

EXHIBIT 63
FILED UNDER SEAL

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

_____)	
APPLE, INC., a California corporation)	
)	
Plaintiff,)	Case No. 11-cv-01846-LHK
)	
v.)	
)	
SAMSUNG ELECTRONICS CO., LTD., a)	
Korean corporation; SAMSUNG)	
ELECTRONICS AMERICA, INC., a New)	
York corporation; and SAMSUNG)	
TELECOMMUNICATIONS AMERICA,)	
LLC, a Delaware limited liability company,)	
)	
Defendants.)	
_____)	

EXPERT REPORT OF SAM LUCENTE

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AIGA / U.S. Department of Transportation Symbols

The first set of 34 symbols was published in 1974, and received one of the first Presidential Design Awards, then 16 more symbols were added in 1979. “These copyright-free symbols have become the standard for off-the-shelf symbols in the catalogues of U.S. sign companies..”³⁷

Even Apple’s former CEO, in directing his designers and programmers, noted the pervasiveness of the rounded rectangle as a proven, universal communication symbol saying, “Well, circles and ovals are good, but how about drawing rectangles with rounded corners?” “Rectangles with rounded corners are everywhere!... Just look around this room... And look outside, there’s even more, practically everywhere you look!” “Within three blocks, we found seventeen examples . . . I started pointing them out everywhere until he was completely convinced.” Eventually his software engineer conceded and implemented this direction: “When he finally got to a No Parking sign, I said, ‘Okay, you’re right, I give up. We need to have a rounded-corner rectangle as a primitive!”³⁸ The rounded rectangular icon was implemented on early Apple desktop applications following the Xerox efforts.

The current Apple iOS Human Interface Guidelines also emphasize the functionality of the icons themselves. Apple expressly adopted a consistent rounded rectangular design as a functional design element as noted in their detailed specifications. Using current tools not

³⁷ <http://www.aiga.org/symbol-signs/>

³⁸ Steve Jobs, Walter Isaacson (page 130).

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available to the Xerox designers, the conversion from a square icon to a consistent, rounded square icon with added visual effects is programmed into the guidelines.

“When iOS displays your application icon on the Home screen of a device, it automatically adds the following visual effects:

- Rounded corners
- Drop shadow
- Reflective shine (unless you prevent the shine effect)

For example, a simple 57 x 57 pixel iPhone application icon might look like this:



When it’s displayed on an iPhone Home screen, iOS adds rounded corners, a drop shadow, and a reflected shine. So the same application icon would look like this:³⁹



Emphasizing the functional aspect of the icons, the Apple iOS Human Interface Guidelines note that, “Beautiful, compelling icons and images are a fundamental part of the iOS user experience. Far from being merely decorative, the icons and images in your app play an essential role in communicating with users.” They continue, saying, “Embrace simplicity. In particular, avoid cramming lots of different images into your icon. Try to use a single object that expresses the essence of your app. Start with a basic shape and add details cautiously. If an icon’s content or shape is overly complex, the details can become confusing and may appear muddy at smaller sizes.”⁴⁰

Apple’s Guidelines also acknowledge the need for universal imagery and metaphors in icons that convey their function to the user easily. Initially, Apple instructs that designers must “[u]se universal imagery that people will easily recognize. Avoid focusing on a secondary or obscure aspect of an element.” “Try to balance eye appeal and clarity of meaning in your icon so that it’s rich and beautiful and clearly conveys the essence of your application’s purpose. Also,

³⁹ Apple iOS Human Interface Guidelines,
https://developer.apple.com/library/IOs/#documentation/UserExperience/Conceptual/MobileHIG/IconsImages/IconsImages.html#//apple_ref/doc/uid/TP40006556-CH14-SW1

⁴⁰ Apple iOS Human Interface Guidelines,
https://developer.apple.com/library/IOs/#documentation/UserExperience/Conceptual/MobileHIG/IconsImages/IconsImages.html#//apple_ref/doc/uid/TP40006556-CH14-SW1

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it’s a good idea to investigate how your choice of image and color might be interpreted by people from different cultures.”

Icons in the shape of rounded rectangles as a functional element on a touch interface were used on the first smartphone, the IBM Simon, which was launched in 1993.⁴¹ The Simon included a calendar, address book, world clock, calculator, note pad, e-mail, and games. The Simon used a touchscreen and optional stylus to dial phone numbers, send faxes and write memos. Text could be entered with either an on-screen “predictive” keyboard or QWERTY keyboard. The IBM Human Factors Group spent two years conducting studies and providing usability guidance, again focusing on the functional aspects of the graphical user interface.



Views of IBM Simon Smartphone and Graphical User Interface (1993)

The Simon’s icons are positioned in an icon grid much like the Xerox Star. When touched, the icons launch applications, such as the phone shown here.⁴² Rounded rectangles are used consistently throughout the Simon design.

The Simon included another functional element by adding descriptive labels under the icons to provide a redundant means of communicating the function to the user in addition to the graphical image. More importantly, however, the small size of the touchscreen led to the introduction of an “icon dock,” containing the most frequently used icons located at the bottom of the rectangular screen. The dock concept was another functional element in the evolution of

⁴¹ <http://www.business2community.com/mobile-apps/a-look-back-in-time-at-the-first-smartphone-ever-040906>

⁴² <http://research.microsoft.com/en-us/um/people/bibuxton/buxtoncollection/detail.aspx?id=40>

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Another Apple interface designer, Freddy Anzures, testified to the number of icons on the similar D’305 Patent discussed below, stating that, “based on a design perspective, there were a certain number of applications that we were looking at for the phone, they happen to round out to a particular number, and so we determined this grid based on the number of applications that we had. Deposition of Freddy Anzures (Anzures Dep.) at 141:14-19. This is a functional requirement determined by the manufacturer.

The spacing, proportions, shape and number of the icons on a graphical interface are fundamental components of human-computer interaction. Thus, the rounded square elements of the D’790 “design” are merely functional and not decorative in the context of a “Graphical User Interface for a Display Screen or Portion Thereof.”

Accordingly, it is my opinion that the claimed elements of the D’790 design are all functional, and not decorative, whether taken as individual elements or the design as a whole.

Design Patent D 604,305

The D’305 patent application was filed on June 23, 2007, and the patent issued on November 17, 2009. The D’305, entitled “Graphical User Interface for a Display Screen or Portion Thereof,” shows two variations of the same “design,” with one in color and one in black and white. The overall rectangular outline of the D’305 figures matches exactly the rectangular outline that is centered within the larger rounded rectangular shapes in the D’790 Patent.



Figs. 1 and 2 of D604,305

Functionality of a Rectangular Display, Icon Grid, Icon Dock, and the Size, Shape and Number of Icons

Given that this patent has the same title as D’790, I once again assume for the sake of this report that the upper 12 squares with rounded corners and the lower 4 squares with rounded corners depict selectable icons on a display screen. The D’790 Patent and the D’305 Patent depict the same basic functional elements. Accordingly, for all the reasons set forth above regarding the D’790, it is my opinion that the rectangular shape, grid of rounded squares, separate lower grouping of rounded squares, and the size, shape and number of the 16 rounded squares are all functional elements in the D’305 Patent.

Several aspects of the functionality of these elements are further reinforced in D’305. For example, use of the gray background for icon dock area uses shading to functionally group like items. The use of a color or shading to functionally group the icons on the dock is a functional necessity, but the exact details regarding color or texture could be an ornamental choice. Thus, it is my opinion that these elements of the D’305 “design” are merely functional and not decorative, as set forth more fully above.

Functionality of Status Indicators

I will assume for the sake of this report that the symbols and nomenclature at the top of the large rectangular area are status indicators on a display screen. The status indicators in the upper area are functional because they are located at the top to provide quick readability. Moreover, the status indicators use established conventions for cellular or wireless connectivity: name of the carrier, type and strength of cellular connection, time and battery level to communicate status.

The International Standards Organization⁴⁹ defines status indicators as “a graphic symbol that represents a state within the system. It is noted that status indicators assist a mobile device user to confirm some system-setting state without accessing the system settings. They are dynamically updated only when the state changes in real-time. Users are not able to use the status indicator to control the change. For example, a status indicator is used to show that vibration is set in a cellular phone instead of sounds to indicate ringing or alert. Or as a second example, a status indicator is used to show the remaining battery charge of a personal data assistant (PDA).”

The status indicators on a graphical user interface are a fundamental, functional element for human-computer interaction. Thus, the top line elements of the D’305 “design” are merely functional elements, and not decorative.

⁴⁹ International Standards Organization document ISO/IEC 24755:2007(E) 4.5.

The Functionality of Icons

Icons themselves are functional because they are metaphors for the function the user wishes to access. In other words, icons are descriptive of the applications and/or features that they activate, and thus they are functional. The International Organization for Standardization (ISO) provides a relevant definition of icons:

“Icons are used on Information and Communications Technology (ICT) products to facilitate interaction with their users. Icons can provide a language-independent means of communicating information to the user. They can facilitate the user’s ability to learn, understand, and remember functional elements of the system, and aid in the manipulation of these elements. They are especially suitable for elements that are frequently used and where the meaning of the icon can be easily understood.

Typically, icons draw on a user’s environment to provide a metaphorical representation of the user’s tasks, objects, actions, and attributes. A metaphor provides an analogy to concepts already familiar to the user, from which the user can deduce the system’s use and behaviour. Icons can express the metaphor directly, as graphical representations of the metaphorical objects. They may also directly represent a physical object.

