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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 17, 2012
VS.)	
)	VOLUME 11
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 3387-3711
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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 :

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

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

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

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

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

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

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CROSS-EXAM BY MR. VERHOEVEN P. 3432
REDIRECT EXAM BY MR. LEE P. 3434

EDWARD KNIGHTLY

DIRECT EXAM BY MR. MUELLER P. 3435
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DIRECT EXAM BY MS. KREVANS P. 3465
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1 DR. KNIGHTLY, CAN YOU JUST MARK IT, CAN YOU EXPLAIN
2 THIS PASSAGE IN THAT FIGURE?

3 A RIGHT. SO THIS IS A FLOW CHART OF HOW THE
4 TRANSMITTER TAKES A CELL OR A PACKET FROM A HIGHER
5 LAYER AND DOES A CHECK AND SAYS, IS THIS PACKET A
6 MINIMUM SIZE?

7 AND IT GIVES AN EXAMPLE IN THE TEXT ABOUT
8 THAT MINIMUM BEING 53 BYTES. SO IT LOOKS FOR IT
9 BEING EXACTLY 53 BYTES.

10 IF IT'S NOT, THEN IT -- IF IT'S NOT THE
11 MINIMUM, THEN IT HAS TO BE SEGMENTED BECAUSE IN
12 THAT CASE IT WOULD BE LARGER, SO IT'S GOT TO BE
13 SEGMENTED INTO MULTIPLE SEGMENTS. IF IT IS THE
14 MINIMUM, THEN THERE'S NO SEGMENTATION AND THE
15 ENTIRE SDU DOES FIT AND SO THAT'S TRANSMITTED.

16 Q DR. KNIGHTLY, HAVE YOU CONSIDERED WHETHER THIS
17 PATENT, THE AGARWAL REFERENCE, DISCLOSES EACH AND
18 EVERY LIMITATION OF CLAIMS 10 AND 15 OF THE '941?

19 A YES, I HAVE CONSIDERED THAT AND IT DOES.

20 Q I'M SORRY. WHAT'S YOUR OPINION?

21 A AND IT DOES.

22 Q LET'S START WITH CLAIM 10, AND WE'LL WALK
23 THROUGH IT QUICKLY LIMITATION BY LIMITATION.

24 AND LET'S TURN TO PDX 36.15, PLEASE.

25 THE PREAMBLE STATES AN APPARATUS FOR

1 TRANSMITTING DATA IN A MOBILE COMMUNICATION SYSTEM.

2 IS THAT PRESENT IN AGARWAL?

3 A YES, IT DOES. AS I MENTIONED, IT'S WIRELESS
4 NETWORKS AND SATELLITE WIRELESS NETWORKS ARE
5 MOBILE.

6 Q NEXT ELEMENT BEGINS A TRANSMISSION BUFFER FOR
7 RECEIVING AN SDU.

8 AND THEN IT CONTINUES. IS THAT ELEMENT
9 DISCLOSED IN AGARWAL?

10 A YES. SO IT HAS THE BUFFERING AND WE SAW IN
11 THE FLOW CHART THAT IT WOULD SEE THAT AND THEN MAKE
12 THAT DETERMINATION THAT, YES OR NO WHETHER IT IS
13 SEGMENTED OR NOT.

14 Q NEXT ELEMENT IS A TRANSMISSION BUFFER FOR
15 RECEIVING A SERVICE DATA UNIT. IS THAT ELEMENT
16 PRESENT OR DISCLOSED IN AGARWAL?

17 A THAT WAS THE ONE I WAS JUST REFERRING TO.

18 Q I'M SORRY. I MISSPOKE. THE NEXT ONE IS A
19 HEADER INSERT?

20 A YES. SO THE HEADER INSERT WE JUST WENT
21 THROUGH EARLIER THE DIFFERENT PARTS OF THE HEADER,
22 THE SEQUENCE NUMBER, THE ONE BIT FIELD, LENGTH.

23 Q NEXT ELEMENT IS A ONE BIT FIELD HEADER. IS
24 THAT PRESENT IN AGARWAL?

25 A YES. SO THAT ONE BIT, THAT THIRD BIT OF THE

1 HEADER, THAT'S THE ONE BIT FIELD THAT'S SET TO
2 WHETHER OR NOT THERE'S AN ENTIRE SDU.

3 Q AND THE NEXT LIMITATION IS A LENGTH INDICATOR
4 INSERTER. IS THAT DISCLOSED IN AGARWAL?

5 A YES. WE ALSO DISCUSSED THAT, THAT LENGTH
6 INDICATOR, AS WELL AS THE PREDEFINED VALUES.

7 Q FINAL ELEMENT OF CLAIM 10 IS A TRANSMITTER FOR
8 SENDING PDU'S TO RECEIVER. IS THAT DISCLOSED IN
9 AGARWAL?

10 A YES. SO THE SYSTEM TRANSMITS OVER THE
11 WIRELESS NETWORK AFTER THOSE STEPS.

12 Q LET'S TURN TO CLAIM 15 IF WE COULD. THE
13 PREAMBLE SAYS, "AN APPARATUS FOR RECEIVING DATA IN
14 A MOBILE COMMUNICATIONS SYSTEM." WE'LL PUT THIS ON
15 THE SCREEN. IT'S PDX 36.22. IS THAT PRESENT IN
16 AGARWAL, THE PREAMBLE LIMITATION?

17 A YES. SO FOR THE SAME REASON, IT'S THE -- IT'S
18 A MOBILE COMMUNICATION SYSTEM, YES.

19 Q AND ARE THE OTHER LIMITATIONS LISTED HERE IN
20 PDX 36.22 PRESENT IN AGARWAL, AND COULD YOU EXPLAIN
21 BRIEFLY HOW, IF SO?

22 A YES. SO CLAIM 15 IS A RECEIVER SIDE ANALOG
23 FOR THE SENDER SIDE IN CLAIM 10.

24 SO AGARWAL ALSO DOES THE RECEIVER SIDE
25 AFTER IT'S SEGMENTED, PUTTING EVERYTHING BACK

1 TOGETHER AS IN THIS CLAIM.

2 Q DR. KNIGHTLY, IN SUM, WHAT IS YOUR OPINION ON
3 THE VALIDITY OF THIS PATENT?

4 A THAT THE '941 CLAIMS ARE INVALID IN LIGHT OF
5 AGARWAL.

6 Q JUST A FEW MORE QUESTIONS.

7 LET'S TURN BACK TO THE ALTERNATIVE E-BIT
8 IN THE UMTS STANDARD, AND I WANT TO PUT THIS INTO
9 CONTEXT.

10 HOW LARGE IS THE UMTS STANDARD?

11 A THOUSANDS OF PAGES OF DOCUMENTS.

12 Q AND HOW MUCH OF THE STANDARD IS DEVOTED TO THE
13 ALTERNATIVE E-BIT?

14 A ABOUT A PAGE.

15 Q NOW, AT THE TIME THE ALTERNATIVE E-BIT WAS
16 ADOPTED BY THE UMTS WORKING GROUPS, WERE THERE
17 ALTERNATIVES?

18 A YES, THERE WERE.

19 Q WHAT WERE THEY?

20 A WELL, ONE ALTERNATIVE IS OTHER HEADER
21 STRUCTURES, SUCH AS WHAT WE JUST SAW, THAT THERE
22 ARE OTHER WAYS TO, TO DEFINE HEADERS AS AGARWAL
23 DID.

24 AND THEN ANOTHER ALTERNATIVE IS TO USE
25 THE ORIGINAL E-BIT INTERPRETATION.

1 Q NOW, FOR A PRODUCT LIKE THE IPHONE OR THE
2 IPAD, DO THOSE PRODUCTS CONTROL WHETHER THE E-BIT
3 IS USED?

4 A NO, THEY DON'T.

5 Q WHO DOES?

6 A THE NETWORK SERVICE PROVIDER, SUCH AS AT&T,
7 DECIDES WHETHER OR NOT THE ALTERNATIVE E-BIT IS
8 USED BECAUSE IT'S AN OPTION TO THE PROVIDER WHETHER
9 TO USE THE NORMAL E-BIT OR TO TURN ON THIS OPTION
10 FOR ALTERNATIVE E-BIT.

11 Q NOW, FOR THE PRODUCTS ACCUSED IN THIS CASE,
12 WHICH CARRIER IS THE RELEVANT CARRIER?

13 A AT&T.

14 Q HAVE YOU SEEN ANY EVIDENCE THAT AT&T USES THE
15 ALTERNATIVE E-BIT?

16 A I'VE SEEN NO EVIDENCE THAT THEY EVER TURN IT
17 ON.

18 Q FINALLY, JUST SO WE'RE CLEAR, WHAT IS YOUR
19 OPINION AS TO WHETHER OR NOT THE '941 PATENT COVERS
20 THE ALTERNATIVE E-BIT?

21 A MY OPINION IS THAT IT DOES NOT.

22 MR. MUELLER: NO FURTHER QUESTIONS.

23 THANK YOU.

24 THE COURT: ALL RIGHT. TIME IS NOW 9:54.

25 GO AHEAD, PLEASE.

CROSS-EXAMINATION

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BY MR. VERHOEVEN:

Q GOOD MORNING, DR. KNIGHTLY.

A GOOD MORNING.

Q IN YOUR DIRECT EXAMINATION -- LET ME BACK UP.
WERE YOU HERE FOR DR. WILLIAMS' TESTIMONY?

A YES.

Q OKAY. AND YOU HEARD HIM TESTIFY EXTENSIVELY
ABOUT THE INTEL SPECIFICATION?

A THE --

Q YES?

A INTEL SOURCE CODE.

Q AND THE SOURCE CODE. DO YOU REMEMBER HIM
TALKING ABOUT THE DOCUMENTS AND SOURCE CODE? HE
WENT THROUGH IT IN GREAT DETAIL?

A YES.

Q IN YOUR EXAMINATION, YOU DIDN'T MENTION IT?

A I REVIEWED SCORED, BUT I DIDN'T TALK ABOUT IT.

Q YOU DIDN'T GO THROUGH IT, DID YOU?

A NOT TODAY.

Q YOU DON'T DISPUTE THE ACCURACY OF DR.
WILLIAMS' DESCRIPTIONS OF HOW THE INTEL CHIP WORKS,
DO YOU, SIR?

A I AGREE WITH THE STEPS IN THE INTEL CODE, YES.

Q SO CAN WE PUT UP PDX 36.9? NOW, IN YOUR

1 DIRECT EXAMINATION, YOU FOCUSSED IN PART ON THIS
2 PHRASE AN ENTIRE SDU IN THE DATA FIELD. DO YOU
3 REMEMBER THAT?

4 A YES.

5 Q NOW, SIR, ISN'T IT TRUE THAT SOMETIMES THE
6 APPLE ACCUSED PRODUCTS TRANSMIT AN ENTIRE SDU? YES
7 OR NO, SIR? SOMETIMES THEY DO THAT, DON'T THEY?

8 A WHEN THEY'RE RUNNING THE, THE -- WELL, DO YOU
9 MEAN WITH OR WITHOUT THE 3G -- THE ALTERNATE E-BIT.

10 Q CAN YOU ANSWER MY QUESTION?

11 A WELL --

12 Q ISN'T IT TRUE THAT SOMETIMES THE APPLE ACCUSED
13 PRODUCTS TRANSMIT AN ENTIRE SDU? YES OR NO?

14 A WITHOUT THE ALTERNATIVE E-BIT, DEFINITELY,
15 YES.

16 Q AND SOMETIMES, IF YOU'RE INFRINGING, YOU'RE
17 STILL INFRINGING, ISN'T THAT TRUE?

18 A OH, WELL, THERE ISN'T THAT BIT, SO THEY HAPPEN
19 TO HALF AN ENTIRE SDU, BUT NOT WITH THAT BIT.

20 Q IF SOMETIMES THEY'RE TRANSMITTING AN ENTIRE
21 SDU, THEY'RE TRANSMITTING AN ENTIRE SDU; CORRECT?

22 A YES, BUT NOT WITH THAT BIT INDICATED.

23 Q AND IF YOU'RE INFRINGING SOMETIMES, YOU'RE
24 STILL INFRINGING; RIGHT?

25 A THEY'RE NOT INFRINGING.

1 THE SCREEN?

2 THE COURT: YES.

3 BY MR. MUELLER:

4 Q SO, DR. WALKER, JUST SO WE'RE CLEAR, THIS
5 CHRONOLOGY STARTS WITH THE KOREAN APPLICATION THAT
6 SAMSUNG FILED?

7 A THAT'S CORRECT.

8 Q AND CONTINUES THROUGH PROPOSALS MADE BY
9 SAMSUNG TO ETSI?

10 A THAT IS CORRECT.

11 Q AND CAN YOU EXPLAIN TO THE JURY THE
12 SIGNIFICANCE OF THAT JUNE 1ST THROUGH 3RD, 2005
13 DATE?

14 A SO THIS IS THE DATE AT WHICH THE PROPOSAL WAS
15 ADOPTED AND BECAME THEN A PART OF THE CURRENT -- OF
16 THE STANDARD OF THAT -- AT THAT POINT IN TIME.

