

Estrich Declaration

Exhibit 5

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

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

FOR PLAINTIFF MORRISON & FOERSTER
APPLE: BY: HAROLD J. MCELHINNY
MICHAEL A. JACOBS
RACHEL KREVANS
425 MARKET STREET
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FOR COUNTERCLAIMANT WILMER, CUTLER, PICKERING,
APPLE: HALE AND DORR
BY: WILLIAM F. LEE
60 STATE STREET
BOSTON, MASSACHUSETTS 02109

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

FOR THE DEFENDANT: QUINN, EMANUEL, URQUHART,
OLIVER & HEDGES
BY: CHARLES K. VERHOEVEN
ANNE ABRAMOWITZ
50 CALIFORNIA STREET, 22ND FLOOR
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BY: MICHAEL T. ZELLER
WILLIAM C. PRICE
865 SOUTH FIGUEROA STREET
10TH FLOOR
LOS ANGELES, CALIFORNIA 90017

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INDEX OF WITNESSES

PLAINTIFF'S

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SUSAN KARE

DIRECT EXAM BY MS. KREVANS P. 1356
CROSS-EXAM BY MR. VERHOEVEN P. 1414
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RUSSELL WINER

DIRECT EXAM BY MR. JACOBS P. 1496
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HAL PORET

DIRECT EXAM BY MR. JACOBS P. 1577
CROSS-EXAM BY MR. PRICE P. 1591

1 Q OKAY. WHERE WERE WE?

2 WE WERE TALKING ABOUT YOU PROVIDED THE
3 TESTIMONY ABOUT HOW A CONSUMER MIGHT MAKE A MISTAKE
4 OR BE CONFUSED ABOUT THESE APPLICATION SCREENS
5 THINKING THAT, ONE, THAT IT'S A SAMSUNG APPLICATION
6 SCREEN AND MIGHT BE AN APPLE PHONE, RIGHT, OR AN
7 APPLE APPLICATION SCREEN. DO YOU REMEMBER THAT?

8 A THAT A SAMSUNG APPLICATION SCREEN WOULD LOOK
9 LIKE THE DESIGN OF THE D'305 PATENT.

10 Q DIDN'T YOU -- DIDN'T I HEAR YOU SAY THAT YOU
11 THOUGHT THAT A CONSUMER WOULD BE CONFUSED AS TO THE
12 SOURCE?

13 A WHEN WE TALKED ABOUT TRADE DRESS.

14 Q RIGHT?

15 A WHEN WE TALKED ABOUT -- EXCUSE ME. I THOUGHT
16 YOU WERE ASKING ME ABOUT THE D'305.

17 Q OKAY. BUT YOU DID TALK ABOUT CONSUMERS
18 BEING -- WHETHER OR NOT CONSUMERS MIGHT BE CONFUSED
19 BY THE SAMSUNG APPLICATION SCREENS.

20 DO YOU REMEMBER THAT?

21 A YES.

22 Q OKAY. AND YOU THOUGHT THAT THERE'S -- THAT
23 THEY MIGHT BE?

24 A YES.

25 Q OKAY. SO LET'S LOOK AT WHAT A CONSUMER WOULD

1 SEE WHEN THEY TURN ON THE PHONE BETWEEN THE TIME
2 THEY HAVE A PHONE LIKE THIS IN THEIR HANDS THAT'S
3 TURNED OFF AND THE TIME THAT THEY ACTUALLY GET TO
4 THE APPLICATION SCREEN.

5 I'LL TRY TO DO THIS, YOUR HONOR, ON THE
6 ELMO.

7 DO WE HAVE A MICROPHONE?

8 THE CLERK: A MICROPHONE?

9 MR. VERHOEVEN: YEAH. I THOUGHT THERE
10 WAS A LITTLE HAND MIKE. THERE WE GO.

11 DOES THIS WORK?

12 I'M GOING TO PUT THIS CLOSE TO THE PHONE
13 SO THAT -- OKAY.

14 Q SO NOW I'M THE CONSUMER, AND I'M TURNING ON
15 THE PHONE. WHAT DOES THE CONSUMER SEE?

16 A THE START-UP SCREEN WITH THE --

17 Q WHAT DOES IT SAY?

18 A IT SAYS, "SAMSUNG."

19 Q STILL SAYS SAMSUNG.

20 WHAT'S DROID? IS THAT SHORT FOR ANDROID?

21 A I DON'T KNOW I KNOW IT'S THIS, THE DROID PHONE
22 HAS THE CHIN.

23 Q AND NOW WHAT IS THE CONSUMER LOOKING AT NOW?

24 A THE UNLOCK SCREEN.

25 Q SO THE CONSUMER HAS TO DO SOMETHING HERE;

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 WOULDNT 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 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

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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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