

Exhibit 2

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

APPLE INC., a California

corporation,

Plaintiff,

vs

SAMSUNG ELECTRONICS CO., LTD.,

a Korean business entity,

SAMSUNG ELECTRONICS AMERICA,

INC., a New York corporation,

et al.,

Defendants.

CASE NUMBER

11-CV-01846-LHK (PSG)

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HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

VIDEOTAPED DEPOSITION OF MARYLEE ROBINSON

REDWOOD CITY, CALIFORNIA

MONDAY, NOVEMBER 5, 2012

VOLUME I

REPORTED BY:

THOMAS J. FRASIK

RPR, CSR No. 6961

Job No. 1554075

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

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APPLE INC., a California  
corporation, CASE NUMBER  
Plaintiff, 11-CV-01846-LHK (PSG)  
vs  
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,  
Defendants.

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Confidential Videotaped Deposition of  
MARYLEE ROBINSON, VOLUME I, at 555 Twin Dolphin Drive,  
Fifth Floor, Redwood City, California, beginning at 1:01  
p.m., and ending at 4:47 p.m., on Monday, November 5,  
2012, before THOMAS J. FRASIK, Registered Professional  
Reporter, Certified Shorthand Reporter No. 6961.

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21 ALSO PRESENT:

22 GREGORY A. PINSONNEAULT, LitiNomics

23 RAMON PERAZA, Videographer

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REDWOOD CITY, CALIFORNIA

MONDAY, NOVEMBER 5, 2012, AT 1:01 P.M.

THE VIDEOGRAPHER: Good afternoon.

We are on the record at 1:01 p.m. on 13:01:36  
November 5th, 2012. This is the videotaped deposition  
of Marylee Robinson.

My name is Ramon Peraza, here with court  
reporter, Tom Frasier. We're here from Veritext National  
Deposition and Litigation Services at the request of 13:01:54  
counsel for the defendant. This deposition is being  
held at Quinn Emanuel in the City of Redwood Shores.  
The caption of the case is Apple Inc. versus Samsung  
Electronics Corporation.

Please note that audio and video recording will 13:02:08  
take place unless all parties have agreed to go off the  
record. Microphones are very sensitive and may pick up  
whispers, private conversations, and cellular  
interference.

At this time, counsel, please identify 13:02:20  
yourselves for the record and state whom you represent.

MR. ALDEN: Anthony Alden from Quinn Emanuel  
for Samsung. With me, from LitiNomics, is  
Greg Pinsonneault.

MR. OLSON: And Eric Olson of Morrison & 13:02:33



1 Foerster on behalf of Apple as well as on behalf of the  
2 witness.

3 THE VIDEOGRAPHER: The court reporter may now  
4 swear in the witness.

5  
6 MARYLEE ROBINSON,  
7 having been duly sworn, testified on her oath as  
8 follows:

9 EXAMINATION

10 BY MR. ALDEN: 13:02:48

11 Q. Good afternoon, Ms. Robinson.

12 A. Good afternoon.

13 Q. Thank you for coming today.

14 Ms. Robinson, have you ever had your deposition  
15 taken before? 13:02:56

16 A. I have not.

17 Q. So we'll go over some ground rules just so it  
18 goes as smoothly as possible and we make life easier for  
19 the videographer and the court reporter.

20 First of all, you understand that you're under 13:03:13  
21 oath and the answers you give must be the truth as if  
22 you were in court --

23 A. Yes.

24 Q. -- before a jury?

25 If you need to take a break at any particular 13:03:23

1 Q. The court reporter can only transcribe sound,  
2 so when you answer a question, it has to be audible. We  
3 have a habit to shake our heads up and down or side to  
4 side, and that will be picked up by the video but not by  
5 the court reporter in the transcript. So it's important 13:04:58  
6 that you answer audibly to questions.

7 A. Yes.

8 Q. Do you have any questions before we start?

9 A. I do not.

10 Q. Have you ever been qualified as an expert in 13:05:08  
11 any case?

12 A. I have not.

13 Q. How many patent cases have you worked on?

14 A. I would have to estimate probably at least 30.

15 Q. Okay. Have you worked, prior to this case, on 13:05:41  
16 any design patent cases?

17 A. I have not.

18 Q. Have you worked on any trade dress cases prior  
19 to this case?

20 A. I have not. 13:05:54

21 Q. Have you worked on any antitrust cases prior to  
22 this case?

23 A. No.

24 Q. Have you worked on any breach of contract cases  
25 prior to this case? 13:06:06

1 A. Yes.

2 Q. Are you an expert in the field of marketing?

3 A. No.

4 Q. Are you an expert in the field of consumer

5 decision-making? 13:06:19

6 A. No.

7 Q. Are you an expert in the smartphone market?

8 A. No.

9 Q. Are you an expert in the tablet market?

10 A. No. 13:06:30

11 Q. Have you ever performed any other work for

12 Apple other than this case?

13 A. I have not.

14 Q. Have you ever had any engagements for Samsung?

15 A. I have not. 13:06:53

16 Q. Did you sign the protective order that was

17 entered in this case?

18 A. I believe that Mr. Musika signed a protective

19 order on behalf of the firm, although I reviewed it.

20 That was quite some time ago. 13:07:11

21 Q. Okay. But you yourself did not sign the

22 protective order?

23 A. It's my recollection that he signed it and

24 that covered all of our -- all the people at Invotex who

25 worked on the case. So I don't recall personally 13:07:25

1 signing a protective order, although it's always  
2 possible because I've certainly signed protective  
3 orders in the past.

4 Q. Now, you submitted a declaration in this case;  
5 is that right? 13:07:42

6 A. That is right.

7 Q. And I will have the reporter mark as  
8 Robinson Exhibit 1 a document entitled "Declaration  
9 Of Marylee Robinson In Support Of Apple's Motion For  
10 A Permanent Injunction For Damages Enhancement, For 13:08:04  
11 Supplemental Damages, And For Prejudgment Interest,"  
12 filed under seal.

