

EXHIBIT S

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

APPLE INC., a California corporation,

Plaintiff,

vs.

SAMSUNG ELECTRONICS CO., LTD., a
Korean business entity; SAMSUNG
ELECTRONICS AMERICA, INC., a New
York corporation; SAMSUNG
TELECOMMUNICATIONS AMERICA,
LLC, a Delaware limited liability company,

Defendants.

CASE NO. 11-cv-01846-LHK

**REBUTTAL EXPERT REPORT OF STEPHEN GRAY
REGARDING NON-INFRINGEMENT OF ASSERTED CLAIMS OF U.S. PATENT NOS.
7,844,915 AND 7,864,163**

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INTRODUCTION

1
2 1. I have been retained by Samsung Electronics Co., Ltd., Samsung Electronics America,
3 Inc., and Samsung Telecommunications America, LLC (collectively "Samsung") as an independent
4 expert in this action. I expect to testify concerning the subjects outlined in this report.

5 2. As part of this engagement I have been asked to provide analysis and expert opinions
6 regarding whether certain products identified by Apple infringe the Asserted Claims of U.S. Patent Nos.
7 7,844,915 (hereafter, the '915 Patent) and 7,864,163 (hereafter the '163 Patent). I have also been asked
8 to respond to the Expert Report of Karan Singh ("Singh Report"), served by Apple in this case regarding
9 the alleged infringement of the '915 and '163 Patents. I understand that the claims asserted by Apple
10 include claims 1-21 of the '915 Patent and claims 2, 4-13, 17, 18, 27-42 and 47-52 of the '163 Patent.

11 3. I have previously prepared an Expert Report Concerning Invalidity of U.S. Patent Nos.
12 7,844,915 and 7,864,163 dated March 22, 2012 ("Invalidity Report"), which is incorporated by reference
13 into this Report as if set forth fully herein. My experience and qualifications are included in the
14 Invalidity Report.

15 4. I am being compensated for my work on this case at my standard consulting rate of \$370
16 per hour. I am also being reimbursed for expenses that I incur. My compensation is not contingent
17 upon the results of my study or the substance of my testimony.

18 5. I expect to be called to provide expert testimony regarding opinions formed resulting
19 from my analysis of the issues considered in this report. If asked to do so, I may also provide testimony
20 describing application programming interfaces, scrolling and scroll indicators, gesturing, rubber
21 banding, and multi-touch technology using one or more input points as well as drag user inputs. I may
22 also discuss the use of software, drivers and/or application programming interfaces capable of providing
23 scrolling, scaling, rotating, and other manipulation of content on touch sensitive hardware devices.
24 Additionally, I may discuss my own work, teachings, and knowledge of the state of the art in the
25 relevant time period. I may rely on handbooks, textbooks, technical literature, and the like to
26 demonstrate the state of the art in the relevant period and the evolution of relevant technologies.

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1 6. This Report is a description of the testimony I expect to offer in the case named above.
2 However, I respectfully reserve my right to alter or supplement my analysis in response to any criticisms
3 or alternative opinions offered by Apple.

4 7. I may prepare, for presentation at trial, demonstrative exhibits that discuss the patent, the
5 patent figures, and/or the patent file histories. I may also prepare demonstrative exhibits that discuss
6 technology related to the patent and/or the prior art. I may use these demonstratives to further explain
7 the disclosures in the patent or its prosecution history, as well as issues relating to the patent
8 specification or the technologies at issue.

9 8. I may, for example, prepare static or animated exhibits that summarize the Accused
10 Products¹ and/or the operation of the Accused Products or, for example, a video depicting actual use of
11 the Accused Products. I may also rely on screen shots of the Accused Products or other documents in
12 Appendix 1 to generate demonstratives that walk through the operation of the Accused Products.

13 9. In reaching the conclusions described herein, I have considered the documents and
14 materials set forth in my Invalidity Report and all documents that are identified in this report including
15 the Singh Report. My opinions are also based upon my education, training, research, knowledge, and
16 personal and professional experience.

17 10. It is my understanding that expert discovery is still ongoing. I reserve the right to modify
18 or supplement my opinions, as well as the basis for my opinions, in light of any documents, testimony,
19 or other evidence that may emerge during the course of this matter, including depositions that have yet
20 to be taken.

21 11. It is also my understanding that Apple may submit an expert report responding to this
22 report. I reserve the right to rebut any positions taken in that report.

23 12. Throughout this report, I refer to specific pages of patents and other technical documents.
24 The citations are intended to be exemplary and are not intended to convey that the citations are the only
25 source of evidence to support the propositions for which they are cited.

26 _____
27 ¹ See Section III listing the Accused Products.
28

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1 **I. BASES FOR OPINIONS**

2 **A. Preparation for this Report**

3 13. In forming my opinions, I have considered, in addition to my own knowledge and
4 experience, (a) the documents and things listed in Exhibit 1 as well as (b) any other references referred
5 to or cited in this Report.

6 14. All of the opinions stated in this report are based on my own personal knowledge and
7 professional judgment; if called as a witness during the trial in this matter I am prepared to testify
8 competently about them.

9 15. I reserve the right to update, supplement, or amend this report in view of additional
10 information obtained through discovery or other information that may become available between now
11 and trial that may affect the opinions set forth in this report. I provide the details of my analysis, and the
12 conclusions that form the basis for any testimony that I may give, below. Any testimony I give may
13 include appropriate visual aids, some or all of the data or other documents and information cited herein
14 or identified in Appendix 1, and additional data or other information identified in discovery, to support
15 or summarize my opinions.

16 **B. Materials Considered**

17 16. This report is based on my review of U.S. Patent Nos. 7,844,915 and 7,864,163 and their
18 respective file histories, and parts of the record and documents produced in this case to date, including
19 product manuals and source code relating to the Accused Products.

20 **II. LEGAL UNDERSTANDINGS**

21 17. In this section I describe my understanding of certain legal standards. I have been
22 informed of these legal standards by Samsung's attorneys. I am not an attorney and I am relying only on
23 instructions from Samsung's attorneys for these legal standards.

24 **A. Infringement**

25 18. I understand that Apple has the burden to prove infringement. I have been informed that
26 analysis of patent infringement requires two steps. The first step is to properly construe the terms of the
27 patent claims, which is a step taken by the Court. The second step is to apply the construed claim terms
28

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1 to the accused product. A patent claim is "literally" infringed only if each and every claim element is
2 found in the accused product.

3 **B. Indirect Infringement**

4 19. I understand that to infringe a method claim, the accused infringer must have practiced all
5 the steps of the claimed method.

6 20. I understand that where a company sells a product that is capable of directly infringing a
7 method claim when operated by customers, the seller can be liable under either an induced infringement
8 or contributory infringement theory. However, I also understand that such indirect theories of liability
9 require proof of a single, direct infringer in the first instance. Absent proof that a customer actually
10 operated a device in an infringing manner, an induced or contributory infringement theory is not
11 sustainable.

12 21. I understand that to be liable under an induced infringement theory, the defendant must
13 actively induce the infringement of another. I understand that the United States Supreme Court has
14 interpreted this basis of liability to require the defendant to intend the acts constituting direct
15 infringement with knowledge that such acts constitute patent infringement. While this standard can be
16 met by a showing of "willful blindness," I understand that "deliberate indifference to a known risk that a
17 patent exists" is not sufficient. An alleged inducer's "willful blindness" will only give rise to liability
18 when: (1) the inducer subjectively believes that there is a high probability that the induced acts
19 constitute infringement; and (2) the inducer has taken deliberate actions to avoid learning the truth
20 regarded the nature of the induced acts.

21 22. I understand that to be liable under a contributory infringement theory, the defendant
22 must sell or offer to sell a component of a patented invention constituting a material part of the
23 invention, knowing the same to be especially made or especially adapted for use in an infringement of
24 such patent. As is the case with induced infringement, I understand that a patentee must establish that
25 the defendant had knowledge of the patent and the unlawful character of the acts constituting direct
26 infringement. I also understand that the sale of any product capable of substantial non-infringing use
27 cannot constitute contributory infringement.

28

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1 **C. Doctrine of Equivalents**

2 23. If not literally infringed, a patent claim might still be infringed under the "doctrine of
3 equivalents." It is my understanding that if there are claim limitations that are not literally present in the
4 accused product, the claim might still be infringed if the differences between the accused product and
5 the claims are insubstantial for each claim limitation. It is also my understanding that one test used to
6 determine whether differences are insubstantial is to determine whether an accused element performs
7 substantially the same function, in substantially the same way, to obtain substantially the same results of
8 the claimed element. I am further informed by counsel that patent protection may be granted for any
9 new and useful process, machine, manufacture, or composition of matter, or any new and useful
10 improvement thereof.

11 24. I am also informed that an element in an accused product may be equivalent to a claim
12 limitation if the two are known to be interchangeable at the time of alleged infringement.

13 25. I have been informed that the doctrine of equivalents does not always apply, such as
14 when doing so would contradict statements made during the patent application process.

15 26. It is my understanding that the range of equivalents is also limited by the prior art to
16 prohibit the patent owner from extending the scope of the claim to cover the prior art. Specifically, it is
17 my understanding that the range of equivalents cannot include what the prior art anticipates or what the
18 prior art renders obvious.

19 27. I understand that the doctrine of equivalents is subject to the "all elements" rule, which
20 precludes a theory of infringement based on the doctrine of equivalents when the theory would read a
21 limitation completely out of the claim.

22 **III. OVERVIEW OF THE ACCUSED PRODUCTS**

23 28. In this section, I set forth information relating to my understanding of the Accused
24 Products, focusing on the products identified in the Singh Report. In the event Apple identifies
25 additional infringing products, I reserve the right to supplement my opinions, including the opinions
26 expressed in this section.

27

28

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1 29. The Accused Products as set forth in the Singh Report include: Acclaim, Captivate,
2 Continuum, Droid Charge, Epic 4G, Exhibit 4G, Fascinate, Galaxy Ace, Galaxy Prevail, Galaxy S
3 (i9000), Galaxy S 4G, Galaxy S II (including the i9100, T-Mobile, AT&T, Epic 4G Touch and
4 Skyrocket variants), Galaxy S Showcase (i500), Galaxy Tab 7.0, Galaxy Tab 10.1, Gem, Gravity Smart,
5 Indulge, Infuse 4G, Intercept, Mesmerize, Nexus S, Nexus S 4G, Replenish, Sidekick, Transform, and
6 Vibrant.

7 **IV. OPINIONS ON NON-INFRINGEMENT OF THE '915 PATENT**

8 30. As explained above, I understand that there is no literal infringement if even one
9 limitation recited in an asserted claim is not found in the accused product. The sections below identify
10 specific limitations that, in my opinion, are not found in the Accused Products. The absence of a
11 discussion of a particular limitation from a particular claim, however, should not be construed as an
12 admission that the limitation is present in the Accused Products.

13 31. My opinion is that none of the Asserted Claims of the '915 Patent are literally infringed
14 by the Accused Products for the reasons set forth below. In addition, none of the Asserted Claims are
15 infringed under the doctrine of equivalents because the Accused Products perform a substantially
16 different function in a substantially different way to achieve a substantially different result.

17 **A. General Problems with the Singh Report Infringement Analysis of the '915 Patent**

18 **1. The Singh Report Fails to Provide Support for Many of the Opinions**
19 **Expressed.**

20 32. The Singh Report fails to provide support for opinions alleging that the Accused Products
21 infringe the '915 Patent. Specifically, the Singh Report fails to show that the Accused Products perform
22 several of the key limitations present in each of the independent claims of the '915 Patent. In this
23 section, I will describe several of these non-infringed limitations at a high level, but I note that Section
24 IV.B will set forth in detail the reasons that the Accused Products do not infringe each and every claim
25 of the '915 Patent.

26 **(a) The number of touch inputs are not exclusively used to determine**
27 **whether to scroll or scale**

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1 33. The Accused Products do not exclusively use the number of touch inputs to determine
2 whether to scroll or scale. Rather, some Accused Products permit scrolling (*e.g.*, panning) with one *or*
3 *more* input points (*e.g.*, two-finger scroll, three-finger scroll, etc.) As discussed in section IV.A.4, some
4 Accused Products function similarly to Apple's own products in allowing scrolling using one or more
5 input points. In practice, assuming that an application running on the Accused Products is able to scroll
6 in a first axis, a user may put one or more fingers on the touch-sensitive surface of the device and
7 "swipe" in a direction along the first axis in order to scroll. Additionally, when using two fingers on the
8 touch-sensitive surface of some Accused Products, a user may switch between scrolling by "swiping"
9 the fingers along a first axis and scaling by moving the fingers farther apart (or closer together using a
10 "pinch")—without even lifting the two fingers from the screen.

11 34. Scrolling with two or more fingers, which is a recognized function on some Accused
12 Products, does not satisfy the requirements for "distinguishing between a single input point . . .
13 interpreted as the scroll operation and two or more input points . . . interpreted as the gesture operation"
14 as recited in each of the independent claims of the '915 Patent.²

15 35. I note that the Singh Report does not show that the Accused Products invoke a scroll or
16 gesture operation by distinguishing "between a single input point . . . interpreted as the scroll operation
17 and two or more input points . . . interpreted as the gesture operation." Rather, the Singh Report states
18 that a single input point triggers one method (*e.g.*, `handleTouchEventCommon()`) while two or more
19 input points triggers another method (*e.g.*, `handleMultiTouchInWebView()`). I note that the Singh
20 Report does not connect these methods to scroll or gesture operations. Only in the context of specific
21 applications do the swipe and pinch gestures execute scroll or scale operations, but Singh fails to make
22 these connections. The two methods cited in the Singh Report, `handleTouchEventCommon()` and
23 `handleMultiTouchInWebView()`, are called in response to the user's touch inputs, but do not actually
24 scroll or scale. Scrolling and scaling operations are application-dependent features.

25
26 ² I note that when discussing "gestures" or "gesturing" in the context of the '915 Patent, these terms
27 include both panning (*e.g.* scrolling) *and* scaling (*e.g.* zooming). See '915 Specification, Col. 7:8-10;
28 9:20-28.

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1 36. Gestures on some Accused Products, like gestures on Apple's phones and tablets, include
2 both single finger swipes and multi-finger pinch gestures. For this reason, Accused Products do not
3 meet the requirement of the claimed limitation of "distinguishing between a single input point . . .
4 interpreted as the scroll operation and two or more input points . . . interpreted as the gesture operation."
5 The plain meaning of Claim 1[c] indicates that the term "scroll operation" is distinct from a "gesture
6 operation." This confusion in terminology provided the basis for my conclusion that the '915 Patent is
7 indefinite as set forth in my initial expert report on invalidity.

8 37. Although I am of the opinion that the Accused Products do not infringe the '915 Patent,
9 should the '915 be found infringed by any of the Accused Products, below I detail several
10 straightforward non-infringing alternatives. Several non-infringing alternatives have already been
11 implemented, including the edge glow, an alternative for the "rubberbanding" behavior that I understand
12 Apple asserts is embodied by Claim 2 of the '915 Patent. As an alternative for Claim 1[c],
13 "distinguishing between a single input point . . . interpreted as the scroll operation and two or more input
14 points . . . interpreted as the gesture operation," I note that a user can scroll with two or more fingers on
15 the Accused Products, which does not meet the requirements of this limitation. Based on such already
16 implemented functionality, I propose below that by applying straightforward heuristics to all touch
17 input, the Accused Products could distinguish between scrolling, scaling, and rotating, simply based on
18 the direction of the user's input, not based on the number of touch inputs. Because all the Accused
19 Products already support this functionality, as evidenced by their support for multi-finger scrolling, I
20 believe it would be straightforward to implement this functionality exclusively.

21 38. For at least these reasons, the Accused Products do not infringe any of the asserted claims
22 of the '915 Patent.

(b) The Event Object does not "invoke"

24 39. The claim limitation relating to the event object invoking a scroll or gesture operation in
25 Claim 1[c] is preceded by the language "creating an event object in response to the user input" in Claim
26 1[b]: both limitations refer to the same "event object."

