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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

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

FOR PLAINTIFF MORRISON & FOERSTER
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PLAINTIFF'S

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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 A THERE IS A COMPETITIVE ANALYSIS EXERCISE
2 THAT'S PERFORMED BY OUR PRODUCT DESIGN.

3 Q AND YOU OCCASIONALLY REQUEST THAT SO YOU CAN
4 SEE WHAT THE COMPETITION IS DOING AS PART OF YOUR
5 DESIGN WORK; RIGHT?

6 A VERY RARELY DO WE MAKE ANY SUCH REQUESTS. WE
7 ARE SHOWN THESE COMPETITIVE ANALYSIS.

8 Q WELL, LET'S LOOK AT DX 687. AND IF WE COULD
9 BLOW UP THE TOP PART OF THIS.

10 DO YOU SEE -- DO YOU SEE YOUR NAME IS UP
11 THERE, CHRIS STRINGER?

12 A I SEE THAT.

13 Q AND IF WE COULD GO TO PAGE 2 OF THIS DOCUMENT
14 AND ABOUT A THIRD OF THE WAY DOWN WHERE IT SAYS "ON
15 JANUARY 19TH, 2011," CAN WE BRING THAT UP?

16 THIS IS AN E-MAIL STRING, THIS DOCUMENT;
17 RIGHT?

18 A YES, IT IS.

19 Q SO THIS IS PART OF THE E-MAIL STRING?

20 A YES, IT IS.

21 Q AND THIS PART OF IT IS AN E-MAIL THAT YOU
22 WROTE ON JANUARY 19TH, 2011 AT 2:14 P.M.; CORRECT?

23 A THAT IS CORRECT.

24 Q AND YOU SENT IT TO PAUL. WHO'S PAUL?

25 A PAUL IS -- I BELIEVE HIS TITLE IS ENGINEERING

1 PROGRAM MANAGER. HE WORKS IN THE IPAD DIVISION.

2 Q AND YOU SAID TO PAUL, QUOTE, "I NEED YOUR
3 LATEST SUMMARY OF OUR ENEMIES FOR AN I.D.
4 BRAINSTORM ON FRIDAY."

5 DO YOU SEE THAT, SIR?

6 A I SEE THAT.

7 Q I.D. STANDS FOR?

8 A INDUSTRIAL DESIGN.

9 Q SO YOU HAD AN INDUSTRIAL DESIGN BRAINSTORMING
10 SESSION COMING UP ON FRIDAY; RIGHT?

11 A THAT'S WHAT IT SAYS.

12 Q AND YOU'RE ASKING PAUL TO GIVE YOU HIS LATEST
13 SUMMARY OF, QUOTE, "OUR ENEMIES," CLOSED QUOTE. DO
14 YOU SEE THAT?

15 A THAT'S CORRECT.

16 Q IS THAT SAMSUNG?

17 A IN THIS INSTANCE, YES.

18 Q OKAY. AND THE SUMMARY -- THIS IS IN YOUR
19 BINDER IF YOU WANT TO LOOK AT IT -- WE CAN GO TO
20 PAGE 9.

21 A WHAT IS THE EXHIBIT NUMBER?

22 Q 687, SIR.

23 GO TO PAGE 9, PLEASE. AND HIGHLIGHT THE
24 TOP PART, BRING IT OUT. CAN YOU MOVE IT OVER A
25 LITTLE BIT? THANK 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.

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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

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UNITED STATES DISTRICT COURT
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SAN JOSE DIVISION

APPLE INC., A CALIFORNIA CORPORATION,)	C-11-01846 LHK
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INDEX OF WITNESSES

PLAINTIFF'S

PHILIP SCHILLER

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(RES.)
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RECROSS-EXAM BY MR. PRICE P. 721

SCOTT FORSTALL

DIRECT EXAM BY MR. MCELHINNY P. 724
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JUSTIN DENISON

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

1 AGREEMENT HERE ON LIMITED NUMBER OF PAGES. SO THIS
2 REALLY SHOULD BECOME A NONISSUE.

3 IF YOU'RE GOING TO INSIST ON THE WHOLE
4 THING, I'M GRANTING A STAY UNTIL NEXT FRIDAY SO
5 THEY CAN TAKE IT UP ON APPEAL.

6 MR. PRICE: WE'RE NOT INSISTING ON THAT.

7 THE COURT: ALL RIGHT. WHY DON'T YOU
8 WORK IT OUT? IT SOUNDS LIKE THERE'S AGREEMENT
9 HERE.

10 ALL RIGHT. NOW, THE OBJECTION PROCESS IS
11 NOT WORKING. THE OBJECTIONS TO THESE WITNESSES
12 HAVE BEEN BRIEFED FIVE TIMES. OKAY? AND WE FILED
13 OUR ORDER AT 11:00 O'CLOCK LAST NIGHT AND THIS
14 MORNING THERE ARE RECONSIDERATIONS OF OUR ORDERS.

15 SO THIS IS WHAT I'M GOING TO DO. FROM
16 NOW ON, NONE OF THIS IS GOING TO BE DONE ON PAPER.

17 YOU'RE GOING TO DO IT IN FRONT OF THE
18 JURY AND IT'S GOING TO COUNT TOWARDS YOUR TRIAL
19 TIME, OKAY?

20 BECAUSE SOME OF THESE OBJECTIONS ARE
21 RIDICULOUS. THEY'RE LIKE FOUR OR FIVE PARAGRAPHS
22 LONG SAYING 403, 401, 402. NO EXPLANATION, NO
23 DESCRIPTION.

24 IF YOU WANT TO DO THAT KIND OF MESSY
25 OBJECTION, YOU'RE GOING TO DO IT RIGHT IN FRONT OF

1 THE JURY AND THE TIME CLOCK WILL BE TICKING. I'M
2 GOING TO KEEP A RECORD. IT'S ALL ON YOUR TIME.
3 OKAY?

4 SO FROM NOW ON, NO OBJECTIONS BEFORE.
5 YOU DO IT ALL RIGHT IN FRONT OF THE JURY. AND IF
6 YOU CAN'T EXPLAIN IT TO ME, THEN I'M JUST GOING TO
7 OVERRULE IT. OKAY?

8 SO YOU NEED TO POINT -- IF YOU'RE GOING
9 TO SAY "THIS IS EXCLUDED" OR "THIS IS IRRELEVANT
10 FOR X, Y, Z PURPOSE," YOU BETTER HAVE ALL THE
11 EXHIBITS YOU NEED TO PERSUADE ME RIGHT ON THE SPOT.
12 OKAY? SO NO MORE OBJECTIONS.

13 NOW, ALSO, THE RECONSIDERATION SITUATION
14 HAS GOTTEN OUT OF CONTROL. EVERYTHING IS BEING
15 RECONSIDERED MULTIPLE TIMES.

16 SO FROM NOW ON, ANY TIME YOU MOVE FOR
17 RECONSIDERATION, MY TIME ON REVIEWING YOUR
18 RECONSIDERATION MOTIONS IS GOING TO COUNT TOWARDS
19 YOUR 25 HOURS OF TRIAL TIME. ALL RIGHT?

20 SO IF THERE IS NO DISCIPLINE IN THIS
21 CASE, IT'S JUST GOING TO BE OUT OF YOUR TIME SO
22 YOU'LL HAVE LESS THAN 25 HOURS BEFORE THE JURY.

23 NOW, HAVING SAID THAT, THE
24 RECONSIDERATIONS THAT HAVE BEEN FILED TODAY, ARE
25 THERE ANY THAT YOU WANT ME TO RULE ON? BECAUSE I

1 WILL DO THAT IN FRONT OF THE JURY. WE WILL HAVE
2 THE FULL DISCUSSION IN FRONT OF THE JURY AND IT
3 WILL COUNT TOWARDS YOUR TRIAL TIME.

4 SO WHO WANTS TO GO FORWARD WITH ALL THE
5 RECONSIDERATIONS THAT WERE FILED BETWEEN MIDNIGHT
6 AND THIS MORNING? WHO WANTS TO DO THAT?

7 MR. JACOBS: I THINK WE DO, YOUR HONOR.

8 THE COURT: ALL RIGHT. THAT'S FINE.
9 WE'LL BRING IN THE JURY AND WE'LL ARGUE IT IN FRONT
10 OF THEM. OKAY?

11 NOW, LET'S GO TO THE OTHER ISSUE, AND
12 THAT IS WITH REGARD TO THE SAMSUNG PRESS RELEASE
13 AND MR. QUINN.

14 SO MY SOLE CONCERN IS TO PRESERVE THE
15 IMPARTIALITY OF THE JURY IN ORDER TO HAVE A FAIR
16 TRIAL.

17 SO THIS MORNING I'M GOING TO POLL THEM TO
18 SEE IF THEY'VE READ OR SEEN ANYTHING ABOUT THE CASE
19 SINCE LAST TUESDAY AFTERNOON, WHETHER THAT HAS
20 CAUSED THEM TO FORM AN IMPRESSION OR OPINION ABOUT
21 THE CASE, WHETHER THEY CAN DECIDE THIS CASE BASED
22 SOLELY ON THE EVIDENCE THAT'S ADMITTED AT THE
23 TRIAL, AND WHETHER THEY WILL FOLLOW THE LAW AS I
24 INSTRUCT THEM, AND WHETHER THEY CAN BE FAIR AND
25 IMPARTIAL TO BOTH SIDES.

1 BASED ON HOW A JUROR ANSWERS THAT
2 QUESTION, WE'LL HAVE TO SEE WHETHER THEY REMAIN ON
3 THIS JURY.

4 BASED ON THE CURRENT RECORD, I DENY
5 APPLE'S REQUEST FOR JUDGMENT ON THE PHONE DESIGN
6 PATENTS, FOR FURTHER EXCLUSION OF EVIDENCE, AND FOR
7 AN ADVERSE JURY INSTRUCTION REGARDING THE SAMSUNG
8 PRESS RELEASE. THOSE REMEDIES ARE NOT WARRANTED BY
9 CURRENT RECORD.

10 BUT I DO RESERVE FOR AFTER THE TRIAL THE
11 QUESTION AS TO WHETHER A FURTHER INVESTIGATION AS
12 TO EXACTLY WHAT HAPPENED AND WHAT OTHER
13 CONSEQUENCES MAY BE APPROPRIATE.

14 I WILL TELL YOU WHAT ASPECTS OF WHAT HAS
15 OCCURRED CAUSE ME THE MOST CONCERN, OR AT LEAST
16 SOME CONCERN. I'M SURE THERE ARE WILL BE OTHERS
17 THE MORE I THINK ABOUT IT.

18 BUT AT THE TIME THAT SAMSUNG RELEASED ITS
19 PRESS RELEASE WITH THE LINK TO EXCLUDED
20 DEMONSTRATIVES, THE COURT HAD ALREADY SELECTED AND
21 SEATED A JURY, TRIAL HAD ALREADY BEGUN, AND THE
22 PRESS RELEASE REFERS MORE THAN ONCE TO WHAT
23 EXCLUDED EVIDENCE THE JURY SHOULD CONSIDER.

24 MOREOVER, BOTH SAMSUNG AND QUINN, EMANUEL
25 WERE ON NOTICE THAT THE POSSIBILITY OF JURY TAINT

1 IS REAL. OF OUR 34 POTENTIAL JURORS WHO WERE VOIR
2 DIRED ON MONDAY, 18 ADMITTED SOME EXPOSURE TO
3 PRETRIAL PUBLICITY.

4 OF OUR NINE SEATED JURORS, FOUR ADMITTED
5 TO EXPOSURE TO SOME PRETRIAL PUBLICITY.

6 SO THIS WAS A REAL AND POSSIBLE DANGER
7 THAT SAMSUNG AND QUINN, EMANUEL MADE THE DECISION
8 TO TAKE THE RISK OF TAINTING THE JURY.

9 AT THE TIME THAT MR. QUINN REQUESTED YET
10 ANOTHER RECONSIDERATION OF THE MULTIPLE RULINGS OF
11 THE COURT, THE PARTIES HAD BRIEFED AT LEAST THE
12 SONY-STYLE ISSUE NO LESS THAN SIX TIMES, SIX TIMES,
13 AND ON TUESDAY MORNING, I MADE IT ABSOLUTELY CLEAR
14 THAT I WAS NOT GOING TO RECONSIDER THAT RULING.

15 YET MR. QUINN LEFT THIS COURTROOM AND
16 DELIBERATELY AND WILLFULLY, WITH SAMSUNG, ISSUED A
17 PRESS RELEASE TO HIGHLIGHT EVIDENCE THAT THEY BOTH
18 KNEW WAS EXCLUDED AND WAS INADMISSIBLE IN THIS
19 TRIAL.

20 AND THE LINK TO THE EXCLUDED
21 DEMONSTRATIVES IN THE PRESS RELEASE WAS A WILLFUL
22 AND DELIBERATE ATTEMPT TO FURTHER PROPAGATE THAT
23 EXCLUDED EVIDENCE THE DAY AFTER A JURY HAD BEEN
24 IMPANELED.

25 THIS IS AN UNFORTUNATE SITUATION, BUT I

1 DON'T WANT ANYONE TO LOSE SIGHT OF THE FACT THAT
2 THIS IS A SITUATION OF SAMSUNG AND QUINN, EMANUEL'S
3 OWN MAKING.

4 HAD SAMSUNG TIMELY COMPLIED WITH ITS
5 DISCOVERY OBLIGATIONS, THERE WOULD BE NO EXCLUSION.

6 BOTH JUDGE GREWAL AND I HAVE HELD BOTH
7 PARTIES TO THE SAME STANDARD. APPLE'S UNTIMELY
8 DISCOVERY AND THEORIES HAVE EQUALLY BEEN EXCLUDED
9 FROM THIS TRIAL.

10 I WILL NOT LET ANY THEATRICALS OR ANY SIDE
11 SHOW DISTRACT US FROM WHAT WE ARE HERE TO DO, WHICH
12 IS TO FAIRLY AND EFFICIENTLY TRY THIS CASE.

13 WHEN THE JURY IS HERE, WE'RE GOING TO DO
14 OUR BEST TO MAKE THE MOST OF THEIR TIME, WHETHER
15 THAT MEANS READING JURY INSTRUCTIONS AT 4:30 ON
16 MONDAY AFTERNOON OR CALLING A WITNESS DURING THE
17 LAST FEW MINUTES OF THE DAY ON TUESDAY.

18 NOW, I HOPE THAT ALL PARTIES AND LAWYERS
19 IN THIS CASE WHO ARE SUPPOSED TO BE OFFICERS OF THE
20 COURT WILL RESPECT THE UNITED STATES JUSTICE SYSTEM
21 AND OUR JURY TRIAL PROCESS.

22 NOW, WOULD YOU PLEASE BRING IN THE JURY,
23 AND WHATEVER RECONSIDERATIONS AND OBJECTIONS TO
24 EVIDENCE, WE'RE GOING TO DO IT ON YOUR TIME.

25 MR. LEE: YOUR HONOR, BEFORE THE JURY IS

1 BROUGHT IN, CAN I JUST ADDRESS THE LAST POINT THAT
2 YOUR HONOR ADDRESSED AND JUST RAISED TWO POINTS,
3 NOT TO REARGUE --

4 THE COURT: I'LL GIVE YOU 30 SECONDS.

5 MR. LEE: ALL RIGHT. I'LL DO IT 30
6 SECONDS.

7 WE WOULD ASK THAT THE JURY BE POLLED
8 INDIVIDUALLY OUTSIDE THE COURTROOM. I THINK WITH
9 ALL THE PRESS HERE, ASKING THESE NINE FOLKS THE
10 QUESTIONS YOU'VE ASKED IS GOING TO GET A PARTICULAR
11 RESPONSE.

12 I THINK THIS IS UNUSUAL ENOUGH, IT'S
13 IMPORTANT ENOUGH AND DIFFERENT ENOUGH TO HAVE YOU
14 TALK TO THEM INDIVIDUALLY, WITH OR WITHOUT COUNSEL
15 THERE, IS IMPORTANT.

16 THAT'S WHAT HAPPENS IN OTHER
17 CIRCUMSTANCES AND WE'D ASK YOUR HONOR TO DO THAT.

18 THE SECOND THING, YOUR HONOR, IS YOU ARE
19 CORRECT THAT THERE ARE UNANSWERED QUESTIONS,
20 INCLUDING --

21 THE COURT: ALL RIGHT. I THINK YOUR 30
22 SECONDS ARE UP. I WILL TAKE YOUR SUGGESTION AND
23 POLL THEM INDIVIDUALLY.

24 MR. LEE: ALL RIGHT. THANK YOU.

25 THE COURT: I THINK MS. PARKER BROWN JUST

1 LEFT. JUST BRING THEM IN ONE BY ONE.

2 MR. LEE: YOUR HONOR, WE THOUGHT -- I
3 KNOW I'M OFF MY 30 SECONDS -- ONE BY ONE IN YOUR
4 HONOR'S CHAMBERS, NOT IN FRONT OF EVERYBODY HERE
5 SITTING IN THE COURTROOM.

6 THE COURT: NO, THAT'S DENIED.

7 BRING THEM IN, PLEASE.

8 (WHEREUPON, THE FOLLOWING PROCEEDINGS
9 WERE HELD IN THE PRESENCE OF JUROR NUMBER 9:)

10 THE COURT: ALL RIGHT. GOOD MORNING.

11 I JUST HAD A FEW QUESTIONS TO ASK, AND
12 I'M JUST GOING TO CALL YOU JUROR NUMBER 9, IF
13 THAT'S OKAY --

14 JUROR 9: SURE.

15 THE COURT: -- JUST FOR YOUR OWN PRIVACY
16 AT THIS POINT.

17 SINCE WE WERE LAST HERE ON TUESDAY
18 AFTERNOON, DID YOU READ OR HEAR ANYTHING ABOUT THE
19 CASE?

20 JUROR 9: NO.

21 THE COURT: OKAY. CAN YOU STILL DECIDE
22 THIS CASE BASED SOLELY ON THE EVIDENCE THAT'S
23 ADMITTED AT THE TRIAL AND BASED SOLELY ON THE LAW
24 AS I INSTRUCT YOU?

25 JUROR 9: YES.

1 THE COURT: CAN YOU GIVE BOTH SIDES IN
2 THIS CASE -- CAN YOU BE FAIR AND IMPARTIAL TO BOTH
3 SIDES IN THIS CASE?

4 JUROR 9: ABSOLUTELY.

5 THE COURT: ALL RIGHT. THANK YOU.

6 IF YOU WOULDN'T MIND, PLEASE, WHEN YOU GO
7 BACK IN THERE, EVERYONE IS GOING TO ASK YOU WHAT
8 HAPPENED. IF YOU JUST SAY YOU CAN'T TALK ABOUT IT,
9 BUT THE JUDGE IS GOING TO ASK EVERYONE TO COME OUT
10 INDIVIDUALLY, SO THEY'LL ALL FIND OUT SOON ENOUGH.

11 JUROR 9: SURE.

12 (WHEREUPON, THE FOLLOWING PROCEEDINGS
13 WERE HELD IN THE PRESENCE OF JUROR NUMBER 6:)

14 THE COURT: ALL RIGHT. GOOD MORNING.

15 JUROR 6: GOOD MORNING.

16 THE COURT: ALL RIGHT. WELCOME BACK.

17 FOR YOUR PRIVACY, I'M JUST GOING TO REFER
18 TO YOU AS JUROR NUMBER 6. IS THAT OKAY?

19 JUROR 6: YES.

20 THE COURT: ALL RIGHT. I JUST WANT TO
21 FIND OUT WHETHER, SINCE WE WERE TOGETHER ON TUESDAY
22 AFTERNOON, HAVE YOU READ OR HEARD ANYTHING ABOUT
23 THIS CASE?

24 JUROR 6: NO.

25 THE COURT: ALL RIGHT. WILL YOU DECIDE

1 THIS CASE BASED SOLELY ON THE EVIDENCE THAT'S
2 ADMITTED DURING THE TRIAL AND APPLY ONLY THE LAW
3 THAT I INSTRUCT YOU?

4 JUROR 6: YES.

5 THE COURT: WILL YOU BE FAIR AND
6 IMPARTIAL TO BOTH SIDES IN THIS CASE?

7 JUROR 6: YES.

8 THE COURT: ALL RIGHT. THANK YOU.

9 NOW, WHEN YOU GO BACK IN THERE, PEOPLE
10 MAY ASK WHAT'S GOING ON. IF YOU COULD JUST LET
11 THEM KNOW, THE COURT ASKED YOU NOT TO SAY.
12 EVERYONE IS GOING TO BE COMING IN INDIVIDUALLY, SO
13 THEY'LL FIND OUT SOON ENOUGH. OKAY?

14 JUROR 6: SURE.

15 THE COURT: THANK YOU.

16 (WHEREUPON, THE FOLLOWING PROCEEDINGS
17 WERE HELD IN THE PRESENCE OF JUROR NUMBER 2:)

18 THE COURT: GOOD MORNING. WELCOME BACK.

19 FOR YOUR PRIVACY, I'M JUST GOING TO REFER
20 TO YOU AS JUROR NUMBER 2. IS THAT ALL RIGHT?

21 JUROR 2: YES.

22 THE COURT: OKAY. I JUST HAVE A COUPLE
23 OF QUESTIONS.

24 SINCE WE WERE LAST TOGETHER ON TUESDAY
25 AFTERNOON, DID YOU READ OR HEAR ANYTHING ABOUT THIS

1 CASE?

2 JUROR 2: NO.

3 THE COURT: ALL RIGHT. WILL YOU DECIDE
4 THIS CASE BASED SOLELY ON THE EVIDENCE THAT'S
5 ADMITTED DURING THIS TRIAL AND APPLY THE LAW AS I
6 INSTRUCT YOU?

7 JUROR 2: YES.

8 THE COURT: WILL YOU BE FAIR AND
9 IMPARTIAL TO BOTH SIDES IN THIS CASE?

10 JUROR 2: YES.

11 THE COURT: ALL RIGHT. WELL, THANK YOU
12 SO MUCH.

13 THE OTHER JURORS MAY ASK YOU WHAT'S GOING
14 ON. IF YOU COULD JUST LET THEM KNOW THAT I ASKED
15 YOU NOT TO SAY ANYTHING. THEY'RE ALL GOING TO BE
16 COMING IN HERE IN JUST A SECOND, SO THEY'LL FIND
17 OUT SOON ENOUGH.

18 JUROR 2: ALL RIGHT.

19 THE COURT: ALL RIGHT. THANK YOU.

20 (WHEREUPON, THE FOLLOWING PROCEEDINGS
21 WERE HELD IN THE PRESENCE OF JUROR NUMBER 8:)

22 THE COURT: GOOD MORNING AND WELCOME
23 BACK.

24 IF YOU DON'T MIND, I'M GOING TO CALL YOU
25 JUROR NUMBER 8.

1 JUROR 8: OKAY.

2 THE COURT: JUST FOR YOUR PRIVACY.

3 SINCE WE WERE LAST TOGETHER HERE ON
4 TUESDAY AFTERNOON, DID YOU READ OR HEAR ANYTHING
5 ABOUT THIS CASE?

6 JUROR 8: NO, I DID NOT.

7 THE COURT: ALL RIGHT. WILL YOU DECIDE
8 THIS CASE BASED SOLELY ON THE LAW THAT I INSTRUCT
9 YOU AND THE EVIDENCE THAT'S ADMITTED HERE IN OPEN
10 COURT DURING THIS TRIAL?

11 JUROR 8: YES, I WILL.

12 THE COURT: WILL YOU BE FAIR AND
13 IMPARTIAL TO BOTH SIDES IN THIS CASE?

14 JUROR 8: YES.

15 THE COURT: ALL RIGHT. WELL, THANK YOU
16 SO MUCH.

17 IF THE OTHER JURORS ASK YOU WHAT'S
18 HAPPENING, CAN YOU JUST LET THEM KNOW THAT I ASKED
19 YOU NOT TO SAY AND THAT EVERYONE IS GOING TO BE
20 BROUGHT IN ONE BY ONE, SO THEY'LL FIND OUT SOON
21 ENOUGH. OKAY?

22 JUROR 8: YES.

23 THE COURT: ALL RIGHT. THANK YOU.

24 (WHEREUPON, THE FOLLOWING PROCEEDINGS
25 WERE HELD IN THE PRESENCE OF JUROR NUMBER 3:)

1 THE COURT: ALL RIGHT. GOOD MORNING.

2 JUROR 3: GOOD MORNING.

3 THE COURT: AND WELCOME BACK. FOR YOUR
4 PRIVACY, I'M JUST GOING TO CALL YOU JUROR NUMBER 3
5 IF THAT'S OKAY.

6 JUROR 3: OKAY.

7 THE COURT: ALL RIGHT. SINCE WE WERE
8 LAST HERE ON TUESDAY AFTERNOON, DID YOU READ OR
9 HEAR ANYTHING ABOUT THE CASE?

10 JUROR 3: NO, I HAVEN'T.

11 THE COURT: ALL RIGHT. WILL YOU DECIDE
12 THIS CASE BASED SOLELY ON THE EVIDENCE THAT'S
13 ADMITTED DURING THIS TRIAL AND APPLY THE LAW AS I
14 INSTRUCT YOU?

15 JUROR 3: YES.

16 THE COURT: ALL RIGHT. WILL YOU BE FAIR
17 AND IMPARTIAL TO BOTH SIDES IN THIS CASE?

18 JUROR 3: YES.

19 THE COURT: ALL RIGHT. THANK YOU.

20 WHEN YOU GO BACK, IF YOU WOULD -- IF
21 FOLKS ASK YOU WHAT'S GOING ON, IF YOU COULD JUST
22 LET THEM KNOW, THE JUDGE ASKED ME NOT TO SAY, AND
23 EVERYONE IS GOING TO BE CALLED IN, SO THEY'LL FIND
24 OUT IN JUST A MINUTE OR TWO.

25 JUROR 3: NO PROBLEM.

1 THE COURT: OKAY. THANK YOU.

2 JUROR 3: UM-HUM.

3 (WHEREUPON, THE FOLLOWING PROCEEDINGS
4 WERE HELD IN THE PRESENCE OF JUROR NUMBER 4:)

5 THE COURT: ANYWHERE YOU'D LIKE. THIS IS
6 GOING TO BE PRETTY SHORT, I THINK.

7 JUROR 4: OKAY.

8 THE COURT: GOOD MORNING AND WELCOME
9 BACK.

10 JUROR 4: THANK YOU.

11 THE COURT: FOR YOUR PRIVACY, I'M GOING
12 TO REFER TO YOU AS JUROR NUMBER 4. IS THAT ALL
13 RIGHT?

14 JUROR 4: OKAY.

15 THE COURT: OKAY. SINCE WE WERE LAST
16 TOGETHER ON TUESDAY AFTERNOON, DID YOU READ OR HEAR
17 ANYTHING ABOUT THIS CASE?

18 JUROR 4: NO.

19 THE COURT: WILL YOU DECIDE THIS CASE
20 BASED SOLELY ON THE EVIDENCE THAT'S ADMITTED DURING
21 THE TRIAL AND APPLY THE LAW AS I INSTRUCT YOU?

22 JUROR 4: YES.

23 THE COURT: ALL RIGHT. WILL YOU BE FAIR
24 AND IMPARTIAL TO BOTH SIDES IN THIS CASE?

25 JUROR 4: YES.

1 THE COURT: ALL RIGHT. WELL, THANK YOU.

2 IF YOU WOULDN'T MIND, WHEN YOU GO BACK IN
3 THERE, IF SOMEONE ASKS YOU WHAT'S GOING ON, JUST
4 LET THEM KNOW, THE JUDGE ASKED ME NOT TO SAY, THAT
5 THEY'RE ALL GOING TO BE CALLED IN. OKAY?

6 JUROR 4: ALL RIGHT.

7 THE COURT: ALL RIGHT. THANK YOU.

8 (WHEREUPON, THE FOLLOWING PROCEEDINGS
9 WERE HELD IN THE PRESENCE OF JUROR NUMBER 1:)

10 THE COURT: ALL RIGHT. GOOD MORNING AND
11 WELCOME BACK. PLEASE TAKE A SEAT ANYWHERE THAT YOU
12 WOULD LIKE.

13 JUROR 1: OKAY.

14 THE COURT: ALL RIGHT. FOR YOUR PRIVACY,
15 I'M JUST GOING TO REFER TO YOU AS JUROR NUMBER 1.
16 IS THAT ALL RIGHT?

17 JUROR 1: SURE.

18 THE COURT: OKAY. SO SINCE WE WERE LAST
19 TOGETHER HERE ON TUESDAY AFTERNOON, DID YOU READ OR
20 HEAR ANYTHING ABOUT THIS CASE?

21 JUROR 1: NO, YOUR HONOR.

22 THE COURT: ALL RIGHT. WILL YOU DECIDE
23 THIS CASE BASED SOLELY ON THE EVIDENCE THAT'S
24 ADMITTED DURING THIS TRIAL AND APPLY THE LAW AS I
25 INSTRUCT YOU?

1 JUROR 1: YES, YOUR HONOR.

2 THE COURT: OKAY. WILL YOU BE FAIR AND
3 IMPARTIAL TO BOTH SIDES IN THIS CASE?

4 JUROR 1: YES.

5 THE COURT: ALL RIGHT. THANK YOU.

6 IF YOU -- I'M GOING TO ASK YOU TO STEP
7 BACK IN THE JURY ROOM, BUT IF YOU WOULD PLEASE NOT
8 EXPLAIN TO ANYONE ELSE WHAT'S GOING ON, JUST LET
9 THEM KNOW THAT THEY'RE ALL GOING TO COME IN IN A
10 MINUTE.

11 JUROR 1: YES.

12 THE COURT: ALL RIGHT. THANK YOU.

13 (WHEREUPON, THE FOLLOWING PROCEEDINGS
14 WERE HELD IN THE PRESENCE OF JUROR NUMBER 7:)

15 THE COURT: ALL RIGHT. PLEASE TAKE A
16 SEAT.

17 WELCOME BACK. GOOD MORNING.

18 I JUST HAVE A FEW QUESTIONS TO ASK YOU,
19 AND FOR YOUR PRIVACY, I'M GOING TO CALL YOU JUROR
20 NUMBER 7. IS THAT ALL RIGHT?

21 JUROR 7: YES.

22 THE COURT: SINCE WE WERE LAST HERE ON
23 TUESDAY, DID YOU READ OR HEAR ANYTHING ABOUT THIS
24 CASE?

25 JUROR 7: HEADLINES ON THE INTERNET.

1 THE COURT: HEADLINES. OKAY. CAN YOU
2 TELL ME WHAT HEADLINES YOU READ?

3 JUROR 7: IT SAYS 15 KITCHEN TABLE
4 SOMETHING. IT WAS ABOUT THE, WHAT THE FIRST
5 WITNESS WAS TALKING ABOUT.

6 THE COURT: OH, 15 PEOPLE AT THE KITCHEN
7 TABLE, YOU MEAN THE INDUSTRIAL DESIGNERS?

8 JUROR 7: YEAH.

9 THE COURT: OKAY. ANYTHING ELSE? NO,
10 NOTHING ELSE?

11 JUROR 7: I TRIED TO AVOID IT.

12 THE COURT: OKAY. THANK YOU.

13 NOW, BASED ON ANYTHING THAT YOU READ, DID
14 YOU FORM AN IMPRESSION OR AN OPINION ABOUT THIS
15 CASE?

16 JUROR 7: NO. I DIDN'T READ THE ARTICLE.
17 I JUST SAW THE HEADLINE.

18 THE COURT: OKAY. ANY OTHER HEADLINES
19 THAT YOU CAN RECALL OTHER THAN THE KITCHEN TABLE
20 ONE?

21 JUROR 7: NO.

22 THE COURT: ALL RIGHT. BASED ON THE
23 HEADLINES THAT YOU SAW AND ANYTHING ELSE YOU MAY
24 HAVE SEEN OR HEARD, HAVE YOU FORMED ANY LIKES,
25 DISLIKES, BIASES TOWARDS ONE SIDE OR THE OTHER OR

1 ANYTHING IN PARTICULAR?

2 JUROR 7: NO.

3 THE COURT: NO. OKAY. WILL YOU DECIDE
4 THIS CASE SOLELY ON THE EVIDENCE THAT'S ADMITTED
5 DURING THIS TRIAL?

6 JUROR 7: ABSOLUTELY.

7 THE COURT: OKAY. WILL YOU APPLY THE LAW
8 AS I INSTRUCT YOU?

9 JUROR 7: YES.

10 THE COURT: WILL YOU BE FAIR AND
11 IMPARTIAL TO BOTH SIDES?

12 JUROR 7: YES.

13 THE COURT: ALL RIGHT. I KNOW WE'RE
14 ASKING YOU TO DO SOMETHING THAT'S DIFFICULT, NOT
15 LOOKING AT ANY OF THIS, BUT I'M GOING TO MAKE THIS
16 OFFER TO YOU, AND I'M GOING TO TELL ALL THE OTHER
17 JURORS WHEN THEY COME BACK, THAT WE ARE GOING TO
18 COLLATE ALL OF THE ARTICLES ON THIS CASE AND WHEN
19 YOU ARE COMPLETELY DONE WITH YOUR ROLE AS A JUROR,
20 WE'LL GIVE YOU A FULL COMPILATION.

21 SO I DON'T WANT YOU TO FEEL LIKE YOU'RE
22 BEING LEFT OUT, THAT THERE'S SOMETHING EXCITING
23 ABOUT WHAT'S GOING ON THAT YOU DON'T KNOW ABOUT.
24 AT THE VERY END OF THIS CASE, YOU'RE GOING TO GET
25 IT ALL. OKAY?

1 SO I'M GOING TO MAKE THAT OFFER TO ALL
2 THE OTHER JURORS, SO DON'T FEEL LIKE YOU'RE BEING
3 LEFT OUT AT ALL. WE'RE GOING TO COMPILE EVERYTHING
4 FOR YOU AND WE'RE GOING TO GIVE IT TO YOU AT THE
5 END. SO YOU'LL BE ABLE TO LEARN EVERYTHING AT THE
6 END, BUT WE JUST NEED YOU TO SHUT OFF ANY OTHER
7 COMMENTS, READING, OR HEARING ABOUT THE CASE.

8 CAN YOU DO THAT?

9 JUROR 7: YES.

10 THE COURT: OKAY. ALL RIGHT. THANK YOU.

11 (WHEREUPON, THE FOLLOWING PROCEEDINGS
12 WERE HELD IN THE PRESENCE OF JUROR NUMBER 5:)

13 THE COURT: TAKE A SEAT ANYWHERE, PLEASE.

14 ALL RIGHT. THIS IS JUROR NUMBER 5.

15 WELL, WELCOME BACK.

16 JUROR 5: THANKS.

17 THE COURT: AND GOOD MORNING.

18 SINCE WE WERE LAST HERE ON TUESDAY
19 AFTERNOON, DID YOU READ OR HEAR ANYTHING ABOUT THIS
20 CASE?

21 JUROR 5: NO.

22 THE COURT: WILL YOU DECIDE THIS CASE
23 BASED SOLELY ON THE EVIDENCE THAT'S ADMITTED DURING
24 THE TRIAL?

25 JUROR 5: YES.

1 THE COURT: WILL YOU APPLY THE LAW THAT I
2 INSTRUCT YOU?

3 JUROR 5: YES.

4 THE COURT: OKAY. WILL YOU BE FAIR AND
5 IMPARTIAL TO BOTH SIDES?

6 JUROR 5: YES.

7 THE COURT: ALL RIGHT. THANK YOU.

8 JUROR 5: IS THAT IT?

9 THE COURT: YES.

10 (WHEREUPON, THE FOLLOWING PROCEEDINGS
11 WERE HELD OUT OF THE PRESENCE OF THE JURY:)

12 THE COURT: I DON'T BELIEVE ANY FURTHER
13 VOIR DIRE IS NECESSARY. I'M SATISFIED THAT THIS
14 JURY IS CREDIBLE, THAT THEY'RE GOING TO BE FAIR AND
15 IMPARTIAL TO BOTH SIDES, BUT I'LL GIVE YOU HALF A
16 SECOND TO RESPOND.

17 MR. LEE: NO FURTHER VOIR DIRE FOR APPLE,
18 YOUR HONOR.

19 THE COURT: ALL RIGHT. ANY FURTHER VOIR
20 DIRE FOR SAMSUNG?

21 MR. VERHOEVEN: NO, YOUR HONOR.

22 THE COURT: ALL RIGHT. OKAY. THEN LET'S
23 GO TO MR. SCHILLER, AND WHAT I HAVE AS BEING
24 EXCLUDED ARE PLAINTIFF'S EXHIBIT 126, THE PILLOW
25 ADS, AND THEN THE DEFENSE EXHIBIT 649.

1 NOW, IF YOU HAVE ANY OTHER FIGHTS ABOUT
2 MR. SCHILLER'S EXHIBITS, WE'RE GOING TO DO IT RIGHT
3 HERE IN OPEN COURT ON THE CLOCK. OKAY?

4 SO --

5 MR. PRICE: YOUR HONOR, IF I MAY?
6 BILL PRICE.

7 TWO THINGS: CAN WE HAVE THIS MOVED JUST
8 A LITTLE BIT OVER, BECAUSE I CAN'T SEE THE WITNESS?

9 THE COURT: SURE, ABSOLUTELY.

10 MR. PRICE: AND THE SECOND THING IS WHEN
11 WE MAKE ARGUMENTS IN OPEN COURT, I WOULD,
12 OBVIOUSLY, REQUEST THAT THEY'RE GOING TO BE MADE AT
13 SIDE-BAR, BECAUSE OBJECTIONS TEND TO BE VIOLATION
14 OF ORDERS, THINGS LIKE THAT, AND IF WE'RE GOING TO
15 GET INTO THAT, OBVIOUSLY I DON'T THINK THAT SHOULD
16 BE DONE IN FRONT OF THE JURY.

17 THE COURT: OKAY. UNFORTUNATELY, OUR
18 MICROPHONE HERE IS STILL BROKEN.

19 WELL, WE CAN TRY TO DO THAT ON THE SIDE.

20 MR. PRICE: MAY I APPROACH AND MOVE THIS?

21 THE COURT: PLEASE, MOVE IT HOWEVER YOU'D
22 LIKE.

23 NOW, I DON'T WANT ANY SPEAKING
24 OBJECTIONS, SO -- ALL RIGHT.

25 NOW, 9:11. WE'RE ON THE CLOCK. GO

1 AHEAD.

2 MR. MCELHINNY: EXCUSE ME, YOUR HONOR.
3 I'VE GOT TO UNDO THE -- ARE WE OKAY?

4 ALL RIGHT. WE RECALL MR. SCHILLER.

5 I DON'T HAVE A JURY HERE TO BE ON THE
6 CLOCK, YOUR HONOR.

7 THE COURT: ALL RIGHT. WE'LL BRING IN
8 THE JURY.

9 (WHEREUPON, THE FOLLOWING PROCEEDINGS
10 WERE HELD IN THE PRESENCE OF THE JURY:)

11 THE COURT: ALL RIGHT. WELCOME BACK AND
12 GOOD MORNING.

13 I DO NEED TO MAKE EVERYONE THE OFFER. WE
14 GREATLY APPRECIATE YOUR PATIENCE AND YOUR SERVICE
15 AS JURORS AND ALL OF YOUR ATTEMPTS TO PRESERVE THE
16 INTEGRITY OF THE JURY BY NOT READING OR HEARING OR
17 DISCUSSING THE CASE WITH ANYONE.

18 I JUST WANTED TO LET ALL OF YOU KNOW THAT
19 WE'RE GOING TO COMPILE ALL THE ARTICLES ABOUT THIS
20 CASE, AND WHEN YOU CONCLUDE YOUR SERVICE AS JURORS,
21 WE'RE GOING TO GIVE YOU THE WHOLE STACK, SO DON'T
22 FEEL LIKE YOU'RE MISSING OUT ON ANYTHING. WE CAN
23 SCRAPBOOK IT FOR YOU, WHATEVER YOU'D LIKE. BUT YOU
24 ARE NOT GOING TO BE LEFT OUT.

25 SO WE'RE ASKING YOU TO HOLD ON AND NOT

1 LISTEN OR READ OR TALK ABOUT THE CASE.

2 BUT THERE WILL BE TIME ENOUGH, AND WE'RE
3 GOING TO GIVE YOU EVERYTHING. OKAY? SO WE'LL
4 COLLATE IT ALL AND YOU WILL HAVE IT AT THE END OF
5 THE DAY CASE.

6 SO DON'T FEEL LIKE YOU'RE MISSING OUT ON
7 ANYTHING THAT YOU WON'T BE ABLE TO FIND OUT
8 ULTIMATELY WHAT'S GOING ON. IT'S ALL GOING TO BE
9 TOGETHER FOR YOU, OKAY?

10 WE'LL JUST GIVE IT TO YOU WHEN YOUR
11 SERVICE IS DONE, WHEN THE INTEGRITY OF THE JURY IS
12 NO LONGER AT ISSUE.

13 OKAY? ALL RIGHT. SO THAT'S WHAT WE'RE
14 GOING TO DO.

15 NOW, I'M GOING TO TELL YOU THAT WE ARE
16 GOING TO DO A SLIGHTLY DIFFERENT PROCESS. WE HAVE
17 TRIED AND TRIED OF HAVING ALL OF THE OBJECTIONS OF
18 THE PARTIES RULED ON OUTSIDE YOUR PRESENCE AND IT'S
19 GOTTEN OUT OF HAND, OKAY?

20 SOME OF THESE HAVE BEEN BRIEFED AND
21 BRIEFED SIX TIMES, AND SO WE'RE -- I'M SORRY TO
22 TELL YOU THIS, BUT WE'RE GOING TO DO IT HERE IN
23 COURT. THERE WILL BE CONVERSATIONS THAT YOU CANNOT
24 HEAR, SO WE WILL GO TO THE SIDE.

25 BUT THE GOOD NEWS IS THIS IS GOING TO BE

1 TOUCHSCREEN?

2 A THERE WERE A NUMBER OF CHALLENGES. ONE OF
3 THEM WAS EVERYTHING WE DEALT WITH BEFORE WAS BASED
4 ON A MOUSE AND A KEYBOARD, AND HERE WE WERE
5 CHANGING THE ENTIRE USER INTERFACE TO BE BASED
6 AROUND TOUCH.

7 SO WE HAD TO RETHINK EVERYTHING ABOUT HOW
8 BIG CONTROLS SHOULD BE, WHAT SHOULD HAPPEN WHEN YOU
9 TOUCH, HOW DO YOU SCROLL, HOW DO YOU KNOW WHERE YOU
10 ARE IN A DOCUMENT, HOW DO YOU KNOW IF YOU'RE AT THE
11 END OF A LIST OR THE END OF A DOCUMENT?

12 EVERY SINGLE PART OF THE ENTIRE DEVICE
13 HAD TO BE RETHOUGHT FOR DOING TOUCH. SO WE STARTED
14 WITH A BRAND NEW U/I, A BRAND NEW USER INTERFACE,
15 INSTEAD OF SOMETHING THAT WAS EXISTING. SO THAT'S
16 ONE.

17 SECOND IS WE DIDN'T WANT TO HAVE A
18 PHYSICAL KEYBOARD ON HERE. I MEAN, IF YOU LOOK
19 BACK TO, YOU KNOW, EVEN 2005 WHEN THE ENGINEERING
20 TEAM STARTED ON THIS, SMARTPHONES ALL HAD PHYSICAL
21 KEYBOARDS. YOU KNOW, THE MOST POPULAR AT THE TIME
22 PROBABLY WAS A BLACKBERRY AND IT HAD A PHYSICAL
23 KEYBOARD.

24 AND MANY PEOPLE THOUGHT WE WERE ACTUALLY
25 CRAZY TO TRY TO BUILD SOMETHING WITHOUT ANY FORM OF

1 PHYSICAL KEYBOARD, NOT A SLIDE OUT ONE, NOT ONE ON
2 THE FRONT SCREEN, NOTHING.

3 AND SO THAT WAS, IN LARGE PART, A SCIENCE
4 PROJECT FOR US TO BE ABLE TO CREATE A, AN ON SCREEN
5 TOUCH KEYBOARD THAT COULD WORK REALLY WELL AND THEN
6 GET OUT OF THE WAY WHEN YOU WEREN'T USING IT.

7 AND THEN WHEN YOU SWITCHED TO A DIFFERENT
8 LANGUAGE, YOU COULD ADD DIFFERENT KEYS.

9 SO THERE'S LOTS OF ADVANTAGES. BUT IT
10 WAS REALLY DIFFICULT.

11 ONE OTHER ONE WAS WE WANTED TO GIVE
12 PEOPLE THE ENTIRE WEB, THE ENTIRE INTERNET
13 EXPERIENCE, AND THE INTERNET IS DESIGNED FOR A MUCH
14 LARGER SCREEN. WHEN A WEB DEVELOPER IS BUILDING A
15 SITE FOR THE INTERNET, THEY DESIGN IT EXPECTING A
16 WINDOW LIKE THIS ON A COMPUTER.

17 AND, YET, WE HAVE THIS VERY, YOU KNOW,
18 COMPARED TO THAT, SMALL WINDOW, SMALL SCREEN, INTO
19 THAT WEB WORLD.

20 SO WE WANTED TO SOLVE THE PROBLEM OF
21 GIVING PEOPLE THE ENTIRE REAL INTERNET ON THIS
22 DEVICE.

23 Q WHERE THERE INTERNET BROWSERS AVAILABLE AT THE
24 TIME ON PHONES?

25 A THERE WERE. THERE WAS A TECHNOLOGY CALLED

1 WAP, W-A-P, AND IT REALLY GAVE YOU THIS BABY WEB,
2 THIS DUMBED DOWN WEB.

3 YOU CAN IMAGINE A WEB DEVELOPER WHO'S
4 BUILDING A WEBSITE, SAY THE NEW YORK TIMES. IF
5 THEY WANTED TO PROVIDE THAT FOR A MOBILE DEVICE,
6 THEY HAD TO REWRITE THE ENTIRE WEB PAGE, THE HOME
7 PAGE AND ALL OF THE OTHER PAGES, SPECIFICALLY TO
8 APPEAR IN THIS OTHER FORMAT FOR THESE DUMBED DOWN
9 BROWSERS.

10 Q WHEN YOU'RE PUTTING A WEB PAGE ON A SMALL
11 SCREEN, IS PRINT SIZE AN ISSUE?

12 A ABSOLUTELY. IF YOU'RE LOOKING AT, SAY, AGAIN,
13 THE NEW YORK TIMES, THE ENTIRE WEB PAGE AND IT'S
14 FITTING ON A THREE AND A HALF INCH SCREEN, THEN THE
15 TEXT SIZE IS FAR TOO SMALL FOR MOST THINGS TO READ
16 IT.

17 SO YOU HAVE TO BE ABLE TO ZOOM AROUND TO
18 BE ABLE TO SEE IT.

19 Q YOU HAVEN'T BEEN HERE FOR SOME OF THE
20 ARGUMENTS, BUT THERE'S BEEN SOME DISCUSSIONS OF
21 WHETHER SOME OF THE USER INTERFACE INVENTIONS THAT
22 WE ARE GOING TO BE TALKING ABOUT ARE SMALL THINGS
23 OR TRIVIAL THINGS OR LESS IMPORTANT THAN OTHER
24 STUFF.

25 FROM YOUR OWN EXPERIENCE, HOW DO YOU

1 CAPTURE THE AMOUNT OF THE INVESTMENT THAT WENT INTO
2 CREATING THESE USER INTERFACE FEATURES THAT YOU'RE
3 TALKING ABOUT?

4 MR. JOHNSON: OBJECTION, VAGUE.

5 THE COURT: OVERRULED.

6 THE WITNESS: THE INVESTMENT IN BUILDING
7 A USER INTERFACE THAT COULD WORK ON THIS SIZE
8 DEVICE WITH YOUR FINGERS AND TOUCH WAS IMMENSE. I
9 KNOW I PERSONALLY DEDICATED YEARS OF MY LIFE TO
10 THIS, AS DID HUNDREDS OF PEOPLE ON THIS TEAM.

11 AND IT WAS VERY, VERY DIFFICULT.

12 BY MR. MCELHINNY:

13 Q SIR, IF YOU WOULD OPEN YOUR BINDER, PLEASE, TO
14 EXHIBIT 163. I'M SORRY, EXHIBIT 1046.

15 WHAT IS EXHIBIT 1046, SIR?

16 A IT IS U.S. PATENT 7,864,163.

17 Q AND ARE YOU ONE OF THE NAMED INVENTORS ON THIS
18 PATENT?

19 A I AM.

20 MR. MCELHINNY: YOUR HONOR, I WOULD MOVE
21 EXHIBIT 1046.

22 THE COURT: ANY OBJECTION?

23 MR. JOHNSON: NO, YOUR HONOR.

24 THE COURT: IT'S ADMITTED.

25 ///

1 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
2 1046, HAVING BEEN PREVIOUSLY MARKED FOR
3 IDENTIFICATION, WAS ADMITTED INTO
4 EVIDENCE.)

5 BY MR. MCELHINNY:

6 Q SIR, CAN YOU TELL US, AT A GENERAL LEVEL, WHAT
7 YOUR INVENTION DEALT WITH?

8 A SO THIS INCLUDES A LOT OF THINGS. LET ME
9 DESCRIBE ONE EXAMPLE THAT'S COVERED BY THIS
10 INVENTION.

11 WHEN YOU'RE BROWSING THE WEB IN A WEB
12 BROWSER, LIKE SAFARI, THERE ARE A LOT OF DIFFERENT
13 STORIES AND SO, AGAIN, IMAGINE THE NEW YORK TIMES
14 HOME PAGE. YOU GO THERE AND THERE'S COLUMNS OF
15 STORIES, THERE'S HORIZONTAL STORIES, THERE MIGHT BE
16 AN IMAGE OF A DIFFERENT SIZE, MAYBE A MOVIE, ALL
17 THESE DIFFERENT PIECES OF CONTENT ON THE WEB PAGE.

18 AND THE ISSUE IS -- WELL, WHAT THIS TRIES
19 TO SOLVE IS TO MAKE A REALLY EASY WAY FOR YOU TO
20 NAVIGATE BETWEEN THOSE DIFFERENT STORIES, THOSE
21 DIFFERENT PIECES OF CONTENT ON THE WEB PAGE.

22 Q AND HOW -- CAN YOU TELL US HOW IT DOES THAT?

23 A YES. SO IN THAT EXAMPLE, YOU CAN JUST -- WHAT
24 WE IMPLEMENTED WAS YOU CAN DOUBLE TAP ON ONE OF THE
25 STORIES, AND JUST BY DOUBLE TAPPING ON THE STORY,

1 THE IPHONE ITSELF WILL FIGURE OUT WHICH STORY YOU
2 MEAN AND THEN ZOOM IT UP SO IT SETS THE FONT SIZE
3 RIGHT AND POSITIONS IT AS BEST IT CAN FOR YOU TO
4 READ THAT STORY.

5 AND THEN YOU CAN TAP, DOUBLE TAP ON
6 ANOTHER STORY NEXT TO IT, AND IT'LL AUTOMATICALLY
7 CHANGE THE SCALING AND MOVE THAT PART OF THE STORY
8 SO YOU CAN READ THAT ONE REALLY WELL ALSO.

9 SO IT ALLOWS YOU TO REALLY EASILY
10 NAVIGATE THROUGH A WEBSITE JUST BY TAPPING AROUND,
11 OR DOUBLE TAPPING AROUND.

12 Q CAN WE PLEASE HAVE PLAINTIFF'S DEMONSTRATIVE
13 EXHIBIT 25?

14 CAN YOU -- CAN YOU TELL US WHAT THIS IS
15 SHOWING, PLEASE?

16 A SO I THINK THIS MIGHT BE THE NEW YORK TIMES
17 WEBSITE, I CAN'T SEE THE TOP OF IT HERE, BUT IT
18 LOOKS LIKE A WEBSITE WITH A NUMBER OF NEWS STORIES.

19 CAN WE PLAY IT?

20 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN
21 OPEN COURT OFF THE RECORD.)

22 THE WITNESS: SO YOU SEE THERE, HE DOUBLE
23 TAPPED, IT FIGURED OUT THE STORY THE PERSON WANTED
24 TO READ, ZOOMED IN TO SHOW THAT STORY, SO THE STORY
25 LOOKS GREAT.

1 NOW IF HE DOUBLE TAPS SOMEWHERE ELSE, IT
2 AUTOMATICALLY ZOOMS AND MOVES THAT OTHER STORY OR
3 INFORMATION -- THIS IS SOME STOCK PRICES -- INTO
4 VIEW.

