

Estrich Declaration

Exhibit 7

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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
)	
)	
)	
)	
)	
)	
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

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
19 865 SOUTH FIGUEROA STREET
20 10TH FLOOR
21 LOS ANGELES, CALIFORNIA 90017

20
21
22
23
24
25

INDEX OF WITNESSESPLAINTIFF'S**BORIS TEKSLER**

CROSS-EXAM BY MS. MAROULIS (RES.) P. 2006
REDIRECT EXAM BY MR. MUELLER P. 2009
RE-CROSS-EXAM BY MS. MAROULIS P. 2019
FURTHER REDIRECT EXAM P. 2022

JUN WON LEE

BY VIDEOTAPED DEPOSITION P. 2023
2025

DONG HOON CHANG

BY VIDEOTAPED DEPOSITION P. 2026

TIMOTHY BENNER

BY VIDEOTAPED DEPOSITION P. 2028
2029

TIMOTHY SHEPPARD

BY VIDEOTAPED DEPOSITION P. 2030

TERRY MUSIKA

DIRECT EXAM BY MS. KREVANS P. 2031
CROSS-EXAM BY MR. PRICE P. 2098
REDIRECT EXAM BY MS. KREVANS P. 2160
RE-CROSS-EXAM BY MR. PRICE P. 2165
FURTHER REDIRECT EXAM P. 2171

DEFENDANT'S**BENJAMIN BEDERSON**

DIRECT EXAM BY MR. DEFRANCO P. 2228
CROSS-EXAM BY MR. JACOBS P. 2254
REDIRECT EXAM BY MR. DEFRANCO P. 2269

ADAM BOGUE

DIRECT EXAM BY MR. JOHNSON P. 2274
CROSS-EXAM BY MR. JACOBS P. 2300

1 MS. MAROULIS: IT'S THE ONE WE FILED,
2 YESTERDAY, YOUR HONOR, AROUND NOON.

3 THE COURT: OKAY.

4 MS. MAROULIS: SO BASICALLY THREE PRIOR
5 ARTISTS, DEPOSITION DESIGNATIONS, AND THEN
6 MR. WILLIAMS AND MR. YANG.

7 THE COURT: OKAY. SO MR. PALTIAN,
8 MR. ZORN, MR. WILLIAMS, AND THEN MR. YANG, HE'LL BE
9 ON BEFORE?

10 MR. VERHOEVEN: YES.

11 MS. MAROULIS: BUT THE THREE OTHER
12 WITNESSES ARE GOING FIRST, BOGUE, FORLINES AND
13 BEDERSON BEFORE THE OTHERS.

14 THE COURT: I'M SORRY. GIVE ME YOUR
15 ORDER THEN. PALTIAN, ZORN --

16 MS. MAROULIS: NO, YOUR HONOR. IT'S
17 BOGUE, FORLINES, BEDERSON, PALTIAN, ZORN, WILLIAMS,
18 AND YANG.

19 THE COURT: OKAY. THANK YOU.

20 ALL RIGHT. MR. RIVERA, WOULD YOU PLEASE
21 BRING IN OUR JURY?

22 THE CLERK: YES, YOUR HONOR.

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

25 THE COURT: ALL RIGHT. GOOD MORNING AND

1 WELCOME BACK. THE TIME IS NOW 9:05.

2 GO AHEAD, PLEASE, WITH THE CROSS OF
3 MR. TEKSLER.

4 SIR, YOU ARE STILL UNDER OATH.

5 **BORIS TEKSLER,**
6 BEING CALLED AS A WITNESS ON BEHALF OF THE
7 PLAINTIFF, HAVING BEEN PREVIOUSLY DULY SWORN, WAS
8 FURTHER EXAMINED AND TESTIFIED AS FOLLOWS:

9 **CROSS-EXAMINATION (RESUMED)**

10 BY MS. MAROULIS:

11 Q GOOD MORNING, MR. TEKSLER.

12 A GOOD MORNING.

13 Q WE'RE GOING TO CONTINUE WITH THE DISCUSSION OF
14 THE ROYALTIES THAT WE STARTED LAST WEEK.

15 DO YOU REMEMBER THAT?

16 A I DO.

17 Q LAST WEEK YOU TESTIFIED THAT NO ONE HAS EVER
18 PAID APPLE A ROYALTY OF \$2.02 PER UNIT FOR THE '381
19 PATENT. IS THAT STILL CORRECT?

20 A YES, THAT'S CORRECT. THERE'S NO LICENSE FOR
21 THE '381.

22 Q AND NO ONE HAS EVER PAID APPLE A ROYALTY OF
23 \$2.02 FOR THE '163 PATENT; IS THAT CORRECT AS WELL?

24 A YES, THAT'S CORRECT.

25 Q NO ONE HAS EVER PAID APPLE A ROYALTY OF \$3.10

1 FOR THE '916 PATENT AT ISSUE; IS THAT CORRECT?

2 A YES, THAT'S CORRECT.

3 Q AND NO ONE HAS EVER PAID APPLE A ROYALTY OF
4 \$24 DOLLARS PER UNIT FOR ANY OF THE DESIGN PATENTS
5 AT ISSUE IN THIS CASE; IS THAT RIGHT?

6 A YES, THAT'S CORRECT.

7 Q FURTHERMORE, NO ONE HAS EVER PAID APPLE A
8 ROYALTY OF \$24 A UNIT FOR ALL FOUR DESIGN PATENTS
9 AT ISSUE IN THIS CASE; RIGHT?

10 A YES, THAT'S CORRECT.

11 Q AS A LICENSING PROFESSIONAL, SIR, ARE YOU
12 FAMILIAR WITH THE CONCEPT OF MARKING?

13 A I AM.

14 Q MARKING IS PUTTING THE PATENT OR REGISTERED
15 TRADE DRESS NUMBER ON YOUR PRODUCT; CORRECT?

16 A THAT'S ONE INSTANCE, YES.

17 Q AND THE PURPOSE OF THAT IS TO LET EVERYONE IN
18 THE MARKET KNOW THAT THE PATENTEE HAS RIGHTS TO A
19 PARTICULAR PATENT; RIGHT?

20 A YES, I BELIEVE THAT'S CORRECT.

21 Q AND IT IS CORRECT, SIR, THAT APPLE DOES NOT
22 MARK ITS IPHONES; RIGHT?

23 A YES, I BELIEVE THAT'S CORRECT.

24 Q IT'S ALSO CORRECT THAT APPLE DOES NOT MARK ITS
25 IPADS; IS THAT RIGHT?

1 A THAT'S CORRECT.

2 Q ISN'T IT CORRECT, SIR, THAT PRIOR TO THE
3 FILING OF THIS LAWSUIT, APPLE NEVER TOLD SAMSUNG
4 THAT IT WAS INFRINGING SPECIFIC DESIGN PATENTS BY
5 NUMBER?

6 A WE TOLD THEM THAT THEY INFRINGED DESIGN
7 PATENTS OF OURS, BUT WE DIDN'T ALLOCATE THOSE
8 NUMBERS TO THEM, THAT'S CORRECT.

9 AS A MATTER OF FACT, SEVERAL OF THOSE
10 PATENTS HADN'T YET ISSUED.

11 Q MR. TEKSLER, PLEASE ANSWER MY QUESTION. IS IT
12 CORRECT THAT APPLE NEVER SPECIFIED ANY DESIGN
13 PATENTS TO SAMSUNG THAT IT ALLEGES IN THIS CASE
14 PRIOR TO THE LAWSUIT?

15 A ANY ENUMERATED NUMBER? IS THAT WHAT YOU'RE
16 SAYING?

17 Q YES, MR. TEKSLER.

18 A YES, I AGREE.

19 MS. MAROULIS: OKAY. I DON'T HAVE ANY
20 FURTHER QUESTIONS FOR YOU AT THIS TIME.

21 THE COURT: OKAY. THE TIME IS NOW 9:07.
22 IS THERE ANY REDIRECT?

23 MR. MUELLER: PLEASE, YOUR HONOR.

24 THE COURT: OKAY. GO AHEAD, PLEASE.

25 MR. MUELLER: MAY I PROCEED, YOUR HONOR?

1 THE COURT: PLEASE, GO AHEAD.

2 **REDIRECT EXAMINATION**

3 BY MR. MUELLER:

4 Q JUST A FEW QUESTIONS FOR YOU. FIRST,
5 MS. MAROULIS ASKED YOU SOME QUESTIONS A MOMENT AGO
6 WITH RESPECT TO LICENSING OF APPLE'S PATENTS.

7 DO YOU HAVE THOSE PATENTS IN MIND?

8 A I DO.

9 Q THE '381, THE '163?

10 A YES.

11 Q THE '916?

12 A YES.

13 Q AND THE DESIGN PATENTS.

14 A CORRECT.

15 Q NOW, LET'S BE CLEAR. HAS APPLE LICENSED ANY
16 OF THOSE PATENTS ON A STANDALONE BASIS AS
17 INDIVIDUAL PATENTS?

18 A NO.

19 MS. MAROULIS: OBJECTION. LEADING.

20 THE COURT: OVERRULED.

21 THE WITNESS: SORRY. NO, IT'S NOT OUR
22 CUSTOMARY PRACTICE TO ENUMERATE SPECIFIC DESIGN
23 PATENTS, OR SPECIFIC PATENT NUMBERS.

24 IN GENERAL, YOU COME UP WITH A PRETTY
25 BROAD CATEGORY OF PATENTS IN A CROSS-LICENSE. THAT

1 WAY BOTH PARTIES KNOW THAT THEY HAVE SOME PEACE.

2 BY MR. MUELLER:

3 Q NOW, MR. TEKSLER, LAST WEEK YOU EXPLAINED TO
4 THE JURY HOW APPLE TREATS DIFFERENT CATEGORIES
5 WITHIN ITS PATENT PORTFOLIO.

6 CAN YOU REMIND US, WHICH CATEGORY DO
7 THESE PATENTS FALL INTO?

8 MS. MAROULIS: OBJECTION. BEYOND THE
9 SCOPE OF CROSS.

10 MR. MUELLER: YOUR HONOR, THESE ARE
11 EXACTLY THE PATENTS THAT MS. MAROULIS JUST ASKED
12 ABOUT.

13 THE COURT: OVERRULED.

14 GO AHEAD.

15 THE WITNESS: SO ALL THESE PATENTS ARE IN
16 APPLE'S UNIQUE USER EXPERIENCE AND NOT ONES THAT WE
17 WOULD LICENSE.

18 BY MR. MUELLER:

19 Q NOW, MS. MAROULIS ASKED YOU SOME QUESTIONS
20 ABOUT THE LIMITED CIRCUMSTANCES IN WHICH APPLE HAS
21 LICENSED ITS DESIGN PATENTS. THOSE WERE QUESTIONS
22 ASKED LAST FRIDAY.

23 DO YOU RECALL THAT?

24 A I DO.

25 MS. MAROULIS: OBJECTION. ARGUMENTATIVE.

1 THE COURT: OVERRULED.

2 BY MR. MUELLER:

3 Q NOW, MR. TEKSLER, ARE YOU FAMILIAR WITH
4 APPLE'S LICENSE WITH MICROSOFT?

5 A I AM.

6 Q DOES THAT LICENSE COVER APPLE'S DESIGN
7 PATENTS?

8 A IT DOES.

9 Q CAN YOU EXPLAIN TO THE JURY THE FORM OF THE
10 LICENSE GRANT?

11 A SURE. SO APPLE AND MICROSOFT'S CROSS-LICENSE
12 DOES COVER THE DESIGN PATENTS.

13 HOWEVER, WE TOOK SPECIAL PROHIBITIONS FOR
14 BOTH PARTIES SO THAT THERE'S WHAT I TERM AN
15 ANTI-CLONING PROVISION IN THE AGREEMENT SO THAT WE
16 WOULDN'T COPY EACH OTHER'S PRODUCTS.

