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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

APPLE INC., A CALIFORNIA CORPORATION,	)	C-11-01846 LHK
	)	
	)	SAN JOSE, CALIFORNIA
PLAINTIFF,	)	
	)	AUGUST 10, 2012
VS.	)	
	)	VOLUME 6
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 1638-1988
	)	
	)	
	)	
	)	
	)	
	)	
DEFENDANTS.	)	

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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

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

FOR PLAINTIFF MORRISON & FOERSTER  
APPLE: BY: HAROLD J. MCELHINNY  
MICHAEL A. JACOBS  
RACHEL KREVANS  
425 MARKET STREET  
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  
865 SOUTH FIGUEROA STREET  
10TH FLOOR  
LOS ANGELES, CALIFORNIA 90017  
BY: EDWARD J. DEFRANCO  
51 MADISON AVENUE, 22ND FLOOR  
NEW YORK, NEW YORK 10010

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1 SAN JOSE, CALIFORNIA AUGUST 10, 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: ALL RIGHT. SO I JUST FILED  
6 THE REVISED RULING ON THE TEKSLER AND CHANG  
7 OBJECTIONS -- WERE YOU ABLE TO GET THAT? -- BASED  
8 ON THE ADDITIONAL PROFFERS THAT APPLE FILED THIS  
9 MORNING.

10 OKAY. AND I ALSO ISSUED A RULING ON THE  
11 REQUEST TO SEAL PORTIONS OF THE IBM/APPLE LICENSE.

12 DID YOU GET THAT AS WELL?

13 MR. JACOBS: YES, YOUR HONOR.

14 THE COURT: OKAY.

15 THE COURT: AS YOU PROBABLY SAW FROM MY  
16 RULING LAST NIGHT, THE ONLY THINGS THAT WILL BE  
17 ACTUALLY SEALED ARE THE PAYMENT TERMES,  
18 COMPENSATION TERMS.

19 WITH REGARD TO APPLE'S REQUEST FOR AN  
20 INTERIM JURY INSTRUCTION ON CONFUSION, THAT REQUEST  
21 IS DENIED.

22 I PREFER NOT TO DO ANY INTERIM  
23 INSTRUCTIONS OTHER THAN LIMITING INSTRUCTIONS. I  
24 DON'T WANT TO OVEREMPHASIZE ANY ONE PARTICULAR  
25 INSTRUCTION OVER THE OTHER, SO THE JURY WILL JUST

1 GET THE FINAL INSTRUCTIONS ON THE LAW AT THE END.

2 OKAY? SO THAT'S DENIED.

3 LET'S TALK ABOUT THE STICKERS ON THE  
4 PHONES.

5 WHAT I'D LIKE TO DO IS TO HAVE -- ONCE  
6 THE EXHIBITS ARE ADMITTED IN EVIDENCE IS I'D LIKE  
7 THE COURT TO TAKE CONTROL OF THEM AND HAVE US HAVE  
8 THEM OVERNIGHT, AND IF EITHER SIDE NEEDS THEM,  
9 YOU'RE GOING TO HAVE TO TALK TO -- CALL OUR  
10 CHAMBERS TO GET THEM.

11 ANY OBJECTION TO THAT? I THINK THAT JUST  
12 MAY -- I DON'T WANT THIS TO BE A CONTINUING ISSUE.

13 MR. VERHOEVEN: THAT'S GREAT, YOUR HONOR.  
14 THE ONLY ONE THING I'D MENTION -- THIS IS  
15 MR. VERHOEVEN -- IS THEY NEED TO BE CHARGED SO THAT  
16 THEY CAN BE TURNED ON.

17 THE COURT: OKAY.

18 MR. VERHOEVEN: SO WE COULD PROBABLY WORK  
19 SOMETHING OUT OFF THE RECORD TO MAKE SURE THAT  
20 HAPPENS, BUT -- IF THEY JUST REMAIN -- WE JUST NEED  
21 TO MAKE SURE THAT WHATEVER PARTICULAR PHONE WE MAY  
22 NEED TO USE ON A GIVEN DAY, IF WE NEED TO TURN IT  
23 ON, THAT IT'S CHARGED.

24 THE COURT: OKAY. THEN CAN YOU GIVE US  
25 INSTRUCTIONS ABOUT WHICH ONES YOU NEED US TO

1 CHARGE?

2 MR. VERHOEVEN: WE'LL MEET AND CONFER AND  
3 SEE IF WE CAN FIGURE OUT A PROCESS, YOUR HONOR, AND  
4 PRESENT IT TO YOU.

5 THE COURT: OKAY.

6 MR. VERHOEVEN: I THINK THAT'S THE BEST  
7 THING IS FOR THE COURT TO HOLD ON TO THEM.

8 THE COURT: OKAY. THE OTHER -- YES.

9 MR. JACOBS: WE'RE FINE WITH THAT AS  
10 WELL, YOUR HONOR.

11 THE COURT: ALL RIGHT, GREAT.

12 NOW, I GUESS WHAT IS THE VOLUME? IS IT  
13 JUST THAT ONE CART WITH THE RED WELLS, OR IS IT  
14 MORE THAN THAT? I MEAN, I'M ASSUMING THIS DOESN'T  
15 APPLY TO NON-PHYSICAL EXHIBITS, RIGHT, LIKE THE  
16 DOCUMENTATION?

17 MS. MAROULIS: YES, YOUR HONOR, THIS ONLY  
18 APPLIES TO PHYSICAL EXHIBITS WHERE THE ACTUAL  
19 LABELS ARE AFFIXED, AND IT'S ABOUT TWO DIFFERENT  
20 CARTS BECAUSE SOME OF THEM ARE IN THE CUSTODY OF  
21 SAMSUNG AND SOME ARE IN THE CUSTODY OF APPLE. SO  
22 WE'RE TALKING ABOUT 120 EXHIBITS.

23 THE COURT: SO ABOUT THREE CARTS? IS  
24 THAT RIGHT?

25 MS. MAROULIS: TWO AND A HALF CARTS.

1 THE COURT: TWO AND A HALF FULL CARTS,  
2 OKAY.

3 SO HOW HAVE YOU ALL DIVIDED UP WHO HAS  
4 POSSESSION OF WHAT?

5 MS. MAROULIS: WE HAVE THE PRIOR ART,  
6 SAMSUNG HAS THE PRIOR ART, AND APPLE HAS THE  
7 ACCUSED DEVICES.

8 THE COURT: I SEE. OKAY. WELL, WHY  
9 DON'T -- AT THE BEGINNING AND AT THE END OF EACH  
10 DAY -- MS. PARKER BROWN ACTUALLY IS GOING TO BE  
11 GONE NEXT WEEK, SO MR. RIVERA WILL JUST TAKE  
12 POSSESSION OF THE CARTS AND WE'LL BRING THEM IN  
13 EACH MORNING AND THEN YOU GIVE US INSTRUCTIONS  
14 ABOUT WHAT YOU WANT US TO DO WITH THEM.

15 I THINK DURING THE TRIAL, I'D LIKE TO  
16 HAVE THE OFFICIAL STICKER THAT HAS THE NORTHERN  
17 DISTRICT OF CALIFORNIA, THE OFFICIAL COURT ONE.

18 BUT WE'LL LET THE JURORS KNOW THAT WHEN  
19 THEY'RE DELIBERATING, THEY CAN TAKE OFF WHATEVER  
20 STICKERS THEY LIKE, BUT THAT WE WANT THEM TO  
21 HOPEFULLY PUT IT BACK ON AT THE END OF THEIR  
22 DELIBERATION. BUT THEY CAN REMOVE THE STICKERS.

23 MR. JACOBS: AND THAT TURNS OUT, I THINK,  
24 TO BE A LITTLE DIFFICULT JUST BECAUSE OF THE  
25 NATURE --



1 THE COURT: THE GUMMY ISSUE.

2 MR. JACOBS: -- OF THE NATURE OF THE  
3 STICKER.

4 OUR FEELING IS THAT BECAUSE THE PHONE MAY  
5 GET SEPARATED FROM THE BOX AND MAY GET SEPARATED  
6 SOME DAY FROM THE COURT FILE, IT'S IMPORTANT THAT  
7 THE STICKER HAVE THE FULL INFORMATION ABOUT THE  
8 CASE.

9 THAT'S WHY WE -- THAT'S IN ADDITION TO  
10 THINKING THAT THAT WAS YOUR HONOR'S PREDISPOSITION  
11 AFTER OUR DISCUSSION THE OTHER DAY, THAT THE  
12 OFFICIAL STICKER SHOULD BE ON THEM.

13 THE LOOKING AHEAD REASON TO HAVE THE  
14 OFFICIAL STICKER IS THAT WE'D LIKE TO MAKE SURE THE  
15 PHONE STAYS WITH THE CASE.

16 MS. MAROULIS: YOUR HONOR, OUR PROPOSAL  
17 IS TO PUT A STICKER ON A POST-IT AND TAPE IT ON AND  
18 OFF SO IT CAN BE TAKEN OFF.

19 THE PROBLEM WITH THE STICKERS, AS IT  
20 CURRENTLY STANDS, IS THAT THEY COVER LARGE PORTIONS  
21 OF THE DEVICES FOR TRADE DRESS PURPOSES.

22 THE COURT: WELL, I LOOKED AT THE PHOTOS  
23 IN YOUR FILING AND I STILL THINK YOU CAN SEE THE  
24 SHAPE AND YOU CAN SEE THE TEXTURE OF THE BACK.

25 I MEAN, I THINK YOU CAN CERTAINLY -- I

1 DIDN'T FEEL THAT IT WAS COVERING SO MUCH THAT YOU  
2 COULDN'T MAKE A PROPER EVALUATION OF TRADE DRESS.

3 MY CONCERN ABOUT USING SOMETHING OTHER  
4 THAN THE OFFICIAL COURT STICKER IS THAT WE MAY HAVE  
5 A PROBLEM LIKE WE HAD WITH 1019, WHICH I DON'T WANT  
6 THAT EVER TO HAPPEN AGAIN, WHERE THERE WAS ANOTHER  
7 EXHIBIT THAT WAS NOT A JOINT EXHIBIT THAT ENDS UP  
8 GETTING SHOWN TO THE WITNESS, AND IF WE JUST HAVE  
9 ONE SMALL NUMBER STICKER, I'D LIKE TO HAVE THE  
10 OFFICIAL STICKER KEEP THE OFFICIAL EXHIBIT JUST FOR  
11 THE RECORD TO BE CLEARER.

12 WELL --

13 MS. MAROULIS: YOUR HONOR, MAY WE CONFER  
14 ADDITIONALLY TO DETERMINE THAT, BECAUSE IT'S VERY  
15 IMPORTANT TO SAMSUNG THAT THE DEVICES BE SHOWN TO  
16 THE JURORS AS THEY'RE SOLD IN THE STORES AND NOT IN  
17 ANY WAY CHANGED BY STICKERS OR OTHERWISE.

18 THE COURT: UM-HUM.

19 MS. MAROULIS: SO WE UNDERSTAND THE  
20 IMPORTANCE OF KEEPING TRACK OF THE DEVICES AND  
21 MAKING SURE THEY HAVE APPROPRIATE IDENTIFICATION  
22 INFORMATION.

23 WE SUGGESTED SMALLER STICKERS, BUT MAYBE  
24 THERE'S ANOTHER WAY OF HAVING A FULL STICKER,  
25 AFFIXED IN A REMOVABLE WAY.

1 THE COURT: WELL, I GUESS THE REMOVABLE  
2 PROBLEM IS GOING TO CREATE AN ISSUE. YOU KNOW, I  
3 SUSPECT THAT REGARDLESS OF WHAT HAPPENS IN THIS  
4 CASE, IT'S GOING TO BE REVIEWED ON APPEAL, AND MY  
5 ONLY CONCERN IS IF WE'RE TAKING STICKERS ON AND  
6 OFF, THERE COULD BE A CONFUSION AS TO WHAT WAS  
7 ADMITTED OR WHAT WAS NOT, WHAT WAS THE CORRECT  
8 NAME, IF THE CORRECT NUMBER WAS ON THAT PARTICULAR  
9 DEVICE.

10 WHY DON'T YOU SEE IF PERHAPS THERE'S A  
11 SMALLER OFFICIAL LABEL THAT SATISFIES BOTH PARTIES  
12 THAT CAN BE PLACED ON THERE?

13 OTHERWISE FOR NOW I'D LIKE TO HAVE THE  
14 OFFICIAL COURT STICKER THAT IDENTIFIES, YOU KNOW,  
15 THAT IT'S THE NORTHERN DISTRICT OF CALIFORNIA AND  
16 THAT IT'S OUR COURT. I'D LIKE TO KEEP THOSE ON ALL  
17 THE DEVICES AND HAVE US NOT TAKE THEM OFF.

18 MS. MAROULIS: WE'RE GOING TO SEE IF WE  
19 CAN REDUCE THE FONT SO THE SAME INFORMATION IS ON  
20 THE LABEL THAT'S SMALLER.

21 THE COURT: SURE. I DON'T CARE ABOUT THE  
22 ONES THAT HAVE NOT BEEN ADMITTED YET, BUT IF IT'S  
23 ACTUALLY BEEN ADMITTED INTO EVIDENCE, WE'LL START  
24 HOLDING THOSE ONLY FOR PHYSICAL EXHIBITS, NOT FULL  
25 DOCUMENTS.

1 MR. JACOBS: UNDERSTOOD.

2 THE COURT: SO THAT WAS ALL THAT WAS ON  
3 MY LIST. WAS THERE ANYTHING ELSE?

4 MS. MAROULIS: YOUR HONOR, APPLE FILED  
5 TWO ADDITIONAL MOTIONS THAT SAMSUNG INTENDS TO  
6 OPPOSE. WE'LL FILE THE OPPOSITIONS LATER TODAY.

7 ONE OF THEM IS EXCLUSION OF A WITNESS,  
8 AND THE OTHER ONE IS PROFFER OF EVIDENCE.

9 IT HAPPENED IN THE PAST DAY AND A HALF,  
10 SO THE OPPOSITIONS YOU'LL BE GETTING ON FILE LATER  
11 TODAY.

12 THE COURT: OKAY. WHAT'S THE EXCLUSION  
13 OF WITNESSES ISSUE?

14 MR. MCELHINNY: THE EXCLUSION OF  
15 WITNESSES IS THAT THERE ARE TWO -- WE HAVE THEIR  
16 WILL CALL LIST, THE LIST OF PEOPLE THAT THEY'RE  
17 GOING TO CALL.

18 THE COURT: YES.

19 MR. MCELHINNY: AND THEY HAVE TWO  
20 WITNESSES ON THERE THAT WE ARE ANTICIPATING -- AND  
21 WE'RE GIVING THIS SO THAT YOUR HONOR HAS IT IN  
22 ADVANCE AND YOU SEE IT COMING -- ONE OF WHOM IS A  
23 GENTLEMAN, HIS NAME IS DALE SOHN, WHO'S THE  
24 PRESIDENT OF STA.

25 THE COURT: OKAY.

1 MR. MCELHINNY: AND MR. SOHN WAS THE  
2 SUBJECT OF AN APEX MOTION IN WHICH SAMSUNG TOOK THE  
3 POSITION THAT HE HAS NO KNOWLEDGE OF THE CASE, HE'S  
4 A HIGH LEVEL EXECUTIVE.

5 WE WERE GIVEN A VERY SHORT DEPOSITION OF  
6 HIM, BUT WE WERE NOT GIVEN A FULL DEPOSITION, AND  
7 NOW IT TURNS OUT THAT HE'S GOING TO COME AND  
8 TESTIFY ABOUT THE SUBSTANCE OF THE CASE, THE MERITS  
9 OF THE PHONES, AND ALL THE STUFF THAT SAMSUNG TOOK  
10 THE POSITION HE HAD NO PERSONAL KNOWLEDGE ABOUT,  
11 AND WE WANTED TO RAISE THAT IN ADVANCE.

12 THE OTHER ONE IS THEY ARE -- THEY WANT TO  
13 CALL A WOMAN WHO APPARENTLY IS THE ORIGINAL  
14 DESIGNER OF THE F700 PHONE, AND THE F700 PHONE, AS  
15 YOUR HONOR KNOWS, HAS A LARGE HISTORY HERE, AND  
16 YOUR HONOR HAS EXCLUDED ALL OF THE DESIGN EVIDENCE,  
17 THE HISTORY OF THE DESIGN OF THE F700.

18 YOUR HONOR ALLOWED THE F700 TO BE SHOWN  
19 TO OUR EXPERTS AS A POTENTIAL ALTERNATIVE DESIGN.

20 BUT WE CAN'T IMAGINE WHY THE DESIGNER OF  
21 THE F700 -- WELL, WE KNOW BECAUSE THEY SAY IN THEIR  
22 DISCLOSURE THAT THEY WANT TO BRING HER TO TALK  
23 ABOUT THE HISTORY THAT LED UP TO THE DESIGN, THE  
24 ALTERNATIVE DESIGNS THAT SHE CONSIDERED.

25 THIS IS THE WITNESS WHO WAS SUPPOSED TO

1 SPONSOR ALL OF THE INDEPENDENT DESIGN EVIDENCE THAT  
2 YOUR HONOR HAS EXCLUDED NOW.

3 THE COURT: WHAT IS HER NAME?

4 MR. MCELHINNY: PARKER, YOUR HONOR.

5 THE COURT: ALL RIGHT. SO THAT'S BEEN  
6 BRIEFED ON APPLE'S SIDE.

7 MS. MAROULIS: AND YOUR HONOR, WE'LL FILE  
8 AN OPPOSITION. I JUST WANTED TO RAISE IT THAT  
9 WE'RE FILING AN OPPOSITION SHORTLY ON THAT.

10 THE COURT: OKAY, ALL RIGHT. WHEN -- IN  
11 TERMS OF TIMING, WHEN DO YOU NEED A RULING ON THESE  
12 TWO?

13 MS. MAROULIS: YOUR HONOR, WE'RE NOT  
14 CALLING EITHER OF THESE WITNESSES ON MONDAY, SO WE  
15 DON'T NEED A RULING UNTIL TUESDAY OR WEDNESDAY.

16 MR. MCELHINNY: WE DON'T HAVE THEIR ORDER  
17 OF WITNESSES, YOUR HONOR, SO WE DIDN'T KNOW WHEN IT  
18 WAS COMING UP.

19 MS. MAROULIS: IT'S PREMATURE RIGHT NOW,  
20 BUT WE'LL BRIEF IT TODAY.

21 THE COURT: IS YOUR AFFIRMATIVE CASE  
22 CONCLUDING ON MONDAY?

23 MR. MCELHINNY: EITHER TODAY OR MONDAY,  
24 YOUR HONOR.

25 THE COURT: I SEE. SO WE PROBABLY NEED

1 TO RULE ON THIS PRETTY QUICKLY.

2 CAN YOU FILE YOUR RESPONSES TODAY,  
3 PLEASE?

4 MS. MAROULIS: YES, YOUR HONOR.

5 THE COURT: OKAY. WAS THERE ANYTHING  
6 ELSE OR WERE THOSE TWO OUTSTANDING --

7 MR. MCELHINNY: I'VE GOT ONE REALLY  
8 TECHNICAL ISSUE.

9 THE COURT: ALL RIGHT.

10 MR. MCELHINNY: WHICH IS AS YOUR HONOR  
11 KNOWS, IF WE GET TO THEM TODAY, WE'RE GOING TO BE  
12 PLAYING SOME DEPOSITION DESIGNATIONS. YOU HAVE NOW  
13 RULED ON THE OBJECTIONS TO THOSE DESIGNATIONS.

14 IN THE DESIGNATION ITSELF, FOR SOME OF  
15 THEM, THE WITNESS IDENTIFIES PARTICULAR DOCUMENTS  
16 AND ACTUALLY TESTIFIES, IN ONE CASE, ABOUT A PAGE  
17 OF A DOCUMENT, WHICH IS WHY WE HAVE DESIGNATED THE  
18 DEPOSITION.

19 THE COURT: UM-HUM.

20 MR. MCELHINNY: IN THE NORMAL COURSE,  
21 AFTER THE DEPOSITION CLIP IS SHOWED, WE WOULD MOVE  
22 THE DOCUMENT INTO EVIDENCE.

23 WHAT WE WOULD LIKE TO DO, HOWEVER,  
24 OBVIOUSLY SO THAT THE JURY UNDERSTANDS THE  
25 DESIGNATION, WE WOULD LIKE TO PUBLISH THE DOCUMENT

1 WHEN THE JURY -- WHEN THE WITNESS -- IN THE  
2 DEPOSITION CLIP WHEN THE DEPONENT SAYS THIS IS THE  
3 DOCUMENT, WE WOULD LIKE TO HAVE IT UP NEXT TO THAT.

4 AND SO EITHER IF THERE'S GOING TO BE  
5 OBJECTION -- I THINK YOUR HONOR HAS RULED ON THESE,  
6 SO I THINK ALL THE -- I THINK ALL THE EXHIBITS DO  
7 COME IN, BUT THE WAY WE'RE DOING THE CLIPS, THEY'LL  
8 ACTUALLY BE PUBLISHED BEFORE YOUR HONOR ACTUALLY  
9 MAKES THAT TECHNICAL RULING.

10 DO YOU SEE WHAT I'M TALKING ABOUT?

11 THE COURT: AND WHAT ARE THE EXHIBITS?

12 MR. MCELHINNY: ONE OF THEM IS THE APPLE  
13 PRESENTATION THAT --

14 THE COURT: THE PX 58?

15 MR. MCELHINNY: I BELIEVE SO.

16 THE COURT: OKAY.

17 MR. MCELHINNY: 52, YOUR HONOR.

18 AND THE OTHER TWO ARE PX 89 AND 69.

19 MS. MAROULIS: YOUR HONOR HASN'T RULED ON  
20 THOSE OBJECTIONS YET, SO IT'S PREMATURE AND SAMSUNG  
21 OBJECTS TO THOSE TWO.

22 THE COURT: WELL, 52 WAS MR. TEKSLER;  
23 RIGHT.

24 MS. MAROULIS: CORRECT.

25 MR. MCELHINNY: IN THE CONTEXT OF



1 MR. TEKSLER, YOU RULED ON THAT AND THERE WAS NO  
2 OBJECTION TO IT BEING USED.

3 THE COURT: THAT'S FINE. THAT'S GOING TO  
4 BE ADMITTED.

5 SO I WAS NOT -- YOU KNOW, I THINK THAT WE  
6 NEED -- SOME OF THESE OBJECTIONS WERE FILED AROUND  
7 4:00 O'CLOCK YESTERDAY. I THINK WE NEED MORE LEAD  
8 TIME IF YOU'RE SUDDENLY GOING TO FILE OBJECTIONS ON  
9 11 WITNESSES THE DAY BEFORE.

10 SO YOU ANTICIPATE ACTUALLY GETTING  
11 THROUGH EVERYONE ON YOUR LIST TODAY?

12 MR. MCELHINNY: IT'S ALL SUBJECT TO THE  
13 CROSS, YOUR HONOR, AND WE DON'T KNOW HOW LONG THE  
14 CROSS WILL BE.

15 THE COURT: OKAY.

16 MR. MCELHINNY: WE KEEP THINKING THAT  
17 BECAUSE SAMSUNG IS USING ALL ITS TIME THAT THE  
18 CROSSES ARE GOING TO GET SHORTER. SO FAR THAT  
19 HASN'T HAPPENED AND WE CAN'T ANTICIPATE WHETHER  
20 THEY WILL.

21 THE COURT: WHO DO YOU NEED A RULING ON  
22 THIS MORNING? LET'S ACTUALLY GO THROUGH THIS.

23 MR. MCELHINNY: I THINK THE ONLY TWO THAT  
24 YOUR HONOR HASN'T RULED ON SPECIFICALLY, YOUR  
25 HONOR, ARE THE BENNER CLIPS AND THE PX 89 AND PX

1 69.

2 THE COURT: WELL, I -- SO YOU HAVE  
3 RULINGS ON VAN LIERE, BALAKRISHNAN, SINGH, LEE,  
4 TEKSLER AND CHANG, SO 1 THROUGH 6.

5 MR. MCELHINNY: THAT WILL GET US THROUGH  
6 LUNCH, YOUR HONOR, WITHOUT ANY PROBLEM WHATSOEVER.

7 THE COURT: BUT YOU THINK THAT BENNER,  
8 SHEPPARD, SITTLER, HAUSER AND MUSIKA WILL BE GOING  
9 ON TODAY?

10 MR. MCELHINNY: SAMSUNG HAS TOLD US THAT  
11 THEY'RE GOING TO DO CROSSES AND THESE PEOPLE WON'T  
12 GET ON TODAY, BUT OBVIOUSLY WE'RE NOT GOING TO REST  
13 IF THEY STOP CROSSING.

14 THE COURT: OKAY. ALL RIGHT. WELL, I  
15 MEAN, YOU HAVE THE RULINGS ON THE FIRST SIX  
16 EXHIBITS -- THE FIRST SIX WITNESSES TODAY, PLUS I  
17 DON'T KNOW HOW LONG YOU HAVE ON MR. PORET, SO THE  
18 FIRST SEVEN WITNESSES YOU HAVE RULINGS ON.

19 WE'LL PRIORITIZE -- ARE THEY GOING TO BE  
20 CALLED IN THIS ORDER? BECAUSE WE'LL PRIORITIZE  
21 THEM IN THIS ORDER, BENNER FIRST, THEN SHEPPARD,  
22 THEN SITTLER.

23 MR. MCELHINNY: I WOULD PRIORITIZE  
24 SITTLER OVER SHEPPARD, YOUR HONOR.

25 THE COURT: OKAY. SO BENNER, AND THEN

1 SITTLER?

2 MR. MCELHINNY: YES, YOUR HONOR.

3 THE COURT: WHO ELSE? GIVE ME THE ORDER  
4 SO WE CAN --

5 MR. MCELHINNY: THEN HAUSER AND THEN  
6 MUSIKA. I WOULD PUT MR. SHEPPARD LAST AT THE  
7 MOMENT.

8 THE COURT: SO BENNER, SITTLER, HAUSER,  
9 MUSIKA, AND THEN PUT SHEPPARD LAST?

10 MR. MCELHINNY: YES, YOUR HONOR.

11 THE COURT: OKAY. ALL RIGHT. WELL,  
12 WE'LL GET THOSE OUT AS SOON AS WE CAN. MAYBE WE'LL  
13 DO IT PIECEMEAL. BUT WE PROBABLY WON'T BE ABLE TO  
14 GET MOST OF THESE TO YOU UNTIL, AT THE EARLIEST,  
15 LUNCH TIME.

16 MR. MCELHINNY: THAT WOULD BE PERFECTLY  
17 FINE FOR US.

18 MS. MAROULIS: YOUR HONOR, CAN WE DO ONE  
19 MORE CLARIFICATION?

20 IN YESTERDAY'S ORDER, YOUR HONOR  
21 SUSTAINED AN OBJECTION TO DX 2557, WHICH IS A VIDEO  
22 OF A JOINT EXHIBIT. WE HAVE SINCE, SEVERAL DAYS  
23 AGO, REPLACED THAT DX EXHIBIT WITH ANOTHER ONE THAT  
24 APPLE HAS NOT OBJECTED TO TO MY KNOWLEDGE.

25 SO WE RESPECTFULLY REQUEST THAT THAT

1 OBJECTION BE OVERRULED BECAUSE APPLE NOW HAS A  
2 VIDEO THAT DOES NOT HAVE THE BLUE GLOW THAT YOUR  
3 HONOR MENTIONS IN THE OBJECTION ITSELF.

4 THE COURT: DO YOU HAVE ANY OBJECTION TO  
5 THE NEW DX 2557?

6 MR. JACOBS: I'LL HAVE TO CHECK, YOUR  
7 HONOR. IT'S NOT GOING TO COME UP FOR A BIT, SO  
8 I'LL CHECK AT THE BREAK AND GET BACK TO YOU.

9 THE COURT: ALL RIGHT.

10 MR. JACOBS: I WANT TO MAKE SURE I'VE  
11 SEEN THAT.

12 WE HAVE ONE QUICK ISSUE ON TEKSLER, YOUR  
13 HONOR.

14 MR. MUELLER: GOOD MORNING, YOUR HONOR.  
15 JOE MUELLER.

16 FOR DEFENDANT'S CROSS EXHIBITS, ONE OF  
17 THEM IS DX 51/DX 586. IT'S THE SAME DOCUMENT. WE  
18 OBJECTED TO IT, YOUR HONOR, ON RULE 408 GROUNDS AND  
19 IN LAST NIGHT'S ORDER, YOU OVERRULED THAT.

20 THE BASIS FOR THE ORDER, AS I UNDERSTAND  
21 IT, IS THAT THE DOCUMENT, BECAUSE IT WAS STAMPED  
22 RULE 408, DOES NOT PER SE BECOME RULE 408  
23 PROTECTED, AND RESPECTIVELY, OUR POSITION IS NOT  
24 THAT THE MERE STAMPING OF THE DOCUMENT MAKES IT  
25 408.

1 THE COURT: ALL RIGHT. I'M CHARGING YOUR  
2 TIME, SO HANG ON.

3 MR. MUELLER: I'LL MAKE IT VERY BRIEF,  
4 YOUR HONOR.

5 THE COURT: IT'S 9:04. GO AHEAD.

6 MR. MUELLER: SURE. PAGES 12 THROUGH 18  
7 SPECIFICALLY CONTAIN TERMS OFFERED IN AN ATTEMPT TO  
8 COMPROMISE AND TO REACH A RESOLUTION.

9 SO WE WOULD RESPECTFULLY SUGGEST THAT  
10 THOSE PAGES ARE PROTECTED BY 408, AND TO THE EXTENT  
11 THAT SAMSUNG USES THE DOCUMENT, THOSE PARTICULAR  
12 PAGES, PAGES 12 THROUGH 18, SHOULD BE REDACTED.

13 THERE'S NO CONNECTION BETWEEN THOSE PAGES  
14 AND THE VALID PURPOSE THAT SAMSUNG HAS IN USING  
15 THOSE, NAMELY, NOTICE OF APPLE'S PATENTS.

16 SO WE WOULD REQUEST THAT THOSE PAGES BE  
17 REDACTED, YOUR HONOR.

18 MS. MAROULIS: YOUR HONOR --

19 THE COURT: SO THE ORDER WASN'T JUST  
20 BASED ON HOW IT WAS STAMPED. I MEAN, YOU'RE  
21 SEEKING TO -- IT SEEMS LIKE YOUR POSITION IS  
22 INCONSISTENT. YOU'RE SEEKING TO INTRODUCE SOME OF  
23 THE DOCUMENTS THAT WERE PART OF YOUR VARIOUS  
24 MEETINGS AND SAYING, "OH, BUT THIS ONE IS, YOU  
25 KNOW, PARTICULARLY JUST FOR THE PURPOSES OF

1 SETTLEMENT."

2 MR. MUELLER: RESPECTFULLY, WE'RE NOT,  
3 YOUR HONOR.

4 THE FIRST PRESENTATION CONTAINS NO TERMS  
5 TO RESOLVE THE DISPUTE.

6 THE SECOND PRESENTATION, WHICH IS  
7 PLAINTIFF'S EXHIBIT 51, DEFENDANT'S EXHIBIT 586,  
8 DOES CONTAIN TERMS, SO IT SQUARELY FALLS UNDER RULE  
9 408, AND IN PARTICULAR PAGES 12 THROUGH 18.

10 THE COURT: UNFORTUNATELY, I DON'T  
11 HAVE --

12 MR. MUELLER: I HAVE A COPY FOR YOUR  
13 HONOR.

14 YOUR HONOR, MAY I APPROACH?

15 THE COURT: YES, PLEASE. DO WE HAVE  
16 THE -- DID I GET THE BINDERS FOR THE WITNESSES  
17 TODAY? I JUST HAVE MR. PORET'S.

18 MR. MUELLER: AND, AGAIN, IT'S PAGES --

19 THE COURT: WHAT ARE THE PAGES THAT YOU  
20 ARE --

21 MR. MUELLER: 12 THROUGH 18, YOUR HONOR.  
22 WE -- WE'D WITHDRAW OUR OBJECTION AS TO THE  
23 REMAINDER.

24 THE COURT: SO 12 THROUGH 18 IS WHAT  
25 YOU'RE OBJECTING TO?

1 MR. MUELLER: CORRECT, YOUR HONOR. THOSE  
2 CONTAIN TERMS FOR RESOLUTION OF A DISPUTE, PLAINLY  
3 408 PROTECTED, AND IT HAS NOTHING TO DO WITH NOTICE  
4 OF APPLE'S PATENT CLAIMS, WHICH IS THE PURPOSE THAT  
5 SAMSUNG IDENTIFIED FOR USING THIS DOCUMENT.

6 THE COURT: ALL RIGHT. LET ME HEAR FROM  
7 SAMSUNG.

8 MS. MAROULIS: YES, YOUR HONOR.

9 THE PLAINTIFFS ARE TRYING TO REARGUE THE  
10 OBJECTION THAT YOU ALREADY OVERRULED. THIS  
11 DOCUMENT IS RELEVANT TO NOTICE, AND ALSO RELEVANT  
12 TO APPLE'S LICENSING PRACTICES WHICH WE UNDERSTAND  
13 TO BE THE SUBJECT OF MR. TEKSLER'S TESTIMONY FROM  
14 THE PROFFER.

15 IN PARTICULAR, PAGE 13 OF THIS EXHIBIT,  
16 THEY REFER TO THE DISTINCTIVE INDUSTRIAL DESIGNS,  
17 AND WE HAVE -- WE NEED TO HAVE AN OPPORTUNITY TO  
18 QUESTION THE WITNESS ABOUT WHAT NOTICE, IF ANY, WAS  
19 GIVEN AS TO DESIGN PATENTS, AND ALSO AS TO APPLE'S  
20 LICENSING POLICIES.

21 YOUR HONOR ALREADY RULED THAT THERE'S  
22 GOING TO BE A LIMITING INSTRUCTION THAT THIS CANNOT  
23 BE CONSIDERED FOR ANY DAMAGES AMOUNT AND SUCH.

24 SO WE BELIEVE THAT LIMITING INSTRUCTION  
25 IS SUFFICIENT AND IT WOULD BE INAPPROPRIATE TO

1 REDACT PORTIONS OF THE EXHIBIT SO THE JURY DOESN'T  
2 HAVE THE ENTIRE PRESENTATION.

3 MR. MUELLER: YOUR HONOR, LICENSING  
4 PRACTICES IS A SUBSTANTIVE ISSUE. THAT'S PRECISELY  
5 THE SORT OF ISSUE THAT RULE 408 PROHIBITS.

6 THE COURT: SHOW ME THE OTHER  
7 PRESENTATION, THE ONE THAT YOU'RE TRYING TO GET IN,  
8 BECAUSE IT LOOKS LIKE THE FIRST HALF OF THOSE TWO  
9 SEEM VIRTUALLY IDENTICAL.

10 MS. MAROULIS: YES, YOUR HONOR.

11 THEY'RE ACTUALLY PART OF THE SAME  
12 LICENSING NEGOTIATIONS, AND AS WE EXPLAINED IN OUR  
13 BRIEFS, THE LICENSING NEGOTIATIONS ARE OUTSIDE THE  
14 CONTEXT OF RULE 408 BECAUSE NO LITIGATION WAS HAD  
15 AT THE MOMENT. IT WAS AN ATTEMPT TO RESOLVE THE  
16 LITIGATION.

17 MR. MUELLER: MAY I APPROACH, YOUR HONOR?

18 THE COURT: GO AHEAD.

19 MR. MUELLER: THIS IS PLAINTIFF'S EXHIBIT  
20 52, AND I THINK YOU'LL SEE IN PLAINTIFF'S EXHIBIT  
21 52, THERE'S NO IDENTIFICATION OF ANY TERMS AT ALL.

22 SO IN THAT SENSE, IT'S THE SAME AS PAGES  
23 1 THROUGH 11 OF PLAINTIFF'S EXHIBIT 51.

24 AND THAT'S WHY OUR POSITION IS ENTIRELY  
25 CONSISTENT. THE FIRST IDENTIFICATION OF TERMS IS



1 ON PAGE 12 OF PLAINTIFF'S EXHIBIT 51. THOSE TERMS  
2 ARE PLAINLY PROTECTED BY RULE 408, AND I THINK THAT  
3 SAMSUNG'S COUNSEL, BY MENTIONING LICENSING  
4 PRACTICES, HAS DEMONSTRATED THAT THEY'RE  
5 INTRODUCING IT FOR A SUBSTANTIVE PURPOSE AND THAT'S  
6 WHAT 408 PROHIBITS.

7 THE COURT: ALL RIGHT. SO YOU HAVE NO  
8 OBJECTION TO PAGES 1 THROUGH 11. YOUR OBJECTION IS  
9 JUST TO 12, 13, 14, 15, 16, AND 17?

10 MR. MUELLER: AND 18, YOUR HONOR. ALL  
11 THOSE PAGES RELATE TO SPECIFIC TERMS FOR RESOLVING  
12 A DISPUTE WHICH, AGAIN, IS WHAT 408 PROHIBITS THE  
13 INTRODUCTION OF.

14 MS. MAROULIS: AND AGAIN, YOUR HONOR, IN  
15 OUR BRIEFS WE CITED THE CASE LAW THAT STATES THAT  
16 LICENSING DISCUSSIONS OUTSIDE THE CONTEXT OF  
17 LITIGATION ARE NOT COVERED BY RULE 408, AND THIS  
18 PRESENTATION IS NOT WITHIN THE GAMBIT OF RULE 408  
19 IN THE FIRST PLACE.

20 MR. MUELLER: YOUR HONOR, IF THE  
21 SUGGESTION IS THERE NEEDS TO BE AN ONGOING CASE FOR  
22 RULE 408 TO APPLY, THAT'S WRONG AS A MATTER OF LAW.

23 THE COURT: ALL RIGHT. WELL, LET ME --  
24 I'M INCLINED AT THIS POINT TO GRANT IT, BUT I WANT  
25 TO TAKE A LOOK AT WHAT -- TELL ME WHAT YOUR BEST

1 CASE IS ON EACH SIDE, ONE SAYING 408 DOES APPLY  
2 EVEN THOUGH THERE'S NO ACTUAL DISPUTE IN TERMS OF  
3 ONGOING LITIGATION, AND WHAT'S YOUR BEST CASE  
4 SAYING THAT IT DOES OR DOESN'T APPLY WHEN THERE'S  
5 NO LITIGATION PENDING.

6 MR. MUELLER: YOUR HONOR, YOUR HONOR. IF  
7 WE COULD SUBMIT A CASE ON THE NEXT BREAK BEFORE --  
8 MR. TEKSLER WON'T TESTIFY FOR SEVERAL HOURS AND WE  
9 CAN RESOLVE THIS AT LUNCH.

10 I WOULD NOTE THAT MAGISTRATE JUDGE  
11 GREWAL'S ORDER --

12 THE COURT: YOU JUST SAID IT'S WRONG AS A  
13 MATTER OF LAW AND YOU DON'T HAVE A CASE?

14 MR. MUELLER: I DON'T HAVE A CASE AT MY  
15 FINGERTIPS, BUT IT IS WRONG, YOUR HONOR.

16 THE COURT: YOU MUST HAVE A CASE IN  
17 YOUR BRIEF.

18 MR. MUELLER: THIS WASN'T RAISED, YOUR  
19 HONOR. THIS IS A NEW ARGUMENT THAT WAS JUST  
20 MENTIONED FOR THE FIRST TIMING.

21 BUT I WOULD NOTE THAT MAGISTRATE  
22 JUDGE GREWAL'S DECISION ON THE SPOILIATION MOTION  
23 EXPRESSLY FOUND THAT THERE WAS A DISPUTE AS OF  
24 AUGUST OF 2010, WHICH WAS PRECISELY WHEN WE SAID  
25 THERE WAS A DISPUTE.

1 THE COURT: I'M MORE INTERESTED IN  
2 WHETHER 408 APPLIES WHEN THERE'S NO LAWSUIT  
3 PENDING. SO GIVE ME A CASE.

4 MR. MUELLER: WE WILL, YOUR HONOR.

5 MS. MAROULIS: OUR CASE IS THE SANDISK  
6 CASE CITED IN OUR BRIEFS.

7 A COUPLE POINTS. ONE IS APPLE IS TAKING  
8 A POSITION BEFORE JUDGE GREWAL THAT THEY DID NOT  
9 HAVE AN OBLIGATION TO PRESERVE.

10 THE COURT: I UNDERSTAND.

11 MS. MAROULIS: ONE MORE POINT, AS YOUR  
12 HONOR POINTED OUT, IF WE INCLUDE PX 52, IN  
13 FAIRNESS, WE HAVE TO INCLUDE PX 51 BECAUSE THEY'RE  
14 VERY SIMILAR IN TERMS OF DISCUSSION.

15 THE COURT: ALL RIGHT. I'M GOING TO  
16 RETURN THESE TO YOU. I THINK, MR. MUELLER, THOSE  
17 ARE BOTH YOURS?

18 MR. MUELLER: YES, THANK YOU.

19 THE COURT: OKAY. IT'S NOW 9:11. THAT  
20 COST APPLE EIGHT MINUTES.

21 ALL RIGHT.

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

24 THE COURT: ALL RIGHT. WELCOME BACK.  
25 PLEASE TAKE A SEAT.

1 IS MR. PORET HERE?

2 HAL PORET,

3 BEING CALLED AS A WITNESS ON BEHALF OF THE  
4 PLAINTIFF, HAVING BEEN PREVIOUSLY DULY SWORN, WAS  
5 FURTHER EXAMINED AND TESTIFIED AS FOLLOWS:

6 THE COURT: ALL RIGHT. THE TIME IS NOW  
7 9:13.

8 AND MR. PORET, YOU ARE STILL UNDER OATH.

9 THE WITNESS: I UNDERSTAND.

10 THE COURT: GO AHEAD, PLEASE.

11 CROSS-EXAMINATION (RESUMED)

12 BY MR. PRICE:

13 Q GOOD MORNING, MR. PORET.

14 A GOOD MORNING.

15 Q WHEN WE LEFT, WE WERE TALKING ABOUT CONTROLS,  
16 AND JUST SO WE CAN UNDERSTAND, IF WE PUT UP PDX  
17 30.3, WHICH IS ONE OF YOUR DOCUMENTS HERE, YOU SEE  
18 THAT THE CONTROL IS SOMETHING YOU SUBTRACT FROM THE  
19 FIGURE YOU GET FOR ASSOCIATION. RIGHT?

20 A YES.

21 Q AND THE IDEA IS TO GET A CONTROL WHICH IS --  
22 WHICH DOESN'T HAVE THE SAME TRADE DRESS THAT'S  
23 ALLEGED BY APPLE, BUT WHICH OTHERWISE MIGHT BE  
24 SIMILAR; CORRECT?

25 A I THINK THAT'S GENERALLY FAIR TO SAY.

1 Q AND SO YOU CHOSE -- IF WE LOOK AT 3705.107,  
2 YOU CHOSE AS THE CONTROL, ONE OF THEM IS THE  
3 BLACKBERRY STORM; IS THAT RIGHT?

4 A YES.

5 Q AND BLACKBERRY HAS BEEN IN THE MARKET FOR  
6 QUITE A FEW YEARS?

7 A I BELIEVE SO.

8 Q IT'S -- DO YOU WATCH MANY MOVIES ON THE  
9 BLACKBERRY?

10 A DO I?

11 Q YEAH.

12 A NOT PERSONALLY.

13 Q YOU KIND OF UNDERSTAND THE BLACKBERRY IS KIND  
14 OF SEEN AS AN E-MAILING PHONE?

15 A I DON'T -- THERE ARE A VARIETY OF  
16 BLACKBERRIES. I THINK THIS ONE IS OBVIOUSLY A  
17 SMARTPHONE WITH A TOUCHSCREEN.

18 Q HOW IS IT DOING IN THE MARKET? BLACKBERRY,  
19 RIM, IS KIND OF OFF THE MARKET RIGHT NOW, ISN'T IT?

20 A I DON'T KNOW.

21 Q THEN HOW DID YOU SELECT THIS -- FIRST, DID YOU  
22 SELECT THIS PHONE OR DID SOMEONE GIVE IT TO YOU?

23 A I LOOKED AT A LOT OF PHONES. SOME OF THEM  
24 WERE ONES THAT I CAME ACROSS ON MY OWN AND SOME  
25 WERE ONES SHOWN TO ME BY APPLE, AND I'M NOT SURE

1 WHICH -- I'M NOT SURE EXACTLY HOW I CAME TO SEE  
2 THIS ONE.

3 Q OKAY. SO IT MAY HAVE BEEN SHOWN TO YOU BY  
4 APPLE, IT MAY NOT HAVE BEEN, YOU JUST DON'T  
5 REMEMBER; RIGHT?

6 A RIGHT.

7 Q IT'S NOT IN YOUR REPORT, IS IT, ONE WAY OR THE  
8 OTHER?

9 A NO.

10 Q THAT'S CORRECT, WHAT I SAID?

11 A YOU ARE CORRECT.

12 Q IF YOU LOOK AT 3705.108, YOU USED THIS SANYO,  
13 IS IT -- DO YOU REMEMBER THE NAME OF IT?

14 A ZIO.

15 Q ZIO, WHICH HAS THIS KIND OF A BART SIMPSON  
16 HEAD HERE IF WE LOOK AT THE TOP WITH THE SILVER AND  
17 IT'S GOT THIS THING ACROSS THE TOP.

18 DO YOU SEE THAT?

19 A I SEE THE PICTURE.

20 Q AND CERTAINLY YOU CAN TELL BY LOOKING AT THAT,  
21 EVEN WITH THAT BLURRED OUT, THAT'S NOT AN APPLE?

22 A THAT'S NOT FAIR TO SAY.

23 Q WELL, IN THE PHONES THAT YOU LOOKED AT, I'M  
24 GOING TO ASK YOU, DID YOU LOOK AT -- I'M GOING TO  
25 SHOW YOU WHAT'S BEEN MARKED AS EXHIBIT 2534 FOR

1 IDENTIFICATION.

2 IF I MAY APPROACH, YOUR HONOR?

3 THE COURT: PLEASE, GO AHEAD.

4 BY MR. PRICE:

5 Q AND THIS LOOKS LIKE A MOTOROLA PHONE. DID  
6 APPLE GIVE YOU THAT PHONE OR A PHONE LIKE THAT TO  
7 PERHAPS USE AS A CONTROL?

8 MR. JACOBS: OBJECTION, YOUR HONOR.  
9 THAT'S QUITE A VAGUE QUESTION.

10 THE COURT: SUSTAINED.

11 BY MR. PRICE:

12 Q DID APPLE GIVE YOU THAT PHONE, THAT MOTOROLA,  
13 TO USE AS A CONTROL? IS THAT ONE OF THE  
14 POSSIBILITIES?

15 A I DON'T KNOW. I DON'T REMEMBER. I LOOKED AT  
16 A LOT OF PHONES. I DON'T REMEMBER IF THIS WAS ONE  
17 OF THEM.

18 Q DO YOU SEE EXHIBIT 2534 IS A MOTOROLA  
19 SMARTPHONE?

20 A YES.

21 Q NOT A PHONE THAT'S ACCUSED OF INFRINGING  
22 APPLE'S TRADE DRESS AS FAR AS YOU KNOW; CORRECT?

23 A AS FAR AS I KNOW.

24 MR. PRICE: YOUR HONOR, I MOVE EXHIBIT  
25 2534 INTO EVIDENCE.

1 THE COURT: ANY OBJECTION?

2 MR. JACOBS: NO OBJECTION, YOUR HONOR.

3 THE COURT: ALL RIGHT. THAT'S ADMITTED.

4 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER  
5 2534, HAVING BEEN PREVIOUSLY MARKED FOR  
6 IDENTIFICATION, WAS ADMITTED INTO  
7 EVIDENCE.)

8 BY MR. PRICE:

9 Q AND I'M GOING TO SHOW YOU WHAT'S BEEN MARKED  
10 AS EXHIBIT 2528 FOR IDENTIFICATION, WHICH IS AN LG  
11 PHONE, MADE BY LG.

12 HERE WE HAVE THE LG PHONE.

13 LOOKING AT THAT, IS THAT A PHONE THAT  
14 APPLE SHOWED YOU TO USE AS A POSSIBLE CONTROL?

15 A AGAIN, I'M SORRY, I CAN'T REMEMBER. I LOOKED  
16 AT A LOT OF PHONES. I CAN'T REMEMBER IF THIS IS  
17 ONE OF THEM.

18 Q AND YOU CAN'T TELL FROM ANYTHING THAT YOU PUT  
19 IN WRITING WHAT PHONES YOU LOOKED AT; CORRECT?

20 A CORRECT.

21 Q AND WHAT YOU HAVE IN FRONT OF YOU APPEARS TO  
22 BE AN LG SMARTPHONE, T-MOBILE?

23 A YES, IT DOES.

24 MR. PRICE: MOVE 2528 INTO EVIDENCE, YOUR  
25 HONOR.



1 MR. JACOBS: YOUR HONOR, I THINK A  
2 LIMITING INSTRUCTION WOULD BE APPROPRIATE HERE.

3 THESE ARE BEING OFFERED TO CHALLENGE THE  
4 CONTROL THAT MR. PORET USED AND THEY SHOULD NOT BE  
5 USED FOR ANY OTHER PURPOSE.

6 MR. PRICE: WELL, I THINK THAT'S  
7 INAPPROPRIATE. IT CAN BE USED FOR OTHER PURPOSES  
8 AS WELL IF IT'S IN EVIDENCE.

9 I DON'T KNOW THE IMPROPER PURPOSE THAT  
10 COUNSEL IS TALKING ABOUT, BUT PERHAPS WE COULD TALK  
11 ABOUT THAT OFF --

12 THE COURT: WHY IS IT BEING OFFERED?

13 MR. PRICE: AT THIS POINT, IT'S BEING  
14 OFFERED TO SHOW THAT THERE WERE OTHER PHONES OUT  
15 THERE IN THE MARKET THAT WERE CLOSER LOOKING TO THE  
16 APPLE, WHICH COULD HAVE AND SHOULD HAVE BEEN USED  
17 FOR THIS STUDY IF IT WAS GOING TO BE A FAIR STUDY.

18 THE COURT: ALL RIGHT. ARE THESE PHONES  
19 GOING TO BE ADMITTED FOR ANY OTHER PURPOSE LATER IN  
20 THE CASE?

21 MR. PRICE: TO SHOW WHAT WAS IN THE  
22 MARKETPLACE.

23 THE COURT: ALL RIGHT.

24 MR. JACOBS: YOUR HONOR, THERE'S NO DATE,  
25 THERE'S NO INDICATION OF WHAT THESE PHONES, WHAT

1 THE SCREEN IS LIKE ON THEM. THERE'S NOTHING THAT  
2 WOULD SET A FULL FOUNDATION FOR THEIR BEING USED  
3 FOR OTHER PURPOSES.

4 THE COURT: ALL RIGHT. I'M GOING TO GIVE  
5 A LIMITING INSTRUCTION THAT THESE ARE TO BE  
6 CONSIDERED FOR THE PURPOSE OF EVALUATING HOW  
7 MR. PORET CHOSE HIS CONTROL DEVICES FOR THIS.

8 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER  
9 2528, HAVING BEEN PREVIOUSLY MARKED FOR  
10 IDENTIFICATION, WAS ADMITTED INTO  
11 EVIDENCE.)

12 THE COURT: GO AHEAD, PLEASE.

13 MR. PRICE: THANK YOU, YOUR HONOR. AND  
14 MAY I HAND THOSE OUT TO THE JURY?

15 THE COURT: YES.

16 BY MR. PRICE:

17 Q NOW, LET ME SWITCH TOPICS AND LOOK AT YOUR  
18 REPORT. I'D LIKE TO TALK ABOUT SOME OF THE THINGS  
19 YOU DID TO MAKE SURE THAT YOU WERE FOCUSING JUST  
20 ON THE TRADE DRESS ISSUES.

21 AND IF WE LOOK AT YOUR REPORT AT PAGE 5,  
22 PARAGRAPH 11 -- IF WE CAN PUT THAT UP, PLEASE?

23 DO YOU SEE YOU SAY THAT "IN A SECONDARY  
24 MEANING TRADE DRESS SURVEY, IT'S STANDARD PROCEDURE  
25 TO OBSCURE OR REMOVE ANYTHING ON THE PRODUCT THAT

1 MIGHT SERVE AS AN INDICATOR OF SOURCE APART FROM  
2 THE OVERALL TRADE DRESS."

3 THAT'S CORRECT? THAT IS, IN FACT, THE  
4 STANDARD PROCEDURE; CORRECT?

5 A YES.

6 Q AND "FOR EXAMPLE, BRAND NAMES, LOGOS OR OTHER  
7 FEATURES THAT MIGHT INDICATE THE SOURCE OF A  
8 PRODUCT ARE TYPICALLY OBSCURED OR REMOVED. THIS  
9 ALLOWS THE SURVEY TO MEASURE THE EXTENT TO WHICH  
10 THE TRADE DRESS SPECIFICALLY SERVES AS A SOURCE  
11 IDENTIFIER APART FROM OTHER MARKS THAT MIGHT, ON  
12 THEIR OWN, SIGNAL THE SOURCE OF THE PRODUCT TO  
13 RESPONDENTS."

14 THAT'S THE PURPOSE OF OBSCURING THESE  
15 SORTS OF THINGS; CORRECT?

16 A YES.

17 Q AND IF WE LOOK AT PAGE 6 AT PARAGRAPH 13 --  
18 PARAGRAPH 13 OF THE SAME EXHIBIT, PAGE 6 -- SAME  
19 EXHIBIT, 2544, PAGE 6, PARAGRAPH 13. THERE WE GO.

20 AND IF YOU CAN BLOW UP THE PHONE AND THE  
21 PARAGRAPH THAT WOULD ACTUALLY BE GREAT.

22 SO IT SAYS, "AS CAN BE SEEN FROM THE  
23 PRECEDING IMAGE, SEVERAL OTHER FEATURES OF THE  
24 IPHONE WERE ALSO REMOVED OR OBSCURED TO SAFEGUARD  
25 AGAINST THE POSSIBILITY THAT THOSE FEATURES COULD

1 THEMSELVES SERVE AS SOURCE INDICATORS."

2 RIGHT?

3 A YES.

4 Q AND THAT'S, AGAIN, THE NATURE THAT YOU'RE  
5 FOCUSSED ON THE ISSUE THAT YOU'RE TESTIFYING  
6 ABOUT, WHICH IS SECONDARY MEANING; CORRECT?

7 A YES.

8 Q AND YOU'VE ALREADY DISCUSSED IN YOUR REPORT  
9 HOW THE ICONS WERE BLURRED BECAUSE, FOR EXAMPLE, IF  
10 YOU SEE ITUNES ON SOMETHING, CLEARLY PEOPLE ARE  
11 GOING TO THINK APPLE; RIGHT?

12 A THAT WAS THE REASON FOR DOING THAT, YES.

13 Q AND THEN YOU MENTION THAT THE INDENTED BUTTON  
14 AT THE BOTTOM CENTER OF THE PHONE, WHICH  
15 RESPONDENTS MIGHT ASSOCIATE WITH APPLE, WAS COVERED  
16 WITH A LABEL. RIGHT?

17 A YES.

18 Q AND THAT'S WHY YOU HAVE ITEM C HERE ON THE  
19 BUTTON, BECAUSE THAT COVERS THE HOME BUTTON, AND  
20 YOUR UNDERSTANDING IS APPLE'S NOT SAYING THE HOME  
21 BUTTON IS PART OF THE TRADE DRESS; RIGHT?

22 A RIGHT, THAT'S RIGHT.

23 Q AND SO YOU DON'T WANT SOMETHING THAT'S NOT  
24 PART OF THE TRADE DRESS INDICATING TO SOMEONE, OH,  
25 THIS IS AN APPLE BECAUSE THAT WOULD DISTORT YOUR

1 RESULTS?

2 A YES, I THINK THAT'S BASICALLY ACCURATE.

3 Q AND FOR THE SAME REASON, YOU WOULD OBSCURE  
4 SOMETHING THAT SAID AT&T BECAUSE THAT'S WHERE  
5 ONLY -- THE ONLY CARRIER WHERE APPLE SOLD ITS  
6 PHONES AT THE TIME; RIGHT?

7 A YEAH. I DON'T KNOW THAT THAT WAS NECESSARY  
8 SINCE AT&T HAS OTHER PHONES, BUT IN THEORY, IT'S  
9 POSSIBLE THAT SOMEBODY COULD SEE AT&T AND THINK  
10 APPLE, SO I DID IT JUST TO BE SAFE.

11 Q AND SO THE -- THE PHONES YOU USED IN THIS  
12 SURVEY WERE BLURRED AND THE HOME BUTTON WAS  
13 COVERED; RIGHT?

14 A YES.

15 Q AND BY THE WAY, IF THE HOME BUTTON'S -- NOT  
16 JUST ON YOUR TEST, BUT ON YOUR CONTROL PHONES, YOU  
17 ALSO PUT A STICKER THAT WOULD HIDE IF THERE HAD  
18 BEEN A HOME BUTTON THERE; RIGHT?

19 A YES.

20 Q EVEN IF THERE WASN'T A HOME BUTTON THERE;  
21 RIGHT?

22 A YES.

23 Q AND THAT'S BECAUSE THE ABSENCE OF THE HOME  
24 BUTTON MIGHT SUGGEST IT'S NOT AN APPLE; RIGHT?

25 A THAT MAY BE ONE WAY OF PUTTING IT. IT WAS

1 JUST TO KEEP CONSISTENCY BETWEEN THE TEST AND  
2 CONTROL IMAGES.

3 Q AND YOU DON'T WANT THE LACK OF A HOME BUTTON  
4 INDICATING SOMETHING IS NOT AN APPLE FOR A CONTROL  
5 BECAUSE THAT WILL REDUCE, MIGHT REDUCE THAT NUMBER  
6 YOU'RE SUBTRACTING FROM THE ASSOCIATION NUMBER;  
7 RIGHT?

8 A I THINK THAT GENERALLY SOUNDS RIGHT.

9 Q SO NOW LET'S SWITCH TO YOUR STUDY ABOUT THE  
10 TABLET, THE IPAD.

11 AND YOU USED A COUPLE OF PICTURES FOR THE  
12 APPLE IPAD. IF WE CAN LOOK AT 2544 AT PAGE 22.

13 SO IN YOUR STUDY -- I MIGHT HAVE THE  
14 WRONG ONE HERE. IS THAT 22, PAGE 22? 2544, PAGE  
15 22. GOING ONCE -- THAT'S PAGE 19. I CAN TELL  
16 BECAUSE IT SAYS 19.

17 OKAY. HERE WE GO.

18 SO WHAT YOU DID FOR THE APPLE PRODUCT IS  
19 YOU, AGAIN, YOU BLURRED OUT THE ICONS AND YOU PUT  
20 THAT STICKER OVER THE HOME BUTTON; RIGHT?

21 A YES, FOR THIS GROUP.

22 Q AND NEXT PAGE, IF WE CAN GET TO IT, IT SAYS  
23 THE SAME THING. IT DOES THE SAME THING. YOU USED  
24 TWO OF THESE; RIGHT? AGAIN, IT'S COVERED; RIGHT?

25 A SO YOU'RE ASKING IF THE HOME BUTTON IS

1 COVERED?

2 Q YES.

3 A YES, FOR THIS GROUP IT WAS ALSO COVERED.

4 Q AND THEN WE HAVE THE CONTROL, AND FOR THE  
5 CONTROL, IF WE LOOK AT EXHIBIT -- LET'S GO TO --  
6 AND TO REMIND THE JURORS, WE'LL GO TO 30.5, SDX  
7 30.5 TO SHOW WHAT WE'RE DOING HERE. IT SHOULD BE  
8 SD -- THERE WE GO.

9 WE'RE NOW IN THIS STUDY AND WE'RE TALKING  
10 ABOUT THE FIRST STUDY YOU DID OF THE IPAD, OKAY,  
11 BECAUSE YOU DID TWO; RIGHT?

12 A THERE WERE MULTIPLE PARTS OF IT. I CONSIDERED  
13 IT ALL PART OF THE SAME SURVEY, BUT YES, THERE WERE  
14 MULTIPLE PARTS OF IT.

15 Q I WANT TO REMEMBER THAT, THAT IT'S ALL PART OF  
16 THE SAME SURVEY. THAT'S WHAT YOU'RE SAYING TO THE  
17 JURY. RIGHT?

18 A YES.

19 Q SO YOU DO AN ASSOCIATION WITH THE IPAD, AND  
20 YOU SUBTRACT THE CONTROL, SO AGAIN, YOU'VE GOT TO  
21 SEE IF THE CONTROL HAS INDICATORS THAT MIGHT SCREAM  
22 "NOT APPLE" THAT MIGHT DISTORT THE RESULTS,  
23 CORRECT, BECAUSE YOU'RE SUBTRACTING THAT?

24 A THAT'S NOT REALLY HOW I WOULD PUT IT, BUT I --  
25 I MEAN, YOU GENERALLY HAVE THE GIST RIGHT, THAT,

1 YES, I WOULD NOT WANT THE CONTROL TO BE SCREAMING  
2 "NOT APPLE."

3 Q OKAY. I'M GLAD I'M NOT TOTALLY WRONG THIS  
4 TIME.

5 SO IF WE LOOK AT THAT CONTROL, YOU SEE  
6 YOU USED THIS -- AND WE CAN GET IT BIGGER, I THINK,  
7 AT 2544, PAGE 32.

8 THIS IS THE CONTROL FROM YOUR REPORT?

9 A YES. THIS WAS A CONTROL FOR THE HEAD-ON VIEWS  
10 OF THE IPAD THAT WE SHOWED.

11 Q SO LET ME ASK YOU, DO YOU KNOW OF ANY TABLETS  
12 THAT ONLY HAVE THREE ICONS ACROSS? I MEAN, THIS --

13 A I DON'T -- I CAN'T SPEAK FOR HOW MANY ICONS  
14 ALL THE TABLETS HAVE. LIKE I WAS TALKING ABOUT  
15 BEFORE, I THINK MOST OF THESE TABLETS CAN HAVE, YOU  
16 KNOW, ANY NUMBER OF ICONS DEPENDING ON WHAT PEOPLE  
17 PUT ON THEM.

18 Q I MEAN, EVEN THE SMALL IPHONE HAS FOUR ACROSS;  
19 RIGHT?

20 A I DON'T KNOW HOW MANY ICONS. IT VARIES  
21 DEPENDING ON WHAT PEOPLE HAVE ON THEM.

22 Q WELL, SO YOU'RE AWARE OF A TABLET THAT, THAT  
23 HAS ONLY THREE ICONS INSTEAD OF FOUR?

24 A I'M NOT SAYING THAT. I'M JUST SAYING I THINK  
25 THE NUMBER OF TABLETS VARIES -- THE NUMBER OF ICONS



1 CAN VARY FOR EACH INDIVIDUAL USER DEPENDING ON HOW  
2 MANY THEY HAVE ON A SCREEN OR WHAT SCREEN THEY'RE  
3 LOOKING AT.

4 Q WELL, HAVING THREE HERE SCREAMS "NOT APPLE"?

5 A NO.

6 Q BUT THIS ISN'T ACTUALLY ICONS ON A REAL  
7 SCREEN, THIS IS SOMETHING DONE WITH CGI OR -- I  
8 MEAN, YOU KIND OF CREATED THIS LOOKING SCREEN ON  
9 YOUR COMPUTER; RIGHT?

10 A I DIDN'T PERSONALLY, BUT THE CONTROL WAS  
11 CREATED TO APPEAR TO BE A TABLET WITH A FIELD OF  
12 ICONS.

13 Q NOW, WHEN YOU TALKED TO THE JURY AND SHOWED  
14 THEM 30.5, EXHIBIT 30.5 -- IF WE CAN SHOW THAT  
15 AGAIN -- DO YOU SEE THIS HERE, WHAT YOU SHOWED THE  
16 JURY HAS THE STICKER WHERE A HOME BUTTON WOULD BE?

17 A YES.

18 Q BUT IN YOUR REPORT THAT YOU WERE JUST LOOKING  
19 AT, WHICH IS 2544, PAGE 32, IN YOUR REPORT, THAT  
20 STICKER IS UP ON THE SCREEN, AND SO THE PERSON  
21 COULD SEE THAT THERE IS NO HOME BUTTON AND,  
22 THEREFORE, KNOW IT'S NOT AN APPLE?

23 A NO, THAT -- THAT'S NOT RIGHT. MAYBE THIS  
24 IMAGE GOT MESSED UP SOMEHOW. BUT THE STICKER WAS  
25 OVER THE BLACK PART.

1 Q THIS IS THE IMAGE THAT IS IN YOUR REPORT;  
2 CORRECT?

3 A I -- I DON'T KNOW. I MEAN, I'M -- I'M SEEING  
4 THIS UP HERE NOW. I'M PRETTY SURE THAT THE ACTUAL  
5 DIGITAL IMAGES WERE, WERE PROVIDED AS THE EXHIBITS  
6 TO THE REPORT. THIS WAS SOMETHING THAT WAS SHOWN  
7 IN THE BODY AND PERHAPS SOMETHING GOT MESSED UP IN  
8 PASTING THAT EXHIBIT INTO THE BODY.

9 BUT I KNOW THAT'S NOT WHAT WAS SHOWN.

10 Q WELL, ON PAGE -- I'M SORRY. ON PAGE 31, JUST  
11 THE PAGE BEFORE THIS, YOU'VE GOT PARAGRAPH 4. YOU  
12 SAY "THE CONTROL IMAGES ARE SHOWN ON THE FOLLOWING  
13 PAGES," AND THAT'S ON THE VERY NEXT PAGE; RIGHT?

14 A YES.

15 Q AND YOUR RESULTS, WHICH WE'VE SEEN AT 30.5  
16 AGAIN OF THE STUDY THAT YOU DID THAT IS -- YOU  
17 ENDED UP WITH A 40.3 USING THIS CONTROL; CORRECT?

18 A YES.

19 Q AND YOU -- YOU'VE GRADUATED FROM LAW SCHOOL;  
20 RIGHT?

21 A YES.

22 Q AND YOU HAVE AN UNDERSTANDING THAT FOR  
23 SECONDARY MEANING, THERE'S KIND OF A, A THRESHOLD  
24 THAT IS ABOUT 50 PERCENT? THAT'S THE NUMBER YOU  
25 WANT TO GET ABOVE?

1 A NO.

2 Q WELL, WHEN YOU DID THIS AND GOT THE 40.3  
3 PERCENT NUMBER, YOU THOUGHT THAT YOUR JOB WAS OVER  
4 AND YOU ACTUALLY STARTED WRITING THE REPORT?

5 A I -- I THINK THAT'S CORRECT, THAT AT THAT  
6 POINT I, I THOUGHT THAT THAT WAS GOING TO BE THE  
7 END OF THE RESEARCH.

8 Q AND THEN APPLE CAME TO YOU AND SAID, "WE NEED  
9 YOU TO DO ANOTHER STUDY."

10 A NO, THAT'S NOT -- THAT'S NOT EXACTLY ACCURATE.

11 Q YOU DID ANOTHER STUDY BECAUSE APPLE CAME TO  
12 YOU AND ASKED YOU TO DO ANOTHER STUDY; CORRECT?

13 A I CERTAINLY DID MORE ASPECTS OF THE SURVEY AT  
14 APPLE'S REQUEST.

15 Q OKAY. SO THE ANSWER IS CORRECT, AT APPLE'S  
16 REQUEST, YOU DID MORE WORK AFTER SHOWING THEM THE  
17 RESULTS OF THIS STUDY; CORRECT?

18 A YES.

19 Q AND LET'S TALK ABOUT THAT STUDY THEN.

20 SO ON YOUR NEXT GO-ROUND -- LET'S LOOK AT  
21 EXHIBIT 2544-24. IF YOU CAN BLOW UP THE TOP HERE.

22 NOW, THIS ISN'T THE CLEAREST BLOW UP, BUT  
23 ON YOUR NEXT STUDY, YOU DIDN'T PUT A STICKER OVER  
24 THAT HOME BUTTON AS YOU PREVIOUSLY SAID WAS  
25 NECESSARY TO GET A FAIR STUDY AND MAKE SURE THAT

1 YOU WERE LOOKING JUST AT THE TRADE DRESS?

2 A I DON'T AGREE WITH HOW YOU JUST CHARACTERIZED  
3 THAT, BUT YOU'RE CORRECT THAT THERE WAS NO LABEL  
4 OVER THE BUTTON IN THIS PART OF IT.

5 Q AND ALSO, IF WE LOOK AT THE NEXT PAGE, WHICH  
6 IS 25, ANOTHER PART OF THE STUDY, AND AGAIN, THIS  
7 ISN'T THE CLEAREST VIEW, BUT YOU SEE NOT -- THE  
8 HOME BUTTON IS NOT COVERED; RIGHT?

9 A RIGHT.

10 Q AND THE ICONS ARE NOT BLURRED, EITHER, WHEREAS  
11 PREVIOUSLY IN YOUR REPORT, YOU SAID THAT WAS  
12 NECESSARY TO MAKE SURE YOU WERE GETTING A RESPONSE  
13 THAT WAS MEANINGFUL TO TRADE DRESS. RIGHT?

14 A YOU'RE CORRECT THAT THAT'S WHAT'S SHOWN HERE.

15 I DON'T THINK YOU'RE CORRECT THAT AT THIS  
16 POINT IT WAS NECESSARY TO DO THOSE THINGS GIVEN  
17 THAT I HAD ALREADY DONE THEM AND HAD ALREADY SEEN  
18 THAT THERE WAS SECONDARY MEANING EVEN WITH THOSE  
19 THINGS COVERED.

20 Q WITH THE 40 PERCENT FIGURE THAT YOU GOT?

21 A IT'S NOT JUST THE 40 PERCENT FIGURE THAT'S  
22 RELEVANT. THE 57 PERCENT FIGURE IS THE PRIMARY  
23 FIGURE AS WELL.

24 Q SO BASICALLY FOR THIS SECOND STUDY THAT APPLE  
25 ASKED YOU TO DO AFTER GETTING THE 40 PERCENT

1 RESULT, YOU STACKED THE DECK ACCORDING TO WHAT YOU  
2 SAID, IN YOUR REPORT, WAS THE STANDARD PROCEDURE  
3 FOR DOING SUCH STUDIES?

4 A NO.

5 Q WELL, IN FACT, YOU GOT COMMENTS FROM  
6 PARTICIPANTS LIKE "THE BOTTOM BUTTON AT THE BOTTOM  
7 IS A DEAD GIVE AWAY THAT THIS IS AN APPLE."

8 A I DO RECALL THERE WERE SOME RESPONDENTS WHO  
9 MENTIONED THE HOME BUTTON AS ONE OF THE THINGS THEY  
10 RECOGNIZED. I THINK IT WAS A PRETTY SMALL NUMBER,  
11 BUT THERE WERE DEFINITELY SOME.

12 Q AND THEN AS THE CONTROL -- IF WE CAN PUT UP  
13 2544-33 -- YOU USED A NOOK, AN E-READER; RIGHT?

14 A IT'S -- IT'S A TABLET.

15 Q AND WITH THE NOOK, YOU SHOWED THE "N" HERE  
16 THAT IDENTIFIES IT AS A NOOK TO PEOPLE WHO KNOW  
17 NOOKS?

18 A NO, THAT'S NOT TRUE.

19 Q ISN'T THAT WHAT THAT IS RIGHT THERE?

20 A WELL, I DON'T KNOW EXACTLY WHAT THAT IS, BUT I  
21 KNOW THAT BARELY ANYBODY -- ONLY A VERY SMALL  
22 NUMBER OF PEOPLE IN THE SURVEY SAID THAT THEY  
23 THOUGHT THIS WAS A NOOK. SO IT CLEARLY DID NOT  
24 GIVE AWAY THAT IT WAS A NOOK TO MOST PEOPLE.

25 Q IT DID GIVE AWAY THAT IT WASN'T AN APPLE?

1 A NO. A LOT MORE PEOPLE SAID IT WAS AN APPLE.

2 Q WELL, BUT NOT MANY. YOU KIND OF MADE SURE OF  
3 THAT.

4 A NO. YOU'RE JUST WRONG. 10 PERCENT, I  
5 BELIEVE, I THINK THAT WAS THE NUMBER, I THINK 10  
6 PERCENT SAID THAT THIS WAS AN APPLE, AND IT WAS A  
7 LOT LESS THAN THAT THAT SAID ANYTHING ABOUT A NOOK,  
8 SO THAT'S JUST NOT TRUE.

9 Q SO ONLY 10 PERCENT SAID THAT IT WAS AN APPLE,  
10 AND THAT COULDN'T BE, OF COURSE, BECAUSE APPLE  
11 DOESN'T HAVE A HOME BUTTON LIKE THAT?

12 A CERTAINLY IT'S POSSIBLE THAT ONE -- THAT  
13 THAT'S ONE OF THE REASONS THAT PEOPLE DIDN'T THINK  
14 THIS WAS AN APPLE.

15 Q AND THEN IF WE CAN LOOK AT 34, 2544-34, WE'VE  
16 GOT -- YOU SHOWED THEM ALSO A VERSION OF THIS THAT  
17 HAS THAT NOOK BUTTON AND THEN HAS UNBLURRED ICONS;  
18 RIGHT?

19 A YES, JUST ONE GROUP.

20 Q AND THESE DON'T LOOK ANYTHING LIKE APPLE'S?  
21 AGAIN, IT SCREAMS "I'M NOT AN APPLE"?

22 A AGAIN, THAT'S NOT WHAT THE SURVEY RESULTS  
23 SHOW.

24 Q BECAUSE YOU THINK 10 PERCENT IS A BIG NUMBER?

25 A I'M NOT SAYING IT'S A BIG NUMBER, BUT 10

1 PERCENT OF PEOPLE SAYING THEY THINK SOMETHING IS AN  
2 APPLE CERTAINLY SHOWS THAT IT WAS A POSSIBILITY  
3 THAT PEOPLE WHO WERE GUESSING MIGHT GUESS THAT THIS  
4 IS AN APPLE.

5 Q AND IT'S A LOT CLEARER IN THE ACTUAL, WHAT YOU  
6 SHOWED THEM, BUT UP HERE ALSO IT HAS THIS THING  
7 THAT SAYS "APPS" AND IT SAYS "ARCHIVE." IS THAT  
8 CORRECT?

