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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 3, 2012
VS.)	
)	VOLUME
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 556-930
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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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MICHAEL A. JACOBS
RACHEL KREVANS
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FOR THE DEFENDANT: QUINN, EMANUEL, URQUHART,
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865 SOUTH FIGUEROA STREET
10TH FLOOR
LOS ANGELES, CALIFORNIA 90017

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(RES.)
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REDIRECT EXAM BY MR. MCELHINNY P. 717
RECROSS-EXAM BY MR. PRICE P. 721

SCOTT FORSTALL

DIRECT EXAM BY MR. MCELHINNY P. 724
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JUSTIN DENISON

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1 SAN JOSE, CALIFORNIA AUGUST 3, 2012

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

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

5 THE COURT: ALL RIGHT. WELCOME BACK. WE
6 HAVE QUITE A FEW HOUSEKEEPING MATTERS TO COVER.
7 LET ME JUST START WITH VERY MINOR HOUSEKEEPING
8 MATTERS.

9 JUST IN TERMS OF TIME, I HAVE APPLE
10 HAVING USED 67 MINUTES AND SAMSUNG HAVING USED 34
11 MINUTES.

12 DOES THAT MATCH WITH YOUR UNDERSTANDING?

13 MS. MAROULIS: YOUR HONOR, WE HAVE 32
14 MINUTES FOR SAMSUNG.

15 THE COURT: NO, THAT'S NOT CORRECT.

16 MS. MAROULIS: WE WILL CHECK WITH APPLE
17 AS WELL.

18 MR. JACOBS: WELL, IT DOESN'T MATTER
19 BECAUSE I'VE KEPT THIS TIME AND IT'S IN THE
20 TRANSCRIPT, SO IT IS WHAT IT IS.

21 NOW, I GOT AN ODD E-MAIL YESTERDAY. WE
22 HAVE A PROCESS WHEREBY THE PARTIES ACCESS THIS
23 COURTROOM, AND THAT IS THAT IT'S SIMULTANEOUS AND
24 IT'S EQUAL AND WE NOTIFY BOTH SIDES THAT THE OTHER
25 SIDE IS COMING IN.

1 BUT I RECEIVED THIS E-MAIL FROM
2 JUDGE FOGEL'S CLERK THAT A MR. STRETCH, WHO
3 IDENTIFIED HIMSELF AS COUNSEL FOR SAMSUNG -- HE IS
4 NOT ATTORNEY OF RECORD IN THE CASE, HE'S NOT MADE
5 AN APPEARANCE IN THIS CASE -- CALLED JUDGE FOGEL'S
6 CLERK SAYING HE WAS A PERSONAL FRIEND OF
7 JUDGE BREYER AND JUDGE BREYER HAD TOLD HIM TO ASK
8 JUDGE FOGEL TO OPEN UP THIS CEREMONIAL COURTROOM
9 FOR HIM SO HE COULD COME WITH INDIVIDUALS WHO WOULD
10 BE TESTIFYING IN THE SAMSUNG CASE.

11 NOW, WE HAVE AN ESTABLISHED PROCEDURE FOR
12 HOW THIS COURT IS ACCESSED BY EITHER PARTY, SO LET
13 ME HEAR FROM SAMSUNG AS TO WHY YOU CIRCUMVENTED OUR
14 ESTABLISHED PROCEDURE, WHICH IS THAT YOU CONTACT
15 MS. PARKER BROWN OR CONTACT SNOOKI PULI FROM THE
16 CLERK'S OFFICE.

17 WHY DID YOU CIRCUMVENT THIS AND GO TO
18 JUDGE FOGEL, WHO'S NOT EVEN IN THE COURTHOUSE?

19 NOW, I UNDERSTAND THAT MR. STRETCH CAME
20 WITH TEN INDIVIDUALS INTO THE COURTROOM YESTERDAY
21 AFTERNOON.

22 ONE OF THEM ASKED TO TAKE A PHOTOGRAPH,
23 WHICH IN MY ORDER IT'S VERY CLEAR THAT IT IS
24 ACTUALLY AGAINST THE LAW, PER UNITED STATES
25 MARSHAL'S RULES, TO TAKE A PHOTOGRAPH INSIDE THIS

1 COURTHOUSE FOR SECURITY REASONS.

2 SO WHY IS THIS HAPPENING? APPARENTLY
3 MR. STRETCH ARRIVED WITH TEN INDIVIDUALS, SEVERAL
4 OF WHOM DID NOT SPEAK ENGLISH AND WERE AIDED BY AN
5 INTERPRETER, AND HE WAS SHOWING THEM AROUND THE
6 COURTROOM.

7 SO WHY IS THIS HAPPENING IN CIRCUMVENTION
8 OF OUR VERY ESTABLISHED PROCEDURES OVER THE LAST
9 FEW WEEKS ABOUT HOW A PARTY ACCESSES THIS COURTROOM
10 AND THAT ANY ACCESS, AT LEAST THE OTHER SIDE BE
11 GIVEN NOTICE, AND IF THEY DON'T WANT TO SHOW UP,
12 THAT'S TOTALLY THEIR CALL.

13 SO WHAT'S GOING ON HERE?

14 MR. VERHOEVEN: YOUR HONOR, THIS IS
15 MR. VERHOEVEN.

16 I DON'T KNOW ANYTHING ABOUT THIS, AND
17 MR. -- I'M LOOKING AROUND FOR MR. STRETCH. I DON'T
18 SEE HIM IN THE COURTROOM.

19 I CAN ASSURE YOU I WILL LOOK INTO THIS
20 RIGHT AWAY AND, OVER THE -- AS SOON AS I CAN GET
21 AHOLD OF HIM, WE'LL REPORT BACK TO YOU.

22 THE COURT: ALL RIGHT. I WANT YOU TO
23 FILE THIS AFTERNOON THE NAMES OF THE INDIVIDUALS
24 THAT WERE IN THE COURTHOUSE, IN THIS COURTROOM
25 YESTERDAY.

1 MR. VERHOEVEN: YES, YOUR HONOR.

2 THE COURT: OKAY. I'M NOT SURE WHY
3 THAT'S HAPPENING WITHOUT OUR CLERK'S OFFICE AND
4 WITHOUT MY CHAMBERS KNOWING.

5 WE ARE ALL HERE. JUDGE FOGEL IS NOT
6 HERE, SO THE FACT THAT QUINN, EMANUEL WOULD CONTACT
7 THE CHAMBERS OF JUDGE WHO'S NOT EVEN HERE AND IS IN
8 WASHINGTON D.C. IS A LITTLE BIT CURIOUS.

9 MR. VERHOEVEN: AS I SAID, YOUR HONOR, I
10 DON'T KNOW ANYTHING ABOUT IT, BUT I WILL
11 INVESTIGATE IMMEDIATELY.

12 THE COURT: NOW, THAT IS ANOTHER POINT
13 THAT, FOR SECURITY REASONS, THERE SHOULD BE NO
14 PHOTOS IN THIS COURTHOUSE OR OF THIS COURTHOUSE,
15 BUT APPARENTLY I'VE BEEN TOLD BY THE MARSHAL'S
16 SERVICE THAT MANY PHOTOS OF THIS COURTHOUSE ARE
17 SHOWING UP ON-LINE, THE INSIDE OF THE COURTHOUSE.

18 SO I'M NOT SURE WHO IS DOING THAT, BUT
19 PLEASE, FOR SECURITY REASONS, WE ASK THAT NO
20 PHOTOGRAPHS BE TAKEN INSIDE THE COURTHOUSE.

21 NOW, LET'S HANDLE -- APPLE'S REQUEST TO
22 SEAL IS DENIED. THAT DOES NOT MEET THE COMPELLING
23 REASONS BASIS FOR SEALING INFORMATION.

24 AND I'VE ALREADY RULED ON THE MARKETING
25 DOCUMENTS, SO WHY THERE'S ANOTHER REQUEST TO SEAL

1 THE MARKING SURVEY DOCUMENTS IS PERPLEXING.

2 MR. JACOBS: SO YOUR HONOR HAD INDICATED
3 A PREDILECTION NOT TO SEAL THOSE PARTICULAR
4 DOCUMENTS, AND THEN WE FILED OUR PAPERS ON MONDAY,
5 BOTH OUR RETROSPECTIVE MOTION AND OUR PROSPECTIVE
6 MOTION, AND THE PROSPECTIVE MOTION EXPLAINS THAT
7 THESE ARE VERY DISTINCTIVE -- TO CALL THEM
8 MARKETING DOCUMENTS REALLY DOESN'T ACCURATELY
9 CHARACTERIZE THEM -- AND WE MADE A DETAILED SHOWING
10 IN THAT MOTION OF WHY THESE PARTICULAR SURVEYS,
11 WHICH ARE SURVEYS OF APPLE CUSTOMERS CONDUCTED BY
12 APPLE AT GREAT EXPENSE AND MAINTAINED UNDER LOCK
13 AND KEY, BOTH IN FACT -- IN FACT AND IN SPIRIT,
14 ARE REALLY, REALLY VITAL, AND TO JUST DISPLAY THEM
15 TO COMPETITORS WOULD GIVE COMPETITORS ACCESS THAT
16 THERE'S NO WAY THEY COULD GET OTHERWISE TO WHAT THE
17 APPLE CUSTOMERS LIKE AND WHY THEY MAKE THEIR
18 PURCHASING DECISIONS.

19 SO WHAT WE WERE DOING IN THIS, IN THIS
20 PAPER THAT WE FILED LATE LAST NIGHT WAS SAYING,
21 LOOK, WE HAVE THIS MOTION ON FILE, WE'VE MADE A
22 SHOWING UNDER THE APPLICABLE LAW.

23 IT'S PLAINLY A TRADE SECRET. IF SOMEBODY
24 TOOK THESE FROM APPLE, THEY WOULD BE SUBJECT TO A
25 TRADE SECRET MISAPPROPRIATION CLAIM, AND WE

1 DETAILED ELEMENT BY ELEMENT UNDER THE TRADE SECRET
2 STATUTE WHY THESE MEET THAT STANDARD AND,
3 THEREFORE, MEET THE COMPELLING NEEDS OF ELECTRONIC
4 ART AND THE DISCUSSION WE HAD LAST WEEK.

5 WHAT THIS PAPER SAYS IS, LOOK, YOU
6 HAVEN'T RULED ON THAT MOTION YET. HERE'S WHAT WE
7 SHOULD DO TODAY. WHAT WE SHOULD DO TODAY IS THE
8 PARTICULAR PAGES THAT MR. SCHILLER IS GOING TO BE
9 EXAMINED ON, THOSE COME INTO EVIDENCE.

10 THAT'S OUR BASIC DEFAULT, BARRING
11 EXCEPTIONAL CIRCUMSTANCES ANYWAY, THAT A PARTICULAR
12 PAGE A WITNESS IS EXAMINED ON, THAT CAN COME INTO
13 EVIDENCE.

14 THIS IS A REALLY THICK DOCUMENT. IT
15 COVERS COUNTRIES AROUND THE WORLD, YOUR HONOR. IT
16 TELLS COMPETITORS WHAT THE DIFFERENCES AMONG APPLE
17 CUSTOMERS BETWEEN JAPAN, GERMANY, FRANCE, THE
18 UNITED STATES. THERE'S NO REASON FOR A DOCUMENT
19 LIKE THAT TO COME IN IN ITS ENTIRETY.

20 SO THAT'S OUR PROPOSAL TO YOUR HONOR.
21 IT'S VERY IMPORTANT THAT WE PROTECT THIS
22 INFORMATION FROM COMPETITORS, AND THAT'S WHY WE'RE
23 MAKING THIS PROPOSAL TO YOU, THIS URGING, AND WHY
24 AT THE END, WE JUST HAVE TO ASK YOU THAT IF YOU
25 DON'T GRANT THIS, WE ASK FOR A STAY SO WE CAN SEEK

1 RELIEF, BECAUSE WE BELIEVE WE'VE MET THE RELEVANT
2 STANDARD IN THIS.

3 THE COURT: ALL RIGHT. WHY DON'T YOU
4 SEEK RELIEF THEN? SO WHAT DO YOU NEED TO DO? YOU
5 NEED TO CALL MR. SCHILLER AT A LATER TIME, OR WHAT
6 DO YOU WANT TO DO?

7 MR. MCELHINNY: WHAT WE WOULD LIKE TO DO,
8 YOUR HONOR, IS CALL MR. SCHILLER, PUT IN THE PAGES
9 THAT I SHOW HIM, AND THEN HAVE YOUR ORDER DENYING
10 OUR MOTION TO SEAL TAKE EFFECT NEXT FRIDAY.

11 THE COURT: WHY NEXT FRIDAY?

12 MR. MCELHINNY: WELL --

13 THE COURT: IT TAKES EFFECT TODAY. I'M
14 DENYING YOUR REQUEST TO SEAL TODAY, SO TAKE IT UP
15 ON APPEAL.

16 MR. MCELHINNY: THANK YOU, YOUR HONOR.

17 WHAT WE WERE REQUESTING IS A STAY IN
18 ORDER TO PERMIT US TO TAKE IT UP ON APPEAL.

19 MR. SCHILLER IS COMING ON TODAY. IF THE
20 DOCUMENTS ARE REVEALED TODAY, WE DON'T HAVE A
21 CHANCE TO TAKE IT UP ON APPEAL.

22 SO WE WOULD LIKE JUST -- IT'S JUST A
23 QUESTION OF WHETHER THE EXHIBIT CAME IN TODAY OR IT
24 CAME IN NEXT WEEK, AND WE WOULD JUST LIKE A COUPLE
25 OF DAYS IN ORDER TO BE ABLE TO SEEK A STAY.

1 (DISCUSSION OFF THE RECORD BETWEEN THE
2 COURT AND THE CLERK.)

3 THE COURT: OKAY. APPARENTLY
4 RUSSELL WINER AND WOODWARD YANG, WHO ARE WITNESSES
5 FOR EACH SIDE, ARE WAITING OUTSIDE THE COURTROOM
6 AND THEY THINK THEY'RE SUPPOSED TO COME IN.

7 SO YOU SHOULD SEND SOMEONE OUT TO LET
8 THEM KNOW THEY SHOULD WAIT AND WHAT THEY SHOULD DO.
9 THEY'VE BEEN EXCLUDED SINCE THEY'RE WITNESSES.

10 MS. MAROULIS: YOUR HONOR, THEY'RE BOTH
11 EXPERT WITNESSES.

12 THE COURT: OH, OKAY.

13 MR. MCELHINNY: THEY ARE BOTH EXPERTS,
14 YOUR HONOR.

15 THE COURT: THAT'S FINE.

16 ALL RIGHT. SO YOU ARE REQUESTING THAT I
17 GRANT A STAY UNTIL NEXT FRIDAY SO YOU CAN SEEK AN
18 APPEAL?

19 MR. MCELHINNY: LET ME BE VERY CLEAR.

20 THE COURT: YES.

21 MR. MCELHINNY: I'M NOT GOING TO PUT
22 THESE EXHIBITS IN. SAMSUNG IS GOING TO PUT THE
23 EXHIBITS IN, WE'VE BEEN TOLD. THEY'RE IN THEIR
24 CROSS-EXAMINATION BINDER.

25 AND WHAT I'M ASKING IS IF THEY DO THAT,

1 IF THEY OFFER THE ENTIRE DOCUMENT, THAT THE EFFECT
2 OF YOUR HONOR'S RULING IS WE PROVIDE COPIES OF THE
3 EXHIBITS AT THE END OF THE DAY TO THE PRESS AND
4 THEY BECOME PUBLIC IMMEDIATELY.

5 FOR THOSE DOCUMENTS, IF THEY COME IN,
6 THAT THE EFFECT OF THAT PUBLICITY WOULD BE TAKE
7 EFFECT A WEEK FROM TODAY. SO THOSE WOULD BE MADE
8 PUBLIC A WEEK FROM TODAY.

9 THE COURT: THAT'S FINE.

10 MR. MCELHINNY: THANK YOU.

11 MR. PRICE: YOUR HONOR, THERE'S A TWIST
12 HERE, AND THAT IS, THESE FULL EXHIBITS WERE IN
13 THEIR INITIAL DISCLOSURES THAT WERE EXCHANGED.
14 THEY PLAN TO ASK MR. SCHILLER ABOUT SOME OF THE
15 PAGES IN THAT EXHIBIT.

16 FOR OUR CROSS-EXAMINATION, WE WANT TO ASK
17 HIM ABOUT OTHER PAGES, AND BECAUSE WE'RE ON THE
18 CLOCK, I DON'T PLAN TO ASK HIM ABOUT EVERY PAGE
19 THAT IS RELEVANT AND THAT WE WOULD THEN --

20 THE COURT: SO THEN WHY DO YOU NEED TO
21 GET THE WHOLE DOCUMENT IN?

22 MR. PRICE: WE DON'T NEED THE WHOLE
23 DOCUMENT IN. WHAT I WOULD SUGGEST IS THAT I BE
24 PERMITTED TO CROSS-EXAMINE ON THE PAGES THAT ARE
25 RELEVANT TO HIS TESTIMONY, AND --

1 THE COURT: YOU DON'T HAVE ANY OBJECTION
2 IF HE CROSSES HIM ON THE PAGES THAT YOU'RE GETTING
3 IN?

4 MR. MCELHINNY: OR EVEN HIS OWN PAGES.
5 ANY PAGE THAT GETS DISPLAYED TO THE JURY SHOULD
6 BECOME PUBLIC. WE'RE AGREEING TO THAT.

7 IT'S THE PARTS OF THE DOCUMENT WHICH THE
8 JURY --

9 THE COURT: IF YOU'RE SEEKING TO HAVE THE
10 WHOLE DOCUMENT IN, I'M GOING TO STAY IT UNTIL NEXT
11 FRIDAY.

12 MR. PRICE: AND WHAT I WOULD LIKE --
13 THAT'S FINE, YOUR HONOR.

14 WHAT I WOULD LIKE TO BE ABLE TO DO AS
15 WELL, AND MAYBE WE CAN REACH AGREEMENT ON THIS, IS
16 THERE ARE SOME PAGES I JUST WON'T HAVE TIME TO
17 CROSS HIM ON, WHICH I CAN PERHAPS GIVE THOSE PAGES
18 TO APPLE'S COUNSEL AND SEE IF THEY AGREE THAT THEY
19 CAN ALSO BE PART OF THE RECORD.

20 BUT OBVIOUSLY WHAT APPLE HAS DONE, AND
21 THIS IS GOING TO BE A PROBLEM --

22 THE COURT: I'M SORRY. WE JUST DON'T
23 HAVE A LOT OF TIME. THE JURY IS GOING TO COME OUT
24 AT 9:00. IF YOU CAN GET AGREEMENT, THEN FINE.

25 IT SOUNDS LIKE THERE IS ROOM FOR AN

1 AGREEMENT HERE ON LIMITED NUMBER OF PAGES. SO THIS
2 REALLY SHOULD BECOME A NONISSUE.

3 IF YOU'RE GOING TO INSIST ON THE WHOLE
4 THING, I'M GRANTING A STAY UNTIL NEXT FRIDAY SO
5 THEY CAN TAKE IT UP ON APPEAL.

6 MR. PRICE: WE'RE NOT INSISTING ON THAT.

7 THE COURT: ALL RIGHT. WHY DON'T YOU
8 WORK IT OUT? IT SOUNDS LIKE THERE'S AGREEMENT
9 HERE.

10 ALL RIGHT. NOW, THE OBJECTION PROCESS IS
11 NOT WORKING. THE OBJECTIONS TO THESE WITNESSES
12 HAVE BEEN BRIEFED FIVE TIMES. OKAY? AND WE FILED
13 OUR ORDER AT 11:00 O'CLOCK LAST NIGHT AND THIS
14 MORNING THERE ARE RECONSIDERATIONS OF OUR ORDERS.

15 SO THIS IS WHAT I'M GOING TO DO. FROM
16 NOW ON, NONE OF THIS IS GOING TO BE DONE ON PAPER.

17 YOU'RE GOING TO DO IT IN FRONT OF THE
18 JURY AND IT'S GOING TO COUNT TOWARDS YOUR TRIAL
19 TIME, OKAY?

20 BECAUSE SOME OF THESE OBJECTIONS ARE
21 RIDICULOUS. THEY'RE LIKE FOUR OR FIVE PARAGRAPHS
22 LONG SAYING 403, 401, 402. NO EXPLANATION, NO
23 DESCRIPTION.

24 IF YOU WANT TO DO THAT KIND OF MESSY
25 OBJECTION, YOU'RE GOING TO DO IT RIGHT IN FRONT OF

1 THE JURY AND THE TIME CLOCK WILL BE TICKING. I'M
2 GOING TO KEEP A RECORD. IT'S ALL ON YOUR TIME.
3 OKAY?

4 SO FROM NOW ON, NO OBJECTIONS BEFORE.
5 YOU DO IT ALL RIGHT IN FRONT OF THE JURY. AND IF
6 YOU CAN'T EXPLAIN IT TO ME, THEN I'M JUST GOING TO
7 OVERRULE IT. OKAY?

8 SO YOU NEED TO POINT -- IF YOU'RE GOING
9 TO SAY "THIS IS EXCLUDED" OR "THIS IS IRRELEVANT
10 FOR X, Y, Z PURPOSE," YOU BETTER HAVE ALL THE
11 EXHIBITS YOU NEED TO PERSUADE ME RIGHT ON THE SPOT.
12 OKAY? SO NO MORE OBJECTIONS.

13 NOW, ALSO, THE RECONSIDERATION SITUATION
14 HAS GOTTEN OUT OF CONTROL. EVERYTHING IS BEING
15 RECONSIDERED MULTIPLE TIMES.

16 SO FROM NOW ON, ANY TIME YOU MOVE FOR
17 RECONSIDERATION, MY TIME ON REVIEWING YOUR
18 RECONSIDERATION MOTIONS IS GOING TO COUNT TOWARDS
19 YOUR 25 HOURS OF TRIAL TIME. ALL RIGHT?

20 SO IF THERE IS NO DISCIPLINE IN THIS
21 CASE, IT'S JUST GOING TO BE OUT OF YOUR TIME SO
22 YOU'LL HAVE LESS THAN 25 HOURS BEFORE THE JURY.

23 NOW, HAVING SAID THAT, THE
24 RECONSIDERATIONS THAT HAVE BEEN FILED TODAY, ARE
25 THERE ANY THAT YOU WANT ME TO RULE ON? BECAUSE I

1 WILL DO THAT IN FRONT OF THE JURY. WE WILL HAVE
2 THE FULL DISCUSSION IN FRONT OF THE JURY AND IT
3 WILL COUNT TOWARDS YOUR TRIAL TIME.

4 SO WHO WANTS TO GO FORWARD WITH ALL THE
5 RECONSIDERATIONS THAT WERE FILED BETWEEN MIDNIGHT
6 AND THIS MORNING? WHO WANTS TO DO THAT?

7 MR. JACOBS: I THINK WE DO, YOUR HONOR.

8 THE COURT: ALL RIGHT. THAT'S FINE.
9 WE'LL BRING IN THE JURY AND WE'LL ARGUE IT IN FRONT
10 OF THEM. OKAY?

11 NOW, LET'S GO TO THE OTHER ISSUE, AND
12 THAT IS WITH REGARD TO THE SAMSUNG PRESS RELEASE
13 AND MR. QUINN.

14 SO MY SOLE CONCERN IS TO PRESERVE THE
15 IMPARTIALITY OF THE JURY IN ORDER TO HAVE A FAIR
16 TRIAL.

17 SO THIS MORNING I'M GOING TO POLL THEM TO
18 SEE IF THEY'VE READ OR SEEN ANYTHING ABOUT THE CASE
19 SINCE LAST TUESDAY AFTERNOON, WHETHER THAT HAS
20 CAUSED THEM TO FORM AN IMPRESSION OR OPINION ABOUT
21 THE CASE, WHETHER THEY CAN DECIDE THIS CASE BASED
22 SOLELY ON THE EVIDENCE THAT'S ADMITTED AT THE
23 TRIAL, AND WHETHER THEY WILL FOLLOW THE LAW AS I
24 INSTRUCT THEM, AND WHETHER THEY CAN BE FAIR AND
25 IMPARTIAL TO BOTH SIDES.

1 BASED ON HOW A JUROR ANSWERS THAT
2 QUESTION, WE'LL HAVE TO SEE WHETHER THEY REMAIN ON
3 THIS JURY.

4 BASED ON THE CURRENT RECORD, I DENY
5 APPLE'S REQUEST FOR JUDGMENT ON THE PHONE DESIGN
6 PATENTS, FOR FURTHER EXCLUSION OF EVIDENCE, AND FOR
7 AN ADVERSE JURY INSTRUCTION REGARDING THE SAMSUNG
8 PRESS RELEASE. THOSE REMEDIES ARE NOT WARRANTED BY
9 CURRENT RECORD.

10 BUT I DO RESERVE FOR AFTER THE TRIAL THE
11 QUESTION AS TO WHETHER A FURTHER INVESTIGATION AS
12 TO EXACTLY WHAT HAPPENED AND WHAT OTHER
13 CONSEQUENCES MAY BE APPROPRIATE.

14 I WILL TELL YOU WHAT ASPECTS OF WHAT HAS
15 OCCURRED CAUSE ME THE MOST CONCERN, OR AT LEAST
16 SOME CONCERN. I'M SURE THERE ARE WILL BE OTHERS
17 THE MORE I THINK ABOUT IT.

18 BUT AT THE TIME THAT SAMSUNG RELEASED ITS
19 PRESS RELEASE WITH THE LINK TO EXCLUDED
20 DEMONSTRATIVES, THE COURT HAD ALREADY SELECTED AND
21 SEATED A JURY, TRIAL HAD ALREADY BEGUN, AND THE
22 PRESS RELEASE REFERS MORE THAN ONCE TO WHAT
23 EXCLUDED EVIDENCE THE JURY SHOULD CONSIDER.

24 MOREOVER, BOTH SAMSUNG AND QUINN, EMANUEL
25 WERE ON NOTICE THAT THE POSSIBILITY OF JURY TAINT

1 IS REAL. OF OUR 34 POTENTIAL JURORS WHO WERE VOIR
2 DIRED ON MONDAY, 18 ADMITTED SOME EXPOSURE TO
3 PRETRIAL PUBLICITY.

4 OF OUR NINE SEATED JURORS, FOUR ADMITTED
5 TO EXPOSURE TO SOME PRETRIAL PUBLICITY.

6 SO THIS WAS A REAL AND POSSIBLE DANGER
7 THAT SAMSUNG AND QUINN, EMANUEL MADE THE DECISION
8 TO TAKE THE RISK OF TAINTING THE JURY.

9 AT THE TIME THAT MR. QUINN REQUESTED YET
10 ANOTHER RECONSIDERATION OF THE MULTIPLE RULINGS OF
11 THE COURT, THE PARTIES HAD BRIEFED AT LEAST THE
12 SONY-STYLE ISSUE NO LESS THAN SIX TIMES, SIX TIMES,
13 AND ON TUESDAY MORNING, I MADE IT ABSOLUTELY CLEAR
14 THAT I WAS NOT GOING TO RECONSIDER THAT RULING.

15 YET MR. QUINN LEFT THIS COURTROOM AND
16 DELIBERATELY AND WILLFULLY, WITH SAMSUNG, ISSUED A
17 PRESS RELEASE TO HIGHLIGHT EVIDENCE THAT THEY BOTH
18 KNEW WAS EXCLUDED AND WAS INADMISSIBLE IN THIS
19 TRIAL.

20 AND THE LINK TO THE EXCLUDED
21 DEMONSTRATIVES IN THE PRESS RELEASE WAS A WILLFUL
22 AND DELIBERATE ATTEMPT TO FURTHER PROPAGATE THAT
23 EXCLUDED EVIDENCE THE DAY AFTER A JURY HAD BEEN
24 IMPANELED.

25 THIS IS AN UNFORTUNATE SITUATION, BUT I

1 DON'T WANT ANYONE TO LOSE SIGHT OF THE FACT THAT
2 THIS IS A SITUATION OF SAMSUNG AND QUINN, EMANUEL'S
3 OWN MAKING.

4 HAD SAMSUNG TIMELY COMPLIED WITH ITS
5 DISCOVERY OBLIGATIONS, THERE WOULD BE NO EXCLUSION.

6 BOTH JUDGE GREWAL AND I HAVE HELD BOTH
7 PARTIES TO THE SAME STANDARD. APPLE'S UNTIMELY
8 DISCOVERY AND THEORIES HAVE EQUALLY BEEN EXCLUDED
9 FROM THIS TRIAL.

10 I WILL NOT LET ANY THEATRICALS OR ANY SIDE
11 SHOW DISTRACT US FROM WHAT WE ARE HERE TO DO, WHICH
12 IS TO FAIRLY AND EFFICIENTLY TRY THIS CASE.

13 WHEN THE JURY IS HERE, WE'RE GOING TO DO
14 OUR BEST TO MAKE THE MOST OF THEIR TIME, WHETHER
15 THAT MEANS READING JURY INSTRUCTIONS AT 4:30 ON
16 MONDAY AFTERNOON OR CALLING A WITNESS DURING THE
17 LAST FEW MINUTES OF THE DAY ON TUESDAY.

18 NOW, I HOPE THAT ALL PARTIES AND LAWYERS
19 IN THIS CASE WHO ARE SUPPOSED TO BE OFFICERS OF THE
20 COURT WILL RESPECT THE UNITED STATES JUSTICE SYSTEM
21 AND OUR JURY TRIAL PROCESS.

22 NOW, WOULD YOU PLEASE BRING IN THE JURY,
23 AND WHATEVER RECONSIDERATIONS AND OBJECTIONS TO
24 EVIDENCE, WE'RE GOING TO DO IT ON YOUR TIME.

25 MR. LEE: YOUR HONOR, BEFORE THE JURY IS

1 BROUGHT IN, CAN I JUST ADDRESS THE LAST POINT THAT
2 YOUR HONOR ADDRESSED AND JUST RAISED TWO POINTS,
3 NOT TO REARGUE --

4 THE COURT: I'LL GIVE YOU 30 SECONDS.

5 MR. LEE: ALL RIGHT. I'LL DO IT 30
6 SECONDS.

7 WE WOULD ASK THAT THE JURY BE POLLED
8 INDIVIDUALLY OUTSIDE THE COURTROOM. I THINK WITH
9 ALL THE PRESS HERE, ASKING THESE NINE FOLKS THE
10 QUESTIONS YOU'VE ASKED IS GOING TO GET A PARTICULAR
11 RESPONSE.

12 I THINK THIS IS UNUSUAL ENOUGH, IT'S
13 IMPORTANT ENOUGH AND DIFFERENT ENOUGH TO HAVE YOU
14 TALK TO THEM INDIVIDUALLY, WITH OR WITHOUT COUNSEL
15 THERE, IS IMPORTANT.

16 THAT'S WHAT HAPPENS IN OTHER
17 CIRCUMSTANCES AND WE'D ASK YOUR HONOR TO DO THAT.

18 THE SECOND THING, YOUR HONOR, IS YOU ARE
19 CORRECT THAT THERE ARE UNANSWERED QUESTIONS,
20 INCLUDING --

21 THE COURT: ALL RIGHT. I THINK YOUR 30
22 SECONDS ARE UP. I WILL TAKE YOUR SUGGESTION AND
23 POLL THEM INDIVIDUALLY.

24 MR. LEE: ALL RIGHT. THANK YOU.

25 THE COURT: I THINK MS. PARKER BROWN JUST

1 LEFT. JUST BRING THEM IN ONE BY ONE.

2 MR. LEE: YOUR HONOR, WE THOUGHT -- I
3 KNOW I'M OFF MY 30 SECONDS -- ONE BY ONE IN YOUR
4 HONOR'S CHAMBERS, NOT IN FRONT OF EVERYBODY HERE
5 SITTING IN THE COURTROOM.

6 THE COURT: NO, THAT'S DENIED.

7 BRING THEM IN, PLEASE.

8 (WHEREUPON, THE FOLLOWING PROCEEDINGS
9 WERE HELD IN THE PRESENCE OF JUROR NUMBER 9:)

10 THE COURT: ALL RIGHT. GOOD MORNING.

11 I JUST HAD A FEW QUESTIONS TO ASK, AND
12 I'M JUST GOING TO CALL YOU JUROR NUMBER 9, IF
13 THAT'S OKAY --

14 JUROR 9: SURE.

15 THE COURT: -- JUST FOR YOUR OWN PRIVACY
16 AT THIS POINT.

17 SINCE WE WERE LAST HERE ON TUESDAY
18 AFTERNOON, DID YOU READ OR HEAR ANYTHING ABOUT THE
19 CASE?

20 JUROR 9: NO.

21 THE COURT: OKAY. CAN YOU STILL DECIDE
22 THIS CASE BASED SOLELY ON THE EVIDENCE THAT'S
23 ADMITTED AT THE TRIAL AND BASED SOLELY ON THE LAW
24 AS I INSTRUCT YOU?

25 JUROR 9: YES.

1 THE COURT: CAN YOU GIVE BOTH SIDES IN
2 THIS CASE -- CAN YOU BE FAIR AND IMPARTIAL TO BOTH
3 SIDES IN THIS CASE?

4 JUROR 9: ABSOLUTELY.

5 THE COURT: ALL RIGHT. THANK YOU.

6 IF YOU WOULDN'T MIND, PLEASE, WHEN YOU GO
7 BACK IN THERE, EVERYONE IS GOING TO ASK YOU WHAT
8 HAPPENED. IF YOU JUST SAY YOU CAN'T TALK ABOUT IT,
9 BUT THE JUDGE IS GOING TO ASK EVERYONE TO COME OUT
10 INDIVIDUALLY, SO THEY'LL ALL FIND OUT SOON ENOUGH.

11 JUROR 9: SURE.

12 (WHEREUPON, THE FOLLOWING PROCEEDINGS
13 WERE HELD IN THE PRESENCE OF JUROR NUMBER 6:)

14 THE COURT: ALL RIGHT. GOOD MORNING.

15 JUROR 6: GOOD MORNING.

16 THE COURT: ALL RIGHT. WELCOME BACK.

17 FOR YOUR PRIVACY, I'M JUST GOING TO REFER
18 TO YOU AS JUROR NUMBER 6. IS THAT OKAY?

19 JUROR 6: YES.

20 THE COURT: ALL RIGHT. I JUST WANT TO
21 FIND OUT WHETHER, SINCE WE WERE TOGETHER ON TUESDAY
22 AFTERNOON, HAVE YOU READ OR HEARD ANYTHING ABOUT
23 THIS CASE?

24 JUROR 6: NO.

25 THE COURT: ALL RIGHT. WILL YOU DECIDE

1 THIS CASE BASED SOLELY ON THE EVIDENCE THAT'S
2 ADMITTED DURING THE TRIAL AND APPLY ONLY THE LAW
3 THAT I INSTRUCT YOU?

4 JUROR 6: YES.

5 THE COURT: WILL YOU BE FAIR AND
6 IMPARTIAL TO BOTH SIDES IN THIS CASE?

7 JUROR 6: YES.

8 THE COURT: ALL RIGHT. THANK YOU.

9 NOW, WHEN YOU GO BACK IN THERE, PEOPLE
10 MAY ASK WHAT'S GOING ON. IF YOU COULD JUST LET
11 THEM KNOW, THE COURT ASKED YOU NOT TO SAY.
12 EVERYONE IS GOING TO BE COMING IN INDIVIDUALLY, SO
13 THEY'LL FIND OUT SOON ENOUGH. OKAY?

14 JUROR 6: SURE.

15 THE COURT: THANK YOU.

16 (WHEREUPON, THE FOLLOWING PROCEEDINGS
17 WERE HELD IN THE PRESENCE OF JUROR NUMBER 2:)

18 THE COURT: GOOD MORNING. WELCOME BACK.

19 FOR YOUR PRIVACY, I'M JUST GOING TO REFER
20 TO YOU AS JUROR NUMBER 2. IS THAT ALL RIGHT?

21 JUROR 2: YES.

22 THE COURT: OKAY. I JUST HAVE A COUPLE
23 OF QUESTIONS.

24 SINCE WE WERE LAST TOGETHER ON TUESDAY
25 AFTERNOON, DID YOU READ OR HEAR ANYTHING ABOUT THIS

1 CASE?

2 JUROR 2: NO.

3 THE COURT: ALL RIGHT. WILL YOU DECIDE
4 THIS CASE BASED SOLELY ON THE EVIDENCE THAT'S
5 ADMITTED DURING THIS TRIAL AND APPLY THE LAW AS I
6 INSTRUCT YOU?

7 JUROR 2: YES.

8 THE COURT: WILL YOU BE FAIR AND
9 IMPARTIAL TO BOTH SIDES IN THIS CASE?

10 JUROR 2: YES.

11 THE COURT: ALL RIGHT. WELL, THANK YOU
12 SO MUCH.

13 THE OTHER JURORS MAY ASK YOU WHAT'S GOING
14 ON. IF YOU COULD JUST LET THEM KNOW THAT I ASKED
15 YOU NOT TO SAY ANYTHING. THEY'RE ALL GOING TO BE
16 COMING IN HERE IN JUST A SECOND, SO THEY'LL FIND
17 OUT SOON ENOUGH.

18 JUROR 2: ALL RIGHT.

19 THE COURT: ALL RIGHT. THANK YOU.

20 (WHEREUPON, THE FOLLOWING PROCEEDINGS
21 WERE HELD IN THE PRESENCE OF JUROR NUMBER 8:)

22 THE COURT: GOOD MORNING AND WELCOME
23 BACK.

24 IF YOU DON'T MIND, I'M GOING TO CALL YOU
25 JUROR NUMBER 8.

1 JUROR 8: OKAY.

2 THE COURT: JUST FOR YOUR PRIVACY.

3 SINCE WE WERE LAST TOGETHER HERE ON
4 TUESDAY AFTERNOON, DID YOU READ OR HEAR ANYTHING
5 ABOUT THIS CASE?

6 JUROR 8: NO, I DID NOT.

7 THE COURT: ALL RIGHT. WILL YOU DECIDE
8 THIS CASE BASED SOLELY ON THE LAW THAT I INSTRUCT
9 YOU AND THE EVIDENCE THAT'S ADMITTED HERE IN OPEN
10 COURT DURING THIS TRIAL?

11 JUROR 8: YES, I WILL.

12 THE COURT: WILL YOU BE FAIR AND
13 IMPARTIAL TO BOTH SIDES IN THIS CASE?

14 JUROR 8: YES.

15 THE COURT: ALL RIGHT. WELL, THANK YOU
16 SO MUCH.

17 IF THE OTHER JURORS ASK YOU WHAT'S
18 HAPPENING, CAN YOU JUST LET THEM KNOW THAT I ASKED
19 YOU NOT TO SAY AND THAT EVERYONE IS GOING TO BE
20 BROUGHT IN ONE BY ONE, SO THEY'LL FIND OUT SOON
21 ENOUGH. OKAY?

22 JUROR 8: YES.

23 THE COURT: ALL RIGHT. THANK YOU.

24 (WHEREUPON, THE FOLLOWING PROCEEDINGS
25 WERE HELD IN THE PRESENCE OF JUROR NUMBER 3:)

1 THE COURT: ALL RIGHT. GOOD MORNING.

2 JUROR 3: GOOD MORNING.

3 THE COURT: AND WELCOME BACK. FOR YOUR
4 PRIVACY, I'M JUST GOING TO CALL YOU JUROR NUMBER 3
5 IF THAT'S OKAY.

6 JUROR 3: OKAY.

7 THE COURT: ALL RIGHT. SINCE WE WERE
8 LAST HERE ON TUESDAY AFTERNOON, DID YOU READ OR
9 HEAR ANYTHING ABOUT THE CASE?

10 JUROR 3: NO, I HAVEN'T.

11 THE COURT: ALL RIGHT. WILL YOU DECIDE
12 THIS CASE BASED SOLELY ON THE EVIDENCE THAT'S
13 ADMITTED DURING THIS TRIAL AND APPLY THE LAW AS I
14 INSTRUCT YOU?

15 JUROR 3: YES.

16 THE COURT: ALL RIGHT. WILL YOU BE FAIR
17 AND IMPARTIAL TO BOTH SIDES IN THIS CASE?

18 JUROR 3: YES.

19 THE COURT: ALL RIGHT. THANK YOU.

20 WHEN YOU GO BACK, IF YOU WOULD -- IF
21 FOLKS ASK YOU WHAT'S GOING ON, IF YOU COULD JUST
22 LET THEM KNOW, THE JUDGE ASKED ME NOT TO SAY, AND
23 EVERYONE IS GOING TO BE CALLED IN, SO THEY'LL FIND
24 OUT IN JUST A MINUTE OR TWO.

25 JUROR 3: NO PROBLEM.

1 THE COURT: OKAY. THANK YOU.

2 JUROR 3: UM-HUM.

3 (WHEREUPON, THE FOLLOWING PROCEEDINGS
4 WERE HELD IN THE PRESENCE OF JUROR NUMBER 4:)

5 THE COURT: ANYWHERE YOU'D LIKE. THIS IS
6 GOING TO BE PRETTY SHORT, I THINK.

7 JUROR 4: OKAY.

8 THE COURT: GOOD MORNING AND WELCOME
9 BACK.

10 JUROR 4: THANK YOU.

11 THE COURT: FOR YOUR PRIVACY, I'M GOING
12 TO REFER TO YOU AS JUROR NUMBER 4. IS THAT ALL
13 RIGHT?

14 JUROR 4: OKAY.

15 THE COURT: OKAY. SINCE WE WERE LAST
16 TOGETHER ON TUESDAY AFTERNOON, DID YOU READ OR HEAR
17 ANYTHING ABOUT THIS CASE?

18 JUROR 4: NO.

19 THE COURT: WILL YOU DECIDE THIS CASE
20 BASED SOLELY ON THE EVIDENCE THAT'S ADMITTED DURING
21 THE TRIAL AND APPLY THE LAW AS I INSTRUCT YOU?

22 JUROR 4: YES.

23 THE COURT: ALL RIGHT. WILL YOU BE FAIR
24 AND IMPARTIAL TO BOTH SIDES IN THIS CASE?

25 JUROR 4: YES.

1 THE COURT: ALL RIGHT. WELL, THANK YOU.

2 IF YOU WOULDN'T MIND, WHEN YOU GO BACK IN
3 THERE, IF SOMEONE ASKS YOU WHAT'S GOING ON, JUST
4 LET THEM KNOW, THE JUDGE ASKED ME NOT TO SAY, THAT
5 THEY'RE ALL GOING TO BE CALLED IN. OKAY?

6 JUROR 4: ALL RIGHT.

7 THE COURT: ALL RIGHT. THANK YOU.

8 (WHEREUPON, THE FOLLOWING PROCEEDINGS
9 WERE HELD IN THE PRESENCE OF JUROR NUMBER 1:)

10 THE COURT: ALL RIGHT. GOOD MORNING AND
11 WELCOME BACK. PLEASE TAKE A SEAT ANYWHERE THAT YOU
12 WOULD LIKE.

13 JUROR 1: OKAY.

14 THE COURT: ALL RIGHT. FOR YOUR PRIVACY,
15 I'M JUST GOING TO REFER TO YOU AS JUROR NUMBER 1.
16 IS THAT ALL RIGHT?

17 JUROR 1: SURE.

18 THE COURT: OKAY. SO SINCE WE WERE LAST
19 TOGETHER HERE ON TUESDAY AFTERNOON, DID YOU READ OR
20 HEAR ANYTHING ABOUT THIS CASE?

21 JUROR 1: NO, YOUR HONOR.

22 THE COURT: ALL RIGHT. WILL YOU DECIDE
23 THIS CASE BASED SOLELY ON THE EVIDENCE THAT'S
24 ADMITTED DURING THIS TRIAL AND APPLY THE LAW AS I
25 INSTRUCT YOU?

1 JUROR 1: YES, YOUR HONOR.

2 THE COURT: OKAY. WILL YOU BE FAIR AND
3 IMPARTIAL TO BOTH SIDES IN THIS CASE?

4 JUROR 1: YES.

5 THE COURT: ALL RIGHT. THANK YOU.

6 IF YOU -- I'M GOING TO ASK YOU TO STEP
7 BACK IN THE JURY ROOM, BUT IF YOU WOULD PLEASE NOT
8 EXPLAIN TO ANYONE ELSE WHAT'S GOING ON, JUST LET
9 THEM KNOW THAT THEY'RE ALL GOING TO COME IN IN A
10 MINUTE.

11 JUROR 1: YES.

12 THE COURT: ALL RIGHT. THANK YOU.

13 (WHEREUPON, THE FOLLOWING PROCEEDINGS
14 WERE HELD IN THE PRESENCE OF JUROR NUMBER 7:)

15 THE COURT: ALL RIGHT. PLEASE TAKE A
16 SEAT.

17 WELCOME BACK. GOOD MORNING.

18 I JUST HAVE A FEW QUESTIONS TO ASK YOU,
19 AND FOR YOUR PRIVACY, I'M GOING TO CALL YOU JUROR
20 NUMBER 7. IS THAT ALL RIGHT?

21 JUROR 7: YES.

22 THE COURT: SINCE WE WERE LAST HERE ON
23 TUESDAY, DID YOU READ OR HEAR ANYTHING ABOUT THIS
24 CASE?

25 JUROR 7: HEADLINES ON THE INTERNET.

1 THE COURT: HEADLINES. OKAY. CAN YOU
2 TELL ME WHAT HEADLINES YOU READ?

3 JUROR 7: IT SAYS 15 KITCHEN TABLE
4 SOMETHING. IT WAS ABOUT THE, WHAT THE FIRST
5 WITNESS WAS TALKING ABOUT.

6 THE COURT: OH, 15 PEOPLE AT THE KITCHEN
7 TABLE, YOU MEAN THE INDUSTRIAL DESIGNERS?

8 JUROR 7: YEAH.

9 THE COURT: OKAY. ANYTHING ELSE? NO,
10 NOTHING ELSE?

11 JUROR 7: I TRIED TO AVOID IT.

12 THE COURT: OKAY. THANK YOU.

13 NOW, BASED ON ANYTHING THAT YOU READ, DID
14 YOU FORM AN IMPRESSION OR AN OPINION ABOUT THIS
15 CASE?

16 JUROR 7: NO. I DIDN'T READ THE ARTICLE.
17 I JUST SAW THE HEADLINE.

18 THE COURT: OKAY. ANY OTHER HEADLINES
19 THAT YOU CAN RECALL OTHER THAN THE KITCHEN TABLE
20 ONE?

21 JUROR 7: NO.

22 THE COURT: ALL RIGHT. BASED ON THE
23 HEADLINES THAT YOU SAW AND ANYTHING ELSE YOU MAY
24 HAVE SEEN OR HEARD, HAVE YOU FORMED ANY LIKES,
25 DISLIKES, BIASES TOWARDS ONE SIDE OR THE OTHER OR

1 ANYTHING IN PARTICULAR?

2 JUROR 7: NO.

3 THE COURT: NO. OKAY. WILL YOU DECIDE
4 THIS CASE SOLELY ON THE EVIDENCE THAT'S ADMITTED
5 DURING THIS TRIAL?

6 JUROR 7: ABSOLUTELY.

7 THE COURT: OKAY. WILL YOU APPLY THE LAW
8 AS I INSTRUCT YOU?

9 JUROR 7: YES.

10 THE COURT: WILL YOU BE FAIR AND
11 IMPARTIAL TO BOTH SIDES?

12 JUROR 7: YES.

13 THE COURT: ALL RIGHT. I KNOW WE'RE
14 ASKING YOU TO DO SOMETHING THAT'S DIFFICULT, NOT
15 LOOKING AT ANY OF THIS, BUT I'M GOING TO MAKE THIS
16 OFFER TO YOU, AND I'M GOING TO TELL ALL THE OTHER
17 JURORS WHEN THEY COME BACK, THAT WE ARE GOING TO
18 COLLATE ALL OF THE ARTICLES ON THIS CASE AND WHEN
19 YOU ARE COMPLETELY DONE WITH YOUR ROLE AS A JUROR,
20 WE'LL GIVE YOU A FULL COMPILATION.

21 SO I DON'T WANT YOU TO FEEL LIKE YOU'RE
22 BEING LEFT OUT, THAT THERE'S SOMETHING EXCITING
23 ABOUT WHAT'S GOING ON THAT YOU DON'T KNOW ABOUT.
24 AT THE VERY END OF THIS CASE, YOU'RE GOING TO GET
25 IT ALL. OKAY?

1 SO I'M GOING TO MAKE THAT OFFER TO ALL
2 THE OTHER JURORS, SO DON'T FEEL LIKE YOU'RE BEING
3 LEFT OUT AT ALL. WE'RE GOING TO COMPILE EVERYTHING
4 FOR YOU AND WE'RE GOING TO GIVE IT TO YOU AT THE
5 END. SO YOU'LL BE ABLE TO LEARN EVERYTHING AT THE
6 END, BUT WE JUST NEED YOU TO SHUT OFF ANY OTHER
7 COMMENTS, READING, OR HEARING ABOUT THE CASE.

8 CAN YOU DO THAT?

9 JUROR 7: YES.

10 THE COURT: OKAY. ALL RIGHT. THANK YOU.

11 (WHEREUPON, THE FOLLOWING PROCEEDINGS
12 WERE HELD IN THE PRESENCE OF JUROR NUMBER 5:)

13 THE COURT: TAKE A SEAT ANYWHERE, PLEASE.

14 ALL RIGHT. THIS IS JUROR NUMBER 5.

15 WELL, WELCOME BACK.

16 JUROR 5: THANKS.

17 THE COURT: AND GOOD MORNING.

18 SINCE WE WERE LAST HERE ON TUESDAY
19 AFTERNOON, DID YOU READ OR HEAR ANYTHING ABOUT THIS
20 CASE?

21 JUROR 5: NO.

22 THE COURT: WILL YOU DECIDE THIS CASE
23 BASED SOLELY ON THE EVIDENCE THAT'S ADMITTED DURING
24 THE TRIAL?

25 JUROR 5: YES.

1 THE COURT: WILL YOU APPLY THE LAW THAT I
2 INSTRUCT YOU?

3 JUROR 5: YES.

4 THE COURT: OKAY. WILL YOU BE FAIR AND
5 IMPARTIAL TO BOTH SIDES?

6 JUROR 5: YES.

7 THE COURT: ALL RIGHT. THANK YOU.

8 JUROR 5: IS THAT IT?

9 THE COURT: YES.

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

12 THE COURT: I DON'T BELIEVE ANY FURTHER
13 VOIR DIRE IS NECESSARY. I'M SATISFIED THAT THIS
14 JURY IS CREDIBLE, THAT THEY'RE GOING TO BE FAIR AND
15 IMPARTIAL TO BOTH SIDES, BUT I'LL GIVE YOU HALF A
16 SECOND TO RESPOND.

17 MR. LEE: NO FURTHER VOIR DIRE FOR APPLE,
18 YOUR HONOR.

19 THE COURT: ALL RIGHT. ANY FURTHER VOIR
20 DIRE FOR SAMSUNG?

21 MR. VERHOEVEN: NO, YOUR HONOR.

22 THE COURT: ALL RIGHT. OKAY. THEN LET'S
23 GO TO MR. SCHILLER, AND WHAT I HAVE AS BEING
24 EXCLUDED ARE PLAINTIFF'S EXHIBIT 126, THE PILLOW
25 ADS, AND THEN THE DEFENSE EXHIBIT 649.

1 NOW, IF YOU HAVE ANY OTHER FIGHTS ABOUT
2 MR. SCHILLER'S EXHIBITS, WE'RE GOING TO DO IT RIGHT
3 HERE IN OPEN COURT ON THE CLOCK. OKAY?

4 SO --

5 MR. PRICE: YOUR HONOR, IF I MAY?
6 BILL PRICE.

7 TWO THINGS: CAN WE HAVE THIS MOVED JUST
8 A LITTLE BIT OVER, BECAUSE I CAN'T SEE THE WITNESS?

9 THE COURT: SURE, ABSOLUTELY.

10 MR. PRICE: AND THE SECOND THING IS WHEN
11 WE MAKE ARGUMENTS IN OPEN COURT, I WOULD,
12 OBVIOUSLY, REQUEST THAT THEY'RE GOING TO BE MADE AT
13 SIDE-BAR, BECAUSE OBJECTIONS TEND TO BE VIOLATION
14 OF ORDERS, THINGS LIKE THAT, AND IF WE'RE GOING TO
15 GET INTO THAT, OBVIOUSLY I DON'T THINK THAT SHOULD
16 BE DONE IN FRONT OF THE JURY.

17 THE COURT: OKAY. UNFORTUNATELY, OUR
18 MICROPHONE HERE IS STILL BROKEN.

19 WELL, WE CAN TRY TO DO THAT ON THE SIDE.

20 MR. PRICE: MAY I APPROACH AND MOVE THIS?

21 THE COURT: PLEASE, MOVE IT HOWEVER YOU'D
22 LIKE.

23 NOW, I DON'T WANT ANY SPEAKING
24 OBJECTIONS, SO -- ALL RIGHT.

25 NOW, 9:11. WE'RE ON THE CLOCK. GO

1 AHEAD.

2 MR. MCELHINNY: EXCUSE ME, YOUR HONOR.
3 I'VE GOT TO UNDO THE -- ARE WE OKAY?

4 ALL RIGHT. WE RECALL MR. SCHILLER.

5 I DON'T HAVE A JURY HERE TO BE ON THE
6 CLOCK, YOUR HONOR.

7 THE COURT: ALL RIGHT. WE'LL BRING IN
8 THE JURY.

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

11 THE COURT: ALL RIGHT. WELCOME BACK AND
12 GOOD MORNING.

13 I DO NEED TO MAKE EVERYONE THE OFFER. WE
14 GREATLY APPRECIATE YOUR PATIENCE AND YOUR SERVICE
15 AS JURORS AND ALL OF YOUR ATTEMPTS TO PRESERVE THE
16 INTEGRITY OF THE JURY BY NOT READING OR HEARING OR
17 DISCUSSING THE CASE WITH ANYONE.

18 I JUST WANTED TO LET ALL OF YOU KNOW THAT
19 WE'RE GOING TO COMPILE ALL THE ARTICLES ABOUT THIS
20 CASE, AND WHEN YOU CONCLUDE YOUR SERVICE AS JURORS,
21 WE'RE GOING TO GIVE YOU THE WHOLE STACK, SO DON'T
22 FEEL LIKE YOU'RE MISSING OUT ON ANYTHING. WE CAN
23 SCRAPBOOK IT FOR YOU, WHATEVER YOU'D LIKE. BUT YOU
24 ARE NOT GOING TO BE LEFT OUT.

25 SO WE'RE ASKING YOU TO HOLD ON AND NOT

1 LISTEN OR READ OR TALK ABOUT THE CASE.

2 BUT THERE WILL BE TIME ENOUGH, AND WE'RE
3 GOING TO GIVE YOU EVERYTHING. OKAY? SO WE'LL
4 COLLATE IT ALL AND YOU WILL HAVE IT AT THE END OF
5 THE DAY CASE.

6 SO DON'T FEEL LIKE YOU'RE MISSING OUT ON
7 ANYTHING THAT YOU WON'T BE ABLE TO FIND OUT
8 ULTIMATELY WHAT'S GOING ON. IT'S ALL GOING TO BE
9 TOGETHER FOR YOU, OKAY?

10 WE'LL JUST GIVE IT TO YOU WHEN YOUR
11 SERVICE IS DONE, WHEN THE INTEGRITY OF THE JURY IS
12 NO LONGER AT ISSUE.

13 OKAY? ALL RIGHT. SO THAT'S WHAT WE'RE
14 GOING TO DO.

15 NOW, I'M GOING TO TELL YOU THAT WE ARE
16 GOING TO DO A SLIGHTLY DIFFERENT PROCESS. WE HAVE
17 TRIED AND TRIED OF HAVING ALL OF THE OBJECTIONS OF
18 THE PARTIES RULED ON OUTSIDE YOUR PRESENCE AND IT'S
19 GOTTEN OUT OF HAND, OKAY?

20 SOME OF THESE HAVE BEEN BRIEFED AND
21 BRIEFED SIX TIMES, AND SO WE'RE -- I'M SORRY TO
22 TELL YOU THIS, BUT WE'RE GOING TO DO IT HERE IN
23 COURT. THERE WILL BE CONVERSATIONS THAT YOU CANNOT
24 HEAR, SO WE WILL GO TO THE SIDE.

25 BUT THE GOOD NEWS IS THIS IS GOING TO BE

1 ON THE CLOCK, SO YOU'RE NOT GETTING -- THEY'RE
2 GOING TO GET DOCKED THEIR TIME. IF THEY WANT TO
3 FIGHT IN FRONT OF YOU, THAT'S THEIR CHOICE.

4 OKAY. LET ME GO -- WE'RE GOING FORWARD
5 WITH MR. SCHILLER, WHO WAS HERE ON TUESDAY.

6 AND YOU'RE STILL UNDER OATH, SIR.

7 THE WITNESS: YES.

8 THE COURT: OKAY. THE TIME IS NOW 9:15.
9 GO AHEAD.

10 **PHILIP SCHILLER,**
11 BEING RECALLED AS A WITNESS ON BEHALF OF THE
12 PLAINTIFF, HAVING BEEN PREVIOUSLY DULY SWORN, WAS
13 FURTHER EXAMINED AND TESTIFIED AS FOLLOWS:

14 MR. MCELHINNY: THANK YOU, YOUR HONOR.

15 GOOD MORNING, LADIES AND GENTLEMEN.

16 **DIRECT EXAMINATION (RESUMED)**

17 BY MR. MCELHINNY:

18 Q GOOD MORNING, MR. SCHILLER.

19 A GOOD MORNING.

20 Q WHEN WE LEFT HERE TUESDAY AFTERNOON, YOU WERE
21 THE SENIOR VICE-PRESIDENT OF WORLDWIDE MARKETING
22 PRODUCTS -- PRODUCT MARKETING AT APPLE; IS THAT
23 CORRECT?

24 A YES.

25 Q AND DO YOU STILL HAVE THAT JOB?

1 A I DO.

2 Q OKAY, GOOD. AND YOU WERE ON THE EXECUTIVE
3 TEAM AT APPLE; IS THAT CORRECT?

4 A I AM.

5 Q AND DO YOU STILL HAVE THAT JOB?

6 A I DO.

7 Q VERY GOOD. THIS CASE INVOLVES TWO PRODUCT
8 LINES, THE IPHONE AND THE IPAD. I WANT TO START
9 WITH THE IPHONE.

10 CAN YOU TELL US HOW APPLE CAME TO DEVELOP
11 AN IPHONE, BRIEFLY.

12 A YES. THERE WERE MANY THINGS THAT LED TO THE
13 DEVELOPMENT OF THE IPHONE AT APPLE. I'LL JUST
14 MENTION A COUPLE BRIEFLY.

15 FIRST, APPLE HAD BEEN KNOWN FOR YEARS FOR
16 BEING THE CREATOR OF THE MAC, THE COMPUTER, AND IT
17 WAS GREAT, BUT IT HAD SMALL MARKET SHARE.

18 AND THEN WE HAD A BIG HIT CALLED THE
19 IPOD. IT WAS THE IPOD HARDWARE AND THE ITUNES
20 SOFTWARE. AND THIS REALLY CHANGED EVERYBODY'S VIEW
21 OF APPLE, BOTH INSIDE AND OUTSIDE THE COMPANY.

22 AND PEOPLE STARTED ASKING, WELL, IF YOU
23 CAN HAVE A BIG HIT WITH THE IPOD, WHAT ELSE CAN YOU
24 DO? AND PEOPLE WERE SUGGESTING EVERY IDEA, MAKE A
25 CAMERA, MAKE A CAR, CRAZY STUFF.

1 AND SO WE WERE SEARCHING FOR WHAT TO DO
2 AFTER THE IPOD AND WHAT WOULD MAKE SENSE.

3 AND WITH THE IPOD, WE REALIZED THAT IF
4 ANYTHING WERE EVER TO CHALLENGE THE IDEA THAT YOU
5 HAVE ALL YOUR ENTERTAINMENT IN YOUR POCKET, YOUR
6 MOVIES, YOUR PHOTOS, YOUR MUSIC, IT MIGHT BE THE
7 CELL PHONE.

8 SO WE STARTED TO LOOK AT, COULD YOU PUT
9 ENTERTAINMENT CONTENT ON CELL PHONES, MOVE OUR
10 ITUNES SOFTWARE INTO OTHER DEVICES, AND WE REALIZED
11 THAT AT THE TIME, CELL PHONES WEREN'T ANY GOOD AS
12 ENTERTAINMENT DEVICES, SO THEY WEREN'T GOOD FOR
13 THOSE THINGS.

14 SO THAT WAS ONE OF THE THINGS THAT LED US
15 TO REALIZE THAT MAYBE WE SHOULD MAKE OUR OWN PHONE.

16 AND IN ADDITION, AT THE SAME TIME, WE HAD
17 ALREADY STARTED WORKING ON A TABLET DEVICE THAT
18 WOULD EVENTUALLY BECOME THE IPAD, AND IN WORKING ON
19 THAT, WE KNEW THAT WE WANTED SOMETHING AFFORDABLE
20 AND EASY TO USE AND YOU COULD TYPE RIGHT ON THE
21 SCREEN SO IT WOULD WORK ON MULTITOUCH ON A GLASS
22 SURFACE.

23 SO THE COMBINATION OF WHAT SHOULD COME
24 AFTER THE IPOD AND DECIDING TO MAKE A CELL PHONE
25 AND HAVING THIS MULTITOUCH GLASS TECHNOLOGY WITH

1 IPAD ALL CAME TOGETHER AROUND THE SAME TIME TO GIVE
2 US THE VISION, THE IDEA OF CREATING THE IPHONE.

3 Q JUST SO THAT WE'RE ALL USING THE SAME
4 TECHNOLOGY, WHAT DO YOU MEAN WHEN YOU TALK ABOUT
5 MULTITOUCH? WHAT IS MULTITOUCH?

6 A THE ABILITY ON A SURFACE TO USE MORE THAN ONE
7 FINGER. WE THOUGHT THAT IF YOU WANTED TO TYPE, IF
8 YOU WANTED TO TYPE REALLY FAST, YOU'RE GOING TO BE
9 TOUCHING THAT SURFACE WITH MORE THAN ONE FINGER,
10 AND AT THE TIME PEOPLE WERE TRYING DIFFERENT KINDS
11 OF TOUCH TECHNOLOGIES AND NO ONE HAD REALLY DONE
12 ANYTHING WITH MULTITOUCH, AND WE KNEW THAT WAS
13 REALLY IMPORTANT OR YOU WOULDN'T HAVE A GOOD TYPING
14 EXPERIENCE, A GOOD EXPERIENCE CREATING GESTURES AND
15 OTHER ACTIONS.

16 Q WERE YOU PERSONALLY INVOLVED IN THE
17 DEVELOPMENT OF THE IPHONE?

18 A YES, I WAS.

19 Q WHEN WAS THE IPHONE ANNOUNCED TO THE WORLD?

20 A WE FIRST ANNOUNCED THE IPHONE AT MAC WORLD IN
21 JANUARY OF 2007.

22 Q WERE YOU PERSONALLY INVOLVING IN PLANNING THAT
23 ANNOUNCEMENT?

24 A OH, YES, A GREAT DEAL.

25 Q AND I THINK WE ESTABLISHED ACTUALLY THAT YOU

1 PARTICIPATED IN THE ANNOUNCEMENT. YOU TOOK A
2 TELEPHONE CALL; IS THAT RIGHT?

3 A I DID.

4 Q WHAT WAS THE THEME OF THE EVENT? WHAT WERE
5 YOU TRYING TO SAY ABOUT THE IPHONE AT IN THE MAC
6 WORLD ANNOUNCEMENT?

7 A THE IPHONE WAS A BRAND NEW CONCEPT, THIS NEW
8 GENERATION OF SMARTPHONE, AND THE WAY WE ENDED UP
9 HELPING PEOPLE TO UNDERSTAND ITS CAPABILITIES WAS
10 TO BREAK IT INTO THREE CATEGORIES OF USES.

11 ONE USE WAS AS THE BEST PHONE YOU'VE EVER
12 SEEN, THE REINVENTION OF THE PHONE; THE SECOND WAS
13 AS A COMMUNICATION DEVICE, SOMETHING YOU COULD DO
14 FOR E-MAIL, WEB SURFING, MANAGING YOUR CONTACTS,
15 YOUR CALENDAR; AND THEN THE THIRD AREA WAS AS AN
16 ENTERTAINMENT DEVICE, THE BEST IPOD WE EVER MADE
17 FOR YOUR MUSIC AND PHOTOS AND VIDEOS.

18 SO WE WERE TRYING TO HELP PEOPLE
19 UNDERSTAND THAT IT WAS MORE THAN JUST A CELL PHONE
20 AS THEY KNEW IT BEFORE. THIS WAS THIS ENTIRELY NEW
21 KIND OF DEVICE.

22 Q CAN YOU DESCRIBE FOR US, PLEASE, WHAT THE
23 ATMOSPHERE WAS LIKE AT THIS MAC WORLD WHEN THE
24 ANNOUNCEMENT WAS MADE?

25 A ELECTRIC IS WHAT I WOULD CALL IT. THE ENERGY

1 WAS AMAZING. PEOPLE HAD BEEN WAITING SO LONG AND
2 WERE SO EXCITED ABOUT THIS UPCOMING EVENT AT MAC
3 WORLD.

4 Q WHAT WAS THE INITIAL REACTION TO THE
5 ANNOUNCEMENT?

6 MR. PRICE: I'M GOING TO OBJECT, YOUR
7 HONOR. VAGUE, BY WHOM, WHEN?

8 THE COURT: SUSTAINED.

9 BY MR. MCELHINNY:

10 Q WHAT WAS THE MEDIA REACTION TO THE
11 ANNOUNCEMENT?

12 A WE HAD A HUGE AMOUNT OF PRESS, AND AS YOU
13 WOULD EXPECT, THE RANGE OF THE REACTION WAS
14 EVERYTHING YOU COULD IMAGINE FROM EXCITEMENT ABOUT
15 THIS BREAKTHROUGH PRODUCT TO DOUBT THAT APPLE COULD
16 SUCCEED AT THIS OR DO A GOOD JOB AT IT.

17 Q CAN YOU GIVE US EXAMPLES OF PEOPLE WHO SAID
18 THAT YOU -- AFTER SEEING THE ANNOUNCEMENTS,
19 EXPRESSED DOUBT ABOUT WHETHER OR NOT IT WOULD BE --
20 THE IPHONE WOULD BE A SUCCESSFUL PRODUCT?

21 MR. PRICE: OBJECT TO RELEVANCE AND
22 HEARSAY.

23 THE COURT: WHAT WAS THE QUESTION AGAIN?

24 BY MR. MCELHINNY:

25 Q CAN YOU GIVE US EXAMPLES OF PEOPLE WHO

1 EXPRESSED DOUBT ABOUT WHETHER THE IPHONE WOULD BE A
2 SUCCESSFUL PRODUCT.

3 IT'S A SECONDARY CONSIDERATION.

4 THE COURT: I UNDERSTAND. YOU NEED TO
5 LAY A FOUNDATION. OTHERWISE IT IS ELICITING
6 HEARSAY.

7 GO AHEAD, PLEASE. REPHRASE YOUR
8 QUESTION.

9 BY MR. MCELHINNY:

10 Q AS THE HEAD OF MARKETING, DID YOU BECOME AWARE
11 THAT PEOPLE EXPRESSED DOUBT AS TO THE SUCCESS OF
12 THE IPHONE PRODUCT?

13 A YES, ABSOLUTELY.

14 Q CAN YOU GIVE US AN EXAMPLE?

15 A WE HAD MANY PRESS REPORTS, FROM THE PRESS,
16 FROM ANALYSTS, EVEN FROM COMPETITORS WHO SPOKE OUT
17 AGAINST OUR ANNOUNCEMENT AND SAID THAT WE'RE GOING
18 TO FAIL. EVEN MICROSOFT SAID WE WERE GOING TO
19 FAIL. THE HEAD OF PALM SAID WE WERE GOING TO FAIL.
20 THERE WERE MANY PEOPLE EXPRESSING DOUBT.

21 Q AND DID THEY GIVE REASONS WHY THEY THOUGHT IT
22 WOULD FAIL?

23 A YES, ABSOLUTELY.

24 Q AND DO YOU RECALL ANY OF THE REASONS THAT WERE
25 GIVEN AT THE TIME?

1 A PROBABLY THE BIGGEST REASON WAS THAT APPLE HAD
2 NEVER HAD A PHONE BEFORE AND WAS NEW INTO THE PHONE
3 BUSINESS AND THEY EXPECTED THAT WE WOULD FALL ON TO
4 OUR FACE AND DO A BAD JOB OF IT.

5 Q SIR, IF YOU LOOK AT EXHIBIT 133 IN YOUR
6 EXHIBIT BINDER THERE, PX 133.

7 A YES.

8 Q CAN YOU TELL ME WHAT THAT DOCUMENT IS, PLEASE?

9 A THIS IS AN ARTICLE FROM THE NEW YORK TIMES
10 THAT APPEARED THE DAY AFTER THE LAUNCH OF THE
11 IPHONE WRITTEN BY DAVID POGUE, ONE OF THE
12 PREEMINENT --

13 MR. MCELHINNY: YOUR HONOR, I MOVE PX
14 133.

15 THE COURT: ANY OBJECTION?

16 MR. PRICE: WE HAVE NO FURTHER OBJECTION
17 TO THAT.

18 WE WOULD REQUEST A LIMITING INSTRUCTION
19 TO THE JURY THAT THIS IS NOT FOR THE TRUTH OF
20 ANYTHING THAT'S IN THE ARTICLE.

21 THE COURT: THAT'S FINE. THAT'S FINE.
22 IT'S ADMITTED, AND THIS IS NOT FOR THE TRUTH OF
23 WHAT IS STATED IN THE ARTICLE.

24 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
25 133, HAVING BEEN PREVIOUSLY MARKED FOR

1 IDENTIFICATION, WAS ADMITTED INTO
2 EVIDENCE.)

3 THE COURT: YOU MAY CONSIDER IT
4 OTHERWISE.

5 GO AHEAD.

6 BY MR. MCELHINNY:

7 Q WOULD YOU PLEASE PUT UP PDX 1, PLEASE.

8 CAN YOU TELL US BRIEFLY WHAT MR. POGUE
9 SAID IN THIS ARTICLE?

10 A YES. MR. POGUE WROTE THAT APPLE HAD WAVED OUR
11 WAND, THE IPHONE, AT THE PHONE, AND HE CALLED IT
12 BEAUTIFUL AND THAT THAT ALONE WOULD BE ENOUGH TO
13 EXCITE PEOPLE AND MAKE PEOPLE WANT TO BUY IT.

14 HE ALSO CALLED IT GORGEOUS AND HE SPOKE
15 ABOUT ITS SHINY BLACK FACE AND STAINLESS STEEL
16 MIRRORED FINISHED RIM THAT WENT AROUND IT, THE LOOK
17 OF IT.

18 SO HE TALKED ABOUT HOW IT LOOKED AND HOW
19 BEAUTIFUL IT LOOKED.

20 Q WHEN WAS THE IPHONE ACTUALLY PHYSICALLY
21 RELEASED, SIR?

22 A WE SHIPPED THE FIRST IPHONES IN JUNE OF THAT
23 YEAR, JUNE 19TH, 2007.

24 Q DID APPLE DO ANYTHING BETWEEN JANUARY AND JUNE
25 TO PROMOTE THE IPHONE ITSELF?

1 A YES, WE DID.

2 Q CAN YOU GIVE US EXAMPLES OF WHAT YOU DID?

3 A WELL, IN THAT PERIOD FROM JANUARY UNTIL JUNE,
4 WE HAD A FEW MARKETING STRATEGIES.

5 THE BEGINNING WAS FIRST WE CALLED IT GO
6 QUIET. SO RIGHT AFTER THE LAUNCH IN JANUARY, THERE
7 WAS SO MUCH EXCITEMENT, SO MUCH PRESS COVERAGE, WE
8 DIDN'T NEED TO DO OTHER MARKETING. THE BEST THING
9 TO DO WAS LET THE PRESS WRITE AND TALK ABOUT THE
10 IPHONE. SOME TALKED ABOUT THAT AS THE BIGGEST P.R.
11 LAUNCH OF A PRODUCT IN HISTORY.

12 AND THEN LEADING TOWARDS JUNE, WE BEGAN
13 TO CAREFULLY TURN ON THE MARKETING. FIRST WE HELD
14 A TV AD DURING THE ACADEMY AWARDS IN EARLY MARCH.
15 IT WAS CALLED THE HELLO TV AD WHERE WE HAD FAMOUS
16 SCENES OF PEOPLE MAKING PHONE CALLS, AND THEN AT
17 THE END OF THAT AD, IT ANNOUNCED THAT THE IPHONE
18 WAS COMING IN JUNE, AT THE END OF JUNE.

19 AND THEN AS WE GOT CLOSER TO THE LAUNCH
20 IN JUNE, WE STARTED TO BRING ON ADDITIONAL TV ADS
21 SPECIFICALLY ABOUT THE IPHONE, SHOWCASING IT, AS
22 WELL AS DOING A TREMENDOUS AMOUNT OF MARKETING WITH
23 DIRECT MAIL, WEBSITES, HELPING THE WHOLE WORLD GET
24 READY FOR THE ARRIVAL OF THE IPHONE.

25 Q WHERE WERE YOU PHYSICALLY WHEN THE IPHONE WAS

1 RELEASED, SIR?

2 A I WAS AT OUR APPLE STORE IN CHICAGO ON
3 MICHIGAN AVENUE.

4 Q AND WHY WERE YOU THERE?

5 A WE REALIZED THAT THIS WAS A VERY, VERY BIG DAY
6 FOR APPLE, THE LAUNCH OF THE IPHONE, AND SO MUCH
7 EXCITEMENT HAD BUILT UP THAT I SENT MY TEAM,
8 INCLUDING MYSELF, AROUND THE COUNTRY TO DIFFERENT
9 LOCATIONS TO BE EVERYWHERE WE COULD.

10 AND SO I CHOSE TO GO TO CHICAGO, AND I
11 ACTUALLY EVEN BROUGHT MY SON WITH ME BECAUSE THIS
12 WAS SUCH A HUGE DAY AND I WANTED HIM TO BE PART OF
13 THAT.

14 Q AFTER THE IPHONE WAS PHYSICALLY RELEASED, DID
15 YOU SEE ADDITIONAL REVIEWS IN THE PRESS CONCERNING
16 ITS FEATURES?

17 A YES.

18 Q DID ANY OF THE ARTICLES OR REVIEWS TALK ABOUT
19 THE DESIGN OF THE IPHONE?

20 A OH, I THINK MANY, MANY OF THE ARTICLES TALKED
21 ABOUT THE DESIGN AND SPOKE ABOUT IT, EVEN SHOWED IT
22 IN THEIR STORIES.

23 Q CAN YOU LOOK IN YOUR BINDER, PLEASE, AT
24 EXHIBIT PX 17, 17.

25 A YES.

1 Q CAN YOU TELL ME WHAT THIS DOCUMENT IS, PLEASE?

2 A THIS IS A SUMMARY OF SOME OF THE NEWS COVERAGE
3 ABOUT THE IPHONE.

4 MR. MCELHINNY: YOUR HONOR, I MOVE PX 17.

5 THE COURT: ALL RIGHT. ANY OBJECTION?

6 MR. PRICE: NO FURTHER OBJECTIONS, AGAIN,
7 YOUR HONOR, WITH THE LIMITING INSTRUCTION THAT
8 NOTHING IN THESE ARTICLES IS TO BE TAKEN FOR THE
9 TRUTH OF THE MATTER ASSERTED.

