

**EXHIBIT 2**  
**FILED UNDER SEAL**

1 QUINN EMANUEL URQUHART & SULLIVAN, LLP  
Charles K. Verhoeven (Bar No. 170151)  
2 charlesverhoeven@quinnemanuel.com  
50 California Street, 22<sup>nd</sup> Floor  
3 San Francisco, California 94111  
Telephone: (415) 875-6600  
4 Facsimile: (415) 875-6700

5 Kevin P.B. Johnson (Bar No. 177129)  
kevinjohnson@quinnemanuel.com  
6 Victoria F. Maroulis (Bar No. 202603)  
victoriamaroulis@quinnemanuel.com  
7 555 Twin Dolphin Drive, 5<sup>th</sup> Floor  
Redwood Shores, California 94065-2139  
8 Telephone: (650) 801-5000  
Facsimile: (650) 801-5100

9 Michael T. Zeller (Bar No. 196417)  
10 michaelzeller@quinnemanuel.com  
865 S. Figueroa St., 10th Floor  
11 Los Angeles, California 90017  
Telephone: (213) 443-3000  
12 Facsimile: (213) 443-3100

13 Attorneys for SAMSUNG ELECTRONICS CO.,  
LTD., SAMSUNG ELECTRONICS AMERICA,  
14 INC. and SAMSUNG  
TELECOMMUNICATIONS AMERICA, LLC  
15

16 UNITED STATES DISTRICT COURT  
17 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION  
18

19 APPLE INC., a California corporation,

20 Plaintiff,

21 vs.

22 SAMSUNG ELECTRONICS CO., LTD., a  
Korean business entity; SAMSUNG  
23 ELECTRONICS AMERICA, INC., a New  
York corporation; SAMSUNG  
24 TELECOMMUNICATIONS AMERICA,  
LLC, a Delaware limited liability company,

25 Defendant.  
26

CASE NO. 11-cv-01846-LHK

**SAMSUNG'S SUPPLEMENTAL  
OBJECTIONS AND RESPONSES TO  
APPLE INC.'S FIFTH SET OF  
INTERROGATORIES (11-12)**

**HIGHLY CONFIDENTIAL –  
ATTORNEYS' EYES ONLY**  
**UNDER THE PROTECTIVE ORDER**

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

1 already in the possession of Apple, publicly available, or as readily available to Apple as it is to  
2 Samsung.

3       24. Samsung objects to each interrogatory to the extent that it seeks information before  
4 Samsung is required to disclose such information in accordance with any applicable law, such as  
5 the Northern District of California Patent Local Rules.

6       25. Samsung objects to the interrogatories on the grounds and to the extent that they  
7 seek legal conclusions or call for expert testimony. Samsung’s responses should not be construed  
8 to provide legal conclusions.

9       Subject to and without waiving the foregoing General Statement and General Objections,  
10 Samsung responds as follows:

**INTERROGATORIES**

11  
12 **INTERROGATORY NO. 11:**

13       Specifically for each of the Design Patents at Issue, explain the factual and legal bases for  
14 Samsung’s Second Affirmative Defense: Patent Non-Infringement.

15  
16 **RESPONSE TO INTERROGATORY NO. 11:**

17       Samsung objects to this interrogatory as vague and ambiguous. Samsung further objects to  
18 this interrogatory to the extent that it seeks to elicit information subject to and protected by the  
19 attorney-client privilege, the attorney work-product doctrine, the joint defense privilege, the  
20 common interest doctrine, and/or any other applicable privilege or immunity. Samsung further  
21 objects to this interrogatory as premature to the extent it requests information regarding  
22 Samsung’s non-infringement contentions before sufficient discovery has been conducted.  
23 Samsung further objects to this interrogatory to the extent it prematurely calls for contentions at  
24 this stage of litigation. Samsung will provide such contentions in accordance with the Court’s  
25 Minute Order and Case Management Order, dated August 25, 2011.

26       Subject to the foregoing general and specific objections, Samsung responds as follows:

27       For U.S. Patent No. D627,790, the accused Samsung products, as identified in Apple’s  
28 Response to Samsung Interrogatory No. 5, are not substantially similar to an ordinary observer

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

1 giving such attention as a purchaser usually gives, particularly when viewed in light of the prior  
2 art and the functional elements of the design are excluded as a basis for similarity. In addition,  
3 Samsung’s investigation is ongoing and Samsung will supplement this interrogatory after a  
4 reasonable investigation and further discovery from Apple on the basis for its infringement  
5 position.

6 For U.S. Patent No. D617,334, the accused Samsung products, as identified in Apple’s  
7 Response to Samsung Interrogatory No. 5, are not substantially similar to an ordinary observer  
8 giving such attention as a purchaser usually gives, particularly when viewed in light of the prior  
9 art and the functional elements of the design are excluded as a basis for similarity. In addition,  
10 Samsung’s investigation is ongoing and Samsung will supplement this interrogatory after a  
11 reasonable investigation and further discovery from Apple on the basis for its infringement  
12 position.

13 For U.S. Patent No. D604,305, the accused Samsung products, as identified in Apple’s  
14 Response to Samsung Interrogatory No. 5, are not substantially similar to an ordinary observer  
15 giving such attention as a purchaser usually gives, particularly when viewed in light of the prior  
16 art and the functional elements of the design are excluded as a basis for similarity. In addition,  
17 Samsung’s investigation is ongoing and Samsung will supplement this interrogatory after a  
18 reasonable investigation and further discovery from Apple on the basis for its infringement  
19 position.

20 For U.S. Patent No. D593,087, the accused Samsung products, as identified in Apple’s  
21 Response to Samsung Interrogatory No. 5, are not substantially similar to an ordinary observer  
22 giving such attention as a purchaser usually gives, particularly when viewed in light of the prior  
23 art and the functional elements of the design are excluded as a basis for similarity. In addition,  
24 Samsung’s investigation is ongoing and Samsung will supplement this interrogatory after a  
25 reasonable investigation and further discovery from Apple on the basis for its infringement  
26 position. Samsung also incorporates by reference the Declaration of Itay Sherman in Support of  
27 Samsung’s Opposition to Apple’s Motion for a Preliminary Injunction (Dkt. No. 172).

28

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

1 For U.S. Patent No. D618,677, the accused Samsung products, as identified in Apple’s  
2 Response to Samsung Interrogatory No. 5, are not substantially similar to an ordinary observer  
3 giving such attention as a purchaser usually gives, particularly when viewed in light of the prior  
4 art and the functional elements of the design are excluded as a basis for similarity. In addition,  
5 Samsung’s investigation is ongoing and Samsung will supplement this interrogatory after a  
6 reasonable investigation and further discovery from Apple on the basis for its infringement  
7 position. Samsung also incorporates by reference the Declaration of Itay Sherman in Support of  
8 Samsung’s Opposition to Apple’s Motion for a Preliminary Injunction (Dkt. No. 172).

9 For U.S. Patent No. D622,270, the accused Samsung products, as identified in Apple’s  
10 Response to Samsung Interrogatory No. 5, are not substantially similar to an ordinary observer  
11 giving such attention as a purchaser usually gives, particularly when viewed in light of the prior  
12 art and the functional elements of the design are excluded as a basis for similarity. In addition,  
13 Samsung’s investigation is ongoing and Samsung will supplement this interrogatory after a  
14 reasonable investigation and further discovery from Apple on the basis for its infringement  
15 position.

16 For U.S. Patent No. D504,889, the accused Samsung products, as identified in Apple’s  
17 Response to Samsung Interrogatory No. 5, are not substantially similar to an ordinary observer  
18 giving such attention as a purchaser usually gives, particularly when viewed in light of the prior  
19 art and the functional elements of the design are excluded as a basis for similarity. In addition,  
20 Samsung’s investigation is ongoing and Samsung will supplement this interrogatory after a  
21 reasonable investigation and further discovery from Apple on the basis for its infringement  
22 position. Samsung also incorporates by reference the Declaration of Itay Sherman in Support of  
23 Samsung’s Opposition to Apple’s Motion for a Preliminary Injunction (Dkt. No. 172).

24  
25 **FIRST SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 11 (3/19/12):**

26 Samsung objects to this interrogatory as vague and ambiguous. Samsung further objects to  
27 this interrogatory to the extent that it seeks to elicit information subject to and protected by the  
28 attorney-client privilege, the attorney work-product doctrine, the joint defense privilege, the

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

1 common interest doctrine, and/or any other applicable privilege or immunity. Samsung further  
2 objects to this interrogatory to the extent it prematurely calls for expert testimony. Samsung  
3 hereby incorporates by reference any expert testimony, declarations, or reports previously  
4 submitted in this action or which may be submitted in accordance with the Court’s Minute Order  
5 and Case Management Order, dated August 25, 2011, which address the scope of the Design  
6 Patents at Issue or the non-infringement of any Samsung product accused of design patent  
7 infringement. Samsung also reserves the right to supplement or amend this response if Apple  
8 attempts to supplement or amend in any way its design patent infringement contentions contained  
9 in its Response to Samsung’s Interrogatory No. 72, either through direct supplementation or  
10 amendment of its Response or through any expert report or testimony.

11 Subject to the foregoing general and specific objections, Samsung responds as follows:

12 Design patents can only protect those aspects of the design that are ornamental, not  
13 functional. “If the patented design is primarily functional rather than ornamental, the patent is  
14 invalid. However, when the design also contains ornamental aspects, it is entitled to a design  
15 patent whose scope is limited to those aspects alone and does not extend to any functional  
16 elements of the claimed article.” *Richardson v. Stanley Works, Inc.*, 597 F.3d 1288, 1293-94 (Fec.  
17 Cir. 2010) (internal citation omitted). Therefore, to the extent that each the Design Patents at Issue  
18 contain *any* ornamental aspects, the scope of those patents is narrowly limited to only those  
19 ornamental aspects and does not include the entirety of the claimed designs, which incorporate  
20 numerous functional features. *See id.* (“A claim to a design containing numerous functional  
21 elements, such as here, necessarily mandates a narrow construction.”). Further, “it is the non-  
22 functional, design aspects that are pertinent to determinations of infringement.” *Lee v. Dayton-*  
23 *Hudson Corp.*, 838 F.2d 1186, 1188 (Fed. Cir. 1988). Thus, only those features of the Design  
24 Patents at Issue which are ornamental, if such features exist at all, are properly compared with the  
25 accused Samsung products to assess infringement. *See id.* at 1188-89 (“A device that copies the  
26 utilitarian or functional features of a patented design is not an infringement unless the ornamental  
27 aspects are also copied.”) Samsung incorporates by reference its Responses to Apple’s  
28 Interrogatory No. 38 (Samsung’s Objections and Responses to Apple’s Tenth Set of

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

1 Interrogatories (nos. 27-38), dated Feb. 29, 2012) and No. 12 (contained herein), which detail  
2 functional features contained in the Design Patents at Issue.

3           Moreover, any assessment of infringement must consider the prior art. “The ordinary  
4 observer is deemed to view the differences between the patented design and the accused product in  
5 the context of the prior art. When the differences between the claimed and accused design are  
6 viewed in light of the prior art, the attention of the hypothetical ordinary observer will be drawn to  
7 those aspects of the claimed design that differ from the prior art. And when the claimed design is  
8 close to the prior art designs, small differences between the accused design and the claimed design  
9 are likely to be important to the eye of the hypothetical ordinary observer.” *Egyptian Goddess,*  
10 *Inc. v. Swisa, Inc.*, 543 F.3d 665, 676 (Fed. Cir. 2008). Because the designs claimed by the  
11 Design Patents at Issue are incredibly close to, if not wholly anticipated or made obvious by, the  
12 prior art, the differences between the accused Samsung products and the Design Patents at Issue  
13 are likely to be important to the ordinary observer. Samsung incorporates by reference its  
14 Supplemental Response to Apple’s Interrogatory No. 12, contained herein, which details the prior  
15 art to the Design Patents at Issue.

16           Further, the scope of the Design Patents at Issue is necessarily limited because Apple and  
17 Samsung have both obtained design patents since the issuance of the Design Patents at Issue that  
18 demonstrate unequivocally that similar designs are not substantially the same as those claimed in  
19 the Design Patents at Issue. By way of example only, Apple obtained U.S. Patent No. D633,091  
20 after it obtained U.S. Patent No. 622,270 (the “D’270 patent”), one of the Design Patents at Issue.  
21 Because a design patent may only be granted for a “*new, original, and ornamental design,*” 35  
22 U.S.C. § 171 (emphasis added), the design claimed in D633,091 cannot be substantially the same  
23 as the design claimed by the D’270 patent. However, since the differences between D633,091 and  
24 D’270 are minor, the scope of the D’270 patent must therefore be very narrow, such that a minor  
25 difference results in a “new, original” design. Similarly, D602,486, D602,014, D624,536,  
26 D622,718, D604,297, D613,735, D622,719, D633,091, D637,596, D627,777, D558,758,  
27 D558,756, D580,387, D581,922, D613,736, D634,319, D618,677, D618,678, D593,087,  
28 D622,270, D504,889, D627,790, D617,334, D604,305, D644,239, and D597,101, as well as all of

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

1 the patents and file histories produced at SAMNDCA00359166-SAMNDCA00365544,  
2 SAMNDCA00365600-SAMNDCA00365840, and SAMNDCA00373535-SAMNDCA00374040,  
3 demonstrate that the scope of each of the Design Patents at Issue must be very narrow.

4       Regarding U.S. Patent No. D627,790 (the “D’790 patent”), Samsung incorporates by  
5 reference its Response to Apple’s Interrogatory No. 38 (Samsung’s Objections and Responses to  
6 Apple’s Tenth Set of Interrogatories (nos. 27-38), dated Feb. 29, 2012) and No. 12 (contained  
7 herein) which explain that every aspect of the claimed design is functional. Accordingly, the  
8 D’790 patent is invalid. However, if it is determined that any of the features claimed by the D’790  
9 patent are ornamental, the scope of the D’790 patent is limited to those features. To the extent that  
10 the Samsung devices Apple accuses of infringement of the D’790 patent share any features with  
11 the D’790 patent, such features are wholly functional and therefore irrelevant to a determination of  
12 infringement. To the extent the D’790 patent claims any ornamental features, such features are  
13 not present in the Samsung devices accused of infringement of the D’790 patent.

14       Moreover, Samsung incorporates by reference its Supplemental Response to Apple’s  
15 Interrogatory No. 12, contained herein, which demonstrates that the D’790 patent is anticipated or  
16 made obvious by the prior art, or is invalid due to double patenting, indefiniteness, or otherwise.  
17 To the extent the D’790 patent is valid, the differences between the D’790 patent and the Samsung  
18 devices accused of infringement of the D’790 patent, viewed in light of the prior art, are likely to  
19 be important to the eye of the hypothetical ordinary observer. Therefore, the ordinary observer is  
20 not likely to find the Samsung devices accused of infringement of the D’790 patent to be  
21 substantially the same as the D’790 patent.

22       Finally, the scope of the D’790 patent is necessarily narrow since Apple has subsequently  
23 obtained design patents on similar designs, including but not limited to D644,239 and D597,101.  
24 Because the scope of the D’790 patent is so limited, the ordinary observer would not find the  
25 Samsung devices accused of infringement of the D’790 patent to be substantially the same as the  
26 narrowly-construed D’790 claimed design.

27       Regarding U.S. Patent No. D617,334 (the “D’334 patent”), Samsung incorporates by  
28 reference its Response to Apple’s Interrogatory No. 38 (Samsung’s Objections and Responses to



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

1 Apple’s Tenth Set of Interrogatories (nos. 27-38), dated Feb. 29, 2012) and No. 12 (contained  
2 herein), which explain that every aspect of the claimed design is functional. Accordingly, the  
3 D’334 patent is invalid. However, if it is determined that any of the features claimed by the D’334  
4 patent are ornamental, the scope of the D’334 patent is limited to those features. To the extent that  
5 the Samsung devices Apple accuses of infringement of the D’334 patent share any features with  
6 the D’334 patent, such features are wholly functional and therefore irrelevant to a determination of  
7 infringement. To the extent the D’334 patent claims any ornamental features, such features are  
8 not present in the Samsung devices accused of infringement of the D’334 patent.

9           Moreover, Samsung incorporates by reference its Supplemental Response to Apple’s  
10 Interrogatory No. 12, contained herein, which demonstrates that the D’334 patent is anticipated or  
11 made obvious by the prior art, or is invalid due to double patenting, indefiniteness, or otherwise.  
12 To the extent the D’334 patent is valid, the differences between the D’334 patent and the Samsung  
13 devices accused of infringement of the D’334 patent, viewed in light of the prior art, are likely to  
14 be important to the eye of the hypothetical ordinary observer. Therefore, the ordinary observer is  
15 not likely to find the Samsung devices accused of infringement of the D’334 to be substantially  
16 the same as the D’334 patent.

17           Finally, the scope of the D’334 patent is necessarily narrow since Apple obtained this  
18 patent subsequent to being granted U.S. Patent No. D604,305, which contains a very similar  
19 design. The D’334 patent could not have issued in light of the D604,305 patent unless the D’334  
20 claimed design were different from that of the D604,305 patent. However, because the designs of  
21 these two patents are so similar, the scope of the D’334 patent must be narrowly construed to  
22 explain its issuance in light of D604,305. Because the scope of the D’334 patent is so limited, the  
23 ordinary observer would not find the Samsung devices accused of infringement of the D’334  
24 patent to be substantially the same as the narrowly-construed D’334 claimed design.

25           Regarding U.S. Patent No. D604,305 (the “D’305 patent”), Samsung incorporates by  
26 reference its Response to Apple’s Interrogatory No. 38 (Samsung’s Objections and Responses to  
27 Apple’s Tenth Set of Interrogatories (nos. 27-38), dated Feb. 29, 2012) and No. 12 (contained  
28 herein), which explains that every aspect of the claimed design is functional. Accordingly, the

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

1 D’305 patent is invalid. However, if it is determined that any of the features claimed by the D’305  
2 patent are ornamental, the scope of the D’305 patent is limited to those features. To the extent that  
3 the Samsung devices Apple accuses of infringement of the D’305 patent share any features with  
4 the D’305 patent, such features are wholly functional and therefore irrelevant to a determination of  
5 infringement. To the extent the D’305 patent claims any ornamental features, such features are  
6 not present in the Samsung devices accused of infringement of the D’305 patent.

7           Moreover, Samsung incorporates by reference its Supplemental Response to Apple’s  
8 Interrogatory No. 12, contained herein, which demonstrates that the D’305 patent is anticipated or  
9 made obvious by the prior art, or is invalid due to double patenting, indefiniteness, or otherwise.  
10 To the extent the D’305 patent is valid, the differences between the D’305 patent and the Samsung  
11 devices accused of infringement of the D’305 patent, viewed in light of the prior art, are likely to  
12 be important to the eye of the hypothetical ordinary observer. Therefore, the ordinary observer is  
13 not likely to find the Samsung devices accused of infringement of the D’305 patent to be  
14 substantially the same as the D’305 patent.

15           Finally, the scope of the D’305 patent is necessarily narrow since Apple has subsequently  
16 obtained design patents on similar designs, including the D’334 patent. Because the scope of the  
17 D’305 patent is so limited, the ordinary observer would not find the Samsung devices accused of  
18 infringement of the D’305 patent to be substantially the same as the narrowly-construed D’305  
19 claimed design.

20           Regarding U.S. Patent No. D593,087 (the “D’087 patent”), Samsung incorporates by  
21 reference its Response to Apple’s Interrogatory No. 38 (Samsung’s Objections and Responses to  
22 Apple’s Tenth Set of Interrogatories (nos. 27-38), dated Feb. 29, 2012) and No. 12 (contained  
23 herein), which explain that every aspect of the claimed design is functional. Accordingly, the  
24 D’087 patent is invalid. However, if it is determined that any of the features claimed by the D’087  
25 patent are ornamental, the scope of the D’087 patent is limited to those features. To the extent that  
26 the Samsung devices Apple accuses of infringement of the D’087 patent share any features with  
27 the D’087 patent, such features are wholly functional and therefore irrelevant to a determination of  
28

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

1 infringement. To the extent the D’087 patent claims any ornamental features, such features are  
2 not present in the Samsung devices accused of infringement of the D’087 patent.

