

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,)	
)	JULY 31, 2012
VS.)	
)	VOLUME 2
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 283-555
)	
)	
)	
)	
)	
)	
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
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

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

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

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

FOR THE DEFENDANT: QUINN, EMANUEL, URQUHART,
OLIVER & HEDGES
BY: CHARLES K. VERHOEVEN
50 CALIFORNIA STREET, 22ND FLOOR
SAN FRANCISCO, CALIFORNIA 94111

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

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

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

INDEX OF PROCEEDINGS

OPENING STATEMENT BY MR. MCELHINNY	P. 304
OPENING STATEMENT BY MR. LEE	P. 353
OPENING STATEMENT BY MR. VERHOEVEN	P. 380

INDEX OF WITNESSES

PLAINTIFF'S

CHRISTOPHER STRINGER

DIRECT EXAM BY MR. MCELHINNY	P. 469
CROSS-EXAM BY MR. VERHOEVEN	P. 511
REDIRECT EXAM BY MR. MCELHINNY	P. 537

PHILIP SCHILLER

DIRECT EXAM BY MR. MCELHINNY	P. 541
------------------------------	--------

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

INDEX OF EXHIBITS

MARKED

ADMITTED

PLAINTIFF'S

1040		472
1041		473
1043		474
163		481
164		483
165		486
166		488
168		490
167		491
162		492
1000		497
1001		497
1002		498
1003		498
171		500
170		502
1004		504
1005		504

DEFENDANT'S

741	524	538
687		534
740		538

1 SAN JOSE, CALIFORNIA JULY 31, 2012

2 P R O C E E D I N G S

3 (WHEREUPON, THE FOLLOWING PROCEEDINGS
4 WERE HELD OUT OF THE PRESENCE OF THE JURY:)

5 THE COURT: GOOD MORNING.

6 SO WE ARE FILING RIGHT NOW AN AMENDED
7 ORDER TO THE ORDER WE FILED LAST NIGHT BECAUSE THE
8 THREE DEMONSTRATIVE EXHIBITS WERE FILED. THIS IS
9 WITH REGARD TO SAMSUNG'S OBJECTIONS TO APPLE'S
10 EXHIBITS FOR THE SECOND DAY OF TRIAL.

11 SO THE AMENDED ORDER -- I THINK OUR ORDER
12 WAS FILED AT 11:00 O'CLOCK. OUR AMENDED ORDER IS
13 BEING FILED NOW AND WILL ADDRESS THE THREE
14 DEMONSTRATIVES WHERE WE RESERVED RULING LAST NIGHT.
15 OKAY?

16 WE ARE ALSO FILING NOW A -- RULINGS ON
17 THE OBJECTIONS ON THE STRINGER, CHRISTOPHER
18 STRINGER EXHIBITS, AND I GUESS AROUND MIDNIGHT LAST
19 NIGHT, SOMEONE FILED ADDITIONAL -- APPLE FILED
20 ADDITIONAL OBJECTIONS, CORRECT, ON ABOUT FOUR
21 ADDITIONAL EXHIBITS.

22 AND SO THAT RESPONSE TO THE OBJECTIONS
23 THAT WERE FILED AT MIDNIGHT WE'LL FILE PROBABLY
24 AROUND LUNCHTIME.

25 OKAY? BUT WE ARE WORKING ON THAT. YOU

1 WILL GET ALL OF THE STRINGER EXHIBITS.

2 SO WITH REGARD TO THE NISHIBORI, IT WAS
3 IN OUR RULING LAST NIGHT ON APPLE'S OBJECTIONS TO
4 THE SAMSUNG SLIDES AND EXHIBITS.

5 THAT WILL BE ADMITTED SOLELY FOR
6 FUNCTIONALITY AND FOR NO OTHER PURPOSE, OKAY?

7 AND I'M GOING TO INSTRUCT THE PARTIES,
8 DURING YOUR OPENING STATEMENTS, YOU CAN ONLY SAY
9 WHAT THE EXHIBITS WILL SHOW, WHAT THE WITNESSES
10 WILL TESTIFY TO.

11 THERE SHOULD BE NO ARGUMENT, NO
12 INFERENCES, NO ARGUING THE LAW, AND IF YOU DO THAT,
13 I'M GOING TO STOP YOU IN THE MIDDLE OF YOUR OPENING
14 AND ASK YOU TO PLEASE STOP ARGUING THE CASE.

15 AND I'M ALSO GOING TO TELL THE JURY AT
16 THE BEGINNING THAT OPENING STATEMENT IS NOT
17 EVIDENCE, THAT THE ATTORNEYS ARE MERELY TO STATE
18 WHAT THE EXHIBITS AND THE WITNESSES WILL SAY AND
19 ARE NOT TO ARGUE THE CASE AND NOT TO MAKE
20 INFERENCES AND START ARGUING THE LAW AND THAT, IF
21 THEY DO SO, I WILL STOP THEM IN MID-SENTENCE AND
22 ASK THEM TO PLEASE STOP ARGUING. OKAY?

23 SO I'M JUST PUTTING EVERYONE ON NOTICE
24 THAT THAT'S WHAT'S GOING TO HAPPEN, SO PLEASE DON'T
25 CROSS THE LINE.

1 NOW, WE HAVE AN ISSUE WITH ONE OF OUR
2 JURORS ALREADY. MS. FRIESEN HAS INDICATED THAT HER
3 EMPLOYER WILL NOT PAY HER DURING THE TIME THAT SHE
4 IS SERVING AS A JUROR IN THIS CASE AND THAT THIS
5 WILL CAUSE HER A SEVERE FINANCIAL HARDSHIP BECAUSE
6 OF THE LENGTH OF THIS CASE, AND THE STRESS OF THIS
7 SITUATION IS CAUSING HER ANXIETY TO THE POINT WHERE
8 SHE CANNOT SLEEP, SHE'S HAVING PANIC ATTACKS, HER
9 HUSBAND HAD TO DRIVE HER TO THE COURTHOUSE TODAY.

10 SHE SAYS THAT THE COMMUTE AND THE TRAFFIC
11 ARE CAUSING HER GREAT ANXIETY AND SHE IS REQUESTING
12 THAT SHE BE DISMISSED AS A JUROR.

13 SHE APOLOGIZES FOR THE VERY LATE NOTICE.
14 SHE SAYS THAT YESTERDAY SHE WAS UNAWARE THAT SHE --
15 THAT HER EMPLOYER WOULD NOT PAY HER FOR THE
16 DURATION OF THIS TRIAL.

17 SO LET ME HEAR FROM COUNSEL AS TO WHAT
18 YOU ALL WOULD LIKE TO DO, WHETHER YOU WOULD LIKE TO
19 HAVE ANY ADDITIONAL VOIR DIRE OF MS. FRIESEN.

20 MR. MCELHINNY: I DON'T THINK WE WANT ANY
21 FURTHER VOIR DIRE OF HER, YOUR HONOR.

22 (PAUSE IN PROCEEDINGS.)

23 MR. VERHOEVEN: WE DON'T NEED ANY
24 ADDITIONAL VOIR DIRE, EITHER, YOUR HONOR.

25 THE COURT: OKAY. SO THEN ARE BOTH

1 PARTIES CONSENTING TO HER DISMISSAL?

2 MR. LEE: THAT'S FINE FOR APPLE, YOUR
3 HONOR.

4 MR. VERHOEVEN: YES, YOUR HONOR.

5 THE COURT: ALL RIGHT.

6 NOW, LET ME ASK MS. PARKER BROWN IF YOU
7 WOULD JUST ASK MS. FRIESEN TO COME OUT, PLEASE.

8 THE CLERK: SURE.

9 (PAUSE IN PROCEEDINGS.)

10 THE CLERK: JUDGE, SHE'S IN THE REST
11 ROOM.

12 THE COURT: OKAY.

13 MR. QUINN: YOUR HONOR?

14 THE COURT: YES.

15 MR. QUINN: MAY I ADDRESS THE ISSUE OF
16 SLIDES 11 TO 19 WHICH I WAS PREPARED TO ARGUE --

17 THE COURT: NO. NO. WE HAVE HAD THREE
18 RECONSIDERATIONS ON THAT, OKAY? YOU'VE MADE YOUR
19 RECORD. I'VE RULED. WE NEED TO GO FORWARD.

20 MR. QUINN: YOUR HONOR, I BEG THE COURT.

21 THE COURT: SAMSUNG HAS HAD TEN MOTIONS
22 FOR RECONSIDERATION. I'M DOING, AS QUICKLY AS I
23 CAN, RULINGS TO GIVE YOUR TEAM AS MUCH ADVANCED
24 NOTICE FOR YOUR PREPARATION OF WITNESSES AND
25 EXHIBITS.

1 MR. QUINN: YOUR HONOR, I'VE BEEN
2 PRACTICING 36 YEARS. I'VE NEVER BEGGED THE COURT
3 LIKE I'M BEGGING THE COURT NOW TO HEAR ARGUMENT ON
4 THIS ISSUE.

5 THIS RELATES TO A CENTRAL ISSUE THAT HAS
6 BEEN IN THE CASE FROM THE VERY BEGINNING. THERE
7 WAS NO -- THEY SAY, IN THEIR PAPERS THEY FILED LAST
8 NIGHT, WE DIDN'T DISCLOSE IT IN THE CONTENTION
9 INTERROGATORIES.

10 YOUR HONOR, THERE IS NO INTERROGATORY
11 THAT REQUIRED US TO DISCLOSE THAT, AND WE DID. ALL
12 OF THAT WAS SERVED -- ALL THOSE IMAGES IN THOSE
13 SLIDES WERE SERVED IN FEBRUARY --

14 THE COURT: I'VE GIVEN YOU --

15 MR. QUINN: -- IN THE PRELIMINARY
16 INJUNCTION --

17 THE COURT: -- AN ADDITIONAL OPPORTUNITY
18 TO BRIEF THIS ISSUE YESTERDAY, OKAY? I REVIEWED
19 WHAT YOU FILED YESTERDAY. I HEARD ARGUMENT ON THIS
20 YESTERDAY.

21 MR. QUINN: ALL RIGHT. YOUR HONOR,
22 WHAT'S THE POINT --

23 THE COURT: I'VE GIVEN YOU THREE MOTIONS
24 FOR RECONSIDERATION.

25 MR. QUINN: -- OF HAVING THE TRIAL?

1 WHAT'S THE POINT?

2 THEY WANT TO CREATE THE COMPLETELY FALSE
3 IMPRESSION, YOUR HONOR, THAT WE CAME UP WITH THIS
4 DESIGN AFTER JANUARY OF 2007 AND, YOUR HONOR, WHAT
5 THIS SUGGESTS, WHAT THEY'RE SEEKING IS TO EXCLUDE
6 INDISPUTABLE EVIDENCE THAT WE HAD THAT DESIGN
7 PATENT IN 2006.

8 AND WE CAME OUT WITH THAT PRODUCT IN
9 FEBRUARY OF 2007.

10 THE COURT: MR. QUINN, PLEASE. PLEASE.
11 WE'VE DONE THREE RECONSIDERATIONS ON THIS AND WE
12 NEED TO MOVE FORWARD. WE HAVE A JURY WAITING.

13 YOU'VE MADE YOUR RECORD. YOU'VE MADE
14 YOUR RECORD FOR APPEAL. OKAY?

15 MR. QUINN: ALL RIGHT. CAN I ASK THE
16 COURT FOR SOME EXPLANATION, YOUR HONOR? THERE IS
17 NO INTERROGATORY THAT REQUIRED IT. WE DID DISCLOSE
18 IT IN THE PRELIMINARY INJUNCTION PAPERS. WE GAVE
19 THEM THE DOCUMENTS --

20 THE COURT: MR. QUINN, PLEASE, DON'T MAKE
21 ME SANCTION YOU. PLEASE. PLEASE.

22 MR. QUINN: SO I WON'T GET --

23 THE COURT: YOU'VE HAD THREE
24 RECONSIDERATIONS MOTIONS. YOU'VE HAD AT LEAST TWO,
25 IF NOT THREE, IF NOT FOUR OPPORTUNITIES TO BRIEF

1 THIS. OKAY? PLEASE, TAKE A SEAT.

2 MR. QUINN: ALL RIGHT.

3 THE COURT: ALL RIGHT. WOULD YOU BRING
4 OUT MS. FRIESEN?

5 MR. QUINN: YOUR HONOR, AS A MATTER OF
6 PERSONAL PRIVILEGE, MAY I CHANGE THE SUBJECT?

7 THE COURT: NO.

8 MR. QUINN: ABOUT --

9 THE COURT: NO. I WANT YOU TO SIT DOWN,
10 PLEASE.

11 (WHEREUPON, THE FOLLOWING PROCEEDINGS
12 WERE HELD IN OF THE PRESENCE JUROR FRIESEN.)

13 THE COURT: OKAY. MS. FRIESEN, WE
14 UNDERSTAND THAT YOUR SERVICE WOULD BE A SEVERE
15 ECONOMIC HARDSHIP ON YOU, AS WELL AS PSYCHOLOGICAL.
16 IT'S JUST VERY STRESSFUL; CORRECT?

17 JUROR: I'M HAVING ANXIETY ATTACKS DUE TO
18 THE COMMUTE. I'M NOT A VERY GOOD DRIVER.

19 THE COURT: NO PROBLEM. YOU DON'T NEED
20 TO EXPLAIN ANY FURTHER.

21 WE WANT TO THANK YOU FOR YOUR SERVICE AND
22 TO APOLOGIZE FOR THE ANXIETY AND THE STRESS THAT
23 THIS HAS ALREADY CAUSED YOU.

24 JUROR: I'M SORRY FOR THE INCONVENIENCE.
25 I'M -- I DIDN'T REALLY THINK THAT IT WOULD AFFECT

1 ME THIS BAD.

2 THE COURT: NOT AT ALL A PROBLEM.

3 YOU ARE THANKED AND EXCUSED. YOU HAVE
4 FULFILLED YOUR JURY DUTY OBLIGATION.

5 I'M JUST GOING TO ASK THAT YOU PLEASE GO
6 SEE MR. YOUNGER ON THE SECOND FLOOR AND JUST CHECK
7 OUT AND HE CAN GIVE YOU THE PAPERWORK TO DEAL WITH
8 YOUR MILEAGE AND YOUR OTHER JUROR FEES AND WHATNOT.
9 OKAY?

10 SO THANK YOU. YOU'RE EXCUSED FROM THE
11 JURY.

12 JUROR: THANK YOU.

13 (WHEREUPON, THE FOLLOWING PROCEEDINGS
14 WERE HELD OUT OF THE PRESENCE OF JUROR FRIESEN.)

15 THE COURT: ALL RIGHT.

16 THE CLERK: ARE WE READY?

17 THE COURT: YES. LET'S BRING THEM OUT.

18 YOU HAVE THE VIDEO; CORRECT?

19 MR. JACOBS: YES, YOUR HONOR.

20 THE CLERK: JUDGE, I JUST REALIZED THAT
21 WE'RE MISSING MR. ROGERS. HE'S NOT HERE YET.

22 THE COURT: OKAY. WE'LL WAIT FOR HIM.
23 CAN SOMEONE CALL HIM AND SEE IF HE'S ON HIS WAY?

24 THE CLERK: OKAY. I'LL DO THAT.

25 THE COURT: THANK YOU.

1 THE CLERK: SORRY. THAT'LL TEACH ME NOT
2 TO DO A HEAD COUNT.

3 THE COURT: ALL RIGHT. DO WE HAVE THE
4 ORDERS THAT WERE FILED ON SPRINGER?

5 OH, HE'S HERE? OH, OKAY, PERFECT. LET'S
6 BRING THEM OUT AGAIN.

7 (WHEREUPON, THE FOLLOWING PROCEEDINGS
8 WERE HELD IN THE PRESENCE OF THE JURY:)

9 THE COURT: MR. CATHERWOOD, IF YOU'D LIKE
10 TO SLIDE DOWN SO THERE'S NO EMPTY CHAIR. GREAT.
11 ALL RIGHT. THANK YOU.

12 THE CLERK: YOU MAY BE SEATED.

13 THE COURT: ALL RIGHT. WOULD YOU PLEASE
14 SHOW THE FEDERAL JUDICIAL CENTER VIDEO.

15 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN
16 OPEN COURT OFF THE RECORD.)

17 THE COURT: ALL RIGHT. MAY WE HAVE THE
18 LIGHTS BACK ON, PLEASE? THANK YOU.

19 ALL RIGHT. I'M GOING TO READ AN ADDENDUM
20 TO THIS VIDEO AND THEN THE PARTIES HAVE ASKED THAT
21 I SHOW YOU ONE SAMSUNG UTILITY PATENT AND ONE APPLE
22 DESIGN PATENT. THEY'RE IN YOUR JURY NOTEBOOKS, SO
23 IN A MINUTE WE'LL GO THROUGH THEM TOGETHER. BUT
24 LET ME READ YOU THIS STATEMENT FIRST.

25 LADIES AND GENTLEMEN OF THE JURY, YOU'VE

1 JUST WATCHED A VIDEO ABOUT THE AMERICAN PATENT
2 SYSTEM. THE VIDEO TALKED ABOUT PATENTS IN GENERAL.

3 IN FACT, THERE ARE DIFFERENT KINDS OF
4 PATENTS AND YOU WILL SEE TWO TYPES IN THIS CASE,
5 UTILITY PATENTS AND DESIGN PATENTS.

6 EVERYTHING YOU JUST HEARD ABOUT PATENTS
7 IN THE VIDEO APPLIES TO UTILITY PATENTS.

8 HOWEVER, THERE ARE SOME DIFFERENT RULES
9 AND PROCEDURES THAT APPLY TO DESIGN PATENTS WHICH
10 THE VIDEO DID NOT TALK ABOUT.

11 FOR THAT REASON, I WANT TO EXPLAIN TO YOU
12 BRIEFLY WHAT THOSE DIFFERENCES ARE.

13 AS THE VIDEO DESCRIBED, UTILITY PATENTS
14 ARE DESIGNED FOR INVENTIONS AND, TO BE PATENTABLE,
15 AN INVENTION MUST BE BOTH NEW AND USEFUL.

16 DESIGN PATENTS, ON THE OTHER HAND, DO NOT
17 COVER INVENTIONS, BUT RATHER, AS THEIR NAME
18 SUGGESTS, THEY COVER DESIGNS.

19 TO BE PATENTABLE, A DESIGN MUST MEET A
20 DIFFERENT TEST. IT MUST BE A NEW, ORIGINAL, AND
21 ORNAMENTAL DESIGN.

22 IN GENERAL, A UTILITY PATENT PROTECTS THE
23 WAY AN ARTICLE WORKS, WHILE A DESIGN PATENT
24 PROTECTS THE WAY AN ARTICLE LOOKS.

25 SINCE THE DESIGN IS SHOWN BY ITS

1 APPEARANCE, A DESIGN PATENT MAY RELATE TO THE
2 CONFIGURATION OR SHAPE OF AN ARTICLE, TO THE
3 SURFACE ORNAMENTATION APPLIED TO AN ARTICLE, OR TO
4 THE COMBINATION OF SHAPE AND SURFACE ORNAMENTATION.

5 SO ALTHOUGH YOU HEARD IN THE VIDEO THAT A
6 UTILITY PATENT MUST DESCRIBE A NEW AND USEFUL WAY
7 OF SOLVING A PROBLEM, THIS PROBLEM-SOLVING
8 REQUIREMENT DOES NOT APPLY TO DESIGN PATENTS.

9 THE VIDEO DESCRIBED A PATENT AS
10 REPRESENTING A BARGAIN MADE BETWEEN THE GOVERNMENT
11 AND THE INVENTOR OF A UTILITY PATENT. THAT WAS THE
12 IDEA THAT THE INVENTOR WOULD ADD SOMETHING NEW AND
13 USEFUL TO THE STATE OF THE ART IN RETURN FOR THE
14 RIGHT TO KEEP OTHERS FROM USING THE INVENTION FOR A
15 PERIOD OF TIME.

16 THE SAME KIND OF BARGAIN IS STRUCK WITH A
17 DESIGN PATENT INVENTOR. IN RETURN FOR ADDING A
18 NEW, ORIGINAL, AND ORNAMENTAL DESIGN TO THE PUBLIC
19 KNOWLEDGE, THE INVENTOR CAN KEEP OTHERS FROM USING
20 THE CLAIMED DESIGN AS SHOWN AND SET FORTH IN THE
21 DRAWINGS OF THE DESIGN PATENT FOR A SET PERIOD OF
22 TIME.

23 UTILITY PATENTS NORMALLY LAST FOR 20
24 YEARS, WHEREAS DESIGN PATENTS LAST 14 YEARS.

25 YOU ALSO HEARD THAT FOR A UTILITY PATENT,

1 CONCEPTION OF THE INVENTION OCCURS WHEN IT IS
2 FORMULATED IN THE MIND OF THE INVENTOR CLEARLY
3 ENOUGH THAT HE OR SHE CAN WRITE IT DOWN AND EXPLAIN
4 IT TO SOMEONE.

5 FOR A DESIGN PATENT, CONCEPTION HAPPENS
6 WHEN THE DESIGN IS FORMULATED CLEARLY ENOUGH IN THE
7 MIND OF THE INVENTOR THAT HE OR SHE CAN DRAW THE
8 DESIGN.

9 THE VIDEO DESCRIBED THE APPLICATION FOR A
10 UTILITY PATENT AS A WRITTEN DOCUMENT IN WHICH THE
11 INVENTOR DESCRIBED THE INVENTION HE OR SHE IS
12 TRYING TO PROTECT.

13 THIS IS THE SAME FOR DESIGN PATENTS,
14 EXCEPT THAT DESIGN PATENTS RELY ON FIGURES TO
15 DESCRIBE THE DESIGN AND DO NOT INCLUDE LENGTHY
16 WRITTEN DESCRIPTIONS.

17 A DESIGN PATENT HAS SIMILARITIES IN
18 FORMAT TO THE MAIN PARTS OF A UTILITY PATENT THAT
19 THE VIDEO JUST WALKED YOU THROUGH.

20 I WILL USE THE '677 DESIGN PATENT, WHICH
21 IS IN TAB 6 OF YOUR JURY NOTEBOOKS, TO IDENTIFY THE
22 BASIC PARTS OF A DESIGN PATENT. THERE ARE MANY
23 SIMILARITIES TO UTILITY PATENTS, BUT THERE ARE ALSO
24 SOME DIFFERENCES.

25 WHY DON'T I FIRST SHOW YOU THE SAMSUNG

1 UTILITY PATENT. AS I SAID YESTERDAY, WE USE THE
2 LAST THREE DIGITS TO DESCRIBE IT, THE '460, WHICH
3 IS TAB 15.

4 DO YOU HAVE THAT BEFORE YOU, TAB 15?

5 SO IN THE UPPER RIGHT-HAND CORNER, YOU
6 HAVE THE PATENT NUMBER. WE HAVE THE FULL NUMBER,
7 BUT WE GENERALLY JUST REFER TO PATENTS BY THEIR
8 LAST THREE DIGITS. THAT'S WHY WE SAY THE '460.

9 AS THE VIDEO SHOWED YOU, THE DATE OF THE
10 PATENT IS IN THE RIGHT-HAND CORNER; THE TITLE OF
11 THE PATENT IS AT THE TOP OF THE LEFT COLUMN; WHO
12 THE INVENTORS ARE; AND IF THE INVENTORS HAVE
13 ASSIGNED THEIR RIGHTS TO SOMEBODY, THE ASSIGNEE IS
14 LISTED ON THE LEFT COLUMN AS WELL.

15 AND THE FIELD OF CLASSIFICATION SEARCH,
16 WHICH WAS ALSO MENTIONED ON THE VIDEO, STARTS ON
17 THE BOTTOM LEFT-HAND CORNER; AND THE ABSTRACT, OR
18 THE SPECIFICATION, IS THE DESCRIPTION, AND THAT
19 BEGINS ON THE SECOND COLUMN ON PAGE 1.

20 AND AS YOU FLIP THROUGH IT, YOU CAN SEE
21 THE VARIOUS FIGURES THAT ARE INCLUDED, AND IF YOU
22 LOOK AT WHAT'S NUMBERED AT THE BOTTOM AS 14739 --
23 SO THE NUMBERS ON THE TOP, WHEN YOU HEAR A
24 DESCRIPTION, A LOT OF PEOPLE WILL SAY COLUMN 1,
25 LINE WHATEVER. SO THE NUMBER AT THE TOP WHERE IT

1 SAYS 1, THAT MEANS COLUMN 1. THE NUMBER 2 ON THE
2 TOP OF THE RIGHT-HAND COLUMN, THAT'S COLUMN 2. SO
3 YOU MAY HEAR THROUGHOUT THIS TRIAL PEOPLE REFER TO
4 LINE NUMBERS AND COLUMN NUMBERS AND THAT'S WHAT
5 WE'RE REFERRING TO.

6 THE SMALL NUMBERS IN THE MIDDLE OF THE
7 TWO COLUMNS, THOSE ARE THE LINE NUMBERS. OKAY?

8 AND AS THE VIDEO SAID, THERE IS, IN THIS
9 SPECIFICATION, OR ALSO CALLED AN ABSTRACT, THE
10 BACKGROUND OF THE INVENTION, SUMMARY OF THE
11 INVENTION, A DESCRIPTION OF EMBODIMENTS.

12 AND THEN IF YOU LOOK AT THE VERY LAST
13 PAGE, WHICH IS BATES NUMBER 14745, IF YOU LOOK AT
14 COLUMN 14 WHERE YOU SEE THE NUMBER 1, A DATA
15 TRANSMITTING METHOD, THAT IS THE CLAIM.

16 OKAY? SO IN THIS PARTICULAR CASE, IN
17 THIS PARTICULAR PATENT, THERE'S ONE CLAIM. BUT
18 YOU'LL SEE WITH THE OTHER PATENTS THERE MAY BE MANY
19 MORE CLAIMS.

20 BUT I HOPE THAT'S CLEAR WHEN THE PARTIES
21 REFER TO COLUMN NUMBERS AND LINE NUMBERS WHAT
22 THEY'RE TALKING ABOUT. OKAY?

23 NOW GO TO TAB NUMBER 6 IN YOUR JURY
24 BINDERS. AND THAT IS APPLE'S DESIGN PATENT '677.

25 AND THE FIRST PAGE OF A DESIGN PATENT HAS

1 MUCH OF THE SAME MATERIAL AS THE UTILITY PATENT I
2 JUST SHOWED YOU.

3 IT HAS A PATENT NUMBER ASSIGNED BY THE
4 PTO IN THE UPPER RIGHT CORNER; AND ON THE LEFT
5 SIDE, THE TITLE; THE NAMES OF THE INVENTORS; AND
6 SOMETIMES THE COMPANY THE INVENTORS HAVE ASSIGNED
7 THE PATENT TO; THE FILING DATE OF THE APPLICATION;
8 THE NUMBERS FOLLOWING THE HEADING FIELD OF SEARCH,
9 WHICH IDENTIFY THE CATEGORIES OF PREVIOUSLY ISSUED
10 PATENTS THE EXAMINER LOOKED AT OR SEARCHED; AND THE
11 LIST OF REFERENCES CITED.

12 ONE DIFFERENCE YOU CAN SEE, HOWEVER, IS
13 THAT WHILE IN THE UTILITY PATENT, THE CLAIMS CAME
14 AT THE END, HERE THE CLAIM IS ON THE FIRST PAGE.

15 IN SOME PATENTS -- IN SOME DESIGN
16 PATENTS, THE CLAIM WILL BE ON A FOLLOWING PAGE.

17 ANOTHER DIFFERENCE YOU WILL NOTICE IN
18 LOOKING AT THE SAMPLE PATENT IS THAT A DESIGN
19 PATENT DOES NOT HAVE A LENGTHY WRITTEN DESCRIPTION,
20 WHICH YOU HEARD IS CALLED THE SPECIFICATION IN
21 UTILITY PATENTS.

22 AND WHILE IN A UTILITY PATENT THE CLAIMS
23 DESCRIBE THE PATENTED INVENTION IN WORDS, THE CLAIM
24 OF A DESIGN PATENT IS THE DESIGN AS SHOWN IN THE
25 FIGURES, INCLUDING THE DESCRIPTION OF THE FIGURES

1 IMMEDIATELY BELOW THE SECTION HEADED CLAIM.

2 THE CLAIM AND DESCRIPTION SECTIONS ARE
3 THEN FOLLOWED BY FIGURES THAT SHOW THE PATENTED
4 DESIGN AS CLAIMED.

5 I WILL INSTRUCT YOU LATER ON HOW TO
6 UNDERSTAND THE FIGURES AND THE DESIGN THAT IS
7 LEGALLY CLAIMED IN EACH DESIGN PATENT THAT IS IN
8 THIS CASE.

9 UNLIKE UTILITY PATENTS, A DESIGN PATENT
10 CAN HAVE ONLY A SINGLE CLAIM, ALTHOUGH THERE MAY BE
11 MORE THAN ONE EMBODIMENT OF THE CLAIMED DESIGN AS
12 SHOWN IN THE FIGURES.

13 WHERE A DESIGN PATENT IS EVENTUALLY
14 GRANTED BY THE PTO, THOSE DRAWINGS DEFINE THE
15 BOUNDARIES OF THE PATENT'S PROTECTION AND THE
16 NOTICE TO THE PUBLIC OF THE CLAIMED DESIGN.

17 THE VIDEO ALSO DISCUSSED HOW THE PTO
18 PROCESSES PATENT APPLICATIONS. THE PROCESS IS
19 LARGELY THE SAME FOR DESIGN PATENTS IN THAT AN
20 EXAMINER WHO SPECIALIZES IN DESIGN PATENTS WILL
21 REVIEW THE APPLICATION, INCLUDING THE FIGURES, WILL
22 SEARCH THE PRIOR ART, AND WILL THEN MAKE A DECISION
23 ABOUT WHETHER THE DESIGN AS CLAIMED IS PATENTABLE.

24 JUST LIKE WITH UTILITY PATENTS, YOU MAY
25 ALSO BE ASKED TO DECIDE ABOUT VALIDITY; THAT IS,

1 WHETHER THE DESIGN PATENT SHOULD HAVE BEEN ALLOWED
2 AT ALL BY THE PTO.

3 FOR EXAMPLE, THE PTO MAY NOT HAVE HAD
4 AVAILABLE TO IT ALL THE PRIOR ART THAT WILL BE
5 PRESENTED TO YOU.

6 A PERSON ACCUSED OF INFRINGING HAS THE
7 RIGHT TO ARGUE IN FEDERAL COURT THAT THE PATENT OR
8 PATENTS ARE INVALID BECAUSE THEY DO NOT MEET THE
9 REQUIREMENTS FOR PATENTABILITY.

10 IN THE SAME WAY YOU HEARD ABOUT UTILITY
11 PATENTS ON THE VIDEO, THE PATENT OFFICE IS PRESUMED
12 TO HAVE DONE ITS JOB CORRECTLY IN ISSUING DESIGN
13 PATENTS, SO A PARTY SEEKING TO PROVE A DESIGN
14 PATENT INVALID MUST MEET THE HIGHER STANDARD OF
15 PROOF THAT APPLIES TO UTILITY PATENTS.

16 AND FINALLY, JUST AS WITH UTILITY
17 PATENTS, WHEN AN INFRINGEMENT CASE SUCH AS THIS ONE
18 IS BROUGHT, IT IS UP TO YOU, THE JURY, TO DECIDE
19 THE FACTS OF THE CASE BASED ON THE LAW THAT I WILL
20 GIVE YOU AT THE CONCLUSION OF THE TRIAL.

21 ALL RIGHT. WITH THAT, WE ARE NOW GOING
22 TO MOVE TO OPENING STATEMENTS, AND IT'S CALLED
23 "OPENING STATEMENTS" FOR A REASON. AT THE END OF
24 THE CASE YOU WILL HEAR CLOSING ARGUMENTS, AND IT'S
25 CALLED "ARGUMENT" FOR A REASON.

1 IN A CLOSING ARGUMENT, THE PARTIES ARE
2 ALLOWED TO ARGUE THE CASE, TO DRAW INFERENCES FROM
3 THE EVIDENCE.

4 AN OPENING STATEMENT IS CALLED A
5 "STATEMENT" BECAUSE IT'S SUPPOSED TO BE A STATEMENT
6 OF WHAT THE WITNESSES WILL TESTIFY TO AND WHAT ALL
7 THE DOCUMENTS WILL SHOW. ARGUMENT IS IMPROPER IN
8 AN OPENING STATEMENT.

9 I HAVE NOTIFIED THE ATTORNEYS THAT THEY
10 ARE NOT TO ARGUE IN AN OPENING STATEMENT, AND IF
11 THEY DO SO, I MAY STOP THEM IN THE MIDDLE OF THEIR
12 STATEMENT AND ASK THEM TO PLEASE NOT ARGUE.

13 SO WITH THAT, LET ME ASK IF THE
14 PLAINTIFFS WISH TO GIVE AN OPENING STATEMENT.

15 MR. MCELHINNY: WE DO, YOUR HONOR.

16 THE COURT: OKAY. GO AHEAD, PLEASE. YOU
17 HAVE -- THE TIME IS NOW 9:33.

18 MR. MCELHINNY: THANK YOU.

19 **(WHEREUPON, MR. MCELHINNY GAVE HIS**
20 **OPENING STATEMENT ON BEHALF OF APPLE.)**

21 MR. MCELHINNY: MAY IT PLEASE THE COURT.

22 GOOD MORNING. MY NAME IS HAROLD
23 MCELHINNY. I'LL USE A LITTLE BIT OF MY TIME TO
24 REPEAT SOME OF THE INTRODUCTIONS THAT YOU HEARD
25 YESTERDAY IN CASE YOU HAD OTHER THINGS ON YOUR MIND

1 WHEN THE INTRODUCTIONS HAPPENED YESTERDAY.

2 FIRST I'D LIKE TO INTRODUCE BRUCE SEWELL,
3 WHO IS THE SENIOR VICE-PRESIDENT AND GENERAL
4 COUNSEL OF APPLE AND IS MY BOSS.

5 I WOULD ALSO LIKE TO TALK ABOUT THE TRIAL
6 TEAM, BECAUSE THESE ARE THE PEOPLE THAT YOU'LL BE
7 SEEING FROM TIME TO TIME.

8 STARTING IN THE BACK ROW, YOU HAVE
9 MARK SELWYN; YOU HAVE JOE MUELLER; YOU HAVE
10 FRANCIS HO; YOU HAVE RACHEL KREVANS; BILL LEE, WHO
11 YOU MET YESTERDAY; AND MIKE JACOBS; AND AS I SAID,
12 MY NAME IS HAROLD MCELHINNY, AND WE ARE THE TEAM
13 THAT REPRESENTS APPLE.

14 SO THERE IS GOOD NEWS AND THERE IS BAD
15 NEWS. THE GOOD NEWS IS, AS THE JUDGE HAS TOLD YOU,
16 AND YOU CAN HEAR HER TALKING ABOUT THE CLOCK, SHE
17 HAS US ON A VERY STRICT SCHEDULE TO MAKE SURE THAT
18 WE DO NOT WASTE ANY OF YOUR TIME. THAT'S THE GOOD
19 NEWS.

20 THE BAD NEWS IS WHAT THAT MEANS IS
21 THERE'S GOING TO BE A LOT OF TESTIMONY AND A LOT OF
22 EVIDENCE THAT'S GOING TO COME VERY QUICKLY AND, AND
23 IT WILL JUST COME. BUT WHAT I WANT YOU TO
24 UNDERSTAND FROM THE BEGINNING IS THAT BILL LEE AND
25 I ARE THE LEAD TRIAL COUNSEL FOR APPLE. IT IS OUR

1 JOB TO MAKE SURE THAT THAT EVIDENCE COMES IN
2 CLEARLY, THAT IT GIVES YOU WHAT YOU NEED TO DO YOUR
3 JOB.

4 AND EVERYBODY, THANK YOU FOR YOUR SERVICE
5 YESTERDAY, AND I'LL JUST SAY FOR YOU AT THE END OF
6 THIS, WE WANT YOU TO BE GLAD THAT YOU SERVED ON
7 THIS JURY.

8 ALTHOUGH THERE WILL BE A LOT OF FACTS AND
9 THERE WILL BE A LOT OF TESTIMONY, LIKE MOST
10 DISPUTES, WE THINK THAT ULTIMATELY THIS WILL COME
11 DOWN TO TWO PRETTY SIMPLE QUESTIONS, AND THE FIRST
12 QUESTION IS THIS: HOW DID SAMSUNG MOVE FROM THESE
13 PHONES -- AND THESE ARE THE PHONES THAT SAMSUNG WAS
14 SELLING IN THE YEAR 2006 -- HOW DID THEY MOVE TO
15 THESE PHONES WHICH THEY WERE SELLING IN 2010?

16 LET'S LOOK AT THOSE FIRST PHONES AGAIN.
17 I LOVE THIS PICTURE BECAUSE WHEN I FIRST LOOKED AT
18 THIS, I DIDN'T REMEMBER WHAT PHONES LOOKED LIKE IN
19 2006. THERE WAS A LOT OF TESTIMONY YESTERDAY ABOUT
20 OLD CELL PHONES, AND THERE THEY ARE.

21 BUT THE QUESTION IS, HOW DID SAMSUNG MOVE
22 FROM HERE IN 2006 TO HERE IN 2010?

23 AND TO ANSWER THAT QUESTION, WE HAVE TO
24 GO BACK TO JANUARY 9TH, 2007. THAT'S WHEN
25 STEVE JOBS INTRODUCING THE IPHONE AT THE MAC WORLD

1 CONFERENCE IN MOSCONE CENTER IN SAN FRANCISCO IN A
2 CONFERENCE ATTENDED BY THOUSANDS OF PEOPLE.

3 MR. JOBS, AT THAT CONFERENCE, CALLED THE
4 IPHONE THREE DEVICES IN ONE: AN IPOD, A PHONE, AND
5 AN INTERNET DEVICE.

6 YOU WILL HEAR FROM APPLE WITNESSES WHO
7 WERE INVOLVED IN THAT CONFERENCE, AND WHAT THEY'RE
8 GOING TO TELL YOU IS THAT APPLE HAD A VISION THAT
9 TECHNOLOGY SHOULD BE ABOUT MUCH MORE THAN SIMPLY
10 FUNCTIONALITY.

11 IT SHOULD BE ABOUT EXPERIENCE, HOW YOU
12 REACT TO YOUR PRODUCTS. A WORLD IN WHICH THE LOOK
13 AND FEEL OF A DEVICE AND THE WAY THAT IT INTERACTS
14 WITH THE USER WOULD BE JUST AS IMPORTANT AS WHAT
15 THE DEVICE WAS CAPABLE OF ACCOMPLISHING.

16 THE EVIDENCE WILL BE THAT APPLE HAS MADE
17 THAT VISION A REALITY, SO MUCH THAT NOW IT REALLY
18 IS HARD TO REMEMBER WHAT PHONES LOOKED LIKE BEFORE
19 THIS CONFERENCE.

20 BUT AT THE SAME TIME THAT MR. JOBS
21 ANNOUNCED THE IPHONE, HE WARNED HIS NEW COMPETITORS
22 THAT APPLE HAD FILED FOR PATENT PROTECTION FOR MORE
23 THAN 200 NEW INVENTIONS INCORPORATED IN THE IPHONE,
24 OVER 200 PATENT APPLICATIONS FOR NEW INVENTIONS IN
25 A DEVICE THIS SIZE (INDICATING).

1 LET'S THINK ABOUT WHAT THAT MEANS. THE
2 IPHONE, LIKE ALL OF APPLE'S PRODUCTS FROM THE FIRST
3 MACINTOSH COMPUTER TO THE APPLE STORE DOWN THE
4 STREET, IS ABOUT CREATING A UNIQUE AND SPECIAL USER
5 EXPERIENCE, AN EXPERIENCE THAT IS SO SEAMLESS AND
6 INTUITIVE THAT IT JUST FEELS RIGHT.

7 IT DOESN'T COME EASY, AND THAT'S WHY THE
8 WITNESSES WHO COME HERE WILL TELL YOU ABOUT THE
9 TEAMWORK AND THE INNOVATION THAT IT TOOK IN ORDER
10 TO MAKE THIS A REALITY.

11 THE EXPERIENCE THAT USERS HAVE WITH
12 PRODUCTS LIKE THE IPHONE ARISES OUT OF THE
13 RELATIONSHIP BETWEEN THE MANY INTERVENTIONS -- THE
14 MANY INNOVATIONS AND INVENTIONS THAT GOT PULLED
15 TOGETHER INTO THIS NEW DEVICE, INNOVATIONS LIKE THE
16 BOUNCE BACK FEATURE.

17 IF WE THINK ABOUT IT, YOU KNOW THAT IN AN
18 IPAD OR AN IPHONE, WHENEVER YOU GET TO THE BOTTOM
19 OF A LIST, YOU KNOW YOU'RE AT THE BOTTOM OF A LIST
20 BECAUSE IT BOUNCES BACK. IT'S A LITTLE THING -- IT
21 SEEMS LIKE A LITTLE THING, BUT IF YOU THINK ABOUT
22 IT, OTHERWISE IF IT STOPPED, YOU WOULD THINK YOUR
23 PHONE WAS BROKEN. OR IF IT JUST KEPT GOING INTO
24 WHITE SPACE, YOU WOULDN'T KNOW WHERE YOU WERE ON
25 YOUR SCREEN.

1 OTHER INVENTIONS WERE THE BLACK TO BLACK
2 COMPLETE FLAT FACE OF THE PHONE, WHICH WAS A NEW
3 LOOK, A LOOK THAT DIDN'T EXIST, THAT DRAWS PEOPLE
4 INTO THE DEVICE AND MAKES THEM WANT TO USE IT.

5 EACH OF THOSE INNOVATIONS, THE DESIGN OF
6 THE THING, THE BOUNCE BACK FEATURE, ALL OF THOSE
7 THINGS WERE COVERED BY INDIVIDUAL PATENTS BECAUSE
8 THEY ARE CRITICAL COMPONENTS THAT YOU HAD TO PULL
9 ALL TOGETHER TO GET A PRODUCT THAT WOULD WORK FOR
10 THE FIRST TIME.

11 MANY OF US ARE AT LEAST GENERALLY
12 FAMILIAR WITH APPLE'S HISTORY. IN 1984, APPLE
13 INTRODUCED THE MACINTOSH COMPUTER, A COMPETITOR IN
14 THE P.C. IT WAS FAMOUS FOR ITS NEW DESIGN, THE USE
15 OF THE MOUSE, AND ITS DISTINCTIVE ICONS.

16 THEN IN 2001, APPLE SURPRISED THE WORLD
17 WITH THE IPOD, APPLE'S VERSION OF AN MP3 PLAYER,
18 AGAIN, A PRODUCT IDENTIFIED BY A UNIQUE DESIGN THAT
19 THE WORLD IMMEDIATELY IDENTIFIED AS AN APPLE
20 PRODUCT.

21 THE IPOD LINE HAS BEEN SO SUCCESSFUL THAT
22 TODAY, TEN YEARS LATER, APPLE STILL SELLS MILLIONS
23 OF THEM EVERY YEAR.

24 SO BY 2001, APPLE WAS A FAMOUS COMPUTER
25 COMPANY AND IT WAS A FAMOUS MUSIC COMPANY.

1 BUT AS YOU'RE GOING TO HEAR FROM THE
2 PEOPLE WHO WORKED THERE AT THE TIME WHO WERE
3 INVOLVED IN THIS, APPLE WAS NOT CONTENT TO STAY A
4 COMPUTER COMPANY AND A MUSIC COMPANY.

5 APPLE HAS ALWAYS BEEN A FORWARD-LOOKING
6 COMPANY. IT ALWAYS HAS ITS EYE ON THE FUTURE.
7 PEOPLE ARE ALWAYS TALKING ABOUT WHAT WILL APPLE'S
8 NEXT PRODUCT BE? THE PEOPLE AT APPLE ARE ALWAYS
9 TALKING ABOUT WHAT WILL THEIR NEXT PRODUCT BE?

10 AND SO IN 2003, APPLE BEGAN A RESEARCH
11 PROJECT. IRONICALLY, AS YOU'LL HEAR, WHEN THEY
12 STARTED THE PROJECT, IT WASN'T ABOUT THE PHONE.
13 THEY STARTED WORKING ON WHAT EVENTUALLY BECAME THE
14 IPAD.

15 BUT AS THESE PEOPLE, AS THESE ENGINEERS,
16 AS THESE DESIGNERS GOT TOGETHER IN THEIR SMALL
17 GROUP THAT WAS WORKING ON IT AND THEY WERE
18 DISCUSSING ABOUT THE PRODUCTS, THEY SUDDENLY
19 REALIZED THAT WHAT THE WORLD REALLY NEEDED, WHAT IT
20 DIDN'T HAVE, WAS A PHONE THAT HAD THE CAPABILITIES
21 OF A COMPUTER.

22 AND SO APPLE BEGAN TO DESIGN AN ENTIRELY
23 NEW PRODUCT, A PHONE, A WEB BROWSER, AND A MUSIC
24 PLAYER, A PHONE THAT HAD A DESIGN THAT THE WORLD
25 HAD NEVER SEEN BEFORE.

1 PHYSICAL KEYBOARDS WOULD BECOME A THING
2 OF THE PAST.

3 YOU'LL HEAR THAT TO DO THIS REQUIRED
4 COMBINING THE TALENTS OF PEOPLE FROM VARIOUS --
5 FROM MANY DIFFERENT FIELDS. IT REQUIRED AN
6 ENTIRELY NEW HARDWARE SYSTEM, THE MAC OS SYSTEM
7 WHICH WORKED ON A COMPUTER HAD TO BE TRANSPORTED SO
8 THAT IT WOULD WORK ON A DEVICE AS SMALL AS A PHONE.

9 IT REQUIRED AN ENTIRELY NEW USER
10 INTERFACE, AND THAT INTERFACE HAD TO BECOME
11 COMPLETELY INTUITIVE.

12 THINK ABOUT THIS FOR A MINUTE. THINK
13 ABOUT THE FIRST TIME PEOPLE PICKED UP ONE OF THESE
14 DEVICES. WHAT WAS INTERESTING ABOUT IT, WHAT
15 STRUCK ME -- AND YOU CAN TELL I AM NOT OF THE YOUNG
16 TECHIE GENERATION -- BUT WHAT STRUCK ME ABOUT THIS
17 WAS THERE IS NO MANUAL. IT DOESN'T TEACH YOU HOW
18 TO DO IT.

19 YOU HAD TO WALK INTO THE STORE, YOU HAD
20 TO PICK IT UP, AND YOU HAD TO IMMEDIATELY GET DRAWN
21 INTO HOW TO USE THE DEVICE, BECAUSE IF THAT DIDN'T
22 HAPPEN IMMEDIATELY, YOU WOULD NEVER BUY IT. YOU
23 WOULD PUT IT BACK, YOU WOULD SAY IT WAS TOO HARD,
24 THAT THE HUNDREDS AND THOUSANDS, THE MILLIONS OF
25 PEOPLE THAT NEEDED TO TAKE THIS DEVICE -- THAT

1 NEEDED TO BUY THIS DEVICE WOULD NOT BE ATTRACTED TO
2 IT UNLESS IT WORKED FOR THEM THE FIRST TIME THEY
3 PICKED IT UP.

4 AND TO MAKE THAT HAPPEN FOR PEOPLE WHO
5 HAD NEVER USED A TOUCH SCREEN BEFORE REQUIRED
6 FORWARD THINKING, FORWARD INVENTIONS, GADGETS,
7 FEATURES THAT WOULD DRAW PEOPLE INTO THE PRODUCT
8 ITSELF.

9 AND FINALLY, IT REQUIRED A UNIQUE DESIGN,
10 A PRODUCT THAT WOULD SAY TO PEOPLE, "THIS IS AN
11 APPLE PRODUCT. IT IS NOT A PRODUCT THAT ANY OTHER
12 COMPANY HAS EVER MADE."

13 SO THAT IS -- THIS IS WHAT THE PEOPLE IN
14 CUPERTINO DEVELOPED LESS THAN TEN MILES FROM THIS
15 COURTHOUSE. THAT'S WHAT THIS TEAM PUT TOGETHER.

16 JUST FOR A MOMENT, IF YOU CAN GO BACK IN
17 TIME, THINK OF WHAT A RISK THAT WAS FOR THE
18 COMPANY. THEY WERE A SUCCESSFUL COMPUTER COMPANY.
19 THEY WERE A SUCCESSFUL MUSIC PLAYER COMPANY.

20 AND THEY WERE ABOUT TO ENTER A FIELD THAT
21 WAS DOMINATED BY GIANTS. NOKIA, MOTOROLA, SAMSUNG,
22 ALL OF THESE PEOPLE WERE IN THE TELEPHONE BUSINESS.

23 SAMSUNG AND APPLE -- OR APPLE HAD
24 ABSOLUTELY NO NAME IN THE FIELD, NO CREDIBILITY.
25 IT WAS AN ENTRY INTO AN AREA THAT, IF IT HAD GONE

1 BAD, COULD HAVE ENDED THE COMPANY'S FUTURE.

2 WE ALL KNOW NOW THAT IT WAS A SUCCESS.
3 WE ALL KNOW NOW THAT IT WORKED. WE ALL FORGET
4 ABOUT HISTORY AND HOW THEY GOT THERE. WE ALL
5 FORGET ABOUT THE RISKS.

6 BUT ON JANUARY 9TH, 2007 WHEN STEVE JOBS
7 AND PHIL SCHILLER -- YOU'LL MEET MR. SCHILLER,
8 HE'LL COME HERE AND TESTIFY -- WENT THROUGH THAT
9 PRESENTATION, THEY WERE LITERALLY BETTING THEIR
10 COMPANY.

11 CRITICAL ACCLAIM FOR THE IPHONE WAS
12 IMMEDIATE. ON JANUARY 11TH, 2007, THE NEW YORK
13 TIMES COMPARED APPLE TO THE FAIRY GODMOTHER IN
14 CINDERELLA, WAVING A WAND AT SOME HOMELY AND
15 UTILITARIAN OBJECT, THE ORDINARY CELL PHONE, AND
16 TURNING IT INTO SOMETHING GLAMOROUS AND EXCITING,
17 THE IPHONE.

18 TIME MAGAZINE NAMED THE IPHONE THE 2007
19 INVENTION OF THE YEAR. THEY CALLED IT -- THIS IS
20 THEIR WORDS, THIS IS NOT AN APPLE AD, THIS IS
21 TIME MAGAZINE -- THE PHONE THAT HAS CHANGED PHONES
22 FOREVER. AND THEY SAID THE IPHONE IS CRITICAL.

23 THINK ABOUT THAT FOR A MOMENT. APPLE HAS
24 CHANGED A PHONE INTO SOMETHING GLAMOROUS AND
25 AMAZING. THE PHONE THAT HAS CHANGED PHONES

1 FOREVER.

2 PRESTIGIOUS PROFESSIONAL ORGANIZATIONS,
3 AS YOU'LL HEAR, HAVE GIVEN IT AWARDS FOR ITS DESIGN
4 AND ITS INGENUITY. WE'LL TALK SPECIFICALLY, WHEN
5 ONE OF THE DESIGNERS COMES, ABOUT THIS DESIGN ART
6 DIRECTION AWARD, WHICH IS GENERALLY CONSIDERED TO
7 BE THE HIGHEST ACHIEVEMENT IN THE DESIGN FIELD FOR
8 A PRODUCT.

9 THE WORLD IMMEDIATELY RECOGNIZED, THESE
10 PEOPLE, THESE CRITICS IMMEDIATELY RECOGNIZED THAT
11 APPLE HAD DONE SOMETHING NEW AND REVOLUTIONARY,
12 BOTH IN TERMS OF THE NATURE OF THE DEVICE, AND IN
13 TERMS OF THE NATURE OF THE DESIGN.

14 BUT YOU KNOW, AND THE REASON WE'RE HERE
15 IS BECAUSE APPLE PROTECTED EACH OF THESE INVENTIONS
16 WITH PATENTS.

17 YOU HEARD ABOUT, IN THE MOVIE, THE U.S.
18 PATENT AND TRADEMARK OFFICE. WHAT YOU'LL HEAR
19 ABOUT HERE IS THAT EVEN THE PATENT AND TRADEMARK
20 OFFICE HAS RECOGNIZED THE SIGNIFICANCE OF APPLE'S
21 INVENTIONS AND THE IMPORTANCE OF THE PATENT
22 PROTECTIONS THAT APPLE HAS BEEN AWARDED.

23 THIS -- YOU SAW ONE OF THOSE THINGS IN
24 THE PRESENTATION. THIS IS ANOTHER PRESENTATION
25 THAT THE PTO DID LAST DECEMBER, WHICH HAS NOW BEEN

1 2007, APPLE CHANGED PHONES FOREVER.

2 WHAT DID THAT MEAN?

3 IT MEANT THAT A COMPETITOR LIKE SAMSUNG
4 COULD NOT CONTINUE TO MAKE THE SAME KINDS OF
5 PHONES, THE 2006 PHONES, THAT IT USED TO MAKE.

6 IT MEANT THAT APPLE HAD INVENTED
7 SOMETHING THAT WAS SO UNIQUE AND INNOVATIVE THAT
8 CUSTOMERS WOULD NO LONGER ACCEPT THE DEVICES THAT
9 LOOKED AND ACTED -- THAT DIDN'T HAVE TOUCH SCREENS,
10 FOR EXAMPLE.

11 FACED WITH THIS REALITY, THE EVIDENCE
12 WILL SHOW THAT SAMSUNG HAD TWO CHOICES: IT COULD
13 ACCEPT THE CHALLENGE OF THE IPHONE, IT COULD CREATE
14 ITS OWN PRODUCTS, IT COULD INNOVATE, IT COULD COME
15 UP WITH ITS OWN DESIGNS, IT COULD BEAT APPLE FAIRLY
16 IN THE MARKETPLACE; OR IT COULD COPY APPLE.

17 SAMSUNG COULD LOOK AT THE DETAILS OF THE
18 IPHONE, DETAILS LIKE THE BOUNCE BACK FIGURE --
19 BOUNCE BACK FEATURE AND THE FLAT GLASS FACE AND
20 SAMSUNG COULD COPY THAT.

21 NOW, AS WE ALL KNOW, IT'S EASIER TO COPY
22 THAN TO INNOVATE. IT'S FAR LESS RISKY BECAUSE, AS
23 THE EVIDENCE WILL SHOW, APPLE HAD ALREADY TAKEN THE
24 RISKS. APPLE HAD INTRODUCED SOMETHING THAT WAS
25 WILDLY SUCCESSFUL IN THE MARKETPLACE.

1 SO WHAT WILL THE EVIDENCE SHOW THAT
2 APPLE'S TRUSTED SUPPLIER DID WHEN THE IPHONE WAS
3 INTRODUCED?

4 WE'RE GOING TO LOOK AT SAMSUNG'S OWN
5 INTERNAL DOCUMENTS.

6 NOW, AS YOU PROBABLY KNOW, IN LAWSUITS
7 LIKE THIS, AS PART OF THE PROCESS, EACH COMPANY IS
8 REQUIRED TO TURN ITS SECRET, CONFIDENTIAL, INTERNAL
9 DOCUMENTS OVER TO THE LAWYERS FOR THE OTHER SIDE.
10 SO WE, AS THE LAWYERS FOR APPLE, HAVE HAD THE
11 OPPORTUNITY TO LOOK AT SAMSUNG'S INTERNAL
12 DOCUMENTS.

13 WHAT I'M ABOUT TO SHOW YOU ARE SAMSUNG
14 INTERNAL DOCUMENTS, TRANSLATIONS OF THEM, THAT HAVE
15 NEVER BEEN SEEN IN PUBLIC BEFORE. APPLE DIDN'T
16 KNOW ABOUT THESE DOCUMENTS AT THE TIME THAT THEY
17 WERE CREATED.

18 SHORTLY AFTER THE IPHONE HIT THE MARKET,
19 ONE SAMSUNG DIVISION PREPARED THIS FEASIBILITY
20 REVIEW -- THIS IS AN ENGLISH TRANSLATION. THIS
21 WILL BE EXHIBIT 34. WHEN THE TRIAL IS ALL OVER,
22 YOU WILL ACTUALLY HAVE THIS PHYSICAL DOCUMENT IN
23 THE JURY ROOM WITH YOU -- TO ANALYZE THE IMPACT
24 THAT THE IPHONE WAS HAVING ON SAMSUNG'S MARKET.

25 THE PHONE FOCUSSED ON THE IPHONE'S USER

1 INTERFACE AND ITS BEAUTIFUL DESIGN.

2 "BEAUTIFUL DESIGN." THESE WERE SAMSUNG'S
3 OWN WORDS AT THE TIME.

4 AND IT CONCLUDED, "COMPETING WITH THE
5 IPHONE ONE WAY OR THE OTHER IS INEVITABLE."

6 AND THEN IT NOTED -- H.W. STANDS FOR
7 HARDWARE -- "THE HARDWARE PORTION IS EASY TO COPY."

8 EXHIBIT 36 IS A SAMSUNG SURVEY FROM 2008
9 DESCRIBING WHAT CONSUMERS WERE TELLING SAMSUNG'S
10 INTERVIEWERS ABOUT THE BEAUTIFUL NEW APPLE PRODUCT.
11 TOUCH PORTFOLIO -- BECAUSE THESE PHONES HAVE TOUCH
12 SCREENS, SO A TOUCH PORTFOLIO RELATES TO PHONE THAT
13 IS OPERATED FROM A TOUCH SCREEN.

