

**D'AMATO DECLARATION
EXHIBIT H
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.,
LTD., a Korean business
10 entity; SAMSUNG ELECTRONICS
AMERICA, INC., a New York
11 corporation; SAMSUNG
TELECOMMUNICATIONS AMERICA,
12 LLC, a Delaware limited
liability company,

13 Defendants.

14 _____ /
15 H I G H L Y C O N F I D E N T I A L
16 A T T O R N E Y S ' E Y E S O N L Y

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18 VIDEOTAPED DEPOSITION OF MICHAEL J. WAGNER
19 VOLUME II
20 PALO ALTO, CALIFORNIA
21 SATURDAY, MAY 12, 2012
22

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

24 CSR LICENSE NO. 9830

25 JOB NO. 49053

1 entire market value rule. 16:28

2 And that's what the law seems to say, and I 16:28
3 just have to accept -- even though I don't agree with 16:28
4 it, that's what the rule is. 16:28

5 Because it's not the entire revenue rule. 16:28
6 It's the entire market value rule, which to me is a 16:28
7 measure of profits and value. And yet if you do any 16:28
8 apportionment, then I don't think it's the entire 16:28
9 value. 16:28

10 But that's clearly not what the case law says 16:28
11 and what judges say. 16:28

12 Q Well, you -- what is -- as you understand 16:28
13 what cases say, as long as you do an apportionment of 16:28
14 some type, you're meeting the rule? 16:28

15 A No. You -- even though you've done some 16:28
16 apportionment, that does not mean you're outside of 16:28
17 the entire market value rule. If you started from the 16:28
18 total profits or sales of the product, you're until 16:29
19 there. 16:29

20 Q I see. 16:29

21 Your -- so your understanding as you're 16:29
22 applying it here for purposes of your criticisms of 16:29
23 Mr. Musika is that the entire market value rule just 16:29
24 prohibits starting with entire profitability at all? 16:29

25 A Correct. 16:29

1 Q All right. 16:29

2 Let's -- let's turn, then, to the question of 16:29
3 how Mr. Musika calculates his income ranges for this 16:29
4 reference point. 16:29

5 Do you have a criticism of the methods he 16:29
6 uses to -- other than whether it qualifies under the 16:29
7 entire market value rule, whether it is appropriate -- 16:29
8 I'll stop there. 16:29

9 A Well, I -- yes. I don't think his method is 16:29
10 appropriate as based on what I've said in my report. 16:29
11 That, again, if you use his approach and just change 16:30
12 certain assumptions, and you do his approach and you 16:30
13 separate out iPad from iPhone, it just doesn't work. 16:30
14 I mean, he would show that Samsung has no value from 16:30
15 using these patents. 16:30

16 Q And what is it that causes you to believe 16:30
17 that you would change the -- what assumptions would 16:30
18 need to change in order for it to have no value? 16:30

19 A Well, the only assumption I think you need to 16:30
20 change, which is his decision or judgment to use only 16:30
21 a 5 percent tax rate for Samsung, which makes no sense 16:30
22 to me. He should be using, just like he does for 16:30
23 Apple, the worldwide tax rate. 16:30

24 And if you just make that one change, my 16:30
25 recollection is it's -- using his approach, Samsung is 16:30

1 generating no value from these patents. 16:30

2 Q Do you -- have you actually identified 16:30
3 through discussions with Samsung what tax rate they 16:30
4 pay all in on the Accused Products? 16:30

5 A No. I just know it's pursuant to a 16:31
6 negotiation with the federal government as to 16:31
7 arm's-length transfer pricing. 16:31

8 Q And do you have any reason to disagree with 16:31
9 Mr. Sheppard's testimony that the amount of the profit 16:31
10 or the amount of the tax -- excuse me -- that the -- 16:31
11 let me strike all that. 16:31

12 Do you have any reason to disagree with 16:31
13 Mr. Sheppard's testimony that the amount of the profit 16:31
14 that is to be identified pursuant to the transfer 16:31
15 price discussions with the IRS is 1 percent? 16:31

16 A I'd need more information to know; but no. 16:31
17 He clearly has better information than I do. But if 16:31
18 that's based on the historic financial results, it 16:31
19 doesn't surprise me. They haven't made any money. So 16:31
20 no, it wouldn't surprise me that it's a 1 percent tax 16:32
21 rate. 16:32

22 But if they're making big profits, I don't 16:32
23 think it would be 1 percent. I cannot believe the 16:32
24 U.S. government has done that. 16:32

25 Q Well, do you have -- certainly, you don't 16:32

1 have any better information regarding Samsung's U.S. 16:32
2 tax rate than Mr. Sheppard? 16:32

3 A That's true. 16:32

4 Q Why do you believe that the use of -- let me 16:32
5 back up. 16:32

6 You agree that the U.S. tax rate is a 16:32
7 relevant question; correct? 16:32

8 A I believe it's relevant. 16:32

9 Q The -- so why can't you believe that the 16:33
10 government would do that? 16:33

11 A Because I -- I would be furious at our 16:33
12 government if they are letting some international 16:33
13 corporation not pay taxes in the United States for 16:33
14 their business they do in the United States. I would 16:33
15 believe that they have -- they pay the same tax rates 16:33
16 as any corporation in the U.S. 16:33

17 But if they're losing money, they're not 16:33
18 going to pay taxes, just like a U.S. company who 16:33
19 doesn't make money doesn't pay more than 1 percent 16:33
20 taxes. 16:33

21 Q When you say the same as any U.S. company, 16:33
22 you're talking about, like, a General Electric or 16:33
23 other companies that operate in the U.S.?
16:33

24 A Well, that's a bad example because they are 16:33
25 international, and they have all the same issues that 16:33

J U R A T

I, MICHAEL J. WAGNER, do hereby certify under
Penalty of perjury that I have read the
foregoing transcript of my deposition taken
on May 12, 2012; that I have made such
corrections as appear noted herein in ink,
initialed by me; that my testimony as
contained herein, as corrected, is true and
correct.

DATED this 24 day of May, 2012,
at Mountain View, California.



SIGNATURE OF WITNESS

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E R R A T A S H E E T

I, MICHAEL J. WAGNER, make the following changes to my deposition taken in the matter of Apple, Inc., vs. Samsung Electronics, taken on May 12, 2012:

DATE: May 24, 2012



Signature of Witness

Page	Line	Change
<u>306</u>	<u>18</u>	<u>"get" s/b "give"</u>
<u>455</u>	<u>1</u>	<u>"prove" s/b "improve"</u>
<u>457</u>	<u>11</u>	<u>"SGJ" s/b "S,G & A"</u>
<u>470</u>	<u>12</u>	<u>"disguised" s/b "discussed"</u>
<u>490</u>	<u>22</u>	<u>"day" s/b "data"</u>
<u>513</u>	<u>18</u>	<u>"until" s/b "still"</u>
<u>517</u>	<u>13</u>	<u>"go over" s/b "generate"</u>
<u>548</u>	<u>8</u>	<u>"articles. It" s/b "that"</u>
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