

**EXHIBIT 15**  
**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 description, yes. Closer to the end meaning  
2 the outsides.

3 JUDGE PENDER: Correct.

4 THE WITNESS: Yes.

5 BY MR. VERHOEVEN:

6 Q. And when you look at D '015, the front  
7 surface, do you see oblique line shading?

8 A. I do.

9 Q. And that's to indicate that the front  
10 surface is transparent or translucent or highly  
11 polished or reflective or something like that?

12 A. I --

13 MR. BARQUIST: Objection, compound,  
14 Your Honor.

15 JUDGE PENDER: You know, there's no  
16 real objection to compound if you're arguing  
17 it's an improper question. We'll see if the  
18 witness can answer it or not, you know.

19 THE WITNESS: I believe it fits the  
20 description of what those diagonal lines are  
21 supposed to represent.

22 BY MR. VERHOEVEN:

23 Q. Thank you, sir.

24 A. Three of those.

25 Q. Thank you, sir. And the D '757 patent

1 actually does not claim a transparent,  
2 translucent or highly polished reflective  
3 surface on the front?

4 A. Of the '757?

5 Q. Yes.

6 A. It does not, correct. It does  
7 describe a flat surface.

8 Q. Can we go to RDX-49C-12, please.

9 In conducting your analysis of the  
10 scope of the '757, you didn't happen to review  
11 the Manual of Patent Examining Procedure Rule  
12 1503.02, did you?

13 A. No, but I remember seeing the lines  
14 you've highlighted.

15 Q. Oh, so you do remember seeing these  
16 lines? And I'll read those highlighted lines  
17 into the record, Your Honor. "Oblique line  
18 shading must be used to show transparent,  
19 translucent and highly polished or reflective  
20 surfaces such as a mirror."

21 So you were aware of that?

22 A. Yes.

23 Q. Now, can we go back to the slide that  
24 was just on, Ryan? So here in '757, it's not  
25 claiming that, so that -- it can't be included

1 in '757, right?

2 MR. BARQUIST: Objection, Your Honor.

3 I mean, I don't know what that question means.

4 Can't be included. But I think it's a

5 misstatement of the law if it's an attempt to

6 state the law.

7 MR. VERHOEVEN: I'll withdraw the

8 question.

9 BY MR. VERHOEVEN:

10 Q. In any event, there is no oblique line

11 shading in '757, right?

12 A. That's correct.

13 Q. But there is on '015, right?

14 A. There appears to be, yes. As I said,

15 I haven't studied the patent in depth in all

16 the views.

17 Q. And if we move on, and you compare

18 both on the left-hand side, both the initial

19 iPhone and D '757, you see a continuous rounded

20 surface or curved surface that goes from the

21 flat front surface to the flat back, do you see

22 that?

23 A. On which one, sir?

24 Q. '757?

25 A. Yes.

1 some of them required more complicated or less  
2 complicated processes. But I didn't analyze  
3 them specifically or create documentation that  
4 would show substantial analyzation of the  
5 engineering.

6 Q. For these phones that you put in your  
7 report as alternative designs, you did not do  
8 anything specific on each of those phones to  
9 determine a comparable manufacturing cost  
10 between the different phones, did you, sir?

11 A. No, I did not.

12 Q. And you didn't acquire any data on  
13 whether the performance of any of your  
14 purported alternatives was degraded by the  
15 alternative designs, did you?

16 A. I think that depends on what you mean  
17 by performance. If you mean operability, I did  
18 check that, and reviewed the phones. If you  
19 mean performance in terms of speed or other  
20 technical terms, no, I did not analyze that.

21 Q. And you don't have any information for  
22 these alternative phones as to whether any  
23 product feature affected the quality of the  
24 article, correct?

25 A. I have no specific data in that

1 regard, no.

2 Q. And you also don't have any data on  
3 whether your alternative design phones make the  
4 device more complicated for the user to use,  
5 correct?

6 A. I did review them briefly to get a  
7 sense of what the level of operability was, and  
8 found them generally comparable, though I  
9 didn't get into the detail.

10 Q. And you have no data and didn't review  
11 any data on whether your alternative designs  
12 make the device more complicated, other than  
13 looking at them and thinking about it, right?

14 A. That's correct. I was dealing with  
15 the design. With the aesthetic design.

16 Q. Now, in terms of the functionality  
17 issue, using the standard that you used in your  
18 report, isn't it true that it's your opinion to  
19 His Honor that having a transparent cover over  
20 the display on a smartphone is not functional?

21 A. No, that is not my opinion. That  
22 was -- when it was presented earlier yesterday,  
23 it was taken out of context. What -- I believe  
24 it is, of course, critically important to have  
25 a clear display directly over the -- a clear

1 portion directly over the display. The size of  
2 the display and the location of the display and  
3 having it clear all the way out to the edges is  
4 certainly not a functional requirement.

5 Q. I'd like to play from your deposition  
6 dated April 24th, 2012, an excerpt from page  
7 209, lines 9 through 21.

8 (VIDEOTAPE PLAYED AS FOLLOWS:)

9 "QUESTION: Using your definition of  
10 functional in your analysis, is the use of a  
11 cover that is transparent over a display  
12 functional?