Icons are distinguished from other user interface symbols by the fact that they represent underlying system functions. Icons represent the objects, pointers, controls and tools making up the domain of an application that users manipulate in doing their jobs. They can also represent status indicators used by the computer system to give information to the user and to mediate user interactions with software applications..⁵⁰

Technical authors, Mullet and Sarno provide clear direction to designers of icons stating:

A crucial aspect of visual imagery is the speed and directness of recognition and identification. Selecting the correct approach for a particular communication task is more a discipline than a technique:

1. Use an icon if the concept to be communicated is a familiar object or an externally obvious state.

⁵⁰ ISO/IEC TR 11581-1:2011(E)) © ISO (the International Organization for Standardization) is a worldwide federation of national standards bodies (ISO member bodies). The work of preparing International Standards is normally carried out through ISO technical committees. Each member body interested in a subject for which a technical committee has been established has the right to be represented on that committee. International organizations, governmental and non-governmental, in liaison with ISO, also take part in the work. ISO collaborates closely with the International Electrotechnical Commission (IEC) on all matters of electrotechnical standardization.

Analysis of Prior Art Regarding Design Patents D'790, D'305, and D'334

The following section considers a number of prior art references for the D'790, D'305, and D'334 patents. I base my analysis of the patents and the prior art on the testimony of the inventors named on the patents, Imran Chaudhri and Freddy Anzures, who testified about their own understanding of what these patented designs claim. I have made no judgments as to whether they have accurately described these patents, nor have I offered my own alternative claim interpretation.

According to Imran Chaudhri, the D'790 patent appeared to be the homescreen of the iPhone. Chaudhri Dep. at 133:11-12. The square elements in the patents were called "icons". *Id.* at 133:18. And these icons are laid out in "two sections". *Id.* The first section included the upper rows of icons, and the second section included the bottom row of icons below a blank area. *Id.* at 133:18-24. Chaudhri testified that this arrangement included "rows and columns that are orderly — laid out in an orderly fashion." *Id.* at 135:11-14. He also called the layout "clean," "regular," and "predictable." *Id.* at 135:17-24. Regarding the space above the bottom row of icons, Chaudhri stated that this was a place where additional icons could go, so there was "really no difference between it and the three by four above it." *Id.* at 139:24-25. He also stated that he did not know if the blank row was a part of his invention, but that it was "more a result of how many icons are on the screen." *Id.* at 143:16-144:12. If more icons were added to the D'790 layout, they would go in the empty row, he said. *Id.* Chaudhri also stated that the D'790 design would be substantially the same if one, two, three, or four icons were added to the empty row. *Id.* at 188:4-17. Also, according to Chaudhri, the spacing between the rows of icons in the upper section included "an appreciable amount of room to accommodate a label that would indicate what the icon is." *Id.* at 159:25 and 160:1-2. He also stated that in comparison to the D'334 patent, the D'790 patent was lacking in details and was minimalistic. *Id.* at 207:9-23.

Freddy Anzures noted that the D'790 patent included "round rects," or rectangles, that he assumed were icons. Anzures Dep. at 159:24-160:18. Anzures also stated that the D'790 included a specific spacing and scale for the icons "with respect to the aspect ratio of the screen." *Id.* at 160:21-161:3. He also testified about the D'790 patent that "the visual proportion creates a hierarchy when you look at the device," and that the "four at the bottom" and the "cluster above it" communicates "a certain hierarchy of use, of what's important." *Id.* at 160:23-161:3.

Imran Chaudhri stated that the D'334 design included "icons" and a "dock". *Id.* at 192:6-7. He did not know whether the words "AT&T" or "YouTube" were a part of the claimed design. *Id.* at 194:25-195:25. He identified a number of icons, including a "Phone" icon that had a telephone receiver or handset in it, *id.* at 170:4-25; a "Text" icon that had a "speech bubble" or "chat bubble" in it, *id.* at 172:14-9; a "Notes" icon with a picture of a memo pad, *id.* at 173:11-15; an "iTunes" icon with "music notes" in it, *id.* at 173:21-174:8; a "settings" icon that included gears, *id.* at 176:13-177:3; a "photos" icon that depicted a flower, *id.* at 179:13-20, and an icon above the words "YouTube" that depicted an old-style television, *id.* at 184:12-20.

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Regarding the D'305 patent, Chaudhri indicated that it was substantially the same as the design in the D'334 patent. Chaudhri Dep. at 203:8-13. He noted as differences that the D'334 design had "page dots" and a "pause button or icon," which the D'305 design did not, and that these were the differences that made the D'334 design a "new and different design when compared to the '305 patent." *Id.* at 204:3-205:12. Regarding the D'305 patent, Anzures stated that it was the "visual execution" of the D'790 layout. Anzures Dep. at 162:20-21. He also stated that it had a "bottom dock". *Id.* at 50:11-12. Anzures also indicated that he thought "the idea of having applications on a phone and presented in rounded rectangles or rounded squares for icons . . . had not been done before." *Id.* at 53:6-11. Chaudhri stated that the D'305 design was "substantially the same as the layout that is shown in the D'790 design patent." Chaudhri Dep. at 198:2-6.

Anticipatory Reference for D'790, D'305, and D'334

1. January 9, 2007 Public Announcement of the iPhone by Apple



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On January 9, 2007, several months before the alleged conception date for D'790 and D'305, and over a year before the alleged conception of D'334, Steve Jobs publicly announced the iPhone and Apple released images showing a display screen that is substantially the same as the D'790, D'305 and D'334 designs. The only difference between the images released by Apple in January 2007 and the D'305 patent appears to be that the D'305 patent shows a different number on the icon above the word Calendar, it has the addition of an icon featuring an old-style television, and the icons labeled Calculator, Notes, Clock and Settings have moved in their relative positions. An ordinary observer would find these designs to be substantially the same. And although there are a few extra differences between the January 9th image and the D'334 patent, these would be considered minor and obvious to someone skilled in the art. The addition of an extra icon in the case of the D'790 patent, or four extra icons for the D'334 patent, would be obvious to a designer skilled in the art, especially in light of the testimony by Imran Chaudhri that adding icons in the blank row would still yield substantially the same design.



Comparison between D'305, the Jan. 9, 2007 image, D'334, and D'790

Primary Obviousness References for D'790, D'305, and D'334

1. BellSouth/IBM Simon Personal Communicator — (1993)

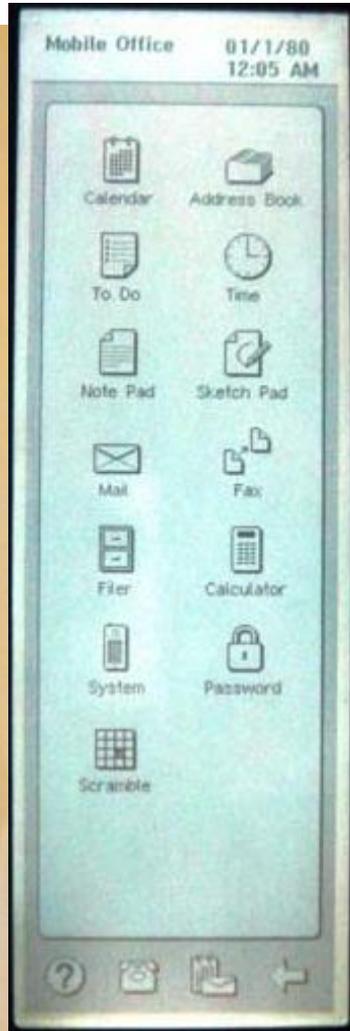
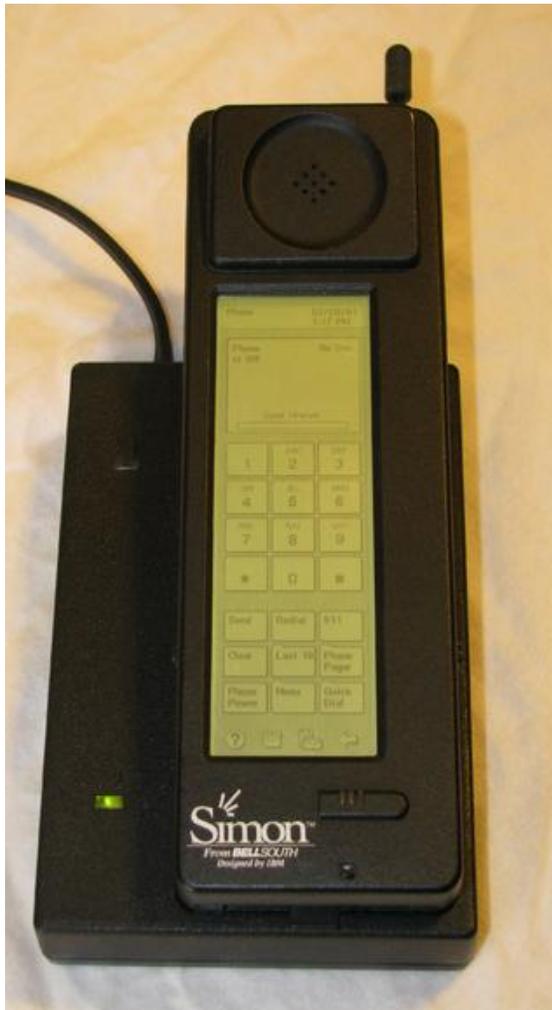
The Simon Personal Communicator was developed as a joint venture between BellSouth and IBM in the early 1990s and was first shown publicly at a trade show in 1992. The phone was released in 1993 and utilized a touchscreen interface. The interface had a dock of four icons at the bottom of the screen. The phone also ran applications, and the icons for these applications were arrayed in rows and columns, and included a calendar, world clock, calculator, note pad, mail, and address book. The grid pattern provided enough room to accommodate text below the icons. And as can be seen in the middle image below, the background displayed behind the four bottom row or "dock" icons is different than that behind the icons displayed above, helping it to

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stand out in a visual hierarchy. The dock is also static though the remainder of the screen changes, just as the dock in the GUI design patents remains static while pages of icons are scrolled through, according to Mr. Chaudhri. Chaudhri Dep. at 134:4-10.

