

Pierce Declaration

EXHIBIT 3

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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 3, 2012
VS.)	
)	VOLUME
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 556-930
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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
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(RES.)
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SCOTT FORSTALL

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JUSTIN DENISON

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1 WAS AMAZING. PEOPLE HAD BEEN WAITING SO LONG AND
2 WERE SO EXCITED ABOUT THIS UPCOMING EVENT AT MAC
3 WORLD.

4 Q WHAT WAS THE INITIAL REACTION TO THE
5 ANNOUNCEMENT?

6 MR. PRICE: I'M GOING TO OBJECT, YOUR
7 HONOR. VAGUE, BY WHOM, WHEN?

8 THE COURT: SUSTAINED.

9 BY MR. MCELHINNY:

10 Q WHAT WAS THE MEDIA REACTION TO THE
11 ANNOUNCEMENT?

12 A WE HAD A HUGE AMOUNT OF PRESS, AND AS YOU
13 WOULD EXPECT, THE RANGE OF THE REACTION WAS
14 EVERYTHING YOU COULD IMAGINE FROM EXCITEMENT ABOUT
15 THIS BREAKTHROUGH PRODUCT TO DOUBT THAT APPLE COULD
16 SUCCEED AT THIS OR DO A GOOD JOB AT IT.

17 Q CAN YOU GIVE US EXAMPLES OF PEOPLE WHO SAID
18 THAT YOU -- AFTER SEEING THE ANNOUNCEMENTS,
19 EXPRESSED DOUBT ABOUT WHETHER OR NOT IT WOULD BE --
20 THE IPHONE WOULD BE A SUCCESSFUL PRODUCT?

21 MR. PRICE: OBJECT TO RELEVANCE AND
22 HEARSAY.

23 THE COURT: WHAT WAS THE QUESTION AGAIN?

24 BY MR. MCELHINNY:

25 Q CAN YOU GIVE US EXAMPLES OF PEOPLE WHO

1 EXPRESSED DOUBT ABOUT WHETHER THE IPHONE WOULD BE A
2 SUCCESSFUL PRODUCT.

3 IT'S A SECONDARY CONSIDERATION.

4 THE COURT: I UNDERSTAND. YOU NEED TO
5 LAY A FOUNDATION. OTHERWISE IT IS ELICITING
6 HEARSAY.

7 GO AHEAD, PLEASE. REPHRASE YOUR
8 QUESTION.

9 BY MR. MCELHINNY:

10 Q AS THE HEAD OF MARKETING, DID YOU BECOME AWARE
11 THAT PEOPLE EXPRESSED DOUBT AS TO THE SUCCESS OF
12 THE IPHONE PRODUCT?

13 A YES, ABSOLUTELY.

14 Q CAN YOU GIVE US AN EXAMPLE?

15 A WE HAD MANY PRESS REPORTS, FROM THE PRESS,
16 FROM ANALYSTS, EVEN FROM COMPETITORS WHO SPOKE OUT
17 AGAINST OUR ANNOUNCEMENT AND SAID THAT WE'RE GOING
18 TO FAIL. EVEN MICROSOFT SAID WE WERE GOING TO
19 FAIL. THE HEAD OF PALM SAID WE WERE GOING TO FAIL.
20 THERE WERE MANY PEOPLE EXPRESSING DOUBT.

21 Q AND DID THEY GIVE REASONS WHY THEY THOUGHT IT
22 WOULD FAIL?

23 A YES, ABSOLUTELY.

24 Q AND DO YOU RECALL ANY OF THE REASONS THAT WERE
25 GIVEN AT THE TIME?

1 A PROBABLY THE BIGGEST REASON WAS THAT APPLE HAD
2 NEVER HAD A PHONE BEFORE AND WAS NEW INTO THE PHONE
3 BUSINESS AND THEY EXPECTED THAT WE WOULD FALL ON TO
4 OUR FACE AND DO A BAD JOB OF IT.

5 Q SIR, IF YOU LOOK AT EXHIBIT 133 IN YOUR
6 EXHIBIT BINDER THERE, PX 133.

7 A YES.

8 Q CAN YOU TELL ME WHAT THAT DOCUMENT IS, PLEASE?

9 A THIS IS AN ARTICLE FROM THE NEW YORK TIMES
10 THAT APPEARED THE DAY AFTER THE LAUNCH OF THE
11 IPHONE WRITTEN BY DAVID POGUE, ONE OF THE
12 PREEMINENT --

13 MR. MCELHINNY: YOUR HONOR, I MOVE PX
14 133.

15 THE COURT: ANY OBJECTION?

16 MR. PRICE: WE HAVE NO FURTHER OBJECTION
17 TO THAT.

18 WE WOULD REQUEST A LIMITING INSTRUCTION
19 TO THE JURY THAT THIS IS NOT FOR THE TRUTH OF
20 ANYTHING THAT'S IN THE ARTICLE.

21 THE COURT: THAT'S FINE. THAT'S FINE.
22 IT'S ADMITTED, AND THIS IS NOT FOR THE TRUTH OF
23 WHAT IS STATED IN THE ARTICLE.

24 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
25 133, HAVING BEEN PREVIOUSLY MARKED FOR

1 IDENTIFICATION, WAS ADMITTED INTO
2 EVIDENCE.)

3 THE COURT: YOU MAY CONSIDER IT
4 OTHERWISE.

5 GO AHEAD.

6 BY MR. MCELHINNY:

7 Q WOULD YOU PLEASE PUT UP PDX 1, PLEASE.

8 CAN YOU TELL US BRIEFLY WHAT MR. POGUE
9 SAID IN THIS ARTICLE?

10 A YES. MR. POGUE WROTE THAT APPLE HAD WAVED OUR
11 WAND, THE IPHONE, AT THE PHONE, AND HE CALLED IT
12 BEAUTIFUL AND THAT THAT ALONE WOULD BE ENOUGH TO
13 EXCITE PEOPLE AND MAKE PEOPLE WANT TO BUY IT.

14 HE ALSO CALLED IT GORGEOUS AND HE SPOKE
15 ABOUT ITS SHINY BLACK FACE AND STAINLESS STEEL
16 MIRRORED FINISHED RIM THAT WENT AROUND IT, THE LOOK
17 OF IT.

18 SO HE TALKED ABOUT HOW IT LOOKED AND HOW
19 BEAUTIFUL IT LOOKED.

20 Q WHEN WAS THE IPHONE ACTUALLY PHYSICALLY
21 RELEASED, SIR?

22 A WE SHIPPED THE FIRST IPHONES IN JUNE OF THAT
23 YEAR, JUNE 19TH, 2007.

24 Q DID APPLE DO ANYTHING BETWEEN JANUARY AND JUNE
25 TO PROMOTE THE IPHONE ITSELF?

1 A YES, WE DID.

2 Q CAN YOU GIVE US EXAMPLES OF WHAT YOU DID?

3 A WELL, IN THAT PERIOD FROM JANUARY UNTIL JUNE,
4 WE HAD A FEW MARKETING STRATEGIES.

5 THE BEGINNING WAS FIRST WE CALLED IT GO
6 QUIET. SO RIGHT AFTER THE LAUNCH IN JANUARY, THERE
7 WAS SO MUCH EXCITEMENT, SO MUCH PRESS COVERAGE, WE
8 DIDN'T NEED TO DO OTHER MARKETING. THE BEST THING
9 TO DO WAS LET THE PRESS WRITE AND TALK ABOUT THE
10 IPHONE. SOME TALKED ABOUT THAT AS THE BIGGEST P.R.
11 LAUNCH OF A PRODUCT IN HISTORY.

12 AND THEN LEADING TOWARDS JUNE, WE BEGAN
13 TO CAREFULLY TURN ON THE MARKETING. FIRST WE HELD
14 A TV AD DURING THE ACADEMY AWARDS IN EARLY MARCH.
15 IT WAS CALLED THE HELLO TV AD WHERE WE HAD FAMOUS
16 SCENES OF PEOPLE MAKING PHONE CALLS, AND THEN AT
17 THE END OF THAT AD, IT ANNOUNCED THAT THE IPHONE
18 WAS COMING IN JUNE, AT THE END OF JUNE.

19 AND THEN AS WE GOT CLOSER TO THE LAUNCH
20 IN JUNE, WE STARTED TO BRING ON ADDITIONAL TV ADS
21 SPECIFICALLY ABOUT THE IPHONE, SHOWCASING IT, AS
22 WELL AS DOING A TREMENDOUS AMOUNT OF MARKETING WITH
23 DIRECT MAIL, WEBSITES, HELPING THE WHOLE WORLD GET
24 READY FOR THE ARRIVAL OF THE IPHONE.

25 Q WHERE WERE YOU PHYSICALLY WHEN THE IPHONE WAS

1 RELEASED, SIR?

2 A I WAS AT OUR APPLE STORE IN CHICAGO ON
3 MICHIGAN AVENUE.

4 Q AND WHY WERE YOU THERE?

5 A WE REALIZED THAT THIS WAS A VERY, VERY BIG DAY
6 FOR APPLE, THE LAUNCH OF THE IPHONE, AND SO MUCH
7 EXCITEMENT HAD BUILT UP THAT I SENT MY TEAM,
8 INCLUDING MYSELF, AROUND THE COUNTRY TO DIFFERENT
9 LOCATIONS TO BE EVERYWHERE WE COULD.

10 AND SO I CHOSE TO GO TO CHICAGO, AND I
11 ACTUALLY EVEN BROUGHT MY SON WITH ME BECAUSE THIS
12 WAS SUCH A HUGE DAY AND I WANTED HIM TO BE PART OF
13 THAT.

14 Q AFTER THE IPHONE WAS PHYSICALLY RELEASED, DID
15 YOU SEE ADDITIONAL REVIEWS IN THE PRESS CONCERNING
16 ITS FEATURES?

17 A YES.

18 Q DID ANY OF THE ARTICLES OR REVIEWS TALK ABOUT
19 THE DESIGN OF THE IPHONE?

20 A OH, I THINK MANY, MANY OF THE ARTICLES TALKED
21 ABOUT THE DESIGN AND SPOKE ABOUT IT, EVEN SHOWED IT
22 IN THEIR STORIES.

23 Q CAN YOU LOOK IN YOUR BINDER, PLEASE, AT
24 EXHIBIT PX 17, 17.

25 A YES.

1 Q CAN YOU TELL ME WHAT THIS DOCUMENT IS, PLEASE?

2 A THIS IS A SUMMARY OF SOME OF THE NEWS COVERAGE
3 ABOUT THE IPHONE.

4 MR. MCELHINNY: YOUR HONOR, I MOVE PX 17.

5 THE COURT: ALL RIGHT. ANY OBJECTION?

6 MR. PRICE: NO FURTHER OBJECTIONS, AGAIN,
7 YOUR HONOR, WITH THE LIMITING INSTRUCTION THAT
8 NOTHING IN THESE ARTICLES IS TO BE TAKEN FOR THE
9 TRUTH OF THE MATTER ASSERTED.

10 THE COURT: ALL RIGHT. SO THIS IS
11 ADMITTED AND YOU ARE NOT TO CONSIDER THIS FOR THE
12 TRUTH OF WHAT'S ASSERTED IN THIS EXHIBIT. YOU CAN
13 CONSIDER IT OTHERWISE.

14 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
15 17, HAVING BEEN PREVIOUSLY MARKED FOR
16 IDENTIFICATION, WAS ADMITTED INTO
17 EVIDENCE.)

18 THE COURT: GO AHEAD, PLEASE.

19 MR. MCELHINNY: THANK YOU, YOUR HONOR.

20 Q IS THIS THE FIRST PAGE OF PX 17?

21 A YES, IT IS.

22 Q AND, AGAIN, JUST WHAT ARE EACH OF THESE
23 PHOTOGRAPHS THAT GO THROUGH THESE PAGES?

24 A THESE ARE ALL EXCERPTS AND SUMMARIES OF
25 DIFFERENT NEWS COVERAGE THAT WAS WRITTEN ABOUT THE

1 STATED IN THE ARTICLE, BUT YOU CAN CONSIDER IT
2 OTHERWISE.

3 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
4 141, HAVING BEEN PREVIOUSLY MARKED FOR
5 IDENTIFICATION, WAS ADMITTED INTO
6 EVIDENCE.)

7 THE COURT: GO AHEAD, PLEASE.

8 MR. MCELHINNY: WOULD YOU SHOW, PLEASE,
9 DEMONSTRATIVE PDX 6.

10 Q WHAT IS THIS DEMONSTRATIVE, SIR?

11 A THIS IS A SUMMARY OF THAT SAME WALL STREET
12 JOURNAL REVIEW OF THE IPAD.

13 Q NOW, AGAIN, REMIND US WHO MR. MOSSBERG IS?

14 A MR. MOSSBERG IS A WRITER FOR THE WALL STREET
15 JOURNAL AND CONSIDERED ONE OF THE TOP TECH
16 JOURNALISTS IN OUR INDUSTRY.

17 Q IF YOU LOOK AT PX 140, WHAT IS THIS DOCUMENT?

18 A THIS IS A PRODUCT REVIEW, ALSO OF THE IPAD, BY
19 THE U.S.A. TODAY NEWSPAPER.

20 MR. MCELHINNY: YOUR HONOR, I MOVE PX
21 140.

22 THE COURT: SAME LIMITING INSTRUCTION?

23 MR. PRICE: YES, YOUR HONOR.

24 THE COURT: ALL RIGHT. YOU CANNOT
25 CONSIDER THIS EXHIBIT FOR THE TRUTH OF WHAT'S

1 STATED IN THE EXHIBIT, BUT YOU CAN CONSIDER IT
2 OTHERWISE.

3 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
4 140, HAVING BEEN PREVIOUSLY MARKED FOR
5 IDENTIFICATION, WAS ADMITTED INTO
6 EVIDENCE.)

7 THE COURT: GO AHEAD, PLEASE.

8 MR. MCELHINNY: PLEASE SHOW DEMONSTRATIVE
9 PDX 7.

10 Q AND WHAT IS THIS DEMONSTRATIVE, SIR?

11 A THIS IS A SUMMARY OF THAT SAME U.S.A. TODAY
12 REVIEW OF THE IPAD AND SOME OF THE COMMENTS THE
13 WRITER WROTE.

14 Q SIR, WAS THE EARLY PRESS FOR THE IPAD ALL
15 POSITIVE?

16 A NO.

17 Q AND WHAT WERE THE -- CAN YOU TELL US, JUST
18 GENERALLY, WHAT THE NEGATIVE COMMENTS WERE.

19 A THERE WERE STILL MANY IN THE INDUSTRY AFTER WE
20 LAUNCHED THE IPAD WHO QUESTIONED WHETHER IT WOULD
21 SUCCEED AT ALL.

22 THEY QUESTIONED THE VALUE OF A PRODUCT
23 THAT PEOPLE MIGHT USE TO CREATE CONTENT LIKE THEY
24 DO ON A PERSONAL COMPUTER AND WHETHER THEY WOULD
25 USE A TABLET TO DO THOSE SAME ACTIONS.

1 THEY QUESTIONED THE NEED FOR SOMETHING
2 LARGER THAN AN IPHONE TO DO SOME OF THE SAME TASKS
3 AN IPHONE CAN DO.

4 THERE WAS GREAT DOUBT ON WHETHER IT WOULD
5 BE SUCCESSFUL TO ANYONE.

6 Q DID THE IPAD HAVE A KEYBOARD?

7 A IT HAD A SOFT SCREEN KEYBOARD, TOUCH KEYBOARD,
8 NO PHYSICAL KEYBOARD ATTACHED TO IT.

9 Q WAS THERE REACTION TO THE FACT OF IT
10 ELIMINATED A PHYSICAL KEYBOARD?

11 A OF COURSE.

12 Q WHAT WAS THE NATURE OF THAT REACTION, SIR?

13 A MANY IN THE INDUSTRY DOUBTED THAT A DEVICE
14 THAT DIDN'T HAVE A PHYSICAL KEYBOARD ATTACHED TO IT
15 COULD SUCCEED IN ANY MEANINGFUL NUMBERS.

16 Q LET'S GO BACK TO PLAINTIFF'S EXHIBIT 15 IN
17 EVIDENCE. DOES THIS CHART TELL US ABOUT SALES FOR
18 THE IPAD?

19 A YES, IT DOES.

20 Q AND CAN YOU SUMMARIZE THAT FOR US, PLEASE?

21 A YES. THE ORANGE LINE ON THE BOTTOM RIGHT THAT
22 STARTS IN MID-2010 AND GOES UNTIL 2012 SHOWS THE
23 CUMULATIVE SALES OF THE IPAD.

24 Q SIR, I'M GOING TO CHANGE SUBJECTS A LITTLE
25 BIT.

1 AS THE HEAD OF MARKETING, IN APPLE'S
2 VIEW, HAS THE IPHONE BEEN A SUCCESSFUL PRODUCT?

3 A YES, IT'S BEEN VERY SUCCESSFUL.

4 Q AND WHAT IS YOUR UNDERSTANDING OF THE REASONS
5 FOR ITS SUCCESS?

6 A WELL, I THINK THERE ARE --

7 MR. PRICE: I'LL OBJECT. IT'S
8 UNDISCLOSED OPINION.

9 THE COURT: OVERRULED.

10 GO AHEAD.

11 THE WITNESS: I THINK THERE ARE MANY
12 REASONS FOR THE IPHONE SUCCESS.

13 FOR ME, WHAT I BELIEVE IS VERY PREVALENT
14 IS, NUMBER ONE, PEOPLE FIND THE IPHONE DESIGNS
15 BEAUTIFUL.

16 NUMBER TWO, IT'S AN INCREDIBLY
17 EASY-TO-USE DEVICE WITH ALL OF OUR SOFTWARE
18 INVENTIONS TO MAKE IT INTUITIVE AND SIMPLE AND WELL
19 INTEGRATED.

20 I THINK, THIRD, THE FACT THAT WE DO SUCH
21 A GOOD JOB INTEGRATING HARDWARE AND SOFTWARE
22 TOGETHER TO MAKE ONE EXPERIENCE.

23 AND, FOURTH, I THINK BECAUSE IT HAS --
24 WE'VE REALLY TAKEN THE ENTIRE EXPERIENCE, EVERY
25 ELEMENT OF IT, HARDWARE, SOFTWARE, APPLICATIONS,

1 INTERNET SERVICES AND TAKEN RESPONSIBILITY TO MAKE
2 ALL THOSE THINGS WORK WELL FOR THE CUSTOMER. I
3 THINK THAT'S SORT OF MY LIST OF WHAT'S MADE IT
4 SUCCESSFUL.

5 Q HAS THE IPAD BEEN A SUCCESSFUL DEVICE?

6 A ABSOLUTELY.

7 Q AND WHAT ARE YOUR UNDERSTANDINGS FOR THE
8 REASONS OF ITS SUCCESS?

9 A WELL, FIRST I WOULD REPEAT SIMILAR ITEMS AS
10 WITH THE IPHONE, THAT IT'S ABSOLUTELY BEAUTIFUL;
11 THAT IT'S VERY EASY TO USE WITH ITS SOFTWARE; THAT
12 IT'S INTEGRATED TOGETHER HARDWARE AND SOFTWARE; AND
13 THE RESPONSIBILITY WE TAKE FOR ALL THOSE SERVICES.

14 BUT I WOULD ADD ONE MORE IN ADDITION TO
15 THE IPHONE, WHICH IS WE'VE ACTUALLY SHOWN PEOPLE
16 THE VALUE THAT THIS INCREDIBLY BEAUTIFUL PRODUCT
17 CAN HAVE IN THEIR LIVES AND WHY THEY WANT ONE WHEN
18 THEY NEVER HAD BEFORE. THAT WAS ONE OF THE BIGGEST
19 CHALLENGES.

20 Q COULD YOU PLEASE PUBLISH PDX 8.

21 SIR, THESE ARE PHOTOGRAPHS OF THE PHONES
22 THAT ARE ALREADY IN EVIDENCE IN THIS CASE.

23 I NOTICE THAT WHEN YOU LOOKED AT THE PTO
24 DISPLAY, YOU IMMEDIATELY RECOGNIZED, YOU TALKED
25 ABOUT THE DISTINCTIVE NATURE OF THE IPHONE.

1 WHAT IS IT ABOUT THESE DESIGNS THAT
2 CAUSES YOU TO CALL THEM DISTINCTIVE?

3 A WELL, AS A MARKETING PERSON, IT'S IMPORTANT TO
4 ME THAT A PRODUCT BE UNIQUE, BE DISTINCTIVE, BE
5 CONSISTENT OVER TIME.

