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 15

16 UNITED STATES DISTRICT COURT

17 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

18 APPLE INC., a California corporation,

19 Plaintiff,

20 vs.

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

24 Defendants.
 25

CASE NO. 11-cv-01846-LHK

**SAMSUNG'S OPENING MEMORANDUM
 REGARDING CLAIM CONSTRUCTION**

Date: July 18, 2012
 Time: 2:00 pm
 Place: Courtroom 8, 4th Floor
 Judge: Hon. Lucy H. Koh

PUBLIC REDACTED VERSION

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1 ARGUMENT

2 Apple argues that it has exclusive rights to basic design ideas and would have the jury
3 compare the figures of its design patents to Samsung’s accused products without the guidance of a
4 judicial claim construction. Any protection afforded to Apple’s design patents, however, is more
5 limited than Apple asserts and than an unguided view of the figures might suggest. That is
6 especially true because the relevant field has long been crowded with rectangular shaped
7 electronic devices with rounded corners, and even Apple now concedes that key features are
8 essential to the use of smartphones and therefore must be excluded as functional from the
9 construction. Claim construction by the Court will be essential to avoid jury confusion and error.

10 First, contrary to Apple’s constructions, design patents do not protect “general design
11 concepts” depicted in their figures, but only their “overall ornamental visual impression.” *OddzOn*
12 *Prods., Inc. v. Just Toys, Inc.*, 122 F.3d 1396, 1405 (Fed. Cir. 1997) (“We agree with the district
13 court’s claim construction, which properly limits the scope of the patent to its overall ornamental
14 visual impression, rather than to the broader general design concept of a rocket-like tossing ball.”);
15 *see also Durling v. Spectrum Furniture Co., Inc.*, 101 F.3d 100, 104 (Fed. Cir. 1996); *In re Mann*,
16 861 F.2d 1581 (Fed. Cir. 1988) (“Design patents have almost no scope”). Apple’s designs are,
17 by its own account, “minimalist” and devoid of ornamentation. *See* Am. Compl. ¶ 1. Overbroad
18 protection of any design philosophy and concepts inherent in Apple’s claimed designs is not only
19 legally impermissible under design patent law, but it would improperly grant monopoly protection
20 to an unpatentable abstract idea. *Bilski v. Kappos*, 130 S. Ct. 3218, 3231 (2010).

21 Second, because design patent law protects only “new” and “original” ornamental designs,
22 35 U.S.C. § 171, the scope of a design claim must be viewed “in the context of the prior art.”
23 *Egyptian Goddess, Inc. v. Swisa, Inc.*, 543 F.3d 665, 676 (Fed. Cir. 2008) (en banc). “[W]hen
24 the claimed design is close to the prior art designs, *small differences* between the accused design
25 and the claimed design are likely to be important to the eye of the hypothetical ordinary observer.”
26 *Id.* (italics added). Further, differences “that might not be noticeable in the abstract can become
27 significant to the hypothetical ordinary observer who is conversant with the prior art.” *Id.* at 678.
28 Thus, when “a field is crowded with many references” relating to the design of the same type of

1 article, a design patent’s “scope of protection” is limited to a more “narrow range”. *Id.* at 676
2 (quoting *Litton Systems, Inc. v. Whirlpool Corp.*, 728 F.2d 1423, 1444 (Fed. Cir. 1984)).

3 Third, because design patent law protects only “ornamental” designs, 35 U.S.C. § 171, any
4 functional aspects must be “factored out” when a design patent is construed and infringement
5 analysis is conducted. *Richardson v. Stanley Works, Inc.*, 597 F.3d 1288, 1293 (Fed. Cir. 2010);
6 Dkt. 449 at 14-15 (Court following *Richardson*). Apple has now conceded that key features are
7 essential to the use of the devices depicted in the patents, and these features must be excluded
8 from any protection afforded the patents when they are compared to Samsung’s accused devices.

9 **I. THE D’889 PATENT**

10 **A. The D’889 Design Is Limited**

11 The D’889 patent claims the design of an entire electronic device. Declaration of Adam
12 Cashman (“Cashman Decl.”), Ex. 1. All views of the device as shown must be included in its
13 construction. *L.A. Gear, Inc. v. Thom McAn Shoe Co.*, 988 F.2d 1117, 1125 (Fed. Cir. 1993)
14 (“the patented design is viewed in its entirety, as it is claimed”). Further, because “[s]urface
15 shading is also necessary to distinguish between any open and solid areas of the article,” MPEP
16 1503.02, ¶15.48, the circular and rectangular shapes on Figures 6 and 8 respectively (even if
17 claimed) are not openings or holes in the surface, but instead are two-dimensional features.

