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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 13, 2012
VS.)	
)	VOLUME 7
SAMSUNG ELECTRONICS CO., LTD., A KOREAN BUSINESS ENTITY; SAMSUNG ELECTRONICS AMERICA, INC., A NEW YORK CORPORATION; SAMSUNG TELECOMMUNICATIONS AMERICA, LLC, A DELAWARE LIMITED LIABILITY COMPANY,)	PAGES 1989-2320
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)	
DEFENDANTS.)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE LUCY H. KOH
UNITED STATES DISTRICT JUDGE

APPEARANCES ON NEXT PAGE

OFFICIAL COURT REPORTER: LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

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

FOR PLAINTIFF MORRISON & FOERSTER
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BY: VICTORIA F. MAROULIS
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10TH FLOOR
LOS ANGELES, CALIFORNIA 90017

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ADAM BOGUE

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1 SAN JOSE, CALIFORNIA AUGUST 13, 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: OKAY. FOR THE JURY
6 INSTRUCTIONS, WOULD YOU PLEASE PROVIDE A MICROSOFT
7 WORD VERSION TO EITHER THE PROPOSED ORDER INBOX OR
8 TO LHK, CRD?

9 MS. MAROULIS: YES, YOUR HONOR.

10 THE COURT: AND WOULD YOU PLEASE ALSO
11 PROVIDE SIX HARD COPIES OF THE JOINT AND DISPUTED
12 JURY INSTRUCTIONS IN THREE-RING BINDERS, PLEASE?

13 MS. MAROULIS: YES.

14 THE COURT: ALL RIGHT. THANK YOU. CAN
15 YOU DO THAT TODAY, AT THE END OF THE DAY SO WE CAN
16 START WORKING ON THOSE?

17 ALL RIGHT. THANK YOU.

18 WITH REGARD TO APPLE'S PROPOSED
19 REDACTIONS TO PX 2581, THAT'S APPROVED.

20 ON YOUR EXHIBIT LIST -- THANK YOU FOR
21 FILING THAT -- IT WAS A LITTLE BIT UNCLEAR -- I
22 MEAN, WE CAN TAKE THE PREFIXES OFF ONCE THE LIST IS
23 FINALIZED, BUT IT WOULD BE HELPFUL IF YOU LEFT THE
24 PREFIXES ON, BECAUSE THAT MORE EASILY MAPS ON TO MY
25 LIST, SO IF YOU WOULD KEEP, LIKE, PX OR DX OR SDX

1 OR PDX.

2 AND I WASN'T SURE ON NUMBER 3 AND 4 WHERE
3 YOU JUST SAY APPLE AND SAMSUNG SMARTPHONES, APPLE
4 AND SAMSUNG TABLETS, WHAT WERE THOSE? BECAUSE I
5 KNOW YOU HAVE THE JX ACTUAL PHONES, YOU KNOW,
6 STARTING ON PAGE 6.

7 MS. MAROULIS: YOUR HONOR, THAT'S
8 PROBABLY APPLE'S EXHIBIT, SO I'LL LET THEM HANDLE
9 THAT.

10 MR. JACOBS: I THINK WE'LL HAVE TO CHECK,
11 YOUR HONOR.

12 MS. KREVANS: I THINK I KNOW THE ANSWER,
13 YOUR HONOR. IF THOSE WERE PX 3 AND 4, THOSE ARE
14 PHOTO COMPILATIONS, ONE ARE ACCUSED DEVICES AND ONE
15 ARE APPLE PRODUCTS. I'D HAVE TO LOOK THEM UP TO
16 MAKE SURE WHICH IS WHICH.

17 THE COURT: ALL RIGHT. IF YOU WOULD,
18 PLEASE, ON THIS EXHIBIT NUMBER INCLUDE THE
19 PREFIXES, THEN I CAN VERIFY IT, AND THEN WE CAN
20 ALWAYS TAKE THOSE OFF WHEN THIS GOES TO THE JURY.

21 AND WHEN CAN YOU UPDATE THESE LISTS? THE
22 DEMONSTRATIVE LIST ONLY GOES THROUGH LAST TUESDAY
23 AND THE EXHIBIT LIST GOES THROUGH LAST THURSDAY.

24 MR. JACOBS: YOUR HONOR, I THINK BY FIRST
25 THING TOMORROW MORNING WE COULD GET THAT DONE.

1 THE COURT: OKAY. THANK YOU.

2 MR. JACOBS: I KNOW THE PARTIES HAVE --
3 UNDERSTAND THAT WE NEED TO BE SYNCHING THIS UP.

4 THE COURT: EVERY DAY WOULD BE GREAT, IF
5 WE COULD HAVE JUST A NEW LIST TO MAKE SURE THERE'S
6 NO DISAGREEMENT ABOUT WHAT'S BEEN ADMITTED THAT
7 DAY.

8 OKAY. SO WHY DON'T WE SAY -- CAN YOU
9 UPDATE THAT TOMORROW AT 8:00?

10 MR. JACOBS: YES, YOUR HONOR.

11 THE COURT: OKAY. THANK YOU.

12 AND WHY DON'T WE JUST HAVE THAT DAILY?
13 SO WHATEVER'S BEEN ADMITTED THE PREVIOUS DAY, WE'LL
14 ALL BE IN AGREEMENT AND THERE'S NO PROBLEM.

15 AND WHEN CAN I HAVE THE JURY
16 INSTRUCTIONS? CAN WE SAY BY 6:00 O'CLOCK TODAY?

17 MR. JACOBS: YES, YOUR HONOR.

18 THE COURT: OKAY. THANK YOU.

19 OKAY. NOW, WHAT'S -- WHAT -- FOR THE
20 ACTUAL EXHIBITS THAT ARE BEING SHOWN TO THE
21 WITNESSES, ARE YOU ALL THEN, ONCE THE WITNESS IS
22 LEAVING, KEEPING THOSE IN YOUR SEPARATE OFFICIAL
23 EXHIBIT CARTS? OR --

24 MR. JACOBS: WE'RE JUST TAKING THE
25 BINDERS BACK, YOUR HONOR. ARE YOU -- ARE YOU --

1 I'M NOT SURE I UNDERSTAND EXACTLY THE QUESTION.

2 ARE YOU ASKING WHAT THE ACTUAL -- HOW DO
3 WE MAKE SURE THE ACTUAL EXHIBITS SYNCH UP WITH YOUR
4 SET?

5 THE COURT: YEAH. I JUST -- SINCE THERE
6 HAS BEEN THIS DISPUTE NOW ABOUT THE DEVICES, I JUST
7 DON'T WANT THERE TO BE ANY DISPUTE ABOUT THE
8 DOCUMENTS THAT THE WITNESS IS ACTUALLY TESTIFYING
9 ABOUT, SO IT MAY BE BEST THAT WE TAKE THOSE AS
10 WELL.

11 I MEAN, THERE HASN'T BEEN ANY ISSUE SO
12 FAR, BUT JUST IN CASE, WOULD IT BE, YOU KNOW, IN AN
13 ABUNDANCE OF CAUTION FOR US TO DO THAT AS WELL, IN
14 ADDITION TO THE DEVICES?

15 MS. MAROULIS: THAT'S FINE. WE'LL SUBMIT
16 TO THE COURT THE PAPER EXHIBITS EVERY DAY AFTER
17 COURT.

18 MR. JACOBS: I THINK THAT WHAT WE SHOULD
19 DO FIRST IS WE SHOULD LOOK AT THE EXHIBIT LIST AND
20 SYNCH UP NOT JUST THE LIST, BUT WHAT DOCUMENT IS
21 ASSOCIATED WITH THE LIST AND MAKE SURE THAT WE HAVE
22 AN AGREEMENT ON THAT, THAT WILL GO RETROSPECTIVELY.

23 AND THEN PROSPECTIVELY, IF YOU WOULD LIKE
24 THE WITNESS BINDERS TO BE LEFT WITH THE COURT, THAT
25 WOULD BE FINE.

1 THE COURT: NOT THAT I WANT US TO
2 ACCUMULATE MORE BECAUSE WE'RE LIMITED ON SPACE, BUT
3 JUST IN THE EVENT THAT THERE'S ANY DISPUTE, IT
4 MIGHT BE BEST FOR US TO HAVE THAT.

5 I WOULD LIKE YOU ALL TO -- I'M HOPING
6 THAT EVIDENCE CONCLUDES BY FRIDAY AND THAT WE HAVE
7 OUR JURY INSTRUCTION CONFERENCE MONDAY AND THEN, AT
8 THE LATEST, THE JURY BE INSTRUCTED TUESDAY MORNING
9 AND HAVING THE CLOSINGS ON TUESDAY.

10 I THINK THAT'S REALISTIC BASED ON THE
11 NUMBER OF HOURS EACH PARTY HAS LEFT, UNLESS YOU
12 DISAGREE.

13 DOES THAT SOUND REALISTIC?

14 MR. JACOBS: SOUNDS POSSIBLE, YOUR HONOR.

15 IT COULD BE THAT THERE'S SOME SPILL OVER
16 ON TO MONDAY AS WE CALCULATE IT DEPENDING ON HOW
17 FAST WE MOVE ALONG.

18 THE COURT: EITHER WAY, I WOULD LIKE TO
19 HAVE CLOSINGS ON TUESDAY AND EITHER HAVE THE JURY
20 START DELIBERATING ON TUESDAY OR WEDNESDAY MORNING.

21 SO IN ORDER FOR US TO MEET THAT SCHEDULE,
22 YOU KNOW, WE'LL WORK ON THE JURY INSTRUCTIONS RIGHT
23 AWAY TO GET, HOPEFULLY, A DRAFT SET OF INSTRUCTIONS
24 WHICH YOU CAN THEN ARGUE, BUT AS CLOSE TO DONE AS
25 POSSIBLE BY MONDAY.

1 THE COURT: ONLY YES OR NO.

2 MS. MAROULIS: THANK YOU.

3 THE COURT: SO WE HAVE MR. TEKSLER THIS
4 MORNING?

5 MS. MAROULIS: YES.

6 MR. JACOBS: A HOUSEKEEPING MATTER.

7 THE COURT: YES.

8 MR. JACOBS: WE MET CLOSE YESTERDAY UNDER
9 YOUR 10:30 DEADLINE FOR HIGH PRIORITY OBJECTIONS
10 AND RESPONSES.

11 DO WE NOW SHIFT TO THE 1:00 O'CLOCK
12 SCHEDULE FOR THE WEEK? THAT WAS THE ORIGINAL
13 SCHEDULE WE SET FOR THOSE FILINGS.

14 THE COURT: WELL, I WOULD -- I WOULD
15 PREFER GOING BACK TO 8:00, BUT IS THAT JUST NOT
16 DOABLE?

17 MR. JACOBS: NOT DOABLE, YOUR HONOR.

18 THE COURT: SO CAN WE COMPROMISE THEN AT
19 10:30?

20 MR. JACOBS: JUST TO BE CLEAR, THIS IS
21 10:30 TODAY FOR WITNESSES TOMORROW?

22 THE COURT: YES, CAN WE COMPROMISE AT
23 10:30?

24 MR. JACOBS: UNDERSTOOD.

25 THE COURT: BECAUSE AS IT IS, WE'RE

1 FILING OUR ORDERS AT 11:00 P.M., AND IF YOU DON'T
2 GIVE IT TO US UNTIL 1:00 AND WE DON'T SEE IT UNTIL
3 4:00, I'M NOT GOING TO GET TO IT UNTIL 2:00 O'CLOCK
4 IN THE MORNING.

5 I HAVE MUCH SMALLER RESOURCES THAN BOTH
6 SIDES DO, SO I NEED THAT TIME. SO 10:30 FOR ANY
7 WITNESSES FOR TOMORROW, PLEASE.

8 MR. JACOBS: AND THEN GOING FORWARD I
9 THINK --

10 THE COURT: AND THEN GOING FORWARD, 10:30
11 EVERY MORNING FOR THE NEXT DAY'S WITNESSES.

12 MR. JACOBS: OKAY.

13 THE COURT: OKAY. THAT'S -- ALL RIGHT.
14 THEN I BELIEVE WE HAVE --

15 MR. VERHOEVEN: JUST ONE OTHER PROCEDURAL
16 ISSUE.

17 THE COURT: YES?

18 MR. VERHOEVEN: APPLE WILL LIKELY REST
19 THEIR CASE THIS MORNING, YOUR HONOR.

20 AS A MATTER OF PROCEDURE, WE NEED TO MAKE
21 A RULE 50 MOTION FOR JUDGMENT, AND I CONFERRED WITH
22 THE OTHER SIDE -- THIS IS MY USUAL PRACTICE ON THIS
23 TO AVOID DELAY -- IS I'LL ORALLY MAKE -- I'LL JUST
24 SAY, "YOUR HONOR, I MOVE UNDER RULE 50." NOTHING
25 MORE.

1 AND THEN WE WOULD SUBMIT, AS SOON AS WE
2 CAN THEREAFTER, MAYBE IN A COUPLE OF DAYS, A BRIEF
3 THAT SETS OUT, FOR THE AVOIDANCE OF WAIVER AND
4 WHATNOT, THE ARGUMENTS THAT WE WANT TO PRESERVE ON
5 THAT MOTION, AND IF IT'S ACCEPTABLE TO YOUR HONOR,
6 I THINK THE OTHER SIDE WOULD AGREE THAT, AND
7 STIPULATE THAT FILING THAT BRIEF IN A DAY OR TWO
8 WOULD NOT CONSTITUTE A WAIVER.

9 SO WE WOULD SUGGEST THAT, YOUR HONOR.

10 MR. MCELHINNY: OUR POSITION IS WHATEVER
11 WORKS FOR YOU WORKS FOR US, YOUR HONOR.

12 WE'RE A LITTLE WORRIED ABOUT GETTING BACK
13 LOADED HERE. BUT IF -- IF YOU -- IF YOU ACCEPT
14 THEIR PROPOSAL, WE HAVE NO OBJECTION TO IT.

15 THE COURT: SO THIS IS GOING -- AND THEN
16 I ASSUME YOU'RE GOING TO WANT TO FILE AN OPPOSITION
17 AND THEN YOU'RE GOING TO FILE A REPLY?

18 MR. VERHOEVEN: THIS IS MOSTLY -- WE NEED
19 TO AVOID ANY ARGUMENTS OF WAIVER. WE HAVE THESE
20 REQUIREMENTS THAT WE MAKE THESE IF WE WANT TO
21 PRESERVE THEM FOR LATER.

22 THE COURT: I UNDERSTAND.

23 MR. MCELHINNY: THERE'S AN INITIAL
24 QUESTION OF WHETHER YOUR HONOR WANTS BRIEFING ON A
25 J --

1 THE COURT: I DON'T. I NORMALLY DON'T
2 GET BRIEFING ON THIS. IT'S USUALLY DONE PRETTY
3 QUICKLY ORALLY. WE'VE ALL SEEN THE SAME EVIDENCE.

4 MR. VERHOEVEN: THE ONLY REASON I REQUEST
5 THAT WE DO IT IN WRITING IS SO THERE'S A CLEAR
6 RECORD THAT WE HAVEN'T WAIVED SPECIFIC EVIDENCE.

7 THERE'S A LOT OF THEORIES AND DOCUMENTS
8 IN THIS CASE, AND WE WANT TO MAKE SURE WE PRESERVE
9 OUR OBJECTIONS, YOUR HONOR.

10 MR. MCELHINNY: THAT CAN USUALLY BE DONE
11 ORALLY. IT'S UP TO YOU, YOUR HONOR.

12 MR. VERHOEVEN: I WAS TOLD THAT THEY
13 DIDN'T OBJECT, AND NOW MR. MCELHINNY IS OBJECTING,
14 SO --

15 MR. MCELHINNY: WELL --

16 THE COURT: WELL, WHY DON'T WE DO THIS:
17 I'LL ALLOW YOU TO DO A THREE-PAGE BRIEF. OKAY?
18 BECAUSE, I MEAN, WE'VE SEEN ALL THE SAME EVIDENCE.

19 MR. VERHOEVEN: THANK YOU, YOUR HONOR.
20 THAT'S EXACTLY WHAT WE NEED, AND WE'LL JUST CHECK
21 OFF THE THINGS WE WANT TO MAKE SURE WE DIDN'T
22 WAIVE.

23 THE COURT: OKAY. NORMALLY I JUST DO
24 THIS ALL ORALLY. I RULE ON IT ORALLY. BUT I
25 ASSUME YOU WANT ME TO WAIT UNTIL I READ YOUR BRIEF,

1 RIGHT, BUT WE'LL KEEP GOING WITH THE TRIAL.

2 MR. VERHOEVEN: EXACTLY, YOUR HONOR.

3 THE COURT: DO YOU WANT TO DO A
4 THREE-PAGE RESPONSE?

5 MR. MCELHINNY: IF -- NO MORE THAN.

6 THE COURT: OH, YOU'RE DEFINITELY GETTING
7 NO MORE THAN. I DON'T -- I'M SURPRISED YOU'RE EVEN
8 ASKING.

9 SO CAN WE WORK OUT A SCHEDULE FOR THAT?
10 WHEN WOULD YOU LIKE TO FILE THAT, MR. VERHOEVEN?

11 MR. VERHOEVEN: WE COULD FILE THAT
12 TOMORROW, YOUR HONOR.

13 THE COURT: OKAY. SO TOMORROW IS THE
14 14TH. IS THAT RIGHT?

15 OKAY. THEN WHEN ARE YOU GOING TO FILE
16 YOUR THREE PAGES OR LESS?

17 MR. MCELHINNY: THE DAY AFTER, YOUR
18 HONOR.

19 THE COURT: OKAY. SO THAT WOULD BE 8-15,
20 AND THEN NO REPLY.

21 MR. VERHOEVEN: THAT'S FINE, YOUR HONOR.

22 THE COURT: ALL RIGHT. SO JUST ORALLY
23 MAKE YOUR RULE 50 MOTION. I WON'T RULE ON IT.
24 I'LL TAKE CARE OF IT AFTER I SEE THE BRIEFS. THAT
25 WAY WE DON'T HAVE TO DO ANY OF THIS IN FRONT OF THE

1 JURY AND THAT WAY WE DON'T LOSE ANY TIME DURING THE
2 DAY.

3 MR. MCELHINNY: AND AS I DID AGREE WITH
4 MR. VERHOEVEN, WE WILL NOT RAISE WAIVER -- HIS
5 ARGUMENTS ARE GOING TO BE PRESERVED IN HIS MOTION,
6 WHATEVER IS IN HIS WRITTEN MOTION.

7 MR. VERHOEVEN: THANK YOU, YOUR HONOR.

8 THE COURT: ALL RIGHT. WHAT ELSE?
9 ANYTHING ELSE THAT WE SHOULD COVER? I GUESS WE CAN
10 BRING OUR JURY IN A LITTLE EARLY.

11 MS. MAROULIS: THE ONLY THING IS MY REAL
12 TIME DOESN'T WORK.

13 THE COURT: MINE IS STUCK AS WELL.

14 (PAUSE IN PROCEEDINGS.)

15 MR. VERHOEVEN: YOUR HONOR, THERE IS ONE
16 OTHER THING, BUT I THINK WE CAN ADDRESS IT AT A
17 LATER TIME. MR. GOLDSTEIN, MY PARTNER, WOULD LIKE
18 US TO USE A COUPLE MINUTES OF OUR TIME TO ADDRESS
19 ONE OF THE OBJECTION RULINGS ON DR. YANG.

20 THE COURT: DR. WHO, WHICH ONE?

21 MR. VERHOEVEN: DR. YANG, BUT HE'S NOT
22 GOING TO BE UP FOR A LONG TIME, SO MY SUGGESTION IS
23 WE GET GOING AND FIND A SPOT CLOSER IN TIME.

24 THE COURT: IS YOUR ORDER OF WITNESSES
25 SIMILAR, LARGELY, ACCORDING TO YOUR LIST?

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

3 THE COURT: OKAY.

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

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

10 MR. VERHOEVEN: YES.

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

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

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

19 THE COURT: OKAY. THANK YOU.

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

22 THE CLERK: YES, YOUR HONOR.

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

25 THE COURT: ALL RIGHT. GOOD MORNING AND

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

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

4 SIR, YOU ARE STILL UNDER OATH.

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

9 **CROSS-EXAMINATION (RESUMED)**

10 BY MS. MAROULIS:

11 Q GOOD MORNING, MR. TEKSLER.

12 A GOOD MORNING.

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

15 DO YOU REMEMBER THAT?

16 A I DO.

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

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

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

24 A YES, THAT'S CORRECT.

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

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

2 A YES, THAT'S CORRECT.

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

6 A YES, THAT'S CORRECT.

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

10 A YES, THAT'S CORRECT.

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

13 A I AM.

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

16 A THAT'S ONE INSTANCE, YES.

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

20 A YES, I BELIEVE THAT'S CORRECT.

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

23 A YES, I BELIEVE THAT'S CORRECT.

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

1 A THAT'S CORRECT.

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

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

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

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

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

17 Q YES, MR. TEKSLER.

18 A YES, I AGREE.

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

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

23 MR. MUELLER: PLEASE, YOUR HONOR.

24 THE COURT: OKAY. GO AHEAD, PLEASE.

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

1 THE COURT: PLEASE, GO AHEAD.

2 **REDIRECT EXAMINATION**

3 BY MR. MUELLER:

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

7 DO YOU HAVE THOSE PATENTS IN MIND?

8 A I DO.

9 Q THE '381, THE '163?

10 A YES.

11 Q THE '916?

12 A YES.

13 Q AND THE DESIGN PATENTS.

14 A CORRECT.

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

18 A NO.

19 MS. MAROULIS: OBJECTION. LEADING.

20 THE COURT: OVERRULED.

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

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

1 WAY BOTH PARTIES KNOW THAT THEY HAVE SOME PEACE.

2 BY MR. MUELLER:

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

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

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

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

13 THE COURT: OVERRULED.

14 GO AHEAD.

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

18 BY MR. MUELLER:

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

23 DO YOU RECALL THAT?

24 A I DO.

25 MS. MAROULIS: OBJECTION. ARGUMENTATIVE.

1 THE COURT: OVERRULED.

2 BY MR. MUELLER:

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

5 A I AM.

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

8 A IT DOES.

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

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

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

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

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

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

1 THE COURT: OVERRULED.

2 GO AHEAD.

3 THE WITNESS: SORRY. CAN YOU REPEAT THE
4 QUESTION?

5 BY MR. MUELLER:

6 Q SURE. WHAT RIGHTS WERE NOT GIVEN TO MICROSOFT
7 WITH RESPECT TO THESE DESIGN PATENTS?

8 A SO THERE WAS NO RIGHT WITH RESPECT TO THESE
9 DESIGN PATENTS TO BUILD CLONE PRODUCTS OF ANY TYPE
10 IN THESE, AND THERE WAS A LIMITED CAPTURE
11 ASSOCIATED WITH THEM AS WELL.

12 Q NOW, HOW DOES THIS PROVISION IN THE MICROSOFT
13 LICENSE COMPARE WITH HOW APPLE GENERALLY TREATS ITS
14 USER EXPERIENCE PATENT?

15 A IT'S COMPLETELY CONSISTENT. THESE ARE AREAS
16 THAT WE DO NOT WANT PEOPLE TO COPY US.

17 Q NEXT TOPIC, IF WE CAN SHIFT GEARS AND FOCUS ON
18 PX 51, WHICH IS AN EXHIBIT THAT MS. MAROULIS ASKED
19 YOU ABOUT. THIS IS FROM OCTOBER 5TH, 2010.

20 DO YOU RECALL MS. MAROULIS HIGHLIGHTED
21 CERTAIN LICENSE TERMS THAT APPLE PROPOSED?

22 A YES.

23 Q WHY WAS APPLE OFFERING THESE TERMS TO SAMSUNG?

24 A WELL, WE WERE TRYING VERY HARD TO COME UP WITH
25 AN AMICABLE RESOLUTION WITH SAMSUNG, AND CONSISTENT

1 WITH OUR STRATEGY OF LICENSING, WHICH IS WE WANT TO
2 GET PROPERLY COMPENSATED FOR THAT WHICH THEY
3 INFRINGE; AND WE WANTED THEM TO RESPECT AND PROTECT
4 OUR UNIQUE USER EXPERIENCE.

5 AND THAT'S EXACTLY WHAT WE WERE TRYING TO
6 DO IN THIS PRESENTATION.

7 Q LET'S PUT PAGE 13 ON THE SCREEN IF WE COULD,
8 PLEASE.

9 MR. TEKSLER, MY QUESTION IS, DID APPLE'S
10 OFFER TO SAMSUNG INCLUDE RIGHTS TO APPLE'S USER
11 EXPERIENCE PATENTS?

12 A ABSOLUTELY NOT. WE WERE VERY CLEAR IN THE
13 DISCUSSIONS WITH SAMSUNG THAT WE WEREN'T OFFERING
14 THEM A LICENSE TO EVERYTHING, AND WE SAID THAT WE
15 STILL HAD YET TO DISCUSS SOME VERY SPECIFIC, WHAT
16 WE SORT OF TERMED UNTOUCHABLES, IF YOU WILL.

17 AND IN RETURN, WHAT WE REALLY WANTED TO
18 DO AT THIS STAGE OF THE DISCUSSIONS WAS GET THEM TO
19 ACKNOWLEDGE THEY NEEDED A LICENSE AND TO STOP
20 COPYING AND TO PAY US APPROPRIATELY FOR THE RIGHTS
21 THAT THEY DO NEED.

22 Q AND LET'S BE CLEAR. WHAT WERE THE
23 UNTOUCHABLES?

24 A THE UNTOUCHABLES WERE THE SPECIFIC PROPRIETARY
25 FEATURES THAT NEEDED TO BE ADDRESSED WHICH IS ON

1 ONE OF THESE SLIDES.

2 Q WHAT TYPES OF PATENTS WERE THOSE, MR. TEKSLER?

3 A THOSE WERE THE ONES THAT WE'VE TALKED ABOUT
4 TODAY AS THE APPLE UNIQUE USER EXPERIENCE PATENTS.

5 Q WOULD THOSE INCLUDE THE ASSERTED PATENTS?

6 A COMPLETELY.

7 Q LAST TOPIC. LET'S LOOK AT PX 52, WHICH IS THE
8 AUGUST 4TH, 2010 PRESENTATION.

9 NOW, DO YOU RECALL WHEN MS. MAROULIS
10 ASKED YOU SOME QUESTIONS ABOUT WHETHER THIS
11 PRESENTATION RAISED DESIGN ISSUES?

12 A YES.

13 Q LET'S TAKE A LOOK AT PAGE 17 IF WE COULD.

14 MR. TEKSLER, WHAT DO WE SEE HERE?

15 A SO I THINK, AS I TESTIFIED EARLIER, THIS IS
16 WHAT WE WERE -- THIS IS A CHAPTER ENTITLED "SAMSUNG
17 COPYING IPHONE," AND WE TALKED ABOUT THE REMARKABLE
18 SIMILARITY OF THE TWO PRODUCTS, YOU KNOW, THAT WE
19 LOOKED AT THEM SIDE BY SIDE AND WE TALKED ABOUT THE
20 OVERALL DESIGN, WE TALKED ABOUT THE BEZEL, WE
21 TALKED ABOUT THE UNIQUE LAYOUT OF THE SCREEN --

22 MS. MAROULIS: OBJECTION, YOUR HONOR.
23 THIS IS BEYOND YOUR HONOR'S RULING.

24 THE WITNESS IS NOT ALLOWED TO TESTIFY
25 ABOUT THE ACTUAL MEETING AND HE'S GOING BEYOND THE

1 EXHIBIT.

2 MR. MUELLER: YOUR HONOR, I'M ASKING
3 ABOUT THE ACTUAL DOCUMENT, AND I CAN MAKE THAT
4 CLEAR IF YOU'D LIKE.

5 THE COURT: WHY DON'T YOU CLARIFY THAT?

6 MR. MUELLER: SURE.

7 Q MR. TEKSLER, I JUST WANT TO MAKE SURE THAT
8 WE'RE FOCUSSED ON THIS PAGE OF THIS DOCUMENT, THE
9 AUGUST 4TH, 2010 PRESENTATION.

10 SO STICKING WITH THIS DOCUMENT, CAN YOU
11 EXPLAIN WHAT WE SEE HERE?

12 A CERTAINLY. SO THE TALKING POINTS THAT --

13 MS. MAROULIS: OBJECTION. LEADING, YOUR
14 HONOR.

15 MR. MUELLER: MY QUESTION WAS, CAN YOU
16 EXPLAIN WHAT WE SEE? THAT'S NOT LEADING.

17 THE COURT: HE'S TALKING ABOUT TALKING
18 POINTS. I'M GOING TO SUSTAIN THE OBJECTION.

19 BY MR. MUELLER:

20 Q LET'S TURN THE PAGE TO PAGE 18. WHAT DO WE
21 SEE HERE?

22 MS. MAROULIS: OBJECTION, YOUR HONOR.

23 THE WITNESS: THIS WAS ANOTHER PAGE THAT
24 I CREATED THAT TALKED ABOUT REMARKABLE SIMILARITY
25 OF THE OVERALL USER EXPERIENCE, AND WE TALKED

1 ABOUT, AGAIN --

2 MS. MAROULIS: YOUR HONOR, I MOVE TO
3 STRIKE THAT.

4 THE COURT: OKAY. THE OBJECTION'S
5 OVERRULED. OKAY. THIS IS GETTING TOO DISRUPTIVE.
6 GO AHEAD.

7 BY MR. MUELLER:

8 Q MR. TEKSLER, CAN YOU CONTINUE, PLEASE.

9 A I'LL TRY TO CHOOSE MY WORDS CAREFULLY.

10 SO WHEN I CREATED THIS SLIDE, I TALKED
11 ABOUT THE, THE REMARKABLE SIMILARITY OF THE WAY THE
12 ICONS ARE ARRANGED, DOWN TO THE ICONS, WE TALKED
13 ABOUT THE KEYBOARD ARRANGEMENT --

14 THE COURT: WAIT. WHO IS HE TALKING TO?
15 HE WAS NOT AT THE MEETING, SO WHY DOES HE KEEP
16 SAYING "WE TALKED ABOUT"? WHO IS HE TALKING TO?
17 I'VE ALREADY SAID HE CAN'T TESTIFY ABOUT THE
18 MEETING THAT HE DIDN'T ATTEND.

19 MR. MUELLER: UNDERSTOOD.

20 THE COURT: THIS NEEDS TO BE CLEANED THIS
21 UP.

22 MR. MUELLER: ABSOLUTELY.

23 Q MR. TEKSLER, LET'S BE VERY CLEAR. I'M JUST
24 ASKING ABOUT WHAT DO WE SEE ON THIS PAGE OF THE
25 DOCUMENT?

1 A YES.

2 Q WHY DON'T YOU EXPLAIN WHAT WE SEE IN TERMS OF
3 THE ACTUAL IMAGES ON PAGE 18 OF THIS AUGUST 4TH
4 PRESENTATION?

5 A YES, ABSOLUTELY. SO THE FOUR-BY-FOUR GRID,
6 THE REMARKABLE SIMILARITY TO SAMSUNG'S PRODUCT; THE
7 CALENDAR, REMARKABLE SIMILARITY; AS WELL AS THE
8 FENCE AT THE BOTTOM; THE CLOCKS THAT ARE THERE; THE
9 NOTES APPLICATION SECTION AND THE KEYBOARD
10 ARRANGEMENT, ALL THOSE THINGS WERE WHAT I INTENDED
11 TO COMMUNICATE BY CREATING THIS SLIDE.

12 Q AND FINALLY, IF YOU COULD LOOK AT PAGE 19, THE
13 VERY NEXT PAGE, WHAT DO WE SEE HERE?

14 A SO WE --

15 MS. MAROULIS: OBJECTION. CALLS FOR
16 OPINION TESTIMONY.

17 THE COURT: CALLS FOR WHAT? I'M SORRY?

18 MS. MAROULIS: OPINION.

19 MR. MUELLER: HERE AGAIN I'M JUST ASKING
20 ABOUT A PAGE IN THE DOCUMENT THAT HE AUTHORED.

21 THE COURT: ALL RIGHT. OVERRULED.

22 THE WITNESS: SO BACK TO APPLE'S USER
23 EXPERIENCE HERE, PART OF THAT IS THE OUT OF BOX
24 EXPERIENCE, AND THIS SLIDE WAS MEANT TO RELAY HOW
25 THE OUT OF BOX EXPERIENCE WAS INCREDIBLY SIMILAR,

1 YOU KNOW, FOR HOW THE PACKAGING WORKED ALL THE WAY
2 DOWN TO HOW THE BOX -- YOU KNOW, THE APPEARANCE OF
3 THE BOX, THE LACK OF MANUALS, THINGS OF THAT SORT.
4 BY MR. MUELLER:

5 Q LAST QUESTION, MR. TEKSLER. WHAT ULTIMATELY
6 HAPPENED WITH THESE COPYING ISSUES?

7 MS. MAROULIS: OBJECTION. CALLS FOR
8 SPECULATION.

9 THE COURT: WHY DON'T YOU LAY A
10 FOUNDATION THAT HE KNOWS?

11 MR. MUELLER: SURE.

12 Q MR. TEKSLER, YOU WORKED ON THIS PRESENTATION
13 ON AUGUST 4TH; CORRECT?

14 A YES.

15 Q WERE YOU PARTY TO ADDITIONAL DISCUSSIONS WITH
16 SAMSUNG?

17 A YES, ON SEVERAL OCCASIONS.

18 Q I'LL REPEAT MY QUESTION. WHAT ULTIMATELY
19 HAPPENED WITH THE COPYING ISSUES IDENTIFIED IN THIS
20 PRESENTATION?

21 A SO --

22 MS. MAROULIS: OBJECTION. BEYOND THE
23 SCOPE OF CROSS.

24 MR. MUELLER: YOUR HONOR, THESE ISSUES
25 WERE RAISED BY MS. MAROULIS, INCLUDING THE DESIGN

1 COPYING ISSUES SPECIFICALLY ON FRIDAY.

2 THE COURT: I DON'T THINK SHE RAISED WHAT
3 HAPPENED BETWEEN THE PARTIES IN HER CROSS, SO IT'S
4 SUSTAINED.

5 MR. MUELLER: NO FURTHER QUESTIONS.

6 THANK YOU, SIR.

7 THE COURT: NOW, PX 51, I DON'T HAVE THAT
8 IN EITHER OF THE BINDERS.

9 MS. MAROULIS: YOUR HONOR, I THINK
10 MR. MUELLER WAS REFERRING TO WHAT'S BEEN ENTERED
11 INTO EVIDENCE AS DX 568.

12 MR. MUELLER: IT'S IDENTICAL. THE
13 PARTIES HAD LISTED BOTH.

14 THE COURT: ALL RIGHT. THANK YOU.

15 MR. MUELLER: THANK YOU.

16 THE COURT: I'M SORRY. LET ME GET THE
17 TIME. IT'S 9:17.

18 GO AHEAD, PLEASE.

19 **RECROSS-EXAMINATION**

20 BY MS. MAROULIS:

21 Q MR. TEKSLER, MR. MUELLER SHOWED YOU SEVERAL
22 SLIDES OF THE PRESENTATION YOU PREPARED; IS THAT
23 CORRECT?

24 A YES, THAT'S CORRECT.

25 Q IN NONE OF THE SLIDES ARE THE WORDS "TRADE

1 DRESS" OR "DESIGN PATENT" EVER MENTIONED; CORRECT?

2 A BY -- BY THOSE WORDS?

3 Q YES.

4 A I AGREE.

5 Q AND YOU WERE NOT AT THE MEETING TO DETERMINE
6 WHETHER ANY WORDS LIKE THAT WERE USED WITH THE
7 PAGES THAT MR. MUELLER SHOWED YOU; CORRECT?

8 A I WAS NOT AT THE MEETING. I WAS AT THE
9 SUBSEQUENT MEETING. I COULDN'T MAKE THE ORIGINAL
10 ONE, BUT I WAS IN THE OCTOBER MEETING.

11 Q ALL RIGHT. BUT YOU WERE NOT AT THE SEPTEMBER
12 MEETING; RIGHT?

13 A I BELIEVE IT WAS AUGUST 4TH.

14 Q I'M SORRY, AUGUST.

15 A YES, I WAS NOT AT THE AUGUST 4TH MEETING.

16 Q OKAY. LET'S TURN TO DX 586 THAT YOU ALSO
17 REVIEWED WITH COUNSEL, AND LET'S SHOW DX 586, PAGE
18 13, PLEASE.

19 DO YOU SEE THE THIRD, OR THE FOURTH
20 OPTION ON THIS DOCUMENT IS "SOME SAMSUNG SMARTPHONE
21 PRODUCTS MAY NOT ADOPT THE DISTINCTIVE INDUSTRIAL
22 DESIGN."

23 IS THAT ONE OF THE OPTIONS DESCRIBED
24 HERE?

25 A YES, THAT'S CORRECT.

1 Q IS IT ALSO CORRECT THAT THERE WAS AN OPTION
2 THAT DID INCLUDE INDUSTRIAL DESIGN?

3 A SO LET ME SPECIFY WHAT WE MEANT IN THIS, AND
4 THIS WAS CLARIFIED IN OTHER PARTS OF THIS
5 PRESENTATION AS WELL, WHICH IS WHAT WE WERE TALKING
6 ABOUT WAS THE OVERALL FORM FACTOR OF THE PHONE,
7 WHETHER IT WAS IN A COMPLETE TOUCHSCREEN PHONE OR
8 WAS IT A SMARTPHONE THAT HAD, LIKE, FOR EXAMPLE, A
9 FULL KEYBOARD, A PHYSICAL KEYBOARD ON IT, AND
10 THAT'S WHAT WE WERE RELATING TO.

11 SO IF YOU LOOK AT THE EXAMPLES, I THINK
12 IT CLARIFIES IT VERY NICELY THAT WHAT WE WERE
13 REFERRING TO WAS AN OVERALL TOUCHSCREEN PHONE.

14 Q ISN'T IT TRUE, SIR, THAT ONE OF THE OPTIONS,
15 BASED ON THIS PRESENTATION, WAS ONE THAT INCLUDED
16 INDUSTRIAL DESIGN?

17 A NOT IN TERMS OF DESIGN PATENTS, NO. I
18 DISAGREE WITH THAT.

19 Q ALL RIGHT. PLEASE TURN TO PAGE 15 OF THE SAME
20 DOCUMENT.

21 DO YOU SEE, SIR, THAT THE PRESENTATION
22 OFFERED \$30 PER UNIT FOR SMARTPHONE?

23 A I DO.

24 Q AND DO YOU SEE THAT THE PRESENTATION OFFERED
25 40 UNITS FOR A TABLET? CORRECT?

1 A \$40 PER UNIT?

2 Q YES.

3 A YES, I AGREE.

4 Q AND THIS WAS FOR THE ENTIRE PORTFOLIO, NOT
5 JUST ONE PATENT; RIGHT?

6 A IT WAS NOT THE ENTIRE PORTFOLIO. IT WAS WHAT
7 I'VE TERMED IN THIS AS THE CORE COMPUTING PATENTS.
8 IT NEVER INCLUDED APPLE'S UNIQUE USER EXPERIENCE
9 AND WE MADE THAT CLEAR.

10 Q THIS WAS FOR MORE THAN JUST ONE PATENT.
11 THERE'S SEVEN PATENTS; CORRECT, SIR?

12 A YES, THAT'S CORRECT.

13 MS. MAROULIS: OKAY. I HAVE NO FURTHER
14 QUESTIONS.

15 THE COURT: ALL RIGHT. THE TIME IS 9:20.
16 GO AHEAD, PLEASE.

17 MR. MUELLER: ONE QUESTION, YOUR HONOR.

18 **FURTHER REDIRECT EXAMINATION**

19 BY MR. MUELLER:

20 Q IF WE CAN GO BACK TO THAT SAME PAGE, PLEASE,
21 PAGE 15 OF THE OCTOBER PRESENTATION.

22 MR. TEKSLER, DID THIS OFFER INCLUDE ANY
23 OF THE PATENTS ASSERTED IN THIS CASE?

24 A NO, IT DID NOT.

25 MR. MUELLER: NOTHING FURTHER. THANK

1 YOU.

2 THE COURT: OKAY. THE TIME IS NOW 9:20.
3 IS THIS WITNESS EXCUSED?

4 MR. MUELLER: YES.

5 THE COURT: SUBJECT TO RECALL OR NOT?

6 MR. MUELLER: YES, SUBJECT TO RECALL.

7 THE COURT: OKAY. YOU'RE EXCUSED SUBJECT
8 TO RECALL.

9 ALL RIGHT. PLEASE CALL YOUR NEXT
10 WITNESS.

11 MR. MCELHINNY: YOUR HONOR, AS OUR NEXT
12 WITNESS, WE'RE GOING TO CALL BY DEPOSITION
13 JUN WON LEE, WHO'S THE DIRECTOR OF LICENSING FOR
14 SAMSUNG ELECTRONICS COMPANY.

15 THE COURT: OKAY. GO AHEAD. IT'S NOW
16 9:21.

17 MR. MCELHINNY: CAN WE DIM THE LIGHTS?

18 THE COURT: YES.

19 **(WHEREUPON, THE VIDEOTAPED DEPOSITION OF**
20 **JUN WON LEE WAS PLAYED IN OPEN COURT OFF THE**
21 **RECORD.)**

22 MS. MAROULIS: YOUR HONOR, DO YOU WANT US
23 TO PRESENT OUR COUNTER --

24 THE COURT: ALL RIGHT. THE TIME IS 9:28.

25 MR. MCELHINNY: YOUR HONOR, I'LL NOTE FOR

1 THE RECORD THAT WHAT WAS REFERRED TO IN THE
2 DEPOSITION CLIP AS EXHIBIT 1 IS PLAINTIFF'S EXHIBIT
3 52 IN EVIDENCE IN THIS CASE.

4 THE COURT: OKAY.

5 MR. MCELHINNY: AND, TWO, I WOULD LIKE TO
6 OFFER FOR THE RECORD PLAINTIFF'S EXHIBIT 201,
7 THAT'S THE TRANSCRIPT OF THE DEPOSITION CLIP THAT
8 WAS JUST PLAYED SINCE THE REPORTER DOESN'T REPORT
9 IT.

10 MS. MAROULIS: YOUR HONOR, WE WEREN'T
11 NOTIFIED THAT APPLE WAS SEEKING TO INTRODUCE IT AS
12 AN EXHIBIT. THE DEPOSITION WAS PLAYED.

13 MR. MCELHINNY: THE COURT HAS THE -- THE
14 RECORD HAS TO HAVE A TRANSCRIPT OF WHAT WAS PLAYED.
15 OTHERWISE THERE'S NO RECORD OF IT.

16 MR. VERHOEVEN: YOUR HONOR, THIS IS
17 MR. VERHOEVEN.

18 IN MY EXPERIENCE, YOUR HONOR,
19 TRANSCRIPTS -- THE TRIAL TRANSCRIPT, DEPOSITION
20 TRANSCRIPTS, DON'T GO TO THE JURY, AND SO WE WOULD
21 OBJECT TO MOVING IT INTO EVIDENCE.

22 THE COURT: IT'S NOT GOING TO BE
23 ADMITTED.

24 MR. MCELHINNY: YOUR HONOR, THEN WE WOULD
25 REQUEST PERMISSION TO LODGE IT SO THAT IT IS

1 CONNECTED WITH THE RECORD, EVEN THOUGH IT WILL
2 NOT --

3 THE COURT: THAT'S FINE.

4 MR. MCELHINNY: THANK YOU, YOUR HONOR.

5 AT THIS TIME, YOUR HONOR, WE WOULD
6 CALL -- OH, I'M SORRY.

7 MS. MAROULIS: YOUR HONOR, MAY WE PROCEED
8 WITH THE COUNTER-DESIGNATIONS?

9 THE COURT: THAT'S FINE. THE TIME IS NOW
10 9:29. GO AHEAD, PLEASE.

11 (WHEREUPON, THE VIDEOTAPED DEPOSITION OF
12 JUN WON LEE WAS PLAYED IN OPEN COURT OFF THE
13 RECORD.)

14 THE COURT: OKAY. THE TIME IS 9:31.

15 DO YOU HAVE A PHOTO TO HAND OUT FOR THE
16 JURORS?

17 MR. MCELHINNY: WE DO, YOUR HONOR.

18 THE CLERK: I HAVE ONE RIGHT HERE.

19 THE COURT: WE CAN DO THAT DURING THE
20 BREAK. THAT'S FINE. THANK YOU.

21 WHO IS YOUR NEXT WITNESS?

22 MR. MCELHINNY: OUR NEXT WITNESS IS
23 MR. DONG HOON CHANG, WHO IS THE HEAD OF SAMSUNG'S
24 MOBILE DESIGN GROUP. WE'RE CALLING HIM BY
25 DEPOSITION, YOUR HONOR.

1 THE COURT: THAT'S FINE. 9:32. GO
2 AHEAD.

3 (WHEREUPON, THE VIDEOTAPED DEPOSITION OF
4 DONG HOON CHANGE WAS PLAYED IN OPEN COURT OFF THE
5 RECORD.)

6 THE COURT: IT'S 9:35.

7 MR. MCELHINNY: YOUR HONOR, AT THIS POINT
8 I WOULD ASK TO LODGE PLAINTIFF'S EXHIBIT 202, WHICH
9 IS A TRANSCRIPT OF MR. CHANG'S DEPOSITION.

10 THE COURT: THAT'S FINE.

11 MS. MAROULIS: SHORT
12 COUNTER-DESIGNATIONS, YOUR HONOR. MAY WE PROCEED?

13 THE COURT: YES, PLEASE. IT'S 9:35.

14 GO AHEAD, PLEASE.

15 (WHEREUPON, THE VIDEOTAPED DEPOSITION
16 DONG HOON CHANGE OF WAS PLAYED IN OPEN COURT OFF
17 THE RECORD.)

18 THE COURT: IS THAT IT? OKAY. IT'S
19 9:36.

20 GO AHEAD WITH YOUR NEXT WITNESS, PLEASE.

21 MR. MCELHINNY: YOUR HONOR, AT THIS POINT
22 WE WOULD CALL TIMOTHY BENNER BY DEPOSITION.

23 MR. BENNER IS THE SENIOR MANAGER IN
24 CONSUMER INSIGHTS AND ANALYTICS FOR SAMSUNG
25 TELECOMMUNICATIONS AMERICA.

1 IN ADVANCE OF THE DEPOSITION, BASED ON
2 YOUR HONOR'S RULINGS, WE WOULD OFFER INTO EVIDENCE
3 PLAINTIFF'S EXHIBIT 69, WHICH IS THE J.D. POWER
4 2011 WIRELESS SMARTPHONE SATISFACTION STUDY; AND
5 PLAINTIFF'S EXHIBIT 89, WHICH IS A SAMSUNG Q1 '11
6 DEEP DIVE DOCUMENT, BOTH OF WHICH WILL BE REFERRED
7 TO IN THE TRANSCRIPT.

8 THE COURT: ALL RIGHT. ANY OBJECTION?

9 MS. MAROULIS: YOUR HONOR, NO FURTHER
10 OBJECTION.

11 WE REQUEST A LIMITING INSTRUCTION AS TO
12 THE DEEP DIVE DOCUMENT.

13 THE COURT: GIVE ME ONE SECOND, PLEASE.

14 (PAUSE IN PROCEEDINGS.)

15 THE COURT: I DON'T SEE IN MY RULINGS ON
16 MR. BENNER'S EXHIBIT 69, 89 THE SPECIFIC -- WAIT
17 ONE SECOND.

18 OH, I SEE. SO EXHIBIT 89, WHICH IS THE
19 DEEP DIVE DOCUMENT, MAY ONLY BE CONSIDERED FOR
20 PURPOSES OF SHOWING INTENT, WILLFULNESS, AND
21 KNOWLEDGE AND NOT FOR ANY OTHER PURPOSE.

22 MR. MCELHINNY: ON THE PART OF SAMSUNG.

23 THE COURT: ON THE PART OF SAMSUNG,
24 THAT'S CORRECT.

25 THE TIME IS 9:38. GO AHEAD, PLEASE.

1 MR. MCELHINNY: I'M SORRY. CAN WE GET A
2 RULING ON THOSE TWO DOCUMENTS?

3 THE COURT: YES, THEY'RE ADMITTED.

4 MR. MCELHINNY: THANK YOU.

5 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBERS
6 69 AND 89, HAVING BEEN PREVIOUSLY MARKED
7 FOR IDENTIFICATION, WERE ADMITTED INTO
8 EVIDENCE.)

9 (WHEREUPON, THE VIDEOTAPED DEPOSITION OF
10 TIMOTHY BENNER WAS PLAYED IN OPEN COURT OFF THE
11 RECORD.)

12 THE COURT: IS THAT IT FOR THE DEPO
13 DESIGNATIONS?

14 MR. MCELHINNY: IT IS, YOUR HONOR. I
15 WOULD NOTE FOR THE RECORD THAT THE EXHIBIT REFERRED
16 TO IN THE DEPOSITION AS EXHIBIT 1594 HAS BEEN
17 ADMITTED AS PLAINTIFF'S EXHIBIT 69; AND THE EXHIBIT
18 ADMITTED AS 1603 HAS BEEN ADMITTED AS PLAINTIFF'S
19 EXHIBIT 89.

20 THE COURT: ALL RIGHT. IT'S 9:43.

21 MR. MCELHINNY: I'M SORRY, YOUR HONOR. I
22 ALSO WANT TO LODGE FOR THE RECORD, PLEASE,
23 PLAINTIFF'S EXHIBIT 203, WHICH IS THE TRANSCRIPT OF
24 THE DEPOSITION WE JUST PLAYED.

25 THE COURT: OKAY. THAT CAN BE LODGED FOR

1 THE RECORD.

2 ALL RIGHT.

3 MS. MAROULIS: YOUR HONOR, MAY WE PROCEED
4 WITH THE COUNTER-DESIGNATIONS?

5 THE COURT: YES, PLEASE. IT'S 9:43. GO
6 AHEAD, PLEASE.

7 (WHEREUPON, THE VIDEOTAPED DEPOSITION OF
8 TIMOTHY BENNER WAS PLAYED IN OPEN COURT OFF THE
9 RECORD.)

10 THE COURT: IS THAT THE END? IT'S 9:47.

11 MR. MCELHINNY: IT IS, YOUR HONOR. AT
12 THIS POINT, I WOULD LIKE TO LODGE PLAINTIFF'S
13 EXHIBIT 204, THE TRANSCRIPT.

14 THE COURT: OF WHO? I DIDN'T HEAR YOU.

15 MR. MCELHINNY: 204, YOUR HONOR, AS A
16 TRANSCRIPT OF MR. SHEPPARD'S DEPOSITION. I'M
17 SORRY, MR. BENNER'S DEPOSITION.

18 THE COURT: I THOUGHT THAT WAS 203 AND
19 YOU ALREADY LODGED IT.

20 MR. MCELHINNY: I'M AHEAD OF MYSELF.

21 THE COURT: THAT'S OKAY.

22 MR. MCELHINNY: WE WILL CALL AS OUR NEXT
23 WITNESS TIMOTHY SHEPPARD, WHO IS THE LEAD FOR
24 SAMSUNG TECHNOLOGY AMERICA LOGISTICS TEAM.

25 THE COURT: OKAY. IT'S 9:48. GO AHEAD.

1 (WHEREUPON, THE VIDEOTAPED DEPOSITION OF
2 TIMOTHY SHEPPARD WAS PLAYED IN OPEN COURT OFF THE
3 RECORD.)

4 THE COURT: ALL RIGHT. IT'S 9:50.

5 MR. MCELHINNY: THANK YOU, YOUR HONOR.
6 AT THIS POINT I WOULD LIKE TO LODGE PLAINTIFF'S
7 EXHIBIT 204, WHICH IS A TRANSCRIPT OF THE SHEPPARD
8 DEPOSITION.

9 THE COURT: OKAY. THAT'S LODGED, BUT NOT
10 ADMITTED.

11 DO YOU HAVE A COUNTER-DESIGNATION?

12 MS. MAROULIS: NO, YOUR HONOR, THERE'S NO
13 ADDITIONAL TESTIMONY.

14 THE COURT: OKAY.

15 MR. MCELHINNY: AT THIS POINT I'D LIKE TO
16 TURN THE FLOOR BACK TO MY PARTNER, RACHEL KREVANS,
17 YOUR HONOR.

18 THE COURT: OKAY. IT'S 9:50.

19 CALL YOUR NEXT WITNESS, PLEASE.

20 MS. KREVANS: YOUR HONOR, APPLE CALLS
21 TERRY MUSIKA.

22 (PAUSE IN PROCEEDINGS.)

23 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

24 **TERRY MUSIKA,**
25 BEING CALLED AS A WITNESS ON BEHALF OF THE

1 PLAINTIFF, HAVING BEEN FIRST DULY SWORN, WAS
2 EXAMINED AND TESTIFIED AS FOLLOWS:

3 THE WITNESS: YES, I DO.

4 THE CLERK: THANK YOU. PLEASE BE SEATED.

5 THE COURT: OKAY. IT'S 9:52.

6 GO AHEAD, PLEASE.

7 THE CLERK: PLEASE STATE YOUR NAME AND
8 SPELL IT FOR THE RECORD.

9 THE WITNESS: YES, MY NAME IS TERRY
10 MUSIKA, T-E-R-R-Y, M-U-S-I-K-A.

11 **DIRECT EXAMINATION**

12 BY MS. KREVANS:

13 Q GOOD MORNING, MR. MUSIKA.

14 A GOOD MORNING.

15 Q COULD YOU START BY TELLING THE JURY WHAT KIND
16 OF WORK DO YOU DO?

17 A I'M A CERTIFIED PUBLIC ACCOUNTANT AND HAVE
18 BEEN FOR APPROXIMATELY JUST SHY OF 40 YEARS.

19 AND IN THAT CAPACITY, I HAVE, THROUGH
20 THAT 40 YEARS, I HAVE DONE AUDITING AND I'VE DONE
21 TESTIMONY SUCH AS THIS. AND I'VE ALSO OWNED AND
22 OPERATED COMPANIES THAT I'VE HAD A SPECIFIC
23 INTEREST IN MYSELF, AS WELL AS DONE SOME WORK, AS I
24 THINK WE'LL TALK ABOUT, FOR THE COURTS.

25 Q AND WHAT HAVE YOU BEEN ASKED TO DO, GENERALLY,

1 IN CONNECTION WITH THIS CASE?

2 A MY ROLE AS THE FINANCIAL EXPERT WITNESS IS TO
3 MAKE AN ASSUMPTION THAT THE JURY, THE COURT, HAS
4 DECIDED THAT THE PATENTS OF APPLE'S ARE VALID AND
5 THE TRADE DRESS IS VALID AND THAT SAMSUNG HAS
6 INFRINGED.

7 THAT'S NOT PART OF MY OPINION. THAT'S
8 JUST AN ASSUMPTION THAT I HAVE TO MAKE TO THEN MAKE
9 A DECISION, OR A CALCULATION AS TO THE AMOUNT OF
10 DAMAGES THAT SAMSUNG SHOULD PAY TO APPLE, ASSUMING
11 THEY ACTUALLY DID INFRINGE AND ASSUMING THAT
12 APPLE'S PATENTS ARE VALID.

13 Q OKAY. COULD WE SEE PDX 34B.1, PLEASE.

14 MR. MUSIKA, COULD YOU PLEASE WALK US
15 GENERALLY THROUGH THE COURSE OF YOUR VERY LENGTHY
16 CAREER?

17 A YES, I'LL BE BRIEF. INVOTEX IS THE MOST
18 RECENT EMPLOYER, AND I FOUNDED INVOTEX PROBABLY SIX
19 OR SEVEN YEARS AGO. TODAY I'M A MANAGING DIRECTOR
20 THERE.

21 PRIOR TO THAT, RIGHT OUT OF GRADUATE
22 SCHOOL, I WENT TO WORK FOR ONE OF THE LARGE
23 INTERNATIONAL ACCOUNTING FIRMS, KPMG, IN
24 LOS ANGELES.

25 AFTER THAT I WAS RECRUITED TO GO TO WORK

1 FOR ANOTHER ONE OF THE OTHER LARGE INTERNATIONAL
2 ACCOUNTING FIRMS, WHICH IS TODAY
3 PRICEWATERHOUSECOOPERS, AND I WORKED IN THERE AS
4 BOTH AN AUDITOR AND A CONSULTANT IN THEIR NATIONAL
5 OFFICE DESIGNING AUDIT TESTS FOR THEM THAT THEY USE
6 NATIONWIDE, AND I WAS EVENTUALLY MADE INTO AUDIT
7 PARTNER.

8 Q LET ME STOP YOU RIGHT THERE. YOU SAID AFTER
9 GRADUATE SCHOOL. TELL US ABOUT YOUR EDUCATION.

10 A UNDERGRADUATE DEGREE IN HISTORY FROM INDIANA
11 UNIVERSITY. I WAS A HISTORY TEACHER IN L.A. FOR A
12 FEW YEARS PRIOR TO GOING BACK TO GRADUATE SCHOOL.
13 THEN I GOT A MASTER'S IN PUBLIC FINANCE, SAME,
14 INDIANA UNIVERSITY IN BLOOMINGTON, INDIANA.

15 Q OKAY. YOU SAID YOU DID BOTH AUDITING AND
16 CONSULTING WORK AT KPMG AND PWC. IS PWC
17 PRICEWATERHOUSECOOPERS?

18 A YES, IT IS.

19 Q OKAY. COULD YOU EXPLAIN THE KINDS OF THINGS
20 YOU DID IN CONNECTION WITH THE AUDITING WORK THAT
21 YOU DID AT THESE TWO ACCOUNTING FIRMS?

22 A OVER THE APPROXIMATELY TEN YEARS THAT I WAS
23 WITH BOTH AUDITING FIRMS, I DID A RANGE OF AUDITS.
24 I DID SMALL LOCAL GOVERNMENTS; I DID DESIGN WORK, I
25 ACTUALLY DESIGNED AN ACCOUNTING SYSTEM FOR THE CITY

1 AND COUNTY OF SAN FRANCISCO; I'VE DONE AUDITS OF
2 LARGE INTERNATIONAL COMPANIES; NONPROFITS.

3 SORT OF THE RANGE OF SMALL TO LARGE
4 PUBLIC AND PRIVATE COMPANIES.

5 Q AND WHAT KIND OF CONSULTING WORK DID YOU DO?

6 A MOST OF MY CONSULTING WORK WAS DESIGN WORK,
7 DESIGNING ACCOUNTING SYSTEMS AND IMPLEMENTING
8 ACCOUNTING SYSTEMS FOR STATE AND LOCAL GOVERNMENTS,
9 AS WELL AS PRIVATE ENTERPRISES.

10 Q DID YOU, IN THE COURSE OF YOUR AUDITING
11 CONSULTING WORK, DO ANY WORK FOR COMPANIES WHERE
12 THE STRUCTURE OF THE COMPANY WAS A PARENT WHICH WAS
13 IN A COUNTRY OUTSIDE THE UNITED STATES WITH
14 SUBSIDIARIES IN THE UNITED STATES?