17 AND SO EVEN THOUGH THERE'S PEACE BETWEEN
18 THE COMPANIES WITH RESPECT TO THE PATENTS AS A
19 WHOLE, THERE'S A CLEAR ACKNOWLEDGMENT THAT THERE'S
20 NO COPYING WITH THIS ANTI-CLONING PROVISION.

21 Q AND MR. TEKSLER, TO BE VERY CLEAR, WHAT RIGHTS
22 WERE NOT GIVEN TO MICROSOFT WITH RESPECT TO THESE
23 DESIGN PATENTS?

24 MS. MAROULIS: OBJECTION. LEADING,
25 BEYOND THE SCOPE OF CROSS.

1 WHAT HAVE YOU DEPICTED ON THIS SLIDE,
2 MR. MUSIKA?

3 A I THINK THIS IS GOING TO HELP SHOW AND EXPLAIN
4 WHAT I WAS JUST BRIEFLY TRYING TO EXPLAIN.

5 I'VE GOT 22 PHONES AT THE TOP, AND THINK
6 OF THESE AS EITHER PHONES OR TABLETS, IT DOESN'T
7 MATTER. BUT EACH ONE OF THOSE REPRESENTS A MILLION
8 UNITS TO TRY AND KEEP US ORIENTED ON THE 22 MILLION
9 TOTAL UNITS.

10 AND SO AS WE JUST WENT THROUGH, I HAVE
11 THREE FORMS OF DAMAGE. EACH ONE OF THOSE PHONES,
12 EACH ONE OF THOSE 22 MILLION PHONES, HAS TO GO IN
13 ONE OF THOSE CATEGORIES, BUT NOT TWO CATEGORIES.
14 IF WE PUT IT IN TWO CATEGORIES, THEN WE'RE GOING TO
15 END UP WITH DOUBLE COUNTING.

16 Q OKAY. CAN YOU JUST WALK US THROUGH,
17 UNDERSTANDING THIS IS A SIMPLIFICATION, WALK US
18 THROUGH THE ALLOCATION THAT YOU MADE.

19 A WELL, THE ALLOCATION THAT I MADE WAS I, I
20 FIRST -- I THINK THE NEXT SLIDE IS GOING TO SHOW
21 THE AMOUNT OF 17 MILLION UNITS SHOULD SLIDE DOWN,
22 AND I CALCULATED THEM AS SAMSUNG'S PROFITS. THAT'S
23 THE UNJUST GAIN. SO I'M USING THAT FORM OF DAMAGES
24 FOR APPROXIMATELY 17 MILLION OF THE TOTAL 22
25 MILLION.

1 Q OKAY. HOW MANY OF THE 5 MILLION LEFT DID YOU
2 PUT IN THE APPLE LOST PROFITS DAMAGES CATEGORY?

3 A I PUT TWO INTO THE LOST PROFITS CATEGORY, SO
4 WE SHOULD HAVE TWO OF THOSE SLIDE DOWN, AND 2
5 MILLION, APPROXIMATELY, COME DOWN THERE.

6 AND THAT, OF COURSE, LEAVES THE 3
7 MILLION, AND YOU CAN OF COURSE GUESS WHERE THOSE
8 GO, DOWN TO THE REASONABLE ROYALTY.

9 AND WE CAN SEE VERY CLEARLY THAT NO
10 INDIVIDUAL PRODUCT HAS HAD MORE THAN ONE DAMAGE
11 CALCULATED ON IT.

12 Q OKAY. THAT LOOKED EASY.

13 CAN YOU DESCRIBE FOR THE JURY THE ACTUAL
14 AMOUNT OF EFFORT THAT IT TOOK TO MAKE THESE
15 ALLOCATIONS AND THEN MAKE THOSE ONE, ONE PHONE BY
16 ONE TABLET DAMAGES CALCULATIONS THAT YOU MADE.

17 A IT -- I CAN ASSURE YOU, IT'S NOT ME SITTING AT
18 A DESK WITH A CALCULATOR DOING 22 MILLION
19 CALCULATIONS.

20 IN FACT, BECAUSE OF THE VARIOUS
21 COMBINATIONS, THERE ARE LITERALLY HUNDREDS OF
22 MILLIONS OF CALCULATIONS, AND SO THE ONLY WAY,
23 PRACTICALLY, TO DO THIS IS TO WRITE A COMPUTER
24 PROGRAM.

25 AND SO OVER THE LAST YEAR AND A HALF TO

1 TWO YEARS, I HAVE HAD A TEAM OF 20 PEOPLE,
2 ECONOMISTS, PROGRAMMERS, STATISTICIANS AND C.P.A.'S
3 DEVELOPING A MODEL THAT IS DYNAMIC ENOUGH TO TAKE
4 IN ALL 22 MILLION AND MAKE CHANGES AND ADJUSTMENTS,
5 SINCE THIS PROCESS WENT ON FOR A YEAR AND A HALF,
6 AS NEW PRODUCTS CAME IN AND WENT OUT.

7 AND ABOUT 7,000 TOTAL PROFESSIONAL HOURS
8 WERE DEDICATED TOWARDS THE CREATION AND OPERATION
9 OF THAT COMPUTER MODEL.

10 Q THAT SOUNDS EXPENSIVE. WAS IT EXPENSIVE?

11 A IT WAS VERY EXPENSIVE.

12 Q WHAT DID IT COST TOTAL FOR YOUR TEAM OF 23
13 PEOPLE?

14 A 20 PEOPLE, OVER MORE THAN A YEAR AND A HALF,
15 THAT 7,000 HOURS, WAS APPROXIMATELY \$1,750,000.

16 Q OKAY. LET'S GO BACK TO THE FIRST CATEGORY YOU
17 TALKED ABOUT, THE SAMSUNG PROFIT CATEGORY.

18 ONCE YOU HAD ALLOCATED 17 MILLION PHONES
19 AND TABLETS TOTAL INTO THAT CATEGORY, WHAT WAS THE
20 NEXT STEP IN DETERMINING THE DAMAGES FOR THOSE 17
21 MILLION DEVICES?

22 A WELL, IT'S, IT'S MAKING THE ACTUAL
23 CALCULATIONS. IT'S FIGURING OUT HOW MUCH -- WE NOW
24 KNOW THE UNITS, BUT HOW MUCH DID SAMSUNG ACTUALLY
25 MAKE ON THOSE 17 MILLION?

1 Q OKAY. IF WE COULD SEE THE NEXT SLIDE. WE'RE
2 SHOWING \$2.241 BILLION HERE.

3 CAN YOU EXPLAIN TO THE JURY HOW YOU CAME
4 UP WITH THAT NUMBER IN CONCEPT?

5 A IN CONCEPT, KEEP IN MIND THE 17 MILLION UNITS,
6 AGAIN, AND IT'S -- IT'S FIGURING OUT HOW MUCH DID
7 SAMSUNG ACTUALLY MAKE IN PROFIT ON EACH ONE OF
8 THOSE UNITS, AS SIMPLISTICALLY MULTIPLICATION.
9 IT'S THE UNITS TIMES THE PROFITS AND THAT GETS YOU
10 TO \$2.2 BILLION.

11 Q WHAT WAS THE SOURCE OF THE INFORMATION YOU
12 USED FOR THE PURPOSES OF MAKING THESE CALCULATIONS?

13 A THESE NUMBERS ARE, IN THIS CASE ARE SAMSUNG'S
14 NUMBERS. WHEN I'M TALKING ABOUT SAMSUNG'S PROFIT,
15 THESE ARE NUMBERS THAT COME DIRECTLY FROM SAMSUNG'S
16 FINANCIAL RECORDS.

17 Q OKAY. COULD WE SEE SLIDE 34B.15.

18 STARTING HERE -- I KNOW YOU HAVE A SERIES
19 OF SLIDES HERE, MR. MUSIKA. CAN YOU WALK US
20 THROUGH THE NATURE OF THE CALCULATION YOU DID TO
21 ARRIVE AT THE \$2.24 BILLION PROFIT NUMBER FOR THE
22 \$17 MILLION PHONES -- 17 MILLION PHONES?

23 A YES. WELL, THERE'S THE \$8.1 BILLION NUMBER
24 AGAIN -- PARDON ME -- AND HOPEFULLY WE CAN REMEMBER
25 THAT WAS THE TOTAL OF THE ACCUSED SALES.

1 BUT KEEPING IN MIND, I'M CALCULATING
2 THIS, THIS DAMAGE ONLY ON SAMSUNG'S PORTION.

3 SO THE FIRST THING I DO IS I HAVE TO
4 REDUCE THAT NUMBER FOR THE UNITS THAT, THAT OTHER 5
5 MILLION UNITS THAT WENT TO OTHER FORMS OF DAMAGE.
6 SO THAT'S THE FIRST DEDUCTION. I THINK THAT'S THE
7 NEXT SLIDE.

8 AND I DEDUCT 1.749 BILLION BECAUSE I'M
9 GOING TO CALCULATE DAMAGES ON A REASONABLE ROYALTY
10 TO LOST PROFITS, AND THAT LEAVES ME \$6,411,000,000.

11 Q AND WHAT WAS THE NEXT STEP?

12 A THE NEXT STEP IS WHAT WE ALL -- REGARDLESS OF
13 WHAT BUSINESS WE'RE IN, ALL OF US INCUR THE SAME
14 THING. WE HAVE REVENUE BECAUSE WE MAKE A SALE, AND
15 WE HAVE EXPENSES. NOBODY JUST GIVES US MONEY. AND
16 SAMSUNG INCURRED EXPENSES TO GENERATE THAT
17 6,411,000,000, SO I HAD TO IDENTIFY HOW MUCH DID IT
18 COST SAMSUNG TO EARN OR GENERATE THAT
19 6,411,000,000.

20 Q OKAY. SO LET'S SEE THE NEXT SLIDE.

21 A AND THERE YOU SEE -- THERE YOU SEE THE COST OF
22 GOODS SOLD, HOW MUCH DID IT COST, WHAT ARE THE
23 DIRECTLY ATTRIBUTABLE COSTS THAT SAMSUNG INCURRED,
24 AND THAT'S 4,170,000,000.

25 IF I SUBTRACT THAT FROM THAT PRIOR

1 NUMBER, THAT GETS US DOWN TO THE BOTTOM,
2 \$2,241,000,000.

3 Q OKAY. HAVE YOU DONE THIS CALCULATION FOR EACH
4 OF THE DIFFERENT PRODUCTS ACCUSED OF VIOLATING ONE
5 OF APPLE'S DESIGN OR TRADE DRESS PATENT RIGHTS?

6 A YES.

7 Q COULD WE SEE SLIDE 34B.19?

8 WHAT IS DEPICTED HERE, MR. MUSIKA?

9 A THIS IS JUST A, AN ADDITIONAL SLIDE TO HELP
10 THE COURT SEE THAT NOT ONLY DID I DO IT ON AN
11 INDIVIDUAL TABLET-BY-TABLET,
12 SMARTPHONE-BY-SMARTPHONE BASIS, BUT THOSE ARE BY
13 MODEL, TOO.