6 WHAT YOU'RE SEEING UP HERE, YOU MAY THINK
7 IT'S JUST FOUR PICTURES OF PHONES, BUT IT ACTUALLY
8 REPRESENTS MANY YEARS OF IPHONE TO APPLE. WE DON'T
9 BRING OUT NEW VERSIONS EVERY MONTH. WE BRING THEM
10 OUT ABOUT ONCE A YEAR.

11 AND YOU SEE THE VERY CONSISTENT SHAPE OF
12 IT. IT'S ROUNDED CORNERS, IT'S RECTANGULAR SHAPE,
13 ITS FULL GLASS FACE WITH THE BLACK SCREEN AND BLACK
14 AREA AROUND THE SCREEN JUST SEEN AS ONE. YOU SEE
15 THE COLORFUL ICONS, THE APPLICATIONS, THE SQUARES
16 WITH THEIR ROUNDED CORNERS.

17 YOU SEE THE BOX ALONG THE BOTTOM WHICH
18 WE'RE KNOWN FOR. I THINK THERE ARE A NUMBER OF
19 FACTS ALTOGETHER THAT MAKE IT VERY OBVIOUS THAT
20 IT'S AN IPHONE.

21 THE COURT: MR. MCELHINNY, I DON'T HAVE
22 IT IN MY NOTES AS HAVING BEEN ADMITTED. WHICH
23 WITNESS WAS THIS?

24 MR. MCELHINNY: I'M SORRY, YOUR HONOR.
25 THE PHONES WERE ADMITTED THROUGH MR. SCHILLER, I

1 BELIEVE -- THROUGH MR. STRINGER, I BELIEVE, AND
2 THIS IS SIMPLY A PICTURE OF THE PHONES THAT ARE IN
3 EVIDENCE.

4 THE COURT: OH, ALL RIGHT.

5 BY MR. MCELHINNY:

6 Q WHICH IPHONES INCORPORATE THE DESIGN FEATURES
7 THAT YOU JUST DISCUSSED?

8 A THEY ALL DO.

9 Q IF YOU WOULD PUT UP, PLEASE, PDX 9.

10 THESE ARE PICTURES OF THE IPAD IN
11 EVIDENCE.

12 AGAIN, WHAT IS IT ABOUT THESE, THE SHAPE
13 OF THESE DEVICES THAT MAKES YOU THINK THAT THEY'RE
14 DISTINCTIVE?

15 A AS A MARKETING PERSON, IT'S IMPORTANT TO ME
16 THAT THE IMAGE OF THE PRODUCT BE SIMPLE, CLEAR,
17 CONSISTENT OVER TIME AND WHAT YOU'RE SEEING IS THE
18 IPAD HAS HAD A CONSISTENT DESIGN OF THE LARGE
19 RECTANGLE WITH FOUR ROUNDED CORNERS, A FULL GLASS
20 FACE WITH A SCREEN AND THE AREA AROUND THE SCREEN
21 JUST BECOME ONE SURFACE. THAT WE HAVE A BEAUTIFUL
22 SET OF ICONS THAT ARE COLORFUL, SQUARES WITH
23 ROUNDED CORNERS. A DOCK FOR THE MOST COMMONLY USED
24 ICONS ALL ON THE BOTTOM.

25 AND ALTOGETHER IT'S A SIMPLE, BEAUTIFUL

1 LOOK THAT HAS STAYED CONSISTENT WITH ACROSS THE
2 PRODUCT LINE.

3 Q IN YOUR EXPERIENCE, DOES THE DESIGN OF THESE
4 PRODUCTS CONTRIBUTE TO THEIR SUCCESS?

5 A ABSOLUTELY.

6 Q AND WHY DO YOU SAY THAT?

7 A BECAUSE I BELIEVE CUSTOMERS VALUE BEAUTIFUL
8 PRODUCTS AND PRODUCTS THEY CAN ASSOCIATE AND
9 IDENTIFY WITH THE COMPANY WHO'S MADE THEM.

10 Q SIR, IF YOU LOOK IN YOUR BINDER AT EXHIBIT
11 1 -- PX 143.

12 A YES.

13 Q WHAT IS EXHIBIT PX 143?

14 A THIS IS AN APPLE CUSTOMER OR BUYER SURVEY OF
15 PEOPLE WHO PURCHASED IPHONES.

16 Q CAN YOU TELL ME THE DATES OF IT, PLEASE?

17 A THIS WAS FROM THE FOURTH FISCAL QUARTER IN
18 FISCAL YEAR 2010.

19 Q ALL RIGHT. WOULD YOU LOOK AT THE PAGES THAT
20 YOU'VE GOT THERE, PLEASE, AND TELL ME WHETHER YOU
21 HAVE THE ENTIRE SURVEY OR EXCERPTS FROM THE SURVEY?

22 A THIS IS JUST A BRIEF EXCERPT OF A LARGER
23 SURVEY.

24 MR. MCELHINNY: THANK YOU. YOUR HONOR, I
25 MOVE PX 143.

1 Q WHO DETERMINES WHAT QUESTIONS SHOULD BE ASKED
2 IN YOUR IPHONE BUYER SURVEY?

3 A MY TEAM DOES.

4 Q AND HOW ARE THE ANSWERS COMPILED?

5 A THEY USUALLY ARE DONE BY GATHERING ANSWERS
6 FROM WEB SURVEYS AND SOMETIMES ALSO CERTAIN PHONE
7 SURVEYS, AND THOSE ARE COMPILED TOGETHER IN A
8 DATABASE AND THEN REPORTED IN A DOCUMENT SUCH AS
9 THESE.

10 Q AND ARE THE BUYER SURVEYS THAT I'VE JUST SHOWN
11 YOU, ARE THEY CONSIDERED CONFIDENTIAL DOCUMENTS AT
12 APPLE?

13 A YES, THEY ARE.

14 Q WHY?

15 A ONE OF THE TOUGH THINGS IN OUR INDUSTRY, AND
16 IN MARKETING PRODUCTS, IS YOU CAN RESEARCH YOUR OWN
17 CUSTOMERS BECAUSE YOU HAVE A DATABASE OF YOUR
18 CUSTOMERS. THEY'VE BOUGHT A PRODUCT FROM YOU, SO
19 YOU KNOW HOW TO REACH THEM.

20 IT'S DIFFICULT TO RESEARCH SOMEONE ELSE'S
21 CUSTOMERS, A COMPETITOR'S CUSTOMERS. SO A
22 COMPETITOR CAN EASILY RESEARCH THEIR OWN CUSTOMERS,
23 BUT TO RESEARCH OUR CUSTOMERS ARE MUCH MORE
24 DIFFICULT.

25 SO OUR DATA THAT WE'VE GATHERED ON OUR

1 CUSTOMERS IS VERY DIFFICULT TO GATHER, AND,
2 THEREFORE, IT'S VERY CONFIDENTIAL AND WE PREFER NOT
3 TO SHARE IT WITH OUR COMPETITORS.

4 Q HAVE YOU PREPARED A SUMMARY OF THE INFORMATION
5 THAT'S CONTAINED IN THE FOUR SURVEYS THAT I JUST
6 SHOWED YOU?

7 A YES.

8 Q IF YOU LOOK IN YOUR BINDER, PLEASE, AT PDX 10.

9 A YES.

10 Q IS THIS THE SUMMARY THAT YOU HAVE PREPARED?

11 A YES, IT IS.

12 Q CAN YOU WALK US THROUGH IT, PLEASE?

13 A SO THIS IS A SUMMARY WHERE, ACROSS THE SURVEYS
14 WE'VE JUST BEEN SPEAKING ABOUT, WE TOOK ONE OF THE
15 QUESTIONS AND JUST SHOWED WHAT THE RESULTS WERE
16 ACROSS EACH OF THOSE SURVEYS TOGETHER.

17 AND IN THIS CASE, IN THE IPHONE BUYER
18 SURVEY, THE QUESTION WAS FOR THE CUSTOMER TO RATE
19 THE IMPORTANCE OF THE ATTRACTIVE APPEARANCE AND
20 DESIGN INTO THEIR DECISION TO PURCHASE THE IPHONE.

21 Q AND WHAT WAS THE QUESTION THAT WAS ASKED IN
22 THIS PARTICULAR, BEHIND THIS -- THAT IS BEHIND THIS
23 PARTICULAR SUMMARY?

24 A SPECIFICALLY, THE EXACT QUESTION WAS, "HOW
25 IMPORTANT WERE EACH OF THE FOLLOWING ATTRIBUTES,

1 "AND THE QUESTION, OF COURSE, THERE WAS MORE THAN
2 ONE, THIS ONE WAS "HOW IMPORTANT IS ATTRACTIVE
3 APPEARANCE AND DESIGN?"

4 AND THEN WHAT YOU SEE THERE IN THE BARS
5 IS THE RESULTS.

6 Q I'M SORRY. SO WE'RE ON TRACK. WHAT DOES
7 ATTRACTIVE APPEARANCE AND DESIGN MEAN IN YOUR
8 BUSINESS?

9 A WE'RE SIMPLY TRYING TO UNDERSTAND FROM THE
10 CUSTOMER'S PERSPECTIVE THE ACTUAL PHYSICAL
11 APPEARANCE, THE LOOK OF THE PRODUCT, THE IPHONE,
12 AND WHAT THEY FELT ABOUT HOW IMPORTANT THAT
13 APPEARANCE OR LOOK WAS IN THEIR OWN DECISION TO BUY
14 IT.

15 Q ALL RIGHT. LET ME HAMMER THE OBVIOUS LATER.
16 THIS IS NOT JUST THE RESULT OF A SINGLE SURVEY; IS
17 THAT RIGHT?

18 A NO, IT IS NOT.

19 Q IT COVERS A PERIOD OF TIME?

20 A YES, IT DOES.

21 Q A NUMBER OF SURVEYS?

22 A YES, IT DOES.

23 Q AND WHAT, WHAT DOES THIS SUMMARY TELL US ABOUT
24 THE IMPORTANCE OF DESIGN TO YOUR CUSTOMERS?

25 A THIS SURVEY RESULT, ACROSS TIME, ACROSS MANY

1 CUSTOMERS, AFFIRMS FOR ME THE PERSPECTIVE THAT,
2 THAT MOST CUSTOMERS BELIEVE THAT ATTRACTIVE
3 APPEARANCE AND DESIGN IS VERY IMPORTANT TO THEIR
4 CHOICE OF BUYING A PRODUCT, AND SPECIFICALLY OUR
5 PRODUCT.

6 Q AND HOW DO YOU GET THAT CONCLUSION FROM THESE
7 NUMBERS?

8 A WE ASKED THE CUSTOMERS, IN THIS QUESTION, TO
9 RATE THIS IMPORTANCE ON A SCALE OF 1 TO 5, WITH THE
10 TOP TWO IN THAT SCALE BEING THE ATTRACTIVE
11 APPEARANCE AND DESIGN IS EITHER SOMEWHAT IMPORTANCE
12 TO THE PURCHASE OR VERY IMPORTANT TO THE PURCHASE.

13 AND IN MARKETING LINGO, WE CALL THAT THE
14 TOP TWO BOX, THOSE TOP TWO CHOICES.

15 AND YOU USUALLY COMBINE THOSE FOR YOUR
16 MEASURE OF WHAT CUSTOMERS THINK WHETHER SOMETHING
17 IS IMPORTANT OR NOT.

18 AND -- NOW I APOLOGIZE THE WAY YOU
19 USUALLY SHOW A CHART LIKE THIS --

20 Q SO WHEN YOU TALK ABOUT TOP TWO BOXES, YOU'RE
21 TALKING ABOUT THE BOTTOM TWO BOXES?

22 A ONE OF THE FUNNY THINGS IN MARKETING IS WE
23 CALL THEM THE TOP TWO, BUT IN A CHART, THEY'RE
24 USUALLY THE BOTTOM COLORS IN THAT, SO IT'S THE DARK
25 BLUE AND MEDIUM BLUE THAT YOU SEE THERE.

1 SO THE WAY I LOOK AT THESE WHEN I SEE
2 THESE REPORTS IS YOU COMBINE THOSE TWO.

3 SO, FOR EXAMPLE, THE FIRST BAR SHOWS 46
4 PERCENT, PLUS 35 PERCENT OF THE TOP TWO BOXES, OR
5 85 PERCENT OF THOSE CUSTOMERS BELIEVED THAT IT WAS,
6 THE APPEARANCE AND DESIGN WAS IMPORTANT TO THEIR
7 PURCHASE OF THE IPHONE.

8 Q DOES APPLE TAKE PRODUCT DESIGN SERIOUSLY?

9 A EXTREMELY.

10 Q WHY?

11 A I BELIEVE ONE OF THE THINGS THE MARKET LOOKS
12 AT FROM APPLE IS BEAUTIFUL PRODUCTS. IT'S ONE OF
13 THE THINGS WE'RE KNOWN FOR. IT'S ONE OF THE THINGS
14 WE STRIVE TO CREATE, AND I THINK IT'S PART OF WHO
15 APPLE IS. WE CREATE BEAUTIFUL PRODUCTS.

16 Q DOES, SIR, THIS SUMMARY THAT YOU PREPARED,
17 DOES IT HAVE A SECOND PAGE?

18 A YES, IT DOES.

19 Q LET'S LOOK AT THE SECOND PAGE. AND WHAT DOES
20 THIS PAGE REPRESENT?

21 A FROM THE SAME IPHONE BUYER SURVEYS, WE ALSO
22 ASKED THE QUESTION OF HOW IMPORTANT EASE OF USE WAS
23 TO THEIR PURCHASE DECISION, AND THIS REPRESENTS THE
24 RESULTS OF THAT QUESTION OVERALL OF THESE SURVEYS.

25 Q AND, AGAIN, THE WAY THAT YOU USED THE PHRASE,

1 WHAT DOES "EASE OF USE" REFER TO?

2 A EASE OF USE IS A WAY TO GET AT THE CUSTOMER'S
3 UNDERSTANDING OF JUST HOW EASY IT IS TO USE OUR
4 PRODUCTS.

5 AND USUALLY THAT, IT STANDS FOR BOTH THE
6 PHYSICAL DESIGN, IS IT SIMPLE TO UNDERSTAND, BUT
7 EVEN MORE SO, THE SOFTWARE AND HOW EASY IT IS TO
8 USE ALL THAT SOFTWARE.

9 Q I'M GOING TO CHANGE SUBJECTS AGAIN.

10 SINCE THE RELEASE OF THESE PRODUCTS, HAS
11 APPLE SPENT -- MADE EFFORTS TO PROMOTE THE
12 PRODUCTS?

13 A OH, YES, A GREAT DEAL.

14 Q AND WHAT KINDS OF EFFORTS JUST GENERALLY HAVE
15 YOU MADE?

16 A WE USE EVERYTHING THAT MARKETING HAS AT OUR
17 DISPOSAL TO USE. THE LARGEST FORM OF COMMUNICATION
18 IS ADVERTISING. THERE'S ALSO PUBLIC RELATIONS.
19 THERE'S DIRECT MAIL. THERE'S EVENTS. OUR
20 WEBSITES, OUR STORES AND ALL THE CONTENT IN THOSE
21 STORES, ON AND ON, MANY THINGS.

22 Q IS ADVERTISING IMPORTANT TO, TO WHAT YOU DO?

23 A AT APPLE, ADVERTISING IS ONE OF THE MOST
24 IMPORTANT MARKETING TOOLS WE HAVE.

25 Q AND WHY IS THAT?

1 A ADVERTISING IS A WAY TO REACH MANY PEOPLE
2 INSTANTLY WITH A SINGLE COMMUNICATION. YOU CAN
3 CREATE AN AD AND REACH MILLIONS OF CUSTOMERS AND
4 SPEAK DIRECTLY TO THEM FROM OUR COMPANY.

5 Q ARE YOU INVOLVED IN HELPING TO SHAPE THE APPLE
6 ADVERTISING CAMPAIGNS?

7 A YES, I AM.

8 Q DOES APPLE HAVE A PARTICULAR APPROACH THAT IT
9 USES TO MARKET THE IPHONE AND THE IPAD?

10 A YES. I THINK WE HAVE A VERY DISTINCTIVE,
11 UNIQUE APPROACH.

12 Q AND WHAT IS THAT APPROACH, SIR?

13 A AT APPLE IN MARKETING, WE CALL THIS APPROACH
14 TO ADVERTISING PRODUCT AS HERO. THAT'S THE TERM WE
15 USE.

16 Q PRODUCT AS HERO?

17 A YES.

18 Q AND WHAT DOES THAT MEAN?

19 A THAT MEANS -- THE MOST IMPORTANT WE DO AT
20 APPLE IS TO CREATE A PRODUCT. THAT'S WHY WE'RE ALL
21 THERE, TO CREATE AMAZING PRODUCTS, AND WE WANT TO
22 SHOWCASE THOSE PRODUCTS AS PREDOMINANTLY AS WE CAN.

23 SO OUR MARKETING STRATEGY IS TO MAKE THE
24 PRODUCT THE BIGGEST, CLEAREST, MOST OBVIOUS THING
25 IN OUR ADVERTISEMENTS, OFTEN AT THE EXPENSE OF

1 ANYTHING ELSE AROUND IT, TO REMOVE ALL THE OTHER
2 ELEMENTS OF COMMUNICATION SO YOU SEE THE PRODUCT
3 MOST PREDOMINANTLY IN THE MARKETING.

4 Q WAS THERE ANYTHING ESPECIALLY CHALLENGING TO
5 MARKETING THE IPHONE?

6 A OH, YES, A GREAT --

7 MR. PRICE: OBJECT TO RELEVANCE TO THE
8 ISSUES IN THIS CASE.

9 MR. MCELHINNY: ADVERTISING IS ONE OF THE
10 CRITICAL ISSUES ON DILUTION.

11 THE COURT: OVERRULED.

12 GO AHEAD.

13 BY MR. MCELHINNY:

14 Q WERE THERE ANY SPECIAL CHALLENGES TO MARKETING
15 THE IPHONE?

16 A YES, THERE WERE.

17 Q AND CAN YOU TELL US WHAT THOSE WERE?

18 A BECAUSE THE IPHONE WAS SUCH A NEW KIND OF
19 DEVICE AND PEOPLE HAD NO IDEA HOW IT WORKED, THE
20 EASIEST WAY TO UNDERSTAND THE IPHONE WOULD BE TO
21 ACTUALLY PICK IT UP AND USE IT.

22 AND WHILE WE WANTED PEOPLE TO GO TO
23 STORES AND DO THAT, OUR TV ADVERTISEMENT CREATES AN
24 EXTRA CHALLENGE, HOW DO YOU SHOW THIS HERO PRODUCT,
25 AND HOW IT WILL WORK IF YOU HAVE NO FOUNDATION FOR

1 UNDERSTANDING HOW THAT IS? SO THAT WAS A BIG
2 CHALLENGE CREATED IN OUR MARKETING.

3 Q SIR, IF YOU LOOK IN YOUR BINDER AT EXHIBIT PX
4 127.

5 A YES.

6 Q CAN YOU TELL ME WHAT EXHIBIT PX 127 IS?

7 A IT'S A VIDEO.

8 Q AND IS IT A VIDEO OF ONE OF THE ADS THAT YOU
9 PRODUCED ABOUT HOW TO USE THE IPHONE?

10 A YES.

11 MR. MCELHINNY: YOUR HONOR, I MOVE PX 127
12 IN.

13 THE COURT: ANY OBJECTION.

14 MR. PRICE: NO ADDITIONAL OBJECTIONS.

15 AGAIN, CAN WE HAVE AN INSTRUCTION THAT WHAT'S SAID
16 IN THE VIDEO IS NOT RELEVANT MATERIAL.

17 MR. MCELHINNY: THIS IS NOT HEARSAY.

18 THE COURT: THAT OBJECTION IS OVERRULED.

19 ARE YOU GOING TO SHOW THIS OR WHAT?

20 MR. MCELHINNY: I'M GOING TO SHOW IT,
21 YOUR HONOR.

22 THE COURT: OKAY. I THINK SINCE WE
23 STARTED EARLIER TODAY, I'D LIKE TO TAKE THE BREAK A
24 LITTLE EARLIER, MAYBE 10:15. OKAY.

25 MR. MCELHINNY: FINE, YOUR HONOR.

1 THE COURT: GO AHEAD.

2 MR. MCELHINNY: WOULD YOU SHOW EXHIBIT --
3 DO WE NEED HELP WITH THAT?

4 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
5 127, HAVING BEEN PREVIOUSLY MARKED FOR
6 IDENTIFICATION, WAS ADMITTED INTO
7 EVIDENCE.)

