

# EXHIBIT 5

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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.

No: 11-CV-01846-LHK

\*\*HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY\*\*

DEPOSITION OF QUIN HOELLWARTH  
Redwood Shores, California  
Tuesday, October 25, 2011

Reported By:  
LINDA VACCAREZZA, RPR, CLR, CRP, CSR. NO. 10201  
JOB NO. 42859

1 whether a design is new and original as compared  
2 to the prior art prior to the time that a design  
3 application is made?

4 MR. OLSON: Objection. Asked and  
5 answered, but you can answer this "yes,"  
6 "no," "I don't know," I don't remember,"  
7 or to the extent that the only  
8 information is privileged, you should so  
9 state.

10 THE WITNESS: I don't know.

11 Q. Has it ever had such guidelines,  
12 to your knowledge?

13 A. I don't know.

14 Q. Show you what's previously marked  
15 as Exhibit 8, which is a copy of United States  
16 design patent 504889. Please let me know when  
17 you've had a chance to review the 889 design  
18 patent.

19 MR. OLSON: Do you have a darker  
20 copy?

21 MR. ZELLER: We can get one. Why  
22 don't we go off the record for a moment.

23 THE VIDEOGRAPHER: The time is  
24 12:11 p.m. and we are off the record.

25 (Recess taken from 12:11 p.m. to

1 12:13 p.m.)

2 THE VIDEOGRAPHER: The time is

3 12:13 p.m. We are on the record.

4 BY MR. ZELLER:

5 Q. You've an opportunity to review  
6 the 889 design patent?

7 A. I have.

8 Q. Do you recognize this as an issued  
9 patent that you worked on the application for?

10 A. Yes.

11 Q. And you did this back when you  
12 were with Beyer Weaver & Thomas?

13 A. Yes.

14 Q. Was your involvement complete  
15 prior to the time that you went and began working  
16 as an Apple employee or did your work on this  
17 design patent application continue on?

18 MR. OLSON: Did he work on, you  
19 mean the prosecution?

20 MR. ZELLER: Yes.

21 THE WITNESS: I started at Apple  
22 in 2007. This issued in 2005.

23 Q. So the answer is that it was  
24 completed before you left?

25 A. Yes.

1 Q. Before you left Beyer Weaver &  
2 Thomas?

3 A. Yes.

4 Q. And generally speaking, what did  
5 you do in connection with the application that  
6 resulted in the 889 design patent?

7 A. What do you mean, generally do?  
8 Can you be more specific?

9 Q. Well, please tell me what the  
10 nature of your tasks and responsibilities were in  
11 connection with the 889 design patent in the  
12 prosecution?

13 A. I prepared the patent application  
14 and filed it. Is that what you mean?

15 Q. When you say that you prepared the  
16 application, were you responsible for the  
17 generation of the figures that are shown here in  
18 the 889 design patent?

19 A. Yes.

20 Q. I take it you didn't draw them  
21 yourself?

22 A. Are you asking me if I did or --

23 Q. Right.

24 A. I did.

25 Q. You drew these?

1 A. I did.

2 Q. Did you draw all nine of the  
3 figures?

4 A. I believe so.

5 Q. Generally speaking, in connection  
6 with those design patent applications that you  
7 worked on when you were with Beyer Weaver &  
8 Thomas, did you actually draw the figures?

9 A. I did.

10 Q. Since you've been working as an  
11 employee for Apple, with respect to those design  
12 patent applications that you've worked on, do you  
13 typically actually draw the figures?

14 A. No.

15 Q. So that practice changed at some  
16 point?

17 A. Yes, when I started at Apple.

18 Q. Since the time period you began  
19 working for Apple, who has prepared the figures  
20 for the design patent applications? And I'm  
21 talking about actually physically drew them.

22 A. In some circumstances, the outside  
23 counsel. Actually, an outside counsel prepares  
24 the final drawings. It's probably a better  
25 answer.

1 Q. My question is, is more pedestrian  
2 and mundane. I'm trying to find out in those  
3 instances where you were involved with design  
4 patent applications after starting with Apple,  
5 who was the person who actually physically does  
6 the drawing?

7 A. Well, in what time frame, because  
8 it's an organic process.

9 Q. Well, I've been focusing on the  
10 time period since you began working for Apple.  
11 But if the person who actually does the drawings  
12 changed over time, please tell me that.

13 A. Well, let's just say it varies or  
14 it depends.

15 Q. In general, are the figures of the  
16 Apple design patent applications prepared by  
17 Apple employees?

18 A. The drawings for the patent  
19 applications?

20 Q. Right.

21 A. No.

22 Q. Typically, in those instances  
23 where you've been involved with the applications,  
24 are they done by outside vendors?

25 A. Since being at Apple?

1 as compared to the prior art?

2 MR. OLSON: I'll instruct him not  
3 to answer on the basis of privilege and  
4 attorney work product.

5 (Testimony marked as requested.)