10 THE COURT: ALL RIGHT. SO THIS IS
11 ADMITTED AND YOU ARE NOT TO CONSIDER THIS FOR THE
12 TRUTH OF WHAT'S ASSERTED IN THIS EXHIBIT. YOU CAN
13 CONSIDER IT OTHERWISE.

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

18 THE COURT: GO AHEAD, PLEASE.

19 MR. MCELHINNY: THANK YOU, YOUR HONOR.

20 Q IS THIS THE FIRST PAGE OF PX 17?

21 A YES, IT IS.

22 Q AND, AGAIN, JUST WHAT ARE EACH OF THESE
23 PHOTOGRAPHS THAT GO THROUGH THESE PAGES?

24 A THESE ARE ALL EXCERPTS AND SUMMARIES OF
25 DIFFERENT NEWS COVERAGE THAT WAS WRITTEN ABOUT THE

1 IPHONE, STARTING AT THE LAUNCH.

2 Q AND THE JURY WILL HAVE THIS EXHIBIT IN THE
3 JURY ROOM. IS THAT YOUR UNDERSTANDING?

4 A YES.

5 Q CAN YOU SHOW ME, PLEASE -- CAN YOU TURN IN
6 YOUR BINDER, PLEASE, TO EXHIBIT PX 134.

7 A YES.

8 Q WHAT IS EXHIBIT PX 134?

9 A IT IS AN ARTICLE FROM THE WALL STREET JOURNAL
10 IN JUNE OF 2007.

11 Q AND WHO'S THE AUTHOR OF THIS ARTICLE?

12 A IT IS BY WALT MOSSBERG AND KATIE BOEHRET.

13 Q AND WHO IS MR. MOSSBERG?

14 A HE IS ONE OF THE EMINENT AUTHORS OR REVIEWERS
15 IN THE TECH INDUSTRY.

16 MR. MCELHINNY: YOUR HONOR, I MOVE
17 PX 134.

18 THE COURT: SAME LIMITING INSTRUCTION,
19 MR. PRICE?

20 MR. PRICE: YES, YOUR HONOR.

21 THE COURT: ALL RIGHT. SO THIS IS
22 ADMITTED, BUT YOU ARE NOT TO CONSIDER THE CONTENTS
23 OF THIS EXHIBIT FOR THEIR TRUTH. YOU CAN CONSIDER
24 IT OTHERWISE.

25 GO AHEAD.

1 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
2 134, HAVING BEEN PREVIOUSLY MARKED FOR
3 IDENTIFICATION, WAS ADMITTED INTO
4 EVIDENCE.)

5 MR. MCELHINNY: CAN WE SEE DEMONSTRATIVE
6 PX 134, PLEASE. CAN YOU EXPLAIN WHAT THIS
7 DEMONSTRATIVE IS TELLING US, SIR?

8 A THIS IS A SUMMARY OF THAT ARTICLE WE WERE JUST
9 SPEAKING ABOUT IN THE WALL STREET JOURNAL.

10 Q WHAT WAS YOUR PERSONAL REACTION TO THIS
11 REVIEW?

12 A THIS WAS, THIS WAS A GREAT REVIEW. WE WERE SO
13 HAPPY TO GET IT.

14 WE -- AS WE LAUNCHED A PRODUCT AS
15 IMPORTANT AS THE IPHONE, WE HAD A FEW PRESS THAT WE
16 GIVE EARLY UNITS TO JUST BEFORE THE LAUNCH SO THEY
17 CAN TRY IT OUT AND HAVE PERSONAL EXPERIENCE WITH IT
18 AND THEN WRITE ABOUT THAT TO TELL THE USERS IN THE
19 COUNTRY WHAT THEY THINK ABOUT IT. THEY BECOME A
20 MEASURE OF WHAT THE REACTION WILL BE.

21 AND THIS WAS AN OVER-THE-TOP POSITIVE
22 REACTION.

23 Q SIR, IF YOU LOOK IN YOUR BINDER AT PX 135.
24 CAN YOU TELL ME WHAT THAT EXHIBIT IS?

25 A YES. THIS IS A STORY, IN FACT, COVER STORY

1 FROM TIME MAGAZINE IN 2007.

2 Q AND WHAT IS SIGNIFICANT ABOUT --

3 WELL, FIRST OF ALL, YOUR HONOR, I'D
4 MOVE PX 135?

5 THE COURT: ALL RIGHT. SAME LIMITING
6 INSTRUCTION, MR. PRICE?

7 MR. PRICE: YES, YOUR HONOR.

8 THE COURT: OKAY. THIS IS ADMITTED, BUT
9 YOU'RE NOT TO CONSIDER IT FOR THE TRUTH OF WHAT'S
10 ASSERTED IN THIS EXHIBIT. YOU MAY CONSIDER IT
11 OTHERWISE. GO AHEAD, PLEASE.

12 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
13 135, HAVING BEEN PREVIOUSLY MARKED FOR
14 IDENTIFICATION, WAS ADMITTED INTO
15 EVIDENCE.)

16 BY MR. MCELHINNY:

17 Q IF YOU WOULD PUBLISH, PLEASE, PX 3. WHAT IS
18 THIS DEMONSTRATIVE, SIR?

19 A THIS IS A SUMMARY OF THAT TIME TIME MAGAZINE
20 ARTICLE.

21 Q AND WHAT WAS SIGNIFICANT ABOUT THIS ARTICLE,
22 SIR?

23 A THIS WAS GREAT. IT'S NOT OFTEN THAT A PRODUCT
24 GETS THE COVER OF TIME MAGAZINE AND TIME VOTED FOR
25 THEIR INVENTIONS OF THE YEAR AND NAMED THE IPHONE

1 THE NUMBER ONE INVENTION OF THE YEAR IN 2007 AND
2 PLACED IT ON THE COVER.

3 Q WAS THIS THE ACTUAL COVER OF THE MAGAZINE?

4 A YES.

5 Q AND CAN YOU READ FOR US WHAT IT SAYS ON THE
6 ICONS ON THE IPHONE THAT'S SHOWN THERE?

7 A THEY HAD FUN PLAYING WITH THE ICONIC
8 APPLICATION ICONS ON THE FRONT OF THE IPHONE AND
9 SPELLED OUT "BEST INVENTIONS OF 2007."

10 Q WOULD YOU LOOK IN YOUR BINDER, PLEASE, AT
11 EXHIBIT PX 142.

12 A YES.

13 Q WHAT IS THIS DOCUMENT, SIR?

14 A THIS IS A NEW YORK TIMES ARTICLE FROM THEIR
15 BITS TECHNOLOGY SECTION IN NOVEMBER OF 2011.

16 MR. MCELHINNY: YOUR HONOR, I MOVE
17 EXHIBIT PX 142.

18 MR. PRICE: I DON'T HAVE MY BINDER. IF I
19 CAN JUST PEEK?

20 THE COURT: PLEASE, PLEASE, YOU SHOULD.

21 (PAUSE IN PROCEEDINGS.)

22 THE COURT: SAME LIMITING INSTRUCTION,
23 MR. PRICE?

24 MR. PRICE: YES. NO FURTHER OBJECTIONS
25 AND ASK FOR THE INSTRUCTION.

1 THE COURT: ALL RIGHT. SO YOU CANNOT
2 CONSIDER THIS EXHIBIT FOR THE TRUTH OF WHAT'S
3 ASSERTED IN THE ARTICLE ITSELF, BUT YOU CAN
4 CONSIDER IT OTHERWISE.

5 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
6 142, HAVING BEEN PREVIOUSLY MARKED FOR
7 IDENTIFICATION, WAS ADMITTED INTO
8 EVIDENCE.)

9 THE COURT: GO AHEAD, PLEASE.

10 BY MR. MCELHINNY:

11 Q WOULD YOU PUT UP, PLEASE, DEMONSTRATIVE PDX
12 16.

13 WHAT IS THIS DEMONSTRATIVE, SIR?

14 A THIS IS A SUMMARY OF THAT NEW YORK TIMES BITS
15 ARTICLE.

16 Q AND WHAT WAS SIGNIFICANT ABOUT THIS PARTICULAR
17 SHOW THAT THE PATENT AND TRADEMARK OFFICE PUT UP?

18 A THIS WAS PRETTY INCREDIBLE. THE U.S. PATENT
19 AND TRADEMARK OFFICE ACTUALLY HAS A --

20 MR. PRICE: I'M GOING TO OBJECT TO THIS
21 WITNESS'S OPINION AS EVIDENCE.

22 MR. MCELHINNY: HE'S HEAD OF MARKETING.
23 HE CAN TALK --

24 THE COURT: I'LL ALLOW LIMITED
25 QUESTIONING ON THIS.

1 MR. MCELHINNY: THANK YOU.

2 Q WHAT WAS SIGNIFICANT ABOUT THE DECISION OF THE
3 PATENT AND TRADEMARK OFFICE TO PUT ON THIS
4 PARTICULAR SHOW, SIR, TO YOU FROM A MARKETING
5 PERSPECTIVE?

6 A I THOUGHT THIS WAS REALLY GREAT THAT A GROUP
7 WITHIN THE PATENT AND TRADEMARK OFFICE CALLED THE
8 NATIONAL INVENTOR'S HALL OF FAME HAD SELECTED,
9 AFTER THE PASSING OF STEVE JOBS, TO CREATE AN
10 EXHIBIT FOR PEOPLE TO SEE HIS PATENTS AND DESIGN
11 INVENTIONS THAT HE WAS NAMED ON AND SET THAT UP FOR
12 PEOPLE JUST TO GO AND READ AND SEE.

13 AND THEY DID IT BY USING THE IPHONE
14 ACTUALLY AS THE DISPLAYS FOR THOSE PATENTS.

15 Q AND YOU -- HOW DO YOU KNOW THOSE ARE THE
16 IPHONES?

17 A I THINK IT'S VERY DISTINCTIVE AND OBVIOUSLY
18 THAT THAT WAS THE IPHONE AND EVERY STORY WRITTEN
19 ABOUT IT MADE THE SAME CONCLUSION, THAT THOSE WERE
20 IPHONES.

21 Q SIR, LET'S MOVE ON TO A SLIGHTLY DIFFERENT
22 SUBJECT.

23 WHAT WERE THE ORIGINAL SALES NUMBERS,
24 WHAT WERE THE SALES NUMBERS FOR THE ORIGINAL
25 IPHONE?

1 A THE SALES WERE, WERE EXTREMELY GOOD. THEY
2 EXCEEDED OUR EXPECTATION.

3 Q DID YOU PREPARE A SUMMARY OF THOSE SALES
4 NUMBERS SO THAT THE JURY WOULD HAVE IT AVAILABLE?

5 A YES, I DID.

6 Q IF YOU WOULD LOOK IN YOUR BINDER, PLEASE, AT
7 PX 15.

8 A YES.

9 Q WHAT IS THIS DOCUMENT?

10 A THIS IS A CHART THAT HAS A LINE FOR BOTH THE
11 IPHONE AND IPAD UNIT SALES.

12 MR. MCELHINNY: YOUR HONOR, I MOVE PX 15.

13 MR. PRICE: NO FURTHER OBJECTIONS.

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

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

19 BY MR. MCELHINNY:

20 Q CAN YOU CAPTURE FOR US, PLEASE, WHAT THIS
21 CHART TELLS US ABOUT IPHONE SALES?

22 A YES. THE IPHONE SALES START WHEN IT BEGAN TO
23 SHIP IN MID-2007. THE CHART GOES UP UNTIL NOW IN
24 2002.

25 THE IPHONE IS REPRESENTED BY THE BLUE

1 LINE, AND THIS IS THE CUMULATIVE OR TOTAL SALES TO
2 DATE.

3 AND ALONG THE LEFT-HAND SIDE YOU SEE
4 QUANTITIES GOING ALL THE WAY UP TO OVER 80 MILLION,
5 AND ON THE BOTTOM RIGHT-HAND SIDE YOU SEE THE TIME.
6 Q HOW DID SUBSEQUENT MOLDS OF THE IPHONE SELL IN
7 COMPARISON TO THE ORIGINAL IPHONE?

8 A EXTREMELY WELL. WE USED TO JOKE INTERNALLY
9 WHEN WE WERE DOING FORECASTING THAT ONE OF THE WAYS
10 TO ESTIMATE THE POTENTIAL SALES OF EACH IPHONE WAS
11 THAT EACH NEW GENERATION SOLD APPROXIMATELY EQUAL
12 TO ALL THE PREVIOUS GENERATIONS COMBINED.

13 Q FROM YOUR VANTAGE POINT AS THE HEAD OF
14 MARKETING OF WHAT IS NOW A PHONE COMPANY, DID YOU
15 OBSERVE ANY EFFECTS ON THE PHONE MARKETPLACE AS A
16 RESULT OF THE INTRODUCTION OF THE IPHONE?

17 A YES, I DID.

18 Q AND CAN YOU TELL US WHAT YOUR OBSERVATIONS
19 WERE.

20 MR. PRICE: OBJECT. THAT'S VAGUE AND
21 IMPROPER EXPERT TESTIMONY. NO IDEA THIS WAS
22 COMING.

23 MR. MCELHINNY: IT'S NEITHER VAGUE NOR IS
24 IT EXPERT TESTIMONY.

25 THE COURT: YOU'LL HAVE TO REPHRASE THE

1 QUESTION, PLEASE.

2 BY MR. MCELHINNY:

3 Q AS THE HEAD OF MARKETING, DO YOU KEEP TRACK OF
4 WHAT -- OF TRENDS AND WHAT'S HAPPENING IN THE PHONE
5 MARKETPLACE?

6 A OF COURSE.

7 Q DID YOU OBSERVE CHANGES IN THE PHONE
8 MARKETPLACE AS A RESULT OF THE INTRODUCTION OF THE
9 IPHONE?

10 A YES, I DID.

11 Q AND WHAT CHANGES DID YOU OBSERVE, SIR?

12 MR. PRICE: SAME OBJECTION.

13 THE COURT: OVERRULED. GO AHEAD.

14 THE WITNESS: WE CONSIDERED THE IPHONE A
15 NEW GENERATION OF SMARTPHONE, AND WE LOOKED AT THE
16 MARKET AS BECOMING DIVIDED INTO TWO LARGE
17 CATEGORIES OF CUSTOMERS.

18 THERE ARE CUSTOMERS WHO HAVE NOT YET
19 BOUGHT INTO THESE NEW SMARTPHONES. THEY WERE
20 HAVING PREVIOUS GENERATION DEVICES, SOME CALLED
21 THEM FEATURE PHONES, LIKE FLIP PHONES WITH
22 CHARACTER DISPLAYS; AND CUSTOMERS THAT HAVE
23 PURCHASED THESE NEW SMARTPHONES AND NOW WERE INTO
24 THIS ECOSYSTEM OF ALL THAT THAT MEANS, THE
25 SMARTPHONE AND THE APPLICATIONS AND HOW ALL THOSE

1 THINGS WORK.

2 BY MR. MCELHINNY:

3 Q AND DID THE INTRODUCTION OF THE IPHONE CHANGE
4 THE DYNAMICS OF THAT TWO-PART MARKET AS YOU'VE JUST
5 DESCRIBED IT?

6 A YES. THE IPHONE CREATED THAT SECOND CATEGORY
7 OF NEW SMARTPHONES AS NOW STARTED TO CREATE A
8 MARKET WHERE, EITHER SOMEONE DOESN'T HAVE A NEW
9 GENERATION PHONE YET OR THEY DO, AND ONCE THEY DO,
10 WE SEE OTHER DYNAMICS THAT OCCUR BECAUSE THEY'RE IN
11 THE SMARTPHONE MARKETPLACE.

12 Q LET'S FOCUS -- SAME KIND OF QUESTION BUT ON
13 THE CURRENT TIME FRAME.

14 WHAT ARE THE CURRENT DYNAMICS OF THE CELL
15 PHONE MARKETPLACE AS YOU OBSERVED THEM FROM THE
16 HEAD OF MARKETING.

17 MR. PRICE: OBJECTION, VAGUE AND
18 AMBIGUOUS AND CALLS FOR EXPERT OPINION UNDISCLOSED.

19 THE COURT: OVERRULED.

20 GO AHEAD.

21 THE WITNESS: SO AS MORE AND MORE
22 CUSTOMERS START TO GET THESE SMARTPHONES, LIKE THE
23 IPHONE, THEN YOU, AGAIN, AS WE SEE THESE TWO
24 CATEGORIES, YOU'RE EITHER TRYING TO SELL TO A NEW
25 USER WHO DOESN'T HAVE ONE OR YOU'RE SELLING TO AN

1 UPGRADE USER.

2 AND WE KNOW FROM ALL OF OUR PRODUCTS AND
3 EXPERIENCES WE'VE HAD SELLING TO CUSTOMERS THAT A
4 CUSTOMER WHO ALREADY HAS ONE IS USED TO THAT ONE,
5 THAT WHOLE ECOSYSTEM.

6 IF I HAVE AN IPHONE, I'M USED TO HOW THE
7 IPHONE WORKS, AND I'VE INVESTED IN THE
8 APPLICATIONS, AND I'VE INVESTED IN THE ACCESSORIES,
9 SO I'M MORE INVESTED IN THAT PRODUCT, AND
10 I'M MORE LIKELY TO STICK WITH THAT PRODUCT LINE
11 ONCE I HAVE IT.

12 SO WE'RE AT THIS REALLY CRITICAL JUNCTURE
13 WHERE CUSTOMERS ARE EITHER GETTING INTO AN
14 ECOSYSTEM FOR THE FIRST TIME OR THEY'RE STAYING
15 WITH THAT ECOSYSTEM AND MOST OFTEN UPGRADING AND
16 STAYING WITHIN IT.

17 BY MR. MCELHINNY:

18 Q DO YOU FIND THAT WHEN A CUSTOMER BUYS AN
19 IPHONE THEY TEND TO BUY ADDITIONAL APPLE PRODUCTS
20 OR SERVICES?

21 A YES. THIS IS VERY WELL-KNOWN IN THE INDUSTRY.
22 IT'S OFTEN CALLED THE HALO EFFECT, THE IDEA THAT
23 ONCE YOU BUY A PRODUCT FROM A COMPANY, IF YOU HAVE
24 A GOOD EXPERIENCE WITH THAT PRODUCT, THAT YOU'RE
25 MORE LIKELY TO CONSIDER OTHER PRODUCTS FROM THAT

1 COMPANY AND ESPECIALLY IF THOSE PRODUCTS DO A GOOD
2 JOB WORKING WELL TOGETHER.

3 SO THAT WILL MAKE YOU WANT TO BUY MORE
4 PRODUCTS FROM THAT COMPANY, AS WELL AS THE OTHER
5 PEOPLE AROUND YOU WHO YOU WORK WITH OR IN YOUR
6 FAMILY.

7 Q LET'S CHANGE SUBJECTS NOW AND GO BACK IN TIME,
8 BACK TO THE IPAD. OKAY?

9 A YES.

10 Q CAN YOU TELL US, AGAIN BRIEFLY, DESCRIBE FOR
11 US THE GENESIS, HOW THE IPAD CAME ABOUT.

12 A THE IPAD ACTUALLY STARTED BEFORE THE IPHONE.
13 WE HAVE, AS EXPLAINED BEFORE, A COMPUTER BUSINESS,
14 THE MACINTOSH BUSINESS, AND INCREASINGLY PEOPLE
15 WERE BUYING NOTEBOOKS IN THIS BUSINESS.

16 AND NOTEBOOKS WERE GETTING MORE AND MORE
17 AFFORDABLE, LOWER PRICE POINTS.

18 BUT MANY OF OUR COMPETITORS WERE MAKING
19 NOTEBOOKS THAT WERE OF A CHEAPER QUALITY THAN WE
20 WOULD BE WILLING TO MAKE TO GET TO REALLY
21 AFFORDABLE PRICE POINTS.

22 SO WE DECIDED WE NEED TO CREATE A NEW
23 CATEGORY OF DEVICE, SOMETHING BELOW THE PRICE POINT
24 OF A NOTEBOOK, SOMETHING BEAUTIFUL, EASY TO USE,
25 EVERYONE MORE PORTABLE, LONGER BATTERY LIFE, AND WE

1 HAD TO INVENT A NEW CATEGORY OF DEVICE FOR THAT.

2 AND THAT'S WHAT LED TO THE WHOLE CONCEPT
3 OF CREATING AN IPAD.

4 Q WHEN WAS THE IPAD INTRODUCED?

5 A WE PUT ASIDE THAT EARLY WORK ON THE IPAD TO
6 SHIP THE IPHONE, AND THEN GOT BACK TO IT AFTER THE
7 IPHONE WAS NOW IN THE MARKETPLACE.

8 EVENTUALLY WE SHIPPED OUR FIRST, OR
9 INTRODUCED OUR FIRST IPAD, EXCUSE ME, IN 2010.

10 Q AND WHEN DID YOU SHIP YOUR FIRST IPAD?

11 A WE ALSO SHIPPED OUR FIRST IPAD IN EARLY APRIL
12 OF 2010.

13 Q AGAIN, SO WE'RE ALL USING THE SAME LANGUAGE,
14 WHAT IS THE DIFFERENCE FROM, IN THE INDUSTRY
15 BETWEEN AN INTRODUCTION AND A SHIPMENT?

16 A THE WAY WE TALK ABOUT IT AT APPLE IS AN
17 INTRODUCTION IS A LAUNCH OF THAT, THE FIRST TIME WE
18 TELL THE WORLD ABOUT A PRODUCT.

19 AND THEN THE PRODUCT MAY EITHER SHIP AT
20 THAT SAME TIME OR WITH REALLY BIG BRAND NEW
21 GENERATION PRODUCTS LIKE IPHONE AND IPAD, SOME TIME
22 AFTERWARDS, AND THAT'S THE AVAILABILITY OR SHIP
23 DATE OF THAT PRODUCT.

24 Q SIR, WAS THERE, AGAIN, PUBLIC MEDIA REACTION
25 TO THE INTRODUCTION OF THE IPAD?

1 A YES, THERE WAS HUGE COVERAGE OF THE IPAD.

2 Q IF YOU LOOK IN YOUR BINDER AT EXHIBIT PX 138.
3 CAN YOU TELL ME WHAT THAT DOCUMENT IS,
4 PLEASE?

5 A YES. THIS IS AN ARTICLE FROM THE WALL STREET
6 JOURNAL.

7 Q WHAT'S THE DATE OF IT, SIR?

8 A THIS WAS WRITTEN IN JANUARY OF 2010, RIGHT
9 AFTER THE INTRODUCTION OF THE IPAD.

10 MR. MCELHINNY: YOUR HONOR, I MOVE PX
11 138.

12 THE COURT: SAME LIMITING INSTRUCTION,
13 MR. PRICE?

14 MR. PRICE: YES, YOUR HONOR. NO FURTHER
15 OBJECTIONS.

16 THE COURT: ALL RIGHT. YOU CANNOT
17 CONSIDER THIS FOR THE TRUTH OF WHAT'S IN THE
18 ARTICLE, BUT YOU CAN CONSIDER IT OTHERWISE.

19 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
20 138, HAVING BEEN PREVIOUSLY MARKED FOR
21 IDENTIFICATION, WAS ADMITTED INTO
22 EVIDENCE.)

23 THE COURT: GO AHEAD, PLEASE.

24 MR. MCELHINNY: PLEASE PUBLISH
25 DEMONSTRATIVE PDX 5.

1 Q SIR, WHAT IS THIS?

2 A THIS IS A SUMMARY OF THAT SAME WALL STREET
3 JOURNAL ARTICLE FROM JANUARY 25TH, 2010.

4 Q YOU SEE THE TITLE OF THIS ARTICLE IS "APPLE
5 TAKES A BIG GAMBLE ON THE" -- I'M SORRY. "APPLE
6 TAKES BIG GAMBLE ON NEW IPAD."

7 DO YOU SEE THAT?

8 A YES.

9 Q DID APPLE'S EXECUTIVES AGREE WITH THAT
10 CHARACTERIZATION THAT THE WALL STREET JOURNAL MADE?

11 A ABSOLUTELY.

12 Q AND WHY, WHY DID YOU CONSIDER THE IPAD A
13 GAMBLE?

14 A IT WAS A BIG GAMBLE TO INTRODUCE THE IPAD FOR
15 A COUPLE REASONS.

16 FIRST, THIS WAS A NEW CATEGORY DEVICE.
17 THE IPHONE WE WERE INVENTING, REINVENTING THE
18 PHONE. PEOPLE WERE ALREADY BUYING OVER A BILLION
19 PHONES A YEAR.

20 PEOPLE HAD TRIED TO MAKE TABLET --
21 COMPANIES HAD TRIED TO MAKE TABLET PRODUCTS BEFORE
22 AND FAILED MISERABLY AND THERE WAS NO CATEGORY OF
23 TABLET COMPUTERS SELLING IN ANY QUANTITY THAT
24 MATTERED.

25 SO IT WAS CONSIDERED A, PRETTY MUCH A

1 DEAD CATEGORY AND NOT LIKELY TO SUCCEED.

2 AND IN ADDITION TO THAT, HERE APPLE NOW
3 HAD RISEN UP FROM PAST TROUBLES AND HAD A HUGE HIT
4 WITH THE IPOD, HAD A SECOND HUGE HIT WITH THE
5 IPHONE. WE WERE ROLLING AND DOING WELL.

6 SO TO TAKE ON A NEW CATEGORY OF PRODUCT
7 THAT MOST ASSUMED WAS NOT GOING TO SUCCEED WAS A
8 RISK TO OUR OWN IMAGE, OUR MARKETING, HOW PEOPLE
9 PERCEIVED US. SO IT WAS A BIG GAMBLE, BOTH FROM
10 THE PRODUCT AND MARKETING PERCEPTION OF APPLE.

11 Q WHAT WAS THE PUBLIC PERCEPTION FOR THE IPAD?

12 A IT WAS FANTASTIC.

13 Q IF YOU LOOK IN YOUR BINDER, PLEASE, AT EXHIBIT
14 PX 141.

15 A YES.

16 Q WHAT IS THAT DOCUMENT?

17 A THIS IS A REVIEW OF THE IPAD FROM THE WALL
18 STREET JOURNAL.

19 MR. MCELHINNY: YOUR HONOR, I MOVE
20 EXHIBIT 141.

21 MR. PRICE: SAME OBJECTION. NO FURTHER
22 OBJECTIONS, YOUR HONOR, MEANING FURTHER TO THE ONES
23 WE MADE AND ASK FOR A LIMITING INSTRUCTION.

24 THE COURT: ALL RIGHT. YOU CANNOT
25 CONSIDER THIS EXHIBIT FOR THE TRUTH OF WHAT'S

1 STATED IN THE ARTICLE, BUT YOU CAN CONSIDER IT
2 OTHERWISE.

3 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
4 141, HAVING BEEN PREVIOUSLY MARKED FOR
5 IDENTIFICATION, WAS ADMITTED INTO
6 EVIDENCE.)

7 THE COURT: GO AHEAD, PLEASE.

8 MR. MCELHINNY: WOULD YOU SHOW, PLEASE,
9 DEMONSTRATIVE PDX 6.

10 Q WHAT IS THIS DEMONSTRATIVE, SIR?

11 A THIS IS A SUMMARY OF THAT SAME WALL STREET
12 JOURNAL REVIEW OF THE IPAD.

13 Q NOW, AGAIN, REMIND US WHO MR. MOSSBERG IS?

14 A MR. MOSSBERG IS A WRITER FOR THE WALL STREET
15 JOURNAL AND CONSIDERED ONE OF THE TOP TECH
16 JOURNALISTS IN OUR INDUSTRY.

17 Q IF YOU LOOK AT PX 140, WHAT IS THIS DOCUMENT?

18 A THIS IS A PRODUCT REVIEW, ALSO OF THE IPAD, BY
19 THE U.S.A. TODAY NEWSPAPER.

20 MR. MCELHINNY: YOUR HONOR, I MOVE PX
21 140.

22 THE COURT: SAME LIMITING INSTRUCTION?

23 MR. PRICE: YES, YOUR HONOR.

24 THE COURT: ALL RIGHT. YOU CANNOT
25 CONSIDER THIS EXHIBIT FOR THE TRUTH OF WHAT'S

1 STATED IN THE EXHIBIT, BUT YOU CAN CONSIDER IT
2 OTHERWISE.

3 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
4 140, HAVING BEEN PREVIOUSLY MARKED FOR
5 IDENTIFICATION, WAS ADMITTED INTO
6 EVIDENCE.)

7 THE COURT: GO AHEAD, PLEASE.

8 MR. MCELHINNY: PLEASE SHOW DEMONSTRATIVE
9 PDX 7.

10 Q AND WHAT IS THIS DEMONSTRATIVE, SIR?

11 A THIS IS A SUMMARY OF THAT SAME U.S.A. TODAY
12 REVIEW OF THE IPAD AND SOME OF THE COMMENTS THE
13 WRITER WROTE.

14 Q SIR, WAS THE EARLY PRESS FOR THE IPAD ALL
15 POSITIVE?

16 A NO.

17 Q AND WHAT WERE THE -- CAN YOU TELL US, JUST
18 GENERALLY, WHAT THE NEGATIVE COMMENTS WERE.

19 A THERE WERE STILL MANY IN THE INDUSTRY AFTER WE
20 LAUNCHED THE IPAD WHO QUESTIONED WHETHER IT WOULD
21 SUCCEED AT ALL.

22 THEY QUESTIONED THE VALUE OF A PRODUCT
23 THAT PEOPLE MIGHT USE TO CREATE CONTENT LIKE THEY
24 DO ON A PERSONAL COMPUTER AND WHETHER THEY WOULD
25 USE A TABLET TO DO THOSE SAME ACTIONS.

1 THEY QUESTIONED THE NEED FOR SOMETHING
2 LARGER THAN AN IPHONE TO DO SOME OF THE SAME TASKS
3 AN IPHONE CAN DO.

4 THERE WAS GREAT DOUBT ON WHETHER IT WOULD
5 BE SUCCESSFUL TO ANYONE.

6 Q DID THE IPAD HAVE A KEYBOARD?

7 A IT HAD A SOFT SCREEN KEYBOARD, TOUCH KEYBOARD,
8 NO PHYSICAL KEYBOARD ATTACHED TO IT.

9 Q WAS THERE REACTION TO THE FACT OF IT
10 ELIMINATED A PHYSICAL KEYBOARD?

11 A OF COURSE.

12 Q WHAT WAS THE NATURE OF THAT REACTION, SIR?

13 A MANY IN THE INDUSTRY DOUBTED THAT A DEVICE
14 THAT DIDN'T HAVE A PHYSICAL KEYBOARD ATTACHED TO IT
15 COULD SUCCEED IN ANY MEANINGFUL NUMBERS.

16 Q LET'S GO BACK TO PLAINTIFF'S EXHIBIT 15 IN
17 EVIDENCE. DOES THIS CHART TELL US ABOUT SALES FOR
18 THE IPAD?

19 A YES, IT DOES.

20 Q AND CAN YOU SUMMARIZE THAT FOR US, PLEASE?

21 A YES. THE ORANGE LINE ON THE BOTTOM RIGHT THAT
22 STARTS IN MID-2010 AND GOES UNTIL 2012 SHOWS THE
23 CUMULATIVE SALES OF THE IPAD.

24 Q SIR, I'M GOING TO CHANGE SUBJECTS A LITTLE
25 BIT.

1 AS THE HEAD OF MARKETING, IN APPLE'S
2 VIEW, HAS THE IPHONE BEEN A SUCCESSFUL PRODUCT?

3 A YES, IT'S BEEN VERY SUCCESSFUL.

4 Q AND WHAT IS YOUR UNDERSTANDING OF THE REASONS
5 FOR ITS SUCCESS?

6 A WELL, I THINK THERE ARE --

7 MR. PRICE: I'LL OBJECT. IT'S
8 UNDISCLOSED OPINION.

9 THE COURT: OVERRULED.

10 GO AHEAD.

11 THE WITNESS: I THINK THERE ARE MANY
12 REASONS FOR THE IPHONE SUCCESS.

13 FOR ME, WHAT I BELIEVE IS VERY PREVALENT
14 IS, NUMBER ONE, PEOPLE FIND THE IPHONE DESIGNS
15 BEAUTIFUL.

16 NUMBER TWO, IT'S AN INCREDIBLY
17 EASY-TO-USE DEVICE WITH ALL OF OUR SOFTWARE
18 INVENTIONS TO MAKE IT INTUITIVE AND SIMPLE AND WELL
19 INTEGRATED.

20 I THINK, THIRD, THE FACT THAT WE DO SUCH
21 A GOOD JOB INTEGRATING HARDWARE AND SOFTWARE
22 TOGETHER TO MAKE ONE EXPERIENCE.

23 AND, FOURTH, I THINK BECAUSE IT HAS --
24 WE'VE REALLY TAKEN THE ENTIRE EXPERIENCE, EVERY
25 ELEMENT OF IT, HARDWARE, SOFTWARE, APPLICATIONS,

1 INTERNET SERVICES AND TAKEN RESPONSIBILITY TO MAKE
2 ALL THOSE THINGS WORK WELL FOR THE CUSTOMER. I
3 THINK THAT'S SORT OF MY LIST OF WHAT'S MADE IT
4 SUCCESSFUL.

5 Q HAS THE IPAD BEEN A SUCCESSFUL DEVICE?

6 A ABSOLUTELY.

7 Q AND WHAT ARE YOUR UNDERSTANDINGS FOR THE
8 REASONS OF ITS SUCCESS?

9 A WELL, FIRST I WOULD REPEAT SIMILAR ITEMS AS
10 WITH THE IPHONE, THAT IT'S ABSOLUTELY BEAUTIFUL;
11 THAT IT'S VERY EASY TO USE WITH ITS SOFTWARE; THAT
12 IT'S INTEGRATED TOGETHER HARDWARE AND SOFTWARE; AND
13 THE RESPONSIBILITY WE TAKE FOR ALL THOSE SERVICES.

14 BUT I WOULD ADD ONE MORE IN ADDITION TO
15 THE IPHONE, WHICH IS WE'VE ACTUALLY SHOWN PEOPLE
16 THE VALUE THAT THIS INCREDIBLY BEAUTIFUL PRODUCT
17 CAN HAVE IN THEIR LIVES AND WHY THEY WANT ONE WHEN
18 THEY NEVER HAD BEFORE. THAT WAS ONE OF THE BIGGEST
19 CHALLENGES.

20 Q COULD YOU PLEASE PUBLISH PDX 8.

21 SIR, THESE ARE PHOTOGRAPHS OF THE PHONES
22 THAT ARE ALREADY IN EVIDENCE IN THIS CASE.

23 I NOTICE THAT WHEN YOU LOOKED AT THE PTO
24 DISPLAY, YOU IMMEDIATELY RECOGNIZED, YOU TALKED
25 ABOUT THE DISTINCTIVE NATURE OF THE IPHONE.

1 WHAT IS IT ABOUT THESE DESIGNS THAT
2 CAUSES YOU TO CALL THEM DISTINCTIVE?

3 A WELL, AS A MARKETING PERSON, IT'S IMPORTANT TO
4 ME THAT A PRODUCT BE UNIQUE, BE DISTINCTIVE, BE
5 CONSISTENT OVER TIME.

6 WHAT YOU'RE SEEING UP HERE, YOU MAY THINK
7 IT'S JUST FOUR PICTURES OF PHONES, BUT IT ACTUALLY
8 REPRESENTS MANY YEARS OF IPHONE TO APPLE. WE DON'T
9 BRING OUT NEW VERSIONS EVERY MONTH. WE BRING THEM
10 OUT ABOUT ONCE A YEAR.

11 AND YOU SEE THE VERY CONSISTENT SHAPE OF
12 IT. IT'S ROUNDED CORNERS, IT'S RECTANGULAR SHAPE,
13 ITS FULL GLASS FACE WITH THE BLACK SCREEN AND BLACK
14 AREA AROUND THE SCREEN JUST SEEN AS ONE. YOU SEE
15 THE COLORFUL ICONS, THE APPLICATIONS, THE SQUARES
16 WITH THEIR ROUNDED CORNERS.

17 YOU SEE THE BOX ALONG THE BOTTOM WHICH
18 WE'RE KNOWN FOR. I THINK THERE ARE A NUMBER OF
19 FACTS ALTOGETHER THAT MAKE IT VERY OBVIOUS THAT
20 IT'S AN IPHONE.

21 THE COURT: MR. MCELHINNY, I DON'T HAVE
22 IT IN MY NOTES AS HAVING BEEN ADMITTED. WHICH
23 WITNESS WAS THIS?

24 MR. MCELHINNY: I'M SORRY, YOUR HONOR.
25 THE PHONES WERE ADMITTED THROUGH MR. SCHILLER, I

1 BELIEVE -- THROUGH MR. STRINGER, I BELIEVE, AND
2 THIS IS SIMPLY A PICTURE OF THE PHONES THAT ARE IN
3 EVIDENCE.

4 THE COURT: OH, ALL RIGHT.

5 BY MR. MCELHINNY:

6 Q WHICH IPHONES INCORPORATE THE DESIGN FEATURES
7 THAT YOU JUST DISCUSSED?

8 A THEY ALL DO.

9 Q IF YOU WOULD PUT UP, PLEASE, PDX 9.

10 THESE ARE PICTURES OF THE IPAD IN
11 EVIDENCE.

12 AGAIN, WHAT IS IT ABOUT THESE, THE SHAPE
13 OF THESE DEVICES THAT MAKES YOU THINK THAT THEY'RE
14 DISTINCTIVE?

15 A AS A MARKETING PERSON, IT'S IMPORTANT TO ME
16 THAT THE IMAGE OF THE PRODUCT BE SIMPLE, CLEAR,
17 CONSISTENT OVER TIME AND WHAT YOU'RE SEEING IS THE
18 IPAD HAS HAD A CONSISTENT DESIGN OF THE LARGE
19 RECTANGLE WITH FOUR ROUNDED CORNERS, A FULL GLASS
20 FACE WITH A SCREEN AND THE AREA AROUND THE SCREEN
21 JUST BECOME ONE SURFACE. THAT WE HAVE A BEAUTIFUL
22 SET OF ICONS THAT ARE COLORFUL, SQUARES WITH
23 ROUNDED CORNERS. A DOCK FOR THE MOST COMMONLY USED
24 ICONS ALL ON THE BOTTOM.

25 AND ALTOGETHER IT'S A SIMPLE, BEAUTIFUL

1 LOOK THAT HAS STAYED CONSISTENT WITH ACROSS THE
2 PRODUCT LINE.

3 Q IN YOUR EXPERIENCE, DOES THE DESIGN OF THESE
4 PRODUCTS CONTRIBUTE TO THEIR SUCCESS?

5 A ABSOLUTELY.

6 Q AND WHY DO YOU SAY THAT?

7 A BECAUSE I BELIEVE CUSTOMERS VALUE BEAUTIFUL
8 PRODUCTS AND PRODUCTS THEY CAN ASSOCIATE AND
9 IDENTIFY WITH THE COMPANY WHO'S MADE THEM.

10 Q SIR, IF YOU LOOK IN YOUR BINDER AT EXHIBIT
11 1 -- PX 143.

12 A YES.

13 Q WHAT IS EXHIBIT PX 143?

14 A THIS IS AN APPLE CUSTOMER OR BUYER SURVEY OF
15 PEOPLE WHO PURCHASED IPHONES.

16 Q CAN YOU TELL ME THE DATES OF IT, PLEASE?

17 A THIS WAS FROM THE FOURTH FISCAL QUARTER IN
18 FISCAL YEAR 2010.

19 Q ALL RIGHT. WOULD YOU LOOK AT THE PAGES THAT
20 YOU'VE GOT THERE, PLEASE, AND TELL ME WHETHER YOU
21 HAVE THE ENTIRE SURVEY OR EXCERPTS FROM THE SURVEY?

22 A THIS IS JUST A BRIEF EXCERPT OF A LARGER
23 SURVEY.

24 MR. MCELHINNY: THANK YOU. YOUR HONOR, I
25 MOVE PX 143.

1 THE COURT: ANY OBJECTION, MR. PRICE?

2 MR. PRICE: NO FURTHER OBJECTIONS.

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

4 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER

5 143, HAVING BEEN PREVIOUSLY MARKED FOR

6 IDENTIFICATION, WAS ADMITTED INTO

7 EVIDENCE.)

8 BY MR. MCELHINNY:

9 Q SIR, IF YOU WOULD LOOK IN YOUR BINDER AT PX
10 144, WHAT IS 144?

11 A THIS IS ANOTHER IPHONE BUYER SURVEY PERFORMED
12 BY APPLE.

13 Q IS IT THE ENTIRE SURVEY OR EXCERPTS, SIR?

14 A THIS ALSO IS AN EXCERPT OF THAT SURVEY.

15 Q FOR WHAT TIME PERIOD, SIR?

16 A FOR THE FIRST QUARTER OF FISCAL YEAR 2011.

17 MR. MCELHINNY: YOUR HONOR, I MOVE PX
18 144.

19 THE COURT: MR. PRICE?

20 MR. PRICE: NO FURTHER OBJECTION.

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

22 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER

23 144, HAVING BEEN PREVIOUSLY MARKED FOR

24 IDENTIFICATION, WAS ADMITTED INTO

25 EVIDENCE.)

1 BY MR. MCELHINNY:

2 Q IF YOU WOULD LOOK IN YOUR BINDER, PLEASE, AT
3 PX 145, WHAT IS 145?

4 A THIS IS ALSO AN IPHONE BUYER SURVEY.

5 Q IS IT THE ENTIRE SURVEY OR EXCERPTS, SIR?

6 A THIS IS ALSO AN EXCERPT OF THAT SURVEY.

7 Q FOR WHAT TIME PERIOD?

8 A THIS IS FOR THE SECOND QUARTER OF FISCAL YEAR
9 2011.

10 MR. MCELHINNY: YOUR HONOR, I MOVE PX
11 145.

12 MR. PRICE: NO ADDITIONAL OBJECTIONS.

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

14 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
15 145, HAVING BEEN PREVIOUSLY MARKED FOR
16 IDENTIFICATION, WAS ADMITTED INTO
17 EVIDENCE.)

18 BY MR. MCELHINNY:

19 Q IF YOU WOULD LOOK IN YOUR BINDER, PLEASE, AT
20 PX 146. WHAT IS 146, SIR?

21 A THIS IS AN IPHONE BUYER SURVEY.

22 Q THE WHOLE SURVEY, SIR, OR EXCERPTS?

23 A IT IS AN EXCERPT OF THAT SURVEY.

24 Q FROM WHAT TIME PERIOD?

25 A THAT IS FROM THE THIRD QUARTER OF FISCAL YEAR

1 2011.

2 MR. MCELHINNY: YOUR HONOR, I MOVE PX
3 146.

4 MR. PRICE: NO ADDITIONAL OBJECTION.

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

6 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
7 146, HAVING BEEN PREVIOUSLY MARKED FOR
8 IDENTIFICATION, WAS ADMITTED INTO
9 EVIDENCE.)

10 BY MR. MCELHINNY:

11 Q WHAT IS AN IPHONE BUYER SURVEY?

12 A PERIODICALLY MY MARKET RESEARCH TEAM WILL DO
13 SURVEYS OF CUSTOMERS WHO HAVE ALREADY PURCHASED OUR
14 PRODUCT TO ASK THEM QUESTIONS. WE'RE CURIOUS ABOUT
15 THEM.

16 Q WHAT IS A MARKET RESEARCH TEAM, SIR?

17 A I HAVE A SMALL GROUP OF PEOPLE WHO REPORT TO
18 ME WHO DO PRIMARILY TWO FUNCTIONS. ONE IS TO
19 PURCHASE THIRD PARTY REPORTS THAT EXIST IN THE
20 MARKETPLACE, USUALLY ANALYSIS OF MARKET TRENDS OR
21 DATA.

22 AND THEN ALSO TO PERFORM A LIMITED NUMBER
23 OF RESEARCH PROJECTS ON EXISTING CUSTOMERS SO WE
24 CAN HEAR WHAT THEY HAVE TO SAY ABOUT THE PRODUCTS
25 THEY'VE PURCHASED.

1 Q WHO DETERMINES WHAT QUESTIONS SHOULD BE ASKED
2 IN YOUR IPHONE BUYER SURVEY?

3 A MY TEAM DOES.

4 Q AND HOW ARE THE ANSWERS COMPILED?

5 A THEY USUALLY ARE DONE BY GATHERING ANSWERS
6 FROM WEB SURVEYS AND SOMETIMES ALSO CERTAIN PHONE
7 SURVEYS, AND THOSE ARE COMPILED TOGETHER IN A
8 DATABASE AND THEN REPORTED IN A DOCUMENT SUCH AS
9 THESE.

10 Q AND ARE THE BUYER SURVEYS THAT I'VE JUST SHOWN
11 YOU, ARE THEY CONSIDERED CONFIDENTIAL DOCUMENTS AT
12 APPLE?

13 A YES, THEY ARE.

14 Q WHY?

15 A ONE OF THE TOUGH THINGS IN OUR INDUSTRY, AND
16 IN MARKETING PRODUCTS, IS YOU CAN RESEARCH YOUR OWN
17 CUSTOMERS BECAUSE YOU HAVE A DATABASE OF YOUR
18 CUSTOMERS. THEY'VE BOUGHT A PRODUCT FROM YOU, SO
19 YOU KNOW HOW TO REACH THEM.

20 IT'S DIFFICULT TO RESEARCH SOMEONE ELSE'S
21 CUSTOMERS, A COMPETITOR'S CUSTOMERS. SO A
22 COMPETITOR CAN EASILY RESEARCH THEIR OWN CUSTOMERS,
23 BUT TO RESEARCH OUR CUSTOMERS ARE MUCH MORE
24 DIFFICULT.

25 SO OUR DATA THAT WE'VE GATHERED ON OUR

1 CUSTOMERS IS VERY DIFFICULT TO GATHER, AND,
2 THEREFORE, IT'S VERY CONFIDENTIAL AND WE PREFER NOT
3 TO SHARE IT WITH OUR COMPETITORS.

4 Q HAVE YOU PREPARED A SUMMARY OF THE INFORMATION
5 THAT'S CONTAINED IN THE FOUR SURVEYS THAT I JUST
6 SHOWED YOU?

7 A YES.

8 Q IF YOU LOOK IN YOUR BINDER, PLEASE, AT PDX 10.

9 A YES.

10 Q IS THIS THE SUMMARY THAT YOU HAVE PREPARED?

11 A YES, IT IS.

12 Q CAN YOU WALK US THROUGH IT, PLEASE?

13 A SO THIS IS A SUMMARY WHERE, ACROSS THE SURVEYS
14 WE'VE JUST BEEN SPEAKING ABOUT, WE TOOK ONE OF THE
15 QUESTIONS AND JUST SHOWED WHAT THE RESULTS WERE
16 ACROSS EACH OF THOSE SURVEYS TOGETHER.

17 AND IN THIS CASE, IN THE IPHONE BUYER
18 SURVEY, THE QUESTION WAS FOR THE CUSTOMER TO RATE
19 THE IMPORTANCE OF THE ATTRACTIVE APPEARANCE AND
20 DESIGN INTO THEIR DECISION TO PURCHASE THE IPHONE.

21 Q AND WHAT WAS THE QUESTION THAT WAS ASKED IN
22 THIS PARTICULAR, BEHIND THIS -- THAT IS BEHIND THIS
23 PARTICULAR SUMMARY?

24 A SPECIFICALLY, THE EXACT QUESTION WAS, "HOW
25 IMPORTANT WERE EACH OF THE FOLLOWING ATTRIBUTES,

1 "AND THE QUESTION, OF COURSE, THERE WAS MORE THAN
2 ONE, THIS ONE WAS "HOW IMPORTANT IS ATTRACTIVE
3 APPEARANCE AND DESIGN?"

4 AND THEN WHAT YOU SEE THERE IN THE BARS
5 IS THE RESULTS.

6 Q I'M SORRY. SO WE'RE ON TRACK. WHAT DOES
7 ATTRACTIVE APPEARANCE AND DESIGN MEAN IN YOUR
8 BUSINESS?

9 A WE'RE SIMPLY TRYING TO UNDERSTAND FROM THE
10 CUSTOMER'S PERSPECTIVE THE ACTUAL PHYSICAL
11 APPEARANCE, THE LOOK OF THE PRODUCT, THE IPHONE,
12 AND WHAT THEY FELT ABOUT HOW IMPORTANT THAT
13 APPEARANCE OR LOOK WAS IN THEIR OWN DECISION TO BUY
14 IT.

15 Q ALL RIGHT. LET ME HAMMER THE OBVIOUS LATER.
16 THIS IS NOT JUST THE RESULT OF A SINGLE SURVEY; IS
17 THAT RIGHT?

18 A NO, IT IS NOT.

19 Q IT COVERS A PERIOD OF TIME?

20 A YES, IT DOES.

21 Q A NUMBER OF SURVEYS?

22 A YES, IT DOES.

23 Q AND WHAT, WHAT DOES THIS SUMMARY TELL US ABOUT
24 THE IMPORTANCE OF DESIGN TO YOUR CUSTOMERS?

25 A THIS SURVEY RESULT, ACROSS TIME, ACROSS MANY

1 CUSTOMERS, AFFIRMS FOR ME THE PERSPECTIVE THAT,
2 THAT MOST CUSTOMERS BELIEVE THAT ATTRACTIVE
3 APPEARANCE AND DESIGN IS VERY IMPORTANT TO THEIR
4 CHOICE OF BUYING A PRODUCT, AND SPECIFICALLY OUR
5 PRODUCT.

6 Q AND HOW DO YOU GET THAT CONCLUSION FROM THESE
7 NUMBERS?

8 A WE ASKED THE CUSTOMERS, IN THIS QUESTION, TO
9 RATE THIS IMPORTANCE ON A SCALE OF 1 TO 5, WITH THE
10 TOP TWO IN THAT SCALE BEING THE ATTRACTIVE
11 APPEARANCE AND DESIGN IS EITHER SOMEWHAT IMPORTANCE
12 TO THE PURCHASE OR VERY IMPORTANT TO THE PURCHASE.

13 AND IN MARKETING LINGO, WE CALL THAT THE
14 TOP TWO BOX, THOSE TOP TWO CHOICES.

15 AND YOU USUALLY COMBINE THOSE FOR YOUR
16 MEASURE OF WHAT CUSTOMERS THINK WHETHER SOMETHING
17 IS IMPORTANT OR NOT.

18 AND -- NOW I APOLOGIZE THE WAY YOU
19 USUALLY SHOW A CHART LIKE THIS --

20 Q SO WHEN YOU TALK ABOUT TOP TWO BOXES, YOU'RE
21 TALKING ABOUT THE BOTTOM TWO BOXES?

22 A ONE OF THE FUNNY THINGS IN MARKETING IS WE
23 CALL THEM THE TOP TWO, BUT IN A CHART, THEY'RE
24 USUALLY THE BOTTOM COLORS IN THAT, SO IT'S THE DARK
25 BLUE AND MEDIUM BLUE THAT YOU SEE THERE.

1 SO THE WAY I LOOK AT THESE WHEN I SEE
2 THESE REPORTS IS YOU COMBINE THOSE TWO.

3 SO, FOR EXAMPLE, THE FIRST BAR SHOWS 46
4 PERCENT, PLUS 35 PERCENT OF THE TOP TWO BOXES, OR
5 85 PERCENT OF THOSE CUSTOMERS BELIEVED THAT IT WAS,
6 THE APPEARANCE AND DESIGN WAS IMPORTANT TO THEIR
7 PURCHASE OF THE IPHONE.

8 Q DOES APPLE TAKE PRODUCT DESIGN SERIOUSLY?

9 A EXTREMELY.

10 Q WHY?

11 A I BELIEVE ONE OF THE THINGS THE MARKET LOOKS
12 AT FROM APPLE IS BEAUTIFUL PRODUCTS. IT'S ONE OF
13 THE THINGS WE'RE KNOWN FOR. IT'S ONE OF THE THINGS
14 WE STRIVE TO CREATE, AND I THINK IT'S PART OF WHO
15 APPLE IS. WE CREATE BEAUTIFUL PRODUCTS.

16 Q DOES, SIR, THIS SUMMARY THAT YOU PREPARED,
17 DOES IT HAVE A SECOND PAGE?

18 A YES, IT DOES.

19 Q LET'S LOOK AT THE SECOND PAGE. AND WHAT DOES
20 THIS PAGE REPRESENT?

21 A FROM THE SAME IPHONE BUYER SURVEYS, WE ALSO
22 ASKED THE QUESTION OF HOW IMPORTANT EASE OF USE WAS
23 TO THEIR PURCHASE DECISION, AND THIS REPRESENTS THE
24 RESULTS OF THAT QUESTION OVERALL OF THESE SURVEYS.

25 Q AND, AGAIN, THE WAY THAT YOU USED THE PHRASE,

1 WHAT DOES "EASE OF USE" REFER TO?

2 A EASE OF USE IS A WAY TO GET AT THE CUSTOMER'S
3 UNDERSTANDING OF JUST HOW EASY IT IS TO USE OUR
4 PRODUCTS.

5 AND USUALLY THAT, IT STANDS FOR BOTH THE
6 PHYSICAL DESIGN, IS IT SIMPLE TO UNDERSTAND, BUT
7 EVEN MORE SO, THE SOFTWARE AND HOW EASY IT IS TO
8 USE ALL THAT SOFTWARE.

9 Q I'M GOING TO CHANGE SUBJECTS AGAIN.

10 SINCE THE RELEASE OF THESE PRODUCTS, HAS
11 APPLE SPENT -- MADE EFFORTS TO PROMOTE THE
12 PRODUCTS?

13 A OH, YES, A GREAT DEAL.

14 Q AND WHAT KINDS OF EFFORTS JUST GENERALLY HAVE
15 YOU MADE?

16 A WE USE EVERYTHING THAT MARKETING HAS AT OUR
17 DISPOSAL TO USE. THE LARGEST FORM OF COMMUNICATION
18 IS ADVERTISING. THERE'S ALSO PUBLIC RELATIONS.
19 THERE'S DIRECT MAIL. THERE'S EVENTS. OUR
20 WEBSITES, OUR STORES AND ALL THE CONTENT IN THOSE
21 STORES, ON AND ON, MANY THINGS.

22 Q IS ADVERTISING IMPORTANT TO, TO WHAT YOU DO?

23 A AT APPLE, ADVERTISING IS ONE OF THE MOST
24 IMPORTANT MARKETING TOOLS WE HAVE.

25 Q AND WHY IS THAT?

1 A ADVERTISING IS A WAY TO REACH MANY PEOPLE
2 INSTANTLY WITH A SINGLE COMMUNICATION. YOU CAN
3 CREATE AN AD AND REACH MILLIONS OF CUSTOMERS AND
4 SPEAK DIRECTLY TO THEM FROM OUR COMPANY.

5 Q ARE YOU INVOLVED IN HELPING TO SHAPE THE APPLE
6 ADVERTISING CAMPAIGNS?

7 A YES, I AM.

8 Q DOES APPLE HAVE A PARTICULAR APPROACH THAT IT
9 USES TO MARKET THE IPHONE AND THE IPAD?

10 A YES. I THINK WE HAVE A VERY DISTINCTIVE,
11 UNIQUE APPROACH.

12 Q AND WHAT IS THAT APPROACH, SIR?

13 A AT APPLE IN MARKETING, WE CALL THIS APPROACH
14 TO ADVERTISING PRODUCT AS HERO. THAT'S THE TERM WE
15 USE.

16 Q PRODUCT AS HERO?

17 A YES.

18 Q AND WHAT DOES THAT MEAN?

19 A THAT MEANS -- THE MOST IMPORTANT WE DO AT
20 APPLE IS TO CREATE A PRODUCT. THAT'S WHY WE'RE ALL
21 THERE, TO CREATE AMAZING PRODUCTS, AND WE WANT TO
22 SHOWCASE THOSE PRODUCTS AS PREDOMINANTLY AS WE CAN.

23 SO OUR MARKETING STRATEGY IS TO MAKE THE
24 PRODUCT THE BIGGEST, CLEAREST, MOST OBVIOUS THING
25 IN OUR ADVERTISEMENTS, OFTEN AT THE EXPENSE OF

1 ANYTHING ELSE AROUND IT, TO REMOVE ALL THE OTHER
2 ELEMENTS OF COMMUNICATION SO YOU SEE THE PRODUCT
3 MOST PREDOMINANTLY IN THE MARKETING.

4 Q WAS THERE ANYTHING ESPECIALLY CHALLENGING TO
5 MARKETING THE IPHONE?

6 A OH, YES, A GREAT --

7 MR. PRICE: OBJECT TO RELEVANCE TO THE
8 ISSUES IN THIS CASE.

9 MR. MCELHINNY: ADVERTISING IS ONE OF THE
10 CRITICAL ISSUES ON DILUTION.

11 THE COURT: OVERRULED.

12 GO AHEAD.

13 BY MR. MCELHINNY:

14 Q WERE THERE ANY SPECIAL CHALLENGES TO MARKETING
15 THE IPHONE?

16 A YES, THERE WERE.

17 Q AND CAN YOU TELL US WHAT THOSE WERE?

18 A BECAUSE THE IPHONE WAS SUCH A NEW KIND OF
19 DEVICE AND PEOPLE HAD NO IDEA HOW IT WORKED, THE
20 EASIEST WAY TO UNDERSTAND THE IPHONE WOULD BE TO
21 ACTUALLY PICK IT UP AND USE IT.

22 AND WHILE WE WANTED PEOPLE TO GO TO
23 STORES AND DO THAT, OUR TV ADVERTISEMENT CREATES AN
24 EXTRA CHALLENGE, HOW DO YOU SHOW THIS HERO PRODUCT,
25 AND HOW IT WILL WORK IF YOU HAVE NO FOUNDATION FOR

1 UNDERSTANDING HOW THAT IS? SO THAT WAS A BIG
2 CHALLENGE CREATED IN OUR MARKETING.

3 Q SIR, IF YOU LOOK IN YOUR BINDER AT EXHIBIT PX
4 127.

5 A YES.

6 Q CAN YOU TELL ME WHAT EXHIBIT PX 127 IS?

7 A IT'S A VIDEO.

8 Q AND IS IT A VIDEO OF ONE OF THE ADS THAT YOU
9 PRODUCED ABOUT HOW TO USE THE IPHONE?

10 A YES.

11 MR. MCELHINNY: YOUR HONOR, I MOVE PX 127
12 IN.

13 THE COURT: ANY OBJECTION.

14 MR. PRICE: NO ADDITIONAL OBJECTIONS.

15 AGAIN, CAN WE HAVE AN INSTRUCTION THAT WHAT'S SAID
16 IN THE VIDEO IS NOT RELEVANT MATERIAL.

17 MR. MCELHINNY: THIS IS NOT HEARSAY.

18 THE COURT: THAT OBJECTION IS OVERRULED.

19 ARE YOU GOING TO SHOW THIS OR WHAT?

20 MR. MCELHINNY: I'M GOING TO SHOW IT,
21 YOUR HONOR.

22 THE COURT: OKAY. I THINK SINCE WE
23 STARTED EARLIER TODAY, I'D LIKE TO TAKE THE BREAK A
24 LITTLE EARLIER, MAYBE 10:15. OKAY.

25 MR. MCELHINNY: FINE, YOUR HONOR.

1 THE COURT: GO AHEAD.

2 MR. MCELHINNY: WOULD YOU SHOW EXHIBIT --
3 DO WE NEED HELP WITH THAT?

4 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
5 127, HAVING BEEN PREVIOUSLY MARKED FOR
6 IDENTIFICATION, WAS ADMITTED INTO
7 EVIDENCE.)

8 MR. MCELHINNY: CAN YOU SHOW EXHIBIT PX
9 127, PLEASE.

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

12 BY MR. MCELHINNY:

13 Q THAT WAS ONE OF THE EARLY ADS FOR THE IPHONE;
14 IS THAT CORRECT?

15 A YES, IT WAS.

16 Q EXPLAIN TO US THE LOGIC. WHAT DID WE JUST SEE
17 FROM AN ADVERTISING PERSPECTIVE?

18 A ADVERTISING IS ALWAYS CHALLENGING BECAUSE YOU
19 ONLY HAVE 30 SECONDS TO GET AN IDEA ACROSS, AND IN
20 THAT 30 SECONDS, WHAT YOU SAW FIRST WAS, WHAT I
21 SPOKE ABOUT EARLIER, THE PRODUCT WAS THE HERO. YOU
22 SAW THE DISTINCTIVE DESIGN VERY CLEARLY.

23 SECONDLY, WE GAVE YOU THE ABILITY TO SEE
24 A BIT ABOUT HOW IT MIGHT WORK. SINCE YOU'VE NEVER
25 USED THIS PRODUCT BEFORE AS A CUSTOMER, YOU SAW HOW

1 FLICKING AND SCROLLING AND TAPPING AND ALL THESE
2 MULTITOUCH IDEAS SIMPLY.

3 AND THEN THE THIRD THING I THINK THE AD
4 DID VERY WELL WAS EXPRESS WHAT WE SPOKE ABOUT
5 EARLIER FROM THE ORIGINAL LAUNCH, THAT THE IPHONE
6 WAS A BREAKTHROUGH OF THREE THINGS:

7 IT WAS A GREAT PHONE; IT WAS A PERSONAL
8 COMMUNICATION DEVICE; AND IT WAS THE BEST IPOD YOU
9 EVER HAD.

10 ALL THREE OF THOSE WERE USED IN THAT
11 ADVERTISEMENT.

12 Q CAN YOU LOOK IN YOUR BINDER, PLEASE, TO
13 EXHIBIT PX 12.

14 A YES.

15 Q I THINK YOU'RE GOING TO FIND TWO THINGS THERE.
16 I THINK YOU'RE GOING TO FIND A CHART AND ANOTHER
17 CD. IS THAT CORRECT?

18 A CORRECT.

19 Q WHAT IS THE CHART?

20 A THIS IS A, A TABLE REPRESENTING ALL OF THE ADS
21 ABOUT IPHONE THAT WE'VE PUT ON A DVD.

22 Q AND WHAT IS THE DVD?

23 A THE DVD HAS ALL OF THESE ADS. IT SHOWS THE
24 ORIGINAL IPHONE ADS, AS WELL AS FOLLOW-ON VERSIONS
25 OF THE IPHONE, ALL AS INDIVIDUAL VIDEOS.

1 Q DOES IT INCLUDE THE AD WE JUST SAW.

2 A YES, IT DOES.

3 MR. MCELHINNY: YOUR HONOR, I MOVE PX 12.

4 MR. PRICE: ONE MOMENT, PLEASE.

5 (PAUSE IN PROCEEDINGS.)

6 MR. PRICE: NO ADDITIONAL OBJECTIONS,
7 JUDGE.

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

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

13 BY MR. MCELHINNY:

14 Q AND THIS IS THE CHART THAT YOU WERE TALKING
15 ABOUT WITH THE ADS?

16 A YES, IT IS.

17 Q AND YOU'VE GIVEN EACH ONE OF THESE ADS AN
18 INDIVIDUAL NAME?

19 A WE DO.

20 Q ALL RIGHT. AND JURY WILL HAVE THE DVD IN THE
21 COURTROOM?

22 A THEY WILL.

23 Q DO YOU KNOW, DID THESE ADS ACTUALLY AIR IN THE
24 UNITED STATES?

25 A YES. ALL OF THESE WERE ADS THAT WE RAN ON TV.

1 Q THANK YOU. WERE THERE ANY SPECIAL CHALLENGES
2 TO MARKETING THE IPAD?

3 A OH, YES.

4 Q AND CAN YOU GIVE US EXAMPLES OF WHAT THOSE
5 CHALLENGES WERE?

6 A AGAIN, LIKE WITH THE IPHONE, THE IPAD IS A
7 DEVICE THAT WAS BRAND NEW AND PEOPLE HAD NO
8 EXPERIENCE WITH ANYTHING LIKE THE IPAD.

9 AND SO THE CHALLENGE IN MARKETING IS TO,
10 AGAIN, NOT ONLY SHOW IT AS THIS HERO, BEAUTIFUL
11 PRODUCT BUT GIVE YOU A SENSE OF HOW IT MIGHT WORK
12 AND WHAT IT MIGHT DO FOR YOU BEFORE YOU EVEN GET A
13 CHANCE TO GO TO THE STORE AND TRY ONE YOURSELF.

14 Q IF YOU OPEN YOUR BINDER TO EXHIBIT PX 128.
15 WHAT IS THIS, SIR?

16 A THIS IS A VIDEO.

17 Q AND IS IT AN AD FOR THE IPAD AGAIN?

18 A YES, IT IS.

19 MR. MCELHINNY: YOUR HONOR, I MOVE PX
20 128.

21 MR. PRICE: NO FURTHER OBJECTION TO THIS
22 VIDEO.

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

24 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
25 128, HAVING BEEN PREVIOUSLY MARKED FOR

1 IDENTIFICATION, WAS ADMITTED INTO
2 EVIDENCE.)

3 MR. MCELHINNY: WE'D LIKE TO PUBLISH THIS
4 ONE, TOO, YOUR HONOR.

5 THE COURT: GO AHEAD, PLEASE.

6 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN
7 OPEN COURT OFF THE RECORD.)

8 BY MR. MCELHINNY:

9 Q AGAIN, WHAT WERE THE MESSAGES THAT WE TAKE
10 FROM -- THAT WE SHOULD HAVE TAKEN FROM THAT?

11 A SO IN THAT BRIEF AD, WE WANTED YOU TO SEE THE
12 BEAUTIFUL DESIGN; GET A SENSE OF HOW EASY IT IS TO
13 USE; REALIZE THAT IT WAS MEANT FOR A WIDE RANGE OF
14 USERS. IT'S REALLY FOR EVERYBODY, AND IT SHOWED
15 STUDENTS AND BUSY PEOPLE AND MANY OTHER EXAMPLES.

16 AND THEN TO GIVE YOU A TASTE OF THE RICH
17 DEPTH OF THE SOFTWARE THAT COULD BE USED ON THIS
18 AND HOW APPLICABLE IT IS TO THE THINGS YOU MIGHT DO
19 IN YOUR LIFE, TO CREATE A REASON THAT YOU MIGHT
20 WANT A TABLET DEVICE LIKE AN IPAD IN YOUR LIFE.

21 Q WOULD YOU LOOK AT EXHIBIT PX 13, PLEASE.

22 A YES.

23 Q WHAT IS PX 13?

24 A IT IS A TABLE OF A LIST OF OUR ADS FOR IPAD.

25 Q FOR IPAD.

1 YOUR HONOR, I MOVE -- AND IS THERE A CD
2 THAT ACTUALLY HAS THOSE?

3 THE WITNESS: THERE'S ALSO A DISK THAT
4 HAS THESE ON IT AS WELL.

5 MR. MCELHINNY: YOUR HONOR, I MOVE PX 13.

6 MR. PRICE: IF YOU'RE TALKING ABOUT THE
7 SUMMARY, THERE'S NO ADDITIONAL OBJECTION.

8 THE COURT: YOU'RE TALKING ABOUT THE
9 SUMMARY; CORRECT?

10 MR. MCELHINNY: THE SUMMARY AND THE DVD.

11 MR. PRICE: NO, NO, THOSE ARE DIFFERENT
12 ISSUES. EARLIER --

13 THE COURT: WHICH ONE IS THE CD? DOES IT
14 HAVE A DIFFERENT NUMBER? BECAUSE I ONLY HAVE PX 13
15 AS BEING A ONE-PAGE CHART.

16 MR. MCELHINNY: THEY'RE NUMBERED THE
17 SAME, YOUR HONOR. THE CHART IS THE LIST OF THE
18 CONTENTS OF THE DVD, AND THE DVD IS PART OF THE
19 EXHIBIT.

20 THE COURT: ALL RIGHT. WHAT'S THE
21 OBJECTION?

22 MR. PRICE: WELL, YOUR HONOR, THERE'S NO
23 OBJECTION TO THE SUMMARY. WE OBJECT TO THE ACTUAL
24 DVD'S. THAT'S THE PURPOSE OF THE SUMMARY GETTING
25 INTO EVIDENCE.

1 AND, SECOND, WITH RESPECT TO THE PRIOR
2 SUMMARY, I DIDN'T OBJECT TO ANY OF THE DETAILED
3 DVD'S ALTHOUGH, FOR EXAMPLE, THERE'S ONE AD ON
4 THERE WHICH YOUR HONOR HAS ALREADY EXCLUDED. SO --
5 THE ISSUE OF THE DVD'S ACTUALLY GETTING IN IS THE
6 OBJECTION.

7 THE COURT: ALL RIGHT. WELL, WHY DON'T
8 WE DO THIS. I'M GOING TO, OVER THE BREAK, LOOK AT
9 THE DVD'S, OKAY?

10 BUT THE CHARTS, THE CHART YOU HAVE NO
11 OBJECTION TO?

12 MR. PRICE: THE SUMMARY CHART, WE HAVE NO
13 ADDITIONAL OBJECTIONS.

14 THE COURT: ALL RIGHT. SO THE CHART
15 ITSELF IS ADMITTED, AND WHY DON'T WE RESERVE UNTIL
16 AFTER THE BREAK THE TWO DVD'S.

17 MR. MCELHINNY: THANK YOU, YOUR HONOR.

18 THE COURT: ALL RIGHT.

19 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
20 13, CHARTS, HAVING BEEN PREVIOUSLY MARKED
21 FOR IDENTIFICATION, WAS ADMITTED INTO
22 EVIDENCE.)

23 BY MR. MCELHINNY:

24 Q OTHER THAN TV COMMERCIALS, SIR, WHAT OTHER
25 KINDS OF ADVERTISING HAVE YOU DONE FOR THE IPHONE

1 AND THE IPAD?

2 A WE DO A LOT OF ADVERTISING. WE ADVERTISE ON
3 MAGAZINES, NEWSPAPERS, OUTDOORS ON BILLBOARDS AND
4 BUS SHELTERS, MANY PLACES.

5 Q WHAT KINDS OF MAGAZINES DO YOU -- IN WHAT KIND
6 OF MAGAZINES DO YOU ADVERTISE?

7 A WELL, IT'S IMPORTANT WHEN WE PICK MEDIA, BE IT
8 TV SHOWS OR MAGAZINES, WE TRY TO PICK PUBLICATIONS
9 THAT FIT WELL WITH APPLE'S IMAGE, REALLY HIGH, WHAT
10 WE DO OF OUR HIGH QUALITY AND BEST OF CLASS.

11 AND WE ALSO TRY TO PICK NATIONWIDE,
12 LARGEST REACH PUBLICATIONS. SO SOMETHING THAT'S A
13 NATIONAL TOP NEWSPAPER MAGAZINE WOULD BE THE
14 TYPICAL PLACE YOU WOULD FIND OUR ADS.

15 Q IF YOU WOULD LOOK, PLEASE, AT EXHIBIT PX 11,
16 WHAT IS THAT?

17 A PX 11 IS A DOCUMENT THAT SHOWS EXAMPLES OF
18 SOME OF OUR PRINT AND OUTDOOR ADVERTISEMENTS.

19 MR. MCELHINNY: YOUR HONOR, I'D MOVE PX
20 11.

21 THE COURT: ANY OBJECTION, MR. PRICE?

22 MR. PRICE: NO ADDITIONAL OBJECTIONS.

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

24 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
25 11, HAVING BEEN PREVIOUSLY MARKED FOR

1 IDENTIFICATION, WAS ADMITTED INTO
2 EVIDENCE.)

3 BY MR. MCELHINNY:

4 Q ARE YOU FAMILIAR WITH THE EXPRESSION "PRODUCT
5 PLACEMENT"?

6 A YES.

7 Q WHAT IS "PRODUCT PLACEMENT"?

8 A IT IS QUITE COMMON IN OUR INDUSTRY TO, AS
9 MARKETING, TO TRY TO GET YOUR PRODUCT PLACED ON A
10 TV SHOW, MOVIE, ANYTHING THAT COULD HELP GET
11 ATTENTION ON IT AND VISIBILITY TO IT.

12 Q AND DOES YOUR DEPARTMENT WORK IN THE FIELD OF
13 PRODUCT PLACEMENT?

14 A YES, WE DO.

15 Q WHAT KINDS OF THINGS DO YOU DO?

16 A WE WOULD LOVE TO SEE OUR PRODUCT USED BY STARS
17 ON MOVIES, ON TV SHOWS, AND WE HAVE A PERSON WHO
18 HELPS PROVIDE PRODUCTS TO PEOPLE WHO WANT TO DO
19 THAT.

20 Q ARE YOU FAMILIAR WITH THE EXPRESSION "BUZZ
21 MARKETING"?

22 A YES, I AM.

23 Q AND WHAT IS "BUZZ MARKETING"?

24 A BUZZ MARKETING IS A TERM FOR GRASSROOTS
25 MARKETING DESIGNED TO CREATE EXCITEMENT AROUND A

1 PRODUCT OUTSIDE OF THE NORMAL METHODS OF
2 ADVERTISEMENT AND DIRECT MAIL, AND WE HAVE A PERSON
3 WHO DOES THAT AT APPLE AS WELL.

4 Q AND GIVE US EXAMPLES. I MEAN, WHAT DOES --
5 HOW DOES THAT HAPPEN IN THE REAL WORLD?

6 A WHAT OFTEN HAPPENS IS THESE PRODUCT PLACEMENTS
7 WILL HAVE AN ACTOR OR A DIRECTOR WHO WILL CONTACT
8 THE PERSON AT APPLE WHO DOES BUZZ MARKETING AND ASK
9 IF THEY CAN GET A DEVICE OR A PRODUCT TO USE IN
10 THEIR SHOW OR THEIR MOVIE.

11 Q IF YOU LOOK, PLEASE, AT TAB PX 14. WHAT IS PX
12 14, SIR?

13 A IT IS A DVD AND A LIST OF ACTUAL CLIPS FROM
14 POPULAR NEWS AND TV SHOWS THAT INCLUDE SOME OF OUR
15 PRODUCTS.

16 Q SO IT'S A DVD THAT SHOWS CLIPS FROM TV SHOWS
17 IN WHICH APPLE PRODUCTS HAVE APPEARED; IS THAT
18 CORRECT?

19 A YES.

20 Q AND THEN A SUMMARY CHART THAT TELL US WHAT'S
21 ON THE DVD; IS THAT CORRECT?

22 A YES.

23 MR. MCELHINNY: YOUR HONOR, I'D MOVE PX
24 14 BOTH AS TO THE CHART AND THE DVD.

25 MR. PRICE: NO ADDITIONAL OBJECTIONS AS

1 TO THE CHART. BUT I DO AS TO THE DVD.

2 THE COURT: UNDERSTOOD. SO THE CHART IS
3 COMING IN. I WILL RESERVE ON THE DVD UNTIL AFTER
4 THE BREAK.

5 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
6 14, CHART, HAVING BEEN PREVIOUSLY MARKED
7 FOR IDENTIFICATION, WAS ADMITTED INTO
8 EVIDENCE.)