5 SO IT MAKES IT REALLY SIMPLE FOR YOU TO
6 MOVE AROUND, NAVIGATE AROUND THE WEBSITE JUST BY
7 DOUBLE TAPPING ON WHAT YOU WANT TO SEE.

8 BY MR. MCELHINNY:

9 Q HOW DID YOU COME UP WITH THIS INVENTION?

10 A I REMEMBER AS WE BUILT THE IPHONE, I SPENT A
11 LOT OF TIME USING THE EARLY PROTOTYPES MYSELF. AND
12 I WOULD USE THEM TO SEND ALL MY E-MAIL, TO BROWSE
13 THE WEB, BASICALLY ANYTHING I COULD DO ON THE
14 PROTOTYPE I WOULD DO ON THE PROTOTYPE INSTEAD OF ON
15 A COMPUTER.

16 AND SO I SPENT A LOT OF TIME BROWSING THE
17 WEB ON THE EARLY PROTOTYPE. IT WAS REALLY COOL,
18 BECAUSE YOU COULD PINCH IN TO STORIES, YOU COULD
19 USE YOUR FINGER TO SCROLL THROUGH THE STORY, MOVE
20 TO ANOTHER STORY AND YOU COULD PINCH OUT.

21 BUT I FOUND I SPENT A LOT OF TIME
22 CAREFULLY PINCHING A STORY TO BE JUST RIGHT, SO IT
23 WOULD FIT JUST RIGHT WITH THE RIGHT FONT SIZE, AND
24 THEN SCROLLING IT, AND THEN PINCHING THE NEXT STORY
25 TO BE JUST RIGHT, SITUATED EXACTLY WHERE I WANTED

1 IT ON THE PHONE.

2 AND I THOUGHT, I'M HOLDING THIS
3 INCREDIBLY POWERFUL DEVICE IN MY HAND, WHY CAN'T IT
4 FIGURE OUT WHAT I KEEP ON DOING OVER AND OVER AGAIN
5 AND JUST DO IT FOR ME?

6 AND SO I CHALLENGED THE TEAM TO ENABLE
7 YOU TO JUST DOUBLE TAP ON A STORY AND THEN HAVE IT
8 DO THE ZOOM UP AND CENTER IT, SUBSTANTIALLY IN THIS
9 CASE, CENTER IT FOR ME TO READ THAT STORY.

10 AND THE TEAM AT FIRST THOUGHT THIS IS
11 GOING TO BE SUPER HARD, MAYBE NOT POSSIBLE, AND
12 THEY WENT BACK AND WORKED REALLY HARD AND MADE IT
13 POSSIBLE.

14 Q IS THERE ANY RELATIONSHIP BETWEEN THE FEATURES
15 THAT WE'RE SHOWING AND THE ACTUAL STRUCTURE OF THE
16 WEB PAGE ITSELF?

17 A YES. THE WEB PAGE, BY ITS NATURE, IS -- IT'S
18 AN ELECTRONIC DOCUMENT, THE WEB PAGE IS, AND WEB
19 PAGES ARE GENERALLY MADE WITH THIS LANGUAGE CALLED
20 HTML, AND HTML DEFINES PIECES OF STRUCTURE.

21 AND SO WHAT WE IMPLEMENTED WAS WHEN THE
22 USER DOUBLE TAPS ON AN AREA, IT FIGURES OUT THE
23 PIECE OF STRUCTURE THAT IS DEFINED BY THE HTML AND
24 DEFINED BY THE APPEARANCE ON THE SCREEN, DETERMINES
25 THE SORT OF BOX OF STRUCTURE YOU CARE ABOUT, AND

1 THAT'S THE ONE THAT IT ZOOMS UP FOR YOU.

2 Q PHYSICALLY, HOW IS THIS FEATURE IMPLEMENTED?
3 HOW DO YOU PUT IT INTO THE PHONE SYSTEM? IS IT A
4 SOFTWARE STRUCTURE?

5 A IT IS -- THE WHOLE THING IS A PIECE OF
6 SOFTWARE. IT'S BUILT RIGHT INTO THE OS, AND BUILT
7 INTO A NUMBER OF PLACES IN THE OS.

8 SO YOU CAN USE IT, YOU KNOW, IN THIS
9 EXAMPLE IN A BROWSER. YOU CAN USE IT IN MAIL, SAY
10 YOU RECEIVE DOCUMENTS.

11 YOU CAN DO IT, I THINK, TO PREVIEW OTHER
12 SORTS OF DOCUMENTS, LIKE PDF'S.

13 SO IT'S SORT OF BUILT THROUGHOUT THE OS
14 TO NAVIGATE THROUGH STRUCTURED DOCUMENTS.

15 Q ARE THERE ANY CHALLENGES TO CODING OR PUTTING
16 THIS FEATURE INTO SOFTWARE?

17 A YEAH, THERE WERE.

18 UNDERSTANDING THAT STRUCTURE AND, IN
19 FACT, THE STRUCTURE THAT THE USER CARES ABOUT,
20 THAT'S THE CHALLENGE. THAT'S A LOT OF THE
21 CHALLENGE.

22 YOU CAN IMAGINE A STORY ON THE WEBSITE
23 WHERE THE FIRST LETTER OF THE FIRST WORD OF A STORY
24 IS A BIG CAPITAL LETTER, A GIANT LETTER, AND THE
25 REST OF THE STORY IS SMALLER.

1 WHEN YOU DOUBLE TAP AROUND THAT FIRST
2 LETTER, THE USER PROBABLY DOESN'T MEAN TO ZOOM INTO
3 ONE LETTER. THEY PROBABLY MEAN TO ZOOM INTO THE
4 COLUMN OF THAT STORY.

5 SO THERE WAS A LOT OF WORK TO FIGURE OUT
6 WHAT WAS THE CORRECT STRUCTURE AND THE CORRECT BOX
7 THAT THE USER CARED ABOUT AND ZOOM UP THAT CORRECT
8 ONE.

9 Q IS IT THE GOAL HERE TO MOVE EACH THING THAT
10 THE PERSON WANTS INTO THE EXACT CENTER OF THE
11 SCREEN?

12 MR. JOHNSON: OBJECTION. LEADING.

13 THE COURT: SUSTAINED.

14 BY MR. MCELHINNY:

15 Q CAN YOU TELL US WHETHER OR NOT IT IS THE GOAL
16 OF THIS TO MOVE THE BOX DIRECTLY INTO THE CENTER OF
17 THE STRUCTURE?

18 A SO THE GOAL IS TO -- WE CALL IT SUBSTANTIALLY
19 CENTER IT, BUT THE GOAL IS TO MOVE IT TO THE BEST
20 VIEWING PLACE FOR YOU.

21 IF YOU HAVE A PICTURE WHICH IS SURROUNDED
22 BY A LOT OF OTHER TEXT OR PICTURES AND THAT PICTURE
23 IS IN THE CENTER, WHEN YOU DOUBLE TAP ON THAT
24 PICTURE, IT'LL LIKELY END UP EXACTLY CENTERED ON
25 THE PHONE.

1 BUT IF YOU HAVE A, A COLUMN OF
2 INFORMATION, LET'S SAY IT'S A COLUMN OF FIRST NAMES
3 AND THEY'RE VERY SHORT NAMES AND IT'S ON THE VERY
4 LEFT-HAND SIDE OF A WEB PAGE, IF YOU DOUBLE TAP ON
5 THAT COLUMN, IT WOULD BE FOOLISH TO CENTER THAT
6 COLUMN IN THE MIDDLE OF THE PHONE BECAUSE YOU LEAVE
7 ALL THIS EMPTY SPACE BEYOND IT TO THE LEFT. YOU'RE
8 JUST WASTING SPACE.

9 YOU CAN STILL PERFECTLY READ THOSE NAMES
10 LINED UP ON THE EDGE OF THE PHONE AND SEE MORE OF
11 THE WEB PAGE TO THE RIGHT.

12 SO WE TALKED ABOUT IT AS BEING
13 SUBSTANTIALLY CENTERED, MEANING CENTER IT WHERE IT
14 MAKES SENSE, BUT DON'T GO BEYOND THE EDGE OF A
15 DOCUMENT BECAUSE THERE'S NO REASON TO DO THAT.

16 Q SIR, AS THE DEVELOPER OF ALL OF THE IOS
17 SYSTEM, DO YOU CONSIDER THIS A SIGNIFICANT FEATURE
18 IN THE IPHONE?

19 A ABSOLUTELY.

20 Q AND WHAT IS THE SIGNIFICANCE OF IT?

21 A I REMEMBER WHAT IT WAS LIKE TO USE BEFORE WE
22 HAD THIS, WHILE WE WERE DEVELOPING IT, AND AFTER WE
23 IMPLEMENTED THE FEATURE, AND IT DRAMATICALLY
24 CHANGED HOW I USED THE WEB. FOR ME PERSONALLY, IT
25 ENABLED ME TO BROWSE THE WEB MUCH MORE QUICKLY,

1 MUCH MORE FLUIDLY, AND I WOULD THINK TO GO AND
2 BROWSE CERTAIN WEBSITES ON MY PHONE WHERE, BEFORE,
3 I MIGHT HAVE THOUGHT I HAVE TO GO TO A COMPUTER FOR
4 THAT.

5 AND WE KNOW FROM OUR USERS THAT BROWSING
6 THE WEB IS ONE OF THE MORE POPULAR THINGS THEY DO
7 ON OUR IPHONES, AND ESPECIALLY ON OUR IPADS.

8 AND SO THIS, I THINK, ENABLES YOU TO HAVE
9 A, A DRAMATICALLY BETTER EXPERIENCE BROWSING THE
10 WEB ON OUR DEVICES.

11 Q SIR, WAS THE FEATURE THAT'S COVERED BY THIS
12 PATENT, YOUR INVENTION, WAS IT EVER THE SUBJECT OF
13 A SPECIFIC AD THAT APPLE DID FOR ITS PRODUCTS?

14 A YES. WE MADE A TELEVISION AD SPECIFICALLY TO
15 HIGHLIGHT THIS.

16 MR. MCELHINNY: YOUR HONOR, AT THIS POINT
17 I WOULD LIKE TO SHOW THAT AD, WHICH IS PART OF
18 PLAINTIFF'S EXHIBIT 12, WHICH IS IN EVIDENCE.

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

20 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN
21 OPEN COURT OFF THE RECORD.)

22 MR. MCELHINNY: THANK YOU, MR. FORSTALL.

23 I HAVE NO FURTHER QUESTIONS.

24 THE COURT: ALL RIGHT. THE TIME IS NOW
25 1:40.

CROSS-EXAMINATION

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BY MR. JOHNSON:

Q GOOD AFTERNOON, MR. FORSTALL.

A GOOD AFTERNOON.

Q MY NAME IS KEVIN JOHNSON. WE'VE SEEN EACH OTHER BEFORE; RIGHT?

A SEVERAL DEPOSITIONS.

Q OKAY.

SO IF I MAY APPROACH, YOUR HONOR, WE'RE GOING TO HAND OUT SOME BINDERS.

(PAUSE IN PROCEEDINGS.)

MR. JOHNSON: I THINK I'M JUST GOING TO REFER TO THE LAST ONE.

Q NOW, THE ORIGINAL IPHONE WAS INTRODUCED, MR. FORSTALL, IN JANUARY 2007; RIGHT?

A CORRECT.

Q AND LET'S GO BACK A LITTLE BIT FURTHER AND TALK ABOUT THE DEVELOPMENT OF THE IPHONE.

IN 2006, YOUR TEAM WAS CONCERNED THAT THE SPEED OF THE PROCESSOR THAT WAS GOING TO BE USED IN THE IPHONE WAS TOO SLOW COMPARED TO THE SPEED OF THE PROCESSORS USED IN OTHER SMARTPHONES, INCLUDING SAMSUNG'S SMARTPHONES; RIGHT?

A I HAD CONCERNS THAT I WANTED IT TO BE AS FAST AS POSSIBLE, YES.

1 Q AND IN FACT, YOU LOOKED AT WHAT SAMSUNG'S
2 PHONE DID AND WHAT KIND OF PROCESSOR IT HAD; RIGHT?
3 DO YOU REMEMBER DOING THAT?

4 A YES.

5 Q OKAY. AND THE IDEA THERE WAS THAT, BY LOOKING
6 AT WHAT YOUR COMPETITORS WERE DOING, POTENTIALLY,
7 THAT WAS OKAY; RIGHT?

8 A YES.

9 Q NOW, THERE WERE OTHER INSTANCES WHEN
10 EXECUTIVES AT APPLE LOOKED AT WHAT COMPETITORS WERE
11 DOING DURING THE DEVELOPMENT OF THE IPHONE; RIGHT?

12 A YES.

13 Q AND THERE WERE OTHER EXAMPLES WHEN APPLE
14 EXECUTIVES LOOKED SPECIFICALLY AT WHAT SAMSUNG WAS
15 DOING IN DEVELOPMENT OF THE IPHONE; RIGHT? DURING
16 THE DEVELOPMENT OF THE IPHONE?

17 A YES.

18 Q NOW, DO YOU RECALL LOOKING AT A SAMSUNG PHONE
19 CALLED THE SGH-E910, A BANG & OLUFSEN FASHION
20 PHONE?

21 A I DO NOT.

22 Q DO YOU REMEMBER THAT IT HAD A CLICKWHEEL-LIKE
23 CONTROL?

24 A I DO NOT.

25 Q IF I CAN DIRECT YOUR ATTENTION TO EXHIBIT,

1 DEFENDANT'S EXHIBIT 2524 THERE, PLEASE.

2 LET ME KNOW WHEN YOU'RE THERE.

3 DO YOU SEE IT?

4 A YEP.

5 Q OKAY. DO YOU SEE IN THE MIDDLE THERE'S A --
6 THERE'S AN E-MAIL FROM TONY FADELL TO STEVE JOBS,
7 JONATHAN IVE, AND YOUR NAME IS LISTED AS A
8 RECIPIENT?

9 A YES.

10 Q AND THE E-MAIL IS DATED OCTOBER 5TH, 2005. DO
11 YOU SEE THAT?

12 A YES.

13 Q AND THAT WAS OBVIOUSLY DURING THE DEVELOPMENT
14 OF THE IPHONE?

15 A YES.

16 MR. JOHNSON: YOUR HONOR, I'D ASK THAT
17 THIS EXHIBIT BE ADMITTED.

18 THE COURT: ANY OBJECTION?

19 MR. MCELHINNY: NO OBJECTION, YOUR HONOR.

20 THE COURT: IT'S ADMITTED.

21 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
22 2524, HAVING BEEN PREVIOUSLY MARKED FOR
23 IDENTIFICATION, WAS ADMITTED INTO
24 EVIDENCE.)

25 BY MR. JOHNSON:

1 Q AND DO YOU SEE THAT IN THIS EXHIBIT,
2 MR. FADELL -- BY THE WAY, MR. FADELL IS, WHAT, HE
3 WAS IN CHARGE OF HARDWARE FOR THE DEVELOPMENT OF
4 THE IPHONE?

5 A YES, MOST OF THE HARDWARE.

6 Q AND WE OBVIOUSLY KNOW WHO STEVE JOBS IS.

7 WHO'S JOHN RUBENSTEIN?

8 A TONY FADELL REPORTED TO JOHN RUBENSTEIN, I
9 BELIEVE.

10 Q SO WAS MR. RUBENSTEIN IN CHARGE OF, ULTIMATELY
11 IN CHARGE OF HARDWARE FOR THE IPHONE AT THE TIME?

12 A YES.

13 Q AND JEFF WILLIAMS IS ANOTHER SENIOR APPLE
14 EXECUTIVE; RIGHT?

15 A YES.

16 Q IS HE A MEMBER OF THE APPLE EXECUTIVE TEAM,
17 ONE OF THE TEN PEOPLE YOU TALKED ABOUT?

18 A HE IS NOW. HE WASN'T AT THE TIME. BUT HE IS
19 NOW, YES.

20 Q OKAY. AND HOW ABOUT JOHNNY IVE? JOHNNY IVE
21 IS THE LEAD INDUSTRIAL DESIGNER AT APPLE; RIGHT?

22 A YES.

23 Q AND IS HE A MEMBER OF THE EXECUTIVE TEAM?

24 A YES, HE IS.

25 Q AND DO YOU SEE THAT MR. FADELL FORWARDS

1 ULTIMATELY THIS E-MAIL ALONG TO MEMBERS WHO ARE NOW
2 ON THE EXECUTIVE TEAM AT APPLE, AND DO YOU SEE THAT
3 ULTIMATELY ABOVE THERE, STEVE JOBS FORWARDS THAT
4 E-MAIL TO MR. IVE AND SAYS, QUOTE, "THIS MAY BE OUR
5 ANSWER -- WE COULD PUT THE NUMBER PAD AROUND OUR
6 CLICKWHEEL."

7 DO YOU SEE THAT?

8 A YES.

9 Q AND DO YOU SEE THAT HE THEN, MR. JOBS, IS
10 ASKING FOR THOUGHTS FROM MR. IVE AND FROM
11 MR. ORDING ABOUT WHETHER THAT WOULD WORK OR NOT?

12 A YES.

13 Q THIS IS AN EXAMPLE OF APPLE EXECUTIVES LOOKING
14 AT THE SAMSUNG, IN THIS CASE, THE SGH-E910, FOR
15 INSPIRATION, RIGHT, DURING THE DEVELOPMENT OF THE
16 IPHONE. THAT'S WHAT MR. JOBS SAYS THERE; RIGHT?
17 "THIS MAY BE OUR ANSWER"?

18 A SO I CAN'T TELL FROM THIS WHETHER OR NOT IT
19 WAS FOR INSPIRATION. WHEN HE SAYS "THIS MAY BE OUR
20 ANSWER," I CAN'T, READING THIS ONE, SAY BECAUSE I
21 DON'T REMEMBER WHAT THIS BANG & OLUFSEN PHONE WAS,
22 WHETHER HE'S SAYING THAT THAT ONE DOES SOMETHING,
23 OR HE'S SAYING "THIS MIGHT BE OUR ANSWER, WE CAN
24 PUT THE NUMBER PAD AROUND THE CLICKWHEEL." SO I'M
25 NOT SURE HOW TO READ THIS ONE.

1 Q ALL RIGHT. LET'S LOOK AT EXHIBIT 2525,
2 PLEASE. THIS IS AGAIN ANOTHER E-MAIL FROM
3 MR. FADELL TO MR. IVE, MR. JOBS, MR. SCHILLER, WHO
4 JUST TESTIFIED, AND TO YOU; RIGHT?

5 A YES.

6 Q AND THIS IS DATED NOVEMBER 7TH, 2006?

7 A YES.

8 MR. JOHNSON: YOUR HONOR, WE ASK THAT
9 THIS BE ADMITTED AS WELL.

10 THE COURT: ANY OBJECTION?

11 MR. MCELHINNY: NO, YOUR HONOR.

12 THE COURT: IT'S ADMITTED.

13 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
14 2525, HAVING BEEN PREVIOUSLY MARKED FOR
15 IDENTIFICATION, WAS ADMITTED INTO
16 EVIDENCE.)

17 BY MR. JOHNSON:

18 Q THIS IS ANOTHER EXAMPLE OF APPLE EXECUTIVES
19 LOOKING AT ANOTHER SAMSUNG PRODUCT DURING THE
20 DEVELOPMENT OF THE IPHONE; RIGHT?

21 A YES.

22 Q AND THIS REFERENCE HERE REFERS TO WHAT'S
23 CALLED A NEW THREE-WAY FOLDABLE COMBINATION OF
24 PHONE, PERSONAL COMPUTER, AND MUSIC PLAYER.

25 DO YOU SEE THAT?

1 A YES.

2 Q DO YOU REMEMBER WHAT THIS PHONE LOOKED LIKE?

3 A I DO NOT, NO.

4 Q LET ME DIRECT YOUR ATTENTION TO EXHIBIT 2517.

5 NOW, ISN'T IT TRUE THAT APPLE EMPLOYEES
6 EVEN STARTED A COMPETITIVE ANALYSIS --

7 A HOLD ON A SECOND.

8 Q SURE.

9 A 2517. OKAY.

10 Q ARE YOU WITH ME?

11 A YES.

12 Q OKAY. SO ISN'T IT TRUE THAT APPLE EMPLOYEES
13 STARTED A COMPETITIVE ANALYSIS INITIALLY IN 2008 TO
14 DETERMINE THE AREAS THAT THE IPHONE WAS LAGGING
15 BEHIND THE COMPETITION, INCLUDING SAMSUNG IN THIS
16 EXAMPLE?

17 A NO, THAT'S NOT NECESSARILY WHAT THIS ONE
18 REFERS TO.

19 WE ARE ASKED TO BENCHMARK AGAINST THE
20 CALL PERFORMANCE OF OTHER CARRIERS, WHICH MEANS THE
21 NUMBER OF CALLS DROPPED.

22 WHEN YOU HAVE A PHONE, IT MAY DROP A CALL
23 AND THAT COULD BE DUE TO THE PHONE ITSELF, BUT IT
24 ALSO COULD BE DUE TO THE NETWORK.

25 AND SO THE LITMUS TEST THAT CARRIERS ASK

1 US TO DO IS TO TAKE CERTAIN OTHER PHONES, DRIVE
2 THESE DRIVE ROUTES WHERE WE'RE ON A PHONE CALL ON
3 MULTIPLE PHONES, OUR OWN AND OTHERS, AND SO -- AND
4 SEE WHERE IT DROPS.

5 AND IF WE DROP LESS PHONES THAN WHAT THEY
6 WOULD CONSIDER TO BE THEIR GOLDEN HANDSET, THEN THE
7 PHONE MIGHT BE GREAT AND BE DOING THE RIGHT THING
8 WITH ITS SOFTWARE, BUT THE NETWORK MIGHT HAVE A, A
9 LOW COVERAGE IN THAT AREA.

10 AND SO THIS RIGHT HERE -- AND THE PERSON
11 WHO'S RESPONSIBLE FOR SENDING THIS IS THE ONE WHO'S
12 RESPONSIBLE FOR THESE KIND OF DRIVE TESTS THEY WERE
13 REQUESTING TO COMPARE THE CALL DROP PERFORMANCE.

14 Q AND IN THIS INSTANCE, THEY WERE COMPARING THE
15 PERFORMANCE OF THE IPHONE TO EVERY MAJOR SMARTPHONE
16 VENDOR, INCLUDING SAMSUNG; RIGHT?

17 A YES.

18 Q AND IN FACT, IN THIS INSTANCE, AND THIS IS --
19 YOU SEE THAT THIS IS AN APPLE INTERNAL E-MAIL DATED
20 NOVEMBER 18TH, 2008?

21 A YES.

22 Q AND DO YOU SEE THAT TOWARDS THE END, IT REFERS
23 SPECIFICALLY TO THE FACT THAT EACH FUNCTIONAL TEAM
24 WILL NEED TO ANALYZE THE AREA THAT WE ARE LAGGING
25 IN COMPETITION?

1 A YES.

2 MR. JOHNSON: YOUR HONOR, WE HAD ASK AT
3 THIS POINT THAT EXHIBIT 2517 BE MOVED INTO
4 EVIDENCE.

5 THE COURT: ANY OBJECTION?

6 MR. MCELHINNY: NO OBJECTION, YOUR HONOR.

7 THE COURT: SO ADMITTED.

8 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
9 2517, HAVING BEEN PREVIOUSLY MARKED FOR
10 IDENTIFICATION, WAS ADMITTED INTO
11 EVIDENCE.)

12 BY MR. JOHNSON:

13 Q DO YOU SEE THAT THERE'S ALSO A REFERENCE AT
14 THE END OF THE FIRST PARAGRAPH THAT SAYS "WE'RE IN
15 THE PROCESS OF PURCHASING THESE DEVICES"? DO YOU
16 SEE THAT?

17 A YES.

18 Q AND THAT "ONCE THEY ARRIVE, WE'LL START
19 VERIFYING THEIR FEATURE SETS IN EACH AREA." RIGHT?

20 A YES.

21 NOW, THIS TEAM IS THE TEAM THAT DOES
22 BASEBAND, WHICH IS THE CELL CONNECTIVITY TO THE
23 CELL TOWERS.

24 SO WHAT THEY WOULD BE REFERRING TO IS
25 FEATURES HERE, AND EVEN IN THE PART BELOW,

1 FUNCTIONAL TEAMS, OUR FUNCTIONAL TEAMS RELATED TO
2 PROTOCOLS BETWEEN THE PHONE AND THE CELL TOWER.

3 THIS HAS NOTHING TO DO WITH USER
4 INTERFACE OR TOUCH AT ALL. THIS IS SPECIFICALLY TO
5 DO WITH MAKING PHONE CALLS.

6 Q THIS SAYS THEY'RE GOING TO BE EVALUATING THE
7 FEATURE SET IN EACH AREA; RIGHT?

8 A IT SAYS EACH AREA, AND FOR HYNENG, EACH AREA
9 WOULD MEAN HIS AREA, WHICH IS THE PROTOCOLS FOR
10 MAKING A PHONE CALL.

11 Q AND MR. HYNENG IS A SENIOR MANAGER IN THE
12 SOFTWARE? HE REPORTS ULTIMATELY AS PART OF YOUR
13 GROUP?

14 A HE'S IN THE RADIO TEAM.

15 Q BUT HE'S PART OF YOUR GROUP; RIGHT?

16 A YES.

17 Q HE'S PART OF THE 1,000 OR 2,000 PEOPLE YOU
18 MENTIONED THAT ULTIMATELY YOU HAVE SUPERVISION FOR,
19 HE'S PART OF THAT; RIGHT?

20 A YES.

21 Q ARE YOU AWARE THAT APPLE HAS DONE VERY
22 DETAILED TEAR-DOWN ANALYSES OF COMPETITORS'
23 PRODUCTS, INCLUDING SAMSUNG'S?

24 A YES.

25 Q LET ME DIRECT YOUR ATTENTION TO EXHIBIT 2519.

1 LET ME KNOW WHEN YOU HAVE THAT.

2 A GOT IT.

3 Q OKAY. THIS IS AN EXAMPLE OF ONE OF THOSE
4 TEAR-DOWNS; RIGHT? IN THIS INSTANCE, THERE'S A
5 TEAR-DOWN OF THE SAMSUNG GALAXY S; RIGHT?

6 A YES.

7 MR. JOHNSON: YOUR HONOR, WE'D MOVE 2519
8 INTO EVIDENCE.

9 MR. MCELHINNY: NO OBJECTION, YOUR HONOR.

10 THE COURT: IT'S ADMITTED.

11 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
12 2519, HAVING BEEN PREVIOUSLY MARKED FOR
13 IDENTIFICATION, WAS ADMITTED INTO
14 EVIDENCE.)

15 BY MR. JOHNSON:

16 Q AND I THINK YOU SAID, LOOKING AT THE OTHER
17 REFERENCE THAT WE JUST LOOKED AT, THAT THAT RELATED
18 TO DROPPED CALLS.

19 THIS IS A TEAR-DOWN THAT WE'RE LOOKING AT
20 NOW, 2519, THAT SPECIFICALLY REFERS TO EXAMINING
21 THE SOFTWARE FEATURES AND USER INTERFACE FOR THE
22 GALAXY S. RIGHT? DO YOU SEE ON THE SECOND PAGE AT
23 THE TOP, "EXAMINE SOFTWARE FEATURES AND U/I"?

24 A I SEE THAT. I'VE NEVER SEEN THIS BEFORE, AND
25 THIS WAS NOT DONE BY THE SOFTWARE TEAM.

1 Q BUT IF YOU THUMB THROUGH THE PAGES, IF YOU
2 LOOK, FOR EXAMPLE, AT THE PAGE THAT ENDS IN 984,
3 YOU'LL SEE THERE A REFERENCE TO THE SAMSUNG
4 GALAXY S PHONE; RIGHT?

5 A YES.

6 Q AND IT SHOWS THE TOUCH BUTTONS THAT WE SEE AT
7 THE BOTTOM?

8 A YEP.

9 Q NOW, THESE ARE DIFFERENT FROM THE SINGLE HOME
10 BUTTON THAT'S USED ON AN IPHONE OR ON THE IPAD;
11 RIGHT?

12 A YES.

13 Q AND YOU'LL SEE THAT IT ALSO REFERS TO THE
14 SAMSUNG TOUCHWIZ U/I 3.0; RIGHT?

15 A YES.

16 Q AND ANDROID 2.1 IS A REFERENCE TO THE GOOGLE
17 ANDROID OPERATING SYSTEM; RIGHT?

18 A CORRECT.

19 Q AND IF YOU GO TO THE NEXT PAGE, 985, YOU'LL
20 SEE A FURTHER TEAR-DOWN OF THE DEVICE. YOU'LL SEE
21 THE FACT THAT IT REFERS TO A, A -- THERE'S A BACK
22 COVER THAT'S REMOVED?

23 A YEP.

24 Q RIGHT? AND THE -- AND HAVE YOU SEEN -- STRIKE
25 THAT.

1 THE -- THE BATTERY IN AN IPHONE CAN'T BE
2 REMOVED, RIGHT, BY A CONSUMER?

3 A CORRECT.

4 Q OKAY. IF YOU GO TO THE NEXT PAGES, 986, 987,
5 YOU'LL SEE FURTHER DETAILED TEAR-DOWN ANALYSES,
6 RIGHT, BREAKING OUT EACH COMPONENT AND LOOKING BOTH
7 AT HARDWARE COMPONENTS AND THE ACTUAL BOARDS THAT
8 ARE USED, FOR EXAMPLE, ON 991?

9 A ON 991? WHERE IS THAT?

10 Q THE LAST THREE NUMBERS ARE 991. DO YOU SEE
11 THE LETTERS AT THE BOTTOM, PCB, THAT'S THE PRINTED
12 CIRCUIT BOARD ON THE GALAXY S?

13 A SORRY. YOU FLIPPED SEVERAL PAGES DOWN.

14 OKAY, YEAH, I SEE IT.

15 Q OKAY. AND THEN ON THE NEXT PAGE THERE'S AN
16 EVALUATION OF THE SOFTWARE FEATURES.

17 DO YOU SEE THAT?

18 A I DON'T KNOW IF I'D CALL IT AN EVALUATION OF
19 SOFTWARE FEATURES, BUT IT'S A LIST OF A FEW
20 SOFTWARE FEATURES, YES.

21 Q WELL, EARLIER IN THE DOCUMENT, WE SAW "EXAMINE
22 SOFTWARE FEATURES AND U/I." THAT'S WHAT THIS PAGE
23 AT LEAST IS REFERRING TO; RIGHT?

24 A YEAH. I GUESS I JUST DON'T -- IT SAYS SAMSUNG
25 TOUCHWIZ. IT'S DESCRIBING IT. THERE'S NO

1 EVALUATION ON THAT.

2 Q AT LEAST, FOR EXAMPLE, IN THE SOCIAL HUB, IT
3 TALKS ABOUT INTEGRATING ALL MESSAGING STREAMS INTO
4 ONE; UNDER SWIPE, IT TALKS ABOUT THE FACT THAT YOU
5 CAN TYPE UP TO 40 WORDS PER MINUTE; RIGHT?

6 A YES.

7 Q NOW, THERE'S NO SWIPE ON THE IPHONE, IS THERE?

8 A THERE IS NOT.

9 Q THERE'S NO SOCIAL HUB WIDGET ON THE IPHONE;
10 RIGHT?

11 A THERE IS NOT.

12 Q MR. FORSTALL, ARE YOU AWARE OF APPLE'S SENIOR
13 EXECUTIVES LOOKING AT SAMSUNG'S GALAXY TAB, IN THIS
14 INSTANCE A SEVEN-INCH TAB, TABLET COMPUTER, AND
15 LOOKING AT IT FOR THE PURPOSE OF EVALUATING WHETHER
16 IT MADE SENSE FOR APPLE TO MAKE A SEVEN-INCH IPAD?

17 A I DON'T KNOW IF IT WAS LOOKED AT FOR THAT
18 REASON. I DO KNOW THAT EDDIE CUE ONCE LOOKED AT,
19 USED IT FOR A LITTLE WHILE.

20 BUT I DON'T REMEMBER IF IT WAS DONE AS,
21 YOU KNOW, TO THE EXTENT, THE REASON THAT YOU SAID.
22 HE MIGHT HAVE COME TO A CONCLUSION, BUT I DON'T
23 REMEMBER HIM SAYING "I'M GOING TO LOOK AT THIS TO
24 SEE IF THIS IS SOMETHING WE SHOULD DO."

25 Q WHO'S EDDIE CUE?

1 A HE RUNS ITUNES AND A NUMBER OF THE APPS AT
2 APPLE.

3 Q OKAY. LET ME DIRECT YOUR ATTENTION TO EXHIBIT
4 2522, PLEASE. THIS IS AN E-MAIL FROM MR. CUE TO
5 YOU, AS WELL AS TO MR. SCHILLER AND TIM COOK. DO
6 YOU SEE THAT?

7 A YEAH. THERE'S SOMETHING ODD ABOUT THE
8 PRINTER, THE PRINTOUT YOU GAVE ME HERE.

9 Q THIS IS A DOCUMENT -- THIS IS AN INTERNAL --

10 A HOLD ON A SECOND. WHAT I HAVE ON HERE LOOKS
11 DIFFERENT FROM WHAT YOU'RE SHOWING ON THE SCREEN
12 HERE.

13 Q THERE MAY NOT HAVE -- IT'S THE SAME DOCUMENT.
14 IT JUST MAY NOT HAVE THE EXHIBIT?

15 A IT'S NOT JUST THAT. IT ACTUALLY SAYS, I DON'T
16 KNOW, I-G-A-D-S-A-L. IT HAS NONSENSICAL WORDS ON
17 HERE.

18 Q OKAY. LET'S LOOK AT EXHIBIT 2522 AND I'LL
19 HAND UP -- I'LL HAND YOU A SEPARATE COPY DURING THE
20 INTERIM.

21 CAN WE GET THAT PLEASE?

22 IF WE LOOK AT WHAT'S ON THE SCREEN IN
23 FRONT OF YOU, CAN YOU SEE THAT?

24 A I CAN. IT'S A LITTLE BLURRY, BUT YES.

25 (PAUSE IN PROCEEDINGS.)

1 (DISCUSSION OFF THE RECORD.)

2 THE COURT: I DON'T THINK THIS IS
3 APPROPRIATE FOR YOU ALL TO BE HAVING A
4 CONVERSATION, OKAY?

5 MR. JOHNSON: YEAH.

6 THE COURT: JUST ASK HIM.

7 BY MR. JOHNSON:

8 Q LET'S GO BACK. 2522 IN FRONT OF YOU, DO YOU
9 RECOGNIZE THAT AS AN E-MAIL FROM MR. CUE TO YOU, TO
10 MR. COOK, AND TO MR. SCHILLER?

11 A YES.

12 Q AND IT'S DATED NOVEMBER -- IT'S DATED
13 JANUARY 24TH, 2011?

14 A YES.

15 Q AND THIS IS AN APPLE INTERNAL E-MAIL; RIGHT?

16 A YES.

17 MR. JOHNSON: WE ASK THAT IT BE ADMITTED,
18 YOUR HONOR, PLEASE.

19 THE COURT: ANY OBJECTION?

20 MR. MCELHINNY: NO OBJECTION.

21 THE COURT: IT'S ADMITTED.

22 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
23 2522, HAVING BEEN PREVIOUSLY MARKED FOR
24 IDENTIFICATION, WAS ADMITTED INTO
25 EVIDENCE.)

1 BY MR. JOHNSON:

2 Q NOW, IN THIS INSTANCE, THIS IS AN EXAMPLE OF
3 AN APPLE EXECUTIVE LOOKING AT THE GALAXY TAB HERE,
4 AND HE SAYS THAT HE TENDS TO AGREE WITH MANY OF THE
5 COMMENTS BELOW, AND, QUOTE, "I BELIEVE THERE WILL
6 BE A SEVEN-INCH MARKET AND WE SHOULD DO ONE."

7 DO YOU SEE THAT?

8 A I DO.

9 Q ALL RIGHT. TO GO BACK, THERE'S NOTHING WRONG
10 WITH COMPETITORS LOOKING AT OTHER COMPETITORS'
11 PRODUCTS FOR PURPOSES OF BENCHMARKING, IS THERE?

12 A NO.

13 Q NOW, YOU ARE THE INVENTOR ON -- ONE OF THE
14 INVENTORS ON THE '163 PATENT; RIGHT?

15 A YES.

16 Q AND I THINK YOU TALKED ABOUT HOW THE WORK THAT
17 WAS DONE WITH RESPECT TO THAT WAS DONE IN SECRECY;
18 RIGHT?

19 A AS SECRET AS WE COULD MAKE IT, YES.

20 Q AS SECRET AS YOU COULD MAKE IT. OKAY.

21 SO THE WORK THAT STARTED ON THE IPHONE
22 STARTED IN ABOUT 2004; RIGHT?

23 A YEAH, 2004.

24 Q AND IT'S AFTER YOU GOT TO APPLE?

25 A IT -- YEAH. I GOT TO APPLE IN 1997 AND WE

1 STARTED, AS I SAID, THE TABLET PIECE IN 2003.

2 Q RIGHT.

3 A AND THEN MOVED TO THE IPHONE PIECE IN 2004.

4 Q OKAY. SO WITH RESPECT TO YOUR PATENT, YOU'RE
5 AWARE, SIR, THAT A CLAIM -- THE CLAIMS THAT COME AT
6 THE END OF THE PATENT ARE WHAT DEFINE THE SCOPE OF
7 THE INVENTION; RIGHT?

8 A YES.

9 Q AND YOU'RE AWARE THAT IN ORDER FOR THERE TO BE
10 INFRINGEMENT, EACH AND EVERY LIMITATION, EVERY WORD
11 THAT'S IN THOSE CLAIMS HAS TO BE FOUND IN THE
12 ACCUSED PRODUCTS?

13 A SO I'M NOT A LAWYER, SO I CAN'T EXPLAIN TO YOU
14 WHAT THE LAW IS AROUND EXACTLY EACH WORD. I DON'T
15 KNOW THAT.

16 Q RIGHT. BUT THAT'S YOUR GENERAL UNDERSTAND;
17 RIGHT?

18 A MY UNDERSTANDING IS THE CLAIMS DESCRIBE THE
19 PATENT AND INFRINGEMENT IS BASED ON THOSE CLAIMS.

20 Q IT -- YOU TALKED GENERALLY ABOUT THE SUBJECT
21 MATTER OF THE '163.

22 NOW, ARE YOU AWARE THAT IN DECIDING TO
23 ISSUE A PATENT, THE U.S. PATENT OFFICE LOOKS AT
24 WHAT OTHER INVENTIONS THAT IT CAN FIND WERE IN THE
25 FIELD PREVIOUSLY?

1 MR. MCELHINNY: OBJECTION, YOUR HONOR.
2 THIS IS BEYOND THE SCOPE AND, GIVEN THE LIMITATIONS
3 ON DIRECT, I THINK THE CROSS SHOULD BE LIMITED TO
4 THE SCOPE THAT I WAS ALLOWED TO GO INTO.

5 MR. JOHNSON: YOUR HONOR, HE TALKED ABOUT
6 THE DEVELOPMENT OF THIS AND ALL I'M TRYING TO DO IS
7 VERY BRIEFLY GO INTO A LITTLE BIT OF BACKGROUND.

8 THE COURT: YOU'RE GOING INTO HOW YOU GET
9 A PATENT, WHICH IS NOT REALLY RELEVANT.

10 I'M GOING TO SUSTAIN THE OBJECTION. GO
11 TO SOMETHING ELSE.

12 BY MR. JOHNSON:

13 Q LET ME ASK YOU, ARE YOU AWARE -- YOU'RE THE
14 INVENTOR ON THE PATENT. WERE YOU INVOLVED IN THE
15 PROSECUTION OF THE PATENT AT ALL?

16 A I DON'T REMEMBER THE PATENT LAWYERS COMING
17 BACK TO ME DURING THE PROSECUTION.

18 Q ARE YOU AWARE THAT THE CLAIMS OF THE '163
19 PATENT WERE NARROWED DURING THE PROSECUTION?

20 MR. MCELHINNY: SAME OBJECTION, YOUR
21 HONOR. THIS IS WAY BEYOND WHAT I WAS ALLOWED TO
22 ADDRESS AND WHAT HE'S ADDRESSED.

23 THE COURT: OVERRULED.

24 THE WITNESS: COULD YOU REPEAT THE
25 QUESTION?

1 BY MR. JOHNSON:

2 Q ARE YOU AWARE THAT DURING THE PROSECUTION OF
3 THE PATENT, THE CLAIMS WERE NARROWED BY APPLE?

4 A I AM NOT.

5 Q ARE YOU AWARE THAT CERTAIN PRIOR ART WAS
6 LOCATED WITH RESPECT TO THE '163 PATENT AND, AS A
7 RESULT OF THAT PRIOR ART, THE CLAIMS WERE NARROWED
8 DURING THE PROSECUTION?

9 A I WAS NOT AWARE OF THAT. I THINK YOU
10 MENTIONED THAT DURING MY DEPOSITION, BUT OTHER THAN
11 THAT, I WAS NOT AWARE OF IT.

12 Q I THINK YOU -- YOU MENTIONED ELECTRONIC
13 DOCUMENT DURING YOUR DIRECT TESTIMONY. DO YOU
14 REMEMBER TALKING ABOUT THAT?

15 MR. MCELHINNY: HE DID NOT MENTION
16 ELECTRONIC DOCUMENT, YOUR HONOR.

17 MR. JOHNSON: HE DID IN THE CONTEXT OF
18 THE NEW YORK TIMES WEB PAGE. I LISTENED VERY
19 CAREFULLY, BECAUSE THAT'S OBVIOUSLY ONE OF THE
20 ISSUES INVOLVED IN THIS CASE.

21 SO LET ME REPHRASE IT.

22 Q IN -- WHEN YOU WERE TESTIFYING ON DIRECT, YOU
23 MENTIONED THE NEW YORK TIMES WEB PAGE AS AN EXAMPLE
24 OF AN ELECTRONIC DOCUMENT THAT'S SORT OF COVERED BY
25 YOUR '163 PATENT; RIGHT?

1 Q WHAT IS THAT?

2 A IT SIMPLY -- AGAIN, THEY'RE MAIN COMPONENTS IN
3 A PHONE, AND THEY'RE NOT ALL PUT BEHIND THE GLASS,
4 IF YOU WILL, BEHIND THE DISPLAY FOR MANY REASONS.

5 SO YOU HAVE TO PUT THEM ON THE TOP AND/OR
6 ON THE BOTTOM OF THE DISPLAY, WHICH, OF COURSE,
7 MEANS THAT THERE HAS TO BE SPACE ABOVE AND BELOW
8 THIS WAY.

9 FOR INSTANCE, THE SPEAKER TYPICALLY IS
10 ABOVE THE DISPLAY. THE MICROPHONE IS TYPICALLY
11 BELOW THE DISPLAY.

12 THERE'S KEYS, WHETHER THEY'RE HARD KEYS
13 OR CAPACITIVE KEYS, THAT ARE BELOW THE DISPLAY, FOR
14 INSTANCE.

15 AND THERE'S MANY OTHER I/C COMPONENTS
16 THAT YOU EITHER WOULD CHOOSE NOT TO PUT BEHIND THE
17 DISPLAY OR YOU NECESSARILY HAVE TO PUT ABOVE OR
18 BELOW JUST FOR REASONS OF EVEN DEVICE THINNESS.

19 Q WE'VE HEARD SOME TESTIMONY ABOUT THE LOCATION
20 OF THE SPEAKER UP NEAR THE TOP. DO YOU HAVE ANY
21 UNDERSTANDING ABOUT WHY SPEAKERS TEND TO BE PUT AT
22 THE TOP OF THE DEVICE?

23 A IT'S JUST CLOSER TO THE EAR THAT WAY.

24 Q AND THEN WE'VE HEARD ABOUT THIS, THE SPACING,
25 YOU KNOW, THE METAL OR PLASTIC ALONG THE SIDE OF

1 THE SCREEN. IS THERE A TERM FOR THAT THAT'S USED
2 IN THE BUSINESS?

3 A THE TERM I'VE HEARD IS CALLED THE BLACK MASK.

4 Q AND THAT'S -- WHERE IS THAT ON THE PHONE?

5 A THAT IS KIND OF, AS YOU WERE GESTURING, ALONG
6 THE SIDES OF THE SCREEN, LET'S SAY, IN BETWEEN WHAT
7 YOU WOULD SEE AS THE EDGE OF THE SCREEN TO THE EDGE
8 OF THE SORT OF OUTER EDGE OF EITHER THE BEZEL, IF
9 THERE'S A BEZEL, OR THE FRAME IF THERE'S A UNIBODY
10 FRAME, FOR INSTANCE.

11 Q IS THERE A REASON WHY THESE PHONES ALL TEND TO
12 HAVE THESE BLACK MASKS ON EITHER SIDE OF THE
13 SCREEN?

14 A THERE IS.

15 Q AND WHAT IS THAT?

16 A AGAIN, IN MY EXPERIENCE IN THE INDUSTRY,
17 ACTUALLY PEOPLE HAVE TRIED TO GET RID OF THAT, YOU
18 KNOW, BECAUSE YOU ACTUALLY WANT -- YOU REALLY DO
19 JUST WANT THE DEVICE TO BE JUST ONE GIANT SCREEN.
20 THAT'S WHAT WE THINK CONSUMERS ULTIMATELY WILL
21 WANT.

22 BUT YOU HAVE TO HAVE THAT FOR
23 MANUFACTURABILITY REASONS, AS WELL AS QUALITY
24 REASONS. SO MANUFACTURABILITY BECAUSE YOU
25 ACTUALLY -- THERE'S NOTHING TO HOLD THE GLASS, PER

1 SE, ON TOP OF THE DEVICE.

2 AND SO WHAT ENDS UP HAPPENING IS YOU
3 ACTUALLY GLUE OR TAPE THE ACTUAL GLASS USING THOSE
4 THIN BORDERS ON TOP OF THE ACTUAL UNDERLYING
5 DISPLAY, BECAUSE THERE'S A PIECE OF GLASS AND THEN
6 UNDERNEATH THAT IS A DISPLAY AND YOU HAVE TO GLUE
7 THAT ON TOP.

8 MANUFACTURABILITY -- OR I'M SORRY.
9 QUALITY REASONS BECAUSE IF YOU WERE TO DROP A PHONE
10 ON ITS SIDE, LET'S SAY, AND THERE WERE NO, YOU
11 KNOW, DISTANCE LET'S SAY, OR NOTHING BETWEEN THE
12 EDGE OF THE DISPLAY AND THE EDGE OF THE PHONE,
13 THERE WOULD BE A VERY SIGNIFICANT IMPACT ON THE
14 DISPLAYS.

15 DISPLAYS CAN BE FRAGILE. THEY'RE
16 EXTREMELY EXPENSIVE TO REPLACE. THEY'RE ONE OF THE
17 MOST EXPENSIVE COMPONENTS ON THE DEVICE.

18 SO THAT'S WHY THAT EXISTS.

19 Q NOW, WE'VE HEARD TESTIMONY ABOUT HOW THESE
20 SCREENS ON SMARTPHONES HAVE GOTTEN LARGER AND TEND
21 TO BE RECTANGULAR AND TEND TO TAKE UP MOST OF THE
22 REAL ESTATE ON THE SURFACE OF THE PHONE.

23 DO YOU HAVE AN UNDERSTANDING ABOUT WHY
24 THAT'S HAPPENING?

25 A YES, I DO.

1 Q WHY IS THAT?

2 A WELL, TWO PARTS. SO THE SCREENS ARE
3 RECTANGULAR BECAUSE THEY'RE RECTANGULAR. THAT'S
4 HOW WE DEVELOPED TECHNOLOGY. TV'S ARE RECTANGULAR.
5 SO THAT'S KIND OF APPEARANCE.

6 IN TERMS OF WHY THE SCREEN TAKES UP THE
7 MAJORITY OF THE DEVICE, AGAIN, IT GOES TO THIS
8 DESIGN IDEAL, WHAT WE THINK CONSUMERS WANT AT THE
9 END OF THE DAY, WHAT I WOULD WANT AS A CONSUMER,
10 WHICH IS A GIANT SCREEN, THE GIANT WINDOW INTO MY
11 CONTENT AND TO MY, YOU KNOW, MOBILE WEB
12 ENVIRONMENT, THINGS LIKE THAT.

13 Q AND I THINK YOU MAY HAVE SUGGESTED THIS, BUT
14 DOES THAT HAVE SOMETHING TO DO WITH BEING ABLE TO
15 SEE MOVIES BETTER, PHOTOGRAPHS BETTER, THINGS LIKE
16 THAT?

17 A YES, IT DOES.

18 Q AND SO THESE VARIOUS FEATURES THAT YOU'VE
19 TALKED ABOUT, DID THESE TEND TO BECOME COMMON
20 ACROSS MOST ALL SMARTPHONES?

21 A I WOULD SAY THAT AS THE TECHNOLOGY BECOMES
22 AVAILABLE TO DO THESE THINGS, THAT'S WHEN YOU SEE
23 PEOPLE INTRODUCING IT INTO THE MARKET, YES.

24 Q AND CAN YOU TELL US, THESE VARIOUS FEATURES
25 WE'VE IDENTIFIED, IS IT JUST APPLE THAT DOES THIS,

1 OR JUST SAMSUNG THAT DOES THIS, OR JUST NOKIA THAT
2 DOES THIS? PRETTY MUCH IN THE SMARTPHONE BUSINESS,
3 CAN YOU TELL US WHETHER OR NOT ALL SMARTPHONE
4 MANUFACTURERS HAVE ADOPTED THIS TECHNOLOGY AS IT
5 BECAME AVAILABLE?

6 A I WOULD SAY THIS IS THE GENERAL DIRECTION THAT
7 THE INDUSTRY IS GOING, YES.

8 Q CHANGING GEARS NOW.

9 YOU WERE SHOWED SOME DOCUMENTS WHERE
10 YOU -- YOU AUTHORED A DOCUMENT. IT'S EXHIBIT 58.

11 IF WE COULD PUT UP ON THE SCREEN THE
12 FIRST PAGE OF THAT.

13 AND YOU WROTE THIS AND YOU SAID, "PLEASE
14 FIND ATTACHED UPDATED PRESENTATION RE: BEAT APPLE
15 STRATEGY UPDATE."

16 DO YOU SEE THAT THERE?

17 A I DO.

18 Q AND CAN YOU JUST -- DOES SAMSUNG WANT TO BEAT
19 APPLE?

20 A SAMSUNG ABSOLUTELY WANTS TO SELL MORE DEVICES
21 THAN APPLE, HTC, MOTOROLA, LG, EVERYBODY IN THE
22 MARKET.

23 Q DO YOU APOLOGIZE FOR THAT?

24 A I DON'T.

25 Q IN THIS SAME DOCUMENT, IF WE LOOK AT THE BACK,

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.

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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

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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

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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 THE FLAT FRONT FACE AND THE BEZEL OF AN ELECTRONIC
2 DEVICE. AS YOU CAN SEE BY THE BROKEN LINES, AGAIN,
3 IT'S NOT CLAIMING THE BODY. IT'S CLAIMING THE
4 BEZEL AND THE FRONT FACE.

5 THAT FRONT FACE IS A RECTANGULAR DESIGN
6 WITH ROUNDED CORNERS IN THE PROPORTIONS AND THE
7 SCALE, LENGTH TO WIDTH AND PROPORTIONAL RATIOS THAT
8 ARE BEING SHOWN HERE IN THE DRAWING.

9 AND IT INCLUDES A RECTANGULAR DISPLAY, AS
10 DID THE OTHER PATENT, WITH NARROW BORDERS ON EITHER
11 SIDE AND WIDER BORDERS TOP AND BOTTOM.

12 AND IT SHOWS THAT RECTANGULAR FRONT FACE
13 AREA AS NOT HAVING ANY SPECIFICATION. IT DOESN'T
14 HAVE DIAGONAL CROSS ACTION, IT DOESN'T HAVE
15 SHEETING. SO THAT FLAT FRONT SURFACE COULD BE ANY
16 COLOR. IT COULD BE TRANSPARENT. IT COULD BE
17 ANYTHING. NOTHING IS BEING SPECIFIED.

18 THE OTHER PART OF IT TO NOTICE IS IN THE
19 SIDE VIEWS THAT, AGAIN, THIS IS SPECIFYING A FRONT
20 FACE AND BEZEL THAT ARE ABSOLUTELY FLAT.

