

EXHIBIT 1

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

APPLE INC., A CALIFORNIA CORPORATION,	)	C-11-01846 LHK
)	
	)	SAN JOSE, CALIFORNIA
PLAINTIFF,)	
	)	JULY 31, 2012
VS.)	
	)	VOLUME 2
SAMSUNG ELECTRONICS CO., LTD., A KOREAN BUSINESS ENTITY; SAMSUNG ELECTRONICS AMERICA, INC., A NEW YORK CORPORATION; SAMSUNG TELECOMMUNICATIONS AMERICA, LLC, A DELAWARE LIMITED LIABILITY COMPANY,)	PAGES 283-555
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DEFENDANTS.)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE LUCY H. KOH
UNITED STATES DISTRICT JUDGE

APPEARANCES ON NEXT PAGE

OFFICIAL COURT REPORTER: LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

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

2 FOR PLAINTIFF MORRISON & FOERSTER
3 APPLE: BY: HAROLD J. MCELHINNY
4 MICHAEL A. JACOBS
5 RACHEL KREVANS
6 425 MARKET STREET
7 SAN FRANCISCO, CALIFORNIA 94105

8 FOR COUNTERCLAIMANT WILMER, CUTLER, PICKERING,
9 APPLE: HALE AND DORR
10 BY: WILLIAM F. LEE
11 60 STATE STREET
12 BOSTON, MASSACHUSETTS 02109

13 BY: MARK D. SELWYN
14 950 PAGE MILL ROAD
15 PALO ALTO, CALIFORNIA 94304

16 FOR THE DEFENDANT: QUINN, EMANUEL, URQUHART,
17 OLIVER & HEDGES
18 BY: CHARLES K. VERHOEVEN
19 50 CALIFORNIA STREET, 22ND FLOOR
20 SAN FRANCISCO, CALIFORNIA 94111

21 BY: VICTORIA F. MAROULIS
22 KEVIN P.B. JOHNSON
23 555 TWIN DOLPHIN DRIVE
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25 REDWOOD SHORES, CALIFORNIA 94065

BY: MICHAEL T. ZELLER
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1 Q WERE YOU EVER TOLD BY ANYONE THAT YOU HAD TO
2 PICK PARTICULAR DESIGNS BECAUSE OF REQUIREMENTS
3 FROM THE COMPONENTS OR THE INTERNAL ELEMENTS OF THE
4 PHONE?

5 A NO.

6 Q HOW -- WHO WAS IN CONTROL OF YOUR DESIGN
7 PROCESS ULTIMATELY?

8 A WE WERE IN CONTROL OF OUR DESIGN PROCESS.

9 Q IS THERE A REASON WHY YOU DIDN'T PUT THE APPLE
10 LOGO ON THE FRONT FACE -- ON THE FRONT FACE OF THE
11 FACE?

12 A FIRST OF ALL, IT -- IT DIDN'T LOOK GOOD.

13 AND WE ALSO KNEW FROM OUR EXPERIENCE WITH
14 IPOD, IF YOU MAKE A STARTLINGLY BEAUTIFUL AND
15 ORIGINAL DESIGN, YOU DON'T NEED TO. IT STANDS FOR
16 ITSELF. IT BECOMES A CULTURAL ICON.

17 Q WHAT DO YOU MEAN WHEN YOU USE THE WORD "ICON,"
18 SIR?

19 A ICON, IT'S A HARD CREDENTIAL, REALLY. I THINK
20 THAT BECOMES TRUE WITH ENORMOUS SUCCESS.

21 BUT IF YOU SEE SOMETHING ACROSS THE ROOM
22 AND YOU KNOW WHAT IT IS AND YOU CAN SIMPLY DESCRIBE
23 IT, IT'S AN ICON.

24 MR. MCELHINNY: YOUR HONOR, I WOULD MOVE
25 JX 1000 INTO EVIDENCE.

1 MR. VERHOEVEN: NO FURTHER OBJECTION.

2 THE COURT: OKAY. IT'S ADMITTED.

3 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
4 1000, HAVING BEEN PREVIOUSLY MARKED FOR
5 IDENTIFICATION, WAS ADMITTED INTO
6 EVIDENCE.)

7 (PAUSE IN PROCEEDINGS.)

8 BY MR. MCELHINNY:

9 Q SIR, I'VE HANDED YOU THREE EXHIBITS.

10 WOULD YOU LOOK AT THE ONE, PLEASE, THAT
11 HAS THE NUMBER ON THE BACK JX 1001. CAN YOU TELL
12 ME WHAT THAT IS, PLEASE?

13 A THIS IS IPHONE 3G.

14 MR. MCELHINNY: YOUR HONOR, I MOVE 1001
15 INTO EVIDENCE.

16 MR. VERHOEVEN: NO FURTHER OBJECTION.

17 THE COURT: OKAY. THAT'S ADMITTED.

18 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
19 1001, HAVING BEEN PREVIOUSLY MARKED FOR
20 IDENTIFICATION, WAS ADMITTED INTO
21 EVIDENCE.)

22 BY MR. MCELHINNY:

23 Q WOULD YOU LOOK, PLEASE, AT THE ONE THAT'S BEEN
24 NUMBERED JX 1002?

25 A YES.

1 Q WHAT IS THAT PHONE, SIR?

2 A I BELIEVE IT'S THE 3GS.

3 MR. MCELHINNY: YOUR HONOR, I'D MOVE 1002
4 INTO EVIDENCE.

5 MR. VERHOEVEN: NO FURTHER OBJECTION.

6 THE COURT: IT'S ADMITTED.

7 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
8 1002, HAVING BEEN PREVIOUSLY MARKED FOR
9 IDENTIFICATION, WAS ADMITTED INTO
10 EVIDENCE.)

11 BY MR. MCELHINNY:

12 Q WOULD YOU LOOK AT THE ONE THAT HAS 1003 ON IT,
13 PLEASE.

14 A YES.

15 Q AND WHAT IS THAT?

16 A IPHONE 4.

17 MR. MCELHINNY: YOUR HONOR, I'D MOVE 1003
18 INTO EVIDENCE.

19 MR. VERHOEVEN: NO FURTHER OBJECTION.

20 THE COURT: IT'S ADMITTED.

21 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
22 1003, HAVING BEEN PREVIOUSLY MARKED FOR
23 IDENTIFICATION, WAS ADMITTED INTO
24 EVIDENCE.)

25 BY MR. MCELHINNY:

1 Q SIR, LET'S TALK ABOUT THE IPAD FOR A MOMENT.

2 A OKAY.

3 Q WHAT, IF ANYTHING, DID YOU WANT TO ACHIEVE IN
4 DESIGNING THE IPAD?

5 A WE WANTED TO, AGAIN, MAKE A, A BREATHTAKINGLY
6 SIMPLE, BEAUTIFUL DEVICE, SOMETHING THAT YOU REALLY
7 WANT, AND SOMETHING THAT'S VERY EASILY
8 UNDERSTANDABLE.

9 Q WHAT DOES THAT MEAN TO YOU?

10 A SOMETHING THAT'S VERY IMMEDIATE. YOU PICK IT
11 UP, YOU USE IT, SOMETHING THAT'S JUST -- IT NEEDS
12 NO EXPLANATION.

13 Q DO YOU RECALL APPROXIMATELY HOW LONG THE
14 DESIGN PROCESS LASTED FOR THE IPAD BEFORE IT WAS
15 RELEASED?

16 A IT WAS AN ENORMOUS AMOUNT OF TIME. WE STARTED
17 THE IPAD BEFORE WE STARTED THE IPHONE. THAT'S WHEN
18 WE FIRST STARTED ON THE MULTITOUCH TECHNOLOGY AND
19 PRODUCTS ASSOCIATED.

20 Q WOULD YOU LOOK IN YOUR BINDER, PLEASE, AT
21 EXHIBIT PX 171.

22 OH, NEVER MIND.

23 LET ME HAND YOU THIS, WHICH IS PX 171
24 (HANDING).

25 A YES.

1 Q CAN YOU TELL ME WHAT THAT IS, PLEASE?

2 A THIS IS, I WOULD THINK, A VERY, VERY EARLY
3 MODEL OF IPAD.

4 Q AGAIN, WE DON'T HAVE TIME TO PASS IT AROUND,
5 BUT CAN YOU HOLD IT UP SO THAT PEOPLE CAN SEE IT?

6 CAN YOU HOLD THE BACK UP SO THAT PEOPLE
7 CAN SEE IT?

8 A (INDICATING.)

9 MR. VERHOEVEN: EXCUSE ME, COUNSEL. I
10 DON'T THINK YOU SHOWED THAT TO ME PREVIOUSLY, IF
11 YOU DON'T MIND.

12 MR. MCELHINNY: SORRY.

13 (PAUSE IN PROCEEDINGS.)

14 MR. VERHOEVEN: THANK YOU.

15 BY MR. MCELHINNY:

16 Q WAS THE DESIGN GROUP FAVORABLY IMPRESSED WITH
17 THIS DESIGN, SIR?

18 A I DON'T RECALL US LOOKING AT IT FOR VERY LONG.

19 MR. MCELHINNY: YOUR HONOR, I WOULD MOVE
20 PX 171 INTO EVIDENCE.

21 MR. VERHOEVEN: NO FURTHER OBJECTION.

22 THE COURT: THAT'S ADMITTED.

23 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
24 171, HAVING BEEN PREVIOUSLY MARKED FOR
25 IDENTIFICATION, WAS ADMITTED INTO

1 EVIDENCE.)

2 THE COURT: WHY DON'T WE TAKE A BREAK AT
3 ABOUT 3:30, SO ABOUT FIVE OR TEN MINUTES.

4 MR. MCELHINNY: PERFECT, YOUR HONOR.

5 THE COURT: AND IF FOLKS NEED
6 CAFFEINATION, THERE ARE DRINKS IN THE FRIDGE IN THE
7 JURY ROOM, AND YOU CAN GO TO THE BATHROOM.

8 BY MR. MCELHINNY:

9 Q WHAT IS PX 170, SIR?

10 A THIS IS A MODEL WE BUILT FOR IPAD.

11 Q AGAIN, CAN YOU HOLD IT UP SO THE JURY CAN SEE
12 IT?

13 A (INDICATING.)

14 Q AND WHAT DOES IT SAY ON THE BACK?

15 A IPOD.

16 Q AND WHY DOES IT SAY IPOD, SIR?

17 A I'M ASSUMING SIMILARLY TO THE DISCUSSION ABOUT
18 THE PHONE, WE EITHER HAD NOT COINED THE TERM YET
19 OR -- ACTUALLY, IT'S HARD TO BELIEVE WE WERE
20 CONSIDERING THIS IDENTITY, BUT MY STRONG SUSPICION
21 IS THAT WE WERE NOT AWARE OF THE NAME AND WE NEEDED
22 TO REPRESENT SOMETHING GRAPHICALLY.

23 Q DOES APPLE HAVE A THING ABOUT SECRECY?

24 A YES.

25 Q OH, OKAY.

1 LET ME SHOW YOU JX 1004.

2 YOUR HONOR, I WOULD MOVE PX 170.

3 MR. VERHOEVEN: NO FURTHER OBJECTION.

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

5 THAT'S 170, IS THAT RIGHT?

6 MR. MCELHINNY: YES, YOUR HONOR.

7 THE COURT: OKAY.

8 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
9 170, HAVING BEEN PREVIOUSLY MARKED FOR
10 IDENTIFICATION, WAS ADMITTED INTO
11 EVIDENCE.)

12 BY MR. MCELHINNY:

13 Q LET ME SHOW YOU PX 1004.

14 WHAT IS THAT, MR. STRINGER?

15 A THIS IS THE IPAD.

16 Q HOW DID YOUR GROUP SELECT THE FINAL DESIGN FOR
17 THE IPAD?

18 A WE -- WE HAD TRIED SO MANY THINGS. IT WAS A
19 LONG PROJECT AND IT TRACKED THE COURSE OF EVENTS OF
20 IPHONE.

21 DURING THE DESIGN OF IPHONE, AS WE WENT
22 THROUGH VARIOUS FORM FACTORS, WE WOULD MODEL IPADS
23 IN SIMILAR SORT OF FAMILY APPEARANCES.

24 YOU SEE, THIS IS KIND OF THE EXTRUDED
25 FORM. WE DID THAT, I'M QUITE CONFIDENT, AT THE

1 WERE LOOKING AT, PLEASE.

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

6 A YES.

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

9 A I AGREE.

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

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

14 I APOLOGIZE, YOUR HONOR.

15 (PAUSE IN PROCEEDINGS.)

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

18 MR. MCELHINNY: WHAT EXHIBIT ARE YOU ON?

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

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

23 A YES.

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

1 A YES.

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

4 A YES.

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

6 A THAT IS THE RECEIVER DETAIL.

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

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

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

12 A CORRECT.

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

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

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

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

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

23 A YES.

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

1 A PLEASE DO.

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

5 A YES.

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

9 A CENTERED THAT WAY ALSO, YES.

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

11 A YES.

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

14 A YES.

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

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

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

21 A TO BE SIMPLE.

22 Q TO BE SIMPLE.

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

1 RIGHT?

2 A YES.

3 Q THAT WAS YOUR DESIGN GOAL; RIGHT?

4 A THAT WAS ONE --

5 Q GO AHEAD.

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

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

10 A CORRECT.

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

12 A YES.

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

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

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

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

21 A YES.

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

23 A YES.

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

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

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

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

10 A YES.

11 Q SORRY. WAS THAT YES?

12 A YES.

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

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

16 Q NOW --

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

19 THE COURT: PLEASE, GO AHEAD.

20 MR. VERHOEVEN: (HANDING.)

21 THE WITNESS: THANK YOU.

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

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

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

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

5 THE COURT: WHAT NUMBER SHOULD IT BE?

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

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

10 MR. VERHOEVEN: DX 741, YOUR HONOR.

11 THE COURT: OKAY.

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

14 BY MR. VERHOEVEN:

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

18 A YES.

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

20 A ABSOLUTELY.

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

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

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

25 A I BELIEVE SO.

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

3 A YES.

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

8 A YES, I SEE IT.

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

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

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

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

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

20 MR. VERHOEVEN: OKAY.

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

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

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

1 MARKED AS DX 741; CORRECT?

2 A I BELIEVE THAT IS TRUE.

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

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

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

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

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

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

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

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

25 THE COURT: WHY DON'T YOU REPHRASE THE

1 QUESTION, PLEASE?

2 BY MR. VERHOEVEN:

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

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

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

11 AND IF YOU COULD LAY THE FOUNDATION.

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

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

16 BY MR. VERHOEVEN:

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

19 A I SEE PHOTOGRAPHS OF 035.

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

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

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

1 MR. MCELHINNY: ARGUMENTATIVE, YOUR
2 HONOR.

3 THE COURT: OVERRULED.

4 YOU CAN ANSWER. GO AHEAD.

5 THE WITNESS: YES, I AM.

6 BY MR. VERHOEVEN:

7 Q IN YOUR --

8 JUST ONE SECOND, YOUR HONOR.

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

11 BY MR. VERHOEVEN:

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

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

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

18 A CORRECT.

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

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

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

24 MR. MCELHINNY: EXCUSE ME, YOUR HONOR.

25 BY MR. VERHOEVEN:

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

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

6 THE COURT: OVERRULED.

7 YOU CAN ANSWER.

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

10 BY MR. VERHOEVEN:

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

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

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

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

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

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

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

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

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

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

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

13 A QUITE POSSIBLY.

14 Q DID YOU THINK THEY WERE BEAUTIFUL?

15 A CLEARLY THEY DID NOT STICK IN MY MIND.

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

19 A THAT'S CORRECT.

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

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

23 Q OVER TEN?

24 A VERY LIKELY.

25 Q OVER 100?

1 A MAYBE NOT.

2 Q WHAT'S YOUR BEST ESTIMATE?

3 A I WILL NOT ESTIMATE BECAUSE I DO NOT KNOW.

4 Q DID YOU WORK ON THE DIFFERENT MODELS OF THE
5 HOME BUTTON?

6 A YES.

7 Q AND WHY WERE THERE SO MANY MODELS OF THE HOME
8 BUTTON DONE?

9 A TO GET IT EXACTLY RIGHT.

10 Q BECAUSE SMALL DETAILS MATTER; RIGHT?

11 A ABSOLUTELY.

12 Q AS AN APPLE INDUSTRIAL DESIGNER, YOU TESTIFIED
13 ABOUT THE WORK YOU DID TO COME UP WITH YOUR DESIGNS
14 ON DIRECT.

15 DO YOU REMEMBER THAT? YOU TESTIFIED
16 GENERALLY ABOUT SITTING AROUND THE KITCHEN TABLE
17 AND ALL THAT.

18 A YES.

19 Q ONE OF THE THINGS THAT YOU ALSO DO AS AN
20 INDUSTRIAL DESIGNER IS YOU PAY ATTENTION TO MOBILE
21 PHONES AND SMARTPHONES MANUFACTURED AND SOLD BY
22 YOUR COMPETITORS, DON'T YOU?

23 A ON OCCASION WE PAY SOME ATTENTION.

24 Q YOU ACTUALLY GET COMPETITIVE ANALYSES DONE AND
25 REVIEW THOSE OF YOUR COMPETITION, DON'T YOU?

1 WAS ON THE SCREEN.

2 GO TO PAGE 2. AND BRING OUT --

3 Q THIS IS WHAT WE WERE JUST TALKING ABOUT FROM
4 PAGE 2; RIGHT?

5 A YES.

6 Q WHERE YOU SAID, "PAUL, I NEED YOUR LATEST
7 SUMMARY OF OUR ENEMIES FOR THE I.D. BRAINSTORM ON
8 FRIDAY."

9 DO YOU SEE THAT?

10 A I DO.

11 Q AND THEN IF WE GO TO 9, PAGE 9, AND HIGHLIGHT
12 THAT AGAIN ONE MORE TIME, PLEASE.

13 THAT'S A LITTLE BIT HARD TO READ. MAYBE
14 WE COULD JUST HIGHLIGHT THE TOP FEW ROWS SO WE CAN
15 SEE BETTER. THAT DOESN'T LOOK MUCH BETTER.

16 BUT YOU CAN SORT OF SEE THERE'S THE
17 PLAYBOOK. DO YOU SEE THAT, MR. STRINGER?

18 A YES.

19 Q WHO MAKES THE PLAYBOOK?

20 A COULD YOU ZOOM IN? I CAN'T READ IT.

21 Q YOU DON'T KNOW WHO MAKES THE PLAYBOOK?

22 A NOT OFF THE TOP OF MY HEAD.

23 Q OKAY. AND THEN THERE'S THE GALAXY TAB. DO
24 YOU SEE THAT?

25 A YES.

1 Q AND THAT'S ONE OF THE PRODUCTS THAT'S BEING
2 ACCUSED IN THIS CASE?

3 A YES.

4 Q RIGHT? AND ON THE LEFT-HAND SIDE, IT SAYS OS,
5 PROCESSOR, RAM, AND A BUNCH OF OTHER DETAILS.

6 DO YOU SEE THAT?

7 A YES.

8 Q SO ISN'T IT TRUE THAT YOU WANTED THIS
9 INFORMATION FOR YOUR BRAINSTORMING SESSION SO YOU
10 COULD ASSESS AND YOU AND THE OTHER DESIGN TEAM
11 MEMBERS COULD ASSESS WHAT YOUR COMPETITORS ARE
12 DOING?

13 A WE WERE INTERESTED IN UNDERSTANDING THE
14 FEATURE SETS AND OVERALL DIMENSIONS OF COMPETITIVE
15 PRODUCTS.

16 Q YOU WERE INTERESTED IN KNOWING WHAT THEY WERE
17 DOING?

18 A WE WERE INTERESTED IN UNDERSTANDING THOSE
19 FACTS.

20 Q SO YOU ANALYZED THEIR PRODUCTS AND THE
21 PARAMETERS OF THEIR PRODUCTS, DIDN'T YOU?

22 A WE PAID ATTENTION TO THE FEATURE SET AND WE
23 WERE VERY INTERESTED IN THE DIMENSIONS.

24 Q IS THERE ANYTHING WRONG WITH DOING THAT?

25 A NO.

1 MR. VERHOEVEN: PASS THE WITNESS, YOUR
2 HONOR.

3 THE COURT: YOU'RE DONE?

4 MR. VERHOEVEN: PASS THE WITNESS.

5 THE COURT: OKAY. ALL RIGHT. IT IS NOW
6 4:20.

7 MR. MCELHINNY: I HAVE ONE REDIRECT
8 QUESTION, YOUR HONOR.

9 THE COURT: ALL RIGHT. GO AHEAD. IT'S
10 4:20. IT'S ALL YOURS.

11 MR. MCELHINNY: I'M ON THE CLOCK HERE.

12 **REDIRECT EXAMINATION**

13 BY MR. MCELHINNY:

14 Q SIR, THE LAST DOCUMENT THAT WAS VIEWED, WAS
15 THAT USED FOR DESIGN INSPIRATION ON HOW TO DESIGN
16 SOME NEW APPLE PRODUCT?

17 A ABSOLUTELY NOT.

18 MR. MCELHINNY: NOTHING FURTHER, YOUR
19 HONOR.

20 THE COURT: ALL RIGHT.

21 ANY RECROSS, MR. VERHOEVEN?

22 MR. VERHOEVEN: JUST ONE SECOND, YOUR
23 HONOR. I'M SORRY.

24 (DISCUSSION OFF THE RECORD BETWEEN
25 DEFENSE COUNSEL.)

1 MR. VERHOEVEN: JUST SOME HOUSEKEEPING
2 MATTERS. I'VE BEEN INFORMED I FAILED TO MOVE IN
3 EXHIBIT 740.

4 THE COURT: ANY OBJECTION?

5 MR. MCELHINNY: NO OBJECTION.

6 THE COURT: IT'S ADMITTED.

7 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
8 740, HAVING BEEN PREVIOUSLY MARKED FOR
9 IDENTIFICATION, WAS ADMITTED INTO
10 EVIDENCE.)

11 MR. VERHOEVEN: AND 741.

12 THE COURT: ANY OBJECTION?

13 MR. MCELHINNY: NO OBJECTION.

14 THE COURT: SO ADMITTED.

15 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
16 741, HAVING BEEN PREVIOUSLY MARKED FOR
17 IDENTIFICATION, WAS ADMITTED INTO
18 EVIDENCE.)

19 THE COURT: IS THAT IT, MR. VERHOEVEN?

20 MR. VERHOEVEN: WELL, THAT -- 741 IS A
21 STIPULATION ABOUT THE PHOTOGRAPHS FROM THE MODEL.

22 AT SOME POINT I'D LIKE TO READ IT INTO
23 THE RECORD. I COULD DO THAT NOW. IT'S ADMITTED
24 INTO EVIDENCE, YOUR HONOR.

25 THE COURT: THAT'S FINE.

1 MR. VERHOEVEN: IT STATES, QUOTE, "APPLE,
2 INC., THROUGH ITS COUNSEL, STIPULATES AS FOLLOWS:

3 PARAGRAPH 1. THE SPECIFIC PHYSICAL MODEL
4 IDENTIFIED BY APPLE INDUSTRIAL DESIGNER
5 CHRISTOPHER STRINGER DURING THE NOVEMBER 4TH, 2011
6 DEPOSITION IDENTIFIES APPLE MODEL 035 IS THE SAME
7 MODEL OR MOCK-UP APPEARING IN THE PHOTOGRAPHS OF
8 THE D'889 PATENT PROSECUTION HISTORY PRODUCED BY
9 APPLE.

10 PARAGRAPH 2. THE PHOTOGRAPHS FROM THE
11 '889 PATENT PROSECUTION HISTORY PRODUCED BY APPLE
12 ARE THE HIGHEST QUALITY THAT IT HAS FOUND."

13 AND THAT CONCLUDES THE STIPULATION, YOUR
14 HONOR.

15 THE COURT: ALL RIGHT.

16 ANYTHING FURTHER FOR MR. STRINGER OR IS
17 HE EXCUSED? IS HE EXCUSED?

18 MR. MCELHINNY: HE'S EXCUSED, YOUR HONOR.

19 THE COURT: ALL RIGHT. AND NOT WITH
20 ANY -- HE'S JUST EXCUSED, PERIOD? NOT SUBJECT TO
21 RECALL?

22 MR. MCELHINNY: HE'S EXCUSED. WE ARE NOT
23 GOING TO HAVE HIM IN THE COURTROOM IN CASE THERE'S
24 A REBUTTAL ISSUE.

25 THE COURT: ALL RIGHT. YOU'RE EXCUSED.

1 THE WITNESS: THANK YOU.

2 DO YOU HAVE YOUR NEXT WITNESS?

3 MR. MCELHINNY: I HAVE HIM READY. IT'LL
4 TAKE US A COUPLE MINUTES TO GET THE BINDERS OUT,
5 YOUR HONOR.

6 THE COURT: ALL RIGHT.

7 (PAUSE IN PROCEEDINGS.)

8 THE COURT: WHO'S YOUR NEXT WITNESS,
9 PLEASE?

10 MR. MCELHINNY: MR. PHILIP SCHILLER, YOUR
11 HONOR.

12 THE COURT: OKAY. WE'RE ONLY GOING TO GO
13 UNTIL 4:30, BUT I FIGURE EVEN IF THERE'S SOME
14 PRELIMINARY STUFF WE CAN DO TODAY, LET'S DO IT.

15 MR. MCELHINNY: YOUR HONOR, APPLE CALLS
16 PHILIP SCHILLER.

17 THE COURT: OKAY. THE TIME IS 4:23.

18 THE CLERK: RAISE YOUR RIGHT HAND,
19 PLEASE.

20 **PHILIP SCHILLER,**
21 BEING CALLED AS A WITNESS ON BEHALF OF THE
22 PLAINTIFF, HAVING BEEN FIRST DULY SWORN, WAS
23 EXAMINED AND TESTIFIED AS FOLLOWS:

24 THE WITNESS: I DO.

25 THE COURT: WOULD YOU HAVE A SEAT UP

1 THERE, PLEASE.

2 MR. MCELHINNY: YOUR HONOR, WE'RE STILL
3 PASSING OUT THE BINDERS. IF I CAN HAVE THAT NOT BE
4 ON MY TIME, PLEASE.

5 (PAUSE IN PROCEEDINGS.)

6 THE CLERK: WOULD YOU STATE YOUR NAME,
7 PLEASE, AND SPELL IT?

8 THE WITNESS: PHILIP WILLIAM SCHILLER,
9 THAT'S P-H-I-L-I-P, W-I-L-L-I-A-M, S-C-H-I-L-L-E-R.

10 THE CLERK: THANK YOU.

11 **DIRECT EXAMINATION**

12 BY MR. MCELHINNY:

13 Q GOOD AFTERNOON, MR. SCHILLER.

14 A GOOD AFTERNOON.

15 Q BY WHOM ARE YOU EMPLOYED?

16 A APPLE.

17 Q AND WHAT IS YOUR CURRENT POSITION AND TITLE,
18 SIR?

19 A I AM THE SENIOR VICE-PRESIDENT OF WORLDWIDE
20 MARKETING.

21 Q AND DOES APPLE HAVE SOMETHING THAT THEY CALL
22 THE EXECUTIVE TEAM?

23 A YES, WE DO.

24 Q AND WHAT IS THE EXECUTIVE TEAM?

25 A IT IS THE GROUP OF EXECUTIVES AT APPLE THAT

1 ARE THE MOST SENIOR PEOPLE WHO RUN THE COMPANY AND
2 WORK FOR THE CEO DIRECTLY, AND WE MEET WEEKLY AND
3 ARE RESPONSIBLE FOR THE BUSINESS OF THE COMPANY.

4 Q ARE YOU A MEMBER OF THE EXECUTIVE TEAM, SIR?

5 A YES, I AM.

6 Q TO WHOM DO YOU REPORT AT APPLE?

7 A TO THE CEO, TIM COOK.

8 Q SIR, JUST TO CONNECT VARIOUS LITTLE PIECES IN
9 MIND. TODAY SAMSUNG'S COUNSEL SHOWED US A VIDEO OF
10 THE INTRODUCTION AT MAC WORLD OF THE IPHONE AND IN
11 THAT VIDEO, IT SHOWED MR. JOBS SENDING A PICTURE, I
12 THINK OF A HAWAIIAN VACATION, TO SOME GUY NAMED
13 PHIL IN THE AUDIENCE.

14 DO YOU KNOW THAT MR. PHIL THAT WAS IN THE
15 AUDIENCE?

16 A THAT WOULD BE ME.

17 Q OKAY. THANK YOU.

18 CAN YOU -- CAN YOU DESCRIBE FOR US,
19 PLEASE, WHAT YOU WERE -- WHAT YOUR JOB
20 RESPONSIBILITIES ARE AT APPLE?

21 A SO I RUN THE MAJORITY OF MARKETING AT APPLE
22 COMPUTERS, SO FOR ME, THAT'S A PRETTY LARGE
23 ORGANIZATION. IT'S MADE UP OF A NUMBER OF
24 MARKETING FUNCTIONS, SOMETHING WE CALL PRODUCT
25 MARKETING, THE MARKETING OF ALL OF OUR PRODUCTS;

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CERTIFICATE OF REPORTER

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

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

/S/

LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

DATED: JULY 31, 2012

EXHIBIT 2

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

APPLE INC., A CALIFORNIA CORPORATION,	)	C-11-01846 LHK
)	
	)	SAN JOSE, CALIFORNIA
PLAINTIFF,)	
	)	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

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

2 FOR PLAINTIFF MORRISON & FOERSTER
APPLE: BY: HAROLD J. MCELHINNY
3 MICHAEL A. JACOBS
RACHEL KREVANS
4 425 MARKET STREET
SAN FRANCISCO, CALIFORNIA 94105
5

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

9 BY: MARK D. SELWYN
10 950 PAGE MILL ROAD
PALO ALTO, CALIFORNIA 94304

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

14 BY: VICTORIA F. MAROULIS
KEVIN P.B. JOHNSON
15 555 TWIN DOLPHIN DRIVE
SUITE 560
16 REDWOOD SHORES, CALIFORNIA 94065

17 BY: MICHAEL T. ZELLER
WILLIAM C. PRICE
18 JOHN B. QUINN
865 SOUTH FIGUEROA STREET
19 10TH FLOOR
LOS ANGELES, CALIFORNIA 90017
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INDEX OF WITNESSES

PLAINTIFF'S

PHILIP SCHILLER

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(RES.)
CROSS-EXAM BY MR. PRICE P. 666
REDIRECT EXAM BY MR. MCELHINNY P. 717
RECROSS-EXAM BY MR. PRICE P. 721

SCOTT FORSTALL

DIRECT EXAM BY MR. MCELHINNY P. 724
CROSS-EXAM BY MR. JOHNSON P. 760
REDIRECT EXAM BY MR. MCELHINNY P. 784
RECROSS-EXAM BY MR. JOHNSON P. 787

JUSTIN DENISON

AS-ON CROSS-EXAM BY MR. LEE P. 790
AS-ON DIRECT EXAM BY MR. QUINN P. 839

1 QUESTION, PLEASE.

2 BY MR. MCELHINNY:

3 Q AS THE HEAD OF MARKETING, DO YOU KEEP TRACK OF
4 WHAT -- OF TRENDS AND WHAT'S HAPPENING IN THE PHONE
5 MARKETPLACE?

6 A OF COURSE.

7 Q DID YOU OBSERVE CHANGES IN THE PHONE
8 MARKETPLACE AS A RESULT OF THE INTRODUCTION OF THE
9 IPHONE?

10 A YES, I DID.

11 Q AND WHAT CHANGES DID YOU OBSERVE, SIR?

12 MR. PRICE: SAME OBJECTION.

13 THE COURT: OVERRULED. GO AHEAD.

14 THE WITNESS: WE CONSIDERED THE IPHONE A
15 NEW GENERATION OF SMARTPHONE, AND WE LOOKED AT THE
16 MARKET AS BECOMING DIVIDED INTO TWO LARGE
17 CATEGORIES OF CUSTOMERS.

18 THERE ARE CUSTOMERS WHO HAVE NOT YET
19 BOUGHT INTO THESE NEW SMARTPHONES. THEY WERE
20 HAVING PREVIOUS GENERATION DEVICES, SOME CALLED
21 THEM FEATURE PHONES, LIKE FLIP PHONES WITH
22 CHARACTER DISPLAYS; AND CUSTOMERS THAT HAVE
23 PURCHASED THESE NEW SMARTPHONES AND NOW WERE INTO
24 THIS ECOSYSTEM OF ALL THAT THAT MEANS, THE
25 SMARTPHONE AND THE APPLICATIONS AND HOW ALL THOSE

1 THINGS WORK.

2 BY MR. MCELHINNY:

3 Q AND DID THE INTRODUCTION OF THE IPHONE CHANGE
4 THE DYNAMICS OF THAT TWO-PART MARKET AS YOU'VE JUST
5 DESCRIBED IT?

6 A YES. THE IPHONE CREATED THAT SECOND CATEGORY
7 OF NEW SMARTPHONES AS NOW STARTED TO CREATE A
8 MARKET WHERE, EITHER SOMEONE DOESN'T HAVE A NEW
9 GENERATION PHONE YET OR THEY DO, AND ONCE THEY DO,
10 WE SEE OTHER DYNAMICS THAT OCCUR BECAUSE THEY'RE IN
11 THE SMARTPHONE MARKETPLACE.

12 Q LET'S FOCUS -- SAME KIND OF QUESTION BUT ON
13 THE CURRENT TIME FRAME.

14 WHAT ARE THE CURRENT DYNAMICS OF THE CELL
15 PHONE MARKETPLACE AS YOU OBSERVED THEM FROM THE
16 HEAD OF MARKETING.

17 MR. PRICE: OBJECTION, VAGUE AND
18 AMBIGUOUS AND CALLS FOR EXPERT OPINION UNDISCLOSED.

19 THE COURT: OVERRULED.

20 GO AHEAD.

21 THE WITNESS: SO AS MORE AND MORE
22 CUSTOMERS START TO GET THESE SMARTPHONES, LIKE THE
23 IPHONE, THEN YOU, AGAIN, AS WE SEE THESE TWO
24 CATEGORIES, YOU'RE EITHER TRYING TO SELL TO A NEW
25 USER WHO DOESN'T HAVE ONE OR YOU'RE SELLING TO AN

1 UPGRADE USER.

2 AND WE KNOW FROM ALL OF OUR PRODUCTS AND
3 EXPERIENCES WE'VE HAD SELLING TO CUSTOMERS THAT A
4 CUSTOMER WHO ALREADY HAS ONE IS USED TO THAT ONE,
5 THAT WHOLE ECOSYSTEM.

6 IF I HAVE AN IPHONE, I'M USED TO HOW THE
7 IPHONE WORKS, AND I'VE INVESTED IN THE
8 APPLICATIONS, AND I'VE INVESTED IN THE ACCESSORIES,
9 SO I'M MORE INVESTED IN THAT PRODUCT, AND
10 I'M MORE LIKELY TO STICK WITH THAT PRODUCT LINE
11 ONCE I HAVE IT.

12 SO WE'RE AT THIS REALLY CRITICAL JUNCTURE
13 WHERE CUSTOMERS ARE EITHER GETTING INTO AN
14 ECOSYSTEM FOR THE FIRST TIME OR THEY'RE STAYING
15 WITH THAT ECOSYSTEM AND MOST OFTEN UPGRADING AND
16 STAYING WITHIN IT.

17 BY MR. MCELHINNY:

18 Q DO YOU FIND THAT WHEN A CUSTOMER BUYS AN
19 IPHONE THEY TEND TO BUY ADDITIONAL APPLE PRODUCTS
20 OR SERVICES?

21 A YES. THIS IS VERY WELL-KNOWN IN THE INDUSTRY.
22 IT'S OFTEN CALLED THE HALO EFFECT, THE IDEA THAT
23 ONCE YOU BUY A PRODUCT FROM A COMPANY, IF YOU HAVE
24 A GOOD EXPERIENCE WITH THAT PRODUCT, THAT YOU'RE
25 MORE LIKELY TO CONSIDER OTHER PRODUCTS FROM THAT

1 COMPANY AND ESPECIALLY IF THOSE PRODUCTS DO A GOOD
2 JOB WORKING WELL TOGETHER.

3 SO THAT WILL MAKE YOU WANT TO BUY MORE
4 PRODUCTS FROM THAT COMPANY, AS WELL AS THE OTHER
5 PEOPLE AROUND YOU WHO YOU WORK WITH OR IN YOUR
6 FAMILY.

7 Q LET'S CHANGE SUBJECTS NOW AND GO BACK IN TIME,
8 BACK TO THE IPAD. OKAY?

9 A YES.

10 Q CAN YOU TELL US, AGAIN BRIEFLY, DESCRIBE FOR
11 US THE GENESIS, HOW THE IPAD CAME ABOUT.

12 A THE IPAD ACTUALLY STARTED BEFORE THE IPHONE.
13 WE HAVE, AS EXPLAINED BEFORE, A COMPUTER BUSINESS,
14 THE MACINTOSH BUSINESS, AND INCREASINGLY PEOPLE
15 WERE BUYING NOTEBOOKS IN THIS BUSINESS.

16 AND NOTEBOOKS WERE GETTING MORE AND MORE
17 AFFORDABLE, LOWER PRICE POINTS.

18 BUT MANY OF OUR COMPETITORS WERE MAKING
19 NOTEBOOKS THAT WERE OF A CHEAPER QUALITY THAN WE
20 WOULD BE WILLING TO MAKE TO GET TO REALLY
21 AFFORDABLE PRICE POINTS.

22 SO WE DECIDED WE NEED TO CREATE A NEW
23 CATEGORY OF DEVICE, SOMETHING BELOW THE PRICE POINT
24 OF A NOTEBOOK, SOMETHING BEAUTIFUL, EASY TO USE,
25 EVERYONE MORE PORTABLE, LONGER BATTERY LIFE, AND WE

1 HAD TO INVENT A NEW CATEGORY OF DEVICE FOR THAT.

2 AND THAT'S WHAT LED TO THE WHOLE CONCEPT
3 OF CREATING AN IPAD.

4 Q WHEN WAS THE IPAD INTRODUCED?

5 A WE PUT ASIDE THAT EARLY WORK ON THE IPAD TO
6 SHIP THE IPHONE, AND THEN GOT BACK TO IT AFTER THE
7 IPHONE WAS NOW IN THE MARKETPLACE.

8 EVENTUALLY WE SHIPPED OUR FIRST, OR
9 INTRODUCED OUR FIRST IPAD, EXCUSE ME, IN 2010.

10 Q AND WHEN DID YOU SHIP YOUR FIRST IPAD?

11 A WE ALSO SHIPPED OUR FIRST IPAD IN EARLY APRIL
12 OF 2010.

13 Q AGAIN, SO WE'RE ALL USING THE SAME LANGUAGE,
14 WHAT IS THE DIFFERENCE FROM, IN THE INDUSTRY
15 BETWEEN AN INTRODUCTION AND A SHIPMENT?

16 A THE WAY WE TALK ABOUT IT AT APPLE IS AN
17 INTRODUCTION IS A LAUNCH OF THAT, THE FIRST TIME WE
18 TELL THE WORLD ABOUT A PRODUCT.

19 AND THEN THE PRODUCT MAY EITHER SHIP AT
20 THAT SAME TIME OR WITH REALLY BIG BRAND NEW
21 GENERATION PRODUCTS LIKE IPHONE AND IPAD, SOME TIME
22 AFTERWARDS, AND THAT'S THE AVAILABILITY OR SHIP
23 DATE OF THAT PRODUCT.

24 Q SIR, WAS THERE, AGAIN, PUBLIC MEDIA REACTION
25 TO THE INTRODUCTION OF THE IPAD?

1 A YES, THERE WAS HUGE COVERAGE OF THE IPAD.

2 Q IF YOU LOOK IN YOUR BINDER AT EXHIBIT PX 138.
3 CAN YOU TELL ME WHAT THAT DOCUMENT IS,
4 PLEASE?

5 A YES. THIS IS AN ARTICLE FROM THE WALL STREET
6 JOURNAL.

7 Q WHAT'S THE DATE OF IT, SIR?

8 A THIS WAS WRITTEN IN JANUARY OF 2010, RIGHT
9 AFTER THE INTRODUCTION OF THE IPAD.

10 MR. MCELHINNY: YOUR HONOR, I MOVE PX
11 138.

12 THE COURT: SAME LIMITING INSTRUCTION,
13 MR. PRICE?

14 MR. PRICE: YES, YOUR HONOR. NO FURTHER
15 OBJECTIONS.

16 THE COURT: ALL RIGHT. YOU CANNOT
17 CONSIDER THIS FOR THE TRUTH OF WHAT'S IN THE
18 ARTICLE, BUT YOU CAN CONSIDER IT OTHERWISE.

19 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
20 138, HAVING BEEN PREVIOUSLY MARKED FOR
21 IDENTIFICATION, WAS ADMITTED INTO
22 EVIDENCE.)

23 THE COURT: GO AHEAD, PLEASE.

24 MR. MCELHINNY: PLEASE PUBLISH
25 DEMONSTRATIVE PDX 5.

1 Q SIR, WHAT IS THIS?

2 A THIS IS A SUMMARY OF THAT SAME WALL STREET
3 JOURNAL ARTICLE FROM JANUARY 25TH, 2010.

4 Q YOU SEE THE TITLE OF THIS ARTICLE IS "APPLE
5 TAKES A BIG GAMBLE ON THE" -- I'M SORRY. "APPLE
6 TAKES BIG GAMBLE ON NEW IPAD."

7 DO YOU SEE THAT?

8 A YES.

9 Q DID APPLE'S EXECUTIVES AGREE WITH THAT
10 CHARACTERIZATION THAT THE WALL STREET JOURNAL MADE?

11 A ABSOLUTELY.

12 Q AND WHY, WHY DID YOU CONSIDER THE IPAD A
13 GAMBLE?

14 A IT WAS A BIG GAMBLE TO INTRODUCE THE IPAD FOR
15 A COUPLE REASONS.

16 FIRST, THIS WAS A NEW CATEGORY DEVICE.
17 THE IPHONE WE WERE INVENTING, REINVENTING THE
18 PHONE. PEOPLE WERE ALREADY BUYING OVER A BILLION
19 PHONES A YEAR.

20 PEOPLE HAD TRIED TO MAKE TABLET --
21 COMPANIES HAD TRIED TO MAKE TABLET PRODUCTS BEFORE
22 AND FAILED MISERABLY AND THERE WAS NO CATEGORY OF
23 TABLET COMPUTERS SELLING IN ANY QUANTITY THAT
24 MATTERED.

25 SO IT WAS CONSIDERED A, PRETTY MUCH A

1 DEAD CATEGORY AND NOT LIKELY TO SUCCEED.

2 AND IN ADDITION TO THAT, HERE APPLE NOW
3 HAD RISEN UP FROM PAST TROUBLES AND HAD A HUGE HIT
4 WITH THE IPOD, HAD A SECOND HUGE HIT WITH THE
5 IPHONE. WE WERE ROLLING AND DOING WELL.

6 SO TO TAKE ON A NEW CATEGORY OF PRODUCT
7 THAT MOST ASSUMED WAS NOT GOING TO SUCCEED WAS A
8 RISK TO OUR OWN IMAGE, OUR MARKETING, HOW PEOPLE
9 PERCEIVED US. SO IT WAS A BIG GAMBLE, BOTH FROM
10 THE PRODUCT AND MARKETING PERCEPTION OF APPLE.

11 Q WHAT WAS THE PUBLIC PERCEPTION FOR THE IPAD?

12 A IT WAS FANTASTIC.

13 Q IF YOU LOOK IN YOUR BINDER, PLEASE, AT EXHIBIT
14 PX 141.

15 A YES.

16 Q WHAT IS THAT DOCUMENT?

17 A THIS IS A REVIEW OF THE IPAD FROM THE WALL
18 STREET JOURNAL.

19 MR. MCELHINNY: YOUR HONOR, I MOVE
20 EXHIBIT 141.

21 MR. PRICE: SAME OBJECTION. NO FURTHER
22 OBJECTIONS, YOUR HONOR, MEANING FURTHER TO THE ONES
23 WE MADE AND ASK FOR A LIMITING INSTRUCTION.

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

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 THE COURT: ANY OBJECTION, MR. PRICE?

2 MR. PRICE: NO FURTHER OBJECTIONS.

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

4 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER

5 143, HAVING BEEN PREVIOUSLY MARKED FOR

6 IDENTIFICATION, WAS ADMITTED INTO

7 EVIDENCE.)

8 BY MR. MCELHINNY:

9 Q SIR, IF YOU WOULD LOOK IN YOUR BINDER AT PX
10 144, WHAT IS 144?

11 A THIS IS ANOTHER IPHONE BUYER SURVEY PERFORMED
12 BY APPLE.

13 Q IS IT THE ENTIRE SURVEY OR EXCERPTS, SIR?

14 A THIS ALSO IS AN EXCERPT OF THAT SURVEY.

15 Q FOR WHAT TIME PERIOD, SIR?

16 A FOR THE FIRST QUARTER OF FISCAL YEAR 2011.

17 MR. MCELHINNY: YOUR HONOR, I MOVE PX
18 144.

19 THE COURT: MR. PRICE?

20 MR. PRICE: NO FURTHER OBJECTION.

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

22 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER

23 144, HAVING BEEN PREVIOUSLY MARKED FOR

24 IDENTIFICATION, WAS ADMITTED INTO

25 EVIDENCE.)

1 BY MR. MCELHINNY:

2 Q IF YOU WOULD LOOK IN YOUR BINDER, PLEASE, AT
3 PX 145, WHAT IS 145?

4 A THIS IS ALSO AN IPHONE BUYER SURVEY.

5 Q IS IT THE ENTIRE SURVEY OR EXCERPTS, SIR?

6 A THIS IS ALSO AN EXCERPT OF THAT SURVEY.

7 Q FOR WHAT TIME PERIOD?

8 A THIS IS FOR THE SECOND QUARTER OF FISCAL YEAR
9 2011.

10 MR. MCELHINNY: YOUR HONOR, I MOVE PX
11 145.

12 MR. PRICE: NO ADDITIONAL OBJECTIONS.

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

14 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
15 145, HAVING BEEN PREVIOUSLY MARKED FOR
16 IDENTIFICATION, WAS ADMITTED INTO
17 EVIDENCE.)

18 BY MR. MCELHINNY:

19 Q IF YOU WOULD LOOK IN YOUR BINDER, PLEASE, AT
20 PX 146. WHAT IS 146, SIR?

21 A THIS IS AN IPHONE BUYER SURVEY.

22 Q THE WHOLE SURVEY, SIR, OR EXCERPTS?

23 A IT IS AN EXCERPT OF THAT SURVEY.

24 Q FROM WHAT TIME PERIOD?

25 A THAT IS FROM THE THIRD QUARTER OF FISCAL YEAR

1 2011.

2 MR. MCELHINNY: YOUR HONOR, I MOVE PX
3 146.

4 MR. PRICE: NO ADDITIONAL OBJECTION.

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

6 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
7 146, HAVING BEEN PREVIOUSLY MARKED FOR
8 IDENTIFICATION, WAS ADMITTED INTO
9 EVIDENCE.)

10 BY MR. MCELHINNY:

11 Q WHAT IS AN IPHONE BUYER SURVEY?

12 A PERIODICALLY MY MARKET RESEARCH TEAM WILL DO
13 SURVEYS OF CUSTOMERS WHO HAVE ALREADY PURCHASED OUR
14 PRODUCT TO ASK THEM QUESTIONS. WE'RE CURIOUS ABOUT
15 THEM.

16 Q WHAT IS A MARKET RESEARCH TEAM, SIR?

17 A I HAVE A SMALL GROUP OF PEOPLE WHO REPORT TO
18 ME WHO DO PRIMARILY TWO FUNCTIONS. ONE IS TO
19 PURCHASE THIRD PARTY REPORTS THAT EXIST IN THE
20 MARKETPLACE, USUALLY ANALYSIS OF MARKET TRENDS OR
21 DATA.

22 AND THEN ALSO TO PERFORM A LIMITED NUMBER
23 OF RESEARCH PROJECTS ON EXISTING CUSTOMERS SO WE
24 CAN HEAR WHAT THEY HAVE TO SAY ABOUT THE PRODUCTS
25 THEY'VE PURCHASED.

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 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 BY MR. PRICE:

2 Q SO THAT'S ONE OF THE PHONES YOU BELIEVE PEOPLE
3 WOULD CONFUSE FOR AN IPHONE (HANDING)?

4 A YES.

5 Q AND I'D LIKE YOU TO LOOK IN YOUR BINDER,
6 THERE'S A DEMONSTRATIVE --

7 MR. MCELHINNY: EXCUSE ME, YOUR HONOR.
8 I'D LIKE TO CORRECT THE RECORD. THIS PHONE IS
9 ACTUALLY NOT ACCUSED OF INFRINGING THE DESIGN
10 PATENTS. IT'S ACCUSED OF INFRINGING THE UTILITY
11 PATENTS.

12 MR. PRICE: AND TRADE DRESS.

13 THE COURT: ALL RIGHT. GO AHEAD, PLEASE.

14 BY MR. PRICE:

15 Q SO IF YOU LOOK IN THE BINDER, THERE'S SDX
16 3557, WHICH IS A DEMONSTRATIVE. IT'S AT THE FRONT
17 OF THE BINDER. IT SHOULD BE UNDER DEMONSTRATIVES.

18 A I'M SORRY.

19 MR. MCELHINNY: WHAT'S THE NUMBER?

20 MR. PRICE: IT'S 3557. YOUR HONOR, IF I
21 MAY ASSIST THE WITNESS?

22 THE COURT: GO AHEAD, PLEASE.

23 MR. PRICE: IT SHOULD BE RIGHT AT THE
24 FRONT WHERE IT SAYS DEMONSTRATIVES, MEANING THESE
25 DON'T GO INTO EVIDENCE.

1 MR. MCELHINNY: YOUR HONOR, THERE IS AN
2 OBJECTION PENDING ON THIS WHICH YOU HAVE NOT RULED
3 ON AND IT SHOULDN'T BE PUBLISHED.

4 MR. PRICE: TAKE IT DOWN, PLEASE.

5 AND SO OUR REQUEST OF MR. MCELHINNY CAN
6 STATE THAT, THAT WE SHOW DEMONSTRATIVE 3557.

7 THE COURT: ALL RIGHT. WHAT'S THE
8 OBJECTION?

9 MR. MCELHINNY: COUNSEL JUST AGREED, THIS
10 IS RELEVANT TO THE TRADE DRESS ISSUES. IT DOESN'T
11 SHOW THE TRADE DRESS, YOUR HONOR. THEY BLANKED OUT
12 THE SCREEN.

13 MR. PRICE: WE CAN DO DIFFERENT ELEMENTS,
14 YOUR HONOR. THIS IS THE --

15 MR. MCELHINNY: AH, THE
16 ELEMENT-BY-ELEMENT ARGUMENT, WHICH IS ABSOLUTELY
17 INCORRECT AS A MATTER OF LAW BECAUSE AS YOUR HONOR
18 HAS SAID, MANY TIMES YOU HAVE TO LOOK AT THE
19 OVERALL APPEARANCE OF A PRODUCT.

20 THE COURT: UNDERSTOOD. BUT I'M GOING TO
21 OVERRULE THE OBJECTION.

22 GO AHEAD, MR. PRICE.

23 MR. PRICE: NOW, IF YOU CAN PUT 3557 UP.

24 Q NOW, FIRST, YOU'VE SAID THAT -- WELL, YOU CAN
25 SEE THE SCREENS ARE DIFFERENT SHAPES? RIGHT?

1 A THEY'RE BOTH RECTANGLES BUT OF DIFFERENT
2 SIZES.

3 Q OKAY. SO HERE'S WHAT I WANT TO ASK YOU ABOUT
4 THEN. DO YOU SEE ON THE, ON THE SAMSUNG PHONE, IT
5 HAS THESE FOUR, IT LOOKS LIKE FOUR BUTTONS HERE?

6 A THE ONE YOU HANDED ME DOES NOT.

7 Q BUT WHEN YOU TURN IT ON IT DOES. IT'S A SOFT
8 BUTTON THAT HIGHLIGHTS WHEN IT'S ON.

9 A WHEN IT'S ON I SEE THOSE, YES.

10 MR. MCELHINNY: AGAIN, YOUR HONOR, NOW
11 THEY'VE TURNED ON THE PARTS THEY WANT AND TURNED
12 OFF THE PARTS THEY DON'T WANT. IT'S NOT EVEN A
13 FAIR PICTURE. IT'S PART ON AND PART OFF.

14 MR. PRICE: NO, YOUR HONOR, IF YOU IGNORE
15 THE SCREEN, WHICH HE'S SAYING THEY DON'T HAVE.

16 MR. MCELHINNY: IT'S TRADE DRESS.

17 THE COURT: WHY IS THIS SCREEN WHITED
18 OUT?

19 MR. PRICE: WE COULD MAKE IT BLACK. I
20 MEAN, IT'S WHITED OUT --

21 THE COURT: BUT FOR TRADE DRESS, WHY IS
22 THE SCREEN MISSING IF THIS IS FOR THE TRADE DRESS
23 CLAIM?

24 MR. PRICE: BECAUSE I'M FOCUSSING ON
25 SPECIFIC AREAS OF THE PHONE, AND ONE CAN DO THAT TO

1 STARTING ON PAGE BATES NUMBER 659, INTERNALLY IT'S
2 PAGE 18 OF THE DOCUMENT.

3 THIS IS ABOUT YOUR ASSESSMENT OF LG.

4 GO FORWARD TWO MORE PAGES. IF WE CAN
5 ENLARGE THAT IN THE UPPER LEFT.

6 LG?

7 A YES. THIS SHOWS OUR, OUR ROAD MAP ANALYSIS,
8 COMPETITIVE ANALYSIS OF THEM.

9 Q ALL RIGHT. SO IS -- I MEAN, DOES SAMSUNG ONLY
10 WANT TO BEAT APPLE?

11 A NO, ABSOLUTELY NOT.

12 Q CAN YOU TELL US WHETHER OR NOT SAMSUNG ALSO
13 MONITORS ITS OTHER COMPETITORS AND SEEKS TO BEAT
14 THEM AS WELL?

15 A WE DO. WE MONITOR ALL THE COMPETITION IN THE
16 MARKET.

17 Q AND THE NEXT PAGE, YOU SEE RIM IN THE UPPER
18 LEFT? THAT'S -- RIM IS RESEARCH IN MOTION,
19 BLACKBERRY?

20 A YES, IT IS.

21 Q AND ON THE NEXT PAGE, HTC?

22 A YES.

23 Q WHO'S HTC?

24 A HTC IS A COMPETITOR. I FORGET WHAT THE
25 ACRONYM STANDS FOR.

1 Q HIGH TECH CORPORATION, SOMETHING LIKE THAT?

2 A THAT RINGS A BELL.

3 Q AND THE NEXT PAGE, IS THAT MOTOROLA?

4 A YES.

5 Q OKAY. DOES -- THANK YOU VERY MUCH.

6 DOES SAMSUNG, AT ANY GIVEN TIME, TEND TO
7 FOCUS ONLY ON ONE COMPETITOR OR ON ONE COMPETITOR
8 MORE THAN OTHERS?

9 A I WOULD SAY IT'S FAIR TO SAY THAT SAMSUNG
10 LOOKS AT ALL THE COMPETITION. WE MAY FOCUS ON ONE
11 COMPETITOR VERSUS THE OTHER DEPENDING ON THE MARKET
12 THAT WE'RE LOOKING AT DURING THAT TIME.

13 Q COULD YOU EXPLAIN TO THE JURY WHAT YOU MEAN?

14 A THERE'S DIFFERENT WAYS TO SEGMENT THE MARKET.
15 ONE WAY WOULD BE TO LOOK AT IT ON A CARRIER BY
16 CARRIER BASIS. ANOTHER WAY TO LOOK AT IT IS
17 PREPAID VERSUS POST PAID. SO THOSE ARE WAYS TO
18 SEGMENT THE MARKET.

19 Q ALL RIGHT. WHAT EXACTLY IS YOUR JOB AT
20 SAMSUNG? I HAVEN'T ASKED YOU THAT. WHAT ARE YOUR
21 RESPONSIBILITIES?

22 A SO I'M THE HEAD OF CORPORATE PLANNING STRATEGY
23 FOR STA, SO MY JOB IS TO CHART THE LONG-RANGE
24 STRATEGIC PLAN FOR STA, OR AT LEAST TO FACILITATE
25 THE CREATION OF THAT PLAN.

1 THAT INCLUDES A MULTI-YEAR PLAN; THAT
2 INCLUDES A SINGLE YEAR PLAN, I.E., THE NEXT YEAR;
3 IT INCLUDES TRACKING OUR PROGRESS AGAINST THOSE
4 PLANS THROUGHOUT THE YEAR.

5 Q ALL RIGHT. SO YOU SAID THAT MARKETS MAY
6 INCLUDE CARRIER MARKETS?

7 A CORRECT.

8 Q CAN YOU EXPLAIN TO US HOW IT IS THAT A CARRIER
9 CAN BE A MARKET?

10 A WELL, CARRIERS CARRY A FINITE SET OF DEVICES
11 IN THEIR PORTFOLIO. THEY THEMSELVES CAN'T MANAGE A
12 THOUSAND DEVICES, LET'S SAY, IN THEIR SUPPLY CHAIN.

13 THEY CHOSE TO OFFER A SELECT NUMBER OF
14 DEVICES TO THEIR CONSUMERS, AND EACH CARRIER HAS
15 VERY SPECIFIC REQUIREMENTS WITH REGARD TO NETWORK
16 TECHNOLOGY, FREQUENCIES THEY USE, THEY HAVE THEIR
17 OWN PROPRIETARY SOFTWARE AND SERVICES THEY WANT YOU
18 TO PUT ON THEIR DEVICE.

19 SO YOU BRING ALL THIS TOGETHER AND YOU
20 HAVE JUST A, A FINITE NUMBER OF DEVICES OF
21 COMPANIES COMPETING WITHIN THAT CARRIER.

22 Q SO IS IT -- CAN YOU TELL US WHETHER OR NOT
23 YOUR COMPETITORS WITH ONE CARRIER MAY BE DIFFERENT
24 THAN YOUR COMPETITORS WITH ANOTHER CARRIER?

25 A THAT'S RIGHT. NOT ALL COMPETITORS ARE

1 PRESENT, LET'S SAY, AT ALL CARRIERS.

2 Q BUT YOU SAID THAT SAMSUNG'S STRATEGY IS TO
3 BEAT APPLE, BEAT HTC, BEAT, YOU KNOW, ALL YOUR
4 COMPETITORS, TO BE NUMBER ONE.

5 YOU'RE THE HEAD STRATEGY GUY AT SAMSUNG.
6 CAN YOU EXPLAIN TO US, IN GENERAL, WHAT IS
7 SAMSUNG'S STRATEGY FOR BECOMING NUMBER ONE?

8 A SAMSUNG'S STRATEGY TO BECOME NUMBER ONE IS
9 BASED ON I GUESS WHAT I WOULD SUMMARIZE AS A RECIPE
10 FOR OUR SUSTAINABLE ADVANTAGE IN THE MARKET.

11 THE --

12 Q WHAT'S A SUSTAINABLE ADVANTAGE?

13 A SO ANY TIME YOU'RE CHARTING A STRATEGY, LET'S
14 SAY FOR A COMPANY OR ENTITY, I GUESS WHEN YOU'RE
15 SOMEONE LIKE ME THINKING ABOUT THE STRATEGY, WHAT
16 YOU'RE TRYING TO FIND IS YOU'RE TRYING TO FIND SOME
17 UNIQUE CAPABILITIES AND COMPETENCIES THAT YOUR
18 COMPANY HAS THAT THEY CAN LEVERAGE THAT YOUR
19 COMPETITORS MAY NOT HAVE. SO ASSETS, LET'S SAY
20 THAT YOU CAN DEVELOP, INCUBATE AND LEVERAGE AS A
21 WIN.

22 AND THAT'S WHAT WE DO AT SAMSUNG.

23 Q AND BASED ON YOUR EXPERIENCE AND YOUR
24 BACKGROUND, CAN YOU OBTAIN A COMPETITIVE ADVANTAGE
25 JUST BY COPYING WHAT SOMEBODY ELSE DOES IN THE

1 MARKET?

2 A NO. THAT WOULD NOT REPRESENT A SUSTAINABLE
3 ADVANTAGE.

4 Q HOW IS IT THAT SAMSUNG GOES ABOUT TRYING TO
5 MAINTAIN A COMPETITIVE ADVANTAGE?

6 A SAMSUNG'S STRATEGY, I GUESS IN SHORT, IS TO
7 DELIVER THE LATEST AND GREATEST TECHNOLOGY TO
8 CONSUMERS, MORE FREQUENTLY THAN THE COMPETITION, AT
9 AS MANY POINTS OF DISTRIBUTION AS POSSIBLE --
10 AGAIN, THE CARRIER IS AN EXAMPLE OF DISTRIBUTION
11 POINT -- LEVERAGING MULTIPLE UNDERLYING
12 TECHNOLOGIES, INCLUDING MULTIPLE OPERATING SYSTEMS,
13 AND AT AS MANY DIFFERENT PRICE POINTS AS POSSIBLE,
14 I.E., PREMIUM, HIGH PRICE POINTS, AS WELL AS LOWER
15 END PRICE POINTS, SO THAT OUR DEVICES ARE AS
16 ACCESSIBLE AS POSSIBLE TO ALL CONSUMERS WHEN THEY
17 WANT TO PURCHASE.

18 SOMETIMES WE REFER TO THAT AS THE
19 DEMOCRATIZATION OF THE CELL PHONE.

20 Q AND HOW IS THAT STRATEGY THAT YOU'VE JUST
21 DESCRIBED DIFFERENT FROM APPLE'S STRATEGY IN TERMS
22 OF THE PRODUCTS IT BRINGS TO MARKET?

23 MR. LEE: I OBJECT. NO FOUNDATION FOR
24 HIM TO KNOW WHAT APPLE'S STRATEGY IS.

25 MR. QUINN: BASED ON HIS COMPETITIVE --

1 HIS JOB. I CAN LAY SOME FOUNDATION, YOUR HONOR.

2 THE COURT: PLEASE DO THAT.

3 MR. QUINN: ALL RIGHT.

4 Q IN YOUR JOB, ARE YOU REQUIRED TO UNDERSTAND
5 WHAT APPLE'S PRODUCT STRATEGY IS IN TERMS OF WHAT
6 PRODUCTS IT'S BRINGING TO MARKET?

7 A WE ABSOLUTELY TRY TO UNDERSTAND WHAT OUR
8 COMPETITORS ARE GOING TO BRING TO MARKET.

9 Q WOULD THAT INCLUDE APPLE?

10 A YES.

11 Q HTC AND ALL THE OTHERS?

12 A YES.

13 Q OKAY. BASED ON WHAT YOU SEE IN TERMS OF THE
14 PRODUCTS APPLE BRINGS TO MARKET, WHAT IS YOUR
15 UNDERSTANDING ABOUT WHAT APPLE'S STRATEGY IS?

16 A WELL, FROM MY VIEW, APPLE IS LAUNCHING, OR HAS
17 BEEN LAUNCHING, THE PRODUCTS AT ABOUT ONE
18 SMARTPHONE A YEAR, OKAY, AND THEY HAVE CHARTED A
19 VERY SPECIFIC PATH, STARTING IN 2007, WHEREBY THEY
20 LAUNCHED THAT WITH ONE PARTICULAR CARRIER ON AN
21 EXCLUSIVE BASIS.

22 THEY'VE CONTINUED TO LAUNCH AN UNDATED
23 PRODUCT EVERY SUBSEQUENT YEAR, AS WELL AS STARTED
24 TO SLOWLY EXPAND THEIR DISTRIBUTION TO MORE
25 CARRIERS.

1 Q WELL, SO APPLE, BASED ON YOUR OBSERVATION,
2 BRINGS OUT ROUGHLY ONE NEW PHONE A YEAR.

3 APPROXIMATELY HOW MANY NEW PHONES DOES
4 SAMSUNG BRING OUT EVERY YEAR?

5 A WE LAUNCH APPROXIMATELY 50-ISH DEVICES A YEAR.
6 I THINK IN 2011, IT WAS A LITTLE BIT MORE THAN 50
7 DEVICES.

8 Q AND WHY IS -- WHY DOES SAMSUNG DO THAT, BRING
9 OUT SO MANY DIFFERENT PHONES?

10 A IN PART IT GOES TO WHAT I DESCRIBED AS OUR
11 DESIRE TO BRING OUT THE LATEST TECHNOLOGY WHEN IT'S
12 AVAILABLE, MORE FREQUENTLY THAN THE COMPETITION.

13 IT ALSO HAS TO DO WITH SOME OF THE
14 UNIQUENESS THAT WE CHOSE TO BRING TO THE CARRIERS
15 IN TERMS OF THE PORTFOLIO.

16 Q DOES SAMSUNG INVEST IN ITS BRAND AND ITS NAME,
17 SAMSUNG?

18 A WE INVEST QUITE A BIT IN THE U.S. ON BEHALF OF
19 SAMSUNG.

20 Q DO YOU KNOW HOW MUCH SAMSUNG INVESTED IN ITS
21 BRAND?

22 A SAMSUNG, STA I SHOULD SAY SPECIFICALLY, HAS
23 INVESTED, LET'S SAY, ABOUT A BILLION DOLLARS LAST
24 YEAR, 2011, ON MARKETING THEIR BRAND.

25 Q IN THE U.S.?

1 A IN THE U.S.

2 Q THAT WAS ONE BILLION WITH A "B"?

3 A YES, IT WAS.

4 Q ALL RIGHT. DOES -- IS SAMSUNG PROUD OF ITS
5 NAME?

6 A ABSOLUTELY.

7 Q DOES SAMSUNG PUT ITS NAME ON ITS PRODUCTS?

8 A IT'S ON EVERY PRODUCT.

9 Q WAS THERE A TIME PERIOD WHERE THERE WAS A
10 TABLET THAT SAMSUNG BROUGHT WHERE THE NAME WASN'T
11 ON THE FRONT, IT WAS ON THE BACK?

12 A THERE WAS, YES.

13 Q AND CAN YOU EXPLAIN WHY THAT WAS?

14 A SO THAT -- I BELIEVE YOU'RE REFERRING TO THE
15 ORIGINAL GALAXY TAB 10.1.

16 Q YOU TELL ME.

17 A OKAY. THAT'S THE WAY I REMEMBER IT, ANYWAY.

18 SO WE DID NOT ORIGINALLY PUT THE SAMSUNG
19 BRAND ON THE FACADE, THE FRONT FACE OF THAT
20 PRODUCT, BECAUSE THE PROCESS BY WHICH YOU, I GUESS
21 YOU ETCH, I THINK IT'S SOME KIND OF LASER ETCHING,
22 YOU ETCH THE ACTUAL BRAND INTO THE DISPLAY WAS
23 CAUSING THE GLASS TO INTERFERE WITH THE ACTUAL, YOU
24 KNOW, KIND OF HIDDEN WIRES, IF YOU WILL, FOR THE
25 TOUCH SENSITIVITY ON THE DISPLAY. SO IT WAS

1 AND INDEED WORKING FOR COMPETITORS BEFORE, DID YOU
2 BECOME -- DID YOU COME TO LEARN ABOUT INNOVATIONS
3 THAT SAMSUNG BROUGHT TO, TO MOBILE
4 TELECOMMUNICATIONS, YOU KNOW, FIRSTS, THINGS THAT
5 SAMSUNG DID FIRST IN THE INDUSTRY?

6 A SURE I DID.

7 Q AND CAN YOU TELL THE JURY WHAT SOME OF THOSE
8 ARE?

9 A CERTAINLY. FOR INSTANCE, SAMSUNG -- AND THIS
10 WAS WHEN I WAS, AS YOU SAID, AT OTHER COMPETITORS,
11 BUT I SAW THAT FROM A COMPETITOR'S POINT OF VIEW --
12 SAMSUNG LAUNCHED THE FIRST MP3 PHONE IN
13 APPROXIMATELY THE YEAR 2000, AS I RECALL.

14 SAMSUNG LAUNCHED THE FIRST DEVICE TO BE
15 SUB-TEN MILLIMETERS THICK. OKAY, THAT'S KIND OF AN
16 IMPORTANT MILESTONE, LET'S SAY. I THINK SOME
17 PEOPLE CALLED IT THE FIRST WAVE OF ULTRATHIN
18 DEVICES IN THE MARKET. THAT WAS AROUND 2001, I
19 BELIEVE.

20 SAMSUNG WAS THE FIRST COMPANY TO LAUNCH A
21 DEVICE WITH VOICE RECOGNITION. THAT, I BELIEVE,
22 WAS IN 2007 IF I'M NOT MISTAKEN.

23 SAMSUNG ALSO LAUNCHED THE FIRST CAMERA
24 PHONE GLOBALLY. THAT WAS DONE AROUND THE YEAR
25 2001.

1 AND THEN MORE RECENTLY, SAMSUNG WAS ALSO
2 THE FIRST MANUFACTURER TO LAUNCH DEVICES WITH THE
3 SUPER AMOLED, A-M-O-L-E-D, SUPER AMOLED TECHNOLOGY
4 WITH THE FIRST FAMILY OF GALAXY S DEVICES, AND THAT
5 WAS IN 2010.

6 Q WHAT IS AMOLED TECHNOLOGY?

7 A AMOLED TECHNOLOGY, I THINK IT STANDS FOR
8 ACTIVE MATRIX ORGANIC LIGHT EMITTING DIODE,
9 SOMETHING TO THAT EFFECT.

10 IT'S A TYPE OF SCREEN TECHNOLOGY THAT
11 SAMSUNG HAS DEVELOPED AND EMPLOYED IN ITS OWN
12 PRODUCTS AND IT, SIMPLY SPEAKING, ALLOWS FOR A MUCH
13 FASTER RESPONSE TIME.

14 SO IMAGES CAN APPEAR WITH LESS BLUR. IT
15 ALLOWS FOR MORE CONTRAST IN BRIGHTNESS.

16 AND IT ALSO ALLOWS FOR BETTER THINNESS OF
17 THE DEVICE BECAUSE THE ORIGINAL SUPER AMOLED
18 TECHNOLOGY INCLUDED THE -- THIS WAS, I GUESS, A
19 BREAKTHROUGH OF SORTS. IT TOOK THE TOUCH
20 SENSITIVITY OF A DISPLAY, WHICH IS NORMALLY
21 SEPARATE FROM THE ACTUAL DISPLAY IN PAST PHONES,
22 AND ACTUALLY COMBINED THE TWO.

23 SO IT ESSENTIALLY ELIMINATED A LAYER OF
24 DISPLAY SO IT ALLOWED PHONES TO BE THINNER BECAUSE
25 THE DISPLAYS WERE THINNER.

1 Q LET'S -- WE'VE HEARD SOME TESTIMONY FROM
2 APPLE'S POINT OF VIEW ABOUT ADVERTISING AND
3 MARKETING OF APPLE PRODUCTS.

4 ARE YOU FAMILIAR WITH HOW STA ADVERTISES
5 AND MARKETS FROM A STRATEGIC STANDPOINT, PROMOTES
6 ITS PRODUCTS IN THE UNITED STATES?

7 A YES, GENERALLY SPEAKING, I AM.

8 Q AND WHAT IS SAMSUNG'S STRATEGY IN TERMS OF
9 ADVERTISING ITS PRODUCTS?

10 A WELL, REALLY ALL WE'RE TRYING TO POINT OUT TO
11 CONSUMERS IS I GUESS WHAT YOU WOULD CALL A BRAND
12 PROMISE OR A BRAND MESSAGE, AND IT'S TIED BACK TO
13 THAT STRATEGY I TALKED TO YOU ABOUT.

14 SO IT ONLY WORKS WHEN EVERYTHING IS
15 LINKED TOGETHER. SO WE TRY AND SHOW CONSUMERS IN
16 OUR ADVERTISING THAT WE'VE BROUGHT THEM THE LATEST
17 AND GREATEST TECHNOLOGY, THAT WE'RE BRINGING IT TO
18 THEM FASTER THAN THE COMPETITION, THAT YOU CAN
19 COUNT ON SAMSUNG TO DO THAT CONTINUOUSLY. YOU CAN
20 TRUST US.

21 Q FOR DIFFERENT PRODUCTS, DOES SAMSUNG HAVE, YOU
22 KNOW, DIFFERENT LAUNCH MESSAGES THAT THEY ASSOCIATE
23 WITH THOSE PRODUCTS?

24 A AT TIMES WE'LL TWEAK THE LAUNCH MESSAGE
25 DEPENDING ON THE PRODUCT, YES.

1 Q CAN YOU GIVE THE JURY AN EXAMPLE OF THAT?

2 A FOR INSTANCE, FOR THE GALAXY S 2 LAUNCH IN THE
3 UNITED STATES, I THINK THE TAG LINE WAS SOMETHING
4 LIKE "THE NEXT BIG THING."

5 Q I MEAN, DOES -- DOES SAMSUNG EVER SEEK TO SELL
6 ITS PRODUCTS BY CAUSING CONSUMERS TO BE CONFUSED
7 INTO THINKING THAT, YOU KNOW, YOU'RE -- YOU THINK
8 YOU'RE BUYING AN APPLE PRODUCT BUT YOU'RE ACTUALLY
9 GETTING A SAMSUNG PRODUCT?

10 A NO. WE WANT CONSUMERS TO HEAR OUR MESSAGE,
11 UNDERSTAND THAT OUR MESSAGE IS OURS, AND GO OUT AND
12 BUY OUR DEVICE.

13 MR. QUINN: AND, YOUR HONOR, I'D REQUEST
14 PERMISSION -- THE COURT HAS RULED ON THIS ALREADY,
15 BUT IN LIGHT OF THE TESTIMONY ABOUT COPYING AND
16 MARKETING AND THE ADVERTISING, I'D REQUEST
17 PERMISSION TO PLAY A 30 SECOND SAMSUNG TELEVISION
18 ADVERTISEMENT CALLED URBAN CAMPING. IT'S DX 629.
19 IT'S 30 SECONDS.

20 MR. LEE: YOUR HONOR --

21 THE COURT: THAT WAS FOR EVIDENCE ABOUT
22 WILLFULNESS, RIGHT, AND I JUST DIDN'T SEE THE
23 CONNECTION.

24 MR. QUINN: THIS WOULD BE OFFERED TO SHOW
25 HOW WE TRY TO SET OURSELVES APART. FAR FROM TRYING

1 TO CREATE CONFUSION OR DECEPTION, WE TRY TO SET
2 OURSELVES APART IN OUR ADVERTISING.

3 MR. LEE: YOUR HONOR HAS RULED THIS
4 INADMISSIBLE. IT IS INADMISSIBLE.

5 ACTUALLY, ALL OF THEIR BRANDING IS OUR
6 TRADE DRESS, OUR TRADE DILUTION THAT'S AT ISSUE,
7 NOT THEIRS.

8 MR. QUINN: THEY'RE ALLEGING CONFUSION,
9 YOUR HONOR, AND DECEPTION.

10 MR. LEE: WELL, MR. QUINN KNOWS THAT THE
11 QUESTION OF CONFUSION ONLY GOES TO SOME CLAIMS, NOT
12 TO OTHERS.

13 MR. QUINN: SO THEY'RE DISMISSING THOSE?

14 MR. LEE: I'M SORRY. GO AHEAD. YOU GO
15 AHEAD.

16 MR. QUINN: I'D REQUEST PERMISSION TO
17 PLAY THAT ADVERTISEMENT.

18 MR. LEE: YOUR HONOR HAS RULED IT OUT AND
19 IT OUGHT TO STAY OUT.

20 THE COURT: OKAY. IT'S -- THE OBJECTION
21 IS STILL SUSTAINED.

22 GO AHEAD AND GO TO SOMETHING ELSE.

23 MR. QUINN: ALL RIGHT.

24 Q DO YOU HAVE ANY -- DO YOU HAVE ANY INFORMATION
25 ABOUT THE VALUE OF THE SAMSUNG BRAND?

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

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 6, 2012
VS.)	
	)	VOLUME 4
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 931-1296
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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

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

2 FOR PLAINTIFF MORRISON & FOERSTER
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3 MICHAEL A. JACOBS
RACHEL KREVANS
4 425 MARKET STREET
SAN FRANCISCO, CALIFORNIA 94105
5

6 FOR COUNTERCLAIMANT WILMER, CUTLER, PICKERING,
APPLE: HALE AND DORR
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9 BY: MARK D. SELWYN
950 PAGE MILL ROAD
10 PALO ALTO, CALIFORNIA 94304

11 FOR THE DEFENDANT: QUINN, EMANUEL, URQUHART,
OLIVER & HEDGES
12 BY: CHARLES K. VERHOEVEN
ALBERT P. BEDECARRE
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SAN FRANCISCO, CALIFORNIA 94111

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INDEX OF WITNESSES

PLAINTIFF'S

JUSTIN DENISON

AS-ON DIRECT EXAM BY MR. QUINN P. 946
AS-ON RECROSS-EXAM BY MR. LEE P. 977
AS-ON REDIRECT EXAM BY MR. QUINN P. 997

PETER BRESSLER

DIRECT EXAM BY MS. KREVANS P. 1002
CROSS-EXAM BY MR. VERHOEVEN P. 1098
REDIRECT EXAM BY MS. KREVANS P. 1236

1 AND I'M GIVING HIM AN OPPORTUNITY TO EXPLAIN HOW.

2 THE COURT: WELL, YOU'RE ASKING HIM ABOUT
3 THE CONTENT OF THIS AND WHETHER IT'S FOR THE TRUTH.
4 SO IT'S SUSTAINED.

5 GO ON TO ANOTHER LINE OF QUESTIONING,
6 PLEASE.

7 BY MS. KREVANS:

8 Q MR. BRESSLER, DID THE CONTENTS OF THIS ARTICLE
9 IN ANY WAY CONFIRM TO YOU YOUR VIEWS ABOUT WHAT AN
10 ORDINARY OBSERVER WOULD BELIEVE WHEN THEY LOOKED AT
11 THE VISUAL IMPRESSION OF THE IPHONE?

12 MR. VERHOEVEN: SAME OBJECTION, YOUR
13 HONOR.

14 THE COURT: SUSTAINED.

15 BY MS. KREVANS:

16 Q COULD YOU LOOK AT PX 4 IN YOUR BINDER,
17 MR. BRESSLER? WHAT IS EXHIBIT PX 4, MR. BRESSLER?
18 YOU HAVE TO FIRST IDENTIFY IT.

19 A OH, I'M SORRY. IT IS A PHOTOGRAPHIC
20 PRESENTATION COMPARING THE SAMSUNG Q1 PRODUCT PRIOR
21 TO THE INTRODUCTION OF THE IPADS, IPADS, AND THEN
22 THE DESIGN OF THE SAMSUNG PRODUCTS AFTER THE IPAD
23 INTRODUCTION.

24 Q AND WHAT DOES THE SECOND PAGE GENERALLY SHOW?

25 A THE SECOND PAGE SHOWS A -- AN ASSORTMENT OF

1 DESIGNS FOR TABLET COMPUTERS THAT WERE AVAILABLE
2 FROM OTHER COMPANIES PRIOR TO THE INTRODUCTION OF
3 THE IPAD.

4 THE CENTER COLUMN SHOWS THE IPAD AND
5 SAMSUNG PRODUCTS.

6 AND THE THIRD COLUMN SHOWS A SAMPLING OF
7 OTHER DESIGNS THAT WOULD BE PERFECTLY ADEQUATE FOR
8 USE IN TABLET COMPUTERS.

9 MS. KREVANS: YOUR HONOR, WE WOULD MOVE
10 THE ADMISSION OF PX 4.

11 MR. VERHOEVEN: YOUR HONOR, WE OBJECT TO
12 THIS. AND WE PREVIOUSLY OBJECTED AND YOU SUSTAINED
13 OUR OBJECTION AS TO THIS.

14 MS. KREVANS: YOUR HONOR, THE OBJECTION
15 WAS SUSTAINED WITH THE PROVISIO THAT APPLE COULD
16 RESUBMIT TAKING OUT --

17 THE COURT: I UNDERSTAND. THAT'S
18 OVERRULE.

19 GO AHEAD.

20 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 4,
21 HAVING BEEN PREVIOUSLY MARKED FOR
22 IDENTIFICATION, WAS ADMITTED INTO
23 EVIDENCE.)

24 MR. VERHOEVEN: YOUR HONOR, JUST FOR THE
25 RECORD, THEY DIDN'T -- OVEN THE SECOND PAGE OF THIS

1 EXHIBIT, THE LEFT-HAND TWO COLUMNS, THEY DID NOT
2 REMOVE THOSE.

3 MS. KREVANS: YOUR HONOR, WE REMOVED
4 EVERYTHING THAT WAS NOT IN MR. BRESSLER'S REPORT,
5 WHICH WAS THE OBJECTION.

6 AND ON THE LEFT-HAPPENED SIDE, WE
7 CORRECTED A DATE THAT WAS WRONG COMPARED TO HIS
8 REPORT.

9 THE COURT: ALL RIGHT. OVERRULED. GO
10 AHEAD.

11 MS. KREVANS: SO IS THE DOCUMENT
12 ADMITTED, YOUR HONOR?

13 THE COURT: YES.

14 MS. KREVANS: THANK YOU.

15 Q OKAY. COULD YOU TELL THE JURY WHAT WE'RE
16 SEEING ON THE FIRST PAGE OF PX 4?

17 A OH, I'M SORRY. I THOUGHT I DID ALREADY. YOU
18 WANT ME TO DO IT AGAIN?

19 Q YES, THANK YOU.

20 A I APOLOGIZE.

21 BRIEFLY, THE LEFT-HAND COLUMN IS A
22 PICTURE OF THE SAMSUNG Q1 THAT WAS IN THE MARKET
23 BEFORE THE APPLE PRODUCTS. THE CENTER COLUMN IS
24 THE APPLE TABLET PRODUCTS; AND THE RIGHT-HAND
25 COLUMN IS THE SAMSUNG TABLET PRODUCTS.

1 Q AND COULD WE SEE THE SECOND PAGE, MR. LEE?

2 WHAT HAVE YOU DEPICTED ON THE SECOND PAGE
3 OF EXHIBIT PX 4?

4 A AGAIN, THE LEFT-HAND COLUMN IS ALTERNATIVE
5 DESIGNS THAT WERE ON THE MARKET BEFORE THE
6 INTRODUCTION OF THE IPAD; AND THE CENTER COLUMN
7 IS -- SHOWS THE IPAD PRODUCTS AND THE SAMSUNG
8 PRODUCTS; AND THEN THE RIGHT-HAND COLUMN SHOWS
9 ALTERNATIVE DESIGNS THAT ARE CONTEMPORARY TO THESE
10 PRODUCT, TO THE CENTER PRODUCTS.

11 Q WHEN YOU SAY, "ALTERNATIVE DESIGNS," WHAT DO
12 YOU MEAN?

13 A I MEAN THAT THEY ARE APPEARANCES FOR TABLET
14 COMPUTERS THAT COULD BE USED FOR A TABLET COMPUTER
15 THAT WOULD PROVIDE THE SAME FUNCTIONS.

16 Q SAME FUNCTIONS AS WHAT?

17 A SAME FUNCTIONS AS THE IPAD SAME FUNCTION AS
18 THE SAMSUNG TABLET.

19 Q IN THE MIDDLE OF THE SECOND PAGE, WHAT'S THAT
20 THING AT THE TOP THAT SAYS MAY 2006, SAMSUNG Q1?

21 A THAT IS THE SAME PRODUCT FROM THE PAGE BEFORE,
22 WHICH IS THEIR OFFERING IN 2006.

23 Q "THEIR" BEING SAMSUNG'S?

24 A YES.

25 Q OKAY. COULD YOU LOOK IN YOUR BINDER AT

1 EXHIBIT PX 173.

2 THE COURT: THIS SHOULD BE THE LAST
3 QUESTION BEFORE THE LUNCH BREAK.

4 MS. KREVANS: CERTAINLY, YOUR HONOR.

5 Q IS PX 173 A DOCUMENT YOU CONSIDERED IN THE
6 COURSE OF FORMING YOUR OPINIONS IN THE CASE?

7 A YES.

8 MS. KREVANS: YOUR HONOR, WE'D MOVE PX
9 173.

10 MR. VERHOEVEN: YOUR HONOR, THIS IS ALSO
11 AN EXHIBIT THAT WAS SUBJECT TO A LIMITING
12 INSTRUCTION. NO FURTHER OBJECTION, BUT I'M JUST
13 REMINDING THE COURT THIS IS SUBJECT TO A LIMITING
14 INSTRUCTION.

15 THE COURT: THAT'S RIGHT. THIS IS NOT
16 OFFERED FOR THE TRUTH OF WHAT'S IN THE ACTUAL
17 ARTICLE, BUT YOU CAN CONSIDER IT FOR OTHER
18 PURPOSES. IT'S ADMITTED.

19 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
20 173 HAVING BEEN PREVIOUSLY MARKED FOR
21 IDENTIFICATION, WAS ADMITTED INTO
22 EVIDENCE.)

23 BY MS. KREVANS:

24 Q OKAY. CAN WE LOOK AT EXHIBIT PX 173. GREAT.

25 WHAT IS EXHIBIT PX 173, MR. BRESSLER?

1 A THIS IS AN ARTICLE FROM P.C. WORLD ENTITLED
2 "Samsung GALAXY TAB 10.1 WI-FI" AND IT -- COLON, "A
3 WORTHY RIVAL TO THE IPAD 2."

4 Q OKAY. CAN WE SEE --

5 MR. VERHOEVEN: YOUR HONOR, I OBJECT TO
6 FURTHER QUESTIONING ON THIS WITH THIS PARTICULAR
7 WITNESS BECAUSE THE ONLY PURPOSE I CAN ENVISION
8 THAT THESE QUESTIONS WOULD GO TO WOULD BE IN
9 VIOLATION OF A LIMITING INSTRUCTION.

10 THE COURT: DO YOU HAVE MORE QUESTIONS
11 ABOUT THIS EXHIBIT?

12 MS. KREVANS: I HAVE ONE MORE QUESTION,
13 YOUR HONOR.

14 THE COURT: WHAT IS IT?

15 MS. KREVANS: I WANT TO ASK THE WITNESS
16 TO POINT OUT A PORTION OF THE TEXT IN THE ARTICLE
17 TO THE JURY.

18 THE COURT: GO AHEAD, BUT IT'S SUBJECT TO
19 THE SAME INSTRUCTION THAT YOU'RE NOT TO CONSIDER
20 THIS FOR THE TRUTH OF WHAT'S IN THE ARTICLE ITSELF.
21 BY MS. KREVANS:

22 Q OKAY. IF WE COULD LOOK AT THE SECOND PAGE,
23 COULD YOU READ FOR THE JURY WHAT IS SET OUT IN THE
24 SECOND PARAGRAPH OF THIS ARTICLE ON THIS SECOND
25 PAGE.

1 MR. VERHOEVEN: SAME OBJECTION, YOUR
2 HONOR.

3 THE COURT: GO AHEAD.

4 THE WITNESS: "IN MY HANDS-ON TESTING,
5 THE TAB 10.1 ACHIEVED PERHAPS ITSELF BEST DESIGN
6 COMPLIMENT AN ANDROID TABLET COULD HOPE FOR --
7 OFTEN BEING MISTAKEN BY PASSERS-BY (INCLUDING APPLE
8 IPAD USERS) FOR AN IPAD 2. THE CONFUSION IS
9 UNDERSTANDABLE WHEN YOU SEE AND HOLD THE TAB 10.1
10 FOR THE FIRST TIME."

11 MS. KREVANS: THANK YOU, MR. BRESSLER.

12 IS THIS THE TIME THAT YOUR HONOR WOULD
13 LIKE TO TAKE A BREAK?

14 THE COURT: THAT'S FINE. IT'S 12:05, AND
15 SO WE'LL TAKE AN HOUR LUNCH BREAK. I'LL SEE YOU AT
16 1:00 O'CLOCK. AGAIN, PLEASE KEEP AN OPEN MIND AND
17 DON'T TALK TO ANYONE ABOUT THE CASE AND PLEASE
18 DON'T RESEARCH ANYTHING ABOUT THE CASE. OKAY.
19 THANK YOU.

20 AND IF YOU COULD LEAVE YOUR JURY
21 NOTEBOOKS IN THE JURY ROOM WHEN YOU GO OUT TO
22 LUNCH. THANK YOU.

23 (WHEREUPON, THE FOLLOWING PROCEEDINGS
24 WERE HELD OUT OF THE PRESENCE OF THE JURY:)

25 THE COURT: YOU CAN STEP DOWN.

1 EXPERT REPORT FOR THIS WITNESS, THERE'S A CITATION
2 TO THIS DOCUMENT. THERE'S ABSOLUTELY NO DISCUSSION
3 OF IT OR DISCLOSURE OF WHAT TESTIMONY HE WOULD LIKE
4 TO SEEK.

5 BY MS. KREVANS:

6 Q EXPLAIN TO THE JURY WHAT THE GIST OF THE
7 CONTENTS OF PX 59 ARE, MR. BRESSLER.

8 THE COURT: WAIT ONE SECOND. ONE SECOND.
9 WHAT'S YOUR RESPONSE TO MR. VERHOEVEN'S
10 OBJECTION?

11 MS. KREVANS: YOUR HONOR, IN PARAGRAPH
12 105 OF THE REPORT, AND I HAVE A COPY HERE IF YOUR
13 HONOR DOES NOT HAVE IT HANDY.

14 THE COURT: I HAVE IT HERE.

15 MS. KREVANS: PARAGRAPH 105 OF THE
16 REPORT, WHICH IS ON PAGE 35, AT THE BOTTOM OF THE
17 PAGE, IT HAS THE SUBSTANCE OF THE TESTIMONY THAT I
18 INTEND TO ELICIT FROM THE WITNESS ABOUT THIS
19 DOCUMENT, AND THE BATES NUMBER CITATION THERE IS
20 THE CITATION TO THIS DOCUMENT.

21 THE COURT: OVERRULED.

22 GO AHEAD, PLEASE.

23 BY MS. KREVANS:

24 Q MR. BRESSLER, WHAT'S THE GIST OF THE CONTENTS
25 OF -- ACTUALLY, LET ME BACK UP.

1 IS PX 59 A DOCUMENT CREATED BY SAMSUNG?

2 A YES.

3 Q AND ORIGINALLY IT WAS IN KOREAN, BUT YOU'RE
4 LOOKING AT THE TRANSLATION?

5 A THAT'S CORRECT.

6 Q OKAY. WHAT'S THE GIST OF THE CONTENTS OF PX
7 59?

8 A THE GIST OF THE CONTENTS IS THIS IS A REPORT
9 THAT A SAMSUNG TEAM CREATED DOING RESEARCH AT BEST
10 BUY STORES TO DETERMINE WHY A LARGER NUMBER THAN
11 USUAL OF GALAXY TAB 10.1'S WERE BEING RETURNED IN
12 CERTAIN REGIONS.

13 Q OKAY. WOULD YOU LOOK AT THE TITLE ON THE
14 FRONT PAGE OF THE DOCUMENT. IT SAYS, "NORTH
15 AMERICAN P4 (P7510 WIFI) BBY RETAIL STORE VISIT TF
16 REPORT."

17 CAN YOU EXPLAIN TO THE JURY WHAT THAT
18 REFERS TO?

19 A I'LL DO THE BEST I CAN.

20 CERTAINLY IT'S IN NORTH AMERICA. I
21 BELIEVE THAT P4 MAY HAVE BEEN WHAT THEY REFERRED TO
22 AS THE 10.1. THE WI-FI SUGGESTS THAT TO ME.

23 THE BBY, AS I UNDERSTAND IT, STANDS FOR
24 BEST BUY.

25 RETAIL STORE VISIT, I THINK THAT'S FAIRLY

1 CLEAR THAT THEY'RE DOING RESEARCH IN RETAIL STORES,
2 AND IT'S A TEAM REPORT AS I UNDERSTAND IT.

3 Q AND THE DATE OF THE DOCUMENT IS WHAT?

4 A IT IS AUGUST 11TH -- I'M SORRY. AUGUST 2011.

5 Q OKAY. IF WE LOOK AT THE SECOND PAGE OF PX 59.
6 WHAT DOES IT SAY THE PURPOSE OF THIS TASK FORCE
7 VISIT WAS?

8 A IT SAYS THE PURPOSE IS TO "INVESTIGATE THE
9 REASONS CONSUMERS RETURN THE PRODUCT, AND IDENTIFY
10 AREAS FOR IMPROVEMENT, BY VISITING THE 30 STORES
11 WITH THE HIGHEST NUMBER OF RETURNS, OF OUR LARGEST
12 VENDOR FOR NORTH AMERICAN P4 WI-FI MODEL, BBY."

