

Estrich Declaration

Exhibit 4

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

APPLE INC., A CALIFORNIA CORPORATION,)	C-11-01846 LHK
)	
)	SAN JOSE, CALIFORNIA
PLAINTIFF,)	
)	AUGUST 6, 2012
VS.)	
)	VOLUME 4
SAMSUNG ELECTRONICS CO., LTD., A KOREAN BUSINESS ENTITY; SAMSUNG ELECTRONICS AMERICA, INC., A NEW YORK CORPORATION; SAMSUNG TELECOMMUNICATIONS AMERICA, LLC, A DELAWARE LIMITED LIABILITY COMPANY,)	PAGES 931-1296
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DEFENDANTS.)	

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

APPEARANCES ON NEXT PAGE

OFFICIAL COURT REPORTER: LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595
IRENE RODRIGUEZ, CSR, CRR
CERTIFICATE NUMBER 8074

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

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

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

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

11 FOR THE DEFENDANT: QUINN, EMANUEL, URQUHART,
12 OLIVER & HEDGES
13 BY: CHARLES K. VERHOEVEN
ALBERT P. BEDECARRE
14 50 CALIFORNIA STREET, 22ND FLOOR
SAN FRANCISCO, CALIFORNIA 94111

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

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

21 FOR INTERVENOR RAM, OLSON,
22 REUTERS: CEREGHINO & KOPCZYNSKI
23 BY: KARL OLSON
555 MONTGOMERY STREET, SUITE 820
24 SAN FRANCISCO, CALIFORNIA 94111
25

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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 THAT'S THE ONE THAT YOU'RE --

2 MR. VERHOEVEN: YOUR HONOR HAS ALREADY
3 RULED ON THEIR OBJECTION TO THE LG PRADA IN
4 CONNECTION WITH MR. DENISON'S TESTIMONY AND YOU
5 OVERRULED THE OBJECTION.

6 THE COURT: I DISAGREE WITH THAT.

7 MS. KREVANS: OKAY. THIS EXHIBIT IS THE
8 LG KE850.

9 THE COURT: RIGHT. I DISAGREE WITH THAT.
10 I'M GOING TO SUSTAIN THAT OBJECTION. OKAY? I'LL
11 GET BACK TO YOU ON THE F700.

12 THE LG KE850, THE OBJECTION IS SUSTAINED.

13 AND --

14 MR. VERHOEVEN: YOUR HONOR, JUST SO I
15 CAN -- YOU HAVE AN ORDER ON APPLE'S MOTION IN
16 LIMINE NUMBER 3 ON THIS ISSUE, AND I CAN HAND THIS
17 UP IF YOU'D LIKE, YOU GRANTED THE MOTION -- APPLE'S
18 MOTION ON MOTION IN LIMINE NUMBER 3 IN PART AND
19 DENIED IT IN OTHER RESPECTS, AND IT SAYS, QUOTE,
20 "THE MOTION IS DENIED IN ALL OTHER RESPECTS. IN
21 OTHER WORDS, THE LG KE 750 MAY BE ADMISSIBLE AS A
22 PRIOR ART REFERENCE UNDER 35 U.S.C. SECTION 102."

23 THE COURT: THIS IS THE LG KE 850. IT'S
24 A DIFFERENT PRODUCT.

25 MS. KREVANS: AND, YOUR HONOR, THE

1 SUBJECT OF THE TESTIMONY ARE --

2 THE COURT: THIS IS A DIFFERENT PRODUCT.
3 THIS IS TOUCHABLE CHOCOLATE. KE 850.

4 OKAY. WELL, I WILL TAKE A LOOK AT THE
5 F700 ISSUE THAT YOU'VE RAISED AND --

6 MR. VERHOEVEN: YOUR HONOR, I THINK THAT
7 IS ACTUALLY THE SAME PRODUCT. ON THE BREAK, WE CAN
8 VERIFY THAT. THE ARTICLE USES A SLIGHTLY DIFFERENT
9 TERMINOLOGY FOR IT.