21 MS. KREVANS: YOUR HONOR, MAY I APPROACH
22 THE WITNESS AND HAND HIM SOME OF THE PHONES --

23 THE COURT: YES.

24 MS. KREVANS: -- HE HAS TO TALK ABOUT?

25 THE WITNESS: THANK YOU.

1 THE COURT: LET'S BREAK AT 10:25. OKAY?

2 THANK YOU.

3 BY MS. KREVANS:

4 Q MR. BRESSLER, I'VE HANDED YOU FOUR PHONES, THE
5 ORIGINAL IPHONE; THE 3G; THE 3GS; AND THE IPHONE 4.

6 THOSE ARE EXHIBITS JX 1000, 1001, 1002
7 AND 1003, ALL IN EVIDENCE, YOUR HONOR.

8 DID YOU STUDY THESE IPHONES FOR THIS
9 CASE?

10 A I DID.

11 Q OKAY. COULD YOU LOOK AT PX 8 IN YOUR BINDER.
12 THAT'S GOING TO BE BACK CLOSER TO THE FRONT. WHAT
13 IS PX 8, MR. BRESSLER?

14 A PX 8 IS A PHOTOGRAPHIC PRESENTATION OF ALL OF
15 THE VIEWS OF ALL OF THE PHONES THAT YOU PRESENTED
16 TO ME.

17 Q SO PX 8 SHOWS A COLLECTION OF PHOTOS OF ALL
18 THE DIFFERENT VIEWS OF THE FOUR IPHONES THAT I JUST
19 GAVE YOU, THE ORIGINAL, 3G, 3GS, AND 4?

20 A CORRECT. AND THEY'RE IN VIEWS THAT YOU MIGHT
21 SEE THEM -- SEE A DESIGN THAT IS SIMILAR TO THEM IN
22 THE PATENT.

23 Q OKAY.

24 YOUR HONOR, WE'D MOVE THE ADMISSION OF PX
25 8.

1 THE COURT: ANY OBJECTION?

2 MR. VERHOEVEN: IT'S A DEMONSTRATIVE,
3 YOUR HONOR, SO MY UNDERSTANDING IS DEMONSTRATIVES
4 SHOULDN'T BE INTRODUCED INTO EVIDENCE.

5 MS. KREVANS: YOUR HONOR, IT'S NOT A
6 DEMONSTRATIVE. IT WAS OFFERED AS AN EXHIBIT.
7 THERE WERE OBJECTIONS THAT WERE MADE PREVIOUSLY
8 THAT YOUR HONOR HAS OVERRULED.

9 THE COURT: IT'S ADMITTED.

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

14 THE COURT: GO AHEAD.

15 BY MS. KREVANS:

16 Q DID YOU REACH ANY CONCLUSIONS, MR. BRESSLER,
17 ABOUT WHETHER THE DESIGNS OF THE IPHONE ARE ANY OF
18 THE IPHONES IN FRONT OF YOU WERE THE DESIGN OF THE
19 D'677 PATENT?

20 A YES. I BELIEVE ALL OF THESE PHONES ARE
21 SUBSTANTIALLY THE SAME AS THE '677 PATENT.

22 Q OKAY. COULD WE SEE YOUR SLIDE 26.5, PLEASE,
23 MR. LEE.

24 WHAT HAVE YOU DEPICTED ON YOUR SLIDE
25 26.5?

1 A 26.5 IS EFFECTIVELY A FOUR-WAY COMPARISON, IF
2 YOU WILL, THAT SHOWS ALL OF THE FIGURES OF THE '677
3 DESIGN PATENT, AND IT SHOWS THE CORRESPONDING VIEWS
4 OF EACH OF THE ORIGINAL IPHONE, THE 3G AND 3GS AND
5 THE 4.

6 I THINK IT ILLUSTRATES FAIRLY CLEARLY
7 THAT ALL OF THEM EMBODY THE DESIGN THAT YOU SEE IN
8 THE '677 PATENT.

9 Q OKAY. LET ME ASK YOU A QUESTION ON ONE
10 SPECIFIC ASPECT OF THIS DESIGN.

11 DOES THE -- DO THE DRAWINGS IN THE D'677
12 PATENT TELL YOU WHETHER THE MATERIAL THAT'S THE
13 SURFACE OF THE FLAT FRONT FACE YOU DESCRIBED IS THE
14 SAME MATERIAL, EDGE TO EDGE, ACROSS THE WHOLE FACE?

15 A YES, IT DOES.

16 AS I MENTIONED IN MY DESCRIPTION OF THE
17 '677 PATENT, THE DIAGONAL LINE, IF YOU LOOK AT
18 THEM, I THINK I POINTED IT OUT, GO FROM ONE
19 DIAGONAL CORNER TO THE OTHER ALL THE WAY,
20 UNINTERRUPTED, ACROSS, AND THAT FRONT DIAGONAL
21 CROSS ACTION SHOWS THAT IT GOES ALL THE WAY ACROSS
22 THE FACE.

23 Q OKAY. DID YOU DO A SIMILAR ANALYSIS TO
24 DETERMINE WHETHER ANY OF THE FOUR IPHONES I GAVE
25 YOU INCORPORATE THE DESIGN OR EMBODY THE DESIGN OF

1 THE '087 PATENT?

2 A I DID.

3 Q AND IF WE COULD SEE YOUR SLIDE -- I'M SORRY.
4 WHY DON'T WE DO THIS. CAN WE SHOW FIGURE 9 FROM
5 THE '087 PATENT, MR. LEE?

6 OKAY. AND THE IPHONE NEXT TO IT.

7 WHAT ARE WE LOOKING AT IN THIS
8 COMPARISON, MR. BRESSLER?

9 A THIS IS A COMPARISON BETWEEN FIGURE 9 OF THE
10 '087 PATENT AND -- WHICH IS THE THREE-QUARTER FRONT
11 VIEW, AND A THREE-QUARTER FRONT VIEW OF WHAT
12 APPEARS, IN THIS PHOTOGRAPH, TO BE THE ORIGINAL
13 IPHONE.

14 Q OKAY. AND WHAT DID YOU CONCLUDE WITH RESPECT
15 TO THE ORIGINAL IPHONE AND THE '087 PATENT?

16 A I BELIEVE THE DESIGN OF THE FRONT FACE AND
17 BEZEL IS, IS EXACTLY THE SAME AS EMBODIED IN THIS
18 PHONE.

19 Q WHAT CONCLUSION DID YOU DRAW ABOUT WHETHER THE
20 IPHONE AND THE IPHONE 3GS EMBODY THE DESIGN OF THE
21 PATENT?

22 A I BELIEVE THEY DO AS WELL.

23 Q AND WHAT ABOUT THE IPHONE 4, AND MAYBE YOU
24 COULD HOLD THE IPHONE 4 UP FOR THE JURY, WHAT
25 CONCLUSION DID YOU DRAW ABOUT WHETHER OR NOT THE

1 IPHONE 4 EMBODIED THE DESIGN OF THE '087 PATENT?

2 A I BELIEVE THE IPHONE 4 DOES NOT EMBODY THE
3 DESIGN OF THE '087 PATENT.

4 Q AND WHY IS THAT?

5 A BECAUSE IT DOES NOT HAVE A BEZEL THAT DIRECTLY
6 SURROUNDS THE FRONT FACE. IT HAS A BAND THAT GOES
7 AROUND THE EDGE.

8 SO IT WOULD APPEAR THAT GLASS ACTUALLY
9 STANDS UP IN FRONT OF THE BAND, SO YOU DON'T REALLY
10 SEE A CLEAR BEZEL.

11 Q OKAY. ONE OTHER DETAIL ABOUT THE '087 DESIGN,
12 I KNOW WE'RE LOOKING AT ONE FIGURE HERE, BUT THE,
13 THE SHAPE OF THE -- I THINK YOU CALLED IT A LOZENGE
14 SHAPED SPEAKER SLOT AT THE TOP, IS THAT CLAIMED IN
15 THE '087 PATENT IN THE SECOND EMBODIMENT?

16 A ACTUALLY, IT'S KIND OF IN THE THIRD EMBODIMENT
17 AND IN THE SIXTH.

18 Q BUT NOT IN THE SECOND?

19 A BUT NOT IN THE SECOND.

20 Q SO THAT'S ANOTHER EMBODIMENT THAT DOES THAT?

21 A YES, IT'S IN THE PATH.

22 MS. KREVANS: OKAY. YOUR HONOR, THIS
23 WOULD BE A CONVENIENT TIME AND I THINK IT'S ABOUT
24 10:25.

25 THE COURT: ALL RIGHT. IT'S 10:27.

1 LET'S TAKE OUR BREAK.

2 I HAVE SOME ISSUES I'D LIKE TO SPEAK WITH
3 THE LAWYERS ABOUT. WE'LL TAKE A SLIGHTLY LONGER
4 BREAK THIS TIME. LET'S SAY 10:50, OKAY?

5 SO, AGAIN, PLEASE KEEP AN OPEN MIND.
6 PLEASE DON'T SPEAK WITH ANYONE ABOUT THE CASE AND
7 PLEASE DON'T DO ANY RESEARCH OR READING ABOUT THE
8 CASE. ALL RIGHT. THANK YOU.

9 WE'LL SEE YOU BACK AT 10:50.

10 (WHEREUPON, THE FOLLOWING PROCEEDINGS
11 WERE HELD OUT OF THE PRESENCE OF THE JURY:)

12 THE COURT: ALL RIGHT. YOU CAN STEP
13 DOWN.

14 THE RECORD SHOULD REFLECT THE JURORS HAVE
15 LEFT THE COURTROOM.

16 I JUST WANTED TO MAKE SURE THAT THERE
17 AREN'T ANY ISSUES WITH SOME OF THESE EXHIBITS.

18 NOW, WITH YOUR DEMONSTRATIVE 684, THAT
19 HAS THE F700 IN IT, WHICH HAS BEEN EXCLUDED. SO
20 WHY ARE YOU STILL TRYING TO GET THAT IN?

21 MR. VERHOEVEN: YOUR HONOR, I DON'T
22 BELIEVE -- I DON'T BELIEVE THE F700 HAS BEEN
23 EXCLUDED. THOSE WERE -- I THINK YOU EXCLUDED
24 INTERNAL DEVELOPMENT DOCUMENTS. THE F700 ITSELF
25 HAS NOT BEEN EXCLUDED AND, IN FACT, IS RELIED UPON

1 BY THIS WITNESS AS AN ALTERNATIVE DESIGN IN HIS
2 EXPERT REPORTS.

3 AND SO WE THINK THAT THE FACT THAT THIS
4 WITNESS HAS PROFFERED THE F700 --

5 THE COURT: ALL RIGHT. LET ME SEE, WHERE
6 IN HIS REPORT DOES HE TALK ABOUT THE F700? SHOW
7 ME. I WANT TO SEE THE ACTUAL DOCUMENTS.

8 MR. VERHOEVEN: YES, YOUR HONOR.

9 THE COURT: WELL, I HAVE HIS REPORT HERE.
10 YOU JUST GIVE ME A PAGE NUMBER, AND I CAN LOOK AT
11 IT MYSELF.

12 MS. KREVANS: YOUR HONOR, IF I MAY.

13 THE COURT: YEAH.

14 MS. KREVANS: FOR COMPLETENESS, BECAUSE
15 WE WERE NOT SURE HOW ALL THE RULES WERE GOING TO
16 COME OUT IN THE CASE, THIS WITNESS DID GIVE SOME
17 OPINIONS IN HIS REPORT ABOUT THE F700. WE DON'T
18 INTEND TO OFFER ANY TODAY.

19 THE COURT: IF IT'S IN THERE, WHY
20 SHOULDN'T IT COME IN?

21 MS. KREVANS: BECAUSE, YOUR HONOR, THE
22 F700 IS NOT AN ACCUSED PRODUCT IN THE CASE. IT IS
23 NOT THE BASIS FOR ANY DESIGN OF ANY PRODUCT WHICH
24 IS ACCUSED, AND THE THEORY OF INDEPENDENT
25 DEVELOPMENT THAT SAMSUNG HAS OFFERED SUPPOSEDLY FOR

1 THE ACCUSED PRODUCTS IN THE CASE IS BASED ON THE
2 F700 AND THAT HAS BEEN EXCLUDED.

3 SO THE ONLY REASON FOR THEM TO TRY TO USE
4 AN EXHIBIT THAT HAS THE F700 OR ANY MOCKUPS, ANY
5 DESIGNS OF THE F700 ON IT WOULD BE TO TRY TO
6 BACKDOOR GET IN THE INDEPENDENT DEVELOPMENT THEORY
7 WHICH HAS ALREADY BEEN EXCLUDED.

8 THIS IS THE CUE BALL, THE EARLY F700'S,
9 THIS WHOLE THEORY WAS NOT DISCLOSED AND IS,
10 THEREFORE, EXCLUDED.

11 MR. VERHOEVEN: I HAVE THE EXPERT REPORT,
12 YOUR HONOR, IF I CAN HAND IT UP AND JUST SHOW YOU.

13 THE COURT: PLEASE.

14 MR. VERHOEVEN: MAY I APPROACH?

15 THE COURT: YES. NOW, TELL ME WHERE
16 JUDGE GREWAL'S ORDER, I ASSUME THAT'S WHAT YOU'RE
17 REFERRING TO, WHERE IT EXCLUDED IT? I WANT TO SEE
18 THE ACTUAL DOCUMENT. I'M NOT GOING TO RELY ON
19 REPRESENTATIONS ANY MORE FROM EITHER SIDE.

20 THE COURT: OKAY. THIS IS PAGES 138 AND
21 139 IN THE REBUTTAL EXPERT REPORT OF PETER
22 BRESSLER.

23 MS. KREVANS: SO THE REBUTTAL EXPERT
24 REPORT IS NOT AN ISSUE IN THE TESTIMONY TODAY, YOUR
25 HONOR. THIS IS INFRINGEMENT.

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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

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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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SUSAN KARE

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RUSSELL WINER

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HAL PORET

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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 A THIS IS A THREE-QUARTER FRONT VIEW, THE TOP IS
2 A THREE-QUARTER FRONT VIEW OF THE CORNER, AND THE
3 TOP IS THE THREE-QUARTER FRONT VIEW OF THE ACTUAL
4 ELECTRONIC DEVICE ITSELF.

5 Q OKAY. SO IN THAT ONE, THAT'S THE ONE WE'RE
6 SEEING THE ACTUAL ELECTRONIC DEVICE?

7 A CORRECT.

8 Q AND COULD YOU TELL US ABOUT THAT?

9 A YES. IN MY REVIEW OF THIS PATENT, I
10 DETERMINED THAT THE ELECTRONIC DEVICE ITSELF HAD A
11 TRANSPARENT AREA OVER THE DISPLAY WHICH RAN EDGE TO
12 EDGE ALL THE WAY ACROSS THAT WAS BALANCED IN THE
13 MIDDLE.

14 BUT IF YOU LOOK AT THE EDGE, WHICH IS AN
15 INTERESTING DEPICTION BECAUSE WHAT THOSE LINES ARE
16 ACTUALLY SHOWING -- I'M SORRY. IT'S HARD TO
17 DESCRIBE THIS WITH LOOKING WITHOUT A POINTER, BUT
18 THERE ARE LINES THAT SURROUND THE CIRCUMFERENCE OF
19 THE FACE AND THERE ARE ACTUALLY TWO LINES. THERE'S
20 AN INNER LINE AND THERE'S AN OUTER LINE.

21 ONE COULD MISTAKE THOSE FOR A BEZEL.

22 Q WHAT ARE THEY, IN FACT, IN YOUR VIEW?

23 A IN MY VIEW, THOSE ARE THE POINTS WHERE THE
24 CURVED CORNER MEETS THE FLAT SURFACE AND WHEN
25 YOU'RE CREATING A DIAGRAM LIKE THIS WITH A

1 COMPUTER, THE COMPUTER SHOWS THOSE LINES AS THE
2 TANGENCY OF WHERE THE RADIUS MEETS THE FLAT
3 SURFACE, THE TANGENCY IS THAT POINT WHERE RADIUS
4 TURNS INTO THE FLAT.

5 SO IT'S SHOWING BOTH ENDS OF THE RADIUS
6 IS BASICALLY WHAT THAT'S SHOWING, AND THAT CAN BE
7 SEEN IF YOU GO BACK TO A PRIOR VIEW.

8 Q OKAY.

9 A IF YOU WILL.

10 Q WHICH VIEW DO YOU WANT TO LOOK AT?

11 A THAT ONE IS FINE.

12 THE TOP VIEW AND/OR BOTTOM VIEW, YOU CAN
13 SEE THAT THE SHAPE OF THE INSIDE BOX ACTUALLY HAS A
14 RADIUS IN THE TOP LEFT CORNER IF YOU'RE LOOKING AT
15 THE TOP ONE OR THE TOP LEFT CORNER IF YOU'RE
16 LOOKING AT THE BOTTOM ONE. SO MY READ IS THAT'S A
17 RADIANT CORNER, NOT A BEZEL.

18 Q OKAY. LET'S GO BACK TO THE OTHER VIEW.

19 LOOKING AT THE ACTUAL DEVICE THAT'S SHOWN BY ITSELF
20 IN THE BOTTOM THERE. DOES THAT HAVE A SURFACE
21 THAT'S CONTINUOUS ACROSS THE ENTIRE FACE, EDGE TO
22 EDGE EVERYWHERE?

23 A IT HAS A FLAT FRONT SURFACE, BUT IT IS NOT
24 CONTINUOUS. THERE IS A TRANSPARENT DISPLAY AREA
25 AND AN AREA ABOVE AND BELOW THAT ARE NOT INDICATED

1 TO BE TRANSPARENT; THEREFORE, ONE WOULD EXPECT THEM
2 TO BE ANYTHING, AND IT COULD BE OPAQUE.

3 Q OKAY. ONE QUESTION ABOUT THE '889 PATENT.
4 COULD WE SEE PDX 26.6, PLEASE. IS THIS ALL OF THE
5 FIGURES SHOWN IN THE DESIGN OF THE '889 PATENT,
6 MR. BRESSLER?

7 A YES.

8 Q IN YOUR VIEW, AS A DESIGNER WHAT HAS WORKED
9 WITH CONSUMERS, WOULD ALL NINE OF THESE VIEWS OF
10 THE DEVICE, BECAUSE WE'RE IGNORING THE MAN, WOULD
11 ALL NINE OF THESE VIEWS BE EQUALLY IMPORTANT IN
12 FORMING AN OVERALL VISUAL IMPRESSION?

13 MR. VERHOEVEN: OBJECTION. LEADING.

14 THE COURT: OVERRULED.

15 THE WITNESS: ALL OF THESE VIEWS ARE
16 EQUALLY IMPORTANT IN THE DESIGNER'S ANALYSIS OF THE
17 PATENT.

18 THEY ARE, HOWEVER, IN MY OPINION NOT
19 EQUALLY IMPORTANT IN FORMING THE OVERALL IMPRESSION
20 HELD BY THE ORDINARY OBSERVER.

21 IT'S -- WOULD YOU LIKE IT BRIEF OR --
22 BY MS. KREVANS:

23 Q A BRIEF EXPLANATION OF WHY PLEASE.

24 A OKAY. I BELIEVE THAT THE DEPARTURE, THE
25 DESIGN DEPARTURE THAT'S DEPICTED IN THIS PATENT,

1 WHICH IS THE CONTINUOUS FLAT, CLEAR, EDGE-TO-EDGE
2 GLASS FRONT SURFACE, AT THE TIME OF THIS PATENT,
3 WAS SUCH A VISUAL DEPARTURE, AND I BELIEVE EVEN NOW
4 IN THE PRODUCTS THAT ARE AVAILABLE IN THE MARKET,
5 THE FACT THAT THAT'S A CONTINUOUS SHEET OF GLASS
6 ACROSS THE WHOLE FRONT OF THE SURFACE I BELIEVE IS
7 SUCH A DESIGN DEPARTURE THAT IT IS THE MAJOR DRIVER
8 OF THE OVERALL IMPRESSION, SUCH THAT THE OTHER
9 VIEWS, THOUGH THEY'RE PART OF THE IMPRESSION, I
10 BELIEVE THEY ASSUME LESS IMPORTANCE IN ONE'S MIND
11 WHEN ONE'S VIEWING THAT PRODUCT.

12 MS. KREVANS: THANK YOU, MR. BRESSLER.
13 PASS THE WITNESS.

14 THE COURT: ALL RIGHT. IT'S NOW 9:27.
15 ANY RECROSS?

16 MR. VERHOEVEN: JUST A FEW MINUTES, YOUR
17 HONOR.

18 THE COURT: OKAY. GO AHEAD, PLEASE.

19 MR. VERHOEVEN: CAN WE PUT UP DX 511,
20 PLEASE.

21 **RECROSS-EXAMINATION**

22 BY MR. VERHOEVEN:

23 Q GOOD MORNING, MR. BRESSLER.

24 A GOOD MORNING.

25 Q WE JUST LOOKED AT THIS. I THINK WE LOOK ADD,

1 OR COUNSEL FOR APPLE DIRECTED TO YOU PAGE 2; IS
2 THAT RIGHT?

3 A YES.

4 Q AND CAN WE -- MR. FISHER, CAN WE PULL UP THE
5 BOTTOM IMAGE AND BLOW IT UP AND MAKE IT BIG?

6 AND IF IT'S POSSIBLE, MR. FISHER, CAN WE
7 SHOW THE '087 PATENT, JX 1041, AND PULL OUT AN
8 IMAGE FROM THERE OF THE FRONT SCREEN? ACTUALLY,
9 LET'S GO BACK ONE, PLEASE.

10 LET'S TAKE FIGURE 1 BECAUSE THAT'S
11 SLIGHTLY ORIENTED IN THE WAY THAT IT'S SLIGHTLY
12 TILTED AS WELL.

13 I DON'T KNOW IF WE CAN PUT THOSE TWO ON
14 THE SAME SCREEN. THERE WE GO.

15 NOW, YOU JUST TESTIFIED THAT IT WAS
16 IMPORTANT TO LOOK AT OTHER ANGLES BESIDES THE FRONT
17 ANGLE; CORRECT?

18 A YES.

19 Q NOW, WE CAN SEE IN THE '087 PATENT -- AND I
20 BELIEVE YOU TESTIFIED TO THIS -- BUT THERE'S DOTTED
21 LINES AROUND THE BACK OF THE PHONE.

22 A THAT'S CORRECT.

23 Q AND SO YOU'RE NOT SAYING WE SHOULD LOOK AT
24 THE, AT ANYTHING BELOW THE BEZEL IN THE '087;
25 RIGHT?

1 A THAT'S CORRECT.

2 Q ALL THOSE DOTTED LINES WE SHOULD IGNORE;
3 RIGHT?

4 A YES.

5 Q THAT'S NOT BEING CLAIMED; RIGHT?

6 A CORRECT. THEY WERE THERE ONLY FOR REFERENCE.

7 Q SO IT'S JUST THE FRONT AND THE BEZEL
8 SURROUNDING IT THAT'S BEING CLAIMED; RIGHT?

9 A CORRECT.

10 Q AND THAT'S WHAT WE SHOULD LOOK AT?

11 A YES.

12 Q SO IF WE LOOK AT THE DX 511, THE PRIOR ART
13 DESIGN PATENT, THE FACT THAT IT'S THICKER AND HAS A
14 DIFFERENT SHAPE ON THE DOWNWARD SIDES AND BACK IS
15 IRRELEVANT; RIGHT?

16 A THAT'S CORRECT.

17 Q OKAY. SO YOUR POINT IS JUST LOOKING AT THE
18 FRONT, IF YOU LOOK AT DX 511, THE DESIGN PATENT,
19 THE PRIOR ART DESIGN PATENT, IT'S NOT ABSOLUTELY
20 FLAT ALL THE WAY ACROSS THE FRONT; RIGHT?

21 A THAT'S CORRECT.

22 Q SO WE'RE TALKING ABOUT RIGHT HERE
23 (INDICATING), RIGHT?

24 A AND BELOW.

25 Q THE TOP AND BOTTOM THERE, RIGHT?

1 ALERT AND AWAKE. ANYONE NEED ANY CAFFEINE?

2 WE'VE GOT CAFFEINATED DRINKS IN THE
3 REFRIGERATOR. WE'RE NOT SUPPOSED TO DRINK THEM,
4 BUT I'M OKAY IF YOU NEED ONE. ANYBODY? NO. OKAY.
5 GO AHEAD.

6 BY MS. KREVANS:

7 Q LET ME STRIKE THAT AND ASK A NEW QUESTIONS SO
8 YOU HAVE IT IN MIND.

9 IS THIS CLAIM LIMITED TO ANY PARTICULAR
10 KIND OF GRAPHICAL USER INTERFACE FOR A DISPLAY
11 SCREEN?

12 A IT DOESN'T SAY. IT SAYS ORNAMENTAL DESIGN FOR
13 A DISPLAY SCREEN.

14 Q OKAY. UNDERNEATH THE CLAIM WHERE IT SAYS "AS
15 SHOWN AND DESCRIBED," IT HAS A LIST OF FIGURES.

16 DID YOU REVIEW THE FIGURES IN THIS
17 PATENT?

18 A YES.

19 Q OKAY. COULD WE LOOK AT FIGURE 1 OF THE
20 PATENT, THOMAS?

21 IS FIGURE 1A -- WELL, WHAT ARE WE SEEING
22 ON THE SCREEN HERE, DR. KARE?

23 A FIGURE 1 IS THE IMAGE THAT IS THE D'305
24 PATENT. THAT'S THE GRAPHICAL USER INTERFACE
25 ORNAMENTAL DESIGN.

1 Q OKAY. WE JUST SAW ON THE SCREEN BOTH A BLACK
2 AND WHITE AND A COLOR VERSION OF FIGURE 1. ARE
3 BOTH OF THOSE IN THE PATENT?

4 A YES.

5 Q OKAY. LOOKING AT THE COLOR VERSION OF FIGURE
6 1, COULD YOU EXPLAIN TO THE JURY WHAT ARE THE
7 FEATURES IN FIGURE 1 THAT CONTRIBUTE TO THE OVERALL
8 VISUAL IMPRESSION IT CREATES?

9 A YES. WE'RE LOOKING AT THE RECTANGULAR AREA
10 THAT'S WITHIN THE DOTTED LINE THAT GOES AROUND THE
11 OUTSIDE.

12 AND I SEE THERE'S A REGULAR GRID OF ICONS
13 THAT ARE SQUARE WITH ROUNDED CORNERS, THEY'RE ABOUT
14 THE SAME DISTANCE APART, THEY'RE COLORFUL, THERE'S
15 A MIX OF DESIGN STYLES, THERE'S A LABEL UNDERNEATH
16 EACH ICON THAT'S UPPER AND LOWER CASE, SANS SERIF,
17 LIGHT AGAINST THE DARK BACKGROUND.

18 AND AT THE BOTTOM OF THE SCREEN THERE ARE
19 FOUR ICONS AND THERE'S A GRAPHIC BEHIND THEM THAT
20 SERVES TO SEPARATE THEM FROM THE ROWS AND COLUMNS
21 OF ICONS ABOVE.

22 Q AND IN THIS DESIGN, WHAT IS THE GRAPHIC THAT
23 IS BEHIND THE BOTTOM FOUR ICONS THAT SERVES, AS YOU
24 SAID, TO SEPARATE THEM?

25 A IT LOOKS LIKE A LIGHT GRAY RECTANGLE THAT

1 LOOKS A LITTLE BIT PERFORATED.

2 Q OKAY. YOU MENTIONED A MIX OF ICON STYLES.

3 CAN YOU EXPLAIN TO THE JURY WHAT YOU MEAN BY THAT?

4 A I THINK I HAVE A SLIDE.

5 Q LET'S JUST GO AHEAD AND USE THIS FIGURE.

6 A OKAY. TYPICALLY WHEN I WOULD WORK ON AN ICON
7 JOB, I MIGHT DISCUSS WITH THE CLIENT OR DEVELOP A
8 FEW STYLES AND THEN WE'D PICK A STYLE SO THAT WE
9 COULD HAVE SOME CONSISTENCY VISUALLY BETWEEN --
10 AMONG THE ICONS IN A PROJECT.

11 SO THIS IS INTERESTING BECAUSE THERE ARE
12 A FEW DIFFERENT STYLES. YOU CAN SEE THE PHONE IN
13 THE LOWER-LEFT IS VERY PLAIN COMPARED TO, SAY, THE
14 LENS OF THE CAMERA IN THE UPPER RIGHT THAT IS MUCH
15 MORE DETAILED.

16 Q HAVE YOU LOOKED AT ANY APPLE PHONES IN FORMING
17 YOUR OPINIONS IN THIS CASE?

18 A YES.

19 Q AND DID YOU -- WELL, LET'S START WITH WHAT
20 APPLE PHONES DID YOU LOOK AT?

21 A I LOOKED AT SEVERAL IPHONES.

22 Q OKAY. DID YOU DRAW ANY CONCLUSIONS AS TO
23 WHETHER ANY OF THEM HAVE A USER INTERFACE THAT USES
24 THE DESIGN OF THE D'305 PATENT?

25 A YES.

1 Q OKAY. COULD WE SEE PDX 14.6.

2 COULD YOU EXPLAIN TO THE JURY WHAT YOU'VE
3 DEPICTED ON YOUR SLIDE 14.6?

4 A ON THE LEFT IS THE D'305 PATENT THAT WE'VE
5 JUST LOOKED AT, THAT IMAGE, AND ON THE RIGHT ARE
6 SCREEN SHOTS OF THE IPHONE, THE IPHONE 3G, THE
7 IPHONE 3GS, AND THE IPHONE 4.

8 Q AND WHAT WAS THE CONCLUSION YOU DREW AS TO
9 WHETHER THESE IPHONES HAVE USER INTERFACES, ANY
10 USER INTERFACES THAT USE THE DESIGN OF THE D'305
11 PATENT?

12 A I CONCLUDED THAT THEY ALL REFLECT A COLLECTION
13 OF DESIGN FEATURES THAT IS PRESENT IN THE D'305
14 PATENT.

15 Q OKAY. IS THE BACKGROUND COLOR OF THE USER
16 INTERFACE YOU'RE SHOWING US FROM EACH OF THESE
17 IPHONES THE SAME?

18 A NO.

19 Q HOW DID THAT ENTER INTO THE CONCLUSIONS THAT
20 YOU DREW?

21 A IT'S DEFINITELY SOMETHING THAT'S DIFFERENT
22 ABOUT THE IPHONE 3GS AND THE IPHONE 4, BUT WHEN I
23 LOOKED AT THE D'305 PATENT AND I METHODICALLY
24 COMPARED THE SET OF FEATURES, THE OVERALL GRID, THE
25 ROWS OF FOUR ICONS, THE SHAPE OF THE ICONS, THE

1 SQUARE WITH ROUNDED CORNERS, THE MIX OF ICON STYLES
2 FROM VERY SYMBOLIZED TO STYLIZED TO VERY DETAILED,
3 I COULD -- THE SEPARATE LITTLE ICONS AT THE BOTTOM
4 AND THE LIGHT TYPE REVERSED OUT, I COULD SEE ALL OF
5 THAT COLLECTION OF FEATURES THAT OVERALL VISUAL
6 IMPRESSION IN ALL THE PHONES.

7 Q OKAY. WERE YOU ASKED TO OFFER AN OPINION AS
8 TO WHETHER ANY SAMSUNG PHONE HAD ANY GRAPHICAL USER
9 INTERFACE SCREENS THAT WERE USING THE -- THAT HAD A
10 DESIGN THAT WAS THE SAME AS THE DESIGN IN THE D'305
11 PATENT?

12 A YES.

13 Q OKAY. WHAT WAS THE TEST THAT YOU USED IN
14 MAKING THAT ANALYSIS?

15 A IT WAS THE SAME KIND OF METHODOICAL, VISUAL
16 ANALYSIS BECAUSE I'M SO USED TO LOOKING AT PIXELS
17 AND WHAT I CAN DO WITH THEM, THAT I LOOKED AT THE
18 GRID, HOW CLOSE ICONS WERE TO EACH OTHER
19 PROPORTIONALLY, ROUNDED CORNERS, ICON STYLE, THE
20 FAIRLY SIGNIFICANT AREA OF THE BOTTOM OF FOUR
21 CORRALLED ICONS. THOSE WERE THE KINDS OF FEATURES
22 I LOOKED AT TO DO MY VISUAL COMPARISON FROM THE
23 SCREEN TO THE D'305 ART.

24 Q OKAY. DID YOU FORM ANY CONCLUSION AS TO
25 WHETHER ANY SAMSUNG PHONE HAD A USER INTERFACE

1 DISPLAY SCREEN THAT WAS SUBSTANTIALLY SIMILAR IN
2 DESIGN TO THE D'305 DESIGN?

3 MR. VERHOEVEN: OBJECTION, YOUR HONOR.
4 NOWHERE IN THIS WITNESS'S EXPERT REPORT IS THERE
5 ANY OPINION USING THOSE WORDS, "SUBSTANTIALLY
6 SIMILAR," AND NOW THE -- COUNSEL IS ASKING HER --

7 THE COURT: I'M SORRY. CAN YOU REPEAT
8 MY -- MY SCREEN IS NOT WORKING. REPEAT THE
9 QUESTION, PLEASE.

10 MS. KREVANS: ALL RIGHT. DID YOU FORM --

11 THE COURT: I'M SORRY. I'M ASKING
12 MS. SHORTRIDGE. ARE YOU GOING TO --

13 MS. KREVANS: I'M GOING TO REPHRASE IT.
14 I MAY HAVE MISSPOKEN.

15 THE COURT: GO AHEAD.

16 MS. KREVANS: AND I DON'T REMEMBER THE
17 QUESTION MYSELF.

18 Q DID YOU FORM ANY CONCLUSIONS AS TO WHETHER
19 THERE WERE, IN THE SAMSUNG PHONES YOU LOOKED AT,
20 ANY DISPLAY SCREENS THAT HAD A DESIGN THAT WAS
21 SUBSTANTIALLY THE SAME AS THE DESIGN OF THE D'305
22 PATENT?

23 MR. VERHOEVEN: OBJECTION, YOUR HONOR.
24 THE WITNESS NOWHERE IN HER EXPERT REPORT SUBMITS AN
25 OPINION ON "SUBSTANTIAL SIMILARITY." THE WORDS

1 "SUBSTANTIAL SIMILARITY" DO NOT APPEAR.

2 MS. KREVANS: ALL RIGHT. LET ME PAUSE
3 ONE MORE TIME, YOUR HONOR, SO WE CAN SHORTCUT THIS
4 AND MOVE THIS ALONG.

5 Q DID YOU FORM ANY CONCLUSIONS, DR. KARE, ABOUT
6 WHETHER ANY SAMSUNG PHONE HAD A DISPLAY SCREEN
7 WHICH HAD A DESIGN THAT PRODUCED THE SAME OVERALL
8 VISUAL IMPRESSION AS THE D'305 PATENT?

9 A YES.

10 Q OKAY. DID YOU FORM THAT CONCLUSION AS TO
11 EVERY SAMSUNG PHONE THAT YOU LOOKED AT?

12 A NO.

13 Q COULD YOU LOOK AT PX 21 THAT'S IN THE BINDER
14 IN FRONT OF YOU?

15 MR. VERHOEVEN: YOUR HONOR, WE HAVE AN
16 OBJECTION TO THIS EXHIBIT FOR THE SAME REASONS THAT
17 CROSS-EXHIBITS WERE OBJECTED TO YESTERDAY BECAUSE
18 IT DEPICTS NOT JUST SCREEN-TO-SCREEN SHOTS. IT'S
19 THE OVERALL PHONE.

20 THE COURT: SUSTAINED.

21 MS. KREVANS: YOUR HONOR, THERE'S NO
22 COMPARISON IN THESE PICTURES. THEY'RE ALL JUST THE
23 SAMSUNG PHONES.

24 THE COURT: YOU ASKED THAT BODY STYLE NOT
25 BE INCLUDED. THAT WAS THE RECORD. YOU NEED TO

1 TAKE THAT DOWN, PLEASE. YOU ASKED FOR THE
2 OBJECTION. IT APPLIES BOTH WAYS.

3 GO AHEAD.

4 BY MS. KREVANS:

5 Q COULD WE SEE SLIDE PDX 14.7, PLEASE. WHAT IS
6 SET OUT ON SLIDE PDX 14.7, DR. KARE?

7 A IT IS THE IMAGE FROM THE D'305 PATENT NEXT TO
8 THE FIRST OF THE APPLICATION SCREENS, A PHOTO, ON
9 THE SAMSUNG FASCINATE.

10 Q WHEN YOU SAY, "THE FIRST," WHAT DO YOU MEAN?

11 A I CAN SEE FROM THE PAGE INDICATOR THAT THERE
12 ARE THREE SCREENS FULL, OR PARTIALLY FULL, OF
13 APPLICATION ICONS, AND I CAN SEE FROM THE ONE ABOVE
14 THE ICONS THAT THIS IS THE FIRST.

15 SO WHEN YOU BRING UP APPLICATION SCREENS,
16 THIS IS WHAT YOU'D SEE FIRST.

17 Q OKAY. DID YOU DRAW ANY CONCLUSION AS TO
18 WHETHER THIS PARTICULAR PHONE, THE FASCINATE, HAD
19 AN APPLICATION SCREEN FOR WHICH THE OVERALL VISUAL
20 APPEARANCE IS SUBSTANTIALLY THE SAME AS THE OVERALL
21 VISUAL APPEARANCE AS THE DESIGNS DEPICTED IN THE
22 D'305 PATENT?

23 A YES.

24 Q AND WHAT WAS YOUR CONCLUSION?

25 A MY CONCLUSION IS THAT THIS APPLICATION SCREEN

1 SHOWN ON THE RIGHT IS SUBSTANTIALLY SIMILAR TO THE
2 D'305 PATENT.

3 MR. VERHOEVEN: OBJECTION, YOUR HONOR.
4 THIS IS NOWHERE IN HER EXPERT REPORT.

5 THE COURT: SUSTAINED UNLESS YOU CAN.

6 MS. KREVANS: YOUR HONOR, ON PAGE 42 OF
7 THE EXPERT REPORT, PARAGRAPH 66 --

8 THE COURT: OKAY. GIVE ME ONE SECOND,
9 PLEASE.

10 MS. KREVANS: THIS IS A SUMMARY IN WHICH
11 THE WITNESS SETS OUT THE TEST AND HER CONCLUSIONS.

12 THE COURT: ALL RIGHT. OVERRULED.

13 BY MS. KREVANS:

14 Q I'M SORRY. DID YOU HAVE A CHANCE TO ANSWER
15 THE QUESTION, DR. KARE?

16 A UM --

17 Q I THINK YOU DID, ACTUALLY.

18 A YES. AND I WAS TALKING -- I WAS SPEAKING TO
19 OVERALL VISUAL IMPRESSION.

20 Q OKAY.

21 A THAT'S WHAT I WAS COMPARING.

22 Q COULD YOU BRIEFLY DESCRIBE FOR US WHAT LED YOU
23 TO THE CONCLUSION THAT THE APPLICATION SCREEN THAT
24 WE'RE SEEING HERE FROM THE FASCINATE HAD
25 SUBSTANTIALLY THE SAME OVERALL VISUAL IMPRESSION,

1 APPEARANCE, AS THE OVERALL VISUAL APPEARANCE OF THE
2 D'305 PATENT DESIGN?

3 A YES. I LOOKED AT THE SIMILAR -- THE
4 SIMILARITIES I SAW WERE THE REGULAR GRID, THE ROSE
5 OF FOUR ICONS, THE COLORFUL MIX OF ICONS THAT ARE
6 SQUARE WITH ROUNDED CORNERS, THE SIMILARITY OF THE
7 MIX OF ICON STYLES, LET'S SAY CLOCK TO CLOCK IS
8 REALISTIC, BUT ALSO STYLIZED BECAUSE IT'S KIND OF A
9 SIMPLE DESIGN THAT READS EASILY, THE PHONES ARE
10 BOTH THAT SIMPLE STYLE THAT LOOKS AS IF THE WHITE
11 RETRO HANDSET COULD HAVE BEEN CUT OUT OF WHITE
12 PAPER, THE MORE MODELLED KIND OF ICON STYLES THAT
13 ARE PRESENT ON BOTH THE CAMERA AND THE SUNFLOWER ON
14 THE D'305 THAT LOOK PHOTO REALISTIC, I CAN SEE THAT
15 KIND OF ICON ON THE RIGHT AS WELL.

16 AND --

17 Q CAN YOU JUST POINT OUT FOR US, BY DESCRIBING
18 THE ROW AND THE COLUMN, WHERE THE SUNFLOWER IS THAT
19 YOU'RE TALKING ABOUT ON EACH OF THESE DESIGNS?

20 A IN THE TOP ROW ON THE D'305, THE THIRD FROM
21 THE LEFT IS A KIND OF A PHOTO REALISTIC SUNFLOWER .

22 AND ON THE FASCINATE IN THE BOTTOM ROW,
23 30 FROM THE LEFT, IS A CLOSE-UP OF WHAT APPEARS TO
24 BE SUNFLOWER PETALS, AND THEY BOTH FIGURE THE
25 USER'S COLLECTION OF PHOTOS THAT THEY TOOK.

1 Q OKAY.

2 A AND, ADDITIONALLY, THEY EACH HAVE FOUR ICONS
3 AT THE BOTTOM SET OFF WITH A GRAPHIC. ON THE LEFT
4 IS THE GRAY AREA, ON THE RIGHT, THERE'S A -- IT'S A
5 SLIGHTLY LIGHTER GRAY AREA WITH A BOUNDING LINE
6 OVER THE ICONS.

7 AND THEY BOTH HAVE LIGHT COLORED MIXED
8 CASE LABELS IN A SANS SERIF FONT.

9 Q WHEN YOU SAY MIXED CASE LABELS IN SANS SERIF,
10 ARE YOU TALKING ABOUT THE TEXT UNDER THE GRAPHICS?

11 A UNDER THE GRAPHICS. SANS SERIF IS THE NAME OF
12 A FONT. IT IS, ACTUALLY, IT MEANS THAT IT'S PLAIN,
13 AND IT DOESN'T HAVE THE LITTLE HORIZONTAL LINES
14 THAT MAKE THE FONT LOOK A LITTLE BIT LIKE IT WAS
15 CARVED IN STONE. IT'S A MORE MODERN KIND OF A
16 FONT.

17 Q OKAY. CAN WE LOOK AT YOUR SLIDE 14.12. WHAT
18 DO YOU SHOW ON 14.12, DR. KARE?

19 A THIS IS ANOTHER SAMSUNG PHONE CALLED THE
20 CAPTIVATE WHERE I FOUND SIMILARLY THAT THE OVERALL
21 VISUAL IMPRESSION WAS SUBSTANTIALLY SIMILAR TO THE
22 D'305 FOR THE SAME, USING THE SAME KIND OF
23 ANALYSIS.

24 Q OKAY. WHAT ABOUT 14.13? COULD WE SEE THAT
25 ONE?

1 WHAT'S THIS, DR. KARE?

2 A THIS IS THE CONTINUUM. THIS IS ANOTHER ONE OF
3 THE GROUP OF PHONES THAT I THOUGHT WAS
4 SUBSTANTIALLY SIMILAR TO THE D'305.

5 Q OKAY. AND 14.14?

6 A THIS IS THE DROID CHARGE, WHICH I ALSO FOUND
7 TO BE SUBSTANTIALLY SIMILAR OVERALL VISUAL
8 IMPRESSION, SAME KIND OF ANALYSIS.

9 Q OKAY. 14.15?

10 A THIS IS --

11 Q WHAT PHONE IS THIS?

12 A THIS IS THE EPIC 4G, ANOTHER SAMSUNG PHONE
13 WHERE THE PATTERN OF SIMILARITIES WAS SUBSTANTIALLY
14 THE SAME.

15 Q AND WHAT WAS THE BASIS FOR YOUR CONCLUSIONS
16 ABOUT THE EPIC 4G?

17 A IT WAS THE RESULT OF THE SAME KIND OF
18 METHODICAL VISUAL ANALYSIS OF THE FEATURE SET OF
19 THE D'305.

20 Q OKAY. LET'S LOOK AT YOUR SLIDE 14.16.

21 WHAT HAVE YOU SHOWN HERE?

22 A THIS IS THE GALAXY S 4G, AND --

23 Q DID YOU DRAW CONCLUSIONS ABOUT THE GALAXY S
24 4G?

25 A YES.

1 Q WHAT WERE THEY?

2 A THAT THE OVERALL VISUAL IMPRESSION WAS
3 SUBSTANTIALLY SIMILAR TO THE DESIGN OF THE D'305
4 PATENT.

5 Q FOR THE SAME REASONS?

6 A YES.

7 Q OKAY. 14.17? THE GALAXY S I9000.

8 WHAT CONCLUSIONS DID YOU DRAW ABOUT THIS
9 DESIGN?

10 A THAT, AGAIN, THE OVERALL VISUAL IMPRESSION WAS
11 SUBSTANTIALLY THE SAME TO THE DESIGN OF THE D'305.

12 Q OKAY. 14.18, THE SAMSUNG GEM.

13 WHAT CONCLUSIONS, IF ANY, DID YOU DRAW
14 ABOUT THIS PHONE?

15 A THAT THE SAME VISUAL FEATURES IN THE D'305 ARE
16 REFLECTED IN THE GEM AND THAT THEY LOOK
17 SUBSTANTIALLY THE SAME.

18 Q OKAY. LET'S SEE 14.19. THIS IS THE SAMSUNG
19 INDULGE.

20 WHAT CONCLUSIONS DID YOU DRAW ABOUT THIS
21 DESIGN?

22 A THAT THE OVERALL VISUAL IMPRESSION IS THE SAME
23 AS THE D'305 BY THE SAME METHOD.

24 Q OKAY. 14.20, PLEASE. THIS IS THE INFUSE 4G.
25 WHAT CONCLUSIONS DID YOU DRAW ABOUT THE DESIGN OF

1 THE APPLICATION SCREEN OF THE INFUSE 4G?

2 A THAT THE OVERALL VISUAL IMPRESSION IS LIKE THE
3 DESIGN OF THE D'305 PATENT.

4 Q DID YOU APPLY THE SAME OVERALL VISUAL
5 IMPRESSION, SUBSTANTIALLY SIMILAR TEST?

6 A I, I FOUND THAT THE OVERALL VISUAL IMPRESSION
7 WAS SUBSTANTIALLY THE SAME.

8 Q OKAY. LET'S LOOK AT 14.21. THIS IS THE
9 SAMSUNG MESMERIZE. DID YOU DRAW ANY CONCLUSIONS
10 ABOUT THIS DESIGN?

11 A YES. THAT, AGAIN, THAT THE OVERALL VISUAL
12 IMPRESSION IS SUBSTANTIALLY THE SAME AS THE DESIGN
13 OF THE D'305 PATENT.

14 Q OKAY. LET'S LOOK AT 14.22, THE SAMSUNG
15 GALAXY S SHOWCASE.

16 CAN YOU DRAW ANY CONCLUSIONS ABOUT THIS
17 DESIGN?

18 A YES. THAT -- THAT THE OVERALL VISUAL
19 IMPRESSION IS SUBSTANTIALLY SIMILAR TO THE D'305
20 PATENT FIGURE ON THE LEFT.

21 Q LET ME ASK YOU A QUESTION ABOUT THE SHOWCASE.
22 DO YOU SEE AT THE TOP THERE'S A, IT'S LIKE IT'S A
23 BLUE-ISH BAR ACROSS THE TOP.

24 DID YOU TAKE THAT INTO ACCOUNT IN YOUR
25 OPINION?

1 A YES.

2 Q IS THAT PRESENT IN THE D'305?

3 A NO.

4 Q COULD YOU EXPLAIN, THEN, WHY YOU STILL
5 CONCLUDED THAT THESE TWO ARE SUBSTANTIALLY THE
6 SAME, OVERALL VISUAL IMPRESSION?

7 A WELL, I WOULD SAY THAT FEATURE, ALONG WITH A
8 FEW OTHERS OCCASIONALLY IN THE SET OF PHONES WE
9 LOOKED AT, THERE WAS ONE ROUND ICON AT THE BOTTOM,
10 OR A BLUE BAR AT THE TOP, AND THEY'RE DIFFERENT,
11 BUT I, I FELT THAT THE OVERALL IMPRESSION CAME FROM
12 THE SALIENT SET OF FEATURES THAT WAS THE
13 PREDOMINANT OVERALL VISUAL IMPRESSION THAT MOST
14 PEOPLE AREN'T GOING TO STOP AND ANALYZE, OH, THIS
15 FEATURE IS THE SAME.

16 SO I FOUND THAT DESPITE SOME MINOR
17 DIFFERENCES, I WAS LOOKING AT OVERALL VISUAL
18 IMPRESSION. I MIGHT HAVE LOOKED -- I DIDN'T MISS
19 THAT. I LOOKED AT EVERYTHING.

20 BUT I CONCLUDED THAT THE OVERALL VISUAL
21 IMPRESSION WAS SUBSTANTIALLY THE SAME.

22 Q OKAY. ANOTHER QUESTION ABOUT THE SHOWCASE.
23 DO YOU SEE THAT AT THE TOP OF THE SCREEN THERE'S
24 THREE DOTS, ONE IS A LITTLE BIGGER AND IT HAS A 1
25 AND THERE'S TWO DOTS TO THE RIGHT?

1 RIGHT?

2 A YES.

3 Q WHAT DO THEY HAVE TO DO?

4 A MOVE THE PUZZLE PIECE TO THE RIGHT TO UNLOCK
5 IT.

6 Q OKAY. NOW, WHAT IS THE CONSUMER LOOKING AT?

7 A THE HOME SCREEN OF THE SAMSUNG PHONE.

8 Q OKAY. AND SO WHAT DOES A CONSUMER NEED TO
9 DO -- THIS IS -- THIS SCREEN HERE IS NOT ACCUSED;
10 RIGHT?

11 A NO.

12 Q YOU WEREN'T EVEN ASKED TO LOOK AT THIS SCREEN;
13 RIGHT?

14 A I WOULD SAY -- I WAS NOT ASKED TO CONSIDER
15 THIS SCREEN.

16 Q OKAY. SO IT'S JUST THE APPLICATION SCREEN;
17 RIGHT?

18 A YES.

19 Q OKAY. AND REMIND US, WHAT DOES THE USER HAVE
20 TO DO -- WHAT DOES THE CONSUMER HAVE TO DO TO GET
21 TO THE APPLICATION SCREEN?

22 A TOUCH THE BLUE BUTTON ON THE LOWER RIGHT WITH
23 THE GRID OF SQUARES.

24 Q OKAY. SO IT'S ONLY AFTER ALL OF THOSE STEPS
25 THAT A CONSUMER GETS TO THE APPLICATION SCREEN.

1 FAIR?

2 A YES.

3 Q NOW, DR. KARE, WOULDN'T YOU AGREE THAT BY THE
4 TIME A CONSUMER GOES THROUGH ALL THOSE STEPS TO GET
5 TO THE APPLICATION SCREEN, THAT CONSUMER KNOWS THAT
6 THIS IS A SAMSUNG PHONE?

7 A I WAS ONLY ASKED TO CONSIDER THIS APPLICATION
8 SCREEN COMPARED TO THE APPLE HOME SCREEN.

9 Q I UNDERSTAND THAT.

10 A BECAUSE --

11 Q BUT I HAVE A DIFFERENT QUESTION FOR YOU.

12 WOULDNT YOU AGREE THAT BY THE TIME THAT
13 A CONSUMER TURNS ON THE PHONE AND GOES THROUGH
14 THOSE STEPS WE LOOKED AT, WHERE THEY SEE THE
15 SAMSUNG NAME PROMINENTLY FOR SEVERAL SECONDS, WHERE
16 THEY SEE THE GRAPHIC FOR DROID, WHERE THEY HAVE TO
17 GO PAST THE HOME SCREEN TO THE APPLICATION SCREEN,
18 BY THE TIME THEY GET TO THAT APPLICATION SCREEN,
19 WOULDN'T YOU AGREE THAT A CONSUMER KNOWS THAT
20 THEY'RE USING A SAMSUNG PHONE?

21 A I'M NOT AN EXPERT IN CONSUMER BEHAVIOR AND
22 THAT KIND OF USER EXPERIENCE.

23 I'M REALLY FOCUSSED ON GRAPHIC U/I. SO I
24 DON'T KNOW THAT I'M QUALIFIED TO ANSWER THAT.

25 Q WELL, QUALIFIED OR NOT, WOULD YOU AGREE WITH

1 ME? A CONSUMER, BY THIS POINT, GOING THROUGH THE
2 START-UP AND ALL OF THAT, SEEING ALL THAT
3 ADVERTISING, THEY KNOW THEY HAVE A SAMSUNG PHONE,
4 DON'T THEY?