14 THE PEOPLE IN THE MARKETPLACE WERE
15 TELLING SAMSUNG, CONSUMERS WERE SAYING THE IPHONE
16 HAS CHANGED THEIR NOTION OF WHAT A PHONE CAN AND
17 SHOULD DO. IT'S NOT JUST USABLE. IT'S NOT JUST
18 FUNCTIONAL. IT'S ENJOYABLE, ENGAGING, AND COOL.

19 THEY SAID IT'S FUN. IT SAYS THE GESTURES
20 LIKE THE TWO FINGERED PINCH AND FLICK, YOU'LL SEE
21 THAT -- YOU KNOW THAT ON PICTURES WHERE YOU CAN
22 EXPAND THE PICTURE JUST BY PINCHING IT OR PULLING
23 IT TOGETHER OR PULLING IT APART, THAT'S ONE OF THE
24 PATENTS IN THIS CASE -- AND IN 2008, CONSUMERS WERE
25 TELLING SAMSUNG THAT THAT WAS ONE OF THE THINGS

1 THAT THEY IMMEDIATELY NOTICED ABOUT THE PHONE.

2 AND THEY SAID IT WAS WHIMSICAL BECAUSE
3 THE LISTS BOUNCED.

4 THESE ARE A FEW OF THE FEATURES THAT
5 IMMEDIATELY CAPTURED THE PUBLIC'S ATTENTION.

6 SO AS THE MARKET TURNED AGAINST SAMSUNG'S
7 OWN DESIGNS, AT ITS HIGHEST CORPORATE LEVELS,
8 SAMSUNG DECIDED SIMPLY TO COPY EVERY ELEMENT OF THE
9 IPHONE.

10 SAMSUNG MAY BRING A COUPLE OF DESIGNERS
11 TO THIS TRIAL TO TELL YOU THAT THEY PERSONALLY
12 DIDN'T COPY.

13 BUT THE PRODUCTS THEY DESIGNED AND THE
14 DOCUMENTS THAT SAMSUNG HAS PROVIDED TELL A MUCH
15 DIFFERENT STORY.

16 LET'S LOOK AT EXHIBIT 40.

17 EXHIBIT 40 ARE NOTES FROM A FEBRUARY 2010
18 EXECUTIVE LEVEL MEETING SUPERVISED BY THE HEAD OF
19 SAMSUNG'S MOBILE PHONE DIVISION, J.K. SHIN, THE
20 HEAD OF THEIR MOBILE PHONE DIVISION.

21 MR. SHIN TOLD THE ASSEMBLED SAMSUNG
22 EXECUTIVES -- THIS IS 2010 -- THAT THE USER
23 INTERFACE OF SAMSUNG'S THEN CURRENT OFFERING, WHICH
24 WAS CALLED THE OMNIA -- AND HERE'S A PICTURE OF
25 WHAT THE OMNIA LOOKED LIKE, YOU SEE THE BUTTONS

1 DOWN AT THE BOTTOM.

2 SO HE'S TALKING ABOUT THE OMNIA AND HE
3 SAYS THE USER INTERFACE OF SAMSUNG'S OMNIA COULD
4 NOT COMPETE WITH THE IPHONE.

5 HE SAID THE IPHONE HAS BECOME THE
6 STANDARD. HE TALKED ABOUT THE USER EXPERIENCE --
7 THAT'S -- THE U.S. IS USER EXPERIENCE -- BETWEEN
8 THE OMNIA AND THE IPHONE AND HE SAID IT IS A
9 DIFFERENCE BETWEEN HEAVEN AND EARTH.

10 IN 2010, THE HEAD OF THEIR MOBILE PHONE
11 DIVISION TOLD HIS EXECUTIVES THAT SAMSUNG FACED,
12 QUOTE, "A CRISIS OF DESIGN."

13 FINALLY, MR. SHIN TOLD HIS SENIOR
14 EXECUTIVES THAT THEIR MAJOR CUSTOMERS, THE PHONE
15 CARRIERS, WERE URGING SAMSUNG TO, QUOTE, "MAKE
16 SOMETHING LIKE THE IPHONE."

17 EVEN IF THESE DOCUMENTS THEMSELVES DIDN'T
18 SHOW COPYING, THE PRODUCTS THEMSELVES LEAD US TO AN
19 INESCAPABLE CONCLUSION.

20 AGAIN, THIS CHART SHOWS WHAT SAMSUNG'S
21 PHONES LOOKED LIKE BEFORE THE IPHONE. THERE'S A
22 PHONE IN THERE THAT LOOKS LIKE THE PALM, AND SEE
23 THE ONE THAT LOOKS LIKE THE BLACKBERRY?

24 THIS CHART SHOWS THE PHONES THAT SAMSUNG
25 INTRODUCED RIGHT AFTER THE IPHONE CAME OUT FOR THE

1 NEXT PERIOD OF TIME.

2 THE ONE THAT IS CALLED AN F700 IS WHAT'S
3 CALLED A SLIDER PHONE. YOU WOULD SLIDE IT OPEN TO
4 GET TO THE KEYBOARD.

5 BUT FINALLY, AFTER CAREFULLY MONITORING
6 APPLE'S SUCCESS AND THE FAILURE OF ITS OWN DESIGNS,
7 IN JUNE 2010, SAMSUNG INTRODUCED THE
8 GALAXY S I9000, A COMPLETE IPHONE CLONE. SINCE
9 THEN THE SUCCESS OF THE GALAXY SERIES HAS LED TO A
10 SERIES OF IPHONE KNOCK-OFFS.

11 AGAIN, YOU DON'T HAVE TO TAKE OUR WORD
12 FOR IT. CRITICS IMMEDIATELY CHIDED SAMSUNG FOR THE
13 OBVIOUS COPYING. P.C. WORLD SAYS, "HOW FAMILIAR IT
14 LOOKED. THE DESIGN IS ACTUALLY VERY
15 IPHONE 3GS-LIKE."

16 WIRED MAGAZINE WAS EVEN TOUGHER. IT
17 SAYS, "SAMSUNG RIPS OFF THE IPHONE 3G DESIGN,
18 SHOCKINGLY SIMILAR." THEY CALLED SAMSUNG'S DESIGN
19 A "DERIVATIVE DESIGN."

20 BUT SAMSUNG SIMPLY IGNORED THIS CRITICISM
21 AND PLOWED AHEAD WITH ITS STRATEGY.

22 PHONES AREN'T THE ONLY PRODUCTS INVOLVED
23 IN THIS CASE. ON JANUARY 7, 2010, APPLE REPEATED
24 ITS SUCCESS BY INTRODUCING THE IPAD.

25 DO YOU BELIEVE THE IPAD HAS ONLY BEEN

1 AROUND FOR TWO YEARS?

2 AGAIN, CRITICAL ACCLAIM WAS IMMEDIATE.
3 TIME MAGAZINE NAMED THE IPAD AS ONE OF THE 50 BEST
4 INVENTIONS OF THE YEAR. THEY SAID THAT APPLE IS
5 THE FIRST COMPANY THAT DESIGNED FINGER-FRIENDLY
6 HARDWARE AND SOFTWARE FROM SCRATCH, REINVENTING A
7 PRODUCT CATEGORY THAT ITS COMPETITORS HAVE GIVEN UP
8 ON.

9 TIME MAGAZINE CALLED IT MAGICAL AND THEY
10 CALLED IT REVOLUTIONARY.

11 AGAIN, NOT OUR WORDS. THE WORDS OF
12 CRITICS AT THE TIME.

13 SAMSUNG IMMEDIATELY INTRODUCED AN EXACT
14 COPY INTO THE MARKETPLACE.

15 THIS IS WHAT SAMSUNG'S TABLET LOOKED LIKE
16 BEFORE THE IPAD WAS ANNOUNCED, AND THIS IS THE
17 GALAXY TAB 10.1 THAT SAMSUNG RELEASED A YEAR AGO IN
18 JUNE OF 2011 (INDICATING).

19 AGAIN, CRITICS IMMEDIATELY ATTACKED
20 SAMSUNG FOR ITS OBVIOUS COPYING.

21 ON MARCH 22ND, 2011, FAST COMPANY WROTE,
22 "SAMSUNG'S ANTI-IPAD 2 POLICY: CLONE THE HECK OUT
23 OF IT."

24 THEY CALLED IT PRETTY MUCH CLONES OF
25 APPLE'S OFFERING.

1 AND IN WORDS THAT I MAY REPEAT IN THE
2 CLOSING, THEY SAID, "SAMSUNG HAS THROWN IN THE
3 TOWEL ON INNOVATIVE TABLET DESIGN AND HAS REALIZED
4 IT HAS TO MATCH APPLE'S SUCCESSFUL DESIGN TO
5 CAPTURE ANY MEANINGFUL MARKET SHARE."

6 TO BE CLEAR, SAMSUNG DID NOT SIMPLY COPY
7 THE OUTWARD APPEARANCE OF APPLE'S PHONE AND TABLET.

8 SAMSUNG COPIED EVERY DETAIL, INCLUDING
9 THE SPECIFIC PATENTED INVENTIONS THAT WE WILL TALK
10 ABOUT IN THIS TRIAL.

11 THIS WAS NOT ACCIDENTAL. SAMSUNG'S
12 COPYING WAS INTENTIONAL.

13 IN THIS TRIAL, YOU WILL SEE DOCUMENTS
14 THAT SHOW HOW OVER 100 TIMES SAMSUNG MADE DETAILED
15 CHANGES TO ITS PHONE AND TABLETS SO THAT THE END
16 RESULT WAS IDENTICAL TO APPLE PRODUCTS.

17 THIS DOCUMENT WILL BE EXHIBIT 44, AND
18 AGAIN, YOU'LL HAVE IT IN THE JURY ROOM WHEN WE'RE
19 DONE. THIS WAS THE ORIGINAL KOREAN DOCUMENT THAT
20 CAME FROM SAMSUNG.

21 WHEN YOU LOOK THROUGH IT, AND I'LL SHOW
22 YOU A PAGE IN A MINUTE, BUT WHEN YOU LOOK THROUGH
23 IT, YOU WILL SEE THAT FOR OVER 100 PAGES, EVERY
24 PAGE HAS A COMPARISON OF THE SI PHONE, WHICH
25 SAMSUNG WAS WORKING ON AT THE TIME, WITH THE

1 IPHONE, PAGE AFTER PAGE AFTER PAGE OF THIS
2 DOCUMENT.

3 AND IF WE LOOK AT A SAMPLE PAGE, EVERY
4 SINGLE ONE OF THE PAGES IN THE REPORT FOLLOWS THIS
5 SAME FORMAT.

6 AT THE TOP IT IDENTIFIES A DIFFERENCE
7 BETWEEN THE GALAXY S I AND THE IPHONE. HERE YOU
8 CAN SEE THE BLUE HEADING AT THE TOP AND THEN THE
9 BULLET POINT BELOW WHERE IT SAYS, HERE'S THE WAY
10 THEY DO IT IN THE IPHONE, AND THE IPHONE -- AND
11 SOMETIMES IT'S HARD TO TELL THE DIFFERENCE, BUT THE
12 IPHONE IS ON THE LEFT -- AND HERE'S THE WAY THE
13 GALAXY S I DOES IT ON THE RIGHT.

14 AND THEN AT THE BOTTOM IT HAS WHAT'S
15 CALLED DIRECTIONS FOR IMPROVEMENT, AND IN EVERY
16 CASE, OVER 100 PAGES, IT RECOMMENDS COPYING OR
17 MAKING IT IDENTICAL TO THE IPHONE.

18 ON THIS PARTICULAR PAGE, YOU'LL SEE THAT
19 SAMSUNG CHANGED ITS ICONS TO LOOK MORE LIKE APPLE'S
20 ICONS, EVEN THOUGH THE APPLE ICON DESIGN WAS
21 PROTECTED BY THE U.S. DESIGN PATENT, ONE OF THE
22 ONES THAT'S IN YOUR BINDER.

23 EXHIBIT 57 FROM 2011 IS A SIMILAR REPORT,
24 BUT THIS ONE -- AGAIN, AN ENGLISH TRANSLATION THAT
25 YOU'RE SEEING HERE -- COVERS TABLET DESIGN.

1 THIS PAGE FROM THE REPORT COMPARES A
2 SAMSUNG TABLET THAT WAS UNDER DEVELOPMENT TO THE
3 IPAD 2.

4 NOW, IN THIS ONE THE SAMSUNG TABLET IS ON
5 THE LEFT AND THE IPAD IS ON THE RIGHT.

6 SAMSUNG SAYS THAT LEGIBILITY IS NOT
7 GOOD -- TALKING ABOUT ITS OWN -- AS THE ICON LABEL
8 IS TOO SMALL IN PROPORTION TO THE LARGE SCREEN. IT
9 REMARKS THAT THE IPAD 2 HAS LARGE ICONS AND LABELS.

10 SO SAMSUNG RECOMMENDS THE PROPOSED
11 IMPROVEMENT OF INCREASING THE SIZE OF ICONS AND
12 LABELS IN ORDER TO MATCH THE IPAD 2.

13 AGAIN, YOU WILL HAVE THIS EXHIBIT AND
14 YOU'LL SEE THAT THERE ARE MANY PAGES IN THE RECORD,
15 EACH ONE A SIDE-BY-SIDE COMPARISON AND EACH ONE A
16 DECISION TO COPY APPLE.

17 TO BE BLUNT, THE TESTIMONY IS GOING TO
18 SHOW YOU THAT SAMSUNG HAS NOT BEEN HONEST ABOUT
19 THIS COPYING.

20 BEFORE WE GOT THE DOCUMENTS THAT I JUST
21 SHOWED YOU, AT THE VERY BEGINNING OF THIS CASE, AT
22 A TIME WHEN WE WERE TALKING ABOUT A SUBSET OF THE
23 PATENTS THAT ARE AT ISSUE, NOT ALL OF THEM, BUT A
24 SUBSET, AND A SUBSET OF THE PRODUCTS THAT ARE AT
25 ISSUE, NOT ALL OF THE ONES THAT ARE NOW, WE WERE

1 ABLE TO QUESTION A SAMSUNG CORPORATE SPOKESMAN
2 UNDER OATH ABOUT COPYING.

3 THIS WAS A WITNESS THAT SAMSUNG HAD
4 CHOSEN TO BE THEIR CORPORATE SPOKESMAN ON THE
5 SUBJECT OF COPYING.

6 HIS NAME IS JUSTIN DENISON. AND THIS IS
7 WHAT MR. DENISON TESTIFIED.

8 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN
9 OPEN COURT OFF THE RECORD.)

10 MR. MCELHINNY: "IN EACH CASE, THE
11 DESIGNERS SAID THEY HAD NOT."

12 THAT WAS TESTIMONY UNDER OATH IN THIS
13 CASE.

14 AS I MENTIONED SEVERAL TIMES, APPLE HAS
15 TAKEN STEPS TO PROTECT THE HUNDREDS OF INVENTIONS
16 THAT WENT INTO ITS PRODUCTS, AND IN RECOGNITION OF
17 APPLE'S CREATIVITY, THE U.S. PATENT AND TRADEMARK
18 OFFICE HAS AWARDED APPLE HUNDREDS OF PATENTS,
19 PATENTS THAT COVER ITS UNIQUE AND BEAUTIFUL
20 DESIGNS; PATENTS THAT COVER VARIOUS ASPECTS OF THE
21 HARDWARE OF ITS PRODUCTS; AND PATENTS THAT COVER
22 THE SOFTWARE THAT SUPPORT APPLE'S INSTANTLY
23 RECOGNIZED USER INTERFACE.

24 OBVIOUSLY WE CAN'T PURSUE THE HUNDREDS OF
25 PATENTS THAT COVERED THE IPHONE IN THIS -- AND THE

1 IPAD, I KNOW THIS WILL DISAPPOINT YOU, BUT WE CAN'T
2 DO 100 PATENTS IN THIS TRIAL.

3 SO WHAT WE HAVE DONE IS WE HAVE SELECTED
4 A SPECTRUM, A HANDFUL OF PATENTS BECAUSE WE WANT TO
5 CONVINCED YOU THAT SAMSUNG HAS COPIED THE ENTIRE
6 DESIGN USER EXPERIENCE.

7 SPECIFICALLY, IN THIS CASE WE WILL
8 PRESENT 12 CLAIMS FOR YOU TO CONSIDER. FIRST IS
9 GOING TO BE THE DESIGN -- THE INFRINGEMENT OF FOUR
10 DESIGN PATENTS.

11 DESIGN PATENTS, AS JUDGE KOH JUST
12 EXPLAINED TO YOU, ARE PATENTS THE U.S. GOVERNMENT
13 AWARDS TO NEW AND NOVEL DESIGNS.

14 IN MAY 2009, APPLE WAS AWARDED A PATENT,
15 THE D'087 THAT COVERS THE DESIGN SHOWN IN THESE
16 FEATURES.

17 THE DESIGN INCLUDES THE FLAT FRONT FACE,
18 ALONG WITH THE BEZEL THAT SURROUNDS THE FRONT FACE
19 OF THE IPHONE. THE BEZEL IS THE METAL PIECE THAT
20 SURROUNDS THE FACE THAT'S HIGHLIGHTED NOW IN THE
21 PICTURE.

22 LOOK AT THE SAMSUNG VIBRANT, WHICH IS
23 JUST ONE OF THE SAMSUNG PHONES THAT WE ACCUSE OF
24 INFRINGING. IT HAS THE SAME FLAT FRONT SURFACE AND
25 A BEZEL SURROUNDING THE FRONT FACE.

1 IN JUNE 2010, APPLE WAS AWARDED -- YOU
2 WILL HAVE THESE, BY THE WAY. YOU WILL HAVE THESE
3 PHONES IN THE JURY ROOM. YOU'LL HAVE THE PHYSICAL
4 PHONES THEMSELVES SO THAT YOU CAN COMPARE THEM AND
5 MAKE YOUR DETERMINATION AT THE END OF TRIAL.

6 IN JUNE 2010, APPLE WAS AWARDED THE D'677
7 PATENT THAT COVERS THE DESIGNS SHOWN IN THESE
8 FIGURES. THE DESIGN INCLUDES THE FLAT BLACK
9 TRANSPARENT GLASS FRONT FACE OF THE IPHONE.

10 HERE'S A DIFFERENT SAMSUNG PHONE, THE
11 FASCINATE. IT HAS THE SAME BLACK -- I CAN'T SAY
12 THIS -- SAME FLAT BLACK TRANSPARENT GLASS FRONT
13 FACE THAT RUNS EDGE TO EDGE ACROSS THE ENTIRE
14 SURFACE.

15 IN NOVEMBER 2009, APPLE WAS AWARDED A
16 PATENT THAT COVERS THE DESIGNS SHOWN IN THESE
17 FIGURES. I ALREADY SHOWED YOU ONE OF THE SAMSUNG
18 INTERNAL DOCUMENTS THAT SHOWS SAMSUNG'S DECISION TO
19 COPY THIS DESIGN.

20 AND HERE IS ANOTHER SAMSUNG PHONE, THE
21 GALAXY S I9000. IT HAS ROWS OF ICONS AND SQUARES
22 WITH ROUNDED CORNERS AND IT HAS THE BOTTOM ROW OF
23 ICONS THAT NEVER CHANGES -- IT'S CALLED A DOCK --
24 THAT IS OFFSET AGAINST A DIFFERENT BACKGROUND, JUST
25 LIKE THE D'305 DESIGN PATENT.

1 AND FINALLY, IN MAY 2005, APPLE WAS
2 AWARDED THE D'889 PATENT, A PATENT THAT COVERS THE
3 TABLET DESIGN SHOWN IN THESE FIGURES.

4 AND HERE IS THE GALAXY, SAMSUNG GALAXY
5 TAB 10.1 WHICH HAS THE SAME RECTANGULAR SHAPE WITH
6 FOUR EVENLY ROUNDED CORNERS AND AN EDGE TO EDGE
7 TRANSPARENT FRONT SURFACE.

8 OBVIOUSLY I CAN'T ANTICIPATE ALL OF THE
9 ARGUMENTS SAMSUNG IS GOING TO RAISE TO EXPLAIN WHAT
10 IT HAS DONE, AND YOU WILL HEAR FROM SAMSUNG'S
11 LAWYER AS SOON AS I SIT DOWN -- WELL, AS SOON AS
12 WE'RE DONE.

13 BUT I DO KNOW ONE THING THAT THEY'RE
14 GOING TO SAY AND I WANT TO MENTION IT NOW.

15 SAMSUNG IS GOING TO TELL YOU THAT APPLE'S
16 DESIGNS ARE FUNCTIONAL, NOT ORNAMENTAL, AND THAT
17 EVERYONE WHO WANTS TO DESIGN A PHONE HAS TO DO IT
18 IN THE WAY THAT APPLE HAS CHOSEN TO DO IT.

19 I THINK OF THIS AS THE
20 DEVIL-MADE-ME-DO-IT DEFENSE.

21 FIRST, DON'T GET CONFUSED BY THE
22 LANGUAGE. JUST BECAUSE A PRODUCT HAS A FUNCTION,
23 JUST BECAUSE YOU DO SOMETHING WITH IT DOESN'T MEAN
24 THAT THERE IS ONLY ONE WAY TO DESIGN IT.

25 YOU'VE ALREADY SEEN, AND YOU'VE -- YOU'VE

1 ALREADY SEEN 20 DIFFERENT DESIGNS FOR IPHONES, CELL
2 PHONES. OBVIOUSLY THERE ARE MANY WAYS TO DO THAT.

3 IT CANNOT BE TRUE THAT SAMSUNG HAD TO
4 COPY APPLE'S DESIGNS.

5 THE NEXT THREE PATENTS ARE UTILITY
6 PATENTS, AND THEY COVER USER INTERFACE DESIGNS THAT
7 HELP TO DEFINE A DISTINCTIVE WAY IN WHICH APPLE'S
8 TOUCH SCREEN RESPONDS TO INPUTS FROM THE USER.

9 THE FIRST IS THE '381 PATENT. THE '381
10 PATENT COVERS WHAT WE'VE BEEN CALLING THE BOUNCE
11 BACK FEATURE. EVERYONE WHO HAS EVER USED AN APPLE
12 DEVICE RECOGNIZES THAT WHEN THEY GET TO THE EDGE OF
13 AN ELECTRONIC DOCUMENT, THE IMAGE GETS PULLED OUT
14 AND THEN BOUNCES BACK TO ITS BORDER. IT WORKS FOR
15 PICTURES, LISTS, WEB PAGES, AND OTHER TYPES OF
16 ELECTRONIC DOCUMENTS.

17 WE WILL PROVE THAT SAMSUNG IS INFRINGING
18 CLAIM 19 OF THE '381 PATENT. CLAIM 19 SETS OUT IN
19 VERY PRECISE LANGUAGE THE USE OF A TOUCH SCREEN
20 DISPLAY TO SHOW WHEN SOMEONE HAS REACHED THE EDGE
21 OF AN ELECTRONIC DOCUMENT BY SHOWING THE AREA
22 BEYOND THE EDGE OF THE DOCUMENT AND THEN HAVING THE
23 DOCUMENT APPEAR TO BOUNCE BACK.

24 UNFORTUNATELY, PATENTS TEND TO BE WRITTEN
25 IN TECHNICAL LANGUAGE, BUT YOU'RE GOING TO GET HELP

1 UNDERSTANDING THE TERMS FROM TWO DIFFERENT SOURCES.

2 FIRST, AS SHE TOLD YOU YESTERDAY,
3 JUDGE KOH HAS DEFINED SEVERAL OF THE TERMS IN THE
4 CLAIMS THAT YOU JUST SAW FOR YOU AND YOU'LL FIND
5 THOSE DEFINITIONS IN YOUR JURY BINDER.

6 SECOND, WE'RE GOING TO CALL EXPERTS TO
7 WORK THROUGH THE CLAIMS WITH YOU. FOR THIS PATENT,
8 WE'RE GOING TO CALL DR. RAVIN BALAKRISHNAN. HE
9 WILL EXPLAIN THAT THE WORD, FOR EXAMPLE, THAT THE
10 WORD "TRANSLATE" IN THIS CLAIM MEANS "MOVE" IN
11 PLAIN ENGLISH. SO THIS CLAIM COVERS MOVING AN
12 ELECTRONIC DOCUMENT.

13 LET ME SHOW YOU A VIDEO OF HOW THIS WORKS
14 ON THE IPHONE.

15 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN
16 OPEN COURT OFF THE RECORD.)

17 MR. MCELHINNY: THE HISTORY OF THIS
18 FEATURE IS FASCINATING. I THINK I TOLD YOU ABOUT
19 THIS A MINUTE AGO. YOU'LL HEAR ABOUT THIS FROM
20 SCOTT FORSTALL, WHO IS THE HEAD OF THE OPERATING
21 SYSTEMS AT APPLE.

22 BUT WHEN THEY WERE PLAYING WITH THIS, IF
23 YOU DIDN'T DO THAT, IF IT JUST DIDN'T MOVE ANY
24 MORE, YOU WOULD THINK THAT YOUR SCREEN HAD STUCK OR
25 YOU WOULD THINK THAT YOUR COMPUTER -- THAT YOUR

1 PHONE HAD BROKEN.

2 SO THEY WANTED TO GIVE YOU A SIGN WHERE
3 IT ENDS, PARTICULARLY IF YOU WERE SCROLLING THROUGH
4 A LIST AND ALL OF A SUDDEN, IT COMES TO A DEAD
5 HALT, IT WASN'T A NATURAL REACTION.

6 BUT IF YOU DON'T DO THAT AND THE SCREEN
7 DISAPPEARS OFF AND YOU'RE LEFT WITH JUST WHITE
8 SPACE, THEY HAD WHAT THEY CALLED A
9 LOST-IN-THE-DESERT EFFECT BECAUSE YOU DIDN'T KNOW
10 WHICH WAY THEN TO NAVIGATE.

11 AND SO COMING UP WITH AN ATTRACTIVE --
12 YOU SAW IT IN THE SURVEY, IT SAYS IT CAUGHT
13 PEOPLE'S ATTENTION, A WAY TO SIGNIFY, TO SHOW THAT
14 YOU'VE COME TO THE END OF A LIST WAS A SIGNIFICANT
15 IMPROVEMENT IN THIS TECHNOLOGY.

16 AS IT TURNS OUT, SAMSUNG'S INTERNAL
17 DOCUMENTS ACTUALLY DISCUSS THIS FEATURE IN GREAT
18 DETAIL. LET'S SEE WHAT THEY SAY.

19 THIS IS EXHIBIT 46. IT'S ANOTHER SAMSUNG
20 REPORT SIMILAR TO THE ONES I SHOWED YOU EARLIER, A
21 SERIES OF SIDE-BY-SIDE COMPARISONS BETWEEN THE
22 IPHONE AND A SAMSUNG PHONE.

23 PAGE 66 OF THIS REPORT MENTIONS THAT THE
24 IPHONE, THIS TIME ON THE RIGHT, HAS A FEATURE,
25 QUOTE, "WHERE IF A WEB PAGE IS DRAGGED TO THE EDGE

1 AND THE HAND IS RELEASED, A BOUNCING VISUAL EFFECT
2 IS PROVIDED."

3 ON THE OTHER HAND, TALKING ABOUT THEIR
4 OWN PHONE, ON THE LEFT THEY SAID IT'S PLAIN BECAUSE
5 IT HAS NO SPECIAL EFFECTS.

6 SO SAMSUNG'S DIRECTION OF IMPROVEMENT WAS
7 TO, QUOTE, "PROVIDE A FUN, VISUAL EFFECT WHEN
8 DRAGGING A WEB PAGE."

9 SO WHAT FUN, VISUAL EFFECT DID SAMSUNG
10 CHOOSE? LET'S LOOK AT THE VIDEO AGAIN. THIS IS
11 THE IPHONE.

12 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN
13 OPEN COURT OFF THE RECORD.)

14 MR. MCELHINNY: AND THIS IS THE BOUNCE
15 FEATURE USING THE SAME PICTURE ON A SAMSUNG VIBRANT
16 PHONE.

17 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN
18 OPEN COURT OFF THE RECORD.)

19 MR. MCELHINNY: LET'S LOOK AT THE NEXT
20 PATENT, THE '163 PATENT.

21 THE '163 PATENT COVERS MANY WAYS IN WHICH
22 A USER CAN USE A GESTURE TO ZOOM INTO A PICTURE OR
23 A DOCUMENT AND THEN USE A SECOND GESTURE TO CENTER
24 OR EXPAND THE IMAGE.

25 IN THIS PATENT, WE'LL BE TALKING ABOUT

1 CLAIM 50.

2 AGAIN, YOU CAN SEE THAT THE CLAIM TALKS
3 ABOUT USING A TOUCH SCREEN AND USING A FIRST
4 GESTURE -- IN THE CASE WE'RE TALKING ABOUT, THAT
5 FIRST GESTURE WILL BE WHAT'S CALLED A DOUBLE TAP --
6 TO ENLARGE AND CENTER THE PICTURE AND THEN USING A
7 SECOND GESTURE TO MOVE THE FOCUS TO A SECOND AREA
8 OF THE PICTURE.

9 THIS IS WHAT IT LOOKS LIKE ON THE IPHONE.

10 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN
11 OPEN COURT OFF THE RECORD.)

12 MR. MCELHINNY: THERE'S THE FIRST
13 GESTURE, DOUBLE TAP. VERY USEFUL IF YOU'RE READING
14 WEB PAGES, NEWSPAPERS. IT MAKES IT EASY SO THAT
15 YOU DON'T HAVE TO ZOOM BACK OUT, FIND A NEW
16 ARTICLE, AND MOVE.

17 IT'S -- AGAIN, I WANT TO GO BACK TO HOW
18 THESE PRODUCTS HAVE TO SELL THEMSELVES. THEY HAD
19 TO BE INTUITIVE.

20 ONCE AGAIN, IN THIS LITIGATION, SAMSUNG
21 HAS PRODUCED DOCUMENTS THAT INESCAPABLY SHOW THEY
22 COPIED IT.

23 THIS IS ITEM 53 -- WE'RE STILL TALKING
24 ABOUT EXHIBIT 44 THAT I SHOWED YOU EARLIER -- AND
25 THE PROBLEM THAT'S IDENTIFIED IS THAT A SINGLE

1 DOUBLE TAP ONLY SUPPORTS ZOOM, BUT YOU COULD NOT
2 GET THE ZOOMED IN SCREEN TO MOVE. YOU HAD TO GO
3 BACK OUT AGAIN TO MOVE INSIDE.

4 ON THE LEFT-HAND SIDE OF THIS CHART, THEY
5 NOTE THAT THE IPHONE ALLOWS THE USER TO ZOOM INTO A
6 PORTION OF THE SCREEN WHICH THE SAMSUNG GALAXY S I
7 ON THE RIGHT DIDN'T.

8 SO WHAT WAS THE SUGGESTED IMPROVEMENT?
9 "DOUBLE TAP ZOOM IN/OUT FUNCTION NEEDS TO BE
10 SUPPLEMENTED."

11 HERE'S ANOTHER SAMSUNG DOCUMENT THAT
12 ADDRESSES ZOOMING. THIS ONE IS EXHIBIT 38. THIS
13 DOCUMENT ACTUALLY IS IMPORTANT FOR A COUPLE OF
14 REASONS.

15 I DO KNOW THAT IN THIS TRIAL, SAMSUNG IS
16 GOING TO SAY, "HEY, WE DIDN'T COPY. WE SIMPLY
17 BENCHMARKED. WE SIMPLY COMPARED OUR PRODUCTS TO
18 APPLE'S PRODUCTS AND EVERYBODY IN THE ELECTRONICS
19 INDUSTRY BENCHMARKS."

20 THEY'RE GOING TO SAY EVEN APPLE
21 BENCHMARKS.

22 BUT SAMSUNG'S DOCUMENTS SHOW US THAT
23 BENCHMARKING HAD A VERY SPECIAL MEANING AT SAMSUNG.
24 HERE, AFTER VERY CAREFULLY COMPARING ITS PHONES TO
25 THE IPHONE, SAMSUNG ADOPTED THE FOLLOWING DESIGN

1 AND RESEARCH RECOMMENDATION CONCERNING BROWSER
2 ZOOMING METHODS.

3 IT SAYS "ADOPT DOUBLE TAP AS A
4 SUPPLEMENTARY ZOOMING METHOD."

5 IT SAYS, "THE USER EXPERIENCE OF THE
6 IPHONE CAN BE USED AS A DESIGN BENCHMARK."

7 THAT'S NOT A COMPARISON. THAT IS A
8 DIRECTION.

9 LET'S LOOK AT THE IPHONE AGAIN.

10 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN
11 OPEN COURT OFF THE RECORD.)

12 MR. MCELHINNY: AND NOW WE'LL LOOK AT THE
13 DOUBLE TAP TO ZOOM FEATURE ON A GALAXY -- ON A
14 SAMSUNG GALAXY S II PHONE.

15 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN
16 OPEN COURT OFF THE RECORD.)

17 MR. MCELHINNY: THEN WE HAVE THE '915
18 PATENT. YOU HAVE TO GO BACK AND REMEMBER, TOUCH
19 SCREEN TECHNOLOGY ON THESE PHONES, A COMPREHENSIVE
20 TOUCH SCREEN SYSTEM WAS ENTIRELY NEW.

21 SO THE TOUCH SCREEN HAD TO BE ABLE TO
22 TELL THE DIFFERENCE BETWEEN VARIOUS GESTURES. IT
23 HAD TO BE ABLE TO INTERPRET WHAT PEOPLE WERE DOING
24 WITH THEIR FINGERS ON THE SCREEN.

25 THE '915 PATENT COVERS A UNIQUE FEATURE

1 THAT LETS THE DEVICE DISTINGUISH BETWEEN TWO
2 DIFFERENT GESTURES SO THAT THE DEVICE KNOWS WHEN
3 THE USER WANTS TO SCROLL TO THE NEXT DOCUMENT OR
4 SCROLL FASTER OR WHEN THE USER WANTS TO ZOOM IN ON
5 THE DOCUMENT IN FRONT OF IT.

6 IN THIS PATENT WE'RE ASSERTING CLAIM 8.

7 FORGIVE ME, BUT I THINK THIS CLAIM IS
8 ACTUALLY RELATIVELY EASY TO UNDERSTAND. IT TALKS
9 ABOUT RECEIVING A USER INPUT AND THEN DETERMINING
10 WHETHER THE USER WANTS A SCROLL, WHICH WOULD BE A
11 SINGLE INPUT ON THE TOUCH SENSITIVE DISPLAY, OR A
12 GESTURE, WHICH IT WOULD BE CALLED IF THE USER
13 TOUCHED AT TWO OR MORE POINTS.

14 LET ME SAY THAT IN ENGLISH. ONE FINGER
15 ON THE SCREEN GETS YOU A SCROLL. TWO OR MORE
16 FINGERS ON THE SCREEN GETS YOU A GESTURE THAT DOES
17 SOMETHING DIFFERENT.

18 THIS IS THE PATENTED FEATURE AS SHOWN ON
19 THE IPHONE. ONE FINGER, SCROLL. TWO FINGER
20 EXPANDS THE PICTURE.

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

23 MR. MCELHINNY: AND THIS IS THE SAME
24 FEATURE AS SHOWN ON THE SAMSUNG GALAXY S II PHONE.

25 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN

1 OPEN COURT OFF THE RECORD.)

2 MR. MCELHINNY: AGAIN, WHAT IS SAMSUNG
3 GOING TO SAY ABOUT THIS? AGAIN, I DON'T KNOW
4 EVERYTHING THEY'RE GOING TO SAY. WE'LL HAVE TO
5 HEAR FROM THEM.

6 BUT I DO KNOW THAT IN THIS CASE THEY HAVE
7 DESCRIBED THESE INVENTIONS AS TRIVIAL.

8 LET'S THINK ABOUT THAT FOR A MINUTE.

9 FIRST, AND WE'LL ASK THEIR WITNESSES, IF
10 THESE WERE TRIVIAL, WHY DID THEY SHOW UP IN YOUR
11 CUSTOMER SURVEYS AND WHY DID YOU COPY THEM?

12 BUT, TWO, THE REAL ANSWER IS MUCH,
13 MUCH -- IT TIES TO WHAT I'M TALKING ABOUT ABOUT THE
14 IMPORTANCE OF PEOPLE INTUITIVELY BEING ABLE TO USE
15 THESE DEVICES.

16 THERE ARE NO CLASSES ON HOW TO USE AN
17 IPAD. MY FOUR-YEAR-OLD GRANDDAUGHTER TAUGHT
18 HERSELF HOW TO USE AN IPAD BECAUSE IT JUST WORKS
19 NATURALLY.

20 WHEN YOU PUT YOUR FINGER ON THE SCREEN OF
21 AN IPAD TO SCROLL A LIST, IT'S AS THOUGH YOU'RE
22 PUTTING YOUR FINGER THROUGH THE SCREEN AND ACTUALLY
23 MOVING THE LIST ITSELF.

24 WHEN YOU PUT YOUR FINGERS ON TO EITHER
25 EXPAND OR CONTRACT A PICTURE, IT'S AS THOUGH YOU

1 WERE ACTUALLY MANIPULATING THE PICTURE ITSELF.

2 THESE WERE INVENTIONS. THESE ARE
3 CRITICAL TO THE SUCCESS OF THESE PRODUCTS. THEY
4 HAD NEVER BEEN SEEN BEFORE. AND APPLE GOT PATENTS
5 ON THEM.

6 SO FAR, WE HAVE DISCUSSED DESIGN PATENTS
7 AND UTILITY PATENTS AND YOU'RE THINKING I SHOULD BE
8 DONE, BUT I HAVE ONE MORE GROUP THAT I HAVE TO TALK
9 ABOUT.

10 YOU'RE ALSO GOING TO FIND THAT SAMSUNG
11 HAS INFRINGED AND DILUTED WHAT THE LAW CALLS THE
12 TRADE DRESS OF CERTAIN APPLE PRODUCTS.

13 JUDGE KOH DEFINED IT FOR US YESTERDAY IN
14 HER PRELIMINARY INSTRUCTIONS. IT'S JUST GENERALLY
15 THE WAY A PERSON PRESENTS THEIR PRODUCT TO THE
16 MARKETPLACE, EVEN WHEN THEY DON'T HAVE A SPECIFIC
17 PATENT, SO THAT THE MARKETPLACE RECOGNIZES THE
18 SOURCE OF THAT PRODUCT.

19 WE HAVE ASSERTED SEVERAL CLAIMS RELATED
20 TO THE IPHONE TRADE DRESS AND IPAD TRADE DRESS.

21 THESE ARE THE ELEMENTS OF THE TRADE DRESS
22 THAT ARE RELATED TO THE IPHONE.

23 IT IS A RECTANGULAR PRODUCT WITH FOUR
24 EVENLY ROUNDED CORNERS; IT HAS A FLAT CLEAR SURFACE
25 COVERING THE FRONT OF THE PRODUCT; IT HAS THE

1 APPEARANCE OF A METALLIC BEZEL AROUND THE FLAT
2 CLEAR SURFACE; IT HAS A DISPLAY SCREEN UNDER THE
3 CLEAR SURFACE; UNDER THE CLEAR SURFACE, SUBSTANTIAL
4 BLACK BORDERS ABOVE AND BELOW THE DISPLAY SCREEN
5 AND NARROW BLACK BORDERS ON EITHER SIDE OF THE
6 SCREEN; WHEN THE DEVICE IS ON, IT HAS A ROW OF
7 SMALL DOTS ON THE DISPLAY SCREEN; AND IT HAS A
8 MATRIX OF COLORFUL SQUARE ICONS WITH ROUNDED
9 CORNERS; AND AT THE BOTTOM, A DOCK OF COLORFUL
10 SQUARE ICONS SET OFF FROM OTHER ICONS THAT DOES NOT
11 CHANGE AS OTHER PAGES OF THE USER INTERFACE ARE
12 VIEWED.

13 WHENEVER A CUSTOMER SEES AN ELECTRONIC
14 DEVICE WITH THESE CHARACTERISTICS, THEY THINK THEY
15 ARE SEEING AN APPLE PRODUCT.

16 BUT ONCE AGAIN, SAMSUNG HAS SIMPLY
17 ADOPTED APPLE'S DISTINCTIVE WORK. THIS IS THE
18 GALAXY S 4G USING APPLE'S IPHONE TRADE DRESS.

19 WE HAVE ALSO ASSERTED A CLAIM RELATED TO
20 THE IPAD TRADE DRESS. THAT TRADE DRESS INCLUDES A
21 RECTANGULAR PRODUCT WITH FOUR EVENLY ROUNDED
22 CORNERS; A FLAT CLEAR SURFACE COVERING THE FRONT OF
23 THE PRODUCT; THE APPEARANCE OF A METALLIC RIM
24 AROUND THE FLAT CLEAR SURFACE; A DISPLAY SCREEN
25 UNDER THE CLEAR SURFACE; UNDER THE CLEAR SURFACE,

1 SUBSTANTIAL NEUTRAL BORDERS ON ALL SIDES OF THE
2 DISPLAY SCREEN; AND WHEN THE DEVICE IS ON, A MATRIX
3 OF COLORFUL SQUARE ICONS WITH ROUNDED CORNERS
4 WITHIN THE DISPLAY.

5 WHENEVER A CUSTOMER SEES AN ELECTRONIC
6 DEVICE WITH THESE CHARACTERISTICS, THEY THINK THEY
7 ARE LOOKING AT AN APPLE PRODUCT.

8 THIS, HOWEVER, IS A GALAXY, SAMSUNG
9 GALAXY TAB 10.1 USING EVERY ELEMENT OF APPLE'S
10 DISTINCTIVE IPAD TRADE DRESS.

11 YOU WILL HEAR THAT APPLE DID NOT SIT
12 QUIETLY BY WHEN SAMSUNG STARTED SELLING ITS
13 INFRINGING PRODUCTS. WHEN THESE PRODUCTS STARTED
14 TO COME OUT --

15 REMEMBER, WE ARE A LARGE CUSTOMER. AND
16 WHEN THESE PRODUCTS CAME OUT, APPLE MET WITH
17 SAMSUNG, AND YOU'LL HEAR ABOUT THIS, ON SEVERAL
18 OCCASIONS TO POINT OUT THAT SAMSUNG WAS ACTING
19 ILLEGALLY AND TO DEMAND THAT SAMSUNG DEVELOP ITS
20 OWN DESIGNS AND ITS OWN USER INTERFACE.

21 THAT IS, YOU CAN AND WILL SEE THESE
22 MEETINGS HAD NO POSITIVE EFFECT ON SAMSUNG.

23 AT THE CONCLUSION OF THIS TRIAL, WE'RE
24 GOING TO ASK YOU TO FIND THAT SAMSUNG HAS INFRINGED
25 OUR DESIGN PATENTS, INFRINGED OUR UTILITY PATENTS,

1 AND INFRINGED AND DILUTED OUR TRADE DRESS.

2 THEN, AS A SEPARATE QUESTION, WE ARE
3 GOING TO ASK YOU TO FIND THAT SAMSUNG'S
4 INFRINGEMENT WAS WHAT THE JUDGE WILL DEFINE FOR YOU
5 AS WILLFUL.

6 THE EVIDENCE WILL BE THAT EVEN THOUGH
7 SAMSUNG KNEW WE HAD THESE PATENTS, IT FAILED TO
8 TAKE REASONABLE STEPS TO MAKE SURE THAT IT DID NOT
9 INFRINGE.

10 WE ARE ABOUT TO START THIS TRIAL BECAUSE
11 SAMSUNG REFUSES TO STOP USING APPLE'S INTELLECTUAL
12 PROPERTY.

13 UNDER U.S. LAW, A PERSON WHO INFRINGES A
14 PATENT HAS TO PAY DAMAGES TO MAKE THE PATENT OWNER
15 WHOLE. THESE DAMAGES CAN INCLUDE THE PROFITS THAT
16 SAMSUNG MADE USING APPLE'S DESIGNS, THE PROFITS
17 APPLE LOST BECAUSE SAMSUNG USED ITS UTILITY
18 PATENTS, WHAT THE LAW CALLS A REASONABLE ROYALTY,
19 OR SOME COMBINATION OF THREE.

20 NOW, I'LL BE HONEST WITH YOU THROUGHOUT
21 THE ENTIRE TRIAL, BUT I'LL START RIGHT NOW.
22 ACTUALLY, I STARTED A LITTLE WHILE EARLIER, BUT
23 I'LL START RIGHT NOW.

24 THERE ARE PEOPLE, PEOPLE WHO COMMONLY SAY
25 TO APPLE, "WE DON'T GET IT. YOU'RE A VERY

1 SUCCESSFUL COMPANY. YOU'RE SELLING A LOT OF
2 PRODUCTS. YOU'RE MAKING A LOT OF MONEY. WHAT DO
3 YOU REALLY CARE IF SOMEBODY IS USING THESE DESIGNS?
4 WHY DO YOU CARE ABOUT THAT?"

5 TO PUT IT QUITE BLUNTLY, PEOPLE SAY, "WHY
6 ARE YOU MAKING A FEDERAL CASE OUT OF IT?"

7 AND YOU WILL HEAR THE EVIDENCE, YOU WILL
8 HEAR THE ANSWERS TO THOSE QUESTIONS FROM THE PEOPLE
9 WHO WORKED ON THESE DESIGNS. AND THERE'S TWO.

10 FIRST, THE EVIDENCE WILL SHOW YOU EXACTLY
11 WHAT I SAID: SAMSUNG HAS TAKEN OUR PROPERTY.

12 SOME PROPERTY IS PHYSICAL, LIKE A CAR.
13 WHEN SOMEBODY TAKES YOUR CAR, THERE'S NO QUESTION
14 THAT YOU USE IT. IT DOESN'T MATTER HOW MUCH MONEY
15 YOU MAKE OR HOW SUCCESSFUL YOU ARE, YOU DON'T LAUGH
16 THAT OFF.

17 SOME PROPERTY IS ART, LIKE THE DESIGNS OF
18 THESE PRODUCTS. AND AGAIN, I'LL TELL YOU THAT
19 ARTISTS DON'T LAUGH THAT OFF WHEN PEOPLE STEAL
20 THEIR DESIGNS.

21 AND SOME PRODUCTS, SOME INVENTIONS, ARE
22 NOT PHYSICAL. THEY'RE SOFTWARE. THEY'RE THE
23 DIRECTIONS THAT MAKE PRODUCTS WORK. THEY'RE CLEVER
24 IDEAS THAT END UP MAKING PRODUCTS SUCCESSFUL IN
25 FIELDS WHERE OTHER PRODUCTS HAVE NOT BEEN

1 SUCCESSFUL.

2 AND IT DOES NOT MATTER WHETHER THE
3 PROPERTY IS PHYSICAL OR ART, SOFTWARE OR AN IDEA.
4 WE ALL KNOW, AND OUR WITNESSES WILL TELL YOU THEY
5 FEEL THIS WAY, PEOPLE SHOULD NOT USE WHAT YOU
6 INVENTED WITHOUT PERMISSION.

7 BUT IN ADDITION, YOU WILL ALSO HEAR THAT
8 SINCE SAMSUNG INTRODUCED THE GALAXY VIBRANT IN
9 2010, SAMSUNG HAS SOLD OVER 22 MILLION INFRINGING
10 PHONES AND TABLETS IN THE UNITED STATES, PHONES AND
11 TABLETS THAT ARE USING APPLE'S INVENTIONS.

12 SAMSUNG'S SALES HAVE TAKEN SALES AWAY
13 FROM APPLE AND THEY HAVE GENERATED MORE THAN \$2
14 BILLION WORTH OF PROFIT FOR SAMSUNG, PROFIT, AS THE
15 EVIDENCE WILL SHOW, THAT THEY MADE USING OUR
16 INTELLECTUAL PROPERTY.

17 AT THE END OF THIS TRIAL, WE WILL ASK YOU
18 TO AWARD TO APPLE THE DAMAGES TO WHICH IT IS
19 ENTITLED UNDER THE LAW.

20 SAMSUNG WILL TELL YOU THAT THEY DON'T --
21 THAT THEY SHOULDN'T HAVE TO PAY BECAUSE, IN
22 ADDITION TO THE OTHER THINGS I MENTIONED, THEY'RE
23 GOING TO SAY IN EVERY SINGLE CASE, IN THE CASE OF
24 EVERY SINGLE ONE OF THESE PATENTS, THE U.S. PATENT
25 AND TRADEMARK OFFICE MADE A MISTAKE AND ISSUED TO

1 APPLE A PATENT THAT SHOULDN'T HAVE ISSUED.

2 THEY WILL SAY OUR DESIGNS ARE FUNCTIONAL;
3 THEY WILL SAY THEY CAN'T UNDERSTAND SOME OF OUR
4 PATENTS; THEY'LL SAY THAT SOME OF OUR INVENTIONS
5 WERE OBVIOUS.

6 BUT THEY WILL CONCLUDE IN EVERY CASE THAT
7 THE ISSUANCE OF THIS PATENT WAS A MISTAKE.

8 YOU WILL HEAR CONTRARY EVIDENCE, AND AT
9 THE END OF THE TRIAL, WE DON'T THINK YOU WILL
10 REJECT THE DECISIONS THAT WERE MADE BY THE PATENT
11 AND TRADEMARK OFFICE.

12 SO, AT THE END, WE'LL ASK YOU TO FIND
13 THAT THERE WAS INFRINGEMENT AND WE WILL ASK YOU TO
14 AWARD US DAMAGES.

15 WHAT NOW SEEMS LIKE THREE YEARS AGO WHEN
16 I STARTED TALKING TO YOU, I TOLD YOU THAT THERE
17 WERE TWO QUESTIONS.

18 NOW I'M GOING TO MOVE -- NO. I TOLD YOU
19 THAT THERE WERE TWO QUESTIONS, AND THE FIRST
20 QUESTION IS SIMPLY, HOW DID SAMSUNG GET FROM HERE
21 IN 2006 TO HERE IN 2011?

22 I'VE SHOWN YOU SOME OF THE EVIDENCE THAT
23 WILL ANSWER THAT QUESTION. OVER THE NEXT FEW WEEKS
24 YOU WILL HEAR MORE.

25 BUT THE CASE DIDN'T END THERE BECAUSE, AS

1 YOU NOW KNOW, WHEN APPLE FILED THIS LAWSUIT,
2 SAMSUNG FILED ITS OWN PATENT INFRINGEMENT CASE
3 AGAINST APPLE.

4 SO THAT BRINGS US TO WHAT ACTUALLY IS THE
5 SECOND QUESTION: WHEN DID SAMSUNG FIRST ACCUSE
6 APPLE OF INFRINGING SAMSUNG'S PATENTS?

7 MY FRIEND BILL LEE IS GOING TO ANSWER
8 THAT QUESTION.

9 THE COURT: ALL RIGHT. THE TIME IS NOW
10 10:29.

11 LET'S TAKE A 15-MINUTE BIO BREAK. OKAY?

12 AGAIN, PLEASE KEEP AN OPEN MIND. DON'T
13 DISCUSS THE CASE WITH ANYONE. PLEASE DON'T DO ANY
14 RESEARCH.

15 OKAY. THANK YOU.

16 (WHEREUPON, A RECESS WAS TAKEN.)

17 (WHEREUPON, THE FOLLOWING PROCEEDINGS
18 WERE HELD OUT OF THE PRESENCE OF THE JURY:)

19 MR. VERHOEVEN: YOUR HONOR, ONE
20 HOUSEKEEPING MATTER REALLY BRIEFLY?

21 THE COURT: YES.

22 MR. VERHOEVEN: I DIDN'T KNOW EXACTLY
23 WHAT MR. MCELHINNY WAS GOING TO SAY ON HIS SLIDES,
24 YOUR HONOR, DURING OPENING.

25 BUT IF YOU TURN TO SLIDE 24 -- I DON'T

1 KNOW IF WE CAN PUT THAT UP -- 24, PLEASE -- YOUR
2 HONOR, THIS IS THE F700.

3 CAN WE GO TO 23?

4 WHAT MR. MCELHINNY SAID, YOUR HONOR, TO
5 THE JURY WAS THIS IS WHAT THE SAMSUNG PHONES LOOKED
6 LIKE BEFORE THE IPHONE WAS ANNOUNCED.

7 THE COURT: WE'VE ALREADY RULED -- I'VE
8 ALREADY RULED ON MULTIPLE OBJECTIONS AS TO ALL OF
9 THESE SLIDES, SO IF THIS IS NOT SOMETHING NEW, I'M
10 GOING TO ASK THAT WE MOVE ON.

11 MR. VERHOEVEN: IT'S A STATEMENT THAT WAS
12 MADE, YOUR HONOR. I JUST WANT, FOR THE RECORD, TO
13 LODGE AN OBJECTION.

14 THE COURT: OKAY, GO AHEAD. WHAT IS IT?

15 MR. VERHOEVEN: HE SAID, "THIS CHART
16 SHOWS WHAT SAMSUNG'S PHONES LOOKED LIKE BEFORE THE
17 IPHONE. THERE'S A PHONE IN THERE THAT LOOKS LIKE
18 THE PALM, AND SEE THE ONE THAT LOOKS LIKE THE
19 BLACKBERRY?"

20 AND THEN HE WENT TO SLIDE 24. "THIS
21 CHART SHOWS THE PHONES SAMSUNG INTRODUCED RIGHT
22 AFTER THE IPHONE CAME OUT," AND HE GOES TO THIS
23 SLIDE AND SHOWS THE F700. "THE ONE THAT IS CALLED
24 AN F700 IS WHAT'S CALLED A SLIDER PHONE."

25 AND THE SUGGESTION HE MADE TO THE JURY,

1 YOUR HONOR, IS THAT THE F700 -- THAT SAMSUNG COPIED
2 THE IPHONE WITH THE F700.

3 THAT WAS MADE -- THAT WAS STATED TO THE
4 JURY, I READ IT, YOUR HONOR.

5 AND THE F700 IS THE PHONE THAT WAS
6 RELEASED BASED ON THE DEVELOPMENT DOCUMENTS YOUR
7 HONOR EXCLUDED US FROM USING.

8 SO I SUBMIT HE'S OPENED THE DOOR NOW.
9 HE'S ACCUSED THIS PHONE OF COPYING THE IPHONE IN
10 THIS SLIDE, YOUR HONOR.

11 AND THE DOCUMENTS THAT, THAT SHOW THE
12 DEVELOPMENT OF THIS VERY PHONE, THE F700, ARE THOSE
13 DOCUMENTS THAT PREDATE THE IPHONE THAT SHOW THAT
14 EXACT SAME FRONT FACE, YOUR HONOR.

15 SO I WOULD SUBMIT HE'S OPENED THIS DOOR
16 AND WE HAVE TO BE ABLE TO REBUT IT.

17 MR. MCELHINNY: MAY I?

18 THAT'S A NICE TRY, BUT WHAT I SAID WAS
19 THESE WERE THE PHONES THAT WERE RELEASED AFTER THE
20 IPHONE.

21 I DIDN'T ACCUSE ANY OF THOSE BECAUSE I
22 SAID THEN WE GOT THE ONE, THE S900, THE NEXT SLIDE,
23 WHICH I SAID WAS THE IPHONE CLONE.

24 THAT'S WHERE WE STARTED ACCUSING THEM OF
25 INFRINGEMENT.

1 IF YOU GO BACK AGAIN -- WE HAVEN'T
2 ACCUSED -- IF YOU GO BACK ONE, PLEASE.

3 NONE OF THOSE ARE INFRINGING. WE SAID
4 THEY CAME OUT AFTER AND THEN WE GOT TO THE
5 INFRINGING PHONES.

6 MR. VERHOEVEN: THE CLEAR IMPLICATION TO
7 THE JURY, IF WE GO BACK TO SLIDE -- GO BACK,
8 PLEASE, TO THE PREVIOUS SLIDE, 23.

9 THE TIMELINE OF SAMSUNG PHONES BEFORE THE
10 SMARTPHONE. THEY SHOW A BUNCH OF DIFFERENT LOOKING
11 PHONES.

12 NEXT SLIDE, PLEASE, 24.

13 TIMELINE AFTER, THEY ALL HAVE THESE BIG
14 SCREENS.

15 THE F700, YOUR HONOR, WAS DEVELOPED --
16 THE ONE THAT LOOKS THE MOST LIKE THIS PHONE, YOUR
17 HONOR, WAS DEVELOPED BEFORE THE IPHONE WAS EVER
18 ANNOUNCED AND WE SHOULD BE ABLE -- IN FAIRNESS --

19 THE COURT: ALL RIGHT. I'VE ALREADY
20 RULED ON THIS OBJECTION.

21 MR. VERHOEVEN: OKAY.

22 THE COURT: YOU'VE MADE YOUR RECORD AND
23 THE OBJECTION IS OVERRULED.

24 MR. JACOBS: QUICK HOUSEKEEPING MATTER,
25 YOUR HONOR.

1 THE COURT: YES.

2 MR. JACOBS: WE HAVE THE -- I THINK YOU
3 NOTICED, BUT JUST FOR THE RECORD, THE DESIGN PATENT
4 CLAIM CONSTRUCTIONS WERE AGREED UPON BY THE PARTIES
5 AND SO THEY'RE READY TO GO IN THE JUROR NOTEBOOKS.