3           Moreover, Samsung incorporates by reference its Supplemental Response to Apple’s  
4 Interrogatory No. 12, contained herein, which demonstrates that the D’087 patent is anticipated or  
5 made obvious by the prior art, or is invalid due to double patenting, indefiniteness, or otherwise.  
6 To the extent the D’087 patent is valid, the differences between the D’087 patent and the Samsung  
7 devices accused of infringement of the D’087 patent, viewed in light of the prior art, are likely to  
8 be important to the eye of the hypothetical ordinary observer. Therefore, the ordinary observer is  
9 not likely to find the Samsung devices accused of infringement of the D’087 patent to be  
10 substantially the same as the D’087 patent.

11           Finally, the scope of the D’087 patent is necessarily narrow since Apple has subsequently  
12 obtained design patents on similar designs. Because the scope of the D’087 patent is so limited,  
13 the ordinary observer would not find the Samsung devices accused of infringement of the D’087  
14 patent to be substantially the same as the narrowly-construed D’087 claimed design.

15           Regarding U.S. Patent No. D618,677(the “D’677 patent”), Samsung incorporates by  
16 reference its Response to Apple’s Interrogatory No. 38 (Samsung’s Objections and Responses to  
17 Apple’s Tenth Set of Interrogatories (nos. 27-38), dated Feb. 29, 2012) and No. 12 (contained  
18 herein), which explain that every aspect of the claimed design is functional. Accordingly, the  
19 D’677 patent is invalid. However, if it is determined that any of the features claimed by the D’677  
20 patent are ornamental, the scope of the D’677 patent is limited to those features. To the extent that  
21 the Samsung devices Apple accuses of infringement of the D’677 patent share any features with  
22 the D’677 patent, such features are wholly functional and therefore irrelevant to a determination of  
23 infringement. To the extent the D’677 patent claims any ornamental features, such features are  
24 not present in the Samsung devices accused of infringement of the D’677 patent.

25           Moreover, Samsung incorporates by reference its Supplemental Response to Apple’s  
26 Interrogatory No. 12, contained herein, which demonstrates that the D’677 patent is anticipated or  
27 made obvious by the prior art, or is invalid due to double patenting, indefiniteness, or otherwise.  
28 To the extent the D’677 patent is valid, the differences between the D’677 patent and the Samsung

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

1 devices accused of infringement of the D’677 patent, viewed in light of the prior art, are likely to  
2 be important to the eye of the hypothetical ordinary observer. Therefore, the ordinary observer is  
3 not likely to find the Samsung devices accused of infringement of the D’677 patent to be  
4 substantially the same as the D’677 patent.

5 Finally, the scope of the D’677 patent is necessarily narrow since Apple has subsequently  
6 obtained design patents on similar designs. Because the scope of the D’677 patent is so limited,  
7 the ordinary observer would not find the Samsung devices accused of infringement of the D’677  
8 patent to be substantially the same as the narrowly-construed D’677 claimed design.

9 Regarding U.S. Patent No. D622,270 (the “D’270 patent”), Samsung incorporates by  
10 reference its Response to Apple’s Interrogatory No. 38 (Samsung’s Objections and Responses to  
11 Apple’s Tenth Set of Interrogatories (nos. 27-38), dated Feb. 29, 2012) and No. 12 (contained  
12 herein), which explain that every aspect of the claimed design is functional. Accordingly, the  
13 D’270 patent is invalid. However, if it is determined that any of the features claimed by the D’270  
14 patent are ornamental, the scope of the D’270 patent is limited to those features. To the extent that  
15 the Samsung devices Apple accuses of infringement of the D’270 patent share any features with  
16 the D’270 patent, such features are wholly functional and therefore irrelevant to a determination of  
17 infringement. To the extent the D’270 patent claims any ornamental features, such features are  
18 not present in the Samsung devices accused of infringement of the D’270 patent.

19 Moreover, Samsung incorporates by reference its Supplemental Response to Apple’s  
20 Interrogatory No. 12, contained herein, which demonstrates that the D’270 patent is anticipated or  
21 made obvious by the prior art, or is invalid due to double patenting, indefiniteness, or otherwise.  
22 To the extent the D’270 patent is valid, the differences between the D’270 patent and the Samsung  
23 devices accused of infringement of the D’270 patent, viewed in light of the prior art, are likely to  
24 be important to the eye of the hypothetical ordinary observer. Therefore, the ordinary observer is  
25 not likely to find the Samsung devices accused of infringement of the D’270 patent to be  
26 substantially the same as the D’270 patent.

27 Finally, the scope of the D’270 patent is necessarily narrow since Apple has subsequently  
28 obtained design patents on similar designs. Because the scope of the D’270 patent is so limited,

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

1 the ordinary observer would not find the Samsung devices accused of infringement of the D’270  
2 patent to be substantially the same as the narrowly-construed D’270 claimed design.

3       Regarding U.S. Patent No. D504,889 (the “D’889 patent”), Samsung incorporates by  
4 reference its Response to Apple’s Interrogatory No. 38 (Samsung’s Objections and Responses to  
5 Apple’s Tenth Set of Interrogatories (nos. 27-38), dated Feb. 29, 2012) and No. 12 (contained  
6 herein), which explain that every aspect of the claimed design is functional. Accordingly, the  
7 D’889 patent is invalid. However, if it is determined that any of the features claimed by the D’889  
8 patent are ornamental, the scope of the D’889 patent is limited to those features. To the extent that  
9 the Samsung devices Apple accuses of infringement of the D’889 patent share any features with  
10 the D’889 patent, such features are wholly functional and therefore irrelevant to a determination of  
11 infringement. To the extent the D’889 patent claims any ornamental features, such features are  
12 not present in the Samsung devices accused of infringement of the D’889 patent.

13       Moreover, Samsung incorporates by reference its Supplemental Response to Apple’s  
14 Interrogatory No. 12, contained herein, which demonstrates that the D’889 patent is anticipated or  
15 made obvious by the prior art, or is invalid due to double patenting, indefiniteness, or otherwise.  
16 To the extent the D’889 patent is valid, the differences between the D’889 patent and the Samsung  
17 devices accused of infringement of the D’889 patent, viewed in light of the prior art, are likely to  
18 be important to the eye of the hypothetical ordinary observer. Therefore, the ordinary observer is  
19 not likely to find the Samsung devices accused of infringement of the D’889 patent to be  
20 substantially the same as the D’889 patent.

21       Finally, the scope of the D’889 patent is necessarily narrow since Apple has subsequently  
22 obtained design patents on similar designs. Because the scope of the D’889 patent is so limited,  
23 the ordinary observer would not find the Samsung devices accused of infringement of the D’889  
24 patent to be substantially the same as the narrowly-construed D’889 claimed design.

25  
26 **INTERROGATORY NO. 12:**

27       Specifically for each of the Design Patents at Issue, explain the factual and legal bases for  
28 Samsung’s Third Affirmative Defense: Patent Invalidity. The response should include: (a) the

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

1 identity of any item of prior art that Samsung alleges anticipates each Design Patent at Issue; (b)  
2 the identity of any item of prior art that Samsung alleges is a primary reference pursuant to *In re*  
3 *Rosen*, 673 F.2d 388 (CCPA 1982); (c) the identity of any combinations of prior art that Samsung  
4 alleges render any of the Design Patents at Issue obvious, including an explanation of why the  
5 prior art renders each Design Patent at Issue obvious; and (d) any other grounds of invalidity  
6 alleged by Samsung, including those based on 35 U.S.C. §§ 101, 102, 103, 112 and/or 171.

7  
8 **RESPONSE TO INTERROGATORY NO. 12:**

9 Samsung objects to this interrogatory as vague and ambiguous. Samsung further objects to  
10 this interrogatory to the extent that it seeks to elicit information subject to and protected by the  
11 attorney-client privilege, the attorney work-product doctrine, the joint defense privilege, the  
12 common interest doctrine, and/or any other applicable privilege or immunity. Samsung further  
13 objects to this interrogatory as premature to the extent it requests information regarding  
14 Samsung’s invalidity contentions before sufficient discovery has been conducted. Samsung  
15 further objects to this interrogatory to the extent it prematurely calls for contentions at this stage of  
16 litigation. Samsung further objects to this interrogatory because it contains multiple subparts such  
17 that each should count as a separate interrogatory. Samsung will provide such contentions in  
18 accordance with the Court’s Minute Order and Case Management Order, dated August 25, 2011.

19 Subject to the foregoing general and specific objections, Samsung responds as follows:

20 For U.S. Patent No. D627,790, because the burden of deriving or ascertaining the answer  
21 to this Interrogatory from the produced business records is substantially the same for Apple as for  
22 Samsung, in accordance with Federal Rule of Civil Procedure 33(d), Samsung refers Apple to  
23 documents produced in this action related to prior art, including the following documents:  
24 SAMNDCA00020035-20119; SAMNDCA00020499-20575; SAMNDCA00020879-20899;  
25 SAMNDCA00021500-21504; SAMNDCA00021894-22450; SAMNDCA00022764-22801;  
26 SAMNDCA00023585-23590; SAMNDCA00024570-24581; SAMNDCA00199073-199148;  
27 SAMNDCA00199210-199401; SAMNDCA00199525-200616; SAMNDCA00200640-200649;  
28 SAMNDCA00200659-200660; SAMNDCA00200666-200669; SAMNDCA00200677-200685;

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

1 SAMNDCA00200715-200723; SAMNDCA00200734-200736; SAMNDCA00200749-200750;  
2 SAMNDCA00200789-200791; SAMNDCA00200807-200808; SAMNDCA00200839-200842;  
3 SAMNDCA00200926-200927; SAMNDCA00200941-200952; SAMNDCA00200961-200971;  
4 SAMNDCA00201021-201022; SAMNDCA00201076-201077; SAMNDCA00201095-201097;  
5 SAMNDCA00201112-201113; SAMNDCA00201141-201142; SAMNDCA00201151-201159;  
6 SAMNDCA00201168-201171; SAMNDCA00201183-201188; SAMNDCA00201205-201206;  
7 SAMNDCA00201211-201220; SAMNDCA00201241-201249.

8 Samsung believes that the identified prior art, standing alone, or in combination, would be  
9 substantially similar to an ordinary observer giving such attention as a purchaser usually gives, to  
10 Apple's design patent, rendering the patent invalid as anticipated and/or obvious. Samsung also  
11 believes that Apple's design patent is invalid because it is the subject of double-patenting, is  
12 indefinite, and because the design is not ornamental. In addition, Samsung’s investigation is  
13 ongoing and Samsung will supplement this interrogatory after a reasonable investigation and  
14 further discovery from Apple on the basis for its infringement position.

15 For U.S. Patent No. D617,334, because the burden of deriving or ascertaining the answer  
16 to this Interrogatory from the produced business records is substantially the same for Apple as for  
17 Samsung, in accordance with Federal Rule of Civil Procedure 33(d), Samsung refers Apple to  
18 documents produced in this action related to prior art, including the following documents:

19 SAMNDCA00020035-20119; SAMNDCA00020499-20575; SAMNDCA00020879-20899;  
20 SAMNDCA00021500-21504; SAMNDCA00021894-22450; SAMNDCA00022764-22801;  
21 SAMNDCA00023585-23590; SAMNDCA00024570-24581; SAMNDCA00199073-199148;  
22 SAMNDCA00199210-199401; SAMNDCA00199525-200616; SAMNDCA00200640-200649;  
23 SAMNDCA00200659-200660; SAMNDCA00200666-200669; SAMNDCA00200677-200685;  
24 SAMNDCA00200715-200723; SAMNDCA00200734-200736; SAMNDCA00200749-200750;  
25 SAMNDCA00200789-200791; SAMNDCA00200807-200808; SAMNDCA00200839-200842;  
26 SAMNDCA00200926-200927; SAMNDCA00200941-200952; SAMNDCA00200961-200971;  
27 SAMNDCA00201021-201022; SAMNDCA00201076-201077; SAMNDCA00201095-201097;  
28 SAMNDCA00201112-201113; SAMNDCA00201141-201142; SAMNDCA00201151-201159;

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

1 SAMNDCA00201168-201171; SAMNDCA00201183-201188; SAMNDCA00201205-201206;  
2 SAMNDCA00201211-201220; SAMNDCA00201241-201249.

3 Samsung believes that the identified prior art, standing alone, or in combination, would be  
4 substantially similar to an ordinary observer giving such attention as a purchaser usually gives, to  
5 Apple's design patent, rendering the patent invalid as anticipated and/or obvious. Samsung also  
6 believes that Apple's design patent is invalid because it is the subject of double-patenting, is  
7 indefinite, and because the design is not ornamental. In addition, Samsung’s investigation is  
8 ongoing and Samsung will supplement this interrogatory after a reasonable investigation and  
9 further discovery from Apple on the basis for its infringement position.

10 For U.S. Patent No. D604,305, because the burden of deriving or ascertaining the answer  
11 to this Interrogatory from the produced business records is substantially the same for Apple as for  
12 Samsung, in accordance with Federal Rule of Civil Procedure 33(d), Samsung refers Apple to  
13 documents produced in this action related to prior art, including the following documents:

14 SAMNDCA00020035-20119; SAMNDCA00020499-20575; SAMNDCA00020879-20899;  
15 SAMNDCA00021500-21504; SAMNDCA00021894-22450; SAMNDCA00022764-22801;  
16 SAMNDCA00023585-23590; SAMNDCA00024570-24581; SAMNDCA00199073-199148;  
17 SAMNDCA00199210-199401; SAMNDCA00199525-200616; SAMNDCA00200640-200649;  
18 SAMNDCA00200659-200660; SAMNDCA00200666-200669; SAMNDCA00200677-200685;  
19 SAMNDCA00200715-200723; SAMNDCA00200734-200736; SAMNDCA00200749-200750;  
20 SAMNDCA00200789-200791; SAMNDCA00200807-200808; SAMNDCA00200839-200842;  
21 SAMNDCA00200926-200927; SAMNDCA00200941-200952; SAMNDCA00200961-200971;  
22 SAMNDCA00201021-201022; SAMNDCA00201076-201077; SAMNDCA00201095-201097;  
23 SAMNDCA00201112-201113; SAMNDCA00201141-201142; SAMNDCA00201151-201159;  
24 SAMNDCA00201168-201171; SAMNDCA00201183-201188; SAMNDCA00201205-201206;  
25 SAMNDCA00201211-201220; SAMNDCA00201241-201249.

26 Samsung believes that the identified prior art, standing alone, or in combination, would be  
27 substantially similar to an ordinary observer giving such attention as a purchaser usually gives, to  
28 Apple's design patent, rendering the patent invalid as anticipated and/or obvious. Samsung also



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

1 believes that Apple's design patent is invalid because it is the subject of double-patenting, is  
2 indefinite, and because the design is not ornamental. In addition, Samsung’s investigation is  
3 ongoing and Samsung will supplement this interrogatory after a reasonable investigation and  
4 further discovery from Apple on the basis for its infringement position.

5           For U.S. Patent No. D593,087, because the burden of deriving or ascertaining the answer  
6 to this Interrogatory from the produced business records is substantially the same for Apple as for  
7 Samsung, in accordance with Federal Rule of Civil Procedure 33(d), Samsung refers Apple to  
8 documents produced in this action related to prior art, including the following documents:  
9 SAMNDCA00019932-20034; SAMNDCA00020120-20303; SAMNDCA00020394-20498;  
10 SAMNDCA00020782-20878; SAMNDCA00020900-20906; SAMNDCA00020978-20989;  
11 SAMNDCA00021255-21313; SAMNDCA00021315-21336; SAMNDCA00021341-21471;  
12 SAMNDCA00021479-21499; SAMNDCA00021505-21588; SAMNDCA00021593-21604;  
13 SAMNDCA00021608-21632; SAMNDCA00021634-21805; SAMNDCA00021812-21857;  
14 SAMNDCA00022451-22522; SAMNDCA00022732-22763; SAMNDCA00022802-22812;  
15 SAMNDCA00022901-22971; SAMNDCA00022984-23064; SAMNDCA00023137-23182;  
16 SAMNDCA00023234-23524; SAMNDCA00023542—23584; SAMNDCA00023591-24061;  
17 SAMNDCA00024582-24662; SAMNDCA00024749-24752; SAMNDCA00027670-27722;  
18 SAMNDCA00198059-198067; SAMNDCA00198070-198096; SAMNDCA00198101-198274;  
19 SAMNDCA00198289-198307; SAMNDCA00198313-198456; SAMNDCA00198754-198846;  
20 SAMNDCA00198884-199046; SAMNDCA00199164-199222; SAMNDCA00199298-199306;  
21 SAMNDCA00199402-199524; SAMNDCA00200425-200472; SAMNDCA00200617-200639;  
22 SAMNDCA00200650-200658; SAMNDCA00200661-200665; SAMNDCA00200670-200676;  
23 SAMNDCA00200686-200714; SAMNDCA00200724-200733; SAMNDCA00200737-200748;  
24 SAMNDCA00200751-200788; SAMNDCA00200793-200806; SAMNDCA00200809-200838;  
25 SAMNDCA00200843-200873; SAMNDCA00201264-201278.

26           Samsung believes that the identified prior art, standing alone, or in combination, would be  
27 substantially similar to an ordinary observer giving such attention as a purchaser usually gives, to  
28 Apple's design patent, rendering the patent invalid as anticipated and/or obvious. Samsung also

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

1 believes that Apple's design patent is invalid because it is the subject of double-patenting, is  
2 indefinite, and because the design is not ornamental. In addition, Samsung’s investigation is  
3 ongoing and Samsung will supplement this interrogatory after a reasonable investigation and  
4 further discovery from Apple on the basis for its infringement position. Samsung also  
5 incorporates by reference the Declaration of Itay Sherman in Support of Samsung’s Opposition to  
6 Apple’s Motion for a Preliminary Injunction (Dkt. No. 172).

7           For U.S. Patent No. D618,677, because the burden of deriving or ascertaining the answer  
8 to this Interrogatory from the produced business records is substantially the same for Apple as for  
9 Samsung, in accordance with Federal Rule of Civil Procedure 33(d), Samsung refers Apple to  
10 documents produced in this action related to prior art, including the following documents:

- 11 SAMNDCA00019932-20034; SAMNDCA00020120-20303; SAMNDCA00020394-20498;  
12 SAMNDCA00020782-20878; SAMNDCA00020900-20906; SAMNDCA00020978-20989;  
13 SAMNDCA00021255-21313; SAMNDCA00021315-21336; SAMNDCA00021341-21471;  
14 SAMNDCA00021479-21499; SAMNDCA00021505-21588; SAMNDCA00021593-21604;  
15 SAMNDCA00021608-21632; SAMNDCA00021634-21805; SAMNDCA00021812-21857;  
16 SAMNDCA00022451-22522; SAMNDCA00022732-22763; SAMNDCA00022802-22812;  
17 SAMNDCA00022901-22971; SAMNDCA00022984-23064; SAMNDCA00023137-23182;  
18 SAMNDCA00023234-23524; SAMNDCA00023542—23584; SAMNDCA00023591-24061;  
19 SAMNDCA00024582-24662; SAMNDCA00024749-24752; SAMNDCA00027670-27722;  
20 SAMNDCA00198059-198067; SAMNDCA00198070-198096; SAMNDCA00198101-198274;  
21 SAMNDCA00198289-198307; SAMNDCA00198313-198456; SAMNDCA00198754-198846;  
22 SAMNDCA00198884-199046; SAMNDCA00199164-199222; SAMNDCA00199298-199306;  
23 SAMNDCA00199402-199524; SAMNDCA00200425-200472; SAMNDCA00200617-200639;  
24 SAMNDCA00200650-200658; SAMNDCA00200661-200665; SAMNDCA00200670-200676;  
25 SAMNDCA00200686-200714; SAMNDCA00200724-200733; SAMNDCA00200737-200748;  
26 SAMNDCA00200751-200788; SAMNDCA00200793-200806; SAMNDCA00200809-200838;  
27 SAMNDCA00200843-200873; SAMNDCA00201264-201278.