5 A I JUST CAN'T SPEAK TO THAT BECAUSE I DON'T --
6 I DON'T KNOW.

7 Q YOU'RE NOT QUALIFIED?

8 A I HAVEN'T STUDIED START-UP EXPERIENCE FROM
9 PHONE TO PHONE. I -- I COMPLETELY -- I KNOW THAT
10 THIS IS THE APPLICATION SCREEN, NOT THE HOME
11 SCREEN.

12 Q BY THE TIME THAT THE CONSUMER TURNS ON THE
13 PHONE, SEES THE SAMSUNG NAME PROMINENTLY DISPLAYED,
14 SEES THE DROID ADVERTISEMENT AND ANIMATION,
15 WOULDN'T YOU AGREE THAT NO CONSUMER WOULD BE
16 CONFUSED AS TO WHICH PHONE THEY HAVE BY THAT TIME?

17 A I CAN'T AGREE BECAUSE I HAVEN'T -- I DON'T --
18 I DON'T KNOW ABOUT CONSUMER BEHAVIOR STARTING -- I
19 DON'T KNOW ABOUT THE QUESTION YOU'RE ASKING ME.
20 THAT'S OUTSIDE MY FOCUS.

21 Q IT'S OUTSIDE YOUR EXPERTISE?

22 A YES, AS A GRAPHIC U/I DESIGNER.

23 Q NOW, THERE WAS ONE SLIDE -- I'LL TURN THIS OFF
24 NOW, YOUR HONOR, IF THAT'S OKAY.

25 THE COURT: GO AHEAD, PLEASE.

1 BY MR. VERHOEVEN:

2 Q THERE'S ONE SLIDE THAT YOU FOCUSSED ON WITH
3 RESPECT TO YOUR TESTIMONY MORE THAN OTHERS WHEN YOU
4 WERE TESTIFYING ABOUT YOUR OPINIONS WITH RESPECT TO
5 THE DESIGN '305 PATENT, AND THAT WAS PDX 14.7.

6 CAN WE PUT THAT ON THE SCREEN. THIS IS A
7 SLIDE THAT COUNSEL FOR APPLE SHOWED YOU. DO YOU
8 REMEMBER THAT?

9 A YES.

10 Q AND DO YOU REMEMBER YOU SPENT MOST OF YOUR
11 TIME EXPLAINING THIS SLIDE, AND FOR THE OTHER
12 SLIDES SHE SHOWED YOU, YOU SAID SAME REASONS?

13 A YES.

14 Q SO LET'S FOCUS ON THIS SLIDE.

15 NOW, IF WE LOOK AT THE DESIGN '305 PATENT
16 COMPARED TO THE FASCINATE, DO YOU SEE IN THE DESIGN
17 '305 PATENT THE FIRST BOX IN THE UPPER LEFT SAYS
18 SMS?

19 A YES.

20 Q WHERE IS THAT ICON IN THE FASCINATE?

21 A I BELIEVE THAT THE ANALOGOUS ICON IS IN THE
22 BOTTOM ROW ON THE RIGHT, THREE FROM THE LEFT.

23 Q I HAVE A LASER POINTER, YOUR HONOR.

24 DO YOU MIND IF I HAND THIS TO THE WITNESS
25 SO SHE CAN INDICATE ON THE BIG SCREEN?

1 A GO AHEAD, PLEASE.

2 Q DO YOU KNOW HOW TO USE THESE?

3 A I'M NOT A LASER POINTER EXPERT, EITHER.

4 Q JUST PUT THIS BUTTON. DON'T POINT IT IN
5 ANYBODY'S EYES.

6 A OKAY.

7 Q SO THE SMS IS ON THE TOP LEFT, RIGHT, IN THE
8 D'305?

9 A YES.

10 Q AND WHERE IS IT IN THE FASCINATE?

11 A (INDICATING).

12 Q RIGHT DOWN HERE?

13 A I BELIEVE THAT THOSE ARE ANALOGOUS.

14 Q OKAY. SO IT'S IN A DIFFERENT PLACE; RIGHT?

15 A YES.

16 Q IN THE '305, THERE'S A DOCK OR -- WHAT WOULD
17 YOU CALL THIS BOTTOM ROW ON THE '305?

18 A YOU KNOW, IT DOESN'T REALLY SAY IN THE '305
19 BECAUSE IT'S JUST A DESIGN, ORNAMENTAL DESIGN. SO
20 I JUST HAVE BEEN CALLING IT AN AREA AT THE BOTTOM,
21 A SEPARATED AREA AT THE BOTTOM, BECAUSE IT
22 DOESN'T -- THE '305 DOESN'T TALK ABOUT
23 FUNCTIONALITY.

24 Q OKAY. WELL, IN THE D'305, THE SMS ICON IS NOT
25 IN THE BOTTOM ROW THAT'S SET OFF SEPARATELY; RIGHT?

1 A RIGHT.

2 Q BUT IN THE FASCINATE, IT IS IN THE BOTTOM ROW.
3 IS THAT BOTTOM ROW SET OFF SEPARATELY?

4 A YES.

5 Q SO YOU WOULD AGREE THAT'S A DIFFERENCE?

6 A YES.

7 Q NOW, YOU TALKED ABOUT ROUNDED RECTANGLES FOR
8 THE IPHONES. DO YOU REMEMBER THAT?

9 A YES.

10 Q AND DO YOU REMEMBER YOU TESTIFIED WITH RESPECT
11 TO ALTERNATIVE DESIGNS THAT, GEE, SAMSUNG COULD
12 HAVE USED SOMETHING BESIDES ROUNDED RECTANGLES,
13 RIGHT? THEY COULD HAVE PICKED A DIFFERENT SHAPE?

14 A YES.

15 Q WELL, THIS ICON SHEER NOT JUST A ROUNDED
16 RECTANGLE. IT'S GOT A LITTLE -- IT'S ALMOST LIKE A
17 SPEECH BOX THAT YOU SEE IN CARTOONS; RIGHT?

18 A RIGHT.

19 Q DO YOU AGREE WITH THAT?

20 A YES. I WOULD SAY IT IS A SPEECH BALLOON THAT
21 HAS, HAS ROUNDED RECTANGULAR ELEMENTS, BUT IT'S NOT
22 A SQUARE.

23 Q IT'S A DIFFERENT SHAPE? RIGHT?

24 A IT'S NOT A SQUARE. IT HAS -- IT HAS STRAIGHT
25 EDGES ON TOP AND BOTTOM, BUT IT'S NOT -- AND

1 ROUNDED CORNERS, BUT IT'S NOT A SQUARE.

2 Q AND THE D'305 PATENT SAYS SMS, BUT THE
3 FASCINATE JUST HAS A HAPPY FACE; RIGHT?

4 A YES.

5 Q IS IT YOUR TESTIMONY -- IT'S NOT YOUR
6 TESTIMONY THAT THOSE ARE SUBSTANTIALLY SIMILAR
7 ICONS, IS IT?

8 A MY TESTIMONY DIDN'T COMPARE SPECIFICALLY
9 THOSE. THEY HAVE FEATURES IN COMMON AND THEY HAVE
10 DIFFERENCES.

11 Q DR. KARE, IS IT KARE OR KARE?

12 A KARE.

13 Q KARE, THANK YOU.

14 DR. KARE, YOU'RE NOT TESTIFYING TO THIS
15 JURY THAT THIS SMS ICON IS SUBSTANTIALLY SIMILAR TO
16 THIS OTHER ICON THAT SAYS, "MESSAGES," ARE YOU?

17 A NO.

18 Q IT'S NOT, IS IT?

19 A IT HAS SOME SIMILARITIES. IT USES THE SPEECH
20 BALLOON AS A METAPHOR AND IT HAS, AS I MENTIONED,
21 THE HORIZONTAL AND VERTICAL EDGES THAT ARE STRAIGHT
22 AND IT HAS ROUNDED CORNERS. THOSE WOULD BE WHAT IT
23 HAS IN COMMON.

24 AND IT OBVIOUSLY HAS DIFFERENCES, LIKE
25 THE FACE AND THE POINT.

1 Q IT'S NOT SUBSTANTIALLY SIMILAR, IS IT?

2 A NO.

3 Q THEN IF YOU LOOK AT THE NEXT ICON, IT SAYS
4 "CALENDAR." AND YOU SEE IT'S GOT A 6, AND IT'S --
5 IT'S GOT WHITE AND A TOP BORDER THAT'S RED?

6 A YES.

7 Q AND I BELIEVE IT'S HARD TO SEE ON THE SCREEN.
8 IT SAYS WEDNESDAY IN THE BORDER?

9 A MY EYES AREN'T THAT GOOD, BUT YES.

10 Q OKAY. WHERE IS THE CALENDAR ICON IN THE
11 FASCINATE?

12 A (INDICATING).

13 Q RIGHT THERE?

14 A YES.

15 Q OKAY. SO IT'S NOT THE SECOND ICON, SECOND
16 COLUMN IN THE TOP ROW, RIGHT?

17 A RIGHT.

18 Q IT'S IN A DIFFERENT PLACE?

19 A YES.

20 Q AND IT'S A COMPLETELY DIFFERENT PICTURE, ISN'T
21 IT?

22 A YES.

23 Q THAT CALENDAR ICON IS NOT SUBSTANTIALLY
24 SIMILAR TO THE CALENDAR ICON IN THE D'305; RIGHT?

25 A NO.

1 Q YOU AGREE WITH ME?

2 A YES.

3 Q IF YOU LOOK AT THIS SECOND ROW HERE, THE LEFT
4 ICON, IT SAYS, "YOUTUBE." DO YOU SEE THAT?

5 A YES.

6 Q YOUTUBE IS A REFERENCE TO WHAT?

7 A THE D'305 DESIGN DOESN'T INCLUDE, YOU KNOW, A
8 DEFINITION OF EVERYTHING. I ASSUME IT'S THE
9 YOUTUBE.COM APPLICATION.

10 BUT --

11 Q AND WHAT COMPANY --

12 A I DON'T KNOW THAT FROM THE D'305.

13 Q DO YOU KNOW WHAT COMPANY PROVIDES YOUTUBE?

14 A I THINK GOOGLE BOUGHT THEM.

15 Q IT'S A GOOGLE ICON, ISN'T IT?

16 A I DON'T KNOW. I DON'T KNOW THE ORIGIN OF THAT
17 ICON.

18 Q CAN YOU TELL THE JURY, WHERE IS THE YOUTUBE
19 ICON IN THE FASCINATE?

20 A IN THIS APPLICATION SCREEN, I DON'T THINK
21 THERE IS ONE.

22 Q IT'S NOT THERE, IS RIGHT?

23 A CORRECT.

24 Q THEN THIS NEXT ICON, THE NEXT ROW, SECOND
25 COLUMN, IT SAYS, "STOCKS." AND IT'S GOT A TICKER

1 SYMBOL. DO YOU SEE THAT?

2 A YES.

3 Q WHERE IS THAT IN THE FASCINATE?

4 A ON THIS APPLICATION SCREEN, THERE ISN'T ONE.

5 Q IT'S NOT THERE; RIGHT?

6 A YES.

7 Q AND THEN THIS NEXT ICON, IT SAYS, "MAPS."

8 DO YOU SEE THAT?

9 A YES.

10 Q WHO PROVIDES THE MAP FUNCTIONALITY ON APPLE'S
11 PHONES?

12 A I DON'T KNOW.

13 Q YOU DON'T KNOW THAT GOOGLE PROVIDE IT IS?

14 A I DON'T KNOW.

15 Q DO YOU KNOW WHETHER OR NOT THIS IS A GOOGLE
16 ICON?

17 A I DON'T KNOW.

18 Q WHERE IS THE MAPS ICON ON THE FASCINATE?

19 A IT -- ON THIS SCREEN, I DON'T SEE ONE.

20 Q IT'S NOT THERE; RIGHT?

21 A YES.

22 Q WHAT ABOUT WEATHER? SECOND ROW, FOURTH
23 COLUMN, A PICTURE OF THE SUN AND 73 DEGREES.

24 WHERE IS THAT IN THE FASCINATE?

25 A I DON'T SEE IT ON THIS SCREEN.

1 Q IF WE GO TO THE FOURTH ROW, SECOND COLUMN, DO
2 YOU SEE THAT ICON FOR CALCULATOR?

3 A YES.

4 Q WHERE IS THE CALCULATOR ICON IN THE FASCINATE?

5 A IN THE SECOND ROW.

6 Q RIGHT THERE? SO IT'S IN A DIFFERENT ROW;
7 RIGHT?

8 A YES.

9 Q AND IF WE LOOK AT THE CALCULATOR ICON ON THE
10 D'305, IT'S GOT A GRAY BACKGROUND, GRAY-WHITE-ISH
11 BACKGROUND; RIGHT?

12 A YES.

13 Q AND IT'S GOT THREE CIRCLES, FOUR CIRCLES,
14 RIGHT?

15 A YES.

16 Q PLUS NOTICE EACH OF THE FOUR CIRCLES
17 RESPECTIVELY ARE THE PLUS, THE MINUS, THE TIMES,
18 AND THE DIVISION SYMBOLS; RIGHT?

19 A YES.

20 Q NOW, IF YOU LOOK AT THE CALCULATOR IN THE
21 FASCINATE, IT DOESN'T HAVE A WHITE-GRAY BACKGROUND,
22 DOES IT?

23 A NO.

24 Q IT HAS A YELLOW ORANGE BACKGROUND; RIGHT?

25 A YES.

1 Q AND IT DOESN'T JUST HAVE FOUR CIRCLES, DOES
2 IT?

3 A NO.

4 Q IT HAS A PICTURE OF AN ENTIRE CALCULATOR;
5 RIGHT?

6 A YES.

7 Q DR. KARE, YOU WOULD AGREE WITH ME THAT THE
8 CALCULATOR ICON IN THE FASCINATE IS NOT
9 SUBSTANTIALLY SIMILAR TO THE CALCULATOR ICON IN THE
10 D'305?

11 A YES.

12 Q AND THE NEXT ICON ON THE FOURTH ROW, THIRD
13 COLUMN, NOTES, WHERE IS THAT FOUND IN THE
14 FASCINATE?

15 A IT'S NOT ON THIS SCREEN.

16 Q IT'S NOT THERE?

17 A NO.

18 Q WHAT ABOUT THE LAST ICON THAT SAYS SETTINGS?
19 IT'S THE FOURTH COLUMN, FOURTH ROW, BOTTOM RIGHT.
20 WHERE IS THAT FOUND IN THE FASCINATE?

21 A IT'S NOT IN THIS SCREEN.

22 Q WELL, THERE'S A GEAR UP HERE. DO YOU SEE
23 THAT?

24 A I SEE THAT.

25 Q DO YOU KNOW IF THAT'S AN ICON?

1 A I KNOW THAT THAT'S A STATUS BAR, BUT I DIDN'T
2 KNOW -- I GUESS THAT COULD BE A SETTINGS ICON.

3 Q IT COULD BE.

4 YOU WOULD AGREE WITH ME THAT THAT GEAR IN
5 THE TOP-LEFT QUADRANT OF THE FASCINATE DEPICTED ON
6 PDX 14.7 IS NOT SUBSTANTIALLY SIMILAR TO THE
7 SETTINGS ICON IN THE D'305 PATENT?

8 A NO.

9 Q YOU WOULD AGREE WITH ME?

10 A YES.

11 Q OKAY. FOR THE RECORD, THEN, YOU AGREE --
12 BECAUSE YOU SAID NO AND YES, I JUST WANT TO MAKE
13 SURE --

14 A WELL, IT'S THE SAME METAPHOR, SO I HADN'T
15 REALLY THOUGHT ABOUT THAT BEFORE. AND IT'S GOT A
16 BIT OF A SIMILAR FORM FACTOR, DIFFERENT SIZE. SO
17 IT'S NOT 100 PERCENT DIFFERENT, BUT --

18 Q IS IT YOUR TESTIMONY THAT THAT TINY LITTLE
19 GEAR IS SUBSTANTIALLY SIMILAR TO THIS LARGER ICON
20 THAT'S GOT A RECTANGLE WITH A BORDER AROUND IT,
21 THREE GEARS, AND SHADING?

22 A NO.

23 Q IT'S NOT SUBSTANTIALLY SIMILAR, IS IT?

24 A NO.

25 Q YOU DID TESTIFY ABOUT A COUPLE OF THESE ICONS

1 THAT YOU WANTED TO POINT THE JURY TO.

2 ONE WAS THE PHONE ICON ON THE BOTTOM
3 LEFT, OR LET'S CALL IT THE BOTTOM -- WELL, FOR THE
4 RECORD, WHY DON'T YOU USE YOUR WORDS. HOW WOULD
5 YOU DESCRIBE THIS, THIS GRAY AREA WITH THE FOUR
6 ICONS IN THE VERY BOTTOM OF THE D'305?

7 A JUST THE SEPARATE AREA AT THE BOTTOM.

8 Q OKAY. SO I'LL JUST USE THAT TO DESCRIBE IT.
9 OKAY?

10 A UM-HUM, THANKS.

11 Q SO THE SEPARATE AREA AT THE BOTTOM HAS, IN THE
12 D'305, HAS THE FINE ICON; RIGHT?

13 A YES.

14 Q AND YOU POINT TO THE FACT THAT THE FASCINATE
15 HAS A PHONE ICON AND IT'S ALSO GREEN AND HAS A
16 PICTURE OF A PHONE; RIGHT?

17 A YES.

18 Q NOW, THAT PICTURE OF THAT PHONE, YOU HAVEN'T
19 SEEN A PHONE RECEIVER LIKE THAT IN ABOUT 25 YEARS,
20 HAVE YOU?

21 A I KNOW THAT IT WAS DESIGNED IN 1938, AND IT
22 WAS BY HENRY DREYFUS AND IT WAS USED, YOU KNOW,
23 THROUGH THE '60S, '70S.

24 BUT I --

25 Q THOSE WERE MA BELL PHONES?

1 A I THINK OF IT AS RETRO.

2 Q SO THAT'S A PICTURE OF A MA BELL PHONE

3 RECEIVER; RIGHT?

4 A I DON'T KNOW WHETHER IT'S A MA BELL PHONE, BUT

5 I KNOW THAT IT'S RETRO.

6 Q DO YOU REMEMBER IN THE OLD DAYS WHEN THERE WAS

7 PHONE BOOTHS ON THE STREETS?

8 A YES.

9 Q BEFORE CELL PHONES?

10 A YES.

11 Q AND DO YOU REMEMBER THEY HAD THAT SAME PICTURE

12 OF THE PHONE ON THE SIDE OF A PHONE BOOTH?

13 A A LOT OF THEM HAD BLUE ONES WITH A RECEIVER

14 THAT WAS VERTICAL.

15 Q AND IT'S THE SAME RECEIVER, RIGHT?

16 A SIMILAR.

17 Q IT'S THE OLD ICONIC MA BELL RECEIVER; RIGHT?

18 A IT'S, IT'S A RETRO VERSION OF A RETRO PHONE

19 RECEIVER.

20 Q THE OLD MA BELL PHONES. DO YOU REMEMBER WHEN

21 YOU GREW UP, YOU HAD TO DIAL PHONES AND YOU PICKED

22 THE RECEIVER UP, THAT'S A PICTURE OF THAT RECEIVER,

23 RIGHT?

24 A YEAH. I JUST DON'T -- I NEVER KNEW ABOUT

25 ASSOCIATING IT WITH THE TERM MA BELL, SO --

1 Q WELL, CERTAINLY APPLE DOESN'T OWN THE IMAGE
2 AFTER THAT PHONE RECEIVER, DOES IT?

3 A I DON'T KNOW.

4 Q DO YOU BELIEVE IT DOES?

5 A I BELIEVE THAT SEEING THAT WHITE PHONE ON AN
6 ANGLE ON A SCREEN BACKGROUND --

7 Q THAT'S NOT WHAT I ASKED YOU.

8 A -- IS DISTINCTIVE.

9 Q THAT'S NOT WHAT I ASKED YOU. DO YOU BELIEVE
10 THAT APPLE OWNS THE IMAGE OF THE OLD RETRO PHONE
11 RECEIVER?

12 A I DON'T KNOW.

13 Q OKAY. WHAT ABOUT THE COLOR GREEN? WHEN
14 PEOPLE SEE THE COLOR GREEN, THAT MEANS GO; RIGHT?

15 A SOMETIMES.

16 Q APPLE DOESN'T OWN THE COLOR GREEN FOR GO, DOES
17 IT?

18 A NO. I DON'T -- I DON'T KNOW, BUT I WOULD
19 ASSUME NO.

20 Q YOU'VE WORKED WITH ICONS A LOT. YOU'VE SEEN
21 DOZENS OF ICONS THAT HAVE GREEN WITH TELEPHONE
22 RECEIVERS ON THEM IN THE PAST, HAVEN'T YOU?

23 A I -- WHEN I WAS LOOKING AT THIS DESIGN, I
24 LOOKED SPECIFICALLY AT THAT INCARNATION OF A PHONE
25 ICON, GREEN, ROUNDED CORNERS, TILTED, POINTING UP,

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.

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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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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

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
24 SUITE 560
25 REDWOOD SHORES, CALIFORNIA 94065

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

BY: EDWARD J. DEFRANCO
51 MADISON AVENUE, 22ND FLOOR
NEW YORK, NEW YORK 10010

22
23
24
25

INDEX OF WITNESSESPLAINTIFF'S**HAL PORET**

CROSS-EXAM BY MR. PRICE (RES.) P. 1665
REDIRECT EXAM BY MR. JACOBS P. 1687

KENT VAN LIERE

DIRECT EXAM BY MR. JACOBS P. 1690
CROSS-EXAM BY MR. PRICE P. 1702

RAVIN BALAKRISHNAN

DIRECT EXAM BY MR. JACOBS P. 1723
CROSS-EXAM BY MR. JOHNSON P. 1769
REDIRECT EXAM BY MR. JACOBS P. 1806
RE-CROSS-EXAM BY MR. JOHNSON P. 1813

KARAN SINGH

DIRECT EXAM BY MR. JACOBS P. 1815
CROSS-EXAM BY MR. DEFRANCO P. 1848
REDIRECT EXAM BY MR. JACOBS P. 1909

JOHN HAUSER

DIRECT EXAM BY MR. JACOBS P. 1914
CROSS-EXAM BY MR. PRICE P. 1917
REDIRECT EXAM BY MR. JACOBS P. 1945
RE-CROSS-EXAM BY MR. PRICE P. 1948

BORIS TEKSLER

DIRECT EXAM BY MR. MUELLER P. 1951
CROSS-EXAM BY MS. MAROULIS P. 1964

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 RELY ON THIS SLIDE? THE ANSWER IS NO, I DID NOT
2 RELY ON THIS SLIDE TODAY.

3 BY MR. JOHNSON:

4 Q BECAUSE THIS SLIDE IS INCORRECT; RIGHT?

5 A I DIDN'T SAY THAT. I SAID I DID NOT RELY ON
6 THIS SLIDE.

7 Q I'M ASKING YOU, THIS SLIDE IS INCORRECT, ISN'T
8 IT?

9 A I'M NOT SURE WHY IT WOULD BE INCORRECT.

10 Q WELL, LET'S LOOK AT BOTH THE CONTACT LIST AND
11 THE BROWSER THAT APPEARS ON THIS SLIDE.

12 WE'RE TALKING ABOUT ELEMENT NUMBER 5.

13 LET'S START ON THE LEFT, THE CONTACT
14 LIST. THIS YELLOW BOX HERE SHOWS THE AREA BEYOND
15 THE EDGE AS THIS YELLOW BOX AT THE BOTTOM OF THE
16 CONTACT LIST.

17 NOW, THAT CANNOT BE THE AREA BEYOND THE
18 EDGE BECAUSE THE USER HASN'T REACHED THE EDGE HERE;
19 CORRECT?

20 A I'D HAVE TO LOOK AT THAT IMAGE VERY CLOSELY.
21 THERE MAY BE A MISTAKE IN THE IMAGE.

22 Q WELL, THIS IS A SLIDE, AGAIN, THAT YOU
23 APPROVED AND YOU REVIEWED; RIGHT?

24 A I DID NOT RELY UPON IT TODAY.

25 Q I DIDN'T ASK YOU THAT, SIR. I ASKED YOU, THIS

1 IS A SLIDE THAT YOU REVIEWED AND YOU APPROVED
2 BEFORE IT WAS SENT OVER TO SAMSUNG AS PART OF YOUR
3 DEMONSTRATIVE EXHIBITS?

4 A I REVIEWED MY SLIDES. I'M NOT SURE AT WHAT
5 POINT, WHAT VERSION WAS SENT OVER TO SAMSUNG, SO I
6 JUST WANT TO MAKE THAT CLEAR, THAT THERE WERE MANY
7 VERSIONS OF THESE SLIDES THAT I'VE WORKED ON IN THE
8 LAST WEEK.

9 Q YOU WOULD AGREE WITH ME THAT THIS IS -- THIS
10 CANNOT BE THE AREA BEYOND THE EDGE FOR THE CONTACT
11 LIST OF THE SAMSUNG GALAXY S II; RIGHT?

12 MR. JACOBS: YOUR HONOR, I'M SORRY. I
13 HAVE TO INTERJECT.

14 WE'VE NOW HAD A CHANCE TO CHASE DOWN
15 WHAT'S GOING ON. THIS IS A VIDEO, AND WHEN YOU
16 CONFLATE A VIDEO INTO A PDF, WHEN YOU PUT IT ALL
17 TOGETHER IN A SINGLE IMAGE, THIS IS HOW IT APPEARS.
18 BUT IT'S ACTUALLY A VIDEO.

19 MR. JOHNSON: YOUR HONOR, THIS IS THE
20 SLIDE THAT WAS PROVIDED TO US BY APPLE AND I'M JUST
21 ASKING HIM QUESTIONS ABOUT IT, WHETHER HE AGREES IT
22 OR NOT.

23 THE COURT: THE OBJECTION IS OVERRULED.

24 YOU'LL HAVE A CHANCE TO REDIRECT.

25 THE WITNESS: SO IN THIS PARTICULAR IMAGE

1 ON THE LEFT-HAND SIDE, IT APPEARS THAT IT'S NOT YET
2 BEYOND THE EDGE.

3 BUT I BELIEVE THE VIDEO WOULD HAVE SHOWN
4 THAT IT WENT BEYOND THE EDGE.

5 BY MR. JOHNSON:

6 Q WHAT ABOUT ON THE RIGHT-HAND SIDE FOR THE
7 BROWSER? THAT'S -- WHAT'S DELINEATED HERE IN
8 YELLOW IS SHOWN AS THE AREA BEYOND THE EDGE BUT, IN
9 FACT, THAT IS NOT THE AREA BEYOND THE EDGE, IS IT?

10 A IN THAT PARTICULAR IMAGE, THAT IS NOT THE AREA
11 BEYOND THE EDGE. I DID NOT RELY ON THIS SLIDE.

12 Q OKAY. LET'S LOOK AT PDX 27-30.

13 THIS IS THE NEXT ELEMENT, ELEMENT 6 OF
14 CLAIM 19; RIGHT?

15 A YES.

16 Q OKAY. AND FOR THIS, AGAIN, THIS REFERS TO THE
17 GALAXY S II FOR THE CONTACT LIST AND THE BROWSER
18 APPLICATIONS; RIGHT?

19 A YES.

20 Q AND LOOK AT THE FIGURE ON THE LEFT FOR CONTACT
21 LIST, AND DO YOU SEE IT SAYS IT'S LABELED THE
22 FOURTH PORTION, NO AREA BEYOND THE EDGE?

23 A OKAY. I BELIEVE THIS WAS A STILL FROM A
24 VIDEO. THE IMAGE DOESN'T SHOW THE RIGHT THING.

25 AGAIN, I DID NOT RELY ON THIS SLIDE TODAY

1 THAT WAS SHOWN TO THE JURY.

2 Q SORRY ABOUT THAT. THIS IS INCORRECT; RIGHT?

3 A THE IMAGE IS INCORRECT.

4 Q AND THE IMAGE ON THE RIGHT-HAND SIDE UNDER THE
5 BROWSER APPLICATION IS ALSO INCORRECT, ISN'T IT?

6 A IN THAT THAT IS NOT THE FULL PORTION. THAT
7 STILL SHOWS AN AREA BEYOND THE EDGE.

8 Q OKAY. THANK YOU.

9 DO YOU KNOW, HOW MUCH IS APPLE CLAIMING
10 IN DAMAGES FOR INFRINGEMENT OF THIS PARTICULAR
11 PATENT?

12 A I DON'T KNOW THE EXACT FIGURE.

13 Q LET'S LOOK AT PDX 27.3, PLEASE.

14 NOW, FIRST, DR. BALAKRISHNAN, YOU WOULD
15 AGREE THAT NOT EVERY BOUNCE EFFECT ON A TOUCHSCREEN
16 IS COVERED BY THE '381 PATENT; RIGHT?

17 A COULD YOU REPHRASE THE QUESTION? I DON'T
18 UNDERSTAND.

19 Q YEAH. NOT EVERY BOUNCE EFFECT THAT YOU SEE ON
20 A TOUCHSCREEN IS COVERED BY THE '381 PATENT, IS IT?

21 A IF THE BOUNCE EFFECT MEETS ALL OF THE
22 LIMITATIONS OF CLAIM 19, IT WOULD BE COVERED.

23 Q BUT THERE ARE BOUNCE EFFECTS THAT DO NOT MEET
24 THE LIMITATIONS OF CLAIM 19; RIGHT?

25 A CAN YOU GIVE ME AN EXAMPLE?

1 Q WELL, WHEN AN IMAGE BOUNCES BACK TO THE CENTER
2 BEFORE YOUR FINGER REACHES THE EDGE OF THE DISPLAY,
3 THAT'S NOT COVERED BY THE '381 PATENT; RIGHT?

4 A IF IT HASN'T REACHED THE EDGE, IT IS NOT IN
5 RESPONSE TO THE EDGE AS THE CLAIMS REQUIRE, THEN
6 CLAIM 19 WOULD NOT BE INFRINGED.

7 Q SO THERE ARE BOUNCE EFFECTS THAT DON'T
8 INFRINGE CLAIM 19; RIGHT?

9 A I DON'T SEE AN EXAMPLE. IF YOU PROVIDED A
10 HYPOTHETICAL -- ARE YOU SAYING IN THE SAMSUNG
11 DEVICES THERE'S A BOUNCE EFFECT THAT YOU WANT ME TO
12 LOOK AT THAT DOESN'T INFRINGE?

13 Q I'M ASKING YOU MORE GENERALLY. AREN'T THERE
14 BOUNCE EFFECTS THAT ARE NOT COVERED BY CLAIM 19?

15 A JUST GENERALLY OUT THERE?

16 Q YES.

17 A SURE. YOU CAN HAVE ALL KINDS OF THINGS THAT
18 BOUNCE THAT DON'T --

19 Q ALL RIGHT.

20 A THAT DON'T MEET THE ELEMENTS OF CLAIM 19.

21 Q WELL, DURING YOUR DIRECT TESTIMONY, YOU SHOWED
22 27.3. LET'S ACTUALLY GO TO 14, 27.14. YOU SHOWED
23 27.14 AS A BASIS FOR INFRINGEMENT OF THE SAMSUNG
24 GALAXY S II; RIGHT?

25 A I SHOWED A SLIDE SIMILAR TO THIS. I'M NOT

1 SURE OF THE EXACT SLIDE NUMBER, SO I JUST WANT TO
2 MAKE SURE, BECAUSE YOU SEEM TO HAVE A DIFFERENT
3 SLIDE FROM WHAT I SHOWED TODAY.

4 Q IS THIS ONE CORRECT?

5 A IT APPEARS CORRECT, BUT I -- I CAN'T SAY FOR
6 SURE WHETHER IT'S THE EXACT SAME SLIDE NUMBER.

7 Q WELL, THE PORTION THAT'S SHOWN ON THE DISPLAY
8 IS ONLY PART OF THE STICK FIGURE; RIGHT?

9 A IT LOOKS TO BE, YES.

10 Q AND IN ALL OF THE EXAMPLES THAT YOU SHOWED IN
11 YOUR VIDEOS, EVEN THE ONES THAT HAD THE, THE
12 FOUR-BY-FOUR, THE USER MUST FIRST ZOOM IN ON THE
13 STICK FIGURE IN ORDER TO MEET THE LIMITATIONS OF
14 CLAIM 19 OF THE '381; RIGHT?

15 A IN ALL OF THOSE, THE IMAGE WOULD HAVE TO BE
16 BIGGER THAN WOULD FIT ON THE SCREEN, YES.

17 Q AND YOUR VIDEOS, AND EVEN YOUR DEMONSTRATIVE
18 HERE, LEAVES OUT THAT STEP OF WHERE THE USER FIRST
19 ZOOMS IN ON THE IMAGE TO GET THE ENLARGED IMAGE;
20 RIGHT?

21 A IT DOESN'T -- YOU DON'T NEED TO SHOW THAT
22 BECAUSE CLAIM 19 DOESN'T REQUIRE THAT.

23 Q CLAIM 19 DOESN'T REQUIRE A SET UP MOVE LIKE
24 THAT?

25 A NO.

1 Q I'M SORRY?

2 A NOT IN -- NOT EXACTLY, NO. IT DIDN'T REQUIRE
3 THAT. YOU COULD HAVE IT, BUT IT'S NOT REQUIRED.

4 Q WELL, YOU HAVE ACCUSED THE GALAXY TAB 7.0 OF
5 INFRINGEMENT; RIGHT?

6 A THAT IS CORRECT.

7 Q OKAY. NOW, I'D LIKE TO SHOW YOU A VIDEO OF
8 THE GALAXY TAB PRODUCT.

9 LET'S PUT UP SLIDE 3918.101 PLEASE,
10 MR. FISHER.

11 AND YOU'VE SEEN THIS VIDEO BEFORE. IT'S
12 A -- I'M GOING TO SHOW IT TO YOU, BUT IT'S FROM THE
13 JOHNSON REPORT.

14 A MAYBE I COULD LOOK AT THE VIDEO FIRST.

15 Q LET'S TAKE A LOOK AT IT.

16 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN
17 OPEN COURT OFF THE RECORD.)

18 BY MR. JOHNSON:

19 Q NOW, DR. BALAKRISHNAN, WHAT WE JUST SAW IN THE
20 SDX 3918.101, THAT DOESN'T INFRINGE THE '381
21 PATENT, DOES IT?

22 A THAT FUNCTIONALITY -- IS MY MIKE ON?

23 THAT FUNCTIONALITY DOES NOT APPEAR TO
24 MEET THE CLAIMS, BUT --

25 Q BECAUSE IT SHOWS --

1 A -- I DON'T KNOW WHETHER THAT TABLET HAS THE
2 BOUNCE BACK FEATURE IN OTHER APPLICATIONS THAT ARE
3 NOT SHOWN ON THE SCREEN.

4 Q THAT APPLICATION THAT WE JUST LOOKED AT SHOWS
5 SOMETHING WE CALLED HARD STOP; RIGHT? THERE'S NO
6 BOUNCE THERE?

7 A THAT PARTICULAR FUNCTIONALITY YOU JUST SHOWED
8 IS THE HARD STOP, YES.

9 Q OKAY. AND YOU ORIGINALLY ACCUSED THE BROWSER
10 FUNCTION OF THE TAB 7.0, WHAT WE JUST LOOKED AT, OF
11 INFRINGING THE '381 PATENT; RIGHT?

12 A THAT IS CORRECT.

13 Q BUT IT'S YOUR UNDERSTANDING THAT THE BROWSER
14 APPLICATION OF THE GALAXY TAB 7.0 DOES NOT INFRINGE
15 THE '381 PATENT BECAUSE IT DOESN'T BOUNCE BACK;
16 RIGHT?

17 A NO, THAT'S NOT CORRECT. THE GALAXY TAB 7.0
18 THAT I ACCUSED, IN THE VERSION I LOOKED AT, THE
19 VERSION I ANALYZED DOES DO THE BOUNCE BACK.

20 Q I JUST -- I JUST ASKED YOU ABOUT THE BROWSER.

21 A OKAY.

22 Q SO THE BROWSER APPLICATION OF THE GALAXY TAB
23 7.0 THAT WE JUST LOOKED AT DOESN'T INFRINGE THE
24 '381 PATENT; RIGHT?

25 A IN THAT PARTICULAR VERSION --

1 FORMALLY ANNOUNCE, WE CALL DR. KARAN SINGH AS OUR
2 NEXT WITNESS.

3 THE COURT: ALL RIGHT. THE TIME IS NOW
4 1:15. GO AHEAD.

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

7 THE WITNESS: KARAN SHER SINGH,
8 K-A-R-A-N, S-H-E-R, AND MY LAST NAME IS S-I-N-G-H.

9 THE COURT: THANK YOU.

10 **DIRECT EXAMINATION**

11 BY MR. JACOBS:

12 Q DR. SINGH, WHAT DO YOU DO FOR A LIVING?

13 A I 'M A PROFESSOR OF COMPUTER SCIENCE AT THE
14 UNIVERSITY OF TORONTO. I CODIRECT THE GRAPHICS AND
15 HUMAN/COMPUTER INTERACTION LAB. I TEACH. I DO
16 RESEARCH AND SUPERVISE GRADUATE STUDENTS.

17 I 'M ALSO INVOLVED WITH A NUMBER OF
18 PRIVATE COMPANIES IN THE AREA OF GRAPHICS
19 INTERFACE.

20 Q HOW LONG HAVE YOU BEEN A PROFESSOR, SIR?

21 A TEN YEARS.

22 Q WHERE DID YOU GO TO SCHOOL?

23 A I HAVE A NUMBER OF COMPUTER SCIENCE DEGREES.
24 I HAVE A BACHELOR'S FROM THE INDIAN INSTITUTE OF
25 TECHNOLOGY IN '91, AND A MASTER'S AND A PH.D., BOTH

1 FROM THE OHIO STATE UNIVERSITY IN '92 AND '95.

2 Q WHAT DID YOU DO BEFORE YOU BECAME A PROFESSOR?

3 A WELL, AFTER MY PH.D. IN '95, I JOINED A
4 TORONTO COMPANY CALLED WAVEFRONT WHERE I HELPED
5 DESIGN AN ANIMATION SYSTEM CALLED MAYA.

6 LATER I WORKED IN CALIFORNIA AND I
7 CONSTRUCTED A SYSTEM CALLED PARAFORM THAT CONVERTED
8 PHYSICAL OBJECTS INTO DIGITAL MONITORS.

9 Q WERE MAYA AND PARAFORM, WERE THEY A SUCCESS?

10 A WELL, MAYA HAS BEEN THE INDUSTRY STANDARD FOR
11 COMMERCIAL ANIMATION AND MOVIE SPECIAL EFFECTS FOR
12 THE PAST DECADE.

13 IT WON A TECHNICAL OSCAR FOR THIS IN
14 2003, AND PARAFORM ALSO RECEIVED AN ACADEMY AWARD
15 FOR TECHNOLOGY.

16 Q YOU SAID A TECHNICAL OSCAR. IS THIS AN
17 ACADEMY AWARD WITH THE OSCAR AND ALL THAT?

18 A THAT IS CORRECT.

19 Q NOW, DR. SINGH, WOULD YOU SAY YOU'RE FAMILIAR
20 WITH COMPUTER PROGRAMMING, AND IN PARTICULAR, WITH
21 HUMAN/COMPUTER INTERFACES AND COMPUTER GRAPHICS?

22 A SURE. FOR OVER 20 YEARS IT'S BEEN THE FOCUS
23 OF MY EDUCATION, MY COMMERCIAL WORK, MY RESEARCH
24 AND MY TEACHING.

25 MR. JACOBS: ALL RIGHT. YOUR HONOR, WE

1 TENDER DR. SINGH AS AN EXPERT IN COMPUTER
2 PROGRAMMING, HUMAN/COMPUTER INTERFACES, AND
3 COMPUTER GRAPHICS.

4 THE COURT: ANY OBJECTION?

5 MR. DEFRANCO: NO OBJECTION, YOUR HONOR.

6 THE COURT: THANK YOU.

7 BY MR. JACOBS:

8 Q DR. SINGH, LET'S DIVE INTO SOME PATENTS.

9 I'D LIKE TO TALK FIRST ABOUT THE '915
10 PATENT. COULD YOU TURN TO JX 1044 IN YOUR BINDER,
11 PLEASE.

12 YOUR HONOR, WE WOULD OFFER 1044 INTO
13 EVIDENCE.

14 THE COURT: OKAY. ANY OBJECTION.

15 MR. DEFRANCO: NO, YOUR HONOR.

16 THE COURT: OKAY. THAT'S ADMITTED.

17 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
18 1044, HAVING BEEN PREVIOUSLY MARKED FOR
19 IDENTIFICATION, WAS ADMITTED INTO
20 EVIDENCE.)

21 BY MR. JACOBS:

22 Q NOW, WHAT IS THE '915 PATENT, DR. SINGH?

23 A THIS IS APPLE'S '915 PATENT WHICH YOU MIGHT
24 RECALL MR. FORSTALL IN HIS TESTIMONY DESCRIBED THE
25 CHALLENGE OF VIEWING AN IMAGE OF A BICYCLE THROUGH

1 A WINDOW THE SIZE OF A POSTCARD AND HOW YOU MIGHT
2 DIRECTLY REACH IN TO POSITION AND RESIZE THAT IMAGE
3 WITH YOUR FINGERS.

4 NOW, THE '915 PATENT DEALS EXACTLY WITH
5 THAT PROBLEM AND GIVES YOU ACCESS TO THESE VARIOUS
6 VIEW OPERATIONS IN A NATURAL AND FLUID MANNER.

7 Q LET'S TAKE A LOOK AT A DEMONSTRATION OF THIS
8 ON THE IPHONE 4. WE'RE LOOKING AT PDX 29.4, AND
9 WHAT ARE WE SEEING HERE, DR. SINGH?

10 A SO THE '915 PATENT SPECIFICALLY DRAWS A
11 DISTINCTION BETWEEN A VERY COMMONLY USED SCROLLING
12 OPERATION ON AN INTEGRATED TOUCHSCREEN DEVICE, LIKE
13 A SMARTPHONE OR A TABLET, AND ONCE IT MAKES THE
14 DISTINCTION BETWEEN THE COMMON SCROLLING OPERATION
15 AND A MORE GENERAL COMPLEX OPERATION, SUCH AS A
16 SCALE OR ROTATE, IT MAPS SINGLE FINGER INPUT TO, AS
17 WE'LL SEE OVER HERE, SINGLE FINGER INPUT TO
18 SCROLLING AND TWO OR MORE FINGERS TO THIS GENERAL
19 GESTURE TRANSFORMATION, SUCH AS SCALING, SO THAT
20 YOU CAN PERFORM BOTH OF THEM KIND OF
21 SATISFACTORILY, INTUITIVELY, AND AT THE SAME TIME
22 THEY ARE DISTINGUISHABLE FROM EACH OTHER.

23 Q NOW, DID YOU STUDY WHETHER SAMSUNG HAS
24 INFRINGED CLAIM 8 OF APPLE'S '915 PATENT?

25 A YES, I HAVE.

1 Q AND WHAT DID YOU CONCLUDE?

2 A I CONCLUDED THAT 24 SAMSUNG PRODUCTS INFRINGE
3 CLAIM 8 OF THE '915 PATENT.

4 Q AND HOW DID YOU REACH THAT CONCLUSION?

5 A WELL, FOR STARTERS, I STUDIED THE PATENTS, OR
6 THE PATENT, ITS PROSECUTION HISTORY TO FULLY
7 UNDERSTAND THE CLAIMED INVENTION.

8 AND THEN I PERSONALLY TESTED EACH OF
9 THESE 24 PRODUCTS TO OBSERVE THAT THEY, INDEED,
10 PERFORM THE FUNCTIONALITY THAT'S DESCRIBED BY CLAIM
11 8 OF THE '915.

12 Q DID YOU DO ANYTHING ELSE?

13 A SURE. I ALSO REVIEWED ALL THE SOURCE CODE
14 THAT SAMSUNG MADE AVAILABLE IN THIS LITIGATION --

15 Q SO LET'S LOOK --

16 A SORRY. -- THAT WAS RELEVANT TO THE '915
17 PATENT.

18 Q SO LET'S LOOK AT THE SAMSUNG DEVICE. AND YOU
19 HAVE UP HERE THE SAMSUNG GALAXY S II, T-MOBILE.
20 AND WHAT DOES THIS DEVICE -- WHAT BEHAVIOR DOES
21 THIS DEVICE DEMONSTRATE THAT IS RELEVANT TO THIS
22 CLAIM IN THE '915 PATENT, CLAIM 8?

23 A WELL, AS YOU SEE IN THIS VIDEO, VERY MUCH
24 ALONG THE LINES OF WHAT YOU SAW WITH THE APPLE
25 IPHONE, A SINGLE FINGER IS USED IN THE WEB BROWSER

1 PROGRAM TO SCROLL THE CONTENT ON THE SCREEN.

2 AND SUBSEQUENTLY, YOU WILL NOW SEE TWO
3 FINGERS BEING USED TO SCALE THE, THE CONTENT, THE
4 VIEW, AND THE SCALE IS AN EXAMPLE OF A GESTURE
5 TRANSFORM.

6 AND WHAT YOU'VE JUST SEEN DESCRIBES, IN
7 EFFECT, THE CLAIM LANGUAGE OF THE CLAIM 8 OF THE
8 '915.

9 Q WELL, LET'S GO TO THAT. LET'S TURN TO THE
10 CLAIM LANGUAGE OF THE -- OF CLAIM 8 OF THE '915
11 PATENT. AND CAN YOU WALK US THROUGH YOUR ANALYSIS
12 OF THAT CLAIM LANGUAGE AGAINST THE SAMSUNG DEVICE?

13 A SURE. SO THE FIRST PIECE OF LANGUAGE THAT IS
14 THE PREAMBLE OF THE CLAIM OVER HERE ESSENTIALLY IS
15 DESCRIBING A COMPUTING DEVICE, SUCH AS -- AN
16 EXAMPLE OF WHICH IS A SMARTPHONE OR A TABLET. IT'S
17 A MACHINE READABLE STORAGE MEDIUM, IT HAS PROGRAMS,
18 AND THESE PROGRAMS DO THINGS.

19 SO THAT'S, THAT'S WHAT THE FIRST PART
20 DESCRIBES.

21 Q LET'S GO TO THE NEXT SLIDE, SIR, AND LOOK AT
22 THE FIRST TWO ELEMENTS OF THE CLAIM.

23 WHAT DO THEY REQUIRE?

24 A SO THE, THE FIRST ELEMENT, ELEMENT A, THE
25 OPERATIVE WORDS THERE ARE THAT THE DEVICE RECEIVES

1 USER INPUT.

2 YOU'VE JUST SEEN AN EXAMPLE OF A VIDEO OF
3 THE DEVICE PERFORMING THIS FUNCTIONALITY. SO IT'S
4 CLEARLY RECEIVING AND RESPONDING TO THAT INPUT.

5 THE USER INPUT IS IN THE FORM OF ONE OR
6 MORE INPUT POINTS, AND IT IS APPLIED TO A TOUCH
7 SENSITIVE DISPLAY.

8 AND WE'VE SEEN THAT WITH THE SAMSUNG
9 DEVICES. TABLETS AND SMARTPHONES ARE, IN FACT,
10 TOUCH SENSITIVE DISPLAYS THAT ARE INTEGRATED. THE
11 TOUCH SURFACE IS INTEGRATED TO THE SCREEN AND
12 FURTHER INTEGRATED WITH THE ACTUAL COMPUTING
13 DEVICE.

14 SO THAT, THAT MEETS THE CLAIM ELEMENT A.

15 CLAIM ELEMENT B ACTUALLY REQUIRES A PEEK
16 INTO THE SAMSUNG SOURCE CODE, AND I'LL WALK YOU
17 THROUGH THIS.

18 SO HERE WE SEE THE EXAMPLE RESULTING FROM
19 CLAIM ELEMENT A WHERE, AS I'VE ALREADY DESCRIBED,
20 USER INPUT IS, IS RECEIVED IN RESPONSE TO THIS USER
21 INPUT WITHIN SAMSUNG CODE, AND WHAT YOU SEE --

22 Q OKAY. CAN WE HAVE IT ON THE JURORS' SCREEN
23 AND THE COURT'S SCREEN AND OPPOSING COUNSEL?

24 GREAT.

25 A SO WHAT YOU SEE ON THIS SLIDE IS ESSENTIALLY,

1 IT'S AN EXCERPT FROM SAMSUNG'S SOURCE CODE THAT
2 GETS CALLED WHEN THE USER PROVIDES INPUT ON THE
3 SCREEN.

4 AND WITHIN THIS FUNCTION, THAT
5 INFORMATION IS ENCAPSULATED, IT, IT CREATES -- IT
6 IS USED TO CREATE WHAT'S KNOWN AS A MOTION EVENT
7 OBJECT, AND THIS MOTION EVENT OBJECT IS WHAT IS
8 BEING REFERRED TO AS AN EVENT OBJECT IN CLAIM B.

9 TO GIVE YOU SOME MORE SENSE OF WHAT THIS
10 MOTION EVENT OBJECT ACTUALLY IS, JUST BELOW THE
11 MOTION EVENT OBJECT, YOU SEE ANDROID DOCUMENTATION
12 DESCRIBING THE MOTION EVENT OBJECT, AND THE
13 DOCUMENTATION GOES ON TO SAY THAT THE MOTION EVENT
14 OBJECT REPORTS ON MOVEMENTS AND MOVEMENT EVENTS AND
15 IT HOLDS MOVEMENT DATA REGARDING FINGERS AND PENS
16 AND OTHER FORMS OF INPUT, THE LOCATIONS, THE TIMES
17 OF THE INPUT AND SO ON.

18 Q AND SO DO YOU FIND ELEMENTS A AND B MET IN THE
19 SAMSUNG DEVICES AND CODE THAT YOU EXAMINED,
20 DR. SINGH?

21 A YES, I DO.

22 Q LET'S GO ON TO THE NEXT ELEMENTS OF THE CLAIM.

23 A SO --

24 Q SORRY. LET ME JUST INTRODUCE -- WE'RE LOOKING
25 AT 29.12, AND BOTH 29.11 AND .12 ARE BEING SEEN

1 ONLY BY THE JURY AND THE COURT AND OPPOSING
2 COUNSEL.

3 A OKAY. SO THESE ELEMENTS, AGAIN, ARE -- SORT
4 OF DESCRIBE IN SOME SENSE WHAT'S HAPPENING BELOW IN
5 THE, IN THE SAMSUNG CODE.

6 AND THE OPERATIVE WORDS IN THE BIG ONE
7 ARE DETERMINING WHETHER THE EVENT OBJECT INVOKES A
8 SCROLLING OPERATION, WHICH I'VE DESCRIBED BEFORE,
9 WHICH IS MOVING CONTENT, OR THE SMALL COMPLEX
10 GESTURE OPERATION, SUCH AS SCALING, BY
11 DISTINGUISHING BETWEEN WHETHER A SINGLE INPUT POINT
12 IS APPLIED TO THE SCREEN OR TWO OR MORE INPUTS, IN
13 WHICH CASE A GESTURE OPERATION IS MADE.

14 SO TO UNDERSTAND THIS -- TO UNDERSTAND
15 THIS ELEMENT, WHAT YOU SEE BELOW IS A SCHEMATIC.
16 IT'S, IT'S JUST A SCHEMATIC SHOWING THE SAMSUNG
17 SMARTPHONE AND TAB PHONE.

18 AGAIN, WHAT YOU SEE OVER THERE ARE
19 EXCERPTS TAKEN FROM THE SAMSUNG SOURCE CODE AND
20 LAID OUT JUST TO MAKE THINGS VERY CLEAR.

21 AND UPON RECEIVING INPUT, THERE IS A --
22 THERE'S A FUNCTION IN THE WEB VIEW. THE WEB VIEW
23 IS THE BROWSER PROGRAM, THE INTERNET BROWSER
24 PROGRAM ON THE SAMSUNG DEVICE.

25 WEB VIEW HAS A FUNCTION CALLED ON TOUCH

1 EVENT, SO WHENEVER THERE'S A TOUCH, YOU GO INTO
2 THAT CODE.

3 WHEN YOU GO INTO THAT CODE, THAT CODE IS
4 CALLED AND CAUSED BY THIS MOTION EVENT OBJECT THAT
5 IS BEING PASSED INTO THIS PIECE OF CODE AND IT'S --
6 IT'S SENT INTO THIS CODE AS A PARAMETER.