18 **1. The D’889 May Not Claim Concepts Or Ideas**

19 Based on Apple’s requested construction, this Court previously described the D’889 as “a
20 broad, simple design that gives the overall visual impression of a rectangular shape with four
21 evenly rounded corners, a flat glass-like surface without any ornamentation and a rim surrounding
22 the front surface. The back is a flat panel that rounds up near the edges. The overall design
23 creates a thin form factor. The screen takes up most of the space on the front of the design.”
24 Dkt. No. 452 at 40. The Federal Circuit ruled this was error in the invalidity context because it
25 “viewed the various designs from too high a level of abstraction” and “construed [the] claimed
26 design too broadly”. *Apple, Inc. v. Samsung Electronics Co., Ltd.*, No. 2012-1105, 2012 WL
27 1662048, at *13 (Fed. Cir. May 14, 2012) (quoting *Durling*, 101 F.3d at 104). Because the test
28 for infringement mirrors the test for invalidity, the Federal Circuit’s construction equally applies

1 to the infringement analysis. See *International Seaway Trading Corp. v. Walgreens Corp.*, 589
2 F.3d 1233, 1239 (Fed. Cir. 2009) (“That which infringes, if later, would anticipate, if earlier.”)
3 (quoting *Peters v. Active Mfg. Co.*, 129 U.S. 530, 537 (1889)); *Amazon.com, Inc. v.*
4 *Barnesandnoble.com, Inc.*, 239 F.3d 1343, 1351 (Fed. Cir. 2001) (“A patent may not, like a ‘nose
5 of wax,’ be twisted one way to avoid anticipation and another to find infringement.”) (internal
6 citation omitted). The D’889 accordingly should not be construed in the manner Apple has
7 advocated and the Federal Circuit has considered overbroad, but instead should make clear that the
8 patent does not and cannot protect general concepts like “a rectangular tablet with four evenly
9 rounded corners and a flat back” or “thin form factor.” *Apple v. Samsung*, 2012 WL 1662048, at
10 *13 (“Rather than looking to the ‘general concept’ of a tablet, the district court should have
11 focused on the distinctive ‘visual appearances’ of the reference and the claimed design.”).

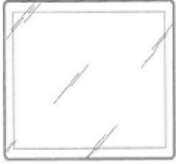

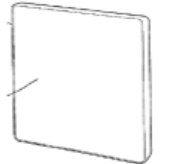

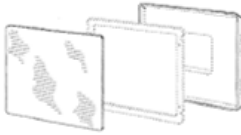
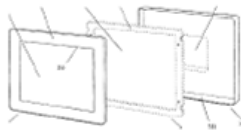






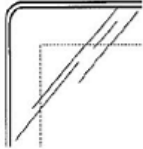



12 **2. Prior Art References Limit D’889**

13 The D’889 must be construed in light of the prior art. For example, U.S. D500,037
14 (“D’037”), filed September 3, 2002 and issued to Bloomberg LP on December 21, 2004, is a pre-
15 D’889 design for a flat panel display. Cashman Decl., Ex. 2. The D’037 has nearly the same
16 rectangular shape as the D’889, nearly the same rounded corners as the D’889, a flat, transparent
17 or reflective front surface running from edge to edge on the front of the device without
18 ornamentation, a rim surrounding the front surface that is formed by the back of the device
19 curving upward to create a single-piece housing, a symmetrical and smooth form, a flat back, and
20 a similar profile.

