

# **EXHIBIT 9**

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA  
3 SAN JOSE DIVISION

4 APPLE INC., a California  
corporation,

5  
6 Plaintiff,

7 vs.

Case No. 11-CV-01846-LHK

8 SAMSUNG ELECTRONICS CO., LTD.,  
a Korean business entity;

9 SAMSUNG ELECTRONICS AMERICA,  
INC., a New York corporation;

10 SAMSUNG TELECOMMUNICATIONS  
AMERICA, LLC, a Delaware  
11 limited liability company,

12 Defendants.

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14  
15  
16 CONFIDENTIAL  
17 ATTORNEYS' EYES ONLY

18  
19 VIDEOTAPED DEPOSITION OF DUNCAN KERR  
Redwood Shores, California  
20 Wednesday, October 26, 2011

21  
22 Reported by:

LORRIE L. MARCHANT, CSR No. 10523

23 RPR, CRR, CCRR, CLR

24 JOB NO. 42863

25

1                   October 26, 2011

2                   10:09 a.m.

3

4   Videotaped Deposition of DUNCAN KERR,  
5   held at the offices of Quinn Emanuel  
6   Urquhart & Sullivan, LLP, 555 Twin  
7   Dolphin Drive, Suite 500, Redwood  
8   Shores, California, before Lorrie L.  
9   Marchant, a Certified Shorthand  
10   Reporter, Registered Professional  
11   Reporter, Certified Realtime Reporter,  
12   California Certified Realtime Reporter  
13   and Certified LiveNote Reporter.

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

2 FOR THE PLAINTIFF APPLE INC.:

3 MORRISON & FOERSTER

BY: ANDREW E. MONACH, ESQ.

4 425 Market Street

San Francisco, California 94105

5

6

7 FOR THE DEFENDANTS SAMSUNG:

8 QUINN EMANUEL URQUHART & SULLIVAN

BY: MARGRET CARUSO, ESQ.

9 SCOTT HALL, ESQ.

555 Twin Dolphin Drive

10 Redwood Shores, California 94065

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12

13 ALSO PRESENT:

14 Tom Vigdal, Apple Litigation Counsel

15 Nick Kasimatis, Videographer

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1 504,889, and you are identified as an inventor on  
2 that design patent.

3 Do you see that?

4 A. Yes, I do.

5 Q. Do you have any understanding of what the  
6 design reflected in Design Patent '889 reflects?

7 MR. MONACH: Objection. Vague and  
8 ambiguous. Objection. Calls for a legal conclusion  
9 from a nonlawyer witness.

10 THE WITNESS: An electronic device.

11 BY MS. CARUSO:

12 Q. Is it an electronic device that you  
13 invented?

14 MR. MONACH: Object to the extent it calls  
15 for a legal conclusion.

16 But you can give your understanding of  
17 whether you participated or not.

18 THE WITNESS: So as a design team, we  
19 collaborate completely on all the projects that we  
20 work on. So if this is a -- a record of something  
21 that we created, then, yes, I contributed to that.

22 BY MS. CARUSO:

23 Q. Do you have any understanding of whether  
24 this is a record of something you created?

25 MR. MONACH: Objection. Vague.

1 THE WITNESS: I understand it is a patent  
2 document, yes.

3 BY MS. CARUSO:

4 Q. Did you create a product that looks like  
5 what's in -- described in Design Patent '889?

6 MR. MONACH: Objection. Vague with respect  
7 to "product." Vague with respect to "like." And I  
8 object to the extent it calls for a legal conclusion  
9 about the scope of the patent.

10 THE WITNESS: Again, I'm a designer. I'm  
11 not a patent attorney. I don't know fully how to --  
12 I don't know how to interpret these -- these  
13 drawings.

14 BY MS. CARUSO:

15 Q. Are you aware of any product that Apple has  
16 released that these drawings show the design of?

17 MR. MONACH: Same objection. Object to the  
18 extent it calls for a legal conclusion. Lack of  
19 foundation.

20 THE WITNESS: One more time.

21 BY MS. CARUSO:

22 Q. Are you aware of any products that Apple  
23 has released that has the design reflected in these  
24 drawings of D'889?