8 MR. MCELHINNY: CAN YOU SHOW EXHIBIT PX
9 127, PLEASE.

10 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN
11 OPEN COURT OFF THE RECORD.)

12 BY MR. MCELHINNY:

13 Q THAT WAS ONE OF THE EARLY ADS FOR THE IPHONE;
14 IS THAT CORRECT?

15 A YES, IT WAS.

16 Q EXPLAIN TO US THE LOGIC. WHAT DID WE JUST SEE
17 FROM AN ADVERTISING PERSPECTIVE?

18 A ADVERTISING IS ALWAYS CHALLENGING BECAUSE YOU
19 ONLY HAVE 30 SECONDS TO GET AN IDEA ACROSS, AND IN
20 THAT 30 SECONDS, WHAT YOU SAW FIRST WAS, WHAT I
21 SPOKE ABOUT EARLIER, THE PRODUCT WAS THE HERO. YOU
22 SAW THE DISTINCTIVE DESIGN VERY CLEARLY.

23 SECONDLY, WE GAVE YOU THE ABILITY TO SEE
24 A BIT ABOUT HOW IT MIGHT WORK. SINCE YOU'VE NEVER
25 USED THIS PRODUCT BEFORE AS A CUSTOMER, YOU SAW HOW

1 FLICKING AND SCROLLING AND TAPPING AND ALL THESE
2 MULTITOUCH IDEAS SIMPLY.

3 AND THEN THE THIRD THING I THINK THE AD
4 DID VERY WELL WAS EXPRESS WHAT WE SPOKE ABOUT
5 EARLIER FROM THE ORIGINAL LAUNCH, THAT THE IPHONE
6 WAS A BREAKTHROUGH OF THREE THINGS:

7 IT WAS A GREAT PHONE; IT WAS A PERSONAL
8 COMMUNICATION DEVICE; AND IT WAS THE BEST IPOD YOU
9 EVER HAD.

10 ALL THREE OF THOSE WERE USED IN THAT
11 ADVERTISEMENT.

12 Q CAN YOU LOOK IN YOUR BINDER, PLEASE, TO
13 EXHIBIT PX 12.

14 A YES.

15 Q I THINK YOU'RE GOING TO FIND TWO THINGS THERE.
16 I THINK YOU'RE GOING TO FIND A CHART AND ANOTHER
17 CD. IS THAT CORRECT?

18 A CORRECT.

19 Q WHAT IS THE CHART?

20 A THIS IS A, A TABLE REPRESENTING ALL OF THE ADS
21 ABOUT IPHONE THAT WE'VE PUT ON A DVD.

22 Q AND WHAT IS THE DVD?

23 A THE DVD HAS ALL OF THESE ADS. IT SHOWS THE
24 ORIGINAL IPHONE ADS, AS WELL AS FOLLOW-ON VERSIONS
25 OF THE IPHONE, ALL AS INDIVIDUAL VIDEOS.

1 Q DOES IT INCLUDE THE AD WE JUST SAW.

2 A YES, IT DOES.

3 MR. MCELHINNY: YOUR HONOR, I MOVE PX 12.

4 MR. PRICE: ONE MOMENT, PLEASE.

5 (PAUSE IN PROCEEDINGS.)

6 MR. PRICE: NO ADDITIONAL OBJECTIONS,
7 JUDGE.

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

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

13 BY MR. MCELHINNY:

14 Q AND THIS IS THE CHART THAT YOU WERE TALKING
15 ABOUT WITH THE ADS?

16 A YES, IT IS.

17 Q AND YOU'VE GIVEN EACH ONE OF THESE ADS AN
18 INDIVIDUAL NAME?

19 A WE DO.

20 Q ALL RIGHT. AND JURY WILL HAVE THE DVD IN THE
21 COURTROOM?

22 A THEY WILL.

23 Q DO YOU KNOW, DID THESE ADS ACTUALLY AIR IN THE
24 UNITED STATES?

25 A YES. ALL OF THESE WERE ADS THAT WE RAN ON TV.

1 Q THANK YOU. WERE THERE ANY SPECIAL CHALLENGES
2 TO MARKETING THE IPAD?

3 A OH, YES.

4 Q AND CAN YOU GIVE US EXAMPLES OF WHAT THOSE
5 CHALLENGES WERE?

6 A AGAIN, LIKE WITH THE IPHONE, THE IPAD IS A
7 DEVICE THAT WAS BRAND NEW AND PEOPLE HAD NO
8 EXPERIENCE WITH ANYTHING LIKE THE IPAD.

9 AND SO THE CHALLENGE IN MARKETING IS TO,
10 AGAIN, NOT ONLY SHOW IT AS THIS HERO, BEAUTIFUL
11 PRODUCT BUT GIVE YOU A SENSE OF HOW IT MIGHT WORK
12 AND WHAT IT MIGHT DO FOR YOU BEFORE YOU EVEN GET A
13 CHANCE TO GO TO THE STORE AND TRY ONE YOURSELF.

14 Q IF YOU OPEN YOUR BINDER TO EXHIBIT PX 128.
15 WHAT IS THIS, SIR?

16 A THIS IS A VIDEO.

17 Q AND IS IT AN AD FOR THE IPAD AGAIN?

18 A YES, IT IS.

19 MR. MCELHINNY: YOUR HONOR, I MOVE PX
20 128.

21 MR. PRICE: NO FURTHER OBJECTION TO THIS
22 VIDEO.

23 THE COURT: ALL RIGHT. IT'S ADMITTED.

24 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
25 128, HAVING BEEN PREVIOUSLY MARKED FOR

1 IDENTIFICATION, WAS ADMITTED INTO
2 EVIDENCE.)

3 MR. MCELHINNY: WE'D LIKE TO PUBLISH THIS
4 ONE, TOO, YOUR HONOR.

5 THE COURT: GO AHEAD, PLEASE.

6 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN
7 OPEN COURT OFF THE RECORD.)

8 BY MR. MCELHINNY:

9 Q AGAIN, WHAT WERE THE MESSAGES THAT WE TAKE
10 FROM -- THAT WE SHOULD HAVE TAKEN FROM THAT?

11 A SO IN THAT BRIEF AD, WE WANTED YOU TO SEE THE
12 BEAUTIFUL DESIGN; GET A SENSE OF HOW EASY IT IS TO
13 USE; REALIZE THAT IT WAS MEANT FOR A WIDE RANGE OF
14 USERS. IT'S REALLY FOR EVERYBODY, AND IT SHOWED
15 STUDENTS AND BUSY PEOPLE AND MANY OTHER EXAMPLES.

16 AND THEN TO GIVE YOU A TASTE OF THE RICH
17 DEPTH OF THE SOFTWARE THAT COULD BE USED ON THIS
18 AND HOW APPLICABLE IT IS TO THE THINGS YOU MIGHT DO
19 IN YOUR LIFE, TO CREATE A REASON THAT YOU MIGHT
20 WANT A TABLET DEVICE LIKE AN IPAD IN YOUR LIFE.

21 Q WOULD YOU LOOK AT EXHIBIT PX 13, PLEASE.

22 A YES.

23 Q WHAT IS PX 13?

24 A IT IS A TABLE OF A LIST OF OUR ADS FOR IPAD.

25 Q FOR IPAD.

1 YOUR HONOR, I MOVE -- AND IS THERE A CD
2 THAT ACTUALLY HAS THOSE?

3 THE WITNESS: THERE'S ALSO A DISK THAT
4 HAS THESE ON IT AS WELL.

5 MR. MCELHINNY: YOUR HONOR, I MOVE PX 13.

6 MR. PRICE: IF YOU'RE TALKING ABOUT THE
7 SUMMARY, THERE'S NO ADDITIONAL OBJECTION.

8 THE COURT: YOU'RE TALKING ABOUT THE
9 SUMMARY; CORRECT?

10 MR. MCELHINNY: THE SUMMARY AND THE DVD.

11 MR. PRICE: NO, NO, THOSE ARE DIFFERENT
12 ISSUES. EARLIER --

13 THE COURT: WHICH ONE IS THE CD? DOES IT
14 HAVE A DIFFERENT NUMBER? BECAUSE I ONLY HAVE PX 13
15 AS BEING A ONE-PAGE CHART.

16 MR. MCELHINNY: THEY'RE NUMBERED THE
17 SAME, YOUR HONOR. THE CHART IS THE LIST OF THE
18 CONTENTS OF THE DVD, AND THE DVD IS PART OF THE
19 EXHIBIT.

20 THE COURT: ALL RIGHT. WHAT'S THE
21 OBJECTION?

22 MR. PRICE: WELL, YOUR HONOR, THERE'S NO
23 OBJECTION TO THE SUMMARY. WE OBJECT TO THE ACTUAL
24 DVD'S. THAT'S THE PURPOSE OF THE SUMMARY GETTING
25 INTO EVIDENCE.

1 AND, SECOND, WITH RESPECT TO THE PRIOR
2 SUMMARY, I DIDN'T OBJECT TO ANY OF THE DETAILED
3 DVD'S ALTHOUGH, FOR EXAMPLE, THERE'S ONE AD ON
4 THERE WHICH YOUR HONOR HAS ALREADY EXCLUDED. SO --
5 THE ISSUE OF THE DVD'S ACTUALLY GETTING IN IS THE
6 OBJECTION.

7 THE COURT: ALL RIGHT. WELL, WHY DON'T
8 WE DO THIS. I'M GOING TO, OVER THE BREAK, LOOK AT
9 THE DVD'S, OKAY?

10 BUT THE CHARTS, THE CHART YOU HAVE NO
11 OBJECTION TO?

12 MR. PRICE: THE SUMMARY CHART, WE HAVE NO
13 ADDITIONAL OBJECTIONS.

14 THE COURT: ALL RIGHT. SO THE CHART
15 ITSELF IS ADMITTED, AND WHY DON'T WE RESERVE UNTIL
16 AFTER THE BREAK THE TWO DVD'S.

17 MR. MCELHINNY: THANK YOU, YOUR HONOR.

18 THE COURT: ALL RIGHT.

19 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
20 13, CHARTS, HAVING BEEN PREVIOUSLY MARKED
21 FOR IDENTIFICATION, WAS ADMITTED INTO
22 EVIDENCE.)

23 BY MR. MCELHINNY:

24 Q OTHER THAN TV COMMERCIALS, SIR, WHAT OTHER
25 KINDS OF ADVERTISING HAVE YOU DONE FOR THE IPHONE

1 AND THE IPAD?

2 A WE DO A LOT OF ADVERTISING. WE ADVERTISE ON
3 MAGAZINES, NEWSPAPERS, OUTDOORS ON BILLBOARDS AND
4 BUS SHELTERS, MANY PLACES.

5 Q WHAT KINDS OF MAGAZINES DO YOU -- IN WHAT KIND
6 OF MAGAZINES DO YOU ADVERTISE?

7 A WELL, IT'S IMPORTANT WHEN WE PICK MEDIA, BE IT
8 TV SHOWS OR MAGAZINES, WE TRY TO PICK PUBLICATIONS
9 THAT FIT WELL WITH APPLE'S IMAGE, REALLY HIGH, WHAT
10 WE DO OF OUR HIGH QUALITY AND BEST OF CLASS.

11 AND WE ALSO TRY TO PICK NATIONWIDE,
12 LARGEST REACH PUBLICATIONS. SO SOMETHING THAT'S A
13 NATIONAL TOP NEWSPAPER MAGAZINE WOULD BE THE
14 TYPICAL PLACE YOU WOULD FIND OUR ADS.

15 Q IF YOU WOULD LOOK, PLEASE, AT EXHIBIT PX 11,
16 WHAT IS THAT?

17 A PX 11 IS A DOCUMENT THAT SHOWS EXAMPLES OF
18 SOME OF OUR PRINT AND OUTDOOR ADVERTISEMENTS.

19 MR. MCELHINNY: YOUR HONOR, I'D MOVE PX
20 11.

21 THE COURT: ANY OBJECTION, MR. PRICE?

22 MR. PRICE: NO ADDITIONAL OBJECTIONS.

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

24 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
25 11, HAVING BEEN PREVIOUSLY MARKED FOR

1 GO AHEAD, PLEASE.

2 MR. MCELHINNY: CAN I HAVE PX 16 UP,
3 PLEASE.

4 Q SIR, CAN YOU GIVE US, AGAIN, ONE OF THESE
5 ESTIMATES ABOUT WHAT -- HOW MUCH APPLE SPENT ON
6 IPAD ADVERTISING THROUGH THE BEGINNING OF JUNE,
7 2011?

8 A BY JUNE -- BY 2011, WE HAD SPENT A TOTAL OF
9 307 MILLION, SO BY JUNE, WHICH IS JUST A FEW MONTHS
10 BEFORE THAT, WE WOULD HAVE SPENT -- AND THIS IS
11 ABOUT THREE-QUARTERS OF THE YEAR AND PAST THE
12 BIGGEST SEASON OF THE HOLIDAYS, SO THREE-QUARTERS
13 OF THAT AT LEAST, IF NOT MORE.

14 SO I WOULD SAY AT LEAST 230 MILLION OR
15 MORE DOLLARS IN U.S. ADVERTISING.

16 Q SIR, I WANT TO ASK YOU ABOUT A DIFFERENT
17 SUBJECT MATTER.

18 IS SAMSUNG ONE OF APPLE'S COMPETITORS IN
19 THE SMARTPHONE MARKET?

20 A YES.

21 Q CAN YOU IDENTIFY FOR US ANY SAMSUNG PRODUCTS
22 THAT HAVE COMPETED WITH APPLE'S SMARTPHONES?

23 A THEY HAVE MANY SMARTPHONES THAT COMPETE WITH
24 US. PROBABLY THE BEST KNOWN LINE OF THEIRS IS THE
25 GALAXY LINE, WHICH THERE'S ACTUALLY MANY MODEL, THE

1 GALAXY S, S II, S III. THERE'S A BUNCH OF VARYING
2 SUBBRAND NAMES UNDER THOSE. I DON'T KNOW ALL OF
3 THEM.

4 Q DOES APPLE COMPETE WITH SAMSUNG IN THE TABLET
5 MARKET?

6 A YES, WE DO.

7 Q IN WHICH, IF ANY, RETAIL CHANNELS DO APPLE AND
8 SAMSUNG SELL THEIR PHONES AND TABLETS?

9 MR. PRICE: OBJECT. THAT'S VAGUE AS TO
10 TIME, YOUR HONOR.

11 THE COURT: SUSTAINED.

12 BY MR. MCELHINNY:

13 Q SINCE THE IPHONE WAS RELEASED, HAVE APPLE AND
14 SAMSUNG SOLD THEIR PHONES THROUGH THE SAME RETAIL
15 CHANNELS?

16 MR. PRICE: I'LL OBJECT. IT'S VAGUE. IS
17 HE ASKING FOR THE ENTIRE TIME?

18 THE COURT: CAN YOU JUST CLARIFY YOUR
19 QUESTION, PLEASE?

20 MR. MCELHINNY: SURE.

21 Q WOULD YOU LOOK, PLEASE, AS EXHIBIT PX -- PDX
22 13.

23 A YES.

24 Q WHAT IS PDX 13, SIR?

25 A IT IS A CHART THAT SHOWS A NUMBER OF THE SALES

1 CHANNELS THAT BOTH APPLE AND SAMSUNG SELL OUR
2 PRODUCTS THROUGH IN THE U.S.

3 MR. MCELHINNY: YOUR HONOR, I'D LIKE TO
4 PUBLISH PDX 13.

5 MR. PRICE: MY OBJECTION IS THAT THE
6 CHART ALSO IS VAGUE AS TO TIME.

7 MR. MCELHINNY: I'VE GIVEN THEM SPECIFIC
8 TIMES, SINCE THE PRODUCTS WERE RELEASED, WHEN THEY
9 COMPETED IN THESE SPECIFIC CHANNELS.

10 THE COURT: ALL RIGHT. OVERRULED.

11 WHAT ABOUT TO THE EXHIBIT, MR. PRICE, PDX
12 13?

13 MR. MCELHINNY: IT'S A DEMONSTRATIVE,
14 YOUR HONOR.

15 THE COURT: OKAY. GO AHEAD.

16 BY MR. MCELHINNY:

17 Q WHAT DOES THIS DEMONSTRATIVE TELL US, SIR?

18 A THIS SHOWS A LIST OF APPLE'S SALES CHANNELS
19 THAT YOU WOULD FIND OUR PRODUCTS SOLD IN THE U.S.,
20 AS WELL AS A LIST OF SAMSUNG'S SALES CHANNELS.

21 Q AND IS THERE AN OVERLAP WHERE ONE CHANNEL IS
22 SELLING BOTH PRODUCTS AT THE SAME TIME?

23 A YES. YOU WILL SEE ACROSS THE MAJORITY OF ALL
24 APPLE SALES CHANNELS, THERE ARE ALSO SAMSUNG
25 PRODUCTS SOLD IN MOST OF ALL OF THOSE CHANNELS AND

1 STORES AS WELL.

2 Q DO YOU REMEMBER, SIR, THE FIRST TIME THAT YOU
3 SAW A GALAXY S PHONE OR THE IMAGE OF ONE?

4 A I RECALL HAVING FIRST SEEN THE GALAXY S PHONE
5 WHEN IT WAS ANNOUNCED.

6 Q AND AS THE HEAD OF MARKETING, DO YOU KEEP
7 TRACK OF WHAT'S GOING ON AND WHAT'S THE COMPETITION
8 IN THOSE MARKETS?

9 A BY KEEPING TRACK, OF COURSE I READ EVERYTHING
10 I CAN I AND JUST REALLY TRY TO KEEP TRACK OF THOSE
11 MARKETS, YES.

12 Q WHAT WAS YOUR REACTION WHEN YOU SAW THE
13 GALAXY S PHONE FOR THE FIRST TIME?

14 MR. PRICE: YOUR HONOR, I OBJECT. IT'S
15 IMPROPER -- OBJECTION. IT'S IMPROPER LAY OPINION.

16 MR. MCELHINNY: THIS IS THE HEAD OF
17 MARKETING WHO MARKETS IN COMPETITION, YOUR HONOR,
18 AND THIS IS -- THIS IS CLASSIC LAY OPINION.

19 THE COURT: ALL RIGHT. OVERRULED.

20 GO AHEAD.

21 THE WITNESS: YES, I RECALL HOW I FELT
22 WHEN I FIRST SAW THE GALAXY S SMARTPHONE.

23 BY MR. MCELHINNY:

24 Q AND WHAT WAS YOUR REACTION AS A MARKETER?

25 A I WAS PRETTY SHOCKED AT THE APPEARANCE OF THE

1 GALAXY S PHONE AND THE EXTENT TO WHICH IT APPEARED
2 TO COPY APPLE'S PRODUCT AND THE PROBLEMS THAT WOULD
3 CREATE FOR US AS A MARKETING TEAM.

4 Q WHAT KIND OF PROBLEMS DOES COPYING CAUSE FOR
5 APPLE IN THE MARKETPLACE?

6 MR. PRICE: I'LL OBJECT. THAT'S VAGUE
7 AND AMBIGUOUS AND NOT RELEVANT TO THIS TRIAL UNLESS
8 HE'S TALKING ABOUT THESE PRODUCTS.

9 MR. MCELHINNY: YOUR HONOR, THIS IS THE
10 EFFECT ON COMPETITION. THIS IS THE HEAD OF OUR
11 MARKETING. I KNOW THEY DON'T WANT TO HEAR THE
12 TESTIMONY, BUT --

13 THE COURT: ALL RIGHT. I'M GOING TO
14 OVERRULE IT.

15 GO AHEAD.

16 BY MR. MCELHINNY:

17 Q WHY IS COPYING A PROBLEM FOR APPLE, SIR?

18 A IT'S A -- IT CREATES A HUGE PROBLEM IN
19 MARKETING ON MANY LEVELS. WHEN WE CREATE
20 MARKETING -- WE TALKED ABOUT HOW WE MARKET OUR
21 PRODUCT AS THE HERO AND HOW DISTINCTIVE IT IS AND
22 WHAT CUSTOMERS SEE WHEN THEY LOOK AT THAT PRODUCT
23 AND HOW CONSISTENT WE'VE KEPT IT OVER TIME.

24 NOW, WHEN SOMEONE COMES UP WITH A PRODUCT
25 THAT COPIES, THAT COPIES THAT DESIGN AND COPIES

1 THAT MARKING, THEN CUSTOMERS CAN GET CONFUSED ON
2 WHOSE PRODUCT IS WHOSE.

3 A SIMPLE EXAMPLE. WE HAVE SHOWN OUR
4 OUTDOOR BILLBOARDS. IF YOU'RE DRIVING DOWN THE
5 HIGHWAY 55 MILES AN HOUR, YOU HAVE A SPLIT SECOND
6 TO SEE A PHONE ON A BILLBOARD. IF IT LOOKS VERY,
7 VERY SIMILAR AND IS COPIED, WHOSE PHONE WAS THAT?
8 DO YOU HAVE TIME TO REALIZE?

