

EXHIBIT 1

1 UNITED STATES DISTRICT COURT
2 STATE OF CALIFORNIA SAN JOSE DIVISION

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4 APPLE INC., A CALIFORNIA
CORPORATION,
5 Plaintiff,

6 vs.

NO. 11-CV-01846-LHK

7 SAMSUNG ELECTRONICS CO.,
LTD., A KOREAN BUSINESS
8 ENTITY; SAMSUNG ELECTRONICS
AMERICA, INC., A NEW YORK
9 CORPORATION; SAMSUNG
TELECOMMUNICATIONS AMERICA,
10 LLC, A DELAWARE LIMITED
LIABILITY COMPANY,
11 Defendants.

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15 VIDEOTAPED DEPOSITION OF YORAM (JERRY) WIND
HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY
Philadelphia, Pennsylvania
16 Wednesday, November 7, 2012
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23 Reported by:
24 Maureen Broderick, RPR
25 JOB NO. 55261

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November 7, 2012

10:03 a.m.

Videotape deposition of YORAM (JERRY)
WIND, taken at Summit Court Reporter Incorporated,
1500 Walnut Street, 16th Floor Conference
Room, Philadelphia, Pennsylvania, before Maureen E.
Broderick, Registered Professional Reporter and
Notary Public in and of the Commonwealth of
Pennsylvania.

1 APPEARANCES

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BY: MICHAEL JUDE GALVIN, ESQUIRE

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12 ALSO PRESENT: Shankar Iyer, Cornerstone Research

Greg Gottlob, Videographer

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1 And, again, you're going to try to 10:25
2 determine, if it's a driver or not, will be 10:25
3 basically, what is the relative importance of 10:25
4 this? What is the relative importance compared 10:25
5 to the brand and the design, the look? 10:25

6 BY MR. KUWAYTI: 10:25

7 Q So you correct me if I'm wrong, but I 10:25
8 think what I hear you saying is that -- well, strike 10:25
9 that. Let me ask it a different way. 10:25

10 In the case of that BMW, we know 10:25
11 there are three, as I've described it, there are 10:25
12 three things that are leading me to purchase the 10:25
13 car; there is no one, sole factor that is leading me 10:25
14 to buy the car. You're saying that's your typical 10:26
15 experience? That's normally the case based on your 10:26
16 experience in the marketing field? 10:26

17 A I'm sorry. Typical experience is multiple 10:26
18 factors, not necessarily three. 10:26

19 Q Right. Okay. 10:26

20 A You're the one that qualified the three. 10:26
21 I'm saying that typically in most studies, consumer 10:26
22 behavior is driven by multiple factors. And the 10:26
23 factors are typically moving more and more towards 10:26
24 features, not -- I'm sorry, more and more away from 10:26
25 features, toward benefits, and toward total solution 10:26

1 and toward experience and away from features. 10:26

2 Features are actually, in increasing 10:26

3 number of studies, are becoming less and less 10:26

4 critical factors in consumer purchases behavior. 10:26

5 And whether you look at a combination of features, 10:26

6 services, benefits, solution, the experience, look 10:26

7 at the totality of this, consumer buying decision is 10:26

8 a combination of a number of these and rarely, if 10:27

9 ever, a factor of one factor, let alone one feature. 10:27

10 Q So if the test for driving consumer demand 10:27

11 were whether this one factor was the sole item 10:27

12 leading you to the -- leading a consumer to purchase 10:27

13 a product, that test would almost never be met? 10:27

14 MR. RAMOS: Object to the form. 10:27

15 THE WITNESS: I don't think I ever said 10:27

16 that the requirement needs to be a sole 10:27

17 determinant. 10:27

18 BY MR. KUWAYTI: 10:27

19 Q Right. 10:27

20 A I think from the beginning I emphasized 10:27

21 we're talking about relative importance. And the 10:27

22 question then is, is the relative importance strong 10:27

23 enough, significant enough to tilt the decision? So 10:27

24 when you're confronted with your two BMWs, the one 10:27

25 great brand, great look, superior technology, and 10:27

1 the second which is the same brand, the same look, 10:27
2 but somewhat less kind of sophisticated or less good 10:27
3 technology, you know, kind of -- does the difference 10:28
4 in technology between the two change your decision? 10:28
5 And you'll decide, no; now that the level of the 10:28
6 technology is below, it's not good enough and I will 10:28
7 now look at other options in the marketplace. 10:28

