D'AMATO DECLARATION EX. J FILED UNDER SEAL

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Page 6
 1
                  UNITED STATES DISTRICT COURT
 2
               NORTHERN DISTRICT OF CALIFORNIA
 3
                       SAN JOSE DIVISION
 5
     APPLE INC., a California
     Corporation,
 6
            Plaintiff,
                                       ) No. 11-CV-01846-LHK
     VS.
 8
     SAMSUNG ELECTRONICS CO., LTD.,
     a Korean business entity;
     SAMSUNG ELECTRONICS AMERICA,
10
     INC., a New York corporation;
     SAMSUNG TELECOMMUNICATIONS
11
     AMERICA, LLC, a Delaware
     limited liability company,
12
            Defendants,
13
14
15
              BE IT REMEMBERED, that on Wednesday,
16
     February 22, 2012, commencing at the hour of 9:12
17
     a.m. thereof, at the offices of Morrison & Foerster,
18
     755 Page Mill Road, Palo Alto, California, before
19
     me, Judie A. Nicholas, a Certified Shorthand
20
     Reporter of the State of California, there
21
     personally appeared.
22
                        TIMOTHY BENNER,
23
     called as a witness by the Plaintiff, who, being by
24
     me first duly sworn, was thereupon examined and
25
     testified as hereinafter set forth.
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		Page 8
1	firm represents Apple, Inc.	09:12
2	MS. CARUSO: Margret Caruso of Quinn	09:12
3	Emanuel Urquhart & Sullivan. With me is Michelle	09:12
4	Yang from Samsung.	09:12
5	THE VIDEOGRAPHER: Thank you.	09:12
6	Would the reporter please swear in the	09:12
7	witness.	09:12
8	TIMOTHY BENNER,	09:12
9	being first duly sworn,	09:12
10	was deposed and testified as follows:	09:12
11	THE VIDEOGRAPHER: Thank you.	09:12
12	EXAMINATION BY MR. ROBINSON	09:12
13	MR. ROBINSON: Good morning, Mr. Benner.	09:12
14	Thank you for being here.	09:12
15	Could you please state your full name for	09:12
16	the record.	09:12
17	A. Timothy John Benner.	09:12
18	Q. Have you ever been deposed before?	09:12
19	A. I have not.	09:12
20	Q. So the procedures are it's fairly	09:12
21	simple, but I just want to review a few of the	09:12
22	rules.	09:12
23	The court reporter here is taking down	09:12
24	everything that we say. I might speak a little	09:12
25	quickly, in which case she might grumble a little	09:13

		Page 126
1	THE WITNESS: The question I think you're	12 : 17
2		
•		12 : 17
4	Q.	12 : 17
5	A. That I conduct.	12 : 17
6	Q. Thank you.	12 : 17
7	And how does that work?	12 : 17
8	You said it	12 : 17
9	A.	12 : 17
10	Q. Is it the	
		12 : 17
12	MS. CARUSO: Objection: Vague.	12 : 17
13	THE WITNESS:	
		12 : 18
21	MR. CARUSO: Mr. Robinson, before you go	12:18
22	on to another topic, I've had this Pavlovian	12:18
23	response since your client announced lunch.	12:18
24	MR. ROBINSON: Oh, I'm so sorry, I	12:18
25	completely forgot.	12:18

		Page 127
1	Let's take a break for lunch.	12:18
2	THE VIDEOGRAPHER: The time is 12:18 p.m.,	12:18
3	and we're off record.	12:18
4	(A lunch break was taken.)	01:23
5	AFTERNOON SESSION	01:23
6	THE VIDEOGRAPHER: The time is 1:24 p.m.	01:23
7	and we are back on the record.	01:23
8	(Exhibits 1603 marked	01:23
9	for identification.)	01:23
10	FURTHER EXAMINATION BY MR. ROBINSON	01:23
11	MR. ROBINSON: Q. Mr. Benner, we're back.	01:23
12	Before the break we were talking about the	01:23
13		01:24
14	I'm going to hand what you has been	01:24
15	premarked as Exhibit 1603. This is entitled	01:24
16	Samsung Q1 '11, with	01:24
17	Bates stamp SAMNDCA00352115 through 352182.	01:24
18	Do you recognize Exhibit 1603?	01:24
19	A. Yes.	01:24
20	Q. Is that your name on the bottom of the	01:24
21	first page where it says "Owner"?	01:24
22	A. Yes.	01:24
23	Q. What does that mean?	01:24
24	A. That means I am the designated "Owner" of	01:24
25	this document in terms of whose responsibility it	01:25

