

# EXHIBIT 36

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA  
3 SAN JOSE DIVISION  
4

5 APPLE INC., a California  
6 corporation,

7 Plaintiff,

8 vs.

CASE NO. 11-cv-01846-LHK

9 SAMSUNG ELECTRONICS CO.,  
10 LTD., a Korean business  
11 entity; SAMSUNG ELECTRONICS  
12 AMERICA, INC., a New York  
13 corporation; SAMSUNG  
14 TELECOMMUNICATIONS AMERICA,  
15 LLC, a Delaware limited  
16 liability company,  
17 Defendants.

18 \_\_\_\_\_/

19 H I G H L Y C O N F I D E N T I A L  
20 A T T O R N E Y S ' E Y E S O N L Y

21 VIDEOTAPED DEPOSITION OF SUSAN KARE, Ph.D.  
22 SAN FRANCISCO, CALIFORNIA  
23 FRIDAY, April 27, 2012

24 BY: ANDREA M. IGNACIO HOWARD, CSR, RPR, CCRR, CLR  
25 CSR LICENSE NO. 9830  
JOB NO. 48804

1 have to double-check. 10:26

2 MS. CARUSO: Okay. 10:26

3 Q Is it your recollection that the speech 10:26

4 balloon was part of the graphic element that you 10:26

5 create -- that you worked on for messaging? 10:26

6 A Yes. 10:27

7 Q Why was the speech balloon chosen for that 10:27

8 function? 10:27

9 A I believe in that particular case, Fossil 10:27

10 provided some mockups, as clients do, that are their 10:27

11 notions, and I rendered them. It was one of -- of a 10:27

12 range of options. 10:27

13 Q When you say "a range of options," do you 10:27

14 mean a range of metaphors or something else? 10:27

15 A Probably in that case, as in general, there 10:27

16 would be a range of metaphorical options, as well as 10:27

17 when there's one option, there's different ways always 10:28

18 to represent any one concept. 10:28

19 Q But you chose to develop the speech balloon 10:28

20 concept for messaging? 10:28

21 MS. TAYLOR: Objection; mischaracterizes her 10:28

22 testimony. 10:28

23 THE WITNESS: I -- I think, as I said, I 10:28

24 believe that that was one visual in a mockup they gave 10:28

25 me that I explored, along with other -- along with 10:28

1 other options. 10:28

2 MS. CARUSO: Q. Do you remember any of the 10:28

3 other options for the messaging function? 10:28

4 A I don't remember exactly what I provided, but 10:28

5 I could check. I'd have to pull up the document and 10:28

6 look at it. 10:28

7 Q Do you think that a speech balloon is a 10:28

8 useful symbol in connection with messaging? 10:28

9 MS. TAYLOR: Objection; that's vague. 10:29

10 THE WITNESS: I mean, I'm not quite sure what 10:29

11 you're asking, "useful." 10:29

12 MS. CARUSO: Well, let's -- let's take a step 10:29

13 back. 10:29

14 Q What's the purpose of an icon, the kind that 10:29

15 you design? 10:29

16 A Usually, it's a visual shorthand to 10:29

17 communicate an idea or some kind of information that 10:29

18 in an application is represented with a visual to 10:29

19 identify it at a glance. 10:29

20 Q So when you set out to develop an icon, how 10:30

21 do you approach that task? 10:30

22 A I would find out everything I could from the 10:30

23 client about what the icon was intended to communicate 10:30

24 or represent. I would usually try to extract from the 10:30

25 client their notion of their need, and as I said 10:30

1 before, keeping in mind perhaps the intended audience 10:30

2 or marketing factors, and then you just want to know 10:30

3 what you're trying to symbolize and make that visual. 10:30

4 Q When you say extract from the client their 10:31

5 need, what would you mean by that? 10:31

6 A Usually the client gives, when they need 10:31

7 icons, a list of deliverables, and the deliverables 10:31

8 would be the -- their -- their request for aspects of 10:31

9 a product. That might be categories or navigational 10:31

10 or applications or any -- any parts of the product 10:31

11 that -- where it's helpful for the user to interact 10:31

12 with symbols. 10:31

13 Q Is it a consideration for you how the user 10:32

14 will interact with the symbols? 10:32

15 A I probably focus most on how things look 10:32

16 versus how things work, but they go hand in hand. 10:32

17 These products are useful. 10:32

18 Q Right. 10:32

19 A So it's not pure fine art. 10:32

20 Q Would it make a difference to you in 10:32

21 designing a graphic element if it's a graphic element 10:32

22 that is going to be on a touch screen versus accessed 10:32

23 in some other way, like with a mouse or a stylus? 10:32

24 A Conceptually, no. There could be practical 10:32

25 considerations in a touch screen. But generally, I 10:32

1 would say I would think about it the same way in terms 10:33  
2 of concept and metaphor. 10:33