10 THE COURT: ALL RIGHT. AND I'LL TAKE A
11 LOOK AT THIS LAST ONE. OKAY.

12 ALL RIGHT. THANK YOU.

13 MR. MCELHINNY: DO YOU STILL WANT US BACK
14 IN TEN MINUTES, YOUR HONOR.

15 THE COURT: NO. UNFORTUNATELY, LET'S
16 TAKE A 15-MINUTE BREAK. THANK YOU.

17 MR. MCELHINNY: THANK YOU, YOUR HONOR.

18 (WHEREUPON, A RECESS WAS TAKEN.)

19 (WHEREUPON, THE FOLLOWING PROCEEDINGS
20 WERE HELD OUT OF THE PRESENCE OF THE JURY:)

21 THE COURT: ALL RIGHT. WELCOME BACK. I
22 APOLOGIZE FOR THE DELAY.

23 THE F700 IS -- OH, PLEASE TAKE A SEAT --
24 IT'S NOT ADMISSIBLE FOR OBVIOUSNESS OR INVALIDITY.
25 JUDGE GREWAL DID STRIKE THAT AND I DID AFFIRM HIS

1 ORDER, BUT IT WILL BE ADMISSIBLE FOR ALTERNATIVE
2 DESIGN.

3 I'M GOING TO ASK MR. VERHOEVEN PLEASE NOT
4 TO CROSS THE LINE INTO INVALIDITY AND OBVIOUSNESS
5 SINCE THAT'S BEEN EXCLUDED.

6 THE DEMONSTRATIVES, I'M GOING TO RESERVE
7 AND GIVE YOU A RULING ON THAT LATER, SO IF YOU
8 COULD MAKE THAT TOWARDS THE END OF YOUR CROSS, I'D
9 APPRECIATE IT.

10 NOW, WITH REGARD TO THE LG CHOCOLATE,
11 IT'S NOT PRIOR ART, BUT IT CAN BE USED FOR OTHER
12 PURPOSES. WE CAN HAVE A LIMITING INSTRUCTION IF
13 NECESSARY.

14 THE LG PRADA, THAT WAS RAISED IN APPLE'S
15 MOTION IN LIMINE NUMBER 3, AND THERE IS A FACTUAL
16 DISPUTE AS TO WHETHER IT WAS, IN FACT, SOLD IN THE
17 U.S. OR NOT AND WHETHER, IN FACT, IT IS OR IS NOT
18 PRIOR ART. SO SAMSUNG CAN USE THAT.

19 MS. KREVANS: YOUR HONOR, WITH RESPECT TO
20 THE SPECIFIC DOCUMENT THAT RAISED THIS ISSUE, THIS
21 DOCUMENT HAS NEVER BEEN PRODUCED OR DISCLOSED
22 BEFORE, SO INDEPENDENT OF WHETHER THEY CAN TALK
23 ABOUT THOSE DEVICES, WE DON'T THINK THEY CAN USE
24 THIS DOCUMENT BECAUSE --

25 THE COURT: OKAY. WELL, THEN, LET ME

1 HEAR FROM SAMSUNG. GIVE ME THE DOCUMENT PRODUCTION
2 NUMBER.

3 I DON'T SEE THAT THIS IS BATES LABELED AT
4 ALL.

5 MR. VERHOEVEN: YES, YOUR HONOR. THIS
6 IS -- THIS IS SIMPLY POTENTIALLY GOING TO BE USED
7 FOR IMPEACHMENT, OR TO REFRESH THE WITNESSES
8 RECOLLECTION.

9 YOUR HONOR HAS DIRECTED US THAT FOR ANY
10 POTENTIAL IMPEACHMENT EXHIBITS, WE NEEDED TO
11 EXCHANGE THEM WITH THE OTHER SIDE.