28

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

1 Samsung believes that the identified prior art, standing alone, or in combination, would be  
2 substantially similar to an ordinary observer giving such attention as a purchaser usually gives, to  
3 Apple's design patent, rendering the patent invalid as anticipated and/or obvious. Samsung also  
4 believes that Apple's design patent is invalid because it is the subject of double-patenting, is  
5 indefinite, and because the design is not ornamental. In addition, Samsung’s investigation is  
6 ongoing and Samsung will supplement this interrogatory after a reasonable investigation and  
7 further discovery from Apple on the basis for its infringement position. Samsung also  
8 incorporates by reference the Declaration of Itay Sherman in Support of Samsung’s Opposition to  
9 Apple’s Motion for a Preliminary Injunction (Dkt. No. 172).

10 For U.S. Patent No. D622,270, because the burden of deriving or ascertaining the answer  
11 to this Interrogatory from the produced business records is substantially the same for Apple as for  
12 Samsung, in accordance with Federal Rule of Civil Procedure 33(d), Samsung refers Apple to  
13 documents produced in this action related to prior art, including the following documents:  
14 SAMNDCA00019932-20034; SAMNDCA00020120-20303; SAMNDCA00020394-20498;  
15 SAMNDCA00020782-20878; SAMNDCA00020900-20906; SAMNDCA00020978-20989;  
16 SAMNDCA00021255-21313; SAMNDCA00021315-21336; SAMNDCA00021341-21471;  
17 SAMNDCA00021479-21499; SAMNDCA00021505-21588; SAMNDCA00021593-21604;  
18 SAMNDCA00021608-21632; SAMNDCA00021634-21805; SAMNDCA00021812-21857;  
19 SAMNDCA00022451-22522; SAMNDCA00022732-22763; SAMNDCA00022802-22812;  
20 SAMNDCA00022901-22971; SAMNDCA00022984-23064; SAMNDCA00023137-23182;  
21 SAMNDCA00023234-23524; SAMNDCA00023542—23584; SAMNDCA00023591-24061;  
22 SAMNDCA00024582-24662; SAMNDCA00024749-24752; SAMNDCA00027670-27722;  
23 SAMNDCA00198059-198067; SAMNDCA00198070-198096; SAMNDCA00198101-198274;  
24 SAMNDCA00198289-198307; SAMNDCA00198313-198456; SAMNDCA00198754-198846;  
25 SAMNDCA00198884-199046; SAMNDCA00199164-199222; SAMNDCA00199298-199306;  
26 SAMNDCA00199402-199524; SAMNDCA00200425-200472; SAMNDCA00200617-200639;  
27 SAMNDCA00200650-200658; SAMNDCA00200661-200665; SAMNDCA00200670-200676;  
28 SAMNDCA00200686-200714; SAMNDCA00200724-200733; SAMNDCA00200737-200748;

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

1 SAMNDCA00200751-200788; SAMNDCA00200793-200806; SAMNDCA00200809-200838;  
2 SAMNDCA00200843-200873; SAMNDCA00201264-201278.

3 Samsung believes that the identified prior art, standing alone, or in combination, would be  
4 substantially similar to an ordinary observer giving such attention as a purchaser usually gives, to  
5 Apple's design patent, rendering the patent invalid as anticipated and/or obvious. Samsung also  
6 believes that Apple's design patent is invalid because it is the subject of double-patenting, is  
7 indefinite, and because the design is not ornamental. In addition, Samsung’s investigation is  
8 ongoing and Samsung will supplement this interrogatory after a reasonable investigation and  
9 further discovery from Apple on the basis for its infringement position.

10 For U.S. Patent No. D504,889, in accordance with Federal Rule of Civil Procedure 33(d),  
11 Samsung refers Apple to documents produced in this action related to prior art, including the  
12 following documents, because the burden of deriving or ascertaining the answer to this  
13 Interrogatory from the produced business records is substantially the same for Apple as for  
14 Samsung: SAMNDCA00019932-19943; SAMNDCA00020120-20247; SAMNDCA00020394-  
15 20498; SAMNDCA00020903-20906; SAMNDCA00020978-20989; SAMNDCA00021281-  
16 21313; SAMNDCA00021330-21336; SAMNDCA00021341-21436; SAMNDCA00021479-  
17 21485; SAMNDCA00021505-21588; SAMNDCA00021593-21596; SAMNDCA00021800-  
18 21805; SAMNDCA00022451-22506; SAMNDCA00022514-22520; SAMNDCA00022732-  
19 22763; SAMNDCA00022802-22812; SAMNDCA00022901-22910; SAMNDCA00022984-  
20 23047; SAMNDCA00023234-23265; SAMNDCA00023520-23524; SAMNDCA00023591-  
21 23801; SAMNDCA00024582-24629; SAMNDCA00027686-27690; SAMNDCA00027692-  
22 27708; SAMNDCA00198059; SAMNDCA00198070-198076; SAMNDCA00198089-198096;  
23 SAMNDCA00198109-198115; SAMNDCA00198134-198142; SAMNDCA00198245-198267;  
24 SAMNDCA00198285-198289; SAMNDCA00198317-198318; SAMNDCA00198322;  
25 SAMNDCA00198333-198336; SAMNDCA00198343-198344; SAMNDCA00198754-198808;  
26 SAMNDCA00198884-198918; SAMNDCA00199164-199189; SAMNDCA00199204-199209;  
27 SAMNDCA00199402-199411; SAMNDCA00199415-199419; SAMNDCA00199426-199432;  
28 SAMNDCA00199439-199441; SAMNDCA00199445-199447; SAMNDCA00199454-199524;

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

1 SAMNDCA00200617-200639; SAMNDCA00200650-200658; SAMNDCA00200661-200665;  
2 SAMNDCA00200670-200676; SAMNDCA00200686-200714; SAMNDCA00200724-200733;  
3 SAMNDCA00200737-200740; SAMNDCA00201264-201271.

4 Samsung believes that the identified prior art, standing alone, or in combination, would be  
5 substantially similar to an ordinary observer giving such attention as a purchaser usually gives, to  
6 Apple's design patent, rendering the patent invalid as anticipated and/or obvious. Samsung also  
7 believes that Apple's design patent is invalid because it is the subject of double-patenting, is  
8 indefinite, and because the design is not ornamental. In addition, Samsung’s investigation is  
9 ongoing and Samsung will supplement this interrogatory after a reasonable investigation and  
10 further discovery from Apple on the basis for its infringement position. Samsung also  
11 incorporates by reference the Declaration of Roger Fidler and the Declaration of Itay Sherman in  
12 Support of Samsung’s Opposition to Apple’s Motion for a Preliminary Injunction (Dkt. Nos. 166,  
13 172).

14

15 **FIRST SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 12 (3/19/12):**

16 Samsung objects to this interrogatory as vague and ambiguous. Samsung further objects to  
17 this interrogatory to the extent that it seeks to elicit information subject to and protected by the  
18 attorney-client privilege, the attorney work-product doctrine, the joint defense privilege, the  
19 common interest doctrine, and/or any other applicable privilege or immunity. Samsung further  
20 objects to this interrogatory as premature to the extent it requests information regarding  
21 Samsung’s invalidity contentions before expert reports have been submitted. Samsung further  
22 objects to this interrogatory because it contains multiple subparts such that each should count as a  
23 separate interrogatory.

24 Subject to the foregoing general and specific objections, Samsung responds as follows:

25

26 **For U.S. Patent No. D593,087**


27 **Invalidity Under 35 U.S.C. § 102 or 103**

28 Samsung identifies the following prior art that anticipates and/or renders obvious the

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

1 D'087 patent either expressly or inherently as understood by a person having ordinary skill in the  
 2 art at the time of the alleged invention, either alone or in combination with other references  
 3 identified below. These references anticipate and/or render obvious one or more embodiments of  
 4 the D’087 patent. These references are prior art under at least 35 U.S.C. §§ 102(a), (b), (e), (g)  
 5 and/or 103.  
 6

7 Without waiving any right to address additional design characteristics of this prior art that  
 8 anticipate and/or render obvious the design claimed in D'087, and without waiving any right to  
 9 show that the design claimed in D'087 is indefinite, the prior art shown below shares at least the  
 10 design characteristics identified below with those that Apple has claimed in D'087:  
 11

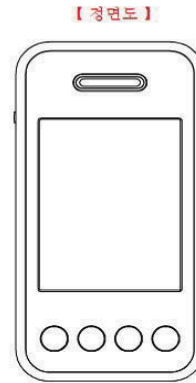
12 <b>Prior Art Design Elements</b>	<b>Disclosure Rendering the Claim Unpatentable</b>
13 • Rounded Corners 14 • Lack of Significant 15 Ornamentation 16 • Rectangular Shape 17 • Flat Continuous Surface 18 • Reflective or 19 Transparent Surface 20 • Horizontal Speaker Slot 21 • Speaker Slot Located 22 Near Top of Device 23 • Display Screen 24 Covering Substantial 25 Portion of Front Face 26 • Display Screen in Center 27 of Device 28 • Narrow Borders on Sides of Screen Broader • Borders Above and Below Screen • Uniform bezel surrounding front face	1. <b>Bluebird Pidion BM-200</b> — (released November 2005; SAMNDCA00326344 - SAMNDCA00326346) 

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- Rounded Corners
- Lack of Significant Ornamentation
- Rectangular Shape
- Flat Continuous Surface
- Horizontal Speaker Slot
- Speaker Slot Located Near Top of Device
- Reflective or Transparent Surface
- Display Screen Covering Substantial Portion of Front Face
- Display Screen in Center of Device
- Narrow Borders on Sides of Screen
- Broader Borders Above and Below Screen
- Uniform bezel surrounding front face

**2. Korean Patent 0398307** — (Issued Nov. 15, 2005; SAMNDCA00282113 - SAMNDCA00282120)



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

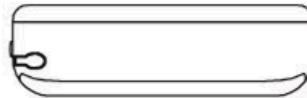
【우측면도】



【평면도】

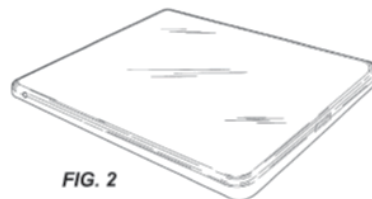
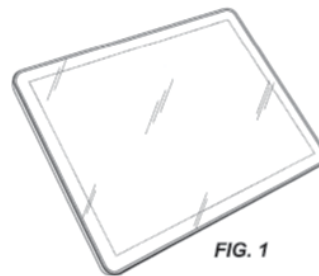


【저면도】



3. **United States Patent D504,889** — (filed March 17, 2004; SAMNDCA00200769—SAMNDCA00200773)

- Rounded Corners
- Lack of Significant Ornamentation
- Rectangular Shape
- Alleged by Apple to have flat Continuous Surface
- Alleged by Apple to have reflective or Transparent Surface
- Display Screen Covering Substantial Portion of Front Face
- Display Screen in Center of Device





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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- Rounded Corners
- Lack of Significant Ornamentation
- Rectangular Shape
- Flat Continuous Surface
- Reflective or Transparent Surface
- Horizontal Speaker Slot
- Speaker Slot Located Near Top of Device
- Display Screen Covering Substantial Portion of Front Face
- Display Screen in Center of Device
- Narrow Borders on Sides of Screen
- Broader Borders Above and Below Screen
- Uniform bezel surrounding front face

**4. LG Prada —** (Images available to public by December 2006; SAMNDCA00326458 - SAMNDCA00326461)



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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- Rounded Corners
- Lack of Significant Ornamentation
- Rectangular Shape
- Horizontal Speaker Slot
- Speaker Slot Located Near Top of Device
- Display Screen Covering Substantial Portion of Front Face
- Display Screen in Center of Device
- Narrow Borders on Sides of Screen
- Broader Borders Above and Below Screen
- Uniform bezel surrounding front face

**5. Sharp Japanese Registration – JP 1241638** — (Issued June 6, 2005; SAMNDCA00255247— SAMNDCA00255260)



- Rounded Corners
- Lack of Significant Ornamentation
- Rectangular Shape
- Flat Continuous Surface
- Reflective or Transparent Surface
- Horizontal Speaker Slot
- Speaker Slot Located Near Top of Device
- Display Screen Covering Substantial Portion of Front Face
- Narrow Borders on Sides of Screen
- Broader Borders Above and Below Screen

**6. LG Chocolate (LG KG800)** — (Released March 2006; SAMNDCA00326329 - SAMNDCA00326331; SAMNDCA00326462)



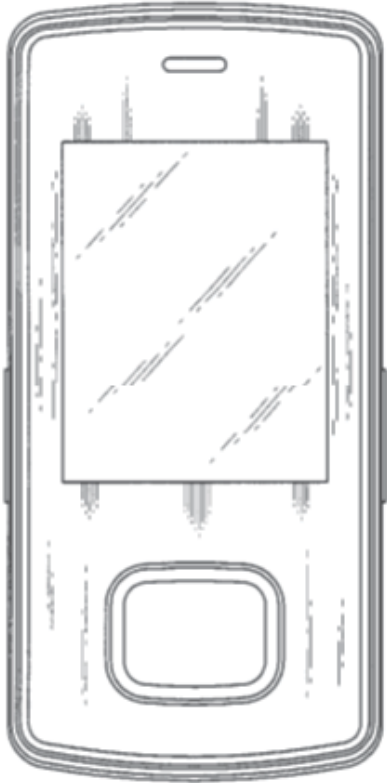
**SUBJECT TO PROTECTIVE ORDER**  
**CONTAINS HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY INFORMATION**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- Uniform bezel surrounding front face

- Rounded Corners
- Lack of Significant Ornamentation
- Rectangular Shape
- Flat Continuous Surface
- Reflective or Transparent Surface
- Horizontal Speaker Slot
- Speaker Slot Located Near Top of Device
- Display Screen Covering Substantial Portion of Front Face
- Narrow Borders on Sides of Screen
- Broader Borders Above and Below Screen
- Uniform bezel surrounding front face

**7. United States Patent, D536,691** — (Filed Mar. 13, 2006; Issued Feb. 13, 2007; SAMNDCA00200883— SAMNDCA00200888)

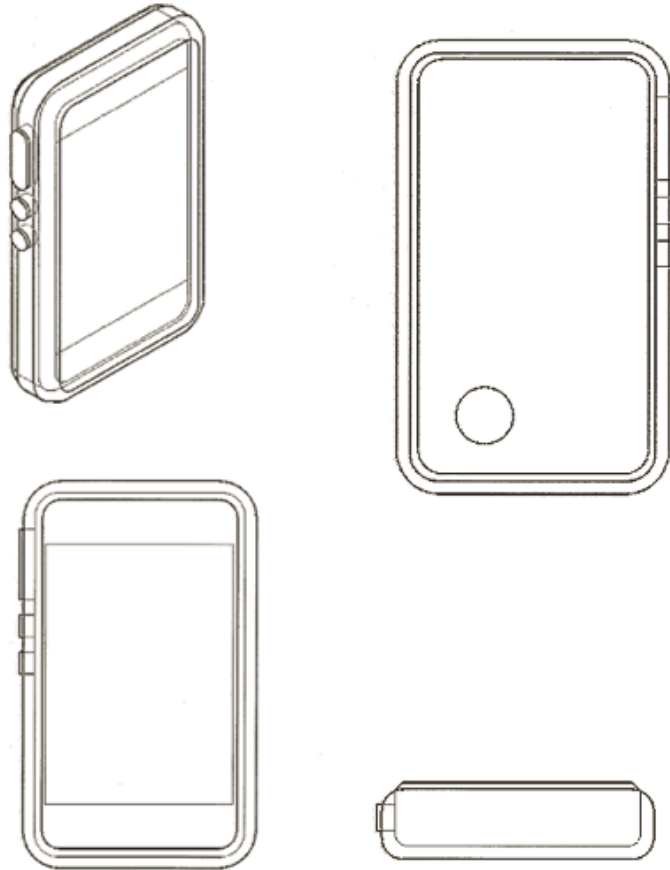


**SUBJECT TO PROTECTIVE ORDER**  
**CONTAINS HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY INFORMATION**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**8. Japanese Patent JP 1241383** — (Issued June 2005; SAMNDCA00255283—SAMNDCA00255295)

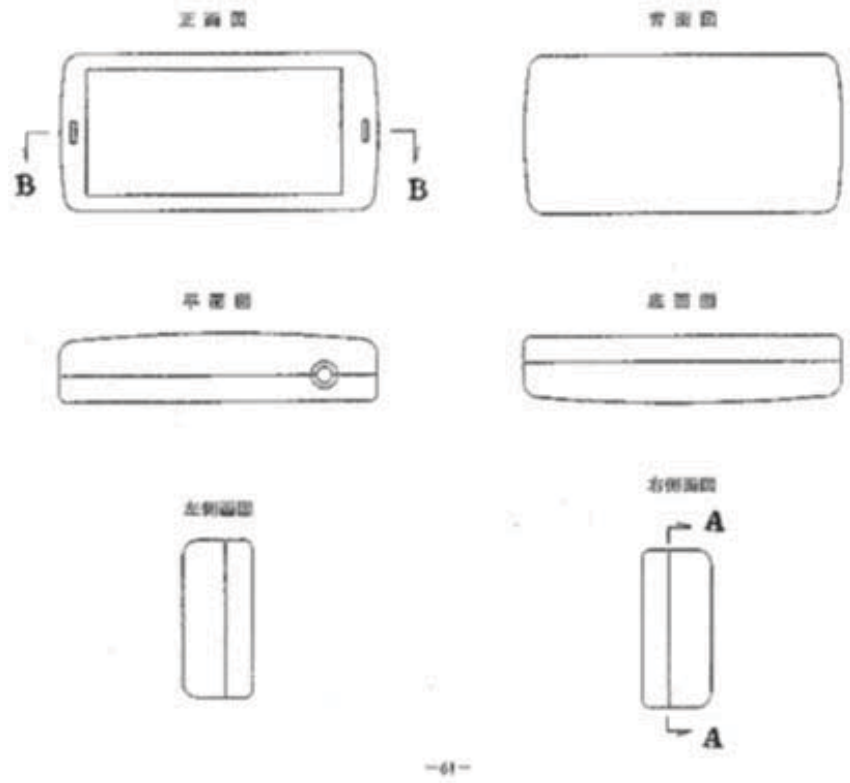
- Rounded Corners
- Lack of Significant Ornamentation
- Rectangular Shape
- Flat Continuous Surface
- Reflective or Transparent Surface
- Display Screen
- Display Screen Covering Substantial Portion of Front Face
- Display Screen in Center of Device
- Narrow Borders on Sides of Screen
- Broader Borders Above and Below Screen
- Uniform bezel surrounding front face



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- Rounded Corners
- Lack of Significant Ornamentation
- Rectangular Shape
- Flat Continuous Surface
- Horizontal Speaker Slot
- Speaker Slot Located Near shorter edge of Device
- Display Screen Covering Substantial Portion of Front Face
- Display Screen in Center of Device
- Narrow Borders on two opposing sides of the screen
- Broader Borders on two other opposing sides of screen