15 A YES, BOTH WAYS. I'VE DONE AUDITS OF COMPANIES
16 WHICH WERE DOMICILED IN THE UNITED STATES AND HAD
17 SUBSIDIARIES OR OPERATIONS AROUND THE WORLD; AND
18 I'VE DONE AUDITS OF COMPANIES WHICH WERE BASED IN
19 THE U.K. OR SOMEWHERE ELSE AROUND THE WORLD AND HAD
20 OPERATIONS IN THE U.S., MUCH LIKE APPLE AND
21 SAMSUNG.

22 Q OKAY. NOW, I'M GOING TO --

23 MR. PRICE: IF I MIGHT MAKE A COMMENT?
24 THE REALTIME IS WORK NOT WORKING, JUST TO LET THE
25 COURT KNOW.

1 THE COURT: MINE IS NOT AS WELL.

2 (PAUSE IN PROCEEDINGS.)

3 THE COURT: LET'S TRY TO FIX IT AT THE
4 BREAK AT 10:30. IS THAT ALL RIGHT?

5 MR. PRICE: FOR AN EXPERT, IT'S NICE TO
6 SEE IT.

7 THE COURT: THAT'S FINE. LET'S TAKE A
8 BREAK. IT'S 9:56. WHY DON'T WE GO AHEAD AND MAYBE
9 JUST TAKE A FIVE MINUTE BREAK NOW AND IF ANYONE
10 NEEDS TO USE THE REST ROOM OR ANYTHING.

11 AGAIN, PLEASE KEEP AN OPEN MIND. DON'T
12 DISCUSS THE CASE WITH ANYONE, AND PLEASE DON'T READ
13 ABOUT THE CASE.

14 (WHEREUPON, A RECESS WAS TAKEN.)

15 (WHEREUPON, THE FOLLOWING PROCEEDINGS
16 WERE HELD IN THE PRESENCE OF THE JURY:)

17 THE COURT: OKAY. WELCOME BACK. SORRY
18 FOR YOUR TECHNICAL DIFFICULTIES HERE.

19 IF EVERYONE WOULD PLEASE TAKE A SEAT.

20 ALL RIGHT. THE TIME IS NOW 10:07.

21 THAT'S GOING TO BE OUR BREAK FOR THE MORNING IF YOU
22 DON'T MIND.

23 GO AHEAD, PLEASE.

24 BY MS. KREVANS:

25 Q MR. MUSIKA, COULD YOU TELL US ABOUT THE COURT

1 APPOINTED TRUSTEE EXPERIENCE YOU HAD.

2 A YES. FOR ABOUT THE LAST 20 YEARS, I HAVE BEEN
3 CALLED UPON BY VARIOUS COURTS, PRIMARILY THE
4 BANKRUPTCY, UNITED STATES BANKRUPTCY COURTS, TO
5 SERVE THE COURTS AS A COURT APPOINTED TRUSTEE.

6 SOMETIMES I'VE SERVED AS AN OPERATING
7 TRUSTEE WHERE THE COMPANY IS HAVING FINANCIAL
8 DIFFICULTY AND MANAGEMENT'S IN QUESTION, SO I'VE
9 BEEN CALLED IN TO RUN THE COMPANY FOR THE BENEFIT
10 OF THE CREDITORS.

11 AT TIMES I'VE BEEN CALLED IN AS A SPECIAL
12 EXAMINER BECAUSE THERE'S SOMETHING IN THE COMPANY
13 THAT'S, THAT'S -- THAT THE COURT IS HAVING
14 DIFFICULTY WITH AND THEY WANT AN INDEPENDENT
15 EXAMINER TO COME IN AND GIVE THE COURT AN OPINION.

16 I'VE ALSO SERVED AS A RECEIVER IN STATE
17 COURT. IT'S VERY MUCH LIKE AN OPERATING TRUSTEE.

18 I'VE SERVED AS A LIQUIDATING TRUSTEE
19 WHERE I'VE TAKEN THE ASSETS AND LIQUIDATED THE
20 ASSETS, AGAIN, FOR THE BENEFIT OF THE CREDITORS.

21 AND I'VE ALSO SERVED AS A SPECIAL MASTER
22 IN COURT, IN SHAREHOLDER DISPUTES WHERE THE COURT
23 WANTS ITS OWN EXPERT, IN ESSENCE, TO ASSIST IN THE
24 EVALUATION.

25 Q BRIEFLY, CAN YOU DESCRIBE WHAT YOU MEAN BY

1 INVESTIGATIONS ON THE FOURTH PORTION OF YOUR SLIDE?

2 A YES. OVER THE 40 YEARS I'VE WORKED NUMEROUS
3 TIMES FOR THE FEDERAL GOVERNMENT, VARIOUS AGENCIES
4 OF THE FEDERAL GOVERNMENT; I INVESTIGATED FRAUD FOR
5 THE FBI; I ANALYZED AND WORK WITH THE IRS IN
6 INVESTIGATIONS; I'VE WORKED FOR THE STATE
7 DEPARTMENT IN MULTI-INTERNATIONAL FRAUD CLAIMS
8 INVOLVING CONSTRUCTION CLAIMS IN EGYPT; I'VE WORKED
9 NUMEROUS TIMES WITHIN THE JUSTICE DEPARTMENT FOR
10 THE VARIOUS UNFORTUNATE SAVINGS AND LOAN CRISES
11 THAT THIS COUNTRY HAS HAD IN THE LAST 30 YEARS.

12 Q DO YOU HAVE PRIOR EXPERIENCE DOING DAMAGE
13 ANALYSIS FOR INTELLECTUAL PROPERTY CASES LIKE THIS
14 ONE?

15 A YES.

16 Q HOW OFTEN HAVE YOU DONE THIS TYPE OF ANALYSIS?

17 A I'VE BEEN INVOLVED IN MORE THAN 200
18 INTELLECTUAL PROPERTY CASES OVER THE LAST 25 YEARS.

19 Q HAVE YOU BEEN INVOLVED BEFORE IN ANY CASES IN
20 WHICH SAMSUNG WAS A PARTY?

21 A YES.

22 Q ON WHICH SIDE? SAMSUNG'S OR THE OTHER SIDE?

23 A BOTH SIDE. I'VE WORKED FOR AND AGAINST
24 SAMSUNG.

25 MS. KREVANS: YOUR HONOR, WE WOULD TENDER

1 MR. MUSIKA AS AN ECONOMIC AND ACCOUNTING EXPERT IN
2 THE CALCULATION OF INTELLECTUAL PROPERTY DAMAGES.

3 THE COURT: ANY OBJECTION?

4 MR. PRICE: NO OBJECTION.

5 THE COURT: ALL RIGHT. SO CERTIFIED.

6 GO AHEAD, PLEASE.

7 BY MS. KREVANS:

8 Q MR. MUSIKA, HAVE YOU FORMED ANY OPINIONS
9 REGARDING WHAT DAMAGES APPLE SHOULD RECEIVE IF THE
10 JURY FINDS THAT SAMSUNG VIOLATED APPLE'S
11 INTELLECTUAL PROPERTY RIGHTS?

12 A YES.

13 Q WHAT IS YOUR OVERALL OPINION?

14 A MY OVERALL OPINION IS THAT THE DAMAGES THAT
15 APPLE SHOULD RECEIVE AS COMPENSATION FOR THE
16 ASSUMED INFRINGEMENT IS A RANGE OF DAMAGES BETWEEN
17 \$2.5 BILLION, THAT'S \$2,500,000,000, AND
18 \$2,750,000,000.

19 SO SOMEWHERE IN THAT RANGE.

20 Q OKAY. LET'S START, TO HELP US UNDERSTAND YOUR
21 OPINION, WITH THE ECONOMIC BACKGROUND.

22 COULD YOU EXPLAIN HOW IT IS THAT A
23 COMPANY LIKE APPLE MIGHT BE INJURED WHEN A
24 COMPETITOR USES ITS INTELLECTUAL PROPERTY?

25 A YES. I HAVE A SERIES OF SLIDES THAT WILL HELP

1 ILLUSTRATE THIS.

2 Q OKAY. AND FOR THE RECORD, WE'RE LOOKING AT
3 PDX 34B.2.

4 WHAT HAVE YOU DEPICTED HERE, MR. MUSIKA?

5 A THIS SLIDE, THE OVERALL SLIDE IS THE
6 MARKETPLACE. SO IT'S -- IT'S -- IT SHOWS TWO ARCH
7 COMPETITORS, ON THE LEFT-HAND SIDE APPLE AND ON THE
8 RIGHT-HAND SIDE SAMSUNG, AND THEY BOTH COMPETE IN
9 THE MARKETPLACE FOR THE CUSTOMERS THAT ARE IN THE
10 MIDDLE.

11 AND OBVIOUSLY THEY'RE BOTH PROFIT SEEKING
12 ORGANIZATIONS AND THEY WOULD LIKE TO MAKE THE SALE
13 AND GAIN THE ECONOMIC BENEFIT, WHICH IS THE MONEY
14 IN BETWEEN.

15 Q OKAY. COULD WE SEE SLIDE 34B.3?

16 A WELL, AS YOU SEE, AS THE -- I'M SORRY.

17 Q LET'S GO TO B.4.

18 A WELL, WHAT YOU SEE IS THAT, IS APPLE SEEKS TO
19 COMPETE WITH THE INTELLECTUAL PROPERTY, AND SAMSUNG
20 IS ASSUMED, AGAIN, TO USE THAT INTELLECTUAL
21 PROPERTY AND MAKES THE SALE AND SO THAT ECONOMIC
22 BENEFIT HAS SLID ACROSS TO SAMSUNG.

23 WHAT MY JOB, AS I INDICATED EARLIER, IS
24 TO DETERMINE HOW MUCH OF THAT GAIN THAT SAMSUNG HAS
25 MADE BY USING, ASSUMED USE OF THE INTELLECTUAL

1 PROPERTY, SHOULD GO BACK TO APPLE, AND THAT'S WHY
2 THAT MONEY SLIDES BACK ACROSS.

3 Q OKAY. FOR PURPOSES OF FORMING YOUR OPINIONS
4 IN THIS CASE, HAVE YOU DONE ANYTHING TO EVALUATE
5 SAMSUNG'S ACCUSED SMARTPHONE SALES AND SAMSUNG'S
6 ACCUSED TABLET SALES?

7 A I HAVE.

8 Q OKAY. CAN WE SEE SLIDE 34B.6.

9 WHAT WAS YOUR OVERALL CONCLUSION ABOUT
10 THE VOLUME OF SAMSUNG'S ACCUSED SMARTPHONE AND
11 TABLET SALES AND THE REVENUES ASSOCIATED WITH THAT?

12 A WELL, THE DAMAGE NUMBERS I'VE JUST GIVEN YOU
13 ARE VERY LARGE, AND THEY'RE VERY LARGE BECAUSE
14 WE'RE DEALING WITH A VERY LARGE QUANTITY OF SALES.

15 WHAT'S DEPICTED HERE IS THAT THE
16 COMBINATION OF SMARTPHONES AND TABLETS, OVER THE
17 TWO YEARS THAT'S AT ISSUE IN THIS CASE, SAMSUNG HAS
18 SOLD 22.7 MILLION INDIVIDUAL SMARTPHONES AND/OR
19 TABLETS.

20 THE AMOUNT THAT'S ASSOCIATED WITH THOSE
21 SALES IS \$8,160,000,000. THAT'S SAMSUNG'S NUMBER.
22 THAT'S JUST -- THAT'S THAT MONEY THAT SLID ACROSS.
23 IT WAS EQUAL TO \$8,160,000,000.

24 Q WHERE DID YOU GET THE INFORMATION THAT YOU
25 USED TO DERIVE THE 22 MILLION INFRINGING SALES AND

1 THE \$8 BILLION OF REVENUE?

2 A THAT'S AN IMPORTANT POINT. THESE AREN'T MY
3 NUMBERS. THESE ARE SAMSUNG'S NUMBERS. THIS IS
4 ACTUALLY TAKEN DIRECTLY FROM SAMSUNG'S RECORDS.

5 Q OKAY. COULD WE LOOK AT JOINT EXHIBIT 1500,
6 PLEASE. JUST LOOK AT THAT IN YOUR BINDER FOR A
7 MOMENT, MR. MUSIKA.

8 DO YOU HAVE -- IT SHOULD BE RIGHT AT THE
9 FRONT.

10 A I'VE GOT IT.

11 Q OKAY. WHAT IS JOINT EXHIBIT 1500?

12 A JOINT EXHIBIT 1500 IS AN EXHIBIT THAT HAS BEEN
13 JOINTLY SUBMITTED BY BOTH APPLE AND SAMSUNG AND
14 AGREED TO BY BOTH PARTIES, AND IT LISTS THOSE TOTAL
15 8 BILLION OF SALES --

16 Q LET ME STOP YOU FOR A MOMENT BEFORE YOU TELL
17 US THE NUMBERS.

18 YOUR HONOR, WE WOULD MOVE THE ADMISSION
19 OF JOINT EXHIBIT 1500.

20 THE COURT: ANY OBJECTION?

21 MR. PRICE: NO OBJECTION.

22 THE COURT: OKAY. IT'S ADMITTED.

23 (WHEREUPON, JOINT EXHIBIT NUMBER 1500,
24 HAVING BEEN PREVIOUSLY MARKED FOR
25 IDENTIFICATION, WAS ADMITTED INTO

1 EVIDENCE.)

2 MS. KREVANS: COULD WE SHOW THE JURY,
3 MR. LEE, JOINT EXHIBIT 1500.

4 Q CAN YOU -- IN EXHIBIT 1500, CAN YOU SHOW US
5 WHERE YOU GOT THE 22 MILLION PHONE AND TABLET SALES
6 AND THE 8 BILLION REVENUE NUMBERS.

7 A RIGHT. I'D LIKE TO APOLOGIZE, FIRST, FOR THE
8 SMALL NUMBERS; AND SECONDLY, I'M GOING TO BE
9 ABBREVIATING A LOT OF NUMBERS FROM TIME TO TIME, SO
10 THAT COULD GET A LITTLE CONFUSING. I WANT TO MAKE
11 SURE THAT I TRY TO POINT OUT WHEN I'M SAYING 2.4
12 BILLION OR MILLION SO I DON'T CONFUSE THE COURT.

13 SO YOUR PENDING QUESTION, IF WE WOULD GO
14 DOWN TO THE -- IN MOST SCHEDULES, IT ADDS ACROSS.
15 THESE ARE CALENDAR QUARTERS, AND THEN THAT FINAL
16 COLUMN ON THE RIGHT TOTALS DOWN.

17 SO THIS IS THE PORTION OF THE SALES THAT
18 RELATE TO THE SMARTPHONES, AND IF WE GO TO THE
19 BOTTOM THERE, SO THIS IS -- THIS IS A TRUNCATED --
20 OR IT'S A NUMBER THAT'S CUT OFF, SO THAT 21 IS
21 21,251,000 SMARTPHONE UNITS, AND THE NUMBER BELOW
22 IT WITH THE DOLLAR SIGN IS 7,516,000,000.

23 AND TO GET BACK TO OUR 22 MILLION AND OUR
24 \$8 BILLION NUMBER, WE HAVE TO ADD PAGE 2, WHICH IS
25 THE TABLETS.

1 WE GO TO THE SAME SPOT, AND THERE'S THE
2 1,438 TABLETS, WE ADD THAT TO THE SMARTPHONE TO GET
3 TO THE \$22 MILLION -- OR 22 MILLION UNITS, AND
4 THERE'S 644,000, WHICH WE ADD THAT BACK TO THE
5 SMARTPHONES, WE GET TO THE \$8.1 BILLION.

6 Q NOW, MR. MUSIKA, YOU SAID 644,000, THAT NUMBER
7 THERE IS -- BECAUSE IT'S MISSING ZEROS, IT'S
8 ACTUALLY WHAT?

9 A MILLIONS. SORRY. I DID IT MYSELF. I
10 APOLOGIZE.

11 Q ALL RIGHT. DOES THIS REPRESENT SALES JUST IN
12 THE UNITED STATES?

13 A SALES OF TABLETS AND SMARTPHONES ONLY IN THE
14 UNITED STATES BY THE DEFENDANT SAMSUNG.

15 Q OKAY. HAVE YOU LOOKED AT INFORMATION ABOUT
16 HOW SAMSUNG'S SALES OF THE ACCUSED PRODUCTS IN THIS
17 CASE -- LET ME START OVER.

18 HAVE YOU LOOKED AT INFORMATION ABOUT HOW
19 SAMSUNG SALES OF SMARTPHONES AND TABLETS BEFORE THE
20 INTRODUCTION OF THE ACCUSED PRODUCTS IN THIS CASE
21 COMPARED TO SAMSUNG SALES OF SMARTPHONES AND
22 TABLETS AFTER THE INTRODUCTION OF THE ACCUSED
23 PRODUCTS?

24 A YES.

25 Q OKAY. COULD WE SEE SLIDE 34B.9. WHAT

1 INFORMATION IS SHOWN ON 34B.9, MR. MUSIKA?

2 A THIS IS A GRAPH, AND ON THE VERTICAL AXIS,
3 IT'S THE MARKET SHARE PERCENT. SO IT'S HOW MUCH OF
4 THE OVERALL SMARTPHONE MARKET DID SAMSUNG HAVE OVER
5 TIME, WHICH IS OUR HORIZONTAL X AXIS THERE.

6 AND THE SLIDE IS DIVIDED UP, AS YOU JUST
7 INDICATED, INTO TWO SEGMENTS. ON THE LEFT-HAND
8 SIDE WITH THE BLUE IS THE TIME PERIOD FOR SAMSUNG
9 PRIOR TO THE INTRODUCTION OF THEIR FIRST ACCUSED
10 PHONE, AND WHAT WE CAN SEE THEN WITH THE
11 INTRODUCTION OF THE FIRST ACCUSED PHONE, THE RED
12 LINE, ON THE RIGHT-HAND SIDE IS THE PERIOD OF TIME
13 AFTERWARDS.

14 Q AND HOW DO THE TWO PERIODS, THAT IS, BEFORE
15 AND AFTER, COMPARE TO ONE ANOTHER?

16 A YES. IT'S A RATHER DRAMATIC DEMONSTRATION OF
17 SAMSUNG WAS LOSING MARKET SHARE DURING THE PERIOD
18 PRIOR TO 2010, APPROXIMATELY JUNE OF 2010 WHEN THEY
19 INTRODUCED THE FIRST ACCUSED PHONE.

20 AFTER THEY INTRODUCED THE FIRST ACCUSED
21 PHONE, SAMSUNG'S MARKET SHARE TOOK AN ABRUPT UPWARD
22 SWING AND HAS CONTINUED TODAY TO ADVANCE
23 DRAMATICALLY IN INCREASES IN MARKET SHARE.

24 Q WHERE DID THE INFORMATION THAT FORMS THIS
25 CHART COME FROM?

1 A ONCE AGAIN, THIS ISN'T MY INFORMATION. THIS
2 IS TAKEN NOT FROM APPLE OR FROM SAMSUNG IN THIS
3 CASE. THIS IS TAKEN -- YOU CAN SEE PERHAPS RIGHT
4 DOWN THERE ON THE BOTTOM, SOURCE IDC WORLDWIDE
5 QUARTERLY.

6 IDC IS AN INDEPENDENT MARKETING
7 ORGANIZATION THAT BOTH APPLE AND SAMSUNG USE TO
8 HELP THEM IN DOING THEIR OWN MARKET RESEARCH. SO
9 THIS IS AN INDEPENDENT STUDY AND ANALYSIS THAT WAS
10 DONE BY IDC.

11 Q OKAY. LET'S TURN TO THE SPECIFIC DAMAGES
12 REMEDIES THAT YOU EVALUATED IN THIS CASE.

13 WHAT KINDS OF REMEDIES DID YOU APPLY WITH
14 RESPECT TO THE VARIOUS INTELLECTUAL PROPERTY RIGHTS
15 THAT APPLE HAS ASSERTED IN THE CASE?

16 A I CONSIDERED THREE DIFFERENT FORMS OF REMEDY
17 IN TOTAL AS IT RELATES TO THE DESIGN, AND THAT
18 WOULD BE THE DESIGN PATENT AND THE TRADE DRESS. I
19 CONSIDERED TWO FORMS OF DAMAGE.

20 Q WHAT WERE THOSE TWO FORMS?

21 A ONE, ONE IS CALLED SAMSUNG'S PROFITS, AND THE
22 OTHER IS CALLED APPLE'S LOST PROFITS.

23 TO PUT IT IN REAL STRAIGHT TERMS, IT'S
24 EITHER WHAT SAMSUNG HAS GAINED OR IT'S WHAT APPLE
25 HAS LOST.

1 IN THE CASE OF SAMSUNG'S GAIN, THAT'S
2 SOMETIMES REFERRED TO AS AN UNJUST ENRICHMENT
3 BECAUSE THE PRESUMPTION IS THEY'VE MADE THAT GAIN,
4 THAT MONEY HAS SLID ACROSS THE SLIDE BECAUSE THEY
5 VIOLATED APPLE'S INTELLECTUAL PROPERTY.

6 Q OKAY. AND REMIND US AGAIN, WHICH TYPES OF
7 INTELLECTUAL PROPERTY RIGHTS DID YOU USE THIS KIND
8 OF ANALYSIS, THE SAMSUNG PROFIT OR APPLE'S LOST
9 PROFITS FOR?

10 A I USED THEM BOTH, AND WE'RE GOING TO SEE THE
11 SITUATION -- THIS ISN'T DOUBLE COUNTING. I USED
12 THEM BOTH FOR THE DESIGN PATENTS AND TRADE DRESS.

13 Q OKAY. WHAT KIND OF REMEDY DID YOU LOOK AT FOR
14 VIOLATIONS OF APPLE'S UTILITY PATENT RIGHTS?

15 A DIFFERENT COMBINATION THERE. LOST PROFITS
16 AGAIN, WHICH I'VE ALREADY DESCRIBED, THAT'S APPLE'S
17 LOSS.

18 BUT HERE I'VE CONSIDERED IN THE
19 ALTERNATIVE WHAT'S CALLED A REASONABLE ROYALTY.

20 Q OKAY. HOW DID YOU -- WHAT WAS YOUR BASIS FOR
21 APPLYING A DIFFERENT KIND OF REMEDY FOR SOME KINDS
22 OF PATENT RIGHTS THAN OTHERS?

23 A IT'S MY UNDERSTANDING OF WHAT IS THE ACCEPTED
24 DAMAGE METHODOLOGY TO BE USED, DEPENDING ON THE
25 TYPE OF INTELLECTUAL PROPERTY. SO THAT'S WHY WE

1 SEE A SLIGHT CHANGE IN THE UTILITY PATENTS VERSUS
2 THE DESIGN AND TRADE DRESS.

3 Q OKAY. COULD WE LOOK AT SLIDE 34B.75.

4 WHAT IS SHOWN ON SLIDE 34B.75,
5 MR. MUSIKA?

6 MR. PRICE: YOUR HONOR, I OBJECT. HE'S
7 NOT A LAWYER. I OBJECT TO SHOWING HIM LAW.

8 THE COURT: I'VE OVERRULED THAT OBJECTION
9 IN MY ORDER OF LAST NIGHT, SO I'LL STILL OVERRULE
10 IT.

11 THE WITNESS: YES. THIS IS THE DAMAGES
12 DESCRIPTION UNDER THE LAW FOR DESIGN PATENT
13 DAMAGES.

14 BY MS. KREVANS:

15 Q AND IS THIS THE TEST YOU APPLIED, THAT IS,
16 THAT THE -- IF THE DEFENDANT DID INFRINGE, THEY'RE
17 FOUND LIABLE TO THE EXTENT OF TOTAL PROFIT?

18 A RIGHT. KEEPING IN MIND, AGAIN, I'M MAKING NO
19 DETERMINATION ON WHETHER THEY DID OR DIDN'T
20 INFRINGE. I'M ACCEPTING THAT AS AN ASSUMPTION.

21 BUT, YES, HAVING DONE THAT, I'VE USED THE
22 TOTAL PROFITS, AGAIN, OF SAMSUNG.

23 Q OKAY. COULD WE SEE SLIDE 34B.76, WHICH IS
24 HEADED TRADE DRESS DAMAGES.

25 IS THIS THE TEST FOR DAMAGES THAT YOU

1 USED FOR TRADE DRESS VIOLATIONS?

2 A YES. AND, AGAIN, WE CAN SEE IN THE
3 ENUMERATION, ONE, DEFENDANT'S PROFITS, THAT WOULD
4 BE SAMSUNG AGAIN; AND DAMAGES SUSTAINED BY
5 PLAINTIFF, THAT WOULD BE LOST PROFITS; AND COSTS OF
6 THE ACTION. I'M NOT GIVING ANY OPINION ON THAT
7 THIRD PIECE.

8 Q AND IF WE COULD SEE SLIDE 34B.74. THIS ONE IS
9 JUST HEADED PATENT DAMAGES.

10 WHAT IS THIS TEST?

11 A YES. AND THIS TEST BASICALLY SAYS THAT UNDER
12 A UTILITY PATENT, THE PATENTEE IS ENTITLED TO
13 DAMAGES ADEQUATE TO COMPENSATE FOR INFRINGEMENT,
14 BUT UNDER NO EVENT LESS THAN A REASONABLE ROYALTY.

15 SO THAT'S WHY YOU USE THOSE TWO FORMS,
16 LOST PROFITS OR, IN THE ALTERNATIVE, A REASONABLE
17 ROYALTY.

18 Q OKAY. YOU'VE TALKED, MR. MUSIKA, ABOUT THREE
19 DIFFERENT FORMS OF DAMAGES AND 22 MILLION PHONES
20 AND TABLETS.

21 DID YOU DO ANYTHING TO MAKE SURE THAT YOU
22 WERE NOT DOUBLE COUNTING THE DAMAGES FOR ANY ONE OF
23 THOSE PHONES AND TABLETS?

24 A I DID.

25 Q WHAT DID YOU DO?

1 A WELL, IT'S -- IT'S -- IT'S EASY TO VISUALIZE,
2 BUT IT'S HARD TO IMAGINE.

3 BUT THE CALCULATION REALLY HAD TO BE DONE
4 ON A PHONE-BY-PHONE, TABLET-BY-TABLET BASIS. EACH
5 PHONE, EACH TABLET DESERVES OR GETS ITS OWN DAMAGE,
6 AND SO THAT CALCULATION HAD TO BE DONE INDIVIDUALLY
7 ON EACH ONE OF THOSE PRODUCTS.

8 Q AND HOW DID YOU DECIDE, FOR EACH ONE OF THOSE
9 PRODUCTS, WHICH OF THE THREE DIFFERENT KINDS OF
10 DAMAGES YOU DESCRIBED SHOULD BE ASSIGNED TO IT?

11 A WELL, THERE WERE SEVERAL CRITERIA. ONE WE
12 JUST WENT THROUGH, WHICH IS THE FORM OF DAMAGES.

13 ANOTHER WOULD BE THE TIME PERIOD IN
14 WHICH -- NOT ALL SALES OCCURRED AT THE SAME TIME.
15 THEY OCCURRED AT DIFFERENT TIMES.

16 AND NOT ALL THE INTELLECTUAL PROPERTY,
17 WHETHER IT WAS A UTILITY PATENT OR A DESIGN PATENT,
18 THEY DIDN'T ALL ISSUE AT ONCE. SO THEY ISSUED AT
19 VARIOUS POINTS IN TIME.

20 SO IT'S REALLY THE INTERSECTION OF WHEN
21 SOMETHING WAS SOLD, WHICH FORM OF DAMAGES -- WHICH
22 FORM OF INTELLECTUAL PROPERTY IT IS ACCUSED OF, AND
23 THEN MAKING THAT CALCULATION ON, AGAIN, A
24 UNIT-BY-UNIT BASIS.

25 Q OKAY. COULD WE SEE SLIDE 34B.56.

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

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

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

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

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

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

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

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

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

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

12 Q OKAY. THAT LOOKED EASY.

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

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

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

25 AND SO OVER THE LAST YEAR AND A HALF TO

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

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

10 Q THAT SOUNDS EXPENSIVE. WAS IT EXPENSIVE?

11 A IT WAS VERY EXPENSIVE.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 Q AND WHAT WAS THE NEXT STEP?

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

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

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

25 IF I SUBTRACT THAT FROM THAT PRIOR

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

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

6 A YES.

7 Q COULD WE SEE SLIDE 34B.19?

8 WHAT IS DEPICTED HERE, MR. MUSIKA?

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

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

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

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

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

25 SO THERE'S NO DISPUTE ABOUT THE NUMBERS

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

4 Q COULD WE SEE PDX 34B.20.

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

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

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

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

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

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

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

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

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

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

16 MR. PRICE: NO OBJECTION.

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

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

22 BY MS. KREVANS:

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

25 A SAMSUNG RECORDS.

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

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

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

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

14 WHAT'S DEPICTED HERE, MR. MUSIKA?

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

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

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

25 STARTING AT THE TOP, THOSE EXPENSES ARE

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

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

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

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

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

22 WHAT ARE THOSE NUMBERS?

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

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

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

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

10 Q AND WHAT'S THE GROSS PROFIT PERCENTAGE?

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

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

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

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

25 A YES.

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

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

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

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

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

15 A I HAVE TWO VERY SPECIFIC REASONS.

16 Q WHAT ARE THEY?

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

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

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

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

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

12 A YES. MAY I?

13 Q PLEASE.

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

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

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

1 FUTURE PRODUCTS, NOT TO THE CURRENT PRODUCTS.

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

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

10 A YES, I DID.

11 Q WHAT LED TO THAT CONCLUSION?

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

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

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

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

1 WHAT IS SET OUT IN YOUR SLIDE 23,

2 MR. MUSIKA?

3 A WELL, I WAS GOING TO DO THIS PIECE BY PIECE.

4 AS A TEACHER, I DON'T LIKE PEOPLE READING AHEAD,

5 BUT -- GOOD.

6 Q THANK YOU, MR. LEE.

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

8 IT WAS TAKEN AWAY, BUT THE FIRST ONE IS,

9 IS THE INFORMATION THAT I'M PRESENTED WITH, DOES

10 THAT TIE TO SOME RELIABLE SOURCE? SOME OTHER

11 SOURCE, AN AUDITED FINANCIAL STATEMENT, A TAX

12 RETURN, SOMETHING ELSE THAT I KNOW SOMEBODY ELSE IS

13 LOOKING OVER THE COMPANY'S SHOULDER?

14 Q AND WHAT DID YOU FIND WHEN YOU LOOKED AT THAT

15 ISSUE?

16 A I'M NOT SAYING IT DIDN'T TIE, BUT NOBODY DID

17 TIE IT. I COULDN'T TIE IT, AND SAMSUNG DIDN'T

18 RECONCILE OR TIE IT, EITHER. SO I WAS LACKING WITH

19 THAT LEVEL OF COMFORT.

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

21 A THE SECOND ONE IS, IS THIS INFORMATION THAT'S

22 USED TO RUN THE BUSINESS? WHEN WE SAY "ORDINARY

23 COURSE," THIS IS INFORMATION THEY USE EVERY DAY.

24 THIS ISN'T SOMETHING THAT'S PRODUCED FOR A SPECIAL

25 PURPOSE.

1 AND I FOUND THAT THAT'S NOT THE CASE.
2 AGAIN, IT MAY HAVE BEEN A NECESSITY, BUT
3 NONETHELESS, I DIDN'T GAIN THE ADDITIONAL COMFORT
4 OF SAYING, WELL, THIS IS A SCHEDULE THEY RAN THE
5 BUSINESS FOR THE LAST TWO YEARS WITH.

6 NO, THIS IS INFORMATION THEY PREPARED FOR
7 THE LITIGATION.

8 Q WHAT WAS THE THIRD CATEGORY?

9 A THE THIRD CATEGORY IS FREE OF ERRORS. SO AS
10 YOU BEGIN TO LOOK AT THE INFORMATION THAT'S
11 PRODUCED TO YOU -- EVERYBODY MAKES MISTAKES. I
12 MAKE MISTAKES. WE ALL MAKE MISTAKES. IT'S THE
13 FREQUENCY OF MISTAKES.

14 AND IN THE CASE OF SAMSUNG'S RECORDS,
15 THERE WERE -- FOR A COMPANY AS SOPHISTICATED AND
16 LARGE AS THEY ARE, THERE WAS TOO MANY MISTAKES.

17 WE WENT -- I WENT THROUGH EIGHT DIFFERENT
18 VERSIONS AT LEAST OF DATA THAT WAS PRODUCED AND
19 PULLED BACK BECAUSE OF INCORRECT TOTALS, BECAUSE IT
20 WAS MISSING UNITS, BECAUSE OF INTERNAL
21 INCONSISTENCIES.

22 AND AGAIN, I'M NOT SAYING THEY WERE
23 INTENTIONALLY DOING IT, BUT I DIDN'T GET THE
24 COMFORT OF SAYING, OH, AS I LOOK AT THIS DATA, IT
25 ALL KIND OF MAKES SENSE.

1 Q WHAT WAS THE LAST CATEGORY THAT ACCOUNTANTS
2 LOOK FOR IN TERMS OF RED FLAGS?

3 A THE PARTIES WHO WERE RESPONSIBLE FOR THE DATA,
4 DO THEY GIVE IT WILLINGLY OR DO THEY GIVE IT IN A
5 FORUM, A FAIR DISCLOSURE, OR IS THERE SOMETHING
6 ABOUT THE PRESENTATION THAT IS LESS THAN COMPLETE?

7 Q AND WHAT DID YOU FIND ON THIS ISSUE?

8 A I FOUND THAT IT WAS DIFFICULT TO GET THE
9 INFORMATION, AND ULTIMATELY THERE WERE MANY AREAS I
10 JUST COULDN'T GET AN EXPLANATION, SAMSUNG DIDN'T
11 PROVIDE AN EXPLANATION.

12 Q MR. MUSIKA, HASN'T A MAGISTRATE JUDGE MANAGING
13 THE DISCOVERY PROCESS IN THIS CASE QUESTIONED THE
14 ACCURACY OF SAMSUNG'S FINANCIAL DATA?

15 A YES. IT WASN'T JUST ME.

16 Q WHAT WAS THE OVERALL CONCLUSION YOU DREW FROM
17 THESE RED FLAGS?

18 A I HAD TO STOP THE GROSS PROFIT LINE, ONE,
19 BECAUSE IT WAS DIRECTLY ATTRIBUTABLE; AND TWO,
20 BECAUSE ANY ALLOCATIONS OF THOSE LESS SPECIFIC
21 COSTS JUST DIDN'T HOLD UP BECAUSE THERE WASN'T
22 SUPPORT FOR IT AND WHAT I DID SEE WAS QUESTIONABLE.

23 Q OKAY. LET'S TURN TO THE ISSUE OF WHICH
24 DEFENDANT'S RECORDS YOU LOOKED AT.

25 WHO ARE THE DEFENDANTS IN THIS CASE?

1 A I'M GOING TO USE THE ABBREVIATIONS. I THINK
2 THE COURT'S USED THE ABBREVIATIONS ALL ALONG.
3 THERE ARE THREE DEFENDANTS, SEC, STA, AND SEA.

4 Q AND WHOSE RECORDS DID YOU USE IN THE ANALYSIS
5 YOU DID FOR PURPOSES OF THE COMPETING DAMAGES?

6 A I USED ALL THREE COMPANIES' RECORDS.

7 Q WHY DID YOU USE THE RECORDS OF ALL THREE?

8 A AGAIN, AS A C.P.A., I KNOW THAT IF YOU WANT TO
9 SEE A COMPLETE PICTURE OF ACTIVITY, YOU HAVE TO
10 LOOK AT THE CONSOLIDATED ENTITY.

11 THERE HAVE BEEN MANY, MANY, MANY
12 FINANCIAL PROBLEMS IN THIS COUNTRY BY SUBSIDIARIES
13 NOT REPORTING ON A CONSOLIDATED BASIS AND COMPANIES
14 PARKING TRANSACTIONS IN SUBSIDIARIES.

15 AGAIN, I'M NOT SAYING THAT SAMSUNG HAS
16 DONE THAT.

17 BUT TO GET THE FULL PICTURE, I WANT TO
18 LOOK AT THE CONSOLIDATED ENTITY.

19 Q AND LET'S LOOK AT SLIDE 34B.24.

20 FIRST OF ALL, USING THIS SLIDE, CAN YOU
21 EXPLAIN TO THE JURY THE CORPORATE RELATIONSHIP
22 BETWEEN THE THREE ENTITIES YOU NAMED, SEC, SEA, AND
23 STA?

24 A YES. SEC, WHICH IS THE PARENT ORGANIZATION
25 LOCATED IN KOREA, OWNS 100 PERCENT OF SEA. THEY

1 OWN AND CONTROL IT. AS THE 100 PERCENT OWNER, THEY
2 GET TO DECIDE WHAT SEA DOES.

3 LIKE, SEA IS THE 100 PERCENT OWNER OF
4 STA.

5 SO WHAT WE HAVE IS A, A COMPLETELY OWNED
6 AND CONTROLLED GROUP OF COMPANIES UNDER THE CONTROL
7 AND OWNERSHIP OF SEC.

8 Q NOW, YOU USED THE WORD "CONSOLIDATED" IN YOUR
9 ANSWER TO MY PREVIOUS QUESTION. WHAT DO YOU MEAN
10 WHEN YOU SAY WE HAVE TO LOOK AT THESE RECORDS ON A
11 CONSOLIDATED BASIS?

12 A WELL, IT'S NOT UNCOMMON FOR COMPANIES,
13 PARTICULARLY UNDER A COMMON CONTROL, TO HAVE
14 TRANSACTIONS WITH EACH OTHER. AND WE JUST HEARD
15 SOME TESTIMONY IN HERE THAT WAS PLAYED ABOUT STA
16 AND SEA BUYING PRODUCT FROM SEC. THAT'S WHAT
17 HAPPENS AND THAT'S WHAT YOU WOULD EXPECT TO HAPPEN.

18 BUT BECAUSE OF THE RELATED PARTY NATURE
19 OF IT, AGAIN, AND BECAUSE OF THE CONTROLLER'S --
20 THE CONTROL RELATIONSHIP THAT SEC HAS, YOU HAVE TO
21 LOOK AT THE CONSOLIDATED, YOU HAVE TO ADD THE THREE
22 TOGETHER BECAUSE YOU'RE NOT -- YOU'RE GOING TO GET
23 AN INCOMPLETE AND INACCURATE ECONOMIC PICTURE IF
24 YOU LOOK AT JUST ONE ENTITY AND NOT ALL THREE
25 TOGETHER.

1 Q OKAY. COULD WE LOOK AT SLIDE 34B.70, AND I
2 KNOW, AGAIN, THIS IS A SERIES OF SLIDES THAT YOU
3 HAD PREPARED FOR YOU, MR. MUSIKA.

4 CAN YOU WALK US THROUGH HERE AN
5 EXPLANATION OF HOW THAT KIND OF INTERCOMPANY SALE
6 AND TRANSFER THAT YOU JUST MENTIONED WORKS?

7 A YES. THIS IS A REAL SIMPLE ANIMATION. YOU'VE
8 GOT THE UNITED STATES ON THE RIGHT AND KOREA ON THE
9 LEFT AND YOU HAVE SEC BASED IN KOREA AND WE HAVE
10 STA AND SEA BASED IN THE UNITED STATES.

11 AND THERE'S OUR CONSUMERS, OUR
12 PURCHASERS, UP THERE SOMEWHERE OFF THE COAST OF
13 MAINE, I THINK.

14 AND WHAT HAPPENS IS THAT SEC SELLS THE
15 PRODUCT TO, WE'LL SAY, STA, AND THE PHONES MOVE
16 ACROSS THE PACIFIC AND LAND IN THE UNITED STATES.

17 STA, IN TURN, THEN SELLS THEM TO
18 UNITED STATES CUSTOMERS, AND THAT'S WHERE WE GET
19 THE \$8.1 BILLION.

20 Q LET ME JUST STOP YOU THERE FOR A SECOND.

21 THE FIRST STEP HERE, YOU SAID SEC MADE
22 THE PHONES AND THEN SOLD THEM TO THEIR SUBSIDIARY,
23 STA?

24 A YES.

25 Q WHO SET THE PRICE IN THAT SALE?

1 A WELL, AS I THINK YOU JUST HEARD FROM THE
2 TESTIMONY PRIOR TO ME, TOO, SEC, AS THE CONTROLLING
3 ENTITY, SAYS -- ESTABLISHES HOW MUCH THEY'RE GOING
4 TO SELL IT TO THEIR SUBSIDIARY.

5 Q OKAY. THEN YOU SAID STA NOW HAS THE PHONES IN
6 THE UNITED STATES. THEY SELL THEM TO CONSUMERS?

7 A THAT'S CORRECT.

8 Q WHO SETS THE PRICE AT WHICH STA SELLS PHONES
9 TO CONSUMERS?

10 A SO WE DON'T CONFUSE ANYONE, WHEN WE SAY
11 "CONSUMERS," I THINK YOU ALL KNOW BY NOW, THE
12 CONSUMERS ARE THE CARRIERS. MOST OF THE COMPANIES
13 SELL TO THE CARRIERS.

14 Q "CARRIERS" MEANING PHONE COMPANIES?

15 A YES.

16 Q AND THAT'S A WHOLESALE PRICE TO PHONE
17 COMPANIES?

18 A YES, YES.

19 Q WHO SETS THE WHOLESALE PRICE AT WHICH STA
20 SELLS PHONES TO PHONE COMPANIES?

21 A SEC, AGAIN, ESTABLISHES THAT PRICE.

22 Q THE PARENT?

23 A THE PARENT.

24 Q THANKS. CAN YOU CONTINUE THEN WITH YOUR
25 EXPLANATION?

1 THEM TO SEE THE ENTIRE BENEFIT.

2 Q WHY DO COMPANIES -- STRIKE THAT.

3 IS THERE A LEGITIMATE REASON FOR
4 COMPANIES TO ARRANGE THEIR TRANSFER PRICING IN THIS
5 WAY?

6 A YES.

7 Q AND WHAT IS THAT REASON?

8 A IT'S -- IT'S TAX STRATEGY. BY MOVING \$97 OVER
9 TO SEC, THAT \$97 ESCAPES U.S. TAXES. SO THE ONLY
10 \$3 OR APPROXIMATELY \$2 --

11 MR. PRICE: I'M GOING TO OBJECT. THIS IS
12 IRRELEVANT AND BEYOND THE SCOPE, AND MOTION IN
13 LIMINE.

14 MS. KREVANS: YOUR HONOR, THIS IS EXACTLY
15 THE PORTION OF THE TESTIMONY THAT YOU HAD
16 PREVIOUSLY RULED HE CAN GIVE.

17 THE COURT: WELL, I'M GOING TO STRIKE HIS
18 STATEMENT, THOUGH. IT'S STRICKEN.

19 YOU'LL HAVE TO ASK HIM ANOTHER QUESTION.

20 BY MS. KREVANS:

21 Q FOR PURPOSES OF DETERMINING TOTAL PROFITS IN
22 THIS CASE, WHOSE PROFITS DID YOU LOOK AT AS ACROSS
23 THE THREE COMPANIES, SEC, STA, AND SEA?

24 A I COMBINED ALL THREE.

25 Q OKAY. AND EARLIER IN YOUR TESTIMONY YOU

1 MENTIONED THAT YOU HAD TO LOOK AT TIME PERIODS IN
2 CONNECTION WITH YOUR DAMAGE CALCULATION. WHY IS
3 THAT?

4 A I HAD TO LOOK AT TIME PERIODS BECAUSE, AS I
5 SAID, YOU NEED THE INTERSECTION. NOT ALL THE
6 INTELLECTUAL PROPERTY IS ISSUED AT THE SAME TIME,
7 AND CERTAINLY NOT ALL THE SALES OF THE PRODUCTS
8 OCCUR AT THE SAME TIME.

9 Q WHEN DID YOU START THE CALCULATION OF DAMAGES
10 FOR PURPOSES OF THE NUMBERS THAT YOU'VE EXPLAINED
11 TO THE JURY?

12 A APPROXIMATELY JUNE OF 2010.

13 Q DID YOU START DAMAGE ON ALL PATENTS IN JUNE OF
14 2010?

15 A NO, BECAUSE IF -- THAT'S WHEN THE FIRST
16 ACCUSED SALE IS, AND IF -- IF THAT ACCUSED SALE
17 INFRINGED ONE PATENT, THEN THERE WOULD BE DAMAGES
18 ASSOCIATED WITH THAT ONE PATENT.

19 BUT IF PATENTS WERE ISSUED LATER, THEN
20 THE CALCULATION WOULD NOT HAVE OCCURRED EARLIER.

21 Q NOW, WITH RESPECT TO YOUR CALCULATION OF
22 SAMSUNG'S PROFITS, IF THE JURY ULTIMATELY DECIDES
23 THAT DAMAGES CALCULATION SHOULD START AT A LATER
24 DATE THAN THE ONE YOU USED, HAVE YOU GIVEN THEM
25 ENOUGH INFORMATION THAT THEY COULD ADJUST THEIR

1 CALCULATION?

2 A YES.

3 Q AND WHERE IS THAT INFORMATION?

4 A THE INFORMATION IS IN TWO PLACES. ONE WOULD
5 BE THE JOINT EXHIBIT 1500, WHICH WE TALKED ABOUT A
6 LITTLE BIT EARLIER, WHICH REALLY IS THE SUM OF ALL
7 THE 22 MILLION UNITS AND THE \$8 BILLION. SO WE
8 HAVE -- YOU HAVE A CHRONOLOGICAL, BASICALLY -- YOU
9 REMEMBER HOW I TALKED ABOUT THAT BEING HARD TO READ
10 BECAUSE IT HAD INDIVIDUAL COLUMNS FOR EACH QUARTER?

11 SO IF THE DATE MOVES, YOU WOULD SIMPLY GO
12 IN ALONG THAT SCHEDULE AND SAY -- DRAW A LINE AND
13 SAY, WELL, OKAY, INFRINGEMENT IS NOT GOING TO START
14 IN JUNE OF 2010. IT'S GOING TO START AT A LATER
15 DATE. DRAW A LINE, AND ALL THE UNITS THAT WERE
16 SOLD BEFORE THEN WOULD COME OUT OF THE CALCULATION.
17 YOU WOULD MULTIPLY THAT REVENUE TIMES THE 35.5
18 PERCENT AND SUBTRACT THAT FROM THE \$2.2 BILLION
19 NUMBER.

20 Q LET'S TURN NOW TO YOUR SECOND CATEGORY OF
21 DAMAGES. IF WE COULD PUT BACK UP SLIDE 34B.61, I
22 THINK IS WHERE WE ARE. YOUR SECOND CATEGORY IS
23 APPLE'S LOST PROFITS.

24 AND IF WE COULD ADVANCE OUR SLIDE ONE
25 CLICK, MR. LEE.

1 WHAT NUMBER DID YOU CALCULATE FOR APPLE'S
2 LOST PROFITS FOR THE \$2 MILLION DEVICES THAT YOU
3 ASSIGNED TO THAT CATEGORY?

4 A TWO MILLION UNITS.

5 Q SORRY. TWO MILLION UNITS YOU ASSIGNED TO THAT
6 CATEGORY?

7 A \$488.8 MILLION.

8 Q HOW DID YOU DETERMINE THAT THE AMOUNT OF
9 APPLE'S LOST PROFITS ON THESE 2 MILLION UNITS WAS
10 THIS, A LITTLE LESS THAN \$500 MILLION?

11 A I -- I APPLIED A FOUR-PART TEST TO SEE IF THE
12 UNITS ACTUALLY DID QUALIFY FOR LOST PROFITS.

13 LOST PROFITS IS, AGAIN, OUR SECOND AND
14 DIFFERENT TEST AND THE TEST IS DIFFERENT TO QUALIFY
15 FOR LOST PROFITS, SO I WENT THROUGH THIS FOUR TEST
16 TO SEE WHICH UNITS WOULD ACTUALLY QUALIFY.

17 Q COULD WE SEE SLIDE 34B.32, PLEASE, MR. LEE.

18 WHAT WAS THE FIRST FACTOR YOU CONSIDERED
19 IN SEEING IF THESE 2 MILLION UNITS QUALIFIED FOR
20 LOST PROFITS?

21 A THE PRESUMPTION HERE IS THAT APPLE WOULD HAVE
22 MADE THE SALE. IF SAMSUNG DIDN'T, APPLE WOULD HAVE
23 MADE THE SALE.

24 SO FIRST I WANTED TO BE SURE THAT THERE
25 WAS ADEQUATE DEMAND FOR APPLE'S PRODUCT. IF THERE

1 WAS NO DEMAND FOR IT, THEY CERTAINLY WOULDN'T MAKE
2 THE SALE.

3 Q JUST SO WE'RE CLEAR, WHAT YOU'RE TRYING TO
4 TEST HERE IS WHEN SAMSUNG SOLD A PHONE, FOR
5 EXAMPLE, DID THEY REALLY TAKE THAT SALE AWAY FROM
6 APPLE, OR PERHAPS JUST FROM ANOTHER SUPPLIER OF
7 PHONES?

8 A THAT'S CORRECT.

9 Q AND WHEN YOU LOOKED AT DEMAND, WHAT DID YOU
10 FIND?

11 A I FOUND THAT THERE WAS ADEQUATE EVIDENCE OF
12 DEMAND, AND I THINK THAT'S RATHER STRAIGHTFORWARD,
13 THAT APPLE'S IPHONES AND IPADS HAVE BEEN
14 TREMENDOUSLY SUCCESSFUL AND THERE IS A SIGNIFICANT
15 DEMAND IN THE MARKETPLACE FOR THEIR PRODUCTS.

16 Q WHAT DO YOU MEAN BY DEMAND FOR APPLE'S
17 INTELLECTUAL PROPERTY?

18 A WHAT I MEAN BY DEMAND FOR APPLE'S INTELLECTUAL
19 PROPERTY IS I LOOKED AT IT BOTH ON A, A PHONE,
20 IPHONE-BY-IPHONE BASIS AND TABLET BASIS, AND I
21 LOOKED AT THE INDIVIDUAL INTELLECTUAL PROPERTY AS
22 WELL. SO WAS THERE DEMAND FOR THE FEATURES THAT
23 ARE INCLUDED IN THE UTILITY PATENTS? WAS THERE
24 DEMAND FOR THE DESIGN THAT'S INCORPORATED INTO THE
25 DESIGN PATENTS AND THE TRADE DRESS?

1 Q THE THIRD THING YOU'RE SHOWING UNDER EVIDENCE
2 OF DEMAND IS A CONJOINT SURVEY. WHAT ARE YOU
3 REFERRING TO THERE?

4 A WE HEARD LAST WEEK ABOUT DR. HAUSER'S CONJOINT
5 ANALYSIS AND, YES, I KNOW THAT DR. HAUSER HAS
6 ESTABLISHED THAT THERE WAS DEMAND FOR THE THREE
7 UTILITY PATENTS IN HIS CONJOINT ANALYSIS. SO THAT
8 ADDED TO THE WEIGHT OF MY CONCLUSION.

9 MR. PRICE: YOUR HONOR, I OBJECT TO HIM
10 GIVING AN OPINION ABOUT DR. HAUSER'S RESULTS. HE
11 CAN SAY HE RELIED ON THEM, BUT HE CAN'T -- HE CAN'T
12 GIVE A SEAL OF APPROVAL. THERE'S BEEN NO ANALYSIS.

13 MS. KREVANS: YOUR HONOR, THIS IS
14 DIRECTLY FROM HIS REPORT. HE REVIEWED THE REPORTS
15 OF DR. HAUSER'S ANALYSIS. HE RELIED ON THEM.

16 THE ONLY PREVIOUS OBJECTION WE HAD ON
17 THIS WAS SAMSUNG WANTED AN OPPORTUNITY TO
18 CROSS-EXAMINE DR. HAUSER AND YOU GAVE THEM THAT
19 LAST WEEK.

20 MR. PRICE: I HAVE NO OBJECTION TO HIM
21 SAYING HE RELIED ON IT. HE'S NO EXPERT ON WHAT
22 DR. HAUSER DID, SO HE CAN'T GIVE A SEAL OF
23 APPROVAL. HE CAN SAY "I RELIED ON IT."

24 THE COURT: OVERRULED.

25 GO AHEAD.

1 THE WITNESS: I ANSWERED ALREADY, SO I
2 APOLOGIZE IF I WAS TOO QUICK.

3 BY MS. KREVANS:

4 Q YES. DID YOU LOOK AT ANY INTERNAL SAMSUNG
5 DOCUMENTS IN EVALUATING THIS ISSUE OF DEMAND FOR
6 APPLE PRODUCTS?

7 A YES.

8 Q COULD WE LOOK AT -- COULD YOU PLEASE TURN TO
9 EXHIBIT 34 IN YOUR BINDER. LET ME KNOW WHEN YOU'RE
10 THERE.

11 A I AM THERE.

12 Q IS EXHIBIT 34 A DOCUMENT YOU REVIEWED IN
13 CONNECTION WITH FORMING YOUR OPINIONS IN THIS CASE?

14 A YES.

15 Q IS IT A SAMSUNG DOCUMENT PRODUCED IN THIS
16 CASE?

17 A IT IS.

18 MS. KREVANS: YOUR HONOR, WE MOVE THE
19 ADMISSION OF EXHIBIT 34.

20 MR. PRICE: OBJECTION. NO FOUNDATION FOR
21 FROM THIS WITNESS.

22 MS. KREVANS: YOUR HONOR, THE WITNESS HAS
23 JUST ESTABLISHED THAT HE REVIEWED AND RELIED ON THE
24 DOCUMENT. IT IS AN ADMISSION BY SAMSUNG.

25 THE COURT: IT'S ADMITTED.

1 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
2 34, HAVING BEEN PREVIOUSLY MARKED FOR
3 IDENTIFICATION, WAS ADMITTED INTO
4 EVIDENCE.)

5 THE COURT: GO AHEAD.

6 BY MS. KREVANS:

7 Q WHAT IS EXHIBIT 34, MR. MUSIKA?

8 A THIS IS A FEASIBILITY REVIEW OR ANALYSIS OF
9 THE SMARTPHONE MARKET BY SAMSUNG, BOTH IMPORTANTLY,
10 OR SIGNIFICANTLY TO ME, ON THE -- AT A TIME WHICH
11 IS DATED 9-2007 WHEN APPLE HAD FIRST ENTERED THE
12 MARKET WITH ITS SMARTPHONES.

13 AND REMEMBER IN THAT GRAPHIC, THIS IS AT
14 THE BEGINNING OF THE BLUE PERIOD WHEN SAMSUNG WAS
15 GOING DOWN.

16 Q COULD YOU PLEASE TURN TO PAGE 13 OF EXHIBIT
17 34.

18 A I'M THERE.

19 Q COULD YOU PLEASE DESCRIBE TO THE JURY WHAT
20 INFORMATION ON THIS PAGE AFFECTED YOUR ANALYSIS.

21 A YES. SO THE NUMBER 4 THERE IN THE MIDDLE, TO
22 ORIENT OURSELVES, "MOBILE PHONE TRENDS UP TO 2012,"
23 AND WHAT SAMSUNG DOES THEN IS SAY, IN THE MIDDLE
24 THERE, "OUR RESEARCH HAS IDENTIFIED FOUR KEY
25 FACTORS THAT WE EXPECT WILL SHAPE HANDSETS IN THE

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

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

9 A 2007, YES.

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

12 A I'M THERE.

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

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

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

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

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

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

1 COULD MAKE IPHONE A SUCCESS."

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

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

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

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

17 A I'M THERE.

18 Q WHAT IS -- STRIKE THAT.

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

22 A YES.

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

25 MR. PRICE: SAME OBJECTIONS, YOUR HONOR.

1 FOUNDATION.

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

4 THE COURT: IT'S ADMITTED.

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

9 BY MS. KREVANS:

10 Q WHAT IS EXHIBIT 194, MR. MUSIKA?

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

13 Q AND THE DATE OF THIS DOCUMENT IS?

14 A MARCH 2ND, 2010.

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

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

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

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

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

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

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

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

9 A UM --

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

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

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

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

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

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

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

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

20 AND THERE WAS ONE OTHER THING.

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

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

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

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

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

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

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

15 Q AND WHAT DID YOU FIND?

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

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

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

1 CAPACITY?

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

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

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

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

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

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

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

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

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

6 Q 34B.42, PLEASE.

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

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

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

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

1 Q AND WE SEE THE WORDS, UNDER PATENTS,
2 "HYPOTHETICAL NEGOTIATION." WHAT DO YOU MEAN BY
3 THAT?

4 A WELL, IT'S A -- IT'S CALLED A LEGAL FICTION.
5 THE PARTIES HAVEN'T -- IN FACT, APPLE HAS TAKEN THE
6 POSITION THAT THEY DON'T WANT A ROYALTY. THEY
7 DON'T WANT TO LICENSE THEIR INTELLECTUAL PROPERTY.

8 BUT AS A FLOOR, REMEMBER THAT, THAT ONE
9 STATUTE THAT WE WERE READING, THAT'S A MINIMUM
10 AMOUNT OF DAMAGES FOR THE UTILITY PATENTS.

11 AND IT'S A LEGAL FICTION THAT I'M ASKING
12 TO TRY TO IDENTIFY WHAT AMOUNT WOULD OR SHOULD --
13 I'M SORRY -- WHAT AMOUNT SHOULD SAMSUNG PAY APPLE
14 FOR THE USE OF THEIR INTELLECTUAL PROPERTY, EVEN
15 THOUGH APPLE DOESN'T WANT IT?

16 Q AND DID YOU REACH A CONCLUSION ON WHAT THE
17 RIGHT ROYALTY RATES SHOULD BE FROM THIS
18 HYPOTHETICAL NEGOTIATION?

19 A YES. I DID A NUMBER OF EVALUATION TECHNIQUES
20 AND I DID SOMETHING CALLED A GEORGIA PACIFIC
21 ANALYSIS, AND THEN I ULTIMATELY IDENTIFIED THE
22 RATES, THE ROYALTY RATES TO BE PAID TO APPLE FOR
23 ITS ASSET.

24 Q WHAT METHODS DID YOU USE TO IDENTIFY THE RANGE
25 OF POTENTIAL VALUES FOR THIS HYPOTHETICALLY

1 NEGOTIATED LICENSE PAYMENT?

2 A RIGHT. I USED THREE VALUATION METHODS: A
3 COST METHOD; AN INCOME METHOD; AND A MARKET METHOD.

4 Q WHAT ARE EACH OF THOSE METHODS, JUST BRIEFLY?

5 A I THINK, AGAIN, EASY REAL ESTATE, A MARKET IS
6 A COMPARABLE, SO IT'S A HOUSE DOWN THE STREET
7 THAT'S LIKE YOURS. THAT'S A COMPARABLE.

8 IN THIS CASE IT WOULD BE A LICENSE. ARE
9 THERE OTHER LICENSES THAT ARE LIKE THE LICENSE THEY
10 WOULD ENTER INTO?

11 COST WOULD BE HOW MUCH DID SAMSUNG OR
12 APPLE PAY TO DEVELOP IT OR DESIGN AROUND IT?

13 AND INCOME IS INCOME DRIVEN, HOW MUCH
14 REVENUE IS BEING PRODUCED BY SAMSUNG AND/OR APPLE
15 USING THESE PATENTS.

16 AND WE DISCOUNT THAT BACK AND CAPITALIZE
17 THAT.

18 Q AND YOU MENTIONED SOMETHING CALLED THE
19 GEORGIA PACIFIC FACTORS. WHAT ARE THOSE -- THOSE
20 OF US OLD ENOUGH TO REMEMBER KNOW THAT
21 GEORGIA PACIFIC WAS A LUMBAR AND PAPER COMPANY.
22 WHAT DOES THAT HAVE TO DO WITH THIS CASE?