17 Q LET'S TURN BACK TO TAB 7 IN YOUR BINDER,
18 PLAINTIFF'S EXHIBIT 122.

19 A YES.

20 Q PLEASE TURN TO PAGE 122.32.

21 A YES, I HAVE THAT PAGE.

22 Q AND DO YOU SEE ANY REFERENCE ON THIS PAGE TO
23 THE U.S. APPLICATION THAT LED TO THE '516 PATENT?

24 A YES, I DO. THIS IS -- I'M LOOKING, CREATED
25 PAGE -- THIS IS THE SECOND COLUMN DOWN.

1 Q AND, SIR, IS THIS THE DISCLOSURE THAT SAMSUNG
2 MADE --

3 A SO THIS IS --

4 Q I'M SORRY. THIS IS THE DISCLOSURE THAT
5 SAMSUNG MADE TO ETSI?

6 A THIS IS THE DISCLOSURE THAT SAMSUNG MADE TO
7 ETSI, AND AS YOU CAN SEE, IT IDENTIFIES THE U.S.
8 PATENT APPLICATION, '181, THE KOREAN APPLICATION,
9 423,000, THE PARTICULAR SPECIFICATION, THAT IT WAS
10 AFFECTING, '214, THE ACTUAL PARAGRAPHS THAT WERE
11 AFFECTED, IN THIS CASE JUST ONE, AND THE VERSION
12 THAT IT WAS NOW ADOPTED INTO.

13 Q AND IF YOU GO BACK, SIR, TO THE PAGE ENDING,
14 IN THE BATES NUMBER AT THE BOTTOM, 9415, WHAT WAS
15 THE DATE ON WHICH THIS DISCLOSURE WAS MADE?

16 A SO THE DATE ON WHICH THIS DISCLOSURE WAS MADE
17 WAS THE 16TH OF MAY, 2006.

18 Q LET'S ADD THAT TO OUR TIMELINE AT PDX 43.12,
19 AND IF YOU LOOK AT THAT, HERE WE HAVE THE
20 DISCLOSURE ON MAY 16TH, 2006. IS THAT CORRECT,
21 SIR?

22 A THAT'S CORRECT.

23 MR. MUELLER: YOUR HONOR, COULD MAY I
24 APPROACH ONE MORE TIME.

25 THE COURT: GO AHEAD.

1 BY MR. MUELLER:

2 Q DR. WALKER, HAVE YOU SEEN ANY EVIDENCE THAT
3 SAMSUNG DISCLOSED THIS PATENT NUMBER TO ETSI BEFORE
4 JUNE 1ST, 2005?

5 A NONE WHATSOEVER.

6 Q WHEN WAS THE DISCLOSURE MADE?

7 A THE DISCLOSURE WAS MADE ON THE 16TH OF MAY,
8 2006.

9 Q DR. WALKER, GIVEN THIS CHRONOLOGY, DO YOU HAVE
10 AN OPINION AS TO WHETHER SAMSUNG COMPLIED WITH ITS
11 DISCLOSURE OBLIGATIONS WITH RESPECT TO THE '516
12 PATENT?

13 A MY OPINION IS THAT IT DID NOT COMPLY WITH THE
14 OBLIGATION BECAUSE IT SHOULD HAVE DISCLOSED BEFORE
15 ADOPTION.

16 MR. MUELLER: THANK YOU, SIR. I HAVE NO
17 FURTHER QUESTIONS.

18 THE COURT: ALL RIGHT. THE TIME IS NOW
19 11:16.

20 PLEASE GO AHEAD. 11:17. GO AHEAD.

21 MR. VERHOEVEN: THANK YOU, YOUR HONOR.

22 **CROSS-EXAMINATION**

23 BY MR. VERHOEVEN:

24 Q GOOD MORNING, DR. WALKER.

25 A GOOD MORNING.

1 Q AS YOU MAY HAVE NOTICED, WE'RE UNDER SOME
2 STRICT TIME LIMITS SO IF, AS I'M ASKING YOU
3 QUESTIONS, IF YOU CAN FAIRLY ANSWER YES OR NO, I'D
4 APPRECIATE YOU DOING THAT. OKAY?

5 A OKAY.

6 Q NOW, SIR, ISN'T IT TRUE THAT TO FALL WITHIN
7 THE ETSI IPR POLICY, AN INTELLECTUAL PROPERTY RIGHT
8 NEEDS TO MEET ETSI'S DEFINITION OF IPR?

9 A THAT IS CORRECT.

10 Q CAN WE PUT UP SDX 3916, SLIDE 12. AND THIS IS
11 THE DEFINITION I HAVE ON THE SCREEN THAT ETSI HAS
12 FOR IPR; RIGHT?

13 A THAT'S CORRECT.

14 Q AND IT SAYS, "IPR SHALL MEAN ANY INTELLECTUAL
15 PROPERTY RIGHT CONFERRED BY STATUTE LAW INCLUDING
16 APPLICATIONS THEREFORE OTHER THAN TRADEMARKS."

17 AND THEN IT CONTINUES, SIR, "FOR THE
18 AVOIDANCE OF DOUBT, RIGHTS RELATING TO GET-UP,
19 CONFIDENTIAL INFORMATION, TRADE SECRETS OR THE LIKE
20 ARE EXCLUDED FROM THE DEFINITION OF IPR."

21 DO YOU SEE THAT, SIR?

22 A YES, I DO.

23 Q NOW, SO ONE OF THE THINGS THAT'S EXCLUDED FROM
24 IPR IS CONFIDENTIAL INFORMATION; RIGHT?

25 A THAT IS CORRECT. IT'S NOT IPR.

1 Q AND IF WE CAN PUT UP PDX 45.6. THIS IS YOUR
2 SLIDE.

3 YOU REFERRED TO THE SAMSUNG KOREAN PATENT
4 APPLICATION; RIGHT?

5 A YES, I DID.

6 Q BUT YOU DON'T -- YOU DIDN'T EVEN READ THAT
7 APPLICATION, DID YOU?

8 A THAT IS CORRECT.

9 Q YOU DON'T KNOW WHETHER IT'S CONFIDENTIAL, DO
10 YOU?

11 A I DON'T KNOW WHETHER THEY MADE A CONFIDENTIAL
12 APPLICATION WITH REGARD TO THAT PATENT, NO.

13 Q NOW, THE JURY, THEY SAW A VIDEO AT THE
14 BEGINNING OF THIS TRIAL THAT TALKED ABOUT THE
15 UNITED STATES, HOW WHEN YOU FILE PATENT
16 APPLICATIONS THEY'RE INITIALLY CONFIDENTIAL.

17 ISN'T IT TRUE, SIR, THAT THE SAME IS TRUE
18 IN THE KOREAN PATENT SYSTEM, THEY'RE CONFIDENTIAL?

19 A I BELIEVE YOU CAN REQUEST THAT TO BE THE CASE,
20 YES.

21 Q AND IF THEY'RE CONFIDENTIAL, IT'S NOT WITHIN
22 THE DEFINITION OF IPR AND THERE'S NO DUTY TO
23 DISCLOSE. ISN'T THAT TRUE, SIR?

24 A NO, BECAUSE YOU CAN'T USE IT THEN WITHIN THE
25 CONTEXT OF ETSI, BECAUSE IF YOU WISH TO --

1 Q IT'S NOT IPR UNDER THE DEFINITION, IS IT, SIR?

2 A IT'S NOT IPR.

3 Q NOW, I'LL DIRECT YOUR ATTENTION TO EXHIBIT 613
4 IN YOUR BINDER. ARE YOU THERE?

5 A NO. 613?

6 Q 613.

7 MR. LEE: HE'S LOOKING AT OUR BINDER.

8 THE COURT: IT'S THE BLACK --

9 THE WITNESS: I HAVE IT. YES, THANK YOU.

10 BY MR. VERHOEVEN:

11 Q OKAY. YOU'VE SEEN THIS DOCUMENT BEFORE,
12 RIGHT?

13 A YES, THE ETSI GUIDE ON IPR, YES.

14 MR. VERHOEVEN: YOUR HONOR, WE MOVE
15 DEFENDANT'S EXHIBIT 613 INTO EVIDENCE.

16 MR. MUELLER: NO OBJECTION.

17 THE COURT: IT'S ADMITTED.

18 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
19 613, HAVING BEEN PREVIOUSLY MARKED FOR
20 IDENTIFICATION, WAS ADMITTED INTO
21 EVIDENCE.)

22 BY MR. VERHOEVEN:

23 Q I'LL DIRECT YOUR ATTENTION TO PAGE 8. HERE --
24 CAN WE PULL OUT THIS BOTTOM PORTION, SECTION 2.

25 THIS IS THE GUIDELINE; RIGHT?

1 A THAT IS CORRECT.

2 Q AND IT'S THE IMPORTANCE OF TIMELY DISCLOSURE
3 OF ESSENTIAL IPR'S IS THE SECTION; RIGHT?

4 A THAT IS CORRECT.

5 Q AND NOTE 1, DEFINITIONS FOR TIMELINESS OR
6 TIMELY CANNOT BE AGREED BECAUSE SUCH DEFINITIONS
7 WOULD CONSTITUTE A CHANGE TO THE POLICY.

8 DO YOU SEE THAT, SIR? IS THAT WHAT THAT
9 SAYS?

10 A THAT IS CORRECT, THAT SAYS THAT.

11 Q AND -- BUT THERE IS A DESCRIPTION OF
12 INTENTIONAL DELAY. DO YOU SEE THAT, SIR?

13 A YES, I DO SEE THAT.

14 Q AN INTENTIONAL DELAY ARISES WHEN IT CAN BE
15 DEMONSTRATED THAT AN ETSI MEMBER HAS DELIBERATELY
16 WITHHELD IPR DISCLOSURES SIGNIFICANTLY BEYOND WHAT
17 WOULD BE EXPECTED FROM NORMAL CONSIDERATIONS OF
18 TIME LIMITS.

19 RIGHT?

20 A THAT IS CORRECT.

21 Q YOU'RE NOT OFFERING AN OPINION HERE TODAY THAT
22 SAMSUNG DELIBERATELY OR INTENTIONALLY DELAYED, ARE
23 YOU, SIR?

24 A I HAVE NOT USED THOSE WORDS, NO.

25 Q AND YOU'RE NOT OFFERING THAT OPINION, ARE YOU,

1 SIR?

2 A NO, I AM NOT.

3 Q NOW, YOU HAVE A TECHNICAL BACKGROUND, RIGHT?

4 A I DO HAVE A TECHNICAL BACKGROUND, YES.

5 Q A PH.D. IN MATHEMATICS?

6 A YES.

7 Q AND FROM 2001 TO 2009, YOU WERE GROUP RESEARCH
8 AND DEVELOPMENT DIRECTOR FOR THE VODAFONE GROUP OF
9 COMPANIES; RIGHT?

10 A THAT IS CORRECT.

11 Q AND YOU'VE BEEN INVOLVED IN ETSI SINCE 1988
12 THROUGH YOUR WORK AT VODAFONE; RIGHT?

13 A THAT IS CORRECT.

14 Q AND YOU STARTED OUT BY PARTICIPATING IN THESE
15 TECHNICAL WORKING GROUPS THAT YOU WERE TALKING
16 ABOUT. DO YOU REMEMBER?

