRIAL EXHIBIT
20 1043. AND LET'S GO TO -- A PAGE INTO THE FIGURE.

21 Q THIS IS ANOTHER DESIGN PATENT THAT YOU
22 TESTIFIED ABOUT ON DIRECT. DO YOU REMEMBER?

23 A YES.

24 Q AND THIS IS ALSO A DESIGN PATENT THAT
25 CORRESPONDS TO THE INITIAL IPHONE; IS THAT RIGHT?

1 A YES.

2 Q AND DO YOU SEE THERE'S THIS ELEMENT UP HERE,
3 I'M CIRCLING IT AT THE TOP OF THE PHONE THERE?

4 A YES.

5 Q CAN YOU DESCRIBE FOR THE JURY WHAT THAT IS?

6 A THAT IS THE RECEIVER DETAIL.

7 Q IS THAT THE LOZENGE SHAPE DESIGN ELEMENT ON
8 THE PHONE?

9 A YES, THAT'S THE OPENING FOR THE RECEIVER.

10 Q AND THAT'S ANOTHER DESIGN ELEMENT IN THE
11 MINIMALIST DESIGN FOR THE INITIAL IPHONE; CORRECT?

12 A CORRECT.

13 Q AND IT WAS IMPORTANT FOR YOUR DESIGN TEAM,
14 WITH RESPECT TO THAT DESIGN ELEMENT, TO MAKE SURE
15 IT WAS CENTERED HORIZONTALLY; IS THAT CORRECT?

16 A CAN YOU BE MORE SPECIFIC OF WHAT YOU MEAN BY
17 "CENTERED HORIZONTALLY"?

18 Q SURE. SO IF THIS IS HORIZONTAL FROM THE
19 BOTTOM TO THE TOP OF THE PHONE, DO YOU FOLLOW ME?

20 A THAT IS VERTICAL TO ME, BUT, YES, IT'S
21 CENTERED ON THAT AXIS.

22 Q OKAY. LET'S SAY CENTERED VERTICALLY THEN.

23 A YES.

24 Q CAN I ASK THE QUESTION ONE MORE TIME FOR THE
25 RECORD?

1 A PLEASE DO.

2 Q IT WAS IMPORTANT TO YOU, AS THE DESIGN TEAM,
3 THAT THAT LOZENGE SHAPED DESIGN ELEMENT BE CENTERED
4 VERTICALLY ON THE PHONE; RIGHT?

5 A YES.

6 Q AND THAT -- AND THAT'S BETWEEN THE TOP OF THE
7 DISPLAY ELEMENT, WHICH WE SEE RIGHT HERE, AND THE
8 TOP OF THE PHONE? IS THAT CORRECT?

9 A CENTERED THAT WAY ALSO, YES.

10 Q OKAY. SO IT'S CENTERED IN BOTH WAYS?

11 A YES.

12 Q OKAY. AND THAT WAS AN IMPORTANT DESIGN
13 ELEMENT FOR THE INITIAL IPHONE; CORRECT?

14 A YES.

15 Q OKAY. IT WAS ALSO IMPORTANT TO YOU AND THE
16 DESIGN TEAM OF THE INITIAL IPHONE THAT THE DESIGN
17 BE MINIMALISTCI. FAIR?

18 A THAT'S NOT THE WORD THAT I WOULD USE.

19 Q NOT HAVE A LOT OF BUTTONS ON IT? NOT HAVE A
20 LOT OF ORNAMENTATION ON IT?

21 A TO BE SIMPLE.

22 Q TO BE SIMPLE.

23 IN FACT, YOU WANTED TO CREATE A PRODUCT
24 THAT EMBODIED THE SIMPLEST OF ICONS, AND ONE KEY
25 IMAGE WAS THAT OF A DARK, OILY POND. IS THAT