14 SO HERE IS THAT SAMSUNG'S PROFITS
15 DIVIDED, OR SHOWN BY MODEL, BOTH FOR TABLETS AND
16 SMARTPHONES.

17 Q OKAY. HAS SAMSUNG ALSO PROVIDED A CALCULATION
18 IN THIS CASE OF WHAT IT SAYS ARE ITS PROFITS ON
19 THIS SAME GROUP OF 17 MILLION DEVICES?

20 A WELL, NOT TO CONFUSE ANYONE. MY NUMBER THAT
21 I'VE JUST GIVEN YOU IS SAMSUNG'S NUMBER, TOO.

22 BUT I DEDUCTED CERTAIN COSTS AND SAMSUNG
23 WOULD -- WOULD AND HAS SAID THAT THEY'VE INCURRED
24 ADDITIONAL COSTS THAT SHOULD BE SUBTRACTED.

25 SO THERE'S NO DISPUTE ABOUT THE NUMBERS

1 THAT I'M USING. IT'S JUST THAT THERE'S A DISPUTE
2 ABOUT HOW MUCH -- HOW MANY COSTS SHOULD BE INCLUDED
3 IN THE CALCULATION.

4 Q COULD WE SEE PDX 34B.20.

5 WHAT HAVE YOU SHOWN ON THIS SLIDE,
6 MR. MUSIKA?

7 A THERE'S NO MATH IN THIS SLIDE. THERE'S JUST
8 THREE NUMBERS. THE FIRST NUMBER IS THE FAVORITE
9 NUMBER, OR THE OLD NUMBER WE KNOW, THE 8.1 BILLION
10 TOTAL REVENUE. SO THAT'S THE REVENUE AT ISSUE.

11 THE MIDDLE NUMBER IS MY NUMBER OF WHAT
12 THE UNJUST GAIN IS. THAT'S THE SAME \$2.2 BILLION
13 NUMBER.

14 BUT THE NUMBER ON THE RIGHT IS ANOTHER
15 SAMSUNG CALCULATION WHICH TAKES MY 2.2 BILLION AND
16 TAKES IT DOWN TO \$1,086,000,000.

17 Q AND WHAT IS -- SINCE YOU BOTH STARTED WITH THE
18 SAME NUMBERS FROM SAMSUNG'S RECORDS, WHAT IS THE
19 REASON FOR THE DIFFERENCE BETWEEN YOUR CALCULATION
20 OF TOTAL PROFITS ON THESE 17 MILLION PHONES AND
21 SAMSUNG'S CALCULATION OF TOTAL PROFITS ON THESE 17
22 MILLION PHONE?

23 A WE'RE GOING TO SEE IT IN JUST A SECOND, BUT
24 IT'S REAL SIMPLE. KEEP IN MIND I DEDUCTED COSTS
25 WHICH ARE DIRECTLY ATTRIBUTABLE.

1 SAMSUNG DEDUCTED THOSE COSTS AS WELL, BUT
2 THEY DEDUCTED ADDITIONAL COSTS WHICH I DID NOT
3 DEDUCT, AND WE'LL LOOK AT THOSE PRESENTLY.

4 Q OKAY. WHY DON'T WE LOOK AT EXHIBIT 28. IT'S
5 IN YOUR BINDER. AND COULD WE START SIMPLY BY YOU
6 IDENTIFYING WHAT EXHIBIT 28 IS.

7 A EXHIBIT 28 IS A -- THIS IS A SCHEDULE THAT I
8 PREPARED USING SAMSUNG'S RECORDS, TRANSLATED
9 RECORDS, FOR SEC AND I USED IT FOR PURPOSES OF
10 LOOKING AT THE TYPES OF COSTS -- THIS WILL LIST ALL
11 THEIR COSTS FROM TOP TO BOTTOM, AND WE'LL SEE THE
12 KIND OF COSTS I DEDUCTED AND THE ADDITIONAL COSTS
13 THAT SAMSUNG DEDUCTED.

14 MS. KREVANS: OKAY. YOUR HONOR, WE MOVE
15 THE ADMISSION OF EXHIBIT PX 28.

16 MR. PRICE: NO OBJECTION.

17 THE COURT: ALL RIGHT. IT'S ADMITTED.

18 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
19 28, HAVING BEEN PREVIOUSLY MARKED FOR
20 IDENTIFICATION, WAS ADMITTED INTO
21 EVIDENCE.)

22 BY MS. KREVANS:

23 Q YOU SAY YOU PREPARED THIS. WHAT WAS THE
24 SOURCE OF THESE NUMBERS?

25 A SAMSUNG RECORDS.

1 Q DID YOU CHANGE THE NUMBERS IN ANY WAY WHEN YOU
2 PREPARED THIS SCHEDULE?

3 A THE NUMBERS ARE -- THEY'RE IMPORTANT, BUT
4 THEY'RE NOT THE NUMBERS. THEY'RE THE NUMBERS FOR
5 THE OVERALL ENTITY. SO IT HAS OTHER SALES OF
6 NON-ACCUSED ITEMS.

7 MY FOCUS IS REALLY MORE ON TERMS OF THE
8 TYPES OF ACCOUNTS, BUT I DIDN'T CHANGE THIS. THIS
9 COMES DIRECTLY -- THIS IS THE TYPE OF ACCOUNTS AND
10 THE NUMBERS COME DIRECTLY FROM SAMSUNG.

11 Q OKAY. COULD WE JUST MAKE A LITTLE LARGER,
12 MR. LEE, THE TOP PORTION OF THIS DOWN THROUGH LINE,
13 GROSS SALES PROFIT PERCENTAGE.

14 WHAT'S DEPICTED HERE, MR. MUSIKA?

15 A SAMSUNG'S RECORDS ARE, ARE THE SAME AS, IN
16 MANY OTHER SOPHISTICATED, SAME AS APPLE'S. THEY'RE
17 PREPARED BASICALLY IN THE SAME FORMAT.

18 AND THE BASIC FORMAT OF A FINANCIAL
19 STATEMENT, OR A PROFIT AND LOSS STATEMENT, IS NO
20 DIFFERENT THAN OUR PERSONAL PROFIT AND LOSS
21 STATEMENTS.

22 WE START AT THE TOP WITH HOW MUCH DID WE
23 EARN, WHAT'S THE REVENUE? AND THEN WE DEDUCT
24 EXPENSES.

25 STARTING AT THE TOP, THOSE EXPENSES ARE

1 DIRECTLY ATTRIBUTABLE. AS YOU MOVE DOWN AND YOU
2 GET TO WHERE PEOPLE USUALLY REFER TO IT, THE BOTTOM
3 LINE, THOSE COSTS THAT ARE INCLUDED BECOME LESS AND
4 LESS SPECIFICALLY ASSOCIATED WITH THE REVENUE.

5 SO HERE WE SEE REVENUE, QUANTITY AT THE
6 TOP, AND THEN SALES IN TERMS OF TOTAL DOLLARS.

7 Q AND I TAKE IT FROM WHAT YOU SAID A COUPLE
8 MINUTES AGO, WHERE IT SAYS SALES \$30 BILLION, YOU
9 DIDN'T USE ALL 30 BILLION OF THOSE DOLLARS IN YOUR
10 CALCULATIONS?

11 A NO. AGAIN, THIS IS THEIR NUMBERS FROM THE SEC
12 MANUFACTURING ENTITY THAT HAS SALES OF OTHER ITEMS
13 IN THERE, SO I'VE ALREADY PULLED MY -- MY 8
14 BILLION, OR SAMSUNG'S 8 BILLION IS IN THAT \$30
15 BILLION NUMBER IN THERE, BUT THERE ARE OTHER THINGS
16 IN THERE AND WE SHOULDN'T BE FOCUSSED ON THOSE
17 NUMBERS.

18 Q OKAY. YOU SEE AT THE BOTTOM PORTION OF THIS
19 EXHIBIT 28 THAT WE'RE LOOKING AT ON THE SCREEN
20 RIGHT NOW, THERE ARE TWO LINES THAT SAY "GROSS
21 SALES PROFIT" AND "GROSS SALES PROFIT PERCENTAGE."

22 WHAT ARE THOSE NUMBERS?

23 A STANDARD ACCOUNTING TERMINOLOGY. SALES MINUS
24 COST OF GOODS SOLD, THAT'S -- C.O.G.S. STANDS FOR
25 COST OF GOODS SOLD, AND THOSE ARE COSTS WHICH ARE

1 DIRECTLY ATTRIBUTABLE TO THE PRODUCTION AND/OR SALE
2 OF THE ACCUSED DEVICES.

3 AND THIS IS -- AGAIN, THIS ISN'T MY
4 CONSTRUCTION. THIS IS REALLY GENERALLY ACCEPTED
5 ACCOUNTING PRINCIPALS AND THIS IS DIRECTLY FROM
6 THEIR STATEMENTS.

7 AND THAT GETS US, IF WE DEDUCT THE COST
8 OF GOODS SOLD FROM THE SALES, WE GET A GROSS PROFIT
9 NUMBER AND PERCENTAGE.

10 Q AND WHAT'S THE GROSS PROFIT PERCENTAGE?

11 A GROSS PROFIT PERCENTAGE IS, IN THIS STATEMENT
12 IS 39.2 PERCENT.

13 Q WHAT WAS THE AVERAGE GROSS PROFIT AMOUNT THAT
14 YOU FOUND IN SAMSUNG'S FINANCIAL RECORDS FOR THE \$8
15 BILLION IN SALES OF THE ACCUSED PRODUCTS IN THE
16 UNITED STATES?

17 A ALL RIGHT. THE ACCUSED PRODUCTS HAVE SLIGHTLY
18 LOWER GROSS PROFIT PERCENTAGE. PER MY
19 RECOLLECTION, THE OVERALL GROSS PROFIT PERCENTAGE
20 ON JUST THE ACCUSED PRODUCTS WAS APPROXIMATELY 35.5
21 PERCENT.

22 Q OKAY. YOU SAID A COUPLE MINUTES AGO THAT IF
23 WE MOVE DOWN THIS SAME PAGE OF EXHIBIT 28, WE'RE
24 GOING TO SEE SOME OTHER KINDS OF EXPENSES.

25 A YES.

1 Q DO YOU BELIEVE THAT THOSE OTHER EXPENSES ARE
2 APPROPRIATE TO BE DEDUCTED IN CALCULATING SAMSUNG'S
3 TOTAL PROFITS FOR PURPOSES OF DAMAGES IN THIS CASE?

4 A FIRST OF ALL, SAMSUNG DEDUCTS ALL THOSE OTHER
5 EXPENSES. THEY WERE INCURRED. I'M NOT DISPUTING
6 THEY WERE INCURRED.

7 BUT I DO NOT THINK IT IS APPROPRIATE TO
8 DEDUCT THOSE TO GET TO THE PROFIT NUMBER WHICH
9 WOULD REWARD APPLE FOR SAMSUNG'S UNJUST ENRICHMENT.

10 SO REALLY ALL THE EXPENSES BELOW THERE
11 ARE REALLY THE DISAGREEMENT.

12 Q AND WHY DO YOU THINK THAT THOSE EXPENSES,
13 THOSE OTHER EXPENSES, ARE NOT PROPERLY DEDUCTED IN
14 CALCULATING SAMSUNG'S PROFITS?

15 A I HAVE TWO VERY SPECIFIC REASONS.

16 Q WHAT ARE THEY?

17 A ONE REASON IS THAT THOSE COSTS, BY THEIR VERY
18 NATURE AND HOW THEY'VE BEEN PUT ON THIS FINANCIAL
19 STATEMENT, I KNOW, AS A C.P.A., THAT THEY ARE LESS
20 AND LESS DIRECTLY ASSOCIATED WITH THE PRODUCT AT
21 HAND. SO I KNOW THAT BASED ON SAMSUNG'S OWN
22 REPRESENTATION.