17 A THAT'S CORRECT, YES.

18 Q AND YOU WERE -- YOU WENT TO MANY OF THESE;
19 RIGHT?

20 A YES, I DID.

21 Q AND IN ALL OF THOSE MEETINGS WHERE YOU
22 ATTENDED AS A MEMBER OF THE WORKING GROUP, NEVER
23 ONCE DID ANYBODY RAISE THEIR HAND AND SAY, HEY,
24 I'VE GOT ESSENTIAL IPR. CORRECT?

25 A THAT IS CORRECT.

1 Q NOW, ETSI ENCOURAGES COMPANIES LIKE SAMSUNG TO
2 MAKE A GENERAL IPR DECLARATION AS PART OF A CALL
3 FOR IPR'S; RIGHT?

4 A THAT'S CORRECT, ALL COMPANIES ARE ASKED TO DO
5 THAT.

6 Q AND, IN FACT, IN DECEMBER OF 1998, SAMSUNG
7 SUBMITTED A GENERAL IPR LICENSING DECLARATION TO
8 ETSI, DIDN'T IT?

9 A THEY DID, YES, INDEED.

10 Q TURN TO EXHIBIT 549.

11 CAN WE PUT THAT --

12 AND I WOULD MOVE THIS INTO EVIDENCE, YOUR
13 HONOR.

14 MR. MUELLER: NO OBJECTION.

15 THE COURT: IT'S ADMITTED.

16 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
17 549, HAVING BEEN PREVIOUSLY MARKED FOR
18 IDENTIFICATION, WAS ADMITTED INTO
19 EVIDENCE.)

20 MR. VERHOEVEN: CAN WE PUT IT ON THE
21 SCREEN.

22 Q NOW, THIS IS DECEMBER 1998; RIGHT?

23 A CORRECT.

24 Q AND DO YOU SEE HERE IT SAYS SEC, THAT'S THE
25 SAMSUNG COMPANY WHO'S A DEFENDANT IN THIS CASE;

1 RIGHT?

2 A YES.

3 Q SEC IS PREPARED TO GRANT LICENSES TO ITS
4 SPECIAL IPR'S ON A FAIR, REASONABLE, AND
5 NON-DISCRIMINATORY BASIS IN ACCORDANCE WITH THE
6 TERMS AND CONDITIONS SET FORTH IN CLAUSE 6.1 OF THE
7 ETSI IPR POLICY.

8 DO YOU SEE THAT?

9 A CORRECT.

10 Q SO SAMSUNG SAID TO ALL THESE MEMBERS OF ETSI,
11 HEY, IF SOMETHING BECOMES ESSENTIAL IN THE FUTURE,
12 WE'RE LETTING YOU KNOW IN ADVANCE, WE WILL LICENSE
13 THAT ON FAIR, REASONABLE, AND NON-DISCRIMINATORY
14 TERMS. ISN'T THAT WHAT THAT'S SAYING?

15 A THAT IS CORRECT. MANY COMPANIES DID THAT.

16 Q NOW, LET'S GO BACK TO PDX 45.6.

17 NOW, YOU'VE GOT A TIME LINE HERE, SIR,
18 BUT YOU DIDN'T PUT ON THE TIMELINE THIS GENERAL
19 DECLARATION THAT SAMSUNG MADE; ISN'T THAT TRUE,
20 SIR?

21 A THAT IS TRUE. THIS TIMELINE RELATED TO
22 DISCLOSURE.

23 Q SIR, IF YOU COULD PLEASE ANSWER MY QUESTION.

24 A YES, I HAVE.

25 Q YOU DIDN'T PUT IT ON THE TIMELINE, DID YOU?

1 A NO, I HAVE NOT.

2 Q IN FACT, THAT WOULD BE WAY BEFORE ANY OF THESE
3 ITEMS ON THE TIMELINE; CORRECT?

4 A THAT IS CORRECT. BUT IT'S NOT RELATED TO
5 DISCLOSURE. THESE ARE THE DISCLOSURE EVENTS.

6 Q NOW --

7 A YOU CITED CLAUSE 6.1.

8 Q NOW, SIR, SIR, I'M ON THE CLOCK.

9 YOU WERE HERE TODAY. YOU SAW THE
10 TESTIMONY OF DR. KIM; RIGHT?

11 A I DID, YES.

12 Q AND DR. KNIGHTLY?

13 A YES, I DID.

14 Q AND YOU HEARD BOTH OF THEM TESTIFY THAT THESE
15 TWO PATENTS, THE '941 AND THE '516 PATENTS, ARE NOT
16 ESSENTIAL.

17 A YES, I DID.

18 Q DIDN'T YOU, SIR?

19 A I DID HEAR THEM SAY THAT.

20 Q AND ISN'T IT TRUE IF A PATENT IS NOT
21 ESSENTIAL, AS APPLE'S OWN SWORN EXPERTS SAID, THEN
22 THERE'S ABSOLUTELY NO DISCLOSURE OBLIGATION, IS
23 THERE, SIR?

24 A YOU ONLY HAVE TO BELIEVE IT LIKELY TO BE
25 ESSENTIAL.

1 Q NOW, YOU TALKED A LITTLE BIT ABOUT FRAND.
2 ISN'T IT TRUE, SIR, YOU HAVE NO OPINION TO PRESENT
3 TO THIS JURY WITH RESPECT TO WHETHER SAMSUNG HAS
4 MADE A FRAND OFFER OR NOT?

5 A I'M DEALING WITH DISCLOSURE AT THE MOMENT,
6 YES.

7 Q SO THE ANSWER IS YES?

8 A YES.

9 Q LET'S GO BACK TO THE IPR POLICY. CAN WE PUT
10 UP SDX 3916.2. ETSI HAS A SECTION 14 IN THE ETSI
11 IPR POLICY CALLED VIOLATION OF POLICY. YES OR NO?

12 A YES, IT HAS.

13 Q IT SAYS, "ANY VIOLATION OF THE POLICY BY A
14 MEMBER SHALL BE DEEMED TO BE A BREACH BY THAT
15 MEMBER OF ITS OBLIGATIONS TO ETSI. THE ETSI
16 GENERAL ASSEMBLY SHALL HAVE THE AUTHORITY TO DECIDE
17 THE ACTION TO BE TAKEN, IF ANY, AGAINST THE MEMBER
18 IN BREACH IN ACCORDANCE WITH ETSI STATUTES."

19 DO YOU SEE THAT, SIR?

20 A YES, I DO.

21 Q YOU HAVE NO OPINION AS TO WHETHER OR NOT,
22 UNDER SECTION 14, SAMSUNG VIOLATED THE ETSI POLICY;
23 CORRECT?

24 A CORRECT. AS FAR AS I KNOW, NO PROCESS HAS
25 TAKEN PLACE WITHIN ETSI TO DECIDE THAT.

1 Q IF YOU CAN ANSWER ME YES OR NO ON THAT?

2 A YES, I HAVE NO OPINION AS TO THE HYPOTHETICAL
3 QUESTION.

4 Q YOU HAVE NO OPINION AS TO WHETHER OR NOT
5 SECTION 14 -- LET ME REPHRASE. YOU HAVE NO OPINION
6 AS TO WHETHER OR NOT, UNDER SECTION 14, SAMSUNG
7 VIOLATED THE ETSI POLICY?

8 A THAT'S CORRECT. SECTION 14 DOESN'T MEAN --

9 Q EXCUSE ME, SIR. IS THAT A YES?

10 A THAT IS A YES BECAUSE --

11 MR. VERHOEVEN: THANK YOU, SIR.

12 YOUR HONOR, PASS THE WITNESS.

13 THE COURT: ALL RIGHT. THE TIME IS
14 11:27. GO AHEAD, PLEASE.

15 **REDIRECT EXAMINATION**

16 BY MR. MUELLER:

17 Q TO YOUR KNOWLEDGE, HAS ETSI CONDUCTED ANY
18 INVESTIGATION INTO SAMSUNG'S DISCLOSURE PRACTICES?

19 A NO, THEY HAVE NOT.

20 MR. MUELLER: NOW -- MAY I APPROACH THE
21 WITNESS, YOUR HONOR?

22 THE COURT: GO AHEAD, PLEASE.

23 BY MR. MUELLER:

24 Q I'M HANDING YOU PLAINTIFF'S EXHIBIT 75.

25 MR. VERHOEVEN REFERRED YOU TO THE ETSI GUIDE. IS

1 THIS ANOTHER VERSION OF THAT GUIDE?

2 A I DIDN'T NOTICE THE ACTUAL VERSION THAT WAS
3 PRESENTED, BUT THIS IS A VERSION, YES.

4 MR. MUELLER: YOUR HONOR, I OFFER IT.

5 THE COURT: ANY OBJECTION?

6 MR. VERHOEVEN: I'VE JUST BEEN HANDED
7 THIS JUST NOW, YOUR HONOR. I NEED TO CHECK TO SEE
8 WHAT IT IS. WE HAVE TO CHECK, YOUR HONOR. WE
9 DON'T BELIEVE THIS WAS DISCLOSED IN THE EXAMINATION
10 EXHIBITS.

11 MR. MUELLER: YOUR HONOR, I'M RAISING IT
12 BECAUSE IT WAS RAISED ON CROSS AS A NEW SUBJECT.

13 MR. VERHOEVEN: NO, THIS DOCUMENT WAS
14 NOT, YOUR HONOR.

15 THE COURT: ALL RIGHT. MOVE ONTO
16 SOMETHING ELSE.

17 MR. MUELLER: OKAY, THAT'S FINE.

18 Q DR. WALKER, DOES A GENERAL DECLARATION SATISFY
19 THE SPECIFIC DISCLOSURE OBLIGATIONS UNDER CLAUSE 4.

20 MR. VERHOEVEN: OBJECTION, LEADING.

21 THE COURT: OVERRULED.

22 BY MR. MUELLER:

23 Q YOU CAN ANSWER, SIR?

24 A NO, IT DOESN'T BECAUSE IT DOESN'T ADDRESS
25 DISCLOSURE.

1 Q NEXT SUBJECT, DR. WALKER. MR. VERHOEVEN ASKED
2 YOU SOME QUESTIONS ABOUT CONFIDENTIALITY. DO YOU
3 RECALL THAT?

4 A YES, I DO.

5 Q LET'S TAKE A LOOK AT THE ETSI IPR POLICY FROM
6 1997, WHICH YOU HAVE BEFORE YOU. PLEASE TURN, IF
7 YOU COULD, SIR, TO PROVISION 10 AND LET'S PUT THAT
8 ON THE SCREEN.

9 SIR, WHAT DOES THIS PROVISION SAY?

10 MR. VERHOEVEN: OBJECTION. OUTSIDE OF
11 SCOPE OF THIS WITNESS'S REPORT.

12 MR. MUELLER: YOUR HONOR, IT'S NOT. IT
13 WAS DIRECTLY WITHIN THE SCOPE OF THE
14 CONFIDENTIALITY CROSS-EXAMINATION THAT WE JUST
15 HEARD ABOUT.

16 THE COURT: OVERRULED. GO AHEAD.

17 THE WITNESS: WHAT THIS SAYS IS THAT IF
18 YOU HAVE INFORMATION THAT YOU BELIEVE IS
19 CONFIDENTIAL AND YOU WISH TO MAKE IT, CREATE A
20 PROPOSAL FROM IT AND BRING IT TO ETSI, THEN YOU
21 HAVE TO MARK IT AS CONFIDENTIAL. IT HAS TO BE IN
22 WRITING. YOU HAVE TO TAKE IT TO THE CHAIRMAN OF
23 THE, OF THE TECHNICAL GROUP. HE HAS TO AGREE THAT
24 YOU CAN NOW SUBMIT IT TO THAT TECHNICAL BODY. THE
25 TECHNICAL BODY WILL MAINTAIN CONFIDENTIALITY. BUT

1 THAT IS THE LIMIT.

2 BY MR. MUELLER:

3 Q DR. WALKER, HAVE YOU SEEN ANY EVIDENCE THAT
4 SAMSUNG FOLLOWED THIS PROVISION?

5 A ABSOLUTELY NOT. ALL THEIR DOCUMENTS THAT I
6 HAVE SEEN, THEY WERE SUBMITTED WITHOUT ANY
7 CONFIDENTIAL MARKINGS WHATSOEVER.