12 SO THIS KIND OF FALLS UNDER THAT.

13 THE COURT: ALL RIGHT. THEN IT'S
14 EXCLUDED. ALL RIGHT. OKAY. LET'S GO FORWARD
15 THEN. OKAY. THANK YOU.

16 (WHEREUPON, THE FOLLOWING PROCEEDINGS
17 WERE HELD IN THE PRESENCE OF THE JURY:)

18 THE COURT: I APOLOGIZE FOR THE DELAY.

19 IT'S NOW 11:19. GO AHEAD, PLEASE.

20 BY MS. KREVANS:

21 Q MR. BRESSLER, I'D LIKE YOU TO TURN TO EXHIBIT
22 JX 1040 IN YOUR BINDER, YOU SHOULD FIND IT
23 SOMEWHERE NEAR THE BACK.

24 FOR THE RECORD, 1040 IS ALREADY IN
25 EVIDENCE.

1 YOU READ MEANS THAT APPLE WASN'T TRYING TO DISCLAIM
2 THE MAN SHOWING THIS PICTURE ACTUALLY HOLDING THE
3 DEVICE?

4 A CORRECT.

5 Q BUT THE DEVICE AND THE UTILITY IS WHAT'S
6 CLAIMED?

7 A YES.

8 Q OKAY. LET'S LOOK AT YOUR SLIDE PDX 26.6. IS
9 THIS THE FIRST -- IN FACT, THIS IS ALL OF THE
10 FIGURES OF THE '889 PATENT?

11 A YES. THIS IS A SLIDE INCLUDING ALL THE
12 FIGURES.

13 Q OKAY. USING THESE FIGURES OF THE '889 PATENT,
14 CAN YOU WALK THE JURY THROUGH THE DESIGN THAT IS
15 CLAIMED AND SHOWN IN THESE FIGURES?

16 A YES. THIS DESIGN INCLUDES AN ELECTRONIC
17 DEVICE THAT HAS A FLAT, TRANSPARENT, AS YOU CAN SEE
18 BY THE DIAGONAL LINES, AND SHINY, FLAT SURFACE THAT
19 GOES IN A RECTANGULAR FORM AS SHOWN IN THE DRAWING
20 FROM EDGE TO EDGE ACROSS THE FRONT OF THE DEVICE.

21 IT MEETS A THIN EDGE AT THE BORDER AND
22 YOU CAN SEE THROUGH THAT CLEAR MATERIAL A BORDER
23 THAT GOES AROUND THE DISPLAY THAT IS OF EQUAL WIDTH
24 ALL THE WAY AROUND.

25 AND THEN IF YOU LOOK -- I WAS LOOKING AT

1 BEEN PASSED OUT? YES.

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

4 MR. VERHOEVEN: THANK YOU, YOUR HONOR.

5 **CROSS-EXAMINATION**

6 BY MR. VERHOEVEN:

7 Q GOOD AFTERNOON, MR. BRESSLER.

8 A GOOD AFTERNOON.

9 Q GOOD TO SEE YOU AGAIN.

10 A AND YOU.

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

17 A YES.

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

23 A YES.

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

1 IPHONES; RIGHT?

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

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

7 A NOT TRUE.

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

10 DO YOU REMEMBER THAT?

11 A YES.

12 Q AND YOU TESTIFIED UNDER OATH; CORRECT?

13 A YES.

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

17 A YES.

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

21 MS. KREVANS: OBJECTION, YOUR HONOR.

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

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

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

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

5 THE COURT: OVERRULED.

6 GO AHEAD, PLEASE.

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

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

13 "ANSWER: CORRECT."