21 The D’037 design is a proper reference for D’889, which claims a design for an
22 “Electronic Device,” without limitation. The D’889 file history confirms that the design was not
23 just for a tablet device, but also a display or screen that could be coupled to a computing device.
24 See Cashman Decl. Ex. 3 at APLPROS0000010190. Indeed, [REDACTED]

25 [REDACTED] The D’037 is entitled “Bezel-less
26 Flat Panel Display” and shows a display screen that has a transparent front surface. The related
27 utility patent, US 6,919,678, filed on the same day by the same inventors, shows that the front face
28 of the display is a sheet of clear glass or plastic that has a transparent portion over the active

1 display area and a mask behind the glass that borders the display area. *See id.* Ex. 5, at column 5,
 2 line 53 to column 6, line 31. Further, Figure 3 of D'037 and Figure 9 of the '678 show parallel
 3 exploded views depicting the transparent or reflective top surface and uniform mask border around
 4 the edges of the display area. *See id.* The following comparisons illustrate the point:

D'889 patent	D'037	U.S. 6,919,678	Galaxy Tab 10.1
			
N/A			N/A
		N/A	
		N/A	
			

26 Many other prior art designs share the visual traits of the D'889 as claimed by Apple. *See*
 27 Cashman Decl. Exs. 6-13. Indeed, [REDACTED]
 28 [REDACTED]; *see also Apple, Inc.*, 2012 WL 1662048, at *12. Because those differences must

1 equally apply to any infringement analysis, the D’889 construction must focus the jury on these
2 differences from the prior art when it makes its infringement comparisons as well. Apple also
3 has [REDACTED]
4 [REDACTED]; *see also*
5 *Apple, Inc.*, 2012 WL 1662048, at *12. In addition, the figures show that the D’889 design is
6 comprised of a one-piece housing that make up the back and relatively thick sides of the device
7 and that receives the separate flat front face that is shown as transparent or reflective. Cashman
8 Decl. Ex. 1.

9 **3. D’889 Does Not Protect Functional Aspects**

10 After first denying it, Apple’s expert Peter Bressler now concedes that [REDACTED]
11 [REDACTED]
12 [REDACTED]

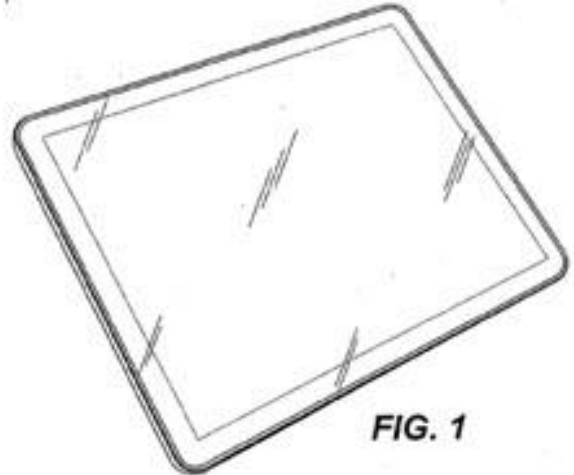
13 Obviously, the same is true of tablet computers. This Court has noted that “several aspects of the
14 D’889 patent” are functional, including that (i) the tablet’s size must allow portability, and (ii) it
15 must have a “relatively large screen” that encompasses a “large portion of the front face of the
16 product.” Dkt. 449 at 39-40.¹ The D’889 construction must direct the jury to factor out those
17 characteristics in deciding infringement.

18 **B. D’889 Does Not Depict An Uninterrupted Flat Front Face**

19 Apple argues that the front face of the D’889 design extends from edge-to-edge without
20 interruption. Discovery has now shown this to be wrong. After Samsung moved to compel it,
21 Apple produced a prototype or mockup, known as the “035.” Cashman Decl. Ex. 16. As Apple
22 has now admitted, [REDACTED]
23

24 ¹ As the Court is aware, Samsung has argued that functionality for design patents is not
25 limited to features that are “essential” to the use or purpose of an article, but also extends to
26 features that “affect” the article’s “cost or quality.” *Amini Innovation Corp. v. Anthony California,*
27 *Inc.*, 439 F.3d 1365, 1371 (Fed. Cir. 2006). To avoid burdening the Court, and without waiving its
28 position on that score, however, Samsung limits its functionality discussion for current claim
construction purposes in this brief only to those features that are “essential” in light of the Court’s
previous ruling regarding design patent functionality. *See* Docket No. 449, at 13-15.

