

EXHIBIT 5

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TELECOMMUNICATIONS AMERICA, LLC
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

**DECLARATION OF ANDRIES VAN
DAM, PH.D. IN SUPPORT OF
SAMSUNG'S MOTION FOR SUMMARY
JUDGMENT REGARDING THE
INVALIDITY OF U.S. PATENT NO.
7,469,381**

1 U.S. Patent Nos. 7,698,711; 6,493,002; 7,469,381; 7,663,607; 7,812,828; 7,844,915; and
2 7,853,891 (Dkt No. 849) at 23.) I adopt this construction for my analysis in this declaration.

3 31. I understand that the Court interpreted the claims of the '381 patent to be
4 "fatalistic" such that if a user scrolls past the edge of an electronic document in the first direction,
5 the screen must snap back to that document when the user lifts her finger. (Order Denying
6 Motion for Preliminary Injunction (Dkt No. 449) at 60.) I adopt this construction for my
7 analysis in this declaration.

8 32. I understand the Court has not provided a construction for "electronic document."
9 In addition, the '381 patent does not provide an explicit definition of "electronic document," and
10 only provides a few examples. I interpret "electronic document" according to the construction
11 Samsung proposed in its Patent Local Rule 4-2 disclosures, namely "information that is visually
12 represented on a screen that has a defined set of boundaries." I understand that Dr. Balakrishnan
13 effectively agreed with this construction during this August 16, 2011 deposition, where he stated
14 "the electronic document is some visual representation on the screen that has a defined length and
15 a width as an example, or defined set of boundaries, because they may not have to be a
16 rectangular set of boundaries." (8/26/2011 Deposition of Ravin Balakrishnan at 27:19-25,
17 attached hereto as Exhibit 2.)

18 33. I understand that the Court has not issued claim construction regarding other
19 disputed terms of the '381 patent. In this declaration, I have attempted to apply the claim
20 constructions that would be used by one of ordinary skill in the art.

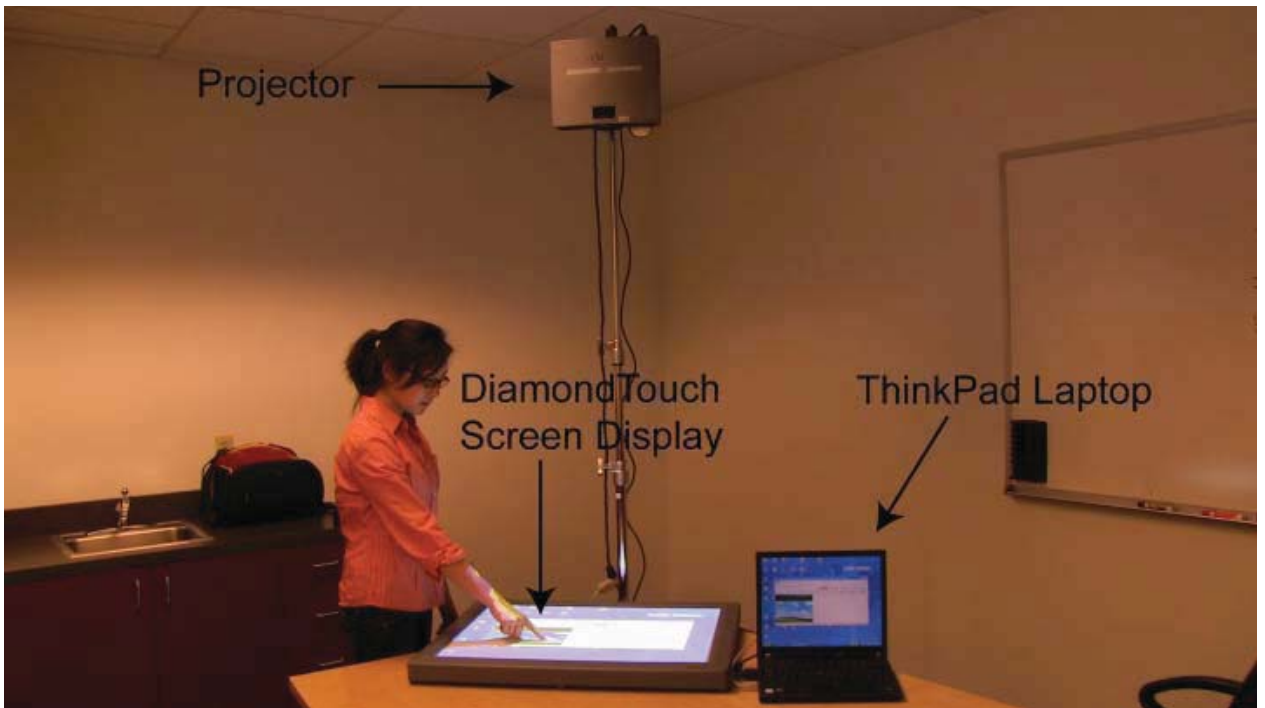
21 **IV. OVERVIEW OF THE '381 PATENT AND THE ASSERTED CLAIMS**

22 **A. The '381 Patent Generally**


23 34. The '381 patent, titled "List Scrolling and Document Translation, Scaling, and
24 Rotation on a Touch-Screen Display," was filed on December 14, 2007 and issued on December
25 23, 2008. It claims priority to a number of provisional applications, the earliest of which was
26 filed on January 7, 2007. The patent has one named inventor, Bas Ording.

1 set up and trivial to calibrate. Once calibrated, which requires four finger touches on the corners
2 of the projected image, the DiamondTouch system running Tablecloth/DTFflash operates
3 precisely as described in this declaration.

4 110. Dr. Balakrishnan also appears to be concerned that the DiamondTouch system was
5 not being used as intended in order to take the videos and photographs attached to the Expert
6 Report of Andries van Dam, Ph.D. Regarding Invalidity of U.S. Patent No. 7,469,381. Below is
7 a picture of the DiamondTouch table, projector, and a computer, here the ThinkPad laptop,
8 driving the display. As the photograph indicates, the DiamondTouch system was calibrated
9 properly and is behaving in its intended manner.



22 I declare under penalty of perjury that the foregoing is true and correct. Executed in
23 Providence, Rhode Island on May 17, 2012.

24
25
26 By 
27 Andries van Dam