13 (Deposition Exhibit 1 was marked  
14 for identification.)

15 MR. OLSON: Anthony, I'll just note for the 13:08:32  
16 benefit of the record, it appears that this is a copy of  
17 the declaration without the exhibits attached.

18 MR. ALDEN: Correct.

19 BY MR. ALDEN:

20 Q. Ms. Robinson, have you had a chance to look at 13:08:53  
21 the document I just handed to you?

22 A. Yes.

23 Q. And is that the declaration you submitted in  
24 case?

25 A. It is. 13:09:15

1 background research on how IDC gathers their data, and  
2 I understand they are an accepted provider of market  
3 share data in this industry.

4 MR. ALDEN: I'd like to mark as Exhibit 5 to  
5 Ms. Robinson's deposition Exhibit 3 to Ms. Robinson's 14:46:57  
6 declaration.

7 (Deposition Exhibit 5 was marked  
8 for identification.)

9 MR. ALDEN: I'd also like to mark as Exhibit 6  
10 to Ms. Robinson's deposition Exhibit 7 to Ms. Robinson's 14:47:38  
11 declaration.

12 (Deposition Exhibit 6 was marked  
13 for identification.)

14 BY MR. ALDEN:

15 Q. Ms. Robinson, I'll first ask you to look at 14:48:17  
16 Exhibit 3 to your declaration, which is Exhibit 5 in the  
17 deposition, and in particular to page 3.2.

18 A. Yes.

19 Q. And could you describe for me what this page  
20 shows? 14:48:46

21 A. This page shows historical sales for eight  
22 products that I was able to confirm in September of 2012  
23 were still selling in the marketplace, that's the blue  
24 line. The green line is a projection of sales for those  
25 eight products. 14:49:08

1           A. What factors into my analysis is what their  
2 share was just prior to the introduction of the  
3 infringing and diluting phones, that's the indication of  
4 how they were selling at that time. What happened two  
5 years before is what happened two years before.                           14:57:13

6           Q. But you would agree, then, that Samsung could  
7 gain a market share greater than five percent without  
8 the infringing and diluting products; correct?

9           A. Again, I think -- I've said it's possible.

10          Q. Well, they did, didn't they?   14:57:39

11          A. In that prior period, before they dropped off  
12 even further.

13          Q. Okay. So you agree that prior to introducing  
14 the infringing and diluting products, that Samsung at  
15 times did have a market share greater than five percent;           14:58:01  
16 correct?

17          A. Yes.

18          Q. I'd like to go back to your declaration,  
19 please. And in particular, I'd like to go to paragraph  
20 27 and the third sentence in that paragraph, which                       14:58:38  
21 reads: "To be conservative, I used the percentage  
22 losses discussed above and assumed that any losses would  
23 be experienced proportionally across all of Samsung's  
24 smartphone product lines."

25                 Did I read that correctly?   14:59:02

1 A. You did.

2 Q. What evidence do you have that all of Samsung's  
3 losses would be experienced proportionally across all of  
4 Samsung's product lines?

5 A. It really goes back to the assumption, which is 14:59:12  
6 that the trade dress -- that the other products enjoyed  
7 the benefits or had success on the heels of the trade  
8 dress, the infringing and diluting products found to  
9 infringe the trade dress.

10 Q. Okay. And I want to make sure I understand 14:59:53  
11 your testimony.

12 The basis for your proportional allocation is  
13 that is your assumption that the later products, the  
14 products sold after the infringing and diluting  
15 products, would benefit from the market share gained by 15:00:19  
16 the infringing and diluting products; is that correct?

17 A. Benefit from the market share and the success  
18 of those products, yes.

19 Q. Okay. Why didn't you allocate the percentage  
20 losses solely to the infringing and diluting products? 15:00:47

21 A. Can we go to the exhibit?

22 Q. Yes. Which exhibit?

23 A. Exhibit 7. Is that entered here?

24 Q. Um-hum.

25 A. I'd like to explain, if I could, how the 15:01:17

1 analysis actually works.

2 Q. Okay.

3 A. Beyond just one sentence.

4 Q. Okay.

5 A. So box -- box 2, where you see the percentage 15:01:28

6 decreases going across, those are calculated based on

7 holding the market share constant at five percent.

8 Q. Um-hum.

9 A. And those reductions are applied in box 4 to

10 the infringing units. 15:01:45

11 Q. Um-hum.

12 A. And the difference -- so the difference between

13 the two million -- if you're looking at third-quarter

14 2010, the difference between the infringing units of two

15 million and the lost units of 1.3, that difference, call 15:02:02

16 it six million, is actually going back to Samsung in

17 this analysis to -- you know, based on the belief that,

18 you know, noninfringing phones could have made those

19 sales. So I think it's -- I just wanted to clarify that

20 point. 15:02:27

21 Q. Okay. If we go to paragraph 28, you say

22 "Apple's losses due to Samsung's sales of these 13.9

23 million phones are substantial."

24 A. Correct.

25 Q. What evidence do you have that Apple suffered 15:02:42



1 any loss as a result of Samsung's gain in market share?

2 A. Mathematics of it. If Samsung's market share  
3 had stayed at five percent, those sales would have gone  
4 somewhere.

5 So this analysis is looking at capturing the 15:03:13  
6 magnitude of these units over time in an emerging,  
7 growing marketplace, after the infringing and diluting  
8 phones were entered into the marketplace. So we're  
9 talking about lots of units, that's where the  
10 "substantial" comes in, and the fact that market 15:03:37  
11 share -- as Samsung's growing their market share, had  
12 they not -- had their market share not grown, those  
13 units would have gone elsewhere.

14 Q. Okay. What evidence do you have of that?

15 A. Again, it really goes back to the assumption in 15:04:01  
16 the analysis to demonstrate -- I'm just -- it's what I  
17 just said. I think I've already answered the question.

