

# Exhibit H

**EXHIBIT 16**  
**FILED UNDER SEAL**

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA  
3 SAN JOSE DIVISION

4 APPLE INC., a California  
corporation,

5 Plaintiff,

Case No.

6 vs.

11-CV-01846-LHK

7  
8 SAMSUNG ELECTRONICS CO., LTD.,  
a Korean business entity;  
9 SAMSUNG ELECTRONICS AMERICA,  
INC., a New York corporation;  
10 SAMSUNG TELECOMMUNICATIONS  
AMERICA, LLC, a Delaware  
limited liability company,

11 Defendants.

12  
13  
14  
15 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

16  
17 VIDEOTAPED DEPOSITION OF RICHARD HOWARTH  
18 San Francisco, California  
19 Monday, October 31, 2011  
20

21  
22  
23 REPORTED BY:

24 CYNTHIA MANNING, CSR No. 7645, CLR, CCRR  
25 JOB NO. 43007

1 reporter please swear in the witness.

2

3

RICHARD HOWARTH,

4

having first been duly sworn, testified

5

as follows:

6

THE VIDEOGRAPHER: You may proceed.

7

8

EXAMINATION

9

BY MR. ZELLER:

10

Q. Good morning.

11

A. Morning.

12

Q. If you could please state and spell your

13

full name for the record for us.

14

A. Richard Howarth. R-I-C-H-A-R-D; Paul,

15

P-A-U-L; H-O-W-A-R-T-H.

16

MR. MONACH: Before we get too far, I

17

just want -- so I don't forget -- I'm sure we're

18

going to do a lot of examination on documents that

19

have been marked "Highly Confidential, Attorneys'

20

Eyes Only." So rather than try to parse it out

21

now we'd like to have the entire transcript

22

designated as attorneys' eyes only.

23

And the witness reserves the right to

24

review and sign the deposition transcript.

25

Thank you.

1 tablet designs that you worked on there for Apple.

2 Is there -- is there an area that, on the  
3 front face of the tablet computer devices that you  
4 worked on, that you understood to include a border  
5 or mask area?

6 MR. MONACH: Objection; vague and  
7 compound.

8 THE WITNESS: Yeah, I'm sorry.  
9 Could you repeat the question?

10 MR. ZELLER: Yes. If you could read it  
11 back, please.

12 (Whereupon the reporter read the record  
13 as follows:

14 "Question: Is there an area that, on the  
15 front face of the tablet computer devices  
16 that you worked on, that you understood  
17 to include a border or mask area?")

18 MR. MONACH: And I objected; vague and  
19 compound.

20 THE WITNESS: Sometimes some people refer  
21 to -- or I refer to the area around the display as  
22 a border.

23 BY MR. ZELLER:

24 Q. But in general, you don't think that  
25 those terms are precise enough or clear enough

1 that you could be -- you'd be able to say it's  
2 really definite; right?

3 MR. MONACH: Objection; vague and  
4 ambiguous.

5 THE WITNESS: I don't know what other  
6 people think.

7 BY MR. ZELLER:

8 Q. Well, I'm not asking about what other  
9 people think. I'm asking you.

10 Do you think that the word "border" or  
11 "mask" is a clear term to you as to what it is  
12 referring to in the context of tablet computer  
13 designs that Apple has made?

14 MR. MONACH: Objection; vague and  
15 ambiguous, both a compound and incomplete  
16 hypothetical.

17 THE WITNESS: It could be.

18 BY MR. ZELLER:

19 Q. I'm going to show you what was previously  
20 marked as Exhibit 8, which for the record is  
21 United States Design Patent 504,889.

22 And please let me know when you've had an  
23 opportunity to review the '889 design patent.

24 A. (Witness reviewing document.)

25 Okay.

1 Q. You're named as an inventor of the '889  
2 design?

3 A. I was one of the industrial design team  
4 that worked on this product.

5 Q. Looking at the drawings, these figures  
6 that are in the '889 design patent, do any of  
7 those drawings show what you, in your view --  
8 well, I'm sorry. Let me rephrase it.

9 Directing your attention to the figures  
10 and drawings in the '889 design patent.

11 Do any of those drawings show a mask  
12 area?

13 MR. MONACH: Objection; lack of  
14 foundation. Objection; compound. Objection;  
15 calls for a legal conclusion by a nonlawyer  
16 witness.