		Page 128
1	is to, you know, produce it.	01:25
2	Q.	01:25
3	you referred to earlier in your testimony today?	01:25
4	A. Yes, it is.	01:25
5	Q. Is Exhibit 1603 a true and correct copy of	01:25
6	an en	01:25
7	A. To the best of my knowledge, yes.	01:25
8	Q. ?	01:25
9	MS. CARUSO: Objection: Vague.	01:25
10	THE WITNESS:	
		01:25
12	MR. ROBINSON: Q.	
		01:25
16	Q. How often does	21-25
		01:25
19	MS. CARUSO: Objection: Vague.	01:25
20	THE WITNESS:	
		01:25
22	MR. ROBINSON: Q. And by "these," are you	01:25
23		01:25
24	A. I am referring	
		01:26

		Page 129
1	Q. Are there	
	sorry. Strike that.	01:26
3		
	?	01:26
5	MS. CARUSO: Objection: Vague.	01:26
6	THE WITNESS:	
•		
		01:26
10	MR. ROBINSON: Q. Thank you for that	01:26
11 clas	rification.	01:26
12	Is the	
		01:26
16	A	01:26
17	Q. What are those?	01:26
18	A.	
		01:27
23	Q. You referred to	01:27
24		01:27
25	A. (01:27

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		Page 130
1	Q. Sorry,	01:27
2	A. (01:27
3	Q. And you mentioned that you receive	01:27
4	reports.	01:27
5		
		01:27
8	A. Carlo de la	<u> </u>
Ĥ		
		01:27
11	Q.	
		01:27
14	A. (1)	
=		
		01:27
17	Q. Can you think are they named anything	01:27
18	in particular?	01:28
19	A. No. They're usually just data.	01:28
20	Q. Are they large documents, or like one,	01:28
21	two-page things?	01:28
22	A.	01:28
23	Q. How much does STA pay to receive the	
		01:28
25	A. The cost has changed over time.	01:28
	<i>y</i>	

		Page 141
1	THE WITNESS: It's just a highlight of	01:43
2	those particular elements or those personalities to	01:43
3	draw attention to it.	01:43
4	MR. ROBINSON: Q. Do you see where it	01:43
5	says the same of t	01:43
6	A. Yes.	01:43
7	Q. What does ?	01:44
8	A. The second of	
Î		
		01:44
11	Q. And what does that mean, in just sort of	01:44
12	survey terms?	01:44
13	A	
		01:44
16	Q. I see?	01:44
17	A. Now we'd like you to it's not,	01:44
18	actually.	01:44
19	I'll find it. It's here.	
		01:44
23	Q. What's the Bates number of the page you	01:44
24	just read from?	01:44
25	A. It is page number 7, SAMNDCA00352121.	01:44

			Page 142
1	Q.	Thank you.	01:45
2		Why does STA consider	
Î			
	,		
			01:45
6	Α.	That's slightly misleading in what it	01:45
7	says.		
Î	_		
Î	-		01:45
10		Does that make sense?	01:45
11	Q.	Could you maybe say that in more regular	01:45
12	terms?		01:45
13		MS. CARUSO: Objection.	01:45
14		THE WITNESS: I don't know if I can. It's	01:45
15	a lot of	statistical analysis.	01:45
16		MR. ROBINSON: Q. Sure.	01:45
17	Α.		
	7		
			01:46
21	Q.	I see.	01:46
22		Could I have you turn please to page 26 of	01:46
23	this rep	ort Bates SAMNDCA00352140.	01:46
24	Α.	352140.	01:46
25	Q.	352140?	01:46

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		Page 143
1	A. Okay.	01:46
2	Q. Down at the bottom it looks like the	01:47
3	question being asked was,	
•		01:47
5	do you see that?	01:47
6	A. Yes.	01:47
7	Q. Is that the question?	01:47
8	A. It's actually	01:47
9	Q. Oh, I'm sorry,	01:47
10	And then above the charts we see a legend	01:47
11	with and it	01:47
12		
	and underneath there are	e 01:47
15	various charts.	01:47
16	Focusing on the chart above the	01:47
17	, what is being depicted in that	01:47
18	chart?	01:47
19	A. China de la	
		01:48

		Page 144
1		
		01:48
5	Q. And that's a significant difference at the	
6	right?	01:48
7	A. Correct.	01:48
8	Q. What this is saying is essentially	
		01:48
12	A. No, that's not correct.	
		01:49
18	Q. Those who saw	
	What do they see?	01:49
20	A. Charles and Market	
		01:49
22	Q. And, looking at that display, then nearly	01:49
23		
		01 40
	is that right?	01:49

		Page 145
1	A. What they were looking at	
Î		
Î		
•		
• •		01:49
7	Q. So, yes, in response to this prompt then,	01:49
8 1	ooking at having looked at the display of the	01:50
9		
-		01:50
12	A. What they thought, they said, was it was	01:50
13		
	عند نده نصفصف هما نمن نما ها ها م	
		01:50
20	Q. What was the sample size?	01:50
21	A. For the people who recognized the	01:50
22		01:50
23	Q. But this result shows, does it not, that	01:51
24 t	the minimum in the second of t	24 -
	right?	01:51

