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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

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| APPLE INC., A CALIFORNIA CORPORATION, |) | C-11-01846 LHK |
| |) | |
| |) | SAN JOSE, CALIFORNIA |
| PLAINTIFF, |) | |
| |) | AUGUST 16, 2012 |
| VS. |) | |
| |) | VOLUME 10 |
| 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 2966-3386 |
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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
IRENE RODRIGUEZ, CSR, CRR
CERTIFICATE NUMBER 8074

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

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10TH FLOOR
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INDEX OF WITNESSESDEFENDANT'S**TIMOTHY SHEPPARD**

DIRECT EXAM BY MR. PRICE P. 3001
CROSS-EXAM BY MR. JACOBS P. 3012

MICHAEL WAGNER

DIRECT EXAM BY MR. PRICE P. 3018
CROSS-EXAM BY MR. JACOBS P. 3057
REDIRECT EXAM BY MR. PRICE P. 3073

RAMAMIRTHAM SUKUMAR

DIRECT EXAM BY MS. MAROULIS P. 3092
CROSS-EXAM BY MR. SELWYN P. 3095

VINCENT O'BRIEN

DIRECT EXAM BY MS. MAROULIS P. 3101
CROSS-EXAM BY MR. SELWYN P. 3113

DAVID TEECE

DIRECT EXAM BY MS. MAROULIS P. 3123
CROSS-EXAM BY MR. MUELLER P. 3141

PLAINTIFF'S REBUTTAL:

TONY BLEVINS

DIRECT EXAM BY MR. LEE P. 3164

EMILIE KIM

DIRECT EXAM BY MR. SELWYN P. 3173
CROSS-EXAM BY MR. JOHNSON P. 3185

PAUL DOURISH

DIRECT EXAM BY MR. SELWYN P. 3188

TONY GIVARGIS

DIRECT EXAM BY MR. SELWYN P. 3220

MANI SRIVASTAVA

DIRECT EXAM BY MR. SELWYN P. 3287
CROSS-EXAM BY MR. JOHNSON P. 3317
REDIRECT EXAM BY MR. SELWYN P. 3320

HYONG KIM

DIRECT EXAM BY MR. LEE P. 3322

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1 CASE?

2 A I WAS ASKED TO COMPUTE THE REASONABLE ROYALTY
3 DAMAGES DUE SAMSUNG FROM APPLE FOR USE OF ITS UMTS
4 PATENTS.

5 Q AND THOSE ARE '941 AND '516 PATENTS?

6 A THAT IS CORRECT.

7 Q HAVE YOU PREPARED A SLIDE TO SUMMARIZE YOUR
8 CALCULATION?

9 A I HAVE.

10 Q LET'S TAKE A LOOK AT SDX 3963.005.

11 DR. TEECE, WHAT DOES THIS SLIDE
12 ILLUSTRATE?

13 A THE HIGHLIGHTED YELLOW IS THE REASONABLE
14 ROYALTY RATES THAT I HAVE DETERMINED ARE
15 APPLICABLE. IT'S A RANGE. AT A MINIMUM END IT'S 2
16 PERCENT. AT THE UPPER END IS 2.75 PERCENT OF NET
17 SALES.

18 ON THE LEFT I HAVE THE INFRINGING SALES
19 OF IPHONES AND IPADS, 12.23 BILLION OF IPHONES, AND
20 2.29 BILLION OF IPADS.

21 AND THAT LEADS ME TO A TOTAL DAMAGES
22 NUMBER ON THE FAR RIGHT WHICH RANGES FROM, AT THE
23 LOW END, 290 MILLION, AT THE RIGHT HAND, 399
24 MILLION.

25 Q SIR, HOW DO YOU CALCULATE THESE REASONABLE

1 ROYALTY AMOUNTS THAT ARE LISTED ON THIS CHART?

2 A WELL, I -- SINCE THERE WAS NO LICENSE ENTERED
3 INTO BETWEEN APPLE AND SAMSUNG, I HAD TO GO THROUGH
4 AN EXERCISE TO FIGURE OUT WHAT THEY MIGHT HAVE
5 AGREED UPON IF THERE WAS A NEGOTIATION BACK AT
6 ABOUT THE TIME OF FIRST INFRINGEMENT.