1 RIGHT?

2 A YES.

3 Q THAT WAS YOUR DESIGN GOAL; RIGHT?

4 A THAT WAS ONE --

5 Q GO AHEAD.

6 A THAT WAS ONE DESCRIPTION OF A DESIGN GOAL,
7 YES.

8 Q YOU DIDN'T WANT TO PUT MULTIPLE BUTTONS ON THE
9 FACE OF THE PHONE; CORRECT?

10 A CORRECT.

11 Q YOU WANTED IT TO BE AS SIMPLE AS POSSIBLE?

12 A YES.

13 Q ALL RIGHT. LET'S TURN TO THE '889 DESIGN
14 PATENT, WHICH YOU'RE ALSO LISTED AS AN INVENTOR ON.

15 THIS IS JX 1040 IN YOUR WITNESS BINDER IF
16 YOU'D LIKE.

17 AND IF WE COULD GO TO PAGE 146 OF JX
18 1040.

19 JUST FOR THE RECORD, YOU'RE AN INVENTOR
20 ON THE '889 DESIGN PATENT; CORRECT?

21 A YES.

22 Q AND YOU'RE FAMILIAR WITH THIS DESIGN PATENT?

23 A YES.

24 Q NOW, WITH RESPECT TO THE '889 DESIGN PATENT,
25 ISN'T IT CORRECT THAT THE DESIGN TEAMS' OBJECTIVES

1 WERE TO REDUCE THE PRODUCT TO WHAT WAS ESSENTIALLY
2 A SINGLE, SEAMLESS VESSEL, WHICH WAS THE REAR
3 HOUSING?

4 A THAT WAS THE INSPIRATION OF THIS DESIGN, YES.

5 Q AND ANOTHER IMPORTANT DESIGN GOAL WAS TO HAVE
6 JUST ONE GAP IN THE PRODUCT BETWEEN THE BACK
7 HOUSING AND WHAT YOU REFER TO AS THE CLEAR GLASS
8 BEZEL THAT EXTENDS ALL THE WAY ACROSS THE FRONT;
9 RIGHT?

10 A YES.

11 Q SORRY. WAS THAT YES?

12 A YES.

13 Q YOU WANTED A SINGLE PIECE OF REAR HOUSING;
14 RIGHT?

15 A THAT WAS THE INSPIRATION FOR THE DESIGN, YES.

16 Q NOW --

17 MAY I APPROACH THE WITNESS WITH A
18 PHYSICAL EXHIBIT, YOUR HONOR?

19 THE COURT: PLEASE, GO AHEAD.

20 MR. VERHOEVEN: (HANDING.)

21 THE WITNESS: THANK YOU.

22 MR. MCELHINNY: I DON'T BELIEVE THAT
23 EXHIBIT HAS BEEN MARKED, YOUR HONOR.

24 MR. VERHOEVEN: YOUR HONOR, THE EXHIBIT
25 HAS BEEN IN THE EXCLUSIVE CUSTODY OF APPLE AND

1 THEY'VE RETAINED POSSESSION OF IT. WE'D BE HAPPY
2 TO MARK IT WITH THE NEXT APPROPRIATE NUMBER.

3 MR. MCELHINNY: I'M NOT OBJECTING TO IT.
4 I'M TRYING TO GET MR. VERHOEVEN A CLEAR RECORD.

5 THE COURT: WHAT NUMBER SHOULD IT BE?

6 MR. VERHOEVEN: WELL, IT'S ACTUALLY BEEN
7 MARKED AS DX 741.

8 THE COURT: DX? I'M SORRY. CAN YOU
9 REPEAT THAT, PLEASE?

10 MR. VERHOEVEN: DX 741, YOUR HONOR.

11 THE COURT: OKAY.

12 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
13 741 WAS MARKED FOR IDENTIFICATION.)

14 BY MR. VERHOEVEN:

15 Q NOW, YOU'VE SEEN THIS -- I'VE BEEN REFERRING
16 TO THIS AS APPLE MODEL 035. WILL YOU UNDERSTAND
17 THAT'S WHAT I'M REFERRING TO?

18 A YES.

19 Q IT SAYS IT RIGHT ON THE BACK; RIGHT?

20 A ABSOLUTELY.

21 Q SO DX 741 IS APPLE MODEL 035. FAIR?

22 A EXCUSE ME. WHAT WAS THE FIRST NUMBER AGAIN?

23 Q THE EXHIBIT NUMBER WE JUST MARKED THAT AS, DX
24 741, CORRESPONDS TO APPLE MODEL 035? FAIR?

25 A I BELIEVE SO.

1 Q AND YOU'VE SEEN THIS MODEL 035 BEFORE;
2 CORRECT?

3 A YES.

4 Q AND IF YOU LOOK AT -- IF WE CAN PUT ON THE
5 SCREEN DX 740, HERE WE HAVE -- AND THIS SHOULD BE
6 IN YOUR BINDER AS WELL IF YOU'D LIKE TO LOOK AT THE
7 HARD COPY IMAGES, SIR.