13 Q OKAY. AND DOWN BELOW, SECTION 2, WHAT
14 GENERALLY IS SET OUT IN SECTION 2 OF THIS DOCUMENT
15 ON PAGE 2?

16 A THIS BASICALLY DEFINES THE PROCESS THEY INTEND
17 TO GO THROUGH.

18 Q OKAY. AND THAT INCLUDED IN-PERSON VISITS TO
19 BEST BUY STORES BY A NUMBER OF SAMSUNG PERSONNEL?

20 A YES. THERE WAS A TEAM SENT OUT TO THREE
21 REGIONS IN THE COUNTRY. I BELIEVE IT WAS FLORIDA,
22 L.A., AND NEW YORK.

23 Q OKAY. COULD YOU GO TO PAGE 19 OF THIS REPORT.
24 AND COULD YOU TELL US WHAT IS SET OUT ON PAGE 19 OF
25 THIS REPORT WITH RESPECT TO THE FINDINGS THAT THE

1 SAMSUNG TEAM MADE ABOUT THE REASONS FOR RETURNS OF
2 THE GALAXY TAB 10.1?

3 A THIS IS A PAGE IN THE PORTION OF THE DOCUMENT
4 THAT RELATES TO MARKETABILITY. AND IF I CAN CALL
5 THE ATTENTION TO THE NOTES BOX, THE NUMBER 1 LINE
6 IN THE NOTES BOX READS "GREATEST NUMBER OF CUSTOMER
7 RETURN TYPE WERE THOSE WHO PURCHASED THINKING IT
8 WAS AN APPLE IPAD 2."

9 Q THANK YOU, MR. BRESSLER.

10 YOU CAN PUT THAT DOCUMENT ASIDE. I WANT
11 TO SWITCH TO A DIFFERENT TOPIC.

12 DID YOU PERFORM AN ANALYSIS OF WHETHER
13 THE APPEARANCE OF ANY ELEMENT IN THE DESIGN OF THE
14 THREE APPLE DESIGN PATENTS THAT YOU ANALYZED WAS
15 DICTATED BY FUNCTION?

16 A I DID.

17 Q AND DID YOU, AS A RESULT OF THAT ANALYSIS,
18 CONCLUDE THAT ANY OF THE VISUAL ELEMENTS OF THE
19 APPLE DESIGN PATENTS WERE, IN FACT, DICTATED BY
20 FUNCTION?

21 A I CONCLUDED THEY -- NONE OF THE ELEMENTS WERE
22 DICTATED BY FUNCTION.

23 Q WHY DID YOU CONCLUDE THAT NONE OF THE ELEMENTS
24 OF THE APPLE DESIGN PATENTS WERE DICTATED BY
25 FUNCTION?

1 A FOR A COUPLE OF REASONS. ONE, IN MY
2 EXPERIENCE, I KNOW FULL WELL THAT VIRTUALLY EVERY
3 FUNCTION THAT'S INCLUDED CAN BE DESIGNED WITH A
4 DIFFERENT APPEARANCE.

5 SECONDLY, I REVIEWED AND IDENTIFIED A
6 NUMBER OF DIFFERENT ALTERNATIVE DESIGNS THAT
7 PERFORMED THE SAME OR SIMILAR FUNCTIONS TO THOSE
8 THAT WERE IN THE PATENTS.

9 Q OKAY. LET'S TURN TO THE OPINIONS YOU GAVE
10 ABOUT TRADE DRESS.

11 DO YOU UNDERSTAND THAT APPLE IS, IN
12 ADDITION TO THE DESIGN PATENTS, ASSERTS IPHONE AND
13 IPAD TRADE DRESS CLAIMS IN THIS CASE?

14 A I DO.

15 Q I'D LIKE TO SHOW YOU SLIDE PDX 26.18.

16 ARE THE ELEMENTS OF THE APPLE IPHONE
17 TRADE DRESS THAT YOU ANALYZED FOR THIS CASE SET OUT
18 ON THIS SLIDE?

19 A YES, THEY ARE.

20 Q WHICH OF THE BULLET POINT ELEMENTS ON THIS
21 SLIDE DID YOU ANALYZE?

22 A IT'S THE FIRST FIVE THAT RELATE PRIMARILY TO
23 THE INDUSTRIAL DESIGN OF THE DEVICE ITSELF, NOT THE
24 SCREEN.

25 Q OKAY. SO YOU IGNORED THE ICONS IN THE MIDDLE?

1 A CORRECT.

2 Q OKAY. DID YOU PERFORM AN ANALYSIS OF WHETHER
3 ANY ELEMENTS OF THE ASSERTED IPHONE TRADE DRESS
4 WERE FUNCTIONAL AS THAT TERM IS USED IN TRADE DRESS
5 ANALYSIS?

6 A I DID.

7 Q AND WHAT IS YOUR UNDERSTANDING OF THE LEGAL
8 STANDARD FOR FUNCTIONALITY OF A TRADE DRESS?

9 A MY UNDERSTANDING UNDER TRADE DRESS IS THAT THE
10 APPEARANCE IS NOT FUNCTIONAL UNDER TRADE DRESS IF
11 IT DOES NOT CONTRIBUTE UNUSUALLY EITHER TO THE
12 USABILITY OR TO THE REDUCTION IN COST OR EASE OF
13 MANUFACTURING.

14 Q AND DID YOU FIND ANY ELEMENT OF THE INDUSTRIAL
15 DESIGN, THE PHYSICAL DESIGN OF THE IPHONE WAS
16 FUNCTIONAL UNDER THAT TEST?

17 A UNDER THOSE TESTS, I DID NOT FIND THAT ANY OF
18 THOSE APPEARANCE ELEMENTS WERE FUNCTIONAL.

19 Q DID YOU, IN YOUR ANALYSIS, DETERMINE WHETHER
20 THERE WERE ALTERNATIVES TO THE HARDWARE ASPECTS OF
21 THE IPHONE TRADE DRESS?

22 A YES, THERE ARE A SIGNIFICANT NUMBER OF
23 ALTERNATIVES.

24 Q OKAY. COULD YOU LOOK AT EXHIBIT PX 10 IN YOUR
25 BINDER.

1 WHAT IS PX 10, MR. BRESSLER?

2 A PX 10 IS ANOTHER COMPILATION OF A PHOTOGRAPH
3 SLIDE THAT IS CREATED TO ILLUSTRATE A NUMBER OF
4 ALTERNATIVE DESIGNS.

5 AND ON THE THIRD PAGE SPECIFICALLY FOR
6 SMARTPHONES.

7 MS. KREVANS: YOUR HONOR, WE MOVE PX 10
8 INTO EVIDENCE.

9 MR. VERHOEVEN: OBJECTION. IT'S A
10 DEMONSTRATIVE.

11 MS. KREVANS: YOUR HONOR, THIS OBJECTION
12 HAS BEEN MADE AND PREVIOUSLY OVERRULED BY YOUR
13 HONOR. THIS IS A COMPILATION OF PHOTOGRAPHS OF
14 ACTUAL OBJECTS.

15 THE COURT: THAT'S ADMITTED.

16 BY MS. KREVANS:

17 Q ON THE THIRD PAGE OF PX 10, WHAT HAVE YOU
18 SHOWN?

19 A THESE ARE FIVE EXAMPLES OF A LARGE NUMBER OF
20 ALTERNATIVE CELL PHONE, SMARTPHONE DESIGNS THAT
21 EXIST.

22 THEY'RE CLEARLY MARKETED BY LARGE
23 COMPANIES.

24 Q DID YOU FIND, IN DOING YOUR ANALYSIS OF
25 FUNCTIONALITY WITH RESPECT TO TRADE DRESS, THAT THE

1 PHYSICAL HARDWARE DESIGN OF THE IPHONE WAS THE
2 RESULT OF PARTICULARLY SIMPLE OR INEXPENSIVE
3 MANUFACTURING PROCESS?

4 A ABSOLUTELY NOT. IN FACT, I'VE SEEN
5 DOCUMENTATION AND READ DEPOSITIONS FROM APPLE
6 PERSONNEL THAT INDICATE THAT THE AESTHETICS THEY
7 WERE TRYING TO ACHIEVE WERE PARTICULARLY DIFFICULT
8 AND MORE EXPENSIVE TO DO.

9 THEY HAD TO BASICALLY DEVELOP A GLASS
10 THAT WAS NOT BREAKABLE ENOUGH, SCRATCH RESISTANT
11 ENOUGH, AND THEY HAD TO DEVELOP SPECIAL MACHINING
12 PROCESSES TO CREATE THE RECEIVER SLOT IN THE GLASS
13 AND TO MACHINE THE BEZEL.

14 Q WHAT WAS YOUR OVERALL CONCLUSION ABOUT WHETHER
15 ANY ASPECTS OF THE IPHONE TRADE DRESS WERE
16 FUNCTIONAL?

17 A IT'S MY OPINION THAT THESE ASPECTS OF THE
18 TRADE DRESS ARE NOT FUNCTIONAL.

19 Q DID YOU ALSO ANALYZE THE, QUOTE,
20 "FUNCTIONALITY" FOR TRADE DRESS OF THE ASSERTED
21 IPAD TRADE DRESS?

22 A I DID.

23 Q LET'S LOOK AT YOUR SLIDE PDX 26.19.

24 ARE THESE THE ELEMENTS OF THE IPAD TRADE
25 DRESS THAT WERE PRESENTED TO YOU FOR CONSIDERATION

1 IN THIS CASE?

2 A YES. AGAIN, THE TOP FIVE ARE FOR THE PHYSICAL
3 DEVICE, NOT INCLUDING THE LIT SCREEN.

4 Q OKAY. WHAT OPINION DID YOU FORM REGARDING THE
5 FUNCTIONALITY OF THE ASSERTED IPAD TRADE DRESS?

6 A USING THE SAME PROCESS AS I DID ON THE IPHONE,
7 I DETERMINED THAT NONE OF THESE ELEMENTS OF THE
8 APPEARANCE OF THE IPAD WERE FUNCTIONAL AS THEY
9 RELATE TO TRADE DRESS.

10 Q DID YOU LOOK TO SEE WHETHER THERE WERE
11 ALTERNATIVE DESIGNS FOR A TABLET DESIGN, THAT IS,
12 ALTERNATIVES TO THE ASSERTED IPAD TRADE DRESS?

13 A YES.

14 Q AND DID YOU FIND ANY?

15 A I DID.

16 Q OKAY. COULD WE LOOK BACK AT PX 10, AND THIS
17 TIME I'D ASK YOU TO LOOK AT PAGES 1 AND 2, STARTING
18 WITH PAGE 1.

19 WHAT HAVE YOU SET OUT IN THE FIRST TWO
20 PAGES OF EXHIBIT PX 10, MR. BRESSLER?

21 A PAGE 1 IS FOUR DIFFERENT TABLET DESIGNS THAT I
22 THINK I TALKED ABOUT EARLIER, ALL OF WHICH ARE
23 DESIGNS THAT COULD BE APPLIED TO A TABLET COMPUTER.
24 THEY ARE CERTAINLY DIFFERENT THAN THE IPHONE AND
25 THE GALAXY 10.1 -- I'M SORRY, THE IPAD 2 AND THE

1 GALAXY 10.1.

2 Q AND WERE THESE ALL ACTUALLY SOLD?

3 A I BELIEVE SO.

4 Q LET'S LOOK AT THE SECOND PAGE.

5 ACTUALLY, LET'S JUST SKIP THE SECOND
6 PAGE.

7 GOING BACK TO THE FIRST PAGE, CAN YOU
8 TELL US A LITTLE BIT MORE ABOUT THAT SONY TABLET S
9 ON THE BOTTOM RIGHT?

10 A YES. THE SONY TABLET S IS ACTUALLY A PRETTY
11 INTERESTING DESIGN IN THAT IT HAS A SHEET OF
12 MATERIAL, WHICH I BELIEVE IS PLASTIC, THAT GOES
13 ACROSS THE FRONT AND LITERALLY FOLDS AROUND TO THE
14 BACK OF THE COMPUTER, AND IT PROVIDES THIS KIND OF
15 FOLIO FEELING DEVICE THAT SOME PEOPLE ACTUALLY SAY
16 IS EASIER TO HOLD THAN THINNER TABLET COMPUTERS.

17 Q IS THAT FOLDED-OVER DESIGN WHAT WE'RE SEEING
18 IN THE MIDDLE PICTURE ON THE BOTTOM RIGHT?

19 A THAT'S AN ILLUSTRATION OF IT, YES. THE FRONT
20 IS ON THE LEFT AND WHERE IT FOLDS DOWN PARTIALLY IS
21 ON THE RIGHT.

22 Q OKAY.

23 THANK YOU, MR. BRESSLER.

24 NO FURTHER QUESTIONS AT THIS TIME, YOUR
25 HONOR.

1 THE COURT: LET ME DO JUST A LITTLE
2 CLEANUP, AND THIS IS NOT GOING TO BE CHARGED TO
3 ANYONE'S TIME.

4 PX 59, IS THAT ADMITTED?

5 MS. KREVANS: DID YOU ADMIT THAT, YOUR
6 HONOR?

7 THE COURT: OKAY. AND THEN YOU SHOWED
8 26.18, A DEMONSTRATIVE, AND 26.19.

9 DID YOU SHOW ANY OTHERS?

10 MS. KREVANS: SINCE LUNCH?

11 THE COURT: NO. JUST -- YES, JUST IN THE
12 LAST FEW MINUTES. I CAUGHT 18 AND 18, BUT I DON'T
13 KNOW IF I MISSED ONE.

14 MS. KREVANS: THOSE ARE THE ONLY TWO
15 DEMONSTRATIVES I THINK I'VE SHOWN SINCE LUNCH.

16 I ALSO USED PX 10 AS AN EXHIBIT.

17 THE COURT: I UNDERSTOOD THAT THAT WAS
18 ADMITTED. I JUST WANTED TO MAKE SURE I HAVE IT.

19 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
20 10, HAVING BEEN PREVIOUSLY MARKED FOR
21 IDENTIFICATION, WAS ADMITTED INTO
22 EVIDENCE.)

23 THE COURT: OKAY. THANK YOU.

24 ARE YOU READY, MR. VERHOEVEN?

25 MR. VERHOEVEN: I AM. EVERYTHING HAS

1 BEEN PASSED OUT? YES.

2 THE COURT: ALL RIGHT. WE'RE ALL SET.
3 IT'S 1:23. PLEASE GO AHEAD.

4 MR. VERHOEVEN: THANK YOU, YOUR HONOR.

5 **CROSS-EXAMINATION**

6 BY MR. VERHOEVEN:

7 Q GOOD AFTERNOON, MR. BRESSLER.

8 A GOOD AFTERNOON.

9 Q GOOD TO SEE YOU AGAIN.

10 A AND YOU.

11 Q WE'RE ALL ON THE CLOCK HERE, SO I'M GOING TO
12 ASK YOU A PRELIMINARY QUESTION, AND THAT IS, AS I
13 GO THROUGH MY QUESTIONING, IF YOU CAN MAKE AN
14 EFFORT, IF MY QUESTION IS FAIRLY ANSWERABLE WITH A
15 YES OR A NO, I'D ASK YOU TO ANSWER IT IN THAT
16 MANNER. OKAY?

17 A YES.

18 Q NOW, MR. BRESSLER, IN FORMING YOUR OPINIONS,
19 IT'S CORRECT THAT YOU DID NOT RELY ON ANY APPLE
20 CONSUMER SURVEYS THAT IDENTIFIED WHAT APPLE
21 CUSTOMERS CONSIDERED TO BE IMPORTANT WITH RESPECT
22 TO IPHONES; TRUE?

23 A YES.

24 Q YOU DON'T HAVE ANY FIRST-HAND KNOWLEDGE OF ANY
25 SURVEYS THAT APPLE HAS CONDUCTED WITH RESPECT TO

1 IPHONES; RIGHT?

2 A I BELIEVE I HAVE SEEN A COUPLE, BUT I DON'T --
3 I HAVEN'T EXAMINED THEM.

4 Q THE ANSWER IS YOU DON'T HAVE ANY FIRST-HAND
5 KNOWLEDGE OF ANY SURVEYS APPLE CONDUCTED WITH
6 RESPECT TO ITS IPHONES; TRUE?

7 A NOT TRUE.

8 Q OKAY. NOW, YOU TESTIFIED FOR APPLE BEFORE IN
9 ANOTHER HEARING ON MAY 31ST, 2012.

10 DO YOU REMEMBER THAT?

11 A YES.

12 Q AND YOU TESTIFIED UNDER OATH; CORRECT?

13 A YES.

14 Q AND SO YOU TOOK JUST AS MUCH CARE WITH YOUR
15 ANSWERS TO QUESTIONS DURING THAT HEARING AS YOU ARE
16 TODAY; RIGHT?

17 A YES.

18 Q OKAY. LET'S PUT UP WHAT YOU SAID AT THAT
19 HEARING ON MAY 31ST, 2012, PAGE 705, LINES 6
20 THROUGH 10.

21 MS. KREVANS: OBJECTION, YOUR HONOR.

22 MR. VERHOEVEN: MR. FISHER, IF WE COULD
23 DO THAT.

24 MS. KREVANS: IT'S IMPROPER TO SHOW
25 TESTIMONY UNTIL THE JURY -- UNTIL IT'S BEEN SHOWN

1 THAT IT'S IMPEACHING TO SOMETHING THE WITNESS HAS
2 SAID AND THAT SHOWING HAS NOT BEEN MADE.

3 MR. VERHOEVEN: YOUR HONOR, THIS IS
4 EXACTLY WHAT COUNSEL IN EXAMINING MR. DENISON DID.

5 THE COURT: OVERRULED.

6 GO AHEAD, PLEASE.

7 MR. VERHOEVEN: PULL THAT UP, MR. FISHER.
8 AND PULL OUT LINES 7 THROUGH 10, AND I'LL READ IT
9 INTO THE RECORD.

10 "QUESTION: YOU DON'T HAVE ANY FIRSTHAND
11 KNOWLEDGE OF ANY SURVEYS APPLE'S CONDUCTED WITH
12 RESPECT TO ITS IPHONES, CORRECT?

13 "ANSWER: CORRECT."

14 Q WAS THAT TRUTHFUL TESTIMONY WHEN YOU GAVE IT
15 IN MAY?

16 A IT WAS TRUE THEN, YES.

17 Q OKAY. THANK YOU, MR. FISHER.

18 IN FORMING YOUR OPINIONS, YOU DID NOT
19 HAVE ANY INFORMATION ABOUT WHAT PERCENTAGE OF
20 PURCHASERS OF IPHONES PURCHASED THOSE PRODUCTS
21 EITHER FROM AN APPLE STORE OR A WEBSITE; RIGHT?

22 A CORRECT.

23 Q YOU DID NOT TALK TO CONSUMERS ABOUT THEIR
24 PERCEPTIONS OF PRODUCTS IN AN APPLE STORE; RIGHT?

25 A I DID SPEAK TO A FEW CONSUMERS IN SOME VERY

1 BRIEF DISCUSSIONS I HAD WITH THEM.

2 Q SIR, YOU DID NOT TALK TO CONSUMERS ABOUT THEIR
3 PERCEPTIONS OF PRODUCTS AT AN APPLE STORE, DID YOU?

4 A AN APPLE STORE, NO, I DID NOT.

5 Q OKAY. YOU DID HAVE A 20-MINUTE PHONE
6 CONVERSATION WITH MR. STRINGER; RIGHT?

7 A YES.

8 Q BUT YOU SPOKE WITH NO ONE ELSE AT APPLE IN
9 FORMING YOUR OPINIONS, DID YOU, SIR?

10 A NO, I DIDN'T.

11 Q AND YOU HAVE NO DIRECT EVIDENCE TO SUGGEST
12 THAT ANY CONSUMER HAS EVER PURCHASED A SAMSUNG
13 SMARTPHONE OR AN APPLE SMARTPHONE BELIEVING IT WAS
14 ACTUALLY A DEVICE MANUFACTURED BY THE OTHER, DO
15 YOU?

16 A WOULD YOU REPEAT THAT, PLEASE?

17 MR. VERHOEVEN: CAN WE HAVE THE QUESTION
18 READ BACK, PLEASE?

19 (WHEREUPON, THE RECORD WAS READ BY THE
20 COURT REPORTER.)

21 THE WITNESS: I DO NOT.

22 BY MR. VERHOEVEN:

23 Q YOU DON'T KNOW WHETHER CONSUMERS HAVE BEEN
24 CONFUSED AT ANY TIME WHEN PURCHASING APPLE DEVICES
25 OR SAMSUNG DEVICES INTO THINKING THEY ARE DEVICES

1 FROM THE OTHER MANUFACTURER; CORRECT?

2 A I BELIEVE THAT'S CORRECT. I'M SORRY. COULD
3 YOU REPEAT THE QUESTION?

4 MR. VERHOEVEN: CAN WE HAVE IT READ BACK
5 FOR MR. BRESSLER?

6 (WHEREUPON, THE RECORD WAS READ BY THE
7 COURT REPORTER.)

8 THE WITNESS: THAT'S CORRECT.
9 BY MR. VERHOEVEN:

10 Q YOU DON'T KNOW WHETHER CONSUMERS CONFUSE APPLE
11 AND SAMSUNG DEVICES DURING THE COURSE OF THEIR
12 PURCHASING DECISIONS, DO YOU?

13 A I BELIEVE I HAVE SEEN SOME ARTICLES THAT
14 SUGGEST THAT PEOPLE DO GET CONFUSED.

15 Q WELL, IN ADDITION TO THIS HEARING IN WHICH YOU
16 TESTIFIED, YOU ALSO HAD YOUR DEPOSITION TAKEN.

17 DO YOU REMEMBER THAT IN THIS CASE?

18 A YES, I DO.

19 Q AND THAT HAPPENED ON APRIL 24TH, 2012? DOES
20 THAT SOUND ABOUT RIGHT?

21 A SOUNDS ABOUT RIGHT, YES.

22 Q AND A DEPOSITION, YOU UNDERSTAND, IS A
23 PROCEEDING JUST LIKE IN THE COURT HERE WHERE YOU'RE
24 SWORN UNDER OATH AND YOU GAVE TRUTHFUL TESTIMONY;
25 RIGHT?

1 A YES.

2 Q LET'S LOOK AT WHAT YOU SAID AT YOUR DEPOSITION
3 AT PAGE 145:24 THROUGH 146, LINE 7, THE DEPOSITION
4 DATED APRIL 24TH, 2012.

5 CAN WE PLAY THAT?

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

8 BY MR. VERHOEVEN:

9 Q THAT WAS TRUTHFUL TESTIMONY WHEN YOU GAVE IT
10 AT THE DEPOSITION IN APRIL OF THIS YEAR; RIGHT,
11 SIR?

12 A I BELIEVE SO.

13 Q TO THE BEST OF YOUR KNOWLEDGE, SMARTPHONE
14 CONSUMERS EVALUATE DIFFERENT MODELS, COMPARE THEM
15 TO ONE ANOTHER, EVEN BEFORE GOING INTO THE STORE;
16 RIGHT?

17 A YES.

18 Q SMARTPHONE CONSUMERS CONSIDER A NUMBER OF
19 FACTORS, SUCH AS PRICE, PERFORMANCE, AS WELL AS
20 APPEARANCE; RIGHT?

21 A I GUESS.

22 Q DO YOU BELIEVE THAT'S TRUE?

23 A I SUSPECT THEY DO.

24 Q YOU WOULD EXPECT THAT IF THE PURCHASER WAS
25 ENTERING INTO A MULTI-YEAR CONTRACT, THEY WOULD

1 KNOW WHAT BRAND OF PHONE THEY WERE BUYING; RIGHT?

2 A YES.

3 Q YOU BELIEVE, BY THE END OF THE SMARTPHONE
4 PURCHASING PROCESS, THE ORDINARY CONSUMER WOULD
5 HAVE TO KNOW WHICH PHONE THEY WERE BUYING; RIGHT?

6 A YES.

7 Q GIVEN THE ENVIRONMENT IN WHICH THESE PHONES
8 ARE BEING SOLD AND THE DEGREE OF ADVERTISING
9 BRANDING, YOU DON'T KNOW WHETHER ANYBODY WOULD EVER
10 BE DECEIVED INTO THINKING THEY WERE BUYING A
11 SAMSUNG PHONE WHEN THEY WERE BUYING AN APPLE PHONE
12 OR VICE-VERSA; ISN'T THAT TRUE, SIR?

13 A COULD YOU REPEAT THAT AGAIN, PLEASE.

14 MR. VERHOEVEN: CAN WE READ IT BACK,
15 PLEASE.

16 (WHEREUPON, THE RECORD WAS READ BY THE
17 COURT REPORTER.)

18 THE WITNESS: YES.

19 BY MR. VERHOEVEN:

20 Q AND WHEN YOU PERFORMED YOUR INFRINGEMENT
21 ANALYSIS THAT YOU'VE TESTIFIED TO EARLIER TODAY,
22 YOU DID NOT ENDEAVOR TO DETERMINE WHETHER THE
23 SIMILARITY BETWEEN TWO DESIGNS WAS DECEPTIVE, DID
24 YOU?

25 A YES, I DID.

1 Q OKAY. LET'S GO TO YOUR TESTIMONY ON MAY 31ST,
2 2012, PAGE 659, LINES 6 THROUGH 14.

3 CAN WE PUT THAT UP, MR. FISHER? 659,
4 PAGE -- LINES 6 THROUGH 14. IT'S THE MAY 31ST,
5 2012. THERE WE GO.

6 "QUESTION: DID YOU APPLY THIS TEST THAT
7 I HAVE ON THE SCREEN ON RDX-49C, PAGE 20?

8 "ANSWER: I CERTAINLY APPLIED THE ISSUE
9 OF THE EYE OF THE ORDINARY OBSERVER GIVING AS MUCH
10 ATTENTION AS A PURCHASER USUALLY GIVES TO THE TWO
11 DESIGNS, FINDING THEM SUBSTANTIALLY THE SAME.

12 "IT WAS MY UNDERSTANDING, FROM COUNSEL,
13 THAT IT WAS NOT NECESSARY THAT THE SIMILARITY BE
14 DECEPTIVE."

15 Q DO YOU SEE THAT?

16 A I SEE THAT, YES.

17 Q AND THAT'S THE TESTIMONY YOU GAVE ON MAY 31ST,
18 2012; RIGHT?

19 A IT IS.

20 Q AFTER YOU SUBMITTED YOUR OPINIONS IN THIS
21 CASE?

22 A YES.

23 Q SO AT THE TIME YOU SUBMITTED YOUR OPINIONS IN
24 THIS CASE, IT WAS YOUR UNDERSTANDING IT WAS NOT
25 NECESSARY TO LOOK INTO WHETHER A SIMILARITY WAS

1 DECEPTIVE; ISN'T THAT TRUE, SIR?

2 A NO. IT WAS MY UNDERSTANDING THAT THE
3 MEASUREMENT WAS DIFFERENT THAT YOU'RE DESCRIBING.

4 MS. KREVANS: YOUR HONOR, MAY I ASK, FOR
5 COMPLETENESS, THAT I BE PERMITTED TO READ AN
6 ADDITIONAL PORTION OF THE TESTIMONY? THIS IS FROM
7 THE ITC TRIAL.

8 THE COURT: NO. YOU'LL HAVE AN
9 OPPORTUNITY IN REDIRECT.

10 BY MR. VERHOEVEN:

11 Q NOW, I WANT TO SWITCH TO TALKING ABOUT THE
12 DESIGN PATENTS, '087 AND '677 MORE SPECIFICALLY,
13 OKAY?

14 A YES.

15 Q WHEN YOU PREPARED YOUR OPINIONS WITH RESPECT
16 TO THOSE DESIGN PATENTS, YOU WERE ASKED TO APPLY
17 CERTAIN PRINCIPALS OR RULES OF THE ROAD FOR YOUR
18 ANALYSIS BY THE ATTORNEYS; CORRECT?

19 A YES.

20 Q AND IF WE COULD JUST GO TO, MR. BRESSLER, YOUR
21 OPENING EXPERT REPORT DATED MARCH 22, 2012 AT
22 PARAGRAPH 21. I THINK THAT'S IN YOUR BINDER IF
23 YOU'D LIKE TO LOOK AT IT. WE'RE GOING TO PUT IT ON
24 THE SCREEN AS WELL.

25 A COULD YOU TELL ME WHERE IT WAS IN MY BINDER,

1 PLEASE.

2

3 MR. VERHOEVEN: IF I COULD APPROACH, YOUR
4 HONOR?

5 THE COURT: GO AHEAD, PLEASE.

6 MR. VERHOEVEN: THANK YOU.

7 YOU HAVE MY BINDER, SO -- THERE SHOULD BE
8 AN EXHIBIT IN THERE.

9 THE WITNESS: THANK YOU.

10 MR. VERHOEVEN: SURE.

11 THE WITNESS: AND WHAT PAGE WAS THIS
12 AGAIN, PLEASE?

13 BY MR. VERHOEVEN:

14 Q IT'S PARAGRAPH 21, SIR. ARE YOU THERE?

15 A YES.

16 Q OKAY. SO OBVIOUSLY YOU'RE NOT A LAWYER;
17 RIGHT?

18 A THAT'S CORRECT.

19 Q BUT YOU WERE GIVEN, BY THE LAWYERS, CERTAIN
20 PRINCIPLES THEY ASKED YOU TO APPLY IN CONDUCTING
21 YOUR ANALYSIS; CORRECT?

22 A YES.

23 Q AND THIS WAS IN THE PART OF YOUR REPORT WHERE
24 YOU DELINEATE WHAT THOSE PRINCIPLES WERE; CORRECT?
25 "I, THEREFORE, HAVE BEEN ASKED TO APPLY THE

1 A YES.

2 Q OKAY. THAT PRE-DATES BOTH THE '087 PATENT AND
3 THE '677 PATENT FILINGS; CORRECT, SIR?

4 A I BELIEVE IT PRE-DATES THE FILING, BUT I'M NOT
5 SURE -- I DON'T THINK IT PRE-DATES THE CONCEPTION
6 DATE THAT'S BEEN IDENTIFIED.

7 Q WELL, YOU AGREE IT PRE-DATES THE FILING DATE?

8 A I -- WITHOUT LOOKING AT THE PATENT, I'M NOT
9 100 PERCENT SURE, BUT IT MIGHT.

10 Q WELL, WOULD YOU AGREE THAT THAT'S
11 APPROXIMATELY SIX MONTHS BEFORE THE IPHONE WAS EVER
12 EVEN ANNOUNCED PUBLICLY?

13 A YES.

14 Q NOW, LET'S GO TO PAGE 7, THE SECOND IMAGE ON
15 PAGE 7 AND PULL THAT OUT. PUT THAT NEXT TO THE
16 '087.

17 SO DX 727, RECTANGULAR IN SHAPE?

18 A YES.

19 Q ROUNDED CORNERS?

20 A YES.

21 Q IT'S GOT A BIG DISPLAY SCREEN; YES?

22 A NOT AS BIG, BUT YES.

23 Q IT'S GOT A LOZENGE SHAPED SPEAKER SLOT? YES?

24 A YES.

25 Q IT'S GOT LATERAL BORDERS THAT ARE NARROWER

1 THAN THE TOP AND BOTTOM BORDERS?

2 A CORRECT. IT DOES NOT SHOW A BEZEL.

3 Q THE SCREEN IS BALANCED; RIGHT?

4 A I'M NOT SURE WHAT YOU MEAN BY "BALANCED."

5 Q HORIZONTALLY AND VERTICALLY CENTERED?

6 A YES. AGAIN, I BELIEVE THIS IS A DISTORTED
7 VIEW OF HOW ONE SHOULD READ A PATENT.

8 Q NOW, LET'S ALSO LOOK AT JX 1093, I THINK WE
9 HAVE A PHYSICAL -- THAT'S A PHYSICAL EXHIBIT, YOUR
10 HONOR.

11 CAN I JUST SEE THAT AND MAKE SURE IT'S
12 THE RIGHT ONE?

13 YOU'VE SEEN THIS PHYSICAL DEVICE BEFORE;
14 CORRECT?

15 A YES.

16 Q IT'S THE LG PRADA PHONE?

17 A YES.

18 Q CAN WE PUT UP SDX 3750 ON THE SCREEN, PLEASE.

19 MS. KREVANS: YOUR HONOR, THERE'S A
20 LIMITING INSTRUCTION WITH RESPECT TO THIS DEVICE,
21 THAT IT IS NOT PRIOR ART FOR PURPOSES OF ANY
22 VALIDITY --

23 MR. VERHOEVEN: I DISPUTE THAT, YOUR
24 HONOR.

25 THE COURT: IS THIS THE KE850?

1 MR. VERHOEVEN: NO, IT IS NOT, YOUR
2 HONOR. THIS IS NOT -- THIS IS IN EVIDENCE.

3 MS. KREVANS: IT WAS SUBJECT TO A
4 LIMITING INSTRUCTION --

5 THE COURT: MOTION IN LIMINE NUMBER 3,
6 THERE WAS A -- THIS IS COMING IN. OVERRULED
7 PLEASE.

8 GO AHEAD, MR. VERHOEVEN.

9 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
10 3750, HAVING BEEN PREVIOUSLY MARKED FOR
11 IDENTIFICATION, WAS ADMITTED INTO
12 EVIDENCE.)

13 MR. VERHOEVEN: THANK YOU, YOUR HONOR.

14 Q NOW, I'VE GOT A PICTURE OF THIS PHONE ON THE
15 SLIDE SDX 3750. DO YOU SEE IT ON THE SCREEN?

16 A I DO.

17 Q THAT'S THE PHONE YOU HAVE IN YOUR HAND; RIGHT?

18 A IT IS.

19 Q OKAY. AND THIS PHONE IS ALSO RECTANGULAR IN
20 SHAPE; CORRECT?

21 A YES.

22 Q ROUNDED CORNERS?

23 A SLIGHTLY ROUNDED, YES.

24 Q WHAT WAS THAT?

25 A THEY'RE SLIGHTLY ROUNDED.

1 Q OKAY. IS THERE SOMETHING DIFFERENT THAN
2 SLIGHTLY ROUNDED IN THE '087?

3 A I BELIEVE THE '087 LOOKS MORE -- THE OVERALL
4 IMPRESSION OF THE '087 IS MORE ROUNDED THAN THESE.

5 Q OKAY. AND THAT'S A DISTINGUISHING DIFFERENCE?

6 A WITHIN A GIVEN RANGE, YES.

7 Q SO IF THE CORNERS ARE MORE SHARPLY ROUNDED,
8 THAT'S A DISTINGUISHING FACTOR?

9 A WITHIN THE OVERALL IMPRESSION, YES.

10 Q OKAY. IT HAS A LOZENGE SHAPED SLOT FOR THE
11 SPEAKER?

12 A YES.

13 Q IT'S GOT A LARGE TOUCHSCREEN?

14 A I DON'T KNOW THAT IT'S A TOUCHSCREEN.

15 Q WELL, IT'S A LARGE SCREEN?

16 A YES.

17 Q CENTERED?

18 A IT SEEMS SO.

19 Q AND THE LATERAL BORDERS ARE NARROWER AND THE
20 TOP AND BOTTOM BORDERS ARE WIDER?

21 A YES. AND IT ALSO HAS A HUGE BUTTON ACROSS THE
22 BOTTOM.

23 Q SO ALL OF THIS ART WE'VE LOOKED AT IS
24 RECTANGULAR IN SHAPE WITH ROUNDED CORNERS; RIGHT?

25 A I GUESS YOU COULD LOOK AT IT THAT WAY.

1 Q IS THERE A WAY FOR US TO PUT EACH OF THOSE
2 IMAGES TOGETHER ON THE SCREEN? MR. FISHER, I'M
3 SORRY.

4 THERE WE GO. SO HERE WE'VE JUST PUT ALL
5 OF THESE IMAGES WE'VE LOOKED AT NEXT TO THE '087.
6 DO YOU SEE THAT, SIR?

7 A I DO.

8 Q IN ALL OF THESE OTHER DESIGN PATENTS AND THIS
9 PHONE ARE SIMILARLY RECTANGULAR TO THE '087; RIGHT?

10 A YES.

11 Q AND THEY ALL HAVE BIG SCREENS; RIGHT?

12 A YES.

13 Q SOME OF THEM HAVE LOZENGE SHAPED EARPIECES;
14 RIGHT?

15 A YES.

16 Q THEY ALL HAVE MINIMALIST DESIGN?

17 A I DON'T KNOW WHAT THAT MEANS.

18 Q YOU DON'T KNOW WHAT MINIMALIST DESIGN MEANS?

19 A NOT IN YOUR COMPARISON OF THESE ONE VIEWS OF
20 ALL THESE PHONES.

21 Q OKAY.

22 A THIS IS NOT HOW YOU REVIEW FIGURES IN PATENTS.

23 Q OKAY. THEY ALL HAVE NARROWER LATERAL BORDERS
24 OF DIFFERING WIDTHS, BUT THEY ALL HAVE NARROWER
25 LATERAL BORDERS?

1 A YES.

2 Q AND LARGER BORDERS ABOVE AND BELOW THE SCREEN;
3 RIGHT?

4 A THAT'S CORRECT.

5 Q SO --

6 A AT LEAST THREE OF THEM DON'T HAVE BEZELS.

7 Q AND THAT'S IMPORTANT, RIGHT, THAT'S IMPORTANT,
8 THE ABSENCE OF A BEZEL TAKES YOU OUT OF SUBSTANTIAL
9 SIMILARITY, DOESN'T IT?

10 A IN THE '087 PATENT, IT DOES.

11 Q OKAY. SO CIRCLING BACK, AS YOU UNDERSTAND THE
12 RULES OF THE ROAD, THE ORDINARY OBSERVER IS
13 SUPPOSED TO TAKE INTO ACCOUNT THIS PRIOR ART AND
14 LOOK AT WHAT IS DIFFERENT FROM THE PRIOR ART IN THE
15 '087 AND TAKE THOSE DIFFERENCES WHICH FOCUS ON
16 THOSE DIFFERENCES WHEN CONDUCTING THE INFRINGEMENT
17 ANALYSIS AS TO THE ACCUSED PHONES; RIGHT?

18 A THIS IS AN INCORRECT ANALYSIS. THESE ARE --
19 YOU ARE SUPPOSED TO BE COMPARING ALL OF THE VIEWS
20 OF EACH OF THESE PATENTS TO DEVELOP AN OVERALL
21 IMPRESSION OF WHAT THE ORDINARY OBSERVER WOULD
22 UNDERSTAND.

23 Q OKAY.

24 A YOU CANNOT GET THAT UNDERSTANDING FROM A
25 SINGLE VIEW.

1 Q OKAY. LET'S ACCEPT THAT. YOU LOOK AT ALL THE
2 VIEWS OF EACH OF THESE FOUR ITEMS HERE TO THE LEFT
3 OF THE '087 PATENT, YOU WOULD AGREE WITH ME THAT
4 WHEN YOU DO THAT, THAT THE ANALYSIS SHOULD BE THAT
5 THE ATTENTION OF THE ORDINARY OBSERVER WOULD BE
6 DRAWN TO THOSE ASPECTS OF THE DESIGN IN THE '087
7 THAT ARE DIFFERENT FROM THE DESIGN ELEMENTS IN THE
8 PRIOR ART; RIGHT?

9 A IF, IF THIS WERE A PROPER ANALYSIS, YOU COULD
10 SAY THAT, YES.

11 Q OKAY. NOW, LET'S GO TO -- LET'S GO TO YOUR
12 OPINIONS WITH RESPECT TO THE ACCUSED DEVICES.

13 NOW, YOU -- THE ONLY PERSON YOU SPOKE TO
14 FROM APPLE IN FORMING YOUR OPINIONS WAS
15 MR. STRINGER; CORRECT?

16 A THAT'S CORRECT.

17 Q WERE YOU HERE WHEN HE CAME AND TESTIFIED
18 BEFORE THE JURY?

19 A I WAS.

20 Q OKAY. AND MR. STRINGER IS LISTED AS AN
21 INVENTOR ON THE '087 AND '677 PATENTS; CORRECT?

22 A YES.

23 Q AND SO FAR, AT LEAST, HE'S THE ONLY INVENTOR
24 ON THE PATENTS THAT WE'VE HEARD TESTIFY SO FAR;
25 RIGHT?

1 A I DON'T KNOW THAT FOR SURE.

2 Q HAVE YOU BEEN IN COURT EVERY DAY?

3 A NO.

4 Q OKAY. WELL, I'LL REPRESENT THAT SO FAR HE'S
5 BEEN THE ONLY ONE THAT'S COME.

6 A OKAY.

7 Q SO LET'S LOOK AT WHAT HE SAID ABOUT WHAT HE
8 THINKS IS NEW AND UNIQUE ABOUT THE '087 DESIGN, OR
9 THE IPHONE, THE INITIAL IPHONE DESIGN.

10 CAN WE PUT UP SDX 37?

11 MS. KREVANS: OBJECTION, YOUR HONOR.
12 IRRELEVANT TO THIS WITNESS'S TESTIMONY. HE'S
13 TESTIFYING ABOUT THE IMPACT ON THE ORDINARY
14 OBSERVER. MR. STRINGER IS AN INDUSTRIAL DESIGNER.
15 HE'S AN EXPERT. HE'S NOT AN ORDINARY OBSERVER.

16 THE COURT: OVERRULED.

17 MS. KREVANS: CERTAINLY IT'S NOT
18 IMPEACHING.

19 THE COURT: OVERRULED. IF HE'S RELIED ON
20 ANY PART OF MR. STRINGER'S STATEMENTS, THEN IT MAY
21 COME IN.

22 GO AHEAD.

23 MR. VERHOEVEN: MAY WE PUT UP THE SCREEN
24 OR THE SLIDE, THANK YOU.

25 FOR THE RECORD, THIS IS SDX 3191. IT'S A

1 DEMONSTRATIVE SLIDE.

2 Q MR. BRESSLER, ON THE LEFT IS A HIGHLIGHTED
3 VERSION OF A COUPLE OF THE FIGURES FROM THE '087
4 PATENT.

5 DO YOU RECOGNIZE THOSE?

6 MS. KREVANS: OBJECTION, YOUR HONOR.
7 THERE IS NO TESTIMONY OR FOUNDATION THAT THIS
8 WITNESS RELIED ON ANY STATEMENTS FROM MR. STRINGER,
9 CERTAINLY NOT HIS TRIAL TESTIMONY, IN FORMING HIS
10 OPINIONS. THERE'S NO FOUNDATION FOR THIS TO BE
11 PART OF THIS WITNESS'S OPINION.

12 AND, AGAIN, MR. STRINGER IS NOT THE
13 ORDINARY OBSERVER.

14 THE COURT: OVERRULED. GO AHEAD.

15 MR. VERHOEVEN: THANK YOU, YOUR HONOR.

16 Q SO LET'S LOOK AT, ON JULY 31ST WHAT
17 MR. STRINGER SAID TO THE JURY ABOUT THIS FEATURE
18 THAT I'VE HIGHLIGHTED HERE, THE BEZEL ON THE '087
19 PATENT.

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

25 MR. STRINGER SAYS, "YES."

1 "QUESTION: AND YOU AGREE WITH ME, THAT
2 WAS AN IMPORTANT ASPECT OF THIS DESIGN, RIGHT?

3 "ANSWER: YES.

4 "QUESTION: AND THE -- IT WAS IMPORTANT
5 THAT THE BEZEL GO CONTINUOUSLY AROUND THE RIM OF
6 THE PHONE, RIGHT?

7 "ANSWER: YES.

8 "QUESTION: AND IT WAS ALSO IMPORTANT
9 THAT THE BEZEL BE OF UNIFORM THICKNESS, CORRECT?

10 "ANSWER: YES."

11 AND YOU CAN SEE FROM THE IMAGE, THE BEZEL
12 GOES ALL THE WAY AROUND AND IT HAS UNIFORM
13 THICKNESS ALL THE WAY AROUND.

14 DO YOU SEE THAT, SIR?

15 A YES, I SEE IT.

16 Q NOW, YOU AGREE WITH MR. STRINGER, DON'T YOU?

17 A I AGREE THAT THAT WAS HIS GOAL AS A DESIGNER.

18 Q AND THAT WAS AN IMPORTANT DESIGN FEATURE OF
19 THE '087, IT'S A DISTINCTION FROM THESE OTHER PRIOR
20 ART IMAGES WE LOOKED AT, THE UNIFORM BEZEL AND
21 UNIFORM THICKNESS?

22 A I DON'T BELIEVE THAT'S THE ONLY DISTINCTION
23 FROM IT. IT WAS ONE OF THEM.

24 Q IT WAS ONE OF THEM?

25 A IT MAY BE ONE OF THEM, YES.

1 Q SO THIS IS ONE OF THE THINGS THAT THE ORDINARY
2 OBSERVER SHOULD FOCUS ON IN LOOKING AT THE ACCUSED
3 PRODUCTS; RIGHT?

4 A NO. I BELIEVE THE ORDINARY OBSERVER IS SEEING
5 AND DEVELOPING AN OVERALL IMPRESSION OF THE DESIGN
6 WHEN ALL OF THOSE ELEMENTS ARE TAKEN INTO
7 CONSIDERATION AT THE SAME TIME.

8 I DON'T BELIEVE AN ORDINARY OBSERVER
9 LOOKS AT ONE PART OF THE PHONE AT A TIME.

10 Q SIR, DO YOU HAVE THE SAMSUNG INFUSE 4G IN
11 FRONT OF YOU, JX 1027?

12 A I THINK I HAVE IT HERE SOMEWHERE.

13 Q IF YOU DON'T --

14 A CAN I CLOSE THIS BINDER?

15 Q MS. KHAN HAS IT. IT'S A PHYSICAL EXHIBIT,
16 SIR.

17 THAT'S THE ACTUAL PHYSICAL PHONE, RIGHT?

18 A THIS IS WHICH ONE.

19 Q THE INFUSE 4G, JX 1027.

20 A YES, I BELIEVE IT IS.

21 Q OKAY. LET'S PUT UP SDX 3753.

22 THE INFUSE 4G HAS NO BEZEL, DOES IT, SIR?

23 A I BELIEVE IT HAS A CREASE LINE THAT INFERS THE
24 SHAPE OF A BEZEL.

25 Q SIR, THE INFUSE 4G HAS NO BEZEL, DOES IT?

1 A AS A SEPARATE PART, THAT'S CORRECT.

2 MR. VERHOEVEN: YOUR HONOR, IF I MAY
3 APPROACH AND LET THE JURORS INSPECT THE 4G, THE
4 INFUSE 4G?

5 THE COURT: YES, GO AHEAD. CHANGE YOU.
6 BY MR. VERHOEVEN:

7 Q DIDN'T YOU JUST TESTIFY A FEW MINUTES AGO THAT
8 IF THE PHONE DOESN'T HAVE A BEZEL, THAT TAKES IT
9 OUT OF BEING SUBSTANTIALLY SIMILAR, SIR?

10 A NO. I TESTIFIED THAT THE OVERALL IMPRESSION
11 OF THE ORDINARY OBSERVER SHOULD BE SUBSTANTIALLY
12 THE SAME AS THE FIGURES IN THE PATH.

13 WHETHER YOU CALL IT A BEZEL OR NOT, THERE
14 IS A SHAPE ON THIS PHONE THAT CAUSES A BELT LINE,
15 IF YOU WILL, OR A CREASE LINE THAT YOU SEE WITH THE
16 HIGHLIGHT THAT DOES MAKE IT SIMILAR TO THE
17 IMPRESSION THAT THE ORDINARY OBSERVER WOULD HAVE OF
18 THAT DESIGN.

19 Q SO EVEN THOUGH YOU ADMIT THAT THE INFUSE 4G
20 HAS NO BEZEL, IT'S YOUR TESTIMONY TO THIS JUROR,
21 JURY, THAT IT'S STILL SUBSTANTIALLY SIMILAR TO THE
22 '087?

23 A I BELIEVE THE OVERALL IMPRESSION IS SIMILAR,
24 YES.

25 Q MS. KHAN, COULD YOU SHOW MR. BRESSLER PHYSICAL

1 PHONE JX 1019, THE GALAXY S 4G?

2 A DOES THIS HAVE A STICKER ON IT?

3 Q IS THAT THE CORRECT PHONE? WE'LL REPRESENT
4 THAT'S THE CORRECT PHONE, SIR. THE GALAXY S 4G?

5 A OH, I SEE, IT DOES HAVE A STICKER ON THE SIDE,
6 THE JX 1019.

7 Q DO YOU AGREE THAT'S THE GALAXY S 4G?

8 A IT APPEARS TO BE.

9 MS. KREVANS: YOUR HONOR, THERE IS AN
10 EXHIBIT WHICH HAS BEEN AGREED ON BY THE PARTIES
11 WHICH IS A JOINT EXHIBIT THAT IS THE GALAXY S 4G.
12 IT'S IN EVIDENCE. THIS IS NOT THAT PHONE. I
13 OBJECT TO THIS. THEY SHOULD SHOW THE ACTUAL
14 EXHIBIT WHICH THE PARTIES HAVE AGREED IS THE
15 GALAXY S 4G.

16 THE COURT: WELL, I THOUGHT IT WAS
17 EXHIBIT 1019.

18 MS. KREVANS: IT IS. BUT THAT'S NOT THE
19 PHONE THEY'VE SHOWED HIM. THIS PHONE HAS NO
20 EXHIBIT STICKER ON IT.

21 MR. VERHOEVEN: IT DOES.

22 THE COURT: DOES IT HAVE IT ON THE SIDE?

23 MS. KREVANS: THAT'S NOT THE EXHIBIT
24 STICKER, YOUR HONOR. THAT'S NOT THE EXHIBIT
25 THAT'S --

1 THE COURT: IT SAYS JX 1019.

2 MS. KREVANS: SOMEONE, I DON'T KNOW WHO,
3 HAS PUT THAT ON THE PHONE. I DON'T KNOW IF THAT'S
4 THE RIGHT ONE. WE HAVE IT.

5 THE COURT: WHERE IS IT? WHERE IS THE
6 OTHER ONE.

7 THE WITNESS: RIGHT HERE.

8 MS. KREVANS: RIGHT THERE.

9 THE COURT: OKAY. DOES IT HAVE A STICKER
10 ON IT?

11 THAT SAYS A-S 469.

12 THE WITNESS: NO, IT -- OH, NO, THAT'S --

13 THE COURT: IS THAT -- IS IT SLIGHTLY
14 DIFFERENT? DOES IT HAVE HAS JX 1019 ON IT
15 ANYWHERE?

16 THE WITNESS: YES, IT DOES. I'M HAPPY TO
17 HAND IT TO YOU.

18 THE COURT: OH, I SEE. OKAY. ALL RIGHT.
19 WHY DO WE HAVE TWO UP THERE?

20 MS. KREVANS: THE A-S NUMBERS, YOUR
21 HONOR, WERE NUMBERS THAT THE PARTIES USED TO KEEP
22 TRACK OF THE DEVICES DURING DEPOSITION AND
23 INSPECTION BEFORE THERE WERE ACTUAL FORMAL EXHIBIT
24 NUMBERS.

25 THE COURT: WHY DO WE HAVE TWO PHONES UP

1 THERE?

2 MS. KREVANS: I DON'T KNOW WHY THERE'S
3 ANOTHER EXHIBIT. THAT'S WHY I SUGGEST WE USE THE
4 ACTUAL EXHIBIT NUMBER.

5 THE COURT: WHY DON'T YOU TAKE BACK THE
6 1019 THAT'S NOT THE OFFICIAL ONE, JUST SO WE DON'T
7 GET CONFUSED WHEN THE JURY GOES INTO THE
8 DELIBERATION ROOM, THEY SHOULD HAVE JUST ONE SET.

9 WHERE IS THAT? THE SECOND ONE.

10 MR. VERHOEVEN: HE'S GOT IT IN HIS HAND.

11 THE COURT: ALL RIGHT. WHAT HAPPENED TO
12 THE OTHER ONE THAT SAYS 1019.

13 MR. VERHOEVEN: MS. KHAN TOOK IT BACK.

14 THE COURT: ALL RIGHT. THANKS.

15 MR. VERHOEVEN: THANK YOU, YOUR HONOR.

16 Q SO WE'VE GOT IT NOW.

17 A YES.

18 Q THAT'S THE GALAXY S 4G, JX 1019 IN FRONT OF
19 YOU?

20 A YES, I BELIEVE SO.

21 Q OKAY. JUST SO THAT WE CAN REFRESH OURSELVES,
22 LET'S GO BACK TO SLIDE SDX 3791.

23 AND, AGAIN, MR. STRINGER SAYS, "IT WAS
24 ALSO IMPORTANT THAT THE BEZEL BE OF UNIFORM
25 THICKNESS," AND IF YOU LOOK AT THE PICTURE FOR THE

1 Q SUBSTANTIALLY DIFFERENT?

2 A SUBSTANTIALLY DIFFERENT, I'M SORRY, I NEED TO
3 RESERVE FOR THE OVERALL DESIGN.

4 Q SO YOU DISAGREE --

5 A IT'S A LONG LEVEL OF DETAIL TO LOOK AT IN
6 ANALYZING THE DESIGN.

7 Q DO YOU DISAGREE THAT THEY'RE SUBSTANTIALLY
8 DIFFERENT IN TERMS OF THE LATERAL BORDER?

9 A PARDON ME.

10 Q YOU DISAGREE THAT THE IPHONE 4G IS
11 SUBSTANTIALLY DIFFERENT FROM THE '677 PATENT AND
12 THE '087 PATENT IN TERMS OF THE WIDTH OF THE
13 LATERAL BORDER?

14 A I BELIEVE THERE IS A MINOR DIFFERENCE BETWEEN
15 THEM. I DON'T BELIEVE IT'S SUBSTANTIALLY
16 DIFFERENT.

17 Q SO IF THE WIDTH IS MEASURED AND IT TURNS OUT
18 TO BE A FACTOR OF 15 TIMES WIDER, YOU THINK THAT'S
19 JUST A MINOR DETAIL?

20 A I BELIEVE THAT DEPENDS ON THE CONTEXT OF THE
21 DESIGN AND THE OVERALL IMPRESSION THAT'S BEING
22 CREATED.

23 Q SO YOU CAN'T SAY?

24 A OKAY, IF THAT WORKS FOR YOU.

25 I MEAN, THAT'S -- YOU'RE ASKING ME TO

1 COMPARE PEANUT BUTTER TO TURKEY. I'M SORRY.

2 Q PEANUT BUTTER AND TURKEY?

3 A YES.

4 Q WHICH ONE IS PEANUT BUTTER AND WHICH ONE IS
5 TURKEY?

6 A I HAVE NO IDEA. I'M JUST GETTING FRUSTRATED
7 THAT YOU'RE ASKING ME TO DESIGN.

8 Q SIR, DETAILS MATTER IN DESIGN PATENTS, DON'T
9 THEY?

10 A IN GENERAL, YES. THEY FORM -- THEY CONTRIBUTE
11 TO HOW AN ORDINARY OBSERVER FORMS AN OVERALL
12 IMPRESSION.

13 Q LET'S GO TO SDX 3799.

14 NOW, MR. STRINGER ALSO TESTIFIED ON JULY
15 31ST ABOUT THE DARK OILY POND.

16 YOU'VE HEARD ABOUT THE DARK, OILY POND
17 BEFORE; RIGHT?

18 A YES.

19 Q THIS IS JULY 31ST, TRANSCRIPT PAGES 521:23
20 THROUGH 522, LINE 12.

21 "QUESTION: IN FACT, YOU WANTED TO CREATE
22 A PRODUCT THAT EMBODIED THE SIMPLEST OF ICONS, AND
23 ONE KEY IMAGE WAS THAT OF A DARK, OILY POND. IS
24 THAT RIGHT?

25 "ANSWER: YES.

1 "QUESTION: THAT WAS YOUR DESIGN GOAL;
2 RIGHT?

3 "ANSWER: THAT WAS ONE --

4 "QUESTION: GO AHEAD.

5 "ANSWER: THAT WAS ONE DESCRIPTION OF A
6 DESIGN GOAL, YES.

7 "QUESTION: YOU DIDN'T WANT TO PUT
8 MULTIPLE BUTTONS ON THE FACE OF THE PHONE; CORRECT?

9 "ANSWER: CORRECT.

10 "QUESTION: YOU WANTED IT TO BE AS SIMPLE
11 AS POSSIBLE?

12 "ANSWER: YES."

13 DO YOU REMEMBER THAT TESTIMONY?

14 A I DO.

15 Q IS THAT WHAT "MINIMALIST DESIGN" MEANS, MAKING
16 IT AS SIMPLE AS POSSIBLE?

17 A DO YOU REALLY WANT ME TO GET INTO A --

18 Q I'M ASKING YOU, SIR. CAN YOU ANSWER THE
19 QUESTION?

20 A I DON'T BELIEVE IT'S THAT SIMPLE, BUT YES.

21 Q OKAY. NOW, LET'S LOOK AT A COMPARISON OF THE
22 '677, DARK, OILY POND AGAINST THE GALAXY S II
23 T-MOBILE. OOPS.

24 JUST ONE SECOND, YOUR HONOR.

25 THE COURT: OKAY.

1 (PAUSE IN PROCEEDINGS.)

2 MR. VERHOEVEN: I MISSPOKE, YOUR HONOR.

3 Q AGAINST THE INFUSE 4G. THIS IS SDX 3776.

4 SO ON THE LEFT HERE, WE'VE GOT THE '677
5 DESIGN PATENT. IT'S GOT THE BLACK FACE; RIGHT?

6 A YES.

7 Q AND IT'S GOT -- IT'S NOT CLAIMING THIS BUTTON
8 DOWN AT THE BOTTOM; RIGHT?

9 A YES.

10 Q THAT'S WHY THE DOTTED LINES ARE AROUND IT;
11 RIGHT?

12 A CORRECT.

13 Q SO THE ONLY DESIGN ELEMENTS IN THIS DARK, OILY
14 POND THAT MR. STRINGER WAS TALKING ABOUT ARE THIS
15 LOZENGE SHAPE AND THIS SCREEN SHAPE; RIGHT?

16 A YES.

17 Q NOW, IF YOU LOOK AT THE INFUSE 4G, IT'S GOT A
18 BUNCH OF KEYS, DOESN'T IT, SIR?

19 A YES. THEY'RE SO SMALL YOU NEED TO POINT THEM
20 OUT WITH A CIRCLE, BUT, YES, THERE ARE KEYS THERE,
21 YES.

22 Q THESE ARE KEYS THAT ARE DESIGNED FOR USERS TO
23 TOUCH AND HAVE FUNCTIONS HAPPEN; CORRECT, SIR?

24 A YES.

25 Q THE MENU KEY RIGHT THERE, DO YOU HAVE AN

1 UNDERSTANDING OF WHAT THAT'S FOR?

2 A I DO, BUT THAT HAD NOTHING TO DO WITH MY
3 DESIGN PATENT INVESTIGATION.

4 Q TELL THE JURY WHAT THAT'S FOR?

5 A I ASSUME IT'S TO PULL UP A MENU.

6 Q THERE'S THIS LITTLE PICTURE OF A HOUSE.
7 THAT'S A SEPARATE KEY, ISN'T IT?

8 A I GUESS.

9 Q YOU DON'T KNOW?

10 A I'M NOT AN EXPERT IN THE FUNCTION OF PHONE,
11 SIR. I'M SORRY.

12 Q WELL, YOU'RE A DESIGN --

13 A I AM ANALYZING THE OVERALL IMPRESSION OF THE
14 DESIGN AND THOSE ARE VISUAL ELEMENTS THAT, IN THIS
15 DESIGN, I HAVE A FEELING YOU BARELY NOTICE UNTIL
16 THE PHONE LIGHTS UP.

17 Q I THOUGHT I HEARD YOU TESTIFY ABOUT WHETHER OR
18 NOT CERTAIN ELEMENTS OF THE DESIGN ARE FUNCTIONAL
19 WHEN COUNSEL FOR APPLE WAS ASKING YOU QUESTIONS ON
20 YOUR DIRECT EXAM.

21 ARE YOU TELLING ME YOU'RE NOT AN EXPERT
22 IN THAT AREA?

23 A NO, I'M NOT TELLING YOU THAT.

24 Q I THOUGHT I JUST HEARD YOU SAY THAT, SIR?

25 A WHAT?

1 Q THAT YOU'RE NOT AN EXPERT IN THE FUNCTIONALITY
2 OF THE PHONE?

3 A I'M NOT AN EXPERT IN HOW THE PHONE WORKS.

4 Q IS THAT DIFFERENT FROM --

5 A YES, IT IS.

6 Q -- FROM THE FUNCTIONALITY OF THE PHONE?

7 A IT'S DIFFERENT FROM THE FUNCTIONALITY AS IT'S
8 UNDERSTOOD IN A DESIGN PATENT.

9 Q HOW SO?

10 A PARDON ME?

11 Q HOW SO?

12 A FUNCTIONALITY IN A DESIGN PATENT HAS TO DO
13 WITH WHETHER ANY OF THE VISUAL ELEMENTS OF THE
14 APPEARANCE ARE DICTATED BY THE FUNCTION THEY
15 PERFORM.

16 Q OKAY. SO FUNCTION IN THAT SENTENCE MEANS HOW
17 IT WORKS?

18 A NO. FUNCTIONALITY IN THAT SENTENCE IS
19 RELATING TO THE APPEARANCE, AND IF YOU CAN HAVE A
20 DIFFERENT APPEARANCE THAT PERFORMS THE SAME
21 FUNCTION, THEN IT IS NOT CONSIDERED FUNCTIONAL AS
22 IT RELATES TO A DESIGN PATENT.

23 Q OKAY. WHEN YOU USE THE PHRASE "PERFORMS THE
24 SAME FUNCTION," YOU'RE TALKING ABOUT HOW THE PHONE
25 WORKS; RIGHT?

1 A NOT NECESSARILY. I MEAN, IF IT'S -- IF IT'S
2 WHERE THE DISPLAY IS, YOU KNOW, YOU CAN -- A
3 DISPLAY FUNCTIONS, IT IS FUNCTIONAL.

4 BUT WHERE IT IS, WHAT SIZE IT IS, THE
5 LOCATION OF IT AND WHAT THE SHAPE OF THE OUTSIDE OF
6 IT IS, THOSE ARE ALL APPEARANCE DECISIONS THAT ARE
7 NOT DRIVEN BY FUNCTION.

8 Q WHEN YOU USE THE WORD "FUNCTION" IN THAT LAST
9 ANSWER, YOU MEAN HOW THE PHONE FUNCTIONS? NO?

10 A NO, I DO NOT.

11 Q OKAY. AND THAT WAS THE UNDERSTANDING YOU USED
12 WHEN YOU APPLIED YOUR ANALYSIS, WHAT YOU JUST SAID?

13 A AS I EXPLAINED IT, YES.

14 Q BUT JUST SO THAT WE'RE CLEAR, YOU'RE NOT AN
15 EXPERT ON FUNCTIONALITY OF THE SMARTPHONES?

16 A IN YOUR USE OF THE WORD "FUNCTIONALITY" AS IT
17 RELATES TO HOW THEY WORK, THAT'S CORRECT.

18 Q IS THIS -- DO YOU SEE THESE FOUR KEYS ON THE
19 BOTTOM OF THE INFUSE 4G?

20 A YES.

21 Q THAT'S -- THAT'S ORNAMENTATION ON THE FRONT
22 FACE OF THE PHONE; RIGHT?

23 A YEAH, MINOR ORNAMENTS, YES.

24 Q AND THAT'S DIFFERENT FROM THE CONCEPT OF A
25 DARK, OILY POND?

1 A NO. I BELIEVE THE DARK, OILY POND IS THERE
2 AND THOSE HAPPEN TO BE SOME RELATIVELY INDISTINCT
3 ELEMENTS THAT ARE AT THE BOTTOM OF IT.

4 Q WHAT DOES LITTLE HOUSE SYMBOL MEAN?

5 A DO YOU WANT ME TO INTERPRET IT SITTING HERE ON
6 THE STAND?

7 Q TELL THE JURY YOUR UNDERSTANDING?

8 A I WOULD INTERPRET IT TO BE A HOME BUTTON.

9 Q SO A USER --

10 A HOME KEY.

11 Q SO THAT'S FOR A USER TO TOUCH TO GO BACK TO
12 THE HOME SCREEN?

13 A YES.

14 Q OKAY. YOU SAY THIS IS MINIMALIST AND NO ONE
15 WOULD NOTICE IT?

16 A PARDON ME?

17 Q IS IT YOUR TESTIMONY TO THE JURY THAT THIS IS
18 SO MINIMALIST THAT NOBODY WOULD NOTICE IT?

19 A NO. IT'S MY TESTIMONY THAT THEY WOULD NOT
20 HAVE A SIGNIFICANT INFLUENCE ON THE OVERALL
21 IMPRESSION THAT THE ORDINARY OBSERVER HAD OF THE
22 DESIGN OF THIS PHONE.

23 Q THE ORDINARY OBSERVER IS GOING TO LOOK AT THAT
24 AND UNDERSTAND THAT'S COMMUNICATING A HOUSE AND IF
25 THEY TOUCH IT, THEY CAN GO TO THE HOME SCREEN;

1 RIGHT?

2 A THAT'S TRUE IN HOW THE PHONE OPERATES, THAT'S
3 CORRECT.

4 Q SO THE USER IS GOING TO KNOW THAT, THEY'RE
5 GOING TO SEE IT, THEY'RE GOING TO UNDERSTAND IT;
6 RIGHT?

7 A YES.

8 Q AND THE SAME THING IS TRUE FOR THIS MENU
9 BUTTON; RIGHT?

10 A YES.

11 Q DO YOU SEE THIS ARROW THAT CURVES AROUND
12 BACKWARDS?

13 A YES.

14 Q WHAT'S YOUR UNDERSTANDING OF WHAT THAT BUTTON
15 IS?

16 A I'M NOT SURE. I CAN GUESS IT MEANS GO BACK.

17 Q WHEN YOU CONDUCTED YOUR ANALYSIS OF THE
18 INFUSE 4G, DID YOU ACTUALLY USE ANY OF THESE
19 BUTTONS?

20 A IN TERMS OF MY ANALYSIS OF THE DESIGN PATENTS,
21 NO.

22 Q SO IN ANY EVENT, YOU'D AGREE WITH ME THAT THIS
23 IS SOMETHING THAT A USER WOULD SEE AND UNDERSTAND,
24 THIS IS A BUTTON THEY CAN PRESS IN ORDER TO GO
25 BACKWARDS?

1 A THAT WOULD BE PART OF THEIR UNDERSTANDING OF
2 THE USE OF THE PHONE, NOT THEIR OVERALL IMPRESSION
3 OF THE DESIGN AS IT RELATES TO A DESIGN PATENT.

4 Q YOU WOULD AGREE WITH ME THAT IN THEIR OVERALL
5 IMPRESSION, THEY WOULD SEE THERE'S FOUR SEPARATE
6 BUTTONS ON THE BOTTOM OF THIS PHONE? YES?

7 A I BELIEVE THEY WOULD SEE THEM AND THAT THEY
8 ARE NOT AS IMPORTANT IN THE OVERALL IMPRESSION AS
9 THE CONTINUOUS GLASS REFLECTIVE, TRANSPARENT BLACK
10 FACE.

11 Q AND DO YOU SEE THIS SEARCH KEY DOWN AT THE
12 BOTTOM?

13 A I SEE YOU POINTING TO IT, YES.

14 Q I GUESS WE LABELED IT A SEARCH KEY.

15 DID YOU UNDERTAKE ANY ANALYSIS OF THAT
16 BUTTON?

17 A NO.

18 Q SO YOU DIDN'T FACTOR ANY OF THESE BUTTONS INTO
19 YOUR ANALYSIS, DID YOU, SIR?

20 A ONLY AS TO WHETHER I COULD SEE THEM AND WHAT
21 FACTOR THEY HAD IN THE OVERALL IMPRESSION OF THE
22 APPEARANCE OF THE PHONE.

23 Q AND THEN YOU SEE THERE'S, THERE'S BRANDING ON
24 THE PHONE, AT&T AND SAMSUNG?

25 A I BELIEVE THAT BRANDING IS NOT CONSIDERED --

1 Q DO YOU SEE THAT?

2 A I SEE IT, YES.

3 Q AND THEN THERE'S HOLES AT THE TOP THAT ARE
4 HARD TO SEE ON THIS SCREEN, FOR THE CAMERA; RIGHT?

5 A IF YOU SAY SO.

6 Q AND THE SENSORS?

7 A I --

8 Q YOU DIDN'T EXAMINE THIS TO DETERMINE WHETHER
9 IT'S GOT A CAMERA HOLE?

10 A TO BE HONEST WITH YOU, I NOTICED THAT THERE
11 WAS AN OPENING IN THE FRONT FACE AS A DESIGNER
12 EXAMINING THE DETAILS OF A PHONE.

13 I DO NOT BELIEVE THAT AN ORDINARY
14 OBSERVER WOULD BE LOOKING AROUND FOR WHERE THE
15 SENSOR IS ON THE FRONT OF THE PHONE.

16 MR. VERHOEVEN: YOUR HONOR, I'M ABOUT TO
17 SWITCH SUBJECTS. I DON'T KNOW IF YOU WANT ME TO
18 KEEP GOING OR IF YOU WANT TO TAKE A BREAK NOW.

19 THE COURT: WE CAN GO AHEAD AND TAKE A
20 BREAK NOW. IT'S 2:43. SO WE'LL TAKE A 15-MINUTE
21 BREAK.

22 PLEASE CONTINUE TO KEEP AN OPEN MIND.
23 DON'T TALK AMONG YOURSELVES OR WITH ANYONE ABOUT
24 THE CASE AND PLEASE DON'T READ ABOUT THE CASE OR DO
25 ANY RESEARCH.

1 THANK YOU.

2 YOU CAN LEAVE YOUR BOOKS EITHER HERE OR
3 IN THE JURY ROOM. WHATEVER IS EASIER FOR YOU.

4 (WHEREUPON, THE FOLLOWING PROCEEDINGS
5 WERE HELD OUT OF THE PRESENCE OF THE JURY:)

6 THE COURT: YOU CAN STEP DOWN. THE
7 RECORD SHOULD REFLECT THE JURORS HAVE LEFT THE
8 COURTROOM.

9 DO WE NEED TO HANDLE THIS '087 COMPARISON
10 WITH THE INFUSE, OR ARE YOU GOING TO MOVE ON?

11 MR. VERHOEVEN: I WOULD LIKE TO SHOW
12 THOSE SLIDES, YOUR HONOR. WHAT WE DID WAS WE
13 DIDN'T REALIZE THAT THEY HAD OBJECTIONS TO THOSE
14 OTHER PHONES. THEY NEVER TOLD US THAT. IF WE HAD
15 KNOWN THAT, WE COULD HAVE SWAPPED THESE OUT. WE'RE
16 SWAPPING OUT THE IMAGE OF THE INFUSE 4G TO BE THE
17 GALAXY S. IT'S NOT CONTROVERSIAL.

18 THE COURT: WHAT IS THIS -- I ONLY
19 THOUGHT THIS WAS ONE THAT WAS IN DISPUTE.

20 MR. VERHOEVEN: I DIDN'T USE THE OTHER
21 ONE BECAUSE YOUR HONOR TOLD ME TO MOVE ON. WE CAN
22 PUT THEM UP.

23 THE COURT: ALL RIGHT. WHY DON'T WE SEE
24 THOSE, PLEASE.

25 MR. VERHOEVEN: I DON'T KNOW IF EVERYONE

1 HAS TO STAND UP STILL.

2 THE COURT: OH, NO. I'M SORRY. I ALWAYS
3 FORGET ABOUT THAT. PLEASE TAKE A SEAT.

4 ALL RIGHT. SO THAT ONE I HAD AS DEFENSE
5 EXHIBIT 62. YOU SAID IT'S UNNUMBERED? DO YOU
6 HAVE --

7 MR. VERHOEVEN: WHAT WE DID, YOUR HONOR,
8 IS WHEN YOU TOLD US YOUR RULING, WE HAD A DIFFERENT
9 PHONE FOR THIS POINT.

10 THE COURT: OKAY.

11 MR. VERHOEVEN: AND ALL WE DID IS WE TOOK
12 A PICTURE OF THE PHONE YOU SAID WE COULD USE
13 INSTEAD OF THE OTHER PHONE.

14 THE COURT: ALL RIGHT.

15 MR. VERHOEVEN: AND IT'S THE SAME IMAGE,
16 EXCEPT A DIFFERENT PHONE.

17 THE COURT: ALL RIGHT. SO LET ME HEAR
18 FROM MS. KREVANS. WHAT'S YOUR OBJECTION?

19 MS. KREVANS: BECAUSE, YOUR HONOR, THEY
20 HAVE BLOWN UP A SMALL PORTION OF THE FACE OF THE
21 PHONE TO A DEGREE THAT NO PERSON WOULD ACTUALLY SEE
22 IT IN THEIR LIFE. SO IT'S A COMPLETE DISTORTION OF
23 WHAT EITHER AN ORDINARY OBSERVER OR EVEN A DESIGN
24 EXPERT WOULD SEE. THERE'S TINY DETAIL ON THE FRONT
25 OF THE PHONE AND THEY'VE CREATED THIS BIG IMAGE OF

1 OPEN COURT OFF THE RECORD.)

2 MS. KREVANS: YOUR HONOR, THAT DOES NOT
3 IMPEACH ANY TESTIMONY THAT THE WITNESS HAS GIVEN
4 HERE IN COURT.

5 THE COURT: OVERRULED.

6 BY MR. VERHOEVEN:

7 Q THAT WAS YOUR UNDERSTANDING WHEN YOU TESTIFIED
8 AT YOUR DEPOSITION; RIGHT?

9 A I GUESS. I GUESS I SAID THAT IN ANSWER TO
10 THAT QUESTION, YES.

11 Q AND LET ME ASK IT ONE MORE TIME?

12 A I WAS CONFUSED.

13 Q LET ME ASK ONE MORE TIME. AND, AGAIN, TO THE
14 EXTENT YOU CAN FAIRLY ANSWER MY QUESTION YES OR NO,
15 I WOULD APPRECIATE IT.

16 ARE YOU AN EXPERT IN THE FUNCTIONALITY OF
17 PHONES?

18 A IN TERMS OF THEIR OPERATION FUNCTIONALITY, NO.

19 Q OKAY. YOU'RE NOT AN EXPERT WITH RESPECT TO
20 TOUCH DISPLAY TECHNOLOGY; CORRECT?

21 A THAT IS CORRECT.

22 Q IN FACT, YOU'RE NO MORE EQUIPPED THAN ANY
23 ORDINARY OBSERVER TO OPINE ON THE FUNCTIONALITY OF
24 A SMARTPHONE?

25 A DEPENDS ON WHETHER YOU MEAN FUNCTIONALITY

1 RELATIVE TO A DESIGN PATENT OR THE GENERAL
2 FUNCTIONALITY OF HOW IT OPERATES.

3 Q IN TERMS OF THE SPECIFIC TECHNICAL KNOWLEDGE
4 AND SCIENTIFIC FUNCTIONALITY, YOU DON'T HAVE ANY
5 KNOWLEDGE; RIGHT?

6 A THAT'S CORRECT.

7 Q IN FACT, YOU BELIEVE THAT YOU ONLY NEED A
8 THIN, TOP LEVEL KNOWLEDGE TO BE ABLE TO PASS
9 JUDGMENT ON THE COMPARABLE FUNCTIONALITY OF THE
10 DIFFERENT PHONES?

11 A AS IT RELATES TO DESIGN FUNCTION, I BELIEVE
12 THAT'S TRUE.

13 Q IT'S YOUR TESTIMONY, SIR, THAT HAVING A
14 DISPLAY ELEMENT IS NOT NECESSARY OR FUNCTIONAL FOR
15 A SMARTPHONE? THAT'S YOUR TESTIMONY TO THIS JURY;
16 RIGHT?

17 A NO.

18 Q OKAY. WELL, LET'S -- YOUR DEPOSITION
19 TESTIMONY, AGAIN, WAS TAKEN APRIL 24TH, 2012;
20 RIGHT?

21 A THAT'S CORRECT.

22 Q IT WAS UNDER OATH?

23 A YES.

24 Q AND YOU ANSWERED QUESTIONS AS CAREFULLY AS YOU
25 COULD; RIGHT?

1 A YES.

2 Q LET'S PLAY AN EXCERPT FROM YOUR DEPOSITION,
3 PAGE 210, LINES 14 THROUGH 24.

4 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN
5 OPEN COURT OFF THE RECORD.)
6 BY MR. VERHOEVEN:

7 Q THAT WAS TRUE TESTIMONY WHEN YOU GAVE IT?

8 A THAT WAS PART OF THE TESTIMONY THAT I GAVE
9 THAT IT TURNS OUT WAS, WAS GOING BOTH DIRECTIONS
10 DEPENDING ON -- BECAUSE I MISUNDERSTOOD THE USE OF
11 THE TERM "FUNCTION" AND THE QUESTION AT THAT TIME.

12 Q SO THAT TESTIMONY IS NOT TRUE?

13 A THE TESTIMONY IS TRUE. I WAS REFERRING TO THE
14 FUNCTION AS IT RELATES TO A DESIGN PATENT, WHICH
15 MEANS THEY CAN BE ANY SHAPE AND LOCATION AND SIZE.

16 AND IN THAT SENSE, IT'S NOT FUNCTIONAL IN
17 THAT SHAPE, LOCATION OR SIZE ARE NOT REQUIRED BY AS
18 FUNCTIONS.

19 Q CAN WE PUT UP THE HARD COPY TRANSCRIPT OF WHAT
20 WE JUST WATCHED, PAGE 210, LINES 14 THROUGH 24.

21 SO THIS IS 210, LINE 14 THROUGH 24.
22 APRIL 24TH, 2012 DEPOSITION.

23 SIR, DO YOU SEE THE QUESTION, IT DOESN'T
24 TALK ABOUT THE DESIGN PATENTS, IT TALKS ABOUT
25 SMARTPHONES.

1 DO YOU SEE THAT, SIR?

2 A I SEE THAT'S WHAT IT SAYS.

3 Q THAT'S WHAT YOU WERE ASKED; RIGHT?

4 A I BELIEVE IT WAS ASKING ME ABOUT AS IT RELATED
5 TO DESIGN PATENTS.

6 Q BUT IT DOESN'T SAY THAT, DOES IT?

7 A I DON'T SEE IT SAYING THAT.

8 Q USING YOUR DEFINITION OF FUNCTIONAL, ISN'T IT
9 TRUE THAT YOUR OPINION TO THIS JURY IS THAT THE USE
10 OF A TRANSPARENT COVER OVER A DISPLAY IS NOT
11 NECESSARY FOR FUNCTIONAL?

12 A IN DEFINING "FUNCTIONAL" AS NOT BEING DRIVEN
13 BY THE SHAPE AND LOCATION AND IT NOT BEING -- I
14 BELIEVE THAT'S TRUE. I THINK THE FACT THAT IT IS
15 CLEAR ON A SMARTPHONE NEEDS -- YES, THAT'S
16 FUNCTIONAL.

17 Q LET'S PLAY PAGE 209 FROM THE SAME DEPOSITION,
18 LINES 9 THROUGH 21.

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

21 BY MR. VERHOEVEN:

22 Q DO YOU STAND BY THAT TESTIMONY?

23 A I BELIEVE THAT'S WHAT I MAY HAVE JUST SAID A
24 MOMENT AGO.

25 Q SO IT'S YOUR TESTIMONY TO THIS JURY THAT

1 HAVING A CLEAR COVER OVER THE DISPLAY ELEMENT IS
2 NOT SOMETHING THAT'S FUNCTIONAL?

3 A FROM A PERFORMANCE STANDPOINT AND OPERATIONS
4 STANDPOINT, I BELIEVE IT'S ABSOLUTELY FUNCTIONAL.

5 Q BUT JUST NOT IN YOUR ANALYSIS? IS THAT RIGHT?

6 A IF IT'S CLEAR THAT IT'S A -- IF IT IS CLEAR IN
7 THE DESIGN PATENT THAT IT'S A DISPLAY, THEN ONE
8 WOULD EXPECT IT TO BE TRANSPARENT OVER THAT
9 DISPLAY.

10 Q BUT YOUR CONCLUSION, WHEN YOU WERE ASKED UNDER
11 OATH ABOUT WHETHER USE OF A COVER THAT IS
12 TRANSPARENT OR A DISPLAY IS FUNCTIONAL, IS THAT
13 IT'S NOT FUNCTIONAL AS YOU'VE DEFINED IT; RIGHT?

14 A I WAS TALKING ABOUT ITS SHAPE AND LOCATION AND
15 SIZE AND THE DESIGN PATENT DEFINITION OF
16 FUNCTIONALITY.

17 Q AND YOU ALSO TESTIFIED THAT -- WELL, LET ME
18 ASK YOU, IN YOUR VIEW, IS LOCATING THE SPEAKER IN
19 THE UPPER PORTION OF THE FRONT FACE OF A SMARTPHONE
20 SOMETHING THAT'S NOT FUNCTIONAL AS YOU USE THAT
21 TERM IN YOUR EXPERT REPORTS?

22 A DEFINING THE PRECISE LOCATION FROM AN
23 AESTHETIC STANDPOINT, IS NOT DRIVEN BY FUNCTION.

24 Q SO THAT'S NO, IT'S NOT FUNCTIONAL?

25 A WITH THE CONDITIONS THAT I JUST SAID, YES,

1 IT'S NOT FUNCTIONAL.

2 Q LET'S PLAY PAGE 212, LINE 25 THROUGH 213, LINE
3 4 OF YOUR APRIL 24TH DEPOSITION.

4 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN
5 OPEN COURT OFF THE RECORD.)

6 BY MR. VERHOEVEN:

7 Q YOU DIDN'T HAVE ANY QUALIFICATIONS WHEN YOU
8 ANSWERED THAT AT YOUR DEPOSITION, DID YOU, SIR?

9 A BECAUSE I UNDERSTOOD IT TO BE THE WAY I JUST
10 SAID IT.

11 Q DO YOU STAND BY THAT TESTIMONY?

12 A YES.

13 Q NOW, YOU TESTIFIED ON DIRECT EXAMINATION THAT
14 YOUR AN INDUSTRIAL DESIGNER; CORRECT?

15 A THAT'S CORRECT.

16 Q BUT, IN FACT, YOU'VE NEVER DESIGNED A
17 SMARTPHONE, HAVE YOU?

18 A NO, I HAVE NOT DESIGNED A SMARTPHONE.

19 Q IS IT FAIR TO SAY THAT YOU HAVE NEVER DESIGNED
20 A SMARTPHONE AT ANY STAGE?

21 A I'M NOT SURE WHAT YOU MEAN BY "ANY STAGE."

22 Q WELL, LET ME ASK IT THIS WAY: REGARDLESS OF
23 WHETHER OR NOT THE DESIGN WAS ACTUALLY IMPLEMENTED
24 OR MANUFACTURED OR PRODUCED IN ANY WAY, YOU NEVER
25 HAVE NOT DESIGNED ANY SMARTPHONES AT ANY STAGE IN

1 THAT PROCESS?

2 A NO. I'VE DESIGNED CELL PHONES, NOT
3 SMARTPHONES.

4 Q YOU HAVE DESIGNED SOME CELL PHONES, BUT THOSE
5 DESIGNS ARE ONLY CONCEPTS; RIGHT?

6 A THAT'S CORRECT.

7 Q AND NONE OF THOSE CONCEPTS WERE EVER PRODUCED
8 OR MANUFACTURED; CORRECT?

9 A I DON'T KNOW FOR SURE.

10 Q WELL, AS FAR AS YOU KNOW, THOSE CONCEPTS WERE
11 NEVER EVEN MADE INTO MODELS OR PROTOTYPES, WERE
12 THEY?

13 A YES, THEY WERE MADE INTO MODELS.

14 Q OKAY. LET'S LOOK AT YOUR DEPOSITION, THIS
15 TIME LET'S JUST PUT UP THE WRITTEN DEPOSITION,
16 PLEASE, MR. FISHER, DATED APRIL 23, 2012.

17 JUST ONE SECOND, YOUR HONOR.

18 (PAUSE IN PROCEEDINGS.)

19 MR. VERHOEVEN: I'M SORRY, MR. FISHER.
20 CAN WE GO TO THE ITC TRANSCRIPT, PAGE 219, LINES 13
21 THROUGH 24.

22 Q DO YOU SEE THIS IS FROM THE HEARING THAT YOU
23 ATTENDED AND GAVE TESTIMONY TO RELATED IN ANOTHER
24 PROCEEDING. DO YOU REMEMBER THAT, IN WASHINGTON?

25 A IT LOOKS FAMILIAR, YES.

1 Q AND YOU WERE ASKED, WITH RESPECT TO OTHER CELL
2 PHONE DESIGNS THAT YOU WORKED ON, DID YOU WORK ON
3 ANY OF THOSE PRIOR TO 2006? DO YOU SEE THAT?

4 A YES.

5 Q AND DOWN AT THE BOTTOM, IT SAYS QUESTION, THIS
6 IS LINES 21 THROUGH 24?

7 "QUESTION: DID ANY OF THEM BECOME MODELS
8 OR PROTOTYPES OR WERE OTHERWISE EXPRESSED IN
9 THREE-DIMENSIONAL FORM?"

10 WHAT WAS YOUR ANSWER?

11 A APPARENTLY I SAID "NOT THAT I KNOW OF," AND
12 I'D APPARENTLY FORGOTTEN THAT MODELS AND MOCK-UPS
13 WERE MADE.

14 Q SO IN MAY OF THIS YEAR YOU TESTIFIED NONE WERE
15 MADE, AND NOW YOU'RE TESTIFYING THAT SOME WERE
16 MADE? IS THAT RIGHT?

17 A YES. I MEAN, IT WAS A LONG TIME AGO. I THINK
18 I REMEMBERED THAT THERE WERE MODELS MADE.

19 Q SO IS THIS TESTIMONY NOT TRUE?

20 A AT THAT POINT, I DIDN'T REMEMBER THAT.

21 Q THAT TESTIMONY WAS GIVEN UNDER OATH, SIMILAR
22 TO THIS TESTIMONY; CORRECT?

23 A TO THE BEST OF MY ABILITY, YES.

24 Q ISN'T IT TRUE THAT IN ALL YOUR TIME AS AN
25 INDUSTRIAL DESIGNER, YOU ONLY WORKED ON CONCEPTS

1 FOR TWO OR THREE CELL PHONE PRODUCTS?

2 A I'M NOT SURE HOW MANY THERE WERE. I THINK
3 THERE MAY HAVE BEEN AS MANY AS HALF A DOZEN.

4 Q ALL RIGHT. WELL, LET'S GO TO YOUR DEPOSITION,
5 APRIL 23 -- I'M SORRY. WITHDRAW THAT.

6 LET'S GO TO THE HEARING PROCEEDING, PAGE
7 53, LINE 17 THROUGH 54, LINE 6.

8 I APOLOGIZE, YOUR HONOR. ONE MORE TIME.

9 LET'S GO TO THE DEPOSITION OF
10 MR. BRESSLER DATED APRIL 23, 2012, PAGE 53, LINE 17
11 THROUGH 54, LINE 6.

12 HERE THIS IS YOUR DEPOSITION.

13 "QUESTION: THESE DESIGNS OR SKETCHES
14 THAT YOU WORKED ON, WERE THEY FOR ONE CELL PHONE
15 PRODUCT OR MORE THAN ONE?

16 "ANSWER: MORE THAN ONE.

17 "QUESTION: CAN YOU TELL ME IN TERMS OF
18 JUST GENERALLY HOW MANY YOU BELIEVE YOU WORKED ON
19 IF YOU WERE TO DEFINE IT AS SORT OF -- AT LEAST THE
20 GOAL WAS ULTIMATELY TO COME UP WITH SOMETHING THAT
21 LOOKED LIKE A PRODUCT?

22 "ANSWER: I BELIEVE THERE WERE TWO OR
23 THREE PROJECTS. I DON'T REMEMBER WHETHER IT WAS
24 TWO OR THREE."

25 DO YOU SEE THAT, SIR?

1 A YES. THOSE ARE PROJECTS. EACH PROJECT HAS A
2 NUMBER OF DESIGNS FOR CELL PHONES IN IT.

3 Q OKAY. SO YOU AGREE THAT YOU ONLY WORKED ON
4 CONCEPTS FOR TWO OR THREE CELL PHONE PROJECTS?

5 A CORRECT.

6 Q AND ASIDE FROM PHONES, YOU HELPED DESIGN ONE
7 COMPUTER TABLET; CORRECT?

8 A THAT'S CORRECT.

9 Q AND THAT'S IT?

10 A THAT'S IT.

11 Q AND THAT WAS SOME TIME WAY BACK IN THE EIGHT
12 '80S; RIGHT?

13 A I BELIEVE SO.

14 Q THE VERSION OF THE TABLET COMPUTER THAT
15 REACHED THE MARKET ON THAT PRODUCT WAS
16 SUBSTANTIALLY DIFFERENT THAN THE DESIGN YOU WORKED
17 ON; CORRECT?

18 A IT WAS DIFFERENT, YES.

19 Q AND THE PROJECT YOU WORKED ON ONLY REACHED THE
20 PROTOTYPE STAGE; CORRECT?

21 A YES. IT WAS A PREPRODUCTION PROTOTYPE.

22 Q THE PRODUCT WAS INTENDED FOR INSURANCE AGENTS
23 APPRAISING CAR ACCIDENTS; RIGHT?

24 A THAT'S CORRECT.

25 Q IT HAD JUST A VERY SMALL DISPLAY LOCATED AT

1 THE TOP OF THE DEVICE?

2 A THE DISPLAY TOOK UP ABOUT 50 PERCENT OF THE
3 FRONT OF THE DEVICE.

4 Q SMALLER THAN WHAT WE'RE LOOKING AT IN THESE
5 SMARTPHONES HERE?

6 A YES.

7 Q IT WASN'T DESIGNED FOR WATCHING MOVIES?

8 A NO.

9 Q BROWSING THE INTERNET?

10 A NO.

11 Q READING BOOKS?

12 A NO.

13 Q COMPLETELY DIFFERENT TYPE OF PRODUCT?

14 A DIFFERENT TYPE OF PRODUCT IN THE SENSE THAT IT
15 DIDN'T DO THE SAME THING, YES. A LOT OF THE DESIGN
16 QUESTIONS OF VISIBILITY, IMPORTABILITY, AND HOW YOU
17 PRESENT INFORMATION WERE SIMILAR.

18 Q NOW, FOR EACH OF THE DESIGN PATENT AND TRADE
19 DRESS THAT YOU LOOKED AT, YOU CONCLUDED, HEY,
20 THERE'S OTHER DESIGNS OUT THERE THAT ARE EQUALLY
21 FUNCTIONAL; RIGHT?

22 A I BELIEVE THAT'S A FAIR STATEMENT.

23 Q THAT WAS PART OF YOUR ANALYSIS OF WHY YOU
24 DIDN'T THINK THERE'S ANY FUNCTIONAL ELEMENT FOR THE
25 DESIGN PATENTS; RIGHT?

1 A I BELIEVE THERE WAS NO FUNCTIONING THAT WAS
2 DRIVEN -- THERE WAS NOTHING IN THE APPEARANCE THAT
3 WAS DRIVEN BY FUNCTION, YES.

4 Q SO I WANT TO FOCUS ON THAT STATEMENT THAT YOU
5 MADE IN YOUR REPORTS AND YOU'RE MAKING TO THE JURY
6 THAT THESE ALTERNATE DESIGNS OR EQUALLY FUNCTIONAL.

7 ARE YOU WITH ME?

8 A I AM.

9 Q OKAY. ISN'T IT TRUE, SIR, THAT THE EXTENT OF
10 YOUR ANALYSIS OF WHETHER THEY WERE EQUALLY
11 FUNCTIONAL WAS SIMPLY REVIEWING THE PACKAGING OF
12 THESE OTHER PHONES AND TURNING THEM ON TO SEE THAT
13 THEIR OPERATING SYSTEM WAS RUNNING?

14 A ACTUALLY, MOST OF MY ANALYSIS DID NOT ENTAIL
15 DOING THOSE THINGS. MOST OF IT ENTAILED REVIEWING
16 THE DESIGN OF THE PHONES, THE APPEARANCE AND DESIGN
17 OF THE PHONES.