23 SECONDLY, WHEN I TRIED TO INVESTIGATE HOW
24 THEY WOULD PERHAPS TRY TO ALLOCATE THESE -- AND
25 WHEN I SAY "TRY," DON'T MEAN THAT IN A NEGATIVE

1 WAY, BUT IF YOU HAD A NON-DIRECT COST, THE ONLY WAY
2 TO ASSIGN IT IS YOU HAVE TO DETERMINE SOME FORM OF
3 ALLOCATION, AND WHEN I LOOK FOR THE ALLOCATION
4 BASIS, THE RECORDS WERE UNRELIABLE.

5 SO FOR THOSE TWO PRIMARY REASONS, NO, I
6 DID NOT INCLUDE THEM.

7 Q OKAY. CAN YOU GIVE US AN EXAMPLE, FROM
8 SAMSUNG'S ACTUAL EXPENSE CATEGORIES, OF SOMETHING
9 THAT SAMSUNG INCLUDED IN ITS CALCULATION WHICH YOU
10 DID NOT INCLUDE AND EXPLAIN WHY YOU THOUGHT IT WAS
11 INAPPROPRIATE.

12 A YES. MAY I?

13 Q PLEASE.

14 A R&D IS A GOOD EXAMPLE. R&D STANDS FOR
15 RESEARCH AND DEVELOPMENT, AND CERTAINLY SAMSUNG
16 ENGAGES IN RESEARCH AND DEVELOPMENT, AS DOES APPLE.

17 FROM AN ACCOUNTING STANDPOINT, IT'S
18 CALLED MATCHING. WE WANT TO MATCH UP THE EXPENSES
19 WITH THE REVENUE. WE DON'T WANT TO MATCH UP THE
20 EXPENSES FOR PRODUCT A AND SUBTRACT THEM FROM
21 PRODUCT B.

22 AND I KNOW, AGAIN, BASED ON MY OWN
23 ACCOUNTING EXPERIENCE, THAT THE RESEARCH AND
24 DEVELOPMENT COSTS, WHICH ARE INCURRED IN THE
25 CURRENT TIME PERIOD, RELATE TO FUTURE EVENTS, OR

1 FUTURE PRODUCTS, NOT TO THE CURRENT PRODUCTS.

2 AND SO, AGAIN, FOR ANOTHER REASON THERE,
3 IT IS A COST THAT'S NOT A COST THAT'S ASSOCIATED
4 WITH THESE ACCUSED PRODUCTS.

5 Q OKAY. LET'S TURN TO THE SECOND REASON THAT
6 YOU SAID YOU THOUGHT IT WAS INAPPROPRIATE TO
7 INCLUDE THESE OTHER CATEGORIES, AND THAT WAS THAT
8 YOU FOUND THE INFORMATION IN SOME WAYS TO BE
9 UNRELIABLE.

10 A YES, I DID.

11 Q WHAT LED TO THAT CONCLUSION?

12 A AS AN AUDITOR FOR THAT FIRST 10, 12 YEARS OF
13 MY LIFE, AND REALLY DOING INVESTIGATIONS
14 AFTERWARDS, WE AS AUDITORS ARE TAUGHT TO, TO APPLY
15 SOMETHING CALLED PROFESSIONAL SKEPTICISM, EXERCISE
16 OUR PROFESSIONAL JUDGMENT. WE SIMPLY DON'T TAKE
17 FROM OUR CLIENTS OR FROM PARTIES THAT ARE PRODUCING
18 FINANCIAL INFORMATION AND SAY, THAT MUST BE RIGHT.

19 WE GIVE IT -- IN SORT OF LAYMAN'S TERMS,
20 WE GIVE IT A SMELL TEST AND SAY, DOES THIS MAKE
21 SENSE? AND IN AUDIT LINGO, AGAIN, ARE THERE
22 CERTAIN RED FLAGS?

23 AND I ENCOUNTERED A NUMBER OF RED FLAGS
24 WITH SAMSUNG'S DATA BELOW THE GROSS PROFIT LINE.

25 Q OKAY. COULD WE LOOK AT PDX 34B.23, PLEASE.

1 WHAT IS SET OUT IN YOUR SLIDE 23,

2 MR. MUSIKA?

3 A WELL, I WAS GOING TO DO THIS PIECE BY PIECE.
4 AS A TEACHER, I DON'T LIKE PEOPLE READING AHEAD,
5 BUT -- GOOD.

6 Q THANK YOU, MR. LEE.

7 A SO, YES, THERE ARE FOUR RED FLAGS, AS YOU SAW.

8 IT WAS TAKEN AWAY, BUT THE FIRST ONE IS,
9 IS THE INFORMATION THAT I'M PRESENTED WITH, DOES
10 THAT TIE TO SOME RELIABLE SOURCE? SOME OTHER
11 SOURCE, AN AUDITED FINANCIAL STATEMENT, A TAX
12 RETURN, SOMETHING ELSE THAT I KNOW SOMEBODY ELSE IS
13 LOOKING OVER THE COMPANY'S SHOULDER?

14 Q AND WHAT DID YOU FIND WHEN YOU LOOKED AT THAT
15 ISSUE?

16 A I'M NOT SAYING IT DIDN'T TIE, BUT NOBODY DID
17 TIE IT. I COULDN'T TIE IT, AND SAMSUNG DIDN'T
18 RECONCILE OR TIE IT, EITHER. SO I WAS LACKING WITH
19 THAT LEVEL OF COMFORT.

20 Q WHAT WAS THE SECOND RED FLAG YOU LOOKED FOR?

21 A THE SECOND ONE IS, IS THIS INFORMATION THAT'S
22 USED TO RUN THE BUSINESS? WHEN WE SAY "ORDINARY
23 COURSE," THIS IS INFORMATION THEY USE EVERY DAY.
24 THIS ISN'T SOMETHING THAT'S PRODUCED FOR A SPECIAL
25 PURPOSE.

1 COME FIVE YEARS," AND THAT CIRCLE -- NUMBER ONE,
2 THE APPLE IPHONE, THAT'S -- THAT'S THEIR DOCUMENT,
3 I DIDN'T CIRCLE THAT. I HAVEN'T CHANGED THIS
4 DOCUMENT. SO SAMSUNG HAS IDENTIFIED THE APPLE
5 IPHONE AS SOMETHING THAT'S GOING TO SHAPE THE NEXT
6 FIVE YEARS.

7 Q AND THE DATE OF THIS DOCUMENT WAS SEPTEMBER
8 2007?

9 A 2007, YES.

10 Q OKAY. COULD YOU TURN TO PAGE 37 OF THIS
11 DOCUMENT. AND LET ME KNOW AGAIN WHEN YOU'RE THERE.

12 A I'M THERE.

13 Q OKAY. WHAT IS THIS PORTION OF EXHIBIT 34
14 DEPICTING?

15 A LISTED AT THE TOP IS "IPHONE EFFECT ANALYSIS,"
16 SO WHAT EFFECT THE IPHONE IS EXPECTED TO HAVE.

17 Q AND, AGAIN, IS THIS FROM SEPTEMBER 2007?

18 A THIS ENTIRE DOCUMENT IS FROM THAT TIME PERIOD,
19 YES.

20 Q OKAY. COULD YOU TURN TO THE SECOND PAGE OF
21 THIS THREE-PAGE SECTION OF EXHIBIT 34 AND TELLS US
22 WHAT IS INDICATED ON THIS PAGE THAT YOU TOOK INTO
23 ACCOUNT IN YOUR OPINION?

24 A YES. THE BOX THAT'S SORT OF AT THE RIGHT, THE
25 TOP BOX, THAT'S CORRECT, IT SAYS "FACTORS THAT

1 COULD MAKE IPHONE A SUCCESS."

2 AND THEN THE FIRST BULLET UNDER THAT IS
3 "EASE AND INTUITIVE U/I," USER INTERFACE, "THAT
4 COVERS ALL USER CLASSES, INCLUDING MALE, FEMALE,
5 OLD AND YOUNG," AND THEN THE FIRST BULLET,
6 "BEAUTIFUL DESIGN."

7 Q AND HOW DID THOSE, THESE PORTIONS OF THE
8 DOCUMENT EFFECT THE DEMAND FOR THE IPHONE?

9 A WELL, THE FOCUS WAS ON IPHONE AND THE
10 IDENTIFICATION BY SAMSUNG OF IPHONE AS BEING A
11 DRIVER IN THE MARKETPLACE, SO OBVIOUSLY THAT'S
12 REPRESENTATIVE OF DEMAND FOR THE IPHONE, AND
13 IDENTIFYING BEAUTIFUL DESIGN AS BEING FURTHER -- OR
14 EVIDENCE OF, OF DEMAND FOR DESIGN.

15 Q COULD YOU TURN TO EXHIBIT 194 IN YOUR BINDER,
16 PLEASE, MR. MUSIKA.

17 A I'M THERE.

18 Q WHAT IS -- STRIKE THAT.

19 IS EXHIBIT 194 A DOCUMENT THAT YOU
20 CONSIDERED AND RELIED UPON IN FORMING YOUR OPINIONS
21 ABOUT DEMAND FOR THE IPHONE?

22 A YES.

23 MS. KREVANS: YOUR HONOR, WE MOVE THE
24 ADMISSION OF EXHIBIT 194.

25 MR. PRICE: SAME OBJECTIONS, YOUR HONOR.

1 FOUNDATION.

2 MS. KREVANS: AGAIN, YOUR HONOR, WE'VE
3 LAID THE FOUNDATION AND IT'S A SAMSUNG ADMISSION.

4 THE COURT: IT'S ADMITTED.

5 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
6 194, HAVING BEEN PREVIOUSLY MARKED FOR
7 IDENTIFICATION, WAS ADMITTED INTO
8 EVIDENCE.)

9 BY MS. KREVANS:

10 Q WHAT IS EXHIBIT 194, MR. MUSIKA?

11 A IT'S A, AN INTERNAL E-MAIL FROM SAMSUNG
12 EXECUTIVES TO OTHER SAMSUNG EXECUTIVES.

13 Q AND THE DATE OF THIS DOCUMENT IS?

14 A MARCH 2ND, 2010.

15 Q AND WHO IS IT -- WHAT IS THE SUBJECT MATTER
16 INDICATING?

17 A THE SUBJECT SAYS "TO UX," USER EXPERIENCE,
18 "EXECUTIVES."

19 Q WHAT PART OF THIS MARCH 2ND, 2010 E-MAIL DID
20 YOU FIND RELEVANT TO THE DEMAND OPINIONS THAT YOU
21 FORMED?

22 A GO DOWN ONE, TWO, THREE, FOUR, FIVE PARAGRAPHS
23 AND HIGHLIGHT THAT. YES.

24 IT SAYS, "I AM NOT SAYING TO MAKE A UX
25 THAT IS EXACTLY IDENTICAL TO THE IPHONE, BUT I AM

1 SAYING TO LEARN THE WISDOM OF THE IPHONE AND
2 RECOGNIZE THE STANDARD OF THE INDUSTRY WHICH WAS
3 SET BY THEM ALREADY."

4 Q LET'S TURN BACK TO YOUR SLIDE 34B.32, AND LOOK
5 AT THE SECOND FACTOR YOU CONSIDERED, WHICH WAS
6 MARKET ALTERNATIVES.