18 Q. Okay. Let me ask if I can -- because I'm not  
19 really understanding the answer so --

20 A. Okay. 15:04:32

21 Q. -- let me see if I can ask it a different way.

22 What evidence do you have that Samsung had not  
23 sold -- made these 3.9 million in sales, that any of  
24 them would have gone to Apple?

25 MR. OLSON: 13.9 million? 15:04:39

1 BY MR. ALDEN:

2 Q. Sorry. 13.9, correct.

3 A. That if Samsung -- the lost units have to go  
4 somewhere. And it's an accepted damage theory that some  
5 portion of them would be distributed to the marketplace 15:05:02  
6 at the market share of the various market participants.

7 Q. Is it possible that no one would have  
8 purchased, made these 3.9 million dollars in sales?

9 A. I sup -- I believe that customers had committed  
10 to purchase a smartphone and that a smartphone would 15:05:25  
11 have been purchased.

12 Q. Okay. And what evidence do you have for that?

13 A. I have data telling me that they purchased a  
14 smartphone.

15 Q. Okay. And what evidence do you have that they 15:05:36  
16 would have -- some of them would have gone to Apple  
17 instead of, for example, HTC, Motorola or Nokia?

18 A. I don't have specific evidence that they would  
19 have gone to Apple. But I'm applying the sales at their  
20 market share, at Apple's market share, leaving plenty of 15:05:56  
21 units for other participants in the marketplace to grab  
22 those sales, including Samsung.

23 Q. Okay. In paragraph 28, you reference a  
24 "Mor-Flo analysis," correct?

25 A. Correct. 15:06:15

1 Q. Did you perform a Mor-Flo analysis?

2 A. I performed a market share distribution of  
3 these units. It's not a true or pure Mor-Flo in that I  
4 did not remove Samsung from the market and redistribute  
5 those -- the shares. So in a typical Mor-Flo, you would 15:06:35  
6 see an up -- an uptake in the market shares of  
7 participants once Samsung's removed. And in this case  
8 I used a pure market share for Apple, which would be  
9 more conservative.

10 Q. Why didn't you use a pure Mor-Flo analysis? 15:06:52

11 A. In performing this analysis, I took a more  
12 simplistic and conservative approach to presenting the  
13 market share.

14 Q. Why did you decide to do that?

15 A. I felt that performing a more conservative 15:07:11  
16 analysis was more appropriate.

17 Q. Why?

18 A. To not give -- not assign more units to any of  
19 the participants than necessary. It's just a built-in  
20 conservative adjustment. 15:07:46

21 Q. Does doing a pure Mor-Flo analysis allocate  
22 more units to the market participants than necessary?

23 A. No, I'm not saying -- I'm not saying that. But  
24 it's -- this was just one way to build in conservatism  
25 to the model that I performed here. 15:08:12

1 Q. Okay.

2 A. It's not to say that it's inappropriate to  
3 perform a pure Mor-Flo analysis.

4 Q. Can a pure Mor-Flo analysis itself account for  
5 price differences between accused products and embodying 15:08:27  
6 products?

7 A. The market share data does account for consumer  
8 preferences for particular devices, thus addressing  
9 price concerns.

10 Q. So did your -- is your testimony that your 15:08:56  
11 analysis addressed price differences?

12 A. Yes.

13 Q. Did you do a separate analysis of price,  
14 concerning price differences?

15 A. No. 15:09:16

16 Q. When calculating lost profits, Mr. Musika did a  
17 Mor-Flo analysis; correct?

18 A. Correct.

19 Q. And he did that by carrier; correct?

20 A. Correct. 15:09:28

21 Q. Why didn't you do that?

22 A. In performing this analysis, I took other  
23 adjustments that ultimately resulted in a number of  
24 units assigned to Apple that was consistent with the  
25 percentages of units that Mr. Musika assigned. 15:09:55

1 Q. Did you do a carrier adjustment like  
2 Mr. Musika?

3 A. I did not do a specific carrier adjustment, but  
4 I feel that my other adjustments captured the necessary  
5 overall reductions to units that are necessary. 15:10:11

6 Q. Do you know -- well, do you know who -- which  
7 carrier sold the Galaxy Prevail?

8 A. Not off the top of my head, no.

9 Q. Okay. If I told you it was Sprint and Boost  
10 Mobile, would you have any reason to disagree with that? 15:10:43

11 A. No.

12 Q. Okay. Are you aware that Sprint did not carry  
13 an iPhone until October 2011?

14 A. Yes.

15 Q. Did you do a capacity analysis? 15:10:57

16 A. I did consider capacity in performing this  
17 analysis.

18 Q. Okay. Did you do a capacity analysis?

19 A. I relied upon the analysis that Mr. Musika  
20 relied upon in his report. 15:11:15

21 Q. Okay. So if we can go to the fourth sentence  
22 in paragraph 28, you say "Using the more conservative  
23 assumption, Apple would have sold more than four million  
24 additional products."

25 Do you see that? 15:11:40

1 A. Yes.

2 Q. Okay. Did Apple have the capacity to sell four  
3 million additional products?

4 A. I did not -- I did not consider whether they  
5 had the capacity or I don't recall whether they had the 15:11:55  
6 capacity to sell four million. I recall considering  
7 whether they had capacity to sell two million units.

8 Q. So you don't know whether they could have sold  
9 four million additional units; correct?

10 A. I do not know one way or the other. 15:12:12

11 Q. Okay. Then you say "To make this calculation  
12 even more conservative, I further assumed that Apple  
13 would capture only half of these sales."