18 Q SO --

19 A HOW THEY FUNCTION -- HOW THEY FUNCTION REALLY
20 WAS INSIGNIFICANT TO ME.

21 Q HOW THEY FUNCTION -- OH, HOW THESE ALTERNATIVE
22 DESIGN PHONES FUNCTIONED WAS IRRELEVANT TO YOU?

23 A IT WAS CERTAINLY A LESSER ELEMENT THAN WHETHER
24 THERE WERE ALTERNATIVE DESIGNS FOR SOMETHING THAT
25 DID THE SAME THING THAT IT WAS CLAIMING ON ITS

1 PACKAGING, YES.

2 Q WHETHER OR NOT THEY FUNCTIONED THE SAME OR NOT
3 WAS INSIGNIFICANT TO YOU?

4 A AGAIN, THE WAY WE'RE USING THE TERM "FUNCTION"
5 MAKES IT A DIFFICULT QUESTION TO ANSWER, BUT IN
6 BROAD TERMS, YES.

7 Q BUT IN ANY CASE, TO THE EXTENT YOU DID EVEN
8 LOOK AT THE ISSUE OF THE FUNCTIONALITY OF THESE
9 ALTERNATIVE DESIGNS, THE EXTENT OF YOUR ANALYSIS
10 WAS TO REVIEW THE PACKAGING OF THE PHONE AND SIMPLY
11 TURN IT ON TO SEE THE OPERATING SYSTEM; RIGHT?

12 A WHAT MATTERED IN THIS ANALYSIS WAS THAT THESE
13 WERE PHONES --

14 Q SIR, CAN YOU JUST -- CAN YOU ANSWER THE
15 QUESTION? IS THAT THE EXTENT OF YOUR ANALYSIS?

16 A NO.

17 Q OTHER THAN LOOKING AT THE PACKAGING AND
18 TURNING THE PHONES ON TO SEE THEIR OPERATING
19 SYSTEM, YOU DID NOT USE ANY OTHER CRITERIA AS AN
20 EXPERT TO DETERMINE WHETHER OR NOT THE
21 FUNCTIONALITY OF THE ALTERNATIVE PHONES WERE THE
22 SAME OR LARGELY THE SAME; RIGHT?

23 A IN TERMS OF THE OPERATION, THAT IS CORRECT.

24 Q SO IN TERMS OF THE OPERATION OF THESE
25 ALTERNATIVE PHONES, FOR MANY OF THEM, YOU DIDN'T

1 LOOK AT IT AT ALL; RIGHT?

2 A PARDON ME?

3 Q FOR MANY OF THE ALTERNATIVE PHONES, YOU DIDN'T
4 EVEN LOOK AT THE OPERATION OF THE PHONES AT ALL;
5 RIGHT?

6 A NO. I SAID I TURNED THEM ON AND I LOOKED AT
7 THE OPERATING SYSTEM.

8 Q OKAY. AND THAT'S ALL YOU DID?

9 A AND REVIEWED THE CLAIMS ON THE PACKAGING AS TO
10 WHETHER THEY HAD THE SAME PERFORMANCE AS THE
11 IPHONE.

12 Q SO ALL YOU DID WAS YOU REVIEWED THE PACKAGING
13 AND YOU TURNED THEM ON; RIGHT?

14 A IF YOU WANT TO SAY IT THAT WAY, YES.

15 Q OKAY. AND BASED ON THAT, YOU'RE TESTIFYING TO
16 THE JURY THAT ALL THESE ALTERNATIVE PHONES --

17 A THAT IS --

18 Q -- HAVE EQUAL FUNCTIONALITY?

19 A I'M SORRY. PARDON ME?

20 Q AND BASED ON THAT ANALYSIS, IT'S YOUR
21 TESTIMONY TO THE JURY THAT ALL OF THESE ALTERNATIVE
22 PHONES HAVE EQUAL FUNCTIONALITY; RIGHT?

23 A NOT NECESSARILY.

24 Q SO THEY DON'T ALL HAVE EQUAL FUNCTIONALITY?

25 A TO THE DEGREE THAT THEY ARE ALL SMARTPHONES

1 AND THEY CLAIM THEY ARE SMARTPHONES, THEY HAVE
2 SIMILAR FUNCTIONALITY.

3 Q AND YOUR BASIS FOR THAT OPINION IS READING THE
4 PACKAGING AND TURNING ON THE OPERATING SYSTEM?
5 THAT'S IT; RIGHT?

6 A AND COMPARING THE DESIGNS TO ONE ANOTHER TO
7 SEE IF ANY OF THEM WERE THE -- WERE REQUIRED BY
8 THOSE FUNCTIONS, YES.

9 Q THE PHONES THAT YOU IDENTIFIED AS ALTERNATIVE
10 MODELS, MR. BRESSLER, YOU DON'T HAVE ANY
11 INFORMATION AS TO WHETHER THE PRODUCT FEATURES OF
12 THOSE ALTERNATIVE PHONES AFFECT THE COST OF THE
13 PHONES, DO YOU?

14 A I DID BUY MOST OF THOSE PHONES, AND SO WE HAD
15 A REASONABLY GOOD -- OR I HAD A REASONABLY GOOD
16 SENSE THAT THEY WERE AT LEAST COMPETITIVELY PRICED
17 IN THE MARKETPLACE, WHICH SUGGESTS THAT THEIR
18 MANUFACTURING COST MUST HAVE BEEN COMPETITIVE.

19 Q LET'S SEE WHAT YOU SAID AT YOUR APRIL 24TH,
20 2012 DEPOSITION, PAGE 171, LINE 24 THROUGH 172,
21 LINE 4.

22 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN
23 OPEN COURT OFF THE RECORD.)

24 BY MR. VERHOEVEN:

25 Q THAT WAS THE QUESTION AND THE ANSWER YOU GAVE

1 AT YOUR SWORN DEPOSITION IN APRIL; RIGHT?

2 A I WAS BEING ASKED ABOUT A PARTICULAR FEATURE,
3 YES.

4 Q DO YOU STAND BY THAT TESTIMONY?

5 A YES.

6 MS. KREVANS: YOUR HONOR, FOR
7 COMPLETENESS, MAY I READ A PORTION OF THE TESTIMONY
8 JUST PRIOR?

9 THE COURT: NO. NO. YOU'LL HAVE
10 REDIRECT OPPORTUNITY.

11 BY MR. VERHOEVEN:

12 Q AND YOU DON'T HAVE ANY INFORMATION FOR THE
13 COMPETITIVE PHONES THAT YOU IDENTIFIED IN YOUR
14 REPORT AS TO WHETHER ANY PRODUCT FEATURE AFFECTED
15 THE QUALITY OF THE PHONES; RIGHT?

16 A QUALITY WAS NOT A PART OF MY ANALYSIS.

17 Q SO IS THE ANSWER NO?

18 A I GUESS IT WOULD HAVE TO BE NO, YES.

19 Q LET ME MAKE SURE THE RECORD IS CLEAR. IT IS
20 CORRECT THAT YOU DO NOT HAVE ANY INFORMATION FOR
21 THE COMPETITIVE PHONES THAT YOU IDENTIFIED AS TO
22 WHETHER ANY PRODUCT FEATURE AFFECTED THE QUALITY OF
23 THOSE PHONES?

24 A AGAIN, HOW YOU MEASURE QUALITY IS NOT CLEAR TO
25 ME.

1 MR. PRICE: IN A DESIGN CASE, BECAUSE YOU
2 CAN LOOK AT IT AND I CAN LOOK AT IT AND I CAN LOOK
3 AT THIS AND WE CAN DECIDE. SO THAT TWO MINUTES
4 GOES ON OUR TIME.

5 THIS I WOULD BEG YOU TO RECONSIDER
6 BECAUSE IT IS JUST A, I BELIEVE A MAJOR
7 MISINTERPRETATION OF WHAT WE'RE REQUIRED TO DO IN
8 DISCOVERY, AND OBVIOUSLY THIS SERIOUSLY IMPACTS OUR
9 NON-INFRINGEMENT CASE BECAUSE WE SHOULD BE ABLE TO
10 SAY WE DON'T LOOK LIKE THIS.

11 MS. KREVANS: YOUR HONOR --

12 MR. PRICE: "THIS" BEING THE PHYSICAL
13 EXHIBIT.

14 SO HOPEFULLY YOU WON'T CHARGE US FOR
15 THEIR RESPONSE, BUT THAT'S YOUR DISCRETION.

16 MS. KREVANS: IF YOUR HONOR LOOKS AT
17 THEIR NON-INFRINGEMENT CONTENTIONS AND RESPONSE TO
18 THE INTERROGATORY, THEY ARE SIMPLY BOILERPLATE
19 AFTER BOILERPLATE AFTER BOILERPLATE PARAGRAPHS.

20 THIS HAS NEVER BEEN DISCLOSED. IT NEEDED
21 TO BE DISCLOSED. IT IS A CONTENTION.

22 IT'S AN AMBUSH NOW IF YOU LET THEM DO IT.

23 AND YOU HAVE DRAWN THIS LINE
24 CONSISTENTLY. WE THINK YOU'RE DRAWING IT AGAIN
25 CORRECTLY NOW.

1 THE COURT: ALL RIGHT. WELL, I'VE MADE
2 MY RULING.

3 IT'S 4:05. I'D LIKE TO BRING THE JURY
4 BACK IN. I NEED TO GO BACK INTO THE RECORD AND SEE
5 WHAT TIME DID WE EXCUSE THE JURY. I'M SORRY.

6 (DISCUSSION OFF THE RECORD BETWEEN THE
7 COURT AND THE REPORTER.)

8 THE COURT: OKAY. LET'S BRING THE JURY
9 BACK IN, PLEASE.

10 (WHEREUPON, THE FOLLOWING PROCEEDINGS
11 WERE HELD IN THE PRESENCE OF THE JURY:)

12 THE COURT: ALL RIGHT. LET'S GO AHEAD,
13 PLEASE.

14 MR. VERHOEVEN: THANK YOU, YOUR HONOR.

15 THE COURT: IT'S 4:07. 4:08. GO AHEAD.

16 BY MR. VERHOEVEN:

17 Q MR. BRESSLER, LET'S TALK BRIEFLY ABOUT THE
18 '889 DESIGN PATENT. AND DO YOU HAVE THAT PATENT IN
19 MIND?

20 A IN MIND?

21 Q YEAH. DO YOU NEED -- DO YOU WANT ME TO SHOW
22 YOU WHERE IT IS?

23 A I THINK I HAVE IT.

24 Q IT'S JX 1061. YOU CAN LOOK AT IT.

25 A YES, I HAVE THAT. IT'S NOT EXACTLY THE SAME

1 AS THE PATENT THAT I'M USED TO SEEING, BUT I
2 BELIEVE IT REPRESENTS IT.

3 Q I'M SORRY. DO YOU HAVE THAT?

4 A I DO.

5 Q OKAY. NOW, DO YOU REMEMBER ON JULY 31ST,
6 MR. STRINGER TESTIFIED -- PROVIDED SOME TESTIMONY
7 ABOUT THE DESIGN OF THE '889 PATENT AS WELL?

8 A YES.

9 Q MR. STRINGER IS ALSO LISTED AS AN INVENTOR ON
10 THE DESIGN '889 PATENT; CORRECT?

11 A I DON'T KNOW. I SUSPECT -- I BELIEVE SO.

12 Q YOU DON'T KNOW?

13 A I DON'T KNOW FOR CERTAIN. I BELIEVE SO.

14 Q WELL, YOU HAVE THE '889 PATENT THERE. CAN YOU
15 LOOK FOR HIS NAME AS AN INVENTOR?

16 A I WILL.

17 YES, I SEE.

18 Q SO WE'RE AGREED HE IS LISTED AS AN INVENTOR?

19 A YES.

20 Q NOW LET'S GO LOOK AT WHAT MR. STRINGER SAID
21 WITH RESPECT TO THE '889.

22 THIS IS SDX 3789.

23 SO MR. BRESSLER, JUST FOR CLARITY ON THIS
24 SLIDE, SDX 3789, ON THE LEFT-HAND SIDE IS PULLED
25 OUT TWO FIGURES FROM THE DESIGN PATENT. YOU HAVE

1 THE '889 DESIGN PATENT IN FRONT OF YOU, JUST TO
2 CHECK ON THAT.

3 AND THIS IS TESTIMONY FROM
4 MR. SPRINGER -- STRINGER, EXCUSE ME -- FROM
5 JULY 31ST, PAGE 522, LINE 24 THROUGH 523, LINE 4.

6 "QUESTION: NOW, WITH RESPECT TO THE '889
7 DESIGN PATENT, ISN'T IT CORRECT THAT THE DESIGN
8 TEAM'S OBJECTIVES WERE TO REDUCE THE PRODUCT TO
9 WHAT WAS ESSENTIALLY A SINGLE, SEAMLESS VESSEL,
10 WHICH WAS THE REAR HOUSING?

11 "ANSWER: THAT WAS THE INSPIRATION OF
12 THIS DESIGN, YES."

13 DO YOU REMEMBER THAT TESTIMONY?

14 A I DO.

15 Q AND IF YOU LOOK AT THE BACK OF THE FIGURES FOR
16 THE '889 PATENT, YOU SEE IT'S A SINGLE, SEAMLESS
17 VESSEL; RIGHT?

18 A IT DOES APPEAR TO BE A SINGLE SHAPE, YES.

19 Q OKAY. AND CAN WE GO TO SDX 3790.

20 AND MR. STRINGER CONTINUED ON JULY 31ST,
21 PAGE 523, LINES 5 THROUGH 10 OF THE TRANSCRIPT.

22 "QUESTION: AND ANOTHER IMPORTANT DESIGN
23 GOAL WAS TO HAVE JUST ONE GAP IN THE PRODUCT
24 BETWEEN THE BACK HOUSING AND WHAT YOU REFER TO AS
25 THE CLEAR GLASS BEZEL THAT EXTENDS ALL THE WAY

1 ACROSS THE FRONT, RIGHT?

2 "ANSWER: YES."

3 DO YOU REMEMBER THAT TESTIMONY?

4 A I DO.

5 Q AND THAT'S REFERRING TO, ON THE FRONT OF THE
6 IMAGE, THIS GAP GOING AROUND BETWEEN THE GLASS AND
7 THE EDGE; RIGHT?

8 A THERE IS A RING AND A SEAM THERE, YES.

9 Q YES. THAT'S THE JUST ONE GAP IN THE PRODUCT?

10 A I BELIEVE HE CALLS SEAMS GAPS, YES.

11 Q SO HE'S REFERRING TO THAT ON THE FRONT, RIGHT?

12 A YES, ALL THE WAY ON THE OUTSIDE.

13 Q RIGHT. SO THE TWO DESIGN GOALS THAT
14 MR. STRINGER IDENTIFIED AS BEING NEW AND UNIQUE FOR
15 THE '889 WERE, NUMBER ONE, ON THE BACK HOUSING,
16 THERE WAS A SINGLE, SEAMLESS VESSEL; AND THEN THE
17 OTHER IMPORTANT DESIGN GOAL WAS THERE'S JUST ONE
18 GAP BETWEEN THE BACK HOUSING, WHICH IS THE SEAMLESS
19 VESSEL, AND THE FRONT. FAIR?

20 A I BELIEVE THAT WAS HIS INTENT, YES.

21 Q NOW, MS. KHAN, DO WE HAVE THE PHYSICAL EXHIBIT
22 FOR THE SAMSUNG TAB 10.1, JX 1038?

23 OKAY. NOW, CAN YOU HOLD UP THE BACK SO
24 THE JURY CAN SEE IT?

25 A (INDICATING.)

1 Q WITH RESPECT TO THE ACCUSED PRODUCT, THE BACK
2 HOUSING IS NOT A SINGLE -- A SINGLE, SEAMLESS
3 VESSEL, IS IT, SIR?

4 A NO, IT'S NOT. I BELIEVE IT GIVES THE
5 IMPRESSION OF ONE.

6 Q THANK YOU, SIR.

7 A BUT I DON'T BELIEVE IT IS.

8 Q IF YOU LOOK AT THE BACK -- ACTUALLY, LET'S GO
9 TO SDX 3784.

10 AND YOUR HONOR, MAY I APPROACH TO HAND
11 THE TAB TO THE JURY?

12 THE COURT: YES, PLEASE GO AHEAD.

13 MR. VERHOEVEN: THANK YOU.

14 SO FOR THE RECORD, I'VE HANDED PHYSICAL
15 EXHIBIT JX 1038 TO THE JURY TO INSPECT. THAT'S THE
16 GALAXY TAB 10.1.

17 Q AND ON THE SCREEN, SLIDE SDX 3784, WE'VE GOT
18 SOME IMAGES OF THAT SAME TAB 10.1 BLOWN UP SO
19 PEOPLE CAN SEE.

20 SO I'M GOING TO REFER TO THESE IMAGES
21 WHILE THE JURY IS -- JURORS ARE LOOKING AT THE
22 PHYSICAL PRODUCT. OKAY?

23 A SURE.

24 Q SO IF YOU LOOK AT THE ACCUSED PRODUCT, YOU'LL
25 SEE -- IF YOU'RE LOOKING AT THE BACK, THERE'S AT

1 LEAST TWO PIECES; RIGHT?

2 A YES.

3 Q AND THERE'S A SEAM THAT GOES ALONG THE BACK
4 AND PROTRUDES DOWN UNDER -- I GUESS THAT'S A
5 CAMERA. IS THAT A CAMERA?

6 A I BELIEVE SO.

7 Q AND THEN THAT WHOLE ASSEMBLY -- LET'S GO TO
8 SDX 3785 -- ALSO FORMS A RIM BETWEEN THE FRONT
9 GLASS SURFACE AND THE BACK SURFACE, THERE'S A WHOLE
10 RIM STRUCTURE THAT GOES ALL THE WAY AROUND THE TAB
11 BETWEEN THOSE TWO; RIGHT?

12 A I SEE THAT.

13 Q THERE'S NO RIM BETWEEN THE BACK HOUSING AND
14 THE FRONT GLASS IN THE '889 DESIGN PATENT. TRUE?

15 A THAT'S TRUE.

16 Q AND THERE'S NO SEAM THAT GOES ALONG THE BACK
17 SEPARATING TWO PORTIONS OF THE BACK HOUSING IS
18 THERE, SIR, ON THE '889?

19 A NO.

20 Q BUT THERE IS ON THE GALAXY TAB 10.1; RIGHT?

21 A IT'S AN ABSOLUTELY FLUSH SEAM, YES, THAT MAKES
22 IT APPEAR TO BE A CONTINUOUS SURFACE.

23 Q YOU'RE SAYING IN THE PHOTO, AN OBSERVER
24 LOOKING AT THIS WOULD THINK THIS IS A CONTINUOUS
25 SURFACE, THIS SILVER COLOR THAT CHANGES COLOR

1 TWO-TONE TO A BLACK COLOR?

2 A I THINK THEIR PERCEPTION WOULD BE THAT IT'S
3 ALL THE SAME SHAPE, PARTICULARLY IF THERE WASN'T
4 ANY CHANGE IN COLOR, WHICH ON A DESIGN PATENT THERE
5 ISN'T.

6 Q WELL, MR. STRINGER DIDN'T TALK ABOUT THE
7 BACK -- WE CAN GO BACK TO SDX 3790. EXCUSE ME.
8 3789.

9 MR. STRINGER DIDN'T TALK ABOUT THE SAME
10 SHAPE OR TWO DIFFERENT PIECES OF THE HOUSING. HE
11 SAYS THE "OBJECTIVES WERE TO REDUCE THE PRODUCT TO
12 WHAT WAS ESSENTIALLY A SINGLE, SEAMLESS VESSEL,"
13 AND THERE'S NO SEAMS AT ALL VISIBLE ON THE '889;
14 RIGHT?

15 A I BELIEVE THAT WAS HIS DESIGN, YES.

16 Q AND THE TAB 10.1 IS NOT A SINGLE, SEAMLESS
17 VESSEL WITH A REAR HOUSING, IS IT, SIR?

18 A NO. BUT IT APPEARS TO BE.

19 Q LET'S GO TO SDX 3787.

20 NOW, THIS IS JUST A SLIDE WITH THE GALAXY
21 TAB 10 ON THE RIGHT AND IMAGES FROM THE '889 PATENT
22 ON THE LEFT.

23 DO YOU SEE THAT, SIR?

24 A I DO.

25 Q NOW, YOU KNEW, WHEN YOU FORMED YOUR

1 OPINIONS -- WITHDRAW THE QUESTION.

2 DO YOU SEE THESE LINES ON THE BACK?

3 A I DO.

4 Q CAN YOU TELL THE JURORS WHAT THAT -- WELL,
5 WITHDRAW THE QUESTION AGAIN.

6 IS IT FAIR TO REFER TO THAT AS OBLIQUE
7 LINE SHADING?

8 A THAT'S ONE WAY TO VIEW IT, YES.

9 Q THAT'S WHAT IT'S CALLED; RIGHT?

10 A I BELIEVE SO.

11 Q RIGHT. AND WHEN YOU FORMED YOUR OPINIONS FOR
12 THE '889 PATENT, YOU KNEW THAT OBLIQUE LINE SHADING
13 MUST BE USED TO SHOW TRANSPARENT, TRANSLUCENT, AND
14 HIGHLY POLISHED SURFACES; RIGHT?

15 A YES.

16 Q SO WHAT THIS IS TELLING US IS THAT THE BACK OF
17 THE '889 PATENT IS A SHINY SURFACE?

18 A I BELIEVE SO.

19 Q NOW, IF YOU LOOK AT THE TAB, AND I DON'T
20 KNOW -- DID WE -- MAYBE WE CAN PASS IT OUT ONE MORE
21 TIME SO THE JURORS CAN SEE.

22 A I BELIEVE THE TERM I WOULD USE WOULD NOT BE
23 SHINY. IT WAS BE REFLECTIVE.

24 Q MS. KHAN, IF WE COULD JUST HAND THAT TO THE
25 JURORS SO THEY CAN PASS IT AROUND ONE MORE TIME.

1 NOW, WHEN YOU LOOK AT THE BACK SURFACE OF
2 THE GALAXY TAB 10.1, IT IS NOT A SHINY SURFACE, IS
3 IT?

4 A IT IS NOT SHINY. IT'S REFLECTIVE.

5 Q IT'S BRUSHED MATTE FINISH, ISN'T IT, SIR?

6 A IT'S OVER THERE.

7 Q DO YOU NEED TO LOOK AT IT?

8 A WELL, IT'S -- I DON'T KNOW IF THAT ONE IS
9 BRUSHED. I KNOW ONE OF THEM IS BRUSHED. I KNOW
10 ONE OF THEM IS PAINTED. THEY ALL HAVE SOME DEGREE
11 OF REFLECTIVITY.

12 Q AS SOON AS THE JURORS ARE DONE, I'LL SHOW IT
13 TO YOU. OKAY.

14 YOU DO KNOW WHAT A BRUSHED, MATTE FINISH
15 IS; RIGHT?

16 A YES.

17 Q AND A BRUSHED, MATTE FINISH IS NOT THE SAME AS
18 A TRANSPARENT OR HIGHLY POLISHED SURFACE, IS IT?

19 A NO. BUT IT IS A REFLECTIVE SURFACE.

20 Q SO THE ANSWER IS NO; RIGHT?

21 A IT'S NOT THE WORDS YOU USED, THAT'S CORRECT.

22 Q IT'S NOT A TRANSPARENT, TRANSLUCENT, OR HIGHLY
23 POLISHED SURFACE, IS IT, A BRUSHED MATTE SURFACE?

24 A I'M NOT SURE IT'S HIGHLY POLISHED. I BELIEVE
25 IT'S REFLECTIVE.

1 MR. VERHOEVEN: YOUR HONOR, MAY I
2 APPROACH?

3 THE WITNESS: AND I DO BELIEVE THAT THIS
4 IS REFLECTIVE.

5 MR. VERHOEVEN: MAY I APPROACH?

6 THE COURT: PLEASE, GO AHEAD.

7 BY MR. VERHOEVEN:

8 Q OKAY. WHEN YOU HOLD THIS UP AND LOOK AT IT,
9 CAN YOU SEE YOUR REFLECTION IN IT, SIR?

10 A NO, I CAN'T SEE MY REFLECTION.

11 Q BUT YOU'RE SAYING IT'S REFLECTIVE?

12 A I CAN SEE LIGHTS REFLECTING OFF OF IT.

13 Q WELL, YOU CAN SEE LIGHT REFLECTING ON ANY
14 SURFACE, CAN'T YOU, SIR?

15 A PRETTY MUCH.

16 Q YOU CAN SEE LIGHT REFLECTING OFF A BRUSHED
17 MATTE FINISH, CAN'T YOU, SIR?

18 A I BELIEVE SO.

19 Q BUT YOU'D AGREE THAT THAT PRODUCT RIGHT THERE,
20 THE BACK IS A BRUSHED, MATTE SURFACE?

21 A YES.

22 Q AND IT'S TWO --

23 A I BELIEVE IT'S A BRUSHED SURFACE. I DON'T
24 KNOW IF I'D QUALIFY IT AS MATTE.

25 Q YOU CAN'T SEE YOUR FACE IN IT?

1 A YES, I CAN'T SEE MY FACE IN IT.

2 Q IN FACT, IT'S TWO-TONED; RIGHT?

3 A YES. BUT THAT DOESN'T MATTER IN A DESIGN
4 PATENT.

5 Q TELL THE JURORS WHAT COLORS YOU SEE ON THE
6 BACK.

7 A I BELIEVE THERE IS A LIGHT GRAY AND A SLIGHTLY
8 DARKER GRAY.

9 Q OKAY. YOU CAN PUT THAT DOWN. THANKS.

10 MR. BRESSLER, APPLE IS PAYING YOU TO
11 TESTIFY AS THEIR EXPERT WITNESS IN THIS CASE;
12 RIGHT?

13 A YES, THEY ARE.

14 Q HOW MUCH ARE YOU BEING PAID PER HOUR?

15 A \$400.

16 Q HOW MUCH MONEY HAS APPLE PAID YOU SO FAR?

17 A SO FAR?

18 Q YES.

19 A FOR THIS CASE, ABOUT \$75,000.

20 Q YOU ADVERTISE YOURSELF ON THE INTERNET AS AN
21 EXPERT WITNESS; CORRECT?

22 A I BELIEVE I'M LISTED ON THE IDSA WEBSITE
23 HAVING TAKEN A CERTIFICATION COURSE.

24 Q SO IS THAT YES?

25 A I GUESS IN THAT ONE PLACE, YES.

1 Q YOU'RE ALSO LISTED AS AN EXPERT WITNESS ON A
2 WEBSITE CALLED PETERBRESSLERIDSA.COM; RIGHT?

3 A I DON'T BELIEVE I'M LISTED AS AN EXPERT
4 WITNESS THERE. I BELIEVE THAT'S A WEBSITE THAT I
5 TOOK OUT WHEN I SOLD BRESSLER GROUP AND I HAVEN'T
6 DONE ANYTHING WITH AT ALL YET. I BELIEVE IT'S
7 UNDER CONSTRUCTION.

8 Q RYAN, CAN WE PUT UP THE SITE
9 HTTP://PETERBRESSLERIDSA.COM? KEEP IT OFF THE BIG
10 SCREEN FIRST. KEEP IT OFF THE BIG SCREEN FIRST.

11 DO YOU SEE THAT ON THE SCREEN THERE, SIR?

12 A YES, I DO.

13 Q WELL, WHAT DO YOU KNOW?

14 A YES, I DO.

15 Q YOU DO?

16 A I DO. I HAD FORGOTTEN ALL ABOUT THAT.

17 Q YOU FORGOT ABOUT IT?

18 A I DID.

19 Q THIS IS YOU -- THIS IS -- YOU'RE THE SAME
20 PETER BRESSLER AS IN THIS WEB LINK; RIGHT?

21 A I AM.

22 Q CAN WE PUT IT UP ON THE SCREEN? THAT'S YOU,
23 PETER BRESSLER; RIGHT?

24 A THAT'S CORRECT.

25 Q AND IT SAYS, "EXPERT WITNESSES FOR TRADE

1 DRESS, UTILITY AND DESIGN PATENTS AND PRODUCT
2 LIABILITY."

3 RIGHT?

4 A THAT'S CORRECT.

5 Q AND THAT'S YOU ADVERTISING YOURSELF TO BE AN
6 EXPERT WITNESS IN LIABILITY CASES, PRODUCT CASES,
7 DESIGN CASES, UTILITY CASES; RIGHT?

8 A YES, IT'S THERE.

9 Q AND THIS ISN'T THE FIRST TIME YOU'VE PROVIDED
10 PAID TESTIMONY FOR APPLE; RIGHT?

11 A IF YOU WANT TO COUNT THE ITC CASE, THAT WOULD
12 MAKE IT THE SECOND TIME.

13 Q AND, INDEED, YOU TESTIFIED AS AN EXPERT IN
14 MANY CASES; RIGHT?

15 A I BELIEVE I'VE TESTIFIED NOW FOUR TIMES.

16 MR. VERHOEVEN: OKAY. I'LL PASS THE
17 WITNESS AT THIS POINT, YOUR HONOR.

18 THE COURT: ALL RIGHT.

19 IT'S NOW 4:24. GO AHEAD WITH THE CROSS,
20 PLEASE, OR THE REDIRECT, I'M SORRY.

21 (PAUSE IN PROCEEDINGS.)

22 MS. KREVANS: LET ME MOVE THE STOOL FOR
23 MR. VERHOEVEN. I DON'T WANT TO HIT MYSELF.

24 THE COURT: IT'S 4:25.

25 MS. KREVANS: THANK YOU, YOUR HONOR.

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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 6, 2012

EXHIBIT 4

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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 7, 2012
VS.)	
	)	VOLUME 5
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 1297-1637
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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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INDEX OF WITNESSES

PLAINTIFF'S

PETER BRESSLER

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SUSAN KARE

DIRECT EXAM BY MS. KREVANS P. 1356
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RUSSELL WINER

DIRECT EXAM BY MR. JACOBS P. 1496
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HAL PORET

DIRECT EXAM BY MR. JACOBS P. 1577
CROSS-EXAM BY MR. PRICE P. 1591

1 THE ACCUSED DESIGN IS NATURALLY MORE LIKELY TO BE
2 REGARDED AS DECEPTIVELY SIMILAR TO THE CLAIMED
3 DESIGN, AND THUS INFRINGING."

4 WAS THAT PART OF THE LEGAL TEST THAT YOU
5 APPLIED IN FORMING YOUR OPINIONS?

6 A ABSOLUTELY.

7 Q OKAY. DO YOU RECALL THAT MR. VERHOEVEN ASKED
8 YOU SOME QUESTIONS ABOUT WHETHER, ON THE SAMSUNG
9 PHONES, AND HE HAD A SLIDE ABOUT THIS WITH A BLUE
10 LINE THAT WENT ACROSS THE FACE, IF YOU RAN YOUR
11 FINGER ACROSS THE PHONE, YOU COULD FEEL THAT BEZEL
12 PROTRUDED A LITTLE BIT ABOVE THE GLASS SURFACE OF
13 THE PHONE.

14 A YES.

15 Q DO YOU RECALL THAT?

16 A I DO.

17 Q OKAY. IS THE TEST FOR DESIGN INFRINGEMENT A
18 TEST ABOUT WHAT A PRODUCT FEELS LIKE IF YOU RUN
19 YOUR FINGERS OVER IT, OR IS IT A TEST OF THE VISUAL
20 IMPRESSION THE PRODUCT MAKES.

21 MR. VERHOEVEN: OBJECTION. LEADING.

22 THE COURT: SUSTAINED.

23 BY MS. KREVANS:

24 Q WHAT IS THE TEST FOR WHETHER A DESIGN IS
25 SUBSTANTIALLY SIMILAR TO A DESIGN OF A PATENT,

1 MR. BRESSLER?

2 MR. VERHOEVEN: OBJECTION. CALLS FOR
3 LEGAL CONCLUSION.

4 THE COURT: SUSTAINED.

5 BY MS. KREVANS:

6 Q WHAT'S THE TEST THAT YOU APPLIED,
7 MR. BRESSLER, TO DETERMINE WHETHER THE DESIGN OF
8 THE SAMSUNG PHONES APPLIED -- WAS THE DESIGN OF THE
9 IPHONE PATENTS?

10 MR. VERHOEVEN: ASKED AND ANSWERED.

11 THE COURT: I'LL ALLOW IT.

12 GO AHEAD. OVERRULED.

13 THE WITNESS: COULD YOU REPEAT IT,
14 PLEASE? SORRY.

15 BY MS. KREVANS:

16 Q WHAT WAS THE TEST, BRIEFLY, THAT YOU APPLIED
17 IN DETERMINING WHETHER THE SAMSUNG PHONES INFRINGED
18 THE APPLE DESIGN PATENTS?

19 A THE TEST THAT I APPLIED, BRIEFLY, WAS THAT THE
20 APPEARANCE OF THE ACCUSED PHONES SHOULD LOOK LIKE
21 THE APPEARANCE THAT AN ORDINARY OBSERVER WOULD --
22 OR AN ORDINARY OBSERVER WOULD THINK THE APPEARANCE
23 OF THE ACCUSED PHONES LOOKED LIKE THE APPEARANCE
24 DEPICTED IN THE DESIGN PATENT.

25 Q OKAY. NOW, DO YOU RECALL THAT MR. VERHOEVEN

1 ACTUALLY SHOWED YOU, DURING YOUR CROSS-EXAMINATION,
2 THE FRONT FACES OF A NUMBER OF PHONES UP ON THE
3 SCREEN?

4 A YES.

5 Q AND ONE OF THOSE WAS THE PRADA?

6 A YES.

7 Q IS THE PRADA IN FRONT OF YOU RIGHT NOW,
8 MR. BRESSLER?

9 A YES, THERE IS ONE HERE.

10 Q IS, IS THE PRADA A PHONE THAT IS PRIOR ART TO
11 THE APPLE DESIGN PATENTS?

12 MR. VERHOEVEN: OBJECTION. CALLS FOR A
13 LEGAL CONCLUSION.

14 THE COURT: SUSTAINED.

15 BY MS. KREVANS:

16 Q MR. BRESSLER, BASED ON THE INFORMATION
17 AVAILABLE TO YOU, MR. BRESSLER, WAS THE PRADA
18 PUBLICLY DISPLAYED OR SOLD IN THE UNITED STATES
19 BEFORE THE APPLICATION DATE OF THE APPLE IPHONE
20 DESIGN PATENTS?

21 A I HAVE BEEN INFORMED THAT IT WAS NOT.

22 Q OKAY. DO YOU THINK, IN YOUR OPINION, THAT THE
23 DESIGN OF THE PRADA THAT YOU'RE HOLDING IN YOUR
24 HAND IS SUBSTANTIALLY SIMILAR TO THE DESIGN OF THE
25 APPLE IPHONE PATENT?

1 A I DO NOT.

2 MS. KREVANS: YOUR HONOR, MAY I PASS THE
3 PRADA AROUND TO THE JURY?

4 THE COURT: ANY OBJECTION?

5 MR. VERHOEVEN: NO OBJECTION, YOUR HONOR.

6 THE COURT: GO AHEAD, PLEASE.

7 DO YOU WANT TO SEE THIS PRADA?

8 MR. VERHOEVEN: SHE HAS SHOWED IT TO ME.

9 MS. KREVANS: I SHOWED IT TO HIM IN
10 ADVANCE.

11 AND MAY I ALSO PASS OUT THE IPHONE?

12 THE COURT: SHOW IT TO MR. VERHOEVEN.

13 MR. VERHOEVEN: NO OBJECTION.

14 MS. KREVANS: I SHOWED IT TO HIM.

15 THE COURT: GO AHEAD.

16 BY MS. KREVANS:

17 Q DO YOU RECALL WHEN MR. VERHOEVEN WAS SHOWING
18 YOU THE SLIDES OF THOSE FRONT FACES, YOU TOLD HIM
19 YOU DIDN'T THINK IT WAS PROPER JUST TO LOOK AT THE
20 FRONT VIEW.

21 WHY DID YOU SAY THAT?

22 A IT'S MY UNDERSTANDING THAT THE ANALYSIS IS
23 CONDUCTED WITH ALL OF THE VIEWS OF THE PATENT IN
24 EACH INDIVIDUAL CASE, NOT USING A SINGLE VIEW,
25 ACTUALLY VIEWING A SINGLE VIEW DISTORTS ONE'S

1 UNDERSTANDING OF THE DESIGN.

2 Q OKAY. LET'S LOOK AT ONE OF THE PHONES, ONE OF
3 THE DESIGNS THAT MR. VERHOEVEN SHOWED YOU. THIS
4 WAS DX 511.

5 COULD WE SEE THAT? IT'S ALSO IN YOUR
6 BINDER, MR. BRESSLER.

7 IF YOU START AT THE FIRST PAGE, PLEASE,
8 THOMAS, AND LET'S JUST WALK THROUGH THE VIEWS.
9 DON'T BLOW IT UP BECAUSE THEN IT'LL -- WE BEGIN
10 SEEING EXACTLY WHAT'S THERE.

11 JUST FOLLOWING ALONG ON THE SCREEN,
12 MR. BRESSLER, COULD YOU JUST BRIEFLY TELL US, AS WE
13 GO THROUGH THESE PAGES, WHAT WE'RE LOOKING AT HERE.
14 THIS IS THE JAPANESE '638 PATENT FOR THE RECORD.

15 A YES. AND THIS IS THE JAPANESE NON-TRANSLATED
16 VERSION.

17 Q IT'S PICTURES, SO WE CAN LOOK AT THEM IN
18 JAPANESE, RIGHT?

19 A EXACTLY.

20 Q OKAY.

21 A THIS IS ACTUALLY TWO THREE-QUARTER FRONT
22 VIEWS. THE UPPER ONE IS SHOWING IT IN A DEPLOYED
23 MODE BECAUSE THIS IS A SLIDER PHONE.

24 THE SECOND ONE SHOWING IT IN THE CLOSED
25 MODE.

1 Q OKAY. LET'S SEE THE NEXT PAGE, THOMAS.

2 WHAT DO WE SEE HERE?

3 A THIS IS A DEAD-ON FRONT VIEW OF THE PHONE.

4 Q OKAY.

5 A AND A DEAD-ON BACK VIEW OF THE PHONE.

6 Q UM-HUM.

7 A AND THEN IT APPEARS IT IS A DEAD-ON TOP VIEW
8 OF THE PAGE.

9 Q OKAY. NEXT PAGE, PLEASE, THOMAS.

10 WHAT DO WE HAVE HERE?

11 A THE NEXT FIGURE WOULD BE THE BOTTOM VIEW, AND
12 LET ME GET MY ORIENTATION CORRECT, BUT I BELIEVE
13 THIS IS THE LEFT-HAND VIEW, DEPENDING ON WHICH WAY
14 YOU ARE FACING. AND THE OTHER ONE IS THE
15 RIGHT-HAND VIEW.

16 Q AND WHAT DO YOU SEE IN THESE EIGHT VIEWS, IF
17 ANYTHING, THAT YOU COULD NOT SEE IN JUST THE FRONT
18 VIEW?

19 A IMMEDIATELY WHAT YOU SEE IS THE DIMENSIONALITY
20 OF THE PHONE, MEANING THAT THE PHONE CAN BE SEEN TO
21 NOT BE A DEVICE THAT'S ABSOLUTELY FLAT.

22 YOU CAN SEE THAT THE FRONT END -- AND IF
23 YOU CAN GO BACK TO THE THREE-QUARTER VIEW, I THINK
24 IT'S MOST EASILY DEMONSTRATED VIEW.

25 Q THOMAS, CAN YOU GO BACK TO THE THREE-QUARTER

1 VIEW. ONE BEFORE THAT.

2 A RIGHT. I THINK YOU CAN SEE THAT IN THESE
3 VIEWS THAT LOOKING AT IT FACE ON, ONE COULD
4 MISUNDERSTAND WHAT THIS DESIGN IS, AND NOT
5 UNDERSTAND THAT IT IS A DIMENSIONAL FACE THAT, IN
6 FACT, IS NOT CONTINUOUS FLAT ALL THE WAY ACROSS THE
7 FRONT, THAT THERE ARE NO INDICATIONS THAT IT'S
8 EITHER REFLECTIVE OR GLASSY OR TRANSPARENT; AND
9 THAT IT'S NOT BLACK OR NOT SPECIFIED TO BE BLACK.

10 AND IF YOU LOOK CLOSELY AT THE PIECE OF
11 MATERIAL AROUND IT, ONE CAN HAVE A DEBATE WHETHER
12 THAT'S, IN FACT, A BEZEL OR A FRONT COVER OF THE
13 FRONT PART OF THE PHONE.

14 Q OKAY. LET'S LOOK AT ONE MORE EXAMPLE OF THE
15 PHONE, THE PICTURES THAT MR. VERHOEVEN SHOWED YOU.

16 COULD WE SEE DX 728. AND, AGAIN, LET'S
17 WALK QUICKLY THROUGH THE VIEWS. THIS IS, FOR THE
18 RECORD, THE JAPANESE '383 PATENT.

19 BRIEFLY, COULD YOU WALK US THREE THESE
20 VIEWS, MR. BRESSLER?

21 A YES. THE FIRST PAGE HERE SHOWS THE FRONT
22 THREE-QUARTER VIEW AND THE FRONT HEAD-ON VIEW OF
23 THIS PHONE, WHICH IS ACTUALLY IN THE SPECIFICATION,
24 THIS IS DESCRIBED AS TWO SEPARATE PARTS. THERE'S
25 AN INTERNAL PHONE COMPONENT THAT THERE'S AN

1 EXTERNAL COVER COMPONENT.

2 Q OKAY.

3 A THAT'S TRANSPARENT.

4 Q LET'S SEE THE NEXT VIEW.

5 WHAT'S HERE?

6 A THIS VIEW, I BELIEVE, IS A BACK VIEW AND A TOP
7 VIEW.

8 Q OKAY. LET'S SEE THE NEXT PAGE, THOMAS.

9 WHAT IS THIS?

10 A THIS, I BELIEVE, IS A BOTTOM VIEW AND A
11 SIDE -- AND A LEFT SIDE VIEW, RIGHT SIDE VIEW.

12 Q OKAY. AND THE NEXT PAGE, THOMAS?

13 A IS THE OTHER SIDE VIEW.

14 AND THE NEXT PART IS A SECTION. NOW, A
15 SECTION IS WHERE YOU SLICE THE OBJECT IN THE PATH
16 POTENTIALLY AND YOU CAN GET TO LOOK AT WHAT IT
17 LOOKS LIKE FROM THE END OF THE SLICE OF BOLOGNA, IF
18 YOU WILL.

19 Q OKAY. SO THAT'S NOT WHAT AN ORDINARY OBSERVER
20 WOULD SEE?

21 A USUALLY, NO.

22 Q UNLESS WE CUT OUR PHONES IN HALF?

23 A RIGHT.

24 Q OKAY. LET'S LOOK AT THE NEXT PAGE. WHAT DO
25 WE SEE HERE?

1 ME THAT A CONSUMER, IF THEY'RE GOING TO BUY AN
2 EXPENSIVE ITEM LIKE AN I -- A SMARTPHONE, THEY GO
3 TO THE STORE AND THEY FIDDLE WITH IT FOR A WHILE
4 AND THEY FIGURE OUT IF THEY WANT TO BUY IT; RIGHT?

5 A I CAN'T SPEAK TO CONSUMER BEHAVIOR, YOU KNOW,
6 EXCEPT MY OWN ANECDOTALLY. BUT IT'S NOT MY AREA.

7 Q SO YOU DON'T HAVE AN OPINION AS TO WHETHER --
8 GO BACK TO THE SLIDE AGAIN -- AS TO WHETHER A
9 CONSUMER WOULD KNOW FROM ALL OF THE APPLE
10 ADVERTISING AND MARKETING THAT, WITH RESPECT TO THE
11 IPHONE, THE HOME BUTTON IS NOT AN ICON, IT'S A
12 PHYSICAL BUTTON?

13 A NO.

14 Q OKAY. NOW, DO YOU SEE UP AT THE TOP HERE
15 THERE'S THESE LITTLE DOTS?

16 A YES.

17 Q THERE'S ONE BIG CIRCLE -- OR ONE RELATIVE TO
18 THE OTHER DOTS, IT'S A BIGGER CIRCLE THAT HAS A 1
19 ON IT?

20 A YES.

21 Q AND TWO OTHER DOTS?

22 A YES.

23 Q WHERE IS THAT ON THE D'305?

24 A THERE ISN'T CORRESPONDING DOTS ON THE D'305.

25 Q THOSE DOTS INDICATE TO A CONSUMER THAT THERE'S

1 THREE PAGES WORTH OF APPLICATION; RIGHT?

2 A YES.

3 Q THERE'S NOTHING INDICATING PAGES OF
4 APPLICATIONS IN THE D'305; CORRECT?

5 A YES.

6 Q AND CAN YOU TELL, BY LOOKING AT THIS, WHETHER
7 OR NOT THE ICONS ARRANGED IN THE FASCINATE ARE IN
8 ALPHABETICAL ORDER? DO YOU SEE THE FIRST ONE IS
9 THREE, THEN A, THEN B, B-I, B-L, B-R, C-A, C-A,
10 C-A. DO YOU SEE THAT?

11 A LOOKS ALPHABETIC.

12 Q IT'S ALPHABETICAL; RIGHT?

13 A YES.

14 Q LOOK AT THE D'305. TEXT, CALENDAR. WELL, T
15 COMES AFTER C IN THE ALPHABET; RIGHT?

16 A YES.

17 Q AND THEN PHOTOS AND BACK TO CAMERA AND THEN TO
18 YOUTUBE, THAT'S WITH A Y, AND THEN STOCKS.

19 SO THE D'305, THE ICONS ARE NOT ARRANGED
20 ALPHABETICAL ORDER; RIGHT?

21 A RIGHT.

22 Q SO BEING ARRANGED IN ALPHABETICAL ORDER IS
23 KIND OF USEFUL, ISN'T IT?

24 A SOMETIMES.

25 Q YEAH, ESPECIALLY IF YOU HAVE THREE PAGES OF

1 ICONS. IT'S EASIER TO FIND THE APPLICATION PROGRAM
2 YOU WANT IF IT'S ARRANGED IN ALPHABETICAL ORDER;
3 RIGHT?

4 A I WOULD PROBABLY, IF I WERE DESIGNING IT, I
5 WOULD ARRANGE THINGS IN ORDER THAT I THOUGHT WOULD
6 BE THE MOST FREQUENTLY USED.

7 BUT I THINK IT'S A -- THAT, WHAT YOU SAY,
8 SOMETIMES ALPHABETICAL MAKES TOTAL SENSE.

9 IT OFTEN MAKES SENSE, YOU KNOW, TYPE
10 FACES, YOU'VE GOT A SUPER LONG LIST OF 50 NAMES,
11 SCREEN ELEMENTS TENDS TO DEPEND HOW MANY YOU'RE
12 TALKING ABOUT, AND HOW THEY'RE DISPLAYED.

13 SO I WOULDN'T CATEGORICALLY SAY THAT
14 ALPHABETICAL IS PREFERRED TO NOT ALPHABETICAL.

15 Q WELL, LET'S TALK ABOUT A HOME SCREEN.

16 THAT'S WHERE YOU COULD PUT -- A USER CAN
17 ACTUALLY TOUCH AND DRAG THEIR FAVORITE APPLICATIONS
18 TO THEIR HOME SCREEN WHERE THEY CAN SEE THEM FAST
19 AS SOON AS THEY PICK UP THEIR PHONE; RIGHT?

20 A YES.

21 Q WHEREAS AN APPLICATIONS SCREEN IS SIMPLY A
22 LIST OF ALL OF YOUR APPLICATIONS; RIGHT?

23 A RIGHT.

24 Q AND SO FOR AN APPLICATION SCREEN, IT MAKES
25 SENSE THAT YOUR ICONS ARE IN ALPHABETICAL ORDER SO

1 YOU CAN FIND THEM; RIGHT?

2 A I WOULDN'T -- I WOULDN'T SAY THAT BECAUSE YOU
3 MIGHT WANT YOUR GAMES TOGETHER AND YOUR ART
4 PROGRAMS TOGETHER AND YOUR CAMERA STUFF TOGETHER,
5 AND THAT MIGHT BE A BETTER SPACIAL WAY TO FIND
6 THINGS.

7 YOU KNOW, IT DEPENDS ON THE PERSON.

8 Q AND YOU MIGHT WANT A PLACE YOU CAN GO TO SEE
9 AN ENTIRE LIST OF YOUR APPLICATIONS TO SEE IF YOU
10 DOWNLOADED SOMETHING OR NOT, RIGHT?

11 A I DON'T DISPUTE ALPHABETICAL CAN BE USEFUL,
12 BUT I WOULDN'T SAY THAT IS IT FOR EASE OF USE.

13 Q NOW, YOU MENTIONED IN YOUR ANSWER A FEW
14 MINUTES AGO, YOU REFERENCED FUNCTIONALITY.

15 DO YOU REMEMBER THAT GENERALLY?

16 A YES.

17 Q WOULD YOU AGREE WITH ME THAT THE ICONS ON THE
18 D'305 DESIGN ARE AT LEAST IN PART FUNCTIONAL?

19 A ICONS IN GENERAL HAVE A PURPOSE.

20 THE D'305, AS I UNDERSTAND IT, IS AN
21 ORNAMENTAL DESIGN, SO IT'S, IT'S A PICTURE.

22 Q WHEN YOU SAY ICONS HAVE A PURPOSE, WHAT DO YOU
23 MEAN?

24 A I MEAN THAT TO GENERALIZE, YOU INTERACT WITH
25 ONE AND SOMETHING HAPPENS.

1 Q THE PURPOSE OF ICONS IS TO COMMUNICATE
2 INFORMATION TO THE USER; RIGHT?

3 A YES.

4 Q ICONS ARE SORT OF LIKE TRAFFIC SIGNS?

5 A YES.

6 Q THEY HELP USERS MAKE CHOICES AMONG OPTIONS?

7 A YES.

8 Q ICONS CAN ALSO BE USED ON TOUCHSCREENS WHERE
9 YOU DON'T HAVE A LOT OF SPACE TO SAVE SPACE; RIGHT?

10 A THAT IS AN OPTION. THERE ARE -- AGAIN,
11 THERE'S -- THERE ARE NO HARD AND FAST RULES.

12 Q ICONS ARE ALSO USEFUL BECAUSE IT CAN BE
13 UNDERSTOOD BY DIFFERENT PEOPLE WHO SPEAK DIFFERENT
14 LANGUAGES; RIGHT?

15 A AS OPPOSED TO TEXT, SOMETIMES A PICTURE IS
16 UNIVERSAL.

17 Q I CAN LOOK AT THIS CLOCK AND IT DOESN'T MATTER
18 WHAT COUNTRY I'M FROM, I DON'T HAVE TO SPEAK
19 ENGLISH, I CAN SEE THE CLOCK AND THAT WOULD
20 COMMUNICATE TO ME AS A USER THAT IF I HIT THAT
21 ICON, I'LL LAUNCH THE CLOCK APPLICATION; RIGHT?

22 A YES.

23 Q SAME THING WITH THIS ICONIC PHONE SYMBOL FROM,
24 WHAT DID YOU SAY, THE '50S, '40S?

25 A '38.

1 Q '38?

2 A BUT IT EVOLVED OVER TIME.

3 Q EVERYBODY SEEING THAT KNOWS, HEY, THAT'S
4 COMMUNICATING TO ME IF I HIT THAT BUTTON, I'LL
5 LAUNCH THE PHONE APPLICATION; RIGHT?

6 A GENERALLY, YES.

7 Q PEOPLE FROM DIFFERENT COUNTRIES WHO SPEAK
8 DIFFERENT LANGUAGES WOULD UNDERSTAND THAT?

9 A YES.

10 Q YOU AGREE THAT FAMILIAR REAL WORLD OBJECTS
11 MAKE GOOD ICONS; RIGHT?

12 A YES AND NO. SOMETIMES USING A REAL WORLD
13 OBJECT WHERE, LET'S SAY, A PRINTER, A PRINTER LOOKS
14 SO MUCH DIFFERENT TEN YEARS LATER THAT SOMETIMES WE
15 FIND VESTIGES OF THINGS THAT LOOK ODD BECAUSE THE
16 INDUSTRIAL DESIGN CHANGES. SO SOMETIMES USING --
17 SOMETIMES A METAPHOR IS STRONGER BECAUSE YOU'RE NOT
18 TIED TO A PARTICULAR WAY SOMETHING LOOKS IN TIME.

19 Q OKAY. YOU DON'T DISPUTE THAT THE ICONS USED
20 IN THE D'305 HERE WERE CHOSEN TO COMMUNICATE THE
21 VARIOUS FUNCTIONS OF THE APPLICATIONS ON THE
22 DEVICE, DO YOU?

23 A THE D'305 DOESN'T SAY ANYTHING IN THE PATENT
24 ABOUT THOSE PARTICULAR DESIGNS. I'M -- I CAN --
25 AND I WASN'T INVOLVED IN THE DESIGN OF THOSE, SO I

1 CAN SPECULATE.

2 Q ISN'T IT TRUE THAT IN YOUR OPINION, THE WAY
3 THE D'305 IS SET UP IS THE MOST EFFECTIVE VISUAL
4 WAY TO COMMUNICATE THE FUNCTIONS ON THE PHONE?

5 A ON A PHONE?

6 Q YES.

7 A WELL, NO. I MEAN, THE D'305 PATENT DOESN'T
8 SAY IT'S A PHONE. IT JUST SAYS IT'S A DEVICE.

9 Q WHEN YOU LOOK AT THE D'305, YOU DON'T DISPUTE
10 THAT THE CLOCK ICON COMMUNICATES TO A CONSUMER THAT
11 IF THEY PUSH THAT BUTTON, IT'LL LAUNCH THE CLOCK
12 APPLICATION FUNCTION?

13 A YES.

14 Q AND THE SAME IS TRUE FOR THE CALCULATOR;
15 RIGHT? IT INDICATES TO THE CONSUMER, IT
16 COMMUNICATES TO THE CONSUMER FUNCTIONAL
17 INFORMATION, I.E., IF YOU HIT THAT ICON, THE
18 CALCULATOR ICON, IT'LL LAUNCH THE CALCULATOR
19 APPLICATION; RIGHT?

20 A WELL, AGAIN, THERE ISN'T ANYTHING THAT I SAW
21 IN THE D'305 THAT TALKS ABOUT WHAT ANY OF THOSE
22 THINGS DO. YOU KNOW, YOU READ THE WORD AND I'M
23 ASSUMING THOSE ARE ALL ILLUSTRATIONS OF POSSIBLE
24 ICONS.

25 Q THAT'S THE WHOLE POINT OF AN ICON IS TO

1 COMMUNICATE TO THE USER -- WITHDRAW THE QUESTION.

2 ISN'T IT TRUE THE WHOLE POINT OF AN ICON
3 ON A SMARTPHONE IS TO COMMUNICATE TO THE CONSUMER
4 USING THAT PRODUCT, THAT IF THEY HIT THAT ICON,
5 CERTAIN FUNCTIONALITY WILL OCCUR ON THE PHONE?

6 A GENERALLY, YES.

7 BUT THAT'S NOT SPELLED OUT, IN MY
8 UNDERSTANDING, IN THE D'305 DESIGN.

9 Q OKAY. GIVEN THAT IT'S NOT SPELLED OUT, YOU
10 AGREE GENERALLY THAT, AS AN EXPERT ON ICONS --

11 A YEAH.

12 Q -- THAT THAT'S THE WAY ICONS ARE FOR, RIGHT?
13 ON SMARTPHONES AT LEAST?

14 A UM --

15 Q TO COMMUNICATE TO THE CONSUMERS, HEY, IF YOU
16 HIT THIS BUTTON, CERTAIN FUNCTIONS WILL HAPPEN. IF
17 YOU HIT THIS OTHER BUTTON, OTHER DIFFERENT
18 FUNCTIONS WILL HAPPEN; RIGHT?

19 A AGREED. VISUAL SHORTHAND FOR SOMETHING.

20 Q AND THE BEST ICONS ARE THE ONES THAT CAN
21 COMMUNICATE THAT FUNCTIONALITY THE BEST SO THE USER
22 ISN'T CONFUSED ABOUT WHICH BUTTONS WILL DO WHAT;
23 RIGHT?

24 A GOOD ICONS COMMUNICATE CLEARLY AND
25 CONSISTENTLY.

1 Q AND THEY -- ON SMARTPHONES, THEY COMMUNICATE
2 TO THE CONSUMER WHAT THE FUNCTIONALITY OF THE PHONE
3 IS? IN OTHER WORDS, IF YOU HIT THIS BUTTON, YOU'LL
4 LAUNCH THE PHONE APPLICATION. IF YOU HIT THIS
5 OTHER BUTTON, YOU'LL LAUNCH THE CAMERA APPLICATION.
6 FAIR?

7 A IF SOMEONE HAD GENERAL KNOWLEDGE THAT THEY
8 BRING TO IT, YES.

9 MR. VERHOEVEN: YOUR HONOR, I'M ABOUT TO
10 CHANGE SUBJECTS. DO YOU WANT TO TAKE THE LUNCH
11 NOW?

12 THE COURT: SURE. IT'S 1202. AGAIN,
13 PLEASE KEEP AN OPEN MIND. DON'T DISCUSS THE CASE
14 WITH ANYONE AND PLEASE DON'T DO ANY OF YOUR OWN
15 RESEARCH.

16 GO AHEAD -- ACTUALLY, IF YOU COULD JUST
17 LEAVE YOUR NOTEBOOKS IN THE JURY ROOM. THANK YOU.
18 WE'LL SEE YOU BACK AT 1:00 O'CLOCK.

19 (WHEREUPON, THE FOLLOWING PROCEEDINGS
20 WERE HELD OUT OF THE PRESENCE OF THE JURY:)

21 THE COURT: OKAY. THANK YOU ALL.

22 (WHEREUPON, THE LUNCH RECESS WAS TAKEN.)
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AFTERNOON SESSION

(WHEREUPON, THE FOLLOWING PROCEEDINGS WERE HELD OUT OF THE PRESENCE OF THE JURY:)

THE COURT: ALL RIGHT. LET ME ASK ONE QUICK QUESTION, BECAUSE THIS IS COMING UP WITH MR. DENISON AND WITH MS. KARE.

THANK YOU, PLEASE TAKE A SEAT.

EXHIBIT 44, LET ME HEAR, BECAUSE I THINK MAYBE I'VE BEEN TOO HARD WITH THE FOUNDATION, I'M ASSUMING THAT SAMSUNG IS NOT GOING TO ARGUE THAT THIS IS NOT A SAMSUNG DOCUMENT. OR ARE YOU?

ARE YOU GOING TO SAY IT WAS FABRICATED? IT'S NOT YOUR DOCUMENT OR ANYTHING ELSE WITH THE COMPARISON? I THINK IT'S HIGHLY RELEVANT. I THINK IT WAS UNFORTUNATE IF IT WASN'T PRODUCED BEFORE MR. DENISON WAS DEPOSED FOR THE PRELIMINARY INJUNCTION.

LET ME HEAR, WHAT'S YOUR POSITION ON THAT, BECAUSE THIS KEEPS COMING UP, AND I'D LIKE TO GET IT ADDRESSED.

MR. VERHOEVEN: OUR POSITION?

THE COURT: YEAH.

MR. VERHOEVEN: WE'RE NOT CHALLENGING THAT IT'S A SAMSUNG DOCUMENT, YOUR HONOR, BUT THERE'S BEEN NO FOUNDATION LAID FOR ADMISSION, FOR

1 ADMISSIBILITY.

2 THE COURT: SO WHAT IS YOUR REQUIREMENT,
3 THAT THEY BRING IN A SAMSUNG EMPLOYEE FROM KOREA
4 WHO CAN SAY THAT, YES, HE/SHE WORKED ON THAT
5 DOCUMENT?

6 MR. VERHOEVEN: IF THEY HAVE DEPOSITION
7 TESTIMONY THAT LAYS THE FOUNDATION OF THE DOCUMENT,
8 WE CAN PUT IF IN THAT WAY, YOUR HONOR.

9 BUT AS WITH ALL OF THESE EXHIBITS, YOU
10 NEED TO LAY A FOUNDATION BEFORE THEY COME IN. AND
11 THE OBJECTION I HAD THIS MORNING, YOUR HONOR, WAS
12 THAT WE DON'T BELIEVE THAT AN EXPERT WITNESS IS
13 SOMEBODY WHO CAN LAY A FOUNDATION --

14 THE COURT: I'M NOT GOING TO ALLOW THAT
15 IT COME IN THROUGH HER. I JUST WANT TO RESOLVE
16 THIS ISSUE.

17 MR. VERHOEVEN: I'M SORRY. WHAT WE'RE
18 SAYING IS THEY NEED TO DO IT THE RIGHT WAY, HAVE A
19 WITNESS WHO THEY'VE HAD OVER A ONE DEPOSITION, I
20 THINK IN THIS CASE, SAMPLE WITNESSES, AND THIS WAS
21 THEIR JOB TO SHOW THIS TO A WITNESS AND GET THE
22 FOUNDATION SO THAT THEY CAN MOVE IT INTO EVIDENCE.
23 AND --

24 THE COURT: RIGHT. BUT I DON'T THINK IT
25 SHOULD BE -- YOU KNOW, SAMSUNG SHOULD HAVE PRODUCED

1 AND HOW APPLE AND SAMSUNG HAD ACTUAL NOTICE OF THE
2 APPLE PATENTS-IN-SUIT, APPLE TRADE DRESS, AND APPLE
3 TRADEMARK.

4 SO I'M GOING TO OVERRULE THE OBJECTION
5 ABOUT DISCLOSURE BECAUSE I FIND THAT THIS IS
6 SUFFICIENT.

7 SO IF YOU WANT TO KEEP ARGUING IT, IT'S
8 NOW JUST GOING TO BE BILLED STRAIGHT TO SAMSUNG'S
9 TIME.

10 MR. VERHOEVEN: I THINK THAT COMPLETES
11 OUR ARGUMENT, YOUR HONOR.

12 THE COURT: OKAY. ALL RIGHT. I'M GOING
13 TO RETURN THIS -- THAT WAS FROM THE APPLE'S
14 CORRECTED AMENDED OBJECTIONS AND RESPONSES TO
15 SAMSUNG ELECTRONICS' LIMITED INTERROGATORIES NUMBER
16 4, 6, 7, 16, 17, 18 TO APPLE, INC.

17 ALL RIGHT.

18 (WHEREUPON, THE FOLLOWING PROCEEDINGS
19 WERE HELD IN THE PRESENCE OF THE JURY:)

20 THE COURT: ALL RIGHT. WELCOME BACK.

21 OH, PLEASE TAKE A SEAT. SORRY. I FORGET
22 THAT.

23 ALL RIGHT. GO AHEAD, PLEASE.

24 IT'S 1:13.

25 MR. VERHOEVEN: THANK YOU, YOUR HONOR.

1 Q GOOD AFTERNOON, DR. KARE.

2 A GOOD AFTERNOON.

3 Q I'D LIKE TO SWITCH SUBJECTS AND TALK A LITTLE
4 BIT ABOUT THE PLACEMENT OF ICONS ON THE USER
5 INTERFACE.

6 WOULD YOU AGREE THAT THERE ARE PRACTICAL
7 ENGINEERING CONSIDERATIONS INVOLVED IN THE SPACING
8 FOR THE ICONS ON A GRAPHICAL USER INTERFACE?

9 A GENERALLY, YES.

10 Q THE USER INTERFACE SHOULD BE ORGANIZED OR MUST
11 BE ORGANIZED SO THAT THERE'S ENOUGH SPACE FOR THE
12 ICON SO THE USER CAN ACTUALLY SELECT THE ICON;
13 RIGHT?

14 A YES.

15 Q SO A DESIGNER HAS TO TAKE INTO ACCOUNT THE
16 SPACE REQUIRED ON THE TOUCHSCREEN TO EFFECTIVELY
17 SELECT AN ICON IN DECIDING HOW TO POSITION ICONS ON
18 THE SCREEN?

19 A IT'S FAIR TO SAY THAT IF IT'S A TOUCHSCREEN
20 AND YOU'RE USING YOUR FINGER AND NOT A STYLUS, THEN
21 THERE'S SOME PRACTICAL CONSIDERATION OF HOW CLOSE
22 THINGS -- HOW CLOSE AREAS COULD BE TOGETHER AND HOW
23 BIG THEY ARE.

24 Q RIGHT. SO IF YOU HAD, FOR EXAMPLE, A COMPUTER
25 SCREEN AND YOU'RE USING A MOUSE, YOU CAN USE -- YOU

1 CAN HAVE SMALLER ICONS IF YOU WANTED TO AND JUST
2 CLICK ON THE POINT; RIGHT?

3 A YOU HAVE A ONE PIXEL POINTER.

4 Q RIGHT.

5 A EASY TO BE PRECISE.

6 Q NOW, IF YOU HAD ONE OF THOSE OUGHT PALM PILOTS
7 WHERE YOU HAD A STYLUS -- DO YOU REMEMBER THOSE?

8 A YES.

9 Q THAT WOULD BE A TIGHT LITTLE POINT THAT YOU
10 PUSH; RIGHT?

11 A YES.

12 Q AND THAT'S ALL THE SPACE YOU'D NEED?

13 A YOU KNOW, MAYBE THERE'S OTHER -- YOU KNOW,
14 VISUAL DESIGN.

15 Q OF COURSE.

16 A BUT, YES.

17 Q SO -- BUT IF YOU HAVE ONE OF THESE NEWER
18 SMARTPHONES THAT ARE DESIGNED TO HAVE A TOUCHSCREEN
19 WITH JUST YOUR FINGER, YOU DON'T NEED A STYLUS,
20 THEN YOU NEED A LARGER AREA BECAUSE THE FINGER
21 TOUCH IS LARGER; RIGHT?

22 A YES.

23 Q SO THAT CAN AFFECT THE NUMBER OF OR HOW BIG
24 THE ICONS NEED TO BE?

25 A IT WOULD AFFECT HOW BIG THE HIT AREA NEEDS TO

1 BE, THE ICON AND THE HIT AREA THAT ARE SENSITIVE TO
2 THE FINGER DON'T NEED TO BE EXACTLY THE SAME SIZE.

3 Q WELL, THEY NEED TO BE ABOUT THE SAME SIZE,
4 DON'T THEY?

5 A YOU CAN HAVE THE ICON IS THE TARGET AND THE
6 HIT AREA COULD BE A HALO AROUND IT SO THAT YOU
7 DON'T NEED TO HAVE EVERY PIXEL THAT'S SENSITIVE TO
8 YOUR FINGER BE PART OF THE ICON.

9 Q IS ONE REASON WHY THE DOCK OR FAVORITES GROUP
10 THAT WAS AT THE BOTTOM OF THE D'305 DESIGN
11 PATENT -- D'305 DESIGN PATENT IS PUT DOWN THERE
12 BECAUSE, BY DESIGN FUNCTIONALLY, YOU WANT THE
13 USER'S THUMB TO BE ABLE TO TOUCH THE ICON WHILE
14 STILL HOLDING THE PHONE WITH THE REST OF THE HAND?

15 A I THINK OF THE D'305 PATENT AS JUST A PICTURE.
16 IT DOESN'T REALLY SAY ANYTHING ABOUT HOW ANYTHING
17 WORKS.

18 SO ALL I CAN REALLY SEE IN THAT PATENT --
19 IN THAT ORNAMENTAL DESIGN IS THAT THERE ARE FOUR
20 ICONS AT THE BOTTOM.

21 Q WELL, YOU ALSO TALKED ABOUT TRADE DRESS.

22 DO YOU REMEMBER THAT?

23 A YES.

24 Q AND DID YOU CONSIDER ANY FUNCTIONAL
25 CONSIDERATIONS WHEN YOU WERE TALKING ABOUT TRADE

1 DRESS -- WHEN YOU WERE FORMING YOUR OPINIONS ABOUT
2 TRADE DRESS?

3 A BECAUSE I WAS ASKED ABOUT THE OVERALL VISUAL
4 IMPRESSION, TO THE EXTENT THAT THE OVERALL VISUAL
5 IMPRESSION INCLUDES, YOU KNOW, ABOUT 20 THINGS, I
6 ASSUMED FROM THAT THAT YOU NEED TO HAVE AN
7 AFFORDANCE TO MAKE THOSE THINGS HAPPEN.

8 BUT I DIDN'T CONSIDER REALLY THE
9 MECHANICS OF, YOU KNOW -- IT WAS MUCH MORE FOCUSSED
10 ON HOW THINGS LOOKED VERSUS HOW THINGS WORKS, MY
11 PARTICULAR ANALYSIS FOR WHAT I WAS ASKED TO DO.

12 Q IS IT FAIR TO SAY THAT YOU DIDN'T INVESTIGATE
13 THE FUNCTIONALITY OF THE ICONS AND HOW THEY WORK
14 AND HOW A USER WOULD INTERACT WITH THEM AS PART OF
15 YOUR ANALYSIS?

16 A YES.

17 Q NOW, ISN'T IT -- I THINK YOU TALKED A LITTLE
18 BIT ABOUT THE SHAPE OF THE ICON BEING A RECTANGLE.

19 DO YOU REMEMBER THAT?

20 A YES.

21 Q THERE'S A REASON PEOPLE DON'T HAVE TRIANGULAR
22 SHAPED ICONS ON SMARTPHONES, ISN'T THERE?

23 A THERE'S NO REASON YOU COULDN'T.

24 Q HAVE YOU EVER SEEN ANY?

25 A NO. BUT I WOULDN'T SAY THAT BECAUSE YOU

1 HAVEN'T SEEN SOMETHING DOESN'T MEAN IT'S NOT A
2 REASONABLY -- IT COULDN'T WORK.

3 Q WELL, YOU WOULD AGREE WITH ME THAT TRIANGULAR
4 ICONS WOULD NOT WORK AS WELL AS RECTANGULAR ICONS
5 ON A SMARTPHONE?

6 A I WOULDN'T AGREE WITH YOU THAT THAT IS A
7 TRUISM.

8 Q SO YOU THINK TRIANGULAR CONTAINERS WORK JUST
9 AS WELL AS RECTANGULAR CONTAINER S?

10 A I THINK YOU NEED TO UNDERSTAND THE DESIGN
11 PROBLEM AND, YOU KNOW, SOMETIMES IF YOU HAVE A
12 SQUARE, IT COULD BE DIVIDED INTO TWO TRIANGLES. SO
13 IF YOU NEEDED TO GET COURT THINGS ON THAT SCREEN, A
14 SCREEN, MAYBE THAT WOULD BE A GOOD WAY TO DO IT.

15 BUT IT ALSO WOULD -- IF YOU USE
16 TRIANGLES, THERE WOULD BE A LOT MORE BACKGROUND
17 SPACE BETWEEN THEM AND MAYBE THAT COULD BE A GOOD
18 DIFFERENTIATING FACTOR. I WOULDN'T RULE IT OUT.

19 Q WELL, YOU HAD YOUR DEPOSITION TAKEN IN APRIL
20 OF THIS YEAR; RIGHT?

21 A YES.

22 Q DO YOU REMEMBER THAT?

23 A YES.

24 Q AND YOUR DEPOSITION WAS TAKEN, YOU WERE UNDER
25 OATH JUST LIKE TODAY; RIGHT?

1 A YES.

2 Q I'D LIKE TO SHOW YOU AN EXCERPT FROM YOUR
3 TRANSCRIPT.

4 IF WE CAN JUST PUT UP THE WRITTEN
5 TRANSCRIPT, MR. FISHER, PAGE 117, LINE 18, AND IT
6 GOES THROUGH 118, LINE 14.

7 LOOK UP HERE, DOCTOR.

8 "QUESTION: DO YOU THINK THAT TRIANGULAR
9 CONTAINERS WOULD WORK JUST AS WELL AS RECTANGULAR
10 CONTAINERS?

11 "ANSWER: NO.

12 "QUESTION: AND WHY IS THAT?

13 "ANSWER: BECAUSE A TRIANGLE, EXCEPT
14 FOR -- IT'S HARD TO FIT A LOT OF IMAGES. IF YOU'RE
15 TRYING TO USE A TRIANGLE AS A BACKGROUND SHAPE,
16 YOU'D BE A LOT MORE LIMITED AS TO WHAT YOU COULD
17 FIT IN IT TO MODIFY IT BECAUSE YOU'D BE GIVING UP
18 ESSENTIALLY HALF OF YOUR REAL ESTATE."

19 DO YOU MEAN REMEMBER THAT TESTIMONY?

20 A I DO.

21 Q YOU AGREE WITH THAT, RIGHT?

22 MS. KREVANS: YOUR HONOR, COULD I ASK
23 THAT MR. VERHOEVEN READ THE ENTIRE QUESTION?

24 THE COURT: NO. YOU'LL HAVE AN
25 OPPORTUNITY IN REDIRECT.

1 THE WITNESS: THAT'S SOMETHING, BECAUSE I
2 REVIEWED MY DEPOSITION TESTIMONY FOR THIS EVENT,
3 THAT I WOULD SAY I THOUGHT MORE ABOUT IT, AND I
4 COULD ALSO EXPLAIN WHAT I MEANT.

5 A SQUARE DOES HAVE MORE REAL ESTATE.
6 BY MR. VERHOEVEN:

7 Q MY QUESTION IS WHETHER YOU STAND BY YOUR
8 TESTIMONY UNDER OATH AT YOUR DEPOSITION.

9 A I HAVE RETHOUGHT ABOUT THAT, AND IF I HAD THE
10 OPPORTUNITY TO ANSWER THAT QUESTION, I WOULD GIVE A
11 BIT OF A DIFFERENT ANSWER.

12 Q YOU DON'T STAND BY IT?

13 A I HAVE THOUGHT -- I HAVE HAD MORE THOUGHTS
14 ABOUT WHEN I WENT BACK AND RECONSIDERED IT.

15 Q OKAY. SO THE ANSWER TO MY QUESTION IS YOU
16 DON'T STAND BY IT? YOU WOULD RATHER HAVE A
17 DIFFERENT ANSWER?

18 A YES. OR THE REST OF MY ANSWER GOES ON TO
19 EXPLAIN WHAT I WAS TRYING TO SAY.

20 Q OKAY. LET'S LOOK AT THAT. "AND AT THE SAME
21 TIME, MAYBE THERE'S A -- HOW BIG ARE THEY? YOU
22 KNOW, HOW ARE YOU ARRANGING THEM? TRIANGLES ARE A
23 GOOD WAY TO GET MAYBE FOUR SHAPES IN A COMPACT
24 SPACE. MAYBE IF IT WAS SOMETHING THAT DIDN'T NEED
25 LABELS, IT COULD BE POSSIBLE. BUT IN GENERAL, A

1 MR. VERHOEVEN: YOUR HONOR, IF I CAN HAVE
2 JUST TEN MINUTES, I CAN REALLY SHORTEN IT. I
3 WASN'T SURE HOW MUCH -- HOW LONG THE DIRECT WOULD
4 BE. I THINK IT WOULD BE USEFUL. SO I WOULD
5 SUGGEST WE TAKE OUR AFTERNOON BREAK NOW IF YOUR
6 HONOR IS WILLING TO. OTHERWISE I CAN GO, BUT
7 OTHERWISE --

8 THE COURT: WE'RE GOING TO GO NOW. WE'RE
9 GOING TO GO UNTIL 2:45 AND TAKE OUR BREAK.

10 MR. VERHOEVEN: YES, YOUR HONOR.

11 (PAUSE IN PROCEEDINGS.)

12 THE COURT: HOW IS THIS DIFFERENT FROM
13 THE WINER CROSS I GOT YESTERDAY? IS THAT THE SAME
14 OR DIFFERENT?

15 **CROSS-EXAMINATION**

16 BY MR. VERHOEVEN:

17 Q GOOD AFTERNOON, DR. WINER.

18 A GOOD AFTERNOON, COUNSEL.

19 Q MY NAME IS CHARLES VERHOEVEN, AND I'LL BE
20 EXAMINING YOU.

21 NOW, YOU'VE BEEN -- YOU WERE ENGAGED,
22 HIRED TO WORK ON THIS CASE FOR APPLE THROUGH A
23 COMPANY CALLED CORNERSTONE RESEARCH?

24 A THAT'S CORRECT.

25 Q AND CORNERSTONE RESEARCH IS A LITIGATION

1 SUPPORT COMPANY; RIGHT?

2 A THAT'S CORRECT.

3 Q THEY CONSULT DIRECTLY WITH ATTORNEYS ON
4 LITIGATION MATTERS?

5 A YES, THEY DO.

6 Q AND THEY HELP FACILITATE CLIENTS TO FIND
7 EXPERT WITNESSES FOR LITIGATION; RIGHT?

8 A THAT'S CORRECT.

9 Q AND THAT'S HOW YOU BECAME INVOLVED IN THIS
10 CASE?

11 A YES. I WAS CONTACTED BY SOMEONE AT
12 CORNERSTONE.

13 Q NOW, AND YOU ACCEPTED THE ASSIGNMENT?

14 A I SURE DID.

15 Q OKAY. AND WHEN YOU WERE HIRED AS AN EXPERT ON
16 THIS CASE, THERE WERE -- CORNERSTONE HAD A STAFF OF
17 FOLKS THAT ASSISTED YOU WITH THE PREPARATION OF
18 YOUR EXPERT REPORT?

19 A THAT'S CORRECT.

20 Q AND, IN FACT, CORNERSTONE -- THE FOLKS AT
21 CORNERSTONE SUBSTANTIALLY WROTE THE FIRST DRAFT OF
22 YOUR REPORT; RIGHT?

23 A I GAVE SUBSTANTIAL INPUT AND APPROVED
24 EVERYTHING IN IT, BUT THEY WROTE THE FIRST DRAFT.

25 Q OKAY. SO WHO WAS IT?

1 A THE LEAD PERSON AT CORNERSTONE. HIS NAME IS
2 SHANKAR, S-H-A-N-K-A-R, IYER, I-Y-E-R.

3 Q SINCE 2000 -- SINCE THE YEAR 2000, YOU'VE
4 SERVED AS AN EXPERT WITNESS ON AT LEAST 14 OTHER
5 LITIGATION MATTERS; RIGHT?

6 A THAT MIGHT BE CORRECT. I HAVEN'T COUNTED.

7 Q AND YOU'RE BEING PAID FOR YOUR TIME IN THIS
8 CASE; RIGHT?

9 A CORRECT.

10 Q TELL THE JURY HOW MUCH YOU'RE BEING PAID?

11 A SIX HUNDRED AND TWENTY-FIVE DOLLARS AN HOUR.

12 Q AND HOW MUCH MONEY HAS APPLE PAID YOU SO FAR?

13 A APPROXIMATELY \$50,000.

14 Q AND HOW MUCH TOTAL HAS IT PAID CORNERSTONE?

15 A I HAVE NO IDEA.

16 Q NOW, IN REACHING YOUR OPINIONS IN YOUR EXPERT
17 REPORT, YOU DID NOT DO ANY SYSTEMATIC CONSUMER
18 RESEARCH, DID YOU, SIR?

19 A I DID NOT CONDUCT ANY NEW STUDIES BEYOND WHAT
20 WAS ALREADY DONE FOR THE CASE.

21 Q YOU, YOURSELF, DID NOT PERSONALLY CONDUCT ANY
22 SYSTEMATIC CONSUMER RESEARCH; FAIR?

23 A THAT'S CORRECT.

24 Q YOU DIDN'T DO ANY FORMAL INTERVIEWS WITH
25 CONSUMERS ABOUT THEIR PURCHASING EXPERIENCES;

1 RIGHT?

2 A THAT'S CORRECT.

3 Q AND YOU HAVE NO EVIDENCE THAT CONSUMERS IN THE
4 REAL WORLD HAVE ACTUALLY BOUGHT APPLE DEVICES
5 THINKING THEY ARE SAMSUNG DEVICES; RIGHT?

6 MR. JACOBS: YOUR HONOR, OPENING THE
7 DOOR. MR. LEE'S TESTIMONY THAT YOUR HONOR EXCLUDED
8 THIS MORNING, MR. VERHOEVEN HAS JUST ASKED THIS
9 WITNESS WHETHER HE HAS ANY ACTUAL EVIDENCE OF
10 CONSUMER CONFUSION AND THIS WITNESS DOES.

11 MR. VERHOEVEN: LET ME, LET ME ASK YOU --

12 Q AT YOUR DEPOSITION -- DO YOU REMEMBER YOUR
13 DEPOSITION WAS TAKEN ON APRIL 27TH?

14 A I REMEMBER BEING DEPOSED. I DON'T REMEMBER
15 THAT DATE, BUT I'LL ASSUME YOU'RE CORRECT.

16 Q AND DO YOU REMEMBER TESTIFYING THAT YOU HAVE
17 NO EVIDENCE THAT CONSUMERS OUT THERE IN THE REAL
18 WORLD HAVE ACTUALLY BOUGHT APPLE DEVICES THINKING
19 THEY WERE SAMSUNG DEVICES?

20 A I THINK THAT MY REPLY WAS IN THE CONTEXT OF I
21 DID NOT DO ANY RESEARCH MYSELF THAT PROVED THAT.

22 Q WELL, LET'S LOOK AT WHAT YOU SAID.

23 CAN WE PLAY DR. WINER'S DEPOSITION
24 TESTIMONY FROM APRIL 27TH, 2012, PAGE 35, LINES 7
25 THROUGH 15.

1 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN
2 OPEN COURT OFF THE RECORD.)

3 MR. VERHOEVEN: ALL RIGHT. LET'S PAUSE
4 IT AND GET THE VOLUME WORKING. I APOLOGIZE, YOUR
5 HONOR.

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

8 BY MR. VERHOEVEN:

9 Q THAT WAS YOUR TESTIMONY YOU GAVE UNDER OATH IN
10 APRIL, SIR?

11 MR. JACOBS: YOUR HONOR, UNDER THE RULE
12 OF COMPLETENESS, I BELIEVE WE SHOULD READ A COUPLE
13 MORE PASSAGES DOWN, AND MR. VERHOEVEN HAS OPENED
14 THE DOOR.

15 THE COURT: I THINK HE'S OPENED THE DOOR,
16 BUT YOU'RE NOT GOING TO DO IT DURING HIS CROSS.

17 THE WITNESS: I BELIEVE I RESPONDED TO
18 THAT IN THE CONTEXT OF WHETHER I HAD DONE ANY
19 RESEARCH MYSELF.

20 I CERTAINLY HAD READ DOCUMENTS, AND I
21 ALLUDED TO THEM IN MY DEPOSITION, AND MY REPORT,
22 THAT THERE WERE INTERNAL SAMSUNG DOCUMENTS
23 INDICATING REAL CASES OF CONFUSION IN THE
24 MARKETPLACE.

25 BY MR. VERHOEVEN:

1 Q DO YOU STAND BY THE TESTIMONY WE JUST SAW,
2 SIR?

3 A SURE I DO.

4 Q OKAY. THANK YOU.

5 YOU HAVE NO IDEA WHETHER CONSUMERS HAVE
6 ACTUALLY BOUGHT APPLE DEVICES THINKING THEY WERE
7 SAMSUNG DEVICES, HAVE YOU?

8 MR. JACOBS: YOUR HONOR, I'M SORRY. THE
9 WITNESS HAS BEEN INSTRUCTED NOT TO -- TO FOLLOW AN
10 EARLIER ORDER OF THE COURT AND MR. VERHOEVEN IS
11 OPENING THE DOOR. THE WITNESS SHOULD BE INFORMED
12 THAT HE CAN ANSWER THAT QUESTION TRUTHFULLY.

13 MR. VERHOEVEN: I'LL MOVE ON, YOUR HONOR.

14 Q DR. WINER, YOU HAVE NO EMPIRICAL EVIDENCE TO
15 SHOW THAT SAMSUNG'S ACTIONS HAVE DILUTED APPLE'S
16 BRAND; RIGHT?

17 A CORRECT.

18 Q AND YOU HAVE NO HARD DATA TO SHOW THAT
19 SAMSUNG'S ACTIONS HAVE DILUTED APPLE'S BRAND;
20 RIGHT?

21 A I WAS NOT ASKED TO DO THAT.

22 Q YOU HAVE NEVER QUANTIFIED THE AMOUNT OF ANY
23 ALLEGED HARM FROM DILUTION OR LOSS OF ANY KIND TO
24 APPLE AS A RESULT OF SAMSUNG'S ACTIONS; RIGHT?

25 A CORRECT.

1 Q YOU HAVE NO EMPIRICAL EVIDENCE THAT SHOWS THAT
2 APPLE HAS ACTUALLY LOST ANY MARKET SHARE AS A
3 RESULT OF SAMSUNG'S SALES OF ITS DEVICES; RIGHT?

4 A NO.

5 Q THAT ANSWER IS YOU DON'T HAVE ANY EMPIRICAL
6 EVIDENCE; CORRECT?

7 A CORRECT.

8 Q AND YOU DON'T HAVE ANY EVIDENCE THAT
9 QUANTIFIES THE AMOUNT OF ANY LOST MARKET SHARE;
10 CORRECT?

11 A THAT'S CORRECT.

12 Q YOU HAVE NO EVIDENCE QUANTIFYING THE NUMBER OF
13 PURCHASERS WHO BOUGHT A SAMSUNG DEVICE IN LIEU OF
14 BUYING AN APPLE DEVICE; RIGHT?

15 A I KNOW OF AT LEAST ONE.

16 Q YOU CAN'T QUANTIFY THE NUMBER OF PURCHASERS
17 WHO BOUGHT A SAMSUNG DEVICE IN LIEU OF BUYING AN
18 APPLE DEVICE; RIGHT?

19 A AS FAR AS I KNOW, ONE IS A QUANTIFICATION,
20 COUNSELOR.

21 Q OKAY. LET'S SEE WHAT YOU SAID IN RESPONSE TO
22 THAT AT YOUR DEPOSITION, SIR. PAGE NOTE NOTE LINE
23 CITE.

24 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN
25 OPEN COURT OFF THE RECORD.)

1 BY MR. VERHOEVEN:

2 Q YOU WERE ASKED THAT QUESTION AND YOU GAVE THAT
3 ANSWER AT YOUR DEPOSITION; RIGHT, SIR?

4 A APPARENTLY SO.

5 Q DO YOU STAND BY THAT TESTIMONY?

6 A YES.

7 Q WILL HE ME SWITCH SUBJECTS NOW.

8 IN YOUR MARCH 22ND, 2012 EXPERT REPORT AT
9 PAGE 160, YOU REFER TO WHAT YOU CALL A SLEEKCRAFT
10 FACTOR, NUMBER 6, DEGREE OF CARE WITH RESPECT TO
11 THE IPAD.

12 CAN WE PUT UP PARAGRAPH 160 FROM
13 DR. WINER'S EXPERT REPORT FROM MARCH 22, PLEASE.

14 CAN YOU PUSH THAT DOWN SO I CAN SEE WHERE
15 IT WAS PULLED OUT FROM, MR. FISHER? GO BACK.

16 OKAY. SO CAN WE -- THAT'S WHAT I'M
17 LOOKING FOR, 160.

18 DO YOU SEE IT SAYS SLEEK, SLEEK -- YOU
19 HAVE IT IN YOUR BINDER AS WELL, SIR?

20 A YES, I DO HAVE IT.

21 Q SLEEK -- SLEEKCRAFT FACTOR SAYS, "TYPES OF
22 GOODS AND," THIS IS WHAT I'M GOING TO FOCUS ON
23 HERE, THE REST OF THIS, "AND THE DEGREE OF CARE
24 LIKELY TO BE EXERCISED BY THE PURCHASER."

25 DO YOU SEE THAT?

1 A I DO.

2 Q AND SO THE DEGREE OF CARE, YOU'D AGREE WITH
3 ME, THAT THE HIGHER THE DEGREE OF CARE EXERCISED BY
4 THE CONSUMER, THE LESS CHANCE THERE IS GOING TO BE
5 THAT THERE'S CONFUSION OR DILUTION; RIGHT?

6 A FOR ANY INDIVIDUAL CONSUMER, THAT WOULD BE
7 TRUE.

8 Q SO IF IT'S LIKE A 50 CENTS DOODAD IN THE
9 GROCERY STORE THAT PEOPLE MIGHT PICK UP, THE DEGREE
10 OF CARE WOULD BE REALLY LOW, RIGHT?

11 A YOU WOULD BE SURPRISED, BUT I WOULD AGREE THAT
12 IT WOULD BE, OVERALL, LOWER THAN FOR A \$600 ITEM OR
13 \$300 ITEM.

14 Q OR TO GET REALLY CONTRASTING, A NEW CAR WOULD
15 BE SOMETHING THAT WOULD BE VERY EXPENSIVE FOR A LOT
16 OF PEOPLE, YOU'LL HAVE TO PAY FOR IT OVER A NUMBER
17 OF YEARS, SO THEY'LL BE REALLY CAREFUL WHEN THEY
18 BUY THAT, RIGHT?

19 A I JUST DON'T WANT TO USE GENERALITIES. I
20 WOULD SAY THAT THERE ARE ALWAYS SEGMENTS OF
21 CONSUMERS WHO TAKE MORE OR LESS CARE IN MAKING
22 PURCHASES OF PRODUCTS.

23 SOME MARKETING, WE DON'T WORK WITH THE
24 NOTION OF THERE BEING A MARKET. WE WORK WITH THE
25 IDEA THAT THERE ARE SEGMENTS AND DIFFERENT KINDS OF

1 CUSTOMERS.

2 SO WHILE THE RATIONAL -- YOU KNOW,
3 EXPLANATION OF PURCHASING WOULD BE, YES, PEOPLE
4 TAKE A LOT OF CARE EVEN IN BUYING CARS. THE FACT
5 IS THAT EVEN THAT WILL VARY OVER CONSUMERS IN TERMS
6 OF HOW MUCH INFORMATION THEY USE, HOW MANY
7 DEALERSHIPS THEY VISIT AND THE WHOLE RANGE OF
8 INFORMATION AND COLLECTION ACTIVITIES.

9 Q FAIR ENOUGH. DIFFERENT CONSUMERS EXHIBIT
10 DIFFERENT BEHAVIORS; RIGHT?

11 A THAT'S WHAT I'M SAYING.

12 Q BUT SETTING THAT ASIDE, GENERALLY SPEAKING,
13 WHEN WE'RE TALKING ABOUT THIS FACTOR HERE, IF IT'S
14 A MORE EXPENSIVE ITEM, ON AVERAGE, CONSUMER WILL
15 EXERCISE MORE CARE; RIGHT?

16 A ONE WOULD EXPECT THAT.

17 Q THAT MEANS THERE'S LESS CHANCE OF CONFUSION,
18 RIGHT?

19 A LESS, BUT NOT ZERO.

20 Q SO IF WE SWITCH TO WHAT WE'RE TALKING ABOUT
21 HERE, I'M HOLDING IN MY HAND ACCUSED SAMSUNG
22 TAB 10.1, WHICH IS EXHIBIT, TRIAL JOINT EXHIBIT
23 1037, YOU'VE SEEN THIS DOCUMENT, THIS --

24 A IT'S NOT TURNED ON, BUT I'LL ASSUME THAT
25 YOU'RE CORRECT.

1 Q DO YOU WANT TO TAKE A LOOK AT IT?

2 A NO, I BELIEVE YOU.

3 Q OKAY. SO IF A CONSUMER IF WE'RE TALKING ABOUT
4 A CONSUMER PURCHASING AN ELECTRONIC DEVICE LIKE
5 THIS TABLET, THEY'RE GOING TO EXERCISE MORE CARE
6 THAN IF THEY'RE BUYING SOME SERIAL AT THE GROCERY
7 STORE, RIGHT, ON AVERAGE?

8 A LET ME BE CLEAR. ON AVERAGE.

9 Q TABLET IS A PRETTY EXPENSIVE PRODUCT; RIGHT?

10 A DEPENDS ON WHAT'S RELATIVE TO YOU. NOT TO A
11 NEW HOUSE. BUT TO A TUBE OF TOOTHPASTE, YES.

12 Q TO AN AVERAGE CONSUMER IT'S NOT A TRIVIAL
13 PURCHASE, IS IT?

14 A IT'S A CONSUMER DURABLE GOOD THAT'S REASONABLY
15 EXPENSIVE, I'LL AGREE.

16 Q AND CONSUMERS ACTUALLY RESEARCH VARIOUS
17 TABLETS BEFORE THEY GO BUY THEM. WOULD YOU AGREE
18 WITH THAT?

19 A NO, I DON'T.

20 Q YOU DON'T AGREE THAT CONSUMERS CONSIDER THE
21 VARIOUS FUNCTION AS AVAILABLE ON ALL THE DIFFERENT
22 TABLETS AVAILABLE?

