

**D'AMATO DECLARATION EX. J  
FILED UNDER SEAL**

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA  
3 SAN JOSE DIVISION  
4

5 APPLE INC., a California )  
6 Corporation, )  
7 Plaintiff, )  
8 vs. ) No. 11-CV-01846-LHK  
9 SAMSUNG ELECTRONICS CO., LTD. , )  
10 a Korean business entity; )  
11 SAMSUNG ELECTRONICS AMERICA, )  
12 INC., a New York corporation; )  
13 SAMSUNG TELECOMMUNICATIONS )  
14 AMERICA, LLC, a Delaware )  
15 limited liability company, )  
16 Defendants, )  
17 )  
18 )  
19 )  
20 )  
21 )  
22 )  
23 )  
24 )  
25 )

26 BE IT REMEMBERED, that on Wednesday,  
27 February 22, 2012, commencing at the hour of 9:12  
28 a.m. thereof, at the offices of Morrison & Foerster,  
29 755 Page Mill Road, Palo Alto, California, before  
30 me, Judie A. Nicholas, a Certified Shorthand  
31 Reporter of the State of California, there  
32 personally appeared.

33 TIMOTHY BENNER,  
34 called as a witness by the Plaintiff, who, being by  
35 me first duly sworn, was thereupon examined and  
36 testified as hereinafter set forth.

Attorneys' Eyes Only

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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





1 is to, you know, produce it. 01:25

2 Q. [REDACTED] 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 [REDACTED]? 01:25

7 A. To the best of my knowledge, yes. 01:25

8 Q. [REDACTED]? 01:25

9 MS. CARUSO: Objection: Vague. 01:25

10 THE WITNESS: [REDACTED] 01:25

11 [REDACTED]. 01:25

12 MR. ROBINSON: Q. [REDACTED] 01:25

13 [REDACTED] 01:25

14 [REDACTED] 01:25

15 [REDACTED] 01:25

16 Q. How often does [REDACTED] 01:25

17 [REDACTED] 01:25

18 [REDACTED] 01:25

19 MS. CARUSO: Objection: Vague. 01:25

20 THE WITNESS: [REDACTED] 01:25

21 [REDACTED] 01:25

22 MR. ROBINSON: Q. And by "these," are you 01:25

23 [REDACTED] 01:25

24 A. I am referring [REDACTED] 01:25

[REDACTED] 01:26









1 Q. Thank you. 01:45

2 Why does STA consider [REDACTED] 01:45

3 [REDACTED] 01:45

4 [REDACTED] 01:45

5 [REDACTED] 01:45

6 A. That's slightly misleading in what it 01:45

7 says. [REDACTED] 01:45

8 [REDACTED] 01:45

9 [REDACTED] 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 A. [REDACTED] 01:45

18 [REDACTED] 01:46

19 [REDACTED] 01:46

20 [REDACTED] 01:46

21 Q. I see. 01:46

22 Could I have you turn please to page 26 of 01:46

23 this report Bates SAMNDCA00352140. 01:46

24 A. 352140. 01:46

25 Q. 352140? 01:46

1 A. Okay. 01:46

2 Q. Down at the bottom it looks like the 01:47

3 question being asked was, [REDACTED] [REDACTED] [REDACTED] [REDACTED]

4 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] 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 [REDACTED] [REDACTED] [REDACTED] 01:47

9 Q. Oh, I'm sorry, [REDACTED] [REDACTED] [REDACTED] 01:47

10 And then above the charts we see a legend 01:47

11 with [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] and it 01:47

12 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] 01:47

13 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] 01:47

14 [REDACTED] [REDACTED] [REDACTED] and underneath there are 01:47

15 various charts. 01:47

16 Focusing on the chart above the 01:47

17 [REDACTED], what is being depicted in that 01:47

18 chart? 01:47

19 A. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] 01:47

20 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] 01:47

21 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] 01:47

22 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] 01:47

23 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] 01:47

24 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] 01:47

25 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] 01:48

1 [REDACTED] 01:48  
2 [REDACTED] 01:48  
3 [REDACTED] 01:48  
4 [REDACTED] 01:48

5 Q. And that's a significant difference at the 01:48  
6 [REDACTED] [REDACTED], right? 01:48

7 A. Correct. 01:48

8 Q. What this is saying is essentially [REDACTED] 01:48  
9 [REDACTED] 01:48  
10 [REDACTED] 01:48  
11 [REDACTED] 01:48

12 A. No, that's not correct. [REDACTED] 01:48  
13 [REDACTED] 01:48  
14 [REDACTED] 01:48  
15 [REDACTED] 01:48  
16 [REDACTED] 01:48  
17 [REDACTED] 01:49

18 Q. Those who saw -- [REDACTED] 01:48  
19 [REDACTED] What do they see? 01:49

20 A. [REDACTED] 01:48  
21 [REDACTED] 01:49

22 Q. And, looking at that display, then nearly 01:49  
23 [REDACTED] 01:48  
24 [REDACTED] 01:48  
25 [REDACTED] is that right? 01:49



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 [REDACTED] 01:51

7 [REDACTED] 01:51

8 [REDACTED] Strike -- I 01:51

9 can't say strike that. 01:51

10 But, [REDACTED] 01:51

11 [REDACTED] 01:51

12 [REDACTED] 01:51

13 [REDACTED] 01:51

14 Q. What did STA do, if anything, about the 01:51

15 [REDACTED] 01:51

16 [REDACTED] 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



1 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] 01:54

6 This is at a time when -- breaking into 01:54  
7 the market, so it's actually not [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] 01:54  
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] 01:54  
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] 01:54  
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] 01:54  
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] 01:54  
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] 01:54  
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] 01:54  
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] 01:54

14 Q. Does STA disagree that the [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] 01:54

17 MS. CARUSO: Objection: Beyond the scope; 01:54  
18 lacks foundation. 01:54

19 THE WITNESS: I'm sorry, could you say it 01:54  
20 again? 01:54

21 MR. ROBINSON: Q. Could we have that 01:54  
22 question read back, please. 01:54

23 THE REPORTER: Question: "Does STA 01:54  
24 disagree that the [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] 01:54



## Attorneys' Eyes Only

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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

Attorneys' Eyes Only

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1 MS. CARUSO: Objection: Lacks foundation; 02:34

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 --oOo--

22

23 Signed under penalty of perjury:

24

25

\_\_\_\_\_  
Timothy Benner