25 MR. MONACH: Same objection.

1 THE WITNESS: What do you mean by "has the  
2 design"?

3 BY MS. CARUSO:

4 Q. Looking at the D'889, is there any product  
5 that you are aware of that you created that bears  
6 any resemblance to the drawings in the D'889?

7 MR. MONACH: Same objection. Vague.

8 THE WITNESS: I'd have to understand what  
9 these drawings represent to be able to answer that  
10 question.

11 BY MS. CARUSO:

12 Q. And you have no understanding of what these  
13 drawings represent?

14 MR. MONACH: Object to the form of the  
15 question.

16 THE WITNESS: I could make a professional  
17 interpretation.

18 BY MS. CARUSO:

19 Q. What is that profession interpretation?

20 A. A handheld device, electronic device. It's  
21 a scale beyond this drawing, which is pretty  
22 ambiguous.

23 Q. And when you say "this drawing," you're  
24 referring to Figure 9?

25 A. Yes.

1 Q. Can you be any more specific than an  
2 electronic device?

3 A. Well, my professional interpretation would  
4 be there is a screen on this device. The user is  
5 looking at the screen and touching the screen.

6 Q. Do you -- at some point in your time with  
7 Apple, did you work on the design for a tablet?

8 A. Yes, I did.

9 Q. When was that?

10 A. I don't recall.

11 Q. If you wanted to understand what time that  
12 was, what would you do to figure that out?

13 MR. MONACH: Objection. Lack of  
14 foundation. Calls for speculation.

15 THE WITNESS: Going through documents.

16 BY MS. CARUSO:

17 Q. What kind of documents?

18 A. E-mail. Drawings.

19 Q. When you say "e-mail," what e-mail are you  
20 referring to?

21 MR. MONACH: Objection. Vague. Lack of  
22 foundation.

23 THE WITNESS: I would search through my  
24 e-mail for anything that was relevant.

25



1 BY MS. CARUSO:

2 Q. Do you have any understanding of what the  
3 sort of interior line that goes within the outline  
4 of the front surface represents?

5 MR. MONACH: Same objection. Vague.

6 THE WITNESS: So this dot -- this dotted  
7 line (indicating)?

8 BY MS. CARUSO:

9 Q. Yes.

10 MR. MONACH: Same objection. Lack of  
11 foundation. And calls for a legal conclusion.

12 THE WITNESS: Again, as a designer, I would  
13 be interpreting this patent drawing, which I would  
14 understand that drawing to mean something for a  
15 patent attorney. I would be making an  
16 interpretation of it as a designer.

17 BY MS. CARUSO:

18 Q. Do you have any understanding of what it  
19 represents?

20 MR. MONACH: Objection. Lack of  
21 foundation. Calls for a legal conclusion.

22 Continuing instruction not to reveal any  
23 attorney-client communications, if you had them.

24 THE WITNESS: It could be a number of  
25 things.

1 BY MS. CARUSO:

2 Q. Which are?

3 MR. MONACH: Same objection.

4 THE WITNESS: Making the assumption that  
5 this -- has a display visible from the front  
6 surface, it could be the edge of the active area of  
7 the display.

8 If this were a -- a display which had touch  
9 sensing on it, it could be a demarcation of what's  
10 active and what's inactive from a touch perspective.  
11 It could be -- it could be some -- a design detail  
12 on the front surface.

13 It could be -- presuming, again, that this  
14 is a reflective material which is transparent, there  
15 could be some detail on the back side of that  
16 surface. It could be some component inside the  
17 assembly, behind the transparent surface.

18 BY MS. CARUSO:

19 Q. In Figure 2, on the right-hand side of the  
20 drawing, what looks to be the side edge of the  
21 device tapers towards the rear of the drawing.