14 Do you see that?

15 A. Yes. 15:12:24

16 Q. Why did you assume that Apple would only  
17 capture half of the sales?

18 A. To build further conservative adjustment to  
19 this analysis and ensure that I wasn't awarding too many  
20 units to Apple. 15:12:44

21 Q. Did Apple have the capacity to make 2,089,143  
22 additional iPhone sales during the period?

23 A. Yes.

24 Q. Are these the same sales that Mr. Musika  
25 presented in his lost profits analysis? 15:12:59

1 MR. OLSON: Objection. Vague.

2 THE WITNESS: Are the two million lost sales  
3 here the same as what's in Mr. Musika's analysis?

4 BY MR. ALDEN:

5 Q. Mr. Musika testified that Apple would have sold 15:13:18  
6 an additional two million iPhones; correct?

7 A. I don't recall the specific number of units  
8 but ...

9 Q. Okay. Well --

10 A. I -- 15:13:33

11 MR. OLSON: Don't guess. If you've got the  
12 number ...

13 MR. ALDEN: I'll mark as Exhibit 8 excerpts  
14 from the Expert Report of Terry L. Musika, CPA.

15 (Deposition Exhibit 8 was marked 15:14:30  
16 for identification.)

17 MR. OLSON: Anthony, as excerpts, are you able  
18 to give any more information about what the scope or  
19 nature of the excerpts are?

20 MR. ALDEN: They go from page 38 to 15:15:01  
21 Mr. Musika's March 22nd, 2012 report, to page 46.

22 MR. OLSON: Perhaps I should put it  
23 differently.

24 I take it you've chosen this. Are you able to  
25 give us what that is or maybe it will be obvious when I 15:15:15

1 review it but ...

2 MR. OLSON: I believe it's Mr. Musika's lost  
3 profits analysis or narrative explanation of his lost  
4 profits analysis.

5 Let me know when you are ready, Ms. Robinson. 15:15:39

6 THE WITNESS: Okay.

7 BY MR. ALDEN:

8 Q. So if we go to page 40, paragraph 124?

9 A. Yes.

10 Q. And if you wish to read the entire paragraph, 15:16:00  
11 that's fine. Let me know when you're ready.

12 A. Okay.

13 Q. So you see at lines 10 to 11, Mr. Musika says,  
14 in his report, there are 8,230,472 accused units?

15 A. I believe it says 18. 15:16:44

16 Q. I'm sorry. 18,230,472 accused units.

17 "I calculated lost profits on only 2,197,534 of  
18 the total (approximately 12 percent). "

19 A. Correct. I see that.

20 Q. Are the approximately two million lost units 15:17:00  
21 that Mr. Musika was referring to and on which he  
22 calculated lost profits --

23 A. Right.

24 Q. -- the same two million units that you're  
25 referring to in paragraph 28 of your declaration? 15:17:19

Page 84



1 A. They're not, in substance, the same units.

2 Q. Okay. How are they different?

3 A. My analysis covers a longer time period than

4 Mr. Musika's analysis did. This report was issued in

5 March and based on data through I believe December 31st 15:17:43

6 or possibly February, I can't recall, but it certainly

7 didn't go past March. And this analysis that I've

8 conducted for this declaration included data, I

9 believe -- yeah, so at least -- yeah, June 30th,

10 June 30th. 15:18:21

11 Q. Okay.

12 A. Just drawing attention to the fact that we're

13 not talking about apples to apples.

14 Q. Okay. So Mr. Musika opined --

15 MR. OLSON: Sorry. 15:18:31

16 BY MR. ALDEN:

17 Q. Mr. Musika opined that Apple had lost

18 approximately two million units worth of sales; correct?

19 A. Correct.

20 Q. And you are opining that Apple has lost 15:18:44

21 approximately two million dollars worth of sales;

22 correct?

23 MR. OLSON: Objection. You meant two million

24 units.

25 THE WITNESS: Two million units. 15:18:53

1 BY MR. ALDEN:

2 Q. Two million units; correct?

3 A. Yes, under this construct, yes.

4 Q. Okay. And how many of the units overlap? In  
5 other words, what I'm trying to get at is how many of 15:19:12  
6 them are the same units, in essence? I mean, there are  
7 a certain number of sales during a period --

8 A. Right.

9 Q. -- correct, whether it's Mr. Musika's period or  
10 a period you're using. 15:19:23

11 You've said Apple has lost two million units  
12 worth of sales and Mr. Musika has said Apple has lost  
13 two million units worth of sales.

14 How many of them are the same sales?

15 A. Well, so on a whole, the two million are 15:19:37  
16 similar and overlap. But my analysis is taking -- you  
17 know, is really about these five products that were  
18 found guilty of infringing and diluting and looking at  
19 the units that weren't found to be guilty of infringing  
20 and diluting to see what kind of damage was sustained on 15:20:01  
21 the heels of the success of those products. So if you  
22 compare, for instance, just the five products for  
23 lost -- that were awarded damage in the case, as  
24 Mr. Wagner's looked at in his approach, you would see  
25 that there's not a double-counting taking place. 15:20:31

1 Q. So let me unpack this.

2 What was Samsung's sales of the five products?

3 A. Over this period?

4 Q. Yes.

5 A. Can I review back to my declaration, please? 15:21:16

6 Q. Yes.

7 A. I don't believe I have that information at my  
8 disposal.

9 MR. OLSON: If you want it, Anthony, it's in  
10 Exhibit 9 to her report. 15:22:03

11 BY MR. ALDEN:

12 Q. Okay. Do you know whether Samsung sold more  
13 than or less than two million phones during the -- of  
14 the five diluting and infringing phones during the  
15 period? 15:22:16

16 A. I would have to refer back to the sales data  
17 presented in JX 1500.

18 Q. So Mr. Musika presented an opinion that Apple  
19 lost two million sales; correct?

20 A. Right. 15:22:48

21 Q. Okay. And you would agree that the jury  
22 awarded damages or awarded lost profits on some of those  
23 sales; correct?

24 A. I don't have an opinion as to what specific  
25 type of damage the jury awarded for those particular 15:23:03

1 products.

2 Q. Okay. Did you review Mr. Wagner's analysis of  
3 the jury's verdict?

4 A. Yes.

5 Q. Okay. Do you disagree with his analysis of the 15:23:15  
6 jury's verdict?

7 A. I believe it's mathematically correct, I find  
8 no errors in the math.

9 Q. Okay. Do you -- so would you agree that the  
10 jury awarded \$91 million in lost profits on these five 15:23:31  
11 products that the jury found to infringe and dilute?