7 SO I SET UP SOMETHING CALLED THE
8 HYPOTHETICAL NEGOTIATION AS A FRAMEWORK FOR
9 DETERMINING WHAT THE REASONABLE ROYALTIES BASE
10 WOULD BE.

11 Q AND WHAT IS THE BASE THAT YOU HAVE USED FOR
12 THE PURPOSES OF THIS ANALYSIS.

13 A YES, THE ROYALTY BASE, BECAUSE IF YOU HAVE A
14 RATE, IT'S NO GOOD TO YOU WITHOUT A BASE, THE BASE
15 IS THE NET SALES OF THE INFRINGING PRODUCTS, AND
16 THE NET SALES ARE BASICALLY THE SALES NUMBERS MINUS
17 A FEW RETURNS. SO IT'S BASICALLY THE SALES OR
18 REVENUE NUMBERS FOR THE PRODUCTS IN QUESTION.

19 Q WHAT PERIOD OF TIME DID YOU ASSUME FOR THE
20 PURPOSES OF THIS ANALYSIS IN CALCULATING THE
21 ROYALTY BASE?

22 A THE DATES ARE AT THE TOP THERE FOR. FOR THE
23 IPHONE, IT WAS POST SEPTEMBER 9TH, 2010. FOR THE
24 IPADS, IT WAS POST APRIL 27TH, 2011.

25 Q SIR, LET'S TAKE THESE COMPONENTS ONE AT A

1 TIME .

2 TURNING TO THE ROYALTY BASE , HOW DID YOU
3 DETERMINE THE NET SALES PRICE OF A PRODUCT WAS THE
4 APPROPRIATE ROYALTY BASE?

5 A WELL , I LOOKED AT TWO THINGS . ONE IS INDUSTRY
6 PRACTICE . IT'S VERY COMMON TO STATE A LICENSE AS A
7 PERIOD OF TIME OF THE SALES PRICE OF THE PRODUCT .

8 SECONDLY , IN THIS CASE I LOOKED AT UMTS
9 TECHNOLOGY AND HOW IT IMPACTED SALES OF THE PRODUCT
10 AND TOOK THAT INTO ACCOUNT AS WELL .

11 Q DID YOU PREPARE ANY SLIDES TO ILLUSTRATE THE
12 VALUE CONFERRED BY THE UMTS TECHNOLOGY?

13 A I DID .

14 Q LET'S TAKE A LOOK AT SDX 3963.006 , PLEASE .

15 CAN YOU PLEASE DESCRIBE FOR THE JURY WHAT
16 THESE SLIDES ILLUSTRATE .

17 A YES . I TRIED TO GET A CONTROL OR AN
18 EXPERIMENT AFTER EXPERIMENT , IF YOU WILL , FOR
19 WHAT'S REALLY THE VALUE OF UMTS TECHNOLOGIES
20 EMBEDDED IN THE APPLE PRODUCTS .

21 AND FORTUNATELY THE IPOD TOUCH IS A
22 PRODUCT IN THE MARKET THAT HAS MOST OF THE FEATURES
23 IN THE IPHONE BUT WITHOUT THE PHONE FEATURE AND
24 WITHOUT THE CONNECTIVITY ASSOCIATED WITH UMTS
25 TECHNOLOGY .

1 AND AS YOU CAN SEE, THERE'S A SIGNIFICANT
2 PRICE PREMIUM BETWEEN THE IPOD AND THE IPHONE. IN
3 FACT, FOR THE TWO DIFFERENT MODELS I LOOKED AT,
4 IT'S EXACTLY 400, THAT'S APPLE'S PRICING, THAT'S
5 NOT TAKING INTO ACCOUNT ANY SERVICE DISCOUNTS OR
6 DISCOUNTS YOU MAY GET THROUGH A SERVICE PROVIDER.

7 BUT THERE'S A VERY SUBSTANTIAL PRICE
8 PREMIUM ASSOCIATED WITH THE UMTS TECHNOLOGY WHICH I
9 THINK IS WELL CAPTURED BY LOOKING AT THAT PRICE
10 DIFFERENTIAL.