23 A IT DEPENDS ON HOW YOU DEFINE "RESEARCH." SOME
24 CONSUMERS WILL MAKE A DECISION BASED ON INFORMATION
25 THEY GET IN A RETAIL STORE, WHICH CAN BE AFFECTED

1 BY A SALESPERSON. THE QUALITY OF THE DISPLAY.

2 OTHERS WILL SEARCH TEN DIFFERENT SOURCES
3 ON THE INTERNET TO FIND OUT INFORMATION.

4 Q YOU DON'T AGREE THAT CONSUMERS WILL, IF
5 THEY'RE THINKING ABOUT BUYING A TABLET THAT HAS A
6 PHONE FUNCTIONALITY, WILL EVALUATE WHAT THE
7 DIFFERENT CARRIER PLANS THAT THE CARRIERS OFFER
8 THAT ARE AVAILABLE FOR VARIOUS DIFFERENT TABLETS?

9 A THAT'S NOT THE SAME AS EVALUATING THE PRODUCT
10 ITSELF.

11 BUT I ASSUME THAT THEY WILL TRY TO
12 UNDERSTAND WHAT THE COST IS OF THE -- ASSOCIATED
13 COST WITH USING THE PRODUCT.

14 Q THE PRODUCTS ARE BUNDLED WITH LONG-TERM
15 CONTRACTS IN SOME CASES; RIGHT?

16 A IN SOME CASES, CORRECT.

17 Q TWO YEARS LONG; RIGHT?

18 A I'M NOT AS FAMILIAR WITH THE CONTRACT NATIVE,
19 BUT, YES, MINE IS TWO YEARS, FOR EXAMPLE.

20 Q IF YOU WERE GOING TO SIGN A TWO-YEAR CONTRACT,
21 YOU'D WANT TO KNOW WHAT THE TERMS OF THE CONTRACT
22 ARE AND WHAT YOU'RE GETTING INTO FOR TWO YEARS;
23 RIGHT?

24 A YES. BUT MY FOCUS WAS ON TRADE DRESS OF THE
25 PRODUCTS, NOT ON THE DETAILS OF THE CONTRACTS THAT

1 PEOPLE ARE SIGNING WITH AT&T.

2 Q I'M ASKING YOU ABOUT THE DEGREE OF CARE FACTOR
3 HERE. RIGHT?

4 A RESTATE YOUR QUESTION, PLEASE.

5 Q WELL, CONSUMERS -- TYPICALLY A CUSTOMER
6 INTERESTED IN A TABLET WILL ACTUALLY WANT TO GO IN
7 A STORE AND PLAY AROUND WITH IT TO SEE HOW IT
8 WORKS; RIGHT?

9 A IN MOST CASES.

10 Q SO YOU'D AGREE THAT BEFORE BUYING A TABLET,
11 MOST CONSUMERS WOULD TURN IT ON AND PLAY WITH IT A
12 LITTLE BIT?

13 A I WOULD AGREE WITH THAT.

14 Q OKAY. LET'S DO THAT WITH THIS JX 103 SEARCH.

15 NOW, BEFORE I TURN THIS ON -- IS THAT
16 GOING TO AUTOMATICALLY FOCUS?

17 CAN YOU HELP ME OUT?

18 BEFORE I TURN THIS ON, THE TRADE DRESS
19 THAT YOU'RE EVALUATING INCLUDES THE APPLICATION
20 SCREEN; RIGHT?

21 A YES, YES, IT DOES.

22 Q THAT'S AN ACCUSED FEATURE THAT YOU SAY IS
23 INFRINGING ON THE TABLET; RIGHT?

24 A THAT'S PART OF THE OVERALL TRADE DRESS.

25 Q OKAY. IS THERE A WAY TO DIM THE LIGHTS?

1 THAT'S A LITTLE BETTER. SO I'M A
2 CONSUMER AND I GO INTO THE STORE TO SEE HOW THIS
3 TABLET WORKS.

4 I TURN IT ON.

5 A IF YOU'RE LUCKY, SOMETHING COMES UP ACTUALLY.
6 MOST STORES IT DOESN'T. NOT JUST FOR THE GALAXY
7 TAB.

8 Q THAT'S RIGHT. THIS IS SET UP FOR LANDSCAPE.

9 DO YOU SEE THE GALAXY TAB NAME, AND THE
10 BIG SWIRLING SAMSUNG. DO YOU SEE THAT?

11 A I DO.

12 Q AND THEN IT GLOWS A COUPLE TIMES AT YOU. DO
13 YOU SEE THAT?

14 AND THEN YOU GET A LOCKED SCREEN; RIGHT?

15 AND YOU HAVE TO MOVE YOUR FINGER OUTSIDE
16 THE CIRCLE TO UNLOCK IT.

17 AND THEN THIS IS NOT THE ACCUSED TRADE
18 DRESS; CORRECT?

19 A NO, IT'S NOT.

20 Q THIS IS THE HOME SCREEN; RIGHT?

21 A IT'S THE HOME SCREEN.

22 Q RIGHT. SO A CONSUMER HAS TO BE ABLE TO FIGURE
23 OUT, HOW DO I GET TO THE APPLICATION SCREEN?

24 AND UP HERE ON THE TOP RIGHT, IF THEY CAN
25 FIGURE IT OUT, IT SAYS APPS, AND THEY HIT THAT

1 BUTTON, AND THAT'S THE SCREEN THAT YOU SAY CAUSES
2 CONFUSION AMONG CONSUMERS; RIGHT?

3 A CORRECT.

4 Q SO IT'S YOUR TESTIMONY TO THIS JUROR THAT
5 CONSUMERS, USING THE DEGREE OF CARE THAT THEY WOULD
6 NORMALLY USE, TURNING ON THIS PHONE, SEEING THE
7 SAMSUNG, SEEING THE SWIRL THAT TURNS INTO THE
8 SAMSUNG, SEEING IT GLOW TWO TIMES, HAVING TO
9 NAVIGATE BEYOND THE HOME SCREEN TO THE APPLICATION
10 SCREEN, THAT THOSE CONSUMERS WOULD BE CONFUSED AND
11 WOULDN'T KNOW THAT THIS IS A SAMSUNG SOURCED
12 PRODUCT? IS THAT YOUR TESTIMONY?

13 A NO, I DON'T AGREE WITH THAT.

14 Q OKAY. LET'S MOVE ON TO ANOTHER SUBJECT. I'D
15 LIKE TO GO TO ANOTHER PORTION OF YOUR REPORT, SIR.

16 THIS IS WITH RELATIONSHIP -- EXCUSE ME.
17 LET ME START OVER.

18 THIS RELATES TO THE PORTION OF YOUR
19 REPORT CONCERNING WHAT YOU CALL DILUTION FACTOR 3,
20 SUBSTANTIAL EXCLUSIVE USE.

21 AND YOU CAN FIND THIS, FOR THE IPHONE, AT
22 PARAGRAPH 173 AND -- OF YOUR MARCH 22ND EXPERT
23 REPORT; AND FOR THE IPAD AT PARAGRAPH 183 OF YOUR
24 MARCH 22ND, 2012 REPORT.

25 AND, MR. FISHER, IF IT'S POSSIBLE TO TAKE

1 THOSE TWO PARAGRAPHS AND PUT THEM ONE ON THE TOP
2 AND ONE AT THE BOTTOM.

3 MR. JACOBS: YOUR HONOR, THIS IS BEYOND
4 THE SCOPE.

5 I DID NOT ASK THIS WITNESS ABOUT THIS
6 FACTOR, AND AS YOU'LL SEE IN THE REPORT, HE RELIES
7 ON DR. BRESSLER'S TESTIMONY, MR. BRESSLER'S
8 TESTIMONY.

9 THE COURT: OVERRULED.

10 GO AHEAD.

11 MR. VERHOEVEN: THANK YOU, YOUR HONOR.

12 Q AND YOU HAVE THE ACTUAL DOCUMENT IF YOU'D LIKE
13 TO LOOK AT IT, SIR.

14 SO THIS IS THE SAME FACTOR, ONE FOR THE
15 PHONE -- THE IPHONE. DO YOU SEE UP THERE, IPHONE?

16 A YES.

17 Q AND THEN YOU'VE GOT IT HERE AGAIN, DILUTION
18 FACTOR, SUBSTANTIALLY EXCLUSIVE USE OF TRADE DRESS
19 FOR THE IPAD?

20 A I SEE THAT.

21 Q AND YOU'RE RELYING ON MR. BRESSLER; IS THAT
22 RIGHT?

23 A YES. I HAVE NO OPINION ON THE DILUTION FACTOR
24 3 ON THE EXCLUSIVE USE OF THE TRADE DRESS AS MY --
25 AS COUNSEL MENTIONED, I REFERRED TO MR. BRESSLER ON

1 THIS.

2 Q OKAY. DO YOU KNOW WHAT THIS FACTOR CONCERNS,
3 EXCLUSIVE USE OF TRADE DRESS?

4 A I'M SORRY. COULD YOU RESTATE THE QUESTION?

5 Q DO YOU KNOW WHAT THIS FACTOR CONCERNS?

6 A NO, I DON'T.

7 MR. VERHOEVEN: YOUR HONOR, IT IS ONE
8 MINUTE BEFORE, BUT I'M GETTING CLOSE TO BEING DONE.

9 THE COURT: THAT'S FINE. IT'S 2:46.
10 WE'LL TAKE OUR BREAK NOW.

11 THIS IS WHAT WE'RE GOING TO DO FROM NOW
12 ON: IF THERE IS AN OBJECTION THAT REQUIRES ME TO
13 DO SOME RESEARCH, WE'RE GOING TO JUST HAVE YOU WAIT
14 PATIENTLY AND I'M GOING TO START CHARGING TIME TO
15 THE OBJECTING PARTY AND YOU WILL THEN HAVE AN
16 OPPORTUNITY TO GIVE ME WHATEVER SPECIFIC DOCUMENTS
17 YOU WANT ME TO LOOK AT, EITHER ORDERS ON MOTIONS IN
18 LIMINE, WHETHER IT'S CONTENTION INTERROGATORY
19 RESPONSES.

20 BUT THE TIME THAT IT TAKES ME TO RULE
21 WILL BE CHARGED TO THE OBJECTING PARTY, AND WE'LL
22 JUST DO IT RIGHT HERE IN COURT, AND WE'LL JUST TAKE
23 A BRIEF PAUSE SO THAT OBJECTION CAN BE DEALT WITH.

24 NOW, IF IT'S AN OBJECTION THAT CAN BE
25 DEALT WITH QUICKLY, THEN THAT WILL STILL BE CHARGED

1 TO THE TIME OF THE NON-OBJECTING PARTY. OKAY.

2 THAT'S THE PROCEDURE WE'RE GOING TO DO
3 FROM NOW ON. I'M SORRY TO OUR JURY THAT YOU'RE
4 GOING TO HAVE TO SIT AND WATCH US DO THAT, BUT I
5 DON'T SEE THAT MUCH OTHER WAY TO GET AROUND THAT.
6 OKAY?

7 ANYWAY, KEEP AN OPEN MIND AND PLEASE
8 DON'T DO ANY RESEARCH OR READ ABOUT THE CASE.
9 PLEASE DON'T DISCUSS THE CASE WITH ANYONE.

10 YOU CAN GO AHEAD AND LEAVE YOUR JURY
11 NOTEBOOKS ON YOUR CHAIR. WE'RE GOING TO TAKE A
12 15-MINUTE BREAK. IT'S 2:45 -- THIS CLOCK SAYS
13 2:47. WE'LL SEE YOU BACK HERE AT 3:00. OKAY?

14 (WHEREUPON, THE FOLLOWING PROCEEDINGS
15 WERE HELD OUT OF THE PRESENCE OF THE JURY:)

16 THE COURT: YOU CAN STEP DOWN.

17 ALL RIGHT. THE RECORD SHOULD REFLECT THE
18 JURORS HAVE LEFT THE COURTROOM.

19 SO LET'S GET A CLEAR AGREEMENT NOW AS
20 TO -- I BELIEVE THE DOOR HAS BEEN OPENED AS TO
21 MR. LEE, WHO I EXCLUDED THIS MORNING. I SUSTAINED
22 SAMSUNG'S OBJECTION, BUT OTHERWISE I THINK IT'S
23 MISLEADING TO THE JURY TO LEAVE IT OTHERWISE.

24 ANYTHING ELSE? LET'S GET -- LET'S HASH
25 THEM OUT NOW. ANY OTHER ISSUES?

1 AND IT GOES TO WHAT PAGE? WHAT PAGE IS
2 THE ONE YOU JUST SHOWED, MR. JACOBS? WHAT'S THE
3 PAGE YOU JUST SHOWED?

4 MR. JACOBS: WHAT I SHOWED WAS 36, YOUR
5 HONOR.

6 THE COURT: ALL RIGHT. HANG ON. I'M ON
7 35, PAGE 35, LINE 7 THROUGH 15.

8 (PAUSE IN PROCEEDINGS.)

9 MR. JACOBS: SO ACTUALLY, NOW THAT I LOOK
10 AT IT, I SEE THE SOURCE EVEN OF WHY THIS WAS
11 COMPLETELY MISLEADING.

12 THE QUESTION WAS, ON 35, HAVE PEOPLE
13 BOUGHT APPLE DEVICES THINKING THEY'RE SAMSUNG
14 DEVICES, WHICH IS, OF COURSE, NOT A RELEVANT
15 QUESTION TO BEGIN WITH.

16 BUT IN THE NEXT PASSAGE HE IS ASKED,
17 SAMSUNG DEVICES THINKING THEY'RE APPLE DEVICES.

18 THE COURT: ALL RIGHT. WELL, I THINK THE
19 RULE OF COMPLETENESS, HAVING REVIEWED PAGES 34,
20 LINE 19, HE IS ASKED IN THAT, LINE 19 THROUGH LINE
21 25, ABOUT WHETHER CONSUMERS OUT IN THE REAL WORLD
22 HAVE BOUGHT SAMSUNG DEVICES THINKING THEY'RE APPLE
23 DEVICES.

24 BUT I THINK FOR THE RULE OF
25 COMPLETENESS --

1 MR. VERHOEVEN: CAN I LOOK AT YOUR
2 TRANSCRIPT WITH YOU?

3 THE COURT: ALL RIGHT. THIS IS WHAT I'M
4 GOING TO ALLOW I THINK FOR THE RULE OF
5 COMPLETENESS.

6 YOU HAVE PAGE 35, LINES 7 THROUGH 15 WAS
7 THE VIDEO DEPOSITION THAT WAS ALREADY SHOWN.

8 I THINK RULE OF COMPLETENESS GOES FROM
9 35, LINE 16 -- WHAT ABOUT THROUGH 37, LINE 9 AND
10 THAT'S IT? YOU DON'T GET ANYTHING ELSE IN.

11 MR. JACOBS: UNDERSTOOD, YOUR HONOR.

12 THE COURT: LET ME GIVE THIS BACK TO --
13 DO YOU HAVE ONE, MR. VERHOEVEN? I DON'T WANT TO
14 TAKE YOURS.

15 MR. VERHOEVEN: I FOUND ANOTHER ONE.

16 THE COURT: OKAY.

17 MR. VERHOEVEN: THAT ONE HAS PROBABLY GOT
18 WORK PRODUCT ON IT, YOUR HONOR.

19 THE COURT: OH, LET ME GIVE THIS BACK.

20 MR. VERHOEVEN: JUST DISREGARD IT.

21 THE COURT: THAT'S IT. YOU DON'T GET
22 INTO MR. LEE. YOU DON'T GET IN THAT POWERPOINT.
23 YOU DON'T GET IN HIS DEPOSITION -- WAS HE DEPOSED?

24 MR. JACOBS: MR. LEE WAS DEPOSED, YES.

25 THE COURT: OKAY.

1 MR. JACOBS: THAT'S WHAT THE WITNESS WAS
2 RELYING ON.

3 THE COURT: THAT'S RIGHT. THAT'S THE
4 DEPOSITION. OKAY. SO THAT'S THE RULING.

5 NOW, WHAT I'M GOING TO DO, IT'S 3:26.
6 I'M GOING TO CHARGE THIS EQUALLY TO BOTH SIDES.

7 MR. JACOBS: OH, YOUR HONOR, IF I HAD
8 KNOWN -- WE'RE BEING SO CAREFUL ABOUT TIME.

9 THE COURT: WELL, LET ME -- I AM NOT --
10 SAMSUNG SEVEN MINUTES. I'LL CHARGE YOU SIX
11 MINUTES, THREE MINUTES EACH. IT'S NOT GOING TO --

12 MR. VERHOEVEN: THANK YOU, YOUR HONOR.

13 THE COURT: IF IT DOESN'T KILL YOU, IT
14 WON'T HURT YOU, OKAY. SO SIX MINUTES, IT'S THREE
15 MINUTES EACH.

16 MR. VERHOEVEN: THANK YOU, YOUR HONOR.

17 THE COURT: ALL RIGHT. ALL RIGHT. SO
18 WHERE ARE WE? WE'RE BACK IN THE CROSS. WILL YOU
19 PLEASE BRING IN OUR JURY. WE'LL GO UNTIL 4:30
20 TODAY.

21 MR. VERHOEVEN: I HAVE NO FURTHER
22 QUESTIONS AT THIS TIME. I'LL JUST LET THE JURORS
23 KNOW THAT.

24 THE COURT: PLEASE, ALL RIGHT.

25 (WHEREUPON, THE FOLLOWING PROCEEDINGS

1 WERE HELD IN THE PRESENCE OF THE JURY:)

2 THE COURT: ALL RIGHT. WELCOME BACK.

3 ALL RIGHT. MR. VERHOEVEN. IT'S 3:28.

4 MR. VERHOEVEN: YOUR HONOR, I PASS THE
5 WITNESS AT THIS TIME.

6 THE COURT: ALL RIGHT. MR. JACOBS, YOUR
7 REDIRECT, 3:28.

8 MR. JACOBS: THANK YOU, YOUR HONOR.

9 THE COURT: GO AHEAD.

10 **REDIRECT EXAMINATION**

11 BY MR. JACOBS:

12 Q DR. WINER, DURING YOUR CROSS-EXAMINATION, YOU
13 WERE ASKED ABOUT A PORTION OF YOUR DEPOSITION, AND
14 I'D LIKE TO SHOW THE JURY SOME ADDITIONAL PORTIONS
15 OF THAT DEPOSITION.

16 MR. LEE, COULD YOU PUT UP PAGE 35, LINE 7
17 THROUGH 37, LINE 9. WE'LL JUST GO THROUGH THAT
18 CAREFULLY.

19 SO YOU'LL RECALL, DR. WINER, YOU WERE
20 ASKED ABOUT THIS TESTIMONY WHERE YOU WERE ASKED,
21 "DO YOU BELIEVE THAT CONSUMERS OUT THERE IN THE
22 REAL WORLD HAVE ACTUALLY BOUGHT APPLE DEVICES
23 THINKING THEY ARE SAMSUNG DEVICES?"

24 AND YOU SAID IN YOUR DEPOSITION, "I HAVE
25 NO EVIDENCE OF THAT THAT."

1 DO YOU RECALL GOING THROUGH THAT WITH
2 MR. VERHOEVEN?

3 A YES, I DO.

4 Q AND THEN IF WE GO A LITTLE BIT AHEAD --

5 MR. VERHOEVEN: YOUR HONOR, I THOUGHT
6 THIS WAS SUPPOSED TO BE READ IN ITS ENTIRETY FOR
7 COMPLETENESS.

8 THE COURT: YES. DO THE WHOLE THING
9 THROUGH. WHAT WAS THAT, PAGE 37?

10 MR. JACOBS: OKAY.

11 Q AND THEN YOU WERE ASKED, "DO YOU BELIEVE THAT
12 CONSUMERS OUT THERE IN THE REAL WORLD HAVE ACTUALLY
13 BOUGHT APPLE DEVICES THINKING THEY'RE SAMSUNG
14 DEVICES?"

15 YOU SAID, "I HAVE NO EVIDENCE OF THAT."

16 THEN YOU WERE ASKED, "I'M ASKING ABOUT
17 YOUR BELIEF. DO YOU BELIEVE IT?"

18 YOU SAID, "I HAVE NO RESPONSE. I HAVE NO
19 IDEA."

20 "QUESTION: SO IT'S APPLE CONSUMERS WHO
21 WOULD BE CONFUSED, IS THAT RIGHT, IN YOUR VIEW?

22 "ANSWER: I THINK THERE IS GENERAL
23 CONFUSION IN THE MARKETPLACE BETWEEN THE PRODUCTS.
24 I AM NOT READY TO STATE EXACTLY WHOSE CONSUMERS
25 HAVE BEEN CONFUSED.

1 "QUESTION: RIGHT NOW I AM ASKING ABOUT
2 PURCHASING. LET'S FOCUS ON ACTUAL PURCHASING.
3 IT'S YOUR BELIEF THAT APPLE CONSUMERS HAVE BOUGHT
4 SAMSUNG DEVICES THINKING THEY ARE APPLE DEVICES,
5 CORRECT?

6 "ANSWER: I DON'T KNOW THE ANSWER TO
7 THAT. I CAN'T RESPOND TO THAT.

8 "QUESTION: WHO -- WHAT IS THE CLASS OF
9 CONSUMERS WHO YOU BELIEVE HAVE BOUGHT SAMSUNG
10 DEVICES THINKING THEY ARE APPLE DEVICES? ARE THEY
11 WOULD-BE APPLE PURCHASERS?

12 "ANSWER: I HAVE -- THE ONLY EVIDENCE I
13 HAVE FROM TESTIMONY THAT I REVIEWED IS THAT SOME
14 INDIVIDUALS BOUGHT A SAMSUNG GALAXY TAB MISTAKENLY
15 THINKING IT WAS AN IPAD AND SUBSEQUENTLY RETURNED
16 IT TO THE STORE AND GOT AN IPAD. THAT'S THE ONLY
17 DIRECT EVIDENCE I HAVE FOR ANY OF THESE QUESTIONS
18 THAT YOU ARE ASKING ON THIS PATH.

19 "QUESTION: SO WE HAVE A CLEAR RECORD,
20 THE ONLY EVIDENCE YOU HAVE THAT IN THE REAL WORLD,
21 ANY CONSUMERS HAVE PURCHASED A SAMSUNG PRODUCT
22 BELIEVING THAT IT WAS AN APPLE PRODUCT IS BASED
23 UPON DOCUMENTS RELATING TO BEST BUY RETURNS IN NEW
24 JERSEY; IS THAT TRUE?

25 "ANSWER: CORRECT.

1 "QUESTION: AND YOU HAVE NOTHING ELSE
2 BEYOND THAT; IS THAT TRUE?

3 "ANSWER: I HAVE NOT SEEN ANY OTHER
4 REPORT THAT GIVES THAT SUCH EVIDENCE.

5 "QUESTION: DO YOU HAVE ANY EVIDENCE THAT
6 ANY CONSUMER HAS BOUGHT A SAMSUNG PHONE BELIEVING
7 THAT IT IS AN APPLE PHONE?

8 "ANSWER: NO, I DON'T."

9 MR. JACOBS: AND, YOUR HONOR, THAT
10 CONCLUDES THE PORTION THAT, FOR THE RECORD, WE'D
11 READ.

12 THE COURT: OKAY.

13 BY MR. JACOBS:

14 Q NOW, I'D LIKE TO DECONFUSE POSSIBLE CONFUSION
15 ABOUT DILUTION AND LIKELY -- AND CONFUSION, AND
16 WHAT I'D LIKE TO DO IS ASK YOU A COUPLE QUESTIONS,
17 DR. WINER, ABOUT WHAT'S REALLY GOING ON HERE.

18 DR. WINER, WHAT'S THIS?

19 A THAT'S ONE OF THE TWO TABLETS. I CAN'T TELL
20 YOU.

21 Q SO LET ME SHOW YOU THE TABLET (HANDING).

22 MAY I, YOUR HONOR? I'M SORRY?

23 THE COURT: YES. MR. VERHOEVEN, DO YOU
24 WANT TO SEE IT?

25 MR. JACOBS: HE DID.

1 MR. VERHOEVEN: I DID, YOUR HONOR, AND
2 IT'S FINE.

3 THE COURT: OKAY.

4 BY MR. JACOBS:

5 Q WHAT IS IT?

6 A IT'S AN IPAD.

7 Q AND YOU BELIEVE THAT THE IPAD HAS ACQUIRED
8 DISTINCTIVENESS IN THE MARKETPLACE; CORRECT?

9 MR. VERHOEVEN: OBJECTION, LEADING.

10 THE COURT: SUSTAINED.

11 MR. JACOBS: I'M SUMMARIZING HIS
12 TESTIMONY.

13 Q DO YOU BELIEVE THE IPAD HAS ACQUIRED
14 DISTINCTIVENESS IN THE MARKETPLACE?

15 A YES, I DO.

16 Q WHAT DOES THAT MEAN? WHEN SOMEONE SEES --
17 WHEN YOU SAY THAT A PRODUCT HAS ACQUIRED
18 DISTINCTIVENESS, WHAT DOES THAT MEAN IN TERMS OF
19 WHAT A CONSUMER WOULD THINK ABOUT THIS PRODUCT
20 BEFORE ANOTHER PRODUCT THAT THREATENED DILUTION BY
21 BLURRING ENTERED THE MARKETPLACE?

22 A I THINK THAT WHAT THAT MEANS IS THAT THE
23 CONSUMERS ASSOCIATE A PARTICULAR TRADE DRESS OR
24 LOOK AND FEEL WITH A PARTICULAR COMPANY THAT MAKES
25 THAT PRODUCT, AND IN THIS CASE THAT WAS APPLE.

1 Q NOW, MR. VERHOEVEN HAD ON THE PODIUM ALREADY
2 THIS PRODUCT, WHICH, AS YOU CAN SEE, I DON'T HAVE
3 TO PLAY THE GUESSING GAME, IS THE GALAXY TAB.

4 AND WHEN YOU TALK ABOUT DILUTION BY
5 BLURRING, WHAT ARE YOU SAYING ABOUT THE IMPACT OF
6 THIS PRODUCT BEING ON THE MARKET ON THE
7 DISTINCTIVENESS OF THE APPLE IPAD?

8 A WHAT I'M SAYING IS THAT THE IMPACT OF THAT
9 COPYING OF THE TRADE DRESS HAS A SUBSTANTIAL IMPACT
10 ON THE INVESTMENT THAT APPLE HAS MADE IN DEVELOPING
11 THE PRODUCTS AND HAS A NEGATIVE IMPACT ON THEIR
12 MARKETING STRATEGY AS A RESULT.

13 Q AND WHY IS THAT? WHAT DOES THE EXISTENCE OF
14 THIS PRODUCT, THE SALES OF THIS PRODUCT IN THE
15 MARKET DO TO THE DISTINCTIVENESS -- I'M HOLDING UP
16 THE TAB -- TO THE DISTINCTIVENESS OF THE IPAD?

17 A IT DIMINISHES IT.

18 Q NOW, MR. VERHOEVEN ASKED YOU A LOT OF
19 QUESTIONS ABOUT ACTUAL CONFUSION.

20 IS IT YOUR UNDERSTANDING THAT THE TEST
21 FOR INFRINGEMENT REQUIRES THAT THERE BE ACTUAL
22 CONFUSION AT THE POINT OF SALE AT A STORE --

23 MR. VERHOEVEN: OBJECTION. LEADING AND
24 ALSO CALLS FOR A LEGAL CONCLUSION.

25 MR. JACOBS: I DON'T THINK --

1 THE COURT: SUSTAINED.

2 BY MR. JACOBS:

3 Q WHAT IS YOUR UNDERSTANDING OF THE -- OF
4 WHETHER ACTUAL CONFUSION AT THE POINT OF SALE IS
5 REQUIRED IN ORDER FOR THERE TO BE A FINDING OF
6 LIKELIHOOD OF CONFUSION?

7 A I'M AFRAID I DON'T KNOW THE ANSWER TO THAT.

8 Q WELL, YOU DISCUSSED THE SCENARIO IN WHICH
9 SOMEONE IS WALKING DOWN THE STREET, LET'S SAY,
10 HOLDING THIS PRODUCT, MAYBE IT'S ON, MAYBE IT'S
11 OFF?

12 A YES.

13 Q AND WHAT DID YOU DESCRIBE THAT AS?

14 A I CALLED IT THE IMITATOR, IMITATIVE SCENARIO.

15 Q AND WHAT DID YOU MEAN BY THAT?

16 A I MEAN THAT SOMEBODY COULD BE WALKING DOWN THE
17 STREET WITH A SAMSUNG GALAXY TAB LOOKING AT THE
18 TRADE DRESS, IF SOMEONE IS USING IT, HAS SEEN IPADS
19 BEFORE, SAY, I LIKE THAT, I LIKE THAT TRADE DRESS,
20 OR LOOK AND FEEL, APPEARANCE, AND THEN GO AND BUY A
21 SAMSUNG GALAXY TAB.

22 Q AND IS THAT POINT-OF-SALE CONFUSION OR
23 POST-SALE CONFUSION?

24 A THAT'S POST-SALE CONFUSION.

25 MR. JACOBS: THANK YOU VERY MUCH,

1 MR. JACOBS: THANK YOU VERY MUCH,
2 MR. PORET.

3 I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

4 THE COURT: ALL RIGHT. 3:56, PLEASE GO
5 AHEAD WITH THE CROSS.

6 MR. PRICE: YOUR HONOR, BEFORE MY TIME
7 STARTS, COULD YOU READ THE LIMITING INSTRUCTION
8 CONCERNING FAME?

9 THE COURT: AH. ONE SECOND, PLEASE.

10 NOW, AS FOR PX 23, AND PX 30.2, AND 30.5,
11 THE 30.2 WAS THE QUESTION THAT WAS ASKED IN THE
12 SURVEY, 30.5 -- OH, THROUGH 30.5.

13 SO THOSE WERE ACTUALLY THE SURVEY RESULTS
14 AND THE QUESTIONS THAT WERE ASKED IN THE SURVEY, AS
15 WELL AS PX 23, WHICH IS ALL OF THOSE COPIES OF THE
16 PHONES AND THE TABLETS THAT WERE ACTUALLY USED IN
17 THE SURVEY, BOTH AS CONTROL AND OTHERWISE, YOU MAY
18 CONSIDER THIS SURVEY AS EVIDENCE THAT APPLE DESIGNS
19 HAVE ACQUIRED SECONDARY MEANING, BUT YOU MAY NOT
20 CONSIDER THE SURVEY AS EVIDENCE THAT THE APPLE
21 DESIGNS ARE FAMOUS.

22 ALL RIGHT. GO AHEAD, PLEASE.

23 MR. PRICE: THANK YOU, YOUR HONOR.

24 **CROSS-EXAMINATION**

25 BY MR. PRICE:

1 Q LET ME MAKE SURE I GET THE -- BY THE WAY, I'M
2 BILL PRICE. AND I WANT TO MAKE SURE I HAVE YOUR
3 PRONUNCIATION CORRECTLY. IS IT PORET?

4 A YES.

5 Q THANK YOU. FIRST OF ALL, LET ME CLARIFY WHAT
6 YOU ARE NOT DOING HERE.

7 THESE STUDIES ARE NOT TRYING TO STUDY
8 CONFUSION AMONG CONSUMERS; CORRECT?

9 A CORRECT.

10 Q AND BASED ON THE SURVEYS YOU DID, YOU CAN'T
11 MAKE A CONCLUSION ABOUT WHETHER OR NOT CONSUMERS
12 ARE CONFUSED; RIGHT?

13 A RIGHT.

14 Q INSTEAD, WHAT YOU'RE LOOKING AT IS SOMETHING
15 CALLED SECONDARY MEANING; RIGHT?

16 A YES.

17 Q AND THAT'S SORT OF A LEGAL TERM IN SOME WAYS
18 WHICH YOU TRIED TO EXPLAIN TO THE JURY; RIGHT?

19 A YES.

20 Q OKAY. SO -- AND YOU'RE TALKING ABOUT
21 SECONDARY MEANING ASSOCIATED WITH APPLE'S CLAIMED
22 TRADE DRESS; RIGHT?

23 A YES.

24 Q SO LET ME ASK YOU ABOUT THAT.

25 NOW, APPLE'S CLAIMED TRADE DRESS, THE

1 ELEMENTS OF THAT WERE DESCRIBED TO YOU BY SOMEONE;
2 CORRECT?

3 A YES. OR READ IN THE COMPLAINT.

4 Q SO IT WASN'T A SITUATION WHERE YOU DID A STUDY
5 TO FIND OUT WHAT IS APPLE'S TRADE DRESS; CORRECT?
6 YOU JUST ACCEPTED WHAT WAS EITHER DESCRIBED TO YOU
7 OR WHAT YOU READ IN A COMPLAINT; RIGHT?

8 A NO, THAT'S NOT REALLY RIGHT.

9 Q SO DID YOU ACTUALLY DO SOME SORT OF
10 INDEPENDENT STUDY TO SEE, YOU KNOW, WHAT ELEMENTS,
11 TOTAL ELEMENTS CONSTITUTE APPLE'S TRADE DRESS?

12 A NO. BUT THE SURVEY SHOWING THE DEVICES AS
13 THEY ARE, SO IT'S NOT AS IF I HAVE IN ANY WAY
14 DECIDED WHAT TRADE DRESS I'M SHOWING PEOPLE.

15 Q WELL, FOR EXAMPLE, YOU DID SOME STATISTICAL
16 ANALYSIS ON THE EFFECT OF THE HOME BUTTON ON THE
17 APPLE PRODUCTS; CORRECT?

18 A I WOULDN'T SAY I DID STATISTICAL ANALYSIS ON
19 THAT. I WOULD SAY THAT WE DID HAVE TWO GROUPS, ONE
20 OF WHICH DID SEE A VERSION WITH THE IPAD BUTTON AND
21 ONE WITHOUT, SO THERE'S SOME DATA ON THAT.

22 Q AND THE DATA THAT YOU FOUND SHOWED THAT THERE
23 WAS A HIGH ASSOCIATION OF PEOPLE BEING ABLE TO
24 IDENTIFY AN APPLE PRODUCT JUST BY THAT INDENTED
25 HOME BUTTON; CORRECT?

1 A NO.

2 Q YOU DIDN'T FIND A HIGH ASSOCIATION BETWEEN THE
3 HOME BUTTON AND BEING ABLE TO IDENTIFY AN APPLE
4 PRODUCT?

5 A THAT'S NOT WHAT THE RESULTS SHOWED.

6 Q DID YOU SHOW AN ASSOCIATION?

7 A YOU MEAN REGARDING THE HOME BUTTON?

8 Q YES.

9 A NO. WHAT, WHAT THE SURVEYS SHOW IS THAT IN
10 THE VERSION WHERE THE HOME BUTTON WAS VISIBLE,
11 THERE WAS A HIGHER RATE OF ASSOCIATION, BUT THAT IS
12 NOT THE ONLY THING THAT WAS DIFFERENT ABOUT THAT
13 IMAGE. IT WAS ALSO SHOWN AT AN ANGLE THAT MAY HAVE
14 GIVEN PEOPLE A BETTER SENSE OF THE SHAPE AND
15 DIMENSIONS OF THE PRODUCTS.

16 Q WELL, I'LL GO TO THE, THE DETAILS IN A SECOND,
17 BUT IF WE GO TO, I GUESS IT'S YOUR EXHIBIT, AND --
18 CAN YOU HELP ME OUT HERE.

19 I THINK IT'S 30.5. DO YOU SEE THAT ON
20 THE RIGHT-HAND SIDE, YOU'VE GOT AN IPAD AND IT'S
21 NOT CLEAR HERE, BUT IN WHAT THE, THE SURVEY PEOPLE
22 COULD SEE, THERE'S A HOME BUTTON ON THAT IPAD;
23 CORRECT?

24 A YES, THE ONE ON THE RIGHT, YES.

25 Q AND THERE'S NOT A HOME BUTTON ON THIS TEST

1 WHERE YOU GOT THE 40.3 PERCENT NET ASSOCIATION
2 COMPARED TO THE 64.4; CORRECT?

3 A YES.

4 Q AND DO YOU HAVE -- WELL, YOU UNDERSTAND THAT
5 SAMSUNG'S PRODUCTS DON'T HAVE THAT KIND OF UNIQUE,
6 DISTINCTIVE HOME BUTTON LIKE APPLE HAS; CORRECT?

7 A I BELIEVE THAT'S THE CASE.

8 Q ALL RIGHT. SO THAT'S A DISTINCTION BETWEEN
9 THE PRODUCTS; CORRECT?

10 A I DON'T -- I DON'T KNOW IF YOU'D CHARACTERIZE
11 IT LIKE THAT.

12 Q WELL, WERE YOU TOLD THAT THAT THE REASON APPLE
13 DID NOT INCLUDE THAT AS BEING AN ELEMENT OF ITS
14 TRADE DRESS IS BECAUSE SAMSUNG IS DIFFERENT FROM
15 APPLE ON THAT UNIQUE IDENTIFYING PART OF APPLE'S
16 PRODUCT?

17 A NO, I WASN'T TOLD THAT ONE WAY OR THE OTHER.

18 Q SO YOU WEREN'T GIVEN ANY REASON, IN DOING YOUR
19 SURVEYS, OF WHY APPLE WASN'T CLAIMING WHY THAT HOME
20 BUTTON WAS A DISTINCTIVE PART OF ITS TRADE DRESS
21 WHICH WOULD DISTINGUISH IT FROM OTHER COMPANIES?

22 A I WAS NOT TOLD WHAT APPLE THINKS OF THE HOME
23 BUTTON.

24 Q WELL, LET ME ASK YOU ABOUT THE NUMBERS YOU DID
25 PUT TOGETHER, AND THERE'S A -- AND WE CAN TAKE THAT

1 DOWN FOR NOW.

2 THERE'S A, A CORRECT PROCEDURE TO FOLLOW
3 TO FIND THE PERCENTAGE OF ASSOCIATION FOR SECONDARY
4 CONSIDERATION; CORRECT?

5 A SECONDARY MEANING, YES.

6 Q SECONDARY MEANING.

7 AND THE FIRST THING YOU HAVE TO DO IS
8 IDENTIFY THE RIGHT POPULATION; CORRECT?

9 A YES.

10 Q AND YOU AGREE THAT THE RIGHT POPULATION THAT
11 YOU SHOULD ASK QUESTIONS OF IS CONSUMERS WHO
12 PURCHASED IN THE LAST 12 MONTHS OR WERE LIKELY TO
13 PURCHASE IN THE NEXT 12 MONTHS THESE SORTS OF
14 PRODUCTS; CORRECT?

15 A YEAH, GENERALLY.

16 Q SO THAT'S LIKE THE TOTAL POPULATION. AND HOW
17 MANY OF THOSE PEOPLE DID YOU HAVE IN THE SURVEY?

18 A I NEED TO LOOK AT MY REPORT TO TELL YOU.

19 Q CAN YOU GIVE ME AN ESTIMATE?

20 A OFF THE TOP OF MY HEAD, I FEEL LIKE THERE WERE
21 800 PEOPLE IN ONE OF THE SURVEYS AND MAYBE 500 IN
22 ONE OF THE OTHERS. BUT THERE WERE SOME OF THOSE
23 WHO MIGHT NOT HAVE BEEN IN THE CATEGORY YOU JUST
24 DESCRIBED.

25 Q AND ALL OF THE PEOPLE IN THAT SURVEY, ALL

1 THOSE PEOPLE IN THAT POPULATION, WHAT YOU'RE TRYING
2 TO FIND OUT IS WHAT PERCENTAGE OF THE PEOPLE IN
3 THAT POPULATION ASSOCIATED THESE IMAGES WITH AN
4 APPLE PRODUCT IN A CERTAIN TIME FRAME; RIGHT?

5 A I UNDERSTAND THE TIME FRAME TO BE RELEVANT.
6 IN THE TYPICAL SECONDARY MEANING SURVEY, THE ISSUE
7 OF TIMING IS NOT ADDRESSED.

8 I DID MAKE AN ATTEMPT TO ASK ABOUT TIMING
9 IN THIS ONE, SO IT'S A RELEVANT ISSUE.

10 BUT IT'S NOT THE HEART OF WHAT A
11 SECONDARY MEANING SURVEY IS ABOUT.

12 Q NOW, WAIT A MINUTE. ISN'T A SECONDARY MEANING
13 SURVEY SUPPOSED TO FIND OUT, IN THE APPROPRIATE
14 POPULATION, WHAT PERCENTAGE IN THAT POPULATION
15 ASSOCIATED THESE IMAGES WITH APPLE BETWEEN THE TIME
16 APPLE FIRST CAME OUT WITH ITS PRODUCT AND THE TIME
17 SAMSUNG FIRST CAME OUT WITH ITS PRODUCT?

18 A I THINK THAT SOUNDS LIKE THE LEGAL DEFINITION,
19 BUT EVERY SECONDARY MEANING SURVEY IS DONE AFTER
20 THE FACT. SO IT'S BEING USED TO DEAL WITH THE
21 PERIOD OF TIME THAT HAPPENED BEFORE THE SURVEY.

22 Q OKAY. SO LET'S TALK ABOUT, THEN, LEGALLY,
23 USING THE LEGAL DEFINITION WHAT YOU'RE SUPPOSED TO
24 BE TRYING TO FIND IN THIS SURVEY, OKAY?

25 AND IF YOU'D LOOK AT -- I'M GOING TO PUT

1 UP RIGHT NOW DEMONSTRATIVE 3705.101, THAT'S
2 3705.101. DO WE HAVE THE BOOKS IN FRONT OF HIM.

3 SO LEGALLY, IF YOU'RE TRYING TO FIND
4 SECONDARY MEANING, YOU WANT TO SEE WHAT PERCENTAGE
5 OF PEOPLE IN THAT POPULATION, PEOPLE BUYING WITHIN
6 A YEAR OR AFTER A YEAR, ASSOCIATED THE ACCUSED
7 TRADE DRESS WITH APPLE BETWEEN, IN THIS CASE,
8 JANUARY 2007 WHEN THE PRODUCT CAME OUT, WAS
9 ANNOUNCED, AND JULY 2010 WHEN THE CASE OF THE
10 PHONE, THE FIRST ACCUSED SAMSUNG PHONE CAME OUT;
11 CORRECT? THAT'S THE LEGAL DEFINITION?

12 A YEAH. MY UNDERSTANDING OF THE LEGAL
13 DEFINITION WOULD BE THAT THERE NEEDS TO BE
14 SECONDARY MEANING, IN OTHER WORDS, THAT CONSUMERS
15 WOULD HAVE TO HAVE ALREADY ASSOCIATED THIS LOOK
16 WITH APPLE AS OF JULY 2010.

17 Q SO YOU ASKED THE CORRECT GROUP OF PEOPLE,
18 PEOPLE WHO HAD BOUGHT A PHONE 12 MONTHS BEFORE, OR
19 12 MONTHS AFTER, YOU ASKED THEM WHETHER OR NOT THEY
20 ASSOCIATED IMAGES YOU SHOWED THEM WITH APPLE;
21 CORRECT?

22 A YES. THAT'S A SUMMARY.

23 Q OKAY. AND YOU ALSO ASKED THEM -- AND IF WE
24 COULD LOOK AT YOUR REPORT, AND YOU'D LOOK AT PAGE,
25 I BELIEVE IT'S PARAGRAPH 91 OF YOUR REPORT. LET ME

1 SEE IF I CAN FIND THAT. I'M SORRY, PARAGRAPH 91.

2 YOU HAVE THIS THING CALLED TIMING OF
3 SECONDARY MEANING.

4 DO YOU SEE THAT?

5 A YES.

6 Q AND NOW I WANT TO SEE IF I CAN FIND THE EXACT
7 QUESTION THAT YOU USED.

8 IF WE CAN TAKE THAT DOWN.

9 AND I BELIEVE IT IS ON, LET'S SEE, PAGE
10 14, LINES 9 THROUGH 17 RIGHT HERE.

11 SO YOU ASKED, THEN, "TO THE BEST OF YOUR
12 RECOLLECTION, DID YOU FIRST COME TO ASSOCIATE THE
13 OVERALL APPEARANCE OF THE MOBILE PHONE YOU WERE
14 SHOWN WITH," WHATEVER COMPANY, AND THEN YOU GAVE
15 THE OPTIONS BEFORE JULY 2010, DURING OR AFTER
16 JULY 2010, AND DON'T KNOW.

17 RIGHT?

18 A THAT, THAT WAS ONLY A FOLLOW-UP QUESTION FOR
19 CERTAIN PEOPLE. WHAT PEOPLE WERE REALLY ASKED --
20 FIRST THEY WERE ASKED IN WHAT YEAR DID THEY COME TO
21 ASSOCIATE THE APPEARANCE WITH APPLE.

22 Q WELL, THAT -- THEY WERE ASKED, WHEN IS THE
23 FIRST YEAR YOU BECAME -- YOU ASSOCIATED THAT
24 APPEARANCE WITH APPLE; RIGHT?

25 IF THEY IDENTIFIED APPLE AS SOMETHING

1 THEY ASSOCIATED THE IMAGE WITH; RIGHT?

2 A YES. I'M JUST SAYING THIS IS NOT THE QUESTION
3 MOST PEOPLE WERE ASKED.

4 Q OKAY.

5 A THEY WERE ASKED JUST TO NAME THE YEAR.

6 Q OKAY. IN THAT CASE, LET'S GO UP ABOVE.

7 WHAT YOU'RE SAYING IS THAT, RIGHT ABOVE
8 HERE IT SAYS, YOU WERE ASKED, "IN WHAT YEAR, IF YOU
9 KNOW, DID YOU FIRST COME TO ASSOCIATE THIS OVERALL
10 APPEARANCE OF THE MOBILE PHONE YOU WERE SHOWN
11 WITH," FILL IN THE BLANK, APPLE; CORRECT?

12 A CORRECT.

13 Q OKAY. AND IF WE LOOK AT EXHIBIT 3705.101 FOR
14 IDENTIFICATION, THIS IS THE -- OKAY, AND THAT WAS
15 -- SO OF THOSE -- YOU WANTED TO FIND OUT, OF THE
16 POPULATION, WHAT PERCENTAGE OF PEOPLE ASSOCIATED
17 THOSE IMAGES WITH APPLE AND ASSOCIATED THOSE IMAGES
18 WITH APPLE IN THIS TIME FRAME, PRIOR TO JULY 2010;
19 RIGHT?

20 A I, I WOULDN'T -- I DON'T THINK THAT'S AN
21 ACCURATE DESCRIPTION OF WHAT THE QUESTION ABOUT THE
22 YEAR WAS, WAS TRYING TO DO.

23 IT WAS TRYING TO TAKE THE GROUP OF PEOPLE
24 WHO DID ASSOCIATE IT WITH APPLE AND BREAK IT UP
25 INTO THOSE THAT WERE BEFORE THAT POINT AND THOSE

1 THAT WERE AFTER TO SEE WHETHER THIS IS REALLY JUST
2 A NEW PHENOMENON THAT OCCURRED AFTER THE SAMSUNG
3 TABLETS CAME OUT OR WHETHER IT WAS ALREADY AN
4 EXISTING THING.

5 Q THE LEGAL DEFINITION, YOU SAID, OF SECONDARY
6 MEANING WHICH YOU WERE TRYING TO MEASURE IS THE
7 PERCENTAGE IN THE APPROPRIATE POPULATION WHO
8 ASSOCIATED THE ALLEGED TRADE DRESS WITH APPLE AND
9 HAD THAT AN ASSOCIATION BETWEEN JANUARY 27TH, 2007
10 AND JULY 2010.

11 THAT'S THE LEGAL DEFINITION. YOU CONCEDE
12 THAT; CORRECT?

13 A THAT SOUNDS TO ME LIKE A FAIR DESCRIPTION OF
14 HOW I UNDERSTAND STAND THE LAW.

15 Q OKAY. AND YOU GOT THE INFORMATION FROM THESE
16 FOLKS AS TO WHEN THEY FIRST ASSOCIATED THE TRADE
17 DRESS WITH APPLE BECAUSE YOU ASKED THEM THE
18 QUESTION; CORRECT?

19 A WE GOT THE INFORMATION FROM SOME PEOPLE WHO
20 COULD REMEMBER AND TO THE BEST OF THEIR, THEIR
21 RECOLLECTION.

22 Q SO THEN YOU HAD THE ABILITY TO DO A
23 CALCULATION CONSISTENT WITH THE LEGAL MEANING OF
24 SECONDARY -- LEGAL DEFINITION OF SECONDARY MEANING,
25 YOU COULD HAVE DONE A CALCULATION TO SEE HOW MANY

1 OF THAT POPULATION ASSOCIATED THE ALLEGED TRADE
2 DRESS WITH APPLE IN THE LEGALLY RELEVANT TIME?

3 YOU COULD HAVE DONE THAT CALCULATION?

4 A YOU'RE ASKING ME?

5 Q YEAH, YES.

6 A NO. YOU CAN'T DO ANYTHING OTHER THAN EXACTLY
7 WHAT I DID. YOU CAN MEASURE THE LEVEL OF SECONDARY
8 MEANING NOW AND YOU CAN ASK A QUESTION TO SEE
9 WHETHER OR NOT IT LOOKS LIKE THAT'S SOMETHING THAT
10 JUST HAS HAPPENED OVER THE PAST FEW MONTHS OR
11 WHETHER IT HAPPENED A WHILE AGO, AND THAT'S WHAT I
12 DID.

13 Q NO. THE LEVEL OF ASSOCIATION NOW IS NOT
14 RELEVANT TO SECONDARY MEANING, IS IT?

15 MR. JACOBS: YOUR HONOR, OBJECTION. I
16 DON'T WANT TO HAVE THIS IN -- THIS IS A LEGAL
17 ISSUE. I'D RATHER NOT HAVE IT IN FRONT OF THE
18 JURY.

19 I BET YOU WOULD RATHER NOT HAVE IT IN
20 FRONT OF THE JURY.

21 MR. PRICE: LET ME REPHRASE IT.

22 THE COURT: ALL RIGHT.

23 BY MR. PRICE:

24 Q ACCORDING TO THE LEGAL DEFINITION YOU GAVE US
25 OF SECONDARY MEANING, THE QUESTION IS WHAT

1 PERCENTAGE OF THOSE, THAT GENERAL POPULATION, HAD
2 AN ASSOCIATION WITH APPLE OF THIS TRADE DRESS
3 BETWEEN JANUARY 2007 AND JULY 2010; RIGHT?

4 A I AGREE WITH THAT.

5 Q OKAY. AND HAVING ASKED THESE, THIS GENERAL
6 POPULATION THE QUESTION YOU ASKED, IS THERE AN
7 ASSOCIATION, AND HAVING ASKED THEM, WHEN DID YOU
8 FIRST HAVE THAT ASSOCIATION, ALL RIGHT, YOU HAD A
9 NUMBER FOR THE GEM POPULATION; RIGHT? HOW MANY --
10 YOU HAD A CERTAIN NUMBER OF THE GENERAL POPULATION;
11 RIGHT? YOU ASKED A CERTAIN NUMBER OF PEOPLE?

12 A YES.

13 Q OKAY. THAT WOULD BE THE, THE NOMINATOR, IS
14 THAT RIGHT? THAT WOULD BE THE THING ON THE BOTTOM,
15 THAT WOULD BE THE NUMBER ON THE BOTTOM, RIGHT, FOR
16 TRYING TO FIND A PERCENTAGE, RIGHT? YOU ASKED,
17 SAY, 800 PEOPLE, YOU WANT A PERCENTAGE, AND YOU PUT
18 800 DOWN THERE, RIGHT? RIGHT?

19 A YOU'RE --

20 Q RIGHT?

21 A WELL, I CAN'T SAY "RIGHT" BECAUSE I CAN TELL
22 YOU'RE CONFUSED ABOUT WHAT YOU'RE TALKING ABOUT, SO
23 I CAN'T REALLY SAY "RIGHT."

24 I CAN SEE WHAT YOU'RE CONFUSED ABOUT AND
25 SO --

1 Q WELL, THAT'S VERY NICE OF YOU, BUT LET ME ASK
2 A QUESTION.

3 A OKAY.

4 Q AND THEN MAYBE SOMETIME OVER DRINKS YOU CAN
5 TELL ME HOW CONFUSED I AM.

6 IF YOU'RE TRYING TO FIND THE SECONDARY
7 MEANING OF A PRODUCT WITHIN A CERTAIN TIME PERIOD,
8 YOU NEED TO FIND OUT IF PEOPLE HAD THAT MEANING
9 DURING THAT TIME PERIOD; RIGHT? IS THAT CORRECT?

10 A NO. I DON'T AGREE WITH THAT.

11 Q WELL, YOU COULD LOOK AT YOUR DATA AND FIND THE
12 NUMBER OF PEOPLE WHO SAID THEY HAD AN ASSOCIATION
13 BETWEEN THESE IMAGES AND APPLE AND THEY HAD THAT
14 ASSOCIATION BETWEEN JANUARY OF 2007 AND JULY 2010?

15 YOU HAD THAT DATA; RIGHT?

16 A I HAD THE DATA TO THE QUESTION THAT WE JUST
17 TALKED ABOUT, YES.

18 Q AND THAT DATA WAS -- IF WE CAN GET BACK TO
19 PAGE 14 OF YOUR REPORT -- IN WHAT YEAR, IF YOU
20 KNOW, DID YOU FIRST COME TO ASSOCIATE THE OVERALL
21 APPEARANCE OF THE MOBILE PHONE YOU WERE SHOWN WITH,
22 AND THEY SAID APPLE.

23 THAT'S THE DATA YOU GOT; RIGHT?

24 A YES.

25 Q OKAY. SO YOU HAD BOTH THE DATA FOR WHAT

1 PERCENTAGE OF THE LARGE POPULATION ASSOCIATED THESE
2 IMAGES WITH APPLE DURING THE 2007 TO 2010 TIME
3 FRAME, YOU HAD THAT DATA BECAUSE YOU ASKED THOSE
4 QUESTIONS; RIGHT?

5 A NO. YOU'RE -- YOU ARE MISINTERPRETING WHAT
6 THE ANSWERS TO THOSE QUESTIONS MEAN.

7 Q WELL, PEOPLE EITHER FILLED IN A NUMBER, LIKE
8 2008, 2009, OR THEY SAID I DON'T KNOW TO THE
9 QUESTION; RIGHT? YOU HAD THAT DATA?

10 A YES.

11 Q AND IF YOU TOOK THAT AS THE NUMERATOR, THE
12 NUMBER OF PEOPLE WHO SAID "I HAD AN ASSOCIATION OF
13 THESE IMAGES WITH APPLE'S TRADE DRESS BETWEEN 2000
14 SEARCH AND 2010," IF THAT'S THE NUMERATOR, AND THEN
15 THE DENOMINATOR, YOU HAVE YOUR POPULATION, WHICH
16 WE'VE AGREED UPON IS THE PEOPLE WHO BOUGHT PHONES
17 12 MONTHS BEFORE OR WERE LIKELY TO 12 MONTHS LATER,
18 RIGHT, YOU'RE WITH ME SO FAR, IF YOU HAD THAT, YOU
19 WOULD BE ABLE TO MAKE A CALCULATION AND GIVE US A
20 PERCENTAGE, RIGHT?

21 A YES. IT WOULD BE AN ARBITRARY PERCENTAGE, BUT
22 YOU COULD DO WHATEVER CALCULATION YOU'RE
23 DESCRIBING.

24 Q WELL, YOU SAY "ARBITRARY ." IF WE GO TO YOUR
25 NUMBERS, IF WE CAN GO BACK TO THE TABLE YOU HAD UP,

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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 7, 2012

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EXHIBIT 5

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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 10, 2012
VS.)	
	)	VOLUME 6
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 1638-1988
)	
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DEFENDANTS.)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE LUCY H. KOH
UNITED STATES DISTRICT JUDGE

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OFFICIAL COURT REPORTER: LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

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1 COVERED?

2 Q YES.

3 A YES, FOR THIS GROUP IT WAS ALSO COVERED.

4 Q AND THEN WE HAVE THE CONTROL, AND FOR THE
5 CONTROL, IF WE LOOK AT EXHIBIT -- LET'S GO TO --
6 AND TO REMIND THE JURORS, WE'LL GO TO 30.5, SDX
7 30.5 TO SHOW WHAT WE'RE DOING HERE. IT SHOULD BE
8 SD -- THERE WE GO.

9 WE'RE NOW IN THIS STUDY AND WE'RE TALKING
10 ABOUT THE FIRST STUDY YOU DID OF THE IPAD, OKAY,
11 BECAUSE YOU DID TWO; RIGHT?

12 A THERE WERE MULTIPLE PARTS OF IT. I CONSIDERED
13 IT ALL PART OF THE SAME SURVEY, BUT YES, THERE WERE
14 MULTIPLE PARTS OF IT.

15 Q I WANT TO REMEMBER THAT, THAT IT'S ALL PART OF
16 THE SAME SURVEY. THAT'S WHAT YOU'RE SAYING TO THE
17 JURY. RIGHT?

18 A YES.

19 Q SO YOU DO AN ASSOCIATION WITH THE IPAD, AND
20 YOU SUBTRACT THE CONTROL, SO AGAIN, YOU'VE GOT TO
21 SEE IF THE CONTROL HAS INDICATORS THAT MIGHT SCREAM
22 "NOT APPLE" THAT MIGHT DISTORT THE RESULTS,
23 CORRECT, BECAUSE YOU'RE SUBTRACTING THAT?

24 A THAT'S NOT REALLY HOW I WOULD PUT IT, BUT I --
25 I MEAN, YOU GENERALLY HAVE THE GIST RIGHT, THAT,

1 YES, I WOULD NOT WANT THE CONTROL TO BE SCREAMING
2 "NOT APPLE."

3 Q OKAY. I'M GLAD I'M NOT TOTALLY WRONG THIS
4 TIME.

5 SO IF WE LOOK AT THAT CONTROL, YOU SEE
6 YOU USED THIS -- AND WE CAN GET IT BIGGER, I THINK,
7 AT 2544, PAGE 32.

8 THIS IS THE CONTROL FROM YOUR REPORT?

9 A YES. THIS WAS A CONTROL FOR THE HEAD-ON VIEWS
10 OF THE IPAD THAT WE SHOWED.

11 Q SO LET ME ASK YOU, DO YOU KNOW OF ANY TABLETS
12 THAT ONLY HAVE THREE ICONS ACROSS? I MEAN, THIS --

13 A I DON'T -- I CAN'T SPEAK FOR HOW MANY ICONS
14 ALL THE TABLETS HAVE. LIKE I WAS TALKING ABOUT
15 BEFORE, I THINK MOST OF THESE TABLETS CAN HAVE, YOU
16 KNOW, ANY NUMBER OF ICONS DEPENDING ON WHAT PEOPLE
17 PUT ON THEM.

18 Q I MEAN, EVEN THE SMALL IPHONE HAS FOUR ACROSS;
19 RIGHT?

20 A I DON'T KNOW HOW MANY ICONS. IT VARIES
21 DEPENDING ON WHAT PEOPLE HAVE ON THEM.

22 Q WELL, SO YOU'RE AWARE OF A TABLET THAT, THAT
23 HAS ONLY THREE ICONS INSTEAD OF FOUR?

24 A I'M NOT SAYING THAT. I'M JUST SAYING I THINK
25 THE NUMBER OF TABLETS VARIES -- THE NUMBER OF ICONS

1 CAN VARY FOR EACH INDIVIDUAL USER DEPENDING ON HOW
2 MANY THEY HAVE ON A SCREEN OR WHAT SCREEN THEY'RE
3 LOOKING AT.

4 Q WELL, HAVING THREE HERE SCREAMS "NOT APPLE"?

5 A NO.

6 Q BUT THIS ISN'T ACTUALLY ICONS ON A REAL
7 SCREEN, THIS IS SOMETHING DONE WITH CGI OR -- I
8 MEAN, YOU KIND OF CREATED THIS LOOKING SCREEN ON
9 YOUR COMPUTER; RIGHT?

10 A I DIDN'T PERSONALLY, BUT THE CONTROL WAS
11 CREATED TO APPEAR TO BE A TABLET WITH A FIELD OF
12 ICONS.

13 Q NOW, WHEN YOU TALKED TO THE JURY AND SHOWED
14 THEM 30.5, EXHIBIT 30.5 -- IF WE CAN SHOW THAT
15 AGAIN -- DO YOU SEE THIS HERE, WHAT YOU SHOWED THE
16 JURY HAS THE STICKER WHERE A HOME BUTTON WOULD BE?

17 A YES.

18 Q BUT IN YOUR REPORT THAT YOU WERE JUST LOOKING
19 AT, WHICH IS 2544, PAGE 32, IN YOUR REPORT, THAT
20 STICKER IS UP ON THE SCREEN, AND SO THE PERSON
21 COULD SEE THAT THERE IS NO HOME BUTTON AND,
22 THEREFORE, KNOW IT'S NOT AN APPLE?

23 A NO, THAT -- THAT'S NOT RIGHT. MAYBE THIS
24 IMAGE GOT MESSED UP SOMEHOW. BUT THE STICKER WAS
25 OVER THE BLACK PART.

1 Q THIS IS THE IMAGE THAT IS IN YOUR REPORT;
2 CORRECT?

3 A I -- I DON'T KNOW. I MEAN, I'M -- I'M SEEING
4 THIS UP HERE NOW. I'M PRETTY SURE THAT THE ACTUAL
5 DIGITAL IMAGES WERE, WERE PROVIDED AS THE EXHIBITS
6 TO THE REPORT. THIS WAS SOMETHING THAT WAS SHOWN
7 IN THE BODY AND PERHAPS SOMETHING GOT MESSED UP IN
8 PASTING THAT EXHIBIT INTO THE BODY.

9 BUT I KNOW THAT'S NOT WHAT WAS SHOWN.

10 Q WELL, ON PAGE -- I'M SORRY. ON PAGE 31, JUST
11 THE PAGE BEFORE THIS, YOU'VE GOT PARAGRAPH 4. YOU
12 SAY "THE CONTROL IMAGES ARE SHOWN ON THE FOLLOWING
13 PAGES," AND THAT'S ON THE VERY NEXT PAGE; RIGHT?

14 A YES.

15 Q AND YOUR RESULTS, WHICH WE'VE SEEN AT 30.5
16 AGAIN OF THE STUDY THAT YOU DID THAT IS -- YOU
17 ENDED UP WITH A 40.3 USING THIS CONTROL; CORRECT?

18 A YES.

19 Q AND YOU -- YOU'VE GRADUATED FROM LAW SCHOOL;
20 RIGHT?

21 A YES.

22 Q AND YOU HAVE AN UNDERSTANDING THAT FOR
23 SECONDARY MEANING, THERE'S KIND OF A, A THRESHOLD
24 THAT IS ABOUT 50 PERCENT? THAT'S THE NUMBER YOU
25 WANT TO GET ABOVE?

1 A NO.

2 Q WELL, WHEN YOU DID THIS AND GOT THE 40.3
3 PERCENT NUMBER, YOU THOUGHT THAT YOUR JOB WAS OVER
4 AND YOU ACTUALLY STARTED WRITING THE REPORT?

5 A I -- I THINK THAT'S CORRECT, THAT AT THAT
6 POINT I, I THOUGHT THAT THAT WAS GOING TO BE THE
7 END OF THE RESEARCH.

8 Q AND THEN APPLE CAME TO YOU AND SAID, "WE NEED
9 YOU TO DO ANOTHER STUDY."

10 A NO, THAT'S NOT -- THAT'S NOT EXACTLY ACCURATE.

11 Q YOU DID ANOTHER STUDY BECAUSE APPLE CAME TO
12 YOU AND ASKED YOU TO DO ANOTHER STUDY; CORRECT?

13 A I CERTAINLY DID MORE ASPECTS OF THE SURVEY AT
14 APPLE'S REQUEST.

15 Q OKAY. SO THE ANSWER IS CORRECT, AT APPLE'S
16 REQUEST, YOU DID MORE WORK AFTER SHOWING THEM THE
17 RESULTS OF THIS STUDY; CORRECT?

18 A YES.

19 Q AND LET'S TALK ABOUT THAT STUDY THEN.

20 SO ON YOUR NEXT GO-ROUND -- LET'S LOOK AT
21 EXHIBIT 2544-24. IF YOU CAN BLOW UP THE TOP HERE.

22 NOW, THIS ISN'T THE CLEAREST BLOW UP, BUT
23 ON YOUR NEXT STUDY, YOU DIDN'T PUT A STICKER OVER
24 THAT HOME BUTTON AS YOU PREVIOUSLY SAID WAS
25 NECESSARY TO GET A FAIR STUDY AND MAKE SURE THAT

1 YOU WERE LOOKING JUST AT THE TRADE DRESS?

2 A I DON'T AGREE WITH HOW YOU JUST CHARACTERIZED
3 THAT, BUT YOU'RE CORRECT THAT THERE WAS NO LABEL
4 OVER THE BUTTON IN THIS PART OF IT.

5 Q AND ALSO, IF WE LOOK AT THE NEXT PAGE, WHICH
6 IS 25, ANOTHER PART OF THE STUDY, AND AGAIN, THIS
7 ISN'T THE CLEAREST VIEW, BUT YOU SEE NOT -- THE
8 HOME BUTTON IS NOT COVERED; RIGHT?

9 A RIGHT.

10 Q AND THE ICONS ARE NOT BLURRED, EITHER, WHEREAS
11 PREVIOUSLY IN YOUR REPORT, YOU SAID THAT WAS
12 NECESSARY TO MAKE SURE YOU WERE GETTING A RESPONSE
13 THAT WAS MEANINGFUL TO TRADE DRESS. RIGHT?

14 A YOU'RE CORRECT THAT THAT'S WHAT'S SHOWN HERE.

15 I DON'T THINK YOU'RE CORRECT THAT AT THIS
16 POINT IT WAS NECESSARY TO DO THOSE THINGS GIVEN
17 THAT I HAD ALREADY DONE THEM AND HAD ALREADY SEEN
18 THAT THERE WAS SECONDARY MEANING EVEN WITH THOSE
19 THINGS COVERED.

20 Q WITH THE 40 PERCENT FIGURE THAT YOU GOT?

21 A IT'S NOT JUST THE 40 PERCENT FIGURE THAT'S
22 RELEVANT. THE 57 PERCENT FIGURE IS THE PRIMARY
23 FIGURE AS WELL.

24 Q SO BASICALLY FOR THIS SECOND STUDY THAT APPLE
25 ASKED YOU TO DO AFTER GETTING THE 40 PERCENT

1 RESULT, YOU STACKED THE DECK ACCORDING TO WHAT YOU
2 SAID, IN YOUR REPORT, WAS THE STANDARD PROCEDURE
3 FOR DOING SUCH STUDIES?

4 A NO.

5 Q WELL, IN FACT, YOU GOT COMMENTS FROM
6 PARTICIPANTS LIKE "THE BOTTOM BUTTON AT THE BOTTOM
7 IS A DEAD GIVE AWAY THAT THIS IS AN APPLE."

8 A I DO RECALL THERE WERE SOME RESPONDENTS WHO
9 MENTIONED THE HOME BUTTON AS ONE OF THE THINGS THEY
10 RECOGNIZED. I THINK IT WAS A PRETTY SMALL NUMBER,
11 BUT THERE WERE DEFINITELY SOME.

12 Q AND THEN AS THE CONTROL -- IF WE CAN PUT UP
13 2544-33 -- YOU USED A NOOK, AN E-READER; RIGHT?

14 A IT'S -- IT'S A TABLET.

15 Q AND WITH THE NOOK, YOU SHOWED THE "N" HERE
16 THAT IDENTIFIES IT AS A NOOK TO PEOPLE WHO KNOW
17 NOOKS?

18 A NO, THAT'S NOT TRUE.

19 Q ISN'T THAT WHAT THAT IS RIGHT THERE?

20 A WELL, I DON'T KNOW EXACTLY WHAT THAT IS, BUT I
21 KNOW THAT BARELY ANYBODY -- ONLY A VERY SMALL
22 NUMBER OF PEOPLE IN THE SURVEY SAID THAT THEY
23 THOUGHT THIS WAS A NOOK. SO IT CLEARLY DID NOT
24 GIVE AWAY THAT IT WAS A NOOK TO MOST PEOPLE.

25 Q IT DID GIVE AWAY THAT IT WASN'T AN APPLE?

1 A NO. A LOT MORE PEOPLE SAID IT WAS AN APPLE.

2 Q WELL, BUT NOT MANY. YOU KIND OF MADE SURE OF
3 THAT.

4 A NO. YOU'RE JUST WRONG. 10 PERCENT, I
5 BELIEVE, I THINK THAT WAS THE NUMBER, I THINK 10
6 PERCENT SAID THAT THIS WAS AN APPLE, AND IT WAS A
7 LOT LESS THAN THAT THAT SAID ANYTHING ABOUT A NOOK,
8 SO THAT'S JUST NOT TRUE.

9 Q SO ONLY 10 PERCENT SAID THAT IT WAS AN APPLE,
10 AND THAT COULDN'T BE, OF COURSE, BECAUSE APPLE
11 DOESN'T HAVE A HOME BUTTON LIKE THAT?

12 A CERTAINLY IT'S POSSIBLE THAT ONE -- THAT
13 THAT'S ONE OF THE REASONS THAT PEOPLE DIDN'T THINK
14 THIS WAS AN APPLE.

15 Q AND THEN IF WE CAN LOOK AT 34, 2544-34, WE'VE
16 GOT -- YOU SHOWED THEM ALSO A VERSION OF THIS THAT
17 HAS THAT NOOK BUTTON AND THEN HAS UNBLURRED ICONS;
18 RIGHT?

19 A YES, JUST ONE GROUP.

20 Q AND THESE DON'T LOOK ANYTHING LIKE APPLE'S?
21 AGAIN, IT SCREAMS "I'M NOT AN APPLE"?

22 A AGAIN, THAT'S NOT WHAT THE SURVEY RESULTS
23 SHOW.

24 Q BECAUSE YOU THINK 10 PERCENT IS A BIG NUMBER?

25 A I'M NOT SAYING IT'S A BIG NUMBER, BUT 10

1 PERCENT OF PEOPLE SAYING THEY THINK SOMETHING IS AN
2 APPLE CERTAINLY SHOWS THAT IT WAS A POSSIBILITY
3 THAT PEOPLE WHO WERE GUESSING MIGHT GUESS THAT THIS
4 IS AN APPLE.

5 Q AND IT'S A LOT CLEARER IN THE ACTUAL, WHAT YOU
6 SHOWED THEM, BUT UP HERE ALSO IT HAS THIS THING
7 THAT SAYS "APPS" AND IT SAYS "ARCHIVE." IS THAT
8 CORRECT?

9 A YES.

10 Q AND TELL ME STEVE JOBS WOULDN'T HAVE FIRED
11 SOMEBODY THAT HAD PUT "ARCHIVE" UP THERE ON A HOME
12 SCREEN?

13 A I COULDN'T SPEAK TO THAT.

14 Q AND THEN THERE ARE OTHER ALTERNATIVES YOU
15 COULD HAVE USED. FOR EXAMPLE, LET ME SHOW YOU
16 EXHIBIT 2529 FOR IDENTIFICATION.

17 THIS IS A MOTOROLA TABLET.

18 DO YOU RECOGNIZE THAT AS A MOTOROLA
19 TABLET?

20 I'M SORRY. DO YOU WANT TO SEE IT?

21 THE WITNESS: YES.

22 MR. PRICE: AND I FORGOT TO SHOW IT TO
23 MR. JACOBS. LET ME DO THAT.

24 (DISCUSSION OFF THE RECORD BETWEEN
25 COUNSEL.)

1 MR. PRICE: SINCE THE WITNESS RECOGNIZES
2 THIS AS A MOTOROLA, I'LL MOVE IT INTO EVIDENCE FOR
3 THE PURPOSE OF CHALLENGING HIS METHODOLOGY.

4 MR. JACOBS: SO, YOUR HONOR, THIS WAS
5 ACTUALLY DISCLOSED TO US AS A DEMONSTRATIVE, ALONG
6 WITH 2528 AND 2534. I WAS A LITTLE SLOW ON THE
7 UPTAKE WHEN THEY WERE PRESENTED, BUT THEY ARE NOT
8 ON THE EXHIBIT LIST FOR ADMISSION AS EXHIBITS.

9 THE COURT: ARE THEY ON YOUR --

10 MR. PRICE: THEY ARE ON THE EXHIBIT LIST
11 FOR THE CASE.

12 WHAT WE GAVE THEM FOR THE WITNESS, I
13 THINK WE DID LIST THEM AS DEMONSTRATIVES BECAUSE I
14 DIDN'T KNOW IF HE WOULD BE ABLE TO SAY, "YES, I SEE
15 THIS IS A MOTOROLA TABLET," AND NOW THAT THEY'RE
16 GOING IN FOR THAT LIMITED PURPOSE, I'D ASK THAT
17 THAT BE ADMITTED. THERE'S NO PREJUDICE TO
18 DEMONSTRATIVES GOING INTO EVIDENCE.

19 MR. JACOBS: I THINK THERE IS, YOUR
20 HONOR. IF IT HAD BEEN DISCLOSED TO US AS AN
21 EXHIBIT, IT MIGHT HAVE CHANGED THE WAY WE
22 APPROACHED OBJECTIONS.

23 MR. PRICE: MR. JACOBS CAN'T SAY --

24 THE COURT: WAS IT TIMELY ON THE EXHIBIT
25 LIST?

1 MR. JACOBS: WE OFFER 24.6 INTO EVIDENCE,
2 YOUR HONOR.

3 MR. PRICE: NO OBJECTION.

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

5 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
6 24.6, HAVING BEEN PREVIOUSLY MARKED FOR
7 IDENTIFICATION, WAS ADMITTED INTO
8 EVIDENCE.)

9 MR. JACOBS: I MOVE ALL OF 24 IN.

10 THE COURT: ANY OBJECTION? YOU WANT ALL
11 OF 24 IN?

12 MR. PRICE: NO OBJECTION.

13 THE COURT: ALL RIGHT. IT'S IN.

14 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
15 24, HAVING BEEN PREVIOUSLY MARKED FOR
16 IDENTIFICATION, WAS ADMITTED INTO
17 EVIDENCE.)

18 THE COURT: GO AHEAD, PLEASE.

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

21 MR. JACOBS: THANK YOU. LET'S PUT UP PX
22 31.2, PLEASE.

23 Q SO WHAT QUESTION DID YOU ASK IF YOUR SURVEY?

24 A SO THE PRIMARY QUESTION WAS, WHAT'S SHOWN ON
25 THE SCREEN HERE, WHICH IS, IN YOUR OPINION, WHAT

1 TABLET WAS SHOWN IN THE VIDEO?

2 Q AND LET'S GO TO 31.3. WHAT IS THIS SLIDE
3 SHOWING, SIR?

4 A SO THIS IS ALSO A SUMMARY OF THE RESULTS FROM
5 THE LIKELIHOOD OF CONFUSION SURVEY. SIMILAR TO THE
6 OTHER ONE, THE FIRST TWO COLUMNS SHOW THE RESULTS
7 FOR THE TWO TEST VIDEOS, AND THEN THE FAR RIGHT
8 COLUMN SHOWS THE TEST FOR THE BARNES & NOBLE COLOR
9 NOOK CONTROL.

10 AND WHAT IT SHOWS IS FOR THE BRANDED
11 VERSION OF THE SAMSUNG GALAXY 10, THE FIRST COLUMN,
12 APPROXIMATELY 30 PERCENT OF THE RESPONDENTS
13 IDENTIFIED IT AS AN IPAD OR APPLE DEVICE.

14 IN THE SAMSUNG GALAXY 10.1 UNBRANDED
15 VERSION, APPROXIMATELY 43 PERCENT IDENTIFIED IT AS
16 AN IPAD OR APPLE DEVICE.

17 AND THEN IF YOU SIMPLY COMBINE THE
18 RESULTS FROM THOSE TWO, JUST TO BE -- JUST TO
19 EXPLAIN, SO EACH RESPONDENT ONLY SAW ONE VIDEO, AND
20 THEY WERE RANDOMLY ASSIGNED TO THE VIDEO THAT THEY
21 SAW.

22 AND THERE WERE APPROXIMATELY 200
23 RESPONDENTS WHO SAW THE FIRST VIDEO, 200 WHO SAW
24 THE SECOND, AND 200 WHO SAW THE CONTROL VIDEO.

25 SO IF YOU COMBINE THE 400 PEOPLE WHO SAW

1 THE BRANDED AND THE UNBRANDED, YOU GET ROUGHLY 36
2 PERCENT OF RESPONDENTS OVERALL THAT IDENTIFIED THE
3 GALAXY TABLET AS AN IPAD OR APPLE PRODUCT.

4 Q AND WHAT ABOUT THE CONTROL RESULTS?

5 A SO IN THIS PARTICULAR STUDY, WE FOUND THAT 24
6 PERCENT IDENTIFIED THE BARNES & NOBLE NOOK COLOR AS
7 AN APPLE OR AN IPAD, AND SO THAT'S OUR ESTIMATE OF
8 GUESSING AND THE EFFECTS OF OUR SURVEY PROCESS,
9 SIMILAR TO WHAT WE'VE DISCUSSED.

10 AND SO WHEN WE NET THAT OFF, WE GET A NET
11 RATE OF CONFUSION BETWEEN 6 AND 19 PERCENT.

12 Q AND THE COMBINED RATE?

13 A THE COMBINED RATE WOULD BE 12 PERCENT FOR THAT
14 STUDY.

15 Q WHAT DO YOU BELIEVE THE RESULTS OF THIS SURVEY
16 SHOW, SIR?

17 A WELL, THE RESULTS SUGGEST THAT THERE'S A, A
18 SUBSTANTIAL PORTION OF THE CONSUMERS WHO ARE LIKELY
19 TO BE CONFUSED WHEN THEY SEE A SAMSUNG GALAXY
20 TABLET IN A POST-SALE ENVIRONMENT, THAT THEY'RE
21 ACTUALLY VIEWING AN IPAD OR APPLE PRODUCT.

22 MR. JACOBS: THANK YOU, DR. VAN LIERE.
23 NO FURTHER QUESTIONS.

24 THE COURT: ALL RIGHT. TIME IS NOW 9:55.
25 PLEASE GO AHEAD WITH YOUR CROSS.

1 MR. PRICE: THANK YOU, YOUR HONOR.

2 **CROSS-EXAMINATION**

3 BY MR. PRICE:

4 Q IS IT MR. VAN LIERE OR DOCTOR?

5 A DR. VAN LIERE. YOU CAN CALL ME EITHER.

6 Q I'LL CALL YOU DOCTOR. WE'RE IN COURT.

7 SO FIRST OF ALL, LET'S TALK ABOUT WHAT
8 YOU DID NOT DO WITH THAT CONFUSION STUDY.

9 YOU DID NOT DO A STUDY THAT MEASURED
10 CONFUSION OF CONSUMERS AT THE TIME THEY BUY AN IPAD
11 OR A TABLET; CORRECT?

12 A YES. I BELIEVE YOU'RE REFERRING TO A POINT OF
13 PURCHASE STUDY, AND I DID NOT DO A POINT OF
14 PURCHASE STUDY.

15 Q NOW, HAVE YOU DONE POINT OF PURCHASE STUDIES
16 IN YOUR CAREER?

17 A YES.

18 Q ABOUT HOW MANY?

19 A I DON'T KNOW EXACTLY. PROBABLY SOMEWHERE
20 BETWEEN 5 AND 15.

21 Q AND WHEN YOU WERE ASKED BY APPLE TO DO A
22 STUDY, DID THEY KIND OF EXPLAIN TO YOU WHAT THE
23 CASE WAS ABOUT?

24 MR. JACOBS: YOUR HONOR, I THINK THIS
25 LINE OF QUESTIONING POTENTIALLY INVADES RULE 26.

1 MR. PRICE: LET ME WITHDRAW THAT.

2 Q WELL, LET ME ASK YOU THIS: DID -- GIVEN YOUR
3 EXPERIENCE IN DOING, YOU KNOW, POINT OF SALE
4 STUDIES, DID APPLE ASK YOU TO DO ONE TO SEE WHETHER
5 OR NOT THERE'S ANY EMPIRICAL EVIDENCE THAT A
6 CONSUMER BUYING A SAMSUNG TABLET WOULD BE CONFUSED
7 INTO THINKING IT'S AN IPAD OR VICE-VERSA?

8 A APPLE DID NOT ASK ME TO CONDUCT A POINT OF
9 PURCHASE SURVEY. THEY ASKED ME TO CONDUCT A
10 POST-SALE CONFUSION SURVEY.

11 Q OKAY. SO LET'S TALK ABOUT THE POST-SALE
12 CONFUSION SURVEY.

13 IT'S MY UNDERSTANDING, IS IT NOT, THAT
14 UNTIL THIS CASE, YOU HAD NEVER DONE A
15 POST-CONFUSION SURVEY.

16 A I THINK THIS IS THE FIRST CASE THAT I'VE PUT
17 IN A SURVEY THAT IS PUBLICLY AVAILABLE IN WHICH WE
18 WERE TESTING A POST-SALE ENVIRONMENT. I THINK THIS
19 IS THE FIRST TIME FOR THAT FOR SURE.

20 Q SO LET'S SEE WHAT YOU DID ON YOUR FIRST TIME
21 OUT ON THIS THING.

22 BY THE WAY, DID YOU SAY TO APPLE, "THIS
23 IS THE FIRST TIME I'VE DONE ONE AFTER SALE"?

24 A I DON'T RECALL IF APPLE ASKED ME THAT QUESTION
25 OR NOT.

1 Q OKAY. AND SO YOU CAN'T USE YOUR STUDY TO SHOW
2 EITHER -- WHETHER A CONSUMER WAS CONFUSED WHEN HE
3 BOUGHT A SAMSUNG TABLET OR TO SHOW ANY IMPACT ON
4 FUTURE PURCHASING DECISIONS; CORRECT?

5 A THE SURVEY, AS IT'S DESIGNED, DOES NOT TEST
6 POINT OF PURCHASE, AND IT DOES NOT TEST THE EXTENT
7 TO WHICH THE CONFUSION AFFECTS FUTURE PURCHASE
8 BEHAVIOR, THAT'S CORRECT.

9 Q NOW, SO IN THE SURVEY YOU DID, YOU DIDN'T SHOW
10 THESE PEOPLE IN THE MALL AN ACTUAL IPAD OR AN
11 ACTUAL SAMSUNG TABLET; CORRECT?

12 A NO, I DON'T THINK YOU SAID THAT CORRECTLY.

13 Q OKAY. MAYBE I DIDN'T. YOU DIDN'T -- THIS WAS
14 THE ONE IN THE MALL, RIGHT, THE ONE WITH THE IPAD
15 AND THE SAMSUNG?

16 A THE TABLET CONFUSION STUDY WAS THE STUDY DONE
17 IN A MALL, YES.

18 Q OKAY. AND YOU DIDN'T SHOW THESE FOLKS -- YOU
19 DIDN'T ACTUALLY HAND THEM AN ACTUAL IPAD OR A
20 SAMSUNG TABLET; RIGHT?

21 A THAT'S CORRECT. WE SHOWED THE VIDEOS THAT
22 YOU'VE SEEN TWO EXAMPLES OF.

23 Q AND WHY NOT SHOW THEM THE TABLET?

24 A YOU SAY "SHOW THEM THE TABLET." JUST TO BE
25 CLEAR, THEY DID SEE THE TABLETS. THE TABLETS WERE

1 IN THE VIDEO. WE JUST DID NOT HAND THEM PHYSICALLY
2 TO THEM.

3 Q WELL, IF WE LOOK AT JOINT EXHIBIT 1004, THIS
4 IS AN ACTUAL IPAD, YOU KNOW, THREE-DIMENSIONAL
5 IPAD.

6 IS THIS ALREADY IN EVIDENCE? IT IS,
7 OKAY.

8 SO I'M JUST ASKING YOU, DID YOU ACTUALLY
9 HAND ONE OF THESE OUT, AN ACTUAL ONE?

10 A NO, WE DID NOT HAND THEM A PHYSICAL DEVICE.

11 Q OR HAND THEM A, A -- THE SAMSUNG TABLET
12 EITHER; CORRECT? YOU DIDN'T HAND THEM THAT?

13 A THAT'S CORRECT. WE DID NOT HAND THEM THE
14 SAMSUNG TABLETS, EITHER.

15 Q NOW, IF WE COULD LOOK AT THE VIDEO YOU SHOWED
16 THEM, THE 24.5, COULD WE PLAY THAT?

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

19 BY MR. PRICE:

20 Q THAT WAS THE FULL VIDEO THAT YOU SHOWED THEM;
21 RIGHT?

22 A THAT'S CORRECT.

23 Q OKAY. NOW, WAS THERE ANY BUDGET LIMITATION
24 THAT YOU HAD TO STOP THE VIDEO THERE?

25 A WELL, TWO COMMENTS. ONE, THE -- NO, I DIDN'T

1 KNOW OF ANY SPECIFIC ONE. THE IDEA WAS TO
2 REPLICATE A REASONABLE POST-SALE ENVIRONMENT
3 INTERACTING WITH THE DEVICE.

4 BUT TWO, AS I WAS COMMENTING IN THESE
5 KINDS OF STUDIES, WE ALSO LET THE RESPONDENTS VIEW
6 THE VIDEO TWICE.

7 Q OKAY.

8 A SO THEY SAW IT ONCE, THEN THEY SAW IT AGAIN,
9 AND THEN THEY ANSWERED THE QUESTIONS.

10 Q I'M JUST WONDERING, YOU'VE BEEN IN CAFES OR
11 PLACES WHERE YOU'VE SEEN PEOPLE, FOR EXAMPLE, WITH
12 APPLE COMPUTERS; RIGHT?

13 A YES.

14 Q AND YOU'VE SEEN, FOR EXAMPLE, ON APPLE
15 COMPUTERS THAT THEY HAVE THAT BIG NEON APPLE AT THE
16 TOP OF THE COMPUTER? YOU CAN SEE THAT PRETTY
17 EASILY WHEN YOU'RE LOOKING AT SOMEBODY WITH THEIR
18 APPLE COMPUTER; RIGHT?

19 A MAYBE. IT DEPENDS ON THE POINT OF VIEW THAT
20 YOU HAVE AS YOU OBSERVE THE PERSON USING THEIR
21 COMPUTER.

22 Q IT'S ACTUALLY BACK LIT IN THE COMPUTERS;
23 RIGHT?

24 A I'M NOT COMPLETELY CERTAIN, BUT PART OF AN
25 APPLE COMPUTER -- ARE YOU TALKING ABOUT THE ONE

1 THAT'S ON THE TOP OF IT WHEN IT'S CLOSED SO THAT
2 WHEN IT'S OPEN, YOU WOULD NOT SEE IT?

3 Q WHEN IT'S -- WHEN AN APPLE COMPUTER IS OPEN,
4 YOU WOULDN'T SEE THE BIG NEON APPLE ON IT?

5 A IF YOU'RE LOOKING -- I'M MAYBE
6 MISUNDERSTANDING WHAT YOU'RE ASKING ME.

7 BUT IF I HAVE THE COMPUTER, I OPEN IT,
8 AND I'M OBSERVING OVER THE SHOULDER, I DON'T SEE
9 THE NEON DEVICE THAT'S ON THE TOP. I BELIEVE
10 THAT'S WHAT YOU'RE ASKING ME.

11 Q AH, I SEE. AND HERE, I GUESS, IS THE PROBLEM.

12 SO LET ME ASK YOU THIS: SO WHY DIDN'T
13 YOU, YOU KNOW, IN YOUR VIDEO, JUST RUN IT A LITTLE
14 BIT LONGER AND HAVE THE PERSON WALK AROUND SO THAT
15 THE PERSON YOU'RE STUDYING COULD SEE THE BACK OF
16 THE DEVICE?

17 A THE WAY WE CREATED THE STIMULI WAS TO TEST THE
18 ALLEGEDLY INFRINGING CONDITIONS THAT WERE OUTLINED
19 IN THE COMPLAINT.

20 AND IT WAS MY UNDERSTANDING, AT THE TIME
21 I DESIGNED THIS STUDY, THAT THE BACK OF THESE
22 DEVICES WAS NOT AT ISSUE, THAT IT WAS THE FRONT AND
23 THE SIDE VIEWS.

24 SO WHEN WE SET UP THE VIDEOS, WE SET THEM
25 UP TO SHOW A REAL PRODUCT THAT'S IN THE REAL

1 MARKETPLACE WHERE YOU WOULD SEE A SIDE VIEW AND A
2 FRONT VIEW OF THE PRODUCT.

3 SO THAT'S WHY WE DID NOT SHOW THE BACK.

4 Q OKAY. SO YOU WERE TOLD THAT IF THE PRODUCT
5 HAD SOMETHING ON THE BACK WHICH WOULD TELL ANY
6 CONSUMER THAT IT'S AN APPLE OR A SAMSUNG, THAT YOU
7 WERE TO IGNORE THAT AND NOT TEST IT? THAT WAS YOUR
8 UNDERSTANDING AS GIVEN TO YOU BY APPLE'S COUNSEL?

9 A IT WAS MY UNDERSTANDING THAT THE FRONT OF THE
10 DEVICE AND THE SIDE VIEW OF THE DEVICE WERE PART OF
11 THE ALLEGED INFRINGEMENT AND THE BACK WAS NOT.

12 Q BUT DON'T YOU UNDERSTAND THAT TO SHOW
13 CONFUSION, YOU LOOK AT THE PRODUCT AND NOT JUST
14 WHAT THE ALLEGED TRADE DRESS IS?

15 A NO, I DON'T AGREE WITH THE WAY YOU'VE STATED
16 THAT.

17 Q OKAY. SO IF THAT ACTUALLY IS THE TEST, THAT
18 IS, THAT YOU'RE SUPPOSED TO LOOK TO SEE WHETHER THE
19 PRODUCT AS SEEN BY A CONSUMER WOULD CONFUSE THEM,
20 IF THAT'S THE TEST, YOU DIDN'T TEST FOR THAT, DID
21 YOU?

22 A NO. IN FACT, I DID TEST FOR THAT.

23 Q WELL, YOU SAID YOU DIDN'T TEST, FOR EXAMPLE,
24 IF THE CONSUMER JUST WALKS A LITTLE FURTHER AND SAW
25 THE PERSON LOOKING AT -- THIS IS EXHIBIT 1004 LIKE

1 THIS -- YOU DIDN'T TEST WHETHER SEEING THIS BIG
2 APPLE HERE WOULD LEAD THEM TO THINK IT WAS AN
3 APPLE?

4 A NO, I DID NOT -- WELL, THERE'S TWO ISSUES.
5 ONE, I DID NOT TEST APPLE DEVICES. I TESTED
6 SAMSUNG DEVICES.

7 BUT NO, WE DID NOT SHOW ALL VIEWS OF THE
8 PRODUCT. WE SHOWED VIEWS THAT WOULD REPRESENT
9 TYPICAL POST-SALE OBSERVATIONS OF THESE PRODUCTS
10 BEING USED IN THE MARKETPLACE, AND THOSE POST-SALE
11 VIEWS WERE DESIGNED TO REPRESENT THE ALLEGEDLY
12 INFRINGING TRADE DRESS, NOT THE WHOLE DEVICE.

13 Q LET ME SHOW YOU WHAT'S BEEN MARKED AS EXHIBIT
14 1038 FOR IDENTIFICATION.

15 APPARENTLY THIS IS IN EVIDENCE.

16 SO THIS IS A -- THE SAMSUNG TABLET -- AND
17 BY THE WAY, GIVEN WHAT YOU KNOW ABOUT THE MARKET,
18 IF SOMEONE SEES A TABLET THAT DOESN'T HAVE THAT BIG
19 APPLE ON IT, THEY KNOW IT'S NOT AN APPLE; RIGHT?

20 A I DON'T KNOW THAT SPECIFICALLY.

21 Q BUT IF THEY WERE LOOKING AT THE SAMSUNG TABLET
22 AND THEY WALK AROUND AND SAW IT, YOU KNOW, YOU CAN
23 SEE IT SAYS SAMSUNG. IT DOESN'T SAY APPLE. IT
24 SAYS SAMSUNG; RIGHT?

25 A MY EYES AREN'T GOOD ENOUGH TO SEE THAT FROM

1 HERE .

2 Q OKAY. LET'S SAY IT'S AS CLOSE AS THE VIDEO
3 WOULD HAVE BEEN, SAY.

4 OKAY. SO LOOKING AT IT HERE, YOU WALK
5 AROUND AND, INSTEAD OF STOPPING THE VIDEO HERE, YOU
6 ACTUALLY CONTINUE IT JUST A FEW SECONDS TO SEE
7 WHETHER OR NOT THE PRODUCT IS ACTUALLY CONFUSING.