**9. Japanese Design Patent JP 1009317 — (Issued Feb. 20, 1998; SAMNDCA00255278—SAMNDCA00255282)**

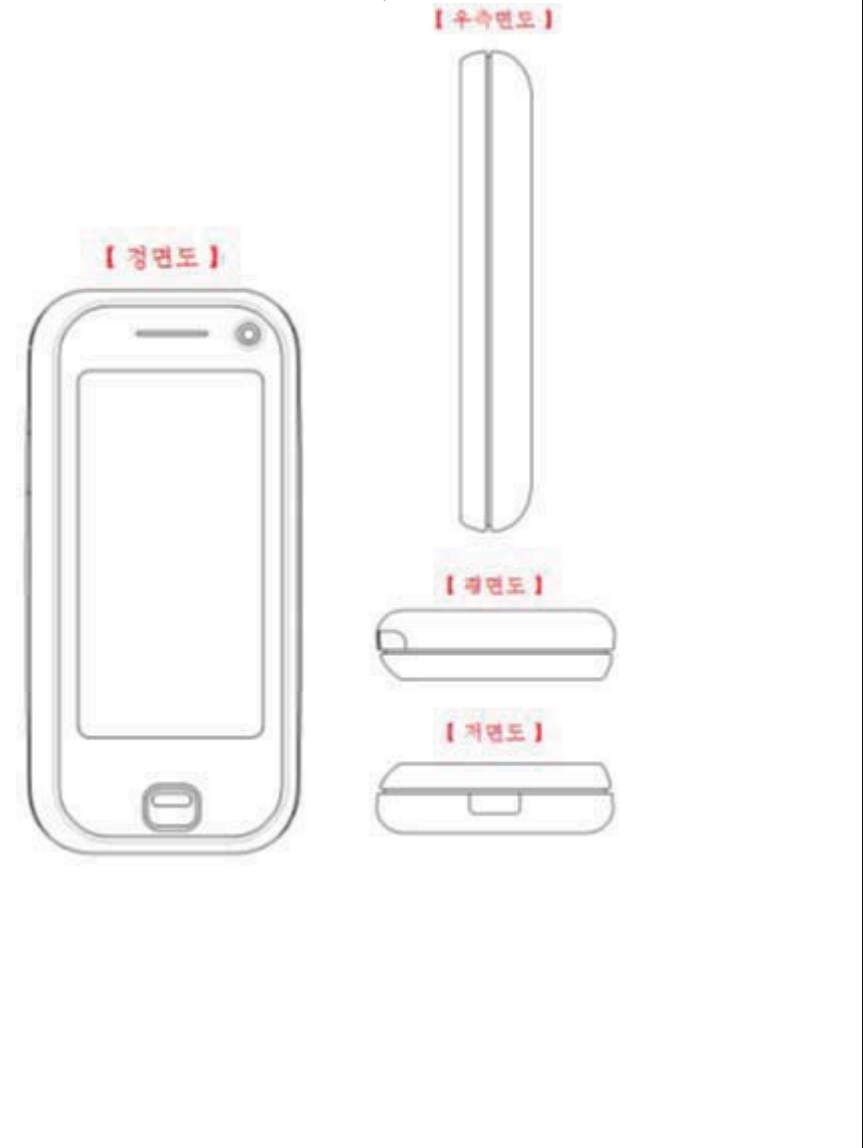


**SUBJECT TO PROTECTIVE ORDER**  
**CONTAINS HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY INFORMATION**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- Rounded Corners
- Lack of Significant Ornamentation
- Rectangular Shape
- Flat Continuous Surface
- Reflective or Transparent Surface
- Horizontal Speaker Slot
- Speaker Slot Located Near Top of Device
- Display Screen
- Display Screen Covering Substantial Portion of Front Face
- Display Screen in Center of Device
- Narrow Borders on Sides of Screen
- Broader Borders Above and Below Screen
- Bezel surrounding front face

**10. Samsung Korean Patent 30-0452985; Application KR 30-2006-0050769** — (Applied for December 2006; patent issued Aug. 2007; SAMNDCA00255357— SAMNDCA00255365)

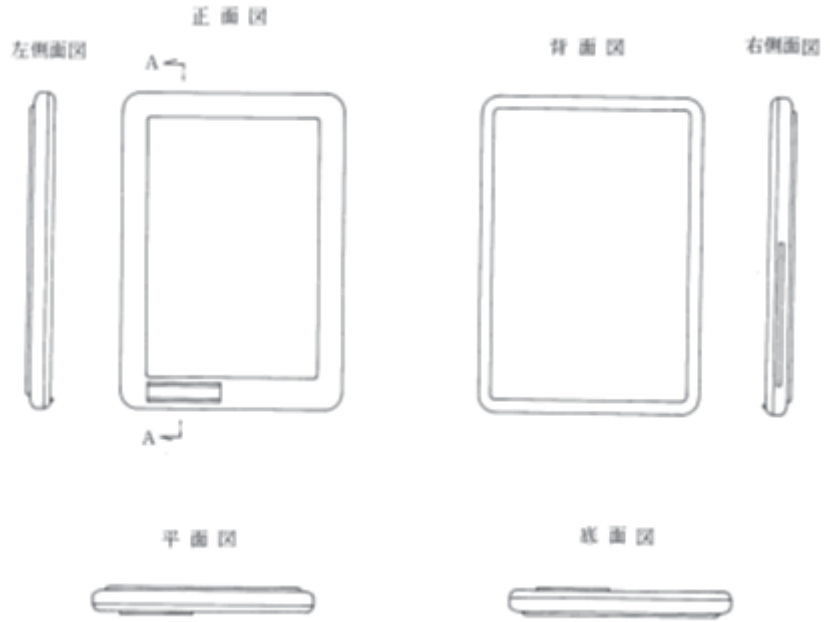


**SUBJECT TO PROTECTIVE ORDER  
CONTAINS HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY INFORMATION**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

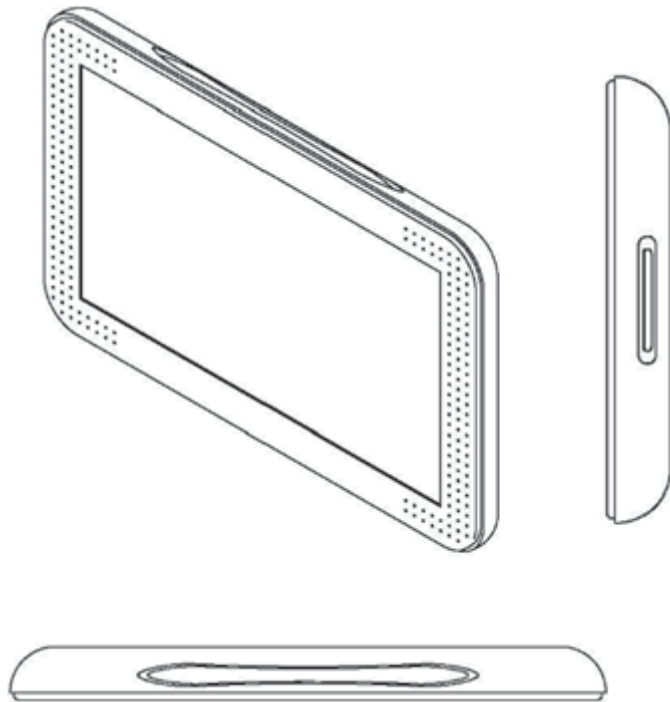
- Rounded Corners
- Lack of Significant Ornamentation
- Rectangular Shape
- Display Screen Covering Substantial Portion of Front Face
- Display Screen in Center of Device

**11. Japanese Design Patent JP-S-887388** — (Issued Dec. 21, 1993; SAMNDCA00255215—SAMNDCA00255221)



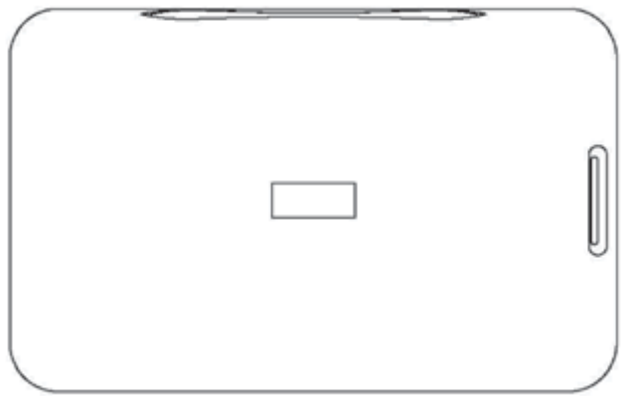
- Rounded Corners
- Lack of Significant Ornamentation
- Rectangular Shape
- Display Screen Covering Substantial Portion of Front Face
- Display Screen in Center of Device

**12. Japanese Design Patent JP-S-1142127** — (Issued May 27, 2002; SAMNDCA00255229—SAMNDCA00255246)



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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



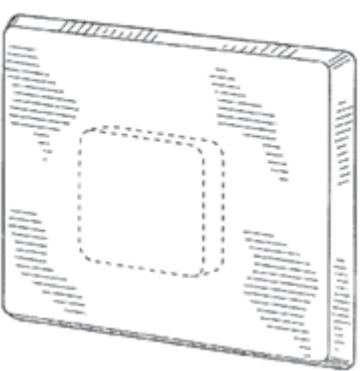
**13. United States Design Patent D497,364** — (Filed Nov. 27, 2002, Issued Oct. 19, 2004; SAMNDCA00326308 - SAMNDCA00326314)

- Rounded Corners
- Lack of Significant Ornamentation
- Rectangular Shape
- Flat Continuous Surface
- Reflective or Transparent Surface
- Display Screen Covering Substantial Portion of Front Face
- Display Screen in Center of Device
- Uniform bezel surrounding front face

**FIG. 1**



**FIG. 2**





1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



- Rounded Corners
- Lack of Significant Ornamentation
- Rectangular Shape
- Flat Continuous Surface
- Reflective or Transparent Surface

**14. United States Patent D548,747** — (filed August 24, 2005; SAMNDCA00200936—SAMNDCA00200940)

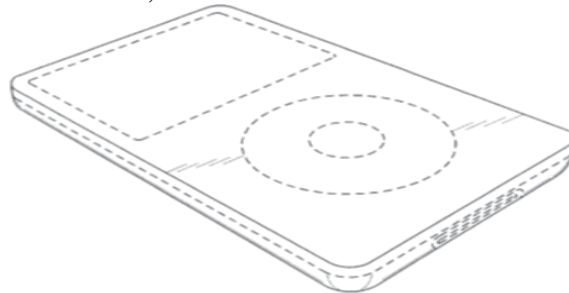


FIG. 1



FIG. 2

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



FIG. 3



FIG. 4



FIG. 5



FIG. 6



FIG. 7

**15. iRiver U10** — (Released October 2005; SAMNDCA00326325 - SAMNDCA00326328)

- Rounded Corners
- Lack of Significant Ornamentation
- Rectangular Shape
- Flat Continuous Surface
- Reflective or Transparent Surface
- Display Screen Covering Substantial Portion of Front Face
- Display Screen in Center of Device
- Narrow Borders on Two Opposing Sides of Screen
- Broader Borders on the Remaining Two Sides of



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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

the Screen

- Uniform bezel surrounding front face



- Rounded Corners
- Lack of Significant Ornamentation
- Rectangular Shape
- Flat Continuous Surface
- Reflective or Transparent Surface
- Horizontal Speaker Slot
- Speaker Slot Located Near Top of Device
- Display Screen Covering Substantial Portion of Front Face
- Display Screen in Center of Device
- Narrow Borders on Sides of Screen
- Broader Borders Above and Below Screen
- Uniform bezel surrounding front face

**16. Nokia N92** — (Released 2005; SAMNDCA00326338 - SAMNDCA00326339)

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- Rounded Corners
- Lack of Significant Ornamentation
- Rectangular Shape
- Flat Continuous Surface
- Reflective or Transparent Surface
- Display Screen
- Uniform bezel surrounding front face

**17. Olympus m:robe MR-100 — (Released 2005; SAMNDCA00326463 - SAMNDCA00326466)**



- Rounded Corners
- Lack of Ornamentation
- Rectangular Shape
- Flat Continuous Surface
- Horizontal Ear Speaker Slot
- Ear Speaker Slot Located Near Top of Device
- Display Screen Covering Substantial

**18. Japanese Design Patent 1204221 — (Issued May 10, 2004; - SAMNDCA00256066—SAMNDCA00256079)**

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- Portion of Front Face
- Display Screen in Center of Device
  - Narrow Borders on Sides of Screen
  - Broader Borders Above and Below Screen



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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- Rounded Corners
- Lack of significant Ornamentation
- Flat Continuous Surface
- Ear Speaker Opening Near Top of Device
- Display Screen Covering Substantial Portion of Front Face
- Display Screen in Center of Device
- Narrow Borders on Sides of Screen
- Broader Borders Above and Below Screen
- Uniform bezel surrounding front face

**19. Nokia Design Contest Phone by Ricardo Villas-Boas —**  
(Publicly displayed online in 2004; SAMNDCA00326336 - SAMNDCA00326337; SAMNDCA00326380 - SAMNDCA00326385)

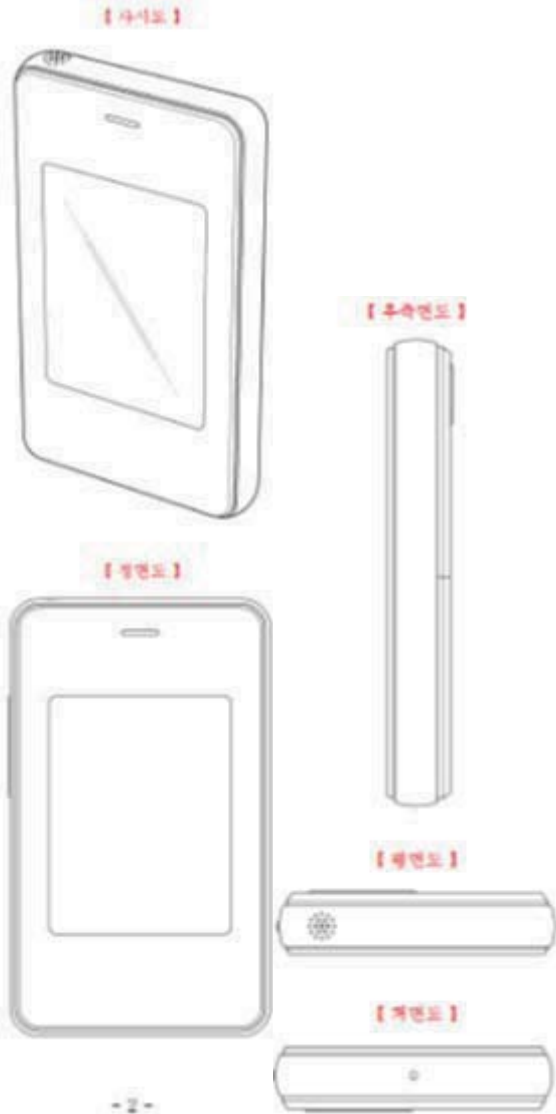


**SUBJECT TO PROTECTIVE ORDER  
CONTAINS HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY INFORMATION**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**20. Korean Design Patent KR 30-0418547 — (Issued July 2006; SAMNDCA00255321—SAMNDCA00255329)**

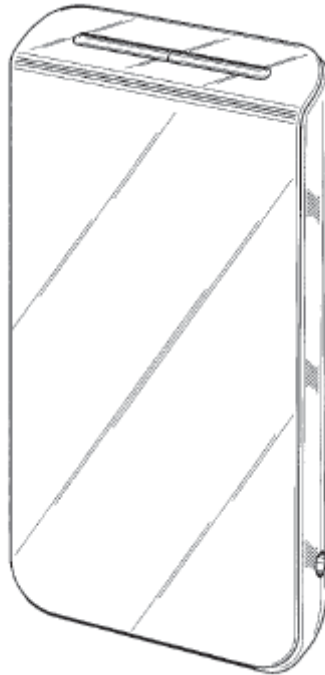
- Rounded Corners
- Lack of Ornamentation
- Rectangular Shape
- Flat Continuous Surface
- Reflective or Transparent Surface
- Horizontal Speaker Slot
- Speaker Slot Located Near Top of Device
- Display Screen Covering Substantial Portion of Front Face
- Display Screen in Center of Device
- Narrow Borders on Sides of Screen
- Broader Borders Above and Below Screen
- Uniform bezel surrounding front face



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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**21. U.S. Design Patent No. D514,590** (Filed November 1, 2004; Issued February 7, 2006; SAMNDC00023918-00023921)



- Rounded Corners
- Lack of Ornamentation
- Rectangular Shape
- Flat Continuous Surface
- Reflective or Transparent Surface
- Horizontal Speaker Slot
- Speaker Slot Located Near Top of Device
- Display Screen Covering Substantial Portion of Front Face



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

FIG. 4



FIG. 5



FIG. 6



FIG. 7



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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- Rounded Corners
- Lack of Ornamentation
- Rectangular Shape
- Flat Continuous Surface
- Reflective or Transparent Surface
- Display Screen Covering Substantial Portion of Front Face
- Display Screen in Center of Device
- Narrow Borders on two opposing sides of the screen
- Broader Borders on two other opposing sides of screen
- Uniform bezel surrounding front face

**22. Olympus MR500i** (Publicly disclosed in 2005; SAMNDCA00365586-00365589)

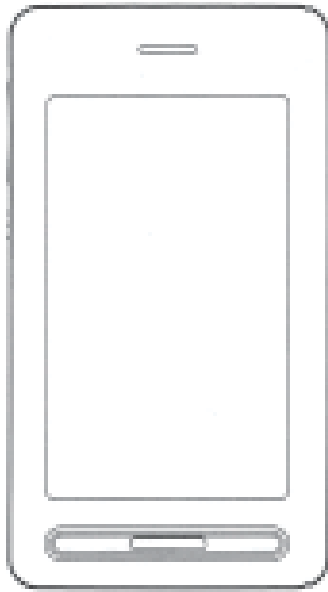
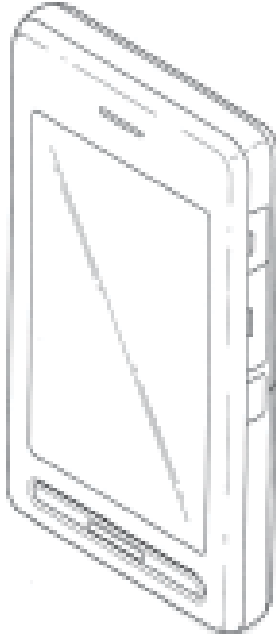


**SUBJECT TO PROTECTIVE ORDER**  
**CONTAINS HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY INFORMATION**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- Rounded Corners
- Lack of Ornamentation
- Rectangular Shape
- Flat Continuous Surface
- Reflective or Transparent Surface
- Horizontal Speaker Slot
- Speaker Slot Located Near Top of Device
- Display Screen Covering Substantial Portion of Front Face
- Display Screen in Center of Device
- Narrow Borders on Sides of Screen
- Broader Borders Above and Below Screen

**23. European Union RCD 000569157-0005** (Registered August 1, 2006; Published September 5, 2006; SAMNDCA00021315-00021319)

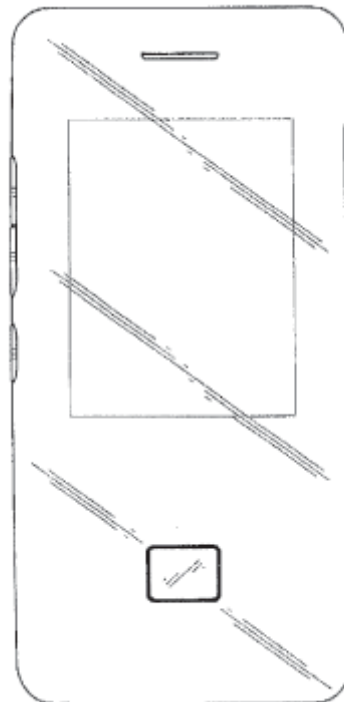


**SUBJECT TO PROTECTIVE ORDER**  
**CONTAINS HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY INFORMATION**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**24. U.S. Design Patent No. 534,516** (Filed March 9, 2006; Issued January 2, 2007; SAMNDCA00255377-255387)