		Page 146
1	A. Yes.	01:51
2	Q. Did STA consider it a problem that the	01:51
3	(Galaxy (Tab) (advertisement) (was) (being) (misattributed) (to	01:51
4	(Apple?)	01:51
5	A. The as the statement here says, the	01:51
6		
•	Strike I	01:51
9	can't say strike that.	01:51
10	But,	
		01:51
14	Q. What did STA do, if anything, about the	01:51
15		
		01:52
17	MS. CARUSO: Objection: Beyond the scope;	01:52
18	lacks foundation.	01:52
19	THE WITNESS: In this case, this was	01:52
20	Samsung was breaking into the tablet market which	01:52
21	was firmly established for a period of time by	01:52
22	Apple being the only product available. I can't	01:52
23	remember exactly how many months that, basically,	01:52
24	stronghold held.	01:52
25	For the Galaxy, the first Galaxy Tab ad	01:52

		Page 147
1		
		01:52
7	Q. Didn't the advertising change as well	01:52
8	the style of the advertising change as between the	01:53
9	Galaxy Tab and Galaxy Tab 2, right?	01:53
10	MS. CARUSO: Objection: Assumes facts not	01:53
11	in evidence; vague.	01:53
12	THE WITNESS: Can you specify more exactly	01:53
13	what you're asking?	01:53
14	MR. ROBINSON: Q. The	
-		
-		
	the Samsung advertisements and	01:53
19	Apple advertisements?	01:53
20	MS. CARUSO: Objection: Calls for a legal	01:53
21	conclusion; mischaracterizes the record; assumes	01:53
22	facts not in evidence; vague.	01:53
23	THE WITNESS: I take issue with your	01:53
24	statement of state	
		01:53

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1	
:	01:54
	when breaking into 01:54
7 the market, so it's actual	
	01:54
Q. Does STA disagree	that the second second
17 MS CARUSO: Obje	01:54
MS. CARUSO: Obje	ection: Beyond the scope; 01:54 01:54
rache realisation.	n sorry, could you say it 01:54
20 again?	01:54
	Could we have that 01:54
²² question read back, please	01:54
THE REPORTER: Qu	nestion: "Does STA 01:54
²⁴ disagree that the	
	01:54

		4.40
		age 149
1	MS. CARUSO: Objection: Beyond the scope;	01:55
2	lacks foundation; mischaracterizes the record.	01:55
3	THE WITNESS: Could you rephrase the	01:55
4	question. I'm confused by the "Does STA disagree."	01:55
5	The negative phrasing of the question is throwing	01:55
6	me off. I'm not sure what you're asking.	01:55
7	MR. ROBINSON: Q. Do you agree that the	01:55
8	Galaxy Tab looks similar to the Apple iPad?	01:55
9	A. In this case, this Galaxy Tab does not.	01:55
10	Q. Why is that?	01:55
11	A. It's half the size.	01:55
12	(Exhibit No. 1604-1613	01:55
13	marked for identification.)	01:55
14	Q. I think I want to show you a bunch of	01:55
15	other documents. I'm not going to ask you detailed	01:55
16	questions about them.	01:55
17	What I'm going to ask is do you recognize	01:55
18	this documents, do they have your name on them, and	01:55
19	are they true and correct copies of the documents	01:56
20	that they are. They have been premarked as	01:56
21	Exhibits 1604 through 1613, and I'll place this	01:56
22	enormous stack in front of you, and counsel,	01:56
23	here's your copy. And I think we can probably take	01:56
24	this in two phases if we wanted to go through it	01:56
25	more quickly.	01:56

		Page 170
1	MS. CARUSO: Objection: Lacks foundation;	_
2	calls for speculation.	02:34
3	THE WITNESS: It would be the strategy	02:34
4	group.	02:34
5	MR. ROBINSON: Q. Who is involved with	02:34
6	the strategy group?	02:34
7	A. As mentioned earlier, Justin Denison and	02:34
8	his team.	02:34
9	Q. Thank you.	02:34
10	I have no further questions at this time,	02:34
11	subject to the same reservations and the same	02:34
12	objection by counsel	02:34
13	MS. CARUSO: Yes. This time we're getting	02:34
14	out of here.	02:34
15	THE VIDEOGRAPHER: This marks the end of	02:34
16	Disk Number 2 of 2, and concludes today's	02:34
17	deposition of Timothy Benner. The time is	02:34
18	2:35 p.m., and we are off the record.	02:34
19	(The deposition adjourned	
20	at 2:35 p.m.)	
21	000	
22		
23	Signed under penalty of perjury:	
24		
25	Timothy Benner	

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