8 DO YOU THINK YOU'D GET A DIFFERENT
9 RESULT?

10 A I DON'T KNOW. I DIDN'T TEST THAT. BUT I
11 DIDN'T ALSO UNDERSTAND THAT TO BE THE ALLEGED
12 INFRINGEMENT HERE.

13 Q OKAY. SO IF -- SO YOU DESIGNED YOUR STUDY
14 BASED UPON WHAT YOU WERE TOLD BY APPLE'S COUNSEL?

15 A AND WHAT I UNDERSTOOD FROM READING THE
16 COMPLAINT.

17 Q OKAY. AND SO YOUR STUDY WAS DESIGNED TO
18 IGNORE THE ENTIRE PRODUCT AND JUST SHOW THE BACK?
19 I MEAN THE FRONT AND SIDE?

20 A YES. MY STUDY WAS DESIGNED TO CREATE A
21 POST-SALE CONFUSION-LIKE INTERACTION FOR A CONSUMER
22 AND SHOW THAT IN A VERSION IN WHICH THEY WOULD SEE
23 THE FRONT AND THE SIDE OF THE DEVICE. THAT'S WHAT
24 I DID, YES.

25 Q OKAY. AS A MATTER OF FACT, AT THE TIME YOU

1 DID THE STUDY, YOU DIDN'T EVEN KNOW THAT SAMSUNG'S
2 NAME WAS ON THE BACK BECAUSE YOU HAD NEVER SEEN ONE
3 OF THESE IN PERSON; RIGHT?

4 A I KNEW THAT SAMSUNG WAS ON THE FRONT. BUT I
5 DIDN'T KNOW FOR CERTAIN IF THE SAMSUNG WAS ON THE
6 BACK OF ALL THE DEVICES.

7 Q AND NOW YOU KNOW -- YOU CALLED THESE BRANDED
8 VERSUS UNBRANDED PHONES, TABLETS.

9 YOU KNOW NOW THAT ALL THE SAMSUNG
10 TABLETS, IN FACT, ARE BRANDED BECAUSE THEY HAVE THE
11 SAMSUNG ON THE BACK; RIGHT?

12 A I'LL UNDERSTAND THAT FROM WHAT YOU'VE JUST
13 TOLD ME. I DIDN'T KNOW THAT FOR SURE.

14 Q OKAY. AND NOW LET'S TALK ABOUT THE CONTROL
15 YOU USED.

16 WHAT YOU USED WAS THE NOOK; RIGHT?

17 A THE NOOK COLOR.

18 Q OKAY. THE NOOK COLOR. AND IF WE CAN SHOW
19 3900.107.

20 SO THIS IS AN IPAD AND THIS IS A NOOK.

21 NOW, THIS IS THE NUMBER YOU SUBTRACT FROM
22 THE ASSOCIATION YOU GOT FROM SHOWING JUST THE FRONT
23 AND SIDE OF THE SAMSUNG TABLET.

24 AND YOU SUBTRACT THE NUMBER OF PEOPLE WHO
25 SAY THIS IS AN APPLE IPAD; RIGHT?

1 A YES. I THINK AS YOU'RE DESCRIBING IT, THAT'S
2 CORRECT.

3 Q OKAY. AND THIS HAS THIS LITTLE SCREEN THING
4 HERE WHICH SCREAMS "I'M NOT AN IPAD," RIGHT? WOULD
5 YOU AGREE?

6 A NO.

7 Q OKAY. AND IT HAS -- IT ACTUALLY HAS THE NOOK
8 TRADEMARK ON IT AND THE NOOK BUTTON THERE; RIGHT?

9 A IT HAS THOSE THINGS ON THERE, YES, THAT'S
10 CORRECT.

11 Q AND THE NOOK IS AN E-READER; RIGHT? IT'S
12 BASICALLY KNOWN AS AN E-READER FOR READING BOOKS
13 ON?

14 A THE NOOK COLOR, WHICH IS THE DEVICE WE USED IN
15 OUR STUDY, IS MARKETED AS A TABLET AND IT HAS THE
16 SAME BASIC FUNCTIONALITY AS THE IPAD AND THE
17 GALAXY.

18 Q LET ME SHOW YOU EXHIBIT 2526 FOR
19 IDENTIFICATION.

20 THIS IS THE NOOK TABLET THAT WAS USED IN
21 YOUR STUDY, OR ONE JUST LIKE IT -- I MEAN NOOK
22 READER, COLOR; RIGHT?

23 A I'LL UNDERSTAND THAT TO BE JUST LIKE IT. I
24 DON'T THINK THAT'S THE ONE WE ACTUALLY USED.

25 Q OKAY. AND THERE WERE OTHER CONTROLS YOU COULD

1 HAVE USED? YOU COULD HAVE USED A MOTOROLA. YOU
2 COULD HAVE USED AN LG TABLET. YOU COULD HAVE USED
3 SOMETHING THAT LOOKED A LOT CLOSER TO THE IPAD THAN
4 THAT?

5 A NO, I DON'T AGREE WITH THAT.

6 Q OKAY. SO HAVE YOU SEEN OTHER TABLETS IN THE
7 MARKET AND WHAT THEY LOOK LIKE?

8 A YES.

9 Q OKAY. AND YOU DON'T AGREE THAT THE MOTOROLA
10 AND LG, WHICH WE'VE SEEN ALREADY HERE IN COURT AND
11 PASSED AROUND, YOU DON'T THINK THEY LOOK MORE LIKE
12 THE IPAD THAN THIS?

13 A YES, I THINK, IN FACT, THEY DO LOOK MORE LIKE
14 THE IPAD IN THE SENSE THAT THEY HAVE MORE ELEMENTS
15 OF THE ALLEGEDLY INFRINGING TRADE DRESS.

16 SO IN CHOOSING THE CONTROL, THE IDEA IS
17 TO GET A PRODUCT THAT'S IN THE SAME MARKET THAT HAS
18 THE SAME BASIC FUNCTIONALITY, BUT DOES NOT INCLUDE
19 THE ALLEGEDLY INFRINGING TRADE DRESS.

20 Q WELL, ACTUALLY -- SO ARE YOU SAYING THAT APPLE
21 IS CONTENDING THAT MOTOROLA AND LG, THAT THOSE
22 TABLETS INFRINGE APPLE'S TRADE DRESS AND THAT'S WHY
23 YOU DIDN'T USE THEM?

24 MR. JACOBS: YOUR HONOR, THIS IS ASKING
25 FOR A LEGAL CONCLUSION FROM THIS WITNESS AND LACKS

1 FOUNDATION.

2 THE COURT: SUSTAINED.

3 BY MR. PRICE:

4 Q I'M ASKING YOUR UNDERSTANDING AS TO WHY YOU
5 DIDN'T USE THEM. OKAY?

6 IS IT YOUR UNDERSTANDING, WHICH WOULD BE
7 THE BASIS OF YOU NOT USING THE MOTOROLA AND THE LG,
8 IS IT YOUR UNDERSTANDING THAT YOU COULDN'T USE THEM
9 BECAUSE APPLE IS SAYING THAT THOSE INFRINGE ITS
10 TRADE DRESS?

11 MR. JACOBS: YOUR HONOR, YOU JUST
12 SUSTAINED AN OBJECTION TO THIS SAME QUESTION.

13 THE COURT: SUSTAINED.

14 BY MR. PRICE:

15 Q IF WE CAN LOOK BACK AT THAT 30.5, I THINK IT
16 WAS 30.5, 24.5. NO, I'M SORRY. 31.3. THIS IS
17 YOUR STUDY. I BELIEVE IT'S 31.3.

18 SO IS THIS THE STUDY -- THIS IS YOUR
19 RESULTS SHOWING THAT VIDEO, SHOWING THE NOOK, AND
20 YOU GOT 6 PERCENT IS POST-CONFUSION WITH THE
21 BRANDED, 19, AND YOU AVERAGED THOSE TO GET 12.

22 NOW, IF YOU REALLY WANTED TO COME UP WITH
23 AN AVERAGE THAT MEANT ANYTHING AS FAR AS THE REAL
24 WORLD, YOU'D HAVE TO WEIGHT THOSE NUMBERS; RIGHT?

25 A WELL, I THINK I UNDERSTAND YOUR QUESTION, AND

1 THE -- FIRST OF ALL, THE 12 WAS NOT -- IT ISN'T --
2 I DIDN'T AVERAGE THE TWO. I JUST SUMMED EVERYTHING
3 ACROSS THE TWO CONDITIONS AND THEY COME TO 12
4 PERCENT.

5 Q SO LET ME STOP YOU THERE.

6 SO THIS IS NOT AN OPINION YOU HAVE AS TO
7 NET CONFUSION RATE IN THE MARKET; RIGHT?

8 A NO. I BELIEVE THE CONFUSION -- THE OPINION I
9 OFFERED IN MY REPORT IS THAT IT'S SOMEWHERE BETWEEN
10 6 PERCENT AND 19 PERCENT WERE ACTUALLY CONFUSED BY
11 MY TEST.

12 Q AND THE 19 HERE, YOU DON'T KNOW HOW MANY,
13 QUOTE, "UNBRANDED" TABLETS WERE IN THE MARKET
14 COMPARED TO THE BRANDED ONES; RIGHT?

15 A WELL, TWO COMMENTS. ONE --

16 Q CAN YOU ANSWER YES OR NO? BECAUSE I'M ON THE
17 CLOCK.

18 A I'M SORRY. I UNDERSTAND.

19 Q DO YOU KNOW HOW MANY --

20 A ASK ME THE QUESTION AGAIN.

21 Q DO YOU KNOW IN THE MARKETPLACE HOW MANY
22 UNBRANDED VERSUS BRANDED THERE WERE?

23 A NO, I DON'T KNOW HOW MANY UNBRANDED VERSUS
24 BRANDED THERE WERE.

25 Q NOW LET'S TALK ABOUT YOUR PHONE ASSOCIATION

1 SURVEY.

2 AND, AGAIN, THIS IS NOT A SURVEY THAT
3 SHOWS CONSUMER CONFUSION AT ALL; CORRECT?

4 A LET ME JUST MENTALLY SHIFT GEARS.

5 SO YOU'RE TALKING ABOUT NOW MY PHONE
6 ASSOCIATION STUDY?

7 Q YES.

8 A YES, THAT STUDY WAS NOT DESIGNED TO MEASURE
9 LIKELIHOOD OF CONFUSION. THAT STUDY WAS DESIGNED
10 TO MEASURE ASSOCIATION.

11 Q OKAY. SO IF WE CAN LOOK AT YOUR STUDY AND
12 LOOK AT 3900.153, THIS IS THE QUESTION YOU ASKED.
13 3900.153. YOU SHOWED THE PICTURE OF ONE OF THE
14 SAMSUNG PHONES AND SAID, "DOES THE LOOK AND DESIGN
15 OF THIS PHONE BRING TO MIND OR CREATE ANY
16 ASSOCIATION FOR YOU WITH ANY OTHER PHONES?"

17 DO YOU SEE THAT?

18 A YES.

19 Q IN THE DEMONSTRATIVE YOU SHOWED THE JURY,
20 WHICH WAS THE QUESTION YOU ASKED, YOU DIDN'T
21 UNDERLINE "OTHER," BUT "OTHER" WAS UNDERLINED IN
22 THE ACTUAL SURVEY?

23 A YES.

24 Q THE PEOPLE WHO READ THIS KNEW THEY WERE
25 SUPPOSED TO THINK OF SOME OTHER PHONE FOR

1 ASSOCIATION; RIGHT?

2 A IT SUGGESTS THAT -- WE'RE ASKING THEM, FIRST,
3 YES, NO, OR DON'T KNOW, DOES IT BRING TO MIND ANY
4 ASSOCIATION? AT THIS STAGE WE'RE NOT TELLING THEM
5 THERE IS AN ASSOCIATION.

6 Q NOW, I WANT TO ASK YOU, IF SOMEONE ASKED YOU,
7 FOR EXAMPLE, SHOWED YOU A PICTURE OF A COKE AND
8 SAID, "DOES THIS BRING TO MIND OR CREATE ANY
9 ASSOCIATION WITH ANY OTHER SOFT DRINK," YOU'D THINK
10 A LOT OF PEOPLE MIGHT SAY PEPSI; RIGHT? BECAUSE
11 THEY'RE THE TWO BIGGEST PLAYERS IN THE MARKET?

12 A I HAVEN'T DONE THAT STUDY, SO I WOULDN'T HAVE
13 AN OPINION ON HOW THAT MIGHT TURN OUT.

14 Q WELL, IF SOMEONE ASKED YOU, YOU KNOW, SHOWED A
15 PICTURE OF A BURGER KING, YOU KNOW, RESTAURANT AND
16 SAID, "DOES THE LOOK AND DESIGN OF THIS RESTAURANT
17 BRING TO MIND OR CREATE ANY ASSOCIATION WITH YOU OF
18 ANY OTHER RESTAURANT," THEY'RE QUITE LIKELY TO SAY
19 MCDONALD'S; RIGHT?

20 A AGAIN, I HAVEN'T DONE THAT SURVEY. I DON'T
21 KNOW THAT TO BE THE CASE.

22 Q YOU DON'T KNOW THAT FROM COMMON SENSE?

23 A I DON'T KNOW THAT FROM COMMON SENSE AS YOU'VE
24 DESCRIBED IT.

25 Q WELL, IF YOU DID FIND THAT, HYPOTHETICALLY,

1 HYPOTHETICALLY YOU DID A SURVEY, "DOES THIS BURGER
2 KING RESTAURANT BRING TO MIND ANY OTHER FAST FOOD
3 RESTAURANT" AND THEY SAID MCDONALD'S, YOU CERTAINLY
4 COULDN'T CONCLUDE FROM THAT THAT THE ASSOCIATION
5 WAS BECAUSE THE DESIGNS ARE SIMILAR; RIGHT?

6 A AGAIN, YOU'RE ASKING ME ABOUT A HYPOTHETICAL
7 STUDY THAT I HAVEN'T CONDUCTED, SO --

8 Q WELL, IN THIS CASE, YOU UNDERSTAND THAT
9 SAMSUNG AND APPLE ARE THE TWO LARGEST COMPETITORS
10 IN THIS MARKET; RIGHT?

11 A I UNDERSTAND THEY'RE TWO LARGE COMPETITORS IN
12 THIS MARKET.

13 Q AND YOU UNDERSTAND FROM KNOWING THE MARKET
14 THAT IF SOMEONE SHOWED YOU A SAMSUNG PHONE AND SAID
15 "WHAT OTHER PHONE DOES THIS REMIND YOU OF," PEOPLE
16 ARE LIKELY TO SAY APPLE, AND VICE-VERSA, BECAUSE
17 THEY'RE THE TWO BIGGIES, JUST LIKE BURGER KING AND
18 MCDONALD'S AND COKE AND PEPSI?

19 A PERHAPS.

20 BUT TO THE EXTENT THAT THAT'S TRUE,
21 THAT'S ALSO HAPPENING IN THE CONTROL. SO IF THIS
22 WAS CREATING A DEMAND CHARACTERISTIC AS YOU
23 SUGGEST, THEN IT WOULD BE NETTED OUT IN THE CONTROL
24 CONDITION.

25 Q SO NOW LET'S TALK ABOUT THE CONTROL. THE

1 CONTROL -- I THINK IF WE CAN SHOW 3900.129.

2 IN SELECTING A CONTROL, YOU COULD HAVE
3 SELECTED FROM A NUMBER OF PHONES; RIGHT?

4 A YES.

5 Q AND YOU INSTEAD -- WELL, OF THE PHONES, YOU
6 SELECTED A BLACKBERRY?

7 A YES, A BLACKBERRY STORM.

8 Q AND IF WE COULD LOOK AT EXHIBIT 24, I GUESS
9 PAGE 4. AND AGAIN, A BLACKBERRY, YOU SAID THIS
10 CONTROL, THE BLACKBERRY CONTROL FOR THE FACT THAT
11 SAMSUNG AND APPLE JUST MIGHT BE NAMES ON THE TIPS
12 OF YOUR TONGUE.

13 IF SOMEONE SHOWED YOU A PICTURE OF A CAN
14 OF MOXIE, DO YOU THINK PEOPLE WOULD ASSOCIATE THAT
15 WITH COKE OR PEPSI?

16 A A CAN OF WHAT?

17 Q MOXIE. YOU DON'T KNOW MOXIE?

18 A I DON'T KNOW MOXIE.

19 Q OKAY. WELL, JUST AS WITH THE BLACKBERRY --
20 AND BY THE WAY, IN THE REAL PICTURE, YOU CAN SEE
21 BLACKBERRY ACROSS THE TOP HERE; RIGHT?

22 A YES. IN ALL OF THE PHONES, THE PICTURES ARE
23 THE ACTUAL PRODUCTS THAT ARE IN THE MARKETPLACE AS
24 THEY WOULD LOOK.

25 Q AND BLACKBERRY AND RIM ARE, ARE PRETTY MUCH --

1 AT THE TIME YOU TOOK THIS SURVEY, THEY'RE NOT ON
2 THE TONGUES OF MANY PEOPLE THINKING ABOUT
3 SMARTPHONES? THEY ARE HAVING SERIOUS TROUBLE AND
4 ALMOST DROPPING OUT OF THE MARKET; RIGHT?

5 A I DON'T HAVE THAT UNDERSTANDING DURING THE
6 PERIOD OF TIME OF THE SURVEY.

7 Q YOU DON'T HAVE IT ONE WAY OR THE OTHER?

8 A THAT'S CORRECT.

9 Q AND IS IT JUST A COINCIDENCE THAT BOTH YOU AND
10 DR. PORET USED A NOOK AND THE BLACKBERRY STORM FOR
11 YOUR CONTROLS? DID YOU GUYS GET TOGETHER AND TALK
12 ABOUT THIS?

13 A NO. I HAVE NO KNOWLEDGE OF MR. PORET'S WORK
14 BEFORE I CAME TO TRIAL AND HEARD ABOUT IT OTHER
15 THAN I KNEW HE HAD DONE SURVEYS.

16 Q DID YOU -- WERE YOU GIVEN THESE PHONES AND THE
17 BLACKBERRY AND THE NOOK TO USE AS THE CONTROLS?

18 A NO. I SELECTED THESE PHONES AND TABLETS WITH
19 MY STAFF FROM OUR REVIEW OF THE PRODUCTS THAT WERE
20 AVAILABLE.

21 Q SO YOU INTENTIONALLY SELECTED THE NOOK AS THE
22 TABLET TO USE AS A CONTROL; RIGHT?

23 A YES.

24 Q YOU'RE SAYING THAT?

25 A YES.

1 Q AND YOU INTENTIONALLY SELECTED THE BLACKBERRY
2 TO USE AS THE CONTROL; RIGHT?

3 A THE BLACKBERRY STORM.

4 Q AND YOU INTENTIONALLY DECIDED, IN THOSE
5 VIDEOS, NOT TO SHOW THE COMPLETE PRODUCT, THE
6 SAMSUNG TABLET? THAT WAS YOUR DECISION?

7 A WELL, IT WAS MY DECISION BASED ON MY
8 UNDERSTANDING FROM THE COMPLAINT, THAT -- AND
9 DISCUSSION WITH COUNSEL, THAT THE FRONT AND THE
10 SIDE VIEWS WAS WHAT MATTERED IN THE TABLET SETTING.

11 Q AND WITH RESPECT TO THE SAMSUNG PHONES, YOU
12 TESTED JUST TWO OF THE PHONES?

13 A YES, I TESTED TWO OF THE, WHATEVER THE NUMBER
14 OF PHONES IS.

15 Q SO, FOR EXAMPLE, YOU DIDN'T TEST THE PHONE
16 THAT MS. KARE SAID HAD A CHIN, THE DROID CHARGE?

17 A NO, I DIDN'T TEST THAT SPECIFIC DEVICE.

18 MR. PRICE: THANK YOU, YOUR HONOR.

19 THE COURT: ALL RIGHT. THE TIME IS
20 10:19.

21 MR. PRICE: I'M SORRY. I MEANT TO MOVE
22 IN THE NOKIA -- I MEAN THE NOOK.

23 MR. JACOBS: YOUR HONOR, AGAIN, THAT IS
24 LISTED ON THE LIST OF DEMONSTRATIVES.

25 THE COURT: IS THAT 2526?

1 THE CLERK: I BELIEVE SO.

2 MR. PRICE: YES, 2526. IT WOULD BE FOR
3 THE SAME PURPOSE.

4 THE COURT: ALL RIGHT. IT'S ADMITTED
5 WITH A LIMITING INSTRUCTION THAT IT'S ADMITTED
6 SOLELY TO ASSESS MR. VAN LIERE'S SURVEY. IT'S
7 ADMITTED.

8 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
9 2526, HAVING BEEN PREVIOUSLY MARKED FOR
10 IDENTIFICATION, WAS ADMITTED INTO
11 EVIDENCE.)

12 THE COURT: ALL RIGHT. THE TIME IS NOW
13 10:20.

14 DO YOU HAVE ANY REDIRECT?

15 MR. JACOBS: NO, YOUR HONOR.

16 THE COURT: ALL RIGHT. MAY THIS WITNESS
17 BE EXCUSED?

18 MR. JACOBS: SUBJECT TO RECALL.

19 THE COURT: ALL RIGHT. YOU ARE EXCUSED
20 SUBJECT TO RECALL. YOU MAY LEAVE.

21 THE WITNESS: THANK YOU, YOUR HONOR.

22 THE COURT: ALL RIGHT. CALL YOUR NEXT
23 WITNESS, PLEASE.

24 MR. JACOBS: THE NEXT WITNESS IS
25 DR. RAVIN BALAKRISHNAN.

1 THE CLERK: RAISE YOUR RIGHT HAND,
2 PLEASE.

3 **RAVIN BALAKRISHNAN,**
4 BEING CALLED AS A WITNESS ON BEHALF OF THE
5 PLAINTIFF, HAVING BEEN FIRST DULY SWORN, WAS
6 EXAMINED AND TESTIFIED AS FOLLOWS:

7 THE WITNESS: I DO.

8 THE CLERK: WOULD YOU HAVE A SEAT,
9 PLEASE.

10 THE WITNESS: THANK YOU.

11 MR. JACOBS: YOUR HONOR, LET'S JUST TAKE
12 A MOMENT TO GET SETTLED WITH THE BINDERS.

13 THE COURT: THAT'S FINE.

14 (PAUSE IN PROCEEDINGS.)

15 THE CLERK: COULD YOU STATE YOUR NAME,
16 PLEASE, AND SPELL IT.

17 THE WITNESS: MY NAME IS RAVIN
18 BALAKRISHNAN. THAT IS SPELLED R-A-V-I-N, LAST NAME
19 IS SPELLED B-A-L-A-K-R-I-S-H-N-A-N.

20 THE CLERK: IT'S 10:22. GO AHEAD.

21 **DIRECT EXAMINATION**

22 BY MR. JACOBS:

23 Q DR. BALAKRISHNAN, THE JURY HAS BEEN HEARING
24 ABOUT TRADEMARK SURVEYS. ARE YOU HERE TO TALK
25 ABOUT TRADEMARK SURVEYS?

1 A NO, I'M NOT.

2 Q WHAT ARE YOU HERE TO TALK ABOUT?

3 A I'M HERE TO TALK ABOUT THE UTILITY PATENT
4 KNOWN AS THE '381 PATENT.

5 Q COULD YOU INTRODUCE YOURSELF TO THE JURY?
6 THEY'VE HEARD YOUR NAME, BUT CAN YOU DESCRIBE FOR
7 THEM WHAT YOU DO.

8 A SURE. I'M A PROFESSOR THE COMPUTER SCIENCE AT
9 THE DEPARTMENT OF COMPUTER SCIENCE AT THE
10 UNIVERSITY OF TORONTO, WHERE I ALSO HOLD A CANADA
11 RESEARCH CHAIR IN HUMAN CENTER INTERFACES, AND I
12 ALSO CODIRECT A USER INTERFACES AND GRAPHICS
13 LABORATORY AT THE UNIVERSITY OF TORONTO.

14 Q TELL THE JURY A LITTLE BIT ABOUT YOUR
15 TRAINING.

16 A I HOLD THREE DEGREES IN COMPUTER SCIENCE,
17 INCLUDING A PH.D. IN COMPUTER SCIENCE, GRADUATED IN
18 2001 FROM THE UNIVERSITY OF TORONTO.

19 AND I'VE SINCE THEN BEEN A PROFESSOR AT
20 THE UNIVERSITY SINCE 2001, SO THAT WOULD MAKE IT
21 ALMOST 11 YEARS AT THIS POINT.

22 Q TELL THE JURY -- ACTUALLY, PULL THE MICROPHONE
23 A LITTLE BIT CLOSER TO YOU, AND THEN TELL THE JURY
24 JUST A LITTLE BIT ABOUT THE RESEARCH THAT YOU DO.

25 A MY RESEARCH IS BROADLY IN THE FIELD OF

1 DOCUMENT.

2 BY MR. JACOBS:

3 Q AND THAT WAS PDX 27.24. WHAT'S THE NEXT
4 PROBLEM THAT THE '381 PATENT WAS DESIGNED TO SOLVE?

5 A THE SECOND PROBLEM IS KNOWN IN THE FIELD AS A
6 DESERT FOG PROBLEM.

7 SO THIS IS A BIT OF THE CONVERSE OF THE
8 FROZEN SCREEN PROBLEM IN THAT ONE COULD MANIPULATE
9 THE IMAGE SUCH THAT IT GOES OFF, COMPLETELY OFF THE
10 SCREEN AND YOU'RE LEFT WITH A BLANK SCREEN, WHAT WE
11 WOULD CALL THE DESERT FOG, AND YOU HAVE NO IDEA
12 WHERE THE SCREEN IS RELATIVE TO WHERE THE
13 PHOTOGRAPH IS OUTSIDE THE SCREEN.

14 SO I PREPARED A LITTLE ANIMATION FOR THAT
15 AS WELL.

16 AS YOU CAN SEE, THE PHOTOGRAPH IS TAKEN
17 OFF THE SCREEN, AND NOW THE USER IS MANIPULATING
18 THE DESERT FOG AND IT'S UNCLEAR, ESSENTIALLY THEY
19 PAUSE FOR A MOMENT, HOW TO BRING THAT PHOTOGRAPH
20 BACK ON TO THE SCREEN.

21 SO THESE ARE OF THE TWO KEY PROBLEMS THAT
22 ARE FOUND IN THIS KIND OF NAVIGATION INTERFACE THAT
23 THE '381 PATENT IS FOCUSSED ON SOLVING.

24 Q AND THAT WAS PDX 27.25. HOW DOES THE '381
25 PATENT SOLVE THESE TWO PROBLEM PROBLEMS, FROZEN

1 SCREEN AND DESERT FOG?

2 A THE '381 PATENT SOLVES BOTH THESE PROBLEMS IN
3 ONE FELL SWOOP. ESSENTIALLY, A, IT SOLVES THE
4 DESERT FOG PROBLEM BY NOT ALLOWING THE PHOTOGRAPH
5 TO GO OFF THE SCREEN COMPLETELY.

6 AND THE FROZEN SCREEN PROBLEM IT SOLVES
7 BY WHEN THE DOCUMENT REACHES THE EDGE, IT ALLOWS A
8 CERTAIN AMOUNT OF MOVEMENT BEYOND THE EDGE, SHOWS
9 AN AREA BEYOND THE EDGE, SO THE USER KNOWS, I'VE
10 REACHED THE EDGE OF THE DOCUMENT, AND THEN WHEN
11 THEY RELEASE THEIR FINGER, IT BOUNCES BACK.

12 IT GIVES NICE FEEDBACK SAYING "YOU'VE
13 REACHED THE EDGE. THE SYSTEM IS STILL ALIVE. IT'S
14 NOT FROZEN."

15 I PREPARED AN ANIMATION TO ILLUSTRATE
16 THAT AS WELL.

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

19 THE WITNESS: AS YOU CAN SEE, YOU'VE
20 REACHED THE EDGE OF THE DOCUMENT. THE BLACK AREA
21 BELOW IS SHOWN.

22 CAN WE SHOW THAT AGAIN IF YOU DON'T MIND?

23 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN
24 OPEN COURT OFF THE RECORD.)

25 THE WITNESS: AND WHEN THE USER RELEASES

1 THEIR FINGER, IT BOUNCES BACK. SO IT GIVES THE
2 ILLUSION OF A VERY LIVELY SYSTEM THAT'S NOT FROZEN
3 BECAUSE THE USER KNOWS WHERE THE EDGES ARE AND IT
4 DOESN'T DISAPPEAR IN THE DESERT FOG.

5 BY MR. JACOBS:

6 Q WERE THESE PROBLEMS RECOGNIZED IN THE FIELD
7 BEFORE THE '381 PATENT?

8 A THE TWO PROBLEMS WERE WELL RECOGNIZED IN THE
9 FIELD. IN FACT, PAPERS WERE PUBLISHED ABOUT IT
10 YEARS BACK.

11 Q DID ANYONE SOLVE IT BEFORE APPLE?

12 A NO, IT DID NOT.

13 Q NOW, DOES THE IPHONE IMPLEMENT CLAIM 19 OF THE
14 '381 PATENT?

15 A YES, IT DOES.

16 Q AND HOW DO YOU KNOW THAT?

17 A I INVESTIGATED THE DIFFERENT IPHONE DEVICES
18 AND TRIED THE FUNCTIONALITY ON THE DIFFERENT
19 DEVICES.

20 I ALSO LOOKED AT THE IPHONE SOURCE CODE
21 TO UNDERSTAND HOW IT'S IMPLEMENTED.

22 Q SO LET'S LOOK AT 27.7, MR. LEE.

23 A SO THIS IS A VIDEO OF THE FUNCTIONALITY BEING
24 SHOWED IN THE PHOTOS APPLICATION ON THE IPHONE 3GS.
25 THIS IS THE ACTUAL IPHONE, THE ACTUAL PERSON DOING

1 THE FUNCTIONALITY.

2 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN
3 OPEN COURT OFF THE RECORD.)

4 THE WITNESS: AS YOU CAN SEE, YOU MOVE TO
5 THE RIGHT, YOU GET TO THE EDGE, IT SHOWS BEYOND THE
6 EDGE, AND THEN IT BOUNCES BACK.

7 BY MR. JACOBS:

8 Q LET'S SHOW THAT ONE MORE TIME, PLEASE.

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

11 THE WITNESS: THE USER IS DRAGGING, AN
12 AREA BEYOND THE EDGE IS SHOWN, AND THEN IT BOUNCES
13 BACK.

14 BY MR. JACOBS:

15 Q LET'S TURN NOW TO SAMSUNG PRODUCTS AND YOUR
16 ANALYSIS OF HOW THEY -- WHETHER THEY INFRINGE CLAIM
17 19 OF THE '381 PATENT, AND LET'S START WITH THE
18 SAMSUNG GALAXY S II AT&T.

19 DOES IT INFRINGE CLAIM 19?

20 A YES. THE SAMSUNG GALAXY S II, AT&T VERSION,
21 INFRINGES CLAIM 19 OF THE '381 PATENT.

22 Q NOW, YOU'VE LISTED HERE ON THE SLIDE THE
23 GALLERY APPLICATION. WHAT'S THE GALLERY
24 APPLICATION?

25 A THE GALLERY APPLICATION IN SAMSUNG'S PRODUCT

1 IS ESSENTIALLY THE PHOTO MIGRATION AND VIEWING
2 APPLICATION THAT ALLOWS YOU TO LOOK THROUGH A SET
3 OF PHOTOGRAPHS.

4 Q SO LET'S LOOK AT THE GALLERY APPLICATION IN
5 THE GALAXY S II.

6 MR. LEE, COULD WE HAVE 27.9, PLEASE.

7 WHAT ARE WE SEEING HERE,

8 DR. BALAKRISHNAN?

9 A HERE WE'RE SEEING ON THE GALAXY S II, AT&T
10 VERSION, THE GALLERY APPLICATION. WE CONTINUE TO
11 USE THE SAME PHOTOGRAPH WE USED IN THE EARLIER
12 EXAMPLES.

13 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN
14 OPEN COURT OFF THE RECORD.)

15 THE WITNESS: AND AS YOU CAN SEE, THE
16 SAME BOUNCE BACK FUNCTIONALITY AS WE'VE SEEN.

17 AND IF YOU CAN SHOW THAT ONE MORE TIME,
18 YOU CAN SEE THE USER IS DRAGGING THE DOCUMENT, IT
19 REACHES THE EDGE, THE AREA BEYOND THE EDGE IS
20 SHOWN, AND IT BOUNCES BACK WHEN THEY RELEASE THE
21 FINGER. ESSENTIALLY IT'S THE SAME AS THE WAY THE
22 IPHONE WORKS.

23 BY MR. JACOBS:

24 Q LET'S BREAK THE REQUIREMENTS OF CLAIM 19 DOWN
25 INTO ITS VARIOUS PARTS.

1 COULD WE HAVE 27.10, MR. LEE.

2 SO THE FIRST PART OF CLAIM 19 DISCUSSES A
3 DEVICE WITH A TOUCHSCREEN DISPLAY, A PROCESSOR,
4 MEMORY, AND A PROGRAM FOR PERFORMING RUBBER BANDING
5 OF THE BOUNCE FUNCTION.

6 DO SAMSUNG'S PRODUCTS MEET THESE
7 ELEMENTS, REQUIREMENTS, OR LIMITATIONS AS THE
8 PATENT LAWYERS CALL THEM?

9 A YES, THEY DO.

10 Q SO LET'S GO TO 27.12. AND CAN YOU JUST REVIEW
11 THIS ELEMENT, THIS FIRST ELEMENT OF CLAIM 19
12 BRIEFLY WITH THE JURY AND WHY YOU FIND IT PRESENT
13 IN THE SAMSUNG DEVICE?

14 A SURE. THIS FIRST ELEMENT ESSENTIALLY SAYS IT
15 HAS TO BE A COMPETING DEVICE WHICH HAS A
16 TOUCHSCREEN DISPLAY. AND WHAT A TOUCHSCREEN
17 DISPLAY IS IS A TOUCH SENSOR THAT SENSES THE USER'S
18 TOUCH INPUTS INTEGRATED WITH A DISPLAY.

19 AND ALL THESE PHONES AND TABLETS CLEARLY
20 HAVE A TOUCH SENSOR INTEGRATED WITH THE DISPLAY.

21 IT ALSO HAS ONE OR MORE COMPUTING
22 PROCESSORS, WHICH MAKES ALL THE PROGRAMS RUN;
23 MEMORY TO INSTALL THOSE PROGRAMS AND DATA; AND ONE
24 OR MORE PROGRAMS THAT ACTUALLY GIVE YOU THE
25 FUNCTIONALITY THAT WE USE ON THESE DIFFERENT

1 DEVICES.

2 Q CAN WE HAVE 27.14, MR. LEE.

3 NOW, THIS IS ELEMENT 2 OF THE CLAIM -- OF
4 CLAIM 19 OF THE '381 PATENT. WHAT IS IT CALLING
5 FOR?

6 A ELEMENT 2 SIMPLY SAYS IT HAS TO BE
7 INSTRUCTIONS OR COMPUTER CODE FOR DISPLAYING A
8 FIRST PORTION OF AN ELECTRONIC DOCUMENT.

9 SO THE GALLERY APPLICATION, THE
10 ELECTRONIC DOCUMENT WILL BE THE PHOTOGRAPH, AND AS
11 YOU CAN SEE ON THIS PARTICULAR SLIDE, I'VE
12 ILLUSTRATED IT DISPLAYING A FIRST PORTION, JUST A
13 FIRST PART OF THAT DOCUMENT.

14 Q LET'S GO TO THE NEXT SLIDE, MR. LEE, 27.16.

15 THIS IS THE THIRD ELEMENT OF CLAIM 19,
16 AND WHAT IS IT LOOKING FOR?

17 A THIS ELEMENT IS LOOKING FOR THE DETECTION OF
18 AND MOVEMENT OF AN OBJECT ON A TOUCHSCREEN DISPLAY.

19 NOW, THE OBJECT COULD BE ANY OBJECT OR IT
20 COULD BE THE FINGER, THE USER'S FINGER AS WELL, AND
21 THE SAMSUNG DEVICES CLEARLY DETECT THE TOUCH.

22 AS YOU CAN SEE IN SUBSEQUENT VIDEOS, AND
23 EVEN THE ORIGINAL VIDEO WE SHOWED, IT CLEARLY
24 DETECTS THE MOVEMENT OF THAT OBJECT, A FINGER ON
25 THE SCREEN.

1 Q LET'S GO TO 27.18. THIS IS THE FOURTH ELEMENT
2 OF CLAIM 19. AND WHAT IS IT REQUIRING?

3 A THIS REQUIRES A TRANSLATION OR MOVEMENT OF THE
4 ELECTRONIC DOCUMENT, IN THIS EXAMPLE, THE
5 PHOTOGRAPH, IN A FIRST DIRECTION, AND THEN IT
6 SUBSEQUENTLY DISPLAYS A SECOND PORTION OF THAT SAME
7 DOCUMENT WHERE THAT SECOND PORTION HAS TO BE
8 DIFFERENT FROM THE FIRST PORTION.

9 AS YOU CAN SEE HERE -- IF YOU CAN SHOW
10 THE VIDEO AGAIN, PLEASE?

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

13 BY MR. JACOBS:

14 Q THAT'S THE FIRST PORTION.

15 A NOW, WHEN YOU DRAG IT IN THE FIRST DIRECTION,
16 A SECOND PORTION OF THE SAME ELECTRONIC DOCUMENT OR
17 PHOTOGRAPH IS SHOWN.

18 AS YOU CAN SEE, THE SECOND PORTION COULD
19 OVERLAP THE FIRST PORTION, BUT IT'S STILL DIFFERENT
20 FROM THE FIRST PORTION.

21 Q AND JUST BECAUSE IT WENT A LITTLE FAST, SIR,
22 WHEN YOU WERE APPLYING THE PHRASE "TRANSLATING THE
23 ELECTRONIC DOCUMENT," YOU WERE LOOKING FOR WHAT?

24 A I'M LOOKING FOR MOVEMENT. "TRANSLATION"
25 SIMPLY MEANS MOVEMENT ON A PARTICULAR SET OF AXES,

1 IN THIS CASE IT'S MOVING ON THE X AND Y OR
2 TWO-DIMENSIONAL PLANE OF THE SCREEN.

3 Q SO NOW LET'S LOOK AT THE FIFTH ELEMENT ON THE
4 SCREEN, AND WE'RE LOOKING AT 27.20. WHAT DOES THIS
5 ELEMENT CALL FOR?

6 A THIS ELEMENT IS WHAT HAPPENS WHEN THE USER
7 CONTINUES TO DRAG THE DOCUMENT, TRANSLATE THE
8 DOCUMENT, AND IT REACHES THE EDGE OF THE DOCUMENT.

9 WHEN THE SYSTEM RECOGNIZES THAT THE EDGE
10 OF A DOCUMENT HAS BEEN REACHED, IN RESPONSE TO THAT
11 EDGE BEING REACHED, AN AREA BEYOND THE EDGE IS
12 SHOWN, WHAT I'VE ILLUSTRATED IN THE YELLOW BOX TO
13 THE LEFT OF THE ACTUAL DOCUMENT'S EDGE THERE ON THE
14 SCREEN.

15 AND THE LAST PART OF THIS IS THAT A THIRD
16 PORTION OF THE DOCUMENT HAS TO REMAIN ON THE SCREEN
17 WHERE THAT THIRD PORTION HAS TO BE SMALLER THAN THE
18 ORIGINAL FIRST PORTION.

19 AND THAT'S PRETTY APPARENT FROM THIS
20 IMAGE HERE. THE THIRD PORTION IS NOT -- DOESN'T
21 FILL THE FULL SCREEN, WHEREAS THE FIRST PORTION I
22 ORIGINALLY SHOWED FILLS THE FULL SCREEN.

23 Q DOES THE SAMSUNG GALAXY S II, AT&T, MEET THIS
24 LIMITATION?

25 A YES, IT DOES.

1 Q LET'S GO TO THE SIXTH ELEMENT OF CLAIM 19.
2 WHAT DOES THIS ELEMENT REQUIRE?

3 A THIS ELEMENT DEALS WITH WHAT HAPPENS WHEN THE
4 OBJECT OR FINGER IS RELEASED FROM THE SCREEN, IT'S
5 NO LONGER DETECTED BY THE TOUCHSCREEN, AND THIS
6 REQUIRES THAT WHEN THAT HAPPENS, THE DOCUMENT IS
7 TRANSLATED IN A SECOND DIRECTION, IT'S MOVED IN A
8 SECOND DIRECTION, SUCH THAT THE AREA BEYOND THE
9 EDGE OF THE SCREEN PREVIOUSLY DISPLAYED IS NO
10 LONGER DISPLAYED.

11 AND FINALLY, IT DISPLAYS A FOURTH PORTION
12 OF THE ELECTRONIC DOCUMENT, AND THAT FOURTH PORTION
13 HAS TO BE DIFFERENT FROM THE ORIGINAL FIRST PORTION
14 THAT WE SAW AT THE START OF THIS SEQUENCE OF
15 VIDEOS.

16 AND FOR SAKE OF ILLUSTRATION, JUST TO
17 REMIND US, I'VE ASKED TO PUT UP THE FOURTH -- THE
18 FIRST PORTION AS A CALL OUT. IF WE CAN HAVE THAT
19 ON THE SLIDE?

20 THAT IS THE ORIGINAL FIRST PORTION. AS
21 YOU CAN SEE, IT'S DIFFERENT FROM THE FOURTH PORTION
22 THAT'S ENDED UP ON THE SCREEN AND OF THIS
23 INTERACTION.

24 Q SO WE'VE BEEN LOOKING AT THESE ELEMENTS IN THE
25 CONTEXT OF THE GALLERY APPLICATION ON THE

1 GALAXY S II, AT&T. DOES THIS PHONE MEET THESE SAME
2 REQUIREMENTS IN OTHER APPLICATIONS?

3 A YES, IT DOES. THE GALAXY S II, AT&T, MEETS
4 THE ELEMENTS OF CLAIM 19 OF THE '381 PATENT IN TWO
5 OTHER APPLICATIONS, IN THE CONTACTS LIST AND THE
6 INTERNET BROWSER APPLICATIONS.

7 Q LET'S TAKE A LOOK AT THOSE BRIEFLY.

8 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN
9 OPEN COURT OFF THE RECORD.)

10 THE WITNESS: SO ON THE LEFT YOU HAVE A
11 VIDEO OF THE CONTACTS LIST APPLICATION. THIS IS
12 SIMPLY THE LIST OF PEOPLE YOU HAVE PHONE NUMBERS
13 AND SO FORTH FOR ON THE PHONE.

14 AND IF WE CAN PLAY THAT AGAIN, THE USER
15 IS DRAGGING THE LIST UPWARDS, AND WHEN THEY REACH
16 THE EDGE, IT'S HARD TO SEE, BUT YOU REACH THE EDGE,
17 IT'S BLACK ON THE BOTTOM, THE AREA BEYOND THE EDGE,
18 A BLACK AREA IS SHOWN.

19 WHEN THE USER LIFTS THEIR FINGER UP, IT
20 BOUNCES BACK. IT'S THE EDGE OF THE PHOTOGRAPH,
21 JUST IN A DIFFERENT DIRECTION.

22 BY MR. JACOBS:

23 Q AND HOW ABOUT IN THE BROWSER APPLICATION?

24 A THE BROWSER APPLICATION SIMILARLY WORKS THE
25 SAME WAY. YOU CAN DRAG IT BEYOND THE EDGE, IN THIS

1 CASE YOU'VE REACHED THE EDGE, AN AREA BEYOND THE
2 EDGE IS SHOWN, YOU RELEASE YOUR FINGER, IT BOUNCES
3 BACK, VERY MUCH LIKE THE GALLERY ACTUALLY.

4 Q CLAIM 19 DISCUSSES INSTRUCTIONS THAT MAKE THIS
5 FEATURE WORK. WHAT ARE INSTRUCTIONS IN THE CONTEXT
6 OF A SMARTPHONE OR A TABLET COMPUTER?

7 A INSTRUCTIONS IN THE CONTEXT OF PHONES AND
8 TABLET COMPUTERS THAT WE'RE DISCUSSING HERE ARE
9 REALLY JUST COMPUTER CODE, COMPUTER PROGRAM
10 INSTRUCTIONS, AND THIS IS LINES OF CODE THAT'S IN
11 THE COMPUTER THAT EXECUTE ON THE PROCESSOR TO MAKE
12 THIS FUNCTIONALITY WORK.

13 Q HOW DO YOU KNOW THAT THESE INSTRUCTIONS ARE
14 PRESENT ON THE GALAXY S II, AT&T?

15 A AS I TESTIFIED EARLIER, I LOOKED AT THE
16 SAMSUNG PRODUCED CODE AND WHAT I'VE DONE IS I'VE
17 EXCERPTED JUST TWO SMALL PORTIONS TO ILLUSTRATE
18 SOME OF THE PERTINENT CODE FOR THE GALLERY AND FOR
19 THE BROWSER APPLICATIONS ON THE SCREEN.

20 IT'S NOT ON THE SCREEN YET.

21 MR. JACOBS: SO, YOUR HONOR, WE'D LIKE TO
22 DISPLAY THIS FOR YOU, FOR OPPOSING COUNSEL, AND FOR
23 THE JURY AS IS REPRESENTATIVE OF THE CODE OF
24 SAMSUNG.

25 THE COURT: OKAY. GO AHEAD.

1 BY MR. JACOBS:

2 Q SO WE'RE LOOKING AT 27.31, SIR, AND IS IT ON
3 THE JURY'S SCREEN.

4 NO, NOT ON THE PUBLIC SCREEN.

5 THE COURT: TAKE THAT DOWN, PLEASE.

6 MR. JACOBS: IS IT ON THE JURORS'
7 SCREENS? NO.

8 THANK YOU MR. LEE.

9 Q SO DR. BALAKRISHNAN, CAN YOU SHOW US WHAT WE
10 ARE SEEING ON THIS, IN THIS SOURCE CODE?

11 A SURE.

12 Q CAN YOU TELL US WHAT WE'RE SEEING ON THE
13 SOURCE CODE?

14 A ON THE LEFT-HAND SIDE IS THE SOURCE CODE FOR
15 THE GALLERY APPLICATION THAT WE'VE BEEN TALKING
16 ABOUT. SO THIS IS A VERY SMALL SNIPPET OF THE
17 OVERALL CODE THAT RUNS. WHAT I'VE DONE IS
18 ILLUSTRATE JUST A PORTION THAT SETS UP THE
19 PARAMETERS FOR DETERMINING WHAT HAPPENS AT THE EDGE
20 OF THE DOCUMENT.

21 SO IT LOOKS AT THE LEFT EXTENT OR THE
22 RIGHT EXTENT OR THE TOP OR BOTTOM. THOSE ARE FOUR
23 EDGES OF THE DOCUMENT. IF IT EXCEEDS THE THRESHOLD
24 OF THAT EDGE, IT MOVES THE DOCUMENT BY THE
25 APPROPRIATE AMOUNT SO YOU CAN SEE IT.

1 ON THE RIGHT-HAND SIDE IS THE SAME
2 FUNCTIONALITY, BUT WRITTEN IN A SLIGHTLY DIFFERENT
3 WAY FOR THE BROWSER APPLICATION, AND IN THIS CASE
4 IT'S COMPUTING THE AMOUNT OF BOUNCE THAT NEEDS TO
5 HAPPEN WHEN THE FINGER IS RELEASED AND IT DOES SOME
6 CALCULATIONS WITH THAT.

7 SO I WANT TO EMPHASIZE, THIS IS JUST THE
8 RELEVANT SNIPPET OF THE OVERALL CODE. THERE'S MUCH
9 MORE CODE THAT MAKES THIS ALL REALLY WORK IN
10 TOTALITY.

11 Q SO BASED ON YOUR REVIEW OF THE CODE AND OF THE
12 DEVICE, WHAT IS YOUR CONCLUSION AS TO WHETHER THE
13 SAMSUNG GALLERY S II, AT&T, INFRINGES CLAIM 19 OF
14 THE '381 PATENT?

15 A BASED ON MY REVIEW OF THE DEVICES AND THE
16 CODE, IT IS MY OPINION THAT THE SAMSUNG
17 GALAXY S II, AT&T, INFRINGES CLAIM 19 OF THE '381
18 PATENT IN ALL THREE APPLICATIONS.

19 Q YOU ANALYZED OTHER SAMSUNG PHONES?

20 A YES, I DID.

21 Q AND DOES YOUR OPINION EXTEND TO OTHERS OF THE
22 PHONES THAT YOU EXAMINED?

23 A YES, 20 OTHER PHONES ALSO INFRINGE THE '381
24 PATENT.

25 Q CAN WE SHOW THAT TO THE JURY ?

1 A SURE.

2 Q OKAY. SO LET'S LOOK AT 27.32. I'M SORRY,
3 .33?

4 A WHAT I HAVE HERE IS THE FOUR OTHER PHONES,
5 GALAXY S I9000, GALAXY S II I9100, S 4G, AND THE
6 VIBRANT, ALL SHOWING THE SAME FUNCTIONALITY THAT I
7 WENT THROUGH IN DETAIL EARLIER WITH THE
8 GALAXY S II, AND YOU CAN SEE THAT ALL OF THEM DO
9 THE SAME KIND OF BOUNCING.

10 Q AND NOW LET'S LOOK AT PDX 27.34?

11 A THESE ARE FOUR MORE PHONES, THE ACE,
12 CAPTIVATE, CONTINUUM, AND THE DROID CHARGE.

13 AGAIN, EACH OF THEM DO THE SAME
14 FUNCTIONALITY AS I ILLUSTRATED BEFORE IN THE
15 GALLERY APPLICATION.

16 Q LET'S JUST SEE THAT ONE MORE TIME SINCE WE
17 SHOWED ALL FOUR TOGETHER.

18 A YOU DRAG TO THE RIGHT, REACH THE EDGE, YOU LET
19 GO, IT BOUNCES BACK.

20 Q AND 27.35.

21 A THESE ARE FOUR MORE DEVICES, EXHIBIT 4G, THE
22 EPIC 4G, THE FASCINATE, AND THE INDULGE,
23 ESSENTIALLY DOING WHAT YOU'VE ALREADY SEEN.

24 Q AND LET'S PLAY THAT ONE MORE TIME.

25 A AGAIN, DRAG TO THE RIGHT, YOU REACH THE EDGE,

1 AN AREA BEYOND THE EDGE IS SEEN, AND IT BOUNCES
2 BACK WHEN YOU LET GO.

3 Q AND 27.36.

4 A THIS IS ANOTHER FIVE PHONES, THE INFUSE, THE
5 MESMERIZE, THE NEXUS S 4G, THE PREVAIL, AND THE
6 REPLENISH.

7 AGAIN, SAME FUNCTIONALITY. YOU DRAG TO
8 THE RIGHT, WHEN YOU LET GO, IT BOUNCES BACK.

9 Q AND THEN 27.37.

10 A AND THESE ARE THE TWO TABLET DEVICES RUNNING
11 THE GALLERY. THEY DO THE EXACT SAME FUNCTIONALITY.
12 YOU REACH THE EDGE, YOU LET GO, IT BOUNCES BACK.

13 Q NOW, DID YOU ALSO SHOW -- LOOK AT SOME OTHER
14 SAMSUNG PRODUCTS IN CONNECTION WITH THE CONTACTS
15 APPLICATION?

16 A YES, I DID. AND I THINK I'VE ILLUSTRATED FOUR
17 MORE OF THEM HERE.

18 Q 27.38?

19 A RIGHT. THIS IS THE FASCINATE, THE GALAXY S
20 4G, THE GEM, AND THE VIBRANT, AND THEY ALL DO THE
21 SAME BOUNCE BACK FUNCTIONALITY IN THE CONTACTS
22 LIST.

23 AND IN THIS CASE YOU DRAG UP AND DOWN,
24 YOU REACH THE EDGE, IT SHOWS AN AREA BEYOND THE
25 EDGE, AND IT BOUNCES BACK.

1 Q DO OTHER SAMSUNG PRODUCTS ALSO INFRINGE IN THE
2 CONTACTS LIST APPLICATION?

3 A YES, THEY DO. I BELIEVE THERE'S A TOTAL OF 16
4 OF THE 21 ACCUSED PRODUCTS THAT INFRINGE IN THE
5 CONTACTS LIST APPLICATION.

6 Q AND DO YOU HAPPEN TO REMEMBER WHAT THE OTHERS
7 ARE?

8 A I DON'T REMEMBER, BUT I HAVE A LIST HERE AND I
9 CAN READ THEM OUT IF YOU WANT ME TO.

10 Q THAT WOULD BE GREAT.

11 A SO THE ONES THAT DO INFRINGE IN THE CONTACTS
12 LIST ARE THE CAPTIVATE, THE CONTINUUM, THE DROID
13 CHARGE, THE EPIC 4G, THE EXHIBIT 4G, THE FASCINATE,
14 THE GALAXY ACE, THE GALAXY S I9000, THE GALAXY S II
15 I9100, THE GALAXY S II, AT&T, WHICH WE'VE ALREADY
16 GONE THROUGH IN DETAIL, THE GALAXY S 4G, THE GEM,
17 THE INDULGE, THE INFUSE 4G, THE MESMERIZE, AND THE
18 VIBRANT.

19 Q HAVE YOU PREPARED ADDITIONAL VIDEOS DEPICTING
20 INFRINGEMENT IN THE BROWSER APPLICATION?

21 A YES, I HAVE.

22 Q LET'S TAKE A LOOK AT THOSE, 27.39.

23 A THESE ARE FOUR SAMSUNG DEVICES, THE ACE,
24 EXHIBIT 4G, GALAXY S II I9100, AND THE GALAXY
25 TAB 10.1, ALL OF WHICH ARE PERFORMING THE '391,

1 CLAIM 19 FUNCTIONALITY IN THE BROWSER APPLICATION.

2 AND IF WE PLAY THAT AGAIN JUST VERY
3 QUICKLY, YOU CAN SEE YOU DRAG THE DOCUMENT, WHEN AN
4 EDGE IS REACHED, AN AREA BEYOND THE EDGE, THE GRAY
5 AREA IS SHOWN. WHEN YOU LET GO, IT BOUNCES BACK.

6 Q HAVE YOU PREPARED A COMPILATION OF THESE
7 VIDEOS FOR THE JURY?

8 A YES, I PREPARED A WHOLE SET OF VIDEOS OVER THE
9 COURSE OF THIS THAT ILLUSTRATE THE DIFFERENT
10 INFRINGEMENT.

11 Q AND ARE THOSE VIDEOS IN PX 64?

12 A YES, THEY ARE.

13 MR. JACOBS: YOUR HONOR, WE OFFER PX 64
14 IN EVIDENCE.

15 THE COURT: ANY OBJECTION?

16 MR. JOHNSON: NO OBJECTION, YOUR HONOR.

17 THE COURT: ALL RIGHT. THEY'RE ADMITTED.

18 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
19 64, HAVING BEEN PREVIOUSLY MARKED FOR
20 IDENTIFICATION, WAS ADMITTED INTO
21 EVIDENCE.)

22 BY MR. JACOBS:

23 Q GOING BACK TO THE GALLERY APPLICATION FOR A
24 MINUTE --

25 YOU CAN TAKE THAT DOWN, MR. LEE, THANK

1 YOU.

2 GOING BACK TO THE GALLERY APPLICATION FOR
3 A MINUTE, HAVE YOU HEARD OF SOMETHING CALLED THE
4 HOLD STILL BEHAVIOR IN SOME SAMSUNG PRODUCTS?

5 A YES, I HAVE.

6 Q AND WHAT IS YOUR UNDERSTANDING OF THAT
7 BEHAVIOR AND HOW DOES IT AFFECT YOUR INFRINGEMENT
8 ANALYSIS?

9 A THIS IS BEHAVIOR THAT SEEMS TO MANIFEST ITSELF
10 IN SOME SAMSUNG PRODUCTS THAT ARE ACCUSED, BUT NOT
11 ALL, IN THE GALLERY APPLICATION. AND I HAVE NOT
12 BEEN ABLE TO RELIABLY DUPLICATE IT, BUT IT DOES
13 OCCUR IN SOME OF THOSE PRODUCTS.

14 AND WHAT HAPPENS THERE IS WHEN YOU DRAG
15 THE IMAGE VERY, VERY SLOWLY, VERY GINGERLY, VERY
16 SLOWLY FROM THE EDGE INTO -- SO THE EDGE OF THE
17 DOCUMENT IS PASSED, AND YOU LET GO, IT SIMPLY
18 FREEZES. IT DOESN'T ACTUALLY DO THE BOUNCE.

19 AND IN THOSE SITUATIONS, THOSE GALLERY
20 APPLICATIONS STILL DO THE BOUNCE FUNCTIONALITY MOST
21 OF THE TIME.

22 SO AS A RESULT, MY OPINION IS THAT THE
23 GALLERY APPLICATION, EVEN ON THOSE DEVICES THAT
24 HAVE THE HOLD STILL BEHAVIOR ONCE IN A WHILE, THEY
25 STILL INFRINGE THE '381 PATENT BECAUSE THE

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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 11, 2012

EXHIBIT 6

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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 13, 2012
VS.)	
	)	VOLUME 7
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 1989-2320
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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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ADAM BOGUE

DIRECT EXAM BY MR. JOHNSON P. 2274
CROSS-EXAM BY MR. JACOBS P. 2300

1 WE GO TO THE SAME SPOT, AND THERE'S THE
2 1,438 TABLETS, WE ADD THAT TO THE SMARTPHONE TO GET
3 TO THE \$22 MILLION -- OR 22 MILLION UNITS, AND
4 THERE'S 644,000, WHICH WE ADD THAT BACK TO THE
5 SMARTPHONES, WE GET TO THE \$8.1 BILLION.

6 Q NOW, MR. MUSIKA, YOU SAID 644,000, THAT NUMBER
7 THERE IS -- BECAUSE IT'S MISSING ZEROS, IT'S
8 ACTUALLY WHAT?

9 A MILLIONS. SORRY. I DID IT MYSELF. I
10 APOLOGIZE.

11 Q ALL RIGHT. DOES THIS REPRESENT SALES JUST IN
12 THE UNITED STATES?

13 A SALES OF TABLETS AND SMARTPHONES ONLY IN THE
14 UNITED STATES BY THE DEFENDANT SAMSUNG.

15 Q OKAY. HAVE YOU LOOKED AT INFORMATION ABOUT
16 HOW SAMSUNG'S SALES OF THE ACCUSED PRODUCTS IN THIS
17 CASE -- LET ME START OVER.

18 HAVE YOU LOOKED AT INFORMATION ABOUT HOW
19 SAMSUNG SALES OF SMARTPHONES AND TABLETS BEFORE THE
20 INTRODUCTION OF THE ACCUSED PRODUCTS IN THIS CASE
21 COMPARED TO SAMSUNG SALES OF SMARTPHONES AND
22 TABLETS AFTER THE INTRODUCTION OF THE ACCUSED
23 PRODUCTS?

24 A YES.

25 Q OKAY. COULD WE SEE SLIDE 34B.9. WHAT

1 INFORMATION IS SHOWN ON 34B.9, MR. MUSIKA?

2 A THIS IS A GRAPH, AND ON THE VERTICAL AXIS,
3 IT'S THE MARKET SHARE PERCENT. SO IT'S HOW MUCH OF
4 THE OVERALL SMARTPHONE MARKET DID SAMSUNG HAVE OVER
5 TIME, WHICH IS OUR HORIZONTAL X AXIS THERE.

6 AND THE SLIDE IS DIVIDED UP, AS YOU JUST
7 INDICATED, INTO TWO SEGMENTS. ON THE LEFT-HAND
8 SIDE WITH THE BLUE IS THE TIME PERIOD FOR SAMSUNG
9 PRIOR TO THE INTRODUCTION OF THEIR FIRST ACCUSED
10 PHONE, AND WHAT WE CAN SEE THEN WITH THE
11 INTRODUCTION OF THE FIRST ACCUSED PHONE, THE RED
12 LINE, ON THE RIGHT-HAND SIDE IS THE PERIOD OF TIME
13 AFTERWARDS.

14 Q AND HOW DO THE TWO PERIODS, THAT IS, BEFORE
15 AND AFTER, COMPARE TO ONE ANOTHER?

16 A YES. IT'S A RATHER DRAMATIC DEMONSTRATION OF
17 SAMSUNG WAS LOSING MARKET SHARE DURING THE PERIOD
18 PRIOR TO 2010, APPROXIMATELY JUNE OF 2010 WHEN THEY
19 INTRODUCED THE FIRST ACCUSED PHONE.

20 AFTER THEY INTRODUCED THE FIRST ACCUSED
21 PHONE, SAMSUNG'S MARKET SHARE TOOK AN ABRUPT UPWARD
22 SWING AND HAS CONTINUED TODAY TO ADVANCE
23 DRAMATICALLY IN INCREASES IN MARKET SHARE.

24 Q WHERE DID THE INFORMATION THAT FORMS THIS
25 CHART COME FROM?

1 A ONCE AGAIN, THIS ISN'T MY INFORMATION. THIS
2 IS TAKEN NOT FROM APPLE OR FROM SAMSUNG IN THIS
3 CASE. THIS IS TAKEN -- YOU CAN SEE PERHAPS RIGHT
4 DOWN THERE ON THE BOTTOM, SOURCE IDC WORLDWIDE
5 QUARTERLY.

6 IDC IS AN INDEPENDENT MARKETING
7 ORGANIZATION THAT BOTH APPLE AND SAMSUNG USE TO
8 HELP THEM IN DOING THEIR OWN MARKET RESEARCH. SO
9 THIS IS AN INDEPENDENT STUDY AND ANALYSIS THAT WAS
10 DONE BY IDC.

11 Q OKAY. LET'S TURN TO THE SPECIFIC DAMAGES
12 REMEDIES THAT YOU EVALUATED IN THIS CASE.

13 WHAT KINDS OF REMEDIES DID YOU APPLY WITH
14 RESPECT TO THE VARIOUS INTELLECTUAL PROPERTY RIGHTS
15 THAT APPLE HAS ASSERTED IN THE CASE?

16 A I CONSIDERED THREE DIFFERENT FORMS OF REMEDY
17 IN TOTAL AS IT RELATES TO THE DESIGN, AND THAT
18 WOULD BE THE DESIGN PATENT AND THE TRADE DRESS. I
19 CONSIDERED TWO FORMS OF DAMAGE.

20 Q WHAT WERE THOSE TWO FORMS?

21 A ONE, ONE IS CALLED SAMSUNG'S PROFITS, AND THE
22 OTHER IS CALLED APPLE'S LOST PROFITS.

23 TO PUT IT IN REAL STRAIGHT TERMS, IT'S
24 EITHER WHAT SAMSUNG HAS GAINED OR IT'S WHAT APPLE
25 HAS LOST.

1 IN THE CASE OF SAMSUNG'S GAIN, THAT'S
2 SOMETIMES REFERRED TO AS AN UNJUST ENRICHMENT
3 BECAUSE THE PRESUMPTION IS THEY'VE MADE THAT GAIN,
4 THAT MONEY HAS SLID ACROSS THE SLIDE BECAUSE THEY
5 VIOLATED APPLE'S INTELLECTUAL PROPERTY.

6 Q OKAY. AND REMIND US AGAIN, WHICH TYPES OF
7 INTELLECTUAL PROPERTY RIGHTS DID YOU USE THIS KIND
8 OF ANALYSIS, THE SAMSUNG PROFIT OR APPLE'S LOST
9 PROFITS FOR?

10 A I USED THEM BOTH, AND WE'RE GOING TO SEE THE
11 SITUATION -- THIS ISN'T DOUBLE COUNTING. I USED
12 THEM BOTH FOR THE DESIGN PATENTS AND TRADE DRESS.

13 Q OKAY. WHAT KIND OF REMEDY DID YOU LOOK AT FOR
14 VIOLATIONS OF APPLE'S UTILITY PATENT RIGHTS?

15 A DIFFERENT COMBINATION THERE. LOST PROFITS
16 AGAIN, WHICH I'VE ALREADY DESCRIBED, THAT'S APPLE'S
17 LOSS.

18 BUT HERE I'VE CONSIDERED IN THE
19 ALTERNATIVE WHAT'S CALLED A REASONABLE ROYALTY.

20 Q OKAY. HOW DID YOU -- WHAT WAS YOUR BASIS FOR
21 APPLYING A DIFFERENT KIND OF REMEDY FOR SOME KINDS
22 OF PATENT RIGHTS THAN OTHERS?

23 A IT'S MY UNDERSTANDING OF WHAT IS THE ACCEPTED
24 DAMAGE METHODOLOGY TO BE USED, DEPENDING ON THE
25 TYPE OF INTELLECTUAL PROPERTY. SO THAT'S WHY WE

1 SEE A SLIGHT CHANGE IN THE UTILITY PATENTS VERSUS
2 THE DESIGN AND TRADE DRESS.

3 Q OKAY. COULD WE LOOK AT SLIDE 34B.75.

4 WHAT IS SHOWN ON SLIDE 34B.75,
5 MR. MUSIKA?

6 MR. PRICE: YOUR HONOR, I OBJECT. HE'S
7 NOT A LAWYER. I OBJECT TO SHOWING HIM LAW.

8 THE COURT: I'VE OVERRULED THAT OBJECTION
9 IN MY ORDER OF LAST NIGHT, SO I'LL STILL OVERRULE
10 IT.

11 THE WITNESS: YES. THIS IS THE DAMAGES
12 DESCRIPTION UNDER THE LAW FOR DESIGN PATENT
13 DAMAGES.

14 BY MS. KREVANS:

15 Q AND IS THIS THE TEST YOU APPLIED, THAT IS,
16 THAT THE -- IF THE DEFENDANT DID INFRINGE, THEY'RE
17 FOUND LIABLE TO THE EXTENT OF TOTAL PROFIT?

18 A RIGHT. KEEPING IN MIND, AGAIN, I'M MAKING NO
19 DETERMINATION ON WHETHER THEY DID OR DIDN'T
20 INFRINGE. I'M ACCEPTING THAT AS AN ASSUMPTION.

21 BUT, YES, HAVING DONE THAT, I'VE USED THE
22 TOTAL PROFITS, AGAIN, OF SAMSUNG.

23 Q OKAY. COULD WE SEE SLIDE 34B.76, WHICH IS
24 HEADED TRADE DRESS DAMAGES.

25 IS THIS THE TEST FOR DAMAGES THAT YOU

1 USED FOR TRADE DRESS VIOLATIONS?

2 A YES. AND, AGAIN, WE CAN SEE IN THE
3 ENUMERATION, ONE, DEFENDANT'S PROFITS, THAT WOULD
4 BE SAMSUNG AGAIN; AND DAMAGES SUSTAINED BY
5 PLAINTIFF, THAT WOULD BE LOST PROFITS; AND COSTS OF
6 THE ACTION. I'M NOT GIVING ANY OPINION ON THAT
7 THIRD PIECE.

8 Q AND IF WE COULD SEE SLIDE 34B.74. THIS ONE IS
9 JUST HEADED PATENT DAMAGES.

10 WHAT IS THIS TEST?

11 A YES. AND THIS TEST BASICALLY SAYS THAT UNDER
12 A UTILITY PATENT, THE PATENTEE IS ENTITLED TO
13 DAMAGES ADEQUATE TO COMPENSATE FOR INFRINGEMENT,
14 BUT UNDER NO EVENT LESS THAN A REASONABLE ROYALTY.

15 SO THAT'S WHY YOU USE THOSE TWO FORMS,
16 LOST PROFITS OR, IN THE ALTERNATIVE, A REASONABLE
17 ROYALTY.

18 Q OKAY. YOU'VE TALKED, MR. MUSIKA, ABOUT THREE
19 DIFFERENT FORMS OF DAMAGES AND 22 MILLION PHONES
20 AND TABLETS.

21 DID YOU DO ANYTHING TO MAKE SURE THAT YOU
22 WERE NOT DOUBLE COUNTING THE DAMAGES FOR ANY ONE OF
23 THOSE PHONES AND TABLETS?

24 A I DID.

25 Q WHAT DID YOU DO?

1 A WELL, IT'S -- IT'S -- IT'S EASY TO VISUALIZE,
2 BUT IT'S HARD TO IMAGINE.

3 BUT THE CALCULATION REALLY HAD TO BE DONE
4 ON A PHONE-BY-PHONE, TABLET-BY-TABLET BASIS. EACH
5 PHONE, EACH TABLET DESERVES OR GETS ITS OWN DAMAGE,
6 AND SO THAT CALCULATION HAD TO BE DONE INDIVIDUALLY
7 ON EACH ONE OF THOSE PRODUCTS.

8 Q AND HOW DID YOU DECIDE, FOR EACH ONE OF THOSE
9 PRODUCTS, WHICH OF THE THREE DIFFERENT KINDS OF
10 DAMAGES YOU DESCRIBED SHOULD BE ASSIGNED TO IT?

11 A WELL, THERE WERE SEVERAL CRITERIA. ONE WE
12 JUST WENT THROUGH, WHICH IS THE FORM OF DAMAGES.

13 ANOTHER WOULD BE THE TIME PERIOD IN
14 WHICH -- NOT ALL SALES OCCURRED AT THE SAME TIME.
15 THEY OCCURRED AT DIFFERENT TIMES.

16 AND NOT ALL THE INTELLECTUAL PROPERTY,
17 WHETHER IT WAS A UTILITY PATENT OR A DESIGN PATENT,
18 THEY DIDN'T ALL ISSUE AT ONCE. SO THEY ISSUED AT
19 VARIOUS POINTS IN TIME.

20 SO IT'S REALLY THE INTERSECTION OF WHEN
21 SOMETHING WAS SOLD, WHICH FORM OF DAMAGES -- WHICH
22 FORM OF INTELLECTUAL PROPERTY IT IS ACCUSED OF, AND
23 THEN MAKING THAT CALCULATION ON, AGAIN, A
24 UNIT-BY-UNIT BASIS.

25 Q OKAY. COULD WE SEE SLIDE 34B.56.

1 WHAT HAVE YOU DEPICTED ON THIS SLIDE,
2 MR. MUSIKA?

3 A I THINK THIS IS GOING TO HELP SHOW AND EXPLAIN
4 WHAT I WAS JUST BRIEFLY TRYING TO EXPLAIN.

5 I'VE GOT 22 PHONES AT THE TOP, AND THINK
6 OF THESE AS EITHER PHONES OR TABLETS, IT DOESN'T
7 MATTER. BUT EACH ONE OF THOSE REPRESENTS A MILLION
8 UNITS TO TRY AND KEEP US ORIENTED ON THE 22 MILLION
9 TOTAL UNITS.

10 AND SO AS WE JUST WENT THROUGH, I HAVE
11 THREE FORMS OF DAMAGE. EACH ONE OF THOSE PHONES,
12 EACH ONE OF THOSE 22 MILLION PHONES, HAS TO GO IN
13 ONE OF THOSE CATEGORIES, BUT NOT TWO CATEGORIES.
14 IF WE PUT IT IN TWO CATEGORIES, THEN WE'RE GOING TO
15 END UP WITH DOUBLE COUNTING.

16 Q OKAY. CAN YOU JUST WALK US THROUGH,
17 UNDERSTANDING THIS IS A SIMPLIFICATION, WALK US
18 THROUGH THE ALLOCATION THAT YOU MADE.

19 A WELL, THE ALLOCATION THAT I MADE WAS I, I
20 FIRST -- I THINK THE NEXT SLIDE IS GOING TO SHOW
21 THE AMOUNT OF 17 MILLION UNITS SHOULD SLIDE DOWN,
22 AND I CALCULATED THEM AS SAMSUNG'S PROFITS. THAT'S
23 THE UNJUST GAIN. SO I'M USING THAT FORM OF DAMAGES
24 FOR APPROXIMATELY 17 MILLION OF THE TOTAL 22
25 MILLION.

1 Q OKAY. HOW MANY OF THE 5 MILLION LEFT DID YOU
2 PUT IN THE APPLE LOST PROFITS DAMAGES CATEGORY?

3 A I PUT TWO INTO THE LOST PROFITS CATEGORY, SO
4 WE SHOULD HAVE TWO OF THOSE SLIDE DOWN, AND 2
5 MILLION, APPROXIMATELY, COME DOWN THERE.

6 AND THAT, OF COURSE, LEAVES THE 3
7 MILLION, AND YOU CAN OF COURSE GUESS WHERE THOSE
8 GO, DOWN TO THE REASONABLE ROYALTY.

9 AND WE CAN SEE VERY CLEARLY THAT NO
10 INDIVIDUAL PRODUCT HAS HAD MORE THAN ONE DAMAGE
11 CALCULATED ON IT.

12 Q OKAY. THAT LOOKED EASY.

13 CAN YOU DESCRIBE FOR THE JURY THE ACTUAL
14 AMOUNT OF EFFORT THAT IT TOOK TO MAKE THESE
15 ALLOCATIONS AND THEN MAKE THOSE ONE, ONE PHONE BY
16 ONE TABLET DAMAGES CALCULATIONS THAT YOU MADE.

17 A IT -- I CAN ASSURE YOU, IT'S NOT ME SITTING AT
18 A DESK WITH A CALCULATOR DOING 22 MILLION
19 CALCULATIONS.

20 IN FACT, BECAUSE OF THE VARIOUS
21 COMBINATIONS, THERE ARE LITERALLY HUNDREDS OF
22 MILLIONS OF CALCULATIONS, AND SO THE ONLY WAY,
23 PRACTICALLY, TO DO THIS IS TO WRITE A COMPUTER
24 PROGRAM.

25 AND SO OVER THE LAST YEAR AND A HALF TO

1 TWO YEARS, I HAVE HAD A TEAM OF 20 PEOPLE,
2 ECONOMISTS, PROGRAMMERS, STATISTICIANS AND C.P.A.'S
3 DEVELOPING A MODEL THAT IS DYNAMIC ENOUGH TO TAKE
4 IN ALL 22 MILLION AND MAKE CHANGES AND ADJUSTMENTS,
5 SINCE THIS PROCESS WENT ON FOR A YEAR AND A HALF,
6 AS NEW PRODUCTS CAME IN AND WENT OUT.

7 AND ABOUT 7,000 TOTAL PROFESSIONAL HOURS
8 WERE DEDICATED TOWARDS THE CREATION AND OPERATION
9 OF THAT COMPUTER MODEL.

10 Q THAT SOUNDS EXPENSIVE. WAS IT EXPENSIVE?

11 A IT WAS VERY EXPENSIVE.

12 Q WHAT DID IT COST TOTAL FOR YOUR TEAM OF 23
13 PEOPLE?

14 A 20 PEOPLE, OVER MORE THAN A YEAR AND A HALF,
15 THAT 7,000 HOURS, WAS APPROXIMATELY \$1,750,000.

16 Q OKAY. LET'S GO BACK TO THE FIRST CATEGORY YOU
17 TALKED ABOUT, THE SAMSUNG PROFIT CATEGORY.

18 ONCE YOU HAD ALLOCATED 17 MILLION PHONES
19 AND TABLETS TOTAL INTO THAT CATEGORY, WHAT WAS THE
20 NEXT STEP IN DETERMINING THE DAMAGES FOR THOSE 17
21 MILLION DEVICES?

22 A WELL, IT'S, IT'S MAKING THE ACTUAL
23 CALCULATIONS. IT'S FIGURING OUT HOW MUCH -- WE NOW
24 KNOW THE UNITS, BUT HOW MUCH DID SAMSUNG ACTUALLY
25 MAKE ON THOSE 17 MILLION?

1 Q OKAY. IF WE COULD SEE THE NEXT SLIDE. WE'RE
2 SHOWING \$2.241 BILLION HERE.

3 CAN YOU EXPLAIN TO THE JURY HOW YOU CAME
4 UP WITH THAT NUMBER IN CONCEPT?

5 A IN CONCEPT, KEEP IN MIND THE 17 MILLION UNITS,
6 AGAIN, AND IT'S -- IT'S FIGURING OUT HOW MUCH DID
7 SAMSUNG ACTUALLY MAKE IN PROFIT ON EACH ONE OF
8 THOSE UNITS, AS SIMPLISTICALLY MULTIPLICATION.
9 IT'S THE UNITS TIMES THE PROFITS AND THAT GETS YOU
10 TO \$2.2 BILLION.

11 Q WHAT WAS THE SOURCE OF THE INFORMATION YOU
12 USED FOR THE PURPOSES OF MAKING THESE CALCULATIONS?

13 A THESE NUMBERS ARE, IN THIS CASE ARE SAMSUNG'S
14 NUMBERS. WHEN I'M TALKING ABOUT SAMSUNG'S PROFIT,
15 THESE ARE NUMBERS THAT COME DIRECTLY FROM SAMSUNG'S
16 FINANCIAL RECORDS.

17 Q OKAY. COULD WE SEE SLIDE 34B.15.

18 STARTING HERE -- I KNOW YOU HAVE A SERIES
19 OF SLIDES HERE, MR. MUSIKA. CAN YOU WALK US
20 THROUGH THE NATURE OF THE CALCULATION YOU DID TO
21 ARRIVE AT THE \$2.24 BILLION PROFIT NUMBER FOR THE
22 \$17 MILLION PHONES -- 17 MILLION PHONES?

23 A YES. WELL, THERE'S THE \$8.1 BILLION NUMBER
24 AGAIN -- PARDON ME -- AND HOPEFULLY WE CAN REMEMBER
25 THAT WAS THE TOTAL OF THE ACCUSED SALES.

1 BUT KEEPING IN MIND, I'M CALCULATING
2 THIS, THIS DAMAGE ONLY ON SAMSUNG'S PORTION.

3 SO THE FIRST THING I DO IS I HAVE TO
4 REDUCE THAT NUMBER FOR THE UNITS THAT, THAT OTHER 5
5 MILLION UNITS THAT WENT TO OTHER FORMS OF DAMAGE.
6 SO THAT'S THE FIRST DEDUCTION. I THINK THAT'S THE
7 NEXT SLIDE.

8 AND I DEDUCT 1.749 BILLION BECAUSE I'M
9 GOING TO CALCULATE DAMAGES ON A REASONABLE ROYALTY
10 TO LOST PROFITS, AND THAT LEAVES ME \$6,411,000,000.

11 Q AND WHAT WAS THE NEXT STEP?

12 A THE NEXT STEP IS WHAT WE ALL -- REGARDLESS OF
13 WHAT BUSINESS WE'RE IN, ALL OF US INCUR THE SAME
14 THING. WE HAVE REVENUE BECAUSE WE MAKE A SALE, AND
15 WE HAVE EXPENSES. NOBODY JUST GIVES US MONEY. AND
16 SAMSUNG INCURRED EXPENSES TO GENERATE THAT
17 6,411,000,000, SO I HAD TO IDENTIFY HOW MUCH DID IT
18 COST SAMSUNG TO EARN OR GENERATE THAT
19 6,411,000,000.

20 Q OKAY. SO LET'S SEE THE NEXT SLIDE.

21 A AND THERE YOU SEE -- THERE YOU SEE THE COST OF
22 GOODS SOLD, HOW MUCH DID IT COST, WHAT ARE THE
23 DIRECTLY ATTRIBUTABLE COSTS THAT SAMSUNG INCURRED,
24 AND THAT'S 4,170,000,000.

25 IF I SUBTRACT THAT FROM THAT PRIOR

1 NUMBER, THAT GETS US DOWN TO THE BOTTOM,
2 \$2,241,000,000.

3 Q OKAY. HAVE YOU DONE THIS CALCULATION FOR EACH
4 OF THE DIFFERENT PRODUCTS ACCUSED OF VIOLATING ONE
5 OF APPLE'S DESIGN OR TRADE DRESS PATENT RIGHTS?

6 A YES.

7 Q COULD WE SEE SLIDE 34B.19?

8 WHAT IS DEPICTED HERE, MR. MUSIKA?

9 A THIS IS JUST A, AN ADDITIONAL SLIDE TO HELP
10 THE COURT SEE THAT NOT ONLY DID I DO IT ON AN
11 INDIVIDUAL TABLET-BY-TABLET,
12 SMARTPHONE-BY-SMARTPHONE BASIS, BUT THOSE ARE BY
13 MODEL, TOO.

14 SO HERE IS THAT SAMSUNG'S PROFITS
15 DIVIDED, OR SHOWN BY MODEL, BOTH FOR TABLETS AND
16 SMARTPHONES.

17 Q OKAY. HAS SAMSUNG ALSO PROVIDED A CALCULATION
18 IN THIS CASE OF WHAT IT SAYS ARE ITS PROFITS ON
19 THIS SAME GROUP OF 17 MILLION DEVICES?

20 A WELL, NOT TO CONFUSE ANYONE. MY NUMBER THAT
21 I'VE JUST GIVEN YOU IS SAMSUNG'S NUMBER, TOO.

22 BUT I DEDUCTED CERTAIN COSTS AND SAMSUNG
23 WOULD -- WOULD AND HAS SAID THAT THEY'VE INCURRED
24 ADDITIONAL COSTS THAT SHOULD BE SUBTRACTED.

25 SO THERE'S NO DISPUTE ABOUT THE NUMBERS

1 THAT I'M USING. IT'S JUST THAT THERE'S A DISPUTE
2 ABOUT HOW MUCH -- HOW MANY COSTS SHOULD BE INCLUDED
3 IN THE CALCULATION.

4 Q COULD WE SEE PDX 34B.20.

5 WHAT HAVE YOU SHOWN ON THIS SLIDE,
6 MR. MUSIKA?

7 A THERE'S NO MATH IN THIS SLIDE. THERE'S JUST
8 THREE NUMBERS. THE FIRST NUMBER IS THE FAVORITE
9 NUMBER, OR THE OLD NUMBER WE KNOW, THE 8.1 BILLION
10 TOTAL REVENUE. SO THAT'S THE REVENUE AT ISSUE.

11 THE MIDDLE NUMBER IS MY NUMBER OF WHAT
12 THE UNJUST GAIN IS. THAT'S THE SAME \$2.2 BILLION
13 NUMBER.

14 BUT THE NUMBER ON THE RIGHT IS ANOTHER
15 SAMSUNG CALCULATION WHICH TAKES MY 2.2 BILLION AND
16 TAKES IT DOWN TO \$1,086,000,000.

17 Q AND WHAT IS -- SINCE YOU BOTH STARTED WITH THE
18 SAME NUMBERS FROM SAMSUNG'S RECORDS, WHAT IS THE
19 REASON FOR THE DIFFERENCE BETWEEN YOUR CALCULATION
20 OF TOTAL PROFITS ON THESE 17 MILLION PHONES AND
21 SAMSUNG'S CALCULATION OF TOTAL PROFITS ON THESE 17
22 MILLION PHONE?

23 A WE'RE GOING TO SEE IT IN JUST A SECOND, BUT
24 IT'S REAL SIMPLE. KEEP IN MIND I DEDUCTED COSTS
25 WHICH ARE DIRECTLY ATTRIBUTABLE.

1 SAMSUNG DEDUCTED THOSE COSTS AS WELL, BUT
2 THEY DEDUCTED ADDITIONAL COSTS WHICH I DID NOT
3 DEDUCT, AND WE'LL LOOK AT THOSE PRESENTLY.

4 Q OKAY. WHY DON'T WE LOOK AT EXHIBIT 28. IT'S
5 IN YOUR BINDER. AND COULD WE START SIMPLY BY YOU
6 IDENTIFYING WHAT EXHIBIT 28 IS.

7 A EXHIBIT 28 IS A -- THIS IS A SCHEDULE THAT I
8 PREPARED USING SAMSUNG'S RECORDS, TRANSLATED
9 RECORDS, FOR SEC AND I USED IT FOR PURPOSES OF
10 LOOKING AT THE TYPES OF COSTS -- THIS WILL LIST ALL
11 THEIR COSTS FROM TOP TO BOTTOM, AND WE'LL SEE THE
12 KIND OF COSTS I DEDUCTED AND THE ADDITIONAL COSTS
13 THAT SAMSUNG DEDUCTED.

14 MS. KREVANS: OKAY. YOUR HONOR, WE MOVE
15 THE ADMISSION OF EXHIBIT PX 28.

16 MR. PRICE: NO OBJECTION.

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

18 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
19 28, HAVING BEEN PREVIOUSLY MARKED FOR
20 IDENTIFICATION, WAS ADMITTED INTO
21 EVIDENCE.)

22 BY MS. KREVANS:

23 Q YOU SAY YOU PREPARED THIS. WHAT WAS THE
24 SOURCE OF THESE NUMBERS?

25 A SAMSUNG RECORDS.

1 Q DID YOU CHANGE THE NUMBERS IN ANY WAY WHEN YOU
2 PREPARED THIS SCHEDULE?

3 A THE NUMBERS ARE -- THEY'RE IMPORTANT, BUT
4 THEY'RE NOT THE NUMBERS. THEY'RE THE NUMBERS FOR
5 THE OVERALL ENTITY. SO IT HAS OTHER SALES OF
6 NON-ACCUSED ITEMS.

7 MY FOCUS IS REALLY MORE ON TERMS OF THE
8 TYPES OF ACCOUNTS, BUT I DIDN'T CHANGE THIS. THIS
9 COMES DIRECTLY -- THIS IS THE TYPE OF ACCOUNTS AND
10 THE NUMBERS COME DIRECTLY FROM SAMSUNG.

11 Q OKAY. COULD WE JUST MAKE A LITTLE LARGER,
12 MR. LEE, THE TOP PORTION OF THIS DOWN THROUGH LINE,
13 GROSS SALES PROFIT PERCENTAGE.

14 WHAT'S DEPICTED HERE, MR. MUSIKA?

15 A SAMSUNG'S RECORDS ARE, ARE THE SAME AS, IN
16 MANY OTHER SOPHISTICATED, SAME AS APPLE'S. THEY'RE
17 PREPARED BASICALLY IN THE SAME FORMAT.

18 AND THE BASIC FORMAT OF A FINANCIAL
19 STATEMENT, OR A PROFIT AND LOSS STATEMENT, IS NO
20 DIFFERENT THAN OUR PERSONAL PROFIT AND LOSS
21 STATEMENTS.

22 WE START AT THE TOP WITH HOW MUCH DID WE
23 EARN, WHAT'S THE REVENUE? AND THEN WE DEDUCT
24 EXPENSES.

25 STARTING AT THE TOP, THOSE EXPENSES ARE

1 DIRECTLY ATTRIBUTABLE. AS YOU MOVE DOWN AND YOU
2 GET TO WHERE PEOPLE USUALLY REFER TO IT, THE BOTTOM
3 LINE, THOSE COSTS THAT ARE INCLUDED BECOME LESS AND
4 LESS SPECIFICALLY ASSOCIATED WITH THE REVENUE.

5 SO HERE WE SEE REVENUE, QUANTITY AT THE
6 TOP, AND THEN SALES IN TERMS OF TOTAL DOLLARS.

7 Q AND I TAKE IT FROM WHAT YOU SAID A COUPLE
8 MINUTES AGO, WHERE IT SAYS SALES \$30 BILLION, YOU
9 DIDN'T USE ALL 30 BILLION OF THOSE DOLLARS IN YOUR
10 CALCULATIONS?

11 A NO. AGAIN, THIS IS THEIR NUMBERS FROM THE SEC
12 MANUFACTURING ENTITY THAT HAS SALES OF OTHER ITEMS
13 IN THERE, SO I'VE ALREADY PULLED MY -- MY 8
14 BILLION, OR SAMSUNG'S 8 BILLION IS IN THAT \$30
15 BILLION NUMBER IN THERE, BUT THERE ARE OTHER THINGS
16 IN THERE AND WE SHOULDN'T BE FOCUSSED ON THOSE
17 NUMBERS.

18 Q OKAY. YOU SEE AT THE BOTTOM PORTION OF THIS
19 EXHIBIT 28 THAT WE'RE LOOKING AT ON THE SCREEN
20 RIGHT NOW, THERE ARE TWO LINES THAT SAY "GROSS
21 SALES PROFIT" AND "GROSS SALES PROFIT PERCENTAGE."

22 WHAT ARE THOSE NUMBERS?

23 A STANDARD ACCOUNTING TERMINOLOGY. SALES MINUS
24 COST OF GOODS SOLD, THAT'S -- C.O.G.S. STANDS FOR
25 COST OF GOODS SOLD, AND THOSE ARE COSTS WHICH ARE

1 DIRECTLY ATTRIBUTABLE TO THE PRODUCTION AND/OR SALE
2 OF THE ACCUSED DEVICES.

3 AND THIS IS -- AGAIN, THIS ISN'T MY
4 CONSTRUCTION. THIS IS REALLY GENERALLY ACCEPTED
5 ACCOUNTING PRINCIPALS AND THIS IS DIRECTLY FROM
6 THEIR STATEMENTS.

7 AND THAT GETS US, IF WE DEDUCT THE COST
8 OF GOODS SOLD FROM THE SALES, WE GET A GROSS PROFIT
9 NUMBER AND PERCENTAGE.

10 Q AND WHAT'S THE GROSS PROFIT PERCENTAGE?

11 A GROSS PROFIT PERCENTAGE IS, IN THIS STATEMENT
12 IS 39.2 PERCENT.

13 Q WHAT WAS THE AVERAGE GROSS PROFIT AMOUNT THAT
14 YOU FOUND IN SAMSUNG'S FINANCIAL RECORDS FOR THE \$8
15 BILLION IN SALES OF THE ACCUSED PRODUCTS IN THE
16 UNITED STATES?

17 A ALL RIGHT. THE ACCUSED PRODUCTS HAVE SLIGHTLY
18 LOWER GROSS PROFIT PERCENTAGE. PER MY
19 RECOLLECTION, THE OVERALL GROSS PROFIT PERCENTAGE
20 ON JUST THE ACCUSED PRODUCTS WAS APPROXIMATELY 35.5
21 PERCENT.

22 Q OKAY. YOU SAID A COUPLE MINUTES AGO THAT IF
23 WE MOVE DOWN THIS SAME PAGE OF EXHIBIT 28, WE'RE
24 GOING TO SEE SOME OTHER KINDS OF EXPENSES.

25 A YES.

1 Q DO YOU BELIEVE THAT THOSE OTHER EXPENSES ARE
2 APPROPRIATE TO BE DEDUCTED IN CALCULATING SAMSUNG'S
3 TOTAL PROFITS FOR PURPOSES OF DAMAGES IN THIS CASE?

4 A FIRST OF ALL, SAMSUNG DEDUCTS ALL THOSE OTHER
5 EXPENSES. THEY WERE INCURRED. I'M NOT DISPUTING
6 THEY WERE INCURRED.

7 BUT I DO NOT THINK IT IS APPROPRIATE TO
8 DEDUCT THOSE TO GET TO THE PROFIT NUMBER WHICH
9 WOULD REWARD APPLE FOR SAMSUNG'S UNJUST ENRICHMENT.

10 SO REALLY ALL THE EXPENSES BELOW THERE
11 ARE REALLY THE DISAGREEMENT.

12 Q AND WHY DO YOU THINK THAT THOSE EXPENSES,
13 THOSE OTHER EXPENSES, ARE NOT PROPERLY DEDUCTED IN
14 CALCULATING SAMSUNG'S PROFITS?

15 A I HAVE TWO VERY SPECIFIC REASONS.

16 Q WHAT ARE THEY?

17 A ONE REASON IS THAT THOSE COSTS, BY THEIR VERY
18 NATURE AND HOW THEY'VE BEEN PUT ON THIS FINANCIAL
19 STATEMENT, I KNOW, AS A C.P.A., THAT THEY ARE LESS
20 AND LESS DIRECTLY ASSOCIATED WITH THE PRODUCT AT
21 HAND. SO I KNOW THAT BASED ON SAMSUNG'S OWN
22 REPRESENTATION.

23 SECONDLY, WHEN I TRIED TO INVESTIGATE HOW
24 THEY WOULD PERHAPS TRY TO ALLOCATE THESE -- AND
25 WHEN I SAY "TRY," DON'T MEAN THAT IN A NEGATIVE

1 WAY, BUT IF YOU HAD A NON-DIRECT COST, THE ONLY WAY
2 TO ASSIGN IT IS YOU HAVE TO DETERMINE SOME FORM OF
3 ALLOCATION, AND WHEN I LOOK FOR THE ALLOCATION
4 BASIS, THE RECORDS WERE UNRELIABLE.

5 SO FOR THOSE TWO PRIMARY REASONS, NO, I
6 DID NOT INCLUDE THEM.

7 Q OKAY. CAN YOU GIVE US AN EXAMPLE, FROM
8 SAMSUNG'S ACTUAL EXPENSE CATEGORIES, OF SOMETHING
9 THAT SAMSUNG INCLUDED IN ITS CALCULATION WHICH YOU
10 DID NOT INCLUDE AND EXPLAIN WHY YOU THOUGHT IT WAS
11 INAPPROPRIATE.

