

EXHIBIT 10

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

2 -----X
APPLE INC., a California corporation

3
4 PLAINTIFF,

5 -against-

6 SAMSUNG ELECTRONIC CP., LTD., a Korean
business entity; SAMSUNG ELECTRONICS
7 AMERICAN, INC., A New York Corporation;
SAMSUNG TELECOMMUNICATIONS AMERICA, LLC,
8 a Delaware limited liability company,

9
10 DEFENDANTS.
-----X

11
12 ***CONFIDENTIAL***
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15 VIDEOTAPED DEPOSITION OF RUSSELL WINER
16 New York, New York
17 Friday, April 27, 2012
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23 Reported by:
24 Rebecca Schaumloffel, RPR, CLR
25 JOB NO. 48805

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April 27, 2012
9:16 a.m.

Deposition of Russell Winer, held at
the offices of Quinn Emanuel, 51 Madison
Avenue, New York, New York, before Rebecca
Schaumloffel, a Registered Professional
Reporter, Certified Livenote Reporter and
Notary Public of the State of New York.

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

2
3 MORRISON & FOERSTER

4 Attorneys for the Plaintiff
5 1290 Avenue of the Americas
6 New York, New York 10104
7 BY: KAREN L. HAGBERG, ESQ.

8
9 QUINN EMANUEL URQUHART & SULLIVAN

10 Attorneys for the Defendant
11 865 South Figueroa Street
12 Los Angeles, California 90017
13 BY: MICHAEL T. ZELLER, ESQ.
14 MARY McNEILL, ESQ

15 ALSO PRESENT:

16 Mike Pineiro, videographer

17 Sean Millenel, interning videographer
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1 A. Yes. 05:07PM

2 Can I ask a question about this 05:07PM

3 document, Exhibit 3? 05:08PM

4 MS. HAGBERG: No, no. You're 05:08PM

5 not allowed to ask questions. 05:08PM

6 Q. If you look five pages in -- 05:08PM

7 THE WITNESS: I know. Just a 05:08PM

8 clarification. 05:08PM

9 MS. HAGBERG: Maybe he will let 05:08PM

10 you. 05:08PM

11 A. Five pages in? 05:08PM

12 Q. You will see language that says, 05:08PM

13 "In sum, Apple's home screen button is a 05:08PM

14 distinctive design element tying together 05:08PM

15 Apple's family of mobile devices." 05:08PM

16 Do you see that? 05:08PM

17 MS. HAGBERG: How many pages in? 05:08PM

18 Sorry. 05:08PM

19 MR. ZELLER: It's five pages in. 05:08PM

20 THE WITNESS: It's at the top of 05:08PM

21 this long list. 05:08PM

22 MS. HAGBERG: Thank you. 05:08PM

23 BY MR. ZELLER: 05:08PM

24 Q. Do you see that statement? 05:08PM

25 A. I do. 05:08PM

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1 Q. Is that a true statement? 05:08PM

2 MS. HAGBERG: Objection. Lacks 05:08PM

3 foundation. There is no foundation 05:08PM

4 about this document. 05:08PM

5 A. I don't know if -- I can't answer 05:08PM

6 yes or no. I haven't studied this document, 05:09PM

7 and I am not a -- not an industrial engineer 05:09PM

8 or designer to be able to conclude one way or 05:09PM

9 the other. 05:09PM

10 Q. You can't give me a view as an 05:09PM

11 expert on that statement; is that true? 05:09PM

12 A. I can say that the button is 05:09PM

13 there. I can't conclude that it is a 05:09PM

14 distinctive design element tying together 05:09PM

15 Apple's family of mobile devices. 05:09PM

16 Q. Do you have any hard data or 05:09PM

17 empirical evidence to show that Apple has 05:09PM

18 suffered any loss of market share as a result 05:09PM

19 of what you say are the similarities between 05:09PM

20 Samsung devices and Apple's claimed trade 05:09PM

21 dress? 05:09PM

22 MS. HAGBERG: Objection. 05:09PM

23 Compound. 05:09PM

24 A. My belief is that, while Apple's 05:09PM

25 sales are strong, we don't know if the sales 05:09PM

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1 could have been stronger without the 05:10PM
2 infringement. 05:10PM