12 A. I don't know specifically whether the jury  
13 awarded lost profits. I don't know what the jury did.  
14 I know that on the verdict form they put damage amount  
15 for each product. 15:23:52

16 Q. So it's possible that for every product that  
17 that the jury found infringed the design patent, for  
18 example, the entire amount of the jury's award could be  
19 Samsung's profits?

20 A. I believe that could be possible. 15:24:08

21 Q. And it's possible that for the five phones that  
22 the jury found infringed the design patent and diluted  
23 trade dress, that the jury's entire award could be  
24 infringer's profits under Section 289 for design patent  
25 infringement; correct? 15:24:35

1 A. I believe that's possible.

2 Q. For the purposes of his lost profits analysis,  
3 Mr. Musika assumed that Samsung would have designed  
4 around all of Apple's asserted intellectual property by  
5 May 2011; correct? 15:25:29

6 A. Correct.

7 Q. And Mr. Musika assumed that Samsung would have  
8 designed around the '381 Patent in one month; correct?

9 A. I believe that's correct.

10 Q. Mr. Musika assumed that Samsung would have 15:25:38  
11 designed around the '163 Patent in one month; correct?

12 A. I believe that's correct.

13 Q. Mr. Musika assumed that Samsung would have  
14 designed around the '915 Patent in six months; correct?

15 A. I believe that is correct. 15:25:52

16 Q. Okay. You didn't make any assumptions  
17 concerning design-around; correct?

18 A. I did not.

19 Q. Mr. Musika also assumed that Samsung would have  
20 reentered the market and obtained a hundred percent of 15:26:05  
21 its previous market share after designing around;  
22 correct?

23 A. He did, yes.

24 Q. Okay. Your analysis assumed that Samsung's  
25 infringing products have an effect on Apple's sales 15:26:18

1 after May 2011; correct?

2 A. Yes.

3 Q. What other differences are there between  
4 Mr. Musika's lost profits analysis and your analysis?

5 A. I believe you've identified all the 15:26:40  
6 differences.

7 Q. If we go to paragraph 29, the last sentence,  
8 you say -- let me know when you're there.

9 A. Yes.

10 Q. "Multiplying the lost sales by quarter times 15:27:26  
11 per unit."

12 THE VIDEOGRAPHER: Ms. Robinson, you are  
13 covering your mic.

14 BY MR. ALDEN:

15 Q. "Multiplying the lost sales by quarter times 15:27:40  
16 per unit incremental profits by quarter, Apple's lost  
17 profits for the 2.1 million in additional sales are  
18 702,868,901, as shown on Exhibit 8."

19 Did I read that correctly?

20 A. Correct. 15:27:56

21 Q. You're aware that, at trial, Mr. Musika opined  
22 that Apple's lost profits were approximately \$490  
23 million; correct?

24 A. Yes.

25 Q. And that \$490 million is included in the 702 15:28:07

1 million that you have concluded and that you've arrived  
2 at in paragraph 29; correct?

3 MR. OLSON: Objection. Misstates prior  
4 testimony.

5 THE WITNESS: I would just say that Mr. Musika 15:28:22  
6 and I did not look at that time exact, same number of  
7 units, so it's not exactly the same number of units but,  
8 yes, there is an overlap.

9 BY MR. ALDEN:

10 Q. Given that Apple's, in your opinion, lost 15:28:48  
11 profits -- well, it's your opinion that Apple's lost  
12 profits were approximately \$700 million; correct?

13 A. It's my opinion, under this analysis and this  
14 construct, that that's the amount of lost units that  
15 I've calculated under the assumption that after the 15:29:05  
16 infringing and diluting products entered the  
17 marketplace, that Samsung was able to enjoy success on  
18 the heels of those products and, as a result, the damage  
19 was 700 million.

20 Q. So it's your opinion that Apple lost 15:29:39  
21 \$700 million; correct?

22 A. Built upon the model that we've described and  
23 the assumptions built into it, yes.

24 Q. Then why is Apple seeking \$400 million for the  
25 five infringing and diluting products as opposed to 15:30:03

1 \$700 million?

2 A. I can't speak specifically to a determination  
3 that was made for the \$400 million enhancement. I'm  
4 providing context here as to whether that number is in  
5 line with the type of damage that Apple has sustained. 15:30:33

6 Q. Why didn't Apple seek \$700 million in lost  
7 profits at trial?

8 MR. OLSON: Objection. Asked and answered.

9 Oh, sorry, "at trial." Sorry.

10 THE WITNESS: Mr. Musika prepared his opinion 15:30:46  
11 of lost profits built upon a construct that was not --  
12 you know, that's not 100 percent the same as this  
13 analysis. They're two different types of analysis.

14 BY MR. ALDEN:

15 Q. Why did you do a different analysis to 15:31:10  
16 Mr. Musika?

17 A. I have facts at my disposal that Mr. Musika  
18 didn't have, for instance, that five specific products  
19 launched in early -- you know, in the 2010 time frame  
20 were found to be infringing trade dress. Mr. Musika 15:31:29  
21 didn't have that information at his disposal when  
22 preparing his lost profits analysis.

23 Q. Well, Mr. Musika made that assumption, didn't  
24 he?

25 A. What assumption? 15:31:53



1 Q. That those five products infringed trade dress.

2 A. He assumed that all intellectual property  
3 asserted was valid and infringed, yes.

4 Q. Okay. So then what difference does it make?

5 A. A finding of infringement and an assumption of 15:32:08  
6 infringement I believe are two different things.

7 Q. Okay. And so why did a finding of infringement  
8 lead you to adopt a different methodology for  
9 calculating lost profits than Mr. Musika?

10 A. I'm performing this analysis to demonstrate the 15:32:23  
11 magnitude of sales that Apple -- lost sales that Apple  
12 was not compensated for under the jury's verdict.