9 A YES.

10 Q AND TELL ME STEVE JOBS WOULDN'T HAVE FIRED  
11 SOMEBODY THAT HAD PUT "ARCHIVE" UP THERE ON A HOME  
12 SCREEN?

13 A I COULDN'T SPEAK TO THAT.

14 Q AND THEN THERE ARE OTHER ALTERNATIVES YOU  
15 COULD HAVE USED. FOR EXAMPLE, LET ME SHOW YOU  
16 EXHIBIT 2529 FOR IDENTIFICATION.

17 THIS IS A MOTOROLA TABLET.

18 DO YOU RECOGNIZE THAT AS A MOTOROLA  
19 TABLET?

20 I'M SORRY. DO YOU WANT TO SEE IT?

21 THE WITNESS: YES.

22 MR. PRICE: AND I FORGOT TO SHOW IT TO  
23 MR. JACOBS. LET ME DO THAT.

24 (DISCUSSION OFF THE RECORD BETWEEN  
25 COUNSEL.)

1 MR. PRICE: SINCE THE WITNESS RECOGNIZES  
2 THIS AS A MOTOROLA, I'LL MOVE IT INTO EVIDENCE FOR  
3 THE PURPOSE OF CHALLENGING HIS METHODOLOGY.

4 MR. JACOBS: SO, YOUR HONOR, THIS WAS  
5 ACTUALLY DISCLOSED TO US AS A DEMONSTRATIVE, ALONG  
6 WITH 2528 AND 2534. I WAS A LITTLE SLOW ON THE  
7 UPTAKE WHEN THEY WERE PRESENTED, BUT THEY ARE NOT  
8 ON THE EXHIBIT LIST FOR ADMISSION AS EXHIBITS.

9 THE COURT: ARE THEY ON YOUR --

10 MR. PRICE: THEY ARE ON THE EXHIBIT LIST  
11 FOR THE CASE.

12 WHAT WE GAVE THEM FOR THE WITNESS, I  
13 THINK WE DID LIST THEM AS DEMONSTRATIVES BECAUSE I  
14 DIDN'T KNOW IF HE WOULD BE ABLE TO SAY, "YES, I SEE  
15 THIS IS A MOTOROLA TABLET," AND NOW THAT THEY'RE  
16 GOING IN FOR THAT LIMITED PURPOSE, I'D ASK THAT  
17 THAT BE ADMITTED. THERE'S NO PREJUDICE TO  
18 DEMONSTRATIVES GOING INTO EVIDENCE.

19 MR. JACOBS: I THINK THERE IS, YOUR  
20 HONOR. IF IT HAD BEEN DISCLOSED TO US AS AN  
21 EXHIBIT, IT MIGHT HAVE CHANGED THE WAY WE  
22 APPROACHED OBJECTIONS.

23 MR. PRICE: MR. JACOBS CAN'T SAY --

24 THE COURT: WAS IT TIMELY ON THE EXHIBIT  
25 LIST?



1 MR. PRICE: OH, YES.

2 THE COURT: ALL RIGHT. THAT'S GOING TO  
3 BE ADMITTED WITH A LIMITING INSTRUCTION THAT THIS  
4 IS SOLELY FOR PURPOSES OF CHALLENGING MR. PORET'S  
5 STUDY.

6 CORRECT?

7 MR. PRICE: YES.

8 THE COURT: OKAY. IT'S ADMITTED.

9 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER  
10 2529, HAVING BEEN PREVIOUSLY MARKED FOR  
11 IDENTIFICATION, WAS ADMITTED INTO  
12 EVIDENCE.)

13 BY MR. PRICE:

14 Q AND LET ME SHOW YOU 2538 FOR IDENTIFICATION.

15 THIS IS AN LG TABLET. DO YOU SEE THIS IS  
16 AN LG TABLET AS WELL?

17 A YES, IT IS.

18 Q AND THEN IF WE CAN GO BACK TO 30.5.

19 AND SO GIVEN WHAT WE JUST WENT THROUGH AS  
20 TO HOW YOU CHANGED YOUR PROCEDURES, CONTRARY TO THE  
21 WAY YOU SAID A SURVEY SHOULD BE DONE IN THIS CASE,  
22 YOU EXPECT THE JURY TO ACCEPT THESE NUMBERS IN  
23 DECIDING A CASE WHERE APPLE IS ASKING FOR ABOUT  
24 \$2.7 BILLION?

25 A WELL, YOU JUST SAID A LOT OF THINGS THERE.

1 IT'S NOT TRUE THAT I CHANGED MY  
2 PROCEDURES. I EXPLAINED WHAT HAPPENED, THAT I HAD  
3 ALREADY DONE A SURVEY THAT HAD ESTABLISHED  
4 SECONDARY MEANING WITHOUT THE HOME BUTTON VISIBLE  
5 OR THE ICONS VISIBLE, AND SO IT WAS OF INTEREST TO  
6 SURVEY IT FROM ANOTHER VIEW.

7 SO THAT'S NOT A FAIR WAY TO PUT IT.

8 AND, YOU KNOW, TO ANSWER YOUR SECOND  
9 QUESTION, YES, THOSE WERE GOOD CONTROLS AND THEY  
10 SHOWED THAT THOSE MUCH LARGER NUMBERS ARE NOT  
11 GUESSING OR THE PRODUCT OF ANY PROBLEM WITH THE  
12 SURVEY.

13 SO I THINK THEY CLEARLY WOULD BE ACCEPTED  
14 AS SHOWING SECONDARY MEANING.

15 MR. PRICE: YOUR HONOR, IF I MAY APPROACH  
16 AND PASS TO THE JURY THE TABLETS?

17 THE COURT: THAT'S FINE. GO AHEAD,  
18 PLEASE.

19 MR. PRICE: NO FURTHER QUESTIONS.

20 THE COURT: ALL RIGHT. THE TIME IS NOW  
21 9:38.

22 GO AHEAD, PLEASE, WITH ANY REDIRECT.

23 **REDIRECT EXAMINATION**

24 BY MR. JACOBS:

25 Q CAN I HAVE THE ELMO, PLEASE.

1                   ACTUALLY, MR. PORET, CAN YOU TURN -- DO  
2 YOU HAVE YOUR FULL REPORT IN FRONT OF YOU?

3           A        YES.

4           Q        CAN YOU TURN TO PAGE 245 WHERE YOU HAVE THE,  
5 THE QUESTIONS THAT YOU'RE PRESENTING TO THE SURVEY  
6 TAKERS.

7           A        YES. 282 -- OH, YES, OKAY.

8           Q        NOPE, GO BACK. I'M SORRY. I'M WRONG.

9                   MAY I HAVE THE ELMO?

10                   DOES THIS SHOW THE STICKER ON THE CONTROL  
11 IN THE PLACE THAT YOU INDICATED IT WAS, MR. PORET?

12           A        YES. THIS IS THE ACTUAL SCREEN SHOT FROM HOW  
13 THE SURVEY SCREEN APPEARED TO PEOPLE ON THEIR  
14 COMPUTERS.

15           Q        AND THE "ITEM H" IS LOCATED WHERE ON THIS  
16 CONTROL?

17           A        IT'S OVER WHERE THE HOME BUTTON WOULD HAVE  
18 BEEN.

19                   MR. JACOBS: THANK YOU. NO FURTHER  
20 QUESTIONS, YOUR HONOR.

21                   THE COURT: ALL RIGHT. IT'S 9:41.

22                   MAY THIS --

23                   MR. PRICE: NO FURTHER QUESTIONS.

24                   THE COURT: ALL RIGHT. MAY THIS WITNESS  
25 BE EXCUSED AND IS IT SUBJECT TO RECALL OR NOT?

1 MR. PRICE: HE CAN BE EXCUSED.

2 THE COURT: ALL RIGHT. YOU ARE EXCUSED.

3 MR. JACOBS: SUBJECT TO RECALL, YOUR  
4 HONOR.

5 THE COURT: OH, YOU ARE EXCUSED SUBJECT  
6 TO RECALL. YOU'RE FREE TO LEAVE, SIR.

7 THE WITNESS: THANK YOU, YOUR HONOR.

8 THE COURT: ALL RIGHT. PLEASE CALL YOUR  
9 NEXT WITNESS.

10 MR. JACOBS: YOUR HONOR, APPLE CALLS  
11 KENT VAN LIERE.

12 THE COURT: OKAY.

13 THE CLERK: WOULD YOU RAISE YOUR RIGHT  
14 HAND, PLEASE. REMAIN STANDING.

15 **KENT VAN LIERE,**  
16 BEING CALLED AS A WITNESS ON BEHALF OF THE  
17 PLAINTIFF, HAVING BEEN FIRST DULY SWORN, WAS  
18 EXAMINED AND TESTIFIED AS FOLLOWS:

19 THE WITNESS: I DO.

20 THE CLERK: WOULD YOU HAVE A SEAT,  
21 PLEASE.

22 THE COURT: ALL RIGHT. THE TIME IS 9:42.  
23 GO AHEAD, PLEASE.

24 MR. JACOBS: THANK YOU, YOUR HONOR.

25 THE CLERK: EXCUSE ME. WE NEED TO GET

1 HIS NAME AND THE SPELLING.

2 IF YOU COULD STATE YOUR NAME, PLEASE, AND  
3 SPELL IT.

4 THE WITNESS: MY NAME IS KENT VAN LIERE,  
5 THE LAST NAME IS V-A-N L-I-E-R-E. IT'S TWO WORDS.

6 THE CLERK: THANK YOU.

7 **DIRECT EXAMINATION**

8 BY MR. JACOBS:

9 Q SIR, CAN YOU TELL THE JURY WHAT YOU DO?

10 A YES. I'M A VICE-PRESIDENT WITH NERA ECONOMIC  
11 CONSULTING.

12 I HAVE A PH.D. IN SOCIOLOGY FROM  
13 WASHINGTON STATE UNIVERSITY.

14 I STARTED MY CAREER TEACHING AT THE  
15 UNIVERSITY OF TENNESSEE. I SPENT MANY YEARS AS A  
16 PRESIDENT AND A PARTNER IN A MARKET RESEARCH FIRM,  
17 AND NOW FOR THE LAST SIX YEARS, I'VE BEEN DOING  
18 EXPERT WORK WITH NERA, PRIMARILY IN LITIGATION.

19 Q IS ONE OF YOUR FIELDS OF EXPERTISE SURVEY  
20 RESEARCH?

21 A YES.

22 Q CAN YOU DESCRIBE THAT BACKGROUND BRIEFLY FOR  
23 THE JURY, PLEASE?

24 A YES. MY TRAINING WAS IN SURVEY RESEARCH AND  
25 STATISTICS, ALONG WITH OTHER THINGS, AND I'VE SPENT

1 THE BETTER PART OF THE LAST 30 YEARS DOING SURVEY  
2 RESEARCH IN A VARIETY OF CONTEXTS, BOTH AS A  
3 PROFESSOR, AS THE HEAD OF A MARKET RESEARCH FIRM,  
4 AND NOW MOST RECENTLY IN LITIGATION.

5 MR. JACOBS: YOUR HONOR, WE OFFER  
6 DR. VAN LIERE AS AN EXPERT QUALIFIED TO TESTIFY  
7 ABOUT SURVEY RESEARCH AND CONSUMER --

8 THE COURT: ANY OBJECTION?

9 MR. PRICE: NO OBJECTION.

10 THE COURT: ALL RIGHT. SO CERTIFIED.

11 GO AHEAD, PLEASE.

12 BY MR. JACOBS:

13 Q NOW, WHAT SURVEYS DID WE ASK YOU TO CONDUCT,  
14 DR. VAN LIERE?

15 A YES. I WAS ASKED TO CONDUCT TWO SURVEYS FOR  
16 THIS MATTER, ONE SURVEY TO MEASURE THE EXTENT TO  
17 WHICH CONSUMERS ASSOCIATE THE LOOK AND THE DESIGN  
18 OF SAMSUNG GALAXY PHONES WITH IPHONE; AND ONE  
19 SURVEY TO MEASURE THE EXTENT TO WHICH CONSUMERS WHO  
20 VIEW THE SAMSUNG GALAXY TABLETS IN A POST-SALE  
21 ENVIRONMENT ARE CONFUSED AND BELIEVE THAT THEY ARE  
22 SEEING AN IPAD OR APPLE PRODUCT.

23 Q HOW DID YOU CONDUCT THE SURVEYS?

24 A THE ASSOCIATION STUDY WAS CONDUCTED AS A  
25 WEB-BASED SURVEY AND THE, THE CONFUSION STUDY WAS

1 CONDUCTED AS A MALL INTERCEPT SURVEY.

2 Q ALL RIGHT. WE'LL EXPLAIN THAT BRIEFLY IN A  
3 MINUTE.

4 LET'S TAKE A LOOK AT EXHIBIT 24 IN YOUR  
5 BINDER. WHAT IS EXHIBIT 24?

6 A EXHIBIT 24 IS PHOTOGRAPHS OF THE IMAGES THAT  
7 WERE USED IN THE ASSOCIATION SURVEY, AND THEN A  
8 PLACE HOLDER FOR THE VIDEOS THAT WERE USED AS THE  
9 TEST AND CONTROL STIMULI IN THE CONFUSION SURVEY.

10 MR. JACOBS: YOUR HONOR, WE OFFER PX 24  
11 INTO EVIDENCE.

12 THE COURT: ANY OBJECTION?

13 MR. PRICE: NO OBJECTION.

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

15 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER  
16 24, HAVING BEEN PREVIOUSLY MARKED FOR  
17 IDENTIFICATION, WAS ADMITTED INTO  
18 EVIDENCE.)

19 THE COURT: GO AHEAD, PLEASE.

20 BY MR. JACOBS:

21 Q LET'S TAKE A LOOK AT PX 24.2 AND 24.3, PLEASE,  
22 DR. VAN LIERE.

23 WHAT DO THESE SLIDES SHOW US?

24 A SO IN THE ASSOCIATION SURVEY, WE WERE TESTING  
25 THE DEGREE TO WHICH THE SAMSUNG GALAXY PHONES, THAT

1 CONSUMERS ASSOCIATED THEM WITH APPLE.

2 SO THE FIRST ONE IS THE GALAXY FASCINATE  
3 AND THE SECOND IS THE GALAXY S II EPIC. THESE WERE  
4 THE IMAGES THAT WERE USED AS MY TEST STIMULI IN THE  
5 ASSOCIATION SURVEY.

6 Q AND LET'S LOOK AT 24.2. THAT'S -- 24.2 IS THE  
7 FASCINATE AND 24.3 IS THE GALAXY S II EPIC 4G  
8 TOUCH. DO YOU SEE THAT, SIR?

9 A I DO.

10 Q OKAY. NOW LET'S GO TO 24.4, AND WHAT IS 24.4?

11 A SO AS YOU'VE HEARD DISCUSSED THIS MORNING, I  
12 ALSO USED A CONTROL DEVICE IN THE ASSOCIATION  
13 SURVEY, AND THE BLACKBERRY STORM WAS MY CONTROL  
14 DEVICE.

15 Q AND WHAT'S THE PURPOSE OF A CONTROL IN THIS  
16 KIND OF STUDY?

17 A WELL, IN BOTH TRADEMARK INFRINGEMENT AND FALSE  
18 ADVERTISING AND THE RANGE OF THESE KINDS OF  
19 SURVEYS, WE TYPICALLY USE CONTROLS FOR THE SAME  
20 PURPOSE THAT MR. PORET IDENTIFIED.

21 THE AMOUNT OF CONFUSION MEASURED OR  
22 ASSOCIATION MEASURED IN THE TEST CONDITION MAY BE  
23 PARTLY INFLUENCED BY THE WAY THE SURVEY WAS  
24 CONDUCTED, BY WHETHER RESPONDENTS ARE GUESSING.

25 SO WE USE A CONTROL STIMULI TO MEASURE



1 THE EXTENT TO WHICH OUR SURVEY PROCESS OR CONSUMER  
2 GENERALLY KNOWING SOMETHING AND GUESSING AND KNOCK  
3 THAT OFF OF OUR TEST RESULTS.

4 Q ONCE A RESPONDENT SAW AN IMAGE OF A PHONE,  
5 WHAT DID THE SURVEY ASK?

6 A IN THE ASSOCIATION SURVEY, THE PRIMARY  
7 QUESTION WAS, DOES THE LOOK AND DESIGN OF THIS  
8 PHONE BRING TO MIND OR CREATE ANY ASSOCIATION FOR  
9 YOU WITH ANY OTHER PHONES? BASICALLY THAT WAS THE  
10 WORDING.

11 Q SO THESE QUESTIONS WERE ASKED OF PEOPLE  
12 LOOKING AT THE SAMSUNG PHONES AND THE CONTROLS?

13 A YES.

14 Q AND THEN IF SOMEONE ANSWERED YES, WHAT WERE  
15 THEY ASKED?

16 A SO IF THEY SAID IT BROUGHT TO MIND OR CREATED  
17 AN ASSOCIATION YES TO THAT QUESTION, THEN THEY WERE  
18 ASKED, WHAT PHONE OR PHONES DO YOU ASSOCIATE WITH  
19 THIS LOOK?

20 Q LET'S GO TO 31.4. IS THAT THE -- ARE THOSE  
21 THE QUESTIONS YOU WERE JUST REFERRING TO,  
22 DR. VAN LIERE?

23 A YES, FOR THE ASSOCIATION SURVEY. SO THIS IS  
24 THE BASIC FIRST QUESTION THEY WERE ASKED AFTER THEY  
25 HAD LOOKED AT THE IMAGE OF THE PHONES THAT WE

1 LOOKED AT A MINUTE AGO.

2 Q LET'S GO TO 31.5. OKAY. WHAT DOES THIS SLIDE  
3 SHOW?

4 A SO THIS IS BASICALLY A SUMMARY OF THE RESULTS  
5 FROM THE ASSOCIATION SURVEY. SO THE FIRST TWO  
6 COLUMNS ARE THE RESULTS FOR MY TEST STIMULI, AND  
7 THEN THE THIRD COLUMN IS MY RESULTS FOR THE  
8 BLACKBERRY STORM, WHICH WAS MY CONTROL STIMULI.

9 AND WHAT THIS IS BASICALLY SHOWING IN THE  
10 FIRST ROW IS THAT FOR THE SAMSUNG GALAXY FASCINATE,  
11 ABOUT 52 PERCENT OF THE RESPONDENTS SAID THAT THE  
12 SAMSUNG GALAXY, THEY ASSOCIATED IT WITH APPLE OR  
13 THE IPHONE; AND THE SECOND COMMENTS SHOWING THAT  
14 FOR THE SAMSUNG GALAXY S II EPIC 4G, ABOUT 51  
15 PERCENT ASSOCIATED IT WITH THE IPHONE OR AN APPLE  
16 PRODUCT.

17 Q DO YOU HAVE AN OPINION ABOUT THESE RESULTS?

18 A YES. BASICALLY WHAT THE RESULTS SUGGEST -- SO  
19 WE NETTED OFF THE CONTROL, OR GUESSING, THE SAME  
20 WAY WHAT YOU SAW THIS MORNING, AND SO THE NET  
21 ASSOCIATIONS IN MY STUDY WERE 38 PERCENT AND 37  
22 PERCENT FOR THE TWO SAMSUNG PRODUCTS.

23 SO THOSE PERCENTAGES WOULD SUGGEST THAT  
24 IT IS LIKELY THAT CONSUMERS WILL ASSOCIATE THE LOOK  
25 AND DESIGN OF THE SAMSUNG GALAXY PHONES WITH APPLE

1 OR WITH THE IPHONE, AND THAT WOULD BE EVIDENCE  
2 SUGGESTIVE OF DILUTION.

3 Q LET'S TALK ABOUT YOUR TABLET SURVEY NOW.

4 WHAT WERE YOU DESIGNING -- WHAT DID YOU  
5 DID -- HOW DID YOU -- WHAT WAS THE PURPOSE OF THAT  
6 SURVEY?

7 A SO THE TABLET SURVEY WAS A LIKELIHOOD OF  
8 CONFUSION SURVEY, SO MY GOAL WAS TO MEASURE THE  
9 EXTENT TO WHICH CONSUMERS, WHEN THEY VIEW THE  
10 SAMSUNG GALAXY TABLET IN A WHOLESALE ENVIRONMENT,  
11 DID THEY BELIEVE THEY'VE SEEN AN IPAD OR APPLE  
12 PRODUCT.

13 Q AND YOU SAID THIS IS A MALL INTERCEPT SURVEY.  
14 CAN YOU EXPLAIN WHAT THAT WAS?

15 A YES. SO THERE'S A VARIETY OF WAYS TO COLLECT  
16 DATA FOR THESE KINDS OF SURVEYS. ONE WAY TO DO IT  
17 IS IN MALLS. THERE'S A NETWORK OF MALLS AROUND THE  
18 U.S. THAT HAVE RESEARCH FACILITIES AT THEM. THE  
19 MARKET RESEARCH IS OFTEN DONE IN THESE KIND OF  
20 FACILITIES.

21 THE IDEA IS TO GO OUT INTO THE MALL,  
22 INTERCEPT CONSUMERS, ASK THEM A SERIES OF SCREENING  
23 QUESTIONS TO MAKE SURE THEY QUALIFY FOR THE STUDY,  
24 AND THEN BRING THEM BACK TO THE INTERVIEWING AREA  
25 OR THE RESEARCH FACILITY AND CONDUCT THE ACTUAL

1 SURVEY WITH THEM.

2 SO THAT'S HOW WE DID THIS PARTICULAR  
3 STUDY.

4 Q AND WHAT DID YOU ACTUALLY --

5 CAN WE GO DARK, MR. LEE?

6 WHAT DID YOU ACTUALLY TEST IN THIS  
7 SURVEY? WHAT TABLETS DID YOU TEST?

8 A SO THE, THE THREE -- THE TWO TESTS AND  
9 CONTROLS WERE A SAMSUNG GALAXY 10.1 WITH A BRAND ON  
10 IT; A SAMSUNG GALAXY 10.1 TABLET WITHOUT A BRAND ON  
11 IT; AND THEN A BARNES & NOBLE COLOR NOOK WAS THE  
12 CONTROL DEVICE.

13 Q AND YOU MENTIONED YOU USED VIDEOS FOR THE  
14 SURVEY. LET'S TAKE A LOOK AT ONE. LET'S TAKE A  
15 LOOK AT ACTUALLY -- LET'S TAKE A LOOK AT PX 24.5.

16 IS THIS ONE OF THE -- BEFORE YOU RUN IT,  
17 MR. LEE -- IS PX 24.5 ONE OF THE VIDEOS YOU SHOWED  
18 YOUR RESPONDENTS?

19 A I BELIEVE SO.

20 MR. JACOBS: YOUR HONOR, WE OFFER PX 24.5  
21 INTO EVIDENCE.

22 THE COURT: IT'S ADMITTED.

23 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER  
24 24.5, HAVING BEEN PREVIOUSLY MARKED FOR  
25 IDENTIFICATION, WAS ADMITTED INTO

1 EVIDENCE.)

2 THE COURT: GO AHEAD, PLEASE.

3 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN  
4 OPEN COURT OFF THE RECORD.)

5 BY MR. JACOBS:

6 Q SO WHICH GALAXY TAB ARE WE LOOKING AT IN 24.5?

7 A I BELIEVE THIS IS THE UNBRANDED VERSION.

8 AND THEN WE TESTED -- THE SAME EXACT  
9 VIDEO WAS DONE WITH A BRANDED VERSION.

10 Q AND SO SOMEONE WOULD BE AT THE RESEARCH  
11 FACILITY IN THE MALL AND THEY WOULD BE SHOWN THIS  
12 VIDEO AND ASKED QUESTIONS?

13 A YES, THAT'S CORRECT. SO THE BASIC IDEA WAS TO  
14 SIMULATE A POST-SALE CONFUSION ENVIRONMENT WHERE A  
15 CONSUMER IN THE RELEVANT MARKET IS OBSERVING  
16 SOMEBODY ELSE USING THE DEVICE, AS YOU WOULD IF YOU  
17 WENT TO A COFFEE SHOP OR YOU WERE ON THE LIGHT RAIL  
18 OR WALKED THROUGH THIS ROOM AND SEE THESE DEVICES  
19 IN USE. SO THAT WAS THE IDEA.

20 AND SO WE WERE GOING TO USE A VIDEO TO  
21 SIMULATE THAT, SO THAT'S WHY WE DID THESE IN THE  
22 MALL.

23 Q AND LET'S TAKE A LOOK AT YOUR CONTROL VIDEO.

24 IS 24.6 YOUR CONTROL, SIR?

25 A I BELIEVE SO.

1 MR. JACOBS: WE OFFER 24.6 INTO EVIDENCE,  
2 YOUR HONOR.

3 MR. PRICE: NO OBJECTION.

4 THE COURT: ALL RIGHT. THAT'S ADMITTED.  
5 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER  
6 24.6, HAVING BEEN PREVIOUSLY MARKED FOR  
7 IDENTIFICATION, WAS ADMITTED INTO  
8 EVIDENCE.)

9 MR. JACOBS: I MOVE ALL OF 24 IN.

10 THE COURT: ANY OBJECTION? YOU WANT ALL  
11 OF 24 IN?

12 MR. PRICE: NO OBJECTION.

13 THE COURT: ALL RIGHT. IT'S IN.  
14 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER  
15 24, HAVING BEEN PREVIOUSLY MARKED FOR  
16 IDENTIFICATION, WAS ADMITTED INTO  
17 EVIDENCE.)

18 THE COURT: GO AHEAD, PLEASE.

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

21 MR. JACOBS: THANK YOU. LET'S PUT UP PX  
22 31.2, PLEASE.

23 Q SO WHAT QUESTION DID YOU ASK IF YOUR SURVEY?

24 A SO THE PRIMARY QUESTION WAS, WHAT'S SHOWN ON  
25 THE SCREEN HERE, WHICH IS, IN YOUR OPINION, WHAT

1 TABLET WAS SHOWN IN THE VIDEO?

2 Q AND LET'S GO TO 31.3. WHAT IS THIS SLIDE  
3 SHOWING, SIR?

4 A SO THIS IS ALSO A SUMMARY OF THE RESULTS FROM  
5 THE LIKELIHOOD OF CONFUSION SURVEY. SIMILAR TO THE  
6 OTHER ONE, THE FIRST TWO COLUMNS SHOW THE RESULTS  
7 FOR THE TWO TEST VIDEOS, AND THEN THE FAR RIGHT  
8 COLUMN SHOWS THE TEST FOR THE BARNES & NOBLE COLOR  
9 NOOK CONTROL.

10 AND WHAT IT SHOWS IS FOR THE BRANDED  
11 VERSION OF THE SAMSUNG GALAXY 10, THE FIRST COLUMN,  
12 APPROXIMATELY 30 PERCENT OF THE RESPONDENTS  
13 IDENTIFIED IT AS AN IPAD OR APPLE DEVICE.

14 IN THE SAMSUNG GALAXY 10.1 UNBRANDED  
15 VERSION, APPROXIMATELY 43 PERCENT IDENTIFIED IT AS  
16 AN IPAD OR APPLE DEVICE.

17 AND THEN IF YOU SIMPLY COMBINE THE  
18 RESULTS FROM THOSE TWO, JUST TO BE -- JUST TO  
19 EXPLAIN, SO EACH RESPONDENT ONLY SAW ONE VIDEO, AND  
20 THEY WERE RANDOMLY ASSIGNED TO THE VIDEO THAT THEY  
21 SAW.

22 AND THERE WERE APPROXIMATELY 200  
23 RESPONDENTS WHO SAW THE FIRST VIDEO, 200 WHO SAW  
24 THE SECOND, AND 200 WHO SAW THE CONTROL VIDEO.

25 SO IF YOU COMBINE THE 400 PEOPLE WHO SAW

1 THE BRANDED AND THE UNBRANDED, YOU GET ROUGHLY 36  
2 PERCENT OF RESPONDENTS OVERALL THAT IDENTIFIED THE  
3 GALAXY TABLET AS AN IPAD OR APPLE PRODUCT.

4 Q AND WHAT ABOUT THE CONTROL RESULTS?

5 A SO IN THIS PARTICULAR STUDY, WE FOUND THAT 24  
6 PERCENT IDENTIFIED THE BARNES & NOBLE NOOK COLOR AS  
7 AN APPLE OR AN IPAD, AND SO THAT'S OUR ESTIMATE OF  
8 GUESSING AND THE EFFECTS OF OUR SURVEY PROCESS,  
9 SIMILAR TO WHAT WE'VE DISCUSSED.

10 AND SO WHEN WE NET THAT OFF, WE GET A NET  
11 RATE OF CONFUSION BETWEEN 6 AND 19 PERCENT.

12 Q AND THE COMBINED RATE?

13 A THE COMBINED RATE WOULD BE 12 PERCENT FOR THAT  
14 STUDY.

15 Q WHAT DO YOU BELIEVE THE RESULTS OF THIS SURVEY  
16 SHOW, SIR?

17 A WELL, THE RESULTS SUGGEST THAT THERE'S A, A  
18 SUBSTANTIAL PORTION OF THE CONSUMERS WHO ARE LIKELY  
19 TO BE CONFUSED WHEN THEY SEE A SAMSUNG GALAXY  
20 TABLET IN A POST-SALE ENVIRONMENT, THAT THEY'RE  
21 ACTUALLY VIEWING AN IPAD OR APPLE PRODUCT.

22 MR. JACOBS: THANK YOU, DR. VAN LIERE.  
23 NO FURTHER QUESTIONS.

24 THE COURT: ALL RIGHT. TIME IS NOW 9:55.  
25 PLEASE GO AHEAD WITH YOUR CROSS.



1 MR. PRICE: THANK YOU, YOUR HONOR.

2 CROSS-EXAMINATION

3 BY MR. PRICE:

4 Q IS IT MR. VAN LIERE OR DOCTOR?

5 A DR. VAN LIERE. YOU CAN CALL ME EITHER.

6 Q I'LL CALL YOU DOCTOR. WE'RE IN COURT.

7 SO FIRST OF ALL, LET'S TALK ABOUT WHAT  
8 YOU DID NOT DO WITH THAT CONFUSION STUDY.

9 YOU DID NOT DO A STUDY THAT MEASURED  
10 CONFUSION OF CONSUMERS AT THE TIME THEY BUY AN IPAD  
11 OR A TABLET; CORRECT?

12 A YES. I BELIEVE YOU'RE REFERRING TO A POINT OF  
13 PURCHASE STUDY, AND I DID NOT DO A POINT OF  
14 PURCHASE STUDY.

15 Q NOW, HAVE YOU DONE POINT OF PURCHASE STUDIES  
16 IN YOUR CAREER?

17 A YES.

18 Q ABOUT HOW MANY?

19 A I DON'T KNOW EXACTLY. PROBABLY SOMEWHERE  
20 BETWEEN 5 AND 15.

21 Q AND WHEN YOU WERE ASKED BY APPLE TO DO A  
22 STUDY, DID THEY KIND OF EXPLAIN TO YOU WHAT THE  
23 CASE WAS ABOUT?

24 MR. JACOBS: YOUR HONOR, I THINK THIS  
25 LINE OF QUESTIONING POTENTIALLY INVADES RULE 26.

1 MR. PRICE: LET ME WITHDRAW THAT.

2 Q WELL, LET ME ASK YOU THIS: DID -- GIVEN YOUR  
3 EXPERIENCE IN DOING, YOU KNOW, POINT OF SALE  
4 STUDIES, DID APPLE ASK YOU TO DO ONE TO SEE WHETHER  
5 OR NOT THERE'S ANY EMPIRICAL EVIDENCE THAT A  
6 CONSUMER BUYING A SAMSUNG TABLET WOULD BE CONFUSED  
7 INTO THINKING IT'S AN IPAD OR VICE-VERSA?

8 A APPLE DID NOT ASK ME TO CONDUCT A POINT OF  
9 PURCHASE SURVEY. THEY ASKED ME TO CONDUCT A  
10 POST-SALE CONFUSION SURVEY.

11 Q OKAY. SO LET'S TALK ABOUT THE POST-SALE  
12 CONFUSION SURVEY.

13 IT'S MY UNDERSTANDING, IS IT NOT, THAT  
14 UNTIL THIS CASE, YOU HAD NEVER DONE A  
15 POST-CONFUSION SURVEY.

16 A I THINK THIS IS THE FIRST CASE THAT I'VE PUT  
17 IN A SURVEY THAT IS PUBLICLY AVAILABLE IN WHICH WE  
18 WERE TESTING A POST-SALE ENVIRONMENT. I THINK THIS  
19 IS THE FIRST TIME FOR THAT FOR SURE.

20 Q SO LET'S SEE WHAT YOU DID ON YOUR FIRST TIME  
21 OUT ON THIS THING.

22 BY THE WAY, DID YOU SAY TO APPLE, "THIS  
23 IS THE FIRST TIME I'VE DONE ONE AFTER SALE"?

24 A I DON'T RECALL IF APPLE ASKED ME THAT QUESTION  
25 OR NOT.

1 Q OKAY. AND SO YOU CAN'T USE YOUR STUDY TO SHOW  
2 EITHER -- WHETHER A CONSUMER WAS CONFUSED WHEN HE  
3 BOUGHT A SAMSUNG TABLET OR TO SHOW ANY IMPACT ON  
4 FUTURE PURCHASING DECISIONS; CORRECT?

5 A THE SURVEY, AS IT'S DESIGNED, DOES NOT TEST  
6 POINT OF PURCHASE, AND IT DOES NOT TEST THE EXTENT  
7 TO WHICH THE CONFUSION AFFECTS FUTURE PURCHASE  
8 BEHAVIOR, THAT'S CORRECT.

9 Q NOW, SO IN THE SURVEY YOU DID, YOU DIDN'T SHOW  
10 THESE PEOPLE IN THE MALL AN ACTUAL IPAD OR AN  
11 ACTUAL SAMSUNG TABLET; CORRECT?

12 A NO, I DON'T THINK YOU SAID THAT CORRECTLY.

13 Q OKAY. MAYBE I DIDN'T. YOU DIDN'T -- THIS WAS  
14 THE ONE IN THE MALL, RIGHT, THE ONE WITH THE IPAD  
15 AND THE SAMSUNG?

16 A THE TABLET CONFUSION STUDY WAS THE STUDY DONE  
17 IN A MALL, YES.

18 Q OKAY. AND YOU DIDN'T SHOW THESE FOLKS -- YOU  
19 DIDN'T ACTUALLY HAND THEM AN ACTUAL IPAD OR A  
20 SAMSUNG TABLET; RIGHT?

21 A THAT'S CORRECT. WE SHOWED THE VIDEOS THAT  
22 YOU'VE SEEN TWO EXAMPLES OF.

23 Q AND WHY NOT SHOW THEM THE TABLET?

24 A YOU SAY "SHOW THEM THE TABLET." JUST TO BE  
25 CLEAR, THEY DID SEE THE TABLETS. THE TABLETS WERE

1 IN THE VIDEO. WE JUST DID NOT HAND THEM PHYSICALLY  
2 TO THEM.

3 Q WELL, IF WE LOOK AT JOINT EXHIBIT 1004, THIS  
4 IS AN ACTUAL IPAD, YOU KNOW, THREE-DIMENSIONAL  
5 IPAD.

6 IS THIS ALREADY IN EVIDENCE? IT IS,  
7 OKAY.

8 SO I'M JUST ASKING YOU, DID YOU ACTUALLY  
9 HAND ONE OF THESE OUT, AN ACTUAL ONE?

10 A NO, WE DID NOT HAND THEM A PHYSICAL DEVICE.

11 Q OR HAND THEM A, A -- THE SAMSUNG TABLET  
12 EITHER; CORRECT? YOU DIDN'T HAND THEM THAT?

13 A THAT'S CORRECT. WE DID NOT HAND THEM THE  
14 SAMSUNG TABLETS, EITHER.

15 Q NOW, IF WE COULD LOOK AT THE VIDEO YOU SHOWED  
16 THEM, THE 24.5, COULD WE PLAY THAT?

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

19 BY MR. PRICE:

20 Q THAT WAS THE FULL VIDEO THAT YOU SHOWED THEM;  
21 RIGHT?

22 A THAT'S CORRECT.

23 Q OKAY. NOW, WAS THERE ANY BUDGET LIMITATION  
24 THAT YOU HAD TO STOP THE VIDEO THERE?

25 A WELL, TWO COMMENTS. ONE, THE -- NO, I DIDN'T

1 KNOW OF ANY SPECIFIC ONE. THE IDEA WAS TO  
2 REPLICATE A REASONABLE POST-SALE ENVIRONMENT  
3 INTERACTING WITH THE DEVICE.

4 BUT TWO, AS I WAS COMMENTING IN THESE  
5 KINDS OF STUDIES, WE ALSO LET THE RESPONDENTS VIEW  
6 THE VIDEO TWICE.

7 Q OKAY.

8 A SO THEY SAW IT ONCE, THEN THEY SAW IT AGAIN,  
9 AND THEN THEY ANSWERED THE QUESTIONS.

10 Q I'M JUST WONDERING, YOU'VE BEEN IN CAFES OR  
11 PLACES WHERE YOU'VE SEEN PEOPLE, FOR EXAMPLE, WITH  
12 APPLE COMPUTERS; RIGHT?

13 A YES.

14 Q AND YOU'VE SEEN, FOR EXAMPLE, ON APPLE  
15 COMPUTERS THAT THEY HAVE THAT BIG NEON APPLE AT THE  
16 TOP OF THE COMPUTER? YOU CAN SEE THAT PRETTY  
17 EASILY WHEN YOU'RE LOOKING AT SOMEBODY WITH THEIR  
18 APPLE COMPUTER; RIGHT?

19 A MAYBE. IT DEPENDS ON THE POINT OF VIEW THAT  
20 YOU HAVE AS YOU OBSERVE THE PERSON USING THEIR  
21 COMPUTER.

22 Q IT'S ACTUALLY BACK LIT IN THE COMPUTERS;  
23 RIGHT?

24 A I'M NOT COMPLETELY CERTAIN, BUT PART OF AN  
25 APPLE COMPUTER -- ARE YOU TALKING ABOUT THE ONE

1 THAT'S ON THE TOP OF IT WHEN IT'S CLOSED SO THAT  
2 WHEN IT'S OPEN, YOU WOULD NOT SEE IT?

3 Q WHEN IT'S -- WHEN AN APPLE COMPUTER IS OPEN,  
4 YOU WOULDN'T SEE THE BIG NEON APPLE ON IT?

5 A IF YOU'RE LOOKING -- I'M MAYBE  
6 MISUNDERSTANDING WHAT YOU'RE ASKING ME.

7 BUT IF I HAVE THE COMPUTER, I OPEN IT,  
8 AND I'M OBSERVING OVER THE SHOULDER, I DON'T SEE  
9 THE NEON DEVICE THAT'S ON THE TOP. I BELIEVE  
10 THAT'S WHAT YOU'RE ASKING ME.

11 Q AH, I SEE. AND HERE, I GUESS, IS THE PROBLEM.

12 SO LET ME ASK YOU THIS: SO WHY DIDN'T  
13 YOU, YOU KNOW, IN YOUR VIDEO, JUST RUN IT A LITTLE  
14 BIT LONGER AND HAVE THE PERSON WALK AROUND SO THAT  
15 THE PERSON YOU'RE STUDYING COULD SEE THE BACK OF  
16 THE DEVICE?

17 A THE WAY WE CREATED THE STIMULI WAS TO TEST THE  
18 ALLEGEDLY INFRINGING CONDITIONS THAT WERE OUTLINED  
19 IN THE COMPLAINT.

20 AND IT WAS MY UNDERSTANDING, AT THE TIME  
21 I DESIGNED THIS STUDY, THAT THE BACK OF THESE  
22 DEVICES WAS NOT AT ISSUE, THAT IT WAS THE FRONT AND  
23 THE SIDE VIEWS.

24 SO WHEN WE SET UP THE VIDEOS, WE SET THEM  
25 UP TO SHOW A REAL PRODUCT THAT'S IN THE REAL

1 MARKETPLACE WHERE YOU WOULD SEE A SIDE VIEW AND A  
2 FRONT VIEW OF THE PRODUCT.

3 SO THAT'S WHY WE DID NOT SHOW THE BACK.

4 Q OKAY. SO YOU WERE TOLD THAT IF THE PRODUCT  
5 HAD SOMETHING ON THE BACK WHICH WOULD TELL ANY  
6 CONSUMER THAT IT'S AN APPLE OR A SAMSUNG, THAT YOU  
7 WERE TO IGNORE THAT AND NOT TEST IT? THAT WAS YOUR  
8 UNDERSTANDING AS GIVEN TO YOU BY APPLE'S COUNSEL?

9 A IT WAS MY UNDERSTANDING THAT THE FRONT OF THE  
10 DEVICE AND THE SIDE VIEW OF THE DEVICE WERE PART OF  
11 THE ALLEGED INFRINGEMENT AND THE BACK WAS NOT.

12 Q BUT DON'T YOU UNDERSTAND THAT TO SHOW  
13 CONFUSION, YOU LOOK AT THE PRODUCT AND NOT JUST  
14 WHAT THE ALLEGED TRADE DRESS IS?

15 A NO, I DON'T AGREE WITH THE WAY YOU'VE STATED  
16 THAT.

17 Q OKAY. SO IF THAT ACTUALLY IS THE TEST, THAT  
18 IS, THAT YOU'RE SUPPOSED TO LOOK TO SEE WHETHER THE  
19 PRODUCT AS SEEN BY A CONSUMER WOULD CONFUSE THEM,  
20 IF THAT'S THE TEST, YOU DIDN'T TEST FOR THAT, DID  
21 YOU?

22 A NO. IN FACT, I DID TEST FOR THAT.

23 Q WELL, YOU SAID YOU DIDN'T TEST, FOR EXAMPLE,  
24 IF THE CONSUMER JUST WALKS A LITTLE FURTHER AND SAW  
25 THE PERSON LOOKING AT -- THIS IS EXHIBIT 1004 LIKE

1 THIS -- YOU DIDN'T TEST WHETHER SEEING THIS BIG  
2 APPLE HERE WOULD LEAD THEM TO THINK IT WAS AN  
3 APPLE?

4 A NO, I DID NOT -- WELL, THERE'S TWO ISSUES.  
5 ONE, I DID NOT TEST APPLE DEVICES. I TESTED  
6 SAMSUNG DEVICES.

7 BUT NO, WE DID NOT SHOW ALL VIEWS OF THE  
8 PRODUCT. WE SHOWED VIEWS THAT WOULD REPRESENT  
9 TYPICAL POST-SALE OBSERVATIONS OF THESE PRODUCTS  
10 BEING USED IN THE MARKETPLACE, AND THOSE POST-SALE  
11 VIEWS WERE DESIGNED TO REPRESENT THE ALLEGEDLY  
12 INFRINGING TRADE DRESS, NOT THE WHOLE DEVICE.

13 Q LET ME SHOW YOU WHAT'S BEEN MARKED AS EXHIBIT  
14 1038 FOR IDENTIFICATION.

15 APPARENTLY THIS IS IN EVIDENCE.

16 SO THIS IS A -- THE SAMSUNG TABLET -- AND  
17 BY THE WAY, GIVEN WHAT YOU KNOW ABOUT THE MARKET,  
18 IF SOMEONE SEES A TABLET THAT DOESN'T HAVE THAT BIG  
19 APPLE ON IT, THEY KNOW IT'S NOT AN APPLE; RIGHT?

20 A I DON'T KNOW THAT SPECIFICALLY.

21 Q BUT IF THEY WERE LOOKING AT THE SAMSUNG TABLET  
22 AND THEY WALK AROUND AND SAW IT, YOU KNOW, YOU CAN  
23 SEE IT SAYS SAMSUNG. IT DOESN'T SAY APPLE. IT  
24 SAYS SAMSUNG; RIGHT?

25 A MY EYES AREN'T GOOD ENOUGH TO SEE THAT FROM



1           HERE .

2           Q       OKAY.  LET'S SAY IT'S AS CLOSE AS THE VIDEO  
3           WOULD HAVE BEEN, SAY.

4                       OKAY.  SO LOOKING AT IT HERE, YOU WALK  
5           AROUND AND, INSTEAD OF STOPPING THE VIDEO HERE, YOU  
6           ACTUALLY CONTINUE IT JUST A FEW SECONDS TO SEE  
7           WHETHER OR NOT THE PRODUCT IS ACTUALLY CONFUSING.

8                       DO YOU THINK YOU'D GET A DIFFERENT  
9           RESULT?

10          A       I DON'T KNOW.  I DIDN'T TEST THAT.  BUT I  
11          DIDN'T ALSO UNDERSTAND THAT TO BE THE ALLEGED  
12          INFRINGEMENT HERE.

13          Q       OKAY.  SO IF -- SO YOU DESIGNED YOUR STUDY  
14          BASED UPON WHAT YOU WERE TOLD BY APPLE'S COUNSEL?

15          A       AND WHAT I UNDERSTOOD FROM READING THE  
16          COMPLAINT.

17          Q       OKAY.  AND SO YOUR STUDY WAS DESIGNED TO  
18          IGNORE THE ENTIRE PRODUCT AND JUST SHOW THE BACK?  
19          I MEAN THE FRONT AND SIDE?

20          A       YES.  MY STUDY WAS DESIGNED TO CREATE A  
21          POST-SALE CONFUSION-LIKE INTERACTION FOR A CONSUMER  
22          AND SHOW THAT IN A VERSION IN WHICH THEY WOULD SEE  
23          THE FRONT AND THE SIDE OF THE DEVICE.  THAT'S WHAT  
24          I DID, YES.

25          Q       OKAY.  AS A MATTER OF FACT, AT THE TIME YOU

1 DID THE STUDY, YOU DIDN'T EVEN KNOW THAT SAMSUNG'S  
2 NAME WAS ON THE BACK BECAUSE YOU HAD NEVER SEEN ONE  
3 OF THESE IN PERSON; RIGHT?

4 A I KNEW THAT SAMSUNG WAS ON THE FRONT. BUT I  
5 DIDN'T KNOW FOR CERTAIN IF THE SAMSUNG WAS ON THE  
6 BACK OF ALL THE DEVICES.

7 Q AND NOW YOU KNOW -- YOU CALLED THESE BRANDED  
8 VERSUS UNBRANDED PHONES, TABLETS.

9 YOU KNOW NOW THAT ALL THE SAMSUNG  
10 TABLETS, IN FACT, ARE BRANDED BECAUSE THEY HAVE THE  
11 SAMSUNG ON THE BACK; RIGHT?

12 A I'LL UNDERSTAND THAT FROM WHAT YOU'VE JUST  
13 TOLD ME. I DIDN'T KNOW THAT FOR SURE.

14 Q OKAY. AND NOW LET'S TALK ABOUT THE CONTROL  
15 YOU USED.

16 WHAT YOU USED WAS THE NOOK; RIGHT?

17 A THE NOOK COLOR.

18 Q OKAY. THE NOOK COLOR. AND IF WE CAN SHOW  
19 3900.107.

20 SO THIS IS AN IPAD AND THIS IS A NOOK.

21 NOW, THIS IS THE NUMBER YOU SUBTRACT FROM  
22 THE ASSOCIATION YOU GOT FROM SHOWING JUST THE FRONT  
23 AND SIDE OF THE SAMSUNG TABLET.

24 AND YOU SUBTRACT THE NUMBER OF PEOPLE WHO  
25 SAY THIS IS AN APPLE IPAD; RIGHT?

1 A YES. I THINK AS YOU'RE DESCRIBING IT, THAT'S  
2 CORRECT.

3 Q OKAY. AND THIS HAS THIS LITTLE SCREEN THING  
4 HERE WHICH SCREAMS "I'M NOT AN IPAD," RIGHT? WOULD  
5 YOU AGREE?

6 A NO.

7 Q OKAY. AND IT HAS -- IT ACTUALLY HAS THE NOOK  
8 TRADEMARK ON IT AND THE NOOK BUTTON THERE; RIGHT?

9 A IT HAS THOSE THINGS ON THERE, YES, THAT'S  
10 CORRECT.

11 Q AND THE NOOK IS AN E-READER; RIGHT? IT'S  
12 BASICALLY KNOWN AS AN E-READER FOR READING BOOKS  
13 ON?

14 A THE NOOK COLOR, WHICH IS THE DEVICE WE USED IN  
15 OUR STUDY, IS MARKETED AS A TABLET AND IT HAS THE  
16 SAME BASIC FUNCTIONALITY AS THE IPAD AND THE  
17 GALAXY.

18 Q LET ME SHOW YOU EXHIBIT 2526 FOR  
19 IDENTIFICATION.

20 THIS IS THE NOOK TABLET THAT WAS USED IN  
21 YOUR STUDY, OR ONE JUST LIKE IT -- I MEAN NOOK  
22 READER, COLOR; RIGHT?

23 A I'LL UNDERSTAND THAT TO BE JUST LIKE IT. I  
24 DON'T THINK THAT'S THE ONE WE ACTUALLY USED.

25 Q OKAY. AND THERE WERE OTHER CONTROLS YOU COULD

1 HAVE USED? YOU COULD HAVE USED A MOTOROLA. YOU  
2 COULD HAVE USED AN LG TABLET. YOU COULD HAVE USED  
3 SOMETHING THAT LOOKED A LOT CLOSER TO THE IPAD THAN  
4 THAT?

5 A NO, I DON'T AGREE WITH THAT.

6 Q OKAY. SO HAVE YOU SEEN OTHER TABLETS IN THE  
7 MARKET AND WHAT THEY LOOK LIKE?

8 A YES.

9 Q OKAY. AND YOU DON'T AGREE THAT THE MOTOROLA  
10 AND LG, WHICH WE'VE SEEN ALREADY HERE IN COURT AND  
11 PASSED AROUND, YOU DON'T THINK THEY LOOK MORE LIKE  
12 THE IPAD THAN THIS?

13 A YES, I THINK, IN FACT, THEY DO LOOK MORE LIKE  
14 THE IPAD IN THE SENSE THAT THEY HAVE MORE ELEMENTS  
15 OF THE ALLEGEDLY INFRINGING TRADE DRESS.

16 SO IN CHOOSING THE CONTROL, THE IDEA IS  
17 TO GET A PRODUCT THAT'S IN THE SAME MARKET THAT HAS  
18 THE SAME BASIC FUNCTIONALITY, BUT DOES NOT INCLUDE  
19 THE ALLEGEDLY INFRINGING TRADE DRESS.

20 Q WELL, ACTUALLY -- SO ARE YOU SAYING THAT APPLE  
21 IS CONTENDING THAT MOTOROLA AND LG, THAT THOSE  
22 TABLETS INFRINGE APPLE'S TRADE DRESS AND THAT'S WHY  
23 YOU DIDN'T USE THEM?

24 MR. JACOBS: YOUR HONOR, THIS IS ASKING  
25 FOR A LEGAL CONCLUSION FROM THIS WITNESS AND LACKS

1 FOUNDATION.

2 THE COURT: SUSTAINED.

3 BY MR. PRICE:

4 Q I'M ASKING YOUR UNDERSTANDING AS TO WHY YOU  
5 DIDN'T USE THEM. OKAY?

6 IS IT YOUR UNDERSTANDING, WHICH WOULD BE  
7 THE BASIS OF YOU NOT USING THE MOTOROLA AND THE LG,  
8 IS IT YOUR UNDERSTANDING THAT YOU COULDN'T USE THEM  
9 BECAUSE APPLE IS SAYING THAT THOSE INFRINGE ITS  
10 TRADE DRESS?

11 MR. JACOBS: YOUR HONOR, YOU JUST  
12 SUSTAINED AN OBJECTION TO THIS SAME QUESTION.

13 THE COURT: SUSTAINED.

14 BY MR. PRICE:

15 Q IF WE CAN LOOK BACK AT THAT 30.5, I THINK IT  
16 WAS 30.5, 24.5. NO, I'M SORRY. 31.3. THIS IS  
17 YOUR STUDY. I BELIEVE IT'S 31.3.

18 SO IS THIS THE STUDY -- THIS IS YOUR  
19 RESULTS SHOWING THAT VIDEO, SHOWING THE NOOK, AND  
20 YOU GOT 6 PERCENT IS POST-CONFUSION WITH THE  
21 BRANDED, 19, AND YOU AVERAGED THOSE TO GET 12.

22 NOW, IF YOU REALLY WANTED TO COME UP WITH  
23 AN AVERAGE THAT MEANT ANYTHING AS FAR AS THE REAL  
24 WORLD, YOU'D HAVE TO WEIGHT THOSE NUMBERS; RIGHT?

25 A WELL, I THINK I UNDERSTAND YOUR QUESTION, AND

1 THE -- FIRST OF ALL, THE 12 WAS NOT -- IT ISN'T --  
2 I DIDN'T AVERAGE THE TWO. I JUST SUMMED EVERYTHING  
3 ACROSS THE TWO CONDITIONS AND THEY COME TO 12  
4 PERCENT.

5 Q SO LET ME STOP YOU THERE.

6 SO THIS IS NOT AN OPINION YOU HAVE AS TO  
7 NET CONFUSION RATE IN THE MARKET; RIGHT?

8 A NO. I BELIEVE THE CONFUSION -- THE OPINION I  
9 OFFERED IN MY REPORT IS THAT IT'S SOMEWHERE BETWEEN  
10 6 PERCENT AND 19 PERCENT WERE ACTUALLY CONFUSED BY  
11 MY TEST.

12 Q AND THE 19 HERE, YOU DON'T KNOW HOW MANY,  
13 QUOTE, "UNBRANDED" TABLETS WERE IN THE MARKET  
14 COMPARED TO THE BRANDED ONES; RIGHT?

15 A WELL, TWO COMMENTS. ONE --

16 Q CAN YOU ANSWER YES OR NO? BECAUSE I'M ON THE  
17 CLOCK.

18 A I'M SORRY. I UNDERSTAND.

19 Q DO YOU KNOW HOW MANY --

20 A ASK ME THE QUESTION AGAIN.

21 Q DO YOU KNOW IN THE MARKETPLACE HOW MANY  
22 UNBRANDED VERSUS BRANDED THERE WERE?

23 A NO, I DON'T KNOW HOW MANY UNBRANDED VERSUS  
24 BRANDED THERE WERE.

25 Q NOW LET'S TALK ABOUT YOUR PHONE ASSOCIATION

1 SURVEY.

2 AND, AGAIN, THIS IS NOT A SURVEY THAT  
3 SHOWS CONSUMER CONFUSION AT ALL; CORRECT?

4 A LET ME JUST MENTALLY SHIFT GEARS.

5 SO YOU'RE TALKING ABOUT NOW MY PHONE  
6 ASSOCIATION STUDY?

7 Q YES.

8 A YES, THAT STUDY WAS NOT DESIGNED TO MEASURE  
9 LIKELIHOOD OF CONFUSION. THAT STUDY WAS DESIGNED  
10 TO MEASURE ASSOCIATION.

11 Q OKAY. SO IF WE CAN LOOK AT YOUR STUDY AND  
12 LOOK AT 3900.153, THIS IS THE QUESTION YOU ASKED.  
13 3900.153. YOU SHOWED THE PICTURE OF ONE OF THE  
14 SAMSUNG PHONES AND SAID, "DOES THE LOOK AND DESIGN  
15 OF THIS PHONE BRING TO MIND OR CREATE ANY  
16 ASSOCIATION FOR YOU WITH ANY OTHER PHONES?"

17 DO YOU SEE THAT?

18 A YES.

19 Q IN THE DEMONSTRATIVE YOU SHOWED THE JURY,  
20 WHICH WAS THE QUESTION YOU ASKED, YOU DIDN'T  
21 UNDERLINE "OTHER," BUT "OTHER" WAS UNDERLINED IN  
22 THE ACTUAL SURVEY?

23 A YES.

24 Q THE PEOPLE WHO READ THIS KNEW THEY WERE  
25 SUPPOSED TO THINK OF SOME OTHER PHONE FOR

1 ASSOCIATION; RIGHT?

2 A IT SUGGESTS THAT -- WE'RE ASKING THEM, FIRST,  
3 YES, NO, OR DON'T KNOW, DOES IT BRING TO MIND ANY  
4 ASSOCIATION? AT THIS STAGE WE'RE NOT TELLING THEM  
5 THERE IS AN ASSOCIATION.

6 Q NOW, I WANT TO ASK YOU, IF SOMEONE ASKED YOU,  
7 FOR EXAMPLE, SHOWED YOU A PICTURE OF A COKE AND  
8 SAID, "DOES THIS BRING TO MIND OR CREATE ANY  
9 ASSOCIATION WITH ANY OTHER SOFT DRINK," YOU'D THINK  
10 A LOT OF PEOPLE MIGHT SAY PEPSI; RIGHT? BECAUSE  
11 THEY'RE THE TWO BIGGEST PLAYERS IN THE MARKET?

12 A I HAVEN'T DONE THAT STUDY, SO I WOULDN'T HAVE  
13 AN OPINION ON HOW THAT MIGHT TURN OUT.

14 Q WELL, IF SOMEONE ASKED YOU, YOU KNOW, SHOWED A  
15 PICTURE OF A BURGER KING, YOU KNOW, RESTAURANT AND  
16 SAID, "DOES THE LOOK AND DESIGN OF THIS RESTAURANT  
17 BRING TO MIND OR CREATE ANY ASSOCIATION WITH YOU OF  
18 ANY OTHER RESTAURANT," THEY'RE QUITE LIKELY TO SAY  
19 MCDONALD'S; RIGHT?

20 A AGAIN, I HAVEN'T DONE THAT SURVEY. I DON'T  
21 KNOW THAT TO BE THE CASE.

22 Q YOU DON'T KNOW THAT FROM COMMON SENSE?

23 A I DON'T KNOW THAT FROM COMMON SENSE AS YOU'VE  
24 DESCRIBED IT.

25 Q WELL, IF YOU DID FIND THAT, HYPOTHETICALLY,



1 HYPOTHETICALLY YOU DID A SURVEY, "DOES THIS BURGER  
2 KING RESTAURANT BRING TO MIND ANY OTHER FAST FOOD  
3 RESTAURANT" AND THEY SAID MCDONALD'S, YOU CERTAINLY  
4 COULDN'T CONCLUDE FROM THAT THAT THE ASSOCIATION  
5 WAS BECAUSE THE DESIGNS ARE SIMILAR; RIGHT?

6 A AGAIN, YOU'RE ASKING ME ABOUT A HYPOTHETICAL  
7 STUDY THAT I HAVEN'T CONDUCTED, SO --

8 Q WELL, IN THIS CASE, YOU UNDERSTAND THAT  
9 SAMSUNG AND APPLE ARE THE TWO LARGEST COMPETITORS  
10 IN THIS MARKET; RIGHT?

11 A I UNDERSTAND THEY'RE TWO LARGE COMPETITORS IN  
12 THIS MARKET.

13 Q AND YOU UNDERSTAND FROM KNOWING THE MARKET  
14 THAT IF SOMEONE SHOWED YOU A SAMSUNG PHONE AND SAID  
15 "WHAT OTHER PHONE DOES THIS REMIND YOU OF," PEOPLE  
16 ARE LIKELY TO SAY APPLE, AND VICE-VERSA, BECAUSE  
17 THEY'RE THE TWO BIGGIES, JUST LIKE BURGER KING AND  
18 MCDONALD'S AND COKE AND PEPSI?

19 A PERHAPS.

20 BUT TO THE EXTENT THAT THAT'S TRUE,  
21 THAT'S ALSO HAPPENING IN THE CONTROL. SO IF THIS  
22 WAS CREATING A DEMAND CHARACTERISTIC AS YOU  
23 SUGGEST, THEN IT WOULD BE NETTED OUT IN THE CONTROL  
24 CONDITION.

25 Q SO NOW LET'S TALK ABOUT THE CONTROL. THE

1 CONTROL -- I THINK IF WE CAN SHOW 3900.129.

2 IN SELECTING A CONTROL, YOU COULD HAVE  
3 SELECTED FROM A NUMBER OF PHONES; RIGHT?

4 A YES.

5 Q AND YOU INSTEAD -- WELL, OF THE PHONES, YOU  
6 SELECTED A BLACKBERRY?

7 A YES, A BLACKBERRY STORM.

8 Q AND IF WE COULD LOOK AT EXHIBIT 24, I GUESS  
9 PAGE 4. AND AGAIN, A BLACKBERRY, YOU SAID THIS  
10 CONTROL, THE BLACKBERRY CONTROL FOR THE FACT THAT  
11 SAMSUNG AND APPLE JUST MIGHT BE NAMES ON THE TIPS  
12 OF YOUR TONGUE.

13 IF SOMEONE SHOWED YOU A PICTURE OF A CAN  
14 OF MOXIE, DO YOU THINK PEOPLE WOULD ASSOCIATE THAT  
15 WITH COKE OR PEPSI?

16 A A CAN OF WHAT?

17 Q MOXIE. YOU DON'T KNOW MOXIE?

18 A I DON'T KNOW MOXIE.

19 Q OKAY. WELL, JUST AS WITH THE BLACKBERRY --  
20 AND BY THE WAY, IN THE REAL PICTURE, YOU CAN SEE  
21 BLACKBERRY ACROSS THE TOP HERE; RIGHT?

22 A YES. IN ALL OF THE PHONES, THE PICTURES ARE  
23 THE ACTUAL PRODUCTS THAT ARE IN THE MARKETPLACE AS  
24 THEY WOULD LOOK.

25 Q AND BLACKBERRY AND RIM ARE, ARE PRETTY MUCH --

1 AT THE TIME YOU TOOK THIS SURVEY, THEY'RE NOT ON  
2 THE TONGUES OF MANY PEOPLE THINKING ABOUT  
3 SMARTPHONES? THEY ARE HAVING SERIOUS TROUBLE AND  
4 ALMOST DROPPING OUT OF THE MARKET; RIGHT?

5 A I DON'T HAVE THAT UNDERSTANDING DURING THE  
6 PERIOD OF TIME OF THE SURVEY.

7 Q YOU DON'T HAVE IT ONE WAY OR THE OTHER?

8 A THAT'S CORRECT.

9 Q AND IS IT JUST A COINCIDENCE THAT BOTH YOU AND  
10 DR. PORET USED A NOOK AND THE BLACKBERRY STORM FOR  
11 YOUR CONTROLS? DID YOU GUYS GET TOGETHER AND TALK  
12 ABOUT THIS?

13 A NO. I HAVE NO KNOWLEDGE OF MR. PORET'S WORK  
14 BEFORE I CAME TO TRIAL AND HEARD ABOUT IT OTHER  
15 THAN I KNEW HE HAD DONE SURVEYS.

16 Q DID YOU -- WERE YOU GIVEN THESE PHONES AND THE  
17 BLACKBERRY AND THE NOOK TO USE AS THE CONTROLS?

18 A NO. I SELECTED THESE PHONES AND TABLETS WITH  
19 MY STAFF FROM OUR REVIEW OF THE PRODUCTS THAT WERE  
20 AVAILABLE.

21 Q SO YOU INTENTIONALLY SELECTED THE NOOK AS THE  
22 TABLET TO USE AS A CONTROL; RIGHT?

23 A YES.

24 Q YOU'RE SAYING THAT?

25 A YES.

1 Q AND YOU INTENTIONALLY SELECTED THE BLACKBERRY  
2 TO USE AS THE CONTROL; RIGHT?

3 A THE BLACKBERRY STORM.

4 Q AND YOU INTENTIONALLY DECIDED, IN THOSE  
5 VIDEOS, NOT TO SHOW THE COMPLETE PRODUCT, THE  
6 SAMSUNG TABLET? THAT WAS YOUR DECISION?

7 A WELL, IT WAS MY DECISION BASED ON MY  
8 UNDERSTANDING FROM THE COMPLAINT, THAT -- AND  
9 DISCUSSION WITH COUNSEL, THAT THE FRONT AND THE  
10 SIDE VIEWS WAS WHAT MATTERED IN THE TABLET SETTING.

11 Q AND WITH RESPECT TO THE SAMSUNG PHONES, YOU  
12 TESTED JUST TWO OF THE PHONES?

13 A YES, I TESTED TWO OF THE, WHATEVER THE NUMBER  
14 OF PHONES IS.

15 Q SO, FOR EXAMPLE, YOU DIDN'T TEST THE PHONE  
16 THAT MS. KARE SAID HAD A CHIN, THE DROID CHARGE?

17 A NO, I DIDN'T TEST THAT SPECIFIC DEVICE.

18 MR. PRICE: THANK YOU, YOUR HONOR.

19 THE COURT: ALL RIGHT. THE TIME IS  
20 10:19.

21 MR. PRICE: I'M SORRY. I MEANT TO MOVE  
22 IN THE NOKIA -- I MEAN THE NOOK.

23 MR. JACOBS: YOUR HONOR, AGAIN, THAT IS  
24 LISTED ON THE LIST OF DEMONSTRATIVES.

25 THE COURT: IS THAT 2526?

1 THE CLERK: I BELIEVE SO.

2 MR. PRICE: YES, 2526. IT WOULD BE FOR  
3 THE SAME PURPOSE.

4 THE COURT: ALL RIGHT. IT'S ADMITTED  
5 WITH A LIMITING INSTRUCTION THAT IT'S ADMITTED  
6 SOLELY TO ASSESS MR. VAN LIERE'S SURVEY. IT'S  
7 ADMITTED.

8 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER  
9 2526, HAVING BEEN PREVIOUSLY MARKED FOR  
10 IDENTIFICATION, WAS ADMITTED INTO  
11 EVIDENCE.)

12 THE COURT: ALL RIGHT. THE TIME IS NOW  
13 10:20.

14 DO YOU HAVE ANY REDIRECT?

15 MR. JACOBS: NO, YOUR HONOR.

16 THE COURT: ALL RIGHT. MAY THIS WITNESS  
17 BE EXCUSED?

18 MR. JACOBS: SUBJECT TO RECALL.

19 THE COURT: ALL RIGHT. YOU ARE EXCUSED  
20 SUBJECT TO RECALL. YOU MAY LEAVE.

21 THE WITNESS: THANK YOU, YOUR HONOR.

22 THE COURT: ALL RIGHT. CALL YOUR NEXT  
23 WITNESS, PLEASE.

24 MR. JACOBS: THE NEXT WITNESS IS  
25 DR. RAVIN BALAKRISHNAN.

1 THE CLERK: RAISE YOUR RIGHT HAND,  
2 PLEASE.

3 RAVIN BALAKRISHNAN,  
4 BEING CALLED AS A WITNESS ON BEHALF OF THE  
5 PLAINTIFF, HAVING BEEN FIRST DULY SWORN, WAS  
6 EXAMINED AND TESTIFIED AS FOLLOWS:

7 THE WITNESS: I DO.

8 THE CLERK: WOULD YOU HAVE A SEAT,  
9 PLEASE.

10 THE WITNESS: THANK YOU.

11 MR. JACOBS: YOUR HONOR, LET'S JUST TAKE  
12 A MOMENT TO GET SETTLED WITH THE BINDERS.

13 THE COURT: THAT'S FINE.

14 (PAUSE IN PROCEEDINGS.)

15 THE CLERK: COULD YOU STATE YOUR NAME,  
16 PLEASE, AND SPELL IT.

17 THE WITNESS: MY NAME IS RAVIN  
18 BALAKRISHNAN. THAT IS SPELLED R-A-V-I-N, LAST NAME  
19 IS SPELLED B-A-L-A-K-R-I-S-H-N-A-N.

20 THE CLERK: IT'S 10:22. GO AHEAD.

21 DIRECT EXAMINATION

22 BY MR. JACOBS:

23 Q DR. BALAKRISHNAN, THE JURY HAS BEEN HEARING  
24 ABOUT TRADEMARK SURVEYS. ARE YOU HERE TO TALK  
25 ABOUT TRADEMARK SURVEYS?

1 A NO, I'M NOT.

2 Q WHAT ARE YOU HERE TO TALK ABOUT?

3 A I'M HERE TO TALK ABOUT THE UTILITY PATENT  
4 KNOWN AS THE '381 PATENT.

5 Q COULD YOU INTRODUCE YOURSELF TO THE JURY?  
6 THEY'VE HEARD YOUR NAME, BUT CAN YOU DESCRIBE FOR  
7 THEM WHAT YOU DO.

8 A SURE. I'M A PROFESSOR THE COMPUTER SCIENCE AT  
9 THE DEPARTMENT OF COMPUTER SCIENCE AT THE  
10 UNIVERSITY OF TORONTO, WHERE I ALSO HOLD A CANADA  
11 RESEARCH CHAIR IN HUMAN CENTER INTERFACES, AND I  
12 ALSO CODIRECT A USER INTERFACES AND GRAPHICS  
13 LABORATORY AT THE UNIVERSITY OF TORONTO.

14 Q TELL THE JURY A LITTLE BIT ABOUT YOUR  
15 TRAINING.

16 A I HOLD THREE DEGREES IN COMPUTER SCIENCE,  
17 INCLUDING A PH.D. IN COMPUTER SCIENCE, GRADUATED IN  
18 2001 FROM THE UNIVERSITY OF TORONTO.

19 AND I'VE SINCE THEN BEEN A PROFESSOR AT  
20 THE UNIVERSITY SINCE 2001, SO THAT WOULD MAKE IT  
21 ALMOST 11 YEARS AT THIS POINT.

22 Q TELL THE JURY -- ACTUALLY, PULL THE MICROPHONE  
23 A LITTLE BIT CLOSER TO YOU, AND THEN TELL THE JURY  
24 JUST A LITTLE BIT ABOUT THE RESEARCH THAT YOU DO.

25 A MY RESEARCH IS BROADLY IN THE FIELD OF

1 HUMAN/COMPUTER INTERACTION, WHICH INVOLVES THE  
2 STUDY, DESIGN, AND IMPLEMENTATION OF DIFFERENT  
3 FORMS OF USER INTERFACES FOR HOW PEOPLE INTERACT  
4 WITH DIFFERENT KINDS OF TECHNOLOGY, WHETHER IT IS  
5 MOBILE DEVICES OR DESKTOP COMPUTERS AND OTHER FORMS  
6 OF COMPUTATIONAL --

7 Q ON THIS SLIDE PDX 27.1 SHOWING SOME OF YOUR  
8 QUALIFICATIONS, PATENTS ARE IDENTIFIED. CAN YOU  
9 DESCRIBE JUST A BIT ABOUT THE PATENTS THAT YOU'VE  
10 BEEN AWARDED?

11 A SURE. THE 14 PATENTS THAT HAVE BEEN ISSUED  
12 WITH ME AS A COINVENTOR, ARE ALL IN THE AREA OF  
13 USER INTERFACES FOR DIFFERENT KINDS OF COMPUTING  
14 TECHNOLOGIES.

15 Q YOU MENTIONED THIS PHRASE "HUMAN/COMPUTER  
16 INTERACTION." CAN YOU BRIEFLY DESCRIBE WHAT THAT  
17 MEANS?

18 A SURE. I POINTED AT IT A LITTLE BIT EARLIER.  
19 IT'S A BROAD FIELD THAT STUDIES HUMAN INTERACTION  
20 WITH TECHNOLOGY.

21 ONE OF THE THINGS THAT PEOPLE IN THE  
22 FIELD CARE ABOUT IS CAN WE MAKE TECHNOLOGY MORE  
23 ACCESSIBLE AND USABLE TO DIFFERENT USER POPULATIONS  
24 DEPENDING WHAT THAT TECHNOLOGY IS.

25 SO IF IT'S A MOBILE DEVICE, FOR EXAMPLE,



1 AND THE POPULATION IS A BROAD USER BASE, WE WOULD  
2 LOOK AT HOW YOU DESIGN THE INTERFACE FOR THAT  
3 TECHNOLOGY FOR THAT PARTICULAR POPULATION AND MAKE  
4 REFINEMENTS AND STUDY THE REFINEMENTS AND EVALUATE  
5 THEM AND SO FORTH.

6 Q YOU MENTIONED AT THE OUTSET THAT WE HAD ASKED  
7 YOU TO TAKE A LOOK AT THE '381 PATENT. HAVE YOU  
8 SERVED AS AN EXPERT IN OTHER LITIGATION AND BEEN  
9 RETAINED BY APPLE?

10 A YES, I HAVE SERVED AS AN EXPERT IN OTHER  
11 LITIGATION RETAINED BY APPLE AND BY NINTENDO IN THE  
12 PAST.

13 Q AND WHAT'S THE AREA THAT YOU HAVE COVERED IN  
14 THOSE CASES?

15 A ALL OF THESE CASES HAVE TO DO WITH DIFFERENT  
16 KINDS OF USER INTERFACE TECHNOLOGIES, BROADLY  
17 SPEAKING.

18 Q WHAT'S YOUR COMPENSATION LEVEL FOR YOUR WORK  
19 ON THIS CASE?

20 A I'M CURRENTLY BEING COMPENSATED AT MY STANDARD  
21 RATE OF \$430 AN HOUR.

22 Q AND APPROXIMATELY HOW MUCH HAVE YOU BEEN  
23 COMPENSATED FOR YOUR WORK ON THIS CASE?

24 A ON THIS CASE, I'VE SPENT QUITE A BIT OF TIME.  
25 IT STARTED ABOUT A YEAR AND A HALF AGO. I'VE

1 LOOKED AT DIFFERENT CODE, STUDIED THIS PATENT AND  
2 ANOTHER PATENT THAT IS NO LONGER AT ISSUE IN THIS  
3 CASE.

4 SO IN ALL THAT WORK, I'VE BILLED  
5 APPROXIMATELY \$150,000 OVER THE YEAR AND A HALF.

6 Q NOW, WE'VE BEEN REFERRING TO THE '381 PATENT.  
7 WHAT ARE THE, KIND OF THE ABBREVIATIONS WE HAVE  
8 BEEN USING TO DESCRIBE THAT PATENT? WHAT DO WE  
9 CALL IT?

10 A THE '381 PATENT GOES BY SEVERAL ABBREVIATIONS  
11 OR NICKNAMES. ONE OF THE TERMS IS CALLED A RUBBER  
12 BANDING PATENT. OTHER PEOPLE CALL IT A BOUNCE BACK  
13 OR SNAP BACK PATENT.

14 OTHER TERMS I'VE HEARD IN THE COURSE OF  
15 THIS CASE INCLUDE THE ELASTIC EFFECT OR THE LATEX  
16 EFFECT.

17 SO THESE ARE ESSENTIALLY INTERCHANGEABLE  
18 TERMINOLOGIES FOR THE SAME CONCEPT.

19 MR. JACOBS: YOUR HONOR, WE OFFER  
20 DR. BALAKRISHNAN AS AN EXPERT IN THE FIELD OF  
21 COMPUTER SCIENCE AND HUMAN COMPUTER INTERACTION.