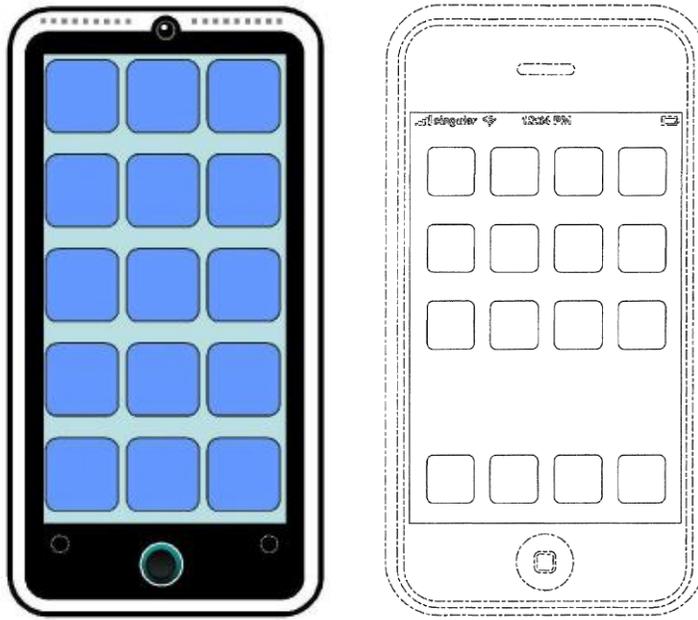
The Simon phone shows that from the inception of the "smartphone" era, the obvious and intuitive way to create a touch user interface was through icons and rounded rectangular elements depicting common, everyday metaphors and arranged in a grid pattern of rows and columns. Using the Simon interface as a primary reference in combination with the collection of icons in the chart at the end of the section, a designer of ordinary skill in the art could arrive at a design that is substantially the same as the D'790, D'305, and D'334 patents. I believe this because as telephone and touchscreen technology has improved, phones have decreased in size from what they were in the early 1990s and display screens have become much more high resolution. Designers can visually communicate more in a smaller area than was possible with lower resolutions and larger pixel dimensions in older devices. Reducing the size of the Simon to account for these changes would yield a display screen with dimensions more similar to the three design patents. Maintaining the dock already present in the Simon, a designer would find it obvious to arrange icons and text labels above that dock in rows and columns. A configuration of 4 columns would be obvious in light of the 4 icons in the dock, and as seen in the secondary references below, 4 or 5 rows of icons would be an obvious design choice if the display screen could accommodate it.

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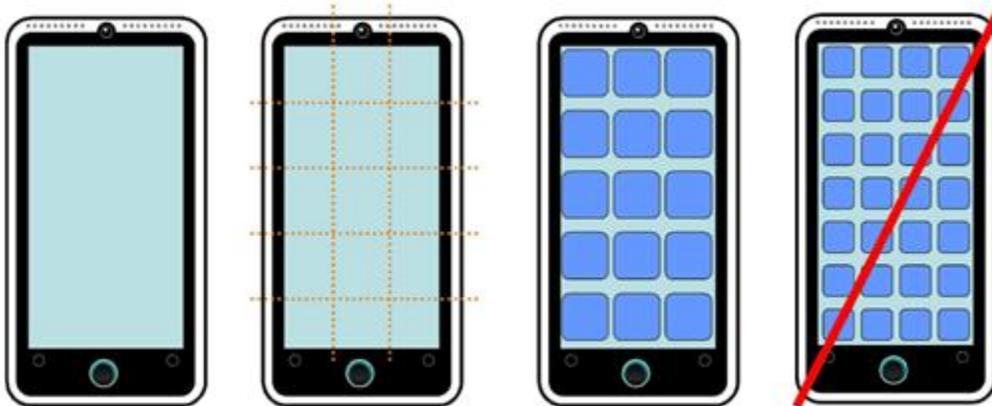
2. Samsung Mobile UX Group — Intelligent Screen Interaction Studies

The following image was included in a report and presentation created within Samsung in mid-2006 by the Mobile UX Group. I understand that the report was designed to investigate touchscreen interfaces and to develop and recommend an appropriate interface for a touchscreen mobile phone.



The above side-by-side comparison shows that the Samsung Mobile UX Group report already included a design that was substantially the same as the one shown in the D'790 patent. Both designs include squares with rounded corners. These rounded squares are arranged in a grid pattern in both designs. The squares in both designs also have no ornamentation in them and the display area is rectangular in both designs. There is no status bar at the top of the UX report, but I understand that the elements at the top of the D'790 patent are purportedly not part of the claimed design, so that is not a consequential difference. Also, the colors used in the UX report do not affect my opinion as I understand that the D'790 patent makes no claim as to any specific colors.

The only differences between the designs are that the Mobile UX Group report design shows a grid pattern of 3x5, while the D'790 includes a 4x4 pattern with the appearance of a missing row. I believe that a designer skilled in the art would have found it to be an obvious choice to modify the Mobile UX Group design to have an extra column and to remove the fourth row if that were a desirable configuration for the aspect ratio of the touchscreen display. Indeed, the following image from the report shows that the Mobile UX Group considered a pattern of 4 columns, but chose 3 columns in order to optimize the size of the squares for use in a touchscreen device with the specific aspect ratio presented.



3. LG KE850 ("LG Prada")

The LG Prada was announced in December 2006, and images of the phone were already public by that time because it had won a design contest in September of 2006. The display screen of the device is rectangular and of similar proportion to the designs shown in the asserted GUI patents. The images below show several alternate graphical user interface displays produced by the LG Prada.





The first image contains a row of four squares or icons at the bottom of the display screen, as do the D'790, D'305, and D'334. The second image of the Prada contains rounded rectangles arranged in a grid pattern. Although the grid pattern is 3x5 in the LG Prada and 4x4 with an apparently missing row in D'790, it would be obvious to a designer skilled in the art to alter the number of rectangles in the rows and columns to match what is displayed in D'790 if the designer had a reason to make this change. This is especially true because the image on the left already has four icons in a row, so it was apparent to the designers of the LG Prada that a row of four was feasible if desired. And as seen in the image on the bottom right, the LG Prada displayed icons with text below them, arranged in a grid pattern. For these reasons, I believe the user interface of the LG Prada is a primary obviousness reference for the asserted GUI patents.

In combination with secondary references, the LG Prada user interface renders as obvious the designs in the D'790, D'305, and D'334 patents, as they are claimed by Apple's designers. For example, the four icon dock at the bottom of the screen could be used in combination with a device such as the BlackBerry 7130e to create a 4x4 grid of colorful icons with a missing row above the fourth row, like D'305, or a 4x5 grid with a missing icon in the fourth row, like the D'334. And as with many of the other prior art devices in this report, the LG Prada displays icons using common everyday metaphors. For example, there is an icon featuring the receiver of an analog phone, a gear wheel, an envelope, and an address book. These features further render obvious the individual icons in the D'305 and D'334 patents.

4. Finnish Design Application 20030256

Design application 20030256 from Finland was published on April 29, 2004. It depicts an organization of icons in 4x5 grid pattern. The icons are rounded rectangles and are evenly spaced. The icons also contain images that are used in graphical user interfaces as common metaphors. For example, the following images are present: an analog phone receiver, musical eighth notes, a note pad, a calendar, a clock, and a spiral bound address book.



Comparison views of D'305, Finnish Design Registration 20030256, and D'334

The above side-by-side comparison shows that the Finnish design is very similar to the designs in the D'305 and D'334 patents. For example, the Finnish design does not include text below the icons and there is no status bar or region at the top of the display. The D'305 and D'334 patents each have empty or blank spaces above the dock, while the Finnish design has a full grid.

I believe it would have been obvious to a designer skilled in the art to remove some of the differences between the Finnish design and either D'305 or D'334. For example, a slight re-scaling of the Finnish design so that it displays squares instead of rectangles makes the grid pattern, icon size, and icon spacing virtually identical to that in the D'305 and D'334 patents:



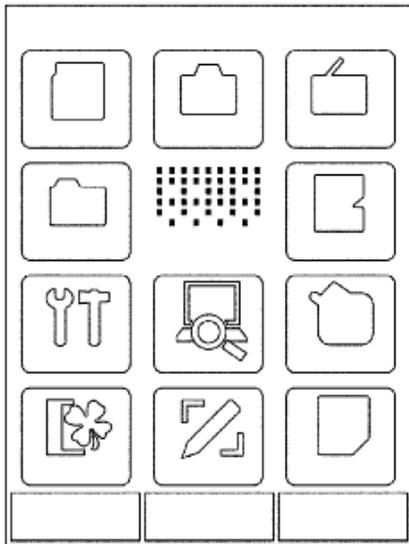
Comparison views of D'305, re-scaled Finnish Design Registration 20030256, and D'334

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Also, as explained below, adding text to label icons was a common and obvious design choice at the time the D'305 and D'334 were allegedly conceived. Status bars were another commonplace design choice for user interface displays in mobile devices in 2007. Thus, any modifications or secondary reference combinations needed to make the Finnish design substantially the same as the D'305 and D'334 designs would have been obvious to a designer skilled in the art of creating a graphical user interface for a mobile device in 2007.

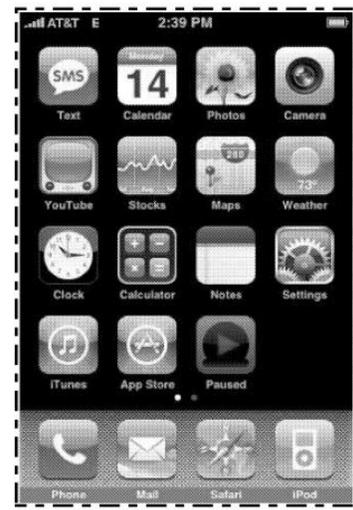
5. Japanese Design Patent D1279226 (Issued Aug. 21, 2006)

The Japanese design patent below shows that several design elements said to be claimed in the asserted GUI patents were obvious prior to their alleged conception. Most notably, the use of rounded squares for icons or icon containers. Also, the arrangement of those rounded squares in two sections. Just as Mr. Chaudhri and Mr. Anzures testified regarding the D'790 patent, the Japanese reference below has a row of icons at the bottom of the display that are part of a different visual hierarchy from the icons above, which can help in denoting their importance.