7 WHAT EVIDENCE DID YOU FIND WHEN YOU
8 LOOKED AT MARKET ALTERNATIVES?

9 A UM --

10 Q AND LET ME FIRST ASK YOU, WHAT DO YOU MEAN BY
11 "MARKET ALTERNATIVES"?

12 A SO I THINK YOU PHRASED IT WELL, IS IF SAMSUNG
13 DIDN'T MAKE THE SALE, WOULD APPLE HAVE MADE THE
14 SALE?

15 SO IF, IF THERE WERE OTHER ALTERNATIVES
16 IN THE MARKETPLACE, THEN APPLE WOULDN'T MAKE EVERY
17 ONE OF THOSE 22 MILLION SALES. OF COURSE I DIDN'T
18 CALCULATE LOST PROFITS ON THE 22 MILLION. YOU MAY
19 RECALL IT WAS ONLY 2 MILLION.

20 PART OF THE REASON WAS BECAUSE ALTHOUGH
21 I'M NOT OFFERING AN OPINION THAT THERE ARE MARKET
22 ALTERNATIVES, I CONSERVATIVELY SAID, WELL, I'M JUST
23 GOING TO ASSUME AND ACCEPT THAT SAMSUNG'S OTHER
24 PRODUCTS AND THAT EVERY OTHER MARKET PARTICIPANT IS
25 A MARKET ALTERNATIVE.

1 Q COULD YOU EXPLAIN TO US THE EVIDENCE THAT YOU
2 FOUND WHEN YOU LOOKED AT THIS QUESTION.

3 A I DID TWO, TWO RESTRICTIONS. ONE, I, I LOOKED
4 AT THE TIME PERIOD AND I TOOK THAT TWO YEARS,
5 BASICALLY THE TWO-YEAR TIME PERIOD OF 2010, 2011,
6 2012, AND I SHRUNK THAT -- SORRY -- I SHRUNK THAT
7 DOWN. I ASSUMED THAT WITH EACH PATENT OR EACH
8 TRADE DRESS THAT SAMSUNG WOULD SIMPLY NOT LEAVE THE
9 MARKET, THAT THEY WOULD DO SOMETHING TO TRY TO GET
10 BACK INTO THE MARKET.

11 SO I LIMITED MY CALCULATIONS TO LOST
12 PROFITS TO ONLY A TIME PERIOD WHICH WOULD BE
13 ASSOCIATED WITH THE TIME SAMSUNG WOULD BE OUT OF
14 THE MARKET.

15 SO DEPENDING ON THE INTELLECTUAL
16 PROPERTY, IT WAS AS LITTLE AS ONLY ONE MONTH OR AS
17 HIGH AS EIGHT MONTHS, BUT NOT THE ENTIRE TIME
18 PERIOD. SO THAT 22 MILLION SHRINKS DOWN TO EIGHT
19 MONTHS OR ONE MONTH, RIGHT, BASED ON THAT.

20 AND THERE WAS ONE OTHER THING.

21 Q YES, THE MARKET SHARE ALLOCATION. WHAT ARE
22 YOU REFERRING TO THERE?

23 A MARKET SHARE ALLOCATION, THERE WAS A FURTHER
24 CUT. ONCE I GOT IT DOWN TO JUST THAT TIME PERIOD,
25 THE SALES THAT WOULD HAVE BEEN MADE IN THAT TIME

1 PERIOD, THEN I DISTRIBUTED THOSE SALES TO ALL THE
2 MARKET PARTICIPANTS.

3 I ONLY PUT IN APPLE'S PILE THEIR MARKET
4 SHARE. I GAVE BACK TO SAMSUNG THEIR MARKET SHARE.
5 I GAVE NOKIA THEIR MARKET SHARE. I GAVE MOTOROLA
6 THEIR MARKET SHARE.

7 SO THAT CARVED IT DOWN FURTHER AND THAT'S
8 WHY I ONLY END UP WITH 2 MILLION OUT OF THAT 22
9 MILLION THAT QUALIFY FOR LOST PROFITS.

10 Q WHAT WAS THE THIRD FACTOR YOU CONSIDERED IN
11 DETERMINING HOW MANY OF THE 22 MILLION UNITS
12 QUALIFIED FOR LOST PROFITS?

13 A CAPACITY. COULD APPLE -- DID THEY HAVE THE
14 FACILITIES TO ACTUALLY PRODUCE THIS AND SELL THIS?

15 Q AND WHAT DID YOU FIND?

16 A I FOUND THAT THEY DID. THERE WERE -- THERE
17 WERE LIMITATIONS, AS -- BECAUSE THE DEMAND WAS SO
18 HIGH, FROM TIME TO TIME, APPLE DID HAVE
19 CONSTRAINTS.

20 BUT WITH RESPECT TO THIS 2 MILLION
21 INCREMENTAL UNITS OVER THE TWO YEAR TIME PERIOD,
22 APPLE, I CONCLUDED, DID HAVE THE ABILITY TO MAKE
23 THOSE SALES.

24 Q WHEN YOU SAY "THE ABILITY TO MAKE THOSE
25 SALES," ARE YOU REFERRING TO MANUFACTURING

1 CAPACITY?

2 A MANUFACTURING AND MARKETING CAPACITY. IT
3 COULD BE EITHER OR BOTH.

4 Q AND WHAT WAS THE FOURTH FACTOR YOU USED IN
5 DETERMINING WHETHER UNITS QUALIFIED FOR LOST
6 PROFITS REMEDY?

7 A IT'S JUST A CALCULATION OF APPLE'S PROFITS,
8 AND I WAS ABLE TO CALCULATE HOW MUCH APPLE MAKES ON
9 EACH ONE OF ITS SMARTPHONES OR TABLETS. AND ONCE
10 AGAIN, IT'S SIMPLE MULTIPLICATION, TIMES 2 MILLION
11 UNITS GAVE ME MY LOST PROFITS.

12 Q LET'S GO BACK TO SLIDE 34B.62. IF YOU HAD NOT
13 CONCLUDED THAT 2 MILLION OF THE DEVICES DID QUALIFY
14 FOR LOST PROFIT DAMAGES, WHAT WOULD HAVE CHANGED IN
15 YOUR ULTIMATE CONCLUSION?

16 A WE WOULD JUST SLIDE THOSE PHONES UP BECAUSE
17 THEY'RE ENTITLED -- UNDER THE ASSUMPTION THAT
18 THEY'RE INFRINGING, THEY'RE GOING TO GET SOME FORM
19 OF DAMAGE. SO I SLIDE IT UP TO SAMSUNG'S
20 PROFITS -- I'M NOT DOUBLE COUNTING -- AND THE
21 RESULT IS, I THINK WE CAN SHOW, WE DON'T HAVE ANY
22 LOST PROFITS, BUT THE INFRINGING PROFITS NOW GOES
23 UP TO \$2.481 BILLION.

24 Q LET'S GO BACK TO YOUR ORIGINAL APPROACH IN
25 WHICH YOU HAVE PHONES AND TABLETS IN ALL THREE

1 CATEGORIES, AND LET ME ASK YOU ABOUT THE LAST
2 CATEGORY, THE REASONABLE ROYALTY CATEGORY.

3 FIRST, COULD YOU EXPLAIN TO THE JURY IN
4 CONCEPT WHAT IS MEANT BY A REASONABLE ROYALTY?

5 A YES. I HAVE A SIMPLE LITTLE SLIDE THAT HELPS.

6 Q 34B.42, PLEASE.

7 A YES. A ROYALTY PAYMENT IS, IT'S JUST LIKE, AS
8 THE FIRST EXAMPLE, RENT. SO IF YOU DECIDE TO RENT
9 OUT YOUR HOUSE OR IF YOU HAVE AN APARTMENT AND YOU
10 WANT TO RENT IT, THAT'S YOUR ASSET. YOU OWN THAT.
11 IT'S A TANGIBLE ASSET. IF SOMEBODY ELSE IS GOING
12 TO USE IT, YOU WANT TO BE PAID FOR IT. SO THEY PAY
13 YOU RENT.

14 Q LET ME STOP YOU RIGHT THERE. UNDER YOUR REAL
15 ESTATE COLUMN ON THIS GRAPHIC, YOU HAVE WHAT LOOKS
16 LIKE A PICTURE OF TWO HANDS SHAKING. WHY DO YOU
17 HAVE THAT THERE?

18 A WELL, IN THE TWO EXAMPLES, REAL ESTATE AND
19 MINERAL RIGHTS, THE PARTIES GET TOGETHER AND
20 ACTUALLY AGREE.

21 BUT HERE, WITHIN THE CONTEXT OF THE
22 LITIGATION, THE REASON WE'RE ALL HERE,
23 UNFORTUNATELY, IS THE TWO PARTIES HAVEN'T AGREED.
24 THEY HAVEN'T SHOOK HANDS AND AGREED. SO WE DON'T
25 HAVE AN AGREEMENT.

1 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 BY APPLE TO PRESENT TO THE JURY, FOR EXAMPLE, WHAT
2 WOULD BE YOUR OPINION OF THE DAMAGES IF IT WAS JUST
3 A BOUNCE BACK INFRINGEMENT?

4 A NO.

5 Q HOW ABOUT IF IT WAS -- I'M TRYING TO THINK OF
6 THE PATENT NOW -- HIT TO ZOOM AND THEN HIT
7 SOMEWHERE ELSE TO CENTER AND ZOOM?

8 A NO.

9 Q I'VE GOT THE LIST HERE. THERE'S THE ONE WHERE
10 YOU, YOU USE ONE FINGER FOR SCROLLING AND THEN
11 THERE'S A PARTICULAR METHOD BY WHICH YOU USE TWO
12 FINGERS TO ZOOM.

13 A YOU MAY BE MIXING THE THREE UTILITY PATENTS
14 UP, BUT I'M FOLLOWING YOU, AND THE ANSWER IS STILL
15 NO, I DIDN'T DO -- I WASN'T ASKED TO MAKE THAT
16 CALCULATION.

17 Q OKAY. AND THESE -- THE LOST PROFITS THAT --
18 THE LOST PROFITS IS A BIG PERCENTAGE OF YOUR
19 NUMBERS; RIGHT?

20 A NO, THEY'RE NOT.

21 Q I'M SORRY. YOU'RE ABSOLUTELY RIGHT.

22 THE INFRINGER'S PROFITS, SAMSUNG'S,
23 THAT'S A BIG PART OF THE NUMBER; RIGHT?

24 A THAT'S CORRECT.

25 Q AND, OF COURSE, YOU DON'T GET INFRINGER'S

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.

1 DESIGN, IS IT, AS IT'S BEING USED HERE?

2 A I DON'T KNOW.

3 Q BUT THAT'S ACTUALLY THE PART YOU WERE ASKED TO
4 LOOK AT. YOU SAID YOU UNDERSTOOD WHAT YOU WERE
5 ASKED TO LOOK AT, SO I JUST -- LOOKING AT THIS, YOU
6 REALIZE THAT THIS DOCUMENT, GIVEN WHERE IT'S COMING
7 FROM, WHICH IS THE HARDWARE PART OF THE COMPANY
8 THAT MAKES THESE BRAINS, PROCESSORS, IT'S
9 DISTINGUISHING BETWEEN THE DESIGN AND THE HARDWARE?
10 IT'S DISTINGUISHING; RIGHT?

11 A IT'S LISTED SEPARATELY, YES.

12 Q SO THEY'RE TALKING ABOUT DIFFERENT THINGS?

13 A I DON'T KNOW.

14 (PAUSE IN PROCEEDINGS.)