27 40. According to the documentation regarding the Android operating system:
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1 Motion events describe movements in terms of an action code and a set of
2 axis values. The action code specifies the state change that occurred such
3 as a pointer going down or up. The axis values describe the position and
4 other movement properties.

5 41. (See <http://developer.android.com/reference/android/view/MotionEvent.html>)

6 42. Paragraph 322 of the Singh Report asserts that the Android MotionEvent object
7 represents the event object described in Claim 1. However, the MotionEvent object never invokes a
8 scroll or gesture operation.

9 43. Instead of asserting that MotionEvent invokes a scroll or gesture operation, the Singh
10 Report maintains that *another*, different event object includes a method,
11 `WebView.handleQueuedMotionEvent()`, which invokes a scroll or gesture operation (*e.g.*,
12 `handleTouchEventCommon()` for a single input point and `handleMultiTouchInWebView()` for two or
13 more input points). I agree with the Singh Report's apparent conclusion that the MotionEvent object
14 does not invoke a scroll or gesture operation.

15 44. The Singh Report provides no additional discussion of how the "event object invokes"
16 the scroll or gesture operation. See Singh's report ¶¶321-323

17 45. For at least reason, the Accused Products do not infringe any of the asserted claims of the
18 '915 Patent.

19 **2. It Is My Understanding That The Singh Report Opinions Regarding Indirect**
20 **Infringement Were Not Properly Disclosed In Apple's Infringement**
21 **Contentions.**

22 46. The opinions of the Singh Report rely on an indirect theory of infringement with respect
23 to the method claims of the '915 Patent. The opinion, as stated by the Singh report, is that "the Samsung
24 defendants have indirectly infringed the method claims of the '915 Patent." Singh Report at ¶ 304.
25 However, it is my understanding that Apple's P.L.R. 3-1 infringement contentions did not previously
26 disclose that it would be relying on this type of infringement theory with regard to the '915 Patent. The
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1 cover pleadings to Apple's infringement contentions do contain the following boiler-plate paragraph
2 regarding indirect infringement generally:

3 47. Samsung induces the infringement of others under 35 U.S.C. § 271(b) to the extent it
4 contracts, instructs, or otherwise induces others to make, use, offer to sell, sell, or import the Accused
5 Instrumentalities within or into the United States. Samsung also contributes to the infringement of others
6 under 35 U.S.C. § 271(c) to the extent it offers to sell, sells, or imports part or all of the Accused
7 Instrumentalities within or into the United States.

8 48. Apple P.L.R. 3-1 Infringement Contentions Section I.D. But, Apple's claim-by-claim
9 infringement allegations (specifically, Exhibits 13-15 in support of Apple's P.L.R. 3-1 Infringement
10 Contentions) make no mention of an induced or contributory infringement theory and do not at all
11 distinguish between the method and apparatus/system claims of the '915 Patent. Further, the
12 infringement contentions do not appear to identify any instances of direct infringement by downstream
13 users.

14 49. Because Apple failed to adequately raise its indirect infringement allegations earlier, I
15 must re-visit my non-infringement opinions and consider theories of inducement and contributory
16 infringement for the first time since the service of the Singh Report. Accordingly, I reserve the right to
17 supplement this report as new information regarding this theory of infringement develops.

18 **3. Opinions in the Singh Report Fail To Adequately Address The Vast Majority**
19 **Of Samsung "Accused Products"**

20 50. The claim-by-claim infringement analysis contained in the Singh Report, as well as the
21 claim charts offered in support, Singh Report Exhibits 16 and 17, purport to address only the Galaxy
22 Tab 10.1 tablet and the Galaxy S II phone out of the 31 products characterized as infringing. *Compare,*
23 *e.g.* Singh Report ¶ 301, *with* ¶ 305. Rather than engage in a detailed analysis with respect to the
24 remaining 29 products, the Singh Report merely offers the following statement at the conclusion of his
25 analysis for each of the major claims of the '915 Patent: "[b]ased on my inspection of Samsung source
26 code for each major release of Android running on the Samsung Accused Products (Android 2.1, 2.2,

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1 2.3, and 3.1), I believe that each Samsung Accused Product includes similar computer code that [meets
2 the relevant claim limitation of the '915 Patent]." Singh Report ¶¶ 332, 339, 348, 354, 374, and 396.

3 51. The Singh Report claim charts make occasional references to prior versions of
4 "analogous" Android code. Additionally, Exhibit 17 in support of the Singh Report purports to
5 demonstrate infringing behavior on two additional devices (Vibrant and Captivate). However, absent a
6 detailed, claim-by-claim explanation of how each device infringes the particular claims of the '915
7 Patent, I am unable to determine the basis for each infringement opinion expressed in the Singh Report.
8 The vague assertions in the Singh Report regarding review of earlier versions of "analogous" *Android*
9 code running on *some*, unspecified Accused Products are insufficient for me to analyze or rebut.

10 **4. Apple's Alleged Practice Of The '915 Patent**

11 52. I have also been asked to consider whether Apple's products practice the features
12 described in the '915 Patent. Section VI.B of the Singh Report claims that each of "Apple's iPhone and
13 iPad products" "practice the asserted claims of the '915 patent, and their ordinary and intended use
14 practices the asserted method claims of the '915 patent." Singh Report ¶ 295, 298. However, I note that
15 the Singh Report presents no evidence that an Apple product performs the claimed "determining
16 whether the event object invokes a scroll or gesture operation by distinguishing between a single input
17 point applied to the touch-sensitive display interpreted as the scroll operation and two or more input
18 points applied to the touch-sensitive display that are interpreted as the gesture operation" as recited in
19 each of the independent claims. In fact, one of the sections of the "Event Handling Guide for iOS"
20 reference relied upon in the Singh Report suggests that scroll and gesture operations are *not*
21 distinguished since "gestures *includes* ... swiping, panning or dragging a view" which is another way of
22 describing a scroll operation. (Guide at 18, 40.) In other words, a user may scroll with a single input
23 point (*e.g.*, using one finger) *or* with more than one input point (*e.g.*, using more than one finger).
24 Consequently, Singh has not shown that the Apple products distinguish "between a single input point
25 applied to the touch-sensitive display interpreted as the scroll operation and two or more input points
26 applied to the touch-sensitive display that are interpreted as the gesture operation." As described below,
27 the Samsung devices work in the same way—in a manner that is not covered by the claims.

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1 53. [REDACTED] s

2 [REDACTED]
3 However, this testimony, like the "Event Handling Guide for iOS" reference does not show that Apple's
4 products distinguish "between a single input point applied to the touch-sensitive display interpreted as
5 the scroll operation and two or more input points applied to the touch-sensitive display that are
6 interpreted as the gesture operation" as required by the independent claims of the '915 Patent.

7 54. It is my opinion that the Singh Report has failed to make even a threshold showing that
8 any Apple product practices *any* claims of the '915 Patent.

9 **5. Apple's Priority Date For The '915 Patent**

10 55. As discussed in my opening report, it is my understanding that the documentary evidence
11 offered by Apple does not support a conception date for the '915 Patent "no later than the summer and
12 fall of 2005." Nothing in Section VI.C of the Singh Report changes this understanding. I would note
13 that the opinion expressed in the Singh Report that "it appears that the claims of the '915 patent were
14 conceived no later than the summer and fall of 2005" is based largely on a historical narrative that is
15 identical to an interrogatory response previously submitted by counsel for Apple. Singh Report ¶ 300;
16 *see also* Apple's Amended Objections and Response to Interrogatory No. 1.

17 **B. Claim by Claim Non-Infringement Analysis and Basis for My Opinion**

18 **1. '915 Patent, Claim 1 Preamble**

19 56. The Preamble recites:

20 *1. A machine implemented method for scrolling on a touch-sensitive*
21 *display of a device comprising:*

22 57. It is unclear whether the Singh Report finds that the Preamble is limiting. However, I
23 understand that the Preamble is not limiting on this claim.

24 **2. '915 Patent, Claim 1[a]**

25 58. Claim 1[a] recites:

26 *receiving a user input, the user input is one or more input points applied*
27 *to the touch-sensitive display that is integrated with the device;*
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1 59. The Singh Report does not identify any specific component in the Accused Products that
2 receives a user input. Singh merely asserts that "[e]ach '915 Accused Product ... includes a touch-
3 sensitive display," but does not cite to any evidence to establish that any such touch-sensitive displays
4 receive "one or more input points." Further, The Singh Report does not identify any software
5 component that receives or handles the user input from the touch-sensitive display. Singh Report ¶ 308.

6 60. Additionally, I note that any Accused Products that do not receive user input in the form
7 of "one or more input points" do not infringe Claim 1.

8 **3. '915 Patent, Claim 1[b]**

9 61. Claim 1[b] recites:

10 *creating an event object in response to the user input;*

11 62. I note that any Accused Products that do not create an event object in response to user
12 input in the form of "one or more input points" do not infringe this limitation.

13 **4. '915 Patent, Claim 1[c]**

14 63. Claim 1[c] recites:

15 *determining whether the event object invokes a scroll or gesture operation*
16 *by distinguishing between a single input point applied to the touch-*
17 *sensitive display that is interpreted as the scroll operation and two or*
18 *more input points applied to the touch-sensitive display that are*
19 *interpreted as the gesture operation;*

20 64. As discussed above, the Accused Products do not only use the number of touch inputs to
21 determine whether a scroll or gesture operation is performed and therefore do not infringe this
22 limitation.

23 65. Claim 1[c] requires "determining whether the event object invokes a scroll or gesture
24 operation." I have previously submitted an expert report outlining the reasons for my conclusion that
25 Claim 1 of the '915 Patent is indefinite and therefore invalid over the cited prior art.

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1 66. In the alternative, should the court find that Claim 1 is not indefinite and confirms its
2 validity over the cited prior art, it is my opinion that Claim 1 is not infringed by the Accused Products,
3 either literally or under the doctrine of equivalents, for at least the following reasons:

4 **(a) The Event Object does not "invoke"**

5 67. The claim limitation relating to the event object invoking a scroll or gesture operation in
6 Claim 1[c] is preceded by the language "creating an event object in response to the user input" in Claim
7 1[b]. Therefore, both limitations refer to the same "event object."

8 68.

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11 69. I note that Android's MotionEvent object is used to "report movement (mouse, pen,
12 finger, trackball) events. Motion events may hold either absolute or relative movements and other data,
13 depending on the type of device." (See
14 <http://developer.android.com/reference/android/view/MotionEvent.html>.)

15 Some devices can report multiple movement traces at the same time.
16 Multi-touch screens emit one movement trace for each finger. The
17 individual fingers or other objects that generate movement traces are
18 referred to as pointers. Motion events contain information about all of the
19 pointers that are currently active even if some of them have not moved
20 since the last event was delivered.

21 70. (*Id.*)

22 71.

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26 72. The Singh Report goes on to state that the
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73. The Singh Report provides no additional discussion of how the "event object invokes" the scroll or gesture operation, as required by this limitation of Claim 1. See Singh's report ¶¶321-323.

74. For at least these reasons, the Accused Products do not infringe Claim 1 of the '915 Patent, either literally or under the doctrine of equivalents.

(b) The number of touch inputs are not used to determine whether to scroll or scale

75. As described above in Section IV.A.1.a, on the Accused Products a user is able to scroll with one or more fingers (*e.g.*, two-finger scroll, three-finger scroll, etc.). Scrolling with two or more fingers does not meet the limitation of "distinguishing between a single input point . . . interpreted as the scroll operation and two or more input points . . . interpreted as the gesture operation."

76. I note that the Singh Report does not show that the Accused Products invoke a scroll or gesture operation by distinguishing "between a single input point . . . interpreted as the scroll operation and two or more input points . . . interpreted as the gesture operation." Rather, the Singh Report claims that in response to a single input point

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note that the Singh Report does not connect these methods to scroll or gesture operations.

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78. On the Galaxy Tab 10.1 tablet,

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8 81. The Singh Report fails to prove infringement because the '915 Patent's definition of a
9 "gesture," found in the Specification, includes both scrolling and scaling operations. The Accused
10 Products therefore do not meet the claimed limitation of "distinguishing between a single input point . . .
11 interpreted as the scroll operation and two or more input points . . . interpreted as the gesture operation."
12 I also point out that Claim 1 uses the term "the scroll operation" to indicate that this operation is separate
13 and different from "the gesture operation." As set forth in my initial expert report on invalidity, the
14 conflation of scroll operations and gesture operations provided the basis for my conclusion that the '915
15 Patent is indefinite.

16 82. For at least these reasons, the Accused Products do not infringe Claim 1 of the '915
17 Patent either literally or under the doctrine of equivalents.

18 (c) **Additional Comments**

19 83. The Singh Report also relies o

20

21

22 **5. '915 Patent, Claim 1[d]**

23 84. Claim 1[d] recites:

24 *issuing at least one scroll or gesture call based on invoking the scroll or*
25 *gesture operation;*

26 85. As discussed above, systems that do not issue one or more scroll or gesture calls from the
27 event object created in response to user input in the form of "one or more input points" do not infringe

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1 this limitation. Because the Accused Products do not issue any scroll or gesture calls based on the
2 MotionEvent object invoking the scroll or gesture operation, they do not meet this limitation.

3 **6. '915 Patent, Claim 1[e]**

4 86. Claim 1[e] recites:

5 *responding to at least one scroll call, if issued, by scrolling a window*
6 *having a view associated with the event object based on an amount of a*
7 *scroll with the scroll stopped at a predetermined position in relation to the*
8 *user input;*

9 87. As discussed above, systems that do not issue one or more scroll calls from an event
10 object created in response to the user input in the form of "a single input point" does not infringe this
11 limitation.

12 88. Further, the Singh Report fails to show how a "window having a view" is "associated
13 with the" MotionEvent object, as required by this claim limitation.

14 89. Because the Accused Products do not issue a response to any scroll calls by scrolling a
15 window having a view associated with the MotionEvent object, they do not meet this claim limitation.

16 90. For at least these reasons, the Accused Products do not infringe Claim 1 of the '915
17 Patent either literally or under the doctrine of equivalents.

18 **7. '915 Patent, Claim 1[f]**

19 91. Claim 1[f] recites:

20 *responding to at least one gesture call, if issued, by scaling the view*
21 *associated with the event object based on receiving the two or more input*
22 *points in the form of the user input.*

23 92. As discussed above, systems that do not issue one or more scroll or gesture calls from the
24 event object created in response to the user input in the form of "one or more input points" do not
25 infringe this limitation.

26 93. Further, the Singh Report fails to show how "the view" is "associated with the"
27 MotionEvent object, as required by this claim limitation.

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1 94. For at least these reasons, the Accused Products do not infringe Claim 1 of the '915
2 Patent either literally or under the doctrine of equivalents.

3 **8. '915 Patent, Claim 2**

4 95. Claim 2 recites:

5 2. *The method as in claim 1, further comprising: rubberbanding a*
6 *scrolling region displayed within the window by a predetermined*
7 *maximum displacement when the scrolling region exceeds a window edge*
8 *based on the scroll.*

9 96. Claim 2 depends on Claim 1. For the same reasons that the Accused Products do not
10 infringe Claim 1, they do not infringe Claim 2. I incorporate by reference in their entirety my
11 explanations and opinions directed to the non-infringement of Claim 1 of the '915 Patent, above.

12 97. For at least these reasons, the Accused Products do not infringe Claim 2 of the '915
13 Patent either literally or under the doctrine of equivalents.

14 **9. '915 Patent, Claim 3**

15 98. Claim 3 recites:

16 3. *The method as in claim 1, further comprising: attaching scroll*
17 *indicators to a content edge of the window.*

18 99. I have previously submitted an expert report outlining the reasons for my conclusion that
19 Claim 3 of the '915 Patent is indefinite and is invalid over the cited prior art.