- Rounded Corners
- Lack of Ornamentation
- Rectangular Shape
- Flat Continuous Surface
- Reflective or Transparent Surface
- Horizontal Speaker Slot
- Speaker Slot Located Near Top of Device
- Display Screen Covering Substantial Portion of Front Face
- Narrow Borders on Sides of Screen
- Broader Borders Above and Below Screen



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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- Rounded Corners
- Lack of Ornamentation
- Rectangular Shape
- Flat Continuous Surface
- Reflective or Transparent Surface
- Bezel surrounding front face

**25. Samsung Yepp YP-K3 MP3 Player** (Publicly disclosed in 2006; SAMNDCA00326549-00326557)



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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- Rounded Corners
- Lack of Ornamentation
- Rectangular Shape
- Horizontal Speaker Slot
- Speaker Slot Located Near Top of Device
- Display Screen Covering Substantial Portion of Front Face
- Narrow Borders on Sides of Screen
- Broader Borders Above and Below Screen

**26. Sony Ericsson Walkman Phone W950** (Images publicly available by February 2006)



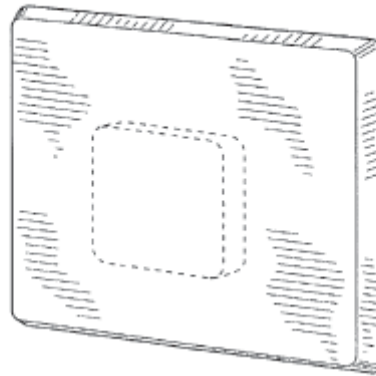
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**27. United States Design Patent D500,037** — (Filed September 3, 2002, Issued December 21, 2004; SAMNDCA00027716 -0027722)

- Rounded Corners
- Lack of Significant Ornamentation
- Rectangular Shape
- Flat Continuous Surface
- Reflective or Transparent Surface
- Display Screen Covering Substantial Portion of Front Face
- Thin rim surrounding the front surface



**FIG. 2**

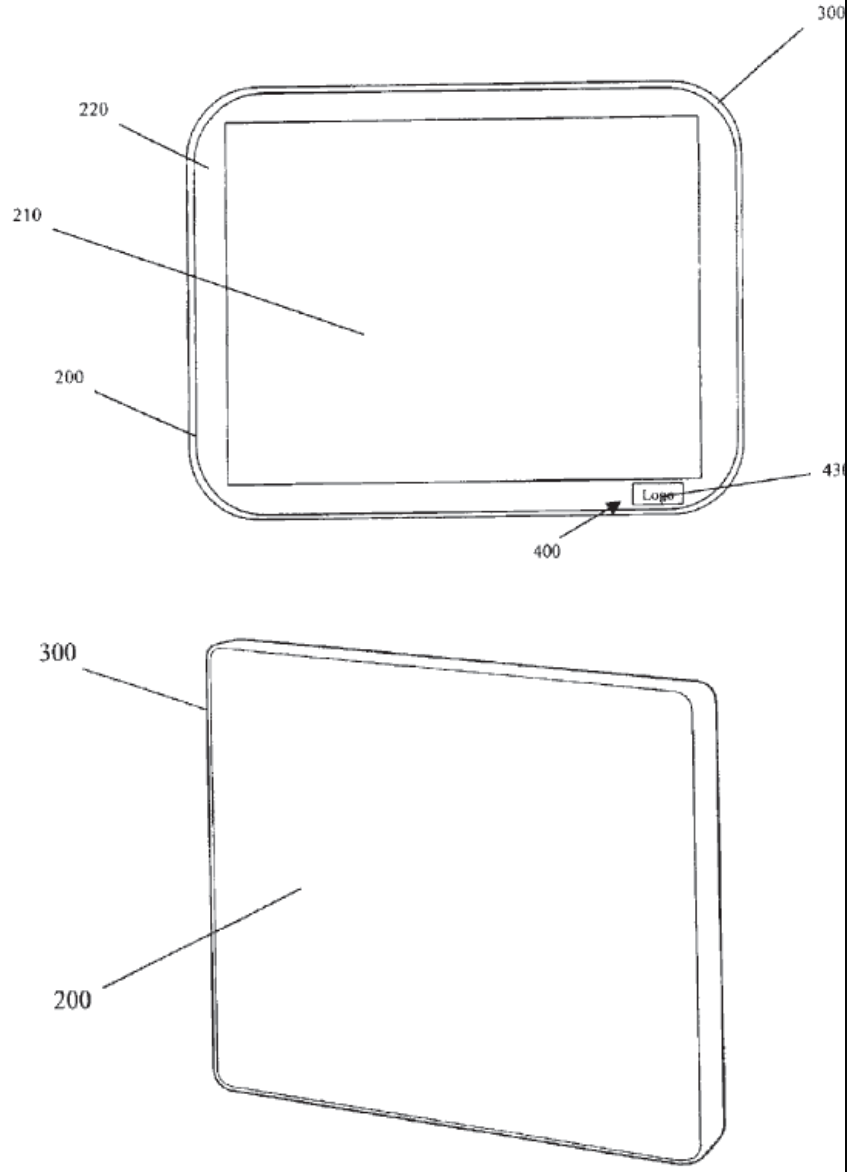


**SUBJECT TO PROTECTIVE ORDER**  
**CONTAINS HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY INFORMATION**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- Rounded Corners
- Lack of Significant Ornamentation
- Rectangular Shape
- Flat Continuous Surface
- Display Screen Covering Substantial Portion of Front Face
- Display Screen in Center of Device
- Thin rim surrounding the front surface
- Reflective or Transparent Surface

**28. U.S. Patent No. 6,919,678** — (Filed November 20, 2002; Issued July 19, 2005; SAMNDCA00354855— SAMNDCA00354872)





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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- Rounded Corners
- Lack of Ornamentation
- Rectangular Shape
- Horizontal Speaker Slot
- Speaker Slot Located Near Top of Device
- Narrow Borders on Sides of Screen
- Broader Borders Above and Below Screen

**29. JPD1247215** — (Filed in 2004)



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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- Rounded Corners
- Lack of Ornamentation
- Rectangular Shape
- Horizontal Speaker Slot
- Speaker Slot Located Near Top of Device
- Narrow Borders on Sides of Screen
- Broader Borders Above and Below Screen

**30. JPD1263649** — (Filed in 2005)



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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- Rounded Corners
- Lack of Ornamentation
- Rectangular Shape
- Flat Continuous Surface
- Transparent or Reflective Surface

**31. The ‘black box’ – concept design from electronics giant BenQ winning the iF2006 awards (June 2006)**

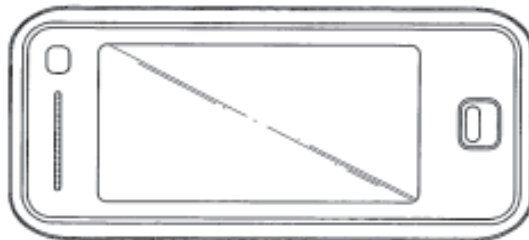
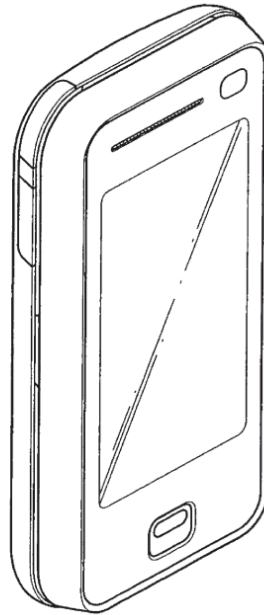


**SUBJECT TO PROTECTIVE ORDER**  
**CONTAINS HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY INFORMATION**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- Rounded Corners
- Lack of Significant Ornamentation
- Rectangular Shape
- Flat Continuous Surface
- Reflective or Transparent Surface
- Horizontal Speaker Slot
- Speaker Slot Located Near Top of Device
- Display Screen Covering Substantial Portion of Front Face
- Display Screen in Center of Device
- Narrow Borders on Sides of Screen
- Broader Borders Above and Below Screen
- Bezel surrounding front face

**32. U.S. Design Patent No. D560,192** (Filed: December 22, 2006; Issued: January 22, 2008)



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

1 Samsung believes that the identified prior art, standing alone, or in combination, would  
2 appear to an ordinary observer — giving such attention as a purchaser usually gives — to be  
3 substantially the same as the design shown in D'087, rendering that patent invalid as anticipated  
4 and/or obvious.

5 Without waiving any right to address additional design characteristics of this prior art that  
6 anticipate and/or render obvious the design claimed in D'087, at least the prior art references  
7 numbered 4, 5, 18 and 23 in the chart above contain all of the claimed elements of the D'087 and,  
8 therefore, anticipate the D'087. Furthermore, any of numbers 3, 8, 13, 15, 19, 21, 22, 25, 27 and  
9 28 could serve as primary references that would have been obvious to one of ordinary skill in the  
10 art to combine with the shape and position of the speaker slot of numbers 4, 5, 18 or 23.  
11 Additionally, any of numbers 1, 2, 6, 7, 9, 11, 12, 14, 16, 17, 20, 24, 26, 29 and 30 could serve as  
12 primary references that it would have been obvious to one of ordinary skill in the art to combine  
13 with the proportions of the display or speaker slots of numbers 4, 5, 18 and 23. It also would have  
14 been obvious to one of ordinary skill in the art to combine the bezel of numbers 1, 2, 6, 7, 8, 10,  
15 13, 15, 16, 17, 19, 20, 22, 25 or 32 with any of numbers 4, 5, 18 or 23.

16 **Bates Ranges of Prior Art Produced by Samsung**

17 Samsung also incorporates by reference all prior art that has been produced and/or  
18 disclosed by Samsung, including the documents listed in the Bates Ranges below. These  
19 incorporated pieces of prior art further show that the design claimed by the D'087 patent is  
20 obvious and anticipated:

21  
22 SAMNDCA00019932-20034; SAMNDCA00020120-20303; SAMNDCA00020394-20498;  
23 SAMNDCA00020782-20878; SAMNDCA00020900-20906; SAMNDCA00020978-20989;  
24 SAMNDCA00021255-21313; SAMNDCA00021315-21336; SAMNDCA00021341-21471;  
25 SAMNDCA00021479-21499; SAMNDCA00021505-21588; SAMNDCA00021593-21604;  
26 SAMNDCA00021608-21632; SAMNDCA00021634-21805; SAMNDCA00021812-21857;  
27  
28

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

1 SAMNDCA00022451-22522; SAMNDCA00022732-22763; SAMNDCA00022802-22812;  
2 SAMNDCA00022901-22971; SAMNDCA00022984-23064; SAMNDCA00023137-23182;  
3 SAMNDCA00023234-23524; SAMNDCA00023542—23584; SAMNDCA00023591-24061;  
4 SAMNDCA00024582-24662; SAMNDCA00024749-24752; SAMNDCA00027670-27722;  
5 SAMNDCA00198059-198067; SAMNDCA00198070-198096; SAMNDCA00198101-198274;  
6 SAMNDCA00198289-198307; SAMNDCA00198313-198456; SAMNDCA00198754-198846;  
7 SAMNDCA00198884-199046; SAMNDCA00199164-199222; SAMNDCA00199298-199306;  
8 SAMNDCA00199402-199524; SAMNDCA00200425-200472; SAMNDCA00200617-200639;  
9 SAMNDCA00200650-200658; SAMNDCA00200661-200665; SAMNDCA00200670-200676;  
10 SAMNDCA00200686-200714; SAMNDCA00200724-200733; SAMNDCA00200737-200748;  
11 SAMNDCA00200751-200788; SAMNDCA00200793-200806; SAMNDCA00200809-200838;  
12 SAMNDCA00200843-200873; SAMNDCA00201264-201278; SAMNDCA00255026 –  
13 SAMNDCA00256183; SAMNDCA00282113 - SAMNDCA00282120; SAMNDCA00326302 –  
14 SAMNDCA00326557; SAMNDCA00359127-00365840; SAMNDCA00370485-00370527;  
15 SAMNDCA00373535-374040.  
16  
17

18  
19 **Invalidity Due to Functionality**

20 The D’087 patent is also invalid because it is functional and not ornamental. *See Lee v.*  
21 *Dayton-Hudson Corp.*, 838 F.2d 1186, 1188 (Fed. Cir. 1988). Apple's principal designer,  
22 Jonathan Ive, has even said about the iPhone that “everything defers to the display. A lot of what  
23 we seem to be doing in a product like that is actually getting design out of the way. And I think  
24 when forms develop with that sort of reason, and they’re not just arbitrary shapes, it feels almost  
25 inevitable. It feels almost undesigned.” Jonathan Ive, *Objectified* (2009). Because the display is  
26 the primary means of user interaction with the device, having “everything defer[] to the display”  
27  
28

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

1 serves a highly functional purpose, which would be diminished by designs with additional design.

2  
3 In addition to the overall design of D’087 being non-ornamental, and therefore functional,  
4 individual aspects of the design are also functional and render its scope either invalid or indefinite.

5 For example:

- 6 • **Front Surface Flatness and Transparency** – The introduction of touch  
7 technology allowed the removal of keypads and otherwise allowed for the  
8 reduction in the number of surface mounted buttons. Early commercial smartphone  
9 models used resistive touch technology. Resistive touch technology dictated that  
10 the active touch layer would be exposed externally so that the user could apply  
11 pressure to it. Because this active layer is not resistant to scratches and since it is  
12 activated by pressure, a bezel elevated from its surface typically was used to  
13 provide protection from scratches and false triggering. Unlike resistive touch  
14 technology, capacitive technology allows placement of the active surface below an  
15 externally hardened surface, such as reinforced glass or plastic. The screen  
16 therefore could be made flush but still protected against scratches, since an elevated  
17 surround was no longer required to protect the exposed touch layer of the screen.  
18 The underlying LCD displays have a flat surface and manufacturing a contoured  
19 glass surface to place over the LCD touch screen is a time-consuming,  
20 technologically-challenging and more expensive than a primarily smooth front  
21 surface. The choice of a flat cover is the natural and economical choice. Once  
22 touch screentechnology reached the maturity level where capacitive touch screens  
23 could be made in the right size and form factor for mobile electronic devices, at a  
24 commercially palatable price point, the concept of a continuous flat, transparent  
25 surface emerged almost simultaneously from multiple companies. Any cover over  
26  
27  
28

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

a display screen must be transparent, otherwise the display screen would have no purpose. Any continuous flat surface on the front of the phone must necessarily be transparent. Also, it is functional to have the flat surface be continuous and to extend all the way from side to side and top to bottom because having a rim or edge around the touch surface creates limitations on unimpeded access to the touch surface, the amount of surface that is accessible, and other issues.

- **Rounded Corners** — The rounded corners of the claimed rectangular area of the front face of the device are a natural consequence of the rounded outside corners of the device. Almost all designs of portable consumer devices use some degree of rounding on corners of devices. Rounded corners are functional because of various human factors and ergonomics issues. Rounded corners also make a portable electronic device more durable and easier to manufacture. Pointed or sharp corners on designs are mechanical weak points and they may bend, snag, or break with the application of relatively little force. Rounded corners, on the other hand, are more able to absorb impact and less likely to break. It is also easier and more reliable to manufacture rounded corners with smooth and accurate finishes than it is to create sharp corners that are clean, accurate, and aesthetic. Users may also find sharp corners uncomfortable to hold by their faces or against their palms.

- **Centered Rectangular Screen** — Rectangular screens are virtually mandatory for any use of a display screen. That is not proprietary to Apple, but rather in accord with the longstanding use of rectangular shapes as the format for viewing any media--movies, television, magazines, newspapers, books, letters, legal briefs, or clay tablets. Available display screen options that might exist other than an elongated rectangle would be less efficient for use in a modern mobile electronic



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

1 device and would be considerably more expensive. The rectangular element with  
2 square corners is definitely dictated by the function of the component it depicts and  
3 the type of device disclosed.

- 4 • **Inset display screen with narrow borders on the sides and wider borders on**  
5 **the top and bottom of the front surface** – The display screen on a phone needs to  
6 be inset; it cannot protrude or be directly exposed as part of the surface without  
7 increasing the risk of damage to the screen. Nor was it technologically feasible for  
8 a display to extend from edge to edge on the front of a device in 2006. Display  
9 screens then, and now, include active components and wiring and require a  
10 controller to activate the display. These wires force the actual size of the display  
11 glass to be slightly larger than the active viewable area. The controller for the  
12 display may be located either on the glass substrate of the display (COG – Chip on  
13 Glass) or on a flexible cable extending from the display (COF – chip on flex). In  
14 both cases this yields additional length on top or bottom of screen that needs to be  
15 reserved for the controller functionality, as well as some space on the sides to offset  
16 the display screen from other components of the edge of the device. Standard  
17 display screens are made of a relatively fragile material and needs to be protected.  
18 A mobile handset needs to tolerate, to some extent, drops and casual hits. To avoid  
19 having the display absorb the energy of such impacts directly, it is a common  
20 practice to maintain a border between the glass of the display screen and the  
21 exterior surface of the handset. Narrow borders are preferable to wide borders on  
22 the long sides of a screen because significantly widening the borders would reduce  
23 the width of the display screen or require a wider product, which could be awkward  
24 to hold in the hand. Handsets are often designed to be operated using a single hand,  
25  
26  
27  
28

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

1 with the thumb being able to press the display/keys, while the device is held on the  
2 same hand. This requirement, considering the standard range for human hands,  
3 forces designs to have limited width. In addition, having no side border would  
4 increase the likelihood that the screen would be damaged if it bumped against  
5 anything, and that the display screen would be accidentally activated when the  
6 phone is held. The wider borders on the top and bottom of the display screen are a  
7 practical solution to placing earpiece and navigational buttons on the front surface  
8 without having to drill through or otherwise interrupt the display screen. In  
9 addition to facilitating the placement of the earpiece slots and navigation buttons,  
10 the wider borders provide functional space for other components such as the  
11 antenna. The display screen operates using high frequency signals, extending over  
12 wires which have considerable length. As a result, the display tends to emit  
13 radiated noise that may interfere with the operation of other components. It is a  
14 common practice to cover the display with a metal shield on its back side. A  
15 mobile communication device design also must include an antenna to enable its  
16 cellular radio operation. The existence of large metal objects in the area of the  
17 antenna influences and distorts its radiation pattern. It is therefore a common  
18 practice to keep the antenna’s area from overlapping with the metal shielded area of  
19 the display. Therefore, the antenna is commonly placed behind one of these larger  
20 borders.  
21  
22  
23

- 24 • **Earpiece with horizontally-oriented elongated ellipse or lozenge-shape**  
25 **centered over the display screen** – The use of an earpiece is necessary on a  
26 smartphone to allow the user to listen to a conversation privately without the use of  
27 a separate headphone or ear bud connection. Ever since mobile phones were  
28

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

1           invented, the most natural place to put the earpiece of the phone was on the upper  
2           portion of the handheld part of the phone, near the ear—on the opposite end from  
3           the microphone, which is customarily placed on the end closest to the user’s mouth.  
4           Centering the earpiece on the vertical axis is required as it allows users to  
5           conveniently align the phone to their ears, and hold the phone in the same  
6           alignment relative to the head irrespective of whether it is held in the right or left  
7           hand. Placing the earpiece anywhere other than on the upper portion of the phone,  
8           such as on the back or side of the phone, would be a highly unusual choice that  
9           would force users to hold the smartphone in an unnatural position when using the  
10          phone feature. Horizontal earpiece slots (as opposed to vertical slots) maximize the  
11          area that can be devoted to a speaker without impinging on the display screen size.  
12          The slot shape, with its narrow height, also serves to protect the mesh covering the  
13          speaker below it by not having a more expansive area, such as a circle or square,  
14          which might allow the mesh to be more easily punctured, torn, or obstructed by dirt  
15          or dust. The slot shape also increases the durability of the smartphone surface by  
16          not weakening it with a relatively large expanse of less rigid material. In addition,  
17          having rounded edges increases the ease of manufacturing by allowing the slot to  
18          be created by a drill (the slots created by which are naturally rounded on the edges  
19          due to the spinning of the round drill bit).

