

**EXHIBIT 3**  
**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. CASE NO. 11-cv-01846-LHK

9 SAMSUNG ELECTRONICS CO.,  
10 LTD., a Korean business  
11 entity; SAMSUNG ELECTRONICS  
12 AMERICA, INC., a New York  
13 corporation; SAMSUNG  
14 TELECOMMUNICATIONS AMERICA,  
15 LLC, a Delaware limited  
16 liability company,  
17 Defendants.

18 \_\_\_\_\_/  
19 H I G H L Y C O N F I D E N T I A L  
20 A T T O R N E Y S ' E Y E S O N L Y  
21

22 VIDEOTAPED DEPOSITION OF MICHAEL J. WAGNER  
23 VOLUME II  
24 PALO ALTO, CALIFORNIA  
25 SATURDAY, MAY 12, 2012

BY: ANDREA M. IGNACIO HOWARD, CSR, RPR, CCRR, CLR

CSR LICENSE NO. 9830

JOB NO. 49053

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SATURDAY, MAY 12, 2012

8:59 a.m.

VIDEOTAPED DEPOSITION OF MICHAEL J. WAGNER  
taken at MORRISON & FOERSTER LLP  
755 Page Mill Road, Palo Alto, California,  
Pursuant to Notice, before me,  
ANDREA M. IGNACIO HOWARD, CLR, CCRR, RPR,  
CSR License No. 9830.

1     A P P E A R A N C E S:

2

3             FOR APPLE INC.:

4             MORRISON & FOERSTER

5             By:   ERIK J. OLSON, Esq.

6                     PETER H. DAY, Esq.

7             755 Page Mill Road

8             Palo Alto, California 94304

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13             FOR SAMSUNG ELECTRONICS CO. LTD:

14             QUINN EMANUEL URQUHART & SULLIVAN

15             By:   CARL G. ANDERSON, Esq.

16             50 California Street

17             San Francisco, California 94111

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21             ALSO PRESENT:   Alan Dias, Videographer

22                             Terry Musika, Apple, Inc.

23                             ----oOo----

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1 Palo Alto, CALIFORNIA

2 SATURDAY, MAY 12, 2012

3 8:59 A.M.

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7 (Documents marked Wagner Exhibits 1 - 5 08:59

8 for identification.) 08:59

9 08:59

10 THE VIDEOGRAPHER: Good morning. 08:59

11 This is the beginning of Disc No. 1 of the 08:59

12 videotaped deposition of Michael Wagner. In the 08:59

13 matter of Apple Inc. versus Samsung Electronics. 08:59

14 This is a matter pending before the United 08:59

15 States District Court for the Northern District of 08:59

16 California. Case No. 11-CV-01846. 08:59

17 We are located today at 755 Page Mill Road in 09:00

18 the city of Palo Alto, California. 09:00

19 Today is May 12, 2012, and the time is 09:00

20 8:59 a.m. 09:00

21 My name is Alan Dias from TSG Reporting. 09:00

22 Counsel, will you please identify yourselves 09:00

23 for the record. 09:00

24 MR. OLSON: Yeah. Erik Olson of Morrison & 09:00

25 Foerster on behalf of Apple. With me is Peter Day 09:00

1 from my office. And also present here is Terry Musika 09:00

2 of Invotex Group, who is an expert in the case. 09:00

3 MR. ANDERSON: Carl Anderson of Quinn Emanuel 09:00

4 for Michael Wagner and Samsung. 09:00

5 THE VIDEOGRAPHER: Will the court reporter 09:00

6 please swear in the witness. 09:00

7 09:00

8 MICHAEL WAGNER, 09:00

9 having been sworn as a witness 09:00

10 by the Certified Shorthand Reporter, 09:00

11 testified as follows: 09:01

12 09:01

13 THE VIDEOGRAPHER: You may proceed. 09:01

14 09:01

15 EXAMINATION BY MR. OLSON 09:01

16 MR. OLSON: Q. Mr. Wagner, you understand 09:01

17 you're here to testify regarding certain opinions you 09:01

18 have regarding the damages that would be paid to Apple 09:01

19 for violations of its intellectual property by 09:01

20 Samsung; correct? 09:01

21 A Correct. 09:01

22 Q And you've testified more than 300 times 09:01

23 before; correct? 09:01

24 A I have. 09:01

25 Q All right. So I'm not going to bother with 09:01

1 by my client as to these times. These are engineering 09:44  
2 questions. I have to rely on others to give me this 09:45  
3 information. I also had to get information as to 09:45  
4 average cost of engineering time at Samsung. 09:45

5 Again, I'm not able to independently state 09:45  
6 those are accurate. But if those are accurate, it's 09:45  
7 not garbage in 09:45

8 Q Okay. So let me see if I -- I was too quick 09:45  
9 there. 09:45

10 Let me -- you are relying entirely on 09:45  
11 estimates that have come from Samsung for purposes of 09:45  
12 this calculation? 09:45

13 A That is correct. 09:45

14 Q And your -- your dollar calculation also 09:45  
15 includes amounts on the cost per hour, for example, 09:45  
16 for engineers that come entirely from Samsung? 09:45