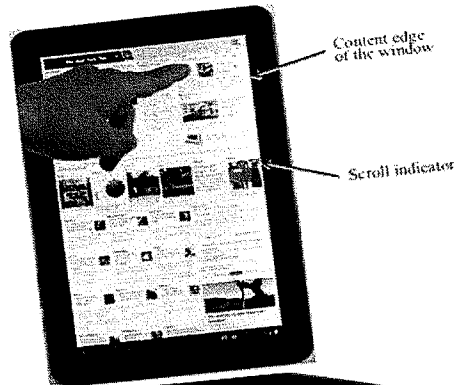
20 100. In the alternative, should the court find that Claim 3 is not indefinite and confirms its
21 validity over the cited prior art, it is my opinion that Claim 3 is not infringed by the Accused Products.

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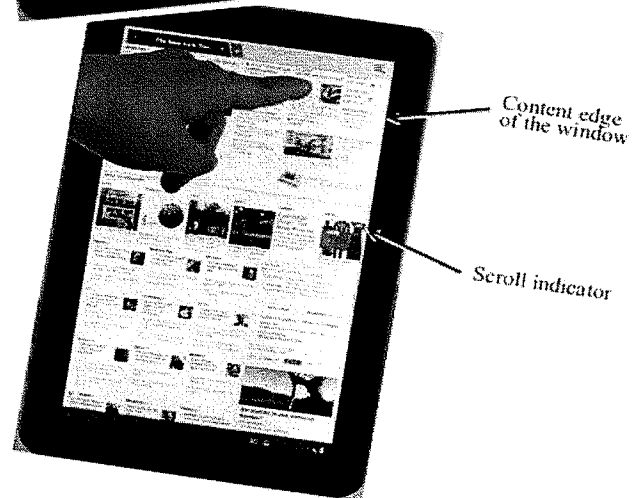
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1 101. I find it noteworthy that even Apple's expert is confused by the difference between claims
2 3 and 4, which describe attaching scroll indicators to a content edge (Claim 3) or to a window edge
3 (Claim 4).

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6 ¶ 363 Content Edge:



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11 ¶ 368 Window Edge:



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19 102. In the Singh Report, the figure showing "attaching scroll indicators to a content edge of
20 the window" (Claim 3) is identical to that showing "attaching scroll indicators to the window edge"
21 (Claim 4). *Compare* Singh Report ¶ 363 with ¶ 368.

22 103. To the extent that Singh actually intended the figures to be identical, I agree. However, I
23 note that the figure in ¶ 368 likely contains an error – the label should read "window edge."

24 104. Claim 3 is dependent on Claim 1. For the reasons previously stated, the Accused
25 Products do not infringe Claim 1 and, therefore, does not infringe Claim 3.

26 105. For at least these reasons, the Accused Products do not infringe Claim 3 of the '915
27 Patent either literally or under the doctrine of equivalents.

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1 **10. '915 Patent, Claim 4**

2 106. Claim 4 recites:

3 *4. The method as in claim 1, further comprising: attaching scroll*
4 *indicators to the window edge.*

5 107. Claim 4 is dependent on Claim 1. For the reasons previously stated, the Accused
6 Products do not infringe Claim 1 and, therefore, does not infringe Claim 4.

7 108. For at least these reasons, the Accused Products do not infringe Claim 4 of the '915
8 Patent either literally or under the doctrine of equivalents.

9 **11. '915 Patent, Claim 5**

10 109. Claim 5 recites:

11 *5. The method as in claim 1, wherein determining whether the event*
12 *object invokes a scroll or gesture operation is based on receiving a drag*
13 *user input for a certain time period.*

14 110. As stated above, the MotionEvent object identified in the Singh Report as the event
15 object created in response to the user input does not invoke a scroll or gesture operation as required by
16 '915 Claim 1[c]. Thus, in my opinion, this limitation is not met and Claim 5 is not infringed.

17 111. Claim 5 is dependent on Claim 1. For the reasons previously stated, the Accused
18 Products do not infringe Claim 1 and, therefore, does not infringe Claim 5.

19 112. For at least these reasons, the Accused Products do not infringe Claim 5 of the '915
20 Patent either literally or under the doctrine of equivalents.

21 **12. '915 Patent, Claim 6**

22 113. Claim 6 recites:

23 *6. The method as in claim 1, further comprising: responding to at least*
24 *one gesture call, if issued, by rotating a view associated with the event*
25 *object based on receiving a plurality of input points in the form of the user*
26 *input.*

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1 114. Claim 6 is dependent on Claim 1. For the reasons previously stated, the Accused
2 Products do not infringe Claim 1 and, therefore, does not infringe Claim 6.

3 115. For at least this reason, the Accused Products do not infringe Claim 6 of the '915 Patent
4 either literally or under the doctrine of equivalents.

5 **13. '915 Patent, Claim 7**

6 116. Claim 7 recites:

7 *7. The method as in claim 1, wherein the device is one of: a data*
8 *processing device, a portable device, a portable data processing device, a*
9 *multi touch device, a multi touch portable device, a wireless device, and a*
10 *cell phone.*

11 117. Claim 7 is dependent on Claim 1. For the reasons previously stated, the Accused
12 Products do not infringe Claim 1 and, therefore, does not infringe Claim 7.

13 118. For at least this reason, the Accused Products do not infringe Claim 7 of the '915 Patent
14 either literally or under the doctrine of equivalents.

15 **14. '915 Patent, Claim 8**

16 119. Claim 8 recites:

17 *8. A machine readable storage medium storing executable program*
18 *instructions which when executed cause a data processing system to*
19 *perform a method comprising:*
20 *[a] receiving a user input, the user input is one or more input points*
21 *applied to a touch-sensitive display that is integrated with the data*
22 *processing system;*
23 *[b] creating an event object in response to the user input;*
24 *[c] determining whether the event object invokes a scroll or gesture*
25 *operation by distinguishing between a single input point applied to the*
26 *touch-sensitive display that is interpreted as the scroll operation and two*
27 *or more input points applied to the touch-sensitive display that are*
28 *interpreted as the gesture operation;*

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1 *[d] issuing at least one scroll or gesture call based on invoking the scroll*
2 *or gesture operation;*

3 *[e] responding to at least one scroll call, if issued, by scrolling a window*
4 *having a view associated with the event object; and*

5 *[f] responding to at least one gesture call, if issued, by scaling the view*
6 *associated with the event object based on receiving the two or more input*
7 *points in the form of the user input.*

8 120. See analysis for Claim 1.

9 121. Just as the Accused Products do not meet the claim limitations set forth in claim elements
10 1[a]-[f], they do not meet the claim limitations set forth in claim elements 8[a]-[f]. It is my opinion that
11 the Accused Products therefore do not infringe Claim 8 either literally or under the doctrine of
12 equivalents.

13 **15. '915 Patent, Claim 9**

14 122. Claim 9 recites:

15 *9. The medium as in claim 8, further comprising: rubberbanding a*
16 *scrolling region displayed within the window by a predetermined*
17 *maximum displacement when the scrolling region exceeds a window edge*
18 *based on the scroll.*

19 123. Claim 9 generally tracks the language of Claim 2. I incorporate by reference in its
20 entirety my explanations and opinions directed to non-infringement of Claims 2 and 8 of the '915 Patent,
21 above.

22 124. Also, Claim 9 depends on Claim 8. For the reasons previously stated, the Accused
23 Products do not infringe Claim 8 and, therefore, does not infringe Claim 9.

24 125. For at least these reasons, the Accused Products do not infringe Claim 9 of the '915
25 Patent either literally or under the doctrine of equivalents.

26 **16. '915 Patent, Claim 10**

27 126. Claim 10 recites:
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1 10. *The medium as in claim 8, further comprising: attaching scroll*
2 *indicators to a content edge of the window.*

3 127. I have previously submitted an expert report outlining the reasons for my conclusion that
4 Claim 10 of the '915 Patent is indefinite and is invalid over the cited prior art.

5 128. In the alternative, should the court find that Claim 10 is not indefinite and confirms its
6 validity over the cited prior art, it is my opinion that Claim 10 is not infringed by the Accused Products.

7 129. In the Singh Report, the figure showing "attaching scroll indicators to a content edge of
8 the window" (Claim 3) is identical to that showing "attaching scroll indicators to the window edge"
9 (Claim 4). *Compare* Singh Report ¶ 363 with ¶ 368.

10 130. To the extent that Singh actually intended the figures to be identical, I agree. However, I
11 note that the figure in ¶ 368 likely contains an error – the label should read "window edge."

12 131. Claim 10 generally tracks the language of Claim 3. I incorporate by reference in their
13 entirety my explanations and opinions directed to non-infringement of Claims 3 and 8 of the '915 Patent,
14 above.

15 132. Also, Claim 10 is dependent on Claim 8. For the reasons previously stated, the Accused
16 Products do not infringe Claim 8 and, therefore, do not infringe Claim 10.

17 133. For at least these reasons, the Accused Products do not infringe Claim 10 of the '915
18 Patent either literally or under the doctrine of equivalents.

19 **17. '915 Patent, Claim 11**

20 134. Claim 11 recites:

21 11. *The medium as in claim 8, further comprising: attaching scroll*
22 *indicators to the window edge.*

23 135. Claim 11 generally tracks the language of Claim 4. I incorporate by reference in their
24 entirety my explanations and opinions directed to non-infringement of Claims 4 and 8 of the '915 Patent,
25 above.

26 136. Claim 11 is dependent on Claim 8. For the reasons previously stated, the Accused
27 Products do not infringe Claim 8 and, therefore, do not infringe Claim 11.

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1 137. For at least these reasons, the Accused Products do not infringe Claim 11 of the '915
2 Patent either literally or under the doctrine of equivalents.

3 **18. '915 Patent, Claim 12**

4 138. Claim 12 recites:

5 *12. The method as in claim 8, wherein determining whether the event*
6 *object invokes a scroll or gesture operation is based on receiving a drag*
7 *user input for a certain time period.*

8 139. As stated above, the MotionEvent object identified in the Singh Report as the event
9 object created in response to the user input does not invoke a scroll or gesture operation as required in
10 '915 Claim 1[c]. Thus, in my opinion, this limitation is not met and Claim 12 is not infringed.

11 140. Claim 12 generally tracks the language of Claim 5. I incorporate by reference in their
12 entirety my explanations and opinions directed to non-infringement of Claims 5 and 8 of the '915 Patent,
13 above.

14 141. Claim 12 is dependent on Claim 8. For the reasons previously stated, the Accused
15 Products do not infringe Claim 8 and, therefore, do not infringe Claim 12.

16 142. For at least these reasons, the Accused Products do not infringe Claim 12 of the '915
17 Patent either literally or under the doctrine of equivalents.

18 **19. '915 Patent, Claim 13**

19 143. Claim 13 recites:

20 *13. The medium as in claim 8, further comprising: responding to at least*
21 *one gesture call, if issued, by rotating a view associated with the event*
22 *object based on receiving a plurality of input points in the form of the user*
23 *input.*

24 144. Claim 13 generally tracks the language of Claim 6. I incorporate by reference in their
25 entirety my explanations and opinions directed to non-infringement of Claims 6 and 8 of the '915 Patent,
26 above.

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1 145. Claim 13 is dependent on Claim 8. For the reasons previously stated, the Accused
2 Products do not infringe Claim 8 and, therefore, do not infringe Claim 13.

3 146. For at least this reason, the Accused Products do not infringe Claim 13 of the '915 Patent
4 either literally or under the doctrine of equivalents.

5 **20. '915 Patent, Claim 14**

6 147. Claim 14 recites:

7 *14. The medium as in claim 8, wherein the device is one of: a data*
8 *processing device, a portable device, a portable data processing device, a*
9 *multi touch device, a multi touch portable device, a wireless device, and a*
10 *cell phone.*

11 148. Claim 14 generally tracks the language of Claim 7. I incorporate by reference in their
12 entirety my explanations and opinions directed to non-infringement of Claims 7 and 8 of the '915 Patent,
13 above.

14 149. Claim 14 is dependent on Claim 8. For the reasons previously stated, the Accused
15 Products do not infringe Claim 8 and, therefore, do not infringe Claim 14.

16 150. For at least this reason, the Accused Products do not infringe Claim 14 of the '915 Patent
17 either literally or under the doctrine of equivalents.

18 **21. '915 Patent, Claim 15**

19 151. Claim 15 recites:

20 *15. An apparatus comprising:*

21 *[a] means for receiving a user input, the user input is one or more input*
22 *points applied to a touch-sensitive display that is integrated with the data*
23 *processing system;*

24 *[b] means for creating an event object in response to the user input;*

25 *[c] means for determining whether the event object invokes a scroll or*
26 *gesture operation by distinguishing between a single input point applied to*
27 *the touch-sensitive display that is interpreted as the scroll operation and*
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1 *two or more input points applied to the touch-sensitive display that are*
2 *interpreted as the gesture operation;*

3 *[d] means for issuing at least one scroll or gesture call based on invoking*
4 *the scroll or gesture operation;*

5 *[e] means for responding to at least one scroll call, if issued, by scrolling*
6 *a window having a view associated with the event object; and*

7 *[f] means for responding to at least one gesture call, if issued, by scaling*
8 *the view associated with the event object based on receiving the two or*
9 *more input points in the form of the user input.*

10 152. See analysis for claims 1 and 8.

11 153. Claim 15 generally tracks the language of Claims 1 and 8. I incorporate by reference in
12 their entirety my explanations and opinions directed to non-infringement of Claims 1 and 8 of the '915
13 Patent, above.

14 154. Just as the Accused Products do not meet the claim limitations set forth in claim elements
15 1[a]-[f] and 8[a]-[f], they do not meet the claim limitations set forth in claim elements 15[a]-[f]. It is my
16 opinion that the Accused Products therefore do not infringe Claim 15 either literally or under the
17 doctrine of equivalents.

18 **22. '915 Patent, Claim 16**

19 155. Claim 16 recites:

20 *16. The apparatus as in claim 15, further comprising: means for*
21 *rubberbanding a scrolling region displayed within the window by a*
22 *predetermined maximum displacement when the scrolling region exceeds*
23 *a window edge based on the scroll.*

24 156. Claim 16 generally tracks the language of Claims 2 and 9. I incorporate by reference in
25 their entirety my explanations and opinions directed to non-infringement of Claims 2, 9, and 15 of the
26 '915 Patent, above.

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1 157. Also, Claim 16 is dependent on Claim 15. For the reasons previously stated, the Accused
2 Products do not infringe Claim 15 and, therefore, do not infringe Claim 16.

3 158. For at least these reasons, the Accused Products do not infringe Claim 16 of the '915
4 Patent either literally or under the doctrine of equivalents.

5 **23. '915 Patent, Claim 17**

6 159. Claim 17 recites:

7 *17. The medium as in claim 15, further comprising: attaching scroll*
8 *indicators to a content edge of the window.*

9 160. I have previously submitted an expert report outlining the reasons for my conclusion that
10 Claim 17 of the '915 Patent is indefinite and is invalid over the cited prior art.

11 161. In the alternative, should the court find that Claim 17 is not indefinite and confirms its
12 validity over the cited prior art, it is my opinion that Claim 17 is not infringed by the Accused Products.

13 162. In the Singh Report, the figure showing "attaching scroll indicators to a content edge of
14 the window" (Claim 3) is identical to that showing "attaching scroll indicators to the window edge"
15 (Claim 4). *Compare* Singh Report ¶ 363 with ¶ 368.

16 163. To the extent that Singh actually intended the figures to be identical, I agree. However, I
17 note that the figure in ¶ 368 likely contains an error – the label should read "window edge."

18 164. Claim 17 generally tracks the language of Claims 3 and 10. I incorporate by reference in
19 their entirety my explanations and opinions directed to non-infringement of Claims 3, 10, and 15 of the
20 '915 Patent, above.

21 165. Also, Claim 17 is dependent on Claim 15. For the reasons previously stated, the Accused
22 Products do not infringe Claim 15 and, therefore, do not infringe Claim 17.

23 166. For at least these reasons, the Accused Products do not infringe Claim 17 of the '915
24 Patent either literally or under the doctrine of equivalents.

25 **24. '915 Patent, Claim 18**

26 167. Claim 18 recites:
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1 18. *The apparatus as in claim 15, further comprising: means for*
2 *attaching scroll indicators to the window edge.*

3 168. Claim 18 generally tracks the language of Claims 4 and 11. I incorporate by reference in
4 their entirety my explanations and opinions directed to non-infringement of Claims 4, 11, and 15 of the
5 '915 Patent, above.