6. Sharp Zaurus SL-6000L

The Sharp Zaurus SL-6000L was released in 2004 and includes a user interface with colorful square icons arranged in a grid pattern.



Comparison views of D'305, Sharp Zaurus SL-6000L, and D'334.

The above side-by-side comparison shows the three designs to be similar to one another. For example, the user interface display in the Sharp Zaurus SL-6000L contains an array of colorful icons arranged in a grid pattern. The icons are square in all three displays. There are also text labels below each icon for all three. The Sharp Zaurus SL-6000L display also includes a status bar that shows information such as the time and battery strength, although it is located at the bottom of the screen, not the top. The Sharp Zaurus also includes a number of icons with the same or similar text and metaphor as the D'305 and D'334 patents. For example, all three have an icon with the word "calendar" below a calendar page with a day and number on it; all three have an icon above the word "clock" with an image of a clock on it; all three include an icon labeled "calculator" with the addition, subtraction, multiplication, and division symbols arranged in a 2x2 grid on it; and all three have an icon labeled "mail" or "Email" with a picture of an envelope on it. Also, both the Sharp Zaurus SL-6000L and the D'334 patent have an icon

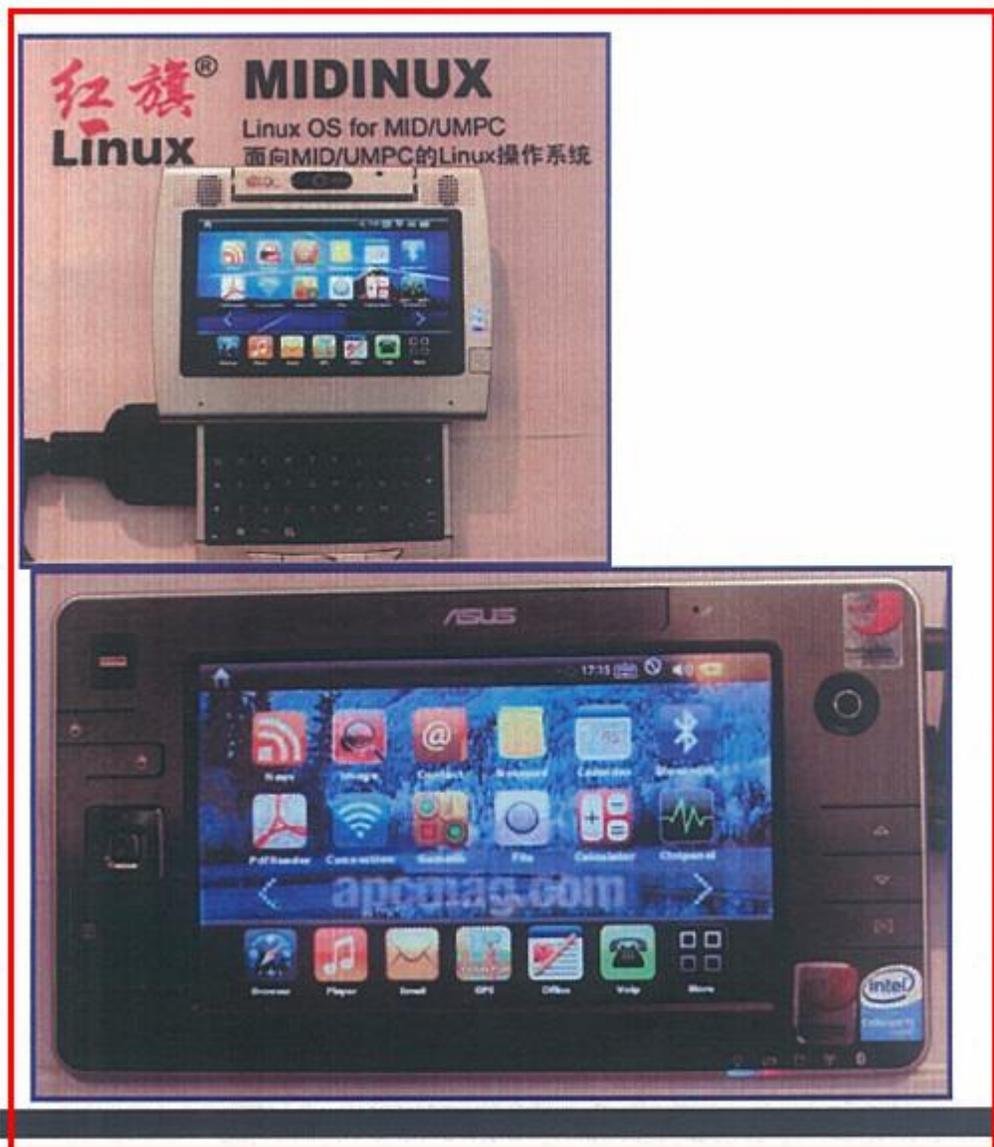
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featuring musical eighth notes and a circular element. Each of these two designs also has 5 rows of icons.

There are a few differences between the Sharp Zaurus SL-6000L design and the two Apple designs. For example, the Sharp Zaurus SL-6000L design has 3 columns while the D'305 and D'334 patents have 4 columns.

7. Midinux

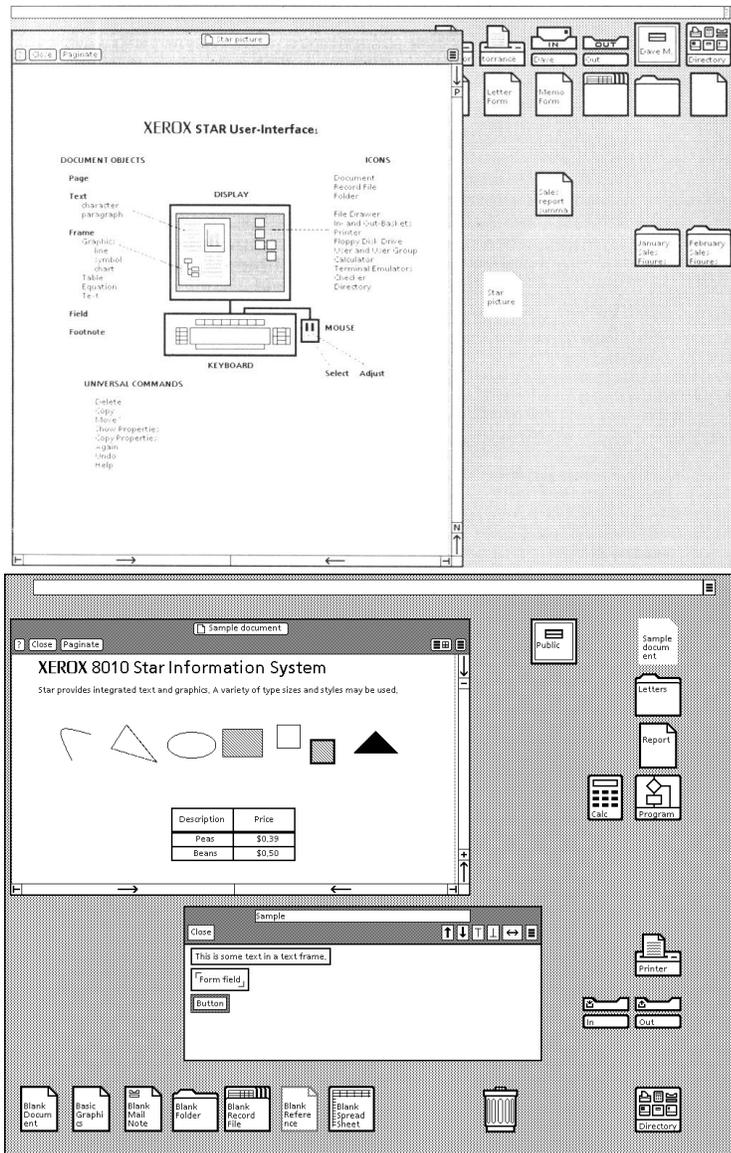
The Midinux was released on April 18, 2007 and includes a user interface with colorful rounded square icons with labels beneath that are arranged in a grid pattern, and a dock of icons at the bottom of the screen.



Early Development of Computer Graphical User Interfaces

1. Xerox Star display – (1981)

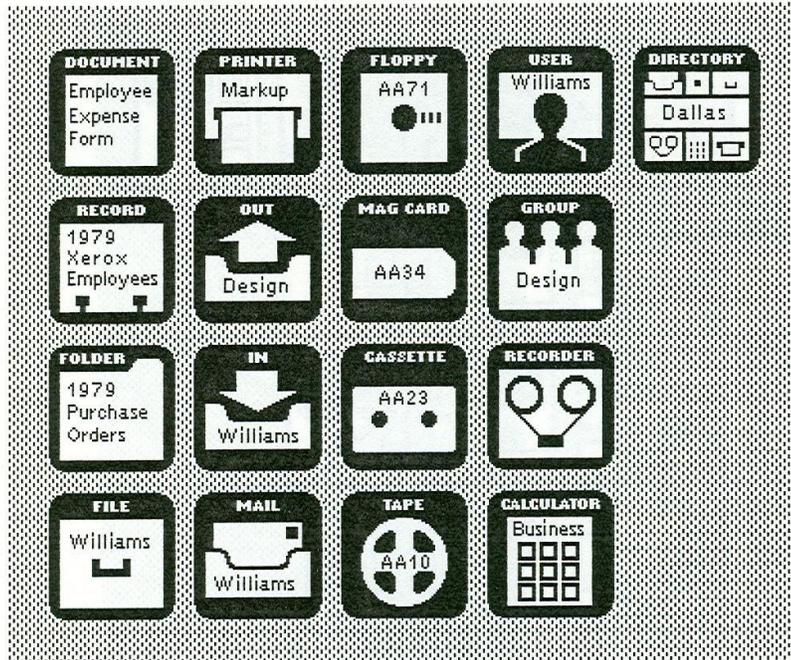
The Xerox Star, released in 1981, featured a functional icon layout with icons arrayed in a grid pattern. Frequently used icons were placed at the bottom of the screen and were given text labels. Many icons were square with rounded corners. This reference was the basis for the contemporary development of iconography. The display also contained a status bar at the top of the display.