3 Q What are some of the practical considerations 10:33  
4 with a touch screen? 10:33

5 A We would probably poll the client about -- 10:33  
6 there -- there might be issues of using your finger. 10:33  
7 There might be size issues or position on the screen 10:33  
8 to physically be able to use the device. 10:33

9 Q When you say there might be issues with using 10:34  
10 your finger, what kind of issues? 10:34

11 A If you're using a finger versus a stylus, 10:34  
12 depending on the device and the physical requirements 10:34  
13 of the device, from device to device, there could be 10:34  
14 issues of needing to have enough -- enough room to 10:34  
15 select something. 10:34

16 Q I'm trying to understand that a little more. 10:34  
17 So what would affect the amount of room you 10:34  
18 have to select something? 10:34

19 A When there's a touch screen, there is a hit 10:35  
20 area that is really an engineering concern, not 10:35  
21 that -- that you would designate part of the screen 10:35  
22 area to respond to your finger. And the -- we might 10:35  
23 find out from a client how much space they would want 10:35  
24 to allot, how many pixel dimensions, so that it's 10:35  
25 possible to hit one area and not another. 10:35

1 Q Do you ever take into consideration how the 10:35  
2 user will discover that hit area? 10:35

3 MS. TAYLOR: Objection; vague. 10:36

4 THE WITNESS: I -- we would usually be guided 10:36  
5 by a client's request for what they need technically. 10:36

6 MS. CARUSO: Q. Have you ever considered 10:36  
7 whether the user would be assisted by visual cues as 10:36  
8 to what the hit area is? 10:36

9 MS. TAYLOR: Objection; it's vague. 10:36

10 THE WITNESS: I -- yeah, I'm not quite 10:36  
11 sure -- I'm not quite sure what you're asking me. 10:36

12 MS. CARUSO: Sure. 10:36

13 Q Well, for example, if you're dealing with a 10:36  
14 touch screen device, is there anything that would lead 10:37  
15 you to believe that a -- given any engineering-driven 10:37  
16 hit area -- is that what you referred to it as -- that 10:37  
17 the icon size should bear any relationship to that hit 10:37  
18 area? 10:37

19 MS. TAYLOR: Wait just a moment. You paused 10:37  
20 in the middle and just added in, like, that inner 10:37  
21 question. Could you ask it -- like, a clear question. 10:37  
22 I'm sorry. 10:37

23 MS. CARUSO: Q. Do you have the question in 10:37  
24 mind? 10:37

25 MS. TAYLOR: Objection; it's vague. 10:37

1           "What do you mean by simple? That could           11:09  
2     be -- I'm talking visual appearance, not -- that it       11:09  
3     can communicate to a wide audience as being           11:09  
4     representative of a concept."                           11:09

5           MS. TAYLOR: I think there was a long pause       11:09  
6     after the "not." I think she started a sentence and   11:09  
7     then --   11:09

8           MS. CARUSO: Well, I would like to ask the       11:09  
9     witness --   11:09

10          MS. TAYLOR: Okay.                               11:09

11          MS. CARUSO: -- to clarify what her testimony   11:09  
12     was there because I don't want the transcript to be   11:09  
13     confusing about what your testimony is.               11:09

14          THE WITNESS: Okay. I don't want to be           11:09  
15     confusing, either.                                   11:09

16          When you asked what is simple, do you mean --   11:09

17          MS. CARUSO: I didn't ask what is simple.       11:09

18          Q     I asked: How does being simple contribute to 11:09  
19     good icon design?                                   11:09

20          A     So in a visual sense, simplicity might --   11:09  
21     could mean lack of extraneous detail, and that can   11:09  
22     make an image that a user brings -- can project their 11:10  
23     own idea onto something that's simple rather than   11:10  
24     having an image that has so many details that it's   11:10  
25     clearly defined as one very specific thing.           11:10



1           So this is one way to think about when you       11:10  
2       said what makes a good icon. It's something that --   11:10  
3       simplicity can mean someone doesn't have to puzzle   11:10  
4       over, what is that?                                       11:10