9 IT ABSOLUTELY IMPACTS THE ABILITY TO
10 MARKET OUR DISTINCTIVE PRODUCT.

11 SAME THING WITH TV ADVERTISING. IF
12 YOU'RE WATCHING A FOOTBALL GAME AND YOU GO TO GET
13 UP DURING THE ADS FOR A SECOND AND GET SOMETHING TO
14 EAT AND YOU CATCH OUT OF THE CORNER OF YOUR EYE A
15 TV AD THAT COMES ON FOR A PHONE, WHOSE PHONE WAS
16 THAT? IF IT LOOKS THE SAME, YOU CAN'T TELL ANY
17 LONGER.

18 SO WE WENT FROM HAVING SOMETHING EASY TO
19 MARKET BECAUSE IT WAS SO DISTINCTIVE AND SO FAMOUS
20 TO NOW BEING MORE CHALLENGING TO MARKET BECAUSE
21 SOMETHING LOOKS A LOT LIKE IT AND CAN CONFUSE
22 CUSTOMERS.

23 Q SIR, YOU WEREN'T HERE DURING THE OPENING
24 STATEMENTS BY THE LAWYERS, BUT THERE WAS A LOT OF
25 DISCUSSION ABOUT COMPETITION. AND I WANT TO ASK

1 YOU, AS THE HEAD OF MARKETING, ARE YOU OPPOSED TO
2 COMPETITION, SIR?

3 A NO. COMPETITION IS GREAT.

4 Q ARE YOU -- CAN YOU GIVE US EXAMPLES OF WHAT
5 YOU CONSIDER TO BE FAIR COMPETITION?

6 A EVERY DAY THERE ARE COMPANIES CREATING
7 PRODUCTS TO COMPETE WITH US, AND THEY CREATE THEIR
8 OWN PRODUCTS, THEIR OWN UNIQUE DESIGNS, THEIR OWN
9 UNIQUE FEATURES TO LOOK DISTINCTIVE AS WE DO, AND
10 WE LET THE CUSTOMER DECIDE WHO'S RIGHT, WHO'S MADE
11 THE BETTER PRODUCT, WHO'S GOT THE DESIGN THAT THEY
12 LIKE, CAME UP WITH THE IDEAS THEY BEST LIKE, AND
13 THAT'S FAIR, OPEN COMPETITION.

14 Q AS YOU DEFINED "FAIR COMPETITION," IS COPYING
15 FAIR COMPETITION?

16 A NOT AT ALL.

17 Q AND WHY NOT?

18 A BECAUSE WHEN YOU COPY OR STEAL THE IDEA OF ONE
19 COMPANY'S PRODUCT, NOW YOU'RE TRADING OFF OF ALL
20 THAT INVESTMENT IN MARKETING, ALL THAT GOOD WILL
21 WE'VE CREATED WITH CUSTOMERS TO SAY THIS IS THE
22 BEST PRODUCT, THIS IS WHAT IT LOOKS LIKE, THIS IS
23 WHAT IT DOES.

24 AND WHEN YOU RIP THAT OFF, YOU'RE TRYING
25 TO GET ALL OF THAT BENEFIT ONTO YOURSELF. YOU'RE

1 TAKING ALL OF OUR INVESTMENT. WE'VE SHOWN THE
2 CHARTS OF THE HUNDREDS OF MILLIONS OF DOLLARS WE'VE
3 SPENT MARKETING THE IPHONE AND THE WAY IT LOOKS,
4 AND IF YOU STEAL THAT, WELL, NOW YOU'RE TRYING TO
5 STEAL ON THAT TOTAL INVESTMENT AND ALL THE VALUE
6 WE'VE CREATED.

7 Q DO YOU RECALL THE FIRST TIME THAT YOU SAW A
8 GALAXY TABLET PRODUCT?

9 A I SURE DO.

10 Q AND WHAT WAS YOUR REACTION AT THAT POINT AS A
11 MARKETER?

12 MR. PRICE: OBJECTION, YOUR HONOR, FOR
13 THE RECORD.

14 THE COURT: OVERRULED.

15 GO AHEAD.

16 THE WITNESS: EVEN MORE SHOCKED. MY
17 FIRST THOUGHT WAS, "WOW, THEY'VE DONE IT AGAIN.
18 THEY'RE JUST GOING TO COPY OUR WHOLE PRODUCT LINE."

19 BY MR. MCELHINNY:

20 Q SIR, AGAIN, BASED ON YOUR EXPERIENCE AND WHAT
21 YOU DO EVERYDAY, IS THE CONDUCT THAT WE'RE TALKING
22 ABOUT IN THIS CASE, IS IT HAVING AN EFFECT ON APPLE
23 IN THE MARKETPLACE?

24 MR. PRICE: OBJECTION. THIS IS
25 INAPPROPRIATE LAY OPINION. UNDISCLOSED.

1 MR. MCELHINNY: THIS IS PERCIPIENT
2 TESTIMONY, YOUR HONOR.

3 THE COURT: IT'S OVERRULED.
4 GO AHEAD.

5 THE WITNESS: I BELIEVE IT'S HAVING A
6 LARGE IMPACT ON THE MARKETPLACE.

7 BY MR. MCELHINNY:

8 Q AND CAN YOU TELL US THE KINDS OF IMPACTS THAT
9 IT IS HAVING?

10 A I THINK HAVING COPYCAT PRODUCTS IN THE
11 MARKETPLACE MAKES OUR JOB AS A MARKETING TEAM MUCH
12 MORE DIFFICULT. IT CONFUSES THE CUSTOMER ON WHO'S
13 THE CREATOR OF THESE PRODUCTS.

14 IT DIMINISHES THE VALUE THAT WE'VE
15 INVESTED IN AND BUILT OR THAT CUSTOMERS SEE APPLE
16 AS THE INVENTOR OF THESE PRODUCTS, THE DESIGNER OF
17 THESE BEAUTIFUL THINGS.

18 AND IT CREATES NOW -- IT DIMINISHES THAT
19 VALUE AND IT DILUTES THE WAY CUSTOMERS SEE APPLE.

20 Q HAS THIS -- IN YOUR VIEW AS THE HEAD OF
21 MARKETING, HAS THIS CONDUCT THAT WE'RE TALKING
22 ABOUT HAD AN EFFECT ON APPLE'S SALES?

23 MR. PRICE: OBJECTION, YOUR HONOR.
24 THAT'S IMPROPER LAY OPINION.

25 THE COURT: OVERRULED.

1 THE WITNESS: I ABSOLUTELY BELIEVE IT'S
2 HAD AN IMPACT ON OUR SALES.

3 BY MR. MCELHINNY:

4 Q AND WE'LL HAVE EXPERTS COME IN TO TALK ABOUT
5 THE NUMBERS LATER, BUT WHAT IS THE OVERALL EFFECT,
6 SIR?

7 A ONE OF THE JOBS OF MY TEAM IS THE FORECASTING
8 PROCESS AND UNDERSTANDING IMPACTS OF THESE THINGS,
9 AND WE HAVE TO GUESS AT THIS EVERY DAY.

10 AND IT IS OUR BELIEF THAT CUSTOMERS, SOME
11 CUSTOMERS ARE CHOOSING TO BUY A SAMSUNG PRODUCT
12 BECAUSE ONE OF THE THINGS IT DOES IS LOOK A LOT
13 LIKE THE IPHONE, A LOT LIKE THE IPAD.

14 I ALSO THINK IT HAS AN EFFECT AROUND
15 THOSE FIRST PURCHASES WHERE SUBSEQUENT PURCHASES
16 THEN ARE AFFECTED BECAUSE YOU'RE USED TO AN
17 ECOSYSTEM THAT YOU'VE STARTED ON, AND THE PEOPLE
18 AROUND YOU ARE AFFECTED BECAUSE IF ONE PERSON IN
19 YOUR FAMILY HAS A CERTAIN PRODUCT THAT RUNS A
20 CERTAIN OPERATING SYSTEM AND USES CERTAIN
21 APPLICATIONS, OTHERS ARE MORE LIKELY IN THAT FAMILY
22 TO CHOOSE A SIMILAR PRODUCT.

23 SO I THINK IT HAS EFFECTS IN THE INITIAL
24 SALES, AS WELL AS ON RELATED SALES.

25 MR. MCELHINNY: THANK YOU, MR. SCHILLER.

1 I HAVE NO FURTHER QUESTIONS AT THIS TIME.
2 THE COURT: ALL RIGHT. THE TIME IS NOW
3 10:47.

4 GO AHEAD, PLEASE, MR. PRICE.

5 **CROSS-EXAMINATION**

6 BY MR. PRICE:

7 Q GOOD MORNING. IT'S GOOD MORNING. GOOD
8 MORNING, MR. SCHILLER.

9 WHILE THE BINDERS ARE BEING DISTRIBUTED,
10 I'LL TRY TO ASK YOU SOME QUESTIONS THAT DON'T
11 CONCERN THEM.

12 AND YOU WERE TESTIFYING ABOUT, OBVIOUSLY,
13 THAT IPHONE, IPAD MADE A SPLASH WHEN THEY WERE
14 LAUNCHED; RIGHT?

15 A YES.

16 Q AND I'M GOING TO TALK ABOUT THE IPHONE FIRST.

17 NOW, THERE WERE SOME PHONES IN THE MARKET
18 IN 2007 THAT HAD THE HARD KEYBOARDS; CORRECT?

19 A HARD? I DON'T KNOW WHAT YOU MEAN BY "HARD
20 KEYBOARDS."

21 Q THE ONES THAT YOU ACTUALLY HAD TO PUSH A
22 BUTTON INSTEAD OF BEING ON THE SCREEN?

23 A A PHYSICAL KEYBOARD, YES, MOST PHONES AT THE
24 TIME HAD THAT.

25 Q BEING ABLE TO PUT A KEYBOARD ON A PHONE ON A

1 SCREEN WAS SOMETHING THAT RESULTED BECAUSE OF
2 ADVANCED IN TECHNOLOGY; CORRECT?

3 A I CAN'T SPEAK FOR OTHER COMPANIES. I CAN ONLY
4 SAY THAT AT APPLE, WE WORKED REALLY HARD TO CREATE
5 A SOFT KEYBOARD ON THE SCREEN OF THE IPHONE.

6 Q OKAY. AND APPLE IN THIS CASE, YOUR
7 UNDERSTANDING, AS A MEMBER OF THE EXECUTIVE TEAM,
8 ISN'T SAYING THAT, YOU KNOW, OTHER COMPANIES CAN'T
9 PUT A SOFT KEYBOARD ON A SCREEN; RIGHT?

10 A I DON'T KNOW THAT ANYONE HAS SAID THAT.

11 Q SO ONCE THAT TECHNOLOGY IS AVAILABLE TO PUT,
12 YOU KNOW, A SOFT KEYBOARD ON A SCREEN, THAT WOULD
13 MEAN THAT YOU CAN MAKE THE SCREEN LARGER ON THE
14 PHONE; RIGHT?

15 A I DON'T THINK THERE'S A DIRECT CORRELATION
16 THAT YOU HAVE TO MAKE A SCREEN LARGER FOR A
17 KEYBOARD OR SMALLER FOR NOT A KEYBOARD. I THINK
18 THESE ARE TWO FACTORS THAT HAVE SOME RELATIONSHIP,
19 BUT THERE'S NOT A CAUSE AND EFFECT THAT ONE MUST BE
20 THE OTHER.

21 Q WELL, MY QUESTION IS THIS: IF YOU HAVE A
22 PHONE AND YOU HAVE A HARD KEYBOARD ON HALF OF IT,
23 WHICH YOU KIND OF HAVE TO HAVE SOME KIND OF
24 KEYBOARD IF YOU'RE GOING TO SEND MESSAGES AND
25 STUFF; RIGHT?

1 MR. SINCLAIR.

2 Q THANK YOU VERY MUCH. WHO IS MR. SINCLAIR?

3 A HE IS A PRODUCT MANAGER ON MY TEAM.

4 Q IT'S ACTUALLY A STRING OF E-MAILS. DO YOU SEE
5 THAT?

6 A YES, THERE ARE A NUMBER OF E-MAILS REFERENCED
7 IN HERE.

8 Q AND ON THE SECOND PAGE, DO YOU SEE IT SAYS ON
9 APRIL 6TH, 2010, STEVE SINCLAIR WROTE; CORRECT?

10 A YES, I SEE THAT.

11 MR. PRICE: YOUR HONOR, MOVE EXHIBIT 578
12 INTO EVIDENCE.

13 THE COURT: ANY OBJECTION?

14 MR. MCELHINNY: NO OBJECTION, YOUR HONOR.

15 THE COURT: IT'S ADMITTED.

16 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
17 578, HAVING BEEN PREVIOUSLY MARKED FOR
18 IDENTIFICATION, WAS ADMITTED INTO
19 EVIDENCE.)

20 MR. PRICE: AND IF WE COULD PUT UP THAT
21 SECOND PAGE AND JUST BLOW UP THE PART THAT STARTS
22 HERE WITH STEVE SINCLAIR, RIGHT HERE ON DOWN, THERE
23 WE GO.

24 Q AND DO YOU SEE MR. SINCLAIR WRITES, "IT'S
25 TOUCH TO APPROACH THIS WITH THE CRITERIA BEING

1 'FIRST,' " AND THIS WAS IN CONNECTION WITH A
2 MARKETING APPROACH THAT WAS BEING DISCUSSED; RIGHT?

3 A THIS WAS A DISCUSSION BETWEEN STEVE SINCLAIR
4 AND THE AD TEAM ON SOME CLAIMS.

5 Q "AD" BEING ADVERTISING?

6 A YES.

7 Q OKAY. AND HE SAYS, "I DON'T KNOW HOW MANY
8 THINGS WE CAN COME UP WITH THAT YOU COULD
9 LEGITIMATELY CLAIM WE DID FIRST. CERTAINLY WE HAVE
10 THE FIRST COMMERCIALY SUCCESSFUL VERSIONS OF MANY
11 FEATURES."

12 AND I JUST WANT TO GO, "THE FIRST PHONE
13 TO INCORPORATE A FULL TOUCHSCREEN FACE," AND IT
14 SAYS, "NOT TRUE," AND YOU SEE THERE'S THAT
15 WIKIPEDIA SITE TO A PRODUCT, THE LG PRADA.

16 DO YOU SEE THAT?

17 A I SEE THAT.

18 MR. PRICE: AND BY THE WAY, YOUR HONOR, I
19 MOVE THE PRADA INTO EVIDENCE, IF I CAN REMEMBER THE
20 EXHIBIT NUMBER. DOES IT HAVE A NUMBER ON THE BACK?
21 1093.

22 THE COURT: OKAY. ANY OBJECTION?

23 MR. MCELHINNY: THIS IS NOT SUPPOSED TO
24 COME IN, YOUR HONOR, PURSUANT TO YOUR ORDER ABOUT
25 THE SPECIFIC LIMITING INSTRUCTION WHICH HAS NOT

1 BEEN PREPARED YET. BUT IT IS NOT PRIOR ART AS THAT
2 TERM IS USED AND WILL BE USED BY THE JURY.

3 MR. PRICE: AND WE'RE NOT -- THIS
4 EXAMINATION IS NOT TALKING ABOUT PRIOR ART.

5 MR. MCELHINNY: SO IT'S NOT RELEVANT TO
6 THE VALIDITY OF ANY OF OUR PATENTS AT ISSUE, YOUR
7 HONOR.

8 THE COURT: ALL RIGHT. SO WHAT -- IT'S
9 1093?

10 MR. PRICE: YES, YOUR HONOR.

11 THE COURT: ALL RIGHT. SO THE LIMITING
12 INSTRUCTION IS THAT THIS EXHIBIT, OR I GUESS THIS
13 PHONE, IS ADMITTED, BUT IT IS NOT PRIOR ART FOR
14 PURPOSES OF ANY INVALIDITY OF THE PATENTS. OKAY?

15 SO YOU CAN CONSIDER IT.

16 MR. PRICE: THANK YOU, YOUR HONOR.

17 THE COURT: IT'S IN EVIDENCE.

18 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
19 1093, HAVING BEEN PREVIOUSLY MARKED FOR
20 IDENTIFICATION, WAS ADMITTED INTO
21 EVIDENCE.)

22 THE COURT: GO AHEAD.

23 BY MR. PRICE:

24 Q TO BE CLEAR, THERE'S NO PATENT THAT HAS BEEN
25 ASSERTED HERE THAT SAYS THAT THE TOUCHSCREEN, THAT

1 APPLE OWNS THAT EXCLUSIVELY; RIGHT?

2 A I'M NOT CERTAIN. I KNOW THERE'S SOME
3 TOUCHSCREEN PATENTS INVOLVED. I DON'T KNOW EXACTLY
4 WHICH ONES AND HOW TO SUMMARIZE THAT.

5 Q OKAY. WELL, IF -- YOU UNDERSTAND, AS SOMEONE
6 WHO'S IN MARKETING, THAT THERE IS AN ADVANTAGE TO
7 HAVING A LARGER SCREEN ON THE PHONE?

8 A TO AN EXTENT OF THE THERE ARE TIMES WHEN IT IS
9 AND TIMES WHEN IT CAN BECOME A DISADVANTAGE.

10 Q SO IT'S A FUNCTIONAL ADVANTAGE IF, FOR
11 EXAMPLE, YOU WANT TO WATCH MOVIES; RIGHT?

12 MR. MCELHINNY: EXCUSE ME, YOUR HONOR.
13 IF YOU THINK IT IS A TERM OF ART AND IT'S A LEGAL
14 EXPRESS WHICH HE JUST SUBSTITUTED INTO HIS
15 QUESTION. WE DON'T HAVE A DEFINITION OF FUNCTIONAL
16 AS HE'S USING IT.

17 THE COURT: WHY DON'T YOU REPHRASE YOUR
18 QUESTION.

19 MR. PRICE: SURE.

20 Q YOU BELIEVE THAT A LARGER SCREEN PROVIDES
21 ADVANTAGES TO A CONSUMER IF THE CONSUMER WANTS TO
22 WATCH A MOVIE?

23 A THERE ARE TIMES WHEN A LARGER SCREEN IS A
24 BENEFIT AND ONE OF THOSE WOULD BE WATCHING A MOVIE.

25 Q OKAY. AND THAT IT'S AN ADVANTAGE BECAUSE YOU

1 CAN VIEW A LARGER SECTION, FOR EXAMPLE, OF A WEB
2 PAGE?

3 A DEPENDING ON THE SCREEN RESOLUTION, IT CAN BE
4 AN ADVANTAGE FOR THAT.

5 Q AND IT'S YOUR EXPERIENCE THAT THESE ARE THINGS
6 WHICH CONSUMERS WANT, THAT THEY WANT SCREENS THAT
7 ARE LARGER SO THEY CAN SEE WEB PAGES, MOVIES, YOU
8 KNOW, WITHIN THE LIMIT OF THE, YOU KNOW, BEING
9 USEFUL IN YOUR HAND?

10 A LARGER SCREENS ARE -- CAN BE A BENEFIT TO
11 USERS. IT'S NOT THE ONLY THING THEY WANT, BUT IT'S
12 ONE THING THAT THEY WANT.

13 Q AND WHEN, WHEN YOU -- WHEN APPLE RELEASED THE
14 IPHONE IN 2007, IT EXPECTED COMPETITION IN THE
15 SMARTPHONE INDUSTRY WITH PHONES THAT YOU COULD
16 WATCH MOVIES ON OR VIEW WEB PAGES; CORRECT?

17 A WE EXPECTED COMPETITION IN THE SMARTPHONE
18 SPACE, YES.

19 Q BECAUSE YOU DIDN'T THINK THAT APPLE -- APPLE
20 DIDN'T THINK THAT IT HAD THE EXCLUSIVE RIGHT TO
21 GIVE THE CONSUMER A SMARTPHONE WITH A SCREEN THAT
22 COULD EXHIBIT WEB PAGES, MOVIES, MUSIC; RIGHT?