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The following image shows a Xerox design study that was done in 1980. The image shows a graphical user interface design using square icons with rounded corners. The icons are displayed in an evenly spaced grid pattern. Combining this reference with the icons collected below would be enough to create designs that are substantially the same as the D'305 and D'334 designs. Removing the content of the icons to leave only the outlines of rounded squares would yield the D'790 patent.

Figure 2.
Set 2 (Bowman)



- | | | | | |
|-------------|--------------------------|-------------|------------|-----------|
| document | printer | floppy disk | user | directory |
| record file | out-basket | mag. card | group | |
| folder | in-basket | cassette | recorder | |
| file drawer | in-basket
(with mail) | mag. tape | calculator | |

(<http://www.digibarn.com/collections/screenshots/xerox-star-8010/index.html>)

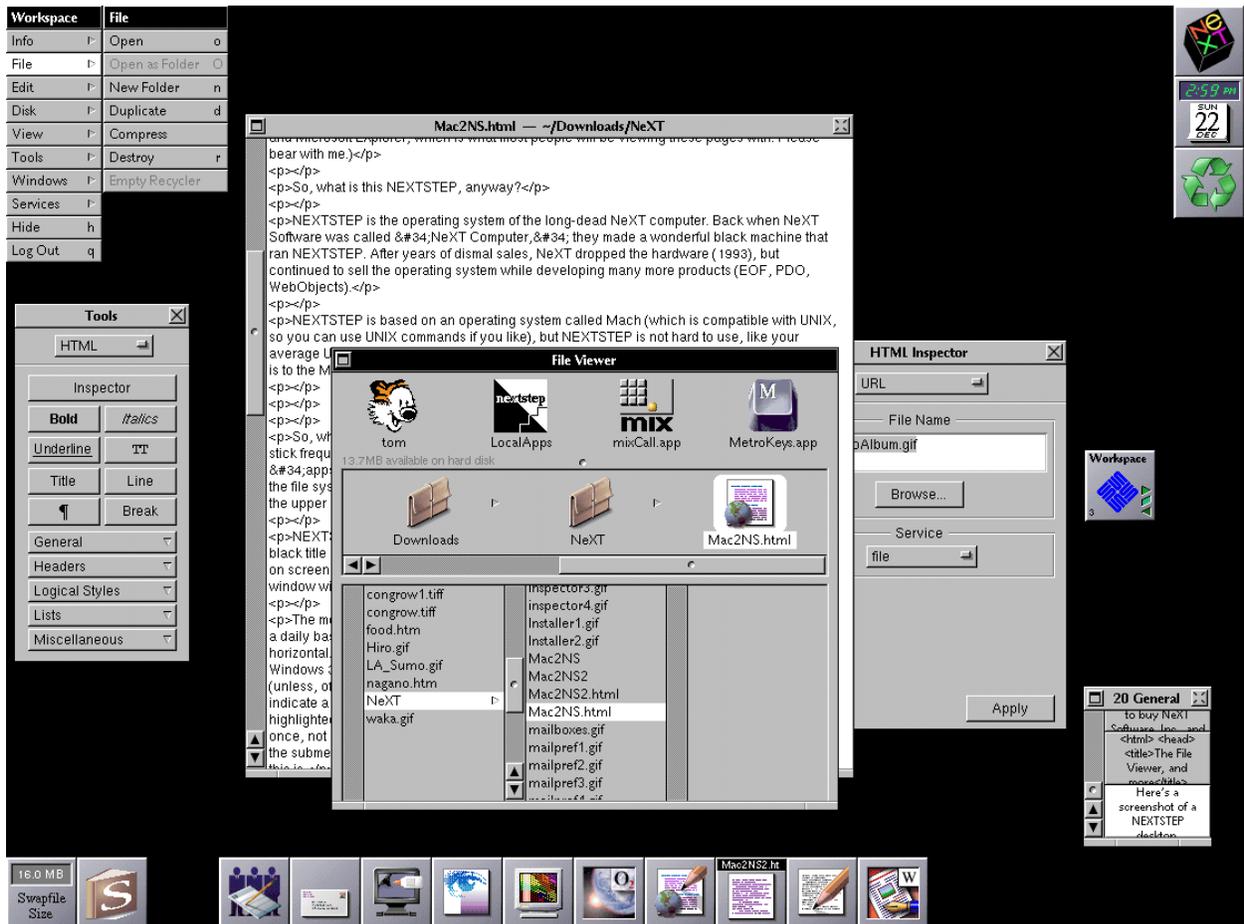
2. Arthur — Acorn Computers (1987)

In 1987, Acorn Computers released an operating system known as Arthur that utilized icons and a taskbar (or icon bar) at the bottom of the display. The system used common metaphors such as a clock, a calculator, a calendar, and a notepad for the icons. This reference helps render those metaphors as obvious for use in an operating system, as well as placing commonly used icons in a dock or taskbar at the bottom of the display screen.



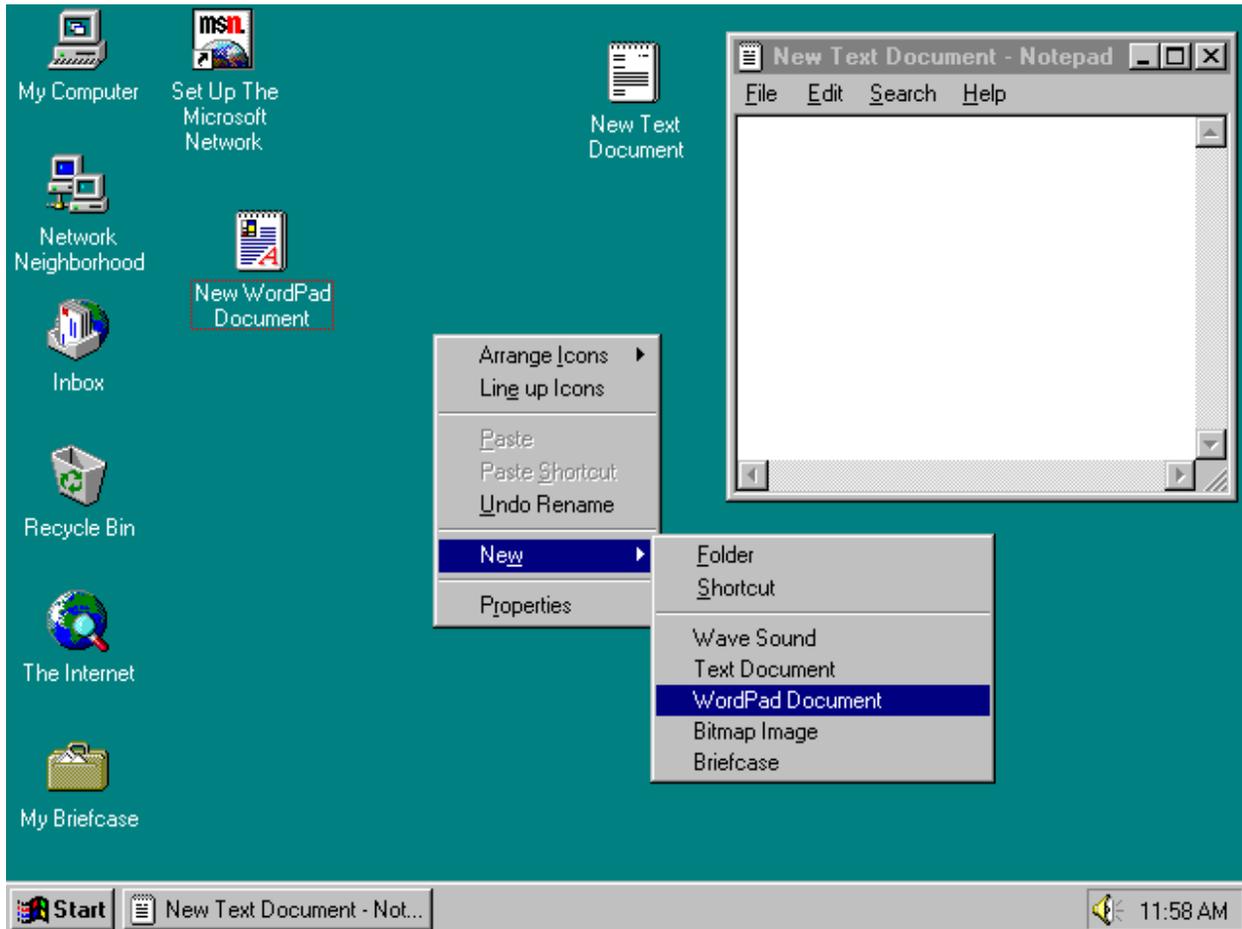
3. NeXTSTEP — (1989)

The NeXTSTEP user interface was released in 1989 and featured a dock where icons were gathered. The icons were squares with colorful images on them displaying the various metaphors that represented the underlying applications. This reference renders obvious the square shape of the icons in the GUI patents as well as the dock.



4. Windows 95 — (1995)

In 1995, Microsoft released the Windows 95 graphical user interface-based operating system. The system featured icons, arranged in a grid pattern, included text labels below the icons, and a dock of applications in use.