8 Q AND, DR. WALKER, YOU WALKED US THROUGH THE
9 WORKING GROUP MEETINGS. WERE THOSE PUBLIC OR
10 CONFIDENTIAL MEETINGS?

11 A ALL OF THOSE MEETINGS, 3GPP MEETINGS, ALL OF
12 THE REPORTS, ALL OF THE DOCUMENTATION IS PUBLIC.

13 Q INCLUDING THE SAMSUNG PROPOSALS?

14 A INCLUDING THE SAMSUNG PROPOSALS.

15 Q LAST QUESTION, DR. WALKER. IF WE LOOK AT
16 CLAUSE 4, MR. VERHOEVEN ASKED YOU SOME QUESTIONS
17 ABOUT THE WORD "TIMELY."

18 I WANT TO FOCUS YOUR ATTENTION ON THAT
19 SECOND SENTENCE, CLAUSE 4.1, "A MEMBER SUBMITTING A
20 TECHNICAL PROPOSAL FOR A STANDARD SHALL, ON A BONA
21 FIDE BASIS, DRAW THE ATTENTION OF ETSI TO ANY OF
22 THAT MEMBER'S IPR WHICH MIGHT BE ESSENTIAL IF THAT
23 PROPOSAL IS ADOPTED."

24 WHAT IS YOUR VIEW ON THE TIMING
25 REQUIREMENT OF THAT SENTENCE?

1 A THAT IF YOU BELIEVE THAT YOUR PROPOSAL
2 CONTAINS IPR THAT MAY BE ESSENTIAL, THEN YOU SHOULD
3 DISCLOSE IT BEFORE OR AT THE POINT OF WHICH THAT
4 PROPOSAL IS ADOPTED.

5 Q AND, SIR, IN YOUR OPINION, DID SAMSUNG COMPLY
6 WITH THAT PROPOSAL?

7 A IN NEITHER CASE DID THEY COMPLY WITH IT.

8 MR. MUELLER: I HAVE NOTHING FURTHER.

9 THE COURT: ALL RIGHT. IT'S 11:30. ANY
10 RECROSS.

11 MR. VERHOEVEN: JUST ONE SECOND, YOUR
12 HONOR.

13 THE COURT: OKAY.

14 (PAUSE IN PROCEEDINGS.)

15 MR. VERHOEVEN: YOUR HONOR, IN THE
16 INTEREST OF TIME, I'M NOT GOING TO HAVE ANY FURTHER
17 EXAMINATION.

18 THE COURT: ALL RIGHT. MAY THIS WITNESS
19 BE EXCUSED AND IS IT SUBJECT TO RECALL OR NOT?

20 MR. MUELLER: NOT SUBJECT TO RECALL, YOUR
21 HONOR.

22 THE COURT: OKAY. YOU MAY BE EXCUSED.

23 CALL YOUR NEXT WITNESS, PLEASE.

24 MR. LEE: YOUR HONOR, APPLE CALLS
25 MR. DONALDSON.

1 THE COURT: OKAY. IF ANYONE WANTS TO
2 STAND UP AND STRETCH DURING THE TRANSITION TIME,
3 PLEASE DO SO.

4 DO WE HAVE PHOTOS OR ANYBODY.

5 MR. MUELLER: WE'VE TAKEN THEM, YOUR
6 HONOR. WE'LL PASS THEM UP OF THE I THINK THEY'RE
7 BEING PRINTED.

8 MR. LEE: THERE THEY ARE, YOUR HONOR.

9 THE COURT: GO AHEAD AND PASS THEM OUT.

10 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

11 **RICHARD DONALDSON,**

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: THANK YOU. PLEASE BE SEATED.

17 THE COURT: CAN YOU PASS THE PHOTOGRAPHS.

18 I WANT PEOPLE TO WRITE NOTES ON THE
19 PHOTOS AND IF YOU GIVE THEM TO US LATE, THEY DON'T
20 GET TO WRITE NOTES ON THE PHOTOS.

21 MR. MUELLER: SORRY, YOUR HONOR.

22 **DIRECT EXAMINATION**

23 BY MR. MUELLER:

24 Q GOOD MORNING, MR. DONALDSON. COULD YOU PLEASE
25 INTRODUCE YOURSELF TO THE JURY.

1 A YES. MY NAME IS RICHARD DONALDSON.

2 THE COURT: TIME IS 11:32.

3 THE WITNESS: I LIVE IN PLANO, TEXAS.

4 BY MR. MUELLER:

5 Q HAVE YOU BEEN RETAINED BY APPLE AS AN EXPERT
6 WITNESS IN THIS CASE?

7 A YES, SIR, I HAVE.

8 Q COULD YOU BRIEFLY SUMMARIZE YOUR EDUCATION AND
9 PROFESSIONAL BACKGROUND?

10 A YES. I HAVE A DEGREE IN ELECTRICAL
11 ENGINEERING; I HAVE A LAW DEGREE FROM ST. LOUIS
12 UNIVERSITY; AND THEN I HAVE A MASTER'S OF LAW
13 DEGREE FROM GEORGE WASHINGTON UNIVERSITY WHERE I
14 SPECIALIZED IN PATENT AND TRADE REGULATION.

15 Q WHAT IS YOUR PROFESSIONAL BACKGROUND, SIR?

16 A YES, FROM MY WORK WITH RESPECT TO PATENTS, I
17 WENT TO WORK FOR TEXAS INSTRUMENTS IN 1969 AS A
18 PATENT ATTORNEY. I WORKED THERE FOR 31 YEARS,
19 FOCUSED MOST OF MY TIME AS THE CHIEF LICENSING
20 PERSON AT TEXAS INSTRUMENTS.

21 I BECAME GENERAL PATENT COUNSEL AND
22 RETIRED FROM TEXAS INSTRUMENTS IN 2000 AS GENERAL
23 PATENT COUNSEL AND SENIOR VICE PRESIDENT OF TEXAS
24 INSTRUMENTS.

25 Q SIR, HOW MANY LICENSES HAVE YOU NEGOTIATED AS

1 A PRINCIPAL NEGOTIATOR?

2 A THAT WOULD BE IN THE HUNDREDS.

3 Q AND HAVE YOU NEGOTIATED LICENSES THAT COVER
4 SOMETHING KNOWN AS FAIR, REASONABLE, AND
5 NON-DISCRIMINATORY COMMITTED PATENTS, OR FRAND
6 PATENTS?

7 A YES, SIR, I HAVE.

8 Q CAN YOU EXPLAIN BRIEFLY?

9 A MANY OF THE LICENSES, IN FACT, MOST OF THE
10 LICENSES THAT I NEGOTIATED WOULD INCLUDE PATENTS
11 RELATED TO FRAND.

12 I ALSO, SINCE RETIRING FROM TEXAS
13 INSTRUMENTS, HAVE BEEN IN LICENSING CONSULTING, AND
14 IN CONSULTING WITH OTHER COMPANIES. I'VE ACTUALLY
15 DONE NEGOTIATIONS INVOLVING FRAND PATENTS.

16 AND I'VE ALSO SERVED AS A WITNESS, OR AS
17 AN EXPERT IN PATENT LITIGATION WHERE FRAND PATENTS
18 WERE ASSERTED.

19 MR. MUELLER: YOUR HONOR, I OFFER
20 MR. DONALDSON AS AN EXPERT IN PATENT LICENSING,
21 INCLUDING FRAND PATENT LICENSING.

22 MS. MAROULIS: NO OBJECTION.

23 THE COURT: ALL RIGHT. HE IS CERTIFIED.
24 GO AHEAD, PLEASE.

25 BY MR. MUELLER:

1 Q MR. DONALDSON, CAN YOU BRIEFLY SUMMARIZE ANY
2 DIFFERENCES THAT, IN YOUR OPINION, DISTINGUISH
3 FRAND PATENTS FROM OTHER PATENTS?

4 A YES, THERE ARE SEVERAL, MANY DISTINCTIONS, AND
5 I HAVE A SLIDE THAT --

6 Q LET'S PUT IT UP. PDX 49.2, PLEASE. WHAT DO
7 WE SEE HERE?

8 A THIS SLIDE SHOWS THREE AREAS OF MATERIAL
9 DIFFERENCES BETWEEN HOW YOU GO ABOUT LICENSES WHAT
10 YOUR RIGHTS ARE WITH RESPECT TO LICENSES PATENTS
11 THAT ARE SUBJECT TO FRAND OBLIGATIONS AND PATENTS
12 THAT ARE NOT SUBJECT TO THAT.

13 Q FIRST ROW REFERS TO EXCLUSIVE USE. CAN YOU
14 EXPLAIN?

15 A WELL, YES. THE FRAND PATENTS, AS EXPLAINED
16 EARLIER TODAY, THEY RELATE TO PATENTS THAT ARE
17 GENERATED WITH RESPECT TO AN INDUSTRY STANDARD,
18 SUCH AS UMTS.

19 AND ONE OF THE PURPOSES OF THAT STANDARD
20 IS WIDE DISTRIBUTION OR USE THROUGHOUT THE
21 INDUSTRY.

22 SO COMPANIES WHO OBTAIN PATENTS RELATING
23 TO THAT SPECIFICATION SIGN AN UNDERTAKING THAT THEY
24 WILL LICENSE IT TO ANYONE WHO WANTS A LICENSE
25 UNDERSTOOD IT, AND THAT MEANS THEY DO NOT HAVE

1 EXCLUSIVE USE.

2 WHEREAS IF YOU GO TO THE NON-FRAND
3 PATENTS, THAT'S ONE OF THE PRIMARY RIGHTS OF A
4 PATENT OWNER IS TO HAVE EXCLUSIVE USE OF THAT
5 PATENT.

6 Q SECOND ROW REFERS TO FREEDOM TO DETERMINE
7 ROYALTY AMOUNT. CAN YOU EXPLAIN TO THE JURY WHAT
8 THAT MEANS?

9 A YES. WITH RESPECT TO THESE FRAND PATENTS,
10 COMPANIES WHO OWN SUCH A PATENT ARE UNDER SOME
11 MATERIAL LIMITATIONS OR RESTRICTIONS OF WHAT WE CAN
12 DO WHEN THEY LICENSE THAT PATENT.

13 AND IN PARTICULAR, THEY ARE COMMITTING
14 THEMSELVES TO SAY THEY WILL LICENSE THESE PATENTS
15 UNDER FAIR, REASONABLE, EXAMINE NON-DISCRIMINATORY
16 TERMS, WHICH ARE VERY SIGNIFICANT LIMITATIONS.

17 WHEREAS IF YOU GO TO OTHER PATENTS, THERE
18 ARE NO RESTRICTIONS. YOU CAN LICENSE AT WHATEVER
19 THE MARKET WILL BEAR.

20 Q LAST ROW REFERS TO DISTINGUISHING PRODUCTS
21 FROM COMPETITORS. CAN YOU EXPLAIN THAT, PLEASE?

22 A WELL, AGAIN, WHEN YOU LOOK AT THE PATENTS THAT
23 RELATE TO THESE SPECIFICATIONS THAT ARE SUBJECT TO
24 THESE FRAND OBLIGATIONS, YOU HAVE MADE A COMMITMENT
25 AS A PATENT OWNER TO LICENSE IT TO ANYONE WHO WANTS

1 A LICENSE. SO YOU CANNOT DISTINGUISH ANY PRODUCT
2 FROM ANOTHER PRODUCT BECAUSE THEY ALL HAVE A RIGHT
3 TO USE ALL OF THE FRAND PATENTS.

4 WHEREAS OTHER PATENTS, THESE ARE
5 SOMETIMES SOME OF THE MOST IMPORTANT PATENTS THAT A
6 COMPANY CAN OWN BECAUSE THEY COVER THE BELLS AND
7 THE WHISTLES OF A PRODUCT. THEY COVER FEATURES
8 THAT WILL DISTINGUISH YOUR PRODUCT FROM A
9 COMPETITOR'S PRODUCT. AND YOU CAN KEEP THOSE
10 FEATURES JUST TO YOURS AND NOT LICENSE THEM AT ALL,
11 OR WHEN YOU DO LICENSE IT, YOU CAN GET
12 SUBSTANTIALLY HIGHER ROYALTIES, IN MY EXPERIENCE,
13 THAN WHAT YOU WOULD GET FROM A FRAND-RELATED
14 PATENT.

15 Q SIR, IF YOU COULD TURN TO TAB 2 IN YOUR
16 BINDER, THIS IS PX 80, THE SAMSUNG PORTFOLIO
17 PROPOSAL THAT THE JURY HEARD ABOUT YESTERDAY FROM
18 DR. TEECE.