6 AND I'M LOOKING AT THE JURY NOTEBOOK AND
7 I SEE THE TABLE OF CONTENTS SHOULD BE ADJUSTED,
8 TOO. WE'LL MEET AND CONFER WITH THE OTHER SIDE AND
9 GET A CHANGED TABLE OF CONTENTS FOR THAT AS WELL.

10 THE COURT: ALL RIGHT. WELL, WHY DON'T
11 WE -- AFTER ALL OF THE OPENINGS, WE CAN JUST PLACE
12 THIS ON THEIR CHAIRS SO THEY CAN PUT IT IN THEIR
13 OWN BOOKS.

14 I DON'T WANT ANYONE TOUCHING THE JURY
15 NOTEBOOKS BECAUSE THEY MAY HAVE ALREADY STARTED
16 TAKING NOTES AND IT WOULDN'T BE APPROPRIATE FOR
17 ANYONE AT THIS TIME TO SEE THAT.

18 ALL RIGHT. THERE WAS SO MUCH MOVING
19 AROUND, I'M GOING TO ASK, I THINK THERE MUST HAVE
20 BEEN SIX OR SEVEN QUINN PEOPLE GOING IN AND OUT, IN
21 AND OUT.

22 CAN I ASK, IF YOU NEED TO GO OUT, CAN YOU
23 STEP OUT NOW AND JUST NOT COME IN UNTIL THE OPENING
24 IS DONE? BECAUSE IT'S VERY DISRUPTIVE, MULTIPLE
25 PEOPLE GOING IN AND OUT OF THE COURTROOM.

1 I'M GOING TO MAKE THE SAME REQUEST OF THE
2 APPLE ATTORNEYS, WHEN SAMSUNG IS MAKING THEIR
3 OPENING, WOULD YOU PLEASE NOT HAVE PEOPLE WALKING
4 AROUND AND TALKING TO EACH OTHER, JUST OUT OF
5 RESPECT FOR EACH OTHER'S OPENING.

6 IF ANYONE ON YOUR TEAM NEEDS TO STEP OUT,
7 PLEASE DO IT NOW, AND DON'T COME IN UNTIL THEY'RE
8 DONE. OKAY?

9 SAME FOR, I KNOW YOU HAD A COUPLE OF GUYS
10 COMING IN AND OUT, IN AND OUT. CAN YOU JUST LET
11 THEM KNOW THAT WHEN THEY'RE IN OPENING STATEMENT,
12 PLEASE NOT DO THAT.

13 IF SOMEONE NEEDS TO COME IN, JUST HAVE
14 THEM COME IN RIGHT NOW AND PASS WHATEVER NOTE OR
15 THUMB DRIVE OR ANYTHING, JUST HAVE THEM COME IN
16 RIGHT NOW.

17 MR. VERHOEVEN: OUR PARALLEL IS IN THERE.

18 THE COURT: ALL RIGHT. THEN WHY DON'T WE
19 WAIT UNTIL SHE COMES OUT TO START THE OPENINGS?

20 MR. VERHOEVEN: I'M NOT SURE WHERE SHE
21 IS, YOUR HONOR, SO IT MIGHT BE POSSIBLE THAT SHE
22 MIGHT WALK IN DURING THE OPENING.

23 CAN SOMEBODY GO OUT THERE?

24 THE COURT: IF ANYONE IN THAT ROOM?
25 BECAUSE I WANT TO BE ABLE TO LET THEM COME OUT.

1 MR. VERHOEVEN: NO, THEY'RE NOT.

2 THE COURT: OKAY. SO WHOEVER YOU NEED TO
3 COME IN AND OUT, JUST HAVE THEM DO IT RIGHT NOW,
4 PLEASE.

5 DO YOU NEED ANYONE ELSE TO COME IN?

6 MR. VERHOEVEN: WE DO NOT, YOUR HONOR.

7 THE COURT: IF YOU CAN LET THEM KNOW,
8 THERE HAVE BEEN A LOT OF PEOPLE COMING AND OUT, AND
9 I'VE BEEN VERY LENIENT, BUT IT DOES GET VERY
10 DISRUPTIVE, ESPECIALLY WITH THIS MANY PEOPLE COMING
11 IN AND OUT.

12 ALL RIGHT. ARE WE READY TO START? YOU
13 HAVE USED ONE HOUR AND SIX MINUTES. YOU HAVE 24
14 MINUTES LEFT.

15 ALL RIGHT. BRING IN THE JURY, PLEASE.

16 MR. MCELHINNY: YOUR HONOR, WE THINK YOU
17 MAY HAVE DONE A MATHEMATICAL -- WE THINK WE HAVE
18 TEN MINUTES MORE THAN THAT.

19 THE COURT: NO. IT'S 9:33 TO 10:29.

20 MR. MCELHINNY: RIGHT. THAT WOULD BE 34
21 MINUTES, YOUR HONOR. I'M SORRY.

22 THE COURT: OH, YOU'RE RIGHT.

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

25 THE CLERK: THERE'S ONE STILL IN THE REST

1 ROOM.

2 THE COURT: OKAY.

3 (PAUSE IN PROCEEDINGS.)

4 THE COURT: ALL RIGHT. GO AHEAD, PLEASE.

5 IT IS NOW 10:52.

6 MR. LEE: YOUR HONOR, MIGHT I ASK FOR A
7 TEN MINUTE WARNING WHEN I HAVE TEN MINUTES LEFT OF
8 MY TIME?

9 THE COURT: OKAY.

10 MR. LEE: THANK YOU.

11 **(WHEREUPON, MR. LEE GAVE HIS OPENING**
12 **STATEMENT ON BEHALF OF APPLE.)**

13 MR. LEE: GOOD MORNING, LADIES AND
14 GENTLEMEN. AS YOU KNOW FROM YESTERDAY, MY NAME IS
15 BILL LEE.

16 MR. MCELHINNY HAS JUST DISCUSSED WITH YOU
17 THE EVIDENCE THAT WILL DEMONSTRATE THAT SAMSUNG HAS
18 INTENTIONALLY COPIED APPLE'S INNOVATIONS AND
19 INVENTIONS.

20 BUT AS HER HONOR EXPLAINED TO YOU
21 YESTERDAY LATE IN THE DAY, SAMSUNG HAS ALREADY
22 ASSERTED FIVE PATENTS AGAINST APPLE.

23 IN THIS PORTION OF THE OPENING, WHICH
24 I'LL GET DONE IN THE 30 MINUTES OR SO THAT I HAVE,
25 I'M GOING TO DISCUSS THOSE CLAIMS BY SAMSUNG

1 AGAINST APPLE.

2 AND AS WE REVIEW THE EVIDENCE, THE
3 EVIDENCE THAT GOES TO THESE CLAIMS, I'D LIKE TO ASK
4 YOU TO KEEP IN MIND THE QUESTION, THE SECOND
5 QUESTION THAT MR. MCELHINNY ASKED OF YOU, AND THAT
6 IS THIS: WHEN DID SAMSUNG FIRST ACCUSE APPLE OF
7 INFRINGING ITS PATENTS?

8 THE ANSWER, THE EVIDENCE WILL
9 DEMONSTRATE, IS THAT SAMSUNG NEVER SAID A WORD
10 ABOUT THESE PATENTS UNTIL APPLE, AS MR. MCELHINNY
11 TOLD YOU, WENT TO SAMSUNG, ITS BUSINESS PARTNER,
12 AND SAID, "STOP COPYING." AND ONLY THEN WERE THESE
13 PATENTS ASSERTED.

14 NOW, I'M GOING TO COME BACK TO THAT
15 QUESTION AT THE END OF MY OPENING.

16 BUT NOW THAT SAMSUNG HAS SUED, NOW THAT
17 SAMSUNG HAS BROUGHT THESE PATENTS AGAINST APPLE,
18 LET'S TAKE A LOOK AT THE PATENTS THEMSELVES.

19 THE SLIDE ON THE SCREEN RIGHT NOW HAS
20 INFORMATION ON EACH OF THE FIVE ASSERTED PATENTS.

21 THERE'S A LOT OF INFORMATION THERE. IT'S
22 INFORMATION THAT JUST SUMMARIZES WHAT'S IN YOUR
23 JUROR NOTEBOOKS.

24 FOR EACH PATENT YOU CAN SEE WHEN SAMSUNG
25 FILED THEIR ORIGINAL PATENT APPLICATION IN KOREA,

1 WHEN IT FILED ITS UNITED STATES APPLICATION, AND
2 WHEN THE UNITED STATES PATENTS WERE ISSUED.

3 NOW, YOU KNOW THAT SAMSUNG IS A KOREAN
4 COMPANY AND IT NATURALLY FILED ITS PATENTS FIRST IN
5 KOREA, AND THEN IT LATER FILED ITS PATENTS IN THE
6 UNITED STATES.

7 NOW, WHAT YOU CAN'T SEE FROM THE CHART
8 THAT'S ON THE SCREEN BEFORE YOU NOW IS EVERY KOREAN
9 APPLICATION, EVERY ONE OF THESE INVENTIONS WAS
10 FILED BEFORE THE END OF AUGUST 2005.

11 NOW, THE EVIDENCE WILL DEMONSTRATE THAT
12 TECHNOLOGY MOVES QUICKLY. LIVING HERE IN NORTHERN
13 CALIFORNIA, YOU KNOW THAT WHAT IS TODAY'S
14 TECHNOLOGY MAY TOMORROW BE OLD NEWS.

15 WELL, THESE PATENTS, AS YOU WILL LEARN,
16 WERE FILED SEVEN YEARS AGO. AND IN THIS PARTICULAR
17 CASE, THEY WERE FILED ON OLDER TECHNOLOGIES USED IN
18 PHONES BEFORE THE IPHONE REVOLUTIONIZED THE MARKET.

19 SO WHAT WILL THE EVIDENCE SAY ABOUT THESE
20 PATENTS?

21 YOU WILL LEARN THESE PATENTS DESCRIBE
22 OLDER TECHNOLOGIES THAT APPLE, APPLE'S ACCUSED
23 PRODUCTS, THE IPAD, THE IPOD TOUCH, THE IPHONE, DO
24 NOT USE.

25 YOU WILL LEARN THAT THERE IS NO EVIDENCE

1 OF COPYING BY APPLE OF THESE PATENTS OR THESE
2 FEATURES.

3 IN FACT, YOU WILL HEAR NO EVIDENCE THAT
4 ANYONE AT APPLE EVEN KNEW ABOUT THESE PATENTS AT
5 THE TIME THAT THEY WERE SITTING DOWN TO DESIGN THE
6 IPAD AND THE IPHONE.

7 YOU WILL NOT SEE ANY DOCUMENTS LIKE
8 MR. MCELHINNY JUST SHOWED YOU COMPARING THE IPHONE
9 WITH THE SAMSUNG PRODUCT AND SUGGESTING THAT IT BE
10 COPIED.

11 YOU WILL SEE NO APPLE DOCUMENTS SAYING,
12 LIKE THE ONE EXHIBIT SHOWN, "EASY TO COPY."

13 YOU WILL ALSO LEARN FROM THE EVIDENCE
14 THAT THESE INVENTIONS ARE NOT NEW AND IMPORTANT.

15 IN FACT, LADIES AND GENTLEMEN, YOU WILL
16 LEARN THAT IN AT LEAST TWO OF THE CASES, SAMSUNG
17 ITSELF DOES NOT EVEN USE THESE PATENTS IN THEIR OWN
18 PRODUCTS TODAY.

19 NOW, I'M GOING TO PUT THE SAMSUNG
20 PRODUCTS INTO TWO BUCKETS FOR YOU, OR TWO GROUPS.

21 THE FIRST ARE THE '941 AND '516, WHICH
22 ARE AT THE TOP OF THE CHART BEFORE YOU.

23 SAMSUNG WILL TELL YOU THAT THESE ARE
24 PATENTS CRUCIAL FOR MODERN PHONES, THAT PHONES WILL
25 NOT WORK WITHOUT THEM, AND SAMSUNG IS GOING TO

1 REQUEST FROM YOU DAMAGES ON THESE TWO PATENTS THAT
2 ARE TEN TIMES MORE THAN THEIR THREE OTHER PATENTS.

3 SO WHAT WILL THE EVIDENCE SHOW?

4 WELL, BOTH OF THESE PATENTS ARE -- RELATE
5 TO SOMETHING CALLED A STANDARD.

6 WHAT WILL THE EVIDENCE SHOW IS THE
7 STANDARD? SOME OF YOU MIGHT BE FAMILIAR WITH
8 STANDARDS BASED UPON THE INFORMATION YOU GAVE US HE
9 HAD WHY.

10 BUT A STANDARD IS A SET OF TECHNICAL
11 RULES THAT ARE DEVELOPED IN A COLLABORATIVE PROCESS
12 THAT INCLUDES MANY COMPANIES AND OTHER
13 PARTICIPANTS.

14 AND STANDARD SETTING ORGANIZATIONS HAVE
15 RULES. THEY HAVE RULES THAT ARE DESIGNED TO MAKE
16 SURE THAT COMPANIES THAT WORK TOGETHER DO SO FAIRLY
17 AND SQUARELY AND THAT THE PRODUCTS THAT RESULT
18 BENEFIT THE PUBLIC AT LARGE AND ALL OF THE
19 PARTICIPANTS.

20 HERE'S A REALLY SIMPLE EXAMPLE OF A
21 STANDARD THAT IS FROM A LOWER TECHNOLOGY TIME.

22 IT IS AN ELECTRICAL OUTLET IN A WALL.
23 THERE IS A STANDARD THAT SAYS, IN AMERICA, OUR
24 OUTLETS HAVE A PARTICULAR SIZE AND SHAPE. BECAUSE
25 WE HAVE THIS STANDARD, I CAN PLUG IN A LIGHT, A

1 TELEVISION, A MICROWAVE, ALL INTO THE SAME OUTLET
2 BECAUSE THERE'S A STANDARD.

3 NOW, IN WIRELESS COMMUNICATIONS THAT WE
4 BEGAN TALKING TO YOU ABOUT YESTERDAY AND WE'RE
5 GOING TO TALK TO YOU ABOUT IN THE NEXT COUPLE OF
6 WEEKS, THERE ARE STANDARDS, TOO, STANDARDS THAT
7 ALLOW PHONES TO CONNECT TO ONE ANOTHER, STANDARDS
8 THAT ALLOW PHONES TO CONNECT OVER A WIRELESS
9 NETWORK.

10 SO WHO SETS THESE STANDARDS?

11 THE EVIDENCE WILL PROVE THAT ONE STANDARD
12 ORGANIZATION IS SOMETHING CALLED ETSI, THE EUROPEAN
13 TELECOMMUNICATIONS STANDARDS INSTITUTE. IT'S A BIG
14 DEAL STANDARDS BODY. IT HELPED DEVELOP SOME OF THE
15 MOST POPULAR STANDARDS FOR WIRELESS COMMUNICATIONS
16 IN THE WORLD.

17 SAMSUNG IS A MEMBER, AND HAS BEEN.

18 APPLE IS A MEMBER.

19 MOST IMPORTANTLY, THE EVIDENCE WILL
20 ESTABLISH THAT THE MEMBERS AGREE TO A SET OF RULES,
21 RULES THAT THEY WILL ALL LIVE BY, RULES THAT THEY
22 WILL ABIDE BY, RULES THAT ARE DESIGNED TO ENSURE
23 THAT PEOPLE ACT FAIRLY AND SQUARELY.

24 NOW, ETSI HELPED DEVELOP A STANDARD YOU
25 WILL LEARN CALLED UMTS. UMTS IS SOMETIMES REFERRED

1 TO, AND YOU MAY HAVE SEEN IT, AS 3GPP. FOR OUR
2 PURPOSES, THEY ARE CLOSE TO THE SAME.

3 ENGINEERS FROM DIFFERENT COMPANIES CAME
4 TOGETHER. THEY DISCUSSED DIFFERENT TECHNICAL
5 PROPOSALS. THEY DECIDED WHAT TO INCLUDE IN THE
6 STANDARD, WHAT WAS GOING TO BE THEIR EQUIVALENT OF
7 THE SOCKET.

8 AND THE GOAL WAS TO COME UP WITH A
9 STANDARD THAT EVERYBODY COULD USE TOGETHER AND IT
10 WOULD PROMOTE COMPETITION.

11 NOW, SAMSUNG CLAIMS THAT THE TWO PATENTS,
12 THE '941 AND THE '516, ARE ESSENTIAL TO USING UMTS.
13 SAMSUNG IS GOING TO TELL YOU IN JUST A FEW MINUTES
14 THAT IF YOU USE UMTS, YOU USE THESE PATENTS AND YOU
15 INFRINGE.

16 WELL, WHAT'S THE EVIDENCE GOING TO SHOW
17 YOU ABOUT THIS ARGUMENT?

18 FIRST, THE EVIDENCE IS GOING TO SHOW THAT
19 "DECLARED ESSENTIAL" MEANS SIMPLY THAT SAMSUNG HAS
20 SAID SO.

21 THE EVIDENCE WILL ESTABLISH THAT NO ONE,
22 NOT ETSI, NOT ANYONE ELSE, HAS EVER DECIDED THAT
23 THAT'S, IN FACT, TRUE.

24 YOU WILL BE THE FIRST PEOPLE TO DECIDE
25 WHETHER SAMSUNG'S STATEMENT THAT ITS PATENTS WERE

1 ESSENTIAL IS TRUE.

2 WE WILL CALL PROFESSORS EDWARD KNIGHTLY
3 FROM RICE AND PROFESSOR HYONG KIM FROM CARNEGIE
4 MELLON UNIVERSITY, TWO VERY WELL KNOWN AND
5 REPUTABLE COMPUTER SCIENTISTS AND ENGINEERS, AND
6 THEY WILL EXPLAIN TO YOU THAT THEY HAVE LOOKED AT
7 SAMSUNG'S PATENTS AND THEY ARE, IN FACT, NOT
8 ESSENTIAL TO UMTS, THAT, IN FACT, APPLE DOES NOT
9 USE THEM.

10 BUT SECOND, YOU WILL ALSO LEARN THAT THE
11 ENTIRE UMTS STANDARD IS THOUSANDS OF PAGES LONG.
12 IF I HAD IT IN THIS COURTROOM, IT WOULD GO FROM
13 HERE TO THAT WALL AND PROBABLY BACK AGAIN.

14 OUT OF THAT ENTIRE SPECIFICATION, YOU
15 WILL LEARN, THESE TWO PATENTS, EVEN UNDER SAMSUNG'S
16 CONTENTIONS, RELATE TO TWO PAGES.

17 NOW, I'D LIKE TO SHOW YOU JUST WHAT IT IS
18 IN THE IPHONE THAT SAMSUNG SAYS INFRINGES THESE TWO
19 PATENTS THAT IS ESSENTIAL TO WIRELESS
20 COMMUNICATIONS.

21 I HAVE ANOTHER IPHONE. MR. MCELHINNY HAD
22 ONE. I'VE TAKEN OFF THE BACK AND WHAT YOU'LL
23 SEE -- YOU'LL SEE SEVERAL OF THESE DURING THE
24 COURSE OF THE TRIAL -- ARE THE INSIDES.

25 BUT UNDERNEATH THE BLACK THAT I'M SHOWING

1 YOU NOW IS A HOST OF A COMPUTER CHIP AND THE
2 CONNECTIONS AND THE COMPONENTS THAT MAKE THE IPHONE
3 THE MAGICAL DEVICE THAT IT IS (INDICATING).

4 IF I WERE TO PULL OFF THIS BLACK, YOU CAN
5 SEE AT THE TOP RIGHT HERE, IF I WERE TO PULL THAT
6 OFF, YOU WOULD GET WHAT'S CALLED THE MOTHERBOARD
7 (INDICATING).

8 AND YOU CAN SEE ON THE MOTHERBOARD A
9 SERIES OF CHIPS, A SERIES OF CONNECTIONS, ALL OF
10 WHICH CONTRIBUTE TO WHAT MR. MCELHINNY DESCRIBED TO
11 YOU.

12 NOW, YOU CAN'T SEE IT NOW -- WE'LL PASS
13 THIS TO YOU WHEN IT GOES INTO EVIDENCE -- BUT I
14 HAVE TWO LITTLE DOTS HERE, AND RIGHT ABOVE THOSE
15 TWO LITTLE DOTS, I'M PUTTING MY FINGER ON THIS
16 LITTLE SQUARE HERE, NOT EVEN AS BIG AS MY FINGER.

17 WHAT IS THAT? THAT'S THE BASEBAND
18 PROCESSOR. THAT IS SOMETHING THAT APPLE BUYS FROM
19 INTEL. IT'S SOMETHING THAT INTEL MAKES FOR APPLE
20 AND A HOST OF OTHER DIFFERENT CUSTOMERS. IT IS THE
21 DEVICE THAT ACTUALLY PERFORMS WHAT SAMSUNG SAYS IS
22 INFRINGING, THE INTEL CHIP.

23 IT IS A CHIP, IT IS A CHIP THAT APPLE
24 BUYS FOR AROUND \$10 APIECE, AND I'D ASK YOU TO KEEP
25 THAT IN MIND BECAUSE I'M GOING TO COME BACK TO THE

1 AMOUNT OF MONEY THAT SAMSUNG IS ASKING ON THESE TWO
2 PATENTS.

3 NOW, I EXPECT THAT IN A FEW MINUTES, I'M
4 SURE IN A FEW MINUTES SAMSUNG IS GOING TO GET UP
5 AND SAY, "WE PLAYED AN IMPORTANT ROLE IN DEVELOPING
6 THIS CELLULAR TELECOMMUNICATION SYSTEM. THESE
7 PATENTS THAT ARE IN THIS BASEBAND PROCESSOR YOU BUY
8 FROM INTEL WERE OURS AND CRITICAL TO THE
9 INFORMATION HIGHWAY."

10 WELL, LET ME SHOW YOU WHAT ONE OF THE
11 HEADS OF SAMSUNG'S LICENSING DEPARTMENT, A
12 GENTLEMAN NAMED DR. AHN, TESTIFIED UNDER OATH ON
13 THIS VERY ISSUE.

14 DR. AHN REPORTS DIRECTLY TO THE CHIEF
15 EXECUTIVE OFFICER OF SAMSUNG AND HERE'S WHAT HE
16 SAID.

17 "DO YOU HAVE ANY KNOWLEDGE AS TO WHETHER
18 OR NOT SAMSUNG PLAYED AN IMPORTANT ROLE IN
19 DEVELOPING THE CELLULAR TELECOMMUNICATION SYSTEM?

20 "ANSWER: NO, I DO NOT REALLY KNOW."

21 THE DIRECT REPORT TO THE CEO WAS ASKED
22 THAT QUESTION WHEN THIS CASE BEGAN AND THE ANSWER
23 WAS I DON'T KNOW.

24 NOW, WHAT YOU'RE GOING TO LEARN IS THAT
25 SAMSUNG DID PARTICIPATE IN THIS RULE-BASED STANDARD

1 SETTING PROCESS, AND WHAT YOU'RE GOING TO LEARN IS
2 THAT IN DOING SO, SAMSUNG ACTUALLY BROKE THE RULES,
3 THE RULES THAT WERE ADOPTED TO ENSURE THE STANDARD
4 PROCESS WAS FAIR AND SQUARE.

5 NOW, WHAT WERE THOSE RULES? THERE WERE
6 TWO.

7 THE FIRST RULE IS THE RULE THAT REQUIRES
8 EVERYONE WHO HAS A PATENT THAT THEY SAY MIGHT BE
9 ESSENTIAL TO THE STANDARD TO DISCLOSE IT.

10 WHAT WILL THE EVIDENCE SHOW IS THE
11 REASON? THINK ABOUT MY SIMPLE EXAMPLE OF THE PLUG,
12 OF THE WALL SOCKET.

13 IF I HAD A PATENT APPLICATION, A SECRET
14 PATENT APPLICATION LIKE THE VIDEO TOLD YOU ON A
15 WALL SOCKET, AND I THEN WENT TO THE STANDARD AND
16 SAID, "LET'S ALL GET TOGETHER, THE TEN OF US, AND
17 ADOPT AS A STANDARD THIS PARTICULAR CONFIGURATION,"
18 AND WE ALL GOT TOGETHER, THE TEN OF US, AND WE
19 ADOPTED THIS CONFIGURATION, AND THEN EVERYBODY IN
20 THE WORLD MADE THEIR WALL SOCKETS THAT WAY, AND
21 THEN A FEW YEARS LATER, I SAID, "I FORGOT TO TELL
22 YOU. I HAVE A PATENT AND NOW YOU ALL HAVE TO PAY
23 ME."

24 WELL, ETSI HAS RULES TO PREVENT JUST
25 THAT, AND YOU WILL SEE RULE 4.1, AND I'M GOING TO

1 FOCUS YOU JUST ON THE SECOND SENTENCE WHICH SAYS,
2 "IN PARTICULAR, A MEMBER SUBMITTING A TECHNICAL
3 PROPOSAL FOR A STANDARD SHALL, ON A BONA FIDE
4 BASIS, DRAW THE ATTENTION OF ETSI TO ANY OF THAT
5 MEMBER'S IPR WHICH MIGHT BE ESSENTIAL IF THAT
6 PROPOSAL IS ADOPTED."

7 THREE THINGS YOU'LL LEARN ABOUT THAT VERY
8 IMPORTANT SIMPLE SENTENCE. THE FIRST IS IPR MEANS
9 PATENTS AND PATENT APPLICATIONS, INTELLECTUAL
10 PROPERTY RIGHTS. IT INCLUDES BOTH.

11 THE SECOND IS IT SAYS IF THAT MIGHT BE
12 ESSENTIAL, AND THE THIRD IS IT SAYS IF THE PROPOSAL
13 IS ADOPTED.

14 SO IT MEANS BEFORE THE FOLKS HAVE SETTLED
15 ON THE WALL SOCKET.

16 THE EVIDENCE WILL DEMONSTRATE THAT
17 SAMSUNG IGNORED THIS RULE. IT FILED PATENT
18 APPLICATIONS WHICH WERE KEPT SECRET.

19 IT THEN WENT TO STANDARDS BODY AND MADE
20 PROPOSALS THAT IT THOUGHT WERE COVERED BY ITS
21 PATENTS. IT SAT IN THE ROOM WHEN THE CHAIR SAID,
22 "IF YOU HAVE PATENTS OR PATENT APPLICATIONS,
23 DISCLOSE THEM," AND THEY DID NOT.

24 THE CHRONOLOGY WILL BE UNDISPUTED -- I'M
25 GOING TO PUT IT ON THE SCREEN NOW -- FOR BOTH OF

1 THESE TWO PATENTS.

2 LET ME JUST TAKE THE '941 PATENT.

3 FOR THE '941 PATENT, SAMSUNG FILED A
4 PATENT APPLICATION ON MAY 4TH, 2005.

5 FIVE DAYS LATER, LADIES AND GENTLEMEN,
6 FIVE DAYS LATER, THE THREE INVENTORS WENT TO THE
7 STANDARD SETTING BODY. THEY SAT IN A ROOM WHILE
8 THE CHAIRMAN SAID, "IF YOU HAVE A PATENT OR PATENT
9 APPLICATION, DISCLOSE IT" AND NEVER SAID A WORD.

10 THEN THE STANDARD IS FROZEN AND ADOPTED,
11 AND WHAT HAPPENS TWO YEARS LATER? SAMSUNG SAYS,
12 "OH, WE HAVE A PATENT. EVERYBODY SHOULD PAY US
13 NOW."

14 NOW, YOU WILL LEARN THAT AS TO THE '516,
15 THE CHRONOLOGY WAS THE SAME. I'M NOT GOING TO GO
16 THROUGH IT NOW. IT'S ON SCREEN.

17 BUT IT ACTUALLY HAPPENED TWICE. IT
18 HAPPENED ONCE IN 2004 AND ONCE IN 2005.

19 NOW, THIS WAS NOT, YOU WILL LEARN, AN
20 ACCIDENT. THE EVIDENCE WILL SHOW THIS ACTUALLY WAS
21 A CONSCIOUS, CORPORATE POLICY ADOPTED AT THE
22 HIGHEST LEVELS OF SAMSUNG.

23 NOW, WE'RE NOT SAYING, AND YOU WON'T HEAR
24 US SAY, THAT THOSE ENGINEERS BY THEMSELVES WENT
25 INTO THE MEETINGS AND HAD TO MAKE THE DISCLOSE BY

1 THEMSELVES .

2 BUT SOMEONE FROM SAMSUNG DID.

3 AND WHAT WILL THE EVIDENCE SHOW YOU? THE
4 EVIDENCE WILL SHOW YOU THAT SAMSUNG ADOPTED A
5 CORPORATE POLICY OF SENDING EMPLOYEES TO THESE
6 MEETINGS .

7 SOME OF THESE EMPLOYEES, YOU WILL LEARN,
8 ARE INVENTORS ON THE TWO PATENTS YOU WILL LEARN
9 ABOUT. THESE EMPLOYEES, YOU WILL LEARN, HAVE NEVER
10 DESIGNED A PRODUCT. THEIR WHOLE PURPOSE, THEIR
11 JOB, WAS TO GO TO THE MEETINGS AND TRY TO GET
12 PATENTS ON WHAT THE STANDARDS FOLKS WERE
13 DISCUSSING .

14 YOU WILL, IN FACT, LEARN THAT SAMSUNG SET
15 TARGETS FOR THEM, GOALS, FOR THE NUMBER OF PATENTS
16 THEY HAD TO GET THAT COVERED THE STANDARD AND IT
17 AFFECTED THEIR COMPENSATION .

18 AND YOU WILL FIND THAT THESE GROUPS OF
19 SAMSUNG EMPLOYEES WENT TO THE MEETING, IT INCLUDED
20 MANY LAWYERS, THEY CAME HOME, AND THEY DRAFTED
21 PATENT APPLICATIONS OR TRIED TO AMEND PATENT
22 APPLICATIONS TO COVER THE STANDARDS .

23 NOW, BY FAILING TO TIMELY DISCLOSE,
24 SAMSUNG BROKE RULE 4.1 .

25 SAMSUNG IS GOING TO SHOW YOU SOME OTHER

1 RULES. THE FOCUS HERE IS RULE 4.1.

2 BUT YOU'RE NOT GOING TO HAVE TO TAKE OUR
3 WORD FOR IT. SAMSUNG HIRED AN EXPERT IN THIS CASE,
4 THEIR EXPERT, SOMEONE THEY'RE GOING TO PAY, NAMED
5 KARL HEINZ ROSENBROCK.

6 HE WAS THE FORMER DIRECTOR GENERAL OF
7 ETSI. THEIR EXPERT TESTIFIED UNDER OATH THAT
8 SAMSUNG FAILED TO ABIDE BY THE LETTER OF RULE 4.1.

9 THAT WILL BE CONFIRMED BY OUR EXPERT,
10 DR. MICHAEL WALKER, WHO ACTUALLY WAS THE CHAIRMAN
11 OF THE BOARD OF ETSI DURING THIS TIME PERIOD.

12 NOW, WHAT WILL THE EVIDENCE TELL YOU
13 ABOUT WHY SAMSUNG DIDN'T TELL PEOPLE ABOUT THE
14 PATENTS? WHY DIDN'T THEY, IN ANSWER TO THE CALL,
15 SAY "WE HAVE THE PATENT APPLICATION"?

16 YOU WON'T HAVE TO WONDER. HERE IS THE
17 TESTIMONY WHICH SAMSUNG OFFERED FROM A CORPORATE
18 REPRESENTATIVE ON THIS VERY ISSUE.

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

21 MR. LEE: "A STUPID THING."

22 NOW, WHAT IS THE SECOND RULE THAT THE
23 EVIDENCE WILL DEMONSTRATE THAT SAMSUNG BROKE?

24 THERE'S ANOTHER RULE CALLED FRAND. FRAND
25 IS AN ACRONYM. IT MEANS FAIR, REASONABLE, AND

1 NON-DISCRIMINATORY.

2 WHAT'S THIS MEAN? IT MEANS IF YOU'RE
3 GOING TO BE PART OF THIS GROUP, THE TEN OF US WHO
4 ARE COMING UP WITH THIS WALL SOCKET, WE'RE ALL
5 GOING TO AGREE THAT TO THE EXTENT WE HAVE PATENTS,
6 WE'RE GOING TO MAKE THEM AVAILABLE BECAUSE WE WANT
7 PEOPLE TO USE THEM, AND SO WE'LL PROMISE TO LICENSE
8 THEM, IF WE HAVE PATENTS, ON FAIR, REASONABLE, AND
9 NON-DISCRIMINATORY TERMS.

10 THIS IS IMPORTANT BECAUSE, AS YOU WILL
11 LEARN FROM THE EVIDENCE, THERE ARE LITERALLY
12 THOUSANDS OF PATENTS THAT PEOPLE HAVE DECLARED
13 ESSENTIAL.

14 AGAIN, AS I SAID, YOU WILL LEARN THAT
15 THOSE CLAIMS BY PEOPLE HAVE NOT BEEN TESTED FOR THE
16 MOST PART.

17 BUT FRAND IS ANOTHER RULE OF ETSI THAT IS
18 DESIGNED TO PREVENT PEOPLE FROM ENGAGED IN THE KIND
19 OF CONDUCT DESCRIBED AND, AT THE END, SAY, "I WANT
20 A LOT OF MONEY IF YOU'RE GOING TO USE MY PATENT."

21 NOW, MR. MCELHINNY TOLD YOU ABOUT SOME
22 APPLE PATENTS THAT COVER UNIQUE FEATURES OF THE
23 IPHONE AND IPAD.

24 THOSE YOU WILL LEARN ARE IDEAS AND
25 INVENTIONS THAT MADE THE IPHONE AND THE IPAD

1 DIFFERENT FROM OTHERS.

2 THE TWO PATENTS I'M TALKING ABOUT NOW ARE
3 RELATED TO FEATURES THAT ARE THE SAME AMONG
4 PRODUCTS. THEY ARE FEATURES THAT ARE THE WIRELESS
5 COMMUNICATION, ELECTRICAL PLUG.

6 SO WHAT IS SAMSUNG SAYING? ONCE SAMSUNG
7 WAS ASKED TO STOP COPYING, ONCE IT ASSERTED THESE
8 PATENTS, WHAT DID IT SAY AND WHAT WILL IT TELL YOU
9 IT SHOULD BE PAID FOR THESE TWO PATENTS?

10 WELL, SAMSUNG IS GOING TO TRY TO CONVINCEN
11 YOU THAT IT SHOULD GET 2.4 PERCENT OF EVERY IPHONE
12 AND IPAD FOR THESE TWO PATENTS.

13 NOW, LADIES AND GENTLEMEN, YOU WILL LEARN
14 THAT THAT'S ABOUT \$12 FOR EVERY IPHONE AND IPAD.
15 IT'S HUNDREDS OF MILLIONS OF DOLLARS.

16 REMEMBER I SHOWED YOU THE BASEBAND
17 PROCESSOR THAT HAS ALL OF THESE FUNCTIONS? \$10?

18 SAMSUNG WANTS \$12 FOR A COMPONENT THAT
19 APPLE PAYS \$10 FOR.

20 NOW, YOU MAY BE ASKING YOURSELF, WELL,
21 HAS ANYBODY PAID SAMSUNG FOR THESE PATENTS BEFORE?

22 THE EVIDENCE WILL SHOW YOU THAT NO ONE
23 HAS. NO ONE HAS PAID A PENNY FOR THESE PATENTS.

24 SOME COMPANIES HAVE ENGAGED IN
25 CROSS-LICENSES WITH SAMSUNG. ONE COMPANY GIVES

1 SAMSUNG PATENTS, SAMSUNG GIVES THE OTHER COMPANY
2 PATENTS.

3 BUT SAMSUNG HAS NEVER BEEN PAID.

4 IN FACT, WHEN THE PAYMENT HAS BEEN MADE,
5 SAMSUNG HAS BEEN PAYING IT.

6 AND YOU'LL RECALL THE LAST TWO LETTERS OF
7 MY FRAND, NON-DISCRIMINATORY. NON-DISCRIMINATORY
8 MEANS IN THIS CONTEXT JUST WHAT IT MEANS TO YOU ON
9 AN EVERY DAY BASIS. IT MEANS EVERYBODY GETS
10 TREATED THE SAME.

11 WHAT WILL THE EVIDENCE SHOW ABOUT WHETHER
12 SAMSUNG HAS EVER MADE THIS DEMAND OF ANYONE ELSE?
13 THE DEMAND WAS ONLY MADE AFTER APPLE SAID "STOP
14 COPYING." NOT MADE TO ONE OTHER PERSON, EVER.

15 THAT'S NOT FAIR, IT'S NOT REASONABLE, AND
16 IT'S NOT NON-DISCRIMINATORY.

17 AND WE WILL CALL A VERY EXPERIENCED
18 LICENSING EXECUTIVE, RICHARD DONALDSON, AN
19 ECONOMIST FROM NEW YORK UNIVERSITY WHO WILL EXPLAIN
20 TO YOU THE CONSEQUENCES OF THIS TYPE OF CONDUCT.

21 BUT IN THE END, IT WILL NOT BE, WE
22 SUBMIT, SURPRISING THAT SAMSUNG FAILED TO COMPLY
23 WITH FRAND, WITH THESE RULES.

24 WHY? BECAUSE AS I TOLD YOU, SAMSUNG'S
25 STRATEGY IS AT THE VERY TOP OF THE COMPANY.

1 LET ME SHOW YOU SOME MORE TESTIMONY FROM
2 DR. AHN, WHO RUNS SAMSUNG'S INTELLECTUAL PROPERTY
3 CENTER, THE I.P. CENTER AT SAMSUNG.

4 "QUESTION: DR. AHN, AS HEAD OF LICENSING
5 AT SAMSUNG, HAVE YOU PERSONALLY TAKEN ANY STEPS TO
6 ENSURE THAT SAMSUNG COMPLIES WITH ITS FRAND
7 COMMITMENTS?"

8 THOSE ARE THE RULES.

9 "ANSWER: I AM THE HEAD OF THE I.P.
10 CENTER AND I HAVE NOT TAKEN SUCH STEPS."

11 THE COURT: NINE MINUTES.

12 MR. LEE: THERE WAS ANOTHER QUESTION.

13 "ANSWER: I HAVE NEVER VERIFIED WHETHER
14 SOMEBODY DOES."

15 LADIES AND GENTLEMEN, YOU CAN'T FOLLOW
16 THE RULES IF YOU DON'T TRY.

17 NOW, THE CONSEQUENCES OF THIS STANDARD
18 SETTING MISCONDUCT REALLY ARE THREE.

19 AT THE END, AFTER WE PUT THIS EVIDENCE
20 BEFORE YOU, WE WILL ASK YOU TO FIND THAT THESE
21 PATENTS ARE UNENFORCEABLE BECAUSE THEY DIDN'T ACT
22 FAIRLY AND SQUARELY.

23 WE WILL ASK YOU TO FIND THAT THEY
24 BREACHED THEIR CONTRACTUAL COMMITMENTS TO ETSI AND
25 THE OTHER PEOPLE PARTICIPATING IN ETSI.

1 AND WE WILL ASK YOU TO FIND THAT THIS
2 TYPE OF CONDUCT IS PRECISELY WHAT OUR ANTITRUST
3 LAWS SAY THEY CAN'T DO.

4 NOW, LET ME MOVE TO THE LATTER THREE
5 PATENTS, THE ONES THAT, BY SAMSUNG'S OWN DAMAGES
6 AWARDS, DAMAGES CLAIMS IS ABOUT A TENTH OR LESS IN
7 IMPORTANCE.

8 THERE ARE THREE OF THEM, THE '711, THE
9 '893, AND THE '460.

10 TWO OF THESE, THE '893 AND THE '460, ARE
11 DIRECTED TO AN OLDER APPROACH OF DESIGNING PHONES.
12 THESE ARE THE OLDER PHONES THAT YOU SAW IN
13 MR. MCELHINNY'S SLIDES.

14 IN BOTH PATENTS, THE PHONES CAN BE PUT
15 INTO PARTICULAR MODES, PHOTO MODE AND CAMERA MODE.

16 WHEN THAT DEVICE IS IN THAT MODE, THAT'S
17 IT. IT CAN'T BE ANYWHERE ELSE.

18 IT'S JUST LIKE THE OLD MODES ON YOUR
19 WASHING MACHINE. YOU HAVE A HOT WATER MODE, WARM
20 WATER MODE, COLD WATER MODE. YOU CAN PICK ONE, BUT
21 THAT'S WHERE YOU ARE. YOU'RE IN THAT MODE.

22 YOUR RADIO, THE OLD RADIOS, F.M. MODE,
23 A.M. MODE, RIGHT? TWO MODES. BUT WHEN YOU PICKED
24 ONE, YOU WERE IN IT. PICK ONE, THAT WAS IT.

25 THAT'S THE WAY THESE OLD PRODUCTS THAT

1 SAMSUNG DESIGNED OPERATED BECAUSE COMPUTING POWER
2 WAS NOT WHAT IT IS TODAY, AS YOU WILL LEARN. YOU
3 HAD TO PICK ONE MODE OR THE OTHER, GO THERE, AND
4 THAT WAS IT.

5 THE IPHONE AND THE IPAD HAVE MUCH MORE
6 SOPHISTICATED COMPUTER SYSTEMS, COMPUTING POWER
7 AND, THEREFORE, THEY CAN DO MUCH MORE. THEY CAN
8 RUN HUNDREDS OF THOUSANDS OF APPLICATIONS AND APPS
9 AT THE SAME TIME.

10 NOW, SOME OF THE APPS MAY HAVE MODES
11 WITHIN THEM, BUT THE APPLICATIONS ARE WHAT'S
12 DIFFERENT FROM THESE OLDER MODES.

13 YOU HAVE HEARD ABOUT APPLE'S APP STORE.
14 THIS IS WHERE USERS CAN CHOOSE FROM AMONG MANY OF
15 THE APPS AVAILABLE, RANGING FROM A SEARCH APP TO A
16 GAME APP TO A MUSIC APP. AND THESE APPS ARE RUN AT
17 THE SAME TIME.

18 WHY? YOU WILL LEARN IT'S BECAUSE APPLE
19 HAS INVENTED A DESIGN, A SYSTEM THAT ALLOWED FOR A
20 FLEXIBLE AND DYNAMIC APPROACH THAT USES THE
21 POWERFUL COMPUTING POWER OF TODAY, BUT USES THE
22 INVENTIONS THAT MR. MCELHINNY HAS DESCRIBED TO YOU
23 TO ALLOW PROCESSING CAPABILITY AND FEATURES THAT GO
24 SO FAR BEYOND WHAT WAS DEVELOPED A DECADE AGO.

25 SO LET ME SHOW YOU CLAIM 10 OF THE '893

1 PATENT.

2 YOU'LL REMEMBER THAT HER HONOR SAID THAT
3 THE CLAIMS ARE THE DESIGNED INVENTIONS. I KNOW
4 HAVING THE INSTRUCTIONS, LONG INSTRUCTIONS FOR THE
5 FIRST TIME AT 4:00 O'CLOCK ON A MONDAY AFTERNOON IS
6 NOT EASY. THE CLAIMS WILL BE COMING IN DURING THE
7 COURSE OF THE TRIAL.

8 I'M NOT GOING TO GO THROUGH THIS WHOLE
9 CLAIM, BUT WHAT I'M HIGHLIGHTING FOR YOU NOW IS ALL
10 THE DIFFERENT PLACES WHERE IT REQUIRES A MODE.

11 FIGURE 1 OF THE '893 PATENT ILLUSTRATES
12 THESE OLDER MODES. IT'S A CAMERA. THERE'S A MODE
13 DIAL. YOU CAN DIAL BETWEEN TWO DIFFERENT MODES.

14 BUT WHEN YOU'RE IN ONE, IF YOU'RE F.M.,
15 YOU'RE F.M., AND IF YOU'RE A.M., YOU'RE A.M. YOU
16 CAN'T DO BOTH.

17 NOW, LET'S LOOK AT THE IPHONE, AND LET'S
18 LOOK AT THE APPS OF THE IPHONE.

19 EVERY ICON REPRESENTS A DIFFERENT APP.
20 SOME OF THEM ARE IN YOUR IPHONE WHEN YOU BUY IT AND
21 OPEN IT UP FOR THE FIRST TIME. THE CAMERA APP, YOU
22 WILL LEARN, IS. THE PHOTO APP, YOU WILL LEARN, IS.

23 OTHERS CAN BE DOWNLOADED THROUGH THE APP
24 STORE FROM THE HUNDREDS OF THOUSANDS OF APPS THAT
25 PEOPLE ALL OVER THE WORLD HAVE DESIGNED.

1 AND USERS HAVE THE ABILITY TO USE MANY AS
2 THIS ANIMATION WILL SHOW YOU.

3 YOU CAN HAVE THE MUSIC APP PLAY MUSIC.
4 AT THE SAME TIME AS THE MUSIC APP IS PLAYING, WE
5 CAN SEND A TEXT MESSAGE, AND THE ANIMATION COULD GO
6 ON FOR THE OTHER THINGS YOU COULD DO.

7 THE '460 PATENT IS VERY MUCH THE SAME.
8 IF I GO TO THE NEXT SLIDE, THIS IS CLAIM 1 OF THE
9 '460, AND YOU WILL SEE IT'S ALL ABOUT MODE AND
10 SUB-MODE, MODES AND SUB-MODES THAT YOU WILL LEARN
11 ARE DIFFERENT FROM APPLE'S APPS.

12 YOU WILL HEAR FROM AN APPLE ENGINEER
13 NAMED EMILIE KIM. SHE ACTUALLY WAS AN APPLE
14 ENGINEER, MOVED ON TO ANOTHER JOB, BUT SHE'S GOING
15 TO COME AND EXPLAIN TO YOU JUST HOW APPLE DEVELOPED
16 ITS CAMERA AND PHOTO APPS AND JUST HOW THEY WORK.

17 AND WE WILL THEN CALL TWO EXPERTS,
18 PROFESSOR PAUL DOURISH FROM U.C. IRVINE AND
19 PROFESSOR MANI SRIVASTAVA FROM UCLA, AND THEY WILL
20 COME AND EXPLAIN TO YOU THE DIFFERENCE BETWEEN THE
21 OLD APPS, THE OLD MODES, AND THE APPS OF THE IPHONE
22 FROM 2007 ON.

23 BUT THE BEST EVIDENCE THAT YOU WILL
24 RECEIVE ABOUT WHY THESE PATENTS -- THE BEST
25 EVIDENCE YOU WILL RECEIVE ABOUT WHY THESE PATENTS

1 ARE NOT WHAT SAMSUNG SAYS IS THIS: SAMSUNG DOES
2 NOT USE THEM ITSELF.

3 HER HONOR ESTABLISHED SOME RULES WHERE WE
4 HAD TO TELL EACH OTHER FACTS AND CONTENTIONS.
5 UNDER HER HONOR'S RULES, SAMSUNG HAD TO TELL US
6 WHICH OF THEIR PRODUCTS HAD THESE INVENTIONS IN
7 THEM.

8 YOU WILL SEE THE SUBMISSION AND, FOR
9 THOSE TWO PATENTS, IT'S ONE BIG BLANK. THEY DON'T
10 EVEN USE IT THEMSELVES.

11 NOW, LET ME TURN TO THE LAST OF THE
12 SAMSUNG PATENTS, THE '711 PATENT. THIS IS ALSO
13 SOMETHING THAT IS DIRECTED TO AN OLDER TECHNOLOGY.

14 I'M GOING TO PUT CLAIM 9 ON THE SCREEN --
15 AND FOR EACH OF THESE CLAIMS, YOU WILL HEAR MORE
16 ABOUT THE OTHER WORDS. FOR EACH OF THE CLAIMS I'VE
17 SHOWN YOU, YOU WILL ACTUALLY LEARN THAT MUCH OF THE
18 WORDS DESCRIBE WHAT OTHERS HAD DONE BEFORE AND THAT
19 WAS NOT NEW, AND THE QUESTION WILL BECOME, WELL, IF
20 THAT'S ALL TRUE, WHAT IS IT THAT SAMSUNG SAYS IS
21 NEW?

22 NOW, THIS PATENT DESCRIBES PLAYING
23 BACKGROUND MUSIC WHILE MULTITASKING ON A MOBILE
24 DEVICE, JUST LIKE I SHOWED YOU THE APPLE PHONE
25 COULD DO.

1 BUT THAT'S NOT WHAT THIS INVENTION IS,
2 AND SAMSUNG CONCEDES THAT, BEFORE IT EVER MADE THIS
3 INVENTION, OTHERS HAD MOBILE DEVICES THAT PLAYED
4 BACKGROUND MUSIC AND MULTITASKED.

5 SO WHAT DID SAMSUNG TELL THE PATENT
6 OFFICE? AND YOU'LL SEE THIS IN WORDS.

7 THE CLAIM REFERS TO AN APPLETS. YOU SEE
8 THAT ONE WORD I'VE HIGHLIGHTED THERE, APPLETS.

9 SAMSUNG SAID TO THE PATENT OFFICE, THIS
10 IS WHAT IS NEW.

11 NOW, YOU'RE GOING TO LEARN THAT APPLETS
12 ACTUALLY WERE PRETTY OLD THEMSELVES. THEY WERE
13 INVENTED BY OTHERS.

14 YOU WILL ALSO LEARN THAT THE NAME HAS
15 NOTHING TO DO WITH APPLE, NOTHING TO DO WITH
16 APPLE'S APPS.

17 AND IN FACT, HER HONOR HAS GIVEN THIS
18 TERM, "APPLETS," A VERY SPECIFIC DEFINITION.

19 THE COURT: YOU HAVE ONE MINUTE.

20 MR. LEE: THANK YOU.

21 "AN APPLICATION DESIGNED TO RUN WITHIN AN
22 APPLICATION MODULE."

23 THAT IS NOT -- THAT IS NOT WHAT APPLE
24 DOES.

25 NOW, I SAID AT THE BEGINNING THAT I WOULD

1 COME BACK TO THE QUESTION THAT MR. MCELHINNY POSED:
2 WHEN DID SAMSUNG FIRST ASSERT THESE PATENTS?

3 WE NOW KNOW THESE PATENTS WERE ALL FILED
4 BY 2007.

5 WHEN THE IPHONE CAME TO THE MARKET IN
6 2007, WHAT WILL THE EVIDENCE SHOW SAMSUNG DID? DID
7 IT SAY, "APPLE, WE APPRECIATE YOUR BUSINESS.
8 APPLE, WE APPRECIATE THE BILLIONS OF DOLLARS YOU'RE
9 PAYING US. BUT YOU SHOULD KNOW, WE'VE GOT PATENTS,
10 PATENTS THAT COVER YOUR IPHONE."

11 NOT A WORD. NOT A WORD IN 2008. NOT A
12 WORD IN 2009. NOT A WORD IN THE FIRST HALF OF 2010
13 UNTIL APPLE SAID, "STOP COPYING."

14 AND ONLY THEN DID THESE PATENTS, WHICH
15 THE EVIDENCE WILL SHOW DESCRIBED OLD TECHNOLOGIES,
16 TECHNOLOGIES THAT APPLE DOESN'T USE, ONLY THEN WERE
17 THEY ASSERTED AGAINST APPLE.

18 NOW, I'M AT THE END OF OUR OPENING.
19 MR. MCELHINNY AND ME, WE KNOW THAT A LOT OF
20 INFORMATION HAS BEEN PROVIDED TO YOU.

21 I WANT TO END WHERE MR. MCELHINNY BEGAN,
22 WHICH IS BY THANKING YOU FOR YOUR JURY SERVICE. WE
23 KNOW IT IMPOSES GREAT BURDENS ON YOU PERSONALLY.
24 AT TIMES YOU'RE GOING TO FEEL LIKE YOU'RE TAKING IN
25 INFORMATION LIKE YOU'RE DRINKING WATER FROM A FIRE

1 HOSE. BUT IT'S OUR JOB TO MAKE IT UNDERSTANDABLE.

2 AT THE CONCLUSION OF THE CASE, HER HONOR
3 IS GOING TO PROVIDE YOU THE RULES AND THE LAW BOTH.
4 HER WORD IS THE FINAL WORD BECAUSE WE ARE A COUNTRY
5 OF LAWS AND RULES.

6 THE EVIDENCE WILL DEMONSTRATE THAT
7 SAMSUNG HAS REFUSED TO ABIDE BY THE RULES OF
8 UTILITY PATENTS.

9 THE EVIDENCE WILL DEMONSTRATE THAT
10 SAMSUNG HAS REFUSED TO ABIDE BY THE RULES OF DESIGN
11 PATENTS.

12 THE EVIDENCE WILL DEMONSTRATE THAT
13 SAMSUNG HAS REFUSED TO ABIDE BY THE RULES OF TRADE
14 DRESS.

15 AND THE EVIDENCE WILL DEMONSTRATE THAT
16 SAMSUNG BROKE ETSI'S RULES.

17 WE WILL COME BACK TO YOU AT THE
18 CONCLUSION OF THE EVIDENCE AND ASK YOU TO RETURN A
19 VERDICT FOR APPLE AGAINST SAMSUNG ON ALL OF THE
20 VARIOUS CLAIMS THAT ARE BEFORE YOU.

21 THANK YOU FOR YOUR TIME AND ATTENTION.

22 THE COURT: ALL RIGHT. IT'S 11:25.

23 ALL RIGHT. LET'S GO FORWARD WITH
24 SAMSUNG'S OPENING.

25 MR. VERHOEVEN: YOUR HONOR, MAY I

1 INQUIRE, ARE WE GOING TO BREAK FOR LUNCH AT NOON?

2 THE COURT: AT NOON PLEASE.

3 MR. VERHOEVEN: THANK YOU, YOUR HONOR.

4 THE COURT: THANK YOU.

5 MR. VERHOEVEN: MAY I PROCEED, YOUR
6 HONOR?

7 THE COURT: PLEASE.

8 **(WHEREUPON, MR. VERHOEVEN GAVE HIS**
9 **OPENING STATEMENT ON BEHALF OF SAMSUNG.)**

10 MR. VERHOEVEN: GOOD MORNING, MEMBERS OF
11 THE JURY. MY NAME IS CHARLIE VERHOEVEN. I'M
12 COUNSEL FOR THE APPLE DEFENDANTS AND
13 CROSS-CLAIMANTS IN THIS CASE, AND I'LL BE
14 PRESENTING OUR OPENING STATEMENT.

15 NOW, YESTERDAY YOU HEARD FROM THE JUDGE
16 THAT IT'S VERY IMPORTANT TO KEEP AN OPEN MIND IN
17 THIS CASE. BOTH MR. MCELHINNY AND MR. LEE ARE VERY
18 GOOD TRIAL LAWYERS. I'M SURE THAT THEY SOUNDED
19 QUITE PERSUASIVE TO YOU.

20 BUT YOUR JOB, AS THE JUDGE INSTRUCTED
21 YOU, IS TO KEEP AN OPEN MIND, AND I ASK YOU TO DO
22 THAT NOT JUST TO HEAR MY OPENING STATEMENT, BUT
23 THROUGHOUT ALL THE EVIDENCE AND UNTIL THE END OF
24 THE TRIAL BECAUSE, MEMBERS OF THE JURY, THERE'S
25 MORE TO THE STORY THAN WHAT YOU'VE JUST HEARD.

1 SO PLEASE KEEP AN OPEN MIND UNTIL YOU
2 HEAR THE WHOLE STORY.

3 FOR EXAMPLE -- IF WE CAN GO TO SLIDE 8.

4 YOU HEARD FROM MR. MCELHINNY THAT APPLE'S
5 DESIGN FOR THE IPHONE WAS REVOLUTIONARY; THERE WAS
6 NOTHING LIKE IT BEFORE; THAT IT HAD NEVER BEEN SEEN
7 BEFORE.

8 BUT WHAT YOU WEREN'T TOLD WAS THAT, IN
9 FACT, WE'RE TALKING ABOUT THE DESIGN OF THE IPHONE,
10 THERE WERE, IN PATENT PUBLICATIONS -- EXCUSE ME --
11 IN PATENT PUBLICATIONS THAT PRE-DATED THE IPHONE
12 MANY PATENTS THAT HAD LARGE RECTANGULAR SCREENS.

13 SO, FOR EXAMPLE, HERE IN 2005, BEFORE THE
14 IPHONE IS RELEASED, A JAPANESE PATENT, THE '383
15 PATENT. LARGE, RECTANGULAR SCREEN, YOU SEE IT
16 RIGHT THERE, SIMILAR TO THE IPHONE SCREEN; BIG
17 RECTANGULAR FORM FACTOR, THE SCREEN TAKES UP MOST
18 OF THE, OF THE FORM FACTOR; ROUNDED, DEEPLY ROUNDED
19 CORNERS; AND MINIMALIST DESIGN.

20 APPLE DIDN'T INVENT THAT. THAT WAS
21 ALREADY OUT THERE.

22 AND ANOTHER JAPANESE PATENT, JP368, YOU
23 SEE HERE AS WELL, VERY SIMILAR. THE LARGE, REAL --
24 MOST OF THE REAL ESTATE IN THAT PHONE THERE, PHONE
25 DESIGN, IS THE SCREEN; IT'S GOT A LARGE RECTANGULAR

1 FORM FACTOR; IT'S GOT ROUNDED CORNERS; IT'S GOT A
2 VERY MINIMALIST DESIGN; JUST ONE LOZENGE-SHAPED EAR
3 HOLE THERE.

4 THERE'S ANOTHER, KR547, A DESIGN PATENT
5 FILED BEFORE ANY OF THE DESIGN PATENTS IN THIS
6 CASE.

7 AGAIN, LARGE RECTANGULAR SCREEN;
8 RECTANGULAR FORM FACTOR WITH ROUNDED CORNERS;
9 MINIMALIST DESIGN WITH JUST A LOZENGE-SHAPED EAR
10 HOLE.