5. Mac OS X 10.4 — Tiger (2005)

The Tiger operating system, released in 2005, included a user interface application called the Dashboard. The Dashboard displayed a dock at the bottom of the screen where square icons with rounded corners were located. These icons also had text labels beneath them and the dock featured a background distinct from the background used for the main screen. Among the icons in Dashboard were those for calculator, calendar, and stocks applications or "widgets". Several icons, such as the calculator, calendar, and stocks icons look substantially the same as they do in the D'305 and D'334 patents.



Development of PDAs and Phones with Graphical User Interface Systems

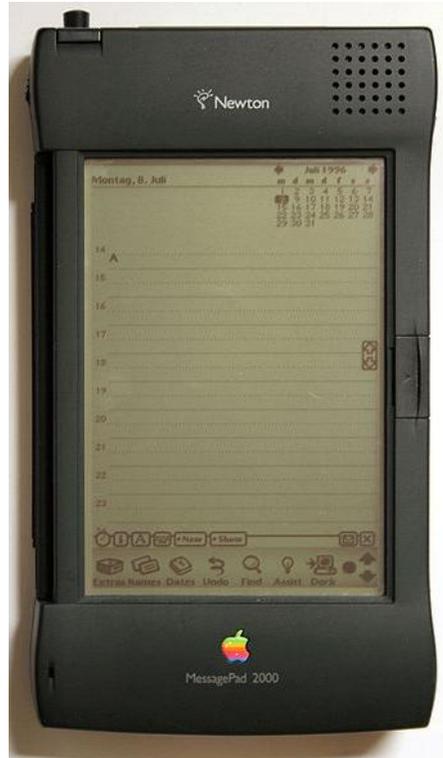
8. BellSouth/IBM Simon Personal Communicator — (1993)

As mentioned above, the IBM Simon was the first "smartphone" and contained a number of features that Apple's inventors claimed were new and unique to the Apple GUI design patents.

9. MessagePad — Apple Newton — (1993)

The MessagePad was developed by Apple in the early 1990s and featured a touchscreen user interface. Various models of the MessagePad are shown below, all of which feature a user interface with icons arrayed in a grid pattern, with common applications represented in a dock, usually at the bottom of the screen.

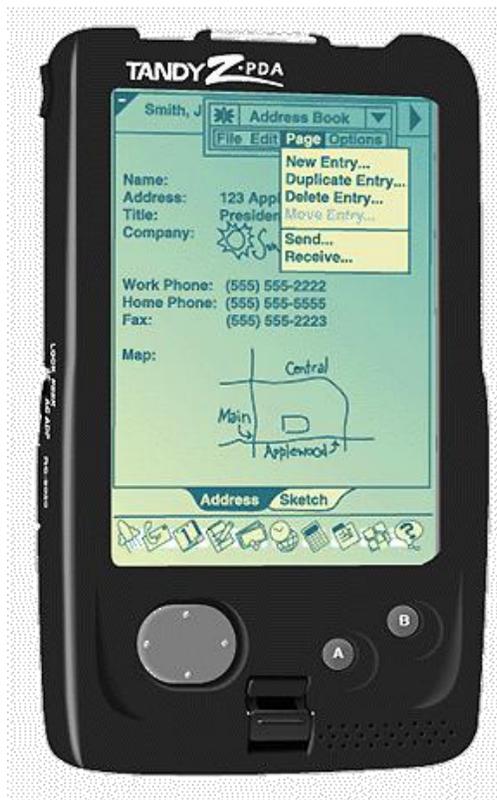
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10. Tandy Zoomer — (1992)

In 1992, the Tandy company released the Tandy Zoomer, which was a personal digital assistant ("PDA"). The Zoomer was a touchscreen device and the graphical user interface utilized icons arrayed at the bottom of the screen in a dock region. The icons included a calendar page, an analog phone receiver, a calculator, a writing pad, and a world clock.



11. Handspring Visor — (1999)

Like its predecessors, the Handspring Visor user interface displayed icons arranged in a grid pattern with text labels beneath. A dock of four icons for commonly used tasks surrounded a stylus input matrix in a 2x2 grid. The Visor had icons for common applications such as calculator, date book, mail, addresses, and world clock. The Visor also had a status bar at the top of the display showing information such as the time and battery strength. A location indicator on the side of the display indicated the portion of the icon catalog being displayed on the screen. Although the user interface included a 3x4 grid pattern, it would be an obvious choice to a designer with skill in the art to create a 4x4 grid if the screen permitted. Using this device as a primary reference, adjusting the dock to look like the one in the Simon Personal Communicator, and adding square icons from the collection below, the display of the Visor could be easily altered to look substantially the same as the GUI patents.



12. Palm

a. Palm i705

The Palm i705 is an example of an early PDA device made by Palm. The i705 device was released in January 2002 and the display maintained the same general appearance as the predecessor Handspring device.



b. Palm Treo

The Palm Treo is a line of PDAs beginning in 2002. Building off of the earlier Handspring and Palm devices, the Treo display featured colorful icons arranged in a grid pattern. The display also had a status bar at the top including information such as time, network, battery power, and signal strength. The devices also had icons for various applications such as messages, calendar, picture/video, calculator, memos, and contacts, and each icon had a text label beneath.



13. BlackBerry Devices

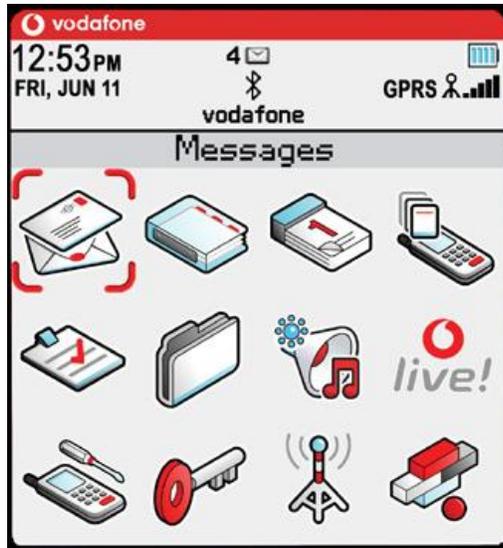
Beginning in the late 1990s, the company Research in Motion (RIM) developed and produced BlackBerry devices that operated as smartphones and PDAs. Representative pictures of the displays of various models are shown below. In general, the displays for the BlackBerry devices share many of the same features:

- Colorful array of icons
- Icons in matrix pattern
- Status bar or region at top of display screen, including information such as time, network, battery power, and signal strength.
- Icons for various applications such as messages, telephone calling, tasks, settings, notes, calculator, clock, volume, calendar, address book.

i) BlackBerry 6710 (released Oct. 2002))



ii) RIM BlackBerry 7100V (released around Oct. 2004)



iii) BlackBerry 7290 (released early 2005)



iv) BlackBerry 7130e (released Nov. 2005)



v) BlackBerry 8700C (released Nov. 2005)



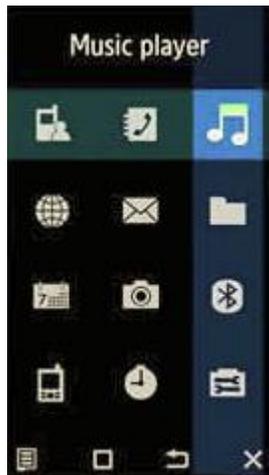
14. Nokia N73 — (August 2006)

The Nokia N73 was announced in April 2006 and released in August 2006. As with many of the references above, the rectangular display on the device contained a matrix of colorful icons in a grid pattern. The icons used common metaphors such as eighth notes for the music player function, an envelope for messages, and a wirebound page displaying the day of the month the calendar function. One and two word text labels were used below each icon. All of these features were further rendered obvious to designers with skill in the art by the Nokia N73.



15. Samsung F700

The Samsung F700 was announced in February 2007, and like the LG Prada above, it contains a number of features later included in the D'305 and D'334 patents. The phone has a rectangular display screen presenting a grid of icons. There is a row of four icons at the bottom of the display screen, and the display includes icons using common metaphors such as the receiver of an analog phone, an envelope, musical eighth notes, a globe, the silhouette of a person, a camera, a wirebound calendar page that includes the day of the month, and a clock. These features, which are shared by a number of other prior art devices, had become common by the time they were used in the Samsung F700.



**Various Design Elements Already Known Prior to the Alleged
Conception Dates for D'790, D'305 and D'334**

1. Dot Indicators

The Samsung F300 was announced in December 2006 and contained a dual face construction, one side being a phone and the other an MP3 player. The user interface for the MP3 player included a row of icons at the bottom of the display, including a common musical eighth note icon for the music player. Above each icon was a small filled circle, or dot, that increased in brightness when the user scrolled to that icon at the icon menu screen.



Like many of the previously discussed devices, the F300 also had a status bar or region at the top of the screen that displayed useful information such as the battery's strength.

2. Square Icons and Containers with Rounded Corners

The following references in this section all display square icons or containers with rounded corners. All of these pieces of prior art serve as secondary references of obviousness for the rounded square design feature, as well as other features, such as the use of a status bar and arrangement of icons in a grid pattern. Many of the individual icons shown in the designs below can also serve as secondary references for the obviousness of the individual icons in the D'305 and D'334 patents. Many of those icons have been collected in the chart at the end of this section.