6 169. Also, Claim 18 is dependent on Claim 15. For the reasons previously stated, the Accused
7 Products do not infringe Claim 15 and, therefore, do not infringe Claim 18.

8 170. For at least this reason, the Accused Products do not infringe Claim 18 of the '915 Patent
9 either literally or under the doctrine of equivalents.

10 **25. '915 Patent, Claim 19**

11 171. Claim 19 recites:

12 19. *The apparatus as in claim 15, wherein determining whether the event*
13 *object invokes a scroll or gesture operation is based on receiving a drag*
14 *user input for a certain time period.*

15 172. As stated above, the MotionEvent object identified in the Singh Report as the event
16 object created in response to the user input does not invoke a scroll or gesture operation as required in
17 '915 Claim 1[c]. Thus, in my opinion, this limitation is not met and Claim 19 is not infringed.

18 173. Claim 19 generally tracks the language of Claims 5 and 12. I incorporate by reference in
19 their entirety my explanations and opinions directed to non-infringement of Claims 5, 12, and 15 of the
20 '915 Patent, above.

21 174. Also, Claim 19 is dependent on Claim 15. For the reasons previously stated, the Accused
22 Products do not infringe Claim 15 and, therefore, do not infringe Claim 19.

23 175. For at least this reason, the Accused Products do not infringe Claim 19 of the '915 Patent
24 either literally or under the doctrine of equivalents.

25 **26. '915 Patent, Claim 20**

26 176. Claim 20 recites:
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1 20. *The medium as in claim 15, further comprising: means for responding*
2 *to at least one gesture call, if issued, by rotating a view associated with*
3 *the event object based on receiving a plurality of input points in the form*
4 *of the user input.*

5 177. Claim 20 generally tracks the language of Claims 6 and 13. I incorporate by reference in
6 their entirety my explanations and opinions directed to non-infringement of Claims 6, 13, and 15 of the
7 '915 Patent, above.

8 178. Also, Claim 20 is dependent on Claim 15. For the reasons previously stated, the Accused
9 Products do not infringe Claim 15 and, therefore, do not infringe Claim 20.

10 179. For at least this reason, the Accused Products do not infringe Claim 20 of the '915 Patent
11 either literally or under the doctrine of equivalents.

12 **27. '915 Patent, Claim 21**

13 180. Claim 21 recites:

14 21. *The apparatus as in claim 15, wherein the device is one of: a data*
15 *processing device, a portable device, a portable data processing device, a*
16 *multi touch device, a multi touch portable device, a wireless device, and a*
17 *cell phone.*

18 181. Claim 21 generally tracks the language of Claims 7 and 14. I incorporate by reference in
19 their entirety my explanations and opinions directed to non-infringement of Claims 7, 14, and 15 of the
20 '915 Patent, above.

21 182. Also, Claim 21 is dependent on Claim 15. For the reasons previously stated, the Accused
22 Products do not infringe Claim 15 and, therefore, do not infringe Claim 21.

23 183. For at least this reason, the Accused Products do not infringe Claim 21 of the '915 Patent
24 either literally or under the doctrine of equivalents.

25 **C. Samsung Devices Do Not Indirectly Infringe The Method Claims Of The '915 Patent**

26 184. The Singh Report offers a definition of the term "ordinary and intended use," which is
27 used throughout the '915 infringement analysis:

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1 By "ordinary and intended use" in this section of my Report, I mean
2 actions that virtually *every* user of a Samsung Accused Product would
3 perform when using the Accused Product, and which Samsung encouraged
4 and intended the user to perform.

5 Singh Report ¶ 304.

6 185. In using this term to describe certain features of the Accused Products, the Singh report is
7 apparently attempting to establish that the features are inevitably used by purchasers of Samsung devices
8 such that further evidence of indirect infringement is unnecessary. I disagree that the opinions and
9 evidence offered in the Singh Report support a viable indirect infringement theory. I note that it is not
10 inevitable for users to use the zoom feature much if at all. There are many normal uses of the Accused
11 Products, as covered below in Section IV.D, which do not require zooming. For example, users that use
12 the device for email or texting have no reason to zoom. Furthermore, in many applications running on
13 the Accused Products, a user is not provided with any ability to zoom.

14 **1. The Method Claims Of The '915 Patent Are Not Part Of The "Ordinary And**
15 **Intended Use" Of The Samsung Devices.**

16 186. Each of the '915 method claims asserted by Apple tracks the language of Claim 1 or its
17 dependent claims. Independent Claim 1 requires that an "event object invokes a scroll or gesture
18 operation by distinguishing between a single input point ... that is interpreted as the scroll operation and
19 two or more input points ... that are interpreted as the gesture operation."

20 187. For several reasons, the functionality associated with this limitation is not part of the
21 "ordinary and intended use" of the Accused Products. First, as discussed above, the Accused Products
22 permit scrolling (*i.e.*, panning) with one *or more* input points (*e.g.*, two-finger scroll, three-finger scroll,
23 etc.).

24 188. The Singh Report opines that users would use a single finger to scroll and two or more
25 fingers to zoom. Singh Report at ¶ 304. Based on my experience, users commonly scroll using two or
26 more fingers.

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1 189. For these reasons, I disagree with the Singh Report that using a single finger to scroll and
2 two or more fingers to zoom as required by the independent claims of the '915 Patent is part of the
3 "ordinary and intended use" of the Accused Products, or that "virtually all users of the Samsung
4 Accused Products would engage in direct infringement of the '915 Patent." *See* Singh Report ¶ 305.

5 **2. The Singh Report Cites No Evidence Of Direct Infringement By Users And**
6 **No Evidence That Samsung Intended Users To Engage In The Acts**
7 **Constituting Infringement With Intent That They Infringe.**

8 190. Finally, I understand that a necessary prerequisite to an indirect infringement theory is
9 evidence of direct infringement by another. The Singh Report cites to no evidence and I am unaware of
10 any evidence establishing that any person or entity caused the Accused Products to engage in the
11 allegedly infringing behavior at any time.

12 191. Further, under my understanding of the law, an inducement of infringement theory
13 requires the alleged inducer to not only intend the acts constituting direct infringement be done, but to
14 intend such acts *with knowledge* that they constitute infringement. Although the Singh report repeatedly
15 attempts (unsuccessfully) to show that Samsung "encouraged and intended" users to engage in the acts
16 alleged to constitute infringement, I would note that the Report does not even address the question
17 whether Samsung had knowledge that the acts allegedly encouraged constituted direct infringement of
18 the '915 Patent. Further, I understand from counsel that to prove indirect infringement Apple must
19 demonstrate that the infringer knew or should have known that their acts encouraged a direct
20 infringement of the patent by others. I note that the Singh Report does not address this question either.

21 192. There are numerous non-infringing uses of the phone that are not related to the features
22 of the '915 Patent. For example, if a user exclusively uses one or more of the following applications,
23 there is no implication of any of the features of the '915 Patent accused in the Singh Report:

- 24 • Media player
- 25 • Phone
- 26 • Calculator
- 27 • Contacts

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1 193. A common non-infringing use of the Accused Products would be to use the phone in
2 conjunction with personal information management functions—without use of the browser functions
3 which is the only function mentioned as allegedly infringing the '915 Patent in the Singh Report. It is
4 my opinion that the Singh Report does not make even a threshold showing that any of the method claims
5 of the '915 Patent are indirectly infringed.

6 **D. Other Non-infringing Alternatives**

7 194. As stated in Section IV.B of this report, it is my opinion that the Accused Products do not
8 infringe any claims of the '915 Patent. I note that there are several additional non-infringing alternatives
9 which can be implemented in the Accused Products which are simple, if not trivial, to implement.
10 Further, several of these non-infringing alternatives (e.g., tilt zoom, over-scroll glow, dimensional
11 distortion, and list stretching) have already been implemented in at least some of the Accused Products.

12 195. The Singh Report indicates that any design around of the '915 Patent would be
13 undesirable because the resultant product would have much less functionality:

14 In my opinion, any such re-design would make the Accused Products
15 much less useable, render them inconvenient for users, and deprive them
16 of intuitive functionality that smartphone and tablet users have come to
17 expect. (¶ 456)

18 196. I disagree. As the following sections illustrate, there are many easy to implement and
19 cost effective non-infringing alternatives that would provide at least equivalent functionality to the
20 current modes of operation.

21 **1. Removing the test for number of inputs**

22 197.

23 as

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198. While I disagree that the Accused Products infringe the '915 Patent for the reasons explained above, a straightforward and fully functional non-infringing alternative is available.

199. [REDACTED]

[REDACTED] The proposed modification would not read on Claim 1[c], which requires "determining whether the event object invokes a scroll or gesture operation by distinguishing between a single input point applied to the touch-sensitive display interpreted as the scroll operation and two or more input points applied to the touch-sensitive display that are interpreted as the gesture operation."

200. I further note that the Android's MotionEvent class already contains the information required:

Some devices can report multiple movement traces at the same time. Multi-touch screens emit one movement trace for each finger. The individual fingers or other objects that generate movement traces are referred to as pointers. Motion events contain information about all of the

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1 pointers that are currently active even if some of them have not moved
2 since the last event was delivered.

3 201. (See <http://developer.android.com/reference/android/view/MotionEvent.html>.)

4 202. [REDACTED]

5 [REDACTED]
6 203. The proposed non-infringing alternative clearly does not infringe the '915 Patent because

7 [REDACTED]
8 [REDACTED], as required by Claim 1[c]:

9 *determining whether the event object invokes a scroll or gesture operation*
10 *by distinguishing between a single input point applied to the touch-*
11 *sensitive display that is interpreted as the scroll operation and two or*
12 *more input points applied to the touch-sensitive display that are*
13 *interpreted as the gesture operation;*

14 204. (emphasis added.) Rather, [REDACTED]

15 [REDACTED].
16 **2. Tilt zoom**

17 205. Tilt zoom is a non-infringing, commercially acceptable alternative to multi-touch
18 gesturing that Samsung has offered in at least the Galaxy Tab 10.1 before this suit was even filed. The
19 tilt zoom feature requires users to activate the tilt zoom mode by placing their thumbs in the lower left
20 and right corners of the screen and then tilting the entire device downwards and upwards to zoom in and
21 out, respectively. This functionality adds the extra step of initiating a scaling mode (*i.e.*, "gesture
22 operation"), by touching the surface and *then* tilting the tablet.

23 206. If the Accused Products were found to infringe the '915 Patent, using the tilt zoom
24 functionality in lieu of a traditional multi-touch gesture (*e.g.*, pinch-to-zoom) would not implicate the
25 "two or more input points applied to the touch-sensitive display that are interpreted as a gesture
26 operation." Tilt zoom requires two input points to activate the zooming mode, in addition to tilting the
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1 entire device, which is interpreted as the gesture operation--not merely two or more touch input points
2 standing alone.

3 207. In my opinion, since the functionality is already present in devices such as the Galaxy
4 Tab 10.1, this non-infringing alternative would be inexpensive and easy to implement.

5 **3. Over-scroll glow**

6 208. The over-scroll glow is a non-infringing, commercially acceptable alternative to
7 "rubberbanding" that Samsung already offers in at least the Galaxy S II.

8 209. Instead of a rubberbanding animation, the over-scroll glow shows a "glow" on the edge
9 of the screen that the user is attempting to scroll past. For example, when a user scrolls to the end of a
10 list of contacts and continues to attempt to scroll down, an over-scroll glow will be visible on the edge of
11 the list. The over-scroll glow can be animated to "illuminate" more bright depending upon a user input
12 in the same manner that the elasticity of the rubberbanding animation may depend on a user input.

13 210. In my opinion, since the functionality is already present in devices such as the Galaxy S
14 II, this non-infringing alternative would be inexpensive and easy to implement.

15 **4. Dimensional distortion**

16 211. Dimensional distortion is a non-infringing, commercially acceptable alternative to
17 "rubberbanding" that Samsung already offers in at least the Galaxy S II (Gallery application).

18 212. Instead of a rubberbanding animation, dimensional distortion manipulates content into
19 what appears to be another "dimension" (e.g. different from the two dimensional flat plane).
20 Dimensional distortion contorts content that the user is attempting to scroll past. For example, when a
21 user scrolls to the end of a list of pictures in the Gallery application and continues to attempt to scroll
22 across, dimensional distortion will manipulate the list of available pictures.

23 213. The dimensional distortion effect can be animated to move the content "deeper" into the
24 third dimensional view depending upon a user input in the same manner that the elasticity of the
25 rubberbanding animation may depend on a user input.

26 214. In my opinion, since the functionality is already present in devices such as the Galaxy S
27 II, this non-infringing alternative would be inexpensive and easy to implement.

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1 **5. List stretching**

2 215. List stretching is a non-infringing, commercially acceptable alternative to
3 "rubberbanding" that Samsung already offers in at least one Accused Product.

4 216. Instead of a rubberbanding animation, list stretching manipulates content such that the
5 space between corresponding rows of content increases as a user attempts to scroll past an edge of the
6 content. For example, when a user scrolls to the end of a list of contracts and continues to attempt to
7 scroll, content stretching will increase the amount of space between each contact row

8 217. The list stretching effect can be animated to move the rows content farther apart
9 depending upon a user input in the same manner that the elasticity of the rubberbanding animation may
10 depend on a user input.

11 218. In my opinion, since the functionality is already present in at least one Accused Product,
12 this non-infringing alternative would be inexpensive and easy to implement.

13 **E. Response to the Hauser Report Regarding Functionality Described in the '915**
14 **Patent.**

15 219. I have also been asked to respond to technical descriptions relating to the '915 Patent in
16 the Hauser Report. The Hauser Report explains that, "In order to obtain reliable data from a conjoint
17 exercise, it is important to have clear descriptions of the features and levels." (Hauser ¶ 63.) The report
18 includes several videos showing "touchscreen capability levels (for both smartphones and tablets) . . .
19 chosen such that they would represent a product that included a non-infringing alternative for one or
20 more of the patents at issue." (Id.) Specifically, the Hauser Report says:

21 The touchscreen capability levels in the smartphone survey were chosen to
22 capture the following Patents: (i) '828, (ii) '915, and (iii) combination of
23 '915, '381, and '163. The touchscreen capability levels in the tablet survey
24 were chosen to capture the following Patents: (i) '607, (ii) '915, and (iii)
25 combination of '915, '381, and '163.

26 (Hauser at footnote 42.)

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1 220. The Hauser Report does not attempt to explain the functionality claimed by the '915
2 Patent, saying only that, "The specific technical descriptions of the touchscreen capability levels and
3 information about their functionality were provided to me by counsel. I have not reviewed or interpreted
4 the patent claims myself and do not have a professional opinion on that matter." (Hauser ¶ 63.)

5 221. With respect to the '915 Patent, the most relevant feature in the survey is the "Full Multi-
6 Touch, Auto-Switch (1 to 2 Fingers)" capability. However, the second video demonstration in both the
7 phone and tablet surveys introduces a mode referred to as "Very Limited Multi-Touch, Auto-Switch (1
8 to 2 Fingers)." This mode is misleading both with respect to the functionality claimed by the '915 Patent
9 and the behavior of Accused Products. A mobile phone or tablet computer with a touchscreen that
10 works occasionally, but unreliably, is not claimed by the '915 Patent. Samsung's Accused Products do
11 not work this way. For that matter, even Apple's phones and tablets do not exhibit the behavior shown
12 in these videos.

13 222. The videos are also irrelevant to any possible non-infringing alternatives for the '915
14 Patent. The second Phone Touchscreen demonstrative (found at
15 http://www.surveyplus.com/survey1202asps/play_video.asp?vid=32) includes a mode that "doesn't
16 always reliably detect intent of contact with touchscreen." Somewhat similarly, the second Tablet
17 Touchscreen demonstrative (http://www.surveyplus.com/survey1202asts/play_video.asp?vid=32)
18 "works in a single-touch mode," with "very limited multi-touch capability," and some multi-touch
19 gestures "like pinch to zoom, will work, but with poor response." An unreliable touchscreen also does
20 not represent a non-infringing alternative to the '915 Patent, as Apple would claim it still infringed when
21 the device responded properly to the user's touch input.