12 A YES. MAY I?

13 Q PLEASE.

14 A R&D IS A GOOD EXAMPLE. R&D STANDS FOR
15 RESEARCH AND DEVELOPMENT, AND CERTAINLY SAMSUNG
16 ENGAGES IN RESEARCH AND DEVELOPMENT, AS DOES APPLE.

17 FROM AN ACCOUNTING STANDPOINT, IT'S
18 CALLED MATCHING. WE WANT TO MATCH UP THE EXPENSES
19 WITH THE REVENUE. WE DON'T WANT TO MATCH UP THE
20 EXPENSES FOR PRODUCT A AND SUBTRACT THEM FROM
21 PRODUCT B.

22 AND I KNOW, AGAIN, BASED ON MY OWN
23 ACCOUNTING EXPERIENCE, THAT THE RESEARCH AND
24 DEVELOPMENT COSTS, WHICH ARE INCURRED IN THE
25 CURRENT TIME PERIOD, RELATE TO FUTURE EVENTS, OR

1 FUTURE PRODUCTS, NOT TO THE CURRENT PRODUCTS.

2 AND SO, AGAIN, FOR ANOTHER REASON THERE,
3 IT IS A COST THAT'S NOT A COST THAT'S ASSOCIATED
4 WITH THESE ACCUSED PRODUCTS.

5 Q OKAY. LET'S TURN TO THE SECOND REASON THAT
6 YOU SAID YOU THOUGHT IT WAS INAPPROPRIATE TO
7 INCLUDE THESE OTHER CATEGORIES, AND THAT WAS THAT
8 YOU FOUND THE INFORMATION IN SOME WAYS TO BE
9 UNRELIABLE.

10 A YES, I DID.

11 Q WHAT LED TO THAT CONCLUSION?

12 A AS AN AUDITOR FOR THAT FIRST 10, 12 YEARS OF
13 MY LIFE, AND REALLY DOING INVESTIGATIONS
14 AFTERWARDS, WE AS AUDITORS ARE TAUGHT TO, TO APPLY
15 SOMETHING CALLED PROFESSIONAL SKEPTICISM, EXERCISE
16 OUR PROFESSIONAL JUDGMENT. WE SIMPLY DON'T TAKE
17 FROM OUR CLIENTS OR FROM PARTIES THAT ARE PRODUCING
18 FINANCIAL INFORMATION AND SAY, THAT MUST BE RIGHT.

19 WE GIVE IT -- IN SORT OF LAYMAN'S TERMS,
20 WE GIVE IT A SMELL TEST AND SAY, DOES THIS MAKE
21 SENSE? AND IN AUDIT LINGO, AGAIN, ARE THERE
22 CERTAIN RED FLAGS?

23 AND I ENCOUNTERED A NUMBER OF RED FLAGS
24 WITH SAMSUNG'S DATA BELOW THE GROSS PROFIT LINE.

25 Q OKAY. COULD WE LOOK AT PDX 34B.23, PLEASE.

1 WHAT IS SET OUT IN YOUR SLIDE 23,

2 MR. MUSIKA?

3 A WELL, I WAS GOING TO DO THIS PIECE BY PIECE.
4 AS A TEACHER, I DON'T LIKE PEOPLE READING AHEAD,
5 BUT -- GOOD.

6 Q THANK YOU, MR. LEE.

7 A SO, YES, THERE ARE FOUR RED FLAGS, AS YOU SAW.

8 IT WAS TAKEN AWAY, BUT THE FIRST ONE IS,
9 IS THE INFORMATION THAT I'M PRESENTED WITH, DOES
10 THAT TIE TO SOME RELIABLE SOURCE? SOME OTHER
11 SOURCE, AN AUDITED FINANCIAL STATEMENT, A TAX
12 RETURN, SOMETHING ELSE THAT I KNOW SOMEBODY ELSE IS
13 LOOKING OVER THE COMPANY'S SHOULDER?

14 Q AND WHAT DID YOU FIND WHEN YOU LOOKED AT THAT
15 ISSUE?

16 A I'M NOT SAYING IT DIDN'T TIE, BUT NOBODY DID
17 TIE IT. I COULDN'T TIE IT, AND SAMSUNG DIDN'T
18 RECONCILE OR TIE IT, EITHER. SO I WAS LACKING WITH
19 THAT LEVEL OF COMFORT.

20 Q WHAT WAS THE SECOND RED FLAG YOU LOOKED FOR?

21 A THE SECOND ONE IS, IS THIS INFORMATION THAT'S
22 USED TO RUN THE BUSINESS? WHEN WE SAY "ORDINARY
23 COURSE," THIS IS INFORMATION THEY USE EVERY DAY.
24 THIS ISN'T SOMETHING THAT'S PRODUCED FOR A SPECIAL
25 PURPOSE.

1 COULD MAKE IPHONE A SUCCESS."

2 AND THEN THE FIRST BULLET UNDER THAT IS
3 "EASE AND INTUITIVE U/I," USER INTERFACE, "THAT
4 COVERS ALL USER CLASSES, INCLUDING MALE, FEMALE,
5 OLD AND YOUNG," AND THEN THE FIRST BULLET,
6 "BEAUTIFUL DESIGN."

7 Q AND HOW DID THOSE, THESE PORTIONS OF THE
8 DOCUMENT EFFECT THE DEMAND FOR THE IPHONE?

9 A WELL, THE FOCUS WAS ON IPHONE AND THE
10 IDENTIFICATION BY SAMSUNG OF IPHONE AS BEING A
11 DRIVER IN THE MARKETPLACE, SO OBVIOUSLY THAT'S
12 REPRESENTATIVE OF DEMAND FOR THE IPHONE, AND
13 IDENTIFYING BEAUTIFUL DESIGN AS BEING FURTHER -- OR
14 EVIDENCE OF, OF DEMAND FOR DESIGN.

15 Q COULD YOU TURN TO EXHIBIT 194 IN YOUR BINDER,
16 PLEASE, MR. MUSIKA.

17 A I'M THERE.

18 Q WHAT IS -- STRIKE THAT.

19 IS EXHIBIT 194 A DOCUMENT THAT YOU
20 CONSIDERED AND RELIED UPON IN FORMING YOUR OPINIONS
21 ABOUT DEMAND FOR THE IPHONE?

22 A YES.

23 MS. KREVANS: YOUR HONOR, WE MOVE THE
24 ADMISSION OF EXHIBIT 194.

25 MR. PRICE: SAME OBJECTIONS, YOUR HONOR.

1 FOUNDATION.

2 MS. KREVANS: AGAIN, YOUR HONOR, WE'VE
3 LAID THE FOUNDATION AND IT'S A SAMSUNG ADMISSION.

4 THE COURT: IT'S ADMITTED.

5 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
6 194, HAVING BEEN PREVIOUSLY MARKED FOR
7 IDENTIFICATION, WAS ADMITTED INTO
8 EVIDENCE.)

9 BY MS. KREVANS:

10 Q WHAT IS EXHIBIT 194, MR. MUSIKA?

11 A IT'S A, AN INTERNAL E-MAIL FROM SAMSUNG
12 EXECUTIVES TO OTHER SAMSUNG EXECUTIVES.

13 Q AND THE DATE OF THIS DOCUMENT IS?

14 A MARCH 2ND, 2010.

15 Q AND WHO IS IT -- WHAT IS THE SUBJECT MATTER
16 INDICATING?

17 A THE SUBJECT SAYS "TO UX," USER EXPERIENCE,
18 "EXECUTIVES."

19 Q WHAT PART OF THIS MARCH 2ND, 2010 E-MAIL DID
20 YOU FIND RELEVANT TO THE DEMAND OPINIONS THAT YOU
21 FORMED?

22 A GO DOWN ONE, TWO, THREE, FOUR, FIVE PARAGRAPHS
23 AND HIGHLIGHT THAT. YES.

24 IT SAYS, "I AM NOT SAYING TO MAKE A UX
25 THAT IS EXACTLY IDENTICAL TO THE IPHONE, BUT I AM

1 SAYING TO LEARN THE WISDOM OF THE IPHONE AND
2 RECOGNIZE THE STANDARD OF THE INDUSTRY WHICH WAS
3 SET BY THEM ALREADY."

4 Q LET'S TURN BACK TO YOUR SLIDE 34B.32, AND LOOK
5 AT THE SECOND FACTOR YOU CONSIDERED, WHICH WAS
6 MARKET ALTERNATIVES.

7 WHAT EVIDENCE DID YOU FIND WHEN YOU
8 LOOKED AT MARKET ALTERNATIVES?

9 A UM --

10 Q AND LET ME FIRST ASK YOU, WHAT DO YOU MEAN BY
11 "MARKET ALTERNATIVES"?

12 A SO I THINK YOU PHRASED IT WELL, IS IF SAMSUNG
13 DIDN'T MAKE THE SALE, WOULD APPLE HAVE MADE THE
14 SALE?

15 SO IF, IF THERE WERE OTHER ALTERNATIVES
16 IN THE MARKETPLACE, THEN APPLE WOULDN'T MAKE EVERY
17 ONE OF THOSE 22 MILLION SALES. OF COURSE I DIDN'T
18 CALCULATE LOST PROFITS ON THE 22 MILLION. YOU MAY
19 RECALL IT WAS ONLY 2 MILLION.

20 PART OF THE REASON WAS BECAUSE ALTHOUGH
21 I'M NOT OFFERING AN OPINION THAT THERE ARE MARKET
22 ALTERNATIVES, I CONSERVATIVELY SAID, WELL, I'M JUST
23 GOING TO ASSUME AND ACCEPT THAT SAMSUNG'S OTHER
24 PRODUCTS AND THAT EVERY OTHER MARKET PARTICIPANT IS
25 A MARKET ALTERNATIVE.

1 Q COULD YOU EXPLAIN TO US THE EVIDENCE THAT YOU
2 FOUND WHEN YOU LOOKED AT THIS QUESTION.

3 A I DID TWO, TWO RESTRICTIONS. ONE, I, I LOOKED
4 AT THE TIME PERIOD AND I TOOK THAT TWO YEARS,
5 BASICALLY THE TWO-YEAR TIME PERIOD OF 2010, 2011,
6 2012, AND I SHRUNK THAT -- SORRY -- I SHRUNK THAT
7 DOWN. I ASSUMED THAT WITH EACH PATENT OR EACH
8 TRADE DRESS THAT SAMSUNG WOULD SIMPLY NOT LEAVE THE
9 MARKET, THAT THEY WOULD DO SOMETHING TO TRY TO GET
10 BACK INTO THE MARKET.

11 SO I LIMITED MY CALCULATIONS TO LOST
12 PROFITS TO ONLY A TIME PERIOD WHICH WOULD BE
13 ASSOCIATED WITH THE TIME SAMSUNG WOULD BE OUT OF
14 THE MARKET.

15 SO DEPENDING ON THE INTELLECTUAL
16 PROPERTY, IT WAS AS LITTLE AS ONLY ONE MONTH OR AS
17 HIGH AS EIGHT MONTHS, BUT NOT THE ENTIRE TIME
18 PERIOD. SO THAT 22 MILLION SHRINKS DOWN TO EIGHT
19 MONTHS OR ONE MONTH, RIGHT, BASED ON THAT.

20 AND THERE WAS ONE OTHER THING.

21 Q YES, THE MARKET SHARE ALLOCATION. WHAT ARE
22 YOU REFERRING TO THERE?

23 A MARKET SHARE ALLOCATION, THERE WAS A FURTHER
24 CUT. ONCE I GOT IT DOWN TO JUST THAT TIME PERIOD,
25 THE SALES THAT WOULD HAVE BEEN MADE IN THAT TIME

1 PERIOD, THEN I DISTRIBUTED THOSE SALES TO ALL THE
2 MARKET PARTICIPANTS.

3 I ONLY PUT IN APPLE'S PILE THEIR MARKET
4 SHARE. I GAVE BACK TO SAMSUNG THEIR MARKET SHARE.
5 I GAVE NOKIA THEIR MARKET SHARE. I GAVE MOTOROLA
6 THEIR MARKET SHARE.

7 SO THAT CARVED IT DOWN FURTHER AND THAT'S
8 WHY I ONLY END UP WITH 2 MILLION OUT OF THAT 22
9 MILLION THAT QUALIFY FOR LOST PROFITS.

10 Q WHAT WAS THE THIRD FACTOR YOU CONSIDERED IN
11 DETERMINING HOW MANY OF THE 22 MILLION UNITS
12 QUALIFIED FOR LOST PROFITS?

13 A CAPACITY. COULD APPLE -- DID THEY HAVE THE
14 FACILITIES TO ACTUALLY PRODUCE THIS AND SELL THIS?

15 Q AND WHAT DID YOU FIND?

16 A I FOUND THAT THEY DID. THERE WERE -- THERE
17 WERE LIMITATIONS, AS -- BECAUSE THE DEMAND WAS SO
18 HIGH, FROM TIME TO TIME, APPLE DID HAVE
19 CONSTRAINTS.

20 BUT WITH RESPECT TO THIS 2 MILLION
21 INCREMENTAL UNITS OVER THE TWO YEAR TIME PERIOD,
22 APPLE, I CONCLUDED, DID HAVE THE ABILITY TO MAKE
23 THOSE SALES.

24 Q WHEN YOU SAY "THE ABILITY TO MAKE THOSE
25 SALES," ARE YOU REFERRING TO MANUFACTURING

1 CAPACITY?

2 A MANUFACTURING AND MARKETING CAPACITY. IT
3 COULD BE EITHER OR BOTH.

4 Q AND WHAT WAS THE FOURTH FACTOR YOU USED IN
5 DETERMINING WHETHER UNITS QUALIFIED FOR LOST
6 PROFITS REMEDY?

7 A IT'S JUST A CALCULATION OF APPLE'S PROFITS,
8 AND I WAS ABLE TO CALCULATE HOW MUCH APPLE MAKES ON
9 EACH ONE OF ITS SMARTPHONES OR TABLETS. AND ONCE
10 AGAIN, IT'S SIMPLE MULTIPLICATION, TIMES 2 MILLION
11 UNITS GAVE ME MY LOST PROFITS.

12 Q LET'S GO BACK TO SLIDE 34B.62. IF YOU HAD NOT
13 CONCLUDED THAT 2 MILLION OF THE DEVICES DID QUALIFY
14 FOR LOST PROFIT DAMAGES, WHAT WOULD HAVE CHANGED IN
15 YOUR ULTIMATE CONCLUSION?

16 A WE WOULD JUST SLIDE THOSE PHONES UP BECAUSE
17 THEY'RE ENTITLED -- UNDER THE ASSUMPTION THAT
18 THEY'RE INFRINGING, THEY'RE GOING TO GET SOME FORM
19 OF DAMAGE. SO I SLIDE IT UP TO SAMSUNG'S
20 PROFITS -- I'M NOT DOUBLE COUNTING -- AND THE
21 RESULT IS, I THINK WE CAN SHOW, WE DON'T HAVE ANY
22 LOST PROFITS, BUT THE INFRINGING PROFITS NOW GOES
23 UP TO \$2.481 BILLION.

24 Q LET'S GO BACK TO YOUR ORIGINAL APPROACH IN
25 WHICH YOU HAVE PHONES AND TABLETS IN ALL THREE

1 CATEGORIES, AND LET ME ASK YOU ABOUT THE LAST
2 CATEGORY, THE REASONABLE ROYALTY CATEGORY.

3 FIRST, COULD YOU EXPLAIN TO THE JURY IN
4 CONCEPT WHAT IS MEANT BY A REASONABLE ROYALTY?

5 A YES. I HAVE A SIMPLE LITTLE SLIDE THAT HELPS.

6 Q 34B.42, PLEASE.

7 A YES. A ROYALTY PAYMENT IS, IT'S JUST LIKE, AS
8 THE FIRST EXAMPLE, RENT. SO IF YOU DECIDE TO RENT
9 OUT YOUR HOUSE OR IF YOU HAVE AN APARTMENT AND YOU
10 WANT TO RENT IT, THAT'S YOUR ASSET. YOU OWN THAT.
11 IT'S A TANGIBLE ASSET. IF SOMEBODY ELSE IS GOING
12 TO USE IT, YOU WANT TO BE PAID FOR IT. SO THEY PAY
13 YOU RENT.

14 Q LET ME STOP YOU RIGHT THERE. UNDER YOUR REAL
15 ESTATE COLUMN ON THIS GRAPHIC, YOU HAVE WHAT LOOKS
16 LIKE A PICTURE OF TWO HANDS SHAKING. WHY DO YOU
17 HAVE THAT THERE?

18 A WELL, IN THE TWO EXAMPLES, REAL ESTATE AND
19 MINERAL RIGHTS, THE PARTIES GET TOGETHER AND
20 ACTUALLY AGREE.

21 BUT HERE, WITHIN THE CONTEXT OF THE
22 LITIGATION, THE REASON WE'RE ALL HERE,
23 UNFORTUNATELY, IS THE TWO PARTIES HAVEN'T AGREED.
24 THEY HAVEN'T SHOOK HANDS AND AGREED. SO WE DON'T
25 HAVE AN AGREEMENT.

1 PROFITS IF THERE'S -- IF THE PATENT THAT IS
2 INFRINGED IS A UTILITY PATENT; RIGHT?

3 A THAT'S RIGHT. THAT'S NOT ONE OF THE FORMS OF
4 DAMAGES UNDER A UTILITY PATENT, I AGREE.

5 Q SO THOSE BIG NUMBERS ALL HAVE SOMETHING TO DO
6 WITH THE WAY THE PHONE OR THE TABLET LOOKS?

7 A WELL, THE ONLY ADDITION, SO THE RECORD IS
8 CLEAR, IS REMEMBER THE SLIDING PHONES. SO IF YOU
9 MOVE THOSE PHONES OUT OF INFRINGER'S PROFITS,
10 YOU'VE GOT TO PUT THEM INTO SOME COLUMN, LOST
11 PROFITS OR REASONABLE ROYALTY.

12 AND SO AT A MINIMUM, YOU WOULD MOVE THEM
13 ALL DOWN TO REASONABLE ROYALTY TO THE EXTENT THAT
14 THEY ALSO INFRINGED THE UTILITY PATENT.

15 Q AND SO THAT'S, THAT'S WHAT I'M SAYING. IT'S
16 ONLY -- YOU GET INFRINGER'S PROFITS ONLY IF THERE'S
17 SOME FINDING ABOUT BASICALLY HOW THESE PHONES LOOK?

18 A RIGHT.

19 Q THE DESIGN PATENT, THE DESIGN PATENT OR TRADE
20 DRESS INFRINGEMENT; RIGHT?

21 A I'M AGREEING WITH YOU. BUT ALL I'M SAYING IS
22 IT'S NOT LIKE YOU SUBTRACT IT. YOU HAVE TO
23 SUBTRACT IT, BUT YET ADD IT BACK ON THE OTHER FORM.

24 Q WELL, YOU DON'T ADD IT BACK IF THERE'S A
25 FINDING THAT, YOU KNOW, AN ORDINARY OBSERVER, FOR

1 EXAMPLE, IS NOT GOING TO BE CONFUSED OR THERE'S NOT
2 DECEIT OR THAT THE PATENT'S INVALID; RIGHT?

3 A NO, YOU DO. THAT'S WHAT'S KEY, BECAUSE THE
4 KEY TO THE CALCULATION IS EVERY PRODUCT -- THE
5 CALCULATION IS DONE ON AN INDIVIDUAL PRODUCT. SO
6 IN YOUR HYPOTHETICAL, WE HAVE JUST A PHONE, AND
7 THAT PHONE INFRINGES THE UTILITY PATENTS AND IT
8 INFRINGES THE TRADE DRESS AND IT INFRINGES THE
9 DESIGN PATENTS.

10 I'M THINKING THAT YOUR HYPOTHETICAL --
11 AND ON THAT BASIS, THE CALCULATION WOULD BE
12 PRESUMABLY BASED ON THE INFRINGER'S PROFITS.

13 YOU SAY LET'S ASSUME THAT THEY DON'T
14 INFRINGE THE DESIGN PATENTS AND THE TRADE DRESS.
15 LET'S TAKE THAT AWAY.

16 WELL, WE STILL HAVE THE POTENTIAL OF LOST
17 PROFITS ON THE UTILITY AND, AT A MINIMUM, THE
18 REASONABLE ROYALTY.

19 SO WHEN YOU TAKE AWAY THE INFRINGER'S
20 PRODUCTS, YOU'VE TO RECALCULATE THE DAMAGES FOR
21 THAT PARTICULAR PHONE ON ONE OF THOSE OTHER BASES
22 THERE, ASSUMING IT INFRINGES ONE OF THE OTHER
23 UTILITY PATENTS.

24 Q AND THAT'S WHAT YOU'RE SAYING. ASSUMING
25 THERE'S SOME OTHER INFRINGEMENT, THERE'S GOING TO

1 BE SOME WAY TO CALCULATE IT?

2 A YES.

3 Q AND YOU'VE TOLD US THAT YOU WEREN'T ASKED TO
4 CALCULATE ASSUMING THAT, YOU KNOW, ONE OF THESE
5 PATENTS, UTILITY PATENTS WAS INFRINGED ONLY, OR, OR
6 A COMBINATION OF THE UTILITY PATENTS?

7 A THE COMBINATION -- THAT'S WHY A MODEL WAS
8 REQUIRED -- IS ENDLESS. THERE ARE REALLY HUNDREDS
9 OF THOUSANDS OF COMBINATIONS GIVEN THE NUMBER OF
10 PATENTS, ET CETERA.

11 AND NO, I WASN'T. THE ANSWER IS NO, I
12 WASN'T.

13 Q AND THE ONLY COMBINATIONS I'M TALKING ABOUT
14 ARE THE THREE UTILITY PATENTS. OKAY?

15 A YOU'RE RIGHT, I WAS NOT ASKED TO PRESENT THAT.

16 Q SO THE ASSUMPTIONS, THEN, ARE WE TALKED ABOUT
17 EACH PATENT, DESIGN PATENT IS VALID AND INFRINGED.
18 THAT'S YOUR ASSUMPTION FOR YOUR DAMAGES; RIGHT?

19 A YES.

20 Q THAT ALL THE DIFFERENT PRODUCTS THAT APPLE
21 SAYS INFRINGE DO INFRINGE; CORRECT?

22 A YES.

23 Q THAT EACH OF THE UTILITY PATENTS IS VALID AND
24 WHATEVER APPLE SAYS INFRINGES INFRINGES; CORRECT?

25 A UNTIL THE JURY SAYS IT, YES.

1 Q THAT ALL OF APPLE'S TRADE DRESS IS VALID AND
2 EVERYTHING APPLE SAYS INFRINGES INFRINGES; CORRECT?

3 A YES.

4 Q AND IT'S GIVEN ALL THOSE ASSUMPTIONS THAT YOU
5 THEN HAVE THIS RANGE OF 2.5 BILLION TO 2.7 BILLION?

6 A THAT'S CORRECT.

7 Q SO LET'S TALK ABOUT, FOR EXAMPLE, THE BOUNCE
8 BACK. ON YOUR LOST PROFITS, I THINK YOU'RE UP
9 AROUND, FOR TOTAL, YOU'RE UP AROUND 400 SOMETHING
10 MILLION?

11 A 488 MILLION.

12 Q OKAY. AND THAT OBVIOUSLY ISN'T LOST -- WOULD
13 NOT BE APPLE'S LOST PROFITS WITH RESPECT TO, SAY, A
14 BOUNCE BACK PATENT?

15 A NOT EXCLUSIVELY, NO. SAME QUESTION, SAME
16 ANSWER.

17 Q IN FACT, YOUR ANALYSIS ON THAT, WHEN YOU
18 TALKED -- WHEN YOU THOUGHT IT WOULD TAKE -- IF
19 SAMSUNG WERE TOLD "YOU CAN'T DO THAT ON YOUR
20 PHONE," IT WOULD TAKE THEM A MONTH TO DESIGN AROUND
21 THAT AND DO SOMETHING ELSE?

22 A AS ONE OF THOSE LIMITING CONDITIONS THAT I
23 TALKED ABOUT, YES, I LIMITED THE CALCULATION TO
24 JUST ONE MONTH OF LOST PROFITS FOR THAT.

25 Q SO LET'S TALK ABOUT YOUR ANALYSIS ON -- YOU

1 SAID YOU DID ANALYSIS ON BUT-FOR; THAT IS, IF -- IF
2 SAMSUNG DIDN'T HAVE A FEATURE, WHAT WOULD HAPPEN?

3 AND FOR BUT-FOR, FOR LOST PROFITS, FOR
4 APPLE'S LOST PROFITS, OKAY, YOU'RE SAYING THAT IF
5 THE JURY FOUND INFRINGEMENT ON A UTILITY PATENT,
6 THEN YOU'VE GOT TO LOOK AT, OKAY, WHAT WOULD APPLE
7 HAVE MADE IF SAMSUNG DIDN'T HAVE THAT FEATURE;
8 RIGHT?

9 A MADE? WHAT --

10 Q WOULD HAVE MADE.

11 A ALL RIGHT. I'LL SAY YES. I'M NOT SURE WHAT
12 YOU MEAN, BUT I'LL SAY YES.

13 THEY'VE ALREADY MADE THEIR PRODUCTS. THE
14 PRODUCTS ARE THE IPHONES IN YOUR HYPOTHETICAL, SO
15 IT WOULD BE THE IPHONE. IT'S ALREADY MADE.

16 Q OKAY. AND I DIDN'T MEAN MANUFACTURE, BUT THE
17 PROFITS THEY WOULD HAVE EARNED?

18 A OKAY. THAT'S WHERE I WAS NOT SURE.

19 Q AND WHEN YOU'RE DOING THAT, YOU'VE GOT TO ASK
20 YOURSELF, HERE'S A SAMSUNG CUSTOMER, THEY'VE GOT A
21 PHONE, ONE OF THE ACCUSED PHONES, THAT HAS BOUNCE
22 BACK. NOW, IF BOUNCE BACK ISN'T IN THERE, ARE THEY
23 GOING TO LEAVE SAMSUNG TO GO TO APPLE BECAUSE OF
24 THAT ONE FEATURE? THAT'S THE BUT-FOR ANALYSIS,
25 ISN'T IT? THAT -- IS SOMEONE GOING TO SAY, "I

1 BOUGHT THIS PHONE. I LIKED IT. WELL, DARN. IT
2 DOESN'T HAVE BOUNCE BACK ANYMORE. I'M GOING TO GO
3 BUY AN APPLE."

4 A WELL, THAT'S KIND OF A STATEMENT, BUT I'LL
5 RESPOND TO IT AS A QUESTION.

6 Q TRUE.

7 A MY CALCULATION IS THAT THEY WOULD GO TO THEM
8 BECAUSE, REMEMBER, I'VE ONLY TAKEN THE SALE AWAY
9 FOR THE MONTH IT WOULD TAKE FOR SAMSUNG TO
10 BASICALLY REMOVE THE BOUNCE BACK. THEY'RE GOT
11 TO -- THAT'S JUST A PHYSICAL FACT. SAMSUNG, WITH
12 THE ASSUMPTION THAT THEY CAN'T USE IT, HAS TO TAKE
13 IT OUT OF THEIR PHONE. THEY HAVE TO REDESIGN THE
14 PHONE. THEY HAVE TO NEGOTIATE A DIFFERENT PRICE.
15 THEY NEED TO PUT THE MANUFACTURING FACILITY IN
16 PLACE. I'VE ALLOWED, FOR EVERYTHING TO HAPPEN, ONE
17 MONTH AND ONLY ONE MONTH.

18 AND DURING THAT PERIOD OF TIME, YES, SOME
19 PORTION OF THE MARKET WOULD CHOOSE AN IPHONE
20 INSTEAD OF SAYING, "OH, WELL, I'M GOING TO WAIT OR
21 DO SOMETHING ELSE."

22 Q WELL, FOR ONE THING, YOU WOULDN'T HAVE TO
23 START A MANUFACTURING FACILITY TO CHANGE THE BOUNCE
24 BACK. THAT'S JUST A SOFTWARE UPGRADE, RIGHT? PLUG
25 IT INTO YOUR COMPUTER AND IT WOULD BE CHANGED?

1 A FAIR ENOUGH, YES.

2 Q OKAY. AND MY QUESTION IS DIFFERENT. WE KNOW
3 SOMETHING ABOUT THE PEOPLE WHO PURCHASE THE SAMSUNG
4 PHONES THAT WE DON'T KNOW ABOUT THE GENERAL PUBLIC,
5 WHICH IS THAT THEY CHOSE A SAMSUNG PHONE; RIGHT?

6 A YES.

7 Q OKAY. SO IF THEY CHOSE A SAMSUNG PHONE, YOU
8 MIGHT WANT TO LOOK AS TO WHY THEY CHOSE THAT PHONE;
9 CORRECT?

10 A I AGREE, AND I DID.

11 Q AND IN CONNECTION WITH THAT, YOU'D WANT TO
12 ASK, OR FIND OUT, "OKAY, MR. PURCHASER, IF YOU
13 DIDN'T HAVE BOUNCE BACK, WOULD YOU NOT HAVE CHOSEN
14 THAT PHONE AND GONE SOMEWHERE ELSE?" THAT'S WHAT
15 THE BUT-FOR CAUSATION IS. IF NOT FOR WHAT SAMSUNG
16 WAS DOING, IT WOULD HAVE GONE TO APPLE INSTEAD;
17 RIGHT?

18 A THAT'S CORRECT.

19 Q AND THERE ARE HUNDREDS AND HUNDREDS OF
20 FEATURES ON A SAMSUNG SMARTPHONE; RIGHT?

21 A YES.

22 Q APPLE HAS DONE RESEARCH, ITSELF, ON WHY THE
23 PEOPLE WHO BUY SAMSUNG, OR ANDROID, WHY ARE THEY
24 ATTRACTED TO THAT PRODUCT INSTEAD OF OURS; RIGHT?

25 A YES.

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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 14, 2012

EXHIBIT 7

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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 14, 2012
VS.)	
	)	VOLUME 8
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 2321-2650
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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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5 RACHEL KREVANS
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INTERPRETERS: JAMES YIM VICTORY
ALBERT S. KIM
ANN PARK

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1 MR. VERHOEVEN: ALL RIGHT. SO LET ME ASK
2 YOU THIS.

3 Q EXCLUDING THE PRADA --

4 MS. KREVANS: YOUR HONOR, MAY I HAVE A
5 RULING ON MY MOTION TO STRIKE?

6 MR. VERHOEVEN: HE GAVE A VERY LENGTHY
7 ANSWER, YOUR HONOR, IT WOULD BE INAPPROPRIATE.

8 THE COURT: IT'S NOT IN PAGES 63 TO 75
9 THAT DISCUSSED THE '087. I DON'T SEE IT.

10 MR. VERHOEVEN: HOW ABOUT IF I ASK HIM
11 ANOTHER QUESTION THEN.

12 Q EXCLUDING FOR THE '087, EXCLUDING THE PRADA,
13 CAN YOU EXPLAIN TO THE JURY YOUR OPINION WITH
14 RESPECT TO WHETHER OR NOT, IN ANY OF THESE OTHER
15 REFERENCES BESIDE THE PRADA, RENDER THE '087
16 OBVIOUS.

17 MS. KREVANS: YOUR HONOR, JUST SO THE
18 RECORD IS CLEAR, MAY I ASK THAT COUNSEL WITHDRAW
19 THE PREVIOUS QUESTION ASKED FOR THE RECORD AND THAT
20 YOUR HONOR STRIKE IT.

21 MR. VERHOEVEN: I'LL WITHDRAW IT, YOUR
22 HONOR, IN THE INTEREST OF TIME.

23 THE COURT: ALL RIGHT. THANK YOU.

24 BY MR. VERHOEVEN:

25 Q DO YOU WANT ME TO ASK YOU THE QUESTION AGAIN

1 OR DO YOU HAVE IT, SIR?

2 A I'M TRYING TO UNDERSTAND. WHICH --

3 Q SO THERE'S AN OBJECTION TO TALKING ABOUT THE
4 PRADA, SO EXCLUDE THAT FROM YOUR ANSWER IN THE
5 INTERESTS OF TIME?

6 A SURE.

7 Q I'M ASKING YOU ABOUT THE '087, THAT'S THIS ONE
8 HERE, AND YOU'VE REACHED AN OPINION THAT THAT'S
9 OBVIOUS IN LIGHT OF SOME COMBINATION OF THESE OTHER
10 THREE PHONES; RIGHT?

11 A YES.

12 Q OTHER THREE DESIGN PATENTS; RIGHT?

13 A YES.

14 Q SO ALL I'M ASKING YOU TO DO IS WALK THE JURY
15 THROUGH YOUR ANALYSIS?

16 A SURE. SO TAKING THE '638 AND THEN COMBINING
17 IT WITH THE '383, WHICH IS ON THE RIGHT SIDE, THE
18 '383 HAS A COMPLETELY FLAT FRONT FACE AND IT ALSO
19 HAS THE UNIFORM, COMPLETELY UNIFORM BEZEL.

20 SO COMBINING IT WITH THE '638 WOULD YIELD
21 THE DESIGN OF THE '087. SO THAT MAKES IT AND
22 RENDERS IT OBVIOUS.

23 Q ALL RIGHT. LET'S TURN TO THE LAST DESIGN
24 PATENT, THE TABLET DESIGN, THAT'S THE D'889.

25 THAT'S AT JX 1040 IN YOUR BINDER IF YOU'D LIKE TO

1 LOOK AT IT, SIR. IT'S ALREADY IN EVIDENCE.

2 CAN WE PUT UP THE SLIDE -- THE NEXT
3 SLIDE, MR. FISHER.

4 WHAT'S SHOWN ON THIS SLIDE, SIR?

5 A IT SHOWS THE DESIGN PATENT, THE D 504,889 FOR
6 THE ELECTRONIC DEVICE.

7 Q AND YOU REVIEWED THIS DESIGN PATENT; CORRECT?

8 A YES.

9 Q WHEN WAS THIS PATENT FILED?

10 A IT WAS FILED ON MARCH 17TH, 2004.

11 Q WHAT DOES THE D'889 PATENT SHOW?

12 A IT SHOWS AN ELECTRONIC DEVICE WHICH HAS
13 OVERALL RECTANGULAR SHAPE WITH EVENLY ROUNDED
14 CORNERS. IT HAS A FLAT FRONT FACE, A TRANSPARENT
15 FRONT FACE, WITH A LARGE, WHAT I ASSUME IS A
16 DISPLAY BELOW THAT SURFACE.

17 IT HAS A RIM SURROUNDING THE FRONT FACE.
18 AND IT HAS A FLAT BACK.

19 Q NOW, WE SAW, BY VIDEO TESTIMONY, THE TESTIMONY
20 OF MR. ROGER FIDLER. DID YOU SEE THAT?

21 A YES, I DID.

22 Q AND DID YOU CONSIDER MR. FIDLER'S TABLET IN
23 YOUR ANALYSIS UNDER THE D'889 PATENT?

24 A YES, I DID.

25 Q CAN WE PUT UP PX 10.79 IN EVIDENCE? PX 10.79.

1 THIS IS ACTUALLY A PLAINTIFF'S EXHIBIT.
2 DO YOU THINK I COULD ASK COUNSEL TO PUT IT UP?
3 IT'S -- OR PLAINTIFF'S AUDIO/VISUAL GUY. IT'S PX
4 10.79 IN EVIDENCE.

5 MS. KREVANS: I WILL HAVE TO LOOK, YOUR
6 HONOR, BECAUSE THIS ISN'T ONE OF THE EXHIBITS THAT
7 WAS DISCLOSED TO US.

8 THE COURT: CAN YOU FIND IT, PLEASE.

9 MR. VERHOEVEN: LET'S TRY IT THIS WAY,
10 YOUR HONOR. I'M JUST TRYING TO AVOID AN OBJECTION
11 BY USING THEIR EXHIBITS. LET'S TRY SDX 3970.012.
12 GO BACK ONE. THERE WE GO.

13 Q DO YOU RECOGNIZE THESE AS DEPICTIONS OF THE
14 1994 FIDLER TABLET THAT WE SAW ON THE DEPOSITION
15 TESTIMONY THAT WAS JUST PLAYED?

16 A YES.

17 Q AND DID YOU REVIEW THAT DEPOSITION?

18 A YES, I DID.

19 Q AND DID YOU CONSIDER MR. ROGER FIDLER'S 1994
20 TABLET AS PART OF YOUR OBVIOUSNESS ANALYSIS?

21 A YES, I DID.

22 Q WHEN DID MR. FIDLER DESIGN THIS TABLET?

23 A IN 1994.

24 Q LET'S GO TO THE NEXT SLIDE, PLEASE.

25 CAN YOU EXPLAIN TO THE JURY YOUR ANALYSIS

1 OF MR. FIDLER'S TABLET AS WITH REGARDS TO THE D'889
2 DESIGN?

3 A YES. SO ON THE TOP WE SEE THE TWO FRONT
4 FACES, THE FIDLER TABLET HAS OVERALL RECTANGULAR
5 SHAPE, EVENLY ROUNDED CORNERS. IT IS ALMOST FLAT,
6 THE INTENT WAS THAT IT WOULD BE COMPLETELY FLAT,
7 BUT ON THIS ONE IT WAS ALMOST FLAT.

8 IT HAS A VERY LARGE DISPLAY ON THE FRONT
9 FACE.

10 IT HAS A FLAT BACK. THAT'S IT.

11 Q DID YOU CONSIDER ANY OTHER PRIOR ART IN
12 CONNECTION WITH YOUR ANALYSIS OF THE VALIDITY OF
13 THE '889 PATENT?

14 A YES, I DID.

15 MR. VERHOEVEN: YOUR HONOR, MAY I
16 APPROACH WITH A PHYSICAL EXHIBIT?

17 THE COURT: PLEASE, GO AHEAD.

18 MR. VERHOEVEN: FOR THE RECORD, I'M
19 HANDING THE WITNESS PHYSICAL EXHIBIT, JOINT
20 PHYSICAL EXHIBIT 1074.

21 THE WITNESS: THANK YOU.

22 BY MR. VERHOEVEN:

23 Q WHAT IS JOINT EXHIBIT 1074?

24 A THIS IS THE H-P TC 1000, OR COMPAQ AT THAT
25 TIME.

1 Q CAN YOU HOLD IT UP FOR THE JURY?

2 A SURE (INDICATING).

3 Q CAN YOU HOLD IT UP ON A SIDE VIEW AS WELL.

4 YOUR HONOR, IF I MAY LET THE JURORS PASS
5 THAT AROUND?

6 THE COURT: THAT'S FINE.

7 MR. VERHOEVEN: YOUR HONOR, I'D MOVE JX
8 1074 INTO EVIDENCE.

9 MS. KREVANS: NO OBJECTION, YOUR HONOR.

10 THE COURT: IT'S ADMITTED.

11 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
12 1074, HAVING BEEN PREVIOUSLY MARKED FOR
13 IDENTIFICATION, WAS ADMITTED INTO
14 EVIDENCE.)

15 BY MR. VERHOEVEN:

16 Q WHEN WAS THIS TABLET RELEASED?

17 A THIS WAS RELEASED IN 2002.

18 Q DID YOU COMPARE THE -- THIS IS THE -- I'M
19 GOING TO REFER TO THIS AS THE TC1000?

20 A YES.

21 Q OKAY. AND THIS BEING JX 1074. OKAY?

22 A OKAY.

23 Q DID YOU DO A COMPARISON OF THE TC1000 AGAINST
24 THE D'889 PATENT?

25 A YES, I DID.

1 Q CAN WE GO TO THE NEXT SLIDE, PLEASE. ONE
2 MORE.

3 WHAT IS SHOWN ON THIS SLIDE HERE, SIR?

4 A SO WE SEE SIDE BY SIDE BOTH THE VIEW OF THE
5 D'889 AND THE PHOTO OF THE TC1000, AND ON THE
6 BOTTOM WE SEE A SIDE VIEW OF THE D'889 AND SIDE
7 VIEW OF THE H-P TC1000.

8 AND AS CAN BE SEEN, THE DEVICE ITSELF IS
9 OVERALL RECTANGULAR IN SHAPE WITH EVENLY ROUNDED
10 CORNERS. IT HAS A FLAT FRONT SURFACE THAT GOES
11 ACROSS THE WHOLE FRONT FACE UP TO A RELATIVELY THIN
12 RIM THAT SURROUNDS THE DEVICE.

13 IT HAS A RELATIVELY NARROW PROFILE, AND
14 THE PROPORTIONS OF THIS DEVICE ARE ACTUALLY ALMOST
15 IDENTICAL TO THE PROPORTIONS OF THE D'889, WHICH
16 MEANS THE RATIO BETWEEN LENGTH, WIDTH, AND HEIGHT
17 ALMOST IDENTICAL.

18 Q MR. FISHER, CAN WE PUT UP THE '889 VIEWS, THE
19 H-P TC1000, AND THE FIDLER TABLET ALTOGETHER ON THE
20 SAME SCREEN? NO, THAT'S NOT IT.

21 IN THE INTEREST OF TIME, YOUR HONOR, I'M
22 GOING TO MOVE ON WHILE MR. FISHER IS TRYING TO GET
23 THAT PUT TOGETHER.

24 THE COURT: THAT'S FINE.

25 BY MR. VERHOEVEN:

1 Q SO IS IT CORRECT THAT YOU EVALUATED WHETHER
2 THE '889 PATENT WAS OBVIOUS IN LIGHT OF THE FIDLER
3 TABLET COMBINED WITH THE TC1000?

4 A YES.

5 Q DID YOU REACH A CONCLUSION?

6 A YES.

7 Q WHAT WAS YOUR CONCLUSION?

8 A I FOUND THAT THE D'889 IS OBVIOUS IN LIGHT OF
9 THE COMBINATION OF THE FIDLER TABLET WITH THE H-P
10 TC1000.

11 IF YOU TAKE THE FIDLER TABLET, WHICH HAS
12 NO LIMITATION ON THE FRONT FACE, IT'S RECTANGULAR
13 SHAPE, AND YOU TAKE THE TRANSPARENT, FLAT FRONT
14 COVER OFF THE TC1000 AND WITH THE PROPORTIONS THAT
15 IT HAS AND COMBINE THE TWO, YOU ACTUALLY YIELD THE
16 DESIGN OF THE D'889 AND THAT, THEREFORE, IT RENDERS
17 IT OBVIOUS.

18 Q OKAY. LET'S TURN TO THE ISSUE OF
19 FUNCTIONALITY. YOU TESTIFIED EARLIER, YOU WERE
20 ASKED TO CONSIDER FUNCTIONALITY OF THE DESIGNS IN
21 APPLE'S PATENTS?

22 A YES.

23 Q WHY DID YOU CONSIDER FUNCTIONALITY?

24 A AS FAR AS I UNDERSTAND, THE DESIGN PATENT IS
25 INTENDED TO PROTECT ORNAMENTAL DESIGN. IT IS NOT

1 INTENDED TO PROTECT FUNCTIONAL ELEMENTS.

2 Q WHAT DID YOU LOOK FOR WHEN YOU WERE
3 CONSIDERING THE ISSUE OF FUNCTIONALITY?

4 A I WAS TRYING TO SEPARATE WHAT ARE THE
5 ORNAMENTAL ELEMENTS, WHAT ARE THE ORNAMENTAL
6 FEATURES OF THE DESIGN PATENTS AND EXCLUDE OUT THE
7 ONES THAT ARE FUNCTIONAL, THE ELEMENTS THAT ARE
8 FUNCTIONAL.

9 Q DID YOU USE ANY TEST TO DETERMINE WHETHER
10 SOMETHING WAS FUNCTIONAL OR NOT?

11 A THE TEST WOULD BE IF SOMETHING IS -- IF AN
12 ELEMENT IS ESSENTIAL FOR THE USE OR IMPACTS THE
13 COST OR QUALITY OF THE PRODUCT, THAT WOULD BE
14 CONSIDERED FUNCTIONAL OR IF THE APPEARANCE OF THAT
15 ELEMENT WOULD BE DICTATED BY FUNCTION.

16 Q DO YOU HAVE ANY EXPERTISE YOURSELF RELEVANT TO
17 DETERMINING FUNCTIONALITY IN THE SMARTPHONES?

18 A I'M -- AS I MENTIONED, I'VE WORKED IN MOBILE,
19 I DESIGNED PHONES, I HAVE WORKED VERY HARD ON
20 UNDERSTANDING THE FUNCTIONALITIES FOR A PHONE, WHAT
21 IT MEANS, HOW IT IMPACTS THE DESIGN.

22 SO I DEFINITELY THINK I HAVE THE
23 EXPERIENCE FOR THAT.

24 Q OKAY. MR. FISHER, CAN WE PUT UP THE FRONT
25 FACE OF '677, '087, AND '889 FOR REFERENCE. THERE

1 WE GO.

2 THIS IS JUST AN ILLUSTRATION OF THE FRONT
3 FACE OF THE '677 ON THE LEFT, '087 IN THE MIDDLE,
4 '889 ON THE RIGHT. DO YOU SEE THAT, SIR?

5 A YES, I DO.

6 Q DO ALL OF THESE -- WELL, CAN YOU DESCRIBE THE
7 SHAPE OF THE DISPLAY SCREENS ON THESE DESIGN
8 PATENTS?

9 A ALL OF THESE DEVICES HAVE RECTANGULAR
10 DISPLAYS.

11 Q DID YOU FORM AN OPINION AS TO WHETHER A LARGE
12 RECTANGULAR DISPLAY WAS FUNCTIONAL?

13 A YES, I DID.

14 Q PLEASE EXPLAIN YOUR OPINION TO THE JURY?

15 A SO A RECTANGULAR DISPLAY IS FUNCTIONAL AND IT
16 IS FUNCTIONAL BECAUSE, FIRST, THE MEDIA THAT WE'RE
17 CONSUMING ON THESE DEVICES, WHICH MEANS EITHER
18 MOVIES OR NEWSPAPERS OR WEB PAGES, ALL OF THESE
19 COME IN RECTANGULAR SHAPE.

20 SO OBVIOUSLY THE DISPLAYS ARE RECTANGULAR
21 AND THEY HAVE BEEN SO AS FAR AS I CAN REMEMBER.

22 IN ADDITION, IN TERMS OF WHAT'S AVAILABLE
23 AND WHAT'S EASY TO MANUFACTURE IN TERMS OF COST,
24 THESE RECTANGULAR DISPLAYS, THIS IS THE MAJORITY,
25 OVERWHELMING MAJORITY OF THE DISPLAYS ARE

1 RECTANGULAR AND ANY OTHER SHAPE WOULD BE MORE
2 EXPENSIVE, COMPLETELY RARE.

3 Q WHAT ABOUT THE OUTSIDE SHAPE OF EACH OF THESE
4 FORM FACTORS? HOW WOULD YOU DESCRIBE THEM?

5 A SO I WOULD DESCRIBE THAT AS OVERALL
6 RECTANGULAR SHAPE.

7 Q AND DID YOU FORM ANY OPINION ON WHETHER AN
8 OVERALL RECTANGULAR SHAPE WAS FUNCTIONAL USING THE
9 STANDARD THAT YOU'VE DESCRIBED?

10 A YES, I DID.

11 Q PLEASE EXPLAIN TO THE JURY.

12 A SO ON THESE TYPE OF DEVICES, EITHER A TABLET
13 OR A SMARTPHONE WITH A LARGE DISPLAY, THE DISPLAY
14 IS SORT OF THE MAIN ELEMENT. YOU ARE TRYING TO
15 MAXIMIZE THE SIZE OF THE DISPLAY.

16 AND ON THE OTHER HAND, SINCE THESE ARE
17 MOBILE DEVICES BY NATURE, YOU ARE TRYING TO
18 MINIMIZE THE OVERALL SIZE OF THE DEVICE.

19 AND, THEREFORE, THE OVERALL SHAPE OF THE
20 DESIGN IS PRACTICALLY DICTATED BY THE FACT THAT
21 THERE IS A RECTANGULAR DISPLAY WHICH BASICALLY
22 YIELDS OVERALL RECTANGULAR SHAPE FOR THE DEVICE.

23 Q CAN YOU DESCRIBE THE CORNERS ON EACH OF THESE
24 DEVICES?

25 A ON ALL FOUR -- ON ALL OF THESE DESIGNS, THE

1 CORNERS ARE ROUNDED.

2 Q AND DID YOU FORM AN OPINION AS TO WHETHER
3 ROUNDED CORNERS WERE FUNCTIONAL USING THE STANDARD
4 YOU DESCRIBED?

5 A YES.

6 Q PLEASE EXPLAIN THAT TO THE JURY.

7 A ROUNDED CORNERS HAVE SIGNIFICANT BENEFITS WHEN
8 IT COMES TO SORT OF THE USABILITY AND ECONOMICS.

9 IT'S EASIER TO HOLD THEM, IT'S MORE
10 COMFORTABLE.

11 THEY ALSO DON'T SNAG WHEN YOU'RE TRYING
12 TO PUT THEM INTO YOUR POCKET OR ACTUALLY YOUR
13 FINGERS OR HURT YOU.

14 AND THERE ARE ALSO BENEFITS IN TERMS OF
15 MANUFACTURING AND THE MECHANICAL STABILITY OF
16 ROUNDED CORNERS. SHARP CORNERS, MAY BEND AND
17 BREAK, WHILE ROUNDED CORNERS ARE STRONGER AND
18 EASIER TO MANUFACTURE.

19 Q DID YOU FIND ANY EVIDENCE IN THE RECORD THAT
20 APPLE DESIGNERS CONSIDERED THE FUNCTIONAL ASPECTS
21 OF ROUNDED CORNERS?

22 A YES.

23 Q I'LL DIRECT YOUR ATTENTION TO DX 562 IN YOUR
24 BINDER. AND CAN WE PUT UP SDX 3970.017.

25 YOUR HONOR, I THINK MY RECORDS ARE A

1 LITTLE CONFUSED. I'M NOT SURE IF DX 562 IS IN
2 EVIDENCE. I WOULD MOVE IT INTO EVIDENCE FOR THE
3 LIMITED PURPOSE OF FUNCTIONALITY.

4 THE COURT: IT IS ADMITTED AND I JUST
5 HAVE ONE INSTRUCTION, AND THAT IS THAT THE JURY MAY
6 CONSIDER DX 562 AS TO FUNCTIONALITY, BUT NOT AS TO
7 INVALIDITY OR NON-INFRINGEMENT.

8 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
9 562, HAVING BEEN PREVIOUSLY MARKED FOR
10 IDENTIFICATION, WAS ADMITTED INTO
11 EVIDENCE.)

12 MR. VERHOEVEN: JUST ONE SECOND. A
13 LITTLE TECHNICAL DIFFICULTY.

14 THE COURT: THAT'S ADMITTED AND,
15 MS. KREVANS, YOU'RE RESERVING YOUR OBJECTION?

16 MS. KREVANS: YES, YOUR HONOR.

17 THE COURT: OKAY.

18 GO AHEAD, PLEASE.

19 MR. VERHOEVEN: MAY I PUBLISH IT ON THE
20 SCREEN, YOUR HONOR?

21 THE COURT: GO AHEAD.

22 MR. VERHOEVEN: THANK YOU.

23 Q IS THIS ONE OF THE DOCUMENTS YOU CONSIDERED,
24 SIR?

25 A YES.

1 Q THIS IS A DOCUMENT FROM RICHARD HOWARTH. DO
2 YOU HAVE AN UNDERSTAND WHO HE IS?

3 A HE'S A DESIGNER AT APPLE.

4 Q AND IT'S TO JONATHAN IVE. WHO IS HE?

5 A THE HEAD OF APPLE.

6 Q I'LL READ THIS INTO THE RECORD, "I'M WORRIED
7 ABOUT THE EXTRUDO SHAPE WE'RE USING FOR P2, ET
8 CETERA, LOOKING AT WHAT SHIN'S DOING WITH THE
9 SONY-STYLE CHAPPY. HE'S ABLE TO ACHIEVE A MUCH
10 SMALLER-LOOKING PRODUCT WITH A MUCH NICER SHAPE TO
11 HAVE NEXT TO YOUR EAR AND IN YOUR POCKET. BUT IT
12 DOES HAVE THE SIZE AND SHAPE/COMFORT BENEFITS I
13 MENTIONED BEFORE AND THESE ARE HARD TO IGNORE WITH
14 A PRODUCT WE HAVE TO CARRY IN OUR POCKET."

15 DO YOU SEE THAT, SIR?

16 A YES.

17 Q AND HOW DID THAT INFORM YOUR OPINION AS TO THE
18 ISSUE OF WHETHER THE ROUNDED CORNERS ARE
19 FUNCTIONAL?

20 A IT SEEMS THE APPLE DESIGNERS ALSO ACKNOWLEDGED
21 THE ADVANTAGES OF ROUNDED CORNERS SINCE WHAT THEY
22 CALL THE "SONY-STYLE CHAPPY," WHICH IS THE
23 LEFT-SIDE IMAGE, HAS ROUNDED CORNERS VERSUS THE
24 OTHER DESIGN, THE EXTRUDO, WHICH DOES NOT HAVE
25 THEM. AND THEY ALSO MENTIONED THE ERGONOMIC

1 BENEFITS OF THAT. SO I THINK THAT BASICALLY
2 REENFORCES THAT.

3 Q MR. FISHER, CAN WE GO BACK TO THE SCREEN THAT
4 HAS THE VIEWS OF THE THREE DESIGN PATENTS THAT
5 WE'RE TALKING ABOUT.

6 MS. KREVANS: AND, YOUR HONOR, I WOULD
7 JUST NOTE THAT THIS WAS NOT A DEMONSTRATIVE THAT
8 WAS DISCLOSED TO US. WE WOULDN'T HAVE HAD
9 OBJECTION IF IT HAD BEEN, BUT I THINK SINCE THERE
10 HAS BEEN EXTENSIVE TESTIMONY ABOUT IT, IT SHOULD BE
11 GIVEN A NUMBER AND PROVIDED TO US.

12 MR. VERHOEVEN: THAT'S FINE, YOUR HONOR.
13 THIS IS JUST TRIAL DIRECTOR.

14 THE COURT: I KNOW. I UNDERSTAND. GO
15 AHEAD. PLEASE.

16 MR. VERHOEVEN: THANK YOU.

17 Q DO ALL THESE DESIGNS HAVE A FLAT FRONT FACE?

18 A YES, THEY DO.

19 Q AND DID YOU CONSIDER WHETHER A FLAT FRONT FACE
20 WAS FUNCTIONAL?

21 A YES.

22 Q AND CAN YOU EXPLAIN WHY?

23 A SO IF WE'RE LOOKING AT THESE DEVICES, THEY ARE
24 ALL TOUCH OPERATED DEVICES WITH VERY LARGE
25 DISPLAYS. YOU OBVIOUSLY WANT TO BE ABLE TO OPERATE

1 THEM AND THEY'RE ALL OPERATED BY FINGERS, SO YOU
2 WANT TO HAVE A FLAT SURFACE THAT WILL BE EASY TO
3 MANIPULATE AND SINCE YOUR MOVEMENTS AND YOUR
4 FINGERS ARE NOT POINT ELEMENTS, THEY'RE NOT PENS,
5 THEY ALSO EXTEND BEYOND WHAT IS THE ACTIVE AREA.

6 SO WE WOULD LIKE THIS WHOLE AREA TO BE
7 FLAT SO IT'S GOING TO BE EASILY MANIPULATED WHEN
8 YOU'RE MOVING YOUR FINGERS AND OPERATING THE
9 DEVICE.

10 Q NOW, THE '677 AND THE '087 HAVE THOSE LOZENGE
11 SHAPED SPEAKER SLOTS IN THE TOP PORTION OF THE
12 PHONE. DO YOU SEE THAT?

13 A YES.

14 Q DID YOU FORM AN OPINION AS TO WHETHER HAVING
15 THESE SPEAKER, LOZENGE SHAPED SPEAKER SLOTS IN THAT
16 POSITION WOULD BE FUNCTIONAL OR NOT?

17 A YES.

18 Q CAN YOU EXPLAIN YOUR OPINION TO THE JURY?

19 A YES. SO OBVIOUSLY YOU NEED AN EARPIECE IN
20 ORDER TO HAVE CALLS, PRIVATE CALLS. THE LOCATION
21 OF THE EARPIECE SLOT ON TOP OF THE DISPLAY ON THE
22 UPPER PART OF THE TELEPHONE IS A NATURAL LOCATION.
23 YOU'RE HOLDING IT TO YOUR EAR, SO THAT NEEDS TO BE
24 NEAR YOUR EAR. THE MICROPHONE ON THE BOTTOM SO
25 IT'S CLOSE TO YOUR MOUTH.

1 YOU ALSO WOULD LIKE TO HAVE IT SORT OF IN
2 AN ELONGATED SHAPE WHERE IT HAS A LOT OF BENEFITS,
3 AND THE REASONS FOR THAT ARE TWO. ONE IS THAT AS A
4 USER, YOU DON'T WANT TO NEED TO KEEP IT AT THE
5 EXACT POINT. YOU WANT TO HAVE SOME FLEXIBILITY ON
6 THE PLACING IT, YOU PUT IT TOWARDS YOUR EAR, SO IT
7 NEEDED TO HAVE SOME WIDTH.

8 AND ALSO IN TERMS OF SPACE USAGE, YOU
9 DON'T WANT TO SORT OF EXTEND THE LENGTH OF THE
10 DEVICE, SO IT'S MUCH MORE CONVENIENT TO HAVE THE
11 EARPIECE BEING ELONGATED SO IT DOESN'T CREATE MORE
12 LENGTH TO THE DEVICE. SO THAT'S BASICALLY IT.

13 Q FINALLY, THE '677 CLAIMS THIS BLACK FRONT
14 SURFACE. DO YOU SEE THAT?

15 A YES.

16 Q DID YOU CONSIDER OR FORM AN OPINION AS TO
17 WHETHER HAVING A BLACK FRONT FACE WAS FUNCTIONAL AS
18 YOU APPLIED YOUR TEST?

19 A YES.

20 Q CAN YOU EXPLAIN THAT TO THE JURY.

21 A SO WHEN WE'RE LOOKING AT THIS TYPE OF DEVICE,
22 THERE ARE A LOT OF COMPONENTS THAT RESIDE BELOW THE
23 SURFACE, AND YOU WOULD LIKE TO HIDE THEM. YOU
24 DON'T WANT THEM TO BE SEEN.

25 BLACK IS VERY EFFICIENT COLOR IN HIDING

1 THESE TYPE OF COMPONENTS, SO THAT'S ONE REASON.

2 THE OTHER REASON IS THAT THE DISPLAYS
3 THEMSELVES USUALLY COME IN SORT OF GRAY TOWARDS
4 BLACK COLORS, AND SO HAVING THE WHOLE THING AS
5 BLACK IS A NATURAL.

6 IT ALSO PROVIDES GOOD CONTRAST TO THE
7 DISPLAY ITSELF.

8 MR. VERHOEVEN: PASS THE WITNESS, YOUR
9 HONOR.

10 THE COURT: ALL RIGHT. THE TIME IS NOW
11 4:12. GO AHEAD, PLEASE.

12 **CROSS-EXAMINATION**

13 BY MS. KREVANS:

14 Q GOOD AFTERNOON, MR. SHERMAN.

15 A GOOD AFTERNOON.

16 Q I'M ALSO ON THE CLOCK, SO I'M JUST GOING TO
17 FOLLOW UP ON A FEW OF THE THINGS THAT MR. VERHOEVEN
18 ASKED YOU.

19 FIRST, LET'S START WITH YOUR BACKGROUND.
20 YOU'RE AN ELECTRICAL ENGINEER; RIGHT?

21 A CORRECT.

22 Q YOU'RE NOT AN INDUSTRIAL DESIGNER?

23 A NO, I'M NOT.

24 Q AND YOU'VE NEVER TAKEN ANY COURSES IN
25 INDUSTRIAL DESIGN?

1 A NO.

2 Q AND YOU'VE NEVER TAUGHT ANY COURSES IN
3 INDUSTRIAL DESIGN?

4 A NO.

5 Q AND THOSE 20 PATENTS AND A LOT OF PATENT
6 APPLICATIONS YOU MENTIONED, STARTING YOUR
7 TESTIMONY, THOSE ARE ALL UTILITY PATENTS; RIGHT?

8 A YES.

9 Q NONE OF THEM ARE DESIGN PATENTS?

10 A YES.

11 Q THEY'RE ON VARIOUS ASPECTS OF ENGINEERING
12 INVENTIONS THAT YOU'VE HELPED MAKE?

13 A YES.

14 Q OKAY. WHY DON'T WE START WITH YOUR
15 OBVIOUSNESS OPINIONS ABOUT THE '889 PATENT. THAT'S
16 THE IPAD DESIGN PATENT.

17 DO YOU HAVE THE TC1000 STILL THERE WITH
18 YOU?

19 A NO.

20 MS. KREVANS: MAY I APPROACH, YOUR HONOR.

21 MR. VERHOEVEN: YOUR HONOR, I OBJECT TO
22 THE CHARACTERIZATION OF THAT DESIGN PATENT BY
23 COUNSEL.

24 MS. KREVANS: MAY I GO FETCH THE TABLET
25 WHILE YOU'RE LOOKING, YOUR HONOR?

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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 14, 2012

EXHIBIT 8

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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 15, 2012
VS.)	
	)	VOLUME 9
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 2651-2965
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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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39 ANN PARK
40 ALBERT KIM

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1 OBJECTION ON, BECAUSE I DON'T HAVE THE TIME FOR
2 THIS, IS SIMPLY THE FACT THAT THE LAST THREE PAGES
3 WERE DISCLOSED TO US AFTER THE DISCLOSURE DATE,
4 AFTER WE BRIEFED THE HPO'S AND WE DIDN'T HAVE A
5 CHANCE TO BRING THIS TO YOUR ATTENTION IN AN
6 ORDERLY FASHION WHEN WE CITED ALL THE DOCUMENTS.

7 THE COURT: SO YOU'RE WITHDRAWING YOUR
8 OBJECTION TO THE FIRST ONE, 684?

9 MR. MCELHINNY: WE HAVE NEVER OBJECTED TO
10 THAT. I'M -- THAT WAS DISCLOSED. I'M NOT
11 OBJECTING TO THAT. I'M OBJECTING TO THE
12 VARIATIONS, THE THREE VARIATIONS --

13 THE COURT: THE A, B, AND C?

14 MR. MCELHINNY: YES, YOUR HONOR, THAT
15 WERE DISCLOSED TO US AT 4:00 O'CLOCK YESTERDAY
16 AFTERNOON.

17 THE COURT: ALL RIGHT. WELL --

18 MR. BEDECARRE: AND, AGAIN, YOUR HONOR,
19 MR. SHERMAN'S REPORT, WHICH HE POINTED YOU TO, HAS
20 IMAGES FROM A DIFFERENT DOCUMENT.

21 THE COURT: NO, NO, NO. I SET A
22 PROCEDURE FOR ORDERLY OBJECTIONS AND YOU SHOULD
23 HAVE DISCLOSED A, B, AND C SO THAT THEY COULD HAVE
24 BE OBJECTED TO IT IN A TIMELY MANNER.

25 MR. QUINN: YOUR HONOR, B WAS DISCLOSED

1 IN A TIMELY MANNER.

2 684.001B, THAT'S THE SLIDE THAT WE USED
3 IN OPENING. IT'S THE SLIDE WE USED WITH
4 MR. DENISON. ALTHOUGH THE JURY DIDN'T SEE IT, THE
5 COURT SAID IF HE CAN'T IDENTIFY ALL THE PHONES, THE
6 JURY IS NOT GOING TO SEE IT. THIS WITNESS CAN
7 IDENTIFY THE PHONES --

8 THE COURT: I DISAGREE WITH YOU. I
9 THINK, AND YOU CAN CORRECT ME IF I'M WRONG, I
10 BELIEVE WHAT MR. DENISON SAW WAS 684.001. I DON'T
11 THINK HE SAW 001B. I DON'T REMEMBER SEEING 001B.

12 MR. QUINN: WE RESEARCHED THAT, YOUR
13 HONOR, BECAUSE I HAD THE SAME QUESTION AND WANTED
14 TO BE CERTAIN OF IT.

15 THE COURT: OKAY. LET ME SEE THE
16 TRANSCRIPT. LET ME SEE THE TRANSCRIPT. THIS IS
17 ALL TIME THAT'S BEING BILLED TO YOU BOTH 50/50.
18 SHOW ME THE TRANSCRIPT OF THAT DATE, PLEASE. AND
19 LET ME SEE WHERE IN -- JUST SHOW ME, TAB FOR ME
20 WHERE IT SAYS THAT THIS PARTICULAR EXHIBIT WAS
21 REVIEWED.

22 MR. QUINN: SINCE THERE'S NO OBJECTION,
23 YOUR HONOR, TO 681.001, TO SAVE TIME, WE'LL JUST
24 USE THAT.

25 THE COURT: WHICH ONE?

1 MR. QUINN: MY UNDERSTANDING IS 684.001.

2 THE COURT: ALL RIGHT.

3 MR. MCELHINNY: I'M SORRY, YOUR HONOR.

4 THE SLIDE THAT WAS DISCLOSED IS THE -- THAT'S

5 RIGHT. I'M SORRY.

6 THE COURT: ALL RIGHT. SO ARE WE IN

7 AGREEMENT AS TO WHICH ONE IS GOING IN?

8 MR. MCELHINNY: WE'RE IN AGREEMENT, YOUR

9 HONOR, AS TO WHICH ONE CAN BE USED. WHETHER OR NOT

10 THIS WITNESS CAN HELP US WITH THIS DOCUMENT IS YET

11 TO BE SEEN.

12 THE COURT: ALL RIGHT. THAT'S 684.001;

13 CORRECT?

14 MR. MCELHINNY: YES, YOUR HONOR.

15 THE COURT: ALL RIGHT. 1:14. YOU'RE

16 GETTING BILLED FOR THAT 50/50. THAT'S GOING TO BE

17 SIX MINUTES EACH.

18 ALL RIGHT. PLEASE BRING IN OUR JURY.

19 (WHEREUPON, THE FOLLOWING PROCEEDINGS

20 WERE HELD IN THE PRESENCE OF THE JURY:)

21 THE COURT: ALL RIGHT. WELCOME BACK.

22 PLEASE TAKE A SEAT. THE TIME IS NOW 1:15.

23 PLEASE GO AHEAD.

24 MR. QUINN: THANK YOU, YOUR HONOR.

25 Q IF THE WITNESS COULD PLEASE RECEIVE EXHIBITS,

1 GALAXY TAB EXHIBIT, JOINT EXHIBIT 1037 AND 1038.

2 AND LET ME ASK YOU, MR. KIM, IF YOU WERE
3 INVOLVED IN DESIGNING THE GALAXY TAB.

4 MR. MCELHINNY: MAY I SEE THOSE, PLEASE?

5 MR. QUINN: I THINK THEY'RE BOTH IN
6 EVIDENCE.

7 MR. MCELHINNY: BUT WE HAVE A PROCEDURE,
8 MR. QUINN, YOU HAVEN'T BEEN HERE -- WE HAVE A
9 PROCEDURE. WE'VE HAD MISTAKES BEFORE.

10 MR. QUINN: WOULD YOU LIKE TO COME UP OR
11 SHALL I BRING THEM TO YOU?

12 MR. MCELHINNY: AS YOU -- I DON'T WANT TO
13 INTERRUPT YOU.

14 THANK YOU.

15 MR. QUINN: WE HAVE SOME OTHER PHONES.
16 PERHAPS YOU COULD SHOW THEM TO COUNSEL.

17 Q SO KIM -- MR. KIM, MY QUESTION IS WHETHER YOU
18 WERE THE PERSON INVOLVED IN DESIGNING THESE TWO
19 TABLETS.

20 A THAT IS CORRECT.

21 Q AND WHAT IS THE DIFFERENCE, IF YOU CAN TELL
22 THE JURY, BETWEEN THOSE TWO GALAXY TAB 10.1'S?

23 A ONE IS A SIMPLE WI-FI VERSION. THE OTHER ONE
24 IS A 4G LTE VERSION.

25 Q WHEN DID SAMSUNG BEGIN WORKING ON THE GALAXY

1 TAB 10.1 PROJECT?

2 A THAT WOULD BE OCTOBER 2009.

3 Q AND WHEN DID YOU PERSONALLY BEGIN WORKING ON
4 THAT PROJECT?

5 A THE SAME TIME, OCTOBER OF 2009.

6 Q AND CAN YOU TELL US WHETHER THAT WAS BEFORE OR
7 AFTER APPLE ANNOUNCED THE IPAD.

8 A THAT WOULD BE BEFORE.

9 Q AND DO YOU RECALL WHEN THE IPAD WAS ANNOUNCED?

10 A END OF JANUARY OF 2010. THAT'S MY
11 UNDERSTANDING.

12 Q AND DO YOU HAVE ANY DOCUMENTS THAT REFLECT
13 THAT YOU WERE WORKING ON THE GALAXY TAB 10.1 BEFORE
14 APPLE ANNOUNCED THE IPAD?

15 A YES, I DO.

16 Q AND WHAT IS YOUR RECOLLECTION OF ANY DOCUMENTS
17 THAT WOULD REFLECT THAT, THAT YOU WERE WORKING ON
18 THAT?

19 THE INTERPRETER: YOUR HONOR, MAY THE
20 WITNESS REPEAT HIS ANSWER?

21 THE WITNESS: YES, I RECEIVED THE
22 PACKAGING REVIEW DOCUMENTS FROM THE DEVELOPMENT
23 OFFICE, WHICH WAS IN THE FORM OF AN E-MAIL.

24 BY MR. QUINN:

25 Q AND IF WE COULD LOOK AT SDX 3973.009. IF THAT

1 COULD BE DISPLAYED ON THE SCREEN?

2 AND THIS IS THE KOREAN LANGUAGE VERSION.

3 DO WE HAVE THE ENGLISH LANGUAGE VERSION?

4 IS THIS THE DOCUMENT THAT YOU'RE REFERRING TO?

5 A YES, THAT'S CORRECT.

6 Q AND WHAT IS THE DATE OF THAT DOCUMENT?

7 A THAT WOULD BE JANUARY 6TH, 2010.

8 Q AND IN TERMS OF THE CONTENT OF THIS DOCUMENT,
9 WHAT DOES IT SAY?

10 A THIS IS A, THE OVERALL REVIEW OF THE SIZES
11 CONCERNING THE GALAXY TAB 10.1, BASICALLY
12 DISCUSSING THE DISPLAY SIZE, AND ALSO THE BORDER
13 AREA SIZE.

14 Q AND IS THIS DATED BEFORE APPLE ANNOUNCED THE
15 IPAD?

16 A YES, THAT'S CORRECT.

17 MR. QUINN: WE'D OFFER THIS IN EVIDENCE,
18 YOUR HONOR.

19 THE COURT: ANY OBJECTION?

20 MR. MCELHINNY: NO OBJECTION?

21 THE COURT: IT'S ADMITTED.

22 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
23 3973.009, HAVING BEEN PREVIOUSLY MARKED
24 FOR IDENTIFICATION, WAS ADMITTED INTO
25 EVIDENCE.)

1 BY MR. QUINN:

2 Q LET'S TALK ABOUT THE BASIC DESIGN PRINCIPLES
3 THAT WENT INTO DESIGNING THE GALAXY TAB.

4 AND WHAT WAS THE MOST IMPORTANT INITIAL
5 CONSIDERATION?

6 A THE MOST IMPORTANT THING AT THE TIME WAS TO
7 PROVIDE FOR THE BIGGEST ROOM OR THE LARGEST ROOM
8 FOR THE DISPLAY WITHIN AN EXTERIOR THAT IS AS SMALL
9 AS POSSIBLE.

10 Q AND WHAT SIZE DID YOU ARRIVE AT FOR THE SIZE
11 OF THE DISPLAY?

12 A WHEN YOU DETERMINE THE SIZE OF A DISPLAY, YOU
13 WOULD HAVE TO CONSIDER THE ECONOMIC ASPECTS OF IT.
14 YOU WANT TO MAKE SURE THAT THERE WOULD BE THE
15 LARGEST AVAILABLE NUMBER OF THE GLASSES WHEN YOU
16 CUT THE BIGGER GLASS, AND ALSO THERE HAS TO BE
17 EFFICIENCY OR PRODUCTIVITY ASPECT TO IT.

18 Q HOW DID YOU ARRIVE AT THE SIZE OF 10.1 INCHES?
19 THAT SOUNDS LIKE KIND OF AN ODD NUMBER TO CHOOSE.

20 A PRODUCTIVITY-WISE, AND ALSO THE ECONOMIC
21 EFFICIENCY-WISE, WHEN IT COMES TO MANUFACTURING
22 CAPABILITIES WHICH WERE CONCERNED, WE FELT IT WAS
23 BETTER PERHAPS INCREASING IT BY POINT ONE INCH OF
24 THIS UNIT.

25 THE INTERPRETER: AFTER HAVING CHECKED,

1 YOUR HONOR, WITH THE CHECKERS, RATHER THAN
2 PRODUCTIVITY, IT SHOULD BE MANUFACTURABILITY.

3 BY MR. QUINN:

4 Q IF YOU HAD INCREASED IT BY ONE INCH, HOW WOULD
5 THAT HAVE AFFECTED THE MANUFACTURABILITY?

6 A WELL, WE START WITH A MOTHER GLASS, AND IF YOU
7 WERE TO INCREASE THE DISPLAY SIZE OR THE GLASS TO
8 BE CUT BY EVEN 0.1 INCH, IT WOULD MEAN THAT INSTEAD
9 OF HAVING 50 GLASSES THAT COULD BE CUT OUT FROM THE
10 MOTHER GLASS, YOU WOULD END UP WITH 30 TO 35 UNITS
11 ONLY.

12 Q WHAT WAS THE SECOND PRINCIPAL CONSIDERATION
13 ARRIVING AT THE DESIGN OF THE GALAXY TABLET?

14 MAY I APPROACH THE WITNESS, YOUR HONOR?

15 THE COURT: PLEASE, GO AHEAD.

16 THE WITNESS: THE -- THE SECOND THING I
17 HAD CONSIDERED WAS WHETHER THEY WANT TO HAVE THE
18 DISPLAY ON A MORE HORIZONTAL BASIS OR THE VERTICAL
19 BASIS.

20 MR. QUINN: I'M HANDING THE WITNESS, YOUR
21 HONOR, AN IPAD, EXHIBIT 1004 IN EVIDENCE.

22 Q AND CAN YOU EXPLAIN TO US WHAT THE DIFFERENCE
23 IN ORIENTATION, WHAT YOU MEAN BY "ORIENTATION"?

24 MR. MCELHINNY: YOUR HONOR, OBJECTION.
25 THIS IS THE NON-INFRINGEMENT COMPARISONS. THIS

1 WITNESS IS NOT AN EXPERT. HE'S NOT BEEN DISCLOSED
2 AS AN EXPERT.

3 MR. QUINN: I'M JUST ASKING HIM TO
4 EXPLAIN WHAT HE MEANS BY ORIENTATION, YOUR HONOR.

5 THE COURT: I'M GOING TO SUSTAIN THE
6 OBJECTION.

7 GO AHEAD WITH YOUR NEXT QUESTION, PLEASE.
8 BY MR. QUINN:

9 Q YOU REFERRED TO PORTRAIT AND LANDSCAPE. CAN
10 YOU EXPLAIN THE DIFFERENCE?

11 MR. MCELHINNY: COULD SOMEONE EXPLAIN TO
12 THE WITNESS THAT HE'S NOT SUPPOSED TO BE HOLDING UP
13 THE TWO DEVICES?

14 MR. QUINN: IS THAT THE COURT'S RULING,
15 THAT HE SHOULD NOT HOLD THE TWO DEVICES?

16 THE COURT: WELL, MY RULING WAS THAT HE'S
17 NOT TO TESTIFY ON INVALIDITY OR NON-INFRINGEMENT.

18 SO, YES.

19 MR. QUINN: ALL RIGHT.

20 Q SO WOULD YOU PUT DOWN THE IPAD, PLEASE.

21 COULD YOU EXPLAIN THE DIFFERENCE BETWEEN
22 LANDSCAPE AND PORTRAIT ORIENTATION?

23 A WELL, WHEN YOU LOOK AT THESE DEVICES, THERE'S
24 THE HARDWARE PART AND THEN THERE ARE PARTS THAT ARE
25 UNSEEN, OR NOT SEEN. FOR EXAMPLE, WE WOULD HAVE TO

1 DECIDE WHERE WE WANT TO PUT THE PLACE, THE 30 PIN
2 CONNECTOR, AND ALSO THERE'S A CAMERA HERE WHICH
3 WOULD TAKE A SHOT OF THE FRONT VIEW, AND ALSO
4 THERE'S ANOTHER CAMERA FOR A REAR, REAR VIEWS.

5 AND ALSO, WE HAVE TO CONSIDER THE
6 PLACEMENT OF THE EAR DUCTS AND THE SPEAKERS. SO
7 ALL THESE PLACEMENTS WOULD BE A BEARING ON WHETHER
8 THE ORIENTATION SHOULD BE VERTICAL OR HORIZONTAL.

9 SO AS DESIGNERS WE WOULD HAVE TO CONSIDER
10 ALL THESE THINGS.

11 Q IN THE CASE OF THE GALAXY TAB, WHAT DECISION
12 WAS MADE IN TERMS OF ORIENTATION, LANDSCAPE OR
13 PORTRAIT?

14 A WELL, WE HAVE VARIOUS FEATURES, SUCH AS THE
15 MULTIMEDIA PLAYER AND ALSO THE CAMERA AND ALSO
16 MOVING PICTURE, CAMCORDER, THINGS LIKE THAT, AS
17 WELL AS TV.

18 SO WE HAD TO CONSIDER ALL THOSE THINGS,
19 AND WE HAD TO DECIDE, SINCE WE WERE EMPLOYING A
20 LANDSCAPE ALREADY ANYWAY, THAT THE GALAXY TAB
21 SHOULD ALSO BE LANDSCAPE ORIENTED.

22 Q OKAY. IN TALKING ABOUT THE DESIGN OF THE
23 GALAXY, WE TALKED ABOUT SCREEN SIZE AND
24 ORIENTATION.

25 WAS THERE A THIRD FACTOR -- SIGNIFICANT

1 DESIGN DECISION THAT YOU HAD TO MAKE?

2 A AND ALSO WE HAD TO CONSIDER THE DISPLAY THAT
3 YOU -- ONE WOULD ENCOUNTER FROM THE FRONT, MORE OF
4 A FRONTAL DISPLAY.

5 AND ALSO, WE HAD TO CONSIDER THE
6 PACKAGING ITSELF.

7 SO WE HAD TO DECIDE WHETHER WE WANT TO
8 REDUCE THE IMAGING AREA, OR THE DISPLAY AREA, AND
9 THEREBY PERHAPS INCREASING THE THICKNESS, OR
10 DECREASE THE THICKNESS AND PERHAPS HAVE THE
11 VERTICAL AND THE HORIZONTAL PART IMAGE SHOWING
12 SMALLER.

13 Q SO IS IT TRUE THAT YOU COULD --

14 THE INTERPRETER: I'M SORRY, COUNSEL.

15 (DISCUSSION OFF RECORD BETWEEN
16 INTERPRETERS.)

17 THE WITNESS: LET ME SAY, YES, WHEN WE
18 TALK ABOUT THE FRONT DISPLAY PART, WE HAVE TO
19 CONSIDER THE FACTORS, INCLUDING RELATING TO THE
20 COMPONENTS. SO WHETHER WE ARE GOING TO DECREASE
21 THE HORIZONTAL AND THE VERTICAL SIZE, MEANING THE
22 LANDSCAPE ORIENTATION AND THE VERTICAL ORIENTATION
23 OF IT, OR -- IF THAT'S THE CASE, WE HAVE TO
24 INCREASE THE THICKNESS.

25 AND ON THE OTHER HAND, IF YOU WANT TO

1 DECREASE THE THICKNESS, WE HAVE TO DECREASE THE
2 HORIZONTAL AND THE VERTICAL SIZE OF IT.

3 BY MR. QUINN:

4 Q IN DEVELOPING --

5 MR. MCELHINNY: EXCUSE ME, YOUR HONOR.
6 IT DOESN'T MATTER, BUT WE HAVE AN OFFICIAL
7 TRANSLATOR. WE HAVE TWO CHECK TRANSLATORS. THAT
8 WAS SAMSUNG'S TRANSLATOR. IS THAT THE OFFICIAL
9 TRANSLATION? I THOUGHT WE WERE GOING TO GET IT
10 FROM THE OFFICIAL TRANSLATOR.

11 MR. QUINN: I HAD UNDERSTOOD THE OFFICIAL
12 TRANSLATOR INVITED THE -- WHAT WE JUST HEARD.

13 THE COURT: WAS THAT A CONSENSUS AMONGST
14 THE THREE OF YOU, OR NOT?

15 THE INTERPRETER: WE DON'T INTEND TO
16 OFFER INTERPRETATION BY COMMITTEE BUT FIRST --

17 (DISCUSSION OFFER THE RECORD BETWEEN
18 INTERPRETERS.)

19 THE INTERPRETER: YOUR HONOR, AFTER
20 HAVING CONFIRMED WITH THE CHECK INTERPRETERS, THE
21 MAIN INTERPRETER STANDS CORRECTED AND THE CHECKER'S
22 RENDITION SHOULD STAND.

23 THE COURT: OKAY.

24 MR. QUINN: I'M SORRY. I DIDN'T HEAR,
25 YOUR HONOR.

1 THE COURT: HE IS ACCEPTING THE
2 INTERPRETATION OR THE TRANSLATION OF THE CHECK
3 INTERPRETER.

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

5 THE INTERPRETER: IN THAT REGARD, THIS IS
6 ALBERT KIM. I'M SORRY, BUT THIS INTERPRETER'S
7 RENDITION, I DIDN'T WANT IT TO GET TOO MESSY. I
8 THINK SOMETIMES TO RE-ELICIT THE TESTIMONY, THIS IS
9 WHAT I BELIEVE I RECALL.

10 MR. QUINN: YOUR HONOR, THE OFFICIAL
11 TRANSLATOR HAS ALREADY ADOPTED A TRANSLATION. THIS
12 IS COMING OUT OF MY TIME PRESUMABLY. WE ALREADY
13 HAVE AN OFFICIAL ADOPTED TRANSLATION.

14 MR. MCELHINNY: I ACCEPT THE OFFICIAL
15 TRANSLATOR, YOUR HONOR.

16 THE COURT: OKAY. WE'RE FINE. THANK
17 YOU.

18 MR. QUINN: THANK YOU, YOUR HONOR.

19 Q OKAY. IN TERMS OF THIS TRADEOFF THAT YOU
20 DESCRIBED ABOUT STRETCHING THE SCREEN SIZE AND
21 AFFECTING THE THICKNESS, IN DEVELOPING THE GALAXY
22 TAB, WHAT DID YOU DECIDE TO DO?

23 A OF COURSE THERE WAS THE VERY IMPORTANT
24 DECISION AS TO THE VERTICAL AND THE HORIZONTAL SIZE
25 AND THE THICKNESS.

1 ALSO, WHAT WAS IMPORTANT TO US WAS THE
2 FEELING THAT YOU WOULD HAVE ONCE YOU HOLD THE
3 DEVICE IN YOUR HAND. SO YOU HAD TO CONSIDER
4 WHETHER HOLDING THE DEVICE IN YOUR HAND WOULD
5 RENDER A PERSON TO FEEL AS IF IT'S QUITE
6 COMFORTABLE OR NOT.

7 Q BUT IN TERMS OF THIS TRADEOFF IN DEVELOPING
8 THE TABLET, WHAT DID YOU DECIDE TO DO INITIALLY IN
9 TERMS OF HAVING A THICKER OR THINNER TABLET?

10 A OF COURSE WE START WITH THE SCHEDULING WHEN IT
11 COMES TO DEVELOPMENT, AND AS WE WORK THROUGH THE
12 SCHEDULES, SOMETIMES THE DESIGNS WOULDN'T
13 NECESSARILY HAVE TO BE CHANGED ALONG THE WAY.

14 AND, FOR EXAMPLE, INTERNALLY, WITHIN
15 THESE DEVICES, WE HAVE TO DECIDE HOW WE WANT TO
16 HAVE THE LAYOUT OF THE COMPONENTS INTERNALLY.
17 WOULD YOU WANT TO STACK THEM OR DO YOU WANT TO HAVE
18 THEM SITTING NEXT TO ONE ANOTHER?

19 Q ALL RIGHT. DID YOU PREPARE PROTOTYPES OF A
20 THICKER VERSION AND A THINNER VERSION?

21 A YES, WE HAD DESIGN MOCKUPS.

22 Q AND DO YOU HAVE THOSE WITH YOU TODAY OF THE
23 THINNER ONE AND THE THICKER ONE?

24 A YES, I HAVE THEM.

25 Q ALL RIGHT. DID YOU DECIDE INITIALLY, THE

1 INITIAL DECISION, THAT YOU COULD MAKE THE THINNER
2 VERSION?

3 A NO, I DID NOT. THAT'S BECAUSE THE COMPONENTS,
4 THEY COULD NOT BE DEVELOPED AS FAST AS THE SCHEDULE
5 HAD ASKED -- HAD REQUIRED.

6 Q ALL RIGHT. WHEN DID SAMSUNG FIRST DISCLOSE TO
7 THE WORLD THE GALAXY 10.1 TAB DESIGN?

8 A IT WAS AT THE MOBILE WORLD CONGRESS, WHICH WAS
9 HELD ON -- IN FEBRUARY OF 2011.

10 Q AND AT THAT TIME, THE DESIGN THAT WAS
11 DISCLOSED, WAS THAT THE THICKER ONE OR THE THINNER
12 ONE?

13 A THE THICKER ONE.

14 Q AND DID SAMSUNG ULTIMATELY SELL THAT THICKER
15 VERSION IN THE UNITED STATES?

16 A NO.

17 Q WHY NOT?

18 A AT THE MOBILE WORLD CONGRESS, THERE HAD BEEN
19 ABOUT 80 COMPETITORS WHICH HAVE ANNOUNCED THEIR OWN
20 TABLETS.

21 AND AT THE TIME WHEN WE HAD COMPARED OUR
22 SAMSUNG TABLET TO THOSE TABLETS, WE FELT THAT WE
23 DID NOT HAVE MUCH BETTER OF A COMPETITIVENESS OVER
24 THESE OTHER PRODUCTS.

25 SO WE DECIDED THAT WE SHOULD REDESIGN.

1 Q AND SO WHAT DID SAMSUNG DO AS A RESULT OF
2 SEEING THESE OTHER 80 COMPETITIVE TABLETS AT THE
3 MOBILE WORLD CONGRESS?

4 A WE HAVE DECIDED THAT WE WILL PRODUCE THE
5 LIGHTEST AND THINNEST TABLET IN THE WORLD AND SELL
6 SUCH.

7 Q AND DID THAT DEVELOPMENT EFFORT TO MAKE THE
8 LIGHTEST AND THINNEST TABLET IN THE WORLD, DID THAT
9 BEGIN BEFORE OR AFTER APPLE ANNOUNCED THE IPAD 2?

10 A IT WOULD BE BEFORE.

11 Q AND DO YOU RECALL WHEN THE IPAD 2 WAS
12 ANNOUNCED TO THE WORLD?

13 A MY UNDERSTANDING IS MARCH, AROUND MARCH OF
14 2011.

15 Q AND AS A RESULT OF THE ANNOUNCEMENT OF THE
16 IPAD 2, DID SAMSUNG MAKE ANY CHANGES IN YOUR GALAXY
17 TAB PROJECT THAT YOU THEN WERE REDOING AFTER THE
18 WORLD MOBILE CONFERENCE?

19 A NO. WE WERE ALREADY CONTINUALLY PURSUING THE
20 THINNEST TABLET IN THE WORLD.

21 Q AND AS A RESULT, DID THE IPAD 2, WAS THAT
22 THINNER OR THICKER THAN WHAT YOU WERE THEN
23 DEVELOPING INTERNALLY?

24 A THINNER.

25 Q AND DID THE TABLET THAT -- DO YOU KNOW WHETHER

1 OR NOT THE TABLET THAT SAMSUNG ULTIMATELY BROUGHT
2 TO MARKET, THE GALAXY TAB 10.1, WAS THINNER OR
3 THICKER THAN THE IPAD 2?

4 A THINNER.

5 Q AND DID YOU THINK -- DID IT OCCUR TO YOU THAT
6 THERE WAS ANYTHING INAPPROPRIATE, IN SEEING THE
7 IPAD 2 AND THEN TRYING TO MAKE SOMETHING THINNER
8 THAN THAT?

9 MR. MCELHINNY: HE'S LEADING, YOUR HONOR.

10 THE COURT: SUSTAINED.

11 BY MR. QUINN:

12 Q ALL THE -- DID YOU CONSIDER ANY -- ANY --
13 WE'VE HEARD ABOUT THE SMOOTH GLASS SURFACE ON THE
14 GALAXY TAB.

15 DID YOU EVER CONSIDER A SURFACE OTHER
16 THAN A SMOOTH GLASS SURFACE?

17 A WE HAVE NOT.

18 Q WHY NOT?

19 A WE HAVE NOT. SAMSUNG DOES NOT PRODUCE
20 REINFORCED GLASSES. WE WOULD HAVE TO IMPORT SUCH
21 FROM CORNING OF THE U.S. OR SOME OTHER JAPANESE
22 COMPANIES.

23 AND IF YOU WERE TO HAVE A CURVATURE OR
24 DIMPLED WITHIN OR ON THE SURFACE OF THE GLASSES,
25 THEN THIS COULD LEAD TO ERROR BECAUSE -- DUE TO

1 SUCH IMPERFECTIONS, A USER MAY BE PRESSING A
2 CERTAIN SPOT BUT A DIFFERENT SPOT MAY RESPOND.

3 Q AND IN TERMS OF THE BEZEL, WHAT CONSIDERATIONS
4 WENT INTO DESIGNING THE BEZEL AROUND THE GALAXY
5 TAB?

6 A WELL, THE BEZEL OF THESE DEVICES, IT'S
7 REALLY -- IT ACTS LIKE A BUMPER, SAY, ON A CAR. IT
8 IS TO PROTECT THE DEVICE, AND SO REALLY IT'S FOR
9 THE USER.

10 SO WITHOUT A FRAME, WHICH I THINK OF IT
11 AS PROVIDING A FENCE OR A FENCING MECHANISM, IF YOU
12 DIDN'T HAVE SUCH FRAME, YOU WOULD HAVE THE
13 REINFORCED GLASS THAT COMES DIRECTLY IN CONTACT
14 WITH THE USER, PERHAPS THE USER'S HAND, AND IF THE
15 GLASS WERE SOMEHOW SHATTERED OR ABSORBS SOME SORT
16 OF A SHOCK, THEN THIS COULD INFLICT A DEEP WOUND ON
17 THE USER'S HAND.

18 AND ALSO, IF IT DROPS, SO IT COULD
19 SHATTER. SO THAT'S WHY THE FRAME HAS TO BE THERE,
20 IN ORDER TO PROTECT THE USER, AND ALSO TO MAKE SURE
21 THAT THE SECONDARY DAMAGES DO NOT OCCUR, DAMAGES TO
22 THE REINFORCED GLASS.

23 Q AND CAN YOU DESCRIBE THE SHAPE OF THE EDGE AND
24 THE REASONS WHY YOU DESIGNED THE EDGE THE WAY YOU
25 DID.

1 A WELL, LOOKING AT THE BACK SIDE, THE EDGE,
2 WELL, YOU WANT TO MAKE SURE THAT WHEN A USER HOLDS
3 THE DEVICE THAT THE LARGEST AREA THAT A USER'S HAND
4 WOULD COME IN CONTACT WITH THE BACK SIDE OF THE
5 DEVICE, AND ALSO YOU WANT TO MAKE IT SO THAT THE
6 USER WOULD HAVE AN EASIER TIME, OR IT WOULD BE
7 EASIER FOR THE USER TO PICK UP THE DEVICE, WHETHER
8 IT'S LAYING ON THE FRONT OR ON THE BACK SIDE.

9 Q ALL RIGHT. YOU SHOULD HAVE SOME PHONES UP
10 THERE, SOME SMARTPHONES BEFORE YOU, MR. KIM.

11 THESE ARE ALL IN EVIDENCE, THE DROID
12 CHARGE, JOINT EXHIBIT 1025; THE GALAXY S EPIC 4G
13 SLIDE, JOINT EXHIBIT 1012; THE GALAXY S II, AT&T,
14 JOINT EXHIBIT 1031; THE GALAXY S II SKYROCKET,
15 JOINT EXHIBIT 1035; AND THE GALAXY S II EPIC 4G
16 TOUCH, JOINT EXHIBIT 1034.