9 THE COURT: GO AHEAD, PLEASE.

10 BY MR. MCELHINNY:

11 Q CAN YOU LOOK AT EXHIBIT PX 16?

12 A YES.

13 Q WHAT IS PX 16, SIR?

14 A THIS IS A CHART THAT SHOWS APPLE'S U.S.
15 EXPENSES FOR IPHONE AND IPAD ADVERTISING.

16 Q WHAT INFORMATION IS THIS CHART BASED ON?

17 A MY TEAM COMPILED THIS FROM OUR OWN FINANCIAL
18 TRACKING OF ADVERTISING DOLLARS THAT WE SPENT.

19 Q AND IF YOU LOOK AT PX 33, WHAT IS THAT
20 DOCUMENT?

21 A THIS IS THE ACTUAL TABLE OF DATA THAT WENT
22 INTO CREATING THAT CHART.

23 MR. MCELHINNY: YOUR HONOR, I MOVE PX 16
24 AND PX 33.

25 THE COURT: ANY OBJECTION?

1 MR. PRICE: NO ADDITIONAL OBJECTION.

2 THE COURT: ALL RIGHT. THEY'RE ADMITTED.

3 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBERS
4 16 AND 33, HAVING BEEN PREVIOUSLY MARKED
5 FOR IDENTIFICATION, WERE ADMITTED INTO
6 EVIDENCE.)

7 MR. MCELHINNY: CAN WE SEE PX 16, PLEASE.

8 Q HOW MUCH DID APPLE SPEND IN THE YEAR 2008 ON
9 IPHONE ADVERTISING?

10 A \$97.5 MILLION IN THE UNITED STATES.

11 Q AND HOW MUCH IN 2009, SIR?

12 A \$149.6 MILLION.

13 Q JUST BASED ON THIS CHART, CAN YOU GIVE US SOME
14 SORT OF AN ESTIMATE OF HOW MUCH YOU SPENT ON
15 ADVERTISING -- IPHONE ADVERTISING IN THE
16 UNITED STATES THROUGH JUNE OF 2010?

17 A LET'S SEE. WELL, IN JUNE OF 2010, WE SPENT
18 173.3 MILLION -- EXCUSE ME -- IN ALL OF 2010, 173.3
19 MILLION.

20 OUR FISCAL YEAR STARTS IN OCTOBER, SO BY
21 JUNE WE'RE THREE-QUARTERS THROUGH THE YEAR, AND
22 ALSO PAST THE BIGGEST PART OF THE YEAR, WHICH IS
23 THE HOLIDAY SEASON.

24 SO WE CERTAINLY WOULD HAVE SPENT
25 THREE-QUARTERS OF THAT MONEY, OR AT LEAST 120, 130

1 MILLION BY THEN.

2 Q CAN YOU GIVE US THE SAME ESTIMATE FOR THE
3 IPAD, SIR?

4 A THE IPAD, IN 2010, AT THAT POINT WE HAD SPENT
5 149.5 MILLION. SO, AGAIN, WE WOULD HAVE SPENT
6 ABOUT THREE-QUARTERS OF THAT AT THAT POINT OF THE
7 YEAR IN JUNE AS WELL.

8 Q AND BASED ON -- THIS IS A QUESTION THAT MIGHT
9 GET YOU FIRED, OKAY? ARE YOU READY FOR THIS ONE?

10 HAS YOUR ADVERTISING CAMPAIGN BEEN
11 SUCCESSFUL?

12 A I BELIEVE SO.

13 Q AND WHAT'S YOUR BASIS FOR THAT?

14 A WELL, I THINK BOTH THE IPHONE AND THE IPAD
15 HAVE BECOME FAMOUS, WELL KNOWN, RECOGNIZED BY
16 PEOPLE ALL AROUND THE WORLD, AND CERTAINLY HERE IN
17 THE U.S.

18 I THINK THEY'RE VERY SOUGHT AFTER,
19 DESIRED, AND VERY WELL IDENTIFIED.

20 Q OKAY. AND IN YOUR -- BASED ON YOUR
21 EXPERIENCE, HAS THIS PRODUCT AS HERO APPROACH
22 PLAYED ANY PART IN THAT SUCCESS THAT YOU JUST TOLD
23 US ABOUT?

24 A YES. I BELIEVE OUR MARKETING STRATEGY, THE
25 WAY WE DO ADVERTISING, THE PRODUCT AS HERO HAS

1 CREATED THAT IDENTITY, THAT VISUAL IMPACT OF THAT
2 FAMOUS PRODUCT FROM APPLE.

3 MR. MCELHINNY: IS THIS A GOOD TIME, YOUR
4 HONOR?

5 THE COURT: YES, PLEASE.

6 LET'S GO AHEAD AND TAKE A 15-MINUTE BREAK
7 UNTIL 10:30. AGAIN, PLEASE KEEP AN OPEN MIND.
8 PLEASE DON'T DISCUSS THE CASE WITH ANYONE. DON'T
9 DO ANY RESEARCH. DON'T READ ANY NEWS ACCOUNTS OR
10 ANYTHING ELSE.

11 ALL RIGHT. THANK YOU FOR YOUR PATIENCE
12 AND YOUR SERVICE. WE'LL SEE EVERYBODY BACK AT
13 10:30.

14 (WHEREUPON, A RECESS WAS TAKEN.)

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

17 THE COURT: YES. LET'S BRING IN THE
18 JURY.

19 (WHEREUPON, THE FOLLOWING PROCEEDINGS
20 WERE HELD IN THE PRESENCE OF THE JURY:)

21 THE COURT: ALL RIGHT. THE TIME IS NOW
22 10:36, AND THE OBJECTION TO EXHIBITS 12 AND 13 AND
23 14, THE CD'S THAT ACCOMPANY THE CHARTS, IS
24 SUSTAINED AS CUMULATIVE UNDER 403. SO THEY'RE NOT
25 COMING IN.

1 GO AHEAD, PLEASE.

2 MR. MCELHINNY: CAN I HAVE PX 16 UP,
3 PLEASE.

4 Q SIR, CAN YOU GIVE US, AGAIN, ONE OF THESE
5 ESTIMATES ABOUT WHAT -- HOW MUCH APPLE SPENT ON
6 IPAD ADVERTISING THROUGH THE BEGINNING OF JUNE,
7 2011?

8 A BY JUNE -- BY 2011, WE HAD SPENT A TOTAL OF
9 307 MILLION, SO BY JUNE, WHICH IS JUST A FEW MONTHS
10 BEFORE THAT, WE WOULD HAVE SPENT -- AND THIS IS
11 ABOUT THREE-QUARTERS OF THE YEAR AND PAST THE
12 BIGGEST SEASON OF THE HOLIDAYS, SO THREE-QUARTERS
13 OF THAT AT LEAST, IF NOT MORE.

14 SO I WOULD SAY AT LEAST 230 MILLION OR
15 MORE DOLLARS IN U.S. ADVERTISING.

16 Q SIR, I WANT TO ASK YOU ABOUT A DIFFERENT
17 SUBJECT MATTER.

18 IS SAMSUNG ONE OF APPLE'S COMPETITORS IN
19 THE SMARTPHONE MARKET?

20 A YES.

21 Q CAN YOU IDENTIFY FOR US ANY SAMSUNG PRODUCTS
22 THAT HAVE COMPETED WITH APPLE'S SMARTPHONES?

23 A THEY HAVE MANY SMARTPHONES THAT COMPETE WITH
24 US. PROBABLY THE BEST KNOWN LINE OF THEIRS IS THE
25 GALAXY LINE, WHICH THERE'S ACTUALLY MANY MODEL, THE

1 GALAXY S, S II, S III. THERE'S A BUNCH OF VARYING
2 SUBBRAND NAMES UNDER THOSE. I DON'T KNOW ALL OF
3 THEM.

4 Q DOES APPLE COMPETE WITH SAMSUNG IN THE TABLET
5 MARKET?

6 A YES, WE DO.

7 Q IN WHICH, IF ANY, RETAIL CHANNELS DO APPLE AND
8 SAMSUNG SELL THEIR PHONES AND TABLETS?

9 MR. PRICE: OBJECT. THAT'S VAGUE AS TO
10 TIME, YOUR HONOR.

11 THE COURT: SUSTAINED.

12 BY MR. MCELHINNY:

13 Q SINCE THE IPHONE WAS RELEASED, HAVE APPLE AND
14 SAMSUNG SOLD THEIR PHONES THROUGH THE SAME RETAIL
15 CHANNELS?

16 MR. PRICE: I'LL OBJECT. IT'S VAGUE. IS
17 HE ASKING FOR THE ENTIRE TIME?

18 THE COURT: CAN YOU JUST CLARIFY YOUR
19 QUESTION, PLEASE?

20 MR. MCELHINNY: SURE.

21 Q WOULD YOU LOOK, PLEASE, AS EXHIBIT PX -- PDX
22 13.

23 A YES.

24 Q WHAT IS PDX 13, SIR?

25 A IT IS A CHART THAT SHOWS A NUMBER OF THE SALES

1 CHANNELS THAT BOTH APPLE AND SAMSUNG SELL OUR
2 PRODUCTS THROUGH IN THE U.S.

3 MR. MCELHINNY: YOUR HONOR, I'D LIKE TO
4 PUBLISH PDX 13.

5 MR. PRICE: MY OBJECTION IS THAT THE
6 CHART ALSO IS VAGUE AS TO TIME.

7 MR. MCELHINNY: I'VE GIVEN THEM SPECIFIC
8 TIMES, SINCE THE PRODUCTS WERE RELEASED, WHEN THEY
9 COMPETED IN THESE SPECIFIC CHANNELS.

10 THE COURT: ALL RIGHT. OVERRULED.

11 WHAT ABOUT TO THE EXHIBIT, MR. PRICE, PDX
12 13?

13 MR. MCELHINNY: IT'S A DEMONSTRATIVE,
14 YOUR HONOR.

15 THE COURT: OKAY. GO AHEAD.

16 BY MR. MCELHINNY:

17 Q WHAT DOES THIS DEMONSTRATIVE TELL US, SIR?

18 A THIS SHOWS A LIST OF APPLE'S SALES CHANNELS
19 THAT YOU WOULD FIND OUR PRODUCTS SOLD IN THE U.S.,
20 AS WELL AS A LIST OF SAMSUNG'S SALES CHANNELS.

21 Q AND IS THERE AN OVERLAP WHERE ONE CHANNEL IS
22 SELLING BOTH PRODUCTS AT THE SAME TIME?

23 A YES. YOU WILL SEE ACROSS THE MAJORITY OF ALL
24 APPLE SALES CHANNELS, THERE ARE ALSO SAMSUNG
25 PRODUCTS SOLD IN MOST OF ALL OF THOSE CHANNELS AND

1 STORES AS WELL.

2 Q DO YOU REMEMBER, SIR, THE FIRST TIME THAT YOU
3 SAW A GALAXY S PHONE OR THE IMAGE OF ONE?

4 A I RECALL HAVING FIRST SEEN THE GALAXY S PHONE
5 WHEN IT WAS ANNOUNCED.

6 Q AND AS THE HEAD OF MARKETING, DO YOU KEEP
7 TRACK OF WHAT'S GOING ON AND WHAT'S THE COMPETITION
8 IN THOSE MARKETS?

9 A BY KEEPING TRACK, OF COURSE I READ EVERYTHING
10 I CAN I AND JUST REALLY TRY TO KEEP TRACK OF THOSE
11 MARKETS, YES.

12 Q WHAT WAS YOUR REACTION WHEN YOU SAW THE
13 GALAXY S PHONE FOR THE FIRST TIME?

14 MR. PRICE: YOUR HONOR, I OBJECT. IT'S
15 IMPROPER -- OBJECTION. IT'S IMPROPER LAY OPINION.

16 MR. MCELHINNY: THIS IS THE HEAD OF
17 MARKETING WHO MARKETS IN COMPETITION, YOUR HONOR,
18 AND THIS IS -- THIS IS CLASSIC LAY OPINION.

19 THE COURT: ALL RIGHT. OVERRULED.

20 GO AHEAD.

21 THE WITNESS: YES, I RECALL HOW I FELT
22 WHEN I FIRST SAW THE GALAXY S SMARTPHONE.

23 BY MR. MCELHINNY:

24 Q AND WHAT WAS YOUR REACTION AS A MARKETER?

25 A I WAS PRETTY SHOCKED AT THE APPEARANCE OF THE

1 GALAXY S PHONE AND THE EXTENT TO WHICH IT APPEARED
2 TO COPY APPLE'S PRODUCT AND THE PROBLEMS THAT WOULD
3 CREATE FOR US AS A MARKETING TEAM.

4 Q WHAT KIND OF PROBLEMS DOES COPYING CAUSE FOR
5 APPLE IN THE MARKETPLACE?

6 MR. PRICE: I'LL OBJECT. THAT'S VAGUE
7 AND AMBIGUOUS AND NOT RELEVANT TO THIS TRIAL UNLESS
8 HE'S TALKING ABOUT THESE PRODUCTS.

9 MR. MCELHINNY: YOUR HONOR, THIS IS THE
10 EFFECT ON COMPETITION. THIS IS THE HEAD OF OUR
11 MARKETING. I KNOW THEY DON'T WANT TO HEAR THE
12 TESTIMONY, BUT --

13 THE COURT: ALL RIGHT. I'M GOING TO
14 OVERRULE IT.

15 GO AHEAD.

16 BY MR. MCELHINNY:

17 Q WHY IS COPYING A PROBLEM FOR APPLE, SIR?

18 A IT'S A -- IT CREATES A HUGE PROBLEM IN
19 MARKETING ON MANY LEVELS. WHEN WE CREATE
20 MARKETING -- WE TALKED ABOUT HOW WE MARKET OUR
21 PRODUCT AS THE HERO AND HOW DISTINCTIVE IT IS AND
22 WHAT CUSTOMERS SEE WHEN THEY LOOK AT THAT PRODUCT
23 AND HOW CONSISTENT WE'VE KEPT IT OVER TIME.

24 NOW, WHEN SOMEONE COMES UP WITH A PRODUCT
25 THAT COPIES, THAT COPIES THAT DESIGN AND COPIES

1 THAT MARKING, THEN CUSTOMERS CAN GET CONFUSED ON
2 WHOSE PRODUCT IS WHOSE.

3 A SIMPLE EXAMPLE. WE HAVE SHOWN OUR
4 OUTDOOR BILLBOARDS. IF YOU'RE DRIVING DOWN THE
5 HIGHWAY 55 MILES AN HOUR, YOU HAVE A SPLIT SECOND
6 TO SEE A PHONE ON A BILLBOARD. IF IT LOOKS VERY,
7 VERY SIMILAR AND IS COPIED, WHOSE PHONE WAS THAT?
8 DO YOU HAVE TIME TO REALIZE?

9 IT ABSOLUTELY IMPACTS THE ABILITY TO
10 MARKET OUR DISTINCTIVE PRODUCT.

11 SAME THING WITH TV ADVERTISING. IF
12 YOU'RE WATCHING A FOOTBALL GAME AND YOU GO TO GET
13 UP DURING THE ADS FOR A SECOND AND GET SOMETHING TO
14 EAT AND YOU CATCH OUT OF THE CORNER OF YOUR EYE A
15 TV AD THAT COMES ON FOR A PHONE, WHOSE PHONE WAS
16 THAT? IF IT LOOKS THE SAME, YOU CAN'T TELL ANY
17 LONGER.

18 SO WE WENT FROM HAVING SOMETHING EASY TO
19 MARKET BECAUSE IT WAS SO DISTINCTIVE AND SO FAMOUS
20 TO NOW BEING MORE CHALLENGING TO MARKET BECAUSE
21 SOMETHING LOOKS A LOT LIKE IT AND CAN CONFUSE
22 CUSTOMERS.

23 Q SIR, YOU WEREN'T HERE DURING THE OPENING
24 STATEMENTS BY THE LAWYERS, BUT THERE WAS A LOT OF
25 DISCUSSION ABOUT COMPETITION. AND I WANT TO ASK

1 YOU, AS THE HEAD OF MARKETING, ARE YOU OPPOSED TO
2 COMPETITION, SIR?

3 A NO. COMPETITION IS GREAT.

4 Q ARE YOU -- CAN YOU GIVE US EXAMPLES OF WHAT
5 YOU CONSIDER TO BE FAIR COMPETITION?

6 A EVERY DAY THERE ARE COMPANIES CREATING
7 PRODUCTS TO COMPETE WITH US, AND THEY CREATE THEIR
8 OWN PRODUCTS, THEIR OWN UNIQUE DESIGNS, THEIR OWN
9 UNIQUE FEATURES TO LOOK DISTINCTIVE AS WE DO, AND
10 WE LET THE CUSTOMER DECIDE WHO'S RIGHT, WHO'S MADE
11 THE BETTER PRODUCT, WHO'S GOT THE DESIGN THAT THEY
12 LIKE, CAME UP WITH THE IDEAS THEY BEST LIKE, AND
13 THAT'S FAIR, OPEN COMPETITION.

14 Q AS YOU DEFINED "FAIR COMPETITION," IS COPYING
15 FAIR COMPETITION?

16 A NOT AT ALL.

17 Q AND WHY NOT?

18 A BECAUSE WHEN YOU COPY OR STEAL THE IDEA OF ONE
19 COMPANY'S PRODUCT, NOW YOU'RE TRADING OFF OF ALL
20 THAT INVESTMENT IN MARKETING, ALL THAT GOOD WILL
21 WE'VE CREATED WITH CUSTOMERS TO SAY THIS IS THE
22 BEST PRODUCT, THIS IS WHAT IT LOOKS LIKE, THIS IS
23 WHAT IT DOES.

24 AND WHEN YOU RIP THAT OFF, YOU'RE TRYING
25 TO GET ALL OF THAT BENEFIT ONTO YOURSELF. YOU'RE

1 TAKING ALL OF OUR INVESTMENT. WE'VE SHOWN THE
2 CHARTS OF THE HUNDREDS OF MILLIONS OF DOLLARS WE'VE
3 SPENT MARKETING THE IPHONE AND THE WAY IT LOOKS,
4 AND IF YOU STEAL THAT, WELL, NOW YOU'RE TRYING TO
5 STEAL ON THAT TOTAL INVESTMENT AND ALL THE VALUE
6 WE'VE CREATED.

7 Q DO YOU RECALL THE FIRST TIME THAT YOU SAW A
8 GALAXY TABLET PRODUCT?

9 A I SURE DO.

10 Q AND WHAT WAS YOUR REACTION AT THAT POINT AS A
11 MARKETER?

12 MR. PRICE: OBJECTION, YOUR HONOR, FOR
13 THE RECORD.

14 THE COURT: OVERRULED.

15 GO AHEAD.

16 THE WITNESS: EVEN MORE SHOCKED. MY
17 FIRST THOUGHT WAS, "WOW, THEY'VE DONE IT AGAIN.
18 THEY'RE JUST GOING TO COPY OUR WHOLE PRODUCT LINE."
19 BY MR. MCELHINNY:

20 Q SIR, AGAIN, BASED ON YOUR EXPERIENCE AND WHAT
21 YOU DO EVERYDAY, IS THE CONDUCT THAT WE'RE TALKING
22 ABOUT IN THIS CASE, IS IT HAVING AN EFFECT ON APPLE
23 IN THE MARKETPLACE?

24 MR. PRICE: OBJECTION. THIS IS
25 INAPPROPRIATE LAY OPINION. UNDISCLOSED.

1 MR. MCELHINNY: THIS IS PERCIPIENT
2 TESTIMONY, YOUR HONOR.

3 THE COURT: IT'S OVERRULED.
4 GO AHEAD.

5 THE WITNESS: I BELIEVE IT'S HAVING A
6 LARGE IMPACT ON THE MARKETPLACE.

7 BY MR. MCELHINNY:

8 Q AND CAN YOU TELL US THE KINDS OF IMPACTS THAT
9 IT IS HAVING?

10 A I THINK HAVING COPYCAT PRODUCTS IN THE
11 MARKETPLACE MAKES OUR JOB AS A MARKETING TEAM MUCH
12 MORE DIFFICULT. IT CONFUSES THE CUSTOMER ON WHO'S
13 THE CREATOR OF THESE PRODUCTS.

14 IT DIMINISHES THE VALUE THAT WE'VE
15 INVESTED IN AND BUILT OR THAT CUSTOMERS SEE APPLE
16 AS THE INVENTOR OF THESE PRODUCTS, THE DESIGNER OF
17 THESE BEAUTIFUL THINGS.

18 AND IT CREATES NOW -- IT DIMINISHES THAT
19 VALUE AND IT DILUTES THE WAY CUSTOMERS SEE APPLE.

20 Q HAS THIS -- IN YOUR VIEW AS THE HEAD OF
21 MARKETING, HAS THIS CONDUCT THAT WE'RE TALKING
22 ABOUT HAD AN EFFECT ON APPLE'S SALES?

23 MR. PRICE: OBJECTION, YOUR HONOR.
24 THAT'S IMPROPER LAY OPINION.

25 THE COURT: OVERRULED.

1 THE WITNESS: I ABSOLUTELY BELIEVE IT'S
2 HAD AN IMPACT ON OUR SALES.

3 BY MR. MCELHINNY:

4 Q AND WE'LL HAVE EXPERTS COME IN TO TALK ABOUT
5 THE NUMBERS LATER, BUT WHAT IS THE OVERALL EFFECT,
6 SIR?

7 A ONE OF THE JOBS OF MY TEAM IS THE FORECASTING
8 PROCESS AND UNDERSTANDING IMPACTS OF THESE THINGS,
9 AND WE HAVE TO GUESS AT THIS EVERY DAY.

10 AND IT IS OUR BELIEF THAT CUSTOMERS, SOME
11 CUSTOMERS ARE CHOOSING TO BUY A SAMSUNG PRODUCT
12 BECAUSE ONE OF THE THINGS IT DOES IS LOOK A LOT
13 LIKE THE IPHONE, A LOT LIKE THE IPAD.

14 I ALSO THINK IT HAS AN EFFECT AROUND
15 THOSE FIRST PURCHASES WHERE SUBSEQUENT PURCHASES
16 THEN ARE AFFECTED BECAUSE YOU'RE USED TO AN
17 ECOSYSTEM THAT YOU'VE STARTED ON, AND THE PEOPLE
18 AROUND YOU ARE AFFECTED BECAUSE IF ONE PERSON IN
19 YOUR FAMILY HAS A CERTAIN PRODUCT THAT RUNS A
20 CERTAIN OPERATING SYSTEM AND USES CERTAIN
21 APPLICATIONS, OTHERS ARE MORE LIKELY IN THAT FAMILY
22 TO CHOOSE A SIMILAR PRODUCT.

23 SO I THINK IT HAS EFFECTS IN THE INITIAL
24 SALES, AS WELL AS ON RELATED SALES.

25 MR. MCELHINNY: THANK YOU, MR. SCHILLER.

1 I HAVE NO FURTHER QUESTIONS AT THIS TIME.
2 THE COURT: ALL RIGHT. THE TIME IS NOW
3 10:47.

4 GO AHEAD, PLEASE, MR. PRICE.

5 **CROSS-EXAMINATION**

6 BY MR. PRICE:

7 Q GOOD MORNING. IT'S GOOD MORNING. GOOD
8 MORNING, MR. SCHILLER.

9 WHILE THE BINDERS ARE BEING DISTRIBUTED,
10 I'LL TRY TO ASK YOU SOME QUESTIONS THAT DON'T
11 CONCERN THEM.

12 AND YOU WERE TESTIFYING ABOUT, OBVIOUSLY,
13 THAT IPHONE, IPAD MADE A SPLASH WHEN THEY WERE
14 LAUNCHED; RIGHT?

15 A YES.

16 Q AND I'M GOING TO TALK ABOUT THE IPHONE FIRST.

17 NOW, THERE WERE SOME PHONES IN THE MARKET
18 IN 2007 THAT HAD THE HARD KEYBOARDS; CORRECT?

19 A HARD? I DON'T KNOW WHAT YOU MEAN BY "HARD
20 KEYBOARDS."

21 Q THE ONES THAT YOU ACTUALLY HAD TO PUSH A
22 BUTTON INSTEAD OF BEING ON THE SCREEN?

23 A A PHYSICAL KEYBOARD, YES, MOST PHONES AT THE
24 TIME HAD THAT.

25 Q BEING ABLE TO PUT A KEYBOARD ON A PHONE ON A

1 SCREEN WAS SOMETHING THAT RESULTED BECAUSE OF
2 ADVANCED IN TECHNOLOGY; CORRECT?

3 A I CAN'T SPEAK FOR OTHER COMPANIES. I CAN ONLY
4 SAY THAT AT APPLE, WE WORKED REALLY HARD TO CREATE
5 A SOFT KEYBOARD ON THE SCREEN OF THE IPHONE.

6 Q OKAY. AND APPLE IN THIS CASE, YOUR
7 UNDERSTANDING, AS A MEMBER OF THE EXECUTIVE TEAM,
8 ISN'T SAYING THAT, YOU KNOW, OTHER COMPANIES CAN'T
9 PUT A SOFT KEYBOARD ON A SCREEN; RIGHT?

10 A I DON'T KNOW THAT ANYONE HAS SAID THAT.

11 Q SO ONCE THAT TECHNOLOGY IS AVAILABLE TO PUT,
12 YOU KNOW, A SOFT KEYBOARD ON A SCREEN, THAT WOULD
13 MEAN THAT YOU CAN MAKE THE SCREEN LARGER ON THE
14 PHONE; RIGHT?

15 A I DON'T THINK THERE'S A DIRECT CORRELATION
16 THAT YOU HAVE TO MAKE A SCREEN LARGER FOR A
17 KEYBOARD OR SMALLER FOR NOT A KEYBOARD. I THINK
18 THESE ARE TWO FACTORS THAT HAVE SOME RELATIONSHIP,
19 BUT THERE'S NOT A CAUSE AND EFFECT THAT ONE MUST BE
20 THE OTHER.

21 Q WELL, MY QUESTION IS THIS: IF YOU HAVE A
22 PHONE AND YOU HAVE A HARD KEYBOARD ON HALF OF IT,
23 WHICH YOU KIND OF HAVE TO HAVE SOME KIND OF
24 KEYBOARD IF YOU'RE GOING TO SEND MESSAGES AND
25 STUFF; RIGHT?

1 A MANY PHONES WERE CREATED WITHOUT A KEYBOARD ON
2 THEM BEFORE THE IPHONE. THEY HAD A TEN-KEY KEYPAD
3 WITH NUMBERS AND PEOPLE -- I USED TO DO A LOT OF
4 TEXTING WHERE I WOULD HIT A NUMBER TWICE AND THAT
5 BECAME A LETTER, AND THIS WAS A POPULAR WAY TO DO
6 TEXTING ON KEYBOARDS BEFORE LARGER QWERTY
7 KEYBOARDS.

8 Q THE POINT IS THAT ONCE YOU CAN PUT EVERYTHING
9 ON THE SCREEN BY HAVING A TOUCHSCREEN, YOU CAN MAKE
10 THAT SCREEN LARGER ON THE PHONE; RIGHT?

11 A I THINK YOU CAN ALWAYS MAKE THE SCREEN LARGER
12 ON A PHONE. I'M NOT SURE OF THE DIRECT CORRELATION
13 BETWEEN KEYBOARDS AND SCREEN SIZE.

14 Q OKAY. SO IF SOMEONE HAD AN OLD PHONE THAT HAD
15 KEYS LIKE THIS, IF YOU REMOVE THOSE, YOU CAN MAKE
16 THE SCREEN LARGER; RIGHT?

17 MR. MCELHINNY: YOUR HONOR, I'M NOT SURE
18 THE RECORD IS CLEAR WHAT MR. PRICE IS POINTING TO
19 IN HIS HAND.

20 MR. PRICE: IT'S A DEMONSTRATIVE. IT'S
21 MY PHONE, ON OLD ONE. I'D RATHER NOT PUT IT INTO
22 EVIDENCE.

23 MR. MCELHINNY: WE DON'T WANT IT IN
24 EVIDENCE. WE'D LIKE THE RECORD TO REFLECT WHAT
25 HE'S USING.

1 MR. PRICE: THANK YOU. IT'S AN ANCIENT
2 BLACKBERRY SOMEWHERE OUT OF THE CLOSET.

3 Q IN OTHER WORDS, IF YOU HAVE A HARD SCREEN, IF
4 THE TECHNOLOGY ALLOWS YOU TO USE A TOUCHSCREEN,
5 THAT YOU CAN REMOVE THIS; RIGHT? THAT'S ALL?

6 A A TOUCHSCREEN ALLOWS YOU TO REMOVE A PHYSICAL
7 KEYBOARD, SURE.

8 Q OKAY. AND THERE WERE PHONES, OR YOU WERE AT
9 LEAST AWARE OF ONE, THAT HAD A FULL TOUCHSCREEN
10 BEFORE THE IPHONE WENT INTO THE MARKET; CORRECT?

11 A I'M NOT SURE WHAT YOU'RE REFERRING TO WHEN YOU
12 SAY I'M AWARE OF ONE.

13 Q YOU WERE HEAD OF MARKETING, SO YOU WERE AWARE
14 OF THE MARKET; CORRECT?

15 A YES.

16 Q AND YOU WERE AWARE OF THE LG PRADA PHONE?

17 A I'VE HEARD OF THE PRADA PHONE, YES.

18 MR. PRICE: LET ME SHOW YOU WHAT'S BEEN
19 MARKETED AS 1093 FOR IDENTIFICATION. IT'S JOINT
20 EXHIBIT 1093.

21 MAY I APPROACH, YOUR HONOR?

22 THE COURT: GO AHEAD, PLEASE.

23 BY MR. PRICE:

24 Q SO YOU SEE THAT PHONE HAS, YOU KNOW, A FULL --
25 IT LOOKS LIKE A FULL TOUCHSCREEN ON IT. DO YOU SEE

1 THAT?

2 A IT HAS A SCREEN ON IT. IT'S -- I WOULDN'T
3 CONSIDER IT A TOUCH LIKE TODAY'S PRODUCTS, BUT IT
4 HAS A SCREEN ON IT.

5 Q AND, AGAIN, THAT MEANS THAT YOU CAN HAVE MORE
6 REAL ESTATE SPACE ON THAT PHONE DEVOTED TO THAT
7 SCREEN IF YOU CAN TOUCH IT TO TYPE?

8 A AGAIN, I THINK THESE ARE UNRELATED FACTORS.
9 THERE ARE OTHER PHONES THAT HAVE LARGE SCREENS THAT
10 PUT THE KEYBOARD BEHIND THE SCREEN. I'M POINTING
11 OUT THERE ARE MANY WAYS TO GET THERE.

12 Q THERE ARE OTHER WAYS TO MAKE IT LARGE AS WELL,
13 BUT I'M SAYING IF YOU CAN DO THE TOUCHSCREEN
14 TECHNOLOGY, WHICH YOU'RE NOT CLAIMING APPLE
15 EXCLUSIVELY OWNS, YOU CAN MAKE THE SCREEN BIGGER;
16 RIGHT?

17 A THAT'S ONE OF THE WAYS.

18 Q AND IF YOU LOOK AT EXHIBIT 578 FOR
19 IDENTIFICATION, IT SHOULD BE IN THE BINDER WHICH
20 HOPEFULLY HAS APPEARED IN FRONT OF YOU NOW.

21 A YES.

22 Q AND DOES THIS APPEAR TO YOU TO BE AN E-MAIL
23 WITHIN APPLE FROM A MR. SINCLAIR AND AN ERIC JUE TO
24 A KELLY ALTICK?

25 A THIS IS AN E MEAL FROM KELLY ALTICK TO

1 MR. SINCLAIR.

2 Q THANK YOU VERY MUCH. WHO IS MR. SINCLAIR?

3 A HE IS A PRODUCT MANAGER ON MY TEAM.

4 Q IT'S ACTUALLY A STRING OF E-MAILS. DO YOU SEE
5 THAT?

6 A YES, THERE ARE A NUMBER OF E-MAILS REFERENCED
7 IN HERE.

8 Q AND ON THE SECOND PAGE, DO YOU SEE IT SAYS ON
9 APRIL 6TH, 2010, STEVE SINCLAIR WROTE; CORRECT?

10 A YES, I SEE THAT.

11 MR. PRICE: YOUR HONOR, MOVE EXHIBIT 578
12 INTO EVIDENCE.

13 THE COURT: ANY OBJECTION?

14 MR. MCELHINNY: NO OBJECTION, YOUR HONOR.

15 THE COURT: IT'S ADMITTED.

16 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
17 578, HAVING BEEN PREVIOUSLY MARKED FOR
18 IDENTIFICATION, WAS ADMITTED INTO
19 EVIDENCE.)

20 MR. PRICE: AND IF WE COULD PUT UP THAT
21 SECOND PAGE AND JUST BLOW UP THE PART THAT STARTS
22 HERE WITH STEVE SINCLAIR, RIGHT HERE ON DOWN, THERE
23 WE GO.

24 Q AND DO YOU SEE MR. SINCLAIR WRITES, "IT'S
25 TOUCH TO APPROACH THIS WITH THE CRITERIA BEING

1 'FIRST,' " AND THIS WAS IN CONNECTION WITH A
2 MARKETING APPROACH THAT WAS BEING DISCUSSED; RIGHT?

3 A THIS WAS A DISCUSSION BETWEEN STEVE SINCLAIR
4 AND THE AD TEAM ON SOME CLAIMS.

5 Q "AD" BEING ADVERTISING?

6 A YES.

7 Q OKAY. AND HE SAYS, "I DON'T KNOW HOW MANY
8 THINGS WE CAN COME UP WITH THAT YOU COULD
9 LEGITIMATELY CLAIM WE DID FIRST. CERTAINLY WE HAVE
10 THE FIRST COMMERCIALY SUCCESSFUL VERSIONS OF MANY
11 FEATURES."

12 AND I JUST WANT TO GO, "THE FIRST PHONE
13 TO INCORPORATE A FULL TOUCHSCREEN FACE," AND IT
14 SAYS, "NOT TRUE," AND YOU SEE THERE'S THAT
15 WIKIPEDIA SITE TO A PRODUCT, THE LG PRADA.

16 DO YOU SEE THAT?

17 A I SEE THAT.

18 MR. PRICE: AND BY THE WAY, YOUR HONOR, I
19 MOVE THE PRADA INTO EVIDENCE, IF I CAN REMEMBER THE
20 EXHIBIT NUMBER. DOES IT HAVE A NUMBER ON THE BACK?
21 1093.

22 THE COURT: OKAY. ANY OBJECTION?

23 MR. MCELHINNY: THIS IS NOT SUPPOSED TO
24 COME IN, YOUR HONOR, PURSUANT TO YOUR ORDER ABOUT
25 THE SPECIFIC LIMITING INSTRUCTION WHICH HAS NOT

1 BEEN PREPARED YET. BUT IT IS NOT PRIOR ART AS THAT
2 TERM IS USED AND WILL BE USED BY THE JURY.

3 MR. PRICE: AND WE'RE NOT -- THIS
4 EXAMINATION IS NOT TALKING ABOUT PRIOR ART.

5 MR. MCELHINNY: SO IT'S NOT RELEVANT TO
6 THE VALIDITY OF ANY OF OUR PATENTS AT ISSUE, YOUR
7 HONOR.

8 THE COURT: ALL RIGHT. SO WHAT -- IT'S
9 1093?

10 MR. PRICE: YES, YOUR HONOR.

11 THE COURT: ALL RIGHT. SO THE LIMITING
12 INSTRUCTION IS THAT THIS EXHIBIT, OR I GUESS THIS
13 PHONE, IS ADMITTED, BUT IT IS NOT PRIOR ART FOR
14 PURPOSES OF ANY INVALIDITY OF THE PATENTS. OKAY?

15 SO YOU CAN CONSIDER IT.

16 MR. PRICE: THANK YOU, YOUR HONOR.

17 THE COURT: IT'S IN EVIDENCE.

18 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
19 1093, HAVING BEEN PREVIOUSLY MARKED FOR
20 IDENTIFICATION, WAS ADMITTED INTO
21 EVIDENCE.)

22 THE COURT: GO AHEAD.

23 BY MR. PRICE:

24 Q TO BE CLEAR, THERE'S NO PATENT THAT HAS BEEN
25 ASSERTED HERE THAT SAYS THAT THE TOUCHSCREEN, THAT

1 APPLE OWNS THAT EXCLUSIVELY; RIGHT?

2 A I'M NOT CERTAIN. I KNOW THERE'S SOME
3 TOUCHSCREEN PATENTS INVOLVED. I DON'T KNOW EXACTLY
4 WHICH ONES AND HOW TO SUMMARIZE THAT.

5 Q OKAY. WELL, IF -- YOU UNDERSTAND, AS SOMEONE
6 WHO'S IN MARKETING, THAT THERE IS AN ADVANTAGE TO
7 HAVING A LARGER SCREEN ON THE PHONE?

8 A TO AN EXTENT OF THE THERE ARE TIMES WHEN IT IS
9 AND TIMES WHEN IT CAN BECOME A DISADVANTAGE.

10 Q SO IT'S A FUNCTIONAL ADVANTAGE IF, FOR
11 EXAMPLE, YOU WANT TO WATCH MOVIES; RIGHT?

12 MR. MCELHINNY: EXCUSE ME, YOUR HONOR.
13 IF YOU THINK IT IS A TERM OF ART AND IT'S A LEGAL
14 EXPRESS WHICH HE JUST SUBSTITUTED INTO HIS
15 QUESTION. WE DON'T HAVE A DEFINITION OF FUNCTIONAL
16 AS HE'S USING IT.

17 THE COURT: WHY DON'T YOU REPHRASE YOUR
18 QUESTION.

19 MR. PRICE: SURE.

20 Q YOU BELIEVE THAT A LARGER SCREEN PROVIDES
21 ADVANTAGES TO A CONSUMER IF THE CONSUMER WANTS TO
22 WATCH A MOVIE?

23 A THERE ARE TIMES WHEN A LARGER SCREEN IS A
24 BENEFIT AND ONE OF THOSE WOULD BE WATCHING A MOVIE.

25 Q OKAY. AND THAT IT'S AN ADVANTAGE BECAUSE YOU

1 CAN VIEW A LARGER SECTION, FOR EXAMPLE, OF A WEB
2 PAGE?

3 A DEPENDING ON THE SCREEN RESOLUTION, IT CAN BE
4 AN ADVANTAGE FOR THAT.

5 Q AND IT'S YOUR EXPERIENCE THAT THESE ARE THINGS
6 WHICH CONSUMERS WANT, THAT THEY WANT SCREENS THAT
7 ARE LARGER SO THEY CAN SEE WEB PAGES, MOVIES, YOU
8 KNOW, WITHIN THE LIMIT OF THE, YOU KNOW, BEING
9 USEFUL IN YOUR HAND?

10 A LARGER SCREENS ARE -- CAN BE A BENEFIT TO
11 USERS. IT'S NOT THE ONLY THING THEY WANT, BUT IT'S
12 ONE THING THAT THEY WANT.

13 Q AND WHEN, WHEN YOU -- WHEN APPLE RELEASED THE
14 IPHONE IN 2007, IT EXPECTED COMPETITION IN THE
15 SMARTPHONE INDUSTRY WITH PHONES THAT YOU COULD
16 WATCH MOVIES ON OR VIEW WEB PAGES; CORRECT?

17 A WE EXPECTED COMPETITION IN THE SMARTPHONE
18 SPACE, YES.

19 Q BECAUSE YOU DIDN'T THINK THAT APPLE -- APPLE
20 DIDN'T THINK THAT IT HAD THE EXCLUSIVE RIGHT TO
21 GIVE THE CONSUMER A SMARTPHONE WITH A SCREEN THAT
22 COULD EXHIBIT WEB PAGES, MOVIES, MUSIC; RIGHT?

23 A WE DID NOT HAVE EXCLUSIVITY ON PLAYING MOVIES
24 OR MUSIC ON PHONES.

25 Q SO LET'S TALK THEN NOW ABOUT, ABOUT OTHER

1 THINGS ABOUT THE WAY THE PHONE WORKS.

2 IF -- LET ME ASK YOU, YOU'VE HEARD THE
3 PHRASE THAT EVERYTHING DEFERS TO THE SCREEN?

4 A NO, ACTUALLY, I DON'T RECALL THAT PHRASE.

5 Q DO YOU REMEMBER MR. IVE SAYING SOME PHRASE
6 LIKE THAT, THAT EVERYTHING DEFERS TO THE SCREEN?

7 A YOU MEAN JONATHAN IVE?

8 Q YES, IVE, THANK YOU.

9 A I DON'T RECALL THAT SAYING.

10 Q BUT THAT'S THE IDEA FOR APPLE'S PHONES, FOR
11 EXAMPLE, IS THAT THE SCREEN KIND OF DOMINANTS THE
12 PHONE?

13 MR. MCELHINNY: THIS IS BEYOND THE SCOPE
14 OF DIRECT EXAMINATION, YOUR HONOR, TALKING ABOUT
15 THE ELEMENTS OF THE DESIGN.

16 MR. PRICE: HE TALKED ABOUT THE DESIGN AT
17 LENGTH.

18 THE COURT: GO AHEAD. OVERRULED.

19 BY MR. PRICE:

20 Q CORRECT?

21 A I'M SORRY. COULD YOU REPEAT THE QUESTION.

22 Q THE SCREEN DOMINANTS THE APPLE IPHONE;
23 CORRECT?

24 A THE SCREEN IS ONE OF THE DOMINANT FEATURES OF
25 THE PHONE.

1 Q AND I'M GOING TO -- WE WERE TALKING ABOUT
2 EXHIBIT 1000, WHICH WAS THE FIRST PHONE, AND YOU
3 WERE ASKED BY YOUR COUNSEL ABOUT THAT, SO WHEN THE
4 SCREEN DOMINANTS, THEN, FOR EXAMPLE, ON THE IPHONE,
5 THERE'S THESE TWO AREAS AT THE TOP AND BOTTOM,
6 FAIRLY SMALL AREAS COMPARED TO THE SCREEN; CORRECT?

7 A YEAH, THERE ARE AREAS ON THE TOP AND BOTTOM OF
8 THE PHONE AND THE SCREEN AS WELL.

9 Q AND IN THAT REGARD, APPLE'S PHILOSOPHY HAS
10 BEEN LET'S MAKE THIS REALLY CLEAN AND NOT HAVE
11 APPLE ON IT AND JUST HAVE A SPEAKER AND HAVE WHAT
12 IS CALLED THE HOME BUTTON; CORRECT?

13 A OUR PHILOSOPHY IS TO CREATE ONE SEAMLESS FACE
14 ON THE FRONT FOR THE SCREEN AND THE AREA ABOVE AND
15 BELOW IT. THAT'S OUR PHILOSOPHY ON THAT.

16 Q SO IF YOU'VE GOT A TOUCHSCREEN, AND MOST
17 PEOPLE HOLD THEIR PHONES LIKE I'M HOLDING THIS IN
18 MY HAND NOW, RIGHT (INDICATING)?

19 A THAT'S ONE WAY TO HOLD IT.

20 Q VERY RARELY, WHEN MAKING A CALL, FOR EXAMPLE,
21 DO PEOPLE HOLD PHONES LIKE THIS WITH ONE FINGER,
22 RIGHT (INDICATING)?

23 A I HOLD IT LIKE THAT WHEN I MAKE A CALL
24 (INDICATING).

25 Q NOW, WHEN YOU HAVE A TOUCHSCREEN, YOU HAVE TO

1 DO SOMETHING ON THE EDGES HERE SO THAT YOUR FINGERS
2 AREN'T TOUCHING THAT SCREEN AND, AND DOING
3 SOMETHING THAT YOU DON'T WANT IT TO DO; RIGHT?

4 A NO. IT'S MUCH MORE COMPLICATED THAN THAT.

5 Q WELL, YOU DON'T WANT TO HAVE SOMEONE
6 ACCIDENTALLY TOUCHING THE PHONE WHEN THEY'RE
7 HOLDING IT THE WAY THAT THEY WOULD NORMALLY HOLD IT
8 FOR A CALL; CORRECT?

9 A AGAIN, I'M NOT SURE WHAT YOU MEAN. YOU DO
10 WANT PEOPLE TO TOUCH THEIR PHONE WHEN THEY'RE
11 HOLDING IT TO MAKE A CALL AND IT WILL TOUCH THE
12 SCREEN.

13 Q THE SCREEN. YOU DON'T WANT PEOPLE TO -- IF
14 IT'S AN INTERACTIVE TOUCHSCREEN, YOU DON'T WANT
15 PEOPLE TO ACCIDENTALLY TOUCH IT WHILE THEY'RE
16 MAKING A CALL. THAT WOULD BE A PROBLEM THAT WOULD
17 BE KIND OF AN INCONVENIENCE?

18 A WELL, THEY WILL FROM TIME TO TIME TOUCH IT, SO
19 WE'VE INVENTED WAYS TO, TO KEEP THAT FROM CREATING
20 CONTACTS THAT YOU DON'T WANT OR SIGNALS THAT YOU
21 DON'T WANT TO HAPPEN ON YOUR CALL, YES.

22 Q AND WHAT APPLE HAS DONE HERE, AT LEAST ON THE
23 FIRST IPHONE, IT HAS THIS METAL BEZEL AND IT HAS
24 THESE VERY SMALL DARK LINES DOWN THE SIDE WHICH ARE
25 NOT PART OF THE ACTUAL INTERACTIVE SCREEN; RIGHT?

1 A THERE ARE -- THERE IS A BORDER AROUND THE
2 SCREEN THAT'S VERY SMALL, YES.

3 Q AND THAT BORDER, IF YOU TOUCH IT, IT WON'T DO
4 ANYTHING TO MAKE THE PHONE FUNCTION; RIGHT?

5 A IF YOU'RE NOT TOUCHING THE TOUCHSCREEN, YOU'RE
6 NOT -- EXCEPT FOR, OF COURSE, THE HOME BUTTON AND
7 THE BUTTONS ON THE SIDE, YOU'RE NOT INTERACTING
8 WITH IT; CORRECT.

9 Q AND YOU NEED A SPEAKER AT THE TOP TO HEAR?

10 A YOU NEED A SPEAKER TO HEAR, UNLESS YOU'RE
11 USING A HEAD SET.

12 Q AND IF YOU'RE GOING TO HAVE A CAMERA, YOU NEED
13 SOMETHING ON THE TOP FOR A CAMERA; CORRECT?

14 A FOR A FRONT FACING CAMERA, YES.

15 Q AND THESE AREAS THAT ARE DARK, YOU KNOW, ABOVE
16 AND BELOW THE SCREEN, DO THEY HIDE INTERNAL WIRING
17 AND COMPONENTS?

18 A THERE ARE COMPONENTS BEHIND EVERY PART OF THE
19 IPHONE, THE SCREEN AND THE TOP AND BOTTOM, AND
20 ALONG THE BOTTOM AS WELL.

21 Q NOW, ANOTHER THING, THESE ARE ROUNDED. I
22 ASSUME YOU THOUGHT THAT CUSTOMERS MIGHT PUT THESE
23 PHONES IN THEIR POCKETS.

24 A WE CERTAINLY ASSUME CUSTOMERS PUT THEIR PHONE
25 IN THEIR POCKET. I WOULDN'T SAY THAT'S WHY IT'S

1 ROUNDED. THAT'S NOT THE ONLY REASON.

2 Q IT MAY NOT BE THE ONLY REASON, BUT IF IT'S
3 SQUARE, THAT WOULD MAKE IT MORE DIFFICULT FOR A
4 CUSTOMER TO TAKE THEIR PHONE OUT OF THEIR POCKET?

5 A IT DEPENDS. THERE ARE WAYS TO HANDLE THAT NO
6 MATTER WHAT THE SHAPE IS. SO I WOULDN'T SAY THAT'S
7 A GUARANTEED RULE. I'VE SEEN SQUARE PHONES THAT
8 WORK JUST FINE IN YOUR POCKETS.

9 Q YOU THINK THAT JUST GENERALLY, USING YOUR
10 COMMON SENSE, IT WOULD BE MORE DIFFICULT TO TAKE A
11 SQUARE PHONE OUT OF YOUR POCKET BECAUSE IT MIGHT
12 CATCH ON SOMETHING?

13 A I THINK IT DEPENDS ON THE SIZE, BUT ROUNDED
14 CORNERS CERTAINLY HELP YOU MOVE THINGS IN AND OUT
15 OF YOUR POCKET.

16 Q NOW, YOU SAID THAT YOU WERE INVOLVED IN THE
17 DEVELOPMENT OF THE IPHONE; RIGHT?

18 A YES.

19 Q AND YOU SAID THAT YOU THOUGHT IT WAS, I THINK,
20 BEAUTIFUL, UNIQUE, DISTINCTIVE; CORRECT?

21 A YES.

22 Q AND WE SHOWED THAT PICTURE IN 2011, AFTER
23 MR. JOBS PASSED AWAY, AND THEY HAD THE IPHONES AND
24 YOU SAID YOU COULD IMMEDIATELY RECOGNIZE THOSE AS
25 IPHONES; CORRECT?

1 A YES, I DID.

2 Q BECAUSE THEY WERE SO UNIQUE; RIGHT?

3 A YES.

4 Q SO I THEN HEARD YOU TESTIFY FROM, I GUESS,
5 MR. MCELHINNY SAYING THAT YOU BELIEVED THERE WAS
6 CONSUMER CONFUSION REGARDING THE IPHONE AND
7 SAMSUNG'S PRODUCTS; RIGHT?

8 A I SAID -- I EXPLAINED AN EXAMPLE BOTH WITH TV
9 ADS AND OUTDOOR ADVERTISING HOW IT WOULD CREATE
10 CONFUSION AND IF THE USER SEES EITHER A SAMSUNG OR
11 AN APPLE PHONE, THE MORE THAT A SAMSUNG PHONE
12 COPIES AN APPLE PHONE, THE HARDER IT IS TO TELL
13 WHICH IS WHICH IN SITUATIONS LIKE I DESCRIBED,
14 DRIVING BY A BILLBOARD OR WATCHING TV AND MOVING
15 OUT OF THE ROOM.

16 Q LET'S TALK ABOUT HOW, ABOUT HOW -- YOUR
17 UNDERSTANDING OF HOW CONSUMERS OVER THE YEARS HAVE
18 BUILT THESE SMARTPHONES.

19 THEY'RE FAIRLY EXPENSIVE COMPARED TO
20 OTHER PHONES; CORRECT?

21 A NOT NECESSARILY.

22 Q OKAY. WOULD YOU SAY \$500, \$600 IS EXPENSIVE?

23 A THE IPHONE STARTS AT FREE WHEN YOU PURCHASE
24 IT -- IN THE U.S., THE PREDOMINANT NUMBER OF
25 CUSTOMERS BUY IT WITH A CONTRACT AND IT'S FREE.

1 Q THE CURRENT IPHONE ALSO? MODELS?

2 A THE IPHONE 3GS STARTS AT FREE, YES.

3 Q I'M TALKING ABOUT THE LATEST AND GREATEST
4 MODELS THAT YOU COME OUT WITH AND THERE'S A BIG
5 SPLASH OF MEDIA, THEY'RE KIND OF EXPENSIVE? SOME
6 PEOPLE DON'T BUY THEM BECAUSE THEY'RE EXPENSIVE?

7 A SOME PEOPLE DO, SOME DON'T. THEY
8 TRADITIONALLY START AT ABOUT \$199 UNDER A CONTRACT.
9 SO DEPENDING ON YOUR PERSPECTIVE WHETHER THAT'S
10 EXPENSIVE OR NOT.

11 Q AND YOUR RESEARCH TELLS YOU THAT PEOPLE
12 USUALLY CONSIDER THEIR PHONE PURCHASE CAREFULLY
13 WHEN THEY'RE BUYING SUCH A PERSONAL AND PRICED
14 ITEM?

15 A I DON'T RECALL ANY SPECIFIC RESEARCH ABOUT THE
16 CARE SOMEONE TAKES IN AN INDIVIDUAL PURCHASE.

17 Q YOU'VE HAD EXPERIENCE GOING INTO STORES;
18 CORRECT?

19 A I HAVE GONE INTO STORES.

20 Q AND IN THE STORES, THE IPHONE PRODUCTS ARE
21 SEGREGATED, AT THE CARRIERS, FROM SAMSUNG PRODUCTS;
22 RIGHT?

23 A IT DEPENDS ON THE STORE AND THE SETUP, BUT
24 THEY'RE NOT ALWAYS NEXT TO EACH OTHER.

25 Q THAT'S A LITTLE BIT DIFFERENT. EVERY STORE

1 YOU'VE BEEN INTO THAT'S A CARRIER, THE IPHONE
2 PRODUCTS ARE SEGREGATED FROM THE SAMSUNG PRODUCTS;
3 RIGHT?

4 A AGAIN, I'M NOT SURE BY SEGREGATED WHAT YOU
5 MEAN, BUT USUALLY THEY'RE DISPLAYED SEPARATELY FROM
6 EACH OTHER.

7 Q AND YOU ARE SAYING THAT THE IPHONE IS CONFUSED
8 WITH SAMSUNG PHONES. YOU KNOW THERE ARE A NUMBER
9 OF PHONES THAT ARE, THAT ARE ACCUSED IN THIS CASE;
10 RIGHT?

11 A YES, I BELIEVE THERE ARE A NUMBER OF PHONES
12 THAT HAVE COPIED THE IPHONE, YES.

13 Q AND SO IS IT YOUR TESTIMONY THAT IF YOU LOOK
14 AT THESE PHONES, THEN CUSTOMERS ARE GOING TO BE
15 CONFUSED ABOUT ALL THE PHONES THAT ARE ACCUSED IN
16 THIS CASE?

17 A I BELIEVE CUSTOMERS CAN BE CONFUSED.

18 AND, AGAIN, I WAS SPEAKING SPECIFICALLY
19 ABOUT ALL THE MARKETING EFFORT AND I BELIEVE
20 THEY'RE CREATING CONFUSION THERE.

21 Q WELL, LET ME SHOW YOU WHAT HAS BEEN MARKED AS
22 EXHIBIT 1016. THIS IS A, A JOINT EXHIBIT. IT'S
23 ONE OF THE ACCUSED PRODUCTS. IT'S THE CONTINUUM.

24 IF I MAY APPROACH, YOUR HONOR?

25 THE COURT: GO AHEAD, PLEASE.

1 BY MR. PRICE:

2 Q SO THAT'S ONE OF THE PHONES YOU BELIEVE PEOPLE
3 WOULD CONFUSE FOR AN IPHONE (HANDING)?

4 A YES.

5 Q AND I'D LIKE YOU TO LOOK IN YOUR BINDER,
6 THERE'S A DEMONSTRATIVE --

7 MR. MCELHINNY: EXCUSE ME, YOUR HONOR.
8 I'D LIKE TO CORRECT THE RECORD. THIS PHONE IS
9 ACTUALLY NOT ACCUSED OF INFRINGING THE DESIGN
10 PATENTS. IT'S ACCUSED OF INFRINGING THE UTILITY
11 PATENTS.

12 MR. PRICE: AND TRADE DRESS.

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

14 BY MR. PRICE:

15 Q SO IF YOU LOOK IN THE BINDER, THERE'S SDX
16 3557, WHICH IS A DEMONSTRATIVE. IT'S AT THE FRONT
17 OF THE BINDER. IT SHOULD BE UNDER DEMONSTRATIVES.

18 A I'M SORRY.

19 MR. MCELHINNY: WHAT'S THE NUMBER?

20 MR. PRICE: IT'S 3557. YOUR HONOR, IF I
21 MAY ASSIST THE WITNESS?

22 THE COURT: GO AHEAD, PLEASE.

23 MR. PRICE: IT SHOULD BE RIGHT AT THE
24 FRONT WHERE IT SAYS DEMONSTRATIVES, MEANING THESE
25 DON'T GO INTO EVIDENCE.

1 MR. MCELHINNY: YOUR HONOR, THERE IS AN
2 OBJECTION PENDING ON THIS WHICH YOU HAVE NOT RULED
3 ON AND IT SHOULDN'T BE PUBLISHED.

4 MR. PRICE: TAKE IT DOWN, PLEASE.

5 AND SO OUR REQUEST OF MR. MCELHINNY CAN
6 STATE THAT, THAT WE SHOW DEMONSTRATIVE 3557.

7 THE COURT: ALL RIGHT. WHAT'S THE
8 OBJECTION?

9 MR. MCELHINNY: COUNSEL JUST AGREED, THIS
10 IS RELEVANT TO THE TRADE DRESS ISSUES. IT DOESN'T
11 SHOW THE TRADE DRESS, YOUR HONOR. THEY BLANKED OUT
12 THE SCREEN.

13 MR. PRICE: WE CAN DO DIFFERENT ELEMENTS,
14 YOUR HONOR. THIS IS THE --

15 MR. MCELHINNY: AH, THE
16 ELEMENT-BY-ELEMENT ARGUMENT, WHICH IS ABSOLUTELY
17 INCORRECT AS A MATTER OF LAW BECAUSE AS YOUR HONOR
18 HAS SAID, MANY TIMES YOU HAVE TO LOOK AT THE
19 OVERALL APPEARANCE OF A PRODUCT.

20 THE COURT: UNDERSTOOD. BUT I'M GOING TO
21 OVERRULE THE OBJECTION.

22 GO AHEAD, MR. PRICE.

23 MR. PRICE: NOW, IF YOU CAN PUT 3557 UP.

24 Q NOW, FIRST, YOU'VE SAID THAT -- WELL, YOU CAN
25 SEE THE SCREENS ARE DIFFERENT SHAPES? RIGHT?

1 A THEY'RE BOTH RECTANGLES BUT OF DIFFERENT
2 SIZES.

3 Q OKAY. SO HERE'S WHAT I WANT TO ASK YOU ABOUT
4 THEN. DO YOU SEE ON THE, ON THE SAMSUNG PHONE, IT
5 HAS THESE FOUR, IT LOOKS LIKE FOUR BUTTONS HERE?

6 A THE ONE YOU HANDED ME DOES NOT.

7 Q BUT WHEN YOU TURN IT ON IT DOES. IT'S A SOFT
8 BUTTON THAT HIGHLIGHTS WHEN IT'S ON.

9 A WHEN IT'S ON I SEE THOSE, YES.

10 MR. MCELHINNY: AGAIN, YOUR HONOR, NOW
11 THEY'VE TURNED ON THE PARTS THEY WANT AND TURNED
12 OFF THE PARTS THEY DON'T WANT. IT'S NOT EVEN A
13 FAIR PICTURE. IT'S PART ON AND PART OFF.

14 MR. PRICE: NO, YOUR HONOR, IF YOU IGNORE
15 THE SCREEN, WHICH HE'S SAYING THEY DON'T HAVE.

16 MR. MCELHINNY: IT'S TRADE DRESS.

17 THE COURT: WHY IS THIS SCREEN WHITED
18 OUT?

19 MR. PRICE: WE COULD MAKE IT BLACK. I
20 MEAN, IT'S WHITED OUT --

21 THE COURT: BUT FOR TRADE DRESS, WHY IS
22 THE SCREEN MISSING IF THIS IS FOR THE TRADE DRESS
23 CLAIM?

24 MR. PRICE: BECAUSE I'M FOCUSSING ON
25 SPECIFIC AREAS OF THE PHONE, AND ONE CAN DO THAT TO

1 GO WITH AN OVERALL IMPRESSION AS TO WHETHER OR NOT
2 IT'S CONFUSING.

3 THE COURT: ALL RIGHT. GO AHEAD.

4 MR. PRICE: POINT OUT DISTINGUISHING
5 CHARACTERISTICS.

6 THE COURT: GO AHEAD, PLEASE.

7 BY MR. PRICE:

8 Q HERE WE GO. THESE ARE SOFT BUTTONS. SO MY
9 QUESTION IS YOU SAID YOU WERE INVOLVED IN THE
10 DEVELOPMENT OF THE IPHONE; RIGHT?

11 A YES.

12 Q WHY DIDN'T APPLE PUT FOUR BUTTONS LIKE THIS AT
13 THE BOTTOM OF ITS PHONE?

14 A OF THIS PHONE, I'M SORRY -- WELL, WE DIDN'T
15 MAKE THAT PHONE.

16 Q I'M SORRY. I SHOULD HAVE SAID FOR THE RECORD,
17 WHY DIDN'T APPLE PUT FOUR BUTTONS AT THE BOTTOM OF
18 ANY OF ITS IPHONES?

19 A BECAUSE WE BELIEVED THE EASIEST DESIGN FOR THE
20 IPHONE IS A SINGLE HOME BUTTON UNDER THE SCREEN.

21 Q AND THAT SINGLE HOME BUTTON THE SCREEN IS ON
22 EVERY IPHONE AND IPAD PRODUCT THAT HAS EVER BEEN
23 RELEASED; CORRECT?

24 A THE HOME BUTTON IS ON EVERY IPHONE AND IPAD.

25 Q AND KIDS REFER TO IT AS THE BELLYBUTTON. HAVE

1 YOU HEARD THAT?

2 A NO, I HAVE NOT.

3 Q IT'S AN INNIE. IT'S RECESSED. DO YOU SEE
4 THAT?

5 AND IT'S THE ONLY COMMON ELEMENT ON, ON
6 ALL THE APPLE PRODUCTS; CORRECT?

7 A NO.

8 Q EVERY ONE?

9 A NO. I DON'T KNOW WHY YOU SAY THAT'S THE ONLY.
10 IT'S A COMMON ELEMENT. I WOULDN'T SAY IT'S THE
11 ONLY COMMON ELEMENT.

12 Q SO IS ONE OF THE REASONS YOU DIDN'T PUT THESE
13 FOUR BUTTONS AT THE BOTTOM, IS YOUR THOUGHT IT
14 WOULD BE UNATTRACTIVE, NOT AS BEAUTIFUL?

15 A WE PUT IT THERE BECAUSE THAT ISN'T HOW OUR
16 SYSTEM WORKS. THAT'S HOW ANDROID WORKS. NOT HOW
17 OUR IOS WORKS.

18 Q I'M SORRY?

19 A THAT'S HOW ANDROID WORKS. NOT PART OF OUR
20 INTERFACE.

21 Q AS PART OF THE DESIGN, YOU CAN PUT BUTTONS ON
22 THE BOTTOM OF THE IPHONE?

23 A YOU ASKED WHY WE DIDN'T, AND MY ANSWER IS
24 BECAUSE THAT'S NOT HOW IT WORKS ON IOS. THAT'S HOW
25 ANDROID WORKS.

1 Q OKAY. SO IF YOU WOULD -- YOU COULD HAVE, YOU
2 WOULD HAVE PUT FOUR BUTTONS ON THE BOTTOM OF THE
3 IPHONE?

4 A WE CHOSE TO HAVE ONE BUTTON ON THE SCREEN
5 UNDER THE IPHONE, SIR.

6 Q AND THAT WAS A DESIGN CHOICE?

7 A THAT WAS A CHOICE WE MADE BECAUSE WE THOUGHT
8 IT WAS THE EASIEST TO USE WAY FOR THE IPHONE TO
9 WORK.

10 Q WAS IT A -- SO WAS IT A FUNCTIONAL CHOICE OR A
11 DESIGN CHOICE?

12 A IT'S ACTUALLY RELATED TO BOTH. IT'S IN THE
13 DESIGN AND IT'S HOW THE SYSTEM WORKS.

14 Q HOW ABOUT UP HERE, DO YOU SEE THAT THERE'S,
15 THERE'S NOTHING EXCEPT FOR THE SPEAKER, THERE'S NO
16 LABEL LIKE HERE IT SAYS VERIZON, WHY DIDN'T YOU PUT
17 APPLE OR SOMETHING AT THE TOP THERE?

18 A TWO REASONS. FIRST, I BELIEVE THE DESIGN OF
19 THE IPHONE IS DISTINCT AND UNIQUE AND PEOPLE DO
20 RECOGNIZE IT AS APPLE'S, AND ON THE BACK IS A
21 REALLY LARGE APPLE LOGO ON THE BACK OF THE IPHONE.

22 Q BUT THE REASON YOU DIDN'T PUT IT ON THE FRONT
23 IS BECAUSE YOU AND MR. STRINGER THOUGHT THIS WOULD
24 KIND OF RUIN THE UNIQUE LOOK THAT APPLE WAS GOING
25 FOR; RIGHT?

1 A NO, I THINK WE CHOSE NOT TO BECAUSE IT'S A
2 SMALL DEVICE AND THERE WAS ALREADY A LARGE LOGO ON
3 THE BACK.

4 Q IF MR. STRINGER SAID THIS WAS A DESIGN CHOICE
5 AND YOU DIDN'T WANT AN UGLY APPLE AT THE TOP, WOULD
6 YOU DISAGREE WITH HIM?

7 A I DON'T KNOW WHAT HE SAID, SO I DON'T WANT TO
8 HYPOTHESIZE ON WHAT HE MAY OR MAY NOT HAVE SAID.

9 Q OKAY. WELL, YOU'LL CERTAINLY -- IF WE LOOK AT
10 THE REAL ESTATE ON THE PHONE THAT'S NOT THE SCREEN,
11 YOU CAN CERTAINLY SAY THAT THERE'S A DIFFERENT
12 DESIGN ON THIS REAL ESTATE, THAT IS, THE TOP WHERE
13 YOU HAVE THE VERIZON AND THE BOTTOM WHERE APPLE
14 JUST HAS THE HOME BUTTON?

15 A WHAT YOU CALL THE SCREEN AND THE FRONT OF THE
16 PHONE, I CONSIDER TO BE THE WHOLE FACE OF THE
17 PHONE, AND SO BY SHOWING THE SCREEN FAKED OUT WITH,
18 WHITED OUT LIKE THIS, YOU GIVE THE IMPRESSION THAT
19 SOMEHOW THEY'RE DIFFERENT SURFACES.

20 BUT TO ME, THE FRONT OF THE IPHONE IS ONE
21 SURFACE. THE SCREEN IS, IS PART OF THAT ENTIRE
22 FRONT FACE.

23 AND SO THE WAY YOU DESCRIBED IT ISN'T THE
24 WAY I WOULD DESCRIBE IT. I LOOK AT THAT AS THE
25 ENTIRE FRONT FACE OF THE PHONE.

1 Q WHEN A BUYER BUYS THE PHONE, OF COURSE IT
2 LOOKS AT THE ENTIRE PHONE; RIGHT?

3 A YES, THEY LOOK AT THE WHOLE PHONE.

4 Q THAT'S FAIR? AND YOUR VIEW IS THE BUYER WOULD
5 CONFUSE THE CONTINUUM FOR AN IPHONE?

6 A I THINK IT'S POSSIBLE FOR BUYERS TO GET
7 CONFUSED AS THEY'RE STARTING TO COPY AND LOOK A LOT
8 MORE LIKE AN IPHONE AND COPY OUR DESIGN.

9 Q AND AS A MEMBER OF THE EXECUTIVE COMMITTEE
10 TEAM, YOU -- IS IT YOUR UNDERSTANDING THAT APPLE IS
11 ASKING FOR ABOUT \$45 MILLION ON THIS ALONE, JUST
12 THIS PHONE?

13 A I DON'T KNOW THE FINANCES OF EACH DEVICE AND
14 WHAT'S BEING ARGUED HERE.

15 Q LET ME SHOW YOU WHAT'S BEEN MARKED AS EXHIBIT
16 1027. THIS IS A JOINT EXHIBIT. THIS IS THE
17 INFUSE 4G.

18 AND I WOULD MOVE INTO EVIDENCE EXHIBIT
19 1016, WHICH IS THE JOINT EXHIBIT, THE CONTINUUM
20 PHONE.

21 MR. MCELHINNY: NO OBJECTION.

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

23 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
24 1016, HAVING BEEN PREVIOUSLY MARKED FOR
25 IDENTIFICATION, WAS ADMITTED INTO

1 EVIDENCE.)

2 BY MR. PRICE:

3 Q AND DO YOU HAVE 1027 IN FRONT OF YOU?

4 A THE DEVICE, YES.

5 THE COURT: YOU WANT TO MOVE 1016 AND
6 1027?

7 MR. PRICE: YES, YOUR HONOR.

8 THE COURT: OKAY. NO OBJECTION, RIGHT?

9 MR. MCELHINNY: NO OBJECTION.

10 THE COURT: THEY'RE BOTH ADMITTED.

11 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
12 1027, HAVING BEEN PREVIOUSLY MARKED FOR
13 IDENTIFICATION, WAS ADMITTED INTO
14 EVIDENCE.)

15 THE COURT: GO AHEAD, PLEASE.

16 BY MR. PRICE:

17 Q AND IF YOU LOOK AT THAT PHONE, AND ALSO LOOK,
18 WE'RE STILL AT THE DEMONSTRATIVES THERE, A COUPLE
19 PAGES IN THERE'S A 3559.

20 IF WE CAN DISPLAY THAT, YOUR HONOR?

21 THE COURT: DO YOU WANT THE INFUSE 4? DO
22 YOU WANT 3561?

23 MR. PRICE: IT WOULD BE 3559, 3560 --
24 YOU'RE RIGHT, YOUR HONOR. I'M SORRY. YOU'RE
25 ABSOLUTELY RIGHT. 3561.

1 THE COURT: OKAY.

2 MR. MCELHINNY: AGAIN, YOUR HONOR, THERE
3 ARE OBJECTIONS PENDING FOR THE SAME REASON. AGAIN,
4 THEY'VE BLACKED OUT THE ENTIRE SCREEN.

5 THE COURT: UNDERSTOOD. OVERRULED.
6 KEEP GOING, PLEASE.

7 MR. PRICE: THANK YOU.

8 Q SO THIS PHONE ACTUALLY HAS FOUR HARD BUTTONS
9 AT THE BOTTOM; RIGHT?

10 A THE ONE ON THE SLIDE?

11 Q YEAH, AND THE ONE YOU HAVE, THE INFUSE 4G.

12 A THIS -- THE DEVICE YOU'VE HANDED ME IS
13 DIFFERENT THAN THE DEVICE UP ON THE SLIDE.

14 Q YOU MAY BE RIGHT. IS THAT THE DROID -- WHAT'S
15 THE NUMBER ON THAT?

16 A ANOTHER CONFUSION. 1025.

17 Q I APOLOGIZE. THAT'S THE DROID CHARGE.

18 IF I CAN MOVE THAT INTO EVIDENCE, YOUR
19 HONOR?

20 THE COURT: ALL RIGHT. THAT'S 1025. ANY
21 OBJECTION?

22 MR. MCELHINNY: NO OBJECTION, YOUR HONOR.

23 THE COURT: THAT'S ADMITTED.

24 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
25 1025, HAVING BEEN PREVIOUSLY MARKED FOR

1 IDENTIFICATION, WAS ADMITTED INTO
2 EVIDENCE.)

3 MR. PRICE: AND I WOULD ASK THAT WE
4 DISPLAY 3559, YOUR HONOR.

5 THE COURT: ALL RIGHT.

6 MR. MCELHINNY: AGAIN, YOUR HONOR, SAME
7 OBJECTIONS. THESE SLIDES ARE MISLEADING.

8 THE COURT: UNDERSTOOD.

9 GO AHEAD, PLEASE.

10 THAT'S OVERRULED.

11 BY MR. PRICE:

12 Q AND SO THE ONE YOU HAVE, THERE ARE THESE THREE
13 HARD BUTTONS AT THE BOTTOM?

14 A THERE ARE FOUR.

15 Q FOUR, SORRY. AND IT'S KIND OF CURVED?

16 A THERE'S A POINT SORT OF TO THE BOTTOM OF THE
17 DEVICE.

18 Q AND AT THE TOP IT SAYS VERIZON?

19 A YES, IT DOES.

20 Q AND IT'S YOUR UNDERSTANDING THAT IN THIS CASE
21 APPLE IS ASKING FOR ABOUT \$143 MILLION ON THE BASIS
22 OF THIS PHONE?

23 A I DON'T KNOW THE FINANCIAL CLAIMS AND
24 ARGUMENTS IN THE CASE, NO.

25 Q I GUESS MY QUESTION, HAVE YOU ACTUALLY LOOKED

1 AT ALL THE PHONES TO DETERMINE -- BECAUSE YOU GAVE
2 YOUR OPINION -- WHETHER OR NOT YOU THINK THE
3 AVERAGE CONSUMER WOULD GO TO A STORE AND BE
4 CONFUSED AND ACCIDENTLY BUY A SAMSUNG PHONE INSTEAD
5 OF AN IPHONE?

6 A YES, I DO BELIEVE THAT SOME CONFUSED --
7 CONSUMERS CAN BE CONFUSED, AND AS I SAID, I THINK
8 IT'S MADE THE MARKETING VERY CONFUSING AND
9 DIFFICULT TO DO.

10 Q MY QUESTION IS, HAVE YOU LOOKED AT ALL THE
11 PHONES THAT ARE IN THIS CASE AND ARRIVED AT THE
12 OPINION THAT ALL OF THESE PHONES WOULD BE
13 CONFUSING?

14 A I'VE LOOKED AT THE PHONES THAT ARE INVOLVED IN
15 THIS CASE, AND I DO BELIEVE THEY CAN BE CONFUSED.

16 Q SO THIS PHONE IS ONE OF THE ONES YOU LOOKED
17 AT, THIS SUPPORTS YOUR OPINION THAT AN AVERAGE
18 CONSUMER WOULD BE CONFUSED AND ACCIDENTALLY BUY THE
19 DROID CHARGE AND THINK IT WAS AN IPHONE?

20 A I LOOKED AT THIS PHONE, AND IT WAS MY OPINION
21 THAT SAMSUNG HAS RIPPED OFF A NUMBER OF OUR DESIGN
22 ELEMENTS AND BY DOING THAT IS MAKING IT LOOK MORE
23 LIKE AN IPHONE AND CAUSING CONFUSION.

24 Q MY QUESTION IS, DID YOU COME TO THE CONCLUSION
25 THAT CUSTOMERS ACCIDENTALLY BUY THE DROID CHARGE

1 BECAUSE THEY THINK IT'S AN IPHONE?

2 A I BELIEVE THEY MAY GET CONFUSED WITH THE
3 DEVICES.

4 Q AND IT'S THE "MAY" THAT HAS CAUSED APPLE TO
5 ASK FOR \$143 MILLION IN DAMAGES.

6 MR. MCELHINNY: THAT'S ARGUMENTATIVE,
7 YOUR HONOR. THIS IS CHARGED UNDER SEVERAL PATENTS.
8 IT'S NOT 143 FOR THIS PARTICULAR CLAIM.

9 THE COURT: OVERRULED.

10 ANSWER THE QUESTION, PLEASE.

11 THE WITNESS: I DON'T KNOW OF THE AMOUNTS
12 BEING CLAIMED ON EACH INDIVIDUAL DEVICE.

13 BY MR. PRICE:

14 Q LET ME ASK YOU, THEN, ABOUT WHY CUSTOMERS BUY
15 PHONES, AND YOU HAD LOOKED AT EXHIBIT 143, I
16 BELIEVE IT WAS, AND THERE ARE DOCUMENTS, AND THIS
17 IS ONE OF THE APPLE SURVEYS?

18 A THIS IS, AS WE DISCUSSED EARLIER, AN IPHONE
19 BUYER SURVEY.

20 Q SO THESE ARE PEOPLE WHO ARE ALREADY APPLE
21 CUSTOMERS; RIGHT?

22 A YES.

23 Q SO IF YOU LOOK AT THIS SURVEY, IT DOESN'T TELL
24 YOU ANYTHING ABOUT WHY APPLE LOST A SALE BECAUSE
25 THESE ARE SALES THAT APPLE WON; RIGHT?