6 Q. Did Apple or its counsel do  
7 anything to determine that the design that's  
8 shown here in the 889 design patent was new and  
9 original as compared to the prior art?

10 MR. OLSON: So if I may make a  
11 suggestion as to how you may reframe that  
12 in which I would allow the question.

13 MR. ZELLER: Okay.

14 MR. OLSON: Is he obviously was  
15 personally involved in the participation  
16 of the filing of this application in  
17 2004. So I would permit you to ask the  
18 question whether he recalls doing  
19 anything at that time.

20 MR. ZELLER: Yeah. That was the  
21 context in which I was asking is back in  
22 the prosecution of this application. So  
23 let me be more definitive, then, on the  
24 time period of what I'm talking about.

25 Q. Prior to the time that this design

1 patent issued on May 10, 2005, did Apple or its  
2 counsel do anything to determine that the design  
3 shown in the 889 design patent was new and  
4 original as compared to the prior art?

5 MR. OLSON: Objection. Vague on  
6 "Apple or its counsel." Obviously, I'll  
7 allow him to answer as to what he did.

8 THE WITNESS: I don't recall.

9 Q. Do you have any knowledge or  
10 information in that regard?

11 A. Not that I can remember.

12 Q. You'll see that there are a number  
13 of named inventors listed in the first column on  
14 the first page of the 889 design patent. Do you  
15 see that?

16 A. Yes.

17 Q. Was anything done prior to the  
18 time that this patent issued to determine that  
19 these individuals were, in fact, the appropriate  
20 inventors?

21 A. I don't recall.

22 Q. Do you have any knowledge or  
23 information in that regard?

24 A. Not that I can remember.

25 Q. Now, you mentioned that you

1 prepared the figures that are shown in the 889  
2 design patent?

3 A. Yeah.

4 Q. Did you base those drawings on  
5 some information that you received from Apple?

6 A. Yes.

7 Q. And one of the sources of  
8 information that you used to prepare the figures  
9 were photographs?

10 A. Yes.

11 Q. I'm going to show you what was  
12 previously marked as Exhibit 841, which is a  
13 multi-page document bearing Bates numbers APLPROS  
14 00000 18778 through 18798. And please let me  
15 know when you've had an opportunity to review  
16 Exhibit 841.

17 A. (Document review.)

18 Q. Do you recognize what's been  
19 marked as Exhibit 841?

20 A. I do.

21 Q. What are these?

22 A. These are copies of a product,  
23 copies of a picture of some product.

24 Q. And what is the product that is  
25 represented in these copies, these materials?

1           A.     It's an electronic device of some  
2     sort.

3           Q.     Is this electronic device that's  
4     shown here in Exhibit 841 the same electronic  
5     device that was used as the basis for the  
6     drawings in the 889 design patent?

7           A.     Just to clarify where these -- I  
8     know that you presented this as evidence, but  
9     where are they from?

10          Q.     Well, I'm going to get to that in  
11     a minute.  But I'm just trying to first figure  
12     out something is, do these photographs and other  
13     images in Exhibit 841 have some relationship to  
14     the drawing and drawings that are depicted here  
15     in the 889 design patent

16                   MR. OLSON:  And Mr. Zeller, I  
17     think what we're saying is if he knew the source  
18     of them, it would help him to answer that  
19     question.  I may be --

20                   THE WITNESS:  Yeah, I mean, as far  
21     as I don't know -- I mean, until I know  
22     where this is from, I don't -- I can't  
23     answer your question, right.  I mean...

24          Q.     Well, I mean, I'm just an outside  
25     lawyer; I don't know facts.  I'm trying to find

1 out the facts from you. What I can say is is  
2 that, that these -- and I'm talking about exactly  
3 in this form is how it was produced by an Apple  
4 prosecuting firm, the Stern firm, as I understand  
5 it. That's my best understanding.

6 A. This is from the file wrapper.

7 Q. I believe that there are photos  
8 that are in the file wrapper that I'm going to  
9 ask you about next that I believe correspond to  
10 these. But again, I'm just an outside lawyer.  
11 I'm trying to see how these things are related.  
12 And that's my -- that's the point of my  
13 questioning. So it's a little hard for me to  
14 make representations to you about any of this  
15 because that's part of what I'm trying to find  
16 out.

17 MR. OLSON: Did we provide source  
18 information for these?

19 MR. ZELLER: I don't think so. My  
20 last understanding -- we have asked for  
21 the native files of these, these images.

22 MR. OLSON: And I'm happy to  
23 address that as well, but go ahead.

24 MR. ZELLER: And any original  
25 photographs so that we would have clear

1 images of it and the like. But, you  
2 know, the information we have is pretty  
3 limited. It was, as I understand it,  
4 produced by Stern, which I believe took  
5 over the prosecution, but -- and that's  
6 probably why it's in possession of them.  
7 But it doesn't -- we don't know what the  
8 ultimate source of this was.