- 20          • **Bezel** – A bezel in a mobile phone handset is a frame that surrounds the front face  
21          of the device to provide structural support and to join and hold together the front  
22          and back pieces of the device. A bezel also can protect the display screen and  
23          cover glass or plastic from side impacts and drops, as Apple acknowledged in its  
24          bezel patent: “By their very nature, portable electronic devices are carried around  
25          26          27          28

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

1                   and subject to impacts and inadvertent blows to which static electronic devices are  
2                   not subject. To protect the electronic systems of these portable devices ... there is  
3                   a need for a hard, easily manufactured and aesthetically pleasing case for portable  
4                   electronic devices.” US Patent 7,688,574 at 1:8-19.

5                   Moreover, Apple sought and obtained a number of utility patents on the same elements  
6                   present in the D'087 design patent. *See, e.g.*, United States Patent No. 7,688,574  
7                   (SAMNDCA00365600-612); US Patent Publication 2009/0247244 A1 (APLNDC0003037770-  
8                   781); United States Patent No. 7,902,474. These utility patents render the design patent invalid  
9                   because they confirm that the elements shown in the D'087 design are functional. *See PHG*  
10                  *Techs., LLC v. St. John Cos.*, 469 F.3d 1361, 1366 (Fed. Cir. 2006) (noting that courts should  
11                  consider "whether there are any concomitant utility patents" when ruling on invalidity due to  
12                  functionality); *see also Power Controls Corp. v. Hybrinetics, Inc.*, 806 F.2d 234, 238-240 (Fed.  
13                  Cir. 1986).

14                  Samsung also incorporates by reference its Response to Apple’s Interrogatory No. 38,  
15                  regarding functionality of Apple’s asserted design patents.

**Invalidity Due to Indefiniteness**

16                  The asserted claim of the D'087 patent is also invalid under paragraph 2 of Section 112 of  
17                  Title 35 of the United States Code because the claim is indefinite in that the drawings depicting  
18                  the design do not enable a person skilled in the art to make the design. *See* Manuel of Patent  
19                  Examining Procedure § 1504.04; 1503.2 (“As the drawing or photograph constitutes the entire  
20                  visual disclosure of the claim, it is of utmost importance that the drawing or photograph be clear  
21                  and complete, and that nothing regarding the design sought to be patented is left to conjecture.”)  
22                  Where, as with the D'087 patent, design patent drawings are inconsistent and/or ambiguous and  
23                  leave the scope of the design open to conjecture, the patent may be rendered invalid due to  
24                  Where, as with the D'087 patent, design patent drawings are inconsistent and/or ambiguous and  
25                  leave the scope of the design open to conjecture, the patent may be rendered invalid due to  
26                  Where, as with the D'087 patent, design patent drawings are inconsistent and/or ambiguous and  
27                  leave the scope of the design open to conjecture, the patent may be rendered invalid due to  
28                  Where, as with the D'087 patent, design patent drawings are inconsistent and/or ambiguous and  
                  leave the scope of the design open to conjecture, the patent may be rendered invalid due to

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

1 indefiniteness. *See, e.g., Seed Lighting Design Co., Ltd. v. Home Depot*, 2005 WL 1868152, \*8  
2 (N.D. Cal. Aug. 3, 2005).

3  
4 The drawings of the D’087 are subject to varying interpretations. For example, Apple  
5 claims that the D’087 has a flat surface, but the D’087 figures have no surface details indicating  
6 that the surface is flat or reflective similar to the designs shown in the D’677, D’270 and D’889  
7 patents. The varying and inconsistent use of dotted lines within the figures of the D’087 patent is  
8 also contrary to convention and creates uncertainty as to the scope of the design and whether  
9 certain elements are or are not a part of the design, or are intended to be less important aspects of  
10 the design, which is prohibited. *See* MPEP 1503.02. Because the drawings are subject to  
11 conjecture and multiple interpretations, the D’087 is indefinite.  
12

**Invalidity Due to Double Patenting**

13  
14 To the extent the D’087 patent is construed in any way other than very narrowly, such as to  
15 require almost virtual identity for infringement, the D’087 patent is also invalid under the doctrine  
16 of double patenting because it is substantially the same design that Apple sought to patent, and did  
17 patent, in a number of other applications. For example, D’087, D558,758, D558,756, D580,387,  
18 D581,922, D613,736, D634,319, D618,677, and D618678, among other Apple design patents, all  
19 appear to be substantially the same design.  
20

**Incorporation by Reference of Other Materials**

21  
22  
23 In support of all of its bases for invalidity of Apple’s asserted design patents, Samsung also  
24 incorporates by reference the deposition testimony of witnesses providing testimony related to  
25 Apple’s design patents, including Daniele de Iuliis, Rico Zorkendorfer, Matthew Rohrbach,  
26 Bartley Andre, Duncan Kerr, Daniel Coster, Eugene Whang, Richard Howarth, Christopher  
27 Stringer, Douglas Satzger, Jonathan Ive, Cooper Woodring, Itay Sherman, Erin Wong, Tracy  
28

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

1 Durkin, Quinn Hoellwarth, Peter Russell-Clarke, Richard Dinh, Phil Hobson, Mark Lee, Fletcher  
2 Rothkopf, Steven Zadesky, Christopher Harris, Christopher Hood, Evans Hankey, Richard Lutton,  
3 Christopher Prest, as well as all deposition testimony provided by third parties, and all exhibits  
4 used in those depositions. Moreover, because Apple delayed in providing Samsung with identities  
5 of all individuals involved in the designs and alleged embodiments at issue, Samsung currently  
6 does not have all relevant testimony on this issue.  
7

8 Samsung further incorporates by reference the file history of the D'087 patent and any  
9 continuing application from the D'087 patent including reexaminations and reissue applications  
10 and all documents cited during those proceedings; all documents cited on the face of or in the  
11 D'087 patent; all related patents and file histories; and all of the documents produced or to be  
12 produced by Apple or third parties constituting prior art.  
13

14 Samsung also incorporates by reference the Declaration of Itay Sherman in Support of  
15 Samsung’s Opposition to Apple’s Motion for a Preliminary Injunction (Dkt. No. 172), and any  
16 and all expert reports that have been or may be submitted in this action that support the invalidity  
17 of Apple’s asserted design patents.  
18

19 *For U.S. Patent No. D618,677*

**Invalidity Under 35 U.S.C. § 102 or 103**

21 Samsung identifies the following prior art that anticipates and/or renders obvious the  
22 D'677 patent either expressly or inherently as understood by a person having ordinary skill in the  
23 art at the time of the alleged invention, either alone or in combination with other references  
24 identified below. These references are prior art under at least 35 U.S.C. §§ 102(a), (b), (e), (g)  
25 and/or 103.  
26

27 Without waiving any right to address additional design characteristics of this prior art that  
28 anticipate and/or render obvious the design claimed in D’677, and without waiving any right to

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

1 show that the design claimed in D'677 is indefinite, Samsung incorporates by reference all of the  
2 prior art and explanatory discussion identified above regarding the D'087. Samsung also  
3 identifies certain of those references, including numbers 1, 4, 6, 17, 18, 19, 25 and 31 as sharing  
4 the sole additional characteristic claimed by Apple as part of the D'677 – a black front face.  
5 Additionally, numbers 10, 23 and 32 could serve as primary references that would have been  
6 obvious to one of ordinary skill in the art to combine with the black surface of numbers 1, 4, 6, 17,  
7 18, 19, 25 or 31.

8 Samsung believes that the identified prior art, standing alone, or in combination, would  
9 appear to an ordinary observer — giving such attention as a purchaser usually gives — to be  
10 substantially the same as the design shown in D'677, rendering that patent invalid as anticipated  
11 and/or obvious.

12 **Bates Ranges of Prior Art Produced by Samsung**

13 Samsung also incorporates by reference all prior art that has been produced and/or  
14 disclosed by Samsung, including the documents listed in the Bates Ranges below. These  
15 incorporated pieces of prior art further show that the design claimed by the D'677 patent is  
16 obvious and anticipated:  
17

18 SAMNDCA00019932-20034; SAMNDCA00020120-20303; SAMNDCA00020394-20498;  
19 SAMNDCA00020782-20878; SAMNDCA00020900-20906; SAMNDCA00020978-20989;  
20 SAMNDCA00021255-21313; SAMNDCA00021315-21336; SAMNDCA00021341-21471;  
21 SAMNDCA00021479-21499; SAMNDCA00021505-21588; SAMNDCA00021593-21604;  
22 SAMNDCA00021608-21632; SAMNDCA00021634-21805; SAMNDCA00021812-21857;  
23 SAMNDCA00022451-22522; SAMNDCA00022732-22763; SAMNDCA00022802-22812;  
24 SAMNDCA00022901-22971; SAMNDCA00022984-23064; SAMNDCA00023137-23182;  
25 SAMNDCA00023234-23524; SAMNDCA00023542—23584; SAMNDCA00023591-24061;  
26 SAMNDCA00024582-24662; SAMNDCA00024749-24752; SAMNDCA00027670-27722;  
27  
28

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

1 SAMNDCA00198059-198067; SAMNDCA00198070-198096; SAMNDCA00198101-198274;  
2 SAMNDCA00198289-198307; SAMNDCA00198313-198456; SAMNDCA00198754-198846;  
3 SAMNDCA00198884-199046; SAMNDCA00199164-199222; SAMNDCA00199298-199306;  
4 SAMNDCA00199402-199524; SAMNDCA00200425-200472; SAMNDCA00200617-200639;  
5 SAMNDCA00200650-200658; SAMNDCA00200661-200665; SAMNDCA00200670-200676;  
6 SAMNDCA00200686-200714; SAMNDCA00200724-200733; SAMNDCA00200737-200748;  
7 SAMNDCA00200751-200788; SAMNDCA00200793-200806; SAMNDCA00200809-200838;  
8 SAMNDCA00200843-200873; SAMNDCA00201264-201278; SAMNDCA00255026 –  
9 SAMNDCA00256183; SAMNDCA00282113 - SAMNDCA00282120; SAMNDCA00326302 –  
10 SAMNDCA00326557; SAMNDCA00359127-00365840; SAMNDCA00370485-00370527;  
11 SAMNDCA00373535-374040.  
12

13  
14 **Invalidity Due to Functionality**

15 Samsung incorporates by reference its functionality response regarding the D’087, and  
16 identifies the following additional functional elements of the D’677 design: In addition to the  
17 overall design of D’677 being non-ornamental, and therefore functional, individual aspects of the  
18 design are also functional and render its scope either invalid or indefinite. For example:  
19

- 20 • **Blackness of Surface** – For similar reasons that the display screen mandates a  
21 transparent covering, it also is obvious that any single color applied to the front  
22 surface would be a shade of black given that display screens only come in shades of  
23 black. In addition, black is a particularly useful color for the surface of a phone. It  
24 efficiently hides the wiring and electronic components underlying it; it makes it  
25 easier to determine if the display of the device is turned on or off; it minimizes the  
26 appearance of the phone, making it seem smaller and less prominent than a bright  
27 color would; and it provides a sharply-defined contrast to edge of the screen that  
28



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

1 helps the content of the display screen stand apart from whatever context the  
2 smartphone is in. The strong contrast also helps increase the saturation of the  
3 colors of the display screen, creating a finer impression of the quality of the display  
4 screen, and, given the vast consumer preference for black for electronic products  
5 well before January 2006, serves a neutral color choice for consumers, which does  
6 not send an overt message of flashiness or frivolity.  
7

8 Samsung also incorporates by reference its Response to Apple’s Interrogatory No. 38, regarding  
9 functionality of Apple’s asserted design patents.

10 **Invalidity Due to Indefiniteness**

11 Samsung incorporates by reference its indefiniteness response regarding the D’087, and  
12 identifies the following additional information regarding the D’677 design: The drawings of the  
13 D’677 are subject to varying interpretations by Apple’s own named inventors of the D’677. For  
14 example, Apple’s named inventors of the D’677 had differing opinions of what was depicted in  
15 the drawings of the surface of the D’677. *Compare* De Iuliis Depo. Tr. 164:18-166:5 (stating that  
16 the grid pattern on Figures 1 and 3 of the D’677 indicate a contiguous surface) *with* Kerr Depo. Tr.  
17 (noting that the surface is illustrated with the designation for the color black). Additionally, many  
18 of the figures in the D’677 contain dotted lines, which are typically used to show portions of the  
19 environment surrounding a design that are not claimed. Yet, the D’677 patent does not make clear  
20 whether the aspects of the design shown in dotted lines are included or excluded from the claimed  
21 design. Indeed, the D’677 patent fails to state anything about the use of broken lines in the patent  
22 figures. Thus, the use of dotted lines in the figures of the D’677 patent is contrary to convention  
23 and creates uncertainty as to the scope of the design and whether certain elements are or are not a  
24 part of the design, or are intended to be less important aspects of the design, which is prohibited.  
25 *See* MPEP 1503.02. Because the figures in the D’677 patent are unclear and subject to multiple  
26  
27  
28

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

1 interpretations, even by the very inventors of the design, the D’677 is indefinite.

2 **Invalidity Due to Double Patenting**

3  
4 Samsung incorporates by reference its double patenting response regarding the D’087.

5 **Incorporation by Reference of Other Materials**

6 In support of all of its bases for invalidity of Apple’s asserted design patents, Samsung also  
7 incorporates by reference the deposition testimony of witnesses providing testimony related to  
8 Apple’s design patents, including Daniele de Iuliis, Rico Zorkendorfer, Matthew Rohrbach,  
9 Bartley Andre, Duncan Kerr, Daniel Coster, Eugene Whang, Richard Howarth, Christopher  
10 Stringer, Douglas Satzger, Jonathan Ive, Cooper Woodring, Itay Sherman, Erin Wong, Tracy  
11 Durkin, Quinn Hoellwarth, Peter Russell-Clarke, Richard Dinh, Phil Hobson, Mark Lee, Fletcher  
12 Rothkopf, Steven Zadesky, Christopher Harris, Christopher Hood, Evans Hankey, Richard Lutton,  
13 as well as all deposition testimony provided by third parties, and all exhibits used in those  
14 depositions. Moreover, because Apple delayed in providing Samsung with identities of all  
15 individuals involved in the designs and alleged embodiments at issue, Samsung currently does not  
16 have all relevant testimony on this issue.  
17

18  
19 Samsung further incorporates by reference the file history of the D’677 patent and any  
20 continuing application from the D’677 patent including reexaminations and reissue applications  
21 and all documents cited during those proceedings; all documents cited on the face of or in the  
22 D’677 patent; all related patents and file histories; and all of the documents produced or to be  
23 produced by Apple or third parties constituting prior art.  
24

25 Samsung also incorporates by reference the Declaration of Itay Sherman in Support of  
26 Samsung’s Opposition to Apple’s Motion for a Preliminary Injunction (Dkt. No. 172), and any  
27 and all expert reports that have been or may be submitted in this action that support the invalidity  
28

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

1 of Apple’s asserted design patents.

2

3

*For U.S. Patent No. D622,270*

4

**Invalidity Under 35 U.S.C. § 102 or 103**

5

6 Samsung identifies the following prior art that anticipates and/or renders obvious the D'270  
7 patent either expressly or inherently as understood by a person having ordinary skill in the art at  
8 the time of the alleged invention, either alone or in combination with other references identified  
9 below. These references are prior art under at least 35 U.S.C. §§ 102(a), (b), (e), (g) and/or 103.

10

11 Without waiving any right to address additional design characteristics of this prior art that  
12 anticipate and/or render obvious the design claimed in D’270, and without waiving any right to  
13 show that the design claimed in D’270 is indefinite, Samsung incorporates by reference all of the  
14 prior art and explanatory discussion identified above regarding the D’087.

14

15 Samsung believes that the identified prior art, standing alone, or in combination, would  
16 appear to an ordinary observer — giving such attention as a purchaser usually gives — to be  
17 substantially the same as the design shown in D’270, rendering that patent invalid as anticipated  
18 and/or obvious.

18

19 **Bates Ranges of Prior Art Produced by Samsung**

20

21 Samsung also incorporates by reference all prior art that has been produced and/or  
22 disclosed by Samsung, including the documents listed in the Bates Ranges below. These  
23 incorporated pieces of prior art further show that the design claimed by the D’270 patent is  
24 obvious and anticipated:

24

25 SAMNDCA00019932-20034; SAMNDCA00020120-20303; SAMNDCA00020394-20498;

26 SAMNDCA00020782-20878; SAMNDCA00020900-20906; SAMNDCA00020978-20989;

27 SAMNDCA00021255-21313; SAMNDCA00021315-21336; SAMNDCA00021341-21471;

28

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

1 SAMNDCA00021479-21499; SAMNDCA00021505-21588; SAMNDCA00021593-21604;  
2 SAMNDCA00021608-21632; SAMNDCA00021634-21805; SAMNDCA00021812-21857;  
3 SAMNDCA00022451-22522; SAMNDCA00022732-22763; SAMNDCA00022802-22812;  
4 SAMNDCA00022901-22971; SAMNDCA00022984-23064; SAMNDCA00023137-23182;  
5 SAMNDCA00023234-23524; SAMNDCA00023542—23584; SAMNDCA00023591-24061;  
6 SAMNDCA00024582-24662; SAMNDCA00024749-24752; SAMNDCA00027670-27722;  
7 SAMNDCA00198059-198067; SAMNDCA00198070-198096; SAMNDCA00198101-198274;  
8 SAMNDCA00198289-198307; SAMNDCA00198313-198456; SAMNDCA00198754-198846;  
9 SAMNDCA00198884-199046; SAMNDCA00199164-199222; SAMNDCA00199298-199306;  
10 SAMNDCA00199402-199524; SAMNDCA00200425-200472; SAMNDCA00200617-200639;  
11 SAMNDCA00200650-200658; SAMNDCA00200661-200665; SAMNDCA00200670-200676;  
12 SAMNDCA00200686-200714; SAMNDCA00200724-200733; SAMNDCA00200737-200748;  
13 SAMNDCA00200751-200788; SAMNDCA00200793-200806; SAMNDCA00200809-200838;  
14 SAMNDCA00200843-200873; SAMNDCA00201264-201278; SAMNDCA00255026 –  
15 SAMNDCA00256183; SAMNDCA00282113 - SAMNDCA00282120; SAMNDCA00326302 –  
16 SAMNDCA00326557; SAMNDCA00359127-00365840; SAMNDCA00370485-00370527;  
17 SAMNDCA00373535-374040.  
18  
19  
20

21 **Invalidity Due to Functionality**

22 Samsung incorporates by reference its functionality response regarding the D’087.

23  
24 Samsung also incorporates by reference its Response to Apple’s Interrogatory No. 38, regarding  
25 functionality of Apple’s asserted design patents.

