

**D'AMATO DECLARATION
EXHIBIT J
FILED UNDER SEAL**

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

APPLE, INC., a California
5 corporation,

6
7 Plaintiff,

8
9 -vs-

No. 11-CV-01846-LHK

10 SAMSUNG ELECTRONICS CO., LTD.,
11 a Korean business entity; et al.,
12 Defendants.

/

13 VIDEOTAPED DEPOSITION OF TIMOTHY SHEPPARD - 30(b)(6)
14 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY
15 SAN FRANCISCO, CALIFORNIA
16 WEDNESDAY, FEBRUARY 29, 2012

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21 Reported by: LOUISE MARIE SOUSOURES, CSR NO. 3575
22 Certified LiveNote Reporter

23
24
25 JOB NO: 47031

P R O C E E D I N G S

-oOo-

1 (Exhibit Nos. 1918 and 1919 were marked.) 13:26
2
3 THE VIDEOGRAPHER: Good afternoon. Here 13:26
4 marks the beginning of the deposition for Tim 13:26
5 Sheppard, 30(b)(6) in the matter of Apple, 13:26
6 Incorporated versus Samsung Electronics Company, 13:26
7 Limited et al., in the United States District Court, 13:26
8 Northern District of California, San Jose Division, 13:26
9 case 11-CV-01846-LHK. 13:26
10 Deposition is being held at 425 Market Street 13:26
11 in San Francisco, California on February 29th, 2012 at 13:26
12 approximately 1:26. 13:26
13 I am Aline Mayer, a legal video specialist 13:26
14 from TSG Reporting, headquartered at 747 Third Avenue, 13:26
15 New York, New York, and our court reporter is Louise 13:26
16 in association with TSG Reporting. 13:26
17 Counsel, please introduce yourselves and 13:26
18 state who you represent for the record. 13:27
19 MR. OLSON: Eric Olson from Morrison & 13:27
20 Foerster representing Apple. 13:27
21 MR. SELWYN: Mark Selwyn from WilmerHale also 13:27
22 on behalf of Apple. 13:27
23 MR. ALDEN: Anthony Alden on behalf of Quinn 13:27
24 Emanuel for Samsung and the witness, Tim Sheppard. 13:27
25

1 MS. HAN: Julie Han from Samsung. 13:27

2 THE VIDEOGRAPHER: The court reporter will 13:27

3 now please swear in the witness. 13:27

4 --oOo--

5 TIMOTHY SHEPPARD,

6 having been first duly sworn by the

7 Certified Shorthand Reporter to tell

8 the truth, the whole truth, and nothing

9 but the truth, testified as follows:

10 EXAMINATION BY MR. OLSON:

11 Q. Mr. Sheppard, you have been deposed in this 13:27

12 case before, correct? 13:27

13 A. Correct. 13:27

14 Q. And have your job responsibilities changed in 13:27

15 a material way since your deposition in January of 13:27

16 this year? 13:27

17 A. No. 13:27

18 Q. And is it correct that you are responsible 13:27

19 for accounting functions at Samsung Technology -- 13:27

20 excuse me, Telecommunications America? 13:27

21 A. Yes. 13:27

22 Q. And if I refer to that as STA, you would 13:27

23 understand what I was referring to? 13:27

24 A. Yes. 13:28

25 Q. Do you have any role in the accounting at 13:28

1 I don't know where profit is earned in the 16:36
2 whole entire supply chain. 16:36
3 So if manufacturing is -- supplies are in 16:36
4 multiple countries, I don't know where their 16:36
5 individual relative profits lie in the entire supply 16:36
6 chain. 16:36
7 So it could be China, could be the U.S., if 16:36
8 we have supplies in the U.S., making profit that are 16:36
9 selling to Samsung, there's a lot of people involved 16:36
10 in manufacturing handsets. 16:36
11 BY MR. OLSON: 16:36
12 Q. So in the hypothetical situation in which on 16:36
13 a consolidated basis from STA all the way up through 16:36
14 all the subsidiaries, Samsung collectively is making 16:36
15 20 percent, the plan by means of the APA is to 16:37
16 transfer between 18 and a half and 19 percent to 16:37
17 entities outside of the United States? 16:37
18 MR. ALDEN: Objection, assumes facts not in 16:37
19 evidence, vague and ambiguous. 16:37
20 THE WITNESS: Well, firstly, I don't know 16:37
21 what the actual total consolidated profit is so I 16:37
22 don't know if it's 20 percent. Sounds like a 16:37
23 wonderful number to get to, but I don't know what the 16:37
24 reality is. 16:37
25 In terms of attempting to move profit, I 16:37

1 don't think that's the way it works. 16:37

2 So the negotiation for the APA is really a 16:37

3 three-party negotiation between the Korean IRS, the 16:37

4 U.S. IRS and Samsung to say based on our economic 16:37

5 activity, they hire economists, we hire economists, 16:37

6 the Korean government hires economists and says based 16:37

7 on the activity STA does, this is a fair and 16:37

8 reasonable amount of profit that reflects the activity 16:38

9 that STA is doing. 16:38

10 Based on that, that's how the tax is paid. 16:38

11 So the tax is paid no matter whether STA's 16:38

12 having a good or bad year, guaranteed income to the 16:38

13 U.S. government. 16:38

14 BY MR. OLSON: 16:38

15 Q. What I'm trying to understand is the 16:38

16 guarantee is limited to by virtue of the Berry ratio 16:38

17 ultimately approximately one to one and a half 16:38

18 percent; is that correct? 16:38

19 A. Yeah, but it's guaranteed no matter what. 16:38

20 There's no risk from the U.S. government 16:38

21 point of view. They're in a good position. 16:38

22 Q. Any other profits go to other entities and 16:38

23 would be paid taxes elsewhere outside the United 16:38

24 States, correct? 16:38

25 A. I don't know if there are profits. You're 16:38

1 assuming there are profits. 16:38

2 I don't know if there are. 16:38

3 From a U.S. government point of view, the 16:38

4 negotiation is to say there will be profits paid based 16:38

5 on the activity no matter what, rather, there will be 16:38

6 income tax paid no matter what the result of the 16:38

7 activity is being performed. 16:38

8 For other tax jurisdictions, they don't have 16:39

9 that benefit. There may be profits, may not be 16:39

10 profits. 16:39

11 They have a much higher risk and reward 16:39

12 situation to deal with this. 16:39

13 They may get no tax, may get much more tax. 16:39

14 Q. If there are profits, taxes are all paid on 16:39

15 those profits somewhere outside the United States? 16:39

16 A. Taxes paid on profits in the U.S. guaranteed 16:39

17 and probably, I don't know for sure, there may be 16:39

18 taxes paid in other jurisdictions. 16:39

19 Q. And the amount paid in the U.S. is 16:39

20 approximately a one to one and a half percent of 16:39

21 revenue for STA? 16:39

22 MR. ALDEN: Objection, assumes facts not in 16:39

23 evidence. 16:39

24 THE WITNESS: No, the operating margin is 16:39

25 about one and a half percent and the tax rate is 16:39

1 consider the deposition closed. 18:14
2 I have nothing further, though. 18:14
3 THE VIDEOGRAPHER: Here marks the end of 18:14
4 today's deposition of Tim Sheppard, total number of 18:14
5 tapes used is three. We are off the record, it's 18:14
6 6:14. 18:14

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9 (Whereupon, at 6:14 p.m. the deposition of
10 TIMOTHY SHEPPARD was adjourned.)

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TIMOTHY SHEPPARD