13 Q. And how do you know that Apple wasn't  
14 compensated for them?

15 A. In -- I know that the jury awarded damages for 15:32:47  
16 specifically five products that were found guilty of  
17 infringing and diluting the trade dress. The other  
18 products that were asserted as infringing or asserted in  
19 this case were found guilty of infringing other types of  
20 intellectual property. 15:34:19

21 However, what my analysis here is looking at is  
22 assuming those products enjoyed success and sales based  
23 on the success and the historical sales of these other  
24 devices that were found guilty of infringing, those --  
25 this is capturing that, the magnitude of those units. 15:34:46

1 So it's -- I'm trying to provide an analysis that looks  
2 at the magnitude at which Apple was not compensated,  
3 fully compensated at trial.

4 MR. OLSON: Anthony, before you ask another  
5 question, we've been going I think it's close to an hour 15:35:08  
6 and a half. I'd like the benefit of the break.

7 MR. ALDEN: Yes, just after I finish this line,  
8 a couple minutes.

9 MR. OLSON: Well, I'd actually like to have a  
10 break right now, but if you have a couple more 15:35:21  
11 questions, let's see what we can do.

12 BY MR. ALDEN:

13 Q. Okay. So it's your opinion under this model  
14 that Apple lost 700 -- approximately \$703 million;  
15 correct? 15:35:32

16 A. Yes.

17 Q. Okay. And how much of that -- how do you know  
18 that that amount wasn't included in the jury's verdict?

19 MR. OLSON: Object on asked and answered.

20 THE WITNESS: I believe I've already answered 15:35:51  
21 that question.

22 BY MR. ALDEN:

23 Q. I'm sorry. I didn't understand the answer, so  
24 if you could explain it to me again?

25 MR. OLSON: Objection. Asked and answered. 15:36:06

1 THE WITNESS: Okay. This amount -- this  
2 analysis is providing context for Apple's willfulness  
3 request of 400 million --

4 BY MR. ALDEN:

5 Q. Right. 15:36:49

6 A. -- under the Lanham Act, tied to trade dress.  
7 I performed this analysis specific to these five  
8 products with the assumption that those five products  
9 received a benefit -- or the other products received a  
10 benefit over time related to those sales in that initial 15:37:09  
11 period, capturing shares -- capturing units here.

12 This number, this 700 million that's here,  
13 is providing context to the three -- I believe it's the  
14 approximate 382 million and which was awarded on those  
15 specific five products. 15:37:31

16 Q. So is the 700, approximately 703 million,  
17 relating to the lost sales of other products, not the  
18 five products; is that correct?

19 MR. OLSON: Objection. Misstates the  
20 testimony. 15:37:46

21 THE WITNESS: The 700 is going to include units  
22 beyond the five products.

23 BY MR. ALDEN:

24 Q. Okay. Did the jury already award damages on  
25 those units? 15:38:05

1 A. Which units?

2 Q. The units --

3 A. The five --

4 Q. No. On the units that are included in the 700

5 million number. 15:38:17

6 A. On -- the jury provided an award for certain  
7 products based on the findings of infringement.

8 Q. And did any of that award -- was any of that

9 award for units that are -- on which you base

10 \$700 million number in paragraph 29? 15:38:49

11 A. I don't think I'm in a position to dissect the  
12 jury's award.

13 Q. Okay. So you don't know?

14 A. I know they awarded a damage award on -- you  
15 know, on certain products, but I don't think I'm in a 15:39:32  
16 position to dissect their award.

17 Q. Okay. So it's possible that the jury awarded

18 damages on units on which -- at least some units on

19 which you calculated the \$700 million; you just don't

20 know? 15:39:46

21 MR. OLSON: Objection. Asked and answered.

22 THE WITNESS: Without dissecting the award, I

23 can't offer an opinion as to what specific units the

24 jury gave an award on, beyond taking what I've done in

25 this analysis and what I've done, you know, in this 15:40:42

1 report or this declaration.

2 As to -- I'm going to take it back again one  
3 more time to what the purpose of this analysis was,  
4 which was to provide context to Apple's request for \$400  
5 million and willfulness damages that relate to the 15:41:14  
6 Lanham Act and the five products that were found guilty  
7 of infringing the trade dress.

8 MR. ALDEN: Okay. Let's take a break.

9 THE VIDEOGRAPHER: We are off the record at  
10 3:51 p.m. 15:41:26

11 (Recess held.)

12 THE VIDEOGRAPHER: We are back on the record  
13 at 3:58 p.m.

14 MR. OLSON: So, Anthony, just very quickly,  
15 because I don't want to take more time: I told 15:58:52  
16 Mr. Alden during the break that I may have some  
17 re-direct questions, that I would ask him to reserve  
18 time, and because that, if he didn't, I would  
19 potentially argue that the record's closed within the  
20 three-hour limit. 15:59:08

21 I intend to ask a very small number of  
22 questions. My understanding is that reserving all  
23 objections to this procedure and that his time shouldn't  
24 be docked under the circumstances, that you're asking  
25 that the time be identified when you have ten minutes 15:59:20

1 left and I'll ask my questions. We'll give the time  
2 back to you and we'll see where we go.

3 MR. ALDEN: Correct.

4 I'll just state for the record that I object  
5 to the redirect under these circumstances. It's new 15:59:32  
6 testimony, new direct testimony by Ms. Robinson,  
7 potentially not within the scope of her declaration.

8 The court gave Samsung three hours to depose  
9 Ms. Robinson about her declaration, not about new  
10 testimony that's being offered subsequent to her 15:59:49  
11 declaration.

12 Having said that, you know, to avoid engaging  
13 in dispute right now, as Mr. Olson said, I'll reserve  
14 ten minutes to -- for re-cross, if necessary.  
15 Otherwise, I'd like -- Mr. Olson has agreed that ten 16:00:09  
16 minutes can otherwise be used by me as I see fit if I  
17 don't have any re-cross. We'll take it from there.