23 A WE DID NOT HAVE EXCLUSIVITY ON PLAYING MOVIES
24 OR MUSIC ON PHONES.

25 Q SO LET'S TALK THEN NOW ABOUT, ABOUT OTHER

1 THINGS ABOUT THE WAY THE PHONE WORKS.

2 IF -- LET ME ASK YOU, YOU'VE HEARD THE
3 PHRASE THAT EVERYTHING DEFERS TO THE SCREEN?

4 A NO, ACTUALLY, I DON'T RECALL THAT PHRASE.

5 Q DO YOU REMEMBER MR. IVE SAYING SOME PHRASE
6 LIKE THAT, THAT EVERYTHING DEFERS TO THE SCREEN?

7 A YOU MEAN JONATHAN IVE?

8 Q YES, IVE, THANK YOU.

9 A I DON'T RECALL THAT SAYING.

10 Q BUT THAT'S THE IDEA FOR APPLE'S PHONES, FOR
11 EXAMPLE, IS THAT THE SCREEN KIND OF DOMINANTS THE
12 PHONE?

13 MR. MCELHINNY: THIS IS BEYOND THE SCOPE
14 OF DIRECT EXAMINATION, YOUR HONOR, TALKING ABOUT
15 THE ELEMENTS OF THE DESIGN.

16 MR. PRICE: HE TALKED ABOUT THE DESIGN AT
17 LENGTH.

18 THE COURT: GO AHEAD. OVERRULED.

19 BY MR. PRICE:

20 Q CORRECT?

21 A I'M SORRY. COULD YOU REPEAT THE QUESTION.

22 Q THE SCREEN DOMINANTS THE APPLE IPHONE;
23 CORRECT?

24 A THE SCREEN IS ONE OF THE DOMINANT FEATURES OF
25 THE PHONE.

1 Q AND I'M GOING TO -- WE WERE TALKING ABOUT
2 EXHIBIT 1000, WHICH WAS THE FIRST PHONE, AND YOU
3 WERE ASKED BY YOUR COUNSEL ABOUT THAT, SO WHEN THE
4 SCREEN DOMINANTS, THEN, FOR EXAMPLE, ON THE IPHONE,
5 THERE'S THESE TWO AREAS AT THE TOP AND BOTTOM,
6 FAIRLY SMALL AREAS COMPARED TO THE SCREEN; CORRECT?

7 A YEAH, THERE ARE AREAS ON THE TOP AND BOTTOM OF
8 THE PHONE AND THE SCREEN AS WELL.

9 Q AND IN THAT REGARD, APPLE'S PHILOSOPHY HAS
10 BEEN LET'S MAKE THIS REALLY CLEAN AND NOT HAVE
11 APPLE ON IT AND JUST HAVE A SPEAKER AND HAVE WHAT
12 IS CALLED THE HOME BUTTON; CORRECT?

13 A OUR PHILOSOPHY IS TO CREATE ONE SEAMLESS FACE
14 ON THE FRONT FOR THE SCREEN AND THE AREA ABOVE AND
15 BELOW IT. THAT'S OUR PHILOSOPHY ON THAT.

16 Q SO IF YOU'VE GOT A TOUCHSCREEN, AND MOST
17 PEOPLE HOLD THEIR PHONES LIKE I'M HOLDING THIS IN
18 MY HAND NOW, RIGHT (INDICATING)?

19 A THAT'S ONE WAY TO HOLD IT.

20 Q VERY RARELY, WHEN MAKING A CALL, FOR EXAMPLE,
21 DO PEOPLE HOLD PHONES LIKE THIS WITH ONE FINGER,
22 RIGHT (INDICATING)?

23 A I HOLD IT LIKE THAT WHEN I MAKE A CALL
24 (INDICATING).

25 Q NOW, WHEN YOU HAVE A TOUCHSCREEN, YOU HAVE TO

1 DO SOMETHING ON THE EDGES HERE SO THAT YOUR FINGERS
2 AREN'T TOUCHING THAT SCREEN AND, AND DOING
3 SOMETHING THAT YOU DON'T WANT IT TO DO; RIGHT?

4 A NO. IT'S MUCH MORE COMPLICATED THAN THAT.

5 Q WELL, YOU DON'T WANT TO HAVE SOMEONE
6 ACCIDENTALLY TOUCHING THE PHONE WHEN THEY'RE
7 HOLDING IT THE WAY THAT THEY WOULD NORMALLY HOLD IT
8 FOR A CALL; CORRECT?

9 A AGAIN, I'M NOT SURE WHAT YOU MEAN. YOU DO
10 WANT PEOPLE TO TOUCH THEIR PHONE WHEN THEY'RE
11 HOLDING IT TO MAKE A CALL AND IT WILL TOUCH THE
12 SCREEN.

13 Q THE SCREEN. YOU DON'T WANT PEOPLE TO -- IF
14 IT'S AN INTERACTIVE TOUCHSCREEN, YOU DON'T WANT
15 PEOPLE TO ACCIDENTALLY TOUCH IT WHILE THEY'RE
16 MAKING A CALL. THAT WOULD BE A PROBLEM THAT WOULD
17 BE KIND OF AN INCONVENIENCE?

18 A WELL, THEY WILL FROM TIME TO TIME TOUCH IT, SO
19 WE'VE INVENTED WAYS TO, TO KEEP THAT FROM CREATING
20 CONTACTS THAT YOU DON'T WANT OR SIGNALS THAT YOU
21 DON'T WANT TO HAPPEN ON YOUR CALL, YES.

22 Q AND WHAT APPLE HAS DONE HERE, AT LEAST ON THE
23 FIRST IPHONE, IT HAS THIS METAL BEZEL AND IT HAS
24 THESE VERY SMALL DARK LINES DOWN THE SIDE WHICH ARE
25 NOT PART OF THE ACTUAL INTERACTIVE SCREEN; RIGHT?

1 A THERE ARE -- THERE IS A BORDER AROUND THE
2 SCREEN THAT'S VERY SMALL, YES.

3 Q AND THAT BORDER, IF YOU TOUCH IT, IT WON'T DO
4 ANYTHING TO MAKE THE PHONE FUNCTION; RIGHT?

5 A IF YOU'RE NOT TOUCHING THE TOUCHSCREEN, YOU'RE
6 NOT -- EXCEPT FOR, OF COURSE, THE HOME BUTTON AND
7 THE BUTTONS ON THE SIDE, YOU'RE NOT INTERACTING
8 WITH IT; CORRECT.

9 Q AND YOU NEED A SPEAKER AT THE TOP TO HEAR?

10 A YOU NEED A SPEAKER TO HEAR, UNLESS YOU'RE
11 USING A HEAD SET.

12 Q AND IF YOU'RE GOING TO HAVE A CAMERA, YOU NEED
13 SOMETHING ON THE TOP FOR A CAMERA; CORRECT?

14 A FOR A FRONT FACING CAMERA, YES.

15 Q AND THESE AREAS THAT ARE DARK, YOU KNOW, ABOVE
16 AND BELOW THE SCREEN, DO THEY HIDE INTERNAL WIRING
17 AND COMPONENTS?

18 A THERE ARE COMPONENTS BEHIND EVERY PART OF THE
19 IPHONE, THE SCREEN AND THE TOP AND BOTTOM, AND
20 ALONG THE BOTTOM AS WELL.

21 Q NOW, ANOTHER THING, THESE ARE ROUNDED. I
22 ASSUME YOU THOUGHT THAT CUSTOMERS MIGHT PUT THESE
23 PHONES IN THEIR POCKETS.

24 A WE CERTAINLY ASSUME CUSTOMERS PUT THEIR PHONE
25 IN THEIR POCKET. I WOULDN'T SAY THAT'S WHY IT'S

1 ROUNDED. THAT'S NOT THE ONLY REASON.

2 Q IT MAY NOT BE THE ONLY REASON, BUT IF IT'S
3 SQUARE, THAT WOULD MAKE IT MORE DIFFICULT FOR A
4 CUSTOMER TO TAKE THEIR PHONE OUT OF THEIR POCKET?

5 A IT DEPENDS. THERE ARE WAYS TO HANDLE THAT NO
6 MATTER WHAT THE SHAPE IS. SO I WOULDN'T SAY THAT'S
7 A GUARANTEED RULE. I'VE SEEN SQUARE PHONES THAT
8 WORK JUST FINE IN YOUR POCKETS.

9 Q YOU THINK THAT JUST GENERALLY, USING YOUR
10 COMMON SENSE, IT WOULD BE MORE DIFFICULT TO TAKE A
11 SQUARE PHONE OUT OF YOUR POCKET BECAUSE IT MIGHT
12 CATCH ON SOMETHING?

13 A I THINK IT DEPENDS ON THE SIZE, BUT ROUNDED
14 CORNERS CERTAINLY HELP YOU MOVE THINGS IN AND OUT
15 OF YOUR POCKET.

16 Q NOW, YOU SAID THAT YOU WERE INVOLVED IN THE
17 DEVELOPMENT OF THE IPHONE; RIGHT?

18 A YES.

19 Q AND YOU SAID THAT YOU THOUGHT IT WAS, I THINK,
20 BEAUTIFUL, UNIQUE, DISTINCTIVE; CORRECT?

21 A YES.

22 Q AND WE SHOWED THAT PICTURE IN 2011, AFTER
23 MR. JOBS PASSED AWAY, AND THEY HAD THE IPHONES AND
24 YOU SAID YOU COULD IMMEDIATELY RECOGNIZE THOSE AS
25 IPHONES; CORRECT?

1 A YES, I DID.

2 Q BECAUSE THEY WERE SO UNIQUE; RIGHT?

3 A YES.

4 Q SO I THEN HEARD YOU TESTIFY FROM, I GUESS,
5 MR. MCELHINNY SAYING THAT YOU BELIEVED THERE WAS
6 CONSUMER CONFUSION REGARDING THE IPHONE AND
7 SAMSUNG'S PRODUCTS; RIGHT?

8 A I SAID -- I EXPLAINED AN EXAMPLE BOTH WITH TV
9 ADS AND OUTDOOR ADVERTISING HOW IT WOULD CREATE
10 CONFUSION AND IF THE USER SEES EITHER A SAMSUNG OR
11 AN APPLE PHONE, THE MORE THAT A SAMSUNG PHONE
12 COPIES AN APPLE PHONE, THE HARDER IT IS TO TELL
13 WHICH IS WHICH IN SITUATIONS LIKE I DESCRIBED,
14 DRIVING BY A BILLBOARD OR WATCHING TV AND MOVING
15 OUT OF THE ROOM.

16 Q LET'S TALK ABOUT HOW, ABOUT HOW -- YOUR
17 UNDERSTANDING OF HOW CONSUMERS OVER THE YEARS HAVE
18 BUILT THESE SMARTPHONES.

19 THEY'RE FAIRLY EXPENSIVE COMPARED TO
20 OTHER PHONES; CORRECT?

21 A NOT NECESSARILY.

22 Q OKAY. WOULD YOU SAY \$500, \$600 IS EXPENSIVE?

23 A THE IPHONE STARTS AT FREE WHEN YOU PURCHASE
24 IT -- IN THE U.S., THE PREDOMINANT NUMBER OF
25 CUSTOMERS BUY IT WITH A CONTRACT AND IT'S FREE.

1 Q THE CURRENT IPHONE ALSO? MODELS?

2 A THE IPHONE 3GS STARTS AT FREE, YES.

3 Q I'M TALKING ABOUT THE LATEST AND GREATEST
4 MODELS THAT YOU COME OUT WITH AND THERE'S A BIG
5 SPLASH OF MEDIA, THEY'RE KIND OF EXPENSIVE? SOME
6 PEOPLE DON'T BUY THEM BECAUSE THEY'RE EXPENSIVE?

7 A SOME PEOPLE DO, SOME DON'T. THEY
8 TRADITIONALLY START AT ABOUT \$199 UNDER A CONTRACT.
9 SO DEPENDING ON YOUR PERSPECTIVE WHETHER THAT'S
10 EXPENSIVE OR NOT.

11 Q AND YOUR RESEARCH TELLS YOU THAT PEOPLE
12 USUALLY CONSIDER THEIR PHONE PURCHASE CAREFULLY
13 WHEN THEY'RE BUYING SUCH A PERSONAL AND PRICED
14 ITEM?

15 A I DON'T RECALL ANY SPECIFIC RESEARCH ABOUT THE
16 CARE SOMEONE TAKES IN AN INDIVIDUAL PURCHASE.

17 Q YOU'VE HAD EXPERIENCE GOING INTO STORES;
18 CORRECT?

19 A I HAVE GONE INTO STORES.

20 Q AND IN THE STORES, THE IPHONE PRODUCTS ARE
21 SEGREGATED, AT THE CARRIERS, FROM SAMSUNG PRODUCTS;
22 RIGHT?

23 A IT DEPENDS ON THE STORE AND THE SETUP, BUT
24 THEY'RE NOT ALWAYS NEXT TO EACH OTHER.

25 Q THAT'S A LITTLE BIT DIFFERENT. EVERY STORE

1 YOU'VE BEEN INTO THAT'S A CARRIER, THE IPHONE
2 PRODUCTS ARE SEGREGATED FROM THE SAMSUNG PRODUCTS;
3 RIGHT?

4 A AGAIN, I'M NOT SURE BY SEGREGATED WHAT YOU
5 MEAN, BUT USUALLY THEY'RE DISPLAYED SEPARATELY FROM
6 EACH OTHER.

7 Q AND YOU ARE SAYING THAT THE IPHONE IS CONFUSED
8 WITH SAMSUNG PHONES. YOU KNOW THERE ARE A NUMBER
9 OF PHONES THAT ARE, THAT ARE ACCUSED IN THIS CASE;
10 RIGHT?

11 A YES, I BELIEVE THERE ARE A NUMBER OF PHONES
12 THAT HAVE COPIED THE IPHONE, YES.

13 Q AND SO IS IT YOUR TESTIMONY THAT IF YOU LOOK
14 AT THESE PHONES, THEN CUSTOMERS ARE GOING TO BE
15 CONFUSED ABOUT ALL THE PHONES THAT ARE ACCUSED IN
16 THIS CASE?

17 A I BELIEVE CUSTOMERS CAN BE CONFUSED.

18 AND, AGAIN, I WAS SPEAKING SPECIFICALLY
19 ABOUT ALL THE MARKETING EFFORT AND I BELIEVE
20 THEY'RE CREATING CONFUSION THERE.

21 Q WELL, LET ME SHOW YOU WHAT HAS BEEN MARKED AS
22 EXHIBIT 1016. THIS IS A, A JOINT EXHIBIT. IT'S
23 ONE OF THE ACCUSED PRODUCTS. IT'S THE CONTINUUM.

24 IF I MAY APPROACH, YOUR HONOR?

25 THE COURT: GO AHEAD, PLEASE.

1 SOMETHING AROUND THEIR IPHONE, SOME KIND OF CASE OR
2 COVER; RIGHT?

3 A ALMOST THAT MANY, YES.

4 Q AND SO THOSE CASES USUALLY COVER UP THE BEZEL
5 AND THE TOP, EXCEPT FOR THE USEFUL PARTS; CORRECT?

6 A IT DEPENDS ON THE CASE. THE BUMPER DOES.
7 SOME CASES DO. SOME DON'T.

8 Q AND SO IF YOU ARE COVERING UP THIS OUTSIDE OF
9 THE CASE, YOU KNOW, AND EVERYONE THE BACK, THEN
10 KIND OF WHAT YOU'RE LEFT WITH, WHEN YOU ACTUALLY
11 SEE IT IN USE MUCH OF THE TIME, IS THE FRONT FACE
12 WITH THE HOME BUTTON AND THE SPEAKER AND THE
13 SCREEN; CORRECT?

14 A SOME CASES DO THAT, SHOW JUST THAT MUCH, YES.

15 Q AND THE -- YOU HAVE -- YOU AGREE THAT THIS
16 HOME BUTTON IS PROMINENT, CONSISTENT, AND AN
17 UNMISTAKABLE FEATURE OF APPLE DESIGN? THE HOME
18 BUTTON?

19 A I AGREE THAT THE HOME BUTTON IS ON EVERY PHONE
20 AND PROMINENT, YES.

21 Q WELL, YOU ALSO BELIEVE THAT IT IS AN
22 UNMISTAKABLE AND UNIQUE PART OF THE APPLE DESIGN;
23 CORRECT?

24 A I THINK IT'S VERY UNIQUE TO HAVE A SINGLE
25 APPLE HOME BUTTON ONLY THE SCREEN, YES.

1 Q AND THERE'S NOT A SINGLE SAMSUNG PHONE THAT
2 YOU'RE AWARE OF THAT HAS THE HOME BUTTON LIKE THE
3 ONE THAT APPLE HAS?

4 A I'M NOT AWARE OF SAMSUNG PHONES WITH THE SAME
5 HOME BUTTON AS APPLE'S.

6 Q NOW, WHEN YOU SHOWED THOSE -- YOU SHOWED A
7 DEMONSTRATIVE ABOUT WHERE APPLE IS SOLD, OR THE
8 CHAINS OF -- DISTRIBUTION CHAINS. AM I RIGHT ON
9 THAT?

10 A THERE WAS A CHART OF CHANNELS, CHANNELS THAT
11 THE PRODUCTS ARE SOLD THROUGH.

12 Q CHANNELS. AND IF YOU LOOK AT THAT, THOSE HAVE
13 NOT ALWAYS BEEN THE CHANNELS OF DISTRIBUTION FOR
14 APPLE PHONES; RIGHT?

15 A THERE ARE TIMES WHEN WE HAVE SOLD THROUGH
16 ADDITIONAL CHANNELS OR STARTED AT THE VERY
17 BEGINNING WITH, WITH A SMALLER LIST OF CHANNELS.

18 Q WELL, LET'S PUT UP PDX 13.

19 AND HERE ARE THE APPLE SALES CHANNELS AND
20 YOU'VE GOT VERIZON THERE. THE IPHONE HAS BEEN OUT
21 SINCE 2007; IS THAT RIGHT?

22 A YES.

23 Q AND THIS VERIZON CHANNEL DIDN'T EXIST UNTIL
24 FEBRUARY 10TH, 2011; RIGHT?

25 A CORRECT.

1 Q AND THE SPRINT CHANNEL THAT YOU TOLD THE JURY
2 ABOUT DID NOT EXIST UNTIL OCTOBER 14TH, 2011;
3 CORRECT?

4 A CORRECT.

5 Q SO YOU WEREN'T INTENDING TO SAY THAT, SINCE
6 2007, THAT APPLE HAS BEEN IN ALL OF THESE CHANNELS;
7 RIGHT?

8 A I DID NOT SAY THAT.

9 Q AND YOU DIDN'T INTEND TO CONVEY THAT; CORRECT?

10 A I JUST SHOWED THE LIST OF SIMILAR CHANNELS
11 THAT WE SELL OUR PRODUCTS AT.

12 Q AND SO YOU HAVEN'T GIVEN INFORMATION ON
13 EXACTLY WHEN APPLE GOT INTO THESE CHANNELS;
14 CORRECT?

15 A WE HAVE NOT SHOWN THAT, NO.

16 Q IN FACT, T-MOBILE STILL DOESN'T EXIST AS AN
17 APPLE SALES CHANNEL; RIGHT?

18 A CORRECT.

19 Q AND HERE WE'VE GOT TARGET, FOR EXAMPLE, TARGET
20 WASN'T A SALES CHANNEL UNTIL NOVEMBER 7 OF 2010?

21 A I DON'T RECALL THE EXACT DATE WHEN WE STARTED
22 AT TARGET.

23 Q SO IF SOMEONE REALLY WANTED TO KNOW ON A
24 YEAR-BY-YEAR BASIS WHAT YOUR SALES CHANNELS WERE
25 AND WHETHER THEY WERE COMPARABLE TO SAMSUNG'S, YOUR

1 DIRECT TESTIMONY WOULD NOT HAVE BEEN ANY HELP TO
2 THEM?

3 A I DID NOT TESTIFY TO THE EXACT TIME OF EACH OF
4 THESE CHANNELS, NO.

5 Q IN FACT, IT MIGHT HAVE BEEN A LITTLE
6 MISLEADING --

7 MR. MCELHINNY: OBJECTION, YOUR HONOR.
8 BY MR. PRICE:

9 Q -- TO LIST ALL THOSE AND NOT EXPLAIN, EVERY
10 YEAR WE HAVEN'T BEEN IN THOSE CHANNELS.

11 MR. MCELHINNY: OBJECTION. THAT'S
12 ARGUMENTATIVE.

13 THE COURT: OVERRULED.

14 GO AHEAD, PLEASE.

15 THE WITNESS: SIMPLY SOLD THE LIST OF
16 CHANNELS. THERE WAS NOTHING SAID ABOUT INDIVIDUAL
17 TIMES FOR EACH ONE OF THEM. SO THERE WAS CERTAINLY
18 NO ATTEMPT TO MISLEAD ANY OF THEM.