22 Do you see that?

23 A. You mean --

24 MR. MONACH: Objection.  
25

1 BY MS. CARUSO:

2 Q. Yes.

3 MR. MONACH: Assumes facts not in evidence.  
4 Objection to the extent it calls for a legal  
5 conclusion.

6 THE WITNESS: I see that tapering, yes.

7 BY MS. CARUSO:

8 Q. Do you have an understanding of what that  
9 tapering represents?

10 MR. MONACH: Objection. Vague. Object to  
11 the extent it calls for a legal conclusion.

12 THE WITNESS: Again, I'm a designer, not a  
13 patent attorney. I don't understand the -- the  
14 constraints or the -- what the goals of a patent  
15 attorney drawing -- patent drawing are.

16 My design interpretation of that could be a  
17 number of things.

18 BY MS. CARUSO:

19 Q. Which are?

20 MR. MONACH: Same objection.

21 THE WITNESS: It could be an attempt at a  
22 perspective representation of this object. It could  
23 be that the shape of the -- the object, actually the  
24 thickness of it, changes from one corner to the  
25 other corner. It could be a combination of those.

1 BY MS. CARUSO:

2 Q. Do you recall creating a product at Apple  
3 in which the thickness of a handheld tablet device  
4 changed from one corner to the next?

5 A. I don't recall.

6 Q. Focusing on the upper right corner of  
7 Figure 2, that tapering portion that we were  
8 referring to earlier doesn't appear to go all the  
9 way to the top edge of the product.

10 Do you see that?

11 MR. MONACH: Objection. Assumes facts not  
12 in evidence. Object to the extent it asks for a  
13 legal conclusion from the witness.

14 THE WITNESS: Again, it's difficult for me  
15 to interpret this patent drawing. I'm not an expert  
16 on what lines on the patent drawing are supposed to  
17 represent.

18 BY MS. CARUSO:

19 Q. I'm not -- as a designer, how would you  
20 interpret this drawing if someone presented it to  
21 you?

22 MR. MONACH: Objection. Vague. Incomplete  
23 hypothetical. Object to the extent it calls for a  
24 legal conclusion since it's a patent drawing.

25 THE WITNESS: I find it ambiguous from a

1 design perspective.

2 BY MS. CARUSO:

3 Q. Why do you find it ambiguous?

4 A. I don't know what the lines represented in  
5 the drawing -- what they represent relative to a  
6 three-dimensional object.

7 Q. Going back to Kerr Exhibit 1036, if you  
8 could turn to page 10223.

9 I'll represent to you this is a copy of a  
10 photograph that Apple produced in connection with an  
11 application for the D -- what became the D'889  
12 patent.

13 Do you recognize what it's a photograph of?

14 A. I see a very blurry image. I -- I find  
15 this almost impossible to interpret.

16 Q. There appears to be a corner -- well, I'll  
17 just mark it on here and note this on the record.

18 I'm going to ask you about this black line  
19 within this white section here (indicating), which  
20 we'll just note as Point A. And it would  
21 continue -- sort of all of this black line would  
22 also be part of what I'm referring to as A.

23 Do you see that black line within the white  
24 border?

25 MR. MONACH: Object to the characterization

1 of the drawing -- or, I'm sorry, characterization of  
2 the photograph.

3 THE WITNESS: It's a very poor quality  
4 image. I see gray zones, white zones, darker zones,  
5 no clear edges. I mean, broadly, I think I follow  
6 your -- but it's a very poor representation.

7 BY MS. CARUSO:

8 Q. Unfortunately, this is what we have to work  
9 with.

10 What is pointed out on the exhibit now  
11 marked as Exhibit A of Kerr 1036, do you have an  
12 understanding of what that darker area might be?

13 MR. MONACH: Objection. Lack of  
14 foundation. Calls for speculation.

15 THE WITNESS: I don't know how to interpret  
16 this image. If you have the original photograph, I  
17 might be able to do better.

18 MS. CARUSO: Mr. Monach, did you bring with  
19 you the original photograph?

20 MR. MONACH: I don't have any original  
21 photographs of anything.

22 MS. CARUSO: Did you bring any of the  
23 mockups that we requested?

24 MR. MONACH: The two mockups that you have  
25 requested in previous depositions I believe are in