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

16 A IT WAS TRUE THEN, YES.

17 Q OKAY. THANK YOU, MR. FISHER.

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

22 A CORRECT.

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

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

1 BRIEF DISCUSSIONS I HAD WITH THEM.

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

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

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

7 A YES.

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

10 A NO, I DIDN'T.

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

16 A WOULD YOU REPEAT THAT, PLEASE?

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

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

21 THE WITNESS: I DO NOT.

22 BY MR. VERHOEVEN:

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

1 FROM THE OTHER MANUFACTURER; CORRECT?

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

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

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

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

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

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

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

17 DO YOU REMEMBER THAT IN THIS CASE?

18 A YES, I DO.

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

21 A SOUNDS ABOUT RIGHT, YES.

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

1 A YES.

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

5 CAN WE PLAY THAT?

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

8 BY MR. VERHOEVEN:

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

12 A I BELIEVE SO.

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

17 A YES.

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

21 A I GUESS.

22 Q DO YOU BELIEVE THAT'S TRUE?

23 A I SUSPECT THEY DO.

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

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

2 A YES.

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

6 A YES.

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

13 A COULD YOU REPEAT THAT AGAIN, PLEASE.

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

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

18 THE WITNESS: YES.

19 BY MR. VERHOEVEN:

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

25 A YES, I DID.

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

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

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

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

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

15 Q DO YOU SEE THAT?

16 A I SEE THAT, YES.

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

19 A IT IS.

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

22 A YES.

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

1 DECEPTIVE; ISN'T THAT TRUE, SIR?

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

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

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

10 BY MR. VERHOEVEN:

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

14 A YES.

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

19 A YES.

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

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

1 PLEASE.

2

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

5 THE COURT: GO AHEAD, PLEASE.

6 MR. VERHOEVEN: THANK YOU.

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

9 THE WITNESS: THANK YOU.

10 MR. VERHOEVEN: SURE.

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

13 BY MR. VERHOEVEN:

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

15 A YES.

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

18 A THAT'S CORRECT.

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

22 A YES.

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

1 OPEN COURT OFF THE RECORD.)

2 MS. KREVANS: YOUR HONOR, THAT DOES NOT
3 IMPEACH ANY TESTIMONY THAT THE WITNESS HAS GIVEN
4 HERE IN COURT.

5 THE COURT: OVERRULED.

6 BY MR. VERHOEVEN:

7 Q THAT WAS YOUR UNDERSTANDING WHEN YOU TESTIFIED
8 AT YOUR DEPOSITION; RIGHT?

9 A I GUESS. I GUESS I SAID THAT IN ANSWER TO
10 THAT QUESTION, YES.

11 Q AND LET ME ASK IT ONE MORE TIME?

12 A I WAS CONFUSED.

13 Q LET ME ASK ONE MORE TIME. AND, AGAIN, TO THE
14 EXTENT YOU CAN FAIRLY ANSWER MY QUESTION YES OR NO,
15 I WOULD APPRECIATE IT.

16 ARE YOU AN EXPERT IN THE FUNCTIONALITY OF
17 PHONES?

18 A IN TERMS OF THEIR OPERATION FUNCTIONALITY, NO.

19 Q OKAY. YOU'RE NOT AN EXPERT WITH RESPECT TO
20 TOUCH DISPLAY TECHNOLOGY; CORRECT?

21 A THAT IS CORRECT.

22 Q IN FACT, YOU'RE NO MORE EQUIPPED THAN ANY
23 ORDINARY OBSERVER TO OPINE ON THE FUNCTIONALITY OF
24 A SMARTPHONE?

25 A DEPENDS ON WHETHER YOU MEAN FUNCTIONALITY

1 RELATIVE TO A DESIGN PATENT OR THE GENERAL
2 FUNCTIONALITY OF HOW IT OPERATES.

3 Q IN TERMS OF THE SPECIFIC TECHNICAL KNOWLEDGE
4 AND SCIENTIFIC FUNCTIONALITY, YOU DON'T HAVE ANY
5 KNOWLEDGE; RIGHT?

6 A THAT'S CORRECT.

7 Q IN FACT, YOU BELIEVE THAT YOU ONLY NEED A
8 THIN, TOP LEVEL KNOWLEDGE TO BE ABLE TO PASS
9 JUDGMENT ON THE COMPARABLE FUNCTIONALITY OF THE
10 DIFFERENT PHONES?