22 MR. JOHNSON: NO OBJECTION.

23 THE COURT: ALL RIGHT. SO CERTIFIED.

24 BY MR. JACOBS:

25 Q NOW, YOU LOOKED AT CLAIM 19 OF THIS RUBBER

1 BANDING OR BOUNCE BACK PATENT; CORRECT?

2 A YES, I DID.

3 Q AND WHAT OPINION DID YOU FORM ABOUT WHETHER  
4 SAMSUNG MOBILE PHONES INFRINGE THIS CLAIM OF THIS  
5 PATENT?

6 A MY OPINION, FORMED AFTER STUDYING THE PATENT  
7 AND THE PHONES, IS THAT 21 SAMSUNG MOBILE DEVICES  
8 INFRINGE CLAIM 19 OF THE '381 PATENT.

9 Q AND HOW DID YOU GO ABOUT DOING YOUR WORK TO  
10 MAKE THAT, TO REACH THAT CONCLUSION?

11 A FIRST OF ALL, I ANALYZED THE DEVICES  
12 THEMSELVES, TRYING THEM OUT IN THE DIFFERENT  
13 APPLICATIONS, SEEING WHICH APPLICATIONS MIGHT  
14 INFRINGE.

15 AND THEN I -- IN SOME CASES, I ALSO  
16 LOOKED AT THE SOURCE CODE TO CONFIRM THAT THE  
17 BEHAVIOR WAS ACTUALLY AS WAS BEING SEEN ON THE  
18 SCREEN FOR THE ACCUSED DEVICES.

19 Q AND WHAT SOURCE CODE DID YOU LOOK AT, SIR?

20 A I LOOKED AT FOUR REPRESENTATIVE VERSIONS OF  
21 SOURCE CODE, REPRESENTATIVE OF THE DIFFERENT  
22 PHONES, FOUR OF THE DIFFERENT PHONES; THAT IS, THE  
23 SAMSUNG VERSION OF THE ANDROID 2.1, SAMSUNG VERSION  
24 ANDROID 2.2, 2.3, AND 3.1 SOURCE CODE.

25 Q AND WHAT WAS THE SOURCE OF THAT SOURCE CODE?

1 A THAT SOURCE CODE WAS PROVIDED BY SAMSUNG'S  
2 ATTORNEYS IN THEIR OFFICES AT REDWOOD SHORES.

3 Q DID YOU ENCOUNTER ANY DIFFERENCES BETWEEN THE  
4 VARIOUS VERSIONS OF THE SAMSUNG SOURCE CODE THAT  
5 YOU LOOKED AT WITH REFERENCE TO THE '381 PATENT?

6 A WITH REGARDS TO THE FUNCTIONALITY OF THE '381  
7 PATENT, I DID NOT IDENTIFY ANY LOGICAL  
8 INCONSISTENCIES AT ALL. THEY WERE ESSENTIALLY THE  
9 SAME AS IT PERTAINED TO THE FUNCTIONALITY OF THE  
10 PATENT.

11 Q WHAT ELSE DID YOU REVIEW IN THE COURSE OF  
12 DOING YOUR WORK ON THIS PATENT?

13 A IN ADDITION TO THE CODE AND THE DEVICES  
14 THEMSELVES, I ALSO REVIEWED SEVERAL SAMSUNG  
15 INTERNAL DOCUMENTS THAT PERTAINED TO THE  
16 FUNCTIONALITY OF THE '381 PATENT.

17 Q SO LET'S TAKE A LOOK AT THE '381 PATENT. IT'S  
18 JX 1045 IN YOUR BINDER, DR. BALAKRISHNAN.

19 YOUR HONOR, WE OFFER JX 1045 INTO  
20 EVIDENCE.

21 THE COURT: OKAY. ANY OBJECTION?

22 MR. JOHNSON: NO OBJECTION.

23 THE COURT: IT'S ADMITTED.

24 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER  
25 1045, HAVING BEEN PREVIOUSLY MARKED FOR

1 IDENTIFICATION, WAS ADMITTED INTO  
2 EVIDENCE.)

3 BY MR. JACOBS:

4 Q SO IS THIS THE '381 PATENT THAT YOU ANALYZED,  
5 SIR?

6 A YES, IT IS. IT'S THE FRONT PAGE OF THE '381  
7 PATENT.

8 Q AND WHO IS THE INVENTOR ON THIS PATENT?

9 A THE INVENTOR ON THIS PATENT IS LISTED AS  
10 MR. BAS ORDING.

11 Q AND DO YOU LOOK AT THE QUESTION OF WHEN  
12 MR. ORDING CONCEIVED THE INVENTION IN CLAIM 19 IN  
13 THE COURSE OF HIS WORK?

14 A YES, I DID.

15 MR. JOHNSON: OBJECTION. OUTSIDE THE  
16 SCOPE OF HIS REPORT, YOUR HONOR.

17 MR. JACOBS: PARAGRAPH 42, YOUR HONOR.

18 THE COURT: OVERRULED.

19 GO AHEAD.

20 THE WITNESS: YES, I DID. I CONSIDERED  
21 AND REVIEWED MR. ORDING'S -- PORTIONS OF  
22 MR. ORDING'S DEPOSITION TESTIMONY WHERE HE  
23 TESTIFIED THAT HE HAD BEEN WORKING WITH A PROTOTYPE  
24 TOUCHSCREEN DEVICE IN AROUND ABOUT 2005, FEBRUARY  
25 2005, WHICH IS ABOUT TWO YEARS BEFORE THE IPHONE

1 WAS RELEASED.

2 AND HE ALSO TESTIFIED THAT THE '381  
3 PATENT AND THE BOUNCE BACK FUNCTIONALITY, HE WAS  
4 DEVELOPING AT THAT TIME WAS PROTOTYPED.

5 AND HE ALSO PRODUCED A SOURCE CODE FILE  
6 OF HIS EARLY PROTOTYPE USING A LANGUAGE CALLED  
7 MACROMEDIA DIRECTOR THAT I BRIEFLY -- THAT I  
8 REVIEWED AS WELL.

9 BY MR. JACOBS:

10 Q NOW, LET'S GO BACK TO THIS, THIS PATENT,  
11 DR. BALAKRISHNAN.

12 AND MAYBE WE CAN PUT UP 27. -- PDX 27.3,  
13 MR. LEE.

14 SO WHAT IS THE PROBLEM THAT THE '381  
15 PATENT IS DESIGNED TO SOLVE, SIR?

16 A AT A VERY HIGH LEVEL, THE FOCUS OF THE '381  
17 PATENT IS DEALING WITH USER INTERFACES FOR MOBILE  
18 DEVICES, AND AS MANY OF US KNOW, MOBILE DEVICES  
19 HAVE RELATIVELY SMALL SCREENS COMPARED TO, FOR  
20 EXAMPLE, THE BIG MONITOR I'M LOOKING AT HERE.

21 BUT THE CONTENT WE WANT TO VIEW ON THOSE  
22 MOBILE DEVICES CAN BE LARGER THAN WOULD FIT ON THE  
23 SCREEN.

24 SO, FOR EXAMPLE, WHAT YOU SEE ON THE  
25 SLIDE RIGHT NOW IS JUST A SIMPLE PHOTOGRAPH OF A

1 STICK FIGURE AND IS LARGER THAN WHAT COULD FIT ON A  
2 HYPOTHETICAL MOBILE DEVICE.

3 SO IF SOMEBODY WANTS TO VIEW THE ENTIRETY  
4 OF THIS PHOTOGRAPH, ONE NEEDS TO PROVIDE AN  
5 APPROPRIATE USER INTERFACE TO ALLOW THE USER TO  
6 MOVE AROUND THIS PHOTOGRAPH TO SEE THE REST OF IT.

7 AND IN DOING THAT, PROVIDING THAT KIND OF  
8 NAVIGATION USER INTERFACE, THERE ARE TWO LONG-KNOWN  
9 PROBLEMS THAT ARE ENCOUNTERED, AND THE '381 PATENT  
10 IS FOCUSED AT SOLVING THOSE LONG-KNOWN PROBLEMS  
11 WITH A VERY ELEGANT SOLUTION.

12 THE COURT: I'M SORRY. IT'S 10:31.  
13 LET'S TAKE OUR BREAK NOW.

14 LET ME ASK, DOES THE JURY HAVE THE PHOTOS  
15 OF MR. VAN LIERE YET?

16 THE CLERK: I HAVE THEM.

17 THE COURT: WHAT ABOUT MR. BALAKRISHNAN?

18 THE CLERK: I HAVE NOT YET GOTTEN THEM.  
19 BUT I'M ABOUT TO.

20 THE COURT: OKAY. SO MS. PARKER BROWN  
21 WILL HAND OUT THE PHOTOS OF OUR LAST TWO WITNESSES.

22 THE CLERK: I CAN JUST LEAVE THEM ON  
23 THEIR CHAIRS.

24 THE COURT: SHE'LL JUST LEAVE THEM ON  
25 YOUR CHAIRS.

1                   LET'S TAKE A BREAK. IT'S 10:31. BE BACK  
2                   AT 10:45. AGAIN, PLEASE KEEP AN OPEN MIND. DON'T  
3                   DO ANY RESEARCH OR DISCUSS THE CASE.

4                   THANK YOU.

5                   (WHEREUPON, A RECESS WAS TAKEN.)

6                   (WHEREUPON, THE FOLLOWING PROCEEDINGS  
7                   WERE HELD OUT OF THE PRESENCE OF THE JURY:)

8                   THE COURT: AS OF THIS MORNING, YOU  
9                   DIDN'T HAVE ANY OBJECTIONS FILED AS TO  
10                  MR. SHEPPARD.

11                  MS. MAROULIS: THAT'S CORRECT, YOUR  
12                  HONOR.

13                  THE COURT: OKAY. ARE THOSE GOING TO BE  
14                  FILED TODAY?

15                  MS. MAROULIS: NO. IT'S JUST A VERY  
16                  SHORT DEPOSITION CLIP AND WE DID NOT HAVE OBJECTION  
17                  TO THAT.

18                  THE COURT: OH, OKAY. AND YOU DIDN'T  
19                  HAVE ANY OBJECTIONS AS TO --

20                  MR. MCELHINNY: NO, YOUR HONOR. BUT THE  
21                  REASON WE'RE PUTTING HIM LAST IS BECAUSE WE THINK  
22                  WE DESIGNATED THE WRONG CLIP, SO IF WE GO OVER  
23                  UNTIL MONDAY, WE'LL PROBABLY DO A NEW DESIGNATION.

24                  THE COURT: AT WHICH POINT YOU MIGHT HAVE  
25                  AN OBJECTION?



1 MS. MAROULIS: THAT'S CORRECT.

2 YOUR HONOR, THIS RAISES ANOTHER ISSUE WE  
3 WANTED TO DISCUSS BRIEFLY. APPLE SAID THEY'RE NOT  
4 GOING TO PLAY OUR COUNTER-DESIGNATIONS AS PART OF  
5 THEIR CLIPS AND WE WANTED TO MAKE SURE THAT WAS  
6 DONE, BECAUSE OTHERWISE OUR COUNTER-DESIGNATIONS  
7 WILL BE NOT UNDERSTANDABLE TO THE JURY IF THEY'RE  
8 PLAYED AT A LATER TIME.

9 THERE'S ONLY A FEW OF THEM SUBJECT --  
10 WHERE THE COURT OVERRULED OBJECTIONS, BUT WE CAN'T  
11 HAVE THEM PLAYED SEPARATELY BECAUSE THEY WILL NOT  
12 MAKE ANY SENSE.

13 THE COURT: THAT'S WHAT WE'VE REQUIRED  
14 THROUGHOUT THIS CASE. THERE ARE A NUMBER OF TIMES  
15 WHEN MR. VERHOEVEN PLAYED A VIDEO CLIP AND  
16 MS. KREVANS JUMPED AND UP AND SAID "RULE OF  
17 COMPLETENESS," AND I SAID NOPE, IT'S ON YOUR TIME  
18 AND IN YOUR CASE.

19 SO THAT'S OVERRULED. OKAY?

20 ALL RIGHT. ANYTHING ELSE?

21 LET'S BRING IN OUR JURY.

22 MR. MUELLER: YOU ASKED FOR A CASE CITE  
23 ON THE 408 ISSUE.

24 THE COURT: OKAY.

25 MR. MUELLER: AFFILIATED MANUFACTURERS

1        VERSUS ALUMINUM COMPANY OF AMERICA, THIS IS 56 F.3D  
2        521, PAGE 527, QUOTE, "LITIGATION NEED NOT HAVE  
3        COMMENCED FOR RULE 408 TO APPLY," END QUOTE.

4                THAT WAS CITED WITH APPROVAL BY  
5        JUDGE ILLSTON IN THE MOZAFFARIAN CASE, 1998 WEST  
6        LAW 827596 AT PAGE 6 WHERE JUDGE ILLSTON STATED,  
7        QUOTE, "IT IS NOT NECESSARY THAT THE NEGOTIATIONS  
8        OCCUR AFTER A FORMAL COMPLAINT IS FILED."

9                THE COURT:    ALL RIGHT.    LET ME JUST MAKE  
10        SURE I HAVE THE DATES -- THE CITES CORRECT.    56  
11        F.3D 521, THE PIN CITE IS 527, AND 1998 WEST LAW  
12        827.

13                MR. MUELLER:    827596 AT STAR 6 IS THE PIN  
14        CITE, YOUR HONOR.

15                MS. MAROULIS:    AND YOUR HONOR, WE ALREADY  
16        CITED THE SANDISK CASE EARLIER, SO I'M GOING TO, IF  
17        I CAN, HAND UP IT THE COURT AND GIVE OPPOSING  
18        COUNSEL A PAPER COPY WITH HIGHLIGHTED TEXT.

19                THE COURT:    I KNOW.    IT WAS IN YOUR  
20        BRIEF.

21                MS. MAROULIS:    WOULD YOUR HONOR LIKE A  
22        COPY, OR NOT?

23                THE COURT:    SURE, I'LL TAKE ONE.    BUT I  
24        KNOW THAT WAS IN YOUR BRIEF.

25                MR. MUELLER:    AND IF YOUR HONOR WOULD

1 LIKE COPIES OF THOSE CASES I MENTIONED, WE WOULD BE  
2 HAPPY TO PROVIDE THEM.

3 THE COURT: OKAY. THANK YOU.

4 MR. MUELLER: THANK YOU, YOUR HONOR.

5 THE COURT: ALL RIGHT. IF THERE'S  
6 NOTHING ELSE, LET'S GO AHEAD WITH MR. BALAKRISHNAN.  
7 WE'LL GO UNTIL NOON.

8 ALL RIGHT. LET'S GO AHEAD AND BRING IN  
9 OUR JURY, PLEASE.

10 (WHEREUPON, THE FOLLOWING PROCEEDINGS  
11 WERE HELD IN THE PRESENCE OF THE JURY:)

12 THE COURT: ALL RIGHT. PLEASE TAKE A  
13 SEAT. SORRY. I KEEP FORGETTING.

14 ALL RIGHT. IT'S 10:49. PLEASE GO AHEAD.  
15 BY MR. JACOBS:

16 Q DR. BALAKRISHNAN, LET'S CONTINUE WHERE WE LEFT  
17 OFF.

18 I THINK YOU WERE TALKING ABOUT THE  
19 PROBLEMS THE '381 PATENT IS DESIGNED TO SOLVE.

20 A RIGHT. AND I THINK I LEFT OFF BY DESCRIBING  
21 THE GENERAL PROBLEMS FACED, AND I THINK I SAID THE  
22 '381 PATENT SOLVES TWO PARTICULAR PROBLEMS WHEN WE  
23 BROKE.

24 Q EXACTLY. SO LET'S FOCUS ON THOSE TWO  
25 PARTICULAR PROBLEMS NOW.

1                   WHAT'S THE FIRST OF THOSE PROBLEMS?

2           A        THE FIRST OF THOSE PROBLEMS IS WHAT'S KNOWN IN  
3           THE FIELD AS THE FROZEN SCREEN PROBLEM, AND THIS  
4           OCCURS WHEN THE USER IS NAVIGATING ABOUT A  
5           DOCUMENT, OR A PHOTOGRAPH IN THIS EXAMPLE, AND WHEN  
6           THEY REACH THE EDGE OF THE PHOTOGRAPH, IT SIMPLY  
7           JUST STOPS.

8                   AND THE USER IS LEFT WONDERING, HAVE THEY  
9           REACHED THE EDGE OF THE PHOTOGRAPH OR HAS THE  
10          SYSTEM JUST STOPPED REACTING TO THEM, IN OTHER  
11          WORDS, FROZEN?

12                   AND BECAUSE THEY ARE UNSURE, THEY OFTEN  
13          TRY AGAIN JUST TO MAKE SURE THE SYSTEM IS NOT  
14          FROZEN.

15                   I'VE PREPARED A LITTLE VIDEO, ANIMATION  
16          TO ILLUSTRATE THIS PROBLEM.

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

19                   THE WITNESS:   THE USER HITS THE EDGE,  
20          TRIES AGAIN, AND YOU SEE IT'S FROZEN, BUT THE USER  
21          IS TRYING AGAIN.

22                   AND THAT'S ESSENTIALLY THE HEART OF THE  
23          FROZEN SCREEN PROBLEM.   THERE ISN'T SUFFICIENT  
24          FEEDBACK TO THE USER AS TO WHETHER THE SYSTEM IS  
25          STILL ALIVE OR THEY'VE HIT THE EDGE OF THE

1 DOCUMENT.

2 BY MR. JACOBS:

3 Q AND THAT WAS PDX 27.24. WHAT'S THE NEXT  
4 PROBLEM THAT THE '381 PATENT WAS DESIGNED TO SOLVE?

5 A THE SECOND PROBLEM IS KNOWN IN THE FIELD AS A  
6 DESERT FOG PROBLEM.

7 SO THIS IS A BIT OF THE CONVERSE OF THE  
8 FROZEN SCREEN PROBLEM IN THAT ONE COULD MANIPULATE  
9 THE IMAGE SUCH THAT IT GOES OFF, COMPLETELY OFF THE  
10 SCREEN AND YOU'RE LEFT WITH A BLANK SCREEN, WHAT WE  
11 WOULD CALL THE DESERT FOG, AND YOU HAVE NO IDEA  
12 WHERE THE SCREEN IS RELATIVE TO WHERE THE  
13 PHOTOGRAPH IS OUTSIDE THE SCREEN.

14 SO I PREPARED A LITTLE ANIMATION FOR THAT  
15 AS WELL.

16 AS YOU CAN SEE, THE PHOTOGRAPH IS TAKEN  
17 OFF THE SCREEN, AND NOW THE USER IS MANIPULATING  
18 THE DESERT FOG AND IT'S UNCLEAR, ESSENTIALLY THEY  
19 PAUSE FOR A MOMENT, HOW TO BRING THAT PHOTOGRAPH  
20 BACK ON TO THE SCREEN.

21 SO THESE ARE OF THE TWO KEY PROBLEMS THAT  
22 ARE FOUND IN THIS KIND OF NAVIGATION INTERFACE THAT  
23 THE '381 PATENT IS FOCUSED ON SOLVING.

24 Q AND THAT WAS PDX 27.25. HOW DOES THE '381  
25 PATENT SOLVE THESE TWO PROBLEM PROBLEMS, FROZEN

1 SCREEN AND DESERT FOG?

2 A THE '381 PATENT SOLVES BOTH THESE PROBLEMS IN  
3 ONE FELL SWOOP. ESSENTIALLY, A, IT SOLVES THE  
4 DESERT FOG PROBLEM BY NOT ALLOWING THE PHOTOGRAPH  
5 TO GO OFF THE SCREEN COMPLETELY.

6 AND THE FROZEN SCREEN PROBLEM IT SOLVES  
7 BY WHEN THE DOCUMENT REACHES THE EDGE, IT ALLOWS A  
8 CERTAIN AMOUNT OF MOVEMENT BEYOND THE EDGE, SHOWS  
9 AN AREA BEYOND THE EDGE, SO THE USER KNOWS, I'VE  
10 REACHED THE EDGE OF THE DOCUMENT, AND THEN WHEN  
11 THEY RELEASE THEIR FINGER, IT BOUNCES BACK.

12 IT GIVES NICE FEEDBACK SAYING "YOU'VE  
13 REACHED THE EDGE. THE SYSTEM IS STILL ALIVE. IT'S  
14 NOT FROZEN."

15 I PREPARED AN ANIMATION TO ILLUSTRATE  
16 THAT AS WELL.

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

19 THE WITNESS: AS YOU CAN SEE, YOU'VE  
20 REACHED THE EDGE OF THE DOCUMENT. THE BLACK AREA  
21 BELOW IS SHOWN.

22 CAN WE SHOW THAT AGAIN IF YOU DON'T MIND?

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

25 THE WITNESS: AND WHEN THE USER RELEASES

1           THEIR FINGER, IT BOUNCES BACK.    SO IT GIVES THE  
2           ILLUSION OF A VERY LIVELY SYSTEM THAT'S NOT FROZEN  
3           BECAUSE THE USER KNOWS WHERE THE EDGES ARE AND IT  
4           DOESN'T DISAPPEAR IN THE DESERT FOG.

5           BY MR. JACOBS:

6           Q       WERE THESE PROBLEMS RECOGNIZED IN THE FIELD  
7           BEFORE THE '381 PATENT?

8           A       THE TWO PROBLEMS WERE WELL RECOGNIZED IN THE  
9           FIELD.    IN FACT, PAPERS WERE PUBLISHED ABOUT IT  
10          YEARS BACK.

11          Q       DID ANYONE SOLVE IT BEFORE APPLE?

12          A       NO, IT DID NOT.

13          Q       NOW, DOES THE IPHONE IMPLEMENT CLAIM 19 OF THE  
14          '381 PATENT?

15          A       YES, IT DOES.

16          Q       AND HOW DO YOU KNOW THAT?

17          A       I INVESTIGATED THE DIFFERENT IPHONE DEVICES  
18          AND TRIED THE FUNCTIONALITY ON THE DIFFERENT  
19          DEVICES.

20                    I ALSO LOOKED AT THE IPHONE SOURCE CODE  
21          TO UNDERSTAND HOW IT'S IMPLEMENTED.

22          Q       SO LET'S LOOK AT 27.7, MR. LEE.

23          A       SO THIS IS A VIDEO OF THE FUNCTIONALITY BEING  
24          SHOWED IN THE PHOTOS APPLICATION ON THE IPHONE 3GS.  
25          THIS IS THE ACTUAL IPHONE, THE ACTUAL PERSON DOING

1 THE FUNCTIONALITY.

2 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN  
3 OPEN COURT OFF THE RECORD.)

4 THE WITNESS: AS YOU CAN SEE, YOU MOVE TO  
5 THE RIGHT, YOU GET TO THE EDGE, IT SHOWS BEYOND THE  
6 EDGE, AND THEN IT BOUNCES BACK.

7 BY MR. JACOBS:

8 Q LET'S SHOW THAT ONE MORE TIME, PLEASE.

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

11 THE WITNESS: THE USER IS DRAGGING, AN  
12 AREA BEYOND THE EDGE IS SHOWN, AND THEN IT BOUNCES  
13 BACK.

14 BY MR. JACOBS:

15 Q LET'S TURN NOW TO SAMSUNG PRODUCTS AND YOUR  
16 ANALYSIS OF HOW THEY -- WHETHER THEY INFRINGE CLAIM  
17 19 OF THE '381 PATENT, AND LET'S START WITH THE  
18 SAMSUNG GALAXY S II AT&T.

19 DOES IT INFRINGE CLAIM 19?

20 A YES. THE SAMSUNG GALAXY S II, AT&T VERSION,  
21 INFRINGES CLAIM 19 OF THE '381 PATENT.

22 Q NOW, YOU'VE LISTED HERE ON THE SLIDE THE  
23 GALLERY APPLICATION. WHAT'S THE GALLERY  
24 APPLICATION?

25 A THE GALLERY APPLICATION IN SAMSUNG'S PRODUCT



1 IS ESSENTIALLY THE PHOTO MIGRATION AND VIEWING  
2 APPLICATION THAT ALLOWS YOU TO LOOK THROUGH A SET  
3 OF PHOTOGRAPHS.

4 Q SO LET'S LOOK AT THE GALLERY APPLICATION IN  
5 THE GALAXY S II.

6 MR. LEE, COULD WE HAVE 27.9, PLEASE.

7 WHAT ARE WE SEEING HERE,

8 DR. BALAKRISHNAN?

9 A HERE WE'RE SEEING ON THE GALAXY S II, AT&T  
10 VERSION, THE GALLERY APPLICATION. WE CONTINUE TO  
11 USE THE SAME PHOTOGRAPH WE USED IN THE EARLIER  
12 EXAMPLES.

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

15 THE WITNESS: AND AS YOU CAN SEE, THE  
16 SAME BOUNCE BACK FUNCTIONALITY AS WE'VE SEEN.

17 AND IF YOU CAN SHOW THAT ONE MORE TIME,  
18 YOU CAN SEE THE USER IS DRAGGING THE DOCUMENT, IT  
19 REACHES THE EDGE, THE AREA BEYOND THE EDGE IS  
20 SHOWN, AND IT BOUNCES BACK WHEN THEY RELEASE THE  
21 FINGER. ESSENTIALLY IT'S THE SAME AS THE WAY THE  
22 IPHONE WORKS.

23 BY MR. JACOBS:

24 Q LET'S BREAK THE REQUIREMENTS OF CLAIM 19 DOWN  
25 INTO ITS VARIOUS PARTS.

1                   COULD WE HAVE 27.10, MR. LEE.

2                   SO THE FIRST PART OF CLAIM 19 DISCUSSES A  
3                   DEVICE WITH A TOUCHSCREEN DISPLAY, A PROCESSOR,  
4                   MEMORY, AND A PROGRAM FOR PERFORMING RUBBER BANDING  
5                   OF THE BOUNCE FUNCTION.

6                   DO SAMSUNG'S PRODUCTS MEET THESE  
7                   ELEMENTS, REQUIREMENTS, OR LIMITATIONS AS THE  
8                   PATENT LAWYERS CALL THEM?

9                   A        YES, THEY DO.

10                  Q        SO LET'S GO TO 27.12.   AND CAN YOU JUST REVIEW  
11                  THIS ELEMENT, THIS FIRST ELEMENT OF CLAIM 19  
12                  BRIEFLY WITH THE JURY AND WHY YOU FIND IT PRESENT  
13                  IN THE SAMSUNG DEVICE?

14                  A        SURE.   THIS FIRST ELEMENT ESSENTIALLY SAYS IT  
15                  HAS TO BE A COMPETING DEVICE WHICH HAS A  
16                  TOUCHSCREEN DISPLAY.   AND WHAT A TOUCHSCREEN  
17                  DISPLAY IS IS A TOUCH SENSOR THAT SENSES THE USER'S  
18                  TOUCH INPUTS INTEGRATED WITH A DISPLAY.

19                  AND ALL THESE PHONES AND TABLETS CLEARLY  
20                  HAVE A TOUCH SENSOR INTEGRATED WITH THE DISPLAY.

21                  IT ALSO HAS ONE OR MORE COMPUTING  
22                  PROCESSORS, WHICH MAKES ALL THE PROGRAMS RUN;  
23                  MEMORY TO INSTALL THOSE PROGRAMS AND DATA; AND ONE  
24                  OR MORE PROGRAMS THAT ACTUALLY GIVE YOU THE  
25                  FUNCTIONALITY THAT WE USE ON THESE DIFFERENT

1 DEVICES.

2 Q CAN WE HAVE 27.14, MR. LEE.

3 NOW, THIS IS ELEMENT 2 OF THE CLAIM -- OF  
4 CLAIM 19 OF THE '381 PATENT. WHAT IS IT CALLING  
5 FOR?

6 A ELEMENT 2 SIMPLY SAYS IT HAS TO BE  
7 INSTRUCTIONS OR COMPUTER CODE FOR DISPLAYING A  
8 FIRST PORTION OF AN ELECTRONIC DOCUMENT.

9 SO THE GALLERY APPLICATION, THE  
10 ELECTRONIC DOCUMENT WILL BE THE PHOTOGRAPH, AND AS  
11 YOU CAN SEE ON THIS PARTICULAR SLIDE, I'VE  
12 ILLUSTRATED IT DISPLAYING A FIRST PORTION, JUST A  
13 FIRST PART OF THAT DOCUMENT.

14 Q LET'S GO TO THE NEXT SLIDE, MR. LEE, 27.16.

15 THIS IS THE THIRD ELEMENT OF CLAIM 19,  
16 AND WHAT IS IT LOOKING FOR?

17 A THIS ELEMENT IS LOOKING FOR THE DETECTION OF  
18 AND MOVEMENT OF AN OBJECT ON A TOUCHSCREEN DISPLAY.

19 NOW, THE OBJECT COULD BE ANY OBJECT OR IT  
20 COULD BE THE FINGER, THE USER'S FINGER AS WELL, AND  
21 THE SAMSUNG DEVICES CLEARLY DETECT THE TOUCH.

22 AS YOU CAN SEE IN SUBSEQUENT VIDEOS, AND  
23 EVEN THE ORIGINAL VIDEO WE SHOWED, IT CLEARLY  
24 DETECTS THE MOVEMENT OF THAT OBJECT, A FINGER ON  
25 THE SCREEN.

1 Q LET'S GO TO 27.18. THIS IS THE FOURTH ELEMENT  
2 OF CLAIM 19. AND WHAT IS IT REQUIRING?

3 A THIS REQUIRES A TRANSLATION OR MOVEMENT OF THE  
4 ELECTRONIC DOCUMENT, IN THIS EXAMPLE, THE  
5 PHOTOGRAPH, IN A FIRST DIRECTION, AND THEN IT  
6 SUBSEQUENTLY DISPLAYS A SECOND PORTION OF THAT SAME  
7 DOCUMENT WHERE THAT SECOND PORTION HAS TO BE  
8 DIFFERENT FROM THE FIRST PORTION.

9 AS YOU CAN SEE HERE -- IF YOU CAN SHOW  
10 THE VIDEO AGAIN, PLEASE?

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

13 BY MR. JACOBS:

14 Q THAT'S THE FIRST PORTION.

15 A NOW, WHEN YOU DRAG IT IN THE FIRST DIRECTION,  
16 A SECOND PORTION OF THE SAME ELECTRONIC DOCUMENT OR  
17 PHOTOGRAPH IS SHOWN.

18 AS YOU CAN SEE, THE SECOND PORTION COULD  
19 OVERLAP THE FIRST PORTION, BUT IT'S STILL DIFFERENT  
20 FROM THE FIRST PORTION.

21 Q AND JUST BECAUSE IT WENT A LITTLE FAST, SIR,  
22 WHEN YOU WERE APPLYING THE PHRASE "TRANSLATING THE  
23 ELECTRONIC DOCUMENT," YOU WERE LOOKING FOR WHAT?

24 A I'M LOOKING FOR MOVEMENT. "TRANSLATION"  
25 SIMPLY MEANS MOVEMENT ON A PARTICULAR SET OF AXES,

1 IN THIS CASE IT'S MOVING ON THE X AND Y OR  
2 TWO-DIMENSIONAL PLANE OF THE SCREEN.

3 Q SO NOW LET'S LOOK AT THE FIFTH ELEMENT ON THE  
4 SCREEN, AND WE'RE LOOKING AT 27.20. WHAT DOES THIS  
5 ELEMENT CALL FOR?

6 A THIS ELEMENT IS WHAT HAPPENS WHEN THE USER  
7 CONTINUES TO DRAG THE DOCUMENT, TRANSLATE THE  
8 DOCUMENT, AND IT REACHES THE EDGE OF THE DOCUMENT.

9 WHEN THE SYSTEM RECOGNIZES THAT THE EDGE  
10 OF A DOCUMENT HAS BEEN REACHED, IN RESPONSE TO THAT  
11 EDGE BEING REACHED, AN AREA BEYOND THE EDGE IS  
12 SHOWN, WHAT I'VE ILLUSTRATED IN THE YELLOW BOX TO  
13 THE LEFT OF THE ACTUAL DOCUMENT'S EDGE THERE ON THE  
14 SCREEN.

15 AND THE LAST PART OF THIS IS THAT A THIRD  
16 PORTION OF THE DOCUMENT HAS TO REMAIN ON THE SCREEN  
17 WHERE THAT THIRD PORTION HAS TO BE SMALLER THAN THE  
18 ORIGINAL FIRST PORTION.

19 AND THAT'S PRETTY APPARENT FROM THIS  
20 IMAGE HERE. THE THIRD PORTION IS NOT -- DOESN'T  
21 FILL THE FULL SCREEN, WHEREAS THE FIRST PORTION I  
22 ORIGINALLY SHOWED FILLS THE FULL SCREEN.

23 Q DOES THE SAMSUNG GALAXY S II, AT&T, MEET THIS  
24 LIMITATION?

25 A YES, IT DOES.

1 Q LET'S GO TO THE SIXTH ELEMENT OF CLAIM 19.  
2 WHAT DOES THIS ELEMENT REQUIRE?

3 A THIS ELEMENT DEALS WITH WHAT HAPPENS WHEN THE  
4 OBJECT OR FINGER IS RELEASED FROM THE SCREEN, IT'S  
5 NO LONGER DETECTED BY THE TOUCHSCREEN, AND THIS  
6 REQUIRES THAT WHEN THAT HAPPENS, THE DOCUMENT IS  
7 TRANSLATED IN A SECOND DIRECTION, IT'S MOVED IN A  
8 SECOND DIRECTION, SUCH THAT THE AREA BEYOND THE  
9 EDGE OF THE SCREEN PREVIOUSLY DISPLAYED IS NO  
10 LONGER DISPLAYED.

11 AND FINALLY, IT DISPLAYS A FOURTH PORTION  
12 OF THE ELECTRONIC DOCUMENT, AND THAT FOURTH PORTION  
13 HAS TO BE DIFFERENT FROM THE ORIGINAL FIRST PORTION  
14 THAT WE SAW AT THE START OF THIS SEQUENCE OF  
15 VIDEOS.

16 AND FOR SAKE OF ILLUSTRATION, JUST TO  
17 REMIND US, I'VE ASKED TO PUT UP THE FOURTH -- THE  
18 FIRST PORTION AS A CALL OUT. IF WE CAN HAVE THAT  
19 ON THE SLIDE?

20 THAT IS THE ORIGINAL FIRST PORTION. AS  
21 YOU CAN SEE, IT'S DIFFERENT FROM THE FOURTH PORTION  
22 THAT'S ENDED UP ON THE SCREEN AND OF THIS  
23 INTERACTION.

24 Q SO WE'VE BEEN LOOKING AT THESE ELEMENTS IN THE  
25 CONTEXT OF THE GALLERY APPLICATION ON THE

1 GALAXY S II, AT&T. DOES THIS PHONE MEET THESE SAME  
2 REQUIREMENTS IN OTHER APPLICATIONS?

3 A YES, IT DOES. THE GALAXY S II, AT&T, MEETS  
4 THE ELEMENTS OF CLAIM 19 OF THE '381 PATENT IN TWO  
5 OTHER APPLICATIONS, IN THE CONTACTS LIST AND THE  
6 INTERNET BROWSER APPLICATIONS.

7 Q LET'S TAKE A LOOK AT THOSE BRIEFLY.

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

10 THE WITNESS: SO ON THE LEFT YOU HAVE A  
11 VIDEO OF THE CONTACTS LIST APPLICATION. THIS IS  
12 SIMPLY THE LIST OF PEOPLE YOU HAVE PHONE NUMBERS  
13 AND SO FORTH FOR ON THE PHONE.

14 AND IF WE CAN PLAY THAT AGAIN, THE USER  
15 IS DRAGGING THE LIST UPWARDS, AND WHEN THEY REACH  
16 THE EDGE, IT'S HARD TO SEE, BUT YOU REACH THE EDGE,  
17 IT'S BLACK ON THE BOTTOM, THE AREA BEYOND THE EDGE,  
18 A BLACK AREA IS SHOWN.

19 WHEN THE USER LIFTS THEIR FINGER UP, IT  
20 BOUNCES BACK. IT'S THE EDGE OF THE PHOTOGRAPH,  
21 JUST IN A DIFFERENT DIRECTION.

22 BY MR. JACOBS:

23 Q AND HOW ABOUT IN THE BROWSER APPLICATION?

24 A THE BROWSER APPLICATION SIMILARLY WORKS THE  
25 SAME WAY. YOU CAN DRAG IT BEYOND THE EDGE, IN THIS

1 CASE YOU'VE REACHED THE EDGE, AN AREA BEYOND THE  
2 EDGE IS SHOWN, YOU RELEASE YOUR FINGER, IT BOUNCES  
3 BACK, VERY MUCH LIKE THE GALLERY ACTUALLY.

4 Q CLAIM 19 DISCUSSES INSTRUCTIONS THAT MAKE THIS  
5 FEATURE WORK. WHAT ARE INSTRUCTIONS IN THE CONTEXT  
6 OF A SMARTPHONE OR A TABLET COMPUTER?

7 A INSTRUCTIONS IN THE CONTEXT OF PHONES AND  
8 TABLET COMPUTERS THAT WE'RE DISCUSSING HERE ARE  
9 REALLY JUST COMPUTER CODE, COMPUTER PROGRAM  
10 INSTRUCTIONS, AND THIS IS LINES OF CODE THAT'S IN  
11 THE COMPUTER THAT EXECUTE ON THE PROCESSOR TO MAKE  
12 THIS FUNCTIONALITY WORK.

13 Q HOW DO YOU KNOW THAT THESE INSTRUCTIONS ARE  
14 PRESENT ON THE GALAXY S II, AT&T?

15 A AS I TESTIFIED EARLIER, I LOOKED AT THE  
16 SAMSUNG PRODUCED CODE AND WHAT I'VE DONE IS I'VE  
17 EXCERPTED JUST TWO SMALL PORTIONS TO ILLUSTRATE  
18 SOME OF THE PERTINENT CODE FOR THE GALLERY AND FOR  
19 THE BROWSER APPLICATIONS ON THE SCREEN.

20 IT'S NOT ON THE SCREEN YET.

21 MR. JACOBS: SO, YOUR HONOR, WE'D LIKE TO  
22 DISPLAY THIS FOR YOU, FOR OPPOSING COUNSEL, AND FOR  
23 THE JURY AS IS REPRESENTATIVE OF THE CODE OF  
24 SAMSUNG.

25 THE COURT: OKAY. GO AHEAD.



1 BY MR. JACOBS:

2 Q SO WE'RE LOOKING AT 27.31, SIR, AND IS IT ON  
3 THE JURY'S SCREEN.

4 NO, NOT ON THE PUBLIC SCREEN.

5 THE COURT: TAKE THAT DOWN, PLEASE.

6 MR. JACOBS: IS IT ON THE JURORS'  
7 SCREENS? NO.

8 THANK YOU MR. LEE.

9 Q SO DR. BALAKRISHNAN, CAN YOU SHOW US WHAT WE  
10 ARE SEEING ON THIS, IN THIS SOURCE CODE?

11 A SURE.

12 Q CAN YOU TELL US WHAT WE'RE SEEING ON THE  
13 SOURCE CODE?

14 A ON THE LEFT-HAND SIDE IS THE SOURCE CODE FOR  
15 THE GALLERY APPLICATION THAT WE'VE BEEN TALKING  
16 ABOUT. SO THIS IS A VERY SMALL SNIPPET OF THE  
17 OVERALL CODE THAT RUNS. WHAT I'VE DONE IS  
18 ILLUSTRATE JUST A PORTION THAT SETS UP THE  
19 PARAMETERS FOR DETERMINING WHAT HAPPENS AT THE EDGE  
20 OF THE DOCUMENT.

21 SO IT LOOKS AT THE LEFT EXTENT OR THE  
22 RIGHT EXTENT OR THE TOP OR BOTTOM. THOSE ARE FOUR  
23 EDGES OF THE DOCUMENT. IF IT EXCEEDS THE THRESHOLD  
24 OF THAT EDGE, IT MOVES THE DOCUMENT BY THE  
25 APPROPRIATE AMOUNT SO YOU CAN SEE IT.

1           ON THE RIGHT-HAND SIDE IS THE SAME  
2           FUNCTIONALITY, BUT WRITTEN IN A SLIGHTLY DIFFERENT  
3           WAY FOR THE BROWSER APPLICATION, AND IN THIS CASE  
4           IT'S COMPUTING THE AMOUNT OF BOUNCE THAT NEEDS TO  
5           HAPPEN WHEN THE FINGER IS RELEASED AND IT DOES SOME  
6           CALCULATIONS WITH THAT.

7           SO I WANT TO EMPHASIZE, THIS IS JUST THE  
8           RELEVANT SNIPPET OF THE OVERALL CODE. THERE'S MUCH  
9           MORE CODE THAT MAKES THIS ALL REALLY WORK IN  
10          TOTALITY.

11         Q       SO BASED ON YOUR REVIEW OF THE CODE AND OF THE  
12            DEVICE, WHAT IS YOUR CONCLUSION AS TO WHETHER THE  
13            SAMSUNG GALLERY S II, AT&T, INFRINGES CLAIM 19 OF  
14            THE '381 PATENT?

15         A       BASED ON MY REVIEW OF THE DEVICES AND THE  
16            CODE, IT IS MY OPINION THAT THE SAMSUNG  
17            GALAXY S II, AT&T, INFRINGES CLAIM 19 OF THE '381  
18            PATENT IN ALL THREE APPLICATIONS.

19         Q       YOU ANALYZED OTHER SAMSUNG PHONES?

20         A       YES, I DID.

21         Q       AND DOES YOUR OPINION EXTEND TO OTHERS OF THE  
22            PHONES THAT YOU EXAMINED?

23         A       YES, 20 OTHER PHONES ALSO INFRINGE THE '381  
24            PATENT.

25         Q       CAN WE SHOW THAT TO THE JURY ?

1 A SURE.

2 Q OKAY. SO LET'S LOOK AT 27.32. I'M SORRY,  
3 .33?

4 A WHAT I HAVE HERE IS THE FOUR OTHER PHONES,  
5 GALAXY S I9000, GALAXY S II I9100, S 4G, AND THE  
6 VIBRANT, ALL SHOWING THE SAME FUNCTIONALITY THAT I  
7 WENT THROUGH IN DETAIL EARLIER WITH THE  
8 GALAXY S II, AND YOU CAN SEE THAT ALL OF THEM DO  
9 THE SAME KIND OF BOUNCING.

10 Q AND NOW LET'S LOOK AT PDX 27.34?

11 A THESE ARE FOUR MORE PHONES, THE ACE,  
12 CAPTIVATE, CONTINUUM, AND THE DROID CHARGE.

13 AGAIN, EACH OF THEM DO THE SAME  
14 FUNCTIONALITY AS I ILLUSTRATED BEFORE IN THE  
15 GALLERY APPLICATION.

16 Q LET'S JUST SEE THAT ONE MORE TIME SINCE WE  
17 SHOWED ALL FOUR TOGETHER.

18 A YOU DRAG TO THE RIGHT, REACH THE EDGE, YOU LET  
19 GO, IT BOUNCES BACK.

20 Q AND 27.35.

21 A THESE ARE FOUR MORE DEVICES, EXHIBIT 4G, THE  
22 EPIC 4G, THE FASCINATE, AND THE INDULGE,  
23 ESSENTIALLY DOING WHAT YOU'VE ALREADY SEEN.

24 Q AND LET'S PLAY THAT ONE MORE TIME.

25 A AGAIN, DRAG TO THE RIGHT, YOU REACH THE EDGE,

1 AN AREA BEYOND THE EDGE IS SEEN, AND IT BOUNCES  
2 BACK WHEN YOU LET GO.

3 Q AND 27.36.

4 A THIS IS ANOTHER FIVE PHONES, THE INFUSE, THE  
5 MESMERIZE, THE NEXUS S 4G, THE PREVAIL, AND THE  
6 REPLENISH.

7 AGAIN, SAME FUNCTIONALITY. YOU DRAG TO  
8 THE RIGHT, WHEN YOU LET GO, IT BOUNCES BACK.

9 Q AND THEN 27.37.

10 A AND THESE ARE THE TWO TABLET DEVICES RUNNING  
11 THE GALLERY. THEY DO THE EXACT SAME FUNCTIONALITY.  
12 YOU REACH THE EDGE, YOU LET GO, IT BOUNCES BACK.

13 Q NOW, DID YOU ALSO SHOW -- LOOK AT SOME OTHER  
14 SAMSUNG PRODUCTS IN CONNECTION WITH THE CONTACTS  
15 APPLICATION?

16 A YES, I DID. AND I THINK I'VE ILLUSTRATED FOUR  
17 MORE OF THEM HERE.

18 Q 27.38?

19 A RIGHT. THIS IS THE FASCINATE, THE GALAXY S  
20 4G, THE GEM, AND THE VIBRANT, AND THEY ALL DO THE  
21 SAME BOUNCE BACK FUNCTIONALITY IN THE CONTACTS  
22 LIST.

23 AND IN THIS CASE YOU DRAG UP AND DOWN,  
24 YOU REACH THE EDGE, IT SHOWS AN AREA BEYOND THE  
25 EDGE, AND IT BOUNCES BACK.

1 Q DO OTHER SAMSUNG PRODUCTS ALSO INFRINGE IN THE  
2 CONTACTS LIST APPLICATION?

3 A YES, THEY DO. I BELIEVE THERE'S A TOTAL OF 16  
4 OF THE 21 ACCUSED PRODUCTS THAT INFRINGE IN THE  
5 CONTACTS LIST APPLICATION.

6 Q AND DO YOU HAPPEN TO REMEMBER WHAT THE OTHERS  
7 ARE?

8 A I DON'T REMEMBER, BUT I HAVE A LIST HERE AND I  
9 CAN READ THEM OUT IF YOU WANT ME TO.

10 Q THAT WOULD BE GREAT.

11 A SO THE ONES THAT DO INFRINGE IN THE CONTACTS  
12 LIST ARE THE CAPTIVATE, THE CONTINUUM, THE DROID  
13 CHARGE, THE EPIC 4G, THE EXHIBIT 4G, THE FASCINATE,  
14 THE GALAXY ACE, THE GALAXY S I9000, THE GALAXY S II  
15 I9100, THE GALAXY S II, AT&T, WHICH WE'VE ALREADY  
16 GONE THROUGH IN DETAIL, THE GALAXY S 4G, THE GEM,  
17 THE INDULGE, THE INFUSE 4G, THE MESMERIZE, AND THE  
18 VIBRANT.

19 Q HAVE YOU PREPARED ADDITIONAL VIDEOS DEPICTING  
20 INFRINGEMENT IN THE BROWSER APPLICATION?

21 A YES, I HAVE.

22 Q LET'S TAKE A LOOK AT THOSE, 27.39.

23 A THESE ARE FOUR SAMSUNG DEVICES, THE ACE,  
24 EXHIBIT 4G, GALAXY S II I9100, AND THE GALAXY  
25 TAB 10.1, ALL OF WHICH ARE PERFORMING THE '391,

1 CLAIM 19 FUNCTIONALITY IN THE BROWSER APPLICATION.

2 AND IF WE PLAY THAT AGAIN JUST VERY  
3 QUICKLY, YOU CAN SEE YOU DRAG THE DOCUMENT, WHEN AN  
4 EDGE IS REACHED, AN AREA BEYOND THE EDGE, THE GRAY  
5 AREA IS SHOWN. WHEN YOU LET GO, IT BOUNCES BACK.

6 Q HAVE YOU PREPARED A COMPILATION OF THESE  
7 VIDEOS FOR THE JURY?

8 A YES, I PREPARED A WHOLE SET OF VIDEOS OVER THE  
9 COURSE OF THIS THAT ILLUSTRATE THE DIFFERENT  
10 INFRINGEMENT.

11 Q AND ARE THOSE VIDEOS IN PX 64?

12 A YES, THEY ARE.

13 MR. JACOBS: YOUR HONOR, WE OFFER PX 64  
14 IN EVIDENCE.

15 THE COURT: ANY OBJECTION?

16 MR. JOHNSON: NO OBJECTION, YOUR HONOR.

17 THE COURT: ALL RIGHT. THEY'RE ADMITTED.

18 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER  
19 64, HAVING BEEN PREVIOUSLY MARKED FOR  
20 IDENTIFICATION, WAS ADMITTED INTO  
21 EVIDENCE.)

22 BY MR. JACOBS:

23 Q GOING BACK TO THE GALLERY APPLICATION FOR A  
24 MINUTE --

25 YOU CAN TAKE THAT DOWN, MR. LEE, THANK

1 YOU.

2 GOING BACK TO THE GALLERY APPLICATION FOR  
3 A MINUTE, HAVE YOU HEARD OF SOMETHING CALLED THE  
4 HOLD STILL BEHAVIOR IN SOME SAMSUNG PRODUCTS?

5 A YES, I HAVE.

6 Q AND WHAT IS YOUR UNDERSTANDING OF THAT  
7 BEHAVIOR AND HOW DOES IT AFFECT YOUR INFRINGEMENT  
8 ANALYSIS?

9 A THIS IS BEHAVIOR THAT SEEMS TO MANIFEST ITSELF  
10 IN SOME SAMSUNG PRODUCTS THAT ARE ACCUSED, BUT NOT  
11 ALL, IN THE GALLERY APPLICATION. AND I HAVE NOT  
12 BEEN ABLE TO RELIABLY DUPLICATE IT, BUT IT DOES  
13 OCCUR IN SOME OF THOSE PRODUCTS.

14 AND WHAT HAPPENS THERE IS WHEN YOU DRAG  
15 THE IMAGE VERY, VERY SLOWLY, VERY GINGERLY, VERY  
16 SLOWLY FROM THE EDGE INTO -- SO THE EDGE OF THE  
17 DOCUMENT IS PASSED, AND YOU LET GO, IT SIMPLY  
18 FREEZES. IT DOESN'T ACTUALLY DO THE BOUNCE.

19 AND IN THOSE SITUATIONS, THOSE GALLERY  
20 APPLICATIONS STILL DO THE BOUNCE FUNCTIONALITY MOST  
21 OF THE TIME.

22 SO AS A RESULT, MY OPINION IS THAT THE  
23 GALLERY APPLICATION, EVEN ON THOSE DEVICES THAT  
24 HAVE THE HOLD STILL BEHAVIOR ONCE IN A WHILE, THEY  
25 STILL INFRINGE THE '381 PATENT BECAUSE THE

1 INSTRUCTION FOR DOING THE BOUNCE FUNCTIONALITY  
2 REMAINS ON THOSE DEVICES.

3 Q AND SO JUST TO CLARIFY WHERE THIS EXISTS, WHAT  
4 APPLICATION DID YOU LEARN OF THE HOLD STILL  
5 BEHAVIOR IN?

6 A THIS WAS IN THE GALLERY APPLICATION ON SOME OF  
7 THE SAMSUNG PHONES, BUT NOT ALL OF THE ACCUSED  
8 PHONES.

9 Q AND DOES IT EXIST IN CONTACTS OR THE BROWSER  
10 APPLICATION?

11 A NO.

12 Q DOES THE -- SO JUST TO SUM UP ON THE HOLD  
13 STILL BEHAVIOR, DOES IT AFFECT YOUR INFRINGEMENT  
14 ANALYSIS?

15 A NO, IT DOESN'T.

16 Q AND THE REASON FOR THAT IS?

17 A BECAUSE THE INSTRUCTIONS FOR DOING THE BOUNCE  
18 BACK FUNCTIONALITY I ALREADY DEMONSTRATED CONTINUE  
19 TO EXIST ON THOSE PHONES AND, IN FACT, IS THE  
20 DEFAULT BEHAVIOR THAT ONE ENCOUNTERS IN THE USE OF  
21 THOSE DEVICES.

22 Q YOU MENTIONED THAT YOU HAD STUDIED CERTAIN  
23 SAMSUNG DOCUMENTS IN CONNECTION WITH YOUR WORK ON  
24 THE '381 PATENT.

25 WAS EXHIBIT 46 ONE OF THOSE DOCUMENTS,



1 THE BEHOLD 3 USABILITY EVALUATION RESULTS?

2 A YES, IT WAS.

3 MR. JACOBS: YOUR HONOR, WE OFFER PX 46  
4 INTO EVIDENCE.

5 MR. JOHNSON: YOUR HONOR, THERE HASN'T  
6 BEEN A FOUNDATION LAID WITH THIS WITNESS.  
7 OBJECTION.

8 IT'S ALSO -- AT LEAST BY LOOKING AT THE  
9 DEMONSTRATIVES, HE ONLY REFERS TO THREE PAGES OUT  
10 OF THE 94-PAGE DOCUMENT.

11 THERE'S NO FOUNDATION.

12 THE COURT: ALL RIGHT. OVERRULED.

13 MR. JACOBS: THANK YOU.

14 THE COURT: GO AHEAD. WHAT WERE YOU  
15 GOING TO SAY.

16 MR. JACOBS: I WAS GOING TO SAY YOU  
17 OVERRULED IT EARLIER.

18 THE COURT: I'VE ALREADY RULED ON THIS  
19 OBJECTION. GO AHEAD.

20 MR. JACOBS: THANK YOU VERY MUCH.

21 THE COURT: IT'S ADMITTED.

22 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER  
23 46, HAVING BEEN PREVIOUSLY MARKED FOR  
24 IDENTIFICATION, WAS ADMITTED INTO  
25 EVIDENCE.)

1 BY MR. JACOBS:

2 Q DR. BALAKRISHNAN, WHAT IS PX 46?

3 A PX 46 IS AN INTERNAL SAMSUNG DOCUMENT FAIRLY  
4 CREATED BY THE SOFTWARE VERIFICATION GROUP THAT IS  
5 A USABILITY EVALUATION ANALYSIS COMPARING THE  
6 BEHOLD 3 DEVICE, WHICH IS THE CODE NAME FOR THE  
7 VIBRANT PHONE, COMPARING IT TO THE IPHONE.

8 SO THIS IS AN EVALUATION COMPARING  
9 DIFFERENT FEATURES OF THE BEHOLD 3, OR VIBRANT, TO  
10 THE IPHONE.

11 Q LET'S TAKE A LOOK AT THE SUMMARY PAGE IN THIS  
12 DOCUMENT. AND WHAT DID YOU UNDERSTAND THIS  
13 DOCUMENT TO BE DESCRIBING BY WAY OF THE PURPOSE OF  
14 THE STUDY THAT WAS DONE?

15 A ON THIS PAGE, IF YOU LOOK AT THE BACKGROUND,  
16 IF YOU CAN HIGHLIGHT THAT BACKGROUND AREA THERE, IT  
17 BASICALLY SAYS THE -- THIS EVALUATION IS TO FIGURE  
18 OUT THE PERCEIVED QUALITY OF DIFFERENT APPLICATIONS  
19 IN THE ANDROID MODEL BEHOLD 3 IN COMPARISON TO THE  
20 IPHONE BY EVALUATING IT IN THE AREAS OF EASE OF USE  
21 FOR MULTIMEDIA FUNCTIONS, OVERALL AESTHETICS, P-I-M  
22 IS PERSONAL INFORMATION MANAGEMENT, AND WEB  
23 BROWSING.

24 SO I CONSIDER THIS TO BE COMPARING THESE  
25 TWO DEVICES, THE IPHONE TO THE BEHOLD 3 IN THESE

1 DIFFERENT AREAS OF USABILITY.

2 Q AND THIS IS PAGE 14 OF 94 OF THE DOCUMENT.

3 LET'S TAKE A LOOK AT THE EVALUATION OPINIONS PAGE,  
4 PAGE 16 OF 94.

5 WHAT DID YOU UNDERSTAND THIS EVALUATION  
6 OPINIONS PAGE TO BE CONVEYING?

7 A SURE. IF YOU LOOK AT THE FIRST BULLET, YOU  
8 CAN HIGHLIGHT THAT, IT VERY CLEARLY SAYS THAT THE  
9 RESULTS SHOW THAT THE BEHOLD 3 WAS SHOWN TO BE  
10 INFERIOR TO APPLE'S IPHONE IN BOTH THE ACTIONS  
11 SUCCESS RATE, SO THIS IS A QUANTITATIVE METHOD  
12 WHERE PEOPLE DO THE TASKS THEY WERE ASKED TO DO,  
13 AND THE SATISFACTION SCORE, WHICH APPEARS TO BE  
14 MORE OF A QUALITATIVE METHOD. IN OTHER WORDS, DO  
15 PEOPLE FEEL COMFORTABLE? DID THEY LIKE IT AND SO  
16 FORTH? SO THEY EVALUATED AT LEAST TWO METHODS.

17 Q SO NOW LET'S LOOK AT AESTHETICS BROWSING IN  
18 EXHIBIT 46, THIS INTERNAL SAMSUNG DOCUMENT. WHAT  
19 DID YOU SEE ON THIS, ON SLIDE 47 OF THIS ANALYSIS?

20 A SURE. THIS ANALYSIS HERE IS TALKING ABOUT  
21 EVALUATION OF THE WEB BROWSER, AND IT SAYS WHEN THE  
22 WEB PAGE IS DRAGGED TO ITS END POINT IN THE  
23 BEHOLD 3, NO VISUAL EFFECT IS SHOWN, ONLY  
24 INFORMATION IS PROVIDED WITHOUT ANY EFFECT.

25 IN OTHER WORDS, IT JUST STOPS WHEN YOU

1 REACH THE EDGE OF THE DOCUMENT.

2 IN CONTRAST, IT SPECIFICALLY NOTES THAT  
3 THE IPHONE GENERATES FUN FOR THE USER WITH A VISUAL  
4 ELEMENT THAT SEEMS TO BOUNCE.

5 SO THIS INDICATES TO ME THAT THE PEOPLE  
6 WHO DID THIS STUDY AT SAMSUNG CLEARLY UNDERSTOOD  
7 AND RECOGNIZED THE VALUE OF THE BOUNCE  
8 FUNCTIONALITY THAT WAS SEEN IN THE IPHONE, WHICH  
9 THE BEHOLD 3 DID NOT HAVE.

10 Q SO WHAT WAS THE RECOMMENDATION IN VIEW OF THAT  
11 FINDING?

12 A THE RECOMMENDATION WAS THAT -- IN THE SECTION  
13 AT THE BOTTOM OF THE SLIDE, YOU SEE THERE'S  
14 DIRECTION OF IMPROVEMENT. IT SAYS, "PROVIDE A FUN  
15 VISUAL EFFECT WHEN DRAGGING A WEB PAGE."

16 AND IT GOES ON TO SAY THAT THE  
17 "CORRESPONDING EFFECT IS NOT SUPPORTED CURRENTLY."

18 AND THIS IS AN ISSUE SHARED BY THE  
19 BROWSER, AGAIN, AND IT DECLARES THAT -- AND I'LL  
20 NOTE THAT SUBSEQUENT VERSIONS OF SAMSUNG PHONES  
21 THAT FALL WITHIN THIS STUDY DOES IMPLEMENT A FUN,  
22 VISUAL EFFECT WHICH IS, IN FACT, THE BOUNCE  
23 FUNCTIONALITY THAT WE HAVE ALREADY SEEN ON  
24 DIFFERENT VIDEOS AND WHICH IS WHAT THEY ANALYZED  
25 AND FOUND IN THE IPHONE IN THIS STUDY.

1 Q AND JUST IN THE MIDDLE OF THAT PAGE, DO YOU  
2 SEE WHERE IT SAYS, ON THE BEHOLD 3, IT DESCRIBES  
3 ITS BEHAVIOR?

4 A YES. SURE. WE CAN HIGHLIGHT THAT.

5 IT SAYS -- AND THIS IS ON BEHOLD 3 -- THE  
6 WEB BROWSER IS DRAGGED BEYOND THE EDGE AND IT SAYS  
7 "THE BEHAVIOR IS DULL BECAUSE NO SPECIAL EFFECTS  
8 ARE PROVIDED WHEN DRAGGING WEB PAGE TO THE  
9 BOTTOM-MOST OR SIDE EDGES."

10 AND YOU CAN SEE -- HOPEFULLY YOU CAN SEE  
11 ON THIS IMAGE ON THE LEFT, THE PAGE DOESN'T GO  
12 BEYOND THE EDGE. IT VISUALLY SUFFERS FROM THE  
13 FROZEN SCREEN PROBLEM I TALKED ABOUT EARLIER.

14 Q AND THEN IF YOU LOOK ON THE RIGHT-HAND PORTION  
15 OF THE PAGE AND THE DESCRIPTION OF THE IPHONE?

16 A AND HERE YOU CAN SEE ON THE LEFT-HAND SIDE, AS  
17 WELL AS THE IMAGE GOING BEYOND THE EDGE AND SHOWING  
18 AN AREA BEYOND THE EDGE.

19 ON THE RIGHT HAND SIDE, THE COMMENTARY  
20 SAYS "IF A WEB PAGE IS DRAGGED TO THE EDGE AND THE  
21 HAND IS RELEASED, A BOUNCING VISUAL EFFECT IS  
22 PROVIDED." SO THAT'S EXACTLY THE '381 PATENT.

23 Q THANK YOU, DR. BALAKRISHNAN.

24 LET'S TAKE A LOOK AT EXHIBIT PX 57. NOW,  
25 IS PX 57 ANOTHER DOCUMENT YOU STUDIED IN THE COURSE

1 OF YOUR WORK ON THE '381 PATENT?

2 A YES, IT IS.

3 MR. JACOBS: YOUR HONOR, WE OFFER PX 57  
4 IN EVIDENCE.

5 MR. JOHNSON: OBJECTION, YOUR HONOR. NO  
6 FOUNDATION.

7 MR. JACOBS: JUST PROVIDED THE  
8 FOUNDATION, YOUR HONOR.

9 THE COURT: ALL RIGHT. OVERRULED.

10 GO AHEAD. IT'S ADMITTED.

11 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER  
12 57, HAVING BEEN PREVIOUSLY MARKED FOR  
13 IDENTIFICATION, WAS ADMITTED INTO  
14 EVIDENCE.)

15 BY MR. JACOBS:

16 Q WHAT IS PX 57, DR. BALAKRISHNAN?

17 A PX 57 IS ANOTHER USABILITY EVALUATION DOCUMENT  
18 CREATED BY SAMSUNG SOFTWARE VERIFICATION GROUP THAT  
19 IN TURN -- SORRY -- INTERNAL SAMSUNG DOCUMENT, AND  
20 THIS IS COMPARING A SAMSUNG TABLET TO THE IPAD 2,  
21 AGAIN, FOR THE SAME BOUNCE FUNCTIONALITY, OR THE  
22 LACK THEREOF IN THE ORIGINAL TABLET DESIGN IN  
23 SAMSUNG'S CASE.

24 Q SO LET'S TAKE A LOOK AT THE OVERVIEW.

25 AND WHAT DOES THE OVERVIEW DESCRIBE AS

1 KIND OF THE IMPORTANT POINTS OF THIS STUDY?

2 A ONE OF THE IMPORTANT POINTS IS, IF YOU LOOK AT  
3 THE SECOND MAJOR BULLET, IT SAYS "MAJOR USABILITY  
4 PROBLEM AREAS," AND THE PART THAT'S RELEVANT TO THE  
5 '381 PATENT IS THE LAST SUPPLEMENT OF THIS  
6 PARAGRAPH. IT STATES THAT "GUI," OR GRAPHICAL USER  
7 INTERFACE, THAT'S WHAT THE G-U-I STANDS FOR, "AND  
8 VISUAL EFFECT ARE LACKING IN COMPARISON TO THE  
9 IPAD 2," AND THEN IT TALKS ABOUT FOUR APPLICATIONS  
10 THAT'S LACKING FOR, AND ONE OF THEM IS THE GALLERY  
11 APPLICATION.

12 Q LET'S TAKE A LOOK AT ISSUE 51 IN THIS  
13 DOCUMENT, THIS INTERNAL SAMSUNG DOCUMENT.

14 WHAT DOES THIS, THE PAGE OF THIS REPORT  
15 DESCRIBE AS AN ISSUE?

16 A THIS IS DESCRIBING AN ISSUE WITH THE BROWSER  
17 ON THE PHONE, THE SAMSUNG TABLET, AND BASICALLY IF  
18 YOU LOOK AT THE NEXT BULLET, THE FIRST BULLET POINT  
19 UP THERE, IT SAYS "DURING THE TOP-MOST/BOTTOM-MOST  
20 DIAGONAL MOVEMENTS, THERE IS NO SPRINGING BOUNCE  
21 EFFECT."

22 AND YOU CAN SEE THAT ON THE LEFT-HAND  
23 SIDE ARE THE IMAGE AND THE COMMENTARY TO THE RIGHT  
24 OF THE LEFT IMAGE WHERE THEY'VE DRAGGED IT BEYOND  
25 THE EDGE AND NOTHING IS HAPPENING. IT DOESN'T

1 BOUNCE. IT SUFFERS FROM THE FROZEN SCREEN PROBLEM.

2 AND THEN YOU LOOK AT THE COMPARISON,  
3 WHICH IS THE IPAD 2, AND IT CLEARLY GOES BEYOND THE  
4 EDGE AND IT SAYS IN THE COMMENTARY ON THE RIGHT, IT  
5 SAYS, "IN THE CASE OF IPAD 2, THERE IS A FUN  
6 ELEMENT FROM A NATURAL BOUNCE EFFECT THAT FOLLOWS  
7 THE HAND GESTURES."

8 SO THIS THEN, THIS IS THE '381  
9 FUNCTIONALITY THAT SAMSUNG HAS CLEARLY SEEN IN THE  
10 IPAD 2 AND FOUND THAT TO BE LACKING IN THEIR OWN  
11 TABLET.

12 Q AND WHAT WAS THIS -- CAN WE GO BACK TO THE  
13 FULL PAGE VIEW?

14 AND HOW WAS THIS LABELED IN TERMS OF ITS  
15 LEVEL OF IMPORTANCE BY SAMSUNG AS AN ISSUE?

16 A IN A SUBSEQUENT PAGE I BELIEVE IT WAS LABELED  
17 AS CRITICAL. ON THIS PAGE IT WAS LABELED AS  
18 SERIOUS.

19 Q SO LET'S LOOK AT THAT SUBSEQUENT PAGE.

20 A I DON'T --

21 Q VISUAL EFFECT COMPARED TO IPAD 2.

22 A SO THIS IS A CONTINUATION OF THAT SAME  
23 DISCUSSION AND THEY'RE TALKING ABOUT IT LACKING --  
24 IT LACKS THE FUN OR WOW EFFECT. THAT'S THE FIRST  
25 BULLET.



1                   AND IF YOU LOOK AT THE FIRST ROW THERE,  
2                   IT TALKS ABOUT THE -- ACTUALLY, LET'S LOOK AT --  
3                   YEAH, IF YOU LOOK AT THE MIDDLE IMAGE AND THE TEXT,  
4                   RIGHT, THAT ONE, IT SAYS, "THE TOP-MOST/BOTTOM-MOST  
5                   AND DIAGONAL MOVEMENT LACK THE BOUNCE EFFECT," SO  
6                   THIS IS TALKING ABOUT WHAT I JUST TALKED ABOUT FROM  
7                   THE PREVIOUS PAGE.

8                   AND IF YOU GO BACK TO THE PREVIOUS PAGE,  
9                   YOU'LL SEE ON THE RIGHT-HAND SIDE, IT SAYS FOR  
10                  BROWSER, "THE BOUNCE EFFECT IS SCHEDULED TO BE  
11                  REVIEWED." IN OTHER WORDS, THEY INTEND TO LOOK AT  
12                  THAT FUNCTIONALITY IN LIGHT OF WHAT THEY FOUND.

13                 Q       AND HOW DID THIS GET LABELED IN TERMS OF ITS  
14                  LEVEL OF IMPORTANCE TO SAMSUNG AS AN ISSUE IN ITS  
15                  USER INTERFACE?

16                 A       THIS WAS LABELED AS CRITICAL AS YOU CAN SEE ON  
17                  THE TOP RIGHT CORNER OF THE SLIDE.

18                 Q       AND SO WHAT DO YOU OBSERVE AS A TECHNICAL  
19                  EXPERT WHEN YOU LOOK AT THESE DOCUMENTS AND YOU  
20                  LOOK AT THE SAMSUNG PRODUCTS?

21                 A       AS A TECHNICAL EXPERT, WHEN I LOOK AT THESE  
22                  DOCUMENTS IT IS VERY CLEAR TO ME FROM THE DOCUMENTS  
23                  THAT THEY HAVE -- SAMSUNG HAS, A, STUDIED THIS  
24                  PROBLEM, RECOGNIZED THE LIMITATIONS OF THE CURRENT  
25                  DESIGN IN COMPARISON TO WHAT THE IPHONE AND THE

1 IPAD WERE DOING, RECOGNIZED THE IPHONE AND IPAD HAD  
2 A BETTER, FUN, BOUNCING SOLUTION; AND IN SUBSEQUENT  
3 VERSIONS OF THE PHONES AND TABLETS THAT WE SEE IN  
4 THE MARKET, WHICH I'VE SHOWN SOME OF THE EXAMPLES  
5 OF, THAT EXACT SAME FUNCTIONALITY, THAT BOUNCING  
6 FUNCTIONALITY, HAS BEEN IMPLEMENTED.

7 Q DID YOU LOOK AT OTHER INTERNAL SAMSUNG  
8 DOCUMENTS IN ORDER TO ANALYZE THE LEVEL OF  
9 IMPORTANCE, THE LEVEL OF ANALYSIS SAMSUNG DID OF  
10 THE BOUNCE BACK FEATURE?

11 A YES. I LOOKED AT SEVERAL OTHER SAMSUNG  
12 INTERNAL DOCUMENTS, INCLUDING SOME E-MAILS THAT ALL  
13 POINT TO THE -- THAT THEY HAVE ANALYZED THIS  
14 FUNCTIONALITY AND DEEMED IT TO BE AN IMPORTANT  
15 FUNCTION.

16 MR. JACOBS: YOUR HONOR, AT THIS POINT I  
17 WOULD LIKE TO MOVE INTO EVIDENCE -- I'VE SHOWN  
18 THESE TO COUNSEL -- JX 1023, THE NEXUS S 4G; JX  
19 1024, THE REPLENISH; JX 1028, THE EXHIBIT 4G; AND  
20 JX 1036, THE GALAXY TAB.

21 MR. JOHNSON: NO OBJECTION.

22 THE COURT: OKAY. 1024 IS THE REPLENISH;  
23 1028 IS THE EXHIBIT 4G; AND 1026 IS THE GALAXY TAB?

24 MR. JACOBS: 1036 IS THE GALAXY TAB; AND  
25 1028 IS THE EXHIBIT 4G.

1 THE COURT: THE GALAXY TAB HAS ALREADY  
2 BEEN ADMITTED.

3 MR. JACOBS: THIS IS A -- IT'S POSSIBLE,  
4 YOUR HONOR. THIS IS THE 7 -- SOMETIMES CALLED THE  
5 7.0.

6 THE COURT: OKAY. 7.0. ALL RIGHT. SO  
7 IT'S THE 1023, 1024, 1028, AND 1036. IS THAT --

8 MR. JACOBS: YES.

9 THE COURT: THOSE FOUR.

10 MR. JACOBS: THAT'S CORRECT, YOUR HONOR.

11 THE COURT: AND THERE'S NO OBJECTION;  
12 CORRECT?

13 MR. JOHNSON: CORRECT.

14 THE COURT: THOSE ARE ALL ADMITTED.

15 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBERS  
16 1023, 1024, 1028, 1036, HAVING BEEN  
17 PREVIOUSLY MARKED FOR IDENTIFICATION,  
18 WERE ADMITTED INTO EVIDENCE.)

19 BY MR. JACOBS:

20 Q SO DR. BALAKRISHNAN, YOU STUDIED THE '381  
21 PATENT, YOU STUDIED THE SAMSUNG DEVICES, YOU  
22 STUDIED THE SAMSUNG INTERNAL DOCUMENTS. THE  
23 SAMSUNG DEVICES YOU IDENTIFIED INFRINGE CLAIM 19 OF  
24 THE '381 RUBBER BANDING PATENT?

25 A YES, THE 21 DEVICES I IDENTIFIED INFRINGE

1 CLAIM 19 OF THE '381 PATENT.

2 Q AND THE INTERNAL DOCUMENTS TELL YOU WHAT ABOUT  
3 HOW SAMSUNG CAME TO INFRINGE THAT PATENT?

4 A THE INTERNAL DOCUMENTS INDICATE TO ME THAT  
5 THEY'D STUDIED THE PROBLEM, RECOGNIZED A SOLUTION  
6 PROVIDED BY THE IPHONE AND THE IPAD 2 AS BEING A  
7 GOOD SOLUTION TO THE PROBLEM AND THE RESULTING  
8 DEVICES THEMSELVES MANIFEST -- THEY SHOW THAT THE  
9 SOLUTION THAT THEY IMPLEMENTED WAS, INDEED, THE  
10 BOUNCING FUNCTIONALITY OF THE '381 PATENT.

11 MR. JACOBS: THANK YOU, DR. BALAKRISHNAN.

12 THE WITNESS: THANK YOU.

13 THE COURT: ALL RIGHT. THE TIME IS  
14 11:23.

15 **CROSS-EXAMINATION**

16 BY MR. JOHNSON:

17 Q HELLO, DR. BALAKRISHNAN.

18 A GOOD MORNING.

19 Q I AM KEVIN JOHNSON.

20 GOOD MORNING, LADIES AND GENTLEMEN OF THE  
21 JURY.

22 I WANT TO START ACTUALLY,  
23 DR. BALAKRISHNAN, WITH -- YOU BEGAN WORKING AS AN  
24 EXPERT FOR APPLE BACK IN MAY AND JUNE OF 2011  
25 TIMEFRAME; RIGHT?

1 A NO, ACTUALLY. I THINK I DID SOME WORK FOR  
2 THEM ON ANOTHER CASE EARLIER THAN THAT IN 2010.

3 Q OKAY. YOUR WORK IN THIS CASE BEGAN BACK IN  
4 MAY AND JUNE OF 2011; RIGHT?

5 A ROUGHLY, THAT'S CORRECT.

6 Q AND YOU WERE TOLD, BACK WHEN YOU WERE  
7 RETAINED, THAT IN THIS CASE, APPLE HAD ALLEGED THAT  
8 SAMSUNG PRODUCTS INFRINGED THE '381 PATENT BEFORE  
9 YOU EVEN BEGAN YOUR OWN INFRINGEMENT ANALYSIS;  
10 RIGHT?