23 A I THINK THEY STILL ARE. IT'S A CASE
24 REFERENCE. GEORGIA PACIFIC WAS INVOLVED IN A
25 PATENT SUIT AND THE COURT IDENTIFIED 15 FACTORS,

1 QUESTIONS TO ASK TO TRY TO GUIDE THIS HYPOTHETICAL
2 NEGOTIATION. AND NOT ALL 15 FACTORS WOULD
3 NECESSARILY APPLY, BUT I LOOKED AT ALL 15 FACTORS
4 AND APPLIED THEM TO GET TO MY FINAL RATE.

5 Q CAN YOU GIVE US SOME EXAMPLES OF SOME OF THE
6 GEORGIA PACIFIC FACTORS THAT DID APPLY HERE AND
7 THAT YOU TOOK INTO ACCOUNT IN CALCULATING WHAT YOU
8 DETERMINED TO BE A REASONABLE ROYALTY HERE?

9 A SURE. FACTOR NUMBER 1 IS HAS THERE BEEN A
10 LICENSE OF THE INTELLECTUAL PROPERTY? AND YOU JUST
11 HEARD THE EXCHANGE, NO, THERE HAS NOT BEEN A
12 LICENSE OF INTELLECTUAL PROPERTY, UTILITY, OR
13 DESIGN AND APPLE DOESN'T WANT TO LICENSE IT.

14 THE EXTENT OF BENEFIT, THERE'S ANOTHER
15 FACTOR, THE EXTENT OF BENEFIT OBTAINED BY THE
16 ACCUSED INFRINGER. AND HERE WE'VE SEEN \$8 BILLION
17 OF REVENUE AND \$2.4 BILLION OF INCOME. SO THAT IS
18 PART OF THE GEORGIA PACIFIC FACTORS.

19 Q COULD WE SEE SLIDE 34B.51, PLEASE, MR. LEE.

20 COULD YOU EXPLAIN TO THE JURY THE
21 ULTIMATE CONCLUSION THAT YOU DREW ABOUT WHAT
22 REASONABLE ROYALTIES WOULD HAVE RESULTED FROM THIS
23 HYPOTHETICAL NEGOTIATION, TAKING INTO ACCOUNT THE
24 FACTORS THAT YOU MENTIONED.

25 A SO I IDENTIFY AN INDIVIDUAL RATE FOR EACH OF

1 THE UTILITY PATENTS, \$3.10, \$2.02, \$2.02 MULTIPLIED
2 BY EACH UNIT.

3 AND THEN FOR THE DESIGN ELEMENTS, THAT
4 BEING THE DESIGN PATENTS AND THE TRADE DRESS, I
5 LOOKED AT THOSE AS A GROUP, RECOGNIZING THAT APPLE
6 WOULD NOT, AND REALLY COULD NOT LICENSE THAT OUT.
7 YOU CAN'T TAKE YOUR IDENTITY, YOU CAN'T TAKE
8 BASICALLY WHAT YOU'VE BUILT YOUR COMPANY AROUND AND
9 LICENSE A PIECE OF THAT.

10 SO I DEVELOPED MY RATE THAT WOULD BE FOR
11 ONE OR ALL OF THE DESIGN PATENTS OR TRADE DRESS.

12 Q WHY IS THE DESIGN NUMBER SO MUCH HIGHER THAN
13 THE OTHERS?

14 A IT'S -- IT'S -- WELL, WE'VE BEEN HERE TWO
15 WEEKS, I GUESS, TWO AND A HALF WEEKS. IT'S WHAT
16 APPLE HAS SAID -- AND ONE OF THE OTHER
17 GEORGIA PACIFIC FACTORS THAT I DIDN'T MENTION WAS,
18 I THINK IT'S FACTOR 2, IS THE DEGREE OF COMPETITION
19 OR HOW -- IS THIS SOMEONE THAT DIDN'T COMPETE
20 DIRECTLY?

21 THESE ARE TWO MAJOR COMPETITORS COMPETING
22 FOR \$8 BILLION, AND APPLE HAS COME INTO THE MARKET
23 ON THE BASIS OF ITS DESIGN AND HAS INDICATED
24 REPEATEDLY THEY DON'T WANT TO LICENSE THEIR DESIGN,
25 AND THE DESIGNS ARE OF CRITICAL ECONOMIC IMPORTANCE

1 TO APPLE, AND THAT'S WHY YOU END UP WITH SUCH A
2 HIGH NUMBER.

3 Q CAN YOU TELL US WHETHER OR NOT YOU TOOK
4 SAMSUNG'S PROFITS AND APPLE'S PROFITS INTO ACCOUNT
5 IN DETERMINING A HYPOTHETICAL REASONABLE ROYALTY?

6 A YES.

7 Q WHERE DID YOU GET THE NUMBERS THAT YOU USED
8 FOR THE APPLE PROFITS PORTION OF THAT CALCULATION?

9 A FROM APPLE'S AUDITED FINANCIAL STATEMENTS.

10 Q LET'S GO BACK TO YOUR SLIDE WITH THE THREE
11 CATEGORIES, 34B.65 NOW. AND GO AHEAD AND PUT UP
12 THE REASONABLE ROYALTY NUMBER.

13 A \$21,240,000 FOR THOSE THREE MILLION UNITS.

14 Q NOW, IF WE LOOK AT THE TOP TWO NUMBERS ON THIS
15 CHART, THE SAMSUNG PROFIT NUMBER AND THE APPLE LOST
16 PROFIT NUMBER, IS THAT \$24 PER UNIT NUMBER WE SAW
17 FOR DESIGN PATENTS, IS THAT INCLUDED IN ANY OF THE
18 NUMBERS WE SEE THERE?

19 A NO.

20 Q WHY NOT?

21 A BECAUSE I DIDN'T -- MAYBE I MISSED THE
22 QUESTION. I'M NOT DOUBLE COUNTING. I'M
23 CALCULATING THE REASONABLE ROYALTY ONLY ON THE
24 REMAINING PHONES FOR WHICH I DID NOT CALCULATE THE
25 LOST PROFIT OR INFRINGING PROFIT.

1 Q OKAY. IF, INSTEAD OF CALCULATING FOR THE 17
2 MILLION PHONES AND TABLETS IN THE TOP LINE AND THE
3 2 MILLION PHONES AND TABLETS IN THE MIDDLE LINE
4 SAMSUNG PROFITS AND APPLE'S LOST PROFITS, IF YOU
5 HAD JUST DONE A REASONABLE ROYALTY FOR ALL 22
6 MILLION UNITS, WHAT WOULD THAT NUMBER HAVE BEEN?

7 A RIGHT. THAT'S 500 -- IT'S APPROXIMATELY
8 540 --

9 MR. PRICE: OBJECT TO THAT. THAT'S
10 BEYOND THE SCOPE OF HIS REPORT.

11 MS. KREVANS: YOUR HONOR, THIS IS IN THE
12 SUPPLEMENTAL EXPERT REPORT AT EXHIBIT 19-S IN THE
13 MIDDLE COLUMN.

14 THE COURT: THAT'S OVERRULED.

15 GO AHEAD.

16 THE WITNESS: IF YOU SLID ALL THE PHONES,
17 AS COUNSEL HAS SAID, OVER AND DOWN INTO REASONABLE
18 ROYALTY AND CALCULATED DAMAGES AGAIN AS A FLOOR, A
19 MINIMUM AMOUNT, NO LOST PROFITS, NO REASONABLE --
20 AND NO INFRINGER'S PROFITS, THE AMOUNT IS
21 APPROXIMATELY \$540 MILLION, STANDALONE.

22 BY MR. KREVANS:

23 Q LOOKING AT THE NUMBERS THE WAY YOU DID
24 CALCULATE THEM IN THE THREE SEPARATE BUCKETS, WHAT
25 IS THE TOTAL DAMAGES THAT YOU CALCULATED THAT YOU

1 BELIEVE SAMSUNG SHOULD PAY IN THIS CASE IF THE JURY
2 FINDS THAT APPLE'S INTELLECTUAL PROPERTY IS VALID
3 AND INFRINGED?

4 A SUMMING THE THREE UP, THE TOTAL NUMBER COMES
5 TO \$2,751,000,000.

6 Q COULD YOU TURN TO EXHIBIT 25 IN YOUR BINDER.
7 I'M SORRY, THIS IS 25A-1.

8 A YES.

9 Q WHAT IS 25A-1, MR. MUSIKA?

10 A THIS IS A SUMMARY OF SOME OF THE CALCULATIONS
11 THAT I'VE BEEN TALKING ABOUT THIS MORNING.

12 Q AND WHO PREPARED EXHIBIT 25A-1?

13 A MY TEAM UNDER MY DIRECTION.

14 MS. KREVANS: YOUR HONOR, WE OFFER
15 EXHIBIT 25A-1.

16 MR. PRICE: NO FURTHER OBJECTION.

17 THE COURT: OKAY. IT'S ADMITTED.

18 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
19 25A-1, HAVING BEEN PREVIOUSLY MARKED FOR
20 IDENTIFICATION, WAS ADMITTED INTO
21 EVIDENCE.)

22 MS. KREVANS: OKAY.

23 Q COULD YOU, JUST BRIEFLY, MR. MUSIKA, WALK THE
24 JURY THROUGH WHAT INFORMATION IS SET OUT ON EACH
25 PAGE OF EXHIBIT 25A-1?

1 A YES. SO I'LL USE MY BOOK, AND I ASSUME THAT
2 YOU'LL MOVE THE SCREEN AS I TALK.

3 SO PAGE 2 OF 16 IS JUST THE SUMMARY OF
4 DAMAGES, WHAT WE JUST LOOKED AT.

5 PAGE 3 OF 16 --

6 Q LET ME STOP YOU FOR A MOMENT ON PAGE 3. YOU
7 SEE AT THE BOTTOM THERE'S A NOTE?

8 A YES.

9 Q WHAT DOES THAT NOTE EXPLAIN?

10 A THAT EXPLAINS THE, THE TIME PERIODS THAT WERE
11 USED FOR THE CALCULATION OF THE DAMAGES.

12 Q AND WHAT DOES IT INDICATE THOSE TIME PERIODS
13 WERE?

14 A IT INDICATES THAT THE TIME PERIODS THAT I USED
15 FOR THE REGISTERED TRADE DRESS WAS BASICALLY THE
16 START OF THE INFRINGING TIME PERIOD.

17 Q THAT'S FOR THE UNREGISTERED TRADE DRESS?

18 A UNREGISTERED TRADE DRESS.

19 Q AND FOR THE REST?

20 A AND FOR THE REST I USED AUGUST 4TH, 2010 AS
21 THE START DATE.

22 Q THANK YOU. COULD YOU CONTINUE EXPLAINING TO
23 THE JURY WHAT THE CONTENTS OF PX 25 ARE.

24 A YES. PAGE 3 OF 16 IS JUST THE MATRIX. YOU
25 SEE THE PRODUCTS THERE ON THE LEFT AND ALL THE

1 FORMS OF INTELLECTUAL PROPERTY THAT HAVE BEEN
2 IDENTIFIED THERE, WHICH PRODUCTS ARE ACCUSED OF
3 INFRINGING WHICH OF THE INTELLECTUAL PROPERTY.

4 THE NEXT PAGE IS JUST A SUMMARY OF, A
5 MORE DETAILED SUMMARY BY PRODUCT OF THE FOLLOWING
6 PHONES THAT WE WENT THROUGH. IT'S JUST DIFFERENT
7 CALCULATIONS.

8 THE SAME IS TRUE OF 5 OF 16.

9 6 OF 16 IS A LISTING OF PRODUCTS AND THE
10 CARRIERS THAT ARE ASSOCIATED WITH EACH PRODUCT.

11 Q SO THE -- THIS IS JUST WHICH PHONE COMPANIES
12 ARE PROVIDING THEIR CUSTOMERS WITH WHICH SAMSUNG
13 PRODUCTS?

14 A THAT'S CORRECT.

15 Q THANK YOU. AND YOU HAVE A SERIES OF PAGES
16 THAT ARE HEADED "MOR-FLO ANALYSIS."

17 A THAT'S 7 THROUGH 12.

18 Q WHAT ARE THOSE?

19 A THAT'S THE MARKET SHARE ALLOCATIONS. THAT'S
20 WHERE I LIMITED THE NUMBER OF PHONES THAT APPLE
21 WOULD GET BECAUSE I'VE ALLOCATED PERCENTAGES TO THE
22 OTHER MARKET PARTICIPANTS, AND THOSE ARE THOSE
23 CALCULATIONS.

24 Q THAT TAKES US TO PAGE 13, AND WHAT IS SET OUT
25 ON PAGE 13?

1 A PAGE 13 IS A STUDY DONE, I THINK IT WAS DONE
2 BY IBM, BUT IT WAS DONE BY SOMEONE ELSE WHICH
3 REALLY LOOKED AT THE PERCENTAGE OF USERS THAT WOULD
4 SWITCH CARRIERS, AND THAT WAS ANOTHER LIMITING
5 FACTOR THAT I USED.

6 Q OKAY. LET'S -- MR. LEE, DON'T SHOW IT IN
7 COURT, BUT JUST SHOW THE JURORS PAGES 14 AND 15.

8 YOUR HONOR, I'D NOTE FOR THE RECORD THAT
9 THESE TWO PAGES, PER A PRIOR ORDER OF THE COURT,
10 HAVE BEEN PERMITTED TO BE REDACTED AND FILED UNDER
11 SEAL AND WE HAVE PROVIDED BOTH THE REDACTED AND
12 UNREDACTED COPIES TO THE COURT.

13 AND MR. MUSIKA, CAN YOU TELL US WHAT
14 INFORMATION IS SET OUT ON PAGES 14 AND 15?

15 A YES. IT'S MY ANALYSIS THAT RELATES TO THE
16 CAPACITY FACTOR, DETERMINING WHETHER OR NOT THERE'S
17 SUFFICIENT CAPACITY.

18 Q AND FINALLY, PAGE 16.

19 A 16 IS THE RATES THAT WE JUST LOOKED AT, AND IT
20 GIVES A LITTLE MORE DETAILS ABOUT THE THREE
21 VALUATION METHODOLOGIES I USED.

22 Q JUST TO FINISH UP, MR. MUSIKA, COULD YOU
23 SUMMARIZE FOR THE JURY YOUR OVERALL DAMAGES OPINION
24 IN THIS CASE?

25 A YES. WHERE I BEGAN, THE DAMAGES ARE A RANGE

1 BETWEEN \$2.5 BILLION AND AT THE HIGH END,
2 \$2,750,000,000.

3 Q AND WHAT IS THE DIFFERENCE BETWEEN THE BOTTOM
4 AND THE TOP OF THAT RANGE?

5 A ONE ASSUMES -- YOU REMEMBER WE WERE SLIDING
6 THE PHONES, THAT WE BASICALLY -- THE LOWER END
7 NUMBER IS JUST ALL OF SAMSUNG'S UNJUST ENRICHMENT,
8 PLUS A REASONABLE ROYALTY.

9 THE HIGHER NUMBER WAS SAMSUNG'S UNJUST
10 ENRICHMENT, LOST PROFIT ON THOSE 2 MILLION, PLUS
11 THE REASONABLE ROYALTY.

12 MS. KREVANS: THANK YOU.

13 NOTHING FURTHER, YOUR HONOR.

14 THE COURT: ALL RIGHT. THE TIME IS NOW
15 11:20.

16 **CROSS-EXAMINATION**

17 BY MR. PRICE:

18 Q GOOD MORNING, MR. MUSIKA.

19 A GOOD MORNING.

20 Q MY NAME IS BILL PRICE.

21 AND I WANTED TO ASK YOU, BEFORE WE GET
22 INTO YOUR METHODOLOGIES, YOU SAID YOU'VE DONE THIS
23 A NUMBER OF TIMES, THIS SORT OF ANALYSIS; CORRECT?

24 A YES.

25 Q AND YOU'VE DONE IT IN CONNECTION WITH

1 LITIGATION?

2 A YES.

3 Q AND I JUST WANT TO SEE HOW YOU APPROACH THAT
4 AS AN EXPERT. IT'S YOUR UNDERSTANDING THAT YOU ARE
5 SUPPOSED TO KIND OF APPLY YOUR EXPERTISE IN A
6 NEUTRAL FASHION; CORRECT?

7 A THAT'S CORRECT.

8 Q YOU'RE NOT SUPPOSED TO FAVOR ONE PARTY OVER
9 THE OTHER; RIGHT?

10 A THAT'S CORRECT.

11 Q YOU'RE GOING TO GIVE THE SAME OPINION
12 REGARDLESS OF WHICH SIDE HIRES YOU? THAT'S THE
13 IDEA?

14 A THAT IS THE IDEA.

15 Q AND IN THAT CONNECTION, YOU KNOW THAT IT WOULD
16 BE INAPPROPRIATE, THEN, FOR YOU AS AN EXPERT TO BE
17 AN ADVOCATE? THAT IS, YOU'RE SUPPOSED TO BE
18 OBJECTIVE USING YOUR EXPERTISE?

19 A I WOULD AGREE.

20 Q AND -- NOW, WE LOOKED AT A LOT OF SLIDES. I
21 ASSUME THAT YOU REVIEWED THOSE SLIDES BEFORE THEY
22 WERE PRESENTED TO THE JURY.

23 A YES.

24 Q AND EITHER YOU CREATED THEM OR, LIKE THE
25 PRESIDENTIAL ADS, YOU APPROVED OF THEM?

1 A YES.

2 Q AND WERE THERE ANY THAT YOU CREATED VERSUS
3 APPROVED, OR --

4 A I DON'T MAKE THAT DISTINCTION, NO.

5 Q OKAY. AND IF WE COULD LOOK AT, FOR EXAMPLE, I
6 THINK IT WAS SLIDE 34B.2, AND I'M JUST WONDERING,
7 FOR EXAMPLE, WITH THIS SLIDE -- I'M NOT GETTING
8 ANYTHING OUT OF THIS.

9 OKAY. SO ON THIS SLIDE, YOU SEE ON THE
10 RIGHT HERE THERE'S A SAMSUNG PHONE. DO YOU SEE
11 THAT?

12 A I DO.

13 Q AND DID YOU SELECT THAT PICTURE?

14 A THE INDIVIDUAL PHONE?

15 Q YES.

16 A NO. I THINK THAT -- THIS -- THE SLIDE ITSELF
17 WAS CONSTRUCTED ORIGINALLY BY ME, BUT THERE'S A
18 TEAM OF, OF GRAPHICS PEOPLE THAT, THAT PUT IN THE
19 ICONS ULTIMATELY. SO, NO, I DIDN'T SELECT THAT
20 PHONE.

21 Q I JUST WANT TO -- YOUR UNDERSTANDING IS THAT
22 APPLE IS NOT CLAIMING THAT YOU HAVE TO USE HARD
23 KEYS ON A PHONE; RIGHT?

24 A THAT IS NOT MY UNDERSTANDING, NO.

25 Q AND IT'S YOUR UNDERSTANDING THAT APPLE IS NOT

1 CLAIMING THAT YOU CAN'T HAVE, YOU KNOW, A BIG
2 SCREEN ON A PHONE; RIGHT?

3 A THAT IS CORRECT.

4 Q AND THEY'RE NOT CLAIMING THAT YOU CAN'T HAVE
5 OVAL SPEAKER; RIGHT?

6 A THAT IS MY UNDERSTANDING ALSO, YES.

7 Q SO WHEN APPLE CAME OUT, YOUR UNDERSTANDING
8 WAS, WAS AT LEAST AS FAR AS THIS CASE IS CONCERNED,
9 THAT THERE'S NO CLAIM THAT A COMPETITOR COULDN'T
10 COME OUT WITH A, A PHONE THAT HAD VIRTUAL KEYS? DO
11 YOU KNOW WHAT I'M TALKING ABOUT?

12 A YES, I DO.

13 Q THAT HAD A BIG SCREEN; RIGHT?

14 A YES.

15 Q OR AN OVAL SHAPED SPEAKER AT THE TOP; RIGHT?

16 A YES.

17 Q SO THEN WHEN YOU WENT TO YOUR AFTER -- AFTER
18 APPLE CAME OUT, I THINK YOU WENT TO SLIDE 34B.4, OR
19 ONE OF THESE, AND YOU SEE YOU CHOSE THIS PHONE ON
20 THE RIGHT --

21 A YES.

22 Q -- TO PUT IN THIS COMPARISON.

23 NOW, THERE ARE HOW MANY PHONES INVOLVED
24 IN THIS CASE?

25 A OH, 28 OR SOMETHING LIKE THAT. I DON'T

1 REMEMBER EXACTLY.

2 Q WELL, I'M WONDERING, LIKE, WHY DIDN'T YOU
3 CHOOSE -- LET'S SEE IF I CAN FIND -- THIS IS
4 EXHIBIT 1011. IT'S ALREADY IN EVIDENCE. IT'S THE
5 CAPTIVATE.

6 YOU'VE SEEN THIS PHONE BEFORE?

7 A I CAN'T SEE IT FROM HERE.

8 Q OKAY.

9 MAY I APPROACH?

10 THE COURT: PLEASE, GO AHEAD.

11 BY MR. PRICE:

12 Q YOU'VE SEEN THAT PHONE BEFORE?

13 A I BELIEVE I HAVE, YES.

14 Q AND THAT PHONE, WITHOUT MY HANDS ON IT, LET'S
15 PUT UP SDX 3909.4, I THINK.

16 AND BY THE WAY, THIS PHONE, IN YOUR
17 CALCULATIONS, ACCOUNTS FOR ABOUT 36 PERCENT OF
18 APPLE'S LOST PROFITS; RIGHT?

19 A I DON'T KNOW THE PERCENTAGE, BUT I'D HAVE TO
20 CALCULATE IT.

21 Q WELL, DO YOU RECALL THAT THIS WAS ONE OF THE
22 PHONES THAT WAS A BIG PERCENTAGE OF YOUR LOST
23 PROFITS? RIGHT?

24 A IT LOOKS -- NOW THAT I HAVE THE NUMBER IN
25 FRONT OF ME, WHAT WAS YOUR REFERENCE?

1 Q THIS IS ABOUT 36 PERCENT OF THE LOST PROFITS
2 CALCULATION?

3 A THAT'S -- YES. I THINK THAT'S CLOSE, YES.
4 I'LL AGREE WITH THAT.

5 Q AND SO THIS PHONE, YOU KNOW, THAT ON THE FRONT
6 HAS -- THIS ISN'T A VERY CLEAR PICTURE. ON THE
7 BOTTOM IT HAS THOSE SOFT TOUCH BUTTONS. DO YOU SEE
8 THAT?

9 A I SEE THAT, YES.

10 Q AND IT HAS KIND OF WHAT LOOK LIKE SILVER ON
11 THE SIDE, BUT IT'S CURVED BLACK ON THE TOP AND
12 BOTTOM. DO YOU SEE THAT?

13 A YES, I DO.

14 Q OF COURSE IT HAS SAMSUNG'S NAME ON IT. IF YOU
15 TURN IT OVER, IT LOOKS LIKE THIS IS A CAP ALMOST ON
16 THE BACK, RIGHT, WHERE YOU CAN FEEL THE SURFACE GO
17 FROM, YOU KNOW, THESE BLACK PARTS AT THE TOP TO
18 THIS DIFFERENT MATERIAL HERE; CORRECT?

19 A I GUESS SO. IT IS WHAT IT IS. HERE IT IS.

20 Q OKAY.

21 A THAT'S THE BACK OF IT.

22 Q OKAY. AND YOU CAN SEE --

23 MAY I APPROACH?

24 A SURE.

25 Q SORRY. WHAT I'M SAYING IS THAT'S NOT A

1 CONTINUOUS PIECE THERE? IT'S KIND OF BROKEN UP?
2 YOU'VE GOT THIS PIECE AROUND HERE AND THEN KIND OF
3 SEEMS TO HOLD IN THIS DIFFERENT TYPE BACK; RIGHT?

4 A WELL, I'M NOT AN ENGINEER, BUT IT WOULD APPEAR
5 TO BE A DIFFERENT PIECE, YES.

6 MR. PRICE: AND YOUR HONOR, IF I COULD
7 JUST GIVE THAT TO THE JURY?

8 THE COURT: PLEASE, GO AHEAD.

9 BY MR. PRICE:

10 Q BUT -- SO INSTEAD OF USING THIS PHONE, WHICH
11 WAS -- WHICH ACCOUNTS FOR ABOUT 36 PERCENT OF YOUR
12 LOST PROFITS FIGURE WHICH HAS THE DIFFERENT TEXTURE
13 AND ALL THAT, INSTEAD OF USING THAT PHONE, YOU
14 DECIDED, AS AN OBJECTIVE, NEUTRAL EXPERT, TO USE
15 THE FIGURE IN 34B.4. WE CAN PUT THAT BACK.

16 IS THAT RIGHT?

17 A YES.

18 Q WAS THAT YOUR DECISION? OR WAS THAT THE
19 ATTORNEYS' DECISION?

20 A NO. THAT WAS MY DECISION.

21 Q ANOTHER PHONE YOU COULD HAVE USED -- WELL,
22 THERE ARE A NUMBER YOU COULD HAVE USED BECAUSE
23 THERE ARE A LOT OF PHONES; RIGHT?

24 YOU COULD HAVE USED THE DROID 1025. IT'S
25 ALREADY IN EVIDENCE. I THINK MS. KARE SAID THAT'S

1 THE ONE WITH THE CHIN.

2 A YES.

3 Q AND YOU CAN SEE THE CHIN EVEN FROM WHERE
4 YOU'RE SITTING; RIGHT?

5 A WELL, NO.

6 Q YOU CAN'T?

7 A I DON'T DOUBT YOU.

8 Q MS. KARE MUST HAVE BETTER EYES THAN YOU.

9 IF I CAN APPROACH, YOUR HONOR?

10 THE COURT: PLEASE, GO AHEAD.

11 BY MR. PRICE:

12 Q IT'S NOT QUITE A JAY LENO CHIN, BUT YOU CAN
13 SEE IT'S A DIFFERENT SHAPE?

14 A YES, I SEE THAT.

15 MR. PRICE: IF I MAY HAND THIS OUT, YOUR
16 HONOR?

17 THE COURT: PLEASE, GO AHEAD.

18 BY MR. PRICE:

19 Q AND THIS PHONE ACCOUNTS FOR ABOUT \$126 MILLION
20 OF SAMSUNG'S PROFITS THAT YOU'RE SAYING THAT
21 SAMSUNG SHOULD GIVE TO APPLE?

22 A WHICH ONE WAS THAT?

23 Q THAT'S THE DROID.

24 A DID YOU SAY 106 MILLION?

25 Q I THINK I HAVE DOWN HERE 126 MILLION.

1 A I'VE GOT 106 MILLION, SO --

2 Q OKAY. GIVE OR TAKE 20 MILLION.

3 A RIGHT.

4 Q I'LL HAVE SOMEONE CHECK THAT AND SEE IF
5 THERE'S A REASON WHY WE HAVE DIFFERENT NUMBERS.

6 A WELL, HERE, I SEE THE 126 MILLION. YOU'RE ON
7 THE OPTION IF IT'S ONLY INFRINGER'S PROFITS. I WAS
8 LOOKING AT THE CALCULATION WHEN IT WAS LOST
9 PROFITS, INFRINGER'S PROFITS, PLUS REASONABLE
10 ROYALTY. SO THIS IS A CASE WHERE BOTH OF OUR
11 NUMBERS ARE RIGHT DEPENDING ON WHICH OPTION.

12 Q GREAT. I LIKE BEING RIGHT.

13 NOW, IF WE CAN GO TO -- ANOTHER ONE YOU
14 SHOWED WAS YOU SHOWED SAMSUNG'S SMARTPHONE MARKET
15 SHARE, AND THAT WAS 34B.9, AND YOU SAID THIS WAS A
16 RATHER DRAMATIC UPTAKE IN SAMSUNG'S MARKET SHARE.

17 DO YOU REMEMBER THAT?

18 A I DO.

19 Q AND AGAIN, YOU PUT THIS PHONE UP HERE. THERE
20 ARE A COUPLE PHONES THAT CAME OUT AROUND THAT TIME;
21 CORRECT?

22 A YES, THAT'S RIGHT.

23 Q INCLUDING THE CAPTIVATE, WHICH THE JURY IS
24 LOOKING AT; RIGHT?

25 A I DON'T REMEMBER WHEN THE CAPTIVATE CAME OUT,

1 BUT I DO KNOW THAT THERE WERE MORE THAN ONE PHONE
2 THAT CAME OUT AROUND THAT TIME PERIOD.

3 Q AND IT'S CORRECT THAT, BY THE WAY, THESE SALES
4 REFLECT BOTH ACCUSED AND NON-ACCUSED PHONES THAT
5 SAMSUNG SOLD?

6 A THAT'S POSSIBLE. THAT IS POSSIBLE.

7 Q IN FACT, IF YOU LOOK AT THE FOURTH QUARTER,
8 FOR EXAMPLE, OF 2010, IT'S ONLY ABOUT 49 PERCENT OF
9 THIS GROWTH THAT IS DUE TO THE ACCUSED PHONES?

10 A RUN THAT BY ME AGAIN.

11 Q SURE. BY THE FOURTH QUARTER OF 2010, FOR
12 EXAMPLE, ONLY ABOUT -- ONLY, LIKE, 48 PERCENT OF
13 THESE SALES ARE OF THE ACCUSED PHONES.

14 A I -- I DON'T KNOW WHERE YOU'RE GETTING THAT
15 NUMBER. I'M SORRY. I DON'T KNOW THAT TO BE THE
16 CASE.

17 Q OKAY. SO BASICALLY YOU CAN'T TELL THE JURY
18 WHAT PERCENTAGE OF THIS IS ACCUSED PHONES, WHAT
19 PERCENTAGE IS NON-ACCUSED PHONES?

20 A WHAT PERCENTAGE OF THEIR MARKET SHARE, YOU'RE
21 SAYING, I THINK IS YOUR QUESTION, AND THE ANSWER IS
22 NO, I CAN'T AS I SIT HERE. I'D HAVE TO GO BACK AND
23 CALCULATE TO SEE WHICH NON-ACCUSED SMARTPHONES, AS
24 IDENTIFIED BY IDC, ARE IN THAT NUMBER.

25 Q OKAY.

1 A YOU'RE THROWING OUT A NUMBER. I JUST DON'T
2 KNOW.

3 Q AND YOU'VE GOT A SCALE HERE OF 0 TO 25
4 PERCENT, DO YOU SEE THAT, 0 TO 25?

5 A I DO SEE THAT, YES.

6 Q AND THE SCALE KIND OF AFFECTS VISUALLY HOW YOU
7 LOOK AT THIS; RIGHT?

8 A WELL, THE -- THE PAPER DEFINES HOW BIG THE
9 SCALE CAN BE. BUT, YES.

10 Q SO THERE WAS ACTUALLY A CHART IN YOUR REPORT,
11 YOUR SUPPLEMENTAL REPORT, OF THE SMARTPHONE MARKET
12 SHARE; RIGHT?

13 A YES, THERE WAS.

14 Q AND IF WE COULD LOOK AT THAT, I THINK IT'S SDX
15 3909.59. IT'S EXHIBIT 2583, CHART 11. 2583, CHART
16 11.

17 THIS IS YOUR SUPPLEMENTAL REPORT; RIGHT?

18 A APPEARS TO BE, YES.

19 Q AND IF WE CAN GO TO CHART 11, I BELIEVE IT IS.
20 HERE WE GO.

21 THIS IS YOUR CHART OF THE U.S. SMARTPHONE
22 MARKET SHARES, AND THERE YOU HAVE A SCALE FROM 0 TO
23 100 PERCENT. DO YOU SEE THAT?

24 A YES.

25 Q AND WHAT WE SAW EARLIER, WHICH WAS THE SAMSUNG

1 UNITS SHIPPED, AND SAMSUNG MARKET SHARE -- I'M
2 SORRY. LOOK AT THE SAMSUNG MARKET SHARE. THAT'S
3 THIS RED LINE HERE; CORRECT?

4 A YES.

5 Q OKAY. AND SO YOU REFLECTED THAT ON A 25
6 PERCENT SCALE INSTEAD OF 100 PERCENT?

7 A YES.

8 Q AND WHAT WE HAVE HERE IN BLUE IS APPLE'S
9 SHARE; CORRECT?

10 A WELL, IT'S -- YES, BUT THIS IS A DIFFERENT
11 TIME PERIOD. I THINK WE NEED TO BE CLEAR ON THAT.
12 THIS STARTS IN 2010, AND REMEMBER THE OTHER CHART
13 STARTED IN 2007.

14 Q RIGHT. I'M LOOKING AT THE PART THAT STARTS
15 AFTER YOU SAY SAMSUNG WAS IN COMPETITION.

16 A AGREED, AGREED.

17 Q OKAY. AND SO IF WE LOOK AT, AT -- THEN IF WE
18 LOOK AT APPLE'S SHARE, YOU SEE IT'S KIND OF -- I
19 MEAN, THEY'RE -- BY THE FOURTH QUARTER OF 2011,
20 THEY'RE CLOSE TO HALF OF ALL -- THEY HAVE ALMOST
21 HALF THE MARKET.

22 I'M SORRY. APPLE HAS ABOUT HALF OF THE
23 MARKET AS OF THE FOURTH QUARTER OF 2011; RIGHT?

24 A YES.

25 Q AND YOU CAN SEE BASICALLY, IF WE THEN LOOK AT

1 UNITS SHIPPED -- BY THE WAY, NOW, ARE THESE UNITS
2 SHIPPED IN TERMS OF JUST MARKET SHARE AGAIN? OR IS
3 THAT LOOKING AT THIS SIDE HERE?

4 A NO. I THINK THAT'S LOOKING AT THE RIGHT-HAND
5 AXIS, YES.

6 Q OKAY. AND YOU CAN SEE THE UNITS SHIPPED FOR
7 APPLE HAS REALLY EXPLODED; CORRECT?

8 A YES.

9 Q IN FACT, YOU KNOW THAT -- OR LOOKING AT THE
10 DOCUMENTS, THAT APPLE IS THE MOST PROFITABLE
11 COMPANY IN THE WORLD?

12 A MOST PROFITABLE?

13 Q YEAH, MOST PROFITABLE.

14 A MOST VALUABLE. I DON'T KNOW THAT IT'S THE
15 MOST PROFITABLE BECAUSE THAT TAKES IN A LOT OF
16 COMPANIES. I MEAN, YOU CAN HAVE SOME SMALL
17 COMPANIES THAT ARE, THAT ARE BASICALLY PRINTING
18 MONEY.

19 SO I DON'T KNOW THAT THEY WOULD BE VIEWED
20 AS THE MOST PROFITABLE. BUT THEY ARE CERTAINLY
21 VERY SUCCESSFUL AND VERY VALUABLE.

22 Q AND BY THE WAY, YOU HAD TALKED TO THE JURY
23 ABOUT HOW THE MONEY GOES WHEN SAMSUNG SELLS PHONES,
24 THAT SEC MANUFACTURES THE PHONES AND THEN THEY'RE
25 SOLD TO A SUBSIDIARY WHO THEN SELLS TO CARRIERS.

1 DO YOU REMEMBER THAT?

2 A I DO, YES.

3 Q AND THEN A LOT OF THAT MONEY GOES BACK TO
4 KOREA; CORRECT?

5 A 97 TO 98 PERCENT OF IT GOES BACK, YES.

6 Q AND YOU ALSO LOOKED AT U.S. COMPANIES THAT
7 SELL THINGS MANUFACTURED HERE, MAYBE AIRPLANES OR
8 STEEL OR WHATEVER, THAT ARE SOLD TO FOREIGN
9 COUNTRIES; RIGHT?

10 A YES.

11 Q AND MOST OF THAT COMES BACK HERE BECAUSE OUR
12 COMPANIES SOLD IT; RIGHT?

13 A OUR COMPANIES ARE --

14 Q IN THE U.S., LIKE THE STEEL COMPANIES?

15 A DEPENDS ON THE ARRANGEMENT. DEPENDS ON
16 WHETHER THEY'RE SELLING TO AN INDEPENDENT PARTY.
17 IT'LL DEPEND ON THE FACTS.

18 COULD THEY BE EXACTLY REVERSED? SURE,
19 THEY COULD BE.

20 Q OKAY. AND THERE'S -- AND YOU WERE SAYING
21 THERE'S NOTHING INAPPROPRIATE ABOUT THAT; CORRECT?

22 A NO, THERE'S NOTHING INAPPROPRIATE ABOUT IT,
23 NO. OTHER THAN -- UNLESS YOU TRY IT AND DIVIDE IT
24 UP AND SAY, "WELL, NOW I ONLY WANT TO LOOK AT A
25 PIECE OF IT." THAT'S INAPPROPRIATE.

1 BUT AS LONG AS YOU CONSOLIDATE THEM ALL,
2 I DON'T HAVE A PROBLEM WITH THAT.

3 Q FROM AN ANALYTICAL PERSPECTIVE, YOU WANT TO
4 LOOK AT THE WHOLE THING IS WHAT YOU SAID?

5 A NOT ANALYTICAL. IF I WANT TO KNOW THE VALUE
6 OR WHAT BENEFITS SAMSUNG GAINED, YOU HAVE TO LOOK
7 AT THE CONSOLIDATED. THAT'S MY ONLY POINT. YOU
8 CAN'T DIVIDE IT UP AND LOOK AT A PIECE OF IT,
9 PARTICULARLY WHEN YOU HAVE CASH OR MONEY THAT'S
10 MOVING IN SUCH A DRAMATIC FASHION UNDER THE CONTROL
11 OF SEC.

12 Q OKAY. SO LET'S GO BACK TO YOUR CHART THEN, IF
13 WE CAN.

14 IS IT YOUR UNDERSTANDING THAT APPLE -- BY
15 THE WAY, APPLE COMES OUT, BASICALLY, WITH A NEW
16 PHONE ONCE EVERY COUPLE OF YEARS?

17 A MIGHT BE A LITTLE BIT MORE FREQUENTLY THAN
18 THAT, BUT SOMETHING IN BETWEEN A YEAR AND TWO YEARS
19 I'D SAY.

20 Q AND WHAT YOU'VE NOTICED IS THAT -- WHEN YOU
21 LOOK AT THE CHARTS IS THAT APPLE'S SALES
22 DRAMATICALLY SPIKE WHEN IT COMES OUT WITH A NEW
23 PHONE; CORRECT?

24 A THAT'S CORRECT.

25 Q BECAUSE ITS CUSTOMERS HAVEN'T -- THEY HAVE THE

1 OLD MODEL AND THEY WANT A NEW, PRETTIER ADVANCED
2 ONE; RIGHT?

3 A THEY WAIT. THAT'S CONSTANTLY -- CUSTOMERS
4 WILL WAIT BECAUSE THEY WANT -- THEY FIGURE, "IT'S
5 COMING OUT. I'LL WAIT AND GET IT WHEN IT COMES
6 OUT."

7 Q WHEREAS SAMSUNG COMES OUT WITH LOTS OF PHONES
8 PER YEAR?

9 A CERTAINLY MORE THAN APPLE, YES, THAT'S TRUE.

10 Q AND THE SPIKE IN -- WE'VE GOT, LIKE, IN 2011,
11 YOU'VE GOT SAMSUNG GOING UP -- AT THIS POINT WE'RE
12 TALKING ABOUT PHONES LIKE THE GALAXY S II; CORRECT?

13 A I THINK THAT'S RIGHT. AGAIN, I DON'T HAVE
14 COMMITTED TO MEMORY THE LAUNCH DATES OF EACH OF THE
15 PHONES. THAT IS AN ACCUSED PHONE, AND I THINK IT
16 IS IN THE 2011 TIME PERIOD.

17 Q OKAY. SO IF YOU WANT TO SEE, YOU KNOW, WHAT
18 SAMSUNG IS ACTUALLY SELLING, HOW IT'S CREATING
19 THIS, THIS, THESE SALES, YOU'D WANT TO LOOK AT KIND
20 OF WHAT PHONES ARE ACTUALLY DRIVING THIS; RIGHT?

21 A I DON'T UNDERSTAND THE QUESTION. I'M SORRY.

22 Q WELL, I MEAN, YOU'D WANT TO SEE, IN 2010 OR
23 2011 HERE, WHAT'S THE PHONE MIX THAT SAMSUNG HAS,
24 BECAUSE IT DOESN'T JUST HAVE ONE PHONE; RIGHT?

25 A RIGHT. BUT THE PURPOSE -- I'M NOT DISAGREEING

1 WITH THAT. I'M JUST SAYING I DON'T UNDERSTAND THE
2 QUESTION.

3 THE PURPOSE OF THIS IS TO SHOW THE
4 SMARTPHONE MARKET SHARE. IF YOU WANT TO KNOW HOW A
5 PARTICULAR PHONE IS DOING, YOU SHOULD LOOK TO THAT
6 PHONE AND BREAK IT DOWN.

7 Q WELL, IF YOU WANT TO LOOK TO SEE WHETHER OR
8 NOT IT'S BECAUSE SAMSUNG DID SOMETHING WRONG, THAT
9 IS, WHETHER OR NOT A PARTICULAR PHONE WAS, WAS
10 SOMETHING THAT WAS DRIVING INJURY TO APPLE, YOU'D
11 HAVE TO LOOK AT THE PARTICULAR PHONE, LIKE THE
12 DROID, AND MAKE A DECISION AS TO WHETHER OR NOT IT
13 INFRINGED; RIGHT?

14 A YES. AGREED.

15 Q NOW, LET ME ASK YOU A LITTLE BIT ABOUT YOUR
16 ASSUMPTIONS HERE.

17 AND I WANT TO START OUT WITH WHAT YOU
18 TOLD THE JURY AT THE END, THAT DAMAGES WERE
19 SOMEWHERE BETWEEN 2.5 AND 2.75 BILLION.

20 A THAT'S CORRECT.

21 Q OKAY. SO LET ME UNDERSTAND THIS. IF THE
22 JURORS LOOK AT THIS EVIDENCE -- AND LET ME GIVE YOU
23 A HYPOTHETICAL -- THEY SAY, "WELL, YOU KNOW, THE
24 DESIGN PATENTS, THE TRADEMARK, I DON'T THINK THEY
25 INFRINGE THAT. I DON'T THINK THERE'S, YOU KNOW,

1 DECEPTION OR THAT PEOPLE WOULD BE CONFUSED. AND
2 I'M LOOKING AT THESE, THESE UTILITY PATENTS AND I'M
3 GOING TO CONCLUDE, YOU KNOW, THEY DO THE BOUNCE
4 BACK THING, THEY DO THAT, AND I'M GOING TO FIND
5 THAT'S A VALID PATENT."

6 ARE YOU WITH ME SO FAR?

7 MS. KREVANS: OBJECTION, YOUR HONOR.
8 THERE ARE NO TRADEMARKS AT ISSUE IN THIS CASE.

9 MR. PRICE: I'M SORRY. TRADE DRESS. I
10 MISSPOKE. I APOLOGIZE.

11 Q SO IF YOU SUBSTITUTE "TRADE DRESS" AND THE
12 "TRADEMARK," ARE YOU WITH ME SO FAR?

13 A I'M ALL RIGHT. KEEP GOING. SURE.

14 Q OKAY. SO THE JURORS FIND, AFTER ANALYZING
15 THIS THAT, WELL, YOU KNOW, SAMSUNG SHOULDN'T HAVE
16 USED THE BOUNCE BACK AND THAT'S VALID. LET'S
17 ASSUME THAT'S WHAT THEY FIND, OKAY?

18 YOUR DAMAGES FOR THAT IS GOING TO BE A
19 LOT LESS THAN \$2.5 BILLION WHICH YOU SAID WAS THE
20 SMALLEST NUMBER OF DAMAGES THAT SHOULD BE AWARDED;
21 RIGHT?

22 A WELL, I DON'T KNOW THAT IT'S GOING TO BE A LOT
23 LESS, NO.

24 Q SO YOU'RE SAYING THAT IF THE ONLY INFRINGEMENT
25 THAT EXISTS OF A VALID PATENT IS THE BOUNCE BACK,

1 OKAY -- YOU KNOW WHICH ONE THAT IS; RIGHT?

2 A SO -- YES. MAYBE I MISUNDERSTOOD YOUR
3 QUESTION. SO YOUR HYPOTHETICAL IS ONLY THAT?

4 Q ABSOLUTELY.

5 A YES.

6 Q YOU UNDERSTAND THE JURORS, YOU KNOW, MIGHT
7 DECIDE THAT APPLE'S WRONG ON SOME OF THESE THINGS?

8 A THEY COULD DECIDE THAT.

9 Q "AND SO INSTEAD OF THROWING A COUPLE BILLION
10 THEIR WAY, I'M GOING TO LOOK AT IT ANALYTICALLY AND
11 DECIDE, YOU KNOW, WHAT DID -- WHAT DID SAMSUNG
12 ACTUALLY DO WRONG, IF ANYTHING?"

13 YOU UNDERSTAND STAND THEY MIGHT TAKE THAT
14 APPROACH?

15 A I DO.

16 Q OKAY. AND IF THEY TAKE THAT APPROACH, I WANT
17 YOU TO ASSUME THAT THEY DECIDE, NO DESIGN PATENT
18 INFRINGEMENT OR THE DESIGN PATENTS AREN'T VALID OR
19 NO TRADE DRESS INFRINGEMENT BECAUSE, YOU KNOW, AN
20 ORDINARY OBSERVER IS NOT GOING TO BE CONFUSED AND
21 THERE'S NO DECEPTION, NO DECEIT.

22 BUT THEY DO LOOK AT THE UTILITIES AND
23 SAY, "YOU KNOW, THAT BOUNCE BACK, I THINK APPLE
24 OWNED THAT AND THEY HAD A VALID OWNERSHIP RIGHT TO
25 THAT AND SAMSUNG USES THAT."

1 OKAY? SO UNDER THAT ASSUMPTION, ARE YOU
2 WITH ME?

3 A I'M WITH YOU.

4 Q OKAY. YOUR DAMAGES AREN'T CLOSE TO 2 BILLION
5 OR 1 BILLION OR ANYTHING LIKE THAT, ARE THEY?

6 A AGREED.

7 Q NOW, HOW CAN THEY TELL? HOW CAN THE JURORS
8 TELL THAT IF IT'S JUST -- ASSUME IT'S JUST A BOUNCE
9 BACK. YOU HAVEN'T GIVEN THEM THE TOOLS TO BE ABLE
10 TO COME UP WITH A DAMAGES FIGURE FOR THAT?

11 A I HAVE.

12 Q AND YOU SAY THAT'S IN HERE?

13 A YES, IT IS.

14 Q YOU CAN GO IN AND LOOK AT IT AND POINT TO IT?
15 I'M SORRY. BUT WE'LL GET BACK TO THAT.

16 BUT RIGHT NOW WHAT YOU'RE SAYING IS WHAT
17 YOU SAID EARLIER, WHICH IS THE MINIMUM DAMAGES
18 FIGURE, WHICH IS \$2.4 BILLION -- I SHOULD HAVE
19 WRITTEN IT DOWN -- 2.5 BILLION?

20 A THAT'S CORRECT.

21 Q THAT'S ABSOLUTELY INCORRECT; RIGHT? THAT'S
22 ABSOLUTELY INCORRECT? THAT IS NOT THE MINIMUM
23 DAMAGES FIGURE THAT THIS JURY COULD AWARD IF IT
24 FOUND SOME INFRINGEMENT?

25 A NO, I DISAGREE.

1 Q OKAY. SO DO YOU AGREE, THEN, THAT IF THIS
2 JURY FOUND THAT THE ONLY THING WRONG WAS THAT
3 SAMSUNG USED A BOUNCE BACK, YOU'RE SAYING THAT THAT
4 DAMAGE WOULD BE 2.5 BILLION?

5 A NO. I THINK YOU'RE MIXING IT UP, AND I'M
6 LISTENING TO YOUR QUESTIONS CAREFULLY.

7 WHEN I STARTED MY PRESENTATION, I SAID
8 THAT I ASSUMED THAT ALL PATENTS ARE VALID AND THAT
9 ALL PRODUCTS INFRINGE, AND UNDER THAT ASSUMPTION,
10 WHICH I'M GIVEN AS AN EXPERT, THE MINIMUM DAMAGES
11 ARE \$2.5 BILLION AND THEY'RE NOT LESS THAN THAT IN
12 MY OPINION.

13 YOU HAVE A HYPOTHETICAL, AND I AGREED
14 WITH YOU, ON THAT HYPOTHETICAL, THE DAMAGES WOULD
15 BE LESS.

16 BUT THAT'S NOT MY OPINION.

17 Q I WAS LOOKING AT THE TRANSCRIPT AND I WANTED
18 TO MAKE SURE THAT WE ALL UNDERSTOOD. SO APPARENTLY
19 WHEN YOU TOLD THE JURY THAT THE MINIMUM DAMAGES
20 WERE 2.5 BILLION, THAT WAS ASSUMING THAT APPLE WAS
21 CORRECT ON EVERY PATENT, THAT THERE WAS
22 INFRINGEMENT ON EVERY PATENT AND THAT EVERY PATENT
23 WAS VALID?

24 A YES.

25 Q OKAY. SO I'M JUST CURIOUS, WERE YOU ASKED BY,

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

4 A NO.

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

8 A NO.

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

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

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

20 A NO, THEY'RE NOT.

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

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

24 A THAT'S CORRECT.

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

1 PROFITS IF THERE'S -- IF THE PATENT THAT IS
2 INFRINGED IS A UTILITY PATENT; RIGHT?

3 A THAT'S RIGHT. THAT'S NOT ONE OF THE FORMS OF
4 DAMAGES UNDER A UTILITY PATENT, I AGREE.

5 Q SO THOSE BIG NUMBERS ALL HAVE SOMETHING TO DO
6 WITH THE WAY THE PHONE OR THE TABLET LOOKS?

7 A WELL, THE ONLY ADDITION, SO THE RECORD IS
8 CLEAR, IS REMEMBER THE SLIDING PHONES. SO IF YOU
9 MOVE THOSE PHONES OUT OF INFRINGER'S PROFITS,
10 YOU'VE GOT TO PUT THEM INTO SOME COLUMN, LOST
11 PROFITS OR REASONABLE ROYALTY.

12 AND SO AT A MINIMUM, YOU WOULD MOVE THEM
13 ALL DOWN TO REASONABLE ROYALTY TO THE EXTENT THAT
14 THEY ALSO INFRINGED THE UTILITY PATENT.

15 Q AND SO THAT'S, THAT'S WHAT I'M SAYING. IT'S
16 ONLY -- YOU GET INFRINGER'S PROFITS ONLY IF THERE'S
17 SOME FINDING ABOUT BASICALLY HOW THESE PHONES LOOK?

18 A RIGHT.

19 Q THE DESIGN PATENT, THE DESIGN PATENT OR TRADE
20 DRESS INFRINGEMENT; RIGHT?

21 A I'M AGREEING WITH YOU. BUT ALL I'M SAYING IS
22 IT'S NOT LIKE YOU SUBTRACT IT. YOU HAVE TO
23 SUBTRACT IT, BUT YET ADD IT BACK ON THE OTHER FORM.

24 Q WELL, YOU DON'T ADD IT BACK IF THERE'S A
25 FINDING THAT, YOU KNOW, AN ORDINARY OBSERVER, FOR

1 EXAMPLE, IS NOT GOING TO BE CONFUSED OR THERE'S NOT
2 DECEIT OR THAT THE PATENT'S INVALID; RIGHT?

3 A NO, YOU DO. THAT'S WHAT'S KEY, BECAUSE THE
4 KEY TO THE CALCULATION IS EVERY PRODUCT -- THE
5 CALCULATION IS DONE ON AN INDIVIDUAL PRODUCT. SO
6 IN YOUR HYPOTHETICAL, WE HAVE JUST A PHONE, AND
7 THAT PHONE INFRINGES THE UTILITY PATENTS AND IT
8 INFRINGES THE TRADE DRESS AND IT INFRINGES THE
9 DESIGN PATENTS.

10 I'M THINKING THAT YOUR HYPOTHETICAL --
11 AND ON THAT BASIS, THE CALCULATION WOULD BE
12 PRESUMABLY BASED ON THE INFRINGER'S PROFITS.

13 YOU SAY LET'S ASSUME THAT THEY DON'T
14 INFRINGE THE DESIGN PATENTS AND THE TRADE DRESS.
15 LET'S TAKE THAT AWAY.

16 WELL, WE STILL HAVE THE POTENTIAL OF LOST
17 PROFITS ON THE UTILITY AND, AT A MINIMUM, THE
18 REASONABLE ROYALTY.

19 SO WHEN YOU TAKE AWAY THE INFRINGER'S
20 PRODUCTS, YOU'VE TO RECALCULATE THE DAMAGES FOR
21 THAT PARTICULAR PHONE ON ONE OF THOSE OTHER BASES
22 THERE, ASSUMING IT INFRINGES ONE OF THE OTHER
23 UTILITY PATENTS.

24 Q AND THAT'S WHAT YOU'RE SAYING. ASSUMING
25 THERE'S SOME OTHER INFRINGEMENT, THERE'S GOING TO

1 BE SOME WAY TO CALCULATE IT?

2 A YES.

3 Q AND YOU'VE TOLD US THAT YOU WEREN'T ASKED TO
4 CALCULATE ASSUMING THAT, YOU KNOW, ONE OF THESE
5 PATENTS, UTILITY PATENTS WAS INFRINGED ONLY, OR, OR
6 A COMBINATION OF THE UTILITY PATENTS?

7 A THE COMBINATION -- THAT'S WHY A MODEL WAS
8 REQUIRED -- IS ENDLESS. THERE ARE REALLY HUNDREDS
9 OF THOUSANDS OF COMBINATIONS GIVEN THE NUMBER OF
10 PATENTS, ET CETERA.

11 AND NO, I WASN'T. THE ANSWER IS NO, I
12 WASN'T.

13 Q AND THE ONLY COMBINATIONS I'M TALKING ABOUT
14 ARE THE THREE UTILITY PATENTS. OKAY?

15 A YOU'RE RIGHT, I WAS NOT ASKED TO PRESENT THAT.

16 Q SO THE ASSUMPTIONS, THEN, ARE WE TALKED ABOUT
17 EACH PATENT, DESIGN PATENT IS VALID AND INFRINGED.
18 THAT'S YOUR ASSUMPTION FOR YOUR DAMAGES; RIGHT?

19 A YES.

20 Q THAT ALL THE DIFFERENT PRODUCTS THAT APPLE
21 SAYS INFRINGE DO INFRINGE; CORRECT?

22 A YES.

23 Q THAT EACH OF THE UTILITY PATENTS IS VALID AND
24 WHATEVER APPLE SAYS INFRINGES INFRINGES; CORRECT?

25 A UNTIL THE JURY SAYS IT, YES.

1 Q THAT ALL OF APPLE'S TRADE DRESS IS VALID AND
2 EVERYTHING APPLE SAYS INFRINGES INFRINGES; CORRECT?

3 A YES.

4 Q AND IT'S GIVEN ALL THOSE ASSUMPTIONS THAT YOU
5 THEN HAVE THIS RANGE OF 2.5 BILLION TO 2.7 BILLION?

6 A THAT'S CORRECT.

7 Q SO LET'S TALK ABOUT, FOR EXAMPLE, THE BOUNCE
8 BACK. ON YOUR LOST PROFITS, I THINK YOU'RE UP
9 AROUND, FOR TOTAL, YOU'RE UP AROUND 400 SOMETHING
10 MILLION?

11 A 488 MILLION.

12 Q OKAY. AND THAT OBVIOUSLY ISN'T LOST -- WOULD
13 NOT BE APPLE'S LOST PROFITS WITH RESPECT TO, SAY, A
14 BOUNCE BACK PATENT?

15 A NOT EXCLUSIVELY, NO. SAME QUESTION, SAME
16 ANSWER.

17 Q IN FACT, YOUR ANALYSIS ON THAT, WHEN YOU
18 TALKED -- WHEN YOU THOUGHT IT WOULD TAKE -- IF
19 SAMSUNG WERE TOLD "YOU CAN'T DO THAT ON YOUR
20 PHONE," IT WOULD TAKE THEM A MONTH TO DESIGN AROUND
21 THAT AND DO SOMETHING ELSE?

22 A AS ONE OF THOSE LIMITING CONDITIONS THAT I
23 TALKED ABOUT, YES, I LIMITED THE CALCULATION TO
24 JUST ONE MONTH OF LOST PROFITS FOR THAT.

25 Q SO LET'S TALK ABOUT YOUR ANALYSIS ON -- YOU

1 SAID YOU DID ANALYSIS ON BUT-FOR; THAT IS, IF -- IF
2 SAMSUNG DIDN'T HAVE A FEATURE, WHAT WOULD HAPPEN?

3 AND FOR BUT-FOR, FOR LOST PROFITS, FOR
4 APPLE'S LOST PROFITS, OKAY, YOU'RE SAYING THAT IF
5 THE JURY FOUND INFRINGEMENT ON A UTILITY PATENT,
6 THEN YOU'VE GOT TO LOOK AT, OKAY, WHAT WOULD APPLE
7 HAVE MADE IF SAMSUNG DIDN'T HAVE THAT FEATURE;
8 RIGHT?

9 A MADE? WHAT --

10 Q WOULD HAVE MADE.

11 A ALL RIGHT. I'LL SAY YES. I'M NOT SURE WHAT
12 YOU MEAN, BUT I'LL SAY YES.

13 THEY'VE ALREADY MADE THEIR PRODUCTS. THE
14 PRODUCTS ARE THE IPHONES IN YOUR HYPOTHETICAL, SO
15 IT WOULD BE THE IPHONE. IT'S ALREADY MADE.

16 Q OKAY. AND I DIDN'T MEAN MANUFACTURE, BUT THE
17 PROFITS THEY WOULD HAVE EARNED?

18 A OKAY. THAT'S WHERE I WAS NOT SURE.

19 Q AND WHEN YOU'RE DOING THAT, YOU'VE GOT TO ASK
20 YOURSELF, HERE'S A SAMSUNG CUSTOMER, THEY'VE GOT A
21 PHONE, ONE OF THE ACCUSED PHONES, THAT HAS BOUNCE
22 BACK. NOW, IF BOUNCE BACK ISN'T IN THERE, ARE THEY
23 GOING TO LEAVE SAMSUNG TO GO TO APPLE BECAUSE OF
24 THAT ONE FEATURE? THAT'S THE BUT-FOR ANALYSIS,
25 ISN'T IT? THAT -- IS SOMEONE GOING TO SAY, "I

1 BOUGHT THIS PHONE. I LIKED IT. WELL, DARN. IT
2 DOESN'T HAVE BOUNCE BACK ANYMORE. I'M GOING TO GO
3 BUY AN APPLE."

4 A WELL, THAT'S KIND OF A STATEMENT, BUT I'LL
5 RESPOND TO IT AS A QUESTION.

6 Q TRUE.

7 A MY CALCULATION IS THAT THEY WOULD GO TO THEM
8 BECAUSE, REMEMBER, I'VE ONLY TAKEN THE SALE AWAY
9 FOR THE MONTH IT WOULD TAKE FOR SAMSUNG TO
10 BASICALLY REMOVE THE BOUNCE BACK. THEY'RE GOT
11 TO -- THAT'S JUST A PHYSICAL FACT. SAMSUNG, WITH
12 THE ASSUMPTION THAT THEY CAN'T USE IT, HAS TO TAKE
13 IT OUT OF THEIR PHONE. THEY HAVE TO REDESIGN THE
14 PHONE. THEY HAVE TO NEGOTIATE A DIFFERENT PRICE.
15 THEY NEED TO PUT THE MANUFACTURING FACILITY IN
16 PLACE. I'VE ALLOWED, FOR EVERYTHING TO HAPPEN, ONE
17 MONTH AND ONLY ONE MONTH.

