

# **EXHIBIT 5**

**FILED UNDER SEAL**

BEFORE THE  
UNITED STATES INTERNATIONAL TRADE COMMISSION

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In the Matter of:                    ) Investigation No.  
CERTAIN ELECTRONIC DIGITAL    ) 337-TA-796  
MEDIA DEVICES AND                )  
COMPONENTS THEREOF             )

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Main Hearing Room

United States  
International Trade Commission  
500 E Street, Southwest  
Washington, D.C.

Friday, June 1, 2012

Volume 2

The parties met, pursuant to the notice of the  
Judge, at 8:44 a.m.

BEFORE: THE HONORABLE THOMAS B. PENDER

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12 \*\*\* Index appears at end of transcript \*\*\*

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1 overall impression.

2           And then tried to apply that to all of  
3 the phones that we examined and, in fact,  
4 narrowed that field down significantly. And  
5 then compared that to select items of prior art  
6 that I selected from many of the pieces of  
7 prior art that Samsung had provided in their  
8 materials.

9           And then we did a -- then I did a -- a  
10 prior art to the patent, to the phone  
11 comparison. And my understanding of the law is  
12 that you're comparing each of them to the prior  
13 art. And if the infringing phone is closer to  
14 the patent than it is to the prior art, then  
15 that's a reasonable understanding of it being  
16 satisfactory in that regard.

17       Q.     Now, you mentioned in that answer your  
18 functionality analysis, and of course, you were  
19 asked some questions about that during  
20 cross-examination?

21       A.     Yes.

22       Q.     Would you tell us what exactly you  
23 believe is and is not functional about having a  
24 display on a smartphone?

25       A.     I believe having a display in a

1 smartphone is absolutely functional from a  
2 performance and engineering standpoint. I  
3 believe that the size of that display and the  
4 location of that display and in some cases the  
5 shape of that display is definitely not  
6 functional.

7 Q. Why not?

8 A. It's an appearance element as it  
9 relates on a patent, and it certainly is not a  
10 requirement that it cover the entire face.

11 Q. And why do you mention covering the  
12 entire face, why is that important in this  
13 case?

14 A. Because in my personal opinion as an  
15 expert, the major overall impression created by  
16 the '757 patent and the '678 patents are that  
17 of a -- an electronic device with a flat face  
18 that covers the entire surface of the phone.  
19 And based on the '678, one that is transparent,  
20 in which you can see an area that if it were a  
21 phone would be a display. And that  
22 transparency covers the phone from edge to  
23 edge, and I think that's really a dominant  
24 visual element.

25 Q. Is there anything functional about



1 having a clear transparent face on any part of  
2 the front face of a phone other than over the  
3 display?

4 A. Not that I'm aware of.

5 Q. Now you were also asked about the  
6 functionality of the location of the receiver  
7 or the speaker slot or speaker hole on a phone,  
8 do you recall that?

9 A. Yes.

10 Q. And what, in your opinion, is  
11 functional or nonfunctional about the location  
12 or shape of the speaker slot or hole?

13 A. Well, based on my comparison to other  
14 phones, it became pretty clear that the  
15 location of that speaker slot and the size and  
16 the shape of that speaker slot really was not  
17 determined by function. It could be many  
18 different places on the face, and I seem to  
19 recall having seen at some point a phone where  
20 the speaker was actually on the top edge. I  
21 can't produce one as proof, but I do recall  
22 that.

23 Q. So as long as it's somewhere near the  
24 ear, it would be good enough?

25 A. Yes.

1 question and ask another question, okay. So  
2 you don't -- you didn't mean to ask that  
3 question, because you asked about phone, you  
4 didn't ask design. Okay. Your witness was  
5 quicker than either one of us.

6 MR. BARQUIST: Yes, Your Honor.

7 BY MR. BARQUIST:

8 Q. Mr. Bressler, could you please explain  
9 to the Court the basis for your opinion, if  
10 this is your opinion, for why an ordinary  
11 observer could mistake the Samsung phone  
12 RPX-149 for the Apple design?

13 MR. VERHOEVEN: Same objections.

14 JUDGE PENDER: Overruled. And when  
15 you say design, do you mean the '757, do you  
16 mean the two patents together, sir?

17 MR. BARQUIST: Thank you, Your Honor.

18 BY MR. BARQUIST:

19 Q. Take it one at a time, so we're really  
20 clear, Mr. Bressler. Could you explain to the  
21 Court your opinion for how it is an ordinary  
22 observer could mistake the Samsung phone  
23 RPX-149 for the design of the D '757 patent?