15 MR. PRICE: MY BRAIN TRUST TELLS ME I'M
16 DONE. THANK YOU.

17 THE WITNESS: THANK YOU.

18 THE COURT: ALL RIGHT. THE TIME IS NOW
19 1:30.

20 IS THERE GOING TO BE ANY RE-REDIRECT OR
21 NO?

22 MS. KREVANS: THERE IS VERY BRIEF, YOUR
23 HONOR.

24 THE COURT: OKAY. IT'S 1:40. GO AHEAD,
25 PLEASE.

1 MS. KREVANS: MR. LEE, WOULD YOU PUT UP
2 THAT SAME PAGE? I THINK THAT WAS EXHIBIT 34 AT
3 PAGE 38.

4 **FURTHER REDIRECT EXAMINATION**

5 BY MS. KREVANS:

6 Q MY FIRST QUESTION IS A VERY QUICK ONE,
7 MR. MUSIKA. THE LINE OF -- THIS SAMSUNG DOCUMENT
8 THAT MR. PRICE JUST POINTED YOU TO THAT STARTS WITH
9 THE WORDS "SEAMLESS INTEGRATION OF HARDWARE," WHAT
10 DOES THE WHOLE LINE ACTUALLY SAY?

11 A "SEAMLESS INTEGRATION OF HARDWARE, SW," WHICH
12 I UNDERSTAND TO BE SOFTWARE, "AND CONTENTS USING
13 ITUNES."

14 Q OKAY. AND COULD YOU GO BACK TO EXHIBIT 25A-1
15 IN YOUR BINDER?

16 AND MR. LEE, COULD YOU SHOW US THE SECOND
17 PAGE OF THAT EXHIBIT?

18 COULD YOU REMIND US WHAT'S SHOWN ON THIS
19 PAGE?

20 A YES. SO THIS IS THE DAMAGE SUMMARY, AND THIS
21 IS THE PAGE THAT SETS FORTH THE NOTICE THAT I WAS
22 RECITING.

23 Q OKAY. AND YOU WERE TRYING TO REMEMBER A DATE
24 JUST FROM MEMORY. CAN YOU TELL US WHAT THIS PAGE,
25 WHAT THE ACTUAL DATE WAS IN AUGUST THAT YOU USED

1 FOR NOTICE FOR THINGS OTHER THAN UNREGISTERED TRADE
2 DRESS?

3 A YES. IT'S LISTED THERE. IT IS AUGUST, BUT
4 IT'S AUGUST 4TH, 2010. I THINK I PROBABLY SAID
5 AUGUST 11TH INCORRECTLY. BUT IT'S AUGUST 4TH,
6 2010.

7 MS. KREVANS: THANK YOU VERY MUCH.

8 THE COURT: ALL RIGHT. IT'S 1:42. ANY
9 RE-RE-CROSS-EXAMINATION?

10 MR. PRICE: NO, YOUR HONOR.

11 THE COURT: ALL RIGHT. MAY THIS WITNESS
12 BE EXCUSED?

13 MS. KREVANS: HE MAY SUBJECT TO RECALL,
14 YOUR HONOR.

15 THE COURT: ALL RIGHT. YOU'RE EXCUSED
16 SUBJECT TO RECALL.

17 THE WITNESS: THANK YOU, YOUR HONOR.

18 MR. MCELHINNY: YOUR HONOR, SUBJECT TO
19 STIPULATION AND ORDER OF THE COURT AS TO ORDER AND
20 PRODUCTION OF PROOF, WHICH RESERVES OUR CONTRACT,
21 ANTITRUST, UNFAIR COMPETITION AND DECLARATORY
22 JUDGMENT ACTIONS, SUBJECT TO THAT STIPULATION, WE
23 REST OUR CASE-IN-CHIEF.

24 THE COURT: OKAY. ALL RIGHT.

25 SO LADIES AND GENTLEMEN OF THE JURY, WE

1 HAVE TO TAKE CARE OF SOMETHING OUTSIDE YOUR
2 PRESENCE, SO I'M GOING TO EXCUSE YOU FOR NOW.

3 AGAIN, PLEASE KEEP AN OPEN MIND. PLEASE
4 DON'T DISCUSS THE CASE WITH ANYONE AND PLEASE DON'T
5 DO ANY OF YOUR OWN RESEARCH.

6 YOU'RE FREE TO TAKE YOUR JURY BOOKS WITH
7 YOU INTO THE JURY ROOM. OKAY? THANK YOU.

8 (WHEREUPON, THE FOLLOWING PROCEEDINGS
9 WERE HELD OUT OF THE PRESENCE OF THE JURY:)

10 THE COURT: ALL RIGHT. THANK YOU. LET'S
11 GO AHEAD WITH THE RULE 50 MOTION, PLEASE.

12 GO AHEAD.

13 MR. ZELLER: THANK YOU, YOUR HONOR.

14 SAMSUNG DOES MOVE UNDER RULE 50 AT THIS
15 TIME FOR APPLE'S FAILURE TO PROVE ITS CLAIMS, AND
16 WE BELIEVE THIS APPLIES TO EVERYTHING THAT APPLE
17 HAS ASSERTED IN THIS CASE.

18 FOR THE UTILITY PATENTS, APPLE HAS NOT
19 SUBMITTED EVIDENCE LIMITATION-BY-LIMITATION SHOWING
20 INFRINGEMENT. THEY DIDN'T EVEN ATTEMPT TO DO THAT
21 WITH THEIR EXPERTS, AND WE BELIEVE THAT THAT ALONE
22 SHOWS -- ALSO, WE DID SHOW ON CROSS-EXAMINATION
23 THAT THESE WERE NOT INFRINGING.

24 THE SAME APPLIES FOR THE DESIGN PATENTS.
25 APPLE HAS FAILED TO PROVE INFRINGEMENT.

1 IT HAS ALSO FAILED TO TAKE INTO ACCOUNT
2 THE LACK OF FUNCTIONALITY, OR THE FUNCTIONALITY OF
3 THE DESIGNS.

4 AND ALSO ON TRADE DRESS, IT HAS FAILED TO
5 PROVE THAT TRADE DRESS IS FAMOUS AND THAT IT'S BEEN
6 INFRINGED AND THAT IT'S NOT FUNCTIONAL.

7 SO WE MOVE ON ALL THE ELEMENTS OF THE
8 CLAIMS, YOUR HONOR.

9 WITH RESPECT TO DAMAGES, THERE'S NO
10 APPORTIONMENT THAT'S BEEN ESTABLISHED. THERE HAS
11 BEEN NO PRODUCT-BY-PRODUCT DAMAGES THAT HAVE BEEN
12 BROKEN OUT, AND WE BELIEVE THAT THAT'S INSUFFICIENT
13 AS A MATTER OF LAW.

14 THERE'S NO CAUSATION THAT'S BEEN PROVEN,
15 AND ALSO THEY HAVE -- EXCUSE ME -- ONLY HAD
16 DUPLICATIVE DAMAGES THAT THEY'VE ASSERTED.

17 AND SO FOR ALL THE SAME REASONS, WE
18 BELIEVE THE JUDGMENT IS ALSO WARRANTED ON DAMAGES.

19 EXCUSE ME.

20 THE COURT: OKAY.

21 MR. ZELLER: AND ALSO, WE MOVE ON THE
22 FAILURE TO PROVE WILLFUL INFRINGEMENT.

23 THE COURT: ALL RIGHT.

24 MR. ZELLER: AND THEN FINALLY, YOUR
25 HONOR, ALSO ON THE DAMAGES FRONT, JUST TO BE MORE

1 SPECIFIC, THERE WAS A FAILURE TO REALLY ACCOUNT FOR
2 REASONABLE ROYALTY, AND THEY ALSO FAILED TO PROVE
3 THAT THERE WAS SUFFICIENT DEMAND FOR, AND CAPACITY
4 FOR APPLE PRODUCTS.

5 THE COURT: OKAY. ANYTHING ELSE THAT
6 YOU'D LIKE TO STATE ON THE RECORD?

7 MR. ZELLER: WELL, YOUR HONOR, WE WOULD,
8 OF COURSE, LIKE THE OPPORTUNITY TO OUTLINE THESE IN
9 WRITING. I MEAN, THE COURT DID SAY WE WOULD DO
10 THAT EARLIER.

11 THE COURT: I HAVE REVIEWED -- EVERY TIME
12 I CHECK OUR ECF, THERE ARE, LIKE, THREE OR FOUR
13 MORE MOTIONS THAT ARE FILED, AND I NEVER HAVE
14 BRIEFING ON RULE 50, NEVER. NEVER, EVER. I'VE
15 NEVER HAD BRIEFING ON RULE 50 BEFORE.

16 AND JUST IN TERMS OF KEEPING UP WITH ALL
17 OF THE MOTIONS THAT HAVE BEEN FILED, TO SAY NOW DO
18 ANOTHER ORDER ON RULE 50 WHEN I NEVER HAVE BRIEFING
19 ON RULE 50 MOTIONS, I'M SORRY, I JUST DON'T THINK I
20 CAN.

21 MR. ZELLER: THIS IS, OF COURSE, AN
22 IMPORTANT MOTION, YOUR HONOR.

23 THE COURT: UNDERSTOOD.

24 MR. ZELLER: WE OBVIOUSLY WANT TO DO IT
25 FOR PRESERVATION PURPOSES, BUT THE COURT IS

1 OBVIOUSLY NOT INCLINED TO GRANT IT IN ANY EVENT, WE
2 WOULD ASK FOR THAT OPPORTUNITY.

3 OBVIOUSLY APPLE IS GOING TO ARGUE --
4 WE'RE TRYING TO MAKE OUR GROUNDS SUFFICIENTLY BROAD
5 AT THIS MOMENT MOVING ORALLY IN ORDER TO MAKE SURE
6 THAT WE'VE COVERED EVERYTHING.

7 BUT WE KNOW, OF COURSE, APPLE IS GOING TO
8 ARGUE LATER THERE'S SOME SORT OF PROCEDURAL
9 DEFAULT.

10 OBVIOUSLY OUR VIEW IS THEY HAVE NOT
11 PROVEN THEIR CASE, AND THEY HAVEN'T PROVEN IT AS TO
12 ANY OF THE ELEMENTS THAT ARE REQUIRED HERE.

13 THE COURT SAW THEIR WITNESSES. THEY PUT
14 THEM UP, FOR EXAMPLE, AND THEY SAID "DID YOU DO A
15 SURVEY?" "YES, I DID. THIS IS WHAT IT SHOWED."

16 WE DON'T THINK THAT THAT IS, AS A MATTER
17 OF LAW, SUFFICIENT IN ORDER TO CARRY THEIR BURDEN,
18 AND WE WOULD BE ABLE TO OUTLINE THESE THINGS AND
19 PROVIDE CITATIONS AT LEAST TO THE EVIDENCE, YOUR
20 HONOR, THAT WE BELIEVE SUPPORTS THAT.

21 BUT --

22 THE COURT: I'M UNDERSTANDING YOUR MOTION
23 TO BE MOVING ON ABSOLUTELY EVERY CLAIM THAT APPLE
24 HAS MADE THAT A REASONABLE JURY WOULD NOT HAVE
25 SUFFICIENT EVIDENCE TO RULE IN THEIR FAVOR.