11 AND THEN THE LG PRADA, THIS IS AN ACTUAL
12 PICTURE OF A PRODUCT FROM 2006, A SMARTPHONE, LARGE
13 RECTANGULAR SCREEN; SAME FORM FACTOR; ROUNDED
14 CORNERS; MINIMALIST DESIGN.

15 SO THE FACTS WILL SHOW THAT THERE'S A
16 DISTINCTION BETWEEN A PRODUCT WITH ALL OF ITS
17 ACCOUTREMENTS THAT BECOMES VERY POPULAR AND THE
18 QUESTION OF WHAT DID YOU INVENT? WERE YOU THE
19 FIRST TO DO IT? DID SOMEBODY ELSE DO IT BEFORE?

20 THERE'S A DISTINCTION, THE EVIDENCE WILL
21 SHOW, BETWEEN COMMERCIAL SUCCESS AND INVENTING
22 SOMETHING.

23 NOW, I'D LIKE TO SHOW YOU ALSO THE IPAD.

24 IF WE CAN GO TO THE NEXT SLIDE.

25 AGAIN, THE CLAIM WAS MADE, THE EVIDENCE

1 WILL SHOW THE IPAD REVOLUTIONIZED DESIGN.

2 BUT IF YOU LOOK AT THE EVIDENCE -- IF YOU
3 LOOK AT WHAT THE EVIDENCE IN THIS CASE WILL SHOW,
4 THESE HERE ARE PRIOR ART TABLETS THAT HAVE SIMILAR
5 FORM FACTORS.

6 HERE WE SEE THAT, IN 1994, THE FIDLER
7 TABLET. YOU WEREN'T TOLD ABOUT THAT. THAT WAS
8 YEARS BEFORE THE IPAD CAME OUT IN 2010. THE FIDLER
9 PATENT HAD A LARGE SCREEN; RECTANGULAR SHAPE;
10 MINIMALIST DESIGN; ROUNDED CORNERS.

11 HEWLETT-PACKARD, TC1000 PRE-DATED THE
12 IPAD. LARGE RECTANGULAR SCREEN; TAKES UP MOST OF
13 THE SPACE OR THE REAL ESTATE ON THE FRONT OF THE
14 IPAD -- EXCUSE ME -- ON THE TABLET; RECTANGULAR IN
15 SHAPE; ROUNDED CORNER; MINIMALIST DESIGN.

16 U.S. DESIGN PATENT '802, SIMILAR.

17 JAPANESE DESIGN PATENT, '127.

18 THE EVIDENCE IS GOING TO SHOW THAT APPLE
19 DIDN'T INVENT THE RECTANGULAR SHAPED FORM FACTOR
20 THAT YOU KEEP SEEING. APPLE DIDN'T INVENT HAVING A
21 LARGE TOUCH SCREEN IN A RECTANGLE WITH ROUNDED
22 CORNERS.

23 THE EVIDENCE WILL SHOW THAT APPLE'S OWN
24 EXPERTS ADMIT THAT APPLE HAS NO RIGHT TO CLAIM A
25 MONOPOLY ON A RECTANGLE WITH ROUNDED CORNERS OR A

1 LARGE SCREEN.

2 NOW, ANOTHER THING YOU WEREN'T TOLD --
3 LET ME RESTATE THAT.

4 YOU WERE TOLD, OR AT LEAST IT WAS
5 IMPLICATED, THAT MY CLIENT, SAMSUNG, WAS PURSUING
6 ONE TYPE OF DESIGN FOR A PHONE AND THEN THE IPHONE
7 CAME OUT AND THEN THEY SWITCHED AND JUST COPIED THE
8 IPHONE.

9 WELL, THE EVIDENCE IS GOING TO SHOW THAT
10 YOU DIDN'T HEAR THE WHOLE STORY THERE, EITHER.

11 HERE, MEMBERS OF THE JURY, IS A
12 DEMONSTRATIVE SLIDE THAT DEPICTS THE SAMSUNG
13 PRE-IPHONE PHONES AND POST-IPHONE DESIGNS.

14 WE PUT A LINE RIGHT THROUGH THE MIDDLE OF
15 THIS SLIDE SO YOU CAN SEE THAT'S WHEN THE IPHONE
16 WAS ANNOUNCED, JANUARY 2007.

17 NOW, AS YOU CAN SEE, BEFORE THE IPHONE
18 WAS EVEN ANNOUNCED, SAMSUNG'S BUSINESS MODEL WAS TO
19 MAKE A NUMBER OF DIFFERENT TYPES OF PHONES.

20 UNLIKE APPLE, THE EVIDENCE WILL SHOW,
21 SAMSUNG MAKES MANY PHONES FOR MANY DIFFERENT TYPES
22 OF PEOPLE BECAUSE, AS WE HEARD DURING JURY
23 SELECTION, DIFFERENT PEOPLE HAVE DESIRES FOR
24 DIFFERENT TYPES OF PHONES. SOME JUST WANT A PHONE
25 THAT DOES NOTHING ELSE. SOME WANT TO BE ABLE TO

1 TYPE A LOT, SO THEY WANT A PHYSICAL KEYBOARD. SOME
2 LIKE TO HAVE THE TOUCH SCREEN PHONE.

3 WELL, UNLIKE APPLE THAT JUST MAKES
4 BASICALLY ONE KIND OF PHONE, SAMSUNG MAKES ALL
5 KINDS OF PHONES FOR ALL KINDS OF PEOPLE.

6 AND SO THERE'S A FOLDER-TYPE PHONE THAT
7 SAMSUNG MADE BEFORE THE IPHONE AND MAKES NOW.

8 THERE'S THE BAR-TYPE IPHONE -- EXCUSE
9 ME -- BAR-TYPE PHONE THAT SAMSUNG MADE BEFORE THE
10 IPHONE. SAMSUNG STILL MAKES THE BAR-TYPE PHONE.
11 IT DIDN'T SWITCH AND ONLY MAKE TOUCH SCREEN PHONES
12 AFTER THE IPHONE CAME OUT.

13 THERE'S THE SLIDE-TYPE IPHONE, THE SLIDER
14 PHONE. SAMSUNG MADE THOSE BEFORE THE IPHONE. IT
15 DIDN'T STOP MAKING THOSE WHEN THE IPHONE CAME OUT
16 AND SWITCH TO JUST TOUCH SCREENS. IT STILL MAKES
17 SLIDER-TYPE PHONES.

18 AND IMPORTANTLY, BEFORE THE IPHONE CAME
19 OUT, SAMSUNG ALSO MADE PHONES THAT WERE RECTANGULAR
20 IN SHAPE WITH ROUNDED CORNERS THAT HAD LARGE TOUCH
21 SCREENS ON THEM, AND CONTINUED TO MAKE THOSE AFTER
22 THE IPHONE CAME OUT.

23 WHAT YOU SAW IN MR. MCELHINNY'S OPENING
24 WAS A LITTLE BIT UNFAIR. WHAT YOU SAW WAS POINTING
25 TO A BAR-TYPE IPHONE AND SAYING, "WELL, THAT'S

1 PRE-IPHONE," AND THEN POINTING TO ONE OF THESE
2 TOUCH SCREEN PHONES AFTER THE IPHONE AND SAYING,
3 "OH, WELL, THEY SWITCHED AND THEY STOPPED DOING
4 THIS AND STARTED DOING THAT."

5 BUT THAT'S NOT THE -- THAT'S NOT THE
6 WHOLE STORY. IF YOU LOOK AT THE PHONES THAT
7 SAMSUNG MAKES, THAT'S A DISTORTION -- THE EVIDENCE
8 WILL SHOW THIS -- OF WHAT HAPPENED.

9 IN FACT, WHAT THE EVIDENCE WILL SHOW IS
10 THERE'S AN EVOLUTION IN TECHNOLOGY, IN SMARTPHONE
11 TECHNOLOGY, AND THE EVIDENCE WILL SHOW THAT AS THE
12 GUTS OF THESE PHONES GOT MORE SOPHISTICATED AND
13 MORE SOPHISTICATED, YOU COULD DO MORE THINGS.

14 IT USED TO BE YOU COULD JUST MAKE A PHONE
15 CALL. THEN IT WAS YOU CAN MAKE A PHONE CALL AND
16 TEXT MESSAGE.

17 BUT THEN TECHNOLOGY GOT BETTER AND BETTER
18 AND THESE PHONES TURNED INTO MINICOMPUTERS AND YOU
19 COULD WATCH VIDEOS ON THEM, YOU COULD PLAY MOVIES,
20 YOU COULD LISTEN TO MUSIC, YOU COULD TALK TO
21 SOMEBODY ELSE VIA VIDEO, ALL KINDS OF DIFFERENT
22 THINGS.

23 AND AS THAT FUNCTIONALITY INCREASED, THE
24 ENTIRE INDUSTRY MOVED TOWARDS SCREENS THAT WERE
25 MUCH, MUCH LARGER BECAUSE NO ONE IS GOING TO WANT

1 TO WATCH A MOVIE ON A TINY LITTLE SCREEN IN A
2 PHONE.

3 IT'S NOT JUST SAMSUNG. THE EVIDENCE WILL
4 SHOW THE ENTIRE INDUSTRY MOVED THIS WAY.

5 IS THAT INFRINGEMENT?

6 THE EVIDENCE IS GOING TO SHOW, NO, IT'S
7 COMPETITION. IT'S PROVIDING THE CONSUMER WHAT THE
8 CONSUMER WANTS.

9 AND THAT IS WHAT SAMSUNG HAS DONE.
10 SAMSUNG FOLLOWS ITS BUSINESS MODEL IS TO MEET ITS
11 CONSUMER'S DEMANDS. IF THE CONSUMERS DESIRE TO
12 HAVE PHONES WITH TOUCH SCREENS THAT ARE LARGE ON
13 THE FRONT FACE, SAMSUNG PROVIDES THEM.

14 IF THE CONSUMERS WANT TO HAVE A
15 FOLDER-TYPE PHONE, SAMSUNG PROVIDES IT.

16 IT'S NOT OUT THERE, LIKE SOME
17 JOHNNY-COME-LATELY, JUST COPYING KNOCK-OFFS. IT'S
18 DEVELOPING TECHNOLOGY FOR WHAT PEOPLE WANT.

19 NOW, WE'RE NOT STANDING HERE TELLING YOU,
20 MEMBERS OF THE JURY, THAT THE IPHONE WASN'T
21 COMMERCIALY SUCCESSFUL. WE'RE NOT SAYING THAT IT
22 WASN'T A GREAT PRODUCT. IT WAS. IT WAS AN
23 INSPIRING PRODUCT TO EVERYONE, INCLUDING THE
24 COMPETITION.

25 BUT BEING INSPIRED BY A GOOD PRODUCT AND

1 SEEKING TO MAKE EVEN BETTER PRODUCTS IS NOT -- IT'S
2 CALLED COMPETITION. IT'S NOT COPYING. IT'S NOT
3 INFRINGEMENT.

4 EVERYBODY DOES IT IN THE COMMERCIAL
5 MARKETPLACE.

6 THE QUESTION FOR YOU, MEMBERS OF THE
7 JURY, ARE THE INSTRUCTIONS HER HONOR IS GOING TO
8 GIVE YOU ON TRADE DRESS INFRINGEMENT, ON DESIGN
9 PATENT INFRINGEMENT, ON UTILITY PATENT INFRINGEMENT
10 WHERE YOU HAVE SPECIFIC RULES AND YOU APPLY THOSE
11 RULES.

12 IT'S NOT WHETHER OR NOT PEOPLE ARE
13 COMPETING AGAINST EACH OTHER. THERE'S NOTHING
14 WRONG WITH THAT.

15 NOW, I'D LIKE TO SPEND JUST A MINUTE
16 TALKING ABOUT MY CLIENT, SAMSUNG, BEFORE I GET INTO
17 THESE TRADE DRESS AND DESIGN PATENT, UTILITY PATENT
18 ISSUES.

19 IF WE CAN GO BACK TO SLIDE 3, PLEASE.

20 SAMSUNG HAS BEEN IN THE MOBILE TECHNOLOGY
21 INDUSTRY SINCE 1991, WELL BEFORE APPLE DECIDED TO
22 ENTER THE INDUSTRY IN 2007.

23 SAMSUNG WAS ONE OF THE FOUNDATIONAL
24 TECHNOLOGY COMPANIES THAT BUILT THE STANDARDS THAT
25 ALLOW YOU TO LISTEN TO MUSIC AND DO ALL THESE GREAT

1 THINGS WITH YOUR SMARTPHONES.

2 SAMSUNG HAS INVESTED, JUST FROM 2005 TO
3 2010, \$35 BILLION IN RESEARCH AND DEVELOPMENT TO
4 HELP BUILD THIS INFRASTRUCTURE, TO HELP BUILD THESE
5 SMARTPHONES. THAT'S JUST FROM 2005 TO 2010.

6 THERE'S OVER 20,000 ENGINEERS DEDICATED
7 AT SAMSUNG TO TELECOMMUNICATIONS RESEARCH AND
8 DEVELOPMENT WORLDWIDE. OVER 1,000 DESIGNERS
9 DESIGNING THOUSANDS OF ELECTRONIC PRODUCTS EACH
10 YEAR.

11 SAMSUNG IS NOT SOME COPYIST, SOME
12 JOHNNY-COME-LATELY WHO'S DOING KNOCK-OFFS. SAMSUNG
13 IS A MAJOR TECHNOLOGY COMPANY THAT DEVELOPS ITS OWN
14 INNOVATIONS.

15 SAMSUNG ALSO HAS OFFICES RIGHT HERE IN
16 SAN JOSE. SAMSUNG HAS ITS MOBILE COMMUNICATIONS
17 LAB WITH 90 ENGINEERS WHO WORK CLOSELY WITH GOOGLE
18 TO OPTIMIZE THE ANDROID OPERATING SYSTEM FOR
19 SAMSUNG'S PHONES. SAMSUNG'S PHONES OPERATE ON THE
20 ANDROID OPERATING SYSTEM IN LARGE PART.

21 IN SAN JOSE ALSO IS THE SAMSUNG DESIGN
22 AMERICA GROUP WHERE DESIGNERS AND ENGINEERS WORK
23 CLOSELY WITH OTHER DIVISIONS CREATING THE DESIGN
24 AND USER INTERFACE OF SAMSUNG'S PHONES AND TABS.

25 FINALLY IN SAN JOSE IS THE MEDIA SOLUTION

1 CENTER-AMERICA WHICH DEVELOPS AND MANAGES THE
2 PLATFORMS THAT DELIVER CONTENT AND SERVICES TO
3 MOBILE DEVICES.

4 GO TO SLIDE 7, PLEASE.

5 NOW, MR. MCELHINNY AND MR. LEE ALLUDED TO
6 THIS, BUT I WANT TO -- I WANT TO PAUSE ON IT
7 BECAUSE IT'S IMPORTANT -- IT'S SOMEWHAT IMPORTANT.

8 THE EVIDENCE WILL SHOW THAT IT IS SAMSUNG
9 THAT SUPPLIES 20 PERCENT OF THE COMPONENT COSTS FOR
10 THE IPHONE.

11 THINK ABOUT THAT. THE GUTS THAT MAKE
12 THIS PHONE WORK, THE FLASH MEMORY IN THE PHONE, THE
13 MAIN MEMORY IN THE PHONE, THE APPLICATION PROCESSOR
14 IN THE PHONE, THEY ARE ALL SUPPLIED BY SAMSUNG.

15 APPARENTLY APPLE THINGS THAT SAMSUNG HAS
16 INVENTED SOMETHING BECAUSE IT'S BUYING ITS PRODUCTS
17 FROM IT TO PUT IT IN ITS OWN PHONE.

18 WITH RESPECT TO THE IPAD, THE EVIDENCE
19 WILL SHOW THAT SAMSUNG MANUFACTURES THE A5X
20 PROCESSOR IN THE IPAD, AND IT IS THE SOLE AND ONLY
21 QUALIFIED SUPPLIER FOR APPLE FOR ITS MUCH VALUED
22 AND MARKETED RETINA DISPLAY ON THE NEWEST IPAD.

23 APPLE IS OUT THERE MARKETING ITSELF AS AN
24 INNOVATOR AND THE ONLY COMPANY TO ACTUALLY PROVIDE
25 THIS RETINA DISPLAY IS SAMSUNG.

1 WHO'S THE REAL INNOVATOR? ASK YOURSELF
2 THAT QUESTION WHEN YOU HEAR THE EVIDENCE.

3 NOW, THE SUGGESTION WAS MADE THAT THERE'S
4 SOMETHING WRONG WITH LOOKING TO SOMEBODY ELSE TO BE
5 INSPIRED. MR. MCELHINNY WENT THROUGH AND SHOWED
6 YOU SOME DOCUMENTS WHERE SOME SAMSUNG PEOPLE WHO
7 WERE DOING COMPETITIVE ANALYSIS WERE LOOKING AT THE
8 IPHONE.

9 I'LL GET TO WHAT THE EVIDENCE WILL SHOW
10 ABOUT APPLE DOING THAT IN A MINUTE, BUT THE
11 EVIDENCE IS GOING TO SHOW, MEMBERS OF THE JURY,
12 THERE'S NOTHING WRONG WITH THAT. IT'S CALLED
13 COMPETITION. ALL COMPETITORS DO THAT.

14 AND THERE'S NOTHING WRONG WITH BEING
15 INSPIRED BY SOMEBODY ELSE'S DESIGN.

16 COULD WE GO TO THE NEXT SLIDE HERE?
17 OOPS.

18 FOR EXAMPLE, IN THIS CASE -- IN THIS VERY
19 CASE WITH RESPECT TO THE CREATION OF THE DESIGN OF
20 THE IPHONE, THE INITIAL IPHONE, THE EVIDENCE WILL
21 SHOW THAT APPLE ITSELF WAS INSPIRED BY THE
22 FUNCTIONALITY OF ANOTHER COMPANY'S DESIGN, SONY.
23 THIS IS EXHIBIT 562 ON THE SCREEN.

24 YOU SEE THE PICTURE HERE, MEMBERS OF THE
25 JURY. ON THE BOTTOM RIGHT, THAT'S -- THE EVIDENCE

1 IS GOING TO SHOW THAT WAS REFERRED TO AS THE
2 EXTRUDO SHAPE DESIGN. YOU SEE HERE IT SAYS
3 "EXTRUDO SHAPE" IN THE E-MAIL.

4 ON THE LEFT-HAND SIDE IS A DIFFERENT
5 DESIGN, ONE THAT LOOKS A LOT MORE LIKE WHAT THE
6 ORIGINAL IPHONE, THE INITIAL IPHONE WHEN IT WAS
7 RELEASED LOOKED LIKE: ROUNDED CORNERS, BLACK, AN
8 IPHONE SET UP VERY SIMILAR TO WHAT YOU SAW FOR THE
9 INITIAL IPHONE.

10 WELL, THE EVIDENCE IS GOING TO SHOW THAT
11 THAT DESIGN WAS -- AND ITS FUNCTIONALITY INSPIRED
12 APPLE TO CHANGE COURSE WITH THE DESIGN OF ITS
13 INITIAL IPHONE. APPLE WAS INSPIRED BY SONY.

14 THIS E-MAIL IS DATED MARCH 8TH, 2006 FROM
15 RICHARD HOWARTH, WITHIN APPLE, TO JONATHAN IVE,
16 WHO'S THE HEAD OF THE DESIGN GROUP AT APPLE. DATED
17 MARCH 8, 2006.

18 THEY'RE STILL WORKING -- THE EVIDENCE
19 WILL SHOW THEY WERE STILL WORKING ON THE DESIGN OF
20 THE IPHONE. THEY HADN'T FINISHED IT. THEY HADN'T
21 COMPLETED IT.

22 THE EVIDENCE IS GOING TO SHOW, MEMBERS OF
23 THE JURY, THIS EXTRUDO SHAPE IS WHAT THEY WERE
24 GOING WITH UNTIL IT BECAME INSPIRED BY THE
25 SONY-STYLE DESIGN FUNCTIONALITY.

1 AND HERE IT SAYS "HI JONY, I'M WORRIED
2 ABOUT THE EXTRUDO SHAPE WE'RE USING FOR P2."

3 P2, THE EVIDENCE WILL SHOW, IS CODE NAME,
4 THE INTERNAL CODE NAME THAT APPLE USED FOR ITS
5 INTERNAL PROJECT FOR DEVELOPING THE IPHONE.

6 "I'M WORRIED ABOUT THE EXTRUDO SHAPE
7 WE'RE USING FOR P2 ET CETERA LOOKING AT WHAT SHIN'S
8 DOING" -- AND THAT SHIN IS REFERRING TO SHIN
9 NISHIBORI, WHICH IS -- WHO WAS ANOTHER DESIGNER
10 WITHIN THE APPLE DEPARTMENT -- "LOOKING AT WHAT
11 SHIN'S DOING WITH THE SONY-STYLE CHAPPY, HE'S ABLE
12 TO ACHIEVE A MUCH SMALLER-LOOKING PRODUCT WITH A
13 MUCH NICER SHAPE TO HAVE NEXT TO YOUR EAR AND IN
14 YOUR POCKET. ALSO NOTE THAT IT'S ONLY --" AND THEN
15 IT GOES ON.

16 SO RIGHT THERE IN APPLE'S OWN DOCUMENTS
17 WE SEE APPLE ITSELF WAS INSPIRED, AS PART OF ITS
18 DESIGN PROCESS, TO MOVE FROM THE EXTRUDO SHAPE TO
19 SOMETHING THAT WAS MORE SONY-LIKE.

20 THERE'S NOTHING WRONG WITH THAT. THAT
21 DOESN'T MEAN THEY'VE INFRINGED SOME SONY PATENT OR
22 DESIGN PATENT. IT JUST MEANS THAT THEY WERE
23 COMPETING AND THEY WERE INSPIRED BY A COMPETITOR.

24 POINTING TO DOCUMENTS THAT ARE SIMILAR
25 WITHIN THE SAMSUNG INTERNAL DOCUMENTS DOESN'T SHOW

1 ANYTHING MORE. THERE'S NOTHING WRONG WITH BEING
2 INSPIRED -- THERE'S NOTHING WRONG WITH LOOKING AT
3 WHAT YOUR COMPETITORS DO OR SOMETHING INSPIRED BY
4 THEM. THAT'S NOT WHAT WE'RE HERE FOR.

5 WE'RE HERE TO ASSESS THE SPECIFIC CLAIMS
6 MADE IN THIS CASE WITH RESPECT TO TRADE DRESS
7 INFRINGEMENT, DESIGN PATENT INFRINGEMENT, UTILITY
8 PATENT INFRINGEMENT.

9 THE EVIDENCE IS ALSO GOING TO SHOW THAT
10 APPLE -- DESPITE MR. MCELHINNY'S CLAIMS, APPLE
11 WASN'T FIRST.

12 THIS IS AN E-MAIL FROM APRIL 6TH, 2010
13 FROM STEVEN SINCLAIR, WHO WAS THE IPHONE PRODUCT
14 MARKETING MANAGER. AND IN THIS E-MAIL, HE SAYS,
15 "IT'S TOUGH TO APPROACH THIS WITH THE CRITERIA OF
16 BEING THE 'FIRST.' I DON'T KNOW HOW MANY THINGS WE
17 CAN COME UP WITH THAT YOU COULD LEGITIMATELY CLAIM
18 WE DID FIRST. CERTAINLY WE HAVE THE FIRST
19 COMMERCIALY SUCCESSFUL VERSIONS OF MANY FEATURES,
20 BUT THAT'S DIFFERENT THAN LAUNCHING SOMETHING TO
21 MARKET FIRST."

22 THAT POINT MADE BY APPLE'S OWN PRODUCT
23 MARKETING MANAGER, STEVEN SINCLAIR, IS VERY
24 IMPORTANT BECAUSE THERE IS A DIFFERENCE BETWEEN
25 INVENTING SOMETHING THAT'S NEW AND DOING IT FOR THE

1 FIRST TIME VERSUS MAKING SOMETHING POPULAR.

2 IF YOU MAKE SOMETHING POPULAR, THAT
3 DOESN'T GIVE YOU A RIGHT TO EXCLUDE EVERYONE ELSE
4 FROM DOING IT.

5 IN ORDER TO EXCLUDE PEOPLE, AS THE JUDGE
6 WILL INSTRUCT YOU AT THE END, YOU NEED TO HAVE A
7 PATENT OR A TRADE DRESS THAT'S INFRINGED.

8 HERE THE EVIDENCE IS GOING TO SHOW, THERE
9 ISN'T INFRINGEMENT OF THESE PATENTS THAT ARE BEING
10 ASSERTED.

11 AND WHETHER OR NOT THESE COMPETITORS WERE
12 INSPIRED BY EACH OTHER IS IRRELEVANT.

13 THE QUESTION IS WHETHER THERE'S
14 INFRINGEMENT.

15 NOW, AGAIN, YOU WERE SHOWN INTERNAL
16 DOCUMENTS THAT SAMSUNG -- WHERE SAMSUNG WAS LOOKING
17 AT THE IPHONE AND COMPARING IT AND THE SUGGESTION
18 WAS MADE THAT THAT MEANS THAT THEY'RE EVIL
19 COPYISTS.

20 BUT AS I SAID, THE EVIDENCE WILL SHOW
21 THAT EVERYBODY DOES THAT IN THE SMARTPHONE
22 BUSINESS. EVERYONE BENCHMARKS AGAINST EACH OTHER.
23 THEY ALL DO COMPETITIVE ANALYSIS.

24 AND THE EVIDENCE WILL SHOW APPLE'S OWN
25 DOCUMENTS AND EMPLOYEES AGREE WITH ME.

1 HERE IS GREG JOSWIAK, VICE-PRESIDENT OF
2 IPHONE PRODUCT MARKETING IN A SWORN DEPOSITION
3 TAKEN IN THIS CASE.

4 "MY GROUP, FOR EXAMPLE, WOULD HAVE A
5 PRODUCT MANAGER WHEN A NEW PRODUCT COMES OUT,
6 PURCHASE IT, YOU KNOW, UNDERSTAND, YOU KNOW, HOW
7 MUCH OF A THREAT IT IS, ARE THEY BETTER AT
8 ANYTHING, ARE THEY BETTER AT ANYTHING THAN US TO
9 ASSESS THE THREAT."

10 AND THEN HE CONTINUES, "IF YOU'RE GOING
11 TO BE THE BEST AT SOMETHING, YOU HAVE TO KNOW WHAT
12 YOUR COMPETITION IS DOING."

13 THERE'S NOTHING WRONG WITH THAT, AND
14 THERE'S NOTHING WRONG WITH SAMSUNG DOING THAT AS
15 WELL. IT'S CALLED COMPETITION. THAT'S WHAT WE DO
16 IN AMERICA.

17 DUNCAN KERR, APPLE DESIGN INVENTOR, HIS
18 DEPOSITION WAS TAKEN IN THIS CASE. HE TESTIFIED,
19 UNDER OATH, "I THINK FROM A DESIGN PERSPECTIVE IT'S
20 INTERESTING TO SEE WHAT OTHER COMPANIES ARE DOING."

21 AND THERE'S OTHER, MORE TESTIMONY THAT
22 WE'RE GOING TO SEE IN THE TRIAL THAT SUPPORTS THIS
23 FROM APPLE'S OWN WITNESSES.

24 AND THEN WE HAVE APPLE'S DOCUMENTS. YOU
25 SAW A DOCUMENT OF SAMSUNG LOOKING AT THE APPLE

1 IPHONE. APPLE DOES THE SAME THING.

2 HERE'S A TEARDOWN DOCUMENT, IT'S CALLED
3 MINI-TEARDOWN OF THE SAMSUNG GALAXY S PERFORMED ON
4 AUGUST 10TH, 2010, MEMBERS OF THE JURY. THIS IS AN
5 ACCUSED PRODUCT IN THIS CASE.

6 WELL, THIS IS AN APPLE DOCUMENT FROM
7 APPLE'S INTERNAL FILES. YOU SEE, MINI-TEARDOWN,
8 SAMSUNG GALAXY S.

9 AND WHAT ARE THEY DOING? THEY'RE
10 CONDUCTING A DETAILED TEARDOWN OF THE DOCUMENT TO
11 DETERMINE THE PRODUCT SPECS, ITS FEATURES, THE
12 DISASSEMBLY, THE COMPONENTS, THE SOFTWARE, AND THE
13 ADDITIONAL COMPONENTS, AND THEY GO THROUGH IT
14 METICULOUSLY, JUST LIKE IN THE DOCUMENT THAT
15 MR. MCELHINNY SHOWED YOU.

16 DOES THAT MEAN THAT APPLE IS A COPYIST?
17 NO. IT MEANS IT'S A COMPETITOR. THAT'S NOTHING
18 WRONG WITH THAT.

19 SAME THING WITH THE TAB. APPLE'S OWN
20 DOCUMENTS, SAMSUNG GALAXY -- THIS IS AN APPLE
21 DOCUMENT, EXHIBIT 717, DATED MAY 24TH, 2011 WHERE
22 APPLE DOES A TEARDOWN OF THE ACCUSED PRODUCT, TAB
23 PRODUCT IN THIS CASE, THE GALAXY TAB 10.1, AND IT'S
24 TITLED -- THE DOCUMENT IS TITLED "SAMSUNG GALAXY
25 TAB 10.1 TAKE-APART," AND THEY EVEN HAVE PICTURES

1 OF SOMEONE TAKING THE THING APART AND EXAMINING IT
2 AND STUDYING IT.

3 DOES THAT MEAN THAT APPLE DID SOMETHING
4 WRONG? NO.

5 AND TO SUGGEST BY POINTING TO SIMILAR
6 DOCUMENTS WITHIN SAMSUNG THAT THAT MEANS WE'RE AN
7 INFRINGER IS IRRELEVANT. IT'S A COMPETITIVE
8 ANALYSIS. IT'S DONE ALL THE TIME. THERE'S NOTHING
9 WRONG WITH IT.

10 NOW, WITH THAT I'D LIKE TO TURN TO THE
11 CLAIMS THAT ARE MADE IN THIS CASE AGAINST MY
12 CLIENT, AND THE FIRST IS TRADE DRESS INFRINGEMENT.

13 AND I HOPE YOU DON'T MIND, MEMBERS OF THE
14 JURY, BUT I HAVE A PROBLEM WITH MY BACK, SO I HAVE
15 A STOOL HERE. I THINK I'M GOING TO HAVE TO SIT ON
16 THE STOOL WHILE I DO THIS.

17 IF THAT'S OKAY WITH YOUR HONOR?

18 THE COURT: PLEASE, GO AHEAD.

19 MR. VERHOEVEN: SO LET'S START WITH
20 APPLE'S TRADE DRESS, MEMBERS OF THE JURY.

21 NOW, HER HONOR ALREADY GAVE YOU A
22 PRELIMINARY INSTRUCTION ON TRADE DRESS AND I JUST
23 WANT TO GO OVER IT BEFORE WE LOOK AT THE EVIDENCE.

24 "'INFRINGEMENT' REFERS TO ANOTHER
25 COMPANY'S USE SIMILAR TO THE OWNER'S TRADE DRESS

1 THAT IS LIKELY TO CAUSE CONFUSION IN THE
2 MARKETPLACE."

3 MR. MCELHINNY: EXCUSE ME, YOUR HONOR.
4 I'M SORRY. BUT I'VE BEEN LISTENING PATIENTLY, BUT
5 YOU HAVE A SPECIFIC ORDER THAT SAID THAT
6 INSTRUCTIONS WERE NOT SUPPOSED TO BE DEALT WITH IN
7 OPENING AND ARGUING THE LAW. IT'S THE LAST
8 PARAGRAPH OF YOUR ORDER.

9 MR. VERHOEVEN: YOUR HONOR, THIS SLIDE
10 WAS NOT OBJECTED TO.

11 THE COURT: BUT MY ORDER DID SAY THAT
12 THERE SHOULDN'T BE ANY DISCUSSION OF THE LAW.

13 YOU KNOW, I'M GOING TO OVERRULE THE
14 OBJECTION.

15 PLEASE MAKE THIS SHORT.

16 MR. VERHOEVEN: THANK YOU, YOUR HONOR.
17 ALL I DID WAS THE PRELIMINARY INSTRUCTIONS.

18 THE COURT: OKAY.

19 MR. VERHOEVEN: SO THAT'S THE STANDARD
20 WHEN YOU'RE LOOKING AT THE ISSUE OF TRADE DRESS
21 INFRINGEMENT.

22 IN THIS CASE, APPLE HAS CLAIMED THAT
23 SAMSUNG'S TABLET PRODUCT INFRINGES APPLE'S TRADE
24 DRESS, AND SO THE STANDARD IS, IS THERE LIKELY --
25 ONE OF THE STANDARDS IS, IS THERE A LIKELIHOOD OF

1 CONFUSION AS TO THE SOURCE OF WHO MAKES IT? IS
2 SOMEONE GOING TO BUY IT THINKING IT'S AN APPLE
3 TABLET? OR ARE THEY GOING TO KNOW WHEN THEY BUY IT
4 THAT IT'S A SAMSUNG TABLET?

5 WELL, THE EVIDENCE IS GOING TO SHOW OF
6 COURSE EVERYONE'S GOING TO KNOW IT'S A SAMSUNG
7 TABLET. IT'S A VERY EXPENSIVE PRODUCT. PEOPLE
8 RESEARCH IT BEFORE THEY EVEN GO TO THE STORE. THEY
9 GET ON-LINE AND THEY LOOK AT ALL THE DIFFERENT
10 TABLETS THAT ARE OUT THERE. THEY COMPARE THEM,
11 THEY ASK QUESTIONS, WHAT KIND OF FUNCTIONALITY DO I
12 WANT IN THEM?

13 THEY HAVE DIFFERENT TYPES OF
14 FUNCTIONALITY, DIFFERENT TYPES OF FEATURES,
15 DIFFERENT TYPES OF FORM FACTORS.

16 SOME ARE LANDSCAPE, SOME HAVE STYLUSES,
17 SOME ARE DESIGNED SPECIFICALLY FOR READING.

18 IT'S NOT SOMETHING THAT A PERSON WALKS
19 INTO THE STORE AND JUST CASUALLY PICKS UP AND MAKES
20 A MISTAKE.

21 IN FACT, THE EVIDENCE IS GOING TO SHOW,
22 MEMBERS OF THE JURY, THAT APPLE'S OWN DESIGNERS AT
23 DEPOSITION ADMITTED THEY'RE NOT AWARE OF ANY
24 CONFUSION.

25 MATT ROHRBACH, APPLE DESIGN INVENTOR, SO

1 HE'S AN INVENTOR ON SOME OF THE DESIGN PATENTS IN
2 THIS CASE, WE TOOK HIS DEPOSITION.

3 "ARE YOU AWARE OF ANY INSTANCE WHERE A
4 CONSUMER HAS CONFUSED A SAMSUNG TABLET COMPUTER FOR
5 AN IPAD?

6 "ANSWER: NO."

7 EUGENE WHANG, ANOTHER APPLE DESIGN
8 INVENTOR IN THIS CASE, HIS DEPOSITION WAS TAKEN.

9 "ARE YOU AWARE OF OR KNOW OF ANY
10 INSTANCES WHERE A CONSUMER CONFUSED A SAMSUNG AND
11 AN APPLE TABLET?

12 "NO."

13 ANOTHER APPLE DESIGN INVENTOR IN THIS
14 CASE, DANIEL -- I'LL PROBABLY MISPRONOUNCE HIS LAST
15 NAME -- BUT DANIEL DE IULIIS, I GUESS. HIS
16 DEPOSITION WAS TAKEN.

17 "QUESTION: HAVE YOU EVER HEARD OF ANY
18 CONSUMERS MISTAKENLY PURCHASING GALAXY TABS
19 THINKING THEY WERE IPADS?

20 "ANSWER: I DON'T RECALL HEARING THAT."

21 THE EVIDENCE WILL SHOW THAT BASICALLY
22 THERE IS NO EVIDENCE.

23 REMEMBER, THIS IS APPLE'S CLAIM, APPLE'S
24 BURDEN OF PROOF BY A PREPONDERANCE OF EVIDENCE AS
25 THE COURT INSTRUCTED YOU DURING PRELIMINARY

1 INSTRUCTIONS. THEY HAVE TO SHOW YOU BY A
2 PREPONDERANCE OF THE EVIDENCE THAT THERE IS A
3 LIKELIHOOD OF CONFUSION.

4 WELL, THE EVIDENCE IS GOING TO SHOW,
5 MEMBERS OF THE JURY, THAT THEY CAN'T MEET THAT
6 BURDEN. THERE IS NO EVIDENCE THAT YOU'LL SEE IN
7 THIS CASE THAT MEETS THAT BURDEN.

8 NOW LET ME TURN TO THE ISSUE OF DILUTION,
9 TRADE DRESS DILUTION. THAT'S ANOTHER CLAIM THAT
10 APPLE IS MAKING IN THIS CASE.

11 PART OF THEIR CLAIM IS BASED ON WHAT
12 WE'RE LOOKING AT ON THE SCREEN RIGHT HERE. THIS IS
13 A TRADE DRESS REGISTRATION THAT WAS FILED BY APPLE.

14 AND AS YOU CAN SEE, WHEN YOU LOOK AT THIS
15 TRADE DRESS REGISTRATION -- I'M NOT GOING TO READ
16 THE WHOLE THING, IT'S KIND OF HARD TO READ -- BUT
17 IT'S VERY DETAILED.

18 IT SAYS -- IT TALKS ABOUT THE -- IT SHOWS
19 THE BOTTOM PORTION WITH THE BUTTON THERE. IT SAYS
20 "THE MARK CONSISTS OF THE CONFIGURATION," AND IT
21 GOES THROUGH EACH OF 17 DIFFERENT ICONS AND
22 SPECIFICALLY DESCRIBES EACH OF THOSE 17 DIFFERENT
23 ICONS AND WHAT EACH OF THEM DOES.

24 YOU CAN SEE HERE, THE FIRST ICON, SECOND
25 ICON, THIRD ICON, FOURTH ICON, AND EACH OF THEM

1 SAYS WHAT IT DOES. THE FOURTH ICON DEPICTS A
2 CAMERA LENS WITH A BLACK BARREL AND THE BLUE GLASS
3 ON A SILVER BACK.

4 AND EACH ONE OF THESE DIFFERENT CALL OUTS
5 IN THIS REGISTRATION TALKS ABOUT A SPECIFIC ICON
6 AND WHAT IT LOOKS LIKE, AND THIS IS A SPECIFIC
7 CONFIGURATION.

8 THAT IS THE REGISTRATION THAT THEY'RE
9 USING TO SAY, WITH RESPECT TO THE IPHONE, THAT
10 THERE IS DILUTION, TRADE DRESS DILUTION.

11 WHAT WILL THE EVIDENCE SHOW? THE
12 EVIDENCE WILL SHOW THAT SAMSUNG'S PHONES ARE
13 DIFFERENT, THEY'RE DIFFERENT FROM THAT REGISTRATION
14 AND THEY'RE DIFFERENT FROM THE IPHONE.

15 HERE YOU CAN -- IN FACT, SAMSUNG MAKES SO
16 MANY DIFFERENT TYPES OF PHONES THAT THEY'RE
17 DIFFERENT AMONGST EACH OTHER. HERE WE'VE GOT THE
18 CONTINUUM THAT'S GOT ONE SHAPE AND ONE LOOK; WE
19 HAVE GOT THE DROID CHARGE THAT'S SHAPED DIFFERENTLY
20 WITH A DIFFERENT HOME SCREEN; THE GALAXY S 4G
21 SHAPED DIFFERENTLY WITH A DIFFERENT SCREEN; AND THE
22 EPIC 4G.

23 LET'S TAKE THESE APART A LITTLE BIT AND
24 LOOK AT THEM.

25 IF YOU LOOK AT THE BOTTOMS, THE SAMSUNG

1 PHONES ARE CLEARLY DIFFERENT. YOU'VE GOT THESE
2 FOUR DIFFERENT ICONS ON THERE.

3 ON THE CONTINUUM HERE, YOU'VE EVEN GOT A
4 MESSAGING WINDOW THAT YOU DON'T SEE ANYWHERE IN THE
5 TRADE DRESS REGISTRATION OR IN THE INITIAL IPHONE.

6 YOU'VE GOT VARIOUS INITIAL SHAPES AT THE
7 BOTTOM. LOOK AT THE DROID CHARGE HAS GOT A, ALMOST
8 A V-SHAPE TO IT.

9 THE EPIC 4G HAS A COMPLETELY DIFFERENT
10 ROUNDED SHAPE WITH FOUR DIFFERENT ICONS AND, OF
11 COURSE, BRANDED.

12 THE SAMSUNG PHONES ARE DIFFERENT FROM THE
13 IPHONE REGISTRATION.

14 LOOK AT THE HOME -- WHEN YOU PULL OUT THE
15 HOME SCREENS THAT YOU SEE WHEN YOU RAMP UP -- AND
16 BY THE WAY, REMEMBER, BEFORE A CONSUMER CAN EVEN
17 SEE THESE HOME SCREENS, WHAT DOES A CONSUMER DO?
18 TURN ON THE PHONE.

19 WHAT HAPPENS WHEN YOU TURN ON THE PHONE?
20 YOU GET A WHOLE MINI MOVIE ADVERTISING THE CARRIER,
21 ADVERTISING THE OEM MAKER, SAMSUNG. YOU SEE ALL
22 THAT BEFORE YOU EVEN SEE THIS.

23 BUT IF YOU LOOK AT THE HOME SCREENS OF
24 THESE PHONES, THEY DON'T LOOK ANYTHING LIKE THE
25 HOME SCREEN OF THE IPHONE.

1 SAMSUNG PHONES ARE DIFFERENT.

2 SAME THING WHEN YOU LOOK AT THE TOPS OF
3 THESE PHONES.

4 NOW, DILUTION, ONE OF THE ISSUES OF
5 DILUTION IS TO ASSESS WHETHER THE PRESENCE OF THE
6 ACCUSED PRODUCT IN THE MARKETPLACE DILUTES THE
7 TRADE DRESS. SO IT'S SORT OF LIKE JUST DILUTING A
8 LIQUID BY POURING WATER INTO IT. IT TAKES AWAY
9 FROM THE BRAND. AND THE JUDGE WILL STRUCK YOU ON
10 THAT.

11 BUT WHAT I WANT TO GET TO IS THE EVIDENCE
12 HERE WILL SHOW THERE IS NO DILUTION. THERE IS NO
13 DILUTION OF THE MARKETPLACE.

14 THIS IS FROM APPLE -- THIS IS AN IMAGE
15 FROM APPLE'S OWN INTERNAL DOCUMENTATION FROM
16 JULY 7TH OF 2011, AND IF YOU LOOK HERE, YOU CAN
17 SEE, THERE'S THE ACCUSED PRODUCT, THE GALAXY TAB 10
18 ON THE LEFT.

19 BUT THE MARKETPLACE IS FULL OF TABLETS
20 THAT ARE RECTANGULAR IN SHAPE WITH ROUNDED CORNERS,
21 WITH LARGE TOUCH SCREENS, WITH MINIMALIST DESIGNS.

22 WHETHER THE GALAXY IS IN THAT MIX OR NOT
23 IS NOT GOING TO DILUTE APPLE'S TRADE DRESS BECAUSE
24 EVERYONE'S OUT THERE WITH PRODUCTS THAT HAVE THAT
25 BASIC FORM FACTOR.

1 SAME THING FOR SMARTPHONES. YOU'RE GOING
2 TO BE ASKED TO ANSWER THE QUESTION, DOES THE
3 ACCUSED SAMSUNG PHONE CAUSE DILUTION OF APPLE'S
4 TRADE DRESS?

5 BUT WHEN YOU LOOK AT THE MARKETPLACE AND
6 YOU TAKE OUT THE APPLE, YOU STILL HAVE DOZENS AND
7 DOZENS AND DOZENS OF SMARTPHONES OUT THERE THAT
8 HAVE LARGE TOUCH SCREENS ON THEM, TAKE UP MOST OF
9 THE REAL ESTATE IN THE FRONT, THEY'RE RECTANGULAR
10 IN SHAPE WITH ROUNDED CORNERS, AND THEY HAVE
11 MINIMALIST DESIGN.

12 WHETHER SAMSUNG'S IN THERE OR NOT,
13 THEY'RE ALL OUT THERE. THERE'S NO DILUTION.

14 BUT THE KICKER HERE, MEMBERS OF THE JURY,
15 IS THE EVIDENCE IS GOING TO SHOW THAT APPLE'S OWN
16 EXPERT WITNESS, ON THIS SUBJECT, ADMITTED, UNDER
17 OATH, THAT THERE'S NO DILUTION. I'LL SHOW YOU.

18 THIS IS TESTIMONY OF APPLE'S WITNESS
19 REGARDING THE LACK OF DILUTION, RUSSELL WINER.
20 APPLE IS GOING TO CALL HIM TO TESTIFY ABOUT
21 DILUTION.

22 AND HE WAS ASKED AT HIS DEPOSITION, "MY
23 QUESTION IS, DO YOU HAVE ANY EMPIRICAL EVIDENCE OR
24 HARD DATA TO SHOW THAT SAMSUNG'S ACTIONS HAS
25 DILUTED APPLE'S BRAND?"

1 AND HIS ANSWER WAS, "NO."

2 REMEMBER, IT'S APPLE'S BURDEN OF PROOF.

3 HE WAS ALSO ASKED, "DO YOU HAVE ANY
4 QUANTIFICATION OF ANY HARM OR DILUTION OR LOSS OF
5 ANY KIND TO APPLE AS A RESULT OF SAMSUNG'S
6 ACTIONS?"

7 AND UNDER OATH, HE SAID, "NO."

8 SO APPLE'S OWN EXPERT ON TRADE DRESS
9 DILUTION HAS ADMITTED THERE ISN'T ANY. THERE'S NO
10 HARM, THERE'S NO DILUTION, THERE'S NO LOSS OF ANY
11 KIND.

12 THE EVIDENCE WILL SHOW, MEMBERS OF THE
13 JURY, THAT APPLE'S TRADE DRESS CLAIMS FAIL AND
14 APPLE CANNOT MEET ITS BURDEN WITH RESPECT TO THOSE
15 CLAIMS.

16 IS NOW A GOOD TIME TO TAKE A BREAK?

17 THE COURT: THAT'S GREAT.

18 IT'S NOW 12:02. WE ARE GOING TO TAKE A
19 BREAK FOR LUNCH.

20 AGAIN, PLEASE DO NOT DISCUSS THE CASE
21 WITH ANYONE. DO NOT READ ANY MEDIA ACCOUNTS OR DO
22 ANY RESEARCH AND KEEP AN OPEN MIND.

23 WE'LL SEE YOU -- IF YOU COULD PLEASE
24 REASSEMBLE BACK HERE AT 1:00 O'CLOCK IN THE JURY
25 ROOM. ALL RIGHT? THANK YOU ALL.

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

AND FOR FOLKS WHO GOT SEATS, YOU CAN
RESERVE YOUR SEATS OVER THE LUNCH HOUR SO YOU DON'T
HAVE TO STAND IN LINE AGAIN. YOU CAN LEAVE SOME
PERSONAL ITEM ON THERE.

(WHEREUPON, THE LUNCH RECESS WAS TAKEN.)

1 **AFTERNOON SESSION**

2 (WHEREUPON, THE FOLLOWING PROCEEDINGS
3 WERE HELD IN THE PRESENCE OF THE JURY:)

4 THE COURT: WELCOME BACK. WE'LL CONTINUE
5 WITH SAMSUNG'S OPENING STATEMENT.

6 IT IS NOW 1:06.

7 PLEASE GO AHEAD.

8 MR. VERHOEVEN: THANK YOU, YOUR HONOR.

9 CAN WE GO TO SLIDE 66, PLEASE.

10 GOOD AFTERNOON, MEMBERS OF THE JURY.

11 BEFORE LUNCH WE HAD LEFT OFF AND I WAS
12 TALKING ABOUT APPLE'S TRADE DRESS CLAIMS.

13 AND THERE'S, THERE'S TWO OTHER TYPES OF
14 CLAIMS THAT APPLE IS MAKING AGAINST SAMSUNG IN THIS
15 CASE. THE SECOND ONE IS DESIGN PATENTS, AND THE
16 THIRD ONE IS WHAT HER HONOR MENTIONED AS UTILITY
17 PATENTS.

18 I'M NOW GOING TO SWITCH TO THE DESIGN
19 PATENT CLAIMS THAT APPLE HAS MADE AND ADDRESS
20 THOSE.

21 AND THE FIRST OF THOSE PATENTS THAT I'D
22 LIKE TO ADDRESS IS THE '889 DESIGN PATENT.

23 NOW, YOU HEARD HER HONOR REFER THIS
24 MORNING TO DESIGN PATENTS AND EXPLAIN HOW THEY'RE
25 DIFFERENT FROM UTILITY PATENTS. FOR A UTILITY

1 PATENT, IT'S SOMETHING THAT IS USEFUL AND NEW AND
2 HAS UTILITY. A DESIGN PATENT IS A NEW, ORIGINAL,
3 AND ORNAMENTAL DESIGN. AND SO THAT'S WHAT WE'RE
4 TALKING ABOUT.

5 AND THIS IS THE '889 DESIGN PATENT THAT
6 APPLE'S ASSERTED AGAINST MY CLIENT IN THIS CASE.
7 AND AS YOU CAN SEE, IT'S A VERY SIMPLE DESIGN.
8 IT'S A RECTANGLE WITH ROUNDED CORNERS, AND IN THE
9 BACK, THERE'S NO ORNAMENTATION WHATSOEVER.

10 NOW, IN ORDER FOR APPLE TO ASSERT THIS
11 CLAIM, THE DESIGN PATENT HAS TO BE NEW AND
12 ORIGINAL.

13 THE EVIDENCE IS GOING TO SHOW IN THIS
14 CASE THAT IT'S NOT, THAT THERE WAS PRIOR ART OUT
15 THERE THAT SHOWED THIS.

16 FOR EXAMPLE, WE SAW EARLIER, IN 1994, A
17 TABLET DESIGN INVENTED BY ROGER FIDLER. HE EVEN
18 CALLED IT THE TABLET. AND YOU CAN SEE FOR
19 YOURSELF, IT'S A LARGE RECTANGLE IN A TABLET SHAPE,
20 ROUNDED CORNERS, AND A LARGE DISPLAY SCREEN.

21 WHEN WE TOGGLE BACK TO THE '889, THE SAME
22 THING: LARGE RECTANGLE, ROUNDED CORNERS, MINIMAL
23 ORNAMENTATION, TABLET FORM FACTOR.

24 THE EVIDENCE IS ALSO GOING TO SHOW,
25 MEMBERS OF THE JURY, THAT THE ACCUSED TABLET, WHICH

1 IS THIS ONE RIGHT HERE (INDICATING), THE SAMSUNG
2 TABLET, THAT AN ORDINARY OBSERVER, LOOKING AT THE
3 ACCUSED TABLET, COULD TELL THE DIFFERENCE BETWEEN
4 THAT AND THIS '889 DESIGN PATENT.

5 IN PARTICULAR, THE EVIDENCE IN THIS CASE,
6 MEMBERS OF THE JURY, IS GOING TO SHOW THAT THERE
7 WAS A PHYSICAL MODEL THAT APPLE CREATED INTERNALLY
8 WITHIN APPLE. IT'S REFERRED TO AS THE 035 MODEL,
9 AND I HAVE IT RIGHT HERE. YOU CAN SEE IT FOR
10 YOURSELF (INDICATING). THIS IS A MODEL CREATED BY
11 APPLE.

12 THE EVIDENCE IS GOING TO SHOW THAT THIS
13 EXACT PHYSICAL MODEL WAS USED TO DRAW THE PICTURES
14 THAT WERE SUBMITTED RIGHT HERE FOR THE '889 DESIGN
15 PATENT.

16 IF YOU GO BACK AND LOOK AT THESE
17 PICTURES, THE EVIDENCE IS GOING TO SHOW THESE
18 PICTURES WERE TAKEN OF THIS MODEL AND SUBMITTED TO
19 THE PATENT OFFICE AS PART OF THE APPLICATION FOR
20 THE '889 PATENT TO SHOW THAT THEY HAD A MODEL OF
21 IT.

22 AND, IN FACT, THE EVIDENCE WILL SHOW,
23 IT'S UNDISPUTED, THAT THIS MODEL WAS USED TO DRAW
24 THE PICTURES.

25 AND HERE ON THIS NEXT SLIDE, 71, THESE

1 ARE PICTURES ON THE LEFT OF THIS ACTUAL MODEL,
2 SOMEONE HOLDING IT; AND ON THE RIGHT, THESE ARE
3 IMAGES FROM THE ACTUAL '889 DESIGN PATENT. YOU CAN
4 SEE THE CORRESPONDENCE BETWEEN THE PHYSICAL MODEL
5 AND THE DRAWINGS. THIS IS THE PHYSICAL EMBODIMENT
6 OF THE PICTURE IN THE '889 PATENT.

7 NOW, I SUBMIT THE EVIDENCE WILL SHOW THAT
8 AN ORDINARY OBSERVER CAN TELL THE DIFFERENCE
9 BETWEEN THE 035 MODEL AND THIS MUCH DIFFERENT
10 ACCUSED TABLET. YOU CAN SEE FOR YOURSELF
11 (INDICATING). THESE ARE NOT SOMETHING THAT AN
12 ORDINARY OBSERVER COULDN'T TELL THE DIFFERENCE
13 BETWEEN.

14 AND THAT'S -- THAT'S GOING TO BE YOUR
15 CHARGE. THE JUDGE WILL INSTRUCT YOU ON THE RULES
16 FOR HOW TO DO THAT, BUT I SUBMIT THE EVIDENCE WILL
17 SHOW THAT -- FOR EXAMPLE, HERE'S AN IMAGE THAT
18 WE'VE TAKEN OF THESE TWO PHYSICAL EXHIBITS AND YOU
19 CAN SEE THEY LOOK MUCH DIFFERENT. ONE IS MUCH
20 THICKER. ONE IS MUCH BIGGER. THE ORDINARY
21 OBSERVER COULD TELL THE DIFFERENCE.

22 IN ADDITION TO THIS EVIDENCE, WE ALSO
23 HAVE TESTIMONY FROM CHRISTOPHER STRINGER, WHO WILL
24 BE THE FIRST WITNESS IN THIS CASE CALLED BY APPLE,
25 AND AT HIS DEPOSITION, MR. STRINGER WAS ASKED,

1 QUESTION, "PLEASE TELL ME ALL THE WAYS IN WHICH THE
2 DESIGN, THAT'S DEPICTED HERE IN EXHIBIT 8" -- AND
3 I'LL REPRESENT EXHIBIT 8 IS THE DESIGN PATENT THAT
4 WE JUST LOOKED AT, THE '889 PATENT -- "PLEASE TELL
5 ME ALL THE WAYS IN WHICH THE DESIGN, THAT'S
6 DEPICTED HERE IN EXHIBIT 8, WAS DIFFERENT FROM THE
7 OTHER TABLET COMPUTER DESIGNS THAT EXISTED AS OF
8 THE TIME IT WAS CONCEIVED.

9 "ANSWER: WE EXTENDED THE CLEAR BEZEL
10 ACROSS THE ENTIRETY OF THE FRONT FACE OF THE
11 PRODUCT," SO THAT'S THIS PART RIGHT HERE
12 (INDICATING), HE TESTIFIED, "WE EXTENDED THIS GLASS
13 BEZEL ALL THE WAY TO THE EDGES." SO THAT'S ONE OF
14 THE THINGS THEY DID THAT HE THINKS MAKES IT
15 DIFFERENT FROM WHAT WAS ALREADY OUT THERE.

16 AND THEN THE SECOND THING HE SAYS IS
17 REALLY VERY IMPORTANT. HE SAYS, "AND WE SIMPLIFIED
18 THE REAR HOUSE TO GO TO A SINGLE PIECE."

19 AND THEN HE CLARIFIED, "WE CHOSE TO HAVE
20 A COMPLETE HOUSING THAT WITHOUT ANY BREAKS IN
21 PRODUCT LINES EXTENDS UP TO THE TOP SURFACE OF THE
22 PRODUCT."

23 SO THERE'S ONLY TWO THINGS THAT HE
24 IDENTIFIED FOR THE '889 DESIGN THAT MADE IT NEW, IN
25 HIS VIEW, NEW AND UNIQUE. ONE WAS EXTENDING THE

1 GLASS BEZEL ALL THE WAY ACROSS THE EDGES; AND THE
2 SECOND THING WAS TO HAVE A SIMPLIFIED REAR HOUSE
3 GOING TO A SINGLE PIECE WITHOUT ANY BREAKS IN
4 PRODUCT LINES.