13 "ANSWER: I believe it is not  
14 exclusively functional.

15 "QUESTION: And therefore, by your  
16 definition, it is not functional, correct?

17 "ANSWER: Correct."

18 "Objection.

19 "ANSWER: It is not functional as  
20 we've defined it relative to a design patent.

21 (END OF VIDEOTAPED PORTION PLAYED.)

22 BY MR. VERHOEVEN:

23 Q. And you also, using your definition,  
24 do not believe that a relatively large display  
25 screen is a functional part of a smartphone

1 design, correct?

2 A. I believe we were talking in the  
3 context of the patents that I was analyzing.  
4 And there was nothing in the patents that said  
5 they were smartphones. So in that context, I  
6 think I spoke correctly.

7 Q. Let's play from your April 24th  
8 deposition, page 212, lines 7 through 10.

9 (VIDEOTAPE PLAYED AS FOLLOWS:)

10 "QUESTION: In your view, is having a  
11 relatively large screen for a smartphone  
12 functional, as you've used that term?

13 "ANSWER: As it's defined in my  
14 report, no."

15 (END OF VIDEOTAPED PORTION PLAYED.)

16 BY MR. VERHOEVEN:

17 Q. Using your definition of functional,  
18 it's your opinion to His Honor that the  
19 incorporation of a display element into a  
20 smartphone is nonfunctional, correct?

21 A. If you are asking me about a  
22 smartphone specifically, having a display is  
23 functional. If we're talking about analysis of  
24 the '678 patent, which is what I believe we  
25 were discussing, there is nothing there that

1 indicates it's specifically a display, there's  
2 nothing claimed that it's specifically a  
3 display.

4 Q. So it's your position and opinion that  
5 a display element and the use of a display  
6 element where related to the '678 patent is a  
7 nonfunctional component and consideration,  
8 right?

9 JUDGE PENDER: You know, I'm going  
10 to -- I anticipate the objection there, and I'm  
11 not going to allow the question. First of all,  
12 I'm going to say it's asked and answered, and I  
13 thought it was answered in quite good  
14 precision, Mr. Verhoeven. I don't think you  
15 need to go any further.

16 MR. VERHOEVEN: Okay.

17 BY MR. VERHOEVEN:

18 Q. It's your opinion to His Honor that  
19 locating a receiver or opening in the upper  
20 portion of the front face of a smartphone is  
21 not a functional consideration, correct?

22 A. As I was defining the use of  
23 functionality, analyzing those patents  
24 in -- that's correct. In the general context  
25 of, is it a good place for a speaker? It

1 absolutely is functional.

2 Q. But in your opinion, as you used the  
3 term functional?

4 A. Correct.

5 Q. It's your opinion to His Honor that  
6 locating a speaker in the upper portion of the  
7 front face is not a functional consideration,  
8 correct?

9 A. I do not believe its aesthetic  
10 location is a functional consideration.

11 MR. VERHOEVEN: Your Honor, if I could  
12 have one minute to review my notes.

13 JUDGE PENDER: Please, sir.

14 BY MR. VERHOEVEN:

15 Q. In your view, the location of the  
16 speaker or the receiver aperture in the upper  
17 portion of the front face of a smartphone is  
18 not functional, as you have used that term in  
19 your expert report?

20 A. As I have understood the use of that  
21 term in analyzing a design patent, I did not  
22 believe that its aesthetic location is  
23 functional.

24 MR. LUCAS: Your Honor, is it okay if  
25 we go back on the confidential record -- I'm

1 sorry, the public record?

2 MR. VERHOEVEN: Actually, I was just  
3 going to say -- thank you, I was just going to  
4 say at this time, I pass the witness, Your  
5 Honor.

6 JUDGE PENDER: Well, anyway, it's a  
7 beautiful time to take a break. We're about 10  
8 minutes over, and I've noticed that clock up  
9 there is a few minutes fast. So when that  
10 clock says 20 of 11, we will return. Thank  
11 you.

12 (Whereupon, a short recess was taken.)

13 MR. BARQUIST: Your Honor, you may  
14 want to inquire, but Mr. Lucas has told me he  
15 doesn't have questions for the witness, so if I  
16 may begin redirect.

17 JUDGE PENDER: I'm sorry, I'm not  
18 hearing.

19 MR. BARQUIST: You may -- if you want,  
20 I can inquire of Mr. Lucas, but he's told me  
21 that he does not have cross-examination, so I  
22 was prepared to start.

23 JUDGE PENDER: I'll take you at your  
24 word, sir.

25 //

1 or Wednesday morning and be unhappy about that,  
2 okay?

3 MR. JOHNSON: Understood.

4 JUDGE PENDER: Thank you.

5 MR. McELHINNY: Thank you, Your Honor.

6 (Whereupon, at 4:50 p.m., the hearing  
7 recessed, to reconvene at 8:45 a.m. on Monday,  
8 June 4, 2012.)

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