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- a. **Korean Patent 30-20060005195** (Issued February 11, 2006)



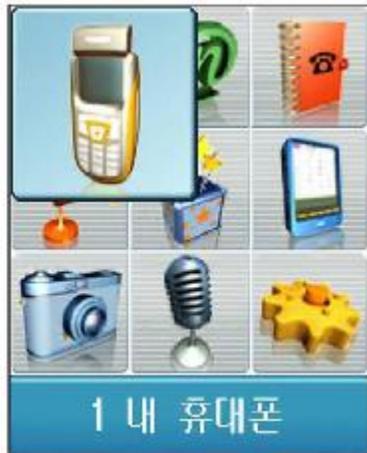
- b. **Nokia 7710** – (Released Nov. 2004)



- c. **European Community Design Registration No. 000505532-0001** (Published May 23, 2006)



c. Korean Design Patent 30-0403504 (Published Jan. 10, 2006)



d. Japanese Design Patent D1189312 (Issued Nov. 5, 2003)



e. United States Patent Application Publication 2007/0067738 (Published Mar. 22, 2007)

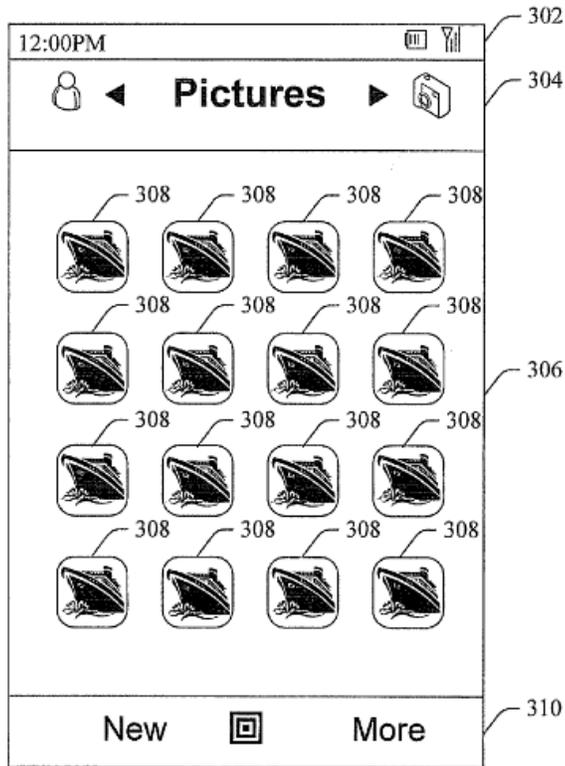


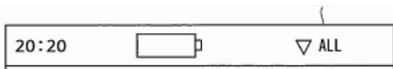
FIG. 5

3. Status Bar or Region at Top of Display Screen

The following is a sampling of devices and designs that present a status bar or region at the top of the display, including images that symbolize battery strength, signal strength, the name of a carrier and/or network, and the time. In almost every case, the signal strength and battery strength are indicated using parallel bars. In the case of signal strength, the bars increase in height from left to right, as with the D'305 and D'334 patents. And battery strength is often depicted using equal parallel bars inside the outline of a battery, as in the D'305 and D'334 patents. Time is also displayed in a number of the status bars below, and is usually depicted using numerals and the abbreviations "AM" or "PM".



Korean Patent 30-20060005195 (February 11, 2006)

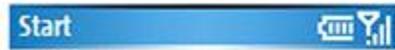


US 2005/0183026 A1 (Aug. 18, 2005)



Community Design Reg. 000584529-0001 (Nov. 14, 2006)

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Windows Mobile 5.0 (2005)



Windows Mobile 6.0 (Feb. 2007)



Palm i705 (Jan. 2002)



Palm Treo (Nov. 2006)



RIM BlackBerry 7100V Oct. 2004)



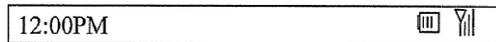
BlackBerry 8700C (Nov. 2005)



BlackBerry 7130g (Sept. 2006)



BlackBerry 6710 (Oct. 2002)



United States Patent Application Publication
2007/0067738 (Mar. 22, 2007)



LG KE850 ("LG Prada") (Dec. 2006)

4. Common Metaphors for Icons

The following is a collection of prior art icons using the same metaphors that appear to have been used by Apple in the D'305 and D'334 patents.

Icon Features	Icon Images
<ul style="list-style-type: none"> An icon featuring the receiver of an analog phone. Receiver depicted at a near 	<p>1. Phone Icons</p>
	 <p>Samsung M4300 (2005)</p>

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Icon Features	Icon Images
<p>45 degree angle.</p> <ul style="list-style-type: none"> Green color often used either for the phone receiver or the phone. 	 Windows Mobile 5.0 (2005)  (08.2007 – KU990Viewty)  (09.2007 - LG KS20)  (05.2007 - LG U960)  (Samsung SGH 800 (1999))  (Samsung SCH-X800 (2003))  Nokia 6310i (March 2002)  Skype (2005-2006)  Finnish Design Registration 20030256 (April 2004)  BlackBerry 6710 (released Oct. 2002)  BlackBerry 7290 (released early 2005)  BlackBerry 7130e (Released Nov. 2005)  Nokia 7710 – (Nov. 2004)
<ul style="list-style-type: none"> An icon featuring gear wheel(s). 	<p>2. Settings Icons</p>  2002 Samsung (CDMA2000)

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Icon Features	Icon Images
	 <p>2004 Samsung (Mega2 model)</p>
	 <p>2005 design registration</p>
	 <p>Windows Mobile 5.0 (2005)</p>
	 <p>중남미향 (2002)</p>
	 <p>의장등록 (2004)</p>
	 <p>(2006 – Samsung SCH-U420)</p>
	 <p>(2004 Sony Ericsson Q4 T290)</p>
	 <p>(Dec. 2006 – LG ke850 prada)</p>
	 <p>GNOME 2.0 (2002 – “Applications”)</p>
	 <p>Windows 95 (1995 – “Settings”)</p>

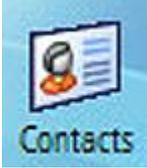
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Icon Features	Icon Images
	 <p>Windows 98 (1998 – “Settings”)</p>  <p>GNOME 2.0 (2002 – “Run”)</p>  <p>Slicer – 2006 Windows Icons Design Contest Winner</p>  <p>Slicer – 2006 Windows Icons Design Contest Winner</p>  <p>BlackBerry 8700c (Nov. 2005)</p>  <p>Windows Mobile 6 (Feb. 2007)</p>  <p>Korean Patent 30-20060005195 (Issued February 11, 2006)</p>  <p>European Community Design Registration No. 000505532-0001 (Published May 23, 2006)</p>  <p>European Community Design Registration No. 000778741-0001 (Published April 9, 2007)</p>  <p>Korean Design Patent 30-0403504 (Published Jan. 10, 2006)</p>
<ul style="list-style-type: none"> An icon featuring paper bound at one edge 	<p style="text-align: center;">3. Notes Icons</p>

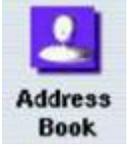
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Icon Features	Icon Images
	 <p style="text-align: right;">GEOS (1986)</p>
	 <p style="text-align: right;">GeoWorks 1990-2002</p>
	 <p style="text-align: right;">Mac OS 1995-1999</p>
	 <p style="text-align: right;">OS/2 (1992)</p>
	 <p style="text-align: right;">OS/2 (1994)</p>
	 <p style="text-align: right;">OS/2 (1996)</p>
	 <p style="text-align: right;">MEMO PAD US 2005/0183026 A1 (Aug. 18, 2005)</p>
	 <p style="text-align: right;">BlackBerry 7290 (2005)</p>
	 <p style="text-align: right;">Finnish Design Registration 20030256 (April 2004)</p>
	 <p style="text-align: right;">BlackBerry 7130e (Nov. 2005)</p>

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Icon Features	Icon Images
	 BlackBerry 8700g (April 2006)  BlackBerry 7130g (Sept. 2006)  Korean Design Patent 30-0441582 (Feb. 27, 2007)  BellSouth/IBM Simon Personal Communicator — (1993)
<ul style="list-style-type: none"> Colorful icons that include the silhouette of a person’s head and shoulders on or next to a bound address book or information card. 	<p>4. Contacts Icons</p>  Contacts Palm Treo 700p (Q2 2006)  Gigabyte GSmart q60 (May 2007)  Contacts Windows Mobile 5.0 (2005)  Contacts Windows Mobile 6.0 (Feb. 2007)  Vodafone v1240 (HTC Tornado Noble) (Jan. 2006)  Sony Clie PEG-NX73VE (Sept. 2003)  Blackberry 8703e (Verizon 2006)

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Icon Features	Icon Images
	 BlackBerry 8700c (Nov. 2005)  Address Book  Sharp Zaurus SL-5600 (2003)  United States Patent Application Publication 2007/0067738 (Mar. 22, 2007)  Samsung F700 (Feb. 2007)
<ul style="list-style-type: none"> • Colorful icons that include eighth notes • Icons that include a CD • Icons that include eighth notes and a CD 	<p style="text-align: center;">5. Music Icons</p>  GNOME 2.0 (2002 – “Media Player”)  GNOME 2.0 (2002 – “CD Player”)  OS/2 Warp 3 (1994 – “CD Player”)  Window NT 3.1 (1993 – “CD Player”)  BeOS Operating System – (1995)  Samsung SCH-X650 (Aug. 2002)  SonyEricsson K800 (June 2006)

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Icon Features	Icon Images
	 <p>2007 SAMSUNG SGH-F700</p>
	 <p>Nokia N77 (Feb. 2007)</p>
	 <p>Slicer – 2006 Windows Icons Design Contest Winner</p>
	 <p>BlackBerry 8700c (Nov. 2005)</p>
	 <p>Sharp Zaurus SL-5600 (2003)</p>
	 <p>Finnish Design Registration 20030256 (April 2004)</p>
	 <p>BlackBerry 6710 (released Oct. 2002)</p>
	 <p>Korean Patent 30-20060005195 (Issued February 11, 2006)</p>
	 <p>European Community Design Registration No. 000584529-0001 (Published Nov. 14, 2006)</p>
	 <p>European Community Design Registration No. 000778741-0001 (Published April 9, 2007)</p>
	 <p>European Community Design Registration No. 000778741-0001 (Published April 9, 2007)</p>