7 I'VE KIND OF ILLUSTRATED IT ON TOP JUST
8 SO YOU CAN CLEARLY SEE THE FLOW THAT IS TAKING
9 PLACE IN THE CODE.

10 AND THERE'S A VERY IMPORTANT LINE IN THIS
11 CODE WHERE A SIMPLE TEST IS MADE. THE MOTION EVENT
12 OBJECT HAS A POINTER COUNT. THE POINTER COUNT
13 TELLS YOU WHETHER ONE INPUT IS ONE INPUT TOUCH, TWO
14 INPUT TOUCHES, OR MORE.

15 SO ALL YOU'RE DOING OVER HERE IS MAKING
16 THIS QUINTESSENTIAL TEST, AND THEN BASED ON THE
17 TEST, WHEN A SINGLE INPUT TOUCH IS ON THE SCREEN,
18 YOU GO DOWN A ONE FINGER PART, THAT RESULTS IN A
19 SCROLL OPERATION.

20 SO THAT TAKES YOU TO THIS CLAIM ELEMENT C
21 WHERE YOU'RE DISTINGUISHING AND YOU'RE GOING DOWN
22 THIS SCROLL BAR, AND I'LL GO ONE STEP FURTHER INTO
23 CLAIM ELEMENT D, WHICH SAYS ISSUES AT LEAST A
24 SCROLL CALL OR A GESTURE CALL, DEPENDING ON WHICH
25 PART YOU GO DOWN, AND A SCROLL CALL, AN EXAMPLE OF

1 A SCROLL CALL IN THIS CASE IS A METHOD THAT SAYS DO
2 DRAG, WHICH SAYS I'M DRAGGING NOW, AND WHAT DO I
3 DO? THAT'S IF YOU GO DOWN THE SCROLL CALL.

4 VERY SIMILARLY, IF YOU GO DOWN THE
5 GESTURE PART, WHICH IS TWO OR MORE FINGERS, YOU GO
6 DOWN IN THE CODE AND YOU PERFORM A GESTURE
7 OPERATION WHICH RESULTS IN A GESTURE CALL BEING
8 MADE.

9 IN THIS EXAMPLE, THE GESTURE CALL IS A
10 THE TOUCH EVENT OF A SCALE GESTURE, SOMETHING THAT
11 RESULTS IN THE SCALE OPERATION.

12 SO WHAT WE'VE JUST SEEN OVER HERE IS A
13 RUN THROUGH THROUGH THE SAMSUNG SOURCE CODE TO GIVE
14 YOU A SENSE OF TWO IMPORTANT THINGS.

15 ONE, THAT THE MOTION EVENT OBJECT CAUSES
16 A VERY IMPORTANT TEST TO BE MADE, ONE FINGER OR TWO
17 OR MORE FINGERS; AND THEN BASED ON THAT TEST,
18 THERE'S A FORK IN THE CODE AND YOU EITHER GO DOWN A
19 SCROLL BOX WHERE A SCROLL CALL IS MADE AND A SCROLL
20 OPERATION RESULTS, OR DOWN THE GESTURE PART AND A
21 GESTURE CALL IS MADE AND A GESTURE RESULTS.

22 SO THAT'S THESE TWO ELEMENTS.

23 Q NOW, WHICH DEVICES DOES THIS ANALYSIS THAT YOU
24 JUST PROVIDED APPLY TO?

25 A IT APPLIES -- THIS SPECIFIC SCHEMATIC APPLIES

1 TO 23 OF THE 24 ACCUSED DEVICES.

2 THE SAMSUNG GALAXY TAB 10.1 ALSO
3 INFRINGES THIS CLAIM, BUT FOR THE PURPOSES OF
4 CLAIM -- FOR ELEMENTS C AND D, IT'S STRUCTURED A
5 LITTLE BIT DIFFERENTLY.

6 Q DO YOU WANT TO JUST SPEND A MINUTE EXPLAINING
7 THAT WITH 29.14?

8 A SURE. SO AS YOU CAN SEE ON THIS SLIDE, THE
9 SCHEMATIC OF THE SOURCE CODE, IT'S VIRTUALLY --
10 IT'S VERY SIMILAR. AND FOR THE PURPOSES OF THESE
11 CLAIMS, IT'S ACTUALLY IDENTICAL.

12 YOU STILL HAVE THE MOTION EVENT OBJECT
13 CAUSING THIS ALL-IMPORTANT TEST OF ONE FINGER INPUT
14 OR TWO OR MORE FINGERS WITH INPUTS, SO YOU STILL
15 HAVE THE LOGICAL TEST.

16 YOU STILL HAVE THE BRANCHING TAKING PLACE
17 IN THE CODE, AND GOING DOWN THE SCROLL PART RESULTS
18 IN A SCROLL CALL. EVENTUALLY IT RESULTS IN A
19 SCROLL OPERATION.

20 GOING DOWN THE GESTURE BOX ESSENTIALLY
21 RESULTS IN A GESTURE CALL AND THEN THE
22 CORRESPONDING GESTURE OPERATION.

23 THIS LOGIC THAT YOU SEE ACTUALLY ALLOWS
24 THE GALAXY TAB 10.1 TO PERFORM WHAT YOU CAN THINK
25 OF AS A MORE COMPLEX GESTURE TRANSFORM WHERE IT

1 SIMULTANEOUSLY SCALES AND TRANSLATES THE VIEW.

2 IF YOU GO BACK TO THAT PICTURE OF A
3 BICYCLE AND IMAGINE YOUR FINGERS ARE DOWN ON THE
4 WHEELS OF THE BICYCLE AND NOW YOU'RE GOING TO START
5 TO MOVE YOUR FINGERS AROUND, MOVING -- SPREADING
6 THEM APART WILL SCALE THE BICYCLE.

7 BUT YOU ALSO WANT TO MOVE IT SO THAT YOUR
8 FINGERS REMAIN ON TO THE BICYCLE. IF YOU DON'T
9 MOVE WITH IT, SIMULTANEOUSLY, ALL OF A SUDDEN YOUR
10 BICYCLE IS OFF IN SPACE AND IT'S BIGGER, BUT IT
11 DOESN'T HAVE THAT DIRECT FEEL.

12 AND THAT DIRECT FEEL IS WHAT THE APPLE
13 PRODUCTS PROVIDE.

14 OF THE 24 INFRINGING DEVICES, ONLY THE --
15 OVER HERE WITH THIS CODE, ONLY THE SAMSUNG GALAXY
16 TAB 10.1 KIND OF PROVIDES THIS, THIS -- IT MAKES IT
17 MORE LIKE THE APPLE PRODUCTS.

18 Q OKAY. LET'S MARCH THROUGH THE REST OF THE
19 CLAIM LIMITATIONS.

20 A UM --

21 Q WE'RE LOOKING AT 29.16.

22 A SO CLAIM ELEMENT E, ONCE -- NOW THAT WE'VE
23 SPENT, WE'VE BEEN THROUGH THE SLIGHTLY MORE
24 DIFFICULT PART IN THE SAMSUNG CODE, THIS IS -- THIS
25 IS A LOT SIMPLER.

1 YOU'VE ALREADY SEEN THIS VIDEO OF THE
2 SAMSUNG GALAXY S II. IF YOU CAN PLAY THIS VIDEO
3 AGAIN, YOU WILL SEE THAT, IN FACT, IN RESPONSE TO
4 THAT ONE FINGER INPUT, ONCE YOU'VE GONE DOWN THAT
5 SCROLL PART, CLEARLY A SCROLL CALL HAS BEEN MADE
6 AND THAT SCROLL CALL, EVENTUALLY IT RESULTS IN
7 SCROLLING THE WINDOW, HAVING A VIEW ASSOCIATED WITH
8 THE EVENT OBJECT.

9 I'D JUST LIKE TO CLARIFY WHAT WE MEAN BY
10 A VIEW ASSOCIATED WITH THE EVENT OBJECT.

11 THE EVENT OBJECT WAS THE MOTION EVENT
12 OBJECT THAT WE SAW IN THE LAST COUPLE OF SLIDES,
13 AND THE VIEW WAS THE WEB VIEW, WEB VIEW FROM WHICH
14 THE PROGRAM THAT RUNS THE -- THAT IS THE BROWSER
15 THAT WE ARE SEEING THIS FUNCTIONALITY BEING
16 PERFORMED IN.

17 SO THAT ESSENTIALLY EXPLAINS ELEMENT E.

18 Q GREAT. LET'S GO TO ELEMENT F.

19 WHAT DOES IT REQUIRE?

20 A ELEMENT F IS, IS ACTUALLY VERY ANALOGOUS TO
21 ELEMENT E. ELEMENT E DESCRIBES WHAT HAPPENS WHEN
22 YOU GO DOWN THE SCROLL BAR.

23 ELEMENT F SIMPLY TELLS YOU WHAT HAPPENS
24 IF YOU GO DOWN THE GESTURE BAR. SO IF YOU PLAY
25 THIS VIDEO, YOU NOTICE AGAIN OVER HERE, BASED ON

1 TWO FINGER INPUT, A GESTURE CALL IS MADE AND THAT
2 IS RESULTING IN SCALING THE VIEW ASSOCIATED WITH
3 THE OBJECT.

4 Q DR. SINGH, CAN YOU SHOW THE JURY -- I'M SORRY.
5 LET'S GO TO THE NEXT SLIDE.

6 DR. SINGH, ARE EACH ELEMENTS -- ARE EACH
7 OF THE ELEMENTS OF CLAIM 8 MET BY THE SAMSUNG
8 DEVICES THAT YOU HAVE DETERMINED INFRINGE?

9 A YES, THEY HAVE. WE'VE JUST BEEN THROUGH ALL
10 THE ELEMENTS IN SEQUENCE, AND INDEED, ALL THE
11 DEVICES ACTUALLY MEET THESE CLAIM ELEMENTS.

12 Q OKAY. NOW LET'S SHOW THE JURY THE DEVICES,
13 AND CAN YOU SHOW ALL 24 OF THESE AS THEY
14 DEMONSTRATE THE INFRINGING BEHAVIOR?

15 A SURE. WE'LL START WITH THE GALAXY S II, AT&T,
16 THE GALAXY S II, T-MOBILE, THE GALAXY S II I9100,
17 AND THE GALAXY T 4G.

18 YOU JUST NOTICED THE ONE FINGER SCROLL
19 FOLLOWED BY A TWO FINGER SCALE GESTURE OPERATION.

20 Q AND THAT WAS 29.20?

21 A HERE WE SEE ANOTHER SET OF SIX DEVICES, THE
22 ACE, THE CAPTIVATE, THE CONTINUUM, THE DROID
23 CHARGE, THE EPIC 4G, AND THE EXHIBIT 4G.

24 ONCE AGAIN, ONE FINGER, SCROLL; TWO
25 FINGERS, STAY OR GESTURE.

1 SHOULD STRUCTURE AND DISPLAY THE CONTENT, THE
2 STORIES, THE HEADLINES, THE IMAGES ON THE SCREEN.

3 Q LET'S LOOK AT THE NEXT ELEMENT, ELEMENT F ON
4 PDX 29.34.

5 A OKAY. SO THESE TWO CLAIM ELEMENTS ARE SORT
6 OF -- THEY SORT OF REQUIRE AN UNDERSTANDING OF WHAT
7 WE SEE ON THE SCREEN, AND PERHAPS WHAT THE PROGRAM
8 SEES.

9 SO I'LL TRY AND EXPLAIN THIS IN A WAY
10 THAT HOPEFULLY WILL BE UNDERSTANDABLE.

11 IN CLAIM ELEMENT F, WE SEE INSTRUCTIONS
12 FOR DETECTING A FIRST GESTURE AT A LOCATION OF THE
13 DISPLAYED PORTION OF THE ELECTRONIC DOCUMENT.

14 SO THAT ONE IS EASY. DETECTING A FIRST
15 GESTURE, CLEARLY WE SAW IN THE VIDEO A GESTURE IS
16 MADE. BASED ON THAT GESTURE, THE DEVICE RESPONDS,
17 SO THAT GESTURE IS, IS BEING DETECTED.

18 ON THE -- AND THEN BASED ON THAT,
19 INSTRUCTIONS FOR DETERMINING A FIRST BOX AMONG THE
20 PLURALITY OF BOXES. THAT'S SORT OF ELEMENT G.

21 SO WHAT YOU SEE ON THE LEFT-HAND SIDE ARE
22 A NUMBER OF BOXES. I'VE SORT OF LABELED THEM
23 SCHEMATICALLY 1 THROUGH 9.

24 BOX 6 IS PARTICULARLY INTERESTING, AND
25 WHAT YOU SEE ON THE RIGHT-HAND SIDE IS SORT OF A

1 TREE STRUCTURE THAT THE SAMSUNG CODE PRODUCES THAT
2 IS REPRESENTATIVE OF WHAT YOU SEE ON THE SCREEN.

3 SO NOW WHEN --

4 THE COURT: I'M SORRY.

5 DOES ANYONE NEED ANY CAFFEINE? I'M MORE
6 THAN HAPPY IF YOU WANT TO TAKE A LITTLE MINUTE
7 BREAK OR TWO. WOULD THAT BE GOOD NOW? OR IF YOU
8 WOULD LIKE TO BRING A CAFFEINATED DRINK IN, THAT'S
9 FINE, TOO. WOULD YOU LIKE TO DO THAT? WE CAN TAKE
10 A COUPLE MINUTE BREAK TO DO THAT.

11 NO? IS EVERYBODY OKAY?

12 ALL RIGHT. GO AHEAD.

13 THE WITNESS: WHEN A GESTURE IS MADE
14 WITHIN THE SAMSUNG CODE, A DOUBLE TAP FUNCTION IS
15 CALLED WHEN YOU TAP ON THERE.

16 AND THEN ONCE YOU DO THAT WITHIN THE
17 CODE, YOU WILL SEE THAT IT USES THE LOCATION OF
18 THAT TAP TO ESSENTIALLY TRAVERSE DOWN THIS TREE
19 STRUCTURE AND FIND WHICH BOX IN THAT TREE STRUCTURE
20 CORRESPONDED TO THE LOCATION. IN THIS CASE, IT
21 HAPPENS TO BE BOX 6.

22 SO THAT TAKES CARE OF ELEMENTS F AND G.

23 BY MR. JACOBS:

24 Q BECAUSE WHAT YOU HAVE JUST ILLUSTRATED IS
25 INSTRUCTIONS FOR DOING WHAT?

1 A IT'S INSTRUCTIONS FOR DETECTING THIS GESTURE
2 AND, BASED ON THE LOCATION OF THAT GESTURE,
3 ACTUALLY DETERMINING A BOX, A FIRST BOX THAT IS
4 PART OF THIS STRUCTURED ELECTRONIC DOCUMENT.

5 Q OKAY. LET'S GO TO THE NEXT ELEMENT OF CLAIM
6 50.

7 THE COURT: OKAY. WHAT WAS THE NUMBER OF
8 THAT ONE?

9 MR. JACOBS: THAT ONE WAS 29.36.

10 THE COURT: OKAY. THANK YOU.

11 BY MR. JACOBS:

12 Q AND NOW WE'RE ON 29.37.

13 A SO ELEMENT H SORT OF BRINGS US BACK OUT OF
14 THE, OUT OF THE NITTY GRITTY OF THE SAMSUNG SOURCE
15 CODE AND HERE AGAIN WE'RE LOOKING AT THE DEVICE.

16 IF YOU PLAY THIS VIDEO, YOU'VE ALREADY
17 SEEN THIS VIDEO BEFORE WHERE, UPON RECEIVING THAT,
18 THAT FIRST GESTURE AND DETERMINING THE BOX, YOU CAN
19 SEE THAT THAT INFORMATION IS BEING USED TO ENLARGE
20 THE ENTIRE DOCUMENT AND THEN MOVE IT SUCH THAT THE
21 BOX IS ENLARGED AND SUBSTANTIALLY CENTERED ON THE
22 DISPLAY.

23 Q AND JUST TO REMIND US, THIS IS A VIDEO OF
24 THE --

25 A THIS IS A VIDEO OF THE SAMSUNG GALAXY S II,

1 T-MOBILE, THAT WE'VE SEEN ONCE BEFORE.

2 Q NOW LET'S GO TO THE NEXT ELEMENT, THE NEXT TWO
3 ELEMENTS, I AND J.

4 A SO ELEMENTS I AND J ESSENTIALLY RELATE TO THE
5 SECOND GESTURE. SO ONCE YOU HAVE PERFORMED WHAT
6 YOU JUST SAW, YOU CAN SEE THAT THE FIRST BOX IS
7 STILL ENLARGED, AND YOU WILL SEE IN THE VIDEO
8 DETECTING A SECOND GESTURE ON A SECOND BOX, AND YOU
9 CAN SEE THAT THE SECOND BOX IS DISTINCT FROM THE
10 FIRST BOX.

11 AND THEN THE INSTRUCTIONS IN RESPONSE TO
12 THAT GESTURE ESSENTIALLY TRANSLATE THE DOCUMENT SO
13 THAT NOW THE SECOND BOX IS SUBSTANTIALLY CENTERED
14 ON THE WEB SCREEN DISPLAY.

15 Q AND THAT'S PDX 29.39.

16 SO HAVE YOU NOW GONE THROUGH ALL OF THE
17 ELEMENTS, ALL OF THE LIMITATIONS OF CLAIM 50 OF THE
18 '163 PATENT, SIR?

19 A YES, I HAVE.

20 Q AND YOU FIND THEM -- DO YOU FIND THEM PRESENT
21 IN THE SAMSUNG DEVICES YOU'RE ABOUT TO ENUMERATE?

22 A YES, I DO, AND I HAVE.

23 Q OKAY. LET'S LOOK AT THE DEVICES.

24 A OKAY.

25 Q THIS IS 29.41.

1 A WE SEE THE GALAXY S II, AT&T. YOU JUST SAW
2 THE FIRST GESTURE AND NOW THE SECOND GESTURE.

3 THE GALAXY S II, T-MOBILE, WHICH IS A
4 VIDEO THAT WE'VE ALREADY SEEN.

5 THE GALAXY S II I9100, SECOND GESTURE.

6 GALAXY S II 4G, FIRST GESTURE, AND NOW
7 THE SECOND GESTURE.

8 OKAY. HERE IS A SET OF SIX OTHER
9 DEVICES, THE ACE, THE CAPTIVATE, THE CONTINUUM, THE
10 DROID CHARGE, THE EPIC 4G, AND THE EXHIBIT 4G.

11 MAYBE THAT RAN BY A LITTLE QUICKLY.
12 PERHAPS WE CAN PLAY THAT ONE AGAIN.

13 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN
14 OPEN COURT OFF THE RECORD.)

15 BY MR. JACOBS:

16 Q AND WE'RE UP TO 29.42.

17 A ANOTHER SIX DEVICES, THE FASCINATE, THE
18 GALAXY S I9000, THE GEM, THE INDULGE, THE
19 INFUSE 4G, AND INTERCEPT.

20 Q THAT'S 29.43.

21 A THE MESMERIZE, NEXUS S 4G, PREVAIL, REPLENISH,
22 TRANSFORM, AND VIBRANT.

23 Q THAT'S PDX 29.44.

24 A AND THEN FINALLY THE TABLETS, THE GALAXY TAB
25 7.0, THERE YOU SEE THE FIRST GESTURE, AND THE

1 SECOND GESTURE.

2 AND THE GALAXY TAB 10.1.

3 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN
4 OPEN COURT OFF THE RECORD.)

5 BY MR. JACOBS:

6 Q AND THAT'S 29.45.

7 YOUR HONOR, THE DEMONSTRATIVES -- SORRY.

8 THE VIDEOS THAT WE'VE SHOWN PREPARED
9 UNDER DR. SINGH'S DIRECTION WE WOULD OFFER INTO
10 EVIDENCE.

11 THE COURT: AND WHICH ONES? THERE HAVE
12 BEEN QUITE A FEW VIDEOS.

13 MR. JACOBS: YES.

14 THE COURT: WHY DON'T YOU GO THROUGH THE
15 NUMBERS, PLEASE?

16 MR. JACOBS: 29.4, 29.5, 29.6, 29.10;
17 THEN THREE THAT WOULD BE UNDER SEAL, 29.12, .13,
18 .14; 29.16, 29.18, 29.20, .21, .22, .23, .24, .25,
19 THEN 29.26, .27, .28, .32, .34, .35; THE NEXT ONE
20 WOULD BE SEALED, THAT WOULD BE 29.36, .37, .39,
21 29.41, .42, .43, .44, AND .45.

22 THE COURT: I DIDN'T SEE ON THE SCREEN
23 29.23, 29.25, 29.35. I WAS MOSTLY CATCHING EVEN
24 NUMBERS.

25 MR. JACOBS: LET'S TAKE A QUICK LOOK.

1 THE COURT: ARE THOSE PART --

2 MR. JACOBS: 29.23, MR. LEE.

3 THE COURT: IS THAT -- ALL RIGHT.

4 MR. JACOBS: '915 INFRINGING SMARTPHONES.

5 WHAT WAS THE NEXT ONE, YOUR HONOR?

6 THE COURT: FOR THE SEALED, I HAD 29.11,

7 29.12, AND 29.13. IT COULD BE THESE ARE

8 INTERMEDIARY ONES THAT I DIDN'T CATCH.

9 MR. JACOBS: SO .12 IS THE FIRST ONE, .13

10 IS THE NEXT ONE, AND .14, THOSE ARE ALL THE SOURCE

11 CODE. OH, YES.

12 THE COURT: OKAY. 29.11, .12, .13, .14.

13 MR. JACOBS: 11 DOESN'T NEED TO BE UNDER

14 SEAL. ACTUALLY, I DIDN'T LIST -- LET'S GO BACK TO

15 11. THAT'S JUST THE CLAIM LANGUAGE, YOUR HONOR.

16 WE DON'T NEED THAT IN.

17 THE COURT: OKAY. SO THAT'S 29.11 IS NOT

18 COMING IN.

19 MR. JACOBS: CORRECT.

20 THE COURT: SO .12, .13, .14, .16, .18,

21 .20, .21, .22, .23, .24, .25, AND THEN 29.26, .27,

22 .28, .30, .32, .34, .35, .36. IS THAT RIGHT?

23 MR. JACOBS: .32, .34, .35, .36 IS

24 SEALED.

25 THE COURT: YES.

1 YOU'RE TALKING ABOUT, BUT YES.

2 Q WELL, I SAW ON THE WEB A LIST OF ABOUT 15
3 PEOPLE THAT WERE ASSOCIATED WITH THE WORK THAT WENT
4 INTO THE OSCAR THAT WAS OBTAINED.

5 A PERHAPS.

6 Q AND MY POINT IS, I JUST NEED TO MAKE CLEAR FOR
7 THE RECORD, THAT THAT WASN'T AN OSCAR THAT YOU AS
8 AN INDIVIDUAL OBTAINED; IS THAT TRUE, SIR?

9 A I NEVER SAID IT WAS. I SAID THE -- I SAID THE
10 SOFTWARE WON AN OSCAR.

11 Q YOU TALKED ABOUT A COUPLE OF OTHER PROJECTS
12 THAT YOU WORKED ON AT ALIAS, WAVEFRONT, AND SOME
13 OTHER COMPANIES, PARAFORM. DO YOU REMEMBER THAT,
14 SIR?

15 A SURE.

16 Q THAT WORK WASN'T SPECIFICALLY DIRECTED TO CELL
17 PHONES OR OTHER PORTABLE DEVICES LIKE TABS. IS
18 THAT FAIR?

19 A IT'S FAIR.

20 Q AND IF YOU LOOK ON YOUR WEB PAGE ON THE
21 INTERNET, AN AWFUL LOT OF INFORMATION THERE,
22 CERTAINLY DISCUSSING SOME OF THE THINGS YOU TOLD US
23 ABOUT ON DIRECT BASED ON YOUR WORK EXPERIENCE.

24 BUT I DIDN'T SEE ANY PARTICULAR MENTION
25 OF YOUR WORK OR EXPERTISE RELATED TO CELL PHONES,

1 FOR EXAMPLE. IS THAT FAIR? ARE YOU AWARE OF ANY?

2 A IT'S NOT FAIR.

3 Q I DIDN'T SEE ANY SPECIFIC CALL OUT, MENTION OF
4 YOUR PARTICULAR EXPERTISE OR WORK EXPERIENCE IN THE
5 AREA OF TAB DEVICES. IS THAT FAIR TO SAY, SIR?

6 A IT'S NOT FAIR TO SAY.

7 Q I DIDN'T -- WAS THERE SOMETHING MENTIONED ON
8 YOUR WEBSITE RELATING TO TABS LIKE WE'RE SEEING IN
9 THIS CASE?

10 A ABSOLUTELY. I -- ONE OF MY MAIN AREAS OF
11 RESEARCH IS AN AREA CALLED SKETCH-BASED INTERFACES,
12 WHICH IS VERY MUCH APPLICABLE TO TOUCHSCREEN
13 DEVICES WHERE YOU, YOU, YOU PROVIDE DIRECT INPUT
14 AND YOU SKETCH AND PERFORM OTHER KINDS OF DIRECT
15 MANIPULATION OPERATIONS.

16 SO I'VE JUST CHAIRED THE MAIN CONFERENCE
17 IN THAT AREA IN ANNECY ABOUT A MONTH BACK, ANNECY,
18 A-N-N-E-C-Y, FRANCE.

19 Q AND YOU'RE TALKING ABOUT TOUCHSCREEN DEVICES
20 GENERALLY, NOT TAB DEVICES IN PARTICULAR?

21 A I'M TALKING ABOUT GENERAL STROKE-BASED INPUT
22 THAT COULD COME FROM THE FINGERS, THAT COULD COME
23 FROM A PEN, BUT IS CLEARLY DISTINCT FROM
24 TRADITIONAL WINDOWS, MOUSE, KEYBOARD INTERFACES.

25 Q LET'S TALK ABOUT THAT TECHNOLOGY.

1 YOU STARTED WITH THE '915 PATENT. DO YOU
2 REMEMBER THAT?

3 A YES.

4 Q YOU TALKED ABOUT MR. FORSTALL AND SOME OF HIS
5 TESTIMONY THAT HE GAVE IN THIS CASE.

6 DO YOU REMEMBER THAT?

7 A YES, I DO.

8 Q WERE YOU HERE IN COURT FOR HIS TESTIMONY?

9 A I WAS HERE FOR, I BELIEVE, FOR AT LEAST A PART
10 OF IT.

11 Q LET'S PUT UP ONE OF YOUR SLIDES. IT'S CLAIM 8
12 OF THE '915 PATENTS. IT'S PDX 29.8. THIS IS ONE
13 OF YOUR SLIDES, DR. SINGH; RIGHT?

14 A YES.

15 Q NOW, YOU SAID, IF I HAVE THIS RIGHT, ON DIRECT
16 EXAMINATION, THAT -- YOU MENTIONED MR. FORSTALL A
17 BIT, YOU TALKED GENERALLY ABOUT THE INVENTION IN
18 THE '915 PATENT, AND YOU SAID IT RELATES TO HOW TO
19 POSITION AND RESIZE, WITH YOUR FINGERS, ITEMS ON A
20 SMALL SCREEN, LIKE THE SIZE OF A POSTCARD.

21 DO YOU REMEMBER THAT?

22 A I GAVE THAT EXAMPLE ACTUALLY BEFORE THIS SLIDE
23 SHOWED UP AS A GENERAL UNDERSTANDING TO PEOPLE AS
24 TO WHAT THE PATENT DEALT WITH.

25 WHEN WE CAME TO THIS SLIDE, WE WERE

1 TALKING MUCH MORE SPECIFICALLY ABOUT THE CLAIM
2 LANGUAGE.

3 Q OKAY. LET'S TALK ABOUT SOME OF THE CLAIM
4 LANGUAGE. ONE OF THE THINGS THAT -- YOUR TITLE, BY
5 THE WAY, IS SCROLL VERSUS GESTURE; RIGHT?

6 A SURE.

7 Q DO YOU SEE THAT?

8 A YES.

9 Q AND THOSE ARE ACTUAL WORDS THAT ARE USED IN
10 CLAIM 8; ISN'T THAT RIGHT?

11 A YES.

12 Q NOW, A SCROLL GENERALLY, AS WE'VE SEEN IN THE
13 CASE, IS YOU CAN USE TWO FINGERS OR YOU CAN MOVE
14 TWO FINGERS TO MOVE CONTENT UP ON THE DEVICES THAT
15 WE'RE TALKING ABOUT. IS THAT FAIR?

16 A YOU'LL HAVE TO BE A LITTLE MORE PRECISE WITH A
17 QUESTION LIKE THAT IF YOU EXPECT AN ANSWER.

18 Q WHAT'S A SCROLL, DOCTOR?

19 A A SCROLL -- IN THE CONTEXT OF THE '915 PATENT,
20 A SCROLL IS MOVING OR SLIDING CONTENT ON THE
21 SCREEN.

22 Q OKAY. MOVING OR SLIDING CONTENT ON THE
23 SCREEN. IS THAT RIGHT?

24 A YEAH.

25 Q THAT CONCEPT ALONE, SCROLL, THE '915 INVENTORS

1 DIDN'T INVENT SCROLLING. THAT'S FAIR, ISN'T IT?

2 A THAT'S FAIR.

3 Q GESTURE, A GESTURE, WE'VE HEARD ALSO, IS A
4 SCALE. THAT WORD IS USED IN THE CLAIM, RIGHT, A
5 SCALE?

6 A YES.

7 Q THEY'RE INTERCHANGEABLE IN YOUR VIEW; RIGHT?

8 A NO, THEY'RE NOT INTERCHANGEABLE. SCALE IS AN
9 EXAMPLE OF A MORE GENERAL GESTURE OPERATION.

10 Q BETTER PUT. THANK YOU.

11 BUT A SCALE IS A GESTURE; ISN'T THAT
12 TRUE?

13 A A SCALE IS A GESTURE OPERATION IN THE CONTEXT
14 OF THE '915.

15 Q AND A SCALE, IS THAT PRETTY MUCH THE SAME
16 THING AS A ZOOM? YOU'RE TAKING TWO FINGERS AND
17 ZOOMING IN OR OUT?

18 A YES.

19 Q IS THAT FAIR?

20 A THAT'S FAIR.

21 Q THE INVENTORS OF THE '915 PATENT, THEY DIDN'T
22 INVENT A GESTURE, A SCALE, A ZOOM, OR DETECTING
23 THOSE ON THE DEVICES WE'RE TALKING ABOUT. ISN'T
24 THAT FAIR, SIR?

25 A ABSOLUTELY NOT. THE CONCEPT OF SCALING GOES

1 BACK TO THE ANCIENT GREEKS.

2 Q I THINK AS YOU PUT IT -- LATER ON IN YOUR
3 TESTIMONY WHEN WE GOT TO THE DETERMINATION STEP, I
4 THINK YOU USED THE WORDS THE "ALL-IMPORTANT TEST."

5 DO YOU REMEMBER THAT? DO YOU REMEMBER
6 USING THAT PHRASE?

7 A I MAY HAVE SAID THAT, YEAH, SURE.

8 Q AND BY THAT, DIDN'T YOU MEAN THAT THIS CLAIM
9 IS NOT TALKING ABOUT JUST USING A SCROLL AND THE
10 DEVICE FIGURING OUT IF A SCROLL IS THERE, BECAUSE
11 CERTAINLY THAT'S NOT WHAT THEY INVENTED. FAIR?

12 A FAIR.

13 Q THE CLAIM IS NOT ABOUT SOME -- A USER USING A
14 GESTURE OPERATION LIKE A ZOOM AND THE DEVICE
15 FIGURING OUT IF THERE'S A GESTURE THAT HAS BEEN
16 PERFORMED; RIGHT? BECAUSE THAT WAS THERE, AS YOU
17 SAID; CORRECT?

18 A IT IS ABOUT THE DEVICE FIGURING OUT WHETHER
19 IT'S A GESTURE BASED ON TWO OR MORE FINGER INPUTS.

20 Q BUT AS YOU SAID, IT'S THE ALL-IMPORTANT TEST
21 IN THE CLAIM AS TO WHETHER IT'S A ONE FINGER SCROLL
22 VERSUS A TWO FINGER GESTURE. THAT'S WHAT THIS
23 INVENTION IS ABOUT. FAIR?

24 A SURE.

25 Q OKAY. NOW, YOU SAID YOU LOOKED AT THE

1 PROSECUTION HISTORY.

2 DO YOU REMEMBER THAT?

3 A YES, I DID.

4 Q LET'S PUT UP A SLIDE THAT'S BEEN PREPARED.

5 IT'S SLIDE SDX 3912.007.

6 NOW, DR. SINGH, HAVE YOU SEEN THIS SLIDE
7 BEFORE TODAY?

8 A YES, I HAVE.

9 Q YOU'VE SEEN -- THIS IS ONE OF OUR SLIDES WE
10 PREPARED FOR CROSS. YOU SAW IT BEFORE YOU TOOK THE
11 STAND TODAY; RIGHT?

12 A YES.

13 Q YOU KNOW WHAT THIS SLIDE IS? IT'S SHOWING ON
14 THE LEFT-HAND SIDE AN EARLY VERSION OF THE CLAIM
15 AND THE PROSECUTION HISTORY. IS THAT RIGHT?

16 A THAT IS CORRECT.

17 Q AND PROSECUTION HISTORY, AGAIN, IS THE BACK
18 AND FORTH BETWEEN THE PATENT OFFICE. IT'S THE
19 DIALOGUE THAT ULTIMATELY, IF SUCCESSFUL, RESULTS IN
20 A PATENT BEING ISSUED. IS THAT FAIR?

21 A ABSOLUTELY.

22 Q AND ON THE RIGHT-HAND SIDE IS THE ACTUAL
23 CLAIM. DO YOU SEE THAT?

24 A YES.

25 Q AND THERE'S -- YOU CAN TELL JUST BY LOOKING AT

1 THE TWO THERE'S MORE WORDS, INFORMATION, THERE ARE
2 MORE LIMITATIONS IN THE CLAIM AS ACTUALLY ISSUED
3 THAN IN THE EARLY FILE CLAIM. IS THAT FAIR?

4 A VERY FAIR.

5 Q AND IT'S TRUE, ISN'T IT, SIR, THAT FOR THERE
6 TO BE INFRINGEMENT -- YOU'RE AN EXPERT ON
7 INFRINGEMENT, RIGHT? -- FOR THERE TO BE
8 INFRINGEMENT, EACH AND EVERY CLAIM ELEMENT MUST BE
9 FOUND IN THE ACCUSED DEVICE; IS THAT RIGHT?

10 A THAT IS RIGHT.

11 Q IF ONE IS MISSING, ONE, ONLY ONE IS MISSING,
12 THERE'S NO INFRINGEMENT; RIGHT?

13 A THAT IS RIGHT.

14 Q NOW, THIS REFLECTS, DOESN'T IT, THAT AS
15 ORIGINALLY FILED, THAT ALL-IMPORTANT TEST THAT YOU
16 MENTIONED WAS NOT IN THE CLAIM; RIGHT?

17 DO YOU SEE THAT HIGHLIGHTED, "BY
18 DISTINGUISHING BETWEEN A SINGLE INPUT POINT," AND
19 THEN IT GOES ON TO TALK ABOUT TWO OR MORE INPUT
20 POINTS? THAT NOTION WAS NOT IN THE CLAIM AS IT
21 ORIGINALLY FILED. IS THAT FAIR?

22 A ABSOLUTELY NOT.

23 Q NOW, WHY -- THAT LANGUAGE IS -- DO YOU SEE
24 THAT LANGUAGE IN THE CLAIM AS ORIGINALLY FILED,
25 SIR?

1 A I DO.

2 Q OKAY. NOW, IS IT YOUR UNDERSTANDING, SIR,
3 THAT ONE OF THE REASONS THAT PATENT EXAMINERS
4 INSIST ON ADDITIONS BEING MADE TO CLAIMS IS BECAUSE
5 THEY'VE SEEN SOMETHING THAT SAYS TO THEM, UNLESS
6 THAT'S ADDED, THIS CLAIM MAY NOT BE VALID, FOR
7 EXAMPLE?

8 A PERHAPS.

9 Q AND BY THE WAY, IF A CLAIM -- WE'RE GOING TO
10 TALK ABOUT INVALIDITY LATER IN THE CASE, BUT IF A
11 CLAIM IS INVALID, THEN YOU CAN'T INFRINGE THAT
12 CLAIM. IS THAT FAIR? YOU'RE HERE TO TALK ABOUT
13 INFRINGEMENT TODAY; RIGHT?

14 A RIGHT.

15 Q NOW, YOU SHOWED SOME DEMONSTRATIVES ON DIRECT
16 EXAMINATION. YOU SHOWED SOME ACTUAL PRODUCTS.

17 DO YOU REMEMBER THAT?

18 A THAT IS CORRECT.

19 Q YOU SHOWED SOME INSTANCES WHERE THERE'S A, A
20 ONE FINGER SCROLL. IS THAT FAIR?

21 A YES.

22 Q LET'S PUT BACK UP ON THE SCREEN, PLEASE, RYAN,
23 PDX 29.8.

24 NOW, WITH RESPECT TO THE SCROLL VERSUS A
25 GESTURE, THE CLAIM AS IT ULTIMATELY CAME OUT OF THE

1 WE GOT A DIATRIBE ABOUT CAUSES. THAT WAS NOT MY
2 QUESTION.

3 MR. JACOBS: YOUR HONOR, I --

4 THE COURT: OVERRULED. GO TO THE NEXT
5 QUESTION.

6 THE WITNESS: SORRY.

7 BY MR. DEFRANCO:

8 Q LET ME ASK AGAIN. MAYBE MY QUESTION WASN'T
9 CLEAR. LET ME TRY AGAIN.

10 I THOUGHT ON DIRECT EXAMINATION YOU SAID
11 THE MOTION EVENT OBJECT CALLS FOR CAUSES. YOU JUST
12 TOLD US ABOUT CAUSES. I DON'T WANT TO TALK ABOUT
13 CAUSES FOR THE MOMENT.

14 I WANT TO FOCUS ON CALLS. CALLS IS
15 SOMETHING SPECIFIC IN COMPUTER PARLANCE; RIGHT?

16 A YES.

17 Q IS IT YOUR TESTIMONY HERE THAT MOTION EVENT
18 OBJECT PERFORMS A CALL OPERATION?

19 A NO. THE MOTION EVENT OBJECT CAUSES --

20 Q DOES IT PERFORM A CALL OPERATION? YES OR NO,
21 SIR? I NEED A YES OR NO TO THAT.

22 MR. JACOBS: YOUR HONOR, THAT WAS AN
23 ANSWER.

24 THE COURT: OVERRULED.

25 GO AHEAD, PLEASE. YOU CAN ANSWER.

1 BY MR. DEFRANCO:

2 Q PLEASE, SIR, JUST YES OR NO, DOES IT PERFORM A
3 CALL OPERATION?

4 A WHEN YOU SAY "PERFORM A CALL OPERATION," A
5 CALL IS NOT AN OPERATION. A CALL IS SOME -- IS A
6 FUNCTION.

7 Q LET ME TRY IT THIS WAY, SIR.

8 A YES.

9 Q WOULD YOU AGREE WITH ME THAT MOTION EVENT
10 OBJECT DOESN'T MAKE A SCROLL CALL, FOR EXAMPLE?

11 A THE MOTION EVENT OBJECT ITSELF DOES NOT.

12 BUT IT CAUSES THE CODE THAT RESULTS IN A
13 SCROLL CALL TO BE MADE, YES.

14 Q IT DOESN'T DO IT ITSELF?

15 A IT IS RESPONSIBLE FOR IT.

16 Q IT DOESN'T DO IT ITSELF IS WHAT YOU JUST SAID,
17 SIR?

18 A I SAID IT IS RESPONSIBLE FOR IT.

19 Q DID YOU -- WERE NOT HERE WITH ME, SIR? DID
20 YOU JUST SAY IT DOESN'T DO IT ITSELF? YES OR NO?

21 A I BELIEVE THE ANSWER TO THIS QUESTION NEEDS TO
22 BE COMPLETED, SO I SAID, YES, IT DOESN'T DO IT
23 ITSELF, BUT IT CAUSES IT.

24 Q AND THERE'S NOTHING IN THE MOTION EVENT OBJECT
25 THAT CALLS A GESTURE OPERATION; ISN'T THAT TRUE,

1 SIR?

2 A ONCE AGAIN, IT CAUSES IT.

3 Q THERE'S NOTHING, THOUGH, THAT CALLS IT? IS
4 THAT TRUE?

5 A ONCE AGAIN, IT CAUSES IT.

6 Q LET'S MOVE ON. LET'S MOVE ON TO THE '163
7 PATENT.

8 THAT'S THE SECOND PATENT THAT YOU
9 TESTIFIED ON DIRECT EXAMINATION ABOUT INFRINGEMENT;
10 CORRECT?

11 A YES.

12 Q NOW, I THINK ON DIRECT EXAMINATION YOU SAID
13 SOMETHING TO THE EFFECT THAT IN THE '163 PATENT
14 THAT WAS A RESULT, IN YOUR VIEW, OF A KEY INSIGHT,
15 THOSE PARTICULAR WORDS I WROTE DOWN, KEY INSIGHT IN
16 REALIZING THAT THERE'S AN INHERENT STRUCTURE IN WEB
17 PAGES THAT CAN BE EXPLOITED FOR USE IN THE
18 INVENTION.

19 IS THAT FAIR?

20 A THAT'S FAIR.

21 Q OKAY. THERE ARE NINE PATENTS -- NINE
22 INVENTORS ON THE, ON THE '163 PATENT; IS THAT
23 CORRECT?

24 A I HAVEN'T COUNTED THEM, BUT THERE ARE MANY.

25 Q YOU HAVEN'T SPOKEN TO THESE INVENTORS ABOUT,

1 DIRECTLY ABOUT THE '163 PATENT OR THEIR INVENTION
2 OR ANY INSIGHTS THEY MAY HAVE HAD. ISN'T THAT
3 TRUE, SIR?

4 A I READ THEIR DEPOSITION TESTIMONIES.

5 Q YOU HAVEN'T SPOKEN TO THEM ABOUT ANY INSIGHTS
6 THEY MAY HAVE HAD. IS THAT TRUE, SIR?

7 A I READ THEIR DEPOSITION TESTIMONIES WHERE THEY
8 TALK ABOUT INSIGHTS THEY MAY HAVE HAD.

9 Q AND -- BY THE WAY, ARE YOU AWARE THAT MANY OF
10 THE INVENTORS ARE WORKING FOR APPLE AND THEY'RE
11 READILY ACCESSIBLE TO YOU IF YOU WANTED TO SPEAK TO
12 THEM AND ASK THEM ABOUT THE INVENTION AND WHAT LED
13 TO IT AND THEIR INSIGHTS AND THAT SORT OF THING?
14 WERE YOU AWARE OF THAT THAT, THAT'S AVAILABLE TO
15 YOU AS AN EXPERT FOR APPLE?

16 A PERHAPS.

17 Q NOW, LET'S PULL UP THE SLIDE THAT YOU PREPARED
18 FOR THE '163 PATENT. THIS IS PDX 29.29.

19 NOW, YOU TOOK US THROUGH THIS ON DIRECT
20 EXAMINATION. I JUST WANT TO POINT OUT A FEW
21 THINGS.

22 AGAIN, THIS CLAIM -- THIS IS THE -- YOU
23 CALLED IT TAP TO ZOOM AND SUBSTANTIALLY CENTER.

24 DO YOU SEE THAT?

25 A YES.

1 Q THAT'S SHORTHAND THAT YOU USED TO DESCRIBE
2 THIS INVENTION IN VERY GENERAL TERMS. IS THAT
3 FAIR?

4 A THAT'S FAIR.

5 Q YOU WEREN'T TRYING TO SAY THAT'S WHAT THIS
6 INVENTION IS ALL ABOUT; RIGHT?

7 A NO. JUST, AS YOU SAID, A SHORTHAND
8 DESCRIBING.

9 Q BECAUSE, OF COURSE, TAP TO ZOOM WAS, WAS OUT
10 THERE IN THIS FIELD BEFORE THIS PATENT; RIGHT? YOU
11 WOULDN'T SAY THESE INVENTORS INVENTED TAP TO ZOOM;
12 RIGHT?

13 A THAT IS CORRECT.

14 Q AND SUBSTANTIALLY CENTERING CONTENT, WHATEVER
15 THAT MEANS -- WELL, LET'S TALK ABOUT CENTERING
16 CONTENT ON A MOBILE DEVICE, A PHONE OR AN IPAD.

17 THESE INVENTORS OF THE '163 PATENT, THEY
18 CERTAINLY DIDN'T INVENT SUBSTANTIALLY CENTERING; IS
19 THAT RIGHT?

20 A IN A VERY GENERAL CONTEXT, MAYBE NOT.

21 Q OKAY. BUT AGAIN, YOU WOULD SAY -- I KNOW IT'S
22 COMING -- YOU WOULD SAY, WELL, YOU'VE GOT TO PUT
23 ALL THE ELEMENTS TOGETHER INTO THIS PARTICULAR
24 CLAIM, THAT'S WHAT DESCRIBES THE INVENTION. THAT'S
25 FAIR; RIGHT? NOT ANY ONE ELEMENT; RIGHT?

1 A RIGHT.

2 Q EVEN THOUGH, AS YOU TAKE APART THE ELEMENTS,
3 THEY MAY HAVE BEEN OUT THERE INDIVIDUALLY,
4 CERTAINLY LIKE TAP TO ZOOM AND CENTERING; IS THAT
5 TRUE?

6 A WELL, WHEN YOU SAY TAP TO ZOOM, YOU HAVE TO,
7 AGAIN, TALK ABOUT IT IN WHAT CONTEXT YOU'RE TALKING
8 ABOUT IT. SIMPLY ZOOMING, QUITE OFTEN ZOOMING OR
9 TAPPING TO ZOOM WITHOUT -- WITH NO STRUCTURE FOR A
10 DOCUMENT WITHOUT STRUCTURE IS, IS A COMPLETELY
11 DIFFERENT PIECE OF FUNCTIONALITY. IT'S
12 COMPLETELY -- IT'S SOMETHING THAT'S QUITE
13 DIFFERENT.

14 SO JUST BECAUSE YOU SHARE SOME TECHNICAL
15 WORDS DOESN'T MEAN THAT, YOU KNOW, SOMETHING IS
16 VERY COMMON.

17 Q ABSOLUTELY. BUT TAP TO ZOOM, AGAIN, ALONE,
18 THAT CONCEPT WAS NOT -- THESE INVENTORS DID NOT
19 COME UP WITH THAT CONCEPT?

20 A IN A HYPER TECHNICAL GENERAL SENSE, YES.

21 Q WHEN YOU SAY THE KEY INSIGHT IS THEY REALIZED
22 THERE'S AN INHERENT STRUCTURE IN WEB PAGES THAT CAN
23 BE EXPLOITED, THE PATENT, THE CLAIM, 50, USES THE
24 PHRASE "STRUCTURED ELECTRONIC DOCUMENT."

25 DO YOU SEE THAT?

1 A YES, I DO.

2 Q THAT'S ANOTHER LIMITATION ELEMENT THAT MUST BE
3 PRESENT IN THE ACCUSED DEVICE OR FEATURE IN ORDER
4 FOR THERE TO BE INFRINGEMENT; CORRECT?

5 A WHAT, THAT A STRUCTURED ELECTRONIC DOCUMENT
6 MUST BE PRESENT?

7 Q YES, YES.

8 A NO, ABSOLUTELY NOT.

9 Q OKAY. IT'S GOT TO BE -- IT'S GOT TO BE DOING
10 SOMETHING TO A STRUCTURED ELECTRONIC DOCUMENT?
11 THERE'S GOT TO BE A DISPLAY, AND THEN THE CLAIM
12 CONTINUES ON; RIGHT? SO THERE'S GOT TO BE A
13 STRUCTURED ELECTRONIC DOCUMENT PRESENT; IS THAT
14 TRUE?

15 A NO, IT'S NOT TRUE.

16 Q OKAY. STRUCTURED ELECTRONIC DOCUMENT, SIR,
17 THEY WERE OUT THERE; RIGHT? I MEAN, WEB PAGES USE
18 HTML. THAT'S THE CODE THAT, AS YOU SAY, WITH TABS
19 WILL STRUCTURE AN ELECTRONIC DOCUMENT; IS THAT
20 RIGHT?

21 A WITH TAGS.

22 Q I'M SORRY. I SAID TABS. WITH TAGS, THOSE ARE
23 THE LITTLE CHARACTERS; RIGHT? IS THAT RIGHT?

24 A YEAH.

25 Q SO ANY PROGRAMMER KNOWS THAT CERTAIN

1 INFORMATION YOU CAN GET ON THE INTERNET AND ACCESS
2 THROUGH A MOBILE DEVICE, LIKE A WEB PAGE, THOSE ARE
3 STRUCTURED DOCUMENTS USING, IN THAT INSTANCE, HTML
4 CODE. IS THAT FAIR?

5 A YEAH, THAT'S FAIR.

6 Q NOW, THIS CLAIM TALKS ABOUT INSTRUCTIONS. DO
7 YOU SEE THAT, SIR?

8 A YES.

9 Q ALL THE WAY DOWN?

10 A YES.

11 Q NOW, INSTRUCTIONS ARE ACTUAL LINES OF CODE; IS
12 THAT CORRECT?

13 A YES.

14 Q NOW, THAT MEANS THAT SOMEWHERE IN THE SOURCE
15 CODE, THERE ARE VERY SPECIFIC INSTRUCTIONS FOR
16 PERFORMING THOSE OPERATIONS; IS THAT CORRECT? IS
17 THAT RIGHT?

18 A YES.

19 Q AND CAN YOU DETERMINE INFRINGEMENT JUST BY
20 OPERATING AN ACCUSED DEVICE, REGARDLESS OF WHAT MAY
21 OR MAY NOT ACTUALLY BE IN THE SOURCE CODE?

22 A IT DEPENDS ON WHAT THE, WHAT THE CLAIM
23 LANGUAGE IS, IS STATING.

24 IF THE CLAIM LANGUAGE IS DESCRIBING A
25 VISUAL OPERATION AND YOU CLEARLY OBSERVE THAT

1 INFORMATION; IS THAT RIGHT?

2 A THAT IS CORRECT.

3 Q NOW, YOU ANALYZED WHETHER OR NOT THE ACCUSED
4 PRODUCTS SUBSTANTIALLY CENTERED CONTENT IN YOUR
5 WORK ON INFRINGEMENT; IS THAT CORRECT?

6 A YES.

7 Q NOW, THERE'S NO -- OTHER THAN THAT PHRASE,
8 "SUBSTANTIALLY CENTERED," THERE'S NO -- THERE'S NO
9 DEFINITION OR EXPLANATION ABOUT WHAT THOSE TERMS
10 MEAN IN THE CLAIM; RIGHT?

11 A NOT IN THE CLAIM, NO.

12 Q AND THE SPECIFICATION TALKS ABOUT THOSE TERMS,
13 BUT THERE'S NO EXPLICIT DEFINITION IN THE
14 SPECIFICATION; ISN'T THAT RIGHT?

15 A WELL, THERE'S TALK IN THE SPECIFICATION ABOUT
16 PADDING AND SO ON WITH REGARDS TO, TO THE DOCUMENT.

17 BUT BY AND LARGE, IT'S SOMETHING THAT A
18 PERSON OF ORDINARY SKILL IN THE ART WILL HAVE NO
19 PROBLEM UNDERSTANDING.

20 Q SO IS IT YOUR TESTIMONY, SIR, THAT IF I HAD 50
21 PEOPLE LINED UP WHO WERE SKILLED IN THE ART, THEY
22 WOULD ALL GIVE ME THE EXACT SAME ANSWER IF I SHOWED
23 THEM SOMETHING AND ASKED THEM IF IT WAS
24 SUBSTANTIALLY CENTERED?

25 A BY AND LARGE, GIVEN THE CONTEXT FOR THE '163

1 PATENT, THERE ARE OTHER DESIGN CRITERIA, DESIGN
2 GOALS THAT UNDERLIE THE, THE PATENT, AND SO USUALLY
3 IN THE RARE CIRCUMSTANCE WHERE YOU FIND -- YOU FEEL
4 THAT REASONABLE MINDS MIGHT, MIGHT DEVIATE.

5 THERE'S USUALLY A GOOD REASON IN THE, IN
6 THE INTERFACE DESIGN FOR, FOR THINGS APPEARING THE
7 WAY THEY DO.

8 Q SO TWO PEOPLE MIGHT DISAGREE ABOUT WHETHER
9 SOMETHING IS SUBSTANTIALLY CENTERED, BUT THAT MAY
10 BE KEY TO THE DESIGN GOAL FOR THE SPECIFIC DEVICE?
11 IS THAT WHAT YOU'RE SAYING?