11 Q AND HAVE YOU PREPARED ANY ADDITIONAL SLIDES
12 WITH RESPECT TO THE IPAD PRODUCT?

13 A YES. SO I'VE DONE A SIMILAR COMPARISON WITH
14 RESPECT TO THE IPAD.

15 Q LET'S TAKE A LOOK AT 3963.07.

16 A YES. THE PRICE DIFFERENCE IS NOT QUITE AS
17 GREAT, BUT IF YOU LOOK AT AN IPAD THAT'S JUST GOT
18 THE WI-FI FEATURES OR THE ONE WITH UMTS, THEN
19 THERE'S A \$177 OR \$180 DIFFERENCE IN PRICE BY
20 HAVING THAT EXTRA FUNCTIONALITY ASSOCIATED WITH THE
21 UMTS TECHNOLOGY.

22 Q THANK YOU, SIR.

23 TURNING NOW TO ROYALTY RATES, HOW DID YOU
24 DETERMINE THAT THE ROYALTY RATES SHOULD BE BETWEEN
25 2 PERCENT AND TWO AND THREE QUARTERS PERCENT?

1 A AS AN ECONOMIST, I LIKE TO LOOK AT MARKET
2 TRANSACTIONS. THAT'S USUALLY THE BEST MEASURE OF
3 VALUE. SO I LOOKED AT LICENSING AGREEMENTS THAT I
4 FOUND IN THE RECORD OF THE CASE TO SEE WHAT I COULD
5 GLEAN FROM THOSE IN TERMS OF WHAT A REASONABLE
6 ROYALTY MIGHT BE.

7 Q SIR, I'M NOW GOING TO TURN YOUR ATTENTION TO
8 AN EXHIBIT THAT IS ONLY GOING TO BE SHOWN TO THE
9 JURY AND THE COURT AND YOURSELF. IT HAS HIGHLY
10 CONFIDENTIAL INFORMATION OF THIRD PARTIES.

11 PLEASE TURN TO EXHIBIT DX 630 IN YOUR
12 BINDER.

13 A OKAY.

14 Q WHAT IS EXHIBIT DX 630?

15 A I'M THERE.

16 Q HAVE YOU PREPARED THIS EXHIBIT?

17 A I HAVE.

18 Q WHAT DOES IT SUMMARIZE?

19 A IT SUMMARIZES THE NUMBER OF LICENSING
20 AGREEMENTS, IN THIS CASE I'M LOOKING AT THE SAMSUNG
21 LICENSING AGREEMENTS THAT I WAS ABLE TO FIND
22 INFORMATION ON, THAT I COULD ACTUALLY GET AHOLD OF
23 THE LICENSE AGREEMENT AND DISTILL CERTAIN
24 INFORMATION FROM IT.

25 MS. MAROULIS: YOUR HONOR, I MOVE EXHIBIT

1 DX 630 INTO EVIDENCE.

2 THE COURT: ANY OBJECTION?

3 MR. MUELLER: NO OBJECTION.

4 THE COURT: IT'S ADMITTED.

5 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
6 630, HAVING BEEN PREVIOUSLY MARKED FOR
7 IDENTIFICATION, WAS ADMITTED INTO
8 EVIDENCE.)

9 BY MS. MAROULIS:

10 Q SIR, TURNING YOUR ATTENTION TO ROW 12 OF
11 CONFIDENTIAL EXHIBIT DX 630, HAVE YOU CONSIDERED
12 THIS LICENSE THAT I'M POINTING YOU TO IN YOUR
13 ANALYSIS?

14 A YES, I HAVE.

15 Q WHEN DID THE PARTIES ENTER INTO THIS LICENSE?

16 A THIS ONE WAS ENTERED INTO IN 2004.

17 Q WHAT IS BEING LICENSED HERE?

18 A A NUMBER OF TECHNOLOGIES, INCLUDING UMTS
19 TECHNOLOGY.

20 Q AND WHERE DID THE JURY FIND THE FINANCIAL
21 TERMS OF THE AGREEMENT?

22 A IN THE COLUMN SECOND FROM THE RIGHT.

23 Q OKAY. DID THOSE TERMS SUPPORT YOUR CONCLUSION
24 THAT THE NET SALE PRICE IS THE APPROPRIATE ROYALTY
25 BASE FOR ASSESSING REASONABLE ROYALTY?