1 The 035 shows a prominent, intentional gap between the outer edge of the glass surface on
2 the front and the frame – a “gap” that Apple inventors [REDACTED]



13 See *id.*, Ex. 17, at 192:23-193:6.²

14 **C. Apple Has Admitted That Its D’889 Patent Should be Narrowly Construed**

15 Other Apple admissions demonstrate that the D’889 does not include a continuous flat
16 front surface. In 2008 and 2009, years after the D’889 issued, Apple submitted applications for
17 the D’677 and D’678. The PTO initially rejected both as obvious in light of prior art. To
18 overcome this objection, Apple asserted that its D’677 and D’678 designs were distinctive over
19 the prior art because they did not disclose “a substantially continuous transparent surface on an
20 electronic device and the substantially smooth or flush transition between the display screen and
21 the rest of the front face of the device[.]” Cashman Decl. Ex. 21 at APLPROS0000011937; Ex. 22
22 at APL-ITC7960000003884. Because the D’889 was cited as prior art to the D’677 and D’678
23 designs, the D’889 necessarily must *exclude* the features Apple represented to the PTO had not
24 previously been disclosed, namely, the “substantially continuous transparent surface” and a

25
26
27 ² Apple’s insistence that photographs of the 035 were cancelled by the PTO (Dkt. 1033-2, at
28 8) misses the point. The 035’s visual appearance matters because it embodies the D’889, which
was drawn based on it, not because the 035 was or was not separately patentable from D’889.

1 “substantially smooth or flush transition between the display screen and the rest of the front face
2 of the device.”

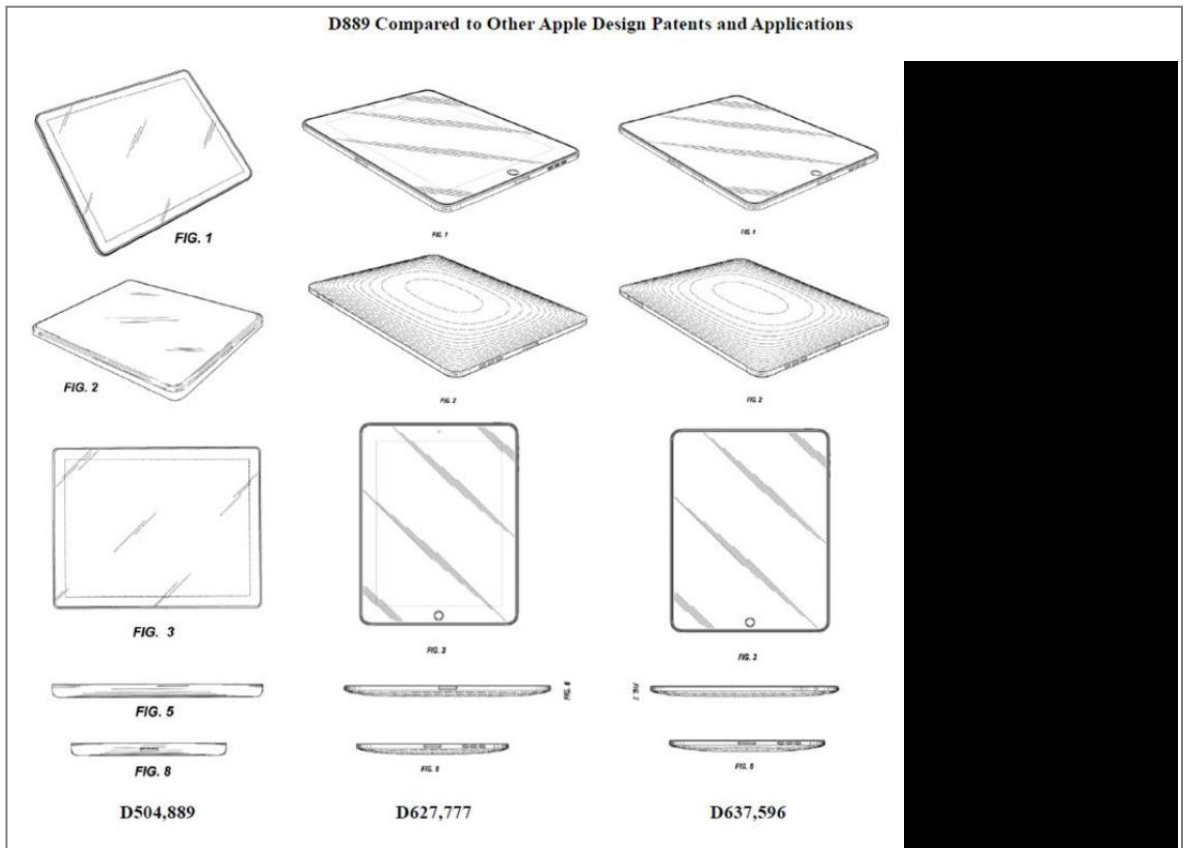
3 Moreover, years after the D’889 issued, Apple filed several design patent applications [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]