22 223. Accordingly, to the extent the opinion on the value of the '915 Patent in the Hauser
23 Report reflects any results from the survey participants' responses to these demonstratives, those
24 opinions are invalid.

1 **V. OPINIONS ON NON-INFRINGEMENT OF THE '163 PATENT**

2 224. As stated above, I understand that there is no literal infringement if even one limitation
3 recited in an asserted claim is not found in the accused product. The sections below identify specific
4 limitations that, in my opinion, are not found in the Accused Products.

5 225. My opinion is that none of the Asserted Claims of the '163 Patent are literally infringed
6 by the Accused Products for the reasons set forth below. In addition, none of the Asserted Claims are
7 infringed under the doctrine of equivalents because the Accused Products perform a substantially
8 different function in a substantially different way to achieve a substantially different result.

9 **A. General Problems with the Singh Report Infringement Analysis of the '163 Patent**

10 **1. It Is My Understanding That The Singh Report Opinions Regarding Indirect**
11 **Infringement Were Not Properly Disclosed In Apple's Infringement**
12 **Contentions.**

13 226. The opinions of the Singh Report rely on an indirect theory of infringement with respect
14 to the method claims of the '163 Patent. The opinion, as stated by the Singh report, is that "the Samsung
15 defendants have indirectly infringed the method claims of the '163 Patent." Singh Report at ¶ 41.
16 However, it is my understanding that Apple's P.L.R. 3-1 infringement contentions did not previously
17 disclose that it would be relying on this type of infringement theory with regard to the '163 Patent. The
18 cover pleadings to Apple's infringement contentions do contain the following boiler-plate paragraph
19 regarding indirect infringement generally:

20 Samsung induces the infringement of others under 35 U.S.C. § 271(b) to
21 the extent it contracts, instructs, or otherwise induces others to make, use,
22 offer to sell, sell, or import the Accused Instrumentalities within or into
23 the United States. Samsung also contributes to the infringement of others
24 under 35 U.S.C. § 271(c) to the extent it offers to sell, sells, or imports
25 part or all of the Accused Instrumentalities within or into the United
26 States.

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1 227. Apple P.L.R. 3-1 Infringement Contentions Section I.D. But, Apple's claim-by-claim
2 infringement allegations (specifically, Exhibits 10, 11, & 12 in support of Apple's P.L.R. 3-1
3 Infringement Contentions) make no mention of an induced or contributory infringement theory and do
4 not at all distinguish between the method and apparatus/system claims of the '163 Patent. Further, the
5 infringement contentions do not appear to identify any instances of direct infringement by downstream
6 users.

7 228. Because Apple failed to adequately raise its indirect infringement allegations earlier, I
8 must re-visit my non-infringement opinions and consider theories of inducement and contributory
9 infringement for the first time since the service of the Singh Report. Accordingly, I reserve the right to
10 supplement this report if new information regarding this theory of infringement develops.

11 **2. Opinions Expressed in the Singh Report Fail To Adequately Address The**
12 **Vast Majority Of Samsung "Accused Products."**

13 229. The claim-by-claim infringement analysis contained in the Singh Report, as well as the
14 claim charts offered in support, Singh Report Exhibits 4 and 5, purport to address only 2 (Galaxy Tab
15 10.1 and Galaxy S II) of the 31 products characterized in the Report as infringing. *Compare, e.g.* Singh
16 Report ¶ 38, *with* ¶ 43. Rather than engage in a detailed analysis with respect to the 29 remaining
17 products, the Singh Report merely offers the following statement at the conclusion of the analysis for
18 each major claim of the '163 Patent: "[b]ased on my inspection of Samsung source code for each major
19 release of Android running on the Samsung Accused Products (Android 2.1, 2.2, 2.3, and 3.1), I believe
20 that each Samsung Accused Product includes similar computer code that [meets the relevant claim
21 limitation of the '163 Patent]." Singh Report ¶¶ 85, 109, 119, 160, 212.

22 230. The Singh Report claim charts do make stray references to prior versions of "analogous"
23 Android code. Additionally, Exhibits 13 and 14 in support of the Singh Report do purport to
24 demonstrate infringing behavior on 2 additional devices (Vibrant and Galaxy S Showcase). However,
25 absent a more detailed, claim-by-claim explanation of how each of these additional devices infringe the
26 particular claims of the '163 Patent, I am unable to determine the basis for each infringement opinion in
27 the Singh Report. Vague assertions to earlier versions of "analogous" *Android* code running on *some*,

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1 unspecified Accused Products, do not establish that the remaining devices behave the same or similarly
2 to the devices the Singh Report has chosen to analyze in-depth.

3 231. Because the other Accused Products were not discussed in detail, it is my understanding
4 that the Singh Report has failed to make even a threshold showing of infringement with respect to all but
5 the Galaxy Tab 10.1 and the Galaxy S II product. Thus I have only been able to rebut the Singh Report's
6 infringement accusations with respect to the Accused Products at the level of specificity they were
7 addressed by the Singh Report. In the event Apple supplements the Singh Report to analyze any
8 Accused Product in further detail, I reserve the right to amend this Report accordingly.

9 **3. Apple's Alleged Practice Of The '163 Patent**

10 232. Section IV.B of the Singh Report offers opinions that each of the "iPhone 4S, iPhone 4,
11 iPhone 3GS, iPhone 3G, iPhone, iPad2, and iPad" "practice the asserted apparatus and system claims of
12 the '163 patent, and their ordinary and intended use practices the asserted method claims of the '163
13 patent." Singh Report ¶¶ 33, 34. I have been asked to consider this opinion, and whether it correctly
14 concludes that the Apple products practice the asserted claims of the '163 Patent.

15 233. I would note that these conclusions appear to be based on an examination of the behavior
16 of a single product (iPhone 4) viewing a single webpage (the *New York Times* homepage). Singh Report
17 ¶ 33. Further, the Singh Report discussion regarding the behavior of this single product appears to
18 discuss *only* the functionalities associated with Claim 2 of the '163 Patent. *Id.*

19 234. [REDACTED] e

20 [REDACTED] h
21 [REDACTED] However, absent a more detailed,
22 claim-by-claim explanation of how each of the Apple devices in question practice claims of the '163
23 Patent, I am unable to determine the basis for each opinion expressed in the Singh Report.

24 235. It is therefore my opinion that the Singh Report has failed to make even a threshold
25 showing that the iPhone 4S, iPhone 3GS, iPhone 3G, iPad 2, and iPad practice *any* claims of the '163
26 Patent. Further, The Singh Report has failed to make even a threshold showing that the iPhone 4
27 practices any claims other than Claim 2 of the '163 Patent.

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1 **4. Apple's Priority Date For The '163 Patent**

2 236. As discussed in my opening report, it is my understanding that the documentary evidence
3 offered by Apple does not support a conception date for the '163 Patent "in or before" March 2006.
4 Nothing in Section IV.C of the Singh Report changes this understanding. I would note that the opinion
5 in the Singh Report that "it appears that the claims of the '163 Patent . . . were conceived of . . . in or
6 before March 2006," is based largely on a historical narrative that is identical to an interrogatory
7 response previously submitted by counsel for Apple. Singh Report ¶ 37.

8 **B. Claim-by-Claim Non-Infringement Analysis and Basis for My Opinion**

9 **1. '163 Patent, Claim 2 Preamble**

10 237. '163 Patent, Claim 2 preamble recites:

11 2. *A computer-implemented method, comprising;*

12 238. It is unclear whether the Singh Report views the Preamble as limiting. I understand that
13 the Preamble is not limiting in this claim. In the event the Court construes the preamble as limiting, I
14 reserve the right to supplement this Report accordingly.

15 **2. '163 Patent, Claim 2[a]**

16 239. '163 Patent, Claim 2[a] recites:

17 *at a portable electronic device with a touch screen display;*

18 240. For all but two of the Accused Products, the Singh Report provides no support for the
19 accusation of infringement of this element of Claim 2. Rather, the Singh Report makes the following
20 conclusory infringement assertion:

21 Each of the other Samsung Accused Products is also a portable electronic
22 device with a touch screen display. Therefore, the ordinary and intended
23 use of the Samsung Accused Products infringes this element of claim 2.

24 Singh Report ¶ 53.

25 241. As noted above, the Singh Report only offers support for the Galaxy S II and Galaxy Tab
26 10.1. Should Apple offer new evidence that supports the Singh Report assertions regarding Samsung's
27 other Accused Products, I reserve the right to supplement my Report.

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1 242. For at least these reasons, the Accused Products do not infringe Claim element 2[a] of the
2 '163 Patent, either literally or under the doctrine of equivalents.

3 **3. '163 Patent, Claim 2[b]**

4 243. '163 Patent, Claim 2[b] recites:

5 *displaying at least a portion of a structured electronic document on the*
6 *touch screen display, wherein the structured electronic document*
7 *comprises a plurality of boxes of content;*

8 244. It is my opinion that the Singh Report does not establish that the Accused Products
9 display a "structured electronic document" comprising a "plurality of boxes of content." Exhibits 4 and
10 5 in support of the Singh Report depict websites, but I note that "boxes" have been superimposed in
11 order to give the appearance that the website itself groups content into visually distinct square or
12 rectangular regions.

13 245. I have operated both the Galaxy S II and Galaxy Tab 10.1 devices viewing a single
14 webpage (the *New York Times* homepage). There are no clearly delineated "plurality of boxes of
15 content" displayed for the "structured electronic document." In fact, the websites depicted in the Singh
16 Report contain no visual cues that alert the user that certain regions are grouped together into a visually
17 distinct "boxes of content." From the perspective of a user, the websites cited in the Singh Report, as
18 displayed on the Accused Products, generally contain unbounded groupings of text or graphics.



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1 246. For at least these reasons, the Accused Products do not infringe Claim element 2[b] of the
2 '163 Patent, either literally or under the doctrine of equivalents.

3 **4. '163 Patent, Claim 2[d]**

4 247. '163 Patent, Claim 2[d] recites:

5 *determining a first box in the plurality of boxes at the location of the first*
6 *gesture;*

7 248. It is my opinion that the Singh Report also fails to establish that the Accused Products
8 practice the limitation "determining a first box in the plurality of boxes at the location of the first
9 gesture." As I read this claim limitation, the entire phrase "in the plurality of boxes at the location of the
10 first gesture" modifies the reference to a "first box." Therefore, to meet this limitation, the Accused
11 Products must be capable of determining a single box, out of a plurality of boxes (*e.g.*, nested boxes)
12 that *each* correspond to the location of the first gesture.

13 249. My reading of this Claim limitation is bolstered by the way the drafters of the '163 Patent
14 drafted the limitation corresponding to the second gesture. There, the Patent requires "detecting a
15 second gesture on a second box other than the first box." Thus, in my opinion, where the drafters
16 intended to cover a "detecting" of a *single* box corresponding to the location of a gesture, they phrased
17 the limitation in terms of the "second gesture" of the '163 Patent. By contrast, when the drafters
18 intended a "determining" of a single box out of *multiple* boxes corresponding to a location of a gesture,
19 they phrased the claim limitation in terms of the "first gesture" of the '163 Patent.

20 250. The Singh report does not identify what the Accused Products do, if anything, to
21 determine a first box in a plurality of boxes content. None of Exhibits 4, 5, 10, 11, 12, or 13 show a
22 plurality of boxes at the location of the first gesture. In each exhibit, the location of the first gesture
23 corresponds to merely a *single* box. Further, my use of the Galaxy S II and Galaxy Tab 10.1 devices
24 shows that the determination of a "first box" among a "plurality of boxes of content" is not performed.
25 From my use of the devices, it appears that a given gesture at a particular location corresponds to merely
26 a single box. There is no indication that the software does anything to determine a first box *from* a
27 plurality of boxes.

28

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1 251. Additionally, from my use of the Galaxy S II and Galaxy Tab 10.1, I have noticed that at
2 least some portion of the area depicted within the superimposed boundaries of the Singh Report do not
3 behave as if they were part of the "box" of content. For instance, with respect to the "boxes" relating to
4 a news article, the Singh Report boundaries are drawn such that the article headline is included within.
5 However, when I perform a gesture directly on the article headline, the device does not perform the
6 subsequent enlarging and translating steps I would expect if the headline were, in fact, part of the "box"
7 of content. Instead, in such cases, an entirely new web page is rendered on the touch-screen display.
8 This observation further confirms the flaws in how the Singh Report defines a "box" of content with
9 superimposed, arbitrary boundaries.

10 252. For at least these reasons, the Accused Products do not infringe Claim element 2[d] of the
11 '163 Patent, either literally or under the doctrine of equivalents.

12 **5. '163 Patent, Claim 2[e]**

13 253. '163 Patent, Claim 2[e] recites:

14 *enlarging and translating the structured electronic document so that the*
15 *first box is substantially centered on the touch screen display;*

16 254. In my opening report, I opined that the term "substantially centered" was indefinite
17 because it would not reasonably apprise persons ordinarily skilled in the art as to the degree and type of
18 centering required.

19 255. For the purposes of my invalidity report and to the extent the Court does not find the term
20 "substantially centered" indefinite, I assumed that "substantially centered" meant "centered" in at least
21 one direction. Of the 4 devices depicted in video exhibits attached in the Singh Report, I note that at
22 least one device (the Vibrant as shown in Exhibit 13), does not even meet this requirement with respect
23 to the first box upon the user's first gesture.

24 256. Alternatively, because I have always maintained that the term "substantially centered" is
25 indefinite and open to multiple, interpretations, I would further note that to the extent the Court adopts a
26 construction of "substantially centered" that requires centering in both the horizontal and vertical
27 directions, two additional devices fail to meet this limitation. The Galaxy Tab 10.1 (as shown in
28

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1 Exhibits 4 and 12) and the Galaxy S Showcase (as shown in Exhibit 14) do not meet this limitation as
2 they show the first box being centered in only the horizontal dimension:

- 3 • Exhibit 4 (Galaxy Tab 10.1, claim chart) – first gesture may appear to result in only
4 horizontal centering (although, it is difficult to tell because the top of the photograph is
5 cut-off to give the appearance that the first box might be vertically centered);
- 6 • Exhibit 5 (Galaxy S II, claim chart) – first gesture may appear to result in both horizontal
7 and vertical centering (but, centering in both directions appears to be due to the fortuity
8 that the box was initially centered in both dimensions prior to the first gesture);
- 9 • Exhibit 11 (Galaxy S II, video) – first gesture may result in horizontal and vertical
10 centering (but, centering in both directions appears to be due to the fortuity that the box
11 was initially centered in both dimensions prior to the first gesture);
- 12 • Exhibit 12 (Tab 10.1, video) – first gesture may result in only horizontal centering of the
13 first box;
- 14 • Exhibit 13 (Vibrant, video) – first gesture does not result in centering of the first box in
15 either dimension;
- 16 • Exhibit 14 (Galaxy S Showcase, video) – first gesture may result in only horizontal
17 centering (in fact, first box goes from being slightly higher than center to slightly lower
18 than center) of the first box.

19 257. To the extent "substantially centered" is found to be an indefinite term, the Singh Report
20 has not and cannot establish that the Accused Products substantially center the first box.

21 258. For at least these reasons, the Accused Products do not infringe Claim element 2[e] of the
22 '163 Patent, either literally or under the doctrine of equivalents.

23 **6. '163 Patent Claim 2[f]**

24 259. '163 Patent Claim 2[f] recites:

25 *while the first box is enlarged, detecting a second gesture on a second box*
26 *other than the first box;*
27
28

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1 260. I incorporate by reference in its entirety my explanation and opinions directed to non-
2 infringement of Claim element 2[b] of the '163 Patent above.

3 261. For at least these reasons, the Accused Products do not infringe Claim element 2[f] of the
4 '163 Patent, either literally or under the doctrine of equivalents.