8 A YES, I SEE IT.

9 Q I DON'T HAVE MY HARD COPY YET, SO I'M GOING TO
10 GET MY HARD COPY, TOO.

11 MR. MCELHINNY: YOUR HONOR, THIS EXHIBIT
12 HAS NOT BEEN MOVED INTO EVIDENCE. I'M NOT SURE IT
13 SHOULD BE PUBLISHED.

14 THE COURT: IS THERE GOING TO BE AN
15 OBJECTION?

16 MR. MCELHINNY: IT DEPENDS ON WHETHER OR
17 NOT THERE'S A FOUNDATION THAT'S LAID, YOUR HONOR.

18 THE COURT: ALL RIGHT. LAY THE
19 FOUNDATION, PLEASE.

20 MR. VERHOEVEN: OKAY.

21 Q YOU'VE SEEN THESE IMAGES BEFORE, THESE PHOTOS;
22 RIGHT, SIR?

23 A I BELIEVE I MAY HAVE SEEN THEM IN DEPOSITION.

24 Q AND YOU'VE STUDIED THOSE PHOTOS AND YOU
25 COMPARED THEM TO THE APPLE MODEL 035, WHICH IS

1 MARKED AS DX 741; CORRECT?

2 A I BELIEVE THAT IS TRUE.

3 Q AND IT'S YOUR OPINION, IN FACT, YOU'RE
4 CONVINCED FROM STUDYING THEM BOTH THAT THEY ARE ONE
5 AND THE SAME? IN OTHER WORDS, THE PHOTOS ARE
6 PICTURES OF APPLE MODEL 035; RIGHT?

7 A I DO RECALL SUCH AN EXERCISE OF COMPARING THE
8 MODEL AND THE PHOTOS. I THINK THESE ARE THOSE
9 PHOTOS, I THINK THIS IS THAT MODEL, SO IT FEELS
10 TRUE.

11 Q OKAY. AND YOU AGREE WITH ME THAT THE APPLE
12 MODEL 035 AND THE CORRESPONDING PICTURES ARE
13 EMBODIMENTS OF THE '889 DESIGN PATENT; RIGHT?

14 MR. MCELHINNY: OBJECTION, YOUR HONOR.
15 CALLS FOR A LEGAL CONCLUSION FROM THIS WITNESS.

16 MR. VERHOEVEN: YOUR HONOR, ON DIRECT THE
17 WITNESS TESTIFIED TO THE EXACT QUESTION WITH
18 RESPECT TO OTHER APPLE PHYSICAL EXHIBITS --

19 MR. MCELHINNY: NO, WE'RE --

20 MR. VERHOEVEN: -- IN TESTIMONY ELICITED
21 BY MR. MCELHINNY.

22 MR. MCELHINNY: THE WORD "EMBODIMENT,"
23 WHICH IS A LEGAL WORD, WAS NEVER USED IN ANY
24 QUESTION THAT I ASKED.

25 THE COURT: WHY DON'T YOU REPHRASE THE

1 QUESTION, PLEASE?

2 BY MR. VERHOEVEN:

3 Q THE SPECIFIC PHYSICAL MODEL, APPLE MODEL 035,
4 IS THE SAME MODEL OR MOCK-UP APPEARS IN PHOTOGRAPHS
5 THAT WERE SUBMITTED TO THE PATENT OFFICE TOGETHER
6 WITH THE '889 PATENT APPLICATION? ISN'T THAT TRUE,
7 SIR?

8 MR. MCELHINNY: AGAIN, THAT LACKS
9 FOUNDATION FROM THIS WITNESS, YOUR HONOR.

10 THE COURT: IF YOU KNOW, SIR, GO AHEAD.

11 AND IF YOU COULD LAY THE FOUNDATION.

12 BUT IF YOU KNOW, SIR, YOU CAN ANSWER.

13 THE WITNESS: YOU -- COULD YOU REPEAT THE
14 QUESTION? YOU WERE ASKING ABOUT PHOTOGRAPHS WITH
15 THE PATENT APPLICATION?

16 BY MR. VERHOEVEN:

17 Q YOU'RE AWARE THAT PHOTOGRAPHS WERE TAKEN OF
18 THE APPLE MODEL 035; RIGHT?

19 A I SEE PHOTOGRAPHS OF 035.

20 Q AND THOSE PHOTOGRAPHS WERE SUBMITTED TO THE
21 PATENT OFFICE AS PART OF THE PROSECUTION OF WHAT
22 BECAME THE '889 PATENT; ISN'T THAT TRUE, SIR?

23 A I DON'T RECALL THE SPECIFICS OF SUCH AN
24 ATTACHMENT.

25 Q WELL, YOU'RE AN INVENTOR ON THE PATENT; RIGHT?

1 MR. MCELHINNY: ARGUMENTATIVE, YOUR
2 HONOR.

3 THE COURT: OVERRULED.

4 YOU CAN ANSWER. GO AHEAD.

5 THE WITNESS: YES, I AM.

6 BY MR. VERHOEVEN:

7 Q IN YOUR --

8 JUST ONE SECOND, YOUR HONOR.

9 (DISCUSSION OFF THE RECORD BETWEEN
10 DEFENSE COUNSEL.)