1 SO I AM ASSUMING THAT YOU ARE, AND I HEAR
2 YOU, MOVING ON EVERY SINGLE CLAIM THAT APPLE HAS
3 MADE.

4 MR. ZELLER: THAT IS CORRECT, YOUR HONOR.
5 CERTAINLY WE WILL -- WE DO MOVE ON THAT BASIS.

6 LET ME GIVE SOME SPECIFIC EXAMPLES, YOUR
7 HONOR.

8 FOR EXAMPLE, THEY INTRODUCED ABSOLUTELY
9 NO EVIDENCE WITH RESPECT TO PARTICULAR PHONES THAT
10 THEY CLAIM WERE SOLD IN THE UNITED STATES. THERE
11 IS NO EVIDENCE, FOR EXAMPLE, AS TO THE GALAXY ACE,
12 WHICH IS JX 1030, THE GALAXY S I9000, JX 1007, OR
13 THE GALAXY S II I9100, WHICH IS JX 1032. THERE'S
14 ZERO EVIDENCE THAT'S BEEN ADDUCED IN THIS CASE THAT
15 THOSE HAVE BEEN SOLD IN THE UNITED STATES. THEY
16 REPRESENTED THAT THEY WERE. THEY PROVIDED NO
17 EVIDENCE.

18 AND I CAN GO THROUGH A MUCH LONGER LIST
19 OF THESE KINDS OF PARTICULARS, YOUR HONOR. WE HAD
20 UNDERSTOOD WE WERE GOING TO DO THIS IN WRITING, AND
21 SO WHEN THE COURT ASKED, IS THERE ANYTHING FURTHER
22 WE WANT TO SAY, THERE IS MUCH MORE WE WANT TO SAY.

23 BUT WE THINK THAT IT'S MORE EFFICIENT TO
24 SIMPLY PUT IT IN WRITING. I CAN GO DOWN THIS LIST
25 AND I'M CERTAINLY HAPPY TO DO IT NOW.

1 THE COURT: DO IT NOW. I'LL GIVE YOU
2 FIVE MINUTES. GO AHEAD.

3 MR. ZELLER: YOUR HONOR, WITH ALL
4 RESPECT, FIVE MINUTES IS NOT ENOUGH WHERE SOMEONE
5 IS ASKING FOR TWO AND A HALF BILLION DOLLARS ON A
6 WHOLE HOST OF CLAIMS.

7 THE COURT: WELL, WHY DON'T YOU HAVE
8 WHATEVER YOU HAVE. GO AHEAD. I'M GIVING YOU AN
9 OPPORTUNITY TO MAKE YOUR RECORD. WHATEVER YOU
10 WOULD LIKE, GO AHEAD.

11 MR. ZELLER: I MENTIONED THAT THERE WAS
12 NO EVIDENCE THAT WAS PROVIDED AS TO CERTAIN DEVICES
13 BEING SOLD IN THE UNITED STATES BY SAMSUNG.

14 IN ADDITION, APPLE PRESENTED NO EVIDENCE
15 THAT SHOWED THAT THE GEM, THE SAMSUNG GEM PHONE,
16 WHICH IS JX 1020, INFRINGES THE '381 PATENT.

17 AND, IN FACT, THAT WAS NEVER DISCLOSED IN
18 THEIR LOCAL PATENT CONTENTIONS AS REQUIRED.

19 THERE'S NO EVIDENCE OF ACTIVE INDUCEMENT
20 BY SAMSUNG IN THIS CASE.

21 ALL THAT HAS BEEN ADDUCED IN THIS CASE SO
22 FAR BY APPLE IS THAT SAMSUNG, THE PARENT, WAS
23 AWARE.

24 BUT THAT IS INSUFFICIENT AS A MATTER OF
25 LAW FOR ACTIVELY INDUCING INFRINGEMENT.

1 AS WE MENTIONED EARLIER, OF COURSE, THERE
2 IS NO EVIDENCE THAT APPLE HAS MET OR PROVEN
3 DECEPTIVE SIMILARITY IN THE CONTEXT OF PURCHASING
4 FOR THE DESIGN PATENTS AS REQUIRED.

5 AS A MATTER OF FACT, APPLE'S EXPERTS
6 ACKNOWLEDGED THAT THAT IS NOT THE ANALYSIS THAT
7 THEY DID. THEY DIDN'T EVEN ATTEMPT TO APPLY THE
8 PROPER LEGAL STANDARD UNDER THE LAW.

9 IN FACT, THE ONLY WITNESS WHO TESTIFIED
10 ABOUT THE HARDWARE DESIGN PATENT SIMILARITIES WAS
11 PETER BRESSLER, AND HE SPECIFICALLY ACKNOWLEDGED
12 THAT IT WAS HIS UNDERSTANDING THAT IT WAS NOT
13 NECESSARY THAT THE SIMILARITY BE DECEPTIVE.

14 OF COURSE, THE COURT IS AWARE THAT UNDER
15 GORHAM, THE GORHAM STANDARD AS ARTICULATED BY THE
16 SUPREME COURT AND AS CONFIRMED BY EGYPTIAN GODDESS,
17 APPLE HAS TO PROVE THAT THERE -- THAT THE
18 SIMILARITY IS SUCH THAT IT WOULD DECEIVE THE
19 ORDINARY OBSERVER IN THE PURCHASING CONTEXT.

20 AND MR. BRESSLER ACKNOWLEDGED THAT THAT
21 WAS NOT THE STANDARD HE APPLIED.

22 IN FACT, AGAIN, HE WAS THE ONLY PERSON
23 WHO OFFERED ANY TESTIMONY ON THESE ALLEGED
24 SIMILARITIES.

25 APPLE DID, OF COURSE, OFFER VARIOUS

1 HEARSAY BLOG STATEMENTS AND PRESS REPORTS, BUT THE
2 COURT HAS SAID THAT THAT IS NOT ADMISSIBLE FOR THE
3 TRUTH, SO IT CANNOT BE RELIED UPON BY APPLE TO
4 PROVE A SUBSTANTIAL SIMILARITY.

5 ALSO, MR. BRESSLER ACKNOWLEDGED HE HAD NO
6 REAL WORLD EVIDENCE OF ANY KIND OF DECEPTION OR
7 SIMILARITIES BETWEEN THE DESIGNS.

8 IN ADDITION, THERE WERE DIFFERENCES THAT
9 WERE SHOWN WITH RESPECT TO THE PRODUCTS AT ISSUE
10 THAT ALSO SHOWED THAT THEY ARE NOT INFRINGED. I
11 CAN RECITE AS MUCH AS THE COURT WOULD LIKE ON THAT,
12 BUT AN EXAMPLE WOULD BE WITH RESPECT TO THE GALAXY
13 10.1.

14 MR. STRINGER TESTIFIED THAT AN IMPORTANT
15 ASPECT OF THIS DESIGN WAS THAT IT WAS A SINGLE
16 VESSEL ON THE BACK.

17 WE DON'T MEET THAT LIMITATION. WE DO NOT
18 PRACTICE THAT, AND THAT IS UNDISPUTED. IT'S NOT A
19 SINGLE VESSEL WHEN YOU'RE TALKING ABOUT THE GALAXY
20 TAB 10.1. IT IS A DIFFERENT DESIGN.

21 AND THERE HAS BEEN NO REBUTTAL TO THAT
22 POINT WHATSOEVER.

23 SAME THING WITH RESPECT TO THE HARDWARE
24 DESIGNS FOR WHAT WE AT LEAST SHORTHAND CALL THE
25 SMARTPHONES.

1 MR. STRINGER TESTIFIED THAT AN INTEGRAL
2 PART OF WHAT WAS NEW AND ORIGINAL ABOUT THOSE
3 DESIGNS WAS THAT THEY WERE FLAT.

4 SAMSUNG DOES NOT HAVE THAT SAME DESIGN,
5 AND AGAIN, THAT IS UNDISPUTED.

6 WITH RESPECT TO THE '305 DESIGN PATENTS,
7 ESSENTIALLY IT'S THE SAME STORY.

8 DR. KARE WAS THE WITNESS WHO TESTIFIED
9 ABOUT THAT DESIGN PATENT. SHE DID NOT, AND DID NOT
10 EVEN ATTEMPT, TO APPLY THE GORHAM DECEPTION IN
11 PURCHASING STANDARD.

12 IN FACT, ALL SHE OFFERED AN OPINION ON
13 WAS ESSENTIALLY THAT SHE THOUGHT THE OVERALL
14 SIMILARITIES WERE THERE, WHICH IS NOT SUFFICIENT
15 UNDER GORHAM.

16 IN ADDITION, SHE ALSO ACKNOWLEDGED THAT
17 SHE PAID NO ATTENTION AND DID NOT FACTOR INTO HER
18 ANALYSIS ANY KIND OF FUNCTIONALITY.

19 AND OF COURSE THE COURT IS AWARE THAT
20 FUNCTIONALITY HAS TO BE FACTORED OUT OF ANY KIND OF
21 ANALYSIS UNDER RICHARDSON, THE FEDERAL CIRCUIT
22 DECISION IN RICHARDSON, IN ORDER TO FIND
23 INFRINGEMENT.

24 AND ALSO, DR. KARE DID NOT EVEN CONSIDER
25 PRIOR ART, SHE ADMITTED THAT AS WELL, WHICH, OF

1 DID OTHERS WORK WITH YOU ON THE
2 DEVELOPMENT OF LAUNCHTILE?

3 A YES. I WORKED ON -- WITH A FEW PEOPLE. MY
4 PH.D. GRADUATE STUDENT, AMY KARLSON; RESEARCH
5 ASSISTANT, AARON CLAMAGE; AND THE WORK WAS DONE IN
6 COLLABORATION WITH MICROSOFT AND THEY SPONSORED THE
7 RESEARCH, THEY PAID FOR IT, SO I WORKED WITH
8 SOMEONE THERE NAMED JOHN SANGIOVANNI.

9 Q GENERALLY, WHAT LED YOUR TEAM TO COME ABOUT TO
10 DEVELOP LAUNCHTILE?

11 A WE WERE TRYING TO SOLVE TWO MAJOR PROBLEMS.
12 ONE WAS HOW TO FIT A LOT OF INFORMATION ON A SMALL
13 DEVICE; AND THE SECOND WAS TO DESIGN A USER
14 EXPERIENCE THAT PEOPLE COULD USE WITH JUST A SINGLE
15 HAND RATHER THAN TWO HANDS OR A STYLUS.

16 Q DID YOU SOLVE THOSE PROBLEMS?

17 A I BELIEVE WE DID.

18 Q TELL US HOW YOU DID IT, PLEASE.

19 A I HAD BEEN WORKED FOR ALMOST TEN YEARS AT THE
20 TIME ON AN INTERFACE APPROACH I CALLED ZOOMABLE
21 USER INTERFACES, AND WE APPLIED THAT TECHNIQUE TO
22 LAUNCHTILE.

23 Q OKAY. CAN YOU JUST GIVE US A SENTENCE OR TWO
24 ABOUT WHAT A ZOOMABLE USER INTERFACE IS.

25 A SURE. GENERALLY SPEAKING, IT'S AN INTERFACE

1 WHERE YOU PRESENT A BIG INFORMATION SPACE AND YOU
2 CAN ZOOM OUT TO GET SOME CONTEXT, AND ZOOM IN TO
3 LOOK A LITTLE CLOSER TO GET MORE DETAIL.

4 Q OKAY. WAS THIS THE FIRST TIME IN YOUR CAREER
5 THAT YOU WORKED WITH ZOOMABLE USER INTERFACES?

6 A NO. AS I SAID, I'VE BEEN DOING IT FOR A
7 WHILE. I THINK I STARTED IN 1993.

8 Q WHAT, WHAT TYPE OF DEVICE, IN VERY GENERAL
9 TERMS, WAS YOUR LAUNCHTILE PROGRAM DESIGNED TO RUN
10 ON?

11 A IT WAS DESIGNED IN GENERAL TO WORK ON ANY KIND
12 OF MOBILE TOUCHSCREEN DEVICE. IN PARTICULAR, WE
13 BUILT THIS, THIS PARTICULAR SOFTWARE TO RUN ON THE
14 MICROSOFT POCKET P.C. PLATFORM, AND WE WERE USING
15 OFTEN AN H-P IPAQ PDA.