18 AND DURING THAT PERIOD OF TIME, YES, SOME
19 PORTION OF THE MARKET WOULD CHOOSE AN IPHONE
20 INSTEAD OF SAYING, "OH, WELL, I'M GOING TO WAIT OR
21 DO SOMETHING ELSE."

22 Q WELL, FOR ONE THING, YOU WOULDN'T HAVE TO
23 START A MANUFACTURING FACILITY TO CHANGE THE BOUNCE
24 BACK. THAT'S JUST A SOFTWARE UPGRADE, RIGHT? PLUG
25 IT INTO YOUR COMPUTER AND IT WOULD BE CHANGED?

1 A FAIR ENOUGH, YES.

2 Q OKAY. AND MY QUESTION IS DIFFERENT. WE KNOW
3 SOMETHING ABOUT THE PEOPLE WHO PURCHASE THE SAMSUNG
4 PHONES THAT WE DON'T KNOW ABOUT THE GENERAL PUBLIC,
5 WHICH IS THAT THEY CHOSE A SAMSUNG PHONE; RIGHT?

6 A YES.

7 Q OKAY. SO IF THEY CHOSE A SAMSUNG PHONE, YOU
8 MIGHT WANT TO LOOK AS TO WHY THEY CHOSE THAT PHONE;
9 CORRECT?

10 A I AGREE, AND I DID.

11 Q AND IN CONNECTION WITH THAT, YOU'D WANT TO
12 ASK, OR FIND OUT, "OKAY, MR. PURCHASER, IF YOU
13 DIDN'T HAVE BOUNCE BACK, WOULD YOU NOT HAVE CHOSEN
14 THAT PHONE AND GONE SOMEWHERE ELSE?" THAT'S WHAT
15 THE BUT-FOR CAUSATION IS. IF NOT FOR WHAT SAMSUNG
16 WAS DOING, IT WOULD HAVE GONE TO APPLE INSTEAD;
17 RIGHT?

18 A THAT'S CORRECT.

19 Q AND THERE ARE HUNDREDS AND HUNDREDS OF
20 FEATURES ON A SAMSUNG SMARTPHONE; RIGHT?

21 A YES.

22 Q APPLE HAS DONE RESEARCH, ITSELF, ON WHY THE
23 PEOPLE WHO BUY SAMSUNG, OR ANDROID, WHY ARE THEY
24 ATTRACTED TO THAT PRODUCT INSTEAD OF OURS; RIGHT?

25 A YES.

1 Q AND YOU REVIEWED SOME OF THAT?

2 A I DID.

3 Q SO, FOR EXAMPLE, IF YOU LOOK AT EXHIBIT 572 --

4 A THESE ARE IN YOUR BOOKS, COUNSEL?

5 Q YES. IF YOU NEED HELP FINDING IT, JUST LET ME
6 KNOW.

7 A 572. OKAY, I'M THERE.

8 Q AND FIRST LET ME ASK YOU, IS THIS A DOCUMENT
9 THAT YOU HAVE EVER SEEN?

10 A I'VE SEEN A LOT OF APPLE SURVEYS, SO THAT'S
11 PROBABLY -- TO MOVE IT ALONG, THAT'S PROBABLY ONE
12 I'VE SEEN. I'VE SEEN A LOT OF THEM. IT LOOKS LIKE
13 IT.

14 Q SO APPLE LOOKS AT THE MARKET TO SEE WHY ARE
15 PEOPLE CHOOSING OTHER PHONES? WHY ARE THEY
16 CHOOSING OUR PHONE? THINGS LIKE THAT?

17 A YES.

18 Q AND THIS LOOKS LIKE AN APPLE DOCUMENT TO YOU?

19 A YES.

20 MR. PRICE: YOUR HONOR, I MOVE EXHIBIT
21 572 INTO EVIDENCE.

22 THE COURT: IT'S ADMITTED.

23 MS. KREVANS: YOUR HONOR, I WOULD REQUEST
24 THAT THIS DOCUMENT, BECAUSE IT'S A VERY SENSITIVE
25 DOCUMENT, THAT WHAT'S ADMITTED BE ONLY THE PAGES

1 THAT ARE SHOWN. THERE'S NO REASON TO ADMIT PAGES
2 THAT ARE NOT SHOWN.

3 MR. PRICE: I HAVE NO PROBLEM WITH THAT.
4 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
5 572.003, HAVING BEEN PREVIOUSLY MARKED
6 FOR IDENTIFICATION, WAS ADMITTED INTO
7 EVIDENCE.)

8 BY MR. PRICE:

9 Q SO IF WE CAN LOOK AT 572.003, THAT'S A
10 SMARTPHONE MARKET STUDY. DO YOU SEE THAT?

11 A WHAT'S THE BATES PAGE?

12 Q IT'S 572.003.

13 A OH, THERE'S TWO DIFFERENT BATES RANGES HERE.
14 SORRY.

15 Q IT'S AT THE TOP WHERE IT SAYS DEFENDANT'S
16 EXHIBIT NUMBER 572.003.

17 A YES, I'M THERE.

18 Q AND IF YOU LOOK AT THE SECOND PAGE, YOU SEE IT
19 SAYS "WHY THIS REPORT," AND IT TALKS ABOUT -- I'M
20 SORRY -- THAT'S 572.004, AND YOU SEE IT TALKS ABOUT
21 "FOCUS ON IPHONE AND ANDROID."

22 AND YOU UNDERSTAND WHAT ANDROID IS?

23 A I DO.

24 Q THAT'S A DIFFERENT OPERATING SYSTEM WHICH IS
25 OFFERED ON SAMSUNG AND OTHER PRODUCTS COMPARED TO

1 APPLE'S OPERATING SYSTEM; CORRECT?

2 A NOT ALL SAMSUNG PRODUCTS, BUT SOME SAMSUNG
3 PRODUCTS. SORRY, SOME SAMSUNG PRODUCTS.

4 Q LET'S GO TO THE KEY AREAS WHERE YOU HAVE, YOU
5 KNOW, SMARTPHONE PURCHASE DRIVERS, BRAND LOYALTY,
6 DRIVERS OF ANDROID CONSIDERATION AND PURCHASE.

7 DO YOU SEE THAT?

8 A YES.

9 Q OKAY. AND IF WE LOOK AT 572.08 -- I'M
10 SORRY -- 077, YOU SEE THIS IS A SECTION THAT STARTS
11 "DRIVERS OF ANDROID CONSIDERATION AND PURCHASE."

12 DO YOU SEE THAT?

13 A LET ME CATCH UP.

14 Q IT'S AT THE TOP AGAIN, 572.077?

15 A I GOT IT. I'M THERE.

16 Q AND IF WE GO TO PAGE 572.082.

17 A YES.

18 Q AND THESE ARE THE TOP REASONS FOR BUYING AN
19 ANDROID AMONG THOSE WHO CONSIDERED THE IPHONE. DO
20 YOU SEE THAT?

21 A I CAN'T READ THE FINE PRINT THERE, BUT, YES,
22 IT DOES SAY THAT.

23 Q IT MIGHT BE EASIER IF YOU LOOK AT IT BLOWN UP,
24 BECAUSE, YEAH, THE WAY IT WAS --

25 A I'M TRYING TO SEE WHAT THE LIGHT PRINT SAYS

1 DOWN IN THE LOWER LEFT-HAND CORNER.

2 Q "NOTE 25 PERCENT OF RECENT ANDROID BUYERS
3 CONSIDERED AN IPHONE."

4 AND THIS IS, "FOR WHAT REASON DID YOU
5 DECIDE TO BUY AN ANDROID-BASED SMARTPHONE RATHER
6 THAN AN IPHONE?"

7 A OKAY.

8 Q AND IT'S GOT YOU WANT TO STAY WITH THE SERVICE
9 PROVIDER; RIGHT?

10 A YES.

11 Q AND THAT'S BECAUSE DURING THE ENTIRE TIME
12 PERIOD HERE, BY THE WAY, ONLY AT&T SOLD IPHONES
13 DURING THE DAMAGES PERIOD?

14 A LET ME UNDERSTAND THIS SLIDE. SO THIS SLIDE
15 REPRESENTS ONLY THOSE PORTIONS WHO -- ONLY THOSE
16 CUSTOMERS WHO HAVE ALREADY DECIDED TO STAY WITH
17 ANDROID, NOT FOR OTHERS?

18 Q THESE ARE PEOPLE WHO CHOSE ANDROID RATHER THAN
19 CHOOSING AN IPHONE. THAT IS, WHY DID THEY
20 CHOOSE --

21 A YES, OKAY. I'M WITH YOU.

22 Q OKAY. AND WE'VE GOT STAY WITH WIRELESS
23 SERVICE PROVIDER, AND I WAS ASKING YOU ABOUT AT&T.

24 DURING THE DAMAGES PERIOD YOU
25 CALCULATED --

1 A YES.

2 Q -- THE ONLY PLACE YOU COULD BUY AN IPHONE WAS
3 AT&T?

4 A NO, THAT'S INCORRECT.

5 Q AT WHAT POINT DID -- WAS THERE A PERIOD OF
6 TIME WHEN YOU COULD ONLY GET IT THROUGH AT&T?

7 A THERE WAS A PERIOD OF TIME, NOT THE WHOLE
8 DAMAGE PERIOD OF TIME, BUT THERE WAS A PERIOD OF
9 TIME THAT YOU COULD ONLY GET AN IPHONE AT AT&T.

10 BUT AS THE DAMAGE PERIOD PROGRESSED,
11 OTHER CARRIERS DID CARRY THE IPHONE AS WELL.

12 Q WHAT TIME PERIOD WAS IT WHERE YOU'VE GOT TO GO
13 TO AT&T?

14 A FROM THE START OF IT, I CAN'T REMEMBER THE
15 EXACT CUT OFF, BUT I KNOW ANOTHER CARRIER CAME IN.

16 THROUGHOUT THE ENTIRE TIME PERIOD AT&T,
17 BUT THERE WAS A LIMITED PERIOD OF TIME THERE EARLY
18 ON.

19 Q AND YOU SEE TRUSTED MODEL BRAND, PREFERRED
20 LARGE SCREEN; RIGHT?

21 A YES.

22 Q PREFERRED THE ANDROID MARKET FOR APPS, THAT
23 WAS ANOTHER REASON?

24 A YES.

25 Q AND IT GOES ON -- TURN-BY-TURN GPS NAVIGATION.

1 THERE WAS A PERIOD OF TIME WHEN ANDROID HAD THAT
2 AND APPLE DID NOT; CORRECT?

3 A YES, MY UNDERSTANDING, YES.

4 Q AND THIS KIND OF RUNS INTO THE NEWEST, COOLEST
5 THING, WANTED THE LATEST TECHNOLOGY; RIGHT?

6 A THAT'S WHAT IT SAYS, YES.

7 Q AND ANOTHER REASON PEOPLE MIGHT CHOOSE PHONES
8 IS PRICE; RIGHT? HOW MUCH THEY COST?

9 A AGREED.

10 Q AND YOU ACTUALLY DID A CALCULATION -- BY THE
11 WAY, NOTHING IN HERE MENTIONS -- LET ME WITHDRAW
12 THAT.

13 LET'S GO BACK TO PRICE. SORRY ABOUT
14 THAT.

15 A THAT'S ALL RIGHT.

16 Q MENTAL HICCOUGH.

17 YOU DID A CALCULATION WHICH COMPARED THE
18 AVERAGE IPHONE PRICE TO THE AVERAGE IPHONE PRICE;
19 RIGHT?

20 A I KNOW THAT THERE'S A DIFFERENCE, YES. I
21 MEAN, THERE'S MANY, MANY CALCULATIONS, BUT IT
22 DEPENDS AT WHAT POINT IN TIME, WHICH PHONES, ET
23 CETERA. BUT, YES, I'M AWARE THAT THERE'S A
24 DIFFERENCE.

25 Q AND YOU DID THAT CALCULATION AS PART OF YOUR,

1 YOUR ANALYSIS FOR APPLE PROFITS, RIGHT, WHAT
2 THEY'RE SELLING THESE PHONES FOR?

3 A NO. I DIDN'T NEED TO KNOW WHAT SAMSUNG WAS
4 SELLING FOR TO GET TO APPLE'S PROFITS PER SE. I
5 NEEDED APPLE'S PROFITS ON THAT CALCULATION.

6 Q LET'S SEE IF WE CAN -- CAN WE PUT UP 3909.046.

7 DO YOU REMEMBER IN YOUR REPORT, YOUR
8 SUPPLEMENTAL REPORT, YOU CALCULATED THE AVERAGE
9 IPHONE SELLING PRICE AT \$656; RIGHT?

10 A THAT LOOKS RIGHT, YES.

11 Q AND YOU CALCULATED THE AVERAGE -- IF WE CAN GO
12 TO THE NEXT --

13 A BEFORE YOU LEAVE -- WELL, YOU'RE STILL UP
14 THERE. THIS WAS FOR A SPECIFIC POINT IN TIME.

15 Q RIGHT. YOU HAD TO DO IT FOR EVERY -- YOU DID
16 IT FOR EVERY QUARTER; RIGHT?

17 A YES.

18 Q AND IF YOU HAVE A PROBLEM WITH THE QUARTER I
19 CHOSE, JUST LET ME KNOW.

20 AND SO THIS IS FIRST QUARTER OF 2011, THE
21 AVERAGE SAMSUNG SELLING PRICE WAS \$369 THAT YOU
22 CALCULATED?

23 A WELL, I CALCULATED -- THOSE ARE ON TWO
24 DIFFERENT BASES. THAT'S -- I'M SORRY. APPLE'S
25 PRICE IS THE SALE TO THE CARRIER, AND SAMSUNG'S

1 PRICE IS A SALE TO THE CARRIER, BUT THE ULTIMATE
2 CONSUMER, OF COURSE, PAYS A DIFFERENT PRICE SINCE
3 THE CARRIER SUBSIDIZES. SO THE REAL PRICE IS NOT
4 656. IT'S SOMETHING DRAMATICALLY LESS THAT THE
5 CUSTOMER PAYS ULTIMATELY SINCE THE CARRIERS HAVE
6 SUBSIDIZED APPLE'S PRICE.

7 Q WELL, AS AN ECONOMIST, YOU KNOW THAT THERE'S
8 NO SUCH THING AS A FREE LUNCH; RIGHT?

9 A NO FREE LUNCH, RIGHT.

10 Q AND SO WHAT HAPPENS IS WHEN YOU BUY -- IF YOU
11 WANTED TO BUY AN IPHONE FROM APPLE, FOR EXAMPLE, AS
12 OF A COUPLE WEEKS AGO -- I KNOW THERE WERE SOME BIG
13 REDUCTIONS LAST WEEK BECAUSE OF THE IPHONE BEING
14 OUT THERE, THE 5 -- BUT AS OF LAST WEEK, LIKE THE
15 CHEAPEST YOU COULD GET WAS OVER \$300.

16 A I MISSED THE LAST PART OF THAT.

17 Q THE CHEAPEST YOU COULD GET WAS OVER \$300 IF A
18 CONSUMER WANTED TO BUY IT FROM APPLE; RIGHT?

19 A I DON'T KNOW THAT TO BE A FACT, BECAUSE AS YOU
20 SAY, IT DEPENDS ON THE SPEED OF PHONE, DEPENDS ON
21 THE CAPACITY OF THE PHONE, DEPENDS ON YOUR
22 CARRIER'S SUBSIDY, BECAUSE EVEN IF YOU WALK INTO AN
23 APPLE RETAIL STORE, IF YOU'RE RE-UPPING, THE
24 CARRIER WILL PAY THAT SUBSIDY TO APPLE, SO THAT
25 REDUCES YOUR PRICE THAT YOU HAVE TO PAY. SO I

1 THINK WE'D HAVE TO LOOK AT A LOT OF CONSIDERATIONS.

2 Q YEAH, BUT YOU PAY. I MEAN, YOU HAVE TO DO A
3 TWO YEAR CONTRACT AND YOU'RE -- YOU'VE GOT CERTAIN
4 RIGHTS AND --

5 A THAT'S TRUE FOR BOTH.

6 Q SO WHAT I'M SAYING IS THAT ONE WAY OR ANOTHER,
7 THE CARRIER GETS A PROFIT, EVEN IF IT SELLS THE
8 PHONE TO THE CUSTOMER -- THE PHONE IS BASICALLY A
9 DOWN PAYMENT PRICE FOR A TWO YEAR PERIOD TO PAY
10 MONEY; RIGHT?

11 A IF WE'RE TRYING TO MAKE -- I THINK WHAT YOU'RE
12 TRYING TO DO IS MAKE A PRICE COMPARISON. YOU HAVE
13 TO LOOK AT ULTIMATELY WHAT THE RETAIL CUSTOMER
14 PAYS, AND YOU'RE ABSOLUTELY RIGHT. WHAT THE
15 CARRIER IS DOING TO TRY AND MAKE ITS INCOME OFF THE
16 SERVICE IS TO OFFER A PHONE THAT'S COMPETITIVE, AND
17 IF THERE'S HIGH DEMAND FOR THE APPLE PHONE, IT'S
18 GOING TO DISCOUNT THAT PHONE SO THAT YOU WILL BUY
19 IT AND BUY THEIR SERVICE, AND THAT'S THE PRICE THAT
20 WE SHOULD BE COMPARING, NOT THE PRICE THAT APPLE
21 SELLS TO THE CARRIER. IT'S WHAT BOTH -- THE
22 CARRIER SELLS BOTH OF THOSE PRODUCTS.

23 THE COURT: IT'S 12:02 AND MS. SHORTRIDGE
24 HAS BEEN GOING ALMOST TWO YEARS SINCE WE TOOK OUR
25 BREAK SO EARLY, SO I THINK WE SHOULD TAKE A BREAK.

1 IT'S 12:02. WE ARE NOW GOING TO BREAK
2 FOR LUNCH.

3 AGAIN, PLEASE KEEP AN OPEN MIND, DON'T
4 DISCUSS THE CASE WITH ANYONE AND DON'T READ ABOUT
5 OR RESEARCH THE CASE. OKAY. THANK YOU.

6 IF YOU WOULD, PLEASE, GO AHEAD AND LEAVE
7 YOUR JURY BOOKS IN THE JURY ROOM.

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

10 THE COURT: ALL RIGHT. THANK YOU ALL
11 VERY MUCH. WE'LL SEE YOU 1:00 O'CLOCK.

12 MR. LEE: YOUR HONOR, JUST ONE THING. AS
13 THE NEW EXHIBITS ARE COMING IN FOR TOMORROW, I
14 THINK YOUR HONOR STILL HAS ON YOUR PLATE THE
15 WILLIAMS --

16 THE COURT: I DO.

17 MR. LEE: OKAY.

18 THE COURT: I'LL TRY TO GET THAT OUT --
19 IT'LL DEFINITELY GO OUT TODAY.

20 MR. LEE: OKAY. THANK YOU.

21 THE COURT: THANK YOU.

22 (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. THANK YOU. PLEASE TAKE A SEAT.

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

THE COURT: ALL RIGHT. PLEASE TAKE A SEAT.

THE TIME IS NOW 1:00 O'CLOCK. GO AHEAD, PLEASE.

MR. PRICE: THANK YOU.

Q DR. MUSIKA, WE WERE TALKING ABOUT PRICES AND I WANT TO ASK YOU ABOUT SOMETHING YOU SAID IN YOUR DIRECT WHERE YOU SAID THAT YOU RELIED ON DR. HAUSER.

A YES.

Q DID YOU TALK TO HIM FOR MORE THAN ONE AND A HALF MINUTES?

A YES.

Q NOW, LET ME ASK YOU SOME SPECIFICS ABOUT YOUR, YOUR METHODOLOGY, AND I'M GOING TO STICK ON APPLE'S LOST PROFITS, OKAY?

AND IN PARTICULAR, I WANT TO ASK YOU ABOUT -- OH, ONE THING. YOU'RE NOT SEEKING ANY

1 LOST PROFITS AT ALL FOR THE ICON, OR THE DESIGN
2 PATENT D'305; CORRECT?

3 A THAT'S THE SO-CALLED GUI PATENTS?

4 Q SURE.

5 A I'D HAVE TO LOOK, BUT THERE IS --

6 Q THE ONE WITH THE ICONS.

7 A YES, YES.

8 Q OKAY.

9 A YOU ARE CORRECT.

10 Q AND SO LET'S LOOK AT -- WE SHOWED YOU THE
11 CAPTIVATE THIS MORNING, WHICH IS EXHIBIT 1011. I
12 DON'T KNOW IF IT'S MADE ITS WAY BACK IN FRONT OF
13 YOU.

14 A NO, IT'S NOT HERE.

15 Q OH, IT'S RIGHT THERE.

16 YOUR HONOR, MAY I APPROACH?

17 THE COURT: YES, PLEASE.

18 BY MR. PRICE:

19 Q SO I WANT TO TALK TO YOU ABOUT YOUR
20 CALCULATION FOR LOST PROFITS OF THE CAPTIVATE.

21 YOUR RECORDS SHOW THIS WAS RELEASED IN
22 JULY 2010; CORRECT?

23 A I DON'T REMEMBER.

24 Q WELL, LET ME ASK YOU TO ASSUME THAT, THAT THE
25 RECORDS SHOW IT WAS RELEASED IN 2010.

1 NOW, TO GET SALES, OBVIOUSLY APPLE HAD TO
2 BE ABLE TO MAKE PRODUCT FOR SOMEONE WHO WAS GOING
3 TO LEAVE SAMSUNG AND BUY AN IPHONE; RIGHT?

4 A YES.

5 Q OKAY. AND AS OF JULY 2010, THIS WAS ONE OF
6 SAMSUNG'S, YOU KNOW, LATEST AND GREATEST NEW
7 PHONES; RIGHT? WHATEVER DATE IT CAME OUT?

8 A YES.

9 Q OKAY. AND YOU -- AND BEFORE PREPARING YOUR
10 SUPPLEMENTAL REPORT, YOU READ THE DEPOSITION
11 TESTIMONY OF TONY BLEVINS; CORRECT?

12 A I DID.

13 Q MR. BLEVINS WAS PRESENTED AS A CORPORATE
14 REPRESENTATIVE ON THE ISSUE OF APPLE'S CAPACITY AND
15 ABILITY TO MANUFACTURE PHONES; CORRECT?

16 A YES.

17 Q AND MR. BLEVINS TESTIFIED THAT THERE WERE BACK
18 ORDERS FOR THE IPHONE 4 FROM JUNE THROUGH SEPTEMBER
19 2010. DO YOU RECALL THAT?

20 A YES.

21 Q AND HE SAID THAT'S BECAUSE DEMAND EXCEEDED
22 THEIR ABILITY TO PRODUCE THEM DURING JUNE THROUGH
23 SEPTEMBER OF 2010; CORRECT?

24 A YES.

25 Q AND HE SPECIFICALLY SAID THAT IN ORDER TO TRY

1 TO INCREASE THE SUPPLY, HE CONTACTED COMPONENT
2 SUPPLIERS, TRIED TO EXPEDITE SHIPPING, AND THAT
3 NONETHELESS, HE WASN'T ABLE TO PROVIDE THE SUPPLY
4 BETWEEN JUNE AND SEPTEMBER OF 2010; CORRECT?

5 A WELL, WHAT DO YOU MEAN BY -- WHEN YOU SAY HE
6 WASN'T ABLE TO PROVIDE SUPPLY? THERE WERE --

7 Q OF THE IPHONE 4.

8 A THEY DID CERTAINLY PROVIDE SALES OF THE IPHONE
9 4. I DON'T REMEMBER EXACTLY WHEN IT WAS LAUNCHED.

10 ARE YOU SAYING THERE WAS A DATE AT WHICH
11 THERE WERE NO IPHONE 4'S FOR SALE?

12 Q LET ME ASK IT THIS WAY: DID MR. BLEVINS
13 TESTIFY THAT APPLE DID EVERYTHING IT COULD TO
14 INCREASE THE SUPPLY OF THE IPHONE 4 FROM JUNE OF
15 2010 UNTIL ABOUT SEPTEMBER OF 2010 SO THAT THEY
16 COULD MEET DEMAND?

17 A I DON'T REMEMBER HIS EXACT TESTIMONY, BUT
18 SOMETHING TO THAT EFFECT, YES.

19 Q AND FROM ABOUT JUNE OF 2010 TO SEPTEMBER OF
20 2010, APPLE DID NOT HAVE EXCESS SUPPLY OF THE APPLE
21 IPHONE 4; CORRECT?

22 A JUNE OF 2010 UNTIL WHEN?

23 Q SEPTEMBER OF 2010.

24 ACTUALLY, LET ME REPHRASE THAT AND LOOK
25 AT THE NEXT QUESTION.

1 FROM JUNE 2010 UNTIL OCTOBER OF 2010,
2 APPLE DID NOT HAVE EXCESS SUPPLY OF THE IPHONE 4;
3 CORRECT?

4 A I'M JUST LOOKING.

5 Q IF YOU WANT TO LOOK AT HIS DEPOSITION
6 TESTIMONY, IT'S IN THE GREEN BINDER DATED APRIL 3,
7 2012.

8 A OKAY.

9 Q THAT'S THE TESTIMONY COLLECTION HERE. IT
10 SHOULD BE THE LAST TAB THERE, PAGE 17, LINES 1
11 THROUGH 7. DO YOU SEE THAT?

12 A YES, I DO.

13 Q SO BETWEEN JUNE OF 2010 THROUGH OCTOBER OF
14 2010, APPLE DID NOT HAVE EXCESS SUPPLY OF THE
15 IPHONE; CORRECT?

16 A THAT'S CORRECT.

17 Q IPHONE 4?

18 A THAT'S CORRECT.

19 Q SO IF WE LOOK AT YOUR -- AT THE CALCULATION
20 HERE, YOU CALCULATED THE PROFIT ON THIS PHONE -- IF
21 WE CAN PUT UP DEMONSTRATIVE 3909.4 -- AND WE CAN GO
22 THROUGH THIS TO 5, AND THEN -- WHAT NUMBERS ARE
23 THESE? LET'S JUST KEEP GOING TO 49. GO ON TO 50
24 AND JUST DO THE SUMMARY. OKAY. RIGHT THERE.

25 SO IN YOUR REPORT, EXHIBIT 17.2-S, YOU'VE

1 GOT SALES AND PROFITS FOR SALES FOR THE SAMSUNG
2 GALAXY S CAPTIVATE TOTALING ABOUT \$199 MILLION. DO
3 YOU SEE THAT?

4 A I DO.

5 Q AND THAT'S WHAT APPLE WOULD, YOU BELIEVE,
6 WOULD HAVE GOTTEN IN PROFITS BECAUSE IT WOULD HAVE
7 SOLD MORE PHONES; CORRECT?

8 A I DON'T REMEMBER THE EXACT NUMBERS, BUT I
9 THINK THIS IS PROBABLY ACCURATE, YES.

10 Q AND THIS IS A TIME WHEN APPLE COULDN'T EVEN
11 SERVICE ITS OWN CUSTOMERS FOR THE IPHONE 4;
12 CORRECT?

13 A WELL, YES, WITH THE IPHONE 4. THEY HAD
14 AVAILABLE IPHONES, BUT NOT THE IPHONE 4.

15 Q SO APPLE COULDN'T SERVICE ITS OWN CUSTOMERS
16 FOR THE IPHONE 4, BUT IT COULD SERVICE THE
17 CUSTOMERS IT DIDN'T HAVE, THAT IT WOULD HAVE GOTTEN
18 FROM SAMSUNG DURING THAT SAME TIMEFRAME?

19 A IPHONE 3'S, 3G, NOT IPHONE.

20 Q OH. SO NOW YOU'RE -- SO YOU'RE SAYING -- TO
21 GET TO YOUR \$199 MILLION FIGURE HERE, YOU'RE SAYING
22 THAT CUSTOMERS WOULD HAVE GIVEN UP THEIR SAMSUNG,
23 FOR EXAMPLE, BECAUSE IT DIDN'T HAVE A BOUNCE, AND
24 GONE TO APPLE AND BOUGHT AN OLD MODEL THAT THE
25 WORLD -- WHEN THE WORLD WAS WAITING FOR THE IPHONE

1 4?

2 A THERE'S A LOT IN THAT QUESTION. I DON'T THINK
3 THE WHOLE WORLD WAS WAITING FOR IT. I BOUGHT AN
4 IPHONE 4, FOR EXAMPLE, WHEN THE 4S CAME OUT BECAUSE
5 IT WAS CHEAPER AND I'M A LITTLE CHEAP MAYBE. BUT
6 I -- I WENT AHEAD AND BOUGHT IT.

7 SO THERE CERTAINLY ARE PEOPLE OUT THERE
8 WHO BUY, AND APPLE CONTINUED TO SELL THE IPHONE 3
9 AND THE IPHONE 3G DURING THAT PERIOD OF TIME.

10 SO FACED WITH THAT OPTION, WOULD SOME
11 PERCENTAGE OF THE CONSUMERS HAVE PURCHASED THE
12 IPHONE 3 OR IPHONE 3G, PARTICULARLY SINCE IT WAS
13 CHEAPER? YES, I THINK THEY WOULD HAVE.

14 Q WELL, THIS PARTICULAR CONSUMER, YOU SAID,
15 BOUGHT THE CAPTIVATE, WHICH WAS SAMSUNG LATEST AND
16 GREATEST PHONE, THE NEXT NEW THING IN JULY THROUGH
17 OCTOBER OF 2010, AND YOU'RE SAYING THAT, TO THE
18 TUNE OF \$199 MILLION, THEY WOULD HAVE GIVEN UP THAT
19 PHONE BECAUSE IT LACKED BOUNCE BACK AND BOUGHT, NOT
20 THE LATEST AND GREATEST, BUT A PHONE THAT WAS A
21 YEAR OLD AT APPLE WHEN APPLE COULDN'T MAKE THE
22 IPHONE 4, ANYMORE?

23 A THAT'S SOMEWHAT OF A LARGE STATEMENT. I
24 DIDN'T SAY EXCLUSIVELY BECAUSE OF THE BOUNCE.

25 Q SO I WANT -- ANYWAY, THIS IS PART OF YOUR

1 ANALYSIS. WE DIDN'T GO INTO MUCH DETAIL, BUT YOU
2 DID SOME ANALYSIS ON CAPACITY; RIGHT?

3 A I DID.

4 Q AND YOU HAD TO RELY ON MR. BLEVINS' TESTIMONY,
5 IN PART, BECAUSE OF THAT; CORRECT?

6 A THAT'S CORRECT.

7 Q AND MR. BLEVINS' TESTIMONY ABOUT THEIR
8 CAPACITY; RIGHT?

9 A YES.

10 Q AND HIS ANALYSIS ASSUMED THAT A WORKER -- THAT
11 ASSUMED 19 TO 20 HOUR WORKDAYS SIX DAYS A WEEK;
12 RIGHT?

13 A SAY THAT AGAIN. 19 --

14 Q HIS ANALYSIS FOR CAPACITY, THAT IS, ENOUGH
15 CAPACITY TO MAKE PHONES ASSUMED 19 TO 20 HOUR
16 WORKDAYS SIX DAYS A WEEK?

17 A NOT FOR THE SAME WORKER. THAT'S SHIFTS.

18 Q THAT'S NOT THE SAME WORKER?

19 A I DON'T THINK SO, NO.

20 Q OKAY. LET ME ASK YOU, AGAIN, A LITTLE BIT,
21 SINCE WE HAVEN'T GONE INTO MUCH DETAIL, I JUST WANT
22 TO HIGHLIGHT A FEW DETAILS.

23 FOR THE IPAD, IN DOING LOST PROFITS, YOU
24 DID A MARKET CALCULATION, AGAIN, TO TRY TO GIVE A
25 NUMBER AS TO HOW MANY PEOPLE WOULD LEAVE THE TABLET

1 AND GO TO THE IPAD; CORRECT?

2 A YES.

3 Q AND TO DO THAT, YOU HAD TO DO ANALYSIS AS TO
4 WHO HAD MARKET SHARE IN THAT MARKET, THE SAME
5 MARKET AS THE IPAD AND THE GALAXY --

6 A YES.

7 Q SO IF WE LOOK AT YOUR TESTIMONY AT 2582 OF
8 YOUR REPORT -- I'M SORRY, IT'S EXHIBIT 2582. IT IS
9 AT 19, PAGE 19 --

10 A I'M SORRY. WHAT'S THE EXHIBIT NUMBER?

11 Q IT'S 2582, THAT'S YOUR REPORT. AND IF YOU GO
12 TO PAGE, I THINK IT'S 19, AND --

13 A EXCUSE ME. WOULD THAT BE IN THE GREEN BINDER?

14 Q NO, THAT'S THE NORMAL BLACK BINDER, I THINK.
15 THAT'S DOCUMENTS.

16 DO YOU HAVE A COPY OF YOUR REPORT UP
17 THERE WITH YOU? MAYBE YOUR COUNSEL MIGHT HAVE
18 GIVEN YOU YOUR OWN COPY.

19 A NO, I DON'T. I DON'T THINK IT'S IN HERE.

20 Q IT IS THE BLUE BINDER I'M TOLD.

21 A GREEN BINDER?

22 Q BLUE.

23 A BLUE?

24 Q YES.

25 A OKAY. ALL RIGHT. HERE WE GO.

1 Q AND WHILE YOU'RE LOOKING, IF I CAN ASK THAT
2 THIS BE BLOWN UP, LINES 6 THROUGH 9.

3 A ALL RIGHT, I'M THERE.

4 Q AND DO YOU SEE, BARNES & NOBLE SOLD THE NOOK
5 COLOR AT THE TIME YOU DID YOUR ANALYSIS; CORRECT?

6 A YES, FOR PART OF THE TIME. NOT THE WHOLE
7 TIME. FOR PART OF THE TIME.

8 Q AND, IN FACT, DURING PART OF THE TIME THEY HAD
9 ABOUT 21 PERCENT OF THE MARKET, 21.9?

10 A I DON'T REMEMBER EXACTLY WHAT THE MARKET SHARE
11 WAS.

12 Q AND HERE YOU SAY, "FURTHER, WHILE THE
13 BARNES & NOBLE NOOK COLOR AND THE KINDLE FIRE HAVE
14 CHANGED THE DYNAMICS OF THE MARKET, THESE PRODUCTS
15 BY AND LARGE COMPETE IN A DIFFERENT SEGMENT OF THE
16 TABLET MARKET THAN SAMSUNG AND APPLE. ACCORDINGLY,
17 I HAVE REMOVED THEIR CORRESPONDING UNITS FROM MY
18 ANALYSIS OF IDC'S MEDIA TABLET DATA."

19 DO YOU SEE THAT?

20 A I DO.

21 Q AND IDC, THAT'S THE SOURCE OF THE, OF A LOT OF
22 THE INFORMATION YOU GAVE US ON MARKET SHARE AND
23 THINGS LIKE THAT?

24 A CORRECT.

25 Q RIGHT? AND WAS THIS -- DID YOU ALSO TALK WITH

1 MR. VAN LIERE AND MR. PORET?

2 A I THINK I DID, BUT NOT ON THIS POINT, NO, NOT
3 THAT I CAN RECALL.

4 Q SO YOU DIDN'T TALK ABOUT WHETHER IT WAS
5 APPROPRIATE -- WHETHER THE BARNES & NOBLE NOOK WAS
6 EVEN IN THE SAME MARKET AS THE IPHONE, IPAD, OR THE
7 GALAXY TAB? YOU DIDN'T HAVE ANY DISCUSSIONS ABOUT
8 THAT?

9 A NO. IDC DIDN'T INCLUDE IT FOR THE ENTIRE TIME
10 AND CHANGED THEIR ANALYSIS MID-WAY THROUGH THE
11 DAMAGES PERIOD AND PUT IT IN.

12 BUT THEY -- "THEY" BEING IDC -- DIDN'T
13 HAVE THE E-READERS IN THE MARKET EARLIER. SO TO
14 KEEP IT CONSISTENT, I TOOK THEM OUT OF A LATER
15 PERIOD.

16 Q BY THE WAY, TAKING THEM OUT OF THE PERIOD IN
17 YOUR ANALYSIS WOULD INCREASE APPLE'S MARKET SHARE
18 AND WOULD INCREASE THE DAMAGES NUMBERS?

19 A SLIGHTLY, YES, VERY SLIGHTLY. BUT, YES, IT
20 WOULD.

21 Q SO LET ME ASK YOU NOW ABOUT, ABOUT SOME OF THE
22 DOCUMENTS YOU WERE TALKING ABOUT. AND IN
23 PARTICULAR, YOU WERE SHOWN EXHIBIT, I THINK IT'S
24 34, PX 34 --

25 THE COURT: I'M SORRY. LET ME STOP YOU

1 ONE SECOND. IT'S 1:13. I HAVE -- I'M SORRY.

2 WE'RE GOING TO HANDLE THE RULE 50 ORALLY.

3 I JUST WANTED TO GIVE EVERYONE NOTICE, OKAY?

4 BECAUSE IT'S NOT GOING TO BE BRIEFED. I'VE SEEN

5 ALL THE MOTIONS THAT WERE FILED OVER LUNCH, AND I

6 AM NOT GOING TO TAKE ANY BRIEFS ON THAT.

7 GO AHEAD.

8 MR. PRICE: OKAY.

9 THE COURT: IT'S 1:14. GO AHEAD.

10 BY MR. PRICE:

11 Q SO LET'S LOOK AT -- AND YOU SEE THIS DOCUMENT

12 SAYS "FEASIBILITY REVIEW ON STANDALONE AP BUSINESS

13 FOR SMARTPHONE MARKET." DO YOU SEE THAT?

14 A I DO.

15 Q NOW, YOU KNOW THAT SAMSUNG MAKES A LOT OF

16 THINGS, TV'S, OH, GOSH, A WHOLE LIST OF THINGS THAT

17 YOU SEE SAMSUNG'S NAME ON; RIGHT?

18 A ABSOLUTELY.

19 Q AND THEY MAKE COMPUTERS, THEY MAKE MEMORY

20 CHIPS; CORRECT?

21 A ALL TRUE, YES.

22 Q OKAY. AND WHAT AP HERE REFERS TO IS AN

23 APPLIED PROCESSOR; RIGHT?

24 A THAT'S MY UNDERSTANDING.

25 Q SO THIS IS A REPORT THAT'S NOT DONE BY THE

1 AREA THAT MAKES AND MANUFACTURES THESE PHONES, BUT
2 BY THE AREA THAT MANUFACTURES PARTS TO BE SOLD TO
3 PEOPLE LIKE NOKIA, OTHER PHONE COMPANIES; RIGHT?

4 A YES. AT THE TIME SAMSUNG WASN'T REALLY IN THE
5 SMARTPHONE MARKET, SO I WOULD AGREE.

6 Q OKAY. SO -- I MEAN, SAMSUNG DID SELL PHONES;
7 RIGHT?

8 A FEATURE PHONES, YES.

9 Q BUT THIS ISN'T EVEN RELATED TO FEATURE PHONES.
10 THIS IS THE PART OF SAMSUNG'S BUSINESS THAT SELLS,
11 IN THIS CASE, A PROCESSOR, KIND OF THE BRAIN, YOU
12 KNOW, TO OTHER COMPANIES; RIGHT?

13 A WELL, MY ANSWER WOULD BE YES TO OTHER
14 COMPANIES, BUT YES TO ITSELF AS WELL. SO THE
15 CONSIDERATION WAS, WHAT'S THE FEASIBILITY OF THE
16 APPLICATION PROCESSOR IN THE SMARTPHONE MARKET, FOR
17 SAMSUNG AS WELL AS FOR ANYBODY ELSE WHO MIGHT BUY
18 IT FROM SAMSUNG. SO I DON'T THINK IT'S ONE WAY OR
19 THE OTHER, I SUPPOSE.

20 Q SO SAMSUNG WOULD MAKE THEM FOR THEMSELVES AND
21 FOR OTHERS?

22 A YES.

23 Q INCLUDING OTHERS THAT YOU MIGHT THINK ARE ITS
24 COMPETITORS?

25 A INCLUDING?

1 Q INCLUDING FOR OTHERS THAT YOU MIGHT THINK ARE
2 ITS COMPETITORS?

3 A YES, YES.

4 Q JUST AS THEY SOLD THINGS, HARDWARE TO APPLE
5 FOR THE IPHONE; CORRECT?

6 A CORRECT.

7 Q OKAY. SO IF WE CAN GO TO -- I THINK YOU
8 LOOKED AT PAGE 34.37. IT SAYS PAGE 37 ON IT.

9 AND THIS IS THE "IPHONE EFFECT ANALYSIS"?

10 A YES.

11 Q AND IT SAYS "PROMOTE POPULARIZATION OF
12 SMARTPHONES BY STRENGTHENING MULTIMEDIA FUNCTIONS
13 SUCH AS FULL BROWSING PLUS PMP." RIGHT?

14 A YES.

15 Q YOU UNDERSTOOD WHAT SAMSUNG WAS TRYING TO DO
16 WAS TO PROMOTE AT LEAST THIS PART OF ITS BUSINESS
17 TO PROMOTE PEOPLE TO MAKE SMARTPHONES TO INCLUDE
18 FUNCTIONS THAT WOULD BE IN SAMSUNG'S PROCESSOR?

19 A I AGREE.

20 Q AND IT SAYS HERE, "STIMULATE ENHANCING AND
21 UPGRADING HW PERFORMANCE FOR OTHER COMPETITORS'
22 SMARTPHONE MULTIMEDIA FEATURES." CORRECT?

23 A CORRECT.

24 Q AND WHAT IT'S SAYING THERE IS WE WANT OUR
25 COMPETITORS, YOU KNOW, TO UPGRADE THEIR HARDWARE

1 PERFORMANCE SO THAT WE CAN SELL THEM OUR, OUR
2 BRAIN, OUR PROCESSOR.

3 A I'M SORRY. I DIDN'T HEAR A QUESTION.

4 Q OKAY. ISN'T IT TRUE -- SOMETIMES THAT'S JUST
5 THE WAY I DO IT AT THE END THERE. I'LL STRIKE
6 THAT.

7 ISN'T IT TRUE THAT YOUR UNDERSTANDING OF
8 THIS IS THAT SAMSUNG WANTED TO STIMULATE ITS
9 COMPETITORS TO UPGRADE THEIR HARDWARE SO THAT
10 SAMSUNG COULD SELL THOSE COMPETITORS ITS BRAIN, ITS
11 PROCESSOR?

12 A THEY'RE STIMULATING THE DEMAND FOR
13 SMARTPHONES, THAT IS CORRECT.

14 Q YEAH. AND, AND IT'S SO THEY CAN, SAMSUNG CAN
15 SELL THE PROCESSOR; RIGHT?

16 A YES.

17 Q SO IT WANTS ITS COMPETITORS TO COME OUT WITH,
18 YOU KNOW, MULTIMEDIA FEATURES AND THINGS LIKE THAT;
19 RIGHT?

20 A YES.

21 Q AND SO WE GO DOWN HERE, "HW PORTION: EASY TO
22 COPY." DO YOU SEE THAT?

23 A YES, I DO.

24 Q ACTUALLY, WHAT I HAVE IN MY BOOK IS "EASE OF
25 IMITATION." SO LET'S PUT UP WHAT THEY PUT UP,

1 WHICH IS A SLIGHTLY DIFFERENT TRANSLATION.

2 DO YOU HAVE THEIR VERSION?

3 COULD WE HAVE YOU GUYS PUT YOUR VERSION
4 UP IF WE SWITCH? IT WAS EXHIBIT 34.37.

5 MR. MCELHINNY: WHAT IS THAT NUMBER?

6 MR. PRICE: THIS IS -- THIS IS WHAT'S IN
7 MY BOOK.

8 MR. MCELHINNY: I'M SORRY. FOR THE
9 RECORD, WHAT'S THE IDENTIFICATION NUMBER THAT
10 YOU'RE SHOWING?

11 MR. PRICE: PLAINTIFF'S EXHIBIT NUMBER
12 34.37. THAT WAS IN MY BOOK THAT YOU GAVE ME THIS
13 MORNING.

14 CAN WE SWITCH? CAN WE SWITCH THE FEED TO
15 THEM? CAN WE SWITCH TO THE ELMO?

16 MS. KREVANS: HE'S PUTTING IT UP FOR YOU,
17 MR. PRICE.

18 MR. PRICE: AH, THANK YOU. OKAY. THANK
19 YOU. CAN YOU BLOW THAT UP A LITTLE BIT SO WE CAN
20 SEE IT BETTER?

21 Q OKAY. THIS SAYS "HW PORTION: EASE OF
22 IMITATION." AND YOU SEE IT SAYS TOUCHSCREEN, U/I,
23 DISPLAY/VIDEO RESOLUTION, VGA, WVGA, PERFORMANCE,
24 FLASH MEMORY, CAPACITY, MOTION PROXIMITY, LIGHT
25 SENSORS. DO YOU SEE THAT?

1 A I DO.

2 Q YOU UNDERSTAND WHEN IT SAYS HW, THAT'S TALKING
3 ABOUT THE HARDWARE THAT YOU GET FROM SUPPLIERS;
4 RIGHT?

5 A I UNDERSTAND HW TO STAND FOR HARDWARE, YES.

6 Q THIS DOES NOT STAND FOR DESIGN, DOES IT, HW?

7 A UM --

8 Q IN YOUR UNDERSTANDING?

9 A I DON'T HAVE AN UNDERSTANDING BEYOND WHAT IT
10 SAYS ON THE SCREEN THERE.

11 Q RIGHT. AND FROM WHAT IT SAYS ON THE SCREEN,
12 WHICH TALKS ABOUT COMPONENTS, LIKE THE TOUCHSCREEN,
13 U/I, THE VIDEO RESOLUTION, THE FLASH MEMORY AND ALL
14 THAT, WHAT THEY'RE TALKING ABOUT IS THEIR
15 COMPETITORS' HARDWARE PERFORMANCE SO THEY CAN SELL
16 THEIR MEMORY CHIPS; RIGHT?

17 A AS A GENERAL POINT ABOUT THIS DOCUMENT, YES,
18 THAT -- I WOULD AGREE WITH YOU, THAT IS PART OF THE
19 CONSIDERATION, TO STIMULATE DEMAND FOR SMARTPHONES,
20 I DO AGREE WITH THAT.

21 Q AND YOU WOULD AGREE THAT IT WOULD BE INCORRECT
22 AND MISLEADING TO SUGGEST THAT THIS IS SAYING THAT
23 SAMSUNG'S COMPETITORS SHOULD COPY APPLE'S IPHONE
24 DESIGNS?

25 LOOK AT ME, NOT OVER THERE, OKAY? I'M

1 ASKING THE QUESTION, NOT YOUR COUNSEL.

2 YOU WOULD AGREE WITH ME, IT WOULD BE
3 MISLEADING AND IMPROPER TO SUGGEST THAT THIS IS
4 SAYING THAT, THAT THE IPHONE DESIGN THAT'S -- THAT
5 THEY HAVE A PATENT ON OR THE TRADE DRESS, SHOULD BE
6 COPIED?

7 A I DON'T THINK I EVER SAID THAT, OR EVEN
8 TESTIFIED AT ALL CONCERNING THIS PARTICULAR PAGE.

9 Q OKAY. SO, SO -- AND YOU WOULDN'T TESTIFY TO
10 THAT BECAUSE THAT WOULD BE MISLEADING TO SUGGEST
11 THAT; RIGHT?

12 A IT WOULD BE BEYOND MY ROLE HERE IN CALCULATING
13 DAMAGES TO TALK ABOUT WHETHER OR NOT SAMSUNG COPIED
14 OR NOT. THAT'S JUST NOT MY ROLE IN THIS CASE ONE
15 WAY OR THE OTHER.

16 Q WELL, YOU DON'T READ THIS AS SUGGESTING THAT,
17 THAT SAMSUNG OR ITS COMPETITORS COPY APPLE'S
18 DESIGNS?

19 A IT'S NOT SOMETHING I'VE TESTIFIED TO, NOR DO I
20 FEEL COMFORTABLE TESTIFYING ONE WAY OR THE OTHER TO
21 IT. IT'S JUST BEYOND THE SCOPE OF MY ROLE AND
22 EXPERTISE. I'M NOT HERE TO TALK ABOUT WHETHER
23 THERE'S LIABILITY OR WHETHER THEY COPIED.

24 Q BUT -- NO, NO. BUT YOU PUT UP PAGES, YOU
25 INTERPRETED THEM, YOU READ THEM. YOU CAN READ.

1 YOU DID THAT IN YOUR DIRECT; RIGHT?

2 A I READ THE PAGES THAT HAD TO DO WITH DEMAND,
3 AND IN PARTICULAR HERE, DEMAND FOR THE IPHONE AND
4 DEMAND FOR A PARTICULAR DESIGN WHERE IT SAYS
5 DESIGN.

6 BUT I DIDN'T TAKE PAGES WHERE IT DOESN'T
7 SAY THAT AND SAY THAT THEY ARE EASY TO COPY THE
8 DESIGN.

9 Q OKAY. SO I'M JUST SAYING, AS SOMEONE WHO'S
10 READ A LOT OF THIS SORT OF STUFF, I MEAN, THESE
11 KINDS OF PRESENTATIONS, LOTS OF PRESENTATIONS THAT
12 APPLE AND SAMSUNG MADE, THAT DOESN'T HAVE ANYTHING
13 TO DO WITH DESIGN, DOES IT? I MEAN, JUST, COME ON,
14 TELL US WHAT YOU THINK.

15 A I THINK YOU'RE WORRIED ABOUT IT, THAT IT SAYS
16 EASY TO IMITATE OR COPY, AND YOU WANT ME TO SAY
17 SOMETHING ABOUT IT OR NOT AND I -- IT'S NOT WHAT I
18 WAS ASKED TO DO. IT'S NOT MY ROLE IN THIS CASE. I
19 DON'T HAVE ANY EXPERTISE ABOUT THAT. I'M NOT A
20 LAWYER. I'M NOT AN ENGINEER. I'M NOT A DESIGN
21 EXPERT. I'M A FINANCIAL EXPERT.

22 Q WELL, ANOTHER DOCUMENT YOU LOOKED AT WAS 194,
23 AND THIS WAS DATED MARCH 2010. AND I WANT TO ASK
24 YOU ABOUT THIS.

25 OBVIOUSLY THE IPHONE WAS PRETTY

1 SUCCESSFUL.

2 A PRETTY?

3 Q PRETTY SUCCESSFUL.

4 A YES, IT WAS. IS.

5 Q AND APPLE BECAME, YOU KNOW, EARLY ON,
6 BASICALLY THE TOP SELLER IN THE SMARTPHONE MARKET?

7 A THEY WERE FOR A WHILE, YES.

8 Q AND YOU WOULD EXPECT COMPETITORS TO LOOK AT
9 EACH OTHER, THIS ONE IS DOING REALLY WELL, AND YOU
10 WOULD EXPECT THEM TO LOOK AT EACH OTHER'S PRODUCTS
11 AND EVALUATE THEM; RIGHT?

12 A I WOULD.

13 Q AND THINGS LIKE -- WE CAN GO TO, RIGHT HERE,
14 "THIS IS BEING INTERPRETED AS INSTRUCTION TO THINK
15 ABOUT AND DECIDE ALL MATTERS FROM THE PERSPECTIVE
16 OF THE USER (NOT SUPPLIERS OR PROVIDERS)."

17 DO YOU SEE THAT?

18 A I DO.

19 Q "THE MOST REPRESENTATIVE EXAMPLE IS OBVIOUSLY
20 THE IPHONE."

21 DO YOU SEE THAT?

22 A YES.

23 Q AT ONE POINT, THE MANUFACTURERS WERE MAKING
24 THEIR PHONES FOR THE VARIOUS CARRIERS, THE
25 CARRIER'S PHONE DESIGN AND THAT WAS A BIG PART OF

1 THE PROCESS; RIGHT?

2 A YES.

3 Q AND APPLE WENT TO AT&T AND APPLE, ONE OF THE
4 THINGS IT DID WAS TO MAKE ITS PHONES AND THINK
5 ABOUT -- KIND OF IGNORE WHAT THE CARRIERS WANTED
6 AND LOOK AT WHAT THE CONSUMER WANTED? SOMEWHAT?

7 A IS THAT -- THAT'S A QUESTION?

8 Q YES.

9 A IS THAT WHAT APPLE DID?

10 Q YEAH.

11 A I DON'T KNOW. I DON'T THINK THEY IGNORED WHAT
12 THE CARRIERS WANTED. I DON'T KNOW.

13 Q AND YOU WOULD AGREE THAT ONE THING YOU SHOULD
14 DO AS A COMPETITOR IS LEARN FROM YOUR COMPETITION;
15 RIGHT?

16 A THAT WOULD BE A GOOD THING, SURE.

17 Q SO, FOR EXAMPLE, IF YOU DISCOVER YOUR
18 COMPETITION IS SELLING A LOT OF PHONES BY
19 INCREASING ITS SCREEN SIZE, THEN YOU MIGHT THINK,
20 "HEY, SHOULD WE INCREASE OUR SCREEN SIZE?"

21 A WELL, UNLESS THAT COMPETITOR HAS INTELLECTUAL
22 PROPERTY PROTECTION ON THE SCREEN SIZE, THEN YOU
23 SHOULDN'T DO THAT.

24 Q RIGHT. UNLESS YOUR COMPETITOR HAS THE
25 EXCLUSIVE RIGHT TO PREVENT EVERYBODY ELSE FROM

1 DOING IT WHO HASN'T LICENSED, THEN YOU WOULD WANT
2 TO LOOK AT HOW WELL YOUR COMPETITOR IS DOING AND
3 SAY, "HEY, CONSUMERS LIKE A BIGGER SCREEN. I MIGHT
4 DO A BIGGER SCREEN." RIGHT?

5 A YES.

6 Q OR "CONSUMERS LIKE A SEVEN INCH AS OPPOSED TO
7 A TEN INCH TABLET, MAYBE I SHOULD DO A SEVEN INCH
8 TABLET." RIGHT?

9 A YES.

10 Q AND SAMSUNG DID THE SEVEN INCH TABLET?

11 A THEY DID.

12 Q AND YOU KNOW THAT IBM -- I'M SORRY -- THAT
13 APPLE INTERNALLY DISCUSSED, "MAYBE WE SHOULD DO A
14 SEVEN INCH TABLET"?

15 A I DON'T HAVE A RECOLLECTION. I DON'T
16 REMEMBER.

17 Q OKAY. AND IF WE CAN GO ON DOWN HERE TO THIS
18 PARAGRAPH, "IN THE END, WE MUST LEARN THROUGH THE
19 LESSONS OF THE IPHONE THAT JUST PROVIDING EVERY
20 GOOD FEATURE ISN'T THE WAY TO GO ABOUT IT.

21 ALTHOUGH EVERYONE WOULD AGREE WITH THIS, WE WOULD
22 FACE HUGE OBSTACLES."

23 AND IT GOES ON AT THE END, AT THE NEXT
24 PARAGRAPH, SAYING, "I'M NOT SAYING TO MAKE A UX" --
25 AND YOU UNDERSTAND THAT'S USER INTERFACE; RIGHT?

1 A YES.

2 Q -- "THAT IS EXACTLY IDENTICAL TO THE IPHONE,
3 BUT I AM SAYING TO LEARN THE WISDOM OF THE IPHONE
4 AND RECOGNIZE THE STANDARD OF THE INDUSTRY WHICH
5 WAS SET BY THEM ALREADY."

6 DO YOU SEE THAT?

7 A I DO.

8 Q OKAY. AND THAT'S EXACTLY WHAT A COMPETITOR IS
9 SUPPOSED TO DO? IT'S SUPPOSED TO LOOK AT WHAT ITS
10 COMPETITION DOES WELL AND TRY TO DO AS GOOD OR
11 BETTER, UNLESS IT'S PREVENTED BY SOME -- BY
12 SOMETHING FROM DOING THAT, LIKE UNLESS APPLE HAS
13 THE EXCLUSIVE RIGHT; RIGHT?

14 A THAT'S CORRECT.

15 Q FOR EXAMPLE, IF WE GO DOWN HERE TO NUMBER 4,
16 ONE OF THE THINGS HE SAYS IS "SHALL WE OFFER ALL OF
17 DELTA AS A FUNCTION, WHICH HAS MORE FUNCTIONALITY
18 THAN THE IPHONE?"

19 RIGHT? DO YOU SEE THAT?

20 A I DO.

21 Q AND SO HE'S THINKING, SHOULD WE DO SOME OF
22 THESE THINGS? RIGHT? THAT'S WHAT COMPETITORS
23 SHOULD DO IN THE MARKET?

24 A CAN DO, YES.

25 MR. PRICE: JUST A SECOND, YOUR HONOR.

1 (PAUSE IN PROCEEDINGS.)

2 MR. PRICE: YOUR HONOR, PASS THE WITNESS.

3 THE COURT: OKAY. IT'S NOW 1:28. ANY
4 REDIRECT?

5 MS. KREVANS: YES, YOUR HONOR.

6 THE COURT: ALL RIGHT. IT'S 1:28. GO
7 AHEAD, PLEASE.

8 **REDIRECT EXAMINATION**

9 BY MS. KREVANS:

10 Q LET ME START WITH A QUESTION WHERE MR. PRICE
11 ENDED UP.

12 CAN WE PUT BACK UP PLAINTIFF'S EXHIBIT
13 34.

14 AND HE WAS ASKING YOU ABOUT SOMETHING ON,
15 I THINK, PAGE 35 OF THIS EXHIBIT.

16 COULD YOU -- I'M SORRY, 37. COULD YOU
17 TURN TO PAGE -- EXHIBIT 34, PAGE 38?

18 IS THIS THE PAGE THAT HAD THE INFORMATION
19 THAT YOU RELIED UPON, MR. MUSIKA?

20 A YES.

21 Q AND COULD YOU REMIND US SPECIFICALLY WHAT YOU
22 RELIED ON FROM THESE THREE PAGES ABOUT "IPHONE
23 EFFECT ANALYSIS" IN THE SAMSUNG DOCUMENT?

24 MR. PRICE: OBJECT. IT WAS ASKED AND
25 ANSWERED.

1 THE COURT: I'M SORRY. CAN YOU REPEAT
2 THE QUESTION?

3 (WHEREUPON, THE RECORD WAS READ BY THE
4 COURT REPORTER.)

5 THE COURT: OVERRULED.

6 GO AHEAD, PLEASE.

7 THE WITNESS: YES. AS I WAS INDICATING,
8 I LOOKED AT THIS REPORT ANALYSIS BY SAMSUNG FOR
9 PURPOSES OF SUPPORT FOR DEMAND, WAS THERE DEMAND?