1 A CORRECT. THESE ARE CUSTOMERS WHO PURCHASED
2 OUR PRODUCT.

3 Q SO, FOR EXAMPLE, YOU WOULDN'T EXPECT TO SEE IN
4 HERE SOMEONE SAY I BOUGHT AN APPLE BECAUSE IT
5 ALLOWS ME TO LOOK AT FLASH, THE VIDEOS; RIGHT? YOU
6 WOULDN'T EXPECT THAT?

7 A I'M SORRY. THAT'S NOT HOW WE RUN THE SURVEYS.

8 Q PARDON?

9 A WE ASK SPECIFIC QUESTIONS ON THE SURVEY, WHAT
10 YOU DESCRIBE IS MORE OF AN OPEN-ENDED DISCUSSION.
11 THAT'S NOT HOW WE RUN OUR SURVEY.

12 Q BUT YOU WOULDN'T ASK THEM DID YOU BUY THE
13 IPHONE BECAUSE IT'S SO GOOD AT LOOKING AT VIDEOS
14 AND THE USE OF FLASH?

15 A I WOULD NOT ASK THEM ABOUT THE USE OF FLASH ON
16 THE IPHONE.

17 Q BECAUSE THE IPHONES DON'T DO THAT?

18 A WE DON'T RUN FLASH PLUG INS.

19 Q AND YOU COULDN'T ASK THEM WHETHER OR NOT THEY
20 BOUGHT THE IPHONE BECAUSE IT HAS A REPLACEABLE
21 BATTERY BECAUSE IT DOESN'T.

22 MR. MCELHINNY: THIS IS BEYOND THE SCOPE,
23 YOUR HONOR, AND IRRELEVANT TO ANY OF THE ISSUES IN
24 THIS CASE.

25 THE COURT: OVERRULED.

1 THE WITNESS: WE DO NOT ASK IF THEY
2 PURCHASED THE IPHONE FOR THE FEATURE OF A REMOVAL
3 BATTERY.

4 BY MR. PRICE:

5 Q BECAUSE IT DOESN'T HAVE ONE?

6 A IT DOES NOT HAVE A REMOVABLE BATTERY.

7 Q AND YOU DIDN'T ASK THEM WHETHER THEY BOUGHT
8 THE IPHONE BECAUSE IT HAD A BIGGER -- A 4.5 INCH
9 SCREEN, OR EVEN A 4 INCH SCREEN?

10 A WE DO NOT ASK THEM IF THEY BOUGHT ONE FOR
11 THOSE REASONS.

12 Q AND THOSE MIGHT BE QUESTIONS THAT ARE RELEVANT
13 TO SOMEONE BUYING A SAMSUNG PHONE; IS THAT CORRECT?

14 A YOU WOULD HAVE TO ASK THEM. I DON'T DO MARKET
15 RESEARCH FOR SAMSUNG.

16 Q THAT'S FAIR ENOUGH.

17 SO BASICALLY FROM THESE DOCUMENTS HERE,
18 YOU CAN'T MAKE ANY CONCLUSIONS AS TO WHY A SAMSUNG
19 PURCHASER BOUGHT A SAMSUNG PHONE; CORRECT? THIS IS
20 JUST WHAT APPLE PEOPLE, THE REASON THEY -- THE
21 REASON YOU WON, THE REASON THEY BOUGHT YOUR PHONE?

22 A THESE ARE APPLE SURVEYS, YES.

23 Q AND THERE'S A SECTION ON EASE OF USE, AND YOU
24 DON'T ASK SPECIFICALLY WHAT -- I MEAN, YOU DON'T
25 IDENTIFY WHAT "EASE OF USE" IS IN THE SURVEY;

1 CORRECT?

2 A WE ASK ABOUT EASE OF USE. WE DON'T FURTHER
3 DEFINE IT INTO SUBCATEGORIES, NO.

4 Q AND YOU BELIEVE THAT APPLE -- THE IPHONE HAS
5 HUNDREDS OF FEATURES THAT GO TO EASE OF USE;
6 CORRECT?

7 A THERE ARE MANY FEATURES THAT CONTRIBUTE TO
8 EASE OF USE.

9 Q AND THIS DOESN'T DEMONSTRATE THAT YOU LOST A
10 SINGLE CUSTOMER TO SAMSUNG BECAUSE OF THE SAMSUNG
11 APPEARANCE; CORRECT?

12 A THIS SURVEY DOES NOT ASK THAT QUESTION OF A
13 CUSTOMER IF THEY BOUGHT A SAMSUNG DEVICE DUE TO
14 SAMSUNG APPEARANCE.

15 Q AND IT DOESN'T TELL YOU WHETHER A PURCHASER
16 BOUGHT A SAMSUNG DEVICE OVER A -- OVER AN IPHONE
17 BECAUSE SAMSUNG HAD THREE OF HUNDREDS OF FEATURES
18 THAT THE IPHONE ALSO HAS?

19 A THIS IS NOT A SURVEY OF SAMSUNG CUSTOMERS.

20 Q NOW, AND IN YOUR OWN SURVEYS, YOU ASK ABOUT A
21 NUMBER OF FEATURES; THIS SOMETHING THAT'S VERY
22 IMPORTANT, YOU HAD THOSE TOP TWO CATEGORIES. DO
23 YOU REMEMBER?

24 A WE ASK ABOUT A NUMBER OF FEATURES AND THE
25 IMPORTANCE INTO THE BUYING DECISION.

1 Q AND WHEN YOU ASKED THEM AND LOOKED AT THOSE
2 RELATIVELY, THOUGH, EASE OF USE, EVERYONE FOR
3 IPHONE CUSTOMERS COMPARED TO OTHERS, YOU FOUND THAT
4 THE, THE -- I'M SORRY -- THAT THE DESIGN WAS RANKED
5 RELATIVELY LOWER COMPARED TO THE OTHER QUESTIONS
6 YOU ASKED?

7 A IT WAS LOWER THAN SOME AND HIGHER THAN OTHERS.

8 Q SO IF YOU LOOK AT 143.22, FOR EXAMPLE, THAT'S
9 A PAGE --

10 AND I MOVE THAT INTO EVIDENCE, YOUR
11 HONOR.

12 THE COURT: IS THAT IN YOUR BINDER?

13 MR. PRICE: IT'S UNDER 143, WE HAVE THE
14 COMPLETE EXHIBIT, AND AT THIS POINT I'LL BE
15 OFFERING PAGES IN. THIS IS A COMPLETE EXHIBIT OF
16 THE ONE APPLE SHOWED HIM.

17 THE COURT: DO YOU WANT JUST 143.22?

18 MR. PRICE: YES, RIGHT NOW.

19 THE COURT: OKAY. ANY OBJECTION?

20 MR. MCELHINNY: NO OBJECTION, YOUR HONOR.

21 THE COURT: IT'S ADMITTED.

22 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
23 143.22 HAVING BEEN PREVIOUSLY MARKED FOR
24 IDENTIFICATION, WAS ADMITTED INTO
25 EVIDENCE.)

1 BY MR. PRICE:

2 Q AND WHEN YOU LOOKED AT ALL OF THIS, YOU FOUND
3 THAT THE IMPORTANCE OF ATTRACTIVE APPEARANCE AND
4 DESIGN IS RATED RELATIVELY LOWER THAN THE OTHER
5 QUESTIONS YOU ASKED?

6 A AGAIN, NOT APPARENTLY YOU WILL THE OTHER
7 QUESTIONS. JUST SOME.

8 Q WHAT QUESTIONS?

9 A SPECIFICALLY, EASE OF USE RATED HIGHER THAN
10 APPEARANCE.

11 Q OTHERS?

12 A THERE LOOKS LIKE -- I WOULD HAVE TO TAKE A
13 MINUTE TO LOOK THROUGH.

14 Q LIKE MULTITASKING, PRICE, ABILITY TO DOWNLOAD
15 APPS?

16 A WELL, IT DEPENDS ON COUNTRY BY COUNTRY. IT
17 VARIES. BUT THOSE ARE SOMETIMES RATED HIGHER.

18 Q AND ACTUALLY ON EASE OF USE, IF YOU LOOK AT --
19 IF YOU -- LET ME BACK UP HERE.

20 LOOKING ON THE DESIGN, YOU ALSO SUBSCRIBE
21 AND PAY FOR A SURVEY DONE BY A COMPANY CALLED
22 COM-TECH?

23 A I'M FAMILIAR WITH THAT.

24 Q AND IF WE CAN PUT EXHIBIT 592 IN FRONT OF YOU.
25 DO YOU SEE ON THE FRONT PAGE IT HAS THE APPLE LOGO

1 ON IT, AND ON THE SECOND PAGE, IT SAYS CONTENTS
2 UNITED STATES, AND IT HAS APPLE MARKET RESEARCH AND
3 ANALYSIS, FEBRUARY 11TH, 2011.

4 DO YOU SEE THAT?

5 A I SEE THAT PAGE.

6 Q SO THIS IS A SURVEY WHICH A THIRD PARTY DOES
7 AT APPLE'S -- AND APPLE BUYS THE RESULT?

8 A CORRECT, WE BUY THE RESULTS FROM THIS COMPANY.

9 Q AND YOU DO THAT ON A QUARTERLY BASIS?

10 A I DON'T KNOW THAT THIS IS DONE QUARTERLY. I
11 DON'T KNOW THE FREQUENCY OF THIS REPORT, BUT WE
12 HAVE MORE THAN ONE THAT WE'VE PURCHASED.

13 MR. PRICE: I MOVE EXHIBIT 592 INTO
14 EVIDENCE.

15 MR. MCELHINNY: NO OBJECTION.

16 THE COURT: ALL RIGHT. IT'S ADMITTED.
17 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
18 592, HAVING BEEN PREVIOUSLY MARKED FOR
19 IDENTIFICATION, WAS ADMITTED INTO
20 EVIDENCE.)

21 BY MR. PRICE:

22 Q AND IF WE LOOK AT PAGE 23, YOU SEE THERE'S A,
23 A SECTION ON REASONS FOR PURCHASE. DO YOU SEE
24 THAT?

25 A I SEE THAT PAGE.

1 Q AND WHEN WE GO ON THE LEFT, THIS IS KIND OF
2 HARD TO SEE, BUT -- BUT IF YOU GO TO THE LEFT, YOU
3 SEE IOS. IOS IS APPLE?

4 A YES.

5 Q AND THE BLUE PART THERE IS THE PART THAT SAYS
6 DESIGN/COLOR. DO YOU SEE THAT?

7 A I SEE THAT.

8 Q OKAY. AND THERE ARE ABOUT 67,000 PEOPLE
9 INTERVIEWED IN THIS STUDY? THAT'S AT 592.4.

10 A YES, THAT'S THE NUMBER OF INTERVIEWS THEY DID.

11 Q AND SO THEIR STUDY OF THAT LARGE POPULATION IS
12 THAT 1 PERCENT CHECKED EASY TO USE --

13 A NO.

14 Q -- I'M SORRY, CHECKED DESIGN/COLOR?

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

16 Q THIS IS DESIGN/COLOR AND THIS IS -- DOES THAT
17 LOOK LIKE 1 PERCENT TO YOU?

18 A SEE, I THINK WHAT'S IMPORTANT IN LOOKING AT
19 RESEARCH LIKE THIS IS UNDERSTANDING THE QUESTION
20 AND THE METHODOLOGY, AND I THINK YOU'RE COMPARING
21 IT TO THE PREVIOUS SLIDES WE'VE BEEN LOOKING AT,
22 AND THIS IS A VERY DIFFERENT METHODOLOGY THAN THE
23 TOP BOX EXAMPLE.

24 Q WELL, SINCE I'M ON THE CLOCK, AS THE JURY
25 KNOWS, MY QUESTION WAS SIMPLY, THIS STUDY, 1

1 PERCENT CHOSE DESIGN COLOR AS THE REASON FOR
2 PURCHASING ON IOS; RIGHT?

3 A AGAIN, THE ONLY -- ONLY IF YOU UNDERSTOOD WHAT
4 WAS ASKED.

5 Q AND IF YOU LOOK AT EXHIBIT 60 -- LET'S SEE.
6 EXHIBIT 605.

7 BEFORE WE GO FROM THERE, THAT'S LESS
8 THAN -- RIM IS THE BLACKBERRY AREA; CORRECT?

9 A I'M SORRY.

10 Q RIM WOULD BE BLACKBERRY?

11 A I THINK YOU'RE TOTALLY MISINTERPRETING WHAT
12 THIS CHART SAYS BY NOT EXPLAINING WHAT WAS ASKED.

13 Q I'M ASKING WHETHER RIM IS BLACKBERRY?

14 A SORRY, YES. THE BLACKBERRY IS A PRODUCT MADE
15 BY RIM.

16 Q AND THIS IS LESS THAN BLACKBERRY, 1 PERCENT
17 VERSUS 4 PERCENT?

18 A 1 PERCENT IS A LOWER NUMBER THAN 4 PERCENT.

19 Q SO LET ME ASK YOU ABOUT THE DESIGN ITSELF.

20 AND YOU TALKED ABOUT POINT OF PURCHASE.

21 I WANT TO SWITCH TO WHEN PEOPLE ARE ACTUALLY IN THE
22 MARKET, LIKE IN NATURE WITH THEIR IPHONE, AND ASK

23 YOU, WHEN PEOPLE BUY IPHONES, WHAT YOU FOUND IS

24 THAT, IN YOUR SURVEYS, IS THAT, LIKE, 78 PERCENT,

25 70, 78 PERCENT BUY A CASE WITH IT AT THE SAME TIME?

1 A I DON'T RECALL THAT SURVEY RESULT.

2 Q OKAY. IF YOU LOOK AT 143, WHICH WAS THE APPLE
3 SURVEY, AT PAGE 82, 143.82.

4 AND YOUR HONOR, I MOVE 143.82 INTO
5 EVIDENCE.

6 THE COURT: IS THIS IN YOUR BINDER?

7 MR. PRICE: IT IS, YOUR HONOR. THE FULL
8 EXHIBIT, 14.

9 THE COURT: AND YOU'RE MOVING THE WHOLE
10 THING IN?

11 MR. PRICE: NO, JUST 143.82 BECAUSE OF
12 CONCERNS ABOUT CONFIDENTIALITY.

13 THE COURT: ALL RIGHT.

14 MR. MCELHINNY: NO OBJECTION.

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

16 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
17 143.82, HAVING BEEN PREVIOUSLY MARKED FOR
18 IDENTIFICATION, WAS ADMITTED INTO
19 EVIDENCE.)

20 BY MR. PRICE:

21 Q SO YOU FOUND THAT 78 PERCENT USED A CASE OR A
22 BUMPER WITH THEIR IPHONE; CORRECT?

23 A YES, THIS SURVEY FOUND THAT, YES.

24 Q SO ASSUMING THEY BUY IT FOR A PURPOSE, THEN
25 YOU'D HAVE, LIKE, FOUR OUT OF FIVE PEOPLE HAVE

1 SOMETHING AROUND THEIR IPHONE, SOME KIND OF CASE OR
2 COVER; RIGHT?

3 A ALMOST THAT MANY, YES.

4 Q AND SO THOSE CASES USUALLY COVER UP THE BEZEL
5 AND THE TOP, EXCEPT FOR THE USEFUL PARTS; CORRECT?

6 A IT DEPENDS ON THE CASE. THE BUMPER DOES.
7 SOME CASES DO. SOME DON'T.

8 Q AND SO IF YOU ARE COVERING UP THIS OUTSIDE OF
9 THE CASE, YOU KNOW, AND EVERYONE THE BACK, THEN
10 KIND OF WHAT YOU'RE LEFT WITH, WHEN YOU ACTUALLY
11 SEE IT IN USE MUCH OF THE TIME, IS THE FRONT FACE
12 WITH THE HOME BUTTON AND THE SPEAKER AND THE
13 SCREEN; CORRECT?

14 A SOME CASES DO THAT, SHOW JUST THAT MUCH, YES.

15 Q AND THE -- YOU HAVE -- YOU AGREE THAT THIS
16 HOME BUTTON IS PROMINENT, CONSISTENT, AND AN
17 UNMISTAKABLE FEATURE OF APPLE DESIGN? THE HOME
18 BUTTON?

19 A I AGREE THAT THE HOME BUTTON IS ON EVERY PHONE
20 AND PROMINENT, YES.

21 Q WELL, YOU ALSO BELIEVE THAT IT IS AN
22 UNMISTAKABLE AND UNIQUE PART OF THE APPLE DESIGN;
23 CORRECT?

24 A I THINK IT'S VERY UNIQUE TO HAVE A SINGLE
25 APPLE HOME BUTTON ONLY THE SCREEN, YES.

1 Q AND THERE'S NOT A SINGLE SAMSUNG PHONE THAT
2 YOU'RE AWARE OF THAT HAS THE HOME BUTTON LIKE THE
3 ONE THAT APPLE HAS?

4 A I'M NOT AWARE OF SAMSUNG PHONES WITH THE SAME
5 HOME BUTTON AS APPLE'S.

6 Q NOW, WHEN YOU SHOWED THOSE -- YOU SHOWED A
7 DEMONSTRATIVE ABOUT WHERE APPLE IS SOLD, OR THE
8 CHAINS OF -- DISTRIBUTION CHAINS. AM I RIGHT ON
9 THAT?

10 A THERE WAS A CHART OF CHANNELS, CHANNELS THAT
11 THE PRODUCTS ARE SOLD THROUGH.

12 Q CHANNELS. AND IF YOU LOOK AT THAT, THOSE HAVE
13 NOT ALWAYS BEEN THE CHANNELS OF DISTRIBUTION FOR
14 APPLE PHONES; RIGHT?

15 A THERE ARE TIMES WHEN WE HAVE SOLD THROUGH
16 ADDITIONAL CHANNELS OR STARTED AT THE VERY
17 BEGINNING WITH, WITH A SMALLER LIST OF CHANNELS.

18 Q WELL, LET'S PUT UP PDX 13.

19 AND HERE ARE THE APPLE SALES CHANNELS AND
20 YOU'VE GOT VERIZON THERE. THE IPHONE HAS BEEN OUT
21 SINCE 2007; IS THAT RIGHT?

22 A YES.

23 Q AND THIS VERIZON CHANNEL DIDN'T EXIST UNTIL
24 FEBRUARY 10TH, 2011; RIGHT?

25 A CORRECT.

1 Q AND THE SPRINT CHANNEL THAT YOU TOLD THE JURY
2 ABOUT DID NOT EXIST UNTIL OCTOBER 14TH, 2011;
3 CORRECT?

4 A CORRECT.

5 Q SO YOU WEREN'T INTENDING TO SAY THAT, SINCE
6 2007, THAT APPLE HAS BEEN IN ALL OF THESE CHANNELS;
7 RIGHT?

8 A I DID NOT SAY THAT.

9 Q AND YOU DIDN'T INTEND TO CONVEY THAT; CORRECT?

10 A I JUST SHOWED THE LIST OF SIMILAR CHANNELS
11 THAT WE SELL OUR PRODUCTS AT.

12 Q AND SO YOU HAVEN'T GIVEN INFORMATION ON
13 EXACTLY WHEN APPLE GOT INTO THESE CHANNELS;
14 CORRECT?

15 A WE HAVE NOT SHOWN THAT, NO.

16 Q IN FACT, T-MOBILE STILL DOESN'T EXIST AS AN
17 APPLE SALES CHANNEL; RIGHT?

18 A CORRECT.

19 Q AND HERE WE'VE GOT TARGET, FOR EXAMPLE, TARGET
20 WASN'T A SALES CHANNEL UNTIL NOVEMBER 7 OF 2010?

21 A I DON'T RECALL THE EXACT DATE WHEN WE STARTED
22 AT TARGET.

23 Q SO IF SOMEONE REALLY WANTED TO KNOW ON A
24 YEAR-BY-YEAR BASIS WHAT YOUR SALES CHANNELS WERE
25 AND WHETHER THEY WERE COMPARABLE TO SAMSUNG'S, YOUR

1 DIRECT TESTIMONY WOULD NOT HAVE BEEN ANY HELP TO
2 THEM?

3 A I DID NOT TESTIFY TO THE EXACT TIME OF EACH OF
4 THESE CHANNELS, NO.

5 Q IN FACT, IT MIGHT HAVE BEEN A LITTLE
6 MISLEADING --

7 MR. MCELHINNY: OBJECTION, YOUR HONOR.
8 BY MR. PRICE:

9 Q -- TO LIST ALL THOSE AND NOT EXPLAIN, EVERY
10 YEAR WE HAVEN'T BEEN IN THOSE CHANNELS.

11 MR. MCELHINNY: OBJECTION. THAT'S
12 ARGUMENTATIVE.

13 THE COURT: OVERRULED.

14 GO AHEAD, PLEASE.

15 THE WITNESS: SIMPLY SOLD THE LIST OF
16 CHANNELS. THERE WAS NOTHING SAID ABOUT INDIVIDUAL
17 TIMES FOR EACH ONE OF THEM. SO THERE WAS CERTAINLY
18 NO ATTEMPT TO MISLEAD ANY OF THEM.

19 BY MR. PRICE:

20 Q OKAY. YOU MENTIONED THAT YOU'RE -- DO YOU
21 REMEMBER, MR. SCHILLER, THAT VIDEO.

22 A I'M SORRY, WHICH?

23 Q THE VIDEO OF THE MAC WORLD WHICH HAD MR. JOBS
24 GETTING THE PHOTO AND THEN E-MAILING YOU WITH THE
25 PHOTO, YOU'RE THAT GUY?

1 A I WAS IN THE DEMO OF THE LAUNCH, YES, OF THE
2 ORIGINAL IPHONE IN 2007.

3 Q AND THAT'S EXHIBIT 1091.

4 AND, YOUR HONOR, WOULD IT BE OKAY TO PLAY
5 A SECTION OF THAT FROM 1:24:52 TO 1:25:46? IT'S
6 WHAT WAS PLAYED IN THE OPENING.

7 THE COURT: PLEASE, GO AHEAD.

8 CAN I ASK, HAS THAT ALREADY COME IN?

9 MR. PRICE: NO. WE MOVE THAT INTO
10 EVIDENCE NOW, YOUR HONOR. EXHIBIT 109.

11 THE COURT: ALL RIGHT. ANY OBJECTION?

12 MR. MCELHINNY: NO OBJECTION.

13 THE COURT: IT'S ADMITTED.

14 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
15 109, HAVING BEEN PREVIOUSLY MARKED FOR
16 IDENTIFICATION, WAS ADMITTED INTO
17 EVIDENCE.)

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

20 BY MR. PRICE:

21 Q I WOULDN'T HAVE RECOGNIZED YOU.

22 BUT WHAT HAPPENS IS -- AND I SEE YOU'VE
23 DONE THIS, THAT YOU'VE SCROLLED TO A PHOTO, TOUCHED
24 IT, WRITTEN AN E-MAIL AND ACCEPT THE PHOTO; RIGHT?

25 A SURE, I'VE SENT PHOTOS.

1 Q AND IT'S YOUR UNDERSTANDING THAT CUSTOMERS OF
2 APPLE, WITH THE IPHONES, DO THE SAME THING, WHERE
3 THEY SCROLL TO A PICTURE, TOUCHED IT AND THEN SENT
4 IT WITH A TEXT?

5 MR. MCELHINNY: LACKS FOUNDATION, YOUR
6 HONOR.

7 MR. PRICE: HE'S HEAD OF MARKETING.

8 THE COURT: OVERRULED.

9 GO AHEAD.

10 THE WITNESS: I'M SORRY. YOU STARTED BY
11 TALKING ABOUT E-MAIL AND THEN YOU JUST SAID TEXT.
12 SO THEY'RE DIFFERENT THINGS.

13 BY MR. PRICE:

14 Q OKAY. YOU BELIEVE THAT THE APPLE CUSTOMERS,
15 IPHONE CUSTOMERS, HAVE HAD THE EXPERIENCE OF
16 SCROLLING TO A PHOTO, TOUCHING IT, WRITING AN
17 E-MAIL, AND SENDING THAT PHOTO WITH THE E-MAIL?

18 A YES, OUR CUSTOMERS HAVE OFTEN SENT PHOTOS WITH
19 E-MAIL AND DO.

20 Q NOW, I'D LIKE YOU TO LOOK, IF YOU COULD, AT
21 EXHIBIT 715. DO YOU HAVE THAT IN FRONT OF YOU,
22 SIR?

23 A YES.

24 Q AND YOU RECOGNIZE THIS AS A DOCUMENTATION OF A
25 TEAR-DOWN THAT APPLE DID ON THE SAMSUNG GALAXY S?

1 A NO, I'M NOT FAMILIAR WITH THIS DOCUMENT.

2 Q WELL, DO YOU SEE IT IS -- IT DOES COME FROM
3 APPLE, YOU CAN TELL THAT; CORRECT?

4 A I SEE IT'S STAMPED WITH APPLE, YES.

5 Q AND IT HAS THE APPLE LOGO; CORRECT?

6 A YES.

7 Q AND YOU'RE ON THE EXECUTIVE COMMITTEE, YOU
8 SAID, ONE OF THE FEW PEOPLE WHO TALK TO MR. COOK
9 DIRECTLY?

10 A YES, I'M ON THE COMMITTEE.

11 Q SO CERTAINLY YOU HAVE NO REASON TO THINK THIS
12 IS NOT AN APPLE DOCUMENT?

13 A I HAVE NO REASON TO THINK OF IT. I'VE JUST
14 NEVER SEEN IT BEFORE.

15 MR. PRICE: YOUR HONOR, MOVE EXHIBIT 715
16 INTO EVIDENCE.

17 MR. MCELHINNY: THIS IS ONE WE RESERVED
18 OBJECTIONS PENDING A FOUNDATION, YOUR HONOR. HE'S
19 NOT LAID THAT.

20 THE COURT: THAT'S SUSTAINED. THAT'S NOT
21 COMING IN RIGHT NOW. GET SOMEONE ELSE WHO HAS
22 PERSONAL KNOWLEDGE.

23 GO AHEAD, PLEASE.

24 MR. PRICE: OKAY. YOUR HONOR, I WOULD
25 LIKE TO -- AS WE DISCUSSED EARLIER, I WOULD LIKE TO

1 MOVE INTO EVIDENCE PAGES LATER OF THESE APPLE
2 MARKETING SURVEYS, BUT NOT THE WHOLE THING
3 BECAUSE --

4 THE COURT: THAT'S FINE. WHICH PAGES
5 WOULD YOU LIKE.

6 MR. PRICE: WHAT I'D LIKE TO DO NOW, YOUR
7 HONOR, IS THAT I WILL BE MOVING IN PAGES FROM 143,
8 144, 145 --

9 THE COURT: WHY DON'T WE DO THAT RIGHT
10 NOW. SO JUST GIVE ME THE NUMBERS AGAIN, PLEASE.
11 143?

12 MR. PRICE: 143.

13 THE COURT: OKAY. NOT THE WHOLE THING
14 THOUGH, YOU WANTED SPECIFIC PAGES?

15 MR. PRICE: NOT THE WHOLE THING, THAT'S
16 RIGHT.

17 THE COURT: OKAY.

18 MR. PRICE: SPECIFIC PAGES. IT WOULD BE
19 143.4, WHICH THAT MAY ALREADY BE IN.

20 THE COURT: I DON'T HAVE IT IN.

21 MR. PRICE: OKAY. 143.4.

22 THE COURT: OKAY.

23 MR. PRICE: 143.12.

24 THE COURT: OKAY.

25 MR. PRICE: 143.6.

1 THE COURT: OKAY.

2 MR. PRICE: 143.16.

3 THE COURT: ALL RIGHT.

4 MR. PRICE: 143.25; 143.22.

5 THE COURT: ALL RIGHT. ANY OBJECTIONS?

6 MR. MCELHINNY: NO OBJECTIONS, YOUR
7 HONOR.

8 THE COURT: ALL RIGHT. THEY'RE ALL
9 ADMITTED.

10 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBERS
11 143.4, 143.12, 143.6, 143.16, 143.22,
12 143.25, BEEN PREVIOUSLY MARKED FOR
13 IDENTIFICATION, WERE ADMITTED INTO
14 EVIDENCE.)

15 BY MR. PRICE:

16 Q AND FINALLY, SIR, BECAUSE I USED WAY MORE OF
17 THE CLOCK THAN I SHOULD HAVE, I JUST WANT TO ASK
18 YOU, ON THESE APPLE PHONES THAT WE'VE SEEN FROM THE
19 3G TO THE 4, APPLE CHANGES THE DESIGN EVERY COUPLE
20 OF YEARS; CORRECT?

21 A WE UPDATE THE DESIGN OF NEW MODELS, YES.

22 Q AND THE -- IN FACT, WHEN YOU CAME OUT WITH THE
23 IPHONE 4S, THERE WAS SOME CRITICISM IN THE MARKET
24 THAT THE DESIGN WASN'T CHANGED; RIGHT?

25 A THAT WAS ONE OF THE THINGS WE HEARD, YES.

1 Q AND, IN FACT, YOU'RE GOING TO CHANGE THE
2 DESIGN AGAIN WITH THE IPHONE 5?

3 MR. MCELHINNY: OBJECTION, YOUR HONOR.
4 THE IPHONE 5 IS NOT IN THIS CASE. IT'S NOT PUBLIC.
5 NO ONE KNOWS WHAT THE DESIGN OF IT WILL LOOK LIKE.
6 IT'S ONE OF THE MOST CLOSELY GUARDED, CONFIDENTIAL
7 SECRETS OF APPLE.

8 MR. PRICE: IT'S RELEVANT. THEY KEEP
9 CHANGING THEIR DESIGNS.

10 MR. MCELHINNY: THAT IS ARGUMENTATIVE,
11 AND IT'S NOT RELEVANT TO WHY FUTURE DESIGNS --
12 THERE'S NO EVIDENCE, NEVER BEEN DISCOVERED, NO
13 DISCOVERY HAS BEEN TAKEN ON IT.

14 THE COURT: ALL RIGHT. I'M GOING TO
15 OVERRULE THE OBJECTION.

16 GO AHEAD.

17 BY MR. PRICE:

18 Q SO THAT'S GOING TO BE A DIFFERENT DESIGN, TOO?

19 A SO I JUST WANT TO MAKE SURE I UNDERSTAND.

20 I'M SORRY, JUDGE. AM I BEING ASKED TO
21 TELL CONFIDENTIAL INFORMATION ABOUT FUTURE
22 PRODUCTS?

23 THE COURT: NO. YOU DON'T HAVE TO. TO
24 THE EXTENT THAT YOU CAN, AND IF YOU CAN'T, THEN YOU
25 CAN'T.

1 BY MR. PRICE:

2 Q IF YOU THINK YOU CAN'T TELL US ABOUT THE
3 DESIGN CHANGES FOR THE IPHONE 5, JUST TELL US AND
4 WE'LL GO ON?

5 A I PREFER NOT TO TELL CONFIDENTIAL INFORMATION
6 ABOUT FUTURE PRODUCTS IF I DON'T HAVE TO.

7 Q SURE, OKAY. AND THE IPAD, WE'VE LOOKED AT THE
8 FRONT A LOT. THERE'S ALSO A BACK TO THE IPAD;
9 CORRECT?

10 A THERE IS A BACK TO THE IPAD.

11 Q IT'S A SILVER WITH A BIG APPLE ON IT; RIGHT?

12 A YES.

13 Q AND IF SOMEONE IS USING THIS IN THE REAL WORLD
14 AGAIN AND SOMEONE WALKS IN FRONT OF THEM, THERE'S A
15 CHANCE THAT THEY'RE GOING TO SEE THE BACK?

16 A PEOPLE CAN SEE THE IPAD, YES.

17 Q AND THE BACK OF THE IPAD AS WELL?

18 A YES.

19 MR. PRICE: THANK YOU, MR. SCHILLER.

20 THE WITNESS: THANK YOU.

21 THE COURT: ALL RIGHT. THE TIME IS NOW
22 11:41. DOES ANYONE NEED BIO BREAK OR DO YOU WANT
23 TO KEEP GOING UNTIL NOON?

24 YOU NEED A BATHROOM BREAK?

25 OKAY. LET'S JUST TAKE FIVE MINUTES AND

1 THEN WE'LL GO UNTIL NOON. ALL RIGHT.

2 THANK YOU. JUST A FEW MINUTES, PLEASE.

3 (WHEREUPON, A RECESS WAS TAKEN.)

4 THE COURT: ALL RIGHT. WE'RE BACK IN
5 SESSION. PLEASE TAKE A SEAT.

6 AND IT IS NOW 11:45. DO YOUR RECROSS,
7 PLEASE. I'M SORRY, REDIRECT.

8 **REDIRECT EXAMINATION**

9 BY MR. MCELHINNY:

10 Q MR. SCHILLER, I THINK THE QUESTION THAT
11 EVERYONE REALLY WANTS TO KNOW, THE FOCUS, TO JUST
12 GET THE FACTS STRAIGHT, DID YOU HAVE DARK HAIR IN
13 2007?

14 A YES, I DID.

15 Q OKAY.

16 A THANK YOU FOR REMINDING ME.

17 Q I GUESS WE RESOLVED THAT ISSUE.

18 COUNSEL STARTED OFF BY SHOWING YOU A
19 PHONE THAT HE TOLD YOU WAS CALLED THE LG PRADA. DO
20 YOU REMEMBER SEEING THAT PHONE?

21 A YES, I DO.

22 Q DO YOU KNOW WHETHER OR NOT THE LG PRADA WAS
23 EVER SOLD IN THE UNITED STATES?

24 A NO, I DO NOT THINK IT WAS.

25 Q COUNSEL SHOWED YOU EXHIBIT 592, WHICH WAS

1 CALLED THE COM-TECH SURVEY, AND HE SHOWED YOU PAGE
2 23, AND HE SHOWED YOU THE CHART UP IN THE UPPER
3 RIGHT-HAND CORNER, WHICH IF I UNDERSTAND IT
4 CORRECTLY, SHOWED THAT FOUR TIMES MORE PEOPLE LIKED
5 THE DESIGN OF THE BLACKBERRY PHONE THAN LIKED THE
6 DESIGN OF THE APPLE PHONE. IS THAT WHAT THAT
7 PURPORTS TO SHOW?

8 A NO, I DON'T AGREE IT SHOWS THAT.

9 Q YOU WERE GOING TO -- YOU WERE GOING TO TRY TO
10 EXPLAIN HOW TO INTERPRET THIS CORRECTLY, AND I'D
11 LIKE TO GIVE YOU THE OPPORTUNITY TO DO THAT?

12 A YES, AS I UNDERSTAND WHAT THIS COMPANY DID
13 WITH THIS DATA WAS THEY ASKED CUSTOMERS A SPECIFIC
14 QUESTION AND THAT QUESTION WAS, OTHER THAN PRICE,
15 SO YOU'VE ALREADY SET THE MINDSET TO START THEM
16 THINKING ABOUT WHAT MATTERS TO THEM, WHAT ONE OTHER
17 THING WOULD YOU RATE AS IMPORTANT IN YOUR PURCHASE?

18 AND THEY WERE ALLOWED TO ONLY PICK ONE
19 THING.

20 AND THAT'S THE UNDERSTANDING OF THE
21 METHODOLOGY I HAD HERE. SO UNLIKE THE DATA WE
22 COLLECT WHERE WE ASK EACH ITEM AND CHECK WHICH IS
23 THE TOP BOXES OF PREFERENCE, THIS YOU WERE LIMITED
24 IN YOUR CHOICE.

25 AND TO FURTHER ADD CONFUSION, ONE OF

1 THOSE CHOICES IS BRAND, WHICH AS YOU SEE, APPLE
2 RANKS THE HIGHEST OF.

3 AND I BELIEVE THAT CUSTOMERS AT THIS
4 LEVEL AREN'T CLEAR ON BRAND AND DESIGN AND WHAT
5 THAT MEANS.

6 SO YOU WEREN'T GIVEN MORE THAN ONE
7 CHOICE, AND IT WAS CONFUSED WITH OTHER CHOICES THAT
8 HAD RATED VERY HIGHLY. SO IF YOU LIKED BRAND AND
9 DESIGN, YOU COULDN'T SELECT THAT.

10 Q SO THAT WE'RE, AGAIN, USING THE SAME
11 TERMINOLOGY, WHAT DOES BRAND, AS IS USED ON THIS
12 CHART WHICH COUNSEL PUT INTO EVIDENCE, WHAT DOES
13 BRAND MEAN?

14 A ON THIS QUESTION IT'S CONFUSED BECAUSE THEY
15 SAY BRAND/MODEL. SOME PEOPLE THINK BRAND MEANS THE
16 BRAND OF THE COMPANY, BUT MODEL MEANS MODEL OF
17 PHONES. SO IN THIS CASE, IT MIGHT MEAN APPLE AND
18 IPHONE.

19 SO IN THIS CASE, I CAN ONLY ASSUME,
20 BECAUSE IT'S UP TO THE USER'S INTERPRETATION OF
21 WHAT THEY'RE ASKED, THAT 44 PERCENT OF APPLE IOS
22 CUSTOMERS SELECTED APPLE/IPHONE AS A PRIMARY REASON
23 TO PURCHASE, OTHER THAN PRICE. AND THEN THEY
24 COULDN'T EXPECT ANYTHING ELSE.

25 Q BASED ON YOUR EXPERIENCE IN MARKETING, IS

1 THERE AN OVERLAP OR A CONNECTION BETWEEN THE DESIGN
2 OF THE APPLE PHONES AND THE APPLE BRAND?

3 A YES, I THINK THERE'S A STRONG CORRELATION.

4 Q AND WHAT IS THAT CORRELATION?

5 A IT IS THAT PEOPLE ASSOCIATE THE APPLE BRAND
6 WITH GREAT DESIGN, AND THEY HAVE INTRINSIC MEANING
7 TOGETHER.

8 Q SIR, AGAIN, I THINK YOU TESTIFIED THAT YOU
9 WERE INVOLVED IN THE ORIGINAL IPHONE PRODUCT; IS
10 THAT CORRECT?

11 A YES.

12 Q AND WE'VE TALKED A LOT ABOUT WHAT THE IPHONE
13 LOOKS LIKE AND THE DESIGN AND THE ELEMENTS OF THAT
14 DESIGN; IS THAT CORRECT?

15 A YES.

16 Q WAS THAT DESIGN CHOSEN SO THAT IT WOULDN'T
17 MATCH ON SOMEBODY'S POCKET?

18 A NO.

19 Q WHAT WAS THE THEME OF THE OVERALL DESIGN OF
20 THE IPHONE?

21 A WE WERE TRYING TO CREATE A NEW BREAKTHROUGH
22 DESIGN FOR A PHONE THAT WAS BEAUTIFUL AND SIMPLE
23 AND EASY TO USE AND CREATED A BEAUTIFUL, SMOOTH
24 SURFACE THAT HAD A TOUCHSCREEN AND WENT RIGHT TO
25 THE RIM WITH THE BEZEL AROUND IT AND LOOKING FOR A

1 LOOK THAT WE FOUND WAS BEAUTIFUL AND EASY TO USE
2 AND APPEALING.

3 WE HAD A TERM AT APPLE, IN MARKETING,
4 THAT WE CALLED THE LUST FACTOR. DOES THIS IPHONE
5 HAVE APPEAL TO PEOPLE THAT THEY LUST AFTER IT
6 BECAUSE IT'S SO GORGEOUS. THAT'S ONE OF THE THINGS
7 WE WERE GOING FOR, A HIGH LUST FACTOR.

8 Q DURING THE FOUR YEARS THAT THE IPHONE WAS
9 UNDER DEVELOPMENT, WERE OTHER DESIGNS CONSIDERED AT
10 ANY TIMES?

11 A YES, THERE WERE MANY DESIGNS.

12 Q WOULD THOSE OTHER DESIGNS HAVE CUT ON PEOPLE'S
13 POCKETS.

14 A I DON'T BELIEVE SO.

15 MR. MCELHINNY: THANK YOU. I HAVE
16 NOTHING FURTHER.

17 THE COURT: ALL RIGHT. TIME IS NOW
18 11:50.

19 ANY RECROSS, MR. PRICE?

20 MR. PRICE: NOT MUCH.

21 **RECROSS-EXAMINATION**

22 BY MR. PRICE:

23 Q I WANTED TO ASK YOU, YOU WANTED TO CREATE THIS
24 LUST FACTOR WITH THE IPHONE. THE SAMSUNG PHONES I
25 SHOWED YOU WITH THE FOUR HARD BUTTONS AND THE

1 SIGNAGE AT THE TOP, DO YOU THINK THAT'S BEAUTIFUL?

2 A I DON'T THINK THEY'RE AS BEAUTIFUL AS THE
3 IPHONE, BUT I THINK THEY'RE TRYING TO BE AS
4 BEAUTIFUL AS THE IPHONE.

5 Q AND IN YOUR OPINION, THEY DON'T QUITE CUT IT
6 ON THAT REGARD; RIGHT? IN YOUR OPINION?

7 A NOT FOR ME.

8 Q OKAY. AND THAT'S ONE OF THE REASONS APPLE HAS
9 THAT ICONIC HOME BUTTON WITH NOTHING ELSE ON THE
10 BOTTOM BECAUSE THAT WAS AN IMPORTANT PART OF WHAT
11 YOU THOUGHT WAS A BEAUTIFUL, UNIQUE DESIGN?

12 MR. MCELHINNY: BEYOND THE SCOPE. ASKED
13 AND ANSWERED.

14 THE COURT: OVERRULED.

15 GO AHEAD. GO AHEAD, PLEASE.

16 THE WITNESS: I THINK WE HAVE A LUSTFUL,
17 GORGEOUS DESIGN IN TOTAL AND I THINK THE HOME
18 BUTTON IS ONE OF THE FEATURES ON THE PHONE.

19 MR. PRICE: NOTHING FURTHER.

20 THE COURT: ALL RIGHT. SO IT'S 11:51.

21 MAY THIS WITNESS BE EXCUSED AND IS HE
22 SUBJECT TO RECALL OR NOT?

23 MR. MCELHINNY: I WOULD LIKE HIM EXCUSED,
24 NOT SUBJECT TO RECALL, ALTHOUGH WE MAY CHOOSE TO
25 USE HIM IN REBUTTAL, SO HE WON'T BE IN THE

1 COURTROOM.

2 THE COURT: ALL RIGHT. WELL, YOU'RE
3 EXCUSED.

4 THE WITNESS: THANK YOU.

5 THE COURT: ALL RIGHT. CALL YOUR NEXT
6 WITNESS, PLEASE.

7 MR. MCELHINNY: YOUR HONOR, ON BEHALF OF
8 APPLE, WE CALL MR. SCOTT FORSTALL.

9 THE CLERK: WOULD YOU RAISE YOUR RIGHT
10 HAND, PLEASE.

11 **SCOTT FORSTALL,**
12 BEING CALLED AS A WITNESS ON BEHALF OF THE
13 PLAINTIFF, HAVING BEEN FIRST DULY SWORN, WAS
14 EXAMINED AND TESTIFIED AS FOLLOWS:

15 THE WITNESS: I DO.

16 THE CLERK: WOULD YOU HAVE A SEAT,
17 PLEASE.

18 WOULD YOU STATE YOUR NAME, PLEASE, AND
19 SPELL IT?

20 THE WITNESS: SCOTT FORSTALL, S-C-O-T-T
21 FIRST NAME, LAST NAME FORSTALL, F, AS IN FRANK,
22 O-R-S-T-A-L-L.

23 THE CLERK: THANK YOU.

24 MR. MCELHINNY: MAY I PROCEED, YOUR
25 HONOR?

1 THE COURT: PLEASE, GO AHEAD.

2 DIRECT EXAMINATION

3 BY MR. MCELHINNY:

4 Q GOOD MORNING, MR. FORSTALL.

5 A GOOD MORNING.

6 Q I'M GOING TO HAVE YOU ON THE STAND HERE FOR
7 EIGHT MINUTES.

8 BY WHOM ARE YOU EMPLOYED?

9 A APPLE.

10 Q AND WHAT IS YOUR CURRENT JOB TITLE, SIR?

11 A I'M SENIOR VICE-PRESIDENT OF IOS.

12 Q AND WE'RE GOING TO DO SOME -- I'M GOING TO
13 DEFINE TERMS AS WE GO ALONG. WHAT IS IOS?

14 A IOS IS THE OPERATING SYSTEM THAT RUNS ALL
15 IPHONES, IPADS, AND IPOD TOUCH.

16 Q AND JUST GENERALLY, WHAT IS YOUR GROUP
17 RESPONSIBLE FOR AT APPLE?

18 A SO IN ADDITION TO ALL THE SOFTWARE THAT RUNS
19 ON ALL THOSE PLATFORMS, IPHONE, IPADS AND IPOD
20 TOUCH, MY GROUP ALSO DOES USER INTERFACE DESIGN,
21 BOTH FOR THOSE PRODUCTS AND FOR THE MACINTOSH.

22 Q MR. FORSTALL, THIS WOMAN IN FRONT OF ME IS A
23 COURT REPORTER AND SO SHE'S TRYING TO TAKE DOWN
24 WHAT YOU SAY. SO IF YOU WOULD SLOW DOWN JUST A
25 LITTLE BIT, THAT WOULD BE GREAT.

1 TO WHOM DO YOU REPORT AT APPLE?

2 A I REPORT DIRECTLY TO TIM COOK, WHO IS OUR CEO.

3 Q AND ARE YOU FAMILIAR WITH THE EXPRESSION, THE
4 EXECUTIVE TEAM?

5 A I AM.

6 Q HOW -- ARE YOU ON APPLE'S EXECUTIVE TEAM?

7 A YES, I AM.

8 Q HOW MANY PEOPLE ARE ON APPLE'S EXECUTIVE TEAM?

9 A I THINK THERE'S AROUND TEN OF US.

10 Q HOW MANY PEOPLE REPORT TO YOU, MR. FORSTALL?

11 A SO WE HAVE A SORT OF MATRIX FUNCTIONAL GROUP.
12 I HAVE AROUND A THOUSAND PEOPLE REPORTING DIRECTLY
13 TO ME.

14 AND AT MY STAFF MEETING, IF YOU LOOK AT
15 ALL THE PEOPLE REPRESENTED BY PEOPLE THAT COME TO
16 MY STAFF MEETING, IT'S AROUND 2,000 PEOPLE.

17 Q CAN YOU TELL US A LITTLE BIT ABOUT YOUR
18 EDUCATION, PLEASE?

19 A YEAH. I WENT TO STANFORD UNIVERSITY FOR AN
20 UNDERGRADUATE DEGREE, AS WELL AS STANFORD FOR A
21 MASTER'S DEGREE.

22 Q AND WHAT WAS YOUR UNDERGRADUATE DEGREE FROM
23 STANFORD?

24 A MY UNDERGRADUATE DEGREE WAS SOMETHING CALLED
25 SYMBOLIC SYSTEMS.

1 Q WHAT IS SYMBOLIC SYSTEMS?

2 A THAT'S THE QUESTION I GET EVERY TIME.

3 Q I DIDN'T WANT TO DISAPPOINT YOU IN THIS CASE.

4 A SYMBOLICS SYSTEM IS ACTUALLY A MAJOR THAT WAS
5 CREATED RIGHT AROUND THE TIME I GOT TO STANFORD.
6 IT'S AN INTERDISCIPLINARY MAJOR BETWEEN PHILOSOPHY,
7 PSYCHOLOGY, LINGUISTICS, AND COMPUTER SCIENCE.

8 AND -- IT'S A FASCINATING MAJOR, AND I
9 ACTUALLY DID AN EMPHASIS IN ARTIFICIAL
10 INTELLIGENCE.

11 SO I GOT TO STUDY HOW THE MIND WORKS AND
12 THINKS, HOW TO REPRESENT INFORMATION IN A COMPUTER,
13 AND SORT OF HUMAN COMPUTER INTERACTION.

14 Q AND IN WHAT FIELD IS YOUR MASTER'S DEGREE,
15 SIR?

16 A MY MASTER'S IS IN COMPUTER SCIENCE, ALSO WITH
17 AN EMPHASIS IN ARTIFICIAL INTELLIGENCE.

18 Q SIR, WHEN DID YOU FIRST MEET STEVE JOBS?

19 A WHEN I WAS IN GRAD SCHOOL GETTING MY MASTER'S,
20 I STARTED INTERVIEWING FOR FULL-TIME POSITIONS.

21 AND ONE OF THE PLACES I WENT AND
22 INTERVIEWED WAS AT NEXT COMPUTER, WHICH IS THE
23 COMPANY STEVEN STARTED AFTER HE LEFT APPLE.

24 AND I WAS IN AN INTERVIEW ROOM AND
25 SUDDENLY STEVE BURST INTO THE ROOM, GRABBED THE

1 PERSON WHO WAS INTERVIEWING ME AND PULLED THEM OUT
2 AND ASKED HIM A SET OF QUESTIONS IN THE HALLWAY.

3 A FEW MINUTES LATER, STEVE RETURNED, NOT
4 THE GUY WHO'S INTERVIEWING ME, AND ASKED ME A FEW
5 QUESTIONS AND THEN TOLD ME HE EXPECTED I WOULD GET
6 AN OFFER FROM NEXT, AND HE ALSO EXPECTED I WOULD
7 ACCEPT THE OFFER.

8 AND THEN HE LEFT AND THE INTERVIEWER CAME
9 BACK AND SAID IN CASE THERE'S ANY QUESTION WHETHER
10 STEVE IS HANDS ON, THE ANSWER IS YES.

11 Q DID YOU GET AN OFFER FROM NEXT COMPUTER?

12 A I WAS LUCKY ENOUGH TO GET AN OFFER, YES.

13 Q DID YOU ACCEPT THE OFFER?

14 A I DID.

15 Q HOW LONG DID YOU WORK AT NEXT COMPUTER?

16 A SO THAT WAS IN 1992, AND IN 1997 NEXT WAS
17 ACQUIRED BY APPLE. AND SO IT WAS, IT WAS AGREED TO
18 IN '96, IT CLOSED IN '97. SO IN 1997, ALONG WITH
19 NEXT, I WENT TO APPLE.

20 Q WHAT WERE YOUR -- WHAT WORK WERE YOU DOING AT
21 NEXT BEFORE IT WAS ACQUIRED BY APPLE?

22 A YEAH. I WAS AN ENGINEER. SO I WAS DESIGNING
23 AND WRITING THE CODE THAT MADE UP THE OPERATING
24 SYSTEM FROM NEXT AT THE TIME, AND WHEN WE GOT TO
25 APPLE, I CONTINUED DOING SIMILAR WORK.

1 Q I'M SORRY. I FORGOT WHETHER I'VE ASKED THIS
2 OR WHETHER YOU ANSWERED IT, BUT DID YOU THEN MOVE
3 TO APPLE WHEN APPLE ACQUIRED NEXT?

4 A I DID.

5 Q CAN YOU TELL US, JUST GENERALLY SO WE
6 UNDERSTAND YOUR BACKGROUND, WHAT YOU DID AT APPLE
7 BETWEEN 1997 AND 2004?

8 A I MANAGED THE OPERATING SYSTEM SOFTWARE. SO
9 ONE REASON THAT APPLE PURCHASED NEXT WAS TO HAVE AN
10 OPERATING SYSTEM STRATEGY. APPLE HAD MAC OS 7 AT
11 THE TIME, COMING INTO MAC OS 8 RIGHT AT THAT SAME
12 TIME, AND APPLE WANTED A STRATEGY FOR THE FUTURE.

13 SO I WAS MANAGING WHAT BECAME MAC OS 10,
14 STEVE ASKED FOR US TO COME UP WITH A GOOD SOLUTION
15 FOR A FUTURE OPERATING SYSTEM. A SET OF US SAT
16 DOWN AND CAME UP WITH MAC OS 10. SO I MANAGED A
17 PART OF IT AND EVENTUALLY ALL OF MAC OS 10.

18 Q AND, AGAIN, SO WE UNDERSTAND, WHAT IS MAC OS
19 10?

20 A SO MAC OS 10 IS THE OPERATING SYSTEM THAT RUNS
21 ALL MACINTOSHES TODAY, SO ALL THE LAPTOPS, I MANAGE
22 ALL OF THEM TODAY RUN MAC OS 10.

23 Q AND WHAT WAS YOUR RESPONSIBILITY IN TERMS OF
24 THE OVERALL DEVELOPMENT OF MAC OS 10?

25 A I WAS ONE OF THE PEOPLE WHO STARTED THE

1 PROJECT AND CREATED A PIECE OF IT, AND THEN OVER
2 TIME, I WAS RESPONSIBLE FOR MORE AND MORE PIECES,
3 THINGS LIKE CREATING VIDEO CONFERENCING, CREATING
4 SAFARI, THE WEB BROWSER, AND EVENTUALLY WAS
5 RESPONSIBLE FOR THE ENTIRE OPERATING SYSTEM.

6 Q AND CAN YOU TELL US WHAT YOU MEANT BY AN
7 OPERATING SYSTEM STRATEGY?

8 A SO THE GOAL OF AN OPERATING SYSTEM IS TO RUN
9 ALL OF THE MACHINE, BASICALLY DRIVE THE MACHINE,
10 AND WE WANTED AN OPERATING SYSTEM THAT COULD LAST
11 FOR ANOTHER 20 YEARS.

12 AND THE OPERATING SYSTEM THAT APPLE HAD
13 AT THE TIME DIDN'T HAVE THOSE LEGS, AND SO WE CAME
14 UP WITH A STRATEGY THAT WORKED REALLY WELL FOR
15 APPLICATIONS, YOU COULD BUY FROM SOMEONE ELSE AND,
16 AS WELL AS ALL THE BUILT-IN APPLICATIONS. SO
17 STRATEGY WAS A MODERN OPERATING SYSTEM.

18 MR. MCELHINNY: YOUR HONOR, I'M ABOUT TO
19 CHANGE SUBJECTS. I KNOW IT'S TWO MINUTES BEFORE
20 YOU WANT TO QUIT.

21 THE COURT: THIS ONE SAYS IT'S NOON, SO
22 THAT'S FINE.

23 MR. MCELHINNY: GOOD.

24 THE COURT: OKAY. SO WE ARE GOING TO
25 BREAK FOR ONE HOUR FOR LUNCH. AGAIN, PLEASE KEEP

1 AN OPEN MIND. PLEASE DON'T TALK TO ANYONE ABOUT
2 THE CASE, AND PLEASE DON'T READ ABOUT IT, YOU KNOW,
3 PLEASE DON'T READ OR DO YOUR OWN RESEARCH. OKAY?

4 ALL RIGHT. THANK YOU SO MUCH, AND WE'LL
5 SEE YOU BACK HERE AT 1:00 O'CLOCK.

6 (WHEREUPON, THE LUNCH RECESS WAS TAKEN.)

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1 MR. JOHNSON: WELL, THE INITIAL
2 DISCLOSURES THAT THEY SUBMITTED REFERS ONLY TO THE
3 '163 PATENT, AND THEY AMENDED IT TWICE. BOTH
4 TIMES --

5 THE COURT: WELL, LET ME SEE THEM. I
6 WANT TO SEE THEM. I'M GETTING TO THE POINT NOW
7 WHERE I WANT TO SEE THE ACTUAL DOCUMENTS. I DON'T
8 WANT TO TAKE ANY --

9 MR. JOHNSON: SORRY. THE PATEL EXHIBIT
10 D, WHICH WE SUBMITTED --

11 THE COURT: I NEED TO SEE IT. WE'RE
12 GOING TO DO ALL THESE IN OPEN COURT. YOU NEED TO
13 HAVE ALL THE DOCUMENTS READY TO GO.

14 LET ME SEE THE ACTUAL INITIAL DISCLOSURE.
15 WHO'S GOT IT? SHOW ME WHERE IT SAYS
16 PATENTS-IN-SUIT.

17 MR. JOHNSON: YOUR HONOR, THIS IS --
18 YOU'VE ALREADY SUSTAINED OUR OBJECTIONS, SO THIS
19 IS --

20 THE COURT: RIGHT. BUT I WAS NOT AWARE
21 OF THIS DEPOSITION TESTIMONY. YOUR OBJECTION SAID
22 THAT YOU HAD NO OPPORTUNITY DEPOSE HIM ON ANY
23 TOPIC, OTHER THAN ON THE ONE PATENT THAT HE WAS
24 LISTED, WHICH I BELIEVE WAS THE '135.

25 MR. JOHNSON: IF I MAY APPROACH, YOUR

1 HONOR? I'LL SHOW YOU THE --

2 THE COURT: ALL RIGHT. LET ME SEE IT.

3 MR. JOHNSON: RIGHT WHERE THE BLUE FLAGS
4 ARE (HANDING).

5 THE COURT: OKAY. WELL, IF YOU LOOK AT
6 SCOTT FORSTALL, IT SAYS '163 NEXT TO HIS NAME, BUT
7 IT SAYS "POTENTIAL AREA OF KNOWLEDGE." IT SAYS
8 "APPLE PATENTS-IN-SUIT."

9 MR. JOHNSON: WELL, IT SAYS "PERTINENT
10 PATENTS," AND IF YOU LOOK DOWN THE LEFT-HAND SIDE,
11 INDIVIDUALLY FOR EACH WITNESS IT IDENTIFIES THE
12 PATENTS THAT ARE PERTINENT FOR THAT PARTICULAR
13 WITNESS.

14 AND WHEN YOU LOOK AT INTERROGATORY NUMBER
15 1, IN APPLE'S RESPONSE, FIVE TIMES WE ASKED THEM TO
16 IDENTIFY THE PEOPLE THAT WERE RESPONSIBLE OR
17 INVOLVED IN THE PATENTS IN THE CASE.

18 NOWHERE DO THEY IDENTIFY MR. FORSTALL AS
19 HAVING ANY KNOWLEDGE RELEVANT TO THE '381, THE
20 '915, OR THE '305 PATENT, NOT A SINGLE TIME.

21 THEY AMENDED THAT FIVE TIMES, INCLUDING
22 THREE DAYS BEFORE THE CLOSE OF DISCOVERY.

23 MR. MCELHINNY: MAY I SAY SOMETHING
24 BRIEFLY THAT MAY BE OF ASSISTANCE, YOUR HONOR?

25 THE COURT: WHAT'S THAT?

1 MR. MCELHINNY: ALL I INTENDED TO DO WITH
2 MR. FORSTALL WAS TO PUT THE PATENT INTO EVIDENCE
3 AND HAVE HIM DESCRIBE, IN THE MOST GENERAL TERMS,
4 WHAT IT COVERS. THAT'S ALL I WAS GOING TO DO WITH
5 HIM IN HIS DIRECT.

6 HE'S THE SUPERVISOR OF THE ENTIRE GROUP.
7 IT SAID ALL PERTINENT PATENTS. IT --

8 THE COURT: WELL --

9 MR. JOHNSON: IT SAYS --

10 THE COURT: IT SAYS PERTINENT PATENTS AND
11 NEXT TO HIS NAME, IT SAYS '163.

12 MR. JOHNSON: AND IT SAYS IT TWICE. THEY
13 AMENDED IT. THEY SUPPLEMENTED IT. EACH TIME IT
14 SAYS '163. NOWHERE, EVEN IN THE WITNESS STATEMENT,
15 DO THEY IDENTIFY THE '305 PATENT.

16 THE COURT: ALL RIGHT. GIVE ME JUST ONE
17 SECOND, PLEASE.

18 (PAUSE IN PROCEEDINGS.)

19 MR. JOHNSON: AND YOUR HONOR, I HAVE THE
20 INTERROGATORY RESPONSES AS WELL.

21 THE COURT: NOW, THIS QUESTION ABOUT THE
22 ICONS, HOW DID THAT COME UP?

23 MR. JOHNSON: I'M SORRY, WHICH QUESTION?

24 THE COURT: I'M LOOKING AT APPLE'S MOTION
25 FOR RECONSIDERATION. IT'S PAGE 4, LINE 3.

1 MR. JOHNSON: IS THERE A DEPOSITION CITE?
2 I DON'T HAVE THAT SINCE --

3 THE COURT: IT'S HUNG DECLARATION EXHIBIT
4 G, PAGE 216, LINES 17 THROUGH 23. IT'S A
5 DISCUSSION ABOUT THE ICONS. IT TALKS ABOUT THE
6 PINCH TO ZOOM AND THE RUBBER BANDING.

7 MR. JOHNSON: YOUR HONOR, IN THIS
8 INSTANCE, MR. FORSTALL WAS REFERRING SPECIFICALLY
9 TO A MEETING THAT OCCURRED BETWEEN APPLE AND GOOGLE
10 AND I HAD ASKED HIM WHAT WAS DISCUSSED IN THAT
11 MEETING. THAT'S ALL I ASKED HIM.

12 I DIDN'T ASK HIM ABOUT --

13 THE COURT: ALL RIGHT. LET'S STOP A
14 SECOND HERE.

15 SO WE HAVE THINGS LIKE PINCH TO ZOOM AND
16 PUT TWO FINGERS DOWN AND I GUESS WE CALL THIS A
17 DEPINCH. IN CREATING THE IPHONE, THERE WERE SO
18 MANY COMPLETELY UNSOLVED PROBLEMS.

19 LET'S ADDRESS THAT ONE.

20 MR. JOHNSON: CAN YOU TELL ME WHERE
21 YOU'RE READING FROM? WHAT PAGE?

22 THE COURT: PAGE 5 OF THE MOTION FOR
23 RECONSIDERATION. DO YOU HAVE THAT? IT'S DOCUMENT
24 NUMBER 1569.

25 MR. JOHNSON: I HAVE THE DEPOSITION

1 TESTIMONY, YOUR HONOR. I DON'T HAVE THEIR MOTION.

2 THE COURT: OKAY. PAGE 28, LINES 19
3 THROUGH 22, PAGE 23, LINE 24 THROUGH PAGE 24, LINE
4 17.

5 MR. JOHNSON: YOUR HONOR, CAN YOU GIVE ME
6 THE PAGES AGAIN?

7 THE COURT: SURE, PAGE 28.

8 MR. JOHNSON: THIS IS FROM WHICH
9 DEPOSITION, OCTOBER 27TH?

10 THE COURT: WHAT DOES THE HUNG
11 DECLARATION, EXHIBIT G --

12 MR. JACOBS: YOUR HONOR IS EXACTLY RIGHT.
13 IT'S OCTOBER 27TH, PAGE 28, AND MR. FORSTALL IS
14 EXPLAINING, REALLY IN THE WAY HE WOULD DO IN HIS
15 TESTIMONY IN A FEW MINUTES, HOW THE '163 FIT INTO
16 THE OVERALL INVENTION AND DEVELOPMENT OF IOS AS IT
17 RELATED TO THE IPHONE.

18 MR. JOHNSON: THERE HE'S TALKING ABOUT
19 THE '163 PATENT, AND I'M NOT OBJECTING TO
20 SPECIFICALLY THE FACTS ASSOCIATED WITH THE '163
21 PATENT.

22 HE SAID AT DIFFERENT TIMES HE WASN'T A
23 LAWYER AND HE WASN'T ABLE TO CONSTRUE THE DIFFERENT
24 TERMS THAT ARE IN THE '163 PATENT.

25 BUT HE IS THE INVENTOR ON THE '163

1 PATENT, AND I'M NOT OBJECTING TO THE PERCIPIENT
2 TESTIMONY WITH RESPECT TO THE '163.

3 I'M OBJECTING TO HIS TESTIMONY ABOUT THE
4 '381 PATENT, THE '915, AND THE --

5 THE COURT: LET ME ASK MR. JACOBS, WHY DO
6 YOU HAVE THIS LABELED AS THE '915 PATENT?

7 MR. JACOBS: WHY DO I HAVE --

8 THE COURT: THIS DESCRIPTION ABOUT THE
9 PINCH TO ZOOM AND THE TWO FINGERS DOWN AND THE
10 DEPINCH AND --

11 MR. JACOBS: THAT'S THE OVERALL SUBJECT,
12 PART OF THE SUBJECT OF THE '915 PATENT AND THOSE
13 TOPICS, YOUR HONOR.

14 MR. JOHNSON: YOUR HONOR, IF YOU LOOK AT
15 LINE 7, I WAS ASKING ABOUT CLAIM 2 OF THE '163
16 PATENT. I WAS NOT ASKING ABOUT THE '915 PATENT.

17 MR. JACOBS: BUT HE EXPLAINED HIS
18 KNOWLEDGE OF THE OVERALL DEVELOPMENT OF THE IOS AND
19 HOW THESE INVENTIONS FIT TOGETHER IN THE
20 DEVELOPMENT OF IOS.

21 THE COURT: ALL RIGHT. THE OBJECTION IS
22 SUSTAINED.

23 MR. JOHNSON: THANK YOU, YOUR HONOR.

24 THE COURT: OKAY. LET'S BRING THEM IN,
25 PLEASE.

1 (WHEREUPON, THE FOLLOWING PROCEEDINGS
2 WERE HELD IN THE PRESENCE OF THE JURY:)

3 THE COURT: ALL RIGHT. THE TIME IS 1:12.
4 PLEASE GO AHEAD.

5 MR. MCELHINNY: THANK YOU.

6 Q MR. FORSTALL, BEFORE WE BROKE FOR LUNCH, I HAD
7 BROUGHT YOU UP TO 2004, AND MY NEXT QUESTION IS,
8 HOW DID YOU GET INVOLVED IN WHAT BECAME THE
9 DEVELOPMENT OF THE IPHONE?

10 A SO I THINK YOU ACTUALLY BROUGHT ME UP TO 2003.

11 Q ALL RIGHT. LET'S GO TO 2003, THEN.

12 A IN 2003, WE BUILT ALL THESE GREAT MACS AND
13 LAPTOPS AND WE STARTED ASKING OURSELVES, WHAT COMES
14 NEXT?

15 AND ONE THOUGHT WAS A TABLET, SO WE
16 SETTLED ON THIS IDEA OF COULD WE MAKE A BEAUTIFUL
17 TABLET WITHOUT A KEYBOARD, WITHOUT A HINGE WHERE
18 YOU HAVE TO FOLD IT LIKE YOU DO FOR A LAPTOP.

19 AND WE SETTLED PRETTY QUICKLY AT
20 INVESTIGATING WHETHER WE COULD DO THAT USING A
21 TOUCHSCREEN, AND NOT ONE WITH A STYLUS, BUT
22 LITERALLY MAKE IT SO YOUR FINGER OR FINGERS COULD
23 BE THE STYLUS OR STYLII.

24 SO WE STARTED INVESTIGATING AND BUILDING
25 PROTOTYPES AND DEMOS TO SEE IF WE COULD BUILD A

1 TABLET. THAT WAS 2003.

2 IN 2004, WE WERE SITTING AROUND AND WE
3 ALL HAD CELL PHONES, AND I REMEMBER SITTING WITH
4 STEVE AND SOME OTHERS SAYING WE ALL HAD CELL PHONES
5 AND WE ALL HATED OUR CELL PHONES. I THINK WE HAD
6 THESE FLIP PHONES AT THE TIME.

7 AND WE WERE ASKING OURSELVES, COULD WE
8 USE THE TECHNOLOGY WE WERE DOING WITH TOUCH THAT
9 WE'D BEEN PROTOTYPING FOR THIS TABLET AND COULD WE
10 USE THAT SAME TECHNOLOGY TO BUILD A PHONE,
11 SOMETHING THE SIZE THAT COULD FIT IN YOUR POCKET,
12 BUT GIVE IT ALL THE SAME POWER THAT WE WERE LOOKING
13 AT GIVING TO THE TABLET?

14 AND SO WE, WE PROTOTYPED THIS THING,
15 WHICH I'LL NEVER FORGET. WE TOOK THAT TABLET AND
16 WE BUILT A SMALL SCROLLING LIST.

17 NOW, ON A TABLET WE WERE DOING PINCH AND
18 ZOOM AND SCROLLS AND ALL THOSE THINGS, AND WE
19 WANTED IT TO FIT IN THE POCKET, SO WE BUILT A SMALL
20 CORNER OF IT AS A LIST OF CONTACTS.

21 AND YOU WOULD SIT THERE AND YOU'D SCROLL
22 ON THIS LIST OF CONTACTS, YOU COULD TAP ON THE
23 CONTACT, IT WOULD SLIDE OVER AND SHOW YOU THE
24 CONTACT INFORMATION, AND YOU COULD TAP ON THE PHONE
25 NUMBER AND IT WOULD SAY CALLING. IT WASN'T

1 CALLING, BUT IT WOULD SAY IT WAS CALLING.

2 AND IT WAS JUST AMAZING. AND WE REALIZED
3 THAT A TOUCHSCREEN THAT WAS SIZED THAT COULD FIT
4 INTO YOUR POCKET WOULD WORK PERFECTLY AS ONE OF
5 THESE PHONES.

6 SO WE TOOK AND SHELVED THE IDEA OF THE
7 TABLET FOR YEARS -- WE LATER STARTED UP AGAIN AND
8 THAT WAS THE IPAD -- BUT WE SWITCHED OVER IN 2004
9 TO BUILDING WHAT BECAME THE IPHONE.

10 Q LET'S DEFINE SOME TERMS. YOU MENTIONED THE
11 TERM "PINCH." WHAT DO YOU MEAN BY "PINCH"?

12 A YEAH. THE WHOLE ILLUSION WE WERE TRYING TO
13 CREATE WITH THE TOUCHSCREEN WAS THAT YOU -- THAT
14 YOUR FINGERS WERE LITERALLY REACHING THROUGH THE
15 SCREEN TO THE CONTENT YOU SAW BEHIND IT.

16 AND SO IF YOU HAD TWO FINGERS, YOU WANTED
17 THE CONTENT BEHIND THOSE TWO FINGERS TO STAY THE
18 SAME, AND AS YOU PINCHED -- IMAGINE THERE WAS A
19 PICTURE OF A BICYCLE ON THE SCREEN AND YOU TOOK AND
20 YOU PUT ONE FINGER ON ONE WHEEL OF THE BICYCLE AND
21 THE ONE FINGER ON THE OTHER WHEEL.

22 AS YOU MOVED YOUR FINGERS APART, THE
23 WHEELS OF THE BICYCLE SHOULD STAY UNDERNEATH YOUR
24 FINGERS AND YOU ARE ZOOMING INTO THE PHOTO, THE
25 ENTIRE BICYCLE IS GETTING BIGGER.

1 CONVERSELY, IF YOU TAKE AND PINCH INWARD,
2 AGAIN, THE WHEELS OF THE BICYCLE ARE STAYING UNDER
3 YOUR FINGER AND THE BICYCLE WAS GETTING SMALLER.
4 SO THAT WAS DEPINCH OR REVERSE PINCH.

5 Q THE OTHER TERM YOU USED THAT I WANT TO MAKE
6 SURE WE HAVE A DEFINITION FOR IS "SCROLL." WHAT DO
7 YOU MEAN BY "SCROLL"?

8 A AGAIN, THE ILLUSION IS THAT YOUR FINGER IS
9 PHYSICALLY MOVING THE CONTENT ON THE SCREEN.

10 SO WHEN YOU WOULD PUT A SINGLE FINGER
11 DOWN AND MOVE THAT FINGER ALONG, YOU WERE SCROLLING
12 THE CONTENTS.

13 SO IF THERE WAS A DOCUMENT AND YOU PUT
14 YOUR FINGER DOWN, YOU'RE PHYSICALLY HOLDING THE
15 DOCUMENT UP AND DOWN AND SCROLLING IT.

16 IF THERE'S A LIST OF MUSIC, YOU'RE
17 PHYSICALLY MOVING THAT LIST OF MUSIC AS YOU SCROLL.

18 Q WHAT WAS YOUR PERSONAL ROLE, THEN, JUST IN
19 GENERAL, IN TERMS OF THE DEVELOPMENT OF THE IPHONE?

20 A IN 2004 WHEN WE DECIDED TO, TO BUILD THE
21 IPHONE, STEVE KNEW THERE WERE A LOT OF PEOPLE THAT
22 WERE GOING TO HAVE TO BE INVOLVED, A LOT OF GROUPS,
23 SO HE PUT DIFFERENT PEOPLE IN CHARGE OF EACH OF THE
24 GROUPS.

25 I WAS PUT IN CHARGE OF ALL OF THE

1 SOFTWARE, SO I STARTED AND BUILT A TEAM.

2 AND THERE WAS A HARDWARE TEAM, THERE WAS
3 AN INDUSTRIAL DESIGN TEAM. SO THERE WERE MANY
4 TEAMS AND I WAS RESPONSIBLE FOR BUILDING THE
5 SOFTWARE TEAM.

6 Q HOW DID YOU GO ABOUT RECRUITING THE TEAM THAT
7 YOU USED FOR THE IPHONE PROJECT?

8 A SO THIS WAS -- THIS WAS A REAL CHALLENGE.
9 STEVE GAVE ME A, A DIFFICULT CONSTRAINT, AND THAT
10 CONSTRAINTS WAS HE DIDN'T WANT, FOR SECRECY
11 REASONS, FOR ME TO HIRE ANYONE OUTSIDE OF APPLE TO
12 WORK ON THE USER INTERFACE, MEANING ANYTHING YOU
13 WERE GOING TO SEE ON THE SCREEN, HE DIDN'T WANT ME
14 TO HIRE ANYONE FROM OUTSIDE OF APPLE TO WORK ON
15 THAT. SO I HAD TO FIND PEOPLE FROM WITHIN APPLE TO
16 WORK ON THAT.

17 BUT HE TOLD ME I COULD HIRE ANYONE IN THE
18 COMPANY, I COULD MOVE ANYONE IN THE COMPANY INTO
19 THIS TEAM TO BUILD THE IPHONE TEAM.

20 AND THAT WAS QUITE A CHALLENGE. THE WAY
21 I DID IT IS I WOULD, I WOULD FIND PEOPLE WHO WERE
22 TRUE SUPERSTARS AT THE COMPANY, JUST AMAZING
23 ENGINEERS, AND I WOULD BRING THEM TO MY OFFICE AND
24 I WOULD SIT THEM DOWN AND I WOULD SAY, "YOU ARE A
25 SUPERSTAR IN YOUR CURRENT ROLE. YOUR MANAGER LOVES

1 YOU. YOU'RE GOING TO BE INCREDIBLY SUCCESSFUL AT
2 APPLE IF YOU JUST STAY IN YOUR CURRENT ROLE AND
3 KEEP ON DOING WHAT YOU WANT TO DO.

4 "I HAVE ANOTHER OFFER FOR YOU, ANOTHER
5 OPTION. WE'RE STARTING A NEW PROJECT. IT'S SO
6 SECRET, I CAN EVEN TELL YOU WHAT THAT NEW PROJECT
7 IS. I CANNOT TELL YOU WHO YOU WILL WORK FOR.

8 "WHAT I CAN TELL YOU IS IF YOU CHOSE TO
9 ACCEPT THIS ROLE, YOU'RE GOING TO WORK HARDER THAN
10 YOU EVER HAVE IN YOUR ENTIRE LIFE. YOU'RE GOING TO
11 HAVE TO GIVE UP NIGHTS AND WEEKENDS PROBABLY FOR A
12 COUPLE YEARS AS WE MAKE THIS PRODUCT."

13 AND AMAZINGLY, SOME TREMENDOUSLY TALENTED
14 PEOPLE ACCEPTED THAT CHALLENGE AND THAT'S HOW I PUT
15 TOGETHER THE IPHONE TEAM.

16 Q WHY WAS THIS PROJECT SO SUPER SECRET?

17 A WE -- WE WANTED TO BUILD A PHONE FOR
18 OURSELVES. WE WANTED TO BUILD A PHONE THAT WE
19 LOVED, THAT REALLY WAS, YOU KNOW, A COMPUTER IN
20 YOUR POCKET IN SOME WAYS.