11 A I DON'T KNOW WHETHER EXACTLY I WAS TOLD THAT.  
12 IN FACT, I BELIEVE I WAS TOLD THAT THEY WERE  
13 ALLEGING INFRINGEMENT AND I WAS ASKED TO ANALYZE  
14 THE DEVICES TO DETERMINE IF, INDEED, THAT WAS TRUE.

15 Q YOU WERE TOLD BY APPLE'S COUNSEL THAT THEY  
16 WERE ALLEGING SAMSUNG'S PRODUCTS INFRINGE THE '381  
17 PATENT; RIGHT?

18 A I WAS TOLD BY APPLE'S COUNSEL THAT THAT WAS  
19 THE ALLEGATION, THAT'S RIGHT.

20 Q AND YOU THEN AGREED WITH APPLE'S CONCLUSION  
21 THAT THERE WAS INFRINGEMENT; RIGHT?

22 A AFTER MY ANALYSIS, YES.

23 Q AND, AGAIN, THAT WAS AFTER YOU WERE HIRED BY  
24 APPLE AND AFTER APPLE'S COUNSEL TOLD YOU WHAT THE  
25 ALLEGATIONS WERE IN THIS CASE; RIGHT?

1 A AFTER I WAS HIRED AND AFTER I WAS TOLD ABOUT  
2 THE ALLEGATIONS AND AFTER I DID MY OWN  
3 INVESTIGATION AS TO WHETHER THE FUNCTIONALITY WAS  
4 PRESENT --

5 Q AND --

6 A -- IN THE DEVICES.

7 Q AND AT THAT TIME, YOU CONCLUDED THAT THERE WAS  
8 INFRINGEMENT OF THE DEVICES BY LOOKING AT THE  
9 OPERATION OF THE DEVICES; RIGHT?

10 A I CONCLUDED THERE WAS INFRINGEMENT BY LOOKING  
11 AT THE OPERATION OF THE DEVICES, AND I ALSO  
12 SUBSEQUENTLY LOOKED AT THE SOURCE CODE AS WELL.

13 Q BUT AT THAT TIME, I'M GOING BACK TO LAST  
14 SUMMER, YOU DIDN'T LOOK AT THE UNDERLYING SOURCE  
15 CODE; RIGHT?

16 A MY -- BEFORE MY CONCLUSIONS IN MY EXPERT  
17 REPORT, I HAD ALREADY LOOKED AT THE UNDERLYING  
18 SOURCE CODE. SO IF YOU'RE ASKING FOR WHAT I LOOKED  
19 AT WHEN I CONCLUDED INFRINGEMENT, YES, I HAD LOOKED  
20 AT THE SOURCE CODE.

21 Q I'M TALKING ALMOST A YEAR AGO, AUGUST 16TH TO  
22 BE PRECISE, THAT'S WHEN I -- DO YOU REMEMBER I TOOK  
23 YOUR DEPOSITION WAY BACK THEN?

24 A YOU'VE TAKEN SEVERAL OF MY DEPOSITIONS. THAT  
25 WAS IN CLAIM CONSTRUCTION, PERHAPS, OR SOMETHING

1 ELSE.

2 Q DO YOU -- DO YOU REMEMBER TESTIFYING THAT YOU  
3 DID NOT NEED TO ANALYZE THE UNDERLYING SOURCE CODE  
4 IN ORDER TO DETERMINE THAT THERE WAS INFRINGEMENT  
5 OF THE '381 PATENT?

6 A I MIGHT HAVE SAID THAT, YES.

7 Q NOW, THERE'S ONE INVENTOR THAT'S NAMED ON THE  
8 '381 BOUNCE BACK PATENT, RIGHT, MR. BAS ORDING?

9 A THAT IS CORRECT, YES.

10 Q AND YOU ARE AWARE THAT MR. ORDING IS STILL ON  
11 EMPLOYEE OF APPLE TODAY; RIGHT?

12 A AS FAR AS I KNOW, YES.

13 Q AND YOU HAVE NOT SPOKEN TO MR. ORDING AS PART  
14 OF YOUR WORK IN THIS CASE, HAVE YOU?

15 A I HAVE NOT SPOKEN TO MR. ORDING.

16 Q NOW, MR. ORDING IS A PERSON OF ORDINARY SKILL  
17 IN THE ART; RIGHT?

18 MR. JACOBS: OBJECTION, YOUR HONOR.

19 THAT'S A LEGAL TERM, LEGAL CONCEPT. HE MAY BE  
20 ORDINARY. HE MAY BE EXTRAORDINARY.

21 THE COURT: CAN YOU REPHRASE THE  
22 QUESTION, PLEASE?

23 BY MR. JOHNSON:

24 Q MR. ORDING UNDERSTANDS THE TECHNOLOGY THAT'S  
25 DISCLOSED IN HIS PATENT?

1                   LET'S STRIKE THAT. LET ME ASK YOU A  
2 DIFFERENT WAY.

3                   MR. ORDING UNDERSTANDS THE GENERAL IDEA  
4 OF BOUNCE BACK, OBVIOUSLY, SINCE HE'S THE INVENTOR;  
5 RIGHT?

6           A        I WOULD ASSUME HE DOES. I HAVE NOT SPOKEN TO  
7 HIM, SO I CAN'T SPEAK TO WHAT HE KNOWS IN HIS HEAD.

8           Q        BUT YOU REMEMBER -- YOU REVIEWED HIS  
9 DEPOSITION TRANSCRIPT IN THIS CASE?

10          A        YES.

11          Q        AND DO YOU RECALL FROM READING HIS DEPOSITION  
12 TRANSCRIPT THAT HE HAD A HARD TIME UNDERSTANDING  
13 THE MEANING OF THE WORDS OF THE '381 PATENT CLAIMS?

14          A        NO, I DO NOT RECALL THAT PART OF THE  
15 DEPOSITION TRANSCRIPT.

16          Q        LET ME SHOW YOU -- LET ME GO AHEAD AND PASS  
17 OUT THE BINDERS.

18                   SO THERE SHOULD BE A COUPLE OF BINDERS UP  
19 THERE IN FRONT OF YOU?

20          A        I ONLY HAVE MY DIRECT BINDER HERE.

21          Q        OKAY. CROSS, PLEASE.

22          A        OH, THERE'S SOME OTHERS LABELED FOR A  
23 DIFFERENT WITNESS BEHIND ME.

24          Q        THOSE PROBABLY WON'T HELP.

25          A        PROBABLY NOT.



1 Q ALL RIGHT. WE'RE GOING TO COME BACK TO  
2 MR. ORDING.

3 YOUR HONOR, IF WE MAY APPROACH?

4 THE COURT: PLEASE, GO AHEAD.

5 BY MR. JOHNSON:

6 Q AND IN THE DEPOSITION -- IN THE -- IN ONE OF  
7 THE BINDERS, THERE YOU SHOULD FIND THE ORDING  
8 DEPOSITION TRANSCRIPT FROM AUGUST 9TH, 2011.

9 A CAN YOU POINT ME TO A TAB?

10 MR. JOHNSON: MAY I APPROACH, YOUR HONOR,  
11 JUST TO HELP HIM FIND IT?

12 THE COURT: PLEASE, GO AHEAD. PLEASE.

13 THE WITNESS: BECAUSE THEY ALL HAVE  
14 NUMBERS ON THEM.

15 MR. JACOBS: WHERE IS IT?

16 MR. JOHNSON: IT'S THE AUGUST 9TH.

17 MR. JACOBS: WHICH BINDER IS IT?

18 MR. JOHNSON: IT SHOULD BE IN THE SECOND  
19 BINDER.

20 Q AND IF I CAN TURN YOUR ATTENTION TO PAGE 28,  
21 LINE 23 THROUGH PAGE 29, LINE 15.

22 A SO WHEN YOU SAY PAGE, DO YOU MEAN THE --

23 Q THE SMALL PAGES.

24 A THE SMALL PAGES. OKAY. I'M AT PAGE 28.

25 Q AND IF YOU LOOK AT LINE 23.

1 A OKAY.

2 Q DO YOU SEE I WAS ASKING HIM QUESTIONS THERE  
3 ABOUT CLAIMS 19 AND 20?

4 MR. JACOBS: YOUR HONOR, WE OBJECT TO  
5 THIS LINE OF QUESTIONING.

6 THE COURT: WHAT'S THE OBJECTION?

7 MR. JACOBS: THE OBJECTION IS THIS IS  
8 HEARSAY BY MR. ORDING, WHO IS AN AVAILABLE WITNESS.  
9 THE COURT HAS ALREADY RULED ON SIMILAR SOURCE OF  
10 USES.

11 MR. JOHNSON: YOUR HONOR, HE SAID HE  
12 REVIEWED THE TRANSCRIPT AS PART OF HIS WORK IN THIS  
13 CASE.

14 THE COURT: OVERRULED.

15 GO AHEAD.

16 MR. JACOBS: IT CAN'T BE IMPEACHING  
17 TESTIMONY, YOUR HONOR. THERE'S NO TESTIMONY THAT  
18 HE'S ELICITED FROM DR. BALAKRISHNAN.

19 THE COURT: OVERRULED.

20 GO AHEAD, PLEASE.

21 MR. JOHNSON: CAN WE PUT IT UP, YOUR  
22 HONOR?

23 THE COURT: GO AHEAD.

24 MR. JOHNSON: RYAN, 28:23.

25 Q DO YOU SEE I ASKED THE QUESTION, "IF YOU LOOK

1 AT CLAIMS 19 AND 20, WHICH APPEAR IN COLUMN 36 --  
2 THE BOTTOM OF 36 AND THEN 37" --

3 MR. JACOBS: YOUR HONOR, WE NEED YOU TO  
4 RULE ON THE OBJECTION BECAUSE THE WITNESS WAS ASKED  
5 FOR A LEGAL CONCLUSION AND A RECORD WAS TIMELY  
6 MADE.

7 THE COURT: I OVERRULED THE OBJECTION.  
8 WHICH OBJECTION ARE YOU TALKING ABOUT?

9 MR. JACOBS: NOW I'M TALKING ABOUT THE  
10 OBJECTION THAT CALLS FOR A LEGAL CONCLUSION AND  
11 EXPERT TESTIMONY IN THE PASSAGE THAT IS BEING  
12 DISPLAYED TO THE JURY WHICH SHOULD NOT BE.

13 THE COURT: OVERRULED.

14 GO AHEAD, PLEASE.

15 MR. JOHNSON: MAY WE PUT IT BACK UP?

16 THE COURT: YES.

17 MR. JOHNSON: "QUESTION: AND YOU'LL SEE  
18 THAT THEY USE A LOT OF THE SAME TERMS. AND I CAN  
19 GO THROUGH THESE ONE AT A TIME, BUT I WANTED TO ASK  
20 YOU IF YOU HAVE A SIMILAR PROBLEM WITH READING --  
21 OF UNDERSTANDING 'FIRST,' 'SECOND,' 'THIRD,'  
22 'FOURTH PORTION' IN THOSE TERMS. I JUST WANT TO  
23 KNOW IF YOU HAVE THE SAME ANSWER."

24 ANSWER BY THE WITNESS, MR. ORDING:

25 "YEAH, I CAN -- LEGALLY, I'M NOT SURE WHAT THAT

1 MEANS. I'M NOT SURE IF THEY MEAN THE SAME THING OR  
2 NOT. IN GENERAL, I JUST -- I'M NOT SURE WHAT IT  
3 MEANS."

4 Q DOES THIS REFRESH YOUR RECOLLECTION THAT  
5 MR. ORDING HAD TROUBLE UNDERSTANDING WHAT THE  
6 MEANING OF HIS CLAIMS WERE IN THE '381 PATENT?

7 A NOT COMPLETELY, BECAUSE WHAT I'M SEEING HERE  
8 IS JUST A PORTION OF THE TRANSCRIPT, AND I NOTE  
9 THAT YOUR QUESTION SEEMS TO REFER TO AN EARLIER --  
10 WHEN YOU SAY "SIMILAR PROBLEM," I NEED TO GO BACK  
11 AND UNDERSTAND WHAT THAT SIMILAR PROBLEM HE HAD  
12 EARLIER WAS, BECAUSE THIS SEEMS TO BE AFTER A LONG  
13 LINE OF QUESTIONING.

14 Q LET'S LOOK AT PLAINTIFF'S EXHIBIT 27.29.

15 BEFORE YOU PUT IT UP, RYAN -- YOU  
16 OBVIOUSLY REVIEWED THE SLIDES, THE DEMONSTRATIVE  
17 SLIDES IN CONNECTION WITH YOUR WORK IN THIS CASE  
18 THAT WERE PROVIDED TO SAMSUNG'S COUNSEL; RIGHT?

19 A MY DEMONSTRATIVE SLIDES --

20 Q YES.

21 A -- THAT I USED IN MY DIRECT?

22 Q THE ONES THAT YOU USED IN YOUR DIRECT AND THAT  
23 WERE PROVIDED TO US.

24 A YES.

25 Q OKAY. AND YOU HELPED PREPARE THOSE SLIDES?

1 A OF COURSE.

2 Q SO LET'S GO AHEAD AND -- AND YOU APPROVED THEM  
3 ULTIMATELY?

4 A SURE.

5 Q OKAY. LET'S PUT UP PDX 27.29.

6 NOW, THIS IS THE SLIDE THAT YOU'RE  
7 RELYING ON TO SHOW THAT SAMSUNG'S GALAXY S II  
8 INFRINGES THE '381 PATENT; RIGHT?

9 A SO I'LL JUST NOTE, I THINK THIS SLIDE WASN'T  
10 ACTUALLY USED IN MY DIRECT TODAY. THIS IS AN  
11 EARLIER VERSION.

12 Q AND I'M ASKING YOU ABOUT THIS SLIDE THAT WAS  
13 PROVIDED TO US, WHICH YOU SAID YOU HELPED PREPARE  
14 AND APPROVED, AND I'M ASKING YOU ABOUT -- THIS IS A  
15 SLIDE THAT YOU RELY ON TO SHOW THAT SAMSUNG'S  
16 GALAXY S II INFRINGES THE '381 PATENT. RIGHT?

17 MR. JACOBS: YOUR HONOR, I THINK THE  
18 WITNESS HAS ALREADY TESTIFIED THAT WE DIDN'T USE  
19 THIS DEMONSTRATIVE IN HIS DIRECT, SO TO SAY THAT HE  
20 RELIES ON IT --

21 MR. JOHNSON: THEY ADDRESSED THIS VERY  
22 SAME ELEMENT IN HIS DIRECT.

23 THE COURT: OVERRULED.

24 GO AHEAD. PLEASE ANSWER THE QUESTION.

25 THE WITNESS: SO THE QUESTION IS DID I

1 RELY ON THIS SLIDE? THE ANSWER IS NO, I DID NOT  
2 RELY ON THIS SLIDE TODAY.

3 BY MR. JOHNSON:

4 Q BECAUSE THIS SLIDE IS INCORRECT; RIGHT?

5 A I DIDN'T SAY THAT. I SAID I DID NOT RELY ON  
6 THIS SLIDE.

7 Q I'M ASKING YOU, THIS SLIDE IS INCORRECT, ISN'T  
8 IT?

9 A I'M NOT SURE WHY IT WOULD BE INCORRECT.

10 Q WELL, LET'S LOOK AT BOTH THE CONTACT LIST AND  
11 THE BROWSER THAT APPEARS ON THIS SLIDE.

12 WE'RE TALKING ABOUT ELEMENT NUMBER 5.

13 LET'S START ON THE LEFT, THE CONTACT  
14 LIST. THIS YELLOW BOX HERE SHOWS THE AREA BEYOND  
15 THE EDGE AS THIS YELLOW BOX AT THE BOTTOM OF THE  
16 CONTACT LIST.

17 NOW, THAT CANNOT BE THE AREA BEYOND THE  
18 EDGE BECAUSE THE USER HASN'T REACHED THE EDGE HERE;  
19 CORRECT?

20 A I'D HAVE TO LOOK AT THAT IMAGE VERY CLOSELY.  
21 THERE MAY BE A MISTAKE IN THE IMAGE.

22 Q WELL, THIS IS A SLIDE, AGAIN, THAT YOU  
23 APPROVED AND YOU REVIEWED; RIGHT?

24 A I DID NOT RELY UPON IT TODAY.

25 Q I DIDN'T ASK YOU THAT, SIR. I ASKED YOU, THIS

1 IS A SLIDE THAT YOU REVIEWED AND YOU APPROVED  
2 BEFORE IT WAS SENT OVER TO SAMSUNG AS PART OF YOUR  
3 DEMONSTRATIVE EXHIBITS?

4 A I REVIEWED MY SLIDES. I'M NOT SURE AT WHAT  
5 POINT, WHAT VERSION WAS SENT OVER TO SAMSUNG, SO I  
6 JUST WANT TO MAKE THAT CLEAR, THAT THERE WERE MANY  
7 VERSIONS OF THESE SLIDES THAT I'VE WORKED ON IN THE  
8 LAST WEEK.

9 Q YOU WOULD AGREE WITH ME THAT THIS IS -- THIS  
10 CANNOT BE THE AREA BEYOND THE EDGE FOR THE CONTACT  
11 LIST OF THE SAMSUNG GALAXY S II; RIGHT?

12 MR. JACOBS: YOUR HONOR, I'M SORRY. I  
13 HAVE TO INTERJECT.

14 WE'VE NOW HAD A CHANCE TO CHASE DOWN  
15 WHAT'S GOING ON. THIS IS A VIDEO, AND WHEN YOU  
16 CONFLATE A VIDEO INTO A PDF, WHEN YOU PUT IT ALL  
17 TOGETHER IN A SINGLE IMAGE, THIS IS HOW IT APPEARS.  
18 BUT IT'S ACTUALLY A VIDEO.

19 MR. JOHNSON: YOUR HONOR, THIS IS THE  
20 SLIDE THAT WAS PROVIDED TO US BY APPLE AND I'M JUST  
21 ASKING HIM QUESTIONS ABOUT IT, WHETHER HE AGREES IT  
22 OR NOT.

23 THE COURT: THE OBJECTION IS OVERRULED.

24 YOU'LL HAVE A CHANCE TO REDIRECT.

25 THE WITNESS: SO IN THIS PARTICULAR IMAGE

1 ON THE LEFT-HAND SIDE, IT APPEARS THAT IT'S NOT YET  
2 BEYOND THE EDGE.

3 BUT I BELIEVE THE VIDEO WOULD HAVE SHOWN  
4 THAT IT WENT BEYOND THE EDGE.

5 BY MR. JOHNSON:

6 Q WHAT ABOUT ON THE RIGHT-HAND SIDE FOR THE  
7 BROWSER? THAT'S -- WHAT'S DELINEATED HERE IN  
8 YELLOW IS SHOWN AS THE AREA BEYOND THE EDGE BUT, IN  
9 FACT, THAT IS NOT THE AREA BEYOND THE EDGE, IS IT?

10 A IN THAT PARTICULAR IMAGE, THAT IS NOT THE AREA  
11 BEYOND THE EDGE. I DID NOT RELY ON THIS SLIDE.

12 Q OKAY. LET'S LOOK AT PDX 27-30.

13 THIS IS THE NEXT ELEMENT, ELEMENT 6 OF  
14 CLAIM 19; RIGHT?

15 A YES.

16 Q OKAY. AND FOR THIS, AGAIN, THIS REFERS TO THE  
17 GALAXY S II FOR THE CONTACT LIST AND THE BROWSER  
18 APPLICATIONS; RIGHT?

19 A YES.

20 Q AND LOOK AT THE FIGURE ON THE LEFT FOR CONTACT  
21 LIST, AND DO YOU SEE IT SAYS IT'S LABELED THE  
22 FOURTH PORTION, NO AREA BEYOND THE EDGE?

23 A OKAY. I BELIEVE THIS WAS A STILL FROM A  
24 VIDEO. THE IMAGE DOESN'T SHOW THE RIGHT THING.

25 AGAIN, I DID NOT RELY ON THIS SLIDE TODAY



1 THAT WAS SHOWN TO THE JURY.

2 Q SORRY ABOUT THAT. THIS IS INCORRECT; RIGHT?

3 A THE IMAGE IS INCORRECT.

4 Q AND THE IMAGE ON THE RIGHT-HAND SIDE UNDER THE  
5 BROWSER APPLICATION IS ALSO INCORRECT, ISN'T IT?

6 A IN THAT THAT IS NOT THE FULL PORTION. THAT  
7 STILL SHOWS AN AREA BEYOND THE EDGE.

8 Q OKAY. THANK YOU.

9 DO YOU KNOW, HOW MUCH IS APPLE CLAIMING  
10 IN DAMAGES FOR INFRINGEMENT OF THIS PARTICULAR  
11 PATENT?

12 A I DON'T KNOW THE EXACT FIGURE.

13 Q LET'S LOOK AT PDX 27.3, PLEASE.

14 NOW, FIRST, DR. BALAKRISHNAN, YOU WOULD  
15 AGREE THAT NOT EVERY BOUNCE EFFECT ON A TOUCHSCREEN  
16 IS COVERED BY THE '381 PATENT; RIGHT?

17 A COULD YOU REPHRASE THE QUESTION? I DON'T  
18 UNDERSTAND.

19 Q YEAH. NOT EVERY BOUNCE EFFECT THAT YOU SEE ON  
20 A TOUCHSCREEN IS COVERED BY THE '381 PATENT, IS IT?

21 A IF THE BOUNCE EFFECT MEETS ALL OF THE  
22 LIMITATIONS OF CLAIM 19, IT WOULD BE COVERED.

23 Q BUT THERE ARE BOUNCE EFFECTS THAT DO NOT MEET  
24 THE LIMITATIONS OF CLAIM 19; RIGHT?

25 A CAN YOU GIVE ME AN EXAMPLE?

1 Q WELL, WHEN AN IMAGE BOUNCES BACK TO THE CENTER  
2 BEFORE YOUR FINGER REACHES THE EDGE OF THE DISPLAY,  
3 THAT'S NOT COVERED BY THE '381 PATENT; RIGHT?

4 A IF IT HASN'T REACHED THE EDGE, IT IS NOT IN  
5 RESPONSE TO THE EDGE AS THE CLAIMS REQUIRE, THEN  
6 CLAIM 19 WOULD NOT BE INFRINGED.

7 Q SO THERE ARE BOUNCE EFFECTS THAT DON'T  
8 INFRINGE CLAIM 19; RIGHT?

9 A I DON'T SEE AN EXAMPLE. IF YOU PROVIDED A  
10 HYPOTHETICAL -- ARE YOU SAYING IN THE SAMSUNG  
11 DEVICES THERE'S A BOUNCE EFFECT THAT YOU WANT ME TO  
12 LOOK AT THAT DOESN'T INFRINGE?

13 Q I'M ASKING YOU MORE GENERALLY. AREN'T THERE  
14 BOUNCE EFFECTS THAT ARE NOT COVERED BY CLAIM 19?

15 A JUST GENERALLY OUT THERE?

16 Q YES.

17 A SURE. YOU CAN HAVE ALL KINDS OF THINGS THAT  
18 BOUNCE THAT DON'T --

19 Q ALL RIGHT.

20 A THAT DON'T MEET THE ELEMENTS OF CLAIM 19.

21 Q WELL, DURING YOUR DIRECT TESTIMONY, YOU SHOWED  
22 27.3. LET'S ACTUALLY GO TO 14, 27.14. YOU SHOWED  
23 27.14 AS A BASIS FOR INFRINGEMENT OF THE SAMSUNG  
24 GALAXY S II; RIGHT?

25 A I SHOWED A SLIDE SIMILAR TO THIS. I'M NOT

1 SURE OF THE EXACT SLIDE NUMBER, SO I JUST WANT TO  
2 MAKE SURE, BECAUSE YOU SEEM TO HAVE A DIFFERENT  
3 SLIDE FROM WHAT I SHOWED TODAY.

4 Q IS THIS ONE CORRECT?

5 A IT APPEARS CORRECT, BUT I -- I CAN'T SAY FOR  
6 SURE WHETHER IT'S THE EXACT SAME SLIDE NUMBER.

7 Q WELL, THE PORTION THAT'S SHOWN ON THE DISPLAY  
8 IS ONLY PART OF THE STICK FIGURE; RIGHT?

9 A IT LOOKS TO BE, YES.

10 Q AND IN ALL OF THE EXAMPLES THAT YOU SHOWED IN  
11 YOUR VIDEOS, EVEN THE ONES THAT HAD THE, THE  
12 FOUR-BY-FOUR, THE USER MUST FIRST ZOOM IN ON THE  
13 STICK FIGURE IN ORDER TO MEET THE LIMITATIONS OF  
14 CLAIM 19 OF THE '381; RIGHT?

15 A IN ALL OF THOSE, THE IMAGE WOULD HAVE TO BE  
16 BIGGER THAN WOULD FIT ON THE SCREEN, YES.

17 Q AND YOUR VIDEOS, AND EVEN YOUR DEMONSTRATIVE  
18 HERE, LEAVES OUT THAT STEP OF WHERE THE USER FIRST  
19 ZOOMS IN ON THE IMAGE TO GET THE ENLARGED IMAGE;  
20 RIGHT?

21 A IT DOESN'T -- YOU DON'T NEED TO SHOW THAT  
22 BECAUSE CLAIM 19 DOESN'T REQUIRE THAT.

23 Q CLAIM 19 DOESN'T REQUIRE A SET UP MOVE LIKE  
24 THAT?

25 A NO.

1 Q I'M SORRY?

2 A NOT IN -- NOT EXACTLY, NO. IT DIDN'T REQUIRE  
3 THAT. YOU COULD HAVE IT, BUT IT'S NOT REQUIRED.

4 Q WELL, YOU HAVE ACCUSED THE GALAXY TAB 7.0 OF  
5 INFRINGEMENT; RIGHT?

6 A THAT IS CORRECT.

7 Q OKAY. NOW, I'D LIKE TO SHOW YOU A VIDEO OF  
8 THE GALAXY TAB PRODUCT.

9 LET'S PUT UP SLIDE 3918.101 PLEASE,  
10 MR. FISHER.

11 AND YOU'VE SEEN THIS VIDEO BEFORE. IT'S  
12 A -- I'M GOING TO SHOW IT TO YOU, BUT IT'S FROM THE  
13 JOHNSON REPORT.

14 A MAYBE I COULD LOOK AT THE VIDEO FIRST.

15 Q LET'S TAKE A LOOK AT IT.

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

18 BY MR. JOHNSON:

19 Q NOW, DR. BALAKRISHNAN, WHAT WE JUST SAW IN THE  
20 SDX 3918.101, THAT DOESN'T INFRINGE THE '381  
21 PATENT, DOES IT?

22 A THAT FUNCTIONALITY -- IS MY MIKE ON?

23 THAT FUNCTIONALITY DOES NOT APPEAR TO  
24 MEET THE CLAIMS, BUT --

25 Q BECAUSE IT SHOWS --

1           A       -- I DON'T KNOW WHETHER THAT TABLET HAS THE  
2           BOUNCE BACK FEATURE IN OTHER APPLICATIONS THAT ARE  
3           NOT SHOWN ON THE SCREEN.

4           Q       THAT APPLICATION THAT WE JUST LOOKED AT SHOWS  
5           SOMETHING WE CALLED HARD STOP; RIGHT?  THERE'S NO  
6           BOUNCE THERE?

7           A       THAT PARTICULAR FUNCTIONALITY YOU JUST SHOWED  
8           IS THE HARD STOP, YES.

9           Q       OKAY.  AND YOU ORIGINALLY ACCUSED THE BROWSER  
10          FUNCTION OF THE TAB 7.0, WHAT WE JUST LOOKED AT, OF  
11          INFRINGEMENT OF THE '381 PATENT; RIGHT?

12          A       THAT IS CORRECT.

13          Q       BUT IT'S YOUR UNDERSTANDING THAT THE BROWSER  
14          APPLICATION OF THE GALAXY TAB 7.0 DOES NOT INFRINGE  
15          THE '381 PATENT BECAUSE IT DOESN'T BOUNCE BACK;  
16          RIGHT?

17          A       NO, THAT'S NOT CORRECT.  THE GALAXY TAB 7.0  
18          THAT I ACCUSED, IN THE VERSION I LOOKED AT, THE  
19          VERSION I ANALYZED DOES DO THE BOUNCE BACK.

20          Q       I JUST -- I JUST ASKED YOU ABOUT THE BROWSER.

21          A       OKAY.

22          Q       SO THE BROWSER APPLICATION OF THE GALAXY TAB  
23          7.0 THAT WE JUST LOOKED AT DOESN'T INFRINGE THE  
24          '381 PATENT; RIGHT?

25          A       IN THAT PARTICULAR VERSION --

1 Q YES?

2 A -- OF THE GALAXY TAB, I DON'T SEE AN  
3 INFRINGEMENT.

4 Q OKAY.

5 A BUT THE VERSION I LOOKED AT DID HAVE THE  
6 INFRINGEMENT.

7 Q LET'S THEN LOOK -- LET'S LOOK AT THAT VERSION.  
8 LET'S LOOK AT ANOTHER ONE. CAN WE SHOW -- LET ME  
9 ASK YOU, YOU'VE HEARD OF DR. SINGH? HE'S ANOTHER  
10 EXPERT IN THIS CASE; RIGHT?

11 A YES.

12 Q AND HE IS -- YOU'VE KNOWN HIM FOR MANY YEARS?

13 A YES, I HAVE.

14 Q HE WORKS DOWN THE HALL FROM YOU AT THE  
15 UNIVERSITY OF TORONTO?

16 A YES, HE'S A COLLEAGUE.

17 Q OKAY. SO HE'S IN THE SAME DEPARTMENT AS YOU?

18 A YES, HE IS.

19 Q ALL RIGHT. NOW, I WANT TO SHOW YOU A VIDEO  
20 THAT WAS PREPARED BY DR. SINGH.

21 CAN WE LOOK AT PX 66-A, PLEASE. AND THIS  
22 IS A VIDEO OF THE GALAXY TAB 10.1 THAT APPLE'S  
23 EXPERT PREPARED.

24 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN  
25 OPEN COURT OFF THE RECORD.)

1 BY MR. JOHNSON:

2 Q NOW, RIGHT THERE, STOP IT, RYAN, THANKS.

3 WHAT THE USER JUST DID THERE DOESN'T  
4 INFRINGE THE '381 PATENT, DOES IT?

5 A WHAT THE USER DID THERE WAS A SCROLL. I'M NOT  
6 SURE WHAT THIS VIDEO IS SUPPOSED TO BE SHOWING. I  
7 DID NOT CREATE THIS VIDEO.

8 Q LET ME ASK IT AGAIN, DOCTOR.

9 WHAT WE JUST SAW ON THAT VIDEO, THE  
10 MOVEMENT DOWN AND THE LACK OF A BOUNCE, DOES NOT  
11 INFRINGE THE '381 PATENT; RIGHT?

12 A I DID NOT SEE IT REACHING THE EDGE, SO I HAVE  
13 NO IDEA WHETHER IT IS MEETING THE '381 PATENT.

14 Q MR. FISHER, CAN WE PLAY IT AGAIN?

15 AND I WANT TO ASK YOU, DR. BALAKRISHNAN,  
16 DOES THIS INFRINGE THE '381 PATENT, BASED ON WHAT  
17 YOU'RE SEEING HERE?

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

20 THE WITNESS: NOT WHAT I'M SEEING. BUT I  
21 CAN'T TELL, JUST FROM THE VIDEO, WHETHER IT'S  
22 REACHED THE EDGE OR NOT.

23 IF YOU'D SHOW ME THE DEVICE, I'M HAPPY TO  
24 CHECK IT OUT AND VERIFY THAT.

25 BY MR. JOHNSON:

1 Q LET'S LOOK AT PX 66-B. THIS IS ANOTHER VIDEO  
2 PREPARED BY APPLE'S EXPERT, DR. SINGH, WITH RESPECT  
3 TO THE SAMSUNG VIBRANT PHONE.

4 I'M GOING TO ASK YOU THE SAME QUESTION.  
5 IF WE CAN, PUT IT UP, MR. FISHER.

6 DOES THIS DEVICE THAT YOU SEE IN THIS  
7 PARTICULAR VIDEO INFRINGE THE '381 PATENT?

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

10 THE WITNESS: I HAVE NOT ACCUSED THE  
11 VIBRANT OF INFRINGING THE '381 PATENT IN THE  
12 BROWSER APPLICATION.

13 BY MR. JOHNSON:

14 Q SO THE ANSWER TO MY QUESTION IS YES, IT DOES  
15 NOT INFRINGE THE '381 PATENT; RIGHT?

16 A IN THE BROWSER APPLICATION, IT DOES NOT.

17 BUT THE VIBRANT INFRINGES THE '381 IN THE  
18 GALLERY AND THE CONTACTS APPLICATION AS I'VE  
19 ALREADY SHOWN.

20 Q WELL, LET'S TALK ABOUT THAT.

21 SO YOU CLAIM, I BELIEVE -- YOU UNDERSTAND  
22 THAT IN ORDER TO SHOW INFRINGEMENT OF A CLAIM, YOU  
23 NEED TO SHOW THAT EACH AND EVERY CLAIM LIMITATION  
24 HAS BEEN MET; RIGHT?

25 A SURE.



1 Q AND THAT EACH AND EVERY CLAIM LIMITATION IS  
2 ACTUALLY CONTAINED IN THE ACCUSED DEVICES?

3 A YES.

4 Q AND IT'S NOT ENOUGH JUST TO SAY IT'S, IT'S  
5 CONTAINED IN ONE DEVICE. YOU HAVE TO SHOW THAT  
6 EACH AND EVERY CLAIM LIMITATION IS SHOWN IN EACH  
7 AND EVERY ONE OF THE 21 DEVICES THAT YOU'RE  
8 ACCUSING OF INFRINGEMENT; RIGHT?

9 A IN EACH OF THE DEVICES BEING ACCUSED, YES.

10 Q OKAY. AND YOU ALSO UNDERSTAND, GIVEN THAT  
11 YOU'VE GOT SOME OF YOUR OWN PATENTS, THAT THE  
12 CLAIMS MUST BE READ CONSISTENTLY FOR INFRINGEMENT  
13 PURPOSES AND FOR INVALIDITY PURPOSES; RIGHT?

14 A THAT'S CORRECT.

15 Q AND SAID ANOTHER WAY, YOU CAN'T READ A CLAIM  
16 BROADER TO ESTABLISH INFRINGEMENT, BUT THEN READ IT  
17 NARROWLY IN ORDER TO AVOID THE PRIOR ART; RIGHT?

18 A THAT'S TRUE.

19 Q OKAY. LET'S SHOW DX 751-A, MR. FISHER, AND  
20 THIS IS THE VIBRANT.

21 OKAY. AND ACTUALLY, BEFORE WE PLAY IT,  
22 LET ME JUST ASK YOU, YOU'RE AWARE THAT SAMSUNG  
23 BELIEVES IT DOESN'T INFRINGE THE '381 PATENT  
24 BECAUSE SAMSUNG'S PHONES EXHIBIT SOMETHING CALLED  
25 THE HOLD STILL BEHAVIOR; RIGHT?

1 A I'M AWARE THAT SAMSUNG'S MADE THE CLAIM THAT  
2 SOME OF THE SAMSUNG PHONES EXHIBIT THE HOLD STILL  
3 BEHAVIOR IN THE GALLERY APPLICATION --

4 Q OKAY.

5 A -- ONLY. BUT NOT ALL THE SAMSUNG PHONES, AND  
6 EVEN ON THE PHONES THAT DO EXHIBIT THE HOLD STILL  
7 BEHAVIOR IN THE GALLERY APPLICATION, MANY OF THEM  
8 INFRINGE THE '381 IN OTHER APPLICATIONS.

9 Q IN YOUR VIEW, TO INFRINGE '381 PATENT, MUST  
10 THE IMAGE ALWAYS BOUNCE BACK?

11 A TO INFRINGE CLAIM 19 OF THE '381 PATENT?

12 Q YES.

13 A IT DOESN'T HAVE TO ALWAYS BOUNCE BACK.

14 Q LET'S LOOK AT DX 751-A, PLEASE.

15 CAN WE GO AHEAD AND PLAY IT.

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

18 BY MR. JOHNSON:

19 Q THE VIDEO THAT WE JUST SHOWED THERE SHOWS THE  
20 HOLD STILL BEHAVIOR; RIGHT?

21 A CAN YOU PLAY THAT AGAIN, PLEASE?

22 Q SURE.

23 A I SAW SOMETHING GOING ON AT THE END WHERE THE  
24 USER IS TAPPING THEIR FINGER ON SOME PART OF THE  
25 SCREEN.

1 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN  
2 OPEN COURT OFF THE RECORD.)

3 THE WITNESS: SO I'M NOT SURE WHAT'S  
4 GOING ON WITH THE TAPPING OF THE FINGER.

5 BY MR. JOHNSON:

6 Q I THINK THE TAPPING IS JUST TO SHOW THAT THE  
7 VIDEO IS STILL ROLLING.

8 A THE VIDEO IS STILL ROLLING, NOT THAT IT'S  
9 STILL IN CONTACT WITH THE SCREEN?

10 Q RIGHT.

11 A IF YOU REPRESENT THAT.

12 Q I'LL REPRESENT THAT.

13 A I'LL HAVE TO CHECK THAT OUT FOR MYSELF, BUT --

14 Q I'LL REPRESENT THAT TO YOU. YOU'VE -- LET ME  
15 ASK IT TO YOU A DIFFERENT WAY.

16 WHAT WE JUST SAW HERE IN THE HOLD STILL  
17 OF THE VIBRANT, JUST THE HOLD STILL, DOES NOT MEET  
18 THE LIMITATIONS OF CLAIM 19 OF THE '381 PATENT;  
19 RIGHT?

20 A IF, INDEED, THAT IS THE HOLD STILL BEHAVIOR.

21 AND I STILL HAVE AN OPEN QUESTION AS TO  
22 WHAT'S ACTUALLY HAPPENING AT THE END OF THAT VIDEO  
23 WITH THE FINGER TAPPING.

24 BUT IF, INDEED, THE FINGER HAS LEFT THE  
25 SCREEN AND IT'S HOLDING STILL, THAT HOLD STILL

1 BEHAVIOR DOES NOT MEET CLAIM 19.

2 BUT I'LL NOTE THAT THE VIBRANT, MOST OF  
3 THE TIME, DOES MEET CLAIM 19 IN THE GALLERY  
4 APPLICATION, BECAUSE IF YOU USE IT AS YOU NORMALLY  
5 WOULD, IT WILL BOUNCE, AND I'M HAPPY TO SHOW THAT  
6 TO YOU NOW AND SHOW IT TO THE JURY IF YOU SHOW ME  
7 THE PHONE.

8 Q HAVE YOU REVIEWED THE SOURCE CODE FOR THE HOLD  
9 STILL ROUTINE FOR THE VIBRANT PHONE?

10 A I HAVE NOT LOOKED AT SOURCE CODE FOR THE  
11 NON -- FOR ANY FUNCTIONALITY THAT HAS NOTHING TO DO  
12 WITH CLAIM 19.

13 Q HAVE YOU LOOKED AT ANY OF THE HOLD STILL  
14 SOURCE CODE FOR ANY OF THE PHONES THAT ARE ACCUSED  
15 OF INFRINGEMENT?

16 A I MAY HAVE ENCOUNTERED IT, BUT I DON'T RECALL  
17 ANALYZING IT IN DETAIL.

18 Q NOW, YOU UNDERSTAND THAT THERE'S HOLD STILL  
19 BEHAVIOR FOR MANY SAMSUNG PHONES THAT ARE ACCUSED  
20 OF INFRINGEMENT; RIGHT?

21 A THERE APPEARS TO BE, AT LEAST ACCORDING TO  
22 SAMSUNG, SIMILAR HOLD STILL BEHAVIOR ONLY IN THE  
23 GALLERY APPLICATION FOR SOME, BUT NOT ALL, OF THE  
24 21 ACCUSED DEVICES, AND ONLY IN THE GALLERY  
25 APPLICATION.



1 IS A DEMONSTRATIVE.

2 THE COURT: OVERRULED. IT'S ADMITTED.

3 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER  
4 3918.105, HAVING BEEN PREVIOUSLY MARKED  
5 FOR IDENTIFICATION, WAS ADMITTED INTO  
6 EVIDENCE.)

7 MR. JOHNSON: AND WHILE WE'RE DOING THAT,  
8 I'D ASKS THAT 66-A AND B, AND 751-A, THE THREE  
9 OTHER VIDEOS THAT I REFERRED TO EARLIER, BE MOVED  
10 INTO OBJECTION.

11 MR. JACOBS: OBJECTION, YOUR HONOR.  
12 THERE'S BEEN NO FOUNDATION FOR HOW THEY WERE  
13 PREPARED.

14 MR. JOHNSON: THEY WERE PREPARED -- TWO  
15 OF THEM WERE PREPARED BY APPLE'S EXPERT.

16 THE COURT: 66-A IS ADMITTED, AND 66-B IS  
17 ADMITTED.

18 AND MR. JOHNSON, I DIDN'T CATCH THE LAST  
19 ONE.

20 MR. JOHNSON: 751-A, WHICH IS THE VIDEO  
21 WE JUST LOOKED AT FOR THE VIBRANT.

22 THE COURT: IT'S ADMITTED.

23 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBERS  
24 66-A, 66-B, AND 751-A, HAVING BEEN  
25 PREVIOUSLY MARKED FOR IDENTIFICATION,

1 WERE ADMITTED INTO EVIDENCE.)

2 BY MR. JOHNSON:

3 Q LET ME SHOW YOU SDX 3918.104.

4 THESE ARE OTHER EXAMPLES OF THE HOLD  
5 STILL BEHAVIOR IN THE EXHIBIT 4G, THE FASCINATE,  
6 THE GALAXY PREVAIL, AND THE GALAXY S I9000. HAVE  
7 YOU SEEN THESE BEFORE -- ARE YOU AWARE THAT EACH OF  
8 THESE ACCUSED PHONES DEMONSTRATES HOLD STILL  
9 BEHAVIOR?

10 A CAN YOU -- IF YOU DON'T MIND, CAN YOU PLAY  
11 THAT AGAIN, PLEASE?

12 Q SURE.

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

15 THE WITNESS: IT'S REALLY HARD TO TELL  
16 FROM THESE VIDEOS EXACTLY WHAT IS HAPPENING, SO  
17 IT'S VERY HARD TO COMMENT ON WHETHER IT'S DOING THE  
18 HOLD STILL OR SOMETHING ELSE.

19 IT WOULD BE MUCH EASIER IF I SAW THE  
20 DEVICES.

21 BY MR. JOHNSON:

22 Q YOU WOULD AGREE WITH ME THAT THE HOLD STILL  
23 BEHAVIOR THAT'S SHOWN IN EACH ONE OF THOSE PHONES  
24 IN SDX 3918.104 DOES NOT INFRINGE THE '381 PATENT;  
25 RIGHT?

1 A IF INDEED THOSE VIDEOS ARE DEMONSTRATING THE  
2 HOLD STILL BEHAVIOR, WHICH I CANNOT ASCERTAIN  
3 INDEPENDENTLY WITHOUT LOOKING AT THE PHONES, BUT IF  
4 YOU REPRESENT THAT, I WOULD SAY THAT THAT HOLD  
5 STILL BEHAVIOR ITSELF DOESN'T MEET THE CLAIMS.

6 BUT THE GALLERY APPLICATION ON EACH OF  
7 THOSE PHONES DOES MEET THE CLAIM OF CLAIM 19.

8 Q LET'S LOOK AT 3918.105. THIS IS ANOTHER VIDEO  
9 WITH MORE ACCUSED DEVICES THAT DEMONSTRATE THE HOLD  
10 STILL BEHAVIOR, THE GALAXY S 4G, THE INDULGE, THE  
11 INFUSE 4G, AND THE MESMERIZE.

12 YOU WOULD AGREE WITH ME THAT THE HOLD  
13 STILL BEHAVIOR THAT'S DEMONSTRATED IN THIS EXHIBIT  
14 DOES NOT INFRINGE THE '381 PATENT; RIGHT?

15 A AGAIN, JUST GOING BY THE VIDEO HERE, I CAN'T  
16 CONFIRM FOR CERTAIN WHETHER IT'S DOING THE HOLD  
17 STILL BEHAVIOR.

18 BUT IF YOU REPRESENT THAT IT IS, I WOULD  
19 SAY THAT THAT PARTICULAR BEHAVIOR DOESN'T MEET ALL  
20 THE CLAIM ELEMENTS OF CLAIM 19.

21 BUT THE GALLERY APPLICATION, WHICH IS THE  
22 SAME APPLICATION, DOES MEET CLAIM 19 AS I'VE  
23 ALREADY DEMONSTRATED.

24 AND I'M HAPPY TO DEMONSTRATE IT AGAIN IF  
25 I'M GIVEN THE OPPORTUNITY TO SHOW THE JURY LIVE.



1 Q LET'S LOOK AT 3918.106.

2 THESE ARE THREE MORE DEVICES THAT EXHIBIT  
3 THE HOLD STILL BEHAVIOR?

4 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN  
5 OPEN COURT OFF THE RECORD.)  
6 BY MR. JOHNSON:

7 Q THE NEXUS S 4G, THE REPLENISH, THE VIBRANT,  
8 NONE OF THESE APPLICATIONS SHOWING -- RUNNING HOLD  
9 STILL HERE OR DEMONSTRATING HOLD STILL INFRINGE THE  
10 '381 PATENT; RIGHT?

11 A AGAIN, I'M NOT VERIFYING THIS ON THE DEVICES  
12 THEMSELVES.

13 BASED ON THE VIDEOS, IF INDEED THEY'RE  
14 DOING THE HOLD STILL BEHAVIOR, I WOULD SAY THAT  
15 BEHAVIOR, AS I'VE SAID BEFORE, DOESN'T MEET CLAIM  
16 19.

17 BUT THE GALLERY APPLICATION RUNNING ON  
18 EACH OF THOSE PHONES, AS I'VE ALREADY DEMONSTRATED,  
19 DOES MEET CLAIM 19.

20 MR. JOHNSON: YOUR HONOR, WE'D ASK THAT  
21 DX 3918.104, .105 AND .106 BE ADMITTED.

22 THE COURT: ANY OBJECTION?

23 MR. JACOBS: SAME OBJECTION AS BEFORE,  
24 YOUR HONOR.

25 THE COURT: THEY'RE ALL THREE ADMITTED.

1 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBERS  
2 3918.104, 3918.105, 3918.106, HAVING BEEN  
3 PREVIOUSLY MARKED FOR IDENTIFICATION,  
4 WERE ADMITTED INTO EVIDENCE.)

5 THE COURT: GO AHEAD, PLEASE.

6 BY MR. JOHNSON:

7 Q NOW, DR. BALAKRISHNAN, I THINK YOU SAID  
8 EARLIER, THIS ISN'T THE FIRST TIME THAT YOU'VE  
9 SERVED AS AN EXPERT FOR APPLE; CORRECT?

10 A THAT'S CORRECT.

11 Q IT'S NOT THE SECOND TIME, EITHER?

12 A NO.

13 Q YOU'VE SERVED AS A TECHNICAL EXPERT FOR APPLE  
14 IN AT LEAST NINE DIFFERENT CASES IN THE LAST COUPLE  
15 YEARS; RIGHT?

16 A I THINK I'VE TESTIFIED IN FOUR OTHER CASES  
17 PRIOR TO THIS ONE.

18 Q YOU'VE SERVED AS A TECHNICAL EXPERT FOR APPLE  
19 IN AT LEAST NINE CASES IN THE LAST COUPLE OF YEARS;  
20 RIGHT?

21 A I PROBABLY HAVE BEEN RETAINED IN NINE, BUT I  
22 HAVEN'T TESTIFIED IN ALL NINE.

23 Q AND I HEARD YOU TALK ABOUT WHAT YOUR HOURLY  
24 RATE WAS AND HOW MUCH YOU'VE BEEN PAID SO FAR FOR  
25 YOUR WORK IN THIS CASE. I THINK YOU SAID \$150,000.

1 A APPROXIMATELY, YES.

2 Q RIGHT?

3 NOW, IF APPLE PAYS YOU FOR ALL THE WORK  
4 YOU'VE DONE FOR THEM ACROSS ALL THESE DIFFERENT  
5 CASES, HOW MUCH WILL IT BE?

6 A THE LAST TIME I CHECKED, IT WAS -- I THINK I  
7 BILLED ON THE ORDER OF ABOUT \$500,000.

8 Q I'M SORRY?

9 A IN THE ORDER OF ABOUT \$500,000.

10 Q \$500,000. AND THAT WAS AS OF APRIL OF THIS  
11 YEAR; RIGHT?

12 A ROUGHLY, THAT'S RIGHT.

13 Q AND YOU'VE DONE HOW MUCH WORK SINCE APRIL OF  
14 THIS YEAR FOR APPLE ACROSS ALL THESE DIFFERENT  
15 CASES?

16 A I'D HAVE TO LOOK AT MY INVOICES AND SO FORTH,  
17 BUT I'D ESTIMATE A COUPLE OF HUNDRED HOURS.

18 Q A COUPLE OF HUNDRED?

19 A HOURS.

20 Q SO, WHAT, THAT'S ANOTHER HUNDRED THOUSAND?

21 A GIVE OR TAKE.

22 Q SO IS IT FAIR TO SAY, ACROSS ALL THESE CASES,  
23 YOU WILL HAVE MADE AT LEAST, TO TODAY, ABOUT  
24 \$600,000?

25 A OVER THREE YEARS, YES.

1 Q NOW, YOU WERE ALSO CRITICIZED FOR YOUR  
2 OPINIONS BY AN ADMINISTRATIVE LAW JUDGE IN ANOTHER  
3 CASE --

4 MR. JACOBS: OBJECTION, YOUR HONOR.  
5 BY MR. JOHNSON:

6 Q -- IN ANOTHER CASE FOR TAKING INCONSISTENT  
7 POSITIONS, CORRECT?

8 THE COURT: OKAY. THAT IS SUSTAINED.

9 IF YOU WANT US TO START GETTING INTO  
10 THINGS THAT I'VE ALREADY EXCLUDED, I'D BE HAPPY TO  
11 DO IT. DO YOU REALLY WANT ME TO DO THAT?

12 MR. JOHNSON: YOUR HONOR, I DIDN'T  
13 UNDERSTAND THIS TO BE ANYTHING AFAR FROM WHAT WE'VE  
14 ALREADY DISCUSSED ACTUALLY.

15 BUT I'LL WITHDRAW THE QUESTION.

16 THE COURT: BECAUSE I CAN CERTAINLY START  
17 GETTING INTO PREVIOUS RULINGS IF YOU WANT ME TO.

18 MR. JOHNSON: I WAS JUST --

19 THE COURT: DO YOU WANT ME TO DO THAT?  
20 IF I'VE RULED IT TO BE EXCLUDED, WHICH THERE WAS A  
21 MOTION IN LIMINE TO EXCLUDE PREVIOUS THINGS FROM  
22 OTHER CASES AND FROM THIS CASE, AND THEY'VE BEEN  
23 SUSTAINED. SO PLEASE DON'T --

24 MR. JOHNSON: UNDERSTOOD.

25 THE COURT: -- VIOLATE PREVIOUS RULINGS,

1 UNLESS YOU WANT TO OPEN THE DOOR, IN WHICH CASE I  
2 WILL GET INTO IT.

3 MR. JOHNSON: NO, YOUR HONOR. THAT'S  
4 FINE.

5 THE COURT: OKAY.

6 MR. JOHNSON: I'LL PASS THE WITNESS.

7 OKAY. IT'S 11:59.

8 MR. JOHNSON: THANK YOU,  
9 DR. BALAKRISHNAN.

10 THE WITNESS: THANK YOU.

11 THE COURT: OKAY. LET'S GO AHEAD -- IT'S  
12 11:59. LET'S GO AHEAD AND TAKE OUR LUNCH BREAK.

13 AGAIN, PLEASE KEEP AN OPEN MIND. PLEASE  
14 DON'T DISCUSS THE CASE WITH ANYONE, AND PLEASE  
15 DON'T DO ANY OF YOUR OWN RESEARCH.

16 AND IF YOU WOULD PLEASE GO AHEAD AND  
17 LEAVE YOUR JURY NOTEBOOKS IN THE JURY ROOM.

18 ALL RIGHT. THANK YOU. WE'LL SEE YOU  
19 BACK AT 1:00 O'CLOCK.

20 (WHEREUPON, THE FOLLOWING PROCEEDINGS  
21 WERE HELD OUT OF THE PRESENCE OF THE JURY:)

22 THE COURT: ALL RIGHT. I WOULD LIKE  
23 TO -- YOU CAN STEP DOWN.

24 I'D LIKE TO SEE DX 2557, BOTH THE ONE  
25 THAT I SUSTAINED THE OBJECTION TO THAT HAD THE BLUE

1 GLOW AND THE NEW ONE. SO IF YOU COULD, PLEASE, IF  
2 YOU DON'T HAVE IT NOW, IF YOU COULD PLEASE DELIVER  
3 IT TO MY CHAMBERS DURING THE LUNCH HOUR.

4 AND I THINK THAT'S, THAT'S IT. OKAY?

5 MS. MAROULIS: DO YOU WANT IT ON A CD OR  
6 IN WHAT FORMAT DO YOU WANT IT?

7 THE COURT: VIDEO. IT'S A VIDEO, I WANT  
8 TO SEE BOTH THE ONE THAT I SUSTAINED THE OBJECTION  
9 ON AND THE NEW REVISED ONE.

10 MR. MUELLER: YOUR HONOR, I HAVE HARD  
11 COPIES OF THOSE FOUR CASES IF YOU WOULD LIKE.

12 THE COURT: OKAY.

13 MS. MAROULIS: YOUR HONOR, I UNDERSTAND  
14 THAT DURING THE BREAK COUNSEL FOR APPLE AND SAMSUNG  
15 CONFERRED AND THEY DON'T HAVE OBJECTION TO THE NEW  
16 EXHIBIT.

17 THE COURT: IS THAT CORRECT?

18 MR. JACOBS: WE'LL JUST TAKE A VERY QUICK  
19 LOOK AND MAYBE SAVE YOUR HONOR THE TIME. WE'LL  
20 REPORT BACK.

21 THE COURT: WELL, YOU KNOW, MR. SINGH IS  
22 NEXT. IS THAT RIGHT?

23 MR. JACOBS: YES.

24 THE COURT: SO I JUST WANT TO SEE THEM.  
25 SO LET ME SEE BOTH THE SUSTAINED OBJECTION VERSION

1 AND THE NEW ONE. OKAY?

2 ALL RIGHT. THANK YOU.

3 DO I HAVE -- I DON'T HAVE THE HAUSER  
4 DIRECT -- WHO HAS THE HAUSER DIRECT EXHIBITS,  
5 PLEASE? I ONLY HAVE THE CROSS.

6 AND DO I HAVE BENNER, SITTLER, MUSIKA?  
7 DO YOU HAVE THE DIRECT ON HAUSER, PLEASE?

8 MR. JACOBS: WE'LL GET IT FOR YOU, YOUR  
9 HONOR.

10 THE COURT: OKAY. ALL RIGHT. THANK YOU.  
11 (WHEREUPON, THE LUNCH RECESS WAS TAKEN.)

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**AFTERNOON SESSION**

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

THE COURT: OKAY. WELCOME BACK. PLEASE TAKE A SEAT.

SO I'VE ISSUED AN ORDER ON SITTLER AND BENNER. I DON'T KNOW IF YOU'VE HAD A CHANCE TO GET THOSE.

AND I WILL KEEP WORKING ON THE HAUSER AND MUSIKA ONES.

WITH REGARD TO DX 2557, APPLE HAS WITHDRAWN ITS OBJECTION BASED ON THE AMENDMENT, RIGHT? SO THAT'S RESOLVED.

MR. JACOBS: CORRECT, YOUR HONOR.

THE COURT: WITH REGARD TO THE TEKSLER EXHIBIT, I'M GOING TO ADMIT IT, BUT WITH THE LIMITING INSTRUCTION THAT JUST SAYS YOU MAY NOT CONSIDER THIS EVIDENCE TO PROVE OR DISPROVE THE VALIDITY OR INVALIDITY OF A CLAIM OR THE AMOUNT OF A DISPUTED CLAIM. HOWEVER, YOU MAY CONSIDER THIS EVIDENCE FOR SOME OTHER PURPOSE, FOR EXAMPLE, TO ESTABLISH THAT SAMSUNG LACKED NOTICE.

SO THERE'S GOING TO BE A LIMITING INSTRUCTION.

MR. MCELHINNY: YOUR HONOR, I THINK WE



1           WOULD WANT IT "WHETHER OR NOT SAMSUNG HAD NOTICE."

2                   THE COURT:   WHETHER OR NOT SAMSUNG HAD  
3           NOTICE.   THAT'S FINE.

4                   OKAY.   SO I THINK THAT WAS IT.   I'LL WAIT  
5           TO SEE SAMSUNG'S OBJECTIONS ON DALE SOHN AND THE  
6           F700 DESIGNER.

7                   OKAY.   LET'S THEN PLEASE BRING IN OUR  
8           JURY, MS. PARKER BROWN.

9                   (WHEREUPON, THE FOLLOWING PROCEEDINGS  
10          WERE HELD IN THE PRESENCE OF THE JURY:)

11                   THE COURT:   ALL RIGHT.   WELCOME BACK.

12                   THE TIME IS NOW 1:06.

13                   GO AHEAD, PLEASE.

14                                   **REDIRECT EXAMINATION**

15           BY MR. JACOBS:

16           Q       DR. BALAKRISHNAN, SAMSUNG'S COUNSEL ASKED YOU  
17           ABOUT SOME SLIDES AND YOU WEREN'T SURE WHETHER THEY  
18           ACCURATELY REPRESENTED WHAT YOU HAD PREPARED.   DO  
19           YOU RECALL THAT EXCHANGE?

20           A       YES, I DO.

21           Q       LET'S TAKE A LOOK, PLEASE, AT PDX 27.29.

22                                   AND CAN YOU RUN IT, PLEASE.

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

25           BY MR. JACOBS:

1 Q SO, IN FACT, IS 27.29 A VIDEO,  
2 DR. BALAKRISHNAN?

3 A YES, IT IS, AS WE CAN SEE.

4 Q AND IS THERE ANYTHING IN THIS VIDEO THAT'S  
5 INCONSISTENT WITH THE TESTIMONY YOU GAVE EARLIER?

6 A NO. THE VIDEO EXPLAINS CLEAR THAT IT'S DOING  
7 THE FUNCTIONALITY I DESCRIBED IN MY EARLIER  
8 TESTIMONY.

9 Q AND THEN ANOTHER SLIDE THAT YOU WERE SHOWN AS  
10 KIND OF A STILL WAS 27.30.

11 MR. LEE, COULD WE SEE THAT?

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

14 BY MR. JACOBS:

15 Q IS 27.30, IN FACT, A VIDEO, DR. BALAKRISHNAN?

16 A YES, IT IS.

17 Q AND DOES IT SHOW ANY -- DOES IT HAVE ANY  
18 CONTENT INCONSISTENT WITH YOUR EARLIER TESTIMONY ON  
19 INFRINGEMENT?

20 A NO, IT DOESN'T. IT'S COMPLETELY CONSISTENT  
21 WITH MY EARLIER TESTIMONY.

22 Q AND WHAT SAMSUNG'S COUNSEL SHOWED YOU WAS  
23 WHAT, EXACTLY?

24 A THEY WERE JUST PORTIONS OF THE VIDEO WHICH  
25 APPEARED TO BE AN IN-BETWEEN STILL, HALFWAY THROUGH

1 THE VIDEO SOMEPLACE. SO IT WAS A MISMATCH OF THE  
2 STILL AND THE, THE CAPTIONING THAT'S ON THE SLIDE.

3 Q NOW, LET'S LOOK AT ANOTHER VIDEO THAT SAMSUNG  
4 PLAYED IN YOUR CROSS-EXAMINATION.

5 CAN WE SEE SDX 3918.101, PLEASE.

6 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN  
7 OPEN COURT OFF THE RECORD.)

8 BY MR. JACOBS:

9 Q NOW, THIS WAS A VIDEO OF THE ANDROID TAB IN  
10 THE BROWSER CONFIGURATION. DO YOU RECALL THAT,  
11 DR. BALAKRISHNAN?

12 A THAT'S CORRECT.

13 Q AND I HAVE EXHIBIT JX 1036, THE GALAXY TAB,  
14 SOMETIMES KNOWN AS THE GALAXY TAB 7.0, ON THE ELMO.

15 CAN YOU TURN THAT OFF, MR. LEE, AND LET'S  
16 LOOK AT THE ELMO.

17 AND DR. BALAKRISHNAN, IS THIS THE BOUNCE  
18 FUNCTIONALITY THAT YOU OBSERVED WHEN YOU EXAMINED  
19 THE TAB DEVICE?

20 A IT IS.

21 Q NOW, IF I COULD, I'M NOT -- I DON'T KNOW IF I  
22 CAN GET THIS TO HOLD STILL, BUT IF I COULD, WOULD  
23 THAT IN ANY WAY CALL INTO QUESTION THE PRESENCE OF  
24 INSTRUCTIONS FOR -- ON THE DEVICE FOR EXECUTING THE  
25 BOUNCE FEATURE?

1 A ABSOLUTELY NOT. EVEN IF YOU COULD GET IT TO  
2 HOLD STILL, WHICH YOU CANNOT ON THIS DEVICE, IT  
3 WOULD STILL HAVE THE INSTRUCTIONS FOR BOUNCING  
4 BECAUSE, AS YOU CAN SEE, IT'S BOUNCING AWAY.

5 Q AND WHAT DOES CLAIM 19 REQUIRE IN THIS  
6 CONNECTION?

7 A CLAIM 19 REQUIRES INSTRUCTIONS FOR THE BOUNCE  
8 BACK FEATURE.

9 Q NOW, ANOTHER VIDEO YOU WERE SHOWN WAS OF THE  
10 VIBRANT.

11 CAN WE SEE DX 751-A, PLEASE.

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

14 BY MR. JACOBS:

15 Q AND IN THE VIBRANT, THE GALLERY APPLICATION  
16 WAS SHOWN TO YOU AND THE HOLD STILL BEHAVIOR WAS  
17 DEMONSTRATED IN THE VIDEO; CORRECT,  
18 DR. BALAKRISHNAN?

19 A YES.

20 Q AND THERE WAS SOMETHING -- YOU HAD A QUESTION  
21 ABOUT WHAT WAS GOING ON WITH THE FINGER.

22 I NOW HAVE ON THE ELMO JX 1010, THE  
23 GALAXY VIBRANT. AND WHAT ARE WE SEEING AS I MOVE  
24 MY FINGER ON THE VIBRANT, JX 1010,  
25 DR. BALAKRISHNAN?

1 A WE ARE SEEING THE BOUNCE BACK FUNCTIONALITY OF  
2 THE '381 PATENT AS I HAD CLEARLY DESCRIBED IN MY  
3 DIRECT TESTIMONY.

4 Q AND DID YOU PERSONALLY OBSERVE THE BOUNCE  
5 FUNCTIONALITY ON ALL THE DEVICES THAT YOU  
6 CATEGORIZED AS INFRINGING THE '381 PATENT, CLAIM  
7 19?

8 A YES, I DID EXAMINE EVERY SINGLE ONE OF THOSE  
9 DEVICES FOR THE FUNCTIONALITY.

10 MR. JACOBS: YOUR HONOR, WE WOULD LIKE TO  
11 MOVE INTO EVIDENCE THE FOLLOWING VIDEOS THAT WERE  
12 SHOWN IN DR. BALAKRISHNAN'S DIRECT TESTIMONY. CAN  
13 I JUST GIVE THEM TO YOU ALL AT ONCE?

14 THE COURT: YES.

15 MR. JACOBS: 27.9, 27.12 --

16 THE COURT: WAIT, WAIT. I'M SORRY.

17 MR. JACOBS: SORRY.

18 THE COURT: ALL RIGHT. GO AHEAD. YOU  
19 SAID 27.9.

20 MR. JACOBS: 27.12, 27.14, 27.16, 27.18,  
21 27.20, 27.22, 27.24, AND THEN 27.33, .34, .35, .36,  
22 .37, .38, AND .39.

23 ALL OF THESE WERE SHOWN DURING  
24 BALAKRISHNAN'S DIRECT, DR. BALAKRISHNAN'S DIRECT.

25 THE COURT: THESE ARE PDX NUMBERS; RIGHT?

1 MR. JACOBS: CORRECT.

2 THE COURT: OKAY. ANY OBJECTION?

3 MR. JOHNSON: NO, YOUR HONOR.

4 THE COURT: ALL RIGHT. THEY'RE ADMITTED.

5 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBERS  
6 27.9, 27.12, 27.14, 27.16, 27.18, 27.20,  
7 27.22, 27.24, 27.33, 27.34, 27.35, 27.36,  
8 27.37, 27.38, 27.39, HAVING BEEN

9 PREVIOUSLY MARKED FOR IDENTIFICATION,  
10 WERE ADMITTED INTO EVIDENCE.)

11 MR. JACOBS: AND THEN LASTLY WE'D LIKE TO  
12 MOVE INTO EVIDENCE UNDER SEAL PX 31, WHICH IS THE  
13 SAMSUNG SOURCE CODE PORTIONS THEREOF THAT  
14 DR. BALAKRISHNAN EXAMINED.

15 THE COURT: ALL RIGHT. ANY OBJECTION?

16 MR. JOHNSON: NO, YOUR HONOR.

17 THE COURT: THAT'S ADMITTED.

18 (WHEREUPON, PLAINTIFF'S UNDER SEAL  
19 EXHIBIT NUMBER 31, HAVING BEEN PREVIOUSLY  
20 MARKED FOR IDENTIFICATION, WAS ADMITTED  
21 INTO EVIDENCE.)

22 MR. JACOBS: AND THEN, YOUR HONOR, ONE  
23 MORE, PDX 27.31, THAT'S THE SLIDE THAT HAD THE CODE  
24 SNIPPETS ON IT, AND WE'D OFFER THAT UNDER SEAL AS  
25 WELL.

1 THE COURT: 27.31. ALL RIGHT. ANY  
2 OBJECTION TO THAT?

3 MR. JOHNSON: I MISSED THE PART -- ARE  
4 YOU GOING TO -- IS THIS GOING TO BE UNDER SEAL?

5 MR. JACOBS: YES.

6 MR. JOHNSON: NO OBJECTION AS LONG AS  
7 IT'S UNDER SEAL, YOUR HONOR.

8 THE COURT: BOTH PX 31 AND PDX 27.31 WILL  
9 BE UNDER SEAL BECAUSE THEY ARE SOURCE CODE.

10 (WHEREUPON, PLAINTIFF'S UNDER SEAL  
11 EXHIBIT NUMBER 27.31, HAVING BEEN  
12 PREVIOUSLY MARKED FOR IDENTIFICATION, WAS  
13 ADMITTED INTO EVIDENCE.)

14 MR. JACOBS: NO FURTHER QUESTIONS, YOUR  
15 HONOR.

16 THE COURT: OKAY. THE TIME IS NOW 1:12.  
17 RECROSS, PLEASE.

18 MR. JOHNSON: JUST A COUPLE QUESTIONS,  
19 YOUR HONOR.

20 THE COURT: GO AHEAD, PLEASE.

21 MR. JOHNSON: FIRST, YOUR HONOR, I'D LIKE  
22 TO MOVE IN THE EXHIBITS PDX 27.29 AND 27.30, WHICH  
23 IS THE STILL IMAGES THAT I DISCUSSED WITH  
24 DR. BALAKRISHNAN ON CROSS.

25 THE COURT: ALL RIGHT.

1 MR. JACOBS: YOUR HONOR, WE OBJECT. NOW  
2 WE'VE DEMONSTRATED THAT THOSE WERE VIDEOS.

3 MR. JOHNSON: THAT WAS EXACTLY HOW IT WAS  
4 PRODUCED TO US. THAT IS EXACTLY WHAT WAS PRODUCED.

5 MR. JACOBS: THEY'RE HIGHLY MISLEADING,  
6 YOUR HONOR.

7 THE COURT: THEY'RE ADMITTED.

8 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBERS  
9 27.29 AND 27.30, HAVING BEEN PREVIOUSLY  
10 MARKED FOR IDENTIFICATION, WERE ADMITTED  
11 INTO EVIDENCE.)

12 THE COURT: GO AHEAD, PLEASE.

13 MR. JOHNSON: JUST A COUPLE QUESTIONS.  
14 IF I COULD ASK YOU TO PUT UP, PLEASE, MR. FISHER,  
15 PDX 27.10, WHICH IS JUST THE CLAIM, CLAIM 19.

16 **RECROSS-EXAMINATION**

17 BY MR. JOHNSON:

18 Q DR. BALAKRISHNAN, THIS IS CLAIM 19, AND DURING  
19 REDIRECT, YOU WERE ASKED QUESTIONS ABOUT HOLD  
20 STILL; RIGHT?

21 A SURE.

22 Q THERE'S NO REQUIREMENT, NO LIMITATION IN CLAIM  
23 19 THAT SAYS THAT THE FINGER HAS TO MOVE AT A  
24 PARTICULAR SPEED; RIGHT?

25 A SPEED OF THE FINGER MOVEMENT IS NOT DESCRIBED



1 IN CLAIM 19.

2 Q IT'S IRRELEVANT TO CLAIM 19; RIGHT?

3 A IT'S NOT DISCUSSED IN CLAIM 19.

4 MR. JOHNSON: THANK YOU. NO FURTHER  
5 QUESTIONS.

6 THE COURT: ALL RIGHT. THE TIME IS NOW  
7 1:14. ANY RE-REDIRECT?

8 MR. JACOBS: NO, YOUR HONOR.

9 THE COURT: ALL RIGHT. MAY THIS WITNESS  
10 BE EXCUSED, AND IS IT SUBJECT TO RECALL?

11 MR. JACOBS: YES, AND YES.

12 THE COURT: ALL RIGHT. YOU ARE EXCUSED  
13 SUBJECT TO RECALL. YOU MAY STEP DOWN.

14 THE WITNESS: THANK YOU.

15 MR. JACOBS: YOUR HONOR, WE CALL --

16 (PAUSE IN PROCEEDINGS.)

17 THE CLERK: WOULD YOU RAISE YOUR RIGHT  
18 HAND, PLEASE.

19 **KARAN SINGH,**

20 BEING CALLED AS A WITNESS ON BEHALF OF THE  
21 PLAINTIFF, HAVING BEEN FIRST DULY SWORN, WAS  
22 EXAMINED AND TESTIFIED AS FOLLOWS:

23 THE WITNESS: I DO.

24 THE CLERK: HAVE A SEAT, PLEASE.

25 MR. JACOBS: YOUR HONOR, I DIDN'T

1           FORMALLY ANNOUNCE, WE CALL DR. KARAN SINGH AS OUR  
2           NEXT WITNESS.

3                       THE COURT:   ALL RIGHT.   THE TIME IS NOW  
4           1:15.   GO AHEAD.

5                       THE CLERK:   WOULD YOU STATE YOUR NAME,  
6           PLEASE, AND SPELL IT?

7                       THE WITNESS:   KARAN SHER SINGH,  
8           K-A-R-A-N, S-H-E-R, AND MY LAST NAME IS S-I-N-G-H.

9                       THE COURT:   THANK YOU.

10   **DIRECT EXAMINATION**

11           BY MR. JACOBS:

12           Q       DR. SINGH, WHAT DO YOU DO FOR A LIVING?

13           A       I'M A PROFESSOR OF COMPUTER SCIENCE AT THE  
14           UNIVERSITY OF TORONTO.   I CODIRECT THE GRAPHICS AND  
15           HUMAN/COMPUTER INTERACTION LAB.   I TEACH.   I DO  
16           RESEARCH AND SUPERVISE GRADUATE STUDENTS.

17                               I'M ALSO INVOLVED WITH A NUMBER OF  
18           PRIVATE COMPANIES IN THE AREA OF GRAPHICS  
19           INTERFACE.

20           Q       HOW LONG HAVE YOU BEEN A PROFESSOR, SIR?

21           A       TEN YEARS.

22           Q       WHERE DID YOU GO TO SCHOOL?

23           A       I HAVE A NUMBER OF COMPUTER SCIENCE DEGREES.  
24           I HAVE A BACHELOR'S FROM THE INDIAN INSTITUTE OF  
25           TECHNOLOGY IN '91, AND A MASTER'S AND A PH.D., BOTH

1 FROM THE OHIO STATE UNIVERSITY IN '92 AND '95.

2 Q WHAT DID YOU DO BEFORE YOU BECAME A PROFESSOR?

3 A WELL, AFTER MY PH.D. IN '95, I JOINED A  
4 TORONTO COMPANY CALLED WAVEFRONT WHERE I HELPED  
5 DESIGN AN ANIMATION SYSTEM CALLED MAYA.

6 LATER I WORKED IN CALIFORNIA AND I  
7 CONSTRUCTED A SYSTEM CALLED PARAFORM THAT CONVERTED  
8 PHYSICAL OBJECTS INTO DIGITAL MONITORS.

9 Q WERE MAYA AND PARAFORM, WERE THEY A SUCCESS?

10 A WELL, MAYA HAS BEEN THE INDUSTRY STANDARD FOR  
11 COMMERCIAL ANIMATION AND MOVIE SPECIAL EFFECTS FOR  
12 THE PAST DECADE.

13 IT WON A TECHNICAL OSCAR FOR THIS IN  
14 2003, AND PARAFORM ALSO RECEIVED AN ACADEMY AWARD  
15 FOR TECHNOLOGY.

16 Q YOU SAID A TECHNICAL OSCAR. IS THIS AN  
17 ACADEMY AWARD WITH THE OSCAR AND ALL THAT?

18 A THAT IS CORRECT.

19 Q NOW, DR. SINGH, WOULD YOU SAY YOU'RE FAMILIAR  
20 WITH COMPUTER PROGRAMMING, AND IN PARTICULAR, WITH  
21 HUMAN/COMPUTER INTERFACES AND COMPUTER GRAPHICS?

22 A SURE. FOR OVER 20 YEARS IT'S BEEN THE FOCUS  
23 OF MY EDUCATION, MY COMMERCIAL WORK, MY RESEARCH  
24 AND MY TEACHING.