19 DO YOU HAVE AN OPINION AS TO WHETHER THIS
20 PORTFOLIO PROPOSAL MET SAMSUNG'S REQUIREMENTS OF
21 FRAND LICENSING?

22 A YES, IN MY OPINION, IT DOES NOT MEET THE
23 REQUIREMENTS TO LICENSE UNDER FRAND TERMS.

24 Q CAN YOU EXPLAIN WHY NOT, SIR?

25 A BECAUSE THE ROYALTY BASE THAT IS USED AND THE

1 ROYALTY RATE THAT IS USED TO CALCULATE THE
2 ROYALTIES ARE NOT REASONABLE. THEY'RE NOT FAIR AND
3 REASONABLE.

4 Q AND JUST SO WE'RE CLEAR, WHEN YOU REFER TO THE
5 RATE AND THE BASE, ARE YOU REFERRING TO 2.4 PERCENT
6 OF THE PRICE OF EACH APPLE PRODUCT?

7 A THAT IS CORRECT.

8 Q AND THE RATE IS 2.4 PERCENT?

9 A AND THE BASE IS THE ENTIRE PRICE, SELLING
10 PRICE OF ONE OF THE ACCUSED PRODUCTS, LIKE THE
11 IPHONE.

12 Q NOW, LET'S FOCUS FIRST ON THE BASE. DO YOU
13 HAVE AN OPINION AS TO WHETHER OR NOT THE BASE IN
14 THE SAMSUNG PROPOSAL COMPLIED WITH FRAND?

15 A YES, I BELIEVE IT DOES NOT APPLY TO FRAND.

16 Q AND WHY NOT, SIR?

17 A BECAUSE IN LICENSING, WHEN YOU ARE LICENSING A
18 PATENT, YOU PRIMARILY, WHEN YOU SELECT THE ROYALTY
19 BASE, ARE LOOKING FOR SOMETHING THAT MOST CLOSELY
20 RELATES TO THE SCOPE OF THE PATENT.

21 HERE WE'RE TALKING ABOUT TWO PATENTS THAT
22 COVER UMTS, THEY COVER CELL PHONE APPLICATIONS.

23 THE IPHONE, OR THE IPOD THAT ARE ACCUSED,
24 THEY COVER MANY, MANY OTHER FEATURES. IN FACT, THE
25 ONLY CAPABILITY, WHAT PROVIDES THE CAPABILITY IN

1 THESE PRODUCTS IS THE UMTS CHIPSET, OR THE BASEBAND
2 CONTROLLER, WHICH IS JUST ONE SMALL PART OF THE
3 PHONE.

4 AND THAT WOULD BE A MORE REASONABLE
5 BASIS, BECAUSE OTHERWISE YOU'RE OBTAINING ROYALTIES
6 ON VALUE COMPLETELY UNRELATED TO YOUR PATENT.

7 Q NOW, SIR, WERE YOU HERE YESTERDAY FOR THE
8 TESTIMONY OF TONY BLEVINS FROM APPLE?

9 A YES, I WAS.

10 Q AND DID YOU HEAR HIM DISCUSS HOW MUCH APPLE
11 PAYS FOR THE BASEBAND PROCESSORS AND THE PRODUCTS
12 ACCUSED?

13 A YES. AS I RECALL HE TESTIFIED THAT APPLE
14 PURCHASES THESE BASEBAND CONTROLLER FROM INTEL AND
15 THE PRICE IS BETWEEN \$6 AND \$10 PER UNIT.

16 Q HOW DOES THAT COMPARE TO THE ROYALTIES THAT
17 SAMSUNG WAS DEMANDING UNDER THIS PROPOSAL?

18 A WELL, SAMSUNG IS APPLYING, IN THIS PROPOSAL A
19 ROYALTY OF 2.4 PERCENT TO A PRODUCT THAT SELLS FOR
20 \$600, WHERE THE CAPABILITY TO DO THE CELL PHONE,
21 THE UMTS CHIPSET, SELLS FOR \$6 TO \$12. I THINK \$12
22 IS WHAT HE USED.

23 Q AND DO YOU KNOW HOW MUCH THE SAMSUNG ROYALTY
24 WOULD TRANSLATE INTO IN DOLLARS AND CENTS?

25 A YES, UNDER SAMSUNG'S PROPOSAL, IT WOULD BE

1 OVER \$14 FOR EACH PRODUCT.

2 Q AS COMPARED TO WHAT PRICE FOR THE BASEBAND?

3 A BETWEEN \$6 AND \$12.

4 Q NOW, WHAT DOES THE N-D IN FRAND STANDS FOR?

5 A IT STANDS FOR NON-DISCRIMINATORY.

6 Q WAS SAMSUNG PROPOSAL NON-DISCRIMINATORY?

7 A NO, I BELIEVE IT IS DISCRIMINATORY.

8 Q COULD YOU EXPLAIN?

9 A SURE. BECAUSE THE FUNCTIONALITY THAT THESE
10 PATENTS RELATE TO IS CELL PHONE CAPABILITY. THAT'S
11 PROVIDED BY THE UMTS CHIP THAT SELLS FOR \$6 TO \$12.

12 SO IF A COMPANY, ONE COMPANY BUILDS JUST
13 A STANDARD CELL PHONE, SELLING FOR MAYBE \$100, THEY
14 WOULD PAY 2.4 PERCENT UNDER THAT EXAMPLE, OR \$2.04.

15 BUT IF YOU APPLY THE 2.4 PERCENT TO THE
16 ENTIRE PRICE OF AN APPLE SMARTPHONE, THAT'S \$600,
17 THAT'S OVER \$14 FOR CAPABILITIES AND
18 FUNCTIONALITIES UNRELATED TO THE CELL PHONE.

19 Q AND YOU VIEW THAT AS DISCRIMINATORY?

20 A YES, I CERTAINLY DO.

21 Q NOW, LET'S SWITCH GEARS FOR A MOMENT. I WANT
22 TO ASK YOU TO TURN TO TAB 3 IN YOUR BINDER. THIS
23 IS A REDACTED VERSION OF A LICENSE AGREEMENT. THE
24 JURY WILL HAVE THE FULL VERSION, BUT THE PUBLIC
25 WILL HAVE A REDACTED VERSION OF THIS AGREEMENT.

1 DO YOU RECOGNIZE IT?

2 A YES, I DO.

3 Q WHAT IS IT?

4 A THIS IS A LICENSE AGREEMENT BETWEEN SAMSUNG
5 AND INTEL THAT REALLY RELATES TO A BROAD RANGE OF
6 INTEGRATED CIRCUITS, BUT IT'S A LICENSE THAT WOULD
7 INCLUDE A BASEBAND CONTROLLER.

8 Q BETWEEN INTEL?

9 MS. MAROULIS: YOUR HONOR, OBJECTION WITH
10 REFERENCE TO PRIOR PRETRIAL ORDER AS TO THE SCOPE
11 OF MR. DONALDSON'S TESTIMONY.

12 MR. MUELLER: YOUR HONOR, I'M GOING TO
13 ASK ONLY ABOUT MR. DONALDSON'S UNDERSTANDING AS TO
14 HOW PARTICULAR TERMS ARE COMMONLY UNDERSTOOD IN THE
15 ENTRY. THAT'S PRECISELY WHAT YOU ALLOWED IN DOCKET
16 ENTRY 1157 ON JUNE 30TH.

17 THE COURT: GO AHEAD.

18 Q MR. DONALDSON, DO YOU HAVE PERSONAL EXPERIENCE
19 LICENSING IN THE SEMICONDUCTOR INDUSTRY?

20 A YES. MOST OF MY CAREER AT T.I. WAS DOING JUST
21 THAT.

22 Q LET'S TAKE A LOOK AT SECTION 31(A)(1), WHICH
23 IS PART OF THE MATERIALS IN THIS LICENSE AGREEMENT.

24 AND, YOUR HONOR, BEFORE I DO, I OFFER
25 THIS.

1 THE COURT: ANY OBJECTION, MS. MAROULIS?

2 MS. MAROULIS: NO OBJECTION OTHER THAN
3 STATED.

4 THE COURT: IT'S ADMITTED.

5 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
6 81, HAVING BEEN PREVIOUSLY MARKED FOR
7 IDENTIFICATION, WAS ADMITTED INTO
8 EVIDENCE.)

9 BY MR. MUELLER:

10 Q THIS IS THE REDACTED VERSION. I'M GOING TO
11 ASK YOU TO TURN TO THIS SECTION, WHICH IS SOMETHING
12 THE PUBLIC CAN SEE, AND DO YOU SEE WHERE IT SAYS
13 SUBJECT TO THE TERMS AND CONDITIONS OF THIS
14 AGREEMENT, SAMSUNG HERE BY GRANTS TO INTEL A
15 NONEXCLUSIVE, NON TRANSFERRABLE, ROYALTY-FREE
16 WORLDWIDE LICENSE, WITHOUT THE RIGHT TO SUBLICENSE,
17 UNDER SAMSUNG'S PATENTS TO MAKE, USE, SELL,
18 DIRECTLY OR INDIRECTLY, OFFER TO SELL, IMPORT, OR
19 OTHERWISE DISPOSE OF ALL INTEL LICENSED PRODUCTS.

20 DO YOU SEE THAT, SIR?

21 A I DO.

22 Q DO YOU SEE IT SAYS ROYALTY-FREE?

23 A I DO.

24 Q WHAT DOES THAT MEAN WITH RESPECT TO WHAT INTEL
25 OWED SAMSUNG IN TERMS OF MONEY?

1 MS. MAROULIS: OBJECTION, CALLS FOR LEGAL
2 CONCLUSION.

3 MR. MUELLER: YOUR HONOR, AGAIN, I'M
4 ASKING ABOUT HOW SOMEONE IN THE INDUSTRY WOULD
5 UNDERSTAND THESE TERMS.

6 THE COURT: OVERRULED.

7 GO AHEAD.

8 THE WITNESS: I WAS INVOLVED IN
9 NEGOTIATING A NUMBER OF ROYALTY-FREE CROSS LICENSES
10 OF THIS NATURE, AND IT'S JUST WHAT IT SAYS. WHAT
11 PEOPLE UNDERSTOOD, THAT NO MONEY CHANGES HANDS
12 BETWEEN THE PARTIES.

13 Q NOW, YOU'VE REVIEWED OTHER SAMSUNG AGREEMENTS;
14 IS THAT RIGHT?

15 A I HAVE.

16 Q HAVE YOU SEEN ANY EVIDENCE THAT ANYONE HAS
17 PAID SAMSUNG MONEY FOR ITS UMTS PORTFOLIO?

18 A NO, I HAVE NOT.

19 Q LET'S FOCUS ON THIS PROVISION. DO YOU SEE
20 WHERE IT SAYS MAKE, USE, SELL, DIRECTLY OR
21 INDIRECTLY. CAN YOU EXPLAIN HOW THOSE TERMS ARE
22 COMMONLY UNDERSTOOD IN THE SEMICONDUCTOR INDUSTRY?

23 MS. MAROULIS: OBJECTION.

24 THE COURT: OVERRULED.

25 THE WITNESS: THIS IS UNDERSTOOD AND USED

1 AND, HOWEVER, THERE'S A BIG INCONVENIENCE
2 FOR THAT, BECAUSE IF YOU BUY A TOASTER AT SEARS AND
3 YOU BRING IT HOME AND IT TURNS OUT THAT IT DOESN'T
4 FIT THE PLUG. WELL, YOU WASTED YOUR MONEY, OR AT
5 LEAST YOUR TIME.

6 SO THE STANDARD IS SET.

7 Q AND LET'S TALK ABOUT POST-STANDARD. ON THE
8 SCREEN WE HAVE THOSE SAME THREE PLUGS WITH A
9 CHECKMARK NEXT TO ONE AND X'S NEXT TO THE OTHER.
10 WHAT DO YOU MEAN BY THAT?

11 A WELL, WHAT I MEAN BY THAT, ONCE THE STANDARD
12 IS SET THROUGH WHATEVER MEANS, STANDARD SETTING
13 ORGANIZATIONS IN THE BUILDING TRADES, THEY WILL DO
14 THAT, THE TWO ALTERNATIVE TYPES OF PLUGS ARE NO
15 LONGER AVAILABLE FOR PURCHASE IN THE, LET'S SAY THE
16 UNITED STATES, BECAUSE THESE PLUGS NO LONGER WILL
17 FIT THE RECEPTACLES IN WHICH THEY WERE DESIGNED.