10 I'M NOT HERE TO TALK ABOUT COPYING.

11 AND HERE SPECIFICALLY, FACTORS THAT COULD
12 MAKE AN IPHONE A SUCCESS, EASY, INTUITIVE, USER
13 INTERFACE ON ALL CLASSES, AND THEN MORE
14 SPECIFICALLY, BEAUTIFUL DESIGN.

15 SO I WAS LOOKING FOR AND FOUND EVIDENCE
16 OF THE DESIGN ELEMENT BEING A FUNCTION OR A FACTOR
17 IN THE DEMAND.

18 BY MS. KREVANS:

19 Q IN SAMSUNG'S OWN WORDS?

20 A YES.

21 Q OKAY. LET'S LOOK AT ANOTHER THING THAT
22 MR. PRICE ASKED YOU ABOUT.

23 COULD WE PUT UP SAMSUNG'S SLIDE SDX
24 3909.053, PLEASE, MR. LEE.

25 DO YOU RECALL MR. PRICE ASKED YOU A

1 NUMBER OF QUESTIONS ABOUT CAPTIVATE SALES AND
2 APPLE'S CAPACITY ABOUT THIS SLIDE IN ASKING YOU
3 WHETHER THIS WAS \$199 MILLION OUT OF YOUR LOST
4 PROFITS CALCULATION?

5 A RIGHT.

6 Q DO THE NUMBERS THAT MR. PRICE HAS SET FORTH ON
7 THIS SLIDE ADD UP TO \$199 MILLION?

8 A NO. THAT'S -- I MEAN, JUST OFF THE TOP OF MY
9 HEAD, 30, 60, 80, 115, 120, 120,000. 120 MILLION.
10 SORRY.

11 Q OKAY. LET'S GO BACK TO A QUESTION THAT
12 MR. PRICE ASKED YOU EARLIER BEFORE LUNCH.

13 DO YOU RECALL -- I THINK THIS WAS BEFORE
14 LUNCH. DO YOU RECALL HE WAS ASKING YOU ABOUT WHAT
15 WOULD HAPPEN IF THE JURY FOUND THAT SOME PATENTS
16 WERE, AND TRADE DRESS WERE NOT INFRINGED, BUT OTHER
17 PATENTS WERE INFRINGED?

18 A YES.

19 Q AND HE ASKED YOU WHETHER YOU HAD GIVEN THE
20 JURORS INFORMATION THAT WOULD LET THEM FIGURE OUT
21 WHAT WOULD BE THE APPROPRIATE ROYALTIES OR DAMAGES
22 IN THAT SITUATION.

23 YOU SAID THAT YOU HAD GIVEN THEM THE
24 TOOLS?

25 A YES, THAT'S CORRECT.

1 Q AND WHAT TOOLS DID YOU GIVE THE JURORS THAT
2 WOULD LET THEM FIGURE OUT ROYALTIES ON A
3 PATENT-BY-PATENT BASIS?

4 A WELL, I'M GOING TO GIVE A BROAD -- A GENERAL
5 ANSWER AND THE COURT CAN ASK ME TO DO IT IN A MORE
6 DETAILED FASHION.

7 BUT I WOULD POINT THE JURORS TO PX 25A-1
8 BECAUSE I THINK THE INFORMATION THAT'S CONTAINED IN
9 THERE, WE WENT THROUGH IN SUMMARY, WOULD PERMIT
10 THEM TO ADJUST DATES AND ADJUST VOLUMES AND ADJUST
11 THEIR DAMAGES APPROPRIATELY BASED ON THE CHANGES
12 THAT HE WAS SUGGESTING.

13 Q COULD YOU SHOW US THE LAST PAGE OF 25A-1,
14 MR. LEE.

15 WHAT IS THE INFORMATION THAT IS SET OUT
16 ON THE LAST PAGE OF EXHIBIT 25A-1?

17 A IT IS A DETAILED SCHEDULE OF,
18 PATENT-BY-PATENT, THE ULTIMATE REASONABLE ROYALTY
19 RATES. SO ON THE LEFT, FOR EXAMPLE, THE '381
20 PATENT, ITS ANALYSIS IN BETWEEN WOULD GO ALL THE
21 WAY TO THE RIGHT, THE ROYALTY IS \$2.02 FOR THAT.

22 AND SO FORTH DOWN TO WHERE WE GET TO THE
23 DESIGN AS I HAD INDICATED.

24 Q IF -- IF THE JURORS WANTED TO CALCULATE JUST A
25 ROYALTY NUMBER FOR ANY OF THE PATENTS THAT ARE SET

1 OUT ON THIS CHART, WOULD THEY NEED INFORMATION
2 BEYOND WHAT IS ON THIS PAGE?

3 A WELL, THEY'D NEED UNITS, YES.

4 Q AND WHERE WOULD THEY FIND THAT?

5 A THEY WOULD FIND THAT -- THEY CAN DETERMINE
6 WHICH PRODUCTS WERE ACCUSED OF INFRINGING WHICH
7 PATENT UP ON PAGE 3 OF 16 IN 25A.

8 Q OKAY. SO SAME EXHIBIT, PAGE 3?

9 A YES.

10 Q OKAY. AND THIS IS A CHART THAT TELLS US WHAT?

11 A IT TELLS US, PRODUCT-BY-PRODUCT, WHICH PATENTS
12 ARE ACCUSED. SO LET'S JUST USE AN EXAMPLE,
13 CAPTIVATE. IF WE CAN BLOW THAT CAPTIVATE UP. WE
14 CAN SEE THE CAPTIVATE IS ACCUSED OF INFRINGING THE
15 '163, THE '381, AND THE '915. SO YOU WOULD
16 MULTIPLY THE RATE TIMES -- FOR EACH OF THOSE
17 UTILITY PATENTS.

18 IF WE MOVED ACROSS, WE WOULD SEE THAT
19 IT'S NOT ACCUSED OF INFRINGING ANY OF THE DESIGN
20 PATENTS EXCEPT THE '305. AND IF YOU MOVE FURTHER
21 ACROSS, IT'S ACCUSED OF INFRINGING THREE OF THE
22 TRADE DRESS.

23 BUT AS WE REMEMBER FROM THE, FROM THE
24 ROYALTY RATE, WHETHER IT'S ONE OR ALL OF THEM, THAT
25 WOULD BE \$24.

1 SO THEY KNOW, ONCE IT'S INFRINGING ONE OF
2 THOSE EITHER DESIGN PATENTS OR TRADE DRESS, IT'S
3 \$24, AND THEN THE UNIT TIMES EACH OF THE UTILITY
4 PATENTS THAT ARE INFRINGED.

5 Q AND WHERE IN THE INFORMATION THAT YOU'VE GIVEN
6 THE JURY WOULD THEY FIND THE NUMBER OF UNITS SOLD?

7 A THE NUMBER OF UNITS SOLD, WE WOULD GO UP TO
8 THE JOINT EXHIBIT, 1500, AND REMEMBER WE KIND OF
9 STARTED THERE. THAT'S THAT DETAILED -- THERE WE
10 GO -- AND THERE'S PRODUCT-BY-PRODUCT AND
11 PERIOD-BY-PERIOD BOTH IN UNITS AND IN DOLLARS.

12 MS. KREVANS: NOTHING FURTHER, YOUR
13 HONOR.

14 THE COURT: OKAY. THE TIME IS 1:34. ANY
15 RE CROSS?

16 **RE CROSS - EXAMINATION**

17 BY MR. PRICE:

18 Q SIR, I HEARD YOU SAY SOMETHING ABOUT \$24, AND
19 THAT PART OF YOUR CALCULATION ASSUMES THAT THERE
20 HAS BEEN INFRINGEMENT OF A DESIGN PATENT FOR TRADE
21 DRESS.

22 A ONE OR MORE, YES.

23 Q OKAY. SO IF WE'RE TALKING ABOUT JUST THE, FOR
24 EXAMPLE, THE '381 PATENT, YOU WOULDN'T BE USING
25 THAT NUMBER?

1 A NO, YOU WOULD NOT.

2 Q AND YOU SAID THAT YOU COULD GO FROM YOUR
3 ROYALTY, ASSUMING IT'S CORRECT, LOOKING AT THE
4 GRAPH AND THEN LOOKING AT 1500; IS THAT RIGHT?

5 A YES.

6 Q WELL, IS IT TRUE THAT -- FOR THE CAPTIVATE
7 HERE, FOR EXAMPLE, HAVE YOU MADE A FINDING THAT ALL
8 OF THE CAPTIVATE, OR YOU'RE ASSUMING THAT ALL OF
9 THE CAPTIVATE PHONES INFRINGE A CERTAIN CLAIM, A
10 CERTAIN PATENT?

11 A WELL, DEPENDS ON THE TIMING OF THE PATENT
12 AGAIN.

13 Q AND WHEN YOU LOOK AT THESE NUMBERS ON 1500, I
14 MEAN, THERE'S A CERTAIN TIMEFRAME, RIGHT, YEAH,
15 THAT YOU HAVE TO LOOK AT TO SEE WHETHER OR NOT
16 SOMETHING INFRINGES THE PATENT; RIGHT?

17 A ABSOLUTELY RIGHT.

18 Q AND HAVE YOU DONE THAT ON 1500?

19 A I'M SORRY. HAVE I DONE WHAT ON 1500?

20 Q IDENTIFIED WHICH UNITS INFRINGE AND WHICH
21 DON'T?

22 A ALL THESE UNITS INFRINGE.

23 Q OKAY. SO YOU'RE SAYING --

24 A THESE ARE ALL ACCUSED -- THIS IS EQUAL TO THE
25 22 MILLION UNITS OF THE ACCUSED DEVICES AND THE \$8

1 BILLION. SO EVERY UNIT ON HERE IS INFRINGING.

2 Q OKAY. SO YOUR TESTIMONY IS THAT IF YOU LOOK
3 AT 1500, EVERY UNIT ON HERE IS INFRINGING AND ALL
4 YOU HAVE TO DO IS ADD THESE UP? IS THAT WHAT
5 YOU'RE SAYING?

6 A ADD WHAT UP?

7 Q WELL, I ASSUME YOU'RE TALKING ABOUT ADDING UP
8 UNITS. WHERE IT SAYS UNITS -- FOR EXAMPLE, UNDER
9 CAPTIVATE, IT HAS UNITS. DO YOU SEE THAT?

10 A I DO.

11 Q AND YOU'RE SAYING YOU JUST HAVE TO ADD THOSE
12 UNITS UP AND THEY'RE ALL INFRINGING?

13 A THEY ARE ALL INFRINGING --

14 Q ALLEGEDLY?

15 A I'M SORRY?

16 Q I'M SORRY. APPLE'S CLAIMED THEY INFRINGE?

17 A YOU TRAILED OFF.

18 Q THE IPAD -- YOU'RE ASSUMING THAT APPLE ALLEGES
19 THAT ALL OF THESE UNITS INFRINGE?

20 A ONE OR MORE OF THE PATENTS OR TRADE DRESS,
21 YES.

22 MR. PRICE: JUST ONE SECOND.

23 (PAUSE IN PROCEEDINGS.)

24 BY MR. PRICE:

25 Q AND IS IT YOUR UNDERSTANDING THAT FOR THESE

1 PARTICULAR PATENTS, THAT THERE ARE DIFFERENT NOTICE
2 DATES FROM WHICH DAMAGES RUN?

3 A YES.

4 Q AND IS THAT REFLECTED ON THIS CHART, 1500, THE
5 DIFFERENT NOTICE DATES?

6 A NO.

7 Q AND WOULDN'T YOU HAVE TO APPLY THAT TO FIGURE
8 OUT WHAT THE DAMAGES SHOULD ACTUALLY BE?

9 A WELL, YOU'RE ASSUMING THAT THERE ARE DIFFERENT
10 NOTICE DATES.

11 Q AND WERE YOU ASKED -- THIS IS ANOTHER FACT YOU
12 WERE ASKED TO ASSUME, THAT THERE'S ONLY ONE NOTICE
13 DATE?

14 A I'M -- THAT'S A LEGAL DETERMINATION AS TO WHAT
15 THE NOTICE DATE IS.

16 BUT THESE DAMAGES ARE BASED ON A SPECIFIC
17 NOTICE DATE, YES.

18 Q OKAY. WHAT DAMAGES -- WHAT NOTICE DATE ARE
19 THESE BASED ON?

20 A THESE ARE BASED ON -- FOR THE TRADE DRESS, IT
21 WOULD BE AT THE TIME THAT THE TRADE DRESS -- FOR
22 THE UNREGISTERED TRADE DRESS, I'M SORRY, AT THE
23 TIME THE PRODUCTS WERE SOLD SINCE THE UNREGISTERED
24 TRADE DRESS WAS IN THE MARKET PRIOR TO THE LAUNCH
25 OF THE ACCUSED PRODUCTS. SO THOSE WOULD BE FOR THE

1 ENTIRE PERIOD.

2 FOR ALL OTHER DEVICES THAT ARE IN HERE,
3 IT'S THE AUGUST 11TH OF 2010, I THINK -- I'D HAVE
4 TO GO RESEARCH, BUT I THINK IT'S AUGUST 11TH, 2010
5 IS THE NOTICE PERIOD.

6 Q AND THAT'S REFLECTED ON YOUR CHART HOW?

7 A IT'S REFLECTED IN HERE SOMEWHERE. THAT'S THE
8 DATE, I BELIEVE, AT WHICH THE FIRST MEETING BETWEEN
9 APPLE AND SAMSUNG TOOK PLACE WHERE APPLE NOTIFIED
10 SAMSUNG OF THEIR COMPLAINT.

11 Q AND IF WE COULD LOOK AT -- YOU WERE SHOWN PAGE
12 34.38, PLAINTIFF'S EXHIBIT, WHERE YOU'RE TALKING
13 ABOUT DEMAND.

14 AND I THINK THIS WAS BLOWN UP, SUCCESS
15 FACTORS FOR THE IPOD -- I'M SORRY -- FACTORS THAT
16 COULD MAKE IPHONE A SUCCESS.

17 DO YOU SEE THAT?

18 A YES.

19 Q AND DO YOU SEE HOW, WHERE IT TALKS ABOUT THE
20 INTUITIVE U/I; RIGHT?

21 A YES.

22 Q AND IT SAYS BEAUTIFUL DESIGN?

23 A YES.

24 Q AND THEN IT SAYS SEAMLESS INTEGRATION OF
25 HARDWARE. AGAIN, HARDWARE IS NOT THE SAME AS

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

2 A I DON'T KNOW.

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

11 A IT'S LISTED SEPARATELY, YES.

12 Q SO THEY'RE TALKING ABOUT DIFFERENT THINGS?

13 A I DON'T KNOW.

14 (PAUSE IN PROCEEDINGS.)

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

17 THE WITNESS: THANK YOU.

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

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

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

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

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

4 **FURTHER REDIRECT EXAMINATION**

5 BY MS. KREVANS:

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

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

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

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

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

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

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

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

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

7 MS. KREVANS: THANK YOU VERY MUCH.

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

10 MR. PRICE: NO, YOUR HONOR.

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

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

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

17 THE WITNESS: THANK YOU, YOUR HONOR.

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

24 THE COURT: OKAY. ALL RIGHT.

25 SO LADIES AND GENTLEMEN OF THE JURY, WE

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

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

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

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

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

12 GO AHEAD.

13 MR. ZELLER: THANK YOU, YOUR HONOR.

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

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

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

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

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

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

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

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

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

19 EXCUSE ME.

20 THE COURT: OKAY.

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

23 THE COURT: ALL RIGHT.

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

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

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

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

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

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

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

23 THE COURT: UNDERSTOOD.

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

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

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

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

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

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

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

21 BUT --

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 APPLE DID, OF COURSE, OFFER VARIOUS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 COURSE, IS AN INTEGRAL PART OF THE GORHAM STANDARD
2 AS FURTHER ARTICULATED BY EGYPTIAN GODDESS, AND
3 AGAIN, THIS IS AN ADMISSION BY HER THAT SHE DID NOT
4 DO SO.

5 I'LL TALK A LITTLE BIT MORE ABOUT
6 DILUTION IN A MOMENT, BUT DR. WINER, FOR EXAMPLE,
7 ACKNOWLEDGED THAT THERE WAS NO EVIDENCE OF
8 DILUTION.

9 I MEAN, EVEN THOUGH WHAT APPLE WOULD
10 ARGUE IS THAT THE STANDARD IS LIKELIHOOD OF
11 DILUTION, THE FACT IS THAT THESE PHONES HAVE NOW
12 BEEN IN THE MARKET, THESE TABLETS, FOR A
13 CONSIDERABLE PERIOD OF TIME. IF APPLE CANNOT
14 POINT, AT THIS STAGE, MONTHS AND YEARS LATER TO ANY
15 ACTUAL EVIDENCE OF LOSS, DILUTION, BLURRING AND THE
16 LIKE, IT IS OBVIOUSLY UNLIKELY AT THIS POINT. THAT
17 IS THE ONLY ARGUMENT THEY HAVE, FRANKLY, ON
18 DILUTION.

19 I WOULD FURTHER SAY, YOUR HONOR, WITH
20 RESPECT TO THE TRADE DRESS DILUTION ARGUMENTS --
21 ACTUALLY, LET ME STEP BACK AND TALK ABOUT THE
22 INFRINGEMENT ARGUMENT THAT APPLE HAS MADE, WHICH
23 IS, OF COURSE, AT THIS POINT ONLY LIMITED TO THE,
24 TO AN ACCUSATION AGAINST THE GALAXY TAB 10.1.

25 AND ALSO, THIS WOULD APPLY EQUALLY TO

1 DILUTION.

2 BUT LET ME START WITH FUNCTIONALITY, YOUR
3 HONOR, WHICH IS THAT APPLE BEARS THE BURDEN OF
4 PROVING, WITH RESPECT TO THE UNREGISTERED TRADE
5 DRESS, THAT THAT TRADE DRESS IS NOT FUNCTIONAL.

6 IT HAS NOT DONE SO. IT OFFERED NO
7 EVIDENCE TO SUBSTANTIATE THAT.

8 DR. BRESSLER ACKNOWLEDGED HE APPLIED A
9 STANDARD FOR NON-FUNCTIONALITY THAT WAS, NUMBER
10 ONE, INCOMPLETE; AND, NUMBER TWO, WRONG.

11 WHAT I WOULD ALSO SAY IN THIS REGARD,
12 YOUR HONOR, IS THAT WITH RESPECT TO TRADE DRESS --
13 AND THIS IS FROM LEATHERMAN, THE NINTH CIRCUIT
14 DECISION IN LEATHERMAN, IT SAYS, "FOR AN OVERALL
15 PRODUCT CONFIGURATION TO BE RECOGNIZED AS A
16 TRADEMARK, THE ENTIRE DESIGN MUST BE
17 NON-FUNCTIONAL."

18 THAT'S WHAT THEY HAVE TO PROVE. YOU
19 CAN'T JUST SIMPLY PICK AND CHOOSE AMONG THIS
20 PRODUCT CONFIGURATION THAT THEY'RE CLAIMING AND
21 THEN JUST SORT OF WAVE THEIR HAND AND SAY IT'S NOT
22 FUNCTIONAL.

23 THEY MUST PROVE THAT THAT ENTIRE DESIGN
24 IS NOT FUNCTIONAL. MR. BRESSLER ADMITTED THAT
25 PORTIONS OF THAT DESIGN AREN'T THAT FUNCTIONAL.

1 THAT, IN ITSELF, DEFEATS APPLE'S ABILITY
2 TO CARRY FORWARD THAT CLAIM.

3 AND THAT APPLIES EQUALLY TO DILUTION AS
4 WELL, BECAUSE AS THE COURT IS AWARE, WITH RESPECT
5 TO ITS UNREGISTERED TRADE DRESS, APPLE BEARS THE
6 BURDEN OF PROVING THAT BOTH WITH RESPECT TO THE,
7 THE INFRINGEMENT CLAIM, AS WELL AS THE DILUTION
8 CLAIM.

9 THEN, AS THE COURT IS ALSO AWARE WITH
10 RESPECT TO THE DILUTION CLAIM, ALL THAT THAT'S --
11 YOU KNOW, THAT ALSO NOW INCLUDES THE PHONES.

12 AND WE DON'T BELIEVE THAT THERE'S BEEN
13 ANY KIND OF EVIDENCE SHOWING THAT THERE'S A
14 LIKELIHOOD OF DILUTION AND, SIMILARITY, FOR
15 TRADEMARK INFRINGEMENT, NO EVIDENCE OF LIKELIHOOD
16 OF CONFUSION.

17 IN FACT, AGAIN, APPLE'S OWN EXPERTS
18 ACKNOWLEDGED THAT BY THE TIME PEOPLE ACTUALLY
19 COMPLETE THE PURCHASING PROCESS, BASED ON THE
20 INFORMATION THAT THEY HAVE AVAILABLE TO THEM, THEY
21 KNOW WHAT PHONE THEY ARE BUYING.

22 APPLE, OF COURSE, RECOGNIZING THAT THAT
23 IS FATAL TO THEIR CLAIMS, HAS TRIED TO ARGUE THAT
24 THERE'S POST-SALE CONFUSION, AND THAT'S REALLY ALL
25 THAT THEY'RE LEFT WITH.

1 BUT, NUMBER ONE, THAT IS NOT A THEORY
2 THAT WAS ASSERTED TIMELY IN THIS CASE.

3 NUMBER TWO, YOUR HONOR, COURTS HAVE MADE
4 VERY CLEAR THAT POST-SALE CONFUSION IS NOT PROPERLY
5 AVAILABLE IN INSTANCES WHERE PRODUCT CONFIGURATION
6 IS THE TRADE DRESS CLAIM, AND THAT MAKES SENSE,
7 YOUR HONOR, BECAUSE OTHERWISE WHAT YOU'RE SAYING IS
8 THAT A, A -- ONE COMPETITOR HAS AN EXCLUSIVE
9 MONOPOLISTIC RIGHT TO THE APPEARANCE OF A PRODUCT
10 FROM A DISTANCE, WHICH REALLY MAKES ABSOLUTELY NO
11 SENSE UNLESS WHAT YOU'RE TALKING ABOUT ARE OUTRIGHT
12 COUNTERFEITING CASES WHERE SOMETIMES COURTS HAVE
13 RECOGNIZED AN EXCEPTION.

14 BUT THE COURT WILL RECALL THAT WE HAD
15 EXTENSIVE BRIEFING ON THIS POINT, BUT PRODUCT
16 CONFIGURATION, AS IT'S BEEN ARTICULATED BY THE
17 SUPREME COURT AND THE NINTH CIRCUIT AND OTHER
18 COURTS OF APPEALS, IS A RED FLAG BECAUSE IT IS
19 DANGEROUS TO COMPETITION.

20 AND IT IS DANGEROUS TO COMPETITION
21 BECAUSE COMPETITORS, IF THEY'RE ALLOWED TO
22 MONOPOLIZE A PRODUCT FEATURE THAT HAS SOME
23 UTILITARIAN ADVANTAGES, THAT CAN HARM COMPETITION.

24 AND IT DOES NOT ADVANCE THE PURPOSES OF
25 THE LANHAM ACT IN DOING SO. THE LANHAM ACT IS

1 SUPPOSED TO PROTECT SOURCE IDENTIFYING INFORMATION.
2 IT DOES NOT PROTECT IDEAS. IT DOES NOT PROTECT
3 CONCEPTS. IT DOES NOT PROTECT FUNCTIONAL OR
4 UTILITARIAN PRODUCT ASPECTS.

5 AND THAT MEANS IN A VERY, VERY BROAD
6 SENSE, BECAUSE, AGAIN, THE PURPOSE OF THE LANHAM
7 ACT IS EXTREMELY LIMITED, AND IN THIS PARTICULAR
8 INSTANCE, THE -- APPLE ACTUALLY MADE NO EFFORT TO
9 SHOW THAT THESE FEATURES OF TRADE DRESS WERE NOT
10 FUNCTIONAL.

11 LITERALLY THE ONLY THING THEY DID IS THEY
12 HAD MR. STRINGER CLAIM IN COMPLETELY CONCLUSORY
13 TERMS THEY'RE COMPLETELY AESTHETIC WHICH IS, A,
14 FALSE AND NOT EVEN CONSISTENT WITH THE TESTIMONY OF
15 MR. BRESSLER AND THE OTHER WITNESSES AND UTTERLY
16 IMPLAUSIBLE, BUT IN NO WAY CAN IT AMOUNT TO THE
17 SUBSTANTIAL EVIDENCE THAT THEY ARE REQUIRED ADDUCE
18 ON THIS ELEMENT.

19 FURTHERMORE, YOUR HONOR, THERE'S NO
20 EVIDENCE THAT THE TRADE DRESS, THE ACTUAL TRADE
21 DRESS THAT'S BEING ASSERTED HERE, IS FAMOUS.

22 THE COURT IS AWARE THAT THEY HAVE COME UP
23 WITH THIS CONSTRUCT, TO PUT IT KINDLY, THIS
24 IMAGINARY CONSTRUCT OF WHAT THEY THINK THEIR TRADE
25 DRESS IS.

1 IT IGNORES, IN FACT, WELL-SETTLED LAW
2 BECAUSE IT'S ACTUALLY THE OVERALL PRODUCT AS IT'S
3 PRESENTED TO THE MARKETPLACE. THEY LITERALLY ARE
4 X'ING OUT AND COVERING UP KEY ASPECTS OF THAT TRADE
5 DRESS BECAUSE THEY, OF COURSE, KNOW THAT IF THEY
6 INCLUDE THAT IN THERE, THE TRADE DRESS CLAIMS, OF
7 COURSE, WOULD BE QUITE OBVIOUSLY FLAWED BECAUSE
8 THESE ARE ELEMENTS THAT SAMSUNG DOES NOT EVEN ARGUE
9 WERE USED.

10 BUT THERE IS NO EVIDENCE THAT THE GENERAL
11 CONSUMING PUBLIC, AS REQUIRED FOR TRADE DRESS FAME,
12 FOR DILUTION LEVEL FAME, IS RECOGNIZED WITHOUT SUCH
13 FEATURES AS THE HOME BUTTON OR THE APPLE LOGO.

14 AND, IN FACT, THE ONLY SURVEY THAT WAS
15 SUBMITTED IN THIS CASE, YOUR HONOR, THE COURT WILL
16 RECALL, THE COURT HAS LIMITED TO ITS PROPER PURPOSE
17 AS ONLY BEING EVIDENCE OF SECONDARY MEANING.

18 SECONDARY MEANING, OF COURSE, IS NOT
19 EQUIVALENT TO FAME. FAME IS A MUCH, MUCH HIGHER
20 STANDARD AND HAS TO REACH THAT HOUSEHOLD
21 RECOGNITION AMONG THE ENTIRE CONSUMING PUBLIC OF
22 THE UNITED STATES.

23 AND THERE IS SIMPLY NO EVIDENCE THAT
24 WOULD ALLOW THAT BURDEN -- TO SHOW THAT THAT BURDEN
25 HAS BEEN MET BY APPLE.

1 I WOULD ALSO ADD, YOUR HONOR, THAT
2 THERE'S NO EVIDENCE OF ANY KIND OF BLURRING IN THIS
3 CASE. AS I MENTIONED EARLIER, DR. WINER ACTUALLY
4 TESTIFIED TO THE OPPOSITE. HE MENTIONED, AND
5 ACKNOWLEDGED, THAT EVEN AFTER ALL THIS TIME, THERE
6 IS -- THERE'S NO INDICATION THAT APPLE HAS LOST ANY
7 SALES, HAD ANY HARM TO ITS REPUTATION, OR OTHERWISE
8 SUFFERED FROM ANY DILUTION AFTER ALL THIS TIME.

9 AND THAT, OF COURSE, IS AN ESSENTIAL
10 ELEMENT. THIS LIKELIHOOD OF DILUTION BY BLURRING
11 IS AN ESSENTIAL ELEMENT OF THE DILUTION CLAIMS AS
12 WELL.

13 TO ELABORATE A BIT MORE ON THE DAMAGES
14 FRONT, YOUR HONOR, AS I MENTIONED, AS A MATTER OF
15 LAW, THESE ARE JUST NOT -- THE DAMAGES FOUNDATION
16 THAT WAS ADDUCED HERE IS NOT SUFFICIENT. IT'S NOT
17 SUFFICIENT FOR DISGORGEMENT OF PROFITS; IT'S NOT
18 SUFFICIENT FOR APPLE LOST PROFITS; IT'S NOT
19 SUFFICIENT FOR REASONABLE ROYALTY.

20 ONE THING I WOULD MENTION, YOUR HONOR, IS
21 THAT THERE'S NO EVIDENCE OF CAUSATION. THERE'S NO
22 EVIDENCE OF CAUSATION WITH RESPECT TO APPLE'S LOST
23 SALES. THERE'S NO EVIDENCE THAT IT HAD -- HAD
24 THERE BEEN -- WELL, ACTUALLY, LET ME TRY AND
25 REPHRASE THIS IN ANOTHER WAY.

1 THERE'S NO EVIDENCE THAT CONSUMERS WOULD
2 NOT HAVE PURCHASED THE ALTERNATIVES IN THE MARKET,
3 NON-INFRINGEMENT ALTERNATIVES OR NON-ACCUSED
4 ALTERNATIVES IN THE MARKET AS OPPOSED TO APPLE
5 PRODUCTS.

6 THAT WAS NOT MENTIONED AT ALL IN THE
7 ANALYSIS THAT YOU HEARD HERE TODAY.

8 IN ADDITION, THERE HAS BEEN NO
9 APPORTIONMENT FOR PURPOSES OF TRADE DRESS. APPLE
10 DOES BEAR THAT BURDEN. APPLE MUST SHOW WHAT AMOUNT
11 OF THE TRADE DRESS PROFITS ARE ATTRIBUTABLE TO THE
12 SO-CALLED INFRINGEMENT, AND PARTICULARLY HERE WHERE
13 WE'RE TALKING ABOUT, AS APPLE IS CLAIMING, A
14 LIMITED SET OF FEATURES THAT MAKE UP ITS TRADE
15 DRESS.

16 IT'S NOT SUFFICIENT TO SIMPLY GO IN AND
17 SAY, "WELL, WE THINK THAT YOU INFRINGE OUR TRADE
18 DRESS BECAUSE OF PARTICULAR ASPECTS OF IT," HAVING
19 A CLEAR FLAT SURFACE, FOR EXAMPLE, AND THEN JUST
20 SAYING, "SO PRESUMPTIVELY WE GET ALL THE PROFITS
21 THAT COME FROM THE SALE OF THOSE PRODUCTS."

22 AND APPLE HAS MADE NO EFFORT AT ALL TO
23 APPORTION THOSE, NOR, UNDER THE DESIGN AND PATENT
24 ACT OR THE DESIGN PATENT DAMAGES PROVISION, HAS
25 APPLE MADE ANY EFFORT TO LIMIT THE PROFITS IT'S

1 THAT WAS OFFERED HERE TODAY IS CONTRARY TO THE
2 RECORD EVIDENCE AS WELL IN ANOTHER WAY, AND ALSO
3 APPLE HAS FAILED TO PROVE THIS AS WELL, WHICH IS
4 THE COURT KNOWS, OF COURSE, THAT THERE ARE NO
5 DAMAGES PRIOR TO NOTICE, AND THE NOTICE THAT'S
6 REQUIRED HERE HAS TO BE FOR THE SPECIFIC
7 INTELLECTUAL PROPERTY AT ISSUE.

8 THE COURT HAS HEARD TESTIMONY THAT DURING
9 THESE DISCUSSIONS, APPLE DID NOT CITE ANY SPECIFIC
10 DESIGN PATENTS, NO SPECIFIC TRADE DRESS, AND SO
11 THERE WAS NO NOTICE PRIOR TO THE TIME OF THE
12 PREFILING -- PRIOR TO THE FILING OF THIS, THIS
13 ACTION.

14 IN ADDITION, THERE'S BEEN NO MARKING.
15 THAT ALSO WAS ADMITTED HERE TODAY.

16 IN OTHER WORDS, THERE'S NO EVIDENCE OF
17 ACTUAL NOTICE, OTHER THAN WITH RESPECT TO THE '381,
18 AS TO ANY OF THE ASSERTED INTELLECTUAL PROPERTY IN
19 THIS CASE. AND YOU HEARD THAT FROM MR. TEKSLER AS
20 A MATTER OF FACT.

21 AND, YET, APPLE'S DAMAGES EXPERT WAS
22 ESSENTIALLY ASKING FOR DAMAGES THAT FLY IN THE FACE
23 OF THOSE UNDISPUTED FACTS.

24 IF I MAY, YOUR HONOR?

25 THE COURT: PLEASE, GO AHEAD. AND I'M

1 GOING TO LET YOU HAVE THE REPLY AS WELL.

2 (DISCUSSION OFF THE RECORD BETWEEN
3 DEFENSE COUNSEL.)

4 MR. ZELLER: THE ONLY OTHER THING, YOUR
5 HONOR, IS WE CAN PROVIDE MORE DETAIL ON THE UTILITY
6 FRONT, BUT I THINK THE COURT SEES THE GIST OF OUR
7 MOTION ON THAT.

8 THE COURT: I DO. I'M GOING TO GIVE YOU
9 AN OPPORTUNITY TO REPLY, SO IF YOU THINK OF
10 ANYTHING ELSE, PLEASE RAISE IT AT THAT TIME.

11 NOW, DOES ANYONE WANT TO RESPOND?

12 MR. MCELHINNY: THANK YOU, YOUR HONOR.

13 FIRST OF ALL, OF COURSE, THE STANDARD FOR
14 A RULE 50 MOTION IS THAT -- IT CAN ONLY BE GRANTED
15 IF NO REASONABLE JURY CAN FIND IN THE NON-MOVING
16 PARTY'S FAVOR.

17 CONFLICTING INTERESTS HAVE TO BE DRAWN,
18 CONFLICTING INFERENCES HAVE TO BE DRAWN IN OUR
19 FAVOR AT THIS POINT IN THE CASE.

20 AT THE OVERALL LEVEL, OBVIOUSLY WE
21 DISAGREE. WE THINK WE HAVE PROVIDED DETAILED,
22 INCREDIBLY DETAILED EVIDENCE OF EACH OF OUR
23 INFRINGEMENT CLAIMS ON A CLAIM-BY CLAIM BASIS.

24 I SAT HERE WHILE BOTH DR. BALAKRISHNAN
25 AND DR. SINGH WENT THROUGH THE PATENT CLAIM

1 LANGUAGE AND APPLIED IT TO THE ACCUSED DEVICES.

2 THE COURT: WHAT EVIDENCE HAVE YOU
3 PROVIDED THAT ACE AND SOME OF THE OTHER SMARTPHONES
4 WERE SOLD IN THE U.S.?

5 MR. MCELHINNY: ON THOSE THREE SPECIFIC
6 PHONES, YOUR HONOR, THE EVIDENCE WAS THAT SAMSUNG'S
7 WITNESS TESTIFIED THAT THEY WERE GLOBAL VERSIONS,
8 SO IT'S -- THE REST OF THE VERSIONS THAT WE'RE
9 TALKING ABOUT WERE DIRECTED TO THE UNITED STATES,
10 BUT THE TESTIMONY IS THAT THOSE, THREE OF THOSE
11 DEVICES WERE GLOBAL VERSIONS.

12 THE COURT: AND WHO WAS THAT,
13 MR. DENISON, OR WHO WAS THAT?

14 MR. MCELHINNY: THAT WAS MR. DENISON WHO
15 DESCRIBED THEM AS GLOBAL VERSIONS.

16 THE IMPLICATION IS THAT THEY WERE SOLD
17 AROUND THE GLOBE, AND THAT WOULD INCLUDE THE
18 UNITED STATES, AT LEAST THAT WOULD BE THE INFERENCE
19 AT THIS POINT UNTIL SOMEBODY COMES IN AND SAYS THAT
20 THEY WEREN'T ON THOSE THREE PARTICULAR PHONES.

21 THE COURT: WAS THE GEM JX 1021 ONE OF
22 YOUR '381 PATENT SLIDES? I THINK THAT IT WAS. I
23 RECALL IT WAS, BUT --

24 MR. MCELHINNY: IT WAS, YOUR HONOR.

25 THE COURT: WHAT'S YOUR EVIDENCE OF

1 ACTIVE INDUCEMENT BY SEC?

2 MR. MCELHINNY: ON ACTIVE INDUCEMENT, THE
3 TESTIMONY, AT LEAST TO DATE, IS THAT SEC SELLS
4 PHONES DIRECTLY -- WELL, FIRST OF ALL, WHAT WE GOT
5 THIS MORNING WERE THE ADMISSIONS THAT SEC WAS AWARE
6 OF THE PATENTS. THEY KNEW ABOUT THE UTILITY
7 PATENTS. THEY KNEW ABOUT THE DESIGN PATENTS. THEY
8 CHOSE -- THE TESTIMONY IS THEY CHOSE NOT TO PAY ANY
9 ATTENTION TO THE DESIGN PATENTS BECAUSE THEY
10 THOUGHT THEIR PHONES DIDN'T LOOK THE SAME. BUT THE
11 TESTIMONY WAS THAT THEY WERE AWARE OF THE DESIGN
12 ISSUES.

13 THERE WAS TESTIMONY ALSO FROM THE
14 LICENSING PERSON THAT THE DESIGN ISSUES HAD BEEN
15 SPECIFICALLY RAISED BY APPLE DURING THE INITIAL
16 CONVERSATIONS.

17 WE KNOW THAT SEC MANUFACTURES THE PHONES.
18 WE KNOW THAT SEC CONTROLS THE DESIGN OF THE PHONES.
19 WE KNOW THAT SEC COPIED.

20 SO THEY MADE THE INTERNAL CORPORATE
21 DECISIONS THAT THE PHONES THEY SOLD WOULD BE
22 KNOCK-OFFS OF THE APPLE PRODUCTS THAT THEY WERE
23 SELLING.

24 WE KNOW THAT SEC CONTROLS THE PRICE AT
25 WHICH THEY'RE SOLD, CONTROLS THE PRICE AT WHICH

1 THEY'RE SOLD TO CARRIERS.

2 AND IN ADDITION TO THAT, DIRECTS ITS
3 SUBSIDIARIES IN THE UNITED STATES TO SELL THESE
4 INFRINGEMENT PRODUCTS, WE WOULD SAY KNOWING, BUT
5 CERTAINLY WILLFULLY BLINDLY OF THE FACT THAT THEIR
6 SALES INFRINGE APPLE'S PATENT.

7 THE COURT: WHAT'S YOUR RESPONSE TO FAME
8 BEING A HIGHER STANDARD THAN SECONDARY MEANING?

9 MR. MCELHINNY: WE THINK -- WE THINK THAT
10 WE HAVE PROVED FAME. THE EVIDENCE THAT WENT IN TO
11 SHOW FAME WERE THE DOCUMENTS, INCLUDING SAMSUNG'S
12 OWN DOCUMENTS. WE JUST LOOKED AT ONE THAT WAS -- I
13 MEAN, WE JUST GOT THROUGH LOOKING AT A DOCUMENT
14 THAT WAS DATED NOVEMBER OF 2007 TALKING ABOUT THE
15 INFLUENCES THAT THE IPHONE WOULD HAVE, HOW IT WOULD
16 CHANGE THE NATURE OF THE SMARTPHONE MARKET,
17 INCLUDING BY ITS BEAUTIFUL DESIGN.

18 SO SAMSUNG'S OWN -- AND THAT WAS JUST ONE
19 OF THE DOCUMENTS. SO WE HAVE A NUMBER OF SAMSUNG
20 DOCUMENTS.

21 IF YOU REMEMBER BACK TO THAT GRAVITY TANK
22 SURVEY THAT THEY DID OF THE POPULATION, THAT SHOWED
23 IT WAS A REVOLUTIONARY DESIGN, THAT PEOPLE
24 IMMEDIATELY IDENTIFIED IT, THAT THEY WERE BUYING
25 IT. WE HAVE THE WORDS "THE WOW EFFECT" THAT WAS

1 INTRODUCTION BY SAMSUNG -- BY APPLE.

2 ALL OF THESE DESIGNS, ALL OF WHICH
3 SAMSUNG'S EVIDENCE, NOT OURS, BUT SAMSUNG'S
4 EVIDENCE ATTRIBUTED DIRECTLY.

5 WE HAVE THE CHAIRMAN AND CHIEF EXECUTIVE
6 OFFICER OF SAMSUNG SAYING THAT THE IPHONE
7 ESTABLISHED THE STANDARD FOR HOW SMARTPHONES HAD TO
8 BE DESIGNED IN THE UNITED STATES. THAT'S SIMPLY
9 ADMISSIONS.

10 IN ADDITION TO THAT, WE HAVE PUT IN,
11 OBVIOUSLY TO THE EXTENT WE WERE PERMITTED TO, WE
12 PUT IN THE AMOUNT OF ADVERTISING THAT APPLE HAD PUT
13 IN.

14 MR. SCHILLER TESTIFIED AT GREAT LENGTH
15 ABOUT WHAT IS UNIQUE ABOUT APPLE'S ADVERTISING IS
16 THIS "PRODUCT AS HERO" APPROACH IN WHICH THE
17 ADVERTISING, BY AND LARGE, IS DIRECTED TO THE TRADE
18 DRESS, THE PHYSICAL DESIGNS, THE BEAUTY OF THE
19 PRODUCTS ITSELF.

20 WE THEN ALSO HAVE A LARGE NUMBER OF
21 ARTICLES, REFERENCES TO MOVIES, REFERENCES TO
22 TELEVISION SHOWS, ALL OF WHICH MAKE THE APPLE
23 PRODUCT IMMEDIATELY IDENTIFIABLE.

24 THE COURT: WHAT'S YOUR RESPONSE TO NO
25 ALLOCATION IN THE DAMAGES BETWEEN ALLEGEDLY

1 INFRINGING OR ACCUSED FEATURES VERSUS
2 NON-INFRINGING PRODUCTS VERSUS NON-INFRINGING --

3 MR. MCELHINNY: I BELIEVE THE ONLY
4 EVIDENCE, THE ONLY CONTRARY EVIDENCE IN THE RECORD
5 THAT I HEARD -- AND YOUR HONOR OBVIOUSLY IS THE
6 JUDGE OF THIS, YOUR HONOR OBVIOUSLY IS THE JUDGE --
7 BUT THE ONLY EVIDENCE I HEARD WAS MR. PRICE'S
8 QUESTION.

9 WE JUST LISTENED TO MR. MUSIKA GO THROUGH
10 HIS SUMMARY AND POINT OUT THAT, AT A MINIMUM, ON
11 THE LAST PAGE A ROYALTY NUMBER IS BROKEN OUT FOR
12 EACH INDIVIDUAL PATENT.

13 IN ADDITION, THERE'S A CHART THAT SETS
14 OUT BY QUARTER, SO IF THERE'S ANY QUESTION ABOUT
15 WHEN INFRINGEMENT BEGAN, THE JURY CAN DETERMINE BY
16 QUARTER WHAT THE NUMBER OF ACCUSED DEVICES, OR
17 INFRINGING DEVICES WOULD BE, AND IT'S A MATTER OF
18 MULTIPLYING THAT AMOUNT AGAINST THE INDIVIDUAL
19 ROYALTY IN THE BACKGROUND FOR THE CALCULATION OF
20 THE ROYALTY THAT HAS BEEN MADE IN EVERY SINGLE
21 CASE.

22 SO MR. MUSIKA'S REPORT IS, AS HE
23 DESCRIBED IT, A MATRIX THAT WOULD PERMIT THE JURY
24 TO COME TO -- TO CALCULATE ANY OF THE THOUSANDS OF
25 PERMUTATIONS OR -- THAT, IN THEORY ARE POSSIBLE

1 HERE DEPENDING ON THE INDIVIDUAL PHONE AND THE
2 PATENT AND THE INDIVIDUAL NUMBERS ARE BROKEN OUT IN
3 EVERY CASE.

4 THE COURT: WHAT'S YOUR RESPONSE TO THE
5 FACT THAT THERE'S, THERE'S THE ASSERTION THAT
6 THERE'S NO NOTICE OF THE TRADE DRESS OR DESIGN
7 PATENTS IN THAT AUGUST 4TH, 2010 MEETING UNTIL THIS
8 LAWSUIT WAS FILED AND UNTIL THE AMENDMENT IN THE
9 SUMMER OF 2011?

10 MR. MCELHINNY: THE -- THE QUESTION, YOU
11 KNOW -- WELL, FIRST OF ALL, WE KNOW AS A MATTER OF
12 LAW THAT ACTUAL NOTICE DOES NOT REQUIRE THE
13 SPECIFIC NAMING OF PRODUCTS THAT ARE ACCUSED.

14 WE ALSO KNOW THAT, UNDER -- FIRST OF ALL,
15 THE COURTS HAVE TOLD US, THE SUPREME COURT HAS TOLD
16 US THAT THE QUESTION OF NOTICE IS A FACT INTENSIVE
17 DETERMINATION THAT TURNS ON THE PARTICULAR FACTS OF
18 EVERY CASE.

19 WE KNOW THAT THE SPECIFIC PATENT NUMBERS
20 ARE NOT REQUIRED IN ORDER TO GIVE ACTUAL NOTICE.
21 THAT'S THE CHICO MANUFACTURING COMPANY, 817 F.SUPP
22 979.

23 WE ALSO KNOW THAT IN THE CASE OF ONGOING
24 RELATIONSHIPS BETWEEN PARTIES THAT ARE IN A
25 CONTRACTUAL RELATIONSHIP, THE NOTICE REQUIREMENTS

1 ARE REDUCED.

2 SO THAT'S THE BACKGROUND.

3 BUT WE HAVE MR. TEKSLER'S TESTIMONY AND
4 WE HAVE HIS -- WELL, WE HAVE -- WE HAVE IT FROM
5 BOTH SIDES, YOUR HONOR.

6 WE PRODUCED MR. TEKSLER, WHO TESTIFIED
7 ABOUT THE DOCUMENT THAT HE PREPARED. HE HAS NOT
8 YET -- BECAUSE OF THE WAY THE CASE HAS BEEN DIVIDED
9 UP, THIS IS PART OF THAT SEPARATION -- HE'S NOT YET
10 BEEN PERMITTED TO TESTIFY ABOUT WHAT HAPPENED AT
11 ANYTHING OTHER THAN THE FIRST MEETING.

12 BUT HE WAS PERMITTED TO TESTIFY ABOUT THE
13 DOCUMENT THAT WAS USED AT THE FIRST MEETING. HE
14 POINTED OUT THAT THERE WAS AN INTENTIONAL CHAPTER
15 TO THE BACKGROUND OF THE DISCUSSION OF THE DESIGN
16 AND TRADE DRESS ISSUES THAT SHOWED THE PHONES NEXT
17 TO EACH OTHER.

18 AND THEN WE HAVE THE TESTIMONY FROM MR.,
19 I WANT TO SAY LEE, THE FIRST PERSON I PLAYED TODAY,
20 WHO WAS ON THE OTHER SIDE OF THOSE DISCUSSIONS WHO
21 TESTIFIED THAT HE WAS THERE, THAT SAMSUNG -- THAT
22 APPLE DID ACCUSE SAMSUNG BOTH OF INFRINGEMENT OF
23 UTILITY PATENTS, BUT ALSO OF COPYING THE DESIGNS OF
24 THEIR PRODUCTS.

25 AND HE TESTIFIED THAT THAT SPECIFICALLY

1 HAPPENED, THAT SAMSUNG LISTENED, BUT IT CHOSE NOT
2 TO DO ANYTHING ABOUT THAT.

3 SO I -- ACTUAL NOTICE IS, I THINK -- ONE,
4 IT'S GOING TO BE SUBJECT TO HOW YOUR HONOR
5 SPECIFICALLY INSTRUCTS THE JURY ULTIMATELY, BUT THE
6 FACTS RIGHT NOW CERTAINLY WOULD SUPPORT A VERDICT
7 IN OUR FAVOR THAT SAMSUNG HAD ABSOLUTE NOTICE GIVEN
8 THOSE FIRST MEETINGS AND THE DOCUMENTS THAT WERE
9 EXCHANGED.

10 THE COURT: ALL RIGHT. MR. ZELLER, WHAT
11 WOULD YOU -- I DON'T AGREE WITH YOU THAT THE GORHAM
12 TEST REQUIRES DECEPTION AT THE TIME OF PURCHASING.
13 I DON'T THINK THAT'S WHAT THE LAW IS.

14 IF I DISAGREE WITH YOU ON THAT, THEN
15 PERSUADE ME WHY A REASONABLE JURY WOULDN'T HAVE A
16 LEGALLY SUFFICIENT EVIDENTIARY BASIS TO FIND FOR
17 APPLE.

18 MR. ZELLER: MAYBE LET ME CLARIFY ONE
19 THING, YOUR HONOR. I DIDN'T SAY AT THE POINT OR
20 TIME OF THE PURCHASE. IT'S IN THE PURCHASING
21 CONTEXT. THE GORHAM STANDARD DOES SAY THAT THE
22 DECEPTION HAS TO BE IN THE PURCHASING CONTEXT SUCH
23 THAT THE ORDINARY OBSERVER THINKS THAT HE OR SHE IS
24 PURCHASING THE DESIGN THINKING IT'S THE OTHER.

25 THE COURT: WELL, I GUESS I JUST DON'T

1 AGREE THAT THAT'S WHAT THE LAW REQUIRES, THAT A
2 PERSON ACTUALLY BE DECEIVED AT THE POINT OF
3 PURCHASE INTO THINKING THAT THEY ARE BUYING AN
4 ALLEGEDLY INFRINGING PRODUCT.

5 MR. ZELLER: I'M NOT --

6 THE COURT: I DON'T THINK THAT'S THE LAW
7 AND I DON'T INTEND TO INSTRUCT THE JURY THAT THAT'S
8 THE LAW.

9 SO IF I DON'T AGREE WITH YOU ON THAT
10 POINT OF THE LAW, PERSUADE ME WHY OTHERWISE THERE'S
11 NOT A LEGALLY SUFFICIENT EVIDENTIARY BASIS FOR A
12 JURY TO RULE IN APPLE'S FAVOR.

13 MR. ZELLER: WELL, I THINK THE SHORT
14 ANSWER IS I'M NOT TRYING TO PERSUADE YOU THAT
15 THAT'S NOT THE LAW.

16 I THINK WHAT I'M SAYING, YOUR HONOR --
17 AND BEAR WITH ME AND I WILL GET THE EXACT
18 LANGUAGE -- BUT WHAT IT SAYS IS -- THIS IS THE
19 GORHAM TEST VERBATIM, "IF, IN THE EYE OF AN
20 ORDINARY OBSERVER, GIVING SUCH ATTENTION AS A
21 PURCHASER USUALLY GIVES TO DESIGNS, ARE
22 SUBSTANTIALLY THE SAME, IF THE RESEMBLANCE IS SUCH
23 AS TO DECEIVE SUCH AN OBSERVER, INDUCING HIM TO
24 PURCHASE ONE SUPPOSING IT TO BE THE OTHER, THE
25 FIRST ONE PATENTED IS INFRINGED BY THE OTHER."

1 THAT'S WHAT I REFER TO WHEN I TALK ABOUT
2 PURCHASING.

3 THE COURT: I HEAR YOU, AND I THINK THERE
4 IS LAW THAT SAYS THAT.

5 BUT I THINK ALL THE SUBSEQUENT LAW SAYS
6 THAT THAT'S NOT THE TEST -- THE TEST IS NOT THAT
7 HIGH, THAT YOU ACTUALLY HAVE TO BE DECEIVED AT THE
8 TIME OF YOUR PURCHASING, THAT YOU HAVE TO BE
9 DECEIVED. I DON'T THINK THAT'S THE LAW.

10 BUT ANYWAY, LET ME GIVE YOU AN
11 OPPORTUNITY TO RESPOND TO ANYTHING YOU WANT AS TO
12 WHAT MR. MCELHINNY STATED, AND IF YOU WANT TO MAKE
13 ANY OTHER NEW POINTS, TO DO SO.

14 MR. ZELLER: YOUR HONOR, I WOULD JUST TO
15 THIS POINT, BECAUSE IT'S OBVIOUSLY AN IMPORTANT ONE
16 FROM OUR PERSPECTIVE. THIS IS ALSO THE EXACT
17 VERBATIM LANGUAGE THAT THE FEDERAL CIRCUIT USED IN
18 EGYPTIAN GODDESS, WHICH IS THE LAST EN BANC
19 DECISION BY THE FEDERAL CIRCUIT ON DESIGN PATENTS.

20 IT SPECIFICALLY QUOTED THAT SAME LANGUAGE
21 THAT I HAVE JUST QUOTED.

22 THE COURT ALSO IS AWARE THAT EVEN -- THAT
23 WAS THE STANDARD THAT THIS COURT APPLIED, THIS
24 EXACT LANGUAGE THIS COURT APPLIED ON THE
25 PRELIMINARY INJUNCTION, AS WELL AS MOST RECENTLY IN

1 ITS ORDER ON CLAIM CONSTRUCTION.

2 SO I, I APOLOGIZE IF I'M -- IF WE'RE
3 TALKING PAST EACH OTHER OR IF I'M MISUNDERSTANDING
4 YOU.

5 BUT WHAT WE'RE ADVOCATING SIMPLY IS THAT
6 THIS GORHAM TEST, THE LANGUAGE THAT I DESCRIBED
7 WHICH WE THINK IS A BINDING LAW --

8 THE COURT: OH, I REMEMBER WE HAD
9 CONVERSATIONS ABOUT THIS VERY LAW AT THE
10 PRELIMINARY INJUNCTION HEARING BACK IN OCTOBER.

11 I HEAR YOU, BUT I DON'T THINK THE TEST IS
12 ACTUAL DECEPTION IS WHAT I'M TRYING TO SAY. I
13 DON'T THINK THAT'S THE REQUIREMENT.

14 MR. ZELLER: AND I THINK WE AGREE ON
15 THAT. WE'RE NOT SAYING THAT APPLE HAS TO ADDUCE
16 EVIDENCE OF BUYERS WHO HAVE BEEN ACTUALLY DECEIVED.

17 NOW, WE DO THINK THAT THAT'S A RELEVANT
18 PIECE OF EVIDENCE.

19 THE COURT: SURE, YEAH.

20 MR. ZELLER: THE FEDERAL CIRCUIT HAS
21 CERTAINLY CONSIDERED THAT.

22 BUT I WANT TO BE VERY CLEAR, YOUR HONOR,
23 BECAUSE WE ARE NOT ADVOCATING THAT THEY NEED TO
24 PROVE ACTUAL CONFUSION, FOR EXAMPLE, OR ACTUAL
25 DECEPTION.

1 BUT THE LACK OF IT IN THE REAL WORLD IS
2 CERTAINLY A PERTINENT CONSIDERATION.

3 BUT REALLY, TO THEN GO A STEP FURTHER,
4 YOUR HONOR, TO PERHAPS PERSUADE YOU ON THIS POINT,
5 WHAT OUR POINT IS ON THE RULE 50 MOTION IS THAT
6 APPLE'S OWN EXPERTS, WHEN THEY CAME IN, DID NOT
7 APPLY THIS STANDARD. THEY DIDN'T APPLY THE, THE
8 GORHAM DECEPTION STANDARD.

9 JUDGE KARE -- EXCUSE ME -- DR. KARE, FOR
10 EXAMPLE, SAID ESSENTIALLY THAT SHE JUST THOUGHT
11 THAT THE OVERALL APPEARANCE WAS SIMILAR. SHE NEVER
12 UTTERED THE WORDS -- SHE NEVER TALKED ABOUT EVEN
13 APPLYING THE GORHAM STANDARD.

14 MR. BRESSLER, IN FACT, EVEN WENT FURTHER.
15 MR. BRESSLER ACKNOWLEDGED THAT HE DID NOT APPLY
16 DECEPTIVE SIMILARITY AS THE STANDARD. HE SAID HE
17 WAS INSTRUCTED BY COUNSEL THAT THAT WAS NOT
18 NECESSARY.

19 AND SO OUR POINT IS THAT UNDER THAT
20 STANDARD ADOPTED BY THIS COURT, THE FEDERAL
21 CIRCUIT, THE SUPREME COURT, THEIR OWN EXPERTS
22 FAILED TO APPLY IT AND THAT IS WHY WE'RE MOVING ON
23 THAT GROUND.

24 THE COURT: OKAY. IS THERE ANYTHING ELSE
25 THAT MR. MCELHINNY SAID THAT YOU WOULD LIKE TO

1 ADDRESS OR ANY OTHER BASIS FOR A RULE 50 MOTION
2 THAT YOU WANT TO STATE?

3 MR. ZELLER: YES, YOUR HONOR.

4 WITH RESPECT TO -- I'LL JUST TAKE THEM IN
5 ORDER.

6 THE COURT: OKAY.

7 MR. ZELLER: WITH RESPECT TO THE GALAXY
8 ACE, THE GALAXY S I9000, AND THE GALAXY S II I9100,
9 MR. DENISON ACTUALLY TESTIFIED TO THE OPPOSITE OF
10 WHAT APPLE'S COUNSEL SAID.

11 MR. DENISON SPECIFICALLY TESTIFIED THAT
12 THOSE MODELS WERE NOT SOLD IN THE UNITED STATES.

13 AND I BELIEVE THIS IS THE CITATION FOR
14 IT, I'LL HAVE TO DOUBLE CHECK, BUT I BELIEVE YOU'LL
15 FIND IT AT PAGES 947 THROUGH 948 AND 961 OF AT
16 LEAST ONE VERSION OF THE TRANSCRIPT.

17 THE COURT: LET ME SEE THAT, PLEASE. WHO
18 HAS THAT?

19 AND WHAT'S YOUR RESPONSE TO THAT,
20 MR. MCELHINNY?

21 MR. MCELHINNY: MY RECOLLECTION, I
22 BELIEVE THAT MR. DENISON SAID THOSE PRODUCTS WERE
23 NOT SOLD IN THE UNITED STATES BY STA, YOUR HONOR.

24 MR. VERHOEVEN: WE'VE GOT IT HERE, YOUR
25 HONOR. WE'LL GET IT.

1 THE COURT: OKAY. THANK YOU.

2 MR. VERHOEVEN: WHAT'S THE PAGE NUMBER,
3 MR. ZELLER?

4 THE COURT: 947 TO 961.

5 MR. ZELLER: 947, 948, AND 961.

6 THE COURT: SO, MR. MCELHINNY, WHO DID HE
7 SAY SOLD THEM, THEN?

8 MR. MCELHINNY: HE SAID THEY WERE THE
9 GLOBAL VERSION, YOUR HONOR, AND HE SAID THAT HIS
10 PARTICULAR COMPANY DIDN'T SELL THEM. THAT'S WHAT
11 THE EVIDENCE IS, I BELIEVE.

12 THE COURT: CAN I SEE THE TRANSCRIPT,
13 PLEASE? JUST HAND THAT TO MR. RIVERA.

14 MR. MCELHINNY: THIS IS MY COPY, YOUR
15 HONOR. I HAVEN'T HAD A CHANCE TO CHECK THIS. I'M
16 JUST GIVING YOU MY COPY OF THE TRANSCRIPT.