8 Q Right. And I think, I think I understand 10:28
9 what you're saying. But if the test for whether 10:28
10 something were driving consumer demand is whether 10:28
11 that was the sole determinant of the reason to 10:28
12 purchase the product, that test could almost never 10:28
13 be met in your experience? 10:28

14 MR. RAMOS: Object to the form. 10:28

15 THE WITNESS: I would find it kind of 10:28
16 strange to find a factor that is a sole 10:28
17 determinant. Perhaps with the exception I 10:28
18 mentioned before of a brand name, that a brand 10:28
19 name represents a totality of images, 10:28
20 associations, perceptions of a consumer of the 10:29
21 brand; and a consumer may decide, you know, BMW 10:29
22 is such a terrific brand; I will just go ahead 10:29
23 and buy a BMW kind of basically because, in 10:29
24 their mind, if you probe further, the BMW is a 10:29
25 very rich set of association with them. So if 10:29

1 you probe further for the association, you'll 10:29

2 find out; and one of them may be technology. 10:29

3 BY MR. KUWAYTI: 10:29

4 Q Okay. Did you try to do your own conjoint 10:29

5 analysis in this case? 10:29

6 A No. 10:29

7 Q Did anybody on your team try to do an 10:29

8 analysis or a conjoint analysis? 10:29

9 A Not that I know. 10:29

10 Q Are you aware of anybody on your team or 10:29

11 not on your team that tried to replicate all or any 10:29

12 part of Dr. Hauser's survey with survey respondents? 10:29

13 A Not that I know. 10:29

14 Q Did you consider doing another survey 10:29

15 to -- let me step back. 10:29

16 You point out in your report that, in 10:30

17 your opinion, there are a number of design flaws 10:30

18 with Dr. Hauser's survey. Did you consider doing 10:30

19 another survey in revising some of those flaws to 10:30

20 see what would happen? 10:30

21 A No. We didn't have time. This was very, 10:30

22 you know, time-compressed. And there was no way I 10:30

23 could have designed a survey in this time period. 10:30

24 Q About how much time would have been needed 10:30

25 to do that? 10:30

1 BY MR. KUWAYTI: 11:59

2 Q Do you know, Dr. Wind, whether at the time 11:59

3 Dr. Hauser constructed his survey these 11:59

4 design-arounds were in the marketplace? 11:59

5 A I don't know. I don't know the exact time 12:00

6 when they were lunched. 12:00

7 Q So your report actually does not make 12:00

8 mention of the fact that Dr. Hauser presented these 12:00

9 non-infringing alternatives in the video animations, 12:00

10 does it? 12:00

11 A Correct. Might have been oversight. I 12:00

12 focused primarily on what I considered to be the 12:00

13 most important factors, which are the screens, the 12:00

14 16 stimuli screens. 12:00

15 Q You didn't explain that to the Court, 12:00

16 that, in fact, when you say he didn't -- you say 12:00

17 here his non-infringing alternatives were to remove 12:00

18 the features from the device; you did not in your 12:00

19 report explain to the Court that, in fact, 12:00

20 non-infringing alternatives were presented for each 12:01

21 of the three patents in detail in video animations 12:01

22 to the respondents of this survey, right? 12:01

23 MR. RAMOS: Object to the form. 12:01

24 BY MR. KUWAYTI: 11:00

25 Q Yes or no? 12:01

1 A Correct. I did not. I did not mention 12:01
2 it. It can easily be corrected. But, again, my 12:01
3 understanding here and my view is that the two 12:01
4 problems that were mentioned before, that the 12:01
5 animation, we don't know how clear it was to the 12:01
6 respondent and, two, that the critical 16 screens 12:01
7 did not include any reference to alternative 12:01
8 designs. 12:01