21 See Cashman Decl., Exs. 23-25. Apple swore under oath in each of these applications that the
22 claimed designs were “new” and “original” over the prior art, including the D’889. *Id.*; see 35
23 U.S.C. § 171; 37 CFR 1.63(a)(4). Thus, by its own statements to the PTO, Apple recognized that
24 the D’889 does *not* extend to such designs. See 35 U.S.C. § 171; *Miller v. Eagle Mfg. Co.*, 151
25 U.S. 186, 198 (1894) (“no patent can issue for an invention actually covered by a former patent,
26 especially to the same patentee.”); [REDACTED]

28

1 In short, contrary to Apple’s contentions, the front face of the D’889 does not show an
2 uninterrupted, continuous glass surface running from edge to edge, but instead depicts a gap
3 between the glass surface and surrounding frame. Nor do Apple’s iPad devices embody the
4 D’889. Those devices instead are the subject of separate design patents and applications which
5 Apple swore to the PTO were new and original designs over the D’889.

6 **D. The Scope of The D’889**

7 The Court accordingly should construe the D’889 as follows:

8 The D’889 is for an ornamental electronic device design that (i) has the shape that
9 is shown in all views of the figures, with the corner radii, proportions and relative
10 thick sides that are shown in those figures, (ii) has a uniform gap around the entire
11 front face between the front face surface and the frame, (iii) has no ornamentation,
12 protrusions or holes on any surface and (iv) has a single frame that forms the back
13 and sides of the device in the manner and proportions shown in the figures. In
14 addition, the D’889 does not give Apple rights to a large display screen that
15 encompasses a large portion of the front face of the product, to the use of a
16 transparent cover over the display or to the size and proportions that allow for the
17 portability of tablet computer devices.

18 **II. THE D’087 AND D’677 PATENTS**

19 **A. D’087 and D’677 Are Limited**

20 **1. The D’087 and D’677 May Not Claim General Concepts**

21 Based on Apple’s arguments, this Court had construed these design patents as disclosing:

22 a flat front surface with four evenly rounded corners with an inset rectangular
23 display screen centered on the front surface that leaves very narrow borders on
24 either side of the display screen and substantial borders above and below the
25 display screen. The D’087 patent has a horizontal speaker slot centered on the front
26 surface. The front surface is also substantially free of additional ornamentation
27 outside of an optional button centrally located below the display . . . The D’677
28 patent is substantially the same as the D’087 patent, and discloses an additional
element of a black transparent and glass-like front surface.

Dkt. 449 at 20-21. The Federal Circuit employed a more particularized approach in evaluating
anticipation of the D’087, however, finding that the D’087’s “perfectly flat” front face sufficed to
distinguish it from the prior art’s “arched, convex” face at the top and bottom (as seen in side
view). *Apple, Inc.*, 2012 WL 1662048, at *9. That construction must apply equally to the
infringement analysis, and Apple’s claim of rights to minimalist electronic device designs using
rectangles with rounded corners and similarly broad design concepts is untenable.

1 The D'087 shows no oblique line shading. It thus claims an opaque, rather than a
2 transparent or reflective, front surface. MPEP 1503.02 (“Oblique line shading *must* be used to
3 show transparent, translucent and highly polished or reflective surfaces, such as a mirror.”)
4 (emphasis added); Dkt. 997-02, at 10 (Apple citing and relying on this MPEP provision for this
5 same point); [REDACTED]

6 [REDACTED]
7 The D'087 also depicts a completely flush, flat front surface, such that the front surface and the
8 top bezel surface are level and co-planar. Cashman Decl. Ex. 14, at ¶ 198. According to Apple,
9 such a completely flat front face is [REDACTED]

10 [REDACTED]. Further, as noted, “[s]urface shading is also necessary to distinguish
11 between any open and solid areas of the article,” MPEP 1503.02, ¶15.48, and thus the lozenge-
12 shaped feature near the top and the circular feature near the bottom of the front face are not
13 openings or holes in the surface, but instead represent two-dimensional features on the front
14 surface.