18 SOME OF THEM YOU CAN BUY IN EUROPE OR
19 CONTINENTAL EUROPE OR UK, BUT IN THE UNITED STATES
20 WE ARE DOWN TO THE PLUG DESIGN ON THE LEFT.

21 AND WHAT HAS HAPPENED IS WHATEVER
22 COMPETITION THERE MAY HAVE EXISTED BETWEEN THE
23 OWNERS OF THOSE TECHNOLOGIES TO GET THE TECHNOLOGY
24 INTO THE HANDS OF THE APPLIANCE SUPPLIERS, THAT
25 TECHNOLOGY IS NOW A MONOPOLIST IN THIS NARROW

1 MARKET OF THE TECHNOLOGY FOR CONNECTIVITY.

2 Q AND, SIR, IF YOU COULD, HOW DOES THIS EXAMPLE
3 RELATE TO WHAT YOU DESCRIBED AS HOLD UP?

4 A WELL, THE WAY THAT IT RELATES, AND AGAIN,
5 PRETTY MUCH STRAIGHTFORWARD TYPE OF CONNECTION THAT
6 I'M MAKING, AND THAT IS THAT IF THERE WAS
7 COMPETITION AND ONE OF THE -- THE GREEN PLUG
8 MANUFACTURER TRIED TO RAISE THE PRICE RELATIVE TO
9 WHAT THE RIVALS WERE CHARGING, WHICH WOULD LOSE
10 BUSINESS.

11 HOWEVER, NOW, IF THE PRICE -- IF THE
12 GREEN TECHNOLOGY GETS OVERPRICED, PEOPLE HAVE
13 NOWHERE TO GO BECAUSE YOU NEED TO HAVE THAT TYPE OF
14 PLUG-IN ORDER TO USE THE TOASTER.

15 THAT GIVES THE MANUFACTURER THE ABILITY,
16 INCREASED ABILITY TO MANIPULATE PRICE RELATIVE TO
17 THE PRE-STANDARD LEVEL.

18 Q NOW, SIR, ARE YOU FAMILIAR WITH AN
19 ORGANIZATION CALLED THE EUROPEAN TELECOMMUNICATIONS
20 STANDARDS INSTITUTE, OR ETSI?

21 A YES.

22 Q AND ARE YOU FAMILIAR WITH THE ETSI
23 INTELLECTUAL PROPERTY RIGHTS POLICY?

24 A YES, I AM.

25 Q LET'S PUT UP PDX 44.3. THIS QUOTES TWO

1 SECTIONS FROM THE ETSI IPR POLICY, CLAUSE 4 AND
2 CLAUSE 6.

3 ARE YOU FAMILIAR WITH THESE PROVISIONS?

4 A YES, THOSE WERE DISCUSSED ACTUALLY THIS
5 MORNING EXTENSIVELY.

6 Q ARE THESE BINDING ON THE ETSI MEMBERSHIP?

7 A THAT'S MY UNDERSTANDING.

8 Q FIRST RULE RELATES TO DISCLOSURE OF
9 INTELLECTUAL PROPERTY RIGHTS. FROM AN ECONOMIC
10 PERSPECTIVE, WHAT IS THE PURPOSE OF THIS PROVISION?

11 A WELL, I SEE THAT PROVISION AS BEING REALLY
12 DIRECTED TOWARDS INFORMING THE STANDARD SETTING
13 BODY WHAT KIND OF TECHNOLOGIES ARE AVAILABLE AND
14 WHAT KIND OF INTELLECTUAL PROPERTY RIGHTS ATTACH TO
15 THESE ALTERNATIVE TECHNOLOGIES.

16 Q THE SECOND RULE, CLAUSE 6, IS WHAT DR. WALKER
17 REFERRED TO AS THE FRAND PROVISION; IS THAT RIGHT?

18 A YES, THAT'S WHAT IT IS.

19 Q WHAT ARE THE ECONOMIC IMPLICATIONS OF THE
20 FRAND PROVISION?

21 A WELL, THAT, I THINK, IS A BIT AT THE HARD OF
22 THE HOLD UP, BECAUSE WHAT FRAND TRIES TO IMPLEMENT
23 IS THE KIND OF RESTRICTION THAT IS A COMPETITIVE
24 MARKET WOULD IMPOSE ON THE OWNER OF TECHNOLOGY ONCE
25 THE STANDARD IS DETERMINED. ONCE IT'S FROZEN,

1 THERE IS NO CHOICE. YOU HAVE TO USE THE TECHNOLOGY
2 THAT IS IN THE STANDARD AND THE FRAND PROVISIONS,
3 THEY REALLY TRY TO MIMIC WHAT THE MARKET,
4 COMPETITIVE MARKET WILL DELIVER. THEY CANNOT
5 ALWAYS DO THAT, BUT THAT'S WHAT THEY TRY TO
6 ACCOMPLISH.

7 Q NOW, SIR, WERE YOU HERE THIS MORNING FOR
8 DR. WALKER'S TESTIMONY REGARDING WHETHER SAMSUNG
9 COMPLIED WITH THE DISCLOSURE PROVISION, CLAUSE 4?

10 A YES.

11 Q AND WERE YOU HERE THIS MORNING FOR
12 MR. DONALDSON'S TESTIMONY REGARDING WHETHER SAMSUNG
13 COMPLIED WITH THE FRAND PROVISION, CLAUSE 6?

14 A YES.

15 Q NOW, THE LADIES AND GENTLEMEN OF THE JURY WILL
16 NEED TO DECIDE FOR THEMSELVES WHETHER THEY AGREE
17 WITH DR. WALKER AND MR. DONALDSON.

18 BUT FOR PURPOSES OF THE QUESTIONS I'M
19 ABOUT TO ASK YOU, I WANT YOU TO ASSUME THEY DO
20 AGREE.

21 DO YOU HAVE THAT IN MIND?

22 A YES.

23 Q IF DR. WALKER AND MR. DONALDSON ARE CORRECT,
24 WHAT ARE THE ECONOMIC CONSEQUENCES?

25 A WELL, LET ME SUMMARIZE THEM AND SORT OF GO

1 THROUGH THE TILE. I THINK THE FIRST CONCEPT WAS
2 THAT SAMSUNG'S CONDUCT DISTORTED THE DECISION
3 MAKING PROCESS AT ETSI.

4 SECOND, THAT DISTORTION HAS LED TO A
5 CHOICE OF TECHNOLOGY THAT MAY NOT HAVE BEEN CHOSEN
6 BUT FOR ITS CONDUCT.

7 NUMBER THREE, IT ENABLED SAMSUNG'S
8 TECHNOLOGY TO BE INTRODUCED, AT LEAST THEY CLAIM IT
9 HAS BEEN INTRODUCED, BECOME PART OF THE STANDARD.
10 THEY THINK OF THEMSELVES AS STANDARD ESSENTIAL
11 TECHNOLOGIES.

12 AS A FINAL STEP, BECAUSE THEY ARE NOW
13 STANDARD, PROCEED TO SELL STANDARD ESSENTIAL
14 TECHNOLOGIES FOR THESE TWO TYPES OF FEATURES THAT
15 UMTS IMPLEMENTS, THEY HAVE ACQUIRED WHAT I CALL THE
16 HOLDUP POWER, THE PATENT OWNER HOLDUP POWER, AND
17 THAT IS THE RISK THAT THE STANDARD SETTING CREATES,
18 AND THAT'S THE RISK THAT THE PROVISION 6.1 IS
19 SUPPOSED TO CONTROL.

20 Q DR. ORDOVER, AS AN ECONOMIST, HOW DO YOU
21 MEASURE THE TYPES OF CONSEQUENCES THAT YOU'VE
22 DESCRIBED?

23 A WELL, THE -- FIRST OF ALL, YOU CAN LOOK AT THE
24 CONSEQUENCES AN INCENTIVE TO INNOVATE, YOU CAN LOOK
25 AT THE CONSEQUENCES OF THE PRICING OF THE

1 TECHNOLOGY, WHICH IS CRITICAL INPUT INTO THE COST
2 OF MANUFACTURING THESE HANDSETS.

3 YOU CAN LOOK AT THE OVERALL PRICING IN
4 THE MARKETPLACE, AND IN PARTICULAR, THE QUESTION
5 BECOMES THAT OF WHETHER YOU HAVE SEEN AN EMERGENCE
6 OF MARKET POWER OR MONOPOLY POWER IN THE HANDS OF
7 THE FIRM THAT IS SUPPLYING THE TECHNOLOGY.

8 Q NOW, SIR, ARE YOU FAMILIAR WITH A CONCEPT
9 CALLED A TECHNOLOGY MARKET?

10 A YES, I AM.

11 Q WHAT IS A TECHNOLOGY MARKET?

12 A WELL, THE PLACE, THE SOURCE CODE FOR IT, THAT
13 IDEA; IN THE UNITED STATES DEPARTMENT OF JUSTICE
14 FEDERAL TRADE COMMISSION GUIDELINES FOR LICENSING
15 OF INTELLECTUAL PROPERTY.

16 AND THESE GUIDELINES DESCRIBE THE
17 TECHNOLOGY MARKET AS CONSISTING OF TECHNOLOGIES
18 THAT A REASONABLE GROUP SUBSTITUTES FOR EACH OTHER.
19 THEY DON'T HAVE TO BE PERFECT SUBSTITUTES, BUT THEY
20 HAVE TO BE GOOD ENOUGH SUBSTITUTES SO THAT IN THE
21 MARKETPLACE, IF ALL OF THEM ARE PRESENT, THEY WILL
22 PRESS DOWN ON THE PRICE OF THE TECHNOLOGY, WHICH IS
23 THE LICENSE PRICES.

24 GOING BACK TO THE PLUGS, THE TECHNOLOGY
25 MARKET WOULD CONSIST OF THE THREE TYPES OF PLUG

1 SOLUTIONS, BUT AFTER THE STANDARD IS SET, IT'S
2 GOING TO BE ONLY ONE TECHNOLOGY IN THE RELEVANT
3 MARKET.

4 Q NOW, COULD YOU EXPLAIN TO THE JURY, PLEASE,
5 THE DIFFERENCE BETWEEN THE TECHNOLOGY MARKET ON THE
6 ONE HAND AND A PRODUCT MARKET ON THE OTHER?

7 A YES. JUST SOME OF THE EXAMPLES I'M GOING TO
8 USE THE ONE THAT I USE IN MY CLASS. SO YOU MAY
9 HAVE A MARKET FOR TECHNOLOGIES TO MAKE JAM. THAT
10 TECHNOLOGY MARKET IS BASICALLY, IN THE OLDEN DAYS
11 YOU WOULD TAKE THE CHERRIES AND YOU COULD COOK THEM
12 DOWN IN THE POT. BUT THESE DAYS, OF COURSE THIS IS
13 NOT THE WAY JAM IS MADE. AT THE SAME TIME, THERE
14 IS A DOWNSTREAM MARKET FOR JAM. THERE ARE MANY
15 FIRMS PRODUCING JAM AND THEY COMPETE ON TOP OF THE
16 TECHNOLOGY WITH THEIR OWN INNOVATIONS.

17 SO IN THE TECHNOLOGY MARKET, WE HAVE
18 COMPETING JAM MAKING TECHNOLOGIES, AND ON THE LOWER
19 LEVEL, WHICH IS CALLED THE DOWNSTREAM MARKET IN
20 ECONOMICS, WE HAVE JAMS.

21 AND HOPEFULLY THERE'S A VIBRANT
22 COMPETITION UPSTREAM AND THE TECHNOLOGY MARKET AND
23 HOPEFULLY THERE IS VIBRANT COMPETITION IN THE
24 DOWNSTREAM MARKET, WHICH IS THE JAMS .

25 Q NOW, SIR, FOR SAMSUNG'S '516 AND '941 PATENTS,

1 HAVE YOU ATTEMPTED TO DETERMINE RELEVANT TECHNOLOGY
2 MARKETS?

3 A YES. I THINK THERE WAS RELEVANT TESTIMONY BY
4 DR. KIM AND KNIGHTLY WHICH DESCRIBE THE RELEVANT
5 TECHNOLOGIES AS CENTERING ON THE TECHNOLOGIES THAT
6 SAMSUNG SPONSORED INTO THE STANDARD, AND ALL THE
7 OTHER TECHNOLOGIES THAT COULD HAVE PERFORMED THE
8 FEATURES ON WHICH THOSE TECHNOLOGIES READ.