11 A AS IT RELATES TO DESIGN FUNCTION, I BELIEVE
12 THAT'S TRUE.

13 Q IT'S YOUR TESTIMONY, SIR, THAT HAVING A
14 DISPLAY ELEMENT IS NOT NECESSARY OR FUNCTIONAL FOR
15 A SMARTPHONE? THAT'S YOUR TESTIMONY TO THIS JURY;
16 RIGHT?

17 A NO.

18 Q OKAY. WELL, LET'S -- YOUR DEPOSITION
19 TESTIMONY, AGAIN, WAS TAKEN APRIL 24TH, 2012;
20 RIGHT?

21 A THAT'S CORRECT.

22 Q IT WAS UNDER OATH?

23 A YES.

24 Q AND YOU ANSWERED QUESTIONS AS CAREFULLY AS YOU
25 COULD; RIGHT?

1 A YES.

2 Q LET'S PLAY AN EXCERPT FROM YOUR DEPOSITION,
3 PAGE 210, LINES 14 THROUGH 24.

4 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN
5 OPEN COURT OFF THE RECORD.)
6 BY MR. VERHOEVEN:

7 Q THAT WAS TRUE TESTIMONY WHEN YOU GAVE IT?

8 A THAT WAS PART OF THE TESTIMONY THAT I GAVE
9 THAT IT TURNS OUT WAS, WAS GOING BOTH DIRECTIONS
10 DEPENDING ON -- BECAUSE I MISUNDERSTOOD THE USE OF
11 THE TERM "FUNCTION" AND THE QUESTION AT THAT TIME.

12 Q SO THAT TESTIMONY IS NOT TRUE?

13 A THE TESTIMONY IS TRUE. I WAS REFERRING TO THE
14 FUNCTION AS IT RELATES TO A DESIGN PATENT, WHICH
15 MEANS THEY CAN BE ANY SHAPE AND LOCATION AND SIZE.

16 AND IN THAT SENSE, IT'S NOT FUNCTIONAL IN
17 THAT SHAPE, LOCATION OR SIZE ARE NOT REQUIRED BY AS
18 FUNCTIONS.

19 Q CAN WE PUT UP THE HARD COPY TRANSCRIPT OF WHAT
20 WE JUST WATCHED, PAGE 210, LINES 14 THROUGH 24.

21 SO THIS IS 210, LINE 14 THROUGH 24.
22 APRIL 24TH, 2012 DEPOSITION.

23 SIR, DO YOU SEE THE QUESTION, IT DOESN'T
24 TALK ABOUT THE DESIGN PATENTS, IT TALKS ABOUT
25 SMARTPHONES.

1 DO YOU SEE THAT, SIR?

2 A I SEE THAT'S WHAT IT SAYS.

3 Q THAT'S WHAT YOU WERE ASKED; RIGHT?

4 A I BELIEVE IT WAS ASKING ME ABOUT AS IT RELATED
5 TO DESIGN PATENTS.

6 Q BUT IT DOESN'T SAY THAT, DOES IT?

7 A I DON'T SEE IT SAYING THAT.

8 Q USING YOUR DEFINITION OF FUNCTIONAL, ISN'T IT
9 TRUE THAT YOUR OPINION TO THIS JURY IS THAT THE USE
10 OF A TRANSPARENT COVER OVER A DISPLAY IS NOT
11 NECESSARY FOR FUNCTIONAL?

12 A IN DEFINING "FUNCTIONAL" AS NOT BEING DRIVEN
13 BY THE SHAPE AND LOCATION AND IT NOT BEING -- I
14 BELIEVE THAT'S TRUE. I THINK THE FACT THAT IT IS
15 CLEAR ON A SMARTPHONE NEEDS -- YES, THAT'S
16 FUNCTIONAL.