21 YOU KNOW, IT WAS THE ENTIRE INTERNET. IT
22 WAS AN IPOD, SO IT HAD MUSIC.

23 WE WANTED SOMETHING THAT REALLY, YOU
24 KNOW, WAS A GREAT PHONE.

25 AND WE WANTED TO DO IT FROM WHOLE CLOTH.

1 WE WANTED TO FIGURE OUT HOW TO BUILD SOMETHING
2 GREAT WITHOUT ANYONE ELSE FINDING OUT WHAT WE WERE
3 DOING AND LEAKING IT.

4 SO WE TRIED KEEPING IT INCREDIBLY SECRET
5 SO IT WOULD NOT LEAK OUT BEFORE WE ANNOUNCED IT.

6 Q AT THE BEGINNING OF THE PROJECT, WERE YOU
7 CONFIDENT THAT YOU COULD DO THIS, DEVELOP A NEW
8 PHONE?

9 A NOT AT ALL.

10 Q WERE THERE -- IF YOU HAD NOT SUCCEEDED --
11 LET'S CHANGE HISTORY AND GO BACK TO THE PERSON WHO
12 DIDN'T CROSS THE STREET AND ALL OF HISTORY CHANGES.

13 IF YOU HAD NOT SUCCEEDED, WOULD THERE
14 HAVE BEEN NEGATIVE CONSEQUENCES FOR APPLE?

15 A ABSOLUTELY.

16 Q FOR EXAMPLE?

17 A WE WERE TAKING MANY OF THE KEY PEOPLE AT THE
18 COMPANY AND MOVING THEM ON TO THIS PROJECT. WE
19 ACTUALLY MOVED OUT OTHER RELEASES OF OUR PRODUCTS
20 BECAUSE OF THE PEOPLE THAT WE TOOK OFF THOSE
21 PROJECTS AND PUT ON TO THIS.

22 AND SO HAD IT NOT SUCCEEDED, NOT ONLY
23 WOULD WE HAVE HAD THE DETRIMENT OF THE LACK OF
24 THOSE PRODUCTS SHIPPING, WE WOULDN'T HAVE HAD
25 SOMETHING ELSE TO FILL IN AT THE SAME TIME.

1 AND HAD WE NOT SUCCEEDED, SOME OF THESE
2 GREAT PEOPLE WOULD HAVE BURNED OUT AND PROBABLY
3 LEFT.

4 Q WHERE DID THIS DEVELOPMENT PROJECT TAKE PLACE
5 PHYSICALLY?

6 A WE TOOK A -- ONE OF THE BUILDINGS WE HAVE UP
7 IN CUPERTINO AND WE, WE LOCKED IT DOWN. WE STARTED
8 WITH ONE FLOOR. WE LOCKED THE ENTIRE FLOOR DOWN.
9 WE PUT DOORS WITH BADGE READERS, THERE WERE
10 CAMERAS, I THINK TO GET TO SOME OF OUR LABS, YOU
11 HAD TO BADGE IN FOUR TIMES TO GET THERE.

12 AND AT THE TIME, WE CALLED PROJECTS BY
13 CODE NAMES. THEY WERE COLORS. THE ORIGINAL IPHONE
14 WAS CALLED THE PURPLE PROJECT.

15 AND SO I REFERRED TO THIS, THIS BUILDING
16 AS THE PURPLE DORM BECAUSE --

17 Q WHERE DID THAT NAME COME FROM?

18 A WELL, VERY MUCH LIKE A DORM, PEOPLE WERE THERE
19 ALL THE TIME. THEY WERE THERE AT NIGHT. THEY WERE
20 THERE ON WEEKENDS. YOU KNOW, IT SMELLED SOMETHING
21 LIKE PIZZA.

22 AND, IN FACT, ON THE FRONT DOOR OF THE
23 PURPLE DORM, WE PUT A SIGN UP THAT SAID "FIGHT
24 CLUB" BECAUSE THE FIRST RULE OF FIGHT CLUB IN THE
25 MOVIE IS YOU DON'T TALK ABOUT FIGHT CLUB, AND THE

1 FIRST RULE ABOUT THE PURPLE PROJECT IS YOU DO NOT
2 TALK ABOUT THAT OUTSIDE OF THOSE DOORS.

3 Q THE PEOPLE ON THE SOFTWARE -- SO YOU'RE DOING
4 THE SOFTWARE AND THE USER INTERFACE.

5 WHAT HARDWARE WERE YOU USING DURING THE
6 DEVELOPMENT PHASE?

7 A AS WE WERE BUILDING THE SOFTWARE, THE HARDWARE
8 TEAM WAS MOVING EQUALLY FAST TO BUILD A WHOLE SET
9 OF INCREDIBLE HARDWARE, AND AS THEY WOULD BUILD
10 SOMETHING, THEY WOULD GIVE IT TO US; WE WOULD
11 IMMEDIATELY PUT OUR SOFTWARE ON TOP OF THAT, FIND
12 ANY ISSUES, FIND THINGS THAT HAD BEEN FIXED, GIVE
13 FEEDBACK, AND THEN THEY WOULD ITERATE.

14 AND THE KEY REALLY WAS THE TOUCHSCREEN
15 DISPLAY. AND THAT WAS A HUGE CHALLENGE.

16 Q AND WHAT KIND OF TOUCHSCREEN? WHAT WERE YOU
17 USING FOR A TOUCHSCREEN?

18 A WHEN WE STARTED THE PROJECT, MOST TOUCHSCREENS
19 OUT THERE THAT PEOPLE HAD IN THEIR DEVICES WERE
20 CALLED RESISTIVE TOUCH, AND WHAT THAT MEANS IS WHEN
21 YOU TAKE YOUR FINGER AND YOU PRESS DOWN ON THE
22 SCREEN, IT ACTUALLY DEFORMS THE SCREEN AND CHANGES
23 THE RESISTANCE SO THAT THE SCREEN CAN TELL THAT
24 YOU'RE PHYSICALLY TOUCHING IT.

25 BUT THIS HAD TWO PRETTY LARGE PROBLEMS IN

1 OUR EYES. ONE IS IT PHYSICALLY DEFORMS THE SCREEN,
2 SO IF YOU'RE LOOKING AT AN IMAGE OR A LIST OF MUSIC
3 ON THE SCREEN, YOU SEE THIS WARPING OF THE TEXT OR
4 THE IMAGE. AND SO WE DIDN'T LIKE THE WARPING PART.

5 THE SECOND IS WHEN YOU MOVE YOUR FINGER
6 ALONG, YOU HAVE TO PRESS PRETTY HARD, SO YOUR
7 FINGER STARTS TO FATIGUE OVER TIME AS YOU'RE TRYING
8 TO SCROLL. AND WE WERE TRYING TO CREATE THIS
9 ILLUSION THAT YOU'RE LITERALLY TOUCHING THE CONTENT
10 AND MOVING IT WITH YOUR FINGER, AND YOU SHOULD BE
11 ABLE TO TOUCH IT REALLY LIGHTLY.

12 SO THE HARDWARE TEAM SET OUT TO BUILD
13 SOMETHING CALLED CAPACITIVE TOUCH, AND CAPACITIVE
14 TOUCH ALLOWS YOU TO GET YOUR FINGER VERY CLOSE OR
15 EVEN LIGHTLY TOUCH THE SCREEN, IT CHANGES THE
16 CAPACITANCE AND NOTICES YOUR FINGER THERE.

17 SO THE HARDWARE TEAM WAS BUILDING THESE
18 EARLY PROTOTYPES AND LATER PROTOTYPES OF A
19 CAPACITIVE TOUCH SCREEN AND WE WERE TAKING
20 ADVANTAGE OF THAT WITH OUR SOFTWARE.

21 Q NOW, YOU'VE DONE OPERATING SYSTEMS AND USER
22 INTERFACES FOR BOTH COMPUTERS AND PHONES, AND I
23 WANT TO ASK YOU, WHAT UNIQUE CHALLENGES WERE YOU
24 FACING TO TRY TO DO THIS OPERATING SYSTEM, AND THE
25 USER INTERFACE PARTICULARLY, ON A SMALL

1 TOUCHSCREEN?

2 A THERE WERE A NUMBER OF CHALLENGES. ONE OF
3 THEM WAS EVERYTHING WE DEALT WITH BEFORE WAS BASED
4 ON A MOUSE AND A KEYBOARD, AND HERE WE WERE
5 CHANGING THE ENTIRE USER INTERFACE TO BE BASED
6 AROUND TOUCH.

7 SO WE HAD TO RETHINK EVERYTHING ABOUT HOW
8 BIG CONTROLS SHOULD BE, WHAT SHOULD HAPPEN WHEN YOU
9 TOUCH, HOW DO YOU SCROLL, HOW DO YOU KNOW WHERE YOU
10 ARE IN A DOCUMENT, HOW DO YOU KNOW IF YOU'RE AT THE
11 END OF A LIST OR THE END OF A DOCUMENT?

12 EVERY SINGLE PART OF THE ENTIRE DEVICE
13 HAD TO BE RETHOUGHT FOR DOING TOUCH. SO WE STARTED
14 WITH A BRAND NEW U/I, A BRAND NEW USER INTERFACE,
15 INSTEAD OF SOMETHING THAT WAS EXISTING. SO THAT'S
16 ONE.

17 SECOND IS WE DIDN'T WANT TO HAVE A
18 PHYSICAL KEYBOARD ON HERE. I MEAN, IF YOU LOOK
19 BACK TO, YOU KNOW, EVEN 2005 WHEN THE ENGINEERING
20 TEAM STARTED ON THIS, SMARTPHONES ALL HAD PHYSICAL
21 KEYBOARDS. YOU KNOW, THE MOST POPULAR AT THE TIME
22 PROBABLY WAS A BLACKBERRY AND IT HAD A PHYSICAL
23 KEYBOARD.

24 AND MANY PEOPLE THOUGHT WE WERE ACTUALLY
25 CRAZY TO TRY TO BUILD SOMETHING WITHOUT ANY FORM OF

1 PHYSICAL KEYBOARD, NOT A SLIDE OUT ONE, NOT ONE ON
2 THE FRONT SCREEN, NOTHING.

3 AND SO THAT WAS, IN LARGE PART, A SCIENCE
4 PROJECT FOR US TO BE ABLE TO CREATE A, AN ON SCREEN
5 TOUCH KEYBOARD THAT COULD WORK REALLY WELL AND THEN
6 GET OUT OF THE WAY WHEN YOU WEREN'T USING IT.

7 AND THEN WHEN YOU SWITCHED TO A DIFFERENT
8 LANGUAGE, YOU COULD ADD DIFFERENT KEYS.

9 SO THERE'S LOTS OF ADVANTAGES. BUT IT
10 WAS REALLY DIFFICULT.

11 ONE OTHER ONE WAS WE WANTED TO GIVE
12 PEOPLE THE ENTIRE WEB, THE ENTIRE INTERNET
13 EXPERIENCE, AND THE INTERNET IS DESIGNED FOR A MUCH
14 LARGER SCREEN. WHEN A WEB DEVELOPER IS BUILDING A
15 SITE FOR THE INTERNET, THEY DESIGN IT EXPECTING A
16 WINDOW LIKE THIS ON A COMPUTER.

17 AND, YET, WE HAVE THIS VERY, YOU KNOW,
18 COMPARED TO THAT, SMALL WINDOW, SMALL SCREEN, INTO
19 THAT WEB WORLD.

20 SO WE WANTED TO SOLVE THE PROBLEM OF
21 GIVING PEOPLE THE ENTIRE REAL INTERNET ON THIS
22 DEVICE.

23 Q WHERE THERE INTERNET BROWSERS AVAILABLE AT THE
24 TIME ON PHONES?

25 A THERE WERE. THERE WAS A TECHNOLOGY CALLED

1 WAP, W-A-P, AND IT REALLY GAVE YOU THIS BABY WEB,
2 THIS DUMBED DOWN WEB.

3 YOU CAN IMAGINE A WEB DEVELOPER WHO'S
4 BUILDING A WEBSITE, SAY THE NEW YORK TIMES. IF
5 THEY WANTED TO PROVIDE THAT FOR A MOBILE DEVICE,
6 THEY HAD TO REWRITE THE ENTIRE WEB PAGE, THE HOME
7 PAGE AND ALL OF THE OTHER PAGES, SPECIFICALLY TO
8 APPEAR IN THIS OTHER FORMAT FOR THESE DUMBED DOWN
9 BROWSERS.

10 Q WHEN YOU'RE PUTTING A WEB PAGE ON A SMALL
11 SCREEN, IS PRINT SIZE AN ISSUE?

12 A ABSOLUTELY. IF YOU'RE LOOKING AT, SAY, AGAIN,
13 THE NEW YORK TIMES, THE ENTIRE WEB PAGE AND IT'S
14 FITTING ON A THREE AND A HALF INCH SCREEN, THEN THE
15 TEXT SIZE IS FAR TOO SMALL FOR MOST THINGS TO READ
16 IT.

17 SO YOU HAVE TO BE ABLE TO ZOOM AROUND TO
18 BE ABLE TO SEE IT.

19 Q YOU HAVEN'T BEEN HERE FOR SOME OF THE
20 ARGUMENTS, BUT THERE'S BEEN SOME DISCUSSIONS OF
21 WHETHER SOME OF THE USER INTERFACE INVENTIONS THAT
22 WE ARE GOING TO BE TALKING ABOUT ARE SMALL THINGS
23 OR TRIVIAL THINGS OR LESS IMPORTANT THAN OTHER
24 STUFF.

25 FROM YOUR OWN EXPERIENCE, HOW DO YOU

1 CAPTURE THE AMOUNT OF THE INVESTMENT THAT WENT INTO
2 CREATING THESE USER INTERFACE FEATURES THAT YOU'RE
3 TALKING ABOUT?

4 MR. JOHNSON: OBJECTION, VAGUE.

5 THE COURT: OVERRULED.

6 THE WITNESS: THE INVESTMENT IN BUILDING
7 A USER INTERFACE THAT COULD WORK ON THIS SIZE
8 DEVICE WITH YOUR FINGERS AND TOUCH WAS IMMENSE. I
9 KNOW I PERSONALLY DEDICATED YEARS OF MY LIFE TO
10 THIS, AS DID HUNDREDS OF PEOPLE ON THIS TEAM.

11 AND IT WAS VERY, VERY DIFFICULT.

12 BY MR. MCELHINNY:

13 Q SIR, IF YOU WOULD OPEN YOUR BINDER, PLEASE, TO
14 EXHIBIT 163. I'M SORRY, EXHIBIT 1046.

15 WHAT IS EXHIBIT 1046, SIR?

16 A IT IS U.S. PATENT 7,864,163.

17 Q AND ARE YOU ONE OF THE NAMED INVENTORS ON THIS
18 PATENT?

19 A I AM.

20 MR. MCELHINNY: YOUR HONOR, I WOULD MOVE
21 EXHIBIT 1046.

22 THE COURT: ANY OBJECTION?

23 MR. JOHNSON: NO, YOUR HONOR.

24 THE COURT: IT'S ADMITTED.

25 ///

1 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
2 1046, HAVING BEEN PREVIOUSLY MARKED FOR
3 IDENTIFICATION, WAS ADMITTED INTO
4 EVIDENCE.)

5 BY MR. MCELHINNY:

6 Q SIR, CAN YOU TELL US, AT A GENERAL LEVEL, WHAT
7 YOUR INVENTION DEALT WITH?

8 A SO THIS INCLUDES A LOT OF THINGS. LET ME
9 DESCRIBE ONE EXAMPLE THAT'S COVERED BY THIS
10 INVENTION.

11 WHEN YOU'RE BROWSING THE WEB IN A WEB
12 BROWSER, LIKE SAFARI, THERE ARE A LOT OF DIFFERENT
13 STORIES AND SO, AGAIN, IMAGINE THE NEW YORK TIMES
14 HOME PAGE. YOU GO THERE AND THERE'S COLUMNS OF
15 STORIES, THERE'S HORIZONTAL STORIES, THERE MIGHT BE
16 AN IMAGE OF A DIFFERENT SIZE, MAYBE A MOVIE, ALL
17 THESE DIFFERENT PIECES OF CONTENT ON THE WEB PAGE.

18 AND THE ISSUE IS -- WELL, WHAT THIS TRIES
19 TO SOLVE IS TO MAKE A REALLY EASY WAY FOR YOU TO
20 NAVIGATE BETWEEN THOSE DIFFERENT STORIES, THOSE
21 DIFFERENT PIECES OF CONTENT ON THE WEB PAGE.

22 Q AND HOW -- CAN YOU TELL US HOW IT DOES THAT?

23 A YES. SO IN THAT EXAMPLE, YOU CAN JUST -- WHAT
24 WE IMPLEMENTED WAS YOU CAN DOUBLE TAP ON ONE OF THE
25 STORIES, AND JUST BY DOUBLE TAPPING ON THE STORY,

1 THE IPHONE ITSELF WILL FIGURE OUT WHICH STORY YOU
2 MEAN AND THEN ZOOM IT UP SO IT SETS THE FONT SIZE
3 RIGHT AND POSITIONS IT AS BEST IT CAN FOR YOU TO
4 READ THAT STORY.

5 AND THEN YOU CAN TAP, DOUBLE TAP ON
6 ANOTHER STORY NEXT TO IT, AND IT'LL AUTOMATICALLY
7 CHANGE THE SCALING AND MOVE THAT PART OF THE STORY
8 SO YOU CAN READ THAT ONE REALLY WELL ALSO.

9 SO IT ALLOWS YOU TO REALLY EASILY
10 NAVIGATE THROUGH A WEBSITE JUST BY TAPPING AROUND,
11 OR DOUBLE TAPPING AROUND.

12 Q CAN WE PLEASE HAVE PLAINTIFF'S DEMONSTRATIVE
13 EXHIBIT 25?

14 CAN YOU -- CAN YOU TELL US WHAT THIS IS
15 SHOWING, PLEASE?

16 A SO I THINK THIS MIGHT BE THE NEW YORK TIMES
17 WEBSITE, I CAN'T SEE THE TOP OF IT HERE, BUT IT
18 LOOKS LIKE A WEBSITE WITH A NUMBER OF NEWS STORIES.

19 CAN WE PLAY IT?

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

22 THE WITNESS: SO YOU SEE THERE, HE DOUBLE
23 TAPPED, IT FIGURED OUT THE STORY THE PERSON WANTED
24 TO READ, ZOOMED IN TO SHOW THAT STORY, SO THE STORY
25 LOOKS GREAT.

1 NOW IF HE DOUBLE TAPS SOMEWHERE ELSE, IT
2 AUTOMATICALLY ZOOMS AND MOVES THAT OTHER STORY OR
3 INFORMATION -- THIS IS SOME STOCK PRICES -- INTO
4 VIEW.

5 SO IT MAKES IT REALLY SIMPLE FOR YOU TO
6 MOVE AROUND, NAVIGATE AROUND THE WEBSITE JUST BY
7 DOUBLE TAPPING ON WHAT YOU WANT TO SEE.

8 BY MR. MCELHINNY:

9 Q HOW DID YOU COME UP WITH THIS INVENTION?

10 A I REMEMBER AS WE BUILT THE IPHONE, I SPENT A
11 LOT OF TIME USING THE EARLY PROTOTYPES MYSELF. AND
12 I WOULD USE THEM TO SEND ALL MY E-MAIL, TO BROWSE
13 THE WEB, BASICALLY ANYTHING I COULD DO ON THE
14 PROTOTYPE I WOULD DO ON THE PROTOTYPE INSTEAD OF ON
15 A COMPUTER.

16 AND SO I SPENT A LOT OF TIME BROWSING THE
17 WEB ON THE EARLY PROTOTYPE. IT WAS REALLY COOL,
18 BECAUSE YOU COULD PINCH IN TO STORIES, YOU COULD
19 USE YOUR FINGER TO SCROLL THROUGH THE STORY, MOVE
20 TO ANOTHER STORY AND YOU COULD PINCH OUT.

21 BUT I FOUND I SPENT A LOT OF TIME
22 CAREFULLY PINCHING A STORY TO BE JUST RIGHT, SO IT
23 WOULD FIT JUST RIGHT WITH THE RIGHT FONT SIZE, AND
24 THEN SCROLLING IT, AND THEN PINCHING THE NEXT STORY
25 TO BE JUST RIGHT, SITUATED EXACTLY WHERE I WANTED

1 IT ON THE PHONE.

2 AND I THOUGHT, I'M HOLDING THIS
3 INCREDIBLY POWERFUL DEVICE IN MY HAND, WHY CAN'T IT
4 FIGURE OUT WHAT I KEEP ON DOING OVER AND OVER AGAIN
5 AND JUST DO IT FOR ME?

6 AND SO I CHALLENGED THE TEAM TO ENABLE
7 YOU TO JUST DOUBLE TAP ON A STORY AND THEN HAVE IT
8 DO THE ZOOM UP AND CENTER IT, SUBSTANTIALLY IN THIS
9 CASE, CENTER IT FOR ME TO READ THAT STORY.

10 AND THE TEAM AT FIRST THOUGHT THIS IS
11 GOING TO BE SUPER HARD, MAYBE NOT POSSIBLE, AND
12 THEY WENT BACK AND WORKED REALLY HARD AND MADE IT
13 POSSIBLE.

14 Q IS THERE ANY RELATIONSHIP BETWEEN THE FEATURES
15 THAT WE'RE SHOWING AND THE ACTUAL STRUCTURE OF THE
16 WEB PAGE ITSELF?

17 A YES. THE WEB PAGE, BY ITS NATURE, IS -- IT'S
18 AN ELECTRONIC DOCUMENT, THE WEB PAGE IS, AND WEB
19 PAGES ARE GENERALLY MADE WITH THIS LANGUAGE CALLED
20 HTML, AND HTML DEFINES PIECES OF STRUCTURE.

21 AND SO WHAT WE IMPLEMENTED WAS WHEN THE
22 USER DOUBLE TAPS ON AN AREA, IT FIGURES OUT THE
23 PIECE OF STRUCTURE THAT IS DEFINED BY THE HTML AND
24 DEFINED BY THE APPEARANCE ON THE SCREEN, DETERMINES
25 THE SORT OF BOX OF STRUCTURE YOU CARE ABOUT, AND

1 THAT'S THE ONE THAT IT ZOOMS UP FOR YOU.

2 Q PHYSICALLY, HOW IS THIS FEATURE IMPLEMENTED?
3 HOW DO YOU PUT IT INTO THE PHONE SYSTEM? IS IT A
4 SOFTWARE STRUCTURE?

5 A IT IS -- THE WHOLE THING IS A PIECE OF
6 SOFTWARE. IT'S BUILT RIGHT INTO THE OS, AND BUILT
7 INTO A NUMBER OF PLACES IN THE OS.

8 SO YOU CAN USE IT, YOU KNOW, IN THIS
9 EXAMPLE IN A BROWSER. YOU CAN USE IT IN MAIL, SAY
10 YOU RECEIVE DOCUMENTS.

11 YOU CAN DO IT, I THINK, TO PREVIEW OTHER
12 SORTS OF DOCUMENTS, LIKE PDF'S.

13 SO IT'S SORT OF BUILT THROUGHOUT THE OS
14 TO NAVIGATE THROUGH STRUCTURED DOCUMENTS.

15 Q ARE THERE ANY CHALLENGES TO CODING OR PUTTING
16 THIS FEATURE INTO SOFTWARE?

17 A YEAH, THERE WERE.

18 UNDERSTANDING THAT STRUCTURE AND, IN
19 FACT, THE STRUCTURE THAT THE USER CARES ABOUT,
20 THAT'S THE CHALLENGE. THAT'S A LOT OF THE
21 CHALLENGE.

22 YOU CAN IMAGINE A STORY ON THE WEBSITE
23 WHERE THE FIRST LETTER OF THE FIRST WORD OF A STORY
24 IS A BIG CAPITAL LETTER, A GIANT LETTER, AND THE
25 REST OF THE STORY IS SMALLER.

1 WHEN YOU DOUBLE TAP AROUND THAT FIRST
2 LETTER, THE USER PROBABLY DOESN'T MEAN TO ZOOM INTO
3 ONE LETTER. THEY PROBABLY MEAN TO ZOOM INTO THE
4 COLUMN OF THAT STORY.

5 SO THERE WAS A LOT OF WORK TO FIGURE OUT
6 WHAT WAS THE CORRECT STRUCTURE AND THE CORRECT BOX
7 THAT THE USER CARED ABOUT AND ZOOM UP THAT CORRECT
8 ONE.

9 Q IS IT THE GOAL HERE TO MOVE EACH THING THAT
10 THE PERSON WANTS INTO THE EXACT CENTER OF THE
11 SCREEN?

12 MR. JOHNSON: OBJECTION. LEADING.

13 THE COURT: SUSTAINED.

14 BY MR. MCELHINNY:

15 Q CAN YOU TELL US WHETHER OR NOT IT IS THE GOAL
16 OF THIS TO MOVE THE BOX DIRECTLY INTO THE CENTER OF
17 THE STRUCTURE?

18 A SO THE GOAL IS TO -- WE CALL IT SUBSTANTIALLY
19 CENTER IT, BUT THE GOAL IS TO MOVE IT TO THE BEST
20 VIEWING PLACE FOR YOU.

21 IF YOU HAVE A PICTURE WHICH IS SURROUNDED
22 BY A LOT OF OTHER TEXT OR PICTURES AND THAT PICTURE
23 IS IN THE CENTER, WHEN YOU DOUBLE TAP ON THAT
24 PICTURE, IT'LL LIKELY END UP EXACTLY CENTERED ON
25 THE PHONE.

1 BUT IF YOU HAVE A, A COLUMN OF
2 INFORMATION, LET'S SAY IT'S A COLUMN OF FIRST NAMES
3 AND THEY'RE VERY SHORT NAMES AND IT'S ON THE VERY
4 LEFT-HAND SIDE OF A WEB PAGE, IF YOU DOUBLE TAP ON
5 THAT COLUMN, IT WOULD BE FOOLISH TO CENTER THAT
6 COLUMN IN THE MIDDLE OF THE PHONE BECAUSE YOU LEAVE
7 ALL THIS EMPTY SPACE BEYOND IT TO THE LEFT. YOU'RE
8 JUST WASTING SPACE.

9 YOU CAN STILL PERFECTLY READ THOSE NAMES
10 LINED UP ON THE EDGE OF THE PHONE AND SEE MORE OF
11 THE WEB PAGE TO THE RIGHT.

12 SO WE TALKED ABOUT IT AS BEING
13 SUBSTANTIALLY CENTERED, MEANING CENTER IT WHERE IT
14 MAKES SENSE, BUT DON'T GO BEYOND THE EDGE OF A
15 DOCUMENT BECAUSE THERE'S NO REASON TO DO THAT.

16 Q SIR, AS THE DEVELOPER OF ALL OF THE IOS
17 SYSTEM, DO YOU CONSIDER THIS A SIGNIFICANT FEATURE
18 IN THE IPHONE?

19 A ABSOLUTELY.

20 Q AND WHAT IS THE SIGNIFICANCE OF IT?

21 A I REMEMBER WHAT IT WAS LIKE TO USE BEFORE WE
22 HAD THIS, WHILE WE WERE DEVELOPING IT, AND AFTER WE
23 IMPLEMENTED THE FEATURE, AND IT DRAMATICALLY
24 CHANGED HOW I USED THE WEB. FOR ME PERSONALLY, IT
25 ENABLED ME TO BROWSE THE WEB MUCH MORE QUICKLY,

1 MUCH MORE FLUIDLY, AND I WOULD THINK TO GO AND
2 BROWSE CERTAIN WEBSITES ON MY PHONE WHERE, BEFORE,
3 I MIGHT HAVE THOUGHT I HAVE TO GO TO A COMPUTER FOR
4 THAT.

5 AND WE KNOW FROM OUR USERS THAT BROWSING
6 THE WEB IS ONE OF THE MORE POPULAR THINGS THEY DO
7 ON OUR IPHONES, AND ESPECIALLY ON OUR IPADS.

8 AND SO THIS, I THINK, ENABLES YOU TO HAVE
9 A, A DRAMATICALLY BETTER EXPERIENCE BROWSING THE
10 WEB ON OUR DEVICES.

11 Q SIR, WAS THE FEATURE THAT'S COVERED BY THIS
12 PATENT, YOUR INVENTION, WAS IT EVER THE SUBJECT OF
13 A SPECIFIC AD THAT APPLE DID FOR ITS PRODUCTS?

14 A YES. WE MADE A TELEVISION AD SPECIFICALLY TO
15 HIGHLIGHT THIS.

16 MR. MCELHINNY: YOUR HONOR, AT THIS POINT
17 I WOULD LIKE TO SHOW THAT AD, WHICH IS PART OF
18 PLAINTIFF'S EXHIBIT 12, WHICH IS IN EVIDENCE.

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

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

22 MR. MCELHINNY: THANK YOU, MR. FORSTALL.

23 I HAVE NO FURTHER QUESTIONS.

24 THE COURT: ALL RIGHT. THE TIME IS NOW
25 1:40.

CROSS-EXAMINATION

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BY MR. JOHNSON:

Q GOOD AFTERNOON, MR. FORSTALL.

A GOOD AFTERNOON.

Q MY NAME IS KEVIN JOHNSON. WE'VE SEEN EACH OTHER BEFORE; RIGHT?

A SEVERAL DEPOSITIONS.

Q OKAY.

SO IF I MAY APPROACH, YOUR HONOR, WE'RE GOING TO HAND OUT SOME BINDERS.

(PAUSE IN PROCEEDINGS.)

MR. JOHNSON: I THINK I'M JUST GOING TO REFER TO THE LAST ONE.

Q NOW, THE ORIGINAL IPHONE WAS INTRODUCED, MR. FORSTALL, IN JANUARY 2007; RIGHT?

A CORRECT.

Q AND LET'S GO BACK A LITTLE BIT FURTHER AND TALK ABOUT THE DEVELOPMENT OF THE IPHONE.

IN 2006, YOUR TEAM WAS CONCERNED THAT THE SPEED OF THE PROCESSOR THAT WAS GOING TO BE USED IN THE IPHONE WAS TOO SLOW COMPARED TO THE SPEED OF THE PROCESSORS USED IN OTHER SMARTPHONES, INCLUDING SAMSUNG'S SMARTPHONES; RIGHT?

A I HAD CONCERNS THAT I WANTED IT TO BE AS FAST AS POSSIBLE, YES.

1 Q AND IN FACT, YOU LOOKED AT WHAT SAMSUNG'S
2 PHONE DID AND WHAT KIND OF PROCESSOR IT HAD; RIGHT?
3 DO YOU REMEMBER DOING THAT?

4 A YES.

5 Q OKAY. AND THE IDEA THERE WAS THAT, BY LOOKING
6 AT WHAT YOUR COMPETITORS WERE DOING, POTENTIALLY,
7 THAT WAS OKAY; RIGHT?

8 A YES.

9 Q NOW, THERE WERE OTHER INSTANCES WHEN
10 EXECUTIVES AT APPLE LOOKED AT WHAT COMPETITORS WERE
11 DOING DURING THE DEVELOPMENT OF THE IPHONE; RIGHT?

12 A YES.

13 Q AND THERE WERE OTHER EXAMPLES WHEN APPLE
14 EXECUTIVES LOOKED SPECIFICALLY AT WHAT SAMSUNG WAS
15 DOING IN DEVELOPMENT OF THE IPHONE; RIGHT? DURING
16 THE DEVELOPMENT OF THE IPHONE?

17 A YES.

18 Q NOW, DO YOU RECALL LOOKING AT A SAMSUNG PHONE
19 CALLED THE SGH-E910, A BANG & OLUFSEN FASHION
20 PHONE?

21 A I DO NOT.

22 Q DO YOU REMEMBER THAT IT HAD A CLICKWHEEL-LIKE
23 CONTROL?

24 A I DO NOT.

25 Q IF I CAN DIRECT YOUR ATTENTION TO EXHIBIT,

1 DEFENDANT'S EXHIBIT 2524 THERE, PLEASE.

2 LET ME KNOW WHEN YOU'RE THERE.

3 DO YOU SEE IT?

4 A YEP.

5 Q OKAY. DO YOU SEE IN THE MIDDLE THERE'S A --
6 THERE'S AN E-MAIL FROM TONY FADELL TO STEVE JOBS,
7 JONATHAN IVE, AND YOUR NAME IS LISTED AS A
8 RECIPIENT?

9 A YES.

10 Q AND THE E-MAIL IS DATED OCTOBER 5TH, 2005. DO
11 YOU SEE THAT?

12 A YES.

13 Q AND THAT WAS OBVIOUSLY DURING THE DEVELOPMENT
14 OF THE IPHONE?

15 A YES.

16 MR. JOHNSON: YOUR HONOR, I'D ASK THAT
17 THIS EXHIBIT BE ADMITTED.

18 THE COURT: ANY OBJECTION?

19 MR. MCELHINNY: NO OBJECTION, YOUR HONOR.

20 THE COURT: IT'S ADMITTED.

21 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
22 2524, HAVING BEEN PREVIOUSLY MARKED FOR
23 IDENTIFICATION, WAS ADMITTED INTO
24 EVIDENCE.)

25 BY MR. JOHNSON:

1 Q AND DO YOU SEE THAT IN THIS EXHIBIT,
2 MR. FADELL -- BY THE WAY, MR. FADELL IS, WHAT, HE
3 WAS IN CHARGE OF HARDWARE FOR THE DEVELOPMENT OF
4 THE IPHONE?

5 A YES, MOST OF THE HARDWARE.

6 Q AND WE OBVIOUSLY KNOW WHO STEVE JOBS IS.

7 WHO'S JOHN RUBENSTEIN?

8 A TONY FADELL REPORTED TO JOHN RUBENSTEIN, I
9 BELIEVE.

10 Q SO WAS MR. RUBENSTEIN IN CHARGE OF, ULTIMATELY
11 IN CHARGE OF HARDWARE FOR THE IPHONE AT THE TIME?

12 A YES.

13 Q AND JEFF WILLIAMS IS ANOTHER SENIOR APPLE
14 EXECUTIVE; RIGHT?

15 A YES.

16 Q IS HE A MEMBER OF THE APPLE EXECUTIVE TEAM,
17 ONE OF THE TEN PEOPLE YOU TALKED ABOUT?

18 A HE IS NOW. HE WASN'T AT THE TIME. BUT HE IS
19 NOW, YES.

20 Q OKAY. AND HOW ABOUT JOHNNY IVE? JOHNNY IVE
21 IS THE LEAD INDUSTRIAL DESIGNER AT APPLE; RIGHT?

22 A YES.

23 Q AND IS HE A MEMBER OF THE EXECUTIVE TEAM?

24 A YES, HE IS.

25 Q AND DO YOU SEE THAT MR. FADELL FORWARDS

1 ULTIMATELY THIS E-MAIL ALONG TO MEMBERS WHO ARE NOW
2 ON THE EXECUTIVE TEAM AT APPLE, AND DO YOU SEE THAT
3 ULTIMATELY ABOVE THERE, STEVE JOBS FORWARDS THAT
4 E-MAIL TO MR. IVE AND SAYS, QUOTE, "THIS MAY BE OUR
5 ANSWER -- WE COULD PUT THE NUMBER PAD AROUND OUR
6 CLICKWHEEL."

7 DO YOU SEE THAT?

8 A YES.

9 Q AND DO YOU SEE THAT HE THEN, MR. JOBS, IS
10 ASKING FOR THOUGHTS FROM MR. IVE AND FROM
11 MR. ORDING ABOUT WHETHER THAT WOULD WORK OR NOT?

12 A YES.

13 Q THIS IS AN EXAMPLE OF APPLE EXECUTIVES LOOKING
14 AT THE SAMSUNG, IN THIS CASE, THE SGH-E910, FOR
15 INSPIRATION, RIGHT, DURING THE DEVELOPMENT OF THE
16 IPHONE. THAT'S WHAT MR. JOBS SAYS THERE; RIGHT?
17 "THIS MAY BE OUR ANSWER"?

18 A SO I CAN'T TELL FROM THIS WHETHER OR NOT IT
19 WAS FOR INSPIRATION. WHEN HE SAYS "THIS MAY BE OUR
20 ANSWER," I CAN'T, READING THIS ONE, SAY BECAUSE I
21 DON'T REMEMBER WHAT THIS BANG & OLUFSEN PHONE WAS,
22 WHETHER HE'S SAYING THAT THAT ONE DOES SOMETHING,
23 OR HE'S SAYING "THIS MIGHT BE OUR ANSWER, WE CAN
24 PUT THE NUMBER PAD AROUND THE CLICKWHEEL." SO I'M
25 NOT SURE HOW TO READ THIS ONE.

1 Q ALL RIGHT. LET'S LOOK AT EXHIBIT 2525,
2 PLEASE. THIS IS AGAIN ANOTHER E-MAIL FROM
3 MR. FADELL TO MR. IVE, MR. JOBS, MR. SCHILLER, WHO
4 JUST TESTIFIED, AND TO YOU; RIGHT?

5 A YES.

6 Q AND THIS IS DATED NOVEMBER 7TH, 2006?

7 A YES.

8 MR. JOHNSON: YOUR HONOR, WE ASK THAT
9 THIS BE ADMITTED AS WELL.

10 THE COURT: ANY OBJECTION?

11 MR. MCELHINNY: NO, YOUR HONOR.

12 THE COURT: IT'S ADMITTED.

13 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
14 2525, HAVING BEEN PREVIOUSLY MARKED FOR
15 IDENTIFICATION, WAS ADMITTED INTO
16 EVIDENCE.)

17 BY MR. JOHNSON:

18 Q THIS IS ANOTHER EXAMPLE OF APPLE EXECUTIVES
19 LOOKING AT ANOTHER SAMSUNG PRODUCT DURING THE
20 DEVELOPMENT OF THE IPHONE; RIGHT?

21 A YES.

22 Q AND THIS REFERENCE HERE REFERS TO WHAT'S
23 CALLED A NEW THREE-WAY FOLDABLE COMBINATION OF
24 PHONE, PERSONAL COMPUTER, AND MUSIC PLAYER.

25 DO YOU SEE THAT?

1 A YES.

2 Q DO YOU REMEMBER WHAT THIS PHONE LOOKED LIKE?

3 A I DO NOT, NO.

4 Q LET ME DIRECT YOUR ATTENTION TO EXHIBIT 2517.

5 NOW, ISN'T IT TRUE THAT APPLE EMPLOYEES
6 EVEN STARTED A COMPETITIVE ANALYSIS --

7 A HOLD ON A SECOND.

8 Q SURE.

9 A 2517. OKAY.

10 Q ARE YOU WITH ME?

11 A YES.

12 Q OKAY. SO ISN'T IT TRUE THAT APPLE EMPLOYEES
13 STARTED A COMPETITIVE ANALYSIS INITIALLY IN 2008 TO
14 DETERMINE THE AREAS THAT THE IPHONE WAS LAGGING
15 BEHIND THE COMPETITION, INCLUDING SAMSUNG IN THIS
16 EXAMPLE?

17 A NO, THAT'S NOT NECESSARILY WHAT THIS ONE
18 REFERS TO.

19 WE ARE ASKED TO BENCHMARK AGAINST THE
20 CALL PERFORMANCE OF OTHER CARRIERS, WHICH MEANS THE
21 NUMBER OF CALLS DROPPED.

22 WHEN YOU HAVE A PHONE, IT MAY DROP A CALL
23 AND THAT COULD BE DUE TO THE PHONE ITSELF, BUT IT
24 ALSO COULD BE DUE TO THE NETWORK.

25 AND SO THE LITMUS TEST THAT CARRIERS ASK

1 US TO DO IS TO TAKE CERTAIN OTHER PHONES, DRIVE
2 THESE DRIVE ROUTES WHERE WE'RE ON A PHONE CALL ON
3 MULTIPLE PHONES, OUR OWN AND OTHERS, AND SO -- AND
4 SEE WHERE IT DROPS.

5 AND IF WE DROP LESS PHONES THAN WHAT THEY
6 WOULD CONSIDER TO BE THEIR GOLDEN HANDSET, THEN THE
7 PHONE MIGHT BE GREAT AND BE DOING THE RIGHT THING
8 WITH ITS SOFTWARE, BUT THE NETWORK MIGHT HAVE A, A
9 LOW COVERAGE IN THAT AREA.

10 AND SO THIS RIGHT HERE -- AND THE PERSON
11 WHO'S RESPONSIBLE FOR SENDING THIS IS THE ONE WHO'S
12 RESPONSIBLE FOR THESE KIND OF DRIVE TESTS THEY WERE
13 REQUESTING TO COMPARE THE CALL DROP PERFORMANCE.

14 Q AND IN THIS INSTANCE, THEY WERE COMPARING THE
15 PERFORMANCE OF THE IPHONE TO EVERY MAJOR SMARTPHONE
16 VENDOR, INCLUDING SAMSUNG; RIGHT?

17 A YES.

18 Q AND IN FACT, IN THIS INSTANCE, AND THIS IS --
19 YOU SEE THAT THIS IS AN APPLE INTERNAL E-MAIL DATED
20 NOVEMBER 18TH, 2008?

21 A YES.

22 Q AND DO YOU SEE THAT TOWARDS THE END, IT REFERS
23 SPECIFICALLY TO THE FACT THAT EACH FUNCTIONAL TEAM
24 WILL NEED TO ANALYZE THE AREA THAT WE ARE LAGGING
25 IN COMPETITION?

1 A YES.

2 MR. JOHNSON: YOUR HONOR, WE HAD ASK AT
3 THIS POINT THAT EXHIBIT 2517 BE MOVED INTO
4 EVIDENCE.

5 THE COURT: ANY OBJECTION?

6 MR. MCELHINNY: NO OBJECTION, YOUR HONOR.

7 THE COURT: SO ADMITTED.

8 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
9 2517, HAVING BEEN PREVIOUSLY MARKED FOR
10 IDENTIFICATION, WAS ADMITTED INTO
11 EVIDENCE.)

12 BY MR. JOHNSON:

13 Q DO YOU SEE THAT THERE'S ALSO A REFERENCE AT
14 THE END OF THE FIRST PARAGRAPH THAT SAYS "WE'RE IN
15 THE PROCESS OF PURCHASING THESE DEVICES"? DO YOU
16 SEE THAT?

17 A YES.

18 Q AND THAT "ONCE THEY ARRIVE, WE'LL START
19 VERIFYING THEIR FEATURE SETS IN EACH AREA." RIGHT?

20 A YES.

21 NOW, THIS TEAM IS THE TEAM THAT DOES
22 BASEBAND, WHICH IS THE CELL CONNECTIVITY TO THE
23 CELL TOWERS.

24 SO WHAT THEY WOULD BE REFERRING TO IS
25 FEATURES HERE, AND EVEN IN THE PART BELOW,

1 FUNCTIONAL TEAMS, OUR FUNCTIONAL TEAMS RELATED TO
2 PROTOCOLS BETWEEN THE PHONE AND THE CELL TOWER.

3 THIS HAS NOTHING TO DO WITH USER
4 INTERFACE OR TOUCH AT ALL. THIS IS SPECIFICALLY TO
5 DO WITH MAKING PHONE CALLS.

6 Q THIS SAYS THEY'RE GOING TO BE EVALUATING THE
7 FEATURE SET IN EACH AREA; RIGHT?

8 A IT SAYS EACH AREA, AND FOR HYNENG, EACH AREA
9 WOULD MEAN HIS AREA, WHICH IS THE PROTOCOLS FOR
10 MAKING A PHONE CALL.

11 Q AND MR. HYNENG IS A SENIOR MANAGER IN THE
12 SOFTWARE? HE REPORTS ULTIMATELY AS PART OF YOUR
13 GROUP?

14 A HE'S IN THE RADIO TEAM.

15 Q BUT HE'S PART OF YOUR GROUP; RIGHT?

16 A YES.

17 Q HE'S PART OF THE 1,000 OR 2,000 PEOPLE YOU
18 MENTIONED THAT ULTIMATELY YOU HAVE SUPERVISION FOR,
19 HE'S PART OF THAT; RIGHT?

20 A YES.

21 Q ARE YOU AWARE THAT APPLE HAS DONE VERY
22 DETAILED TEAR-DOWN ANALYSES OF COMPETITORS'
23 PRODUCTS, INCLUDING SAMSUNG'S?

24 A YES.

25 Q LET ME DIRECT YOUR ATTENTION TO EXHIBIT 2519.

1 LET ME KNOW WHEN YOU HAVE THAT.

2 A GOT IT.

3 Q OKAY. THIS IS AN EXAMPLE OF ONE OF THOSE
4 TEAR-DOWNS; RIGHT? IN THIS INSTANCE, THERE'S A
5 TEAR-DOWN OF THE SAMSUNG GALAXY S; RIGHT?

6 A YES.

7 MR. JOHNSON: YOUR HONOR, WE'D MOVE 2519
8 INTO EVIDENCE.

9 MR. MCELHINNY: NO OBJECTION, YOUR HONOR.

10 THE COURT: IT'S ADMITTED.

11 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
12 2519, HAVING BEEN PREVIOUSLY MARKED FOR
13 IDENTIFICATION, WAS ADMITTED INTO
14 EVIDENCE.)

15 BY MR. JOHNSON:

16 Q AND I THINK YOU SAID, LOOKING AT THE OTHER
17 REFERENCE THAT WE JUST LOOKED AT, THAT THAT RELATED
18 TO DROPPED CALLS.

19 THIS IS A TEAR-DOWN THAT WE'RE LOOKING AT
20 NOW, 2519, THAT SPECIFICALLY REFERS TO EXAMINING
21 THE SOFTWARE FEATURES AND USER INTERFACE FOR THE
22 GALAXY S. RIGHT? DO YOU SEE ON THE SECOND PAGE AT
23 THE TOP, "EXAMINE SOFTWARE FEATURES AND U/I"?

24 A I SEE THAT. I'VE NEVER SEEN THIS BEFORE, AND
25 THIS WAS NOT DONE BY THE SOFTWARE TEAM.

1 Q BUT IF YOU THUMB THROUGH THE PAGES, IF YOU
2 LOOK, FOR EXAMPLE, AT THE PAGE THAT ENDS IN 984,
3 YOU'LL SEE THERE A REFERENCE TO THE SAMSUNG
4 GALAXY S PHONE; RIGHT?

5 A YES.

6 Q AND IT SHOWS THE TOUCH BUTTONS THAT WE SEE AT
7 THE BOTTOM?

8 A YEP.

9 Q NOW, THESE ARE DIFFERENT FROM THE SINGLE HOME
10 BUTTON THAT'S USED ON AN IPHONE OR ON THE IPAD;
11 RIGHT?

12 A YES.

13 Q AND YOU'LL SEE THAT IT ALSO REFERS TO THE
14 SAMSUNG TOUCHWIZ U/I 3.0; RIGHT?

15 A YES.

16 Q AND ANDROID 2.1 IS A REFERENCE TO THE GOOGLE
17 ANDROID OPERATING SYSTEM; RIGHT?

18 A CORRECT.

19 Q AND IF YOU GO TO THE NEXT PAGE, 985, YOU'LL
20 SEE A FURTHER TEAR-DOWN OF THE DEVICE. YOU'LL SEE
21 THE FACT THAT IT REFERS TO A, A -- THERE'S A BACK
22 COVER THAT'S REMOVED?

23 A YEP.

24 Q RIGHT? AND THE -- AND HAVE YOU SEEN -- STRIKE
25 THAT.

1 THE -- THE BATTERY IN AN IPHONE CAN'T BE
2 REMOVED, RIGHT, BY A CONSUMER?

3 A CORRECT.

4 Q OKAY. IF YOU GO TO THE NEXT PAGES, 986, 987,
5 YOU'LL SEE FURTHER DETAILED TEAR-DOWN ANALYSES,
6 RIGHT, BREAKING OUT EACH COMPONENT AND LOOKING BOTH
7 AT HARDWARE COMPONENTS AND THE ACTUAL BOARDS THAT
8 ARE USED, FOR EXAMPLE, ON 991?

9 A ON 991? WHERE IS THAT?

10 Q THE LAST THREE NUMBERS ARE 991. DO YOU SEE
11 THE LETTERS AT THE BOTTOM, PCB, THAT'S THE PRINTED
12 CIRCUIT BOARD ON THE GALAXY S?

13 A SORRY. YOU FLIPPED SEVERAL PAGES DOWN.

14 OKAY, YEAH, I SEE IT.

15 Q OKAY. AND THEN ON THE NEXT PAGE THERE'S AN
16 EVALUATION OF THE SOFTWARE FEATURES.

17 DO YOU SEE THAT?

18 A I DON'T KNOW IF I'D CALL IT AN EVALUATION OF
19 SOFTWARE FEATURES, BUT IT'S A LIST OF A FEW
20 SOFTWARE FEATURES, YES.

21 Q WELL, EARLIER IN THE DOCUMENT, WE SAW "EXAMINE
22 SOFTWARE FEATURES AND U/I." THAT'S WHAT THIS PAGE
23 AT LEAST IS REFERRING TO; RIGHT?

24 A YEAH. I GUESS I JUST DON'T -- IT SAYS SAMSUNG
25 TOUCHWIZ. IT'S DESCRIBING IT. THERE'S NO

1 EVALUATION ON THAT.

2 Q AT LEAST, FOR EXAMPLE, IN THE SOCIAL HUB, IT
3 TALKS ABOUT INTEGRATING ALL MESSAGING STREAMS INTO
4 ONE; UNDER SWIPE, IT TALKS ABOUT THE FACT THAT YOU
5 CAN TYPE UP TO 40 WORDS PER MINUTE; RIGHT?

6 A YES.

7 Q NOW, THERE'S NO SWIPE ON THE IPHONE, IS THERE?

8 A THERE IS NOT.

9 Q THERE'S NO SOCIAL HUB WIDGET ON THE IPHONE;
10 RIGHT?

11 A THERE IS NOT.

12 Q MR. FORSTALL, ARE YOU AWARE OF APPLE'S SENIOR
13 EXECUTIVES LOOKING AT SAMSUNG'S GALAXY TAB, IN THIS
14 INSTANCE A SEVEN-INCH TAB, TABLET COMPUTER, AND
15 LOOKING AT IT FOR THE PURPOSE OF EVALUATING WHETHER
16 IT MADE SENSE FOR APPLE TO MAKE A SEVEN-INCH IPAD?

17 A I DON'T KNOW IF IT WAS LOOKED AT FOR THAT
18 REASON. I DO KNOW THAT EDDIE CUE ONCE LOOKED AT,
19 USED IT FOR A LITTLE WHILE.

20 BUT I DON'T REMEMBER IF IT WAS DONE AS,
21 YOU KNOW, TO THE EXTENT, THE REASON THAT YOU SAID.
22 HE MIGHT HAVE COME TO A CONCLUSION, BUT I DON'T
23 REMEMBER HIM SAYING "I'M GOING TO LOOK AT THIS TO
24 SEE IF THIS IS SOMETHING WE SHOULD DO."

25 Q WHO'S EDDIE CUE?

1 A HE RUNS ITUNES AND A NUMBER OF THE APPS AT
2 APPLE.

3 Q OKAY. LET ME DIRECT YOUR ATTENTION TO EXHIBIT
4 2522, PLEASE. THIS IS AN E-MAIL FROM MR. CUE TO
5 YOU, AS WELL AS TO MR. SCHILLER AND TIM COOK. DO
6 YOU SEE THAT?

7 A YEAH. THERE'S SOMETHING ODD ABOUT THE
8 PRINTER, THE PRINTOUT YOU GAVE ME HERE.

9 Q THIS IS A DOCUMENT -- THIS IS AN INTERNAL --

10 A HOLD ON A SECOND. WHAT I HAVE ON HERE LOOKS
11 DIFFERENT FROM WHAT YOU'RE SHOWING ON THE SCREEN
12 HERE.

13 Q THERE MAY NOT HAVE -- IT'S THE SAME DOCUMENT.
14 IT JUST MAY NOT HAVE THE EXHIBIT?

15 A IT'S NOT JUST THAT. IT ACTUALLY SAYS, I DON'T
16 KNOW, I-G-A-D-S-A-L. IT HAS NONSENSICAL WORDS ON
17 HERE.

18 Q OKAY. LET'S LOOK AT EXHIBIT 2522 AND I'LL
19 HAND UP -- I'LL HAND YOU A SEPARATE COPY DURING THE
20 INTERIM.

21 CAN WE GET THAT PLEASE?

22 IF WE LOOK AT WHAT'S ON THE SCREEN IN
23 FRONT OF YOU, CAN YOU SEE THAT?

24 A I CAN. IT'S A LITTLE BLURRY, BUT YES.

25 (PAUSE IN PROCEEDINGS.)

1 (DISCUSSION OFF THE RECORD.)

2 THE COURT: I DON'T THINK THIS IS
3 APPROPRIATE FOR YOU ALL TO BE HAVING A
4 CONVERSATION, OKAY?

5 MR. JOHNSON: YEAH.

6 THE COURT: JUST ASK HIM.

7 BY MR. JOHNSON:

8 Q LET'S GO BACK. 2522 IN FRONT OF YOU, DO YOU
9 RECOGNIZE THAT AS AN E-MAIL FROM MR. CUE TO YOU, TO
10 MR. COOK, AND TO MR. SCHILLER?

11 A YES.

12 Q AND IT'S DATED NOVEMBER -- IT'S DATED
13 JANUARY 24TH, 2011?

14 A YES.

15 Q AND THIS IS AN APPLE INTERNAL E-MAIL; RIGHT?

16 A YES.

17 MR. JOHNSON: WE ASK THAT IT BE ADMITTED,
18 YOUR HONOR, PLEASE.

19 THE COURT: ANY OBJECTION?

20 MR. MCELHINNY: NO OBJECTION.

21 THE COURT: IT'S ADMITTED.

22 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
23 2522, HAVING BEEN PREVIOUSLY MARKED FOR
24 IDENTIFICATION, WAS ADMITTED INTO
25 EVIDENCE.)

1 BY MR. JOHNSON:

2 Q NOW, IN THIS INSTANCE, THIS IS AN EXAMPLE OF
3 AN APPLE EXECUTIVE LOOKING AT THE GALAXY TAB HERE,
4 AND HE SAYS THAT HE TENDS TO AGREE WITH MANY OF THE
5 COMMENTS BELOW, AND, QUOTE, "I BELIEVE THERE WILL
6 BE A SEVEN-INCH MARKET AND WE SHOULD DO ONE."

7 DO YOU SEE THAT?

8 A I DO.

9 Q ALL RIGHT. TO GO BACK, THERE'S NOTHING WRONG
10 WITH COMPETITORS LOOKING AT OTHER COMPETITORS'
11 PRODUCTS FOR PURPOSES OF BENCHMARKING, IS THERE?

12 A NO.

13 Q NOW, YOU ARE THE INVENTOR ON -- ONE OF THE
14 INVENTORS ON THE '163 PATENT; RIGHT?

15 A YES.

16 Q AND I THINK YOU TALKED ABOUT HOW THE WORK THAT
17 WAS DONE WITH RESPECT TO THAT WAS DONE IN SECRECY;
18 RIGHT?

19 A AS SECRET AS WE COULD MAKE IT, YES.

20 Q AS SECRET AS YOU COULD MAKE IT. OKAY.

21 SO THE WORK THAT STARTED ON THE IPHONE
22 STARTED IN ABOUT 2004; RIGHT?

23 A YEAH, 2004.

24 Q AND IT'S AFTER YOU GOT TO APPLE?

25 A IT -- YEAH. I GOT TO APPLE IN 1997 AND WE

1 STARTED, AS I SAID, THE TABLET PIECE IN 2003.

2 Q RIGHT.

3 A AND THEN MOVED TO THE IPHONE PIECE IN 2004.

4 Q OKAY. SO WITH RESPECT TO YOUR PATENT, YOU'RE
5 AWARE, SIR, THAT A CLAIM -- THE CLAIMS THAT COME AT
6 THE END OF THE PATENT ARE WHAT DEFINE THE SCOPE OF
7 THE INVENTION; RIGHT?

8 A YES.

9 Q AND YOU'RE AWARE THAT IN ORDER FOR THERE TO BE
10 INFRINGEMENT, EACH AND EVERY LIMITATION, EVERY WORD
11 THAT'S IN THOSE CLAIMS HAS TO BE FOUND IN THE
12 ACCUSED PRODUCTS?

13 A SO I'M NOT A LAWYER, SO I CAN'T EXPLAIN TO YOU
14 WHAT THE LAW IS AROUND EXACTLY EACH WORD. I DON'T
15 KNOW THAT.

16 Q RIGHT. BUT THAT'S YOUR GENERAL UNDERSTAND;
17 RIGHT?

18 A MY UNDERSTANDING IS THE CLAIMS DESCRIBE THE
19 PATENT AND INFRINGEMENT IS BASED ON THOSE CLAIMS.

20 Q IT -- YOU TALKED GENERALLY ABOUT THE SUBJECT
21 MATTER OF THE '163.

22 NOW, ARE YOU AWARE THAT IN DECIDING TO
23 ISSUE A PATENT, THE U.S. PATENT OFFICE LOOKS AT
24 WHAT OTHER INVENTIONS THAT IT CAN FIND WERE IN THE
25 FIELD PREVIOUSLY?

1 MR. MCELHINNY: OBJECTION, YOUR HONOR.
2 THIS IS BEYOND THE SCOPE AND, GIVEN THE LIMITATIONS
3 ON DIRECT, I THINK THE CROSS SHOULD BE LIMITED TO
4 THE SCOPE THAT I WAS ALLOWED TO GO INTO.

5 MR. JOHNSON: YOUR HONOR, HE TALKED ABOUT
6 THE DEVELOPMENT OF THIS AND ALL I'M TRYING TO DO IS
7 VERY BRIEFLY GO INTO A LITTLE BIT OF BACKGROUND.

8 THE COURT: YOU'RE GOING INTO HOW YOU GET
9 A PATENT, WHICH IS NOT REALLY RELEVANT.

10 I'M GOING TO SUSTAIN THE OBJECTION. GO
11 TO SOMETHING ELSE.

12 BY MR. JOHNSON:

13 Q LET ME ASK YOU, ARE YOU AWARE -- YOU'RE THE
14 INVENTOR ON THE PATENT. WERE YOU INVOLVED IN THE
15 PROSECUTION OF THE PATENT AT ALL?

16 A I DON'T REMEMBER THE PATENT LAWYERS COMING
17 BACK TO ME DURING THE PROSECUTION.

18 Q ARE YOU AWARE THAT THE CLAIMS OF THE '163
19 PATENT WERE NARROWED DURING THE PROSECUTION?

20 MR. MCELHINNY: SAME OBJECTION, YOUR
21 HONOR. THIS IS WAY BEYOND WHAT I WAS ALLOWED TO
22 ADDRESS AND WHAT HE'S ADDRESSED.

23 THE COURT: OVERRULED.

24 THE WITNESS: COULD YOU REPEAT THE
25 QUESTION?

1 BY MR. JOHNSON:

2 Q ARE YOU AWARE THAT DURING THE PROSECUTION OF
3 THE PATENT, THE CLAIMS WERE NARROWED BY APPLE?

4 A I AM NOT.

5 Q ARE YOU AWARE THAT CERTAIN PRIOR ART WAS
6 LOCATED WITH RESPECT TO THE '163 PATENT AND, AS A
7 RESULT OF THAT PRIOR ART, THE CLAIMS WERE NARROWED
8 DURING THE PROSECUTION?

9 A I WAS NOT AWARE OF THAT. I THINK YOU
10 MENTIONED THAT DURING MY DEPOSITION, BUT OTHER THAN
11 THAT, I WAS NOT AWARE OF IT.

12 Q I THINK YOU -- YOU MENTIONED ELECTRONIC
13 DOCUMENT DURING YOUR DIRECT TESTIMONY. DO YOU
14 REMEMBER TALKING ABOUT THAT?

15 MR. MCELHINNY: HE DID NOT MENTION
16 ELECTRONIC DOCUMENT, YOUR HONOR.

17 MR. JOHNSON: HE DID IN THE CONTEXT OF
18 THE NEW YORK TIMES WEB PAGE. I LISTENED VERY
19 CAREFULLY, BECAUSE THAT'S OBVIOUSLY ONE OF THE
20 ISSUES INVOLVED IN THIS CASE.

21 SO LET ME REPHRASE IT.

22 Q IN -- WHEN YOU WERE TESTIFYING ON DIRECT, YOU
23 MENTIONED THE NEW YORK TIMES WEB PAGE AS AN EXAMPLE
24 OF AN ELECTRONIC DOCUMENT THAT'S SORT OF COVERED BY
25 YOUR '163 PATENT; RIGHT?

1 MR. MCELHINNY: OBJECTION, YOUR HONOR.
2 THIS IS A CLAIM TERM THAT YOUR HONOR IS GOING TO
3 CONSTRUE. WE'RE NOW GETTING INTO THE CONSTRUCTION
4 OF THIS ARGUMENT.

5 I DID NOT GO INTO THIS ON DIRECT. THE
6 CONSTRUCTION IS THE LIMITATION --

7 MR. JOHNSON: HIS TESTIMONY --

8 THE COURT: I'M GOING TO OVERRULE THE
9 OBJECTION.

10 BUT IF IT GOES TOO FAR, I'LL START
11 SUSTAINING THE OBJECTIONS.

12 GO AHEAD, PLEASE.

13 BY MR. JOHNSON:

14 Q IS THE NEW YORK TIMES WEB PAGE THAT YOU LOOKED
15 AT AN EXAMPLE OF AN ELECTRONIC DOCUMENT?

16 A YES, I THINK OF THE NEW YORK TIMES, AN HTML
17 WEB PAGE, AS AN ELECTRONIC DOCUMENT.

18 Q AND YOU CAN HAVE ELECTRONIC DOCUMENTS EMBEDDED
19 WITHIN OTHER ELECTRONIC DOCUMENTS; RIGHT?

20 A YOU CAN. I MEAN, THERE'S A QUESTION OF
21 DEFINITION THERE OF WHAT IT MEANS FOR THE EMBEDDED
22 DOCUMENT TO BE A DOCUMENT IN AND OF ITSELF AS
23 OPPOSED TO A PIECE OF THE OUTER DOCUMENT.

24 AND SO IT KIND OF DEPENDS ON WHAT YOUR
25 DEFINITION IS HERE, LIKE WHAT -- I'M NOT SURE WHAT

1 YOU'RE TRYING TO GET AT.

2 Q I'M TRYING TO ASK, WHEN YOU LOOK AT THE WEB
3 PAGE, THE NEW YORK TIMES WEB PAGE, IT'S GOT THE
4 OVERALL WEB PAGE, AND THEN IT'S GOT ARTICLES WITHIN
5 THE WEB PAGE, RIGHT, AND PHOTOGRAPHS?

6 MR. MCELHINNY: YOUR HONOR, WE'RE ARGUING
7 AGAINST YOUR CLAIM CONSTRUCTION AND WE'RE TRYING TO
8 GET THE SAME TERMS USED IN A WAY THAT CAN BE QUOTED
9 OUT OF CONTEXT LATER AND I DID NOT GO INTO ANY OF
10 THIS.

11 MR. JOHNSON: HE PLAYED THE VIDEO.

12 THE COURT: OVERRULED.

13 GO AHEAD, PLEASE.

14 THE WITNESS: SORRY. WHAT'S THE
15 QUESTION?

16 BY MR. JOHNSON:

17 Q YOU CAN ANSWER -- LET ME GO BACK.

18 IF YOU LOOK AT THE NEW YORK TIMES WEB
19 PAGE, IT'S GOT -- THAT IS AN ELECTRONIC DOCUMENT,
20 AND IT CONSISTS OF OTHER ELECTRONIC DOCUMENTS
21 EMBEDDED WITHIN THERE; RIGHT?

22 LIKE THERE'S AN ARTICLE OR A PHOTOGRAPH,
23 THEY'RE ALL PART OF THE WEB PAGE, THOSE ARE ALL
24 ELECTRONIC DOCUMENTS EMBEDDED WITHIN THE OVERALL
25 WEB PAGE; RIGHT?

1 A WELL, THE WAY HTML WORKS AND FOR THOSE
2 STORIES, THEY --

3 Q IS THAT RIGHT?

4 A THEY THEMSELVES ARE PART OF THE ELECTRONIC
5 DOCUMENT, THE DOCUMENT, THE ELECTRONIC DOCUMENT
6 DOCUMENT OF THE WEB PAGE, AND THERE'S A STRUCTURE
7 IN THERE WHICH TELLS YOU ABOUT A GIVEN STORY OR A
8 GIVEN IMAGE.

9 IT'S NOT THAT YOU HAD ANOTHER DOCUMENT IN
10 THE NEW YORK TIMES EMBEDDED WITHIN THE FIRST ONE.
11 YOU ACTUALLY HAVE STRUCTURE WITHIN THE HTML, WITHIN
12 THAT DOCUMENT.

13 SO I DON'T THINK OF, YOU KNOW, A STORY --
14 SO LET'S SAY THERE'S FIVE STORIES IN THE NEW YORK
15 TIMES AND THERE'S THREE IMAGES. I DON'T THINK OF
16 THOSE FIVE STORIES AS EACH BEING INDEPENDENT, YOU
17 KNOW, SEPARATE DOCUMENTS IN THAT EXAMPLE.

18 Q YOU TALKED ABOUT -- IN YOUR DIRECT TESTIMONY,
19 YOU TALKED ABOUT THE FACT THAT YOU COULD TAKE -- I
20 THINK THE EXAMPLE YOU GAVE WAS PUTTING YOUR FINGER
21 ON EACH WHEEL OF THE BICYCLE AND ZOOMING IN AND
22 ZOOMING OUT.

23 DO YOU REMEMBER TALKING ABOUT THAT?

24 A YES.

25 Q APPLE DIDN'T INVENT ZOOMING IN OR ZOOMING OUT

1 OF THE BICYCLE; RIGHT? THAT EXISTED BEFORE APPLE'S
2 IPHONE?

3 A I CAN'T SPEAK TO APPLE'S ENTIRE PATENT
4 PORTFOLIO. I DON'T KNOW WHETHER OR NOT WE HAVE
5 PATENTS AROUND THAT OR NOT.

6 Q BUT BASED ON -- BASED ON YOUR, ON YOUR
7 FAMILIARITY, YOU'RE THE HEAD OF IOS, YOUR SOFTWARE
8 EXPERIENCE, I'M ASKING YOU, APPLE DIDN'T INVENT
9 ZOOMING IN OR ZOOMING OUT ON A TOUCHSCREEN?

10 MR. MCELHINNY: THIS QUESTION GOES INTO
11 THE AREA THAT I WAS NOT ALLOWED TO GO INTO ON
12 DIRECT ABOUT OTHER PATENTS THAT ARE AT ISSUE.

13 MR. JOHNSON: I'M ASKING IT SOLELY IN THE
14 CONTEXT OF THE '163. HE TALKED ABOUT IT IN THE
15 CONTEXT OF THE '163.

16 THE COURT: THAT'S SUSTAINED. I EXCLUDED
17 IN THE '915.

18 SO GO AHEAD.

19 THE TESTIMONY THAT WAS IN THE DEPOSITION
20 HAD TO DO WITH THIS TOPIC AND IT'S BEEN EXCLUDED,
21 SO PLEASE DON'T GO THERE.

22 BY MR. JOHNSON:

23 Q NOW YOU TALKED ABOUT TOUCHSCREENS AS WELL,
24 MR. FORSTALL. APPLE DIDN'T INVENT TOUCHSCREENS,
25 DID IT?

1 A AGAIN, I DON'T KNOW THE EXTENT OF APPLE'S
2 PATENT PORTFOLIO AROUND TOUCHSCREENS.

3 Q SO YOUR ANSWER IS?

4 A I DON'T KNOW.

5 MR. JOHNSON: YOUR HONOR, NO FURTHER
6 QUESTIONS.

7 THE COURT: ANY REDIRECT? THE TIME IS
8 NOW 2:07.

9 MR. MCELHINNY: MAY I HAVE DEFENDANT'S
10 EXHIBIT 2524.

11 **REDIRECT EXAMINATION**

12 BY MR. MCELHINNY:

13 Q AND CAN WE FOCUS ON THE TOP E-MAIL, PLEASE,
14 FROM MR. JOBS.

15 WHEN MR. JOBS SAID "THEY REALLY SCREWED
16 THIS UP IN THAT RESPECT," DID YOU UNDERSTAND HIM AS
17 TO BE SAYING "WE SHOULD COPY SAMSUNG"?

18 A ABSOLUTELY NOT.

19 MR. JOHNSON: YOUR HONOR, LEADING.
20 OBJECTION.

21 MR. MCELHINNY: MAY I HAVE --

22 THE COURT: SUSTAINED. YOU NEED TO ASK
23 THAT ANOTHER WAY.

24 BY MR. MCELHINNY:

25 Q AS YOU SEE THIS, DO YOU UNDERSTAND THIS TO BE

1 A DIRECTION TO COPY?

2 A I SEE THIS AS A DIRECTION FROM STEVE THAT WE
3 SHOULD NOT COPY. WE SHOULD DO SOMETHING DIFFERENT.
4 HE SAID "THEY REALLY SCREWED THIS UP."

5 Q MAY I HAVE EXHIBIT 2519, PLEASE.

6 CAN YOU TELL, SIR -- GO AHEAD AND GET
7 THAT.

8 A YEAH.

9 Q WHAT WAS THE DATE ON THIS DOCUMENT?

10 A IT LOOKS LIKE AUGUST 10TH OF 2010.

11 Q HOW MANY YEARS AFTER THE IPHONE CAME OUT WAS
12 THIS DOCUMENT PREPARED?

13 A MORE THAN THREE.

14 Q THANK YOU.

15 YOU MENTIONED ON YOUR CROSS-EXAMINATION
16 THAT THERE'S NOTHING WRONG WITH BENCHMARKING.

17 A CORRECT.

18 Q IS THERE A POINT WHERE BENCHMARKING BECOMES
19 SOMETHING THAT YOU DO THINK IS INAPPROPRIATE?

20 MR. JOHNSON: OBJECTION. LEADING.

21 MR. MCELHINNY: THAT'S NOT --

22 THE COURT: OVERRULED.

23 GO AHEAD.

24 THE WITNESS: ABSOLUTELY. IT'S FINE TO
25 BENCHMARK, YOU KNOW, FOR PERFORMANCE REASONS.

1 IT'S NOT OKAY WHEN YOU THEN GO AND COPY
2 AND RIP SOMETHING OFF. SO THERE'S A VERY, YOU
3 KNOW, STRONG DISTINCTION BETWEEN BENCHMARKING AND
4 COPYING.

5 BY MR. MCELHINNY:

6 Q IN THE IOS AREA, ARE WE GOING TO SEE ANY
7 DOCUMENTS IN THIS CASE WITH SIDE-BY-SIDE
8 COMPARISONS BETWEEN APPLE AND SAMSUNG PRODUCTS
9 WHERE YOU OR ANY OTHER MANAGER AT SAMSUNG -- AT
10 APPLE HAVE DIRECTED YOUR PEOPLE TO COPY A SAMSUNG
11 PHONE?

12 A I --

13 MR. JOHNSON: YOUR HONOR, OBJECTION.
14 OUTSIDE THE SCOPE OF MY CROSS. IT'S ALSO LEADING.

15 THE COURT: OVERRULED.

16 GO AHEAD.

17 THE WITNESS: I NEVER DIRECTED ANYONE TO
18 GO AND COPY ANYTHING FROM SAMSUNG.

19 BY MR. MCELHINNY:

20 Q WHY NOT?

21 A WE WANTED TO BUILD SOMETHING GREAT AND WE
22 THOUGHT WE COULD BUILD SOMETHING BETTER THAN ANYONE
23 ELSE HAD EVER BUILT ON THIS. SO THERE WAS NO
24 REASON TO LOOK AT WHAT THEY DID.

25 MR. MCELHINNY: NOTHING FURTHER, YOUR

1 HONOR.

2 THE COURT: ALL RIGHT. MAY THIS WITNESS
3 BE EXCUSED?

4 MR. JOHNSON: YOUR HONOR, JUST BRIEFLY,
5 JUST A COUPLE OF QUESTIONS JUST TO FOLLOW UP ON
6 MR. MCELHINNY'S STATEMENT ABOUT EXHIBIT 2524,
7 LITERALLY JUST A COUPLE QUESTIONS.

8 THE COURT: GO AHEAD. IT'S 2:10.

9 **RECROSS-EXAMINATION**

10 BY MR. JOHNSON:

11 Q IF WE COULD PULL THAT UP AGAIN, PLEASE, FRANK.

12 MR. MCELHINNY POINTED YOU TO THE PART
13 THAT TALKS ABOUT -- IT SAYS, "OF COURSE WE SHOULD
14 ORIENT IT LIKE A WATCH WITH 3, 6, 9, ASTERISK IN
15 THE HORIZONTAL AND VERTICAL POSITIONS, JUST LIKE
16 ANY CLOCK. THEY REALLY SCREWED THIS UP IN THAT
17 RESPECT."

18 MR. JOBS STILL LIKED THE CONCEPT HERE, HE
19 WAS SAYING MAKE IT MORE LIKE A WATCH, RIGHT?

20 MR. MCELHINNY: TO REPEAT MR. JOHNSON'S
21 OBJECTION, HE'S ASKING HIM TO SPECULATE ABOUT WHAT
22 MR. JOBS WAS SAYING.

23 THE COURT: OVERRULED.

24 GO AHEAD, PLEASE.

25 THE WITNESS: SO I, I DON'T KNOW WHAT

1 THIS BANG & OLUFSEN PHONE HAD. READING STEVE'S
2 THING ALONE, HE'S RECOMMENDING THIS ACTUALLY ISN'T
3 FOR THE IPHONE. THIS IS FOR SOMETHING ELSE HE'S
4 TALKING ABOUT. SO IT REALLY HAS NOTHING TO DO WITH
5 THE IPHONE.

6 BUT HE'S SAYING, "HEY, HERE'S AN IDEA FOR
7 THIS OTHER PRODUCT, HOW WOULD THEY DO SOMETHING,"
8 AND THEN SAYING THAT SAMSUNG REALLY SCREWED IT UP.
9 BY MR. JOHNSON:

10 Q YEAH, BUT HE SAID AT THE VERY BEGINNING, THE
11 VERY FIRST PHRASE SAYS, "THIS MAY BE OUR ANSWER."
12 RIGHT?

13 A BUT HE DOES NOT SAY THE BANG & OLUFSEN FASHION
14 PHONE MIGHT BE THE ANSWER. HE SAYS "THIS MIGHT BE
15 THE ANSWER," DASH, "WE COULD PUT OUR NUMBER PAD
16 AROUND OUR CLICKWHEEL," AND WE HAD A CLICKWHEEL AT
17 THE TIME, SO WE WERE WORKING WITH THE IPOD, OUR
18 IPOD WHEEL, AND HE'S SAYING, "HEY, THIS MIGHT BE
19 OUR ANSWER. WE CAN PUT A NUMBER PAD AROUND OUR
20 CLICKWHEEL."

21 Q MR. FORSTALL, ALL I ASKED YOU WAS THE VERY
22 FIRST PHRASE HERE, IT SAYS "THIS MAY BE OUR
23 ANSWER." RIGHT?

24 A THAT IS WHAT IT SAYS.

25 MR. JOHNSON: OKAY. THANK YOU. NO

1 FURTHER QUESTIONS.

2 THE COURT: THE TIME IS NOW 2:11. IS
3 THIS WITNESS EXCUSED?

4 MR. MCELHINNY: HE IS FROM OUR SIDE, YOUR
5 HONOR.

6 THE COURT: SUBJECT TO RECALL, OR CAN I
7 JUST EXCUSE HIM?

8 MR. MCELHINNY: I PREFER TO HAVE HIM
9 COMPLETELY EXCUSED. WE MAY CALL HIM ON REBUTTAL.
10 WE WILL NOT HAVE HIM IN THE COURTROOM.