3 The second point is, we don't 05:10PM
4 know what the long-term implication could be 05:10PM
5 from the loss of the stickiness of the Apple 05:10PM
6 brand due to Samsung's infringements, which 05:10PM
7 could have even more serious long-term 05:10PM
8 implications for the Apple brand. 05:10PM

9 Q. Based on all the work that you 05:10PM
10 have done up until now, and based on 05:10PM
11 everything that has happened up until now, do 05:10PM
12 you have any hard data or empirical evidence 05:10PM
13 that you can point to specifically that shows 05:10PM
14 that Apple has lost any market share as a 05:10PM
15 result of what you say are the similarities 05:10PM
16 between Samsung's devices and Apple's claimed 05:10PM
17 trade dress? 05:10PM

18 MS. HAGBERG: Same objections 05:10PM
19 and asked and answered. 05:10PM

20 A. It is my professional opinion 05:10PM
21 that sales, current sales could well have 05:10PM
22 been lost, and that future sales are at risk 05:10PM
23 because of the infringement. 05:11PM

24 Q. What data do you have 05:11PM
25 specifically, what empirical evidence? 05:11PM

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1 A. I don't have any. 05:11PM

2 Q. Do you have any quantification? 05:11PM

3 A. I don't. 05:11PM

4 Q. Do you have any empirical 05:11PM

5 evidence or hard data to show that anything 05:11PM

6 Samsung has done has diluted Apple's brand? 05:11PM

7 A. I think if you take the research 05:11PM

8 reports together, the Poret report with the 05:11PM

9 Van Liere report, and the actions that 05:11PM

10 Samsung has taken with the infringing 05:11PM

11 products, that Apple's brand is at risk both 05:11PM

12 at the present time and in the future from 05:11PM

13 potential confusion in the marketplace that 05:11PM

14 could affect consumer purchasing, in the 05:12PM

15 short run and the long run. 05:12PM

16 Q. My question is, do you have any 05:12PM

17 empirical evidence or hard data to show that 05:12PM

18 Samsung's actions has diluted Apple's brand? 05:12PM

19 MS. HAGBERG: Objection. Asked 05:12PM

20 and answered. 05:12PM

21 A. No. 05:12PM

22 Q. Do you have any quantification of 05:12PM

23 any harm or dilution or loss of any kind to 05:12PM

24 Apple as a result of Samsung's actions? 05:12PM

25 MS. HAGBERG: Objection. Vague. 05:12PM

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1 Compound. 05:12PM

2 A. No. 05:12PM

3 MS. HAGBERG: Asked and 05:12PM

4 answered. 05:12PM

5 Q. Do you have any evidence or data 05:12PM

6 to distinguish between harm that Apple's 05:12PM

7 brand has suffered as a result of negative 05:12PM

8 publicity from labor abuses or price fixing 05:12PM

9 or other conduct that's been alleged in the 05:13PM

10 media as compared to any actions that 05:13PM

11 Apple -- excuse me, that Samsung has 05:13PM

12 undertaken? 05:13PM

13 MS. HAGBERG: Objection; 05:13PM

14 compound. Lack of foundation. 05:13PM

15 A. No. 05:13PM

16 Q. Have you undertaken any kind of 05:13PM

17 study to determine whether any dilution that 05:13PM

18 Apple's brand is at risk for is the result of 05:13PM

19 negative publicity such as the exploitation 05:13PM

20 of labor, or price fixing, or the other kinds 05:13PM

21 of negative press that Apple has received? 05:13PM

22 MS. HAGBERG: Same objection. 05:13PM

23 Q. When compared to Samsung's 05:13PM

24 activities? 05:13PM

25 MS. HAGBERG: Same objections. 05:13PM

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1 And compound. 05:13PM

2 A. No. 05:13PM

3 MS. HAGBERG: Can I get a 05:13PM
4 reading on our time, please. 05:13PM

5 THE VIDEOGRAPHER: We are at 05:13PM
6 seven hours. 05:13PM

7 MS. HAGBERG: Are you done? 05:13PM

8 MR. ZELLER: Could I just make 05:13PM
9 sure I have a clear answer, because I 05:13PM
10 think it got cut up a little bit. 05:14PM