19 BY MR. PRICE:

20 Q OKAY. YOU MENTIONED THAT YOU'RE -- DO YOU
21 REMEMBER, MR. SCHILLER, THAT VIDEO.

22 A I'M SORRY, WHICH?

23 Q THE VIDEO OF THE MAC WORLD WHICH HAD MR. JOBS
24 GETTING THE PHOTO AND THEN E-MAILING YOU WITH THE
25 PHOTO, YOU'RE THAT GUY?

1 A I WAS IN THE DEMO OF THE LAUNCH, YES, OF THE
2 ORIGINAL IPHONE IN 2007.

3 Q AND THAT'S EXHIBIT 1091.

4 AND, YOUR HONOR, WOULD IT BE OKAY TO PLAY
5 A SECTION OF THAT FROM 1:24:52 TO 1:25:46? IT'S
6 WHAT WAS PLAYED IN THE OPENING.

7 THE COURT: PLEASE, GO AHEAD.

8 CAN I ASK, HAS THAT ALREADY COME IN?

9 MR. PRICE: NO. WE MOVE THAT INTO
10 EVIDENCE NOW, YOUR HONOR. EXHIBIT 109.

11 THE COURT: ALL RIGHT. ANY OBJECTION?

12 MR. MCELHINNY: NO OBJECTION.

13 THE COURT: IT'S ADMITTED.

14 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
15 109, HAVING BEEN PREVIOUSLY MARKED FOR
16 IDENTIFICATION, WAS ADMITTED INTO
17 EVIDENCE.)

18 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN
19 OPEN COURT OFF THE RECORD.)

20 BY MR. PRICE:

21 Q I WOULDN'T HAVE RECOGNIZED YOU.

22 BUT WHAT HAPPENS IS -- AND I SEE YOU'VE
23 DONE THIS, THAT YOU'VE SCROLLED TO A PHOTO, TOUCHED
24 IT, WRITTEN AN E-MAIL AND ACCEPT THE PHOTO; RIGHT?

25 A SURE, I'VE SENT PHOTOS.

1 Q AND IT'S YOUR UNDERSTANDING THAT CUSTOMERS OF
2 APPLE, WITH THE IPHONES, DO THE SAME THING, WHERE
3 THEY SCROLL TO A PICTURE, TOUCHED IT AND THEN SENT
4 IT WITH A TEXT?

5 MR. MCELHINNY: LACKS FOUNDATION, YOUR
6 HONOR.

7 MR. PRICE: HE'S HEAD OF MARKETING.

8 THE COURT: OVERRULED.

9 GO AHEAD.

10 THE WITNESS: I'M SORRY. YOU STARTED BY
11 TALKING ABOUT E-MAIL AND THEN YOU JUST SAID TEXT.
12 SO THEY'RE DIFFERENT THINGS.

13 BY MR. PRICE:

14 Q OKAY. YOU BELIEVE THAT THE APPLE CUSTOMERS,
15 IPHONE CUSTOMERS, HAVE HAD THE EXPERIENCE OF
16 SCROLLING TO A PHOTO, TOUCHING IT, WRITING AN
17 E-MAIL, AND SENDING THAT PHOTO WITH THE E-MAIL?

18 A YES, OUR CUSTOMERS HAVE OFTEN SENT PHOTOS WITH
19 E-MAIL AND DO.

20 Q NOW, I'D LIKE YOU TO LOOK, IF YOU COULD, AT
21 EXHIBIT 715. DO YOU HAVE THAT IN FRONT OF YOU,
22 SIR?

23 A YES.

24 Q AND YOU RECOGNIZE THIS AS A DOCUMENTATION OF A
25 TEAR-DOWN THAT APPLE DID ON THE SAMSUNG GALAXY S?

1 A NO, I'M NOT FAMILIAR WITH THIS DOCUMENT.

2 Q WELL, DO YOU SEE IT IS -- IT DOES COME FROM
3 APPLE, YOU CAN TELL THAT; CORRECT?

4 A I SEE IT'S STAMPED WITH APPLE, YES.

5 Q AND IT HAS THE APPLE LOGO; CORRECT?

6 A YES.

7 Q AND YOU'RE ON THE EXECUTIVE COMMITTEE, YOU
8 SAID, ONE OF THE FEW PEOPLE WHO TALK TO MR. COOK
9 DIRECTLY?

10 A YES, I'M ON THE COMMITTEE.

11 Q SO CERTAINLY YOU HAVE NO REASON TO THINK THIS
12 IS NOT AN APPLE DOCUMENT?

13 A I HAVE NO REASON TO THINK OF IT. I'VE JUST
14 NEVER SEEN IT BEFORE.

15 MR. PRICE: YOUR HONOR, MOVE EXHIBIT 715
16 INTO EVIDENCE.

17 MR. MCELHINNY: THIS IS ONE WE RESERVED
18 OBJECTIONS PENDING A FOUNDATION, YOUR HONOR. HE'S
19 NOT LAID THAT.

20 THE COURT: THAT'S SUSTAINED. THAT'S NOT
21 COMING IN RIGHT NOW. GET SOMEONE ELSE WHO HAS
22 PERSONAL KNOWLEDGE.

23 GO AHEAD, PLEASE.

24 MR. PRICE: OKAY. YOUR HONOR, I WOULD
25 LIKE TO -- AS WE DISCUSSED EARLIER, I WOULD LIKE TO

1 MOVE INTO EVIDENCE PAGES LATER OF THESE APPLE
2 MARKETING SURVEYS, BUT NOT THE WHOLE THING
3 BECAUSE --

4 THE COURT: THAT'S FINE. WHICH PAGES
5 WOULD YOU LIKE.

6 MR. PRICE: WHAT I'D LIKE TO DO NOW, YOUR
7 HONOR, IS THAT I WILL BE MOVING IN PAGES FROM 143,
8 144, 145 --

9 THE COURT: WHY DON'T WE DO THAT RIGHT
10 NOW. SO JUST GIVE ME THE NUMBERS AGAIN, PLEASE.
11 143?

12 MR. PRICE: 143.

13 THE COURT: OKAY. NOT THE WHOLE THING
14 THOUGH, YOU WANTED SPECIFIC PAGES?

15 MR. PRICE: NOT THE WHOLE THING, THAT'S
16 RIGHT.

17 THE COURT: OKAY.

18 MR. PRICE: SPECIFIC PAGES. IT WOULD BE
19 143.4, WHICH THAT MAY ALREADY BE IN.

20 THE COURT: I DON'T HAVE IT IN.

21 MR. PRICE: OKAY. 143.4.

22 THE COURT: OKAY.

23 MR. PRICE: 143.12.

24 THE COURT: OKAY.

25 MR. PRICE: 143.6.

1 THE COURT: OKAY.

2 MR. PRICE: 143.16.

3 THE COURT: ALL RIGHT.

4 MR. PRICE: 143.25; 143.22.

5 THE COURT: ALL RIGHT. ANY OBJECTIONS?

6 MR. MCELHINNY: NO OBJECTIONS, YOUR
7 HONOR.

8 THE COURT: ALL RIGHT. THEY'RE ALL
9 ADMITTED.

10 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBERS
11 143.4, 143.12, 143.6, 143.16, 143.22,
12 143.25, BEEN PREVIOUSLY MARKED FOR
13 IDENTIFICATION, WERE ADMITTED INTO
14 EVIDENCE.)

15 BY MR. PRICE:

16 Q AND FINALLY, SIR, BECAUSE I USED WAY MORE OF
17 THE CLOCK THAN I SHOULD HAVE, I JUST WANT TO ASK
18 YOU, ON THESE APPLE PHONES THAT WE'VE SEEN FROM THE
19 3G TO THE 4, APPLE CHANGES THE DESIGN EVERY COUPLE
20 OF YEARS; CORRECT?

21 A WE UPDATE THE DESIGN OF NEW MODELS, YES.

22 Q AND THE -- IN FACT, WHEN YOU CAME OUT WITH THE
23 IPHONE 4S, THERE WAS SOME CRITICISM IN THE MARKET
24 THAT THE DESIGN WASN'T CHANGED; RIGHT?

25 A THAT WAS ONE OF THE THINGS WE HEARD, YES.

1 Q AND, IN FACT, YOU'RE GOING TO CHANGE THE
2 DESIGN AGAIN WITH THE IPHONE 5?

3 MR. MCELHINNY: OBJECTION, YOUR HONOR.
4 THE IPHONE 5 IS NOT IN THIS CASE. IT'S NOT PUBLIC.
5 NO ONE KNOWS WHAT THE DESIGN OF IT WILL LOOK LIKE.
6 IT'S ONE OF THE MOST CLOSELY GUARDED, CONFIDENTIAL
7 SECRETS OF APPLE.

8 MR. PRICE: IT'S RELEVANT. THEY KEEP
9 CHANGING THEIR DESIGNS.

10 MR. MCELHINNY: THAT IS ARGUMENTATIVE,
11 AND IT'S NOT RELEVANT TO WHY FUTURE DESIGNS --
12 THERE'S NO EVIDENCE, NEVER BEEN DISCOVERED, NO
13 DISCOVERY HAS BEEN TAKEN ON IT.

14 THE COURT: ALL RIGHT. I'M GOING TO
15 OVERRULE THE OBJECTION.

16 GO AHEAD.

17 BY MR. PRICE:

18 Q SO THAT'S GOING TO BE A DIFFERENT DESIGN, TOO?

19 A SO I JUST WANT TO MAKE SURE I UNDERSTAND.

20 I'M SORRY, JUDGE. AM I BEING ASKED TO
21 TELL CONFIDENTIAL INFORMATION ABOUT FUTURE
22 PRODUCTS?

23 THE COURT: NO. YOU DON'T HAVE TO. TO
24 THE EXTENT THAT YOU CAN, AND IF YOU CAN'T, THEN YOU
25 CAN'T.

1 BY MR. PRICE:

2 Q IF YOU THINK YOU CAN'T TELL US ABOUT THE
3 DESIGN CHANGES FOR THE IPHONE 5, JUST TELL US AND
4 WE'LL GO ON?

5 A I PREFER NOT TO TELL CONFIDENTIAL INFORMATION
6 ABOUT FUTURE PRODUCTS IF I DON'T HAVE TO.

7 Q SURE, OKAY. AND THE IPAD, WE'VE LOOKED AT THE
8 FRONT A LOT. THERE'S ALSO A BACK TO THE IPAD;
9 CORRECT?

10 A THERE IS A BACK TO THE IPAD.

11 Q IT'S A SILVER WITH A BIG APPLE ON IT; RIGHT?

12 A YES.

13 Q AND IF SOMEONE IS USING THIS IN THE REAL WORLD
14 AGAIN AND SOMEONE WALKS IN FRONT OF THEM, THERE'S A
15 CHANCE THAT THEY'RE GOING TO SEE THE BACK?

16 A PEOPLE CAN SEE THE IPAD, YES.

17 Q AND THE BACK OF THE IPAD AS WELL?

18 A YES.

19 MR. PRICE: THANK YOU, MR. SCHILLER.

20 THE WITNESS: THANK YOU.

21 THE COURT: ALL RIGHT. THE TIME IS NOW
22 11:41. DOES ANYONE NEED BIO BREAK OR DO YOU WANT
23 TO KEEP GOING UNTIL NOON?

24 YOU NEED A BATHROOM BREAK?

25 OKAY. LET'S JUST TAKE FIVE MINUTES AND

1 THEN WE'LL GO UNTIL NOON. ALL RIGHT.

2 THANK YOU. JUST A FEW MINUTES, PLEASE.

3 (WHEREUPON, A RECESS WAS TAKEN.)

4 THE COURT: ALL RIGHT. WE'RE BACK IN
5 SESSION. PLEASE TAKE A SEAT.

6 AND IT IS NOW 11:45. DO YOUR RECROSS,
7 PLEASE. I'M SORRY, REDIRECT.

8 **REDIRECT EXAMINATION**

9 BY MR. MCELHINNY:

10 Q MR. SCHILLER, I THINK THE QUESTION THAT
11 EVERYONE REALLY WANTS TO KNOW, THE FOCUS, TO JUST
12 GET THE FACTS STRAIGHT, DID YOU HAVE DARK HAIR IN
13 2007?

14 A YES, I DID.

15 Q OKAY.

16 A THANK YOU FOR REMINDING ME.

17 Q I GUESS WE RESOLVED THAT ISSUE.

18 COUNSEL STARTED OFF BY SHOWING YOU A
19 PHONE THAT HE TOLD YOU WAS CALLED THE LG PRADA. DO
20 YOU REMEMBER SEEING THAT PHONE?

21 A YES, I DO.

22 Q DO YOU KNOW WHETHER OR NOT THE LG PRADA WAS
23 EVER SOLD IN THE UNITED STATES?

24 A NO, I DO NOT THINK IT WAS.

25 Q COUNSEL SHOWED YOU EXHIBIT 592, WHICH WAS

1 CALLED THE COM-TECH SURVEY, AND HE SHOWED YOU PAGE
2 23, AND HE SHOWED YOU THE CHART UP IN THE UPPER
3 RIGHT-HAND CORNER, WHICH IF I UNDERSTAND IT
4 CORRECTLY, SHOWED THAT FOUR TIMES MORE PEOPLE LIKED
5 THE DESIGN OF THE BLACKBERRY PHONE THAN LIKED THE
6 DESIGN OF THE APPLE PHONE. IS THAT WHAT THAT
7 PURPORTS TO SHOW?

8 A NO, I DON'T AGREE IT SHOWS THAT.

9 Q YOU WERE GOING TO -- YOU WERE GOING TO TRY TO
10 EXPLAIN HOW TO INTERPRET THIS CORRECTLY, AND I'D
11 LIKE TO GIVE YOU THE OPPORTUNITY TO DO THAT?

12 A YES, AS I UNDERSTAND WHAT THIS COMPANY DID
13 WITH THIS DATA WAS THEY ASKED CUSTOMERS A SPECIFIC
14 QUESTION AND THAT QUESTION WAS, OTHER THAN PRICE,
15 SO YOU'VE ALREADY SET THE MINDSET TO START THEM
16 THINKING ABOUT WHAT MATTERS TO THEM, WHAT ONE OTHER
17 THING WOULD YOU RATE AS IMPORTANT IN YOUR PURCHASE?

18 AND THEY WERE ALLOWED TO ONLY PICK ONE
19 THING.

20 AND THAT'S THE UNDERSTANDING OF THE
21 METHODOLOGY I HAD HERE. SO UNLIKE THE DATA WE
22 COLLECT WHERE WE ASK EACH ITEM AND CHECK WHICH IS
23 THE TOP BOXES OF PREFERENCE, THIS YOU WERE LIMITED
24 IN YOUR CHOICE.

25 AND TO FURTHER ADD CONFUSION, ONE OF

1 THOSE CHOICES IS BRAND, WHICH AS YOU SEE, APPLE
2 RANKS THE HIGHEST OF.

3 AND I BELIEVE THAT CUSTOMERS AT THIS
4 LEVEL AREN'T CLEAR ON BRAND AND DESIGN AND WHAT
5 THAT MEANS.

6 SO YOU WEREN'T GIVEN MORE THAN ONE
7 CHOICE, AND IT WAS CONFUSED WITH OTHER CHOICES THAT
8 HAD RATED VERY HIGHLY. SO IF YOU LIKED BRAND AND
9 DESIGN, YOU COULDN'T SELECT THAT.

10 Q SO THAT WE'RE, AGAIN, USING THE SAME
11 TERMINOLOGY, WHAT DOES BRAND, AS IS USED ON THIS
12 CHART WHICH COUNSEL PUT INTO EVIDENCE, WHAT DOES
13 BRAND MEAN?

14 A ON THIS QUESTION IT'S CONFUSED BECAUSE THEY
15 SAY BRAND/MODEL. SOME PEOPLE THINK BRAND MEANS THE
16 BRAND OF THE COMPANY, BUT MODEL MEANS MODEL OF
17 PHONES. SO IN THIS CASE, IT MIGHT MEAN APPLE AND
18 IPHONE.

19 SO IN THIS CASE, I CAN ONLY ASSUME,
20 BECAUSE IT'S UP TO THE USER'S INTERPRETATION OF
21 WHAT THEY'RE ASKED, THAT 44 PERCENT OF APPLE IOS
22 CUSTOMERS SELECTED APPLE/IPHONE AS A PRIMARY REASON
23 TO PURCHASE, OTHER THAN PRICE. AND THEN THEY
24 COULDN'T EXPECT ANYTHING ELSE.

25 Q BASED ON YOUR EXPERIENCE IN MARKETING, IS

1 THERE AN OVERLAP OR A CONNECTION BETWEEN THE DESIGN
2 OF THE APPLE PHONES AND THE APPLE BRAND?

3 A YES, I THINK THERE'S A STRONG CORRELATION.

4 Q AND WHAT IS THAT CORRELATION?

5 A IT IS THAT PEOPLE ASSOCIATE THE APPLE BRAND
6 WITH GREAT DESIGN, AND THEY HAVE INTRINSIC MEANING
7 TOGETHER.

8 Q SIR, AGAIN, I THINK YOU TESTIFIED THAT YOU
9 WERE INVOLVED IN THE ORIGINAL IPHONE PRODUCT; IS
10 THAT CORRECT?

11 A YES.

12 Q AND WE'VE TALKED A LOT ABOUT WHAT THE IPHONE
13 LOOKS LIKE AND THE DESIGN AND THE ELEMENTS OF THAT
14 DESIGN; IS THAT CORRECT?

15 A YES.

16 Q WAS THAT DESIGN CHOSEN SO THAT IT WOULDN'T
17 MATCH ON SOMEBODY'S POCKET?

18 A NO.

19 Q WHAT WAS THE THEME OF THE OVERALL DESIGN OF
20 THE IPHONE?

21 A WE WERE TRYING TO CREATE A NEW BREAKTHROUGH
22 DESIGN FOR A PHONE THAT WAS BEAUTIFUL AND SIMPLE
23 AND EASY TO USE AND CREATED A BEAUTIFUL, SMOOTH
24 SURFACE THAT HAD A TOUCHSCREEN AND WENT RIGHT TO
25 THE RIM WITH THE BEZEL AROUND IT AND LOOKING FOR A

1 LOOK THAT WE FOUND WAS BEAUTIFUL AND EASY TO USE
2 AND APPEALING.

3 WE HAD A TERM AT APPLE, IN MARKETING,
4 THAT WE CALLED THE LUST FACTOR. DOES THIS IPHONE
5 HAVE APPEAL TO PEOPLE THAT THEY LUST AFTER IT
6 BECAUSE IT'S SO GORGEOUS. THAT'S ONE OF THE THINGS
7 WE WERE GOING FOR, A HIGH LUST FACTOR.

8 Q DURING THE FOUR YEARS THAT THE IPHONE WAS
9 UNDER DEVELOPMENT, WERE OTHER DESIGNS CONSIDERED AT
10 ANY TIMES?

11 A YES, THERE WERE MANY DESIGNS.

12 Q WOULD THOSE OTHER DESIGNS HAVE CUT ON PEOPLE'S
13 POCKETS.

14 A I DON'T BELIEVE SO.

15 MR. MCELHINNY: THANK YOU. I HAVE
16 NOTHING FURTHER.

17 THE COURT: ALL RIGHT. TIME IS NOW
18 11:50.

19 ANY RECROSS, MR. PRICE?

20 MR. PRICE: NOT MUCH.

21 **RECROSS-EXAMINATION**

22 BY MR. PRICE:

23 Q I WANTED TO ASK YOU, YOU WANTED TO CREATE THIS
24 LUST FACTOR WITH THE IPHONE. THE SAMSUNG PHONES I
25 SHOWED YOU WITH THE FOUR HARD BUTTONS AND THE

1 SIGNAGE AT THE TOP, DO YOU THINK THAT'S BEAUTIFUL?

2 A I DON'T THINK THEY'RE AS BEAUTIFUL AS THE
3 IPHONE, BUT I THINK THEY'RE TRYING TO BE AS
4 BEAUTIFUL AS THE IPHONE.

5 Q AND IN YOUR OPINION, THEY DON'T QUITE CUT IT
6 ON THAT REGARD; RIGHT? IN YOUR OPINION?

7 A NOT FOR ME.

8 Q OKAY. AND THAT'S ONE OF THE REASONS APPLE HAS
9 THAT ICONIC HOME BUTTON WITH NOTHING ELSE ON THE
10 BOTTOM BECAUSE THAT WAS AN IMPORTANT PART OF WHAT
11 YOU THOUGHT WAS A BEAUTIFUL, UNIQUE DESIGN?