17 Q LET'S PLAY PAGE 209 FROM THE SAME DEPOSITION,
18 LINES 9 THROUGH 21.

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

21 BY MR. VERHOEVEN:

22 Q DO YOU STAND BY THAT TESTIMONY?

23 A I BELIEVE THAT'S WHAT I MAY HAVE JUST SAID A
24 MOMENT AGO.

25 Q SO IT'S YOUR TESTIMONY TO THIS JURY THAT

1 HAVING A CLEAR COVER OVER THE DISPLAY ELEMENT IS
2 NOT SOMETHING THAT'S FUNCTIONAL?

3 A FROM A PERFORMANCE STANDPOINT AND OPERATIONS
4 STANDPOINT, I BELIEVE IT'S ABSOLUTELY FUNCTIONAL.

5 Q BUT JUST NOT IN YOUR ANALYSIS? IS THAT RIGHT?

6 A IF IT'S CLEAR THAT IT'S A -- IF IT IS CLEAR IN
7 THE DESIGN PATENT THAT IT'S A DISPLAY, THEN ONE
8 WOULD EXPECT IT TO BE TRANSPARENT OVER THAT
9 DISPLAY.

10 Q BUT YOUR CONCLUSION, WHEN YOU WERE ASKED UNDER
11 OATH ABOUT WHETHER USE OF A COVER THAT IS
12 TRANSPARENT OR A DISPLAY IS FUNCTIONAL, IS THAT
13 IT'S NOT FUNCTIONAL AS YOU'VE DEFINED IT; RIGHT?

14 A I WAS TALKING ABOUT ITS SHAPE AND LOCATION AND
15 SIZE AND THE DESIGN PATENT DEFINITION OF
16 FUNCTIONALITY.

17 Q AND YOU ALSO TESTIFIED THAT -- WELL, LET ME
18 ASK YOU, IN YOUR VIEW, IS LOCATING THE SPEAKER IN
19 THE UPPER PORTION OF THE FRONT FACE OF A SMARTPHONE
20 SOMETHING THAT'S NOT FUNCTIONAL AS YOU USE THAT
21 TERM IN YOUR EXPERT REPORTS?

22 A DEFINING THE PRECISE LOCATION FROM AN
23 AESTHETIC STANDPOINT, IS NOT DRIVEN BY FUNCTION.

24 Q SO THAT'S NO, IT'S NOT FUNCTIONAL?

25 A WITH THE CONDITIONS THAT I JUST SAID, YES,

1 IT'S NOT FUNCTIONAL.

2 Q LET'S PLAY PAGE 212, LINE 25 THROUGH 213, LINE
3 4 OF YOUR APRIL 24TH DEPOSITION.

4 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN
5 OPEN COURT OFF THE RECORD.)

6 BY MR. VERHOEVEN:

7 Q YOU DIDN'T HAVE ANY QUALIFICATIONS WHEN YOU
8 ANSWERED THAT AT YOUR DEPOSITION, DID YOU, SIR?

9 A BECAUSE I UNDERSTOOD IT TO BE THE WAY I JUST
10 SAID IT.

11 Q DO YOU STAND BY THAT TESTIMONY?

12 A YES.

13 Q NOW, YOU TESTIFIED ON DIRECT EXAMINATION THAT
14 YOUR AN INDUSTRIAL DESIGNER; CORRECT?

15 A THAT'S CORRECT.

16 Q BUT, IN FACT, YOU'VE NEVER DESIGNED A
17 SMARTPHONE, HAVE YOU?

18 A NO, I HAVE NOT DESIGNED A SMARTPHONE.

19 Q IS IT FAIR TO SAY THAT YOU HAVE NEVER DESIGNED
20 A SMARTPHONE AT ANY STAGE?

21 A I'M NOT SURE WHAT YOU MEAN BY "ANY STAGE."

22 Q WELL, LET ME ASK IT THIS WAY: REGARDLESS OF
23 WHETHER OR NOT THE DESIGN WAS ACTUALLY IMPLEMENTED
24 OR MANUFACTURED OR PRODUCED IN ANY WAY, YOU NEVER
25 HAVE NOT DESIGNED ANY SMARTPHONES AT ANY STAGE IN