15 The D'677 claims only the front face. Dkt. 449 at 16-17. It shows a transparent,
16 reflective front surface that is black and uniform in color across the entire front surface. There is
17 no surface shading on the lozenge shape, which therefore does not depict an open hole. MPEP
18 1503.02, ¶15.48. The circular feature is depicted with broken lines and not claimed.

19 **2. Prior Art References Limit D'087 and D'677**

20 Under the law, the D'087 and D'677 are limited by the numerous prior art references in the
21 crowded field of electronic device design. These references show that designs with generally
22 rectangular shapes, rounded corners, mask areas and other elements depicted in Apple's design
23 patents were common:

24
25
26
27
28



U.S. D593,087, JP 638, KR30-0398307, Bluebird Pidion, JP 221, LG KE850 Prada

See Cashman Decl., Exs. 26, 30-34. In the invalidity context, Apple has sought to [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

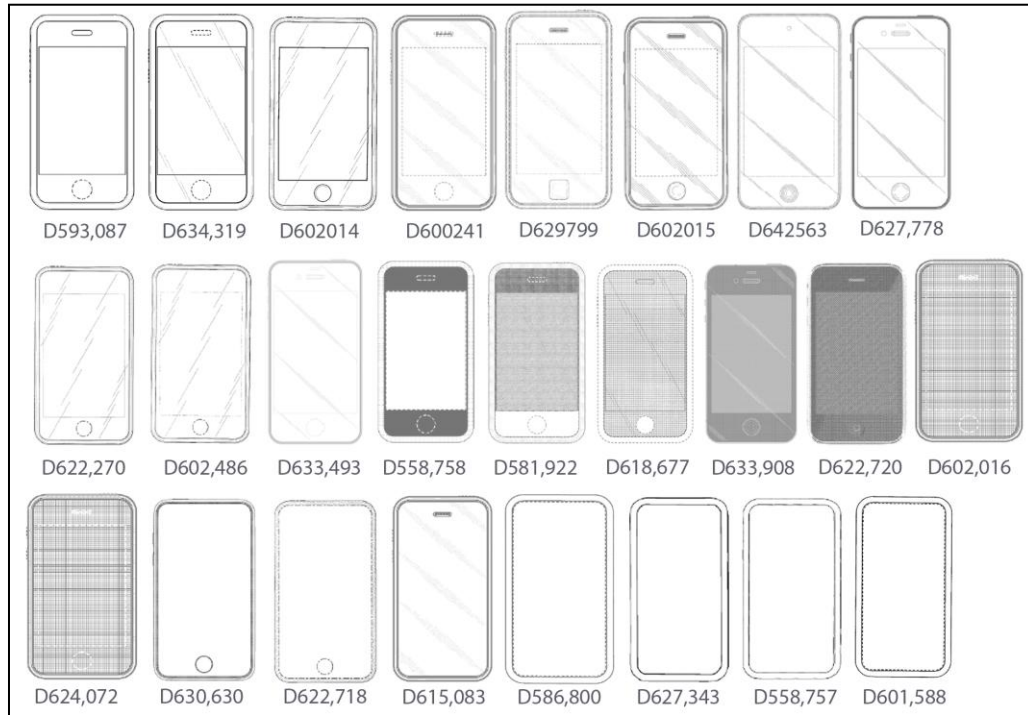
[REDACTED]

As shown by the authorities cited previously, such differences must therefore be applied equally to the scope of Apple’s design patents in construing them for infringement purposes as well.

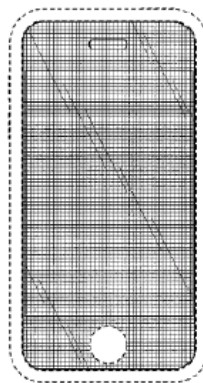
3. Apple’s Other Admissions Limit D’087 and D’677

Apple has obtained dozens of design patents designs that purportedly embody its various iPhone products. In doing so, Apple swore that these designs were “new” and “original” over the prior art, including D’087 and D’677. See 35 U.S.C. § 171; 37 CFR 1.63(a)(4). These included each of the following:³

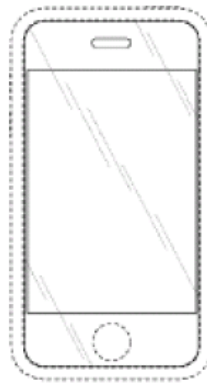
³ Cashman Decl. Exs. 35-61.