12 MR. MCELHINNY: BEYOND THE SCOPE. ASKED
13 AND ANSWERED.

14 THE COURT: OVERRULED.

15 GO AHEAD. GO AHEAD, PLEASE.

16 THE WITNESS: I THINK WE HAVE A LUSTFUL,
17 GORGEOUS DESIGN IN TOTAL AND I THINK THE HOME
18 BUTTON IS ONE OF THE FEATURES ON THE PHONE.

19 MR. PRICE: NOTHING FURTHER.

20 THE COURT: ALL RIGHT. SO IT'S 11:51.

21 MAY THIS WITNESS BE EXCUSED AND IS HE
22 SUBJECT TO RECALL OR NOT?

23 MR. MCELHINNY: I WOULD LIKE HIM EXCUSED,
24 NOT SUBJECT TO RECALL, ALTHOUGH WE MAY CHOOSE TO
25 USE HIM IN REBUTTAL, SO HE WON'T BE IN THE

1 COURTROOM.

2 THE COURT: ALL RIGHT. WELL, YOU'RE
3 EXCUSED.

4 THE WITNESS: THANK YOU.

5 THE COURT: ALL RIGHT. CALL YOUR NEXT
6 WITNESS, PLEASE.

7 MR. MCELHINNY: YOUR HONOR, ON BEHALF OF
8 APPLE, WE CALL MR. SCOTT FORSTALL.

9 THE CLERK: WOULD YOU RAISE YOUR RIGHT
10 HAND, PLEASE.

11 **SCOTT FORSTALL,**
12 BEING CALLED AS A WITNESS ON BEHALF OF THE
13 PLAINTIFF, HAVING BEEN FIRST DULY SWORN, WAS
14 EXAMINED AND TESTIFIED AS FOLLOWS:

15 THE WITNESS: I DO.

16 THE CLERK: WOULD YOU HAVE A SEAT,
17 PLEASE.

18 WOULD YOU STATE YOUR NAME, PLEASE, AND
19 SPELL IT?

20 THE WITNESS: SCOTT FORSTALL, S-C-O-T-T
21 FIRST NAME, LAST NAME FORSTALL, F, AS IN FRANK,
22 O-R-S-T-A-L-L.

23 THE CLERK: THANK YOU.

24 MR. MCELHINNY: MAY I PROCEED, YOUR
25 HONOR?

1 Q DID I ACCURATELY READ THE TESTIMONY THAT YOU
2 GAVE APPLE'S LAWYERS?

3 A YOU DID.

4 Q NOW, I WANT TO COME -- I WILL COME BACK AND
5 TALK ABOUT THE INVESTIGATION THAT YOU DID AND WHO
6 YOU SPOKE TO, BUT FIRST I'D LIKE TO ADDRESS SOME OF
7 THE DOCUMENTS THAT MR. LEE SHOWED YOU.

8 FIRST IF WE COULD LOOK AT EXHIBIT 44.

9 AND PRIOR TO YOUR INVOLVEMENT IN THIS
10 CASE, HAD YOU EVER SEEN THIS EXHIBIT BEFORE?

11 A I HAVE NOT.

12 Q DO YOU KNOW, IN CONNECTION WITH, YOU KNOW,
13 PREPARING TO TESTIFY WHETHER THE ORIGINAL OF THIS
14 DOCUMENT IS IN THE KOREAN LANGUAGE?

15 A IN PREPARATION FOR THIS TESTIMONY, I WAS TOLD
16 IT WAS TRANSLATED AND THERE'S A TRANSLATION LABEL
17 ON TOP OF IT.

18 Q AND THIS IS, OBVIOUSLY, AN ENGLISH LANGUAGE
19 TRANSLATION OF THE DOCUMENT THAT WE'RE LOOKING AT?

20 A CORRECT.

21 Q NOW, MR. LEE CALLED YOUR ATTENTION TO PAGE
22 44.122, WHICH TALKS ABOUT -- THE TITLE IS "VISUAL
23 INTERACTION EFFECT-ICON."

24 DO YOU SEE THAT?

25 A I DO.

1 Q AND WAS THIS WITHIN THE -- THIS IS -- IS THIS
2 WHEN YOU WOULD CALL A FEATURE RELATING TO THE
3 GRAPHICAL USER INTERFACE, GUI?

4 A I'M NOT SURE WHAT ALL CONSTITUTES A GUI, BUT I
5 GUESS THIS MIGHT BE PART OF THE GUI.

6 Q BUT WAS THIS WITHIN THE SCOPE OF YOUR
7 INVESTIGATION, THIS FEATURE THAT IS TALKED ABOUT
8 HERE?

9 A NO, IT'S NOT.

10 Q SO IT'S NOT ONE OF THE DESIGN PATENTS?

11 A CORRECT.

12 Q AND DOES THIS RELATE TO BOUNCE BACK?

13 A AS BEST AS I UNDERSTAND IT, NO.

14 Q THERE'S A RECOMMENDATION DOWN THERE AT THE
15 BOTTOM. DO YOU SEE THAT?

16 A I DO.

17 Q AND IT RELATES TO "EITHER CHANGE THE COLORS OF
18 THE BORDERING RECTANGULAR FRAMES ACCORDING TO A
19 CONSISTENT PATTERN FOR A UNIFORM FEEL OR REMOVE THE
20 RECTANGULAR FRAME AND USE THE ICONS ONLY FOR A
21 CLEAN AND UNIFORM FEEL."

22 DO YOU SEE THAT?

23 A I DO.

24 Q DO YOU KNOW WHETHER, IN FACT -- WELL, WHAT ARE
25 CONTAINERS? DO YOU SEE A REFERENCE -- YOU KNOW,

1 WE'VE HEARD OF THE CONCEPT OF CONTAINERS AROUND
2 ICONS.

3 A SO MY UNDERSTANDING OF CONTAINERS ARE THE, I
4 GUESS, SQUARES OR MAYBE RECTANGLES THAT SURROUND
5 THE ACTUAL ICON THAT MAY BE IN THE MIDDLE, SO TO
6 MAKES IT LOOK LIKE THEY'RE ALL THE SAME SIZE MAYBE
7 IS THE WAY TO DESCRIBE IT.

8 Q ALL RIGHT. AND DO YOU KNOW WHETHER, YOU KNOW,
9 SAMSUNG EVER IMPLEMENTED A RECOMMENDATION THAT ALL
10 THE CONTAINERS AROUND ICONS BE ELIMINATED?

11 A I'M NOT AWARE OF ANY -- I'M SORRY. CAN YOU
12 REPEAT?

13 Q YEAH. ARE YOU AWARE OF WHETHER THERE WAS SOME
14 RECOMMENDATION THAT WAS IMPLEMENTED THAT, ON ALL
15 THE GALAXY S PHONES, CONTAINERS AROUND ICONS SHOULD
16 BE ELIMINATED?

17 A NO, I'M NOT AWARE OF THAT.

18 Q DO YOU KNOW WHETHER, ON THE GALAXY S PHONES,
19 THIS RECOMMENDATION HERE WAS ACTUALLY IMPLEMENTED
20 ACROSS THE BOARD?

21 A I'M NOT AWARE OF THAT.

22 Q AND THEN IF -- ANOTHER PAGE THAT MR. LEE
23 SHOWED YOU, PAGE 131, IF WE COULD TAKE A LOOK AT
24 THAT, AND THIS RELATES AGAIN TO ICONS, AND WAS THIS
25 WITHIN THE SCOPE OF WHAT YOU TOLD APPLE YOU HAD

1 RESEARCHED AND WERE PREPARED TO TESTIFY ON?

2 A NO, IT WAS NOT.

3 Q AND THEN THE LAST LINE OF THE RECOMMENDATION
4 THERE IS "REMOVE THE FEELING THAT IPHONE'S MENU
5 ICONS ARE COPIED BY DIFFERENTIATING DESIGN."

6 DO YOU SEE THAT?

7 A I DO.

8 Q AND WHAT IS THE CONCEPT OF DIFFERENTIATING
9 DESIGN? WHAT DOES THAT MEAN TO YOU?

10 A IT'S FOUR DIFFERENT -- TO THAT WOULD MEAN
11 DIFFERENT AND/OR BETTER.

12 Q ALL RIGHT. I'D LIKE TO TURN NOW TO ACTUALLY,
13 YOU KNOW, YOUR INVESTIGATION AND WHAT IT WAS THAT
14 YOU DID.

15 AND AT THE BEGINNING, I'D ASK YOU IF I
16 COULD -- IF I COULD SHOW YOU TWO PHONE DEVICES
17 WHICH ARE IN EVIDENCE, FIRST THE JX 1000 -- AND I'M
18 GOING TO GET SOME HELP, I HOPE, FROM MS. KHAN --
19 THE IPHONE, WHICH IS IN EVIDENCE, THE JOINT EXHIBIT
20 1000, AND THE INFUSE 4G, JOINT EXHIBIT 1027, WHICH
21 IS ONE OF THE ACCUSED PHONES.

22 IF WE COULD HAND THOSE -- DO WE HAVE THE
23 IPHONE THERE, JX 1000?

24 THE COURT: SO I'M GOING TO START
25 COUNTING THIS TIME AS YOUR DIRECT. OKAY?

1 MR. QUINN: OKAY. THANK YOU, YOUR HONOR.

2 THE COURT: FOR YOUR CASE. OKAY.

3 BY MR. QUINN:

4 Q DO YOU HAVE THOSE, SIR, THOSE TWO?

5 A I HAVE THE INFUSE 4G AND THE ORIGINAL IPHONE,
6 I BELIEVE.

7 Q CAN YOU TELL US, CAN YOU SEE DIFFERENCES
8 BETWEEN THOSE TWO?

9 MR. LEE: I OBJECT. YOUR HONOR, THIS IS
10 GETTING IN EVIDENCE -- THEY HAD AN EXPERT ON IT.
11 THE EXPERT IS OUT. NOW THEY'RE TRYING TO GET THIS
12 IN.

13 MR. QUINN: IT'S JUST HIS OBSERVATION,
14 YOUR HONOR. HE'S LOOKING AT THEM AND IT'S A
15 PERCIPIENT ACTIVITY, WHAT HE SEES LOOKING AT THESE,
16 LOOKING AT THE PHYSICAL OBJECTS.

17 MR. LEE: YOUR HONOR, THIS IS AN EFFORT
18 TO GET IN, THROUGH HIM, TESTIMONY THAT HAS BEEN
19 EXCLUDED.

20 THE COURT: ALL RIGHT. SUSTAINED.

21 BY MR. QUINN:

22 Q WELL, IF WE COULD LOOK AT THE INFUSE, THE
23 JOINT EXHIBIT 1027, DOES IT HAVE, DOWN AT THE
24 BOTTOM, DOES IT HAVE SOME, WHAT LOOK LIKE SOFT
25 BUTTONS?

1 A AT THE BOTTOM, THERE'S WHAT I CALL CAPACITIVE
2 KEYS.

3 Q CAPACITIVE KEYS. WHAT MIGHT THE REST OF US
4 CALL THOSE?

5 A I'M NOT SURE. IT'S THE OPPOSITE OF AN ACTUAL
6 PHYSICAL BUTTON.

7 Q ALL RIGHT.

8 A IT'S SOMETHING THAT SENSES YOUR FINGER AND
9 PERFORMS AN ACTION AS IF YOU TOUCHED A BUTTON.

10 Q AND DOES THE INFUSE HAVE A BEZEL AROUND IT?

11 A THE INFUSE, I DON'T THINK IT HAS A BEZEL, PER
12 SE. IT'S KIND OF A UNIBODY DESIGN.

13 Q AND IT'S A UNIBODY DESIGN. IT DOES NOT HAVE A
14 BEZEL?

15 A CORRECT.

16 Q IS THAT UNIBODY, IS THAT FLAT AND LEVEL WITH
17 THE SCREEN OR NOT?

18 A THE EDGES OF THE UNIBODY PROTRUDE ABOVE THE
19 SCREEN. SO IT'S NOT FLAT, AS IT WERE.

20 Q DOES IT HAVE WHAT'S BEEN REFERRED TO AS THE,
21 AS THE, WHAT DO YOU CALL IT, INNIE, THE HOME
22 BUTTON? THE BELLY BUTTON? THE HOME BUTTON.

23 DOES IT HAVE A HOME BUTTON ON IT?

24 A IT JUST HAS A CAPACITIVE BUTTON FOR HOME, BUT
25 NOT A PHYSICAL HOME KEY AS SUCH.

1 MR. QUINN: YOUR HONOR, WITH THE
2 PERMISSION OF THE COURT, I WOULD REQUEST, IF WE
3 COULD, TO HAND TO THE JURY THESE TWO EXHIBITS SO
4 THAT THEY CAN ACTUALLY HANDLE THEM AND SEE THEM IF
5 THAT WOULD BE ACCEPTABLE.

6 MR. LEE: NO OBJECTION.

7 THE COURT: GO AHEAD, PLEASE. AND LET ME
8 JUST MAKE SURE I HAVE IT. IT IS THE INFUSE 4,
9 WHICH IS 1027.

10 MR. QUINN: YES, YOUR HONOR.

11 THE COURT: 4G, EXCUSE ME.

12 AND WHAT IS THE OTHER NUMBER?

13 MR. QUINN: THE JX 1000, WHICH IS THE
14 IPHONE.

15 THE COURT: OKAY. AND THE JX 1000 HAS
16 ALREADY BEEN -- I DON'T SEE THAT COMING IN, SO
17 THAT'S COMING IN NOW.

18 MR. QUINN: I WOULD OFFER JX 1000, YOUR
19 HONOR.

20 THE COURT: OKAY.

21 THE CLERK: IT CAME IN YESTERDAY.

22 BY MR. QUINN:

23 Q SO IF I COULD ASK YOU NOW ABOUT YOUR
24 ASSIGNMENT THAT LED TO YOUR TESTIMONY THAT YOU
25 REFERRED TO. WHAT WAS IT THAT YOU WERE ASKED TO

1 DO?

2 A I WAS ASKED TO REPRESENT SAMSUNG IN A LEGAL
3 MATTER AS A CORPORATE REPRESENTATIVE. MY JOB WAS
4 TO BECOME THE PERSON MOST KNOWLEDGEABLE ON CERTAIN
5 SUBJECTS, AND WE'VE TALKED ABOUT HOW IT WAS FOUR
6 PRODUCTS AND FOUR FEATURES OF PATENTS.

7 Q AND WHAT DID YOU DO TO FULFILL THAT
8 ASSIGNMENT?

9 A I UNDERTOOK RESEARCH, I SPOKE TO THE RELEVANT
10 DESIGNERS AND ENGINEERS FOR THE PRODUCTS AND THE
11 FEATURES IN QUESTION, INTERVIEWED THEM, AND THAT
12 WAS MY INVESTIGATION.

13 Q ALL RIGHT. AND LET ME -- WHEN YOU SAY "I
14 SPOKE TO THE DESIGNERS AND ENGINEERS," WHY WAS
15 IT -- WHICH WERE THE DESIGNERS AND ENGINEERS? LET
16 ME WITHDRAW THAT. BAD QUESTION.

17 HOW DID YOU GO ABOUT DECIDING WHAT
18 DESIGNERS AND ENGINEERS YOU WANTED TO TALK TO?

19 A SO I LOCATED THE PRINCIPAL DESIGNERS AND
20 ENGINEERS THAT WERE IN CHARGE OF THE FINAL
21 PRODUCTION, IF YOU WILL, OF EITHER THE INDUSTRIAL
22 DESIGN IN THE CASE OF THE INDUSTRIAL DESIGN ISSUES,
23 AND THE -- WHO WERE IN CHARGE OF THE SOFTWARE
24 ENGINEERS FOR THE ACTUAL SOFTWARE FEATURES IN
25 QUESTION.

1 Q AND DID YOU -- CAN YOU TELL US WHETHER OR NOT
2 YOU SPOKE TO THE ACTUAL DESIGNERS WHO WERE
3 RESPONSIBLE FOR THE DESIGN OF THOSE PRODUCTS THAT
4 WERE AT ISSUE?

5 A I DID.

6 Q AND IN THE CASE OF THE -- THE INFUSE THAT THE
7 JURY IS LOOKING AT NOW, WAS THAT ONE OF THE
8 PRODUCTS THAT YOU -- THAT WAS AT ISSUE AND YOU
9 SPOKE TO THE DESIGNERS?

10 A YES.

11 Q AND CAN YOU RECALL THE NAMES OF THE FOLKS YOU
12 SPOKE TO?

13 A I RECALL THE NAMES OF SOME OF THEM. IT MIGHT
14 HELP IF I REFERRED TO A REFERENCE. BUT, YES, I
15 REMEMBER THE NAMES OF SOME.

16 Q WELL, DO YOU REMEMBER THE NAMES OF THE
17 DESIGNERS OF THE INFUSE THAT YOU SPOKE TO?

18 A THE INFUSE DESIGNERS, AS I RECALL, WERE, I
19 BELIEVE THAT WAS YONGSEOK BANK, I BELIEVE THAT WAS
20 BORA KIM, AND I BELIEVE THE LAST ONE WAS
21 MIN-HYOUK LEE IF I REMEMBER CORRECTLY.

22 Q AND IN SOME CASE -- IN THE CASES -- WERE THERE
23 SOME CASES WHERE THE DESIGNER WASN'T FLUENT IN
24 ENGLISH?

25 A THERE WERE SOME CONVERSATIONS THAT WERE

1 A YES, I DO.

2 Q AND WHAT DO YOU KNOW IN THAT REGARD?

3 MR. LEE: YOUR HONOR, CAN WE HAVE A
4 FOUNDATION? AND THE SAMSUNG BRAND IS IRRELEVANT TO
5 OUR TRADE DRESS AND TRADE DILUTION. I DON'T KNOW
6 WHAT HIS BASIS IS.

7 THE COURT: WELL, JUST LAY A FOUNDATION.

8 I'M GOING TO OVERRULE THE OBJECTION.

9 GO AHEAD, PLEASE.

10 BY MR. QUINN:

11 Q SO WHAT YOU KNOW ABOUT THE VALUE OF THE
12 SAMSUNG BRAND, IS IT -- CAN YOU TELL US WHETHER OR
13 NOT THAT'S SOMETHING YOU LEARNED IN THE COURSE OF
14 YOUR WORK?

15 A YES, IT'S SOMETHING I'VE COME ACROSS OVER THE
16 COURSE OF MY JOB.

17 Q AND IN DOING YOUR JOB IN TERMS OF PLANNING AND
18 STRATEGY, IS THAT SOMETHING THAT YOU NEED TO BE
19 AWARE OF?

20 A YES, IT IS.

21 Q AND WHAT IS IT THAT YOU KNOW ABOUT THE VALUE
22 OF THE SAMSUNG BRAND?

23 A ONE OF THE WAYS WE TRACK OUR BRAND IS USING A
24 SURVEY OR A REPORT FROM A COMPANY CALLED
25 INTERBRAND. THEY DO A RANKING OF GLOBAL BRANDS.

1 AND IN THE LAST REPORT, ANNUAL RELEASE,
2 THIS ONE WAS 2011, WE WERE RANKED IN THE TOP 20 OF
3 GLOBAL BRANDS IN TERMS OF BRAND VALUE OR BRAND
4 EQUITY.

5 Q AS PART OF YOUR JOB, IS IT -- CAN YOU TELL US
6 WHETHER OR NOT IT'S IMPORTANT FOR YOU TO UNDERSTAND
7 HOW CONSUMERS GO ABOUT MAKING DECISIONS TO BUY
8 PHONES AND OTHER DEVICES?

9 A YES.

10 Q AND HOW IS IT -- HOW CAN CONSUMERS PURCHASE
11 SAMSUNG DEVICES IN THE UNITED STATES?

12 A SO SAMSUNG CONSUMERS CAN PURCHASE IN ANY
13 NUMBER OF PHYSICAL POINTS OF SALE. SO CARRIER
14 STORES, FOR INSTANCE, OR NATIONAL --

15 Q WHAT DO YOU MEAN BY "CARRIER STORES"?

16 A SO CARRIER STORES ARE STORES THAT ARE, I
17 GUESS, OWNED AND OPERATED BY THE U.S. WIRELESS
18 CARRIERS. SO AN EXAMPLE WOULD BE A STORE OWNED BY
19 AT&T, IT SAYS AT&T ON THE OUTSIDE.

20 ANOTHER EXAMPLE WOULD BE A NATIONAL
21 RETAILER. THAT'S NOT AN EXAMPLE OF A CARRIER
22 STORE. THAT'S AN EXAMPLE OF ANOTHER TYPE OF RETAIL
23 ENVIRONMENT.