9 It was presumably transferred  
10 from Beyer Weaver & Thomas at some point  
11 would be my assumption, but again, that's  
12 part of what I'm trying to find out. So  
13 maybe if we step back for a minute and  
14 try some kind of foundational things and  
15 see if this helps --

16 A. Okay.

17 Q. -- jog your memory on any of  
18 this. And let's first focus on the '889 design  
19 patent for a moment.

20 A. Yes.

21 Q. At some point, did you actually  
22 have a three-dimensional model that you were  
23 shown or had access to that helped you form the  
24 basis of the drawings that you made on the '889  
25 design patent?

1 A. Yes.

2 Q. And if you could direct your  
3 attention to the page of Exhibit 841 that bears  
4 Bates number APLPROS 0000018789.

5 A. 18789?

6 Q. Yes. And you'll see this is a  
7 photograph of an individual. Is this you?

8 A. Yes.

9 Q. And this photograph shows you  
10 holding a three-dimensional tablet mock-up?

11 A. Yes.

12 Q. And does this depict the three-  
13 dimensional mock-up that you had available to you  
14 as a resource to create the '889 design patent  
15 figures?

16 A. Yes.

17 Q. And in the course of that, was  
18 there one model that you had to do that?

19 MR. OLSON: As opposed to?

20 MR. ZELLER: As opposed to more  
21 than one.

22 THE WITNESS: I don't recall.

23 Q. Directing your attention to the  
24 last page of Exhibit 841.

25 A. (Witness complies.)

1 Q. You'll see that this is a  
2 cornucopia of you?

3 A. Yes.

4 Q. Do you know who created these?

5 A. I mean, I don't know but I think  
6 it was me.

7 Q. And then directing your attention  
8 to the other photographs that are part of Exhibit  
9 841 which show various perspectives of the mock-  
10 up, did you take these photos?

11 A. It's likely.

12 Q. Do you recall where you did this?  
13 In other words, were you at the Beyer law firm's  
14 offices? Did you go to Apple to do this? Do you  
15 remember?

16 A. Yes, I remember.

17 Q. And where was it?

18 A. Apple.

19 Q. And I take it that's the occasion  
20 in which you were provided the mock-up that's  
21 depicted in these photographs and other images  
22 that we have marked as Exhibit 841?

23 A. I believe so.

24 Q. Do you know where the photographs  
25 are?

1 the inventors?

2 MR. OLSON: You can testify as to  
3 any steps you may have taken, meetings  
4 you may have had, et cetera, without  
5 disclosing the content of such  
6 communication, to the extent that you  
7 have a recollection.

8 THE WITNESS: I can't speak to  
9 Apple. For myself, I don't recall.

10 Q. Was anything done to determine  
11 whether any of the named inventors on the '889  
12 design patent application, in fact, made a  
13 contribution to the claimed invention?

14 MR. OLSON: You can identify any  
15 steps you took or meetings you had or things that  
16 you did with respect to that question.

17 THE WITNESS: Just generally?

18 MR. OLSON: Without -- I think the  
19 question is specific to the '889 patent.  
20 But you can give steps you took or  
21 actions you took or things you can  
22 remember yourself doing without  
23 disclosing the content of any  
24 communication that you may have received  
25 from someone.

1 THE WITNESS: I don't recall.

2 Q. Generally speaking, you're aware  
3 that a design patent can only have a single  
4 claim, right?

5 A. Yes.

6 Q. And what's your understanding of  
7 what defines a claim in a design patent, just  
8 generally speaking?

9 MR. OLSON: I'll let that answer.

10 THE WITNESS: The drawings.

11 Q. You're generally aware that you  
12 can't get more than one design patent for what is  
13 substantially or essentially the same design,  
14 right?

15 MR. OLSON: Objection. Vague.

16 THE WITNESS: Generally, yes.

17 Q. And generally speaking, you  
18 understand that when Apple seeks and obtains a  
19 design patent, that Apple is necessarily  
20 representing or stating to the patent office that  
21 the overall appearance of the patent design is  
22 not substantially the same as another patented  
23 design, right?

24 MR. OLSON: Wait a second. Calls  
25 for a legal opinion and instruct him not

1 to answer on the ground of attorney-  
2 client privilege and work product.

3 (Testimony marked as requested.)

4 THE WITNESS: Can we take a  
5 break? Is it possible?

6 MR. ZELLER: Okay.

7 THE VIDEOGRAPHER: The time is  
8 5:06 p.m. We are off the record.

9 (Recess taken from 5:06 p.m. to 5:19 p.m.)

10 THE VIDEOGRAPHER: The time is  
11 5:19 p.m. We are on the record.

12 BY MR. ZELLER:

13 Q. Does Apple --

14 MR. OLSON: Do you mind, while we  
15 are doing stuff, can we just clean up the  
16 figures?

17 MR. ZELLER: Sure.

18 Q. Does Apple have any processes or  
19 procedures in place to ensure that it is not  
20 double patenting?

21 A. At this time? Is that what your  
22 question, is at this time?

23 Q. Yes. I'm talking about currently.

24 A. I don't know.

25 Q. Has it ever?