5 WELL, IF YOU LOOK AT THE 035 MODEL, IT'S
6 CONSISTENT WITH THAT. THE GLASS EXTENDS TO THE
7 EDGE.

8 LOOK AT THE BACK. THERE'S A -- IT'S JUST
9 ONE PIECE.

10 NOW, IF YOU LOOK AT THE ACCUSED
11 PRODUCT --

12 YOUR HONOR, WOULD IT BE OKAY IF I TOOK A
13 COUPLE STEPS CLOSER FOR THEM TO SEE?

14 THE COURT: WHY DON'T YOU STAY THERE,
15 PLEASE?

16 MR. VERHOEVEN: OKAY.

17 IF YOU LOOK AT THE ACCUSED PRODUCT, YOU
18 CAN SEE CLEARLY, IT HAD MULTIPLE PIECES
19 (INDICATING).

20 I'VE GOT A SLIDE THAT PULLS THAT OUT.

21 BUT YOU CAN SEE, THERE'S A MULTIPLE PIECE
22 HOUSING.

23 SO THE SECOND OF THE ONLY TWO DESIGN
24 ELEMENTS THAT THE INVENTOR, WHO'S COMING TO
25 TESTIFY, SAYS MAKES IT NEW AND UNIQUE DOES NOT

1 EXIST IN THE ACCUSED PRODUCT.

2 THE EVIDENCE WILL SHOW THAT AN ORDINARY
3 OBSERVER CAN TELL THE DIFFERENCE. AN ORDINARY
4 OBSERVER CAN TELL THE DIFFERENCE BETWEEN THIS AND
5 THIS (INDICATING).

6 THE EVIDENCE IS ALSO GOING TO SHOW THAT
7 APPLE'S OWN EXPERT ON THIS SUBJECT TESTIFIED UNDER
8 OATH THAT THE INITIAL IPAD, WHICH IS THIS PRODUCT
9 RIGHT HERE (INDICATING), IS NOT AN EMBODIMENT OF
10 THE '889 PATENT. THEIR OWN EXPERT TESTIFIED UNDER
11 OATH, THIS IS DIFFERENT FROM THE '889 PATENT
12 (INDICATING). THIS IS DIFFERENT.

13 BUT APPLE CLAIMS THAT THIS IS SIMILAR.
14 HOW CAN THIS BE DIFFERENT FROM THE 035 -- FROM THE
15 '889 PATENT WHILE THIS ONE, WHICH IS EVEN THINNER,
16 EVEN SMALLER WITH MULTIPLE PART HOUSING, IT'S
17 SIMILAR (INDICATING)?

18 THE EVIDENCE DOES NOT ADD UP. AN
19 ORDINARY OBSERVER COULD TELL THE DIFFERENCE.

20 IN FACT, IF YOU GO TO SLIDE 78, APPLE'S
21 OWN DESIGNERS, THE INVENTORS LISTED ON THE '889
22 PATENT, MEMBERS OF THE JURY, TESTIFIED THAT THEY
23 WEREN'T AWARE OF ANY PRODUCTS THAT EMBODIED THE
24 '889. THEY'RE NOT AWARE OF ANY PRODUCTS THAT APPLE
25 SELLS THAT EMBODY THIS.

1 MATTHEW ROHRBACH, APPLE DESIGN INVENTOR,
2 "DID APPLE EVER MANUFACTURE OR PRODUCE A PRODUCT
3 THAT LOOKS LIKE THE DESIGN THAT'S SHOWN HERE IN THE
4 '889 PATENT?

5 "ANSWER: I DON'T KNOW."

6 EUGENE WHANG, APPLE'S DESIGN INVENTOR.

7 "QUESTION: DID APPLE EVER MANUFACTURE AN
8 ELECTRONIC DEVICE THAT IN YOUR VIEW LOOKED LIKE THE
9 DRAWINGS SHOWN HERE IN THE '889 DESIGN PATENT?

10 "I CAN'T TELL."

11 THESE ARE THE SAME DESIGNERS WHO DESIGNED
12 THE IPAD AND THE IPAD 2 AND THEY TESTIFIED, UNDER
13 OATH, LOOKING AT THE '889, THAT THEY'RE NOT AWARE
14 OF ANY PRODUCTS THAT EMBODY IT.

15 YET APPLE NOW IS SAYING THAT THE SAMSUNG
16 PRODUCT EMBODIES IT. IT DOESN'T ADD UP.

17 WE BELIEVE THE EVIDENCE WILL SHOW THE
18 '889 PATENT IS NOT INFRINGED.

19 NOW I'D LIKE TO TURN TO TWO OTHER DESIGN
20 PATENTS THAT HAVE BEEN ASSERTED.

21 IF WE CAN GO TO SLIDE 46, PLEASE.

22 APPLE'S ALSO ASSERTING TWO PATENTS FROM
23 THE IPHONE, THE '087, AND THE '677 PATENTS.
24 THEY'RE BOTH DESIGN PATENTS AND THEY BOTH RELATE TO
25 THE INITIAL IPHONE THAT WAS RELEASED IN 2007.

1 MR. MCELHINNY SHOWED YOU THE PICTURES OF
2 THESE. THIS IS THE '087. IT'S JUST CLAIMING THIS
3 RECTANGULAR ROUNDED CORNER IMAGE HERE WITH THE
4 LOZENGE SLOT AND THE DISPLAY SCREEN.

5 THE DOTTED LINES EVERYONE AGREES ARE NOT
6 BEING CLAIMED. IT'S JUST THE FRONT OF THE PHONE
7 AND THE BEZEL IS WHAT'S BEING CLAIMED.

8 AND IN THE '677, IT'S JUST THIS FRONT
9 FACE RIGHT HERE. THOSE ARE TWO OTHER DESIGN
10 PATENTS THAT APPLE IS ASSERTING AGAINST MY CLIENT.

11 AGAIN, IN ORDER FOR THERE TO BE
12 INFRINGEMENT, THESE PATENTS HAVE TO BE VALID. THEY
13 HAVE TO BE NEW, ORIGINAL, AND ORNAMENTAL.

14 THE EVIDENCE IS GOING TO SHOW -- AND THIS
15 IS ANOTHER THING YOU WEREN'T TOLD BY APPLE'S
16 COUNSEL -- THAT THERE'S PRIOR ART OUT THERE, A LOT
17 OF OTHER DESIGN PATENTS OUT THERE THAT HAVE THIS
18 BASIC SAME SHAPE. BIG SCREEN, ROUNDED CORNER,
19 RECTANGULAR FORM FACTOR WITH THE LOZENGE.

20 WE'VE ALREADY LOOKED AT THESE. THE
21 JP1638, JP1383, KR547 AND THE LG PRADA ALL ARE
22 PHONES THAT HAVE THIS BASIC SHAPE. THEY ALL
23 PRE-DATED THESE TWO VERY SIMPLISTIC DESIGN PATENTS.
24 THEY SHOW CONCLUSIVELY THAT THESE, THESE LIMITED
25 DESIGN PATENTS ARE NOT NEW, THEY'RE NOT UNIQUE IN

1 ANY WAY.

2 THE EVIDENCE IS ALSO GOING TO SHOW THAT
3 AN ORDINARY OBSERVER, LOOKING AT THESE PATENTS,
4 COULD TELL THE DIFFERENCE BETWEEN THE ACCUSED
5 PRODUCTS AND THE DESIGN ELEMENTS OF THESE PATENTS.

6 FOR EXAMPLE, APPLE'S FIRST WITNESS,
7 MR. STRINGER, WILL TESTIFY AS TO WHAT THE DESIGN
8 ELEMENTS OF THESE PATENTS ARE. ONE OF THE DESIGN
9 ELEMENTS WAS VERY IMPORTANT, ACCORDING TO APPLE, TO
10 HAVE A FLAT FRONT SURFACE.

11 IF YOU LOOK RIGHT HERE IN THE SIDE VIEW,
12 MEMBERS OF THE JURY, YOU'LL SEE IT'S FLAT ALL THE
13 WAY ACROSS FROM END TO END.

14 MR. STRINGER WILL TESTIFY THAT THEY
15 WANTED TO MAKE SURE THE BEZEL -- THAT'S THIS BAND,
16 THIS METAL BAND THAT GOES AROUND THE SIDE -- DID
17 NOT PROTRUDE BEYOND THE GLASS.

18 IT WAS A DESIGN ELEMENT TO MAKE THAT
19 BEZEL FLUSH WITH THE GLASS FOR AESTHETIC REASONS,
20 EVEN THOUGH FUNCTIONALLY, IT'S HARDER TO MAKE A
21 PHONE THAT HAS THAT; EVEN THOUGH, FUNCTIONALLY,
22 HAVING A PROTRUDED BEZEL WILL PROTECT THE GLASS IF
23 YOU PUT THE PHONE DOWN UPSIDE DOWN.

24 FOR DESIGN REASONS, ACCORDING TO
25 MR. STRINGER, THEY WANTED A GLASS TO HAVE A FLUSH

1 BEZEL.

2 WHAT HAPPENS WHEN YOU LOOKED AT THE
3 ACCUSED PRODUCTS? WHEN YOU LOOK AT THE ACCUSED
4 PRODUCTS, MEMBERS OF THE JURY, YOU SEE THEY DON'T
5 HAVE THAT DESIGN ELEMENTS.

6 THESE ARE TWO EXAMPLES OF MANY ACCUSED
7 PRODUCTS IN THIS CASE, MEMBERS OF THE JURY. THE
8 FIRST IS THE INFUSE 4G.

9 AND YOU'LL BE ABLE TO, DURING THE COURSE
10 OF THIS TRIAL, GET A PHYSICAL COPY OF THIS PHONE
11 AND RUN YOUR FINGERS ACROSS IT AND YOU'LL SEE THE
12 SURFACE IS NOT FLAT. THE HOUSING PROTRUDES ABOVE
13 THE GLASS, THE OPPOSITE OF THE DESIGN ELEMENT THAT
14 THE INVENTOR ON THIS DESIGN PATENT SAYS MADE IT
15 NEW, MADE IT DIFFERENT FROM THE PRIOR ART.

16 SAME THING WITH THE VIBRANT. THE BEZELS
17 PROTRUDE ABOVE THE GLASS. THERE'S NOT A COMPLETELY
18 FRONT FLAT SURFACE.

19 ANOTHER DESIGN ELEMENT THAT MR. STRINGER
20 WILL TESTIFY TO IS -- IF YOU GO BACK TO SLIDE 46,
21 PLEASE -- IS THIS BEZEL ELEMENT OR RIM. HE SAID
22 IT'S A VERY IMPORTANT DESIGN ELEMENT FOR THE
23 INITIAL IPHONE TO HAVE THIS UNIFORM BEZEL OR RIM
24 GOING AROUND THE FRONT OF THE PHONE. YOU CAN SEE
25 IT RIGHT HERE (INDICATING).

1 AND HE TESTIFIED THAT UNIFORM MEANT IT
2 WAS THE SAME ALL THE WAY AROUND THE PHONE,
3 INCLUDING UNIFORM THICKNESS ALL THE WAY AROUND THE
4 PHONE, AND THAT WAS SOMETHING DIFFERENT, ACCORDING
5 TO THE INVENTOR, FROM THE PRIOR ART.

6 WELL, LET'S TAKE THAT DESIGN ELEMENT AND
7 COMPARE IT TO THE ACCUSED PHONES.

8 IF YOU GO TO 52, PLEASE.

9 HERE WE HAVE ON THE LEFT THE '087 PATENT.
10 THERE'S THE CONTINUOUS BEZEL. YOU CAN SEE IT'S
11 EXACTLY AS DESCRIBED BY MR. STRINGER. IT'S OF
12 UNIFORM THICKNESS.

13 NOW LET'S LOOK AT THE ACCUSED PRODUCTS.

14 WE'LL START WITH THE INFUSE 4G. THERE'S
15 NO BEZEL. THERE'S NO PIECE OF METAL THAT GOES
16 AROUND THE RIM AT ALL.

17 THIS IS A VERY SIMPLE DESIGN PATENT. IT
18 DOESN'T HAVE VERY MUCH TO IT. ONE OF THE THINGS IT
19 HAS TO IT IS A UNIFORM BEZEL.

20 APPLE ACCUSES THIS INFUSE 4G OF
21 INFRINGEMENT, BUT THE 4G DOESN'T EVEN HAVE A BEZEL.

22 APPLE ALSO ACCUSES SOME PHONES THAT DO
23 HAVE BEZELS, LIKE THE VIBRANT.

24 BUT WHEN YOU DO THE APPROPRIATE ANALYSIS,
25 THE EVIDENCE WILL SHOW, YOU CAN SEE THE BEZEL ON

1 THE VIBRANT IS NOT OF UNIFORM THICKNESS. IT'S A
2 DIFFERENT DESIGN.

3 AN ORDINARY OBSERVER, LOOKING AT THIS,
4 CAN TELL THE DIFFERENCE. THERE IS NO INFRINGEMENT.

5 THE '087 PATENT ALSO HAS VIRTUALLY NO
6 ORNAMENTATION. THAT IS A DESIGN ELEMENT,
7 MINIMALISM.

8 WELL, IF YOU LOOK AT THE ACCUSED
9 PRODUCTS, THEY DON'T HAVE NO ORNAMENTATION. THEY
10 HAVE LOTS OF ORNAMENTATION. CAMERA INDICATORS,
11 SENSOR INDICATORS, YOU'VE GOT WRITING ON THE TOP,
12 YOU'VE GOT ICONS ON THE BOTTOM THAT YOU CAN SEE
13 WHEN THE PHONE IS OFF, THE MENU ICON, THE HOME
14 ICON, BACK ICON, SEARCH ICON.

15 VIBRANT, YOU ALSO SEE MANY DIFFERENCES
16 FROM THE '087 WHICH HAS VIRTUALLY NO ORNAMENTATION.

17 THE ONLY OTHER THING BESIDES THE BEZEL
18 AND THE FLAT SURFACE AND THE LACK OF ORNAMENTATION
19 THAT YOU EVEN SEE IN THE '087 PATENT IS YOU'VE GOT
20 THIS LOZENGE SHAPE, AND MR. STRINGER WILL TESTIFY
21 THAT WHAT WAS IMPORTANT ABOUT THIS DESIGN ELEMENT
22 WAS THAT IT BE CENTERED HORIZONTALLY.

23 WELL, WHEN YOU LOOK AT THE ACCUSED
24 PRODUCTS, THEY DO HAVE EAR HOLES SO THAT YOU CAN
25 HEAR. THE EVIDENCE IS GOING TO SHOW SMARTPHONES

1 HAVE TO HAVE THAT. THE EVIDENCE IS GOING TO SHOW
2 THAT'S A FUNCTIONAL ELEMENT SO THAT YOU CAN HEAR.

3 BUT THEY'RE DIFFERENT. THEY DON'T LOOK
4 THE SAME. ON THE INFUSE, IT'S FLATTER. IT'S
5 LONGER. IT HAS 41 SEPARATE SMALL HOLES AND IT'S
6 NOT CENTERED HORIZONTALLY.

7 WHEN YOU LOOK AT THE VIBRANT, AGAIN,
8 FLATTER, LONGER, 16 HOLES IN THE DESIGN, AND IT
9 ALSO IS NOT HORIZONTALLY CENTERED.

10 IF THESE DESIGN PATENTS ARE VALID, THAT
11 IS, IF THEY AREN'T -- IF THEY DO HAVE ANYTHING THAT
12 MAKES THEM NEW OR UNIQUE OVER THOSE OTHER PATENTS
13 WE LOOKED AT THAT ALSO HAD ROUNDED CORNERS AND
14 LARGE RECTANGLES, IT'S GOT TO BE SPECIFIC FEATURES:
15 THIS BAND THAT'S UNIFORM; THAT LOZENGE THAT'S
16 HORIZONTALLY ORIENTED; THE FLAT SURFACE WITH NO
17 BEZEL RAISING OVER IT.

18 BUT WHEN YOU ANALYZE IT WITH THAT LEVEL
19 OF APPROPRIATE CARE, MEMBERS OF JURY, THE EVIDENCE
20 WILL SHOW THERE ISN'T ANY INFRINGEMENT HERE. THE
21 ORDINARY OBSERVER COULD TELL THE DIFFERENCE.

22 REALLY QUICKLY WE'LL GO TO THE LAST
23 DESIGN PATENT ASSERTED HERE, THE D'305 PATENT.

24 AND THIS PATENT -- MR. MCELHINNY SHOWED
25 YOU THIS -- CONCERNS AN IMAGE, IT'S ACTUALLY THE

1 HOME SCREEN FROM THE INITIAL IPHONE, AND THEY'RE
2 ASSERTING THIS IMAGE AGAINST THE SAMSUNG PHONES.

3 AGAIN, THE EVIDENCE IS GOING TO SHOW HERE
4 THAT AN ORDINARY OBSERVER COULD EASILY TELL THE
5 DIFFERENCE.

6 HERE'S FIGURE 1 OF THE '305. IT'S THE
7 HOME SCREEN OF THE INITIAL IPHONE.

8 TAKE A LOOK AT THE HOME SCREENS OF THE
9 ACCUSED PHONES. HERE'S THE CAPTIVE, DROID CHARGE,
10 THE VIBRANT, GEM, MESMERIZE, SHOWCASE.

11 EACH ONE OF THE PHONES IN AND OF
12 THEMSELVES HAS A DIFFERENT HOME SCREEN, AND
13 CERTAINLY AN ORDINARY OBSERVER COULD TELL THE
14 DIFFERENCE BETWEEN THE HOME SCREENS ON THESE PHONES
15 AND THE HOME SCREEN IDENTIFIED IN DESIGN PATENT
16 '305.

17 BUT APPLE SKIPS THESE HOME SCREENS AND
18 WHEN IT ACCUSES THAT IMAGE YOU SAW MR. MCELHINNY
19 SHOW YOU FOR THE EVIDENCE OF INFRINGEMENT, THAT
20 WASN'T THE HOME SCREENS.

21 WHAT WAS IT? IT'S THE APPLICATION MENU.

22 I'M SURE THOSE OF YOU WHO HAVE
23 SMARTPHONES KNOW THERE'S AN APPLICATION ICON YOU
24 CAN HIT AND THEN THAT TAKES YOU TO ANOTHER SCREEN.

25 THAT'S WHAT THEY'RE ACCUSING. THEY'RE

1 NOT EVEN ACCUSING THE EQUIVALENT HOME SCREEN FOR
2 THE ACCUSED PHONES.

3 SO A USER HAS GOT TO TURN ON THE PHONE,
4 SEE ALL THE ADVERTISING THAT COMES ON WHEN THE
5 PHONE COMES ON, SEE THE HOME SCREEN WHICH DOESN'T
6 LOOK THE SAME, HIT THE APPLICATION BUTTON, AND THEN
7 ONLY -- THEN AND ONLY THEN WILL THEY SEE THIS MENU
8 THAT APPLE IS ACCUSING, AND THEIR SUGGESTION IS AN
9 ORDINARY OBSERVER COULDN'T TELL THE DIFFERENCE.

10 WELL, AN ORDINARY OBSERVER COULD. WE
11 THINK THE EVIDENCE WILL SHOW THAT.

12 SO I'D LIKE TO TURN NOW TO THE LAST OF
13 THE THREE CATEGORIES OF INTELLECTUAL PROPERTY THAT
14 APPLE HAS ASSERTED, AND THAT'S UTILITY PATENTS.

15 IF YOU GO TO SLIDE 80, PLEASE.

16 APPLE IS ASSERTING THREE UTILITY PATENTS
17 IN THIS CASE, THE '915, THE '163, AND THE '381.

18 IN THE INTERESTS OF TIME, I'M NOT GOING
19 TO BE ABLE TO ADDRESS ALL OF THE ISSUES WITH
20 RESPECT TO THESE PATENTS, BUT I'D LIKE TO COVER A
21 COUPLE OF POINTS IF I MAY.

22 FIRST, YOU HEARD FROM HER HONOR THIS
23 MORNING FROM THE PRELIMINARY REMARKS THAT THE FACT
24 THAT THE PATENT OFFICE GRANTS A PATENT DOES NOT
25 NECESSARILY MEAN THAT ANY INVENTION CLAIMED IN THE

1 PATENT, IN FACT, DESERVES --

2 MR. MCELHINNY: EXCUSE ME, YOUR HONOR.
3 AGAIN, YOU TOLD HIM BEFORE AND NOW WE'RE TALKING
4 ABOUT THE REMARKS, THE BURDEN OF PROOF IN EVIDENCE.

5 THE COURT: ALL RIGHT. PLEASE DON'T
6 ARGUE, MR. VERHOEVEN.

7 MR. VERHOEVEN: THANK YOU, YOUR HONOR.

8 THE POINT I WAS GOING TO MAKE IS THE
9 PATENT OFFICE IS PRESUMED -- WHEN A PATENT ISSUES,
10 IT'S PRESUMED TO BE VALID.

11 BUT THE PATENT OFFICE DOESN'T ALWAYS KNOW
12 EVERYTHING. SOMETIMES THERE'S PRIOR ART OUT THERE
13 THAT THE PATENT OFFICE IS NOT AWARE OF.

14 THE EVIDENCE IS GOING TO SHOW, MEMBERS OF
15 THE JURY, THAT WITH RESPECT TO EACH OF THESE
16 PATENTS, THAT'S THE CASE.

17 I'D LIKE TO BRIEFLY GO THROUGH THAT, SO
18 LET'S GO TO THE '913 -- THE '915 PATENT.

19 THIS IS A PATENT THAT'S VERY SIMPLE.
20 HERE'S AN ILLUSTRATION OF WHAT APPLE IS CLAIMING
21 THEY INVENTED, A USER SCROLLING -- GO AHEAD -- AND
22 A USER USING TWO FINGERS TO CREATE A GESTURE.

23 IN A NUTSHELL, THAT IS WHAT APPLE CLAIMS
24 IT DESERVES A PATENT FOR IN THE '915 PATENT.

25 THE EVIDENCE IS GOING TO SHOW, MEMBERS OF

1 THE JURY, THAT OTHERS HAD ALREADY INVENTED THAT
2 BEFORE APPLE. IN PARTICULAR, NOVEMBER 25 OF 1998,
3 THE NOMURA PATENT WAS FILED WHICH SHOWS THE EXACT
4 SAME THING.

5 IN 2004, MERL DEVELOPED AND DEMONSTRATED
6 A PRODUCT CALLED FRACTAL ZOOM THAT SHOWS THE SAME
7 THING.

8 AND IN FEBRUARY OF 2006, JEFFERSON HAN
9 DEMONSTRATED HIS SYSTEM THAT SHOWS THE SAME THING.

10 LET'S TAKE A LOOK AT THE FRACTAL ZOOM
11 PRIOR ART.

12 THIS IS A VIDEO -- CAN WE PAUSE HERE --
13 OF THE FRACTAL ZOOM.

14 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN
15 OPEN COURT OFF THE RECORD.)

16 MR. VERHOEVEN: AND HERE IT SAYS RIGHT ON
17 THE VIDEO, IT'S CALLED "DIAMONDTOUCH FRACTAL ZOOM
18 DEMO CONTROLS."

19 IT SAYS "TOUCH THE TABLE WITH TWO FINGERS
20 AND SPREAD THEM APART TO ZOOM IN. TOUCH THE TABLET
21 WITH ONE FINGER OR GRAB THE IMAGE AND PULL TO PAN."

22 WELL, THAT'S EXACTLY WHAT THIS PATENT
23 CLAIMS YEARS LATER IT INVENTED.

24 LET'S CONTINUE.

25 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN

1 OPEN COURT OFF THE RECORD.)

2 MR. VERHOEVEN: THERE YOU SEE THE PERSON
3 ZOOMING -- OR PANNING, EXCUSE ME, AND THEN USING
4 TWO FINGERS TO DO WHAT'S CALLED A GESTURE IN THE
5 '915 PATENT.

6 THE SAME THING THAT APPLE SAYS IT'S
7 ENTITLED TO A PATENT ON WAS ALREADY DONE BY OTHERS
8 IN THE FRACTAL ZOOM PRIOR ART.

9 SAME THING WITH THE NOMURA PRIOR ART.
10 THIS WAS A PATENT FILED IN 1998, YEARS BEFORE THE
11 APPLE PATENT. YOU CAN SEE HERE IN ILLUSTRATIONS
12 FROM NOMURA, THIS IS ACTUAL PICTURES OUT OF THE
13 PATENT SHOWING PANNING AND THEN PINCHING AND
14 ZOOMING. LET'S GO AHEAD AND PLAY THAT.

15 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN
16 OPEN COURT OFF THE RECORD.)

17 MR. VERHOEVEN: SO THE NOMURA PATENT ALSO
18 DISCLOSES USING ONE FINGER TO SCROLL OR PAN AND TWO
19 FINGERS -- PLAY THAT -- TWO FINGERS TO PINCH OR
20 ZOOM, A GESTURE.

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

23 MR. VERHOEVEN: AND FINALLY, JEFFERSON
24 HAN'S PRIOR ART. THIS WAS PRESENTED IN FEBRUARY OF
25 2006, THE MULTITOUCH SYSTEM AT A TED CONFERENCE,

1 AND HE DEMONSTRATED THE EXACT SAME FUNCTIONALITY.

2 LET'S PLAY IT.

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

5 MR. VERHOEVEN: DO WE HAVE A TECHNICAL
6 PROBLEM?

7 I APOLOGIZE, YOUR HONOR.

8 THE COURT: NO PROBLEM.

9 (PAUSE IN PROCEEDINGS.)

10 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN
11 OPEN COURT OFF THE RECORD.)

12 MR. VERHOEVEN: STOP RIGHT THERE. PAUSE.

13 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN
14 OPEN COURT OFF THE RECORD.)

15 MR. VERHOEVEN: WELL, WE DIDN'T PAUSE
16 WHERE I WANTED TO. I APOLOGIZE.

17 YOU SAW HE WAS MOVING VERY QUICKLY, BUT
18 HE MOVED HIS FINGER AND THE ENTIRE SCREEN MOVED,
19 AND THAT WAS THE PANNING OR SCROLLING.

20 GO AHEAD AND CONTINUE.

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

23 MR. VERHOEVEN: WELL, THAT WASN'T THE
24 MOST SOPHISTICATED VIDEO THERE, BUT HE ALSO SHOWED
25 THIS VERY SAME FUNCTIONALITY. HE USED ONE FINGER,

1 HAND, TO SCROLL. TWO FINGERS TO ZOOM.

2 THE PATENT THAT APPLE HAS ASSERTED IS NOT
3 VALID. THE EVIDENCE IS GOING TO SHOW IT.

4 NOW LET'S GO TO THE '163 PATENT.

5 OKAY. I'M GOING TO SHOW YOU A QUICK
6 SUMMARY. THIS IS ANOTHER VERY SIMPLE PATENT THAT
7 APPLE IS ASSERTING AGAINST SAMSUNG IN THIS CASE,
8 AND HERE IS ESSENTIALLY WHAT IT IS.

9 TAKING YOUR FINGER, YOU HIT -- YOU HIT A
10 BLOCK AND IT BECOMES CENTERED. LET'S SHOW IT ONE
11 MORE TIME.

12 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN
13 OPEN COURT OFF THE RECORD.)

14 MR. VERHOEVEN: THIS IS THE TECHNOLOGY.
15 YOU HIT A BLOCK, IT CENTERS. YOU HIT A BLOCK, IT
16 CENTERS.

17 WELL, THAT VERY SIMPLE PATENT WAS ALSO
18 DONE YEARS BEFORE APPLE FILED FOR ITS PATENT
19 APPLICATION.

20 THE EVIDENCE IS GOING TO SHOW THAT IN
21 APRIL OF 2005, LAUNCHTILE DEMONSTRATED THAT EXACT
22 SAME FUNCTIONALITY AT A CHI CONFERENCE.

23 IN SEPTEMBER OF 2005, MICROSOFT FILED A
24 PATENT APPLICATION FOR TILE SPACE USER INTERFACE
25 WHICH ALSO DEMONSTRATED THAT SAME TECHNOLOGY.

1 THE LAUNCHTILE TECHNOLOGY DEVELOPED BY
2 DR. BENJAMIN BEDERSON IN 2004 WAS DEMONSTRATED AT A
3 CONFERENCE, THE EVIDENCE WILL SHOW, IN 2005.

4 AND IT SHOWED THREE DIFFERENT VIEWS FOR
5 LAUNCHTILE. WE START WITH THE WORLD VIEW, THAT'S
6 THE FIRST BOX YOU SEE THERE, AND YOU CLICK THAT BOX
7 AND WHAT HAPPENS IS THAT BOX EXPANDS INTO THE ZONE
8 VIEW IN THAT MIDDLE SCREEN THAT YOU SEE THERE.

9 AND THEN IF YOU GO -- AND YOU CAN HIT ANY
10 ONE OF THESE FOUR QUADRANTS, BUT IF YOU HIT THE TOP
11 RIGHT QUADRANT, WHICH I'VE LABELED THE SECOND BOX,
12 THAT WOULD BE CENTERED AND GO INTO THE APPLICATION
13 USE SCREEN.

14 THAT'S EXACTLY WHAT THE PATENT IS TALKING
15 ABOUT.

16 AND HERE WE'LL SHOW YOU, YOU CAN SEE IT
17 FOR YOURSELF BECAUSE WE HAVE THE SOFTWARE.

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

20 MR. VERHOEVEN: THE EVIDENCE IS GOING TO
21 SHOW THAT THIS IS EXACTLY WHAT THE '163 PATENT
22 CLAIMS, BUT IT WAS DONE BEFORE.

23 IN ADDITION TO THIS LAUNCHTILE PRIOR ART,
24 WE HAVE THE MICROSOFT PRIOR ART. AGAIN, A PATENT
25 WAS FILED BEFORE THIS PATENT, AND THE MICROSOFT

1 PRIOR ART ALSO SHOWS CLICKING ON A BOX AND HAVING
2 THE BOX THEN BECOME ENLARGED AND CENTERED.

3 AND WE HAVE AN ILLUSTRATION OF THAT HERE,
4 TOO.

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

7 MR. VERHOEVEN: SO WE SEE HERE THAT, AS
8 WITH THE FIRST PATENT, THE SECOND PATENT ALSO HAS
9 ART THAT INVALIDATES IT.

10 LET'S TURN TO THE THIRD PATENT, THE '381
11 PATENT.

12 THIS PATENT AS WELL IS A VERY SIMPLE
13 PATENT.

14 GO TO SLIDE 105, PLEASE.

15 AND WE'LL SHOW YOU WHAT IT IS CLAIMING.

16 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN
17 OPEN COURT OFF THE RECORD.)

18 MR. VERHOEVEN: THIS IS WHAT WAS REFERRED
19 TO AS THE BOUNCE BACK PATENT BY MR. MCELHINNY, OR
20 THE SLIDE BACK.

21 SO YOU PULL TO THE EDGE OF A DOCUMENT AND
22 YOU LET GO AND THERE'S AN EMPTY SPACE. YOU LET GO
23 AND IT BOUNCES BACK. THAT'S, IN A NUTSHELL, A HIGH
24 LEVEL OF WHAT THE '381 PATENT IS TALKING ABOUT.

25 WELL, THE EVIDENCE IS GOING TO SHOW,

1 MEMBERS OF THE JURY, THAT OTHERS ALSO DID THIS,
2 ALSO DEVELOPED THIS TECHNOLOGY BEFORE APPLE FILED
3 ITS PATENT.

4 THE SAME LAUNCH TILE PROGRAM THAT WE
5 LOOKED AT IN NOVEMBER 19 -- NOVEMBER OF 2004
6 PERFORMED THAT FUNCTIONALITY.

7 THERE WAS A PRODUCT -- OR A TECHNOLOGY
8 CALLED TABLECLOTH THAT WAS CREATED IN 2005 THAT
9 ALSO PERFORMED THAT. AND LET'S TAKE A LOOK BRIEFLY
10 AT TABLECLOTH.

11 IN THE INTERESTS OF TIME, WE'RE NOT GOING
12 TO RELOOK AT THAT LAUNCH PAD.

13 CAN WE PLAY IT?

14 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN
15 OPEN COURT OFF THE RECORD.)

16 MR. VERHOEVEN: HERE YOU SEE THE EXACT
17 SAME THING BOUNCING BACK. GO PAST THE EDGE OF THE
18 DOCUMENT, YOU HAVE A BLANK SPACE, YOU LET GO, IT
19 BOUNCES BACK.

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

22 MR. VERHOEVEN: SO MEMBERS OF THE JURY,
23 EACH OF THESE THREE VERY SIMPLE PATENTS THAT APPLE
24 IS ASSERTING ON THE UTILITY PATENT SIDE, EACH ONE
25 OF THEM, THE EVIDENCE IS GOING TO SHOW THAT OTHERS

1 DID IT BEFORE, MULTIPLE OTHERS DID IT BEFORE.

2 AND IF OTHER PEOPLE HAVE DONE WHAT YOU
3 CLAIM YOU'VE INVENTED, YOU DON'T HAVE AN INVENTION.
4 IT'S NOT VALID.

5 AND THE EVIDENCE IS GOING TO SHOW THAT'S
6 THE CASE.

7 WE ALSO CONTEND THAT WE DON'T INFRINGE
8 THESE PATENTS. I DON'T HAVE ENOUGH TIME TODAY TO
9 GO THROUGH ALL OF OUR ARGUMENTS WITH RESPECT TO
10 THAT, BUT THE EVIDENCE IS ALSO GOING TO SHOW THAT.

11 NOW, LET ME MOVE -- I'VE GOT ONE MORE
12 MODULE, I'M SURE YOU'RE ALL VERY TIRED, THAT I NEED
13 TO SWITCH TO AND THEN I'LL BE DONE, AND THAT IS MY
14 CLIENT, SAMSUNG'S, AFFIRMATIVE CASE, COUNTERCLAIM
15 AND CLAIM AGAINST APPLE FOR PATENT INFRINGEMENT.

16 NOW, I HEARD MR. MCELHINNY AND MR. LEE
17 SAY, "WELL, SAMSUNG DIDN'T SUE US ON THESE PATENTS
18 UNTIL WE SUED THEM," AS IF THAT MEANS OUR PATENTS
19 AREN'T ANY GOOD.

20 WELL, THAT'S TRUE.

21 IT'S ALSO TRUE THAT SAMSUNG HAD A MAJOR
22 BUSINESS RELATIONSHIP WITH APPLE. YOU SAW AT THE
23 START OF MY OPENING STATEMENT WHEN I SHOWED YOU THE
24 EVIDENCE THAT OVER 20 PERCENT OF THE COMPONENT
25 PARTS THAT MAKE UP THE IPHONE IS TECHNOLOGY THAT'S

1 SUPPLIED BY SAMSUNG.

2 SAMSUNG ISN'T IN THE HABIT OF SUING ITS
3 BUSINESS PARTNERS, EVEN IF IT COULD.

4 BUT SAMSUNG ISN'T THE ONE WHO LAUNCHED
5 THIS LITIGATION. SAMSUNG IS THE ONE WHO DECIDED TO
6 COMPETE IN THE COURTROOM INSTEAD OF THE
7 MARKETPLACE.

8 AND SAMSUNG HAS EVERY RIGHT, AFTER IT'S
9 BEEN ATTACKED BY APPLE, TO UTILIZE ITS OWN
10 INTELLECTUAL PROPERTY TO DEFEND ITSELF. THERE'S
11 NOTHING WRONG WITH THAT, AND TO SUGGEST OTHERWISE
12 IS WITHOUT MERIT.

13 NOW, LET'S GO THROUGH QUICKLY SAMSUNG'S
14 CLAIMS AGAINST APPLE FOR INFRINGEMENT OF THE
15 UTILITY PATENTS.

16 HERE WE HAVE TWO CATEGORIES OF PATENTS
17 I'M GOING TO ADDRESS. THE FIRST ARE WHAT I'LL CALL
18 HIGH SPEED DATA PATENTS, THE '516 AND THE '941
19 PATENTS.

20 IN ADDITION, SAMSUNG IS ASSERTING THREE
21 CAMERA AND MUSIC PATENTS, THE '460, '893, AND 711.

22 EACH OF THOSE PATENTS WAS FILED BEFORE
23 AND PRE-DATES THE INTRODUCTION OF THE IPHONE.

24 FIRST THE HIGH SPEED DATA PATENTS.

25 THE FIRST OF THOSE IS THE '516. THE '516

1 PATENT IS A METHOD AND APPARATUS FOR ACHIEVING
2 ENHANCED DATA UPLINK TRANSMISSIONS. THESE ARE THE
3 GUTS OF THE TRANSMISSIONS THAT GO BACK AND FORTH
4 WITH THE CELL TOWER.

5 THESE AREN'T MINOR FEATURES ON YOUR TOUCH
6 SCREEN. THESE ARE CORE INNOVATIONS.

7 WITH THESE TYPES OF TECHNOLOGIES, MEMBERS
8 OF THE JURY, THAT ALLOWS COMPANIES LIKE APPLE TO
9 MAKE PRODUCTS WHERE YOU CAN SEND PICTURES AND YOU
10 CAN SURF THE INTERNET AND MAKE VIDEO CALLS. YOU
11 WOULDN'T BE ABLE TO DO THAT UNLESS YOU WERE ABLE TO
12 ACHIEVE VERY HIGH SPEEDS.

13 IN A NUTSHELL -- THIS IS SOMEWHAT
14 COMPLEX, SO I CAN'T GET INTO TOO MUCH DETAIL IN THE
15 OPENING -- BUT IN THE A NUTSHELL, THERE WAS A
16 PROBLEM WITH THE 3G HIGH SPEED SYSTEMS IN TERMS OF
17 THEIR SPEED, AND THAT WAS YOU HAD SOMETHING CALLED
18 MAXIMUM POWER AND YOU COULDN'T -- YOU COULDN'T --
19 EVERY MOBILE UNIT, EVERY HANDSET HAD -- IT WAS
20 ASSIGNED A MAXIMUM POWER AND THEY CAN'T GO HIGHER
21 THAN THAT MAXIMUM POWER.

22 BUT SOMETIMES THE PHONE WANTS TO
23 COMMUNICATE SO MUCH INFORMATION THAT THEY EXCEED
24 THE MAXIMUM POWER, AND THAT'S WHAT YOU SEE HERE.
25 THIS P_{MAX} IS THE MAXIMUM POWER.

1 AND IN THE PAST, THE WAY THAT THE
2 TECHNOLOGY DEALT WITH THIS WAS BY REDUCING THE
3 PACKET TRANSMISSIONS, AND THEY WOULD REDUCE ALL OF
4 THEM. THEY WOULD REDUCE ENHANCED DATA CHANNELS
5 THAT WERE RETRANSMITTED, AND THEY WOULD ALSO REDUCE
6 VOICE DATA CHANNELS, WHICH WERE NOT RETRANSMITTED.

7 SO FOR VOICE IT'S A LITTLE BIT DIFFERENT
8 THE WAY THE TRANSMISSION WORKS THAN DATA, AND IN
9 VOICE, THE PHONE WILL TRANSMIT ONCE. WITH DATA,
10 YOU HAVE THE ABILITY TO RETRANSMIT MANY TIMES.

11 THE WAY THE OLD SYSTEM WORKED IS IT WOULD
12 REDUCE EVERYTHING. IT WOULDN'T MAKE A DISTINCTION.
13 AND THAT WAS A PROBLEM.

14 IT WAS A PROBLEM WHY? BECAUSE THIS VOICE
15 DATA CHANNEL DOESN'T GET RETRANSMITTED AND IT GOT
16 LOST OCCASIONALLY AND YOU WOULD GET DROPPED CALLS
17 OR PROBLEMS WITH TRANSMISSION.

18 IT DIDN'T MATTER SO MUCH FOR THE ENHANCED
19 RETRANSMITTED DATA CHANNELS BECAUSE IT JUST
20 RETRANSMITS IF SOMETHING GETS LOST BECAUSE IT'S
21 DATA.

22 SAMSUNG CAME UP WITH A SOLUTION THAT
23 HELPED DEAL WITH THIS PROBLEM, AND THIS IS THE '516
24 PATENT.

25 THE SOLUTION WAS TO ONLY REDUCE CHANNELS

1 THAT ARE RETRANSMITTED, DATA CHANNELS, SO THEY CAME
2 UP WITH AN INVENTION THAT APPLIED INTELLIGENCE TO
3 THIS PROBLEM.

4 AND YOU SEE HOW I'VE HIGHLIGHTED THE
5 ORANGE BOX HERE, AND THE SOLUTION UNDER THE '516
6 PATENT, ONLY THE ENHANCED DATA CHANNELS THAT ARE
7 RETRANSMITTED GET REDUCED.

8 THE VOICE CHANNEL DOES NOT GET REDUCED
9 ANYMORE, AND THAT RESULTED IN A GREAT IMPROVEMENT
10 BECAUSE YOU HAD FEWER VOICE DROPPED CALLS OR
11 INTERRUPTIONS WITH YOUR VOICE TRANSMISSIONS THAT
12 YOU COULDN'T RECREATE BECAUSE THEY'RE NOT BEING
13 RETRANSMITTED, WHEREAS THE DROPPING THAT OCCURRED
14 BECAUSE OF THE REDUCTION THAT WOULD HAPPEN IN THESE
15 RETRANSMITTED CHANNELS WOULDN'T BE AS BIG OF A
16 PROBLEM BECAUSE THEY KEEP GETTING RETRANSMITTED.

17 IT'S A SIGNIFICANT INVENTION THAT THE
18 EVIDENCE IS GOING TO SHOW APPLE IS USING.

19 APPLE'S -- THIS INVENTION WAS SO USEFUL
20 THAT IT GOT ADOPTED INTO THE 3GPP STANDARD.

21 AND THIS JUST CITES THE EVIDENCE.
22 5.1.2.6 OF THE STANDARD WHICH INCORPORATES THIS
23 TECHNOLOGY.

24 WELL, THE EVIDENCE WILL SHOW, MEMBERS OF
25 THE JURY, THAT APPLE'S PRODUCTS PRACTICE THIS

1 PATENT, AND YOU HEARD MR. LEE GET UP AND MAKE HIS
2 PRESENTATION ABOUT APPLE'S DEFENSE TO THESE
3 PATENTS.

4 YOU DIDN'T HEAR ANYTHING ABOUT THE
5 PATENTS OR WHAT THEY DID OR WHAT EVIDENCE WOULD
6 SHOW NON-INFRINGEMENT. HE DIDN'T TALK ABOUT THAT
7 AT ALL. THAT'S BECAUSE THE EVIDENCE SHOWS
8 INFRINGEMENT.

9 APPLE ADMITS IT PRACTICES THE STANDARD.

10 IN ADDITION, WE'VE GOT EVIDENCE WHICH
11 WE'LL SHOW YOU THAT THE INFINEON BASEBAND PROCESSOR
12 THAT'S USED IN THE APPLE PRODUCTS PERFORMS THE
13 STEPS THAT ARE CLAIMED IN THIS PATENT.

14 WE'LL PRESENT EVIDENCE FROM MARKUS
15 PALTIAN, AN INTEL ENGINEER, WHO WILL TESTIFY THAT
16 HE PROGRAMMED THE INTEL CHIPS TO PERFORM THE 3GPP
17 STANDARD, AND THAT THE CHIPS DO PERFORM THIS
18 REDUCTION THAT I TOLD YOU ABOUT.

19 LET'S GO TO THE SECOND HIGH SPEED DATA
20 PATENT. THIS IS THE '941 PATENT.

21 THIS IS A PATENT -- THIS PATENT ALSO
22 DEALS WITH THE GUTS OF THE TRANSMISSION BETWEEN
23 HANDSETS AND CELL TOWERS, MUCH MORE FUNDAMENTAL
24 PATENT THAN LITTLE THINGS YOU CAN DO ON TOUCH
25 SCREENS.

1 THIS PATENT CONCERNS DATA TRANSMISSIONS
2 AS OPPOSED TO VOICE, AND DATA TRANSMISSION GETS
3 TRANSMITTED IN PACKETS.

4 AND I DON'T KNOW HOW FAMILIAR YOU ALL ARE
5 WITH, FOR EXAMPLE, TCP OR I.P. ON THE INTERNET OR
6 OTHER TYPES OF PROTOCOLS, BUT WHEN YOU'RE
7 TRANSMITTING DATA, IT'S SORT OF LIKE THE U.S. MAIL.
8 YOU BREAK THE DATA UP INTO PACKAGES AND THEN YOU
9 PUT A LABEL ON IT AND INFORMATION ABOUT IT SO THE
10 PACKAGE KNOWS WHERE TO GO.

11 AND IN THE PARLANCE AND THE TECHNOLOGY,
12 THAT'S OFTEN REFERRED TO AS A HEADER. SO YOU HAVE
13 THE DATA IN THE PACKET AND THE PACKET HAS A HEADER.

14 AND WHEN YOU WANT TO SEND, FOR EXAMPLE, A
15 VIDEO, LIKE THIS VIDEO HERE OF A GIRL RIDING A
16 BIKE, WHAT THE PHONE DOES IS IT BREAKS IT UP INTO
17 PACKETS AND IT SENDS CHUNKS OF THAT DATA TO THE
18 CELL TOWER TO GET TRANSMITTED FURTHER.

19 THE PROBLEM WITH THE ART BEFORE THE '941
20 PATENT CAME ALONG IS THE HEADER -- AND THAT'S
21 REPRESENTED IN THIS BOX HERE WITH THE RED SUBBOXES
22 WITH THE BINARY NUMBERS, THAT'S THE HEADER -- THE
23 PROBLEM IS THE HEADER WAS TOO BIG AND IT TOOK SPACE
24 AWAY FROM THE DATA AND THE PACKET.

25 SO HERE WE'RE TRYING TO SEND AN IMAGE,

1 BUT THE WHOLE IMAGE WON'T FIT INTO ONE PACKET, SO
2 YOU HAVE TO BREAK IT UP, AND THEN YOU HAVE SOME
3 WASTED SPACE HERE BECAUSE OF HAVING TO BREAK IT UP
4 THIS WAY.

5 WELL, THE INVENTORS AT SAMSUNG CAME UP
6 WITH A SOLUTION WHERE THEY ELIMINATED THE NEED TO
7 HAVE SUCH A BIG HEADER. THEY CAME UP WITH A MORE
8 EFFICIENT HEADER -- OOPS -- SO THAT YOU COULD FIT
9 MORE DATA INTO THE PACKAGES.

10 AND THIS RESULTED IN MUCH MORE EFFICIENT
11 TRANSMISSIONS. IT RESULTED IN GETTING MORE DATA
12 ACROSS WITH FEWER PACKETS AND ALLOWED FOR HIGHER
13 SPEED DATA TRANSMISSION.

14 THIS INVENTION WAS ALSO SIGNIFICANT
15 ENOUGH THAT IT WAS INCORPORATED INTO THE 3GPP
16 STANDARD.

17 AND THE EVIDENCE WILL SHOW, MEMBERS OF
18 THE JURY, THAT APPLE PRACTICES THIS PATENT. APPLE
19 PRACTICES THE STANDARD.

20 AND IN ADDITION TO THAT, WE WILL PRESENT
21 EVIDENCE FROM AN INTEL ENGINEER, ANDRE ZORN, THAT
22 HE PROGRAMMED INTEL CHIPS, WHICH ARE USED IN THE
23 APPLE PRODUCTS, TO PERFORM THE 3GPP STANDARD.
24 HE'LL TESTIFY THAT THE INTEL CHIPS HAVE THIS NEW
25 E-BIT SOLUTION, WHICH IS THE SMALLER HEADER THAT I

1 WAS TALKING ABOUT.

2 NOW, AGAIN, YOU DIDN'T HEAR ANYTHING
3 ABOUT THIS FROM MR. LEE WHEN HE WAS DESCRIBING THE
4 DEFENSE THAT APPLE HAD TO THESE PATENTS. YOU
5 DIDN'T HEAR ANY NON-INFRINGEMENT ARGUMENTS --

6 MR. LEE: YOUR HONOR, I OBJECT.

7 FIRST, THIS IS ARGUMENT; AND SECOND, I
8 DID ADDRESS IT. I SAID THEY WEREN'T COVERED.

9 THIS IS THE THIRD TIME HE'S MADE A
10 REPRESENTATION ABOUT WHAT I SAID.

11 THE COURT: OVERRULED.

12 GO AHEAD, PLEASE.

13 MR. VERHOEVEN: THANK YOU, YOUR HONOR.

14 WHAT YOU DID HEAR A LOT ABOUT WAS
15 SOMETHING CALLED FRAND AND ETSI.

16 THE ALLEGATION WAS MADE, AND I'M NOT
17 GOING TO GO INTO THE DETAILS OF IT, BUT THE
18 EVIDENCE WOULD SHOW THAT THERE WAS SOME SORT OF A
19 BREACH OF AN OBLIGATION TO THIS ORGANIZATION CALLED
20 ETSI.

21 WELL, MEMBERS OF THE JURY, THE EVIDENCE
22 IS NOT GOING TO BEAR THAT OUT.

23 IF WE CAN GO TO SLIDE 137, PLEASE.

24 WHAT YOU WERE NOT TOLD ABOUT WITH RESPECT
25 TO FRAND AND ETSI RULES IS THAT THE DUTY TO

1 DISCLOSE INTELLECTUAL PROPERTY RIGHTS DOES NOT
2 APPLY, UNDER ETSI RULES, FOR CONFIDENTIAL
3 INFORMATION, AND THE EVIDENCE IS GOING TO SHOW THAT
4 THE APPLICATIONS, THE PATENT APPLICATIONS THAT
5 APPLE IS POINTING TO WHICH THEY SAY SHOULD HAVE
6 BEEN DISCLOSED, WERE CONFIDENTIAL. THEY'RE
7 CONFIDENTIAL KOREAN PATENT APPLICATIONS.

8 THE EVIDENCE IS GOING TO SHOW THERE WAS
9 NO DUTY.

10 ANOTHER THING YOU WEREN'T TOLD BY COUNSEL
11 FOR APPLE WAS THAT THEIR OWN EXPERT ON THIS
12 SUBJECT, DR. MICHAEL WALKER, TESTIFIED THAT THERE
13 WAS NO VIOLATION OF ETSI POLICY.

14 SECTION 14 OF THE ETSI RULES ENTITLED
15 "VIOLATION OF POLICY," "ANY VIOLATION OF THE POLICY
16 BY A MEMBER SHALL BE DEEMED TO BE A BREACH, BY THAT
17 MEMBER, OF ITS OBLIGATIONS TO ETSI," AND IT GOES
18 ON.

19 DR. WALKER WAS ASKED UNDER OATH,
20 "QUESTION: JUST FOR THE RECORD, YOU HAVE NO
21 OPINION AS TO WHETHER OR NOT THERE HAS BEEN A
22 VIOLATION UNDER SECTION 14, CORRECT?

23 "ANSWER: THAT IS CORRECT."

24 THAT'S THEIR EXPERT, APPLE'S EXPERT WHO
25 WAS HIRED TO PROVE TO YOU THAT THERE IS SOME SORT

1 OF BREACH OF FRAND ADMITTED UNDER OATH THAT HE'S
2 NOT AWARE OF WHETHER THERE'S BEEN ANY VIOLATION
3 UNDER SECTION 14.

4 SO THE EVIDENCE IS NOT GOING TO BEAR OUT
5 THIS FRAND DEFENSE THAT APPLE IS MAKING ON THESE
6 TWO PATENTS.

7 VERY BRIEFLY -- TIME CHECK?

8 THE COURT: YOU HAVE EIGHT MINUTES.

9 MR. VERHOEVEN: EIGHT MINUTES, THANK YOU,
10 YOUR HONOR.

11 I'D LIKE TO ADDRESS THE CAMERA AND MUSIC
12 PATENTS. THERE'S THREE OTHER PATENTS THAT SAMSUNG
13 IS ASSERTING IN THIS CASE.

14 THE FIRST IS THE '460 PATENT, WHICH IS A
15 PATENT CONCERNING SENDING AN E-MAIL WHILE YOU
16 DISPLAY A PHOTO IN THE PHOTO GALLERY.

17 SO THIS IS A UNIQUE WAY, AN IMPROVEMENT
18 ON BEING ABLE TO MANIPULATE YOUR PHONE TO USE TEXT
19 AND PHOTOS TOGETHER.

20 THE PATENT -- AND I'M SUMMARIZING HERE --
21 THE PATENT DESCRIBES THREE FUNCTIONS: SENDING AN
22 E-MAIL WITH A MESSAGE ONLY; SENDING AN E-MAIL
23 DISPLAYING A PHOTO AND A MESSAGE FROM THE PHOTO
24 GALLERY; AND THEN ALSO GRAPHICALLY SCROLLING
25 THROUGH PHOTOS.

1 SO IT'S TALKING ABOUT A PHONE THAT HAS
2 MULTIPLE FUNCTIONALITIES THAT YOU CAN USE. SO IT
3 IMPROVED ON PHONES PRIOR TO THAT TIME THAT YOU
4 COULDN'T DO ALL THESE THINGS TOGETHER.

5 THE EVIDENCE WILL SHOW THAT SAMSUNG
6 INVENTED THIS CAMERA PHONE TECHNOLOGY EIGHT YEARS
7 BEFORE THE RELEASE OF THE IPHONE. IT WAS FIRST TO
8 IMPLEMENT THESE THREE CORE FUNCTIONS IN A CAMERA
9 PHONE, THE FIRST TO ENABLE SENDING A PHOTO IN A
10 MESSAGE IN THE BODY OF AN E-MAIL, AND FIRST TO
11 OFFER A SEPARATE MODE FOR SENDING E-MAIL FROM PHOTO
12 GALLERY ON A CAMERA PHONE.

13 THE APPLE ACCUSED PRODUCTS DO ALL OF
14 THIS, THE EVIDENCE WILL SHOW. USING AN APPLE
15 PRODUCT, YOU CAN SEND AN E-MAIL WITH A MESSAGE
16 ONLY, YOU CAN SEND AN E-MAIL WITH A PHOTO AND A
17 MESSAGE, THERE'S A PICTURE OF IT RIGHT HERE FROM
18 THE IPHONE, AND GRAPHICALLY SCROLLING THROUGH
19 PHOTOS.

20 IN FACT, YEARS AFTER THIS PATENT WAS
21 FILED WHEN APPLE MARKETED ITS IPHONE, WHEN IT
22 LAUNCHED ITS IPHONE, THIS FUNCTIONALITY WAS
23 IMPORTANT ENOUGH THAT APPLE, IN LAUNCHING THE
24 IPHONE, IN ANNOUNCING THE IPHONE, HIGHLIGHTED IT.
25 LET'S PLAY.

1 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN
2 OPEN COURT OFF THE RECORD.)

3 MR. VERHOEVEN: THAT'S THE -- THAT IS
4 COOL TECHNOLOGY. I ADMIT IT.

5 THE ISSUE IS, SAMSUNG INVENTED IT YEARS
6 BEFORE THE IPHONE WAS LAUNCHED.

7 IT WAS IMPORTANT ENOUGH THAT WHEN THEY
8 LAUNCHED THE IPHONE, THEY HIGHLIGHTED IT AS A
9 FEATURE. THE EVIDENCE IS GOING TO SHOW THAT
10 PATENT'S INFRINGED.

11 NOW, TURNING TO THE '711 PATENT -- EXCUSE
12 ME -- THE '893 PATENT, VERY BRIEFLY, THE '893
13 PATENT ALLOWS USERS TO BOOKMARK A PHOTO IN THE
14 PHOTO GALLERY WHILE CAPTURING A NEW PHOTO.

15 SO IF YOU THINK ABOUT IT, YOU'RE GOING
16 THROUGH YOUR GALLERY OF PHOTOS, YOU GET HALFWAY
17 THROUGH, AND THIS ILLUSTRATION IS TRYING TO
18 ILLUSTRATE BY SHOWING SAY YOU'RE AT YOUR VACATION
19 PHOTOS HERE, AND SAY YOU'RE ON VACATION, AND ALL OF
20 A SUDDEN -- YOU'RE LOOKING THROUGH YOUR PHOTOS AND
21 ALL OF A SUDDEN YOU SEE SOMETHING YOU WANT TO TAKE
22 A PICTURE OF.

23 WHAT THIS PATENT ALLOWS TO YOU DO IS GET
24 OUT OF YOUR GALLERY, TAKE THE PICTURE, GO BACK IN
25 YOUR GALLERY AND GO RIGHT BACK TO THE PLACE WHERE

1 YOU WERE BEFORE.

2 IN THIS ILLUSTRATION, SAY YOU'RE VIEWING
3 THE SUNSET WHILE YOU'RE ON THE BEACH THE NEXT DAY
4 AND YOU SEE YOUR DAUGHTER MAKING A SAND CASTLE,
5 IT'S REALLY CUTE. YOU JUMP OUT, TAKE A PICTURE,
6 AND GO RIGHT BACK INTO YOUR GALLERY WHERE YOU WERE
7 WITHOUT HAVING LEFT OFF. THAT'S A COOL LITTLE
8 FEATURE.

9 APPLE'S PRODUCTS DO THAT AS WELL. IN
10 THIS EXAMPLE, AT THE OLYMPICS, WE TOOK A PICTURE OF
11 A HIGH JUMPER -- OR MAYBE THAT'S NOT A HIGH
12 JUMPER -- A GYMNAST AND YOU'RE GOING THROUGH YOUR
13 GALLERY THE NEXT DAY AND YOU WANT TO TAKE A PICTURE
14 OF MORE GYMNASTICS AND YOU GO RIGHT BACK, IN THE
15 APPLE PRODUCT, TO YOUR GALLERY.

