

Exhibit D  
(Submitted Under Seal)

**In The Matter Of:**

*APPLE INC.*

*v.*

*SAMSUNG ELECTRONICS CO.,*

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*TODD PENDLETON - Vol. 1*

*March 21, 2012*

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***HIGHLY CONFIDENTIAL  
ATTORNEY'S EYES ONLY***

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TODD PENDLETON - 3/21/2012

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

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APPLE INC. a California )  
corporation, )  
 )  
Plaintiff, )  
 )  
vs. ) 11-cv-01846-LHK  
 )  
SAMSUNG ELECTRONICS CO., )  
LTD., a Korean corporation; )  
SAMSUNG ELECTRONICS AMERICA, )  
INC., a New York corporation; )  
and SAMSUNG TELECOMMUNICATIONS )  
AMERICA, LLC, a Delaware )  
limited liability company, )  
 )  
Defendants. )  
\_\_\_\_\_ )

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DEPOSITION OF  
TODD PENDLETON

\_\_\_\_\_  
MARCH 21, 2012

VOLUME I

(Pages 1 - 217)

REPORTED BY: SARAH LUCIA BRANN, CSR 3887

1 MS. CARUSO: Margret Caruso, Quinn,  
2 Emanuel, Urquhart & Sullivan, representing Samsung.  
3 And with me is Cindi Moreland of STA.

4 THE VIDEOGRAPHER: Your court reporter  
5 today is Sarah Brann of Merrill. Would the reporter  
6 please swear in the witness?

7 TODD PENDLETON

8  
9 \_\_\_\_\_  
10 called as a witness, who, having been first duly  
11 sworn, was examined and testified as follows:

12 THE VIDEOGRAPHER: Please begin.

13 EXAMINATION BY MR. PLUNKETT

14 MR. PLUNKETT: Q. Good morning. Could  
15 you state and spell your name for the record?

16 A. It's Todd Pendleton, T-o-d-d, last name  
17 Pendleton, P-e-n-d-l-e-t-o-n.

18 Q. What's your home address?

19 A. 6546 Sondra Drive, Dallas, Texas 75214.

20 Q. Is this your first deposition?

21 A. Yes, it is.

22 Q. So let's go over some basics of the  
23 deposition. Do you understand that you are under  
24 oath today?

25 A. I do.

Q. Do you understand that that's the same

1 oath as if you were testifying in a court?

2 A. Yes.

3 Q. If you don't understand my questions, you  
4 can ask me to rephrase. Okay?

5 A. Okay.

6 Q. Do you understand that if you answer my  
7 question it will indicate that you understood the  
8 question?

9 A. Yes.

10 Q. You will have an opportunity to review  
11 your transcript to make any corrections, but I want  
12 to make sure you understand that if you correct your  
13 transcript we will have the opportunity to comment  
14 about your corrections in court. Do you understand  
15 that?

16 A. Yes.

17 Q. Is there anything preventing you from  
18 giving complete and accurate testimony today?

19 A. No.

20 Q. What's your current position with Samsung?

21 A. Chief marketing officer of wireless  
22 terminals.

23 Q. And who is your employer?

24 A. Samsung.

25 Q. Do you work for Samsung Telecommunications

1 just go out on a limb here. I am just going to do  
2 Pendleton 1. Okay? Because I am not going to --  
3 whatever. If I get in trouble, I get in trouble.  
4 Okay. Let's mark this as, please, Pendleton Exhibit  
5 Number 1.

6 I can't slide, because we have got a chasm  
7 here.

8 (Deposition Exhibit 1  
9 was marked for identification.)

10 MR. HEYISON: Q. Okay, Mr. Pendleton. So  
11 this is Apple's ninth Rule 30(b)(6) deposition  
12 notice.

13 A. Okay.

14 Q. I'd like to direct your attention to page  
15 eight.

16 A. Okay.

17 Q. Do you understand that you have been  
18 designated to testify concerning topic number four,  
19 for each of the covered products, Samsung's  
20 marketing plans, and strategies, and marketing, and  
21 sales messaging during the period from 2006 through  
22 the present?

23 A. Yes.

24 Q. Do you also understand you have been  
25 designated to testify concerning topic number five,

1 which is, "For each of the Covered Products,  
2 Samsung's marketing plans, strategies, marketing,  
3 sales messaging and advertising for use against each  
4 Competitive Product and Apple Accused Product during  
5 the period 2006 through the present"?

6 A. Yes.

7 Q. Okay. And then let's turn to topic number  
8 38, which you will find on page 14.

9 Do you understand that you have been  
10 designated to testify concerning Samsung's  
11 promotional or marketing programs and materials for  
12 any of the covered products, including but not  
13 limited to programs and materials that describe the  
14 advantages or benefits of such products over other  
15 products in any studies, reports, and analyses  
16 concerning such programs and materials --

17 Let me finish, and then you can object.

18 MS. CARUSO: Sure.

19 MR. HEYISON: Q. -- during the period  
20 2006 through the present?

21 MS. CARUSO: And my objection is based on  
22 the fact that Mr. Pendleton is not designated to  
23 talk about studies and reports about studies  
24 concerning an analysis concerning the programs and  
25 materials during the period 2006 through the

1 present.