1 A YES, IT DOES. IT'S --

2 Q IT SUPPORT --

3 A UNDER THE PAYMENTS SECTION THERE, YES, YOU CAN
4 HIGHLIGHT IT ON THE TOP LINE, BUT IT'S A PERIOD OF
5 TIME OF NET SELLING PRICE THAT IS IDENTIFIED THERE
6 THAT GIVES ME A CLUE, AT LEAST WITH RESPECT TO THAT
7 PARTICULAR PROVIDER OF UMTS TECHNOLOGY, AS TO WHAT
8 A REASONABLE ROYALTY RATE IS. IT'S EXPRESSED AS A
9 PERIOD OF TIME OF NET SALES.

10 Q AND DOES IT SUPPORT YOUR ROYALTY RATE AS WELL?

11 A YES. IT'S ABOVE THE ROYALTY RATE RANGE THAT I
12 HAVE CHOSEN, BUT IT CERTAINLY IS CONSISTENT WITH
13 THE HIGH END OF IT.

14 Q PLEASE TAKE A LOOK AT ROW 29 OF DX 630. HAVE
15 YOU CONSIDERED THIS LICENSE IN SUPPORTING YOUR
16 ANALYSIS?

17 A YES, I HAVE.

18 Q HOW DOES THIS LICENSE SUPPORT YOUR
19 DETERMINATION OF ROYALTY BASE AND ROYALTY RATE?

20 A WELL, ONCE AGAIN, IF YOU LOOK AT THE PAYMENTS
21 SECTION, THERE IS A REASONABLE -- OR THERE IS A
22 ROYALTY RATE AS A PERIOD OF TIME OF SALES IT'S
23 SPECIFIED.

24 MAYBE YOU CAN HIGHLIGHT THAT. AND IT IS
25 WITHIN THE RANGE, THERE'S A NUMBER IN THE MIDDLE,

1 THERE'S A PERCENTAGE. IT'S A PERCENTAGE OF NET
2 SALES. THERE'S A NUMBER THERE THAT IS WITHIN MY
3 RANGE THAT I DESCRIBED EARLIER TO THE JURY.

4 Q OKAY. YOU CAN TAKE DOWN THE EXHIBIT.

5 DOES THIS EXHIBIT SET FORTH THE ROYALTY
6 RATE FOR SAMSUNG'S ESSENTIAL PATENTS?

7 A NO, IT DOESN'T. THESE ARE WHAT SAMSUNG HAS
8 PAID FOR THE USE OF OTHER PEOPLE'S TS TECHNOLOGY,
9 SO IT'S NOT IDEAL, BUT I THINK IT'S INDICATIVE.

10 Q CAN YOU DESCRIBE HOW IT'S NONETHELESS RELEVANT
11 TO YOUR ANALYSIS?

12 A HOW IT IS RELEVANT TO MY ANALYSIS?

13 Q YES.

14 A YES, I MEAN, THERE'S A GENERAL MARKETPLACE OUT
15 THERE FOR TECHNOLOGY, AND WHETHER YOU'RE THE BUYER
16 OR THE SELLER FOR UMTS TECHNOLOGY, THEY TEND TO GO
17 DOWN IN APPROXIMATELY THE SAME RANGE.

18 Q SO HOW MANY SAMSUNG CROSS-LICENSES HAVE YOU
19 ANALYZED IN THIS CASE?

20 A WELL, I WAS ABLE TO GET SOME INFORMATION ON
21 TWO SAMSUNG CROSS-LICENSES WHERE SAMSUNG WAS
22 LICENSING OUT ITS UMTS TECHNOLOGY. THE ONES I
23 LOOKED AT, THOSE WERE LICENSING IN. BUT I WAS ABLE
24 TO GET INFORMATION ON TWO LICENSES WHERE SAMSUNG
25 WAS LICENSING OUT ITS UMTS.