16 FINALLY, VERY, VERY BRIEFLY, THE '711
17 PATENT. THIS IS A MUSIC PATENT. THIS COVERS
18 PLAYING MUSIC WHILE PERFORMING OTHER TASKS WITHOUT
19 A DEDICATED MUSIC PROCESSOR. AN INDICATOR ON THE
20 DISPLAY LETS YOU KNOW YOU'RE PLAYING MUSIC IN THE
21 BACKGROUND.

22 HERE ALSO THE UNDISPUTED EVIDENCE SHOWS
23 APPLE PRACTICES THIS PATENT.

24 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN
25 OPEN COURT OFF THE RECORD.)

1 MR. VERHOEVEN: I APOLOGIZE FOR THE
2 AUDIO, YOUR HONOR.

3 SO WE PUT THAT IN REALLY QUICKLY, BUT
4 THAT WAS -- YOU TURNED ON THE MUSIC, YOU'RE ABLE TO
5 GO AND DO OTHER THINGS ON YOUR PHONE WHILE THE
6 MUSIC IS PLAYING, AND THERE'S AN INDICATOR AT THE
7 TOP THAT THE MUSIC IS PLAYING.

8 CLEAR INFRINGEMENT WHICH THE EVIDENCE IS
9 GOING TO SHOW.

10 IN SUMMARY, MEMBERS OF THE JURY, I THANK
11 YOU VERY MUCH FOR YOUR TIME. I KNOW IT'S BEEN A
12 VERY LONG OPENING STATEMENT BY BOTH SIDES.

13 I THINK THE EVIDENCE IS GOING TO SHOW
14 HERE THAT SAMSUNG HASN'T DONE ANYTHING WRONG.
15 SAMSUNG IS AN INNOVATOR. IT'S A COMPETITOR. IF
16 ANYTHING, WHAT WE HAVE HERE IS INFRINGEMENT BY
17 APPLE OF CORE SAMSUNG PATENTS.

18 NOW, I'M NOT GOING TO GET TO SPEAK TO YOU
19 AGAIN UNTIL THE CLOSING STATEMENT, SO I WANT TO
20 THANK YOU VERY MUCH FOR YOUR TIME AND YOUR SERVICE.

21 THE COURT: ALL RIGHT. IT'S 1:59.

22 WHY DON'T WE TAKE A FIVE-MINUTE BREAK.

23 SO WHOEVER IS GOING TO LEAVE AFTER THE
24 OPENING STATEMENTS, IF YOU WOULD PLEASE, WE'LL TAKE
25 A BREAK SO THAT WHATEVER CHANGES NEED TO BE MADE TO

1 THE COURTROOM CAN BE MADE.

2 ALL RIGHT. LET'S TAKE JUST A FIVE-MINUTE
3 BREAK.

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

7 ALL RIGHT. THANK YOU.

8 (WHEREUPON, A RECESS WAS TAKEN.)

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

11 THE COURT: ALL RIGHT. PLEASE HAVE YOUR
12 FIRST WITNESS READY TO GO.

13 MR. MCELHINNY: THANK YOU, YOUR HONOR.

14 THE COURT: THANK YOU.

15 MR. MCELHINNY: YOUR HONOR, I JUST HAVE
16 NOTED THIS EARLIER, THERE'S A NOTE FOR THE RECORD.
17 THE PARTIES HAVE STIPULATED AND INVOKED THE RULE SO
18 THAT POTENTIAL WITNESSES SHOULD NOT BE IN THE
19 COURTROOM.

20 THE COURT: YES, YES.

21 MR. VERHOEVEN: YES, YOUR HONOR.

22 THE COURT: THERE'S AN EXCLUSION OF ALL
23 POTENTIAL WITNESSES.

24 MR. MCELHINNY: OTHER THAN EXPERTS.

25 MR. VERHOEVEN: YEAH, JUST PERCIPIENTS IS

1 WHAT WE AGREED.

2 THE COURT: SORRY.

3 MR. VERHOEVEN: PERCIPIENT WITNESSES.

4 THE COURT: THAT'S FINE. WHATEVER YOU
5 AGREED TO IS FINE.

6 SO ANYONE WHO IS NOT A PERCIPIENT WITNESS
7 WHO IS GOING TO TESTIFY CAN REMAIN IN THE
8 COURTROOM. IS THAT RIGHT?

9 MR. MCELHINNY: YES, YOUR HONOR.

10 MR. VERHOEVEN: EXPERT WITNESSES, YES,
11 YOUR HONOR.

12 THE COURT: ALL RIGHT. THAT'S FINE.
13 LET'S TAKE A FEW MINUTE BREAK, PLEASE.

14 (WHEREUPON, A RECESS WAS TAKEN.)

15 (WHEREUPON, THE FOLLOWING PROCEEDINGS
16 WERE HELD OUT OF THE PRESENCE OF THE JURY:)

17 THE COURT: I'VE LOOKED THROUGH THE
18 EXHIBITS THAT BOTH SIDES HAVE COLLATED FOR
19 CHRISTOPHER STRINGER. I KNOW ONE OF THEM IS AN
20 APPLE DOCUMENT THAT I ORDERED EXCLUDED, SO YOU'RE
21 TAKING THAT OUT, RIGHT, 157?

22 MR. MCELHINNY: IT JUST WON'T EVER COME
23 UP. IT WON'T GET OFFERED, YOUR HONOR, THAT'S
24 RIGHT.

25 THE COURT: ALL RIGHT. AND THEN IN THE

1 SAMSUNG, THERE'S 504, 623, 624, 628, 649, 678, AND
2 690. I'M ASSUMING THOSE ARE NOT GOING TO COME UP
3 AS WELL.

4 MR. VERHOEVEN: I THINK SO, YOUR HONOR.

5 I HAVE TO COMPARE THAT LIST YOU READ, BUT
6 WE'RE TRYING TO TAKE YOUR ORDER AND THEN --

7 THE COURT: LET'S JUST GO THROUGH THEM
8 RIGHT NOW.

9 MR. VERHOEVEN: OKAY.

10 THE COURT: 504, 623, 624, 628, 649,
11 '678, AND 690. DO YOU WANT ME TO GO THROUGH THAT
12 LIST ONE MORE TIME? 504 --

13 MR. VERHOEVEN: THE ONLY QUESTION I HAVE,
14 YOUR HONOR --

15 THE COURT: YES.

16 MR. VERHOEVEN: -- IS YOU DID PERMIT --
17 EXCUSE ME. JUST A POINT OF CLARIFICATION.

18 YOU DID PERMIT -- 562 IS THE ONE THAT HAS
19 THIS (INDICATING).

20 THE COURT: YES.

21 MR. VERHOEVEN: THE ONLY CLARIFICATION
22 I'D REFER TO IS THE DOCUMENT, THAT SONY-STYLE
23 CHAPPY, AND THAT IS ACTUALLY A REFERENCE TO 523.

24 THE COURT: YOU MEAN 623?

25 MR. VERHOEVEN: 623, I APOLOGIZE.

1 THE COURT: WHICH IS WHAT JUDGE GREWAL
2 ALREADY EXCLUDED IN HIS ORDER WHICH I HAVE THEN
3 AFFIRMED ON THE RECONSIDERATION AND I'VE LOOKED AT
4 AGAIN.

5 SO WE'VE GONE THROUGH THIS THREE TIMES.
6 OKAY?

7 MR. VERHOEVEN: OKAY. I JUST WANTED TO
8 LET YOU KNOW THAT THAT'S WHAT THAT'S REFERRING TO.
9 THAT'S ALL.

10 THE COURT: I UNDERSTAND. JUDGE GREWAL
11 EXPLICITLY EXCLUDED THIS, I AFFIRMED IT TWICE, AND
12 I DON'T WANT TO HAVE TO LITIGATE THIS FOUR TIMES,
13 FOUR TIMES, FIVE TIMES, SIX TIMES, SEVEN TIMES,
14 EIGHT TIMES.

15 MR. VERHOEVEN: THANK YOU, YOUR HONOR.

16 THE COURT: ALL RIGHT. THANK YOU.

17 SO THE EXCLUDED ITEMS ARE APPLE 157,
18 SAMSUNG 504, 623, 624, 628, 629, 678, AND 690.
19 OKAY?

20 NOW, I'M GOING TO MAKE A REQUEST IN THAT
21 WE ARE GETTING OBJECTIONS SOMETIMES AT MIDNIGHT.
22 WE'RE TRYING TO RESPOND TO THIS AS QUICKLY AS
23 POSSIBLE. WE ISSUED THE ORDER ON THE MIDNIGHT
24 OBJECTIONS DURING THE BREAK THIS MORNING.

25 WHAT WOULD BE HELPFUL IS NOW THAT I SEE

1 THAT YOU HAVE COLLATED ALL OF THE EXHIBITS FOR EACH
2 WITNESS, IF WE COULD GET A COPY OF THIS WHEN YOU
3 FILE YOUR OBJECTIONS, THAT WOULD BE VERY HELPFUL.

4 BECAUSE OTHERWISE WE'RE TRYING TO FIND
5 THEM -- AND THIS ISN'T EVEN ALL THE BINDERS YOU'VE
6 GIVEN US -- BUT THEN WE'RE TRYING TO GO AND FIND
7 THEM, GETTING SOMETIMES OBJECTIONS AT MIDNIGHT,
8 TRYING TO GET YOU ORDERS BY THE NEXT MORNING. IT'S
9 VERY DIFFICULT.

10 MR. VERHOEVEN: ABSOLUTELY, YOUR HONOR.

11 THE COURT: SO IS THERE A POSSIBILITY
12 THAT FOR YOUR DIRECT AND CROSS-EXAMINATION
13 EXHIBITS, YOU COULD PROVIDE THESE JUST TO OUR
14 CHAMBERS WHEN YOU FILE YOUR OBJECTIONS?

15 MR. JACOBS: ABSOLUTELY.

16 THE COURT: OKAY.

17 MR. JACOBS: AS AN ASIDE, YOUR HONOR,
18 WE'VE TAKEN A LOOK AT THE SCHEDULE -- WE DON'T HAVE
19 TO DO THIS NOW, MAYBE RIGHT AFTER TODAY'S TRIAL --
20 WE THINK WE CAN TWEAK THIS TO MAKE IT EASIER FOR
21 THE COURT AND WORK BETTER FOR THE PARTIES.

22 THE COURT: THAT WOULD BE GREAT. THAT
23 WOULD BE GREAT. WE'RE TRYING TO GET THROUGH THIS
24 AS QUICKLY AS POSSIBLE, BUT IT'S CHALLENGING.

25 MR. JACOBS: YES.

1 THE COURT: OKAY. SO IF YOU COULD
2 PROVIDE US THESE -- I BELIEVE YOU'RE FILING YOUR
3 OBJECTIONS BY 8:00 A.M. THE DAY BEFORE THE WITNESS
4 TESTIFIES. IS THAT RIGHT?

5 MR. JACOBS: ON THE DIRECT EXHIBITS, I
6 THINK THAT'S CORRECT.

7 BUT I THINK WHERE THE SYSTEM ISN'T
8 WORKING WELL IS ON THE CROSS EXHIBITS.

9 MS. MAROULIS: YOUR HONOR, WE'VE BEEN
10 TRYING TO FILE THEM EITHER BY 8:00 P.M. THE DAY
11 BEFORE OR 8:00 A.M. THE NEXT DAY, BUT IT RESULTED
12 IN A ROLLING SERIES OF OBJECTIONS.

13 SO WE'VE BEEN DISCUSSING DOING ONE
14 DEADLINE FOR THE WITNESS RATHER THAN TWO SEPARATE
15 SETS.

16 THE COURT: THAT ACTUALLY WOULD BE GREAT,
17 AND IF YOU COULD JUST MAKE SURE THAT -- THERE WERE
18 A FEW OBJECTIONS WHERE PEOPLE WERE SORT OF TALKING
19 PAST EACH OTHER WITH THE THINGS THAT WERE FILED
20 YESTERDAY.

21 IF THERE'S SOME WAY THAT THERE COULD BE
22 JUST A MEETING OF THE MINDS AS TO WHAT EACH SIDE'S
23 OBJECTIONS ARE AND WHAT EACH SIDE'S RESPONSES ARE,
24 THAT WOULD BE HELPFUL AS WELL.

25 MR. JACOBS: YES.

1 MS. MAROULIS: YES.

2 THE COURT: OKAY. SO PLEASE MAKE A
3 PROPOSAL AS TO THE SCHEDULING ON THIS BECAUSE THIS
4 IS -- THIS IS CHALLENGING AND IF IT'S GOING TO BE
5 FOUR WEEKS LIKE THIS, IT'S GOING TO BE VERY
6 DIFFICULT FOR US JUST BECAUSE WE'RE A SHOESTRING
7 OPERATION ON THIS END COMPARED TO Y'ALL. OKAY?

8 ALL RIGHT. SO THEN THE OTHER ISSUE IS --
9 AND I'M SORRY THIS IS --

10 MR. MCELHINNY: EXCUSE ME. WHEN YOU READ
11 THE LIST OF STRINGER OBJECTIONS, YOU DID NOT
12 MENTION 743, AND THAT'S THE -- THE OBJECTION WAS
13 SUSTAINED. IT MAY JUST NOT BE IN THE BINDER, BUT
14 IT'S ON YOUR LIST OF SUSTAINED OBJECTIONS.

15 THE COURT: IT'S NOT IN THIS BINDER. IT
16 SKIPS FROM 740 TO 741 TO 1040, SO I ASSUME THAT
17 SAMSUNG DOES NOT ANTICIPATE USING THAT ONE.

18 OKAY. AND WHY DON'T WE -- WE'LL DO THIS
19 BEFORE EACH WITNESS. WE'LL JUST GO THROUGH AND
20 MAKE SURE EVERYONE IS IN AGREEMENT AS TO WHAT'S
21 BEEN EXCLUDED. OKAY?

22 I JUST DON'T WANT THESE FIGHTS OCCURRING
23 IN FRONT OF THE JURY.

24 MR. MCELHINNY: THE -- JUST --

25 THE COURT: YES.

1 MR. MCELHINNY: I UNDERSTAND THAT.

2 IN OPENING, I THOUGHT THAT THE QUESTION
3 OF WHAT WAS ADMISSIBLE FOR FUNCTIONALITY KIND OF
4 GOT ABUSED, AND I DIDN'T OBJECT BECAUSE IT WAS THE
5 OPENING.

6 BUT WE MAY -- IF HE TRIES TO USE IT FOR
7 THE SAME PURPOSE THAT HE DID IN THE OPENING, GIVEN
8 YOUR HONOR'S LIMITATION, WE'RE GOING TO HAVE SOME
9 OBJECTIONS.

10 THE COURT: I UNDERSTAND. I THOUGHT THAT
11 CROSSED THE LINE AS WELL.

12 MR. MCELHINNY: THANK YOU, YOUR HONOR.

13 THE COURT: OKAY. JUST A SMALL
14 HOUSEKEEPING ISSUE IS THAT I WOULD APPRECIATE IT IF
15 YOU COULD PROVIDE MORE CARTS BECAUSE I WILL HAVE A
16 SEPARATE ONE OF THE WITNESS SPECIFIC BINDERS
17 SEPARATE FROM THIS WHOLE LIST, WHICH IS NOT EVEN
18 ALL OF THEM. THERE ARE MORE DOWN IN MY CHAMBERS
19 THAT WE NEED TO BRING UP.

20 MR. MCELHINNY: MAY I -- DO YOU
21 UNDERSTAND WHAT THE JUDGE WANTS?

22 YES, YOUR HONOR.

23 THE COURT: I'M SORRY. WE JUST DON'T
24 HAVE, UNFORTUNATELY, THINGS AS SIMPLE AS THAT.

25 OKAY. SO ARE WE ALL SET ON WHAT'S COMING

1 IN WITH MR. STRINGER?

2 MR. MCELHINNY: WE ARE, YOUR HONOR.

3 THE COURT: OKAY. THEN ARE WE READY TO
4 PROCEED?

5 MR. MCELHINNY: ONE -- I JUST -- SO
6 THERE'S NO SURPRISES, I'M GOING TO SHOW HIM A
7 NUMBER OF PHYSICAL MODELS.

8 THE COURT: OKAY.

9 MR. MCELHINNY: AND AT LEAST WITH ONE OF
10 THE PHYSICAL MODELS, BECAUSE IT'S ON MY TIME, I
11 WOULD LIKE TO ACTUALLY PASS IT AROUND THE JURY.

12 THE COURT: ALL RIGHT. IS THERE ANY
13 OBJECTION FROM SAMSUNG?

14 MR. VERHOEVEN: I DON'T KNOW. WHICH
15 MODEL IS IT?

16 THE COURT: WHY DON'T YOU GO AHEAD AND
17 PLEASE SHOW MR. VERHOEVEN THE EXHIBIT?

18 MR. MCELHINNY: IT'S ONE TO WHICH THERE'S
19 BEEN NO OBJECTION.

20 (PAUSE IN PROCEEDINGS.)

21 THE COURT: OKAY. IS THERE --

22 MR. VERHOEVEN: JUST A SECOND, YOUR
23 HONOR.

24 THE COURT: OH, PLEASE.

25 MR. VERHOEVEN: THERE IS AN ISSUE. WE'RE

1 TRYING TO DETERMINE WHETHER THIS WAS EVER DISCLOSED
2 TO US, YOUR HONOR. WE JUST GOT IT HANDED TO US.

3 MR. ZELLER: THIS IS NEW TO US.

4 MR. MCELHINNY: HERE. I'LL SHOW THE JURY
5 THIS ONE (INDICATING).

6 (PAUSE IN PROCEEDINGS.)

7 MR. MCELHINNY: THESE ARE --

8 MS. MAROULIS: MR. MCELHINNY, WHAT'S THE
9 EXHIBIT NUMBER?

10 (DISCUSSION OFF THE RECORD BETWEEN
11 COUNSEL.)

12 MR. VERHOEVEN: YOUR HONOR, I DON'T THINK
13 WE'VE RECEIVED NOTICE THAT THEY'RE GOING TO TRY TO
14 MARK PHYSICAL EXHIBITS FOR THIS WITNESS, AND THAT'S
15 WHY WE'RE HAVING THE HICCOUGH HERE.

16 THE COURT: GO AHEAD. TAKE YOUR TIME.

17 MR. VERHOEVEN: THERE'S BEEN NO NOTICE IN
18 THE WITNESS EXHIBIT LIST. THERE IS A DEMONSTRATIVE
19 THAT THEY IDENTIFIED THAT THEY WERE GOING TO SHOW,
20 BUT NO PHYSICAL EXHIBITS.

21 THE COURT: WERE THESE PRODUCED IN
22 DISCOVERY?

23 MR. MCELHINNY: OH, YES, YOUR HONOR, AND
24 THEY'VE BEEN EXAMINED THREE TIMES, AS RECENTLY AS
25 THREE DAYS AGO, IN TERMS OF -- AND IT WAS

1 ORIGINALLY SET UP WHERE WE WERE GOING TO PUT IN
2 PHOTOGRAPHS, BUT NOT PUT IN THE ACTUAL EXHIBIT
3 BECAUSE WE DIDN'T WANT THEM TO BECOME PUBLIC.

4 NOW WE'RE PUTTING IN THE PHOTOGRAPHS AND
5 THE DEMONSTRATIVE ITSELF BECAUSE WE WANT THEM TO BE
6 PART OF THE RECORD SO THAT THE JURY WILL HAVE THEM.

7 THE COURT: OH. I -- WASN'T IT ALSO
8 BECAUSE SAMSUNG OBJECTED TO THE PHOTOGRAPHS?

9 MR. MCELHINNY: THEY ALSO DID OBJECT TO
10 THE PHOTOGRAPHS.

11 THE COURT: WELL, I MEAN, THIS IS A
12 CATCH-22, RIGHT? IF YOU OBJECT TO THE PHOTOGRAPHS
13 BECAUSE YOU WANT THEM TO INTRODUCE THE ORIGINALS
14 AND NOW THEY'RE INTRODUCING THE ORIGINALS BECAUSE
15 YOU OBJECTED TO THE PHOTOGRAPHS, I'M KIND OF
16 CREATING A --

17 MR. VERHOEVEN: WE DIDN'T HAVE NOTICE
18 THAT THEY WERE GOING TO INTRODUCE THE PHYSICAL
19 EXHIBITS.

20 WE'RE TRYING TO FIGURE IT OUT, YOUR
21 HONOR.

22 THE COURT: OKAY.

23 (DISCUSSION OFF THE RECORD BETWEEN
24 COUNSEL.)

25 THE COURT: OKAY. DO WE HAVE A

1 RESOLUTION?

2 MR. MCELHINNY: I BELIEVE WE HAVE A
3 RESOLUTION. WE'RE PUTTING THE EXHIBIT STICKERS ON
4 THEM.

5 THE COURT: OKAY. AT THE END OF EACH
6 WITNESS, WHY DON'T YOU MOVE WHATEVER YOU'RE GOING
7 TO MOVE INTO EVIDENCE? OKAY?

8 MR. MCELHINNY: AT THE END OF EACH
9 WITNESS?

10 THE COURT: YEAH. OR I GUESS IF YOU WANT
11 TO DO IT AT THE END, THAT'S FINE. I WANT TO MAKE
12 UP A SYSTEM --

13 MR. MCELHINNY: I WAS GOING TO DO IT AS I
14 WENT ALONG.

15 THE COURT: THAT'S FINE.

16 MR. MCELHINNY: I HAD ONE OTHER QUESTION
17 ON THE EXHIBITS.

18 ON WHAT WAS AN ITC EXHIBIT, 442, YOUR
19 HONOR RESERVED RULING UNTIL YOU ACTUALLY SAW THE
20 PATENT.

21 ON THE ONES THAT YOU HAD, YOU SUSTAINED
22 OBJECTIONS.

23 THE COURT: ITC 442. AND WHICH --

24 MS. KREVANS: IT'S THE '678 PATENT.

25 THE COURT: I'M LOOKING THROUGH MY

1 DIFFERENT ORDERS .

2 WHAT'S THE NUMBER --

3 MR. VERHOEVEN: CAN WE --

4 THE COURT: TELL ME WHICH OF THE
5 ORDERS -- WHICH OF THE ORDERS ARE YOU REFERRING TO?

6 MR. MCELHINNY: THIS IS THE JULY 30TH,
7 2012 ORDER, YOUR HONOR.

8 THE COURT: DO YOU HAVE THE DOCKET
9 NUMBER -- IS THAT DOCKET NUMBER 1522?

10 MR. MCELHINNY: 1519.

11 MS. MAROULIS: 1522.

12 THE COURT: 1519, OKAY. WHAT NUMBER ARE
13 YOU REFERRING TO?

14 MR. MCELHINNY: IT IS --

15 MS. KREVANS: IT DOESN'T HAVE THE EXHIBIT
16 NUMBER.

17 THE COURT: OKAY.

18 MR. MCELHINNY: ON THE LAST PAGE, IT'S
19 THE SECOND FROM THE TOP.

20 THE COURT: OKAY. APL-ITC-796? THAT
21 ONE.

22 MR. MCELHINNY: YES, YOUR HONOR.

23 THE COURT: OKAY. LET ME SEE IT.

24 MR. VERHOEVEN: YOUR HONOR, MAY I ASK --
25 I CAN EXPLAIN EXACTLY WHAT, WHY THAT'S ON THE LIST,

1 BUT I'D PREFER IF THE WITNESS WAS SEQUESTERED FOR
2 THAT IF THAT'S OKAY.

3 THE COURT: ALL RIGHT. CAN WE PLEASE
4 HAVE MR. STRINGER STEP OUTSIDE, PLEASE.

5 MR. VERHOEVEN: I CAN TELL YOU EXACTLY
6 WHAT THAT IS, YOUR HONOR.

7 THE COURT: SURE. HE'S STILL IN HERE.
8 LET'S WAIT UNTIL HE STEPS OUTSIDE.

9 (MR. STRINGER NOT PRESENT.)

10 THE COURT: OKAY. LET ME JUST LOOK AT
11 THE BRIEFING.

12 MR. VERHOEVEN: IT MIGHT BE HELPFUL FOR
13 ME TO TELL YOU WHY IT'S ON THE LIST.

14 THE COURT: YES. AND GIVE ME JUST ONE
15 SECOND SO I CAN LOOK AT WHAT THE BRIEFING WAS ON
16 THIS PARTICULAR ISSUE.

17 MR. VERHOEVEN: SURE.

18 THE COURT: THE OBJECTION WAS THAT THIS
19 WAS ALREADY EXCLUDED BY MOTION IN LIMINE NUMBER 2.

20 MR. MCELHINNY: THAT'S CORRECT. YOU
21 MADE -- ON THE EXACT PREVIOUS EXHIBIT, ANOTHER
22 PATENT, ON YOUR ORDER YOU SUSTAINED OUR OBJECTION,
23 BUT ON THIS ONE, YOU SAID YOU DIDN'T ACTUALLY HAVE
24 THE PATENT ITSELF.

25 THE COURT: ALL RIGHT. WELL, LET ME HEAR

1 WHAT IT'S BEING REFERRED TO FOR.

2 MR. VERHOEVEN: YES. IT'S PURELY -- IT
3 MIGHT BE SOMETHING THAT I WOULD NEED FOR
4 IMPEACHMENT, YOUR HONOR. THAT'S THE ONLY THING.

5 AND I'LL TELL YOU EXACTLY WHAT IT IS.

6 I'M GOING TO ASK MR. STRINGER, ISN'T IT
7 TRUE THAT ONE OF THE DESIGN ELEMENTS IN THE '087
8 PATENT THAT WAS IMPORTANT IS THAT IT HAD FOUR
9 CORNERS THAT WERE UNIFORM AND HAD EQUAL RADII?

10 AND AS YOU -- THE '757 PATENT, YOUR
11 HONOR, IS A DESIGN PATENT ON THE ORIGINAL, OR THE
12 INITIAL IPHONE, JUST LIKE THE '087.

13 AND IN PREVIOUS TESTIMONY HE TESTIFIED
14 THAT IT DID, THAT IN THE CONTEXT OF '757, THAT THE
15 INITIAL IPHONE HAD FOUR EVENLY RADIUS CORNERS.

16 I DON'T EXPECT HIM TO DEVIATE FROM THAT,
17 YOUR HONOR. IT'S A CONTROL FOR ME. IF HE WERE TO
18 SAY, "NO, THAT'S NOT NECESSARY," THIS WOULD BE
19 IMPEACHMENT FROM THE PRIOR PROCEEDING WHERE HE USED
20 THE SAME IMAGE BASICALLY, WITH THE FOUR ROUNDED
21 CORNERS, AND SAID AN IMPORTANT DESIGN
22 CHARACTERISTIC WAS EQUAL RADII.

23 SO IT'S SIMPLY -- BECAUSE WE HAD TO LIST
24 ALL POTENTIAL IMPEACHMENT EXHIBITS ON THE LIST,
25 THAT'S WHY IT'S ON THE LIST. I WOULD NOT USE IT

1 FOR ANY OTHER PURPOSE, YOUR HONOR.

2 MR. MCELHINNY: WELL, TO BE CLEAR,
3 IMPEACHMENT EXHIBITS DON'T HAVE TO BE LISTED ON THE
4 LIST.

5 MR. VERHOEVEN: THEY DON'T?

6 MR. MCELHINNY: BUT EVEN IF THEY'RE USED
7 JUST FOR IMPEACHMENT, THEY WOULDN'T COME INTO
8 EVIDENCE, YOUR HONOR.

9 THE COURT: NO. I THINK IMPEACHMENT
10 EXHIBITS NEED TO BE ON THE LIST.

11 MR. VERHOEVEN: WE ARGUED THAT AND WE
12 LOST.

13 THE COURT: YEAH.

14 MR. VERHOEVEN: WE ARGUED THAT
15 EXTENSIVELY.

16 MR. MCELHINNY: I GUESS I MAY BE WRONG.
17 I THOUGHT THAT WAS REBUTTAL, BUT --

18 THE COURT: THE APPLE MOTION IN LIMINE
19 NUMBER 2 WAS TO EXCLUDE NON-PRIOR ART APPLE OR
20 SAMSUNG DESIGN PATENTS, AND I'M UNDERSTANDING THAT
21 THIS IS PRIOR TO --

22 MR. VERHOEVEN: WELL, THIS DOESN'T EVEN
23 HAVE TO DO WITH OFFERING IT FOR THE TRUTH OR
24 ANYTHING.

25 IT'S SIMPLY TO CONTROL THE WITNESS IF THE

1 WITNESS ALL OF A SUDDEN, WITH '087 -- WHICH IS THE
2 SAME SHAPE, IT'S THE SAME PHONE -- SAYS, "NO,
3 THAT'S NOT AN IMPORTANT DESIGN ELEMENT."

4 I THINK THIS IS AN APPROPRIATE
5 IMPEACHMENT TO SHOW THAT THE WITNESS SAID, WITH
6 RESPECT TO THAT EXACT -- FOR THE SAME PHONE, THE
7 SALE THING, THAT IT WAS.

8 THE COURT: I'M SORRY. LET ME INTERRUPT
9 YOU A SECOND.

10 MOTION IN LIMINE NUMBER 2 WAS BASICALLY
11 FOR SUBSEQUENTLY FILED DESIGN PATENT APPLICATIONS,
12 AND THIS PARTICULAR ONE IS NOT A SUBSEQUENTLY FILED
13 ONE.

14 MR. VERHOEVEN: THAT'S TRUE AS WELL.

15 THE COURT: SO WHY DOES MOTION IN LIMINE
16 NUMBER 2 EVEN APPLY HERE?

17 MR. MCELHINNY: BECAUSE IT COVERS PATENTS
18 THAT WERE FILED ON THE SAME DAY OR SUBSEQUENT, YOUR
19 HONOR, AND THIS ONE WAS EITHER FILED ON THE SAME
20 DAY OR SUBSEQUENT.

21 THE COURT: WELL, THIS SAYS IT WAS FILED
22 PRIOR TO THE '677 AND THE '087, NOT AFTER.

23 MR. MCELHINNY: THEY ALL CONTINUE BACK TO
24 THE SAME PRIORITY DATE, YOUR HONOR.

25 THE COURT: GIVE ME THE DATES ON THE '677

1 AND '087.

2 MR. MCELHINNY: WHICH WOULD YOU LIKE,
3 YOUR HONOR?

4 THE COURT: I NEED TO GET THE ANSWER TO
5 THE QUESTION OF DOES MOTION IN LIMINE NUMBER 2
6 APPLY HERE? IS THIS A SUBSEQUENT FILED PATENT, IN
7 WHICH CASE IT WOULD BE EXCLUDED; AND IF IT'S NOT
8 SUBSEQUENTLY FILED, IT WOULD BE COMING IN.

9 MR. VERHOEVEN: I'VE GOT THE DATES HERE,
10 YOUR HONOR. THE '757 WAS FILED JANUARY 5, 2007.

11 THE '677 -- IS THAT THE ONE IN QUESTION,
12 YOUR HONOR?

13 THE COURT: BOTH OF THEM, PLEASE.

14 MR. VERHOEVEN: FILED NOVEMBER 18TH,
15 2008.

16 THE COURT: OKAY.

17 MR. VERHOEVEN: '087, FILED JANUARY --
18 JULY 30TH, 2007.

19 MR. MCELHINNY: BUT, YOUR HONOR --

20 THE COURT: OKAY. I SEE YOUR POINT NOW.
21 THIS -- THIS PATENT IS A DIVISIONAL AND A
22 CONTINUATION OF AN APPLICATION THAT WAS GETTING A
23 PRIORITY DATE OF JANUARY 5TH, 2007.

24 MR. MCELHINNY: EXACTLY THE SAME.

25 THE COURT: THAT'S THE EARLIEST DATE THAT

1 YOUR DESIGN PATENT WAS FILED.

2 MR. MCELHINNY: YES, YOUR HONOR.

3 THE COURT: ALL RIGHT. THEN I'M GOING TO
4 EXCLUDE THIS.

5 MR. VERHOEVEN: FOR IMPEACHMENT PURPOSES
6 YOUR HONOR? I'M NOT OFFERING -- I WOULD NEVER
7 OFFER -- I'M NOT OFFERING -- PROPOSING TO PUT THIS
8 INTO EVIDENCE.

9 BUT THE WITNESS -- WHAT I'M SAYING TO
10 YOUR HONOR IS IF I SHOW HIM '087 AND I SAY, "ISN'T
11 IT TRUE THAT ONE DESIGN ELEMENT ON THE '087 WAS
12 HAVING EQUAL RADII ON EACH OF THE FOUR CORNERS?"
13 AND HE SAYS NO AND HE TESTIFIED THE OPPOSITE ON THE
14 EXACT SAME FORM FACTOR, THE EXACT SAME PHONE,
15 THAT'S IMPEACHMENT.

16 MR. MCELHINNY: THE --

17 MR. VERHOEVEN: I'M NOT TALKING ABOUT --
18 EXCUSE ME.

19 I'M NOT TALKING ABOUT INTRODUCING IT INTO
20 EVIDENCE, BUT SHOWING A PRIOR INCONSISTENT
21 STATEMENT IN THE CONTEXT OF TALKING ABOUT THAT SAME
22 PATENT THAT HAS THE SAME PRIORITY, THE SAME EXACT
23 SHAPE.

24 IT GOES TO CREDIBILITY AND IMPEACHMENT,
25 YOUR HONOR, NOT -- I'M NOT PROPOSING TO INTRODUCE

1 IT INTO EVIDENCE.

2 MR. MCELHINNY: IF HE NEEDS TO IMPEACH
3 HIM, HE HAS THE TESTIMONY, YOUR HONOR. I DON'T
4 KNOW WHAT HE'S TALKING ABOUT, BUT IF HE'S GOT
5 SOMETHING IN WHICH HE SAID, "YES, THE FOUR CORNERS
6 WERE CRITICAL TO THE DESIGN," HE'S GOT THE
7 TESTIMONY.

8 THE COURT: ALL RIGHT. WELL, THE MOTION
9 IN LIMINE IS GOING TO STAND. OKAY?

10 ALL RIGHT. ANY OTHER DISPUTES OR CAN WE
11 GO FORWARD?

12 MR. MCELHINNY: WE NEED TO GET THE
13 WITNESS NOW, YOUR HONOR.

14 THE COURT: OKAY.

15 (PAUSE IN PROCEEDINGS.)

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

18 THE COURT: ALL RIGHT. WELCOME BACK.

19 ON YOUR CHAIRS YOU HAVE TWO PIECES OF
20 PAPER. ONE IS THE DESIGN CLAIM CONSTRUCTION THAT
21 WAS REFERENCED YESTERDAY. THAT CAN JUST GO IN YOUR
22 JURY NOTEBOOKS UNDER CHART OF ASSERTED PATENT
23 CLAIMS WHICH IS, I GUESS, TAB NUMBER 4, THE BIG
24 ONE.

25 AND THEN YOU ALSO HAVE A PHOTOGRAPH OF

1 THE FIRST WITNESS WHO IS GOING TO TESTIFY, AND THAT
2 YOU CAN PLACE IN THE TAB THAT'S THIRD FROM THE BACK
3 WHICH SAYS WITNESS PHOTOS.

4 SO EVERY WITNESS WHO TESTIFIES DURING
5 THIS TRIAL IS GOING TO HAVE A PHOTOGRAPH TAKEN OF
6 WHAT THEY LOOK LIKE AT THE TIME THAT THEY TESTIFY
7 SO, DOWN THE ROAD, SEVERAL WEEKS FROM NOW, YOU CAN
8 GO BACK AND REFER TO WHAT EACH WITNESS SAID AND
9 WHAT THEY LOOKED LIKE BECAUSE YOU'LL REMIND
10 YOURSELF OF WHO IS WHO.

11 YOU CAN ALSO KEEP NOTES ON THE
12 PHOTOGRAPHS IF YOU'D LIKE.

13 AND IF YOU ALSO SAW, IN THE BACK OF THIS
14 NOTEBOOK, THE VERY LAST TAB IS JUST CLEAN LINED
15 PAPER IF YOU WOULD LIKE TO TAKE ANY NOTES.

16 ALL RIGHT. WITH THAT, APPLE PLEASE CALL
17 YOUR FIRST WITNESS.

18 MR. MCELHINNY: YOUR HONOR, WE CALL
19 CHRISTOPHER STRINGER.

20 THE CLERK: PLEASE STEP RIGHT UP HERE,
21 PLEASE.

22 WOULD YOU RAISE YOUR RIGHT HAND.

23 **CHRISTOPHER STRINGER,**
24 BEING CALLED AS A WITNESS ON BEHALF OF THE
25 PLAINTIFF, HAVING BEEN FIRST DULY AFFIRMED, WAS

1 EXAMINED AND TESTIFIED AS FOLLOWS:

2 THE WITNESS: I AFFIRM.

3 THE CLERK: WOULD YOU HAVE A SEAT,
4 PLEASE.

5 STATE YOUR NAME, PLEASE, AND SPELL IT.

6 THE WITNESS: CHRISTOPHER STRINGER,
7 C-H-R-I-S-T-O-P-H-E-R, S-T-R-I-N-G-E-R.

8 **DIRECT EXAMINATION**

9 BY MR. MCELHINNY:

10 Q ARE YOU COMFORTABLE?

11 A I AM.

12 THE COURT: I'M SORRY. THE TIME WAS
13 2:37. GO AHEAD.

14 MR. MCELHINNY: THANK YOU.

15 Q WOULD YOU PLEASE STATE YOUR NAME FOR THE
16 RECORD.

17 A CHRISTOPHER STRINGER.

18 Q THANKS. AND BY WHOM ARE YOU EMPLOYED?

19 A APPLE.

20 Q HOW LONG HAVE YOU WORKED AT APPLE?

21 A SEVENTEEN YEARS IN SEPTEMBER.

22 Q WHAT YEAR DID YOU START?

23 A 1995.

24 Q WHAT IS YOUR CURRENT POSITION AT APPLE?

25 A I'M AN INDUSTRIAL DESIGNER.

1 Q SIR, CAN YOU TELL US JUST GENERALLY,
2 DEFINITIONALLY, WHAT DOES AN INDUSTRY DESIGNER DO?

3 A WELL, AT APPLE, OUR ROLE IS TO IMAGINE OBJECTS
4 THAT DON'T EXIST AND TO GUIDE THE PROCESS THAT
5 BRINGS THEM TO LIFE.

6 AND SO THAT INCLUDES DEFINING THE
7 EXPERIENCE THAT A CUSTOMER HAS WHEN THEY TOUCH AND
8 FEEL OUR PRODUCTS.

9 SO IT'S MANAGING THE OVERALL FORM AND THE
10 MATERIALS, THE TEXTURES, THE COLORS. IT'S MANAGING
11 THE DETAILS.

12 AND IT'S ALSO WORKING WITH ENGINEERING
13 GROUPS TO, AS I SAY, BRING IT TO LIFE, TO BRING IT
14 TO THE MARKET AND TO BUILDING THE CRAFTSMANSHIP
15 THAT IT ABSOLUTELY NEEDS TO HAVE TO HAVE THAT APPLE
16 QUALITY.

17 Q TELL US A LITTLE BIT ABOUT YOUR PROFESSIONAL
18 BACKGROUND BEFORE YOU JOINED APPLE.

19 A BEFORE I JOINED APPLE, I WORKED IN
20 CONSULTANCIES IN SAN FRANCISCO, IN SIDNEY, AND
21 LONDON.

22 AND PRIOR TO THAT, I -- MY EDUCATION WAS
23 COMPLETED AT THE ROYAL COLLEGE OF ART WHERE I HAD A
24 MASTER'S IN INDUSTRIAL DESIGN.

25 Q WHAT IS A CONSULTANCY, SIR?

1 A A CONSULTANCY WOULD BE A HIRED HAND FOR
2 INDUSTRIAL DESIGN. SO WE WORK WITH MULTIPLE
3 CORPORATIONS, BASICALLY PROJECT BY PROJECT.

4 Q TO WHOM DO YOU CURRENTLY REPORT AT APPLE?

5 A JONATHAN IVE.

6 Q WERE YOU INVOLVED IN THE DESIGN OF THE FIRST
7 IPHONE THAT WAS RELEASED BY APPLE?

8 A YES, I WAS.

9 Q HAVE YOU WORKED ON OTHER APPLE PRODUCTS?

10 A YES. I'VE WORKED ON EVERY APPLE PRODUCT SINCE
11 I JOINED APPLE IN 1995.

12 WE WORK AS A TEAM. WE TAKE THAT VERY
13 SERIOUSLY. WE DEDICATE TIME EVERY WEEK TO MAKE
14 SURE THAT WE ALL GET TOGETHER AND WE ALL DISCUSS
15 EVERY SINGLE PROJECT. SO EACH MEMBER OF THE DESIGN
16 TEAM CONTRIBUTES TO ALL PROJECTS, PRODUCTS, WHICH
17 IS WHY I'M CONFIDENT THAT I HAVE HAD INPUT IN EVERY
18 PRODUCT THAT WE'VE SHIPPED SINCE 1995.

19 Q ARE YOU NAMED, SIR, AS AN INVENTOR ON ANY
20 PATENTS?

21 A YES, MANY. HUNDREDS. I HAVE NO IDEA HOW
22 MANY.

23 Q IF I'M LUCKY, YOU'LL HAVE A BINDER IN FRONT OF
24 YOURSELF THAT SAYS EXHIBITS.

25 DO YOU SEE THAT?

1 A YES. IT DOESN'T SAY EXHIBITS, BUT I HAVE A
2 BINDER.

3 Q OKAY. DOES IT HAVE EXHIBITS IN IT? CAN YOU
4 FIND JX 1040, PLEASE?

5 A YES, I HAVE IT HERE.

6 Q WHAT IS THAT DOCUMENT?

7 A THIS IS A PATENT DOCUMENT THAT DEFINES THE
8 IPAD.

9 Q AND CAN YOU TELL US THE LAST THREE NUMBERS OF
10 THE DOCUMENT, OF THE PATENT?

11 A '889.

12 Q ARE YOU A NAMED INVENTOR ON THAT PATENT?

13 A YES, I AM.

14 MR. MCELHINNY: YOUR HONOR, I'D MOVE JX
15 1040 INTO EVIDENCE.

16 THE COURT: ANY OBJECTION.

17 MR. VERHOEVEN: NO OBJECTION.

18 THE COURT: SO ADMITTED.

19 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
20 1040, HAVING BEEN PREVIOUSLY MARKED FOR
21 IDENTIFICATION, WAS ADMITTED INTO
22 EVIDENCE.)

23 BY MR. MCELHINNY:

24 Q SIR, DO ANY APPLE PRODUCTS INCORPORATE THE
25 DESIGN OF THE '889 PATENT?

1 A YES, IPAD 2 AND IPAD 3.

2 Q WOULD YOU LOOK IN YOUR BINDER, PLEASE, TO
3 EXHIBIT JX 1041.

4 A YES, I SEE IT.

5 Q WHAT IS THAT DOCUMENT?

6 A THIS IS A PATENT DOCUMENT THAT DESCRIBES THE
7 IPHONE.

8 Q AND CAN YOU TELL US THE LAST THREE NUMBERS OF
9 THAT DOCUMENT?

10 A '087.

11 Q ARE YOU A NAMED INVENTOR ON THIS PATENT?

12 A YES, I AM.

13 MR. MCELHINNY: YOUR HONOR, I WOULD MOVE
14 EXHIBIT JX 1041 INTO EVIDENCE.

15 MR. VERHOEVEN: NO OBJECTION.

16 THE COURT: ALL RIGHT. SO ADMITTED.

17 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
18 1041, HAVING BEEN PREVIOUSLY MARKED FOR
19 IDENTIFICATION, WAS ADMITTED INTO
20 EVIDENCE.)

21 THE COURT: GO AHEAD, PLEASE.

22 BY MR. MCELHINNY:

23 Q DO ANY APPLE PRODUCTS INCORPORATE THIS DESIGN?

24 A YES. THE ORIGINAL IPHONE, THE IPHONE 3G, AND
25 THE 3GS.

1 Q WOULD YOU LOOK, PLEASE, AT EXHIBIT JX 1043.

2 A YES.

3 Q WHAT IS THIS DOCUMENT?

4 A THIS IS A PATENT DOCUMENT THAT DESCRIBES
5 IPHONE.

6 Q I'M SORRY?

7 A THIS IS A PATENT DOCUMENT THAT DESCRIBES
8 IPHONE.

9 Q THANK YOU. WHAT ARE THE LAST THREE NUMBERS OF
10 THE PATENT?

11 A '677.

12 Q AND ARE YOU A NAMED INVENTOR ON THIS PATENT?

13 A YES, I AM.

14 MR. MCELHINNY: YOUR HONOR, I MOVE JX
15 1043 INTO EVIDENCE.

16 MR. VERHOEVEN: NO OBJECTION.

17 THE COURT: SO ADMITTED.

18 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
19 1043, HAVING BEEN PREVIOUSLY MARKED FOR
20 IDENTIFICATION, WAS ADMITTED INTO
21 EVIDENCE.)

22 BY MR. MCELHINNY:

23 Q DO ANY APPLE PRODUCTS INCORPORATE THIS DESIGN?

24 A YES, ALL -- ALL IPHONES TO DATE.

25 Q CAN YOU TELL US A LITTLE BIT ABOUT HOW THE

1 DESIGN, THE INDUSTRIAL DESIGN GROUP AT APPLE WORKS?
2 A WE -- FIRST LET ME EXPLAIN THE GROUP A LITTLE.
3 WE'RE A VERY SMALL GROUP, SOMETHING AROUND 15 OR 16
4 DESIGNERS. AS I SAID EARLIER, WE WORK AROUND -- WE
5 WORK TOGETHER LIKE AROUND THE KITCHEN TABLE.

6 IT'S A VERY CULTURALLY DIVERSE GROUP. WE
7 HAVE DESIGNERS FROM THE U.S., OF COURSE, BUT WE
8 ALSO HAVE AUSTRALIANS, JAPANESE, ENGLISH, I SHOULD
9 SAY BRITISH, GERMAN, AUSTRIAN. YOU GET THE GIST.
10 IT'S A VERY DIVERSE GROUP.

11 WE'VE BEEN TOGETHER FOR AN AWFULLY LONG
12 TIME. MANY OF US HAVE BEEN THERE FOR 15 TO 20
13 YEARS WORKING TOGETHER.

14 SO IT'S A VERY FAMILIAR, SMALL
15 ENVIRONMENT WHICH I THINK IS REMARKABLE ABOUT A
16 COMPANY THE SIZE OF APPLE.

17 WE REPORT DIRECTLY INTO THE HIGHEST
18 LEVELS OF LEADERSHIP AT APPLE.

19 AND WE HAVE OUR OWN, OUR ARMS AROUND ALL
20 OF THE PROJECTS THAT WE SHIP 100 PERCENT.

21 SO IN SOME WAYS, IT FEELS LIKE A SMALL
22 COMPANY. IT'S A VERY COMFORTABLE WORKING
23 ENVIRONMENT AND WE WORK REALLY HARD.

24 Q SIR, WE HEARD THIS MORNING IN SAMSUNG'S
25 OPENING THAT SAMSUNG HAS A THOUSAND DESIGNERS.

1 AND HOW MANY DOES APPLE HAVE?

2 A 15 OR 16. I'M NOT QUITE SURE. I'VE NEVER
3 COUNTED.

4 Q YOU MENTIONED WORKING AROUND A TABLE. IS
5 THAT -- IS THAT -- ARE YOU USING THAT AS SORT OF A
6 SYMBOL FOR SOMETHING, OR ARE YOU TALKING ABOUT
7 SOMETHING LITERAL?

8 A THERE IS A TABLE IN THE KITCHEN. IT'S WHERE
9 WE'RE COMFORTABLE. IT'S WHERE WE ARE MOST
10 FAMILIAL. WE THROW IDEAS AROUND AND WE -- IT'S A
11 BRUTALLY HONEST CIRCLE OF DEBATE. WE'RE JUST VERY
12 COMFORTABLE THERE. THAT'S WHERE THE IDEAS HAPPEN.

13 Q DOES THE INDUSTRIAL DESIGN GROUP AT APPLE
14 INTERACT WITH OTHER GROUPS AT APPLE?

15 A YES, WE DO. WE WORK WITH PRIMARILY TWO
16 GROUPS. WE WORK WITH MANY GROUPS, OF COURSE, BUT
17 PRIMARILY TWO, ONE OF THEM BEING PRODUCT DESIGN,
18 WHICH IS OFTEN REFERRED TO AS PD.

19 THEY ARE RESPONSIBLE FOR PATENT DESIGN
20 AND BUILDING, MANUFACTURING THE PRODUCTS, OR
21 DESIGNING PATENT DESIGNS FOR MANUFACTURED PRODUCTS.

22 WE ALSO WORK WITH THE OPERATIONS GROUP
23 WHICH HAS MANY ENGINEERING ORGANIZATIONS UNDER ITS
24 ROOF, AND EACH OF THEM SPECIALIZE IN VARIOUS
25 ASPECTS OF MANUFACTURING ENGINEERING.

1 SO THAT MIGHT BE PROCURING EQUIPMENT FOR
2 FACTORIES. IT MIGHT BE RUNNING MACHINE CENTERS,
3 DESIGNING MACHINE PROGRAMS, HOGGING OUT -- I'M
4 USING COLLOQUIAL TERMS -- HOGGING OUT AT AN
5 ALARMING RATE.

6 BASICALLY THE PEOPLE THAT REALLY PUT THE
7 SWEAT IN THE FACTORIES TO MAKE THIS HAPPEN.

8 Q AND SO, JUST SO WE HAVE THE TERMINOLOGY, THE
9 INDUSTRY DESIGN GROUP IS DIFFERENT THAN THE PRODUCT
10 DESIGN GROUP? IS THAT RIGHT?

11 A YES.

12 Q AT WHAT POINT IN THE DEVELOPMENT OF A
13 PARTICULAR PRODUCT DOES INDUSTRIAL DESIGN START
14 WORKING WITH PRODUCT DESIGN?

15 A USUALLY WHEN WE GET SOME DEGREE OF CONFIDENCE
16 AROUND A GIVEN DESIGN DIRECTION. IT COULD BE
17 REALLY EARLY. WE MIGHT WORK WITH THEM TO COMPARE A
18 FEW DIRECTIONS AND SORT OF BRAINSTORM HOW TO BUILD
19 THE DEVICES.

20 Q CAN YOU GIVE US SOME PICTURE OF, OF THE
21 PROCESS BY WHICH THE DESIGN PROCESS STARTS FOR
22 SOMETHING AT APPLE.

23 A THERE ARE MANY INTERACTIONS OF SEVERAL
24 PROCESSES. LET ME TRY TO BE CLEAR.

25 WE CAN DISCUSS OUR OBJECTIVES, AND SO WE

1 CAN JUST BE TALKING ABOUT WHAT WE WOULD WANT A
2 PRODUCT TO BE.

3 THAT ORDINARILY BECOMES SKETCHING, SO
4 WE'LL SIT THERE WITH OUR SKETCH BOOKS AND JUST
5 SKETCH IDEAS AND TRADE IDEAS AND GO BACK AND FORTH.

6 AS I WAS SAYING BEFORE, THAT'S WHERE THE
7 VERY HARD, BRUTAL, HONEST CRITICISM COMES IN AND WE
8 THRASH THROUGH IDEAS UNTIL WE REALLY FEEL LIKE
9 WE'RE GETTING SOMETHING THAT'S WORTH MODELING.

10 AND MODELING IN CAD IS WHAT WE TYPICALLY
11 DO NEXT, WHICH IS COMPUTER-AIDED DESIGN, WHICH IS
12 THE PROCESS OF INPUTTING INTO A COMPUTER SURFACES
13 TO REPRESENT OUR WORK.

14 THIS IS SOMETHING THAT WE DO NOT AT THE
15 KITCHEN TABLE, BUT WITH THE CAD SCULPTORS. THERE'S
16 A CAD GROUP THAT ARE EMPLOYED SPECIFICALLY TO BE
17 MASTERS OF CAD SCULPTING AND WE WORK WITH THEM AND
18 WE MAKE SURE THAT OUR IDEAS ARE THOROUGHLY
19 REPRESENTED IN THE CAD FORM.

20 AND FROM THAT POINT WE WILL BRING THE
21 MODEL MAKERS THESE CAD FILES AND PRODUCE 3-D
22 PHYSICAL MANIFESTATIONS OF THESE IDEAS, WHICH COULD
23 BE SIMPLISTIC BLOCK FORMS OR THEY COULD BE HIGHLY
24 DETAILED, WHAT WE CALL SCRAP MODELS, WHICH MIGHT BE
25 JUST A LITTLE CORNER OF A PRODUCT JUST TO REALLY

1 UNDERSTAND HOW YOU MIGHT WANT TO DETAIL A BUTTON,
2 FOR EXAMPLE.

3 SO THESE PROCESSES, THOUGH THEY SEEM VERY
4 LINEAR, AND IN INSTANCES CAN BE, TYPICALLY AREN'T
5 BECAUSE WE'LL GO BACK AND FORTH.

6 WE'LL EVEN SKETCH ON MODELS. WE'LL
7 COMBINE A PART MODEL AND A SKETCH FROM ANOTHER
8 SKETCH BOOK FROM A DIFFERENT DESIGN SESSION.

9 IT'S BACK AND FORTH. IT'S NON-LINEAR.
10 IT WEAVES AND KNITS ITS WAY ALONG THE DESIGN
11 PROCESS, ULTIMATELY TO A POINT WHERE WE FEEL REALLY
12 SATISFIED THAT WE HAVE SOMETHING SPECIAL.

13 Q I WANT TO FOCUS ON SOMETHING YOU SAID. YOU
14 USED THE EXPRESSION TO "DETAIL A BUTTON." IS THAT
15 WHAT YOU JUST SAID?

16 A YES.

17 Q WHAT IS THAT -- FOR THOSE OF US WHO DON'T LIVE
18 WITH YOU, WHAT DOES IT MEAN TO DETAIL A BUTTON?

19 A WE'RE A PRETTY MANIACAL GROUP OF PEOPLE. WE
20 OBSESS OVER EVERY DETAIL. IF WE DESIGN A BUTTON,
21 THERE MIGHT BE 50 MODELS OF THE HOME BUTTON OR A
22 VOLUME SWITCH. WE LOOK AT THE EDGE DETAIL AND HOW
23 FAR OUT DOES IT PROTRUDE? DOES IT HAVE A SHAFT?
24 IS IT ROUND? IS IT METAL? IS IT PLASTIC? THE
25 SIZE, LENGTH, WIDTH, HEIGHT. EVERY SINGLE DETAIL

1 IS VERY CLEVERLY CRAFTED.

2 Q YOU ALSO MENTIONED -- YOU SAID THE PROCESS IS
3 NOT LINEAR. CAN YOU MAKE THAT REAL FOR US, PLEASE.

4 A YEAH. IT DOESN'T GO FROM THOUGHT TO SKETCH TO
5 MODEL TO PRODUCTION EVEN THOUGH, IN SIMPLISTIC
6 TERMS, THAT IS THE GENERAL SEQUENCE OF EVENTS.

7 WE'LL GO BACK AND FORTH. WE'LL GO ALL
8 THE WAY TO MODEL, WE'LL GO TO WORKING WITH THE PD
9 AND OPERATIONS GROUPS ON THE ENGINEERING SIDE.
10 WE'LL JUMP STRAIGHT BACK TO AN IDEA IF A BETTER
11 IDEA IS CREATED.

12 Q WOULD YOU LOOK IN YOUR BINDER, PLEASE, TO
13 EXHIBIT PX 163.

14 A YES, I SEE IT.

15 Q WHAT IS THIS DOCUMENT?

16 A THIS IS ONE PAGE FROM ONE OF MY SKETCH BOOKS.

17 Q AND DO YOU -- DO YOU TRADITIONALLY SKETCH IN
18 THE SKETCH BOOKS?

19 A I TRY TO. I END UP SKETCHING EVERYWHERE.

20 I'M NOT SO DISCIPLINED WITH REGARD TO MY
21 SKETCH BOOKS. I'LL SKETCH ON LOOSELEAF PAPER.

22 I'LL SKETCH ON MODELS. I'LL SKETCH ON, YOU KNOW,
23 ANYTHING I CAN PUT MY HANDS ON, QUITE OFTEN ON TOP
24 OF CAD OUTPUTS FOR WANT OF BETTER THINGS TO DO.

25 SO YOU'RE WORKING WITH SOMETHING THAT

1 ALREADY HAS THE PERSPECTIVE SET UP AND THE VIEWS IN
2 A WAY THAT YOU CAN SORT OF ADD IN LAVISH DETAIL
3 UPON THEM.

4 Q AND WHAT DO THE SKETCHES ON THIS PARTICULAR
5 DOCUMENT, PX 163, TO WHAT DO THEY RELATE?

6 A THESE ARE SKETCHES OF IPHONE IDEAS.

7 MR. MCELHINNY: YOUR HONOR, I WOULD MOVE
8 PX 163, PLEASE.

9 MR. VERHOEVEN: NO OBJECTION, YOUR HONOR.

10 THE COURT: ALL RIGHT. SO ADMITTED.

11 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
12 163, HAVING BEEN PREVIOUSLY MARKED FOR
13 IDENTIFICATION, WAS ADMITTED INTO
14 EVIDENCE.)