17 AND MY QUESTION TO YOU, MR. KIM, IS
18 WHETHER YOU'RE THE INDIVIDUAL WHO DESIGNED ALL OF
19 THESE ACCUSED PHONES?

20 A YES, I AM.

21 Q AND WE DON'T HAVE TIME TO GO THROUGH ALL OF
22 THEM, BUT IN EACH CASE, IS THE DESIGN OF THE PHONE
23 DIFFERENT?

24 A THAT IS CORRECT, THESE DESIGNS ARE DIFFERENT.

25 Q AND WHY ARE THE DESIGNS OF EACH OF THESE

1 PHONES DIFFERENT? IN OTHER WORDS, WHY DO YOU
2 DESIGN MULTIPLE PHONES WHICH ARE DIFFERENT?

3 A WELL, FOR STARTERS, YOU WOULD HAVE DIFFERENT
4 SCREEN SIZES OF EACH DEVICE.

5 AND ALSO SOMETHING CALLED A FORM FACTOR,
6 SUCH AS WHETHER THE PHONE IS A SLIDE PHONE OR
7 SOMETHING THAT IS A FULL TOUCH PHONE.

8 AND ALSO, THE FACTORS SUCH AS WHETHER
9 THERE ARE KEYS ON THE FRONT OR NOT.

10 ALL THESE THINGS WOULD HAVE A
11 DETERMINATION, DETERMINING EFFECT.

12 Q IF WE COULD PUT UP ON THE SMALL SCREEN THE
13 EXHIBIT 684.001, JUST ON THE SMALL SCREEN AT THIS
14 POINT. AND, MR. KIM, I'M GOING TO CALL YOUR
15 ATTENTION TO THE IMAGES OF PHONES IN THE UPPER LEFT
16 OF THIS EXHIBIT UNDER BAR TYPE TOUCHSCREEN DISPLAY.

17 DO YOU SEE THAT?

18 A YEAH, I CAN SEE THOSE.

19 Q AND JUST FOCUSSING ON THOSE IN THAT UPPER
20 QUARTER OF THE EXHIBIT, ARE THERE ANY OF THOSE THAT
21 YOU CANNOT IDENTIFY AS BEING TRUE AND CORRECT
22 IMAGES OF SAMSUNG PHONES OR MOCKUPS THAT EXISTED IN
23 2006?

24 SO AT THIS POINT I'M ASKING THAT IF THERE
25 ARE ANY THAT YOU CANNOT IDENTIFY AS BEING SAMSUNG

1 Q HE'S THE PERSON WHO'S TWO LEVELS ABOVE YOU IN
2 THE ORGANIZATION; CORRECT?

3 A THAT IS CORRECT.

4 MR. MCELHINNY: YOUR HONOR, I WOULD MOVE
5 PX 43 IN.

6 MR. QUINN: OBJECTION, RELEVANCE, YOUR
7 HONOR. THIS RELATES TO THE KEY --

8 THE COURT: OVERRULED.

9 MR. QUINN: THAT'S NOT AT ISSUE IN THIS
10 CASE.

11 THE COURT: THAT'S ADMITTED.

12 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER PX
13 43, HAVING BEEN PREVIOUSLY MARKED FOR
14 IDENTIFICATION, WAS ADMITTED INTO
15 EVIDENCE.)

16 MR. MCELHINNY: THANK YOU, YOUR HONOR.

17 Q BEFORE I LOOK AT THAT, BEFORE I LOOK AT THAT,
18 SIR, WOULD YOU OPEN YOUR BINDER, I WANT TO DEAL
19 WITH MR. QUINN'S ISSUE HERE, WOULD YOU OPEN YOUR
20 BINDER TO PLAINTIFF'S EXHIBIT 42.

21 A IS THIS IT?

22 Q YES, SIR, THAT'S IT. AND IT SHOULD BE THE
23 KOREAN ON THE NEXT PAGE.

24 A IS THAT FOUND IN MY BINDER HERE?

25 Q IT SHOULD BE RIGHT BEHIND TAB 42, SIR. IT'S

1 THE FIRST DOCUMENT IN MINE, PX 42. IT'S IN THE
2 WHITE BINDER, SIR.

3 A YES, I'M LOOKING AT IT.

4 Q SIR, DO YOU SEE THERE AN E-MAIL THAT'S DATED
5 FEBRUARY 16TH, 2010?

6 A YES, THAT'S CORRECT.

7 Q FROM A PERSON NAMED HYUN KIM, DO YOU SEE THAT?

8 A YES, I SEE IT.

9 Q HYUN KIM IS DESIGNATED HERE AS A SENIOR
10 DESIGNER AT SAMSUNG?

11 A I HAVE NOT SEEN THIS PERSON BEFORE.

12 Q SIR, MY QUESTION IS, DOES HIS TITLE ON THE
13 E-MAIL SAY THAT HE IS A SENIOR DESIGNER AT SAMSUNG?

14 A YES, THAT'S HOW IT'S WRITTEN.

15 MR. MCELHINNY: YOUR HONOR, I WOULD MOVE
16 EXHIBIT, PLAINTIFF'S EXHIBIT 42.

17 MR. QUINN: OBJECTION. RELEVANCE,
18 RELATES TO P1, P3, NEITHER OF WHICH ARE AT ISSUE IN
19 THIS CASE.

20 THE COURT: THAT'S OVERRULED.

21 GO AHEAD. IT'S ADMITTED.

22 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
23 42, HAVING BEEN PREVIOUSLY MARKED FOR
24 IDENTIFICATION, WAS ADMITTED INTO
25 EVIDENCE.)

1 BY MR. MCELHINNY:

2 Q NOW LET'S LOOK AT THESE DOCUMENTS, SIR.

3 EXHIBIT 42, ON FEBRUARY 16TH, 2010,
4 ACCORDING TO THIS, THERE WAS A MEETING BETWEEN
5 GOOGLE AND A SAMSUNG SENIOR DESIGNER CHO. DO YOU
6 SEE THAT?

7 A YES.

8 Q AND THERE'S AN ENTRY THERE TALKING ABOUT P1
9 AND P3.

10 A YES.

11 Q AND THE QUOTE IS, "SINCE IT IS TOO SIMILAR TO
12 APPLE, MAKE IT NOTICEABLY DIFFERENT, STARTING WITH
13 THE FRONT SIDE."

14 DO YOU SEE THAT?

15 A YES, THAT'S HERE, YES.

16 Q AND THEN, SIR, IF YOU LOOK AT PX 43., IF YOU
17 LOOK AT THE SECOND PAGE AT BULLET POINT NUMBER 6.
18 THIS IS THE MINUTES OF THE TEAM LEADER'S DIRECTIVES
19 AT THE EXECUTIVE MEETING.

20 DO YOU SEE THAT?

21 A YES, THAT'S CORRECT.

22 Q AND THE FIRST ENTRY SAYS, "RESPOND TO THE
23 ISSUE OF DESIGN SIMILARITY FOR THE S SERIES."

24 DO YOU SEE THAT?

25 A YES, THERE IS A MENTION THAT THE CMF SHOULD BE

1 CHANGED.

2 Q AND THE S SERIES, SO WE ALL UNDERSTAND IT, IS
3 THE GALAXY S SERIES OF PHONES. THAT'S WHAT THEY'RE
4 TALKING ABOUT HERE WHERE THEY'RE TALKING ABOUT
5 DESIGN SIMILARITY?

6 A YES, THAT IS CORRECT.

7 Q AND THEN FURTHER DOWN, IT SAYS, "GOOGLE IS
8 DEMANDING DISTINGUISHABLE DESIGN VIS-À-VIS THE IPAD
9 FOR THE P3."

10 DO YOU SEE THAT?

11 A I SEE IT. BUT THIS IS ABOUT THE FRONTAL
12 DIFFERENTIATION AND THERE IS A FAMOUS ARCHITECT IN
13 THE U.S. WHO HAD SAID THAT FORM FOLLOWS FUNCTION,
14 SO THE FUNCTION IS MORE IMPORTANT WHEN IT COMES TO
15 THE FRONTAL SIZE.

16 Q AND THE DECISION THAT THE TEAM EXECUTIVES MADE
17 AT THIS MEETING WAS TO MAINTAIN THE CURRENT DESIGN.

18 DO YOU SEE THAT?

19 A YES, THAT IS CORRECT.

20 Q IN FACT --

21 A YES. HOWEVER, THE TIME PERIOD HERE CONCERNED,
22 THIS WOULD BE AFTER THE CONCLUSION OF MWC, AND THIS
23 IS WHEN WE HAD ALREADY DECIDED THAT WE WOULD
24 PRODUCE THE THINNEST DEVICE IN THE WORLD.

25 Q AND LET'S MAKE SURE OF YOUR TESTIMONY.

1 DESPITE THIS TEAM LEADER'S MEETING, THE
2 DISCUSSION ABOUT GOOGLE AND THE DECISION, YOU HAVE
3 TESTIFIED HERE UNDER OATH THAT NOT ONE OF YOUR
4 SUPERVISORS EVER MENTIONED THIS ISSUE TO YOU? IS
5 THAT YOUR TESTIMONY?

6 MR. QUINN: YOUR HONOR, ASSUMES FACTS NOT
7 IN EVIDENCE. THERE'S NO FOUNDATION THAT'S BEEN
8 LAID THAT HE WAS AT THE MEETING OR THAT HE HAS ANY
9 KNOWLEDGE OF THIS. HE'S BEING QUESTIONED ABOUT A
10 DOCUMENT HE HASN'T EVEN LAID A FOUNDATION HE'S EVEN
11 SEEN.

12 THE COURT: OVERRULED.

13 THE WITNESS: I DIDN'T QUITE CATCH THAT.
14 COULD YOU ASK ME THE QUESTION AGAIN, PLEASE.

15 BY MR. MCELHINNY:

16 Q IS IT YOUR TESTIMONY, UNDER OATH, THAT NO
17 SUPERVISOR OF YOURS EVER MENTIONED TO YOU THE
18 DISCUSSION WITH GOOGLE?

19 A THAT IS CORRECT.

20 Q SIR, IN FACT, YOU THEN WENT ON TO USE THE
21 DESIGN OF THE GALAXY TAB AS YOUR INSPIRATION WHEN
22 YOU DESIGNED THE GALAXY ACE PHONE; ISN'T THAT TRUE?

23 THE INTERPRETER: COUNSEL, WAS THAT ACE
24 PHONE?

25 MR. MCELHINNY: ACE, GALAXY CASE.

1 THE WITNESS: YES, THAT IS CORRECT.

2 BY MR. MCELHINNY:

3 Q SIR, DO YOU KNOW A GENTLEMAN BY THE NAME OF
4 MINHYOUK LEE?

5 A YES, I DO.

6 Q HE WAS THE ORIGINAL DESIGNER OF THE GALAXY
7 PHONES, WASN'T HE?

8 A THAT'S CORRECT. HE DESIGNED THE GALAXY S I.

9 Q HAVE YOU SEEN MR. LEE SINCE YOU'VE BEEN HERE
10 IN SAN JOSE?

11 A YES, I HAVE.

12 Q IS HE GOING TO COME AND TESTIFY TO THIS JURY?

13 A I DON'T KNOW THAT.

14 MR. MCELHINNY: MR. KIM, THANK YOU VERY
15 MUCH FOR YOUR TIME.

16 THE COURT: ALL RIGHT. THE TIME IS NOW
17 2:17. PLEASE GO AHEAD.

18 MR. QUINN: IF WE COULD PUT UP ON THE
19 SCREEN PLAINTIFF'S EXHIBIT 43.

20 **REDIRECT EXAMINATION**

21 BY MR. QUINN:

22 Q AND LOOK AT THE PAGE -- THE SECOND PAGE, BATES
23 NUMBER 857 THAT COUNSEL WAS JUST ASKING YOU ABOUT.

24 AND IF WE CAN BLOW UP THAT 6, RESPOND TO
25 THE ISSUE.

1 "GOOGLE IS DEMANDING DISTINGUISHABLE
2 DESIGN VISIT APPARENTLY VISIT THE IPAD FOR THE P3."
3 DO YOU SEE THAT, THAT COUNSEL ASKED YOU ABOUT?

4 A YES.

5 Q THAT'S THE TABLET THAT WAS NEVER SOLD IN THE
6 UNITED STATES; CORRECT?

7 A THAT'S CORRECT. THE P3 WAS NOT SOLD.

8 Q THAT TABLET IS NOT AT ISSUE IN THIS CASE, IS
9 IT?

10 A THAT IS CORRECT.

11 Q IF WE COULD LOOK AT EXHIBIT 42, THE OTHER
12 DOCUMENT THAT COUNSEL SHOWED YOU, AND IF WE CAN
13 ENLARGE THAT P1, P3 LANGUAGE THERE.

14 I THINK YOU TOLD US THE P1 IS THE GALAXY
15 7.0.

16 A YES, THAT'S CORRECT.

17 Q IS THAT -- IS THAT TABLET AT ISSUE IN THIS
18 CASE?

19 MR. MCELHINNY: YOUR HONOR, THERE'S NO
20 WAY THIS WITNESS WOULD KNOW THAT CORRECTLY.

21 MR. QUINN: YOUR HONOR, I THINK WE CAN
22 GET A STIPULATION ON THAT, YOUR HONOR.

23 THE COURT: OVERRULED.

24 GO AHEAD, PLEASE.

25 BY MR. QUINN:

1 RECEIVES THAT, THAT INPUT AND PERFORMS -- SENDS IT
2 TO THE DISPLAY UNIT, WHICH THEN UPDATES THE DISPLAY
3 ON THE E-BOOK ITSELF.

4 Q OKAY. I THINK THERE'S A LITTLE MOTION.

5 A SO THERE'S A SCROLL BAR THAT SHOWS, THAT
6 DEMONSTRATES THE SCROLL OPERATION. SO THAT
7 LIMITATION IS MET.

8 Q OKAY. AND LET'S FINISH THE LAST SLIDE WITH
9 RESPECT TO NOMURA.

10 A SO, AGAIN, SIMILARLY TO THE WAY THAT THE
11 SCROLL OPERATION WAS, WAS MET, THE SYSTEM ALSO
12 RESPONDS TO A GESTURE CALL BY PASSING THE
13 INFORMATION TO THE IMAGE GENERATION UNIT WHICH GOES
14 TO THE DISPLAY UNIT WHICH UPDATES THE E-BOOK.

15 Q OKAY. NOW, IN YOUR OPINION, SIR, WITH
16 RESPECT -- ARE ALL THE LIMITATIONS OF CLAIM 8 OF
17 THE 195 -- '915 PATENT FOUND IN NOMURA?

18 A YES, THEY ARE.

19 Q AND WHAT DOES THAT LEAD YOU TO CONCLUDE?

20 A WHAT THAT MEANS IS BY VIRTUE OF THE FACT THAT
21 ALL OF THE CLAIM LIMITATIONS ARE COVERED BY NOMURA,
22 OR THAT IT ANTICIPATES OR RENDERS OBVIOUS, OR
23 INVALIDATES, RATHER, THE '915 PATENT BY WHAT'S
24 REFERRED TO AS ANTICIPATION, MEANING THAT ONE
25 SOURCE ENCOMPASSES ALL OF THE CLAIM ELEMENTS.

1 Q AND WHAT CONCLUSION, SIR, JUST TO MAKE SURE I
2 DIDN'T MISS IT, WHAT WAS YOUR CONCLUSION WITH
3 RESPECT TO DIAMONDTOUCH RUNNING FRACTAL ZOOM
4 COMPARED TO CLAIM 8 OF THE '915 PATENT?

5 A LIKE NOMURA, DIAMONDTOUCH COVERS ALL OF THE
6 CLAIM ELEMENTS OF CLAIM 8, AND, THEREFORE,
7 INVALIDATES CLAIM 8 AS WELL.

8 Q I JUST WANT TO SPEND A MOMENT ON A THIRD
9 REFERENCE, IF I HAVE SUCCESS BRINGING IT UP HERE
10 HERE.

11 JUST A SENTENCE OR TWO, SIR, ABOUT WHAT
12 THE HAN SYSTEM WAS?

13 A SURE. JEFFERSON HAN WAS A RESEARCH SCIENTIST
14 AT NEW YORK UNIVERSITY AND HE CREATED A DEVICE, NOT
15 ENTIRELY DISSIMILAR FROM THE DIAMONDTOUCH SYSTEM,
16 BUT IT'S A USER INTERFACE, LARGE SCALE USER
17 INTERFACE THAT RESPONDS TO TOUCH INPUT. AND
18 THERE'S A, A FILM HERE THAT SHOWS EXACTLY WHAT THAT
19 SYSTEM DOES.

20 Q OKAY. AND I THINK JUST TO BRING IT BACK TO
21 MIND, LET'S SHOW A VERY SHORT PORTION OF THE HAN
22 VIDEO.

23 CAN YOU PUT THAT UP, PLEASE.

24 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN
25 OPEN COURT OFF THE RECORD.)

1 MR. DEFRANCO: OKAY.

2 THE COURT: WHAT'S THE NUMBER ON THAT
3 VIDEO, PLEASE?

4 MR. DEFRANCO: YOUR HONOR, WE WOULD OFFER
5 THAT INTO EVIDENCE. THAT IS GOING TO BE EXHIBIT DX
6 556.

7 THE COURT: ALL RIGHT. THAT'LL BE
8 PENDING THE STIPULATION. OKAY. SO IT'S NOT
9 ADMITTED RIGHT NOW UNLESS THERE'S A STIPULATION ON
10 THE VIDEO. SO I'LL HOLD THAT.

11 MR. DEFRANCO: YES, YOUR HONOR.

12 THE COURT: GO AHEAD, PLEASE.

13 BY MR. DEFRANCO:

14 Q BRIEFLY, CAN YOU WALK THROUGH CLAIM 8 OF THE
15 '915 PATENT WITH RESPECT TO THE HAN VIDEO, SIR?

16 A SO THE HAN DEMONSTRATION SHOWS A MACHINE
17 READABLE -- A COMPUTER THAT HAS INSTRUCTIONS IN IT
18 THAT PERFORM VARIOUS OPERATIONS. IT'S SHOWN IT
19 RECEIVES INPUTS, AS YOU CAN SEE WHEN HE WAS
20 DEMONSTRATING THE SYSTEM, IT RECEIVES INPUTS IN THE
21 FORM OF SINGLE INPUT SCROLLS, MULTI INPUT ZOOMING
22 OPERATIONS. IT CREATES -- IT DETERMINES WHETHER OR
23 NOT THE EVENT OBJECT INVOKES A SCROLL BECAUSE IT
24 RECORDS THOSE EVENTS IN AN EVENT OBJECT. IT
25 DETERMINES BY DISTINGUISHING WHETHER IT'S A SINGLE

1 POINT OR MULTIPPOINT.

2 IT THEN ISSUES A SCROLL OR GESTURE CALL
3 BASED ON THE DETERMINATION IT MADE AND THEN UPDATES
4 THE SCREEN TO REFLECT WHAT THE USER HAD DONE WITH
5 THE SINGLE OR MULTITOUCH INPUTS.

6 Q OKAY. LET'S TALK ABOUT NON-INFRINGEMENT,
7 INFRINGEMENT ISSUES FOR JUST A MOMENT.

8 CAN YOU TELL US WHAT CLAIM ELEMENT D IS
9 ABOUT AGAIN IN THIS CLAIM.

10 A SO CLAIM ELEMENT D HAS TO DO WITH DETERMINING
11 WHETHER THE EVENT OBJECT INVOKES A SCROLL BY
12 DISTINGUISH -- OR A GESTURE BY DISTINGUISHING
13 BETWEEN ONE POINT OR MULTIPPOINT.

14 AND IT'S -- THE EVENT OBJECT IS --
15 INVOKES THE SCROLL OR GESTURE OPERATION. THERE'S
16 AN INVOCATION OF THE SCROLL OR GESTURE OPERATION BY
17 THE EVENT OBJECT.

18 Q WHAT IS YOUR UNDERSTANDING OF THE DEFINITION
19 OF INVOKE AS IT'S TO BE USED IN THIS CASE?

20 A SO INVOKE, AS I UNDERSTAND IT, HAS COME TO
21 MEAN TO CAUSE, AND I UNDERSTAND THAT'S THE COURT'S
22 CONSTRUCTION FOR THE TERM "INVOKE."

23 Q OKAY. AND --

24 MR. JACOBS: YOUR HONOR, THAT'S AN
25 INCOMPLETE RECITATION OF THE COURT'S CLAIM

1 CONSTRUCTION.

2 THE COURT: OVERRULED. YOU'LL HAVE A
3 CHANCE ON CROSS.

4 GO AHEAD.

5 BY MR. DEFRANCO:

6 Q OKAY. IN YOUR OPINION, DO THE ACCUSED
7 PRODUCTS HAVE THAT FEATURE, SIR?

8 A NO. THE ACCUSED PRODUCTS, I THINK THERE'S A
9 SLIDE ON THIS, BUT THE ACCUSED PRODUCTS OPERATE
10 MORE ALONG THE LINES LIKE THIS.

11 WE HEARD THE OTHER DAY DR. SINGH TALK
12 ABOUT THE WEB VIEW OBJECT AND THAT THE WEB VIEW
13 OBJECT RELIED -- USES THE DATA THAT IS STORED IN
14 THE MOTION EVENT OBJECT TO MAKE A DETERMINATION AS
15 TO WHETHER ONE TOUCH OR MULTIPLE TOUCHES HAD
16 OCCURRED.

17 AND IF ONE USES -- IT TAKES A DIFFERENT
18 PATH THROUGH THE CODE, IN ORDER TO SEE IF ONE TOUCH
19 OR MULTITOUCH HAD BEEN USED.

20 THE POINT IS THAT THE MOTION EVENT OBJECT
21 IS NOT THE CAUSER OF THIS DETERMINATION AS TO
22 WHETHER OR NOT ONE TOUCH OR MULTIPLE TOUCHES HAVE
23 OCCURRED.

24 THE MOTION OF THAT OBJECT THAT CONTAINS
25 THE DATA, WHICH IS THEN USED BY THE WEB VIEW OBJECT

1 IN ORDER TO MAKE THE DETERMINATION.

2 Q OKAY. AND THEN THERE'S BEEN SOME TALK ABOUT
3 TWO FINGER SCROLLING. WOULD YOU TELL US WHAT
4 YOU'VE CONCLUDED WITH RESPECT TO TWO-FINGER
5 SCROLLING IN SOME OF THE SAMSUNG PRODUCTS THAT YOU
6 ANALYZED?

7 A SO ON SOME OF THE SAMSUNG PRODUCTS THAT I HAD
8 THE OPPORTUNITY, THAT I'VE ANALYZED, WHICH ARE THE
9 ACCUSED PRODUCTS IN THIS MATTER, THE PRODUCTS DO
10 PERFORM MULTIPOINT SCROLLING, IN OTHER WORDS, BEING
11 ABLE TO SCROLL A DEVICE USING MULTIPLE POINTS.

12 AGAIN, THE PATENT CALLS FOR
13 DISTINGUISHING BETWEEN A MULTIPOINT SCROLL AND A
14 SINGLE -- I MEAN, A MULTIPOINT SCALE AND A SINGLE
15 POINT SCROLL.

16 WHAT I WAS ABLE -- WHAT I'VE OBSERVED IS
17 THAT SOME OF THE DEVICES DO PERFORM MULTIPOINT
18 SCROLLING WHICH, AGAIN, IS CONTRARY TO THE WAY THE
19 PATENT, THE WAY THE PATENT CLAIMS OPERATE.

20 Q OKAY. LET'S SHIFT GEARS NOW AND LET'S TALK
21 ABOUT THE '163 PATENT, OKAY?

22 A SURE.

23 Q I WANT TO MOVE AHEAD A LITTLE BIT. I KNOW
24 THIS IS INTRODUCTORY SLIDE. YOU'VE GOT THE SAME
25 PRIOR ART?

1 A AGAIN, SAME PRIOR ART, YES, TO THE RIGHT.

2 Q THERE'S BEEN QUITE A BIT OF DISCUSSION OF
3 LAUNCHTILE IN THIS CASE. I THINK WE'VE HEARD
4 ENOUGH ABOUT THAT. SO WHY DON'T WE GO STRAIGHT TO
5 THE ASSERTED CLAIM IN THE '163 PATENT. THAT'S
6 CLAIM 50, IS THAT RIGHT, SIR?

7 A CLAIM 50 IS THE ASSERTED CLAIM IN THE '163
8 PATENT.

9 Q WHY DON'T WE DO THIS. WHY DON'T WE -- LET'S
10 START WITH THE FIRST ELEMENT AND I WILL MOVE
11 THROUGH THE SLIDES AS YOU DESCRIBE WHERE YOU
12 BELIEVE THE ELEMENT AT ISSUE IS FOUND IN CLAIM 50.
13 ARE YOU WITH ME?

14 A OKAY. SO THE FIRST ELEMENT IS OF -- DESCRIBES
15 A PORTABLE ELECTRONIC DEVICE WHICH THE LAUNCHTILE
16 SYSTEM RUNNING ON THIS HEWLETT-PACKARD IPAQ
17 HANDHELD UNIT PERFORMS. IT'S A CROSS -- IT'S WITH
18 A PROCESSOR, A TOUCH SENSITIVE SCREEN, MEMORY, AND
19 A SERIES OF PROGRAMS AND THOSE PROGRAMS CONTAIN
20 INSTRUCTIONS WHICH ALLOW THE PROGRAM TO DO WHAT
21 IT'S SUPPOSED TO DO. SO THAT CLAIM ELEMENT IS MET.

22 SO THE SECOND PART OF CLAIM 50 SAYS
23 DISPLAYING AT LEAST A PORTION OF A STRUCTURED
24 ELECTRONIC DOCUMENT.

25 WHAT'S REFERRED TO THERE, IN LAUNCHTILE,

1 THE STRUCTURED ELECTRONIC DOCUMENT IS WHAT
2 DR. BEDERSON REFERRED TO AS THE INTERACTIVE ZOOM
3 SPACE. THAT INTERACTIVE ZOOM SPACE IS THAT
4 COLLECTION OF 36 TILES THAT DR. BEDERSON TALKED
5 ABOUT, AND THOSE 36 TILES ARE AN INTERACTIVE ZOOM
6 SPACE THAT IS THE STRUCTURED ELECTRONIC DOCUMENT OF
7 THE REQUIREMENT.

8 IF YOU SEE HERE, WHAT IT ALLOWS IS FOR
9 THE IDENTIFICATION OF A FIRST BOX IN THAT -- IN A
10 PLURALITY OF BOXES OF CONTENT.

11 Q OKAY. AND THE NEXT LIMITATION, SIR?

12 A SO THE -- THE PATENT REQUIRES THAT THE SYSTEM
13 BE ABLE TO DETECT A FIRST GESTURE AT THE LOCATION
14 DISPLAYED ON THE -- AT A LOCATION DISPLAYED ON THE
15 STRUCTURED ELECTRONIC DOCUMENT FOR DETERMINING A
16 FIRST BOX IN THE PLURALITY OF BOXES LOCATED AT THAT
17 LOCATION.

18 SO, IN OTHER WORDS, AS YOU CAN SEE HERE,
19 THE USER IS ABOUT TO SELECT AN AREA WITHIN THAT BOX
20 OF FOUR, BECAUSE THAT'S THE WAY THAT THE LAUNCHTILE
21 IS ORGANIZED IS A SERIES OF QUAD TILES, OR
22 TWO-BY-TWO ELEMENTS, AND WHEN THAT HAPPENS, THE
23 STRUCTURED ELECTRONIC DOCUMENT, OR THE INTERACTIVE
24 ZOOM SPACE, IS TRANSLATED AND ENLARGED, AND WE'LL
25 SEE THAT IN THE NEXT CLAIM ELEMENT. THIS MEANS

1 THIS ONE HAS BEEN MET.

2 SO HERE WE SEE THE STRUCTURED ELECTRONIC
3 DOCUMENT, THE INTERACTIVE ZOOM SPACE IS NOW
4 TRANSLATED, MEANING SCROLLED, AND ENLARGED OR
5 CENTERED, CENTERED AND ENLARGED SO THAT WE ENLARGE
6 THAT, THAT FIRST BOX OF CONTENT WITHIN THAT
7 STRUCTURED ELECTRONIC DOCUMENT.

8 AND THAT'S WHAT'S SHOWN HERE. THE
9 FOUR -- THAT QUAD TILE, THOSE FOUR TILES, ARE NOW
10 SELECTED AND ENLARGED. SO THAT CLAIM ELEMENT IS
11 MET.

12 Q AND THE NEXT LIMITATION, SIR?

13 A SO THE NEXT LIMITATION, THIS IS AN IMPORTANT
14 ONE, THE NEXT LIMITATION IS AFTER THE FIRST BOX IS
15 ENLARGED, DETECTING A SECOND BOX WHICH IS NOT THAT
16 FIRST BOX.

17 AND THAT SECOND GESTURE NOW, YOU CAN SEE
18 IT BEING DONE HERE, THE USER IS SELECTING THAT
19 SECOND BOX OTHER THAN THE FIRST BOX.

20 AND SO THE -- ONCE THE FIRST BOX HAS BEEN
21 ENLARGED, NOW I'M SELECTING A SECOND BOX, WHICH IS
22 THIS UPPER LEFT-HAND QUADRANT HERE. SO THAT
23 ELEMENT IS MET.

24 Q OKAY. AND THEN FINALLY THE LAST LIMITATION,
25 SIR?

1 ENLARGED AND CENTERED, SO THAT MEANS THAT CLAIM 50D
2 AND E ARE MET, AND F FOR THAT MATTER.

3 AND IN ADDITION, ONCE THAT -- ONCE THE
4 TILE HAS BEEN ENLARGED AND CENTERED, THE ADJACENT
5 TILES AROUND IT ARE AVAILABLE, THE USER THEN HAS
6 THE OPPORTUNITY TO SELECT THOSE ADJACENT TILES,
7 WHICH THAT TILE WILL NOW BE CENTERED AND ENLARGED
8 AS WELL. SO MUCH LIKE LAUNCHTILE, THE AGNETTA
9 PATENT PERFORMS THE SAME OPERATIONS AND SAME
10 FUNCTIONS.

11 Q AND WHAT IS YOUR YOUR OPINION OF THE VALIDITY
12 OF CLAIM 50 OF THE '163 PATENT IN VIEW OF THE
13 AGNETTA REFERENCE, SIR?

14 A I BELIEVE THE AGNETTA REFERENCE INVALIDATES
15 CLAIM 50 BECAUSE IT MEETS ALL THE CLAIM
16 LIMITATIONS.

17 Q WE HAVE ONE MORE TO DO, THE ROBBINS PATENT.
18 IT SHOULD BE IN YOUR BINDER AGAIN. IT'S '349
19 PATENT. DO YOU SEE THAT THERE, SIR? IT'S EXHIBIT
20 DX 1081.

21 AND, RYAN, WHILE WE'RE DOING THAT, CAN
22 YOU PLEASE PUT UP THE SUMMARY SLIDE FOR THAT
23 REFERENCE.

24 A I DO. I SEE EXHIBIT 1081 AND IT IS THE '349
25 OR ROBBINS PATENT.

1 Q IS THAT THE ROBBINS PATENT THAT YOU ANALYZED
2 IN YOUR WORK IN THIS CASE?

3 A IT IS.

4 MR. DEFRANCO: YOUR HONOR, WE WOULD MOVE
5 EXHIBIT DX 1081 INTO EVIDENCE, PLEASE.

6 THE COURT: ANY OBJECTION?

7 MR. JACOBS: IS THAT THE PATENT?

8 THE COURT: YES, IT IS.

9 MR. JACOBS: NO OBJECTION.

10 THE COURT: IT'S ADMITTED.

11 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
12 1081, HAVING BEEN PREVIOUSLY MARKED FOR
13 IDENTIFICATION, WAS ADMITTED INTO
14 EVIDENCE.)

15 THE COURT: GO AHEAD, PLEASE.

16 BY MR. DEFRANCO:

17 Q MR. GRAY, ONE MORE TIME. WE'RE ALMOST DONE.
18 WOULD YOU PLEASE DO THE SAME. TAKE US THROUGH EACH
19 ELEMENT IN CLAIM 50 OF THE '163 PATENT AND TELL US
20 WHERE IN YOUR OPINION THAT IS FOUND IN THE ROBBINS
21 '349 PRIOR ART PATENT.

22 A SO THE ROBBINS PATENT, AGAIN, IS A ZOOM
23 PATENT. IT IS DIRECTED TO PORTABLE ELECTRONIC
24 DEVICES. AGAIN, THERE'S A MAP APPLICATION
25 UNDERNEATH IT. THE ROBBINS PATENT AGAIN BEING

1 DIRECTED TO A PORTABLE ELECTRONIC DOCUMENT HAS
2 PROCESSOR AND A TOUCHSCREEN AND A VARIETY -- AND
3 MEMORY AND INSTRUCTIONS THAT PERFORM VARIOUS
4 OPERATIONS.

5 IN THIS PARTICULAR CASE, WHAT HAPPENS IS,
6 IN THIS EXAMPLE THAT'S SHOWN HERE, THE SCREEN IS
7 DIVIDED INTO THREE-BY-THREE MATRIX THAT OVERLAPS,
8 AND WE'LL TALK A LITTLE BIT ABOUT WHY THAT
9 OVERLAPS.

10 THE USER THEN CAN SELECT ANY OF THOSE
11 SEGMENTS AND THOSE SEGMENTS THEN BECOME CENTERED
12 AND ENLARGED ON THE DISPLAY SCREEN.

13 IF YOU NOTICE ON THE -- IF YOU TAKE THE
14 UPPER RIGHT-HAND SEGMENT, THERE'S A SMALL RECTANGLE
15 TO THE LEFT-HAND SIDE OF THAT SEGMENT. THE
16 SELECTION OF THAT SEGMENT NOW ALLOWS THE, THE USER
17 INTERFACE TO MOVE TO THE ADJACENT SEGMENT AND HAVE
18 THAT BE CENTERED AND ENLARGED AS WELL.

19 SO THE PATENT MEETS THE LIMITATIONS OF
20 THE FIRST PART OF 50A AND B BECAUSE IT IS A
21 STRUCTURED -- IT'S A PORTABLE ELECTRONIC DEVICE.
22 IT ALLOWS FOR THE ENLARGEMENT OF THE DOCUMENTS,
23 THAT'S 50C. IT ALLOWS FOR SELECTION OF THE SECOND,
24 A SECOND SPACE, AND THEN THE ENLARGEMENT AND
25 CENTERING OF THAT. SO IT MEETS ALL THE LIMITATIONS

1 OF THE CLAIM AS WELL.

2 Q AND, IN YOUR VIEW, IS CLAIM 50 INVALID IN VIEW
3 OF THIS REFERENCE?

4 A AGAIN, ROBBINS AS WELL, THIS CLAIM COVERS ALL
5 OF THE CLAIM LIMITATIONS OF '163, CLAIM 50, AND
6 CONSEQUENTLY IS -- INVALIDATES IT AS WELL.

7 Q SHIFTING GEARS BRIEFLY TO INFRINGEMENT,
8 NON-INFRINGEMENT ISSUE, YOU'VE HEARD THE TERM
9 "SUBSTANTIALLY CENTERED." IS THAT CORRECT?

10 A RIGHT. ONE OF THE CLAIM ELEMENTS HERE, 50F,
11 FOR EXAMPLE, REFERS TO SOMETHING BEING
12 SUBSTANTIALLY CENTERED.

13 Q AND WHAT IS YOUR VIEW ON THAT, SIR?

14 A IN MY OPINION, THE TERM "SUBSTANTIALLY
15 CENTERED" IS AN AMBIGUOUS TERM. I -- PART OF WHAT
16 A PATENT DOES IS PROVIDE INFORMATION TO AN ENGINEER
17 TO ALLOW THEM TO UNDERSTAND THE SCOPE OF THE PATENT
18 SO THAT THEY CAN AVOID INFRINGING THE PATENT.

19 I DON'T KNOW WHEN SOMETHING IS
20 SUBSTANTIALLY CENTER. I KNOW WHEN SOMETHING IS
21 FULLY CENTERED OR NOT CENTERED, BUT "SUBSTANTIALLY
22 CENTERED" IS AMBIGUOUS.

23 HOW WOULD A PATENT -- HOW WOULD AN
24 ENGINEER UNDERSTAND HOW TO MAKE SOMETHING
25 SUBSTANTIALLY CENTERED OR NOT? SO IN MY OPINION,

1 "SUBSTANTIALLY CENTERED" IS AN AMBIGUOUS TERM.

2 Q AND, FINALLY, SIR, WITH RESPECT TO ELEMENT E,
3 DETERMINING A FIRST BOX IN THE PLURALITY OF BOXES
4 AT THE LOCATION OF THE FIRST GESTURE, CAN YOU GIVE
5 US YOUR OPINION AS IT RELATES TO INFRINGEMENT ON
6 THAT ELEMENT?

7 A AGAIN, 50E TALKS ABOUT IDENTIFYING A BOX IN
8 PLURALITY OF BOXES AT THE LOCATION OF THE FIRST
9 GESTURE.

10 WHAT THAT SEEMS TO INTEND, AT LEAST THE
11 WAY I READ THIS CLAIM THE FIRST TIME I READ IT, WAS
12 THAT THERE ARE A PLURALITY OF BOXES.

13 IF YOU THINK ABOUT NESTED BOXES WHERE
14 THERE ARE MULTIPLE BOXES THAT ARE NESTED AND THE
15 USER SELECTS A BOX OR A SPACE, SOME LOCATION WITHIN
16 THAT NESTED BOX, WHAT HAPPENS IS THE SYSTEM WOULD
17 THEN NEED TO DETERMINE WHICH ONE OF THOSE NESTED
18 BOXES THE USER WAS ACTUALLY INTENDING TO HAVE
19 CENTERED AND ENLARGED.

20 SIMILARLY TO THE WAY LAUNCHTILE WORKS.
21 IF YOU RECALL LAUNCHTILE, YOU CAN SELECT ANY ONE OF
22 THE FOUR IN THE QUAD TILES AND THAT WHOLE QUAD TILE
23 GETS ENLARGED AND CENTERED.

24 AGAIN, I'M NOT SEEING ANY EVIDENCE AT ALL
25 SUPPLIED, OR ANYTHING IN ANY OF THE REPORTS THAT

1 INDICATE HOW THE ACCUSED PRODUCTS MEET THE
2 LIMITATION OF SELECTING A -- SOMETHING IN A
3 PLURALITY OF BOXES. SO, AGAIN, I'M NOT SEEING IT.

4 MR. DEFRANCO: MY TIME IS UP. THANK YOU,
5 SIR.

6 THE COURT: ALL RIGHT. THE TIME IS NOW
7 4:20. GO AHEAD, PLEASE, WITH ANY CROSS.

8 **CROSS-EXAMINATION**

9 BY MR. JACOBS:

10 Q GOOD AFTERNOON, MR. GRAY.

11 A GOOD AFTERNOON.

12 Q NOW, YOUR TESTIMONY ON THE SUBJECT OF
13 INVALIDITY WAS PREMISED ON THE IDEA OF
14 ANTICIPATION; CORRECT, SIR?

15 A THAT'S CORRECT.

16 Q AND ANTICIPATION IS ALL YOU SPOKE TO; CORRECT?

17 A THAT'S CORRECT.

18 Q AND ANTICIPATION REQUIRES THAT EVERY ELEMENT,
19 THE JURY HAS HEARD THIS MANTRA, EVERY ELEMENT OF
20 THE CLAIM BE PRESENT IN THE PROPOSED INVALIDATING
21 REFERENCE; CORRECT, SIR?

22 A THAT'S CORRECT.

23 Q AND SO IF THE JURY --

24 A WELL, WITH A POSSIBLE EXCEPTION THERE. IT IS
25 EITHER -- IT IS EITHER COVERED OR IS INHERENTLY IN

1 THE REFERENCE.

2 Q AND SO IF THE JURY FINDS THAT IN -- WHEN IT
3 COMES TO INVALIDITY, IF ANY ELEMENT OF THE CLAIM IS
4 NOT PRESENT IN THE PROPOSED INVALIDATING REFERENCE,
5 THEN YOUR OPINION SHOULD BE REJECTED; CORRECT, SIR?

6 A AGAIN, WITH THE PROVISO THAT IF IT IS AN
7 ELEMENT THAT IS INHERENT OR IMPLIED, THAT'S MY
8 UNDERSTANDING.

9 Q OTHERWISE YOU AGREE WITH ME, YOUR OPINION
10 RISES AND FALLS ON THE IDEA OF -- THERE'S NO CLOSE
11 HERE, YOU EITHER GOT IT, EVERY ELEMENT IS PRESENT,
12 OR YOU DON'T. CORRECT, SIR?

13 A EITHER EVERY ELEMENT IS PRESENT OR IT IS
14 INHERENT AS IS REQUIRED.

15 Q NOW, I LISTENED CAREFULLY TO THE ANSWER TO THE
16 QUESTION ABOUT YOUR ROLE IN LITIGATION SUPPORT OVER
17 THE LAST COUPLE YEARS, AND YOU SAID YOU SPENT SOME
18 TIME DOING LITIGATION SUPPORT.

19 WHAT DID YOU MEAN BY "SOME TIME," SIR?

20 A WELL, ACTUALLY SINCE, STARTING IN 1984, I DID
21 SOME LITIGATION SUPPORT, AND THROUGHOUT MY CAREER
22 AS AN ENGINEER, I PERIODICALLY DID LITIGATION
23 SUPPORT ASSIGNMENTS. SO IT'S BEEN OVER A LONG
24 TIME, SINCE 1984.

25 Q BUT OVER THE LAST COUPLE OF YEARS, ALMOST ALL

1 OF YOUR TIME HAS BEEN SPENT DOING LITIGATION
2 SUPPORT; CORRECT, SIR?

3 A I THINK OVER THE LAST FEW YEARS THE MAJORITY
4 OF MY CONSULTING WORK HAS BEEN WITH RESPECT TO
5 LITIGATION SUPPORT, YES.

6 Q AND IN THIS PARTICULAR CASE -- AGAIN, THE JURY
7 HAS HEARD A LOT ABOUT EXPERT COMPENSATION -- YOU'VE
8 MADE ABOUT \$200,000; CORRECT, SIR?

9 A I THINK THAT SOUNDS HIGH, BUT IT COULD BE. I
10 DON'T KNOW THE EXACT NUMBER, BUT IT MAY BE.

11 Q AND YOUR BACKGROUND, SIR, IS IN ECONOMICS;
12 CORRECT? THAT WAS YOUR UNDERGRADUATE DEGREE?

13 A THAT'S CORRECT.

14 Q NO FORMAL TRAINING IN THE SENSE OF ADVANCED
15 DEGREES IN COMPUTER SCIENCE OR ENGINEERING?

16 A THAT'S CORRECT.

17 Q AND YOU NEVER TOOK A COURSE IN OBJECT ORIENTED
18 PROGRAMMING?

19 A THAT'S A QUESTION? YES, I HAVE NOT TAKEN ANY
20 FORMAL COURSES IN OBJECT ORIENTATION. I'M AN
21 ENGINEER. I WAS WORKING, DOING THE WORK, BUT, YES,
22 I'VE NOT TAKEN ANY OBJECT ORIENTED COURSES.

23 Q AND SINCE THE DATE OF THE INTRODUCTION OF THE
24 IPHONE, JUST TO PICK A POINT IN TIME, YOU HAVEN'T
25 DONE ANY PROGRAMMING FOR TOUCH SENSITIVE DEVICES?

1 A NO, I HAVE NOT SINCE 2007. IS THAT WHAT --

2 Q YES, SORRY. WE ALL KNOW IN THIS TRIAL THAT
3 DATE?

4 A SORRY. I THOUGHT IT WAS 2007, BUT I WASN'T
5 SURE.

6 Q AND YOUR PROGRAMMING EXPERIENCE FOR WRITING
7 CODE FOR A SENSITIVE DEVICE, THAT WAS ACTUALLY FOR
8 A PHOTOCOPIER; CORRECT, SIR?

9 A IT WAS FOR AN ELECTRONIC REPROGRAPHICS
10 SYSTEMS, SO PHOTOCOPIES AND PRINTERS AND SO ON,
11 SCANNERS.

12 Q NOW, I WOULD LIKE TO TALK TO YOU ABOUT A
13 COUPLE OF THE REFERENCES THAT YOU DISCUSSED.

14 YOU REFERRED TO THE NOMURA REFERENCE.
15 THAT WAS THAT JAPANESE UNEXAMINED PATENT
16 APPLICATION. DO YOU RECALL THAT, SIR?

17 A I DO.

18 Q AND AGAIN, I LISTENED CAREFULLY TO THE WAY YOU
19 SAID IT. ON THE QUESTION OF AN EVENT OBJECT, YOU
20 POINTED TO SOMETHING AND YOU SAID THAT WAS THE '915
21 VERSION OF THE EVENT OBJECT.

22 DO YOU RECALL THAT TESTIMONY, SIR?

23 A I DO.

24 Q NOW, IN FACT, WHEN YOU SUBMITTED AN EXPERT
25 REPORT IN THIS MATTER, YOU COULD NOT FIND AN EVENT

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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 15, 2012

EXHIBIT 9

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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 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 :

FOR PLAINTIFF MORRISON & FOERSTER
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BY: CHARLES K. VERHOEVEN
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BY: VICTORIA F. MAROULIS
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10TH FLOOR
LOS ANGELES, CALIFORNIA 90017

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

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 A ONE THING YOU'RE ASKED TO LOOK IS WHETHER
2 THERE ARE ANY CONVOYED SALES, WHETHER THERE'S
3 PROFITABILITY ATTACHED TO THE PRODUCTS IN QUESTION,
4 AND I THINK IT'S WELL KNOWN THAT THE IPHONE AND THE
5 IPOD ARE VERY PROFITABLE PRODUCTS.

6 IT'S WELL KNOWN THAT THERE'S PASS
7 THROUGH, OR THAT SUCCESS WITH THE IPHONE AND THE
8 IPAD, SALES FROM THE ITUNES AND THE APP STORE AND
9 SO ON AND SO FORTH.

10 SO I THINK THERE ARE SOME OTHER PLUS
11 FACTORS IN GEORGIA PACIFIC. SO I TOOK COMFORT FROM
12 THOSE OTHER FACTORS.

13 CRITICALLY, GEORGIA PACIFIC REQUIRES YOU
14 TO ASK THIS FUNDAMENTAL QUESTION, WHAT WOULD BE THE
15 REASONABLE ROYALTY IN A HYPOTHETICAL NEGOTIATION IF
16 THE PARTIES HAD ACTUALLY NEGOTIATED RATHER THAN
17 INFRINGED, AND THAT IS THE LINCHPIN OF MY ANALYSIS.

18 Q SIR, TO SUMMARIZE, WHAT ARE THE DAMAGES THAT
19 APPLE WILL OWE TO SAMSUNG IF IT IS FOUND TO
20 INFRINGE SAMSUNG'S STANDARDS PATENTS?

21 A IF YOU GO BACK TO MY FIRST SLIDE.

22 Q 3963.005?

23 A YEAH. AND I'VE GIVEN A RANGE THERE FROM 290
24 MILLION TO 300 MILLION.

25 MS. MAROULIS: THANK YOU, SIR. I PASS

1 RECORD AND STORE DIGITAL IMAGES, SO IT MIGHT BE
2 MEMORY OR A COMPACT FLASH CARD OR A HARD DRIVE.

3 Q DOES THE LG PATENT DISCLOSE THAT LIMITATION?

4 A YES.

5 Q WHERE?

6 A IF WE LOOK ON THE NEXT SLIDE, THERE ARE MANY
7 PLACES IN THE LG PATENT THAT TALK ABOUT THE
8 RECORDING MEDIUM, AND IN PARTICULAR THEY TALK ABOUT
9 MEMORY, SO IT SAYS EXPANDED MEMORY ON THAT VERY
10 FIRST LINE THERE.

11 AND THEN IN THAT SECOND PARAGRAPH THAT
12 WE'VE GOT, IN THE FIRST SEGMENT IT SAYS PHOTOGRAPH
13 TAKEN BY THE USE OF THE AFOREMENTIONED CAMERA KEY
14 OR STORED IN THE MOBILE PHONE'S MEMORY.

15 SO HERE WE HAVE A RECORDING MEDIUM STORED
16 IMAGE.

17 Q LET'S GO TO THE NEXT LIMITATION, A DISPLAY
18 SCREEN FOR DISPLAYING THE IMAGE DATA. CAN WE FIND
19 THAT IN THE LG PATENT?

20 A YES, WE CAN.

21 Q CAN WE HAVE PDX 42.18.

22 CAN YOU EXPLAIN YOUR OPINION WITH RESPECT
23 TO THIS LIMITATION?

24 A SO WE SEE IN DRAWING 1 HERE, HERE'S THE
25 ILLUSTRATION OF THE MOBILE PHONE AND THERE'S A VERY

1 PROMINENT DISPLAY SCREEN.

2 THE DISPLAY SCREEN IS ALSO MENTIONED IN
3 THE TEXT HERE AND ON PAGE 2 AND ON PAGE 4 SUCH AS
4 THE TEXT THAT SAYS AS ILLUSTRATED IN DRAWING 1,
5 WHEN MOBILE PHONE IS FLIPPED OPEN, THE CAMERA IS
6 COMPRISED OF A DISPLAY AREA.

7 Q DOES THE LG PATENT DISCLOSE A CONTROLLER?

8 A YES, IT DOES.

9 Q WHAT IS A CONTROLLER?

10 A SO A CONTROLLER, AS I SAID A MINUTE AGO, IS
11 SORT OF THE BRAINS OF THE DIGITAL CAMERA, OR THE
12 MOBILE PHONE HERE.

13 Q AND WHERE WOULD WE FIND THE CONTROLLER IN THE
14 LG PATENT?

15 A IF WE, IF WE MOVE ON TO ANOTHER -- YES, THE
16 NEXT SLIDE.

17 Q LET'S GO TO PDX 42.20?

18 A YEAH. SO WE FIND THAT RIGHT IN THAT FIRST
19 LINE THERE, ATTRIBUTED TO THE MOBILE PHONE'S
20 DISPLAY CAPABILITIES, INTERNAL PROCESSING
21 CAPABILITIES, EXPANDED MEMORY. AND INTERNAL
22 PROCESSING CAPABILITIES, THOSE ARE THE CAPABILITIES
23 OF A CONTROL.

24 Q LET'S PAUSE ON THIS LIMITATION BECAUSE IT
25 REQUIRES MORE THAN JUST A CONTROLLER. IT SAYS A

1 CONTROLLER CONNECTED WITH THE PHOTOGRAPHIC
2 CONVERSION MODULE, PHOTO MEDIUM AND DISPLAY SCREEN.
3 DID YOU FIND THAT IN THE LG PATENT?

4 A YES, THAT'S HERE IN THE LG PATENT.

5 SO THE CONTROLLER, AS I SAID, IS SORT OF
6 THE BRAINS OF THE IMAGE PROCESSING APPARATUS. IT'S
7 THE PART THAT CONTROLS EVERYTHING ELSE AND MAKES IT
8 WORK.

9 IF THE CONTROLLER WERE NOT CONNECTED TO
10 AND IN COMMUNICATION WITH MEMORY AND IN
11 COMMUNICATION WITH A CONVERSION MODULE, IT WOULDN'T
12 BE ABLE TO TAKE A PHOTOGRAPH AT ALL. SO THAT'S HOW
13 IT ALL WORKS.

14 Q LET'S GO TO THE NEXT LIMITATION, WHICH BEGINS
15 A CONTROLLER BEING OPERATIVE. WE'RE NOW ON
16 LIMITATION F. IN YOUR OPINION, DOES THE LG PATENT
17 HAVE THAT LIMITATION?

18 A YES, IT DOES.

19 Q CAN WE HAVE THE NEXT DEMONSTRATIVE, PLEASE.
20 WHERE DOES THE LG PATENT DISCLOSE THAT LIMITATION?

21 A SO THIS PATENT -- THIS LIMITATION IS THE ONE
22 THAT TALKS ABOUT THESE TWO MODES, THE PHOTOGRAPHING
23 MODE AND THE IMAGE DISPLAY MODE.

24 AND THE TEXT THAT WE HAVE HERE SHOWS US
25 THESE TWO MODES UNDER THE DIRECTION OF THE

1 CONTROLLER.

2 SO THE, THE FIRST TEXT FROM PAGE 2, IF
3 YOU LOOK AT THAT BOTTOM LINE, IT SAYS PHOTOGRAPHS
4 TAKEN BY USE OF THE AFOREMENTIONED CAMERA KEY ARE
5 STORED IN THE MOBILE PHONE'S MEMORY. SO THAT'S
6 WHERE WE FIND THE PHOTOGRAPHING MODE.

7 Q SO WHERE DOES THE LG PATENT DISCLOSE THE PHOTO
8 IMAGE DISPLAYED LIMITATION?

9 A SO THE SECOND TEXT SEGMENT I PUT ON THE SLIDE
10 DISCLOSES THE STORED IMAGE DISPLAY MODE. SO, FOR
11 INSTANCE, IF WE READ THAT BOTTOM PARAGRAPH, IT SAYS
12 SECOND SLIDE SHOW MENU IS SELECTED ON THE SCREEN
13 WITH THE SHORTCUT MENUS AND THE FIRST PHOTOGRAPH
14 STORED IN THE MEMORY IS IMMEDIATELY DISPLAYED ON
15 THE SCREEN. SO THAT IS THE -- THAT'S THE STORED
16 IMAGE DISPLAY MODE THERE.

17 Q AND IF WE CAN GO BACK TO OUR CLAIM CHART. SO
18 WE'RE NOW AT THE LAST ELEMENT, ELEMENT G. DOES THE
19 LG PATENT DISCLOSE THE MODE SWITCHING OPERATION OF
20 CLAIM 10?

21 A YES, IT DOES.

22 Q CAN WE HAVE THESE PDX 42.24 ON THE SCREEN?

23 CAN YOU EXPLAIN, WITH RESPECT TO THIS
24 SLIDE, WHERE YOU'LL FIND THE MODE SWITCHING
25 OPERATION?

1 A SO ACTUALLY THE ILLUSTRATION HERE, FIGURE 3,
2 SHOWS US MODE SWITCHING. IT SHOWS HOW WE START UP
3 THE IMAGE DISPLAY MODE, EITHER THE REGULAR VIEW
4 PHOTOGRAPH VERSION OR THE SLIDE SHOW VERSION.

5 AND IF WE LOOK AT THE TEXT, THAT FIRST
6 PARAGRAPH THERE, IT TELLS US HOW TO USE THE MENUS
7 IN ORDER TO SELECT THE VIEW PHOTOGRAPH MODE, AND
8 ONCE THE PHOTOGRAPHS HAVE BEEN SELECTED, IT SAYS
9 THEN THE CORRESPONDING PHOTOGRAPHS APPEAR ON THE
10 SCREEN.

11 SO WE'RE GETTING THE, THE SWITCHING INTO
12 THE STORED IMAGE DISPLAY MODE THERE.

13 Q DOES THE LG PATENT DISCLOSE SHOWING THE MOST
14 RECENTLY VIEWED IMAGE BEING DISPLAYED WHEN THE USER
15 RETURNS TO THE STORED IMAGE DISPLAY MODE?

16 A YES, IT DOES.

17 Q WHERE CAN WE FIND THAT?

18 A SO THE SECOND PARAGRAPH THAT I CONCLUDED FROM
19 PAGE 4, THE ONE THAT BEGINS NOW IF THE SEC, THAT
20 PARAGRAPH SHOWS US EXACTLY THIS.

21 SO THE TEXT TO LOOK AT IS THE TEXT IN THE
22 SECOND HALF OF THAT PARAGRAPH, THIS IS TEXT WE SAW
23 A MOMENT AGO WHERE IT SAYS A FIRST PHOTOGRAPH
24 DISPLAYED CAN SIMPLY BE THE ONE THAT'S BEEN STORED
25 THE LONGEST OR THE ONE HAVING THE EARLIEST STORED

1 ADDRESS NUMBER, OR IT COULD BE THAT VIEWING CAN
2 START FROM THE PHOTOGRAPH THAT WAS LAST VIEWED BY
3 THE VIEWER, SO THE LAST VIEWED IMAGE.

4 Q THE LAST QUESTION WITH RESPECT TO THIS
5 LIMITATION. DOES THE LG PATENT DISCLOSE
6 IRRESPECTIVE OF THE DURATION LIMITATION?

7 A IT DISCLOSES IT UNDER DR. YANG'S
8 INTERPRETATION.

9 Q CAN YOU EXPLAIN?

10 A SO DR. YANG ARGUES THAT, THAT IRRESPECTIVE OF
11 THE DURATION MEANS THAT THERE'S NO DEPENDENCE ON
12 TIME. THERE'S NO TIMER OR OTHER DEPENDENCE ON TIME
13 THAT WILL DETERMINE WHICH PHOTOGRAPH SHOULD BE
14 DISPLAYED WHEN YOU ENTER STORED IMAGE DISPLAY MODE.

15 AND THE PARAGRAPH I JUST READ IS THE ONE
16 THAT SHOWS HOW A DECISION WILL BE MADE ABOUT WHAT
17 PHOTOGRAPH SHOULD BE SHOWN, AND AS YOU CAN SEE,
18 THERE'S NO DEPENDENCE ON TIME IN THERE.

19 SO UNDER DR. YANG'S INTERPRETATION, THAT
20 DOES MEET, OR DISCLOSE IRRESPECTIVE OF THE
21 DURATION.

22 Q TO SUMMARIZE, WHAT IS YOUR CONCLUSION
23 REGARDING THE LG PATENT?

24 A THE LG PATENT DISCLOSES ALL THE LIMITATIONS OF
25 CLAIM 10.

1 Q HAVE YOU FORMED ANY OPINION AS TO WHETHER
2 CLAIM 10 IS OBVIOUS?

3 A YEAH. YES. MY OPINION IS THAT CLAIM 10, EVEN
4 IF WE DECIDED THAT THE LG PATENT DIDN'T DISCLOSE
5 ONE LIMITATION OR ANOTHER, IT STILL RENDERS THE
6 CLAIM 10 OBVIOUS TO SOMEBODY WHO WAS WORKING IN
7 THIS AREA AND DEVELOPING A SYSTEM OF THIS SORT.

8 Q COULD YOU EXPLAIN YOUR OPINION, PLEASE?

9 A WELL, THE LG PATENT MAKES CLEAR THAT DIGITAL
10 IMAGE PROCESSING APPARATUSES ALREADY EXISTED, LIKE
11 CAMERA PHONES.

12 AND IT MAKES CLEAR, TOO, THAT THEY HAVE
13 ALL THE COMPONENTS, THE OPTICAL SYSTEM AND THE
14 CONTROLLER AND YOUR RECORDING MEDIUM AND SO FORTH.

15 AND IT ALSO SHOWS US THAT YOU COULD --
16 AND YOU COULD HAVE BOTH A PHOTOGRAPHING MODE AND A
17 STORED IMAGE DISPLAY MODE IN THE SAME DEVICE AND
18 THAT WOULD BE SOMETHING THAT YOU WOULD WANT TO DO.

19 AND IN PARTICULAR, THAT THOSE TWO
20 FUNCTIONS MIGHT BE IMPLEMENTED USING MODES.

21 AND -- AND FURTHER, THROUGH THE
22 DISCUSSION OF MODE SWITCHING, IT MAKES CLEAR IF YOU
23 HAVE THOSE MODES, YOU HAVE TO BE ABLE TO SWITCH
24 AMONGST THEM, SWITCH FROM ONE TO THE OTHER AND
25 BACK.

1 AND, FINALLY, IT ALSO MAKES OBVIOUS THE
2 IDEA THAT THERE'S, WELL, ONLY A FINITE NUMBER OF
3 CHOICES YOU CAN MAKE FOR WHICH IMAGE SHOULD BE ON
4 THE SCREEN WHEN YOU RETURN TO THE PHOTOGRAPHING --
5 TO THE IMAGE DISPLAY MODE, AND THAT ONE AMONGST
6 THOSE CHOICES IS TO DISPLAY THE IMAGE THAT WAS LAST
7 VIEWED.

8 AND, YOU KNOW, IT ALSO TELLS US THAT
9 THERE'S, THERE'S NO PARTICULAR -- THAT THAT'S
10 ALWAYS A SENSIBLE CHOICE, THAT WE COULD ALWAYS, WE
11 SHOULD ALWAYS -- THAT'S ALWAYS ONE OF THE CHOICES
12 THAT WE MIGHT WANT TO MAKE ANY TIME THAT WE ENTERED
13 MODE. SO IT REALLY SORT OF RENDERS ALL THE
14 ELEMENTS OF CLAIM 10 OBVIOUS.

15 Q IN REACHING YOUR OBVIOUSNESS OPINION, DID YOU
16 CONSIDER WHETHER THERE EXISTS ANY SO-CALLED
17 SECONDARY CONSIDERATIONS OF NON-OBVIOUSNESS? AND
18 I'M REFERRING HERE TO THINGS LIKE COPYING,
19 COMMERCIAL SUCCESS, PRAISE IN THE INDUSTRY.

20 A YES, I DID.

21 Q AND DID YOU FIND ANY EVIDENCE OF ANY OF THOSE
22 FACTORS?

23 A I FOUND NO EVIDENCE OF ANY OF THOSE SECONDARY
24 CONSIDERATIONS OF NON-OBVIOUSNESS, AND SAMSUNG
25 HASN'T PRESENTED ANY THAT ARE SORT OF TIED TO THE

1 SPECIFIC LIMITATIONS OF CLAIM 10.

2 MR. SELWYN: THANK YOU. NO FURTHER
3 QUESTIONS.

4 THE COURT: ALL RIGHT. TIME IS NOW 2:11.
5 GO AHEAD, PLEASE.

6 MR. JOHNSON: YOUR HONOR, IN THE INTEREST
7 OF TIME, NO QUESTIONS.

8 THE COURT: OH, OKAY. ALL RIGHT.

9 THEN IS THIS WITNESS EXCUSED AND IS IT
10 SUBJECT TO RECALL OR NOT?

11 MR. SELWYN: HE IS EXCUSED. HE IS
12 SUBJECT TO RECALL.

13 THE COURT: HE IS SUBJECT TO RECALL.

14 OKAY. YOU ARE EXCUSED SUBJECT TO RECALL.

15 THE WITNESS: THANK YOU.

16 THE COURT: ALL RIGHT. CALL YOUR NEXT
17 WITNESS, PLEASE.

18 MR. LEE: YOUR HONOR, APPLE CALLS
19 PROFESSOR GIVARGIS. IF WE CAN JUST HAVE A MINUTE
20 TO SWAP THE NOTEBOOKS OUT.

21 THE COURT: OKAY. THAT'S FINE. THAT'S
22 FINE.

23 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

24 **TONY GIVARGIS,**
25 BEING CALLED AS A WITNESS ON BEHALF OF THE

1 STANDALONE APPLICATION THAT RUNS ON ITS OWN.

2 Q IS MEDIA SERVER D AN APPLETT?

3 A NO.

4 Q WHY NOT?

5 A MEDIA SERVER D IS A STANDALONE APPLICATION,
6 AND IT IS NOT DESIGNED TO HAVE AN APPLETT RUN WITHIN
7 IT. THAT WOULDN'T BE POSSIBLE.

8 Q IS MEDIA SERVER D AN APPLICATION MODULE?

9 A MEDIA SERVER D IS NOT AN APPLICATION MODULE
10 FOR THE SAME REASON. IT'S NOT DESIGNED TO HAVE AN
11 APPLETT RUN WITHIN IT.

12 Q HAVE YOU PREPARED A SLIDE TO HELP COMPARE THE
13 ARCHITECTURE OF THE APPLE CODE TO AN ARCHITECTURE
14 THAT USES APPLETT?

15 A YES.

16 Q CAN WE HAVE PDX 43.9, AND CAN YOU EXPLAIN YOUR
17 OPINION WITH RESPECT TO THIS SLIDE?

18 A YES. THESE ARE THE TWO, THE TWO
19 ARCHITECTURES, SOFTWARE ARCHITECTURES THAT WE'VE
20 BEEN TALKING ABOUT.

21 ON THE RIGHT WE HAVE THE APPLE
22 ARCHITECTURE WHERE YOU HAVE STANDALONE
23 APPLICATIONS, APPLICATIONS THAT RUN DIRECTLY ON THE
24 HARDWARE.

25 AND ON THE LEFT YOU HAVE THIS '711

1 ARCHITECTURE, WHICH IS AN APPLETS RUNNING WITHIN AN
2 APPLICATION MODULE.

3 THESE TWO ARCHITECTURES ARE VERY
4 DIFFERENT, AND A PERSON WHO'S KNOWLEDGEABLE ABOUT
5 SOFTWARE SYSTEMS SHOULD BE ABLE TO, AS A MATTER OF
6 FACT, NOT OPINION, AND THE CODE AND BE ABLE TO TELL
7 IF A SYSTEM IS USING THE RIGHT ARCHITECTURE OR THE
8 LEFT ARCHITECTURE.

9 Q I WANT TO TURN NOW TO THE SECOND REASON YOU
10 GAVE FOR NON-INFRINGEMENT. CAN YOU REMIND US WHAT
11 THAT WAS?

12 A YES. THE SECOND REASON HAD TO DO WITH THE
13 APPLE PRODUCTS NOT HAVING AN MP3 MODE.

14 Q LET'S TURN BACK TO THE CLAIM LANGUAGE. WE
15 HAVE CLAIM 9 ON THE SCREEN. WHAT REQUIREMENTS DOES
16 CLAIM 9 HAVE WITH RESPECT TO MP3 MODE?

17 A CLAIM 9 HAS THREE PLACES WHERE IT REQUIRES AN
18 MP3 MODE. IT REQUIRES THE ABILITY TO SELECT AN MP3
19 MODE, IT REQUIRES THE ABILITY TO PLAY MUSIC IN AN
20 MP3 MODE, AND IT ALSO HAS THE REQUIREMENT OF
21 SWITCHING FROM THE MP3 MODE TO A STANDBY MODE.

22 Q NOW, WHAT IS AN MP3 MODE?

23 A A MODE IS A STATE OF OPERATION OF THE DEVICE,
24 AS IT'S BEEN ALREADY TALKED ABOUT.

25 AND AN MP3 MODE IS A STATE OF THE DEVICE

1 WHERE THE DEVICE IS PLACING MP3.

2 Q NOW, THE APPLE PRODUCTS PLAY MUSIC, DON'T
3 THEY?

4 A YES.

5 Q SO HOW DO THEY PLAY MUSIC WITHOUT USING AN MP3
6 MODE?

7 A THEY USE APPLICATIONS FOR PLAYING MUSIC. THEY
8 USE APPS.

9 Q LET'S TURN NOW TO YOUR INVALIDITY OPINION.
10 AGAIN, REMIND US WHAT YOUR OPINION IS?

11 A CLAIM 9 OF THE '711 PATENT IS NOT VALID.

12 Q CAN YOU SUMMARIZE FOR US THE BASIS OF YOUR
13 OPINION?

14 A YES. CLAIM 9 OF THE '711 PATENT WOULD HAVE
15 BEEN OBVIOUS TO A PERSON OF ORDINARY SKILL IN THE
16 ART PRIOR TO 2005 BECAUSE OF PRIOR ART, INCLUDING
17 SONY ERICSSON K700I DEVICE.

18 Q SO TAKE US BACK, IF YOU COULD, TO 2005 FOR A
19 MOMENT.

20 WHAT WAS THE STATE OF THE ART FOR MOBILE
21 PHONES WITH MUSIC PLAYERS IN 2005?

22 A PRIOR TO 2005, MOBILE PHONES COULD DO
23 MULTITASKING. THEY COULD PLAY MUSIC. AND THEY DID
24 ALLOW YOU TO PLAY MUSIC WHILE LISTENING TO PHONE --
25 TO LISTEN TO MUSIC WHILE OPERATING SOME OTHER

1 FUNCTION OF THE PHONE.

2 Q LET ME HAND YOU WHAT'S BEEN MARKED AS --
3 MAY I, YOUR HONOR?

4 THE COURT: YES, PLEASE, GO AHEAD.

5 BY MR. SELWYN:

6 Q I'VE HANDED YOU WHAT'S BEEN MARKED AS PX 125.
7 DO YOU RECOGNIZE IT?

8 A YES.

9 Q WHAT IS IT?

10 A THIS IS THE SONY ERICSSON K700I DEVICE THAT I
11 TALKED ABOUT.

12 MR. SELWYN: YOUR HONOR, I OFFER PX 125.

13 THE COURT: ANY OBJECTION?

14 MR. DEFRANCO: NO OBJECTION.

15 THE COURT: IT'S ADMITTED.

16 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
17 125, HAVING BEEN PREVIOUSLY MARKED FOR
18 IDENTIFICATION, WAS ADMITTED INTO
19 EVIDENCE.)

20 BY MR. SELWYN:

21 Q WHEN DID THE PX -- WHEN DID WHAT'S BEEN MARKED
22 AS PX 125 THE SONY K700I DEVICE GO ON SALE OR
23 BECOME PUBLICLY AVAILABLE?

24 A IN 2004.

25 Q HOW DO YOU KNOW?

1 A FOR THREE REASONS. THERE WERE A COUPLE OF
2 NEWS RELEASES BY SONY THAT TALKED ABOUT THE SONY
3 ERICSSON K700I, AND THE MANUAL OF THIS PHONE ALSO
4 MENTIONS THE DATE 2004. AND ALSO SONY PROVIDED
5 SALES NUMBERS FOR 2004 THAT SHOWED SOME UNITS WERE
6 SOLD IN THE U.S. N 2004.

7 Q AND TURN YOUR BINDER, PLEASE, TO TAB 3, WHICH
8 IS PX 117.

9 A YES.

10 Q AND WHAT ARE THOSE DOCUMENTS?

11 A THESE ARE THE PRESS RELEASES THAT I TALKED
12 ABOUT. THIS PARTICULAR PRESS RELEASE IS SONY
13 ERICSSON UNVEILING THE K700 CAMERA PHONE IN
14 MARCH OF 2004.

15 Q AND IF YOU TURN TO THE -- TO THE THIRD PAGE OF
16 PX 117, WHAT DO YOU FIND?

17 A THIS IS THE SECOND PRESS RELEASE. THIS IS
18 ALSO FROM SONY ERICSSON WHEN THE K700 CAMERA PHONE
19 IN ATLANTA, IT SHOWCASES THE UNIT.

20 MR. SELWYN: YOUR HONOR, I OFFER PX 117.

21 THE COURT: ANY OBJECTION.

22 MR. DEFRANCO: NO, YOUR HONOR.

23 THE COURT: THAT'S ADMITTED.

24 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
25 117, HAVING BEEN PREVIOUSLY MARKED FOR

1 IDENTIFICATION, WAS ADMITTED INTO
2 EVIDENCE.)

3 BY MR. SELWYN:

4 Q WHAT IS THE DATE ON EACH OF THE PRESS
5 RELEASES?

6 A ON THE ONE THAT'S BEING DISPLAYED NOW, IT SAYS
7 MARCH 21ST, 2004.

8 Q NOW, IF YOU WOULD, PLEASE, SIR, TURN TO TAB 4
9 OF YOUR NOTEBOOK. DO YOU RECOGNIZE THAT DOCUMENT?

10 A YES.

11 Q WHAT IS IT?

12 A THIS IS THE OWNER'S MANUAL OF THE SONY
13 INTERROGATORY RESPONSE ERICSSON K700I PHONE.

14 MR. SELWYN: YOUR HONOR, WE OFFER PX 116.

15 THE COURT: ANY OBJECTION?

16 MR. JOHNSON: NO, YOUR HONOR.

17 THE COURT: IT'S ADMITTED.

18 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
19 116, HAVING BEEN PREVIOUSLY MARKED FOR
20 IDENTIFICATION, WAS ADMITTED INTO
21 EVIDENCE.)

22 MR. SELWYN: IF WE CAN SHOW THE DATE OF
23 PUBLICATION ON THE SCREEN, PLEASE.

24 Q WHAT IS THE DATE OF PUBLICATION SHOWN ON THIS?

25 A I BELIEVE IT IS MARCH 2004.

1 Q NOW, SIR, IF YOU WOULD TURN TO TAB 5 IN YOUR
2 NOTEBOOK. CAN YOU TELL US WHAT THESE DOCUMENTS
3 ARE.

4 A YES. THIS IS THE SALES RECORD PROVIDED BY
5 SONY.

6 MR. SELWYN: YOUR HONOR, WE OFFER PX 113.

7 THE COURT: THAT'S NOT THE AFFIDAVIT, IS
8 IT?

9 MR. SELWYN: NO.

10 THE COURT: THAT'S WHAT I SAW ON MY
11 SCREEN. PX 113, WHAT IS THAT?

12 MR. SELWYN: WE REMOVED THE AFFIDAVIT
13 FROM WHAT'S IN THE BINDER, AND WE'LL REPLACE THE
14 EXHIBIT TO REMOVE THE AFFIDAVIT.

15 THE COURT: OKAY. I SEE IT. ANY
16 OBJECTION?

17 MR. DEFRANCO: NO, YOUR HONOR.

18 THE COURT: I'M GOING TO ADMIT IT.

19 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
20 113, HAVING BEEN PREVIOUSLY MARKED FOR
21 IDENTIFICATION, WAS ADMITTED INTO
22 EVIDENCE.)

23 BY MR. SELWYN:

24 Q WE HAVE UP ON THE SCREEN THE FIRST PAGE OF THE
25 DOCUMENT. WHAT DOES THIS SHOW?

1 A THIS SHOWS THAT THE K700I DEVICE WAS SOLD IN
2 2004. IT SHOWS THE NUMBER OF UNITS SOLD IN 2004.

3 Q AND YOU HAVE THE SONY K700I IN FRONT OF YOU,
4 RIGHT?

5 A YES.

6 MR. SELWYN: YOUR HONOR, MAY I PUBLISH
7 THAT TO THE JURY?

8 THE COURT: GO AHEAD, PLEASE.

9 BY MR. SELWYN:

10 Q CAN YOU BRIEFLY DESCRIBE THE FEATURES OF THE
11 SONY K700I?

12 A THE SONY K700I IS A POCKET SIZED PHONE. IT
13 DOES ALLOW YOU TO PERFORM MULTITASKING. IT DOES
14 PLAY MP3 MUSIC AND IT ALLOWS YOU TO LISTEN TO MUSIC
15 WHILE OPERATING OTHER FUNCTIONS OF THE PHONE.

16 Q WAS THE SONY K700I CONSIDERED BY THE PATENT
17 OFFICE WHEN REVIEWING THE APPLICATION FOR THE '711
18 PATENT?

19 A NO.

20 Q HOW DO YOU KNOW?

21 A IT IS NOT LISTED ON THE '711 PATENT, AND IT IS
22 ALSO NOT IN THE FILE HISTORY.

23 Q HAVE YOU PREPARED A VIDEO TO DEMONSTRATE THE
24 FEATURES OF THE SONY K700I?

25 A YES.

1 Q CAN WE HAVE, PLEASE, PX 43.11, AND WE'LL PLAY
2 THIS AND AS WE DO, WOULD YOU PLEASE NARRATE FOR US.

3 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN
4 OPEN COURT OFF THE RECORD.)

5 THE WITNESS: YES. THIS IS A VIDEO I
6 MADE OF THE K700I PHONE. I'M GOING TO SHOW YOU HOW
7 THIS DEVICE TEACHES OR DETERMINES MANY OF THE SPECS
8 AS DESCRIBED IN THE CLAIM 9 OF THE '711 PATENT.

9 I JUST POWERED IT UP AND THE UNIT IS NOW
10 ENTERING STANDBY MODE.

11 I'M GOING TO GO TO THE MENU SYSTEM TO
12 SELECT THE MUSIC PLAYER. WE CAN SEE THAT THERE'S A
13 BOX AROUND THE MUSIC PLAYER ICON, AND I SELECT THAT
14 AND THE MUSIC PLAYER APPLICATION LAUNCHES.

15 I CAN SCROLL THROUGH A LIST OF SONGS,
16 SELECT A PARTICULAR SONG FOR PLAY BACK. THE SONG
17 IS PLAYING. I CAN GO THROUGH A NUMBER OF STEPS TO
18 GO BACK TO THE STANDBY MODE. I WILL PRESS
19 MINIMIZE, AND I'LL GO BACK TO THE STANDBY MODE.

20 FROM THE STANDBY MODE, I CAN OPERATE ANY
21 NUMBER OF FUNCTIONS. I'M GOING TO SHOW YOU THREE
22 DIFFERENT FUNCTIONS OF THE PHONE, CONTACTS, I'LL
23 SCROLL THROUGH A LIST OF CONTACTS. I CAN DO THINGS
24 LIKE SEND A MESSAGE, VIEW SOMETHING AS A CONNECT,
25 EDIT THE CONTACT, I CAN DO THINGS LIKE SEND AN

1 E-MAIL. THE MUSIC IS PLAYING, OF COURSE.

2 BACK TO THE STANDBY MODE. AND FROM THE
3 STANDBY MODE, I CAN GO TO SOME OTHER FUNCTION, LIKE
4 CALENDAR. NOTICE THAT NO MATTER WHAT FUNCTION OF
5 THE PHONE I'M OPERATING, THE MUSIC INDICATOR ON TOP
6 SHOWS THAT MUSIC IS PLAYING.

7 I CAN CHANGE THE VIEW OF THE CALENDAR.
8 BACK TO THE STANDBY MODE, AND STILL THE INDICATOR
9 THAT INDICATES MUSIC IS PLAYING IS DISPLAYED ON
10 TOP.

11 I'M GOING TO SHOW YOU ONE FINAL FUNCTION
12 OF THE PHONE. I'LL SELECT THE STOP WATCH FUNCTION.
13 THAT IS GOING.

14 AND BACK TO THE STANDBY MODE.

15 Q OKAY. SO NOW I'D LIKE YOU TO COMPARE THE SONY
16 K700I AGAINST CLAIM 9, AND LET'S PUT UP CHECKLIST
17 OF THE ELEMENTS OF CLAIM 9 SO WE CAN KEEP TRACK OF
18 WHERE WE ARE.

19 CAN WE HAVE PDX 43.13. SO LET'S START
20 WITH THE PREAMBLE, A MULTITASKING APPARATUS IN A
21 POCKET SIZED MOBILE COMMUNICATION DEVICE, INCLUDING
22 AN MP3 PLAYING CAPABILITY. DOES THE SONY K700I
23 HAVE THOSE FUNCTIONS?

24 A YES. AND IF YOU WOULD GO TO THE NEXT SLIDE,
25 HERE I HAVE SCREEN SHOTS OF THE SAME VIDEO THAT I

1 JUST PLAYED FOR YOU THAT SHOWS THAT THE SONY K700I
2 IS A POCKET SIZED MOBILE COMMUNICATION DEVICE. IT
3 HAS MP3 PLAYING CAPABILITIES, AND IT'S ALSO
4 MULTITASKING. HE SHOWED YOU THREE DIFFERENT
5 FUNCTIONS.

6 Q LET'S GO TO ELEMENT A. ELEMENT A REQUIRES A
7 CONTROLLER FOR PERFORMING CERTAIN FUNCTIONS. DO
8 YOU SEE THAT?

9 A YES.

10 Q WHAT IS A CONTROLLER?

11 A A CONTROLLER IS A PROCESSOR. IT IS WHAT RUNS
12 THE APPLICATIONS.

13 Q DOES THE SONY K700I HAVE A CONTROLLER?

14 A YES.

15 Q HOW DO YOU KNOW?

16 A I TOOK ONE APART, LOOKED AT THE LOGIC BOARD.
17 IT HAS A PROCESSOR.

18 Q ELEMENT A ALSO REQUIRES GENERATING A MUSIC
19 PLAYGROUND PLAY OBJECT WHERE IN THE BASIC
20 PLAYGROUND PLAY OBJECT HAS THE APPLICATION MODE.
21 DOES IT HAVE THAT ELEMENT?

22 A YES, IN THIS SCREEN, YOU SEE THERE IS AN ICON
23 THAT REPRESENTS THE MUSIC PLAY, THE MUSIC PLAYER,
24 AND YOU SAW ME SELECT THAT, THAT IT STARTED PLAYING
25 MUSIC IN THE BACKGROUND.

1 Q LET'S TURN NOW TO ELEMENT B. CAN WE HAVE PDX
2 43.18. DOES THE SONY K700I INCLUDE AT LEAST ONE
3 APPLETT WITH CLAIMED FUNCTION?

4 A I DON'T KNOW. I COULD NOT DETERMINE THAT.

5 Q WHY NOT?

6 A TO DETERMINE THAT, I WOULD NEED TO LOOK AT THE
7 SOFTWARE OF THE SONY.

8 Q SO WE'LL LEAVE THAT BOX BLANK, AND LET'S MOVE
9 ON TO THE NEXT ELEMENT.

10 PROVIDING AN INTERFACE FOR MUSIC PLAY BY
11 THE MUSIC PLAYGROUND PLAY OBJECT. DOES THE SONY
12 K700I HAVE THAT ELEMENT?

13 A YES, I ALREADY SHOWED IT HAS A MUSIC
14 BACKGROUND PLAY OBJECT, AND IT HAS BUTTONS THAT I
15 WAS PRESSING TO OPERATE THE USER INTERFACE.

16 Q LET'S GO TO ELEMENT D. SELECTING AN MP3 MODE
17 IN A POCKET SIZED MOBILE COMMUNICATION DEVICE USING
18 THE INTERFACE. WHERE DO WE SEE THAT IN THE SONY
19 K700I?

20 A YES, YOU SAW ME, BY CLICKING THE ICON, IT
21 LAUNCHED THIS APPLICATION FROM WHICH I COULD
22 ACTUALLY SELECT AN MP3 FILE AND FILE THAT FILE. IT
23 DOES HAVE THIS ELEMENT.

24 Q NEXT IS ELEMENT E, FOR SELECTING AND PLAYING A
25 MUSIC FILE IN THE POCKET SIZED MOBILE COMMUNICATION

1 DEVICE IN THE MP3 MODE.

2 DOES THE SONY K700I MEET THAT
3 REQUIREMENT?

4 A YES, THOSE FILES ON THAT LIST, THEY'RE ALL MP3
5 FILES. THAT'S INDICATED IN THE ZOOM FIGURE. THE
6 SCREEN SHOT IS FROM THE VIDEO. AND IT IS CAPABLE
7 OF PLAYING MP3 FILES.

8 Q CAN WE HAVE PDX 43.20, ELEMENT F. DOES THE
9 SONY K700I HAVE THE ELEMENT OF SWITCHING FROM THE
10 MP3 MODE TO A STANDBY MODE WHILE THE PLAYING OF THE
11 MUSIC FILE CONTINUES?

12 A YES. THESE SCREEN SHOTS FROM THE VIDEO SHOW
13 YOU THAT I WENT THROUGH A FEW, BUTTON PRESSES TO
14 MINIMIZE THE APPLICATION AND GO BACK TO THE STANDBY
15 MODE.

16 Q LET'S GO TO ELEMENT G, SELECTING AND
17 PERFORMING AT LEAST ONE FUNCTION OF THE POCKET
18 SIZED MOBILE COMMUNICATION DEVICE FROM THE STANDBY
19 MODE WHILE THE PLAYING OF THE MUSIC FILE CONTINUES.

20 WHERE DO WE FIND THAT IN THE SONY K700I?

21 A IN THE VIDEO I SHOWED YOU THREE DIFFERENT
22 FUNCTIONS, SCREEN SHOTS OF EACH ONE OF THOSE
23 FUNCTIONS WHILE THE MUSIC WAS PLAYING, AND THE SONY
24 K700 DOES ALLOW TO YOU DO THIS.

25 Q CAN WE HAVE PDX 43.22. DOES THE SONY K700I

1 HAVE A DISPLAY UNIT FOR DISPLAYING AN INDICATION
2 THAT THE MUSIC FILE IS BEING PLAYED IN THE STANDBY
3 MODE?

4 A YES. IN THE STANDBY MODE, I POINTED OUT THE
5 INDICATION. IT'S ALSO ZOOMED IN THIS PICTURE.
6 THERE'S AN INDICATION AT THE TOP OF THE SCREEN THAT
7 SLOWS THAT THE MUSIC IS PLAYING.

8 Q LAST ELEMENT, PDX 43.23. DOES THE SONY K700I
9 CONTINUE TO DISPLAY THE INDICATION THAT THE MUSIC
10 FILE IS BEING PLAYED WHILE PERFORMING THE SELECTED
11 FUNCTION?

12 A YES. IN ALL THOSE THREE MODES, OR ALL THOSE
13 THREE APPLICATIONS THAT I SHOWED YOU, CALENDAR,
14 STOP WATCH, AND CONTACTS, THAT INDICATION ON TOP OF
15 THE SCREEN WAS THERE.

16 Q LET'S RECAP FOR A MOMENT. CAN WE HAVE PDX
17 43.24. WE'VE CHECKED OFF EVERY ELEMENT FOR CLAIM 9
18 EXCEPT FOR THE APPLETT ONE, RIGHT?

19 A YES.

20 Q IN YOUR OPINION, WOULD THE USE OF AN APPLETT
21 HAVE BEEN OBVIOUS TO A PERSON OF ORDINARY SKILL IN
22 THE ART IN 2005?

23 A YES.

24 Q WHY?

25 A APPLETT WERE WELL KNOWN PRIOR TO 2005. THEY

1 OFFERED A NUMBER OF ADVANTAGES THAT WOULD HAVE BEEN
2 VERY USEFUL TO TAKE, TO EMPLOY IN A CELL PHONE.

3 Q WHAT ADVANTAGES?

4 A THOSE WOULD BE, TWO EXAMPLES WOULD BE
5 PORTABILITY AND SECURITY.

6 Q WHAT DO YOU MEAN BY SECURITY AND HOW DO
7 APPLETS HELP WITH THAT?

8 A WELL, BY SECURITY, I MEAN BEING CAREFUL ABOUT
9 AN APPLICATION GAINING ACCESS TO AN APPLICATION
10 THAT'S POSSIBLY MALICIOUS OR BUGGING GAINING ACCESS
11 TO THE DATA STORED ON THE DEVICE, AND APPLETS HELP
12 BY THE FACT THAT THEY RUN WITHIN AN APPLICATION
13 MODULE, IT ALLOWS THE APPLICATION MODULE TO SERVE
14 AS A LAYER OF PROTECTION. IT LIMITS THE ACCESS OF
15 THE APPLETS TO THE DEVICE.

16 Q DO YOU HAVE ANY OTHER BASIS FOR YOUR
17 CONCLUSION THAT IT WOULD HAVE BEEN OBVIOUS FOR A
18 PERSON OF ORDINARY SKILL TO USE AN APPLETS FOR
19 BACKGROUND MUSIC PLAY IN A MOBILE PHONE?

20 A YES, THERE'S A PATENT BY WONG, W-O-N-G, THAT
21 TEACHES THE USEFULNESS OF APPLETS FOR MOBILE
22 DEVICES.

23 Q COULD YOU TURN TO TAB 6 IN YOUR BINDER. DO
24 YOU RECOGNIZE -- WHICH IS PX 91. DO YOU RECOGNIZE
25 THAT?

1 A I WORK AT CARNEGIE MELLON UNIVERSITY.

2 Q WHAT IS YOUR POSITION AT CARNEGIE MELLON
3 UNIVERSITY?

4 A I'M A PERKINS PROFESSOR OF ELECTRICAL AND
5 COMPUTER ENGINEERING.

6 Q HOW LONG HAVE YOU BEEN AT CARNEGIE MELLON?

7 A TWENTY-THREE YEARS.

8 Q AND ARE YOU A FULL PROFESSOR?

9 A YES.

10 Q WHEN DID YOU BECOME A FULL PROFESSOR?

11 A 1999.

12 Q DO YOU TEACH AT CARNEGIE MELLON?

13 A YES.

14 Q WHAT DO YOU TEACH?

15 A I TEACH UNDERGRADUATE COURSE IN
16 TELECOMMUNICATION NETWORKS, AND GRADUATE COURSES IN
17 NETWORK, ADVANCED NETWORKS.

18 Q WHAT KIND OF RESEARCH HAVE YOU DONE?

19 A I DO RESEARCH IN SWITCHING SYSTEMS, THAT'S THE
20 NETWORK SWITCHING SYSTEM, AND TELECOMMUNICATION
21 NETWORK, CONTROLLER MANAGEMENT AND WIRELESS NETWORK
22 AND RESOURCE ALLOCATIONS.

23 Q OTHER THAN BEING A PROFESSOR, HAVE YOU HELD
24 ANY OTHER POSITIONS THE CARNEGIE MELLON?

25 A YES. I WAS DIRECTOR OF THE CYLAB KOREA FROM

1 2004 TO 2007.

2 Q WHAT WAS CYLAB KOREA AT CARNEGIE MELLON?

3 A IT WAS A RESEARCH INSTITUTE THAT WE CARRIED
4 OUT RESEARCH IN NETWORK SECURITY, AND IT WAS FUNDED
5 BY THE KOREAN GOVERNMENT.

6 Q CAN YOU SUMMARIZE YOUR EDUCATIONAL BACKGROUND
7 FOR US?

8 A I OBTAINED BACHELOR OF ENGINEERING FROM MCGILL
9 UNIVERSITY IN 1984, IT'S BEEN A WHILE, AND A
10 MASTER'S DEGREE AND PH.D. DEGREE FROM THE
11 UNIVERSITY OF TORONTO, 1987, AND 1990, ALL IN
12 ELECTRICAL ENGINEERING.

13 Q HAVE YOU AUTHORED ANY SCIENTIFIC PUBLICATIONS?

14 A YES.

15 Q ABOUT HOW MANY?

16 A OVER A HUNDRED.

17 Q WOULD ANY BE IN PEER REVIEWED JOURNALS?

18 A YES, THEY WERE ALL PEER REVIEWED.

19 Q DO YOU HAVE ANY PATENTS?

20 A YES.

21 Q HOW MANY?

22 A TWELVE.

23 Q ARE ANY OF YOUR PATENTS LICENSED?

24 A YES. ONE OF THEM WAS LICENSED TO ADVANCED
25 MICRODEVICES AND SAMSUNG ELECTRONICS.

1 Q TO SAMSUNG?

2 A YES.

3 Q NOW, HAVE YOU RECEIVED ANY FUNDING FOR YOUR
4 RESEARCH?

5 A YES.

6 Q WHAT GOVERNMENT AGENCIES HAVE SPONSORED YOUR
7 RESEARCH?

8 A NATIONAL SCIENCE FOUNDATION AND THE DEPARTMENT
9 OF DEFENSE AND SO ON.

10 Q HAVE ANY COMPANIES FUNDED YOUR RESEARCH?

11 A YES.

12 Q WHAT COMPANIES?

13 A H-P, INTEL, CISCO, NORTEL, LG, SAMSUNG, AND SO
14 ON.

15 Q SAMSUNG HAS FUNDED YOUR RESEARCH IN THE PAST?

16 A YES, IN THE PAST.

17 Q IN ADDITION TO BEING A PROFESSOR, DO YOU HAVE
18 ANY EXPERIENCE IN PRIVATE INDUSTRY?

19 A YES.

20 Q WHAT EXPERIENCE DO YOU HAVE?

21 A I HAD TWO START-UP COMPANIES, ONE IS CALLED
22 SCALABLE NETWORKS, THAT WAS FOUNDED IN 1995, AND WE
23 DEVELOPED FAST ETHERNET SWITCHING SYSTEM.

24 AND IN THE YEAR 2000, I FOUNDED A COMPANY
25 CALLED ACCELIGHT NETWORKS, WHICH DEVELOPED OPTICAL

1 SWITCHING SYSTEMS.

2 MR. LEE: YOUR HONOR, I OFFER PROFESSOR
3 KIM AS AN EXPERT IN WIRELESS COMMUNICATIONS AND
4 NETWORKS.

5 MR. VERHOEVEN: NO OBJECTION.

6 THE COURT: ALL RIGHT. SO CERTIFIED.

7 BY MR. LEE:

8 Q DR. -- PROFESSOR KIM, HAVE YOU EVER TESTIFIED
9 BEFORE?

10 A NO.

11 Q ARE YOU BEING COMPENSATED FOR YOUR TIME
12 WORKING ON THIS CASE?

13 A YES.

14 Q WHAT'S YOUR HOURLY RATE?

15 A IT'S \$450.

16 Q AND HOW MANY HOURS HAVE YOU WORKED ON THIS
17 CASE SO FAR?

18 A ABOUT 500 HOURS.

19 Q WHAT OPINIONS HAVE YOU REACHED?

20 A MY OPINION IS '516 PATENT IS INVALID AND THE
21 APPLE PRODUCT DOES NOT INFRINGE THAT PATENT.

22 Q NOW, HAVE YOU HAD AN OPPORTUNITY TO READ
23 DR. WILLIAMS' DIRECT AND CROSS-EXAMINATION
24 YESTERDAY IN THIS COURTROOM?