25 MR. JACOBS: ALL RIGHT. YOUR HONOR, WE

1 TENDER DR. SINGH AS AN EXPERT IN COMPUTER  
2 PROGRAMMING, HUMAN/COMPUTER INTERFACES, AND  
3 COMPUTER GRAPHICS.

4 THE COURT: ANY OBJECTION?

5 MR. DEFRANCO: NO OBJECTION, YOUR HONOR.

6 THE COURT: THANK YOU.

7 BY MR. JACOBS:

8 Q DR. SINGH, LET'S DIVE INTO SOME PATENTS.

9 I'D LIKE TO TALK FIRST ABOUT THE '915  
10 PATENT. COULD YOU TURN TO JX 1044 IN YOUR BINDER,  
11 PLEASE.

12 YOUR HONOR, WE WOULD OFFER 1044 INTO  
13 EVIDENCE.

14 THE COURT: OKAY. ANY OBJECTION.

15 MR. DEFRANCO: NO, YOUR HONOR.

16 THE COURT: OKAY. THAT'S ADMITTED.

17 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER  
18 1044, HAVING BEEN PREVIOUSLY MARKED FOR  
19 IDENTIFICATION, WAS ADMITTED INTO  
20 EVIDENCE.)

21 BY MR. JACOBS:

22 Q NOW, WHAT IS THE '915 PATENT, DR. SINGH?

23 A THIS IS APPLE'S '915 PATENT WHICH YOU MIGHT  
24 RECALL MR. FORSTALL IN HIS TESTIMONY DESCRIBED THE  
25 CHALLENGE OF VIEWING AN IMAGE OF A BICYCLE THROUGH

1 A WINDOW THE SIZE OF A POSTCARD AND HOW YOU MIGHT  
2 DIRECTLY REACH IN TO POSITION AND RESIZE THAT IMAGE  
3 WITH YOUR FINGERS.

4 NOW, THE '915 PATENT DEALS EXACTLY WITH  
5 THAT PROBLEM AND GIVES YOU ACCESS TO THESE VARIOUS  
6 VIEW OPERATIONS IN A NATURAL AND FLUID MANNER.

7 Q LET'S TAKE A LOOK AT A DEMONSTRATION OF THIS  
8 ON THE IPHONE 4. WE'RE LOOKING AT PDX 29.4, AND  
9 WHAT ARE WE SEEING HERE, DR. SINGH?

10 A SO THE '915 PATENT SPECIFICALLY DRAWS A  
11 DISTINCTION BETWEEN A VERY COMMONLY USED SCROLLING  
12 OPERATION ON AN INTEGRATED TOUCHSCREEN DEVICE, LIKE  
13 A SMARTPHONE OR A TABLET, AND ONCE IT MAKES THE  
14 DISTINCTION BETWEEN THE COMMON SCROLLING OPERATION  
15 AND A MORE GENERAL COMPLEX OPERATION, SUCH AS A  
16 SCALE OR ROTATE, IT MAPS SINGLE FINGER INPUT TO, AS  
17 WE'LL SEE OVER HERE, SINGLE FINGER INPUT TO  
18 SCROLLING AND TWO OR MORE FINGERS TO THIS GENERAL  
19 GESTURE TRANSFORMATION, SUCH AS SCALING, SO THAT  
20 YOU CAN PERFORM BOTH OF THEM KIND OF  
21 SATISFACTORILY, INTUITIVELY, AND AT THE SAME TIME  
22 THEY ARE DISTINGUISHABLE FROM EACH OTHER.

23 Q NOW, DID YOU STUDY WHETHER SAMSUNG HAS  
24 INFRINGED CLAIM 8 OF APPLE'S '915 PATENT?

25 A YES, I HAVE.

1 Q AND WHAT DID YOU CONCLUDE?

2 A I CONCLUDED THAT 24 SAMSUNG PRODUCTS INFRINGE  
3 CLAIM 8 OF THE '915 PATENT.

4 Q AND HOW DID YOU REACH THAT CONCLUSION?

5 A WELL, FOR STARTERS, I STUDIED THE PATENTS, OR  
6 THE PATENT, ITS PROSECUTION HISTORY TO FULLY  
7 UNDERSTAND THE CLAIMED INVENTION.

8 AND THEN I PERSONALLY TESTED EACH OF  
9 THESE 24 PRODUCTS TO OBSERVE THAT THEY, INDEED,  
10 PERFORM THE FUNCTIONALITY THAT'S DESCRIBED BY CLAIM  
11 8 OF THE '915.

12 Q DID YOU DO ANYTHING ELSE?

13 A SURE. I ALSO REVIEWED ALL THE SOURCE CODE  
14 THAT SAMSUNG MADE AVAILABLE IN THIS LITIGATION --

15 Q SO LET'S LOOK --

16 A SORRY. -- THAT WAS RELEVANT TO THE '915  
17 PATENT.

18 Q SO LET'S LOOK AT THE SAMSUNG DEVICE. AND YOU  
19 HAVE UP HERE THE SAMSUNG GALAXY S II, T-MOBILE.  
20 AND WHAT DOES THIS DEVICE -- WHAT BEHAVIOR DOES  
21 THIS DEVICE DEMONSTRATE THAT IS RELEVANT TO THIS  
22 CLAIM IN THE '915 PATENT, CLAIM 8?

23 A WELL, AS YOU SEE IN THIS VIDEO, VERY MUCH  
24 ALONG THE LINES OF WHAT YOU SAW WITH THE APPLE  
25 IPHONE, A SINGLE FINGER IS USED IN THE WEB BROWSER

1 PROGRAM TO SCROLL THE CONTENT ON THE SCREEN.

2 AND SUBSEQUENTLY, YOU WILL NOW SEE TWO  
3 FINGERS BEING USED TO SCALE THE, THE CONTENT, THE  
4 VIEW, AND THE SCALE IS AN EXAMPLE OF A GESTURE  
5 TRANSFORM.

6 AND WHAT YOU'VE JUST SEEN DESCRIBES, IN  
7 EFFECT, THE CLAIM LANGUAGE OF THE CLAIM 8 OF THE  
8 '915.

9 Q WELL, LET'S GO TO THAT. LET'S TURN TO THE  
10 CLAIM LANGUAGE OF THE -- OF CLAIM 8 OF THE '915  
11 PATENT. AND CAN YOU WALK US THROUGH YOUR ANALYSIS  
12 OF THAT CLAIM LANGUAGE AGAINST THE SAMSUNG DEVICE?

13 A SURE. SO THE FIRST PIECE OF LANGUAGE THAT IS  
14 THE PREAMBLE OF THE CLAIM OVER HERE ESSENTIALLY IS  
15 DESCRIBING A COMPUTING DEVICE, SUCH AS -- AN  
16 EXAMPLE OF WHICH IS A SMARTPHONE OR A TABLET. IT'S  
17 A MACHINE READABLE STORAGE MEDIUM, IT HAS PROGRAMS,  
18 AND THESE PROGRAMS DO THINGS.

19 SO THAT'S, THAT'S WHAT THE FIRST PART  
20 DESCRIBES.

21 Q LET'S GO TO THE NEXT SLIDE, SIR, AND LOOK AT  
22 THE FIRST TWO ELEMENTS OF THE CLAIM.

23 WHAT DO THEY REQUIRE?

24 A SO THE, THE FIRST ELEMENT, ELEMENT A, THE  
25 OPERATIVE WORDS THERE ARE THAT THE DEVICE RECEIVES

1 USER INPUT.

2 YOU'VE JUST SEEN AN EXAMPLE OF A VIDEO OF  
3 THE DEVICE PERFORMING THIS FUNCTIONALITY. SO IT'S  
4 CLEARLY RECEIVING AND RESPONDING TO THAT INPUT.

5 THE USER INPUT IS IN THE FORM OF ONE OR  
6 MORE INPUT POINTS, AND IT IS APPLIED TO A TOUCH  
7 SENSITIVE DISPLAY.

8 AND WE'VE SEEN THAT WITH THE SAMSUNG  
9 DEVICES. TABLETS AND SMARTPHONES ARE, IN FACT,  
10 TOUCH SENSITIVE DISPLAYS THAT ARE INTEGRATED. THE  
11 TOUCH SURFACE IS INTEGRATED TO THE SCREEN AND  
12 FURTHER INTEGRATED WITH THE ACTUAL COMPUTING  
13 DEVICE.

14 SO THAT, THAT MEETS THE CLAIM ELEMENT A.

15 CLAIM ELEMENT B ACTUALLY REQUIRES A PEEK  
16 INTO THE SAMSUNG SOURCE CODE, AND I'LL WALK YOU  
17 THROUGH THIS.

18 SO HERE WE SEE THE EXAMPLE RESULTING FROM  
19 CLAIM ELEMENT A WHERE, AS I'VE ALREADY DESCRIBED,  
20 USER INPUT IS, IS RECEIVED IN RESPONSE TO THIS USER  
21 INPUT WITHIN SAMSUNG CODE, AND WHAT YOU SEE --

22 Q OKAY. CAN WE HAVE IT ON THE JURORS' SCREEN  
23 AND THE COURT'S SCREEN AND OPPOSING COUNSEL?

24 GREAT.

25 A SO WHAT YOU SEE ON THIS SLIDE IS ESSENTIALLY,



1 IT'S AN EXCERPT FROM SAMSUNG'S SOURCE CODE THAT  
2 GETS CALLED WHEN THE USER PROVIDES INPUT ON THE  
3 SCREEN.

4 AND WITHIN THIS FUNCTION, THAT  
5 INFORMATION IS ENCAPSULATED, IT, IT CREATES -- IT  
6 IS USED TO CREATE WHAT'S KNOWN AS A MOTION EVENT  
7 OBJECT, AND THIS MOTION EVENT OBJECT IS WHAT IS  
8 BEING REFERRED TO AS AN EVENT OBJECT IN CLAIM B.

9 TO GIVE YOU SOME MORE SENSE OF WHAT THIS  
10 MOTION EVENT OBJECT ACTUALLY IS, JUST BELOW THE  
11 MOTION EVENT OBJECT, YOU SEE ANDROID DOCUMENTATION  
12 DESCRIBING THE MOTION EVENT OBJECT, AND THE  
13 DOCUMENTATION GOES ON TO SAY THAT THE MOTION EVENT  
14 OBJECT REPORTS ON MOVEMENTS AND MOVEMENT EVENTS AND  
15 IT HOLDS MOVEMENT DATA REGARDING FINGERS AND PENS  
16 AND OTHER FORMS OF INPUT, THE LOCATIONS, THE TIMES  
17 OF THE INPUT AND SO ON.

18 Q AND SO DO YOU FIND ELEMENTS A AND B MET IN THE  
19 SAMSUNG DEVICES AND CODE THAT YOU EXAMINED,  
20 DR. SINGH?

21 A YES, I DO.

22 Q LET'S GO ON TO THE NEXT ELEMENTS OF THE CLAIM.

23 A SO --

24 Q SORRY. LET ME JUST INTRODUCE -- WE'RE LOOKING  
25 AT 29.12, AND BOTH 29.11 AND .12 ARE BEING SEEN

1 ONLY BY THE JURY AND THE COURT AND OPPOSING  
2 COUNSEL.

3 A OKAY. SO THESE ELEMENTS, AGAIN, ARE -- SORT  
4 OF DESCRIBE IN SOME SENSE WHAT'S HAPPENING BELOW IN  
5 THE, IN THE SAMSUNG CODE.

6 AND THE OPERATIVE WORDS IN THE BIG ONE  
7 ARE DETERMINING WHETHER THE EVENT OBJECT INVOKES A  
8 SCROLLING OPERATION, WHICH I'VE DESCRIBED BEFORE,  
9 WHICH IS MOVING CONTENT, OR THE SMALL COMPLEX  
10 GESTURE OPERATION, SUCH AS SCALING, BY  
11 DISTINGUISHING BETWEEN WHETHER A SINGLE INPUT POINT  
12 IS APPLIED TO THE SCREEN OR TWO OR MORE INPUTS, IN  
13 WHICH CASE A GESTURE OPERATION IS MADE.

14 SO TO UNDERSTAND THIS -- TO UNDERSTAND  
15 THIS ELEMENT, WHAT YOU SEE BELOW IS A SCHEMATIC.  
16 IT'S, IT'S JUST A SCHEMATIC SHOWING THE SAMSUNG  
17 SMARTPHONE AND TAB PHONE.

18 AGAIN, WHAT YOU SEE OVER THERE ARE  
19 EXCERPTS TAKEN FROM THE SAMSUNG SOURCE CODE AND  
20 LAID OUT JUST TO MAKE THINGS VERY CLEAR.

21 AND UPON RECEIVING INPUT, THERE IS A --  
22 THERE'S A FUNCTION IN THE WEB VIEW. THE WEB VIEW  
23 IS THE BROWSER PROGRAM, THE INTERNET BROWSER  
24 PROGRAM ON THE SAMSUNG DEVICE.

25 WEB VIEW HAS A FUNCTION CALLED ON TOUCH

1       EVENT, SO WHENEVER THERE'S A TOUCH, YOU GO INTO  
2       THAT CODE.

3               WHEN YOU GO INTO THAT CODE, THAT CODE IS  
4       CALLED AND CAUSED BY THIS MOTION EVENT OBJECT THAT  
5       IS BEING PASSED INTO THIS PIECE OF CODE AND IT'S --  
6       IT'S SENT INTO THIS CODE AS A PARAMETER.

7               I'VE KIND OF ILLUSTRATED IT ON TOP JUST  
8       SO YOU CAN CLEARLY SEE THE FLOW THAT IS TAKING  
9       PLACE IN THE CODE.

10              AND THERE'S A VERY IMPORTANT LINE IN THIS  
11       CODE WHERE A SIMPLE TEST IS MADE.  THE MOTION EVENT  
12       OBJECT HAS A POINTER COUNT.  THE POINTER COUNT  
13       TELLS YOU WHETHER ONE INPUT IS ONE INPUT TOUCH, TWO  
14       INPUT TOUCHES, OR MORE.

15              SO ALL YOU'RE DOING OVER HERE IS MAKING  
16       THIS QUINTESSENTIAL TEST, AND THEN BASED ON THE  
17       TEST, WHEN A SINGLE INPUT TOUCH IS ON THE SCREEN,  
18       YOU GO DOWN A ONE FINGER PART, THAT RESULTS IN A  
19       SCROLL OPERATION.

20              SO THAT TAKES YOU TO THIS CLAIM ELEMENT C  
21       WHERE YOU'RE DISTINGUISHING AND YOU'RE GOING DOWN  
22       THIS SCROLL BAR, AND I'LL GO ONE STEP FURTHER INTO  
23       CLAIM ELEMENT D, WHICH SAYS ISSUES AT LEAST A  
24       SCROLL CALL OR A GESTURE CALL, DEPENDING ON WHICH  
25       PART YOU GO DOWN, AND A SCROLL CALL, AN EXAMPLE OF

1 A SCROLL CALL IN THIS CASE IS A METHOD THAT SAYS DO  
2 DRAG, WHICH SAYS I'M DRAGGING NOW, AND WHAT DO I  
3 DO? THAT'S IF YOU GO DOWN THE SCROLL CALL.

4 VERY SIMILARLY, IF YOU GO DOWN THE  
5 GESTURE PART, WHICH IS TWO OR MORE FINGERS, YOU GO  
6 DOWN IN THE CODE AND YOU PERFORM A GESTURE  
7 OPERATION WHICH RESULTS IN A GESTURE CALL BEING  
8 MADE.

9 IN THIS EXAMPLE, THE GESTURE CALL IS A  
10 THE TOUCH EVENT OF A SCALE GESTURE, SOMETHING THAT  
11 RESULTS IN THE SCALE OPERATION.

12 SO WHAT WE'VE JUST SEEN OVER HERE IS A  
13 RUN THROUGH THROUGH THE SAMSUNG SOURCE CODE TO GIVE  
14 YOU A SENSE OF TWO IMPORTANT THINGS.

15 ONE, THAT THE MOTION EVENT OBJECT CAUSES  
16 A VERY IMPORTANT TEST TO BE MADE, ONE FINGER OR TWO  
17 OR MORE FINGERS; AND THEN BASED ON THAT TEST,  
18 THERE'S A FORK IN THE CODE AND YOU EITHER GO DOWN A  
19 SCROLL BOX WHERE A SCROLL CALL IS MADE AND A SCROLL  
20 OPERATION RESULTS, OR DOWN THE GESTURE PART AND A  
21 GESTURE CALL IS MADE AND A GESTURE RESULTS.

22 SO THAT'S THESE TWO ELEMENTS.

23 Q NOW, WHICH DEVICES DOES THIS ANALYSIS THAT YOU  
24 JUST PROVIDED APPLY TO?

25 A IT APPLIES -- THIS SPECIFIC SCHEMATIC APPLIES

1 TO 23 OF THE 24 ACCUSED DEVICES.

2 THE SAMSUNG GALAXY TAB 10.1 ALSO  
3 INFRINGES THIS CLAIM, BUT FOR THE PURPOSES OF  
4 CLAIM -- FOR ELEMENTS C AND D, IT'S STRUCTURED A  
5 LITTLE BIT DIFFERENTLY.

6 Q DO YOU WANT TO JUST SPEND A MINUTE EXPLAINING  
7 THAT WITH 29.14?

8 A SURE. SO AS YOU CAN SEE ON THIS SLIDE, THE  
9 SCHEMATIC OF THE SOURCE CODE, IT'S VIRTUALLY --  
10 IT'S VERY SIMILAR. AND FOR THE PURPOSES OF THESE  
11 CLAIMS, IT'S ACTUALLY IDENTICAL.

12 YOU STILL HAVE THE MOTION EVENT OBJECT  
13 CAUSING THIS ALL-IMPORTANT TEST OF ONE FINGER INPUT  
14 OR TWO OR MORE FINGERS WITH INPUTS, SO YOU STILL  
15 HAVE THE LOGICAL TEST.

16 YOU STILL HAVE THE BRANCHING TAKING PLACE  
17 IN THE CODE, AND GOING DOWN THE SCROLL PART RESULTS  
18 IN A SCROLL CALL. EVENTUALLY IT RESULTS IN A  
19 SCROLL OPERATION.

20 GOING DOWN THE GESTURE BOX ESSENTIALLY  
21 RESULTS IN A GESTURE CALL AND THEN THE  
22 CORRESPONDING GESTURE OPERATION.

23 THIS LOGIC THAT YOU SEE ACTUALLY ALLOWS  
24 THE GALAXY TAB 10.1 TO PERFORM WHAT YOU CAN THINK  
25 OF AS A MORE COMPLEX GESTURE TRANSFORM WHERE IT

1 SIMULTANEOUSLY SCALES AND TRANSLATES THE VIEW.

2 IF YOU GO BACK TO THAT PICTURE OF A  
3 BICYCLE AND IMAGINE YOUR FINGERS ARE DOWN ON THE  
4 WHEELS OF THE BICYCLE AND NOW YOU'RE GOING TO START  
5 TO MOVE YOUR FINGERS AROUND, MOVING -- SPREADING  
6 THEM APART WILL SCALE THE BICYCLE.

7 BUT YOU ALSO WANT TO MOVE IT SO THAT YOUR  
8 FINGERS REMAIN ON TO THE BICYCLE. IF YOU DON'T  
9 MOVE WITH IT, SIMULTANEOUSLY, ALL OF A SUDDEN YOUR  
10 BICYCLE IS OFF IN SPACE AND IT'S BIGGER, BUT IT  
11 DOESN'T HAVE THAT DIRECT FEEL.

12 AND THAT DIRECT FEEL IS WHAT THE APPLE  
13 PRODUCTS PROVIDE.

14 OF THE 24 INFRINGING DEVICES, ONLY THE --  
15 OVER HERE WITH THIS CODE, ONLY THE SAMSUNG GALAXY  
16 TAB 10.1 KIND OF PROVIDES THIS, THIS -- IT MAKES IT  
17 MORE LIKE THE APPLE PRODUCTS.

18 Q OKAY. LET'S MARCH THROUGH THE REST OF THE  
19 CLAIM LIMITATIONS.

20 A UM --

21 Q WE'RE LOOKING AT 29.16.

22 A SO CLAIM ELEMENT E, ONCE -- NOW THAT WE'VE  
23 SPENT, WE'VE BEEN THROUGH THE SLIGHTLY MORE  
24 DIFFICULT PART IN THE SAMSUNG CODE, THIS IS -- THIS  
25 IS A LOT SIMPLER.

1           YOU'VE ALREADY SEEN THIS VIDEO OF THE  
2           SAMSUNG GALAXY S II. IF YOU CAN PLAY THIS VIDEO  
3           AGAIN, YOU WILL SEE THAT, IN FACT, IN RESPONSE TO  
4           THAT ONE FINGER INPUT, ONCE YOU'VE GONE DOWN THAT  
5           SCROLL PART, CLEARLY A SCROLL CALL HAS BEEN MADE  
6           AND THAT SCROLL CALL, EVENTUALLY IT RESULTS IN  
7           SCROLLING THE WINDOW, HAVING A VIEW ASSOCIATED WITH  
8           THE EVENT OBJECT.

9           I'D JUST LIKE TO CLARIFY WHAT WE MEAN BY  
10          A VIEW ASSOCIATED WITH THE EVENT OBJECT.

11          THE EVENT OBJECT WAS THE MOTION EVENT  
12          OBJECT THAT WE SAW IN THE LAST COUPLE OF SLIDES,  
13          AND THE VIEW WAS THE WEB VIEW, WEB VIEW FROM WHICH  
14          THE PROGRAM THAT RUNS THE -- THAT IS THE BROWSER  
15          THAT WE ARE SEEING THIS FUNCTIONALITY BEING  
16          PERFORMED IN.

17          SO THAT ESSENTIALLY EXPLAINS ELEMENT E.

18          Q       GREAT. LET'S GO TO ELEMENT F.

19          WHAT DOES IT REQUIRE?

20          A       ELEMENT F IS, IS ACTUALLY VERY ANALOGOUS TO  
21          ELEMENT E. ELEMENT E DESCRIBES WHAT HAPPENS WHEN  
22          YOU GO DOWN THE SCROLL BAR.

23          ELEMENT F SIMPLY TELLS YOU WHAT HAPPENS  
24          IF YOU GO DOWN THE GESTURE BAR. SO IF YOU PLAY  
25          THIS VIDEO, YOU NOTICE AGAIN OVER HERE, BASED ON

1 TWO FINGER INPUT, A GESTURE CALL IS MADE AND THAT  
2 IS RESULTING IN SCALING THE VIEW ASSOCIATED WITH  
3 THE OBJECT.

4 Q DR. SINGH, CAN YOU SHOW THE JURY -- I'M SORRY.  
5 LET'S GO TO THE NEXT SLIDE.

6 DR. SINGH, ARE EACH ELEMENTS -- ARE EACH  
7 OF THE ELEMENTS OF CLAIM 8 MET BY THE SAMSUNG  
8 DEVICES THAT YOU HAVE DETERMINED INFRINGE?

9 A YES, THEY HAVE. WE'VE JUST BEEN THROUGH ALL  
10 THE ELEMENTS IN SEQUENCE, AND INDEED, ALL THE  
11 DEVICES ACTUALLY MEET THESE CLAIM ELEMENTS.

12 Q OKAY. NOW LET'S SHOW THE JURY THE DEVICES,  
13 AND CAN YOU SHOW ALL 24 OF THESE AS THEY  
14 DEMONSTRATE THE INFRINGING BEHAVIOR?

15 A SURE. WE'LL START WITH THE GALAXY S II, AT&T,  
16 THE GALAXY S II, T-MOBILE, THE GALAXY S II I9100,  
17 AND THE GALAXY T 4G.

18 YOU JUST NOTICED THE ONE FINGER SCROLL  
19 FOLLOWED BY A TWO FINGER SCALE GESTURE OPERATION.

20 Q AND THAT WAS 29.20?

21 A HERE WE SEE ANOTHER SET OF SIX DEVICES, THE  
22 ACE, THE CAPTIVATE, THE CONTINUUM, THE DROID  
23 CHARGE, THE EPIC 4G, AND THE EXHIBIT 4G.

24 ONCE AGAIN, ONE FINGER, SCROLL; TWO  
25 FINGERS, STAY OR GESTURE.



1 Q THAT WAS 29.21.

2 A ANOTHER SET OF SIX, THE FASCINATE, THE  
3 GALAXY S I9000, THE GEM, THE INDULGE, INFUSE 4G,  
4 INTERCEPT.

5 Q AND THAT'S 29.22.

6 A ANOTHER SET OF SIX, MESMERIZE, NEXUS S 4G,  
7 PREVAIL, REPLENISH, TRANSFORM, VIBRANT.

8 AND FINALLY, THE TABLETS, THE GALAXY TAB  
9 7.0 AND THE GALAXY TAB 10.1.

10 AS YOU CAN SEE, ONE FINGER PERFORMS THE  
11 PURE SCROLLING OPERATION, TWO OR MORE FINGERS  
12 PERFORMS A GENERAL GESTURE OPERATION, SUCH AS THE  
13 SCALE.

14 Q SO BASED ON YOUR ANALYSIS OF THESE DEVICES  
15 THAT YOU'VE ENUMERATED, DR. SINGH, AS WELL AS THE  
16 SOURCE CODE THAT SAMSUNG PROVIDED YOU, WHAT IS YOUR  
17 OPINION AS TO WHETHER THESE PRODUCTS INFRINGE CLAIM  
18 8 OF THE '915 PATENT?

19 A IT'S MY OPINION THAT THESE 24 PRODUCTS THAT  
20 I'VE JUST RECITED INFRINGE CLAIM 8 OF THE '915  
21 PATENT.

22 MR. JACOBS: AND YOUR HONOR, I WOULD LIKE  
23 TO OFFER INTO EVIDENCE JUST A COUPLE MORE PHONES.  
24 1014 IS THE TRANSFORM; AND 1009 IS THE INTERCEPT,  
25 BOTH JOINT EXHIBITS.

1 THE COURT: ALL RIGHT. ANY OBJECTION?

2 MR. DEFRANCO: NO, YOUR HONOR.

3 THE COURT: THEY'RE ADMITTED.

4 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBERS  
5 1014 AND 1009, HAVING BEEN PREVIOUSLY  
6 MARKED FOR IDENTIFICATION, WERE ADMITTED  
7 INTO EVIDENCE.)

8 BY MR. JACOBS:

9 Q NOW LET'S TURN TO THE '163 PATENT, WHICH IS  
10 1046 IN YOUR BINDER.

11 YOUR HONOR, WE OFFER -- IT'S ALREADY IN  
12 EVIDENCE.

13 WHAT IS THE '163 PATENT ABOUT, DR. SINGH?

14 A ONCE AGAIN, YOU MIGHT REMEMBER MR. FORSTALL  
15 DESCRIBING THIS PROBLEM OF VIEWING A DOCUMENT, SUCH  
16 AS A NEWSPAPER, ON A SMALL SMARTPHONE SCREEN.

17 NOW, WITH -- AS YOU CAN SEE, WITH THE --  
18 WITH THE NEWSPAPER LARGELY OR ENTIRELY VISIBLE ON  
19 THE SCREEN, YOU CAN, AT MOST, SORT OF SEE THE  
20 LAYOUT OF STORIES AND PERHAPS READ SOME HEADLINES.

21 BUT THE '163 INVENTION, WHAT IT BRINGS TO  
22 THE TABLE IS THAT IT ALLOWS A USER TO SIMPLY TAP ON  
23 A STORY OR A REGION OR A BOX OF INTEREST AND THE,  
24 THE PROGRAM, THE BROWSER ITSELF, USES THE STRUCTURE  
25 TO DETERMINE WHAT THAT STORY IS AND THEN ENLARGES

1 AND POSITIONS THE DOCUMENT AS BEST IT CAN TO MAKE  
2 THAT INFORMATION READABLE.

3 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN  
4 OPEN COURT OFF THE RECORD.)

5 THE WITNESS: AND WE'LL SEE THIS IN AN  
6 EXAMPLE ON THE APPLE IPHONE 4.

7 AND ONCE YOU'VE DONE THIS, OF COURSE THE  
8 '163 THEN ALLOWS YOU TO TAP ON A SECOND BOX OF  
9 CONTENT WHILE YOU ARE -- WHILE THE DOCUMENT IS  
10 ENLARGED, AND IT MOVES THAT OVER SO THAT YOU CAN  
11 READ THE SECOND STORY, AND SO ON.

12 AND YOU CAN CONTINUE IN THIS FASHION.

13 BY MR. JACOBS:

14 Q SO WHY DON'T YOU JUST DEMONSTRATE THAT ONE  
15 MORE TIME?

16 A SO MAYBE WE CAN LOOK AT IT AGAIN.

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

19 THE WITNESS: THE FIRST TAP ENLARGES AND  
20 POSITIONS THE DOCUMENT. AGAIN, THE SECOND TAP  
21 REPOSITIONS THE DOCUMENT ON THE SECOND BOX.

22 BY MR. JACOBS:

23 Q DID YOU CONCLUDE ONE WAY OR THE OTHER WHETHER  
24 THE APPLE PATENTS, THE APPLE PRODUCTS, IN FACT,  
25 PRACTICE CLAIM 50 OF THE '163 PATENT?

1 A YES, I DID. ALL APPLE MOBILE TOUCH DEVICES,  
2 THE IPHONE AS YOU JUST SAW AND THE IPODS AND IPADS,  
3 IPOD TOUCHES PERFORM IT.

4 Q WHY NOT JUST USE THE SCROLLING AND PINCHING OF  
5 THE '915 PATENT TO ADDRESS THIS PROBLEM?

6 A OF COURSE YOU CAN USE SCROLLING AND PINCHING.

7 BUT FOR THIS SPECIFIC PROBLEM, YOU WOULD  
8 SPEND A LOT OF TIME ADJUSTING YOUR VIEW TO MAKE  
9 SURE THE FONT WAS A READABLE SIZE AND SO ON.

10 THE '163 INSTEAD JUST MAKES A KEY  
11 INSIGHT. IT REALIZES THAT IN DOCUMENTS, SUCH AS  
12 WEB PAGES, THERE'S ALREADY AN INHERENT STRUCTURE  
13 THAT THE PROGRAM CAN EXPLOIT, SO THAT WHEN YOU  
14 SIMPLY TAP ON A LOCATION OF THE SCREEN, THE PROGRAM  
15 USES THAT INFORMATION OF THAT LOCATION AND FIGURES  
16 OUT WHAT THAT PIECE OF CONTENT IS THAT YOU'RE  
17 INTERESTED IN AND THEN IT RESIZES IT, ENLARGES THE  
18 DOCUMENT AND POSITIONS IT AS BEST IT CAN TO MAKE  
19 THAT PIECE OF INFORMATION READABLE.

20 SO IT'S MUCH MORE DIRECT IN THAT ASPECT.

21 Q DO YOU HAVE AN EXAMPLE OF A SAMSUNG PRODUCT  
22 PRACTICING CLAIM 50?

23 A YES, I DO.

24 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN  
25 OPEN COURT OFF THE RECORD.)

1 THE WITNESS: HERE IS AN EXAMPLE OF THE  
2 GALAXY S II, T-MOBILE, AND VERY SIMILAR TO THE  
3 APPLE DEVICE, YOU WILL SEE THE FIRST TOUCH ENLARGES  
4 THE DOCUMENT AND SUBSTANTIALLY CENTERS THE FIRST  
5 BOX, THE FIRST STORY.

6 AND NOW THE SECOND BOX, ONCE IT'S TABBED  
7 ON, IS SUBSTANTIALLY CENTERED.

8 LET'S LOOK AT THAT ONCE MORE JUST SO WE  
9 CAN SEE IT WITHOUT MY TALKING OVER IT.

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

12 BY MR. JACOBS:

13 Q AND THAT'S 29.26 FOR THE IPHONE, .27 FOR THE  
14 FIRST TAP FOR THE SAMSUNG GALAXY S II, AND 29.28  
15 FOR THE SECOND TAP; CORRECT?

16 A THAT IS CORRECT.

17 Q OKAY. DID YOU STUDY THE CLAIM LANGUAGE OF  
18 CLAIM 50 OF THE '163 PATENT?

19 A YES, I DID.

20 Q SO LET'S GO OVER THOSE ELEMENTS IN ORDER TO  
21 ANALYZE HOW THE SAMSUNG PRODUCTS ALIGN WITH THAT  
22 CLAIM.

23 AND FIRST WE HAVE, AGAIN, KIND OF A  
24 PREAMBLE, RIGHT, DR. SINGH?

25 A THAT'S RIGHT. WELL, IN THIS CASE, IT -- IT IS

1 PART OF THE ACTUAL CLAIM ELEMENTS.

2 BUT IN FACT, ALL CLAIM ELEMENTS A TO D  
3 ESSENTIALLY DISCLOSE OUR TOUCHSCREEN DISPLAY, ONE  
4 OR MORE PROCESSORS, MEMORY, ONE OR MORE PROGRAMS,  
5 WHICH WE'VE ALREADY SEEN SORT OF IN THE CONTEXT OF  
6 THE '915, AS WELL AS HERE.

7 SAMSUNG SMARTPHONES AND TABLETS ARE  
8 ESSENTIALLY -- THEY ARE TOUCHSCREEN DISPLAYS  
9 INTEGRATED WITH A COMPUTER THAT HAS MEMORY AND  
10 PROGRAMMING.

11 Q SO LET'S GO TO THE FIRST OF THE MORE  
12 SUBSTANTIVE LIMITATIONS. LET'S GO TO ELEMENT E.

13 A OKAY.

14 Q WE'RE LOOKING AT 29.32.

15 A RIGHT. SO ELEMENT E ACTUALLY DESCRIBES  
16 INSTRUCTIONS FOR DISPLAYING AT LEAST A PORTION OF A  
17 STRUCTURED ELECTRONIC DOCUMENT ON THE TOUCHSCREEN  
18 DISPLAY.

19 SO WHAT WE'RE TALKING ABOUT HERE IS A  
20 STRUCTURE OF ELECTRONIC DOCUMENT, SUCH AS A WEB  
21 PAGE. IN THIS PARTICULAR SCENARIO, YOU SEE THE  
22 NEW YORK TIMES WEB PAGE. IT IS A WEB PAGE WRITTEN  
23 IN A LANGUAGE CALLED HYPERTEXT MARKUP LANGUAGE,  
24 HTML. IT'S A VERY COMMON LANGUAGE USED FOR  
25 ALTERING WEB PAGES.

1                   AND YOU CAN SEE A PORTION OF THIS  
2                   DOCUMENT BEING CLEARLY DISPLAYED ON THE SAMSUNG  
3                   DEVICE.

4                   THE LAST FEW OPERATIVE WORDS DESCRIBE  
5                   COMPRISING A PLURALITY OF BOXES OF CONTENT.

6                   NOW, THESE WEB PAGES, IN FACT, DO HAVE A  
7                   NUMBER OF VISUALLY SALIENT REGIONS, VISUALLY  
8                   DISTINCT REGIONS THAT YOU SEE THAT ARE THESE BOXES  
9                   OF CONTENT, AND I HAVE ILLUSTRATED THESE BY DRAWING  
10                  SORT OF DOTTED LINES AROUND THEM AND LABELING THEM  
11                  FIRST BOX AND SECOND BOX, BUT THAT IS SIMPLY TO  
12                  ILLUSTRATE WHAT THE PROGRAM ACTUALLY SEES.

13                 Q       AND HOW DOES THE UNDERLYING DOCUMENT GET  
14                  STRUCTURED?   WHAT'S THE SOURCE OF THE STRUCTURE IN  
15                  HTML?

16                 A       WELL, HTML ACTUALLY HAS A NUMBER OF WHAT THEY  
17                  CALL TAGS.   THESE ARE JUST -- THESE ARE SPECIAL  
18                  CONSTRUCTS THAT HTML USES TO -- THAT YOU CAN USE TO  
19                  ANNOTATE YOUR CONTENT, ANNOTATE YOUR TEXT, YOUR  
20                  IMAGES AND SO ON.

21                 AND THESE TAGS ARE DESIGNED SUCH THAT THE  
22                  VIEWER DOESN'T SEE THEM.   THEY'RE NOT DESIGNED FOR  
23                  VISUAL CONSUMPTION.

24                 BUT WHAT THEY ARE DESIGNED FOR IS THAT  
25                  THE PROGRAM USES THESE TAGS TO FIGURE OUT HOW IT

1 SHOULD STRUCTURE AND DISPLAY THE CONTENT, THE  
2 STORIES, THE HEADLINES, THE IMAGES ON THE SCREEN.

3 Q LET'S LOOK AT THE NEXT ELEMENT, ELEMENT F ON  
4 PDX 29.34.

5 A OKAY. SO THESE TWO CLAIM ELEMENTS ARE SORT  
6 OF -- THEY SORT OF REQUIRE AN UNDERSTANDING OF WHAT  
7 WE SEE ON THE SCREEN, AND PERHAPS WHAT THE PROGRAM  
8 SEES.

9 SO I'LL TRY AND EXPLAIN THIS IN A WAY  
10 THAT HOPEFULLY WILL BE UNDERSTANDABLE.

11 IN CLAIM ELEMENT F, WE SEE INSTRUCTIONS  
12 FOR DETECTING A FIRST GESTURE AT A LOCATION OF THE  
13 DISPLAYED PORTION OF THE ELECTRONIC DOCUMENT.

14 SO THAT ONE IS EASY. DETECTING A FIRST  
15 GESTURE, CLEARLY WE SAW IN THE VIDEO A GESTURE IS  
16 MADE. BASED ON THAT GESTURE, THE DEVICE RESPONDS,  
17 SO THAT GESTURE IS, IS BEING DETECTED.

18 ON THE -- AND THEN BASED ON THAT,  
19 INSTRUCTIONS FOR DETERMINING A FIRST BOX AMONG THE  
20 PLURALITY OF BOXES. THAT'S SORT OF ELEMENT G.

21 SO WHAT YOU SEE ON THE LEFT-HAND SIDE ARE  
22 A NUMBER OF BOXES. I'VE SORT OF LABELED THEM  
23 SCHEMATICALLY 1 THROUGH 9.

24 BOX 6 IS PARTICULARLY INTERESTING, AND  
25 WHAT YOU SEE ON THE RIGHT-HAND SIDE IS SORT OF A



1 TREE STRUCTURE THAT THE SAMSUNG CODE PRODUCES THAT  
2 IS REPRESENTATIVE OF WHAT YOU SEE ON THE SCREEN.

3 SO NOW WHEN --

4 THE COURT: I'M SORRY.

5 DOES ANYONE NEED ANY CAFFEINE? I'M MORE  
6 THAN HAPPY IF YOU WANT TO TAKE A LITTLE MINUTE  
7 BREAK OR TWO. WOULD THAT BE GOOD NOW? OR IF YOU  
8 WOULD LIKE TO BRING A CAFFEINATED DRINK IN, THAT'S  
9 FINE, TOO. WOULD YOU LIKE TO DO THAT? WE CAN TAKE  
10 A COUPLE MINUTE BREAK TO DO THAT.

11 NO? IS EVERYBODY OKAY?

12 ALL RIGHT. GO AHEAD.

13 THE WITNESS: WHEN A GESTURE IS MADE  
14 WITHIN THE SAMSUNG CODE, A DOUBLE TAP FUNCTION IS  
15 CALLED WHEN YOU TAP ON THERE.

16 AND THEN ONCE YOU DO THAT WITHIN THE  
17 CODE, YOU WILL SEE THAT IT USES THE LOCATION OF  
18 THAT TAP TO ESSENTIALLY TRAVERSE DOWN THIS TREE  
19 STRUCTURE AND FIND WHICH BOX IN THAT TREE STRUCTURE  
20 CORRESPONDED TO THE LOCATION. IN THIS CASE, IT  
21 HAPPENS TO BE BOX 6.

22 SO THAT TAKES CARE OF ELEMENTS F AND G.

23 BY MR. JACOBS:

24 Q BECAUSE WHAT YOU HAVE JUST ILLUSTRATED IS  
25 INSTRUCTIONS FOR DOING WHAT?

1 A IT'S INSTRUCTIONS FOR DETECTING THIS GESTURE  
2 AND, BASED ON THE LOCATION OF THAT GESTURE,  
3 ACTUALLY DETERMINING A BOX, A FIRST BOX THAT IS  
4 PART OF THIS STRUCTURED ELECTRONIC DOCUMENT.

5 Q OKAY. LET'S GO TO THE NEXT ELEMENT OF CLAIM  
6 50.

7 THE COURT: OKAY. WHAT WAS THE NUMBER OF  
8 THAT ONE?

9 MR. JACOBS: THAT ONE WAS 29.36.

10 THE COURT: OKAY. THANK YOU.

11 BY MR. JACOBS:

12 Q AND NOW WE'RE ON 29.37.

13 A SO ELEMENT H SORT OF BRINGS US BACK OUT OF  
14 THE, OUT OF THE NITTY GRITTY OF THE SAMSUNG SOURCE  
15 CODE AND HERE AGAIN WE'RE LOOKING AT THE DEVICE.

16 IF YOU PLAY THIS VIDEO, YOU'VE ALREADY  
17 SEEN THIS VIDEO BEFORE WHERE, UPON RECEIVING THAT,  
18 THAT FIRST GESTURE AND DETERMINING THE BOX, YOU CAN  
19 SEE THAT THAT INFORMATION IS BEING USED TO ENLARGE  
20 THE ENTIRE DOCUMENT AND THEN MOVE IT SUCH THAT THE  
21 BOX IS ENLARGED AND SUBSTANTIALLY CENTERED ON THE  
22 DISPLAY.

23 Q AND JUST TO REMIND US, THIS IS A VIDEO OF  
24 THE --

25 A THIS IS A VIDEO OF THE SAMSUNG GALAXY S II,

1 T-MOBILE, THAT WE'VE SEEN ONCE BEFORE.

2 Q NOW LET'S GO TO THE NEXT ELEMENT, THE NEXT TWO  
3 ELEMENTS, I AND J.

4 A SO ELEMENTS I AND J ESSENTIALLY RELATE TO THE  
5 SECOND GESTURE. SO ONCE YOU HAVE PERFORMED WHAT  
6 YOU JUST SAW, YOU CAN SEE THAT THE FIRST BOX IS  
7 STILL ENLARGED, AND YOU WILL SEE IN THE VIDEO  
8 DETECTING A SECOND GESTURE ON A SECOND BOX, AND YOU  
9 CAN SEE THAT THE SECOND BOX IS DISTINCT FROM THE  
10 FIRST BOX.

11 AND THEN THE INSTRUCTIONS IN RESPONSE TO  
12 THAT GESTURE ESSENTIALLY TRANSLATE THE DOCUMENT SO  
13 THAT NOW THE SECOND BOX IS SUBSTANTIALLY CENTERED  
14 ON THE WEB SCREEN DISPLAY.

15 Q AND THAT'S PDX 29.39.

16 SO HAVE YOU NOW GONE THROUGH ALL OF THE  
17 ELEMENTS, ALL OF THE LIMITATIONS OF CLAIM 50 OF THE  
18 '163 PATENT, SIR?

19 A YES, I HAVE.

20 Q AND YOU FIND THEM -- DO YOU FIND THEM PRESENT  
21 IN THE SAMSUNG DEVICES YOU'RE ABOUT TO ENUMERATE?

22 A YES, I DO, AND I HAVE.

23 Q OKAY. LET'S LOOK AT THE DEVICES.

24 A OKAY.

25 Q THIS IS 29.41.

1 A WE SEE THE GALAXY S II, AT&T. YOU JUST SAW  
2 THE FIRST GESTURE AND NOW THE SECOND GESTURE.

3 THE GALAXY S II, T-MOBILE, WHICH IS A  
4 VIDEO THAT WE'VE ALREADY SEEN.

5 THE GALAXY S II I9100, SECOND GESTURE.

6 GALAXY S II 4G, FIRST GESTURE, AND NOW  
7 THE SECOND GESTURE.

8 OKAY. HERE IS A SET OF SIX OTHER  
9 DEVICES, THE ACE, THE CAPTIVATE, THE CONTINUUM, THE  
10 DROID CHARGE, THE EPIC 4G, AND THE EXHIBIT 4G.

11 MAYBE THAT RAN BY A LITTLE QUICKLY.  
12 PERHAPS WE CAN PLAY THAT ONE AGAIN.

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

15 BY MR. JACOBS:

16 Q AND WE'RE UP TO 29.42.

17 A ANOTHER SIX DEVICES, THE FASCINATE, THE  
18 GALAXY S I9000, THE GEM, THE INDULGE, THE  
19 INFUSE 4G, AND INTERCEPT.

20 Q THAT'S 29.43.

21 A THE MESMERIZE, NEXUS S 4G, PREVAIL, REPLENISH,  
22 TRANSFORM, AND VIBRANT.

23 Q THAT'S PDX 29.44.

24 A AND THEN FINALLY THE TABLETS, THE GALAXY TAB  
25 7.0, THERE YOU SEE THE FIRST GESTURE, AND THE

1 SECOND GESTURE.

2 AND THE GALAXY TAB 10.1.

3 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN  
4 OPEN COURT OFF THE RECORD.)

5 BY MR. JACOBS:

6 Q AND THAT'S 29.45.

7 YOUR HONOR, THE DEMONSTRATIVES -- SORRY.

8 THE VIDEOS THAT WE'VE SHOWN PREPARED  
9 UNDER DR. SINGH'S DIRECTION WE WOULD OFFER INTO  
10 EVIDENCE.

11 THE COURT: AND WHICH ONES? THERE HAVE  
12 BEEN QUITE A FEW VIDEOS.

13 MR. JACOBS: YES.

14 THE COURT: WHY DON'T YOU GO THROUGH THE  
15 NUMBERS, PLEASE?

16 MR. JACOBS: 29.4, 29.5, 29.6, 29.10;  
17 THEN THREE THAT WOULD BE UNDER SEAL, 29.12, .13,  
18 .14; 29.16, 29.18, 29.20, .21, .22, .23, .24, .25,  
19 THEN 29.26, .27, .28, .32, .34, .35; THE NEXT ONE  
20 WOULD BE SEALED, THAT WOULD BE 29.36, .37, .39,  
21 29.41, .42, .43, .44, AND .45.

22 THE COURT: I DIDN'T SEE ON THE SCREEN  
23 29.23, 29.25, 29.35. I WAS MOSTLY CATCHING EVEN  
24 NUMBERS.

25 MR. JACOBS: LET'S TAKE A QUICK LOOK.

1 THE COURT: ARE THOSE PART --

2 MR. JACOBS: 29.23, MR. LEE.

3 THE COURT: IS THAT -- ALL RIGHT.

4 MR. JACOBS: '915 INFRINGING SMARTPHONES.

5 WHAT WAS THE NEXT ONE, YOUR HONOR?

6 THE COURT: FOR THE SEALED, I HAD 29.11,

7 29.12, AND 29.13. IT COULD BE THESE ARE

8 INTERMEDIARY ONES THAT I DIDN'T CATCH.

9 MR. JACOBS: SO .12 IS THE FIRST ONE, .13

10 IS THE NEXT ONE, AND .14, THOSE ARE ALL THE SOURCE

11 CODE. OH, YES.

12 THE COURT: OKAY. 29.11, .12, .13, .14.

13 MR. JACOBS: 11 DOESN'T NEED TO BE UNDER

14 SEAL. ACTUALLY, I DIDN'T LIST -- LET'S GO BACK TO

15 11. THAT'S JUST THE CLAIM LANGUAGE, YOUR HONOR.

16 WE DON'T NEED THAT IN.

17 THE COURT: OKAY. SO THAT'S 29.11 IS NOT

18 COMING IN.

19 MR. JACOBS: CORRECT.

20 THE COURT: SO .12, .13, .14, .16, .18,

21 .20, .21, .22, .23, .24, .25, AND THEN 29.26, .27,

22 .28, .30, .32, .34, .35, .36. IS THAT RIGHT?

23 MR. JACOBS: .32, .34, .35, .36 IS

24 SEALED.

25 THE COURT: YES.

1 MR. JACOBS: THEN .37 IS THE VIDEO.

2 .39 --

3 THE COURT: .41, .42, .43, .44, .45.

4 MR. JACOBS: EXACTLY, YOUR HONOR.

5 THE COURT: ALL RIGHT. THEY'RE ADMITTED.

6 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBERS

7 29.4 - 29.6, 29.10; UNDER SEAL 29.12,

8 29.13, 29.14, 29.36; 29.16, 29.18, 29.20,

9 29.21 - 29.28, 29.32, 29.34 - 29.37,

10 29.39, 29.41 - 29.45, HAVING BEEN

11 PREVIOUSLY MARKED FOR IDENTIFICATION,

12 WERE ADMITTED INTO EVIDENCE.)

13 MR. JACOBS: THANK YOU VERY MUCH.

14 THE COURT: GO AHEAD.

15 BY MR. JACOBS:

16 Q NOW, DR. SINGH, DID YOU LOOK AT SAMSUNG  
17 DOCUMENTS TO DETERMINE WHAT INTEREST SAMSUNG HAD IN  
18 THIS FEATURE IN APPLE -- IN THE APPLE IPHONE?

19 A YES, I DID.

20 Q WAS PX 38 ONE OF THE DOCUMENTS YOU LOOKED AT?

21 A YES, IT WAS.

22 MR. JACOBS: YOUR HONOR, WE'D OFFER PX 38  
23 INTO EVIDENCE.

24 MR. DEFRANCO: OBJECTION, FOUNDATION,  
25 YOUR HONOR.

1 BY MR. JACOBS:

2 Q DID YOU STUDY THIS DOCUMENT, SIR?

3 A YES, I DID.

4 MR. JACOBS: YOUR HONOR, WE'VE LAID A  
5 FOUNDATION.

6 MR. DEFRANCO: SAME OBJECTION, YOUR  
7 HONOR.

8 THE COURT: OKAY. IT'S ADMITTED.

9 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER  
10 38, HAVING BEEN PREVIOUSLY MARKED FOR  
11 IDENTIFICATION, WAS ADMITTED INTO  
12 EVIDENCE.)

13 THE COURT: I DON'T HAVE ANY BINDERS FOR  
14 MR. SINGH.

15 (PAUSE IN PROCEEDINGS.)

16 MR. JACOBS: YOUR HONOR, WE HAVE ONE HERE  
17 IF YOU LIKE.

18 THE COURT: OKAY, I HAVE IT.

19 (PAUSE IN PROCEEDINGS.)

20 BY MR. JACOBS:

21 Q DR. SINGH, WHAT IS THE TITLE OF THIS DOCUMENT,  
22 PX 38?

23 A WELL, THE TITLE IS "BROWSER ZOOMING METHODS  
24 UX," THAT'S USER EXPERIENCE, "EXPLORATION STUDY."

25 IT'S A DOCUMENT FROM SAMSUNG



1 TELECOMMUNICATIONS AMERICA.

2 Q AND WHAT IS THE -- WHAT WAS THE PURPOSE OF  
3 THIS DOCUMENT AS YOU UNDERSTOOD IT BASED ON YOUR  
4 REVIEW?

5 A SO THIS DOCUMENT WAS AN EXPLORATION STUDY  
6 COMPARING A NUMBER OF DIFFERENT METHODS FOR ZOOMING  
7 ON BROWSERS AND IT LOOKED AT A NUMBER OF DIFFERENT  
8 ALTERNATIVE TECHNIQUES, INCLUDING SORT OF THE  
9 DOUBLE TAP TO ZOOM FUNCTIONALITY.

10 Q NOW, LET'S ADVANCE TO I BELIEVE IT'S SLIDE 47  
11 IN THE DOCUMENT.

12 A SO THIS, THIS PAGE OF THE DOCUMENT ESSENTIALLY  
13 IS, IT'S SUMMARIZING THE RESULTS OF THE, OF THE  
14 DOCUMENT, THAT THE EXPLORATION FOUND THAT, IN FACT,  
15 THE DOUBLE TAP ZOOMING FUNCTIONALITY IN GENERAL WAS  
16 SUPERIOR TO THEIR OTHER ALTERNATIVES THAT THEY  
17 STUDIED, AND THAT THIS FUNCTIONALITY SHOULD BE  
18 ADOPTED AS A SUPPLEMENTARY ZOOMING METHOD.

19 AND, FURTHER, THAT THE USER EXPERIENCE OF  
20 THE IPHONE COULD BE USED AS A DESIGN BENCHMARK IN  
21 WHATEVER FUNCTIONALITY THAT THEY, THAT THEY USED.

22 Q NOW LET'S TAKE A LOOK AT PLAINTIFF'S EXHIBIT  
23 44, WHICH IS ALREADY IN EVIDENCE AND THAT'S IN YOUR  
24 BINDER.

25 THE JURY HAS SEEN THIS DOCUMENT. IT'S

1 THE "RELATIVE EVALUATION REPORT ON S1 IPHONE,  
2 MARCH 2, 2010."

3 DOES THIS DOCUMENT HAVE ANY RELATIONSHIP  
4 TO THE PATENTS THAT YOU STUDIED?

5 A YES, IT DOES.

6 Q LET'S GO TO SLIDE 49, PLEASE.

7 AND WHAT DOES THIS DOCUMENT SHOW? OR  
8 WHAT DOES THIS PAGE SHOW?

9 A SO THIS, THIS DOCUMENT IS, AGAIN, A RELATIVE  
10 EVALUATION REPORT, IN PARTICULAR, IT'S COMPARING  
11 THE S1 PHONE, WHICH WAS A PHONE IN DEVELOPMENT, I  
12 BELIEVE IT WAS -- IT REPRESENTED THE GALAXY S  
13 FAMILY OF PHONES -- AND COMPARING THE S PHONE WITH  
14 THE IPHONE FUNCTIONALITY.

15 NOW, IN THE IPHONE, AS YOU'VE SEEN, YOU  
16 PERFORM A DOUBLE TAP TO, TO SORT OF ZOOM IN ON  
17 CONTENT AND THEN YOU PERFORM A DOUBLE TAP AND IT  
18 TAKES YOU TO A SECOND PIECE OF CONTENT AND SO ON.

19 IN THE OLDER SAMSUNG PHONES, THE SECOND  
20 GESTURE WAS PERFORMED -- ACTUALLY IN ALL OF THE  
21 SAMSUNG PHONES, BUT ALSO IN THE OLDER PHONES, THE  
22 SECOND GESTURE WAS PERFORMED WITH A SHORT PRESS,  
23 AND IF YOU DOUBLE TAPPED, IT WOULD SORT OF ZOOM IN  
24 AND OUT.

25 SO THIS DOCUMENT FINDS THAT THAT ZOOMING

1 IN AND OUT PERHAPS IS NOT AS GOOD AS WHAT WE SEE  
2 WITH THE IPHONE AND, THEREFORE, SUGGESTS AN  
3 IMPROVEMENT, WHICH IS THAT THE DOUBLE TAP ZOOM  
4 IN/OUT FUNCTION NEEDS TO BE SUPPLEMENTED IN THE  
5 NEWER DEVICES.

6 Q AND IN THE NEWER DEVICES DID YOU, IN FACT, SEE  
7 SUPPLEMENTATION THAT CORRESPONDED TO WHAT THIS  
8 DOCUMENT WAS SEEING IN THE IPHONE?

9 A YES, INDEED. THE NEWER SAMSUNG DEVICES DID,  
10 IN FACT, SUPPLEMENT THEIR DOUBLE TAP TO ZOOM  
11 FUNCTIONALITY, AND THE WAY THEY SUPPLEMENTED IT WAS  
12 TO WORK, ESSENTIALLY, THE WAY IT IS DESCRIBED AND  
13 IT TAKES PLACE ON THE IPHONE.

14 MR. JACOBS: THANK YOU VERY MUCH,  
15 DR. SINGH.

16 THE COURT: ALL RIGHT. THE TIME IS NOW  
17 2:00 O'CLOCK.

18 **CROSS-EXAMINATION**

19 BY MR. DEFRANCO:

20 Q GOOD AFTERNOON, DR. SINGH.

21 A GOOD AFTERNOON.

22 Q MY NAME IS ED DEFRANCO. I'M ONE OF THE  
23 LAWYERS REPRESENTING SAMSUNG. WE HAVEN'T MET  
24 BEFORE, OBVIOUSLY.

25 A NO.

1 Q YOU'RE TALKING ABOUT TWO PATENTS HERE TODAY;  
2 RIGHT? YOU'RE APPLE'S EXPERT ON INFRINGEMENT OF  
3 THE '915 PATENT AND THE '163; IS THAT CORRECT?

4 A YES.

5 Q LET'S DO A LITTLE BACKGROUND FIRST.

6 THIS IS THE FIRST TIME YOU'RE TESTIFYING  
7 IN COURT AS A TECHNICAL EXPERT; IS THAT TRUE, SIR?

8 A THAT IS CORRECT.

9 Q YOU'VE WORKED FOR APPLE -- YOU'RE WORKING FOR  
10 APPLE ON OTHER CASES, THOUGH; IS THAT CORRECT?

11 A I'M NOT SURE WHAT YOU MEAN.

12 Q IS THIS THE ONLY LITIGATION IN WHICH YOU'RE  
13 WORKING FOR APPLE AS AN EXPERT?

14 A I HAVE DONE SOME WORK FOR APPLE IN AN ITC  
15 CASE, AND SOME WORK ON ANOTHER -- A NORTHERN  
16 DISTRICT OF CALIFORNIA CASE.

17 BUT AT THE MOMENT, THIS IS THE ONLY CASE  
18 THAT I'M ACTIVELY WORKING ON.

19 Q AND IS THIS THE FIRST TIME YOUR WORK FOR APPLE  
20 GENERALLY, IS THIS THE FIRST -- IS THIS THE FIRST  
21 TIME THAT YOU'VE ANALYZED INFRINGEMENT OF A PATENT  
22 LIKE YOU SHOWED US EARLIER TODAY?

23 A YES.

24 Q FIRST TIME YOU'VE ANALYZED A SPECIFICATION OF  
25 A PATENT, PROSECUTION HISTORY OF A PATENT AS YOU

1 TOLD US EARLIER; IS THAT RIGHT?

2 A WELL, I'VE READ PATENT SPECIFICATIONS BEFORE.  
3 I'VE HAD PATENT APPLICATIONS OF MY OWN.

4 Q RIGHT. BUT IN TERMS OF ANALYZING THEM AND  
5 PERFORMING A FULL-BLOWN INFRINGEMENT ANALYSIS OF A  
6 SET OF ACCUSED PRODUCTS, THE FIRST TIME YOU'VE DONE  
7 THAT IS YOUR WORK FOR APPLE; ISN'T THAT TRUE, SIR?

8 A YES, THAT IS THE FIRST TIME.

9 Q IT CAME OUT THIS MORNING -- WERE YOU IN THE  
10 ROOM FOR DR. BALAKRISHNAN'S TESTIMONY?

11 A YES, I WAS.

12 Q YOU TWO ARE FRIENDS, OF COURSE. YOU WORK  
13 TOGETHER AT THE UNIVERSITY OF TORONTO; IS THAT  
14 RIGHT?

15 A YES, WE DO.

16 Q YOU'VE KNOWN EACH OTHER FOR TEN YEARS AT THE  
17 UNIVERSITY, AND YOU KNEW EACH OTHER EVEN BEFORE  
18 THAT WHEN YOU BOTH WORKED FOR THE SAME COMPANY; IS  
19 THAT CORRECT?

20 A THAT IS CORRECT.

21 Q AS A MATTER OF FACT, IT CAME ABOUT THROUGH  
22 DR. BALAKRISHNAN'S CONSULTING WITH YOU THAT YOU  
23 ACTUALLY BECAME AN EXPERT IN THIS CASE; IS THAT  
24 TRUE?

25 A YOU'D HAVE TO REPHRASE THAT QUESTION. I'M NOT

1 SURE WHAT YOU'RE TRYING TO ASK ME.

2 Q WELL, FOR EXAMPLE, YOU'RE GETTING PAID AN  
3 HOURLY RATE TO TESTIFY HERE BY APPLE; ISN'T THAT  
4 CORRECT?

5 A I'M GETTING PAID FOR MY TIME AS AN EXPERT.

6 Q BY APPLE?

7 A BY APPLE.

8 Q AND YOU CONSULTED WITH SOME PEOPLE ABOUT WHAT  
9 RATE YOU SHOULD CHARGE, AND ONE OF THOSE PEOPLE WAS  
10 DR. BALAKRISHNAN; ISN'T THAT TRUE, SIR?

11 A YES.

12 Q YOU TALKED ABOUT -- ON DIRECT EXAMINATION, YOU  
13 TALKED ABOUT SOME OF YOUR ACHIEVEMENTS IN YOUR  
14 PARTICULAR FIELD. DO YOU REMEMBER THAT, SIR?

15 A YES, I DO DID.

16 Q JUST A FEW QUICK QUESTIONS ABOUT THAT. YOU  
17 WON AN OSCAR; RIGHT?

18 A THE SOFTWARE THAT I WORKED ON WON AN OSCAR.

19 Q OKAY. A COUPLE QUESTIONS I NEED TO ASK YOU,  
20 SIR. IF YOU LOOK ON THE WEB, FOR EXAMPLE, AND SURF  
21 FOR SOME INFORMATION RELATING TO THAT OSCAR,  
22 THERE'S A LIST OF PEOPLE WHO WORKED FOR THE COMPANY  
23 THAT YOU WORKED FOR AT THE TIME WHO ACTUALLY ARE  
24 CREDITED WITH CONTRIBUTING TO THAT, ISN'T THERE?

25 A PERHAPS. I HAVEN'T -- I DON'T KNOW OF WHAT

1 YOU'RE TALKING ABOUT, BUT YES.

2 Q WELL, I SAW ON THE WEB A LIST OF ABOUT 15  
3 PEOPLE THAT WERE ASSOCIATED WITH THE WORK THAT WENT  
4 INTO THE OSCAR THAT WAS OBTAINED.

5 A PERHAPS.

6 Q AND MY POINT IS, I JUST NEED TO MAKE CLEAR FOR  
7 THE RECORD, THAT THAT WASN'T AN OSCAR THAT YOU AS  
8 AN INDIVIDUAL OBTAINED; IS THAT TRUE, SIR?

9 A I NEVER SAID IT WAS. I SAID THE -- I SAID THE  
10 SOFTWARE WON AN OSCAR.

11 Q YOU TALKED ABOUT A COUPLE OF OTHER PROJECTS  
12 THAT YOU WORKED ON AT ALIAS, WAVEFRONT, AND SOME  
13 OTHER COMPANIES, PARAFORM. DO YOU REMEMBER THAT,  
14 SIR?

15 A SURE.

16 Q THAT WORK WASN'T SPECIFICALLY DIRECTED TO CELL  
17 PHONES OR OTHER PORTABLE DEVICES LIKE TABS. IS  
18 THAT FAIR?

19 A IT'S FAIR.

20 Q AND IF YOU LOOK ON YOUR WEB PAGE ON THE  
21 INTERNET, AN AWFUL LOT OF INFORMATION THERE,  
22 CERTAINLY DISCUSSING SOME OF THE THINGS YOU TOLD US  
23 ABOUT ON DIRECT BASED ON YOUR WORK EXPERIENCE.

24 BUT I DIDN'T SEE ANY PARTICULAR MENTION  
25 OF YOUR WORK OR EXPERTISE RELATED TO CELL PHONES,

1 FOR EXAMPLE. IS THAT FAIR? ARE YOU AWARE OF ANY?

2 A IT'S NOT FAIR.

3 Q I DIDN'T SEE ANY SPECIFIC CALL OUT, MENTION OF  
4 YOUR PARTICULAR EXPERTISE OR WORK EXPERIENCE IN THE  
5 AREA OF TAB DEVICES. IS THAT FAIR TO SAY, SIR?

6 A IT'S NOT FAIR TO SAY.

7 Q I DIDN'T -- WAS THERE SOMETHING MENTIONED ON  
8 YOUR WEBSITE RELATING TO TABS LIKE WE'RE SEEING IN  
9 THIS CASE?

10 A ABSOLUTELY. I -- ONE OF MY MAIN AREAS OF  
11 RESEARCH IS AN AREA CALLED SKETCH-BASED INTERFACES,  
12 WHICH IS VERY MUCH APPLICABLE TO TOUCHSCREEN  
13 DEVICES WHERE YOU, YOU, YOU PROVIDE DIRECT INPUT  
14 AND YOU SKETCH AND PERFORM OTHER KINDS OF DIRECT  
15 MANIPULATION OPERATIONS.

16 SO I'VE JUST CHAIRED THE MAIN CONFERENCE  
17 IN THAT AREA IN ANNECY ABOUT A MONTH BACK, ANNECY,  
18 A-N-N-E-C-Y, FRANCE.

19 Q AND YOU'RE TALKING ABOUT TOUCHSCREEN DEVICES  
20 GENERALLY, NOT TAB DEVICES IN PARTICULAR?

21 A I'M TALKING ABOUT GENERAL STROKE-BASED INPUT  
22 THAT COULD COME FROM THE FINGERS, THAT COULD COME  
23 FROM A PEN, BUT IS CLEARLY DISTINCT FROM  
24 TRADITIONAL WINDOWS, MOUSE, KEYBOARD INTERFACES.

25 Q LET'S TALK ABOUT THAT TECHNOLOGY.



1                   YOU STARTED WITH THE '915 PATENT. DO YOU  
2 REMEMBER THAT?

3           A        YES.

4           Q        YOU TALKED ABOUT MR. FORSTALL AND SOME OF HIS  
5 TESTIMONY THAT HE GAVE IN THIS CASE.

6                   DO YOU REMEMBER THAT?

7           A        YES, I DO.

8           Q        WERE YOU HERE IN COURT FOR HIS TESTIMONY?

9           A        I WAS HERE FOR, I BELIEVE, FOR AT LEAST A PART  
10 OF IT.

11          Q        LET'S PUT UP ONE OF YOUR SLIDES. IT'S CLAIM 8  
12 OF THE '915 PATENTS. IT'S PDX 29.8. THIS IS ONE  
13 OF YOUR SLIDES, DR. SINGH; RIGHT?

14          A        YES.

15          Q        NOW, YOU SAID, IF I HAVE THIS RIGHT, ON DIRECT  
16 EXAMINATION, THAT -- YOU MENTIONED MR. FORSTALL A  
17 BIT, YOU TALKED GENERALLY ABOUT THE INVENTION IN  
18 THE '915 PATENT, AND YOU SAID IT RELATES TO HOW TO  
19 POSITION AND RESIZE, WITH YOUR FINGERS, ITEMS ON A  
20 SMALL SCREEN, LIKE THE SIZE OF A POSTCARD.

21                   DO YOU REMEMBER THAT?

22          A        I GAVE THAT EXAMPLE ACTUALLY BEFORE THIS SLIDE  
23 SHOWED UP AS A GENERAL UNDERSTANDING TO PEOPLE AS  
24 TO WHAT THE PATENT DEALT WITH.

25                   WHEN WE CAME TO THIS SLIDE, WE WERE

1 TALKING MUCH MORE SPECIFICALLY ABOUT THE CLAIM  
2 LANGUAGE.

3 Q OKAY. LET'S TALK ABOUT SOME OF THE CLAIM  
4 LANGUAGE. ONE OF THE THINGS THAT -- YOUR TITLE, BY  
5 THE WAY, IS SCROLL VERSUS GESTURE; RIGHT?

6 A SURE.

7 Q DO YOU SEE THAT?

8 A YES.

9 Q AND THOSE ARE ACTUAL WORDS THAT ARE USED IN  
10 CLAIM 8; ISN'T THAT RIGHT?

11 A YES.

12 Q NOW, A SCROLL GENERALLY, AS WE'VE SEEN IN THE  
13 CASE, IS YOU CAN USE TWO FINGERS OR YOU CAN MOVE  
14 TWO FINGERS TO MOVE CONTENT UP ON THE DEVICES THAT  
15 WE'RE TALKING ABOUT. IS THAT FAIR?

16 A YOU'LL HAVE TO BE A LITTLE MORE PRECISE WITH A  
17 QUESTION LIKE THAT IF YOU EXPECT AN ANSWER.

18 Q WHAT'S A SCROLL, DOCTOR?

19 A A SCROLL -- IN THE CONTEXT OF THE '915 PATENT,  
20 A SCROLL IS MOVING OR SLIDING CONTENT ON THE  
21 SCREEN.

22 Q OKAY. MOVING OR SLIDING CONTENT ON THE  
23 SCREEN. IS THAT RIGHT?

24 A YEAH.

25 Q THAT CONCEPT ALONE, SCROLL, THE '915 INVENTORS

1 DIDN'T INVENT SCROLLING. THAT'S FAIR, ISN'T IT?

2 A THAT'S FAIR.

3 Q GESTURE, A GESTURE, WE'VE HEARD ALSO, IS A  
4 SCALE. THAT WORD IS USED IN THE CLAIM, RIGHT, A  
5 SCALE?

6 A YES.

7 Q THEY'RE INTERCHANGEABLE IN YOUR VIEW; RIGHT?

8 A NO, THEY'RE NOT INTERCHANGEABLE. SCALE IS AN  
9 EXAMPLE OF A MORE GENERAL GESTURE OPERATION.

10 Q BETTER PUT. THANK YOU.

11 BUT A SCALE IS A GESTURE; ISN'T THAT  
12 TRUE?

13 A A SCALE IS A GESTURE OPERATION IN THE CONTEXT  
14 OF THE '915.

15 Q AND A SCALE, IS THAT PRETTY MUCH THE SAME  
16 THING AS A ZOOM? YOU'RE TAKING TWO FINGERS AND  
17 ZOOMING IN OR OUT?

18 A YES.

19 Q IS THAT FAIR?

20 A THAT'S FAIR.

21 Q THE INVENTORS OF THE '915 PATENT, THEY DIDN'T  
22 INVENT A GESTURE, A SCALE, A ZOOM, OR DETECTING  
23 THOSE ON THE DEVICES WE'RE TALKING ABOUT. ISN'T  
24 THAT FAIR, SIR?

25 A ABSOLUTELY NOT. THE CONCEPT OF SCALING GOES

1 BACK TO THE ANCIENT GREEKS.

2 Q I THINK AS YOU PUT IT -- LATER ON IN YOUR  
3 TESTIMONY WHEN WE GOT TO THE DETERMINATION STEP, I  
4 THINK YOU USED THE WORDS THE "ALL-IMPORTANT TEST."

5 DO YOU REMEMBER THAT? DO YOU REMEMBER  
6 USING THAT PHRASE?

7 A I MAY HAVE SAID THAT, YEAH, SURE.

8 Q AND BY THAT, DIDN'T YOU MEAN THAT THIS CLAIM  
9 IS NOT TALKING ABOUT JUST USING A SCROLL AND THE  
10 DEVICE FIGURING OUT IF A SCROLL IS THERE, BECAUSE  
11 CERTAINLY THAT'S NOT WHAT THEY INVENTED. FAIR?

12 A FAIR.

13 Q THE CLAIM IS NOT ABOUT SOME -- A USER USING A  
14 GESTURE OPERATION LIKE A ZOOM AND THE DEVICE  
15 FIGURING OUT IF THERE'S A GESTURE THAT HAS BEEN  
16 PERFORMED; RIGHT? BECAUSE THAT WAS THERE, AS YOU  
17 SAID; CORRECT?

18 A IT IS ABOUT THE DEVICE FIGURING OUT WHETHER  
19 IT'S A GESTURE BASED ON TWO OR MORE FINGER INPUTS.

20 Q BUT AS YOU SAID, IT'S THE ALL-IMPORTANT TEST  
21 IN THE CLAIM AS TO WHETHER IT'S A ONE FINGER SCROLL  
22 VERSUS A TWO FINGER GESTURE. THAT'S WHAT THIS  
23 INVENTION IS ABOUT. FAIR?

24 A SURE.

25 Q OKAY. NOW, YOU SAID YOU LOOKED AT THE

1 PROSECUTION HISTORY.

2 DO YOU REMEMBER THAT?

3 A YES, I DID.

4 Q LET'S PUT UP A SLIDE THAT'S BEEN PREPARED.

5 IT'S SLIDE SDX 3912.007.

6 NOW, DR. SINGH, HAVE YOU SEEN THIS SLIDE  
7 BEFORE TODAY?

8 A YES, I HAVE.

9 Q YOU'VE SEEN -- THIS IS ONE OF OUR SLIDES WE  
10 PREPARED FOR CROSS. YOU SAW IT BEFORE YOU TOOK THE  
11 STAND TODAY; RIGHT?

12 A YES.

13 Q YOU KNOW WHAT THIS SLIDE IS? IT'S SHOWING ON  
14 THE LEFT-HAND SIDE AN EARLY VERSION OF THE CLAIM  
15 AND THE PROSECUTION HISTORY. IS THAT RIGHT?

16 A THAT IS CORRECT.

17 Q AND PROSECUTION HISTORY, AGAIN, IS THE BACK  
18 AND FORTH BETWEEN THE PATENT OFFICE. IT'S THE  
19 DIALOGUE THAT ULTIMATELY, IF SUCCESSFUL, RESULTS IN  
20 A PATENT BEING ISSUED. IS THAT FAIR?

21 A ABSOLUTELY.

22 Q AND ON THE RIGHT-HAND SIDE IS THE ACTUAL  
23 CLAIM. DO YOU SEE THAT?

24 A YES.

25 Q AND THERE'S -- YOU CAN TELL JUST BY LOOKING AT

1 THE TWO THERE'S MORE WORDS, INFORMATION, THERE ARE  
2 MORE LIMITATIONS IN THE CLAIM AS ACTUALLY ISSUED  
3 THAN IN THE EARLY FILE CLAIM. IS THAT FAIR?

4 A VERY FAIR.

5 Q AND IT'S TRUE, ISN'T IT, SIR, THAT FOR THERE  
6 TO BE INFRINGEMENT -- YOU'RE AN EXPERT ON  
7 INFRINGEMENT, RIGHT? -- FOR THERE TO BE  
8 INFRINGEMENT, EACH AND EVERY CLAIM ELEMENT MUST BE  
9 FOUND IN THE ACCUSED DEVICE; IS THAT RIGHT?

10 A THAT IS RIGHT.

11 Q IF ONE IS MISSING, ONE, ONLY ONE IS MISSING,  
12 THERE'S NO INFRINGEMENT; RIGHT?

13 A THAT IS RIGHT.

14 Q NOW, THIS REFLECTS, DOESN'T IT, THAT AS  
15 ORIGINALLY FILED, THAT ALL-IMPORTANT TEST THAT YOU  
16 MENTIONED WAS NOT IN THE CLAIM; RIGHT?