Moreover, the D'677 cites as prior art Apple's separate application that led to the D'678. Cashman Dec. Ex. 21. That patent is *identical* to D'677, apart from D'677's black front surface:



U.S. D618,677



U.S. D618,678

The only thing that could make the D'677 distinct from the D'678 to justify a separate patent is its black surface, showing that such a surface is an integral part of the claimed design.

4. The D'087 and D'677 Do Not Protect Functional Aspects

The Court previously found, with respect to the D'087 and D'677 designs, that “[i] a size that can be handheld, [ii] a screen that encompasses a large portion of the front face of the smartphone, and [iii] a speaker on the upper portion of the front face of the product” are each

1 “dictated by” the devices’ function. Dkt. 449, at 15. Apple’s expert now admits that [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 **5. The Scope of The D’087 and D’677**

5 Thus, the Court should construe the D’087 as follows:

6 The D’087 is for an ornamental electronic device design that has (i) the shape that
7 is shown in all views of the figures, with the four equally rounded corner radii and
8 proportions that are shown in those figures, (ii) an opaque, non-reflective front
9 surface that is without any hole or opening, (iii) a prominent, uniform bezel that has
10 equally rounded corner radii and is completely flush with the remainder of the front
11 surface, and (vi) no ornamentation except for one or two of the following:
12 (a) interior borders that are narrow on the side and otherwise are in the proportions
13 shown in the figures, (b) a circular shaped, two-dimensional surface decoration
14 centered near the bottom of the front face or (c) a two-dimensional lozenge shaped
15 surface decoration that is of the shape and proportions shown in the figures and is
16 in the center location on the front face as shown in the figures.⁴ In addition, the
17 D’087 does not give Apple rights to a size that can be handheld, a large screen on
18 the front face of a smartphone, a transparent cover over the display or a speaker on
19 the upper portion of the front face.

20 The Court should instruct on the D’677 as follows:

21 The D’677 is for an ornamental electronic device design that has (i) the shape that
22 is shown in all views of the figures, with the four equally rounded corner radii and
23 proportions that are shown in those figures, (ii) a reflective front surface that is
24 entirely flat, is without any hole or opening and is the same uniform black color
25 across the entire front surface and (iv) no ornamentation except for (a) interior
26 borders that are narrow on the side and otherwise are in the proportions shown in
27 the figures, and (b) a two-dimensional lozenge shaped surface decoration that is of
28 the shape and proportions shown in the figures. In addition, the D’677 does not give Apple rights
to a size that can be handheld, a large screen on the front face of a smartphone, a
transparent cover over the display or a speaker on the upper portion of the front
face.⁵

24 ⁴ The sources for each element of this construction, in addition to the discussion above,
25 include: (i) Figures 1, 3; (ii) Figures 5,6; (iii) Figures 7,8; (iv) Figures 9, 11; (v) Figures 13, 14;
26 (vi) Figures 15, 16; (vii) Figures 17, 19; (viii) Figures 21, 22; (ix) Figures 23, 24; (x) Figures 25,
27 27; (xi) Figures 29, 30; (xii) Figures 31, 33; (xiii) Figures 35, 36; (xiv) Figures 37, 38; (xv)
28 Figures 39, 40; (xvi) Figures 41, 43; (xvii) Figures 45, 46; (xviii) Figures 47, 48.

⁵ The sources for each element of this construction, in addition to the discussion above,
include: (i) Figures 1, 3; (ii) Figures 5, 6; (iii) Figures 7, 8.

1 **III. THE D’305 AND D’334 PATENTS**

2 **A. The D’305 and D’334 Designs Must be Narrowly Construed**

3 **1. The D’305 and D’334 Do Not Cover General Concepts or Ideas**

4 These Apple design patents cannot cover the general concept of a GUI – a monopoly
5 Apple sought years ago under copyright law and that the courts rejected. *Apple Computer, Inc. v.*
6 *Microsoft Corp.*, 35 F.3d 1435, 1443 (9th Cir. 1994). Just as no one can claim a monopoly over
7 the abstract idea of “iconic representation of familiar objects from the office environment,” *id.* at
8 1443-34, the use of colorful square icons arranged in a grid to enable user interaction is not
9 protectable. *OddzOn*, 122 F.3d at 1405 (no protection for “the broader general design concept”).