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Icon Features	Icon Images
	<div style="display: flex; flex-direction: column; align-items: center;">  <p>Music player Nokia 7710 – (Nov. 2004)</p>  <p>Music player Nokia N73 (August 2006)</p>  <p>Samsung F300 (Dec. 2006)</p> </div>
<ul style="list-style-type: none"> Colorful icons or images depicting an orange or yellow flower. 	<p>6. Photos Icons</p> <div style="display: flex; flex-direction: column; align-items: center;">  <p>01.2007 Windows Vista</p>  <p>Photoshop 2006</p> </div>
<ul style="list-style-type: none"> Colorful icons featuring cartoon text balloons of various shapes including rounded rectangles. Text balloons including several letters or a small picture. 	<p>7. Text Messaging Icons</p> <div style="display: flex; flex-direction: column; align-items: center;">  <p>Samsung SGH-Z130 (Jan. 2005)</p>  <p>2005 AOL Icon</p>  <p>2003 ICQ</p>  <p>Blackberry 8830 (Q2 2007)</p> </div>
<ul style="list-style-type: none"> Colorful icons that include a calendar page, often 	<p>8. Calendar Icons</p>

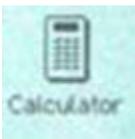
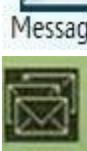
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Icon Features	Icon Images
including the day number.	 <p>United States Patent D445,428 (Issued July 24, 2001)</p>
	 <p>Sharp Zaurus SL-5600 (2003)</p>
	 <p>Windows Mobile 5.0 – (2005)</p>
	 <p>Finnish Design Registration 20030256 (April 2004)</p>
	 <p>BlackBerry 7130g (Sept. 2006)</p>
	 <p>Windows Mobile 6 – (Feb. 2007)</p>
	 <p>BlackBerry 6710 (released Oct. 2002)</p>
	 <p>BlackBerry 7290 (released early 2005)</p>
	 <p>BlackBerry 8700C (released Nov. 2005)</p>
	 <p>BlackBerry 7130e (Released Nov. 2005)</p>
	 <p>RIM BlackBerry 7100V (released Oct. 2004)</p>
	 <p>Palm Treo (released Nov. 2006)</p>
	 <p>Palm i705 (released ~ Jan. 2002)</p>
 <p>European Community Design Registration No. 000584529-0001 (Published Nov. 14, 2006)</p>	

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Icon Features	Icon Images
	 <p>European Community Design Registration No. 000778741-0001 (Published April 9, 2007)</p>  <p>Korean Design Patent 30-0441582 (Published Feb. 27, 2007)</p>  <p>BellSouth/IBM Simon Personal Communicator — (publicly announced 1993)</p>  <p>Calendar Nokia 7710 – (Nov. 2004)</p>  <p>Calendar Nokia N73 (August 2006)</p>  <p>Apple Newton MessagePad 2000 (1995)</p>  <p>Samsung F700 – (Announced Feb. 2007)</p>  <p>Mac OS X 10.4 Tiger (2005)</p>  <p>Sony Ericsson T610i (2003)</p>
<ul style="list-style-type: none"> • Colorful icons that include mathematical symbols in a 2x2 grid pattern. • Colorful icons that include images of a calculator. 	<p style="text-align: center;">9. Calculator Icons</p>  <p>Palm i705 (released ~ Jan. 2002)</p>  <p>CALCULATOR US 2005/0183026 A1 (Published Aug. 18, 2005)</p>  <p>Calculator Sharp Zaurus SL-5600 (2003)</p>  <p>Calc Palm Treo (released Nov. 2006)</p>

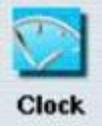
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Icon Features	Icon Images
	 <p>Mac OS X 10.4 Tiger (2005)</p>  <p>BlackBerry 7130g (Sept. 2006)</p>  <p>BlackBerry 7290 (released early 2005)</p>  <p>BlackBerry 7130e (Released Nov. 2005)</p>  <p>United States Patent D445,428 (Issued July 24, 2001)</p>  <p>Calculator BellSouth/IBM Simon Personal Communicator — (publicly announced 1993)</p>
<ul style="list-style-type: none"> Colorful icons that include an envelope. 	<p style="text-align: center;">10. Mail Icons</p>  <p>Sharp Zaurus SL-5600 (2003)</p>  <p>LG Prada (Dec. 2006)</p>  <p>BlackBerry 7130g (Sept. 2006)</p>  <p>Messaging Windows Mobile 5.0 – (2005)</p>  <p>Messaging Windows Mobile 6.0 – (Feb. 2007)</p>  <p>BlackBerry 6710 (released Oct. 2002)</p>

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Icon Features	Icon Images
	 BlackBerry 7290 (released early 2005)
	 Korean Patent 30-20060005195 (Issued February 11, 2006)
	 Motorola Razr (late 2004)
	 BlackBerry 8700c (Nov. 2005)
	 BlackBerry 7130e (Released Nov. 2005)
	 RIM BlackBerry 7100V (released Oct. 2004)
	 Palm Treo (released Nov. 2006)
	 Palm i705 (released ~ Jan. 2002)
	 European Community Design Registration No. 000584529-0001 (Published Nov. 14, 2006)
	 European Community Design Registration No. 000505532-0001 (Published May 23, 2006)
	 United States Patent D445,428 (Issued July 24, 2001)
	 BellSouth/IBM Simon Personal Communicator — (publicly announced 1993)
	 Nokia 7710 – (Nov. 2004)
	 Nokia N73 (August 2006)
	 Samsung F700 – (Announced Feb. 2007)

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Icon Features	Icon Images
	 Sony Ericsson T610i (2003)
<ul style="list-style-type: none"> Colorful icons that include a clock. 	<p style="text-align: center;">11. Clock Icons</p>  United States Patent D445,428 (Issued July 24, 2001)  Sharp Zaurus SL-5600 (2003)  Finnish Design Registration 20030256 (April 2004)  BlackBerry 7130g (Sept. 2006)  BlackBerry 6710 (released Oct. 2002)  Palm i705 (released ~ Jan. 2002)  European Community Design Registration No. 000584529-0001 (Published Nov. 14, 2006)  BlackBerry 7130e (Released Nov. 2005)  Korean Design Patent 30-0441582 (Published Feb. 27, 2007)  BellSouth/IBM Simon Personal Communicator — (publicly announced 1993)  Samsung F700 – (Announced Feb. 2007)
<ul style="list-style-type: none"> Colorful icons that include a globe, a portion of a globe, or a web browser program symbol. 	<p style="text-align: center;">12. Web Browser Icons</p>  Korean Design Patent 30-0441582 (Published Feb. 27, 2007)

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Icon Features	Icon Images
	 <p>Nokia 7710 – (Nov. 2004)</p>  <p>European Community Design Registration No. 000584529-0001 (Published Nov. 14, 2006)</p>  <p>BlackBerry 7130e (Released Nov. 2005)</p>  <p>BlackBerry 8700C (released Nov. 2005)</p>  <p>Samsung F700 – (Announced Feb. 2007)</p>  <p>BlackBerry 8700g (Released April 17, 2006)</p>  <p>BlackBerry 7290 (released early 2005)</p>  <p>BlackBerry 6710 (released Oct. 2002)</p>  <p>BlackBerry 7130g (Released Sept. 2006)</p>  <p>Windows Mobile 5.0 – (2005)</p>  <p>Windows Mobile 6.0 – (Feb. 2007)</p>
<ul style="list-style-type: none"> Colorful icons that include a camera. 	<p>13. Camera Icons</p>  <p>Palm Treo (released Nov. 2006)</p>  <p>European Community Design Registration No. 000584529-0001 (Published Nov. 14, 2006)</p>  <p>Korean Design Patent 30-0403504 (Published Jan. 10, 2006)</p>

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Icon Features	Icon Images
	 Korean Design Patent 30-0441582 (Published Feb. 27, 2007)  Camera Nokia 7710 – (Nov. 2004)  Samsung F700 – (Announced Feb. 2007)  Samsung F300 (Dec. 2006)  Sony Ericsson T610i (2003)  United States Patent Application Publication 2007/0067738 (Mar. 22, 2007)
<ul style="list-style-type: none"> Icon that includes a line graph. 	<p style="text-align: center;">14. Stocks Icon</p>  Mac OS X 10.4 Tiger (2005)

Additional Obviousness References for D'790

1. United States Patent 6,983,424

US patent 6,983,424 ("424") was filed on June 23, 2000 and issued on January 3, 2006. The patent is directed at a method of automatically scaling icons to fit a display area. Figure 8b of the '424 patent shows empty squares evenly arranged in a 4x3 grid pattern.

**SUBJECT TO PROTECTIVE ORDER
CONTAINS HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY INFORMATION**

I understand Apple contends that its iTunes icons are distinctive. To the contrary, as the images below illustrate, icons bearing an eighth note and/or a record are frequently used by companies other than Apple to represent music functions in connection with consumer electronics sold on the market today:



Apple

SONY VITA

NOKIA

Smart Music

In sum, none of the graphical user interface elements identified by Apple as being trademarks and/or trade dress are distinctive in the marketplace. A matrix of colorful icons, an icon “dock” as well as all of the individual icons are all widely used by competing manufactures of consumer electronics and are not unique to Apple.

VII. SUMMARY

In conclusion, it is my opinion that the Asserted Design Patents, trade dress and trademarks are functional because they enhance utility of the subject devices. In addition, it is my opinion that the asserted trademarks and trade dress are not distinctive because similar trademarks and trade dress are regularly used on consumer electronics by manufactures other than Apple. If Apple were to “own” any of these features, other manufacturers would be placed at a significant competitive disadvantage from an industrial design perspective in that they could not employ many of the most useful and efficient designs and configurations, and the quality of the resulting devices would suffer.

Signature executed on March 22, 2012

Samuel Lucente