18 MR. OLSON: I think that's fine. Why don't you  
19 pick up the questioning.

20 BY MR. ALDEN: 16:00:26

21 Q. So I'd like to turn now, Ms. Robinson, to  
22 supplemental damages.

23 A. Okay.

24 Q. And your supplemental damages opinion was based  
25 on projected sales for eight products for the third 16:00:35

1 quarter of 2012 and the fourth quarter of 2012; correct?

2 A. Correct.

3 Q. And have you read Mr. Kerstetter's declaration?

4 A. Yes.

5 Q. Would you now accept that your projections are 16:00:55  
6 inaccurate?

7 MR. OLSON: Objection. Vague.

8 THE WITNESS: I accept for the three months at  
9 which Mr. Kerstetter provided sales for those specific  
10 products that his -- the numbers he has presented are 16:01:18  
11 different than the numbers I projected for those three  
12 months.

13 BY MR. ALDEN:

14 Q. Do you have any reason to doubt  
15 Mr. Kerstetter's numbers for the third quarter of 2012? 16:01:27

16 A. In light of the record in this case of  
17 inaccurate or changing concerns regarding sales data  
18 historically, having eight files produced in the course  
19 of discovery, it would be my preference not to. I'm not  
20 saying there's -- I'm not saying that Mr. Kerstetter is 16:01:53  
21 misrepresenting himself. But it would be my preference  
22 to review ordinary course sales files of Samsung for all  
23 of the products, not just the eight products that  
24 Mr. Kerstetter has provided sales data for.

25 Q. Did you ask for that information prior to 16:02:11

1 providing your declaration?

2 A. I'm not sure if Apple asked for that prior to  
3 my declaration or not. Certainly it would be my  
4 preference to have that at hand.

5 Q. Did you ask counsel to get you third-quarter 16:02:29  
6 sales, Samsung sales data prior to preparing your  
7 declaration?

8 A. I believe there was a discussion of "Are we  
9 going to get third quarter sales data," and the answer  
10 was "No, you're going to need to do a projection." 16:02:49

11 Q. Okay. Did you -- my question is a little  
12 different. Did you ask counsel to get you third-quarter  
13 sales data?

14 MR. OLSON: Objection. Asked and answered.

15 THE WITNESS: I asked if I was going to receive 16:03:02  
16 it.

17 BY MR. ALDEN:

18 Q. Okay.

19 A. I don't -- I mean, it's not typical for me --  
20 you know, I don't really see the distinction. 16:03:09

21 I asked "Will I be receiving it?" Of course I  
22 want it. "Will I be receiving it?" "No" was the  
23 answer.

24 Q. Okay. Are you aware that Apple never asked for  
25 that data -- 16:03:20



1 MR. OLSON: Objection. Misstates --

2 BY MR. ALDEN:

3 Q. -- prior to your declaration?

4 A. I have no -- I don't have any knowledge one way  
5 or the other. 16:03:28

6 MR. OLSON: So, Mr. Alden, I don't want there  
7 to be any confusion.

8 We have very distinctly asked for it recently  
9 and it has been refused to us. Is there a change in  
10 Samsung's position on that point? 16:03:39

11 MR. ALDEN: I'm going to continue with my  
12 questioning.

13 Were you aware that Apple did not ask for  
14 third-quarter sales data prior to submitting your  
15 declaration? 16:03:48

16 THE WITNESS: I had no knowledge of whether  
17 they asked for it or not.

18 BY MR. ALDEN:

19 Q. Was it of concern to you that you didn't get  
20 third-quarter Samsung sales data? 16:03:58

21 A. It would be preferred to have the data, but in  
22 instances, particularly in a litigation environment  
23 where you're not -- you don't have access to  
24 information, it's customary to provide projections.

25 Q. Are you preparing revised projections? 16:04:27

1 A. Not at this time.

2 Q. Do you expect to submit a supplemental  
3 declaration revising your supplemental damages analysis?

4 A. I believe if Samsung produces -- I believe I  
5 understand that Apple has requested comprehensive sales 16:04:48  
6 data for all 26 products. Should that data be provided,  
7 is my understanding I will be asked to update my  
8 analysis.

9 Q. But if that data is not provided, you will not  
10 be updating your analysis; is that correct? 16:05:04

11 A. Yes, that is my understanding.

12 Q. Are you -- will you be submitting a  
13 supplemental declaration either on the subjects of a  
14 permanent injunction or enhancement?

15 A. I -- 16:05:33

16 MR. OLSON: Let me stop.

17 Is the only information you'd have on that some  
18 communication you've had with an attorney at  
19 Morrison & Foerster?

20 THE WITNESS: Yes. 16:05:45

21 MR. OLSON: Okay. At this point, I would  
22 instruct you not to answer pursuant to the parties'  
23 stipulation on expert discovery.

24 BY MR. ALDEN:

25 Q. Do you agree that if the court were to grant 16:06:07

1 Samsung's remunerative motion in whole or in part that  
2 your supplemental damages calculation would need to be  
3 revised?

4 MR. OLSON: Can I have that read back?

5 I can't read it on here. 16:06:34

6 BY MR. ALDEN:

7 Q. I'll ask a different question.

8 If the court grants Samsung's remunerative  
9 motion in whole or in part, what impact would that have  
10 on your supplemental damages calculation? 16:06:43

11 MR. OLSON: Objection. Incomplete  
12 hypothetical.

13 THE WITNESS: I believe there's many things  
14 contained in that motion that Samsung has filed and I'm  
15 not certain how that would impact my analysis. 16:07:04

16 BY MR. ALDEN:

17 Q. If the court were to reduce the jury's damages  
18 verdict, would that impact your supplemental damages  
19 analysis?

20 MR. OLSON: Objection. Incomplete 16:07:17  
21 hypothetical.

22 THE WITNESS: I suppose if the total verdict  
23 amount was reduced, then the numerator involved in the  
24 calculation of the \$50.40 per unit could potentially be  
25 revised per unit amount. 16:07:45

1 MR. ALDEN: Objection. Beyond the scope of her  
2 declaration. Leading. Lacks foundation.

3 THE WITNESS: Parties who get a head-start in  
4 the marketplace and obtain market share, particularly in  
5 a market that's growing like the smartphone market, 16:22:12  
6 are -- have an opportunity or are able to capitalize on  
7 that early market share. As more and more adopters come  
8 along, they are influenced by those who carry -- who  
9 have greater market share in the marketplace.