12 A NO, THAT'S NOT WHAT I'M SAYING.

13 Q OKAY. LET ME ASK YOU THIS. THERE'S NO -- IN
14 TERMS OF GIVING THOSE 50 HYPOTHETICAL PEOPLE SOME
15 TOOLS, THERE'S NO SPECIFIC PARAMETERS SET FORTH IN
16 THE CLAIM; IS THAT TRUE?

17 A THERE DOESN'T NEED TO BE SPECIFIC PARAMETERS
18 SET FORTH IN THE CLAIM.

19 Q THERE ARE NONE SET FORTH IN THE CLAIM, SIR;
20 ISN'T THAT TRUE?

21 A WELL, THERE'S THE TERM "SUBSTANTIALLY
22 CENTERED."

23 Q RIGHT. IT DOESN'T SHOW ANY -- IT DOESN'T GIVE
24 ANY MORE INDICATION. IT DOESN'T GIVE YOU
25 MEASUREMENTS OR DISTANCE OR ANY OTHER INDICATION

1 ABOUT WHAT THAT MEANS, ISN'T THAT TRUE, SIR, IN THE
2 CLAIM?

3 A IN THE CLAIM TAKEN WITH THE PATENT, A PERSON
4 OF ORDINARY SKILL IN THE ART WILL UNDERSTAND WHAT
5 IT MEANS.

6 Q THERE ARE NO -- THERE ARE NO SPECIFIC
7 PARAMETERS. YOU'VE SEEN CLAIMS THAT HAVE
8 PARAMETERS, RIGHT, SPECIFIC MEASUREMENTS DETAILED
9 EXACTLY IN THE CLAIM? YOU'VE SEEN THAT, RIGHT,
10 BEFORE SIR? THAT'S NOT THE SITUATION, IS IT, HERE,
11 SIR?

12 A NOT FOR THIS PARTICULAR --

13 Q I'M SORRY. EVERYBODY IS RUSHED. I APOLOGIZE
14 FOR TALKING OVER YOU.

15 THAT'S ALSO NOT THE SITUATION WITH
16 RESPECT TO THE '163 SPECIFICATION. THERE ARE NO
17 SPECIFIC PARAMETERS FOR EACH OF THOSE 50
18 INDIVIDUALS TO COME TO THE SAME CONCLUSION, TO SEE
19 WHETHER THOSE PARAMETERS ARE MET. THAT'S FAIR,
20 ISN'T IT, SIR?

21 A THAT'S WHY YOU NEED TO BE A PERSON OF ORDINARY
22 SKILL IN THE ART.

23 Q NOW, YOU ANALYZED, FOR INFRINGEMENT OF THE
24 '163 PATENT, ONE WEB PAGE. IS THAT TRUE, SIR?

25 A THAT IS NOT TRUE.

1 Q YOU ANALYZED A PARTICULAR APPLICATION, DIDN'T
2 YOU, THE BROWSER APPLICATION?

3 A YES, THE BROWSER APPLICATION, YES.

4 Q AND IN YOUR REPORT, YOU DIDN'T ANALYZE OTHER
5 APPLICATIONS, LIKE E-MAIL, THE MUSIC PLAYER, OR
6 GALLERY, OR ANY OTHER APPLICATION. YOU FOCUSSED ON
7 THE GALLERY APPLICATION; IS THAT TRUE?

8 A NO, I DID NOT.

9 Q I'M SORRY?

10 A I DID NOT FOCUS ON THE GALLERY APPLICATION AT
11 ALL.

12 Q I APOLOGIZE. I MISSPOKE. I'M RUSHED. LET ME
13 SLOW DOWN.

14 YOU FOCUSSED ON THE WEB BROWSER
15 APPLICATION IN YOUR ANALYSIS; IS THAT TRUE?

16 A THAT IS TRUE.

17 Q THERE ARE MANY OTHER APPLICATIONS OUT THERE,
18 HIGHER ORDER APPLICATIONS LIKE GALLERY AND E-MAIL
19 AND THINGS LIKE THAT, AND HUNDREDS OF OTHER MORE
20 DETAILED APPLICATIONS YOU CAN DOWNLOAD FROM THE
21 WEB, FOR EXAMPLE. YOU DIDN'T ANALYZE OTHER
22 APPLICATIONS?

23 A I DIDN'T NEED TO.

24 Q NOW -- AND THE WEB PAGE, YOU ALSO -- WITHIN
25 ANALYZING THE WEB BROWSER, YOU PICKED OUT A

1 PARTICULAR WEB PAGE, THE NEW YORK TIMES WEB PAGE;
2 IS THAT TRUE?

3 A AS PART OF MY TESTING, I TESTED IT ON A NUMBER
4 OF WEB PAGES. I JUST CHOSE THE NEW YORK TIMES AS A
5 GOOD REPRESENTATIVE WEB PAGE FOR MY ILLUSTRATIONS.

6 BUT THE DESIGN WORKS ON, ON AN
7 INNUMERABLE NUMBER OF WEB PAGES.

8 Q IN THE INTERESTS OF TIME, SIR, DO YOU RECALL
9 TESTIFYING AT YOUR DEPOSITION THAT YOU COULD NOT
10 RECALL TESTING, PERFORMING ANY TESTS ON ANY OTHER
11 WEB PAGE OTHER THAN THE NEWYORKTIMES.COM WEB PAGE?
12 DO YOU RECALL THAT?

13 A I RECALL SAYING AT MY DEPOSITION THAT I DID
14 NOT CONCLUSIVELY REMEMBER VERY PRECISE WEBSITES
15 THAT I TESTED ON.

16 AS PART OF MY TESTING, I SPENT A LOT OF
17 TIME JUST BROWSING AROUND GENERALLY ON THE WEB
18 PAGE. WHEN ONE DOES THAT, YOU DON'T NECESSARILY
19 KEEP A CLEAR TRACK OF EVERY WEB PAGE THAT YOU MIGHT
20 HAPPEN TO VISIT.

21 Q SO YOU DON'T DISAGREE, AT YOUR DEPOSITION, YOU
22 COULDN'T IDENTIFY ANY OTHER WEB PAGE OTHER THAN THE
23 NEW YORK TIMES?

24 A NO. I BELIEVE I DID GIVE AN EXAMPLE OR TWO.

25 Q YOU DIDN'T REMEMBER EXACTLY WHAT YOU TESTED;

1 ISN'T THAT FAIR, SIR?

2 A ARE YOU ASKING ME TO REMEMBER WHAT I SAID AT
3 THE DEPOSITION THREE MONTHS BACK? OR I DON'T KNOW
4 HOWEVER LONG BACK? YOU'D LIKE TO KNOW WHAT WEB
5 PAGES I TESTED ON, I'D BE HAPPY TO GIVE YOU A LIST.

6 Q LET'S KEEP GOING.

7 THE -- THERE ARE OTHER -- THERE ARE
8 CERTAIN TYPES OF CONTENT WEB PAGES THAT ARE NOT OF
9 USE FOR THE '163 PATENT; IS THAT TRUE, SIR?

10 A CAN YOU BE MORE PRECISE WITH THAT QUESTION?

11 Q THERE ARE CERTAIN TYPES OF, LIKE, MOBILE
12 WEBSITES? ISN'T IT TRUE, SIR, THAT MOBILE WEBSITES
13 ARE NOT USEFUL IN THE CONTEXT OF THE '163 PATENT?

14 A MOBILE WEBSITES ARE SITES THAT ARE
15 SPECIFICALLY DESIGNED AS AN ALTERNATIVE, AS AN
16 ALTERNATIVE SOLUTION TO BROWSING ON A SMALL SCREEN
17 DEVICE.

18 THE '163 PATENT SORT OF OBVIATES THE NEED
19 FOR PEOPLE TO GO AND REWRITE THEIR ENTIRE WEB PAGE.

20 SO IT'S -- IT DOESN'T MATTER -- IT'S NOT
21 DESIGNED FOR IT, I WILL AGREE.

22 BUT IT DOESN'T MATTER FOR THE CASE -- FOR
23 THE SAKE OF INFRINGEMENT.

24 Q WELL, WOULDN'T YOU AGREE THAT IT GOES AGAINST
25 THE TEACHING, MOBILE WEBSITES GO AGAINST THE

1 TEACHING OF THE '163 PATENT?

2 A OF COURSE.

3 Q NOW, GENERALLY, YOU DON'T HAVE ANY IDEA -- YOU
4 ANALYZED THE BROWSER -- YOU LOOKED AT THE
5 NEW YORK TIMES WEB PAGE.

6 DO YOU REMEMBER THAT?

7 A AND OTHER WEB PAGES.

8 Q AND YOU SPECIFICALLY AT YOUR DEPOSITION -- I
9 CAN PLAY IT FOR YOU, SIR -- YOU COULDN'T, AT YOUR
10 DEPOSITION, IDENTIFY OTHER SPECIFIC ONES YOU
11 REMEMBERED LOOKING AT.

12 DO YOU REMEMBER THAT?

13 A YOU'RE WELCOME TO PLAY MY DEPOSITION
14 TESTIMONY, BUT I SAID I DID NOT CONCLUSIVELY GIVE
15 ANY NAMES, BUT I DID VERY CLEARLY SAY THAT I HAD
16 LOOKED AT OTHER WEB PAGES.

17 Q OKAY.

18 A I'M -- AT THIS POINT, I'M HAPPY TO GIVE YOU A
19 LIST IF YOU WANT.

20 Q NOW, I JUST WANT TO COVER YOUR MEMORY AT YOUR
21 DEPOSITION.

22 YOU DON'T KNOW, SIR, DO YOU, SITTING
23 HERE, WHAT PERCENTAGE OF PEOPLE WHO OWN A SAMSUNG
24 PRODUCT HAVE ACTUALLY USED THE BROWSER APPLICATION?
25 THAT'S NOT PART OF YOUR TESTIMONY? IS THAT TRUE?

1 A THAT IS TRUE, I DON'T KNOW.

2 Q AND YOU -- YOU'RE NOT PROVIDING ANY SURVEY
3 ESTIMATE OF USAGE TO BACK UP YOUR TESTIMONY ON
4 INFRINGEMENT HERE. IS THAT TRUE?

5 A NO, IT'S NOT RELEVANT TO INFRINGEMENT AT ALL.

6 Q AND, IN FACT, ISN'T IT TRUE, SIR, THAT YOU'VE
7 NEVER SEEN ANYONE USE A SAMSUNG SMARTPHONE OR
8 TABLET COMPUTER IN A WAY THAT WOULD DEMONSTRATE THE
9 RESULTS OF STEPS -- OF THE STEPS IN CLAIM 50 OF THE
10 '163 PATENT, OUTSIDE OF THE TESTING THAT YOU'VE
11 DONE?

12 A IT'S NOT RELEVANT TO THIS CLAIM OF THE PATENT.
13 THIS IS A CLAIM THAT SPECIFICALLY TALKS ABOUT
14 HAVING INSTRUCTIONS ON A DEVICE.

15 IF THE INSTRUCTIONS FOR THIS CLAIM
16 LANGUAGE EXIST ON THE DEVICE, IT DOESN'T MATTER
17 WHETHER ANYONE EVER USES THAT DEVICE OR EVEN DOES
18 ANYTHING ABOUT IT.

19 THE FACT IS IT'S THE DEVICE THAT
20 INFRINGES BECAUSE IT POSSESSES THESE INSTRUCTIONS.

21 Q YOU DIDN'T -- MY QUESTION WAS, YOU DIDN'T
22 SPEAK TO ANYBODY WHO ACTUALLY USES THIS
23 FUNCTIONALITY, SIR?

24 A NO.

25 Q AND THAT WOULD INCLUDE THE INVENTORS; IS THAT

1 TRUE, SIR? YOU DIDN'T SPEAK TO THE INVENTORS ABOUT
2 THIS FUNCTIONALITY?

3 A I DIDN'T SPEAK TO THE INVENTORS OF --

4 Q THANK YOU.

5 THE COURT: ALL RIGHT.

6 MR. DEFRANCO: THANK YOU.

7 THE COURT: ALL RIGHT. THE TIME IS 3:22.

8 MR. JACOBS: JUST A COUPLE OF QUESTIONS
9 FOR DR. SINGH.

10 COULD WE HAVE THE CLAIM LANGUAGE UP,
11 MR. LEE.

12 **REDIRECT EXAMINATION**

13 BY MR. JACOBS:

14 Q THERE WAS A MOMENT OF POSSIBLE CONFUSION. YOU
15 WERE ASKED WHETHER A STRUCTURED ELECTRONIC DOCUMENT
16 HAS TO BE PRESENT IN THE ACCUSED DEVICE IN ORDER
17 FOR THERE TO BE INFRINGEMENT, AND I BELIEVE YOU
18 ANSWERED NO, AND I WONDERED IF YOU COULD EXPLAIN
19 YOUR ANSWER.

20 A THAT'S RIGHT. WHAT THE CLAIM LANGUAGE
21 REQUIRES IS THAT YOUR PROGRAM HAS INSTRUCTIONS THAT
22 ARE CAPABLE OF DEALING WITH A STRUCTURED ELECTRONIC
23 DOCUMENT, DISPLAYING IT AND THEN PERFORMING ALL
24 THESE ACTIONS.

25 THE ACTUAL SORT OF -- THE SPECIFIC

1 STRUCTURED ELECTRONIC DOCUMENT OR MULTIPLE OR WHICH
2 STRUCTURED ELECTRONIC DOCUMENT IS NOT OF
3 CONSEQUENCE.

4 WHAT IS OF CONSEQUENCE IS THAT THERE'S A
5 PROGRAM TO DEAL WITH SUCH DOCUMENTS.

6 Q AND WHEN WE'RE OBSERVING THE DEVICES IN
7 ACTION, ARE WE OBSERVING THOSE ACTIONS OPERATING ON
8 A STRUCTURED ELECTRONIC DOCUMENT?

9 A YES.

10 MR. DEFRANCO: YOUR HONOR, WE'RE LEADING
11 THE WITNESS NOW THROUGH HIS TESTIMONY.

12 THE COURT: YES. SUSTAINED.

13 BY MR. JACOBS:

14 Q CAN YOU EXPLAIN WHETHER OR NOT, WHEN WE'RE
15 OBSERVING THE DEVICE IN ACTION, WE ARE OBSERVING
16 THE INSTRUCTIONS OPERATING ON A STRUCTURED
17 ELECTRONIC DOCUMENT?

18 A YES, EXACTLY. WHEN WE OBSERVE THE DEVICE IN
19 ACTION, THESE INSTRUCTIONS ARE, IN FACT, OPERATING
20 ON A STRUCTURED ELECTRONIC DOCUMENT. IN
21 PARTICULAR, WE SAW THEM OPERATING ON THE
22 NEW YORK TIMES WEB PAGE.

23 Q YOU WERE ASKED ABOUT SOME SOURCE CODE EXTRACTS
24 AND THE WORD GESTURE IN YOUR SLIDE VERSUS THE
25 PRESENCE OF GESTURE IN THE ACTUAL CODE.

1 INNOVATE QUITE A BIT. I'LL HIGHLIGHT A COUPLE.

2 SO IN 2001, WE BUILT THE IPOD AND, WITH
3 IT, WE REVOLUTIONIZED THE MUSIC INDUSTRY.

4 IN 2007, WE BUILT IPHONE AND, WITH IT, WE
5 RECAST WHAT ARE MEANT TO BE THE SMARTPHONES.

6 AND IN 2010, WE BUILT THE IPAD, AND WITH
7 IPAD WE CREATED A WHOLE NEW MARKET CATEGORY KNOWN
8 AS TABLETS.

9 MS. MAROULIS: YOUR HONOR, OBJECTION.
10 MOVE TO STRIKE. IT'S BEYOND THIS WITNESS'S
11 EXPERTISE. HE STARTED OUT IN 2001.

12 THE COURT: OVERRULED.

13 BY MR. MUELLER:

14 Q CONTINUE, PLEASE.

15 A AND WITH THAT SAID, WE BUILT A PORTFOLIO, A
16 PATENT PORTFOLIO ALONG THE WAY AND HAVE DONE A LOT
17 OF INNOVATION TO BUILD THOSE PRODUCTS OUT TO
18 MARKET.

19 Q MR. TEKSLER, COULD YOU EXPLAIN TO THE JURY,
20 PLEASE, HOW THIS CATEGORY OF COMPUTING PATENTS
21 RELATE, IF AT ALL, TO WIRELESS DEVICES?

22 A CERTAINLY. SO ANY MODERN SMARTPHONE THAT HAS
23 A OPERATING SYSTEM BUILT INTO IT THAT YOU WANT TO
24 DOWNLOAD THIRD PARTY APPLICATIONS TO, THAT'S AN
25 EXAMPLE OF CORE COMPUTING I.P. THAT WE'VE REALLY

1 BUILT THE FOUNDATIONAL POSITIONING.

2 Q WHAT IS APPLE'S POSITION ON LICENSING THIS
3 PORTION OF ITS PATENT PORTFOLIO?

4 A SO UNLIKE STANDARDS WHERE WE HAVE TO LICENSE,
5 THIS IS AN AREA WHERE WE DON'T HAVE TO LICENSE.

6 MS. MAROULIS: OBJECTION. BEYOND THE
7 COURT'S ORDER ON STANDARDS.

8 MR. MUELLER: YOUR HONOR, HE'S JUST
9 DESCRIBING THE SECOND CATEGORY, NON-STANDARDS
10 PATENTS.

11 THE COURT: ALL RIGHT. OVERRULED.

12 THE WITNESS: SO WITH RESPECT TO THE
13 COMPUTING PORTFOLIO, IT'S NOT ONE THAT WE HAVE TO
14 LICENSE, BUT WE'RE CERTAINLY WILLING TO DISCUSS
15 LICENSING.

16 WE DO THAT WITH TWO PRIMARY GOALS. THE
17 FIRST ONE IS THAT WE WANT TO GET FAIRLY COMPENSATED
18 FOR THE WORK THAT WE'VE DONE; AND THE SECOND -- AND
19 THE SECOND ONE IS WE WANT TO MAKE SURE THAT WE
20 SAFEGUARD APPLE'S DIFFERENTIATED USER EXPERIENCE.

21 BY MR. MUELLER:

22 Q MR. TEKSLER, LET'S TURN, IF WE COULD, TO THE
23 THIRD CATEGORY IN THE APPLE PORTFOLIO. WOULD YOU
24 REMIND US WHAT THAT IS?

25 A CERTAINLY. THAT'S APPLE'S UNIQUE USER

1 EXPERIENCE I.P.

2 Q WHAT DOES THAT REFER TO?

3 A SO I WOULD DESCRIBE THAT IN A COUPLE DIFFERENT
4 WAYS. FROM A TOP LEVEL, IT'S THAT WHICH MAKES OUR
5 BRAND IDENTITY AND KEEPS US UNIQUE IN THE
6 MARKETPLACE, AND IT'S WHAT WE DON'T WISH TO SHARE
7 AND OTHER PEOPLE TO MAKE.

8 SO WITH THAT, I WOULD SAY FROM A
9 TECHNICAL PERSPECTIVE, IT INCLUDES TRADEMARKS,
10 TRADE DRESS, ALL THE DESIGN PATENTS, AND A SMALL
11 SET OF UTILITY PATENTS THAT REALLY DEAL WITH USER
12 INTERFACE ELEMENTS, AND MAYBE A COUPLE OF
13 ASSOCIATED FEATURES.

14 Q AND HOW DOES THIS CATEGORY RELATE TO WIRELESS
15 DEVICES?

16 A WELL, I GUESS YOU DON'T REALLY NEED A LICENSE
17 TO THIS. FROM OUR PERSPECTIVE, UNLESS YOU'RE
18 TRYING TO BUILD AN IPHONE KNOCK-OFF OR A CLONE OR
19 AN IPAD CLONE, YOU WOULDN'T NEED A LICENSE TO THIS
20 SET OF I.P.

21 Q AND TO BE CLEAR, WHAT IS APPLE'S POSITION ON
22 LICENSING THIS PORTION OF ITS PORTFOLIO?

23 A WE STRONGLY DESIRE NOT TO LICENSE IT. IT'S
24 NOT AN AREA THAT WE LICENSE, AND OUR GOAL IN
25 LICENSING IS TO ENABLE PEOPLE TO DESIGN THEIR OWN

1 PRODUCTS, NOT THE ABILITY TO JUST COPY OUR
2 PRODUCTS.

3 Q HAS APPLE EVER LICENSED ANY OF THE PATENTS
4 WITHIN THIS CATEGORY?

5 A CERTAINLY OVER TIME WE HAVE, BUT I CAN COUNT
6 THOSE INSTANCES ON ONE HAND QUITE EASILY. AND WE
7 DO SO WITH RARE EXCEPTION AND WE DO IT CONSCIOUSLY
8 KNOWING THAT WE'RE NOT ENABLING SOMEBODY TO BUILD A
9 CLONE PRODUCT.

10 Q MR. TEKSLER, I WANT TO SHIFT GEARS, IF I
11 COULD, AND TURN BACK THE CLOCK TO THE BEGINNING OF
12 THE APPLE/SAMSUNG DISPUTE.

13 DO YOU KNOW WHEN THAT DISPUTE BEGAN?

14 A YES. IT BEGAN IN THE SUMMER OF 2010.

15 Q AND WHAT HAPPENED IN THE SUMMER OF 2010?

16 A SO SAMSUNG INTRODUCED THEIR GALAXY S PHONE,
17 AND WITH THIS, WE WERE QUITE SHOCKED FOR A COUPLE
18 OF REASONS.

19 FIRST, THEY WERE A TRUSTED PARTNER OF
20 OURS AND WE DIDN'T UNDERSTAND HOW A TRUSTED PARTNER
21 WOULD BUILD A COPYCAT PRODUCT LIKE THAT.

22 AND THE SECOND ONE WAS THAT THE PRODUCT
23 WAS JUST WAY TOO CLOSE TO OUR PRODUCT.

24 SO WE TOOK IT SO SERIOUS THAT STEVEN JOBS
25 AND TIM COOK CONTACTED SAMSUNG EXECUTIVES AND MET

1 WITH THEM TO RELAY OUR CONCERN.

2 MS. MAROULIS: YOUR HONOR, I MOVE TO
3 STRIKE FOR LACK OF FOUNDATION ON THAT RESPONSE.

4 THE COURT: YOU'RE GOING TO HAVE TO LAY A
5 FOUNDATION HOW HE KNOWS THAT.

6 BY MR. MUELLER:

7 Q SURE. MR. TEKSLER, WERE YOU AT APPLE AT THAT
8 TIME?

9 A I WAS.

10 Q WHAT WAS YOUR POSITION AT THAT TIME?

11 A I WAS THE DIRECTOR OF APPLE I.P. AND STRATEGY.

12 Q YES OR NO, WERE YOU PRIVY TO CONVERSATIONS
13 INVOLVING SAMSUNG?

14 A YES, I WAS.

15 MR. MUELLER: YOUR HONOR, I'VE LAID A
16 FOUNDATION.

17 Q COULD YOU PLEASE TURN TO TAB 1 IN YOUR BINDER,
18 THAT'S PLAINTIFF'S EXHIBIT 52.

19 THE COURT: I DON'T HAVE THE DIRECT
20 EXHIBITS TO MR. TEKSLER. I THOUGHT THEY WERE
21 COMING.

22 MR. MUELLER: I'M SORRY. I THOUGHT YOU
23 HAD A BINDER. I APOLOGIZE, YOUR HONOR. THIS IS
24 TAB 1, PLAINTIFF'S EXHIBIT 52.

25 Q MR. TEKSLER, DO YOU KNOW WHAT THIS DOCUMENT

1 IS?

2 A I DO.

3 Q WHAT IS IT?

4 A IT'S A PRESENTATION THAT WAS GIVEN TO SAMSUNG
5 IN AUGUST OF 2010. IT'S ONE THAT I HELPED AUTHOR
6 AND CREATE.

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

8 MS. MAROULIS: YOUR HONOR, NO FURTHER
9 OBJECTION, BUT YOUR HONOR RULED THAT THE WITNESS
10 WOULD NOT BE ALLOWED TO TESTIFY ABOUT THE MEETING
11 ITSELF.

12 THE COURT: AND I'LL CONTINUE THAT
13 RULING. IT'S ADMITTED.

14 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
15 52, HAVING BEEN PREVIOUSLY MARKED FOR
16 IDENTIFICATION, WAS ADMITTED INTO
17 EVIDENCE.)

18 THE COURT: GO AHEAD.

19 BY MR. MUELLER:

20 Q MR. TEKSLER, WE'RE PUTTING PLAINTIFF'S EXHIBIT
21 52 ON THE SCREEN. THIS IS TITLED "SAMSUNG'S USE OF
22 APPLE PATENT IN SMARTPHONES."

23 AND COULD YOU REMIND US WHAT THIS
24 DOCUMENT IS? IT'S A PRESENTATION?

25 A YES, IT'S A PRESENTATION GIVEN TO SAMSUNG IN

1 AUGUST OF -- AUGUST 4TH OF 2010.

2 Q WHO DELIVERED THE PRESENTATION?

3 A CHIP LUTTON DID.

4 Q WHO IS CHIP LUTTON?

5 A CHIP LUTTON WAS THE CHIEF PATENT COUNSEL AND
6 MY MANAGER AT THAT TIME.

7 Q MR. LUTTON IS STILL AT APPLE?

8 A NO, HE'S NOT.

9 Q NOW, WERE YOU AT THIS PRESENTATION?

10 A I WAS NOT.

11 Q BUT YOU NOW WHEN IT WAS GIVEN?

12 A I DO.

13 Q WHAT WAS THAT DATE?

14 A AUGUST 4TH, 2010.

15 Q LET'S TURN, IF WE COULD, TO PAGE 17 OF THE
16 PRESENTATION AND PUT IT ON THE SCREEN.

17 WHAT DO WE SEE HERE?

18 A SO THIS WAS REALLY A CHAPTER THAT WAS ENTITLED
19 "SAMSUNG COPYING IPHONE," AND WHAT WE WERE -- WHAT
20 WE WERE RELAYING WITH THIS CONTENT WAS REALLY ABOUT
21 THE REMARKABLE SIMILARITY OF THE TWO PRODUCTS, ALL
22 THE WAY FROM THE OVERALL APPEARANCE OF THE PRODUCT
23 DOWN TO THE ARRANGEMENT, THE FOUR-BY-FOUR
24 ARRANGEMENT OF THE ICONS, THE SIMILARITY OF THE
25 ICONS, THE PERSISTENT DOCK THAT YOU HAVE AT THE

1 BOTTOM THAT DOESN'T CHANGE WITH THE SCREENS.

2 AND WE DETAILED IT, YOU KNOW, WITH
3 SUBSEQUENT PAGES THAT REALLY TALKED ABOUT THESE,
4 THE USER INTERFACE ELEMENTS THAT WERE SIMILAR ALL
5 THE WAY DOWN TO THE PACKAGING.

6 Q LET'S TURN --

7 MS. MAROULIS: YOUR HONOR, I MOVE TO
8 STRIKE. THIS WAS A LAY OPINION ON INFRINGEMENT
9 ISSUES AND, AGAIN, THE WITNESS WAS NOT DISCLOSED.

10 MR. MUELLER: YOUR HONOR, I'M SIMPLY
11 ASKING MR. TEKSLER ABOUT A DOCUMENT THAT HE HELPED
12 AUTHOR.

13 THE COURT: OVERRULED.

14 BY MR. MUELLER:

15 Q LET'S PUT PAGE 14 ON THE SCREEN IF WE COULD.

16 WHAT DO WE SEE HERE?

17 A SO IN THIS PAGE WHAT WE WERE DESCRIBING --
18 THIS WAS PART OF THE CHAPTER WHERE WE TALK ABOUT
19 THE ARCHITECTURE OF SAMSUNG PHONES, AND
20 SPECIFICALLY HERE WE'RE REFERRING TO THE ANDROID
21 APPLICATION FRAMEWORK THAT'S HIGHLIGHTED IN THE
22 LEFT ARCHITECTURE DIAGRAM THERE.

23 AND WE WERE COMMUNICATING TO SAMSUNG BY
24 THIS SLIDE THAT THESE ARE SOME OF THE, SOME OF THE
25 PATENTS -- IT'S JUST REPRESENTATIVE OF A LIST OF

1 PATENTS THAT SAMSUNG INFRINGES WITH THIS PORTION OF
2 THE ARCHITECTURE.

3 Q I'D LIKE TO DIRECT YOUR ATTENTION, IF I COULD,
4 MR. TEKSLER, TO U.S. PATENT NUMBER 7,469,381 ON
5 THIS LIST.

6 ARE YOU FAMILIAR WITH THAT PATENT?

7 A I AM.

8 Q WHAT IS IT?

9 A SO THIS PATENT RELATES TO SCROLL BOUNCING AND,
10 I GUESS PUT SIMPLY, IT'S A USER INTERFACE ELEMENT
11 WHEN YOU'RE PANNING THROUGH A LIST, WHEN YOU GET TO
12 THE BOTTOM OF THE LIST, HOW DO YOU KNOW THAT YOU
13 GOT TO THE BOTTOM?

14 WELL, WE HAVE A RUBBER BAND LIKE EFFECT
15 THAT HAPPENS WHEN YOU GET TO THE BOTTOM OF THE
16 LIST. IF YOU DIDN'T HAVE SOMETHING LIKE THIS, YOU
17 WOULDN'T KNOW, IS THE COMPUTER HUNG UP? SO YOU
18 NEED TO HAVE SOME KIND OF USER INTERFACE ELEMENT
19 AND THIS IS HOW WE DO IT.

20 MS. MAROULIS: YOUR HONOR, MOVE TO
21 STRIKE. LACK OF FOUNDATION AND OPINION TESTIMONY.

22 MR. MUELLER: YOUR HONOR, AGAIN, THIS IS
23 A PORTION OF A PRESENTATION THAT MR. TEKSLER HELPED
24 TO AUTHOR. I'M JUST ASKING ABOUT ONE ENTRY ON THIS
25 PAGE.

1 THE COURT: ALL RIGHT. OVERRULED.

2 BY MR. MUELLER:

3 Q MR. TEKSLER, IF YOU COULD, PLEASE TURN TO TAB
4 2 IN YOUR BINDER, AND THIS IS PDX 32. IF WE COULD
5 ALSO PUT THAT ON THE SCREEN.

6 MR. TEKSLER, THIS SHOWS SEVEN PATENT
7 COVERS. ARE YOU FAMILIAR WITH THESE PATENTS?

8 A I AM.

9 Q WHAT ARE THEY?

10 A THESE ARE THE PATENTS --

11 MS. MAROULIS: OBJECTION, CALLS FOR
12 OPINION TESTIMONY. LACKS FOUNDATION.

13 THE COURT: WHAT ARE YOU ASKING?

14 MR. MUELLER: I MERELY WANTED TO GET
15 ACROSS THAT THESE ARE THE ASSERTED PATENTS IN THIS
16 CASE.

17 THE COURT: IS THERE ANY QUESTION ABOUT
18 THAT SO FAR?

19 MR. MUELLER: I CAN REPHRASE IF YOU -- IF
20 I MIGHT, YOUR HONOR.

21 Q ARE THESE THE SEVEN ASSERTED PATENTS?

22 A YES, THEY ARE.

23 Q WHERE DO THESE FALL, THESE SEVEN PATENTS,
24 WITHIN THE CATEGORIES YOU DESCRIBED EARLIER IN THE
25 APPLE PORTFOLIO?

1 A CERTAINLY. SO THERE'S FOUR DESIGN PATENTS,
2 AND ALL FOUR DESIGN PATENTS FALL INTO APPLE'S
3 UNIQUE USER EXPERIENCE.

4 AND THEN THE THREE UTILITY PATENTS THAT
5 ARE LISTED HERE GENERALLY RELATE TO USER INTERFACE
6 AND FEATURES THAT WE WOULD ALSO PUT IN THAT SAME
7 CATEGORY OF APPLE'S UNIQUE USER INTERFACE, OR USER
8 EXPERIENCE.

9 MR. MUELLER: THANK YOU, SIR.

10 NO FURTHER QUESTIONS.

11 THE COURT: ALL RIGHT. THE TIME IS NOW
12 4:22.

13 **CROSS-EXAMINATION**

14 BY MS. MAROULIS:

15 Q GOOD AFTERNOON, MR. TEKSLER. HOW ARE YOU?

16 A GOOD AFTERNOON.

17 Q MY NAME IS VICTORIA MAROULIS. I'M COUNSEL FOR
18 SAMSUNG. AND SEEING HOW IT'S LATE FRIDAY
19 AFTERNOON, I'LL BE VERY BRIEF.

20 YOU TESTIFIED THAT YOU PREPARED A
21 POWERPOINT FOR A MEETING BETWEEN APPLE AND SAMSUNG
22 IN AUGUST 2010. IS THAT CORRECT?

23 A I BELIEVE THAT WAS KEY NOTE, BUT YES.

24 Q AND YOU DIDN'T PERSONALLY ATTEND THE MEETING
25 IN QUESTION; RIGHT?

1 A NO, I DID NOT.

2 Q YOU CANNOT TELL US FROM YOUR PERSONAL
3 KNOWLEDGE ANYTHING ABOUT THAT MEETING AND WHAT WAS
4 PRESENTED; CORRECT?

5 A I KNOW THAT THAT WAS PRESENTED. WE LATER SENT
6 SAMSUNG THE PRESENTATION AND, IN SUBSEQUENT
7 MEETINGS WITH SAMSUNG, WE REFERRED BACK TO THAT
8 PRESENTATION AND TO THE DIALOGUE THAT HAPPENED THAT
9 DAY. SO THAT'S --

10 Q BUT FROM PERSONAL KNOWLEDGE, YOU DO NOT KNOW
11 WHAT OCCURRED AT THAT MEETING AND WHAT WAS SHOWN
12 AND WHAT WAS NOT SHOWN; CORRECT?

13 A OKAY, CERTAINLY.

14 Q AND THE POWERPOINT PRESENTATION THAT YOU
15 PREPARED IS EXHIBIT 52 IN EVIDENCE; CORRECT? IF
16 YOU CAN LOOK IN YOUR CROSS-EXAMINATION BINDER AT
17 TAB 52, DO YOU SEE THAT?

18 A I DO.

19 Q IF YOU LOOK AT PAGES 12 THROUGH 14, DO YOU SEE
20 A VARIETY OF PATENTS LISTED THERE?

21 A YES, I DO.

22 Q OKAY. AND DO YOU REMEMBER, ON DIRECT, JOE
23 ASKED YOU ABOUT THE SEVEN PATENTS ASSERTED IN THIS
24 CASE; CORRECT?

25 A YES, THAT'S CORRECT.

1 Q FOUR OF THEM WERE DESIGN PATENTS?

2 A YES, THAT'S CORRECT.

3 Q ONE OF THOSE DESIGN PATENT PATENTS WAS D'677;
4 RIGHT?

5 A I BELIEVE THAT'S CORRECT, YES.

6 Q THAT PATENT IS NOWHERE IN THIS PRESENTATION;
7 IS THAT CORRECT?

8 A IT'S NOT ENUMERATED.

9 Q IT'S NOT MENTIONED AT ALL AS A PATENT, THE
10 D'677; RIGHT?

11 A SO I THINK WHAT I WOULD SAY IS I AGREE THAT
12 IT'S NOT ENUMERATED IN THE PRESENTATION.

13 WHEN WE WERE PREPARING THE, THE POINTS
14 THAT WE WANTED TO GET ACROSS -- AND I BELIEVE THAT
15 WAS BACK IN SLIDE 17 OF THIS PRESENTATION -- WE DID
16 SAY THAT THERE WAS A REMARKABLE SIMILARITY BETWEEN
17 THE PRODUCTS AND, IN DOING SO, WE DID TALK ABOUT
18 DESIGN PATENTS.

19 Q SIR, THIS PRESENTATION DOES NOT MENTION THE
20 WORD "DESIGN PATENT" AT ALL; CORRECT?

21 A I AGREE.

22 Q AND DESIGN PATENT '087 THAT YOU REVIEWED WITH
23 COUNSEL IS ALSO NOT MENTIONED IN THIS PRESENTATION;
24 IS THAT RIGHT?

25 A I AGREE.

1 Q AND DESIGN PATENT '889 IS SIMILARLY NOT
2 MENTIONED IN THIS PRESENTATION; CORRECT?

3 A I AGREE.

4 Q AND SO IS D'305, THAT IS ALSO NOT MENTIONED IN
5 THE PRESENTATION; RIGHT?

6 A I AGREE.

7 Q YOU ALSO LOOKED AT SEVERAL UTILITY PATENTS
8 WITH COUNSEL; IS THAT RIGHT?

9 A I DID.

10 Q ONE OF THEM WAS '163 PATENT; CORRECT?

11 A I BELIEVE THAT'S CORRECT, YES.

12 Q THAT PATENT IS NOT ENUMERATED ANYWHERE IN THIS
13 PRESENTATION WE JUST LOOK AT; RIGHT?

14 A THAT'S CORRECT.

15 Q AND THE '915 PATENT THAT YOU ALSO LOOKED AT IN
16 YOUR DIRECT TESTIMONY IS ALSO NOWHERE MENTIONED;
17 CORRECT?

18 A THAT'S CORRECT.

19 Q THIS PRESENTATION THAT YOU PREPARED FOR
20 SAMSUNG DOES NOT HAVE ANY MENTION OF TRADE DRESS;
21 RIGHT?

22 A AGAIN, I THINK I WOULD PUT IT INTO THE SAME
23 CATEGORY OF BULLET POINTS THAT WE TALKED ABOUT.

24 Q SIR, YOU'RE A LICENSING PROFESSIONAL. YOU
25 KNOW WHAT A REGISTERED TRADE DRESS IS; CORRECT?

1 A I AM, YES.

2 Q SO NOWHERE IN THIS PRESENTATION IS THERE
3 MENTION OF A REGISTERED TRADE DRESS FOR AN IPHONE;
4 CORRECT?

5 A I AGREE THAT THERE IS NOT.

6 Q AND THERE'S NO MENTION OF UNREGISTERED TRADE
7 DRESS FOR IPHONE AS WELL; CORRECT?

8 A I AGREE THAT IT'S NOT WRITTEN ON THE SLIDES.

9 Q AND THERE'S NO UNREGISTERED TRADE DRESS FOR
10 IPAD; CORRECT?

11 A I AGREE.

12 Q EXHIBIT 52 DOESN'T SAY ANYWHERE THAT APPLE
13 WOULD NOT LICENSE ITS DESIGN PATENTS TO SAMSUNG; IS
14 THAT RIGHT?

15 A I AGREE.

16 Q AND THE PRESENTATION DOES NOT IDENTIFY ANY
17 UTILITY PATENTS THAT APPLE WOULD NOT LICENSE TO
18 SAMSUNG; IS THAT RIGHT?

19 A I AGREE.

20 Q PLEASE TAKE A LOOK AT EXHIBIT DX 586 IN YOUR
21 BINDER. THIS IS A PRESENTATION THAT YOU MADE TO
22 SAMSUNG IN OCTOBER 2010; CORRECT?

23 A YES, THAT'S CORRECT.

24 Q YOU PREPARED IT YOURSELF?

25 A I DID.

1 Q AS PART OF DOING BUSINESS AS A LICENSING
2 OFFICER AT APPLE; CORRECT?

3 A YES, THAT'S CORRECT.

4 MS. MAROULIS: YOUR HONOR, I MOVE EXHIBIT
5 586 INTO EVIDENCE.

6 MR. MUELLER: NO FURTHER OBJECTIONS, YOUR
7 HONOR, SUBJECT TO THE LIMITING INSTRUCTION THAT
8 YOUR HONOR MENTIONED.

9 THE COURT: RIGHT. AND THERE IS A --
10 THIS IS ADMITTED.

11 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
12 586, HAVING BEEN PREVIOUSLY MARKED FOR
13 IDENTIFICATION, WAS ADMITTED INTO
14 EVIDENCE.)

15 THE COURT: YOU MAY CONSIDER THIS -- YOU
16 MAY NOT CONSIDER THIS EVIDENCE TO PROVE OR DISPROVE
17 THE VALIDITY OR INVALIDITY OF THE CLAIM OR THE
18 AMOUNT OF THE DISPUTED CLAIM.

19 HOWEVER, YOU MAY CONSIDER THIS EVIDENCE
20 FOR SOME OTHER PURPOSE, FOR EXAMPLE, WHETHER OR NOT
21 SAMSUNG LACKED NOTICE OF APPLE'S INFRINGEMENT
22 CLAIMS.

23 OKAY. GO AHEAD, PLEASE.

24 BY MS. MAROULIS:

25 Q MR. TEKSLER, NOWHERE IN EXHIBIT 586 DOES APPLE

1 IDENTIFY ANY PATENTS; CORRECT?

2 A THAT'S CORRECT.

3 Q AND NOWHERE IN THIS WRITTEN PRESENTATION DOES
4 IT SAY THAT APPLE WOULD NOT LICENSE ITS DESIGN
5 PATENTS TO SAMSUNG; CORRECT?

6 A I'M NOT SURE THAT I AGREE WITH THAT. I KNOW
7 THAT WE TALKED ABOUT THAT AND THAT THERE WAS A
8 SPECIFIC BULLET, I BELIEVE, ON ONE OF THE PAGES
9 THAT ADDRESSED THAT.

10 Q SIR, I'M NOT ASKING YOU ABOUT THE MEETING
11 ITSELF. I'M ASKING YOU ABOUT THE PRESENTATION.
12 NOWHERE IN THIS DOCUMENT, 586, IS THERE A STATEMENT
13 THAT APPLE WOULD NOT LICENSE DESIGN PATENTS TO
14 SAMSUNG?

15 A I THINK THERE IS A BULLET IN HERE THAT SAYS
16 SPECIFIC APPLE PROPRIETARY FEATURES TO BE
17 DISCUSSED.

18 AND IN THAT CONSTRUCT, WE TALKED ABOUT
19 NOT HAVING THE ABILITY TO CLONE OUR PRODUCTS.

20 Q AGAIN, WITHIN THE CONTEXT OF THIS
21 PRESENTATION, THERE'S NO STATEMENT THAT APPLE WOULD
22 NOT LICENSE ITS DESIGN PATENTS TO SAMSUNG; CORRECT?

23 A I AGREE.

24 Q AND NOWHERE IN THIS DOCUMENT DOES APPLE SAY
25 THAT IT WOULD NOT LICENSE CERTAIN UTILITY PATENTS

1 TO SAMSUNG; CORRECT?

2 A SUBJECT TO THE SAME, YOU KNOW, POINT THAT I
3 MADE EARLIER, YES.

4 Q LET'S PUT UP 586, PAGE 13, PLEASE.

5 AT THE TOP OF THE PAGE, IT SAYS "WE WILL
6 PROVIDE SAMSUNG WITH A NUMBER OF OPTIONS FOR
7 OBTAINING A COST-EFFECT LICENSE TO OUR PATENT
8 PORTFOLIO."

9 DID I READ THIS CORRECTLY?

10 A YES, THAT'S CORRECT.

11 Q AND THIS REFERS TO LICENSING PATENT PORTFOLIO;
12 RIGHT?

13 A YES, THAT'S CORRECT.

14 Q IT DOES NOT SAY "PATENT PORTFOLIO EXCEPT
15 DESIGN PATENTS." CORRECT?

16 A NO, I AGREE THE SLIDE DOESN'T SAY THAT.

17 Q AND IT DOESN'T SAY "EXCEPT FOR CERTAIN UTILITY
18 PATENTS." CORRECT?

19 A THAT'S CORRECT.

20 Q IN EXHIBIT 586, APPLE PROPOSED CERTAIN
21 DISCOUNTS ON THE LICENSE FEES BASED ON CERTAIN
22 ELEMENTS; CORRECT?

23 A YES, THAT'S CORRECT.

24 Q AND ONE OF THOSE ELEMENTS WERE PROPRIETARY,
25 SO-CALLED PROPRIETARY FEATURES?

1 A YES. I'M NOT SURE THAT WE'RE USING THE WORD
2 THE SAME WAY, BUT YES.

3 Q OKAY. AND APPLE DEFINED SOME OF ITS
4 PROPRIETARY FEATURES, WHAT IT'S CALLED DISTINCTIVE
5 INDUSTRIAL DESIGN; CORRECT?

6 A APPLE DEFINED SOME OF IT AS -- OR WHAT I DID
7 SPECIFICALLY, I SHOULD SAY, IS I DEFINED THEM AS
8 DISTINCTIVE INDUSTRIAL DESIGNS, THAT'S CORRECT.

9 Q AND APPLE NEVER GAVE SAMSUNG ANYTHING IN
10 WRITING THAT IDENTIFIED PATENTS OR FEATURES THAT
11 WERE NOT AVAILABLE FOR LICENSE; IS THAT RIGHT?

12 A IN THIS PRESENTATION? OR EVER?

13 Q IN THIS PRESENTATION, SIR.

14 A IN THIS PRESENTATION, NO, WE HAD NOT GOTTEN TO
15 THAT POINT OF THE DISCUSSION. WE HAD JUST SIMPLY
16 MENTIONED THAT THERE WERE SOME THINGS THAT YET HAD
17 TO BE DISCUSSED.

18 Q OKAY. SIR, IT'S TRUE, IS IT NOT, THAT APPLE
19 LICENSED ITS DESIGN PATENTS TO ANOTHER PARTY?

20 A YES. I THINK I SAID EARLIER THAT THERE WERE
21 LESS THAN A HANDFUL OF SUCH EVENTS.

22 Q BUT THOSE PATENTS HAVE BEEN LICENSED BEFORE;
23 CORRECT?

24 A YES.

25 Q ARE YOU AWARE OF WHETHER ANYONE HAS EVER PAID

1 APPLE A PER UNIT ROYALTY OF \$2.02 FOR THE '381
2 PATENT?

3 A NO, I'M NOT AWARE.

4 (PAUSE IN PROCEEDINGS.)

5 BY MS. MAROULIS:

6 Q I'M SORRY, SIR?

7 A NO, I'M NOT AWARE OF THAT.

8 MS. MAROULIS: OKAY. YOUR HONOR, WE'RE
9 ALMOST AT THE END. SHOULD WE STOP OR CONTINUE?

10 THE COURT: IT'S NOW 4:30, SO WE CAN END
11 FOR TODAY.

12 MS. MAROULIS: OKAY.

13 THE COURT: SO WE'LL CONTINUE WITH THE
14 CROSS ON MONDAY.

15 ALL RIGHT. SO PLEASE DON'T DISCUSS THE
16 CASE WITH ANYONE, DON'T DO ANY RESEARCH, PLEASE
17 KEEP AN OPEN MIND, AND YOU'RE EXCUSED FOR TODAY AND
18 WE'LL SEE YOU BACK ON MONDAY AT 9:00 O'CLOCK.

19 AND NEXT WEEK WE ARE GOING FIVE DAYS
20 STRAIGHT, OKAY?

21 THANK YOU FOR YOUR PATIENCE AND YOUR
22 SERVICE.

23 AND IF YOU WOULD, PLEASE, LEAVE YOUR JURY
24 BOOKS IN THE JURY ROOM OVER THE WEEKEND.

25 OKAY. THANK YOU.

1 (WHEREUPON, THE FOLLOWING PROCEEDINGS
2 WERE HELD OUT OF THE PRESENCE OF THE JURY:)

3 THE COURT: THE RECORD SHOULD REFLECT THE
4 JURY HAS LEFT THE COURTROOM.

5 YOU MAY STEP DOWN.

6 THE WITNESS: THANK YOU.

7 THE COURT: AND PLEASE TAKE A SEAT.

8 ARE YOU -- IS APPLE NOT CALLING ANY OF
9 THE INDIVIDUALS, THE FOUR INDIVIDUALS WHO WERE
10 IDENTIFIED FOR DEPOSITION DESIGNATIONS?

11 MR. MCELHINNY: I'M -- I'M SORRY, YOUR
12 HONOR. I'M NOT SURE I UNDERSTAND YOUR QUESTION.

13 WE WILL BE PLAYING THE DEPOSITION
14 DESIGNATIONS.

15 THE COURT: OF JUNWON LEE AND DONG HOON
16 CHANG AND TIMOTHY BENNER AND TIMOTHY SHEPPARD?

17 MR. MCELHINNY: YES, YOUR HONOR.

18 THE COURT: OKAY. SO THAT'S WHAT YOU'LL
19 DO ON MONDAY.

20 MR. MCELHINNY: YES, YOUR HONOR.

21 THE COURT: AFTER MR. TEKSLER?

22 MR. MCELHINNY: YES, YOUR HONOR.

23 THE COURT: OKAY.

24 MR. MCELHINNY: AND THEN MR. MUSIKA.

25 THE COURT: AND THEN MR. MUSIKA. AND

1 THEN WILL YOU HAVE ANY ADDITIONAL WITNESSES OR DO
2 YOU PLAN TO REST?

3 MR. MCELHINNY: WE PLAN TO REST AFTER
4 MR. MUSIKA.

5 THE COURT: I SEE. OKAY. SO THEN THE
6 ONLY OBJECTIONS THAT ARE LEFT, THEN, ARE
7 MR. MUSIKA.

8 AND THEN HAVE YOU REDESIGNATED THE
9 DEPOSITION EXCERPTS THAT YOU WANT FOR MR. SHEPPARD?

10 MR. MCELHINNY: WE HAVEN'T YET. WE'LL DO
11 THAT TOMORROW, YOUR HONOR.

12 THE COURT: OKAY. I NEED THE OBJECTIONS
13 TO ANY WITNESSES TO BE FILED AT 8:00 A.M. THE DAY
14 BEFORE THE WITNESS TESTIFIES. DOING IT AT 4:00
15 O'CLOCK JUST DOESN'T GIVE ME ENOUGH TIME. OKAY?

16 MR. JACOBS: SO, YOUR HONOR, THE PROBLEM
17 I THINK WE'RE GOING TO RUN INTO IS WE WILL FINISH
18 WITH MR. MUSIKA, AND THEN THERE'S THE SAMSUNG CASE
19 ABOUT WHICH WE KNOW ABSOLUTELY NOTHING.

20 THE COURT: WELL, I ASSUME THAT SAMSUNG
21 ALSO IS GOING TO DO ITS ROLLING LIST OF SEVEN
22 WITNESSES THAT APPLE HAS DONE.

23 SO WHEN ARE YOU INTENDING TO FILE THAT,
24 UNDERSTANDING, I THINK, THAT YOUR CASE,
25 MR. VERHOEVEN, WILL START ON MONDAY.

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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

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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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2025

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DIRECT EXAM BY MR. DEFRANCO P. 2228
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ADAM BOGUE

DIRECT EXAM BY MR. JOHNSON P. 2274
CROSS-EXAM BY MR. JACOBS P. 2300

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 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 Q AND WE SEE THE WORDS, UNDER PATENTS,
2 "HYPOTHETICAL NEGOTIATION." WHAT DO YOU MEAN BY
3 THAT?

4 A WELL, IT'S A -- IT'S CALLED A LEGAL FICTION.
5 THE PARTIES HAVEN'T -- IN FACT, APPLE HAS TAKEN THE
6 POSITION THAT THEY DON'T WANT A ROYALTY. THEY
7 DON'T WANT TO LICENSE THEIR INTELLECTUAL PROPERTY.

8 BUT AS A FLOOR, REMEMBER THAT, THAT ONE
9 STATUTE THAT WE WERE READING, THAT'S A MINIMUM
10 AMOUNT OF DAMAGES FOR THE UTILITY PATENTS.

11 AND IT'S A LEGAL FICTION THAT I'M ASKING
12 TO TRY TO IDENTIFY WHAT AMOUNT WOULD OR SHOULD --
13 I'M SORRY -- WHAT AMOUNT SHOULD SAMSUNG PAY APPLE
14 FOR THE USE OF THEIR INTELLECTUAL PROPERTY, EVEN
15 THOUGH APPLE DOESN'T WANT IT?

16 Q AND DID YOU REACH A CONCLUSION ON WHAT THE
17 RIGHT ROYALTY RATES SHOULD BE FROM THIS
18 HYPOTHETICAL NEGOTIATION?

19 A YES. I DID A NUMBER OF EVALUATION TECHNIQUES
20 AND I DID SOMETHING CALLED A GEORGIA PACIFIC
21 ANALYSIS, AND THEN I ULTIMATELY IDENTIFIED THE
22 RATES, THE ROYALTY RATES TO BE PAID TO APPLE FOR
23 ITS ASSET.