5 **7. '163 Patent Claim 2[g]**

6 262. '163 Patent Claim 2[g] recites:

7 *and in response to detecting the second gesture, translat[ing] the*
8 *structured electronic document so that the second box is substantially*
9 *centered on the touch screen display.*

10 263. I incorporate by reference in its entirety my explanation and opinions directed to non-
11 infringement of Claim element 2[e] of the '163 Patent above.

12 264. Again, many of the Singh Report exhibits do not show the structured electronic document
13 "translat[ing] so that the second box is substantially centered on the touch screen display." Each exhibit
14 offered in the Singh Report appears to show the structured electronic document translating in *only* the
15 horizontal dimension in response to a second gesture. Therefore, in the vast majority of circumstances,
16 the second box is at least vertically offset from center after the second gesture:

- 17 • Exhibit 4 (Galaxy Tab 10.1, claim chart) – unclear whether second gesture results in
18 vertical centering because the top of the photograph is cut-off (but, translation appears to
19 have taken place in only the horizontal dimension, so if the second box is vertically
20 centered, it is only due to the fortuity that the first box was vertically offset from center
21 and the user selected a second box that happened to be vertically centered prior to the
22 second gesture);
- 23 • Exhibit 5 (Galaxy S II, claim chart) – second gesture may appear to result in horizontal
24 and vertical centering (but, translation appears to have been required in only in the
25 horizontal direction as the second box was vertically aligned with the first box prior to
26 the second gesture);

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- 1 • Exhibit 11 (Galaxy S II) – second gesture may result in horizontal and vertical centering
2 (but, translation was required in only the horizontal direction as the second box was
3 vertically aligned with the first box prior to the second gesture);
- 4 • Exhibit 12 (Tab 10.1) – second gesture may result in only horizontal centering
5 (translation occurs only in the horizontal dimension);
- 6 • Exhibit 13 (Vibrant) – second gesture may result in only horizontal centering (translation
7 occurs only in the horizontal dimension);
- 8 • Exhibit 14 (Showcase) – second gesture may result in only horizontal centering
9 (translation occurs only in the horizontal dimension).

10 265. To the extent "substantially centered" is found to be an indefinite term, the Singh Report
11 has not and cannot establish that the Accused Products substantially center the second box.

12 266. For at least these reasons, the Accused Products do not infringe Claim element 2[g] of the
13 '163 Patent, either literally or under the doctrine of equivalents.

14 **8. '163 Patent, Claim 4**

15 267. '163 Patent, Claim 4 recites:

16 *method of claim 2 wherein the structured electronic document is a web*
17 *page.*

18 268. Claim 4 depends on Claim 2. For the reasons previously stated, the Accused Products do
19 not infringe Claim 2 and, therefore, do not infringe Claim 4.

20 269. For at least these reasons, the Accused Products do not infringe Claim 4 of the '163
21 Patent, either literally or under the doctrine of equivalents.

22 **9. '163 Patent, Claim 5**

23 270. '163 Patent, Claim 5 recites:

24 *method of claim 2 wherein the structured electronic document is an HTML*
25 *or XML document.*

26 271. Claim 5 depends on Claim 2. For the reasons previously stated, the Accused Products do
27 not infringe Claim 2 and, therefore, do not infringe Claim 5.

28

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1 272. For at least these reasons, the Accused Products do not infringe Claim 5 of the '163
2 Patent, either literally or under the doctrine of equivalents.

3 **10. '163 Patent, Claim 6**

4 273. '163 Patent, Claim 6 recites:

5 *method of claim 2 wherein [a] the structured electronic document has a*
6 *document width and a document length; [b] the touch screen display has a*
7 *display width; and [c] displaying at least a portion of the structured*
8 *electronic document comprises scaling the document width to fit within the*
9 *display width independent of the document length.*

10 274. The Singh Report states

11 on the Galaxy Tab 10.1,

12
13
14
15
16 width.

17 Singh Report at ¶ 108.

18 275. I disagree with the Singh Report's interpretation of Claim 6 as well as its interpretation of
19 the way in which the Samsung source code operates.

20 276. An electronic document, prior to being rendered on a touch screen display, has no
21 inherent width that can be used as an independent variable in determining a scale factor. As used by the
22 '163 Patent, the "document width" can only refer to a characteristic of the structured electronic document
23 when rendered by the portable electronic device browser and displayed on the touch screen display. In
24 other words, a document *only* has a "width" at a particular zoom level. The code routines cited by the
25 Singh Report in ¶ 99 verify this.

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1 277. Therefore, the Singh Report is incorrect when it states the
2
3
4

6 278. My analysis of the scaling operation in the Accused Products is bolstered by the
7
8
9
10

11 279. It is my opinion that the Samsung devices do not meet claim limitation 6[a] because the
12 document has no "width" prior to the scaling operation that takes place at step 6[c]. The Singh Report
13 fails to establish infringement of Claim 6 because the scale of a document is not calculated as a function
14 of document width.

15 280. Additionally, Claim 6 depends on Claim 2. For the reasons previously stated, the
16 Accused Products do not infringe Claim 2 and, therefore, do not infringe Claim 6.

17 281. For at least these reasons, the Accused Products do not infringe Claim 6 of the '163
18 Patent, either literally or under the doctrine of equivalents.

19 **11. '163 Patent, Claim 7**

20 282. '163 Patent, Claim 7 recites:

21 *method of claim 6 wherein the touch screen display is rectangular with a*
22 *short axis and a long axis; the display width corresponds to the short axis*
23 *when the structured electronic document is seen in portrait view; and the*
24 *display width corresponds to the long axis when the structured electronic*
25 *document is seen in landscape view.*

26 283. Claim 7 depends on Claims 2 and 6. For the reasons previously stated, the Accused
27 Products do not infringe Claims 2 or 6 and, therefore, do not infringe Claim 7.
28

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1 284. For at least these reasons, the Accused Products do not infringe Claim 7 of the '163
2 Patent, either literally or under the doctrine of equivalents.

3 **12. '163 Patent, Claim 8**

4 285. '163 Patent, Claim 8 recites:

5 *method of claim 2 wherein the plurality of boxes are defined by a style*
6 *sheet language.*

7 286. The Singh Report fails to establish that the Accused Products practice the method of
8 Claim 2 wherein the plurality of boxes are defined by a style sheet language. Although the Singh Report
9 cites to the HTML code of the *New York Times* website at Exhibit 10, there is no indication in the
10 Report where or how the cited HTML uses style sheets to define the plurality of boxes. It is my opinion
11 that the Report's conclusory statement fails to even make a threshold showing that the Accused Products
12 practice Claim 8.

13 287. Additionally, Claim 8 depends on Claim 2. For the reasons previously stated, the
14 Accused Products do not infringe Claim 2 and, therefore, do not infringe Claim 8.

15 288. For at least these reasons, the Accused Products do not infringe Claim 8 of the '163
16 Patent, either literally or under the doctrine of equivalents.

17 **13. '163 Patent, Claim 9**

18 289. '163 Patent, Claim 9 recites:

19 *method of claim 8 wherein the style sheet language is a cascading style*
20 *sheet language.*

21 290. Claim 9 depends on Claims 2 and 8. For the reasons previously stated, the Accused
22 Products do not infringe Claims 2 or 8 and, therefore, do not infringe Claim 9.

23 291. For at least these reasons, the Accused Products do not infringe Claim 9 of the '163
24 Patent, either literally or under the doctrine of equivalents.

25 **14. '163 Patent, Claim 10**

26 292. '163 Patent, Claim 10 recites:

27 *method of claim 2 wherein the first gesture is a finger gesture.*
28

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1 293. Claim 10 depends on Claim 2. For the reasons previously stated, the Accused Products
2 do not infringe Claim 2 and, therefore, do not infringe Claim 10.

3 294. For at least these reasons, the Accused Products do not infringe Claim 10 of the '163
4 Patent, either literally or under the doctrine of equivalents.

5 **15. '163 Patent, Claim 11**

6 295. '163 Patent, Claim 11 recites:

7 *method of claim 2 wherein the first gesture is a stylus gesture.*

8 296. The Singh Report does not opine on this claim. It is my assumption that the Singh Report
9 offers no opinion on Claim 11 because the Accused Products do not practice the method of Claim 2
10 wherein the first gesture is a stylus gesture. I agree. In the event that Apple supplements the Singh
11 Report to include an analysis of Claim 11, I reserve the right to supplement this rebuttal report
12 accordingly.

13 297. For at least these reasons, the Accused Products do not infringe Claim 11 of the '163
14 Patent, either literally or under the doctrine of equivalents.

15 **16. '163 Patent, Claim 12**

16 298. '163 Patent, Claim 12 recites:

17 *method of claim 2 wherein the first gesture is a tap gesture.*

18 299. Claim 12 depends on Claim 2. For the reasons previously stated, the Accused Products
19 do not infringe Claim 2 and, therefore, do not infringe Claim 12.

20 300. For at least these reasons, the Accused Products do not infringe Claim 12 of the '163
21 Patent, either literally or under the doctrine of equivalents.

22 **17. '163 Patent, Claim 13**

23 301. '163 Patent, Claim 13 recites:

24 *method of claim 12 wherein the first gesture is a double tap with a single*
25 *finger, a double tap with two fingers, a single tap with a single finger, or a*
26 *single tap with two fingers.*

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1 302. Claim 13 depends on Claim 2. For the reasons previously stated, the Accused Products
2 do not infringe Claim 2 and, therefore, do not infringe Claim 13.

3 303. For at least these reasons, the Accused Products do not infringe Claim 13 of the '163
4 Patent, either literally or under the doctrine of equivalents.

5 **18. '163 Patent, Claim 17**

6 304. '163 Patent, Claim 17 recites:

7 *method of claim 2 wherein enlarging and translating the structured*
8 *electronic document comprises displaying at least a portion of the second*
9 *box of the plurality of boxes of content on the touch screen display.*

10 305. Claim 17 depends on Claim 2. For the reasons previously stated, the Accused Products
11 do not infringe Claim 2 and, therefore, do not infringe Claim 17.

12 306. For at least these reasons, the Accused Products do not infringe Claim 17 of the '163
13 Patent, either literally or under the doctrine of equivalents.

14 **19. '163 Patent, Claim 18**

15 307. '163 Patent, Claim 18 recites:

16 *method of claim 2 wherein enlarging comprises expanding the first box so*
17 *that the width of the first box is substantially the same as the width of the*
18 *touch screen display.*

19 308. In my invalidity report, I opined that the term "substantially the same" was indefinite
20 because it does not appraise persons ordinarily skilled in the art as to how closely the width of the first
21 box must approach the width of the touch-screen display to fall within the scope of the claim. Exhibits
22 11 and 14 of the Singh Report (demonstrating the behavior of the Galaxy S II and the Galaxy S
23 Showcase, respectively) are illustrative. Both exhibits show a method wherein the first box is enlarged
24 such that some portions of other boxes are still visible within the display width. It is unclear to me
25 whether this space – between the edges of the first box and the edge of the touch screen display –
26 preclude the devices from practicing the claim limitation of Claim 18 because the term "substantially"
27 the same is indefinite.

28

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1 309. As for Exhibit 12 (demonstrating the behavior of the Galaxy Tab 10.1), this exhibit does
2 not demonstrate an enlarging of the first box such that its width is "substantially" the same as the width
3 of the touch-screen display. In Exhibit 12, the width of the enlarged first box appears to occupy, at
4 most, one-third the width of the touch-screen display. In fact, the Singh Report actually appears to
5 concede that the Galaxy Tab 10.1 does not literally infringe Claim 18 of the '163 Patent. *See Singh*
6 *Report* at ¶ 148 ("I believe that all of the Samsung Accused Products, *with the exception of the Galaxy*
7 *Tab 10.1*, similarly expand the first box . . . so that it is substantially the same width as the touch screen
8 display) (emphasis added).

9 310. Similarly, the Samsung Vibrant, as demonstrated in Exhibit 13, does not enlarge the first
10 box such that its width is "substantially" the same as the width of the touch-screen display. In Exhibit
11 13, the width of the enlarged first box appears to occupy, at most, the right-most half of the width of the
12 touch-screen display.

13 311. I further disagree with the Singh Report that failure of the Galaxy Tab 10.1 and the
14 Vibrant to expand the first box such that width is "substantially" the same as the width of the touch-
15 screen display is an "insubstantial[]" difference from the recited claim language. "Scaling" or "fitting"
16 content to the width of the touch-screen display is an important, non-trivial step in the method of Claim
17 18. As evidenced by Claim 6, even the drafters of the '163 Patent itself envisioned that filling content
18 width to the width of the touch-screen display is an important feature. Furthermore, this "fitting"
19 content to the width of the display is the only limitation that separates Claim 18 from Claim 2. I
20 therefore disagree that any device that does not expand the first box to the degree specified by the literal
21 language of Claim 18 can nonetheless infringe under the doctrine of equivalents. A lesser degree of
22 enlarging is a different function, performed in a different manner, that achieves a different result.

23 312. Additionally, Claim 18 depends on Claim 2. For the reasons previously stated, the
24 Accused Products do not infringe Claim 2 and, therefore, do not infringe Claim 18.

25 313. For at least these reasons, the Accused Products do not infringe Claim 18 of the '163
26 Patent, either literally or under the doctrine of equivalents.

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1 **20. '163 Patent, Claim 27**

2 314. '163 Patent, Claim 27 recites:

3 *method of claim 2 including detecting a third gesture on the enlarged*
4 *second box; and in response to detecting the third gesture reducing in size*
5 *the displayed portion of the structured electronic document.*

6 315. The Singh Report appears to concede that at least one device, the Galaxy S II Epic 4G
7 Touch does not literally practice the method of Claim 27. See Singh Report at ¶ 154 I disagree with the
8 Singh Report's conclusion that the Epic 4G Touch practices a method that is "insubstantially different"
9 from the method of Claim 27. Singh Report ¶ 155. Reducing in size the displayed portion of the
10 structured electronic document in response to a third gesture is an important feature, and the only
11 limitation that separates Claim 27 from Claim 2. The Epic 4G Touch does not infringe the method of
12 Claim 27 under the doctrine of equivalents because it performs a substantially different function, in a
13 substantially different manner, to achieve a substantially different result.

14 316. Additionally, Claim 27 depends on Claim 2. For the reasons previously stated, the
15 Accused Products do not infringe Claim 2 and, therefore, do not infringe Claim 27.

16 317. For at least these reasons, the Accused Products do not infringe Claim 27 of the '163
17 Patent, either literally or under the doctrine of equivalents.

18 **21. '163 Patent, Claim 28**

19 318. '163 Patent, Claim 28 recites:

20 *method of claim 27 wherein the first box returns to its size prior to being*
21 *enlarged.*

22 319. Claim 28 depends on Claims 2 and 27. For the reasons previously stated, the Accused
23 Products do not infringe Claim 2 or 27 and, therefore, do not infringe Claim 28.

24 320. For at least these reasons, the Accused Products do not infringe Claim 28 of the '163
25 Patent, either literally or under the doctrine of equivalents.

26 **22. '163 Patent, Claim 29**

27 321. '163 Patent, Claim 29 recites:

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1 *method of claim 27 wherein the third gesture and the first gesture are the*
2 *same type of gesture.*

3 322. Claim 29 depends on Claims 2 and 27. For the reasons previously stated, the Accused
4 Products do not infringe Claims 2 or 27 and, therefore, do not infringe Claim 29.

5 323. For at least these reasons, the Accused Products do not infringe Claim 29 of the '163
6 Patent, either literally or under the doctrine of equivalents.

7 **23. '163 Patent, Claim 30**

8 324. '163 Patent, Claim 30 recites:

9 *method of claim 27 wherein the third gesture is a finger gesture.*

10 325. Claim 30 depends on Claims 2 and 27. For the reasons previously stated, the Accused
11 Products do not infringe Claims 2 or 27 and, therefore, do not infringe Claim 30.

12 326. For at least these reasons, the Accused Products do not infringe Claim 30 of the '163
13 Patent, either literally or under the doctrine of equivalents.