1 Q WE'RE GOING TO SHOW TO THE JURY NOW THE
2 CONFIDENTIAL DEMONSTRATIVE 3963.019. ONCE THE JURY
3 SEES THAT, AND WE CANNOT SHOW IT TO THE REST OF THE
4 WORLD, CAN YOU PLEASE EXPLAIN THIS SLIDE TO THE
5 JURY?

6 A YES. THE FIRST POINT I'VE GOT TO GET ACROSS
7 IS THAT MOST LICENSES ARE, IN FACT, CROSS-LICENSES,
8 BY WHICH I MEAN ONE PARTY WILL LICENSE OUT
9 TECHNOLOGY AND THEY WILL LICENSE BACK IN
10 TECHNOLOGY.

11 MONEY IS USED AS A BALANCING PAYMENT, BUT
12 THE PRIMARY CONSIDERATION IN GOING BACK AND FORTH
13 ISN'T MONEY. IT'S INTELLECTUAL PROPERTY RIGHTS.
14 IT'S CALLED A CROSS-LICENSE.

15 SO THE CHALLENGE HERE IS FOR ME TO FIGURE
16 OUT, BECAUSE I'M LOOKING AT CALCULATING DAMAGES,
17 WHAT APPLE WOULD PAY SAMSUNG FOR ONE LICENSE, I'VE
18 GOT TO TRY AND FIGURE OUT FROM THE CROSS-LICENSE
19 WHAT THE VALUE OF THE ONE-WAY LICENSE WOULD BE. SO
20 THERE'S A SIMPLE EQUATION HERE.

21 Q SIR, IF I MAY REMIND YOU NOT TO MENTION THE
22 NUMBERS PUBLICLY?

23 A OKAY.

24 Q THERE'S SOME THIRD PARTIES IN THE AUDIENCE?

25 A OKAY.

1 Q GO AHEAD.

2 A BASICALLY IF I KNOW THE ROYALTY BASE, WHICH I
3 DO IN THIS CASE, AND IF I KNOW WHAT THE STANDARD
4 ROYALTY RATE IS FOR THE OTHER PARTY, I CAN ESTIMATE
5 WHAT SAMSUNG'S RATE IS IF I ALSO KNOW WHAT THE
6 BALANCING PAYMENT IS.

7 SO IN THIS CASE, I'VE JUST SET UP THE
8 PROBLEM. I'M TRYING TO FIGURE OUT WHAT SAMSUNG'S
9 IMPLIED RATE IS, AND THAT'S A SIMPLE EQUATION THAT
10 I LOOKED AT, AND THE NEXT SLIDE GIVES THE ANSWER.

11 Q LET'S TAKE A LOOK AT THE NEXT CONFIDENTIAL
12 SLIDE, 3963.020. DOES THIS SLIDE SHOW THE ROYALTY
13 RATE THAT YOU ANALYZED?

14 A YES, THAT IS THE IMPLIED OR ESTIMATED RATE
15 THAT I GET FROM THAT PIECE OF ANALYSIS, THREE
16 PERCENTAGE POINTS OF NET SALES, WHICH IS SLIGHTLY
17 ABOVE MY RANGE OF 2 TO 2.75.

18 Q IS THIS NUMBER CONSISTENT WITH THE INDUSTRY
19 LICENSES YOU LOOKED AT EARLIER?

20 A IT IS.

21 Q SIR, HAVE YOU PREPARED A SLIDE SHOWING WHAT
22 SAMSUNG PROVIDED TO THE -- IN THE CROSS-LICENSE TO
23 THE OTHER SIDE?

24 A YES.

25 Q AND IS THAT THE SLIDE, CONFIDENTIAL SLIDE

1 3963.022?

2 A YES.

3 Q CAN YOU PLEASE EXPLAIN TO THE JURY WHAT YOU
4 EXPRESSED IN THIS SLIDE WITHOUT MENTIONING THE
5 NUMBERS?

6 A YES, THIS ANALYTICAL FRAMEWORK ALSO ENABLES ME
7 TO VALUE THE LICENSING RIGHTS THAT ARE TRADED AND
8 TO SHOW IT IN COMPARISON TO THE BALANCING PAYMENTS.