15 BY MR. MCELHINNY:

16 Q SIR, IF YOU'D OPEN YOUR BINDER TO PX 164.

17 A YES, I SEE IT.

18 Q WHAT IS PX 164?

19 A THE FIRST PAGE IS A SCREEN SHOT OF A
20 DIRECTORY, WHICH IS THE CAD FILE DATABASE. IT
21 LISTS DATE MODIFIED, WHICH MEANS THE LAST DATE THAT
22 YOU WORKED ON THIS PARTICULAR FILE.

23 AND ALSO A CODE NAME, A THREAD.

24 BASICALLY, THAT HELPS YOU FIND IT IN THE DATABASE.

25 SUBSEQUENT PAGES ARE SCREEN SHOTS OF

1 THESE CAD MODELS.

2 Q YOU MENTIONED IN AN EARLIER ANSWER, YOU SAID
3 SOMETHING ABOUT A CAD OUTPUT. IS THIS WHAT YOU
4 WERE REFERRING TO AS A CAD OUTPUT?

5 A YES. THERE ARE VARYING DEGREES OF
6 SOPHISTICATION. THIS IS A FAIRLY CRUDE SET OF WHAT
7 I WOULD CALL CAD OUTPUT.

8 Q CAN YOU TELL, BY LOOKING AT THE DIRECTORY, THE
9 DATE OF THESE DRAWINGS?

10 A MARCH 15TH, 2006.

11 Q AND, SIR, DO YOU -- DO YOU WORK WITH THE --
12 LET ME ASK YOU THIS: DO YOU PERSONALLY OPERATE THE
13 CAD SYSTEM?

14 A NO, I DO NOT.

15 Q WHO DOES THE CAD DRAWINGS AT APPLE?

16 A WE HAVE A DEDICATED TEAM OF CAD SCULPTORS.
17 THERE ARE A FEW DESIGNERS THAT ARE CAPABLE OF
18 CREATING CAD THEMSELVES, BUT IT'S NOT A
19 REQUIREMENT. IN FACT, MOST OF US DON'T.

20 IT'S -- IT REALLY IS A SKILL THAT YOU
21 NEED TO DEDICATE SIGNIFICANT TIME TO JUST TO
22 UNDERSTAND THE CRAFT OF CAD.

23 SO WE PREFER OUR DESIGNERS TO BE
24 THINKING, SO WE HAVE A DEDICATED TEAM FOR THIS.

25 MR. MCELHINNY: YOUR HONOR, I WOULD MOVE

1 PX 164 INTO EVIDENCE.

2 MR. VERHOEVEN: NO OBJECTION, YOUR HONOR.

3 THE COURT: SO ADMITTED.

4 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
5 164, HAVING BEEN PREVIOUSLY MARKED FOR
6 IDENTIFICATION, WAS ADMITTED INTO
7 EVIDENCE.)

8 BY MR. MCELHINNY:

9 Q SO AFTER CAD MODELS, WHAT COMES NEXT, SIR, IN
10 A DESIGN PROCESS, ASSUMING THAT YOU WERE GOING
11 LINEARLY AS OPPOSED TO JUMPING BACKWARDS?

12 A IF WE FIND THAT WE AGREE, THAT WE WANT TO
13 PURSUE AN IDEA THAT WE SEE IN THE CAD SURFACES IN
14 PHYSICAL FORM, WE MODEL IT, WHICH IS TO CNC,
15 COMPUTER NUMERICALLY CONTROLLED.

16 THAT IS THREE OR FIVE MACHINING, WHICH
17 ESSENTIALLY CUTS FROM A SOLID BLOCK A PHYSICAL
18 LIKENESS OF WHAT WE BUILD IN CAD.

19 Q THIS PROCESS THAT YOU'VE DESCRIBED FOR US, IS
20 THAT AN ACCURATE DESCRIPTION OF THE PROCESS THAT
21 LED TO THE ORIGINAL IPHONE?

22 A YES.

23 Q AND IS IT AN ACCURATE DESCRIPTION OF THE
24 PROCESS THAT LED TO THE IPAD?

25 A YES.

1 Q LET'S TALK ABOUT THE IPHONE FOR A MINUTE.

2 WHAT -- IF YOU CAN DESCRIBE IT FOR US,
3 WHAT, IF ANYTHING, WERE YOU TRYING TO ACHIEVE IN
4 DESIGNING THE IPHONE?

5 A WE -- WE WERE LOOKING FOR A NEW, ORIGINAL, AND
6 BEAUTIFUL OBJECT, SOMETHING THAT WOULD REALLY WOW
7 THE WORLD.

8 WE WERE ENTERING A CATEGORY THAT WE'D
9 NEVER PARTICIPATED IN BEFORE, AND THE CATEGORY THAT
10 WE DID NOT ENJOY. THERE WERE NO CELL PHONES THAT
11 WE LOVED.

12 SO THIS WAS SOMETHING THAT WE REALLY
13 CARED DEEPLY AND PASSIONATELY ABOUT, PRODUCING
14 SOMETHING FOR OURSELVES.

15 WE -- AS ALWAYS, WE WANTED TO CREATE
16 SOMETHING THAT SEEMED SO, SO WONDERFUL THAT YOU,
17 YOU CAN'T IMAGINE HOW YOU COULD FOLLOW IT.

18 OF COURSE, YOU CAN BECAUSE IF YOU LOOK AT
19 THE HISTORY OF OUR PRODUCTS, WE'VE DONE THAT TIME
20 AND TIME AGAIN.

21 BUT YOU WANT TO CREATE THE SIMPLEST,
22 PUREST MANIFESTATION OF WHAT THAT OBJECT CAN BE,
23 SOMETHING THAT PEOPLE CAN LOVE.

24 Q DO YOU RECALL APPROXIMATELY HOW LONG YOU
25 WORKED ON THE DESIGN OF THE IPHONE?

1 A I HAVE NO IDEA. I'D HAVE TO LOOK AT
2 DOCUMENTATION FOR THIS. BUT IT WAS A LONG TIME.

3 Q YEARS?

4 A I THINK SO.

5 Q LET ME SHOW YOU PX 165.

6 MAY I APPROACH, YOUR HONOR?

7 THE COURT: YES.

8 MR. MCELHINNY: (HANDING).

9 THE WITNESS: THANK YOU.

10 BY MR. MCELHINNY:

11 Q WHAT IS PX 165, SIR?

12 A THIS IS ONE OF THE EARLY MODELS THAT WE BUILT
13 ON M68, WHICH WAS A CODE NAME THAT WE USED FOR THE
14 ORIGINAL IPHONE.

15 Q I'M SORRY. THAT'S M68?

16 A THAT'S CORRECT.

17 Q WHEN YOU SAY "WE BUILT THIS MODEL," WHO ARE
18 YOU TALKING ABOUT?

19 A "WE" BEING THE INDUSTRIAL DESIGN GROUP, WHICH
20 WOULD INCLUDE THE CAD AND THE MODEL MAKING TEAMS.

21 Q AND IS THIS MODEL THAT YOU'RE LOOKING AT, WAS
22 THIS ORIGINAL APPLE WORK?

23 A ABSOLUTELY, YES.

24 MR. MCELHINNY: YOUR HONOR, I WOULD MOVE
25 EXHIBIT PX 165 INTO EVIDENCE.

1 MR. VERHOEVEN: I HAVE A POINT OF
2 QUESTION.

3 CAN I CONFER WITH COUNSEL?

4 THE COURT: YES, GO AHEAD, PLEASE.

5 (DISCUSSION OFF THE RECORD BETWEEN
6 COUNSEL.)

7 MR. VERHOEVEN: SUBJECT TO YOUR HONOR'S
8 RULING, YOUR HONOR'S ALREADY RULED ON THESE
9 DOCUMENTS -- I DON'T KNOW IF WE CAN HAVE A
10 SIDE-BAR, YOUR HONOR. I JUST WANT TO MAKE SURE I
11 DON'T WAIVE ANYTHING.

12 THE COURT: OKAY. I THOUGHT THIS WAS
13 WORKED OUT BEFORE THE JURY CAME OUT.

14 LET'S DO THAT. UNFORTUNATELY, THE
15 MICROPHONE IS NOT WORKING, SO WE'LL HAVE TO
16 MEMORIALIZE IT AFTER.

17 LET'S GO AHEAD.

18 MR. VERHOEVEN: THAT'S OKAY.

19 (SIDE-BAR DISCUSSION OFF THE RECORD.)

20 THE COURT: OKAY. THE -- I UNDERSTAND
21 THAT THE SAME OBJECTION WAS RESERVED, BUT IT'S
22 OVERRULED.

23 THIS IS ADMITTED.

24 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
25 165, HAVING BEEN PREVIOUSLY MARKED FOR

1 IDENTIFICATION, WAS ADMITTED INTO
2 EVIDENCE.)

3 THE COURT: GO AHEAD.

4 MR. MCELHINNY: THANK YOU, YOUR HONOR.
5 MAY I PUBLISH THIS TO THE JURY?

6 THE COURT: GO AHEAD.

7 (PAUSE IN PROCEEDINGS.)

8 BY MR. MCELHINNY:

9 Q MR. STRINGER, LET ME SHOW YOU AN EXHIBIT
10 THAT'S BEEN MARKED AS PX 166 (HANDING).

11 A YES.

12 Q WHAT IS THAT DEVICE, SIR?

13 A THIS IS ALSO AN EARLY IPHONE MODEL, ALSO UNDER
14 ITSELF CODE NAME M68.

15 Q IS IT THE SAME OR DIFFERENT THAN THE 165?

16 A SIMILAR, BUT DIFFERENT.

17 Q OKAY. AND WHAT DOES IT SAY ON THE BACK OF IT,
18 SIR?

19 A APPLE PROTO 1015 -- OH, IPOD.

20 Q AND WHY DOES IT SAY IPOD ON A PROTOTYPE OF AN
21 IPHONE, SIR?

22 A ONE OF TWO REASONS. EITHER WE HAD NOT YET
23 COINED THE TERM "IPHONE" AND WE WANTED TO SEE
24 SOMETHING GRAPHICALLY REPRESENTED ON THE BACK; OR
25 WE WERE TRYING TO DISGUISE ITS IPHONE IDENTITY.

1 MR. MCELHINNY: YOUR HONOR, I WOULD MOVE
2 P166 INTO EVIDENCE.

3 MR. VERHOEVEN: YOUR HONOR, YOUR HONOR'S
4 ALREADY RULED ON THE EXHIBITS FOR THIS WITNESS AND
5 WE RESERVE WITH RESPECT TO THAT.

6 AND IN GENERAL, GOING FORWARD WITH THAT
7 RESERVATION, THERE'S NO OBJECTION.

8 AND I'LL JUST SAY, IF IT'S OKAY, THAT
9 WE'LL MAKE THAT RESERVATION FOR ALL EXHIBITS WITH
10 THIS WITNESS.

11 THE COURT: THAT'S FINE.

12 MR. VERHOEVEN: THANK YOU, YOUR HONOR.

13 THE COURT: ALL RIGHT. THAT'S ADMITTED.

14 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
15 166, HAVING BEEN PREVIOUSLY MARKED FOR
16 IDENTIFICATION, WAS ADMITTED INTO
17 EVIDENCE.)

18 BY MR. MCELHINNY:

19 Q SIR, NOW, THIS, AS YOU TESTIFIED, 166 THAT
20 SAYS IPOD ON THE BACK, IS A MODEL THAT YOU MADE
21 WHILE YOU WERE DEVELOPING THE ORIGINAL IPHONE; IS
22 THAT CORRECT?

23 A THAT IS CORRECT.

24 Q AFTER THE IPHONE, THE ORIGINAL IPHONE CAME
25 OUT, DID YOU EVER COME BACK TO THIS MODEL?

1 A WE COME BACK TO MODELS CONTINUALLY, ONES LIKE
2 THAT, CERTAINLY. POSSIBLY THAT ONE SPECIFICALLY.

3 Q AND WHAT WAS -- WHAT, IF ANYTHING, RESULTED
4 FROM GOING BACK AND REVISITING EARLIER IDEAS?

5 A ULTIMATELY NOT THAT MODEL, BUT ANOTHER, WE
6 WERE GOING DOWN ONE PATH IN SOME DEPTH, BUT AS I
7 WAS EXPLAINING EARLIER, WE'RE ALWAYS DOUBTING,
8 WE'RE ALWAYS QUESTIONING.

9 WE, AT TIMES, LOOK THROUGH OUR STOCKPILE
10 OF MODELS -- AS I SAID EARLIER, WE MAKE SO MANY OF
11 THEM -- DID WE LEAVE ANYTHING ON THE TABLE?

12 AND WE DETERMINED THAT WE DID. WE PULLED
13 OUT A MODEL THAT LOOKS VERY, VERY SIMILAR TO THE
14 PRODUCT THAT WE SHIPPED.

15 Q AS WHAT, SIR?

16 A WE PULLED OUT AN IPHONE, EARLY PROTOTYPE,
17 WHICH HAS, I THINK, EXACTLY THE SAME SURFACES, OR
18 SURFACES VERY SIMILAR TO THE ONES THAT WE SHIPPED
19 FOR THE IPHONE.

20 Q THANK YOU.

21 IF YOU WOULD LOOK, PLEASE, AT EXHIBIT
22 P168 (HANDING).

23 WHAT IS THAT DEVICE, SIR?

24 A THIS IS ANOTHER MODEL IN THE SAME PROJECT, FOR
25 IPHONE.

1 Q CAN YOU HOLD IT UP AND SORT OF SHOW IT SO THE
2 JURY CAN SEE IT?

3 A (INDICATING.)

4 Q AND DID THAT PARTICULAR MODEL HAVE A
5 PARTICULAR NAME?

6 A WE CALLED IT THE EXTRUDED LOZENGE, THE REASON
7 BEING FROM AN END VIEW, IT IS LOZENGE IN SHAPE AND
8 IT'S EXTRUDED, WHICH MEANS IT'S, IT'S BASICALLY
9 STRETCHED IN THE LONG AXIS.

10 Q THE OTHER MODELS WE LOOKED AT FELT LIKE THEY
11 WERE MADE OUT OF PLASTIC. WHAT IS THAT ONE MADE
12 OUT OF IT?

13 A THIS ONE IS MADE OUT OF ALUMINUM.

14 MR. MCELHINNY: YOUR HONOR, I WOULD MOVE
15 PX 168 INTO EVIDENCE.

16 MR. VERHOEVEN: NO OBJECTION.

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

18 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
19 168, HAVING BEEN PREVIOUSLY MARKED FOR
20 IDENTIFICATION, WAS ADMITTED INTO
21 EVIDENCE.)

22 BY MR. MCELHINNY:

23 Q MR. STRINGER, LET ME SHOW YOU WHAT HAS BEEN
24 MARKED AS PX 167 (HANDING).

25 CAN YOU TELL ME WHAT THAT IS, PLEASE?

1 A THIS IS ANOTHER MODEL FROM THAT SAME PERIOD.
2 IT'S ANOTHER SPIN ON THE IDEA OF EXTRUSIONS, NOT
3 LOZENGE SHAPED IN THIS INSTANCE, BUT IT'S MORE OF A
4 RECTANGULAR EXTRUSION, BUT IN THE SAME FAMILY OF
5 IDEAS.

6 Q AND DID YOU ULTIMATELY PURSUE THAT TYPE OF
7 MODEL?

8 A NO, WE DID NOT.

9 Q WHY NOT, SIR?

10 A WE FOUND SOMETHING MORE BEAUTIFUL. AS I WAS
11 EXPLAINING BEFORE, AS WE WENT THROUGH OUR ARCHIVES,
12 WE FOUND SOMETHING THAT WE'D OVERLOOKED, SOMETHING
13 THAT WE, ONCE ADDING DETAIL TO IT AND REALLY
14 SPENDING SOME TIME WITH IT, DECIDED THAT IT WAS THE
15 ABSOLUTE BEST CHOICE FOR US AT THAT TIME.

16 MR. MCELHINNY: YOUR HONOR, I MOVE PX 167
17 INTO EVIDENCE.

18 MR. VERHOEVEN: NO OBJECTION.

19 THE COURT: THAT'S ADMITTED.

20 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
21 167, HAVING BEEN PREVIOUSLY MARKED FOR
22 IDENTIFICATION, WAS ADMITTED INTO
23 EVIDENCE.)

24 BY MR. MCELHINNY:

25 Q SIR, AGAIN, BACK IN YOUR BINDER, COULD YOU

1 LOOK, PLEASE, AT EXHIBIT PX 162.

2 A YES, I SEE IT.

3 Q AND WHAT IS PX 162?

4 A THESE ARE IMAGES FROM CAD, PRECEDED BY A
5 SNAPSHOT OF THE DIRECTORY WHICH IDENTIFIES IT AS
6 THE ORIGINAL IPHONE.

7 Q CAN YOU TELL, SIR, FROM THIS CAD ANYTHING
8 ABOUT THE DATE ON WHICH YOU COMPLETED THE DESIGN OF
9 THE FRONT FACE AND BEZEL OF THE IPHONE?

10 A APRIL 20, 2006.

11 MR. MCELHINNY: YOUR HONOR, I MOVE PX 162
12 INTO EVIDENCE. 162.

13 MR. VERHOEVEN: NO OBJECTION, YOUR HONOR.

14 THE COURT: THAT'S ADMITTED.

15 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
16 162, HAVING BEEN PREVIOUSLY MARKED FOR
17 IDENTIFICATION, WAS ADMITTED INTO
18 EVIDENCE.)

19 BY MR. MCELHINNY:

20 Q SIR, I'M GOING TO SHOW YOU AGAIN THE MODELS
21 THAT WERE MARKED AS 165 AND 166 (HANDING).

22 A OKAY.

23 Q CAN YOU TELL US WHETHER THE FORM OF THOSE
24 MODELS, THE DESIGN OF THOSE MODELS, ENDED UP IN THE
25 ORIGINAL IPHONE DESIGN?

1 A NO.

2 Q DID THEY END UP IN THE DESIGN OF ANY
3 SUBSEQUENT IPHONE?

4 A IT'S MUCH CLOSER TO THE IPHONE 4.

5 Q THANK YOU, SIR.

6 MR. STRINGER, LET ME HAND YOU WHAT HAS
7 BEEN MARKED AS EXHIBIT JX 1000 (HANDING).

8 CAN YOU TELL ME WHAT THAT IS, SIR?

9 A THIS IS THE IPHONE, THE ORIGINAL.

10 Q CAN YOU TELL US HOW, HOW OF THESE VARIOUS
11 MODELS AND PICTURES THAT WE'VE LOOKED AT, HOW DID
12 YOU COME ABOUT TO SELECT THAT DESIGN AS THE FINAL
13 DESIGN FOR THE IPHONE?

14 A IT'S VERY SIMPLE. IT WAS THE MOST BEAUTIFUL
15 OF OUR DESIGNS. WE SOMETIMES DON'T RECOGNIZE IT
16 INSTANTLY. IT MAY TAKE SOME ENERGY AND ADDING
17 DETAIL. BUT WHEN WE REALIZED WHAT WE HAD, WE KNEW
18 IT.

19 Q AT ANY TIME DURING THE DEVELOPMENT OF THE
20 IPHONE, DID -- WERE THERE ANY DOUBTS ABOUT WHETHER
21 OR NOT YOU WERE GOING TO BE SUCCESSFUL WITH THAT
22 PRODUCT?

23 A ABSOLUTELY. I'M AWARE THAT STEVE JOBS HIMSELF
24 HAD DOUBTS.

25 WE WERE DOING SOMETHING UNPRECEDENTED.

1 THE WORLD HAD NEVER SEEN ANYTHING LIKE THIS. THERE
2 WAS LEGIONS OF PHONES AVAILABLE. NONE WERE VERY
3 SATISFYING.

4 AND THIS BROKE NEW GROUND. IT WAS MORE
5 THAN A PHONE. SMARTPHONES EXISTED, BUT THEY WERE
6 MORE LIKE TINY LITTLE COMPUTERS.

7 WE CAME UP WITH SOMETHING THAT WAS
8 BREATHTAKING. IT WAS A REVOLUTION.

9 Q CAN YOU --

10 A AND THE CHALLENGES IN TERMS OF PRODUCING THAT
11 PRODUCT WERE ENORMOUS.

12 Q CAN YOU GIVE -- I'M SORRY.

13 CAN YOU GIVE US SOME EXAMPLES OF THE
14 PRODUCTION PROBLEMS?

15 A PRODUCTION PROBLEMS, WE HAD MANY. PRODUCING
16 THE GLASS WAS VERY CHALLENGING. WE WERE PUTTING
17 GLASS IN CLOSE PROXIMITY TO HARDENED STEEL. IF YOU
18 DROP THIS, YOU DON'T HAVE TO WORRY ABOUT THE GROUND
19 HITTING THE GLASS. YOU HAVE TO WORRY ABOUT THE
20 BAND OF STEEL SURROUNDING THE GLASS HITTING THE
21 GLASS.

22 SO THERE WAS AN ENORMOUS AMOUNT OF ENERGY
23 PUT INTO THE ENGINEERING OF THAT INTERFACE.

24 SECONDLY, WE WERE PUTTING HOLES IN THE
25 GLASS. I THINK WE -- PEOPLE THOUGHT WE WERE CRAZY.

1 BUT WE, WE JUST SOLVED THE ENGINEERING
2 ISSUES. IT WAS A HUGE, HUGE AMOUNT OF WORK.

3 THE BAND ITSELF WAS CHALLENGING. WE
4 INSISTED ON THIS HIGH POLISHED STEEL, CONTINUOUS
5 BAND AROUND THE PRODUCT, AND IF WE IGNORE THE
6 ANTENNA ISSUES OF THAT GENERATION, WHICH WERE
7 ENORMOUS AT THAT POINT IN TIME, AND FOCUS ON THE
8 MANUFACTURING ISSUES ALONE, THERE'S A LONG LIST OF
9 CHALLENGES THERE.

10 IN ORDER TO, TO MAKE IT WORK, WE HAD TO
11 USE A VERY HIGH, HIGH GRADE OF STEEL BECAUSE WE
12 COULDN'T HAVE IT SORT OF DEFLECTING INTO THE GLASS.

13 THAT WAS INCREDIBLY HARD TO POLISH. THAT
14 WAS ONCE YOU GOT THE SHAPE RIGHT.

15 IT WAS VERY, VERY DIFFICULT TO MACHINE,
16 AND MACHINING THESE VOLUMES WAS UNPRECEDENTED AT
17 THAT TIME.

18 Q WERE ANY OF THE DESIGN DECISIONS THAT YOU MADE
19 ABOUT THE IPHONE, WERE THEY MADE IN ORDER TO MAKE
20 THE IPHONE CHEAPER OR EASIER TO MANUFACTURE?

21 A NO.

22 Q WERE YOU EVER TOLD BY ANYONE -- WERE ANY OF
23 THE DESIGN CHOICES THAT YOU MADE, MADE IN ORDER TO
24 MAKE IT WORK BETTER AS A TELEPHONE?

25 A NO.

1 Q WERE YOU EVER TOLD BY ANYONE THAT YOU HAD TO
2 PICK PARTICULAR DESIGNS BECAUSE OF REQUIREMENTS
3 FROM THE COMPONENTS OR THE INTERNAL ELEMENTS OF THE
4 PHONE?

5 A NO.

6 Q HOW -- WHO WAS IN CONTROL OF YOUR DESIGN
7 PROCESS ULTIMATELY?

8 A WE WERE IN CONTROL OF OUR DESIGN PROCESS.

9 Q IS THERE A REASON WHY YOU DIDN'T PUT THE APPLE
10 LOGO ON THE FRONT FACE -- ON THE FRONT FACE OF THE
11 FACE?

12 A FIRST OF ALL, IT -- IT DIDN'T LOOK GOOD.

13 AND WE ALSO KNEW FROM OUR EXPERIENCE WITH
14 IPOD, IF YOU MAKE A STARTLINGLY BEAUTIFUL AND
15 ORIGINAL DESIGN, YOU DON'T NEED TO. IT STANDS FOR
16 ITSELF. IT BECOMES A CULTURAL ICON.

17 Q WHAT DO YOU MEAN WHEN YOU USE THE WORD "ICON,"
18 SIR?

19 A ICON, IT'S A HARD CREDENTIAL, REALLY. I THINK
20 THAT BECOMES TRUE WITH ENORMOUS SUCCESS.

21 BUT IF YOU SEE SOMETHING ACROSS THE ROOM
22 AND YOU KNOW WHAT IT IS AND YOU CAN SIMPLY DESCRIBE
23 IT, IT'S AN ICON.

24 MR. MCELHINNY: YOUR HONOR, I WOULD MOVE
25 JX 1000 INTO EVIDENCE.

1 MR. VERHOEVEN: NO FURTHER OBJECTION.

2 THE COURT: OKAY. IT'S ADMITTED.

3 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
4 1000, HAVING BEEN PREVIOUSLY MARKED FOR
5 IDENTIFICATION, WAS ADMITTED INTO
6 EVIDENCE.)

7 (PAUSE IN PROCEEDINGS.)

8 BY MR. MCELHINNY:

9 Q SIR, I'VE HANDED YOU THREE EXHIBITS.

10 WOULD YOU LOOK AT THE ONE, PLEASE, THAT
11 HAS THE NUMBER ON THE BACK JX 1001. CAN YOU TELL
12 ME WHAT THAT IS, PLEASE?

13 A THIS IS IPHONE 3G.

14 MR. MCELHINNY: YOUR HONOR, I MOVE 1001
15 INTO EVIDENCE.

16 MR. VERHOEVEN: NO FURTHER OBJECTION.

17 THE COURT: OKAY. THAT'S ADMITTED.

18 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
19 1001, HAVING BEEN PREVIOUSLY MARKED FOR
20 IDENTIFICATION, WAS ADMITTED INTO
21 EVIDENCE.)

22 BY MR. MCELHINNY:

23 Q WOULD YOU LOOK, PLEASE, AT THE ONE THAT'S BEEN
24 NUMBERED JX 1002?

25 A YES.

1 Q WHAT IS THAT PHONE, SIR?

2 A I BELIEVE IT'S THE 3GS.

3 MR. MCELHINNY: YOUR HONOR, I'D MOVE 1002
4 INTO EVIDENCE.

5 MR. VERHOEVEN: NO FURTHER OBJECTION.

6 THE COURT: IT'S ADMITTED.

7 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
8 1002, HAVING BEEN PREVIOUSLY MARKED FOR
9 IDENTIFICATION, WAS ADMITTED INTO
10 EVIDENCE.)

11 BY MR. MCELHINNY:

12 Q WOULD YOU LOOK AT THE ONE THAT HAS 1003 ON IT,
13 PLEASE.

14 A YES.

15 Q AND WHAT IS THAT?

16 A IPHONE 4.

17 MR. MCELHINNY: YOUR HONOR, I'D MOVE 1003
18 INTO EVIDENCE.

19 MR. VERHOEVEN: NO FURTHER OBJECTION.

20 THE COURT: IT'S ADMITTED.

21 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
22 1003, HAVING BEEN PREVIOUSLY MARKED FOR
23 IDENTIFICATION, WAS ADMITTED INTO
24 EVIDENCE.)

25 BY MR. MCELHINNY:

1 Q SIR, LET'S TALK ABOUT THE IPAD FOR A MOMENT.

2 A OKAY.

3 Q WHAT, IF ANYTHING, DID YOU WANT TO ACHIEVE IN
4 DESIGNING THE IPAD?

5 A WE WANTED TO, AGAIN, MAKE A, A BREATHTAKINGLY
6 SIMPLE, BEAUTIFUL DEVICE, SOMETHING THAT YOU REALLY
7 WANT, AND SOMETHING THAT'S VERY EASILY
8 UNDERSTANDABLE.

9 Q WHAT DOES THAT MEAN TO YOU?

10 A SOMETHING THAT'S VERY IMMEDIATE. YOU PICK IT
11 UP, YOU USE IT, SOMETHING THAT'S JUST -- IT NEEDS
12 NO EXPLANATION.

13 Q DO YOU RECALL APPROXIMATELY HOW LONG THE
14 DESIGN PROCESS LASTED FOR THE IPAD BEFORE IT WAS
15 RELEASED?

16 A IT WAS AN ENORMOUS AMOUNT OF TIME. WE STARTED
17 THE IPAD BEFORE WE STARTED THE IPHONE. THAT'S WHEN
18 WE FIRST STARTED ON THE MULTITOUCH TECHNOLOGY AND
19 PRODUCTS ASSOCIATED.

20 Q WOULD YOU LOOK IN YOUR BINDER, PLEASE, AT
21 EXHIBIT PX 171.

22 OH, NEVER MIND.

23 LET ME HAND YOU THIS, WHICH IS PX 171
24 (HANDING).

25 A YES.

1 Q CAN YOU TELL ME WHAT THAT IS, PLEASE?

2 A THIS IS, I WOULD THINK, A VERY, VERY EARLY
3 MODEL OF IPAD.

4 Q AGAIN, WE DON'T HAVE TIME TO PASS IT AROUND,
5 BUT CAN YOU HOLD IT UP SO THAT PEOPLE CAN SEE IT?

6 CAN YOU HOLD THE BACK UP SO THAT PEOPLE
7 CAN SEE IT?

8 A (INDICATING.)

9 MR. VERHOEVEN: EXCUSE ME, COUNSEL. I
10 DON'T THINK YOU SHOWED THAT TO ME PREVIOUSLY, IF
11 YOU DON'T MIND.

12 MR. MCELHINNY: SORRY.

13 (PAUSE IN PROCEEDINGS.)

14 MR. VERHOEVEN: THANK YOU.

15 BY MR. MCELHINNY:

16 Q WAS THE DESIGN GROUP FAVORABLY IMPRESSED WITH
17 THIS DESIGN, SIR?

18 A I DON'T RECALL US LOOKING AT IT FOR VERY LONG.

19 MR. MCELHINNY: YOUR HONOR, I WOULD MOVE
20 PX 171 INTO EVIDENCE.

21 MR. VERHOEVEN: NO FURTHER OBJECTION.

22 THE COURT: THAT'S ADMITTED.

23 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
24 171, HAVING BEEN PREVIOUSLY MARKED FOR
25 IDENTIFICATION, WAS ADMITTED INTO

1 EVIDENCE.)

2 THE COURT: WHY DON'T WE TAKE A BREAK AT
3 ABOUT 3:30, SO ABOUT FIVE OR TEN MINUTES.

4 MR. MCELHINNY: PERFECT, YOUR HONOR.

5 THE COURT: AND IF FOLKS NEED
6 CAFFEINATION, THERE ARE DRINKS IN THE FRIDGE IN THE
7 JURY ROOM, AND YOU CAN GO TO THE BATHROOM.

8 BY MR. MCELHINNY:

9 Q WHAT IS PX 170, SIR?

10 A THIS IS A MODEL WE BUILT FOR IPAD.

11 Q AGAIN, CAN YOU HOLD IT UP SO THE JURY CAN SEE
12 IT?

13 A (INDICATING.)

14 Q AND WHAT DOES IT SAY ON THE BACK?

15 A IPOD.

16 Q AND WHY DOES IT SAY IPOD, SIR?

17 A I'M ASSUMING SIMILARLY TO THE DISCUSSION ABOUT
18 THE PHONE, WE EITHER HAD NOT COINED THE TERM YET
19 OR -- ACTUALLY, IT'S HARD TO BELIEVE WE WERE
20 CONSIDERING THIS IDENTITY, BUT MY STRONG SUSPICION
21 IS THAT WE WERE NOT AWARE OF THE NAME AND WE NEEDED
22 TO REPRESENT SOMETHING GRAPHICALLY.

23 Q DOES APPLE HAVE A THING ABOUT SECRECY?

24 A YES.

25 Q OH, OKAY.

1 LET ME SHOW YOU JX 1004.

2 YOUR HONOR, I WOULD MOVE PX 170.

3 MR. VERHOEVEN: NO FURTHER OBJECTION.

4 THE COURT: ALL RIGHT. THAT'S ADMITTED.

5 THAT'S 170, IS THAT RIGHT?

6 MR. MCELHINNY: YES, YOUR HONOR.

7 THE COURT: OKAY.

8 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER

9 170, HAVING BEEN PREVIOUSLY MARKED FOR

10 IDENTIFICATION, WAS ADMITTED INTO

11 EVIDENCE.)

12 BY MR. MCELHINNY:

13 Q LET ME SHOW YOU PX 1004.

14 WHAT IS THAT, MR. STRINGER?

15 A THIS IS THE IPAD.

16 Q HOW DID YOUR GROUP SELECT THE FINAL DESIGN FOR
17 THE IPAD?

18 A WE -- WE HAD TRIED SO MANY THINGS. IT WAS A
19 LONG PROJECT AND IT TRACKED THE COURSE OF EVENTS OF
20 IPHONE.

21 DURING THE DESIGN OF IPHONE, AS WE WENT
22 THROUGH VARIOUS FORM FACTORS, WE WOULD MODEL IPADS
23 IN SIMILAR SORT OF FAMILY APPEARANCES.

24 YOU SEE, THIS IS KIND OF THE EXTRUDED
25 FORM. WE DID THAT, I'M QUITE CONFIDENT, AT THE

1 SAME TIME THAT THE PHONE WAS GOING THROUGH ITS
2 EXTRUDED PHASE.

3 Q I'M SORRY. WHEN YOU SAID "THE EXTRUDED FORM,"
4 YOU'RE HOLDING UP PX 170? IS THAT CORRECT?

5 A EXCUSE ME. YES.

6 Q OKAY.

7 A SO, YES, WE DID THIS WHILE WE WERE DOING THE
8 EXTRUDED PHONE.

9 THERE WERE OTHER MANIFESTATIONS OF THIS
10 DESIGN ALSO.

11 BUT AT THE END OF THE DAY, WE REALIZED IT
12 NEEDED TO BE ITS OWN SELF. WE CAN'T COPY
13 OURSELVES. WE WANTED A UNIQUE FORM OF THIS DEVICE.
14 IT DESERVED ITS OWN IDENTITY.

15 AND AS WE CHOSE THIS, WE LIKED THE
16 DESIGNS. IT CAPTIVATED ALL OF THE FEATURES ON THIS
17 PERIMETER, WHICH LEFT THE REAR SURFACE ENTIRELY
18 CLEAN.

19 SO AS I WAS EXPLAINING EARLIER WITH THE
20 SIMPLIFICATION, IT WAS A VERY ANONYMOUS OBJECT, NOT
21 PLAYING ALONG WITH THE LINES OF CONSUMER
22 ELECTRONICS AT ALL.

23 IT FELT LIKE AN ENTIRELY NEW THING. IT
24 DIDN'T FEEL LIKE A DEVICE. IT FELT LIKE A NEW
25 OBJECT.

1 Q DID YOU PICK THE DESIGN FOR FUNCTIONAL REASONS
2 BECAUSE YOU THOUGHT IT WOULD WORK BETTER AS A TAB?

3 A NO.

4 MR. MCELHINNY: YOUR HONOR, I'D MOVE JX
5 1004 INTO EVIDENCE.

6 MR. VERHOEVEN: NO OBJECTION.

7 THE COURT: THAT'S ADMITTED.

8 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
9 1004, HAVING BEEN PREVIOUSLY MARKED FOR
10 IDENTIFICATION, WAS ADMITTED INTO
11 EVIDENCE.)

12 BY MR. MCELHINNY:

13 Q SIR, I'M HANDING YOU EXHIBIT JX 1005
14 (HANDING).

15 LET ME CLEAN HOUSE HERE.

16 WHAT IS JX 1005?

17 A THIS IS THE SECOND GENERATION OF IPAD.

18 MR. MCELHINNY: YOUR HONOR, I MOVE JX
19 1005.

20 MR. VERHOEVEN: NO OBJECTION.

21 THE COURT: THAT'S ADMITTED.

22 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
23 1005, HAVING BEEN PREVIOUSLY MARKED FOR
24 IDENTIFICATION, WAS ADMITTED INTO
25 EVIDENCE.)

1 BY MR. MCELHINNY:

2 Q AGAIN, WERE THERE PARTICULAR ENGINEERING
3 CHALLENGES INVOLVED IN THE CONSTRUCTION OF THE
4 IPAD 2?

5 A OF COURSE. THERE WERE MANY. ONE AREA THAT
6 TOOK US A HUGE AMOUNT OF EFFORT IN THE FACTORIES
7 WAS GETTING THE GAPS, OR THE REVEALS, TO BE AS
8 TIGHT AS THEY ARE.

9 IF YOU LOOK AROUND THE PERIMETER OF THE
10 PRODUCT, YOU'LL SEE WHERE THE GLASS MEETS THE
11 HOUSING, WE WANTED TO JUST REDUCE THAT AND MAKE IT
12 SEEM LIKE IT WAS SEALED TIGHT.

13 Q WHERE THE GLASS MEETS THE HOUSING, IS THAT
14 WHAT YOU'RE CALLING A GAP OR A REVEAL?

15 A YES.

16 Q OKAY.

17 YOUR HONOR, I WOULD MOVE --

18 OH, WAS THE DESIGN OF THE IPAD 2 DRIVEN
19 IN ANY WAY TO MAKE IT CHEAPER OR EASIER TO
20 MANUFACTURE?

21 A NO, ABSOLUTELY NOT.

22 Q THANK YOU.

23 MR. STRINGER, WHERE WERE YOU PHYSICALLY
24 ON JANUARY 7TH WHEN THE ORIGINAL IPHONE WAS
25 RELEASED?

1 A THE ENTIRE DESIGN TEAM, OR AT LEAST A
2 SUBSTANTIAL PORTION, THOSE THAT COULD BE THERE,
3 WERE AT THE APPLE STORE IN SAN FRANCISCO.

4 Q AND WHY WERE YOU THERE?

5 A WE WERE EXCITED. WE HAD SOMETHING NEW. THERE
6 WAS AN INCREDIBLE BUZZ. PEOPLE WERE ANTICIPATING
7 SOMETHING, I THINK, STARTING WITH THE SEQUENCE OF
8 EVENTS.

9 BUT WE ANNOUNCED IT. PEOPLE KNEW THAT
10 THERE WAS SOMETHING COMING THAT THEY WANTED.

11 AND THERE WAS AN ENORMOUS CROWD OUTSIDE.
12 WE WANTED TO FEEL THAT ENTHUSIASM AND SEE PEOPLE,
13 SEE THEIR EYES WHEN THEY GET THESE NEW PRODUCTS,
14 THE FIRST PEOPLE TO GET THEM.

15 Q AND WHAT DID YOU OBSERVE WHEN THE DOORS
16 OPENED, SIR?

17 A MAYHEM. IT WAS LIKE A CARNIVAL.

18 Q AND WHAT WAS YOUR REACTION TO THAT?

19 A OVERWHELMED. WE WERE OBVIOUSLY VERY, VERY
20 PROUD. WE'D WORKED REALLY HARD. IT WAS -- THERE
21 WAS AN ENORMOUS NUMBER OF PEOPLE THAT PUT IN
22 PERSONAL SACRIFICE AND IT WAS PAYING OFF IN SPADES.
23 IT WAS A BEAUTIFUL DAY.

24 MR. MCELHINNY: WOULD THIS BE A GOOD
25 TIME, YOUR HONOR?

1 THE COURT: THAT'S FINE. IT'S 3:29.

2 JUST A TEN-MINUTE BREAK, SEVENTH INNING
3 STRETCH SO PEOPLE CAN STAND UP AND USE THE REST
4 ROOM.

5 OKAY. THANK YOU.

6 (WHEREUPON, A RECESS WAS TAKEN.)

7 THE COURT: ALL RIGHT. THE TIME IS NOW
8 3:43.

9 PLEASE GO AHEAD.

10 MR. MCELHINNY: THANK YOU, YOUR HONOR.

11 BOY, YOU TAKE A BREAK AND THE NITPICKERS
12 JUMP ALL OVER YOU.

13 Q LET ME GO BACK TO SOMETHING TO MAKE SURE WE'VE
14 GOT IT RIGHT IN THE RECORD. IF YOU WOULD LOOK,
15 PLEASE, AT JX 1043.

16 A YES.

17 Q THIS IS THE '677 PATENT?

18 A THAT'S RIGHT.

19 Q I ASKED YOU WHICH IPHONES INCORPORATED THIS
20 DESIGN, AND WHAT WAS YOUR ANSWER, SIR?

21 A I BELIEVE MY ANSWER WAS ALL IPHONES.

22 Q DID YOU SAY TODAY OR TO DATE?

23 A TO DATE.

24 Q TO DATE. THANK YOU.

25 AND THEN MY MISTAKE. WHEN YOU WENT TO

1 THE OPENING OF THE ORIGINAL IPHONE, WAS THAT IN THE
2 SUMMER OF 2007?

3 A I DON'T RECALL THAT.

4 Q OKAY. HAS THE APPLE -- HAS THE DESIGN OF THE
5 IPHONE RECEIVED ANY PROFESSIONAL AWARDS FOR DESIGN?

6 A IT'S RECEIVED MANY. AWARDS ARE NOT OUR
7 MOTIVATION. IT'S NOT WHY WE GET UP IN THE MORNING.
8 BUT IT'S CERTAINLY SOMETHING WE DON'T MIND.

9 THE ONLY ONE THAT REALLY WAS OF ANY REAL
10 IMPORTANCE TO MYSELF IS THE DNAD, AND WE RECEIVED A
11 GOLD PENCIL FOR THAT.

12 Q WHAT IS DNAD?

13 A DESIGNERS AND ART DIRECTORS.

14 Q AND WHY IS THAT SIGNIFICANT TO YOU, SIR?

15 A WE JUST HAVE A HIGH REGARD FOR THE JURY
16 SELECTION PROCESS FOR THAT. WE HAVE A PEER JUDGING
17 COMMITTEE AND IT'S A VERY CREDIBLE AWARD.

18 Q DO YOU KNOW WHETHER OR NOT YOUR DESIGNS FOR
19 YOUR PRODUCTS HAVE BEEN MADE PARTS OF DISPLAYS IN
20 MUSEUMS?

21 A YEAH. I'VE SEEN OUR PRODUCTS AT S.F. MOMA;
22 I'VE SEEN THEM AT THE SMITHSONIAN IN WASHINGTON.

23 I KNOW THERE'S NUMEROUS OTHERS. I DON'T
24 SEEK THEM OUT, BUT IT'S FLATTERING TO KNOW THAT
25 THEY'RE THERE.

1 Q HAS YOUR DESIGN GROUP RECEIVED AWARDS FOR THE
2 DESIGN OF THE IPAD?

3 A YES, AGAIN, IT'S RECEIVED THE DNAD, AMONGST
4 OTHERS.

5 Q SIR, HAVE YOU EVER BECOME AWARE THAT OTHER
6 PHONE MAKERS STARTED USING DESIGNS THAT WERE
7 SIMILAR TO YOURS?

8 MR. VERHOEVEN: OBJECTION. LEADING.

9 THE COURT: SUSTAINED.

10 BY MR. MCELHINNY:

11 Q SIR, TO YOUR KNOWLEDGE, DO YOU UNDERSTAND
12 WHETHER OR NOT OTHER PHONE MAKERS, AFTER THE IPHONE
13 WAS ISSUED, STARTED TO USE THAT DESIGN?

14 MR. VERHOEVEN: OBJECTION.

15 THE COURT: WHAT'S THE BASIS?

16 MR. VERHOEVEN: IMPROPER OPINION
17 TESTIMONY FROM A PERCIPIENT WITNESS, YOUR HONOR.

18 THE COURT: OVERRULED.

19 GO AHEAD.

20 BY MR. MCELHINNY:

21 Q DO YOU HAVE THE QUESTION IN MIND?

22 A COULD YOU REPEAT THE QUESTION?

23 Q I CAN'T, BUT THE -- WELL, I'LL GIVE IT BACK TO
24 YOU.

25 AFTER THE IPHONE CAME OUT, DID YOU EVER

1 COME TO A DETERMINATION, IN YOUR OWN HEAD, ABOUT
2 WHETHER OR NOT OTHER COMPETITORS WERE USING YOUR
3 DESIGNS?

4 A YES. WE'VE BEEN RIPPED OFF. IT'S PLAIN TO
5 SEE.

6 Q BY WHOM, SIR?

7 A SAMSUNG IN PARTICULAR.

8 Q AND WHAT IS YOUR REACTION TO THAT AS AN
9 ARTIST?

10 A IT'S OFFENSIVE. AS I WAS EXPLAINING, IT'S A
11 HUGE LEAP OF IMAGINATION TO COME UP WITH SOMETHING
12 ENTIRELY NEW. THAT'S SOMETHING THAT WE DID.

13 IT'S A PROCESS BY WHICH YOU HAVE TO
14 DISMISS EVERYTHING YOU KNOW, TRY TO FORGET
15 EVERYTHING YOU KNOW, WHICH MAKES IT VERY DIFFICULT,
16 BECAUSE IF YOU PAY ATTENTION TO THE COMPETITION,
17 YOU END UP FOLLOWING.

18 AND THAT'S NOT WHAT WE DO. WE WANTED TO
19 CREATE ORIGINALITY. IT'S A VERY DIFFICULT PROCESS.
20 IT TAKES A HUGE AMOUNT OF TIME AND RESOURCES AND
21 CONVICTION TO DO SO.

22 SO WE -- WE WERE OFFENDED.

23 MR. MCELHINNY: NOTHING FURTHER AT THIS
24 TIME, YOUR HONOR.

25 THE COURT: ALL RIGHT. IT'S NOW 3:48.

1 CROSS-EXAMINATION, PLEASE.

2 (PAUSE IN PROCEEDINGS.)

3 MR. VERHOEVEN: ONE SECOND, YOUR HONOR,
4 AS I GET ORGANIZED IF THAT'S OKAY.

5 THE COURT: ALL RIGHT.

6 (PAUSE IN PROCEEDINGS.)

7 MR. VERHOEVEN: CAN I HAVE JUST ONE
8 SECOND, YOUR HONOR, AND I'LL BE READY.

9 (DISCUSSION OFF THE RECORD BETWEEN
10 DEFENSE COUNSEL.)

11 MR. VERHOEVEN: THANK YOU, YOUR HONOR.
12 MAY I PROCEED?

13 THE COURT: PLEASE. IT'S 3:49.

14 GO AHEAD.

15 **CROSS-EXAMINATION**

16 BY MR. VERHOEVEN:

17 Q GOOD AFTERNOON, MR. STRINGER.

18 A GOOD AFTERNOON.

19 Q GOOD TO SEE YOU AGAIN.

20 I'D LIKE TO START BY PUTTING UP THE '087
21 PATENT, WHICH IS JX 1041.

22 CAN WE HAND OUT THE CROSS BINDER?

23 MAY I APPROACH, YOUR HONOR?

24 THE COURT: PLEASE, GO AHEAD.

25 MR. VERHOEVEN: THIS IS OUR EXHIBITS

1 (HANDING).

2 Q IF WE COULD GO TO THE NEXT PAGE AND
3 HIGHLIGHT -- NO, NO, NO. PLEASE GO BACK TO THE
4 PAGE, THE FRONT PAGE. GO TO THE NEXT PAGE. KEEP
5 GOING. ONE MORE. ONE MORE.

6 ALL RIGHT. YOU TESTIFIED ON DIRECT ABOUT
7 THE '087 DESIGN PATENT, SIR; CORRECT?

8 A YES.

9 Q AND YOU ARE ONE OF THE INVENTORS LISTED ON
10 THAT PATENT; CORRECT?

11 A YES.

12 Q AND THE '087 DESIGN PATENT IS EMBODIED BY THE
13 INITIAL IPHONE; IS THAT RIGHT?

14 A YES.

15 Q OKAY. AND DO YOU SEE HERE ON FIGURE 3 -- I'M
16 POINTING ON THE BIG SCREEN IF YOU WANT TO LOOK AT
17 MY POINTER. LOOK AT FIGURE 3.

18 A YES.

19 Q THAT'S THE FRONT FACE OF THE DESIGN; IS THAT
20 CORRECT?

21 A THAT IS CORRECT.

22 Q AND I WANT TO MAKE SURE I GET THE RIGHT
23 FIGURE. IT'S FIGURE 11, PLEASE, ON PAGE 433.

24 THIS IS ANOTHER DEPICTION, BUT THIS ONE
25 DOESN'T CLAIM THE CIRCULAR HOME BUTTON. DO YOU SEE

1 THAT?

2 A YES.

3 Q DO YOU UNDERSTAND THAT THE LINES HERE MEANS
4 IT'S NOT BEING CLAIMED?

5 A THAT'S CORRECT.

6 Q AND THEN FIGURE 15 AND 16 ARE SIDE VIEWS OF
7 THAT SAME DESIGN PATENT; IS THAT RIGHT?

8 A YES.

9 Q OKAY. NOW I'M GOING TO ASK YOU A FEW
10 QUESTIONS ABOUT THE DESIGN ELEMENTS WITH RESPECT TO
11 THE '087 PATENT. OKAY?

12 IN YOUR VIEW, ONE IMPORTANT DESIGN ASPECT
13 OF THE '087 PATENT, AND THE INITIAL IPHONE, WAS
14 THAT IT HAD FOUR EVENLY RADIUS CORNERS; CORRECT?

15 A YES.

16 Q AND THAT'S DEPICTED RIGHT HERE ON EACH OF
17 THESE CORNERS IN FIGURE 11; CORRECT?

18 A YES.

19 Q ANOTHER IMPORTANT DESIGN FEATURE WITH RESPECT
20 TO THE INITIAL IPHONE AND THE '087 PATENT WAS THAT
21 IT HAD THIS CONTINUOUS RIM, OR BEZEL I THINK IS THE
22 WORD YOU USED. IS THAT RIGHT?

23 A YES.

24 Q AND YOU AGREE WITH ME, THAT WAS AN IMPORTANT
25 ASPECT OF THIS DESIGN; RIGHT?

1 A YES.

2 Q AND THE -- IT WAS IMPORTANT THAT THE BEZEL GO
3 CONTINUOUSLY AND UNIFORMLY AROUND THE RIM OF THE
4 PHONE; RIGHT?

5 A YES.

6 Q AND IT WAS ALSO IMPORTANT THAT THE BEZEL BE OF
7 UNIFORM THICKNESS; CORRECT?

8 A YES.

9 Q ANOTHER DESIGN ASPECT -- OR AN ASPECT OF THE
10 DESIGN IN THE '087 PATENT THAT WAS IMPORTANT TO YOU
11 AND YOUR TEAM AS DESIGNERS WAS THAT THE FRONT
12 SURFACE, FOR EXAMPLE, IF YOU LOOK AT FIGURE 16 OR
13 FIGURE 15, YOU CAN SEE IT, THE FRONT SURFACE WAS
14 COMPLETELY FLAT ALL THE WAY ACROSS THE FRONT. THAT
15 WAS AN IMPORTANT DESIGN ELEMENT; RIGHT?

16 A YES.

17 Q IN FACT, I BELIEVE YOU TESTIFIED TO THIS, BUT
18 ISN'T IT TRUE THAT THE DESIGN HERE INTENTIONALLY
19 WAS THAT THE BEZEL, OR THIS RIM, WAS INTENTIONALLY
20 DESIGNED TO BE NOMINALLY FLUSH WITH THE GLASS? IS
21 THAT RIGHT?

22 A YES.

23 Q AND YOU COULD HAVE DESIGNED A PHONE WHERE THE
24 BEZEL PROTRUDED BEYOND THE GLASS, BUT YOU
25 INTENTIONALLY CHOSE NOT TO DO THAT; RIGHT?

1 A YES.

2 Q EVEN THOUGH IT WAS MORE EXPENSIVE TO DO IT
3 THAT WAY; RIGHT?

4 LET ME ASK YOU, WOULD YOU -- WOULD IT
5 HAVE BEEN MORE EXPENSIVE -- WOULD IT HAVE BEEN LESS
6 EXPENSIVE TO DO A BEZEL THAT PROTRUDED BEYOND THE
7 GLASS?

8 A THAT'S -- I DON'T UNDERSTAND HOW YOU CAN
9 DETERMINE THE COST ASSOCIATED WITH THAT DETAIL.

10 Q YOU DON'T UNDERSTAND HOW YOU COULD EXAMINE THE
11 COSTS? YOU REMEMBER ON DIRECT YOU TESTIFIED ABOUT
12 HOW CERTAIN DESIGN ASPECTS COST MORE? COULD YOU --

13 A COULD YOU PLEASE REPEAT YOUR QUESTION?

14 Q SURE. SO ONE OF THE THINGS THAT WAS IMPORTANT
15 ABOUT THIS DESIGN PATENT, CORRECT ME IF I'M WRONG,
16 WAS THAT YOU WANTED TO HAVE COMPLETELY FLAT, ALL
17 THE WAY ACROSS THE FRONT SURFACE, AND THE BEZEL BE
18 FLUSH WITH THE GLASS FRONT SURFACE, WOULDN'T
19 PROTRUDE ABOVE IT. FAIR?

20 A THAT'S CORRECT.

21 Q AND THAT WAS IMPORTANT TO YOUR DESIGN?

22 A YES.

23 Q SOMETHING THAT DISTINGUISHED IT FROM OTHER
24 DESIGNS PREVIOUSLY; RIGHT?

25 A THIS -- THAT WAS OUR DESIGN.

1 Q OKAY. AND DOING THAT ACTUALLY WAS MORE
2 EXPENSIVE, WASN'T IT?

3 A IT CREATED ISSUES WITH -- IN TERMS OF
4 ENGINEERING.

5 BUT I CANNOT SAY IT WAS MORE EXPENSIVE.
6 IT WAS MORE DIFFICULT.

7 Q WOULD YOU SAY THAT IT'S FAIR TO SAY THAT
8 POSITIONING THE GLASS FLUSH WITH THE SURROUNDING
9 BEZEL PRESENTED MANUFACTURING DIFFICULTIES DUE TO
10 THE FRAGILE MATERIAL THAT YOU DECIDED TO USE,
11 NAMELY, THE GLASS?

12 A NOT MANUFACTURING DETAILS.

13 Q WELL, DO YOU REMEMBER YOU SUBMITTED A WITNESS
14 STATEMENT EARLIER WITH RESPECT TO THE INITIAL
15 IPHONE?

16 A YES.

17 Q CAN WE LOOK AT -- IS THAT IN THE BINDER?

18 DO YOU REMEMBER IN AN ITC CASE ON THE
19 '796 YOU SUBMITTED A WITNESS STATEMENT WITH RESPECT
20 TO THE INITIAL IPHONE?

21 A YES, I DO.

22 Q OKAY. AND CAN WE --

23 MR. MCELHINNY: DO YOU HAVE A COPY? OH,
24 OKAY.

25 MR. VERHOEVEN: CAN WE PUT UP --

1 Q YOU WERE AT -- THE WITNESS STATEMENT HAD
2 QUESTIONS AND ANSWERS IN WRITTEN FORM.

3 DO YOU REMEMBER THAT?

4 A YES.

5 Q AND YOU SIGNED IT; RIGHT?

6 A YES.

7 Q YOU SWORE THAT WHAT WAS IN THERE WAS TRUE AND
8 CORRECT?

9 A YES.

10 Q OKAY. I'D LIKE TO PUT UP QUESTION 76 IN AND
11 YOUR ANSWER FROM THAT WITNESS STATEMENT.

12 THE COURT: IS THIS AN EXHIBIT?

13 MR. VERHOEVEN: THIS WAS DESIGNATED, YOUR
14 HONOR.

15 MR. MCELHINNY: IT'S NOT AN EXHIBIT
16 THAT'S BEING USED FOR IMPEACHMENT. I THOUGHT
17 MR. VERHOEVEN JUST ESTABLISHED THAT RULE.

18 THE COURT: OKAY. SO IT'S NOT IN THIS
19 BINDER?

20 MR. MCELHINNY: IT'S NOT, YOUR HONOR.

21 THE COURT: OKAY.

22 MR. MCELHINNY: AND WE OBJECT TO IT FOR
23 THAT REASON, YOUR HONOR. IT VIOLATES THE RULES.

24 THE COURT: WE'LL WORK THIS OUT LATER.
25 OVERRULED.

1 GO AHEAD.

2 MR. VERHOEVEN: THANK YOU, YOUR HONOR.

3 Q DO YOU SEE YOU WERE ASKED, "QUESTION: DID YOU
4 FACE MANUFACTURING DIFFICULTIES IN DESIGNING THE
5 ORIGINAL IPHONE? CAN YOU PLEASE PROVIDE SOME
6 EXAMPLES?"

7 AND YOU PROVIDED AN ANSWER?

8 A YES.

9 Q AND IT'S A MULTI-PART ANSWER AND I'M JUST
10 GOING TO DIRECT YOUR ATTENTION TO THE FOURTH PART
11 OF YOUR ANSWER WHERE IT SAYS FOURTH HERE.

12 DO YOU SEE THAT, SIR?

13 A YES.

14 Q I'LL READ IT INTO THE RECORD. "FOURTH, WE
15 POSITIONED THE GLASS TO BE FLUSH WITH THE
16 SURROUNDING BEZEL. EACH OF THESE DESIGN CHOICES
17 PRESENTED MANUFACTURING DIFFICULTIES DUE TO THE
18 FRAGILE NATURE OF THE MATERIAL THAT WE HAD DECIDED
19 TO USE, NAMELY, GLASS."