9 Q NOW, ARE YOU REFERRING TO TECHNICAL
10 ALTERNATIVES?

11 A YES, I AM REFERRING TO TECHNICAL ALTERNATIVES,
12 AND I'M REMINDING MYSELF, AND EVERYONE ELSE, THAT
13 THESE TECHNICAL ALTERNATIVES DO NOT HAVE TO BE
14 PERFECT SUBSTITUTES, BUT THEY HAVE TO BE GOOD
15 ENOUGH SUBSTITUTES THAT PRIOR TO STANDARDIZATION,
16 THEY COULD HAVE BEEN REASONABLE ALTERNATIVES FROM
17 THE STANDPOINT OF THE DESIGNER OF THE STANDARD.

18 Q NOW, YOU WERE HERE FOR THE TESTIMONY OF
19 DR. KIM AND DR. KNIGHTLY?

20 A YES.

21 Q ON THE ISSUE OF TECHNICAL ALTERNATIVES, WE'RE
22 GOING TO LET THE JURY EVALUATE THE TESTIMONY OF
23 DR. KIM AND DR. KNIGHTLY AND I'M NOT GOING TO ASK
24 YOU ABOUT THOSE TECHNICAL ISSUES, OKAY?

25 A OKAY. THAT'S GOOD.

1 Q IF YOU COULD, THOUGH, THE TECHNOLOGY MARKETS
2 THAT YOU'VE DESCRIBED, WHAT IS THE GEOGRAPHIC SCOPE
3 OF THOSE MARKETS?

4 A I THINK IT'S COMMONLY RECOGNIZED, BY
5 ECONOMISTS AND INTELLECTUAL PROPERTY LICENSES
6 GUIDELINES THAT I REFERENCED ALREADY, THEY
7 GENERALLY REFER TO TECHNOLOGY MARKETS AS BEING
8 GLOBAL.

9 NOW, WHAT IS A TECHNOLOGY MARKET? WELL,
10 AS I SAID, IT'S A MARKET THAT CONSISTS OF THE
11 ALTERNATIVE TECHNOLOGIES FOR A PARTICULAR FEATURE,
12 AND IT'S QUITE CLEAR THAT THESE TECHNOLOGIES CAN BE
13 PROCURED FROM ANYWHERE IN THE WORLD.

14 THESE -- THESE ARE RECOGNIZED BY ETSI,
15 WHICH IS INVITING PARTICIPATION OF FIRMS LOCATED IN
16 EVERY CONCEIVABLE COUNTRY OF THE WORLD. IT IS
17 NOT -- EVEN THOUGH IT'S A EUROPEAN ORGANIZATION, WE
18 KNOW THAT MEMBERS ARE GLOBAL FIRMS OR INTERNATIONAL
19 FIRMS.

20 AND, THEREFORE, I WOULD SAY THAT THE
21 TECHNOLOGY MARKET IS GLOBAL, UNLIKE THE MARKET FOR
22 HAIRCUTS. IF YOU LIVE IN SAN JOSE, YOU'RE NOT
23 LIKELY GOING TO SPEND LOTS OF MONEY TO GO TO
24 SAN FRANCISCO FOR A HAIRCUT, ALTHOUGH SOME PEOPLE
25 HAVE BEEN KNOWN TO DO THAT.

1 SO THE POINT I'M MAKING THAT HOW BROAD IS
2 THE GEOGRAPHIC MARKET DEPENDS ON THE PRODUCT,
3 DEPENDS ON THE -- ON HOW COSTLY IT IS TO GET IT
4 FROM SOMEWHERE ELSE, WHETHER THE QUALITY AS IT
5 TRAVELS LONG DISTANCES, NONE OF THAT HAPPENS TO
6 TECHNOLOGY. IT'S FREE TO TRANSPORT. IT WAS AS
7 GOOD AS IT WAS IN KOREA WHEN IT GOT TO THE
8 UNITED STATES.

9 Q NOW, SIR, JUST TO WE'RE CLEAR, YOU'RE DEFINING
10 YOUR TECHNOLOGY MARKETS BY REFERENCE TO FEATURES IN
11 THE STANDARD?

12 A YES, THE TECHNOLOGY MARKETS IN THIS CASE ARE
13 COEXTENSIVE, YOU CAN THINK OF IT THAT WAY, WITH THE
14 ACTUAL FEATURES THAT I'M DESCRIBING IN THOSE
15 RELEASES THAT PROFESSOR WALKER WALKED US THROUGH
16 THIS MORNING.

17 Q NOW, DO YOU HAVE AN OPINION AS TO WHETHER
18 SAMSUNG ACQUIRED MONOPOLY POWER IN PARTICULAR
19 TECHNOLOGY MARKETS?

20 A YES. BUT BEFORE I EXPLAIN, LET ME STAND BACK
21 FOR A MOMENT AND MAKE A DISTINCTION BETWEEN MARKET
22 POWER AND MONOPOLY POWER.

23 MANY FIRMS HAVE MARKET POWER IN THE
24 ECONOMY. WHAT DOES THAT MEAN? THEY CAN MANIPULATE
25 THEIR PRICES UP AND DOWN A LITTLE BIT WITHOUT

1 GAINING ALL OF THE BUSINESS FROM EVERYBODY OR
2 LOSING ALL OF THE BUSINESS.

3 SO THE FACT THAT YOU CAN HAVE SOME
4 FLEXIBILITY IN YOUR PRICING IS DEFINED IN ECONOMICS
5 AS MARKET POWER.

6 WHAT DO I MEAN BY MONOPOLY POWER? WELL,
7 MONOPOLY POWER IS SOMETHING GREATER THAN THAT, IT
8 IS THE ABILITY TO RAISE PROFITABLY, AND THAT'S THE
9 KEY THING, PROFITABLY THE PRICE ABOVE THE BENCHMARK
10 OR COMPETITIVE LEVEL WITHOUT LOSING THE BUSINESS
11 EITHER TO THE EXISTING FIRMS OR INVITING ENOUGH NEW
12 ENTRANTS TO TAKE THE BUSINESS AWAY FROM YOU. SO IT
13 HAS TO BE A SIGNIFICANT INCREASE FOR A PERSISTENT
14 PERIOD.

15 Q HAS SAMSUNG EXERCISED MONOPOLY POWER?

16 A WELL, IT GAINED MONOPOLY PRESENCE IN THESE TWO
17 TECHNOLOGY MARKETS, AND I THINK AS WE HEARD FROM
18 MR. DONALDSON, IT HAS ACTED IN A WAY THAT, THAT
19 EVIDENCES THAT IT HAS GAINED MONOPOLY POWER BY
20 VIRTUE OF MAKING LICENSING DEMANDS TO SAMSUNG -- TO
21 APPLE, AND ONLY TO APPLE, ACTUALLY, THAT ARE
22 INCONSISTENT WITH THE FRAND PRINCIPLE.

23 THAT, TO ME, EVIDENCES THAT THEY'VE
24 GAINED MONOPOLY POWER BECAUSE NOBODY CAN NOW TAKE
25 THEM OUT OF THE STANDARD UP UNTIL SUCH TIME AS THE

1 SAYING WE RECEIVED JURY NOTE NUMBER 3. WOULD THAT
2 BE HELPFUL? HE CAN ALSO DO A PHONE TREE.

3 MR. MINTZ IS HERE FROM THE MERCURY NEWS.
4 WE CAN NOTIFY AND HE CAN LET -- HE'S THE ONE THAT'S
5 BASED IN THIS COURTHOUSE, IF HE CAN LET FOLKS KNOW,
6 JUST IN CASE ECF MAY SOME DOWN, IT HAS IN THE PAST,
7 AND THAT WAY WE CAN STILL COMMUNICATE WITH YOU.

8 THE WITNESS: E-MAIL ME.

9 THE COURT: WE DON'T WANT TO BE
10 RESPONSIBLE FOR E-MAILING EVERYBODY. WE COULD LET
11 MR. MINTZ KNOW AND IF YOU ALL COULD WORK IT OUT.

12 THE WITNESS: YES, WE'LL WORK ON IT,
13 JUDGE.

14 AUDIENCE: IS BETTER THAN PHONE TREE.

15 THE COURT: IS MS. PARKER-BROWN WILL BE
16 BACK NEXT WEEK, AND SHE'LL E-MAIL MR. MINTZ. WE
17 CAN ALSO FILE THINGS ON ECF SINCE YOU'RE PROBABLY
18 ALSO GETTING ECF NOTICES, AND MAYBE IT WOULD BE
19 EASIER -- WE CAN JUST E-FILE WHEN THE JURY STARTED
20 EACH DAY AND WHEN THEY'VE LEFT, AND IF THERE'S EVER
21 A NOTE OR A VERDICT, WE'LL JUST DO A CLERK'S
22 NOTICE.

23 AUDIENCE: THANK YOU VERY MUCH.

24 THE COURT: YOU CAN FIND THAT, BETWEEN
25 THAT AND THE E-MAIL TREE, I THINK WE SHOULD BE

1 OKAY.

2 THE WITNESS: THANK YOU.

3 THE COURT: ALL RIGHT. LET'S GO AHEAD
4 AND FINISH UP THEN.

5 (WHEREUPON, THE FOLLOWING PROCEEDINGS
6 WERE HELD IN THE PRESENCE OF THE JURY:)

7 THE COURT: WELCOME BACK. WE'RE IN OUR
8 LAST 36 MINUTES.

9 ALL RIGHT. MR. LEE.

10 MR. LEE: APPLE RESTS, YOUR HONOR.

11 THE COURT: OH, OKAY. ALL RIGHT.

12 MR. PRICE: WE SAVED TIME FOR ME.

13 THE COURT: ALL RIGHT. THEN IT'S 3:07.
14 LET'S GO BACK THEN TO SAMSUNG. WHO WOULD YOU LIKE
15 TO CALL?

16 MS. MAROULIS: YOUR HONOR, SAMSUNG CALLS
17 DR. DAVID TEECE.

18 THE COURT: YOU KNOW, JUST BELTS AND
19 SUSPENDERS, WE'RE GOING TO RESWEAR IN EVERYONE LIKE
20 WE DID WITH THE OTHER WITNESSES. OKAY.

21 MS. MAROULIS: YES.

22 THE COURT: PLEASE RAISE YOUR RIGHT HAND.

23 **DAVID TEECE,**
24 BEING RECALLED AS A WITNESS ON BEHALF OF THE
25 DEFENDANTS, HAVING BEEN PREVIOUSLY SWORN, WAS

1 EXAMINED AND TESTIFIED AS FOLLOWS:

2 THE WITNESS: I DO.

3 THE CLERK: THANK YOU. PLEASE BE SEATED.

4 THE COURT: ALL RIGHT. TIME IS NOW 3:08,
5 GO AHEAD, PLEASE WITH YOUR DIRECT.

6 **DIRECT EXAMINATION**

7 BY MS. MAROULIS:

8 Q WELCOME BACK. DO YOU AGREE WITH THE TESTIMONY
9 OF DR. WALKER THAT DISCLOSURE TO ETSI AFTER THE
10 ADOPTION OF THE STANDARD IS UNTIMELY?