9 (Reporter clarification.) 12:01

10 BY MR. KUWAYTI: 12:01

11 Q Yeah. And that's a different problem than 12:01
12 you what describe in your report because here we're 12:01
13 quibbling about whether Dr. Hauser needed to not 12:01
14 just show consumers a detailed animation at the 12:01
15 beginning and when he presented the 16 alternatives, 12:01
16 give them a link if they were confused and wanted to 12:01
17 go back. That's what we're arguing about, whether 12:02
18 that biased the survey, and not whether he just 12:02
19 failed to present non-infringing alternatives at 12:02
20 all. 12:02

21 MR. RAMOS: Object to form. 12:02

22 THE WITNESS: I lost you. I thought that 12:02
23 he did fail -- 12:02

24 BY MR. KUWAYTI: 12:02

25 Q Let's strike the question. 12:02

1 A -- that he did fail to mention the 12:02
2 alternative design in the 16 screens. The 12:02
3 16 screens do not mention, when people are looking 12:02
4 at it -- and if you think about this in term of a 12:02
5 typical respondent to an Internet patent all trying 12:02
6 to work as fast as they can to finish this, they're 12:02
7 focusing on the screens. And the screens basically 12:02
8 did not mention the alternatives. That's what I was 12:02
9 referring to. If it's unclear, I'd be glad to 12:02
10 modify it to include this comment on the animation. 12:02

11 BY MR. KUWAYTI: 12:02

12 Q And this could have been tested, right? 12:02
13 Dr. Hauser presented his results in March of this 12:02
14 year in his report, right? 12:02

15 A I did not see his report in March. I saw 12:02
16 it much later. 12:02

17 Q Right. But Dr. Sukumar was Samsung's 12:03
18 expert at trial and critiqued Dr. Hauser's survey, 12:03
19 correct? 12:03

20 A That's my understanding. 12:03

21 Q And Samsung has had the report since March 12:03
22 of 2012, correct? 12:03

23 A That's my understanding. 12:03

24 Q And one way to determine, rather than sit 12:03
25 here and have you speculate as to whether people 12:03

1 understood these animations or whether people were 12:03
2 willing to click on them and that somehow biased 12:03
3 things, one way we could have determined that is 12:03
4 somebody on the Samsung side could have replicated 12:03
5 Dr. Hauser's survey, but made that modification, 12:03
6 right? 12:03

7 MR. RAMOS: Object to form. 12:03

8 THE WITNESS: I'm not privy to Samsung 12:03
9 decisions what to do or not. What I can talk 12:03
10 about is when I got it, I got it very late. 12:03

11 And based on everything I know about 12:03
12 marketing research and consumer behavior and 12:04
13 respondents in Internet panels and the like is 12:04
14 that the main focus of the respondent most 12:04
15 likely would have been on the 16 screens and 12:04
16 not on the animation, and the animation had its 12:04
17 own impact, as we discussed before. 12:04

18 And the 16 screens are basically what I 12:04
19 was referring to in my report. 12:04

20 BY MR. KUWAYTI: 12:04

21 Q Do you know how long the average 12:04
22 respondent took to complete the survey? 12:04

23 A I recall seeing somewhere an estimate 12:04
24 beginning that said it would take about 25 minutes. 12:04
25 But I don't recall the actual time. I think it 12:04

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COMMONWEALTH OF PENNSYLVANIA :
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COUNTY OF PHILADELPHIA :

I, MAUREEN BRODERICK, Registered Professional Reporter - Notary Public, within and for the Commonwealth of Pennsylvania, do hereby certify that the proceedings, evidence, and objections noted are contained fully and accurately in the notes taken by me of the preceding deposition, and that this copy is a correct transcript of the same.

DATED: 11/7/12

MAUREEN BRODERICK

Registered Professional

Reporter - Notary Public