17 THE COURT: IT DOESN'T HAVE ANY NOTES ON
18 IT, DOES IT?

19 MR. MCELHINNY: NO, YOUR HONOR, IT
20 DOESN'T.

21 THE COURT: ALL RIGHT.

22 (PAUSE IN PROCEEDINGS.)

23 MR. ZELLER: AND THE OPERATIVE PART OF
24 THIS, YOUR HONOR, THE CONTEXT BEGINS ON PAGE 947,
25 LINE 6, AND HERE HE'S TALKING ABOUT CERTAIN PHONES.

1 AND THEN THE MEAT OF THE TESTIMONY BEGINS
2 AT 947, LINE 25 THROUGH 948, LINE 13.

3 AND HE ACTUALLY ANSWERED A BROADER
4 QUESTION THAN APPLE'S COUNSEL HAS ASSERTED. IN
5 TALKING ABOUT THAT, HE SAYS -- HE'S POINTING TO
6 THE -- COUNSEL IS POINTING HIM TO THESE PARTICULAR
7 THREE PHONES, AND HE SAYS, "THESE ARE THE LAST
8 THREE REMAINING PHONES AT ISSUE BASED ON MY
9 UNDERSTANDING. THESE ARE GLOBAL, GLOBAL DEVICES.

10 "QUESTION: ARE ANY OF THESE PHONES SOLD
11 BY ANY SAMSUNG ENTITY IN THE UNITED STATES?

12 "ANSWER: NO, THEY'RE NOT."

13 AND, OF COURSE, EVEN IF IT WERE ONLY ONE
14 ENTITY, YOUR HONOR, WE'D STILL BE ENTITLED TO
15 JUDGMENT AS TO THAT ENTITY.

16 THE COURT: ALL RIGHT. MR. MCELHINNY,
17 WHAT'S YOUR RESPONSE?

18 MR. MCELHINNY: MAY I POINT OUT THAT
19 THAT -- THAT'S DELFIG, YOUR HONOR. THE QUOTE IS
20 DELFIG.

21 WHAT HE TESTIFIED WAS THEY WERE NOT SOLD
22 BY SAMSUNG ENTITIES IN THE UNITED STATES. "IN THE
23 UNITED STATES" REFERS TO STA AND SEA, YOUR HONOR.

24 MR. ZELLER: THE QUESTION WAS, "ARE ANY
25 OF THESE PHONES SOLD BY ANY SAMSUNG ENTITY IN THE

1 UNITED STATES?

2 "ANSWER: NO, THEY'RE NOT.

3 MR. MCELHINNY: WHICH LEAVES OPEN THE
4 POSSIBILITY THAT THEY'RE GLOBAL SOLD DIRECTLY BY
5 SEC.

6 MR. ZELLER: I WOULD ALSO JUST POINT OUT,
7 OF COURSE, THAT RULE 50 REQUIRES APPLE TO PUT IN
8 EVIDENCE, NOT POSSIBILITY AT THIS POINT.

9 THEY'VE FAILED TO PROVE THAT ANY OF THE
10 NAMED DEFENDANTS IN THIS CASE SOLD ANY OF THESE
11 TELEPHONES AND THESE MOBILE PHONES IN THE
12 UNITED STATES.

13 THAT'S OBVIOUSLY A PREDICATE FOR
14 INFRINGEMENT, DAMAGES. AND THIS IS THE SUM TOTAL
15 OF THE EVIDENCE ON THAT ISSUE.

16 (PAUSE IN PROCEEDINGS.)

17 THE COURT: WHAT'S YOUR UNDERSTANDING OF
18 WHAT "GLOBAL" MEANS?

19 MR. ZELLER: I THINK HE'S JUST SIMPLY
20 SAYING THAT THEY'RE SOLD IN MORE THAN ONE MARKET.

21 BUT HE'S ALSO SAYING THEY'RE NOT SOLD IN
22 THE UNITED STATES. IT'S -- IN OTHER WORDS, IT'S --
23 "GLOBAL" MEANS NOT THE UNITED STATES. THAT'S THE
24 POINT OF IT.

25 THE COURT: DOES THAT MEAN SEC IS SELLING

1 THEM IN KOREA TO THE CARRIERS?

2 MR. ZELLER: NO, IT DOES NOT, YOUR HONOR.

3 IT MEANS THAT THEY'RE NOT BEING SOLD FOR
4 THE U.S. MARKET. THEY'RE NOT DESIGNED FOR THE U.S.
5 MARKET. THEY'RE NOT BEING SOLD HERE.

6 AND IF THEY WERE, YOUR HONOR, APPLE WOULD
7 BE ABLE TO PUT IN EVIDENCE FROM CARRIER SALES OR
8 ANY OTHER NUMBER OF SOURCES SHOWING THAT THEY WERE
9 SOLD, AND WE ARE AT THE CONCLUSION, APPLE HAS
10 RESTED, AND IT DID NOT PUT IN EVIDENCE ON THOSE
11 PHONES.

12 MR. MCELHINNY: AND TO BE CLEAR, YOUR
13 HONOR, EVEN IF YOU GAVE US A CHANCE TO REOPEN, WE
14 WOULD NOT CALL MR. ZELLER TO BE THE WITNESS ON THIS
15 ISSUE. BUT WE HAVE --

16 THE COURT: WELL, I GUESS -- THIS IS MY
17 QUESTION. SO THE FIRST QUESTION IS, "ALL RIGHT.
18 THESE ARE THE PHONES THAT ARE AT ISSUE IN THE CASE.

19 "ANSWER: YES.

20 "QUESTION: WHEN YOU SAY 'MAPPED OUT BY
21 CARRIER,' WHAT DO YOU MEAN BY THAT?

22 "ANSWER: I JUST MEAN THAT, YOU KNOW, FOR
23 INSTANCE, THE GALAXY S CAPTIVATE, WHICH IS RIGHT
24 NEXT TO AT&T, THAT PHONE IS SOLD FROM STA TO AT&T
25 AND NOT TO ANY OTHER CARRIER. SO THAT'S TRUE OF

1 ALL OF THESE.

2 "QUESTION: WE'VE TAKEN A LOOK AT THOSE
3 PHONES, BUT FIRST I'D LIKE TO TURN TO THE NEXT
4 DEMONSTRATIVE EXHIBIT."

5 WHAT'S 3585?

6 MR. ZELLER: IF WE CAN PULL THAT UP,
7 PLEASE, 3585.

8 THE COURT: I HAVE IT RIGHT HERE.

9 MR. ZELLER: WE HAVE IT ON THE SCREEN,
10 YOUR HONOR.

11 THE COURT: OKAY.

12 MR. ZELLER: SO THIS IS, FOR THE RECORD,
13 SDX 3585. AND IT HAS THESE THREE BULLET POINTS,
14 THE THREE PHONES THAT WE'VE BEEN TALKING ABOUT, THE
15 GALAXY S I9000, GALAXY ACE, AND GALAXY S II I9100.

16 (PAUSE IN PROCEEDINGS.)

17 THE COURT: ALL RIGHT. WHAT ELSE DO YOU
18 HAVE, MR. ZELLER?

19 MR. ZELLER: THEN WITH RESPECT TO THE --
20 ANOTHER ISSUE THAT HAS BEEN RAISED WHICH PERTAINS
21 TO THE GEM, AND APPLE'S COUNSEL REPRESENTED THEY
22 WERE DISCLOSED IN CONNECTION WITH THE LOCAL RULE
23 3-1 DISCLOSURES. THAT'S NOT CORRECT.

24 AND, IN FACT, IN THE ROW IDENTIFYING THE
25 CLAIMS THAT APPLE ACCUSED THE GEM OF INFRINGING, IT

1 LISTED N/A FOR THE '381 PATENT. AT NO TIME DID
2 APPLE MOVE TO -- FOR LEAVE TO AMEND ITS
3 INFRINGEMENT CONTENTIONS FOR THE GEM AS REQUIRED BY
4 THE LOCAL RULES.

5 THE COURT: I DON'T REALLY THINK THAT'S A
6 RULE 50 ARGUMENT. IF YOU WANTED TO EXCLUDE THIS,
7 THIS REALLY SHOULD HAVE BEEN AN OBJECTION TO ANY
8 SPECIFIC EVIDENCE. YOU GOT ALL THEIR
9 DEMONSTRATIVES AND ALL THEIR EXHIBITS.

10 MR. ZELLER: WE DID OBJECT, YOUR HONOR.

11 THE COURT: WELL, I OVERRULED IT, SO I
12 DON'T THINK THAT'S A BASIS FOR A RULE 50.

13 BUT GO ON, PLEASE.

14 MR. ZELLER: AND THEN WITH RESPECT TO THE
15 POINTS ABOUT FAME, YOUR HONOR, THE ONLY EVIDENCE
16 THAT APPLE'S COUNSEL POINTED TO DOES NOT ADDRESS
17 THE KEY POINT, WHICH IS CONSUMER RECOGNITION.

18 THE NINTH CIRCUIT HAS BEEN VERY CLEAR
19 THAT THE STANDARD IS A VERY HIGH ONE, AND IT HAS TO
20 BE THAT THE GENERAL CONSUMING PUBLIC RECOGNIZES THE
21 TRADEMARK OR TRADE DRESS. IT HAS TO BE A HOUSEHOLD
22 NAME.

23 THE KINDS OF DOCUMENTS THAT APPLE'S
24 COUNSEL HAS POINTED TO ARE DOCUMENTS BY ENGINEERS
25 EXTOLLING THE ALLEGED VIRTUES OF CERTAIN FEATURES

1 OR SAYING THAT THE IPHONE HAS INFLUENCE.

2 THOSE ARE NOT STATEMENTS DIRECTED TO
3 WHETHER OR NOT THERE IS U.S. CONSUMER RECOGNITION
4 THAT IS SUFFICIENTLY HIGH TO CONSTITUTE FAME, LET
5 ALONE FOR THE KIND OF --

6 THE COURT: THAT ONE I THINK IS A WEAKER
7 ARGUMENT BASED ON EVEN THE DEPOSITION THAT CAME IN
8 TODAY ABOUT THE ADVERTISEMENTS BEING CONFUSED.

9 MR. ZELLER: UM-HUM.

10 THE COURT: THAT THEY THOUGHT A SAMSUNG
11 TABLET ADVERTISEMENT WAS AN IPAD ADVERTISEMENT.
12 THAT WAS A SAMSUNG WITNESS. I'M LESS PERSUADED BY
13 THAT POINT.

14 MR. ZELLER: IF I COULD ADDRESS THAT
15 SPECIFIC ARGUMENT, YOUR HONOR?

16 THE COURT: YEAH, AND THE BEST BUY
17 ARGUMENT. ANYWAY, I THINK THAT'S A WEAKER POINT.

18 I THINK YOU HAVE A STRONGER POINT ON THE
19 ACE AND THE I9000 AND THE I9100, BUT GO AHEAD.

20 MR. ZELLER: IF I COULD ADDRESS THOSE TWO
21 DOCUMENTS BRIEFLY, YOUR HONOR?

22 THE COURT: YEAH.

23 MR. ZELLER: THE DEEP DIVE DOCUMENT THAT
24 WAS ACTUALLY DISCUSSED TODAY IS ABOUT THE TAB 7.0.
25 IT'S NOT AN ACCUSED DEVICE. THE COURT WILL RECALL

1 THAT THAT'S THE ONE THAT A LIMITING INSTRUCTION HAS
2 BEEN GIVEN ON. IT CAN'T BE USED FOR THE TRUTH OF
3 THE MATTER ASSERTED TO EVEN SHOW CONFUSION. IT'S
4 ONLY FOR WILLFULNESS OR KNOWLEDGE.

5 AND ALSO, I WOULD SUBMIT THAT THAT IS --
6 THAT THAT STUDY DOES NOT SHOW THAT THE TRADE DRESS
7 THAT'S BEING ASSERTED HERE IS FAMOUS BECAUSE,
8 AGAIN, YOUR HONOR, APPLE IS NOT ASSERTING, TAKE A
9 LOOK AT OUR PRODUCT OVERALL AND IT'S FAMOUS.

10 WE WOULD PROBABLY HAVE A VERY, VERY
11 DIFFERENT DISCUSSION IF THAT'S WHAT APPLE WAS
12 ACTUALLY ASSERTING.

13 BUT APPLE HAS TAKEN THIS, THIS KIND OF
14 SELF-SERVING DEFINITION OF WHAT IT CLAIMS ITS TRADE
15 DRESS IS IN ORDER TO MAKE IT CLOSER TO SAMSUNG SO
16 IT CAN MAKE INFRINGEMENT AND DILUTION ARGUMENTS.

17 THE COURT: I HEAR YOU, BUT THIS IS JUST
18 LEGAL SUFFICIENCY OF EVIDENCE, AND I THINK THAT HAS
19 BEEN MET. SO I DON'T WANT TO WASTE A LOT OF TIME
20 ON THIS PARTICULAR ISSUE IF WE CAN.

21 MR. ZELLER: I UNDERSTAND. THANK YOU,
22 YOUR HONOR.

23 THE NEXT POINT, THEN, IS TALKING ABOUT
24 THE, THE DAMAGES.

25 AND ONE THING, YOUR HONOR, IF I HAVEN'T

1 MADE THIS CLEAR, IS WE ARE -- WE'RE ALSO MOVING ON
2 THE SAME GROUNDS AGAINST THE DAMAGES THEORIES AS WE
3 DID ON THE DAUBERT. I DON'T NEED TO POINT -- I
4 DON'T NEED, AT THIS POINT, TO ELABORATE FURTHER ON
5 IT. I THINK THAT WOULD BE ENOUGH.

6 BUT ONE THING I WOULD SAY IS THAT --
7 SPECIFICALLY IS THAT THERE'S STILL NO SHOWING THAT
8 THIS -- THAT THE JURY HAS SUFFICIENT INFORMATION TO
9 DETERMINE DAMAGES ON A PRODUCT-BY-PRODUCT BASIS,
10 AND THAT'S REALLY WHAT'S REQUIRED HERE.

11 ALL APPLE'S COUNSEL SAID IS, "WELL, THEY
12 CAN DETERMINE IT PATENT-BY-PATENT."

13 BUT THAT STILL IS NOT SUFFICIENT.

14 IT IS APPLE'S BURDEN TO PROVE THAT EVERY
15 DEVICE THEY'VE ACCUSED OF INFRINGING, THAT EVERY
16 SINGLE ONE, IN FACT, INFRINGES IT.

17 AND TO SIMPLY SAY THAT THEY CAN FIND THAT
18 ONE ACCUSED DEVICE INFRINGES THE '381, FOR EXAMPLE,
19 AND THEREFORE THEY CAN SIMPLY AWARD DAMAGES, OR
20 GIVE THAT KIND OF DAMAGES NUMBER THAT THEIR EXPERT
21 WAS TESTIFYING TO IS NOT SUFFICIENT.

22 THEY MADE NO EFFORT TO BREAK THIS DOWN ON
23 A PRODUCT-BY-PRODUCT BASIS AND THAT'S WHAT THEY'RE
24 REQUIRED TO DO.

25 DAMAGES ARE NOT A LOTTERY. THEY AREN'T

1 JUST ALLOWED TO COME IN HERE AND SAY, "WELL, IF YOU
2 FIND THE '381 IS INFRINGED, GIVE US, YOU KNOW, X
3 HUNDRED MILLIONS OF DOLLARS."

4 IT HAS TO BE BROKEN DOWN ON A
5 PRODUCT-BY-PRODUCT AND PATENT-BY-PATENT BASIS, AND
6 THAT'S WHERE WE THINK THESE DAMAGES CALCULATIONS,
7 IN DIRECT RESPONSE TO APPLE'S COUNSEL'S STATEMENT,
8 FAIL.

9 WE THINK THEY FAIL IN A VARIETY OF OTHER
10 WAYS THAT WERE NOT ADDRESSED BY APPLE. BUT WE JUST
11 DON'T THINK THAT EVEN PATENT-BY-PATENT IS
12 SUFFICIENT UNDER THE LAW.

13 THEN WITH RESPECT TO THE NOTICE ARGUMENT,
14 THE -- NUMBER ONE, APPLE'S COUNSEL ACTUALLY
15 MISSTATED THE LAW. THE LAW IS EXACTLY THE
16 OPPOSITE. THE LAW SPECIFICALLY REQUIRES THAT
17 SPECIFIC RIGHTS BE, BE ASSERTED OR THAT THEY, THAT
18 THEY COME TO THE ATTENTION OF THE DEFENDANT.

19 IT'S NOT ENOUGH JUST TO SAY, "I HAVE SOME
20 GENERAL RIGHTS." IT DOES HAVE TO BE WITH RESPECT
21 TO A SPECIFIC PATENT, AND THERE'S BEEN NO SHOWING
22 OF THAT WITH RESPECT TO ANY PATENT OTHER THAN THE
23 '381, AND THERE'S BEEN NO SHOWING OF THAT AS TO
24 THE, THE TRADE DRESS REGISTRATIONS THAT ARE BEING
25 ASSERTED HERE.

1 AND ALSO, IT -- APPLE'S COUNSEL
2 INCORRECTLY RECITED MR. TEKSLER'S TESTIMONY.

3 MR. TEKSLER, THE COURT WILL RECALL, WAS
4 NOT AT THE MEETINGS. HE HAS ZERO FOUNDATION TO
5 TESTIFY ABOUT WHAT WAS SUPPOSEDLY SAID TO SAMSUNG
6 AT THESE MEETINGS.

7 THE COURT: WELL, HE WASN'T AT THE
8 AUGUST 4TH, 2010 MEETING, BUT HE DID SAY HE HAD
9 SUBSEQUENT CONVERSATIONS WITH SAMSUNG EMPLOYEES AS
10 THE DIRECTOR OF I.P. LICENSING.

11 MR. ZELLER: BUT HE ALSO ACKNOWLEDGED
12 THAT HE NEVER IDENTIFIED SPECIFIC PATENTS OR
13 SPECIFIC RIGHTS IN THOSE OTHER MEETINGS.

14 THE ONLY THING HE HAD -- THE ONLY THING
15 HE WAS TRYING TO ASSERT WAS HE HAD CREATED THIS
16 DOCUMENT FOR THE FIRST MEETING, AND THEY WERE
17 PUTTING THOSE UP AND THEY -- THE COURT WILL RECALL
18 THAT THEY MADE QUITE A SHOWING FOR THE JURY OF
19 THESE PARTICULAR COMPARISONS AND THE LIKE TRYING TO
20 GET ACROSS THE SUPPOSED NOTICE.

21 BUT ON CROSS-EXAMINATION, HE ADMITTED
22 THAT, NUMBER ONE, HE WASN'T AT THAT MEETING; AND
23 NUMBER TWO, AT NO TIME DID HE HAVE ANY KNOWLEDGE
24 THAT SAMSUNG WAS PUT ON NOTICE AS TO THOSE SPECIFIC
25 RIGHTS. AND THAT WAS HIS TESTIMONY.

1 THE COURT: ALL RIGHT. LET ME HEAR --
2 WE'VE BEEN ARGUING THIS RULE 50 MOTION FOR ALMOST
3 AN HOUR. WE STARTED AT 1:42. IT'S NOW 2:38.

4 LET ME HEAR -- I WANT TO HEAR FROM APPLE
5 ON THIS ISSUE OF THE ACE, I9000, I9100. THE ONLY
6 TESTIMONY IS THAT THESE THREE PHONES ARE GLOBAL,
7 THEY'RE GLOBAL DEVICES, BUT THEN "ARE ANY OF THESE
8 PRODUCTS SOLD BY ANY SAMSUNG ENTITY IN THE U.S.?"

9 "NO, THEY'RE NOT."

10 SO TELL ME WHY I SHOULDN'T GRANT
11 SAMSUNG'S RULE 50 MOTION AS TO THOSE THREE
12 PRODUCTS.

13 MR. MCELHINNY: THE QUESTION IS WHETHER
14 OR NOT THIS JURY CAN INFER FROM TESTIMONY THAT THIS
15 WAS A GLOBAL PRODUCT, THAT IT WAS SOLD IN THE
16 UNITED STATES, "GLOBAL" MEANING ACROSS THE GLOBE.

17 AND THAT IS THE TESTIMONY.

18 THE CONTRARY TESTIMONY TO THAT, OR THE
19 QUALIFICATION ON THAT, IS NOT -- IT DOESN'T COVER
20 ALL THE SAMSUNG ENTITIES.

21 THE COURT: WELL, IT SAYS "ANY SAMSUNG
22 ENTITIES."

23 MR. MCELHINNY: "IN THE UNITED STATES,"
24 YOUR HONOR, "ANY SAMSUNG" -- AND THERE ARE ONLY
25 TWO -- ONLY TWO OF THE THREE ENTITIES ARE IN THE

1 UNITED STATES.

2 THE COMPANY THAT SELLS GLOBALLY --

3 THE COURT: OH, I SEE WHAT YOU'RE SAYING.

4 YOU'RE SAYING THE "ANY SAMSUNG ENTITY IN THE U.S."

5 REFERS TO THE TWO U.S. SUBSIDIARIES AND NOT TO --

6 MR. MCELHINNY: IT DOES, BECAUSE THE

7 REST --

8 THE COURT: I SEE.

9 MR. MCELHINNY: BECAUSE THE REST OF THE

10 TESTIMONY, WHICH IS CONSISTENT, IS THAT GLOBAL --

11 THAT NEITHER OF THE TWO U.S. ENTITIES ARE

12 RESPONSIBLE FOR GLOBAL SALES.

13 THE COURT: OH. ALL RIGHT.

14 MR. ZELLER: IF I MAY, YOUR HONOR?

15 THERE'S STILL NO EVIDENCE THAT IT'S BEEN

16 SOLD BY ANYBODY. WE'VE BEEN PARSING AS TO WHETHER

17 IT CONCLUSIVELY SHOWS THAT THEY DID NOT -- THEY'VE

18 NOW ADMITTED THAT AT LEAST IT SHOWS IT AS TO THE

19 TWO U.S. ENTITIES, SO JUDGMENT WOULD HAVE TO BE

20 ENTERED AS TO THOSE TWO ENTITIES FOR THAT REASON

21 ALONE.

22 BUT EVEN IF ONE WERE TO INTERPRET THIS --

23 AND THIS IS, I DON'T THINK IT'S A FAIR

24 INTERPRETATION -- BUT EVEN IF THEY DID INTERPRET

25 IT, IT WAS INTERPRETED TO MEAN THAT THEY WERE ONLY

1 THE U.S. ENTITIES.

2 THE FACT IS THAT APPLE HAS NO EVIDENCE
3 THAT ANY OF THOSE PHONES WERE SOLD BY SEC IN THE
4 UNITED STATES, EITHER.

5 IT WASN'T OUR BURDEN -- IN OTHER WORDS,
6 WHAT I'M TRYING TO SAY IS IT WASN'T OUR BURDEN TO
7 COME FORWARD AND NEGATE THE ELEMENTS. THEY STILL
8 HAVE TO PROVE THEM, EVEN IF THAT DOESN'T NEGATE IT
9 AS TO THAT ONE ENTITY.

10 THE COURT: I HEAR YOU.

11 OKAY. ARE YOU CONCEDEDING, THEN, THAT STA
12 AND OTHER U.S. SUBSIDIARIES DO NOT SELL THE ACE,
13 THE I9000, AND THE I9100 IN THE UNITED STATES?

14 MR. MCELHINNY: I AM CONCEDEDING THAT WE
15 HAVE NOT PUT ON ANY EVIDENCE OF THAT.

16 THE COURT: ALL RIGHT.

17 MR. MCELHINNY: OF THOSE TWO ENTITIES,
18 YOUR HONOR.

19 THE COURT: ALL RIGHT. SO I'M GRANTING
20 THE RULE 50 MOTION AS TO THE -- LET'S GET THE FULL
21 NAME.

22 CAN YOU, MR. ZELLER, GIVE ME THE FULL
23 NAME JUST SO I GET THE PRODUCT NAMES CORRECT,
24 PLEASE.

25 MR. ZELLER: YES, YOUR HONOR.

1 THE COURT: IS IT THE GALAXY ACE?

2 MR. ZELLER: SO THE FIRST ONE IS THE
3 GALAXY ACE, AND THAT IS JX 1030.

4 THE COURT: OKAY.

5 MR. ZELLER: THE SECOND ONE IS THE
6 GALAXY S I9000 --

7 THE COURT: OKAY.

8 MR. ZELLER: -- WHICH IS JX 1007.

9 THE COURT: OKAY.

10 MR. ZELLER: AND THEN THE THIRD ONE IS
11 THE GALAXY S II I9100.

12 THE COURT: AND THAT'S ROMAN NUMERAL II?

13 MR. ZELLER: YEAH, SMALL -- IT'S
14 GALAXY S II, ROMAN NUMERAL II, THEN A SMALL I9100.

15 THE COURT: OKAY. SO THE -- IT'S
16 SMALL -- IT'S LOWER CASE ROMAN NUMERAL I.

17 MR. ZELLER: CORRECT.

18 THE COURT: TWO OF THEM, AND THEN I9100?

19 MR. ZELLER: CORRECT.

20 THE COURT: OKAY.

21 MR. ZELLER: AND THEN THE LAST ONE IS
22 I9100, JX 1032.

23 THE COURT: ALL RIGHT. SO I'M GRANTING
24 SAMSUNG'S RULE 50 MOTION AS TO THESE THREE PRODUCTS
25 AS TO SAMSUNG TELECOMMUNICATIONS AMERICA LLC AND

1 SAMSUNG ELECTRONICS AMERICA, INC., BUT DENYING THE
2 MOTION AS TO SAMSUNG ELECTRONICS COMPANY LIMITED.

3 NOW, I AM NOT GOING TO COMMENT WORD FOR
4 WORD ON EACH OF THE ISSUES THAT HAS BEEN RAISED.
5 IT'S REALLY FOR THE JURY TO MAKE A DETERMINATION
6 AND -- SO ALL I'M GOING TO SAY IS THAT, YOU KNOW, I
7 HAVE REVIEWED ALL OF THE EXHIBITS THAT HAVE BEEN
8 ADMITTED INTO EVIDENCE AND HAVE HEARD ALL THE
9 TESTIMONY THAT'S BEEN GIVEN AND A RULE 50 MOTION
10 JUST REQUIRES THE COURT TO MAKE A DETERMINATION OF
11 WHETHER A REASONABLE JURY WOULD HAVE A LEGALLY
12 SUFFICIENT EVIDENTIARY BASIS TO FIND FOR APPLE, AND
13 IF NOT, AS A MATTER OF LAW, THAT ALL OF THESE
14 CLAIMS SHOULD BE TAKEN AWAY FROM THE PURVIEW OF THE
15 JURY AND JUDGMENT SHOULD BE ENTERED AS A MATTER OF
16 LAW IN FAVOR OF SAMSUNG.

17 THAT'S THE QUESTION THAT'S BEFORE THE
18 COURT, NOT -- IT'S JUST SIMPLY THOSE ISSUES.

19 AND BASED ON WHAT THIS COURT HAS SEEN IN
20 TERMS OF THE ADMITTED EXHIBITS AND THE TESTIMONY,
21 I'M DENYING THE MOTION, WITH THE EXCEPTION OF THOSE
22 THREE PRODUCTS AS TO SAMSUNG TELECOMMUNICATIONS
23 AMERICA, LLC AND SAMSUNG ELECTRONICS AMERICA, INC.
24 BECAUSE I DO FIND THAT A REASONABLE JURY WOULD HAVE
25 A LEGALLY SUFFICIENT EVIDENTIARY BASIS TO FIND FOR

1 APPLE ON THE CLAIMS.

2 SO I'M DENYING THE MOTION FOR JUDGMENT AS
3 A MATTER OF LAW AND WILL LET THE JURY ULTIMATELY
4 DECIDE THESE QUESTIONS.

5 NOW, OBVIOUSLY WE COULD GO THROUGH ALL OF
6 THE EVIDENCE, BUT I DON'T THINK THAT'S NECESSARY
7 AND I DO NOT WANT ANY POTENTIAL TAIN OF THIS JURY
8 IF I GO THROUGH, YOU KNOW, WITNESS BY WITNESS OR
9 DOCUMENT BY DOCUMENT.

10 BUT OBVIOUSLY BASED ON EVERYTHING I'VE
11 SEEN, I THINK THAT THERE IS A LEGALLY SUFFICIENT
12 EVIDENTIARY BASIS FOR A REASONABLE JURY TO MAKE
13 THAT FINDING.

14 SO ANYTHING ELSE ON RULE 50? IT'S NOW
15 2:45, SO WE'VE BEEN GOING A LITTLE OVER AN HOUR ON
16 THE ARGUMENT FOR THIS MOTION.

17 SHOULD WE JUST TAKE OUR BREAK NOW AND
18 THEN START WITH SAMSUNG'S CASE AFTER THE BREAK?
19 THAT MIGHT MAKE SENSE.

20 MR. VERHOEVEN: I THINK IT DOES, YOUR
21 HONOR.

22 THE COURT: OKAY. SO IT'S NOW 2:46.
23 LET'S GO AHEAD AND TAKE A 15 MINUTE BREAK.

24 MR. VERHOEVEN: I JUST WANTED TO APPRISE
25 THE COURT, I'VE INFORMED COUNSEL THAT, BECAUSE

1 WE'VE GONE A LITTLE BIT LONGER THAN WE PROJECTED,
2 WE HAVE ACTUALLY THREE WITNESSES WE WERE GOING TO
3 TAKE OUT OF ORDER, THREE THIRD PARTY WITNESSES, WHO
4 HAVE TO LEAVE TODAY, AND NOW WE'RE NOT SURE WE'RE
5 GOING TO GET ALL THREE ON AND OFF, SO WE'RE --
6 THERE'S ONE THAT'S REALLY CRITICAL THAT HAS TO
7 LEAVE TODAY, AND I'VE INFORMED THEM ABOUT THIS.
8 THAT'S BEN BEDERSON.

9 THE COURT: OKAY.

10 MR. VERHOEVEN: AND WE HAD NOT LISTED
11 HIM -- WE HAD LISTED HIM AS THIRD IN ORDER COMING
12 UP.

13 THE COURT: TELL ME WHO DO YOU WANT TO
14 CALL IN WHAT ORDER?

15 MR. VERHOEVEN: JUST SO THE COURT KNOWS,
16 FIRST PROFESSOR BEN BEDERSON, HE'S THE LAUNCHTILE
17 PRIOR ART WITNESS.

18 THE COURT: OKAY. AND THEN WHO ELSE?

19 MR. VERHOEVEN: AND THEN ADAM BOGUE,
20 DIAMONDTouch PRIOR ART WITNESS.

21 THE COURT: OKAY.

22 MR. VERHOEVEN: AND THEN CLIFF FORLINES,
23 ANOTHER DIAMONDTouch PRIOR ART WITNESS, YOUR HONOR.

24 THE COURT: OKAY.

25 MR. VERHOEVEN: SO I JUST WANT TO LET YOU

1 KNOW WE'VE SWITCHED IT A LITTLE BIT BECAUSE OF THAT
2 ISSUE.

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

4 AND THEN AFTER THAT, YOU'LL GO TO
5 MR. PALTIAN AND MR. ZORN?

6 MR. VERHOEVEN: YES, YOUR HONOR.

7 THE COURT: OKAY. AND I DOUBT WE'LL GET
8 TO MR. WILLIAMS TODAY.

9 MR. VERHOEVEN: I THINK THAT'S PROBABLY
10 RIGHT, YOUR HONOR.

11 THE COURT: ALL RIGHT. SO I'LL GET THE
12 OBJECTIONS ON MR. WILLIAMS OUT TONIGHT, AS WELL AS
13 ALL OF THE OTHER OBJECTIONS TO THE OTHER WITNESSES.

14 I KNOW YOU WANTED TO MAKE A
15 RECONSIDERATION MOTION AS TO MR. YANG. WHY DON'T
16 WE DO THAT AT THE END OF THE DAY. IS THAT OKAY?

17 MR. VERHOEVEN: THAT'S FINE, YOUR HONOR.
18 IT'LL JUST BE VERY SHORT.

19 THE COURT: OKAY. AND THEN I KNOW SOME
20 OTHER MOTIONS WERE FILED REGARDING ABSENT WITNESSES
21 AND STAYS OF SEALING AND WE'LL TRY TO GET THOSE OUT
22 TODAY.

23 MR. VERHOEVEN: THANK YOU, YOUR HONOR.

24 THE COURT: ALL RIGHT. THANK YOU. LET'S
25 TAKE THE BREAK NOW.

1 (WHEREUPON, A RECESS WAS TAKEN.)

2 THE COURT: ALL RIGHT. THANK YOU.

3 PLEASE TAKE A SEAT. LET'S BRING IN OUR JURY.

4 MR. JACOBS: YOUR HONOR, BEFORE THEY COME
5 IN?

6 THE COURT: YES?

7 MR. JACOBS: THERE'S AN EXHIBIT ON THE
8 OTHER MATERIALS, ON THE LIST OF MATERIALS THAT
9 SAMSUNG INTENDS TO USE. IT'S THE -- IT'S SDX
10 3951.011.

11 IT'S A DIFFERENT DEVICE FROM THE DEVICE
12 THAT'S ON THE EXHIBIT LIST FOR THIS -- RELEVANT TO
13 THIS WITNESS. IF IT'S NOT GOING TO BE USED OR
14 COMING IN, THEN WE DON'T NEED TO DEAL WITH IT, BUT
15 I WOULD ASK BEFORE THE JURY COMES IN.

16 THE COURT: 3951, WHAT WERE THE LAST
17 THREE OR FOUR DIGITS?

18 MR. JACOBS: .011.

19 THE COURT: I DON'T HAVE THAT IN MINE.

20 MR. JACOBS: TERRIFIC. MAYBE IT WON'T
21 COME IN.

22 THE COURT: MINE ENDS AT .010.

23 MR. DEFRANCO: WE ACTUALLY HAVE A SLIDE
24 OF THIS THAT WE'RE GOING TO MOVE TO ENTER INTO
25 EVIDENCE, BUT NOT THE DEVICE ITSELF, SO WE DON'T

1 NEED TO WORRY ABOUT IT BECOMING PART OF THE RECORD,
2 THE .011.

3 MR. JACOBS: SAME OBJECTION, YOUR HONOR,
4 BUT I DON'T KNOW THAT I SEE THE SLIDE.

5 THE COURT: I DON'T HAVE THE SLIDE,
6 EITHER.

7 MR. DEFRANCO: THE SLIDE IS 3951.006.
8 IT'S JUST A PHOTOGRAPH OF THE SAME DEVICE.

9 MR. JACOBS: WE WOULD OBJECT, YOUR HONOR.

10 THE COURT: WHAT'S THE OBJECTION?

11 MR. JACOBS: THE DEVICE IS NOT ON THE
12 EXHIBIT LIST. THE PHOTO OF THE DEVICE SHOULD NOT
13 COME IN.

14 THE COURT: IF THE DEVICE IS NOT ON THE
15 LIST, THEN IT'S EXCLUDED.

16 ALL RIGHT. WHAT ELSE?

17 MR. JACOBS: WE'RE READY, YOUR HONOR.

18 THE COURT: OKAY. THEN WOULD YOU PLEASE
19 BRING IN THE JURY?

20 THE CLERK: YES, YOUR HONOR.

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

23 THE COURT: THANK YOU FOR YOUR PATIENCE.
24 SORRY TO MAKE YOU WAIT SO LONG, BUT WE HAD TO TAKE
25 CARE OF SOMETHING.

1 IT'S 3:04. PLEASE CALL YOUR FIRST
2 WITNESS.

3 MR. VERHOEVEN: THANK YOU, YOUR HONOR.
4 SAMSUNG, AS YOUR HONOR KNOW, HAS ALREADY,
5 BY AGREEMENT, CALLED ITS FIRST WITNESS OUT OF
6 ORDER, MR. JUSTIN DENISON. HE WAS OUR FIRST
7 WITNESS.

8 WE HAVE THREE THIRD PARTY WITNESSES, YOUR
9 HONOR, THAT WE'RE GOING TO NEED TO CALL OUT OF
10 ORDER.

11 THE FIRST IS -- AND THIS IS THE ONE WE'RE
12 CALLING RIGHT NOW -- PROFESSOR BEN BEDERSON.

13 MR. DEFRANCO: GOOD AFTERNOON, YOUR
14 HONOR. ED DEFRANCO FOR SAMSUNG. I'LL BE
15 PRESENTING THIS WITNESS.

16 THE COURT: OKAY. GOOD AFTERNOON.

17 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

18 **BENJAMIN BEDERSON,**
19 BEING CALLED AS A WITNESS ON BEHALF OF THE
20 DEFENDANT, HAVING BEEN FIRST DULY SWORN, WAS
21 EXAMINED AND TESTIFIED AS FOLLOWS:

22 THE WITNESS: YES.

23 THE CLERK: PLEASE BE SEATED.

24 THE COURT: IT'S 3:05. GO AHEAD.

25 MR. DEFRANCO: THANK YOU, YOUR HONOR.

DIRECT EXAMINATION

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BY MR. DEFRANCO:

Q GOOD AFTERNOON. WOULD YOU PLEASE STATE YOUR FULL NAME FOR THE RECORD?

A YES. I'M BENJAMIN BORIS BEDERSON.

Q WHAT IS YOUR OCCUPATION?

A I'M A PROFESSOR OF COMPUTER SCIENCE AT THE UNIVERSITY OF MARYLAND.

Q SIR, HOW LONG HAVE YOU BEEN A PROFESSOR AT THE UNIVERSITY OF MARYLAND?

A ABOUT 15 YEARS. I GOT THERE IN 1998.

Q WOULD YOU PLEASE JUST GIVE US A BRIEF DESCRIPTION OF YOUR RESPONSIBILITIES AS A PROFESSOR.

A SURE. I TEACH AND ADVISE GRADUATE STUDENTS, PERFORM RESEARCH, AND HELP THE UNIVERSITY COMMUNITY.

Q AND DR. BEDERSON, GIVE US A BIT ABOUT YOUR EDUCATIONAL BACKGROUND.

A I HAVE THREE DEGREES IN COMPUTER SCIENCE, ENDING WITH A PH.D. THAT I GOT FROM NEW YORK UNIVERSITY IN 1992.

Q APART FROM YOUR WORK AS A PROFESSOR AT THE UNIVERSITY OF MARYLAND, ARE YOU AFFILIATED WITH ANY COMPANIES?

1 A YES. I CO-FOUNDED A COMPANY CALLED ZUMOBI IN
2 SEATTLE THAT I'M CURRENTLY CHIEF SCIENTIST AT. WE
3 MAKE MOBILE APPS AND ADS, ADVERTISEMENTS.

4 Q YOU'RE HERE TO TESTIFY AS A FACT WITNESS. DO
5 YOU UNDERSTAND THAT?

6 A YES.

7 Q AND HAVE YOU IN ANY WAY BEEN COMPENSATED FOR
8 YOUR TIME IN THE CASE?

9 A YES. NOT FOR MY TIME HERE TODAY, BUT FOR MY
10 TIME PREPARING, REVIEWING CODE, ATTENDING MY
11 DEPOSITION. I GET PAID \$450 AN HOUR, MY STANDARD
12 CONSULTING RATE, AND I'VE WORKED ABOUT 100 HOURS SO
13 FAR.

14 Q OKAY. LET'S SHIFT GEARS. LET'S TALK ABOUT
15 YOUR SOFTWARE PROGRAM. IT'S CALLED -- WHAT'S THE
16 NAME OF IT?

17 A LAUNCHTILE.

18 Q IN A SENTENCE OR TWO, PLEASE, DOCTOR, TELL US
19 WHAT LAUNCHTILE IS.

20 A IT'S A MOBILE GRAPHICAL USER INTERFACE
21 APPLICATION TO LET PEOPLE ACCESS A LOT OF
22 INFORMATION ON A MOBILE DEVICE.

23 Q OKAY. WE'RE GOING TO LOOK AT SOME VIDEO OF
24 THE DEVICE ITSELF. LET'S GIVE A LITTLE BIT OF
25 BACKGROUND FIRST. OKAY? ARE YOU WITH ME?

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

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

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

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

16 Q DID YOU SOLVE THOSE PROBLEMS?

17 A I BELIEVE WE DID.

18 Q TELL US HOW YOU DID IT, PLEASE.

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

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

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

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

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

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

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

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

16 Q IS THAT WHAT THIS IS?

17 A YES.

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

20 A YES.

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

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

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

3 A YES, IT IS.

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

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

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

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

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

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

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

1 CALLED A ZONE.

2 YOU ZOOM IN FURTHER TO AN APPLICATION
3 TILE.

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

8 BY MR. DEFRANCO:

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

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

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

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

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

1 LAUNCHTILE. OKAY?

2 A OKAY.

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

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

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

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

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

16 A YES.

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

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

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

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

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

10 THE COURT: ANY OBJECTION?

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

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

19 BUT THE WITNESS --

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

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

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

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

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

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

8 BY MR. DEFRANCO:

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

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

13 THE COURT: THAT'S FINE.

14 BY MR. DEFRANCO:

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

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

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

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

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

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

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

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

20 A YES. WE CALLED IT SEMANTIC ZOOMING.

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

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

25 SEMANTIC ZOOMING IS AS IT GETS LARGER,

1 YOU ADD MORE, OR YOU CAN CHANGE THE VISUAL
2 REPRESENTATION TO SHOW MORE RELATED INFORMATION.

3 Q OKAY. YOU SHOULD HAVE A BINDER OF EXHIBITS IN
4 FRONT OF YOU. THERE'S AN ARTICLE I'D LIKE YOU TO
5 LOOK AT.

6 AND RYAN, IF YOU CAN PUT A SLIDE ON THE
7 SCREEN. IT'S A SNIPPET FROM THE ARTICLE. IT'S
8 3951.002.

9 A SORRY. IS THIS THE BIG BINDER OR LITTLE
10 BINDER?

11 Q IT SHOULD BE IN THE BLACK BINDER RIGHT IN
12 FRONT OF YOU.

13 A OKAY.

14 Q NOW, DOCTOR, CAN YOU LOOK UP ON THE SCREEN FOR
15 A MOMENT AS YOU'RE FLIPPING?

16 A YES, I SEE IT.

17 Q SORRY ABOUT THAT. YOU'RE THERE WITH ME IN THE
18 ARTICLE.

19 A SENTENCE OR TWO, PLEASE, WHAT ARE WE
20 LOOKING AT? WHAT IS THIS ARTICLE?

21 A SO THIS IS A PAPER I WROTE AT ANOTHER
22 CONFERENCE, I BELIEVE IT WAS IN 1994, DESCRIBING MY
23 WORK IN ZOOMABLE USER INTERFACES AT THE TIME.

24 AND IN PARTICULAR, I WAS DESCRIBING THIS
25 HIGHLIGHTED SECTION, SEMANTIC ZOOMING, JUST THE WAY

1 I WAS JUST DESCRIBING IT.

2 Q THE YEAR, I'M SORRY, DID YOU GIVE US THE YEAR?

3 A I THINK IT WAS 1994.

4 Q AND IS THIS SEMANTIC VERSUS GEOMETRIC? THIS
5 IS ABOUT WHICH TYPE?

6 A THIS DESCRIBES SEMANTIC ZOOMING.

7 MR. DEFRANCO: YOUR HONOR, I WOULD MOVE
8 FOR ADMISSION OF SLIDE 3951.002, AND EXHIBIT
9 546.002.

10 MR. JACOBS: YOUR HONOR, I BELIEVE
11 COUNSEL HAS GOT A TYPO IN HIS OUTLINE. IT'S
12 3951.010, WHICH IS AN EXAMPLE OF DX 546. WE HAVE
13 NO OBJECTION TO DX 546, AND IF EXPANSIONS LIKE THIS
14 ARE COMING IN, WE HAVE NO OBJECTION TO THIS,
15 EITHER.

16 MR. DEFRANCO: .010, YOUR HONOR, THAT'S
17 CORRECT.

18 THE COURT: SO I WAS UNCLEAR. YOU HAVE
19 NO OBJECTION TO 3951.010?

20 MR. JACOBS: CORRECT, YOUR HONOR.

21 THE COURT: OKAY. THAT'S ADMITTED.

22 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
23 3951.010, HAVING BEEN PREVIOUSLY MARKED
24 FOR IDENTIFICATION, WAS ADMITTED INTO
25 EVIDENCE.)

1 THE COURT: GO AHEAD, PLEASE. ARE YOU
2 ALSO SEEKING THE ACTUAL UNDERLYING ARTICLE AS WELL?

3 MR. DEFRANCO: YES, YOUR HONOR. THAT'S
4 DX 546.002.

5 THE COURT: I JUST HAVE IT AS 546.
6 THAT'S THE ACTUAL ARTICLE AS WELL.

7 MR. DEFRANCO: YES, YOUR HONOR.

8 THE COURT: AND NO OBJECTION TO THAT AS
9 WELL, RIGHT?

10 MR. JACOBS: CORRECT, YOUR HONOR.

11 THE COURT: THAT'S ADMITTED.

12 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
13 546, HAVING BEEN PREVIOUSLY MARKED FOR
14 IDENTIFICATION, WAS ADMITTED INTO
15 EVIDENCE.)

16 BY MR. DEFRANCO:

17 Q SHIFT GEARS FOR A MOMENT, DOCTOR. WE TALKED
18 ABOUT ZOOMING, MOVING AROUND WHAT YOU CALL THE ZOOM
19 SPACE.

20 WERE THERE OTHER METHODS OF NAVIGATING
21 AROUND THE ZOOM SPACE IN YOUR LAUNCHTILE PROGRAM?

22 A YES. SO WHEN YOU ARE IN THAT MIDDLE ZOOM
23 LEVEL IN THE ZONE VIEW, YOU COULD ALSO WHAT I CALL
24 PAN FROM SIDE TO SIDE, FROM ONE ZONE TO ANOTHER BY
25 USING YOUR FINGERS TO DRAG ON THE SCREEN.

1 Q OKAY. LET'S LOOK AT ANOTHER VIDEO.

2 RYAN, PLEASE, IF I HAVE THE NUMBER RIGHT,
3 SDX 3951.004.

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

6 THE WITNESS: SO WHAT YOU'RE SEEING IN
7 THIS VIDEO IS YOU ZOOMED IN, AS WE DID BEFORE, TO
8 THE ZONE VIEW, AND NOW WE'LL DRAG WITH THE FINGER
9 AND WE'LL GO DIRECTLY TO THE NEXT ZONE IN THE
10 DIRECTION THAT YOU'RE DRAGGING THE FINGER.

11 SO WE WENT LEFT, UP, RIGHT, DOWN, AND WE
12 GO BACK TO WHERE WE STARTED.

13 THEN IF YOU DON'T DRAG YOUR FINGER
14 ENOUGH, IT'LL SNAP BACK TO THE ZONE THAT YOU WERE
15 IN BEFORE. SO, AGAIN, YOU DRAG, YOU DON'T DRAG IT
16 ENOUGH, IT SNAPS BACK.

17 AND SIMILARLY, IF YOU DRAG UP, BUT YOU
18 DON'T DRAG FAR ENOUGH, IT'LL SNAP BACK.

19 BY MR. DEFRANCO:

20 Q THAT SNAP BACK FEATURE, WAS THAT A FEATURE
21 THAT YOU AND YOUR TEAM INTENTIONALLY CODED OR
22 PROGRAMMED TO WORK IN THE LAUNCHTILE PROGRAM?

23 A WELL, YEAH, OF COURSE. IT WAS PART OF THE
24 SOFTWARE OF THE LAUNCHTILE.

25 Q WHY DID YOU AND YOUR TEAM DO THAT?

1 A WELL, THERE'S A FEW ADVANTAGES TO THIS KIND OF
2 INTERACTION. A KEY ONE IS WE DON'T WANT A USER TO
3 GET STUCK BETWEEN ZONES. I MEAN, THE SYSTEM IS
4 DESIGNED TO HAVE THESE NICE ZONE VIEWS. YOU CAN
5 MOVE BETWEEN ZONES, BUT YOU WOULDN'T WANT TO BE
6 STUCK HALFWAY BETWEEN ONE.

7 ANOTHER REASON IS THAT USERS DON'T HAVE
8 HIGH PRECISION WHEN THEY'RE USING THIS KIND OF
9 DEVICE, SO IF YOU REQUIRE THEM TO MOVE THEIR FINGER
10 IN SUCH A WAY THAT THEY GOT PERFECT ALIGNMENT, THAT
11 WOULD BE PRETTY ANNOYING.

12 SO INSTEAD THIS WAY THEY ONLY HAVE TO GET
13 NEARBY AND THEN THE SYSTEM WILL TAKE THEM WHERE
14 THEY WANT TO GO.

15 THE OTHER THING IS THOSE TWO FEATURES
16 TOGETHER ENABLE PEOPLE TO EXPLORE AND THUS FIND NEW
17 CONTENT, AND IT ADDED UP TO BEING FUN.

18 Q LET'S STEP BACK FOR A MOMENT, DOCTOR. DO YOU
19 RECALL GENERALLY ABOUT HOW LONG IT TOOK FOR YOU AND
20 YOUR TEAM TO DEVELOP THE OVERALL LAUNCH TILE
21 PROGRAM?

22 A YES. WE DID IT IN THE SUMMER OF 2004. SO IT
23 WAS APPROXIMATELY THREE MONTHS.

24 Q AND WE LOOKED AT THIS H-P IPAQ DEVICE. WERE
25 YOU ABLE TO VERIFY THE DATE OF THE SOFTWARE THAT'S

1 RUNNING ON THIS DEVICE THAT WAS SHOWN ON THE VIDEO
2 THAT WE PUT UP EARLIER?

3 A YES. IT'S NOVEMBER 9TH, 2004, WHICH I
4 VERIFIED BY LOOKING AT MY COMPUTER WHICH CONTAINED
5 THE CODE THAT ENDED UP ON THAT DEVICE.

6 Q AND WHEN CODE WENT -- WHEN COMPUTER CODE IS
7 ACTUALLY RUNNING ON THE DEVICE, WHAT'S THE GENERAL
8 TERM FOR THAT TYPE OF CODE?

9 A IT'S USUALLY CALLED EXECUTABLE CODE.

10 Q AND THERE'S BEEN TALK IN THIS CASE ABOUT
11 SOURCE CODE. CAN YOU TELL US THE DIFFERENCE
12 BETWEEN EXECUTABLE AND SOURCE CODE?

13 A SO SOURCE CODE IS WHAT A HUMAN PROGRAMMER
14 WRITES. HE GOES THROUGH A PROCESS TO CONVERT IT
15 INTO EXECUTABLE CODE, WHICH IS WHAT A COMPUTER CAN
16 EXECUTE.

17 Q OKAY. AND WAS THERE A LATER VERSION -- WELL,
18 YOU HAVE WHAT TYPE OF CODE FOR THIS DEVICE DATING
19 BACK TO NOVEMBER 9TH, 2004? DO YOU HAVE EXCLUDABLE
20 OR SOURCE CODE?

21 A EXCLUDABLE CODE FOR THAT PARTICULAR VERSION.

22 Q OKAY. WAS THERE A -- DID YOU AND YOUR TEAM
23 DEVELOP A LATER VERSION OF THIS CODE LATER ON IN
24 TIME?

25 A YES, WE DID.

1 Q AND WHAT WAS THE NAME OF THAT CODE?

2 A AT THE TIME WE WERE PLANNING ON INTEGRATING
3 WITH IT WITH ANOTHER TECHNOLOGY CALLED XNAV. WE
4 NEVER DID THAT INTEGRATION, BUT THE NAME STUCK.

5 Q AND WAS THE XNAV SOURCE CODE EVER PROVIDED TO
6 A THIRD PARTY?

7 A YES. AS I MENTIONED, WE HAVE BEEN UNDER
8 CONTRACT WITH MICROSOFT, AND SO WE SUPPLIED THE
9 CODE TO MICROSOFT WHEN WE WERE FINISHED WITH THE
10 DEVELOPMENT.

11 Q AND THE XNAV SOURCE CODE, JUST SO I'M CLEAR,
12 WAS THAT PREPARED BY THE TEAM THAT WAS WORKING
13 UNDER YOU?

14 A YES. SO AMY KARLSON STARTED THE DEVELOPMENT,
15 AARON CLAMAGE ENDED UP FINISHING THE DEVELOPMENT,
16 AND I WAS ADVISING AND WORKING WITH THEM CLOSELY
17 DURING THAT PROCESS.

18 Q ADVISING AND SUPERVISING THAT WORK WHEN YOU
19 WERE AT THE UNIVERSITY OF MARYLAND; IS THAT
20 CORRECT?

21 A YES.

22 Q AND THE ACTUAL XNAV SOURCE CODE THAT'S BEEN
23 USED IN THIS CASE, WHERE DID THAT COME FROM, YOUR
24 OWN COMPUTER?

25 A YES, I HAVE THAT.

1 Q AND DO YOU HAVE PERSONAL KNOWLEDGE OF THE
2 OPERATION OF THAT SOURCE CODE?

3 A YES, I DO.

4 Q IS -- THERE SHOULD BE AN EXHIBIT FOLDER WITH
5 SOME SOURCE CODE PRINTED OUT UP THERE. IT SHOULD
6 BE MARKED DX 528, IF I HAVE IT RIGHT. SOMEBODY
7 WILL CORRECT ME IF I DON'T.

8 A OKAY.

9 Q IT SHOULD BE IN A FOLDER, IN A BROWN FOLDER.

10 A OKAY.

11 Q IS THAT THE XNAV SOURCE CODE?

12 A YES, IT IS.

13 MR. DEFRANCO: YOUR HONOR, WE WOULD MOVE
14 EXHIBIT DX 528 INTO EVIDENCE.

15 THE COURT: ANY OBJECTION?

16 MR. JACOBS: NO OBJECTION.

17 THE COURT: IT'S ADMITTED.

18 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
19 528, HAVING BEEN PREVIOUSLY MARKED FOR
20 IDENTIFICATION, WAS ADMITTED INTO
21 EVIDENCE.)

22 MR. DEFRANCO: THANK YOU.

23 Q LET'S PUT UP A SLIDE THAT'S GOT A SNIPPET OF
24 THAT CODE. I UNDERSTAND IT'S OKAY TO SHOW THIS ON
25 THE PUBLIC SCREEN. IS THAT OKAY?

1 A YES.

2 Q THIS IS, IF I HAVE IT RIGHT AGAIN, SDX
3 3951.007. IS THIS PART OF THE XNAV SOURCE CODE
4 YOU'VE SEEN, DOCTOR?

5 A YES, IT IS.

6 Q AND TELL US A LITTLE BIT ABOUT THE ZONES AND
7 THE WORLD VIEW THAT YOU DESCRIBED EARLIER, HOW
8 THAT'S LAID OUT IN THE CODE JUST IN VERY GENERAL
9 TERMS TO GIVE US AN OVERALL FEEL.

10 DO YOU UNDERSTAND WHAT I'M ASKING?

11 A WITH RESPECT TO THIS CODE OR JUST IN GENERAL?

12 Q WITH RESPECT TO THIS CODE.

13 A ALL RIGHT. SO THIS IS SHOWING THE CREATION OF
14 A PART OF THAT ZOOM SPACE. IN PARTICULAR, IT'S
15 CREATING ONE OF THOSE ZONES, I CALLED THEM QUAD
16 TILES BECAUSE THE CODE -- THE ZONE HAD FOUR TILES,
17 SO WE CALLED THEM QUAD TILES.

18 THIS CODE HERE, I KNOW IT'S HARD TO READ
19 UP THERE, BUT IT WAS REPRESENTING THAT MIDDLE ZONE
20 IN THE MIDDLE COLUMN, SO WE CALLED IT THE MIDDLE
21 MIDDLE QUAD TILE.

22 AND THEN WHAT YOU SEE HERE IS FOUR
23 SECTIONS OF CODE THAT CREATE THE STRUCTURE OF THAT
24 ZONE.

25 SO WE FIRST SEE IT CREATING THE UPPER

1 LEFT MAP TILE, AND THEN THE LOWER LEFT CALENDAR
2 TILE, THEN THE UPPER RIGHT IN BOX TILE, AND THEN
3 THE LOWER RIGHT PHONE TILE.

4 Q NOW, SIR, I'D LIKE TO -- LET ME ASK, SO WE'RE
5 LOOKING NOW AT THE XNAV SOURCE CODE AGAIN; CORRECT?

6 A YES.

7 Q WE TALKED EARLIER ABOUT ZOOMING, SNAP BACK
8 FUNCTIONALITY IN LAUNCHTILE. DO YOU REMEMBER THAT?

9 A YES.

10 Q WERE YOU ABLE TO COMPARE THOSE TWO
11 FUNCTIONALITIES IN THE TWO DIFFERENT PRODUCTS/CODE
12 THAT YOU LOOKED AT?

13 A SO, YES, I -- I HAD THE TWO SYSTEMS,
14 LAUNCHTILE SYSTEM THAT YOU SAW AND XNAV, WHICH WAS
15 THE LATER SYSTEM RUNNING ON A DIFFERENT DEVICE, AND
16 I COMPARED THE ZOOMING AND THE SNAP BACK FEATURE
17 AND CONFIRMED THAT THE SNAP BACK FEATURE WORKED
18 IDENTICALLY ON BOTH THE ZOOMING FEATURE -- IT
19 WORKED ALMOST IDENTICALLY. THERE WAS A SLIGHT
20 VISUAL CHANGE IN THE LATER XNAV AND THE WAY THE
21 BLUE DOTS WERE REPRESENTED.

22 Q OKAY. THANKS.

23 SHIFT GEARS MAYBE ONE MORE TIME. LET'S
24 TALK ABOUT WHEN YOU TOLD, YOU AND YOUR TEAM TOLD
25 THE PUBLIC ABOUT LAUNCHTILE. OKAY?

1 A UM-HUM.

2 Q YOU DID THAT AT SOME POINT. CAN YOU TELL US
3 ABOUT IT? WHEN WAS THE FIRST TIME YOU DID IT, AND
4 GIVE US A COUPLE OF SENTENCES ABOUT THE
5 CIRCUMSTANCES SURROUNDING THAT. OKAY?

6 A SURE. SO AS I MENTIONED, WE DEVELOPED THE
7 CODE IN THE SUMMER OF 2004. I KNOW WE COMPLETED IT
8 BY SEPTEMBER 2004 BECAUSE AT THAT POINT WE HAD
9 WRITTEN A PAPER AND SUBMITTED IT TO A CONFERENCE.

10 IT LATER GOT ACCEPTED TO THE CONFERENCE.
11 IT WAS CALLED THE CHI, COMPUTER HUMAN INTERACTION,
12 AND IT WAS EVENTUALLY PUBLISHED THERE IN APRIL OF
13 2005.

14 Q OKAY. AND HOW WAS YOUR PAPER AND LAUNCHTILE
15 RECEIVED AT THE CHI CONFERENCE? CAN YOU TELL US?

16 A WE GOT REALLY EXCELLENT FEEDBACK. IN FACT, IT
17 WAS NOMINATED FOR A BEST PAPER AWARD, WHICH IS
18 GIVEN TO 5 PERCENT OF THE ACCEPTED PAPERS. IN
19 FACT, NORMALLY ABOUT 20 PERCENT OF THE SUBMITTED
20 PAPERED GOT ACCEPTED, SO IT WAS PRETTY SELECTIVE.