24 Q AND OTHER THAN CARRIER STORES, ARE THERE OTHER
25 STORES WHERE CONSUMERS CAN BUY SAMSUNG PRODUCTS?

1 A THERE ARE.

2 Q AND WHAT ARE THOSE?

3 A THERE'S MULTIPLE DIFFERENT TYPES. SOMETHING
4 THAT WE CALL DEALERS, SO THESE ARE TYPICALLY
5 EXCLUSIVE DEALERS, PEOPLE THAT OWN STORES THAT
6 LICENSE A CARRIER BRAND AND OFFER THOSE CARRIER
7 BRANDED SERVICES AND PRODUCTS IN THEIR STORES. SO
8 THEY STILL MAY APPEAR LIKE A CARRIER OWNED STORE,
9 BUT THEY'RE NOT. THEY'RE INDEPENDENTLY OWNED AND
10 OPERATED.

11 ANOTHER EXAMPLE WOULD BE A NATIONAL
12 RETAILER, SUCH AS BEST BUY OR WAL-MART OR RADIO
13 SHACK. WE CALL THOSE NATIONAL RETAILERS.

14 ANOTHER EXAMPLE WOULD BE ON-LINE, SO
15 ON-LINE RETAILERS, LIKE AMAZON.COM, WHO WOULD SELL
16 THESE AS WELL.

17 Q DO THESE STORES SOMETIMES SELL SAMSUNG PHONES
18 THAT THEY DID NOT OBTAIN FROM SAMSUNG IN THE
19 UNITED STATES?

20 A IT'S POSSIBLE THAT THEY COULD SELL DEVICES
21 THAT THEY DID NOT OBTAIN FROM STA.

22 Q AND HOW MIGHT THEY ACQUIRE THEM?

23 A THEY CAN -- THEY CAN ACTUALLY BUY DEVICES FROM
24 INTERNATIONAL DISTRIBUTORS.

25 Q BUT NOT FROM SAMSUNG?

1 A THE DEVICES THAT THEY WOULD BUY FROM, FROM I
2 GUESS WHAT I'M CALLING INTERNATIONAL DISTRIBUTORS
3 WOULD NOT HAVE BEEN -- WOULD NOT HAVE BEEN PROVIDED
4 BY STA.

5 Q AND BY THE WAY, DO YOU KNOW WHETHER -- WHERE
6 TITLE TO THE PRODUCTS, THE DEVICE -- WE HAD
7 TESTIMONY ABOUT HOW, YOU KNOW, STA, SAMSUNG AMERICA
8 INVOICES, YOU KNOW, BIG SAMSUNG BACK IN SEOUL.

9 DO YOU HAPPEN TO KNOW WHERE TITLE TO
10 THOSE DEVICES PASSES?

11 A MY UNDERSTANDING IS TITLE -- STA TAKES TITLE
12 OR OWNERSHIP WHEN THE DEVICE ACTUALLY LEAVES THE
13 PORT HEADED TOWARDS THE UNITED STATES.

14 Q SO OUTSIDE OF THE UNITED STATES?

15 A CORRECT.

16 Q NOW, ARE CONSUMERS -- IF WE COULD TAKE A LOOK,
17 WE HAVE A DEMONSTRATIVE EXHIBIT, SDX 3586. SDX
18 3586. AND WHEN --

19 MR. LEE: BEFORE WE PUT IT UP --

20 THE COURT: DO I HAVE THAT? I ONLY HAVE
21 ALL THE OBJECTIONS.

22 (PAUSE IN PROCEEDINGS.)

23 THE COURT: OKAY. WHAT'S THE NUMBER,
24 PLEASE?

25 MR. QUINN: IT'S 3586.

1 THE COURT: OKAY.

2 MR. LEE: AND, YOUR HONOR, WE OBJECT. IF
3 YOU LOOK AT THE BOTTOM OF THE DOCUMENT, THIS IS AN
4 APPLE -- THIS IS AN EXCERPT FROM AN APPLE
5 PRESENTATION DOCUMENT. HAVING HIM COMMENTING UPON
6 ON APPLE DOCUMENT, DEMONSTRATIVE --

7 MR. QUINN: YOUR HONOR, I WOULD LAY A
8 FOUNDATION THAT HE'S FAMILIAR WITH THESE PHONES.

9 MR. LEE: BUT THIS IS AN APPLE DOCUMENT
10 THAT I THINK HE'S NOT SEEN BEFORE.

11 MR. QUINN: IT SAYS THAT THE IMAGES ARE
12 FROM AN APPLE DOCUMENT.

13 THE COURT: YOU CAN LAY A FOUNDATION.

14 GO AHEAD, PLEASE.

15 BY MR. QUINN:

16 Q DO YOU HAVE BEFORE YOU SOME IMAGES OF PHONES?

17 A I DO.

18 Q ALL RIGHT. AND ARE YOU FAMILIAR WITH THOSE
19 PHONES THAT ARE DISPLAYED THERE?

20 A LET ME LOOK AT THEM ONE-BY-ONE BRIEFLY.

21 (PAUSE IN PROCEEDINGS.)

22 THE WITNESS: I'M FAMILIAR WITH THESE
23 PHONES.

24 MR. QUINN: SO WE WOULD OFFER THIS, YOUR
25 HONOR, JUST AS A DEMONSTRATIVE.

1 THE COURT: ANY OBJECTION, MR. LEE?

2 MR. LEE: JUST THE SAME OBJECTION. YOUR
3 HONOR, ACTUALLY, IF THEY WANT TO OFFER A SUBSTITUTE
4 WITHOUT THE LEGEND AT THE BOTTOM, THAT WOULD BE
5 FINE AND I THINK MORE APPROPRIATE.

6 MR. QUINN: WE CAN REPLACE IT, YOUR
7 HONOR.

8 THE COURT: THAT'S FINE.

9 GO AHEAD, PLEASE.

10 MR. QUINN: ALL RIGHT. IF WE CAN PUT
11 THAT UP ON THE SCREEN.

12 Q WHEN CONSUMERS ARE -- CAN YOU TELL US WHETHER
13 OR NOT IT'S FAIR TO SAY THAT WHEN CONSUMERS ARE
14 DECIDING WHAT PHONE DEVICE TO BUY, THEY'VE GOT A
15 LOT OF DIFFERENT CHOICES?

16 A YES, THAT'S RIGHT.

17 Q AND WOULD IT BE FAIR TO SAY THAT A LOT OF THEM
18 LOOK KIND OF ALIKE?

19 A I WOULD SAY THAT GENERALLY SPEAKING, YEAH,
20 THEY CAN LOOK ALIKE.

21 Q AND WHEN THEY GO TO THE STORE -- THANKS VERY
22 MUCH -- WHEN THEY GO TO ONE OF THESE STORES WHERE
23 SAMSUNG PRODUCTS CAN BE FOUND -- YOU KNOW, BY THE
24 WAY, DO YOU VISIT STORES YOURSELF?

25 A I DO.

1 Q AS PART OF YOUR JOB?

2 A ACTUALLY, WE'RE ALL EXPECTED TO GO VISIT
3 STORES SO WE CAN UNDERSTAND THE CONSUMER BUYING
4 ENVIRONMENT.

5 Q AND HOW OFTEN DO YOU GO TO STORES TO TRY TO
6 UNDERSTAND, TRY TO UNDERSTAND THE CONSUMER BUYING
7 ENVIRONMENT?

8 A I'LL GO IN SEVERAL TIMES A MONTH.

9 Q SEVERAL TIMES A MONTH?

10 A YES.

11 Q AND CAN YOU TELL US WHETHER OR NOT IT'S
12 TYPICAL THAT -- I MEAN, DO YOU SEE APPLE PHONES
13 THAT ARE FOR SALE IN STORES WHEN YOU GO VISIT?

14 A SURE.

15 Q CAN YOU TELL US WHETHER OR NOT IT'S TYPICAL
16 THAT, YOU KNOW, APPLE PHONES AND DEVICES ARE MIXED
17 IN WITH OTHER COMPANIES' DEVICES OR WHETHER THEY'RE
18 SEGREGATED IN A SEPARATE AREA?

19 A IN MY GENERAL EXPERIENCE, IT'S ALMOST ALWAYS
20 THIS CASE, APPLE DEVICES ARE BY THEMSELVES ON A
21 SEPARATE DISPLAY.

22 Q ALL RIGHT. IF WE COULD TAKE A LOOK AT EXHIBIT
23 60 IN EVIDENCE, PAGE 60.11.

24 AND UP ON THE RIGHT-HAND -- CAN YOU --
25 WE'VE GOT PICTURES ON THE LEFT-HAND SIDE. DO YOU

1 KNOW WHAT THAT IS ON THE LEFT-HAND SIDE?

2 A THAT IS AN APPLE RETAIL STORE.

3 Q AND THEN IN THE MIDDLE, WHAT IS THAT PICTURE?

4 A AS IT'S LABELED AND AS I'LL DESCRIBE, IT'S
5 WHAT WE CALL A STORE IN A STORE. SO IT'S
6 ACTUALLY -- IT'S ACTUALLY A SMALL PIECE OF REAL
7 ESTATE, IF YOU WILL, INSIDE A STORE THAT IS
8 DISTINCTLY APPLE.

9 Q OKAY. AND WHEN YOU TOLD US EARLIER THAT APPLE
10 PRODUCTS ARE ALWAYS SEGREGATED IN STORES, IS THIS
11 AN EXAMPLE OF THAT?

12 A THAT IS ONE EXAMPLE OF IT, YES.

13 Q IF YOU GO TO A, AN AT&T STORE, IS A CONSUMER
14 LIKELY TO ENCOUNTER A GALAXY S 2 PHONE SIDE-BY-SIDE
15 WITH AN IPHONE?

16 A YOU CERTAINLY WILL NOT ENCOUNTER ANY GALAXY
17 PHONES ON THE APPLE DISPLAY.

18 Q IN TERMS OF -- ARE THERE SOME CARRIERS,
19 EACH -- FOR EXAMPLE, WOULD IT BE TRUE TO SAY AT A
20 T-MOBILE STORE, YOU'RE NOT GOING TO FIND ANY AT&T
21 PHONES?

22 A THAT'S RIGHT.

23 Q DOES T-MOBILE SELL THE IPHONE?

24 A T-MOBILE DOES NOT SELL THE IPHONE.

25 Q EVER?

1 A THEY HAVE NOT EVER SOLD THE IPHONE.

2 Q SO WOULD A CONSUMER EVER ENCOUNTER A SAMSUNG
3 PHONE FOR SALE IN THE SAME STORE AS AN IPHONE IN A
4 T-MOBILE STORE?

5 A THEY WOULD NOT.

6 Q DOES SPRINT CARRY THE IPHONE?

7 A THEY DO.

8 Q AND FOR HOW LONG HAS SPRINT CARRIED THE
9 IPHONE?

10 A SINCE I THINK IT WAS OCTOBER OF LAST YEAR.

11 Q AND HOW ABOUT VERIZON?

12 A VERIZON HAS CARRIED IT SINCE, I BELIEVE,
13 FEBRUARY OF LAST YEAR.

14 Q SO BEFORE THOSE DATES WHEN THOSE CARRIERS
15 STARTED CARRYING THE IPHONE, CONSUMERS WHO WANTED
16 TO USE THOSE CARRIERS, WOULD THEY HAVE BEEN ABLE TO
17 BUY AN IPHONE THERE?

18 A YES.

19 Q BEFORE THOSE DATES?

20 A OH, NO, I'M SORRY. NOT BEFORE THOSE DATES,
21 NO.

22 Q I MEAN, DO YOU HAVE ANY INFORMATION ABOUT HOW,
23 YOU KNOW, WHAT CONSUMERS DO OR -- LET ME ASK IT
24 THIS WAY.

25 AS THE CHIEF STRATEGY OFFICER, IS IT

1 IMPORTANT FOR YOU TO UNDERSTAND HOW A CONSUMER GOES
2 ABOUT MAKING A DECISION TO BUY A SMARTPHONE?

3 A SURE, YES.

4 Q AND IS THAT SOMETHING THAT YOU'VE STUDIED AND
5 COLLECTED INFORMATION ON?

6 A YES.

7 Q IS THE DECISION -- BASED ON WHAT YOU'VE
8 LEARNED, IS THE DECISION TO MAKE AN INVESTMENT IN
9 BUYING A PHONE, IS THAT TYPICALLY SOMETHING THAT'S
10 DONE, YOU KNOW, ON THE SPUR OF THE MOMENT? OR
11 WITHOUT A LOT OF STUDY AND ASSESSMENT?

12 A NO. IN FACT, WE FIND CONSUMERS DO A
13 CONSIDERABLE AMOUNT OF STUDYING. THEY TAKE A
14 CONSIDERABLE AMOUNT OF TIME, ACTUALLY, TO MAKE
15 THEIR PHONE CHOICE.

16 Q DO YOU HAVE ANY INFORMATION ABOUT HOW MUCH
17 TIME, IN AVERAGE, A CONSUMER SPENDS IN DECIDING
18 WHAT TYPE OF PHONE TO PURCHASE?

19 A WE FIND THE AVERAGE CONSUMER TAKES
20 APPROXIMATELY SIX WEEKS, ABOUT ONE AND A HALF
21 MONTHS, TO MAKE THEIR PHONE PURCHASE DECISION.

22 Q SO, I MEAN, BASED ON EVERYTHING THAT YOU KNOW
23 ABOUT HOW PHONES ARE SOLD, HOW IPHONES ARE SOLD,
24 THE DIFFERENT CHANNELS AND HOW CONSUMERS GO ABOUT
25 MAKING THESE DECISIONS, DO YOU HAVE ANY -- DO YOU

1 BELIEVE THAT ANY REASONABLE CONSUMER WOULD BUY A
2 SAMSUNG PHONE THINKING IT WAS AN IPHONE?

3 MR. LEE: YOUR HONOR, THIS IS NOW OPINION
4 AND THIS IS THEIR EFFORT TO SUBSTITUTE HIM FOR
5 THEIR STRICKEN EXPERT.

6 THE COURT: IT'S SUSTAINED.

7 BY MR. QUINN:

8 Q WELL, I MEAN, HAVE YOU PERSONALLY HEARD OF
9 INSTANCES WHERE CONSUMERS BOUGHT A, A SAMSUNG PHONE
10 THINKING IT WAS AN IPHONE, AN APPLE PRODUCT?

11 A I'M NOT AWARE OF ANY EXAMPLES OF THAT.

12 Q YOU WERE ASKED SOME QUESTIONS ABOUT THE THREE
13 SAMSUNG ENTITIES, STA, SEA, AND SEC.

14 DO THOSE THREE COMPANIES EACH HAVE -- CAN
15 YOU TELL US WHETHER OR NOT THEY EACH HAVE DIFFERENT
16 MANAGEMENT?

17 A THEY DO.

18 Q DO THEY HAVE DIFFERENT EMPLOYEES?

19 A YES, THEY DO.

20 Q DO THEY HAVE DIFFERENT LOCATIONS?

21 A YES, THEY DO.

22 Q AND DOES STA, IN ITS BUSINESS HERE IN AMERICA,
23 MAKE ITS OWN BUSINESS DECISIONS?

24 A WE DO.

25 Q YOU WERE SHOWN EXHIBIT 62, AND IF WE COULD GO

1 TO PAGE 62.13.

2 MR. LEE SHOWED YOU THIS. AND THE
3 RECOMMENDATION AT THE TOP, "RECOMMENDATION, SAMSUNG
4 4G PRODUCTS TO UNDERCUT IPHONE 5, GAP POTENTIALLY
5 REMAINS AT \$49."

6 DO YOU SEE THAT?

7 A I DO.

8 Q AND I THOUGHT I HEARD YOU SAY, WHEN MR. LEE
9 WAS ASKING YOU ABOUT THIS, THAT THIS NEVER
10 HAPPENED.

11 IS THAT WHAT YOU SAID? I WAS JUST GOING
12 TO GIVE YOU A CHANCE TO EXPLAIN WHAT YOU MEANT IF I
13 HEARD YOU RIGHT.

14 A YEAH. THERE ARE SEVERAL THINGS WRONG WITH
15 THIS, IF I MAY.

16 FIRST, THE ACTUAL DOCUMENT, IF I REMEMBER
17 CORRECTLY, WAS CREATED IN MARCH.

18 AND IT'S -- IT'S ATTEMPTING TO PROJECT
19 FORWARD THINGS THAT MAY OR MAY NOT HAPPEN. SO, FOR
20 INSTANCE, THERE WAS NO IPHONE 5 THAT CAME OUT IN
21 2011.

22 IN TERMS OF THE PRICING, IT'S ACTUALLY --
23 IF YOU LOOK AT THIS CHART, IT'S -- WHAT IT'S TRYING
24 TO SAY IS THAT THERE'S ACTUALLY GOING TO BE A GAP
25 BETWEEN OUR FLAGSHIP SMARTPHONE, WHICH WAS SHOWN AS

1 CELOX, C-E-L-O-X, AT THE TOP, AND WHAT WE'RE
2 DEPICTING IS THE, I GUESS, FIGURATIVE IPHONE 5 AT
3 199.

4 OKAY. SO AT THE 199 PRICE BAND, THAT'S
5 SHOWING THE IPHONE 5, AND THAT'S THE DEVICE THAT WE
6 THOUGHT CONSUMERS WOULD COMPARE OUR CELOX TO.

7 ACTUALLY WHAT WE'RE POINTING OUT IS THAT
8 WE'RE GOING TO BE PRICED, WE THOUGHT AT THE TIME AT
9 LEAST, \$49 ABOVE THE IPHONE 5.

10 THE AUTHOR FURTHER GOES TO COMPARE TO
11 ANOTHER VERSION, A MORE EXPENSIVE VERSION OF THE
12 IPHONE 5 AT 32 GIGABYTES AT 299 RETAIL PRICE POINT
13 ABOVE, AND SO THAT'S AN ERRONEOUS COMPARISON.

14 Q I MEAN, THESE PHONES, EXCEPT FOR THE REFERENCE
15 TO THE IPHONE 5 AND THE IPHONE 4 AND THE IPHONE
16 NANA AND THE SGS, THESE OTHER PHONES, CAN YOU TELL
17 US WHETHER OR NOT THOSE ARE ALL SAMSUNG PHONES?

18 A THE ONES THAT ARE LABELED SAMSUNG ARE
19 DEFINITELY SAMSUNG.

20 I CAN'T ACTUALLY BE SURE WHETHER ALL OF
21 THEM ACTUALLY EVER CAME TO MARKET. FOR INSTANCE,
22 HANOVERQ, I DON'T REMEMBER THAT IN PARTICULAR.

23 Q WOULD THIS BE WHAT WAS REFERRED TO AS SAMSUNG
24 STRATEGY, DIFFERENT POINTS, DIFFERENT PRICE POINTS,
25 THE DEMOCRATIZATION OF THE CELL PHONE?

1 A YES, IT IS AN EXAMPLE OF A PORTFOLIO THAT
2 SPANS WHAT WE HOPE IS MULTI-RETAIL PRICE POINTS AND
3 YOU'RE SIMPLY SEEING A NORMAL, I GUESS, PRODUCT
4 LIFECYCLE MANAGEMENT WHERE, WHEN YOU LAUNCH A NEW
5 PHONE, LIKE THE CELOX, YOU HAVE TO DO OTHER THINGS
6 TO OTHER DEVICES SO THAT THEY'RE NOT PRICED ON TOP
7 OF EACH OTHER IN THE MARKET.

8 MR. QUINN: YOUR HONOR, I WAS GOING TO GO
9 INTO A NEW AREA, BUT IT LOOKS LIKE WE'RE CLOSE TO
10 THE TIME --

11 THE COURT: OH, I'M SORRY. IT IS 4:32.
12 WHY DON'T WE END FOR THE DAY?

13 MR. DENISON WILL RESUME ON MONDAY.

14 SO I'M SORRY TO SOUND LIKE A BROKEN
15 RECORD, BUT LET ME JUST REITERATE, SINCE WE'RE
16 ABOUT TO HAVE A LONG WEEKEND, THAT BECAUSE YOU HAVE
17 TO BASE YOUR DECISION SOLELY ON THE EVIDENCE THAT'S
18 ADMITTED DURING THIS TRIAL AND APPLY THE LAW AS I
19 INSTRUCT YOU, YOU MUST NOT BE EXPOSED TO ANY OTHER
20 INFORMATION.

21 SO PLEASE, OVER THE WEEKEND, DON'T SPEAK
22 WITH ANYONE ABOUT THIS CASE, DON'T DO ANY OF YOUR
23 OWN RESEARCH, DON'T READ, WATCH, OR LISTEN TO ANY
24 NEWS OR MEDIA ACCOUNTS.

25 AND HAVE A GOOD EVENING. ALL RIGHT.

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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: AUGUST 3, 2012