20 DO YOU SEE THAT?

21 A YES.

22 Q AND THAT'S AN ACCURATE STATEMENT; RIGHT?

23 A YES.

24 Q OKAY. SO YOU WOULD AGREE WITH ME THAT
25 POSITION -- CAN WE GO BACK TO THE '087 FIGURES WE

1 WERE LOOKING AT, PLEASE.

2 AND AGAIN, LOOKING AT FIGURE 16 AND 15,
3 THE SIDE VIEWS, POSITIONING -- AN IMPORTANT DESIGN
4 ELEMENT HERE WAS POSITIONING THE GLASS FLUSH WITH
5 THE BEZEL; RIGHT?

6 A YES.

7 Q EVEN THOUGH THAT MIGHT PRESENT SOME
8 MANUFACTURING DIFFICULTIES; CORRECT?

9 A I AGREE.

10 Q OKAY. NOW, LET'S TURN TO THE FRONT FACE --
11 ACTUALLY, CAN WE GO BACK A PAGE, PLEASE. ONE MORE.

12 LET'S GO TO THE '677 PATENT, WHICH SHOULD
13 BE IN YOUR BINDER. I'M SORRY, '678.

14 I APOLOGIZE, YOUR HONOR.

15 (PAUSE IN PROCEEDINGS.)

16 MR. VERHOEVEN: HERE IT IS. IT'S IN YOUR
17 BINDER AT 1043.

18 MR. MCELHINNY: WHAT EXHIBIT ARE YOU ON?

19 MR. VERHOEVEN: IT'S JOINT TRIAL EXHIBIT
20 1043. AND LET'S GO TO -- A PAGE INTO THE FIGURE.

21 Q THIS IS ANOTHER DESIGN PATENT THAT YOU
22 TESTIFIED ABOUT ON DIRECT. DO YOU REMEMBER?

23 A YES.

24 Q AND THIS IS ALSO A DESIGN PATENT THAT
25 CORRESPONDS TO THE INITIAL IPHONE; IS THAT RIGHT?

1 A YES.

2 Q AND DO YOU SEE THERE'S THIS ELEMENT UP HERE,
3 I'M CIRCLING IT AT THE TOP OF THE PHONE THERE?

4 A YES.

5 Q CAN YOU DESCRIBE FOR THE JURY WHAT THAT IS?

6 A THAT IS THE RECEIVER DETAIL.

7 Q IS THAT THE LOZENGE SHAPE DESIGN ELEMENT ON
8 THE PHONE?

9 A YES, THAT'S THE OPENING FOR THE RECEIVER.

10 Q AND THAT'S ANOTHER DESIGN ELEMENT IN THE
11 MINIMALIST DESIGN FOR THE INITIAL IPHONE; CORRECT?

12 A CORRECT.

13 Q AND IT WAS IMPORTANT FOR YOUR DESIGN TEAM,
14 WITH RESPECT TO THAT DESIGN ELEMENT, TO MAKE SURE
15 IT WAS CENTERED HORIZONTALLY; IS THAT CORRECT?

16 A CAN YOU BE MORE SPECIFIC OF WHAT YOU MEAN BY
17 "CENTERED HORIZONTALLY"?

18 Q SURE. SO IF THIS IS HORIZONTAL FROM THE
19 BOTTOM TO THE TOP OF THE PHONE, DO YOU FOLLOW ME?

20 A THAT IS VERTICAL TO ME, BUT, YES, IT'S
21 CENTERED ON THAT AXIS.

22 Q OKAY. LET'S SAY CENTERED VERTICALLY THEN.

23 A YES.

24 Q CAN I ASK THE QUESTION ONE MORE TIME FOR THE
25 RECORD?

1 A PLEASE DO.

2 Q IT WAS IMPORTANT TO YOU, AS THE DESIGN TEAM,
3 THAT THAT LOZENGE SHAPED DESIGN ELEMENT BE CENTERED
4 VERTICALLY ON THE PHONE; RIGHT?

5 A YES.

6 Q AND THAT -- AND THAT'S BETWEEN THE TOP OF THE
7 DISPLAY ELEMENT, WHICH WE SEE RIGHT HERE, AND THE
8 TOP OF THE PHONE? IS THAT CORRECT?

9 A CENTERED THAT WAY ALSO, YES.

10 Q OKAY. SO IT'S CENTERED IN BOTH WAYS?

11 A YES.

12 Q OKAY. AND THAT WAS AN IMPORTANT DESIGN
13 ELEMENT FOR THE INITIAL IPHONE; CORRECT?

14 A YES.

15 Q OKAY. IT WAS ALSO IMPORTANT TO YOU AND THE
16 DESIGN TEAM OF THE INITIAL IPHONE THAT THE DESIGN
17 BE MINIMALISTCI. FAIR?

18 A THAT'S NOT THE WORD THAT I WOULD USE.

19 Q NOT HAVE A LOT OF BUTTONS ON IT? NOT HAVE A
20 LOT OF ORNAMENTATION ON IT?

21 A TO BE SIMPLE.

22 Q TO BE SIMPLE.

23 IN FACT, YOU WANTED TO CREATE A PRODUCT
24 THAT EMBODIED THE SIMPLEST OF ICONS, AND ONE KEY
25 IMAGE WAS THAT OF A DARK, OILY POND. IS THAT

1 RIGHT?

2 A YES.

3 Q THAT WAS YOUR DESIGN GOAL; RIGHT?

4 A THAT WAS ONE --

5 Q GO AHEAD.

6 A THAT WAS ONE DESCRIPTION OF A DESIGN GOAL,
7 YES.

8 Q YOU DIDN'T WANT TO PUT MULTIPLE BUTTONS ON THE
9 FACE OF THE PHONE; CORRECT?

10 A CORRECT.

11 Q YOU WANTED IT TO BE AS SIMPLE AS POSSIBLE?

12 A YES.

13 Q ALL RIGHT. LET'S TURN TO THE '889 DESIGN
14 PATENT, WHICH YOU'RE ALSO LISTED AS AN INVENTOR ON.

15 THIS IS JX 1040 IN YOUR WITNESS BINDER IF
16 YOU'D LIKE.

17 AND IF WE COULD GO TO PAGE 146 OF JX
18 1040.

19 JUST FOR THE RECORD, YOU'RE AN INVENTOR
20 ON THE '889 DESIGN PATENT; CORRECT?

21 A YES.

22 Q AND YOU'RE FAMILIAR WITH THIS DESIGN PATENT?

23 A YES.

24 Q NOW, WITH RESPECT TO THE '889 DESIGN PATENT,
25 ISN'T IT CORRECT THAT THE DESIGN TEAMS' OBJECTIVES

1 WERE TO REDUCE THE PRODUCT TO WHAT WAS ESSENTIALLY
2 A SINGLE, SEAMLESS VESSEL, WHICH WAS THE REAR
3 HOUSING?

4 A THAT WAS THE INSPIRATION OF THIS DESIGN, YES.

5 Q AND ANOTHER IMPORTANT DESIGN GOAL WAS TO HAVE
6 JUST ONE GAP IN THE PRODUCT BETWEEN THE BACK
7 HOUSING AND WHAT YOU REFER TO AS THE CLEAR GLASS
8 BEZEL THAT EXTENDS ALL THE WAY ACROSS THE FRONT;
9 RIGHT?

10 A YES.

11 Q SORRY. WAS THAT YES?

12 A YES.

13 Q YOU WANTED A SINGLE PIECE OF REAR HOUSING;
14 RIGHT?

15 A THAT WAS THE INSPIRATION FOR THE DESIGN, YES.

16 Q NOW --

17 MAY I APPROACH THE WITNESS WITH A
18 PHYSICAL EXHIBIT, YOUR HONOR?

19 THE COURT: PLEASE, GO AHEAD.

20 MR. VERHOEVEN: (HANDING.)

21 THE WITNESS: THANK YOU.

22 MR. MCELHINNY: I DON'T BELIEVE THAT
23 EXHIBIT HAS BEEN MARKED, YOUR HONOR.

24 MR. VERHOEVEN: YOUR HONOR, THE EXHIBIT
25 HAS BEEN IN THE EXCLUSIVE CUSTODY OF APPLE AND

1 THEY'VE RETAINED POSSESSION OF IT. WE'D BE HAPPY
2 TO MARK IT WITH THE NEXT APPROPRIATE NUMBER.

3 MR. MCELHINNY: I'M NOT OBJECTING TO IT.
4 I'M TRYING TO GET MR. VERHOEVEN A CLEAR RECORD.

5 THE COURT: WHAT NUMBER SHOULD IT BE?

6 MR. VERHOEVEN: WELL, IT'S ACTUALLY BEEN
7 MARKED AS DX 741.

8 THE COURT: DX? I'M SORRY. CAN YOU
9 REPEAT THAT, PLEASE?

10 MR. VERHOEVEN: DX 741, YOUR HONOR.

11 THE COURT: OKAY.

12 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
13 741 WAS MARKED FOR IDENTIFICATION.)

14 BY MR. VERHOEVEN:

15 Q NOW, YOU'VE SEEN THIS -- I'VE BEEN REFERRING
16 TO THIS AS APPLE MODEL 035. WILL YOU UNDERSTAND
17 THAT'S WHAT I'M REFERRING TO?

18 A YES.

19 Q IT SAYS IT RIGHT ON THE BACK; RIGHT?

20 A ABSOLUTELY.

21 Q SO DX 741 IS APPLE MODEL 035. FAIR?

22 A EXCUSE ME. WHAT WAS THE FIRST NUMBER AGAIN?

23 Q THE EXHIBIT NUMBER WE JUST MARKED THAT AS, DX
24 741, CORRESPONDS TO APPLE MODEL 035? FAIR?

25 A I BELIEVE SO.

1 Q AND YOU'VE SEEN THIS MODEL 035 BEFORE;
2 CORRECT?

3 A YES.

4 Q AND IF YOU LOOK AT -- IF WE CAN PUT ON THE
5 SCREEN DX 740, HERE WE HAVE -- AND THIS SHOULD BE
6 IN YOUR BINDER AS WELL IF YOU'D LIKE TO LOOK AT THE
7 HARD COPY IMAGES, SIR.

8 A YES, I SEE IT.

9 Q I DON'T HAVE MY HARD COPY YET, SO I'M GOING TO
10 GET MY HARD COPY, TOO.

11 MR. MCELHINNY: YOUR HONOR, THIS EXHIBIT
12 HAS NOT BEEN MOVED INTO EVIDENCE. I'M NOT SURE IT
13 SHOULD BE PUBLISHED.

14 THE COURT: IS THERE GOING TO BE AN
15 OBJECTION?

16 MR. MCELHINNY: IT DEPENDS ON WHETHER OR
17 NOT THERE'S A FOUNDATION THAT'S LAID, YOUR HONOR.

18 THE COURT: ALL RIGHT. LAY THE
19 FOUNDATION, PLEASE.

20 MR. VERHOEVEN: OKAY.

21 Q YOU'VE SEEN THESE IMAGES BEFORE, THESE PHOTOS;
22 RIGHT, SIR?

23 A I BELIEVE I MAY HAVE SEEN THEM IN DEPOSITION.

24 Q AND YOU'VE STUDIED THOSE PHOTOS AND YOU
25 COMPARED THEM TO THE APPLE MODEL 035, WHICH IS

1 MARKED AS DX 741; CORRECT?

2 A I BELIEVE THAT IS TRUE.

3 Q AND IT'S YOUR OPINION, IN FACT, YOU'RE
4 CONVINCED FROM STUDYING THEM BOTH THAT THEY ARE ONE
5 AND THE SAME? IN OTHER WORDS, THE PHOTOS ARE
6 PICTURES OF APPLE MODEL 035; RIGHT?

7 A I DO RECALL SUCH AN EXERCISE OF COMPARING THE
8 MODEL AND THE PHOTOS. I THINK THESE ARE THOSE
9 PHOTOS, I THINK THIS IS THAT MODEL, SO IT FEELS
10 TRUE.

11 Q OKAY. AND YOU AGREE WITH ME THAT THE APPLE
12 MODEL 035 AND THE CORRESPONDING PICTURES ARE
13 EMBODIMENTS OF THE '889 DESIGN PATENT; RIGHT?

14 MR. MCELHINNY: OBJECTION, YOUR HONOR.
15 CALLS FOR A LEGAL CONCLUSION FROM THIS WITNESS.

16 MR. VERHOEVEN: YOUR HONOR, ON DIRECT THE
17 WITNESS TESTIFIED TO THE EXACT QUESTION WITH
18 RESPECT TO OTHER APPLE PHYSICAL EXHIBITS --

19 MR. MCELHINNY: NO, WE'RE --

20 MR. VERHOEVEN: -- IN TESTIMONY ELICITED
21 BY MR. MCELHINNY.

22 MR. MCELHINNY: THE WORD "EMBODIMENT,"
23 WHICH IS A LEGAL WORD, WAS NEVER USED IN ANY
24 QUESTION THAT I ASKED.

25 THE COURT: WHY DON'T YOU REPHRASE THE

1 QUESTION, PLEASE?

2 BY MR. VERHOEVEN:

3 Q THE SPECIFIC PHYSICAL MODEL, APPLE MODEL 035,
4 IS THE SAME MODEL OR MOCK-UP APPEARS IN PHOTOGRAPHS
5 THAT WERE SUBMITTED TO THE PATENT OFFICE TOGETHER
6 WITH THE '889 PATENT APPLICATION? ISN'T THAT TRUE,
7 SIR?

8 MR. MCELHINNY: AGAIN, THAT LACKS
9 FOUNDATION FROM THIS WITNESS, YOUR HONOR.

10 THE COURT: IF YOU KNOW, SIR, GO AHEAD.

11 AND IF YOU COULD LAY THE FOUNDATION.

12 BUT IF YOU KNOW, SIR, YOU CAN ANSWER.

13 THE WITNESS: YOU -- COULD YOU REPEAT THE
14 QUESTION? YOU WERE ASKING ABOUT PHOTOGRAPHS WITH
15 THE PATENT APPLICATION?

16 BY MR. VERHOEVEN:

17 Q YOU'RE AWARE THAT PHOTOGRAPHS WERE TAKEN OF
18 THE APPLE MODEL 035; RIGHT?

19 A I SEE PHOTOGRAPHS OF 035.

20 Q AND THOSE PHOTOGRAPHS WERE SUBMITTED TO THE
21 PATENT OFFICE AS PART OF THE PROSECUTION OF WHAT
22 BECAME THE '889 PATENT; ISN'T THAT TRUE, SIR?

23 A I DON'T RECALL THE SPECIFICS OF SUCH AN
24 ATTACHMENT.

25 Q WELL, YOU'RE AN INVENTOR ON THE PATENT; RIGHT?

1 MR. MCELHINNY: ARGUMENTATIVE, YOUR
2 HONOR.

3 THE COURT: OVERRULED.

4 YOU CAN ANSWER. GO AHEAD.

5 THE WITNESS: YES, I AM.

6 BY MR. VERHOEVEN:

7 Q IN YOUR --

8 JUST ONE SECOND, YOUR HONOR.

9 (DISCUSSION OFF THE RECORD BETWEEN
10 DEFENSE COUNSEL.)

11 BY MR. VERHOEVEN:

12 Q ALL RIGHT. WOULD YOU AGREE WITH ME, SIR, THAT
13 APPLE MODEL 035 INCORPORATES THE '889 DESIGN?

14 A I BELIEVE THAT THE '889 PATENT REPRESENTS THIS
15 DESIGN.

16 Q OKAY. NOW, YOU TESTIFIED AT THE END OF YOUR
17 DIRECT TESTIMONY ABOUT SAMSUNG PHONES.

18 A CORRECT.

19 Q YOU'VE SEEN THE FOUR SOFT BUTTONS AT THE
20 BOTTOM OF SAMSUNG PHONES?

21 A WOULD YOU LIKE TO SHOW ME WHAT YOU MEAN?

22 Q WELL, YOU'RE THE ONE WHO TESTIFIED ON DIRECT
23 ALL ABOUT HOW IT WAS A RIP OFF. DO YOU REMEMBER --

24 MR. MCELHINNY: EXCUSE ME, YOUR HONOR.

25 BY MR. VERHOEVEN:

1 Q DO YOU REMEMBER, SIR, LOOKING AT SOFT BUTTONS
2 AT THE BOTTOM OF THE SAMSUNG PHONES?

3 MR. MCELHINNY: OBJECTION, YOUR HONOR.
4 THAT'S NOT A QUESTION. HE'S ARGUING WITH THE
5 WITNESS.

6 THE COURT: OVERRULED.

7 YOU CAN ANSWER.

8 THE WITNESS: COULD YOU REPEAT THE
9 QUESTION, PLEASE?

10 BY MR. VERHOEVEN:

11 Q DO YOU REMEMBER, YES OR NO, WHEN YOU LOOKED AT
12 THE SAMSUNG PHONES TO FORM THE OPINION AND THE
13 TESTIMONY THAT YOU GAVE BEFORE THE JURY, WHETHER
14 THEY HAD FOUR SOFT BUTTONS AT THE BOTTOM?

15 A I HAVE SEEN MANY SAMSUNG PHONES. I DO NOT
16 REMEMBER THE EXACT DETAILS OF SOFTWARE BUTTONS.

17 Q SO YOU DON'T REMEMBER WHETHER THEY HAD BUTTONS
18 ON THE BOTTOM?

19 A I -- LIKE I SAID, I'VE SEEN MANY SAMSUNG
20 PHONES. I DO NOT KNOW THAT THEY'RE ALL THE SAME IN
21 TERMS OF THEIR BUTTON ARRANGEMENTS AT THE BOTTOM.

22 Q HAVE YOU EVER SEEN ANY SAMSUNG PHONES THAT
23 HAVE FOUR SOFT BUTTONS AT THE BOTTOM?

24 A I WOULD LIKE YOU TO SHOW ME THE PHONE. THIS
25 COULD BE A TRICK QUESTION. I DON'T KNOW.

1 Q I'M JUST ASKING YOU, HAVE YOU EVER SEEN A
2 SAMSUNG PHONE THAT HAD FOUR SOFT BUTTONS AT THE
3 BOTTOM?

4 A IF YOU SHOWED ME THE PHONE, I COULD DETERMINE
5 THAT THERE ARE FOUR SOFT BUTTONS.

6 Q THAT'S NOT MY QUESTION, SIR. MY QUESTION IS,
7 HAVE YOU SEEN A SAMSUNG PHONE THAT HAD FOUR SOFT
8 BUTTONS AT THE BOTTOM?

9 A I CANNOT RECALL IT IT'S THREE OR FOUR. I
10 CANNOT RECALL.

11 Q HAVE YOU SEEN ANY PHONE, ANY SMARTPHONE THAT
12 HAD FOUR SOFT BUTTONS AT THE BOTTOM?

13 A QUITE POSSIBLY.

14 Q DID YOU THINK THEY WERE BEAUTIFUL?

15 A CLEARLY THEY DID NOT STICK IN MY MIND.

16 Q NOW, YOU TESTIFIED ON DIRECT ABOUT BUTTONS AND
17 HOW SOMETIMES YOU MIGHT DO 50 DIFFERENT MODELS OF A
18 BUTTON. DO YOU REMEMBER THAT?

19 A THAT'S CORRECT.

20 Q HOW MANY MODELS DID YOU DO OF THE HOME BUTTON?

21 A I COULD NOT GIVE YOU AN EXACT NUMBER, BUT I'M
22 SURE THERE WERE MANY.

23 Q OVER TEN?

24 A VERY LIKELY.

25 Q OVER 100?

1 A MAYBE NOT.

2 Q WHAT'S YOUR BEST ESTIMATE?

3 A I WILL NOT ESTIMATE BECAUSE I DO NOT KNOW.

4 Q DID YOU WORK ON THE DIFFERENT MODELS OF THE
5 HOME BUTTON?

6 A YES.

7 Q AND WHY WERE THERE SO MANY MODELS OF THE HOME
8 BUTTON DONE?

9 A TO GET IT EXACTLY RIGHT.

10 Q BECAUSE SMALL DETAILS MATTER; RIGHT?

11 A ABSOLUTELY.

12 Q AS AN APPLE INDUSTRIAL DESIGNER, YOU TESTIFIED
13 ABOUT THE WORK YOU DID TO COME UP WITH YOUR DESIGNS
14 ON DIRECT.

15 DO YOU REMEMBER THAT? YOU TESTIFIED
16 GENERALLY ABOUT SITTING AROUND THE KITCHEN TABLE
17 AND ALL THAT.

18 A YES.

19 Q ONE OF THE THINGS THAT YOU ALSO DO AS AN
20 INDUSTRIAL DESIGNER IS YOU PAY ATTENTION TO MOBILE
21 PHONES AND SMARTPHONES MANUFACTURED AND SOLD BY
22 YOUR COMPETITORS, DON'T YOU?

23 A ON OCCASION WE PAY SOME ATTENTION.

24 Q YOU ACTUALLY GET COMPETITIVE ANALYSES DONE AND
25 REVIEW THOSE OF YOUR COMPETITION, DON'T YOU?

1 A THERE IS A COMPETITIVE ANALYSIS EXERCISE
2 THAT'S PERFORMED BY OUR PRODUCT DESIGN.

3 Q AND YOU OCCASIONALLY REQUEST THAT SO YOU CAN
4 SEE WHAT THE COMPETITION IS DOING AS PART OF YOUR
5 DESIGN WORK; RIGHT?

6 A VERY RARELY DO WE MAKE ANY SUCH REQUESTS. WE
7 ARE SHOWN THESE COMPETITIVE ANALYSIS.

8 Q WELL, LET'S LOOK AT DX 687. AND IF WE COULD
9 BLOW UP THE TOP PART OF THIS.

10 DO YOU SEE -- DO YOU SEE YOUR NAME IS UP
11 THERE, CHRIS STRINGER?

12 A I SEE THAT.

13 Q AND IF WE COULD GO TO PAGE 2 OF THIS DOCUMENT
14 AND ABOUT A THIRD OF THE WAY DOWN WHERE IT SAYS "ON
15 JANUARY 19TH, 2011," CAN WE BRING THAT UP?

16 THIS IS AN E-MAIL STRING, THIS DOCUMENT;
17 RIGHT?

18 A YES, IT IS.

19 Q SO THIS IS PART OF THE E-MAIL STRING?

20 A YES, IT IS.

21 Q AND THIS PART OF IT IS AN E-MAIL THAT YOU
22 WROTE ON JANUARY 19TH, 2011 AT 2:14 P.M.; CORRECT?

23 A THAT IS CORRECT.

24 Q AND YOU SENT IT TO PAUL. WHO'S PAUL?

25 A PAUL IS -- I BELIEVE HIS TITLE IS ENGINEERING

1 PROGRAM MANAGER. HE WORKS IN THE IPAD DIVISION.

2 Q AND YOU SAID TO PAUL, QUOTE, "I NEED YOUR
3 LATEST SUMMARY OF OUR ENEMIES FOR AN I.D.
4 BRAINSTORM ON FRIDAY."

5 DO YOU SEE THAT, SIR?

6 A I SEE THAT.

7 Q I.D. STANDS FOR?

8 A INDUSTRIAL DESIGN.

9 Q SO YOU HAD AN INDUSTRIAL DESIGN BRAINSTORMING
10 SESSION COMING UP ON FRIDAY; RIGHT?

11 A THAT'S WHAT IT SAYS.

12 Q AND YOU'RE ASKING PAUL TO GIVE YOU HIS LATEST
13 SUMMARY OF, QUOTE, "OUR ENEMIES," CLOSED QUOTE. DO
14 YOU SEE THAT?

15 A THAT'S CORRECT.

16 Q IS THAT SAMSUNG?

17 A IN THIS INSTANCE, YES.

18 Q OKAY. AND THE SUMMARY -- THIS IS IN YOUR
19 BINDER IF YOU WANT TO LOOK AT IT -- WE CAN GO TO
20 PAGE 9.

21 A WHAT IS THE EXHIBIT NUMBER?

22 Q 687, SIR.

23 GO TO PAGE 9, PLEASE. AND HIGHLIGHT THE
24 TOP PART, BRING IT OUT. CAN YOU MOVE IT OVER A
25 LITTLE BIT? THANK YOU.

1 WAS ON THE SCREEN.

2 GO TO PAGE 2. AND BRING OUT --

3 Q THIS IS WHAT WE WERE JUST TALKING ABOUT FROM
4 PAGE 2; RIGHT?

5 A YES.

6 Q WHERE YOU SAID, "PAUL, I NEED YOUR LATEST
7 SUMMARY OF OUR ENEMIES FOR THE I.D. BRAINSTORM ON
8 FRIDAY."

9 DO YOU SEE THAT?

10 A I DO.

11 Q AND THEN IF WE GO TO 9, PAGE 9, AND HIGHLIGHT
12 THAT AGAIN ONE MORE TIME, PLEASE.

13 THAT'S A LITTLE BIT HARD TO READ. MAYBE
14 WE COULD JUST HIGHLIGHT THE TOP FEW ROWS SO WE CAN
15 SEE BETTER. THAT DOESN'T LOOK MUCH BETTER.

16 BUT YOU CAN SORT OF SEE THERE'S THE
17 PLAYBOOK. DO YOU SEE THAT, MR. STRINGER?

18 A YES.

19 Q WHO MAKES THE PLAYBOOK?

20 A COULD YOU ZOOM IN? I CAN'T READ IT.

21 Q YOU DON'T KNOW WHO MAKES THE PLAYBOOK?

22 A NOT OFF THE TOP OF MY HEAD.

23 Q OKAY. AND THEN THERE'S THE GALAXY TAB. DO
24 YOU SEE THAT?

25 A YES.

1 Q AND THAT'S ONE OF THE PRODUCTS THAT'S BEING
2 ACCUSED IN THIS CASE?

3 A YES.

4 Q RIGHT? AND ON THE LEFT-HAND SIDE, IT SAYS OS,
5 PROCESSOR, RAM, AND A BUNCH OF OTHER DETAILS.

6 DO YOU SEE THAT?

7 A YES.

8 Q SO ISN'T IT TRUE THAT YOU WANTED THIS
9 INFORMATION FOR YOUR BRAINSTORMING SESSION SO YOU
10 COULD ASSESS AND YOU AND THE OTHER DESIGN TEAM
11 MEMBERS COULD ASSESS WHAT YOUR COMPETITORS ARE
12 DOING?

13 A WE WERE INTERESTED IN UNDERSTANDING THE
14 FEATURE SETS AND OVERALL DIMENSIONS OF COMPETITIVE
15 PRODUCTS.

16 Q YOU WERE INTERESTED IN KNOWING WHAT THEY WERE
17 DOING?

18 A WE WERE INTERESTED IN UNDERSTANDING THOSE
19 FACTS.

20 Q SO YOU ANALYZED THEIR PRODUCTS AND THE
21 PARAMETERS OF THEIR PRODUCTS, DIDN'T YOU?

22 A WE PAID ATTENTION TO THE FEATURE SET AND WE
23 WERE VERY INTERESTED IN THE DIMENSIONS.

24 Q IS THERE ANYTHING WRONG WITH DOING THAT?

25 A NO.

1 MR. VERHOEVEN: PASS THE WITNESS, YOUR
2 HONOR.

3 THE COURT: YOU'RE DONE?

4 MR. VERHOEVEN: PASS THE WITNESS.

5 THE COURT: OKAY. ALL RIGHT. IT IS NOW
6 4:20.

7 MR. MCELHINNY: I HAVE ONE REDIRECT
8 QUESTION, YOUR HONOR.

9 THE COURT: ALL RIGHT. GO AHEAD. IT'S
10 4:20. IT'S ALL YOURS.

11 MR. MCELHINNY: I'M ON THE CLOCK HERE.

12 **REDIRECT EXAMINATION**

13 BY MR. MCELHINNY:

14 Q SIR, THE LAST DOCUMENT THAT WAS VIEWED, WAS
15 THAT USED FOR DESIGN INSPIRATION ON HOW TO DESIGN
16 SOME NEW APPLE PRODUCT?

17 A ABSOLUTELY NOT.

18 MR. MCELHINNY: NOTHING FURTHER, YOUR
19 HONOR.

20 THE COURT: ALL RIGHT.

21 ANY RECROSS, MR. VERHOEVEN?

22 MR. VERHOEVEN: JUST ONE SECOND, YOUR
23 HONOR. I'M SORRY.

24 (DISCUSSION OFF THE RECORD BETWEEN
25 DEFENSE COUNSEL.)

1 MR. VERHOEVEN: JUST SOME HOUSEKEEPING
2 MATTERS. I'VE BEEN INFORMED I FAILED TO MOVE IN
3 EXHIBIT 740.

4 THE COURT: ANY OBJECTION?

5 MR. MCELHINNY: NO OBJECTION.

6 THE COURT: IT'S ADMITTED.

7 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
8 740, HAVING BEEN PREVIOUSLY MARKED FOR
9 IDENTIFICATION, WAS ADMITTED INTO
10 EVIDENCE.)

11 MR. VERHOEVEN: AND 741.

12 THE COURT: ANY OBJECTION?

13 MR. MCELHINNY: NO OBJECTION.

14 THE COURT: SO ADMITTED.

15 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
16 741, HAVING BEEN PREVIOUSLY MARKED FOR
17 IDENTIFICATION, WAS ADMITTED INTO
18 EVIDENCE.)

19 THE COURT: IS THAT IT, MR. VERHOEVEN?

20 MR. VERHOEVEN: WELL, THAT -- 741 IS A
21 STIPULATION ABOUT THE PHOTOGRAPHS FROM THE MODEL.

22 AT SOME POINT I'D LIKE TO READ IT INTO
23 THE RECORD. I COULD DO THAT NOW. IT'S ADMITTED
24 INTO EVIDENCE, YOUR HONOR.

25 THE COURT: THAT'S FINE.

1 MR. VERHOEVEN: IT STATES, QUOTE, "APPLE,
2 INC., THROUGH ITS COUNSEL, STIPULATES AS FOLLOWS:

3 PARAGRAPH 1. THE SPECIFIC PHYSICAL MODEL
4 IDENTIFIED BY APPLE INDUSTRIAL DESIGNER
5 CHRISTOPHER STRINGER DURING THE NOVEMBER 4TH, 2011
6 DEPOSITION IDENTIFIES APPLE MODEL 035 IS THE SAME
7 MODEL OR MOCK-UP APPEARING IN THE PHOTOGRAPHS OF
8 THE D'889 PATENT PROSECUTION HISTORY PRODUCED BY
9 APPLE.

10 PARAGRAPH 2. THE PHOTOGRAPHS FROM THE
11 '889 PATENT PROSECUTION HISTORY PRODUCED BY APPLE
12 ARE THE HIGHEST QUALITY THAT IT HAS FOUND."

13 AND THAT CONCLUDES THE STIPULATION, YOUR
14 HONOR.

15 THE COURT: ALL RIGHT.

16 ANYTHING FURTHER FOR MR. STRINGER OR IS
17 HE EXCUSED? IS HE EXCUSED?

18 MR. MCELHINNY: HE'S EXCUSED, YOUR HONOR.

19 THE COURT: ALL RIGHT. AND NOT WITH
20 ANY -- HE'S JUST EXCUSED, PERIOD? NOT SUBJECT TO
21 RECALL?

22 MR. MCELHINNY: HE'S EXCUSED. WE ARE NOT
23 GOING TO HAVE HIM IN THE COURTROOM IN CASE THERE'S
24 A REBUTTAL ISSUE.

25 THE COURT: ALL RIGHT. YOU'RE EXCUSED.

1 THE WITNESS: THANK YOU.

2 DO YOU HAVE YOUR NEXT WITNESS?

3 MR. MCELHINNY: I HAVE HIM READY. IT'LL
4 TAKE US A COUPLE MINUTES TO GET THE BINDERS OUT,
5 YOUR HONOR.

6 THE COURT: ALL RIGHT.

7 (PAUSE IN PROCEEDINGS.)

8 THE COURT: WHO'S YOUR NEXT WITNESS,
9 PLEASE?

10 MR. MCELHINNY: MR. PHILIP SCHILLER, YOUR
11 HONOR.

12 THE COURT: OKAY. WE'RE ONLY GOING TO GO
13 UNTIL 4:30, BUT I FIGURE EVEN IF THERE'S SOME
14 PRELIMINARY STUFF WE CAN DO TODAY, LET'S DO IT.

15 MR. MCELHINNY: YOUR HONOR, APPLE CALLS
16 PHILIP SCHILLER.

17 THE COURT: OKAY. THE TIME IS 4:23.

18 THE CLERK: RAISE YOUR RIGHT HAND,
19 PLEASE.

20 **PHILIP SCHILLER,**
21 BEING CALLED AS A WITNESS ON BEHALF OF THE
22 PLAINTIFF, HAVING BEEN FIRST DULY SWORN, WAS
23 EXAMINED AND TESTIFIED AS FOLLOWS:

24 THE WITNESS: I DO.

25 THE COURT: WOULD YOU HAVE A SEAT UP

1 THERE, PLEASE.

2 MR. MCELHINNY: YOUR HONOR, WE'RE STILL
3 PASSING OUT THE BINDERS. IF I CAN HAVE THAT NOT BE
4 ON MY TIME, PLEASE.

5 (PAUSE IN PROCEEDINGS.)

6 THE CLERK: WOULD YOU STATE YOUR NAME,
7 PLEASE, AND SPELL IT?

8 THE WITNESS: PHILIP WILLIAM SCHILLER,
9 THAT'S P-H-I-L-I-P, W-I-L-L-I-A-M, S-C-H-I-L-L-E-R.

10 THE CLERK: THANK YOU.

11 **DIRECT EXAMINATION**

12 BY MR. MCELHINNY:

13 Q GOOD AFTERNOON, MR. SCHILLER.

14 A GOOD AFTERNOON.

15 Q BY WHOM ARE YOU EMPLOYED?

16 A APPLE.

17 Q AND WHAT IS YOUR CURRENT POSITION AND TITLE,
18 SIR?

19 A I AM THE SENIOR VICE-PRESIDENT OF WORLDWIDE
20 MARKETING.

21 Q AND DOES APPLE HAVE SOMETHING THAT THEY CALL
22 THE EXECUTIVE TEAM?

23 A YES, WE DO.

24 Q AND WHAT IS THE EXECUTIVE TEAM?

25 A IT IS THE GROUP OF EXECUTIVES AT APPLE THAT

1 ARE THE MOST SENIOR PEOPLE WHO RUN THE COMPANY AND
2 WORK FOR THE CEO DIRECTLY, AND WE MEET WEEKLY AND
3 ARE RESPONSIBLE FOR THE BUSINESS OF THE COMPANY.

4 Q ARE YOU A MEMBER OF THE EXECUTIVE TEAM, SIR?

5 A YES, I AM.

6 Q TO WHOM DO YOU REPORT AT APPLE?

7 A TO THE CEO, TIM COOK.

8 Q SIR, JUST TO CONNECT VARIOUS LITTLE PIECES IN
9 MIND. TODAY SAMSUNG'S COUNSEL SHOWED US A VIDEO OF
10 THE INTRODUCTION AT MAC WORLD OF THE IPHONE AND IN
11 THAT VIDEO, IT SHOWED MR. JOBS SENDING A PICTURE, I
12 THINK OF A HAWAIIAN VACATION, TO SOME GUY NAMED
13 PHIL IN THE AUDIENCE.

14 DO YOU KNOW THAT MR. PHIL THAT WAS IN THE
15 AUDIENCE?

16 A THAT WOULD BE ME.

17 Q OKAY. THANK YOU.

18 CAN YOU -- CAN YOU DESCRIBE FOR US,
19 PLEASE, WHAT YOU WERE -- WHAT YOUR JOB
20 RESPONSIBILITIES ARE AT APPLE?

21 A SO I RUN THE MAJORITY OF MARKETING AT APPLE
22 COMPUTERS, SO FOR ME, THAT'S A PRETTY LARGE
23 ORGANIZATION. IT'S MADE UP OF A NUMBER OF
24 MARKETING FUNCTIONS, SOMETHING WE CALL PRODUCT
25 MARKETING, THE MARKETING OF ALL OF OUR PRODUCTS;

1 DEVELOPER PROGRAMS; MARKETING COMMUNICATIONS;
2 INTERNATIONAL MARKETING; BUSINESS MARKETING;
3 EDUCATION MARKETING; MARKETING FINANCE; LAUNCH,
4 PRODUCT LAUNCH MARKETING; AND MANY OTHER FUNCTIONS.

5 Q DOES APPLE HAVE A SPECIFIC PROCESS BY WHICH IT
6 DEVELOPS NEW PRODUCTS?

7 A YES, WE DO. WE HAVE SOMETHING WE CALL,
8 CONVENIENTLY, THE APPLE NEW PRODUCT PROCESS, OR
9 ANPP, AND IT IS A WELL-DEFINED MANAGED PROCESS BY
10 WHICH WE WORK ON ALL OF THE PRODUCTS AT APPLE.

11 THE PROCESS IS MADE UP OF ALL THE KEY
12 FUNCTIONS AT APPLE THAT ARE RESPONSIBLE FOR MAKING
13 A PRODUCT, SO HARDWARE ENGINEERING, SOFTWARE
14 ENGINEERING, MARKETING, OPERATIONS, FINANCE, AND
15 SUPPORT.

16 AND TOGETHER THAT CROSS-FUNCTIONAL TEAM
17 OF PEOPLE WORK ON EVERY NEW PRODUCT AT APPLE
18 THROUGH A SERIES OF LOGICAL STEPS, STEPS LIKE
19 INVESTIGATION, CONCEPT, DESIGN, PRODUCTION, AND
20 THAT ALL WORKS TOGETHER.

21 AND I THINK THAT'S THE, THAT'S THE WAY
22 THE TEAM WORKS --

23 MR. PRICE: YOUR HONOR, THIS IS BEYOND
24 THE SCOPE OF THE QUESTION AND A NARRATIVE AT THIS
25 POINT.

1 THE COURT: OVERRULED. BUT PLEASE LET'S
2 NOT HAVE THAT.

3 BY MR. MCELHINNY:

4 Q LET ME BREAK IT UP, PLEASE.

5 IN THIS NEW PRODUCT PROCESS, COULD YOU
6 PLEASE TELL ME WHAT ROLE YOUR GROUP, THE MARKETING
7 GROUP, PLAYS IN THAT PROCESS?

8 A MARKETING IS REPRESENTED AS ONE OF THE MEMBERS
9 OF THE TEAM ON EVERY NEW PRODUCT WE CREATE. WE ARE
10 MEMBERS OF THE APPLE NEW PRODUCT PROCESS TEAM.

11 Q WHY IS THAT?

12 A IT'S VERY IMPORTANT AT APPLE THAT THE NEEDS OF
13 THE CUSTOMER AND NEEDS TO COMPETE IN THE
14 MARKETPLACE ARE CONSIDERED WHEN WE CREATE A PRODUCT
15 RIGHT FROM THE BEGINNING, AND SO MARKETING IS AN
16 EQUAL MEMBER OF THE TEAM CREATING OUR PRODUCTS,
17 ALONG WITH THE ENGINEERING AND OPERATIONS TEAM.

18 Q HAVE YOU EVER HEARD, FROM ANY SOURCE, THE
19 SUGGESTION THAT APPLE DOESN'T LISTEN TO ITS
20 CUSTOMERS IN TERMS OF WHAT THE PRODUCTS SHOULD LOOK
21 LIKE IN THE FUTURE?

22 A YES, I HAVE HEARD THAT QUITE FREQUENTLY.

23 MR. PRICE: OBJECTION, YOUR HONOR.
24 RELEVANCE AND CALLS FOR HEARSAY.

25 THE COURT: SUSTAINED.

1 BY MR. MCELHINNY:

2 Q SIR, WHAT -- WHAT ROLE DOES CUSTOMER INTEREST
3 AND DESIRE PLAY IN THIS NEW PRODUCT PROCESSING --
4 PROCESS THAT YOU DISCUSSED?

5 A WE DON'T USE ANY CUSTOMER INPUT INTO THE
6 CREATION OF OUR PRODUCTS. WE DON'T USE SURVEYS OR
7 FOCUS GROUPS OR TYPICAL THINGS OF THAT NATURE THAT
8 I'VE HEARD MANY OF MY FRIENDS AT OTHER COMPANIES
9 USE.

10 AT APPLE, THAT PLAYS NO PART IN THE
11 CREATION OR DESIGN OF THE PRODUCTS.

12 Q SO WHEN YOU SAID YOU REPRESENT THE CUSTOMER'S
13 VIEW, WHAT DOES THAT MEAN?

14 A THAT OVER OUR YEARS OF DOING MARKETING OF
15 PRODUCTS AT APPLE, WE HAVE A LOT OF OPPORTUNITY TO
16 HAVE CONTACT WITH CUSTOMERS, REVIEWERS, MANY IN OUR
17 INDUSTRY, AND YOU USE THAT ACCUMULATED KNOWLEDGE TO
18 FORMULATE YOUR OWN INSTINCTS, YOUR OWN GUT FEELING,
19 YOUR OWN BELIEF OF WHAT THE RIGHT THING TO DO IS.

20 BUT YOU NEVER GO AND ASK A CUSTOMER
21 DIRECTLY, "WHAT FEATURES DO YOU WANT IN THE NEXT
22 PRODUCT?"

23 IT'S NOT A CUSTOMER'S JOB TO KNOW THAT,
24 SO WE DON'T ASK THEM THAT.

25 WE NEED TO ACCUMULATE THAT KNOWLEDGE

1 OURSELVES AND USE THAT TO THEN DEFINE THE PRODUCTS
2 THAT WE'RE GOING TO CREATE.

3 MR. MCELHINNY: YOUR HONOR, I AM ABOUT TO
4 START THE STORY OF THE DEVELOPMENT OF THE IPHONE
5 AND WE ONLY HAVE THREE MINUTES LEFT.

6 THE COURT: ALL RIGHT. WELL, I HAVE 4:29
7 AS THE TIME.

8 MR. MCELHINNY: THANK YOU, YOUR HONOR.

9 THE COURT: ALL RIGHT. THAT'S FINE.

10 OKAY. SO THANK YOU FOR YOUR PATIENCE
11 TODAY. YOU'RE GOING TO HAVE TWO DAYS OFF. WE WILL
12 NOT BE IN SESSION TOMORROW OR THURSDAY, SO WE WILL
13 SEE YOU NEXT BACK ON FRIDAY MORNING, 9:00 O'CLOCK.
14 PLEASE REPORT TO THE JURY ROOM.

15 IF YOU WOULD, PLEASE, LEAVE YOUR JURY
16 NOTEBOOKS, YOU CAN LEAVE THEM IN THE JURY ROOM.
17 BUT PLEASE DO NOT TAKE THEM HOME.

18 AND SAME ADMONITION. PLEASE DON'T DO ANY
19 RESEARCH, ANY READING ABOUT THE CASE, DON'T TALK TO
20 ANYONE ABOUT IT, AND PLEASE KEEP AN OPEN MIND UNTIL
21 THE VERY, VERY END AND UNTIL YOU START
22 DELIBERATING.

23 OVER THE NEXT FEW DAYS, WHEN PEOPLE FIND
24 OUT YOU'RE A JUROR ON THIS CASE, FAMILY MEMBERS,
25 FRIENDS, NEIGHBORS ARE GOING TO WANT TO GIVE YOU A

1 PIECE OF THEIR MIND.

2 I'M ASKING YOU AGAIN TO PLEASE TELL THEM,
3 "I'M SORRY. I CAN'T LISTEN TO THIS. I CAN TALK
4 WITH YOU WHEN THE CASE IS OVER." ALL RIGHT?

5 OKAY. THANK YOU SO MUCH.

6 (WHEREUPON, THE FOLLOWING PROCEEDINGS
7 WERE HELD OUT OF THE PRESENCE OF THE JURY:)

8 THE COURT: ALL RIGHT. THE RECORD SHOULD
9 REFLECT THE JURORS HAVE LEFT THE COURTROOM.

10 THERE ARE A COUPLE OF ISSUES THAT WE NEED
11 TO RESOLVE AND THAT IS THE ISSUE OF IMPEACHMENT
12 EXHIBITS.

13 WHEN I ISSUED MY ORDER BACK ON JULY 24TH,
14 I DIDN'T MAKE ANY EXCLUSION FOR IMPEACHMENT
15 EXHIBITS AND I BELIEVE WE HAD A FULL ARGUMENT ON
16 THIS ISSUE.

17 SO -- AND I MADE A RULING ON THIS ISSUE.

18 SO WHAT'S GOING ON? WHY ARE THEY NOT IN
19 THE BINDERS?

20 AND THIS IS A PROBLEM ON BOTH SIDES GOING
21 FORWARD. LET'S FIX IT NOW.

22 LET ME ASK, MR. VERHOEVEN, YOU SAID THAT
23 YOU LOST THE ARGUMENT THAT IMPEACHMENT EXHIBITS HAD
24 TO BE DISCLOSED AND IN THE BINDERS. WHY WASN'T
25 THAT IN THIS --

1 MR. VERHOEVEN: THAT WAS IN OUR BINDERS.
2 I'M SORRY, YOUR HONOR.

3 THE COURT: OKAY.

4 MR. VERHOEVEN: IT'S ACTUALLY ITEM NUMBER
5 5 -- IT'S IN YOUR RULINGS. IT'S ON PAGE 3 OF YOUR
6 JULY 30TH ORDER.

7 I CAN HAND THIS UP TO YOU IF YOU WANT TO
8 LOOK AT IT, BUT IT'S ITC 796, WITNESS STATEMENT,
9 CHRIS STRINGER.

10 WE DISCLOSED IT TO THE OTHER SIDE. THEY
11 OBJECTED. YOU OVERRULED THE OBJECTION, YOUR HONOR.

12 AND THE ONLY REASON I DIDN'T HAVE IT IN
13 THE BINDER IS THAT WE KIND OF SCREWED UP WITH THE
14 BINDERS.

15 THE COURT: ALL RIGHT. WELL, THAT'S NO
16 PROBLEM.

17 BUT JUST GOING FORWARD, I WANT TO MAKE
18 SURE THERE'S AN UNDERSTANDING FROM BOTH PARTIES
19 THAT YOUR CROSS-EXAMINATION BINDERS ARE GOING TO BE
20 COMPLETE AND INCLUDE IMPEACHMENT.

21 I WANT TO MAKE SURE, MR. MCELHINNY, YOU
22 ARE IN AGREEMENT ON THAT ON AS WELL.

23 MR. MCELHINNY: I AM IN AGREEMENT ON
24 THAT, YOUR HONOR.

25 THE COURT: ALL RIGHT.

1 MR. VERHOEVEN: ONE QUICK THING. I
2 MISSPOKE AGAIN. I APOLOGIZE, YOUR HONOR. IT WAS
3 IN THE WITNESS BINDER. IT DOESN'T HAVE AN EXHIBIT
4 NUMBER BECAUSE IT WAS IMPEACHMENT.

5 SO I DON'T KNOW IF YOU WANT US TO ASSIGN
6 EXHIBIT NUMBERS TO IMPEACHMENT DOCUMENTS.

7 THE COURT: I THINK THAT WOULD BE
8 HELPFUL. TELL ME WHERE IT IS.

9 MR. VERHOEVEN: SO IT'S IN -- CAN YOU
10 COME UP AND HELP ME. WE'RE KIND OF PLAYING
11 TELEPHONE BECAUSE I DIDN'T ASSEMBLE THE BINDER,
12 YOUR HONOR, SO --

13 MR. HALL: SCOTT HALL, H-A-L-L.

14 THERE ARE TWO BINDERS, THE
15 CROSS-EXAMINATION MATERIALS AND THE TESTIMONY
16 COLLECTION.

17 THE FOURTH TAB IN THE TESTIMONY
18 COLLECTION BINDER IS THE MAY 2ND, 2012 ITC WITNESS
19 STATEMENT OF CHRISTOPHER STRINGER, AND WE PASSED
20 THAT UP.

21 THE COURT: OKAY. DID YOU WANT THIS
22 MARKED FOR IDENTIFICATION?

23 MR. VERHOEVEN: THAT WOULD BE GREAT. HOW
24 ABOUT -- YEAH, THAT WOULD BE TERRIFIC, YOUR HONOR.

25 AND IN THE FUTURE WE'LL MARK FOR

1 IDENTIFICATION ON IMPEACHMENT IF THAT'S THE BEST
2 WAY TO GO.

3 (DISCUSSION OFF THE RECORD BETWEEN
4 COUNSEL.)

5 THE COURT: OKAY.

6 MR. VERHOEVEN: YOUR HONOR --

7 THE COURT: ALL RIGHT. CAN I HAVE THE
8 CROSS-EXAMINATION BINDERS FOR MR. SCHILLER?

9 MR. VERHOEVEN: WHILE WE'RE GETTING THAT,
10 YOUR HONOR --

11 THE COURT: YES.

12 MR. VERHOEVEN: -- WOULD -- WOULD YOU
13 WANT US TO MARK FOR IDENTIFICATION THE IMPEACHMENT
14 MATERIALS GOING FORWARD AND JUST KEEP A RUNNING
15 LIST OF THEM? OR DO YOU WANT TO DO IT IF AND WHEN
16 WE NEED TO USE THEM?

17 THE COURT: IF AND WHEN WE NEED TO USE
18 THEM -- I MEAN, IT WOULD BE HELPFUL THAT I JUST
19 HAVE EVERYTHING.

20 MR. VERHOEVEN: CORRECT.

21 THE COURT: IN CASE THERE'S ANY
22 OBJECTION, I'D RATHER HASH IT ALL OUT IN ADVANCE
23 AND NOT IN FRONT OF THE JURY, SO I WOULD LIKE TO
24 HAVE IT.

25 SO IF YOU COULD IDENTIFY WHAT IT IS, AND

1 THEN WHEN WE ACTUALLY GO THROUGH AND USE IT, I
2 THINK IT WOULD BE HELPFUL TO AT LEAST MARK FOR
3 IDENTIFICATION EVEN IF IT'S NOT GOING TO BE
4 ADMITTED JUST SO THE RECORD IS CLEAN AS TO WHAT
5 DOCUMENT WAS USED.

6 MR. VERHOEVEN: I TOTALLY UNDERSTAND,
7 YOUR HONOR.

8 THE COURT: YEAH.

9 MR. VERHOEVEN: DO YOU WANT TO MAINTAIN
10 THAT LIST, BECAUSE IT'S GOING TO -- WE'RE NOT GOING
11 TO KNOW WHAT WE'RE GOING TO USE DEPENDING UNTIL THE
12 WITNESS GIVES AN ANSWER THAT NEEDS TO BE IMPEACHED.

13 SO SHOULD WE, THE PARTIES, MAINTAIN THAT
14 LIST OR WOULD YOUR HONOR WANT TO DO THAT, THE
15 IDENTIFICATION LIST FOR IMPEACHMENT?

16 THE COURT: YOU MEAN AFTER IT'S DONE?

17 MR. VERHOEVEN: AFTER IT'S DONE.

18 THE COURT: OH, I'M KEEPING MY OWN LIST.

19 I MEAN, WE CAN GO THROUGH IT. I HAVE 18
20 EXHIBITS ADMITTED BY -- ON THE PLAINTIFF'S SIDE
21 TODAY. I HAVE THREE EXHIBITS ADMITTED ON THE
22 DEFENSE SIDE TODAY, AND THEN THE ONE EXHIBIT THAT
23 WAS MARKED FOR IDENTIFICATION BUT NOT ADMITTED.

24 ARE YOU ALL IN AGREEMENT?

25 MR. VERHOEVEN: YES.

1 THE COURT: OKAY.

2 MR. VERHOEVEN: SO HERE'S WHAT I WAS
3 THINKING WE'D DO GOING FORWARD, JUST TO RUN IT BY
4 EVERYONE --

5 THE COURT: OKAY.

6 MR. VERHOEVEN: -- IS WE'LL DO WHAT WE
7 DID TODAY. WE'LL HAVE THE BINDER, BUT IT WON'T
8 HAVE THE EXHIBITS ON IT, BECAUSE WE'RE PROBABLY NOT
9 GOING TO USE 90 PERCENT OF IT.

10 THE COURT: THAT'S FINE. JUST IDENTIFY
11 IT SO I CAN LOOK AT IT WHILE WE'RE GOING.

12 MR. VERHOEVEN: AND THEN AFTER WE USE IT,
13 WE'LL ASSIGN THE IDENTIFICATION NUMBER IN REAL
14 TIME. THE PARTIES WILL KEEP TRACK OF THAT.

15 THE COURT: WELL, EVEN IF YOU USE IT --
16 WE CAN JUST SAY DEFENSE EXHIBIT 4 FOR
17 IDENTIFICATION WHILE YOU'RE USING IT.

18 MR. VERHOEVEN: EXACTLY.

19 THE COURT: AND THEN THE RECORD WILL BE
20 CLEAN. WE'LL KNOW WHAT IT WAS THAT THE WITNESS
21 LOOKED AT.

22 MR. VERHOEVEN: THAT WORKS FOR US, YOUR
23 HONOR.

24 THE COURT: OKAY. ALL RIGHT.

25 AND THEN YOU ALL ARE GOING TO WORK OUT A

1 SYSTEM --

2 MR. VERHOEVEN: WE'RE GOING TO WORK ON
3 THAT.

4 THE COURT: -- ON TIMING ON THE
5 OBJECTIONS AND RESPONSES?

6 MR. VERHOEVEN: YES.

7 THE COURT: AND I WOULD LIKE COPIES OF
8 THOSE.

9 ALL RIGHT. WHAT ELSE DO WE NEED TO DO
10 TODAY? OTHERWISE WE'RE DONE FOR TODAY, TOMORROW,
11 AND THURSDAY AND I DON'T SEE YOU BACK HERE AGAIN
12 UNTIL 8:30 ON FRIDAY.

13 MR. MCELHINNY: I WANT TO PUT ON THE
14 RECORD RIGHT NOW BECAUSE I JUST FOUND OUT ABOUT
15 THIS RIGHT NOW.

16 THE COURT: WHAT'S THAT?

17 MR. MCELHINNY: THIS MORNING WHEN
18 MR. QUINN DID HIS PRESENTATION, I WAS A LITTLE
19 TAKEN ABACK. I COULDN'T FIGURE OUT WHAT WAS GOING
20 ON.

21 AS YOUR HONOR WILL LEARN, AND AS I JUST
22 LEARNED, IMMEDIATELY AFTER THAT, SAMSUNG ISSUED A
23 PRESS RELEASE IN SAN JOSE IN WHICH IT PUBLISHED ALL
24 OF THE INFORMATION AND ITS ARGUMENTS ABOUT THE
25 EVIDENCE WHICH YOUR HONOR HAS EXCLUDED FROM

1 EVIDENCE, AND AN ARGUMENT THAT SAYS, "FUNDAMENTAL
2 FAIRNESS REQUIRES THAT THE JURY DECIDE THE CASE
3 BASED ON ALL THE EVIDENCE."

4 THIS IS, ON PERCEPTION, AN INTENTIONAL
5 ATTEMPT TO POLLUTE THIS JURY IN A WAY, FRANKLY,
6 THAT I'VE NEVER -- I FORGET HOW MANY YEARS
7 MR. QUINN SAID HE PRACTICED, BUT I'M FIVE MORE.

8 THE COURT: 35. WHERE IS HE?

9 MR. MCELHINNY: I DON'T KNOW. I JUST GOT
10 THIS.

11 YOUR HONOR WILL SEE MOTION PRACTICE ON
12 IT. I'M NOT SURE EXACTLY WHAT THE RIGHT REMEDY OR
13 PENALTY IS.

14 BUT THIS IS CONTEMPT OF COURT. I'VE JUST
15 NEVER SEEN ANYTHING AS INTENTIONAL AS THIS IN MY
16 ENTIRE CAREER.

17 THE COURT: CALL MR. QUINN. I'D LIKE TO
18 SEE HIM TODAY.

19 MR. PRICE: YOUR HONOR, IF I MAY.

20 THE COURT: YEAH. IS HE AT THE FAIRMONT
21 OR WHERE IS HE?

22 MR. PRICE: I BELIEVE HE'S IN LOS ANGELES
23 ATTENDING A FUNCTION. HE LEFT THIS MORNING.
24 THERE'S A FUNCTION WITH THE MOTION PICTURE ACADEMY
25 THAT HE HAD A BOARD OF DIRECTORS' MEETING THAT HE

1 HAD TO BE AT.

2 THE COURT: ALL RIGHT. I WANT HIM TO
3 FILE A DECLARATION TOMORROW ABOUT HOW THAT
4 HAPPENED.

5 MR. PRICE: ALL RIGHT.

6 THE COURT: TOMORROW MORNING BY 9:00
7 O'CLOCK. I WANT TO KNOW WHO RELEASED IT, WHO
8 AUTHORIZED IT, WHO DRAFTED IT.

9 MR. PRICE: I'M SORRY?

10 THE COURT: I WANT TO KNOW WHO DRAFTED
11 THE PRESS RELEASE, WHO AUTHORIZED IT FROM YOUR
12 LEGAL TEAM.

13 MR. PRICE: CERTAINLY.

14 THE COURT: AND I WANT MR. QUINN'S
15 DECLARATION AS TO WHAT HIS ROLE WAS.

16 ALL RIGHT. WHAT ELSE FOR TODAY?

17 MR. MCELHINNY: NOTHING FURTHER FROM US,
18 YOUR HONOR.

19 THE COURT: ANYTHING ELSE?

20 OKAY. THANK YOU ALL.

21 (WHEREUPON, THE EVENING RECESS WAS
22 TAKEN.)

23

24

25

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: JULY 31, 2012