11 MS. HAGBERG: He said no. 05:14PM

12 MR. ZELLER: Let me just see. 05:14PM

13 BY MR. ZELLER: 05:14PM

14 Q. And you understood my last 05:14PM
15 question, I was asking whether you could 05:14PM
16 distinguish any loss or dilution, or any 05:14PM
17 potential dilution or loss to Apple's brand 05:14PM
18 as a result of this negative kind of 05:14PM
19 publicity we have talked about as opposed to 05:14PM
20 Apple's actions -- or excuse me, Samsung's 05:14PM
21 actions? 05:14PM

22 MS. HAGBERG: Objection. 05:14PM

23 A. I haven't done such a study, no. 05:14PM

24 Q. Okay. I am sorry. I think this 05:14PM
25 got cut up a little bit, so let me try to ask 05:14PM

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1 a clear question. It is the same thing. 05:14PM

2 Do you have any hard data or 05:14PM

3 empirical evidence that would allow you to 05:14PM

4 distinguish any loss or risk, whether actual 05:14PM

5 or dilution or any other kind, to Apple's 05:14PM

6 brand that has been caused as a result of 05:15PM

7 negative publicity on other subjects like 05:15PM

8 labor as opposed to Samsung's actions? 05:15PM

9 MS. HAGBERG: Lack of foundation 05:15PM

10 and asked and answered. 05:15PM

11 A. No. 05:15PM

12 MR. ZELLER: Thank you. I just 05:15PM

13 wanted to make sure I had a clear 05:15PM

14 record on that. I stumbled and it got 05:15PM

15 interrupted a couple of times. So I 05:15PM

16 appreciate your patience on that one. 05:15PM

17 So I think we are at 05:15PM

18 seven hours. Thank you. 05:15PM

19 05:15PM

20 05:15PM

21 (Continued on next page to include 05:15PM

22 jurat.) 05:15PM

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Name of Case: *Apple Inc. v. Samsung Electronics Co., Ltd., et al.*, Case No. 11-cv-1846 LHK

Date of deposition: April 27, 2012

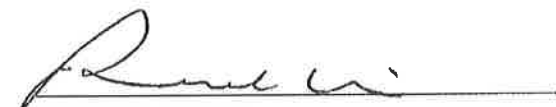
Name of witness: Russell Winer

Reason Codes:

1. To clarify the record.
2. To conform to the facts.
3. To correct transcription errors.

Page	Line	Now Reads	Should Read	Reason
9	7	A-T-O-G-L-U	A-T-U-G-L-U	2
30	23	Although not saying it happened here	Although I'm not saying it happened here	3
55	14	Bump	Lump	3
62	1	Buy	Box	3
69	5	Means	Mean	3
108	24-25	Sleep Craft	Sleekcraft	3
112	10	El	Elk	2
113	9	Ridell	Riddell	2
114	4	Ridell	Riddell	2
323	7-8	Sea to shining sea	"Sea to shining sea"	1

Dated: MAY 15, 2012


RUSSELL WINER

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1	THE VIDEOGRAPHER: The time is	05:15PM
2	5:17. That's the end of today's	05:15PM
3	deposition.	05:15PM

4	We are going off the record.	05:15PM
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5 (Whereupon, at 5:17 p.m., the
6 Examination of this Witness was
7 concluded.)

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10 

RUSSELL WINER

11
12 Subscribed and sworn to before me
13 this ____ day of _____, 2012.

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NOTARY PUBLIC