26 **Invalidity Due to Indefiniteness**

27 Samsung incorporates by reference its indefiniteness response regarding the D’087, and  
28

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

1 identifies the following additional information regarding the D’270 design: The drawings of the  
2 D’270 are subject to varying interpretations by Apple’s own named inventors of the D’270. For  
3 example, certain of Apple’s named inventors of the D’270 testified that a certain portion of Figure  
4 5 of the D’270 was the bezel, while others stated that they did not know what was depicted.  
5  
6 *Compare, e.g., De Iuliis Depo. Tr. 175:23-176:12 and November 4, 2011 Deposition of*  
7 *Christopher Stringer Tr. 114:23-117:5 (identifying the bezel) with Kerr Depo Tr. 41:16-44:14 and*  
8 *October 24, 2011 Deposition of Matthew Rohrbach Tr. 139:4-140:8 (stating that they do not know*  
9 *or cannot interpret whether the object shown is a bezel). Further, the use of dotted lines within the*  
10 *figures of the D’270 patent is contrary to convention and creates uncertainty as to the scope of the*  
11 *design and whether certain elements are or are not a part of the design, or are intended to be less*  
12 *important aspects of the design, which is prohibited. See MPEP 1503.02. Because the figures in*  
13 *the D’270 patent are unclear and subject to multiple interpretations by the very inventors of the*  
14 *design, the D’270 is indefinite.*

**Invalidity Due to Double Patenting**

17 Samsung incorporates by reference its double patenting response regarding the D’087 and  
18 adds the following additional information regarding the D’270 design: For example, the D’270,  
19 D602,486, D602,014, D624,536, D622,718, D604,297, D613,735, D622,719 and D633,091,  
20 among other Apple design patents, all appear to be substantially the same design.

**Incorporation by Reference of Other Materials**

23 In support of all of its bases for invalidity of Apple’s asserted design patents, Samsung also  
24 incorporates by reference the deposition testimony of witnesses providing testimony related to  
25 Apple’s design patents, including Daniele de Iuliis, Rico Zorkendorfer, Matthew Rohrbach,  
26 Bartley Andre, Duncan Kerr, Daniel Coster, Eugene Whang, Richard Howarth, Christopher  
27 Stringer, Douglas Satzger, Jonathan Ive, Cooper Woodring, Itay Sherman, Erin Wong, Tracy  
28

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

1 Durkin, Quinn Hoellwarth, Peter Russell-Clarke, Richard Dinh, Phil Hobson, Mark Lee, Fletcher  
2 Rothkopf, Steven Zadesky, Christopher Harris, Christopher Hood, Evans Hankey, Richard Lutton,  
3 as well as all deposition testimony provided by third parties, and all exhibits used in those  
4 depositions. Moreover, because Apple delayed in providing Samsung with identities of all  
5 individuals involved in the designs and alleged embodiments at issue, Samsung currently does not  
6 have all relevant testimony on this issue.  
7

8 Samsung further incorporates by reference the file history of the D'270 patent and any  
9 continuing application from the D'270 patent including reexaminations and reissue applications  
10 and all documents cited during those proceedings; all documents cited on the face of or in the  
11 D'270 patent; all related patents and file histories; and all of the documents produced or to be  
12 produced by Apple or third parties constituting prior art.  
13

14 Samsung also incorporates by reference the Declaration of Itay Sherman in Support of Samsung’s  
15 Opposition to Apple’s Motion for a Preliminary Injunction (Dkt. No. 172), and any and all expert  
16 reports that have been or may be submitted in this action that support the invalidity of Apple’s  
17 asserted design patents.  
18

19  
20 ***For U.S. Patent No. D504,889***

21 Samsung identifies the following prior art that anticipates and/or renders obvious the D'889  
22 patent either expressly or inherently as understood by a person having ordinary skill in the art at  
23 the time of the alleged invention, either alone or in combination with other references identified  
24 below. These references are prior art under at least 35 U.S.C. §§ 102(a), (b), (e), (g) and/or 103.  
25

26 Without waiving any right to address additional design characteristics of this prior art that  
27 anticipate and/or render obvious the design claimed in D'889, and without waiving any right to  
28

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

1 show that the design claimed in D'889 is indefinite, the prior art shown below shares at least the  
2 design characteristics identified below with those that Apple has claimed in D'889:

**Prior Art Design Elements**

- 5 • Rounded Corners
- 6 • Lack of Significant Ornamentation
- 7 • Rectangular Shape
- 8 • Flat Clear Surface
- 9 • Reflective or Transparent Surface
- 10 • Display Screen
- 11 • Covering Substantial Portion of Front Face
- 12 • Display Screen in Center of Device
- 13 • Thin form factor
- 14 • Substantially flat black
- 15 • Border around display

**Disclosure Rendering the Claim Unpatentable**

1. **1981 Fidler Tablet** (1981 – Exhibit B to Declaration of Roger Fidler in Support of Samsung’s Opposition to Apple’s Motion for Preliminary Injunction)



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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- Rounded Corners
- Lack of Significant Ornamentation
- Rectangular Shape
- Flat Clear Surface
- Display Screen Covering Substantial Portion of Front Face
- Display Screen in Center of Device
- Thin form factor
- Substantially flat back panel that rounds up near the edges
- Border around display

**2. 1994 Knight-Ridder Tablet (1994 – Exhibit I to the Declaration of Roger Fidler in Support of Samsung’s Opposition to Apple’s Motion for Preliminary Injunction; FIDLER00000030)**





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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**3. 1995 Fidler Tablet (1995)**

- Rounded Corners
- Lack of Significant Ornamentation
- Rectangular Shape
- Flat Clear Surface
- Reflective or Transparent Surface
- Display Screen Covering Substantial portion of Front Face
- Display Screen in Center of Device
- Thin form factor
- Substantially flat back panel that rounds up near the edges to form the thin rim
- Border around display



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**4. 1997 Fidler Tablet (1997)**

- Rounded Corners
- Lack of Significant Ornamentation
- Rectangular Shape
- Flat Clear Surface
- Reflective or Transparent Surface
- Display Screen Covering Substantial Portion of Front Face
- Display Screen in Center of Device
- Thin form factor
- Substantially flat back panel that rounds up near the edges



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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**5. EU RCD 48061-0001 (Bloomberg Tablet)** (Filed June 24, 2003; Publication Date: August 19, 2003; SAMNDCA00019932-19933)

- Rounded Corners
- Lack of Significant Ornamentation
- Rectangular Shape
- Flat Continuous Surface
- Display Screen Covering Substantial Portion of Front Face
- Thin form factor
- Back panel that rounds up near the edges
- Thin rim surrounding the front surface



0001.2



0001.3



0001.4



0001.5



0001.6



0001.7

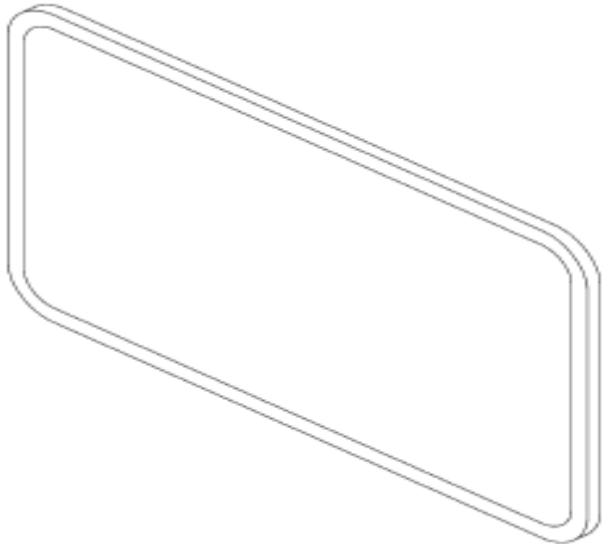


**SUBJECT TO PROTECTIVE ORDER**  
**CONTAINS HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY INFORMATION**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- Rounded Corners
- Lack of Significant Ornamentation
- Rectangular Shape
- Flat Continuous Surface
- Thin form factor
- Substantially flat back panel that rounds up near the edges
- Thin rim surrounding the front surface

6. **JP D1178470** (Registration Date: May 16, 2003; Publications Date: July 7, 2003; SAMNDCA00027686-00027690)



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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- Rounded Corners
- Lack of Significant Ornamentation
- Rectangular Shape
- Flat Continuous Surface
- Reflective or Transparent Surface
- Display Screen Covering Substantial Portion of Front Face
- Display Screen in Center of Device
- Thin form factor
- Substantially flat back panel that rounds up near the edges
- Border around display

**7. Japanese Design Patent JP-S-887388** — (Issued Dec. 21, 1993; SAMNDCA00255215—SAMNDCA00255221)

左側面図      正面図      背面図      右側面図

A ↙      A ↘

平面図      底面図

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- Lack of Significant Ornamentation
- Rectangular Shape
- Flat Continuous Surface
- Display Screen Covering Substantial Portion of Front Face
- Display Screen in Center of Device
- Border around display
- Thin form factor
- Substantially flat back panel

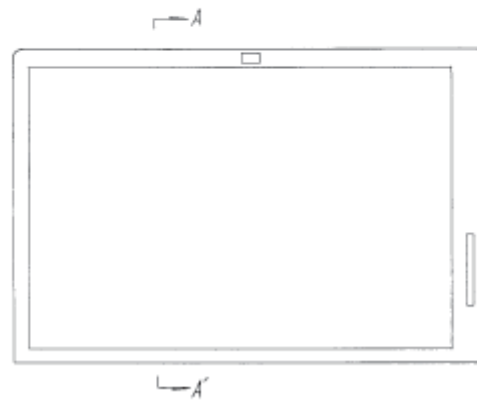
8. **JPD921403** (Filing Date: November 24, 1992; Issue Date: March 9, 1995; SAMNDCA00255222-00255228)



正面图



平面图

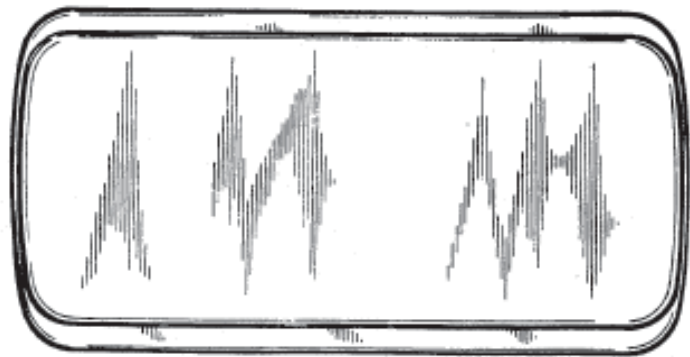
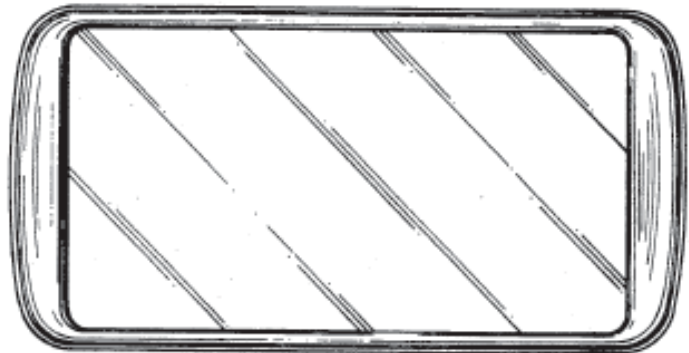
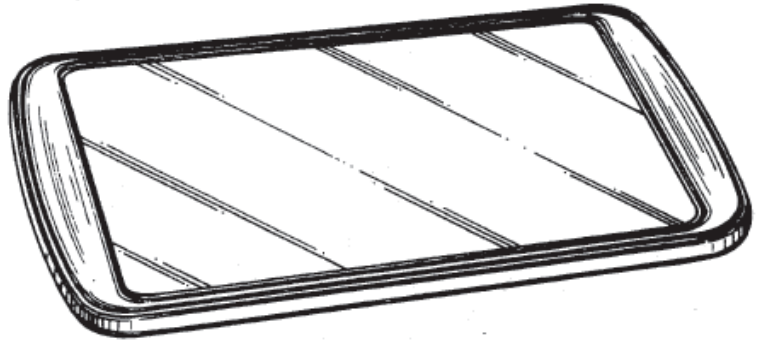


**SUBJECT TO PROTECTIVE ORDER**  
**CONTAINS HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY INFORMATION**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- Rounded Corners
- Lack of Significant Ornamentation
- Rectangular Shape
- Flat Continuous Surface
- Display Screen Covering Substantial Portion of Front Face
- Display Screen in Center of Device
- Thin form factor
- Substantially flat back panel

9. **U.S. Design Patent No. 337,569** (Filing Date: August 30, 1992; Issue Date: July 20, 1993; SAMNDCA00023644-00023646)



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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

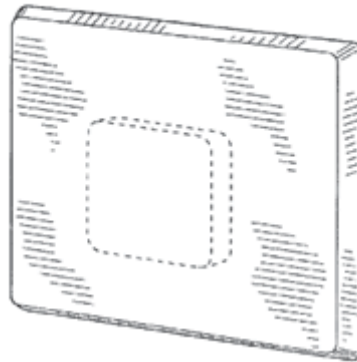
- Rounded Corners
- Lack of Significant Ornamentation
- Rectangular Shape
- Flat Continuous Surface
- Reflective or Transparent Surface
- Display Screen Covering Substantial Portion of Front Face
- Display Screen in Center of Device
- Thin form factor
- Substantially flat back panel
- Thin rim surrounding the front surface

**10. United States Design Patent D497,364** — (Filed Nov. 27, 2002, Issued Oct. 19, 2004; SAMNDCA00326308 - SAMNDCA00326314)

**FIG. 1**



**FIG. 2**





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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



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

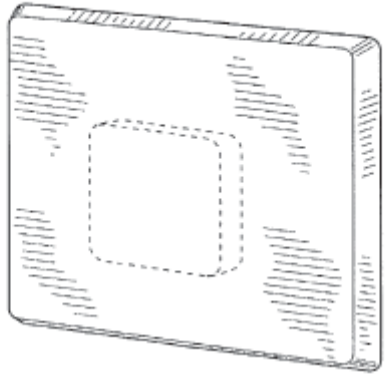
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- Rounded Corners
- Lack of Significant Ornamentation
- Rectangular Shape
- Flat Continuous Surface
- Reflective or Transparent Surface
- Display Screen Covering Substantial Portion of Front Face
- Thin form factor
- Substantially flat back panel
- Thin rim surrounding the front surface

**11. United States Design Patent D500,037** — (Filed September 3, 2002, Issued December 21, 2004; SAMNDCA00027716 -0027722)



**FIG. 2**

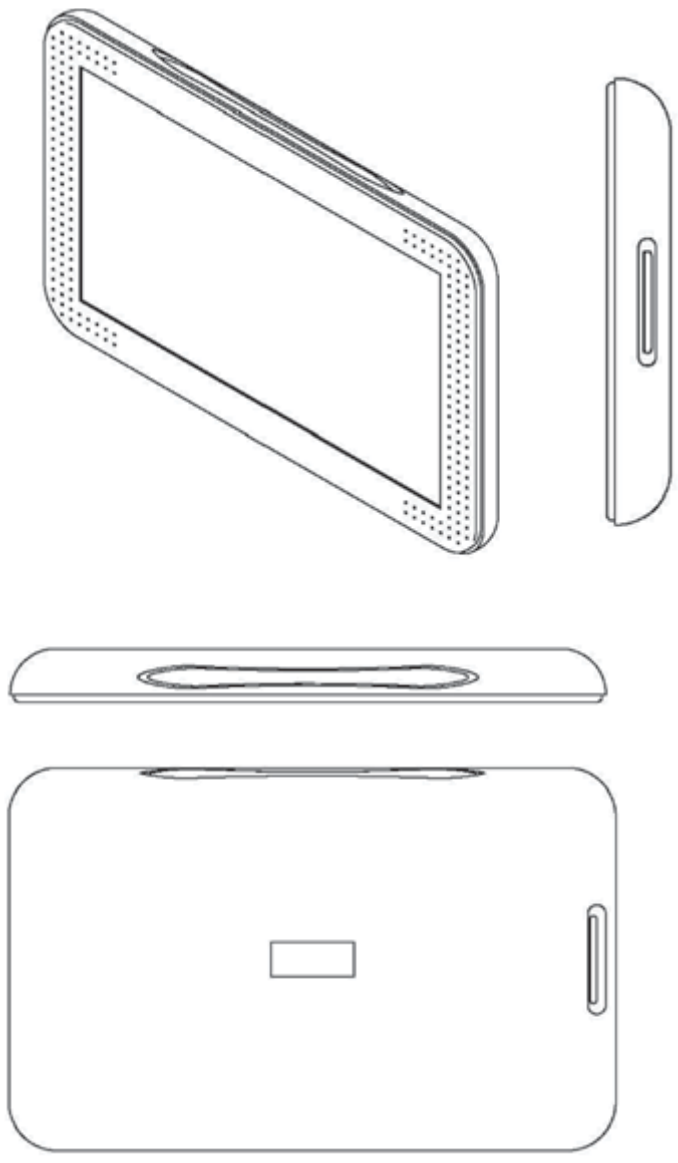


**SUBJECT TO PROTECTIVE ORDER**  
**CONTAINS HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY INFORMATION**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- Rounded Corners
- Lack of Significant Ornamentation
- Clear Flat Surface
- Rectangular Shape
- Display Screen Covering Substantial Portion of Front Face
- Display Screen in Center of Device
- Thin form factor
- Substantially flat back panel that rounds up near the edges
- Thin rim surrounding the front surface
- Border around display

**12. Japanese Design Patent JP-S-1142127** — (Issued May 27, 2002; SAMNDCA00255229—SAMNDCA00255246)

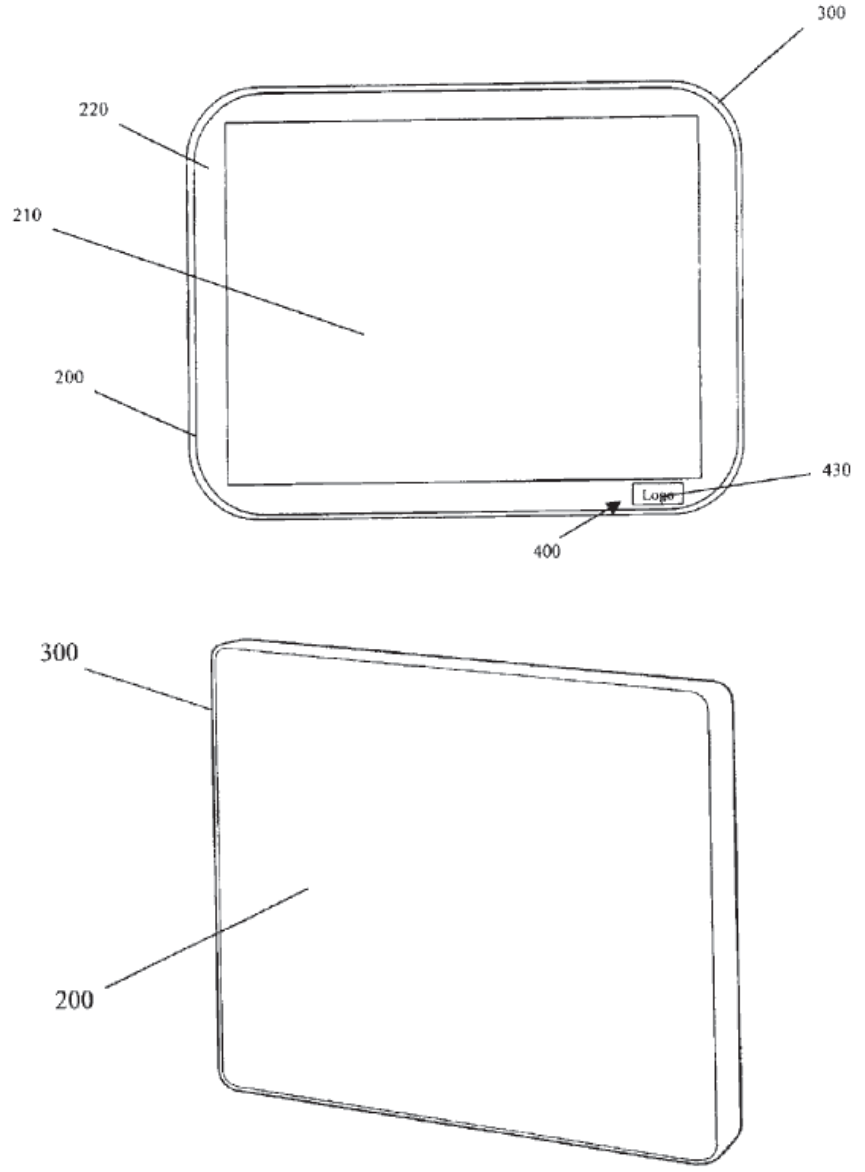


**SUBJECT TO PROTECTIVE ORDER**  
**CONTAINS HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY INFORMATION**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- Rounded Corners
- Lack of Significant Ornamentation
- Rectangular Shape
- Flat Continuous Surface
- Display Screen Covering Substantial Portion of Front Face
- Display Screen in Center of Device
- Thin form factor
- Substantially flat back panel
- Thin rim surrounding the front surface
- Border around display
- Reflective or Transparent Surface