17 THE WITNESS: I'm not a patent lawyer.

18 BY MR. ZELLER:

19 Q. I'm not asking you as a patent lawyer.  
20 I'm asking you as an inventor of the '889 design  
21 patent.

22 Do any of the drawings or figures in the  
23 '889 design patent depict a mask area?

24 MR. MONACH: Same objection; lack of  
25 foundation --

1 THE WITNESS: As --

2 MR. MONACH: Hang on a second.

3 Lack of foundation. Objection, to the  
4 extent it calls for a legal conclusion.

5 THE WITNESS: As an industrial designer,  
6 and not a patent lawyer, it isn't clear to me that  
7 there is an area here that is definitely a mask or  
8 border.

9 BY MR. ZELLER:

10 Q. Directing your attention to Figure 1.

11 A. Yes.

12 Q. You'll see that on the interior of  
13 Figure 1, that there is a rectangular line.

14 Do you see that?

15 A. I see a dotted line.

16 Q. Do you know, is that -- is that a broken  
17 line?

18 MR. MONACH: Objection; lack of  
19 foundation. Under the Best Evidence Rule the  
20 document speaks for itself. Vague.

21 THE WITNESS: It looks like a dotted  
22 line. It looks like an inconsistent dotted line.

23 BY MR. ZELLER:

24 Q. Do you know why it's in that form? Do  
25 you have an understanding?



1 MR. MONACH: Objection; lack of  
2 foundation.

3 And let me just caution you. I'm not  
4 saying you did have any such communications, but I  
5 don't want you, in answering any of these  
6 questions, to reveal any attorney-client  
7 communications.

8 THE WITNESS: Okay. I'm not exactly sure  
9 what that rectangle is depicting.

10 BY MR. ZELLER:

11 Q. Do you know if that dotted line that you  
12 were talking about that's in that rectangular  
13 shape on the interior of Figure 1 has some  
14 relationship to separating the active area of the  
15 display from the mask or nonactive areas of the  
16 display?

17 MR. MONACH: Objection; lack of  
18 foundation, calls for speculation. Object, to the  
19 extent it's asking for a legal conclusion.

20 THE WITNESS: I'm not sure what that line  
21 represents.

22 BY MR. ZELLER:

23 Q. And I take it you don't have an  
24 understanding as to whether or not that particular  
25 line, this rectangular line on the interior of

1 Figure 1 that's dotted, is part of the claimed  
2 design here?

3 MR. MONACH: Objection; lack of  
4 foundation. Objection, to the extent it calls for  
5 a legal conclusion.

6 THE WITNESS: I'm not sure what that line  
7 represents.

8 BY MR. ZELLER:

9 Q. Directing your attention to Figure 2 of  
10 the '889 design patent.

11 You'll see that there are three sets of  
12 diagonal lines on the interior of this.

13 A. Yes.

14 Q. And then directing your attention to  
15 Figure 4.

16 You'll see that it doesn't have those  
17 diagonal lines.

18 A. Okay.

19 Q. Do you see that?

20 A. Yes, I see that.

21 Q. Do you have any understanding or  
22 explanation as to why those diagonal lines don't  
23 appear in Figure 4 but they do appear in Figure 2?

24 MR. MONACH: Objection; lack of  
25 foundation. Objection, to the extent it calls for

1 a legal conclusion.

2 THE WITNESS: I'm not sure why those  
3 lines are in one view and not in another.

4 BY MR. ZELLER:

5 Q. Do you know if the design that's shown  
6 here in the '889 design patent is showing a back  
7 surface or bottom surface that is flat and clear?

8 MR. MONACH: Same objection; lack of  
9 foundation. Object, to the extent it calls for a  
10 legal conclusion.

11 THE WITNESS: I'm not sure what that is  
12 depicting.

13 BY MR. ZELLER:

14 Q. Is the design that's shown here in the  
15 '889 design patent, by your understanding, does  
16 it -- well, I'm sorry. Let me rephrase that.

17 Directing your attention to the '889  
18 design patent.

19 In your view, as an inventor and a  
20 designer, does this design show a clear front  
21 surface of the device?

22 MR. MONACH: Objection; lack of  
23 foundation. Objection, to the extent it calls for  
24 a legal conclusion.

25 You can give your understanding, if you

1 have one.

2 THE WITNESS: I'm not exactly sure what  
3 this document -- what this figure is showing. It  
4 could be.

5 BY MR. ZELLER:

6 Q. And you're not sure one way or another  
7 whether what's shown here in the design shows a  
8 clear, flat, continuous surface on the front?