16 Q IS THAT WHAT THIS IS?

17 A YES.

18 Q YOU'VE HAD EXPERIENCE WITH THIS DEVICE, THE
19 H-P IPAQ, SIR?

20 A YES.

21 Q LET ME JUST NOTE, I'M HOLDING UP WHAT'S BEEN
22 MARKED AS DX EXHIBIT 518. WE HAVE A SLIDE OF THIS
23 AND A VIDEO WE'RE GOING TO SHOW.

24 WHY DON'T WE PUT UP, RYAN, PLEASE, THE
25 SLIDE WHICH IS NUMBERED SDX 3951.001.

1 IS THIS THE SAME AS THE DEVICE I'M
2 HOLDING UP, EXHIBIT 518, DX 518, DOCTOR?

3 A YES, IT IS.

4 Q DO US A FAVOR. I WANT YOU TO NARRATE THE
5 VIDEO. OBVIOUSLY BEFORE WE START THE VIDEO AND
6 NARRATE IT, CAN YOU JUST TELL US GENERALLY WHAT'S
7 SHOWN ON THE SCREEN ON THE IPAQ DEVICE ITSELF?

8 A SURE. THIS IS THE LAUNCHTILE APPLICATION, AND
9 WHAT YOU'RE SEEING HERE IS WHAT WE CALLED AN
10 INTERACTIVE ZOOM SPACE.

11 IT IS A COLLECTION OF 36 TILES WHICH ARE,
12 YOU KNOW, INFORMATION SOURCES. YOU CAN SEE ON THE
13 BOTTOM RIGHT THERE'S SOME STOCK TILES. IN THE
14 MIDDLE, YOU MIGHT BE ABLE TO MAKE OUT THAT THERE'S
15 A LITTLE MAP, AND E-MAIL TILE, A CALENDAR, A PHONE.
16 THERE'S ALL KINDS OF INFORMATION SOURCES HERE.

17 AND THEN AS YOU'LL SEE IN THE VIDEO, YOU
18 WOULD -- YOU'LL BE ABLE TO SEE THAT YOU CAN ZOOM IN
19 AND OUT AND INTERACT WITH THESE FILES.

20 Q LET'S SHOW THE VIDEO, AND WHY DON'T YOU
21 NARRATE IT FOR US AS IT PLAYS. OKAY?

22 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN
23 OPEN COURT OFF THE RECORD.)

24 THE WITNESS: SURE. SO FIRST YOU CAN SEE
25 SOMEONE TOUCH THE VIDEO. IT ZOOMS INTO A REGION I

1 CALLED A ZONE.

2 YOU ZOOM IN FURTHER TO AN APPLICATION
3 TILE.

4 YOU CAN TOUCH THE BACK BUTTON. IT'LL
5 ZOOM OUT TO THAT MIDDLE ZONE LEVEL, AND YOU CAN
6 ZOOM OUT FURTHER BACK TO WHERE YOU STARTED WITH
7 WORLD VIEW IN THE ZOOM SPACE.

8 BY MR. DEFRANCO:

9 Q OKAY. AND I THINK THERE'S ANOTHER SLIDE THAT
10 GOES ALONG WITH THIS. THIS IS SDX 3951.003. CAN
11 YOU DESCRIBE GENERALLY WHAT'S SHOWN ON THIS SLIDE?

12 A SURE. SO THIS IS SHOWING YOU WHAT WE SAW ON
13 THE VIDEO. ON THE LEFT IS THAT WORLD VIEW WHERE WE
14 STARTED. THIS THE ZOOM SPACE THAT CONTAINS ALL OF
15 THE TILES.

16 YOU CAN TAP ON ANY ONE OF THOSE LITTLE
17 GROUPS OF FOUR TILES CALLED A ZONE, AND IF YOU TAP
18 IN THAT MIDDLE GROUP, THAT MIDDLE ZONE, THAT TAKES
19 YOU TO THE ZONE VIEW WHERE FOUR TILES ARE SHOWN.
20 THERE'S MORE INFORMATION DISPLAYED ABOUT EACH ONE.

21 YOU CAN THEN TAP AGAIN AND IT'LL TAKE YOU
22 INTO THE APPLICATION VIEW.

23 Q LET'S -- I WANT TO FOLLOW UP WITH A LITTLE
24 DETAIL ON SOME OF THE TERMS, SOME OF THE THINGS YOU
25 EXPLAINED TO US IN THIS DEVICE THAT USES

1 LAUNCHTILE. OKAY?

2 A OKAY.

3 Q YOU USED -- YOU TALKED ABOUT THE ZOOM SPACE
4 GENERALLY. WHAT IS THE ZOOM SPACE AGAIN, PLEASE?

5 A SO A ZOOM SPACE IS JUST A SINGLE COHERENT
6 COLLECTION OF TILES, IN THIS CASE 36 TILES, WHERE
7 YOU COULD ZOOM IN AND OUT TO OR, AS YOU'LL SEE,
8 OTHER WAYS TO ACCESS THE INFORMATION.

9 Q OKAY. NOW, THIS, THIS WAS A -- THE SOURCE
10 CODE -- THE CODE ON THIS, FOR LAUNCHTILE, THAT'S
11 SOMETHING THAT YOU ACTUALLY SUPERVISED?

12 A YES. I CREATED THE -- I SUPERVISED THE
13 DEVELOPMENT OF THIS APPLICATION.

14 Q WITH THOSE FOLKS YOU MENTIONED EARLIER THIS
15 MORNING?

16 A YES.

17 Q AND FOR EACH ONE OF THOSE TILES, YOU GAVE US
18 SOME EXAMPLES EARLIER ABOUT E-MAIL APPLICATION, THE
19 ABILITY TO OBTAIN STOCK, I THINK I SAW NASCAR IN
20 THE CORNER.

21 WAS THERE ACTUALLY OPERATING CODE
22 UNDERLYING EACH ONE OF THOSE TILES IN THE
23 LAUNCHTILE PROGRAM AT THAT TIME?

24 A SO, YOU KNOW, EVERY TILE FULLY WAS CAPABLE OF
25 BEING ZOOMED IN AND OUT OF AND NAVIGATING WITHIN

1 THE ZOOM SPACE, BUT THE TILES THEMSELVES, IF YOU
2 WENT ALL THE WAY INTO THE APPLICATION VIEW, NO,
3 MANY OF THEM -- MOST OF THEM WERE NOT IMPLEMENTED
4 BECAUSE THE GOAL WAS TO FOCUS NOT ON THE
5 INTERACTING WITH THE DETAILED DATA, BUT WAS TO
6 EXPERIENCE THE NAVIGATION.

7 MR. DEFRANCO: YOUR HONOR, AT THE MOMENT,
8 BEFORE I FORGET, I'D LIKE TO MOVE IN DX 518 AND
9 SLIDES 3951.001, .002 AND .003.

10 THE COURT: ANY OBJECTION?

11 MR. JACOBS: OBJECT TO .003, YOUR HONOR.
12 IT CONTAINS ARGUMENTATIVE CONTENT ON IT RELATED TO
13 CLAIM INTERPRETATION AND THIS WITNESS IS NOT
14 QUALIFIED TO ARGUE THAT.

15 MR. DEFRANCO: YOUR HONOR, I'LL REPRESENT
16 THE WITNESS IS NOT GOING TO -- THIS WAS A SLIDE
17 THAT WAS ALSO USED IN OPENING. THAT'S WHY WE
18 WANTED TO USE IT FOR CONTINUITY.

19 BUT THE WITNESS --

20 THE COURT: THE FIRST BOX AND THE SECOND
21 BOX SHOULDN'T BE ON THIS, SO THAT'S DENIED.

22 BUT DX 518 IS ADMITTED AND SDX 3951.001
23 AND .002 ARE BOTH ADMITTED.

24 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBERS
25 518, 3951.001, 3951.002, HAVING BEEN

1 PREVIOUSLY MARKED FOR IDENTIFICATION,
2 WERE ADMITTED INTO EVIDENCE.)

3 MR. JACOBS: JUST TO BE CLEAR, YOUR
4 HONOR, YOU SAID DENIED, BUT THE OBJECTION IS
5 SUSTAINED?

6 THE COURT: YES, .003 IS NOT COMING INTO
7 EVIDENCE.

8 BY MR. DEFRANCO:

9 Q LET'S TALK ABOUT -- YOU MENTIONED THE ZOOM
10 FUNCTIONALITY?

11 MR. JACOBS: YOUR HONOR, CAN WE HAVE THAT
12 TAKEN DOWN?

13 THE COURT: THAT'S FINE.

14 BY MR. DEFRANCO:

15 Q ZOOM FUNCTIONALITY, DOCTOR, CAN YOU EXPLAIN
16 HOW THE APPEARANCE OF A TILE -- WHAT HAPPENED TO
17 THE APPEARANCE OF A TILE IN YOUR LAUNCHTILE PROGRAM
18 AS YOU WOULD ZOOM IN ON A TILE?

19 A SURE. SO AS YOU ZOOM IN, YOU GET MORE AND
20 MORE SPACE AVAILABLE FOR EACH TILE. AND SO RATHER
21 THAN JUST PURELY GEOMETRICALLY MAKING THE TILES
22 LARGER, WE WOULD USE THE SPACE TO SHOW MORE
23 INFORMATION.

24 SO IN THE E-MAIL TILE, FOR EXAMPLE, WHEN
25 YOU ZOOMED OUT, IT WOULD JUST SAY SOMETHING LIKE 11

1 UNREAD, MEANING 11 UNREAD MESSAGES. AND IF YOU
2 ZOOM IN FURTHER, IT WOULD SHOW SOME INFORMATION
3 ABOUT THE E-MAIL IN YOUR INBOX; AND THEN WHEN YOU
4 ZOOMED IN ALL THE WAY, THEN YOU GOT A FULL LIST OF
5 E-MAIL MESSAGES, WHO THEY'RE FROM AND THEIR
6 SUBJECTS AND SO ON.

7 Q WAS THERE A REASON WHY YOU TEAM DECIDED TO
8 CHANGE THE APPEARANCE OF A TILE AS YOU ZOOMED IN ON
9 IT?

10 A YEAH. AS I SAID, USING PURE GEOMETRIC ZOOMING
11 WOULD HAVE WORKED, BUT THAT WAS VERY SIMPLE AND
12 WOULD NOT HAVE USED THE SCREEN SPACE VERY
13 EFFECTIVELY.

14 SO THE IDEA OF SHOWING DIFFERENT VISUAL
15 REPRESENTATIONS AS YOU GOT CLOSER WAS A NATURAL WAY
16 TO TAKE ADVANTAGE OF THE SPACE, AND ALSO THE KIND
17 OF THING I'D BEEN TALKING ABOUT IN MY RESEARCH FOR
18 TEN YEARS PREVIOUS.

19 Q IS THERE A NAME FOR THAT TYPE OF ZOOMING?

20 A YES. WE CALLED IT SEMANTIC ZOOMING.

21 Q AND AGAIN, THE DIFFERENCE BETWEEN GEOMETRIC
22 AND SEMANTIC ZOOMING?

23 A SO GEOMETRIC IS PURE VISUAL SCALING. YOU GET
24 CLOSER, IT GETS LARGER.

25 SEMANTIC ZOOMING IS AS IT GETS LARGER,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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