11 BY MR. VERHOEVEN:

12 Q ALL RIGHT. WOULD YOU AGREE WITH ME, SIR, THAT
13 APPLE MODEL 035 INCORPORATES THE '889 DESIGN?

14 A I BELIEVE THAT THE '889 PATENT REPRESENTS THIS
15 DESIGN.

16 Q OKAY. NOW, YOU TESTIFIED AT THE END OF YOUR
17 DIRECT TESTIMONY ABOUT SAMSUNG PHONES.

18 A CORRECT.

19 Q YOU'VE SEEN THE FOUR SOFT BUTTONS AT THE
20 BOTTOM OF SAMSUNG PHONES?

21 A WOULD YOU LIKE TO SHOW ME WHAT YOU MEAN?

22 Q WELL, YOU'RE THE ONE WHO TESTIFIED ON DIRECT
23 ALL ABOUT HOW IT WAS A RIP OFF. DO YOU REMEMBER --

24 MR. MCELHINNY: EXCUSE ME, YOUR HONOR.

25 BY MR. VERHOEVEN:

1 Q DO YOU REMEMBER, SIR, LOOKING AT SOFT BUTTONS
2 AT THE BOTTOM OF THE SAMSUNG PHONES?

3 MR. MCELHINNY: OBJECTION, YOUR HONOR.
4 THAT'S NOT A QUESTION. HE'S ARGUING WITH THE
5 WITNESS.

6 THE COURT: OVERRULED.

7 YOU CAN ANSWER.

8 THE WITNESS: COULD YOU REPEAT THE
9 QUESTION, PLEASE?

10 BY MR. VERHOEVEN:

11 Q DO YOU REMEMBER, YES OR NO, WHEN YOU LOOKED AT
12 THE SAMSUNG PHONES TO FORM THE OPINION AND THE
13 TESTIMONY THAT YOU GAVE BEFORE THE JURY, WHETHER
14 THEY HAD FOUR SOFT BUTTONS AT THE BOTTOM?

15 A I HAVE SEEN MANY SAMSUNG PHONES. I DO NOT
16 REMEMBER THE EXACT DETAILS OF SOFTWARE BUTTONS.

17 Q SO YOU DON'T REMEMBER WHETHER THEY HAD BUTTONS
18 ON THE BOTTOM?

19 A I -- LIKE I SAID, I'VE SEEN MANY SAMSUNG
20 PHONES. I DO NOT KNOW THAT THEY'RE ALL THE SAME IN
21 TERMS OF THEIR BUTTON ARRANGEMENTS AT THE BOTTOM.

22 Q HAVE YOU EVER SEEN ANY SAMSUNG PHONES THAT
23 HAVE FOUR SOFT BUTTONS AT THE BOTTOM?

24 A I WOULD LIKE YOU TO SHOW ME THE PHONE. THIS
25 COULD BE A TRICK QUESTION. I DON'T KNOW.

1 Q I'M JUST ASKING YOU, HAVE YOU EVER SEEN A
2 SAMSUNG PHONE THAT HAD FOUR SOFT BUTTONS AT THE
3 BOTTOM?

4 A IF YOU SHOWED ME THE PHONE, I COULD DETERMINE
5 THAT THERE ARE FOUR SOFT BUTTONS.

6 Q THAT'S NOT MY QUESTION, SIR. MY QUESTION IS,
7 HAVE YOU SEEN A SAMSUNG PHONE THAT HAD FOUR SOFT
8 BUTTONS AT THE BOTTOM?

9 A I CANNOT RECALL IT IT'S THREE OR FOUR. I
10 CANNOT RECALL.

11 Q HAVE YOU SEEN ANY PHONE, ANY SMARTPHONE THAT
12 HAD FOUR SOFT BUTTONS AT THE BOTTOM?

13 A QUITE POSSIBLY.

14 Q DID YOU THINK THEY WERE BEAUTIFUL?

15 A CLEARLY THEY DID NOT STICK IN MY MIND.

16 Q NOW, YOU TESTIFIED ON DIRECT ABOUT BUTTONS AND
17 HOW SOMETIMES YOU MIGHT DO 50 DIFFERENT MODELS OF A
18 BUTTON. DO YOU REMEMBER THAT?

19 A THAT'S CORRECT.

20 Q HOW MANY MODELS DID YOU DO OF THE HOME BUTTON?

21 A I COULD NOT GIVE YOU AN EXACT NUMBER, BUT I'M
22 SURE THERE WERE MANY.

23 Q OVER TEN?

24 A VERY LIKELY.

25 Q OVER 100?

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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 31, 2012