10 **2. The D’305 and D’334 Patents Must Be Construed in Light of Prior Art**

11 D’305 and D’334 must be limited in light of the many GUI prior art references, including:



22 Cashman Decl. Ex. 63.

23 That Apple obtained separate design patents for its D’305 and D’334 designs also shows
24 the importance of even minor differences. These separate design patents differ in that the D’334
25 shows a partial fifth row of icons and two small dots above the bottom row, while the D’305 does
26 not. Apple’s claim that such variations entitle it to separate patents without double patenting
27 highlights the importance of even minor variations. Indeed, in response to the PTO’s rejection of
28 its D627,790 patent as obvious in light of the prior art because icons have long been laid out in a

1 grid pattern, Apple claimed that the matrix of sixteen rounded squares giving the appearance of a
2 “missing row” of icons between the third and fourth rows of its design distinguished it from the
3 prior art. *See* Cashman Decl. Ex. 62, at APLPROS0000012230. The D’305 patent also discloses
4 sixteen rounded squares giving the appearance of a missing row, so the D’305 patent must be
5 construed narrowly to avoid reading on the D’790 patent or the prior art.

6 **3. The D’305 and D’334 Do Not Protect Functional Components**

7 The visual impression created by the D’305 and D’334 patents must exclude functional
8 elements essential for a smartphone GUI. Any smartphone GUI must necessarily be designed for
9 devices that are small enough to be handheld. Dkt. 449, at 15. The use of icons as metaphors to
10 represent applications and commands is therefore necessary given the spatial restrictions for a
11 hand-held phone GUI. As Apple’s designers admit [REDACTED]

12 [REDACTED]. It is essential that these icons be arranged within the confines of
13 the active display area in a fashion comprehensible to the user. Imran Chaudhri, the named
14 inventor on Apple’s D’305, D’334, and D’790 patents, conceded that [REDACTED]

15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 In addition, a GUI designed for a smartphone also must take into account the fact that users
19 often operate the device with only one hand. The most popular and important features of the
20 phone must therefore be accessible during one-handed use. As Apple’s named inventor, Mr.
21 Chaudhri, explained [REDACTED]

22 [REDACTED] Finally, as a device that is battery powered and designed for the purpose of
23 connecting to cellular or other wireless networks, the user must be able to obtain updated
24 information regarding battery life, signal strength and network information. The status bar located
25 at the top of the screen is not only known in the prior art, but also delivers this essential
26 information. Ex. 63, at 20.

27 Thus, Apple’s GUI patents should not be construed to include the elements that were
28 known in the prior art and functional: (i) the use of icons as metaphors for applications, features,

1 and commands; (ii) the layout of those icons in a grid pattern (*i.e.*, columns and rows); (iii) a
2 “dock” of icons at the bottom of the screen; and (iv) a status bar.

3 **4. The Scope of the D’305 and D’334**

4 Accordingly, the Court should construe the GUI design patents as follows:

5 The D’305 is for an ornamental graphical user interface design that (i) has the
6 uniform icon shape and order shown in all views of the figures, with the corner
7 radii and proportions shown in those figures, (ii) in which at least some icons that
8 are lighter in color near the top than near the bottom as shown in the figures, (iii)
9 has a black background except for a divided black/gray background for the dock
10 row, and (iv) has four rows of four icons each, with an empty row between the third
11 row and the dock row as shown in the figures. In addition, the D’305 patent does
12 not give Apple rights to the use of icons, pictures or text associated with icons, a
13 grid pattern for the arrangement of icons, use of equidistant rows and columns, a
14 dock row on the bottom or a status bar.

15 The D’334 is for an ornamental graphical user interface design that (i) has the
16 uniform icon shape and order shown in all views of the figures, with the corner
17 radii and proportions shown in those figures, (ii) in which at least some icons that
18 are lighter in shading near the top than near the bottom as shown in the figures, (iii)
19 has a black background except for a divided black/gray background for the dock
20 row, (iv) has four rows of four icons each, with a row of two or three icons between
21 the third row and the dock row as shown in the figures and (v) has two plain dots
22 between the fourth row and the dock row in the location shown in the figures. In
23 addition, the D’305 patent does not give Apple rights to the use of icons, pictures or
24 text associated with icons, a grid pattern for the arrangement of icons, use of
25 equidistant rows and columns, a dock row on the bottom, dots for page indicators
26 or a status bar at the top.

17 *See* Cashman Decl. Ex. 66, at ¶¶34-35.

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