11 THE COURT: ALL RIGHT. HE IS EXCUSED.
12 CALL YOUR NEXT WITNESS, PLEASE.

13 MR. LEE: YOUR HONOR, APPLE CALLS
14 JUSTIN DENISON, WHO IS A SAMSUNG REPRESENTATIVE.
15 WE'RE GOING TO CALL HIM UNDER RULE 611 AND WE'D ASK
16 YOUR HONOR TO EXPLAIN THAT WE'RE CALLING HIM
17 ADVERSELY.

18 THE CLERK: WOULD YOU RAISE YOUR RIGHT
19 HAND, PLEASE.

20 **JUSTIN DENISON,**
21 BEING CALLED AS AN ADVERSE WITNESS ON BEHALF OF THE
22 PLAINTIFF, HAVING BEEN FIRST DULY SWORN, WAS
23 EXAMINED AND TESTIFIED AS FOLLOWS:

24 THE WITNESS: I DO.

25 THE CLERK: HAVE A SEAT, PLEASE. PAR.

1 MR. LEE: YOUR HONOR, I THINK -- CAN WE
2 RETRIEVE THE NOTEBOOK FROM THE LAST WITNESS AND PUT
3 THE RIGHT NOTEBOOKS UP?

4 THE COURT: YEAH, OF COURSE.

5 THE CLERK: STATE YOUR NAME, PLEASE, AND
6 SPELL IT.

7 THE WITNESS: JUSTIN DENISON,
8 J-U-S-T-I-N, D-E-N-I-S-O-N.

9 MR. LEE: YOUR HONOR, MAY I PROCEED, AND
10 MAY I PROCEED UNDER RULE 611?

11 THE COURT: YES. LET ME -- IT'S 2:14.
12 GO AHEAD, PLEASE.

13 **AS-ON CROSS-EXAMINATION**

14 BY MR. LEE:

15 Q GOOD AFTERNOON, MR. DENISON.

16 A GOOD AFTERNOON.

17 Q YOU WORK FORK SAMSUNG TELECOMMUNICATIONS
18 AMERICA; CORRECT?

19 A YES, I DO.

20 Q SOMETIMES REFERRED AS TO STA; CORRECT?

21 A YES.

22 Q SOMETIMES REFERRED AS SAMSUNG MOBILE; CORRECT?

23 A SAMSUNG MOBILE U.S.A.

24 Q YOU'VE WORKED FOR STA SINCE MAY OF 2008;
25 CORRECT?

1 A CORRECT.

2 Q AND YOU'RE THE CHIEF STRATEGY OFFICER;

3 CORRECT?

4 A YES.

5 Q AND IN THAT POSITION, YOU'RE CHARGED WITH

6 FACILITATING THE STRATEGY DEVELOPMENT OF STA;

7 CORRECT?

8 A YES.

9 Q IN THE NOTEBOOK BEFORE YOU THERE ARE SOME

10 EXHIBITS.

11 YOUR HONOR, MAY I APPROACH TO RETRIEVE

12 THE LAST ONE?

13 THE COURT: PLEASE, GO AHEAD.

14 BY MR. LEE:

15 Q SO MR. DENISON, IF YOU'D USE THE TWO WHITE

16 NOTEBOOKS.

17 SO IF YOU WOULD TURN IN VOLUME 1 TO TAB

18 6. TELL ME WHEN YOU'RE THERE.

19 A I'M THERE.

20 Q ALL RIGHT. AND I'M PUTTING PDX 15 ON THE

21 SCREEN.

22 AND LET'S SEE IF YOU CAN HELP US

23 UNDERSTAND JUST WHAT THE ORGANIZATION IS OF

24 SAMSUNG, OKAY?

25 AT THE BOTTOM IS STA; CORRECT?

1 A YES, I SEE THAT.

2 Q THAT'S THE COMPANY YOU WORK FOR; CORRECT?

3 A YES, IT IS.

4 Q IT'S LOCATED IN RICHARDSON, TEXAS; CORRECT?

5 A THAT'S WHERE ITS HEADQUARTERS ARE.

6 Q IT SELLS MOBILE PHONES IN THE UNITED STATES;
7 CORRECT?

8 A MOBILE PHONES AND OTHER EQUIPMENT.

9 Q AND INCLUDED AMONG THE OTHER EQUIPMENT ARE
10 TABLETS THAT CONNECT TO THE CELLULAR NETWORK;
11 CORRECT?

12 A CORRECT.

13 Q STA, AT THE BOTTOM OF THIS CHART, SELLS MOBILE
14 DEVICES TO PHONE CARRIERS WHO THEN SELL THEM TO
15 CUSTOMERS, LIKE THE FOLKS IN THE ROOM; CORRECT?

16 A THAT'S RIGHT.

17 Q NOW, IF WE LOOK AT THE GRAPHIC, STA IS OWNED
18 BY SOMEONE CALLED SEA; CORRECT?

19 A YES.

20 Q THAT'S SAMSUNG ELECTRONICS AMERICA?

21 A YES, THAT'S MY UNDERSTANDING.

22 Q LOCATED IN RICHFIELD, NEW JERSEY; CORRECT?

23 A RICHFIELD PARK, NEW JERSEY, YES.

24 Q AND SEA SELLS ALL SORTS OF DIFFERENT SAMSUNG
25 PRODUCTS; CORRECT?

1 A SURE.

2 Q TELEVISIONS?

3 A YES.

4 Q LAPTOP COMPUTERS?

5 A YES.

6 Q TABLETS?

7 A I GUESS WHAT WE CALL WI-FI ONLY TABLETS, YES.

8 Q CAMERAS?

9 A YES.

10 Q ALL RIGHT. NOW, THAT COMPANY IS, IN TURN,
11 OWNED BY SOMETHING CALLED SAMSUNG ELECTRONICS
12 CORPORATION; CORRECT?

13 A THAT'S MY UNDERSTANDING.

14 Q THAT'S THE PARENT; CORRECT?

15 A I GUESS IF THAT'S WHAT YOU MEAN BY OWNING
16 THEM, YES.

17 Q AND THAT COMPANY IS SOMETIMES CALLED SEC;
18 CORRECT?

19 A YES.

20 Q IT'S LOCATED IN SEOUL, KOREA; CORRECT?

21 A CORRECT.

22 Q AND IT'S SOMETIMES CALLED HQ OR HEADQUARTERS;
23 CORRECT?

24 A SURE.

25 Q NOW, YOU REPORT TO A MAN NAMED DALE SOHN, THE

1 VICE-PRESIDENT OF STA; CORRECT?

2 A YES.

3 Q AND I WANT TO FOCUS ON STA BECAUSE THAT'S THE
4 COMPANY YOU WORK FOR; CORRECT?

5 A YES.

6 Q IT SELLS MOBILE PHONES AND TABLETS IN THE
7 UNITED STATES; RIGHT?

8 A YES.

9 Q IT TAKES PURCHASE ORDERS FROM CARRIERS;
10 CORRECT?

11 A YES.

12 Q YOU THEN TRANSFER THOSE PURCHASE ORDERS TO
13 KOREA, TO SEC; CORRECT?

14 A I'M NOT ACTUALLY SURE HOW THAT PROCESS WORKS,
15 SO, NO, I'M NOT SURE WHETHER THAT'S CORRECT.

16 Q YOU KNOW THAT STA IS NOT MAKING THE PHONES;
17 CORRECT?

18 A CORRECT.

19 Q YOU KNOW THE PHONES ARE BEING MADE BY SEC;
20 CORRECT?

21 A IF BY "MADE" YOU MEAN MANUFACTURING,
22 MANUFACTURED, YES.

23 Q SURE. MAKE, MANUFACTURE, THEY MEAN THE SAME
24 THING; CORRECT?

25 A THEY CAN, YES.

1 Q OKAY. NOW, SEC, THE KOREAN PARENT, THEN SHIPS
2 THE PRODUCTS TO LOCATIONS IN THE UNITED STATES;
3 CORRECT?

4 A YES, TWO LOCATIONS.

5 Q ALL RIGHT. ONE IN CHICAGO; CORRECT?

6 A YES.

7 Q ONE IS DALLAS; CORRECT?

8 A YES.

9 Q AND THE PRODUCTS ARE THEN TRANSFERRED BY TRUCK
10 TO THE PLACES WHERE THE CUSTOMERS ARE LOCATED;
11 CORRECT?

12 A YES.

13 Q AND IF THE PARENT, SEC, PROVIDES YOU AN
14 INSTRUCTION ON A PRODUCT, ON A SALE, ON A CUSTOMER,
15 YOU'RE OBLIGATED TO FOLLOW THAT INSTRUCTION;
16 CORRECT?

17 A I'M SORRY. I'M NOT SURE I UNDERSTOOD THE
18 QUESTION.

19 Q ALL RIGHT. I'LL RESTATE IT AGAIN.

20 A OKAY.

21 Q I'M FOCUSING ON SEC, THE PARENT COMPANY. DO
22 YOU HAVE THAT IN MIND?

23 A YES.

24 Q OKAY. IF THE PARENT COMPANY GIVES YOU AN
25 INSTRUCTION, A DIRECTION ABOUT A CUSTOMER, YOU'RE

1 OBLIGATED TO FOLLOW IT; CORRECT?

2 A CAN YOU GIVE ME AN EXAMPLE, PLEASE, OF AN
3 INSTRUCTION --

4 Q SURE.

5 A -- ABOUT A CUSTOMER?

6 Q IF THEY SAY TO YOU, "MR. DENISON, SHIP THIS
7 PRODUCT TO AT&T IN TEXAS," YOU FOLLOW THAT
8 INSTRUCTION; CORRECT?

9 MR. QUINN: ASSUMES FACT, YOUR HONOR.

10 BY MR. LEE:

11 Q GO AHEAD.

12 A I'M NOT SURE THAT'S THE WAY IT WORKS. I'M NOT
13 SURE THAT'S WHAT WOULD HAPPEN.

14 Q DOES SEC PROVIDE YOU ANY DIRECTIONS AT ALL
15 ABOUT YOUR MOBILE PHONE PRODUCTS?

16 A I WOULD SAY THAT THERE'S A LOT OF
17 CONVERSATIONS BACK AND FORTH. COULD BE CONSTRUED
18 AS DIRECTIONS.

19 Q NOW, MR. DENISON, YOU'VE BEEN DEPOSED IN THIS
20 CASE; CORRECT?

21 A YES.

22 Q ONE TIME WAS SEPTEMBER 21, 2011; CORRECT?

23 A SEPTEMBER, YES, 2011.

24 Q NOW, SO THE LADIES AND GENTLEMEN OF THE JURY
25 UNDERSTAND, YOU ACTUALLY APPEARED AS THE CORPORATE

1 REPRESENTATIVE OF SAMSUNG; CORRECT?

2 A I DID.

3 Q RIGHT. YOU APPEARED ON BEHALF OF ALL THREE OF
4 THESE COMPANIES; CORRECT?

5 A I DID.

6 Q SO YOU WERE SPEAKING FOR ALL THREE OF THE
7 FOLKS THAT I HAD ON THAT SCREEN; CORRECT?

8 A I WAS WITH RESPECT TO SOME CERTAIN TOPICS.

9 Q AND I'M GOING TO COME TO THOSE TOPICS IN A
10 SECOND.

11 BUT SO THE LADIES AND GENTLEMEN OF THE
12 JURY UNDERSTAND, AS THE CORPORATE REPRESENTATIVE
13 FOR ALL THREE COMPANIES, YOU CAME TO A CONFERENCE
14 ROOM; CORRECT?

15 A YES.

16 Q THERE WAS A REPORTER, JUST LIKE OUR REPORTER
17 HERE, WHO WAS TAKING DOWN EVERYTHING YOU SAID;
18 CORRECT?

19 A CORRECT.

20 Q YOU WERE REPRESENTED BY LAWYERS; CORRECT?

21 A YES.

22 Q AND YOU WERE ASKED SOME QUESTIONS AS THE
23 CORPORATE REPRESENTATIVE FOR ALL THREE SAMSUNG
24 ENTITIES; CORRECT?

25 A YES.

1 Q NOW, AMONG THE TOPICS THAT YOU WERE ASKED TO
2 TESTIFY ABOUT WAS SAMSUNG'S IMITATION, COPYING, OR
3 EMULATION OF ANY PRODUCT, ANY APPLE PRODUCT IN
4 DEVELOPING, CREATING OR DESIGNING CERTAIN SAMSUNG
5 PRODUCTS; CORRECT?

6 A THAT WAS TRUE WITH CERTAIN LIMITATIONS PLACED
7 BY THE LAWYERS.

8 Q BUT WHEN YOU SAID JUST A FEW MINUTES AGO YOU
9 CAME INTO THIS ROOM ON BEHALF OF ALL OF THE SAMSUNG
10 ENTITIES TO TESTIFY, THAT WAS ONE OF THE ISSUES YOU
11 WERE TESTIFYING ABOUT; CORRECT?

12 MR. QUINN: YOUR HONOR, ASKED AND
13 ANSWERED. THERE WERE CERTAIN LIMITATIONS.

14 THE COURT: OVERRULED.

15 GO AHEAD.

16 THE WITNESS: I DID REPRESENT SAMSUNG ON
17 THAT TOPIC WITH REGARDS TO CERTAIN LIMITATIONS THAT
18 WERE PUT AROUND THAT TOPIC.

19 BY MR. LEE:

20 Q NOW, YOU WERE ALSO PRESENTED BY SAMSUNG, ALL
21 THREE SAMSUNGS, TO TESTIFY ABOUT ANY REFERENCE TO
22 OR CONSIDERATION OF AN APPLE PRODUCT DURING THE
23 DESIGN OF THE PRODUCTS AT ISSUE, AND THAT WAS
24 CERTAIN PRODUCTS AT THE TIME; CORRECT?

25 A IT WOULD ACTUALLY BE HELPFUL IF I HAD THE

1 LANGUAGE IN FRONT OF ME. BUT I'M ASSUMING YOU'RE
2 READING WHAT THAT LANGUAGE WAS.

3 Q SURE. IT'S AT -- IT'S IN THE NOTEBOOK AT TAB
4 11, TOPIC 9 IF YOU WANT TO TAKE A LOOK AT IT.

5 A OKAY. I'M SORRY. COULD YOU REPEAT THE
6 QUESTION?

7 Q ALL RIGHT. IF YOU LOOK AT TOPIC 9, IT SAYS,
8 QUOTE, "ANY REFERENCE TO OR CONSIDERATION OF AN
9 APPLE PRODUCT DURING THE DESIGN OF THE PRODUCTS AT
10 ISSUE." CORRECT?

11 A THAT'S WHAT IT SAYS.

12 Q THAT'S ONE OF THE OTHER TOPICS YOU WERE
13 DESIGNATED TO TESTIFY ABOUT; CORRECT?

14 A YES, WITH THE SAME LIMITATIONS PLACED ON THE
15 OTHER TOPIC.

16 Q NOW, LET'S TALK ABOUT WHAT YOU DID TO GET
17 YOURSELF READY TO TESTIFY ON BEHALF OF SAMSUNG.

18 YOU ACTUALLY REVIEWED MANY DOCUMENTS;
19 CORRECT?

20 A THERE WERE DOCUMENTS REVIEWED, YES.

21 Q AND ACTUALLY, THERE WERE MANY. THAT'S WHAT
22 YOU TOLD US IN YOUR DEPOSITION; CORRECT?

23 A I MUST HAVE SAID --

24 MR. QUINN: YOUR HONOR, I OBJECT. IF
25 WE'RE REFERRING TO THE DEPOSITION, I THINK WE

1 SHOULD LOOK AT THE TESTIMONY.

2 BY MR. LEE:

3 Q FAIR ENOUGH. CAN YOU TELL ME, DID YOU REVIEW
4 MANY DOCUMENTS OR NOT?

5 A I DON'T ACTUALLY REMEMBER HOW MANY DOCUMENTS I
6 REVIEWED.

7 Q ALL RIGHT. TURN IF YOU WOULD, PLEASE, TO YOUR
8 DEPOSITION, WHICH IS IN VOLUME 1, TAB 7.

9 AND YOUR HONOR, I THINK IN ACCORDANCE
10 WITH THE PROCEDURE WE GAVE IT A PX NUMBER, BUT IT'S
11 JUST AN IMPEACHMENT EXHIBIT. IT'S PX 2001.

12 THE COURT: OKAY.

13 BY MR. LEE:

14 Q DO YOU HAVE THAT BEFORE YOU?

15 A I DO.

16 Q TURN TO PAGE 35, LINE 15.

17 "QUESTION: DID YOU REVIEW ANY DOCUMENTS
18 FOR THE SPECIFIC PURPOSE OF TESTIFYING AS SAMSUNG'S
19 CORPORATION DESIGNEE TODAY?

20 "ANSWER: YES, I REFERRED TO DOCUMENTS
21 FOR THE PURPOSE --

22 "QUESTION: WHAT ARE THOSE DOCUMENTS?

23 "ANSWER: WELL, AS YOU'VE HIGHLIGHTED AND
24 AS I'VE CONFIRMED, I REVIEWED MANY DOCUMENTS, ALL
25 OF WHICH I BELIEVE HAVE BEEN PRODUCED AS PART OF

1 THIS DISCUSSION, AND SPECIFICALLY AS PART OF THE
2 RESEARCH FOR THIS DEPOSITION, WE ASKED FOR AND
3 RECEIVED DOCUMENTS RELATED TO POTENTIAL DESIGN
4 ALTERNATIVES, FOR INSTANCE."

5 A YES.

6 Q I READ THAT CORRECTLY?

7 A YES.

8 Q NOW, I WANT TO HELP THE LADIES AND GENTLEMEN
9 OF THE JURY UNDERSTAND WHERE YOU GOT THESE MANY
10 DOCUMENTS.

11 AMONG THESE MANY DOCUMENTS WERE E-MAILS;
12 CORRECT?

13 A YES.

14 Q PRESENTATIONS; CORRECT?

15 A YES.

16 Q DESIGN DOCUMENTS; CORRECT?

17 A YES, AS I RECALL.

18 Q INTERNAL SAMSUNG DOCUMENTS; CORRECT?

19 A YES.

20 Q NOW, YOU DIDN'T GO FIND THESE DOCUMENTS
21 YOURSELF, DID YOU, SIR?

22 A I'M NOT SURE THAT'S CORRECT.

23 Q DID YOU GO SEARCH FOR THESE DOCUMENTS ON YOUR
24 OWN?

25 A I ACTUALLY PERFORMED AN INVESTIGATION IN

1 PREPARATION FOR MY TESTIMONY THAT DAY.

2 Q MY QUESTION, SIR, WAS, WHO WENT AND LOCATED
3 THE DOCUMENTS? YOU OR SOMEONE ELSE?

4 A THERE WERE MANY DOCUMENTS THAT WERE PROVIDED
5 TO ME. THERE WERE SOME DOCUMENTS THAT I UNCOVERED
6 AS PART OF MY INVESTIGATION.

7 Q AND THE DOCUMENTS THAT WERE PROVIDED TO YOU
8 WERE PROVIDED TO YOU BY SAMSUNG'S LAWYERS; CORRECT?

9 A I BELIEVE SO.

10 Q OKAY. SO YOU HAD TWO SETS OF DOCUMENTS, SOME
11 THAT YOU FOUND ON YOUR OWN, AND ANOTHER GROUP OF
12 DOCUMENTS THAT SAMSUNG'S LAWYERS PROVIDED TO YOU;
13 CORRECT?

14 A YES, THAT'S MY RECOLLECTION.

15 Q AND THOSE DOCUMENTS INCLUDED SOME TRANSLATIONS
16 OF KOREAN DOCUMENTS; CORRECT?

17 A YES, THAT SEEMS RIGHT.

18 Q NOW, YOU DON'T SPEAK KOREAN YOURSELF; CORRECT?

19 A NO.

20 Q YOU DON'T READ KOREAN YOURSELF; CORRECT?

21 A NO.

22 Q IN FACT, YOU'VE BEEN BACK TO SEOUL TO THE
23 PARENT ONLY ONCE SINCE YOU JOINED THE COMPANY IN
24 2008; CORRECT?

25 A THAT'S NOT QUITE RIGHT.

1 Q HOW MANY TIMES?

2 A I JUST RECENTLY GOT BACK FROM KOREA.

3 Q OKAY. SO TWICE?

4 A YES.

5 Q TWO TIMES SINCE 2008, BUT YOU'RE THE
6 DESIGNATED SPOKESPERSON ON COPYING; CORRECT?

7 A YES, THAT'S CORRECT.

8 Q NOW, YOU ALSO TALKED TO A NUMBER OF PEOPLE --
9 MR. QUINN: YOUR HONOR, I'M SORRY. I WAS
10 SLOW. I OBJECT TO THAT LAST COMMENT. IT'S
11 CONTRARY TO THE WITNESS'S TESTIMONY.

12 THE COURT: OVERRULED.

13 BY MR. LEE:

14 Q YOU ALSO TALKED TO SEVERAL SAMSUNG PRODUCT
15 DESIGNERS; CORRECT?

16 A YES.

17 Q NOW, JUST TO BE CLEAR, THESE PRODUCT DESIGNERS
18 WERE IN KOREA; CORRECT?

19 A YES.

20 Q THEY SPOKE KOREAN; CORRECT?

21 A YES, THEY SPOKE KOREAN. SOME OF THEM ALSO
22 SPOKE ENGLISH.

23 Q YOU HAD AN INTERPRETER; CORRECT?

24 A IN SOME CASES AN INTERPRETER WAS USED, YES.

25 Q PROVIDED BY THE LAWYERS; CORRECT?

1 A SURE.

2 Q NOW, AFTER YOU LOOKED AT ALL THESE DOCUMENTS,
3 AFTER YOU SPOKE TO THESE DIFFERENT PEOPLE, YOU
4 APPEARED AND TESTIFIED ON THE ISSUE OF COPYING;
5 CORRECT?

6 MR. QUINN: OBJECTION. MISSTATES THE
7 TESTIMONY, YOUR HONOR.

8 MR. LEE: I'LL --

9 MR. QUINN: HE'S CONSISTENTLY SAID THERE
10 WERE LIMITATIONS.

11 THE COURT: GO AHEAD, PLEASE.

12 MR. LEE: YES.

13 Q MR. DENISON, AFTER REVIEWING ALL THESE
14 DOCUMENTS, AFTER TALKING TO ALL THESE PEOPLE, SOME
15 DOCUMENTS YOU FOUND ON YOUR OWN, SOME DOCUMENTS
16 OTHER FOUNDS FOR YOU, YOU APPEARED AT THE
17 DEPOSITION AND TESTIFIED; CORRECT?

18 A YES, THAT'S RIGHT.

19 Q NOW, LET'S SEE WHAT YOU SAID AT YOUR
20 DEPOSITION.

21 CAN WE HAVE PLAYED ON THE VIDEO PAGE 135,
22 LINES 3 TO 17.

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

25 MR. QUINN: MAY I HAVE A MOMENT, YOUR

1 HONOR, JUST TO READ THE TRANSCRIPT?

2 MR. LEE: VOLUME 1, TAB 7 AT PAGE 135.

3 (PAUSE IN PROCEEDINGS.)

4 MR. QUINN: YOUR HONOR, UNDER THE RULE OF
5 COMPLETENESS, I THINK --

6 THE COURT: YOU'LL HAVE AN OPPORTUNITY TO
7 CROSS HIM AND GET IT IN, SO LET'S GO AHEAD.

8 MR. QUINN: ALL RIGHT.

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

11 BY MR. LEE:

12 Q NOW, MR. DENISON, THE QUESTION SPECIFICALLY
13 ASKED YOU ABOUT COPYING. DO YOU RECALL THAT?

14 A YES, AND I SEE THAT IN THE TRANSCRIPT.

15 Q THERE'S A DIFFERENCE BETWEEN BENCHMARKING AND
16 COPYING; ISN'T THERE?

17 A SURE.

18 Q RIGHT. BIG DIFFERENCE, ISN'T THERE?

19 A I THINK SO.

20 Q RIGHT. BENCHMARKING IS LOOKING AT SOMEONE
21 ELSE'S PRODUCT; CORRECT?

22 A PART OF THAT, YES.

23 Q COPYING IS RIPPING IT OFF; RIGHT?

24 A I SUPPOSE THAT'S ONE DEFINITION OF IT.

25 Q IT'S A FAIR DEFINITION BASED UPON YOUR

1 EXPERIENCE IN THE FIELD; CORRECT?

2 A THAT'S NOT THE DEFINITION I WOULD OFFER.

3 Q RIGHT. BUT THERE'S A BIG DIFFERENCE BETWEEN
4 THE TWO; CORRECT?

5 A YES.

6 Q ALL RIGHT. NOW, MR. DENISON, DO YOU STAND BY
7 THAT TESTIMONY TODAY?

8 A I DO.

9 Q OKAY. SO BASED UPON EVERYTHING YOU KNOW
10 TODAY, NO INDICATION THAT THE DESIGNERS OF THE
11 SAMSUNG PRODUCTS -- AND LET ME GET YOUR QUOTE
12 RIGHT -- "CONSIDERED OR STUDIED OR DREW DIRECT
13 COMPARISONS OR WHAT HAVE YOU VERSUS THE RELEVANT
14 APPLE PRODUCTS."

15 YOU STAND BY THAT TESTIMONY; CORRECT?

16 A YEAH. MY TESTIMONY WAS GIVEN WITH REGARDS TO
17 CERTAIN SPECIFIC PRODUCTS AND CERTAIN FEATURES, AND
18 WITH RESPECT TO THAT LIMITATION, YES, I STAND BY
19 THAT TESTIMONY.

20 Q WELL, IF WE BROADEN IT OUT TO THE PRODUCTS
21 THAT ARE AT ISSUE IN THIS CASE NOW, DO YOU STAND BY
22 THAT TESTIMONY OR NOT?

23 MR. QUINN: YOUR HONOR, THIS NOW LACKS
24 FOUNDATION. IT'S BEYOND THE SCOPE OF HIS
25 DESIGNATION. HE WAS DESIGNATED --

1 THE COURT: OVERRULED.

2 PLEASE SIT DOWN. PLEASE.

3 THE WITNESS: CAN YOU REPEAT THE
4 QUESTION?

5 BY MR. LEE:

6 Q SURE. DO YOU HAVE IT IN MIND? YOU KEEP
7 TELLING ME THAT YOUR TESTIMONY WAS LIMITED TO
8 CERTAIN PRODUCTS. OKAY.

9 BUT NOW WE'RE IN THIS TRIAL, THERE ARE
10 PRODUCTS THAT ARE ACCUSED. THERE ARE APPLE
11 PRODUCTS AT ISSUE.

12 DO YOU STAND BY YOUR TESTIMONY OR NOT?
13 THERE WAS NO CONSIDERATION, NO REVIEW, NO
14 COMPARISON OF THE APPLE AND SAMSUNG PRODUCTS? YES
15 OR NO?

16 A YES WITH RESPECT TO THOSE PRODUCTS AND
17 FEATURES.

18 Q NO. I ASKED YOU A DIFFERENT QUESTION, SIR.

19 A OH.

20 Q WITH RESPECT TO THE PRODUCTS AND FEATURES AT
21 ISSUE IN THIS CASE NOW, DO YOU STAND BY YOUR
22 TESTIMONY?

23 MR. QUINN: YOUR HONOR, LACKS FOUNDATION.

24 THE COURT: OVERRULED.

25 MR. QUINN: MAY WE HAVE A SIDE-BAR, YOUR

1 HONOR? THERE IS A SIGNIFICANT ISSUE.

2 THE COURT: OVERRULED.

3 GO AHEAD, PLEASE.

4 BY MR. LEE:

5 Q DO YOU STAND BY YOUR TESTIMONY OR NOT?

6 A SO THAT WOULD NOT BE MY TESTIMONY IN THAT
7 CASE.

8 Q RIGHT. IN FACT, YOUR TESTIMONY WOULD BE THE
9 OPPOSITE? YOU NOW KNOW FOR THE PRODUCTS AT ISSUE
10 IN THIS CASE, OR THE FEATURES AT ISSUE IN THIS
11 CASE, SAMSUNG ENGINEERS, IN FACT, CONSIDERED,
12 REVIEWED AND COMPARED THEMSELVES TO APPLE PRODUCTS,
13 DON'T YOU, SIR?

14 A SO I'M SORRY. YOU'RE NOT ASKING ME -- YOU'RE
15 ASKING ME IF THEY CONSIDERED, REVIEWED AND
16 COMPARED, WHICH I BELIEVE ARE ELEMENTS OF
17 BENCHMARKING --

18 Q YES, FOR THE PRODUCTS THAT ARE AT ISSUE IN
19 THIS CASE TODAY, THE PRODUCTS THE JURY HAS TO --
20 THE ANSWER IS YOUR TESTIMONY WOULD BE DIFFERENT;
21 CORRECT?

22 A MY TESTIMONY WOULD STILL BE NO BECAUSE I
23 DIDN'T UNDERTAKE AN INVESTIGATION OF ALL PRODUCTS
24 AT ISSUE IN THIS CASE.

25 Q OH. SO YOU REALLY CAN'T SAY?

1 A CORRECT.

2 Q OKAY. SO LET'S -- LET ME ASK YOU A FEW
3 QUESTIONS ABOUT WHAT YOU DID DO.

4 ONE OF THE ENGINEERS YOU TALKED TO WOULD
5 A GENTLEMAN NAMED WOOKYUN KHO, K-H-O; CORRECT?

6 A YES.

7 Q AND IT'S YOUR TESTIMONY THAT HE SAID THAT HE
8 DIDN'T LOOK AT OR COMPARE ANY SAMSUNG PRODUCT TO
9 ANY APPLE PRODUCTS; CORRECT?

10 A I'M SORRY. CAN YOU POINT -- CAN YOU POINT TO
11 THAT IN MY DEPOSITION? I DON'T RECALL SAYING THAT.

12 Q WHAT YOU SAID WAS WHAT I JUST SHOWED YOU ON
13 THE SCREEN, AND MR. KOH WAS ONE OF THE PEOPLE YOU
14 TALKED TO, WASN'T HE?

15 A IT'S MY RECOLLECTION THAT AS PART OF THAT
16 PORTION OF THE DISCUSSION, WE WERE REFERRING TO THE
17 INDUSTRIAL DESIGNERS.

18 Q RIGHT. AND MR. KHO WAS ONE OF THEM; CORRECT?

19 A MY UNDERSTANDING IS THAT MR. KHO IS NOT AN
20 INDUSTRIAL DESIGNER.

21 Q WAS MR. KHO ONE OF THE PEOPLE YOU TALKED TO OR
22 NOT?

23 A HE IS, YES.

24 Q NOW, TURN IF YOU WOULD, IN THE NOTEBOOK, TO
25 VOLUME 1, TAB 3, WHICH IS PLAINTIFF'S EXHIBIT 58.

1 AND I NOW WANT TO TALK TO YOU SO YOU CAN
2 HELP THE LADIES AND GENTLEMEN OF THE JURY WITH THE
3 DOCUMENTS YOU ACTUALLY FOUND ON YOUR OWN AND SOME
4 DOCUMENTS THAT YOU DIDN'T FIND ON YOUR OWN. OKAY?

5 A OKAY.

6 Q NOW, YOU HAVE PLAINTIFF'S EXHIBIT 58; CORRECT?

7 A I DO.

8 Q THIS IS AN E-MAIL YOU SENT TO SOME FOLKS AT
9 SAMSUNG; CORRECT?

10 A IT IS FROM ME TO A COLLECTION OF STA
11 EMPLOYEES, YES.

12 Q AND IT'S AN E-MAIL WHICH YOU DESIGNATED "HIGH
13 IMPORTANCE." CORRECT?

14 A YES, IT LOOKS THAT WAY.

15 MR. LEE: WE OFFER PX 58, YOUR HONOR.

16 MR. QUINN: NO OBJECTION.

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

18 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
19 58, HAVING BEEN PREVIOUSLY MARKED FOR
20 IDENTIFICATION, WAS ADMITTED INTO
21 EVIDENCE.)

22 BY MR. LEE:

23 Q NOW, I'M GOING TO MOVE THROUGH THESE PROMPTLY
24 BECAUSE WE'RE ALL OPERATING UNDER SOME TIME
25 CONSTRAINTS. THE SUBJECT LINE OF YOUR E-MAIL SAYS,

1 QUOTE, "GS CHOI'S DIRECTION AND REQUEST TO STA."

2 DO YOU SEE THAT?

3 A I DO.

4 Q MR. CHOI, IN 2011, WAS THE CHAIRMAN OF SAMSUNG
5 ELECTRONICS, THE KOREAN PARENT; CORRECT?

6 A HE WAS -- I'M NOT SURE OF HIS EXACT TITLE. I
7 DON'T THINK CHAIRMAN IS QUITE ACCURATE.

8 Q HE WAS THE NUMBER ONE OR NUMBER TWO GUY IN THE
9 WHOLE COMPANY?

10 A HE WAS THE CEO, AS I RECALL, OF SAMSUNG
11 ELECTRONICS.

12 Q NOW, TURN, IF YOU WOULD, IN PX 58 TO THE PAGE
13 THAT SAYS 640 IN THE BOTTOM RIGHT-HAND CORNER, AND
14 WE'LL BRING IT UP ON THE SCREEN IF THAT'S EASIER
15 FOR YOU TO SEE.

16 "PLEASE FIND ATTACHED UPDATED
17 PRESENTATIONS WE'RE SHOWING FOR THE PURPOSES OF
18 DISCUSSION TODAY RE: BEAT APPLE STRATEGY UPDATE."
19 CORRECT?

20 A YES.

21 Q THAT'S WHAT YOU SENT OUT; CORRECT?

22 A YES.

23 Q SO LET'S LOOK AT THE PRESENTATION YOU SENT ON.

24 NOW, THIS IS 2011?

25 A IT APPEARS SO.

1 Q FOUR YEARS AFTER THE IPHONE WAS INTRODUCED TO
2 THE MARKET; CORRECT?

3 A THAT'S ABOUT RIGHT.

4 Q ALL RIGHT. SO LET'S LOOK AT PAGE 3 OF THE
5 PRESENTATION, AND YOU'LL FIND AN EXECUTIVE SUMMARY.
6 TELL ME WHEN YOU'RE THERE.

7 A I'M THERE.

8 Q AND IN THE EXECUTIVE SUMMARY, YOU SAY "THE
9 CHAIRMAN HAS ASKED US" -- WELL, LET ME STATE IT
10 DIFFERENTLY.

11 YOU SAY "GS CHOI REQUEST." CORRECT?

12 A YES.

13 Q AND THAT IS THE PERSON WE JUST REFERRED TO AS
14 ONE OF THE NUMBER ONE OR NUMBER TWO GUY IN THE
15 COMPANY; CORRECT?

16 A SURE.

17 Q AND IT'S -- HE'S ASKED YOU TO RESPOND WITH A
18 PLAN IN 2011 WITH A BEAT APPLE BY Q3'11; CORRECT?

19 A THAT'S NOT QUITE RIGHT.

20 Q WELL, LET ME JUST READ IT. "STA MUST RESPOND
21 WITH A PLAN TO BEAT APPLE BY Q3'11 OR Q4'11 WITH A
22 LONGER-TERM GOAL OF GROWING SUPER PREMIUM ASP'S TO
23 MATCH APPLE IN 2012."

24 DID I READ THAT CORRECTLY?

25 A YES.

1 Q THAT'S A SLIDE YOU WROTE; CORRECT?

2 A YES.

3 Q ALL RIGHT. NOW, AT PAGE 5 OF THE SAME
4 PRESENTATION, YOU REFER TO A PRESENTATION MADE BY
5 SOMETHING CALLED THE BOSTON CONSULTING GROUP;
6 CORRECT?

7 A YES.

8 Q NOW, THAT'S A GROUP THAT YOU INVITED IN TO
9 HELP DEVELOP A STRATEGY TO COMPETE WITH APPLE;
10 CORRECT?

11 A NO, NOT EXACTLY.

12 Q WELL, IT SAYS, "STA INVITED BOSTON CONSULTING
13 GROUP TO PRESENT AT THE NOVEMBER 2010 STRATEGY
14 WORKSHOP."

15 DID I READ THAT CORRECTLY?

16 A YOU DID.

17 Q AND THAT WAS THREE YEARS AFTER THE IPHONE WAS
18 INTRODUCED TO THE MARKET; CORRECT?

19 A ABOUT THAT, YES.

20 Q AND YOU HIRED BOSTON CONSULTING GROUP;
21 CORRECT?

22 A NO, WE DID NOT.

23 Q WELL, LET'S SEE. WHAT YOU DID DO IS YOU
24 INVITED THEM TO COME MAKE A PRESENTATION, AND THEN
25 IF YOU LOOK AT THE LOWER RIGHT-HAND CORNER OF SLIDE

1 5, IT SAYS, "DOUBLE CLICK TO LAUNCH PDF FILE."

2 DO YOU SEE THAT?

3 A YES.

4 Q AND IF I WERE TO DOUBLE CLICK THERE, WHAT I'D
5 GET IS THE BOSTON CONSULTING GROUP PRESENTATION;
6 CORRECT?

7 A I THINK SO.

8 Q YEAH. SO LET'S TURN, IF YOU WOULD, TO VOLUME
9 1, TAB 2, WHICH IS PLAINTIFF'S EXHIBIT 54.

10 DO YOU HAVE THAT?

11 A I DO.

12 Q NOW, THIS IS THE BOSTON CONSULTING GROUP
13 REPORT IN 2010 THAT YOU WOULD GET IF YOU CLICKED ON
14 YOUR PRESENTATION; CORRECT?

15 A I BELIEVE SO.

16 Q AND IN 2010, WHAT YOU WERE GETTING FROM BOSTON
17 CONSULTING GROUP IS "LESSONS FROM APPLE." CORRECT?

18 A THAT'S WHAT IT SAYS, YES.

19 MR. LEE: WE MOVE -- WE OFFER PX 54, YOUR
20 HONOR.

21 MR. QUINN: NO ADDITIONAL OBJECTIONS,
22 YOUR HONOR.

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

24 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
25 54, HAVING BEEN PREVIOUSLY MARKED FOR

1 IDENTIFICATION, WAS ADMITTED INTO
2 EVIDENCE.)

3 BY MR. LEE:

4 Q NOW, IN 2010, IN PX 54, IF YOU TURN TO PAGE 1
5 OF THE PRESENTATION, THE CONTEXT STATES, "THIS
6 PRESENTATION WAS PRESENTED TO SAMSUNG STA IN
7 DALLAS, TEXAS IN NOVEMBER 2010."

8 CORRECT?

9 A YES.

10 Q AND IF I THEN TURN YOU TO PAGE 2, WHAT THEY
11 TELL YOU IS, "WHY YOU SHOULD CARE ABOUT APPLE."

12 CORRECT?

13 A YES.

14 Q ALL RIGHT. NOW, TURN, IF YOU WOULD, TO TAB --
15 VOLUME 1, TAB 3, PX 62.

16 A I'M SORRY. WHICH TAB AGAIN?

17 Q ACTUALLY, GO TO VOLUME 1, TAB 3, WHICH IS PX
18 58. I APOLOGIZE.

19 MR. QUINN: I'M SORRY?

20 MR. LEE: VOLUME 1, TAB 3, PX 58, AND
21 WE'RE GOING TO PAGE 8.

22 Q DO YOU HAVE THAT BEFORE YOU?

23 A I DO.

24 Q ALL RIGHT. NOW, WE'LL PUT IT UP ON THE
25 SCREEN. AND YOU TALK ABOUT RECENT APPLE ANALYSIS

1 PROJECTS.

2 NOW, THIS IS 2011; CORRECT?

3 A YES, I BELIEVE SO.

4 Q AND ONE OF THEM IS "STA PRODUCT PLANNING AND
5 STRATEGY ISSUED BELOW, COUNTER IPHONE 5 STRATEGY IN
6 MARCH, UPDATE REQUIRED."

7 CORRECT?

8 A YES.

9 Q ALL RIGHT. NOW, LET ME ASK YOU TO LOOK AT
10 VOLUME 1, TAB 5, WHICH IS PX 62. DO YOU HAVE IT
11 BEFORE YOU?

12 A I DO.

13 Q THIS IS THE IPHONE COUNTER STRATEGY THAT YOU
14 JUST REFERRED TO; CORRECT?

15 A I BELIEVE SO.

16 Q AND IT'S DATED MARCH 2011, ABOUT FOUR YEARS
17 AFTER THE IPHONE WAS INTRODUCED; CORRECT?

18 A JUST A LITTLE LESS THAN THAT, YES.

19 MR. LEE: ALL RIGHT. YOUR HONOR, WE
20 OFFER PX 62.

21 MR. QUINN: NO OBJECTION, YOUR HONOR.

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

23 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
24 62, HAVING BEEN PREVIOUSLY MARKED FOR
25 IDENTIFICATION, WAS ADMITTED INTO

1 EVIDENCE.)

2 BY MR. LEE:

3 Q NOW, THIS WILL BE IN EVIDENCE AND THE JURY CAN
4 LOOK AT IT. I'M JUST GOING TO ASK YOU ABOUT ONE OF
5 THE RECOMMENDATIONS FOUR YEARS AFTER THE IPHONE WAS
6 INTRODUCED.

7 TURN, IF YOU WOULD, TO PAGE 13. DO YOU
8 HAVE THAT BEFORE YOU?

9 A I DO.

10 Q AND ONE OF THE RECOMMENDATIONS MADE IS
11 "SAMSUNG 4G PRODUCTS TO UNDERCUT IPHONE 5."

12 CORRECT?

13 A THAT'S WHAT IT SAYS, YES.

14 Q AND THAT WAS PART OF YOUR STRATEGY IN 2011;
15 CORRECT?

16 A NOT EXACTLY, NO.

17 Q THIS IS YOUR DOCUMENT, ISN'T IT, SIR?

18 A I DID NOT AUTHOR THIS DOCUMENT. I'M AWARE OF
19 THE DOCUMENT.

20 Q OKAY. YOU PRESENTED IT?

21 A NO, I DON'T RECALL PRESENTING THIS DOCUMENT.

22 Q ALL RIGHT. SO IT'S A SAMSUNG DOCUMENT; RIGHT?
23 YOU RECOGNIZE THAT; CORRECT?

24 A IT APPEARS TO BE.

25 Q YEAH. AND YOU KNOW THAT WAS PART OF THE

1 STRATEGY; CORRECT?

2 A NO. AGAIN, THAT'S THE PART THAT I DON'T THINK
3 IS EXACTLY CORRECT.

4 Q OKAY. LET'S GO, IF YOU WOULD, TO VOLUME 1,
5 TAB 4, WHICH IS PX 60. NOW, THIS -- NOW WE'RE INTO
6 FEBRUARY OF 2012. DO YOU HAVE THAT BEFORE YOU?

7 A I DO.

8 Q WE'RE FIVE YEARS AFTER THE IPHONE HAS BEEN
9 INTRODUCED; CORRECT?

10 A A LITTLE LESS THAN THAT, YES.

11 Q YOU'RE THE OWNER OF THIS PRESENTATION, AND IF
12 WE CAN -- LET ME DO THIS.

13 YOU RECOGNIZE THIS PRESENTATION; CORRECT?

14 A I BELIEVE SO, YES.

15 Q YOU'RE THE OWNER?

16 A I AM.

17 Q YOU MARKED IT "TOP SECRET." CORRECT?

18 A YES.

19 MR. LEE: WE OFFER PX 60, YOUR HONOR.

20 MR. QUINN: NO OBJECTION.

21 THE COURT: IT'S ADMITTED.

22 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER

23 60, HAVING BEEN PREVIOUSLY MARKED FOR

24 IDENTIFICATION, WAS ADMITTED INTO

25 EVIDENCE.)

1 BY MR. LEE:

2 Q TURN, IF YOU WOULD, TO SLIDE 8.

3 A I SEE THAT.

4 Q ONE OF THE THINGS YOU STATE ON SLIDE 8 IS, IN
5 2012, "THREE HORSE RACE BECOMING A TWO HORSE RACE
6 BETWEEN APPLE AND SAMSUNG."

7 CORRECT?

8 A THAT'S WHAT IT SAYS, YES.

9 Q ALL RIGHT. NOW, I WANT TO GO BACK TO YOUR
10 DEPOSITION TESTIMONY THAT WE SHOWED ON THE SCREEN A
11 FEW MINUTES AGO.

12 AND YOU TOLD THE JURY THAT YOU FOUND SOME
13 DOCUMENTS ON YOUR OWN AND SOME OF THOSE WERE GIVEN
14 TO YOU; CORRECT?

15 A CORRECT.

16 Q BUT YOU UNDERSTAND THAT YOU WERE THERE TO TALK
17 ON BEHALF OF ALL THREE SAMSUNG ENTITIES; CORRECT?

18 A YES, AGAIN, WITH THOSE LIMITATIONS THAT WE
19 TALKED ABOUT.

20 Q AND YOU WERE GOING TO TALK ABOUT ALL OF THE
21 DOCUMENTS THAT MIGHT RELATE TO THOSE ISSUES WITH
22 THOSE LIMITATIONS; CORRECT?

23 A I WAS THERE TO UNDERTAKE AN INVESTIGATION AND
24 REPORT BACK TO THE COMPANY, SO --

25 Q ALL RIGHT. SO TURN, IF YOU WOULD, IN YOUR

1 NOTEBOOK TO VOLUME 1, TAB 1, WHICH IS PX 44.

2 DON'T PUT IT ON THE SCREEN YET.

3 DO YOU HAVE IT?

4 A I DO.

5 Q NOW, YOU RECOGNIZE -- YOU SEE THIS IS A
6 SAMSUNG DOCUMENT; CORRECT?

7 A I'M NOT -- I'M NOT ENTIRELY SURE IT'S A
8 SAMSUNG DOCUMENT.

9 Q WELL, YOU SEE ON THE FRONT WHERE IT SAYS
10 "RELATIVE EVALUATION REPORT ON S1, IPHONE, PRODUCT
11 ENGINEERING TEAM, SW VERIFICATION GROUP"?

12 A I DO.

13 Q WAS THIS ONE OF THE DOCUMENTS THAT YOU FOUND
14 OR WAS GIVEN TO YOU DURING THE TIME YOU WERE MAKING
15 YOUR INVESTIGATION?

16 A NO. IN FACT, I'VE NEVER SEEN THIS DOCUMENT
17 PRIOR TO PREPARING FOR THIS TESTIMONY.

18 Q ALL RIGHT.

19 YOUR HONOR, WE WOULD OFFER PX 44 AS AN
20 ADMISSION BY SAMSUNG.

21 MR. QUINN: LACKS FOUNDATION, YOUR HONOR.

22 MR. LEE: YOUR HONOR, HE'S A 30(B)(6)
23 WITNESS. YOU CAN'T GIVE A 30(B)(6) WITNESS SOME
24 DOCUMENTS BUT NOT OTHERS AND THEN SAY OTHERS CAN'T
25 COME IN.

1 MR. QUINN: YOUR HONOR, HE HAS NOT
2 ESTABLISHED THAT THIS HAS ANYTHING TO DO WITH THE
3 SCOPE OF HIS 30(B)(6) TESTIMONY, YOUR HONOR.

4 THE WITNESS HAS SAID SEVERAL TIMES THAT
5 THERE WERE LIMITATIONS. THE WITNESS HAS NOT SEEN
6 THIS DOCUMENT.

7 THE COURT: ALL RIGHT. TELL ME WHERE,
8 WITH THE LIMITATIONS OF THE PATENTS AT ISSUE AND
9 THE PRODUCTS AT ISSUE, IT'S IN THIS EXHIBIT.

10 MR. LEE: IF YOUR HONOR GOES TO --

11 MR. QUINN: YOUR HONOR, THAT WAS -- THE
12 LIMITATIONS OF THE 30(B)(6) TESTIMONY WERE NARROWER
13 THAN THAT.

14 THE COURT: I KNOW. BUT LET'S HAVE HIM
15 MAKE A PROFFER AND THEN I'LL LET YOU RESPOND TO
16 THAT. OKAY?

17 MR. LEE: YOUR HONOR, IF YOU GO IN
18 EXHIBIT 44 TO PAGE 58, PAGE 122, PAGE 131, I'M NOT
19 GOING TO SUMMARIZE THEM IN FRONT OF THE JURY, BUT
20 THEY ALL DEAL WITH FEATURES AT ISSUE.

21 MR. QUINN: YOUR HONOR, COULD I HEAR
22 THOSE PAGE NUMBERS AGAIN, PLEASE?

23 MR. LEE: 58, 122, 131.

24 (PAUSE IN PROCEEDINGS.)

25 MR. LEE: YOUR HONOR, CAN I SAY ONE

1 THING?

2 THERE'S A STIPULATION AS TO AUTHENTICITY,
3 SO MY ONLY QUESTION IS THE HEARSAY OBJECTION, OR
4 THE HEARSAY QUESTION.

5 (PAUSE IN PROCEEDINGS.)

6 THE COURT: WELL, 58 IS RELEVANT TO THE
7 ISSUE IN SEPTEMBER.

8 MR. QUINN: YOUR HONOR, AT THE TIME OF
9 THE PRELIMINARY INJUNCTION, DOUBLE TAP --

10 THE COURT: ALL RIGHT. THAT WAS
11 IMPROPER.

12 MR. QUINN: I APOLOGIZE, YOUR HONOR.

13 THE COURT: YOU'RE THE PARTY THAT
14 REQUESTED THAT THAT NOT BE MENTIONED AND YOU
15 INTENTIONALLY BROUGHT IT IN.

16 MR. QUINN: I APOLOGIZE, YOUR HONOR.

17 THE COURT: I HAVE A DIFFICULTY BELIEVING
18 THAT WAS NOT INTENTIONAL.

19 BUT WHAT ELSE DO YOU WANT TO SAY?

20 MR. QUINN: YOUR HONOR, AT THE TIME THE
21 DEPOSITION WAS TAKEN, THAT WAS NOT AN ISSUE.
22 DOUBLE TAP WAS NOT AN ISSUE AT THE TIME.

23 HE WAS DESIGNATED TO TESTIFY ABOUT THE
24 PATENTS THEN AT ISSUE --

25 MR. LEE: YOUR HONOR --

1 MR. QUINN: -- WHICH WAS --

2 MR. LEE: THIS WAS IN HIS DEPOSITION.

3 I ASKED HIM IF HE STOOD BY HIS TESTIMONY
4 AS TO THE PRODUCTS THAT ARE BEFORE THIS JURY AND HE
5 SAID THAT HE DID. HE SAID BOTH. HE SAID HE DID
6 AND HE SAID HE DIDN'T.

7 THE QUESTION IS NOT WHATEVER THEY THOUGHT
8 THEY LIMITED THE DEPOSITION TO.

9 THE QUESTION IS HIS TESTIMONY TODAY.

10 THE COURT: OKAY. 58 IS COMING IN.

11 GO AHEAD.

12 WHAT ABOUT 122?

13 MR. LEE: IT'S 44, YOUR HONOR. I'M
14 SORRY. THE OTHER PAGES WERE 122.

15 THE COURT: IT'S PAGE 58 OUT OF 132;
16 CORRECT?

17 MR. LEE: IT'S PAGE 58 OF EXHIBIT 44, AND
18 THE OTHER PAGES ARE 122 AND 131.

19 MR. QUINN: YOUR HONOR, WITH RESPECT TO
20 PAGE 122, THERE WAS NOTHING --

21 THE COURT: OKAY. WE'RE NOT LIMITED TO
22 HIS DEPOSITION TOPICS. HE IS A WITNESS AT TRIAL.

23 MR. QUINN: I KNOW, YOUR HONOR.

24 THE COURT: SO HE'S NOT LIMITED TO HIS
25 DEPOSITION TOPICS.

1 MR. QUINN: I KNOW, YOUR HONOR.

2 BUT MY UNDERSTANDING IS THE BASIS FOR
3 LAYING THE FOUNDATION IS HE WAS A 30(B)(6) WITNESS
4 DESIGNATED ON CERTAIN TOPICS, AND MY POINT IS THAT
5 WE HAVE TO FOCUS ON WHAT THOSE TOPICS WERE, AND AT
6 THAT TIME THERE WAS NOTHING ABOUT UX THAT WAS AN
7 ISSUE. HE WAS NOT DESIGNATED ON THAT. THAT'S WHAT
8 THIS PAGE REFERS TO.

9 MR. LEE: YOUR HONOR, I THINK WE'RE
10 FIGHTING TWO DIFFERENT WARS HERE.

11 I SPECIFICALLY ASKED HIM THE BROADER
12 QUESTION. WE'VE CALLED HIM ADVERSELY. HE'S A
13 REPRESENTATIVE OF SAMSUNG. I ASKED HIM THE
14 QUESTION WHETHER HE STOOD BY THE CONCLUSION FOR THE
15 PRODUCTS AND FEATURES THAT ARE AT ISSUE IN THIS
16 LITIGATION.

17 MR. QUINN: YOUR HONOR --

18 MR. LEE: THAT'S THE PREDICATE FOR THIS.

19 MR. QUINN: YOUR HONOR, I WOULD REALLY
20 RESPECTFULLY REQUEST, YOUR HONOR, THAT WE TAKE A
21 LOOK AT ACTUALLY WHAT HE WAS DESIGNATED ON, BECAUSE
22 THAT'S THE BASIS FOR LAYING THE FOUNDATION, AND --

23 THE COURT: NO. 122 IS COMING IN.

24 LET'S SEE 131.

25 THIS IS IMPEACHMENT OF A HOSTILE WITNESS,

1 SO IT'S CROSS. IT'S NOT DIRECT.

2 MR. QUINN: AGAIN, YOUR HONOR, THIS IS --
3 THIS DOES NOT RELATE TO ANYTHING THAT WAS AT ISSUE
4 AT THE TIME AND HE WASN'T DESIGNATED ON THIS.

5 MR. LEE: IT'S THE SAME ISSUE. IT'S
6 RELEVANT. IT'S RELEVANT TO --

7 MR. QUINN: THERE'S A FOUNDATION ISSUE.
8 I'M NOT ARGUING WITH RESPECT TO RELEVANCE
9 GENERALLY, YOUR HONOR.

10 I'M ARGUING ABOUT WHETHER IT'S PROPER TO
11 ASK THIS WITNESS, BASED ON THE FOUNDATION THAT HE
12 WAS A 30(B)(6) WITNESS, WITHOUT TAKING INTO ACCOUNT
13 WHAT HE WAS DESIGNATED ON.

14 MR. LEE: AND, AGAIN, YOUR HONOR, THAT'S
15 A BROADER QUESTION.

16 MR. QUINN: THERE WAS A PROCEEDING THEN
17 WHICH DEALT WITH --

18 THE COURT: ALL RIGHT. IT'S IMPEACHMENT.
19 GO AHEAD.

20 MR. LEE: ALL RIGHT.

21 Q DO YOU HAVE EXHIBIT 44 BEFORE YOU IN YOUR
22 BINDER?

23 A I DO.

24 Q OKAY. NOW, THIS IS A DOCUMENT THAT REFERS TO
25 THE SAMSUNG PRODUCT ENGINEERING TEAM; CORRECT?

1 A AGAIN, I DON'T NECESSARILY KNOW THAT THIS
2 REFERS TO THE SAMSUNG PRODUCT ENGINEERING TEAM.

3 Q ALL RIGHT. WELL, WE'LL TAKE A LOOK. IT SAYS
4 "SW VERIFICATION GROUP." CORRECT?

5 A CORRECT.

6 Q "PRODUCT ENGINEERING TEAM." CORRECT?

7 A CORRECT.

8 Q "2010." CORRECT?

9 A YES.

10 Q NOW, JUST SO THE JURY IS CLEAR, IN 2010, THE
11 SAMSUNG GALAXY PHONE THAT'S ACCUSED OF INFRINGING
12 HERE WAS IN DEVELOPMENT; CORRECT?

13 A IN PARTS OF 2010 IT WAS UNDER DEVELOPMENT.

14 Q RIGHT. AND IN MARCH OF 2010, IT WAS UNDER
15 DEVELOPMENT; CORRECT?

16 A AGAIN, ARE WE TALKING -- CAN WE BE SPECIFIC
17 ABOUT WHICH PRODUCT WE'RE TALKING ABOUT SO I CAN BE
18 SURE?

19 Q THE SAMSUNG GALAXY PHONE WAS IN DEVELOPMENT IN
20 2010; CORRECT, SIR?

21 A I'M SORRY. THERE'S A LOT OF GALAXY PHONES.
22 SO CAN YOU --

23 Q THE FIRST ONE?

24 A THE GALAXY S I?

25 Q YEAH.

1 A AS I RECALL, IT HAD NOT LAUNCHED YET IN MARCH
2 OF 2010.

3 Q ALL RIGHT. TURN, IF YOU WILL -- AND WE'LL PUT
4 IT ON THE SCREEN -- TO EXHIBIT 44, PAGE 58.

5 NOW, DO YOU SEE THAT BEFORE YOU?

6 A I DO.

7 Q AND I WANT YOU TO HAVE IN MIND YOUR TESTIMONY
8 ABOUT COMPARING APPLE PRODUCTS AND SAMSUNG
9 PRODUCTS.

10 DO YOU REMEMBER THAT?

11 A YES.

12 Q NOW, ON THE LEFT-HAND SIDE WE HAVE THE IPHONE;
13 CORRECT?

14 A YES.

15 Q ON THE RIGHT-HAND SIDE WE HAVE THE S 1;
16 CORRECT?

17 A CORRECT.

18 Q THAT'S THE GALAXY S I AS YOU JUST TOLD ME;
19 CORRECT?

20 A I THINK THAT'S PERHAPS WHAT IT IS
21 REPRESENTING.

22 Q AND WHAT IT SAYS AT THE TOP IS, "BROWSING, WEB
23 BROWSER."

24 YOU KNOW WHAT THAT REFERS TO; CORRECT?

25 A I UNDERSTAND WHAT A WEB BROWSER IS, YES.

1 Q RIGHT. "DOUBLE TAP ONLY SUPPORTS
2 EXPANSION/REDUCTION THEREFORE IT'S NOT POSSIBLE TO
3 MOVE QUICKLY FROM THE EXPANDED SCREEN MODE."

4 DO YOU SEE THAT?

5 A I DO.

6 Q AND THERE'S SOME -- A DESCRIPTION OF THE
7 IPHONE; CORRECT?

8 A YES.

9 Q AND THERE'S A DESCRIPTION OF THE S 1; CORRECT?

10 A YES.

11 Q AND AFTER COMPARING THE TWO, THERE'S SOMETHING
12 CALLED IMPROVEMENT; CORRECT?

13 A I SEE THAT.

14 Q AND THE RECOMMENDED IMPROVEMENT IS "DOUBLE TAP
15 ZOOM IN/OUT FUNCTION NEEDS TO BE SUPPLEMENTED."

16 CORRECT?

17 A I SEE THAT.

18 Q TURN, IF YOU WOULD, TO PAGE 122. DO YOU HAVE
19 THAT BEFORE YOU?

20 A I DO.

21 Q "VISUAL INTERACTION EFFECT, ICON."

22 DO YOU SEE THAT?

23 A I DO.

24 Q IPHONE ON THE LEFT?

25 A YES.

1 Q GALAXY ON THE RIGHT?

2 A YES.

3 Q AND AT THE TOP, A DESCRIPTION OF THE IPHONE?

4 A YES.

5 Q AND THEN A DESCRIPTION OF THE GALAXY S I;
6 CORRECT?

7 A YES.

8 Q AND THEN THERE'S DIRECTIONS FOR IMPROVEMENT.
9 "EITHER CHANGE THE COLORS OF BORDERING RECTANGULAR
10 FRAMES POINTING TO A CONSISTENT PATTERN FOR A
11 UNIFORM FIELD, OR REMOVE THE RECTANGULAR FRAME AND
12 USE THE ICONS ONLY FOR A CLEAN AND UNIFORM FEEL."

13 CORRECT?

14 A I SEE THAT.

15 Q THAT'S THE CLEAN AND UNIFORM FEEL OF THE
16 IPHONE; CORRECT?

17 A THAT'S NOT NECESSARILY RIGHT.

18 Q TURN TO THE PAGE 131, THE LAST PAGE WE WERE
19 ON. DO YOU HAVE THAT BEFORE YOU?

20 A I'M SORRY. 131?

21 Q YES, SIR, 131. AND WE'LL PUT IT ON THE SCREEN
22 TOO.

23 A YES, I'M THERE.

24 Q THIS ONE REFERS TO GRAPHICAL U/I OF THE MENU
25 ICONS. DO YOU SEE THAT?

1 A I DO.

2 Q AND YOU UNDERSTAND THAT U/I IS USER INTERFACE;
3 CORRECT?

4 A THAT'S MY GUESS.

5 Q AND WE HAVE THE IPHONE ON THE LEFT; CORRECT?

6 A YES.

7 Q GALAXY ON THE RIGHT; CORRECT?

8 A CORRECT.

9 Q AND THEN IT LOOKS -- LET'S -- THERE'S, AT THE
10 TOP, A DESCRIPTION OF THE IPHONE; CORRECT?

11 A I SEE THAT.

12 Q AND A DESCRIPTION OF THE S 1; CORRECT?

13 A YES, I SEE THAT.

14 Q DIRECTIONS FOR IMPROVEMENT. "INSERT EFFECTS
15 OF LIGHT FOR A SOFTER, MORE LUXURIOUS ICON
16 IMPLEMENTATION. MAKE THE EDGE OF THE CURVE MORE
17 SMOOTH TO ERASE THE HARD FEEL. REMOVE A FEELING
18 THAT THE IPHONE'S MENU ICONS ARE COPYING BY
19 DIFFERENTIATING DESIGN."

20 DO YOU SEE THAT?

21 A I SEE.

22 Q IS THAT BENCHMARKING OR COPYING BY YOUR
23 DEFINITION?

24 A THIS IS SIMPLY A COMPARISON.

25 Q THIS IS JUST A COMPARISON.

1 PREAMBLE QUESTION.

2 MR. LEE: WITHDRAWN.

3 Q DO YOU STAND BY YOUR TESTIMONY AS TO THE
4 PRODUCTS AND FEATURES AT ISSUE IN THIS CASE?

5 A I NEVER TESTIFIED TO THE PRODUCTS AND
6 FEATURES, ALL PRODUCTS AND FEATURES AT ISSUE IN
7 THIS CASE.

8 Q SO THE ANSWER IS YOU DO NOT; CORRECT?

9 A CORRECT.

10 Q ALL RIGHT. NOW, LET'S LOOK AT PX 34, VOLUME
11 2, TAB 15. DO YOU HAVE THAT BEFORE YOU?

12 A I DO.

13 THE COURT: THIS IS A SAMSUNG FEASIBILITY
14 REVIEW; CORRECT?

15 A IT'S NOT CLEAR TO ME THAT THIS IS A SAMSUNG
16 DOCUMENT.

17 Q YOU DON'T KNOW ONE WAY OR ANOTHER?

18 A NO, I DON'T.

19 Q DO YOU SEE IT WAS PRODUCED BY SAMSUNG IN THIS
20 CASE?

21 A I'LL TAKE YOUR WORD FOR THAT. I DON'T KNOW
22 HOW TO TELL. I'M SORRY.

23 Q MR. DENISON, IT SAYS SYSTEM LSI. DO YOU SEE
24 THAT?

25 A I DO.

1 Q YOU KNOW WHAT THAT IS, DON'T YOU, SIR?

2 A I KNOW WHAT THOSE WORDS ARE.

3 Q YEAH. IT'S A GROUP WITHIN SAMSUNG; CORRECT?

4 A AS BEST AS I KNOW, IT'S ONE GROUP THAT IS --
5 OR THIS IS A NAME THAT'S USED BY ONE GROUP WITHIN
6 SAMSUNG.

7 Q RIGHT. SO IT SAYS "FEASIBILITY REVIEW ON
8 STANDALONE AP BUSINESS FOR SMARTPHONE MARKET,"
9 SEPTEMBER 2007 NOW, "SYSTEM LSI."

10 CORRECT?

11 A YES, THAT'S WHAT IT SAYS.

12 MR. LEE: YOUR HONOR, WE OFFER PX 34.

13 MR. QUINN: LACKS FOUNDATION.

14 THE COURT: SUSTAINED.

15 BY MR. LEE:

16 Q LET'S LOOK AT PX 38 IF WE COULD.

17 A I'M SORRY. WHICH TAB IS THAT?

18 Q I'M SORRY. IT'S AT VOLUME 2, TAB 17, AND IT'S
19 PX 38. TELL ME WHEN YOU GET THERE.

20 A I'M THERE.

21 Q ALL RIGHT. NOW, THIS DOCUMENT HAS THE SAMSUNG
22 LOGO ON IT; CORRECT?

23 A IT DOES.

24 Q YOU RECOGNIZE THAT?

25 A YES.

1 Q CORRECT? IT SAYS "BROWSER ZOOMING METHODS UX
2 EXPLORATION STUDY." CORRECT?

3 A YES.

4 Q IT SAYS "SAMSUNG TELECOMMUNICATIONS AMERICA."
5 CORRECT?

6 A CORRECT.

7 Q APRIL 17TH, 2009; CORRECT?

8 A CORRECT.

9 MR. LEE: YOUR HONOR, WE'D OFFER IT.

10 MR. QUINN: LACKS FOUNDATION, YOUR HONOR.

11 THE COURT: SUSTAINED.

12 BY MR. LEE:

13 Q NOW, LET ME ASK YOU JUST A COUPLE MORE
14 QUESTIONS.

15 MR. DENISON, YOU'RE NOT A DESIGN
16 ENGINEER, ARE YOU?

17 A NO, I'M NOT.

18 Q YOU HAVEN'T PARTICIPATED IN DESIGNING ANY OF
19 THE PRODUCTS THAT ARE AT ISSUE IN THIS CASE;
20 CORRECT?

21 A THAT'S CORRECT.

22 Q YOU HAVEN'T PARTICIPATED IN DESIGNING ANY OF
23 THE THINGS THAT ARE CLAIMED IN ANY OF THE SAMSUNG
24 PATENTS IN THIS CASE; CORRECT?

25 A I WOULD SAY THAT'S CORRECT.

1 Q YOUR JOB IS AS A MARKETING STRATEGY GUY FOR
2 STA; CORRECT?

3 A I GUESS YOU COULD SAY THAT, YES.

4 Q IS THAT FAIR?

5 A YEAH. I THINK YOU DESCRIBED MY ROLE EARLIER
6 IN THE DISCUSSION, SO YES.

7 Q THAT'S FAIR?

8 A SURE.

9 MR. LEE: OKAY. NOTHING FURTHER, YOUR
10 HONOR.

11 THE COURT: ALL RIGHT. THE TIME IS NOW
12 2:58. WHY DON'T WE GO AHEAD AND TAKE A -- DO YOU
13 WANT TO GET STARTED?

14 MR. QUINN: WE CAN TAKE A BREAK. THAT'S
15 FINE.

16 THE COURT: IT'S ALMOST 3:00 O'CLOCK.
17 WHY DON'T WE TAKE, SINCE WE'VE BEEN GOING SINCE
18 1:00, JUST A 15 MINUTE BREAK UNTIL 3:15. OKAY?

19 THANK YOU.

20 (WHEREUPON, A RECESS WAS TAKEN.)

21 (WHEREUPON, THE FOLLOWING PROCEEDINGS
22 WERE HELD OUT OF THE PRESENCE OF THE JURY:)

23 THE COURT: OKAY. WELCOME BACK. PLEASE
24 TAKE A SEAT.

25 MR. LEE: YOUR HONOR, BEFORE THE JURY

1 COMES IN, MR. QUINN IS BOTH GOING TO DO THE CROSS,
2 OR THE DIRECT OF MY CROSS-EXAMINATION, PLUS CALL
3 THIS WITNESS OUT OF ORDER FOR HIS CASE.

4 SO WE'LL DO BOTH, AND WE JUST WANTED TO
5 LET YOUR HONOR KNOW.

6 THE COURT: THAT'S FINE.

7 MR. QUINN: YOUR HONOR, I'D REQUEST THAT
8 THE JURY BE INSTRUCTED THAT YOU CAN'T IMPEACH A
9 30(B)(6) WITNESS ON QUESTIONS THAT HE WASN'T
10 DESIGNATED ON 30(B)(6), ON SUBJECTS THAT HE WASN'T
11 DESIGNATED ON 30(B)(6) ON.

12 THE COURT: HE WAS DESIGNATED ON COPYING
13 AND THAT DOCUMENT IS APPLE'S EVIDENCE OF COPYING.
14 I THINK IT WAS FAIR.

15 MR. QUINN: WITH RESPECT, HE WAS, YOUR
16 HONOR NOT DESIGNATED SIMPLY ON COPYING. HE WAS
17 DESIGNATED ON THOSE SUBJECTS AS TO THE PRODUCTS
18 THAT WERE ISSUED ON THE PRELIMINARY INJUNCTION AND
19 THOSE FEATURES OF THOSE PRODUCTS.

20 I MEAN, THERE WERE FOUR DESIGN PATENTS
21 AND THE BOUNCE BACK PATENT, AND FOUR DEVICES, AND
22 HE WAS DESIGNATED ON COPYING, EMULATION, AND
23 COMPARING ONLY AS TO THOSE.

24 BUT THE EXAMINATION WENT BEYOND THAT. HE
25 WAS NEVER DESIGNATED ON COPYING GENERALLY.

1 AND THEN THEY ELICITED -- BLESS MR. LEE'S
2 HEART, HE ELICITED A, YOU KNOW, AN ANSWER ABOUT
3 WHETHER HE STOOD BY HIS TESTIMONY AND THEN
4 PURPORTED TO IMPEACH HIM WHEN IT WAS A SUBJECT THAT
5 WASN'T WITHIN THE SCOPE OF HIS DESIGNATION. IT
6 DIDN'T RELATE TO THOSE PRODUCTS THAT WERE THE
7 SUBJECT OF THE PRELIMINARY INJUNCTION MOTION.
8 THAT'S WHEN THIS WAS DONE.

9 MR. LEE: YOUR HONOR, LET ME SAY THREE
10 THINGS AND THEN WE'LL GET THE JURY IN.

11 THE FIRST THING IS I INTENTIONALLY
12 WENT -- HE'S AN STA EXECUTIVE -- I INTENTIONALLY
13 WENT BEYOND THE 30(B)(6) AND ASKED HIM MORE
14 BROADLY, AND WE'RE NOT LIMITED BY WHAT HE SAID IN
15 30(B)(6), AND HE TESTIFIED MORE BROADLY, AND WE
16 IMPEACHED HIM.

17 THE SECOND THING, YOUR HONOR, IS THESE
18 DOCUMENTS, ONE OF WHICH YOU ALLOWED, TWO OF WHICH
19 YOU EXCLUDED, THESE ARE THE DOCUMENTS THAT WE HAD
20 TO MOVE TO COMPEL TWICE ON AFTER HIS DEPOSITION.
21 THESE ARE THE DOCUMENTS THAT SAMSUNG GOT SANCTIONED
22 ON FOR REFUSING TO PRODUCE.

23 WE COULDN'T HAVE ASKED HIM ABOUT THEM AT
24 HIS DEPOSITION, THAT TIME OR ANY OTHER TIME,
25 BECAUSE WE HAD TO GO TO THE COURT THREE TIMES TO

1 GET THE DOCUMENTS.

2 THE THIRD THING IS, WHEN WE CALL HIM
3 ADVERSELY, WE'RE NOT LIMITED TO WHAT HE TESTIFIED
4 AS A 30(B)(6) WITNESS. HE'S HERE. HE'S A WITNESS.

5 THE COURT: I KNOW.

6 MR. QUINN: OF COURSE. BUT THE RULES OF
7 FOUNDATION ARE NOT WAIVED JUST BECAUSE HE'S AN
8 ADVERSE WITNESS AND A 30(B)(6) WITNESS.

9 I THINK MR. LEE HAS A VERY GOOD ARGUMENT
10 ON FOUNDATION WITHIN THE SCOPE OF WHAT HE WAS
11 DESIGNATED AS A 30(B)(6) WITNESS.

12 I THINK HE HAS NO ARGUMENT THAT THE FACT
13 THAT HE WAS A 30(B)(6) WITNESS AUTOMATICALLY GIVES
14 HIM FOUNDATION TO ASK ABOUT COPYING ON SUBJECTS
15 THAT WERE OUTSIDE THAT DESIGNATION, EVEN IF HE'S AN
16 EXECUTIVE OF STA, WHICH HE IS. YOU STILL HAVE TO
17 LAY SOME FOUNDATION.

18 THE COURT: WELL, I DISAGREE. YOU CAN
19 CERTAINLY, ON YOUR TIME WITH HIM, DO AS MUCH
20 REPRESENTATION AS YOU LIKE, BUT I DISAGREE WITH
21 YOU. ALL RIGHT.

22 MR. QUINN: THANK YOU, YOUR HONOR.

23 THE COURT: ALL RIGHT. SO LET'S BRING IN
24 OUR JURORS. WE'LL GO UNTIL ABOUT 4:30 TODAY.

25 MR. QUINN: 4:30?

1 THE COURT: YEAH. SO WE HAVE ABOUT AN
2 HOUR AND TEN MINUTES.

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

5 THE COURT: ALL RIGHT. WELCOME BACK.
6 THE TIME IS 3:23. GO AHEAD PLEASE,
7 MR. QUINN.

8 MR. QUINN: THANK YOU, YOUR HONOR.

9 **AS-ON DIRECT EXAMINATION**

10 BY MR. QUINN:

11 Q GOOD AFTERNOON, SIR.

12 GOOD AFTERNOON, LADIES AND GENTLEMEN.

13 IN RESPONSE TO MR. LEE'S QUESTIONS, YOU
14 INDICATED THAT YOU HAD BEEN DESIGNATED TO TESTIFY
15 ON BEHALF OF VARIOUS SAMSUNG ENTITIES IN YOUR
16 DEPOSITION BACK IN, WHEN WAS IT, OCTOBER OF LAST
17 YEAR.

18 A SEPTEMBER OF 2011.

19 Q ALL RIGHT. AND YOU INDICATED IN RESPONSE TO A
20 COUPLE OF MR. LEE'S QUESTIONS THAT YOU WERE
21 DESIGNATED ON CERTAIN SUBJECTS WITH LIMITATIONS.

22 DO YOU RECALL SAYING THAT?

23 A YES, I DO.

24 Q WERE YOU DESIGNATED TO BE THE EXPERT AND TO
25 SPEAK ON BEHALF OF ALL THE SAMSUNG ENTITIES WITH

1 RESPECT TO ANY COMPARISON THAT EVER TOOK PLACE
2 CONCERNING SAMSUNG PRODUCTS AND APPLE PRODUCTS?

3 A NO, I WAS NOT.

4 Q OR ANY EMULATION OR ANY COPYING OF ANY SAMSUNG
5 PRODUCT AND ANY APPLE PRODUCT?

6 A NO.

7 Q WHAT WAS IT THAT YOU WERE DESIGNATED TO
8 TESTIFY ABOUT?

9 A I WAS ASKED TO TESTIFY -- WELL, FIRST, TO
10 UNDERTAKE RESEARCH AND THEN TESTIFY ON BEHALF OF
11 THE COMPANY FOR FOUR PRODUCTS AT ISSUE, SO FOUR
12 DISTINCT SAMSUNG PRODUCTS.