17 DO YOU SEE THAT HIGHLIGHTED, "BY  
18 DISTINGUISHING BETWEEN A SINGLE INPUT POINT," AND  
19 THEN IT GOES ON TO TALK ABOUT TWO OR MORE INPUT  
20 POINTS? THAT NOTION WAS NOT IN THE CLAIM AS IT  
21 ORIGINALLY FILED. IS THAT FAIR?

22 A ABSOLUTELY NOT.

23 Q NOW, WHY -- THAT LANGUAGE IS -- DO YOU SEE  
24 THAT LANGUAGE IN THE CLAIM AS ORIGINALLY FILED,  
25 SIR?

1 A I DO.

2 Q OKAY. NOW, IS IT YOUR UNDERSTANDING, SIR,  
3 THAT ONE OF THE REASONS THAT PATENT EXAMINERS  
4 INSIST ON ADDITIONS BEING MADE TO CLAIMS IS BECAUSE  
5 THEY'VE SEEN SOMETHING THAT SAYS TO THEM, UNLESS  
6 THAT'S ADDED, THIS CLAIM MAY NOT BE VALID, FOR  
7 EXAMPLE?

8 A PERHAPS.

9 Q AND BY THE WAY, IF A CLAIM -- WE'RE GOING TO  
10 TALK ABOUT INVALIDITY LATER IN THE CASE, BUT IF A  
11 CLAIM IS INVALID, THEN YOU CAN'T INFRINGE THAT  
12 CLAIM. IS THAT FAIR? YOU'RE HERE TO TALK ABOUT  
13 INFRINGEMENT TODAY; RIGHT?

14 A RIGHT.

15 Q NOW, YOU SHOWED SOME DEMONSTRATIVES ON DIRECT  
16 EXAMINATION. YOU SHOWED SOME ACTUAL PRODUCTS.

17 DO YOU REMEMBER THAT?

18 A THAT IS CORRECT.

19 Q YOU SHOWED SOME INSTANCES WHERE THERE'S A, A  
20 ONE FINGER SCROLL. IS THAT FAIR?

21 A YES.

22 Q LET'S PUT BACK UP ON THE SCREEN, PLEASE, RYAN,  
23 PDX 29.8.

24 NOW, WITH RESPECT TO THE SCROLL VERSUS A  
25 GESTURE, THE CLAIM AS IT ULTIMATELY CAME OUT OF THE

1 PATENT OFFICES USES SOME PRETTY SPECIFIC LANGUAGE,  
2 DOESN'T IT?

3 A IT USES THE LANGUAGE OF THE CLAIM THAT YOU  
4 SEE.

5 Q BUT IT'S PRETTY SPECIFIC, ISN'T IT? IT  
6 DOESN'T JUST SAY "A SCROLL." IT SAYS "A SINGLE  
7 INPUT POINT."

8 DO YOU SEE THAT?

9 A YES. IT SAYS USING A, A SINGLE INPUT POINT AS  
10 A WAY OF DISTINGUISHING BETWEEN A SCROLL AND A  
11 GESTURE OPERATION.

12 Q AND A SINGLE INPUT POINT, ACCORDING TO THE  
13 CLAIM, IS INTERPRETED AS A SCROLL OPERATION; ISN'T  
14 THAT CORRECT, SIR?

15 A ABSOLUTELY CORRECT.

16 Q TWO OR MORE INPUT POINTS ARE INTERPRETED  
17 DIFFERENTLY; RIGHT? THOSE ARE SPECIFICALLY  
18 INTERPRETED, ACCORDING TO THIS CLAIM, AS A GESTURE  
19 OPERATION; IS THAT RIGHT?

20 A THAT IS RIGHT.

21 Q AND THE CLAIM REQUIRES THAT DISTINCTION. ONE  
22 IS A SCROLL, TWO IS A GESTURE OR ZOOM OR SCALE;  
23 CORRECT?

24 A YES.

25 Q AND IF YOU DON'T HAVE BOTH OF THOSE, IF YOU'RE



1 NOT APPLYING THAT TEST, THEN THAT CLAIM IS NOT  
2 PRACTICED; IS THAT CORRECT?

3 A IF YOU'RE NOT APPLYING THAT TEST AND, AND THE  
4 REST OF THE, OF THE CLAIM ELEMENTS, YES, IN THE  
5 APPROPRIATE CONTEXT, THEN, YES.

6 Q BUT THE TEST IS ONE, SCROLL; TWO, GESTURE.  
7 THAT'S THE TEST THAT THE CLAIM VERY CLEARLY LAYS  
8 OUT, ISN'T IT? IT SAYS ONE, ONE IS A SCROLL; TWO  
9 IS A GESTURE; RIGHT?

10 A ABSOLUTELY.

11 Q OKAY. BUT YOU'LL AGREE, THOUGH, THAT THERE  
12 ARE AT LEAST SOME PRODUCTS, LIKE THE TAB 10.1 --  
13 YOU KNOW THE TAB 10.1. YOU CAN SCROLL WITH TWO  
14 FINGERS; IS THAT CORRECT?

15 A THAT IS NOT CORRECT.

16 Q OH, YOU CANNOT SCROLL WITH TWO FINGERS IN THE  
17 TAB 10.1?

18 A ABSOLUTELY NOT.

19 Q WHY IS THAT?

20 A I'VE NEVER BEEN ABLE TO DO IT. MAYBE YOU CAN  
21 SHOW ME ON A DEVICE.

22 Q WELL, LET'S TAKE A LOOK AT VIDEO DX 2557.

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

25 BY MR. DEFRANCO:

1 Q IS THAT TWO FINGERS, SIR, BEING USED TO DO A  
2 SCROLL OPERATION?

3 A THAT IS WHAT I DESCRIBED IN MY OWN DIRECT  
4 TESTIMONY AS A SIMULTANEOUS SCALE AND TRANSLATE.

5 IF YOU LOOK AT THAT VIDEO CAREFULLY, YOU  
6 WILL, YOU WILL NOTICE THAT THE CONTENT IS, IS SORT  
7 OF JITTERING SPASMODICALLY BECAUSE IT'S SCALING  
8 WHILE IT'S, IT'S TRANSLATING. AND PERHAPS IF YOU  
9 TRY REALLY HARD, YOU MIGHT BE ABLE TO GET IT TO GET  
10 CLOSE TO STEADY.

11 BUT THE BOTTOM LINE IS THERE ARE  
12 INSTRUCTIONS, AS I SHOWED YOU, AND THE CLAIM IS  
13 ABOUT THE INSTRUCTIONS IN THE CLAIM LANGUAGE.  
14 TECHNICALLY THE INSTRUCTIONS INFRINGE THE CLAIM.

15 Q I'M SORRY. ARE YOU DONE, SIR?

16 A SORRY.

17 Q OKAY. LET ME -- LET ME -- LET'S PLAY IT ONE  
18 MORE TIME, PLEASE.

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

21 BY MR. DEFRANCO:

22 Q MAYBE, MAYBE WE JUST SEE THIS DIFFERENTLY. I  
23 SEE IT JITTERING BACK AND FORTH, BUT I DON'T SEE --  
24 I SEE THAT AS -- WOULDN'T YOU SAY THAT'S MORE OF A  
25 SCROLL THAN A ZOOM, SIR?

1 A WELL, YOU KNOW, IF YOU WERE TO GIVE ME A  
2 DEVICE, I WILL HAPPILY SHOW IT TO YOU IN A WAY THAT  
3 MAYBE YOU WON'T SEE IT SO DIFFERENTLY, BECAUSE I  
4 CAN SHOW YOU THAT IT IS SCALING AND TRANSLATING  
5 BOTH IN YOUR VIDEO AND IN THE SOURCE CODE THAT I  
6 HAVE ANALYZED.

7 Q WELL, LET ME ASK YOU THIS, AND I WANT TO TALK  
8 TO YOU ABOUT YOUR SOURCE CODE ANALYSIS.

9 BUT IF IT WERE -- IF IT WAS TWO FINGERS,  
10 IF TWO FINGERS WERE A SCROLL, THEN THAT WOULDN'T  
11 NEATLY FIT THE TEST IN THE CLAIM, RIGHT? BECAUSE  
12 THE CLAIM, AS WE SAID, IS ONE FINGER IS A SCROLL,  
13 TWO FINGERS IS A GESTURE; RIGHT? IF IT WERE TWO  
14 FINGERS AS A SCROLL, IT WOULDN'T FIT THAT TEST;  
15 ISN'T THAT TRUE, SIR?

16 A BUT THAT'S NOT WHAT YOU'RE SHOWING ME.

17 Q THAT'S NOT MY QUESTION AT THIS POINT. I'M  
18 JUST ASKING YOU GENERALLY, SO WE CAN GET AWAY FROM  
19 THE DEBATE YOU AND I ARE HAVING ABOUT WHAT'S  
20 ACTUALLY SHOWN THERE, YOU'LL AGREE WITH ME, WON'T  
21 YOU, THAT IF THERE'S A TWO FINGER SCROLL, ASSUMING  
22 SOME PRODUCT DID THAT, THAT WOULDN'T FIT WITHIN THE  
23 TEST THAT YOU POINTED OUT IN THE CLAIM 8 OF THE  
24 '915 PATENT; IS THAT TRUE?

25 A YOU WOULD HAVE TO QUALIFY WHAT YOU'RE SAYING,

1 BECAUSE IF, FOR INSTANCE, THERE WAS SOME HYPER  
2 TECHNICAL PRODUCT WHERE THERE WAS ABSOLUTELY NO  
3 SCALING PERFORMED, ABSOLUTELY YOU COULD DO A, A TWO  
4 FINGER SCROLL OR WHATEVER YOU WANTED TO DO.

5 IT'S -- THE KEY IS DISTINGUISHING BETWEEN  
6 A SCROLL AND A GESTURE OPERATION.

7 AND, YES, IN THAT CONTEXT, A SINGLE INPUT  
8 IS USED FOR SCROLLING AND TWO OR MORE INPUTS IS  
9 USED FOR THE GENERAL GESTURE OPERATION.

10 Q NOW, YOU SAID YOU ANALYZED SOFTWARE, IS THAT  
11 CORRECT, THE SOFTWARE THAT IS USED IN SAMSUNG'S  
12 PHONES?

13 A YES.

14 Q NOW, YOU DID AN EXPERT REPORT IN THIS CASE.

15 DO YOU REMEMBER THAT?

16 A YES, I DID.

17 Q YOU GAVE SOME DETAILED CLAIM CHARTS FOR  
18 ANALYSIS OF A COUPLE OF PRODUCTS, TWO PRODUCTS, I  
19 BELIEVE, RIGHT, WHERE YOU REFERENCE SOURCE CODE?

20 DO YOU REMEMBER THAT?

21 A I BELIEVE I REFERENCED SOURCE CODE FOR FOUR  
22 PRODUCTS.

23 Q YOU -- IN DETAIL, YOU DID IT FOR TWO, AND THEN  
24 YOU HAD SOME SHORTHAND REFERRING TO TWO OTHER  
25 PRODUCTS IN THE CHART?

1 A IT WAS EQUALLY IN DETAIL FOR EVERY -- FOR EACH  
2 CLAIM ELEMENT THAT HAD SOURCE CODE. FOR ONE -- FOR  
3 ONE OF THE CHARTS, IT HAD THE EQUIVALENT IN TWO  
4 OTHER CHARTS.

5 Q OKAY. THAT'S FINE. I'LL TAKE IT.

6 FOR FOUR PRODUCTS, THEN, YOU DID SOURCE  
7 CODE ANALYSIS; IS THAT CORRECT?

8 A THAT IS NOT CORRECT.

9 Q WELL, AT LEAST IN YOUR EXPERT REPORT WHERE YOU  
10 HAD DETAILED CHARTS, YOU DID THAT FOR FOUR  
11 PRODUCTS; IS THAT CORRECT?

12 MR. JACOBS: YOUR HONOR, OBJECTION. I  
13 FEAR WE'RE TREADING ON ONE OF THE COURT'S ORDERS  
14 ABOUT CROSS-EXAMINATION RELATING TO THE SOURCE CODE  
15 THAT SAMSUNG DID OR DID NOT PROVIDE.

16 MR. DEFRANCO: YOUR HONOR, THIS IS ALL  
17 WITHIN THE SOURCE CODE -- ALL I'M ASKING ABOUT IS  
18 THE SOURCE CODE THAT DR. SINGH ACTUALLY ANALYZED.

19 I'M NOT ASKING HIM ABOUT SOURCE CODE THAT  
20 WAS NOT PROVIDED. HE SAID HE ANALYZED 24 PRODUCTS.

21 THE COURT: ALL RIGHT. GO AHEAD. JUST  
22 PLEASE BE AWARE OF MY ORDER.

23 MR. DEFRANCO: YES, YOUR HONOR.

24 THE COURT: AND JUDGE GREWAL'S ORDER.

25 THANK YOU.

1 MR. DEFRANCO: LET'S PUT UP PDX 29.12.

2 Q NOW, YOU SAID SOMETHING TO ME A MOMENT AGO,  
3 SIR --

4 THE COURT: I THINK THAT WAS SEALED. CAN  
5 YOU TAKE THAT OFF?

6 MR. DEFRANCO: OKAY.

7 THE COURT: I MEAN, IF YOU WANT TO HAVE  
8 IT OPEN, THAT'S FINE. THIS IS SAMSUNG SOURCE CODE,  
9 SO IT'S UP TO YOU.

10 MR. DEFRANCO: JUST ON THESE SCREENS,  
11 YOUR HONOR.

12 THE COURT: THAT'S FINE.

13 MR. DEFRANCO: SO I DON'T GET IN TROUBLE.

14 THE COURT: THAT'S FINE. WHATEVER YOU  
15 WISH.

16 BY MR. DEFRANCO:

17 Q NOW, WE'RE LOOKING -- YOU PRESENTED, DOCTOR, A  
18 COUPLE OF DEMONSTRATIVES LIKE THIS WHERE YOU  
19 DEPICTED WHAT'S HAPPENING IN THE SOURCE CODE; IS  
20 THAT CORRECT?

21 A THAT IS CORRECT. THEY'RE EXCERPTS.

22 Q WELL, IT'S NOT REALLY -- AN EXCERPT TO ME IS  
23 SOMETHING WHERE YOU'VE TAKEN SOMETHING OUT AND  
24 SHOWN IT.

25 THIS IS A DEPICTION OF YOUR ANALYSIS OF

1 THE SOURCE CODE. ISN'T THAT TRUE, SIR?

2 A YES.

3 Q AND YOU DIDN'T ACTUALLY SHOW US -- WE'RE GOING  
4 TO LOOK AT A LITTLE BIT, BUT YOU DIDN'T ACTUALLY  
5 PRESENT ACTUAL SOURCE CODE AS IT EXISTS IN THE  
6 PRODUCTS AND, LIKE SOMETIMES HAPPENS, SHOW US WHERE  
7 CERTAIN THINGS ARE BEING DONE.

8 YOU SHOWED US A DEPICTION OF YOUR VIEW OF  
9 WHAT'S HAPPENING IN THE SOURCE CODE; IS THAT FAIR?

10 A I ANALYZED IT IN DETAIL IN MY, IN MY REPORT.  
11 I -- I'VE SHOWN IT IN -- TO A LEVEL OF DETAIL THAT  
12 I FELT WAS NECESSARY AND UNDERSTANDABLE TO, TO THE  
13 JURY.

14 BUT IF YOU WOULD LIKE, I'LL BE HAPPY TO  
15 DIG INTO IT WITH YOU.

16 Q THAT'S THE LAST THING I WANT TO DO, SIR.

17 A OKAY.

18 Q I JUST DON'T HAVE TIME.

19 A OKAY.

20 Q MY POINT IS SIMPLE. YOU ANALYZED FOUR  
21 PRODUCTS IN YOUR EXPERT REPORTS, YOU HAD THIS  
22 DEPICTION, BUT WHEN YOU TALKED ABOUT THE SOURCE  
23 CODE YOU PRESENTED ON YOUR DIRECT EXAMINATION, IT'S  
24 THIS DEPICTION THAT YOU WERE TALKING ABOUT. YOU  
25 DIDN'T ACTUALLY SHOW THE ACTUAL SOURCE CODE AND HOW

1 IT'S STRUCTURED. IS THAT FAIR?

2 A WELL, I'D LIKE TO CORRECT YOU FIRST. I  
3 ANALYZED ALL 24 PRODUCTS, NOT FOUR PRODUCTS.

4 AND WHAT YOU SEE, YES, IS A DEPICTION  
5 SHOWING THE IMPORTANT PORTIONS OF THE CODE AND  
6 SHOWING IT IN THE DEGREE OF DETAIL THAT IS  
7 NECESSARY FOR THE CLAIM LANGUAGE.

8 Q WELL, LET'S -- WELL, AS LONG AS WE'RE HERE,  
9 LET'S TAKE A LOOK AT A LITTLE BIT OF THE ANALYSIS  
10 THAT YOU PREPARED, OKAY, IN YOUR EXPERT REPORT. IS  
11 THAT FAIR?

12 A SURE.

13 Q LET'S PUT UP DR. SINGH'S OPENING REPORT. IT'S  
14 EXHIBIT 17 AT PAGE 3, PLEASE.

15 NOW, DO YOU SEE THERE, IN THAT SECTION OF  
16 YOUR REPORT, SIR, YOU'RE TALKING ABOUT -- AT THE  
17 BOTTOM YOU TALK ABOUT THE GALAXY S II.

18 DO YOU SEE THAT?

19 A YES.

20 Q AND IF YOU SCROLL DOWN TO THE NEXT PAGE WHERE  
21 IT CONTINUES, RYAN, PLEASE. GO BACK TO THE TOP A  
22 LITTLE BIT.

23 YOU'VE GOT -- AND CAN YOU JUXTAPOSE THE  
24 TWO OF THEM?

25 YOU'VE GOT A REFERENCE IN THE MIDDLE



1           THERE TO SOME CODE AT DOCUMENT NUMBER 5758. DO YOU  
2           SEE THAT, SIR, RIGHT IN THE MIDDLE OF THE  
3           PARAGRAPH?

4           A        YEAH, OKAY.

5           Q        AND I'D LIKE TO PULL UP THAT CODE, 5758, THAT  
6           YOU REFERENCED IN YOUR EXPERT REPORT.

7                        IF WE TAKE A LOOK AT LINE 7479, DO YOU  
8           SEE THERE IT'S GOT SOMETHING CALLED  
9           MSCALEDETECTOR.TOUCHEVENT.

10                      DO YOU SEE THAT, SIR?

11           A        YES, SURE.

12           Q        YOU HAD SOMETHING IN YOUR GRAPHIC CALLED M  
13           SCALE GESTURE DETECTOR, BUT THAT'S NOT ACTUALLY  
14           WHAT'S SHOWN IN THE CODE, IS IT, SIR?

15           A        THAT IS CORRECT.

16           Q        THAT'S AN ERROR IN YOUR CITATION?

17           A        NO, THAT'S NOT AN ERROR.

18           Q        BUT THAT'S NOT SHOWN IN THAT PARTICULAR  
19           PORTION OF THE SOURCE CODE; IS THAT CORRECT, SIR?

20           A        THE VARIOUS PRODUCTS, THE CODE -- THE ACTUAL  
21           NAMES OF VARIABLES AND ACTUAL, YOU KNOW, THE  
22           PRECISE LINES OF CODE MAY HAVE SOME, SOME MINOR  
23           DIFFERENCES.

24                      BUT LOGICALLY, IT IS THE SAME CODE. WHAT  
25           I SHOWED YOU WAS REPRESENTATIVE OF THAT.

1 Q OKAY. AND AGAIN, IN YOUR REPORT, SIR, YOU  
2 ANALYZED SHOWING THE CODE ANALYSIS FOR FOUR  
3 PRODUCTS, NOT ALL 24 SAMSUNG PRODUCTS; IS THAT  
4 CORRECT.

5 A IN MY REPORT. BUT I DID ANALYZE ALL 24  
6 PRODUCTS.

7 MR. JACOBS: YOUR HONOR, I'M SORRY, HE'S  
8 IMPLYING THAT THERE WAS MORE TO ANALYZE.

9 THE COURT: OVERRULED.

10 GO AHEAD, PLEASE.

11 BY MR. DEFRANCO:

12 Q NOW, LET'S GO BACK FOR A SECOND, DOCTOR. I  
13 THINK YOU MAY HAVE MISSPOKE. LET'S GO BACK AND PUT  
14 ON THE CONFIDENTIAL SCREEN EXHIBIT 29, PDX 29.12.

15 YOU KNOW WHAT, RYAN? I'M SORRY. LET'S  
16 START WITH 29.8 JUST TO PUT THIS IN CONTEXT.

17 WE'RE GOING TO FINISH UP WITH THIS PATENT  
18 AND TURN TO THE OTHER ONE IN A SECOND, DOCTOR.

19 BUT YOU TALKED ABOUT AN EVENT OBJECT,  
20 RIGHT? THAT'S ONE OF THE LIMITATIONS IN THE CLAIM.

21 DO YOU SEE THAT?

22 A THAT'S CORRECT.

23 Q AND AGAIN, IF THE EVENT OBJECT IS NOT PRESENT  
24 IN AN ACCUSED DEVICE, THERE'S NO INFRINGEMENT;  
25 RIGHT?

1 A IF THE EVENT OBJECT IS NOT CREATED IN RESPONSE  
2 TO USER INPUT, YES.

3 Q OKAY. AND AN EVENT OBJECT, IS IT FAIR TO SAY,  
4 IS THAT A PIECE OF PROGRAMMING CODE THAT HOLDS  
5 INFORMATION ABOUT THE TOUCHES THAT A USER MAKES ON  
6 A TOUCHSCREEN?

7 A IT DOES THAT AT LEAST, YES.

8 Q OKAY. AND YOU SHOWED A SLIDE ON DIRECT  
9 EXAMINATION -- NOW WE'LL GO TO PDX 29.12 BY WAY OF  
10 EXAMPLE ON THE CONFIDENTIAL RECORD -- AND YOU'VE  
11 GOT WHAT YOU POINTED TO AS THE EVENT OBJECT IN  
12 SAMSUNG'S CODE, YOU POINTED TO THE MOTION EVENT,  
13 EV, THAT THING IN THE CIRCLE AT THE TOP; IS THAT  
14 CORRECT?

15 A THAT IS CORRECT.

16 Q AND LIKE ANY EVENT OBJECT, AS YOU JUST SAID,  
17 THAT COLLECTS OR HOLDS INFORMATION ABOUT TOUCHES  
18 MADE ON A SCREEN; IS THAT CORRECT?

19 A AND OTHER INFORMATION.

20 Q AND, AGAIN, THAT SORT OF THING WAS OUT THERE  
21 BEFORE THIS INVENTION. THIS INVENTION ISN'T ABOUT  
22 AN EVENT OBJECT THAT HOLDS INFORMATION BASED ON  
23 TOUCHES ON A SCREEN; CORRECT?

24 A WELL, IT'S ABOUT THE -- THE CLAIM ELEMENTS ARE  
25 ABOUT THE ENTIRE INVENTION. WE'VE SEEN THIS

1 BEFORE, THAT SIMPLY DECONSTRUCTING CLAIM ELEMENTS  
2 INTO MICRO WORDS, YOU KNOW, DOESN'T NECESSARILY  
3 SHOW THE PATENT FOR WHAT IT IS.

4 YOU REALLY HAVE TO LOOK AT ALL THE CLAIM  
5 ELEMENTS TOGETHER.

6 Q ABSOLUTELY. ABSOLUTELY. I DIDN'T MEAN TO CUT  
7 YOU OFF. ABSOLUTELY. I DON'T DISAGREE WITH THAT.

8 ALL I'M SUGGESTING IS IF THIS WERE AN  
9 INVENTION ABOUT AN EVENT OBJECT ITEM THAT HOLDS OR  
10 STORES INFORMATIONS, THAT WOULDN'T BE AN INVENTION.  
11 THERE'S MORE TO IT THAN THAT. ISN'T THAT TRUE,  
12 SIR?

13 A THERE'S MUCH MORE TO IT, YES.

14 Q AND BEING ABLE TO TAKE INFORMATION THAT  
15 RESULTS FROM A USER TOUCHING A SCREEN AND STORING  
16 IT SOMEPLACE, LIKE SOMETHING CALLED A MOTION EVENT  
17 OBJECT, THAT WAS NOT NEW?

18 A THE NOTION OF THE EVENT OBJECT, YES, WAS NOT  
19 NEW.

20 BUT USING IT WITHIN THE CONTEXT OF THE  
21 '915 PATENT, YOU KNOW, MAY AND COULD POSE CERTAIN  
22 CHALLENGES THAT THE '915 PATENT HAS TO OVERCOME TO  
23 PRODUCE THAT.

24 Q AND THAT'S GETTING INTO VALIDITY AND WE'LL  
25 TALK ABOUT THAT LATER ON IN THE CASE.

1 A OKAY.

2 Q BUT FOR NOW, THOUGH, I THINK -- I THOUGHT YOU  
3 SAID THAT THE MOTION EVENT OBJECT CALLS OR CAUSES  
4 CERTAIN THINGS TO BE HAPPENING.

5 THE MOTION EVENT OBJECT DOESN'T DO WHAT'S  
6 KNOWN IN COMPUTER PARLANCE AS EFFECTUATING A CALL,  
7 DOES IT?

8 A IF WHAT YOU'RE REFERRING TO IS THE USE OF THE  
9 WORD "INVOKE" IN CLAIM LANGUAGE, THE COURT HAS  
10 ALREADY RULED THAT THE WORD "INVOKE" IN THIS  
11 CONTEXT MEANS CAUSES OR CAUSES SOMETHING TO HAPPEN.

12 IT'S PLAINLY EVIDENT TO ANYBODY WHO'S A  
13 PERSON OF ORDINARY SKILL IN THE ART THAT THE MOTION  
14 EVENT OBJECT IS, INDEED, THE CONSTRUCT THAT IS  
15 CAUSING THIS ENTIRE CHAIN OF EVENTS, INCLUDING THE  
16 TEST THAT YOU SEE, BECAUSE THERE'S A GET POINTER  
17 COUNT EVENT -- SORRY -- GET POINTER COUNT FUNCTION  
18 THAT GETS CALLED, A LOGICAL BRANCH IS MADE AND THEN  
19 YOU GO DOWN EITHER THE SCROLL OR GESTURE PATH.

20 SO ABSOLUTELY THE MOTION EVENT OBJECT  
21 CAUSES EVERYTHING.

22 Q OKAY.

23 AND I'M SORRY, YOUR HONOR, I HAVE TO MOVE  
24 TO STRIKE. THE QUESTION WAS, DOES IT -- WAS YOUR  
25 TESTIMONY ON DIRECT THAT IT CALLS FOR CAUSES, AND

1 WE GOT A DIATRIBE ABOUT CAUSES. THAT WAS NOT MY  
2 QUESTION.

3 MR. JACOBS: YOUR HONOR, I --

4 THE COURT: OVERRULED. GO TO THE NEXT  
5 QUESTION.

6 THE WITNESS: SORRY.

7 BY MR. DEFRANCO:

8 Q LET ME ASK AGAIN. MAYBE MY QUESTION WASN'T  
9 CLEAR. LET ME TRY AGAIN.

10 I THOUGHT ON DIRECT EXAMINATION YOU SAID  
11 THE MOTION EVENT OBJECT CALLS FOR CAUSES. YOU JUST  
12 TOLD US ABOUT CAUSES. I DON'T WANT TO TALK ABOUT  
13 CAUSES FOR THE MOMENT.

14 I WANT TO FOCUS ON CALLS. CALLS IS  
15 SOMETHING SPECIFIC IN COMPUTER PARLANCE; RIGHT?

16 A YES.

17 Q IS IT YOUR TESTIMONY HERE THAT MOTION EVENT  
18 OBJECT PERFORMS A CALL OPERATION?

19 A NO. THE MOTION EVENT OBJECT CAUSES --

20 Q DOES IT PERFORM A CALL OPERATION? YES OR NO,  
21 SIR? I NEED A YES OR NO TO THAT.

22 MR. JACOBS: YOUR HONOR, THAT WAS AN  
23 ANSWER.

24 THE COURT: OVERRULED.

25 GO AHEAD, PLEASE. YOU CAN ANSWER.

1 BY MR. DEFRANCO:

2 Q PLEASE, SIR, JUST YES OR NO, DOES IT PERFORM A  
3 CALL OPERATION?

4 A WHEN YOU SAY "PERFORM A CALL OPERATION," A  
5 CALL IS NOT AN OPERATION. A CALL IS SOME -- IS A  
6 FUNCTION.

7 Q LET ME TRY IT THIS WAY, SIR.

8 A YES.

9 Q WOULD YOU AGREE WITH ME THAT MOTION EVENT  
10 OBJECT DOESN'T MAKE A SCROLL CALL, FOR EXAMPLE?

11 A THE MOTION EVENT OBJECT ITSELF DOES NOT.

12 BUT IT CAUSES THE CODE THAT RESULTS IN A  
13 SCROLL CALL TO BE MADE, YES.

14 Q IT DOESN'T DO IT ITSELF?

15 A IT IS RESPONSIBLE FOR IT.

16 Q IT DOESN'T DO IT ITSELF IS WHAT YOU JUST SAID,  
17 SIR?

18 A I SAID IT IS RESPONSIBLE FOR IT.

19 Q DID YOU -- WERE NOT HERE WITH ME, SIR? DID  
20 YOU JUST SAY IT DOESN'T DO IT ITSELF? YES OR NO?

21 A I BELIEVE THE ANSWER TO THIS QUESTION NEEDS TO  
22 BE COMPLETED, SO I SAID, YES, IT DOESN'T DO IT  
23 ITSELF, BUT IT CAUSES IT.

24 Q AND THERE'S NOTHING IN THE MOTION EVENT OBJECT  
25 THAT CALLS A GESTURE OPERATION; ISN'T THAT TRUE,

1 SIR?

2 A ONCE AGAIN, IT CAUSES IT.

3 Q THERE'S NOTHING, THOUGH, THAT CALLS IT? IS  
4 THAT TRUE?

5 A ONCE AGAIN, IT CAUSES IT.

6 Q LET'S MOVE ON. LET'S MOVE ON TO THE '163  
7 PATENT.

8 THAT'S THE SECOND PATENT THAT YOU  
9 TESTIFIED ON DIRECT EXAMINATION ABOUT INFRINGEMENT;  
10 CORRECT?

11 A YES.

12 Q NOW, I THINK ON DIRECT EXAMINATION YOU SAID  
13 SOMETHING TO THE EFFECT THAT IN THE '163 PATENT  
14 THAT WAS A RESULT, IN YOUR VIEW, OF A KEY INSIGHT,  
15 THOSE PARTICULAR WORDS I WROTE DOWN, KEY INSIGHT IN  
16 REALIZING THAT THERE'S AN INHERENT STRUCTURE IN WEB  
17 PAGES THAT CAN BE EXPLOITED FOR USE IN THE  
18 INVENTION.

19 IS THAT FAIR?

20 A THAT'S FAIR.

21 Q OKAY. THERE ARE NINE PATENTS -- NINE  
22 INVENTORS ON THE, ON THE '163 PATENT; IS THAT  
23 CORRECT?

24 A I HAVEN'T COUNTED THEM, BUT THERE ARE MANY.

25 Q YOU HAVEN'T SPOKEN TO THESE INVENTORS ABOUT,



1 DIRECTLY ABOUT THE '163 PATENT OR THEIR INVENTION  
2 OR ANY INSIGHTS THEY MAY HAVE HAD. ISN'T THAT  
3 TRUE, SIR?

4 A I READ THEIR DEPOSITION TESTIMONIES.

5 Q YOU HAVEN'T SPOKEN TO THEM ABOUT ANY INSIGHTS  
6 THEY MAY HAVE HAD. IS THAT TRUE, SIR?

7 A I READ THEIR DEPOSITION TESTIMONIES WHERE THEY  
8 TALK ABOUT INSIGHTS THEY MAY HAVE HAD.

9 Q AND -- BY THE WAY, ARE YOU AWARE THAT MANY OF  
10 THE INVENTORS ARE WORKING FOR APPLE AND THEY'RE  
11 READILY ACCESSIBLE TO YOU IF YOU WANTED TO SPEAK TO  
12 THEM AND ASK THEM ABOUT THE INVENTION AND WHAT LED  
13 TO IT AND THEIR INSIGHTS AND THAT SORT OF THING?  
14 WERE YOU AWARE OF THAT THAT, THAT'S AVAILABLE TO  
15 YOU AS AN EXPERT FOR APPLE?

16 A PERHAPS.

17 Q NOW, LET'S PULL UP THE SLIDE THAT YOU PREPARED  
18 FOR THE '163 PATENT. THIS IS PDX 29.29.

19 NOW, YOU TOOK US THROUGH THIS ON DIRECT  
20 EXAMINATION. I JUST WANT TO POINT OUT A FEW  
21 THINGS.

22 AGAIN, THIS CLAIM -- THIS IS THE -- YOU  
23 CALLED IT TAP TO ZOOM AND SUBSTANTIALLY CENTER.

24 DO YOU SEE THAT?

25 A YES.

1 Q THAT'S SHORTHAND THAT YOU USED TO DESCRIBE  
2 THIS INVENTION IN VERY GENERAL TERMS. IS THAT  
3 FAIR?

4 A THAT'S FAIR.

5 Q YOU WEREN'T TRYING TO SAY THAT'S WHAT THIS  
6 INVENTION IS ALL ABOUT; RIGHT?

7 A NO. JUST, AS YOU SAID, A SHORTHAND  
8 DESCRIBING.

9 Q BECAUSE, OF COURSE, TAP TO ZOOM WAS, WAS OUT  
10 THERE IN THIS FIELD BEFORE THIS PATENT; RIGHT? YOU  
11 WOULDN'T SAY THESE INVENTORS INVENTED TAP TO ZOOM;  
12 RIGHT?

13 A THAT IS CORRECT.

14 Q AND SUBSTANTIALLY CENTERING CONTENT, WHATEVER  
15 THAT MEANS -- WELL, LET'S TALK ABOUT CENTERING  
16 CONTENT ON A MOBILE DEVICE, A PHONE OR AN IPAD.

17 THESE INVENTORS OF THE '163 PATENT, THEY  
18 CERTAINLY DIDN'T INVENT SUBSTANTIALLY CENTERING; IS  
19 THAT RIGHT?

20 A IN A VERY GENERAL CONTEXT, MAYBE NOT.

21 Q OKAY. BUT AGAIN, YOU WOULD SAY -- I KNOW IT'S  
22 COMING -- YOU WOULD SAY, WELL, YOU'VE GOT TO PUT  
23 ALL THE ELEMENTS TOGETHER INTO THIS PARTICULAR  
24 CLAIM, THAT'S WHAT DESCRIBES THE INVENTION. THAT'S  
25 FAIR; RIGHT? NOT ANY ONE ELEMENT; RIGHT?

1 A RIGHT.

2 Q EVEN THOUGH, AS YOU TAKE APART THE ELEMENTS,  
3 THEY MAY HAVE BEEN OUT THERE INDIVIDUALLY,  
4 CERTAINLY LIKE TAP TO ZOOM AND CENTERING; IS THAT  
5 TRUE?

6 A WELL, WHEN YOU SAY TAP TO ZOOM, YOU HAVE TO,  
7 AGAIN, TALK ABOUT IT IN WHAT CONTEXT YOU'RE TALKING  
8 ABOUT IT. SIMPLY ZOOMING, QUITE OFTEN ZOOMING OR  
9 TAPPING TO ZOOM WITHOUT -- WITH NO STRUCTURE FOR A  
10 DOCUMENT WITHOUT STRUCTURE IS, IS A COMPLETELY  
11 DIFFERENT PIECE OF FUNCTIONALITY. IT'S  
12 COMPLETELY -- IT'S SOMETHING THAT'S QUITE  
13 DIFFERENT.

14 SO JUST BECAUSE YOU SHARE SOME TECHNICAL  
15 WORDS DOESN'T MEAN THAT, YOU KNOW, SOMETHING IS  
16 VERY COMMON.

17 Q ABSOLUTELY. BUT TAP TO ZOOM, AGAIN, ALONE,  
18 THAT CONCEPT WAS NOT -- THESE INVENTORS DID NOT  
19 COME UP WITH THAT CONCEPT?

20 A IN A HYPER TECHNICAL GENERAL SENSE, YES.

21 Q WHEN YOU SAY THE KEY INSIGHT IS THEY REALIZED  
22 THERE'S AN INHERENT STRUCTURE IN WEB PAGES THAT CAN  
23 BE EXPLOITED, THE PATENT, THE CLAIM, 50, USES THE  
24 PHRASE "STRUCTURED ELECTRONIC DOCUMENT."

25 DO YOU SEE THAT?

1 A YES, I DO.

2 Q THAT'S ANOTHER LIMITATION ELEMENT THAT MUST BE  
3 PRESENT IN THE ACCUSED DEVICE OR FEATURE IN ORDER  
4 FOR THERE TO BE INFRINGEMENT; CORRECT?

5 A WHAT, THAT A STRUCTURED ELECTRONIC DOCUMENT  
6 MUST BE PRESENT?

7 Q YES, YES.

8 A NO, ABSOLUTELY NOT.

9 Q OKAY. IT'S GOT TO BE -- IT'S GOT TO BE DOING  
10 SOMETHING TO A STRUCTURED ELECTRONIC DOCUMENT?  
11 THERE'S GOT TO BE A DISPLAY, AND THEN THE CLAIM  
12 CONTINUES ON; RIGHT? SO THERE'S GOT TO BE A  
13 STRUCTURED ELECTRONIC DOCUMENT PRESENT; IS THAT  
14 TRUE?

15 A NO, IT'S NOT TRUE.

16 Q OKAY. STRUCTURED ELECTRONIC DOCUMENT, SIR,  
17 THEY WERE OUT THERE; RIGHT? I MEAN, WEB PAGES USE  
18 HTML. THAT'S THE CODE THAT, AS YOU SAY, WITH TABS  
19 WILL STRUCTURE AN ELECTRONIC DOCUMENT; IS THAT  
20 RIGHT?

21 A WITH TAGS.

22 Q I'M SORRY. I SAID TABS. WITH TAGS, THOSE ARE  
23 THE LITTLE CHARACTERS; RIGHT? IS THAT RIGHT?

24 A YEAH.

25 Q SO ANY PROGRAMMER KNOWS THAT CERTAIN

1 INFORMATION YOU CAN GET ON THE INTERNET AND ACCESS  
2 THROUGH A MOBILE DEVICE, LIKE A WEB PAGE, THOSE ARE  
3 STRUCTURED DOCUMENTS USING, IN THAT INSTANCE, HTML  
4 CODE. IS THAT FAIR?

5 A YEAH, THAT'S FAIR.

6 Q NOW, THIS CLAIM TALKS ABOUT INSTRUCTIONS. DO  
7 YOU SEE THAT, SIR?

8 A YES.

9 Q ALL THE WAY DOWN?

10 A YES.

11 Q NOW, INSTRUCTIONS ARE ACTUAL LINES OF CODE; IS  
12 THAT CORRECT?

13 A YES.

14 Q NOW, THAT MEANS THAT SOMEWHERE IN THE SOURCE  
15 CODE, THERE ARE VERY SPECIFIC INSTRUCTIONS FOR  
16 PERFORMING THOSE OPERATIONS; IS THAT CORRECT? IS  
17 THAT RIGHT?

18 A YES.

19 Q AND CAN YOU DETERMINE INFRINGEMENT JUST BY  
20 OPERATING AN ACCUSED DEVICE, REGARDLESS OF WHAT MAY  
21 OR MAY NOT ACTUALLY BE IN THE SOURCE CODE?

22 A IT DEPENDS ON WHAT THE, WHAT THE CLAIM  
23 LANGUAGE IS, IS STATING.

24 IF THE CLAIM LANGUAGE IS DESCRIBING A  
25 VISUAL OPERATION AND YOU CLEARLY OBSERVE THAT

1 VISUAL OPERATION, THEN CERTAINLY INSTRUCTIONS MUST  
2 EXIST.

3 IT'S A COMPUTATIONAL DEVICE. IT'S NOT A  
4 LITTLE MAN SITTING IN THE BOX PERFORMING THE, THE  
5 ACTIONS.

6 Q WELL, OKAY. SO LET'S TALK ABOUT THIS CLAIM  
7 THEN.

8 COULD YOU ANALYZE INFRINGEMENT OF THIS  
9 CLAIM WITHOUT LOOKING AT THE PARTICULAR CODE TO SEE  
10 WHAT SPECIFIC INSTRUCTIONS THERE WERE?

11 A WELL, YOU WOULD WANT TO SEE THAT, IN FACT, A  
12 FIRST BOX WAS BEING DETERMINED BASED ON THE  
13 LOCATION.

14 THE REASON FOR THAT IS THAT THE BOX IS  
15 ACTUALLY AN HTML BOX THAT EXISTS IN CODE AND NOT,  
16 NOT NECESSARILY WHAT YOU ARE, ARE SEEING -- IT IS  
17 NOT SOMETHING THAT YOU'RE NECESSARILY SEEING  
18 VISUALLY.

19 SO THAT'S PROBABLY THE ONLY ELEMENT THAT  
20 REALLY REQUIRES TO YOU DIG IN DEEP.

21 Q OKAY. AND AGAIN, YOU LOOKED -- AT IN YOUR  
22 EXPERT REPORT, YOU ANALYZED IN DETAIL FOUR OF THE  
23 24 PRODUCTS IN THE CODE; IS THAT CORRECT?

24 A I ONCE AGAIN -- SORRY.

25 I ONCE AGAIN ANALYZED ALL RELEVANT

1 PORTIONS OF SOURCE CODE THAT SAMSUNG MADE AVAILABLE  
2 IN THIS.

3 I PROVIDED INSTRUCTIONS FOR FOUR DEVICES.  
4 THOSE FOUR DEVICES REPRESENTED MAJOR RELEASES OF  
5 THE SAMSUNG SOURCE CODE 2.1, 2.2, 2.3, AND 3.1.

6 Q AND THAT'S ALL I'M ASKING. IN YOUR EXPERT  
7 REPORTS PREPARED IN THE COURSE OF THE CASE, YOU  
8 SPECIFICALLY MAPPED THE CODE FOR FOUR DEVICES;  
9 FAIR?

10 A THAT'S RIGHT. BUT I ALSO --

11 Q AND TODAY YOU SHOWED GRAPHICAL DEPICTIONS, BUT  
12 NOT ACTUAL CODE IN YOUR DIRECT EXAMINATION; IS THAT  
13 RIGHT?

14 MR. JACOBS: YOUR HONOR, NOW I THINK WE  
15 REALLY HAVE CROSSED THE LINE.

16 MR. DEFRANCO: IT'S THE EXACT SAME  
17 QUESTION.

18 MR. JACOBS: HE'S IMPLYING THAT THERE WAS  
19 MORE CODE TO ANALYZE WHEN WE KNOW WHY THERE WERE  
20 ONLY FOUR RELEASES AND SETS OF CODE.

21 MR. DEFRANCO: YOUR HONOR, IT'S THE SAME  
22 CADENCE THAT I HAD FOR THE OTHER PATENT. HE HAD IT  
23 AVAILABLE, ONE VERSION FOR EACH PRODUCT.

24 THAT'S ALL I'M ASKING ABOUT, WHETHER HE  
25 LOOKED AT EACH OF THE CODE PRODUCED, PRODUCED BY

1 SAMSUNG FOR THE PRODUCTS. HE DETERMINED --

2 MR. JACOBS: THE COURT'S ORDER  
3 SPECIFICALLY NOTES THAT THIS WOULD COME UP IN  
4 CROSS-EXAMINATION OF APPLE'S EXPERTS AND THAT IT IS  
5 UNFAIR TO IMPLY ANY KIND OF LIMITATION ON THE SCOPE  
6 OF THE INQUIRY WHEN THE SCOPE OF THE INQUIRY WAS  
7 LIMITED BY SAMSUNG'S CONDUCT.

8 MR. DEFRANCO: YOUR HONOR, I'M NOT GOING  
9 BEYOND THE SCOPE.

10 THE COURT: I'M GOING TO SAY THIS HAS  
11 BEEN ASKED AND ANSWERED ABOUT SIX OR SEVEN TIMES.  
12 WE'RE GOING IN A CIRCLE HERE. CAN YOU PLEASE MOVE  
13 ON? I DON'T KNOW HOW MANY TIMES YOU CAN ASK  
14 WHETHER HE'S LOOKED AT ALL 24 CODE OR NOT. SO  
15 PLEASE MOVE ON.

16 ON 403, I'M GOING TO SUSTAIN THE  
17 OBJECTION.

18 BY MR. DEFRANCO:

19 Q YOU ANALYZED THE PROSECUTION HISTORY FOR THIS  
20 PATENT, TOO; IS THAT CORRECT?

21 A YES, I DID.

22 Q AND WE'RE TALKING ABOUT CLAIM 50 IN THE '163  
23 PATENT; IS THAT RIGHT?

24 A THAT IS CORRECT.

25 Q LET'S TAKE A LOOK AT A SLIDE, SDX 3912.1.



1                   NOW, YOU SAW THIS SLIDE BEFORE. THIS  
2 SLIDE WAS PREPARED FOR CROSS-EXAMINATION BY  
3 SAMSUNG? YOU UNDERSTAND THAT, SIR?

4           A        YES, I DO.

5           Q        YOU SAW THE SLIDE BEFORE YOU TOOK THE STAND TO  
6 TESTIFY ON DIRECT; IS THAT RIGHT?

7           A        THAT IS CORRECT.

8           Q        AND AGAIN, THIS SHOWS WHAT WE SAW FOR THE  
9 OTHER PATENT, AN EARLY DRAFT CLAIM SUBMITTED BY  
10 APPLE TO THE PATENT OFFICE ON THE LEFT SIDE; IS  
11 THAT TRUE?

12          A        THAT'S CORRECT.

13          Q        AND THE CLAIM THAT WAS ACTUALLY ISSUED ON THE  
14 RIGHT-HAND SIDE; IS THAT CORRECT?

15          A        YES, THAT IS CORRECT.

16          Q        AND THERE'S MORE INFORMATION THAT WAS REQUIRED  
17 TO BE ADDED BY THE PATENT OFFICE SO THAT THE CLAIM  
18 WOULD ULTIMATELY ISSUE; IS THAT RIGHT, SIR?

19          A        NO, I DON'T BELIEVE THAT THAT WAS EXACTLY WHAT  
20 IT WAS. IT WAS THE RESULT -- THE LANGUAGE THAT YOU  
21 SEE IS THE RESULT OF A PHONE INTERVIEW BETWEEN THE  
22 PROSECUTING LAWYERS, OR COUNSEL, AND THE PATENT  
23 EXAMINER WHERE THEY AGREED ON ADDING THIS, THIS  
24 CLAIM LANGUAGE.

25                   IT'S UNCLEAR WHETHER THIS LANGUAGE WAS

1       ADDED SORT OF IN ANY WAY THAT WAS NECESSARY, BUT  
2       CLEARLY THE PROSECUTING LAWYERS JUST FIGURED THAT  
3       THIS IS PART OF THE INVENTION AND SO IF ADDING IT  
4       IS SOMETHING THAT MAKES THE CLAIM EASILY  
5       ACCEPTABLE, WHY NOT ADD IT?

6       Q       WELL, LET'S LOOK THE -- THE LANGUAGE THAT WAS  
7       ADDED RELATES TO DETECTING A SECOND GESTURE; IS  
8       THAT RIGHT?

9       A       THAT'S RIGHT, AND THAT'S WHAT WE'VE BEEN  
10       OBSERVING.

11       Q       AND THAT'S REQUIRED IN THIS CLAIM IN ORDER FOR  
12       THERE TO BE INFRINGEMENT; IS THAT TRUE?

13       A       CERTAINLY.

14       Q       AND THAT WAS REQUIRED IN ORDER FOR THIS CLAIM  
15       TO ISSUE FROM THE PATENT OFFICE. YOU CAN SAY THAT  
16       MUCH, CAN'T YOU, SIR?

17       A       THAT WAS SOMETHING THAT THE PATENT OFFICE AND  
18       THE PROSECUTING COUNSEL AGREED ON ADDING. IT'S  
19       SPECULATIVE THAT HAD, HAD THEY -- HAD PROSECUTING  
20       COUNSEL WANTED TO STICK WITH THEIR ORIGINAL CLAIMS,  
21       THEY WOULD HAVE GONE BACK AND ARGUED THE VALIDITY  
22       OF THOSE CLAIMS WITH THE PATENT EXAMINER.

23                BUT THERE'S -- JUST THE FACT THAT THEY  
24       EXIST OVER THERE DOESN'T TELL YOU WHETHER THEY WERE  
25       NECESSARY.

1 Q THE CLAIM AS ISSUED HAS THAT LANGUAGE? IS  
2 THAT CORRECT, SIR?

3 A YES.

4 Q THAT CAME ABOUT AFTER SOME ACTION WAS TAKEN,  
5 SOME COMMUNICATION WAS RECEIVED FROM THE PATENT  
6 OFFICE; IS THAT RIGHT?

7 A THAT IS CORRECT.

8 Q AND THAT SHOWS THE SECOND GESTURE; IS THAT  
9 TRUE, SIR?

10 A THAT IT DOES.

11 Q NOW, YOU TALKED ABOUT A SAMSUNG DOCUMENT, IT  
12 WAS EXHIBIT 44, BUT IN THE INTERESTS OF TIME, YOU,  
13 YOU EXPLAINED HOW THAT DOCUMENT SHOWED THAT IN  
14 SAMSUNG -- IN THE SAMSUNG PRODUCT AT ISSUE WHEN  
15 THERE WAS A DOUBLE TAP, THERE WAS ZOOMING IN, AND  
16 WHEN THERE WAS MORE TAPPING, IT WAS ZOOMING OUT.  
17 IS THAT CORRECT?

18 A IN OLDER SAMSUNG DEVICES, YES.

19 Q RIGHT. AND THAT, THAT DID NOT INFRINGE CLAIM  
20 50 OF THE '163 PATENT; IS THAT CORRECT?

21 A THAT IS NOT CORRECT.

22 Q OH, YOU THOUGHT THAT OLD, THAT SAMSUNG  
23 TECHNOLOGY, THE DOUBLE TAP AND JUST ZOOMING IN AND  
24 DOUBLE TAP AND ZOOMING OUT, THAT -- IS THAT COVERED  
25 BY CLAIM 50?

1 A THOSE DEVICES ARE COVERED BY CLAIM 50.

2 Q THAT SPECIFIC FEATURE THAT I DESCRIBED, DOUBLE  
3 TAP TO ZOOM IN, DOUBLE TAP TO ZOOM BACK, IS THAT  
4 COVERED BY CLAIM 50 OF THE '163 PATENT?

5 A THAT IS NOT COVERED. BUT THE EXISTING  
6 FUNCTIONALITY --

7 Q SO THEN -- I'M JUST ASKING ABOUT THAT  
8 FUNCTIONALITY. THAT FUNCTIONALITY IS NOT COVERED;  
9 RIGHT?

10 A BUT THOSE DEVICES STILL INFRINGE.

11 Q AND IF -- IF A DEVICE ONLY HAD THAT  
12 FUNCTIONALITY, THEN IT WOULDN'T PRACTICE CLAIM 50  
13 OF THE '163 PATENT?

14 A IF THE EARLIER FUNCTIONALITY THAT WAS ALREADY  
15 INFRINGING, IN THE EVENT THAT THAT FUNCTIONALITY  
16 WAS REMOVED, THEN, YES, IT WOULD NOT INFRINGE.

17 Q LET'S GO TO SLIDE, BACK TO SLIDE 29.29. PDX  
18 29.29.

19 THE COURT: IT'S 2:45, SO WHY DON'T YOU  
20 GO AHEAD AND ASK THE NEXT QUESTION.

21 MR. DEFRANCO: THIS IS A NEW TOPIC.

22 THE COURT: SO WHAT WOULD YOU PREFER?  
23 YOU WANT TO TALK GO A LITTLE BIT LONGER AND THEN  
24 TAKE A BREAK?

25 MR. DEFRANCO: COULD WE TAKE A BREAK NOW?

1 THE COURT: THAT'S FINE. IT'S 2:45 NOW.  
2 WE'RE GOING TO TAKE A 20-MINUTE BREAK BECAUSE  
3 THERE'S SOMETHING THAT I WANT TO TALK TO THE  
4 LAWYERS ABOUT.

5 SO IF YOU WOULD PLEASE KEEP AN OPEN MIND,  
6 DON'T TALK ABOUT THE CASE WITH ANYONE, AND PLEASE  
7 DON'T DO ANY OF YOUR OWN RESEARCH.

8 IF YOU COULD GO AHEAD AND LEAVE YOUR  
9 BOOKS IN THE JURY ROOM.

10 THANK YOU.

11 THE WITNESS: DO I HAVE TO STAY HERE?

12 THE COURT: NO. IF YOU COULD JUST STAY  
13 SEATED UNTIL OUR JURORS GO INTO THE JURY ROOM, AND  
14 THEN ONCE THEY'RE OUT OF THE COURTROOM, THEN YOU'RE  
15 FREE TO STEP DOWN AND YOU CAN GO WHEREVER YOU'D  
16 LIKE.

17 THE WITNESS: SURE, OKAY.

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

20 THE COURT: ALL RIGHT. THE RECORD SHOULD  
21 REFLECT THE JURORS HAVE LEFT THE COURTROOM.

22 YOU'RE FREE TO STEP DOWN AND YOU DON'T  
23 HAVE TO STAY. YOU CAN GO WHEREVER YOU'D LIKE.

24 I JUST HAD A QUICK QUESTION ON THIS ISSUE  
25 THAT YOU ALL ARE RAISING WITH REGARD TO THE SOURCE

1 CODE .

2 I WAS ONLY AWARE OF THE SOURCE CODE  
3 REGARDING DESIGN-AROUNDS FOR THE '163 AND THE '381,  
4 NOT HAVING -- I'M SORRY, PLEASE TAKE A SEAT -- NOT  
5 HAVING BEEN PRODUCED BY DECEMBER 31ST OF LAST YEAR.

6 I WAS NOT AWARE OF THIS OTHER ISSUE THAT  
7 YOU SEEM TO BE RAISING. SO IF YOU CAN POINT ME TO  
8 THE ECF NUMBERS, I'LL TAKE A LOOK AT THEM OVER THE  
9 BREAK BECAUSE I'M NOT AWARE OF WHAT THIS ISSUE IS.  
10 IS IT THE SAME ISSUE AS THE DESIGN-AROUNDS, OR NO?

11 MR. JACOBS: IT WAS IN THE ORDER THAT  
12 AFFIRMED, THAT --

13 THE COURT: MY ORDER IS ECF 1545 FILED ON  
14 AUGUST 2ND.

15 MR. JACOBS: RIGHT.

16 THE COURT: THAT ONE?

17 MR. JACOBS: I BELIEVE IT WAS EITHER IN  
18 THAT ONE OR IN THE IMMEDIATELY PRECEDING ORDER BY  
19 JUDGE GREWAL IN WHICH HE SAID THAT THE SCOPE OF THE  
20 PROHIBITION ON SAMSUNG INTRODUCING DESIGN-AROUND  
21 INFORMATION WAS BROADER THAN JUST THE QUESTION OF  
22 WHAT SOURCE CODE, AND IN EITHER THAT ONE OR IN  
23 YOURS, THERE'S A REFERENCE TO CROSS-EXAMINATION.  
24 AND I'LL FIND IT.

25 THE COURT: I GUESS WHAT I DON'T

1 UNDERSTAND IS WAS SOURCE CODE ONLY PRODUCED FOR  
2 FOUR PRODUCTS AND NOT FOR THE OTHER 24 -- THE OTHER  
3 20?

4 MR. DEFRANCO: YOUR HONOR, SOMEBODY WILL  
5 JUMP UP AND CORRECT ME IF I'M WRONG.

6 THE COURT: OKAY.

7 MR. DEFRANCO: SINCE IT'S MY WITNESS, LET  
8 ME STATE MY UNDERSTANDING FOR THE RECORD.

9 THERE WAS AT LEAST ONE VERSION, ONE  
10 VERSION OF SOURCE CODE, LET'S SAY, FOR EACH ACCUSED  
11 PRODUCT.

12 THE COURT: OKAY.

13 MR. DEFRANCO: SOME OF THAT -- IF YOU  
14 LOOK AT A LIST, IT'S THE SAME VERSION FOR DIFFERENT  
15 PRODUCTS IN A COUPLE INSTANCES. BUT THERE WAS AT  
16 LEAST ONE BODY OF SOURCE CODE FOR EACH ACCUSED  
17 PRODUCT.

18 SO MY QUESTIONING WAS GOING TO -- HE SAID  
19 HE ANALYZED ALL THE SOURCE CODE FOR 24 PRODUCTS.  
20 WE DON'T HAVE THAT IN HIS EXPERT REPORT.

21 WE HAVE HIM DOING TWO IN DETAIL AND TWO  
22 IN LESS DETAIL, BUT HE DIDN'T DO ALL 24.

23 THAT'S ALL I'M GETTING TO. I'M NOT GOING  
24 BEYOND TO SAY WHAT SOURCE CODE HE DIDN'T HAVE.

25 HE HAD AT LEAST ONE FOR EACH PRODUCT. HE

1           COULD HAVE DONE THAT IN DETAIL FOR EACH PRODUCT.  
2           HE COULD HAVE PRESENTED THE ACTUAL SOURCE CODE.  
3           THAT'S MY POINT FOR BOTH PATENTS.

4                   THE COURT:    THAT'S WHAT I UNDERSTOOD YOUR  
5           POINT TO BE, SO THAT'S WHY I DON'T UNDERSTAND HOW  
6           THE DESIGN-AROUND IS EVEN RELEVANT.

7                   HE'S NOT SAYING HE DIDN'T REVIEW ALL THE  
8           VERSIONS OF THE CODE FOR EACH PRODUCT.   HIS POINT  
9           IS YOUR REPORT ONLY ADDRESSED FOUR OUT OF THE 24.

10                   SO THAT'S WHY I OVERRULED YOUR OBJECTION,  
11           BECAUSE I LOOK AT MY ORDER THAT'S DOCUMENT NUMBER  
12           1545 AND I JUST DON'T THINK IT'S RELEVANT TO THE  
13           DISPUTE AT HAND.

14                   BUT YOU CAN CORRECT ME IF I'M WRONG ON  
15           THIS.

16                   MR. JACOBS:   SO IT'S FACTUALLY INCORRECT.  
17           THERE WAS NOT CODE PRODUCED FOR EACH PRODUCT.   THE  
18           AT&T GALAXY S II, FOR EXAMPLE, THERE WAS NO CODE  
19           PRODUCED FOR THAT.   AND WE CAN GET YOU A LIST OF  
20           ALL THE CODE IN QUESTION.

21                   THE POINT I WANT TO FLAG FOR YOU, IN YOUR  
22           ORDER, WHICH I UNDERSTAND YOU MAY BE A LITTLE BIT  
23           BEYOND NOW, YOUR HONOR, IS ON PAGE 5.

24                   THE COURT:    AND THAT'S DOCUMENT NUMBER  
25           1545?



1 MR. JACOBS: YES. "INDEED, IT WAS A  
2 REASONABLE FINDING THAT SAMSUNG'S FAILURE TO FULLY  
3 COMPLY WITH THE ORDER TO COMPEL SOURCE CODE  
4 NECESSARILY PREJUDICED APPLE'S ABILITY TO BUILD ITS  
5 CASE AS TO EACH INFRINGING PRODUCT AND TO DEFEND  
6 ITSELF AGAINST CROSS-EXAMINATION OF ITS EXPERT  
7 WITNESSES. SEE JUNE 19, 2012 HEARING TRANSCRIPT AT  
8 20 TO 21 (APPLE'S EXPERTS VULNERABLE ON  
9 CROSS-EXAMINATION TO ATTACKS THAT THEY HAD NOT  
10 THOROUGHLY ANALYZED THE SOURCE CODE)."

11 THAT'S WHAT I WAS DRIVING AT.

12 MR. DEFRANCO: MAY I RESPOND, YOUR HONOR?

13 THE COURT: WELL, MY UNDERSTANDING ON  
14 THAT IS MORE GEARED TOWARDS THE DESIGN-AROUND AND  
15 WHETHER THERE WERE SUBSEQUENT VERSIONS OF THIS SAME  
16 CODE THAT WERE NOT PRODUCED.

17 DOES THAT MAKE SENSE? I NEVER  
18 INTERPRETED THIS TO MEAN THAT THERE ARE ACTUALLY  
19 PRODUCTS FOR WHICH NO VERSION OF CODE WAS EVER  
20 PRODUCED. I UNDERSTOOD THIS TO MEAN THERE ARE  
21 LATER ITERATIONS OF THE CODE THAT WAS PRODUCED THAT  
22 MAY SHOW A DESIGN-AROUND IN A DIFFERENT  
23 FUNCTIONALITY.

24 MR. JACOBS: I THINK MAYBE THE NUANCE  
25 HERE IS THAT THE CODE THAT WAS PRODUCED, WE

1 BELIEVE, IS THE CODE FOR PRODUCTS FOR WHICH  
2 SPECIFICALLY IDENTIFIED CODE WAS NOT PRODUCED  
3 BECAUSE OF THE COMMONALITY OF THE CODE BASE.

4 BUT THERE ARE SPECIFIC PRODUCTS FOR WHICH  
5 IDENTIFIED CODE WAS NOT PRODUCED.

6 THE COURT: ALL RIGHT. WELL, I THINK I'M  
7 NOT GOING TO BE ABLE TO -- WHY DON'T -- WHATEVER  
8 YOU HAVE, I NEED TO SEE IT BECAUSE I'M NOT  
9 PERSUADED JUST, YOU KNOW, BASED ON MY OWN ORDER.  
10 MY OWN ORDER WAS REALLY JUST DIRECTED AT SUBSEQUENT  
11 ITERATIONS OF PRODUCED CODE AND WHETHER THEY SHOWED  
12 ANY DESIGN AROUND OR DIFFERENT FUNCTIONALITY.

13 IT WAS NOT INTENDED, BECAUSE THAT ISSUE  
14 WAS NOT BEFORE ME, OF WHETHER CODE HAD NOT BEEN  
15 PRODUCED FOR SOME OF THESE PRODUCTS, PERIOD.

16 MR. JACOBS: I UNDERSTAND YOUR CONCERN,  
17 YOUR HONOR.

18 THE COURT: OKAY. ALL RIGHT. WELL, IF  
19 YOU HAVE ANYTHING ELSE ON THAT SCORE, YOU NEED TO,  
20 I GUESS, FILE IT OR PROVIDE IT TO BOTH SIDES.  
21 OTHERWISE I'M GOING TO CONTINUE TO OVERRULE THOSE  
22 OBJECTIONS. OKAY?

23 MR. JACOBS: UNDERSTOOD, YOUR HONOR.  
24 THANK YOU.

25 THE COURT: ALL RIGHT. LET'S GO AHEAD

1 AND TAKE A BREAK TO 3:05.

2 MR. JACOBS: ONE QUICK THING. WE HAVE A  
3 WITNESS SCHEDULING ISSUE, SO WE'RE GOING TO PUT  
4 MR. HAUSER ON BRIEFLY NEXT.

5 THE COURT: OH, OKAY. THEN I NEED TO GET  
6 THE RULINGS ON THOSE OBJECTIONS OUT AS SOON AS  
7 POSSIBLE.

8 MR. VERHOEVEN: YOUR HONOR, MR. PRICE IS  
9 GOING TO BE HANDLING THAT WITNESS AND HE'S NOT EVEN  
10 HERE BECAUSE WE HAVEN'T BEEN TOLD THAT MR. HAUSER  
11 WOULD BE NEXT. SO I'LL HAVE TO SEE IF HE'S IN THE  
12 BUILDING.

13 THE COURT: WHAT -- ARE YOU NOT CALLING  
14 JUNWON LEE AT ALL?

15 MR. JACOBS: IT'S BY DEPOSITION, YOUR  
16 HONOR.

17 THE COURT: OKAY. SO THAT'S RELATIVELY  
18 QUICK?

19 MR. JACOBS: EXACTLY.

20 MS. MAROULIS: THERE WAS ALSO MR. TEKSLER  
21 WHO'S GOING TO GO BEFORE MR. HAUSER.

22 MR. VERHOEVEN: AND HE'LL EASILY BE ON  
23 AND OFF. HE'LL BE ON AND OFF TODAY.

24 THE COURT: MR. TEKSLER WILL BE ON AND  
25 OFF QUICKLY?

1 MR. VERHOEVEN: I CAN'T IMAGINE HE  
2 WOULDN'T BE.

3 MR. JACOBS: WE HAVE TO PUT THE LEE  
4 DEPOSITION ON FIRST AND THEN TEKSLER, AND THIS  
5 CROSS LOOKS LIKE IT'S CONTINUING TO GO AND IT'S TEN  
6 OF 3:00 AND MR. HAUSER HAS AN IRONCLAD SCHEDULING  
7 CONFLICT. WE HAVE TO GET HIM ON AND OFF TODAY.

8 I DON'T THINK WE HAD ANY IDEA THESE  
9 CROSSES OF OUR TECHNICAL EXPERTS WOULD GO THIS  
10 LONG, YOUR HONOR.

11 THE COURT: WELL, I'M NOT SURE THAT IN  
12 THE NEXT 15 MINUTES I CAN GET YOU RULINGS ON  
13 MR. HAUSER'S OBJECTIONS. I'LL DO WHAT I CAN.

14 MR. VERHOEVEN: AND WE WOULD ALSO OBJECT,  
15 YOUR HONOR. THE WHOLE POINT OF US HAVING THE  
16 WITNESS ORDER WAS SO THAT WE COULD BE PREPARED AND  
17 HAVE SOME ADVANCED NOTICE OF WHEN WITNESSES ARE  
18 GOING TO BE CALLED.

19 SO WE'LL HAVE TO GO BACK AND SEE IF  
20 MR. PRICE IS HERE. HOPEFULLY HE IS.

21 BUT SWITCHING ORDER LIKE THIS AT THE LAST  
22 SECOND --

23 THE COURT: MR. HAUSER CAN'T COME BACK ON  
24 MONDAY?

25 MR. MCELHINNY: IN FAIRNESS, YOUR HONOR,

1 MR. VERHOEVEN JUST SAID HE CAN GET ON AND OFF  
2 TODAY. SO THEY KNEW HE WAS COMING ON TODAY.

3 THE QUESTION IS WHETHER HE'S NEXT OR  
4 SECOND TO NEXT. THAT'S THE ISSUE. SO THE SURPRISE  
5 THAT MR. VERHOEVEN EXPRESSES IS A LITTLE GENERATED.

6 THE COURT: WELL, LET'S -- IF MR. LEE AND  
7 MR. TEKSLER ARE FAIRLY QUICK, THEN IT SOUNDS LIKE  
8 WE SHOULD BE ABLE TO GET TO MR. HAUSER. CORRECT?

9 MR. JACOBS: IT'S JUST ONE OF THOSE  
10 THINGS, YOUR HONOR. HE HAS TO TESTIFY TODAY.

11 MR. VERHOEVEN: YOUR HONOR, I DOUBT VERY  
12 MUCH WE COULDN'T GET HIM AN AND OFF TODAY.

13 THE COURT: YOU MEAN AFTER LEE AND  
14 TEKSLER?

15 MR. VERHOEVEN: I'M NOT SURE HOW LONG THE  
16 DEPOSITION DESIGNATIONS ARE, BUT MR. TEKSLER IS --  
17 THEY HAVEN'T TOLD US HOW LONG HIS DIRECT IS GOING  
18 TO BE, BUT I DON'T THINK IT'LL BE VERY LONG.

19 MR. LEE: VERY, VERY BRIEF, TEN MINUTES.

20 MR. VERHOEVEN: AND THEN MR. HAUSER IS  
21 NEXT.

22 MR. MCELHINNY: SO IN TERMS OF YOUR  
23 SCHEDULE, YOUR HONOR, IT'S -- I MEAN, THE  
24 OBJECTIONS ARE COMING THIS AFTERNOON.

25 THE COURT: ALL RIGHT. WELL, LET ME SEE

1 IF I CAN GET HAUSER DONE. I WAS TOLD TO PRIORITIZE  
2 BENNER AND SITTLER, WHICH I DID OVER THE LUNCH  
3 HOUR. BUT I'LL TRY TO SEE IF I CAN GET HAUSER.

4 MR. MCELHINNY: THANK YOU, YOUR HONOR.

5 THE COURT: ALL RIGHT. THANK YOU.

6 MR. VERHOEVEN: THANK YOU, YOUR HONOR.

7 THE COURT: THANK YOU.

8 (WHEREUPON, A RECESS WAS TAKEN.)

9 THE COURT: OKAY. WELCOME BACK. PLEASE  
10 TAKE A SEAT.

11 I FILED THE HAUSER OBJECTION RULINGS.

12 ALL RIGHT. LET'S BRING THE JURY IN,  
13 PLEASE.

14 (WHEREUPON, THE FOLLOWING PROCEEDINGS  
15 WERE HELD IN THE PRESENCE OF THE JURY:)

16 THE COURT: ALL RIGHT. WELCOME BACK.

17 IT'S 3:12. PLEASE GO AHEAD,

18 MR. DEFRANCO.

19 BY MR. DEFRANCO:

20 Q WELCOME BACK, DR. SINGH. A FEW FOLLOW-UP  
21 QUESTIONS.

22 YOU STARTED YOUR WORK IN ABOUT DECEMBER  
23 OF LAST YEAR?

24 A MORE OR LESS ABOUT JANUARY OF THIS YEAR, MAYBE  
25 LATE DECEMBER.

1 Q AND IF I ASKED YOU, I APOLOGIZE, YOUR RATE,  
2 YOUR HOURLY RATE IS \$450 AN HOUR?

3 A THAT'S CORRECT.

4 Q AND AT YOUR DEPOSITION IN APRIL, MY MEMORY IS  
5 YOU COULDN'T RECALL AT THAT TIME ABOUT HOW MANY  
6 HOURS YOU HAD SPENT ON THIS CASE.

7 COULD YOU ESTIMATE FOR US NOW ABOUT HOW  
8 MANY HOURS YOU'VE SPENT WORKING ON THIS CASE?

9 A MAYBE SOMEWHERE BETWEEN 150 AND 200.

10 Q LET'S GO BACK -- THANK YOU, SIR. LET'S GO  
11 BACK TO PDX 29.29, PLEASE.

12 I'D LIKE TO SHIFT GEARS -- WE'RE BACK --  
13 WE'RE STILL IN THE '163 PATENT, ONE OF THE TWO  
14 PATENTS YOU ANALYZED, CLAIM 50, ONE OF THE TWO  
15 CLAIMS YOU ANALYZED, ONE FOR EACH PATENT; RIGHT?

16 A YES.

17 Q WE MENTIONED SUBSTANTIALLY CENTERED BRIEFLY.  
18 I'D LIKE TO GO BACK TO THAT.

19 THAT TERM, THAT CONTENT, THAT LIMITATION  
20 APPEARS TWICE IN CLAIM 50; IS THAT CORRECT?

21 A YES.

22 Q AND THERE -- THE CLAIM REQUIRES THERE TO BE  
23 INSTRUCTIONS FOR SUBSTANTIALLY CENTERING SOME FIRST  
24 BIT OF INFORMATION AND INSTRUCTIONS FOR  
25 SUBSTANTIALLY CENTERING A SECOND BIT OF

1 INFORMATION; IS THAT RIGHT?

2 A THAT IS CORRECT.

3 Q NOW, YOU ANALYZED WHETHER OR NOT THE ACCUSED  
4 PRODUCTS SUBSTANTIALLY CENTERED CONTENT IN YOUR  
5 WORK ON INFRINGEMENT; IS THAT CORRECT?

6 A YES.

7 Q NOW, THERE'S NO -- OTHER THAN THAT PHRASE,  
8 "SUBSTANTIALLY CENTERED," THERE'S NO -- THERE'S NO  
9 DEFINITION OR EXPLANATION ABOUT WHAT THOSE TERMS  
10 MEAN IN THE CLAIM; RIGHT?

11 A NOT IN THE CLAIM, NO.

12 Q AND THE SPECIFICATION TALKS ABOUT THOSE TERMS,  
13 BUT THERE'S NO EXPLICIT DEFINITION IN THE  
14 SPECIFICATION; ISN'T THAT RIGHT?

15 A WELL, THERE'S TALK IN THE SPECIFICATION ABOUT  
16 PADDING AND SO ON WITH REGARDS TO, TO THE DOCUMENT.

17 BUT BY AND LARGE, IT'S SOMETHING THAT A  
18 PERSON OF ORDINARY SKILL IN THE ART WILL HAVE NO  
19 PROBLEM UNDERSTANDING.

20 Q SO IS IT YOUR TESTIMONY, SIR, THAT IF I HAD 50  
21 PEOPLE LINED UP WHO WERE SKILLED IN THE ART, THEY  
22 WOULD ALL GIVE ME THE EXACT SAME ANSWER IF I SHOWED  
23 THEM SOMETHING AND ASKED THEM IF IT WAS  
24 SUBSTANTIALLY CENTERED?

25 A BY AND LARGE, GIVEN THE CONTEXT FOR THE '163



1 PATENT, THERE ARE OTHER DESIGN CRITERIA, DESIGN  
2 GOALS THAT UNDERLIE THE, THE PATENT, AND SO USUALLY  
3 IN THE RARE CIRCUMSTANCE WHERE YOU FIND -- YOU FEEL  
4 THAT REASONABLE MINDS MIGHT, MIGHT DEVIATE.

5 THERE'S USUALLY A GOOD REASON IN THE, IN  
6 THE INTERFACE DESIGN FOR, FOR THINGS APPEARING THE  
7 WAY THEY DO.

8 Q SO TWO PEOPLE MIGHT DISAGREE ABOUT WHETHER  
9 SOMETHING IS SUBSTANTIALLY CENTERED, BUT THAT MAY  
10 BE KEY TO THE DESIGN GOAL FOR THE SPECIFIC DEVICE?  
11 IS THAT WHAT YOU'RE SAYING?

12 A NO, THAT'S NOT WHAT I'M SAYING.

13 Q OKAY. LET ME ASK YOU THIS. THERE'S NO -- IN  
14 TERMS OF GIVING THOSE 50 HYPOTHETICAL PEOPLE SOME  
15 TOOLS, THERE'S NO SPECIFIC PARAMETERS SET FORTH IN  
16 THE CLAIM; IS THAT TRUE?