24 Q WHAT METHODS DID YOU USE TO IDENTIFY THE RANGE
25 OF POTENTIAL VALUES FOR THIS HYPOTHETICALLY

1 NEGOTIATED LICENSE PAYMENT?

2 A RIGHT. I USED THREE VALUATION METHODS: A
3 COST METHOD; AN INCOME METHOD; AND A MARKET METHOD.

4 Q WHAT ARE EACH OF THOSE METHODS, JUST BRIEFLY?

5 A I THINK, AGAIN, EASY REAL ESTATE, A MARKET IS
6 A COMPARABLE, SO IT'S A HOUSE DOWN THE STREET
7 THAT'S LIKE YOURS. THAT'S A COMPARABLE.

8 IN THIS CASE IT WOULD BE A LICENSE. ARE
9 THERE OTHER LICENSES THAT ARE LIKE THE LICENSE THEY
10 WOULD ENTER INTO?

11 COST WOULD BE HOW MUCH DID SAMSUNG OR
12 APPLE PAY TO DEVELOP IT OR DESIGN AROUND IT?

13 AND INCOME IS INCOME DRIVEN, HOW MUCH
14 REVENUE IS BEING PRODUCED BY SAMSUNG AND/OR APPLE
15 USING THESE PATENTS.

16 AND WE DISCOUNT THAT BACK AND CAPITALIZE
17 THAT.

18 Q AND YOU MENTIONED SOMETHING CALLED THE
19 GEORGIA PACIFIC FACTORS. WHAT ARE THOSE -- THOSE
20 OF US OLD ENOUGH TO REMEMBER KNOW THAT
21 GEORGIA PACIFIC WAS A LUMBAR AND PAPER COMPANY.
22 WHAT DOES THAT HAVE TO DO WITH THIS CASE?

23 A I THINK THEY STILL ARE. IT'S A CASE
24 REFERENCE. GEORGIA PACIFIC WAS INVOLVED IN A
25 PATENT SUIT AND THE COURT IDENTIFIED 15 FACTORS,

1 Q OKAY. IF, INSTEAD OF CALCULATING FOR THE 17
2 MILLION PHONES AND TABLETS IN THE TOP LINE AND THE
3 2 MILLION PHONES AND TABLETS IN THE MIDDLE LINE
4 SAMSUNG PROFITS AND APPLE'S LOST PROFITS, IF YOU
5 HAD JUST DONE A REASONABLE ROYALTY FOR ALL 22
6 MILLION UNITS, WHAT WOULD THAT NUMBER HAVE BEEN?

7 A RIGHT. THAT'S 500 -- IT'S APPROXIMATELY
8 540 --

9 MR. PRICE: OBJECT TO THAT. THAT'S
10 BEYOND THE SCOPE OF HIS REPORT.

11 MS. KREVANS: YOUR HONOR, THIS IS IN THE
12 SUPPLEMENTAL EXPERT REPORT AT EXHIBIT 19-S IN THE
13 MIDDLE COLUMN.

14 THE COURT: THAT'S OVERRULED.

15 GO AHEAD.

16 THE WITNESS: IF YOU SLID ALL THE PHONES,
17 AS COUNSEL HAS SAID, OVER AND DOWN INTO REASONABLE
18 ROYALTY AND CALCULATED DAMAGES AGAIN AS A FLOOR, A
19 MINIMUM AMOUNT, NO LOST PROFITS, NO REASONABLE --
20 AND NO INFRINGER'S PROFITS, THE AMOUNT IS
21 APPROXIMATELY \$540 MILLION, STANDALONE.

22 BY MR. KREVANS:

23 Q LOOKING AT THE NUMBERS THE WAY YOU DID
24 CALCULATE THEM IN THE THREE SEPARATE BUCKETS, WHAT
25 IS THE TOTAL DAMAGES THAT YOU CALCULATED THAT YOU

1 BELIEVE SAMSUNG SHOULD PAY IN THIS CASE IF THE JURY
2 FINDS THAT APPLE'S INTELLECTUAL PROPERTY IS VALID
3 AND INFRINGED?

4 A SUMMING THE THREE UP, THE TOTAL NUMBER COMES
5 TO \$2,751,000,000.

6 Q COULD YOU TURN TO EXHIBIT 25 IN YOUR BINDER.
7 I'M SORRY, THIS IS 25A-1.

8 A YES.

9 Q WHAT IS 25A-1, MR. MUSIKA?

10 A THIS IS A SUMMARY OF SOME OF THE CALCULATIONS
11 THAT I'VE BEEN TALKING ABOUT THIS MORNING.

12 Q AND WHO PREPARED EXHIBIT 25A-1?

13 A MY TEAM UNDER MY DIRECTION.

14 MS. KREVANS: YOUR HONOR, WE OFFER
15 EXHIBIT 25A-1.

16 MR. PRICE: NO FURTHER OBJECTION.

17 THE COURT: OKAY. IT'S ADMITTED.

18 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
19 25A-1, HAVING BEEN PREVIOUSLY MARKED FOR
20 IDENTIFICATION, WAS ADMITTED INTO
21 EVIDENCE.)

22 MS. KREVANS: OKAY.

23 Q COULD YOU, JUST BRIEFLY, MR. MUSIKA, WALK THE
24 JURY THROUGH WHAT INFORMATION IS SET OUT ON EACH
25 PAGE OF EXHIBIT 25A-1?

1 A YES. SO I'LL USE MY BOOK, AND I ASSUME THAT
2 YOU'LL MOVE THE SCREEN AS I TALK.

3 SO PAGE 2 OF 16 IS JUST THE SUMMARY OF
4 DAMAGES, WHAT WE JUST LOOKED AT.

5 PAGE 3 OF 16 --

6 Q LET ME STOP YOU FOR A MOMENT ON PAGE 3. YOU
7 SEE AT THE BOTTOM THERE'S A NOTE?

8 A YES.

9 Q WHAT DOES THAT NOTE EXPLAIN?

10 A THAT EXPLAINS THE, THE TIME PERIODS THAT WERE
11 USED FOR THE CALCULATION OF THE DAMAGES.

12 Q AND WHAT DOES IT INDICATE THOSE TIME PERIODS
13 WERE?

14 A IT INDICATES THAT THE TIME PERIODS THAT I USED
15 FOR THE REGISTERED TRADE DRESS WAS BASICALLY THE
16 START OF THE INFRINGING TIME PERIOD.

17 Q THAT'S FOR THE UNREGISTERED TRADE DRESS?

18 A UNREGISTERED TRADE DRESS.

19 Q AND FOR THE REST?

20 A AND FOR THE REST I USED AUGUST 4TH, 2010 AS
21 THE START DATE.

22 Q THANK YOU. COULD YOU CONTINUE EXPLAINING TO
23 THE JURY WHAT THE CONTENTS OF PX 25 ARE.

24 A YES. PAGE 3 OF 16 IS JUST THE MATRIX. YOU
25 SEE THE PRODUCTS THERE ON THE LEFT AND ALL THE

1 FORMS OF INTELLECTUAL PROPERTY THAT HAVE BEEN
2 IDENTIFIED THERE, WHICH PRODUCTS ARE ACCUSED OF
3 INFRINGING WHICH OF THE INTELLECTUAL PROPERTY.

4 THE NEXT PAGE IS JUST A SUMMARY OF, A
5 MORE DETAILED SUMMARY BY PRODUCT OF THE FOLLOWING
6 PHONES THAT WE WENT THROUGH. IT'S JUST DIFFERENT
7 CALCULATIONS.

8 THE SAME IS TRUE OF 5 OF 16.

9 6 OF 16 IS A LISTING OF PRODUCTS AND THE
10 CARRIERS THAT ARE ASSOCIATED WITH EACH PRODUCT.

11 Q SO THE -- THIS IS JUST WHICH PHONE COMPANIES
12 ARE PROVIDING THEIR CUSTOMERS WITH WHICH SAMSUNG
13 PRODUCTS?

14 A THAT'S CORRECT.

15 Q THANK YOU. AND YOU HAVE A SERIES OF PAGES
16 THAT ARE HEADED "MOR-FLO ANALYSIS."

17 A THAT'S 7 THROUGH 12.

18 Q WHAT ARE THOSE?

19 A THAT'S THE MARKET SHARE ALLOCATIONS. THAT'S
20 WHERE I LIMITED THE NUMBER OF PHONES THAT APPLE
21 WOULD GET BECAUSE I'VE ALLOCATED PERCENTAGES TO THE
22 OTHER MARKET PARTICIPANTS, AND THOSE ARE THOSE
23 CALCULATIONS.

24 Q THAT TAKES US TO PAGE 13, AND WHAT IS SET OUT
25 ON PAGE 13?

1 A PAGE 13 IS A STUDY DONE, I THINK IT WAS DONE
2 BY IBM, BUT IT WAS DONE BY SOMEONE ELSE WHICH
3 REALLY LOOKED AT THE PERCENTAGE OF USERS THAT WOULD
4 SWITCH CARRIERS, AND THAT WAS ANOTHER LIMITING
5 FACTOR THAT I USED.

6 Q OKAY. LET'S -- MR. LEE, DON'T SHOW IT IN
7 COURT, BUT JUST SHOW THE JURORS PAGES 14 AND 15.

8 YOUR HONOR, I'D NOTE FOR THE RECORD THAT
9 THESE TWO PAGES, PER A PRIOR ORDER OF THE COURT,
10 HAVE BEEN PERMITTED TO BE REDACTED AND FILED UNDER
11 SEAL AND WE HAVE PROVIDED BOTH THE REDACTED AND
12 UNREDACTED COPIES TO THE COURT.

13 AND MR. MUSIKA, CAN YOU TELL US WHAT
14 INFORMATION IS SET OUT ON PAGES 14 AND 15?

15 A YES. IT'S MY ANALYSIS THAT RELATES TO THE
16 CAPACITY FACTOR, DETERMINING WHETHER OR NOT THERE'S
17 SUFFICIENT CAPACITY.

18 Q AND FINALLY, PAGE 16.

19 A 16 IS THE RATES THAT WE JUST LOOKED AT, AND IT
20 GIVES A LITTLE MORE DETAILS ABOUT THE THREE
21 VALUATION METHODOLOGIES I USED.

22 Q JUST TO FINISH UP, MR. MUSIKA, COULD YOU
23 SUMMARIZE FOR THE JURY YOUR OVERALL DAMAGES OPINION
24 IN THIS CASE?

25 A YES. WHERE I BEGAN, THE DAMAGES ARE A RANGE

1 BETWEEN \$2.5 BILLION AND AT THE HIGH END,
2 \$2,750,000,000.

3 Q AND WHAT IS THE DIFFERENCE BETWEEN THE BOTTOM
4 AND THE TOP OF THAT RANGE?

5 A ONE ASSUMES -- YOU REMEMBER WE WERE SLIDING
6 THE PHONES, THAT WE BASICALLY -- THE LOWER END
7 NUMBER IS JUST ALL OF SAMSUNG'S UNJUST ENRICHMENT,
8 PLUS A REASONABLE ROYALTY.

9 THE HIGHER NUMBER WAS SAMSUNG'S UNJUST
10 ENRICHMENT, LOST PROFIT ON THOSE 2 MILLION, PLUS
11 THE REASONABLE ROYALTY.

12 MS. KREVANS: THANK YOU.

13 NOTHING FURTHER, YOUR HONOR.

14 THE COURT: ALL RIGHT. THE TIME IS NOW
15 11:20.

16 **CROSS-EXAMINATION**

17 BY MR. PRICE:

18 Q GOOD MORNING, MR. MUSIKA.

19 A GOOD MORNING.

20 Q MY NAME IS BILL PRICE.

21 AND I WANTED TO ASK YOU, BEFORE WE GET
22 INTO YOUR METHODOLOGIES, YOU SAID YOU'VE DONE THIS
23 A NUMBER OF TIMES, THIS SORT OF ANALYSIS; CORRECT?

24 A YES.

25 Q AND YOU'VE DONE IT IN CONNECTION WITH

1 LITIGATION?

2 A YES.

3 Q AND I JUST WANT TO SEE HOW YOU APPROACH THAT
4 AS AN EXPERT. IT'S YOUR UNDERSTANDING THAT YOU ARE
5 SUPPOSED TO KIND OF APPLY YOUR EXPERTISE IN A
6 NEUTRAL FASHION; CORRECT?

7 A THAT'S CORRECT.

8 Q YOU'RE NOT SUPPOSED TO FAVOR ONE PARTY OVER
9 THE OTHER; RIGHT?

10 A THAT'S CORRECT.

11 Q YOU'RE GOING TO GIVE THE SAME OPINION
12 REGARDLESS OF WHICH SIDE HIRES YOU? THAT'S THE
13 IDEA?

14 A THAT IS THE IDEA.

15 Q AND IN THAT CONNECTION, YOU KNOW THAT IT WOULD
16 BE INAPPROPRIATE, THEN, FOR YOU AS AN EXPERT TO BE
17 AN ADVOCATE? THAT IS, YOU'RE SUPPOSED TO BE
18 OBJECTIVE USING YOUR EXPERTISE?

19 A I WOULD AGREE.

20 Q AND -- NOW, WE LOOKED AT A LOT OF SLIDES. I
21 ASSUME THAT YOU REVIEWED THOSE SLIDES BEFORE THEY
22 WERE PRESENTED TO THE JURY.

23 A YES.

24 Q AND EITHER YOU CREATED THEM OR, LIKE THE
25 PRESIDENTIAL ADS, YOU APPROVED OF THEM?

1 A YES.

2 Q AND WERE THERE ANY THAT YOU CREATED VERSUS
3 APPROVED, OR --

4 A I DON'T MAKE THAT DISTINCTION, NO.

5 Q OKAY. AND IF WE COULD LOOK AT, FOR EXAMPLE, I
6 THINK IT WAS SLIDE 34B.2, AND I'M JUST WONDERING,
7 FOR EXAMPLE, WITH THIS SLIDE -- I'M NOT GETTING
8 ANYTHING OUT OF THIS.

9 OKAY. SO ON THIS SLIDE, YOU SEE ON THE
10 RIGHT HERE THERE'S A SAMSUNG PHONE. DO YOU SEE
11 THAT?

12 A I DO.

13 Q AND DID YOU SELECT THAT PICTURE?

14 A THE INDIVIDUAL PHONE?

15 Q YES.

16 A NO. I THINK THAT -- THIS -- THE SLIDE ITSELF
17 WAS CONSTRUCTED ORIGINALLY BY ME, BUT THERE'S A
18 TEAM OF, OF GRAPHICS PEOPLE THAT, THAT PUT IN THE
19 ICONS ULTIMATELY. SO, NO, I DIDN'T SELECT THAT
20 PHONE.

21 Q I JUST WANT TO -- YOUR UNDERSTANDING IS THAT
22 APPLE IS NOT CLAIMING THAT YOU HAVE TO USE HARD
23 KEYS ON A PHONE; RIGHT?

24 A THAT IS NOT MY UNDERSTANDING, NO.

25 Q AND IT'S YOUR UNDERSTANDING THAT APPLE IS NOT

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

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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

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
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1 GRAND PRIZE, I WOULD RECEIVE 100 MILLION WON AS A
2 PRIZE AND ALSO WOULD BE PROMOTED ONE RANK HIGHER.

3 MR. QUINN: I GUESS, YOUR HONOR, THE
4 INTERPRETERS PROBABLY DON'T DO CURRENCY
5 CONVERSIONS. I'M HEARING 100 MILLION WON. MAYBE
6 WE CAN FILL LATER ON FILL IN THE RECORD ABOUT WHAT
7 THAT TRANSLATES TO.

8 Q IS BEING A DESIGNER AT SAMSUNG AN EASY JOB?

9 A NO, NOT AT ALL.

10 Q WE'VE HEARD TESTIMONY FROM APPLE WITNESSES
11 ABOUT HOW HARD THEY WORKED ON THE IPHONE. DID
12 YOU --

13 THE COURT: OH, OKAY. I'M SORRY. ONE OF
14 OUR JURORS IS HAVING A LITTLE DIFFICULTY HEARING.
15 IS THAT THE TRANSLATIONS?

16 JUROR: THE INTERPRETER.

17 THE COURT: OKAY. COULD WE GIVE HIM A
18 MICROPHONE, OR --

19 THE INTERPRETER: I CAN STEP UP, YOUR
20 HONOR.

21 THE COURT: OH. BUT WE MAY HAVE A
22 MICROPHONE IF YOU WOULDN'T MIND.

23 MR. QUINN: CAN WE STOP THE CLOCK, YOUR
24 HONOR.

25 THE COURT: YES, IT'S 1:34.

1 COULD YOU JUST SAY SOMETHING AND MAKE
2 SURE THAT ALL OF OUR --

3 THE INTERPRETER: ACTUALLY, I WOULD HAVE
4 TO PLACE IT ON THE TABLE. TESTING. IS THAT GOOD
5 ENOUGH, OR NO?

6 JUROR: I DIDN'T HEAR HIM. TESTING,
7 TESTING 1, TESTING 2. IS THAT BETTER?

8 THE COURT: OKAY. I'M JUST -- I WANT TO
9 MAKE SURE THAT HE CAN HEAR YOU.

10 MR. QUINN: WOULD THIS STOOL BE HELPFUL?

11 THE COURT: I THINK HE DOESN'T WANT TO
12 SIT DOWN.

13 THE INTERPRETER: I WOULD SIT NEXT TO THE
14 WITNESS, EXCEPT THAT I DON'T WANT TO BE TOO CLOSE
15 TO THE WITNESS.

16 THE COURT: WELL, I THINK THAT MIGHT
17 ENSURE THAT YOU CAN BE HEARD, WHICH --

18 THE INTERPRETER: SURE, OKAY, THAT'S
19 FINE.

20 THE COURT: IF YOU TWO DON'T MIND.

21 THE INTERPRETER: TESTING.

22 THE COURT: OKAY. THIS IS NOT YOUR TIME.
23 THUS FAR, IS THERE ANY PART THAT YOU HAVE
24 NOT HEARD?

25 JUROR: NO. I THINK IT WAS THE -- JUST A

1 LITTLE BIT IN BETWEEN, I NOTICED VOLUME WOULD DROP
2 A LITTLE BIT. SO I WAS ABLE TO PRETTY MUCH HEAR
3 JUST ABOUT EVERYTHING, BUT THE VOLUME DROPPED JUST
4 A LITTLE BIT. I WANT TO MAKE SURE THAT I'M NOT
5 MISSING ANYTHING.

6 THE COURT: WELL, YOU HEARD THE EDUCATION
7 AND THE PRIZE AND HER FUNCTION AT HER COMPANY?

8 JUROR: YES.

9 THE COURT: YOU HEARD ALL OF THAT?

10 JUROR: YES.

11 THE COURT: JUST FOR THE RECORD, THIS IS
12 JUROR NUMBER 9.

13 YOU HEARD ALL OF THAT ABOUT HER EDUCATION
14 AND WHERE SHE WORKS AND THAT SHE'S GOING TO GET
15 THIS, IS BEING CONSIDERED FOR A PRIZE?

16 PROSPECTIVE JUROR: YES.

17 THE COURT: YOU HEARD ALL OF THAT?

18 PROSPECTIVE JUROR: YEAH.

19 THE COURT: OKAY. ALL RIGHT. ARE THERE
20 ANY POINTS THAT YOU RECALL? YOU DIDN'T HEAR
21 ANYTHING?

22 JUROR: SHE MENTIONED SOMETHING ABOUT
23 THE, BEING THE LEAD, I THINK IT WAS THE LEAD
24 DESIGNER IN THE DESIGN TEAM.

25 THE COURT: IT WAS CORRECTED TO SENIOR

1 DESIGNER.

2 THE INTERPRETER: THAT IS CORRECT, YOUR
3 HONOR.

4 JUROR: OKAY.

5 THE COURT: ANY OTHER THINGS?

6 JUROR: NOT AT THIS TIME.

7 THE COURT: OKAY. ALL RIGHT.

8 OKAY. IT'S 1:36. GO AHEAD, PLEASE.

9 MR. QUINN: THANK YOU, YOUR HONOR.

10 Q MS. WANG, WE'VE HEARD TESTIMONY FROM APPLE
11 WITNESSES ABOUT HOW HARD THEY WORKED TO BRING THE
12 IPHONE TO MARKET.

13 DID YOU -- WOULD YOU TELL US WHAT IT WAS
14 LIKE WORKING ON THE GALAXY PHONE, THE DESIGN
15 ASPECTS FOR THE USER EXPERIENCE THAT YOU WORKED ON?

16 A YES, I CAN. SAMSUNG IS A COMPANY THAT'S VERY
17 TOUGH TO WORK AT AND IN KOREA. IT'S A VERY HARD
18 WORKING TYPE OF COMPANY. ANYWAY, WHEN WE WERE
19 DESIGNING GALAXY SI, WE HAD PEOPLE FROM SEOUL AND
20 ALSO FROM SUWON, AND ALSO FROM GUMI. THE PEOPLE
21 FROM SUWON, THERE WERE HUNDREDS OF DEVELOPERS, AND
22 ALSO PEOPLE FROM GUMI, THERE WERE MULTIPLE OF TENS
23 WHO WERE INVOLVED IN VERIFICATIONS.

24 SO WITH ALL THOSE PEOPLE COMING FROM
25 DIFFERENT PLACES. THERE WAS AT ONE POINT WHERE WE

1 HAD ALL COME TOGETHER AND WORKED TOGETHER AS A TEAM
2 FOR ABOUT THREE MONTHS AND DURING THAT TIME PERIOD
3 OF THREE MONTHS, MY RECOLLECTION WOULD BE THAT I
4 SLEPT PERHAPS TWO HOURS OR THREE HOURS A NIGHT.
5 THAT WAS ABOUT IT.

6 AND ALSO DURING THAT TIME PERIOD, I
7 ACTUALLY ENCOUNTERED SOMETHING THAT WAS VERY
8 DIFFICULT FOR ME. BACK THEN I HAD JUST GIVEN BIRTH
9 TO A NEWBORN, AND I WAS FEEDING MOTHER'S MILK TO
10 THE BABY. BUT SINCE I WASN'T ABLE TO BE WITH THE
11 BABY SO MUCH, I HAD TO SAVE THE BREAST MILK.

12 BUT IT JUST HAPPENED THAT I WASN'T ABLE
13 TO DO THAT ON A CONSISTENT BASIS. SO MY
14 RECOLLECTION WAS THAT THE BREAST FEEDING HAD TO
15 COME TO A STOP BECAUSE I HAD -- MY BODY WOULD NOT
16 GIVE MILK ANY MORE.

17 Q SO IT WAS A DEVELOPING, THE USER INTERFACE,
18 THE ICONS, THAT MENU PAGE, WAS THAT A VERY INTENSE
19 PERIOD OF HARD WORK FOR YOU?

20 A THAT'S CORRECT. THOSE WERE DIFFICULT TIMES.

21 Q LET'S TALK ABOUT SOME -- LET'S TALK ABOUT
22 ICONS AND ICON DESIGN.

23 WHAT FACTORS DO YOU CONSIDER MOST
24 IMPORTANT IN DESIGNING AN EFFECTIVE ICON?

25 A THERE ARE A FEW THINGS THAT'S IMPORTANT WHEN

1 IT COMES TO DESIGNING AN ICON. THE FIRST THING
2 THAT COMES TO MIND IS THAT WHEN A USER IS LOOKING
3 AT AN ICON, THE USER SHOULD BE ABLE TO RECOGNIZE IT
4 AS SUCH RIGHT AWAY.

5 AND, SECONDLY, THE COLOR AND THE SHAPE
6 ARE ALSO IMPORTANT IN THAT THEY SHOULD BE GOOD OR
7 PRETTY TO LOOK AT.

8 AND ALSO, EASILY -- EASY TO GRASP.

9 THIRDLY, IT HAS TO BE SOMETHING THAT HAS
10 TO BE EASILY MEMORIZED OR MEMORABLE.

11 Q AND WHEN YOU'RE DESIGNING -- I'M SORRY. IS
12 THERE A CORRECTION?

13 THE INTERPRETER: NO, YOUR HONOR. NO,
14 SIR.

15 BY MR. QUINN:

16 Q ARE THERE ADDITIONAL SPECIAL CONSIDERATIONS
17 THAT HAVE TO BE TAKEN INTO ACCOUNT WHEN YOU DESIGN
18 AN ICON THAT'S GOING TO BE USED ON A TOUCHSCREEN?

19 A YES, OF COURSE. WHEN IT COMES TO TOUCHSCREEN,
20 IT HAS TO BE A CERTAIN AMOUNT OR A CERTAIN PART OF
21 THE SCREEN THAT WOULD ALLOW FOR THE TOUCHING TO
22 TAKE PLACE.

23 AND SO THERE HAS TO BE A CERTAIN SIZE,
24 SHALL WE SAY, AND ALSO THERE HAS TO BE A VIVID
25 COLOR THAT IS AVAILABLE FOR THE USER SO THE USER

1 WILL BE ABLE TO RECOGNIZE THE AREA AND USE THEIR
2 FINGER TO TOUCH.

3 Q LET'S TAKE A LOOK AT AN ICON. WE DON'T HAVE
4 TIME TO GO THROUGH VERY MANY OF THEM, BUT IF WE
5 COULD PUT UP, YOUR HONOR, DEMONSTRATIVE 3972.012,
6 3972.012, THE MENU SCREEN FOR THE GALAXY S, AND
7 LET'S JUST BEGIN WITH THAT PHONE ICON IN THE LOWER
8 LEFT.

9 ARE YOU THE ONE THAT SELECTED THIS ICON
10 FOR USE ON THE GALAXY PHONE?

11 A YES, THAT IS CORRECT.

12 Q WHY DID YOU CHOOSE THIS ONE?

13 MR. JACOBS: YOUR HONOR, OBJECTION.
14 PRIOR DISCUSSION. YOU WILL SEE AT PAGE 18.

15 THE COURT: OVERRULED.

16 GO AHEAD.

17 THE WITNESS: WELL, I DESIGNED IT AS SUCH
18 BECAUSE IT'S A PHONE, SO I DESIGNED IT AS A PHONE.
19 THE SAME GOES WITH THE CLOCK, AND ALSO THE CAMERA.

20 BY MR. QUINN:

21 Q HAVE YOU, IN THE PAST, HAS SAMSUNG
22 EXPERIMENTED WITH OTHER ICONS FOR PHONE ON
23 TELEPHONES?

24 A YES, WE HAVE.

25 Q AND WHAT OTHER ICONS HAVE YOU USED FOR PHONES

1 AND WHAT WAS YOUR EXPERIENCE WITH THEM?

2 A YES. WELL, WE HAVE TRIED QUITE A FEW
3 DIFFERENT ICONS AND THERE WERE EVEN CERTAIN
4 DIRECTIVES COMING FROM UP ABOVE TELLING US TO COME
5 UP WITH SOMETHING OF A DESIGN THAT'S MORE
6 SOPHISTICATED, SOMETHING THAT LOOKS MORE LIKE A
7 SMARTPHONE.

8 SO WE TRIED DIFFERENT ICONS. FOR
9 EXAMPLE, WE TRIED AN ICON THAT LOOKED LIKE A CELL
10 PHONE WITH AN ANTENNA, AND THEN WE ALSO TRIED AN
11 ICON THAT LOOKED MORE LIKE A SMARTPHONE.

12 BUT WHAT HAPPENED WAS THAT THE PEOPLE
13 WOULD ACTUALLY MISTAKE THESE ICONS. SOME PEOPLE
14 THOUGHT THIS WAS A GAME OR MAYBE A PDA OR EVEN A
15 CALCULATOR. SO WE HAD SOME PROBLEMS.

16 Q HOW LONG HAS SAMSUNG USED THIS PARTICULAR TYPE
17 OF MA BELL, WE'VE HEARD IT CALLED A MA BELL, I
18 DON'T KNOW IF THAT TRANSLATES INTO KOREAN, ICON ON
19 PHONES.

20 MR. JACOBS: OBJECTION, YOUR HONOR.
21 LEADING. HE'S GIVING THE WITNESS A NAME FOR THIS.

22 THE COURT: SUSTAINED. SUSTAINED.
23 THAT'S STRICKEN.

24 BY MR. QUINN:

25 Q DO YOU HAVE A NAME THAT YOU USE FOR THIS

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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

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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
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IRENE RODRIGUEZ, CSR, CRR
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1 NOT HAVE ALLEGATIONS TO COUNTER WHAT'S BEEN
2 REPRESENTED.

3 MR. SELWYN: YOUR HONOR, WE'LL BE
4 PREPARED TO FILE OUR BRIEF BY NOON. I CAN ADDRESS
5 IT ORALLY NOW IF YOU'D LIKE AS WELL.

6 THE COURT: NO, BECAUSE I WANT TO SEE
7 ACTUAL DOCUMENTS. I DON'T WANT ANY ATTORNEY
8 REPRESENTATION ABOUT WHAT VARIOUS THINGS SAY.
9 OKAY.

10 MR. SELWYN: CERTAINLY. WE CAN HAVE THAT
11 FILED BY NOON IF YOU NEED IT.

12 THE COURT: BY NOON. OKAY, WHAT'S THE
13 CHANCE THAT -- I'M ASSUMING -- HOW QUICKLY DO I
14 NEED TO RULE ON THIS?

15 IS THERE ANY CHANCE THAT ANY OF THESE
16 FOLKS WILL BE TESTIFYING TODAY?

17 MR. SELWYN: NO. I DON'T BELIEVE THEY'LL
18 ALL BE TESTIFYING TOMORROW.

19 THE COURT: ALL RIGHT. SO IF I GIVE YOU
20 A RULING AT THE END OF THE DAY, THAT WOULD BE
21 ENOUGH TIME?

22 MR. SELWYN: CERTAINLY.

23 THE COURT: ALL RIGHT. FILE THAT,
24 PLEASE, NO LATER THAN NOON. AND WE'LL FILE AN
25 ORDER TONIGHT.

1 OKAY. DID YOU TALK TO MS. KARE?

2 MS. KREVANS: MY COLLEAGUE, WHO TRIED TO
3 GET IN TOUCH WITH HER TRIED AND COULDN'T GET HER
4 LAST NIGHT. WE'RE TRYING TO GET HER THIS MORNING.
5 I FOUND OUT MORE PARTICULARS, YOUR HONOR.

6 THE ISSUE IS SHE IS TAKING ONE SON
7 BACK-TO-SCHOOL WHO DOESN'T LIVE HERE AND DOESN'T GO
8 TO SCHOOL IN THE BAY AREA AND DRIVING DOWN TO SAN
9 DIEGO TO PICK UP HER YOUNGEST CHILD FROM CAMP. SHE
10 CAN'T PICK HIM UP UNTIL FRIDAY. SO THAT'S PROBLEM.
11 WE'RE TRYING AGAIN, BUT THAT'S THE SPECIFICS OF IT.

12 THE COURT: WELL, LET ME TELL YOU WHAT MY
13 CONCERN IS. I HAVE A CRIMINAL CALENDAR NEXT
14 WEDNESDAY AND A CIVIL CALENDAR. I ONLY HAVE SPEEDY
15 TRIAL EXCLUSIONS FOR MY DEFENDANTS IN MY CRIMINAL
16 CASES UNTIL NEXT WEDNESDAY, SO THAT'S NOT GOING TO
17 MOVE. I'VE GOT OTHER CIVIL CASES WEDNESDAY. I'VE
18 GOT SUMMARY JUDGMENT MOTIONS ON CASES THAT ARE SET
19 TO GO TO TRIAL IN SEPTEMBER ON THURSDAY.

20 SO I'M NOT -- YOU KNOW, I'VE MOVED ENOUGH
21 FOR THIS CASE. I'M NOT GOING TO MOVE IT ANY MORE.

22 SO IF WE DON'T HAVE THE JURY START
23 DELIBERATING ON TUESDAY, EVERYTHING IS GOING TO
24 START GETTING PUSHED UNTIL FRIDAY AND WE'RE GOING
25 TO LOSE PEOPLE. I'M GOING TO SAY IF SHE CAN'T MAKE

1 IT THIS WEEK, WE'RE GOING TO HAVE TO MOVE THE
2 EVIDENCE. IF SHE CAN'T COME THIS WEEK, I'M SORRY,
3 WE'RE PUSHING FORWARD. I'M ASSUMING, ARE YOU GOING
4 TO MAKE THE SAME REQUEST THAT THE CLOSING ALL HAVE
5 TO BE ON THE SAME DAY OR ARE YOU OKAY WITH THEM
6 BEING SPLIT UP.

7 MR. VERHOEVEN: I BELIEVE THE CLOSING
8 WOULD BE THE SAME DAY, YOUR HONOR.

9 THE COURT: SAME DAY. WELL, THAT'S A
10 FOUR-HOUR STRETCH. AND READING THESE JURY
11 INSTRUCTIONS IS GOING TO PUT EVERYONE IN A COMA AND
12 IT'S GOING TO TAKE AT LEAST -- I DON'T EVEN KNOW
13 THE FULL LENGTH, BUT IT'S PROBABLY GOING TO TAKE AT
14 LEAST AN HOUR AND A HALF. SO IF WE WANT TO READ
15 THESE INSTRUCTIONS TO THE JURY, WHICH I HAVE TO DO,
16 AND GIVE ALL FOUR HOURS, THIS THING HAS GOT TO GO
17 TO CLOSING BY TUESDAY.

18 SO --

19 MS. KREVANS: YOUR HONOR, SHE'S A SINGLE
20 PARENT.

21 THE COURT: I'M SORRY. I'M ALL FOR
22 FAMILY VALUES, BUT SHE NEEDS TO BE HERE.

23 MS. KREVANS: SHE'S A SINGLE PARENT.
24 THERE'S ONLY SO MUCH SHE CAN DO. WE ARE WORKING ON
25 IT.

1 THE COURT: OKAY. NOW, ONE OTHER THING I
2 WANT TO ASK BEFORE WE BRING IN OUR JURY IS I WOULD
3 LIKE TO -- I'M GOING TO MAKE TWO MORE REQUESTS.

4 ONE IS, IS THERE ANY FURTHER NARROWING OF
5 THE CASE THAT CAN BE DONE BEFORE THIS GOES TO THE
6 JURY? AND I'M JUST -- I'M JUST THROWING IT OUT
7 THERE. I WANT YOU ALL TO THINK ABOUT IT, CONSULT
8 WITH YOUR CLIENTS BECAUSE IT WOULD HELP A LOT WITH
9 BOTH THE JURY INSTRUCTIONS AND THE VERDICT FORM AND
10 JUST WHAT THIS JURY HAS TO DEAL WITH IF THERE COULD
11 BE FURTHER STREAMLINING.

12 NOW THAT YOU'VE SEEN EVERYTHING THAT'S
13 COME IN, ONE THING THAT COMES TO MIND IS THOSE SAME
14 THREE PRODUCTS FOR WHICH I GRANTED THE RULE 30
15 MOTION AS TO SEC -- I MEAN, I WANT YOU ALL TO JUST
16 THINK ABOUT IT, OKAY? BUT, I MEAN, IF YOU ALL WANT
17 TO KEEP OVERREACHING, THAT'S UP TO YOU. BUT IF
18 NOT, I THINK IT WOULD BE BETTER TO STREAMLINE THIS
19 CASE.

20 SO CAN YOU ALL THINK ABOUT THAT, IF THERE
21 ARE OTHER NARROWING THAT COULD BE DONE DURING THIS
22 PROCESS BEFORE WE GET TO A VERDICT FORM?

23 MR. MCELHINNY: YES, YOUR HONOR.

24 MR. VERHOEVEN: YES, YOUR HONOR.

25 THE COURT: OKAY. THEN THE OTHER THING I

1 AM GOING TO REQUEST, AND I'M JUST GIVING YOU A
2 HEADS UP, I GREATLY APPRECIATE THAT AT MY REQUEST
3 OR ORDER YOUR CEO'S MET IN PERSON WITH JUDGE SPERO
4 FOR SEVERAL DAYS OVER THE LAST FEW MONTHS.

5 BUT BEFORE THIS JURY STARTS DELIBERATING,
6 I'M GOING TO MAKE ONE LAST REQUEST THAT THEY AT
7 LEAST SPEAK BY PHONE ONE LAST TIME BECAUSE I SEE
8 RISKS HERE FOR BOTH SIDES IF YOU GO TO A VERDICT OR
9 IF IT HANGS, WHATEVER IS GOING TO HAPPEN. AND I
10 THINK THAT IT'S AT LEAST WORTH ONE MORE CHANCE.

11 I DON'T MEAN TO WASTE THEIR TIME, AND I
12 APOLOGIZE IF I'M WASTING THEIR TIME, BUT WOULD YOU
13 ALL COMMIT TO ME THAT PERHAPS ONE MORE TIME, BEFORE
14 THIS JURY STARTS DELIBERATING, YOU'LL HAVE YOUR
15 CEO'S HAVE ONE LAST CONVERSATION?

16 MR. MCELHINNY: YES, MA'AM.

17 THE COURT: OKAY. IS THAT --

18 MR. VERHOEVEN: YES, YOUR HONOR.

19 THE COURT: I MEAN, I --

20 MR. SEWALL: YOUR HONOR, I'LL COMMIT ON
21 BEHALF OF APPLE.

22 THE COURT: OKAY. THANK YOU. YOU KNOW,
23 IF WHAT YOU ALL HAVE WANTED IS TO RAISE AWARENESS
24 THAT YOU HAVE I.P. ON THESE DEVICES, MESSAGE
25 DELIVERED. OKAY?

1 IF WHAT YOU ALL HAVE WANTED IS SOME
2 EXTERNAL VALUATIONS OF THE STRENGTH OF YOUR I.P., I
3 THINK YOU'VE KIND OF GOTTEN THAT FROM TRIAL COURTS
4 AND APPELLATE COURTS WORLDWIDE.

5 SO IN MANY RESPECTS, MISSION
6 ACCOMPLISHED. IT'S TIME FOR PEACE. OKAY. SO I'M
7 JUST GIVING YOU A HEADS UP, BECAUSE THIS JURY MAY
8 START DELIBERATING WITHIN A WEEK, IF YOU COULD HAVE
9 YOUR CEO'S HAVE ONE LAST CONVERSATION, I'D
10 APPRECIATE IT.

11 MR. VERHOEVEN: YES, YOUR HONOR.

12 THE COURT: ALL RIGHT. OKAY. WHAT ELSE
13 DO WE NEED TO COVER? ANYTHING ELSE?

14 MR. LEE: YOUR HONOR, JUST A COUPLE OF
15 LOGISTICS. I'D LIKE TO LODGE JUST THE TRANSCRIPT
16 PORTIONS FROM THE DEPOSITION CLIPS THAT WE SHOWED
17 YESTERDAY.

18 THE COURT: OH, OKAY.

19 MR. LEE: AND I'VE SHOWN THEM TO
20 MR. JOHNSON.

21 PX 211 WILL BE THE --

22 THE COURT: YOU KNOW WHAT, THIS IS ON
23 YOUR TRIAL TIME.

24 MR. LEE: OKAY. I'LL DO IT QUICKLY.

25 THE COURT: NO, NO. WE'RE GOING TO DO

1 THIS WITH THE JURY. IT'S GOING TO BE ON YOUR TRIAL
2 TIME.

3 MR. LEE: OKAY.

4 THE COURT: OKAY? BECAUSE THIS IS
5 LODGING OF EXHIBITS. AND IS EVERYONE'S CASE VIEW
6 WORKING? BECAUSE MINE IS NOT WORKING AGAIN.

7 MS. MAROULIS: YOUR HONOR, CAN I HAVE A
8 QUICK ADMINISTRATIVE QUESTION?

9 THE COURT: YES, PLEASE,

10 MS. MAROULIS: WE'VE BEEN LODGING THE
11 EXHIBITS IN CONNECTION WITH OUR OBJECTIONS, PER THE
12 COURT'S INSTRUCTIONS, BUT WE HAVEN'T BEEN FILING
13 THEM.

14 FOR PURPOSES OF THE APPELLATE RECORD, I
15 ASSUME THE PARTIES WILL BOTH WANT TO FILE THESE
16 EITHER REJECTED EXHIBITS OR OBJECTED TO. WHEN
17 WOULD THE COURT LIKE US TO DO THAT AND HOW?

18 THE COURT: I'M GOING TO DEFER TO YOU ALL
19 ON THAT. WHEN WOULD YOU LIKE TO DO THAT?

20 MS. MAROULIS: IF WE CAN DO IT BEFORE THE
21 END OF THE CASE BY AGREEMENT AND COME UP WITH A
22 LIST OF WHAT WAS OBJECTED TO AND SIMPLY BRING A
23 STACK TO YOU AND PUT IT IN FOR THE RECORD AS
24 REJECTED EXHIBITS OR OBJECTED TO EXHIBITS.

25 THE COURT: THAT'S FINE. I'M MOSTLY

1 CONCERNED WITH THE ONES THAT ARE COMING IN. I'LL
2 FINE IF YOU WANT TO WORK IT OUT.

3 MS. MAROULIS: OKAY. WE'LL MEET AND
4 CONFER.

5 THE COURT: YOU WANT TO SAY BY NEXT
6 TUESDAY, YOU'LL FILE ALL THE REJECTED EXHIBITS.

7 MS. MAROULIS: YES, YOUR HONOR.

8 THE COURT: OKAY. WHAT ELSE? ANYTHING
9 ELSE?

10 MR. VERHOEVEN: VERY BRIEFLY, YOUR HONOR,
11 THIS IS MR. VERHOEVEN.

12 YOU WILL RECALL THAT YESTERDAY THERE WAS
13 EXHIBIT 621, WHICH WAS THE VIDEO FROM ROGER FIDLER.

14 THE COURT: YES.

15 MR. VERHOEVEN: AND YOUR HONOR PERMITTED
16 ME TO PUT MR. SHERMAN ON THE STAND BEFORE APPLYING
17 THAT.

18 THE COURT: UM-HUM.

19 MR. VERHOEVEN: WE -- THAT'S A 13 -- OR A
20 15 -- I THINK ABOUT A 15-MINUTE VIDEO.

21 THE COURT: OKAY.

22 MR. VERHOEVEN: AND WE DON'T WANT TO USE
23 15 MINUTES OF OUR TIME.

24 THE COURT: OKAY.

25 MR. VERHOEVEN: SO WE'VE CREATED A

1 Q SIR --

2 A THAT'S NOT WHAT I HEARD.

3 Q THE GALAXY 7.0 IS NOT ANYTHING THIS JURY NEEDS
4 TO MAKE ANY DECISION ABOUT; ISN'T THAT TRUE?

5 MR. MCELHINNY: YOUR HONOR, THAT'S JUST
6 FACTUALLY WRONG. IT'S AN ACCUSED DEVICE IN THE
7 CASE. THAT'S WHY I'M HAVING THIS PROBLEM.

8 MR. QUINN: MAYBE I CAN GET A
9 CLARIFICATION FROM COUNSEL, YOUR HONOR. IS HE
10 SAYING IT'S ACCUSED FOR DESIGN?

11 MR. MCELHINNY: WHAT COUNSEL IS SAYING,
12 YOUR HONOR, IS THIS WITNESS HAS NO IDEA WHAT'S AT
13 ISSUE.

14 BY MR. QUINN:

15 Q SIR, IS IT YOUR UNDERSTANDING THAT THERE ARE
16 ANY DESIGN CLAIMS REGARDING THE GALAXY 7.0 PRODUCT?

17 A NO.

18 Q SO THE ONLY DOCUMENTS THAT COUNSEL SHOWED YOU
19 ARE REGARDING THE DESIGN OF DOCUMENTS THAT HAVE
20 NOTHING TO DO WITH THIS CASE; CORRECT?

21 A YES, THAT'S CORRECT.

22 MR. QUINN: NOTHING FURTHER.

23 THE COURT: ALL RIGHT. IT'S 2:20. IS
24 THERE ANY REDIRECT?

25 MR. MCELHINNY: NONE FOR ME, YOUR HONOR.

1 THE COURT: ALL RIGHT. MAY THIS WITNESS
2 BE EXCUSED, AND IS HE SUBJECT TO RECALL?

3 MR. MCELHINNY: WE WON'T NEED HIM.

4 MR. QUINN: WE DON'T NEED HIM, YOUR
5 HONOR.

6 THE COURT: ALL RIGHT. THEN YOU ARE
7 EXCUSED.

8 OKAY. CALL YOUR NEXT WITNESS, PLEASE.

9 MR. VERHOEVEN: YOUR HONOR, NEXT, AS
10 YOU'LL RECALL YESTERDAY, WE PLAYED THE DEPOSITION
11 DESIGNATIONS OF MR. FIDLER.

12 THE COURT: OKAY.

13 MR. VERHOEVEN: AND AUTHENTICATED HIS
14 PRESENTATION, AND YOUR HONOR SUGGESTED THAT -- WE
15 MOVED IT IN, AND YOUR HONOR SUGGESTED WE PLAY IT.
16 WE HAVE A SHORTENED VERSION OF THAT, WHICH IS DX
17 621-A, YOUR HONOR.

18 THE COURT: OKAY.

19 MR. VERHOEVEN: AND WE'VE ALLOWED COUNSEL
20 FOR APPLE TO REVIEW IT, AND WE'RE READY TO PLAY IT.

21 THE COURT: OKAY. GO AHEAD, PLEASE.

22 COULD YOU DIM THE LIGHTS PLEASE,
23 MR. RIVERA.

24 THIS IS 621-A; CORRECT?

25 MR. VERHOEVEN: CORRECT, YOUR HONOR.

1 THE COURT: OKAY. THANK YOU.

2 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN
3 OPEN COURT OFF THE RECORD.)

4 THE COURT: ALL RIGHT.

5 MR. VERHOEVEN: FOR THE RECORD, THAT'S
6 621-A. IS THAT ADMITTED, YOUR HONOR?

7 THE COURT: IT'S BEEN ADMITTED, YES.

8 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
9 621-A, HAVING BEEN PREVIOUSLY MARKED FOR
10 IDENTIFICATION, WAS ADMITTED INTO
11 EVIDENCE.)

12 MR. VERHOEVEN: OKAY. THANK YOU.

13 THE COURT: ALL RIGHT. IT'S 2:26.
14 CALL YOUR NEXT WITNESS, PLEASE.

15 MR. PRICE: WE CALL RICHARD HOWARTH.

16 THE COURT: OKAY.

17 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

18 **RICHARD HOWARTH,**

19 BEING CALLED AS A WITNESS ON BEHALF OF THE
20 DEFENDANT, HAVING BEEN FIRST DULY SWORN, WAS
21 EXAMINED AND TESTIFIED AS FOLLOWS:

22 THE WITNESS: I DO.

23 THE CLERK: THANK YOU. PLEASE BE SEATED.

24 THE COURT: ALL RIGHT. TIME IS NOW 2:27.
25 GO AHEAD, PLEASE.

DIRECT EXAMINATION

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BY MR. PRICE:

Q MR. HOWARTH, YOU'RE AN INDUSTRIAL DESIGNER AT APPLE; CORRECT?

A THAT'S RIGHT.

Q AND YOU WERE A LEAD DESIGNER ALONG WITH CHRIS STRINGER ON THE ORIGINAL IPHONE PROJECT; CORRECT?

A SURE.

Q AND I'D LIKE YOU TO LOOK IN YOUR BINDER, THERE'S AN EXHIBIT DX 2627. DO YOU SEE THAT?

A YES.

Q AND DO YOU SEE THIS IS AN APPLE 3G SM CONGRESS TRADE SHOW REPORT. CORRECT?

A JUST GIVE ME A SECOND.

Q ARE YOU LOOKING AT EACH PAGE ONE BY ONE?

A YEAH, I'M TRYING TO GET AN IDEA WHAT IT IS.

Q LET ME ASK YOU, THE PAGE SAYS -- IT HAS AN APPLE LOGO ON IT, AND AT THE BOTTOM IT HAS BATES NUMBERS THAT BEGIN WITH A-P-L, APPLE, CORRECT?

A SURE.

MR. PRICE: YOUR HONOR, MOVE 2627 INTO EVIDENCE.

MR. MCELHINNY: YOUR HONOR, WE OBJECT TO THIS DOCUMENT. IT'S NOT ON THE ORIGINAL LIST OF 200. IT'S OUT OF LIMIT.

1 MR. PRICE: IT WAS NOT ON THE LIST,
2 BECAUSE IT WAS JUST DISCOVERED.

3 THE COURT: I'M GOING ALLOW IT, BUT
4 YOU'RE DOING TRANSLATION OF A DOCUMENT TO HAVE TO
5 SUBTRACT ANOTHER ONE. OKAY.

6 MR. PRICE: SURE.

7 THE COURT: IT'S ADMITTED.

8 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
9 2627, HAVING BEEN PREVIOUSLY MARKED FOR
10 IDENTIFICATION, WAS ADMITTED INTO
11 EVIDENCE.)

12 BY MR. PRICE:

13 Q LOOK AT THE FIRST PAGE, THIS IS ITSELF REPORT,
14 CORRECT, FIRST PAGE, RIGHT?

15 A YES.

16 Q LOOK AT PAGE 25 THROUGH 26. ONE OF THE THINGS
17 THIS DOES IS COMPARE PRODUCTS, COMPARE THE PRODUCTS
18 SUCH AS THE F700 ON PAGE 26; CORRECT? DO YOU SEE
19 THAT?

20 A JUST GIVE ME A SECOND.

21 MR. PRICE: YOUR HONOR, I BELIEVE THERE'S
22 A LIMITING INSTRUCTION YOU WERE GOING TO GIVE ON
23 THIS DOCUMENT, ONE BEING THAT THE DATE IS WRONG.

24 CAN WE GO TO THE FIRST PAGE AND SHOW
25 THAT.

1 THE COURT: YES, GIVE ME A SEC. I
2 THOUGHT MR. LUCENTE WAS THE NEXT WITNESS. SO I'VE
3 GOT STUFF READY FOR HIM. GIVE ME ONE SECOND.

4 (PAUSE IN PROCEEDINGS.)

5 THE COURT: YES, YOU MAY NOT CONSIDER THE
6 F700 AS EVIDENCE OF INVALIDITY OR NON-INFRINGEMENT.

7 YOU MAY ONLY CONSIDER THE F700 FOR
8 ALTERNATIVE DESIGN AND FUNCTIONALITY.

9 MR. MCELHINNY: I'M SORRY, YOUR HONOR.
10 ALSO THERE WAS AN INSTRUCTION ABOUT THE INCORRECT
11 DATE.

12 THE COURT: YES, THAT IS CORRECT. THE
13 DATE OF THIS DOCUMENT IS 2006, BUT THAT'S ACTUALLY
14 AN INCORRECT DATE. THE CORRECT DATE IS 2007.

15 BY MR. PRICE:

16 Q AND IF WE LOOK AT PAGE 42, 43, YOU'VE SEEN
17 THESE, RIGHT?

18 A YES.

19 Q I'D LIKE YOU TO LOOK, IF YOU WOULD, AT EXHIBIT
20 712 IN YOUR BINDER.

21 A OKAY.

22 Q AND YOU SEE THIS IS AN APPLE INTERNAL
23 DOCUMENT, APPLE BATES STAMPS AT THE BOTTOM. IT IS
24 FEBRUARY 25, 2001 CONCERNING COMPREHENSIVE LIST FOR
25 CURRENT AND FUTURE FLAGSHIP PHONES. DO YOU SEE

1 THAT?

2 A DID YOU SAY 2001?

3 Q I SAID 712, FEBRUARY 25, 2011. SORRY.

4 A OKAY.

5 Q DO YOU SEE THAT?

6 A SURE.

7 MR. PRICE: YOUR HONOR, I MOVE EXHIBIT
8 712 INTO EVIDENCE.

9 MR. MCELHINNY: NO OBJECTION, YOUR HONOR.

10 THE COURT: ALL RIGHT. 712 IS ADMITTED.
11 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
12 712, HAVING BEEN PREVIOUSLY MARKED FOR
13 IDENTIFICATION, WAS ADMITTED INTO
14 EVIDENCE.)

15 BY MR. PRICE:

16 Q AND IF YOU WOULD LOOK NOW AT EXHIBIT 717. AND
17 DO YOU SEE THAT IS A DOCUMENT WITHIN APPLE DATED
18 FEBRUARY 11TH, 2012, APPLE BATES STAMP CONCERNING
19 THE SAMSUNG GALAXY TAB 10.1 TAKE-APART. DO YOU SEE
20 THAT?