13 Q COULD YOU TELL THE JURY WHAT THOSE FOUR
14 PRODUCTS WERE?

15 A YES. THAT WAS THE INFUSE 4G; THE GALAXY S 4G;
16 THE DROID CHARGE; AND THE GALAXY TAB 10.1.

17 Q AND AS TO THOSE FOUR PRODUCTS, WERE YOU
18 DESIGNATED TO DO RESEARCH AND TESTIFY CONCERNING
19 PARTICULAR FEATURES OR INTELLECTUAL PROPERTY
20 CONCERNING THOSE PRODUCTS?

21 A I WAS.

22 Q AND WHAT WAS THAT?

23 A TO THE BEST OF MY RECOLLECTION, THERE WAS
24 THREE DESIGN PATENTS AND ONE SOFTWARE PATENT, OR
25 UTILITY PATENT AS IT'S CALLED.

1 Q AND THAT UTILITY PATENT, THAT SOFTWARE PATENT,
2 WAS WHAT?

3 A THAT WAS KNOWN AS THE BOUNCE BACK FEATURE.

4 Q ALL RIGHT. AND OTHER THREE WERE DESIGN
5 PATENTS DID YOU SAY?

6 A CORRECT.

7 Q AND SO IS IT TRUE THAT YOUR INVESTIGATION,
8 THEN, WAS YOU WERE DESIGNATED TO RESEARCH AS TO
9 THOSE FOUR PRODUCTS, AND THOSE FEATURES, WHETHER
10 THERE HAD BEEN A COMPARISON -- COMPARISONS,
11 EMULATION, OR COPYING?

12 A CORRECT.

13 Q WAS THAT A SECRET THAT THOSE WERE THE
14 LIMITATIONS ON YOUR ASSIGNMENT?

15 A NO.

16 Q DO YOU RECALL IN YOUR DEPOSITION THAT THOSE
17 LIMITATIONS WERE CALLED TO THE ATTENTION OF APPLE'S
18 COUNSEL?

19 A YES.

20 Q MR. LEE READ YOUR TESTIMONY. DO YOU HAVE YOUR
21 DEPOSITION THERE BEFORE YOU?

22 A IS IT IN THE BINDER?

23 Q IT IS. I DON'T KNOW THE TAB NUMBER.

24 A I DON'T KNOW.

25 Q PERHAPS MS. KHAN CAN HELP YOU FIND THAT.

1 BUT MR. LEE READ A COUPLE OF TIMES YOUR
2 TESTIMONY AND ASKED YOU WHETHER YOU STOOD BY IT.

3 DO YOU RECALL THAT?

4 A I DO.

5 Q AND YOU SAID THAT, "WHEN CONFERRING WITH THE
6 DESIGNERS FOR THE PRODUCTS AT ISSUE, IN ALL CASES I
7 SPECIFICALLY ASKED THEM IF THEY HAD CONSIDERED OR
8 STUDIED OR DRAWN DIRECT COMPARISONS OR WHAT HAVE
9 YOU VERSUS THE RELEVANT APPLE PRODUCTS, WHETHER IT
10 BE TABLET OR SMARTPHONE IN EITHER CASE, AND IN EACH
11 CASE THE DESIGNERS SAID THAT THEY HAD NOT."

12 DO YOU RECALL THAT TESTIMONY?

13 A YES.

14 Q AT THAT POINT IN THE DEPOSITION, WHAT WERE
15 APPLE'S ATTORNEYS ASKING YOU ABOUT?

16 A THEY WERE ASKING ME ABOUT THE INDUSTRIAL
17 DESIGN OF THREE DIFFERENT PRODUCTS AT ISSUE.

18 Q WOULD YOU EXPLAIN TO THE JURY, PLEASE, WHAT
19 YOU MEAN BY THE "INDUSTRIAL DESIGN." WHEN YOU SAID
20 THAT "IN EACH CASE THE DESIGNERS SAID THAT THEY HAD
21 NOT MADE DIRECT COMPARISONS OR STUDIED OR DRAWN ON
22 THOSE DESIGNS," COULD YOU TELL THE JURY WHAT THOSE
23 INDUSTRIAL DESIGNS ARE?

24 A THEY JUST MEAN THE OUTER PHYSICAL APPEARANCE
25 OF THE DEVICE.

1 Q AT THAT POINT, WAS HE QUESTIONING YOU ABOUT
2 THAT ONE UTILITY PATENT, THE BOUNCE BACK PATENT?

3 A NO.

4 Q DID HE THEN TURN -- A FEW PAGES LATER IN YOUR
5 DEPOSITION, DID HE TURN TO THAT SUBJECT, GO FROM
6 TALKING ABOUT THE DESIGN PATENTS TO THE UTILITY
7 PATENTS?

8 A THAT'S WHAT I REMEMBER.

9 Q AND IF WE COULD TAKE A LOOK AT YOUR DEPOSITION
10 ON PAGE -- DO WE HAVE THAT THERE? PAGE 147, LINE
11 19 TO 24. IT'S A COUPLE OF PAGES LATER.

12 DID THE APPLE LAWYERS SAY -- YOU WERE
13 ASKED THIS QUESTION AND GAVE THIS ANSWER:

14 "SO LET ME TURN NOW TO THE '381 PATENT.
15 HAVE YOU HEARD OF THAT REFERENCE BEFORE, THE '381
16 PATENT? IT'S A UTILITY PATENT, IF THAT'S HELPFUL.

17 "ANSWER: I BELIEVE YOU'RE REFERRING TO
18 THE SO-CALLED BOUNCE-BACK PATENT?"

19 "YES, I'LL REFER TO IT AS THE BOUNCE-BACK
20 PATENT FOR SIMPLICITY. IS THAT OKAY?

21 "ANSWER: THAT'S FINE."

22 DO YOU SEE THAT?

23 A I DO.

24 Q SO DO YOU RECALL THAT WHEN YOU GAVE THIS
25 TESTIMONY WHERE YOU SAID THAT YOU SPOKE TO THE

1 DESIGNERS AND IN EACH CASE THEY HAD NOT STUDIED OR
2 DRAWN ON OR MADE COMPARISONS, THAT YOU WERE
3 TESTIFYING THEN ABOUT THE INDUSTRIAL DESIGNERS; AND
4 THEN AFTER THAT, APPLE'S LAWYER THEN TURNED TO THE
5 OTHER SUBJECT ON WHICH YOU HAD BEEN DESIGNATED AS
6 AN EXPERT, AND THAT'S THIS BOUNCE BACK UTILITY
7 PATENT.

8 MR. LEE: YOUR HONOR, I OBJECT TO THE
9 LEADING.

10 THE COURT: OVERRULED.

11 THE WITNESS: THAT'S WHAT I REMEMBER.

12 BY MR. QUINN:

13 Q AND SO LET'S TALK ABOUT THAT BOUNCE BACK
14 UTILITY PATENT.

15 WOULD IT BE TRUE TO SAY THAT IN YOUR
16 DEPOSITION, YOU TOLD APPLE'S LAWYERS THAT THE
17 SOFTWARE ENGINEERS YOU SPOKE TO REGARDING THAT
18 BOUNCE BACK UTILITY PATENT TOLD YOU THEY HAD NEVER
19 LOOKED AT THE APPLE BOUNCE BACK? WOULD THAT BE
20 TRUE TO SAY?

21 A NO, THAT'S NOT TRUE, SIR.

22 Q IN YOUR DEPOSITION, CAN YOU TELL US WHETHER OR
23 NOT YOU TOLD APPLE'S LAWYERS THAT YOU LEARNED IN
24 YOUR INVESTIGATION THAT, IN FACT, THEY HAD LOOKED
25 AT IT?

1 A YES, I DID.

2 MR. QUINN: AND, YOUR HONOR, I'D REQUEST,
3 UNDER COMPLETENESS, I'D REQUEST PERMISSION TO READ
4 A FEW PAGES LATER IN THE DEPOSITION, PAGE 188, LINE
5 1 TO LINE 24.

6 THE COURT: THIS IS IN?

7 MR. QUINN: IT'S IN THE DEPOSITION -- I
8 DON'T KNOW THE --

9 THE WITNESS: IT'S TAB 7 IN VOLUME 1.

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

11 MR. QUINN: "QUESTION: IF YOU LOOK AT
12 THE FOURTH PAGE OF THIS DOCUMENT, WHICH ARE
13 SAMSUNG'S RESPONSES TO APPLE'S INTERROGATORY NUMBER
14 1 RELATING TO ITS MOTION FOR A PRELIMINARY
15 INJUNCTION, THERE IS A STATEMENT, 'IN CONNECTION
16 WITH THE DEVELOPMENT OF THE BOUNCE-BACK FEATURE OF
17 THE CONTACTS APPLICATION, WOOKYUN KHO CONSIDERED
18 SIMILAR OR ANALOGOUS FEATURES IMPLEMENTED IN
19 PRODUCTS OF VARIOUS COMPETITORS, INCLUDING APPLE.'

20 'DO YOU SEE THAT SENTENCE?

21 "ANSWER: I DO SEE IT.

22 "QUESTION: DO YOU HAVE ANY TESTIMONY TO
23 OFFER WITH RESPECT TO THAT STATEMENT?

24 "ANSWER: WITH REGARDS TO MY CONVERSATION
25 WITH MR. KHO, WHO I BELIEVE IS WOOKYUN KHO, I

1 SPECIFICALLY ASKED MR. KHO WHETHER HE HAD LOOKED AT
2 OR EVALUATED BOUNCE-BACK FUNCTIONALITY IN ANY OTHER
3 DEVICE THAT WAS IN THE MARKET, AND HE INDICATED
4 THAT HE HAD SEEN AND DID LOOK AT THE BOUNCE-BACK
5 FUNCTIONALITY INSIDE THE IPHONE AS WELL AS HTC
6 DEVICES THAT WERE RUNNING THE ECLAIR VERSION OF
7 ANDROID OS."

8 DO YOU SEE THAT?

9 A I DO.

10 Q SO WOULD IT BE TRUE TO -- WOULD IT BE FAIR TO
11 LEAVE THE JURY WITH THE IMPRESSION THAT IN YOUR
12 TESTIMONY, YOU DENIED THAT, IN YOUR INVESTIGATION,
13 YOU HAD -- THAT ANY SAMSUNG EMPLOYEE HAD EVER
14 LOOKED AT ANY OF THE ACCUSED FEATURES IN CONNECTION
15 WITH THEIR WORK DESIGNING SAMSUNG PRODUCTS?

16 MR. LEE: I OBJECT, YOUR HONOR. IT'S
17 LEADING AND ARGUMENTATIVE. IT'S HIS WITNESS ON
18 DIRECT EXAMINATION.

19 THE COURT: SUSTAINED.

20 BY MR. QUINN:

21 Q WAS THAT YOUR TESTIMONY THAT YOU GAVE TO
22 APPLE'S LAWYERS?

23 THE COURT: PLEASE. I SUSTAINED THE
24 OBJECTION. YOU NEED TO REASK ANOTHER QUESTION.

25 BY MR. QUINN:

1 Q DID I ACCURATELY READ THE TESTIMONY THAT YOU
2 GAVE APPLE'S LAWYERS?

3 A YOU DID.

4 Q NOW, I WANT TO COME -- I WILL COME BACK AND
5 TALK ABOUT THE INVESTIGATION THAT YOU DID AND WHO
6 YOU SPOKE TO, BUT FIRST I'D LIKE TO ADDRESS SOME OF
7 THE DOCUMENTS THAT MR. LEE SHOWED YOU.

8 FIRST IF WE COULD LOOK AT EXHIBIT 44.

9 AND PRIOR TO YOUR INVOLVEMENT IN THIS
10 CASE, HAD YOU EVER SEEN THIS EXHIBIT BEFORE?

11 A I HAVE NOT.

12 Q DO YOU KNOW, IN CONNECTION WITH, YOU KNOW,
13 PREPARING TO TESTIFY WHETHER THE ORIGINAL OF THIS
14 DOCUMENT IS IN THE KOREAN LANGUAGE?

15 A IN PREPARATION FOR THIS TESTIMONY, I WAS TOLD
16 IT WAS TRANSLATED AND THERE'S A TRANSLATION LABEL
17 ON TOP OF IT.

18 Q AND THIS IS, OBVIOUSLY, AN ENGLISH LANGUAGE
19 TRANSLATION OF THE DOCUMENT THAT WE'RE LOOKING AT?

20 A CORRECT.

21 Q NOW, MR. LEE CALLED YOUR ATTENTION TO PAGE
22 44.122, WHICH TALKS ABOUT -- THE TITLE IS "VISUAL
23 INTERACTION EFFECT-ICON."

24 DO YOU SEE THAT?

25 A I DO.

1 Q AND WAS THIS WITHIN THE -- THIS IS -- IS THIS
2 WHEN YOU WOULD CALL A FEATURE RELATING TO THE
3 GRAPHICAL USER INTERFACE, GUI?

4 A I'M NOT SURE WHAT ALL CONSTITUTES A GUI, BUT I
5 GUESS THIS MIGHT BE PART OF THE GUI.

6 Q BUT WAS THIS WITHIN THE SCOPE OF YOUR
7 INVESTIGATION, THIS FEATURE THAT IS TALKED ABOUT
8 HERE?

9 A NO, IT'S NOT.

10 Q SO IT'S NOT ONE OF THE DESIGN PATENTS?

11 A CORRECT.

12 Q AND DOES THIS RELATE TO BOUNCE BACK?

13 A AS BEST AS I UNDERSTAND IT, NO.

14 Q THERE'S A RECOMMENDATION DOWN THERE AT THE
15 BOTTOM. DO YOU SEE THAT?

16 A I DO.

17 Q AND IT RELATES TO "EITHER CHANGE THE COLORS OF
18 THE BORDERING RECTANGULAR FRAMES ACCORDING TO A
19 CONSISTENT PATTERN FOR A UNIFORM FEEL OR REMOVE THE
20 RECTANGULAR FRAME AND USE THE ICONS ONLY FOR A
21 CLEAN AND UNIFORM FEEL."

22 DO YOU SEE THAT?

23 A I DO.

24 Q DO YOU KNOW WHETHER, IN FACT -- WELL, WHAT ARE
25 CONTAINERS? DO YOU SEE A REFERENCE -- YOU KNOW,

1 WE'VE HEARD OF THE CONCEPT OF CONTAINERS AROUND
2 ICONS.

3 A SO MY UNDERSTANDING OF CONTAINERS ARE THE, I
4 GUESS, SQUARES OR MAYBE RECTANGLES THAT SURROUND
5 THE ACTUAL ICON THAT MAY BE IN THE MIDDLE, SO TO
6 MAKES IT LOOK LIKE THEY'RE ALL THE SAME SIZE MAYBE
7 IS THE WAY TO DESCRIBE IT.

8 Q ALL RIGHT. AND DO YOU KNOW WHETHER, YOU KNOW,
9 SAMSUNG EVER IMPLEMENTED A RECOMMENDATION THAT ALL
10 THE CONTAINERS AROUND ICONS BE ELIMINATED?

11 A I'M NOT AWARE OF ANY -- I'M SORRY. CAN YOU
12 REPEAT?

13 Q YEAH. ARE YOU AWARE OF WHETHER THERE WAS SOME
14 RECOMMENDATION THAT WAS IMPLEMENTED THAT, ON ALL
15 THE GALAXY S PHONES, CONTAINERS AROUND ICONS SHOULD
16 BE ELIMINATED?

17 A NO, I'M NOT AWARE OF THAT.

18 Q DO YOU KNOW WHETHER, ON THE GALAXY S PHONES,
19 THIS RECOMMENDATION HERE WAS ACTUALLY IMPLEMENTED
20 ACROSS THE BOARD?

21 A I'M NOT AWARE OF THAT.

22 Q AND THEN IF -- ANOTHER PAGE THAT MR. LEE
23 SHOWED YOU, PAGE 131, IF WE COULD TAKE A LOOK AT
24 THAT, AND THIS RELATES AGAIN TO ICONS, AND WAS THIS
25 WITHIN THE SCOPE OF WHAT YOU TOLD APPLE YOU HAD

1 RESEARCHED AND WERE PREPARED TO TESTIFY ON?

2 A NO, IT WAS NOT.

3 Q AND THEN THE LAST LINE OF THE RECOMMENDATION
4 THERE IS "REMOVE THE FEELING THAT IPHONE'S MENU
5 ICONS ARE COPIED BY DIFFERENTIATING DESIGN."

6 DO YOU SEE THAT?

7 A I DO.

8 Q AND WHAT IS THE CONCEPT OF DIFFERENTIATING
9 DESIGN? WHAT DOES THAT MEAN TO YOU?

10 A IT'S FOUR DIFFERENT -- TO THAT WOULD MEAN
11 DIFFERENT AND/OR BETTER.

12 Q ALL RIGHT. I'D LIKE TO TURN NOW TO ACTUALLY,
13 YOU KNOW, YOUR INVESTIGATION AND WHAT IT WAS THAT
14 YOU DID.

15 AND AT THE BEGINNING, I'D ASK YOU IF I
16 COULD -- IF I COULD SHOW YOU TWO PHONE DEVICES
17 WHICH ARE IN EVIDENCE, FIRST THE JX 1000 -- AND I'M
18 GOING TO GET SOME HELP, I HOPE, FROM MS. KHAN --
19 THE IPHONE, WHICH IS IN EVIDENCE, THE JOINT EXHIBIT
20 1000, AND THE INFUSE 4G, JOINT EXHIBIT 1027, WHICH
21 IS ONE OF THE ACCUSED PHONES.

22 IF WE COULD HAND THOSE -- DO WE HAVE THE
23 IPHONE THERE, JX 1000?

24 THE COURT: SO I'M GOING TO START
25 COUNTING THIS TIME AS YOUR DIRECT. OKAY?

1 MR. QUINN: OKAY. THANK YOU, YOUR HONOR.

2 THE COURT: FOR YOUR CASE. OKAY.

3 BY MR. QUINN:

4 Q DO YOU HAVE THOSE, SIR, THOSE TWO?

5 A I HAVE THE INFUSE 4G AND THE ORIGINAL IPHONE,
6 I BELIEVE.

7 Q CAN YOU TELL US, CAN YOU SEE DIFFERENCES
8 BETWEEN THOSE TWO?

9 MR. LEE: I OBJECT. YOUR HONOR, THIS IS
10 GETTING IN EVIDENCE -- THEY HAD AN EXPERT ON IT.
11 THE EXPERT IS OUT. NOW THEY'RE TRYING TO GET THIS
12 IN.

13 MR. QUINN: IT'S JUST HIS OBSERVATION,
14 YOUR HONOR. HE'S LOOKING AT THEM AND IT'S A
15 PERCIPIENT ACTIVITY, WHAT HE SEES LOOKING AT THESE,
16 LOOKING AT THE PHYSICAL OBJECTS.

17 MR. LEE: YOUR HONOR, THIS IS AN EFFORT
18 TO GET IN, THROUGH HIM, TESTIMONY THAT HAS BEEN
19 EXCLUDED.

20 THE COURT: ALL RIGHT. SUSTAINED.

21 BY MR. QUINN:

22 Q WELL, IF WE COULD LOOK AT THE INFUSE, THE
23 JOINT EXHIBIT 1027, DOES IT HAVE, DOWN AT THE
24 BOTTOM, DOES IT HAVE SOME, WHAT LOOK LIKE SOFT
25 BUTTONS?

1 A AT THE BOTTOM, THERE'S WHAT I CALL CAPACITIVE
2 KEYS.

3 Q CAPACITIVE KEYS. WHAT MIGHT THE REST OF US
4 CALL THOSE?

5 A I'M NOT SURE. IT'S THE OPPOSITE OF AN ACTUAL
6 PHYSICAL BUTTON.

7 Q ALL RIGHT.

8 A IT'S SOMETHING THAT SENSES YOUR FINGER AND
9 PERFORMS AN ACTION AS IF YOU TOUCHED A BUTTON.

10 Q AND DOES THE INFUSE HAVE A BEZEL AROUND IT?

11 A THE INFUSE, I DON'T THINK IT HAS A BEZEL, PER
12 SE. IT'S KIND OF A UNIBODY DESIGN.

13 Q AND IT'S A UNIBODY DESIGN. IT DOES NOT HAVE A
14 BEZEL?

15 A CORRECT.

16 Q IS THAT UNIBODY, IS THAT FLAT AND LEVEL WITH
17 THE SCREEN OR NOT?

18 A THE EDGES OF THE UNIBODY PROTRUDE ABOVE THE
19 SCREEN. SO IT'S NOT FLAT, AS IT WERE.

20 Q DOES IT HAVE WHAT'S BEEN REFERRED TO AS THE,
21 AS THE, WHAT DO YOU CALL IT, INNIE, THE HOME
22 BUTTON? THE BELLY BUTTON? THE HOME BUTTON.

23 DOES IT HAVE A HOME BUTTON ON IT?

24 A IT JUST HAS A CAPACITIVE BUTTON FOR HOME, BUT
25 NOT A PHYSICAL HOME KEY AS SUCH.

1 MR. QUINN: YOUR HONOR, WITH THE
2 PERMISSION OF THE COURT, I WOULD REQUEST, IF WE
3 COULD, TO HAND TO THE JURY THESE TWO EXHIBITS SO
4 THAT THEY CAN ACTUALLY HANDLE THEM AND SEE THEM IF
5 THAT WOULD BE ACCEPTABLE.

6 MR. LEE: NO OBJECTION.

7 THE COURT: GO AHEAD, PLEASE. AND LET ME
8 JUST MAKE SURE I HAVE IT. IT IS THE INFUSE 4,
9 WHICH IS 1027.

10 MR. QUINN: YES, YOUR HONOR.

11 THE COURT: 4G, EXCUSE ME.

12 AND WHAT IS THE OTHER NUMBER?

13 MR. QUINN: THE JX 1000, WHICH IS THE
14 IPHONE.

15 THE COURT: OKAY. AND THE JX 1000 HAS
16 ALREADY BEEN -- I DON'T SEE THAT COMING IN, SO
17 THAT'S COMING IN NOW.

18 MR. QUINN: I WOULD OFFER JX 1000, YOUR
19 HONOR.

20 THE COURT: OKAY.

21 THE CLERK: IT CAME IN YESTERDAY.

22 BY MR. QUINN:

23 Q SO IF I COULD ASK YOU NOW ABOUT YOUR
24 ASSIGNMENT THAT LED TO YOUR TESTIMONY THAT YOU
25 REFERRED TO. WHAT WAS IT THAT YOU WERE ASKED TO

1 DO?

2 A I WAS ASKED TO REPRESENT SAMSUNG IN A LEGAL
3 MATTER AS A CORPORATE REPRESENTATIVE. MY JOB WAS
4 TO BECOME THE PERSON MOST KNOWLEDGEABLE ON CERTAIN
5 SUBJECTS, AND WE'VE TALKED ABOUT HOW IT WAS FOUR
6 PRODUCTS AND FOUR FEATURES OF PATENTS.

7 Q AND WHAT DID YOU DO TO FULFILL THAT
8 ASSIGNMENT?

9 A I UNDERTOOK RESEARCH, I SPOKE TO THE RELEVANT
10 DESIGNERS AND ENGINEERS FOR THE PRODUCTS AND THE
11 FEATURES IN QUESTION, INTERVIEWED THEM, AND THAT
12 WAS MY INVESTIGATION.

13 Q ALL RIGHT. AND LET ME -- WHEN YOU SAY "I
14 SPOKE TO THE DESIGNERS AND ENGINEERS," WHY WAS
15 IT -- WHICH WERE THE DESIGNERS AND ENGINEERS? LET
16 ME WITHDRAW THAT. BAD QUESTION.

17 HOW DID YOU GO ABOUT DECIDING WHAT
18 DESIGNERS AND ENGINEERS YOU WANTED TO TALK TO?

19 A SO I LOCATED THE PRINCIPAL DESIGNERS AND
20 ENGINEERS THAT WERE IN CHARGE OF THE FINAL
21 PRODUCTION, IF YOU WILL, OF EITHER THE INDUSTRIAL
22 DESIGN IN THE CASE OF THE INDUSTRIAL DESIGN ISSUES,
23 AND THE -- WHO WERE IN CHARGE OF THE SOFTWARE
24 ENGINEERS FOR THE ACTUAL SOFTWARE FEATURES IN
25 QUESTION.

1 Q AND DID YOU -- CAN YOU TELL US WHETHER OR NOT
2 YOU SPOKE TO THE ACTUAL DESIGNERS WHO WERE
3 RESPONSIBLE FOR THE DESIGN OF THOSE PRODUCTS THAT
4 WERE AT ISSUE?

5 A I DID.

6 Q AND IN THE CASE OF THE -- THE INFUSE THAT THE
7 JURY IS LOOKING AT NOW, WAS THAT ONE OF THE
8 PRODUCTS THAT YOU -- THAT WAS AT ISSUE AND YOU
9 SPOKE TO THE DESIGNERS?

10 A YES.

11 Q AND CAN YOU RECALL THE NAMES OF THE FOLKS YOU
12 SPOKE TO?

13 A I RECALL THE NAMES OF SOME OF THEM. IT MIGHT
14 HELP IF I REFERRED TO A REFERENCE. BUT, YES, I
15 REMEMBER THE NAMES OF SOME.

16 Q WELL, DO YOU REMEMBER THE NAMES OF THE
17 DESIGNERS OF THE INFUSE THAT YOU SPOKE TO?

18 A THE INFUSE DESIGNERS, AS I RECALL, WERE, I
19 BELIEVE THAT WAS YONGSEOK BANK, I BELIEVE THAT WAS
20 BORA KIM, AND I BELIEVE THE LAST ONE WAS
21 MIN-HYOUK LEE IF I REMEMBER CORRECTLY.

22 Q AND IN SOME CASE -- IN THE CASES -- WERE THERE
23 SOME CASES WHERE THE DESIGNER WASN'T FLUENT IN
24 ENGLISH?

25 A THERE WERE SOME CONVERSATIONS THAT WERE

1 TRANSLATED. I DON'T REMEMBER EXACTLY WHICH ONES
2 WERE.

3 Q AND CAN YOU TELL US ROUGHLY HOW LONG EACH OF
4 THOSE CONVERSATIONS TOOK?

5 A EACH ONE OF THE CONVERSATIONS TOOK PROBABLY
6 TWO OR THREE HOURS WITH RESPECT TO EACH PRODUCT AND
7 EACH FEATURE.

8 Q DID YOU ASK THESE DESIGNERS FOR THE INFUSE,
9 THOSE INDIVIDUALS THAT YOU IDENTIFIED, HOW THEY
10 CAME UP WITH THE DESIGN FOR THE INFUSE?

11 A I DID.

12 Q AND WHAT DID THEY TELL YOU?

13 A WELL, WHEN I SPECIFICALLY SPOKE TO, I BELIEVE
14 HIS NAME, AGAIN, WAS YONGSEOK BANG -- HOPEFULLY I
15 HAVE THAT CORRECT -- I ASKED HIM WHAT HIS
16 INSPIRATION WAS FOR THE INFUSE 4G.

17 Q AND WHAT DID HE TELL YOU?

18 MR. LEE: I OBJECT. THIS IS HEARSAY,
19 YOUR HONOR.

20 THE COURT: SUSTAINED.

21 MR. QUINN: THEY HAVE CHALLENGED HIS
22 INVESTIGATION. I THINK I'M ENTITLED TO SHOW WHAT
23 HE DID.

24 THE COURT: WELL, YOU HAVE TO REPHRASE
25 THE QUESTION AND SEE IF YOU CAN GET IT IN ANOTHER

1 WAY.

2 BY MR. QUINN:

3 Q SO DID YOU -- DID YOU ASK, YOU KNOW, HOW THEY
4 ARRIVED AT THESE DESIGNS?

5 A I DID.

6 Q AND DID YOU ASK WHETHER THEY HAD REFERRED TO
7 THE IPHONE IN ARRIVING AT THESE DESIGNS?

8 A I DID.

9 Q AND WHAT DID THEY TELL YOU?

10 MR. LEE: I OBJECT, YOUR HONOR. IT'S
11 HEARSAY.

12 MR. QUINN: YOUR HONOR, THEY PUT THIS AT
13 ISSUE.

14 THE COURT: I'M GOING TO SUSTAIN IT.

15 ASK IT ANOTHER WAY, PLEASE.

16 BY MR. QUINN:

17 Q YOU KNOW, BASED ON WHAT YOU LEARNED IN GETTING
18 READY TO TESTIFY AND BASED ON TALKING TO THESE
19 INDIVIDUALS, DID YOU LEARN WHETHER OR NOT THE
20 DESIGNERS HAD BASED THEIR DESIGNS ON THE IPHONE?

21 MR. LEE: YOUR HONOR, STILL HEARSAY.

22 "DID YOU LEARN?" HE'S STATING CONCLUSIONS.

23 MR. QUINN: YOUR HONOR, THEY HAVE
24 CHALLENGED HIS INVESTIGATION. THEY HAVE --

25 THE COURT: I'M GOING TO ALLOW THE

1 QUESTION. OVERRULED.

2 GO AHEAD, PLEASE.

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

5 MR. QUINN: I'LL TRY.

6 Q DID YOU LEARN WHETHER OR NOT, BASED ON
7 SPEAKING TO THEM, WHETHER OR NOT THEY HAD BASED
8 THEIR DESIGNS ON THE IPHONE?

9 A I DID.

10 Q AND WHAT DID YOU LEARN IN THAT REGARD?

11 A THE DESIGNERS, IN PARTICULAR THE MAIN DESIGNER
12 OF THE INFUSE, OR THE ORIGINAL DESIGNER, TOLD ME
13 THAT HIS INSPIRATION WAS ONE OF A FUTURISTIC
14 DESIGN, SOMETHING VERY THIN, HE WANTED TO GO FOR
15 UNIBODY, AND HE WANTED SOMETHING THAT WAS KIND OF,
16 I THINK HE MADE HAVE EVEN USED THE WORD EDGIER,
17 HAVING SHARPER CORNERS THAN MANY OF THE OTHER
18 PHONES IN THE MARKET.

19 Q DID -- BASED ON YOUR INVESTIGATION, DID YOU
20 LEARN WHETHER OR NOT THERE WERE SOME EXISTING, YOU
21 KNOW, PRECEDENTS OR EXISTING CAD DESIGNS THAT WERE
22 ON THE SHELF THERE AT SAMSUNG?

23 MR. LEE: YOUR HONOR, THIS IS HEARSAY
24 AGAIN. "DID YOU LEARN" IS JUST ANOTHER WAY OF
25 SAYING "WHAT DID THEY TELL YOU?"

1 THE COURT: ALL RIGHT. LAY THE
2 FOUNDATION OF IF HE KNEW IT IN A WAY OTHER THAN
3 FROM HEARING SOMEONE'S ELSE'S STATEMENT, OUT OF
4 COURT STATEMENT.

5 MR. QUINN: YOUR HONOR, HE'S NOT A
6 DESIGNER. HE LEARNED WHAT HE KNOWS THROUGH THIS
7 INVESTIGATION.

8 THE COURT: BUT DID HE SEE THEM? HE
9 COULD HAVE FIRST-HAND KNOWLEDGE.

10 BY MR. QUINN:

11 Q DID YOU SEE OTHER DESIGNS WHICH THEY SAID
12 THESE HAD BEEN BASED ON?

13 MR. LEE: YOUR HONOR, THIS IS AN EFFORT
14 TO GET IN THIS, PRECISELY THE ISSUE WE HAD ABOUT
15 EARLIER DEVELOPMENT. I DON'T WANT TO SAY ANY MORE
16 THAN THAT. THAT'S WHAT WE'RE GETTING INTO HERE
17 NOW. IT'S COMING IN BY HEARSAY.

18 MR. QUINN: YOUR HONOR, THEY --

19 MR. LEE: AND THE SUGGESTION THAT I
20 CHALLENGED HIS INVESTIGATION, ALL I DID WAS ASK HIM
21 WHAT HE DID AND WHETHER HE STOOD BY IT TODAY WITH
22 THE PRODUCTS THAT ARE AT ISSUE IN THIS CASE. I
23 DIDN'T CHALLENGE WHO HE TALKED TO.

24 BUT, YOUR HONOR, THIS IS HIS TELLING US
25 WHAT HE LEARNED FROM SOMEONE WITHIN THEIR CONTROL,

1 RIGHT, ON A SUBSTANTIVE ISSUE.

2 MR. QUINN: YOUR HONOR, HE WAS ASKED
3 WHETHER HE STOOD BY HIS TESTIMONY THAT THERE HAD
4 NOT BEEN COPYING, THAT THEY HADN'T REFERRED TO
5 APPLE PRODUCTS, AND, YOU KNOW, AN EFFORT WAS MADE
6 TO CHALLENGE THAT.

7 SO I THINK HE'S ENTITLED TO RESPOND TO
8 THAT AND SAY WHY AND WHAT HE DID AND WHAT HE KNEW
9 BASED ON THAT INVESTIGATION.

10 MR. LEE: YOUR HONOR, HE DOESN'T -- THIS
11 IS NOT A DOOR-OPENER FOR HEARSAY.

12 AND WHAT WE ASKED HIM WAS WHAT HIS
13 CONCLUSION WAS, AND I ONLY ASKED HIM WHETHER HE
14 STOOD BY IT AS TO WHAT'S BEFORE THIS JURY TODAY.

15 THAT DOESN'T OPEN THE DOOR FOR HIM TO NOW
16 TALK ABOUT WHAT THE SAMSUNG EMPLOYEES WHO THEY
17 COULD BRING HERE --

18 THE COURT: ARE NONE OF THESE EMPLOYEES
19 COMING TO TESTIFY DURING THIS TRIAL? ARE THEY ALL
20 COMING IN THROUGH MR. DENISON?

21 BECAUSE IF THEY'RE GOING TO COME TO
22 TESTIFY, I THINK IT DOES MAKE SENSE FOR IT TO COME
23 DIRECTLY FROM THE HORSE'S MOUTH RATHER THAN FROM
24 MR. DENISON.

25 MR. QUINN: SOME OF THESE EMPLOYEES WILL

1 LIKELY TESTIFY.

2 THE COURT: OKAY.

3 MR. QUINN: BUT I CAN'T SAY ALL OF THEM
4 WILL.

5 THE COURT: I'M NOT GOING TO LET THEM
6 TESTIFY THROUGH HIM. SO I'M SUSTAINING THE
7 OBJECTION.

8 MR. QUINN: ALL RIGHT.

9 Q ANOTHER PHONE THAT YOU INVESTIGATED WAS THE --
10 THAT WAS -- YOU SAID THAT WAS AT ISSUE WAS THE
11 GALAXY S, WHICH I THINK IS EXHIBIT 1007.

12 A YES, I THINK THE GALAXY S 4G SPECIFICALLY.

13 Q AND IF WE CAN -- IF I COULD ASK MS. KHAN TO
14 PLACE THAT BEFORE THE WITNESS.

15 THE CLERK: I DON'T THINK THAT'S BEEN
16 ADMITTED.

17 MR. QUINN: IT HAS NOT YET BEEN RECEIVED,
18 I DON'T BELIEVE.

19 THE COURT: I DON'T SEE IT.

20 BY MR. QUINN:

21 Q HOPEFULLY WE'VE GOT ONE IN THE COLLECTION.

22 A I'VE GOT ONE.

23 Q DO YOU HAVE EXHIBIT 1007 BEFORE YOU, SIR?

24 A I DO.

25 Q AND COULD YOU IDENTIFY THAT FOR US, PLEASE?

1 A IT LOOKS TO BE A GALAXY S 4G.

2 MR. QUINN: AND WE'D OFFER THAT, YOUR
3 HONOR.

4 THE COURT: ALL RIGHT. ANY OBJECTION.

5 MR. LEE: NO OBJECTION.

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

7 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
8 1007, HAVING BEEN PREVIOUSLY MARKED FOR
9 IDENTIFICATION, WAS ADMITTED INTO
10 EVIDENCE.)

11 THE WITNESS: I APOLOGIZE. THIS
12 PARTICULAR DEVICE LOOKS TO BE THE GLOBAL VARIANT OF
13 THE ORIGINAL GALAXY S. THAT'S KNOWN AS THE I9000.

14 MR. QUINN: WE OFFER THAT IN EVIDENCE,
15 YOUR HONOR, THE GLOBAL VARIANT OF THE GALAXY 4S.

16 Q IS THAT ONE OF THE ACCUSED PHONES, THE ORIGINS
17 OF THE DESIGN THAT YOU INVESTIGATED?

18 A NO, IT WAS NOT.

19 MR. QUINN: NO. SO WE NEED EXHIBIT 1007,
20 THE GALAXY S.

21 MR. LEE: WHATEVER IT IS HE'S IDENTIFIED,
22 I HAVE NO OBJECTION TO IT.

23 THE COURT: ALL RIGHT. SO THE I9000 IS
24 ADMITTED.

25 THE CLERK: DOES THAT HAVE A NUMBER,

1 COUNSEL?

2 MR. QUINN: IT'S EXHIBIT 1007.

3 THE CLERK: I THOUGHT HE SAID THAT WAS --

4 MR. QUINN: 1007.

5 THE CLERK: I THOUGHT THEY SAID THAT
6 WASN'T --

7 THE COURT: I THINK THEY WANT TO DO
8 ANOTHER ONE THAT'S GOING TO HAVE A DIFFERENT
9 NUMBER.

10 RIGHT? IT'S ANOTHER ONE THAT HAS A
11 DIFFERENT NUMBER? IS THAT RIGHT?

12 THE CLERK: YOU CALLED IT 1007 AND THEN
13 IT DIDN'T TURN OUT TO BE WHAT YOU THOUGHT IT WAS.
14 SO WHAT IS THAT?

15 MR. QUINN: I'M GOING TO ASK HIM.

16 THE CLERK: OKAY.

17 BY MR. QUINN:

18 Q WHAT ARE YOU HOLDING IN YOUR HAND?

19 A RIGHT NOW I'M HOLDING THE GALAXY S 4G. IT'S
20 EXHIBIT 1019.

21 MR. QUINN: 1019. AND WE'D OFFER THAT
22 EXHIBIT.

23 THE COURT: ALL RIGHT.

24 MR. LEE: JUST SO I'M CLEAR, THIS IS THE
25 GALAXY S 4G, 1019.

1 THE WITNESS: 1019.

2 THE COURT: ALL RIGHT.

3 MR. LEE: OKAY. NO OBJECTION.

4 THE COURT: NO OBJECTION. SO THAT'S
5 ADMITTED.

6 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
7 1019, HAVING BEEN PREVIOUSLY MARKED FOR
8 IDENTIFICATION, WAS ADMITTED INTO
9 EVIDENCE.)

10 MR. QUINN: AND YOUR HONOR, WITH THE
11 COURT'S PERMISSION, I'D REQUEST THAT THE JURY HAVE
12 AN OPPORTUNITY TO SEE THIS AS WELL, IF WE CAN HAND
13 THIS TO THE JURORS.

14 THE COURT: ALL RIGHT.

15 ANY OBJECTION, MR. LEE?

16 MR. LEE: NONE, YOUR HONOR.

17 THE COURT: ALL RIGHT. PLEASE GO AHEAD.

18 BY MR. QUINN:

19 Q THIS IS ANOTHER ONE OF THE ACCUSED PHONES IN
20 THIS CASE?

21 THE WITNESS: I BELIEVE SO.

22 MR. LEE: SO I KNOW WHAT THIS IS, SINCE
23 WE'VE HAD THE TWO, WHICH ONE IS GOING TO THE JURY?

24 MR. QUINN: 1019.

25 Q AND THIS IS ANOTHER ONE THAT YOU INVESTIGATED

1 THE ORIGINS OF THE DESIGN?

2 A CORRECT.

3 Q AND WHO DID YOU SPEAK TO?

4 A FOR THIS PARTICULAR DEVICE, I BELIEVE I SPOKE
5 TO MIN-HYOUK LEE. I MAY HAVE MISPRONOUNCED THAT
6 SLIGHTLY.

7 Q AND DID YOU SPEAK TO ANYONE ELSE, AN
8 INDIVIDUAL NAME JIYOUNG HUI AS WELL?

9 A CORRECT.

10 Q AND DID YOU TALK TO THEM ABOUT HOW THEY CAME
11 UP WITH THE DESIGN?

12 A I DID.

13 Q AND BASED ON THAT, DID YOU LEARN WHETHER OR
14 NOT THEY HAD BASED THE DESIGN ON THE IPHONE?

15 MR. LEE: SAME OBJECTION.

16 THE COURT: SUSTAINED.

17 I'M NOT GOING TO LET YOU HAVE PEOPLE WHO
18 ARE NOT TESTIFYING TESTIFY THROUGH MR. DENISON. SO
19 PLEASE GO TO YOUR NEXT TOPIC.

20 MR. QUINN: ALL RIGHT.

21 Q LET ME JUST ASK YOU ABOUT SOME OF THESE
22 FEATURES THAT WE'VE TALKED ABOUT ON THE PHONES.

23 DID YOU ASK -- WHEN YOU TALKED TO THE
24 DESIGNERS, DID YOU ASK THEM WHY THERE WERE ROUNDED
25 CORNERS?

1 A YES.

2 MR. LEE: I OBJECT, YOUR HONOR. THIS IS
3 HEARSAY AGAIN. IT'S THE DESIGNERS TELLING HIM.

4 THE COURT: SUSTAINED.

5 BY MR. QUINN:

6 Q DO YOU -- DO YOU HAVE ANY UNDERSTANDING ABOUT
7 WHY THERE ARE ROUNDED CORNERS ON THESE PHONES?

8 A I DO.

9 Q AND WHAT IS THAT?

10 MR. LEE: YOUR HONOR --

11 THE COURT: WHAT'S THAT BASED ON? IS
12 THAT BASED ON YOU TALKING TO THE DESIGNERS, OR IS
13 THAT -- WHAT IS THAT BASED ON KNOWING, YOU
14 YOURSELF?

15 THE WITNESS: THAT'S BASED ON INDUSTRY
16 EXPERIENCE.

17 MR. QUINN: MAYBE I COULD LAY SOME
18 FOUNDATION ON THAT, YOUR HONOR?

19 THE COURT: PLEASE, GO AHEAD.

20 BY MR. QUINN:

21 Q HOW LONG HAVE YOU BEEN IN THE MOBILE
22 TELECOMMUNICATIONS INDUSTRY AND RELATED INDUSTRIES?

23 A I'VE BEEN IN AND AROUND IT FOR ABOUT 16 YEARS
24 NOW.

25 Q HOW LONG HAVE YOU WORKED FOR STA, SAMSUNG

1 AMERICA?

2 A JUST OVER FOUR YEARS.

3 Q AND PRIOR TO THAT, DID YOU WORK FOR ANY OTHER
4 TELECOMMUNICATIONS COMPANIES?

5 A I WORKED FOR NOKIA CORPORATION PRIOR TO
6 SAMSUNG.

7 Q HAVE YOU DONE WORK -- HAVE YOU HAD ANY OTHER
8 EMPLOYMENT IN THE TELECOMMUNICATIONS RELATED FIELD?

9 A SURE. I WORKED ON THE CHIP SIDE AT TEXAS
10 INSTRUMENTS IN THEIR MOBILE BUSINESS; AND THEN
11 BEFORE THAT, I WORKED FOR MANY YEARS AT MOTOROLA IN
12 THEIR HANDSET AND CHIP BUSINESSES.

13 Q ALL RIGHT. SO BASED ON YOUR INDUSTRY
14 EXPERIENCE, WHAT IS YOUR UNDERSTANDING AS TO WHY
15 THERE ARE ROUNDED CORNERS ON THESE PHONES?

16 A WELL, MY SIMPLE UNDERSTANDING IS THAT IT'S
17 REALLY FOR SEVERAL REASONS. ONE, IT FEELS BETTER
18 IN THE HAND. POINTY CORNERS CERTAINLY CREATE
19 STRESS ON YOUR HAND.

20 IT'S MORE DIFFICULT TO ACTUALLY PUT A
21 DEVICE IN YOUR POCKET IF IT HAS SHARP CORNERS WHEN
22 YOU'RE TRYING TO PUT IT IN YOUR POCKET, AND
23 POCKETABILITY IS AN IMPORTANT ASPECT OF MOBILE
24 DEVICES.

25 IT ALSO AFFECTS DURABILITY. SO IF YOU

1 WERE TO DROP A DEVICE AND IT WERE TO LAND ON A
2 SHARP CORNER, IT WOULD BE MUCH MORE LIKELY TO CRACK
3 THAN IT WOULD BE IF IT WERE ROUNDED, LET'S SAY.

4 Q DO YOU HAVE A TECHNICAL BACKGROUND YOURSELF,
5 SIR, IN TERMS OF YOUR EDUCATION?

6 A MY EDUCATION ORIGINALLY WAS IN ENGINEERING.

7 Q COULD YOU PLEASE TELL THE JURY WHAT EDUCATION
8 YOU HAVE?

9 A SO I HAVE A BACHELOR'S OF SCIENCE IN COMPUTER
10 AND ELECTRICAL ENGINEERING FROM RICE UNIVERSITY; A
11 MASTER'S OF SCIENCE AND ENGINEERING FROM THE
12 UNIVERSITY OF TEXAS AT AUSTIN; AND THEN I HAVE A
13 MASTER'S IN BUSINESS ADMINISTRATION FROM NORTH
14 WESTERN UNIVERSITY.

15 Q WE'VE HEARD TESTIMONY ABOUT THESE PHONES
16 HAVING FLAT SCREENS. BASED UPON YOUR INDUSTRY
17 EXPERIENCE, DO YOU HAVE AN UNDERSTANDING ABOUT WHY
18 THESE PHONES HAVE FLAT SCREENS?

19 A I DO.

20 Q AND WHAT IS THAT?

21 A WELL, FIRST, SINCE WE INVESTIGATED, WE
22 DEVELOPED ONE PHONE THAT HAD A CURVED SCREEN AND
23 ONE OF THE KEY ISSUES OF IT IS IT MANUFACTURABILITY
24 AND COST.

25 TO ACTUALLY CREATE A CURVED GLASS FRONT,

1 LET'S SAY, YOU HAVE TO START WITH A BIG PIECE OF
2 GLASS AND CARVE IT DOWN TO CREATE A CURVED PORTION
3 OF GLASS, AND THAT COSTS MORE MONEY. YOU START
4 WITH MORE MATERIAL AND ACTUALLY USE -- IT RESULTS
5 IN LOWER YIELD.

6 IN ADDITION TO THAT, YOU HAD PROBLEMS
7 WITH REGARDS TO THE TOUCH SENSITIVITY OF A CURVED
8 GLASS FRONT. SO THE ACTUAL INCREASED THICKNESS OF
9 THE DISPLAY AT THE EDGES, THAT'S HOW IT WAS SHAPED,
10 INTERFERED WITH THE TOUCH SENSITIVITY OF THE
11 DISPLAY IN THOSE AREAS AND INTRODUCED SOME, YOU
12 KNOW, VISUAL DEFECTS, LET'S SAY, OF THE UNDERLYING
13 SCREEN UNDERNEATH.

14 Q ALL RIGHT. DOES -- YOU KNOW, DOES HAVING A
15 SCREEN THAT IS NOT FLAT HAVE ANY OPTICAL EFFECTS IN
16 TERMS OF THE EFFECT ON THE IMAGE?

17 A YES. I TRIED TO TALK ABOUT THAT IN MY ANSWER.
18 IT DOES CREATE SOME DISTORTION, IF YOU WILL. I
19 THINK IT'S DUE TO REFRACTION THROUGH THE GLASS AS
20 THE IMAGE COMES OUT.

21 Q WE'VE HEARD THAT THE SCREENS ON THESE PHONES
22 TEND TO BE MORE OR LESS KIND OF CENTERED ON THE
23 DEVICE. DO YOU HAVE ANY UNDERSTANDING ABOUT WHY
24 THAT'S THE CASE?

25 A I DO.

1 Q WHAT IS THAT?

2 A IT SIMPLY -- AGAIN, THEY'RE MAIN COMPONENTS IN
3 A PHONE, AND THEY'RE NOT ALL PUT BEHIND THE GLASS,
4 IF YOU WILL, BEHIND THE DISPLAY FOR MANY REASONS.

5 SO YOU HAVE TO PUT THEM ON THE TOP AND/OR
6 ON THE BOTTOM OF THE DISPLAY, WHICH, OF COURSE,
7 MEANS THAT THERE HAS TO BE SPACE ABOVE AND BELOW
8 THIS WAY.

9 FOR INSTANCE, THE SPEAKER TYPICALLY IS
10 ABOVE THE DISPLAY. THE MICROPHONE IS TYPICALLY
11 BELOW THE DISPLAY.

12 THERE'S KEYS, WHETHER THEY'RE HARD KEYS
13 OR CAPACITIVE KEYS, THAT ARE BELOW THE DISPLAY, FOR
14 INSTANCE.

15 AND THERE'S MANY OTHER I/C COMPONENTS
16 THAT YOU EITHER WOULD CHOOSE NOT TO PUT BEHIND THE
17 DISPLAY OR YOU NECESSARILY HAVE TO PUT ABOVE OR
18 BELOW JUST FOR REASONS OF EVEN DEVICE THINNESS.

19 Q WE'VE HEARD SOME TESTIMONY ABOUT THE LOCATION
20 OF THE SPEAKER UP NEAR THE TOP. DO YOU HAVE ANY
21 UNDERSTANDING ABOUT WHY SPEAKERS TEND TO BE PUT AT
22 THE TOP OF THE DEVICE?

23 A IT'S JUST CLOSER TO THE EAR THAT WAY.

24 Q AND THEN WE'VE HEARD ABOUT THIS, THE SPACING,
25 YOU KNOW, THE METAL OR PLASTIC ALONG THE SIDE OF

1 THE SCREEN. IS THERE A TERM FOR THAT THAT'S USED
2 IN THE BUSINESS?

3 A THE TERM I'VE HEARD IS CALLED THE BLACK MASK.

4 Q AND THAT'S -- WHERE IS THAT ON THE PHONE?

5 A THAT IS KIND OF, AS YOU WERE GESTURING, ALONG
6 THE SIDES OF THE SCREEN, LET'S SAY, IN BETWEEN WHAT
7 YOU WOULD SEE AS THE EDGE OF THE SCREEN TO THE EDGE
8 OF THE SORT OF OUTER EDGE OF EITHER THE BEZEL, IF
9 THERE'S A BEZEL, OR THE FRAME IF THERE'S A UNIBODY
10 FRAME, FOR INSTANCE.

11 Q IS THERE A REASON WHY THESE PHONES ALL TEND TO
12 HAVE THESE BLACK MASKS ON EITHER SIDE OF THE
13 SCREEN?

14 A THERE IS.

15 Q AND WHAT IS THAT?

16 A AGAIN, IN MY EXPERIENCE IN THE INDUSTRY,
17 ACTUALLY PEOPLE HAVE TRIED TO GET RID OF THAT, YOU
18 KNOW, BECAUSE YOU ACTUALLY WANT -- YOU REALLY DO
19 JUST WANT THE DEVICE TO BE JUST ONE GIANT SCREEN.
20 THAT'S WHAT WE THINK CONSUMERS ULTIMATELY WILL
21 WANT.

22 BUT YOU HAVE TO HAVE THAT FOR
23 MANUFACTURABILITY REASONS, AS WELL AS QUALITY
24 REASONS. SO MANUFACTURABILITY BECAUSE YOU
25 ACTUALLY -- THERE'S NOTHING TO HOLD THE GLASS, PER

1 SE, ON TOP OF THE DEVICE.

2 AND SO WHAT ENDS UP HAPPENING IS YOU
3 ACTUALLY GLUE OR TAPE THE ACTUAL GLASS USING THOSE
4 THIN BORDERS ON TOP OF THE ACTUAL UNDERLYING
5 DISPLAY, BECAUSE THERE'S A PIECE OF GLASS AND THEN
6 UNDERNEATH THAT IS A DISPLAY AND YOU HAVE TO GLUE
7 THAT ON TOP.

8 MANUFACTURABILITY -- OR I'M SORRY.
9 QUALITY REASONS BECAUSE IF YOU WERE TO DROP A PHONE
10 ON ITS SIDE, LET'S SAY, AND THERE WERE NO, YOU
11 KNOW, DISTANCE LET'S SAY, OR NOTHING BETWEEN THE
12 EDGE OF THE DISPLAY AND THE EDGE OF THE PHONE,
13 THERE WOULD BE A VERY SIGNIFICANT IMPACT ON THE
14 DISPLAYS.

15 DISPLAYS CAN BE FRAGILE. THEY'RE
16 EXTREMELY EXPENSIVE TO REPLACE. THEY'RE ONE OF THE
17 MOST EXPENSIVE COMPONENTS ON THE DEVICE.

18 SO THAT'S WHY THAT EXISTS.

19 Q NOW, WE'VE HEARD TESTIMONY ABOUT HOW THESE
20 SCREENS ON SMARTPHONES HAVE GOTTEN LARGER AND TEND
21 TO BE RECTANGULAR AND TEND TO TAKE UP MOST OF THE
22 REAL ESTATE ON THE SURFACE OF THE PHONE.

23 DO YOU HAVE AN UNDERSTANDING ABOUT WHY
24 THAT'S HAPPENING?

25 A YES, I DO.

1 Q WHY IS THAT?

2 A WELL, TWO PARTS. SO THE SCREENS ARE
3 RECTANGULAR BECAUSE THEY'RE RECTANGULAR. THAT'S
4 HOW WE DEVELOPED TECHNOLOGY. TV'S ARE RECTANGULAR.
5 SO THAT'S KIND OF APPEARANCE.

6 IN TERMS OF WHY THE SCREEN TAKES UP THE
7 MAJORITY OF THE DEVICE, AGAIN, IT GOES TO THIS
8 DESIGN IDEAL, WHAT WE THINK CONSUMERS WANT AT THE
9 END OF THE DAY, WHAT I WOULD WANT AS A CONSUMER,
10 WHICH IS A GIANT SCREEN, THE GIANT WINDOW INTO MY
11 CONTENT AND TO MY, YOU KNOW, MOBILE WEB
12 ENVIRONMENT, THINGS LIKE THAT.

13 Q AND I THINK YOU MAY HAVE SUGGESTED THIS, BUT
14 DOES THAT HAVE SOMETHING TO DO WITH BEING ABLE TO
15 SEE MOVIES BETTER, PHOTOGRAPHS BETTER, THINGS LIKE
16 THAT?

17 A YES, IT DOES.

18 Q AND SO THESE VARIOUS FEATURES THAT YOU'VE
19 TALKED ABOUT, DID THESE TEND TO BECOME COMMON
20 ACROSS MOST ALL SMARTPHONES?

21 A I WOULD SAY THAT AS THE TECHNOLOGY BECOMES
22 AVAILABLE TO DO THESE THINGS, THAT'S WHEN YOU SEE
23 PEOPLE INTRODUCING IT INTO THE MARKET, YES.

24 Q AND CAN YOU TELL US, THESE VARIOUS FEATURES
25 WE'VE IDENTIFIED, IS IT JUST APPLE THAT DOES THIS,

1 OR JUST SAMSUNG THAT DOES THIS, OR JUST NOKIA THAT
2 DOES THIS? PRETTY MUCH IN THE SMARTPHONE BUSINESS,
3 CAN YOU TELL US WHETHER OR NOT ALL SMARTPHONE
4 MANUFACTURERS HAVE ADOPTED THIS TECHNOLOGY AS IT
5 BECAME AVAILABLE?

6 A I WOULD SAY THIS IS THE GENERAL DIRECTION THAT
7 THE INDUSTRY IS GOING, YES.

8 Q CHANGING GEARS NOW.

9 YOU WERE SHOWED SOME DOCUMENTS WHERE
10 YOU -- YOU AUTHORED A DOCUMENT. IT'S EXHIBIT 58.

11 IF WE COULD PUT UP ON THE SCREEN THE
12 FIRST PAGE OF THAT.

13 AND YOU WROTE THIS AND YOU SAID, "PLEASE
14 FIND ATTACHED UPDATED PRESENTATION RE: BEAT APPLE
15 STRATEGY UPDATE."

16 DO YOU SEE THAT THERE?

17 A I DO.

18 Q AND CAN YOU JUST -- DOES SAMSUNG WANT TO BEAT
19 APPLE?

20 A SAMSUNG ABSOLUTELY WANTS TO SELL MORE DEVICES
21 THAN APPLE, HTC, MOTOROLA, LG, EVERYBODY IN THE
22 MARKET.

23 Q DO YOU APOLOGIZE FOR THAT?

24 A I DON'T.

25 Q IN THIS SAME DOCUMENT, IF WE LOOK AT THE BACK,

1 STARTING ON PAGE BATES NUMBER 659, INTERNALLY IT'S
2 PAGE 18 OF THE DOCUMENT.

3 THIS IS ABOUT YOUR ASSESSMENT OF LG.

4 GO FORWARD TWO MORE PAGES. IF WE CAN
5 ENLARGE THAT IN THE UPPER LEFT.

6 LG?

7 A YES. THIS SHOWS OUR, OUR ROAD MAP ANALYSIS,
8 COMPETITIVE ANALYSIS OF THEM.

9 Q ALL RIGHT. SO IS -- I MEAN, DOES SAMSUNG ONLY
10 WANT TO BEAT APPLE?

11 A NO, ABSOLUTELY NOT.

12 Q CAN YOU TELL US WHETHER OR NOT SAMSUNG ALSO
13 MONITORS ITS OTHER COMPETITORS AND SEEKS TO BEAT
14 THEM AS WELL?

15 A WE DO. WE MONITOR ALL THE COMPETITION IN THE
16 MARKET.

17 Q AND THE NEXT PAGE, YOU SEE RIM IN THE UPPER
18 LEFT? THAT'S -- RIM IS RESEARCH IN MOTION,
19 BLACKBERRY?

20 A YES, IT IS.

21 Q AND ON THE NEXT PAGE, HTC?

22 A YES.

23 Q WHO'S HTC?

24 A HTC IS A COMPETITOR. I FORGET WHAT THE
25 ACRONYM STANDS FOR.

1 Q HIGH TECH CORPORATION, SOMETHING LIKE THAT?

2 A THAT RINGS A BELL.

3 Q AND THE NEXT PAGE, IS THAT MOTOROLA?

4 A YES.

5 Q OKAY. DOES -- THANK YOU VERY MUCH.

6 DOES SAMSUNG, AT ANY GIVEN TIME, TEND TO
7 FOCUS ONLY ON ONE COMPETITOR OR ON ONE COMPETITOR
8 MORE THAN OTHERS?

9 A I WOULD SAY IT'S FAIR TO SAY THAT SAMSUNG
10 LOOKS AT ALL THE COMPETITION. WE MAY FOCUS ON ONE
11 COMPETITOR VERSUS THE OTHER DEPENDING ON THE MARKET
12 THAT WE'RE LOOKING AT DURING THAT TIME.

13 Q COULD YOU EXPLAIN TO THE JURY WHAT YOU MEAN?

14 A THERE'S DIFFERENT WAYS TO SEGMENT THE MARKET.
15 ONE WAY WOULD BE TO LOOK AT IT ON A CARRIER BY
16 CARRIER BASIS. ANOTHER WAY TO LOOK AT IT IS
17 PREPAID VERSUS POST PAID. SO THOSE ARE WAYS TO
18 SEGMENT THE MARKET.

19 Q ALL RIGHT. WHAT EXACTLY IS YOUR JOB AT
20 SAMSUNG? I HAVEN'T ASKED YOU THAT. WHAT ARE YOUR
21 RESPONSIBILITIES?

22 A SO I'M THE HEAD OF CORPORATE PLANNING STRATEGY
23 FOR STA, SO MY JOB IS TO CHART THE LONG-RANGE
24 STRATEGIC PLAN FOR STA, OR AT LEAST TO FACILITATE
25 THE CREATION OF THAT PLAN.

1 THAT INCLUDES A MULTI-YEAR PLAN; THAT
2 INCLUDES A SINGLE YEAR PLAN, I.E., THE NEXT YEAR;
3 IT INCLUDES TRACKING OUR PROGRESS AGAINST THOSE
4 PLANS THROUGHOUT THE YEAR.

5 Q ALL RIGHT. SO YOU SAID THAT MARKETS MAY
6 INCLUDE CARRIER MARKETS?

7 A CORRECT.

8 Q CAN YOU EXPLAIN TO US HOW IT IS THAT A CARRIER
9 CAN BE A MARKET?

10 A WELL, CARRIERS CARRY A FINITE SET OF DEVICES
11 IN THEIR PORTFOLIO. THEY THEMSELVES CAN'T MANAGE A
12 THOUSAND DEVICES, LET'S SAY, IN THEIR SUPPLY CHAIN.

13 THEY CHOSE TO OFFER A SELECT NUMBER OF
14 DEVICES TO THEIR CONSUMERS, AND EACH CARRIER HAS
15 VERY SPECIFIC REQUIREMENTS WITH REGARD TO NETWORK
16 TECHNOLOGY, FREQUENCIES THEY USE, THEY HAVE THEIR
17 OWN PROPRIETARY SOFTWARE AND SERVICES THEY WANT YOU
18 TO PUT ON THEIR DEVICE.

19 SO YOU BRING ALL THIS TOGETHER AND YOU
20 HAVE JUST A, A FINITE NUMBER OF DEVICES OF
21 COMPANIES COMPETING WITHIN THAT CARRIER.

22 Q SO IS IT -- CAN YOU TELL US WHETHER OR NOT
23 YOUR COMPETITORS WITH ONE CARRIER MAY BE DIFFERENT
24 THAN YOUR COMPETITORS WITH ANOTHER CARRIER?

25 A THAT'S RIGHT. NOT ALL COMPETITORS ARE

1 PRESENT, LET'S SAY, AT ALL CARRIERS.

2 Q BUT YOU SAID THAT SAMSUNG'S STRATEGY IS TO
3 BEAT APPLE, BEAT HTC, BEAT, YOU KNOW, ALL YOUR
4 COMPETITORS, TO BE NUMBER ONE.

5 YOU'RE THE HEAD STRATEGY GUY AT SAMSUNG.
6 CAN YOU EXPLAIN TO US, IN GENERAL, WHAT IS
7 SAMSUNG'S STRATEGY FOR BECOMING NUMBER ONE?

8 A SAMSUNG'S STRATEGY TO BECOME NUMBER ONE IS
9 BASED ON I GUESS WHAT I WOULD SUMMARIZE AS A RECIPE
10 FOR OUR SUSTAINABLE ADVANTAGE IN THE MARKET.

11 THE --

12 Q WHAT'S A SUSTAINABLE ADVANTAGE?

13 A SO ANY TIME YOU'RE CHARTING A STRATEGY, LET'S
14 SAY FOR A COMPANY OR ENTITY, I GUESS WHEN YOU'RE
15 SOMEONE LIKE ME THINKING ABOUT THE STRATEGY, WHAT
16 YOU'RE TRYING TO FIND IS YOU'RE TRYING TO FIND SOME
17 UNIQUE CAPABILITIES AND COMPETENCIES THAT YOUR
18 COMPANY HAS THAT THEY CAN LEVERAGE THAT YOUR
19 COMPETITORS MAY NOT HAVE. SO ASSETS, LET'S SAY
20 THAT YOU CAN DEVELOP, INCUBATE AND LEVERAGE AS A
21 WIN.

22 AND THAT'S WHAT WE DO AT SAMSUNG.

23 Q AND BASED ON YOUR EXPERIENCE AND YOUR
24 BACKGROUND, CAN YOU OBTAIN A COMPETITIVE ADVANTAGE
25 JUST BY COPYING WHAT SOMEBODY ELSE DOES IN THE

1 MARKET?

2 A NO. THAT WOULD NOT REPRESENT A SUSTAINABLE
3 ADVANTAGE.

4 Q HOW IS IT THAT SAMSUNG GOES ABOUT TRYING TO
5 MAINTAIN A COMPETITIVE ADVANTAGE?

6 A SAMSUNG'S STRATEGY, I GUESS IN SHORT, IS TO
7 DELIVER THE LATEST AND GREATEST TECHNOLOGY TO
8 CONSUMERS, MORE FREQUENTLY THAN THE COMPETITION, AT
9 AS MANY POINTS OF DISTRIBUTION AS POSSIBLE --
10 AGAIN, THE CARRIER IS AN EXAMPLE OF DISTRIBUTION
11 POINT -- LEVERAGING MULTIPLE UNDERLYING
12 TECHNOLOGIES, INCLUDING MULTIPLE OPERATING SYSTEMS,
13 AND AT AS MANY DIFFERENT PRICE POINTS AS POSSIBLE,
14 I.E., PREMIUM, HIGH PRICE POINTS, AS WELL AS LOWER
15 END PRICE POINTS, SO THAT OUR DEVICES ARE AS
16 ACCESSIBLE AS POSSIBLE TO ALL CONSUMERS WHEN THEY
17 WANT TO PURCHASE.

18 SOMETIMES WE REFER TO THAT AS THE
19 DEMOCRATIZATION OF THE CELL PHONE.

20 Q AND HOW IS THAT STRATEGY THAT YOU'VE JUST
21 DESCRIBED DIFFERENT FROM APPLE'S STRATEGY IN TERMS
22 OF THE PRODUCTS IT BRINGS TO MARKET?

23 MR. LEE: I OBJECT. NO FOUNDATION FOR
24 HIM TO KNOW WHAT APPLE'S STRATEGY IS.

25 MR. QUINN: BASED ON HIS COMPETITIVE --

1 HIS JOB. I CAN LAY SOME FOUNDATION, YOUR HONOR.

2 THE COURT: PLEASE DO THAT.

3 MR. QUINN: ALL RIGHT.

4 Q IN YOUR JOB, ARE YOU REQUIRED TO UNDERSTAND
5 WHAT APPLE'S PRODUCT STRATEGY IS IN TERMS OF WHAT
6 PRODUCTS IT'S BRINGING TO MARKET?

7 A WE ABSOLUTELY TRY TO UNDERSTAND WHAT OUR
8 COMPETITORS ARE GOING TO BRING TO MARKET.

9 Q WOULD THAT INCLUDE APPLE?

10 A YES.

11 Q HTC AND ALL THE OTHERS?

12 A YES.

13 Q OKAY. BASED ON WHAT YOU SEE IN TERMS OF THE
14 PRODUCTS APPLE BRINGS TO MARKET, WHAT IS YOUR
15 UNDERSTANDING ABOUT WHAT APPLE'S STRATEGY IS?

16 A WELL, FROM MY VIEW, APPLE IS LAUNCHING, OR HAS
17 BEEN LAUNCHING, THE PRODUCTS AT ABOUT ONE
18 SMARTPHONE A YEAR, OKAY, AND THEY HAVE CHARTED A
19 VERY SPECIFIC PATH, STARTING IN 2007, WHEREBY THEY
20 LAUNCHED THAT WITH ONE PARTICULAR CARRIER ON AN
21 EXCLUSIVE BASIS.

22 THEY'VE CONTINUED TO LAUNCH AN UNDATED
23 PRODUCT EVERY SUBSEQUENT YEAR, AS WELL AS STARTED
24 TO SLOWLY EXPAND THEIR DISTRIBUTION TO MORE
25 CARRIERS.

1 Q WELL, SO APPLE, BASED ON YOUR OBSERVATION,
2 BRINGS OUT ROUGHLY ONE NEW PHONE A YEAR.

3 APPROXIMATELY HOW MANY NEW PHONES DOES
4 SAMSUNG BRING OUT EVERY YEAR?

5 A WE LAUNCH APPROXIMATELY 50-ISH DEVICES A YEAR.
6 I THINK IN 2011, IT WAS A LITTLE BIT MORE THAN 50
7 DEVICES.

8 Q AND WHY IS -- WHY DOES SAMSUNG DO THAT, BRING
9 OUT SO MANY DIFFERENT PHONES?

10 A IN PART IT GOES TO WHAT I DESCRIBED AS OUR
11 DESIRE TO BRING OUT THE LATEST TECHNOLOGY WHEN IT'S
12 AVAILABLE, MORE FREQUENTLY THAN THE COMPETITION.

13 IT ALSO HAS TO DO WITH SOME OF THE
14 UNIQUENESS THAT WE CHOSE TO BRING TO THE CARRIERS
15 IN TERMS OF THE PORTFOLIO.

16 Q DOES SAMSUNG INVEST IN ITS BRAND AND ITS NAME,
17 SAMSUNG?

18 A WE INVEST QUITE A BIT IN THE U.S. ON BEHALF OF
19 SAMSUNG.

20 Q DO YOU KNOW HOW MUCH SAMSUNG INVESTED IN ITS
21 BRAND?

22 A SAMSUNG, STA I SHOULD SAY SPECIFICALLY, HAS
23 INVESTED, LET'S SAY, ABOUT A BILLION DOLLARS LAST
24 YEAR, 2011, ON MARKETING THEIR BRAND.

25 Q IN THE U.S.?

1 A IN THE U.S.

2 Q THAT WAS ONE BILLION WITH A "B"?

3 A YES, IT WAS.

4 Q ALL RIGHT. DOES -- IS SAMSUNG PROUD OF ITS
5 NAME?

6 A ABSOLUTELY.

7 Q DOES SAMSUNG PUT ITS NAME ON ITS PRODUCTS?

8 A IT'S ON EVERY PRODUCT.

9 Q WAS THERE A TIME PERIOD WHERE THERE WAS A
10 TABLET THAT SAMSUNG BROUGHT WHERE THE NAME WASN'T
11 ON THE FRONT, IT WAS ON THE BACK?

12 A THERE WAS, YES.

13 Q AND CAN YOU EXPLAIN WHY THAT WAS?

14 A SO THAT -- I BELIEVE YOU'RE REFERRING TO THE
15 ORIGINAL GALAXY TAB 10.1.

16 Q YOU TELL ME.

17 A OKAY. THAT'S THE WAY I REMEMBER IT, ANYWAY.

18 SO WE DID NOT ORIGINALLY PUT THE SAMSUNG
19 BRAND ON THE FACADE, THE FRONT FACE OF THAT
20 PRODUCT, BECAUSE THE PROCESS BY WHICH YOU, I GUESS
21 YOU ETCH, I THINK IT'S SOME KIND OF LASER ETCHING,
22 YOU ETCH THE ACTUAL BRAND INTO THE DISPLAY WAS
23 CAUSING THE GLASS TO INTERFERE WITH THE ACTUAL, YOU
24 KNOW, KIND OF HIDDEN WIRES, IF YOU WILL, FOR THE
25 TOUCH SENSITIVITY ON THE DISPLAY. SO IT WAS

1 CREATING MANUFACTURING PROBLEMS IN SHORT.

2 Q AND WERE THOSE FIXED?

3 A THEY WERE.

4 Q AND AFTER THAT, WAS THE SAMSUNG NAME PUT ON
5 THE FRONT?

6 A IT WAS.

7 Q LET'S TURN NOW TO RESEARCH AND DEVELOPMENT.

8 DOES -- DO YOU KNOW HOW MUCH SAMSUNG
9 SPENT ON RESEARCH AND DEVELOPMENT BETWEEN 2005 AND
10 2010?

11 A SAMSUNG SPENT, AND THIS IS SEC, SO SAMSUNG
12 ELECTRONICS CORP., SPENT APPROXIMATELY \$35 BILLION
13 OVER THE COURSE OF THOSE YEARS ON RESEARCH AND
14 DEVELOPMENT.

15 Q AND DO YOU KNOW HOW MANY ENGINEERS ARE
16 EMPLOYED AT SAMSUNG?

17 A THERE'S APPROXIMATELY -- I THINK THERE'S MORE
18 THAN 50,000. I'LL JUST SAY APPROXIMATELY 50,000
19 ENGINEERS GLOBALLY.

20 Q AND HOW MANY OF THOSE WORK IN RESEARCH AND
21 DEVELOPMENT?

22 A OH, I WOULD SAY THEY ALL WORK IN RESEARCH AND
23 DEVELOPMENT.

24 Q AND DO YOU KNOW HOW MANY DESIGNERS ARE
25 EMPLOYED AT SAMSUNG?

1 A I BELIEVE THERE'S UPWARDS OF 1,200 DESIGNERS
2 AT SAMSUNG.

3 Q DOES SAMSUNG MAKE THAT INVESTMENT IN MARKETING
4 AND RESEARCH AND DEVELOPMENT AND EMPLOY THOSE
5 DESIGNERS AND EMPLOY THOSE ENGINEERS ALL SO IT WILL
6 BE EASIER TO COPY ITS COMPETITORS?

7 A NO.

8 MR. LEE: WELL --
9 BY MR. QUINN:

10 Q DO YOU KNOW WHERE SAMSUNG RANKS ANNUALLY IN
11 THE U.S. IN TERMS OF PATENTS ISSUED BY THE
12 UNITED STATES PATENT AND TRADEMARK OFFICE?

13 A I DO.

14 MR. LEE: THAT'S IRRELEVANT.

15 THE COURT: OVERRULED.

16 GO AHEAD, PLEASE.

17 BY MR. QUINN:

18 Q WHERE DOES SAMSUNG RANK?

19 A SAMSUNG HAS BEEN RANKED NUMBER TWO PATENT
20 AWARDEE IN THE UNITED STATES EVERY YEAR SINCE I'VE
21 BEEN AT SAMSUNG.

22 Q SO -- AND THAT WOULD BE? REMIND US WHAT YEAR
23 IT WAS.

24 A I STARTED AT SAMSUNG IN 2008.

25 Q AND HAS -- YOU KNOW, IN YOUR WORK AT SAMSUNG,

1 AND INDEED WORKING FOR COMPETITORS BEFORE, DID YOU
2 BECOME -- DID YOU COME TO LEARN ABOUT INNOVATIONS
3 THAT SAMSUNG BROUGHT TO, TO MOBILE
4 TELECOMMUNICATIONS, YOU KNOW, FIRSTS, THINGS THAT
5 SAMSUNG DID FIRST IN THE INDUSTRY?

6 A SURE I DID.

7 Q AND CAN YOU TELL THE JURY WHAT SOME OF THOSE
8 ARE?

9 A CERTAINLY. FOR INSTANCE, SAMSUNG -- AND THIS
10 WAS WHEN I WAS, AS YOU SAID, AT OTHER COMPETITORS,
11 BUT I SAW THAT FROM A COMPETITOR'S POINT OF VIEW --
12 SAMSUNG LAUNCHED THE FIRST MP3 PHONE IN
13 APPROXIMATELY THE YEAR 2000, AS I RECALL.

14 SAMSUNG LAUNCHED THE FIRST DEVICE TO BE
15 SUB-TEN MILLIMETERS THICK. OKAY, THAT'S KIND OF AN
16 IMPORTANT MILESTONE, LET'S SAY. I THINK SOME
17 PEOPLE CALLED IT THE FIRST WAVE OF ULTRATHIN
18 DEVICES IN THE MARKET. THAT WAS AROUND 2001, I
19 BELIEVE.

20 SAMSUNG WAS THE FIRST COMPANY TO LAUNCH A
21 DEVICE WITH VOICE RECOGNITION. THAT, I BELIEVE,
22 WAS IN 2007 IF I'M NOT MISTAKEN.

23 SAMSUNG ALSO LAUNCHED THE FIRST CAMERA
24 PHONE GLOBALLY. THAT WAS DONE AROUND THE YEAR
25 2001.

1 AND THEN MORE RECENTLY, SAMSUNG WAS ALSO
2 THE FIRST MANUFACTURER TO LAUNCH DEVICES WITH THE
3 SUPER AMOLED, A-M-O-L-E-D, SUPER AMOLED TECHNOLOGY
4 WITH THE FIRST FAMILY OF GALAXY S DEVICES, AND THAT
5 WAS IN 2010.