11 A NO. BASED ON WHAT I'VE OBSERVED FROM THE
12 PUBLIC DATABASE OF ETSI, I DON'T.

13 Q HAVE YOU CONDUCTED AN EMPIRICAL STUDY OF HOW
14 THE PARTICIPANTS IN ETSI DISCLOSE THEIR IPR'S TO
15 ETSI?

16 A I HAVE.

17 Q LET'S TAKE A LOOK AT SDX 3975.006. IS THIS
18 THE SLIDE THAT YOU PREPARED TO SUMMARIZE YOUR
19 FINDINGS?

20 MR. LEE: YOUR HONOR, I OBJECT. THIS WAS
21 EXCLUDED.

22 MS. MAROULIS: YOUR HONOR, THE OBJECTION
23 WAS OVERRULED, I BELIEVE.

24 MR. LEE: NO. IT WAS SUSTAINED AS TO 06
25 AND THEY WERE ALLOWED TO SHOW WHAT WAS 01 TO 05

1 ONLY.

2 THE COURT: ALL RIGHT. LET ME SEE.

3 MS. MAROULIS: YOUR HONOR, I'LL MOVE ON
4 TO 05 WHILE IT'S BEING CHECKED BY MY LEAGUES.

5 THE COURT: OKAY.

6 BY MS. MAROULIS:

7 Q LET'S TAKE A LOOK AT 3975.005. WHAT DOES THIS
8 SLIDE REPRESENT, MR. TEECE?

9 A THIS IS ONE YEAR, 2011, WHERE I WENT INTO THE
10 PUBLIC DATABASE THAT DR. WALKER REFERRED TO AND I
11 MEASURED IN DAYS THE TIME FROM THE ADOPTION OF THE
12 STANDARD TO THE DISCLOSURE BY THREE PARTIES HERE OF
13 INTELLECTUAL PROPERTY POTENTIAL AND AS YOU CAN SEE
14 FOR APPLE, THAT TIME LAPSE WAS ABOUT 250 DAYS ON
15 AVERAGE.

16 FOR HTC, IT WAS ABOUT 700 DAYS ON
17 AVERAGE. AND FOR NOKIA, IT WAS ACTUALLY NORTH OF A
18 THOUSAND DAYS ON AVERAGE. SO WE'RE NOT TALKING
19 DAYS, WE'RE ACTUALLY TALKING MONTHS AND YEARS.

20 Q HAVE YOU ALSO STUDIED SUCH PARTICIPANTS AS
21 ERICSSON AND MOTOROLA FOR THE PURPOSE OF THIS
22 ANALYSIS?

23 A YES.

24 Q AND DID THEY EXHIBIT SIMILAR DELAYS?

25 A YES.

1 Q DO YOU RECALL WHAT DELAYS THEY EXHIBITED ON
2 AVERAGE?

3 A I DON'T RECALL THE NUMBER. BUT WE'RE TALKING
4 WEEKS AND MONTHS AND SOMETIMES YEAR.

5 Q DR. TEECE, HOW DOES THIS EMPIRICAL STUDY
6 EFFECT YOUR ANALYSIS OF THE TIME LIMITS OF THE
7 DISCLOSURE TO ETSI?

8 A WELL, WITH RESPECT TO RULES, AS AN ECONOMIST,
9 I LOOK AT THE WAY PEOPLE BEHAVE. THAT TELLS ME THE
10 MOST ABOUT WHAT THE RULES ARE. AND THIS IS THE WAY
11 THAT PARTICIPANTS BEHAVE. THEY DON'T DISCLOSE, OR
12 THEY DON'T CERTAINLY HARDLY EVER DISCLOSE BEFORE
13 THE PATENTS ARE ISSUES.

14 MR. LEE: I OBJECT, YOUR HONOR. THAT'S
15 BEYOND WHAT YOUR HONOR ALLOWED. HE WAS ALLOWED TO
16 DISCUSS THE DELAYS. THERE'S NO FOUNDATION FOR --

17 MS. MAROULIS: YOUR HONOR, THERE WAS
18 OBJECTIONS TO TWO SPECIFIC EXHIBITS, BOTH WERE
19 OVERRULED BY YOUR ORDER.

20 THE COURT: I KNOW. THE OBJECTION SO
21 THIS SLIDE WAS OVERRULED. SO.

22 MR. LEE: RIGHT, AND I HAVEN'T OBJECTED
23 TO THAT THAT. THIS TIME I BELIEVE HE'S GOING
24 BEYOND THIS NOW AND TALK ABOUT WHEN THEY DISCLOSE.
25 THESE SLIDES DON'T SHOW ANYTHING ABOUT DISCLOSURE.

1 NOW HE'S GIVING OPINION ON WHEN THEY DISCLOSE.
2 THERE'S NOTHING BEFORE THE COURT ABOUT THAT AND
3 THERE'S NOTHING --

4 THE COURT: OVERRULED. I'M GOING TO LET
5 YOU CROSS. GO AHEAD, PLEASE.

6 BY MS. MAROULIS:

7 Q DR. TEECE, HOW DOES THIS EMPIRICAL STUDY
8 AFFECT YOUR ANALYSIS. FINISH YOUR ANSWER, PLEASE.

9 A IT SHOWS THAT THE PRACTICE AT ETSI IS THAT
10 COMPANIES FREQUENTLY PROVIDE INFORMATION ABOUT
11 PATENTS CONSIDERABLY AFTER THE STANDARDS ARE
12 ISSUED.

13 Q THANK YOU, DR. TEECE. YOU HEARD MR. DONALDSON
14 TESTIFY ABOUT THE FRAND OFFER THAT SAMSUNG MADE TO
15 APPLE. WERE YOU HERE?

16 A I WAS.

17 Q AND IN HIS OPINION, THE RATE THAT SAMSUNG
18 OFFERED TO APPLE WAS NOT FAIR AND REASONABLE. DO
19 YOU AGREE WITH THAT OPINION?

20 A NO, I DON'T.

21 Q WHY DO YOU DISAGREE WITH MR. DONALDSON?

22 A ONE, IT WAS IN THE RANGE OF RATES THAT I'VE
23 OBSERVED FROM OTHER COMPANIES; AND, TWO, THE LETTER
24 SPECIFICALLY WAS AN INVITATION TO CONSIDER A
25 CROSS-LICENSE, WHICH IF THAT NEGOTIATION HAD BEEN

1 PURSUED, COULD HAVE RESULTED THAT THE RATE GOING
2 AWAY AND POSSIBLY JUST A BALANCING PAYMENT.

3 Q WHAT TYPICALLY HAPPENS ONCE SUCH AN OFFER IS
4 MADE?

5 A IT'S USUALLY RESPONDED TO.

6 Q TO YOUR KNOWLEDGE, HAS APPLE EVER RESPONDED TO
7 SAMSUNG WITH A COUNTER OFFER OF ROYALTY RATES?

8 A NOT TO MY KNOWLEDGE.

9 Q DR. TEECE, MR. DONALDSON ALSO TESTIFIED THAT
10 THE BASE USED IN THE SAMSUNG OFFER LETTER WAS NOT
11 FRAND.

12 DO YOU AGREE WITH THAT CONCLUSION?

13 A I DISAGREE WITH THAT CONCLUSION.

14 Q WHY DO YOU DISAGREE WITH THAT CONCLUSION?

15 A HE BELIEVED THE BASE SHOULD BE THE BASEBAND
16 CHIP AND I LOOKED AT ALL -- ALL THE LICENSES I
17 LOOKED AT, NOBODY ELSE USED THE BASEBAND CHIP. IT
18 WAS REFERRING EITHER TO SET SALES OR SOME UNIT
19 SALES MEASURE.

20 Q SIR, WHAT ARE YOU RELYING ON WHEN YOU SAY THAT
21 YOU LOOKED AT LICENSES AND HAVE NOT SEEN THE
22 BASEBAND CHIP USED AS A MEASURE OF BASE?

23 A I LOOKED AT SAMSUNG'S LICENSES, NOKIA'S
24 LICENSES, AND A NUMBER OF OTHERS REPORTED IN THE
25 PUBLIC DATABASES.

1 Q THANK YOU, SIR.

2 WHAT ABOUT -- YOU WERE HERE ALSO FOR
3 DR. ORDOVER'S PRESENTATION; CORRECT?

4 A I WAS.

5 Q WHAT IS YOUR OPINION WITH REGARD TO THE MARKET
6 DEFINITION PROPOSED BY DR. ORDOVER?

7 A VERY UNUSUAL, HIS DEFINITION IS VERY UNUSUAL.

8 AND NOR DID HE DO WHAT AN ECONOMIST IS
9 SUPPOSED TO DO TO ESTABLISH A MARKET, WHICH IS LOOK
10 FOR COMMERCIALY VIABLE SUBSTITUTES. HE WAS VERY
11 CLEAR IN HIS REPORT THAT HE ASSUMED THAT THERE WAS
12 SUBSTITUTES WHEN, IN FACT, ECONOMIC ANALYSIS
13 REQUIRES THAT YOU PROVE THAT THERE ARE SUBSTITUTES.

14 Q WHAT IS THE RELEVANCE OF IDENTIFYING
15 SUBSTITUTES TO DEFINING THE MARKET?

16 A YOU CANNOT DEFINE AN ANTITRUST MARKET, OR A
17 RELEVANT ANTITRUST MARKET WITHOUT DOING A CAREFUL
18 ECONOMIC ANALYSIS OF THE SUBSTITUTES THAT ARE
19 AVAILABLE.

20 Q WHAT TYPE OF DATA DOES AN ECONOMIST ANALYZE TO
21 ESTABLISH THAT ONE TECHNOLOGY CAN SUBSTITUTE FOR
22 ANOTHER?

23 A YOU LOOK AT COST DATA, PERFORMANCE DATA, YOU
24 WANT TO SHOW THAT ECONOMICALLY THESE VARIOUS
25 TECHNOLOGIES CAN BE SUBSTITUTED. IT'S NOT ENOUGH

1 FOR A TECHNICAL PERSON TO SAY MAYBE THEY WILL BE
2 TECHNICALLY SIMILAR. THEY HAVE TO BE ECONOMICALLY
3 AND COMMERCIALY SIMILAR.

4 Q DID DR. ORDOVER LOOK AT THAT DATA IDENTIFIED
5 WHAT TECHNOLOGIES HE TALKED ABOUT AS SUBSTITUTE
6 ITSELF?

7 A HE DID NOT.

8 Q WHAT DATA DID HE LOOK?

9 A HE LOOKED AT VARIOUS INFORMATION BY TECHNICAL
10 EXPERTS WHICH WAS COMPLETELY BEREFT OF ANY ECONOMIC
11 ANALYSIS.

12 Q THEN HOW DOES HE GO ABOUT DEFINING THE MARKET
13 DEFINITION?

14 A IN ESSENCE HE ASSUMES HIS MARKET BASED ON THE
15 SCOPE OF THE PATENT.

16 Q IS THIS APPROACH CONSISTENT WITH ECONOMIC
17 PRINCIPLES AS YOU UNDERSTAND THEM?

18 A IT IS NOT.

19 Q WHAT ARE THE IMPLICATIONS OF ADOPTING THIS
20 MARKET DEFINITION PROPOSED BY DR. ORDOVER?

21 A BASICALLY HE ASSUMES HIS RESULT, THAT THERE IS
22 MONOPOLY POWER BECAUSE HE HASN'T DONE THE
23 BACKGROUND WORK THAT'S NECESSARY TO ESTABLISH THAT
24 THERE ARE COMMERCIALY VIABLE SUBSTITUTES.

25 Q AND WHAT IS THE CONSEQUENCE OF THAT FOR THE

1 MARKET PARTICIPANTS IN THE STANDARD SETTING
2 ORGANIZATIONS?

3 A IF THE DESIGNER'S CORRECT, EVERYBODY IS A
4 MONOPOLIST. ANYBODY WITH A PATENT IS A MONOPOLIST
5 AND THERE'S THOUSANDS OF MONOPOLISTS OUT THERE
6 WHICH IS CLEARLY, IN MY VIEW, NOT CORRECT WHY.

7 Q SIR, HAS SAMSUNG LICENSED ITS STANDARD
8 ESSENTIAL PATENTS TO OTHER COMPANIES?

9 A I BELIEVE SO, YES.

10 Q AND HAVE YOU TESTIFIED YESTERDAY REGARDING
11 SAMSUNG'S LICENSING OF THESE PATENTS TO OTHER
12 COMPANIES?

13 A YES.

14 Q IS IT CORRECT THAT EXHIBIT 630 CONTAINS THE
15 INFORMATION REGARDING THAT?

16 A IT DOES.

17 Q TO YOUR KNOWLEDGE, IS APPLE PAYING ANYTHING TO
18 SAMSUNG FOR SAMSUNG'S DECLARED ESSENTIAL PATENTS?

19 A NOT TO MY KNOWLEDGE.

20 MS. MAROULIS: ONE MINUTE, YOUR HONOR.

21 YOUR HONOR, THIS WITNESS CAN BE EXCUSED,
22 OR PASS THE WITNESS.

23 MR. LEE: I'D LIKE TO ASK A FEW
24 QUESTIONS.

25 THE COURT: ALL RIGHT. 3:16. GO AHEAD.

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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 17, 2012