9 MR. MONACH: Objection, to the extent it  
10 calls for a legal conclusion.

11 THE WITNESS: I didn't create these  
12 drawings, so I don't know if that's what that is  
13 supposed to represent.

14 BY MR. ZELLER:

15 Q. And even apart from the fact that you  
16 didn't create the drawings, you still don't know;  
17 is that true?

18 MR. MONACH: Same objection. Object, to  
19 the extent it calls for a legal conclusion; asked  
20 and answered.

21 THE WITNESS: It isn't completely clear  
22 to me that that's what that is representing.

23 BY MR. ZELLER:

24 Q. Directing your attention to Figure 9.

25 You'll see in Figure 9 that the top of

1 the device that's shown there is -- from the  
2 orientation of the individual holding it -- is  
3 somewhat wedge-shaped, or it tapers?

4 MR. MONACH: Objection; mischaracterizes  
5 the evidence, assumes facts not in evidence,  
6 argumentative.

7 BY MR. ZELLER:

8 Q. Do you see that?

9 MR. MONACH: Object, to the extent it  
10 calls for a legal conclusion.

11 THE WITNESS: I see what you're referring  
12 to. I see it's an object that the guy is holding.

13 BY MR. ZELLER

14 Q. Well, from the perspective of the guy  
15 whose holding it --

16 A. Yes.

17 Q. -- how would you describe the shape of  
18 the top of the device?

19 A. What --

20 MR. MONACH: Objection; vague and  
21 ambiguous. Object, to the extent it calls for a  
22 legal conclusion.

23 THE WITNESS: What are you referring to  
24 as "the top"?

25 //

1 BY MR. ZELLER:

2 Q. The top, from the orientation of the  
3 individual holding it, which would be your right.

4 MR. MONACH: Objection. Objection;  
5 vague.

6 BY MR. ZELLER:

7 Q. If you could hand me your copy.

8 A. Okay.

9 MR. ZELLER: Let's please mark as Exhibit  
10 1132 a copy of the '889 design patent with a  
11 marking that I'm about to give it. It will be an  
12 arrow consisting of an X on Figure 9, and then two  
13 arrows with the Figure X, Label X, in Figure 2.

14 (Deposition Exhibit 1132 was marked for  
15 identification)

16 BY MR. ZELLER:

17 Q. So directing your attention to Figure 2.

18 A. Okay.

19 Q. You'll see that what I did there is, I  
20 put two arrows with the Label X on there.

21 A. Mm-hmm.

22 Q. And you'll see that those portions, those  
23 sides, appear to taper, or narrow?

24 MR. MONACH: Object to the form of the  
25 question as mischaracterizing the evidence;

1 assumes facts not in evidence.

2 THE WITNESS: To me, it looks like a  
3 slightly perspective drawing of a rectangular  
4 object.

5 BY MR. ZELLER:

6 Q. Do you have an understanding as to  
7 whether or not those lines taper because of  
8 perspective or because the design that is being  
9 communicated here has tapering sides?

10 A. I couldn't say for certain. To me  
11 personally, as an industrial designer, it looks to  
12 me like they're tapering because of perspective.

13 Q. And in your view, is that an accurate  
14 perspective?

15 MR. MONACH: Objection; vague and  
16 ambiguous.

17 THE WITNESS: I don't know about an  
18 accurate perspective. It looks, perhaps, like  
19 that's what was intended.

20 BY MR. ZELLER:

21 Q. And if I asked you the same questions  
22 about that edge that I labeled as X in Figure 9,  
23 you'd give me the same answers?

24 MR. MONACH: Objection, to the extent it  
25 calls for a legal conclusion. But you can give

1 your understanding.

2 THE WITNESS: My understanding is that's  
3 what that is trying to represent.

4 BY MR. ZELLER:

5 Q. It is perspective, but you're not  
6 certain?

7 MR. MONACH: Object to the form of the  
8 question.

9 THE WITNESS: It's possible that that's  
10 what that represents.

11 BY MR. ZELLER:

12 Q. But, again, you can't say with certainty  
13 whether or not that's -- that tapering is because  
14 of perspective, as opposed to whether or not the  
15 design is actually showing that there is some kind  
16 of tapering?

17 MR. MONACH: Objection; lack of  
18 foundation. Objection, to the extent it calls for  
19 a legal conclusion; asked and answered.

20 You can do it again.

21 THE WITNESS: In my opinion, as an  
22 industrial designer and not a patent lawyer, I  
23 think that that looks like it is an object with  
24 perspective and not a tapering geometry.

25 //



1 BY MR. ZELLER:

2 Q. And from your perspective, is that -- is  
3 that an accurate depiction of perspective?

4 MR. MONACH: Objection; lack of  
5 foundation, incomplete hypothetical. Objection;  
6 vague.

7 THE WITNESS: Yes, it could be.

8 BY MR. ZELLER:

9 Q. Can you say with any certainty if it is?

10 MR. MONACH: Same objection.

11 THE WITNESS: I can't say with any  
12 certainty without -- whether that's an absolutely  
13 accurate perspective view. But it looks okay. It  
14 looks possible.