25 A YES, I READ THEM.

1 Q YOU WERE NOT ABLE TO BE PRESENT; CORRECT?

2 A NO, I WASN'T HERE.

3 Q ALL RIGHT. AT A VERY HIGH LEVEL, WHAT IS THE
4 '516 PATENT ABOUT?

5 A THE '516 PATENT IS ABOUT A PARTICULAR OR
6 SPECIFIC WAY OF DOING THE POWER CONTROL IN WIRELESS
7 NETWORKS.

8 Q SO LET'S SEE IF WE CAN EXPLAIN SOME OF THESE
9 CONCEPTS IN A LITTLE BIT MORE DETAIL.

10 CAN I HAVE PDX 35.2 ON THE SCREEN,
11 PLEASE?

12 DO YOU SEE PDX 35.2?

13 A YES.

14 Q CAN YOU EXPLAIN TO US WHAT'S SHOWN ON THIS
15 SLIDE?

16 A SO IT'S SHOWING TWO ELEMENTS IN THE WIRELESS
17 NETWORK, ONE IS THE HANDSET OR THE MOBILE TERMINAL,
18 OR USER EQUIPMENT WE'LL CALL IT, THAT'S BASICALLY
19 YOUR CELL PHONE; AND THERE'S THE BASE STATION,
20 THAT'S THE ANTENNA WITH ROUND CIRCLES. THAT'S THE
21 BASE STATION THAT'S CONNECTED TO THE NETWORK, FOR
22 INSTANCE, THE INTERNET OR TELECOMMUNICATION
23 NETWORK.

24 Q WHAT ARE THE UPLINK AND DOWNLINK?

25 A THE RED ARROW THAT YOU SEE THAT SAYS UPLINK

1 CONSISTS OF CHANNELS THAT TRANSMIT DATA FROM YOUR
2 HANDSET TO THE BASE STATION.

3 AND THE DOWNLINK THAT YOU SEE, THE GRAY
4 ARROW THAT YOU SEE ON THE SLIDE CONSISTS OF A
5 CHANNEL THAT TRANSMIT DATA FROM BASE STATION TO THE
6 HANDSET.

7 Q WHAT ARE CHANNELS?

8 A CHANNELS IS, IS A PART OF THE SPECTRUM. YOU
9 CAN THINK OF IT AS A PIPE WHERE YOU SEND THE DATA
10 THROUGH THE PARTICULAR PIPE, AND IN THIS CASE,
11 UPLINK WILL HAVE THAT PIPE THAT SENDS DATA FROM THE
12 HANDSET TO THE BASE STATION.

13 Q ARE THERE DIFFERENT TYPES OF CHANNELS?

14 A YES.

15 Q WHAT TYPES OF CHANNELS?

16 A BROADLY, THERE ARE TWO DIFFERENT TYPES. ONE
17 IS A DATA CHANNEL AND ANOTHER ONE IS CONTROL
18 CHANNEL.

19 Q WHAT IS A DATA CHANNEL?

20 A DATA CHANNEL IS WHERE YOU SEND USER DATA OR
21 YOU GET THE DATA FROM THE INTERNET, FOR INSTANCE.

22 SO IF YOU ARE TO TALK ON THE PHONE OR
23 UPLOADING A PICTURE TO YOUR FACEBOOK, FOR INSTANCE,
24 IT WILL USE A DATA CHANNEL, UPLINK DATA CHANNEL TO
25 SEND THE CHANNEL TO THE NETWORK.

1 Q WHAT IS A CONTROL CHANNEL?

2 A SO CONTROL CHANNEL IS TO SET UP THE DATA
3 CHANNEL OR TEAR DOWN THE DATA CHANNEL AND MAINTAIN
4 THE DATA CHANNEL.

5 Q DO YOU NEED POWER TO TRANSFER INFORMATION OVER
6 THE CHANNEL AS YOU'VE JUST DESCRIBED?

7 A YES, YOU NEED POWER FOR EACH OF THOSE
8 CHANNELS.

9 Q CAN A MOBILE PHONE, MY MOBILE PHONE, TRANSMIT
10 ANY AMOUNT OF POWER?

11 A NO. YOU WILL HAVE LIMITED POWER.

12 Q WHAT DETERMINES THE LIMIT ON THE POWER IN MY
13 MOBILE PHONE DEVICE?

14 A WELL, FIRST OF ALL, THE PHONE ITSELF WILL HAVE
15 A LIMIT.

16 BUT FROM THE WIRELESS NETWORK STANDPOINT,
17 THE NETWORK WILL DICTATE HOW MUCH POWER YOU CAN USE
18 TO TRANSMIT THOSE CHANNELS.

19 Q SO THERE WILL BE A MAXIMUM POWER?

20 A YES.

21 Q AND IF YOU GET TO THE MAXIMUM OR EXCEED IT,
22 ARE THERE DIFFERENT WAYS TO REDUCE IT?

23 A YES, THERE'S VARIOUS WAYS YOU CAN REDUCE IT.

24 ONE WAY IS NOT SEND ANYTHING THROUGH THE
25 CHANNEL, WHICH MEANS YOU'LL POWER DOWN ALL THE

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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

EXHIBIT 10

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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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1 '516 PATENT, WHICH IS LABELED PRIOR ART.

2 Q LET'S LOOK AT FIGURE 4 OF THE '516 PATENT JUST
3 FOR A SECOND.

4 THIS IS ALSO LABELED PRIOR ART IN THE
5 PATENT?

6 A YES.

7 Q HOW DOES IT TEACH THIS ELEMENT?

8 A SO IT IS SHOWING THAT THE USE OF CHANNEL
9 CODING, AS YOU SEE IN '305, THE CODING BLOCK, AND
10 THEN THE MODULATOR '306, AND THEN AFTER THAT, YOU
11 WILL BE TRANSMITTING THE SIGNAL.

12 Q LET'S LOOK AT THE LAST ELEMENT OF CLAIM 15,
13 WHICH IS A GAIN SCALING UNIT. DO YOU SEE THAT?

14 A YES.

15 Q AND WHERE IS THAT IN THE PRIOR ART?

16 A THAT WOULD BE IN, AGAIN, FIGURE 4 AND FIGURE 5
17 OF THE '516 PATENT.

18 Q SO DO YOU FIND EACH AND EVERY ELEMENT OF CLAIM
19 15 IN THE PRIOR ART?

20 A YES.

21 Q LET'S LOOK BRIEFLY AT CLAIM 16, WHICH ADDS, AS
22 DR. WILLIAMS POINTED OUT, THIS SLOT TO SLOT. DO
23 YOU SEE THAT?

24 A YES.

25 Q WHERE IS THAT ELEMENT TAUGHT IN THE PRIOR ART?

1 A THAT IS TAUGHT IN FIGURE 5 OF THE '516 PATENT.

2 Q CAN I HAVE FIGURE 5 ON THE SCREEN, BECAUSE I
3 DON'T THINK WE'VE POINTED THIS OUT TO THE JURY
4 BEFORE.

5 WOULD YOU EXPLAIN TO THE JURY WHERE IN
6 THE DIAGRAM THE PATENT LABELS PRIOR ART YOU CAN
7 FIND SLOT TO SLOT?

8 A SO IF YOU LOOK AT FIGURE 5, THERE'S A T1, T2
9 AND T3, THAT'S WHAT WE CALL SLOT IN WIRELESS
10 COMMUNICATIONS, AND THEN YOU SEE AS THE CHANGE IS
11 HAPPENING TO THE POWER, IT HAPPENS AT THE
12 SLOT-BY-SLOT BASIS AS YOU SEE HERE.

13 Q NOW, LET ME TURN TO A RELATED CONCEPT. THE
14 JURY WILL BE INSTRUCTED NEXT WEEK ON SOMETHING
15 CALLED SECONDARY CONSIDERATIONS OF OBVIOUSNESS.
16 THAT'S A LAWYER CONCEPT, BUT YOU'VE HEARD THEM
17 BEFORE?

18 A YES.

19 Q AND I JUST WANT TO ASK YOU ABOUT THOSE
20 CONCEPTS. DID YOU FIND ANY EVIDENCE THAT ANYONE
21 HAD COPIED THE '516 PATENT?

22 A NO.

23 Q ANY EVIDENCE THAT PATENT HAD ENJOYED
24 COMMERCIAL SUCCESS?

25 A NO.

1 Q ANY EVIDENCE THAT OTHERS HAD TRIED AND FAILED
2 TO MAKE THE INVENTION OF THE '516 PATENT?

3 A NO.

4 Q AND ANY PRAISE IN THE INDUSTRY WITH TECHNICAL
5 FIELDS FOR THE PATENT?

6 A NO.

7 Q NOW, LAST SUBJECT. TURN, IF YOU WOULD, TO PX
8 104, WHICH IS VOLUME 2, TAB 8 OF YOUR NOTEBOOK. DO
9 YOU SEE THIS?

10 A YES.

11 Q WHAT IS IT?

12 A IT'S THE SAMSUNG PROPOSAL TO THE 3GPP STANDARD
13 BY ONE OF THE INVENTORS OF THE '516 PATENT.

14 Q JUHO LEE?

15 A YES.

16 Q WHAT IS THE DATE OF THE DOCUMENT?

17 A JUNE 18TH, 2004.

18 MR. LEE: YOUR HONOR, WE OFFER PX 104.

19 THE COURT: ANY OBJECTION?

20 MR. VERHOEVEN: NO OBJECTION.

21 THE COURT: IT'S ADMITTED.

22 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
23 104, HAVING BEEN PREVIOUSLY MARKED FOR
24 IDENTIFICATION, WAS ADMITTED INTO
25 EVIDENCE.)

1 BY MR. LEE:

2 Q AND IF YOU TURN TO PAGE 3 OF THE DOCUMENT, DO
3 YOU SEE ON PAGE 3 DIFFERENT ALTERNATIVE PROPOSAL TO
4 THE 3 -- FOR DEALING WITH THE POWER CONTROL ISSUE?

5 A YES.

6 Q AND WHAT ARE THEY?

7 A SO THE FIRST ONE IT SAYS MUST SEND DATA OVER
8 THE ENHANCED CHANNEL, MEANING YOU POWER DOWN THE
9 ENTIRE CHANNEL.

10 SECOND ONE TALKS ABOUT REDUCING THE POWER
11 OF THE ENHANCED DATA CHANNEL.

12 AND THE THIRD ONE TALKS ABOUT SCALE DOWN
13 EQUALLY, TRANSMIT POWER OVER CHANNELS.

14 MR. LEE: THANK YOU PROFESSOR KIM.

15 NOTHING FURTHER, YOUR HONOR.

16 THE COURT: ALL RIGHT. TIME IS NOW 9:24.
17 GO AHEAD, PLEASE.

18 **CROSS-EXAMINATION**

19 BY MR. VERHOEVEN:

20 Q GOOD MORNING.

21 A GOOD MORNING.

22 Q MY NAME IS CHARLES VERHOEVEN.

23 YOU -- DID YOU SEE DR. WILLIAMS TESTIMONY
24 ON DIRECT AND CROSS?

25 A YES. I DIDN'T SEE IT. I READ IT.

1 Q YOU READ IT?

2 A YES.

3 Q AND YOU SAW HOW HE WENT THROUGH IN GREAT
4 DETAIL HOW THE CLAIMS READ ON THE INTEL
5 SPECIFICATION AND SOFTWARE? DO YOU REMEMBER THAT?

6 A YES.

7 Q IN YOUR DIRECT EXAMINATION, YOU DIDN'T ADDRESS
8 ANY OF THE INTEL DOCUMENTS, DID YOU? YES OR NO?

9 A NO.

10 Q AND YOU DIDN'T ADDRESS THE INTEL SOURCE CODE,
11 DID YOU?

12 A NO.

13 Q YOU DON'T DISPUTE THE ACCURACY OF
14 DR. WILLIAMS' DESCRIPTION OF HOW THOSE DOCUMENTS
15 SHOW THE OPERATION OF THE CHIP, DO YOU, SIR?

16 A I DON'T QUITE UNDERSTAND YOUR QUESTION.

17 Q COULD YOU READ THE QUESTION BACK, PLEASE.

18 (WHEREUPON, THE RECORD WAS READ BY THE
19 COURT REPORTER.)

20 THE WITNESS: YEAH, I BELIEVE HE

21 DESCRIBED THAT --

22 BY MR. VERHOEVEN:

23 Q YES OR NO, SIR?

24 A WAIT. I DON'T DISPUTE.

25 MR. VERHOEVEN: THANK YOU. NOTHING

1 FURTHER.

2 THE COURT: ALL RIGHT. TIME IS NOW 9:25.
3 ANY REDIRECT?

4 **REDIRECT EXAMINATION**

5 BY MR. LEE:

6 Q PROFESSOR KIM, DID YOU REVIEW THE TESTIMONY OF
7 THE INTEL ENGINEER WHERE HE SAID ALL CHANNELS ARE
8 TOTALLED UP IN THE INTEL BASEBAND PROCESSOR?

9 A YES.

10 MR. LEE: NOTHING FURTHER, YOUR HONOR.

11 THE COURT: ALL RIGHT. MAY THIS WITNESS
12 BE EXCLUDED AND IF SO, IS HE SUBJECT TO RECALL?

13 MR. LEE: HE IS, AND NOT SUBJECT TO
14 RECALL.

15 THE COURT: DO YOU AGREE WITH THAT?

16 MR. VERHOEVEN: YES, YOUR HONOR.

17 THE COURT: ALL RIGHT. YOU MAY BE
18 EXCUSED.

19 CALL YOUR NEXT WITNESS, PLEASE.

20 MR. LEE: YOUR HONOR, APPLE CALLS
21 PROFESSOR KNIGHTLY. AND MR. MUELLER WILL PRESENT
22 DR. KNIGHTLY.

23 THE COURT: ALL RIGHT. COME ON UP,
24 PLEASE.

25 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

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EDWARD KNIGHTLY,

BEING CALLED AS A WITNESS ON BEHALF OF THE
PLAINTIFF, HAVING BEEN FIRST DULY SWORN, WAS
EXAMINED AND TESTIFIED AS FOLLOWS:

THE WITNESS: I DO.

THE CLERK: THANK YOU. PLEASE BE SEATED.

THE COURT: ALL RIGHT. THE TIME IS NOW
9:26. GO AHEAD.

THE CLERK: IF YOU CAN PLEASE STATE YOUR
NAME AND SPELL IT FOR THE RECORD.

THE WITNESS: EDWARD WILLIAM KNIGHTLY.
E-D-W-A-R-D, WILLIAM, W-I-L-L-I-A-M, KNIGHTLY,
K-N-I-G-H-T-L-Y.

DIRECT EXAMINATION

BY MR. MUELLER:

Q GOOD MORNING, DR. KNIGHTLY.

A GOOD MORNING.

Q COULD YOU PLEASE INTRODUCE YOURSELF TO THE
JURY?

A YES. MY NAME IS EDWARD KNIGHTLY, AND I LIVE
IN HOUSTON, TEXAS.

Q AND, SIR, IF YOU WOULD SIT UP JUST A BIT
TOWARDS THE MICROPHONE. THANK YOU.

DR. KNIGHTLY, HAVE YOU BEEN RETAINED BY
APPLE AS AN EXPERT WITNESS IN THIS CASE?

1 A YES, I HAVE.

2 Q LET'S START BY GOING OVER YOUR EDUCATIONAL
3 BACKGROUND IF WE COULD.

4 A ALL RIGHT.

5 Q COULD YOU PLEASE DESCRIBE IT FOR THE JURY?

6 A SO I RECEIVED MY BACHELOR'S DEGREE IN 1991
7 FROM AUBURN UNIVERSITY AND MY MASTER AND PH.D. FROM
8 THE UNIVERSITY OF CALIFORNIA AT BERKELEY IN '92 AND
9 '96.

10 Q DR. KNIGHTLY, WHERE DO YOU WORK?

11 A I'M A PROFESSOR OF ELECTRICAL AND COMPUTER
12 ENGINEERING AT RICE UNIVERSITY IN HOUSTON.

13 Q FOR HOW LONG HAVE YOU BEEN AT RICE UNIVERSITY?

14 A SINCE '96.

15 Q WHAT ARE YOUR DUTIES AT RICE?

16 A I TEACH COURSES, GRADUATE AND UNDERGRADUATE
17 COURSES, I TEACH SENIOR LEVEL NETWORKING COURSES,
18 AND ADVANCED WIRELESS NETWORKING COURSES AT THE
19 GRADUATE LEVEL.

20 I ALSO TEACH PROJECT COURSES TO SENIORS
21 ON WIRELESS NETWORKING FOR UNDERSERVED REGIONS FOR
22 LOW COST WIRELESS, AND I ALSO RUN A RESEARCH GROUP
23 WITH GRADUATE STUDENTS AND ENGINEERS.

24 Q COULD YOU PLEASE GIVE US AN OVERVIEW OF YOUR
25 RESEARCH?

1 A YES. I HAVE TWO MAIN PROJECTS RIGHT NOW. ONE
2 IS TERMED SUPER WI-FI WHERE WE'RE DEVELOPING
3 TECHNOLOGY TO MAKE WI-FI GO FURTHER INSTEAD OF TENS
4 OF FEET BY USING UHF BANDS, TV BANDS.

5 AND THE SECOND IS MULTI ANTENNA
6 TECHNOLOGY WHERE WE'RE DEVELOPING TECHNIQUES FOR
7 WI-FI TO BE ABLE TO GO TO MULTIPLE USERS
8 SIMULTANEOUSLY.

9 Q DR. KNIGHTLY, DO YOU HAVE EXPERIENCE WITH REAL
10 LIFE WIRELESS NETWORKS?

11 A YES. WE -- SINCE 2003, WE'VE DESIGNED AND
12 OPERATE A WIRELESS NETWORK IN HOUSTON, TEXAS. THE
13 NETWORK SERVES THOUSANDS OF USERS AND IT'S A
14 PLATFORM FOR US TO DEMONSTRATE OUR RESEARCH FOR
15 LOW-COST WIRELESS IN UNDERSERVED COMMUNITIES.

16 Q WHAT IS THIS CALLED?

17 A TECHNOLOGY FOR ALL WIRELESS.

18 Q IN ADDITION TO TECHNOLOGY FOR ALL, HAVE YOU
19 BEEN INVOLVED IN ANY OTHER REAL LIFE WIRELESS
20 NETWORKS?

21 A YES. WE'RE IN THE DESIGN PROCESS FOR A SUPER
22 WI-FI DEPLOYMENT IN ARGENTINA, WHICH HAS MORE
23 AVAILABLE UHF FREQUENCY SPECTRUM.

24 Q DR. KNIGHTLY, HAVE YOU AUTHORED ANY SCIENTIFIC
25 PUBLICATIONS?

1 A YES, OVER 100 PAPERS AND REFEREED JOURNALS AND
2 RESEARCH CONFERENCES.

3 Q AND HAVE YOU RECEIVED ANY AWARDS?

4 A YES. TWO AWARDS THAT ARE SHOWN ON THE SCREEN.
5 ONE IS IEEE FELLOW, AND THAT'S THE INSTITUTE OF
6 ELECTRICAL AND ELECTRONIC ENGINEERS. THAT'S AN
7 AWARD GIVEN TO NO MORE THAN .1 PERCENT OF THE
8 MEMBERS IN ANY ONE YEAR; AND SLOAN FELLOW IS AN
9 AWARD FOR RESEARCH EXCELLENCE GIVEN TO 128
10 RESEARCHERS ACROSS ALL AREAS FROM CHEMISTRY TO
11 COMPUTER SCIENCE.

12 MR. MUELLER: YOUR HONOR, I MOVE
13 DR. KNIGHTLY AS AN EXPERT IN WIRELESS COMMUNICATION
14 SYSTEMS AND NETWORKING PROTOCOLS.

15 THE COURT: ANY OBJECTION?

16 MR. VERHOEVEN: NO OBJECTION, YOUR HONOR.

17 THE COURT: SO CERTIFIED. GO AHEAD,
18 PLEASE.

19 BY MR. MUELLER:

20 Q DR. KNIGHTLY, WHAT ISSUES WERE YOU ASKED TO
21 CONSIDER IN THIS CASE?

22 A I WAS ASKED TO CONSIDER THE '941 PATENT AND
23 WHETHER OR NOT THE APPLE PRODUCTS INFRINGE, AND
24 ALSO VALIDITY.

25 Q AND HAVE YOU REACHED ANY CONCLUSIONS?

1 A YES, I HAVE.

2 Q AND WHAT ARE THEY?

3 A THAT IS THAT THE '941 PATENT IS INVALID IN
4 LIGHT OF PRIOR ART THAT I'LL BE DISCUSSING IN A FEW
5 MINUTES, AND ALSO THAT THE APPLE PRODUCTS DO NOT
6 INFRINGE.

7 Q COULD YOU GIVE US AN OVERVIEW OF THE WORK THAT
8 YOU'VE DONE ON THIS CASE TO REACH THOSE
9 CONCLUSIONS?

10 A YES. I'VE REVIEWED THE PATENT APPLICATION,
11 THE FILE HISTORY, DOCUMENTS DESCRIBING INTEL SOURCE
12 CODE, DOCUMENTS DESCRIBING THE STANDARD, AND ALL
13 THAT EVIDENCE THAT I LISTED IN MY EXPERT REPORT.

14 Q AND HOW MANY HOURS HAVE YOU BEEN WORKING ON
15 THE CASE?

16 A APPROXIMATELY 300.

17 Q HAVE YOU BEEN COMPENSATED FOR YOUR TIME?

18 A YES, I'VE BEEN COMPENSATED AT MY STANDARD RATE
19 OF \$475 AN HOUR FOR A TOTAL OF ABOUT \$140,000.

20 Q SIR, AT A HIGH LEVEL, WHAT IS THE SUBJECT OF
21 THE '941 PATENT?

22 A SO '941 ADDRESSES SEGMENTATION AND REASSEMBLY
23 IN A WIRELESS NETWORK.

24 Q AND IF YOU NEED TO REFER TO IT, THIS IS JOINT
25 EXHIBIT 1070 WHICH IS AT TAB 2 OF YOUR BINDER, AND

1 THAT'S THE '941 PATENT.

2 BEFORE WE GET INTO THE DETAILS, LET ME
3 ASK YOU A FEW TECHNICAL CONCEPTS. AND LET ME BRING
4 UP PDX 36.2. CAN YOU EXPLAIN TO THE JURY WHAT WE
5 SEE HERE?

6 A SO THIS IS SHOWING A TRANSMITTER, THE USER
7 EQUIPMENT THAT YOU'VE HEARD ABOUT BEFORE, AND THIS
8 IS TRANSMITTING, IN THIS CASE IT'S AN IMAGE OR A
9 VIDEO FRAME. AND WHEN THAT FRAME COMES FROM THE
10 APPLICATION, IT'S PUT INTO WHAT'S CALLED AN SDU, OR
11 A SERVICE DATA UNIT.

12 AND THEN IN MANY CASES THOSE FRAMES OR
13 IMAGES ARE TOO LARGE TO BE SENT OVER THE WIRELESS
14 NETWORK AS THEY ARE, SO THEY'VE GOT TO BE SEGMENTED
15 OR DIVIDED INTO PROTOCOL DATA UNITS OR PDU'S.

16 SO THAT WHAT'S SHOWN IS OVER THE WIRELESS
17 LINK IS THAT YOU'RE SEEING MANY PROTOCOL DATA UNITS
18 WITH, IN ESSENCE, PART OF THE IMAGE, AND THAT'S
19 SEGMENTATION; AND ON THE RECEIVER SIDE, THE WHOLE
20 PROCESS IS REVERSED WITH REASSEMBLY WHERE THE
21 RECEIVER PUTS IT ALL BACK TOGETHER.

22 MR. MUELLER: YOUR HONOR, MAY I APPROACH
23 THE SCREEN, PLEASE?

24 THE COURT: GO AHEAD.

25 BY MR. MUELLER:

1 Q JUST TO TAKE THAT IN PIECES, DR. KNIGHTLY, THE
2 ORIGINAL IMAGE IS A FLOWER.

3 A YES.

4 Q AND THAT FLOWER IS REPRESENTED IN SDU?

5 A YES, THAT FLOWER COMES IN A UNIT FROM THE
6 HIGHER LAYERS AND WE'RE REFERRING TO THAT AS SDU.

7 Q AND CAN YOU EXPLAIN TO US ONE MORE TIME THE
8 RELATIONSHIP BETWEEN THE SDU AND THESE PDU'S?

9 A YES. SO THE SDU'S, IF IT'S LARGER THAN THE
10 PDU, IS BROKEN UP INTO SEGMENTS.

11 Q AND I'M SORRY, THE PROCESS OF BREAKING UP THE
12 SDU IS CALLED?

13 A SEGMENTATION.

14 Q LET'S TAKE A LOOK AT PDX 36.4. WHAT DO WE SEE
15 HERE?

16 A SO THIS IS A ZOOM IN OF ONE OF THOSE PDU'S.
17 ON THE LEFT YOU'RE SEEING AN SDU WITH THE --
18 REPRESENTING THE ENTIRE IMAGE AND THERE'S HEADER
19 INFORMATION ON TOP OF THAT.

20 AND THEN THAT'S SHOWING DIVIDING INTO
21 SOME OF THOSE PDU'S THAT I SHOWED GOING ACROSS THE
22 WIRELESS AIR.

23 AND THEN EACH OF THOSE HAS A HEADER, AND
24 THAT HEADER IS THE CONTROL INFORMATION THAT TELLS
25 THE RECEIVER HOW TO RECONSTRUCT EVERYTHING THAT THE

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 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 DRS. 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 A IN MY EXPERIENCE AS A DESIGNER, A DESIGN
2 COMING OUT DOESN'T HAVE THAT KIND OF IMPACT UNLESS
3 IT'S TRULY UNIQUE AND NOT OBVIOUS.

4 MS. KREVANS: NOTHING FURTHER, YOUR
5 HONOR.

6 THE COURT: ALL RIGHT. THE TIME IS NOW
7 2:13. GO AHEAD, PLEASE.

8 MR. VERHOEVEN: THANK YOU, YOUR HONOR.
9 CAN WE PUT UP SDX 3927.001.

10 **CROSS-EXAMINATION**

11 BY MR. VERHOEVEN:

12 Q THIS IS A SLIDE WE LOOKED AT EARLIER WHEN I
13 WAS CROSS-EXAMINING YOU?

14 MS. KREVANS: OBJECTION, YOUR HONOR.

15 MR. VERHOEVEN: YOUR HONOR, IF WE'RE
16 GOING TO HAVE OBJECTIONS TO A SLIDE THAT'S ALREADY
17 BEEN USED AND TAKING MY TIME.

18 THE COURT: GO AHEAD, OVERRULED.

19 MS. KREVANS: YOUR HONOR, IF I MAY --

20 MR. VERHOEVEN: CAN THIS GO OUT OF THEIR
21 TIME, YOUR HONOR.

22 THE COURT: OVERRULED. GO, PLEASE.

23 MR. VERHOEVEN: THANK YOU.

24 Q THIS IS A SLIDE I ASKED YOU ABOUT LAST TIME
25 YOU TESTIFIED; RIGHT?

1 A CORRECT.

2 Q AND ON THE LEFT WE HAVE THESE PRIOR ART
3 REFERENCES AND WE HAVE THE LG PRADA, DO YOU SEE
4 THAT?

5 A I SEE THAT.

6 Q ALL THESE PRIOR ART DEVICES HAVE A RECTANGULAR
7 SHAPE WITH ROUNDED CORNERS; RIGHT?

8 A THAT'S WHAT I SAID LAST TIME, USE.

9 Q THE USE OF A RECTANGULAR SHAPE WITH ROUNDED
10 CORNERS FOR AN ELECTRONIC DEVICE, THAT'S NOT
11 SOMETHING APPLE OWNS, IS IT, SIR?

12 A THAT GENERAL DESCRIPTION CERTAINLY IS NOT.
13 THE SPECIFIC DESIGN THAT THEY PRODUCED IS.

14 Q THAT ELEMENT IS NOT SOMETHING THAT APPLE OWNS,
15 IS IT, SIR?

16 A I'M NOT SURE I UNDERSTAND THE QUESTION.

17 Q RECTANGULAR SHAPE WITH ROUNDED CORNERS, DOES
18 APPLE OWN THAT?

19 A APPLE OWNS A -- THE DESIGN OF THE PHONE WITH A
20 RECTANGULAR SHAPE AS DEPICTED IN THEIR PATENT WITH
21 ROUNDED CORNERS.

22 Q CAN WE PLAY MR. BRESSLER'S APRIL 24TH, 2000
23 TELEPHONE DEPOSITION, PAGE 176, LINES 18 THROUGH
24 85.

25 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN

1 OPEN COURT OFF THE RECORD.)

2 BY MR. VERHOEVEN:

3 Q AND THE USE OF A LARGE -- GO BACK TO THE
4 SLIDE, PLEASE. EACH OF THESE HAS A LARGE DISPLAY
5 SCREEN; RIGHT?

6 A THEY'RE DIFFERENT SIZES.

7 Q BUT THEY'RE ALL LARGE DISPLAY SCREENS, AREN'T
8 THEY, SIR?

9 A COMPARED TO WHAT?

10 Q YOU DON'T CONCEDE THESE ARE LARGE DISPLAY
11 SCREENS?

12 A I WOULD SAY SOME OF THEM ARE LARGE AND SOME OF
13 THEM ARE NOT, YES.

14 Q WHICH ONE IS NOT LARGE?

15 A THE 547 I DO NOT BELIEVE IS AS LARGE AS THE
16 '087.

17 Q OKAY. SO THESE THREE AT LEAST YOU'LL AGREE
18 ARE LARGE, THE JP'638, JP'383, AND THE LG PRADA?

19 A THEY ARE LARGE RELATIVE TO THE DESIGNS THEY'RE
20 IN, YES.

21 Q THE USE OF A LARGE DISPLAY SCREEN ON AN
22 ELECTRONIC DEVICE IS NOT SOMETHING THAT'S
23 PROPRIETARY TO APPLE, IS IT, SIR?

24 A I'M SORRY. THE WAY YOU'RE ASKING THAT
25 QUESTION IS NOT APPROPRIATE TO THE EVALUATION I

1 DID.

2 Q LET'S PLAY YOUR DEPOSITION, APRIL 24TH, 2012,
3 PAGE 177, LINES 1 THROUGH 5.

4 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN
5 OPEN COURT OFF THE RECORD.)
6 BY MR. VERHOEVEN:

7 Q NOW, THAT WAS TRUE TESTIMONY WHEN YOU GAVE IT
8 AT YOUR DEPOSITION, WASN'T IT, SIR?

9 A AS I UNDERSTAND THE QUESTIONS AT THE TIME,
10 YES.

11 Q NOW, WHEN YOU'RE LOOKING AT THE '889 PATENT,
12 THE TABLET DESIGN PATENT -- ARE YOU WITH ME?

13 A I AM.

14 Q YOU NOTICED A LOT OF LITTLE DIFFERENCES;
15 RIGHT?

16 A A LOT OF LITTLE DIFFERENCES OF WHAT?

17 Q IN THE FIDLER TABLET VERSUS THE '889?

18 A I THOUGHT THEY WERE SUBSTANTIAL DIFFERENCES.

19 Q AND, IN FACT, WHEN YOU COMPARED THE '888 TO
20 THE INITIAL IPAD, IT WAS YOUR BELIEF IT'S NOT AN
21 EMBODIMENT, RIGHT?

22 A BECAUSE OF THE SHAPE.

23 Q SO YOU DIDN'T THINK IT WAS AN EMBODIMENT OF
24 THE '889 PATENT; RIGHT?

25 A THAT REALLY HAS NOT BEEN PART OF MY

1 EVALUATION.

2 Q IS THAT YOUR OPINION?

3 A NO.

4 Q OKAY. LET'S PLAY FROM YOUR DEPOSITION, APRIL
5 24TH, 2012, PAGE 121, LINES 6 THROUGH 13.

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

8 MR. VERHOEVEN: I'LL JUST READ IT, BUT I
9 DON'T THINK THEY WOULD SEE THEM AS BEING
10 SUBSTANTIALLY THE SAME.

11 Q YOU SAID THAT, RIGHT, IN ANSWER TO THAT
12 QUESTION AT YOUR DEPOSITION?

13 A I DID. AND I SAID THE WORD SIGNIFICANT
14 SIMILARITIES.

15 Q BUT DID YOU NOT THINK THEY WERE SUBSTANTIALLY
16 THE SAME. WAS THAT A MISTAKE AT YOUR DEPOSITION?

17 A NO, THAT'S WHAT I SAID.

18 Q OKAY. AND YOU STAND BY IT?

19 A I BELIEVE THAT THE BACK OF THE ORIGINAL IPAD
20 DOES NOT HAVE THE SAME SHAPES THAT THE '889
21 SUGGESTS.

22 Q YOU AGREE THAT YOU APPLIED THE SAME TEST FOR
23 INVALIDITY AS YOU APPLY FOR INFRINGEMENT, YOU APPLY
24 THE ORDINARY OBSERVER TEST; RIGHT, SIR?

25 A I APPLIED THE ORDINARY OBSERVER TEST, IF, IN

1 FACT, I FOUND IN THE CONSTRUCTIONS THAT AS A
2 DESIGNER OF THE ORDINARY SKILL I FELT WERE CLOSE TO
3 OR PRIMARY REFERENCES FOR THE PATENTS, AND I --

4 Q SO IF?

5 A I DON'T BELIEVE ANY OF THEM ARE.

6 Q IF LITTLE DETAILS LIKE THE BEZEL WIDTH OR THE
7 LOCATION OF THE SPEAKER ARE IMPORTANT FOR
8 INVALIDITY, THEY'RE JUST AS IMPORTANT FOR
9 NON-INFRINGEMENT, AREN'T THEY, SIR?

10 A YES. BUT I BELIEVE IT ALL COMES DOWN TO THE
11 OVERALL IMPRESSION.

12 MR. VERHOEVEN: THANK YOU, SIR.

13 PASS THE WITNESS.

14 THE COURT: ALL RIGHT. 2:18.

15 MS. KREVANS: NO REDIRECT YOUR HONOR.

16 THE COURT: ALL RIGHT. IS THIS WITNESS
17 EXCUSED AND NOT SUBJECT TO RECALL.

18 MS. KREVANS: HE IS EXCUSED AND NOT
19 SUBJECT TO RECALL.

20 THE COURT: ALL RIGHT. YOU ARE EXCUSED.

21 THE WITNESS: THANK YOU.

22 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

23 **KARAN SINGH,**

24 BEING CALLED AS A WITNESS ON BEHALF OF THE

25 PLAINTIFF, HAVING BEEN FIRST DULY SWORN, WAS

1 EXAMINED AND TESTIFIED AS FOLLOWS:

2 THE WITNESS: I DO.

3 THE CLERK: THANK YOU. PLEASE BE SEATED.

4 MR. JACOBS: YOUR HONOR, APPLE CALLS DR.
5 KARAN SINGH IN REBUTTAL.

6 THE COURT: OKAY. TIME IS 2:18. GO
7 AHEAD, PLEASE.

8 **DIRECT EXAMINATION**

9 BY MR. JACOBS:

10 Q WELCOME BACK, DR. SINGH. THE JURY HEARD
11 WEDNESDAY FROM A MR. GRAY ON BEHALF OF SAMSUNG THAT
12 LAUNCHTILE AND AGNETTA, A PATENT WITH AGNETTA AS
13 THE INVENTOR, EACH OF THEM SEPARATELY ANTICIPATE
14 CLAIM 50 OF THE '163 PATENT.

15 ARE YOU AWARE OF THAT TESTIMONY?

16 A SURE. I WAS IN COURT. I READ HIS TRANSCRIPT.
17 I SAW THE SLIDES.

18 Q DO YOU AGREE WITH MR. GRAY?

19 A NO, I DO NOT.

20 Q AND BEFORE WE GET INTO THE DETAILS, LET'S TAKE
21 KIND OF A HIGH LEVEL LOOK AT THIS. ARE CLAIM 50 OF
22 THE '163 PATENT ON ONE HAND AND LAUNCHTILE AND
23 AGNETTA, THE REFERENCES MR. GRAY TALKED ABOUT, ARE
24 THEY EVEN DIRECTED TO THE SAME PROBLEM?

25 A NO, NOT AT ALL. ONE, THE '163 DEALS WITH

1 FACILITATING THE NAVIGATION AND READABILITY OF THE
2 STRUCTURED ELECTRONIC DOCUMENTS, LIKE WEB PAGES.
3 IF WE LOOK AT THE VIDEO OF THE '163 ON THE APPLE
4 IPHONE AGAIN, YOU SEE TAPPING ON BOXES.

5 AND THEN THIS ENTIRE DOCUMENT BEING
6 ENLARGED AND CENTERED TO IMPROVE THE READABILITY OF
7 THAT DOCUMENT.

8 LAUNCHTILE AND AGNETTA, ON THE OTHER
9 HAND, DEAL WITH A COMPLETELY DIFFERENT PROBLEM,
10 WHICH IS INTERACTING WITH AND LAUNCHING APPLICATION
11 ICONS, SORT OF LIKE THE APPLICATION ICONS FOR
12 LAUNCHING PROGRAMS THAT YOU SEE ON A COMPUTER DESK
13 TOP.

14 Q SO DO LAUNCHTILE AND AGNETTA ENLARGE AND
15 TRANSLATE A STRUCTURED ELECTRONIC DOCUMENT?

16 A NO, NOT AT ALL. AND CERTAINLY NOT THE WAY THE
17 '163 TALKS ABOUT. THEY ESSENTIALLY REPLACE THE
18 CONCEPT. THEY PROVIDE DIFFERENT CONTENT.

19 Q SO DO -- DOES LAUNCHTILE DISCLOSE INSTRUCTIONS
20 FOR DISPLAYING AT LEAST A PORTION OF A STRUCTURED
21 ELECTRONIC DOCUMENT?

22 A UM --

23 Q CAN WE HAVE PDX 29.29, PLEASE?

24 A NO, THEY DON'T. JUST LOOKING AT THE CLAIM
25 ELEMENTS OVER HERE, LAUNCHTILE, AND AGNETTA,

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 COMMERCIALLY 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.

CROSS-EXAMINATION

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BY MR. LEE:

Q DR. TEECE, I NOTICE YOU NEGLECTED TO TELL THE JURY ABOUT YOUR EXPERIENCE WITH ETSI. WHAT POSITIONS HAVE YOU HELD AT ETSI?

A I DIDN'T NEGLECT TO TELL THEM BECAUSE I HAVE NOT HAD A POSITION AT ETSI.

Q OH. EVER?

A THAT IS CORRECT.

Q HAVE YOU EVER BEEN TO A 3GPP MEETING?

A NO, I HAVE NOT.

Q HAVE YOU EVER BEEN TO A 3GPP WORKING GROUP?

A NOPE.

Q HAVE YOU EVER SUBMITTED A PROPOSAL TO ETSI?

A NOPE.

Q SO UNLIKE DR. WALKER, WHO'S THE CHAIRMAN, YOU HAVE NO EXPERIENCE WITH ETSI; CORRECT?

A I'VE OBSERVED IN THE PUBLIC DATABASES THE FILINGS OF VARIOUS COMPANIES. I'VE DONE ANALYSIS ON THE PUBLIC DATABASES.

Q MY QUESTION WAS DIFFERENT, SIR. OTHER THAN GOING TO A PUBLIC DATABASE AND ANALYZING PUBLICLY AVAILABLE INFORMATION, YOU HAVE NO EXPERIENCE WITH ETSI, PERIOD? RIGHT?

A I HAVE NO DIRECT PARTICIPATORY EXPERIENCE. I

1 STUDIED ETSI AS A SCHOLAR.

2 Q OKAY. NOW, SIR, YOU UNDERSTAND THAT IN THIS
3 CASE APPLE ALLEGES THAT SAMSUNG FAILED TO COMPLY
4 WITH ITS ETSI, WITH THE ETSI IPR POLICY; CORRECT?

5 A YES.

6 Q AND AS YOU TESTIFIED AT YOUR DEPOSITION, YOU
7 HAVE NO OPINION ON THAT ISSUE, DO YOU?

8 MS. MAROULIS: OBJECTION. MISLEADING.

9 BY MR. LEE:

10 Q WELL, LET ME ASK IT THIS WAY: DO YOU HAVE AN
11 OPINION ON THAT ISSUE?

12 A I GAVE YOU AN OPINION WITH RESPECT TO WHAT I
13 OBSERVED AND THE BEHAVIOR OF THE PARTIES, AND SO I
14 INFER FROM THAT THAT THE -- THAT SINCE DELAYS ARE
15 UBIQUITOUS, THAT THE RULE CAN'T BE QUITE WHAT IT'S
16 BEING REPRESENTED BY DR. ORDOVER.

17 Q LET'S SEE WHAT YOU SAID AT YOUR DEPOSITION.
18 CAN I HAVE PAGE 427, LINES 7 TO 13.

19 I'M NOT SURE, I WANT YOU TO HELP ME WITH
20 THIS, WHAT YOU OBSERVED FROM UBIQUITOUS BEHAVIOR.
21 THE LADIES AND GENTLEMEN OF THE JURY HAVE TO
22 TIED --

23 MS. MAROULIS: OBJECTION TO COUNSEL
24 TESTIFYING.

25 THE COURT: OVERRULED.

1 BY MR. LEE:

2 Q -- DOES SAMSUNG VIOLATE THE RULES, AND YOU
3 WERE ASKED, QUESTION, AND ARE YOU OFFERING ON
4 OPINION THAT IN REGARD TO ANY OR ALL OF THE 7
5 PATENTS HERE, SAMSUNG ON A BONE FIDE BASIS DREW THE
6 ATTENTION OF ETSI TO ANY OF ITS IPR WHICH MIGHT BE
7 SPECIAL TO ANY PROPOSAL THAT IT MADE.

8 "ANSWER: NO. AS I SAID BEFORE, MY
9 TESTIMONY WILL RELATE TO INDUSTRY PRACTICE."

10 MS. MAROULIS: OBJECTION, NOT PROPER
11 IMPEACHMENT. CONSISTENT WITH THE WITNESS'S
12 STATEMENT.

13 THE COURT: OVERRULED. GO AHEAD, PLEASE.

14 BY MR. LEE:

15 Q WERE YOU ASKED THAT QUESTION AND DID YOU GIVE
16 THAT ANSWER UNDER OATH, SIR?

17 A I DID.

18 Q ALL RIGHT. NOW, I WANT TO ASK YOU ABOUT
19 SOMETHING ELSE YOU SAID TO THE LADIES AND GENTLEMEN
20 OF THE JURY, WHICH WAS THE QUESTION OF WHETHER
21 PEOPLE DISCLOSE THEIR IPR BEFORE A PROPOSAL WAS
22 ADOPTED.

23 IT'S TRUE, IS IT NOT, SIR, THAT YOU HAVE
24 NO EVIDENCE, AND YOU'RE NOT AWARE OF ANY SPECIFIC
25 INSTANCE WHERE SOMEONE MADE A PROPOSAL TO ETSI AND

1 FAILED TO DISCLOSE THEIR PATENTS UNTIL AFTER THE
2 PROPOSAL WAS ADOPTED; CORRECT?

3 A CAN I HAVE THAT BACK, PLEASE.

4 Q SURE. I'LL BREAK IT DOWN FOR YOU. I WANT TO
5 TAKE A SITUATION WHERE AN ETSI MEMBER IS MAKING A
6 PROPOSAL, YOU KNOW THAT CAN HAPPEN, CORRECT?

7 A YES.

8 Q I WANT YOU TO TAKE THE SITUATION WHERE THEY
9 HAVE A PATENT, OR A PATENT APPLICATION, DO YOU HAVE
10 THAT IN MIND?

11 A YES.

12 Q AND I WANT YOU TO TAKE THE SITUATION WHERE
13 THEY DON'T DISCLOSE IT UNTIL AFTER THE STANDARD HAS
14 BEEN ADOPTED.

15 DO YOU HAVE THAT IN MIND?

16 A YES.

17 Q NOW, THE FACT OF THE MATTER IS YOU DON'T KNOW
18 ONE WAY OR ANOTHER OF ANY SPECIFIC INSTANCES WHERE
19 SOMEONE MADE A PROPOSAL, DISCLOSED AND DISCLOSED
20 BEFORE IT WAS FIXED; CORRECT?

21 A I DON'T HAVE SPECIFIC INFORMATION. I'VE GOT
22 THE DATA THAT I REFERRED TO AND PRESENTED EARLIER.

23 Q AND YOU HAVE NO SPECIFIC INSTANCES WHERE
24 PEOPLE, OTHER THAN SAMSUNG, MADE A PROPOSAL, HAD A
25 PATENT AND DIDN'T DISCLOSE UNTIL LATER; CORRECT?

1 A I HAVE NO SPECIFIC INSTANCES.

2 Q AND, IN FACT, DR. TEECE, THE ONLY SPECIFIC
3 INSTANCES YOU'VE LOOKED AT ARE THE ONES THAT DR.
4 WALKER TESTIFIED ABOUT; CORRECT?

5 A IN TERMS OF SPECIFICS, YES, I'VE LOOKED --
6 WHAT I SHOWED YOU WAS THE AGGREGATE DATA WHICH
7 TELLS A COMPELLING STORY.

8 Q DR. TEECE, MY QUESTION WAS DIFFERENT. I'M
9 TRYING TO LOOK AT THE SPECIFIC QUESTION OF WHETHER
10 SOMEONE BROKE THE RULES.

11 DR. WALKER PUT TWO CHRONOLOGIES ON THE
12 BOARD FOR TWO PATENTS?

13 A YES.

14 Q YOU HAVE NO REASON TO DISAGREE WITH THOSE
15 CHRONOLOGIES; CORRECT?

16 A CORRECT.

17 MR. LEE: THANK YOU, SIR. NOTHING
18 FURTHER.

19 THE COURT: ALL RIGHT. TIME IS NOW 3:21.
20 ANY REDIRECT?

21 MS. MAROULIS: YOUR HONOR, NO REDIRECT.

22 BUT FOR THE RECORD, COUNSEL STATED THAT
23 THIS WAS EXCLUDED. THIS EXHIBIT WAS NOT SUBJECT TO
24 YOUR ORDER. THE RECORD SHOULD REFLECT THAT.

25 MR. LEE: NO. YOUR HONOR, CAN WE TAKE A

1 LOOK AT THIS?

2 MR. VERHOEVEN: WE DON'T HAVE TIME.

3 THE COURT: WE DON'T HAVE TIME.

4 MR. VERHOEVEN: SAMSUNG RECALLS

5 DR. WILLIAMS.

6 THE CLERK: RAISE YOUR RIGHT HAND,

7 PLEASE.

8 **TIM WILLIAMS,**

9 BEING RECALLED AS A WITNESS ON BEHALF OF THE

10 DEFENDANT, HAVING BEEN PREVIOUSLY SWORN, WAS

11 EXAMINED AND TESTIFIED AS FOLLOWS:

12 THE WITNESS: I DO.

13 THE CLERK: THANK YOU. PLEASE BE SEATED.

14 **DIRECT EXAMINATION**

15 BY MR. VERHOEVEN:

16 Q GOOD AFTERNOON, DR. WILLIAMS.

17 THE COURT: TIME IS 321. GO AHEAD,

18 PLEASE.

19 THE WITNESS: GOOD AFTERNOON.

20 BY MR. VERHOEVEN:

21 Q YOU HEARD DR. KIM AND DR. KNIGHTLY TESTIFY

22 WITH RESPECT TO VALIDITY OF THE '516 PATENT AND THE

23 '941 PATENT THIS MORNING?

24 A YES, I DID.

25 Q HE ALSO TESTIFIED ABOUT INFRINGEMENT. YOU'VE

1 ALREADY PROVIDED YOUR OPINION ON THAT, SO I'M NOT
2 GOING TO ASK YOU ANY QUESTIONS ON INFRINGEMENT.
3 LET'S TALK ABOUT THE VALIDITY OPINIONS. ON THE
4 '516 PATENT, DR. KIM, HE IDENTIFIED THE HATTA
5 REFERENCE. CAN WE PUT UP PX 1002. DO YOU REMEMBER
6 THE HATTA REFERENCE, SIR?

7 A YES, I DO.

8 Q DO YOU REMEMBER DR. KIM TESTIFIED IT WAS HIS
9 OPINION THAT THAT REFERENCE RENDERS THE '516 PATENT
10 OBVIOUS?

11 A YES, I DO.

12 Q DO YOU AGREE OR DISAGREE WITH HIS OPINION?

13 A I DISAGREE FOR THREE REASONS. THE FIRST IS
14 HATTA IS TALKING ABOUT THE POWER AMPLIFIER IN A
15 BASE STATION, NOT THE MOBILE DEVICE.

16 SO AS I SHOWED EARLIER THIS WEEK, IN THAT
17 GRAPHIC WITH THE BASE STATION AND MULTIPLE MOBILES,
18 THE BASE STATION WAS TALKING TO MULTIPLE MOBILES AT
19 ONE TIME. THE MOBILE IS ONLY TALKING TO A SINGLE
20 BASE STATION AT A TIME. SO IT'S AN ENTIRELY
21 DIFFERENT PROBLEM.

22 ALSO, WITHIN HATTA, THERE'S NO HARQ
23 CHANNEL. THERE'S NO E-DPDCH CHANNEL. AND ALSO IN
24 HATTA, IF WE LOOK AT DR. KIM'S SLIDE FROM EARLIER
25 TODAY.

1 Q CAN WE PUT UP PDX 35.16?

2 A DR. KIM PUT UP THIS SLIDE, IF YOU LOOK ON THE
3 BOTTOM, THIS RED RECTANGLE IS ACTUALLY SCALING THE
4 VOICE CHANNEL. THAT'S THE PROBLEM THAT THE '516
5 WAS SOLVING. SO HATTA ACTUALLY IS CAUSING THE
6 PROBLEM THAT THE '516 SOLVES.

7 Q NOW, DR. KIM REFERENCED PRIOR ART FIGURES FROM
8 THE '516 PATENTS, FIGURES 5 AND 6, AND SAID, WELL,
9 YOU COULD COMBINE THOSE AND GET THE INVENTION IF
10 YOU COMBINE THEM WITH HATTA. DO YOU REMEMBER THAT?

11 A YES.

12 Q DO YOU AGREE WITH THAT OPINION?

13 A ABSOLUTELY NOT.

14 Q EXPLAIN TO THE JURY WHY?

15 A HATTA IS DESCRIBING A PROBLEM. FIGURES 4 AND
16 5 ARE DESCRIBING A PROBLEM. IF YOU COMBINE TWO
17 PROBLEMS TOGETHER, YOU DON'T GET A SOLUTION.

18 Q ALL RIGHT. LET'S TURN QUICKLY TO THE '941
19 PATENT, DR. KNIGHTLY'S TESTIMONY, HE TESTIFIED AS
20 TO THE '658 PATENT, PX 97.1. DO YOU REMEMBER THAT,
21 SIR?

22 A YES.

23 Q AND HE TESTIFIED THAT IN HIS OPINION, THE '658
24 PATENT ANTICIPATED THE '941 PATENT . DO YOU
25 REMEMBER THAT TESTIMONY?

1 A YES, I DO.

2 Q DO YOU AGREE OR DISAGREE?

3 A I DISAGREE. AGARWAL IS ABOUT A FIXED
4 COMMUNICATION FACILITY THAT TALKS TO A SATELLITE.
5 SO AGARWAL IS ABOUT BIG SATELLITE ANTENNAS AND
6 CEMENT BUILDINGS AND AGARWAL WAS NOT ABOUT A MOBILE
7 COMMUNICATION SYSTEM.

8 ALSO, IF YOU LOOK AT THE PACKET
9 HEADERS --

10 Q LET'S PUT UP PX 97.9 FIGURE 8A, BLOW IT UP.
11 HE SHOWED THIS DURING HIS TESTIMONY; RIGHT?

12 A HE SHOWED PACKET HEADERS, YES.

13 Q YEAH.

14 A IF YOU LOOK AT THE PACKET HEADERS IN AGARWAL,
15 THERE'S NO ONE BIT FIELD, WHICH IS CALLED OUT IN
16 THE CLAIMS OF THE PATENT. THERE'S NO SERIAL
17 NUMBER. AND THERE'S NO LENGTH INDICATOR FIELD.

18 Q SO IN YOUR OPINION, ARE EITHER OF THESE
19 PATENTS INVALIDATED BASED ON THE TESTIMONY YOU'VE
20 HEARD?

21 A ABSOLUTELY NOT.

22 MR. VERHOEVEN: THANK YOU, SIR. NO
23 FURTHER QUESTIONS AT THIS TIME.

24 THE COURT: ALL RIGHT. TIME IS 3:25.
25 ANY CROSS?

1 MR. LEE: CAN I HAVE PDX 35.16 ON THE
2 SCREEN, PLEASE.

3 **CROSS-EXAMINATION**

4 BY MR. LEE:

5 Q DR. WILLIAMS, YOUR SLIDE IS ON THE TOP HALF OF
6 THIS PDX; CORRECT?

7 A CORRECT.

8 Q ON THE LEFT IT'S FIGURE 5 OF THE PATENT;
9 CORRECT?

10 A YES.

11 Q IT'S LABELED PRIOR ART; CORRECT?

12 A IT IS LABELED PRIOR ART. HOWEVER, IF YOU READ
13 THE SPECIFICATION OF THE '516.

14 Q DR. WILLIAMS, IS IT LABELED PRIOR ART?

15 A HOWEVER, IF YOU READ THE SPECIFICATION OF THE
16 '516, THE SPECIFICATION CLEARLY IDENTIFIES THE
17 PRIOR ART ASPECT OF THIS DRAWING AS EQUAL SCALING
18 OF THE CHANNELS.

19 Q DR. WILLIAMS, MR. VERHOEVEN ASKED OUR
20 WITNESSES RESPECTFULLY TO ANSWER YES OR NO. I'M
21 GOING TO DO THE SAME TO YOU, ONLY BECAUSE WE'RE
22 NEAR THE END OF THE TRIAL.

23 MY QUESTION IS PRETTY SIMPLE. IS IT
24 LABELED PRIOR ART?

25 A IT'S LABELED PRIOR ART, BUT THE PRIOR ART

1 ASPECT OF THIS DRAWING IS THE EQUAL SCALING OF THE
2 CHANNELS.

3 Q SO --

4 A NOT THE EXTRUSION --

5 Q JUST TELL THE LADIES AND GENTLEMEN OF THE
6 JURY, IS THIS FIGURE PRIOR ART OR NOT?

7 A THIS FIGURE IS PRIOR ART WITH RESPECT TO THE
8 EQUAL SCALING OF THE CHANNELS, NOT THE INCLUSION OF
9 THE E-DPDCH CHANNEL THAT DR. KIM TALKED ABOUT THIS
10 MORNING.

11 Q AND FIGURE 4, WHICH IS LABELED PRIOR ART, IS
12 NOT PRIOR ART EITHER?

13 A LET'S LOOK AT IT.

14 Q SURE. FIGURE 4. THAT SAYS PRIOR ART, TOO,
15 YES OR NO?

16 A THIS SHOWS THE EQUAL SCALING WOULD BE
17 PERFORMED.

18 Q DR. WILLIAMS, DOES IT SAY PRIOR ART OR NOT?

19 A THE WORDS PRIOR ART ARE THERE.

20 Q OKAY.

21 A YES.

22 Q AND THE PATENTEE, YOU KNOW THAT SAMSUNG WROTE
23 THOSE WORDS THERE; CORRECT?

24 A YES. BUT THE INVENTORS ALL TESTIFIED THAT
25 THEIR INVENTION WAS WITH REGARDS TO SCALING THE

1 HARQ CHANNEL OVER THE NON-HARQ CHANNEL.

2 Q DR. WILLIAMS, THE '941 PATENT, THE OTHER
3 PATENT YOU TESTIFIED ABOUT JUST A MINUTE AGO?

4 A YES.

5 Q THAT'S THE ALTERNATIVE E-BIT PATENT; CORRECT?

6 A YES.

7 Q BUT YOU HAD NEVER HEARD OF UNTIL THE LAWYERS
8 CALLED YOU IN THIS CASE; CORRECT?

9 A YES. BUT IT'S PART OF THE STANDARD.

10 Q ALL RIGHT. NOW, YOU TOLD US THAT YOU BELIEVE
11 IN A STRONG PATENT SYSTEM; CORRECT? DO YOU
12 REMEMBER THAT?

13 A THAT'S WHAT I WOULD LIKE TO LEAVE AS A LEGACY
14 TO MY CHILDREN, YES.

15 Q SURE. THAT APPLIES TO APPLE'S PATENTS.

16 MR. VERHOEVEN: OBJECTION. BEYOND OF
17 SCOPE OF MY DIRECT EXAM.

18 THE COURT: SUSTAINED.

19 BY MR. LEE:

20 Q WE JUST TALKED ABOUT THE SAMSUNG PATENTS;
21 CORRECT?

22 A I'M SORRY.

23 Q YOU JUST TALKED ABOUT THE VALIDITY OF THE
24 SAMSUNG PATENTS?

25 A I DID.

1 Q CORRECT?

2 A YES.

3 Q AND BEYOND THE OPINIONS YOU'VE JUST OFFERED,
4 YOU'VE OFFERED NO OTHER OPINIONS ON THE VALIDITY OF
5 THE PATENTS; CORRECT?

6 A NOT IN COURT TODAY.

7 MR. LEE: THANK YOU.

8 THE COURT: ALL RIGHT. TIME IS 3:28.
9 ANY REDIRECT?

10 MR. VERHOEVEN: NO.

11 THE COURT: NO? ALL RIGHT. THE WITNESS
12 MAY BE EXCUSED. ALL RIGHT. APPLE HAS GOT SIX
13 MINUTES -- ACTUALLY YOU BOTH HAVE SIX MINUTES LEFT.

14 MR. JOHNSON: I DON'T KNOW WHAT TO DO
15 WITH ALL THAT TIME.

16 THE COURT: AND I WILL STOP YOU WHEN YOUR
17 TIME IS UP. NO EXTENSIONS, OKAY?

18 MR. LEE: YOU GO FIRST.

19 MR. JOHNSON: I FEEL LIKE I HAVE A BATON.

20 THE COURT: THE OLYMPIC TORCH IS BEING
21 PASSED.

22 MR. JOHNSON: YOUR HONOR, SAMSUNG IS
23 GOING TO CALL DR. WOODWARD YANG AS OUR LAST
24 WITNESS, AND JUST WHILE HE'S TAKING THE STAND, I'M
25 GOING TO READ INTO THE RECORD REQUEST FOR ADMISSION

1 NUMBER 1966, WHICH WAS A --

2 THE COURT: ALL RIGHT. 3:29. THAT WILL
3 COUNT TOWARDS YOUR TIME.

4 MR. JOHNSON: SO THE QUESTION WAS ASKED
5 OF APPLE, "ADMIT THAT HUNGFUJIN PRECISION
6 ELECTRONICS," A COMPANY LIMITED IN CHINA, "RECEIVES
7 INTEL BASEBAND PROCESSORS ON BEHALF OF APPLE."

8 APPLE'S RESPONSE: "APPLE ADMITS REQUEST
9 NUMBER 1966."

10 THANK YOU. DR. YANG --

11 THE COURT: OH, LET ME STOP YOUR TIME,
12 3:29. I'M STOPPING YOUR TIME. WE'RE JUST
13 RESWEARING PEOPLE IN. BELTS AND SUSPENDERS.

14 THE COURT: PLEASE RAISE YOUR RIGHT HAND.

15 **WOODWARD YANG,**
16 BEING RECALLED AS A WITNESS ON BEHALF OF THE
17 DEFENDANT, HAVING BEEN PREVIOUSLY SWORN, WAS
18 EXAMINED AND TESTIFIED AS FOLLOWS:

19 THE WITNESS: YES, I DO.

20 THE COURT: THANK YOU. PLEASE BE SEATED.

21 ALL RIGHT. IT'S 3:29, GO AHEAD, PLEASE
22 MUCH.

23 MR. JOHNSON: BRIAN, CAN WE PUT UP PDX
24 42.4, PLEASE.

25 / / /

DIRECT EXAMINATION

1
2 BY MR. JOHNSON:

3 Q THIS WAS A DEMONSTRATIVE, DR. YANG, THAT WAS
4 USED WITH DR. DOURISH, AND I WANT TO ASK YOU, THEY
5 PUT UP A PICTURE OF THE AM/FM RADIO. DO YOU THINK
6 THIS WAS A PROPER ANALOGY?

7 A THIS IS AN IMPROPER ANALOGY. THIS IS A VERY
8 SIMPLE DEVICE, IT HAS ONE FUNCTIONALITY, WHEREAS
9 THE PATENTS --

10 MR. LEE: YOUR HONOR, I OBJECT. THIS IS
11 INFRINGEMENT.

12 MR. JOHNSON: NO, IT'S NOT. IT'S IN THE
13 CONTEXT OF VALIDITY.

14 THE COURT: OVERRULED. GO AHEAD, PLEASE.

15 THE WITNESS: THIS SPEAKS SPECIFICALLY
16 TO -- THIS IS A VERY SIMPLE DEVICE, IT HAS ONE
17 FUNCTIONALITY, WHEREAS THE PATENTS ARE TALKING
18 ABOUT COMPLEX DEVICES. THESE ARE DEVICES THAT ARE
19 CAMERAS, PHONES, MP3 PLAYERS TOGETHER.

20 SO WHEN YOU LOOK AT THEM, YOU NEED TO
21 CONSIDER THE MODE HAS MANY SWITCHES AND WHEN YOU
22 CONSIDER WHAT A MODE IS CALLED, YOU NEED TO
23 CONSIDER HOW ALL THOSE SWITCHES ARE SET.

24 SO, IN FACT, THE PATENTS ARE TALKING
25 ABOUT APPS OR APPLICATION PROGRAMS THAT RUN ON

1 THESE DEVICES AND WHEN THOSE DEVICES RUN, THEY HAVE
2 MODES.

3 BY MR. JOHNSON:

4 Q DR. DOURISH ALSO TALKED ABOUT THE LG PATENT
5 APPLICATION. RYAN, CAN WE PLEASE PUT UP 42.24.

6 DOES THE LG PATENT APPLICATION SATISFY
7 THE LAST LIMITATION OF CLAIM 10 OF THE '893 PATENT,
8 THE BOOKMARKING PATENT?

9 A NO, THIS PATENT APPLICATION DOES NOT SATISFY
10 THE LAST LIMITATION OF THE '893 PATENT. THE LAST
11 LIMITATION OF THE '893 PATENT SPECIFICALLY SAYS YOU
12 HAVE TO GO FROM A DISPLAY MODE TO A CAMERA
13 PHOTOGRAPHING MODE BACK TO THE DISPLAY MODE TO SEE
14 THE BOOKMARK.

15 IN FACT, WHEN YOU READ THIS OVER HERE,
16 IT'S JUST TALKING ABOUT WHAT'S GOING ON BETWEEN
17 DIFFERENT DISPLAY MODES. THERE IS NO TALK ABOUT
18 GOING FROM THE DISPLAY MODE TO A CAMERA MODE BACK
19 TO THE DISPLAY MODE. THAT'S MUSIC.

20 Q LET'S TALK ABOUT THE BACKGROUND MUSIC PATENT,
21 THE '711 PATENT. APPLE'S EXPERT, DR. GIVARGIS,
22 SAID THE K700 PHONE RENDERS THE '711 PATENT OBVIOUS
23 AND IT WASN'T REVIEWED BY THE PATENT OFFICE. DO
24 YOU AGREE?

25 A I AGREE THAT THEY DIDN'T LOOK AT THE 700

1 PHONE. BUT THE PATENT OFFICE ACTUALLY CONSIDERED A
2 MORE ADVANCED PHONE, WHICH IS CALLED THE K750, AND
3 THE PATENT OFFICE SPECIFICALLY HAD THE USER MANUAL
4 FOR THAT.

5 AND THE FUNCTIONALITIES AND CAPABILITIES
6 OF THE PHONE ARE EXACTLY THE SAME. AND, IN FACT,
7 THE THING THAT'S MISSING FROM THE K750 AND K700 IS
8 THE IMPORTANT PART ABOUT A CONTROLLER GENERATING A
9 MUSIC BACKGROUND PLAY OBJECT.

10 Q DO YOU AGREE WITH DR. GIVARGIS THAT THE WONG
11 PATENT PROVIDES MOTIVATION TO INCLUDE AN APPLETS?

12 A NO, NOT AT ALL. THE WONG PATENT IS ACTUALLY
13 FROM SUN MICROSYSTEMS, THE PEOPLE WHO WROTE JAVA,
14 SO IT'S ALL ABOUT JAVA APPLICATIONS AND JAVA
15 APPLETS.

16 AND SPECIFICALLY THE PATENT OFFICE HAD
17 SEVERAL REFERENCES DISCUSSING JAVA APPLICATIONS AND
18 JAVA APPLETS IN THERE AS WELL, AND JAVA
19 APPLICATIONS AND JAVA APPLETS, AS WE KNOW, ARE
20 DIFFERENT FROM THE APPLETS THAT WE HAVE IN THE '711
21 PATENT.

22 THE APPLETS WE HAVE IN THE '711 PATENT, AS
23 WE KNOW THE COURT HAS DEFINED FOR US, IS AN
24 APPLICATION DESIGNED TO RUN WITHIN AN APPLICATION
25 MODULE.

1 Q LET'S TALK ABOUT THE '460 PATENT. IN LOOKING
2 AT THE VALIDITY OF THE '460 PATENT, WHAT'S YOUR
3 OPINION ABOUT WHETHER THE PATENT REQUIRES THAT THE
4 THREE CORE FUNCTIONS BE PERFORMED IN A CERTAIN
5 SEQUENCE?

6 A THE THREE CORE FUNCTIONS, AS I EXPLAINED MANY
7 TIMESM CAN BE PERFORMED IN ANY ORDER. AND IN
8 PARTICULAR, I BELIEVE THAT THERE WAS ACTUALLY CLAIM
9 1, IF I COULD HAVE THAT UP, I DON'T KNOW -- THERE
10 WAS THIS IMPLICATION THAT WHEN YOU LOOKED AT THE
11 SECOND E-MAIL MODE, YOU WOULD SEE AN IMAGE, AND THE
12 IDEA THAT AFTER YOU SAW THAT IMAGE, YOU HAVE TO
13 IMMEDIATELY SEQUENTIALLY SCROLL THROUGH THE IMAGES,
14 AND THERE'S AN IMPLICATION THAT C NEEDS TO
15 IMMEDIATELY FOLLOW B.

16 IN FACT, THAT'S NOT TRUE AT ALL. IN
17 FACT, IF YOU LOOK AT THIS, AND YOU CAN SEE THAT
18 IMAGE AND YOU CAN SEE OTHER IMAGES OVER HERE.

19 YOU CAN ALSO IMAGINE THAT LOGICALLY THIS
20 COULD MAKE SENSE IF C WERE TO FOLLOW E OR IF C WERE
21 TO COME BEFORE B.

22 IN FACT, IF YOU LOOK AT THE PATENT
23 SPECIFICATION IN FIGURE 8, THE FLOW CHART THAT THEY
24 SHOW ACTUALLY SHOWS THE SCROLLING OF IMAGES
25 OCCURRING BEFORE ENTERING THE SECOND E-MAIL

1 TRANSMISSION MODE.

2 Q NOW, DR. SRIVASTAVA, APPLE'S EXPERT, COMBINED
3 THREE DIFFERENT REFERENCES, THE SUSO, HARRIS, AND
4 YOSHIDA REFERENCE TO SAY THE '460 PATENT WAS
5 OBVIOUS. DO YOU AGREE WITH HIS OPINION?

6 A I ABSOLUTELY DISAGREE. THE FIRST TWO PATENTS,
7 THE SUSO PATENT AND HARRIS PATENT ACTUALLY DO NOT
8 DISCLOSE A SECOND E-MAIL TRANSMISSION MODE WHERE
9 YOU CAN ACTUALLY SEE THE PICTURE AND COMPOSE A
10 MESSAGE THAT YOU WANT TO SEND.

11 AND THEN HE SAYS THAT THE YOSHIDA PATENT
12 ACTUALLY HAS THIS. BUT IF YOU LOOK AT WHAT HE
13 DISPLAYED UP FOR THE YOSHIDA PATENT, HE'S -- IT'S
14 NOT DISPLAYING THE IMAGE. IT'S ACTUALLY JUST
15 ATTACHING AN IMAGE FILE, SO THE IMAGE IS NOT
16 VISIBLE IN THE E-MAIL THAT YOU'RE SENDING. SO THIS
17 IS NOT A SECOND E-MAIL TRANSMISSION MODE.

18 MR. JOHNSON: YOUR HONOR, NO FURTHER
19 QUESTIONS.

20 THE COURT: ALL RIGHT. THE TIME IS
21 EXPIRED. THANK YOU.

22 MR. JOHNSON: I CROSSED THE FINISH LINE.

23 THE COURT: YES, THAT'S LIGHT.

24 ALL RIGHT. MR. LEE, YOU'VE GOT SIX
25 MINUTES.

1 MR. LEE: I'M GOING TO TRY TO FOLLOW
2 ACROSS THE FINISH LINE.

3 THE COURT: 3:34. GO AHEAD.

4 **CROSS-EXAMINATION**

5 BY MR. LEE:

6 Q DR. YANG, LET'S GO A LITTLE BIT SLOW SO THE
7 JURY GETS IT. ON THE '711 PATENT, IS IT YOUR
8 TESTIMONY TO THIS JURY THAT THE PATENT OFFICE
9 ACTUALLY HAD A K700 PHONE?

10 A NO. I BELIEVE I SAID THEY HAD THE K750 USER
11 MANUAL.

12 Q THEY DIDN'T HAVE ANY PHONE AT ALL; CORRECT?

13 A THEY HAD THE K750 USER MANUAL, WHICH SHOWS THE
14 SAME FUNCTIONALITY AS THE K700 AND K750.

15 Q DR. YANG, DID THEY HAVE THE PHONE OR NOT?

16 A THEY HAD THE SAME USER MANUAL WHICH HAS THE
17 SAME FUNCTIONALITY AS THE K700.

18 Q THAT'S A NO, RIGHT? THEY DIDN'T HAVE THE
19 PHONE?

20 A NO.

21 Q OKAY. NOW, TURN, IF YOU WOULD, IN YOUR BINDER
22 TO VOLUME 1, TAB 4.

23 A VOLUME 1, TAB 4. IT'S A WHITE BINDER? OR --

24 MR. LEE: WHITE BINDER? WHITE BINDER,
25 YES.

1 Q AND YOU'LL FIND THE FILE HISTORY OF THE '460
2 PATENT?

3 A OKAY.

4 Q DO YOU SEE THAT? YOU REVIEWED THAT; CORRECT?

5 A YES. I PRESUME THAT YOU'RE REPRESENTING THIS
6 CORRECTLY. YOU DON'T WANT ME TO LOOK THROUGH
7 EVERYTHING.

8 Q THAT'S JX 1066?

9 A YES.

10 MR. LEE: WE OFFER IT, YOUR HONOR.

11 THE COURT: ANY OBJECTION?

12 MR. JOHNSON: YOUR HONOR, I THINK IT'S
13 BEEN OFFERED FOR PURPOSES OF INFRINGEMENT THIS
14 MORNING.

15 MR. LEE: NO, THIS IS -- THIS GOES TO THE
16 INVALIDITY TESTIMONY, THE FILE HISTORY.

17 THE COURT: THE FILE HISTORY OF THE '460.
18 IT'S ADMITTED.

19 MR. LEE: IT'S A JOINT EXHIBIT.

20 MR. JOHNSON: I DIDN'T ASK ANY QUESTIONS
21 ABOUT THE FILE HISTORY. IT'S OUTSIDE THE SCOPE,
22 YOUR HONOR.

23 MR. LEE: THAT IS THE FILE HISTORY OF THE
24 PATENT THAT HE JUST GAVE INVALIDITY ON.

25 THE COURT: IT'S ADMITTED.

1 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
2 1066, HAVING BEEN PREVIOUSLY MARKED FOR
3 IDENTIFICATION, WAS ADMITTED INTO
4 EVIDENCE.)

5 BY MR. LEE:

6 Q NOW, JUST A COUPLE MORE QUESTIONS. DR. YANG,
7 YOU UNDERSTAND THAT THERE'S A CONCEPT CALLED
8 SECONDARY CONSIDERATION; CORRECT?

9 A YES.

10 Q SECONDARY CONSIDERATIONS ARE REAL WORLD THINGS
11 JURORS CAN LOOK AT TO FIGURE OUT IF THERE'S BEEN AN
12 INVENTION OR NOT; CORRECT?

13 A YES.

14 Q RIGHT. SO ONE OF THE REAL WORLD THINGS YOU
15 CAN LOOK AT IS WHETHER A PRODUCT, BASED UPON THE
16 INVENTION, HAS BEEN COMMERCIALY SUCCESSFUL;
17 CORRECT?

18 A THAT IS A SECONDARY CONSIDERATION, YES.

19 Q BUT WE KNOW FOR THE '893, THE '460 AND THE
20 '711 THAT AS FAR AS YOU KNOW, SAMSUNG TOOK THE
21 POSITION IN THIS CASE THAT IT HAD NO PRODUCT,
22 SUCCESSFUL OR OTHERWISE, THAT PRACTICED THESE
23 PATENTS; CORRECT?

24 A COULD YOU REPEAT THE QUESTION AGAIN? I THINK
25 IT'S VERY IMPORTANT.

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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

EXHIBIT 11

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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 21, 2012
VS.)	
	)	VOLUME 13
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 3941-4264
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DEFENDANTS.)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE LUCY H. KOH
UNITED STATES DISTRICT JUDGE

APPEARANCES ON NEXT PAGE

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CERTIFICATE NUMBER 9595
IRENE RODRIGUEZ, CSR, CRR
CERTIFICATE NUMBER 8074

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1 DESIGN.

2 IT IS MY JOB AS A JUDGE TO INTERPRET FOR
3 YOU WHAT IS CLAIMED BY THE PATENTS. YOU MUST
4 ACCEPT MY INTERPRETATIONS AS CORRECT. MY
5 INTERPRETATIONS SHOULD NOT BE TAKEN AS AN
6 INDICATION THAT I HAVE AN OPINION ONE WAY OR
7 ANOTHER REGARDING THE ISSUES OF INFRINGEMENT AND
8 INVALIDITY. THE DECISIONS REGARDING INFRINGEMENT
9 AND INVALIDITY ARE YOURS TO MAKE.

10 WHEN CONSIDERING THE DESIGN PATENTS, YOU
11 SHOULD VIEW CERTAIN FEATURES IN THE DRAWINGS IN
12 THIS WAY:

13 THE D'677 PATENT CLAIMS THE ORNAMENTAL
14 DESIGN OF AN ELECTRONIC DEVICE AS SHOWN IN FIGURES
15 1 THROUGH 8. THE BROKEN LINES IN THE D'677 PATENT
16 CONSTITUTE UNCLAIMED SUBJECT MATTER.

17 THE USE OF SOLID BLOCK SURFACE SHADING IN
18 THE D'677 PATENT REPRESENTS THE COLOR BLACK. THE
19 USE OF OBLIQUE LINE SHADING ON THE D'677 PATENT IS
20 USED TO SHOW A TRANSPARENT, TRANSLUCENT OR HIGHLY
21 POLISHED OR REFLECTIVE SURFACE.

22 THE D'087 PATENT COVERS -- I'M SORRY --
23 CLAIMS, EXCUSE ME, THE ORNAMENTAL DESIGN OF AN
24 ELECTRONIC DEVICE AS SHOWN IN FIGURES 1 THROUGH 14.
25 THE BROKEN LINES IN THE D'087 PATENT CONSTITUTE

1 UNCLAIMED SUBJECT MATTER.

2 THUS, THE D'087 PATENT CLAIMS THE FRONT
3 FACE, A BEZEL ENCIRCLING THE FRONT FACE OF THE
4 PATENTED DESIGN THAT EXTENDED FROM THE FRONT OF THE
5 PHONE TO ITS SIDES, AND A FLAT CONTOUR OF THE FRONT
6 FACE, BUT DOES NOT CLAIM THE REST OF THE ARTICLE OF
7 MANUFACTURE.

8 THE D'889 PATENT CLAIMS THE ORNAMENTAL
9 DESIGN OF AN ELECTRONIC DEVICE AS SHOWN IN FIGURES
10 1 THROUGH 9.

11 (PAUSE IN PROCEEDINGS.)

12 THE COURT: THE BROKEN LINES DEPICTING
13 THE HUMAN FIGURE IN FIGURE 9 DO NOT FORM A PART OF
14 THE CLAIMED DESIGN.

15 THE OTHER BROKEN LINE ON THE OTHER
16 FIGURES ARE PART OF THE CLAIMED DESIGN.

17 THE D'889 ALSO INCLUDES OBLIQUE LINE
18 SHADING ON SEVERAL OF THE FIGURES. THE OBLIQUE
19 LINE SHADING IN FIGURES 1 THROUGH 3 AND FIGURE 9
20 DEPICTS A TRANSPARENT, TRANSLUCENT OR HIGHLY
21 POLISHED OR REFLECTIVE SURFACE FROM THE TOP
22 PERSPECTIVE OF THE CLAIMED DESIGN, THE TOP VIEW OF
23 THE CLAIMED DESIGN, AND THE BOTTOM PERSPECTIVE VIEW
24 OF THE CLAIMED DESIGN.

25 THE D'305 PATENT CLAIMS THE ORNAMENTAL

1 DESIGN FOR A GRAPHICAL USER INTERFACE FOR A DISPLAY
2 SCREEN OR PORTION THEREOF AS SHOWN IN FIGURES 1
3 THROUGH 2. THE BROKEN LINE SHOWING OF A DISPLAY
4 SCREEN IN BOTH VIEWS FORMS NO PART OF THE CLAIMED
5 DESIGN.

6 NUMBER 44. TO PROVE THAT ANY SAMSUNG
7 ENTITY INFRINGED ANY OF APPLE'S DESIGN PATENTS,
8 APPLE MUST PROVE BY A PREPONDERANCE OF THE EVIDENCE
9 THAT THE SAMSUNG ENTITY HAS INFRINGED THE PATENT.

10 NUMBER 45. I WILL NOW INSTRUCT YOU AS TO
11 THE RULES YOU MUST FOLLOW WHEN DECIDING WHETHER
12 APPLE HAS PROVEN THAT ONE OR MORE OF THE SAMSUNG
13 ENTITIES (SAMSUNG ELECTRONICS AMERICA, SAMSUNG
14 TELECOMMUNICATIONS AMERICA, AND SAMSUNG ELECTRONICS
15 COMPANY) HAS DIRECTLY INFRINGE THE D'677, D'087,
16 D'305 AND/OR D'889 DESIGN PATENTS.

17 AS WITH UTILITY PATENTS, PATENT LAW GIVES
18 THE OWNER OF A VALID DESIGN PATENT THE RIGHT TO
19 EXCLUDE OTHERS FROM IMPORTING, MAKING, USING,
20 OFFERING TO SELL OR SELLING THE PATENTED DESIGNS
21 WITHIN THE UNITED STATES DURING THE TERM OF THE
22 PATENT.

23 ANY PERSON OR COMPANY THAT HAS ENGAGED IN
24 ANY OF THOSE ACTS WITHOUT THE DESIGN PATENT OWNER'S
25 PERMISSION INFRINGES THE PATENT.

1 IN DECIDING WHETHER A SALE HAS TAKEN
2 PLACE WITHIN THE UNITED STATES, YOU MAY FIND THE
3 FOLLOWING GUIDELINES HELPFUL TO YOUR ANALYSIS. THE
4 LOCATION OF THE SALE DEPENDS ON MANY FACTORS, AND
5 YOU MAY FIND THAT THE SALE OCCURRED IN SEVERAL
6 PLACES.

7 A SALE OCCURS WHERE THE ESSENTIAL
8 ACTIVITIES OF THE SALE TAKE PLACE. THE ESSENTIAL
9 ACTIVITIES INCLUDE, FOR EXAMPLE, NEGOTIATING THE
10 CONTRACT AND PERFORMING THE OBLIGATIONS UNDER THE
11 CONTRACT.

12 APPLE BEARS THE BURDEN OF PROVING BY A
13 PREPONDERANCE OF THE EVIDENCE THAT EACH DEVICE
14 INFRINGEMENTS EACH SEPARATE PATENT. THEREFORE, YOU,
15 THE JURY, MUST DETERMINE THE INFRINGEMENT FOR EACH
16 PATENT SEPARATELY, CONSIDERING EACH INDIVIDUAL
17 DEVICE SEPARATELY.

18 NUMBER 46. TO DETERMINE DIRECT
19 INFRINGEMENT OF A DESIGN PATENT, YOU MUST COMPARE
20 THE OVERALL APPEARANCES OF THE ACCUSED DESIGN AND
21 THE CLAIMED DESIGN.

22 IF YOU FIND BY A PREPONDERANCE OF THE
23 EVIDENCE THAT THE OVERALL APPEARANCE OF AN ACCUSED
24 SAMSUNG DESIGN IS SUBSTANTIALLY THE SAME AS THE
25 OVERALL APPEARANCE OF THE CLAIMED APPLE DESIGN

1 PATENT AND THAT THE ACCUSED DESIGN WAS MADE, USED,
2 SOLD, OFFERED FOR SALE OR IMPORTED WITHIN THE
3 UNITED STATES, YOU MUST FIND THAT THE ACCUSED
4 DESIGN INFRINGED THE CLAIMED DESIGN.

5 TWO DESIGNS ARE SUBSTANTIALLY THE SAME
6 IF, IN THE EYE OF AN ORDINARY OBSERVER, GIVING SUCH
7 ATTENTION AS A PURCHASER USUALLY GIVES, THE
8 RESEMBLANCE BETWEEN THE TWO DESIGNS IS SUCH AS TO
9 DECEIVE SUCH AN OBSERVER, INDUCING HIM TO PURCHASE
10 ONE SUPPOSING IT TO BE THE OTHER.

11 YOU DO NOT NEED, HOWEVER, TO FIND THAT
12 ANY PURCHASERS ACTUALLY WERE DECEIVED OR CONFUSED
13 BY THE APPEARANCE OF THE ACCUSED SAMSUNG PRODUCTS.

14 YOU SHOULD CONSIDER ANY PERCEIVED
15 SIMILARITIES OR DIFFERENCES BETWEEN THE PATENTED
16 AND ACCUSED DESIGNS. MINOR DIFFERENCES SHOULD NOT
17 PREVENT A FINDING OF INFRINGEMENT.

18 THIS DETERMINATION OF WHETHER TWO DESIGNS
19 ARE SUBSTANTIALLY THE SAME WILL BENEFIT FROM
20 COMPARING THE TWO DESIGNS WITH PRIOR ART. YOU MUST
21 FAMILIARIZE YOURSELF WITH THE PRIOR ART ADMITTED AT
22 TRIAL IN MAKING YOUR DETERMINATION OF WHETHER THERE
23 HAS BEEN DIRECT INFRINGEMENT.

24 YOU MAY FIND THE FOLLOWING GUIDELINES
25 HELPFUL TO YOUR ANALYSIS:

1 THE PLACEMENT AND ORNAMENTATION OF A LOGO
2 MAY ALTER THE OVERALL DESIGN. HOWEVER, THE USE OF
3 A MARK OR LOGO TO IDENTIFY THE SOURCE OF AN
4 OTHERWISE INFRINGING DESIGN WILL NOT AVOID
5 INFRINGEMENT.

6 WHEN THE CLAIMED DESIGN IS VISUALLY CLOSE
7 TO PRIOR ART DESIGN, SMALL DIFFERENCES BETWEEN THE
8 ACCUSED DESIGN AND THE CLAIMED DESIGN MAY BE
9 IMPORTANT IN ANALYZING WHETHER THE OVERALL
10 APPEARANCES OF THE ACCUSED AND CLAIMED DESIGNS ARE
11 SUBSTANTIALLY THE SAME.

12 IF THE ACCUSED DESIGN INCLUDES A FEATURE
13 OF THE CLAIMED DESIGN THAT DEPARTS CONSPICUOUSLY
14 FROM THE PRIOR ART, YOU MAY FIND THAT FEATURE
15 IMPORTANT IN ANALYZING WHETHER THE OVERALL
16 APPEARANCE OF THE ACCUSED AND CLAIMED DESIGNS ARE
17 SUBSTANTIALLY THE SAME.

18 IF THE ACCUSED DESIGN IS VISUALLY CLOSER
19 TO THE CLAIMED DESIGN THAN IT IS TO THE CLOSEST
20 PRIOR ART, YOU MAY FIND THIS COMPARISON IMPORTANT
21 IN ANALYZING WHETHER THE OVER APPEARANCE OF THE
22 ACCUSED AND CLAIMED DESIGNS ARE SUBSTANTIALLY THE
23 SAME.

24 YOU SHOULD NOT CONSIDER THE SIZE OF THE
25 ACCUSED PRODUCTS IF THE ASSERTED DESIGN PATENT DID

1 SLIGHTLY DIFFERENT NOT SPECIFY THE SIZE OF THE
2 DESIGN.

3 WHILE THESE GUIDELINES MAY BE HELPFUL,
4 THE TEST FOR INFRINGEMENT IS WHETHER THE OVERALL
5 APPEARANCES OF THE ACCUSED DESIGN AND THE CLAIMED
6 DESIGN ARE SUBSTANTIALLY THE SAME.

7 WHETHER SAMSUNG KNEW ITS PRODUCTS
8 INFRINGED OR EVEN KNEW OF APPLE DESIGN PATENTS DOES
9 NOT MATTER IN DETERMINING INFRINGE ACTION.

10 47. IN DECIDING THE ISSUE OF
11 INFRINGEMENT, YOU MUST COMPARE SAMSUNG'S ACCUSED
12 PRODUCTS TO THE DESIGN PATENTS. IN ADDITION, YOU
13 HAVE HEARD EVIDENCE ABOUT CERTAIN APPLE PRODUCTS
14 AND MODELS. IF YOU DETERMINE THAT ANY OF APPLE'S
15 PRODUCTS OR MODELS ARE SUBSTANTIALLY THE SAME AS AN
16 APPLE PATENT DESIGN, AND THAT THE PRODUCT OR MODEL
17 HAS NO SIGNIFICANT DISTINCTIONS WITH THE DESIGN,
18 YOU MAY COMPARE THE PRODUCT OR MODEL DIRECTLY TO
19 THE ACCUSED SAMSUNG PRODUCTS. THIS MAY FACILITATE
20 IF YOU DETERMINE THAT A PARTICULAR APPLE OR PRODUCT
21 DOES NOT EMBODY A PATENTED DESIGN, YOU MAY NOT
22 COMPARE IT TO THE ACCUSED DEVICES.

23 NUMBER 48. I WILL NOW INSTRUCT YOU ON
24 THE RULES YOU MUST FOLLOW IN DECIDING WHETHER
25 SAMSUNG HAS PROVEN THAT THE APPLE DESIGN PATENTS

1 ARE INVALID. BEFORE DISCUSSING THE SPECIFIC RULES,
2 I WANT TO REMIND YOU ABOUT THE STANDARD OF PROOF
3 THAT APPLIES TO THIS DEFENSE. TO PROVE INVALIDITY
4 OF ANY DESIGN PATENT, SAMSUNG MUST PERSUADE YOU BY
5 CLEAR AND CONVINCING EVIDENCE THAT THE DESIGN
6 PATENT IS INVALID.

7 49. BEFORE I DESCRIBE HOW TO ASSESS
8 WHETHER APPLE'S DESIGN PATENTS ARE INVALID, I WILL
9 INSTRUCT YOU ABOUT DOCUMENTS AND THINGS CALLED
10 "PRIOR ART."

11 IN GENERAL, PRIOR ART INCLUDES THINGS
12 THAT EXISTED BEFORE THE CLAIMED DESIGN, THAT WERE
13 PUBLICLY KNOWN IN THIS COUNTRY, OR USED IN A
14 PUBLICLY ACCESSIBLE WAY IN THIS COUNTRY, OR THAT
15 WERE PATENTED OR DESCRIBED IN A PUBLICATION IN ANY
16 COUNTRY.

17 SPECIFICALLY, PRIOR ART INCLUDES ANY OF
18 THE FOLLOWING ITEMS RECEIVED INTO EVIDENCE DURING
19 TRIAL:

20 IF THE CLAIMED DESIGN WAS ALREADY
21 PUBLICLY KNOWN OR PUBLICLY USED BY OTHERS IN THE
22 UNITED STATES BEFORE THE DATE OF THE INVENTION OF
23 THE CLAIMED DESIGN;

24 IF THE CLAIMED DESIGN WAS ALREADY
25 PATENTED OR DESCRIBED IN A PRINTED PUBLICATION

1 ANYWHERE IN THE WORLD BEFORE THE DATE OF INVENTION
2 OF THE CLAIMED DESIGN. A REFERENCE IS A "PRINTED
3 PUBLICATION" IF IT IS ACCESSIBLE TO THOSE
4 INTERESTED IN THE FIELD, EVEN IF IT IS DIFFICULT TO
5 FIND;

6 IF THE CLAIMED DESIGN WAS ALREADY
7 DESCRIBED ANOTHER IN U.S. PATENT OR PUBLISHED U.S.
8 PATENT APPLICATION THAT WAS BASED ON AN APPLICATION
9 FILED BEFORE THE DATE OF THE INVENTION OF THE
10 CLAIMED DESIGN;

11 IF THE CLAIMED DESIGN WAS ALREADY MADE BY
12 SOMEONE ELSE IN THE UNITED STATES BEFORE THE DATE
13 OF INVENTION, IF THAT OTHER PERSON HAD NOT
14 ABANDONED, SUPPRESSED OR CONCEALED HIS OR HER
15 INVENTION.

16 SINCE THE DATE OF INVENTION OF THE D'677
17 AND D'087 IS IN DISPUTE IN THIS CASE, YOU MUST
18 DETERMINE WHETHER APPLE AS PROVED THE DATES THESE
19 DESIGNS WERE INVENTED.

20 THE DATE OF INVENTION OCCURS WHEN THE
21 INVENTION IS SHOWN IN ITS COMPLETE FORM BY
22 DRAWINGS, DISCLOSE TO ANOTHER OR OTHER FORMS OF
23 EVIDENCE PRESENTED AT TRIAL.

24 IF YOU DETERMINE THAT APPLE HAS NOT
25 PROVED WHEN THE PATENTS WERE INVENTED, YOU MUST

1 ASSUME THAT THE DATE OF THE INVENTION OF THE
2 PATENTED DESIGNS WAS NOT UNTIL THE FILING DATE OF
3 THE PATENT.

4 THE APPLE DESIGN PATENTS HAVE THE
5 FOLLOWING FILING DATES:

6 D'677 PATENT, JANUARY 5, 2007.

7 D'087 PATENT, JANUARY 5, 2007.

8 D'889 PATENT, MARCH 17TH, 2004.

9 D'305 PATENT, JUNE 23RD, 2007.

10 NUMBER 50. A DESIGN PATENT IS INVALID IF
11 IT IS NOT NEW. IF A DESIGN PATENT IS NOT NEW, WE
12 SAY IT IS "ANTICIPATED" BY A PRIOR ART REFERENCE.
13 FOR A CLAIMED DESIGN PATENT TO BE INVALID BECAUSE
14 IT IS ANTICIPATED, SAMSUNG MUST PROVE BY CLEAR AND
15 CONVINCING EVIDENCE THAT THERE IS A SINGLE PRIOR
16 ART REFERENCE THAT IS SUBSTANTIALLY THE SAME AS THE
17 CLAIMED DESIGN PATENT.

18 THE SAME STANDARD OF SUBSTANTIAL
19 SIMILARITY THAT APPLIED TO INFRINGEMENT ALSO
20 APPLIES TO ANTICIPATION. THAT IS, THE SINGLE PRIOR
21 ART REFERENCE IN THE CLAIMED DESIGN PATENT ARE
22 SUBSTANTIALLY SAME IF, IN THE EYE OF AN ORDINARY
23 OBSERVER, GIVING SUCH ATTENTION AS A PURCHASER
24 USUALLY GIVES, THE RESEMBLANCE BETWEEN THE TWO
25 DESIGNS IS SUCH AS TO DECEIVE SUCH AN OBSERVER,

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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 21, 2012