14 **24. '163 Patent, Claim 31**

15 327. '163 Patent, Claim 31 recites:

16 *method of claim 27 wherein the third gesture is a stylus gesture.*

17 328. The Singh Report does not opine on this claim. It is my assumption that the Singh Report
18 offers no opinion on Claim 31 because the Accused Products do not practice the method of Claim 27
19 wherein the third gesture is a stylus gesture. I agree. In the event Apple supplements the Singh Report
20 to include an analysis of Claim 31, I reserve the right to supplement this rebuttal report accordingly.

21 329. For at least these reasons, the Accused Products do not infringe Claim 31 of the '163
22 Patent, either literally or under the doctrine of equivalents.

23 **25. '163 Patent, Claim 32**

24 330. '163 Patent, Claim 32 recites:

25 *method of claim 27 wherein the third gesture is a tap gesture.*

26 331. Claim 32 depends on Claims 2 and 27. For the reasons previously stated, the Accused
27 Products do not infringe Claims 2 or 27 and, therefore, do not infringe Claim 32.

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1 332. For at least these reasons, the Accused Products do not infringe Claim 32 of the '163
2 Patent, either literally or under the doctrine of equivalents.

3 **26. '163 Patent, Claim 33**

4 333. '163 Patent, Claim 33 recites:

5 *method of claim 32 wherein the third gesture is a double tap with a single*
6 *finger, a double tap with two fingers, a single tap with a single finger, or a*
7 *single tap with two fingers.*

8 334. Claim 30 depends on Claims 2, 27, and 32. For the reasons previously stated, the
9 Accused Products do not infringe Claims 2, 27, or 32 and, therefore, do not infringe Claim 33.

10 335. For at least these reasons, the Accused Products do not infringe Claim 33 of the '163
11 Patent, either literally or under the doctrine of equivalents.

12 **27. '163 Patent, Claim 34**

13 336. '163 Patent, Claim 34 recites:

14 *method of claim 2 wherein the second gesture and the first gesture are the*
15 *same type of gesture.*

16 337. In each of the Accused Products, the first gesture that causes the enlarging and translating
17 step of Claim 2 is a double tap. The second gesture that causes the document to translate to substantially
18 center a second box is a single tap. The Singh Report glosses over this difference by opining simply that
19 "both the first gesture and the second gesture are finger gestures." Singh Report ¶ 177. But this does
20 not mean they are the "same" finger gestures.

21 338. As evidenced by Claims 13, 33, and 38, the drafters of the '163 Patent itself recognized
22 that there is indeed a difference between a "single tap" and a "double tap" gesture. Further, the fact that
23 the drafters included claims covering "tap" gestures as distinct from "finger" gestures demonstrates that
24 not all "finger" gestures are necessarily the same type of gesture. Finally, in the analysis of Claim 29,
25 the Singh Report cites the fact that the first and third gestures of the Accused Products are both double
26 taps and there is therefore an "identity" between the gestures. Singh Report ¶ 165. Even the Singh
27 Report therefore recognizes that both gestures must be double taps to be the "same" gesture.

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1 339. Therefore, the Singh Report opinion that the first and second gestures are both "finger"
2 gestures does not establish that the devices practice Claim 34. Because the first and second gestures on
3 the Accused Products are different "finger" gestures, it is my opinion that Claim 34 is not literally
4 infringed.

5 340. Additionally, Claim 34 depends on Claim 2. For the reasons previously stated, the
6 Accused Products do not infringe Claim 2 and, therefore, do not infringe Claim 34.

7 341. For at least these reasons, the Accused Products do not infringe Claim 34 of the '163
8 Patent, either literally or under the doctrine of equivalents.

9 **28. '163 Patent, Claim 35**

10 342. '163 Patent, Claim 35 recites:

11 *method of claim 2 wherein the second gesture is a finger gesture.*

12 343. Claim 35 depends on Claim 2. For the reasons previously stated, the Accused Products
13 do not infringe Claim 2 and, therefore, do not infringe Claim 35.

14 344. For at least these reasons, the Accused Products do not infringe Claim 35 of the '163
15 Patent, either literally or under the doctrine of equivalents.

16 **29. '163 Patent, Claim 36**

17 345. '163 Patent, Claim 36 recites:

18 *method of claim 2 wherein the second gesture is a stylus gesture.*

19 346. The Singh Report does not opine on this claim. It is my assumption that the Singh Report
20 did not offer an opinion on Claim 36 because the Accused Products do not practice the method of Claim
21 2 wherein the third gesture is a stylus gesture. I agree. In the event Apple supplements the Singh Report
22 to include an analysis of Claim 36, I reserve the right to supplement this rebuttal report accordingly.

23 347. For at least these reasons, the Accused Products do not infringe Claim 36 of the '163
24 Patent, either literally or under the doctrine of equivalents.

25 **30. '163 Patent, Claim 37**

26 348. '163 Patent, Claim 37 recites:

27 *method of claim 2 wherein the second gesture is a tap gesture.*

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1 349. Claim 37 depends on Claim 2. For the reasons previously stated, the Accused Products
2 do not infringe Claim 2 and, therefore, do not infringe Claim 37.

3 350. For at least these reasons, the Accused Products do not infringe Claim 37 of the '163
4 Patent, either literally or under the doctrine of equivalents.

5 **31. '163 Patent, Claim 38**

6 351. '163 Patent, Claim 38 recites:

7 *method of claim 2 wherein the second gesture is a double tap with a single*
8 *finger, a double tap with two fingers, a single tap with a single finger, or a*
9 *single tap with two fingers.*

10 352. Claim 38 depends on Claim 2. For the reasons previously stated, the Accused Products
11 do not infringe Claim 2 and, therefore, do not infringe Claim 38.

12 353. For at least these reasons, the Accused Products do not infringe Claim 38 of the '163
13 Patent, either literally or under the doctrine of equivalents.

14 **32. '163 Patent, Claim 39**

15 354. '163 Patent, Claim 39 recites:

16 *method of claim 2 including detecting a swipe gesture on the touch screen*
17 *display; and in response to detecting the swipe gesture, translating the*
18 *displayed portion of the structured electronic document on the touch*
19 *screen display.*

20 355. Claim 39 depends on Claim 2. For the reasons previously stated, the Accused Products
21 do not infringe Claim 2 and, therefore, do not infringe Claim 39.

22 356. For at least these reasons, the Accused Products do not infringe Claim 39 of the '163
23 Patent, either literally or under the doctrine of equivalents.

24 **33. '163 Patent, Claim 40**

25 357. '163 Patent, Claim 40 recites:

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1 *method of claim 39 wherein translating comprises vertical, horizontal, or*
2 *diagonal movement of the structured electronic document on the touch*
3 *screen display.*

4 358. Claim 40 depends on Claims 2 and 39. For the reasons previously stated, the Accused
5 Products do not infringe Claims 2 or 39 and, therefore, do not infringe Claim 40.

6 359. For at least these reasons, the Accused Products do not infringe Claim 40 of the '163
7 Patent, either literally or under the doctrine of equivalents.

8 **34. '163 Patent, Claim 41**

9 360. '163 Patent, Claim 41 recites:

10 *method of claim 39 wherein the swipe gesture is a finger gesture.*

11 361. Claim 41 depends on Claims 2 and 39. For the reasons previously stated, the Accused
12 Products do not infringe Claims 2 or 39 and, therefore, do not infringe Claim 41.

13 362. For at least these reasons, the Accused Products do not infringe Claim 41 of the '163
14 Patent, either literally or under the doctrine of equivalents.

15 **35. '163 Patent, Claim 42**

16 363. '163 Patent, Claim 42 recites:

17 *method of claim 39 wherein the swipe gesture is a stylus gesture.*

18 364. The Singh Report does not opine on this claim. It is my assumption that the Singh Report
19 did not opine on Claim 42 because he believes that the Accused Products do not practice the method of
20 Claim 39 wherein the third gesture is a stylus gesture. I agree. In the event Apple supplements the
21 Singh Report include an analysis of Claim 42, I reserve the right to supplement this rebuttal report
22 accordingly.

23 365. For at least these reasons, the Accused Products do not infringe Claim 42 of the '163
24 Patent, either literally or under the doctrine of equivalents.

25 **36. '163 Patent, Claim 47**

26 366. '163 Patent, Claim 47 recites:

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1 *method of claim 2 including detecting a change in orientation of the*
2 *device, in response to detecting a change in orientation of the device,*
3 *rotating the displayed portion of the structured electronic document on the*
4 *touch screen display by 90 degrees.*

5 367. The claim limitation states that the "displayed portion" of the structured electronic
6 document is rotated by 90 degrees. However, in each of the exhibits cited by the Singh report, when the
7 portable electronic device is rotated 90 degrees from a "portrait-view" orientation to a "landscape-view"
8 orientation, the entire "displayed portion" of the structured electronic document is *not* rotated 90
9 degrees. Instead, the document is rescaled, and part of the previously "displayed portion" of the
10 document is cut-off:



18 368. Similarly, when the device is rotated from a "landscape-view" orientation to a "portrait-
19 view" orientation, it is not the previously "displayed portion" of the structured electronic document that
20 is rotated by 90 degrees; rather it is a scaled-down version of the previously "displayed portion" of the
21 document that is rotated by 90 degrees.

22 369. Additionally, Claim 47 depends on Claim 2. For the reasons previously stated, the
23 Accused Products do not infringe Claim 2 and, therefore, do not infringe Claim 47.

24 370. For at least these reasons, the Accused Products do not infringe Claim 47 of the '163
25 Patent, either literally or under the doctrine of equivalents.

26 **37. '163 Patent, Claim 48**

27 371. '163 Patent, Claim 48 recites:
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1 *method of claim 2 including detecting a multi-finger de-pinch gesture on*
2 *the touch screen display, in response to detecting the multi-finger de-pinch*
3 *gesture, enlarging a portion of the displayed portion of the structured*
4 *electronic document on the touch screen display in accordance with a*
5 *position of the multi-finger de-pinch gesture and an amount of finger*
6 *movement in the multi-finger de-pinch gesture.*

7 372. Claim 48 depends on Claim 2. For the reasons previously stated, the Accused Products
8 do not infringe Claim 2 and, therefore, do not infringe Claim 48.

9 373. For at least these reasons, the Accused Products do not infringe Claim 48 of the '163
10 Patent, either literally or under the doctrine of equivalents.

11 **38. '163 Patent, Claim 49**

12 374. '163 Patent, Claim 49 recites:

13 *A graphical user interface on a portable electronic device with a touch*
14 *screen display, comprising: [a] at least a portion of a structured*
15 *electronic document, wherein the structured electronic document*
16 *comprises a plurality of boxes of content; wherein: [b] in response to*
17 *detecting a first gesture at a location on the portion of the structured*
18 *electronic document: a first box in the plurality of boxes at the location of*
19 *the first gesture is determined; [c] the structured electronic document is*
20 *enlarged and translated so that the first box is substantially centered on*
21 *the touch screen display; [d] while the first box is enlarged, a second*
22 *gesture is detected on a second box other than the first box; and [e] in*
23 *response to detecting the second gesture, the structured electronic*
24 *document is translated so that the second box is substantially centered on*
25 *the touch screen display.*

26 375. Claim 49 generally tracks the language of Claim 2. I incorporate by reference in its
27 entirety my explanations and opinions directed to non-infringement of Claim 2 of the '163 Patent above.

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1 376. Just as the Accused Products do not meet the claim limitations set forth in Claim
2 elements 2[b], 2[d]-[g], they do not meet the claim limitations set forth in claim elements 49[a]-[e]. It is
3 my opinion that the Accused Products therefore do not infringe claim 49.

4 377. Furthermore, Claim 49 covers a "graphical user interface on a portable electronic device
5 with a touch screen display, *comprising*: at least a portion of a structured electronic document"
6 (Emphasis added). In analyzing Claim 49, the Singh Report omits the "comprising" portion of the claim
7 limitation, merely opining that the claim limitation of subpart [a] is met because "[t]his is the same
8 limitation present in element [b] of claim 2." Singh Report ¶ 221. This is not true. Element [b] of
9 Claim 2 covers a *method* of "*displaying* at least a portion of a structured electronic document"
10 (Emphasis added). Element [a] of Claim 49 covers a graphical user interface *system* "*comprising* at
11 least a portion of a structured electronic document." (Emphasis added).

12 378. It is my opinion that to read on Claim 49, the browser application of a portable electronic
13 device (*i.e.*, the graphical user interface) must "comprise" or embody a structured electronic document
14 such as a web page. The Singh Report offers no opinion as to whether the Accused Products "comprise"
15 a structured electronic document.

16 379. For at least these reasons, the Accused Products do not infringe Claim 49 of the '163
17 Patent, either literally or under the doctrine of equivalents.

18 **39. '163 Patent, Claim 50**

19 380. '163 Patent, Claim 50 recites:

20 *A portable electronic device, comprising: [a] a touch screen display; [b]*
21 *one or more processors; [c] memory; and [d] one or more programs,*
22 *wherein the one or more programs are stored in the memory and*
23 *configured to be executed by the one or more processors, the one or more*
24 *programs including: [e] instructions for displaying at least a portion of a*
25 *structured electronic document on the touch screen display, wherein the*
26 *structured electronic document comprises a plurality of boxes of content;*
27 *[f] instructions for detecting a first gesture at a location on the displayed*
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1 *portion of the structured electronic document; [g] instructions for*
2 *determining a first box in the plurality of boxes at the location of the first*
3 *gesture; [h] instructions for enlarging and translating the structured*
4 *electronic document so that the first box is substantially centered on the*
5 *touch screen display; [i] instruction for, while the first box is enlarged, a*
6 *second gesture is detected on a second box other than the first box; and [j]*
7 *instructions for, in response to detecting the second gesture, the structured*
8 *electronic document is translated so that the second box is substantially*
9 *centered on the touch screen display.*

10 381. Claim 50 generally tracks the language of Claim 2. I incorporate by reference in its
11 entirety my explanations and opinions directed to non-infringement of Claim 2 of the '163 Patent above.

12 382. Just as the Accused Products do not meet the claim limitations set forth in Claim
13 elements 2[b], 2[d]-[g], they do not meet the claim limitations set forth in Claim elements 50[e], 50[f]-
14 [j]. It is my opinion that the Accused Products therefore do not infringe Claim 50.

15 383. Furthermore, as discussed in my opening invalidity report, it is impossible to tell whether
16 the algorithms embodied in the Accused Products infringe Claim 50 because this claim provides no
17 guidance as to what particular "instructions" are used by the "portable electronic device." Without
18 guidance (either in the claim or in the Patent specification) as to the nature of the these "instructions"
19 one ordinarily skilled in the art would be unable to assess the scope of this claim. As stated in my
20 invalidity report, Claim 50 is indefinite for a failure to disclose sufficient corresponding structure to
21 apprise a person of ordinary skill as to what "instructions" or "algorithms" are being claimed.

22 384. For at least these reasons, the Accused Products do not infringe Claim 50 of the '163
23 Patent, either literally or under the doctrine of equivalents.

24 **40. '163 Patent, Claim 51**

25 385. '163 Patent, Claim 51 recites:

26 *A non-transitory computer readable storage medium storing one or more*
27 *programs, the one or more programs comprising instructions, which when*
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1 *executed by a portable electronic device with a touch screen display,*
2 *cause the device to: [a] display at least a portion of a structured*
3 *electronic document on the touch screen display, wherein the structured*
4 *electronic document comprises a plurality of boxes of content; [b] detect a*
5 *first gesture at a location on the displayed portion of the structured*
6 *electronic document; [c] determine a first box in the plurality of boxes at*
7 *the location of the first gesture; [d] enlarge and translate the structured*
8 *electronic document so that the first box is substantially centered on the*
9 *touch screen display; [e] while the first box is enlarged, detect a second*
10 *gesture on a second box other than the first box; and [f] in response to*
11 *detecting the second gesture, translate the structured electronic document*
12 *so that the second box is substantially centered on the touch screen*
13 *display.*

14 386. Claim 51 generally tracks the language of Claim 2. I incorporate by reference in its
15 entirety my explanations and opinions directed to non-infringement of Claim 2 of the '163 Patent above.