17 A THERE DOESN'T NEED TO BE SPECIFIC PARAMETERS  
18 SET FORTH IN THE CLAIM.

19 Q THERE ARE NONE SET FORTH IN THE CLAIM, SIR;  
20 ISN'T THAT TRUE?

21 A WELL, THERE'S THE TERM "SUBSTANTIALLY  
22 CENTERED."

23 Q RIGHT. IT DOESN'T SHOW ANY -- IT DOESN'T GIVE  
24 ANY MORE INDICATION. IT DOESN'T GIVE YOU  
25 MEASUREMENTS OR DISTANCE OR ANY OTHER INDICATION

1 ABOUT WHAT THAT MEANS, ISN'T THAT TRUE, SIR, IN THE  
2 CLAIM?

3 A IN THE CLAIM TAKEN WITH THE PATENT, A PERSON  
4 OF ORDINARY SKILL IN THE ART WILL UNDERSTAND WHAT  
5 IT MEANS.

6 Q THERE ARE NO -- THERE ARE NO SPECIFIC  
7 PARAMETERS. YOU'VE SEEN CLAIMS THAT HAVE  
8 PARAMETERS, RIGHT, SPECIFIC MEASUREMENTS DETAILED  
9 EXACTLY IN THE CLAIM? YOU'VE SEEN THAT, RIGHT,  
10 BEFORE SIR? THAT'S NOT THE SITUATION, IS IT, HERE,  
11 SIR?

12 A NOT FOR THIS PARTICULAR --

13 Q I'M SORRY. EVERYBODY IS RUSHED. I APOLOGIZE  
14 FOR TALKING OVER YOU.

15 THAT'S ALSO NOT THE SITUATION WITH  
16 RESPECT TO THE '163 SPECIFICATION. THERE ARE NO  
17 SPECIFIC PARAMETERS FOR EACH OF THOSE 50  
18 INDIVIDUALS TO COME TO THE SAME CONCLUSION, TO SEE  
19 WHETHER THOSE PARAMETERS ARE MET. THAT'S FAIR,  
20 ISN'T IT, SIR?

21 A THAT'S WHY YOU NEED TO BE A PERSON OF ORDINARY  
22 SKILL IN THE ART.

23 Q NOW, YOU ANALYZED, FOR INFRINGEMENT OF THE  
24 '163 PATENT, ONE WEB PAGE. IS THAT TRUE, SIR?

25 A THAT IS NOT TRUE.

1 Q YOU ANALYZED A PARTICULAR APPLICATION, DIDN'T  
2 YOU, THE BROWSER APPLICATION?

3 A YES, THE BROWSER APPLICATION, YES.

4 Q AND IN YOUR REPORT, YOU DIDN'T ANALYZE OTHER  
5 APPLICATIONS, LIKE E-MAIL, THE MUSIC PLAYER, OR  
6 GALLERY, OR ANY OTHER APPLICATION. YOU FOCUSSED ON  
7 THE GALLERY APPLICATION; IS THAT TRUE?

8 A NO, I DID NOT.

9 Q I'M SORRY?

10 A I DID NOT FOCUS ON THE GALLERY APPLICATION AT  
11 ALL.

12 Q I APOLOGIZE. I MISSPOKE. I'M RUSHED. LET ME  
13 SLOW DOWN.

14 YOU FOCUSSED ON THE WEB BROWSER  
15 APPLICATION IN YOUR ANALYSIS; IS THAT TRUE?

16 A THAT IS TRUE.

17 Q THERE ARE MANY OTHER APPLICATIONS OUT THERE,  
18 HIGHER ORDER APPLICATIONS LIKE GALLERY AND E-MAIL  
19 AND THINGS LIKE THAT, AND HUNDREDS OF OTHER MORE  
20 DETAILED APPLICATIONS YOU CAN DOWNLOAD FROM THE  
21 WEB, FOR EXAMPLE. YOU DIDN'T ANALYZE OTHER  
22 APPLICATIONS?

23 A I DIDN'T NEED TO.

24 Q NOW -- AND THE WEB PAGE, YOU ALSO -- WITHIN  
25 ANALYZING THE WEB BROWSER, YOU PICKED OUT A

1 PARTICULAR WEB PAGE, THE NEW YORK TIMES WEB PAGE;  
2 IS THAT TRUE?

3 A AS PART OF MY TESTING, I TESTED IT ON A NUMBER  
4 OF WEB PAGES. I JUST CHOSE THE NEW YORK TIMES AS A  
5 GOOD REPRESENTATIVE WEB PAGE FOR MY ILLUSTRATIONS.

6 BUT THE DESIGN WORKS ON, ON AN  
7 INNUMERABLE NUMBER OF WEB PAGES.

8 Q IN THE INTERESTS OF TIME, SIR, DO YOU RECALL  
9 TESTIFYING AT YOUR DEPOSITION THAT YOU COULD NOT  
10 RECALL TESTING, PERFORMING ANY TESTS ON ANY OTHER  
11 WEB PAGE OTHER THAN THE NEWYORKTIMES.COM WEB PAGE?  
12 DO YOU RECALL THAT?

13 A I RECALL SAYING AT MY DEPOSITION THAT I DID  
14 NOT CONCLUSIVELY REMEMBER VERY PRECISE WEBSITES  
15 THAT I TESTED ON.

16 AS PART OF MY TESTING, I SPENT A LOT OF  
17 TIME JUST BROWSING AROUND GENERALLY ON THE WEB  
18 PAGE. WHEN ONE DOES THAT, YOU DON'T NECESSARILY  
19 KEEP A CLEAR TRACK OF EVERY WEB PAGE THAT YOU MIGHT  
20 HAPPEN TO VISIT.

21 Q SO YOU DON'T DISAGREE, AT YOUR DEPOSITION, YOU  
22 COULDN'T IDENTIFY ANY OTHER WEB PAGE OTHER THAN THE  
23 NEW YORK TIMES?

24 A NO. I BELIEVE I DID GIVE AN EXAMPLE OR TWO.

25 Q YOU DIDN'T REMEMBER EXACTLY WHAT YOU TESTED;

1           ISN'T THAT FAIR, SIR?

2           A        ARE YOU ASKING ME TO REMEMBER WHAT I SAID AT  
3           THE DEPOSITION THREE MONTHS BACK?  OR I DON'T KNOW  
4           HOWEVER LONG BACK?  YOU'D LIKE TO KNOW WHAT WEB  
5           PAGES I TESTED ON, I'D BE HAPPY TO GIVE YOU A LIST.

6           Q        LET'S KEEP GOING.

7                        THE -- THERE ARE OTHER -- THERE ARE  
8           CERTAIN TYPES OF CONTENT WEB PAGES THAT ARE NOT OF  
9           USE FOR THE '163 PATENT; IS THAT TRUE, SIR?

10          A        CAN YOU BE MORE PRECISE WITH THAT QUESTION?

11          Q        THERE ARE CERTAIN TYPES OF, LIKE, MOBILE  
12          WEBSITES?  ISN'T IT TRUE, SIR, THAT MOBILE WEBSITES  
13          ARE NOT USEFUL IN THE CONTEXT OF THE '163 PATENT?

14          A        MOBILE WEBSITES ARE SITES THAT ARE  
15          SPECIFICALLY DESIGNED AS AN ALTERNATIVE, AS AN  
16          ALTERNATIVE SOLUTION TO BROWSING ON A SMALL SCREEN  
17          DEVICE.

18                       THE '163 PATENT SORT OF OBVIATES THE NEED  
19          FOR PEOPLE TO GO AND REWRITE THEIR ENTIRE WEB PAGE.

20                       SO IT'S -- IT DOESN'T MATTER -- IT'S NOT  
21          DESIGNED FOR IT, I WILL AGREE.

22                       BUT IT DOESN'T MATTER FOR THE CASE -- FOR  
23          THE SAKE OF INFRINGEMENT.

24          Q        WELL, WOULDN'T YOU AGREE THAT IT GOES AGAINST  
25          THE TEACHING, MOBILE WEBSITES GO AGAINST THE

1 TEACHING OF THE '163 PATENT?

2 A OF COURSE.

3 Q NOW, GENERALLY, YOU DON'T HAVE ANY IDEA -- YOU  
4 ANALYZED THE BROWSER -- YOU LOOKED AT THE  
5 NEW YORK TIMES WEB PAGE.

6 DO YOU REMEMBER THAT?

7 A AND OTHER WEB PAGES.

8 Q AND YOU SPECIFICALLY AT YOUR DEPOSITION -- I  
9 CAN PLAY IT FOR YOU, SIR -- YOU COULDN'T, AT YOUR  
10 DEPOSITION, IDENTIFY OTHER SPECIFIC ONES YOU  
11 REMEMBERED LOOKING AT.

12 DO YOU REMEMBER THAT?

13 A YOU'RE WELCOME TO PLAY MY DEPOSITION  
14 TESTIMONY, BUT I SAID I DID NOT CONCLUSIVELY GIVE  
15 ANY NAMES, BUT I DID VERY CLEARLY SAY THAT I HAD  
16 LOOKED AT OTHER WEB PAGES.

17 Q OKAY.

18 A I'M -- AT THIS POINT, I'M HAPPY TO GIVE YOU A  
19 LIST IF YOU WANT.

20 Q NOW, I JUST WANT TO COVER YOUR MEMORY AT YOUR  
21 DEPOSITION.

22 YOU DON'T KNOW, SIR, DO YOU, SITTING  
23 HERE, WHAT PERCENTAGE OF PEOPLE WHO OWN A SAMSUNG  
24 PRODUCT HAVE ACTUALLY USED THE BROWSER APPLICATION?  
25 THAT'S NOT PART OF YOUR TESTIMONY? IS THAT TRUE?

1 A THAT IS TRUE, I DON'T KNOW.

2 Q AND YOU -- YOU'RE NOT PROVIDING ANY SURVEY  
3 ESTIMATE OF USAGE TO BACK UP YOUR TESTIMONY ON  
4 INFRINGEMENT HERE. IS THAT TRUE?

5 A NO, IT'S NOT RELEVANT TO INFRINGEMENT AT ALL.

6 Q AND, IN FACT, ISN'T IT TRUE, SIR, THAT YOU'VE  
7 NEVER SEEN ANYONE USE A SAMSUNG SMARTPHONE OR  
8 TABLET COMPUTER IN A WAY THAT WOULD DEMONSTRATE THE  
9 RESULTS OF STEPS -- OF THE STEPS IN CLAIM 50 OF THE  
10 '163 PATENT, OUTSIDE OF THE TESTING THAT YOU'VE  
11 DONE?

12 A IT'S NOT RELEVANT TO THIS CLAIM OF THE PATENT.  
13 THIS IS A CLAIM THAT SPECIFICALLY TALKS ABOUT  
14 HAVING INSTRUCTIONS ON A DEVICE.

15 IF THE INSTRUCTIONS FOR THIS CLAIM  
16 LANGUAGE EXIST ON THE DEVICE, IT DOESN'T MATTER  
17 WHETHER ANYONE EVER USES THAT DEVICE OR EVEN DOES  
18 ANYTHING ABOUT IT.

19 THE FACT IS IT'S THE DEVICE THAT  
20 INFRINGES BECAUSE IT POSSESSES THESE INSTRUCTIONS.

21 Q YOU DIDN'T -- MY QUESTION WAS, YOU DIDN'T  
22 SPEAK TO ANYBODY WHO ACTUALLY USES THIS  
23 FUNCTIONALITY, SIR?

24 A NO.

25 Q AND THAT WOULD INCLUDE THE INVENTORS; IS THAT

1 TRUE, SIR? YOU DIDN'T SPEAK TO THE INVENTORS ABOUT  
2 THIS FUNCTIONALITY?

3 A I DIDN'T SPEAK TO THE INVENTORS OF --

4 Q THANK YOU.

5 THE COURT: ALL RIGHT.

6 MR. DEFRANCO: THANK YOU.

7 THE COURT: ALL RIGHT. THE TIME IS 3:22.

8 MR. JACOBS: JUST A COUPLE OF QUESTIONS  
9 FOR DR. SINGH.

10 COULD WE HAVE THE CLAIM LANGUAGE UP,  
11 MR. LEE.

12 **REDIRECT EXAMINATION**

13 BY MR. JACOBS:

14 Q THERE WAS A MOMENT OF POSSIBLE CONFUSION. YOU  
15 WERE ASKED WHETHER A STRUCTURED ELECTRONIC DOCUMENT  
16 HAS TO BE PRESENT IN THE ACCUSED DEVICE IN ORDER  
17 FOR THERE TO BE INFRINGEMENT, AND I BELIEVE YOU  
18 ANSWERED NO, AND I WONDERED IF YOU COULD EXPLAIN  
19 YOUR ANSWER.

20 A THAT'S RIGHT. WHAT THE CLAIM LANGUAGE  
21 REQUIRES IS THAT YOUR PROGRAM HAS INSTRUCTIONS THAT  
22 ARE CAPABLE OF DEALING WITH A STRUCTURED ELECTRONIC  
23 DOCUMENT, DISPLAYING IT AND THEN PERFORMING ALL  
24 THESE ACTIONS.

25 THE ACTUAL SORT OF -- THE SPECIFIC



1           STRUCTURED ELECTRONIC DOCUMENT OR MULTIPLE OR WHICH  
2           STRUCTURED ELECTRONIC DOCUMENT IS NOT OF  
3           CONSEQUENCE.

4                       WHAT IS OF CONSEQUENCE IS THAT THERE'S A  
5           PROGRAM TO DEAL WITH SUCH DOCUMENTS.

6           Q        AND WHEN WE'RE OBSERVING THE DEVICES IN  
7           ACTION, ARE WE OBSERVING THOSE ACTIONS OPERATING ON  
8           A STRUCTURED ELECTRONIC DOCUMENT?

9           A        YES.

10                   MR. DEFRANCO: YOUR HONOR, WE'RE LEADING  
11           THE WITNESS NOW THROUGH HIS TESTIMONY.

12                   THE COURT: YES. SUSTAINED.

13           BY MR. JACOBS:

14           Q        CAN YOU EXPLAIN WHETHER OR NOT, WHEN WE'RE  
15           OBSERVING THE DEVICE IN ACTION, WE ARE OBSERVING  
16           THE INSTRUCTIONS OPERATING ON A STRUCTURED  
17           ELECTRONIC DOCUMENT?

18           A        YES, EXACTLY. WHEN WE OBSERVE THE DEVICE IN  
19           ACTION, THESE INSTRUCTIONS ARE, IN FACT, OPERATING  
20           ON A STRUCTURED ELECTRONIC DOCUMENT. IN  
21           PARTICULAR, WE SAW THEM OPERATING ON THE  
22           NEW YORK TIMES WEB PAGE.

23           Q        YOU WERE ASKED ABOUT SOME SOURCE CODE EXTRACTS  
24           AND THE WORD GESTURE IN YOUR SLIDE VERSUS THE  
25           PRESENCE OF GESTURE IN THE ACTUAL CODE.

1 CAN YOU EXPLAIN WHAT WAS GOING ON THERE?

2 A WELL, AS I SAID, I PROVIDED SORT OF A  
3 SCHEMATIC, OR AN ILLUSTRATION OF WHAT WAS IN THE  
4 SAMSUNG SOURCE CODE.

5 SAMSUNG, I BELIEVE, WAS ASKED TO PROVIDE  
6 ALL -- ITS ENTIRE UNIVERSE OF ALL POSSIBLE SOURCE  
7 CODE. IN THIS LITIGATION WHAT WAS PROVIDED WAS  
8 JUST A SUBSET. I THINK AT MOST ONE FOR -- ONE  
9 PIECE OF SOURCE CODE FOR EVERY DEVICE.

10 AND I FOUND THAT THESE INSTRUCTIONS WERE  
11 LARGELY IDENTICAL ON ALL THESE PIECES OF SOURCE  
12 CODE, NOT JUST THE FOUR THAT I'VE BEEN -- THAT I'VE  
13 PRESENTED AS REPRESENTATIVE.

14 AND SO SIMILARLY ON THE SLIDE THAT YOU  
15 SAW, WHAT YOU SAW WAS JUST A REPRESENTATIVE OF  
16 THAT, THAT -- OF THAT FUNCTION.

17 PERHAPS IN THE OTHER PIECE OF CODE THAT I  
18 WAS SHOWN, YOU KNOW, THE VARIABLE NAME MIGHT HAVE  
19 BEEN CHANGED OR THERE COULD BE A MINOR  
20 TYPOGRAPHICAL CHANGE.

21 BUT INSTRUCTIONALLY, LOGICALLY, THE CODE  
22 WAS IDENTICAL.

23 MR. JACOBS: THANK YOU VERY MUCH,  
24 DR. SINGH.

25 THE COURT: ALL RIGHT. THE TIME IS 3:25.

1 MAY THIS WITNESS BE EXCUSED AND IS IT SUBJECT TO  
2 RECALL?

3 MR. DEFRANCO: YOUR HONOR, WE JUST HAVE  
4 ONE EXHIBIT.

5 THE COURT: OKAY. GO AHEAD, PLEASE.  
6 IT'S 3:25. GO AHEAD, PLEASE.

7 MR. DEFRANCO: 2257, 2557. EXCUSE ME,  
8 YOUR HONOR.

9 MR. JACOBS: THAT'S FINE, YOUR HONOR.

10 THE COURT: I'M SORRY?

11 MR. JACOBS: THAT'S FINE. I THINK YOU  
12 WERE -- I DIDN'T OBJECT.

13 THE COURT: I DIDN'T KNOW -- WHAT JUST  
14 HAPPENED?

15 MR. DEFRANCO: I'M SORRY. THAT'S MY  
16 FAULT. WE'RE OFFERING EXHIBIT 25 -- DX 2557 INTO  
17 EVIDENCE, AND THERE'S NO OBJECTION.

18 THE COURT: OH, OKAY. THAT'S ADMITTED.  
19 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER  
20 2557, HAVING BEEN PREVIOUSLY MARKED FOR  
21 IDENTIFICATION, WAS ADMITTED INTO  
22 EVIDENCE.)

23 THE COURT: OKAY. ALL RIGHT. IT'S 3:26.  
24 ALL RIGHT. NOW, DO YOU HAVE MORE?

25 MR. JACOBS: NO.

1 THE COURT: OKAY. MAY THIS WITNESS BE  
2 EXCUSED?

3 MR. JACOBS: SUBJECT TO RECALL.

4 THE COURT: OKAY. YOU'RE EXCUSED SUBJECT  
5 TO RECALL. YOU CAN STEP DOWN.

6 CALL YOUR NEXT WITNESS, PLEASE.

7 MR. JACOBS: WE WOULD LIKE TO CALL  
8 DR. HAUSER, YOUR HONOR.

9 THE COURT: OKAY.

10 (PAUSE IN PROCEEDINGS.)

11 THE COURT: MAY I HAVE THE HAUSER DIRECT  
12 EXHIBITS?

13 MR. JACOBS: YES, YOUR HONOR.

14 THE CLERK: RAISE YOUR RIGHT HAND,  
15 PLEASE.

16 **JOHN HAUSER,**  
17 BEING CALLED AS A WITNESS ON BEHALF OF THE  
18 PLAINTIFF, HAVING BEEN FIRST DULY SWORN, WAS  
19 EXAMINED AND TESTIFIED AS FOLLOWS:

20 THE WITNESS: I DO.

21 THE CLERK: WOULD YOU HAVE A SEAT,  
22 PLEASE.

23 THE COURT: IT'S 3:28. GO AHEAD.

24 THE CLERK: STATE YOUR NAME, PLEASE, AND  
25 SPELL IT.

**DIRECT EXAMINATION**

BY MR. JACOBS:

Q STATE YOUR NAME AND SPELL IT, PLEASE, SIR.

A MY NAME IS JOHN HAUSER, H-A-U-S-E-R.

Q DR. HAUSER, ARE YOU A FACULTY MEMBER AT M.I.T. SLOAN SCHOOL OF MANAGEMENT?

A YES, I AM. I'M THE KIRIN PROFESSOR, K-I-R-I-N, PROFESSOR OF MARKETING AT THE M.I.T. SLOAN SCHOOL OF MANAGEMENT.

Q AND WHAT IS YOUR FIELD OF EXPERTISE?

A MY FIELD OF EXPERTISE IS MARKETING RESEARCH AND ANALYSIS.

Q WHAT IS YOUR FORMAL TRAINING IN?

A I HAVE A DOCTORATE OF SCIENCE FROM M.I.T. IN OPERATIONS RESEARCH. OPERATIONS RESEARCH IS BASICALLY MATHEMATICS APPLIED TO BUSINESS PROBLEMS.

Q WE'RE GOING TO BE TALKING IN A MINUTE ABOUT A SURVEY CALLED A CONJOINT SURVEY. HAVE YOU PUBLISHED IN THAT FIELD?

A YES, I HAVE. I'VE PUBLISHED OVER 70 PROFESSIONAL ARTICLES IN MARKETING AND MARKETING RESEARCH.

MR. JACOBS: YOUR HONOR, WE OFFER DR. HAUSER AS AN EXPERT IN THE FIELD OF MARKETING SURVEYS AND ANALYSIS.

1 MR. PRICE: NO OBJECTION.

2 THE COURT: ALL RIGHT. HE'S CERTIFIED.

3 BY MR. JACOBS:

4 Q NOW, WE ASKED YOU IN THIS CASE TO CONDUCT A  
5 SURVEY; CORRECT, SIR?

6 A YES, THAT'S CORRECT.

7 Q WHAT DID WE ASK YOU TO DO?

8 A I WAS ASKED TO CONDUCT TWO SURVEYS TO  
9 DETERMINE HOW MUCH MONEY, IF ANY, SAMSUNG CONSUMERS  
10 WOULD PAY FOR THE FEATURES ASSOCIATED WITH THE  
11 PATENTS THAT ARE AT ISSUE IN THIS LITIGATION.

12 Q I'D LIKE YOU TO TURN TO PX 30 IN YOUR BINDER,  
13 PLEASE.

14 A YES, I HAVE IT.

15 Q WHAT IS PX 30?

16 A PX 30 IS AN EXHIBIT THAT I PREPARED TO  
17 SUMMARIZE MY FINDINGS.

18 MR. JACOBS: YOUR HONOR, WE'D OFFER PX 30  
19 INTO EVIDENCE.

20 MR. PRICE: NO FURTHER OBJECTIONS.

21 THE COURT: ALL RIGHT. THAT'S ADMITTED.

22 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER  
23 30, HAVING BEEN PREVIOUSLY MARKED FOR  
24 IDENTIFICATION, WAS ADMITTED INTO  
25 EVIDENCE.)

1 BY MR. JACOBS:

2 Q WHAT CONCLUSIONS DID YOU DRAW FROM THE SURVEY  
3 THAT YOU CONDUCTED?

4 A I CONCLUDED THAT SAMSUNG CONSUMERS ARE WILLING  
5 TO PAY A SUBSTANTIAL PRICE PREMIUM FOR THE FEATURES  
6 THAT ARE ASSOCIATED WITH THE PATENTS THAT ARE AT  
7 ISSUE IN THIS CASE.

8 Q AND WHAT DO THE RESULTS OF YOUR SURVEY REFLECT  
9 REGARDING CONSUMER DEMAND FOR THOSE PATENTED  
10 FEATURES?

11 A THE RESULTS REFLECT THAT THERE IS SUBSTANTIAL  
12 DEMAND FOR THE FEATURES ASSOCIATED WITH THE PATENTS  
13 AT ISSUE IN THIS CASE.

14 MR. JACOBS: THANK YOU, DR. HAUSER. I  
15 HAVE NO FURTHER QUESTIONS.

16 THE COURT: ALL RIGHT. THE TIME IS NOW  
17 3:30.

18 GO AHEAD, PLEASE.

19 MR. PRICE: YOUR HONOR, I MOVE TO STRIKE  
20 THE ENTIRE TESTIMONY. THERE'S NO FOUNDATION FOR  
21 THE JURY TO CONCLUDE HOW IT WAS DONE OR WHAT WAS  
22 DONE.

23 THIS IS, IN THE INTERESTS OF TIME, GAME  
24 PLAYING. I WILL HAVE TO EXPLAIN THE ENTIRE SURVEY,  
25 SO I MOVE TO STRIKE IT IN ITS ENTIRETY.

1 MR. JACOBS: YOUR HONOR, DR. HAUSER, IN  
2 PX 30, SHOWS HIS CONCLUSIONS AND GIVES A BRIEF  
3 EXPLANATION OF THE SURVEY THAT HE CONDUCTED AND  
4 COUNSEL HAS HAD AMPLE OPPORTUNITY TO STUDY THE WORK  
5 THAT HE DID IN THE FORM OF HIS EXPERT REPORT.

6 MR. PRICE: THE POINT, YOUR HONOR, IS IF  
7 I ASK HIM QUESTIONS, THE JURY HAS NO IDEA  
8 WHATSOEVER WHAT HE DID AND I WOULD HAVE TO EXPLAIN  
9 IT AND THAT'S NOT MY BURDEN.

10 THIS IS INAPPROPRIATE, SO I MOVE TO  
11 STRIKE THE ENTIRE TESTIMONY.

12 THE COURT: IT'S OVERRULED.

13 **CROSS-EXAMINATION**

14 BY MR. PRICE:

15 Q GOOD AFTERNOON, DR. HAUSER.

16 A GOOD AFTERNOON.

17 Q I TAKE IT YOU COULD HAVE TOLD US A LOT MORE AS  
18 TO WHAT YOU DID TO REACH YOUR CONCLUSIONS?

19 A I ANSWERED THE QUESTIONS THAT I WAS ASKED.

20 Q AND I APPRECIATE THAT AND I'M SURE COUNSEL  
21 DOES, TOO.

22 MY QUESTION IS DIFFERENT. YOU HAVE A LOT  
23 MORE TO SAY AS TO EXACTLY WHAT IT IS YOU DID TO  
24 REACH THIS CONCLUSION; RIGHT?

25 A YES, I PREPARED AN EXPERT REPORT AND THERE'S



1 MORE DESCRIPTION IN THAT EXPERT REPORT.

2 Q AND THAT EXPERT REPORT GOES ON FOR HOW MANY  
3 PAGES, INCLUDING EXHIBIT, WOULD YOU ESTIMATE?

4 A OH, I DON'T RECALL. 20, 30.

5 Q 20 OR 30 PAGES, INCLUDING EXHIBITS?

6 A OH, NO. THERE'S A LOT OF EXHIBITS. I'VE GOT  
7 A NUMBER -- A LIST IN THERE THAT'S QUITE LONG. I'M  
8 SURE YOU CAN PROVIDE THE NUMBER.

9 Q YOU'VE GOT PROBABLY AT LEAST A COUPLE HUNDRED  
10 PAGES IF YOU INCLUDE THE DATA AND THE DESCRIPTION  
11 OF EXACTLY WHAT IT IS YOU DID; CORRECT?

12 A WELL, YES. IT'S -- I MEAN, IF YOU INCLUDE THE  
13 DATA, SURE.

14 Q AND I TAKE IT -- DO YOU THINK THAT, GIVEN WHAT  
15 YOU'VE SAID IN YOUR DIRECT, WHICH IS THAT YOU DID A  
16 CONJOINT SURVEY, AND YOU CAME TO A COUPLE OF  
17 CONCLUSIONS, DO YOU THINK YOU'VE GIVEN THE JURY  
18 ENOUGH INFORMATION TO UNDERSTAND WHAT A CONJOINT  
19 SURVEY IS?

20 MR. JACOBS: YOUR HONOR, THIS CALLS FOR  
21 SPECULATION FROM THIS WITNESS. YOUR HONOR  
22 OVERRULED HIS OBJECTION.

23 THE COURT: OVERRULED.

24 BY MR. PRICE:

25 Q YOU CAN ANSWER, SIR.

1 A OH, I CAN ANSWER?

2 Q YEAH.

3 A WELL, I'VE ANSWERED THE QUESTIONS. I'M  
4 CONFIDENT IN THE NUMBERS. I HOPE THAT THEY'RE  
5 SUFFICIENT, THAT IT'S A SUFFICIENT EXPLANATION.

6 Q MY QUESTION -- ARE YOU A TEACHER, PROFESSOR?

7 A OH, YES. I TEACH A NUMBER OF COURSES AT  
8 M.I.T.

9 Q I'M JUST ASKING YOU, DO YOU THINK YOU'VE,  
10 YOU'VE MADE ANY ATTEMPT TO TEACH THIS JURY HOW YOU  
11 DID YOUR SURVEY SO THAT THEY COULD COME TO A  
12 CONCLUSION WHETHER OR NOT IT WAS FAIR OR NOT?

13 A WELL, INDEED, IT'S A SURVEY AND THERE'S SOME  
14 COMPLICATED ANALYSIS IN THERE. WE ASKED CONSUMERS  
15 QUESTIONS AND THESE QUESTIONS RELATED TO THEIR  
16 WILLINGNESS TO PAY AND THIS IS A SUMMARY OF THEIR  
17 ANSWERS.

18 Q NO. MY QUESTION WAS -- I KNOW I CAN ASK YOU  
19 QUESTIONS ABOUT THE DETAILS. I'M WONDERING IF YOU  
20 THINK, IN YOUR DIRECT EXAM, YOU GAVE THIS JURY  
21 ENOUGH INFORMATION TO BE ABLE TO EVALUATE WHETHER  
22 OR NOT WHAT YOU DID WAS REASONABLE? OR DID YOU  
23 JUST TELL THEM, "I'M A PROFESSOR, HERE'S MY  
24 CONCLUSIONS, THANK YOU VERY MUCH."

25 A I'M NOT SURE HOW TO ANSWER THAT.

1 Q WELL, IT'S EASY. DID YOU TEACH THEM HOW YOU  
2 DID THIS IN ANY -- DID YOU EVEN ATTEMPT TO TEACH  
3 THIS JURY HOW YOU CAME TO YOUR CONCLUSIONS?

4 A WELL, I DON'T THINK I -- YOU KNOW, I LOOK AT  
5 THE JURY AND I'M SURE THEY'RE QUITE, QUITE  
6 INTELLIGENT AND, YOU KNOW, IF THEY CAME TO CLASS, I  
7 COULD TEACH THIS METHOD. IT'S THE TYPE OF THING I  
8 WOULD TEACH TO M.B.A.'S.

9 Q SO IT'S A -- YOU SAID IT'S AN INTELLIGENT  
10 JURY, SO THEY WOULD ACTUALLY BE ABLE, YOU THINK, TO  
11 UNDERSTAND, AT LEAST IN BROAD TERMS, WHAT YOU DID  
12 SO THEY CAN EVALUATE WHETHER OR NOT THESE NUMBERS  
13 MEAN ANYTHING; RIGHT?

14 A WELL, I DID EXPLAIN. I ANSWERED ALL THE  
15 QUESTIONS I WAS ASKED AND, YOU KNOW, TO THE BEST OF  
16 MY ABILITY. I THINK IT'S A GOOD SURVEY. I THINK  
17 THE NUMBERS MAKE SENSE.

18 Q WELL, LET ME ASK YOU A FEW, BECAUSE I GUESS  
19 I'D LIKE TO -- I'D LIKE THE JURY TO KNOW A LITTLE  
20 BIT ABOUT WHAT YOU DID.

21 AND SO THIS SURVEY THAT YOU WERE TALKING  
22 ABOUT IS PEOPLE WOULD TAKE A SURVEY ON THE  
23 INTERNET, RIGHT? ON THE INTERNET?

24 A YES, THIS IS AN INTERNET-BASED SURVEY.

25 Q AND THEY -- YOU TELL THEM AT THE BEGINNING --

1 AND WE CAN LOOK AT SDX 3902.042 -- YOU TELL THEM AT  
2 THE BEGINNING IT SHOULD TAKE ABOUT 25 MINUTES;  
3 RIGHT?

4 A WELL, I ACTUALLY CAN'T READ THAT. MY EYES ARE  
5 GETTING OLD.

6 BUT, YES, I THINK IT SAYS ABOUT 25  
7 MINUTES.

8 IS THIS IN MY BINDER?

9 Q IT SHOULD BE IN YOUR BINDER.

10 AND YOU DON'T PAY THEM IF IT TAKES ANY  
11 MORE, IF THEY TAKE LONGER TIME; RIGHT?

12 A NO, NO. WE -- WE DO -- THEY DO RECEIVE  
13 BASICALLY AN HONORARIUM FOR COMPLETING THE SURVEY,  
14 WHICH IS STANDARD IN THE FIELD, AND IT'S NOT AT ALL  
15 TIED TO THEIR ANSWERS IN ANY WAY.

16 Q MY QUESTION WAS, IF THEY -- IF THEY TAKE  
17 LONGER, THEY DON'T GET PAID MORE?

18 A NO, NO, THEY DON'T GET PAID MORE IF THEY TAKE  
19 LONGER.

20 Q SO YOU START THE 20, 25 MINUTES, AND YOU SHOW  
21 THEM 12 VIDEOS; RIGHT?

22 A YES, WE SHOWED THEM VIDEOS THAT THE -- WELL,  
23 ACTUALLY, THEY'RE ANIMATIONS. BUT WE DESCRIBE --  
24 WE SHOWED THEM ANIMATIONS THAT DESCRIBE THE  
25 FEATURES ASSOCIATED WITH THE PATENTS THAT ARE AT

1 ISSUE IN THIS CASE.

2 Q AND YOU'RE NOT AN EXPERT IN THE FEATURES  
3 ASSOCIATED WITH THE PATENTS IN THIS CASE, ARE YOU?

4 A NO, I'M NOT. I'M RELYING ON OTHER EXPERTS.

5 Q SO YOU CAN'T TELL THIS JURY WHETHER OR NOT THE  
6 VIDEOS YOU SHOWED THEM, THIS IS FROM YOUR OWN  
7 PROFESSIONAL OPINION, ACTUALLY REFLECT THE PATENTS  
8 IN THIS CASE? YOU DON'T HAVE THAT EXPERTISE;  
9 CORRECT?

10 A THAT'S RIGHT. I'M RELYING ON OTHER EXPERTS IN  
11 THIS CASE THAT I BELIEVE JUST TESTIFIED.

12 Q OKAY. AND SO YOU'VE GIVEN THE JURY -- DID  
13 THOSE EXPERTS SEE THE VIDEOS?

14 A I THINK THEY HAVE, BUT I CAN'T ANSWER FOR  
15 SURE.

16 Q WELL, DID THOSE EXPERTS LOOK AT YOUR VIDEOS  
17 THAT YOU SHOWED THESE FOLKS AND SAY, "YES, WHAT YOU  
18 ARE SHOWING THESE FOLKS IS THE SAME THING AS WHAT  
19 IS REQUIRED FOR OUR PATENT"? DID THAT HAPPEN OR  
20 NOT?

21 A I BELIEVE THEY DID, BUT --

22 Q OKAY. THEN COULD YOU SHOW ME IN YOUR REPORT  
23 WHERE IT SAYS THAT THE VIDEO YOU SHOWED THEM WAS  
24 SOMETHING WHICH THEIR EXPERTS, APPLE'S, LOOKED AT  
25 AND SAID "THIS ACCURATELY DESCRIBES WHAT OUR

1 PATENTS DO"?

2 A THAT'S NOT IN MY REPORT. I RELIED ON THEM TO,  
3 TO LOOK AT THE DESCRIPTIONS AND THAT IS IN MY  
4 REPORT.

5 Q I'M ASKING YOU ABOUT THE VIDEOS YOU SHOWED THE  
6 FOLKS. WHERE IN YOUR REPORT DO YOU SAY ANYTHING  
7 THAT YOU VALIDATED WITH ANY EXPERT, CHECKED WITH  
8 ANY EXPERT TO SAY THESE VIDEOS ACTUALLY ACCURATELY  
9 SHOW WHAT THE PATENT REQUIRES?

10 A I DON'T RECALL THE EXACT WORDS IN MY REPORT,  
11 BUT IT DOES SAY THAT I DID RELY ON OTHER EXPERTS,  
12 ACTUALLY DOCTORS SINGH AND BALAKRISHNAN, THAT THE  
13 DESCRIPTIONS WERE ACCURATE.

14 Q NO --

15 A MY JOB IS A MARKETING RESEARCHER.

16 Q I'M ON A CLOCK HERE. MY QUESTION WAS  
17 DIFFERENT. I'M TALKING ABOUT THE VIDEOS, AND I'M  
18 ASKING YOU, WERE THOSE VIDEOS -- DID YOU GO TO AN  
19 EXPERT AND SAY, "DO THESE VIDEOS ACCURATELY  
20 REPRESENT WHAT THE PATENTS DO?" YES OR NO?

21 A TO THE BEST OF MY RECOLLECTION, THEY DID LOOK  
22 AT THOSE VIDEOS.

23 Q THAT'S NOT MY QUESTION.

24 A OH, DID I PERSONALLY SHOW THE VIDEOS?

25 Q DID YOU TALK TO THEM AND HAVE THEM SAY --

1 A NO.

2 Q OKAY. AND WHERE IN YOUR REPORT DOES IT SAY  
3 THAT ANY EXPERT LOOKED AT THOSE VIDEOS TO SEE THAT  
4 THEY WERE ACCURATE?

5 A I BELIEVE I'VE ANSWERED THAT TO THE BEST OF MY  
6 ABILITY.

7 Q WHICH MEANS YOU CAN'T POINT ME TO A PLACE,  
8 BECAUSE YOU SAID IT'S A SHORT REPORT. YOU TOLD US  
9 THAT.

10 A I DIDN'T SAY IT WAS A SHORT REPORT.

11 Q I THINK YOU SAID 20 PAGES. SO IF YOU COULD  
12 TELL ME THEN, WHERE -- WHERE -- IT DIDN'T HAPPEN,  
13 DID IT? YOU DIDN'T CHECK THE VIDEOS WITH ANY  
14 EXPERTS TO SEE IF THE VIDEOS ACCURATELY PORTRAYED  
15 THE PATENTS?

16 A IF YOU'RE ASKING DID I PERSONALLY SHOW THOSE  
17 VIDEOS, NO, I DID NOT.

18 Q NOW, AFTER SHOWING THEM ABOUT -- AND BY THE  
19 WAY, FOUR VIDEOS HAD TO DO WITH TOUCHSCREENS;  
20 RIGHT?

21 A AGAIN, THEY'RE ANIMATIONS, BUT YES, FOUR  
22 ANIMATIONS.

23 Q AND THEN THERE WERE FOUR FOR TWO OTHER AREAS  
24 THAT YOU LOOKED AT AT THE SAME TIME; RIGHT?

25 A YES, THERE WERE FOUR FOR TWO OTHER AREAS, YES,

1 THAT'S CORRECT.

2 Q AND LET'S LOOK AT -- THIS IS, I THINK, 5680.  
3 I THINK PDX 5680.

4 NO, THAT'S NOT IT. IN THAT CASE, LET'S  
5 TRY -- OH, LET'S TRY PDX 33.6.

6 SO IN THIS 20 TO 25 MINUTES AFTER LOOKING  
7 AT FOUR ANIMATIONS, THERE THEN -- THERE'S A SCREEN  
8 AT SOME POINT HERE WHICH HAS ONE, TWO, THREE, FOUR,  
9 FIVE, SIX, SEVEN KIND OF FEATURES; RIGHT?

10 A WELL, YES. THERE'S SIX FEATURES PLUS PRICE,  
11 THAT'S CORRECT.

12 Q SO YOU'RE -- YOU'VE GOT PRICE AT THE TOP ROW;  
13 RIGHT? NUMBER OF APPS; SIZE AND WEIGHT;  
14 CONNECTIVITY; TOUCHSCREEN; AND EACH OF THOSE BOXES  
15 HAS DIFFERENT FEATURES ON THOSE TOUCHSCREENS,  
16 RIGHT, LIKE RELIABLE TOUCH, AUTO SWITCH, THIS ONE  
17 HAS SOMETHING DIFFERENT. RIGHT?

18 A WELL, YES. I MEAN, THESE ARE DESCRIPTIONS OF  
19 THE PRODUCT FEATURES.

20 NOW, OF COURSE THEY'VE ALREADY SEEN  
21 VIDEOS AND THEY'VE SEEN PICTURES AND THEY'VE HAD A  
22 DESCRIPTION OF THESE FEATURES BY THE TIME THEY GOT  
23 HERE. BUT THAT'S CORRECT, YES.

24 Q AND 28 DIFFERENT THEN KIND OF CHOICES HERE,  
25 BOXES WITH DIFFERENT TYPES OF, OF INFORMATION, LIKE



1 DO YOU WANT ONE WITH 3 MEGAPIXEL CAMERA OR AN 8, OR  
2 WITH HD VIDEO OR ONE WITH AUTO FOCUS. YOU'VE GOT  
3 ALL THIS INFORMATION PACKED INTO THAT SCREEN;  
4 RIGHT?

5 A NO, THAT'S NOT CORRECT.

6 Q WELL, IT LOOKS LIKE -- AM I WRONG, IT'S NOT ON  
7 THE SCREEN?

8 A THAT'S A CORRECT SCREEN. BUT THAT'S NOT 28  
9 CHOICES. THAT'S FOUR CHOICES.

10 Q OKAY. IT'S -- I SEE. SO YOU CHOOSE ONE  
11 COLUMN HERE; RIGHT?

12 A YES. EACH CONSUMER SEES 16 CHOICE SETS LIKE  
13 THAT, ABOUT 7,000 TOTAL ACROSS CONSUMERS. ALL  
14 THEY'RE ASKED TO DO, AFTER WE MAKE SURE THEY  
15 UNDERSTAND THESE, IS TO CHOOSE ONE, AND THEN WE  
16 INFER, BASICALLY, THE PRICE PREMIUM THEY'RE WILLING  
17 TO PAY.

18 Q AND IN CONNECTION WITH THAT -- SO THEY LOOK AT  
19 SCREENS WHERE THESE CHOICES ARE JUMBLED UP  
20 DIFFERENT WAYS AND THEN MAKE THEIR CHOICES?

21 A AS IS STANDARD VALID PRACTICE, YES, WE DO  
22 RANDOMIZE THE FEATURES SO THAT THERE'S NO BIAS DUE  
23 TO ORDER.

24 Q SO I'M JUST WONDERING, LIKE IF SOMEONE IS  
25 LOOKING AT THIS ON A COMPUTER SCREEN AND THEY'RE

1 ASKED HOW MUCH WOULD YOU PAY FOR THIS COMBINATION  
2 VERSUS THIS COMBINATION, DO THEY -- DO YOU KNOW  
3 WHETHER OR NOT -- THEY'RE NOT REALLY SPENDING  
4 MONEY, ARE THEY? THIS IS JUST VIRTUAL?

5 A WELL, DO YOU WANT ME TO ANSWER -- ARE THEY  
6 SPENDING MONEY HERE? NO, THEY'RE NOT SPENDING  
7 MONEY.

8 Q AND YOU DON'T KNOW IF THEY HAVE ENOUGH TIME TO  
9 THINK, DO I WANT TO PAY AN EXTRA 30 BUCKS FOR THAT  
10 OR SHOULD I PAY MY GAS BILL? YOU BELIEVE THEY HAVE  
11 ENOUGH TIME TO MAKE ALL THOSE COMPARISONS WHEN  
12 THEY'RE DOING THIS?

13 A YES, THEY DO.

14 Q HM. AND DO THEY HAVE ENOUGH TIME TO SAY, YOU  
15 KNOW, IF I'M GOING TO SPEND 50 BUCKS FOR THIS,  
16 MAYBE I SHOULD ASK MY SPOUSE AND SEE IF SHE'D  
17 RATHER INSTEAD BUY, YOU KNOW, SOMETHING FOR HER?  
18 DOES THAT HAPPEN DURING THIS ON SCREEN ACTIVITY?

19 A I'M NOT SURE WHAT YOU'RE ASKING, BUT NO, THEY  
20 DO NOT HAVE TIME TO GO CALL THEIR SPOUSE.

21 BUT THEY CERTAINLY HAVE SUFFICIENT TIME  
22 TO MAKE CHOICES AND, YOU KNOW, WE'VE BEEN ABLE TO  
23 VALIDATE THAT THEIR CHOICES ARE ACCURATE.

24 Q BY THE WAY, THERE'S DIFFERENT TYPES OF  
25 VALIDATIONS, INTERNAL VALIDATIONS, EXTERNAL

1 VALIDATIONS, RIGHT?

2 A YES, SURE. I MEAN, I LOVE THIS. THIS IS  
3 GREAT. INTERNAL VALIDATION, WE DID THAT HERE.

4 Q NO, NO. I WAS ASKING --

5 A OH.

6 Q I'M ON THE CLOCK. I KNOW YOU LOVE TALKING  
7 ABOUT THIS, AND I BET YOU WOULD HAVE LIKED TO HAVE  
8 TALKED ABOUT IT WITH THE JURY WHILE YOUR ATTORNEY  
9 WAS UP.

10 A I HAD TO ANSWER THE QUESTIONS.

11 Q WELL, YOU CAN TELL ME THAT YOU PUT IN ALL OF  
12 THESE DIFFERENT TYPES OF PARAMETERS, DO YOU WANT A  
13 SCREEN WITH 4.3 INCHES, 3.5, RIGHT? THEY'RE MAKING  
14 ALL THESE CHOICES.

15 AND LET ME JUST FIGURE OUT WHAT GOES ON  
16 NOW. SO THEN YOU PUT THAT INFORMATION INTO A  
17 SOFTWARE PROGRAM. WHAT'S THE NAME OF THE SOFTWARE?

18 A THIS IS KNOWN AS HIERARCHICAL-BASED,  
19 CHOICE-BASED CONJOINT ANALYSIS.

20 AND, YES, WE PUT IN THE ANSWERS. I THINK  
21 THERE WERE 455 CONSUMERS TIMES 16 TIMES FOUR  
22 CHOICES. YOU CAN MULTIPLY THAT OUT. BUT IT'S  
23 QUITE A LOT OF DATA.

24 Q I CAN'T. BUT WHAT'S THE NAME OF THE SOFTWARE  
25 PROGRAM ?

1 A IT'S -- YOU MEAN WHO DOES -- WHO DO WE -- WHO  
2 PROVIDES IT?

3 Q YES.

4 A OH. THIS IS SAWTOOTH SOFTWARE, INCORPORATED.

5 Q AND YOU SHOWED US SOME NUMBERS THAT YOU HAD  
6 COME UP WITH BY DOING THIS, AND I'D LIKE YOU TO  
7 LOOK, IF YOU COULD, AT -- LET'S GO TO 3920.015.

8 AND AT THE TOP HERE ARE, ARE SOME  
9 CALCULATIONS YOU DID ABOUT WHAT SOMEONE WOULD BE  
10 WILLING TO PAY IN ADDITION TO GET WHATEVER THE  
11 VIDEOS SHOWED ABOUT THESE PATENTS; RIGHT?

12 A YES. FOR EXAMPLE, THE \$39 SAYS THAT IF A  
13 CONSUMER IS PAYING \$199, PLUS THE 24 MONTHS FEES,  
14 THEY WOULD BE WILLING TO PAY AN EXTRA \$39 FOR THE  
15 '915 PATENT AND AN EXTRA \$100 FOR THE COMBINATIONS  
16 OF THE '915, '163, AND '381 PATENT.

17 AND THEN WE HAVE SIMILAR NUMBERS FOR  
18 TABLETS.

19 MR. PRICE: JUST A SECOND.

20 (PAUSE IN PROCEEDINGS.)

21 BY MR. PRICE:

22 Q SO LET ME UNDERSTAND THEN. AFTER YOU GET  
23 THESE SETS OF DATA, YOU THEN PUT THAT DATA INTO THE  
24 SOFTWARE AND IT SIMULATES ABOUT TEN THOUSAND  
25 CHOICES PER PERSON? IS THAT RIGHT?

1 A THAT'S NOT QUITE RIGHT.

2 Q CLOSE? HOW MANY -- IT'S A SIMULATION THAT'S  
3 RUN OF THOUSANDS AND THOUSANDS AND THOUSANDS OF  
4 CHOICES?

5 A NO, THAT'S NOT QUITE RIGHT.

6 Q WHAT DOES THE SIMULATION DO? AND CAN YOU SAY  
7 THIS IN LESS THAN 15 SECONDS?

8 A NOT IN LESS THAN 15 SECONDS.

9 Q OKAY. SO THERE'S SOME PROGRAM THAT CRUNCHES A  
10 LOT OF NUMBERS?

11 A WELL, THERE'S A PROGRAM THAT ESTIMATES THE  
12 PARAMETERS. THERE'S A PROGRAM THAT USES THE  
13 PARAMETERS. THERE'S A PROGRAM THAT CHECKS THE  
14 DATA. THERE'S A LOTS OF PROGRAMS INVOLVED. THIS  
15 IS A CAREFULLY DONE STUDY.

16 Q AND BY THE WAY, YOU SAID EACH PERSON TAKING  
17 THIS HAS TO MAKE 16 CHOICES; RIGHT?

18 A YES, CORRECT. EACH PERSON, THEY SEE FOUR AND  
19 THEY CHOOSE ONE SMARTPHONE -- THEY'RE SAMSUNG  
20 CONSUMERS -- THEY CHOOSE ONE SMARTPHONE OUT OF FOUR  
21 AND THEY DO THIS 16 TIMES.

22 Q AND THE -- THERE'S SOMETHING CALLED AN  
23 EXTERNAL TEST WHERE YOU CAN LOOK INTO THE MARKET  
24 AND SEE WHETHER OR NOT THIS MAKES ANY SENSE; RIGHT?

25 A I'M REALLY JUST DOING THE DEMAND SIDE. I'M

1 DOING WHAT CONSUMERS WOULD BE WILLING TO PAY. I AM  
2 NOT DOING A MARKET EQUILIBRIUM ANALYSIS HERE.

3 Q WHEN YOU SAY "WHAT CONSUMERS ARE WILLING TO  
4 PAY," IF I SAY THEY'RE WILLING TO PAY -- I MEAN,  
5 THIS IS AN ADDITIONAL \$139 FOR A \$199 PHONE.

6 YOU'D LIKE TO LOOK TO SEE WHETHER OR NOT  
7 WHAT IS CRUNCHED HERE REALLY MAKES SENSE WHEN YOU  
8 LOOK INTO THE MARKETPLACE TO SEE WHETHER THAT'S  
9 REALLY TRUE; RIGHT?

10 A WELL, YEAH. I MEAN, IF YOU LOOK AT THE \$39  
11 OVER A 24 MONTH CONTRACT, THAT'S ABOUT A BUCK 60.

12 SO THE QUESTION IS, YEAH, DID I DO SOME  
13 INTERNAL VALIDATION, ABSOLUTELY.

14 Q I WAS ASKING EXTERNAL. EXTERNAL. WOULDN'T  
15 YOU WANT TO LOOK IN THE MARKET AND SEE WHETHER OR  
16 NOT THIS MAKES SENSE AS KIND OF A SANITY CHECK?

17 A I'M NOT SURE WHAT YOU MEAN, BECAUSE I REALLY  
18 WANT TO EXPLAIN WHAT I'M GETTING TO HERE.

19 Q IF THE ANSWER IS NO, YOU CAN TELL ME NO,  
20 BECAUSE I'M ON THE CLOCK.

21 A THE ANSWER IS NOT NO. YOU KNOW, YOU'VE ASKED  
22 ME -- I'M TRYING TO HELP YOU.

23 Q OH, I DON'T KNOW ABOUT THAT.

24 LET'S --

25 (LAUGHTER.)

1 BY MR. PRICE:

2 Q NOW, THESE ARE -- CAMERA, WEIGHT AND SIZE,  
3 STORAGE AND MEMORY, CONNECTIVITY, NUMBER OF APPS,  
4 THESE ARE ALL CHOICES THAT WERE PART OF THAT  
5 FOUR-BY-SEVEN GRAPHIC, THAT IS, THEY'RE MAKING ALL  
6 THESE CHOICES AT THE SAME TIME; RIGHT?

7 A YES.

8 Q YES IS GOOD. I LIKE YES.

9 OKAY. NOW, SO YOU GOT DATA FROM THIS  
10 THAT DIDN'T JUST GIVE YOU NUMBERS FOR THESE, WHAT  
11 YOU HAVE IDENTIFIED AS PATENT NUMBERS, BUT YOU ALSO  
12 GOT DATA AS TO WHAT THESE FOLKS WOULD PAY FOR AN  
13 EXTRA BIT OF MEMORY, FOR BETTER CAMERAS, DIFFERENT  
14 CAMERAS.

15 YOU GOT ALL OF THAT DATA SO THAT YOU  
16 COULD HAVE FILLED IN NUMBERS FOR THOSE AS WELL,  
17 CAMERA, WEIGHT AND SIZE, STORAGE, MEMORY, ET  
18 CETERA. RIGHT?

19 A OH, ABSOLUTELY. IT'S A COMPLICATED SET OF  
20 COMPUTATIONS, BUT THE DATA I COLLECTED COULD HAVE  
21 BEEN USED TO COMPUTE THE WILLINGNESS TO PAY IF IT'S  
22 DONE CORRECTLY.

23 Q OKAY. SO, FOR EXAMPLE, YOU ACTUALLY GOT  
24 RESULTS, OR -- AMONGST ALL THIS DATA, IF YOU WANTED  
25 TO, YOU COULD HAVE, YOU COULD HAVE LOOKED AT, FOR

1 EXAMPLE, WHAT THIS PROGRAM SAID A CONSUMER WOULD  
2 PAY FOR STORAGE, EXTRA MEMORY; RIGHT?

3 A CERTAINLY THE DATA WOULD ALLOW ONE TO DO THAT,  
4 THAT'S CORRECT.

5 (PAUSE IN PROCEEDINGS.)

6 BY MR. PRICE:

7 Q SO, FOR EXAMPLE, IF YOU HAD SHOWN US THE  
8 NUMBER FOR STORAGE AND MEMORY AND YOU WERE ASKING  
9 THE CONSUMERS HERE HOW MUCH THEY WOULD PAY FOR,  
10 LIKE, AN EXTRA 8 -- WHAT WAS IT, DO YOU RECALL WHAT  
11 YOU WERE ASKING THEM FOR? MAYBE WE CAN PUT BACK UP  
12 3.6.

13 WHEN YOU LOOK, YOU'VE GOT 64 GIGABYTES, 8  
14 GIGABYTES, 16, 32. DO YOU SEE THAT?

15 A DO I SEE THAT?

16 Q YEAH.

17 A YES, I DO.

18 Q SO YOU COULD HAVE SHOWN THE JURY THE NUMBER  
19 THAT YOU CAME UP WITH TO SEE WHAT THESE FOLKS, IN  
20 DOING THIS STUDY, THIS TEST, WERE -- WHAT YOUR  
21 NUMBERS TURNED OUT FOR WHAT THE CONSUMER WOULD BE  
22 WILLING TO PAY FOR THE ONE WITH 8 GIGABYTES, THE  
23 16, THE 16 TO 32; RIGHT?

24 A WELL, THESE WERE DISTRACTION FEATURES MEANT  
25 TO --



1 Q NO, MY QUESTION IS DIFFERENT. YOU CRUNCHED  
2 ALL THESE NUMBERS?

3 A OH. OKAY, YEAH.

4 Q YOU COULD HAVE -- YOU COULD HAVE -- LET'S GO  
5 BACK TO WHAT I WAS SHOWING YOU, WHICH IS 3920.015.

6 YOU COULD HAVE PUT DOWN HERE WHAT A  
7 CONSUMER ON THIS THING SAID THEY WERE WILLING TO  
8 PAY FOR AN EXTRA 8 GIGABYTES OF MEMORY; RIGHT?

9 A INDEED, ONE CAN DO THOSE COMPUTATIONS WITH THE  
10 DATA.

11 Q AND THAT WOULD BE NICE TO HAVE BECAUSE YOU CAN  
12 GO ON APPLE'S WEB PAGE AND YOU CAN SEE THAT, FOR  
13 EXAMPLE, TO GO FROM 16 TO 32 GIGABYTES, YOU HAVE TO  
14 PAY \$100 MORE, AND FROM 32 TO 64, YOU'VE GOT TO PAY  
15 ANOTHER HUNDRED DOLLARS MORE? RIGHT? YOU CAN  
16 ACTUALLY SEE WHAT PEOPLE ARE PAYING IN THE MARKET  
17 FOR THAT; RIGHT?

18 A WELL, LET'S A LITTLE COMPLICATED. I MEAN,  
19 SOME PEOPLE ARE WILLING TO PAY THIS. BUT THE  
20 AVERAGE CONSUMER MAY NOT. SOME PURCHASE IT. SOME  
21 DON'T PURCHASE IT.

22 Q SO MY QUESTION IS, YOU CAN DO A REALITY CHECK,  
23 THOUGH, AND THAT IS IF YOU PUT THESE NUMBERS IN,  
24 YOU CAN ACTUALLY GO AND SEE HOW MUCH THESE THINGS  
25 ARE SELLING FOR IN THE REAL WORLD AND COMPARE THEM

1 TO WHAT YOU DID.

2 A THAT'S A LITTLE BIT MORE COMPLICATED THAN  
3 YOU'RE MAKING ON, BECAUSE, YOU KNOW, LET'S TAKE  
4 MEMORY. IT'S AN INTERESTING COMMENT.

5 BUT SOME PEOPLE WILL PAY MORE THAN  
6 OTHERS, AND SO THE QUESTION IS, WHAT WILL THE  
7 AVERAGE PERSON PAY?

8 WELL, YOU'VE GOT TO AVERAGE THE PEOPLE  
9 WHO DO BUY THE MEMORY FOR THAT AND THE PEOPLE WHO  
10 DON'T.

11 BUT IT'S AN INTERESTING QUESTION.

12 Q IF IT'S COMPLICATED, I GUESS YOU -- YOU CHOSE  
13 NOT, IN YOUR DIRECT, TO EXPLAIN IT TO THE JURY;  
14 RIGHT?

15 A I ANSWERED THE QUESTIONS I WAS ASKED.

16 Q DO YOU BELIEVE THAT IF YOU'D PUT THESE NUMBERS  
17 HERE THAT YOU, THAT YOU CRUNCHED, WOULD THAT HAVE  
18 PUT THE JURY IN A BETTER POSITION TO LOOK AT THIS  
19 AND USE THEIR COMMON SENSE TO DETERMINE WHETHER THE  
20 NUMBERS MADE ANY SENSE IN THE REAL WORLD?

21 A IF WE PUT THOSE NUMBERS UP, WE'D HAVE TO  
22 UNDER -- I MEAN, WE'D HAVE TO EXPLAIN WHAT THEY  
23 MEAN. THEY'RE A DEMAND SLIDE. IT'S WHAT PEOPLE  
24 WOULD BE WILLING TO PAY. IT'S NOT WHAT THEY  
25 ACTUALLY PAY IN THE MARKETPLACE.

1 Q SO THIS IS NOT -- STOP RIGHT THERE. THIS DOES  
2 NOT INDICATE WHAT PEOPLE WOULD ACTUALLY PAY IN THE  
3 MARKETPLACE FOR ANY OF THESE ITEMS; CORRECT?

4 A THAT --

5 Q YES OR NO?

6 A WHAT?

7 Q IS THAT CORRECT? YES OR NO? ISN'T THAT WHAT  
8 YOU JUST SAID?

9 A THIS RELATES TO IT, BUT IT'S NOT IT, NO.

10 Q AND SO LET ME GET BACK TO MY QUESTION. DO YOU  
11 THINK IT WOULD GIVE THE JURY A LITTLE BIT MORE OF  
12 AN ABILITY TO JUDGE WHAT YOU'RE TELLING THEM IF  
13 THEY, IF THEY WERE ABLE TO SEE THESE OTHER NUMBERS  
14 SO THEY COULD JUST SEE, RELATIVELY SPEAKING, HOW  
15 THESE THINGS RANK AND HOW MUCH YOU'RE SAYING PEOPLE  
16 ARE WILLING TO PAY? DO YOU THINK THAT WOULD HELP  
17 THEM ANY?

18 A YOU'RE ASKING ME, YOU KNOW, WHAT DO THEY  
19 BELIEVE.

20 BUT THESE NUMBERS --

21 Q YOU'RE A TEACHER. THAT'S WHY I'M ASKING.

22 A RIGHT.

23 Q INSTEAD OF SAYING, "I'M A TEACHER, I'M SMART,  
24 THESE ARE MY NUMBERS," DO YOU THINK IT WOULD HAVE  
25 HELPED THEM ANY TO GIVE THEM THE DATA SO THAT THEY

1 CAN ACTUALLY COMPARE WHAT YOU'RE SAYING ABOUT THESE  
2 NUMBERS HERE, 9, 15, ET CETERA, TO THINGS THAT THEY  
3 MIGHT HAVE EXPERIENCE WITH, LIKE HOW MUCH FOR  
4 CAMERA, OR MEMORY, OR NUMBER OF APPS? DO YOU THINK  
5 THAT WOULD HAVE HELPED THEM OR NOT? YES OR NO?

6 IF THE ANSWER IS NO, I'M GLAD TO HEAR IT  
7 AND I CAN GO ON.

8 A I CAN SAY THE QUESTION I CAN'T ANSWER YES OR  
9 NO BECAUSE IT'S GOT TO BE DONE CORRECTLY. YOU  
10 CAN'T JUST PUT THE NUMBERS UP. THEY HAVE TO BE  
11 EXPLAINED.

12 Q WELL, AND YOU BELIEVE YOU DID A SUFFICIENT  
13 EXPLANATION OF THOSE NUMBERS IN YOUR DIRECT  
14 EXAMINATION? BECAUSE YOU CAN'T JUST PUT THEM UP,  
15 THEY HAVE TO BE EXPLAINED? DID YOU DO A SUFFICIENT  
16 EXPLANATION IN YOUR DIRECT EXAMINATION OF THE  
17 NUMBERS YOU DID SHOW?

18 A I PUT UP THE NUMBERS, YES, AND, IN FACT, I  
19 JUST EXPLAINED THEM AND I'LL BE HAPPY TO EXPLAIN  
20 THEM AGAIN.

21 Q NO, NO. MY QUESTION IS, IN YOUR DIRECT  
22 EXAMINATION, DID YOU PUT UP THE NUMBERS AND GIVE A  
23 SUFFICIENT EXPLANATION SO THAT THESE JURORS WOULD  
24 KNOW WHAT IT MEANS? YES OR NO?

25 A I -- I BELIEVE -- YEAH, I'M CONFIDENT IN THOSE

1 NUMBERS AND I BELIEVE --

2 Q I'M NOT ASKING WHETHER YOU'RE CONFIDENT IN  
3 THEM. YOU JUST SAID IT TAKES A LOT OF EXPLANATION.

4 I'M ASKING WHETHER YOU EXPLAINED IT TO  
5 THESE FOLKS IN YOUR DIRECT EXAMINATION.

6 A I'M TRYING TO HELP YOU HERE.

7 Q WELL, THEN, ANSWER THE QUESTION.

8 A THE QUESTION IS, I BELIEVE, YES, THE DIRECT  
9 EXAMINATION GOT THE NUMBERS ACROSS.

10 Q OKAY. IF YOU LOOK AT 2578 IN YOUR BINDER, YOU  
11 SEE IT'S A BOOK BY BRYAN ORME CALLED GETTING  
12 STARTED WITH CONJOINT ANALYSIS.

13 A I'M SORRY. 2 --

14 Q IT'S 2578.

15 A 2578, OKAY.

16 Q AND YOU KNOW MR. ORME?

17 A YES, I KNOW -- I'VE KNOWN BRYAN FOR A NUMBER  
18 OF YEARS.

19 Q HE'S THE PRESIDENT OF THE SOFTWARE COMPANY,  
20 THE -- WHAT WAS IT CALLED?

21 A IT'S SAWTOOTH SOFTWARE. YES, I KNOW BRYAN.

22 Q AND HE'S THE PRESIDENT OF SAWTOOTH SOFTWARE;  
23 CORRECT?

24 A YES. WELL, I THINK HE IS. I -- HE MIGHT BE  
25 PRESIDENT NOW.

1 Q YOU'VE READ THE BOOK?

2 A I READ PARTS OF THE BOOK, YES.

3 Q YOU RECOGNIZE IT AS BEING FAIRLY  
4 AUTHORITATIVE?

5 A IT'S -- IT'S, YOU KNOW, FAIRLY AUTHORITATIVE,  
6 SURE.

7 Q AND IS IT TRUE THAT -- IS THE FOLLOWING TRUE,  
8 THAT "THE IDEA OF CONVERTING UTILITIES TO DOLLAR  
9 VALUES" --

10 A EXCUSE ME. WHERE ARE YOU READING FROM?

11 Q SURE. THIS IS PAGE 85 WHERE IT SAYS "MONETARY  
12 SCALING TRAP." AND IT SAYS "THE IDEA OF CONVERTING  
13 UTILITIES TO DOLLAR VALUES CAN BE APPEALING TO  
14 MANAGERS. BUT SOME APPROACHES TO CONVERTING  
15 UTILITIES TO DOLLAR EQUIVALENTS ARE FLAWED. EVEN  
16 WHEN COMPUTED REASONABLY, THE RESULTS OFTEN SEEM TO  
17 DEFY COMMONLY HELD BELIEFS ABOUT PRICES AND HAVE  
18 LIMITED STRATEGIC VALUE FOR DECISION MAKING."

19 DO YOU AGREE WITH THAT, YES OR NO?

20 A OF COURSE, BECAUSE WHAT HE SAYS IS THERE'S  
21 SOME WAYS THAT ARE FLAWED, AND I WAS VERY CAREFUL  
22 NOT TO USE THE FLAWED METHODS.

23 Q AH. AND YOU'VE EXPLAINED THOSE SUFFICIENTLY  
24 SO THE JURY CAN TRUST YOU ON IT?

25 A HAVE I GIVEN THEM A COMPLETE CLASS IN SOME

1 VERY ADVANCED STATISTICS? NO, I HAVE NOT.

2 Q HAVE YOU DONE ANYTHING TO EXPLAIN IT TO THEM?

3 A I'M DOING THE BEST I CAN.

4 Q OKAY. ON PAGE 86, DO YOU SEE IT SAYS IN THE  
5 THIRD PARAGRAPH, "EVEN WHEN ACCURATE PRICE  
6 SENSITIVITY HAS BEEN ESTIMATED FOR EACH INDIVIDUAL,  
7 AN EXAMINATION OF AVERAGE VALUES WILL OFTEN REVEAL  
8 THAT RESPONDENTS ARE WILLING TO PAY MUCH MORE FOR  
9 ONE FEATURE OVER ANOTHER THAN IS SUGGESTED BY  
10 MARKET PRICES."

11 DO YOU AGREE WITH THAT?

12 A YES, I DO.

13 Q AND YOU AGREE THAT, THAT ONE OF THE  
14 FUNDAMENTAL PROBLEMS WITH ANALYSIS BASED ON THESE  
15 DOLLAR VALUES IS THAT THE APPROACH ASSUMES NO  
16 COMPETITION BECAUSE THE PRODUCT PURCHASED USUALLY  
17 CONSTITUTES A CHOICE AMONG SPECIFIC ALTERNATIVES,  
18 BUT COMPETITIVE CONTEXT IS A CRITICAL PART OF THE  
19 PURCHASE SITUATION.

20 DO YOU AGREE WITH THAT?

21 A THAT'S CORRECT.

22 Q ON PAGE 87, YOU SEE IT GIVES THE EXAMPLE OF  
23 ASKING SOMEONE THEIR WILLINGNESS TO PAY FOR A COLOR  
24 MONITOR FOR YOUR LAPTOP COMPUTER VERSUS A  
25 MONOCHROME SCREEN, AND IT SAYS "ASSUMING WE CONDUCT

1 A CONJOINT ANALYSIS INCLUDING MONOCHROME VERSUS  
2 COLOR MONITORS, IF WE COMPUTED YOUR WILLINGNESS TO  
3 PAY FOR COLOR OVER MONOCHROME, WE WOULD LIKELY FIND  
4 THAT THE INCREMENTAL VALUE OF COLOR OVER MONOCHROME  
5 IS WORTH A THOUSAND DOLLARS OR MORE. BUT HOW  
6 MEANINGFUL IS THIS INFORMATION TO A LAPTOP  
7 MANUFACTURER GIVEN THE FACT THAT LAPTOPS WITH COLOR  
8 MONITORS ARE READILY AVAILABLE ON THE MARKET AT  
9 QUITE INEXPENSIVE PRICES."

10 DO YOU AGREE WITH THAT?

11 A ARE YOU ASKING ME DO I AGREE WITH WHAT BRYAN  
12 IS TRYING TO MAKE THE DISTINCTION HERE BETWEEN THE  
13 DEMAND SIDE OVER A DEMAND AND SUPPLY, YES, I AGREE  
14 WITH BRYAN.

15 Q THAT -- THESE NUMBERS MAY NOT HAVE ANY  
16 RELATIONSHIP TO WHAT PEOPLE ACTUALLY PAY IN THE  
17 MARKET; RIGHT?

18 A NO, THAT'S -- I DON'T AGREE WITH THAT.

19 Q WELL, LET ME ASK YOU THIS: IF YOU HAD BEEN  
20 ASKED TO DO A CONJOINT ANALYSIS ON -- LET ME GIVE  
21 YOU AN EXAMPLE. IF WE CAN GO TO 3920.016 -- HOLD  
22 ON ONE SECOND. YES, 016.

23 SO IF WE HAD -- IF YOU HAD BEEN ASKED TO  
24 DO A CONJOINT ANALYSIS ON SLIDE TO UNLOCK, OR JUST  
25 UP AND DOWN SCROLL, OR, YOU KNOW, SIDE SCROLL OR



1 HAVING A VIRTUAL KEYBOARD OR JUST ZOOM OR SWIPE OR  
2 THE FLICK OR JUST DOUBLE TAP OR ROTATE OR MOVING  
3 ICONS OR CUT, COPY, PASTING, PRESS AND HOLD, YOU'RE  
4 GOING TO GET A VALUE FOR EVERY ONE OF THOSE; RIGHT?

5 A ONE COULD DO THAT STUDY, YES.

6 Q AND YOU'D GET A VALUE FOR EVERY ONE OF THOSE;  
7 RIGHT?

8 A RIGHT, SURE. I MEAN, YOU WOULD -- YOU WOULD  
9 GET AN ACCURATE MEASURE OF HOW MUCH PEOPLE WOULD BE  
10 WILLING TO PAY.

11 Q GO TO THE NEXT PAGE.

12 AND THEN IF YOU DID THE SAME THING FOR  
13 SCREEN QUALITY, LIKE HOW GOOD, HOW BRIGHT, HOW MANY  
14 PIXELS IN THE GREEN, THE OPERATING SYSTEM, GPS  
15 LOCATION SERVICES, BATTERY LIFE, HEADPHONES, BEING  
16 ABLE TO MOVE THE TABLET SO IT ORIENTS TO YOU, I  
17 MEAN, ALL OF THESE FEATURES, IF YOU DID THE  
18 CONJOINT STUDY, YOU'RE GOING TO GET A NUMBER;  
19 RIGHT?

20 A YEAH, WE COULD DO THAT STUDY, ALTHOUGH I  
21 WOULDN'T DO ALL OF THESE FEATURES AT THE SAME TIME,  
22 BUT YOU COULD DO THAT STUDY.

23 Q AND IF YOU DID THAT, YOU'D BE PAYING THOUSANDS  
24 OF DOLLARS FOR A PHONE IF YOU JUST DID THAT  
25 INDEPENDENTLY WITH EACH OF THOSE -- IF YOU DID

1 THOSE FEATURES AND PLUGGED THEM INTO THE STUDY YOU  
2 JUST DID, THOSE NUMBERS WOULD ADD UP SO THAT PEOPLE  
3 WOULD BE PAYING THOUSANDS OF DOLLARS FOR A PHONE  
4 THAT THEY'RE REALLY ONLY WILLING TO PAY ABOUT \$199  
5 FOR?

6 A WELL, IT'S GETTING A LITTLE BIT COMPLICATE  
7 HERE, BECAUSE PEOPLE DO, OVER THE LIFE OF THE  
8 CONTRACT, PAY MORE, ANYWHERE FROM 2,000 TO \$5,000  
9 IF YOU INCLUDE HOW MUCH THEY'RE PAYING.

10 BUT, YES, SOME OF THESE FEATURES CAN BE  
11 VALUABLE.

12 Q AND JUST SO WE'RE CLEAR, IF YOU GO BACK TO  
13 3920.015, YOU CHOSE NOT TO GIVE THE JURY ANY  
14 NUMBERS HERE TO LET THEM INDEPENDENTLY USE THEIR  
15 COMMON SENSE TO SEE WHETHER OR NOT YOUR NUMBERS  
16 MADE ANY SENSE; RIGHT?

17 A WELL, I WAS REALLY FOCUSSED ON THE QUESTION I  
18 WAS ASKED, WHICH WAS THE VALUE OF THE PATENTS,  
19 THAT'S CORRECT.

20 Q BUT YOU HAVE TO USE COMMON SENSE WHEN YOU  
21 LOOKED AT THESE THINGS TO SEE IF THEY REALLY MAKE  
22 ANY SENSE IN THE REAL WORLD. WOULD YOU AGREE WITH  
23 THAT?

24 A IN FACT, I -- YEAH, I THINK I LOOKED AT COMMON  
25 SENSE. BUT THESE NUMBERS MAKE SENSE TO ME BASED

1 UPON 20 -- NO, HOW MANY, 1975, 35 YEARS OF  
2 EXPERIENCE. 37.

3 Q WELL, YOU MIGHT HAVE EVEN MORE THAN THAT MANY  
4 YEARS OF EXPERIENCE AS A CONSUMER IN THIS BOX  
5 HERE -- OOPS, I POINTED THIS AT THEM -- AND IT  
6 WOULD HAVE BEEN NICE IF YOU WOULD HAVE PUT THEM IN  
7 A POSITION WHERE THEY COULD HAVE USED THEIRS.