9 AND AS YOU CAN SEE, THE PAYMENT IN KIND,
10 IF YOU WILL, OF INTELLECTUAL PROPERTY RIGHTS IS WAY
11 GREATER THAN THE BALANCING PAYMENTS.

12 SO I OFTEN SPEAK OF THE BALANCING
13 PAYMENT, THE CASH AMOUNT THAT TRADES HANDS HERE AS
14 JUST THE TIP OF THE ICEBERG.

15 MY CHALLENGE, OF COURSE, HERE IS TO
16 FIGURE OUT THE VALUE OF THE ICEBERG, NOT JUST THE
17 TIP.

18 Q WHAT IS THE PRIMARY VALUE THAT SAMSUNG WAS
19 PROVIDING TO ITS COUNTER PARTIES IN ITS LICENSING
20 AGREEMENT?

21 A THE PRIMARY VALUE IN A CROSS-LICENSE, AND
22 CERTAINLY IN THE CASE OF SAMSUNG'S CROSS-LICENSES,
23 I BELIEVE WAS THE LICENSING RIGHT.

24 Q AND HOW DOES THE BALANCING RATE COMPARE TO THE
25 VALUE OF THE PATENT RIGHTS PROVIDED BY SAMSUNG?

1 A IT'S LOW IN COMPARISON.

2 Q DID YOU PREPARE, SIR, EXHIBIT DX 631 TO
3 EXPLAIN YOUR ANALYSIS?

4 A YES.

5 Q CAN YOU PLEASE CONFIRM IN YOUR BINDER THAT DX
6 631, CONFIDENTIAL EXHIBIT, IS WHAT YOU PREPARED.

7 A YES.

8 MS. MAROULIS: YOUR HONOR, WE MOVE DX 631
9 UNDER SEAL, REDACTED, INTO EVIDENCE.

10 THE COURT: ANY OBJECTION?

11 MR. MUELLER: NO OBJECTION, YOUR HONOR.

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

13 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
14 631, HAVING BEEN PREVIOUSLY MARKED FOR
15 IDENTIFICATION, WAS ADMITTED INTO
16 EVIDENCE.)

17 BY MS. MAROULIS:

18 Q SIR, DID YOU PREPARE ANOTHER SLIDE TO
19 ILLUSTRATE A DIFFERENT CROSS-LICENSE AT 3963.024?

20 A I DID.

21 Q LET'S TAKE A LOOK, JUST FOR THE JURY, AT THIS
22 SLIDE. CAN YOU PLEASE EXPLAIN, WITHOUT REFERENCE
23 TO THE NUMBERS, WHAT IS DEPICTED THERE?

24 A YES. THIS IS A CROSS-LICENSE WITH ANOTHER
25 PARTY WHERE I WAS LIKEWISE ABLE TO DETERMINE THE

1 ROYALTY BASE, AND I WAS ALSO ABLE TO DETERMINE THE
2 STANDARD RATE FOR THE OTHER PARTY, AS WELL AS THE
3 BALANCING PAYMENT, AND TOOK IN MATHEMATICALLY FOR
4 THIS TO GET AN ESTIMATE OF SAMSUNG'S RIGHT RATE.

5 Q LET'S TURN TO THE NEXT CONTENTION SLIDE. IS
6 THAT THE ROYALTY RATES THAT YOU ANALYZED?

7 A YES. YOU NEED TO CHANGE THE SLIDE THERE, I
8 THINK.

9 Q IT'S 3963.021. IT'S 025. I'M SORRY.

10 A YES. SO THE ESTIMATED RATE THERE IS 1.74,
11 WHICH IS SLIGHTLY BELOW THE LOW END OF MY 2 TO 2.75
12 RANGE.

13 Q OKAY. THANK YOU, RYAN.

14 WE CAN TAKE THOSE DOWN.

15 DR. TEECE, HOW DID YOU ACCOUNT FOR THE
16 FACT THAT THERE ARE TWO PATENTS AT ISSUE HERE AND
17 THESE AGREEMENTS COVER MORE THAN TWO PATENTS?