17 A Yes. 09:45

18 Q And as to the time estimates, those are 09:45  
19 coming entirely from Samsung? 09:45

20 A Samsung engineers. 09:45

21 Q And as to whether or not the design -- the 09:45  
22 change, the redesign, would be equally acceptable to 09:46  
23 consumers, are you relying on Samsung as well? 09:46

24 A Yes. 09:46

25 Q And as to whether or not Samsung would lose 09:46

1 any sales at all, are you relying on Samsung? 09:46

2 A In part, yes. 09:46

3 Q What other -- what other source do you have 09:46  
4 as to that? 09:46

5 A Well, to the extent that they have actually 09:46  
6 designed around some of these patents. And the only 09:46  
7 thing I have in my memory that -- I think there are 09:46  
8 some others -- is the '381 patent, where, assuming it 09:46  
9 is a valid design-around, that a blue glow or an 09:46  
10 orange glow is a sufficient indicator to a user that 09:46  
11 they've reached the end of a series of images or 09:46  
12 something else, is a suitable design-around because 09:47  
13 they've implemented it, and that's in their latest 09:47  
14 generations of phones. 09:47

15 Q Are you familiar with an order that came down 09:47  
16 from this Court on May 4th? 09:47

17 A Possibly, but you'd have to -- I don't have 09:47  
18 those dates memorized. 09:47

19 Q Are you aware that there was an order from 09:47  
20 the Court regarding the limitations on what Samsung 09:47  
21 will be able to prove at trial due to its failure to 09:47  
22 produce source code in connection with the case? 09:47

23 A You've refreshed my recollection. I am aware 09:47  
24 of that. 09:47

25 Q Do you understand that order to provide that 09:47



1 Samsung will not be able to provide evidence at trial 09:47  
2 regarding certain design-arounds? 09:47

3 MR. ANDERSON: Objection; misrepresents the 09:47  
4 Court's order and calls for a legal conclusion. 09:47

5 THE WITNESS: Yeah, I don't know the 09:47  
6 implication of the order. But if you're asking me to 09:47  
7 assume what you said is correct, then -- and if I'm 09:47  
8 not permitted to discuss that, then that is not a 09:47  
9 design-around. 09:48

10 MR. OLSON: Q. Well, let me -- let me read 09:48  
11 you from the -- to the -- from the order: 09:48

12 "Samsung shall be precluded from offering any 09:48  
13 evidence of its design-around efforts for the '381, 09:48  
14 '891 and '163 patents and shall not argue that the 09:48  
15 design-arounds are in any way distinct from those 09:48  
16 versions of the code produced in accordance with the 09:48  
17 Court's order." 09:48

18 Had you read that before? 09:48

19 A Yes. 09:48

20 Q I ask you to assume with me that, based on 09:48  
21 that order, Samsung would not be allowed to produce 09:48  
22 evidence regarding any actual implementation of blue 09:48  
23 glow at trial; do you understand the assumption I'm 09:48  
24 asking you to make? 09:48

25 A I do. 09:48

1 Q Would that change your opinions in any way? 09:48

2 A Yes. 09:48

3 Q How? 09:48

4 A Well, one, it would -- I would not be able to 09:48

5 tell the jury that Samsung not only has thought or 09:49

6 conceptualized a design-around, they've actually 09:49

7 implemented it in their latest generations of phones. 09:49

8 Q And how would that affect the amount that you 09:49

9 believe should be awarded in damages? 09:49

10 A I don't know if it has any impact on the 09:49

11 amount unless, based on the Judge's ruling, I can't 09:49

12 put these numbers in, either. If that's true, then I 09:49

13 don't know -- I will have nothing to say as an 09:49

14 affirmative opinion on the reasonable royalty for -- 09:49

15 for the '381 patent. 09:49

16 Q Okay. Would the same be true about the 09:49

17 '163 patent? 09:49

18 A Yes. 09:49

19 Q Let me go back to the work that you did to 09:49

20 calculate the amounts that are on 530. 09:49

21 Are those found -- the calculations that lead 09:49

22 to that, are those found in the Series 13 schedules of 09:49

23 your Tab 2? 09:50

24 A You know, I don't have my schedule numbers 09:50

25 memorized, but I believe it's in that range, yes. 09:50

1 Q So I think I've put it in front of you. 09:50

2 I'm just looking to understand from you 09:50

3 whether there's anything other than Series 13 that I 09:50

4 should be looking at for purposes of calculation of 09:50

5 those amounts in exhibit -- in paragraph 530? 09:50

6 A No. 09:50

7 Q So can you look at -- well, let's just start 09:50

8 at 13. 09:51

9 So Schedule 13 itself provides just a summary 09:51

10 of the schedules that are underneath; correct? 09:51

11 A Yes. 09:51

12 Q And with the exception of who was -- who you 09:51

13 talked to and the data on the amount of time, are the 09:51

14 manner in which those were calculated in 13.1 through 09:51

15 13.7 all the same -- 09:51

16 A Yes. 09:51

17 Q -- the methodologies? 09:51

18 A Yes, the methodology is the same. 09:51

19 Q And that methodology is to take an hourly 09:51

20 rate, which you obtained from someone at Samsung; 09:51

21 correct? 09:51

22 A Correct. 09:51

23 Q And multiply it times a number of hours, 09:51

24 which you obtained from someone at Samsung? 09:51

25 A Yes. 09:51