8 MR. JACOBS: OBJECTION, YOUR HONOR.

9 MR. MCELHINNY: THAT'S NOT A QUESTION.

10 BY MR. PRICE:

11 Q IS THAT CORRECT?

12 THE COURT: I'M SORRY. LET ME LOOK AT  
13 THE QUESTION.

14 LET'S JUST MOVE ON. GO AHEAD, PLEASE.

15 MR. PRICE: I'M SORRY, YOUR HONOR. I  
16 COULDN'T HEAR YOU.

17 THE COURT: WHAT WAS THE QUESTION? CAN  
18 YOU READ IT PLEASE, MS. SHORTRIDGE?

19 MR. PRICE: LET ME ASK IT AGAIN. IT'LL  
20 BE QUICKER.

21 THE COURT: GO AHEAD.

22 BY MR. PRICE:

23 Q YOU SAID YOU'D USE YOUR COMMON SENSE. YOU'RE  
24 NOT AN EXPERT IN COMMON SENSE; RIGHT?

25 A NO, I'M NOT AN EXPERT IN COMMON SENSE.

1 Q SO IT WOULD HAVE BEEN NICE, YOU'D AGREE, IF  
2 YOU WOULD HAVE PRESENTED FIGURES TO THE JURY SO  
3 THEY COULD USE THEIR COMMON SENSE IN SEEING WHETHER  
4 OR NOT THE NUMBERS YOU PRESENTED SO THEY COULD HAVE  
5 USED THEIR COMMON SENSE. THAT WOULD HAVE BEEN  
6 FAIR?

7 MR. JACOBS: THE FORM OF THE QUESTION IS  
8 IMPROPER.

9 THE COURT: OVERRULED.

10 GO AHEAD.

11 THE WITNESS: LET ME SEE IF I UNDERSTAND  
12 THE QUESTION.

13 MR. PRICE: IF YOU DON'T UNDERSTAND THE  
14 QUESTION, THAT'S FINE.

15 THE COURT: OKAY. IT'S 4:04.

16 **REDIRECT EXAMINATION**

17 BY MR. JACOBS:

18 Q DR. HAUSER, CAN YOU EXPLAIN TO THE JURY WHY  
19 YOU BELIEVE YOUR RESULTS ARE VALID?

20 A YES, I CAN. THIS IS CONJOINT ANALYSIS. WE'VE  
21 BEEN -- THIS HAS BEEN USED IN MARKETING RESEARCH  
22 SINCE 1971. WE'VE DONE A LOT OF VALIDATION  
23 STUDIES. WE'VE ACTUALLY HAD PEOPLE MAKE CHOICES.  
24 HAVING GIVEN THEM REAL MONEY, THEY MAKE CHOICES.

25 WE DESIGNED THE STUDY AS CAREFULLY AS

1 POSSIBLE TO DETERMINE HOW MUCH PEOPLE WOULD BE  
2 WILLING TO PAY FOR THESE FEATURES, AND AS YOU CAN  
3 SEE, WE GOT A SUBSTANTIAL AMOUNT.

4 CONJOINT ANALYSIS IS PROBABLY THE MOST  
5 USED QUANTITATIVE TECHNIQUE IN MARKETING. THE  
6 LARGEST CORPORATIONS USE IT. I'VE USED IT FOR AUTO  
7 COMPANIES. I'VE USED IT FOR CAMERAS. I'VE USED IT  
8 FOR SCREW TOP CAPS FOR WINE BOTTLES. IT'S BEEN  
9 VALIDATED MANY, MANY TIMES.

10 Q AND WHAT ARE THE VALIDATION METHODS FOR THIS  
11 PARTICULAR SURVEY THAT YOU CONDUCTED?

12 A OKAY. IN THIS PARTICULAR SURVEY, WE DID WHAT  
13 ARE REFERRED TO AS HOLD OUT TASKS.

14 FOR EXAMPLE, WE ASKED THE CONSUMER TO  
15 MAKE SOME CHOICES. THEN WE CRUNCHED THE DATA, WE  
16 ANALYZED THE DATA, AND THEN WE PREDICT WHAT THEY  
17 WOULD ACTUALLY SAY IN THE NEXT QUESTIONS, AND THEN  
18 WE COMPARED WHAT THEY WOULD SAY TO WHAT THEY WOULD  
19 ACTUALLY DO.

20 AND THE STATISTICS WE GOT WERE DEFINITELY  
21 WITHIN THE RANGE IN THE LITERATURE AND WHAT ONE  
22 WOULD NORMALLY CONSIDER QUITE HIGH.

23 Q AND WHAT KIND OF VALIDATION IS THAT? IS THERE  
24 A TERM FOR THAT?

25 A THAT'S AN INTERNAL VALIDATION, YES.

1 Q WHY DO YOU BELIEVE THAT'S A SUFFICIENT  
2 VALIDATION IN THIS CASE?

3 A I BELIEVE IT'S A SUFFICIENT VALIDATION BECAUSE  
4 IN MANY OTHER STUDIES, INCLUDING A NUMBER I'VE  
5 PUBLISHED, THERE'S INTERNAL VALIDATION AND AN  
6 EXTERNAL VALIDATION, WHAT PEOPLE ACTUALLY DO WITH  
7 REAL MONEY.

8 AND IN ALL CASES, WHEN STUDIES ARE DONE  
9 CAREFULLY, THE INTERNAL VALIDATION LINES UP WITH  
10 THE EXTERNAL VALIDATION.

11 Q DID YOU HAVE AN UNDERSTANDING OF THE REASON WE  
12 ASKED YOU TO DO THIS SURVEY?

13 A YES. I WAS ASKED TO OBTAIN A VALUATION OF  
14 WHAT PEOPLE WOULD BE WILLING TO PAY, THE DEMAND  
15 SIDE, FOR THE FEATURES AT ISSUE IN THE CASE.

16 Q AND TO WHAT PURPOSE DID YOU UNDERSTAND YOUR  
17 SURVEY WOULD BE USED?

18 MR. PRICE: OBJECTION. THIS IS BEYOND  
19 THE SCOPE OF CROSS AT THIS POINT.

20 THE COURT: SUSTAINED.

21 MR. JACOBS: THANK YOU.

22 NO FURTHER QUESTIONS.

23 THE COURT: ALL RIGHT. IT'S 4:06. ANY  
24 RECROSS?

25 MR. PRICE: JUST ONE SECOND.

1 THE COURT: PLEASE.

2 (PAUSE IN PROCEEDINGS.)

3 **RECROSS-EXAMINATION**

4 BY MR. PRICE:

5 Q I FORGOT TO ASK YOU, YOU'RE BEING PAID ABOUT  
6 \$800 AN HOUR?

7 A THAT'S MY STANDARD GOING RATE, YES.

8 Q AND HOW MUCH DO YOU THINK YOU'RE GOING TO END  
9 UP GETTING?

10 A I DON'T KNOW.

11 Q DO YOU HAVE ANY IDEA HOW MUCH YOU'VE BILLED?

12 A PRIOR TO COMING HERE? I'D HAVE TO ASK MY  
13 WIFE.

14 Q SOMETIMES YOU HAVE TO CHECK WITH YOUR SPOUSE  
15 BEFORE MAKING THESE MARKETING DECISIONS; RIGHT?

16 YOU REALLY CAN'T TELL US? I MEAN,  
17 REALLY?

18 A WELL, IT'S -- I'M TRYING TO VISUALIZE THE  
19 SPREADSHEET. I'D HAVE TO CALL MY WIFE.

20 OH, I DON'T KNOW. TO ACTUALLY DO THE  
21 STUDY, IT'S A COMPLICATED STUDY. 30,000, 40,000.

22 Q THE TESTS YOU TALKED ABOUT, THOSE ARE INTERNAL  
23 TESTS WITHIN THE -- WELL, THOSE WERE INTERNAL  
24 TESTS; RIGHT?

25 A WELL, ABSOLUTELY. THESE WERE WHAT'S KNOWN AS

1 INTERNAL VALIDITY, AND --

2 Q THAT WAS MY QUESTION.

3 A OKAY.

4 Q AND AS, AS MR. ORME SAID, THAT SOMETIMES  
5 DOESN'T REALLY LINE UP WITH REALITY IF YOU DID  
6 EXTERNAL TESTS; CORRECT?

7 A NO, NO. IT ALMOST ALWAYS DOES. WHEN YOU  
8 COMPARE --

9 Q OKAY. YOU SAID IT ALMOST ALWAYS DONE.

10 WE COULD HAVE BEEN ABLE TO TELL THAT  
11 INSTEAD OF JUST TRUSTING YOU IF YOU'D ACTUALLY  
12 GIVEN US THOSE NUMBERS, RIGHT, ON HOW MUCH PEOPLE  
13 ARE WILLING TO PAY FOR MEMORY?

14 A I THINK YOU'RE GETTING A LITTLE CONFUSED. AN  
15 INTERNAL VALIDITY CHECK IS THE ABILITY TO PREDICT  
16 WHAT PEOPLE ARE GOING TO DO, SO PEOPLE BEHAVE THE  
17 WAY THEY SAY THEY'RE GOING TO BEHAVE. THAT'S  
18 DIFFERENT THAN LOOKING AT THESE NUMBERS.

19 MR. PRICE: OKAY. THANK YOU.

20 THE COURT: ALL RIGHT. IT'S 4:08.

21 ANY MORE QUESTIONS.

22 MR. JACOBS: NO, YOUR HONOR.

23 THE COURT: ALL RIGHT. MAY THIS WITNESS  
24 BE EXCUSED AND IS IT SUBJECT TO RECALL.

25 MR. JACOBS: HE MAY, AND HE IS.



1 THE COURT: ALL RIGHT. SO YOU'RE EXCUSED  
2 SUBJECT TO RECALL. YOU MAY STEP DOWN.

3 THE WITNESS: THANK YOU.

4 THE COURT: CALL YOUR NEXT WITNESS,  
5 PLEASE.

6 DO WE HAVE A PHOTO FOR MR. HAUSER?

7 ALL RIGHT. THANK YOU.

8 WHO'S YOUR NEXT WITNESS?

9 MR. LEE: YOUR HONOR, WE'RE GOING TO CALL  
10 MR. TEKSLER AT THIS TIME. MR. MUELLER WILL PRESENT  
11 HIM IF THAT'S ALL RIGHT.

12 THE COURT: ALL RIGHT. I DON'T HAVE ANY  
13 DIRECT EXHIBITS FOR MR. TEKSLER. I HAVE THE CROSS.

14 MR. LEE: I THINK THEY'RE ON THE WAY,  
15 YOUR HONOR.

16 THE COURT: OKAY.

17 MR. MUELLER: YOUR HONOR, MAY I APPROACH  
18 WITH THE PHOTOS?

19 THE COURT: YES. THANK YOU.

20 MR. MUELLER: YOUR HONOR, WE CALL  
21 BORIS TEKSLER.

22 THE COURT: ALL RIGHT.

23 THE CLERK: WOULD YOU RAISE YOUR RIGHT  
24 HAND, PLEASE, BEFORE YOU SIT DOWN.

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**BORIS TEKSLER,**

BEING CALLED AS A WITNESS ON BEHALF OF THE  
PLAINTIFF, HAVING BEEN FIRST DULY SWORN, WAS  
EXAMINED AND TESTIFIED AS FOLLOWS:

THE WITNESS: YES, I DO.

THE CLERK: WOULD YOU HAVE A SEAT,  
PLEASE.

THE WITNESS: THANK YOU.

**DIRECT EXAMINATION**

BY MR. MUELLER:

Q GOOD AFTERNOON. WOULD YOU INTRODUCE YOURSELF  
TO THE JURY?

A CERTAINLY. HELLO, MY NAME IS BORIS TEKSLER.

THE CLERK: COULD YOU SPELL YOUR NAME,  
PLEASE?

THE WITNESS: CERTAINLY. B-O-R-I-S,  
T-E-K-S-L-E-R.

BY MR. MUELLER:

Q MR. TEKSLER, WHERE DO YOU WORK?

A I WORK AT APPLE.

Q WHAT IS YOUR POSITION AT APPLE?

A I'M THE DIRECTOR OF PATENTS AND LICENSING  
STRATEGY.

Q FOR HOW LONG HAVE YOU WORKED AT APPLE?

A FOR A LITTLE OVER THREE YEARS NOW.

1 Q WHAT ARE YOUR RESPONSIBILITIES IN YOUR  
2 POSITION?

3 A SO I HAVE TWO KEY AREAS. THE FIRST ONE IS  
4 PATENT ACQUISITIONS WHERE WE ACQUIRE PATENTS IN THE  
5 COMPANY.

6 THE SECOND ONE IS PATENT LICENSING WHERE  
7 WE DEAL WITH CROSS-LICENSING WITH THIRD PARTIES.

8 Q MR. TEKSLER, COULD YOU EXPLAIN TO THE JURY,  
9 PLEASE, WHAT IT MEANS TO LICENSE A PATENT?

10 A CERTAINLY. SO TO THE EXTENT THAT I HAVE A  
11 PATENT THAT DESCRIBES, LET'S SAY, A TECHNOLOGY OR A  
12 FEATURE, AND IF YOU WANT TO BUILD A PRODUCT THAT  
13 USES THAT TECHNOLOGY OR FEATURE, THEN I CAN SELL  
14 YOU A LICENSE TO PRACTICE THAT PATENT AND YOU CAN  
15 GO AHEAD AND PRACTICE THAT WITHIN YOUR PRODUCT.

16 Q COULD YOU PLEASE GIVE US AN OVERVIEW OF HOW  
17 APPLE APPROACHES LICENSING?

18 A SO I GUESS FROM A STRATEGIC PERSPECTIVE, WE  
19 HAVE THREE DISTINCT AREAS WHEN WE THINK ABOUT  
20 PATENT LICENSING AND WE TREAT THEM DIFFERENTLY.

21 Q COULD YOU PLEASE LIST THOSE THREE.

22 A CERTAINLY. SO I'LL START WITH  
23 STANDARDS-RELATED PATENTS.

24 MS. MAROULIS: YOUR HONOR, OBJECTION PER  
25 YOUR PRIOR RULING.

1 THE COURT: SUSTAINED.

2 MR. MUELLER: YOUR HONOR, I WAS ABOUT TO  
3 ASK MR. TEKSLER TO PAUSE ON STANDARDS QUESTIONS.

4 Q I'M NOT GOING TO ASK ANY QUESTIONS ABOUT  
5 THOSE.

6 BUT IF YOU COULD JUST LIST FOR US THE  
7 NEXT TWO CATEGORIES, PLEASE.

8 A CERTAINLY. THE NEXT ONE IS APPLE COMPUTING  
9 PATENTS, OR COMPUTING PATENTS, AND THE THIRD ONE IS  
10 APPLE'S UNIQUE USER EXPERIENCE, I.P.

11 Q SO LET'S TAKE, IF WE COULD, THOSE LAST TWO  
12 CATEGORIES ONE BY ONE.

13 COMPUTING PATENTS, WHAT DOES THAT REFER  
14 TO?

15 A SO APPLE HAS HAD A LONG LEGACY OF COMPUTING  
16 INNOVATION. IT STARTED WITH PERSONAL COMPUTING,  
17 AND SINCE THEN I WOULD DESCRIBE IT THIS WAY, WHICH  
18 IS WE'VE BEEN ON OVER A TWO DECADE HISTORY OF  
19 INNOVATION WITH BUILDING A VARIETY OF MOBILE  
20 PRODUCTS, AND IT STARTED WITH NOTEBOOK COMPUTERS.

21 AS TECHNOLOGY WAS MATURING WITH THE  
22 PROCESSOR TECHNOLOGY GETTING BETTER,  
23 MINIATURIZATION TECHNOLOGY GETTING BETTER, AND  
24 BATTERIES KEEP GETTING BETTER, WE WERE ABLE TO  
25 BUILD A MULTITUDE OF DIFFERENT PRODUCTS AND WE

1 INNOVATE QUITE A BIT. I'LL HIGHLIGHT A COUPLE.

2 SO IN 2001, WE BUILT THE IPOD AND, WITH  
3 IT, WE REVOLUTIONIZED THE MUSIC INDUSTRY.

4 IN 2007, WE BUILT IPHONE AND, WITH IT, WE  
5 RECAST WHAT ARE MEANT TO BE THE SMARTPHONES.

6 AND IN 2010, WE BUILT THE IPAD, AND WITH  
7 IPAD WE CREATED A WHOLE NEW MARKET CATEGORY KNOWN  
8 AS TABLETS.

9 MS. MAROULIS: YOUR HONOR, OBJECTION.  
10 MOVE TO STRIKE. IT'S BEYOND THIS WITNESS'S  
11 EXPERTISE. HE STARTED OUT IN 2001.

12 THE COURT: OVERRULED.

13 BY MR. MUELLER:

14 Q CONTINUE, PLEASE.

15 A AND WITH THAT SAID, WE BUILT A PORTFOLIO, A  
16 PATENT PORTFOLIO ALONG THE WAY AND HAVE DONE A LOT  
17 OF INNOVATION TO BUILD THOSE PRODUCTS OUT TO  
18 MARKET.

19 Q MR. TEKSLER, COULD YOU EXPLAIN TO THE JURY,  
20 PLEASE, HOW THIS CATEGORY OF COMPUTING PATENTS  
21 RELATE, IF AT ALL, TO WIRELESS DEVICES?

22 A CERTAINLY. SO ANY MODERN SMARTPHONE THAT HAS  
23 A OPERATING SYSTEM BUILT INTO IT THAT YOU WANT TO  
24 DOWNLOAD THIRD PARTY APPLICATIONS TO, THAT'S AN  
25 EXAMPLE OF CORE COMPUTING I.P. THAT WE'VE REALLY

1 BUILT THE FOUNDATIONAL POSITIONING.

2 Q WHAT IS APPLE'S POSITION ON LICENSING THIS  
3 PORTION OF ITS PATENT PORTFOLIO?

4 A SO UNLIKE STANDARDS WHERE WE HAVE TO LICENSE,  
5 THIS IS AN AREA WHERE WE DON'T HAVE TO LICENSE.

6 MS. MAROULIS: OBJECTION. BEYOND THE  
7 COURT'S ORDER ON STANDARDS.

8 MR. MUELLER: YOUR HONOR, HE'S JUST  
9 DESCRIBING THE SECOND CATEGORY, NON-STANDARDS  
10 PATENTS.

11 THE COURT: ALL RIGHT. OVERRULED.

12 THE WITNESS: SO WITH RESPECT TO THE  
13 COMPUTING PORTFOLIO, IT'S NOT ONE THAT WE HAVE TO  
14 LICENSE, BUT WE'RE CERTAINLY WILLING TO DISCUSS  
15 LICENSING.

16 WE DO THAT WITH TWO PRIMARY GOALS. THE  
17 FIRST ONE IS THAT WE WANT TO GET FAIRLY COMPENSATED  
18 FOR THE WORK THAT WE'VE DONE; AND THE SECOND -- AND  
19 THE SECOND ONE IS WE WANT TO MAKE SURE THAT WE  
20 SAFEGUARD APPLE'S DIFFERENTIATED USER EXPERIENCE.

21 BY MR. MUELLER:

22 Q MR. TEKSLER, LET'S TURN, IF WE COULD, TO THE  
23 THIRD CATEGORY IN THE APPLE PORTFOLIO. WOULD YOU  
24 REMIND US WHAT THAT IS?

25 A CERTAINLY. THAT'S APPLE'S UNIQUE USER

1 EXPERIENCE I.P.

2 Q WHAT DOES THAT REFER TO?

3 A SO I WOULD DESCRIBE THAT IN A COUPLE DIFFERENT  
4 WAYS. FROM A TOP LEVEL, IT'S THAT WHICH MAKES OUR  
5 BRAND IDENTITY AND KEEPS US UNIQUE IN THE  
6 MARKETPLACE, AND IT'S WHAT WE DON'T WISH TO SHARE  
7 AND OTHER PEOPLE TO MAKE.

8 SO WITH THAT, I WOULD SAY FROM A  
9 TECHNICAL PERSPECTIVE, IT INCLUDES TRADEMARKS,  
10 TRADE DRESS, ALL THE DESIGN PATENTS, AND A SMALL  
11 SET OF UTILITY PATENTS THAT REALLY DEAL WITH USER  
12 INTERFACE ELEMENTS, AND MAYBE A COUPLE OF  
13 ASSOCIATED FEATURES.

14 Q AND HOW DOES THIS CATEGORY RELATE TO WIRELESS  
15 DEVICES?

16 A WELL, I GUESS YOU DON'T REALLY NEED A LICENSE  
17 TO THIS. FROM OUR PERSPECTIVE, UNLESS YOU'RE  
18 TRYING TO BUILD AN IPHONE KNOCK-OFF OR A CLONE OR  
19 AN IPAD CLONE, YOU WOULDN'T NEED A LICENSE TO THIS  
20 SET OF I.P.

21 Q AND TO BE CLEAR, WHAT IS APPLE'S POSITION ON  
22 LICENSING THIS PORTION OF ITS PORTFOLIO?

23 A WE STRONGLY DESIRE NOT TO LICENSE IT. IT'S  
24 NOT AN AREA THAT WE LICENSE, AND OUR GOAL IN  
25 LICENSING IS TO ENABLE PEOPLE TO DESIGN THEIR OWN

1 PRODUCTS, NOT THE ABILITY TO JUST COPY OUR  
2 PRODUCTS.

3 Q HAS APPLE EVER LICENSED ANY OF THE PATENTS  
4 WITHIN THIS CATEGORY?

5 A CERTAINLY OVER TIME WE HAVE, BUT I CAN COUNT  
6 THOSE INSTANCES ON ONE HAND QUITE EASILY. AND WE  
7 DO SO WITH RARE EXCEPTION AND WE DO IT CONSCIOUSLY  
8 KNOWING THAT WE'RE NOT ENABLING SOMEBODY TO BUILD A  
9 CLONE PRODUCT.

10 Q MR. TEKSLER, I WANT TO SHIFT GEARS, IF I  
11 COULD, AND TURN BACK THE CLOCK TO THE BEGINNING OF  
12 THE APPLE/SAMSUNG DISPUTE.

13 DO YOU KNOW WHEN THAT DISPUTE BEGAN?

14 A YES. IT BEGAN IN THE SUMMER OF 2010.

15 Q AND WHAT HAPPENED IN THE SUMMER OF 2010?

16 A SO SAMSUNG INTRODUCED THEIR GALAXY S PHONE,  
17 AND WITH THIS, WE WERE QUITE SHOCKED FOR A COUPLE  
18 OF REASONS.

19 FIRST, THEY WERE A TRUSTED PARTNER OF  
20 OURS AND WE DIDN'T UNDERSTAND HOW A TRUSTED PARTNER  
21 WOULD BUILD A COPYCAT PRODUCT LIKE THAT.

22 AND THE SECOND ONE WAS THAT THE PRODUCT  
23 WAS JUST WAY TOO CLOSE TO OUR PRODUCT.

24 SO WE TOOK IT SO SERIOUS THAT STEVEN JOBS  
25 AND TIM COOK CONTACTED SAMSUNG EXECUTIVES AND MET



1 WITH THEM TO RELAY OUR CONCERN.

2 MS. MAROULIS: YOUR HONOR, I MOVE TO  
3 STRIKE FOR LACK OF FOUNDATION ON THAT RESPONSE.

4 THE COURT: YOU'RE GOING TO HAVE TO LAY A  
5 FOUNDATION HOW HE KNOWS THAT.

6 BY MR. MUELLER:

7 Q SURE. MR. TEKSLER, WERE YOU AT APPLE AT THAT  
8 TIME?

9 A I WAS.

10 Q WHAT WAS YOUR POSITION AT THAT TIME?

11 A I WAS THE DIRECTOR OF APPLE I.P. AND STRATEGY.

12 Q YES OR NO, WERE YOU PRIVY TO CONVERSATIONS  
13 INVOLVING SAMSUNG?

14 A YES, I WAS.

15 MR. MUELLER: YOUR HONOR, I'VE LAID A  
16 FOUNDATION.

17 Q COULD YOU PLEASE TURN TO TAB 1 IN YOUR BINDER,  
18 THAT'S PLAINTIFF'S EXHIBIT 52.

19 THE COURT: I DON'T HAVE THE DIRECT  
20 EXHIBITS TO MR. TEKSLER. I THOUGHT THEY WERE  
21 COMING.

22 MR. MUELLER: I'M SORRY. I THOUGHT YOU  
23 HAD A BINDER. I APOLOGIZE, YOUR HONOR. THIS IS  
24 TAB 1, PLAINTIFF'S EXHIBIT 52.

25 Q MR. TEKSLER, DO YOU KNOW WHAT THIS DOCUMENT

1 IS?

2 A I DO.

3 Q WHAT IS IT?

4 A IT'S A PRESENTATION THAT WAS GIVEN TO SAMSUNG  
5 IN AUGUST OF 2010. IT'S ONE THAT I HELPED AUTHOR  
6 AND CREATE.

7 MR. MUELLER: YOUR HONOR, I OFFER IT.

8 MS. MAROULIS: YOUR HONOR, NO FURTHER  
9 OBJECTION, BUT YOUR HONOR RULED THAT THE WITNESS  
10 WOULD NOT BE ALLOWED TO TESTIFY ABOUT THE MEETING  
11 ITSELF.

12 THE COURT: AND I'LL CONTINUE THAT  
13 RULING. IT'S ADMITTED.

14 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER  
15 52, HAVING BEEN PREVIOUSLY MARKED FOR  
16 IDENTIFICATION, WAS ADMITTED INTO  
17 EVIDENCE.)

18 THE COURT: GO AHEAD.

19 BY MR. MUELLER:

20 Q MR. TEKSLER, WE'RE PUTTING PLAINTIFF'S EXHIBIT  
21 52 ON THE SCREEN. THIS IS TITLED "SAMSUNG'S USE OF  
22 APPLE PATENT IN SMARTPHONES."

23 AND COULD YOU REMIND US WHAT THIS  
24 DOCUMENT IS? IT'S A PRESENTATION?

25 A YES, IT'S A PRESENTATION GIVEN TO SAMSUNG IN

1 AUGUST OF -- AUGUST 4TH OF 2010.

2 Q WHO DELIVERED THE PRESENTATION?

3 A CHIP LUTTON DID.

4 Q WHO IS CHIP LUTTON?

5 A CHIP LUTTON WAS THE CHIEF PATENT COUNSEL AND  
6 MY MANAGER AT THAT TIME.

7 Q MR. LUTTON IS STILL AT APPLE?

8 A NO, HE'S NOT.

9 Q NOW, WERE YOU AT THIS PRESENTATION?

10 A I WAS NOT.

11 Q BUT YOU NOW WHEN IT WAS GIVEN?

12 A I DO.

13 Q WHAT WAS THAT DATE?

14 A AUGUST 4TH, 2010.

15 Q LET'S TURN, IF WE COULD, TO PAGE 17 OF THE  
16 PRESENTATION AND PUT IT ON THE SCREEN.

17 WHAT DO WE SEE HERE?

18 A SO THIS WAS REALLY A CHAPTER THAT WAS ENTITLED  
19 "SAMSUNG COPYING IPHONE," AND WHAT WE WERE -- WHAT  
20 WE WERE RELAYING WITH THIS CONTENT WAS REALLY ABOUT  
21 THE REMARKABLE SIMILARITY OF THE TWO PRODUCTS, ALL  
22 THE WAY FROM THE OVERALL APPEARANCE OF THE PRODUCT  
23 DOWN TO THE ARRANGEMENT, THE FOUR-BY-FOUR  
24 ARRANGEMENT OF THE ICONS, THE SIMILARITY OF THE  
25 ICONS, THE PERSISTENT DOCK THAT YOU HAVE AT THE

1 BOTTOM THAT DOESN'T CHANGE WITH THE SCREENS.

2 AND WE DETAILED IT, YOU KNOW, WITH  
3 SUBSEQUENT PAGES THAT REALLY TALKED ABOUT THESE,  
4 THE USER INTERFACE ELEMENTS THAT WERE SIMILAR ALL  
5 THE WAY DOWN TO THE PACKAGING.

6 Q LET'S TURN --

7 MS. MAROULIS: YOUR HONOR, I MOVE TO  
8 STRIKE. THIS WAS A LAY OPINION ON INFRINGEMENT  
9 ISSUES AND, AGAIN, THE WITNESS WAS NOT DISCLOSED.

10 MR. MUELLER: YOUR HONOR, I'M SIMPLY  
11 ASKING MR. TEKSLER ABOUT A DOCUMENT THAT HE HELPED  
12 AUTHOR.

13 THE COURT: OVERRULED.

14 BY MR. MUELLER:

15 Q LET'S PUT PAGE 14 ON THE SCREEN IF WE COULD.

16 WHAT DO WE SEE HERE?

17 A SO IN THIS PAGE WHAT WE WERE DESCRIBING --  
18 THIS WAS PART OF THE CHAPTER WHERE WE TALK ABOUT  
19 THE ARCHITECTURE OF SAMSUNG PHONES, AND  
20 SPECIFICALLY HERE WE'RE REFERRING TO THE ANDROID  
21 APPLICATION FRAMEWORK THAT'S HIGHLIGHTED IN THE  
22 LEFT ARCHITECTURE DIAGRAM THERE.

23 AND WE WERE COMMUNICATING TO SAMSUNG BY  
24 THIS SLIDE THAT THESE ARE SOME OF THE, SOME OF THE  
25 PATENTS -- IT'S JUST REPRESENTATIVE OF A LIST OF

1 PATENTS THAT SAMSUNG INFRINGES WITH THIS PORTION OF  
2 THE ARCHITECTURE.

3 Q I'D LIKE TO DIRECT YOUR ATTENTION, IF I COULD,  
4 MR. TEKSLER, TO U.S. PATENT NUMBER 7,469,381 ON  
5 THIS LIST.

6 ARE YOU FAMILIAR WITH THAT PATENT?

7 A I AM.

8 Q WHAT IS IT?

9 A SO THIS PATENT RELATES TO SCROLL BOUNCING AND,  
10 I GUESS PUT SIMPLY, IT'S A USER INTERFACE ELEMENT  
11 WHEN YOU'RE PANNING THROUGH A LIST, WHEN YOU GET TO  
12 THE BOTTOM OF THE LIST, HOW DO YOU KNOW THAT YOU  
13 GOT TO THE BOTTOM?

14 WELL, WE HAVE A RUBBER BAND LIKE EFFECT  
15 THAT HAPPENS WHEN YOU GET TO THE BOTTOM OF THE  
16 LIST. IF YOU DIDN'T HAVE SOMETHING LIKE THIS, YOU  
17 WOULDN'T KNOW, IS THE COMPUTER HUNG UP? SO YOU  
18 NEED TO HAVE SOME KIND OF USER INTERFACE ELEMENT  
19 AND THIS IS HOW WE DO IT.

20 MS. MAROULIS: YOUR HONOR, MOVE TO  
21 STRIKE. LACK OF FOUNDATION AND OPINION TESTIMONY.

22 MR. MUELLER: YOUR HONOR, AGAIN, THIS IS  
23 A PORTION OF A PRESENTATION THAT MR. TEKSLER HELPED  
24 TO AUTHOR. I'M JUST ASKING ABOUT ONE ENTRY ON THIS  
25 PAGE.

1 THE COURT: ALL RIGHT. OVERRULED.

2 BY MR. MUELLER:

3 Q MR. TEKSLER, IF YOU COULD, PLEASE TURN TO TAB  
4 2 IN YOUR BINDER, AND THIS IS PDX 32. IF WE COULD  
5 ALSO PUT THAT ON THE SCREEN.

6 MR. TEKSLER, THIS SHOWS SEVEN PATENT  
7 COVERS. ARE YOU FAMILIAR WITH THESE PATENTS?

8 A I AM.

9 Q WHAT ARE THEY?

10 A THESE ARE THE PATENTS --

11 MS. MAROULIS: OBJECTION, CALLS FOR  
12 OPINION TESTIMONY. LACKS FOUNDATION.

13 THE COURT: WHAT ARE YOU ASKING?

14 MR. MUELLER: I MERELY WANTED TO GET  
15 ACROSS THAT THESE ARE THE ASSERTED PATENTS IN THIS  
16 CASE.

17 THE COURT: IS THERE ANY QUESTION ABOUT  
18 THAT SO FAR?

19 MR. MUELLER: I CAN REPHRASE IF YOU -- IF  
20 I MIGHT, YOUR HONOR.

21 Q ARE THESE THE SEVEN ASSERTED PATENTS?

22 A YES, THEY ARE.

23 Q WHERE DO THESE FALL, THESE SEVEN PATENTS,  
24 WITHIN THE CATEGORIES YOU DESCRIBED EARLIER IN THE  
25 APPLE PORTFOLIO?

1 A CERTAINLY. SO THERE'S FOUR DESIGN PATENTS,  
2 AND ALL FOUR DESIGN PATENTS FALL INTO APPLE'S  
3 UNIQUE USER EXPERIENCE.

4 AND THEN THE THREE UTILITY PATENTS THAT  
5 ARE LISTED HERE GENERALLY RELATE TO USER INTERFACE  
6 AND FEATURES THAT WE WOULD ALSO PUT IN THAT SAME  
7 CATEGORY OF APPLE'S UNIQUE USER INTERFACE, OR USER  
8 EXPERIENCE.

9 MR. MUELLER: THANK YOU, SIR.

10 NO FURTHER QUESTIONS.

11 THE COURT: ALL RIGHT. THE TIME IS NOW  
12 4:22.

13 **CROSS-EXAMINATION**

14 BY MS. MAROULIS:

15 Q GOOD AFTERNOON, MR. TEKSLER. HOW ARE YOU?

16 A GOOD AFTERNOON.

17 Q MY NAME IS VICTORIA MAROULIS. I'M COUNSEL FOR  
18 SAMSUNG. AND SEEING HOW IT'S LATE FRIDAY  
19 AFTERNOON, I'LL BE VERY BRIEF.

20 YOU TESTIFIED THAT YOU PREPARED A  
21 POWERPOINT FOR A MEETING BETWEEN APPLE AND SAMSUNG  
22 IN AUGUST 2010. IS THAT CORRECT?

23 A I BELIEVE THAT WAS KEY NOTE, BUT YES.

24 Q AND YOU DIDN'T PERSONALLY ATTEND THE MEETING  
25 IN QUESTION; RIGHT?

1 A NO, I DID NOT.

2 Q YOU CANNOT TELL US FROM YOUR PERSONAL  
3 KNOWLEDGE ANYTHING ABOUT THAT MEETING AND WHAT WAS  
4 PRESENTED; CORRECT?

5 A I KNOW THAT THAT WAS PRESENTED. WE LATER SENT  
6 SAMSUNG THE PRESENTATION AND, IN SUBSEQUENT  
7 MEETINGS WITH SAMSUNG, WE REFERRED BACK TO THAT  
8 PRESENTATION AND TO THE DIALOGUE THAT HAPPENED THAT  
9 DAY. SO THAT'S --

10 Q BUT FROM PERSONAL KNOWLEDGE, YOU DO NOT KNOW  
11 WHAT OCCURRED AT THAT MEETING AND WHAT WAS SHOWN  
12 AND WHAT WAS NOT SHOWN; CORRECT?

13 A OKAY, CERTAINLY.

14 Q AND THE POWERPOINT PRESENTATION THAT YOU  
15 PREPARED IS EXHIBIT 52 IN EVIDENCE; CORRECT? IF  
16 YOU CAN LOOK IN YOUR CROSS-EXAMINATION BINDER AT  
17 TAB 52, DO YOU SEE THAT?

18 A I DO.

19 Q IF YOU LOOK AT PAGES 12 THROUGH 14, DO YOU SEE  
20 A VARIETY OF PATENTS LISTED THERE?

21 A YES, I DO.

22 Q OKAY. AND DO YOU REMEMBER, ON DIRECT, JOE  
23 ASKED YOU ABOUT THE SEVEN PATENTS ASSERTED IN THIS  
24 CASE; CORRECT?

25 A YES, THAT'S CORRECT.



1 Q FOUR OF THEM WERE DESIGN PATENTS?

2 A YES, THAT'S CORRECT.

3 Q ONE OF THOSE DESIGN PATENT PATENTS WAS D'677;  
4 RIGHT?

5 A I BELIEVE THAT'S CORRECT, YES.

6 Q THAT PATENT IS NOWHERE IN THIS PRESENTATION;  
7 IS THAT CORRECT?

8 A IT'S NOT ENUMERATED.

9 Q IT'S NOT MENTIONED AT ALL AS A PATENT, THE  
10 D'677; RIGHT?

11 A SO I THINK WHAT I WOULD SAY IS I AGREE THAT  
12 IT'S NOT ENUMERATED IN THE PRESENTATION.

13 WHEN WE WERE PREPARING THE, THE POINTS  
14 THAT WE WANTED TO GET ACROSS -- AND I BELIEVE THAT  
15 WAS BACK IN SLIDE 17 OF THIS PRESENTATION -- WE DID  
16 SAY THAT THERE WAS A REMARKABLE SIMILARITY BETWEEN  
17 THE PRODUCTS AND, IN DOING SO, WE DID TALK ABOUT  
18 DESIGN PATENTS.

19 Q SIR, THIS PRESENTATION DOES NOT MENTION THE  
20 WORD "DESIGN PATENT" AT ALL; CORRECT?

21 A I AGREE.

22 Q AND DESIGN PATENT '087 THAT YOU REVIEWED WITH  
23 COUNSEL IS ALSO NOT MENTIONED IN THIS PRESENTATION;  
24 IS THAT RIGHT?

25 A I AGREE.

1 Q AND DESIGN PATENT '889 IS SIMILARLY NOT  
2 MENTIONED IN THIS PRESENTATION; CORRECT?

3 A I AGREE.

4 Q AND SO IS D'305, THAT IS ALSO NOT MENTIONED IN  
5 THE PRESENTATION; RIGHT?

6 A I AGREE.

7 Q YOU ALSO LOOKED AT SEVERAL UTILITY PATENTS  
8 WITH COUNSEL; IS THAT RIGHT?

9 A I DID.

10 Q ONE OF THEM WAS '163 PATENT; CORRECT?

11 A I BELIEVE THAT'S CORRECT, YES.

12 Q THAT PATENT IS NOT ENUMERATED ANYWHERE IN THIS  
13 PRESENTATION WE JUST LOOK AT; RIGHT?

14 A THAT'S CORRECT.

15 Q AND THE '915 PATENT THAT YOU ALSO LOOKED AT IN  
16 YOUR DIRECT TESTIMONY IS ALSO NOWHERE MENTIONED;  
17 CORRECT?

18 A THAT'S CORRECT.

19 Q THIS PRESENTATION THAT YOU PREPARED FOR  
20 SAMSUNG DOES NOT HAVE ANY MENTION OF TRADE DRESS;  
21 RIGHT?

22 A AGAIN, I THINK I WOULD PUT IT INTO THE SAME  
23 CATEGORY OF BULLET POINTS THAT WE TALKED ABOUT.

24 Q SIR, YOU'RE A LICENSING PROFESSIONAL. YOU  
25 KNOW WHAT A REGISTERED TRADE DRESS IS; CORRECT?

1 A I AM, YES.

2 Q SO NOWHERE IN THIS PRESENTATION IS THERE  
3 MENTION OF A REGISTERED TRADE DRESS FOR AN IPHONE;  
4 CORRECT?

5 A I AGREE THAT THERE IS NOT.

6 Q AND THERE'S NO MENTION OF UNREGISTERED TRADE  
7 DRESS FOR IPHONE AS WELL; CORRECT?

8 A I AGREE THAT IT'S NOT WRITTEN ON THE SLIDES.

9 Q AND THERE'S NO UNREGISTERED TRADE DRESS FOR  
10 IPAD; CORRECT?

11 A I AGREE.

12 Q EXHIBIT 52 DOESN'T SAY ANYWHERE THAT APPLE  
13 WOULD NOT LICENSE ITS DESIGN PATENTS TO SAMSUNG; IS  
14 THAT RIGHT?

15 A I AGREE.

16 Q AND THE PRESENTATION DOES NOT IDENTIFY ANY  
17 UTILITY PATENTS THAT APPLE WOULD NOT LICENSE TO  
18 SAMSUNG; IS THAT RIGHT?

19 A I AGREE.

20 Q PLEASE TAKE A LOOK AT EXHIBIT DX 586 IN YOUR  
21 BINDER. THIS IS A PRESENTATION THAT YOU MADE TO  
22 SAMSUNG IN OCTOBER 2010; CORRECT?

23 A YES, THAT'S CORRECT.

24 Q YOU PREPARED IT YOURSELF?

25 A I DID.

1 Q AS PART OF DOING BUSINESS AS A LICENSING  
2 OFFICER AT APPLE; CORRECT?

3 A YES, THAT'S CORRECT.

4 MS. MAROULIS: YOUR HONOR, I MOVE EXHIBIT  
5 586 INTO EVIDENCE.

6 MR. MUELLER: NO FURTHER OBJECTIONS, YOUR  
7 HONOR, SUBJECT TO THE LIMITING INSTRUCTION THAT  
8 YOUR HONOR MENTIONED.

9 THE COURT: RIGHT. AND THERE IS A --  
10 THIS IS ADMITTED.

11 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER  
12 586, HAVING BEEN PREVIOUSLY MARKED FOR  
13 IDENTIFICATION, WAS ADMITTED INTO  
14 EVIDENCE.)

15 THE COURT: YOU MAY CONSIDER THIS -- YOU  
16 MAY NOT CONSIDER THIS EVIDENCE TO PROVE OR DISPROVE  
17 THE VALIDITY OR INVALIDITY OF THE CLAIM OR THE  
18 AMOUNT OF THE DISPUTED CLAIM.

19 HOWEVER, YOU MAY CONSIDER THIS EVIDENCE  
20 FOR SOME OTHER PURPOSE, FOR EXAMPLE, WHETHER OR NOT  
21 SAMSUNG LACKED NOTICE OF APPLE'S INFRINGEMENT  
22 CLAIMS.

23 OKAY. GO AHEAD, PLEASE.

24 BY MS. MAROULIS:

25 Q MR. TEKSLER, NOWHERE IN EXHIBIT 586 DOES APPLE

1 IDENTIFY ANY PATENTS; CORRECT?

2 A THAT'S CORRECT.

3 Q AND NOWHERE IN THIS WRITTEN PRESENTATION DOES  
4 IT SAY THAT APPLE WOULD NOT LICENSE ITS DESIGN  
5 PATENTS TO SAMSUNG; CORRECT?

6 A I'M NOT SURE THAT I AGREE WITH THAT. I KNOW  
7 THAT WE TALKED ABOUT THAT AND THAT THERE WAS A  
8 SPECIFIC BULLET, I BELIEVE, ON ONE OF THE PAGES  
9 THAT ADDRESSED THAT.

10 Q SIR, I'M NOT ASKING YOU ABOUT THE MEETING  
11 ITSELF. I'M ASKING YOU ABOUT THE PRESENTATION.  
12 NOWHERE IN THIS DOCUMENT, 586, IS THERE A STATEMENT  
13 THAT APPLE WOULD NOT LICENSE DESIGN PATENTS TO  
14 SAMSUNG?

15 A I THINK THERE IS A BULLET IN HERE THAT SAYS  
16 SPECIFIC APPLE PROPRIETARY FEATURES TO BE  
17 DISCUSSED.

18 AND IN THAT CONSTRUCT, WE TALKED ABOUT  
19 NOT HAVING THE ABILITY TO CLONE OUR PRODUCTS.

20 Q AGAIN, WITHIN THE CONTEXT OF THIS  
21 PRESENTATION, THERE'S NO STATEMENT THAT APPLE WOULD  
22 NOT LICENSE ITS DESIGN PATENTS TO SAMSUNG; CORRECT?

23 A I AGREE.

24 Q AND NOWHERE IN THIS DOCUMENT DOES APPLE SAY  
25 THAT IT WOULD NOT LICENSE CERTAIN UTILITY PATENTS

1 TO SAMSUNG; CORRECT?

2 A SUBJECT TO THE SAME, YOU KNOW, POINT THAT I  
3 MADE EARLIER, YES.

4 Q LET'S PUT UP 586, PAGE 13, PLEASE.

5 AT THE TOP OF THE PAGE, IT SAYS "WE WILL  
6 PROVIDE SAMSUNG WITH A NUMBER OF OPTIONS FOR  
7 OBTAINING A COST-EFFECT LICENSE TO OUR PATENT  
8 PORTFOLIO."

9 DID I READ THIS CORRECTLY?

10 A YES, THAT'S CORRECT.

11 Q AND THIS REFERS TO LICENSING PATENT PORTFOLIO;  
12 RIGHT?

13 A YES, THAT'S CORRECT.

14 Q IT DOES NOT SAY "PATENT PORTFOLIO EXCEPT  
15 DESIGN PATENTS." CORRECT?

16 A NO, I AGREE THE SLIDE DOESN'T SAY THAT.

17 Q AND IT DOESN'T SAY "EXCEPT FOR CERTAIN UTILITY  
18 PATENTS." CORRECT?

19 A THAT'S CORRECT.

20 Q IN EXHIBIT 586, APPLE PROPOSED CERTAIN  
21 DISCOUNTS ON THE LICENSE FEES BASED ON CERTAIN  
22 ELEMENTS; CORRECT?

23 A YES, THAT'S CORRECT.

24 Q AND ONE OF THOSE ELEMENTS WERE PROPRIETARY,  
25 SO-CALLED PROPRIETARY FEATURES?

1 A YES. I'M NOT SURE THAT WE'RE USING THE WORD  
2 THE SAME WAY, BUT YES.

3 Q OKAY. AND APPLE DEFINED SOME OF ITS  
4 PROPRIETARY FEATURES, WHAT IT'S CALLED DISTINCTIVE  
5 INDUSTRIAL DESIGN; CORRECT?

6 A APPLE DEFINED SOME OF IT AS -- OR WHAT I DID  
7 SPECIFICALLY, I SHOULD SAY, IS I DEFINED THEM AS  
8 DISTINCTIVE INDUSTRIAL DESIGNS, THAT'S CORRECT.

9 Q AND APPLE NEVER GAVE SAMSUNG ANYTHING IN  
10 WRITING THAT IDENTIFIED PATENTS OR FEATURES THAT  
11 WERE NOT AVAILABLE FOR LICENSE; IS THAT RIGHT?

12 A IN THIS PRESENTATION? OR EVER?

13 Q IN THIS PRESENTATION, SIR.

14 A IN THIS PRESENTATION, NO, WE HAD NOT GOTTEN TO  
15 THAT POINT OF THE DISCUSSION. WE HAD JUST SIMPLY  
16 MENTIONED THAT THERE WERE SOME THINGS THAT YET HAD  
17 TO BE DISCUSSED.

18 Q OKAY. SIR, IT'S TRUE, IS IT NOT, THAT APPLE  
19 LICENSED ITS DESIGN PATENTS TO ANOTHER PARTY?

20 A YES. I THINK I SAID EARLIER THAT THERE WERE  
21 LESS THAN A HANDFUL OF SUCH EVENTS.

22 Q BUT THOSE PATENTS HAVE BEEN LICENSED BEFORE;  
23 CORRECT?

24 A YES.

25 Q ARE YOU AWARE OF WHETHER ANYONE HAS EVER PAID

1 APPLE A PER UNIT ROYALTY OF \$2.02 FOR THE '381  
2 PATENT?

3 A NO, I'M NOT AWARE.

4 (PAUSE IN PROCEEDINGS.)

5 BY MS. MAROULIS:

6 Q I'M SORRY, SIR?

7 A NO, I'M NOT AWARE OF THAT.

8 MS. MAROULIS: OKAY. YOUR HONOR, WE'RE  
9 ALMOST AT THE END. SHOULD WE STOP OR CONTINUE?

10 THE COURT: IT'S NOW 4:30, SO WE CAN END  
11 FOR TODAY.

12 MS. MAROULIS: OKAY.

13 THE COURT: SO WE'LL CONTINUE WITH THE  
14 CROSS ON MONDAY.

15 ALL RIGHT. SO PLEASE DON'T DISCUSS THE  
16 CASE WITH ANYONE, DON'T DO ANY RESEARCH, PLEASE  
17 KEEP AN OPEN MIND, AND YOU'RE EXCUSED FOR TODAY AND  
18 WE'LL SEE YOU BACK ON MONDAY AT 9:00 O'CLOCK.

19 AND NEXT WEEK WE ARE GOING FIVE DAYS  
20 STRAIGHT, OKAY?

21 THANK YOU FOR YOUR PATIENCE AND YOUR  
22 SERVICE.

23 AND IF YOU WOULD, PLEASE, LEAVE YOUR JURY  
24 BOOKS IN THE JURY ROOM OVER THE WEEKEND.

25 OKAY. THANK YOU.



1 (WHEREUPON, THE FOLLOWING PROCEEDINGS  
2 WERE HELD OUT OF THE PRESENCE OF THE JURY:)

3 THE COURT: THE RECORD SHOULD REFLECT THE  
4 JURY HAS LEFT THE COURTROOM.

5 YOU MAY STEP DOWN.

6 THE WITNESS: THANK YOU.

7 THE COURT: AND PLEASE TAKE A SEAT.

8 ARE YOU -- IS APPLE NOT CALLING ANY OF  
9 THE INDIVIDUALS, THE FOUR INDIVIDUALS WHO WERE  
10 IDENTIFIED FOR DEPOSITION DESIGNATIONS?

11 MR. MCELHINNY: I'M -- I'M SORRY, YOUR  
12 HONOR. I'M NOT SURE I UNDERSTAND YOUR QUESTION.

13 WE WILL BE PLAYING THE DEPOSITION  
14 DESIGNATIONS.

15 THE COURT: OF JUNWON LEE AND DONG HOON  
16 CHANG AND TIMOTHY BENNER AND TIMOTHY SHEPPARD?

17 MR. MCELHINNY: YES, YOUR HONOR.

18 THE COURT: OKAY. SO THAT'S WHAT YOU'LL  
19 DO ON MONDAY.

20 MR. MCELHINNY: YES, YOUR HONOR.

21 THE COURT: AFTER MR. TEKSLER?

22 MR. MCELHINNY: YES, YOUR HONOR.

23 THE COURT: OKAY.

24 MR. MCELHINNY: AND THEN MR. MUSIKA.

25 THE COURT: AND THEN MR. MUSIKA. AND

1 THEN WILL YOU HAVE ANY ADDITIONAL WITNESSES OR DO  
2 YOU PLAN TO REST?

3 MR. MCELHINNY: WE PLAN TO REST AFTER  
4 MR. MUSIKA.

5 THE COURT: I SEE. OKAY. SO THEN THE  
6 ONLY OBJECTIONS THAT ARE LEFT, THEN, ARE  
7 MR. MUSIKA.

8 AND THEN HAVE YOU REDESIGNATED THE  
9 DEPOSITION EXCERPTS THAT YOU WANT FOR MR. SHEPPARD?

10 MR. MCELHINNY: WE HAVEN'T YET. WE'LL DO  
11 THAT TOMORROW, YOUR HONOR.

12 THE COURT: OKAY. I NEED THE OBJECTIONS  
13 TO ANY WITNESSES TO BE FILED AT 8:00 A.M. THE DAY  
14 BEFORE THE WITNESS TESTIFIES. DOING IT AT 4:00  
15 O'CLOCK JUST DOESN'T GIVE ME ENOUGH TIME. OKAY?

16 MR. JACOBS: SO, YOUR HONOR, THE PROBLEM  
17 I THINK WE'RE GOING TO RUN INTO IS WE WILL FINISH  
18 WITH MR. MUSIKA, AND THEN THERE'S THE SAMSUNG CASE  
19 ABOUT WHICH WE KNOW ABSOLUTELY NOTHING.

20 THE COURT: WELL, I ASSUME THAT SAMSUNG  
21 ALSO IS GOING TO DO ITS ROLLING LIST OF SEVEN  
22 WITNESSES THAT APPLE HAS DONE.

23 SO WHEN ARE YOU INTENDING TO FILE THAT,  
24 UNDERSTANDING, I THINK, THAT YOUR CASE,  
25 MR. VERHOEVEN, WILL START ON MONDAY.

1 MR. VERHOEVEN: YES, YOUR HONOR.

2 THE COURT: SO WHEN ARE YOU GOING TO FILE  
3 YOUR ROLLING LIST OF SEVEN WITNESSES?

4 MS. MAROULIS: YOUR HONOR, THE  
5 DISCLOSURES ARE DUE SATURDAY FOR THE MONDAY  
6 WITNESSES, AND THEN SATURDAY NIGHT WE WILL FILE OUR  
7 ROLLING LIST OF SEVEN WITNESSES.

8 MR. JACOBS: IT WOULD BE VERY HELPFUL, TO  
9 MEET YOUR HONOR'S SCHEDULE, IF WE COULD GET ALL OF  
10 THAT EARLY. I THINK THE DISCLOSURE OF EXHIBITS  
11 WOULD BE DUE AT, UNDER OUR NEW SCHEDULE --

12 MS. MAROULIS: YOUR HONOR, UNDER OUR NEW  
13 SCHEDULE, IT'S 10:00, 10:00 A.M. TOMORROW.

14 MR. JACOBS: YEAH, 10:00 A.M. TOMORROW  
15 FOR THE EXHIBITS. IF WE COULD HAVE THE ROLLING  
16 LIST OF SEVEN AT THAT TIME, THAT WOULD BE TERRIFIC.

17 THE COURT: SO THE EXHIBITS AND THE LIST  
18 OF WITNESSES FOR MONDAY ARE GOING TO BE FILED AND,  
19 I GUESS, EXCHANGED SATURDAY AT 10:00 A.M., AND THEN  
20 I WOULD LIKE THE OBJECTIONS AND RESPONSES TO BE  
21 FILED ON SUNDAY. CAN YOU DO THAT BY 8:00 A.M., OR  
22 WHAT TIME?

23 MS. MAROULIS: IN THAT CASE, WE WOULD  
24 EXPEDITE THE CROSS DISCLOSURES BECAUSE WE WON'T BE  
25 GETTING THE CROSS DISCLOSURES UNTIL 7:00.

1 THE COURT: 7:00 ON WHICH DATE?

2 MS. MAROULIS: SATURDAY.

3 THE COURT: OKAY. TELL ME WHAT TIME ON  
4 SUNDAY WERE YOU PLANNING TO -- I MEAN, YOU ALL  
5 PROPOSE A SCHEDULE FOR THIS WEEKEND, PLEASE.

6 MS. MAROULIS: WE WERE PLANNING TO DO IT  
7 BY 1:00 P.M. FOR MONDAY WITNESSES. THAT'S THE  
8 SCHEDULE WE WORKED OUT, WHERE WE FILE OBJECTIONS  
9 THE DAY BEFORE AT 1:00 O'CLOCK IF THAT'S OKAY FOR  
10 YOUR HONOR.

11 THE COURT: THAT DOESN'T GIVE ME MUCH  
12 TIME. I MEAN, YOU HAD 11 WITNESSES THIS TIME AND  
13 YOU MISSED THE 1:00 O'CLOCK DEADLINE. I GOT THE  
14 OBJECTIONS FOR MOST OF THE WITNESSES AT 4:00  
15 O'CLOCK, AND I DIDN'T EVEN HAVE THE EXHIBITS.

16 MR. JACOBS: WE APOLOGIZE FOR THAT.

17 THE COURT: SO THAT HAS BECOME A  
18 PERENNIAL PROBLEM THAT BOTH SIDES ARE FILING THESE  
19 OBJECTIONS AND THEN NOT GIVING ME THE RELEVANT  
20 EXHIBITS. I DON'T KNOW HOW YOU EXPECT ME TO RULE  
21 ON THINGS THAT I'VE NEVER SEEN BEFORE.

22 SO SOMEHOW THIS PROCESS NEEDS TO BE  
23 IMPROVED BECAUSE I'M GETTING OBJECTIONS LATE AND  
24 I'M NOT GETTING EXHIBITS.

25 SO I'M -- JUST DOING A LIST OF

1 RESERVATIONS DEPENDING ON WHAT THE EXHIBIT LOOKS  
2 LIKE IS NOT REALLY HELPFUL FOR ANYONE AND IT'S A  
3 WASTE OF TIME FOR ALL OF US.

4 SO --

5 MS. MAROULIS: YOUR HONOR, MAY WE FILE  
6 EVERYTHING AT 1:00 P.M. SUNDAY, BUT SHARP THIS  
7 TIME?

8 THE COURT: WELL, THIS IS MY CONCERN.  
9 FOR EIGHT DIFFERENT WITNESSES, AT LEAST, AT A  
10 MINIMUM BECAUSE WE, YOU KNOW, NO OBJECTIONS WERE  
11 FILED AS TO MR. SHEPPARD. I'VE EXCLUDED  
12 MR. SITTLER, SO I'M ASSUMING HE'S OFF. RIGHT?

13 MR. JACOBS: YES, YOUR HONOR.

14 THE COURT: NO. I'M GOING TO SAY -- CAN  
15 WE SAY AT LEAST BY 10:30 ON SUNDAY?

16 MR. JACOBS: AS YOU WISH, YOUR HONOR.

17 MS. MAROULIS: YES, YOUR HONOR.

18 THE COURT: OKAY.

19 MR. JACOBS: IS THERE ANY --

20 THE COURT: OKAY. SO WE HAVE ALSO THE  
21 DALE SOHN ISSUE AND THE F7000 PHONE DESIGNER ISSUE,  
22 AND I OWE YOU THE RULINGS ON THE MUSIKA OBJECTIONS  
23 AND THEN WE'LL WAIT AND SEE ON SHEPPARD.

24 I GUESS IT'S POSSIBLE THAT DALE SOHN AND  
25 THE PHONE DESIGNER WILL GO ON ON MONDAY? IS THAT

1 RIGHT? IS THAT POSSIBLE?

2 MS. MAROULIS: NO, YOUR HONOR. THEY'RE  
3 NOT SCHEDULED TO GO ON MONDAY.

4 THE COURT: OKAY. ALL RIGHT. I'LL TRY  
5 TO GET YOU A RULING ON THAT AS QUICKLY AS I CAN.

6 YOU'RE GOING TO FILE THE OBJECTIONS  
7 TODAY? RIGHT?

8 MS. MAROULIS: WE HAVE FILED IT, YOUR  
9 HONOR. I UNDERSTAND IT'S BEEN FILED ABOUT AN HOUR  
10 AGO.

11 THE COURT: OKAY, PERFECT. SO IF I CAN,  
12 IF IT'S POSSIBLE, I'LL TRY TO GET YOU THE RULINGS  
13 THIS WEEKEND.

14 OKAY. WHAT ELSE? ANYTHING ELSE THAT --

15 MR. MCELHINNY: CAN I GET SOME GUIDANCE  
16 FROM YOUR HONOR?

17 THE COURT: YEAH.

18 MR. MCELHINNY: THE ISSUE IS, IN MY MIND,  
19 ADMITTING DEMONSTRATIVES AS EXHIBITS. WE HAVE  
20 BEEN -- AS YOU KNOW, WE HAVE A SPECIFIC EXHIBIT  
21 LIST THAT WAS SUBJECT TO LIMITATIONS. WE HAVE BEEN  
22 FOCUSSED ON OUR OBJECTIONS ON THE EXHIBITS THAT ARE  
23 ON THAT LIST. TODAY YOUR HONOR BEGAN TO ADMIT  
24 DEMONSTRATIVES.

25 THE COURT: OH, NO, NO. THAT'S NOT TRUE.

1 MS. KREVANS IS THE ONE WHO STARTED THIS  
2 PROCESS OF ADMITTING DEMONSTRATIVES. IT WAS APPLE  
3 THAT STARTED THIS PROCESS.

4 MR. MCELHINNY: LET ME JUST START BACK  
5 AGAIN.

6 ALL I REALLY WANT -- WE DON'T WANT TO BE  
7 MAKING OBJECTIONS THAT ARE NOT GOING TO BE -- WHAT  
8 IS THE COURT'S --

9 THE COURT: ACTUALLY, BOTH SIDES HAVE  
10 BEEN OBJECTING TO DEMONSTRATIVES, SO I'M NOT SURE  
11 WHAT YOU'RE TALKING ABOUT THAT NO ONE HAS OBJECTED  
12 TO DEMONSTRATIVES SO FAR. THERE HAVE BEEN A LOT A  
13 OBJECTIONS TO DEMONSTRATIVES. THAT'S WHY YOU'VE  
14 HAD TO CHANGE TITLES AND TAKE OUT PORTIONS.

15 MR. MCELHINNY: WE'VE BEEN OBJECTING TO  
16 THE DEMONSTRATIVES ON THE GROUNDS THAT THEY'RE  
17 MISLEADING. WE'VE NOT BEEN APPLYING EVIDENTIARY  
18 OBJECTIONS TO THEM BECAUSE I DIDN'T THINK THEY WERE  
19 COMING INTO EVIDENCE.

20 BUT I JUST WANT TO -- IF A DEMONSTRATIVE  
21 IS SHOWN, IS IT MOVED INTO EVIDENCE? IS THAT GOING  
22 TO HAPPEN NOW? THAT'S ALL I REALLY WANT TO KNOW.

23 THE COURT: WELL, I'M TELLING YOU, ASK  
24 MS. KREVANS. SHE'S THE ONE THAT STARTED ADMITTING  
25 DEMONSTRATIVES INTO EVIDENCE.

1 MR. VERHOEVEN: YES.

2 THE COURT: IT WAS NOT MY UNDERSTANDING  
3 THAT WAS GOING TO HAPPEN.

4 LET ME HEAR FROM MS. KREVANS.

5 YOU SHOULD TALK TO YOUR OWN TEAM. YOUR  
6 OWN TEAM STARTED THIS PROCESS OF ADMITTING  
7 DEMONSTRATIVES.

8 MR. VERHOEVEN: AND IF I COULD JUST  
9 SAY --

10 MS. KREVANS: IF I MAY RESPOND TO YOUR  
11 HONOR'S QUESTION?

12 THE COURT: YEAH.

13 MS. KREVANS: THE EXHIBITS THAT I PUT IN  
14 WERE ON OUR EXHIBIT LIST FROM THE START. THEY WERE  
15 PHOTOGRAPHS THAT WERE PUT IN EXPLICITLY AS  
16 SUMMARIES OF SETS OF DEVICES. ALL THE UNDERLYING  
17 DEVICES WERE MADE AVAILABLE TO COUNSEL.

18 THEY WERE OBJECTED TO NOT BECAUSE THEY  
19 WERE DEMONSTRATIVES, THEY WERE OBJECTED TO ON THE  
20 BASIS THEY WERE IMPROPER SUMMARIES.

21 YOUR HONOR SAID THAT OBJECTION WAS  
22 OVERRULED, SO LONG AS THE UNDERLYING DEVICES WERE  
23 MADE AVAILABLE, AND THEY WERE. THEY WERE PLAIN AND  
24 SIMPLE, STRAIGHT AHEAD PHOTOGRAPHS TO COLLECT FOR  
25 THE JURY A SET OF UNDERLYING DEVICES.



1                   THEY HAD NO GRAPHIC CONTENT WHATSOEVER.  
2                   AND THEY WERE PRESENTED ALL ALONG IN THE EXHIBIT  
3                   LIST.

4                   MR. VERHOEVEN:   MAY I BE HEARD, YOUR  
5                   HONOR?

6                   THE COURT:   PLEASE.

7                   MR. VERHOEVEN:   NOT ONLY IS THAT NOT  
8                   CORRECT, AS YOUR HONOR WILL RECALL, I REPEATEDLY  
9                   OBJECTED THAT THEY WERE DEMONSTRATIVES AND I WAS  
10                  OVERRULED.

11                  BUT JUST TODAY, MR. JACOBS PUT IN HIS  
12                  SLIDES, ONE AFTER ANOTHER AFTER ANOTHER AFTER  
13                  ANOTHER OF DEMONSTRATIVES, MOVED THEM INTO EVIDENCE  
14                  OVER OUR OBJECTION THAT THEY WERE DEMONSTRATIVES.

15                  AND NOW THAT THEY'VE FINISHED PUTTING IN  
16                  ALL THEIR DEMONSTRATIVES IS WHEN WE HEAR COUNSEL  
17                  GET UP AND SAY, "WELL, WHAT'S SAUCE FOR THE GOOSE  
18                  SHOULDN'T BE SAUCE FOR THE GANDER."

19                  THIS IS A CLEAR SITUATION WHERE THEY'RE  
20                  TRYING TO CHANGE THE RULES NOW THAT THEY'RE GETTING  
21                  CLOSE TO FINISHING THEIR CASE-IN-CHIEF.

22                  IF WE CAN LOOK THROUGH MR. JACOBS'  
23                  SLIDES, HE MOVED THEM ALL IN, AND YOUR HONOR LET  
24                  THEM ALL IN, AND NOW THEY'RE TRYING TO CHANGE THE  
25                  RULES.

1 MS. KREVANS: YOUR HONOR, I OFFERED INTO  
2 EVIDENCE NO SLIDE THAT WAS PRESENTED AS A  
3 DEMONSTRATIVE WITH MR. BRESSLER OR DR. KARE'S  
4 TESTIMONY, ONLY THE PHOTOGRAPHS THAT HAD BEEN ON  
5 THE EXHIBIT LIST ALL ALONG.

6 AND TODAY WHAT HAPPENED WAS THAT  
7 MR. JACOBS, WHEN HE DID HIS DIRECT OF HIS WITNESS,  
8 OFFERED NONE OF HIS DEMONSTRATIVES UNTIL AFTER, ON  
9 CROSS, SAMSUNG'S COUNSEL OFFERED SOME OF THEIR  
10 DEMONSTRATIVES AND A PRECEDENT WAS SET THAT THEY  
11 COULD COME IN. HE THEN OFFERED HIS. THAT'S THE  
12 RECORD TO DATE.

13 MR. MCELHINNY: AND IT'S LATE FRIDAY  
14 AFTERNOON, YOUR HONOR, AND I'M REALLY SORRY FOR  
15 OPENING THIS BECAUSE ALL I REALLY WANTED TO KNOW  
16 WAS WHAT THE RULES ARE GOING FORWARD.

17 WE'LL LIVE WITH WHATEVER THE RULE IS. I  
18 JUST WANTED SOME SORT OF GUIDE.

19 THE COURT: WELL, AS LONG AS THEY -- I  
20 MEAN, THIS IS EXCEEDING ALL OF THE EXHIBIT LIMITS.

21 MR. VERHOEVEN: YOUR HONOR --

22 THE COURT: BUT I'M GOING TO THE ALLOW  
23 THEM AS LONG AS THEY MEET 403 AND OUR, YOU KNOW,  
24 OTHER PROPER EVIDENTIARY RULES. I THINK THAT'S  
25 ONLY FAIR SINCE THEY HAVE BEEN COMING IN.

1 MR. MCELHINNY: THANK YOU, YOUR HONOR.

2 THE COURT: SO -- AND THEY HAVE BEEN VERY  
3 HEAVILY OBJECTED TO, SO I'M NOT SURE WHAT YOU'RE  
4 REFERRING TO THAT NO ONE HAS BEEN OBJECTING TO  
5 DEMONSTRATIVES, BECAUSE THAT AIN'T WHAT I'VE BEEN  
6 DOING FOR THE LAST TWO WEEKS.

7 SO ANYWAY, WHAT ELSE DO WE HAVE?

8 MR. VERHOEVEN: I JUST HAVE ONE SORT OF A  
9 HOUSEKEEPING MATTER, YOUR HONOR.

10 ON THE DEPOS, I UNDERSTAND YOUR HONOR'S  
11 RULING ON 106, BUT THE ISSUE WE'RE HAVING IS THE  
12 WITNESS ISN'T HERE, RIGHT, AND SO TYPICALLY, MY  
13 PRACTICE, THE WAY YOU DO DEPOS IS YOU HAVE  
14 DESIGNATIONS AND COUNTER-DESIGNATIONS.

15 BUT THE COUNTERS DON'T MAKE ANY -- YOU  
16 CAN'T -- BECAUSE IT'S A TRANSCRIPT, YOU CAN'T SAY,  
17 "NOW, YOU REMEMBER WHEN SO AND SO ASKED YOU X, DID  
18 YOU HAVE SOMETHING TO ADD TO THAT?"

19 SO IF YOU JUST PLAY THEM, THEY REALLY  
20 DON'T MAKE SENSE AND THE JURY IS NOT GOING TO  
21 UNDERSTAND, OUTSIDE OF THE CONTEXT.

22 SO MY -- I'M JUST TELLING MY HISTORICAL  
23 PRACTICE HAS BEEN THAT YOU PUT THEM TOGETHER AND  
24 YOU PLAY THEM AND THE TWO SIDES WORK OUT, YOU KNOW,  
25 THEIR OBJECTIONS TO THE DESIGNATIONS AND COUNTERS,

1 BUT THEY GO IN AS A UNIT. THAT'S BEEN MY  
2 EXPERIENCE.

3 YOUR HONOR, IF I CAN JUST FINISH? IF  
4 YOUR HONOR IS NOT WILLING TO DO THAT, THEN AT LEAST  
5 I THINK IT MAKES SENSE TO HAVE THEM PLAYED SORT OF  
6 LIKE WHEN WE WERE TALKING ABOUT CROSS-EXAMINATION  
7 WHERE IF I PUT UP A SNIPPET ON REBUTTAL, OR REPLY,  
8 THE OTHER COUNSEL IS ABLE TO PUT UP THE OTHER  
9 CONTEXT, SO AT LEAST IT WOULD BE WHILE THE WITNESS  
10 IS STILL ON THE STAND FOR CONTEXT.

11 SO IF WE'RE NOT ALLOWED TO PUT THEM  
12 TOGETHER, WHICH I ACTUALLY THINK WOULD BE THE MOST  
13 COHERENT FOR THE JURY, I THINK IT WOULD MAKE SENSE  
14 FOR US TO PLAY OUR COUNTERS IMMEDIATELY AFTER  
15 THEIRS, SORT OF LIKE A CROSS TO THEIR EXAMINATION.

16 THE COURT: NO. I'M JUST GOING TO HAVE  
17 WHATEVER EXCERPTS ONE SIDE WANTS IN, THEY'LL JUST  
18 FINISH IT AND IT'LL BE COUNTED TOWARDS THEIR TIME;  
19 AND THEN WHATEVER EXCERPT THE OTHER SIDE WANTS,  
20 THEN THEY'LL BE PLAYED AND THEY'LL BE COUNTED  
21 TOWARDS THEIR TIME.

22 IT'S GOING TO BE LIKE THE WITNESS IS  
23 HERE. YOU DON'T GET TO DO THE IMMEDIATE CROSS WHEN  
24 A LIVE WITNESS IS HERE, AND I'M NOT GOING TO TREAT  
25 IT ANY DIFFERENTLY IF IT'S VIDEO.

1 I'M ASSUMING THESE ARE VIDEO.

2 MR. MCELHINNY: THEY ARE VIDEO.

3 MR. VERHOEVEN: SO JUST FOR CLARITY, I  
4 THINK I UNDERSTAND YOU TO SAY NO, WE CAN'T DO THAT,  
5 WE HAVE TO WAIT UNTIL OUR CASE-IN-CHIEF TO PLAY IT?

6 THE COURT: NO, NO. IT'S GOING TO BE  
7 LIKE THE WITNESS IS LIVE. WHATEVER EXCERPT ONE  
8 SIDE WANT, I WILL DOCK THEIR TIME, AND WHATEVER  
9 OTHER EXCERPTS THE OTHER SIDE WANTS --

10 MR. VERHOEVEN: SO WE SHOULD BE PREPARED  
11 AND READY TO PLAY OUR COUNTERS IMMEDIATELY AFTER  
12 THEY DO THEIR DESIGNATIONS?

13 THE COURT: YES, AFTER THEY SHOW THEIR  
14 VIDEO PORTIONS, YOU'LL SHOW YOUR VIDEO PORTIONS,  
15 AND I ASSUME IT'S NOT GOING TO BE ANY FURTHER.  
16 IT'S JUST ONE SET AND ONE SET.

17 AND THEN WE'LL GO TO THE NEXT WITNESS AND  
18 ONE SET AND ONE SET, AND THAT WAY I'LL KEEP THE  
19 TIME THAT WAY.

20 MR. VERHOEVEN: THANK YOU, YOUR HONOR,  
21 FOR THE CLARIFICATION.

22 THE COURT: WHAT ELSE? YOU'RE STILL  
23 STANDING.

24 MR. MCELHINNY: ARE YOU PREPARED TO SHARE  
25 YOUR TIME?

1 THE COURT: OH, YEAH, OKAY.

2 (PAUSE IN PROCEEDINGS.)

3 THE COURT: ALL RIGHT. APPLE HAS USED 11  
4 HOURS AND 35 MINUTES.

5 AND SAMSUNG HAS USED 12 HOURS AND 16  
6 MINUTES.

7 OKAY. WHAT ELSE? ANYTHING ELSE?

8 MR. VERHOEVEN: NOTHING FROM SAMSUNG,  
9 YOUR HONOR.

10 MR. MCELHINNY: NOTHING FOR APPLE, YOUR  
11 HONOR.

12 THE COURT: OKAY. THEN I WILL -- ARE YOU  
13 GOING TO -- FOR THE EXHIBITS, ARE YOU GOING TO THEN  
14 PROVIDE THEM ON FTP OR E-MAIL, THE ONES THAT I NEED  
15 TO RULE ON ON SUNDAY?

16 MS. MAROULIS: WHATEVER IS BEST FOR YOUR  
17 HONOR. WE CAN EITHER E-MAIL THEM OR FTP THEM.  
18 THAT'S THE PREFERENCE?

19 THE COURT: I GUESS THAT DEPENDS ON SIZE.  
20 IF THEY'RE RELATIVELY SMALL AND THEY CAN BE  
21 E-MAILED, THAT'S FINE. BUT IF IT'S A VERY BIG  
22 VOLUME, THEN PROBABLY FTP IS PREFERABLE.

23 MS. MAROULIS: OKAY, YOUR HONOR. WE'LL  
24 PROBABLY DO FTP, BECAUSE IF THEY'RE POWERPOINTS FOR  
25 DEMONSTRATIVES --

1 THE COURT: THEY'LL TAKE A LONG TIME.

2 OKAY. SO WE'LL EXPECT THEM SUNDAY AT 10:30.

3 WE'LL TRY TO GET THE MUSIKA OBJECTIONS,  
4 IF WE CAN, EVEN TODAY OUT, AND THEN THE OTHER TWO  
5 AS SOON AS WE CAN. BUT HOPEFULLY THIS WEEKEND OR  
6 EARLY NEXT WEEK.

7 OKAY. ALL RIGHT. THANK YOU ALL.  
8 APPRECIATE IT.

9 MR. JACOBS: THANK YOU VERY MUCH, YOUR  
10 HONOR.

11 MR. VERHOEVEN: THANK YOU, YOUR HONOR.

12 (WHEREUPON, THE EVENING RECESS WAS  
13 TAKEN.)

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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/

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LEE-ANNE SHORTRIDGE, CSR, CRR  
CERTIFICATE NUMBER 9595

DATED: AUGUST 11, 2012