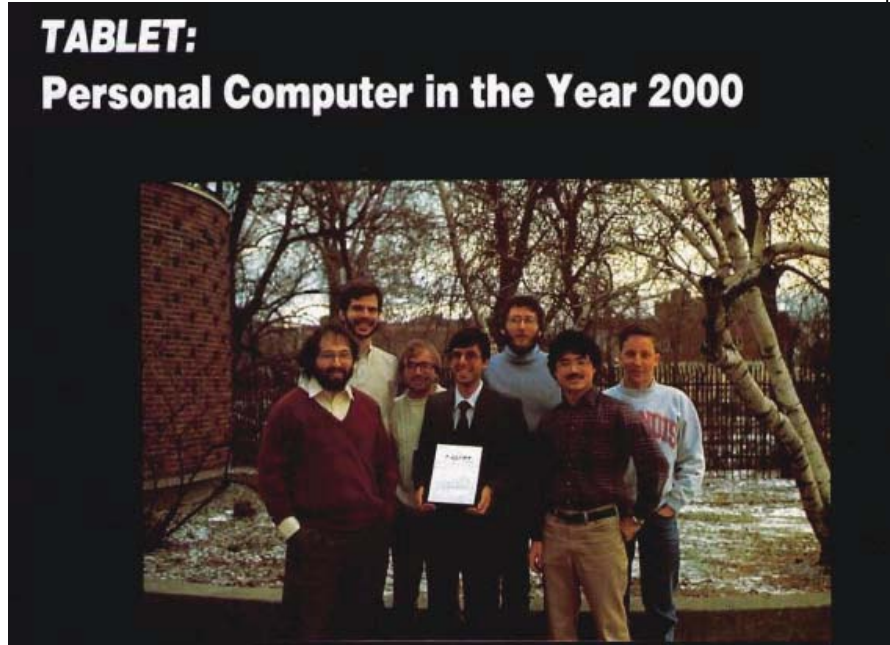
**13. U.S. Patent No. 6,919,678** — (Filed November 20, 2002; Issued July 19, 2005; SAMNDCA00354855— SAMNDCA00354872)



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- Lack of Significant Ornamentation
- Rectangular Shape
- Flat Continuous Surface
- Reflective or Transparent Surface
- Display Screen Covering Substantial Portion of Front Face
- Display Screen in Center of Device
- Thin form factor
- Substantially flat back panel
- Border around display

**14. The Tablet** — (Publicly disclosed in 1988; SAMNDCA00370485—SAMNDCA00370527)



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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- Rounded Corners
- Lack of Significant Ornamentation
- Rectangular Shape
- Flat Continuous Surface
- Reflective or Transparent Surface
- Display Screen Covering Substantial Portion of Front Face
- Display Screen in Center of Device
- Thin form factor
- Substantially flat back panel
- Border around display

**15. The Brain Box Display** — (Created in 1989; Shown in *Appledesign: The Work of the Apple Industrial Design Group*, Paul Kunkel (1997); SAMNDCA00354743—SAMNDCA00354746)

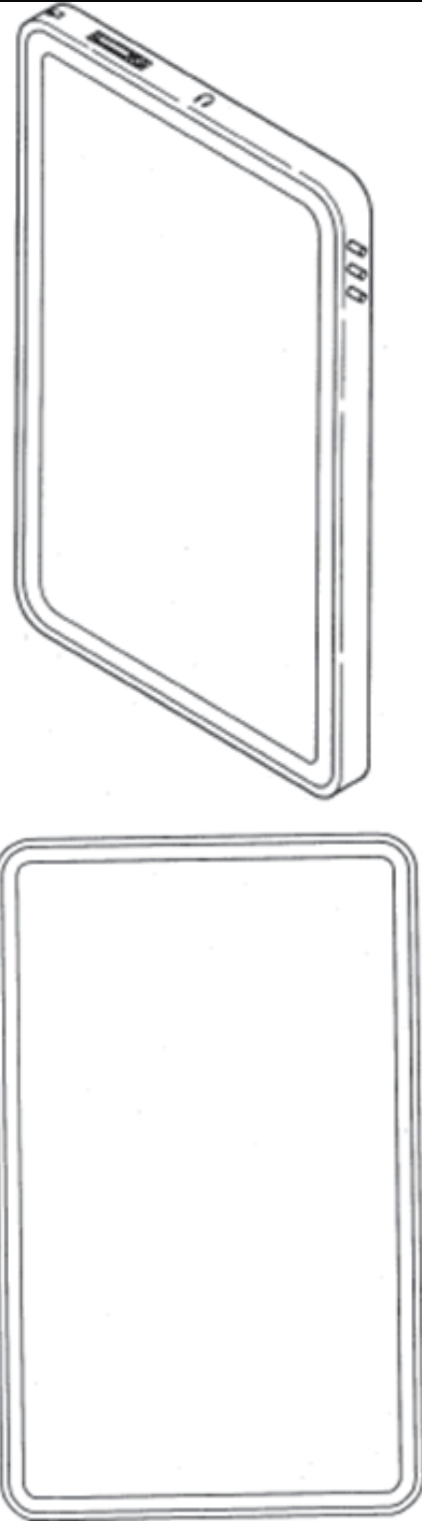


- Rounded Corners
- Lack of Significant Ornamentation
- Rectangular Shape
- Flat Continuous Surface
- Reflective or Transparent Surface
- Display Screen Covering Substantial Portion of Front Face
- Display Screen in Center of Device
- Thin form factor
- Substantially flat back panel
- Thin rim surrounding the front surface

**16. KR 30-0304213** — (Application Date: June 29, 2001; Publication Date: August 16, 2002); SAMNDCA00021593—SAMNDCA00021596)

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

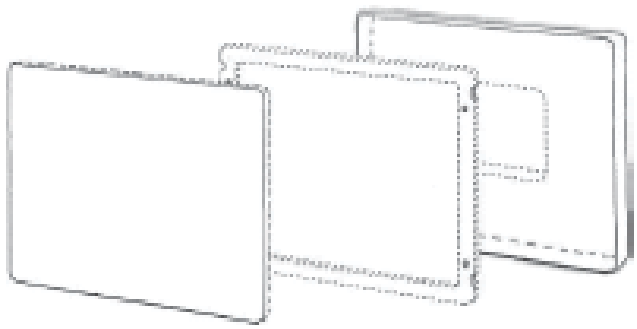


**SUBJECT TO PROTECTIVE ORDER**  
**CONTAINS HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY INFORMATION**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

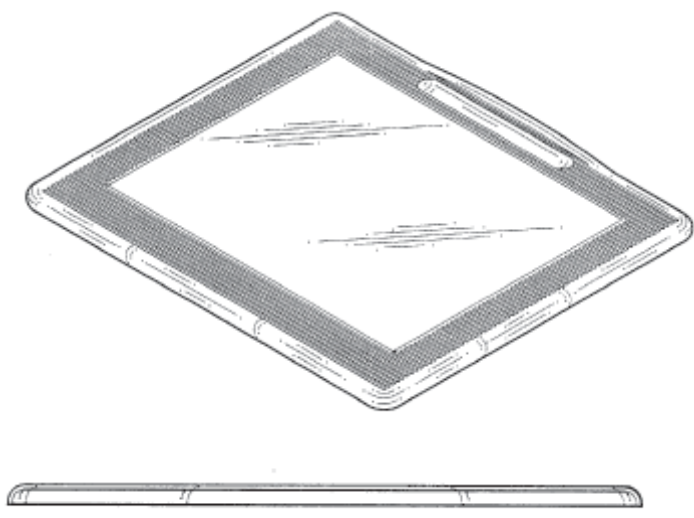
- Rounded Corners
- Lack of Significant Ornamentation
- Rectangular Shape
- Flat Continuous Surface
- Reflective or Transparent Surface
- Display Screen Covering Substantial Portion of Front Face
- Thin form factor
- Thin rim surrounding the front surface

**17. German Registered Design 40301867-0001** — (Publication Date: September 10, 2003); SAMNDCA00020402— SAMNDCA00020404)



- Rounded Corners
- Lack of Significant Ornamentation
- Rectangular Shape
- Flat Continuous Surface
- Reflective or Transparent Surface
- Display Screen Covering Substantial Portion of Front Face
- Display Screen in Center of Device
- Thin form factor
- Substantially flat back panel that rounds up near the edges to form the thin rim around the front surface
- Thin rim surrounding the front surface
- Border around display

**18. U.S. Design Patent No. D461,802** — (Filed: August 29, 2001; Issued: August 20, 2002); SAMNDCA00023750— SAMNDCA00023757)





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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- Rounded Corners
- Lack of Significant Ornamentation
- Rectangular Shape
- Flat Continuous Surface
- Display Screen Covering Substantial Portion of Front Face
- Display Screen in Center of Device
- Thin form factor
- Substantially flat back panel that rounds up near the edges
- Thin rim surrounding the front surface
- Border around display
- Reflective or Transparent Surface

**19. HP Compaq TC 1000** (Filed: August 29, 2001; Issued: August 20, 2002); SAMNDCA00023750—SAMNDCA00023757)



- Rounded Corners
- Lack of Significant Ornamentation
- Rectangular Shape
- Flat Continuous Surface
- Reflective or Transparent Surface
- Display Screen Covering Substantial Portion of Front Face
- Display Screen in Center of Device
- Thin form factor
- Border around display

**20. Plastic Logic Tablet (2006)**



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

1 Samsung believes that the identified prior art, standing alone, or in combination, would  
2 appear to an ordinary observer — giving such attention as a purchaser usually gives — to be  
3 substantially the same as the design shown in D'889, rendering that patent invalid as anticipated  
4 and/or obvious.

5 Without waiving any right to address additional design characteristics of this prior art that  
6 anticipate and/or render obvious the design claimed in D'889, at least the prior art references  
7 numbered 1-4, 7-8, 12-13 and 15 in the chart above anticipate the D'889. Furthermore, any of  
8 these references could serve as primary references that would have been obvious to one of  
9 ordinary skill in the art to combine with the flat, continuous or reflective surface shown in  
10 numbers 5, 9, 10, 11, and 17. Additionally, numbers 14, 18 and 19 could likewise serve as  
11 primary references that would have been obvious to one of ordinary skill in the art to combine  
12 with the thin form factor, flat continuous or reflective surface and/or rounded corners of numbers  
13 1-5, 7-15 and 17-19.

14 **Bates Ranges of Prior Art Produced by Samsung**

15 Samsung also incorporates by reference all prior art that has been produced and/or disclosed by  
16 Samsung, including the documents listed in the Bates Ranges below. These incorporated pieces of  
17 prior art further show that the design claimed by the D'889 patent is obvious and anticipated:  
18

19 SAMNDCA00019932-19943; SAMNDCA00020120-20247; SAMNDCA00020394-20498;  
20 SAMNDCA00020903-20906; SAMNDCA00020978-20989; SAMNDCA00021281-21313;  
21 SAMNDCA00021330-21336; SAMNDCA00021341-21436; SAMNDCA00021479-21485;  
22 SAMNDCA00021505-21588; SAMNDCA00021593-21596; SAMNDCA00021800-21805;  
23 SAMNDCA00022451-22506; SAMNDCA00022514-22520; SAMNDCA00022732-22763;  
24 SAMNDCA00022802-22812; SAMNDCA00022901-22910; SAMNDCA00022984-23047;  
25 SAMNDCA00023234-23265; SAMNDCA00023520-23524; SAMNDCA00023591-23801;  
26 SAMNDCA00024582-24629; SAMNDCA00027686-27690; SAMNDCA00027692-27708;  
27  
28

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

1 SAMNDCA00198059; SAMNDCA00198070-198076; SAMNDCA00198089-198096;  
2 SAMNDCA00198109-198115; SAMNDCA00198134-198142; SAMNDCA00198245-198267;  
3 SAMNDCA00198285-198289; SAMNDCA00198317-198318; SAMNDCA00198322;  
4 SAMNDCA00198333-198336; SAMNDCA00198343-198344; SAMNDCA00198754-198808;  
5 SAMNDCA00198884-198918; SAMNDCA00199164-199189; SAMNDCA00199204-199209;  
6 SAMNDCA00199402-199411; SAMNDCA00199415-199419; SAMNDCA00199426-199432;  
7 SAMNDCA00199439-199441; SAMNDCA00199445-199447; SAMNDCA00199454-199524;  
8 SAMNDCA00200617-200639; SAMNDCA00200650-200658; SAMNDCA00200661-200665;  
9 SAMNDCA00200670-200676; SAMNDCA00200686-200714; SAMNDCA00200724-200733;  
10 SAMNDCA00200737-200740; SAMNDCA00201264-201271; SAMNDCA00255026-00256183;  
11 SAMNDCA00282113-00282120; SAMNDCA00326302-00326557; SAMNDCA00359127-  
12 00365840; SAMNDCA00370485-00370527; SAMNDCA00373535-374040.  
13  
14

**Invalidity Due to Functionality**

15  
16 The asserted claim of the D'889 patent is also invalid because it is functional and not  
17 ornamental. *See Lee v. Dayton-Hudson Corp.*, 838 F.2d 1186, 1188 (Fed. Cir. 1988). Indeed, the  
18 D'889 patent contains no ornamentation whatsoever, and therefore has nothing to protect. In  
19 addition to the overall design of D'889 being non-ornamental, and therefore functional, individual  
20 aspects of the design are also functional and render its scope either invalid or indefinite. For  
21 example:  
22

- 23 • **Rectangular Shape** – Virtually any device used to view media—newspapers,  
24 movies, magazines, or television—has a rectangular shape. This is natural given  
25 that the device for viewing media is essentially merely a frame for the content of  
26 the media. Thus, the dominant trend for televisions, computer monitors, and  
27  
28

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

1 electronic readers has long been toward a rectangular shape with a reduced frame,  
2 well before the claimed invention of the Apple design patents. As Mr. Woodring  
3 testified in his deposition, rectangular screens are commonplace and not proprietary  
4 to anyone. Woodring Dep. Tr. at 28:1-21.

- 5 • **Rounded Corners** — Rounded corners are functional because they ensure  
6 comfort, safety, and ease of use. Pointed or sharp corners are uncomfortable to  
7 hold in one’s hands or rest anywhere on the body. Further, they may scratch or  
8 puncture the skin of the user, specifically in cases where the device falls. Pointed  
9 or sharp corners also may also snag or tear clothing or the material inside a  
10 briefcase, backpack, purse, or other carrying case. Rounded corners minimize all  
11 of these hazards. Rounded corner also make the device more durable. Pointed or  
12 sharp corners on designs are mechanical weak points and they may bend, snag, or  
13 break with the application of relatively little force. Rounded corners, on the other  
14 hand, are more robust and less likely to break. Rounded corners are easier and  
15 more reliable to manufacture – specifically, for plastic molds, creating clean and  
16 esthetic corners is difficult. Having changes in the thickness of plastic created in  
17 molds tends to leave marks on the surface; therefore it is better to have a uniform  
18 thickness.  
19 • **Flat Surface** — Because commercial display screens are flat, devices in which the  
20 functionality of the display screen has primary importance, the front surface of the  
21 device will be mostly flat. The use of display touch technology allows for removal  
22 of physical keys from the device’s front face. This helps keep the tablet surface  
23 clean and minimizes the chances of dust or water encroachment, which could harm  
24 the tablet. Having a smooth, continuous surface maximizes the significance of the  
25  
26  
27  
28

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

1 display screen—which is the primary reason for being of the tablet computer. With  
2 no unnecessary ornamentation, no tactile buttons, and no contrasting surface  
3 materials, nothing distracts from the user’s interaction with the display screen.

4 Having a flat, rather than embedded, screen design for a tablet device also makes it  
5 easier to keep the device clean, since a flat surface does not accumulate dirt and  
6 other debris along the edges of the screen border like an embedded screen does.

- 7  
8 • **Clear Surface Without Ornamentation** — If a single continuous flat front  
9 surface is used on a tablet computer, having that surface be clear best allows  
10 unimpeded viewing of the display screen. The lack of ornamentation that Apple  
11 claims as part of its “ornamental design” is, by definition, not ornamental. Also,  
12 given the functional purpose of the display screen, adding ornamentation around  
13 (or on top of) the display screen would distract from the display screen, thus  
14 detracting from the quality of the device’s functionality. The border around the  
15 screen shown in the D’889 is also functional. The display screen includes active  
16 components and wiring and a controller is required to activate the display. These  
17 wires force the actual size of the display glass to be slightly larger than the active  
18 viewable area. The controller for the display may be either located on the glass  
19 substrate of the display (COG- Chip on Glass) or on a flexible cable extending  
20 from the display (COF – chip on flex). The space of the borders above or below  
21 the display screen accommodates the controller wiring.

- 22  
23  
24 • **Rim around front surface** — Having a rim around a clear surface to hold it into  
25 place is the most obvious design choice for a mobile electronic device.  
26 Theoretically, the clear surface could be glued from underneath or clamped into  
27 place by braces that do not surround the entire edge. However, leaving any part of  
28

1 glass edges exposed would expose the front surface to cracking or scratching.  
2 Consider what would happen if, for example, the exposed edge of the surface hit  
3 the side of a table. For the same reason that watches have bezels, having a rim  
4 surrounding the surface of the tablet is a highly functional choice. Standard  
5 displays are made of a relatively fragile material that needs to be protected. To be a  
6 viable commercial product, a tablet needs to tolerate, to some extent, drops and  
7 casual bumps. Maintaining a border between the display and the exterior surface of  
8 the device functions to protect the display by absorbing the energy of such impacts  
9 directly. Together, these functions and physical limitations work to force the  
10 inclusion of a border between the active area of the display and the edge of the  
11 front surface in all four directions.  
12

- 13 • **Thinness of Design** – The relative thinness of the tablet’s depth is functional.  
14 Being thin facilitates the mobility and portability of the tablet. The trend in  
15 electronics for the past decade has been to make products thin while still being  
16 resilient and usable. Samsung also hereby incorporates by reference its Response  
17 to Apple’s Interrogatory No. 38, regarding functionality of Apple’s asserted design  
18 patents.  
19

20 **Invalidity Due to Indefiniteness**

21 Samsung incorporates by reference its indefiniteness response regarding the D’087, and  
22 identifies the following additional information: The drawings of the D’889 are subject to varying  
23 interpretations by Apple’s own named inventors of the D’889. For example, certain of the named  
24 inventors of the D’889 patent testified that Figure 1 of the D’889 showed a gap or groove near the  
25 edge of the device, while other inventors testified that there was not a gap, and others stated that  
26 they could not tell whether there was a gap. (*Compare, e.g.*, October 21, 2011 Deposition of  
27  
28