6 Q WHAT IS AMOLED TECHNOLOGY?

7 A AMOLED TECHNOLOGY, I THINK IT STANDS FOR
8 ACTIVE MATRIX ORGANIC LIGHT EMITTING DIODE,
9 SOMETHING TO THAT EFFECT.

10 IT'S A TYPE OF SCREEN TECHNOLOGY THAT
11 SAMSUNG HAS DEVELOPED AND EMPLOYED IN ITS OWN
12 PRODUCTS AND IT, SIMPLY SPEAKING, ALLOWS FOR A MUCH
13 FASTER RESPONSE TIME.

14 SO IMAGES CAN APPEAR WITH LESS BLUR. IT
15 ALLOWS FOR MORE CONTRAST IN BRIGHTNESS.

16 AND IT ALSO ALLOWS FOR BETTER THINNESS OF
17 THE DEVICE BECAUSE THE ORIGINAL SUPER AMOLED
18 TECHNOLOGY INCLUDED THE -- THIS WAS, I GUESS, A
19 BREAKTHROUGH OF SORTS. IT TOOK THE TOUCH
20 SENSITIVITY OF A DISPLAY, WHICH IS NORMALLY
21 SEPARATE FROM THE ACTUAL DISPLAY IN PAST PHONES,
22 AND ACTUALLY COMBINED THE TWO.

23 SO IT ESSENTIALLY ELIMINATED A LAYER OF
24 DISPLAY SO IT ALLOWED PHONES TO BE THINNER BECAUSE
25 THE DISPLAYS WERE THINNER.

1 Q LET'S -- WE'VE HEARD SOME TESTIMONY FROM
2 APPLE'S POINT OF VIEW ABOUT ADVERTISING AND
3 MARKETING OF APPLE PRODUCTS.

4 ARE YOU FAMILIAR WITH HOW STA ADVERTISES
5 AND MARKETS FROM A STRATEGIC STANDPOINT, PROMOTES
6 ITS PRODUCTS IN THE UNITED STATES?

7 A YES, GENERALLY SPEAKING, I AM.

8 Q AND WHAT IS SAMSUNG'S STRATEGY IN TERMS OF
9 ADVERTISING ITS PRODUCTS?

10 A WELL, REALLY ALL WE'RE TRYING TO POINT OUT TO
11 CONSUMERS IS I GUESS WHAT YOU WOULD CALL A BRAND
12 PROMISE OR A BRAND MESSAGE, AND IT'S TIED BACK TO
13 THAT STRATEGY I TALKED TO YOU ABOUT.

14 SO IT ONLY WORKS WHEN EVERYTHING IS
15 LINKED TOGETHER. SO WE TRY AND SHOW CONSUMERS IN
16 OUR ADVERTISING THAT WE'VE BROUGHT THEM THE LATEST
17 AND GREATEST TECHNOLOGY, THAT WE'RE BRINGING IT TO
18 THEM FASTER THAN THE COMPETITION, THAT YOU CAN
19 COUNT ON SAMSUNG TO DO THAT CONTINUOUSLY. YOU CAN
20 TRUST US.

21 Q FOR DIFFERENT PRODUCTS, DOES SAMSUNG HAVE, YOU
22 KNOW, DIFFERENT LAUNCH MESSAGES THAT THEY ASSOCIATE
23 WITH THOSE PRODUCTS?

24 A AT TIMES WE'LL TWEAK THE LAUNCH MESSAGE
25 DEPENDING ON THE PRODUCT, YES.

1 Q CAN YOU GIVE THE JURY AN EXAMPLE OF THAT?

2 A FOR INSTANCE, FOR THE GALAXY S 2 LAUNCH IN THE
3 UNITED STATES, I THINK THE TAG LINE WAS SOMETHING
4 LIKE "THE NEXT BIG THING."

5 Q I MEAN, DOES -- DOES SAMSUNG EVER SEEK TO SELL
6 ITS PRODUCTS BY CAUSING CONSUMERS TO BE CONFUSED
7 INTO THINKING THAT, YOU KNOW, YOU'RE -- YOU THINK
8 YOU'RE BUYING AN APPLE PRODUCT BUT YOU'RE ACTUALLY
9 GETTING A SAMSUNG PRODUCT?

10 A NO. WE WANT CONSUMERS TO HEAR OUR MESSAGE,
11 UNDERSTAND THAT OUR MESSAGE IS OURS, AND GO OUT AND
12 BUY OUR DEVICE.

13 MR. QUINN: AND, YOUR HONOR, I'D REQUEST
14 PERMISSION -- THE COURT HAS RULED ON THIS ALREADY,
15 BUT IN LIGHT OF THE TESTIMONY ABOUT COPYING AND
16 MARKETING AND THE ADVERTISING, I'D REQUEST
17 PERMISSION TO PLAY A 30 SECOND SAMSUNG TELEVISION
18 ADVERTISEMENT CALLED URBAN CAMPING. IT'S DX 629.
19 IT'S 30 SECONDS.

20 MR. LEE: YOUR HONOR --

21 THE COURT: THAT WAS FOR EVIDENCE ABOUT
22 WILLFULNESS, RIGHT, AND I JUST DIDN'T SEE THE
23 CONNECTION.

24 MR. QUINN: THIS WOULD BE OFFERED TO SHOW
25 HOW WE TRY TO SET OURSELVES APART. FAR FROM TRYING

1 TO CREATE CONFUSION OR DECEPTION, WE TRY TO SET
2 OURSELVES APART IN OUR ADVERTISING.

3 MR. LEE: YOUR HONOR HAS RULED THIS
4 INADMISSIBLE. IT IS INADMISSIBLE.

5 ACTUALLY, ALL OF THEIR BRANDING IS OUR
6 TRADE DRESS, OUR TRADE DILUTION THAT'S AT ISSUE,
7 NOT THEIRS.

8 MR. QUINN: THEY'RE ALLEGING CONFUSION,
9 YOUR HONOR, AND DECEPTION.

10 MR. LEE: WELL, MR. QUINN KNOWS THAT THE
11 QUESTION OF CONFUSION ONLY GOES TO SOME CLAIMS, NOT
12 TO OTHERS.

13 MR. QUINN: SO THEY'RE DISMISSING THOSE?

14 MR. LEE: I'M SORRY. GO AHEAD. YOU GO
15 AHEAD.

16 MR. QUINN: I'D REQUEST PERMISSION TO
17 PLAY THAT ADVERTISEMENT.

18 MR. LEE: YOUR HONOR HAS RULED IT OUT AND
19 IT OUGHT TO STAY OUT.

20 THE COURT: OKAY. IT'S -- THE OBJECTION
21 IS STILL SUSTAINED.

22 GO AHEAD AND GO TO SOMETHING ELSE.

23 MR. QUINN: ALL RIGHT.

24 Q DO YOU HAVE ANY -- DO YOU HAVE ANY INFORMATION
25 ABOUT THE VALUE OF THE SAMSUNG BRAND?

1 A YES, I DO.

2 Q AND WHAT DO YOU KNOW IN THAT REGARD?

3 MR. LEE: YOUR HONOR, CAN WE HAVE A
4 FOUNDATION? AND THE SAMSUNG BRAND IS IRRELEVANT TO
5 OUR TRADE DRESS AND TRADE DILUTION. I DON'T KNOW
6 WHAT HIS BASIS IS.

7 THE COURT: WELL, JUST LAY A FOUNDATION.

8 I'M GOING TO OVERRULE THE OBJECTION.

9 GO AHEAD, PLEASE.

10 BY MR. QUINN:

11 Q SO WHAT YOU KNOW ABOUT THE VALUE OF THE
12 SAMSUNG BRAND, IS IT -- CAN YOU TELL US WHETHER OR
13 NOT THAT'S SOMETHING YOU LEARNED IN THE COURSE OF
14 YOUR WORK?

15 A YES, IT'S SOMETHING I'VE COME ACROSS OVER THE
16 COURSE OF MY JOB.

17 Q AND IN DOING YOUR JOB IN TERMS OF PLANNING AND
18 STRATEGY, IS THAT SOMETHING THAT YOU NEED TO BE
19 AWARE OF?

20 A YES, IT IS.

21 Q AND WHAT IS IT THAT YOU KNOW ABOUT THE VALUE
22 OF THE SAMSUNG BRAND?

23 A ONE OF THE WAYS WE TRACK OUR BRAND IS USING A
24 SURVEY OR A REPORT FROM A COMPANY CALLED
25 INTERBRAND. THEY DO A RANKING OF GLOBAL BRANDS.

1 AND IN THE LAST REPORT, ANNUAL RELEASE,
2 THIS ONE WAS 2011, WE WERE RANKED IN THE TOP 20 OF
3 GLOBAL BRANDS IN TERMS OF BRAND VALUE OR BRAND
4 EQUITY.

5 Q AS PART OF YOUR JOB, IS IT -- CAN YOU TELL US
6 WHETHER OR NOT IT'S IMPORTANT FOR YOU TO UNDERSTAND
7 HOW CONSUMERS GO ABOUT MAKING DECISIONS TO BUY
8 PHONES AND OTHER DEVICES?

9 A YES.

10 Q AND HOW IS IT -- HOW CAN CONSUMERS PURCHASE
11 SAMSUNG DEVICES IN THE UNITED STATES?

12 A SO SAMSUNG CONSUMERS CAN PURCHASE IN ANY
13 NUMBER OF PHYSICAL POINTS OF SALE. SO CARRIER
14 STORES, FOR INSTANCE, OR NATIONAL --

15 Q WHAT DO YOU MEAN BY "CARRIER STORES"?

16 A SO CARRIER STORES ARE STORES THAT ARE, I
17 GUESS, OWNED AND OPERATED BY THE U.S. WIRELESS
18 CARRIERS. SO AN EXAMPLE WOULD BE A STORE OWNED BY
19 AT&T, IT SAYS AT&T ON THE OUTSIDE.

20 ANOTHER EXAMPLE WOULD BE A NATIONAL
21 RETAILER. THAT'S NOT AN EXAMPLE OF A CARRIER
22 STORE. THAT'S AN EXAMPLE OF ANOTHER TYPE OF RETAIL
23 ENVIRONMENT.

24 Q AND OTHER THAN CARRIER STORES, ARE THERE OTHER
25 STORES WHERE CONSUMERS CAN BUY SAMSUNG PRODUCTS?

1 A THERE ARE.

2 Q AND WHAT ARE THOSE?

3 A THERE'S MULTIPLE DIFFERENT TYPES. SOMETHING
4 THAT WE CALL DEALERS, SO THESE ARE TYPICALLY
5 EXCLUSIVE DEALERS, PEOPLE THAT OWN STORES THAT
6 LICENSE A CARRIER BRAND AND OFFER THOSE CARRIER
7 BRANDED SERVICES AND PRODUCTS IN THEIR STORES. SO
8 THEY STILL MAY APPEAR LIKE A CARRIER OWNED STORE,
9 BUT THEY'RE NOT. THEY'RE INDEPENDENTLY OWNED AND
10 OPERATED.

11 ANOTHER EXAMPLE WOULD BE A NATIONAL
12 RETAILER, SUCH AS BEST BUY OR WAL-MART OR RADIO
13 SHACK. WE CALL THOSE NATIONAL RETAILERS.

14 ANOTHER EXAMPLE WOULD BE ON-LINE, SO
15 ON-LINE RETAILERS, LIKE AMAZON.COM, WHO WOULD SELL
16 THESE AS WELL.

17 Q DO THESE STORES SOMETIMES SELL SAMSUNG PHONES
18 THAT THEY DID NOT OBTAIN FROM SAMSUNG IN THE
19 UNITED STATES?

20 A IT'S POSSIBLE THAT THEY COULD SELL DEVICES
21 THAT THEY DID NOT OBTAIN FROM STA.

22 Q AND HOW MIGHT THEY ACQUIRE THEM?

23 A THEY CAN -- THEY CAN ACTUALLY BUY DEVICES FROM
24 INTERNATIONAL DISTRIBUTORS.

25 Q BUT NOT FROM SAMSUNG?

1 A THE DEVICES THAT THEY WOULD BUY FROM, FROM I
2 GUESS WHAT I'M CALLING INTERNATIONAL DISTRIBUTORS
3 WOULD NOT HAVE BEEN -- WOULD NOT HAVE BEEN PROVIDED
4 BY STA.

5 Q AND BY THE WAY, DO YOU KNOW WHETHER -- WHERE
6 TITLE TO THE PRODUCTS, THE DEVICE -- WE HAD
7 TESTIMONY ABOUT HOW, YOU KNOW, STA, SAMSUNG AMERICA
8 INVOICES, YOU KNOW, BIG SAMSUNG BACK IN SEOUL.

9 DO YOU HAPPEN TO KNOW WHERE TITLE TO
10 THOSE DEVICES PASSES?

11 A MY UNDERSTANDING IS TITLE -- STA TAKES TITLE
12 OR OWNERSHIP WHEN THE DEVICE ACTUALLY LEAVES THE
13 PORT HEADED TOWARDS THE UNITED STATES.

14 Q SO OUTSIDE OF THE UNITED STATES?

15 A CORRECT.

16 Q NOW, ARE CONSUMERS -- IF WE COULD TAKE A LOOK,
17 WE HAVE A DEMONSTRATIVE EXHIBIT, SDX 3586. SDX
18 3586. AND WHEN --

19 MR. LEE: BEFORE WE PUT IT UP --

20 THE COURT: DO I HAVE THAT? I ONLY HAVE
21 ALL THE OBJECTIONS.

22 (PAUSE IN PROCEEDINGS.)

23 THE COURT: OKAY. WHAT'S THE NUMBER,
24 PLEASE?

25 MR. QUINN: IT'S 3586.

1 THE COURT: OKAY.

2 MR. LEE: AND, YOUR HONOR, WE OBJECT. IF
3 YOU LOOK AT THE BOTTOM OF THE DOCUMENT, THIS IS AN
4 APPLE -- THIS IS AN EXCERPT FROM AN APPLE
5 PRESENTATION DOCUMENT. HAVING HIM COMMENTING UPON
6 ON APPLE DOCUMENT, DEMONSTRATIVE --

7 MR. QUINN: YOUR HONOR, I WOULD LAY A
8 FOUNDATION THAT HE'S FAMILIAR WITH THESE PHONES.

9 MR. LEE: BUT THIS IS AN APPLE DOCUMENT
10 THAT I THINK HE'S NOT SEEN BEFORE.

11 MR. QUINN: IT SAYS THAT THE IMAGES ARE
12 FROM AN APPLE DOCUMENT.

13 THE COURT: YOU CAN LAY A FOUNDATION.

14 GO AHEAD, PLEASE.

15 BY MR. QUINN:

16 Q DO YOU HAVE BEFORE YOU SOME IMAGES OF PHONES?

17 A I DO.

18 Q ALL RIGHT. AND ARE YOU FAMILIAR WITH THOSE
19 PHONES THAT ARE DISPLAYED THERE?

20 A LET ME LOOK AT THEM ONE-BY-ONE BRIEFLY.

21 (PAUSE IN PROCEEDINGS.)

22 THE WITNESS: I'M FAMILIAR WITH THESE
23 PHONES.

24 MR. QUINN: SO WE WOULD OFFER THIS, YOUR
25 HONOR, JUST AS A DEMONSTRATIVE.

1 THE COURT: ANY OBJECTION, MR. LEE?

2 MR. LEE: JUST THE SAME OBJECTION. YOUR
3 HONOR, ACTUALLY, IF THEY WANT TO OFFER A SUBSTITUTE
4 WITHOUT THE LEGEND AT THE BOTTOM, THAT WOULD BE
5 FINE AND I THINK MORE APPROPRIATE.

6 MR. QUINN: WE CAN REPLACE IT, YOUR
7 HONOR.

8 THE COURT: THAT'S FINE.

9 GO AHEAD, PLEASE.

10 MR. QUINN: ALL RIGHT. IF WE CAN PUT
11 THAT UP ON THE SCREEN.

12 Q WHEN CONSUMERS ARE -- CAN YOU TELL US WHETHER
13 OR NOT IT'S FAIR TO SAY THAT WHEN CONSUMERS ARE
14 DECIDING WHAT PHONE DEVICE TO BUY, THEY'VE GOT A
15 LOT OF DIFFERENT CHOICES?

16 A YES, THAT'S RIGHT.

17 Q AND WOULD IT BE FAIR TO SAY THAT A LOT OF THEM
18 LOOK KIND OF ALIKE?

19 A I WOULD SAY THAT GENERALLY SPEAKING, YEAH,
20 THEY CAN LOOK ALIKE.

21 Q AND WHEN THEY GO TO THE STORE -- THANKS VERY
22 MUCH -- WHEN THEY GO TO ONE OF THESE STORES WHERE
23 SAMSUNG PRODUCTS CAN BE FOUND -- YOU KNOW, BY THE
24 WAY, DO YOU VISIT STORES YOURSELF?

25 A I DO.

1 Q AS PART OF YOUR JOB?

2 A ACTUALLY, WE'RE ALL EXPECTED TO GO VISIT
3 STORES SO WE CAN UNDERSTAND THE CONSUMER BUYING
4 ENVIRONMENT.

5 Q AND HOW OFTEN DO YOU GO TO STORES TO TRY TO
6 UNDERSTAND, TRY TO UNDERSTAND THE CONSUMER BUYING
7 ENVIRONMENT?

8 A I'LL GO IN SEVERAL TIMES A MONTH.

9 Q SEVERAL TIMES A MONTH?

10 A YES.

11 Q AND CAN YOU TELL US WHETHER OR NOT IT'S
12 TYPICAL THAT -- I MEAN, DO YOU SEE APPLE PHONES
13 THAT ARE FOR SALE IN STORES WHEN YOU GO VISIT?

14 A SURE.

15 Q CAN YOU TELL US WHETHER OR NOT IT'S TYPICAL
16 THAT, YOU KNOW, APPLE PHONES AND DEVICES ARE MIXED
17 IN WITH OTHER COMPANIES' DEVICES OR WHETHER THEY'RE
18 SEGREGATED IN A SEPARATE AREA?

19 A IN MY GENERAL EXPERIENCE, IT'S ALMOST ALWAYS
20 THIS CASE, APPLE DEVICES ARE BY THEMSELVES ON A
21 SEPARATE DISPLAY.

22 Q ALL RIGHT. IF WE COULD TAKE A LOOK AT EXHIBIT
23 60 IN EVIDENCE, PAGE 60.11.

24 AND UP ON THE RIGHT-HAND -- CAN YOU --
25 WE'VE GOT PICTURES ON THE LEFT-HAND SIDE. DO YOU

1 KNOW WHAT THAT IS ON THE LEFT-HAND SIDE?

2 A THAT IS AN APPLE RETAIL STORE.

3 Q AND THEN IN THE MIDDLE, WHAT IS THAT PICTURE?

4 A AS IT'S LABELED AND AS I'LL DESCRIBE, IT'S

5 WHAT WE CALL A STORE IN A STORE. SO IT'S

6 ACTUALLY -- IT'S ACTUALLY A SMALL PIECE OF REAL

7 ESTATE, IF YOU WILL, INSIDE A STORE THAT IS

8 DISTINCTLY APPLE.

9 Q OKAY. AND WHEN YOU TOLD US EARLIER THAT APPLE

10 PRODUCTS ARE ALWAYS SEGREGATED IN STORES, IS THIS

11 AN EXAMPLE OF THAT?

12 A THAT IS ONE EXAMPLE OF IT, YES.

13 Q IF YOU GO TO A, AN AT&T STORE, IS A CONSUMER

14 LIKELY TO ENCOUNTER A GALAXY S 2 PHONE SIDE-BY-SIDE

15 WITH AN IPHONE?

16 A YOU CERTAINLY WILL NOT ENCOUNTER ANY GALAXY

17 PHONES ON THE APPLE DISPLAY.

18 Q IN TERMS OF -- ARE THERE SOME CARRIERS,

19 EACH -- FOR EXAMPLE, WOULD IT BE TRUE TO SAY AT A

20 T-MOBILE STORE, YOU'RE NOT GOING TO FIND ANY AT&T

21 PHONES?

22 A THAT'S RIGHT.

23 Q DOES T-MOBILE SELL THE IPHONE?

24 A T-MOBILE DOES NOT SELL THE IPHONE.

25 Q EVER?

1 A THEY HAVE NOT EVER SOLD THE IPHONE.

2 Q SO WOULD A CONSUMER EVER ENCOUNTER A SAMSUNG
3 PHONE FOR SALE IN THE SAME STORE AS AN IPHONE IN A
4 T-MOBILE STORE?

5 A THEY WOULD NOT.

6 Q DOES SPRINT CARRY THE IPHONE?

7 A THEY DO.

8 Q AND FOR HOW LONG HAS SPRINT CARRIED THE
9 IPHONE?

10 A SINCE I THINK IT WAS OCTOBER OF LAST YEAR.

11 Q AND HOW ABOUT VERIZON?

12 A VERIZON HAS CARRIED IT SINCE, I BELIEVE,
13 FEBRUARY OF LAST YEAR.

14 Q SO BEFORE THOSE DATES WHEN THOSE CARRIERS
15 STARTED CARRYING THE IPHONE, CONSUMERS WHO WANTED
16 TO USE THOSE CARRIERS, WOULD THEY HAVE BEEN ABLE TO
17 BUY AN IPHONE THERE?

18 A YES.

19 Q BEFORE THOSE DATES?

20 A OH, NO, I'M SORRY. NOT BEFORE THOSE DATES,
21 NO.

22 Q I MEAN, DO YOU HAVE ANY INFORMATION ABOUT HOW,
23 YOU KNOW, WHAT CONSUMERS DO OR -- LET ME ASK IT
24 THIS WAY.

25 AS THE CHIEF STRATEGY OFFICER, IS IT

1 IMPORTANT FOR YOU TO UNDERSTAND HOW A CONSUMER GOES
2 ABOUT MAKING A DECISION TO BUY A SMARTPHONE?

3 A SURE, YES.

4 Q AND IS THAT SOMETHING THAT YOU'VE STUDIED AND
5 COLLECTED INFORMATION ON?

6 A YES.

7 Q IS THE DECISION -- BASED ON WHAT YOU'VE
8 LEARNED, IS THE DECISION TO MAKE AN INVESTMENT IN
9 BUYING A PHONE, IS THAT TYPICALLY SOMETHING THAT'S
10 DONE, YOU KNOW, ON THE SPUR OF THE MOMENT? OR
11 WITHOUT A LOT OF STUDY AND ASSESSMENT?

12 A NO. IN FACT, WE FIND CONSUMERS DO A
13 CONSIDERABLE AMOUNT OF STUDYING. THEY TAKE A
14 CONSIDERABLE AMOUNT OF TIME, ACTUALLY, TO MAKE
15 THEIR PHONE CHOICE.

16 Q DO YOU HAVE ANY INFORMATION ABOUT HOW MUCH
17 TIME, IN AVERAGE, A CONSUMER SPENDS IN DECIDING
18 WHAT TYPE OF PHONE TO PURCHASE?

19 A WE FIND THE AVERAGE CONSUMER TAKES
20 APPROXIMATELY SIX WEEKS, ABOUT ONE AND A HALF
21 MONTHS, TO MAKE THEIR PHONE PURCHASE DECISION.

22 Q SO, I MEAN, BASED ON EVERYTHING THAT YOU KNOW
23 ABOUT HOW PHONES ARE SOLD, HOW IPHONES ARE SOLD,
24 THE DIFFERENT CHANNELS AND HOW CONSUMERS GO ABOUT
25 MAKING THESE DECISIONS, DO YOU HAVE ANY -- DO YOU

1 BELIEVE THAT ANY REASONABLE CONSUMER WOULD BUY A
2 SAMSUNG PHONE THINKING IT WAS AN IPHONE?

3 MR. LEE: YOUR HONOR, THIS IS NOW OPINION
4 AND THIS IS THEIR EFFORT TO SUBSTITUTE HIM FOR
5 THEIR STRICKEN EXPERT.

6 THE COURT: IT'S SUSTAINED.

7 BY MR. QUINN:

8 Q WELL, I MEAN, HAVE YOU PERSONALLY HEARD OF
9 INSTANCES WHERE CONSUMERS BOUGHT A, A SAMSUNG PHONE
10 THINKING IT WAS AN IPHONE, AN APPLE PRODUCT?

11 A I'M NOT AWARE OF ANY EXAMPLES OF THAT.

12 Q YOU WERE ASKED SOME QUESTIONS ABOUT THE THREE
13 SAMSUNG ENTITIES, STA, SEA, AND SEC.

14 DO THOSE THREE COMPANIES EACH HAVE -- CAN
15 YOU TELL US WHETHER OR NOT THEY EACH HAVE DIFFERENT
16 MANAGEMENT?

17 A THEY DO.

18 Q DO THEY HAVE DIFFERENT EMPLOYEES?

19 A YES, THEY DO.

20 Q DO THEY HAVE DIFFERENT LOCATIONS?

21 A YES, THEY DO.

22 Q AND DOES STA, IN ITS BUSINESS HERE IN AMERICA,
23 MAKE ITS OWN BUSINESS DECISIONS?

24 A WE DO.

25 Q YOU WERE SHOWN EXHIBIT 62, AND IF WE COULD GO

1 TO PAGE 62.13.

2 MR. LEE SHOWED YOU THIS. AND THE
3 RECOMMENDATION AT THE TOP, "RECOMMENDATION, SAMSUNG
4 4G PRODUCTS TO UNDERCUT IPHONE 5, GAP POTENTIALLY
5 REMAINS AT \$49."

6 DO YOU SEE THAT?

7 A I DO.

8 Q AND I THOUGHT I HEARD YOU SAY, WHEN MR. LEE
9 WAS ASKING YOU ABOUT THIS, THAT THIS NEVER
10 HAPPENED.

11 IS THAT WHAT YOU SAID? I WAS JUST GOING
12 TO GIVE YOU A CHANCE TO EXPLAIN WHAT YOU MEANT IF I
13 HEARD YOU RIGHT.

14 A YEAH. THERE ARE SEVERAL THINGS WRONG WITH
15 THIS, IF I MAY.

16 FIRST, THE ACTUAL DOCUMENT, IF I REMEMBER
17 CORRECTLY, WAS CREATED IN MARCH.

18 AND IT'S -- IT'S ATTEMPTING TO PROJECT
19 FORWARD THINGS THAT MAY OR MAY NOT HAPPEN. SO, FOR
20 INSTANCE, THERE WAS NO IPHONE 5 THAT CAME OUT IN
21 2011.

22 IN TERMS OF THE PRICING, IT'S ACTUALLY --
23 IF YOU LOOK AT THIS CHART, IT'S -- WHAT IT'S TRYING
24 TO SAY IS THAT THERE'S ACTUALLY GOING TO BE A GAP
25 BETWEEN OUR FLAGSHIP SMARTPHONE, WHICH WAS SHOWN AS

1 CELOX, C-E-L-O-X, AT THE TOP, AND WHAT WE'RE
2 DEPICTING IS THE, I GUESS, FIGURATIVE IPHONE 5 AT
3 199.

4 OKAY. SO AT THE 199 PRICE BAND, THAT'S
5 SHOWING THE IPHONE 5, AND THAT'S THE DEVICE THAT WE
6 THOUGHT CONSUMERS WOULD COMPARE OUR CELOX TO.

7 ACTUALLY WHAT WE'RE POINTING OUT IS THAT
8 WE'RE GOING TO BE PRICED, WE THOUGHT AT THE TIME AT
9 LEAST, \$49 ABOVE THE IPHONE 5.

10 THE AUTHOR FURTHER GOES TO COMPARE TO
11 ANOTHER VERSION, A MORE EXPENSIVE VERSION OF THE
12 IPHONE 5 AT 32 GIGABYTES AT 299 RETAIL PRICE POINT
13 ABOVE, AND SO THAT'S AN ERRONEOUS COMPARISON.

14 Q I MEAN, THESE PHONES, EXCEPT FOR THE REFERENCE
15 TO THE IPHONE 5 AND THE IPHONE 4 AND THE IPHONE
16 NANA AND THE SGS, THESE OTHER PHONES, CAN YOU TELL
17 US WHETHER OR NOT THOSE ARE ALL SAMSUNG PHONES?

18 A THE ONES THAT ARE LABELED SAMSUNG ARE
19 DEFINITELY SAMSUNG.

20 I CAN'T ACTUALLY BE SURE WHETHER ALL OF
21 THEM ACTUALLY EVER CAME TO MARKET. FOR INSTANCE,
22 HANOVERQ, I DON'T REMEMBER THAT IN PARTICULAR.

23 Q WOULD THIS BE WHAT WAS REFERRED TO AS SAMSUNG
24 STRATEGY, DIFFERENT POINTS, DIFFERENT PRICE POINTS,
25 THE DEMOCRATIZATION OF THE CELL PHONE?

1 A YES, IT IS AN EXAMPLE OF A PORTFOLIO THAT
2 SPANS WHAT WE HOPE IS MULTI-RETAIL PRICE POINTS AND
3 YOU'RE SIMPLY SEEING A NORMAL, I GUESS, PRODUCT
4 LIFECYCLE MANAGEMENT WHERE, WHEN YOU LAUNCH A NEW
5 PHONE, LIKE THE CELOX, YOU HAVE TO DO OTHER THINGS
6 TO OTHER DEVICES SO THAT THEY'RE NOT PRICED ON TOP
7 OF EACH OTHER IN THE MARKET.

8 MR. QUINN: YOUR HONOR, I WAS GOING TO GO
9 INTO A NEW AREA, BUT IT LOOKS LIKE WE'RE CLOSE TO
10 THE TIME --

11 THE COURT: OH, I'M SORRY. IT IS 4:32.
12 WHY DON'T WE END FOR THE DAY?

13 MR. DENISON WILL RESUME ON MONDAY.

14 SO I'M SORRY TO SOUND LIKE A BROKEN
15 RECORD, BUT LET ME JUST REITERATE, SINCE WE'RE
16 ABOUT TO HAVE A LONG WEEKEND, THAT BECAUSE YOU HAVE
17 TO BASE YOUR DECISION SOLELY ON THE EVIDENCE THAT'S
18 ADMITTED DURING THIS TRIAL AND APPLY THE LAW AS I
19 INSTRUCT YOU, YOU MUST NOT BE EXPOSED TO ANY OTHER
20 INFORMATION.

21 SO PLEASE, OVER THE WEEKEND, DON'T SPEAK
22 WITH ANYONE ABOUT THIS CASE, DON'T DO ANY OF YOUR
23 OWN RESEARCH, DON'T READ, WATCH, OR LISTEN TO ANY
24 NEWS OR MEDIA ACCOUNTS.

25 AND HAVE A GOOD EVENING. ALL RIGHT.

1 THANK YOU VERY MUCH FOR YOUR PATIENCE AND YOUR
2 SERVICE. WE'LL SEE YOU MONDAY MORNING AT
3 9:00 A.M., OKAY? THANK YOU.

4 AND IF YOU WOULD PLEASE LEAVE YOUR JURY
5 NOTEBOOKS IN THE JURY ROOM.

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

8 THE COURT: YOU CAN STEP DOWN, SIR.

9 THE WITNESS: THANK YOU.

10 THE COURT: ALL RIGHT. THE RECORD SHOULD
11 REFLECT THE JURORS HAVE LEFT THE COURTROOM.

12 SO I NEED TO GET YOUR PROPOSAL ON -- I
13 CAN FORESEE THAT THERE MIGHT BE A FEW EXHIBITS THAT
14 IT WOULD BE HELPFUL TO KNOW WHAT YOUR OBJECTIONS
15 ARE IN ADVANCE AND NOT HAVE TO MAKE SAUSAGE IN
16 FRONT OF THE JURY.

17 BUT ON THE OTHER HAND, I MEAN, THIS HAS
18 GOTTEN OUT OF CONTROL. I MEAN, SIX TIMES BRIEFING
19 THE SAME WITNESSES? I MEAN, THAT IS, THAT IS --
20 THAT'S CRUEL AND UNUSUAL PUNISHMENT TO ME AND TO MY
21 CHAMBERS, OKAY?

22 SO LET ME HEAR WHAT A PROPOSAL IS. MAYBE
23 WHAT IF I SAY YOU'RE ONLY ALLOWED TO OBJECT TO
24 THREE EXHIBITS AND THAT'S IT PER DAY, SO YOU REALLY
25 NEED TO TAKE YOUR BEST SHOT AND PREFERABLY ONE

1 THAT, IF IT REQUIRES FURTHER INVESTIGATION, GIVE ME
2 THE TIME TO DO THAT.

3 SO SOMETHING LIKE A RELEVANCE OBJECTION,
4 WE CAN JUST HANDLE THAT HERE AND ACTUALLY IT'S
5 PROBABLY BETTER IF WE DO IT IN TRIAL BECAUSE THEN I
6 CAN REALLY UNDERSTAND THE CONTEXT OF WHY IT'S, YOU
7 KNOW, BEING BROUGHT IN.

8 SO WHAT'S THE PROPOSAL? BECAUSE THIS IS
9 CRAZY. I CAN'T DO THIS.

10 MR. VERHOEVEN: I AGREE WITH THAT.

11 THE COURT: YEAH.

12 MR. VERHOEVEN: AND IN THE PAST, IN OTHER
13 TRIALS, ONE WAY WE'VE DEALT WITH THE ISSUE IS WHAT
14 WE CALL HIGH PRIORITY OBJECTIONS --

15 THE COURT: OKAY.

16 MR. VERHOEVEN: -- WHICH WE COULD
17 ESTABLISH A LIMIT ON AND THOSE WOULD -- YOU KNOW,
18 IT WOULD BE UNDERSTOOD THAT IT WOULDN'T BE EVERY
19 OBJECTION, BUT IT WOULD BE THE SORT OF THING THAT
20 YOU'RE TALKING ABOUT, THAT MAYBE WE TAKE A LITTLE
21 BIT MORE TIME AND ALLOW THE COURT TO LOOK AT THOSE,
22 BUT THEY WOULD BE LIMITED.

23 THE ONLY OTHER THING I WOULD SAY IS IF WE
24 COULD GET THE SIDE-BAR MIKE FIXED, THAT WOULD ALSO
25 HELP.

1 WE'VE GOT TECHNICAL PEOPLE HERE. THEY
2 WOULD BE HAPPY TO HELP WORK ON THAT.

3 THE COURT: I KNOW. THE PROBLEM IS I
4 DON'T THINK, AS A COURT, WE CAN ACCEPT. I KNOW YOU
5 ALL HAVE FAR SUPERIOR TECHNOLOGY, BUT I JUST DON'T
6 THINK WE CAN ACCEPT IT, UNFORTUNATELY, AS MUCH AS I
7 WOULD LIKE TO.

8 MR. VERHOEVEN: ARE YOU SURE, YOUR HONOR?
9 BECAUSE I HAD A TRIAL ONCE IN THE -- IN ARIZONA
10 WHERE THE PARTIES STIPULATED TO ACTUALLY REMODEL
11 THE WHOLE COURTROOM BECAUSE EVERYTHING WAS --
12 BECAUSE EVERYTHING WAS -- THE COURTROOM WAS
13 INSUFFICIENT FOR THE SIZE OF THE CASE.

14 SO IF THERE'S A STIPULATION, I'M NOT SURE
15 THERE WOULD BE ANY ISSUE.

16 BUT I'M NOT AS FAMILIAR, OBVIOUSLY, AS
17 YOU ARE, YOUR HONOR.

18 THE COURT: OUR I.T. PERSON HAS INFORMED
19 ME THAT ON MONDAY THAT THE PERSON, OR THE -- WELL,
20 WAS THAT THE 6TH? IS THE 6TH MONDAY?

21 THE CLERK: YES.

22 THE COURT: OKAY. THEY WERE COMING ON
23 THE 6TH.

24 MR. JACOBS: YOUR HONOR, IF I MAY?

25 THE COURT: I JUST FEEL -- YOU KNOW, I --

1 I DON'T WANT ANY APPEARANCE THAT COMPANIES THAT
2 HAVE A LOT OF MONEY CAN PAY FOR PUBLIC
3 INSTITUTIONS. DO YOU SEE WHAT I'M SAYING?

4 IS THERE A TEMPORARY ONE THAT MAYBE WE
5 COULD JUST USE FOR --

6 MR. VERHOEVEN: ALL I WAS SUGGESTING --

7 THE COURT: I APPRECIATE THE OFFER, AND I
8 WISH WE COULD TAKE IT, BUT I JUST FEEL --

9 MR. VERHOEVEN: WE BOTH HAVE OUR OWN
10 TECHNICIANS.

11 THE COURT: YES.

12 MR. VERHOEVEN: SO WHAT I WAS THINKING
13 WAS IF THEY COULD BOTH TOGETHER TRY TO TAKE A LOOK
14 AT IT AND FIX IT.

15 THE COURT: THAT WOULD BE EVEN BETTER.

16 MR. VERHOEVEN: THAT WOULD BE GREAT.

17 THE COURT: OKAY. BUT LET ME HEAR,
18 BECAUSE I ONLY WANT TO DO THE HIGH PRIORITY
19 OBJECTIONS IN ADVANCE. EVERYTHING ELSE, I MEAN,
20 IT'S NOT IDEAL, BUT I THINK WE CAN DO IT AS WE'RE
21 GOING ALONG.

22 SO I WANT TO LIMIT IT. AND I'M ALSO
23 GOING TO ASK, BECAUSE I HAD DIFFICULTY READING
24 THESE, THEY ARE SO DENSE, AND BECAUSE EVERYONE IS
25 TRYING TO SQUEEZE IN SO MUCH, IT'S IMPOSSIBLE TO

1 FIGURE OUT WHAT THE OBJECTION IS BECAUSE IT'S JUST
2 A CATCH PHRASE.

3 SO THIS IS REALLY HARD TO READ, AND I
4 CAN'T GIVE YOU AN ORDER BECAUSE I DON'T EXACTLY
5 KNOW WHAT IS COMING IN AND FOR WHAT REASON.

6 SO DID I SAY THREE? THREE WAS WHAT I WAS
7 THINKING OF.

8 MR. VERHOEVEN: HOW ABOUT, WITH YOUR
9 HONOR'S INDULGENCE, HOW ABOUT THREE PER WITNESS?
10 BECAUSE ONE OF THE ISSUES WE'RE RUNNING INTO, YOUR
11 HONOR, AND IT'S JUST A MATTER OF PROCESS THAT WE'RE
12 DISCLOSING SEVEN WITNESSES AT A TIME, AND THEN SO
13 WHAT WE'RE DOING IS THEN WE'RE MAKING -- THE
14 REASON, I THINK, YOU'RE GETTING THESE MULTIPLES IS
15 BECAUSE THE WITNESSES DON'T APPEAR FOR SEVERAL DAYS
16 AND THEN THE LAWYERS, BEING LAWYERS, DO MORE.

17 THE COURT: SURE, OKAY. WHAT IF WE DID
18 SOMETHING ELSE? THEN WHAT IF -- I MEAN, DO YOU ALL
19 THINK THIS WILL BE TYPICAL, THAT WE CAN DO ABOUT
20 THREE WITNESSES A DAY?

21 MR. JACOBS: I THINK THESE HAVE GONE ON A
22 LONG -- LET ME STEP BACK A LITTLE BIT.

23 WE TOTALLY -- WE COMPLETELY UNDERSTAND
24 THE PRESSURES ON THE COURT. THERE IS A LOT OF
25 WISDOM IN YOUR DIRECTION THIS MORNING THAT THESE

1 HAVE TO BE WORKED OUT AND STATED AND DONE IN FRONT
2 OF THE JURY, BECAUSE THAT HAS A HUGE DISCIPLINING
3 VALUE, AND WE HAVE A PROBLEM IN THIS CASE WITH
4 DISCIPLINE.

5 ONE OF THE PROBLEMS IS THAT THERE'S KIND
6 OF A FLOODING THAT GOES ON -- AND WE'LL JUST TELL
7 YOU IT FROM OUR PERSPECTIVE, THAT THAT'S THE WAY WE
8 SEE IT -- THERE'S A KIND OF FLOODING THAT'S GOING
9 ON OF OBJECTIONS AND FLOODING OF DOCUMENTS BEING
10 DESIGNATED.

11 SO THAT'S POINT NUMBER ONE. A LOT OF
12 WISDOM IN YOUR RULING THIS MORNING.

13 SECONDLY, MEANWHILE, THE PARTIES HAVE
14 REACHED A STIPULATION ON A BETTER SCHEDULE.

15 THE COURT: OKAY.

16 MR. JACOBS: AND WE'RE READY TO -- THERE
17 WAS ONE LAST REQUEST FROM US LAST NIGHT AND WE'VE
18 AGREED TO IT.

19 AND MAYBE THEY'RE NOT. I'M GOING TO FIND
20 OUT HERE.

21 THE COURT: OKAY.

22 MR. VERHOEVEN: ONE OF THE PROBLEMS IS I
23 HAVE TO SLEEP AT NIGHT AND SOME OF THESE DEALS,
24 SOME OF THESE NEGOTIATIONS HAPPEN AT TWO 2:00 OR
25 3:00 IN THE MORNING, YOUR HONOR, AND SO WE'RE

1 HAVING THE SAME ISSUES YOU ARE, YOUR HONOR, IS
2 THINGS ARE HAPPENING, WE WAKE UP --

3 THE COURT: COMING IN THE MIDDLE OF THE
4 NIGHT, YEAH.

5 MR. VERHOEVEN: SO I WOULD SUGGEST THREE
6 PER WITNESS, NO MORE, THAT'S IT, YOU CAN'T
7 SUPPLEMENT, AND THEN THE REST WE HANDLE LIVE IN
8 COURT.

9 MR. JACOBS: I THINK -- SO PART OF THE
10 PROBLEM IS THAT THE WAY THE PROCESS IS WORKING NOW,
11 THERE'S A KIND OF STATEMENT OF THE OBJECTION AND
12 THEN THE PARTIES, AS YOU KNOW -- THE COURT OBSERVED
13 THIS EARLIER -- THE PARTIES GO PAST EACH OTHER IN
14 THEIR BRIEFING BECAUSE THEY DON'T REALLY KNOW WHAT
15 THE BASIS OF THE OBJECTION IS.

16 IN THE OTHER TRIALS THAT I'VE DONE, THERE
17 IS A SET OF OBJECTIONS FILED AND THEN WE SHOW UP
18 THE NEXT MORNING AT THE HALF HOUR BEFORE AND WE
19 ARGUE THOSE, AND IT WOULD BE LIMITED TO THE FEW
20 THAT YOU THOUGHT YOU COULD REALLY PERSUADE THE
21 COURT WERE WORTH BRINGING UP IN ADVANCE.

22 MR. MCELHINNY: THE REASON THAT THREE
23 DOESN'T WORK, YOUR HONOR, IS BECAUSE FOR EACH
24 WITNESS, WE ARE GETTING A DESIGNATION OF BOXES OF
25 DOCUMENTS WHEN THEY ONLY INTEND TO USE FOUR OR

1 FIVE.

2 I GOT EIGHT BINDERS OF FORSTALL CROSS,
3 POTENTIAL CROSS BEFORE THEY PUT -- BEFORE THEY DID
4 THE CROSS, AND IF WE ONLY HAVE THREE, WE'RE TRYING
5 TO GUESS, OUT OF THE 50 DOCUMENTS THAT THEY'VE SAID
6 THEY MIGHT USE, WHICH ONES WE'RE GOING TO USE OUR
7 OBJECTIONS ON AND IT JUST DOESN'T WORK.

8 THE COURT: WELL, I MYSELF HAVE SIX
9 FORSTALL BINDERS AND ONLY VOLUME 5 WAS USED.

10 MR. MCELHINNY: AND HE WAS ON CROSS FOR
11 TEN MINUTES, YOUR HONOR.

12 THE COURT: YEAH.

13 MR. VERHOEVEN: RATHER THAN CAST
14 ASPERSIONS, BECAUSE WE COULD SAY THE SAME THING
15 ABOUT THE VOLUMES OF EXHIBITS WE GET FROM THEM --

16 THE COURT: YEAH.

17 MR. VERHOEVEN: I AGREE THAT, WITH
18 OPPOSING COUNSEL HERE, THAT HIGH PRIORITY,
19 ARGUED -- NO MORE THAN -- I THINK NO MORE THAN
20 THREE, MAYBE NO MORE THAN FIVE PER WITNESS, NO MORE
21 THAN THAT OR ELSE WE'RE GOING TO BE BACK TO WHERE
22 WE WERE.

23 AND THEN I TOTALLY AGREE THAT THE BEST
24 WAY TO DEAL WITH IT, YOUR HONOR, IS TO ARGUE IT AT
25 8:30 IN THE MORNING SO WE CAN HAVE CONTEXT AND

1 FLUSH IT OUT.

2 THE COURT: WELL, NO. THE PROBLEM I SEE
3 WITH THAT IS IF WE DO IT ALL IN FRONT OF THE JURY,
4 YOU'RE PROBABLY NOT GOING TO MAKE ALL THOSE
5 OBJECTIONS.

6 BUT IF WE HAVE THE WHOLE PROCESS OF
7 HAVING IT DECIDED ON PAPER AND HAVE IT ARGUED,
8 YOU'RE GOING TO EXPLORE ALL OF THEM WHEN YOU'RE
9 REALLY GOING TO BE MORE DISCIPLINED WHEN THE
10 WITNESS IS ON THE STAND.

11 SO I THINK THAT'S A LOT OF MAKEWORK FOR
12 ALL OF US.

13 MR. VERHOEVEN: I'M JUST TALKING ABOUT
14 THE HIGH PRIORITY, NOT ANYTHING ELSE. JUST THE
15 THREE.

16 SO THE THREE -- PRESUMABLY, IF THEY'RE
17 HIGH PRIORITY, WE ARE GOING TO MAKE THEM. AND WHAT
18 I WAS SUGGESTING IS, JUST WITH RESPECT TO THOSE,
19 THAT THE BEST WAY WE COULD DEAL WITH THOSE WOULD BE
20 8:30 IN THE MORNING HASHING THEM OUT.

21 THE COURT: WELL, LET ME ASK, HOW LONG --
22 LET'S FIGURE OUT, FOR THE WITNESSES FOR MONDAY, I
23 ASSUME THE DEPOS ARE PRETTY SHORT; RIGHT? AREN'T
24 THE THREE --

25 MR. JACOBS: THAT WHAT IS SHORT?

1 THE COURT: THE DEPO DESIGNATIONS ARE
2 FAIRLY SHORT, IS THAT RIGHT?

3 MS. MAROULIS: YOUR HONOR, IT'S ONLY ONE.
4 YOU OVERRULED THE OTHER TWO. YOU SUSTAINED THE
5 OBJECTIONS TO THE OTHER TWO DEPOSITIONS.

6 THE COURT: OH, OKAY.

7 SO HOW MANY, REALISTICALLY, DO YOU THINK
8 WE'LL DO ON MONDAY? BECAUSE THAT COULD BE ANOTHER,
9 YOU KNOW, IF YOU NEED IT SORT OF CLOSER TO THE TIME
10 TO MAKE YOUR OBJECTIONS, THEN THE MORE REALISTIC WE
11 CAN BE, RATHER THAN JUST DOING THIS ROLLING SEVEN
12 EVERY DAY.

13 MR. JACOBS: WE'RE AHEAD, YOUR HONOR. IF
14 WE JUST FREEZE WHERE WE ARE NOW, YOU WOULD GET NO
15 WORK ON MONDAY MORNING. WE HAVE BRIEFED IT. YOU
16 HAVE OUR MOTION FOR -- YOU HAVE OUR RECONSIDERATION
17 PAPERS.

18 THE COURT: YES, NO. EVERYTHING THAT'S
19 BEEN -- THE SIX VERSIONS THAT YOU FILED ON THE
20 SEVEN WITNESSES, I'M RECYCLING ALL OF THOSE.
21 THAT'S NOT FAIR.

22 MR. JACOBS: I UNDERSTAND. HOW WOULD YOU
23 LIKE US TO HANDLE THOSE WITNESSES?

24 THE COURT: SO WHO IS LEFT THEN? IT'S
25 JUST --

1 MR. JACOBS: WE HAVE BRESSLER.

2 THE COURT: -- MR. KHO, BRESSLER.

3 MR. JACOBS: MS. KARE.

4 THE COURT: KARE, AND THEN

5 MR. BALAKRISHNAN?

6 MR. VERHOEVEN: MY GUESS IS THAT WOULD
7 BALANCE OUT THE DAY, YOUR HONOR.

8 THE COURT: DO YOU THINK WE'LL GET TO ALL
9 OF THOSE IN ONE DAY?

10 MR. JACOBS: MAYBE --

11 MR. VERHOEVEN: YOU'D HAVE TO ASK COUNSEL
12 FOR APPLE BECAUSE I DON'T KNOW HOW LONG THE DIRECTS
13 ARE GOING TO BE.

14 MR. JACOBS: I WOULD BE SURPRISED IF WE
15 GET THROUGH ALL OF THOSE, YOUR HONOR.

16 THE COURT: I WOULD, TOO.

17 ALL RIGHT. WELL, I DON'T WANT ANY MORE
18 OBJECTIONS AS TO THESE FOUR. IT'S DONE. OKAY? IF
19 YOU HAVEN'T MADE YOUR OBJECTION, YOU'VE WAIVED IT
20 AT THIS POINT.

21 GOING FORWARD, I GUESS YOU WILL BE
22 IDENTIFYING THREE MORE PEOPLE, RIGHT? YOU'RE
23 IDENTIFYING THREE MORE WITNESSES?

24 MR. JACOBS: YES.

25 THE COURT: OKAY. DO YOU KNOW WHO THOSE

1 ARE. I GUESS YOU HAVE UNTIL 7:00 O'CLOCK TONIGHT.

2 MR. JACOBS: RIGHT. WE'D LIKE TO GO BACK
3 AND CONSIDER.

4 MR. VERHOEVEN: THE ONE THING I'D SAY --
5 SORRY TO INTERRUPT, YOUR HONOR. POINT OF
6 CLARIFICATION.

7 DR. BALAKRISHNAN HAS -- THEIR EXHIBITS
8 HAVEN'T YET BEEN DISCLOSED TO US UNDER THE TWO DAY
9 RULE, I DON'T THINK.

10 AND SO I AGREE WITH YOU FOR EVERYONE
11 ELSE, EXCEPT DR. BALAKRISHNAN, WE'VE ALREADY DONE
12 EVERYTHING.

13 BUT I'M BEING TOLD THAT WE HAVEN'T YET
14 DONE THAT PROCESS.

15 SO MY SUGGESTION WOULD BE, IF THAT'S
16 INACCURATE, WOULD BE THAT WE START THE HIGH
17 PRIORITY WITH HIM, LIMIT US TO HOWEVER MANY YOUR
18 HONOR THINKS WE SHOULD BE LIMITED TO, AND THEN ANY
19 OTHER OBJECTIONS WOULD THEN JUST BE IN OPEN COURT
20 AND, YOU KNOW, THE WAY WE'RE HANDLING IT TODAY.

21 THE COURT: ALL RIGHT. WELL, I'M GOING
22 TO ALLOW TWO OBJECTIONS PER WITNESS, AND I DON'T
23 WANT THESE -- YOU KNOW, SOME OF THESE OBJECTIONS
24 BASICALLY TAKE UP THREE-QUARTERS OF THE PAGE, ALL
25 RIGHT, AND IT'S EVERYTHING IN THE KITCHEN SINK, AND

1 I KNOW THAT IF YOU HAD TO DO THIS IN FRONT OF A
2 JURY, YOU WOULDN'T BE DUMPING ALL THIS IN THERE.

3 SO I REALLY AM GOING TO ASK YOU, PLEASE,
4 TO REALLY HONE IN ON WHAT YOUR REAL OBJECTION IS,
5 AND TO THE EXTENT YOU CAN GIVE MORE EXPLANATION OF
6 WHAT IT IS, THAT WILL JUST HELP IN GETTING A BETTER
7 RULING.

8 MR. VERHOEVEN: ABSOLUTELY, YOUR HONOR.

9 THE COURT: BECAUSE SOMETIMES WE'RE
10 REALLY JUST KIND OF THROWING IN THE DARK HERE
11 BECAUSE THERE'S FIVE MILLION OBJECTIONS, NO
12 EXPLANATION.

13 MR. VERHOEVEN: I UNDERSTAND, YOUR HONOR.

14 THE COURT: AND WE DON'T KNOW WHAT THE
15 EXHIBIT IS COMING IN FOR AND IT'S VERY, VERY
16 DIFFICULT.

17 MR. VERHOEVEN: I AGREE WITH THAT, YOUR
18 HONOR.

19 ONE POINT OF CLARIFICATION, JUST SO I
20 DON'T MISUNDERSTANDING YOUR HONOR'S DIRECTION.

21 IF THERE'S, SAY, TEN EXHIBITS AND THE
22 OBJECTION IS EXACTLY THE SAME AND THE BRIEFING
23 WOULD BE EXACTLY THE SAME, CAN WE DO A CATEGORY OF
24 OBJECTIONS?

25 THE COURT: NO, NO.

1 MR. VERHOEVEN: SO HOW SHOULD -- THAT'S
2 WHAT I WANTED TO ASK. PICK ONE OF THEM AND WE'LL
3 JUST LEARN FROM THAT ON YOUR HONOR'S RULING.

4 THE COURT: YEAH.

5 MR. VERHOEVEN: OKAY.

6 THE COURT: SO TWO OBJECTIONS PER
7 WITNESS. I ALREADY HAVE MY LIST. I'M NOT GOING TO
8 DO ANYTHING MORE.

9 BASED ON THE ORDER THAT WAS FILED LAST
10 NIGHT AT 11:00 O'CLOCK, THAT'S IT FOR BRESSLER AND
11 FOR KARE. I'M NOT GOING TO LOOK AT ANYTHING ELSE
12 THAT YOU ALL HAVE FILED, ALL THE RECONSIDERATIONS.
13 OKAY?

14 BUT I GUESS FOR THEN MR. BALAKRISHNAN,
15 YOU CAN DO YOUR TWO.

16 MR. VERHOEVEN: THE TWO.

17 THE COURT: AND THEN WE'LL SEE HOW THAT
18 GOES. IF THAT'S NOT WORKING, THEN WE'RE JUST GOING
19 TO GO BACK TO DOING EVERYTHING IN FRONT OF THE
20 JURY.

21 MR. VERHOEVEN: YES, YOUR HONOR.

22 THE COURT: SO WHEN ARE YOU GOING TO FILE
23 THE BALAKRISHNAN ONES? AND IT'S ONLY GOING TO BE
24 ONE. I'M NOT GOING TO ENTERTAIN THIS THREE, FOUR,
25 FIVE, SIX CORRECTED AND RECONSIDERATION AND WHATNOT

1 VERSIONS.

2 MR. VERHOEVEN: I THINK WE MIGHT BE ABLE
3 TO REACH A STIPULATION ON THAT, YOUR HONOR, WITH
4 YOUR GUIDANCE ON THE LIMIT ON TWO OBJECTIONS.

5 MY SUGGESTION IS THAT WE MEET AND CONFER
6 AND SEND YOUR HONOR A JOINT PROPOSAL. I THINK
7 WE'LL BE ABLE TO REACH AGREEMENT ON THAT.

8 THE COURT: WELL, I GUESS YOU COULD STILL
9 DO IT 8:00 A.M. THE DAY BEFORE THE WITNESS IS GOING
10 TO TESTIFY.

11 MR. JACOBS: WE HAVE A NEW SCHEDULE IN
12 MIND THAT WILL AVOID -- THAT WOULD GET IT TO YOU.

13 MR. VERHOEVEN: IT'S ONE DOCUMENT.

14 MR. JACOBS: YES. THAT WE'LL GET IT TO
15 YOU NOT AT 8:00 O'CLOCK, BUT ACTUALLY EARLIER.

16 THE COURT: OKAY.

17 MR. JACOBS: SO YOU WOULD HAVE IT
18 EARLIER, AND WE, OUR TEAMS, HOPEFULLY WON'T BE
19 WORKING THROUGH THE NIGHT. SO WE WILL SEND YOU
20 THAT PROPOSAL AND WE WOULD RECORD THE TWO
21 OBJECTIONS PER WITNESS AND YOU CAN LOOK AT THE
22 PROPOSAL AND SEE IF THAT WORKS FOR YOU.

23 THE COURT: ALL RIGHT. THAT'S GREAT. SO
24 WE'LL JUST ASSUME TWO OBJECTIONS, YOU KNOW, EACH
25 PARTY WILL MAKE TWO OBJECTIONS TO MR. BALAKRISHNAN,

1 AND THEN SINCE HE'S NOT LIKELY TO COME ON ON MONDAY
2 ANYWAY, YOU KNOW, YOU CAN --

3 MR. VERHOEVEN: I THINK HE PROBABLY WILL
4 COME ON MONDAY. HE JUST WON'T BE COMPLETED. HE'S
5 THE EXPERT WITNESS FOR APPLE.

6 MR. JACOBS: WE SHOULD SHOOT FOR GETTING
7 THOSE WRAPPED UP FOR HIM. BUT WE WILL INCLUDE THIS
8 IN THE UPDATE TO YOU EXACTLY WHAT'S GOING TO HAPPEN
9 WITH THE WITNESSES.

10 THE COURT: OKAY. WELL, IF YOU NEED
11 RULINGS ON MR. BALAKRISHNAN BY MONDAY MORNING, THEN
12 I NEED THE OBJECTIONS SOMETIMES OTHER THAN SUNDAY.
13 OKAY?

14 MR. VERHOEVEN: WHEN WOULD YOU LIKE THEM,
15 YOUR HONOR.

16 THE COURT: CAN YOU FILE THOSE TODAY?

17 MR. VERHOEVEN: I DON'T KNOW IF WE'VE
18 GOTTEN THEIR EXHIBITS YET.

19 THE COURT: OH, OKAY. YOU'LL GET THE
20 EXHIBITS TOMORROW?

21 MR. VERHOEVEN: I THINK WE'RE GETTING
22 THEM TONIGHT.

23 THE COURT: OKAY.

24 MR. VERHOEVEN: THE PROCEDURE THEN IS WE
25 WERE SUPPOSED TO DESIGNATE CROSS AND --

1 THE COURT: SWITCH. CAN YOU FILE THEM ON
2 SATURDAY?

3 MR. VERHOEVEN: WE CAN DO IT ON SATURDAY
4 PROBABLY.

5 MR. JACOBS: OUR EXHIBITS WILL GO OVER TO
6 THEM -- OUR EXHIBITS WILL GO OVER TO THEM TOMORROW
7 PER THE AGREED UPON SCHEDULE.

8 THE COURT: ALL RIGHT.

9 MR. JACOBS: AND WE HAVE A SCHEDULE FOR
10 BRIEFING IT.

11 BUT IF YOU WANT NOT TO GET IT ON SUNDAY,
12 THEN WE'RE GOING TO HAVE TO ACCELERATE THE
13 OBJECTIONS AND RESPONSE.

14 MR. VERHOEVEN: I DON'T SEE ANY REASON
15 WHY WE COULDN'T GET EXHIBITS TONIGHT. WE'D BE
16 FLEXIBLE ON GETTING THEM LATER TONIGHT THAN 7:00
17 O'CLOCK.

18 BUT IF YOUR HONOR WOULD LIKE TO BE ABLE
19 TO LOOK AT THIS ON SATURDAY, OBVIOUSLY IF WE DON'T
20 GET THE EXHIBITS, THEIR DIRECT EXHIBITS UNTIL
21 SATURDAY, WE WON'T BE ABLE TO, YOU KNOW. DO YOU
22 SEE WHAT I'M SAYING, YOUR HONOR?

23 MR. JACOBS: THERE WILL BE TIME ON MONDAY
24 AND THERE WILL BE ONLY TWO OBJECTIONS, SO I THINK
25 IF WE STICK TO THE SCHEDULE WE HAVE IN MIND, EVEN

1 IF WE GET YOU THEM ON THE SCHEDULE.

2 THE COURT: SUNDAY MORNING AT 8:00

3 O'CLOCK.

4 MR. JACOBS: WHATEVER THAT PROPOSAL IS.

5 THE COURT: ALL RIGHT. WELL, I'LL ACCEPT

6 THAT FOR MR. BALAKRISHNAN.

7 BUT, YEAH, LET ME SEE WHAT YOU'RE ALL
8 PLANNING TO DO, BECAUSE I DON'T WANT YOUR TEAMS
9 WORKING THROUGH THE NIGHT, EITHER, AND THIS SYSTEM
10 IS JUST NOT WORKING.

11 MR. JACOBS: CAN I RAISE AN ISSUE THAT
12 COMES -- THAT TIES BACK TO A TOPIC YOU ASKED ABOUT
13 A MINUTE AGO?

14 THE COURT: OKAY.

15 MR. JACOBS: HOW ARE WE GOING TO PLAY THE
16 DEPOSITION VIDEO OF KOREAN LANGUAGE SPEAKING
17 WITNESSES GIVEN THE TIGHT TIME CONSTRAINTS ON THIS
18 TRIAL?

19 WE HAD ORIGINALLY PROPOSED THAT WE
20 OVERDUB THE TRANSLATIONS SO THAT THE WITNESS IS
21 SPEAKING IN KOREAN, BUT THE TRANSLATION OVERDUBS.

22 THAT IS THE MOST EFFICIENT WAY TO USE THE
23 TIME OF THIS JURY, THE LEAST BORING. IT'S THE WAY
24 IT'S DONE ON THE RADIO. WHEN YOU HEAR SOMEBODY
25 TALKING ON THE RADIO, THEY'RE SIMULTANEOUSLY

1 INTERPRETED AND YOU KIND OF HEAR THE ORIGINAL
2 LANGUAGE IN THE BACKGROUND.

3 MR. VERHOEVEN: WE WOULD --

4 MR. JACOBS: EXCUSE ME.

5 SAMSUNG REJECTED THAT.

6 THEN WE PROPOSED THAT WE DELETE THE
7 INTERPRETATION INTO KOREAN OF THE QUESTION SO AT
8 LEAST ALL WE'RE HEARING IN EXTRA SLOW TIME IS THE
9 ANSWER IN KOREAN, FOLLOWED BY THE INTERPRETER IN
10 ENGLISH.

11 SAMSUNG REJECTED THAT.

12 SO WHEN WE PLAY DEPOSITION VIDEO IN THIS
13 TRIAL, EVERYTHING IS GOING TO TAKE TWICE AS LONG,
14 IF NOT MORE, BECAUSE TRANSLATION IS SLOW.

15 WE WOULD ASK THAT OUR ORIGINAL PROPOSAL
16 BE ADOPTED. WE THINK THIS JURY IS ENTITLED TO GET
17 THIS TRIAL IN THE MOST EFFICIENT WAY POSSIBLE, AND
18 THE WAY THEY'RE USED TO IT IS WITH AN OVERDUBBING
19 OF A TRANSLATION OF AN INTERPRETATION ON TOP OF A
20 WITNESS SPEAKING IN A LOWER VOLUME IN A NATIVE
21 LANGUAGE.

22 THE COURT: WELL, I THINK THAT HINDERS
23 THE JURY'S ABILITY TO ASSESS WITNESS'S CREDIBILITY.
24 YOU NEED TO HEAR THE INFLECTION, EVEN IF YOU DON'T
25 UNDERSTAND THE LANGUAGE. YOU NEED TO HEAR THE

1 PAUSES. YOU NEED TO HEAR THE AUTHENTIC VOICE.

2 SO I'M DENYING THAT REQUEST.

3 MR. JACOBS: AND HOW ABOUT ON THE
4 QUESTION SIDE OF THINGS? DO WE REALLY NEED TO
5 PLAY, FOR THE JURY, THE INTERPRETATION INTO KOREAN
6 OF AN ENGLISH LANGUAGE QUESTION?

7 THE COURT: HOW MUCH DIFFERENCE DOES THIS
8 MAKE?

9 MR. JACOBS: WELL, THE INTERPRETER SITS
10 THERE FOR A MINUTE --

11 THE COURT: I'M SORRY TO INTERRUPT YOU.
12 HOW MANY WITNESSES ARE GOING TO BE BROUGHT IN
13 THROUGH TRANSLATION AND VIDEO?

14 MR. JACOBS: WELL, THERE ARE THE TWO
15 USES, RIGHT? ONE IS TO ACTUALLY BRING IN THE
16 WITNESS, AND WE HAVE ONE CUED UP FOR TODAY IS WHY
17 THIS ISSUE HAS SOME URGENCY; BUT THEN ALSO FOR
18 IMPEACHING A KOREAN WITNESS.

19 THEY'VE TOLD US THEY'RE BRINGING THESE
20 WITNESSES TO TRIAL. ARE WE REALLY GOING TO BE
21 HINDERED IN OUR ABILITY TO USE THE VIDEO TO
22 IMPEACH, OR THE TRANSCRIPT TO IMPEACH, THE VIDEO TO
23 IMPEACH, BECAUSE IT'S GOING TO TAKE TWICE AS LONG
24 OFF OUR TIME?

25 THE COURT: WELL, RIGHT NOW THE REQUEST

1 IS DENIED. I MEAN, WE CAN TRY TO SEE, AS IT GOES
2 ALONG, IF IT LOOKS LIKE IT'S REALLY CREATING SOME
3 UNDUE BURDEN, WE CAN RE ASSESS.

4 BUT AT THIS POINT, IT IS WHAT IT IS.

5 SO --

6 MR. JACOBS: THANK YOU, YOUR HONOR.

7 THE COURT: OKAY. ANYTHING ELSE THAT WE
8 NEED TO TALK ABOUT TODAY?

9 OTHERWISE -- LET ME RETURN -- SO THIS BOX
10 OF FORSTALL CROSS-EXAMINATION, DO I NEED TO KEEP
11 THESE EXTRA BINDERS OR NO?

12 MR. JOHNSON: NO. NO, YOUR HONOR.

13 THE COURT: IT'S PROBABLY NOT GOING TO
14 COME UP, RIGHT?

15 MR. JOHNSON: NO, YOUR HONOR. THEY WERE
16 ONLY THERE IN CASE YOUR HONOR ALLOWED MR. FORSTALL
17 TO TESTIFY ABOUT SUBJECTS THAT YOU DENIED.

18 THE COURT: OKAY. SO I'M GOING TO RETURN
19 THOSE.

20 WHAT ABOUT -- I GOT A BOX OF ALL OF THE
21 OBJECTIONS THIS MORNING. I ASSUME I CAN RETURN
22 THAT, OR -- IT'S SAMSUNG'S OBJECTIONS TO THE
23 VARIOUS WITNESSES. I'M NOT --

24 MR. VERHOEVEN: IT SOUNDS LIKE THOSE HAVE
25 ALREADY BEEN RULED ON, YOUR HONOR.

1 THE COURT: OKAY. SO I'M GOING TO RETURN
2 BOTH BOXES THEN TODAY. OKAY.

3 NOW, YOU KNOW, IT BECAME A PROBLEM LAST
4 NIGHT IN THAT WE DIDN'T HAVE THE ACTUAL EXHIBITS
5 FOR AT LEAST ONE OF THE WITNESSES, SO HOW CAN WE
6 MAKE SURE THAT WE ACTUALLY GET THE EXHIBITS?
7 BECAUSE IT'S VERY HELPFUL FOR US.

8 MR. VERHOEVEN: FOR THE TWO HIGH
9 PRIORITIES?

10 THE COURT: PLEASE, YEAH.

11 MR. VERHOEVEN: WE'LL JUST SUBMIT THEM
12 WITH THE OBJECTIONS. YEAH?

13 MR. JACOBS: YES.

14 THE COURT: SO CAN YOU E-FILE THEM?

15 MR. JACOBS: CAN WE LODGE THEM, YOUR
16 HONOR?

17 THE COURT: YES. I'M JUST THINKING OF
18 HOW WE'RE GOING TO DO THIS ON SUNDAY.

19 MR. JACOBS: WE COULD E-MAIL THEM TO
20 YOUR -- TO THAT E-MAIL ADDRESS WE HAVE.

21 THE COURT: WHY DON'T YOU DO THAT,
22 PLEASE.

23 MR. JACOBS: ONE OTHER HOUSEKEEPING
24 ISSUE.

25 THE COURT: WHAT'S THAT?

1 MR. JACOBS: WE DON'T HAVE A MECHANISM TO
2 KEEP TRACK IN THE OFFICIAL COURT RECORDS OF
3 DEMONSTRATIVES, UNDERSTANDING THAT THEY'RE NOT
4 GOING TO GO BACK TO THE JURY ROOM.

5 BUT IT CAN BE HELPFUL TO THE COURT, IT
6 CAN BE HELPFUL FOR REVIEW PURPOSES TO HAVE THE
7 DEMONSTRATIVES IN THE OFFICIAL RECORD.

8 WHAT WE'VE DONE IN OTHER CASES IS AT THE
9 END OF THE DAY, DEMONSTRATIVES THAT ARE ACTUALLY
10 DISPLAYED ARE SUBMITTED UNDER A NOTICE SO THEY GO
11 INTO THE RECORD.

12 WOULD SOMETHING LIKE THAT WORK FOR THE
13 COURT?

14 MR. VERHOEVEN: MY SUGGESTION, YOUR
15 HONOR, THE WAY I'VE DONE IT IS WE MARK THE
16 DEMONSTRATIVES WITH DEMONSTRATIVE NUMBERS AND WE
17 IDENTIFY THEM FOR THE RECORD AS WE'RE GOING ALONG
18 SO IT'S CLEAR FOR THE RECORD WHAT SLIDE THEY'RE ON.

19 AND YES, WE SUBMIT THEM TO THE COURT.

20 THEY DON'T GO TO THE JURORS.

21 BUT WE SHOULD BE MARKING THEM FOR
22 IDENTIFICATION.

23 THE COURT: AND I'M TRYING TO KEEP A
24 RECORD OF ALL OF THOSE AS WELL. SO I'M KEEPING A
25 RECORD OF ALL THE DEMONSTRATIVES AS WELL. THAT'S

1 FINE. WHAT YOU PROPOSE SOUNDS GREAT.

2 MR. JACOBS: GREAT.

3 THE COURT: ALL RIGHT. WHAT ELSE?
4 ANYTHING ELSE?

5 AND I THINK WE SHOULD SET ASIDE, TOWARDS
6 THE END, ENOUGH TIME FOR THE JURY INSTRUCTION
7 CONFERENCE, BECAUSE I SUSPECT THAT'S GOING TO BE
8 PRETTY TIME CONSUMING.

9 BUT ALSO A TIME FOR BOTH SIDES TO GO
10 THROUGH ALL OF THE EXHIBITS AND MAKE SURE YOU'RE IN
11 ABSOLUTE AGREEMENT ABOUT WHICH ONES WILL GO TO THE
12 JURY ROOM. OKAY?

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

14 THE COURT: SO WE'LL JUST NEED TO MAKE
15 SOME TIME FOR THAT.

16 MR. MCELHINNY: NOTHING FURTHER TONIGHT.

17 BUT JUST BECAUSE YOUR HONOR LIKES TO
18 KNOW, WE'RE GOING TO LOOK AT THE TRANSCRIPT PRETTY
19 CAREFULLY TODAY, AND WE MAY BE SEEKING RELIEF ABOUT
20 THE INTRODUCTION OF THE PRELIMINARY INJUNCTION
21 WHICH YOUR HONOR TALKED ABOUT.

22 THE COURT: WELL, I'M GOING TO DENY THAT.
23 YOU'RE GOING TO TRY TO GET IN THE PREVIOUS ORDERS?

24 MR. MCELHINNY: WE ARE, YOUR HONOR.

25 THE COURT: WELL, I'M --

1 MR. MCELHINNY: IF YOUR HONOR -- I MEAN,
2 I -- ALL I'M GOING TO ASK IS FOR A CHANCE TO ARGUE
3 IT. YOUR HONOR ORIGINALLY SAID IT WOULD COME IN,
4 THEN THERE WAS A 403 DETERMINATION, THAT WAS THE
5 BASIS, ON THEIR MOTION, AND NOW THEY'VE INTRODUCED
6 THE ISSUE AND --

7 THE COURT: I DON'T THINK AT THE HEARING
8 I SAID I WAS GOING TO BRING IT IN. I ASKED
9 QUESTIONS. I ACTUALLY HADN'T DECIDED.

10 MR. VERHOEVEN: WHAT'S THAT YOU SAID,
11 YOUR HONOR.

12 THE COURT: I HADN'T MADE A DECISION.

13 MR. MCELHINNY: WELL, I MAY -- I'M
14 DEALING FROM RECOLLECTION ON FRIDAY AFTERNOON.

15 BUT THE BASIS OF THE RULING WAS A 403
16 OBJECTION FROM THEIRS. THAT'S WHAT YOUR HONOR
17 GRANTED.

18 MR. QUINN RAISED THE ISSUE IN FRONT OF
19 THE JURY TODAY.

20 PEOPLE KNOW WHAT A PRELIMINARY INJUNCTION
21 IS.

22 WE JUST WANT TO FILE A TWO-PAGE REQUEST
23 THAT YOUR HONOR --

24 THE COURT: NO, BECAUSE YOU'VE GIVEN ME
25 ENOUGH PAPER TO CHEW ON. I'M TELLING YOU THAT

1 MY -- EVEN THOUGH IT WAS RAISED, IT WAS NOT RAISED
2 AS TO WHETHER IT WAS GRANTED OR DENIED. THIS JURY
3 DOESN'T KNOW WHAT ANY FINDINGS WERE IN THAT PROCESS
4 AND DOESN'T KNOW WHETHER IT WAS A GRANTED
5 INJUNCTION OR A DENIED INJUNCTION.

6 SO I THINK IT WAS UNFORTUNATE THAT IT WAS
7 RAISED, BUT I'M NOT GOING TO ALLOW ALL THAT TO COME
8 IN, BECAUSE THEN WE WILL REALLY HAVE A LITIGATION
9 WITHIN A LITIGATION SIMILAR TO WHAT WE HAD WITH
10 MR. DENISON ABOUT EXACTLY WHAT EVIDENCE WAS BEFORE
11 THE, WHOEVER COURT DECIDED WHAT MOTION AND THE
12 DIFFERENT STANDARDS.

13 I'M NOT GOING TO ALLOW IT. SO I -- CAN
14 WE JUST SAY, FOR THE RECORD, YOU HAVE MADE YOUR
15 RECORD FOR APPEAL, THAT YOU HAVE MADE THIS REQUEST,
16 BUT IT'S BEING DENIED ON THE SAME 403 BASIS.

17 MR. MCELHINNY: WHAT I WOULD PREFER TO
18 SAY WAS I WAS NOT MAKING A RECORD FOR APPEAL. I
19 WAS TRYING TO CONVINCING YOUR HONOR IT WAS THE RIGHT
20 THING TO DO. BUT I HAVEN'T, SO WE'LL ACCEPT THAT.

21 THE COURT: THANK YOU. I APPRECIATE
22 THAT.

23 OKAY. WHAT ELSE? ANYTHING ELSE?

24 MR. VERHOEVEN: NOTHING FURTHER FROM
25 SAMSUNG.

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MR. JACOBS: NOTHING FROM US, YOUR HONOR.

THE COURT: NO? ALL RIGHT. I WILL SEE
YOU ALL AT 8:30 ON MONDAY.

MR. VERHOEVEN: OKAY. THANK YOU.

(WHEREUPON, THE EVENING RECESS WAS
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 3, 2012

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