18 A YES, I'M COGNIZANT OF THE FACT THAT THIS
19 HYPOTHETICAL LICENSE WOULD BE FOR TWO PATENTS, AND
20 TYPICALLY WITH A CROSS-LICENSE, YOU'RE LICENSING A
21 MUCH LARGER PORTFOLIO. BUT WHAT STUDIES SHOW IS
22 THAT THE VOLUME OF ANY PORTFOLIO, OR GROUPING OF
23 LICENSES USUALLY COMES DOWN TO THE VALUE OF ONE,
24 TWO, OR THREE OR A HANDFUL SO THAT A SMALL
25 PERCENTAGE OF THE PATENTS IN A LICENSE ARE REALLY

1 WHAT DRIVES VALUE IN MOST INSTANCES.

2 Q LET'S TAKE A LOOK AT SLIDE 3963.027. DOES
3 THIS SLIDE SUMMARIZE WHAT YOU JUST EXPLAINED ABOUT
4 THE VALUE?

5 A YES. WHAT I'M DOING IN THIS CHART IS LOOKING
6 AT SOME WHAT ARE CALLED PLUS FACTORS OR MINUS
7 FACTORS, THINGS THAT WOULD TEND TO PRESS THE RATE
8 DOWNWARDS OR RAISE IT UPWARDS.

9 AND IF I BEGIN AT THE BOTTOM THERE, I'M
10 COMPARING A BENCHMARK OF A MARKETPLACE LICENSE AND
11 I'M SAYING, OKAY, HOW DOES THAT INFORM ME WITH
12 RESPECT TO WHAT THE DAMAGES RATE WOULD BE HERE,
13 WHAT THE REASONABLE ROYALTY RATE WOULD BE AND I'M
14 SAYING SINCE THIS IS NOT A FULL PORTFOLIO, THIS
15 WOULD BE SOME DISCOUNT. THAT'S WHY THERE'S THE RED
16 MINUS SIGN. BUT AT THE SAME TIME THERE'S TWO
17 OFFSETS FACTORS THAT I THINK FULLY ACCOUNT FOR THAT
18 DISCOUNT OR ESSENTIALLY NEUTRALIZE IT.

19 Q THANK YOU, SIR. YOU HEARD DR. O'BRIEN HERE
20 TESTIFYING ABOUT GEORGIA PACIFIC ANALYSIS. DID YOU
21 DO ONE AS WELL?

22 A I DID. BUT CAN I FIRST EXPLAIN THESE OTHER
23 FACTORS.

24 Q YES, GO AHEAD.

25 A OKAY. THE OTHER FACTORS, HERE I'M REQUIRED TO

1 ASSUME THE PATENTS ARE VALID AND INFRINGED.
2 TECHNICALLY WHEN THERE'S A MARKET TRANSACTION, YOU
3 DON'T KNOW FOR SURE IF THE PATENTS ARE VALID AND
4 INFRINGED, SO LICENSES, WHAT YOU OBSERVE IN THE
5 BUSINESS WORLD ARE DISCOUNTED RATES BECAUSE YOU'RE
6 UNCLEAR ABOUT VALIDITY AND INFRINGEMENT.

7 HERE IN THE COURTROOM, WE KNOW THE
8 ANSWER. SO THAT WOULD BE A PLUS FACTOR.

9 AND THEN ALSO THE LICENSING QUESTION
10 WOULD BE A U.S. ONLY LICENSE, AND THEY TYPICALLY
11 COMMAND A PREMIUM OVER A WORLDWIDE LICENSE BECAUSE
12 THE ROYALTY BASE WILL BE SMALLER.

13 Q THANK YOU, SIR. TURNING TO MY QUESTION OF
14 GEORGIA PACIFIC ANALYSIS, DID YOU CONDUCT ONE AS
15 WELL?

16 A YES, I DID.

17 Q AND DID CONDUCTING GEORGIA PACIFIC ANALYSIS
18 CONFIRM YOUR FINDINGS THROUGH THE MARKET DATA
19 RESEARCH THAT YOU PERFORMED?