2 MR. HEYISON: Q. Okay. So,  
3 Mr. Pendleton, do you understand what your  
4 attorney's, I will call it a de-designation, is?

5 A. Yes.

6 Q. Okay. So for the first part of that,  
7 which is Samsung's promotional or marketing programs  
8 and materials for any of the covered products,  
9 including but not limited to programs and materials  
10 that describe the advantages or benefits of such  
11 products over other products, you understand you are  
12 designated to testify about that topic?

13 A. Correct.

14 Q. Okay. Good.

15 So, now, in each one of those topics we  
16 have just talked about there is a term called  
17 covered products.

18 A. Mm-hmm.

19 Q. Okay? Did you notice that before today?

20 A. Yes.

21 Q. Okay. So if you look on page six of that  
22 notice, topic number six, there's a definition of  
23 covered products. So please turn to that for me.

24 A. Okay.

25 Q. And it's defined as "any product sold or

1 increase its market -- smartphone market share?

2 MS. CARUSO: Objection. Beyond the scope.

3 THE WITNESS: Overall market share again  
4 remained flat. In some carriers we did better than  
5 others that carried the product.

6 MR. HEYISON: Q. And with respect to  
7 those carriers, did Apple's sales decrease?

8 A. No.

9 MS. CARUSO: Objection.

10 MR. HEYISON: Q. Did anybody's sales  
11 decrease?

12 MS. CARUSO: Objection. Vague. Beyond  
13 the scope.

14 THE WITNESS: Obviously RIM is not doing  
15 as well as it used to. HTC and Motorola also  
16 haven't done as well in that time frame, in the  
17 fourth quarter, as they have in the past.

18 MR. HEYISON: Q. In the smartphone market  
19 are there sub segments of that market, like premium,  
20 regular?

21 A. There are price point differentials, yes.

22 Q. Okay. Can you tell me what those are in  
23 the smartphone market?

24 MS. CARUSO: Objection. Beyond the scope.

25 THE WITNESS: The, again, majority of

1 the -- call them super phone, whatever you want to  
2 call them -- could be \$199 and above. You could  
3 have 199 down to 99 as your mid tier, and \$99 and  
4 below as more of your entry level, if you want to  
5 call it that.

6 MR. HEYISON: Q. And does Samsung have  
7 product offerings in each of those three categories?

8 A. Yes.

9 Q. And does Apple -- where does Apple have  
10 product offerings with respect to those?

11 MS. CARUSO: Objection. Beyond the scope.

12 THE WITNESS: Similar.

13 MR. HEYISON: Q. Pardon?

14 A. It would be similar.

15 Q. So, do Samsung and Apple compete in all  
16 three categories?

17 MS. CARUSO: Objection. Beyond the scope.  
18 Vague.

19 THE WITNESS: Yes.

20 MR. HEYISON: Q. And the Galaxy S is \$199  
21 and above?

22 MS. CARUSO: Objection. Beyond the scope.

23 THE WITNESS: Yes.

24 MR. HEYISON: Q. And the Apple iPhone 4S  
25 is in that category, too?

1 A. Yes.

2 Q. Are you aware of any period of time in  
3 which Samsung's market share of the smartphone  
4 market has gone up and Apple's has gone down?

5 MS. CARUSO: Objection. Beyond the scope.

6 THE WITNESS: No.

7 MR. HEYISON: Q. Do you know what Prime  
8 Competitrack is?

9 A. No.

10 MS. CARUSO: Objection. Beyond the scope.

11 MR. HEYISON: Q. Does Samsung use Twitter  
12 in any way to promote its smartphone or tablet  
13 products?

14 A. We have a Samsung mobile Twitter handle  
15 for our smartphones, yes.

16 Q. Okay. Can you describe to me what that  
17 is? I don't even know what you mean by handle.

18 A. So we have a Twitter account.

19 MS. CARUSO: This might call for a  
20 narrative.

21 THE WITNESS: Yes. So we have a Twitter  
22 account, a Samsung mobile Twitter account, and it's  
23 daily communications. If people have questions or  
24 want to connect with us, they can send us a note,  
25 and there is a person that can answer questions

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I declare under penalty of perjury the foregoing is true and correct. Subscribed at \_\_\_\_\_, California, this \_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Todd Pendleton

1 CERTIFICATE OF REPORTER

2 I, SARAH LUCIA BRANN, a Certified  
3 Shorthand Reporter, hereby certify that the witness  
4 in the foregoing deposition was by me duly sworn to  
5 tell the truth, the whole truth, and nothing but the  
6 truth in the within-entitled cause;

7 That said deposition was taken in  
8 shorthand by me, a disinterested person, at the time  
9 and place therein stated, and that the testimony of  
10 the said witness was thereafter reduced to  
11 typewriting, by computer, under my direction and  
12 supervision;

13 That before completion of the deposition,  
14 review of the transcript [ ] was [X] was not  
15 requested. If requested, any changes made by the  
16 deponent (and provided to the reporter) during the  
17 period allowed are appended hereto.

18 I further certify that I am not of counsel  
19 or attorney for either or any of the parties to the  
20 said deposition, nor in any way interested in the  
21 event of this cause, and that I am not related to  
22 any of the parties thereto.

23 DATED: March 27, 2012

24 \_\_\_\_\_  
25 SARAH LUCIA BRANN, CSR No. 3887