15 BY MR. ZELLER:

16 Q. You'll see also in Figure 9 that there is  
17 a portion of it that has a thicker, darker line  
18 that runs around the perimeter of the front.

19 Do you see that?

20 A. Yes, I see that.

21 Q. What does that depict?

22 MR. MONACH: Objection; lack of  
23 foundation. Object, to the extent it calls for a  
24 legal conclusion.

25 THE WITNESS: It's unclear to me exactly

1 what that is trying to depict.

2 BY MR. ZELLER:

3 Q. Does it depict a gap or a groove?

4 MR. MONACH: Same objection; lack of  
5 foundation. Objection, to the extent it calls for  
6 a legal conclusion.

7 THE WITNESS: I'm not sure what that  
8 precise detail is trying to depict. But it looks  
9 like the separation between two parts to me. Not  
10 the separation; it looks like the joint between  
11 two parts.

12 BY MR. ZELLER:

13 Q. And directing your attention to Figure 1,  
14 you'll see that also at least on part of the  
15 perimeter of this front surface there is a darker  
16 line there as well, darker, thicker line?

17 A. I see that.

18 Q. And do you have an understanding as to  
19 what that's depicting?

20 MR. MONACH: Objection; lack of  
21 foundation. Object, to the extent it calls for a  
22 legal conclusion.

23 THE WITNESS: I couldn't tell you exactly  
24 what that's trying to depict.

25 //

1 BY MR. ZELLER:

2 Q. Is that darker, thicker line depicting a  
3 gap or a groove?

4 MR. MONACH: Same objection. Lack of  
5 foundation, calls for a legal conclusion.

6 THE WITNESS: In my opinion as an  
7 industrial designer, it doesn't look like that's  
8 trying to depict a groove or a gap. It looks like  
9 it's perhaps trying to show a radius or an  
10 intersection of the rear housing, perhaps.

11 BY MR. ZELLER:

12 Q. But you're not certain?

13 MR. MONACH: Same objection. Asked and  
14 answered.

15 THE WITNESS: I'm not certain.

16 BY MR. ZELLER:

17 Q. You'll see that the date of this design  
18 patent for filing -- and this is on the first  
19 page --

20 A. Okay.

21 Q. -- in the middle of the first column,  
22 March 17th, 2004.

23 Do you see that date there?

24 A. Yes, I do.

25 Q. Prior to March 17th, 2004, which is the

1 filing date of the '889 design patent, the Apple  
 2 design team was working on tablet computer devices  
 3 that had a gap or groove that ran on the perimeter  
 4 of the front of the device?

5 MR. MONACH: Object to form. Lack of  
 6 foundation.

7 THE WITNESS: I don't recall.

8 BY MR. ZELLER:

9 Q. You just don't recall one way or another?

10 A. I don't recall.

11

[REDACTED]

1

[Redacted text block]



1

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[REDACTED]

BY MR. ZELLER:

Q. I'm going to show you what was previously marked as Exhibit 841.

A. Mm-hmm.

Q. And please let me know when you've had an opportunity to review those pages.

A. (Witness reviewing document.)  
Okay.

Q. I take it generally speaking, at some point, you became aware that there was a dispute between Apple and Samsung, a legal dispute?

MR. MONACH: Object to the form of the question as vague.

In answering this question, I'll instruct the witness not to reveal any attorney-client communications.

THE WITNESS: I can't remember when I was -- when I first found out.

//

1 BY MR. ZELLER:

2 Q. Right. I'm not quite at that question  
3 yet. I'm just trying to understand something  
4 generally. It's to help put some time periods on  
5 the questions I'm going to ask.

6 A. Okay.

7 Q. So at some point, did you become aware  
8 that there was a lawsuit between Apple and  
9 Samsung, just generally speaking?

10 MR. MONACH: You can answer that question  
11 yes, no, or I don't recall.

12 THE WITNESS: At some point, yes.

13 BY MR. ZELLER:

14 Q. Now, prior to the time that you became  
15 aware that there was a lawsuit between Samsung and  
16 Apple, had you seen these pages that were marked  
17 as Exhibit 841 before that time?

18 A. I don't recall.

19 Q. Do you recognize what's depicted here in  
20 Exhibit 841?

21 MR. MONACH: Objection; vague and  
22 ambiguous.

23 THE WITNESS: I'm not -- I'm not clear on  
24 what this -- on what's depicted in these pages.

25 //