24 A. Yes. The D '757 patent describes a  
25 rectangular solid that has radiused corners and

1 soft edges and a totally flat front surface.  
2 The Samsung phones in question have -- are  
3 rectangular in nature, have radiused corners,  
4 have soft -- for the most part, soft sides, and  
5 have a continuous flat front surface.

6 Q. And same question with regard to the  
7 '678 patent, can you explain how it is in your  
8 opinion an ordinary observer could mistake the  
9 Samsung phone RPX-149 for the design claimed in  
10 the '678 patent?

11 JUDGE PENDER: Actually, you asked a  
12 different question. The first way you asked it  
13 was great. You said if he could mistake. In  
14 other words, that was slightly leading, what  
15 you just asked.

16 MR. BARQUIST: Thank you, Your Honor.

17 JUDGE PENDER: You're welcome.

18 BY MR. BARQUIST:

19 Q. Mr. Bressler, could you please explain  
20 what your opinion is with regard to whether or  
21 not an ordinary observer could mistake the  
22 Samsung phone RPX-149 for the design claimed in  
23 the '678 patent?

24 A. Absolutely. I believe that the  
25 '678 patent is the core of the overall

1 impression created by these phones, which is a  
2 continuous surface that is transparent over its  
3 entire surface until it gets to a bezel, and  
4 that it has lateral borders on either side that  
5 are narrower and borders at the top and bottom  
6 that are wider, and they all have  
7 lozenge-shaped speaker slots.

8           So, to me, there's not very much that  
9 isn't very, very subtle differentiating them,  
10 except maybe the couple of little icons across  
11 the bottom.

12       Q.     What role, if any, do the four icons  
13 across the bottom play in your analysis?

14       A.     I acknowledged them and thought about  
15 them and determined that I didn't feel they  
16 played an important role in the overall  
17 impression of the design.

18       Q.     What role, if any, does the logo or  
19 name of Samsung on the front of the phone play  
20 in your analysis?

21       A.     None.

22           JUDGE PENDER: You rung that bell,  
23 Mr. Barquist, and he said none. That was the  
24 response, his response, sir.

25           MR. BARQUIST: Yes, Your Honor.

1 JUDGE PENDER: All right. Thank you.

2 BY MR. BARQUIST:

3 Q. You were also asked some questions  
4 during cross-examination about the iPhone 3G  
5 and its design, do you recall that?

6 A. Yes.

7 Q. And I think, in that respect, the  
8 discussion was on the curvature of the back of  
9 the 3G and how that compared to the  
10 '757 patent, do you recall that?

11 A. I do.

12 Q. And can you explain what role the  
13 curvature on the back of the iPhone 3G plays in  
14 your analysis about whether or not the 3G  
15 practices the '757 patent?

16 A. I believe that the overall impression  
17 that an ordinary observer would have of  
18 that -- of that patent, because the sides are,  
19 in fact, spine curves and not exact radii, the  
20 overall impression is simply that it's soft.  
21 And given that overall impression, I believe  
22 that the 3G and 3GS, provide that same overall  
23 impression.

24 Q. Going back one-half step, can you tell  
25 us why you didn't consider the Samsung logo

CERTIFICATE OF REPORTER

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TITLE: Certain Electronic Digital Media Devices  
INVESTIGATION NO: 337-TA-796  
HEARING DATE: June 1, 2012  
LOCATION: Washington, D.C.  
NATURE OF HEARING: Hearing

I hereby certify that the foregoing/attached transcript is a true, correct and complete record of the above-referenced proceedings of the U.S. International Trade Commission.  
Date: June 1, 2012

SIGNED: CYNTHIA OTT \_\_\_\_\_

Signature of the Contractor of the Authorized Contractor's Representative  
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I hereby certify that I am not the Court Reporter and that I have proofread the above-referenced transcript of the proceedings of the U.S. International Trade Commission, against the aforementioned Court Reporter's notes and recordings, for accuracy in transcription in the spelling, hyphenation, punctuation and speaker identification and did not make any changes of a substantive nature. The foregoing/attached transcript is a true, correct and complete transcription of the proceedings.

SIGNED: H. NGUYEN \_\_\_\_\_  
Signature of Proofreader

I hereby certify that I reported the above-referenced proceedings of the U.S. International Trade Commission and caused to be prepared from my tapes and notes of the proceedings a true, correct and complete verbatim recording of the proceedings.

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