1 THAT PROCESS?

2 A NO. I'VE DESIGNED CELL PHONES, NOT
3 SMARTPHONES.

4 Q YOU HAVE DESIGNED SOME CELL PHONES, BUT THOSE
5 DESIGNS ARE ONLY CONCEPTS; RIGHT?

6 A THAT'S CORRECT.

7 Q AND NONE OF THOSE CONCEPTS WERE EVER PRODUCED
8 OR MANUFACTURED; CORRECT?

9 A I DON'T KNOW FOR SURE.

10 Q WELL, AS FAR AS YOU KNOW, THOSE CONCEPTS WERE
11 NEVER EVEN MADE INTO MODELS OR PROTOTYPES, WERE
12 THEY?

13 A YES, THEY WERE MADE INTO MODELS.

14 Q OKAY. LET'S LOOK AT YOUR DEPOSITION, THIS
15 TIME LET'S JUST PUT UP THE WRITTEN DEPOSITION,
16 PLEASE, MR. FISHER, DATED APRIL 23, 2012.

17 JUST ONE SECOND, YOUR HONOR.

18 (PAUSE IN PROCEEDINGS.)

19 MR. VERHOEVEN: I'M SORRY, MR. FISHER.
20 CAN WE GO TO THE ITC TRANSCRIPT, PAGE 219, LINES 13
21 THROUGH 24.

22 Q DO YOU SEE THIS IS FROM THE HEARING THAT YOU
23 ATTENDED AND GAVE TESTIMONY TO RELATED IN ANOTHER
24 PROCEEDING. DO YOU REMEMBER THAT, IN WASHINGTON?

25 A IT LOOKS FAMILIAR, YES.

1 Q AND YOU WERE ASKED, WITH RESPECT TO OTHER CELL
2 PHONE DESIGNS THAT YOU WORKED ON, DID YOU WORK ON
3 ANY OF THOSE PRIOR TO 2006? DO YOU SEE THAT?

4 A YES.

5 Q AND DOWN AT THE BOTTOM, IT SAYS QUESTION, THIS
6 IS LINES 21 THROUGH 24?

7 "QUESTION: DID ANY OF THEM BECOME MODELS
8 OR PROTOTYPES OR WERE OTHERWISE EXPRESSED IN
9 THREE-DIMENSIONAL FORM?"

10 WHAT WAS YOUR ANSWER?

11 A APPARENTLY I SAID "NOT THAT I KNOW OF," AND
12 I'D APPARENTLY FORGOTTEN THAT MODELS AND MOCK-UPS
13 WERE MADE.

14 Q SO IN MAY OF THIS YEAR YOU TESTIFIED NONE WERE
15 MADE, AND NOW YOU'RE TESTIFYING THAT SOME WERE
16 MADE? IS THAT RIGHT?

17 A YES. I MEAN, IT WAS A LONG TIME AGO. I THINK
18 I REMEMBERED THAT THERE WERE MODELS MADE.

19 Q SO IS THIS TESTIMONY NOT TRUE?

20 A AT THAT POINT, I DIDN'T REMEMBER THAT.

21 Q THAT TESTIMONY WAS GIVEN UNDER OATH, SIMILAR
22 TO THIS TESTIMONY; CORRECT?

23 A TO THE BEST OF MY ABILITY, YES.

24 Q ISN'T IT TRUE THAT IN ALL YOUR TIME AS AN
25 INDUSTRIAL DESIGNER, YOU ONLY WORKED ON CONCEPTS

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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