21 AND THEN WE GOT REALLY EXCELLENT FEEDBACK
22 INFORMALLY DURING THE EVENT, DURING THE CONFERENCE.

23 Q OKAY. AND DID YOU ACTUALLY PRESENT LAUNCHTILE
24 ITSELF TO THE ATTENDEES AT THE CHI CONFERENCE?

25 A YES. IT WAS A BIG CONFERENCE, SOMETHING LIKE

1 2500 PEOPLE, AND SOME NUMBER OF THOSE -- I'M NOT
2 SURE EXACTLY HOW MANY, A FAIR NUMBER -- ATTENDED
3 OUR SESSION, WHICH WAS A FORMAL PRESENTATION. I
4 THINK AMY KARLSON ACTUALLY DELIVERED, MY STUDENT,
5 DELIVERED THE PRESENTATION. WE HAD POWERPOINT
6 SLIDES. WE SHOWED A VIDEO.

7 Q OKAY. LET'S -- WE HAVE A VIDEO. LET'S PLAY
8 THE VIDEO. IF I REMEMBER IT RIGHT, THIS VIDEO HAS
9 SOUND.

10 A YES.

11 Q IS THAT RIGHT? SO WE'LL JUST PLAY IT. YOU
12 DON'T NEED TO NARRATE THIS VIDEO.

13 HOLD ON FOR ONE SECOND, PLEASE.

14 YOU RECOGNIZE THE COVER OF THIS VIDEO,
15 SIR?

16 A YES, I BELIEVE THIS IS THE VIDEO WE ACTUALLY
17 PRESENTED AT THAT CONFERENCE.

18 Q AGAIN, WHAT WAS THE DATE OF THAT?

19 A APRIL 2005.

20 Q OKAY. LET'S PLAY THE VIDEO, PLEASE, RYAN.

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

23 BY MR. DEFRANCO:

24 Q HAVING SEEN THAT, DOCTOR, DOES THAT CONFIRM,
25 OR NOT, THAT THAT'S THE VIDEO THAT WAS SHOWN AT THE

1 CHI CONFERENCE YOU TESTIFIED ABOUT IN APRIL OF
2 2005?

3 A THAT IS THE SAME ONE. THERE WAS SOME OTHER
4 PIECES, SOME OTHER PARTS, BUT THAT'S THE WHOLE
5 SEGMENT ON LAUNCHTILE.

6 Q OTHER PARTS RELATED TO SOMETHING DIFFERENT
7 THAN LAUNCHTILE?

8 A CORRECT.

9 Q ALL RIGHT. WE'RE NOT GOING TO TAKE THE TIME
10 TO SHOW THOSE.

11 YOUR HONOR, WE WOULD MOVE INTO EVIDENCE
12 THIS VIDEO, WHICH IS SDX 3951.009 AND THE PREVIOUS
13 SLIDE WHICH SHOWED SOME SOURCE CODE, WHICH IS SDX
14 3951.007.

15 THE COURT: IS THIS DX 518 IS THE ACTUAL
16 VIDEO? THAT'S WHAT I HAVE IN MY BINDER. DO YOU
17 WANT THAT IN AS --

18 MR. DEFRANCO: THAT'S THE DEVICE ITSELF,
19 YOUR HONOR. THE VIDEO HAS THE SLIDE NUMBER IN THE
20 LOWER RIGHT-HAND CORNER.

21 THE COURT: NO. THIS IS MY DX 518. IT'S
22 THE VIDEO.

23 MR. DEFRANCO: IT'S BOTH.

24 THE COURT: ALL RIGHT. YOU WANT TO MOVE
25 IN 518?

1 MR. DEFRANCO: YES, YOUR HONOR.

2 THE COURT: OKAY. THAT'S ADMITTED.

3 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
4 518, HAVING BEEN PREVIOUSLY MARKED FOR
5 IDENTIFICATION, WAS ADMITTED INTO
6 EVIDENCE.)

7 THE COURT: AND THEN ALSO DX --

8 MR. DEFRANCO: 3951.007.

9 THE COURT: I THINK THAT'S .009.

10 MR. DEFRANCO: YES, .009 IS THE SLIDE
11 THAT GOES WITH THIS VIDEO.

12 THE COURT: OH, AND YOU WANT TO MOVE IN
13 .007?

14 MR. DEFRANCO: AND .007.

15 THE COURT: THAT'S FINE. THEY'RE BOTH
16 ADMITTED.

17 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBERS
18 3951.007, 3951.009, HAVING BEEN
19 PREVIOUSLY MARKED FOR IDENTIFICATION,
20 WERE ADMITTED INTO EVIDENCE.)

21 THE COURT: GO AHEAD, PLEASE.

22 BY MR. DEFRANCO:

23 Q WE TALKED ABOUT THE CHI CONFERENCE, THE VIDEO
24 THAT WAS PRESENTED.

25 DID THERE COME A TIME WHEN THERE WAS YET

1 ANOTHER DEMONSTRATION OF LAUNCHTILE?

2 A YES. SO A MONTH LATER, MAY OF 2005, OUR LAB
3 AT THE UNIVERSITY OF MARYLAND HAD OUR CONFERENCE,
4 WE PUT ON AN ANNUAL CONFERENCE, ABOUT 2- OR 300
5 PEOPLE, AND THEY CAME AND WE SHOWED -- WE GAVE A
6 SIMILAR FORMAL PRESENTATION, AND THEN WE ALSO HAD A
7 DEMO TIME FOR A FEW HOURS WHERE WE WOULD HAVE
8 POSTERS, WE WOULD STAND AROUND THE POSTERS AND THE
9 ATTENDEES COULD WALK AROUND, TALK TO US, AND AMY
10 AND I WOULD HAND OUT THE DEVICES AND ENCOURAGE
11 PEOPLE TO ACTUALLY TRY OUT LAUNCHTILE THEMSELVES.

12 Q OKAY. AND THE LAUNCHTILE DEVICE AND THE CODE
13 THAT WAS LOADED AT THAT TIME, DID THAT HAVE THE
14 ZOOMING AND THE SNAP BACK FUNCTIONALITY THAT YOU
15 SHOWED US IN THE VIDEOS?

16 A OH, YES, DEFINITELY.

17 Q AND WERE PEOPLE -- YOU SAID PEOPLE COULD LOOK
18 AT THE DEVICE. DID YOU LET PEOPLE TAKE THE DEVICE
19 AND PLAY WITH IT AND PLAY AROUND WITH THE
20 FUNCTIONALITY AT THAT TIME?

21 A YES, THEY COULD DO WHATEVER THEY WANTED WITH
22 THE LAUNCHTILE.

23 Q ANY RESTRICTIONS ON PEOPLE'S ABILITY TO DO
24 THAT WHO ATTENDED THAT CONFERENCE?

25 A NO.

1 Q SYMPOSIUM. WAS THAT A SYMPOSIUM OR A
2 CONFERENCE?

3 A WE CALLED IT A SYMPOSIUM. IT WAS A
4 CONFERENCE.

5 Q OKAY. AND THEN JUST SUMMARIZE FOR US
6 REACTION. HOW DID PEOPLE REACT TO THE LAUNCHTILE
7 FUNCTIONALITY THAT YOU SHOWED?

8 A YOU KNOW, PEOPLE LOVED THIS STUFF. AT THE
9 TIME WE WERE RUNNING ON THIS DEVICE, THIS MICROSOFT
10 POCKET P.C. DEVICE WHICH WAS DESIGNED FOR TWO HANDS
11 WHERE YOU'D USE A STYLUS TO SCROLL A TINY, TINY
12 LITTLE SCROLL BAR AND, TO BE HONEST, IT WAS KIND OF
13 FRUSTRATING.

14 SO WHEN WE WERE SHOWING THE FACT THAT YOU
15 COULD NAVIGATE THIS RICH INFORMATION SPACE CASUALLY
16 WITH ONE HAND, PEOPLE LIKED IT.

17 Q AND JUST TO CONFIRM, DOCTOR, YOU'RE HERE AS A
18 FACT WITNESS, NOT AS AN EXPERT FOR SAMSUNG, IS THAT
19 CORRECT, IN THIS CASE?

20 A THAT IS CORRECT.

21 MR. DEFRANCO: THANK YOU VERY MUCH.

22 THE COURT: ALL RIGHT. THE TIME IS NOW

23 3:31.

24 ///

25 ///

CROSS-EXAMINATION

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BY MR. JACOBS:

Q GOOD AFTERNOON, SIR.

A GOOD AFTERNOON.

Q NOW, YOU ARE SERVING AS AN EXPERT FOR -- IN A DIFFERENT LAWSUIT AGAINST APPLE; CORRECT, SIR?

A THAT IS CORRECT.

Q AND YOU'VE OFFERED IN THAT CASE AN OPINION ON BEHALF OF AN APPLE COMPETITOR; RIGHT?

A THAT IS CORRECT.

Q NOW, IN LAUNCHTILE AND XNAV, THERE ARE THREE SEPARATE ZOOM LEVELS; TRUE?

A THERE ARE -- YES, THERE ARE THREE ZOOM LEVELS AND YOU MOVE BETWEEN THEM AS I SHOWED IN THE VIDEOS.

Q AND JUST TO GET THE NAMES OF THIS DOWN, IT'S THE WORLD VIEW, THE ZONE VIEW, AND THE APPLICATION VIEW; RIGHT?

A THAT IS CORRECT.

Q NOW, WHEN YOU'RE IN WORLD VIEW, YOU'RE LOOKING AT THE WHOLE WORLD THAT EXISTS ON THAT -- IN LAUNCHTILE; CORRECT?

A THAT IS CORRECT. YOU CAN SEE THE WHOLE ZOOM SPACE, ALL 36 TILES.

Q AND YOU CAN'T SCROLL AT ALL IN WORLD VIEW?

1 A NO. IT WAS DESIGNED WITH A FIXED SET OF
2 TILES, SO THERE WOULD BE NO REASON TO SCROLL.

3 Q NOW, WHEN YOU'RE IN ZONE VIEW, THAT'S THE
4 MIDDLE LEVEL; RIGHT?

5 A THAT IS CORRECT.

6 Q YOU CAN SCROLL. TRUE?

7 A YES, AS I SHOWED IN THE VIDEO, YOU CAN SCROLL
8 OR PAN. I USE THOSE WORDS INTERCHANGEABLY
9 TYPICALLY.

10 Q AND YOU DESCRIBED THE SNAP BACK FUNCTIONALITY
11 IN YOUR TESTIMONY A FEW MOMENT AGO. DO YOU RECALL
12 THAT?

13 A YES.

14 Q AND THE WAY YOU IMPLEMENTED SNAP BACK WAS THAT
15 IF A USER HAS DRAGGED MORE THAN ONE-SIXTH OF A
16 SCREEN WIDTH, LAUNCHTILE WILL SNAP TO THE NEXT
17 ZONE. TRUE, SIR?

18 A YES, THAT SOUNDS RIGHT. WHEN THE USER IS
19 DRAGGING THEIR FINGER, THERE'S A THRESHOLD, AND IF
20 THEY DRAG MORE THAN THAT THRESHOLD, IT SNAPS
21 FORWARD TO THE NEXT ZONE.

22 AND IF THEY'VE DRAGGED LESS THAN THAT
23 THRESHOLD, IT SNAPS BACK TO THE ZONE THEY STARTED
24 FROM.

25 Q AND THE THRESHOLD IS THE ONE-SIXTH -- WE'LL

1 CALL IT THE ONE-SIXTH CONDITION. TRUE, SIR?

2 A YEAH, THE THRESHOLD IS ONE-SIXTH OF THE
3 DIMENSION OF THE SCREEN THAT YOU'RE DRAGGING. SO
4 IF YOU'RE DRAGGING HORIZONTALLY, IT WOULD BE
5 ONE-SIXTH OF THE WIDTH. IF YOU'RE DRAGGING
6 VERTICALLY, I BELIEVE IT WOULD BE ONE-SIXTH OF THE
7 HEIGHT.

8 Q SO LAUNCHTILE CODE ACTUALLY CONTAINS
9 INSTRUCTIONS THAT MEASURE THE DISTANCE OF MOVEMENT
10 AND THEN PERFORM THAT SNAPPING ANIMATION DEPENDING
11 ON WHETHER THE ONE-SIXTH CONDITION IS SATISFIED.
12 TRUE, SIR?

13 A I THINK THAT SOUNDS RIGHT, THAT THE -- THE
14 CONDITION IS BASED ON HOW FAR THE USER HAS DRAGGED.

15 Q AND THE WAY IT WORKS, THOUGH, IS THAT IF
16 YOU'RE AT THE LAST TILE IN ANY PARTICULAR
17 DIRECTION, YOU CAN'T SCROLL PAST IT. TRUE, SIR?

18 A WE HAD TO MAKE SURE THAT THE USER ALWAYS HAD A
19 MECHANISM TO KNOW WHERE THEY WERE IN THE ZOOM SPACE
20 AND PROVIDED DIFFERENT MECHANISMS FOR ENSURING GOOD
21 EXPERIENCE AND AWARENESS.

22 SO WHEN -- THERE WAS -- WHEN YOU WERE AT
23 DIFFERENT ZONES, THERE WERE DIFFERENT INDICATORS
24 THAT TOLD YOU WHERE YOU WERE. WE ACTUALLY HAD SOME
25 LITTLE BLUE DOTS, THESE LITTLE INDICATORS TO SHOW

1 YOU WHERE YOU WERE IN A ZONE THAT WAS AT THE EDGE
2 OF THE CONTENT, FAR EDGE, OR WHETHER YOU WERE IN
3 THE MIDDLE.

4 SO IF YOU WERE IN THE MIDDLE, YOU WOULD
5 SEE THAT YOU COULD GO FARTHER, YOU COULD GO FARTHER
6 AND SNAP BACK.

7 IF YOU WERE AT THE FAR EDGE, THERE WOULD
8 BE AN INDICATOR THAT YOU WERE AT THE FAR EDGE AND
9 THEN THERE WOULD BE NO NEED TO GO PAST THAT.

10 Q OKAY. SO WE'VE COVERED THREE DIFFERENT CASES
11 AND I'D LIKE TO SHOW A VIDEO NOW AND SEE IF WE CAN
12 EXPLAIN THIS TO THE JURY VIDEO -- VISUALLY. CAN WE
13 SEE PDX 41.1, PLEASE.

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

16 BY MR. JACOBS:

17 Q SO WHAT ARE WE LOOKING AT IN THE FIRST MOMENTS
18 OF THIS VIDEO, DR. BEDERSON? WHAT VIEW ARE WE IN?
19 WHAT VIEW ARE WE IN NOW?

20 A NOW?

21 Q YES.

22 A THIS IS WHAT WE CALLED THE WORLD VIEW, THE
23 ZOOMED OUT VIEW.

24 Q OKAY. LET'S GO A FEW SECONDS INTO THAT.

25 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN

1 OPEN COURT OFF THE RECORD.)

2 BY MR. JACOBS:

3 Q AND AS YOU SEE IN THAT VIEW -- YOU CAN STOP
4 NOW -- YOU CAN'T SCROLL AT ALL; CORRECT?

5 A THAT IS CORRECT. AS I EXPLAINED, THERE WOULD
6 BE NO NEED FOR SCROLLING.

7 Q OKAY. AND NOW LET'S SHOW THE ONE-SIXTH OF A
8 SCREEN WIDTH CONDITION BEING SATISFIED OR NOT
9 SATISFIED AND WE'LL SEE THE SNAP BACK.

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

12 BY MR. JACOBS:

13 Q NOW, ACTUALLY WE'RE AT THE -- WE WERE AT THE
14 EDGE JUST THEN, RIGHT, AND IT WOULDN'T GO ANY
15 FURTHER; CORRECT, SIR?

16 A YOU WERE AT THE FAR OUTSIDE EDGE OF THE
17 CONTENT.

18 Q SO YOU WOULDN'T PULL AWAY FROM THE EDGE AND
19 SHOW SPACE, IT WOULD JUST STOP SCROLLING; CORRECT,
20 SIR?

21 A IF YOU CAN JUST STAY ON THAT VIDEO FRAME FOR
22 JUST A SECOND, IT'S A LITTLE HARD TO SEE IN BETWEEN
23 FRAMES, BUT YOU'LL SEE IN THAT SORT OF HOLE WHERE
24 THE BLUE DOT, THE BLUE BUTTON IS NOT. ON THE RIGHT
25 SIDE THERE ARE THOSE FIXED LITTLE BLUE DOTS, THAT'S

1 AN INDICATOR THAT YOU CAN GO TO THE RIGHT. AND ON
2 THE LEFT EDGE THERE AREN'T ANY INDICATORS.

3 SO YOU WOULD KNOW, THAT'S A VISUAL
4 INDICATION THAT YOU WOULD HAVE NO NEED TO GO TO THE
5 LEFT. SO THAT WAS THE FEEDBACK THAT I WAS TALKING
6 ABOUT.

7 Q SO LET'S GO BACK A FEW SECONDS IN THE VIDEO
8 AND JUST LOOK AT THAT AGAIN.

9 SO AT 11 SECONDS, WE'RE IN WHAT VIEW,
10 SIR?

11 A THIS IS THE ZONE VIEW.

12 Q OKAY.

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

15 BY MR. JACOBS:

16 Q AND WE'RE AT THE LEFT EDGE, SO IT WOULDN'T GO
17 ANY FURTHER; CORRECT?

18 A THE FAR LEFT EDGE, THE OUTSIDE EDGE OF THE
19 CONTENT.

20 Q AND THAT'S TRUE AT EACH BOUNDARY; CORRECT? IF
21 YOU'RE AT THE -- IF YOU'RE SHOWING ALL THE CONTENT
22 AT THE BOTTOM THAT YOU CAN SEE, IT WON'T SCROLL
23 UPWARDS ANY FURTHER; CORRECT, SIR?

24 A IF YOU'RE AT THE BOTTOM-MOST, ONE OF THE
25 BOTTOM-MOST ZONES AND YOU TRY AND SCROLL UP, IT

1 WILL NOT SCROLL UP.

2 Q AND THE SAME IS TRUE FOR RIGHT AND LEFT AND
3 TOP. TRUE, SIR?

4 A YES, ASSUMING YOU WOULD HAVE TO GO THROUGH ALL
5 FOUR EXAMPLES.

6 Q NOW, LET'S TALK ABOUT THE APPLICATION TILES.

7 THE APPLICATION VIEW, THAT'S THE VIEW
8 WHERE YOU ACTUALLY HAVE TAPPED ON A TILE; CORRECT,
9 SIR?

10 A SO THAT'S THE DEEPEST OF THE THREE ZOOM
11 LEVELS. YOU HAVE A ZONE AND YOU TAP ON A TILE, IT
12 WILL BRING YOU INTO THE APPLICATION VIEW, I CALLED
13 IT.

14 Q AND WHAT YOU WERE TRYING TO EXPLAIN -- YOU
15 WERE TRYING TO EXPLAIN THIS IDEA OF SEMANTIC
16 ZOOMING IN YOUR EXAMINATION BY SAMSUNG'S COUNSEL.
17 DO YOU RECALL THAT?

18 A YES, I DO.

19 Q AND THE IDEA WAS THAT WHEN YOU TAP ON AN
20 APPLICATION TILE AND GO DEEPER INTO IT, YOU
21 ACTUALLY SEE NEW CONTENT. TRUE, SIR?

22 A IT WAS THE SAME TILE AND YOU WOULD SEE MORE
23 INFORMATION ABOUT THAT TILE.

24 Q AND WHEN YOU SAY MORE INFORMATION ABOUT THAT
25 TILE, ARE YOU SEEING AN ENLARGEMENT OF THE TILE?

1 HAS THE FONT GOTTEN BIGGER SO YOU CAN READ IT, OR
2 ARE YOU SEEING AN UNDERLYING LEVEL OF DETAILED
3 INFORMATION RELATED TO THAT TILE?

4 A AS I EXPLAINED, THE WHOLE POINT OF SEMANTIC
5 ZOOMING WAS TO HAVE DIFFERENT VISUAL
6 REPRESENTATIONS AND TO SHOW MORE DETAILED
7 INFORMATION AS YOU GOT LARGER, AS IT WAS ZOOMED IN.
8 SO, YES, IT WOULD SHOW MORE DETAILED INFORMATION.

9 Q SO LET'S TAKE A LOOK AT THAT. LET'S TAKE A
10 LOOK AT PDX 41.2.

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

13 BY MR. JACOBS:

14 Q SO, IN FACT, WE TAPPED ON -- ON THIS -- PAUSE
15 IT, PLEASE.

16 WE TAPPED ON THAT PARTICULAR APPLICATION
17 TILE AND THERE WAS NO MORE INFORMATION TO BE SEEN
18 IN THAT PARTICULAR CASE; CORRECT, SIR?

19 A YES. AS I EXPLAINED, THE PRIMARY GOAL WAS TO
20 EXPLORE THIS ZOOM SPACE AND WE DIDN'T BOTHER TO
21 FILL OUT THE ACTUAL IMPLEMENTATION OF THE DEEPEST
22 LEVEL OF MANY OF THE TILES.

23 Q AND THAT WAS FROM 5 SECONDS TO 12 SECONDS THAT
24 WE JUST SAW. TRUE, SIR?

25 A I DON'T REMEMBER EXACTLY WHERE YOU STARTED,

1 BUT THAT SOUNDS ABOUT RIGHT.

2 Q AND SO THE POINT THAT YOU'RE, THAT YOU WERE
3 DRIVING AT IS WHEN THIS THING WAS FULLY FLESHED
4 OUT, INSTEAD OF SEEING SOMETHING BLANK, YOU'D SEE
5 MORE INFORMATION ABOUT THAT PARTICULAR APPLICATION?

6 A CORRECT. I WOULD SAY MORE INFORMATION ABOUT
7 THAT TILE IS THE TERM WE USED, AS YOU SAW IN THE --
8 I THINK I SHOWED THAT IN THE E-MAIL TILE IN THE
9 VIDEO AND IN THE CONFERENCE VIDEO.

10 Q LET'S TAKE A LOOK AT ANOTHER ONE. LET'S TAKE
11 A LOOK AT THE CALENDAR APPLICATION. THIS WOULD BE
12 PDX 41.2. THAT'S WHAT WE JUST SAW, CORRECT, SIR,
13 WAS THAT CALENDAR?

14 I THINK YOU MAY HAVE TO GO BACK A LITTLE
15 BIT FURTHER.

16 SO IT WAS CALENDAR WE TAPPED ON THERE;
17 CORRECT, SIR?

18 A YES.

19 Q NOW LET'S GO TO PDX 41.1, AND LET'S LOOK AT
20 THE E-MAIL APPLICATION FOR A MINUTE. SO LET'S GO
21 TO 27 SECONDS ON THAT, PLEASE.

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

24 BY MR. JACOBS:

25 Q NOW, THIS SHOWS A DIFFERENT FUNCTIONALITY.

1 SAMSUNG'S COUNSEL DIDN'T ASK YOU ABOUT THIS IN YOUR
2 DIRECT EXAMINATION, BUT I WANT TO MAKE SURE THAT
3 THAT WAS INTENTIONAL, SO IF HE GETS UP AND SAYS
4 "BEYOND THE SCOPE OF DIRECT," I'LL KNOW WHETHER
5 THAT WAS TRUE OR NOT.

6 IN THE E-MAIL APPLICATION, THERE'S ALSO A
7 SNAP BACK KIND OF FUNCTIONALITY, AN AUTO CENTERING
8 FUNCTION. TRUE, SIR?

9 A YES, THERE IS.

10 Q AND IN THAT AUTO CENTERING, YOU -- THE BLUE
11 HIGHLIGHTER WILL MOVE UP AND DOWN BETWEEN THE
12 E-MAIL HEADERS; CORRECT, SIR?

13 A WELL, YOU ACTUALLY JUST, I THINK, COMBINED TWO
14 DIFFERENT FEATURES. SO SINCE YOU ASKED ABOUT THAT,
15 I BETTER TRY AND EXPLAIN IT.

16 IF YOU DRAG THAT BLUE BUTTON WITH THE PEN
17 OR YOUR FINGER, WHAT YOU'LL SEE IS THAT BLUE
18 HIGHLIGHT LINE WILL MOVE WITH IT, AND WHEN YOU LET
19 GO, IT WILL ALIGN WITH THE NEAREST E-MAIL.

20 Q SO LET'S --

21 A I -- YOU DESCRIBED TWO DIFFERENT THINGS AND SO
22 I WANTED TO CLARIFY. THAT WAS ONE OF THE FEATURES.

23 THE SECOND FEATURE IS THAT IF YOU DRAG
24 THE E-MAIL LIST TO THE END OF THE CONTENT, TO THE
25 END OF THE LIST, AND YOU DRAG IT PAST THE LAST

1 E-MAIL, BUT NOT TOO FAR PAST, THEN IT WILL SNAP
2 BACK IN A SIMILAR WAY TO WHAT YOU SAW WITH THE
3 ZONES.

4 Q SO LET'S TAKE A LOOK AT THAT, SIR.

5 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN
6 OPEN COURT OFF THE RECORD.)

7 BY MR. JACOBS:

8 Q WE'RE AT 54 SECONDS ON THIS VIDEO, AND WE JUST
9 SAW IT AUTO CENTER. CORRECT, SIR?

10 A I THINK WE JUST SAW -- I THINK I PROBABLY
11 WOULD HAVE CALLED IT ALIGNING THE BLUE HIGHLIGHT
12 BAR WITH THE NEAREST E-MAIL, BUT --

13 Q AND THAT'S WHAT THE CODE ACTUALLY DOES, RIGHT?
14 IT LOOKS FOR WHAT'S THE NEAREST E-MAIL HEADER AND
15 IT MOVES THE BLUE BAR TO THAT HEADER. TRUE, SIR?

16 A THAT'S CORRECT.

17 Q AND NOW LET'S -- DO WE HAVE VIDEO THAT SHOWS
18 THE END?

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

21 BY MR. JACOBS:

22 Q SO IT ACTUALLY GOES OFF INTO DESERT FOG,
23 DOESN'T IT, SIR, IN THIS VIDEO?

24 A SO I THINK THIS DOES EXACTLY HOW I EXPLAINED
25 IT, WHICH IS IF YOU DRAG IT PAST THE END OF THE

1 E-MAIL LIST NOT TOO FAR, IT WILL SNAP BACK. IF YOU
2 DRAG IT TOO FAR, THEN IT WILL JUST STAY THERE.

3 Q AND THE DEFINITION OF "TOO FAR," SIR?

4 A THERE'S A -- IT HAS TO DO WITH HOW THE CODE IS
5 IMPLEMENTED. IT DEPENDS WHERE THE PARTICULAR -- I
6 MEAN, THERE'S A LOT OF DETAILS. IT DEPENDS EXACTLY
7 WHERE THE BLUE HIGHLIGHT BAR IS. IF THE BLUE
8 HIGHLIGHT BAR IS AT THE BOTTOM, THEN YOU CAN DRAG
9 IT UP TO ONE, THE HEIGHT OF ONE E-MAIL, WHICH IS
10 ABOUT 20 PIXELS.

11 IF THE BLUE BAR IS AT A DIFFERENT PLACE,
12 THEN YOU CAN DRAG IT 10 PIXELS IN ORDER TO SEE THE
13 SNAP BACK.

14 Q SO IF YOU GO JUST ANOTHER COUPLE OF PIXELS, IT
15 WON'T SNAP BACK; TRUE, SIR?

16 A SO AS I SAID, THERE'S A THRESHOLD. IF YOU
17 DRAG IT LESS THAN THAT THRESHOLD, IT WILL SNAP
18 BACK. IF YOU DRAG IT MORE THAN THAT THRESHOLD, IT
19 WILL NOT.

20 Q SO WE CAN TAKE THAT DOWN NOW.

21 A COUPLE QUESTIONS ABOUT YOUR
22 SPONSORSHIP. YOUR LAUNCHTILE WORK WAS SPONSORED BY
23 MICROSOFT. TRUE, SIR?

24 A MICROSOFT WAS SPONSORING MY RESEARCH IN
25 GENERAL ON ZOOMABLE USER INTERFACES IN MOBILE

1 DEVICES. THAT COVERED A NUMBER OF THINGS, AND IT
2 INCLUDED THE DEVELOPMENT OF LAUNCHTILE.

3 Q AND YOU WORKED WITH A MAN NAMED
4 JOHN SANGIOVANNI AT MICROSOFT?

5 A THAT IS CORRECT. I MENTIONED HIM BEFORE.

6 Q AFTER COMPLETING THE CODE FOR LAUNCHTILE, YOU
7 TRANSMITTED IT TO MR. SANGIOVANNI; CORRECT, SIR?

8 A AT MICROSOFT, CORRECT.

9 Q AND YOU DID SO IN ENCRYPTED FORM?

10 A YES.

11 Q AND THAT WAS BECAUSE YOU UNDERSTOOD THAT YOU
12 WERE IN OBLIGATION TO KEEP LAUNCHTILE CONFIDENTIAL
13 AND ASKED MR. SANGIOVANNI WHEN YOU COULD DISCUSS IT
14 PUBLICLY. TRUE, SIR?

15 A SO THERE'S A 30-PAGE CONTRACT COVERING THE
16 AGREEMENT BETWEEN THE UNIVERSITY OF MARYLAND AND
17 MICROSOFT AND THERE'S A LOT OF DETAILS, BUT I THINK
18 WHAT YOU'RE GETTING AT IS PART OF THAT AGREEMENT IS
19 THAT MICROSOFT HAD RIGHTS TO THE SOFTWARE WE
20 DEVELOPED, AND AS PART OF THAT RIGHT, THEY HAD --
21 WE HAD AGREED THAT THEY WOULD HAVE SOME TIME TO
22 KEEP THINGS CONFIDENTIAL WHILE THEY CONSIDERED WHAT
23 THEY WERE GOING TO DO WITH IT, IF THEY WERE GOING
24 TO LOOK AT SOME I.P. ISSUES.

25 AFTER SOME TIME PERIOD HAD ELAPSED AND WE

1 HAD CLEARED THAT PROCESS, THEN THE UNIVERSITY OF
2 MARYLAND WAS FREE TO -- WE OWNED THE SOFTWARE. WE
3 COULD DO WHATEVER WE WANTED WITH IT.

4 SO I BELIEVE AT THE TIME OF THAT E-MAIL,
5 I'M GUESSING I CAN -- I THINK -- I'M AWARE OF SOME
6 E-MAIL, MAYBE IT'S THE SAME ONE THAT YOU'RE
7 THINKING OF, THERE WAS SOME INTERACTION WHERE WE
8 WERE DISCUSSING WHETHER WE HAD GONE THROUGH THAT
9 PROCESS YET, WHETHER IT WAS YET TIME TO PUBLICLY
10 DISCLOSE IT OR NOT.

11 THERE WAS A TIME WHEN IT WASN'T PUBLICLY
12 DISCLOSED AND SO WE KEPT IT PRIVATE.

13 OBVIOUSLY BY THE TIME THE CONFERENCE
14 ROLLED AROUND, AND ACTUALLY QUITE A WHILE BEFORE
15 THEN, WE WERE FREE TO DO WHATEVER WE WANTED WITH
16 IT. AND OF COURSE WE TALKED ABOUT IT AND SHOWED IT
17 TO EVERYONE WE COULD. WE WERE QUITE PROUD OF IT.

18 Q LET'S TALK ABOUT THAT, SIR. YOU MENTIONED
19 THAT YOU PRESENTED LAUNCHTILE AT THE CHI
20 CONFERENCE. YOUR PRESENTATION AT CHI DID NOT
21 INCLUDE A DEMONSTRATION OF THE DEVICE WITH THE
22 EXECUTABLE CODE LOADED ON IT; CORRECT?

23 A THE PRESENTATION DIDN'T. BUT I WAS AT THE
24 CONFERENCE FOR SIX DAYS. THIS IS MY MAIN
25 PROFESSIONAL EVENT. I GO TO THIS CONFERENCE EVERY

1 YEAR. I'VE BEEN GOING SINCE 1995.

2 I'M A SOFTWARE DEVELOPER. I MAKE USER
3 INTERFACES. SO WHAT I WOULD DO, MY SORT OF
4 STANDARD PRACTICE IS I WOULD TRAP PEOPLE IN THE
5 HALLWAY AND SAY, "HEY, LOOK WHAT I'M DOING, LOOK AT
6 THIS COOL THING." AND I WOULD SHOW THEM -- ONE
7 YEAR IT WAS MY LAPTOP SOFTWARE OUT OF MY LAPTOP.

8 THIS YEAR I WAS DEVELOPING LAUNCHTILE ON
9 A PDA, SO I WOULD HAND THEM THE PDA AND SAY, "HEY,
10 LOOK WHAT I'M DOING."

11 I'M PRETTY SURE AMY KARLSON DID THE SAME
12 THING.

13 Q YOU ALSO HOSTED A SECOND PUBLIC PRESENTATION
14 AT A CONFERENCE HOSTED BY YOUR LAB. YOU TALKED
15 ABOUT THAT IN YOUR DIRECT EXAMINATION. TRUE, SIR?

16 A YES.

17 Q AND YOU DON'T RECALL ANY SPECIFIC
18 DEMONSTRATIONS YOU DID OF LAUNCHTILE AT THAT
19 SYMPOSIUM IN MAY OF 2005. TRUE, SIR?

20 A WELL, I REMEMBER SENDING --

21 Q SIR, I'M ON A CLOCK. DO YOU REMEMBER ANY
22 SPECIFIC DEMONSTRATION?

23 A ARE YOU ASKING DO I REMEMBER THE INDIVIDUAL
24 PERSON OF THE 200 PEOPLE I DIDN'T KNOW WHICH ONES I
25 HANDED IT TO? THE ANSWER IS NO, I DO NOT.

1 Q AND DO YOU RECALL ANYTHING SPECIFICALLY BEING
2 DEMONSTRATED IN MAY OF 2005 THAT WASN'T IN THE
3 VIDEO THAT WE -- THAT THE JURY SAW IN YOUR DIRECT
4 EXAMINATION?

5 A AS I SAID, PEOPLE -- WE GAVE THE DEVICES TO
6 PEOPLE. THEY WERE ENCOURAGED TO TRY IT OUT AND USE
7 WHATEVER THEY WANTED TO. I COULDN'T EVEN ALWAYS
8 SEE THE DEVICE AS THEY WERE USING IT.

9 SO DO I REMEMBER EXACTLY WHAT THEY DID?
10 NO, I DO NOT.

11 Q ISN'T IT TRUE THAT YOU DON'T RECALL THE
12 SPECIFIC DETAILS OF WHAT WAS OR WAS NOT SHOWN TO
13 ANY SPECIFIC INDIVIDUAL?

14 A YOU MEAN -- AS I SAID, I ENCOURAGED THEM TO
15 USE IT. I DO NOT KNOW EXACTLY WHAT THEY DID. I
16 DON'T KNOW WHERE THEY CLICKED. I CERTAINLY DON'T
17 KNOW WHAT PIXEL THEY CLICKED ON AND HOW THEY
18 DRAGGED IT. SO NO.

19 MR. JACOBS: THANK YOU. NO FURTHER
20 QUESTIONS.

21 THE COURT: ALL RIGHT. THE TIME IS 3:48.
22 GO AHEAD, PLEASE.

23 **REDIRECT EXAMINATION**

24 BY MR. DEFRANCO:

25 Q YOU WERE ASKED ABOUT A COUPLE OF E-MAILS,

1 DOCTOR. I THINK THERE MAY HAVE BEEN CONFUSION OR
2 CONFLATING WHAT WAS IN THE TWO E-MAILS. I WANT TO
3 PUT ONE UP ON THE SCREEN THAT WAS MARKED AS A CROSS
4 EXHIBIT, IT'S EXHIBIT 2227.

5 IF WE CAN BLOW THAT UP, RYAN.

6 YOU WERE ASKED ABOUT ENCRYPTION, SEND
7 CODE TO MICROSOFT. THEY ASKED YOU THAT IT BE
8 ENCRYPTED; IS THAT RIGHT? IS THIS THE E-MAIL
9 YOU'RE TALKING ABOUT?

10 A THAT'S THE ONE I WAS THINKING OF.

11 Q WHAT'S THE DATE OF THAT E-MAIL?

12 A OH, THIS IS LATER. THIS IS AUGUST OF 2005.

13 SO THIS IS LONG AFTER WE HAD PUBLICLY DISCLOSED THE
14 INTERACTION.

15 Q PUBLICLY DISCLOSED LAUNCHTILE?

16 A CORRECT.

17 Q EARLIER IN 2005; RIGHT?

18 A YES.

19 Q THIS LATER REQUEST BY MICROSOFT THAT YOU SEND
20 SOURCE CODE IN ENCRYPTION FORM, WAS THAT, IN YOUR
21 UNDERSTANDING, IN ANY WAY ATYPICAL FOR MICROSOFT'S
22 PRACTICE?

23 A I'M NOT 100 PERCENT SURE, BUT I THINK THIS MAY
24 HAVE BEEN IN RESPONSE TO THEIR REQUEST.

25 Q AND IN TERMS OF ENCRYPTION, DO YOU HAVE ANY

1 EXPERIENCE?

2 A THE ENCRYPTION I THINK WAS IN RESPONSE TO
3 THEIR REQUEST.

4 Q YOU WERE ASKED ABOUT AN EARLIER E-MAIL IN
5 SEPTEMBER '04. DO YOU REMEMBER THAT?

6 A YES, I BELIEVE THAT WAS ONE.

7 Q AND YOU WERE ASKED, WAS THERE AN E-MAIL IN
8 THAT TIMEFRAME TO KEEP INFORMATION CONFIDENTIAL
9 ABOUT LAUNCHTILE; IS THAT CORRECT?

10 A YES.

11 Q BUT AFTER THAT E-MAIL -- WAS THAT REQUEST THAT
12 LAUNCHTILE NOT BE DISCLOSED PUBLICLY, WAS THAT
13 LIFTED, SIR?

14 A YES. AS I SAID, THERE WAS A PROCESS WE WENT
15 THROUGH. WE WENT THROUGH IT, IT DIDN'T TAKE VERY
16 LONG, AND THEN WE WERE FREE TO DO WHATEVER WE
17 WANTED WITH ANY OF THE TECHNOLOGY.

18 Q OKAY. VERY BRIEFLY, YOU WERE ALSO SHOWN SOME
19 E-MAIL FUNCTIONALITY AND SHOWING THE WHITE SCREEN.

20 WHAT -- WAS THE E-MAIL FUNCTIONALITY, DID
21 YOU INTEND FOR THAT TO BE COMPLETED IN LAUNCHTILE
22 AT THIS POINT IN TIME?

23 A NO. IN FACT, THE E-MAIL APPLICATION WAS NOT
24 EVEN FULLY FUNCTIONAL. YOU COULD NOT SEND OR
25 RECEIVE E-MAILS. IT WAS REALLY JUST A

1 DEMONSTRATION OF WHAT AN E-MAIL SYSTEM MIGHT FEEL
2 LIKE. THE MAIN GOAL WAS TO SHOW THE ZOOMING AND
3 THE PANNING AND THE SNAPPING AND ALL THAT KIND OF
4 NAVIGATION.

5 Q OKAY. AND THEN BOUNCE BACK, YOU WERE ASKED
6 ABOUT BOUNCE BACK, SNAP BACK. THE SNAP BACK
7 FUNCTIONALITY WAS USED IN LAUNCHTILE TO GO FROM
8 WHERE TO WHERE, SIR?

9 A PRIMARILY FROM ZONE TO ZONE.

10 Q WAS IT USED ONCE YOU GOT TO THE EDGE WHERE
11 THERE WERE NO MORE ZONES?

12 A NO. IT WAS NOT NECESSARY AT THAT POINT.

13 Q DID YOU USE SOMETHING ELSE?

14 A YES. AS I EXPLAINED EARLIER, WE HAD THOSE
15 BLUE INDICATORS THAT GAVE THE USER INFORMATION SO
16 THEY KNEW THAT THERE WAS NO POINT IN GOING PAST
17 THERE.

18 Q COULD YOU HAVE USED SNAP BACK AT THE EDGE, AND
19 IF SO, WHY DON'T YOU?

20 MR. JACOBS: OBJECTION, YOUR HONOR.

21 LEADING AND ASKS FOR EXPERT TESTIMONY AND
22 HYPOTHETICAL.

23 THE COURT: SUSTAINED.

24 MR. DEFRANCO: THANK YOU VERY MUCH.

25 MR. JACOBS: YOUR HONOR, VERY BRIEFLY.

1 THE COURT: GO AHEAD. THE TIME IS 351.
2 GO AHEAD.

3 MR. JACOBS: I'D LIKE TO OFFER INTO
4 EVIDENCE 2227.

5 THE COURT: ANY OBJECTION?

6 MR. DEFRANCO: NO, YOUR HONOR, NO
7 OBJECTION.

8 THE COURT: OKAY.

9 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
10 2227, HAVING BEEN PREVIOUSLY MARKED FOR
11 IDENTIFICATION, WAS ADMITTED INTO
12 EVIDENCE.)

13 MR. JACOBS: AND I'D LIKE TO OFFER INTO
14 EVIDENCE THE TWO VIDEOS WE SAW, PDX 41.1 AND PDX
15 41.2.

16 THE COURT: THEY'RE ADMITTED.

17 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBERS
18 41.1 AND 41.2, HAVING BEEN PREVIOUSLY
19 MARKED FOR IDENTIFICATION, WERE ADMITTED
20 INTO EVIDENCE.)

21 MR. JACOBS: THANK YOU, YOUR HONOR.

22 THE COURT: MAY THIS WITNESS BE
23 EXCUSED -- I'M SORRY. GIVE ME THE NUMBER AGAIN OF
24 THE E-MAIL.

25 MR. JACOBS: THAT WAS 2227.

1 THE COURT: ALL RIGHT. MAY THIS WITNESS
2 BE EXCUSED OR IS IT SUBJECT TO RECALL?

3 MR. VERHOEVEN: I THINK THE WITNESS MAY
4 BE EXCUSED. HE'S A THIRD PARTY, YOUR HONOR.

5 THE COURT: OKAY. YOU ARE EXCUSED.
6 CALL YOUR NEXT WITNESS, PLEASE.

7 MR. JOHNSON: YOUR HONOR, SAMSUNG CALLS
8 ADAM BOGUE.

9 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

10 **ADAM BOGUE,**
11 BEING CALLED AS A WITNESS ON BEHALF OF THE
12 DEFENDANT, HAVING BEEN FIRST DULY SWORN, WAS
13 EXAMINED AND TESTIFIED AS FOLLOWS:

14 THE WITNESS: I DO.

15 THE CLERK: THANK YOU. PLEASE BE SEATED.

16 **DIRECT EXAMINATION**

17 BY MR. JOHNSON:

18 Q GOOD AFTERNOON, MR. BOGUE.

19 A GOOD AFTERNOON.

20 Q DO YOU HAVE AN UNDERSTANDING OF WHY YOU'RE
21 BEING CALLED TO TESTIFY TODAY?

22 A YES. I'VE BEEN ASKED TO TALK ABOUT THE
23 DIAMONDTOUCH TABLE.

24 Q BEFORE WE TALK ABOUT THE DIAMONDTOUCH, CAN YOU
25 PLEASE DESCRIBE FOR US, GIVE US A LITTLE BIT OF

1 BACKGROUND ON YOUR EDUCATION.

2 A YES. I HAVE AN UNDERGRADUATE DEGREE FROM
3 M.I.T. IN MATERIAL SCIENCE ENGINEERING; AND AN
4 M.B.A. FROM M.I.T. SLOAN SCHOOL OF BUSINESS.

5 Q WHAT'S YOUR OCCUPATION?

6 A I'M THE PRESIDENT OF CIRCLE TWELVE, A COMPANY
7 THAT I FOUNDED IN 2008, AND WE'RE THE MAKER OF THE
8 DIAMONDTOUCH TABLE.

9 Q WHERE DID YOU WORK BEFORE CIRCLE TWELVE?

10 A BEFORE CIRCLE TWELVE, I WAS AT MITSUBISHI
11 ELECTRIC RESEARCH LABS, OR MERL, AND MERL IS WHERE
12 DIAMONDTOUCH WAS FIRST INVENTED BACK IN 2001.

13 Q WHERE IS MERL LOCATED?

14 A 201 BROADWAY IN CAMBRIDGE, MASSACHUSETTS.

15 Q AND WHEN DID YOU START AT MERL?

16 A IN 2000.

17 Q NOW, WHEN YOU STARTED AT MERL, WHAT WERE YOUR
18 RESPONSIBILITIES? WHAT WAS YOUR TITLE THERE?

19 A I WAS THE VICE-PRESIDENT OF MARKETING AND
20 BUSINESS DEVELOPMENT, AND MY RESPONSIBILITIES WERE
21 TO FIND BUSINESS OPPORTUNITIES FOR THE TECHNOLOGY
22 THAT WAS DEVELOPED AT MERL BY THE RESEARCHERS
23 THERE.

24 Q OKAY. AND NOW YOU MENTIONED DIAMONDTOUCH.

25 CAN YOU TELL ME, WHAT WAS DIAMONDTOUCH, OR WHAT IS

1 DIAMONDTOUCH?

2 A SO DIAMONDTOUCH IS A TABLETOP COMPUTER
3 INTERFACE THAT'S DESIGNED FOR SUPPORTING SMALL
4 GROUP, FACE-TO-FACE COLLABORATION.

5 Q YOU HAVE A BINDER IN FRONT OF YOU, A BLACK
6 BINDER THAT HAS SOME EXHIBITS IN IT. AND I'M GOING
7 TO ASK YOU, CAN YOU TURN TO DX 696, PLEASE?

8 A SORRY.

9 Q LET ME KNOW WHEN YOU GET THERE.

10 A BLACK BINDER?

11 Q IT SHOULD BE BLACK, A BLACK BINDER WITH THE
12 NUMBER 696.

13 A 696. I'M SORRY. I'M SORRY. I GOT IT.

14 Q ALL RIGHT. AND IN PARTICULAR, I WANT TO
15 DIRECT YOUR ATTENTION TO PAGE 3, SO 696.003.

16 A YES.

17 Q DO YOU SEE A PHOTOGRAPH ON THAT PAGE IN THE
18 UPPER LEFT-HAND CORNER?

19 A YES. THIS IS A PHOTOGRAPH OF THE DIAMONDTOUCH
20 TABLE AS IT EXISTED IN THE LOBBY AT MITSUBISHI
21 ELECTRIC RESEARCH LABS. THAT'S A PICTURE OF ME ON
22 THE LEFT THERE.

23 MR. JOHNSON: YOUR HONOR, IF WE MAY, I'D
24 LIKE TO MOVE TO ADMIT EXHIBIT 696.

25 THE COURT: ANY OBJECTION?

1 MR. JACOBS: NO OBJECTION, YOUR HONOR.

2 THE COURT: IT'S ADMITTED.

3 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
4 696, HAVING BEEN PREVIOUSLY MARKED FOR
5 IDENTIFICATION, WAS ADMITTED INTO
6 EVIDENCE.)

7 MR. JOHNSON: IF WE MAY PUBLISH THIS TO
8 THE JURY?

9 THE COURT: PLEASE, GO AHEAD.

10 MR. JOHNSON: THANK YOU.

11 Q SO YOU MENTIONED DIAMONDTOUCH IS A TABLE
12 TOUCHSCREEN. CAN YOU TELL US WHAT YOU MEAN BY
13 THAT?

14 A YES. SO WHAT YOU'RE LOOKING AT THERE IN THE
15 PICTURE IS A TABLETOP TOUCHSCREEN. IT'S A
16 RECTANGULAR TOUCHSCREEN, AND IT'S DESIGNED TO
17 SUPPORT SMALL GROUP FACE-TO-FACE COLLABORATION. SO
18 THE FOUR PEOPLE SITTING AT THAT TABLE, WE CAN ALL
19 INTERACT USING MULTITOUCH GESTURES.

20 WHAT YOU DON'T SEE IN THE TABLE -- IN
21 THIS PICTURE IS ABOVE THERE'S A PROJECTOR AIMED
22 DOWN AND SO THE IMAGE IS PROJECTED FROM ABOVE, AND
23 BEHIND IT IS A P.C. AND TOGETHER THAT'S ALL
24 DIAMONDTOUCH.

25 Q OKAY. NOW, COULD DIAMONDTOUCH BE USED WITH A

1 SINGLE USER?

2 A YES. INDEED, I USE DIAMONDTOUCH IN MY
3 DAY-TO-DAY WORK AND HAVE SINCE 2004, 2005. I DO
4 EVERYTHING ON IT. IF YOU HAVE AN E-MAIL FROM ME,
5 IT COMES FROM THE DIAMONDTOUCH TABLE IN MY OFFICE.

6 Q NOW, WHEN WAS DIAMONDTOUCH DEVELOPED?

7 A IN 2001 AT MERL.

8 Q WERE YOU INVOLVED IN THE DEVELOPMENT OF
9 DIAMONDTOUCH?

10 A SO I WAS ON THE TEAM. I DID SOME SOFTWARE
11 TESTING.

12 BUT MY PRINCIPAL RESPONSIBILITY WAS THE
13 BUSINESS DEVELOPMENT PERSON. SO I WAS SHOWING
14 DIAMONDTOUCH TO PEOPLE OUTSIDE OF MERL.

15 WHEN WE HAD VISITORS THAT CAME TO MERL, I
16 WOULD DEMO THE DIAMONDTOUCH TABLE IN THE LOBBY
17 THERE.

18 I ALSO HAD A SYSTEM THAT I WOULD BRING ON
19 THE ROAD TO CUSTOMER SITES, AND I WENT TO A LOT OF
20 TRADE SHOWS AND OTHER PUBLIC EVENTS.

21 Q OKAY. NOW, CAN YOU RUN PROGRAMS ON
22 DIAMONDTOUCH?

23 A YEAH. IN FACT, ONE OF THE NICE THINGS ABOUT
24 DIAMONDTOUCH IS ANY WINDOWS SOFTWARE WORKS ON IT.

25 IN THIS TIME PERIOD WHEN THIS PHOTO WAS

1 TAKEN, 2004/2005 TIMEFRAME, WE WERE DEVELOPING A
2 LOT OF DEMONSTRATION APPLICATIONS TO ILLUSTRATE TO
3 USERS WHAT YOU COULD DO WITH MULTITOUCH AND
4 MULTIUSER TOUCH. SO THERE WERE A LOT OF DEMOS
5 SPECIFICALLY DESIGNED FOR DIAMONDTOUCH.

6 Q AND WHEN WAS THIS PHOTOGRAPH TAKEN?

7 A IN 2004.

8 Q HOW DO YOU KNOW THAT?

9 A WELL, I REMEMBER THE PHOTO BEING TAKEN. ALSO,
10 LOOKING AT THE APPLICATION THERE, THAT'S FROM 2004.

11 I ALSO USE THIS AS A PRESS PIECE. I
12 WOULD SEND THIS TO PEOPLE WHO ASKED ABOUT
13 DIAMONDTOUCH.

14 Q WHAT TECHNOLOGY IS USED TO DETECT USER TOUCH
15 ON THE TOUCHSCREEN?

16 A SO IT'S CAPACITIVE, VERY SIMILAR TO MOBILE
17 DEVICES TODAY. THERE'S A GRID OF TRANSMITTERS IN
18 THE TOUCH SURFACE, AND WHEN YOU TOUCH IT, YOU'RE
19 CAPACITIVELY COUPLED TO THAT, THOSE SIGNALS.

20 Q DID ANYBODY OUTSIDE OF MITSUBISHI USE
21 DIAMONDTOUCH?

22 A YEAH. SO WE -- IN THIS TIME PERIOD,
23 2003/2004, WE MADE ABOUT 100 OF THESE AND LENT OR
24 GAVE THEM AWAY TO MOSTLY UNIVERSITY RESEARCH GROUPS
25 AROUND THE WORLD, YOU KNOW, STANFORD, BERKELEY,

1 THEY ALL HAD DIAMONDTOUCH TABLES AND THEY WERE ALL
2 DEVELOPING APPLICATIONS FOR THEM.

3 Q WHEN DID YOU FIRST START DEMONSTRATING
4 DIAMONDTOUCH SYSTEM TO PEOPLE OUTSIDE OF MERL?

5 A THE FIRST TIME I SHOWED DIAMONDTOUCH OUTSIDE
6 OF MERL WAS IN THE SUMMER OF 2003. I BROUGHT IT TO
7 APPLE HEADQUARTERS AND SHOWED IT TO THE HARDWARE
8 ENGINEERS THERE.

9 Q AND WHO DID YOU FIRST DEMONSTRATE THE
10 DIAMONDTOUCH SCREEN SYSTEM TO?

11 A SO IT WAS -- IT WAS A TEAM OF HARDWARE
12 ENGINEERS, AND I REMEMBER JOSH STRICKEN AND
13 STEVE HOTELLING, THOSE TWO NAMES STICK IN MY MIND.
14 THERE WERE OTHERS IN THE ROOM, I THINK MAYBE A HALF
15 A DOZEN.

16 Q CAN I DIRECT YOUR ATTENTION TO EXHIBIT 695 IN
17 YOUR BINDER. AND TELL ME -- BEFORE YOU PUT IT
18 UP -- DO YOU RECOGNIZE WHAT THAT IS, PLEASE?

19 A YES. THIS IS AN E-MAIL THAT -- IT'S FROM ME
20 AND IT'S TO STEVE HOTELLING FROM APPLE. THIS IS
21 FROM 2003.

22 MR. JOHNSON: YOUR HONOR, WE WOULD ASK
23 THAT THIS EXHIBIT 695 BE ADMITTED.

24 THE COURT: IT'S ADMITTED.

25 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER

1 695, HAVING BEEN PREVIOUSLY MARKED FOR
2 IDENTIFICATION, WAS ADMITTED INTO
3 EVIDENCE.)

4 MR. JOHNSON: WILL YOU PUBLISH IT,
5 PLEASE, RYAN?

6 Q NOW, DO YOU SEE THE DATE ON THIS E-MAIL
7 THREAD?

8 A YES. SO IT'S AN E-MAIL THREAD. THE DATE AT
9 THE TOP IS NOVEMBER 6TH, 2003. THERE'S ANOTHER
10 ITEM IN THE THREAD BELOW, IT SAYS OCTOBER 23RD,
11 2003. AND THEY BOTH ARE FOLLOW-UP E-MAILS TO THE
12 MEETING THAT I HAD PREVIOUS IN THE YEAR.

13 Q AND WHERE DOES THIS E-MAIL COME FROM?

14 A FROM MY FILES.

15 Q NOW, DO THESE E-MAILS REFER TO THE MEETING AT
16 APPLE THAT YOU TALKED ABOUT EARLIER?

17 A YEAH. IT SAYS "A FEW MONTHS AGO, I MET YOU
18 AND JOSH." AND SO, YES, IT REFERS TO THAT MEETING.

19 Q OKAY. NOW, WHEN YOU MET WITH APPLE TO SHOW
20 THE DIAMONDTOUCH SYSTEM, DID YOU REQUIRE APPLE TO
21 SIGN SOME SORT OF CONFIDENTIALITY AGREEMENT BEFORE
22 SHOWING THEM THE DIAMONDTOUCH SYSTEM?

23 A NO. IN FACT, I WAS ASKED TO SIGN AN AGREEMENT
24 THAT SAID ANYTHING THAT I SHOW SHOULD NOT BE
25 CONFIDENTIAL.

1 Q AND WHO ASKED YOU TO SIGN THAT AGREEMENT?

2 A I WAS ASKED BY SOMEONE AT APPLE.

3 Q AND DID YOU SIGN THAT AGREEMENT?

4 A YES.

5 Q NOW, ARE YOU FAMILIAR OF A PROGRAM THAT RAN ON
6 DIAMONDTOUCH CALLED FRACTAL ZOOM?

7 A YES.

8 Q AND WHAT'S THAT?

9 A SO FRACTAL ZOOM WAS ACTUALLY ONE OF THE CORE
10 DEMOS THAT I WOULD SHOW TO DEMONSTRATE THE
11 DIAMONDTOUCH TABLE AND THE MULTIUSER, MULTITOUCH
12 ASPECTS OF IT.

13 IT'S ACTUALLY, I THINK I -- I PREPARED A
14 VIDEO THAT MAYBE WE CAN SHOW.

15 Q OKAY.

16 YOUR HONOR, MAY WE PLAY THE VIDEO? IT'S
17 3952.101.

18 THE COURT: GO AHEAD, PLEASE.

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

21 BY MR. JOHNSON:

22 Q NOW, MR. BOGUE, CAN YOU EXPLAIN WHAT WE SEE
23 HERE?

24 A YEAH. THIS IS THE DIAMONDTOUCH. YOU KIND OF
25 SEE A FRAME THERE, THAT RECTANGULAR SCREEN, THAT'S

1 THE DIAMONDTOUCH TABLE.

2 Q THAT'S THE BLACK FRAME HERE?

3 A YEAH. AND THIS IS SOMETHING WE CALLED THE APP
4 LAUNCHER, SO APP LAUNCHER WAS SOMETHING THAT YOU
5 COULD HAVE APPS, AND IF YOU TOUCH ON THEM, THAT
6 WOULD LAUNCH THE APP.

7 THERE IS FOUR APPS ON THIS SCREEN, AND
8 THIS IS THE CORE SET OF DEMOS THAT I SHOWED IN THE
9 2004/2005 TIME FRAME.

10 AND THE ONE ON THE RIGHT THAT HE'S ABOUT
11 TO TOUCH ON IS, IS FRACTAL ZOOM. I CALLED IT
12 MANDELBROT. HE'S THE MATHEMATICIAN THAT SORT OF
13 DEVELOPED FRACTALS. SORRY.

14 Q DO FRACTAL ZOOM AND MANDELBROT REFER TO THE
15 SAME THING AS FAR AS DIAMONDTOUCH IS CONCERNED?

16 A YES.

17 Q SO WHAT DO WE SEE NEXT IN THE VIDEO?

18 A OKAY. SO WHEN HE TOUCHES ON THAT ICON -- I
19 DON'T KNOW IF YOU CAN RUN THIS. OKAY. SO THAT
20 LAUNCHED THE APPLICATION.

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

23 THE WITNESS: YOU'LL SEE HERE THERE'S A
24 COPYRIGHT 2004, SO THAT'S WHEN FRACTAL ZOOM WAS
25 FIRST DEVELOPED.

1 AND IF WE KEEP RUNNING, THERE'S
2 INSTRUCTIONS ON HOW IT WORKS.

3 MR. JOHNSON: AND CAN WE PAUSE IT HERE
4 JUST FOR A SECOND, PLEASE, RYAN?

5 THE WITNESS: SO HERE IT TELLS YOU TWO
6 FINGERS TO ZOOM IN, TWO FINGERS TO ZOOM OUT, AND
7 ONE FINGER TO GRAB OR PULL THE IMAGE TO MOVE THE
8 IMAGE AROUND.