10 BY MR. OLSON: 16:22:40

11 Q. There were some questions asked to you about  
12 some numbers provided by Mr. Kerstetter of Samsung in  
13 connection with your supplemental damages analysis. Do  
14 you recall the general area that I'm talking about right  
15 now? 16:22:56

16 A. Yes.

17 Q. Has Mr. Kerstetter provided the sales  
18 information for all of the infringing products?

19 A. He has not.

20 Q. Why would it be important to have all of the 16:23:03  
21 infringing products?

22 A. It would be important to verify that -- it  
23 would be important because I would want to capture all  
24 sales that took place of all of the infringing devices  
25 and to verify, particularly based on the record in this 16:23:23

1 case where information that has been presented or  
2 provided by Samsung for sales data has had various  
3 discrepancies in it over time or concerns.  
4 Additionally, we've seen periods where products maybe  
5 stopped selling and then came back onto the market. And 16:23:45  
6 we would want to -- I would want to see and verify that  
7 the information that Mr. Kerstetter is presenting in his  
8 declaration can be verified by and provided for all  
9 products.

10 Q. So do you consider the material provided by 16:24:03  
11 Mr. Kerstetter incomplete?

12 A. It's incomplete as to providing -- it does not  
13 provide sales for all infringing devices.

14 Q. And is it your understanding that Apple has  
15 requested the complete information for all the products? 16:24:19

16 A. Yes.

17 Q. Is it your understanding that Samsung has  
18 refused?

19 A. Yes.

20 MR. OLSON: Do you believe -- withdrawn. 16:24:47

21 I'll pass the witness.

22 ///

23 ///

24 ///

25 /// 16:24:52

EXAMINATION (CONTINUED)

BY MR. ALDEN:

Q. How much does Apple seek in supplemental damages?

A. Combined, 535 -- I'm sorry. Supplemental? 16:25:08

Q. Yes.

A. Sorry. I thought you said "enhanced."

Can I refer back to my declaration?

Q. Sure. Would it help if I told you it was approximately \$121 million? 16:25:56

MR. OLSON: If it helps, to move things along, I think if you look at paragraph 12.

THE WITNESS: Yes, that's where I'm looking at.

It's 121 million.

BY MR. ALDEN: 16:26:10

Q. And that was for eight products; correct?

A. That calculation was derived off of eight products, but the intent beyond -- the intent of that calculation is to represent all infringing devices.

Q. Okay. Did Apple ask for any additional amounts beyond \$121 million for any other infringing devices? 16:26:26

A. The 121 is intended to capture all infringing devices for the supplemental period.

Q. And you testified that it's your understanding that Samsung refused to provide information for all 16:27:04

1 products; correct?

2 A. Yes.

3 Q. How do you have that understanding?

4 A. From counsel.

5 Q. What did counsel say to you? 16:27:11

6 A. That they -- the information's been requested  
7 and Samsung will not -- will not be providing the data.

8 Q. Did counsel explain to you why Samsung isn't  
9 providing the data?

10 A. We did not discuss that. 16:27:29

11 Q. Did counsel explain to you that Apple did not  
12 request the data prior to the time you submitted your  
13 declaration and Apple moved for \$121 million in  
14 supplemental damages?

15 MR. OLSON: Objection. Asked and answered. 16:27:43

16 THE WITNESS: I have no knowledge of whether  
17 the information was requested prior to the issuance of  
18 my report.

19 I had a discussion about whether we would -- I  
20 would be receiving the data and I was told no. There 16:27:59  
21 was no discussion about whether it had been requested.

22 BY MR. ALDEN:

23 Q. I believe you testified in response to  
24 Mr. Olson's questions that Samsung's -- in your opinion,  
25 Samsung's infringing and diluting sales gave it a 16:28:13

1 provided a declaration that's addressed timing of  
2 products, last importation and so forth.

3 BY MR. ALDEN:

4 Q. And you're aware that Mr. Kerstetter has  
5 testified that Samsung will not be selling all those 16:42:24  
6 eight products through December 30th, 2012?

7 MR. OLSON: Anthony, did you say "all those  
8 eight products"?

9 MR. ALDEN: Correct.

10 THE WITNESS: Yes. I'm aware that he has 16:42:36  
11 represented that.

12 BY MR. ALDEN:

13 Q. Do you have any reason to doubt that  
14 representation?

15 A. I don't have any reason to doubt it. I would 16:42:42  
16 like to verify the sales records -- I would like to  
17 verify that representation through the sales records of  
18 Samsung.

19 Q. And to do so, it would be necessary to get  
20 those sales records through December 31st, 2012; 16:42:59  
21 correct?

22 A. Yes.

23 Q. Your projections do not break out projected  
24 sales by product; correct?

25 A. Right. The projection's done on a whole. 16:43:14



1 DEPOSITION REPORTER'S CERTIFICATION

2  
3 I, the undersigned, a California Certified  
4 Shorthand Reporter, do hereby certify:

5 That the foregoing proceedings were taken  
6 before me at the time and place herein set forth, at  
7 which time the witness was administered the oath; that  
8 the testimony of the witness and all objections made by  
9 counsel at the time of the proceedings were recorded  
10 stenographically by me, and were thereafter transcribed  
11 under my direction; that the foregoing transcript  
12 contains a full, true, and accurate record of all  
13 proceedings.

14 I further certify that I am neither financially  
15 interested in the action nor a relative or employee of  
16 any attorney or party to this action.

17 IN WITNESS WHEREOF, I have this date subscribed  
18 my name, dated this 6th day of November, 2012.

19  
20  
21  
22  
23 \_\_\_\_\_  
24 THOMAS J. FRASIK, CSR No. 6961  
25