20 A YES, THE GENERAL FRAMEWORK I'M USING IS
21 GEORGIA PACIFIC, BUT I DID LOOK AT SOME OTHER
22 FACTORS SUGGESTED IN THE FRAMEWORK, AND I DO
23 BELIEVE THAT THEY'RE CONFIRMATORY.

24 Q CAN YOU GIVE US A FEW FACTORS THAT YOU LOOKED
25 AT AND BRIEFLY SUMMARIZE THEM FOR THE JURY?

1 THE WITNESS.

2 THE COURT: OKAY. IT IS NOW 11:54. GO
3 AHEAD, PLEASE.

4 **CROSS-EXAMINATION**

5 BY MR. MUELLER:

6 Q GOOD MORNING, DR. TEECE.

7 A GOOD MORNING.

8 Q MY NAME IS JOE MUELLER. I'M GOING TO ASK YOU
9 A FEW QUESTIONS.

10 A CERTAINLY.

11 Q THE FIRST QUESTION IS YOU HAVE NEVER
12 NEGOTIATED A PATENT LICENSE AS A PRINCIPAL
13 NEGOTIATOR; CORRECT?

14 A THAT'S CORRECT.

15 Q NOW, YOU'RE HERE TODAY TO DISCUSS TWO PATENTS;
16 CORRECT?

17 A YES.

18 Q I NOTICED DURING YOUR DIRECT EXAMINATION YOU
19 DIDN'T USE THE WORD "FRAND;" CORRECT?

20 A CORRECT.

21 Q YOU KNOW WHAT THAT WORD MEANS?

22 A YES, I DO.

23 Q IT MEANS FAIR, REASONABLE, AND
24 NON-DISCRIMINATORY LICENSING; CORRECT?

25 A THAT'S RIGHT.

1 Q IS THAT RIGHT?

2 A THAT'S RIGHT. THE MIDDLE WORD, THE SECOND
3 LETTER IS R, REASONABLE, WHICH IS WHAT I'VE DONE.

4 Q AND FRAND PATENTS ARE A SPECIAL CATEGORY OF
5 PATENTS; CORRECT?

6 A WELL, FRAND LICENSING ARRANGEMENTS ARE -- CAN
7 BE, YES.

8 Q AND COMPANIES MAKE FRAND COMMITMENTS AS PART
9 OF A SPECIAL PROCESS CALLED STANDARDS SETTING;
10 CORRECT.

11 A THAT'S CORRECT.

12 MS. MAROULIS: OBJECTION, YOUR HONOR.
13 THIS IS A DIFFERENT PART OF THE CASE THAT HASN'T
14 STARTED YET.

15 MR. MUELLER: YOUR HONOR, IT'S NOT.
16 THESE ARE TWO FRAND PATENTS, THE EXACT ISSUE HE
17 TESTIFIED ON.

18 THE COURT: I'LL ALLOW LIMITED
19 QUESTIONING, BUT THIS SHOULD BE SAVED FOR YOUR
20 CASE.

21 BY MR. MUELLER:

22 Q DR. TEECE, LET'S BE CLEAR. YOU'RE HERE TO
23 TESTIFY ON TWO PATENTS; CORRECT?

24 A CORRECT.

25 Q AND SAMSUNG HAS MADE A FRAND COMMITMENT FOR

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CERTIFICATE OF REPORTERS

WE, THE UNDERSIGNED OFFICIAL COURT REPORTERS OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, CONSTITUTES A TRUE, FULL AND CORRECT TRANSCRIPT OF OUR SHORTHAND NOTES TAKEN AS SUCH OFFICIAL COURT REPORTERS OF THE PROCEEDINGS HEREINBEFORE ENTITLED AND REDUCED BY COMPUTER-AIDED TRANSCRIPTION TO THE BEST OF OUR ABILITY.

/S/

LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

/S/

IRENE RODRIGUEZ, CSR, CRR
CERTIFICATE NUMBER 8074

DATED: AUGUST 16, 2012