16 387. Just as the Accused Products do not meet the claim limitations set forth in Claim
17 elements 2[b], 2[d]-[g], they do not meet the claim limitations set forth in Claim elements 51[a], 51[c]-
18 [f]. It is my opinion that the Accused Products therefore do not infringe Claim 51.

19 388. For at least these reasons, the Accused Products do not infringe Claim 51 of the '163
20 Patent, either literally or under the doctrine of equivalents.

21 **41. '163 Patent, Claim 52**

22 389. '163 Patent, Claim 52 recites:

23 *A portable electronic device with a touch screen display, comprising: [a]*
24 *means for displaying at least a portion of a structured electronic*
25 *document on the touch screen display, wherein the structured electronic*
26 *document comprises a plurality of boxes of content; [b] means for*
27 *detecting a first gesture at a location on the displayed portion of the*
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1 *structured electronic document; [c] means for determining a first box in*
2 *the plurality of boxes at the location of the first gesture; [d] means for*
3 *enlarging and translating the structured electronic document so that the*
4 *first box is substantially centered on the touch screen display; [e] means*
5 *for, while the first box is enlarged, a second gesture is detected on a*
6 *second box other than the first box; and [f] means for, in response to*
7 *detecting the second gesture, the structured electronic document is*
8 *translated so that the second box is substantially centered on the touch*
9 *screen display.*

10 390. Claim 52 generally tracks the language of Claim 2. I incorporate by reference in its
11 entirety my explanations and opinions directed to non-infringement of Claim 2 of the '163 Patent above.

12 391. Just as the Accused Products do not meet the claim limitations set forth in Claim
13 elements 2[b], 2[d]-[g], they do not meet the claim limitations set forth in Claim elements 52[a], 52[c]-
14 [f]. It is my opinion that the Accused Products therefore do not infringe Claim 52.

15 392. Furthermore, as discussed in my opening invalidity report, it is impossible to tell whether
16 the algorithms embodied in the Accused Products infringe Claim 52 because this claim provides no
17 guidance as to what particular "means" are used by the "portable electronic device." Without guidance
18 (either in the claim or in the Patent specification) as to the nature of the these "means" one ordinarily
19 skilled in the art would be unable to assess the scope of this claim. As stated in my invalidity report,
20 Claim 52 is indefinite for a failure to disclose sufficient corresponding structure to apprise a person of
21 ordinary skill as to what "instructions" or "algorithms" are being claimed.

22 393. The Singh Report does cite to a portion of the Patent specification describing a "touch
23 screen display coupled to one or more special or general purpose processors programmed with special-
24 purpose software to execute an algorithm, the special-purpose software including computer instructions
25 for displaying at least a portion of a structured electronic document on the touch screen display." Singh
26 Report at ¶ 262. However, it is my opinion that this "structure" is insufficient to apprise a person
27 ordinarily skilled in the art as to what is being claimed by Claim 52. The cited provision provides no
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1 clue as to the nature of the "special-purpose software," or "computer instructions." No specific
2 algorithm or code sequence is disclosed.

3 394. For at least these reasons, the Accused Products do not infringe Claim 52 of the '163
4 Patent, either literally or under the doctrine of equivalents.

5 **C. Samsung Devices Do Not Indirectly Infringe The Method Claims Of The '163 Patent**

6 395. The Singh Report offers a definition of the term "ordinary and intended use" which is
7 used throughout the '163 infringement analysis:

8 By "ordinary and intended use" in this section of my Report, I mean
9 actions that virtually *every* user of a Samsung Accused Product would
10 perform when using the Accused Product, and which Samsung encouraged
11 and intended the user to perform.

12 Singh Report ¶ 41.

13 396. In using this term to describe certain features of the Accused Products, the Singh Report
14 is apparently attempting to establish that the features are inevitably used by purchasers of Samsung
15 devices such that further evidence of indirect infringement is unnecessary. I disagree with this
16 characterization of the method claims and issue, and I disagree that the opinions and evidence offered in
17 the Singh Report support a viable indirect infringement theory.

18 **1. The Method Claims Of The '163 Patent Are Not Part Of The "Ordinary And**
19 **Intended Use" Of The Samsung Devices.**

20 397. Each of the '163 method claims asserted by Apple is or depends on independent Claim 2.
21 Independent Claim 2 requires the use of a "second gesture" on a second box of the structured electronic
22 document, "while the first box is enlarged," in order to "translate[] the structured electronic document so
23 that the second box is substantially centered on the touch screen display."

24 398. For several reasons, the functionality associated with this second gesture is not part of the
25 "ordinary and intended use" of the Accused Products. First, the allegedly infringing behavior in each of
26 the Accused Products involve a second gesture that is the same or at least similar to the first gesture.
27 However, immediately after achieving an enlarging/zooming effect with the first gesture, it is my
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1 opinion that a user would be unlikely to associate the same or similar gesture with a completely different
2 panning/translating operation. Indeed the "tool tip" contextual information that is provided on the
3 Galaxy Tab 10.1 (and which is cited in the Singh Report) states "double tap to zoom in an out," but
4 makes no reference to a panning or translating operation in response to a second tapping gesture. The
5 use of the second gesture to re-center the view on a second box is therefore neither intuitive, nor certain
6 to be discovered or used by users of the Accused Products.

7 399. Second, the functionality associated with this second gesture is redundant. Each of the
8 Accused Products include a feature wherein a user can translate a structured electronic document in any
9 direction in response to a finger drag across the touch-screen display. Using this finger drag method, a
10 user is able to pan across a structured electronic document and consequently re-center the view on a
11 second box of content with a gesture that is truly distinct from the first, "tap-to-zoom" gesture. In fact,
12 the Samsung user manuals cited by the Singh Report – which state "Touch and drag your finger on the
13 screen to navigate pages, and to reposition pages within the screen" – describe this finger drag method
14 and thus teach away from using a second gesture to re-center the view on a second area of interest. *See*
15 APLNDC-Y0000058046; APLNDC-Y0000060424; APLNDC-Y0000061493; APLNDC-
16 Y0000061697; APLNDC-Y0000061866; APLNDC-Y0000063918; APLNDC-Y0000065351;
17 APLNDC-Y0000066627; APLNDC-Y0000065800.

18 400. The Singh Report opines that "[o]nce a user zooms in using a double tap, it is
19 overwhelmingly likely – given the relatively small size of the displays of the Accused Products and
20 typical practice in using touch screen devices – that he will tap again on a different box" Singh
21 Report at ¶ 41. But, in my opinion the finger drag method is far more intuitive and permits the user a far
22 greater degree of freedom in repositioning the view of a zoomed-in document than does the second
23 gesture described by the '163 Patent. I believe that the finger drag is the method that nearly all users of
24 the Accused Products will employ in repositioning the enlarged view of a structured electronic
25 document.

26 401. For these reasons, I disagree with the Singh Report that the functionality of the second
27 gesture of Claim 2 of the '163 Patent is part of the "ordinary and intended use" of the Accused Products,
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1 or that "virtually all users of the Samsung Accused Products would engage in direct infringement of the
2 '163 Patent." *See* Singh Report ¶ 41.

**2. Samsung Does Not Encourage Or Instruct Its Users To Infringe The Method
3 Claims Of The '163 Patent**

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5 402. The Singh Report states that the use of documentation in manuals and "tool tips"
6 associated with the Accused Products indicates that Samsung "encouraged and intended" the use of the
7 method claims disclosed by the '163 Patent:

8 For example, manuals included with Samsung Accused Products instruct
9 users to "[t]ap the screen twice to zoom in or out" when viewing a web
10 page in the Browser application. [citations omitted] In addition, each of
11 the Samsung Accused Products, with the exception of the Galaxy Tab
12 10.1, includes a "tool tip" (i.e., contextual instructions to the user in a pop-
13 up window) that is programmed to appear automatically when a user first
14 uses the Browser application. The tool tip displays the text "Tip: double
15 tap to zoom in and out."

16 Singh Report ¶ 41.

17 403. Noticeably absent from the Singh Report's description of these "tool tips" and user
18 manuals, however, is any suggestion that Samsung encouraged users to undertake the "second gesture"
19 in order to infringe Apple's Asserted Claims. For example, although the tool tip instructs users to
20 "double tap to zoom in and out," there is no similar contextual information given once the user is
21 zoomed-in that suggests tapping on a "second box" to re-center the view.

22 404. Similarly, each of the user manuals cited by the Singh Report make absolutely no
23 mention using a tap gesture to re-center a zoomed-in view on a second box of content. Each of these
24 manuals instructs users to (i) "Tap the screen twice to zoom in or out"; and (ii) "Touch and drag your
25 finger on the screen to navigate pages, and to reposition pages within the screen." APLNDC-
26 Y0000058046; APLNDC-Y0000060424; APLNDC-Y0000061493; APLNDC-Y0000061697;
27 APLNDC-Y0000061866; APLNDC-Y0000063918; APLNDC-Y0000065351; APLNDC-

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1 Y0000066627; APLNDC-Y0000065800. Therefore, rather than encouraging users to practice the
2 method of Claim 2, the manuals of the Accused Products instruct users to practice the finger-drag
3 method, which, as I described above, is far more functional and intuitive.

4 405. Other than the cited "tool tips" and user manuals, the Singh Report offers no support for
5 the implicit assertion that allegedly infringing behavior of the Accused Products is "encouraged and
6 intended [for] the user to perform."

7 406. It is my opinion that Samsung does not "encourage" or "intend" users to engage in the
8 allegedly infringing behavior cited by Apple and Singh Report.

9 **3. The Singh Report Cites No Evidence Of Direct Infringement By Users And**
10 **No Evidence That Samsung Intended Users To Engage In The Acts**
11 **Constituting Infringement With Intent That They Infringe.**

12 407. Finally, I understand that a necessary prerequisite to an indirect infringement theory is
13 evidence of direct infringement by another. The Singh Report cites to no evidence in the record (and I
14 am aware of none) that establishes that any person or entity caused the Accused Products to engage in
15 the allegedly infringing behavior at any time.

16 408. Further, under my understanding of the law, an inducement of infringement theory
17 requires the alleged inducer to not only intend the acts constituting direct infringement be done, but to
18 intend such acts *with knowledge* that they constitute infringement. Although the Singh report repeatedly
19 attempts (unsuccessfully) to show that Samsung "encouraged and intended" users to engage in the acts
20 alleged to constitute infringement, I would note that the Report does not even address the question
21 whether Samsung had knowledge that the acts allegedly encouraged constituted direct infringement of
22 the '163 Patent.

23 409. Finally, it is my opinion that each of the Accused Products is capable of substantial non-
24 infringing use. In fact, as compared to the non-infringing utility of the Accused Products, the accused
25 behavior is merely a trivial functionality.

26 410. For at least these reasons, it is my opinion that the Singh report does not even make a
27 threshold showing that any of the method claims of the '163 Patent are indirectly infringed.

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D. Samsung's Alleged "Emulation" Of The Features Of The '163 Patent

411. In Section V.E, the Singh Report accuses Samsung of "emulating" design features described by the '163 Patent and embodied in Apple devices. Specifically, the Singh Report states that Samsung "studied a number of Apple products that embody the asserted claims of the '163 patent, recognized the benefits of the '163 patent, and implemented the features of the '163 patent in Samsung products." Singh Report ¶ 275. I disagree with the conclusions of the Singh Report, and I disagree that the documents cited in Section V.E establish that Samsung has emulated the functionality of the '163 Patent.

412. I have reviewed each of the documents cited in Section V.E of the Singh Report, and most merely show that Samsung compared the performance of the zooming feature on its devices with the performance of Apple devices. Additionally, while the Singh Report cites extensively to documents showing comparison to Apple's zooming, there are *no* documents that show that Samsung conducted any comparisons to the "tap-to-pan" feature (function associated with the second gesture of the '163 Patent) or found this feature important in any way.

1. Many Of The Documents Cited By The Singh Report Show That Samsung Conducted Performance Comparisons, Not That It Emulated Apple's Design Choices.

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2. The Documents Cited By The Singh Report Do Not Show That Samsung Considered The Functionality Associated With The Second Gesture Of The '163 Patent Important In Any Way.

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422. For these reasons, it is my opinion that the Singh Report does not cite evidence sufficient to make even a threshold showing that Samsung intentionally emulated features embodied in Apple products or described by the '163 Patent.

E. Other Non-infringing Alternatives

423. Although it is my opinion that none of the Accused Products infringe the Asserted Claims, I also believe there are several other non-infringing alternatives to Claim 2 of the '163 Patent.

424. I would note that several web designers, apparently finding the '163 methods for navigating structured electronic documents on small-screen devices insufficient, have actually begun to create specially designed "mobile" versions of their websites to more permit users to more easily navigate such websites without the need for the "tap-to-zoom" or "tap-to-pan" features. Such "mobile" websites are themselves non-infringing alternatives and are continuously becoming more prevalent. The ubiquity of such "mobile" devices likely explains why the analysis of the Singh Report and the exhibits in support are limited strictly to a single webpage (the *New York Times*).

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1 425. Additionally, it is my opinion that a non-infringing alternative can be designed by
2 removing the functionality associated with the second gesture completely. I disagree with the Singh
3 Report opinion that removing this "tap-to-pan" feature would be undesirable because the feature is
4 "elegant" and "intuitive" (§ 281). Instead, it is my opinion that eliminating the translating step of Claim
5 2 in response to a second gesture would not appreciably decrease user satisfaction for the following
6 reasons:

7 426. First, upon observing the device perform a zoom operation in response to a first gesture,
8 it is my opinion that a user would not expect the device to perform a completely different translating
9 operation in response to a second gesture that is the same or similar. The second gesture is thus not
10 intuitive and unlikely to be discovered by users.

11 427. Second, because the first gesture "enlarges" and "substantially centers" a first box, it is
12 often the case that whatever portion of a second box that is visible on the touch screen display would be
13 in the periphery of the user's view. Because of the limited space on such devices, it is likely that only a
14 very minor portion (if any) of such a second box would be visible or accessible to users (as is illustrated
15 in Exhibit 11 to the Singh Report). Further, because the "boxes" of content on the Accused Products are
16 not bounded by delineated borders, and it would be unclear to a user whether and where such a "second
17 box" existed. It is therefore unlikely that the second box would provide a sufficient visual cue to the
18 permit the user to gesture at a location of the second box.

19 428. Third, each of the manuals cited by the Singh Report expressly describe a finger "[t]ouch
20 and drag" gesture that permits users to "reposition pages within the screen." Because of this express
21 guidance in the device user manuals, and because I believe users would find touching and dragging the
22 screen far more intuitive for a panning or translating operation, it is my opinion that users are far more
23 likely to use this "touch and drag" gesture to translate across an enlarged view of a web-page.

24 429. Fourth, as I noted in my invalidity report, the functionality associated with the second
25 gesture was added by the *Patent Examiner* late in the prosecution history of the '163 Patent after an
26 initial rejection. The fact that Apple did not initially include the functionality associated with the second
27 gesture, and the fact that the limitation was added by the Examiner, indicates to me that even Apple did
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1 not consider the "tap-to-pan" feature important to functionality. By all indications, the "tap-to-pan"
2 feature was *only* important to the Patent Examiner and *only* for purposes of patentability.

3 430. For these reasons, it is my opinion the "second gesture" described by Claim 2 of the '163
4 Patent does not appreciably improve the functionality of portable electronic devices, and this feature
5 could be eliminated from an infringing device without any noticeable loss of user satisfaction.

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11 432. Finally, I understand that removing the "second gesture" functionality would not take a
12 significant amount of time or effort. Indeed, a programmer can simply change the response to the
13 second gesture to perform a non-infringing operation (such as a zooming out), or to do nothing. It is my
14 opinion that most users would not even notice the absence of this functionality. Moreover, as explained
15 above, there would be no need to change any documentation associated with the Accused Products
16 because I am only aware of documentation that shows another (non-infringing) way to reposition the
17 page after zooming in.

CONCLUSION

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19 433. For the foregoing reasons, it is my opinion that the Asserted Products do not infringe
20 either the '915 Patent or the '163 Patent.

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1 Dated: April 16, 2012

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By 
Stephen Gray

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