9 BY MR. JOHNSON:

10 Q AND WHAT WAS BEING DESCRIBED THERE?

11 A THIS IS -- THIS IS THE INSTRUCTIONS ON HOW TO
12 RUN THE DEMO.

13 Q OKAY. AND WHAT DO WE SEE NEXT IN THE VIDEO?

14 A YOU'LL SEE SOMEBODY OPERATING IT.

15 MR. JOHNSON: CAN WE PRESS PLAY.

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

18 THE WITNESS: SO THERE'S ONE FINGER, IT
19 MOVES. AND NEXT YOU'LL SEE TWO FINGERS AND YOU CAN
20 ZOOM OUT OR ZOOM IN.

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

23 THE WITNESS: SO IT'S -- IT'S KIND OF
24 SIMPLE IN ITS OPERATION, BUT WHAT I LIKED ABOUT
25 FRACTAL ZOOM IS THAT IT WAS KIND OF EYE CATCHING

1 WHEN YOU SHOWED IT TO PEOPLE, AND ALSO IT
2 ILLUSTRATED THE MULTITOUCH ASPECTS OF THE HARDWARE.
3 BY MR. JOHNSON:

4 Q AND WHEN WAS FRACTAL ZOOM FIRST DEMONSTRATED
5 TO PEOPLE?

6 A SO IT WAS IN THE MID TO LATE 2004 TIME PERIOD.
7 WE LOADED IT INTO THE SYSTEM ON THE LOBBY IN MERL.
8 THAT'S THE FIRST PLACE WE ALWAYS SHOWED THINGS. WE
9 KIND OF HAD A POLICY OF THE RESEARCHERS WOULD LOAD
10 IN THE LATEST NEW DEMOS ON TO THAT LOBBY MACHINE.

11 AND THEN AFTER THAT I STARTED BRINGING IT
12 ON THE ROAD ON THE TRAVELLING SYSTEM THAT I BROUGHT
13 OUT.

14 Q HOW MANY TIMES WOULD YOU ESTIMATE THAT YOU'VE
15 PUBLICLY SHOWN FRACTAL ZOOM IN THE 2004/2005 TIME
16 FRAME?

17 A IT WAS -- IT WAS LITERALLY THOUSANDS BECAUSE I
18 WAS ON THE ROAD A LOT AT TRADE SHOWS AND PUBLIC
19 EVENTS AND THIS WAS ONE OF THE CORE DEMOS THAT I
20 SHOWED.

21 Q AND CAN YOU DESCRIBE FOR US WHERE IT WAS
22 PUBLICLY DEMONSTRATED.

23 A YEAH. SO THERE WAS NEXT BEST, WHICH WAS
24 SPONSORED BY WIRED MAGAZINE; THERE WAS GEOINT;
25 THERE WAS -- THAT WAS A TRADE SHOW, AFCEA WEST,

1 WHICH WAS IN SAN DIEGO; THERE WAS A CONFERENCE
2 CALLED SID, SOCIETY FOR INFORMATION DISPLAY, THAT
3 WAS IN BOSTON.

4 THERE WERE ALSO SOME INDIVIDUAL
5 DEMONSTRATIONS. I BROUGHT IT TO THE NEW SCHOOL IN
6 NEW YORK CITY. THERE WAS AN EVENT CALLED CWID,
7 SO -- AND I WAS ON THE ROAD A LOT SHOWING
8 DIAMONDTouch BACK IN THAT PERIOD OF TIME.

9 Q AND THE CONFERENCES THAT YOU JUST REFERRED TO,
10 THE CWID, GEOINT, DID THOSE OCCUR -- WHAT YEAR DID
11 THOSE OCCUR IN WHEN YOU FIRST PUBLICLY DEMONSTRATED
12 FRACTAL ZOOM?

13 A SO GEOINT WAS OCTOBER, NOVEMBER 2004. AFCEA
14 WEST WAS JANUARY 2005. SID WAS MAY 2005.

15 Q OKAY.

16 A I CAN KEEP GOING.

17 Q SO WAS FRACTAL ZOOM OFFERED FOR SALE OR SOLD
18 AS PART OF THE DIAMONDTouch SYSTEM IN 2005?

19 A SO WE -- WE DIDN'T SELL IT SEPARATELY. IT WAS
20 INCLUDED IN THE PRODUCT. SO IF YOU BOUGHT A
21 DIAMONDTouch TABLE, IT CAME WITH DEMONSTRATION
22 SOFTWARE AND THAT WAS, THAT WAS INCLUDED.

23 SO THIS, YES, THIS WAS INCLUDED IN THE
24 PRODUCT THAT WE SOLD.

25 Q CAN I TURN YOUR ATTENTION TO DX 661 IN YOUR

1 BINDER, PLEASE. AND CAN YOU TELL US WHAT THAT IS?

2 A YES. THIS IS A PRICE LIST FOR DIAMONDTOUCH
3 AND PRODUCT OPTIONS. THIS IS -- I PREPARED THIS
4 PRICE LIST BACK IN OCTOBER 2000 -- OCTOBER 25TH,
5 2005. I CAN SEE THE DATE IN THE LOWER RIGHT-HAND
6 CORNER.

7 MR. JOHNSON: OKAY. YOUR HONOR, WE'D ASK
8 THAT DX 661 BE MOVED INTO EVIDENCE.

9 MR. JACOBS: NO OBJECTION.

10 THE COURT: IT'S ADMITTED.

11 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
12 661, HAVING BEEN PREVIOUSLY MARKED FOR
13 IDENTIFICATION, WAS ADMITTED INTO
14 EVIDENCE.)

15 MR. JOHNSON: AND YOUR HONOR, I ALSO ASK
16 THAT SDX 3952.101, WHICH IS THE DIAMONDTOUCH VIDEO
17 WE JUST LOOKED AT, ALSO BE ADMITTED.

18 MR. JACOBS: NO OBJECTION.

19 THE COURT: IT'S ADMITTED.

20 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
21 3952.101, HAVING BEEN PREVIOUSLY MARKED
22 FOR IDENTIFICATION, WAS ADMITTED INTO
23 EVIDENCE.)

24 BY MR. JOHNSON:

25 Q SO GOING TO THE PRICE LIST, MR. BOGUE, CAN YOU

1 TELL US WHAT THIS SHOWS?

2 A WE HAD TWO DIFFERENT MODELS OF DIAMONDTOUCH,
3 DT81 AND DT107, SO BASICALLY TWO DIFFERENT SIZES.
4 WHAT THE PRICE LIST SHOWS IS WHAT'S INCLUDED IN THE
5 PRODUCT AND THE PRICE.

6 Q OKAY. NOW, HOW DO YOU KNOW THAT FRACTAL ZOOM
7 WAS INCLUDED IN THE PRICING STRUCTURE HERE?

8 A OKAY. SO THE LAST BULLET IN THE LIST OF
9 WHAT'S INCLUDED SAYS DT DEMONSTRATION SOFTWARE
10 APPLICATIONS, AND THAT REFERS TO THE -- THAT CORE
11 SET OF DEMOS THAT I HAD SHOWN.

12 Q AND FRACTAL ZOOM WAS INCLUDED AS DT
13 DEMONSTRATION SOFTWARE?

14 A THAT'S CORRECT.

15 Q WHAT DID DT DEMONSTRATION SOFTWARE REFER TO?

16 A SO IT INCLUDED THE APP LAUNCHER, THOSE FOUR
17 DEMOS, DT BOXES, DT LENS, MANDELBROT, AND
18 POP-A-BUBBLE, WHICH WAS A GAME. AND THAT'S IN THE
19 OCTOBER 2005 TIME PERIOD.

20 WE HAD OTHER DEMOS THAT WERE ALSO
21 PROVIDED.

22 Q WHAT'S THE DATE OF THIS PRICE LIST?

23 A OCTOBER 25TH, 2005.

24 Q AND HOW DO YOU KNOW THAT?

25 A IT'S IN THE LOWER RIGHT-HAND CORNER.

1 Q OKAY. AND WHO CREATED THIS PRICE LIST?

2 A I DID.

3 Q DID YOU PROVIDE THE PRICE LIST TO ANYBODY IN
4 2005?

5 A YES. ANYONE WHO WANTED TO BUY A DIAMONDTOUCH
6 TABLE, I WOULD GIVE THEM THE PRICE LIST.

7 Q OKAY. LET'S LOOK AT EXHIBIT DX 662.

8 A YES.

9 Q CAN YOU TELL US WHAT THIS IS?

10 A THIS IS A PURCHASE ORDER FROM SAIC. THEY
11 BOUGHT A DIAMONDTOUCH TABLE. THE DATE OF THIS
12 PURCHASE ORDER IS DECEMBER 12TH, 2005.

13 MR. JOHNSON: YOUR HONOR, WE'D ASK THAT
14 DX 662 BE ADMITTED.

15 MR. JACOBS: NO OBJECTION.

16 THE COURT: IT'S ADMITTED.

17 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
18 662, HAVING BEEN PREVIOUSLY MARKED FOR
19 IDENTIFICATION, WAS ADMITTED INTO
20 EVIDENCE.)

21 BY MR. JOHNSON:

22 Q NOW, WAS THE PRICE LIST PROVIDED TO SAIC
23 BEFORE THIS PARTICULAR PURCHASE ORDER?

24 A YES. I GAVE THE PRICE LIST TO BILL GUNTHER,
25 WHO'S THE BUYER AT SAIC.

1 Q WHAT DOES EXHIBIT 662 SHOW US?

2 A SO THIS SHOWS THAT THEY PURCHASED A
3 DIAMONDTOUCH TABLE. THERE'S THREE PAGES HERE. THE
4 NEXT PAGE IS AN INVOICE, THAT'S THE INVOICE THAT WE
5 SENT AFTER WE SHIPPED. AND THEN THE NEXT PAGE IS
6 THE CHECK THAT SHOWS THAT THEY PAID.

7 Q OKAY. WAS FRACTAL ZOOM INCLUDED AS PART OF
8 THIS PURCHASE ORDER?

9 A IT WAS. I REMEMBER THIS BECAUSE THIS WAS ONE
10 OF OUR FIRST SALES, AND I ACTUALLY TRAVELED TO
11 ARREST LINK TON VIRGINIA TO HELP SET THINGS UP AND
12 I MADE SURE THAT, THAT FRACTAL ZOOM AND THE OTHER
13 DEMOS WERE LOADED IN.

14 Q WHAT IS SAIC?

15 A SAIC IS A GOVERNMENT SYSTEMS INTEGRATOR, SO
16 THEY DO A LOT OF WORK WITH GOVERNMENT AGENCIES AND
17 MILITARY ORGANIZATIONS, SO A LOT OF THEIR CUSTOMERS
18 REQUIRE SECRET SECURITY CLEARANCES.

19 I BELIEVE THAT THEY WERE PLANNING TO USE
20 THE DIAMONDTOUCH TABLE FOR A MAPPING APPLICATION.

21 Q AND NOW I WANT TO TALK ABOUT A DIFFERENT
22 APPLICATION CALLED TABLECLOTH.

23 A YES.

24 Q NOW, ARE YOU FAMILIAR WITH TABLECLOTH?

25 A I AM.

1 Q AND WHAT IS TABLECLOTH?

2 A SO TABLECLOTH IS AN APPLICATION THAT WAS
3 DESIGNED TO OPERATE ON THE DIAMONDTOUCH TABLE. IT
4 WAS WRITTEN IN A LANGUAGE CALLED FLASH, WHICH A LOT
5 OF GAME DEVELOPERS USE.

6 Q OKAY. DID YOU PREPARE A VIDEO TO SHOW THE
7 JURY HOW TABLECLOTH WORKS?

8 A YES.

9 Q CAN WE PULL UP DX 3952.102?

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

12 BY MR. JOHNSON:

13 Q AND MR. BOGUE, CAN YOU EXPLAIN TO US WHAT WE
14 SEE HERE?

15 A YES. SO YOU SEE AN IMAGE AND WITH ONE FINGER
16 YOU CAN KIND OF PULL THAT DOWN, AND THEN WHEN YOU
17 LET GO, IT SNAPS BACK. IT'S ACTUALLY PRETTY
18 SIMPLE.

19 MR. JOHNSON: NOW, YOUR HONOR, WE'D ASK
20 THAT 3952.102 BE MOVED INTO EVIDENCE.

21 THE COURT: ANY OBJECTION?

22 MR. JACOBS: NO, YOUR HONOR.

23 THE COURT: IT'S ADMITTED.

24 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
25 3952.102, HAVING BEEN PREVIOUSLY MARKED

1 FOR IDENTIFICATION, WAS ADMITTED INTO
2 EVIDENCE.)

3 BY MR. JOHNSON:

4 Q DOES THIS VIDEO ACCURATELY SHOW THE OPERATION
5 OF TABLECLOTH?

6 A YES.

7 Q AND HOW DID THE PROGRAM GET ITS NAME
8 TABLECLOTH?

9 A SO THIS IS KIND OF LIKE A METAPHOR FOR IF
10 YOU'RE AT A TABLE AND YOU WANT TO PULL SOMETHING
11 CLOSER TO YOU, YOU CAN PULL THE TABLECLOTH AND THEN
12 GRAB THE SALT SHAKER AND THEN LET GO AND IT'LL SNAP
13 BACK.

14 Q AND WHAT WAS THE --

15 A AND I'LL POINT OUT THAT THIS DEMONSTRATION IS
16 VERY SIMPLE AND IT -- AND THE AUDIENCE FOR WHO WE
17 WOULD SHOW THIS TO IS FLASH DEVELOPERS.

18 SO WHAT WE WANTED TO DO WAS ILLUSTRATE
19 HOW EASY IT WAS TO WRITE AN APPLICATION USING FLASH
20 FOR THE DIAMONDTOUCH TABLE.

21 Q NOW, CAN YOU ESTIMATE HOW MANY TIMES YOU'VE
22 DEMONSTRATED TABLECLOTH AND ITS SNAP BACK FEATURE
23 OVER THE YEARS?

24 A SO, I MEAN, WE HAD THIS IN THE MERL LOBBY AND
25 IT WAS -- THERE WAS A SHORTCUT -- SO THIS RUNS IN

1 INTERNET EXPLORER AND WE HAD SHORTCUTTED OUR
2 INTERNET EXPLORER, SO ANYBODY COULD PLAY WITH IT.

3 WE DIDN'T KEEP RECORDS -- MERL DIDN'T
4 REQUIRE PEOPLE TO, TO SIGN IN OR ANYTHING, SO IT'S
5 HARD TO GIVE YOU A NUMBER ON THAT.

6 BUT I CAN TELL YOU THAT I PERSONALLY
7 SHOWED IT TO PEOPLE BOTH IN THE MERL LOBBY AND
8 ON -- AT TRADE SHOWS.

9 Q OKAY. WHEN WAS TABLECLOTH WITH SNAP BACK
10 FIRST DEMONSTRATED ON THE DIAMONDTOUCH SYSTEM?

11 A SO IT -- AGAIN, IT WOULD HAVE BEEN IN THE
12 LOBBY BECAUSE OUR SORT OF POLICY WAS TO LOAD IN THE
13 LATEST SOFTWARE ON THE LOBBY MACHINE, THAT'S WHERE
14 WE START OUT, AND THEN WE STARTED BRINGING IT ON
15 THE ROAD.

16 I BELIEVE THAT THAT WAS JANUARY 2005 IS
17 WHEN THAT WAS DONE, WHEN DT FLASH, WHICH WAS THE
18 TABLECLOTH, WAS ONE OF SEVERAL APPLICATIONS THAT
19 WERE WRITTEN IN FLASH.

20 SOON AFTER THAT WE HAD SOME MEETINGS
21 OUTSIDE OF, OUTSIDE OF MERL. I KNOW THAT I BROUGHT
22 IT TO THE NEW SCHOOL IN NEW YORK CITY LATER IN
23 JANUARY.

24 Q DID YOU DEMONSTRATE TABLECLOTH AT ANY TRADE
25 SHOWS?

1 A YES. SO I REMEMBER SID, SOCIETY FOR
2 INFORMATION DISPLAY, WAS ONE OF THE FIRST TRADE
3 SHOWS THAT DIDN'T HAVE KIND OF A MILITARY AUDIENCE,
4 AND SO I WAS SHOWING DIFFERENT DEMOS THAN I
5 NORMALLY SHOWED, AND SO I STARTED SHOWING THE FLASH
6 THERE.

7 Q NOW, WAS TABLECLOTH --

8 A INCLUDING FLASH -- INCLUDING TABLECLOTH.

9 Q WAS TABLECLOTH AVAILABLE TO CUSTOMERS AS WELL?

10 A YES. WE PROVIDED IT TO -- I'LL POINT OUT THAT
11 ANY DIAMONDTOUCH CUSTOMER OR USER WHO REQUESTED DT
12 FLASH, WHICH INCLUDES ALL THE DEMONSTRATIONS
13 THAT -- OF WHICH TABLECLOTH IS ONE OF THEM, ANYBODY
14 WHO ASKED FOR IT WOULD GET IT.

15 AND I KNOW A FEW PARTNER COMPANIES THAT
16 GOT IT IN EARLY, MID-2005.

17 Q AND DT FLASH REFERRED TO, OR INCLUDED
18 TABLECLOTH, AND TABLECLOTH WAS WRITTEN IN FLASH?

19 A YES.

20 Q AS A SOFTWARE?

21 A THAT'S EXACTLY RIGHT.

22 Q OKAY. SO WHAT WAS THE -- WHAT WAS THE
23 PURPOSE -- WE HEARD ABOUT THE LOBBY A COUPLE OF
24 TIMES AT MERL.

25 WHAT WAS THE PURPOSE OF PUTTING THE

1 DIAMONDTOUCH SYSTEM IN THE LOBBY AT MERL?

2 A SO THAT WAS MY IDEA, AND I WANTED TO SHOWCASE
3 SOME OF THE INTERESTING THINGS AT MERL. MERL WAS
4 KIND OF AN OPEN LAB AND HAD A LOT OF VISITORS AND I
5 THOUGHT IT MADE SENSE TO HAVE SOMETHING RIGHT THERE
6 IN THE LOBBY SO THAT, IN THE WAITING AREA WHEN
7 VISITORS ARRIVED, WE COULD SHOW THEM THINGS. WE
8 WANTED TO SHOWCASE OUR WORK.

9 Q WHO WAS ALLOWED IN THE MERL LOBBY BACK IN
10 2004/2005?

11 A SO ANY VISITORS, AND WE HAD A LOT. AGAIN, WE
12 HAD MANY PEOPLE FROM COMPANIES AND UNIVERSITIES,
13 FAMILY MEMBERS WOULD COME BY. SO, YEAH, IT WAS --
14 IT WAS OPEN.

15 Q DID PEOPLE NEED SOME SPECIAL PERMISSION TO USE
16 THE DIAMONDTOUCH SYSTEM IN THE LOBBY?

17 A NO. WE PUT IT IN THE LOBBY SO THAT PEOPLE
18 WOULD PLAY WITH IT.

19 Q WAS A CARD KEY REQUIRED TO GET INTO THE LOBBY
20 IN 2005 OR EARLIER?

21 A NO. IT -- IN NORMAL BUSINESS HOURS, THE FRONT
22 DOORS WERE OPEN. WE DID HAVE A RECEPTIONIST THERE,
23 BUT IT WAS OPEN.

24 Q NOW, DID THERE COME A TIME WHEN A CARD KEY WAS
25 ADDED AFTER 2005?

1 A YEAH. THAT WAS LATER.

2 Q WHEN WAS THAT?

3 A I THINK IT WAS, LIKE, MID, LATE 2006. IT
4 MIGHT HAVE EVEN BEEN 2007.

5 I KNOW THAT THERE WAS SOME RESISTANCE TO
6 WANTING TO DO THAT BECAUSE PEOPLE WERE WORRIED
7 ABOUT IT CHANGING THE CULTURE THERE BECAUSE WE HAD
8 THIS SORT OF OPEN LAB. BUT EVENTUALLY WE DID ADD
9 THE CARD KEY.

10 Q OKAY. BACK IN 2004/2005, WERE ANY
11 CONFIDENTIALITY AGREEMENTS REQUIRED TO USE THE
12 DIAMONDTOUCH SYSTEM IN THE LOBBY?

13 A NO.

14 Q NOW, I HEARD A, A -- YOU REFER A COUPLE OF
15 TIMES TO THE NEW SCHOOL.

16 CAN YOU TELL US ABOUT THE DEMONSTRATION
17 THAT WAS MADE TO THE NEW SCHOOL.

18 A YES. SO WE HAD A PRETTY LONG DAY OF
19 DEMONSTRATIONS THERE. IT WASN'T JUST ME. THERE
20 WERE A COUPLE OF OTHER PEOPLE FROM MERL, AND WE
21 WERE SHOWING DIAMONDTOUCH AND THE DEMONSTRATIONS
22 THAT YOU SAW HERE, PLUS MANY OTHERS.

23 ONE OF THE PEOPLE WHO CAME TO VISIT WAS
24 THE PRESIDENT OF THE NEW SCHOOL AT THE TIME,
25 SENATOR BOB KERREY. SO I REMEMBER THAT VERY WELL.

1 AND, YEAH, WE WERE TALKING ABOUT THE
2 POTENTIAL OF COLLABORATING WITH THEM WHERE WE WOULD
3 PROVIDE THIS DIAMONDTOUCH HARDWARE, THEY WOULD
4 WRITE SOME SOFTWARE, AND WE WOULD CREATE SOME SORT
5 OF INFORMATION SYSTEM THAT SENATORS IN WASHINGTON
6 D.C. COULD USE.

7 Q DID YOU PARTICIPATE IN THE DEMONSTRATION TO
8 SENATOR KERREY IN THE NEW SCHOOL?

9 A I DID.

10 Q WHEN DID IT OCCUR?

11 A THIS WAS IN JANUARY 2005.

12 Q AND WHAT WAS SHOWN AT THIS DEMONSTRATION?

13 A SO WE SHOWED THE CORE SET OF DEMOS. I ALSO
14 SHOWED THE DT FLASH DEMOS BECAUSE THEY HAD A FLASH
15 DEVELOPER THERE.

16 AND THEN WE SHOWED A LOT OF OTHER
17 DEMONSTRATIONS THAT WERE WRITTEN IN A DIFFERENT
18 PROGRAMMING LANGUAGE CALLED JAVA. AND SO, YEAH, WE
19 SHOWED A LOT OF DIFFERENT THINGS.

20 Q WAS FRACTAL ZOOM SHOWN?

21 A YEAH. THAT WAS ONE OF THE CORE DEMOS THAT I
22 WOULD HAVE SHOWN FIRST.

23 Q AND WAS TABLECLOTH SHOWN?

24 A YES.

25 Q NOW, CAN YOU LOOK AT EXHIBIT 713 IN YOUR

1 BINDER, AND TELL US IF YOU RECOGNIZE THAT DOCUMENT.

2 A I DO.

3 Q WHAT IS IT?

4 A THIS IS AN E-MAIL FROM ALAN ESENTER TO
5 CHIA SHEN AND ME. THIS -- ALAN AND CHIA ARE BOTH
6 EMPLOYEES AT MERL. AND THIS REFERS TO DT FLASH
7 DEMOS AND A MEETING WITH BOB KERREY.

8 MR. JOHNSON: YOUR HONOR, WE ASKED THAT
9 DX 713 BE ADMITTED.

10 THE COURT: ANY OBJECTION?

11 MR. JACOBS: NO, YOUR HONOR.

12 THE COURT: IT'S ADMITTED.

13 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
14 713, HAVING BEEN PREVIOUSLY MARKED FOR
15 IDENTIFICATION, WAS ADMITTED INTO
16 EVIDENCE.)

17 MR. JOHNSON: IF WE MAY PUBLISH IT TO THE
18 JURY?

19 THE COURT: PLEASE.

20 BY MR. JOHNSON:

21 Q WHAT, IF ANYTHING, DOES EXHIBIT 713 DESCRIBE
22 OR REMIND YOU ABOUT WHETHER TABLECLOTH WAS INCLUDED
23 IN THE DEMONSTRATION TO SENATOR KERREY?

24 A WELL, THIS GIVES ME A GOOD SOLID DATE HERE FOR
25 WHEN DT FLASH DEMOS WERE AVAILABLE FOR THIS MEETING

1 TO BOB KERREY.

2 Q NOW IS THAT?

3 A SO THE DATE OF THE E-MAIL IS JANUARY 15TH,
4 2005. IT'S ALSO REFERRING TO A, A PATH THERE -- I
5 DON'T KNOW IF YOU CAN SEE THAT. IT SAYS
6 DISTRIBUTIONKERRY_1_18_15. IT WAS KIND OF STANDARD
7 OPERATION AT MERL TO MAKE A FOLDER FOR A MEETING
8 THAT HAD THE DATE FOR THAT MEETING. SO THIS WAS
9 THE FOLDER WHERE ALL THE STUFF THAT WE WANTED TO
10 SHOW AT THE NEW SCHOOL WOULD HAVE BEEN PLACED.

11 Q OKAY. AND YOU'RE LISTED AS ONE OF THE
12 RECIPIENTS?

13 A YES. I'M THE "TO," THE SECOND PERSON IN THE
14 "TO" FIELD THERE.

15 Q WHERE DID THIS E-MAIL COME FROM?

16 A FROM MY FILES.

17 Q OKAY. NOW, MR. BOGUE, ARE YOU APPEARING HERE
18 TODAY AS AN EXPERT ON BEHALF OF SAMSUNG?

19 A NO. I'M HIRE AS A FACT WITNESS.

20 Q OKAY. ARE YOU BEING COMPENSATED FOR YOUR TIME
21 HERE TODAY TO TESTIFY?

22 A NO. I'M HERE ON MY OWN TIME.

23 Q HAVE YOU BEEN COMPENSATED FOR YOUR TIME
24 LEADING UP TO TODAY?

25 A YES. I HAVE BEEN COMPENSATED FOR THE TIME TO

1 DIG UP DOCUMENTS AND ANSWER QUESTIONS.

2 Q AND AT WHAT RATE HAVE YOU BEEN COMPENSATED?

3 A \$400 AN HOUR.

4 Q ABOUT HOW MUCH TIME HAVE YOU SPENT ON THIS?

5 A ABOUT 40 HOURS I'VE BILLED SO FAR.

6 MR. JOHNSON: THANK YOU VERY MUCH. I'LL
7 PASS THE WITNESS.

8 THE COURT: ALL RIGHT. THE TIME IS NOW
9 4:21. GO AHEAD, PLEASE.

10 MR. JOHNSON: I'M SORRY, YOUR HONOR. I
11 NEGLECTED TO MOVE IN, I'M TOLD, DX 713.

12 THE COURT: I HAVE IT BEING ADMITTED.

13 MR. JOHNSON: OKAY.

14 THE COURT: OKAY. THE TIME IS 4:21.

15 GO AHEAD, PLEASE.

16 **CROSS-EXAMINATION**

17 BY MR. JACOBS:

18 Q WHERE'S THE DEMONSTRATION TABLE, SIR?

19 A I'M SORRY?

20 Q WHERE'S THE DEMONSTRATION TABLE? WHERE'S THE
21 TABLE THAT YOU'VE BEEN TALKING ABOUT?

22 A IN THE MERL LOBBY.

23 Q THE ONE THAT WAS IN THE MERL LOBBY IN THE
24 MID-2000S?

25 A I SOLD THAT ACTUALLY TO QUINN, EMANUEL.

1 Q YOU SOLD IT?

2 A YES.

3 Q TO QUINN, EMANUEL?

4 A YES.

5 Q IS IT ANYWHERE HERE IN THE COURTROOM THAT WE
6 COULD SEE IT TODAY?

7 A NO.

8 Q ARE YOU AWARE THAT WE ASKED FOR IT TO BE
9 DELIVERED?

10 A I BELIEVE THAT THERE'S A DIFFERENT
11 DIAMONDTOUCH UNIT THAT IS HERE.

12 Q IN THE COURTROOM?

13 A IT'S NOT -- IT'S NOT IN THE MERL -- THAT'S NOT
14 THE ONE THAT WAS IN THE MERL LOBBY, THOUGH.

15 Q OH. THE ONE THAT YOU SOLD TO QUINN, EMANUEL
16 ISN'T AVAILABLE TO US TODAY?

17 A SO I SOLD ONE TO QUINN, EMANUEL THAT WAS IN
18 THE MERL LOBBY, AND THAT'S IN WASHINGTON D.C. RIGHT
19 NOW.

20 AND THERE'S A SECOND ONE THAT I SOLD TO
21 QUINN, EMANUEL AND I BELIEVE THAT THAT IS SOMEWHERE
22 IN THE COURTROOM NEARBY.

23 MR. JOHNSON: YOUR HONOR, I OBJECT TO
24 THIS LINE OF QUESTIONING. WE HAVE -- WE HAVE IT
25 HERE WITH US.

1 MR. JACOBS: COULD WE HAVE IT?

2 MR. JOHNSON: IF YOU'D LIKE TO SEE IT.

3 MR. JACOBS: WE ASKED FOR IT.

4 MR. JOHNSON: SURE. DO YOU WANT US TO
5 GET IT?

6 MR. JACOBS: PLEASE.

7 (PAUSE IN PROCEEDINGS.)

8 MR. JACOBS: YOUR HONOR, I DON'T WANT TO
9 BURDEN THE COURT'S FILES WITH THIS DEVICE, SO WHAT
10 I PROPOSE TO DO IS HAVE IT PHOTOGRAPHED AFTER COURT
11 TODAY AND OFFER PHOTOGRAPHS OF THE DEVICE INTO THE
12 COURT RECORD. WOULD THAT BE ACCEPTABLE?

13 THE COURT: THAT'S FINE.

14 BY MR. JACOBS:

15 Q SO MR. BOGUE, WHAT HAVE WE GOT HERE? I'M
16 HOLDING UP A MITSUBISHI THING ON A TRIPOD. WHAT IS
17 THIS?

18 A SO THAT'S A PROJECTOR AND IT'S ATTACHED TO A
19 TRIPOD.

20 Q AND THIS IS PART OF THE DIAMONDTOUCH SYSTEM?

21 A YES.

22 Q SO THE IMAGE FOR DIAMONDTOUCH WOULD COME FROM
23 A PROJECTOR?

24 A YES.

25 Q AND THE PROJECTOR, IT LOOKS LIKE IT CAN ROTATE

1 ON THE TRIPOD. SO CAN IT GO IN DIFFERENT
2 DIRECTIONS?

3 A NO. IT'S INTENDED TO AIM DOWN ON TO THE
4 SURFACE OF THE TABLE.

5 Q CAN IT -- IN OPERATION, CAN IT PROJECT ON TO
6 THE WALL?

7 A NO. IT'S -- IT'S DESIGNED AS A TABLETOP
8 COMPUTER.

9 Q SO IS THERE -- IN THE DEMONSTRATIONS YOU WERE
10 SHOWING OF THE SYSTEM, IT WASN'T EVER BEING
11 PROJECTED ON TO THE WALL?

12 A NO.

13 Q AND THIS IS THE -- WHAT ARE WE LOOKING AT
14 HERE, THIS WHITE OBJECT WITH THE GRAY BORDER?

15 A SO THAT'S THE DIAMONDTOUCH -- YOU CAN SEE THE,
16 THE MITSUBISHI ELECTRIC LOGO THERE. SO THAT'S A
17 DT81.

18 Q AND WHAT ARE WE LOOKING AT? WHAT'S THE
19 SURFACE, THIS WHITE SURFACE?

20 A SO THAT'S THE TOUCHSCREEN. THAT'S WHAT YOU
21 WOULD TOUCH.

22 Q YOU CALL IT A SCREEN, BUT IT'S JUST PLAIN
23 WHITE. RIGHT, SIR?

24 A IT IS WHITE.

25 Q IT'S A WHITE PLASTIC?

1 A IT IS WHITE.

2 Q IS IT A PLASTIC?

3 A THE TOP SURFACE IS A POLYVINYL FILM, AND
4 BENEATH THAT IS THIS GRID THAT I WAS REFERRING TO
5 EARLIER.

6 Q AND THE IMAGE IS PROJECTED ON TO THIS FROM THE
7 PROJECTOR THAT WE'RE LOOKING AT OVER HERE; IS THAT
8 TRUE, SIR?

9 A THAT'S EXACTLY RIGHT.

10 Q AND THE IDEA WAS THAT PEOPLE WOULD SIT AROUND
11 IT AT A TABLE AND THEY WOULD USE THEIR HANDS TO
12 MANIPULATE THE IMAGES; CORRECT?

13 A YES.

14 Q AND WE HAVE A PICTURE OF THAT, JUST TO GIVE
15 THE JURY A CLEAR VIEW.

16 CAN I HAVE PDX 46.1 UP, PLEASE.

17 SO THIS IS AN IMAGE FROM A PHOTOGRAPH
18 THAT APPEARS IN AN ARTICLE BY MERL, FIGURE 1,
19 "PROTOTYPICAL DIAMONDTOUCH SETUP, FRONT-PROJECTION
20 ON TO A TABLETOP SURFACE."

21 DO YOU SEE THAT, SIR?

22 A YES.

23 Q AND THAT IS, IN TACT, A PROTOTYPICAL
24 PROJECTION OF DIAMONDTOUCH; CORRECT, SIR?

25 A IT IS.

1 Q SO THE PROJECTOR IS OVERHEAD AND IT'S SHINING
2 DOWN ON THE TABLE AND THE TABLE IS THIS GRAY AND
3 WHITE OBJECT HERE; CORRECT, SIR?

4 A IT IS.

5 Q AND IN THE PRICE LIST, IF WE GO TO 662.002 --
6 IF WE GO TO 662, AND GO TO PAGE 2 OF IT.

7 A THIS IS THE INVOICE THAT WE SENT TO SAIC.

8 Q SORRY, YOU'RE CORRECT. IT'S AN INVOICE, NOT A
9 PRICE LIST.

10 THERE'S A REFERENCE THERE TO A DRAFTING
11 TABLE. DO YOU SEE THAT?

12 A YES.

13 Q AND THE DRAFTING TABLE IS A TABLE THAT WOULD
14 HOLD THE DIAMONDTOUCH SURFACE?

15 A EXACTLY RIGHT.

16 Q AND THEN THERE'S A REFERENCE IN THAT INVOICE
17 TO RECEIVER CHAIRS.

18 A YES.

19 Q CAN YOU EXPLAIN THE RECEIVER CHAIRS?

20 A YES. SO THE MAIN THING ABOUT THE DIAMONDTOUCH
21 TABLE THAT MAKES IT DIFFERENT THAN OTHER MULTITOUCH
22 SCREENS -- SO DIAMONDTOUCH WAS MULTITOUCH, BUT AN
23 INTERESTING THING ABOUT DIAMONDTOUCH WAS THAT IT
24 WAS MULTIUSER. IT KNOWS WHO'S WHO.

25 THE WAY IT KNOWS WHO'S WHO IS WE WOULD

1 TAKE THE SIGNALS THAT ARE COMING FROM THE TOUCH
2 SURFACE AND, WHEN YOU TOUCH, YOU'RE COMPLETING A
3 CIRCUIT TO THE CHAIR THAT PEOPLE ARE SITTING IN,
4 AND EACH OF THE CHAIRS AROUND THE TABLE ARE
5 CONNECTED. SO THAT'S HOW WE KNEW WHO'S WHO.

6 AND SO WHAT YOU'RE LOOKING AT HERE IS
7 SOME SPECIAL CHAIRS THAT WE DESIGNED FOR USE WITH
8 THE DIAMONDTOUCH TABLE.

9 THE DIAMONDTOUCH ALSO CAME WITH MATS THAT
10 ARE SORT OF LIKE ANTISTATIC MATS THAT YOU PUT IN
11 OUR OWN FURNITURE, SO LIKE IN THE LOBBY OF OUR
12 BUILDING, WE USED THOSE MATS AND KIND OF HID THEM
13 AWAY IN THE FURNITURE THAT WAS AROUND THE TABLE.

14 Q SO ONE OF THE THINGS YOU WERE DEMONSTRATING
15 WITH APPLICATIONS LIKE MANDELBROT, OR FRACTAL
16 ZOOM -- THOSE ARE CHANGEABLE NAMES; CORRECT, SIR?

17 A THAT'S CORRECT.

18 Q -- WAS SORT OF THE MULTIUSER CAPABILITY;
19 CORRECT, SIR?

20 A ACTUALLY, NO. MANDELBROT WAS A SINGLE USER
21 APPLICATION. SO MANDELBROT FOCUSSED ON MULTITOUCH,
22 BUT IT DOESN'T DISTINGUISH WHO'S WHO.

23 SO WE HAD SOME APPLICATIONS THAT TOOK
24 ADVANTAGE OF THE MULTITOUCH ASPECT OF DIAMONDTOUCH
25 AND OTHER APPLICATIONS THAT TOOK ADVANTAGE OF THE

1 MULTIUSER ASPECT OF DIAMONDTOUCH.

2 Q NOW, ON MANDELBROT, FRACTAL ZOOM, THAT WAS
3 DEVELOPED AFTER YOU HELD THE MEETING WITH THE APPLE
4 REPRESENTATIVES; CORRECT, SIR?

5 A CORRECT.

6 Q SO YOU DIDN'T DEMONSTRATE MANDELBROT FRACTAL
7 ZOOM TO APPLE AT THAT MEETING?

8 A THAT IS CORRECT.

9 Q WITH RESPECT TO TABLECLOTH, TABLECLOTH WASN'T
10 ONE OF THE FOUR DEMOS IN THE STANDARD SET UP;
11 CORRECT, SIR?

12 A WHAT DO YOU MEAN BY "SET UP"?

13 Q WELL, THERE WAS AN APP LAUNCHER THAT YOU
14 SHOWED; CORRECT?

15 A RIGHT.

16 Q AND THAT APP LAUNCHER DIDN'T INCLUDE
17 TABLETOP -- TABLECLOTH; RIGHT?

18 A RIGHT. TABLECLOTH WAS LAUNCHED FROM A
19 SEPARATE SORT OF APP LAUNCHER THAT APPEARED IN AN
20 INTERNET EXPLORER WINDOW.

21 SO THERE WAS A SET OF ABOUT A DOZEN
22 LITTLE APPS THAT WOULD -- THAT YOU COULD TOUCH ON
23 AND LAUNCH AND THAT WAS THROUGH AN INTERNET
24 EXPLORER WINDOW.

25 Q AND WHAT IS YOUR RECOLLECTION OF THE FIRST

1 DEMONSTRATION OF TABLECLOTH, SIR?

2 A SO IT WOULD HAVE BEEN IN THE LOBBY AT MERL
3 BECAUSE THAT'S WHERE EVERYTHING STARTS.

4 AND THEN SOON AFTER THAT, I STARTED
5 SHOWING IT ON THE ROAD AND WE SHOWED IT AT THE NEW
6 SCHOOL IN NEW YORK CITY.

7 Q AND YOU SUBMITTED A DECLARATION IN THIS CASE
8 BEFORE. DO YOU RECALL THAT?

9 A I DO.

10 Q AND DO YOU RECALL STATING THERE THAT YOU
11 RECALL EXHIBITING THE TABLECLOTH APPLICATION TO
12 CUSTOMERS AS EARLY AS 2006?

13 A YES.

14 Q NOW, IF WE LOOK AT THE -- AT EXHIBIT 2288, DO
15 YOU SEE THERE'S --

16 A I'M SORRY.

17 Q -- YELLOW HIGHLIGHTING AROUND TABLECLOTH,
18 27.SWF?

19 A YES.

20 Q AND YOU REFERRED TO SWF?

21 A THAT'S A SWIFT FILE. YES, THAT'S A FLASH
22 FILE.

23 Q AND DO YOU SEE THE DATE, THE LAST DATE
24 MODIFIED THERE IS JUNE 13TH, 2005?

25 A I DO.

1 Q AND YOU SHOWED TABLECLOTH AND YOU SHOWED THAT
2 VIDEO AND YOU CALLED THAT SNAPPING BACK. DO YOU
3 RECALL THAT?

4 A YES.

5 Q CAN WE LOOK AT THAT VIDEO SLOWLY?

6 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN
7 OPEN COURT OFF THE RECORD.)

8 BY MR. JACOBS:

9 Q CAN YOU NARRATE WHAT'S GOING ON, MR. BOGUE?

10 A OKAY. SO THAT'S A TOUCH DOWN AND PULLING IT
11 DOWN AND THEN AT SOME POINT THEY'LL LET GO -- YEAH.
12 THAT'S PRETTY MUCH IT.

13 Q AND WHAT IS ACTUALLY HAPPENING ON THE SCREEN
14 AT THAT POINT, SIR?

15 A SO THERE'S A FINGER TOUCHING DOWN AND MOVING
16 ALONG THE SCREEN, STILL MAKING CONTACT WITH THE
17 SCREEN, AND THEN THAT FINGER LIFTS UP.

18 AND WHAT THIS APPLICATION DOES IS
19 BASICALLY DRAG THAT IMAGE DOWN, AND THEN WHEN YOU
20 LET GO, IT SNAPS BACK.

21 Q WELL, IT SNAPS BACK ALL THE WAY TO THE UPPER
22 IMAGE, DOESN'T IT, SIR?

23 A THE UPPER IMAGE? I'M SORRY.

24 Q IT SNAPS BACK TO WHERE YOU STARTED, NOT TO THE
25 TOP OF THE SECOND PHOTOGRAPH; CORRECT, SIR?

1 A SO IT -- YES, IT SNAPS BACK TO ITS ORIGINAL
2 POSITION.

3 Q AND SO IT'S NOT SNAPPING BACK ON AN IMAGE BY
4 IMAGE BASIS, CORRECT, SIR? IT'S JUST GOING ALL THE
5 WAY BACK TO WHERE YOU WERE WHEN YOU STARTED?

6 MR. JOHNSON: OBJECTION. COMPOUND.

7 THE COURT: OVERRULED.

8 THE WITNESS: I GUESS I ALWAYS SAW THIS
9 AS ONE IMAGE.

10 BY MR. JACOBS:

11 Q WELL, IS IT ONE IMAGE, SIR?

12 A YEAH, IT'S AN IMAGE OF THE DESKTOP.

13 Q WELL, LET'S LOOK AT AGAIN SLOWLY.

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

16 THE WITNESS: ALL RIGHT. SO THE IMAGE
17 REPEATS. THERE'S -- IT'S -- THE DESKTOP, IT'S LIKE
18 A REPEATING DESKTOP.

19 BY MR. JACOBS:

20 Q AND IT SCROLLS BACK TO THE FIRST IMAGE OF THE
21 DESKTOP; CORRECT, SIR?

22 A RIGHT. IT'S -- I MEAN, AGAIN, THE IDEA IS
23 THAT YOU, YOU PULL THE TABLECLOTH DOWN AND THEN IT
24 SNAPS BACK.

25 MR. JACOBS: JUST A MINUTE, YOUR HONOR.

1 THE COURT: IT'S ALMOST -- IT'S 4:33.
2 CAN WE CONTINUE TOMORROW?

3 MR. JACOBS: YES, YOUR HONOR.

4 THE COURT: ALL RIGHT. SO IT IS 4:33.

5 AND, AGAIN, I WANT TO THANK YOU FOR YOUR
6 SERVICE AND YOUR PATIENCE. PLEASE KEEP AN OPEN
7 MIND. PLEASE DON'T DISCUSS THE CASE OR DO ANY OF
8 YOUR OWN RESEARCH.

9 AND IF YOU WOULD PLEASE LEAVE YOUR
10 NOTEBOOKS IN THE JURY ROOM FOR THE EVENING.

11 WE'LL SEE YOU BACK HERE TOMORROW AT 9:00
12 O'CLOCK. WE ARE GOING EVERY DAY THIS WEEK. THANK
13 YOU.

14 (WHEREUPON, THE FOLLOWING PROCEEDINGS
15 WERE HELD OUT OF THE PRESENCE OF THE JURY:)

16 THE COURT: ALL RIGHT. THE RECORD SHOULD
17 REFLECT THE JUROR VERSUS LEFT THE COURTROOM.

18 YOU ARE -- PLEASE, YOU CAN STEP DOWN.

19 THE WITNESS: OKAY.

20 THE COURT: DO WE HAVE THE PHOTOS FOR
21 MR. BOGUE? DO THEY HAVE THEM OF MR. BEDERSON AS
22 WELL?

23 THE CLERK: I DON'T BELIEVE I GOT THEM
24 FOR MR. BEDERSON.

25 THE COURT: CAN WE GET -- WE'LL HOLE

1 PUNCH THESE, BUT IF YOU CAN HOLE PUNCH THEM GOING
2 FORWARD SO THEY CAN PUT THEM IN THEIR BINDER.

3 THE CLERK: OF COURSE.

4 THE COURT: SO I AM GOING TO ASK THAT IN
5 YOUR EXHIBIT LIST THAT YOU GO AHEAD AND INCLUDE THE
6 LIMITING INSTRUCTIONS. IF YOU JUST PUT A COLUMN, I
7 THINK THAT WOULD BE HELPFUL FOR THE JURY.

8 OKAY. AND THEN ULTIMATELY, I'D LIKE YOU
9 TO GIVE ME A WORD PERFECT OR WORD VERSION OF THIS
10 AND I CAN REVISE THE LIMITING INSTRUCTIONS.

11 I'VE BEEN KEEPING MY OWN RECORDS AS WELL
12 AS TO WHICH EXHIBITS HAVE BEEN COMING IN WITH
13 LIMITING INSTRUCTIONS.

14 NOW, I UNDERSTAND THERE IS A
15 RECONSIDERATION MOTION AS TO MR. YANG, SO IT'S
16 4:35.

17 GO AHEAD.

18 MR. GOLDSTEIN: THANK YOU, YOUR HONOR.
19 MY NAME IS RYAN GOLDSTEIN ON BEHALF OF SAMSUNG.

20 WE WOULD LIKE YOU TO RECONSIDER, TO BE
21 HEARD ON RECONSIDERATION OF DX 645.

22 THE COURT: OKAY. LET ME --

23 MR. GOLDSTEIN: THIS IS THE SOURCE CODE
24 EXHIBIT --

25 THE COURT: OKAY. ALL RIGHT. GO AHEAD.

1 MR. GOLDSTEIN: -- FOR DR. YANG.

2 THE COURT: I RECALL THAT ISSUE. GO
3 AHEAD.

4 MR. GOLDSTEIN: THANK YOU. AS
5 BACKGROUND, APPLE PRODUCED TWO GIGABYTES OF SOURCE
6 CODE. THAT'S BETWEEN 350 AND 500,000 PAGES.

7 THE COURT: YOU KNOW WHAT? I'VE GONE
8 THROUGH ALL THIS. YOU SHOW ME WHERE THAT WAS
9 DISCLOSED. I DIDN'T SEE IT WAS -- THAT IT WAS
10 DISCLOSED IN HIS EXPERT REPORT. SO IF YOU CAN
11 POINT TO ME WHERE IT IS, THEN WE CAN KIND OF SHORT
12 CIRCUIT THIS WHOLE THING.

13 MR. GOLDSTEIN: SURE, YOUR HONOR. IT'S
14 HIS EXPERT REPORT --

15 THE COURT: I'VE SEEN THE EXPERT REPORT.
16 HE CITES TO 38 BATES RANGES FOR THE FIRST CLAIM
17 LIMITATION.

18 MR. GOLDSTEIN: EXACTLY.

19 THE COURT: ALL RIGHT. I DON'T THINK
20 THAT'S SUFFICIENT. IF YOU HAVE ANYTHING ELSE, LET
21 ME KNOW.

22 MR. GOLDSTEIN: THIS IS 38 RANGE IS 216
23 PAGES. DR. GIVARGIS THEIR EXPERT, KNOWS EXACTLY
24 WHAT THIS IS. WE WENT FILE-BY-FILE.

25 I THINK THIS WOULD FOLLOW THE RULE THAT

1 WE HAD WITH DR. MUSIKA TODAY WHO HAD A RANGE OF
2 COMPETITIVE ANALYSIS DOCUMENTS. IT'S A PARTY
3 ADMISSION.

4 THE COURT: IT'S A FIRST CLAIM
5 LIMITATION. IT'S ABOUT SEVERAL PARAGRAPHS AND HE
6 JUST CITES TO 38 BATES RANGES OF SOURCE CODE
7 WITHOUT DIFFERENTIATING WHAT IS WHAT.

8 AND THEN IN HIS DEPOSITION, HE WASN'T
9 ABLE TO RECALL WHICH BATES RANGE ASSOCIATED WITH
10 THE APPLET.

11 SO IF YOU CAN GIVE ME HIS DEPOSITION
12 TRANSCRIPT WHERE HE DOES SUDDENLY RECALL IT AND
13 THAT WAS DISCLOSED, THEN I'LL LET IT IN.

14 BUT OTHERWISE I THINK IT'S TOO LATE FOR
15 HIM TO COME TO TRIAL NOW AND SUDDENLY REMEMBER
16 SOMETHING THAT HE DIDN'T REMEMBER DURING HIS
17 DEPOSITION AND THAT WASN'T IN HIS EXPERT REPORT.

18 MR. GOLDSTEIN: IF I COULD JUST EXPLAIN?
19 THE DEPOSITION, ONE PAGE WAS GIVEN TO HIM. HE
20 SAID, "THERE'S THREE ELEMENTS IN THESE 200 PAGES.
21 IF I COULD SEE MORE CONTEXT, I COULD TAKE YOU
22 THROUGH WHERE THEY ARE" AND NONE WAS PROVIDED.

23 THE COURT: THAT'S NOT SUFFICIENT
24 DISCLOSURE. SO GIVE ME SOMETHING THAT, THAT IS A
25 DISCLOSURE OF WHAT HE'S GOING TO SAY AT TRIAL AND I

1 WILL LET IT IN.

2 BUT IF YOU CAN'T DO THAT, THIS OBJECTION
3 IS GOING TO BE REMAIN SUSTAINED.

4 MR. GOLDSTEIN: WELL, YOUR HONOR, THEN I
5 WOULD, I WOULD SUGGEST THAT THE ONE, WE CAN SUBMIT
6 SOMETHING TONIGHT, BUT --

7 THE COURT: NO. I WANT YOU TO DO IT NOW.
8 I ALREADY LOOKED AT ALL OF THIS LAST NIGHT. I
9 ISSUED A RULING ON THIS LAST NIGHT.

10 YOU ARE NOW ASKING FOR RECONSIDERATION.
11 YOU GAVE ME NOTICE THIS MORNING AT FIVE TO 9:00
12 THAT YOU WERE GOING TO ASK FOR RECONSIDERATION.
13 WHATEVER YOU HAVE, SHOW ME NOW.

14 MR. GOLDSTEIN: OKAY.

15 THE COURT: I'M NOT GOING TO HAVE YOU
16 FILING SOMETHING AT 10:30 AT NIGHT AND THEN I HAVE
17 TO SCRAMBLE. SHOW ME WHAT YOU'VE GOT.

18 MR. GOLDSTEIN: UNDERSTOOD.

19 THE COURT: WHAT HAVE YOU GOT? WHAT HAVE
20 YOU GOT?

21 MR. GOLDSTEIN: I'VE GOT FOOTNOTE AND I
22 WOULD ASK THAT HE BE ALLOWED TO TESTIFY AT THE
23 LEVEL OF SPECIFICITY OF THE FOOTNOTE, TO SAY
24 "HERE'S THE FOOTNOTE, I LOOKED AT IT, AND THIS IS
25 MY TESTIMONY."

1 AND THEY CAN CROSS-EXAMINE HIM ON THE
2 WEIGHT IF THAT'S SUFFICIENT, OR IF HE IDENTIFIED IT
3 ENOUGH.

4 BUT HE DID IDENTIFY BATES RANGES AND HE
5 SHOULD BE ALLOWED TO SAY "HERE'S SOURCE CODE. IT
6 WAS IN MY REPORT."

7 THE COURT: AND WHAT IS HE GOING TO SAY?
8 HE'S GOING TO SAY "THIS IS SOURCE CODE FOR AN
9 APPLET" WHEN THAT'S NOT WHAT HIS EXPERT REPORT
10 SAYS?

11 HIS EXPERT REPORT HAS A CLAIM LIMITATION
12 THAT'S ABOUT THIS BIG, AND THEN FOOTNOTES, 38 BATES
13 RANGES. DOESN'T SAY "THAT IS THE APPLET."
14 DOESN'T -- SO IT'S JUST NOT CLEAR WHAT HE'S CITING
15 THAT FOR.

16 SO TELL ME EXACTLY WHAT HE'S GOING TO
17 SAY.

18 MR. GOLDSTEIN: HE WOULD SAY "THIS IS
19 SOURCE CODE WHERE YOU SEE, WHERE THE -- WHERE
20 THERE'S A MUSIC BACKGROUND PLAY OBJECT WITH
21 APPLICATION MODULE WITH AN APPLET," AND THAT'S ALL
22 HE'LL SAY.

23 THAT'S THE LEVEL OF SPECIFICITY IN THE
24 REPORT AND THEY CAN CROSS HIM ON THE WEIGHT AS TO
25 WHETHER THAT'S ENOUGH TO SHOW THAT ELEMENT OR NOT.

1 THAT'S WHAT'S DISCLOSED AND THAT'S WHAT
2 HE WOULD TESTIFY ABOUT.

3 THE COURT: ALL RIGHT. LET ME HEAR FROM
4 APPLE. LET ME HEAR FROM MR. LEE.

5 MR. LEE: YOUR HONOR, THAT -- HE SHOULD
6 NOT BE ALLOWED TO TESTIFY TO THAT.

7 AS YOUR HONOR SAID, HE HAS THIS LONG
8 CLAIM LIMITATION, AND YOU WILL RECALL THAT YOU --
9 THIS IS ONE OF THE TERMS YOU DID CONSTRUE, AND SO
10 THE APPLET HAS TO BE AN APPLICATION WITH AN
11 APPLICATION MODULE.

12 SO TO KNOW WHAT THEIR INFRINGEMENT CASE
13 IS, YOU HAVE TO KNOW WHAT THE APPLET IS. YOU HAVE
14 TO KNOW WHAT THE APPLICATION MODULE IS.

15 HE, IN HIS REPORT, GROUPS EVERYTHING
16 TOGETHER, DROPS A FOOTNOTE WITH 33 DIFFERENT
17 SOFTWARE MODULES, AND SAYS "IT'S IN THERE."

18 LAST NIGHT THEY REPRESENTED TO YOUR HONOR
19 THAT ALL WE HAD TO DO WAS ASK WHAT WAS THE APPLET
20 AND HE WOULD HAVE TOLD US.

21 AS YOUR HONOR KNOWS FROM THE TEN PAGES WE
22 SUBMITTED, WE ASKED HIM 35 DIFFERENT WAYS, "JUST
23 TELL US WHAT THE APPLET IS. TELL US WHAT THE
24 APPLICATION MODE IS." THEY -- HE COULDN'T AND HE
25 WOULDN'T.

1 SO TO ALLOW HIM TO COME IN TODAY AND
2 SAY -- IT SOUNDS LIKE IT'S TWO OF TWO THINGS. ONE
3 POSSIBILITY IS "HERE ARE THESE 32. IT'S IN THERE
4 SOMEWHERE. WE CAN'T TELL YOU QUITE WHERE. WE'RE
5 NOT GOING TO TELL YOU QUITE WHERE. BUT IT'S IN
6 THERE SOMEWHERE."

7 OR HE'S GOING TO GIVE US THE SPECIFICITY
8 HE DIDN'T BEFORE.

9 EITHER WAY, HE SHOULDN'T BE ALLOWED TO
10 TESTIFY TO IT. YOUR HONOR HAS BEEN VERY CAREFUL TO
11 MAKE SURE THAT EITHER OF US, THE RULES APPLY TO
12 BOTH OF US, NO ONE IS HIDING THE BALL ON WHAT THE
13 CLAIM LIMITATION IS.

14 THIS IS A CLAIM LIMITATION THAT YOUR
15 HONOR HEARD ARGUMENT ON AND YOUR HONOR CONSTRUED.
16 IT HAS AT LEAST TWO SPECIFIC REQUIREMENTS, AN
17 APPLICATION, THE APPLLET, WITHIN THE APPLICATION
18 MODULE.

19 HE WAS OBLIGATED TO ADD -- THEY HAVE THE
20 BURDEN OF PROOF. HE WAS OBLIGATED TO SAY WHERE
21 THIS IS IN THE SOURCE CODE.

22 THEY HAVE THIS LONG FOOTNOTE, WE ASKED,
23 HE REFUSED TO IDENTIFY IT.

24 IT SHOULDN'T GO IN EITHER AS THIS 32
25 MODULE UNDIFFERENTIATED, NOR SHOULD HE BE ABLE TO

1 IDENTIFY WHERE IT IS RIGHT NOW.

2 LAST POINT IS THIS, YOUR HONOR. AS YOUR
3 HONOR KNOWS FROM THE DEPOSITION TRANSCRIPT, WE
4 SPECIFICALLY SAID, "DOES THIS LONG FOOTNOTE INCLUDE
5 THINGS THAT ARE NOT THE APPLET?"

6 AND HE SAID, "YES, IT DOES."

7 "WHICH ONES AREN'T?"

8 "I CAN'T TELL YOU RIGHT NOW."

9 MR. GOLDSTEIN: YOUR HONOR, IF I COULD BE
10 HEARD?

11 THERE'S A DIFFERENCE BETWEEN DISCLOSURE
12 AND CROSS-EXAMINATION. IF HE ONLY SAYS WHAT HE
13 DISCLOSED, "I LOOKED AT THE SOURCE CODE," MR. LEE
14 IS FREE TO CROSS-EXAMINE HIM TO HIS HEART'S
15 CONTENT. THAT GOES TO THE WEIGHT.

16 MR. LEE: YOUR HONOR, IT DOESN'T GO TO
17 THE WEIGHT. IT GOES TO DISCLOSURE. THEY NEVER
18 TOLD US WHAT THE APPLET IS. THEY NEVER SAID WHAT
19 THE APPLICATION MODULE IS.

20 HE SAID, "HERE'S 32 DIFFERENT BATES STAMP
21 RANGES," AND THE BEST HE COULD SAY AT HIS
22 DEPOSITION WAS "IT'S IN THERE SOMEWHERE."

23 EXPERTS IN THIS CASE HAVE BEEN PRECLUDED
24 FROM TESTIFYING WHEN THEY'RE ACTUALLY MORE FOCUSED
25 THAN THAT.

1 THIS IS -- IF HE GIVES THAT TESTIMONY
2 TOMORROW, IT WOULD BE THE FIRST TIME WE'LL KNOW
3 WHAT HE'S CLAIMING.

4 THE COURT: ALL RIGHT. THE OBJECTION IS
5 STILL SUSTAINED.

6 OKAY. IT'S 4:42.

7 WHAT ELSE? ANYTHING ELSE THAT WE NEED TO
8 COVER TODAY?

9 MR. JACOBS: NOTHING FROM APPLE, YOUR
10 HONOR.

11 THE COURT: OKAY. ANYTHING ELSE?

12 MR. VERHOEVEN: NO, YOUR HONOR.

13 MR. MCELHINNY: CAN WE HAVE A TIME
14 ESTIMATE?

15 THE COURT: OKAY. I JUST NEED A MINUTE.

16 (PAUSE IN PROCEEDINGS.)

17 THE COURT: OKAY. APPLE HAS USED 14
18 HOURS AND 10 MINUTES, AND SAMSUNG HAS USED 14 HOURS
19 AND 58 MINUTES.

20 OKAY. ALL RIGHT. THANK YOU ALL VERY
21 MUCH. I'LL SEE YOU TOMORROW MORNING. THANK YOU.

22 MR. VERHOEVEN: THANK YOU, YOUR HONOR.

23 MR. MCELHINNY: THANK YOU, YOUR HONOR.

24 (WHEREUPON, THE EVENING RECESS WAS
25 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/

LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

DATED: AUGUST 14, 2012