21 A YES.

22 MR. PRICE: YOUR HONOR, I MOVE 717 INTO
23 EVIDENCE.

24 THE COURT: NO OBJECTION?

25 MR. MCELHINNY: NO OBJECTION, YOUR HONOR.

1 THE COURT: IT'S ADMITTED.
2 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
3 717, HAVING BEEN PREVIOUSLY MARKED FOR
4 IDENTIFICATION, WAS ADMITTED INTO
5 EVIDENCE.)

6 BY MR. PRICE:

7 Q AND IF YOU COULD LOOK AT PAGE 10 OF THE
8 DOCUMENT, DO YOU SEE THERE ARE VARIOUS PHOTOS
9 SHOWING THE TAKE-APART OF THE GALAXY TABLET;
10 CORRECT?

11 A THEY LOOK LIKE, YEAH, A BUNCH OF COMPONENTS.

12 MR. PRICE: OKAY. NO FURTHER QUESTIONS.

13 THE COURT: ALL RIGHT. TIME IS NOW 2:33.
14 IS THERE ANY CROSS?

15 **CROSS-EXAMINATION**

16 BY MR. MCELHINNY:

17 Q COULD YOU PUT ON THE SCREEN, PLEASE,
18 DEFENDANT'S EXHIBIT 562, WHICH IS IN EVIDENCE, YOUR
19 HONOR.

20 THE COURT: OKAY.

21 BY MR. MCELHINNY:

22 Q MR. HOWARTH, IS THIS AN E-MAIL THAT YOU SENT
23 ON MARCH 8TH, 2006?

24 MR. PRICE: YOUR HONOR, THIS EXCEEDS THE
25 SCOPE OF THE DIRECT.

1 THE WITNESS: YES.

2 MR. PRICE: IT CONCERNS THE CHAPPY.

3 THE COURT: IT DOES EXCEED THE SCOPE OF
4 THE DIRECT.

5 MR. MCELHINNY: YOUR HONOR, IT DOES. I
6 WILL CONCEDE THAT. THERE'S BEEN A BUNCH OF
7 TESTIMONY ABOUT A PICTURE THAT'S BEEN ATTACHED TO
8 THIS, AND MR. HOWARTH IS THE AUTHOR OF THE PICTURE.
9 HE'S HERE. I JUST WANT HIM TO IDENTIFY WHAT'S IN
10 THE PICTURE. I'M NOT GOING TO GO INTO ANYTHING
11 OTHER THAN WHAT'S IN THE PICTURE. CAN WE SEE THE
12 PICTURE. CAN WE SEE THE PICTURE.

13 MR. PRICE: I'VE ALSO BEEN INFORMED,
14 THOUGH I HAVEN'T BEEN HERE THE LAST COUPLE OF DAYS,
15 THAT THERE'S NOT BEEN, QUOTE, A BUNCH OF TESTIMONY
16 ABOUT THE PICTURES. BEYOND THE SCOPE.

17 THE COURT: I THINK IT IS BEYOND THE
18 SCOPE OF THE DIRECT.

19 MR. MCELHINNY: THANK YOU, YOUR HONOR. I
20 HAVE NO FURTHER QUESTIONS.

21 THE COURT: ALL RIGHT. MAY THIS WITNESS
22 BE EXCUSED? IS IT SUBJECT TO RECALL OR NOT? ARE
23 YOU GOING TO CALL HIM IN YOUR CASE, OR WHAT'S
24 HAPPENING?

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

1 THE COURT: OKAY. ALL RIGHT.

2 MR. VERHOEVEN: HE'S EXCUSED.

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

4 OKAY. CALL YOUR NEXT WITNESS, PLEASE.

5 IT IS NOW 2:35. WHO'S YOUR NEXT WITNESS?

6 MR. JOHNSON: YOUR HONOR, SAMSUNG CALLS

7 PROFESSOR ANDRIES VAN DAM.

8 THE COURT: OKAY. CAN I ASK, THIS IS NOT

9 THE WITNESS I WAS TOLD, SO CAN I FIND OUT --

10 MR. VERHOEVEN: YOUR HONOR, I APOLOGIZE

11 FOR THAT.

12 THE COURT: IT'S NOT A PROBLEM.

13 MR. VERHOEVEN: WE'RE JUST TRYING TO

14 BALANCE THE TIME FOR TODAY.

15 THE COURT: NO PROBLEM.

16 MR. VERHOEVEN: SO WE'VE SKIPPED OVER

17 MR. LUCENTE. I APOLOGIZE FOR NOT INFORMING, YOU

18 YOUR HONOR.

19 THE COURT: OH, NO, IT'S NOT A PROBLEM AT

20 ALL.

21 MR. VERHOEVEN: AND THEN THE WITNESS

22 AFTER THIS ONE WILL BE STEPHEN GRAY, YOUR HONOR.

23 SO WE'RE GOING TO GO DIRECTLY FROM THE CURRENT

24 WITNESS TO MR. GRAY.

25 THE COURT: OKAY.

1 MR. VERHOEVEN: AND THAT SHOULD CLOSE OUT
2 THE DAY I THINK, YOUR HONOR.

3 THE COURT: OKAY. ALL RIGHT. THANK YOU.
4 SO MR. VAN DAM AND THEN MR. GRAY.

5 MR. VERHOEVEN: YES, YOUR HONOR.

6 THE COURT: ALL RIGHT. THANK YOU.

7 DO YOU HAVE PICTURES OF THE WITNESSES?
8 IF NOT, WE'LL GET THEM LATER. NO PROBLEM.

9 MR. JOHNSON: GOOD AFTERNOON, LADIES AND
10 GENTLEMEN.

11 THE CLERK: PLEASE STAND AND RAISE YOUR
12 RIGHT HAND.

13 **ANDRIES VAN DAM,**
14 BEING CALLED AS A WITNESS ON BEHALF OF THE
15 DEFENDANT, HAVING BEEN FIRST DULY SWORN, WAS
16 EXAMINED AND TESTIFIED AS FOLLOWS:

17 THE WITNESS: I DO.

18 THE CLERK: THANK YOU. PLEASE BE SEATED.

19 THE COURT: ALL RIGHT. TIME IS NOW 2:36.
20 GO AHEAD, PLEASE.

21 **DIRECT EXAMINATION**

22 BY MR. JOHNSON:

23 Q GOOD AFTERNOON, PROFESSOR VAN DAM. COULD YOU
24 PLEASE STATE YOUR FULL NAME FOR THE RECORD?

25 A GOOD AFTERNOON. I'M ANDRIES VAN DAM.

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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

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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 20, 2012
VS.)	
	)	VOLUME 12
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 3712-3940
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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
3 APPLE: BY: HAROLD J. MCELHINNY
4 MICHAEL A. JACOBS
5 RACHEL KREVANS
6 425 MARKET STREET
7 SAN FRANCISCO, CALIFORNIA 94105

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

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

11 FOR THE DEFENDANT: QUINN, EMANUEL, URQUHART,
12 OLIVER & HEDGES
13 BY: CHARLES K. VERHOEVEN
14 50 CALIFORNIA STREET, 22ND FLOOR
15 SAN FRANCISCO, CALIFORNIA 94111

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

17 BY: MICHAEL T. ZELLER
18 WILLIAM C. PRICE
19 SUSAN ESTRICH
20 865 SOUTH FIGUEROA STREET
21 10TH FLOOR
22 LOS ANGELES, CALIFORNIA 90017

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INDEX OF EXHIBITS

MARKED

ADMITTED

DEFENDANT 'S

556

3722

1 US.

2 THE COURT: OKAY. SO HOW MUCH TIME DO
3 YOU NEED FOR YOUR STRAIGHT PUTTING EVERYTHING ON
4 THE RECORD?

5 MR. JACOBS: PROBABLY 20 MINUTES FOR US,
6 YOUR HONOR.

7 MR. JOHNSON: ABOUT THE SAME. MAYBE NOT
8 QUITE AS LONG.

9 THE COURT: DO YOU WANT TO DO THAT FIRST
10 OR DO THAT SECOND?

11 MR. JACOBS: I WOULD DO IT SECOND, IF
12 ONLY BECAUSE GOING THROUGH THE HPO'S MAY --

13 THE COURT: MAY MOOT SOME OF THEM?

14 MR. JACOBS: YES.

15 THE COURT: OKAY. ALL RIGHT. THAT'S
16 FINE. ALL RIGHT.

17 SO THIS IS WHAT I'D LIKE TO DO. WHAT IF
18 I JUST TOLD YOU WHAT THE TENTATIVE IS AS TO EACH
19 ONE AND THEN YOU CAN DECIDE HOW MUCH OF YOUR TIME
20 YOU WANT TO SPEND ON FIGHTING IT OR NOT. OKAY?

21 ALL RIGHT. SHOULD WE GO THROUGH
22 SAMSUNG'S FIRST?

23 OKAY. THE TIME IS NOW 2:42.

24 ALL RIGHT. WITH REGARD TO SALE IN THE
25 UNITED STATES, THAT'S DENIED. I DON'T BELIEVE THAT

1 DELIVERY INTO THE UNITED STATES IS REQUIRED. I
2 KNOW YOU RELY ON MINEBEA VERSUS PAPST AND THE OTHER
3 CASES. THOSE ARE OUT OF DISTRICT COURT CASES.
4 THEY'RE NOT BINDING ON ME.

5 FEDERAL CIRCUIT CASES REALLY SEEM TO
6 FOCUS ON WHERE THE ACTIVITY TOOK PLACE, SO I THINK
7 THE INSTRUCTION THAT'S IN THE INSTRUCTIONS NOW IS
8 MORE CONSISTENT WITH FEDERAL CIRCUIT LAW.

9 SO I'M DENYING THE SALE IN THE U.S.

10 DO YOU WANT TO FIGHT IT OR NO?

11 MR. JOHNSON: YOUR HONOR, CAN WE GO
12 THROUGH THE WHOLE LIST AND THEN LET US DECIDE?

13 THE COURT: OH, OKAY. SURE. ALL RIGHT.

14 LET'S GO TO DESIGN PATENT COPYING, THAT'S
15 34.4(B). THIS IS DENIED.

16 WHILE IT'S TRUE THAT INTENT TO COPY IS
17 NOT RELEVANT TO AN INFRINGEMENT ANALYSIS, ADDING
18 ANOTHER INSTRUCTION WHEN THIS IS ALREADY COVERED
19 ELSEWHERE I THINK WOULD PLACE UNDUE EMPHASIS ON
20 THIS ISSUE AND I THINK IT'S A RELATIVELY MINOR
21 POINT AND SHOULDN'T BE OVEREMPHASIZED. SO THAT'S
22 DENIED.

23 NOW, WITH REGARD TO DESIGN PATENT
24 FUNCTIONALITY, I'M NOT PERSUADED BY AMINI
25 INNOVATION CORP. THAT SEEMS TO BE AN OUTLIER.

1 THERE AREN'T ANY OTHER FED CIRCUIT CASES THAT ADOPT
2 TRADE DRESS AS A TEST FOR FUNCTIONALITY AND DESIGN
3 PATENTS.

4 AND OTHERWISE I THINK THAT THE DICTATED
5 BY FUNCTIONALITY STANDARD IS THE CORRECT STATEMENT
6 OF THE LAW.

7 NOW, I ALSO, I KNOW THAT I HAD
8 PREVIOUSLY, WHEN I DID THE CLAIM CONSTRUCTION ON
9 THE DESIGN PATENTS, HAD SAID I MIGHT ISSUE AN ORDER
10 ON FUNCTIONALITY AND CALLING OUT SPECIFIC
11 FUNCTIONS, BUT I'M NOT CONVINCED THAT, ON THE
12 RECORD BEFORE US, ANY ADDITIONAL LIMITATIONS HAVE
13 BEEN ESTABLISHED BASED ON FUNCTIONALITY, SO I DENY
14 THAT REQUEST.

15 NOW, THE ONE WHERE I COULD HAVE SOME
16 MOVEMENT ON IS WHETHER WE WANT TO -- EVEN THOUGH
17 THE PGH TECHNOLOGY FACTORS ARE NOT IN THE MODEL
18 INSTRUCTIONS THAT WE'VE BEEN USING, I WOULD NOT BE
19 OPPOSED TO INCLUDING THESE AS SOME FACTORS YOU MAY
20 CONSIDER. I DON'T FEEL THAT STRONGLY.

21 I MEAN, I PREFER GENERALLY -- AS YOU'VE
22 SEEN WITH THE JURY INSTRUCTIONS I'VE ISSUED, I
23 PREFER TO GO WITH THE MODEL LANGUAGE WITHOUT MUCH
24 ALTERATION, BUT THAT'S THE ONE WHERE THERE COULD BE
25 SOME POTENTIAL MOVEMENT.

1 OKAY. LET'S GO TO 40 TO 43, DESIGN
2 PATENT DAMAGES. AS MUCH AS I WOULD LIKE TO MAKE
3 APPLE ELECT UPFRONT, I DON'T THINK THERE'S ANY LAW
4 THAT REQUIRES THEM TO DO THAT, SO I'M NOT GOING TO
5 REQUIRE THAT EVEN THOUGH THAT CERTAINLY WOULD BE
6 HELPFUL.

7 NOW, I DO AGREE WITH YOU THAT THE
8 INSTRUCTIONS SHOULD BE CLEARER, A LITTLE BIT, TO
9 AVOID DOUBLE RECOVERY, AND THESE ARE VERY
10 COMPLICATED INSTRUCTIONS AND I HAVE SOME CONCERNS,
11 WHICH IS WHY I ASKED THE PARTIES TO FILE THE
12 ADDITIONAL BRIEFING ON DAMAGES AND DOUBLE RECOVERY,
13 BECAUSE I SHARE THE SAME CONCERNS THAT SAMSUNG
14 DOES.

15 SO WHAT I MIGHT CONSIDER DOING IS MAYBE
16 REARRANGING THE INSTRUCTIONS, PUTTING LOST PROFITS
17 FIRST, THEN REASONABLE ROYALTY, THEN INFRINGER'S
18 PROFITS AND HAVING -- IN THE LOST PROFITS AND
19 REASONABLE ROYALTY INSTRUCTIONS, MAKE IT A LITTLE
20 MORE CLEAR THAT APPLE MAY RECOVER COMPENSATORY
21 DAMAGES IN THE FORM OF EITHER LOST PROFITS OR
22 REASONABLE ROYALTY; AND THEN IN THE, YOU KNOW,
23 INSTRUCTIONS SAYING THAT, LOOK, YOU CANNOT RECOVER
24 FOR BOTH COMPENSATORY DAMAGES AND AN INFRINGER'S
25 PROFITS FOR THE SAME SALE OF AN INFRINGING PRODUCT.

1 NOW, ALL OF THOSE INSTRUCTIONS ARE
2 ALREADY IN THE CURRENT SET, BUT I AM AMENABLE TO
3 TRYING TO MAKE IT A LITTLE CLEARER IF YOU THINK
4 IT'S STILL POTENTIALLY MISLEADING OR IT MIGHT
5 CONFUSE THE JURY INTO THINKING THEY CAN GIVE DOUBLE
6 RECOVERY. SO THERE'S SOME FLEXIBILITY ON THAT ONE.

7 IF YOU HAVE SPECIFIC LANGUAGE THAT YOU
8 THINK WOULD HELP CLARIFY THAT, I'M OPEN TO IT.

9 LET'S GO TO 42, DESIGN PATENT DAMAGES. I
10 THINK THAT'S SORT OF ALONG THE SAME LINES AS WHAT
11 I'VE JUST DESCRIBED. I MIGHT BE WILLING TO DO A
12 LITTLE BIT MORE BY WAY OF INTRODUCTION IN SOME OF
13 THESE INSTRUCTIONS TO MAKE IT A LITTLE CLEARER.

14 TRADE DRESS FUNCTIONALITY, SO FOR TRADE
15 DRESS, I'M THINKING OF PERHAPS TAKING THIS DISC
16 GOLF LANGUAGE OUT. I THINK IT MIGHT BE CONFUSING
17 TO A JURY.

18 WITH REGARD TO YOUR CHANGE ON NUMBER 51,
19 PARAGRAPH 3, TO SAY "TO DETERMINE WHETHER A PRODUCT
20 FEATURE IS FUNCTIONAL, YOU MAY CONSIDER THE
21 FOLLOWING FACTORS," THAT'S FINE.

22 MODIFYING PARAGRAPH 4 TO DELETE "AFTER
23 CONSIDERING THESE FACTORS," THAT'S OKAY.

24 YOUR REQUEST MODIFYING PARAGRAPH 5 TO
25 DELETE "ALTERNATIVE" AND REPLACING IT WITH "IN

1 THE COURT: OKAY.

2 (DISCUSSION OFF THE RECORD BETWEEN
3 DEFENSE COUNSEL.)

4 MR. JOHNSON: YOUR HONOR, I THINK WE'RE
5 GOING TO TALK ABOUT THREE OR FOUR POTENTIALLY.

6 THE COURT: OKAY. ALL RIGHT. CAN YOU
7 TELL ME --

8 MS. MAROULIS: YOUR HONOR, WITH RESPECT
9 TO EXHAUSTION, WITHOUT GIVING UP OUR OBJECTIONS,
10 CAN WE PLEASE INCLUDE, IN THE COURT'S CURRENT
11 INSTRUCTION, THE STATEMENT "WHERE THE SPECIAL
12 ACTIVITIES INCLUDE, FOR EXAMPLE, WHERE A PRODUCT IS
13 DELIVERED."

14 IN OTHER WORDS, WE'RE OBJECTING TO THE
15 INSTRUCTION, BUT IF THE COURT IS INTENDING TO KEEP
16 WHAT IT HAS, IF WE CAN INCLUDE DELIVERY AS ONE OF
17 THE ESSENTIAL ACTIVITIES.

18 THE COURT: OKAY. LET ME HEAR FROM -- IS
19 THERE ANY OBJECTION FROM APPLE ON THAT ONE?

20 MR. SELWYN: YOUR HONOR, THERE IS AN
21 OBJECTION TO THAT. THERE'S NO REASON TO SINGLE OUT
22 THAT SPECIFIC EXAMPLE OF AN ACTIVITY IN THIS LIST.

23 IF YOU WERE TO GO DOWN THAT PATH, THERE
24 ARE OTHER THINGS THAT WE WOULD WANT TO IDENTIFY AS
25 EXAMPLES THAT THE JURY CAN CONSIDER.

1 SO ON INSTRUCTION NUMBER 40, DESIGN
2 PATENT DAMAGES, OKAY.

3 MR. JACOBS: LET ME, IF I -- WE FILED
4 THIS ONE BEFORE WE GOT THE VERY LAST INSTRUCTION.

5 THE COURT: OH.

6 MR. JACOBS: INSTRUCTIONS, AND I THINK
7 YOUR HONOR'S 61.3 CAPTURES THE ESSENCE OF WHAT WE
8 WERE TRYING TO SAY AND YOU HAD, I THINK YOUR HONOR,
9 ALLUDED TO THIS IN OPENING COMMENTS.

10 61.3 IS A UNIT-BY-UNIT -- PROVIDES FOR A
11 UNIT-BY-UNIT ANALYSIS OF WHAT REMEDY IS CALLED FOR,
12 AND OUR PROBLEM WAS THAT IN SOME OF THE EARLIER
13 INSTRUCTIONS, THE INSTRUCTIONS SUGGESTED THAT WE
14 HAD TO MAKE A RIGHT-BY-RIGHT ELECTION.

15 THE COURT: UM-HUM.

16 MR. JACOBS: SO THIS DESIGN PATENT, WE
17 HAVE TO SEEK ONLY LOST PROFITS ON AND THIS DESIGN
18 PATENT WE CAN SEEK INFRINGER'S PROFITS. BUT 61.3
19 CLARIFIED THAT THAT'S NOT RIGHT.

20 AND I THINK REORDERING PROBABLY MAKES
21 SOME SENSE, BUT ALSO SOME INTERLINEATIONS TO
22 CAPTURE 61.3 AND SOME OF THE OTHER INSTRUCTIONS
23 WOULD BE HELPFUL.

24 IN OTHER WORDS, I DON'T THINK WE'RE IN
25 DISAGREEMENT WITH YOUR HONOR NOW ON THE LAW. I

1 THINK IT'S JUST THAT SOME OF THESE EARLIER
2 INSTRUCTIONS WITH THE LANGUAGE OF ELECTION ARE
3 GOING TO BE CONFUSING.

4 THE COURT: SO GIVE ME A SPECIFIC
5 LANGUAGE CHANGE, PLEASE.

6 MR. JACOBS: SO ON 40, FOR EXAMPLE --

7 THE COURT: OKAY.

8 MR. JACOBS: -- AT LINE 7 AND
9 THREE-QUARTERS AFTER THE POTENTIAL RECOVERY --

10 THE COURT: YES.

11 MR. JACOBS: -- WE WOULD ADD, "WITH
12 RESPECT TO THE SALE OF EACH UNIT OF AN INFRINGING
13 PRODUCT."

14 AND THEN AT THE END OF THAT --

15 THE COURT: I'M SORRY. CAN YOU REPEAT
16 THAT LANGUAGE ONE MORE TIME?

17 MR. JACOBS: SURE. "WITH RESPECT TO THE
18 SALE OF EACH UNIT OF AN INFRINGING PRODUCT."

19 AND THEN AT THE END OF THAT PARAGRAPH,
20 I'LL CALL IT LINE 9, TO MAKE IT CLEAR THAT WE'RE
21 NOT ENTITLED TO A DOUBLE RECOVERY, WE WOULD PROPOSE
22 TO ADD -- SO IT'LL READ AS A WHOLE, "APPLE IS NOT
23 ENTITLED TO RECOVER BOTH COMPENSATORY DAMAGES AND
24 THE DEFENDANT'S PROFITS ON THE SAME UNIT SALE,"
25 WITH "ON THE SAME UNIT SALE" BEING THE PROPOSED

1 ADDITIONAL LANGUAGE.

2 THE COURT: ALL RIGHT. WHO WANTS TO
3 SPEAK FOR SAMSUNG ON THESE TWO CHANGES?

4 MR. ZELLER: AS THE COURT IS AWARE, AND
5 WE'VE BRIEFED THIS PREVIOUSLY, WE MAINTAIN OUR
6 OBJECTION. WE DON'T THINK THAT'S A CORRECT
7 STATEMENT OF THE LAW. WE DON'T THINK IT CAN BE
8 DONE UNIT-BY-UNIT IN THIS MANNER.

9 COUNSEL HAS NOT PROPERLY RECITED OUR
10 POSITION ON THIS, EITHER. WE'RE NOT SAYING IT HAS
11 TO BE DESIGN PATENT BY DESIGN PATENT, BUT
12 THERE'S -- WE DON'T AGREE WITH THE LAW ON THIS.

13 BUT SETTING THAT ASIDE FOR A MOMENT, WE
14 ACTUALLY THINK THAT THIS MAKES IT ALL MORE
15 CONFUSING. THEY LITERALLY ARE GOING TO BE ASKING
16 THE JURY TO GO THROUGH AND DETERMINE MILLIONS AND
17 MILLIONS OF UNIT SALES AND TRY AND GROUP THEM IN
18 VARIOUS WAYS TO DETERMINE WHAT AMOUNT OF THAT
19 PARTICULAR UNIT SALE, OR WHAT GROUPING OF UNIT
20 SALES SHOULD BE LOST PROFITS VERSUS SOME OTHER
21 MEASURE OF REMEDY.

22 AND THIS IS -- THIS IS EXTREMELY
23 CONFUSING IN MY OPINION.

24 THE COURT: CAN YOU ALL GIVE ME -- AND
25 THIS IS WHY THE VERDICT FORM TOOK SO LONG IS JUST

1 TRYING TO FIGURE OUT HOW TO PRESENT THE DAMAGES
2 QUESTIONS WHEN THERE'S SO MANY DIFFERENT
3 ALTERNATIVE REMEDIES HERE. WE CAN'T HAVE DOUBLE
4 RECOVERY.

5 AND YET, I MEAN, SO WHAT -- GIVE ME
6 SOME -- I'M ALL EARS ON HOW WE CAN REVISE THE
7 INSTRUCTIONS TO MAKE THIS CLEAR. DO YOU HAVE
8 SPECIFIC LANGUAGE?

9 BECAUSE I AGREE, I'M NOT -- I UNDERSTAND
10 WHAT APPLE IS TRYING TO DO HERE, BUT I'M NOT
11 SURE -- AND ON BALANCE, PROBABLY IT'S BETTER TO
12 INCLUDE THIS LANGUAGE, BUT I'M NOT SURE THAT IT
13 WON'T MAKE THINGS MORE CONFUSING FOR OUR JURORS.

14 MR. ZELLER: RIGHT. AND THAT IS, FROM
15 OUR PERSPECTIVE, THE PROBLEM.

16 AND IT ALL STEMS FROM, YOUR HONOR, THE
17 FACT THAT IN ORDER TO MAXIMIZE THEIR DAMAGES
18 NUMBER, THEY WANT TO HAVE THE JURY LITERALLY
19 APPLYING DIFFERENT THEORIES TO EVEN THE SAME TYPES
20 OF DEVICES AND THE SAME PATENTS. SO THAT'S THE
21 ROOT OF THE PROBLEM IS THAT THIS IS, THIS IS THE
22 WAY APPLE HAS DONE IT TO MAXIMIZE DAMAGES.

23 THIS IS THE ROOT OF ALSO WHY WE SUGGESTED
24 THAT APPLE SHOULD ELECT. I MEAN, WHETHER THE COURT
25 CAN FORCE IT OR NOT, I UNDERSTAND THE COURT'S

1 POSITION ON THAT.

2 THE COURT: I DON'T THINK I CAN FORCE IT,
3 AS MUCH AS I WOULD LIKE TO.

4 MR. ZELLER: BUT AT THIS POINT, IT MAY
5 BE -- MAYBE APPLE IS GOING TO HAVE TO REALLY CHOOSE
6 TO DO IT IF IT WANTS SOMETHING CLEAR THAT CAN GO TO
7 THIS JURY THAT'S NOT GOING TO CREATE CONSIDERABLE
8 CONFUSION.

9 AND ONE THING I WOULD ALSO NOTE ABOUT
10 THIS INSTRUCTION THAT IS SOMEWHAT PROBLEMATIC THAT
11 OVERLAYS IT AS WELL, AS THE COURT IS AWARE FROM
12 CASES LIKE CATALINA LIGHTING, ONCE THERE'S A
13 RECOVERY ON A PARTICULAR DEVICE OR UNIT OR HOWEVER
14 THIS GETS PARSED OUT, WHETHER IT'S ON UTILITY OR
15 DESIGN PATENTS, YOU CAN'T RECOVER ON BOTH.

16 AND THAT'S NOT MADE CLEAR IN THIS
17 INSTRUCTION, EITHER.

18 SO IF -- SAY, FOR EXAMPLE, ON, AGAIN,
19 WHETHER IT'S A UNIT OR A PARTICULAR CATEGORY OF
20 UNITS, IF SAMSUNG'S PROFITS ARE THE MEASURE OF
21 DAMAGES, THAT'S IT. THEY DON'T GET ANYTHING ELSE,
22 NO MATTER HOW MANY OTHER SUPPOSED INFRINGEMENTS
23 HAVE OCCURRED.

24 AND THAT IS NOT MADE CLEAR IN ANY OF
25 APPLE'S INSTRUCTIONS.

1 I -- I APOLOGIZE, I DON'T HAVE ANY --
2 THE COURT: WELL, WHY DON'T -- I'M GOING
3 TO GIVE MR. JACOBS AN OPPORTUNITY TO SPEAK, BUT IF
4 YOU WANT TO THINK ABOUT SOME WAYS THAT WE CAN
5 CLARIFY THIS?

6 I MEAN, I AM SERIOUSLY CONCERNED,
7 MR. JACOBS, THAT WE MAY GET A VERY CONFUSED JURY
8 HERE WHO MAY NOT -- I MEAN, I HAVE TROUBLE
9 UNDERSTANDING THIS AND I'VE SPENT A LITTLE BIT MORE
10 TIME WITH IT THAN THEY HAVE.

11 SO TELL ME, HOW CAN WE MAKE THIS CLEARER?
12 IT'S VERY CONFUSING.

13 MR. JACOBS: WELL, I'M NOT SURE THAT --
14 WELL, I THINK THE ANSWER IS THIS: OUR DAMAGES
15 EXPERT PRESENTED A DAMAGES MODEL. IT HAD VARIOUS
16 COMPONENTS AND IT HAD VARIOUS ALTERNATIVES.

17 THE DAMAGES MODEL -- THE PRESENTATION TO
18 THE JURY WAS VERY CLEAR THAT WE WERE NOT SEEKING A
19 DOUBLE RECOVERY, WHETHER AS AGAINST DIFFERENT TYPES
20 OF RECOVERIES OR DIFFERENT TYPES OF RIGHTS AGAINST
21 PARTICULAR UNITS.

22 FOR EACH UNIT, YOU'LL RECALL KIND OF THE
23 WATERFALL THAT HE DEMONSTRATED, THE PHONES FELL
24 INTO THE VARIOUS BUCKETS.

25 THERE WAS NO CRITICISM OF THAT MODEL, ON

1 THAT ASPECT OF THE MODEL, FROM SAMSUNG'S DAMAGES
2 EXPERT.

3 SO THERE IS NO CLAIM THAT THE MODEL THAT
4 HE PRESENTED AND THE TOTALS THAT HE PRESENTED, THE
5 CALCULATIONS THAT HE PRESENTED SUFFER FROM A DOUBLE
6 RECOVERY PROBLEM.

7 THAT SHOULD BE SUFFICIENT. IF THE
8 DAMAGES MODEL HAD A FUNDAMENTAL FLAW BY WAY OF
9 DOUBLE RECOVERY AND SAMSUNG HAD SAID THAT, WE WOULD
10 BE IN A DIFFERENT WORLD, BUT WE DON'T.

11 SO THE JURY WILL TAKE ALL OF THIS IN,
12 THEY WILL TAKE THE EVIDENCE FROM BOTH SIDES,
13 MR. WAGNER DID TAKE A RUN AT THE LOST PROFITS
14 COMPONENT AND MR. MUSIKA SAID TO THE JURY "IF YOU
15 REJECT OUR LOST PROFITS COMPONENT, THIS IS WHAT
16 HAPPENS ON INFRINGER'S PROFITS" AND HE PRESENTED
17 THAT ALTERNATIVE CALCULATION.

18 THE COURT: UM-HUM.

19 MR. JACOBS: THE JURY WILL GIVE US A
20 NUMBER BASED ON ALL THE EVIDENCE THAT THEY'VE
21 RECEIVED FROM THE WITNESSES AND THE EXHIBITS THAT
22 GO BACK.

23 AND I'M REASONABLY OPTIMISTIC THAT THE
24 NUMBER THEY PRODUCE WILL BE DEFENSIBLE BASED ON THE
25 LIABILITY FINDINGS THEY GENERATE.

1 I THINK IF WE GET MORE GRANULAR --

2 THE COURT: I MEAN, I'M NOT SAYING THAT
3 AN IMPROPER DAMAGES THEORY WAS PUT FORTH.

4 I'M JUST CONCERNED THAT IT'S VERY COMPLEX
5 AND THERE'S SO MANY PIECES HERE AND THEN THERE ARE
6 ALTERNATIVE RECOVERIES FOR EACH ONE.

7 I'M JUST CONCERNED ABOUT POTENTIAL JURY
8 CONFUSION.

9 SO DO YOU HAVE ANY SUGGESTION, AND MAYBE
10 THE VERDICT FORM WILL HELP US IN TRYING TO SORT
11 THAT THROUGH, BUT -- ANY OTHER SUGGESTIONS ABOUT
12 WHAT WE CAN DO, OTHER THAN THE FEW CHANGES I'VE
13 TALKED ABOUT DURING SAMSUNG'S OBJECTIONS ABOUT
14 MAYBE REORDERING AND SOME OF THE DIFFERENT DAMAGES
15 REMEDIES?

16 MR. JACOBS: I THINK THAT ACTUALLY
17 REORDERING IN THE WAY THE COURT PROPOSED MAY
18 AGGRAVATE THE CONFUSION BECAUSE THE LEAD COMPONENT
19 OF DAMAGES IS REALLY INFRINGER'S PROFITS AND THAT'S
20 HOW MR. MUSIKA PRESENTED IT.

21 SO I THINK IF WE START OUT WITH LOST
22 PROFITS AND REASONABLE ROYALTY, THE JURY MARCHING
23 THROUGH THE INSTRUCTIONS MAY WELL GET CONFUSED.

24 SO I WOULD SUGGEST KEEPING INFRINGER'S
25 PROFITS FIRST, LOST PROFITS SECOND, REASONABLE

1 APPLICATION, WOULD REALLY MAKE IT DIFFICULT FOR THE
2 JURY.

3 THE COURT: RIGHT. I'M NOT GOING TO DO
4 THAT.

5 OKAY. WHAT ELSE?

6 MS. MAROULIS: STILL ON '381, THERE IS A
7 PRODUCT CALLED GEM. IN THEIR INFRINGEMENT
8 CONTENTIONS, APPLE DID NOT ACCUSE GEM, AND I'M
9 GOING TO HAND TO THE COURT AND COUNSEL APPLE'S
10 INFRINGEMENT CONTENTIONS, EXHIBIT 20, WHERE YOU CAN
11 SEE --

12 MAY I APPROACH, YOUR HONOR?

13 THE COURT: YES, PLEASE.

14 MS. MAROULIS: -- GEM WAS LISTED AS N/A
15 WITH RESPECT TO '381.

16 MR. JACOBS: YOUR HONOR RULED ON PHONES
17 SOME MONTHS AGO NOW AND SAMSUNG DID NOT MOVE ON THE
18 GEM. SAMSUNG'S EXPERT WROTE A REPORT ON THE GEM
19 EXPLAINING WHY THE GEM DID NOT INFRINGE.

20 SAMSUNG THEN HAD A FURTHER DISCUSSION
21 WITH THE COURT ABOUT THE PHONES ISSUE AND DID NOT
22 RAISE THE GEM.

23 SO NOW WE ARE AT THE END OF TRIAL, THERE
24 WAS NO MOTION ON THE GEM, WE PUT ON OUR PROOF ON
25 THE GEM, IT'S TOO LATE NOW TO SAY IT WASN'T IN THE

1 INFRINGEMENT CONTENTIONS.

2 I WOULD NOTE THAT ONE OF THE PHONES WAS
3 RULED OUT BECAUSE WE FLIPPED THE ORDER OF THE TERMS
4 AND WE DIDN'T COME BACK TO THE COURT ON THAT AND
5 ASK FOR RECONSIDERATION. IT WAS --

6 THE COURT: WHICH PHONE WAS THAT?

7 MR. JACOBS: SHOWCASE. I THINK WE SAID
8 THE SHOWCASE, THE GALAXY S SHOWCASE, AND IT'S THE
9 SHOWCASE GALAXY S. THE COURT SAID WE HADN'T PUT IN
10 OUR INFRINGEMENT CONTENTIONS. WE MOVED ON.

11 NOW FOR SAMSUNG TO COME IN AT THE LAST
12 MINUTE AND SAY, "WE FORGOT TO MOVE ON THIS, BUT
13 IT'S OUT OF THE CASE," THAT'S QUITE UNFAIR.

14 MS. MAROULIS: WE ACTUALLY MOVED FOR JMO
15 AND I THINK WE PREVIOUSLY OBJECTED TO THAT, SO THIS
16 IS DEFINITELY NOT THE FIRST TIME THAT COUNSEL IS
17 HEARING ABOUT IT.

18 THE COURT: WELL, I GUESS WHAT'S
19 CONFUSING TO ME IS IF THESE ARE THE INFRINGEMENT
20 CONTENTIONS, GEM IS ON HERE.

21 MS. MAROULIS: NOT WITH RESPECT TO '381,
22 YOUR HONOR. IT SAYS N/A.

23 THE COURT: OH, I SEE WHAT YOU'RE SAYING.
24 I THINK IT'S UNTIMELY FOR THIS REQUEST.

25 OKAY. GO AHEAD. WHAT'S NEXT?

1 MS. MAROULIS: YOUR HONOR, CAN WE SKIP A
2 LITTLE BIT, THERE'S A PRETTY SIMPLE ISSUE, BEFORE
3 WE GET TO DAMAGES, WHICH IS WAIVER, WHICH IS THE
4 VERY LAST PORTION OF THE VERDICT FORM.

5 WAIVER IS AN EQUITABLE ISSUE, AND YOUR
6 HONOR DID NOT ISSUE JURY INSTRUCTIONS ON WAIVER
7 BECAUSE IT IS AN EQUITABLE ISSUE AND SHOULD NOT GO
8 BEFORE THE JURY. SO WE RESPECTFULLY REQUEST THAT
9 IT BE REMOVED FROM THE VERDICT FORM.

10 THE COURT: LET ME ASK, AND I APOLOGIZE
11 IF THIS WAS A MISTAKE, BUT THE PRELIMINARY
12 INSTRUCTIONS, WE TALKED ABOUT THE SUMMARY OF
13 CONTENTIONS AND ACTUALLY INCLUDED ANTITRUST, PATENT
14 EXHAUSTION, WAIVER, AND BREACH OF CONTRACT.

15 SO IT WAS IN THAT PRELIMINARY --

16 MS. MAROULIS: WE'VE ALWAYS MAINTAINED,
17 SAMSUNG HAS ALWAYS MAINTAINED THAT ESTOPPEL AND
18 WAIVER SHOULD NOT BE BEFORE THE JURY, BUT BECAUSE
19 WE WERE NEGOTIATING JURY INSTRUCTIONS. WE PROPOSED
20 COMPETING LANGUAGE SO THAT IF THE COURT DECIDED IT
21 DOES GO, THERE'S SOMETHING FOR THE JURY TO LOOK AT.

22 BUT THE COURT IS NOT SENDING THIS ISSUE
23 TO THE JURY, SO IT WOULD NOT BE USEFUL TO HAVE THIS
24 IN THE JURY VERDICT FORM.

25 MR. SELWYN: YOUR HONOR, IT WAS IN THE

1 PRELIMINARY JURY INSTRUCTIONS, YOU'RE QUITE RIGHT.

2 IN THE BROADCOM CASE, WHICH IS BASED ON
3 SIMILAR STANDARD SETTING AS THIS ONE, THE COURT
4 ALSO SOUGHT AN ADVISORY VERDICT ON THE WAIVER
5 ISSUE.

6 WE BELIEVE, CONSISTENT WITH THE
7 PRELIMINARY INSTRUCTIONS, IT SHOULD GO TO THE JURY.

8 THE COURT: YOU KNOW, I ACTUALLY DON'T
9 WANT ANY ADVISORY VERDICTS.

10 AND I RECOGNIZE I DID INCLUDE IT IN THE
11 PRELIMINARY. I DON'T HAVE A WAIVER INSTRUCTION IN
12 THIS FINAL SET.

13 I THINK I'M GOING TO TAKE IT OUT. OKAY?

14 MS. MAROULIS: THANK YOU, YOUR HONOR.

15 THE COURT: ALL RIGHT. WHAT ELSE?

16 MS. MAROULIS: RETURNING BACK TO THE
17 BEGINNING OF THE FORM, AGAIN, BECAUSE WE'RE LODGING
18 OUR OBJECTIONS, WE PROPOSE TO INCLUDE VERSION,
19 ANDROID VERSION ON DIFFERENT PHONES THAT ACTUALLY
20 ARE IN THE CASE. WE SEE THAT IT'S NOT IN THERE AND
21 WE RESPECTFULLY REQUEST THAT IT BE INCLUDED.

22 THE COURT: OKAY. THAT'S DENIED.

23 WHAT'S NEXT?

24 MS. MAROULIS: WE'RE MOVING ON TO THE
25 DAMAGES SECTION, AND WITH RESPECT TO DAMAGES, AS

1 YOUR HONOR NOTED, IT'S A COMPLICATED ISSUE, AND ONE
2 THING THAT WE NEED TO ADD TO THE EXISTING DAMAGES
3 CHART -- AND I WAS TRYING TO SCRATCH IT OUT BUT
4 DIDN'T HAVE A CHANCE TO FULLY FIGURE OUT HOW TO DO
5 IT -- BUT THERE ARE THREE DIFFERENT THEORIES ON
6 WHICH APPLE IS SEEKING DAMAGES, AND SAMSUNG
7 INDICATED IN ITS PRETRIAL SUBMISSIONS AND ITS JMOLS
8 THAT THERE ARE INFIRMITIES WITH EACH OF THEM.

9 FOR IT TO BE PROPERLY REVIEWED, TO THE
10 EXTENT THERE'S A REVIEW OF THESE, WE NEED TO
11 IDENTIFY WHICH DAMAGES THEORIES APPLE IS SEEKING
12 DAMAGES ON AND WHAT THE JURORS WOULD AWARD, IF
13 ANYTHING.

14 SO ONE WAY TO DO IT WOULD BE TO ADD
15 COLUMNS TO THE EXISTING CHART, WHICH IS REASONABLE
16 ROYALTY PROFITS AND LOST PROFITS; OR POTENTIAL
17 ALTERNATIVE, WHAT WE SUGGEST IN OUR VERDICT FORM IS
18 TO ASK AN INTERROGATORY, WHICH IS "OF THE NUMBER
19 THAT YOU GAVE, WHAT IS THE BREAKDOWN BETWEEN THE
20 THREE DIFFERENT THEORIES?" TO HAVE THAT IN THE
21 RECORD AND TO UNDERSTAND WHAT THE JURY DID.

22 THE SECOND ISSUE WITH THIS IS THAT IT
23 DOESN'T TIE PRODUCTS TO THE PATENT. THERE ARE SOME
24 PRODUCTS ON WHICH APPLE IS SEEKING MULTIPLE
25 THEORIES AND MULTIPLE PATENTS AND ACCUSING THEM OF

1 DIFFERENT I.P.

2 SO IDEALLY WE'D LIKE TO HAVE A CHART OR
3 SOME FORM THAT ADDRESSES ALL OF THESE ISSUES SO THE
4 RECORD IS CLEAR.

5 AND WE IDENTIFIED ISSUES THAT WE HAVE
6 WITH IT, BUT HAVE NOT YET PROPOSED A SOLUTION.
7 THIS IS ONE PLACE WHERE POTENTIALLY IF WE CAN HAVE
8 A FEW HOURS TO BRAINSTORM AND SUGGEST SOMETHING TO
9 THE COURT, IT MIGHT BE USEFUL.

10 THE COURT: I DON'T WANT A MATRIX THAT'S
11 SO COMPLICATED. TO HAVE SEVEN PATENTS AND FOUR
12 TRADE DRESSES BROKEN DOWN BY THIS MANY NUMBER OF
13 PRODUCTS I THINK WOULD BE OVERCOMPLICATED.

14 MS. MAROULIS: WE DO NEED TO INDICATE
15 BOTH WHICH ENTITY THE DAMAGES ARE BEING SOUGHT FROM
16 AND WHICH THEORY OF DAMAGES IS BEING RELIED ON,
17 BECAUSE THEY ALL HAVE DIFFERENT LEGAL FRAMEWORK,
18 AND TO THE EXTENT THAT THE JURY GETS IT WRONG OR
19 DOES NOT APPLY THE CORRECT THEORY OR WHERE WE
20 BELIEVE THE THEORY HAS NOT BEEN SUFFICIENTLY
21 PROVEN, WE NEED THAT RECORD.

22 THE COURT: WELL, WOULDN'T THAT BE
23 REFLECTED IN THE EARLIER PAGES? BECAUSE THE
24 EARLIER PAGES ARE REQUIRING REQUIREMENTS BY
25 PRODUCT, BY PATENT, BY DEFENDANT.

1 SO I'M HOPING THAT THE FIRST 17 PAGES,
2 FROM THE FIRST 17 PAGES AND THE FINAL NUMBER, IF
3 THE JURY PICKS A NUMBER, THAT YOU CAN SORT OF WORK
4 BACKWARDS AND FIGURE OUT WHICH I.P. WAS ACTUALLY
5 FOUND VALID AND INFRINGED, WHICH PRODUCT, WHICH
6 ENTITY.

7 MR. JACOBS: THIS IS A MATTER OF FINDING
8 A HAPPY MEDIUM, YOUR HONOR, AND OVER DETAIL GIVES
9 RISE TO CLAIMS OF ERROR, TOO, BECAUSE IF THE JURY
10 DOES THINGS AT A VERY GRANULAR LEVEL THAT PRESENT
11 INCONSISTENCIES, THEN IT JUMPS OUT.

12 AND WE THINK THIS IS TOO SPECIFIC. WE
13 OBJECT TO THIS LEVEL OF SPECIFICITY IN QUESTION 25,
14 FOR EXAMPLE.

15 BUT TO GO ANY DEEPER WOULD REALLY PRESENT
16 VERY SERIOUS PROBLEMS.

17 MS. MAROULIS: YOUR HONOR, TO ILLUSTRATE
18 AN ISSUE THAT WE MIGHT HAVE IF WE DON'T IDENTIFY
19 THE THEORIES, FOR EXAMPLE, PROFITS ARE NOT
20 APPROPRIATE FOR UTILITY PATENTS. IF THE JURY IS TO
21 INCLUDE PROFITS IN THE UTILITY PATENT
22 DETERMINATION, THAT IS NOT PROPER.

23 THE COURT: UM-HUM.

24 MR. JACOBS: THE JURY WILL GIVE US
25 AMOUNTS, AND THAT'S ALL THAT WE SHOULD ASK THEM TO

1 DO.

2 THE COURT: AS YOU MIGHT IMAGINE, THIS
3 WAS THE PAGE THAT TOOK THE MOST TIME TO FIGURE OUT.

4 MS. MAROULIS: YES.

5 THE COURT: AND IT IS COMPLICATED.

6 BUT OVERALL, I THINK THAT THIS MAY BE THE
7 BEST WAY TO DO IT, ASSUMING THAT THE JURY IS GOING
8 TO FOLLOW THE JURY INSTRUCTIONS AND NOT DO ANYTHING
9 INAPPROPRIATE IN AWARDING IMPROPER DAMAGES FOR ANY
10 PARTICULAR CLAIM AND NOT GIVING DOUBLE RECOVERY.

11 MR. JACOBS: YOUR HONOR --

12 MS. MAROULIS: WOULD YOUR HONOR CONSIDER
13 INCLUDING FORMER QUESTION 23 FROM THE SAMSUNG FORM,
14 WHICH IS -- SAY, "IF YOU FIND ANY DAMAGES, CAN YOU
15 SEPARATE IT BY ENTITY?" IT'S A YES OR NO QUESTION.

16 MR. JACOBS: AND THE PROBLEM THERE IS
17 THAT MR. WAGNER, FROM THE ACCOUNTING PERSPECTIVE,
18 TESTIFIED THERE REALLY WAS NO BASIS TO DO THAT.

19 MS. MAROULIS: YOUR HONOR, WE'RE NOT
20 GOING TO ARGUE ABOUT THE TESTIMONY HERE.

21 MR. WAGNER PROVIDED A ROADMAP FOR THE JURY.

22 BUT THE POINT IS THAT IF YOU CAN'T FIND
23 DAMAGES ATTRIBUTABLE JUST TO ONE SINGLE ENTITY, IF
24 YOU ASSUME THREE DIFFERENT DEFENDANTS, THAT
25 DEFENDANTS HAVE AN OPPORTUNITY TO KNOW WHAT DAMAGES

1 ARE AWARDED AGAINST THEM.

2 MR. JACOBS: NO PREJUDICE HERE, YOUR
3 HONOR. IT'S A CONSOLIDATED ENTITY, CONSOLIDATED
4 BALANCE SHEETS, CONSOLIDATED FINANCIALS, CONTROLLED
5 BY SAMSUNG ELECTRONICS FOR BOTH ENTITIES, VERY
6 CLOSE CONTROL. THAT WAS TESTIFIED TO.

7 THE COURT: WELL, I'M ALSO HOPING THAT
8 PAGES 1 THROUGH 17 WILL ALSO HELP IN INFORMING AS
9 WELL, BECAUSE IT COULD BE THAT THE JURY FINDS ONE
10 OR MORE OF THESE ENTITIES NOT LIABLE AT ALL BASED
11 ON THE EVIDENCE, WHICH WAS REALLY GEARED MORE
12 TOWARDS SEC ANYWAY.

13 LET ME ASK YOU, WITH REGARD TO HOW I
14 SHOULD HANDLE THE TRADE DRESS CLAIMS AGAINST THE
15 TABLETS, I GUESS I SHOULD THEN JUST DIVIDE UP --

16 MS. MAROULIS: YES, YOUR HONOR, THAT WAS
17 ONE OF THE ISSUES THAT WE NOTED IN QUESTION 19.

18 THERE WAS A TAB TRADE DRESS THAT REALLY
19 PROBABLY SHOULDN'T BE THERE BECAUSE YOU'RE ALREADY
20 ASKING QUESTION 18 OF THE TAB TRADE DRESS.

21 MR. JACOBS: AND THEN WHAT YOUR HONOR
22 COULD --

23 THE COURT: ALTHOUGH 18 IS DILUTION AND
24 21 AND 22 ARE INFRINGEMENT. THAT'S WHY IT'S BROKEN
25 OUT DIFFERENTLY.

1 MS. MAROULIS: 19 IS FOR DILUTION.

2 MR. JACOBS: BUT I DO THINK IF WE DO AN
3 18 STYLE BREAKOUT --

4 THE COURT: NO, 19 IS INDUCEMENT. SO THE
5 WAY IT'S WORKED OUT IS ON PAGE 10, 12 AND 13 ARE
6 GOING TO, IS THIS PROTECTABLE? AND THEN 14 SAYS IS
7 THIS FAMOUS?

8 AND THEN 15 SAYS, "IF YOU FIND IT
9 PROTECTABLE AND FAMOUS, THEN HAS THERE BEEN
10 DILUTION OF THE REGISTERED PHONE DRESS?"

11 AND THEN THE NEXT QUESTION IS, "HAS THERE
12 BEEN DILUTION OF THE UNREGISTERED IPHONE 3 DRESS?"

13 AND THEN THE NEXT QUESTION IS, "HAS THERE
14 BEEN DILUTION OF THE UNREGISTERED COMBINATION PHONE
15 DRESS?" AND THEN IT GOES TO THE PATENT.

16 AND THEN AFTER THAT, WE GO TO INDUCEMENT
17 AND WILLFULNESS AND THEN TRADE DRESS AND
18 INFRINGEMENT. SO THAT'S HOW IT'S ORGANIZED.

19 MR. JACOBS: UNDERSTOOD.

20 THE COURT: I'LL FIGURE OUT SOME WAY TO
21 SPLIT UP THESE TABS.

22 MR. JACOBS: I THINK IF YOU SPLIT OUT THE
23 TABS, YOU CAN MAKE THE REST OF THE CHART TWO
24 COLUMNS AND HAVE TWO COLUMNS FOR THE TABS, OR THREE
25 COLUMNS WITH A SHADED BOX FOR THE TABS.

1 A COUPLE OF THINGS ON OUR END, YOUR
2 HONOR.

3 MS. MAROULIS: I'M NOT DONE.

4 WITH RESPECT TO TRADE DRESS, THERE WERE A
5 COUPLE OF PREDICATE QUESTIONS WE INCLUDED IN THE
6 VERDICT FORM AS TO DAMAGES. WE BELIEVE THEY'RE
7 APPROPRIATE.

8 FOR EXAMPLE, YOU HAVE TO SHOW ACTUAL HARM
9 FOR THE SPECIFIC TRADE DRESS DAMAGES, AND THAT WAS
10 FORMER QUESTION 17 ON OUR FORM.

11 AND SIMILARITY, YOU NEED TO SHOW ACTUAL
12 CONFUSION WITH INTENT TO DECEIVE. AGAIN, THIS IS A
13 PREDICATE FOR DILUTION DAMAGES.

14 SO WE RESPECTFULLY REQUEST THAT THEY BE
15 PUT BACK IF POSSIBLE, RECOGNIZING THAT THE FORM
16 IS -- HAS TO HAVE SOME LIMITATIONS, BUT BECAUSE
17 THOSE ARE PREDICATE FOR DAMAGES, WE THINK IT'S
18 NECESSARY FOR TRADE DRESS.

19 THE COURT: I'M GOING TO ASSUME A JURY IS
20 GOING TO FOLLOW JURY INSTRUCTIONS AND MAKE THE
21 REQUIRED FINDINGS BEFORE THEY MAKE ANY LIABILITY
22 DETERMINATION IN AWARDING DAMAGES. OKAY?

23 MS. MAROULIS: AND FINALLY, YOUR HONOR,
24 WITH RESPECT TO TRADE DRESS INDUCEMENT, SAMSUNG
25 BELIEVES THAT THERE'S NO SUCH THEORY UNDER NINTH

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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 20, 2012