5           Q    How does being clear contribute to an icon       11:11  
6       being a good icon?                                       11:11

7           A    You know what, it's very difficult to talk    11:11  
8       without talking -- you know, if we're looking at a    11:11  
9       range of icons, we might say this. I mean, I'm using   11:11  
10      that word "clear" in the sense of as opposed to       11:11  
11      unclear, puzzling. So I think generally, it's better   11:11  
12      to be -- I mean, it --                                   11:11

13          Q    Not puzzling?                                   11:11

14          A    Not puzzling.                                   11:11

15          Q    Is the -- the clarity you're talking about    11:11  
16      here seems to be not so much visual clarity as        11:12  
17      communicative clarity.                                   11:12

18          A    It could be either.                            11:12

19          Q    So clarity meaning it's not a fuzzy image?    11:12

20          A    That could be one, like, drawn in a way that   11:12  
21      you're drawing a -- if you were drawing a picture of a 11:12  
22      pencil, and the style was fuzzy or impressionistic,    11:12  
23      that might be unclear, or it could be conceptually    11:12  
24      unclear.    11:12

25          Q    Okay. You also identified the characteristic   11:12

1 of not loaded with extraneous detail. How does that 11:12  
2 contribute to a good icon? 11:12

3 A It's like a traffic sign. I think in some 11:13  
4 ways, good icons are like traffic signs because one of 11:13  
5 their purposes is to communicate. 11:13

6 You know, a school crossing sign has a 11:13  
7 silhouette of a boy and girl holding hands, and 11:13  
8 there's no technical reason they couldn't have 3-D 11:13  
9 clothes and plaid skirts and carrying books that you 11:13  
10 could read the name of the books they were carrying. 11:13

11 But I would say that would be extraneous 11:13  
12 detail. It could almost impede your at-a-glance 11:13  
13 recognition of what -- of that message. So, I mean, 11:13  
14 it's analogous to that kind of thing. 11:13

15 Q Okay. So do you agree that good icons are 11:13  
16 more like road signs than like illustrations? 11:14

17 MS. TAYLOR: Mischaracterizes her testimony. 11:14  
18 It's also vague. 11:14

19 THE WITNESS: I don't think you can 11:14  
20 completely generalize and say every icon needs to look 11:14  
21 like a road sign. I was using that as an example to 11:14  
22 say when you're designing icons, you need to -- one of 11:14  
23 the many things you need to consider is how much 11:14  
24 detail when there's -- is there a point when extra 11:14  
25 detail might be obfuscating rather than illuminating. 11:14

1 MS. CARUSO: Q. And that goes to the 11:14

2 ultimate question of at-a-glance recognition that you 11:14

3 were talking about is the goal of the icon? 11:14

4 A Well, there's not a single goal, but that is 11:14

5 a positive aspect. 11:15

6 Q What -- what other goals are there for icons? 11:15

7 A Well, again, different products, different 11:15

8 icons, there could be different goals. That's a -- 11:15

9 the pur -- you need to think about the purpose of 11:15

10 where the icons are. But as I said, usually they 11:15

11 communicate in a visual, shorthand way some concept or 11:15

12 purpose or... 11:15

13 Q When you design icons, do you endeavor to 11:15

14 make them communicate their function immediately? 11:15

15 MS. TAYLOR: Objection; it's vague. 11:15

16 THE WITNESS: It -- an icon maybe needs to 11:15

17 communicate something. It might -- but there's 11:16

18 probably a range of what that could be. It might just 11:16

19 be -- it might be a category. It might be an idea. 11:16

20 It might be some process. 11:16

21 MS. CARUSO: Q. Would you agree that it's 11:16

22 important that the icon communicate immediately, 11:16

23 whatever it is it's communicating? 11:16

24 MS. TAYLOR: Objection; it's vague. 11:16

25 THE WITNESS: I mean, I don't know what the 11:16

1 alternative to "immediately" would be, but you -- they 11:16

2 exist to communicate. 11:16

3 MS. CARUSO: Q. And do you want it to be 11:16

4 memorable as well? 11:16

5 A Easy to remember. 11:17

6 Q Do you have a -- a website for your business? 11:17

7 A I do. 11:17

8 Q And do you have a biography on that website? 11:17

9 A I believe so. 11:17

10 Q Did you write that yourself? 11:17

11 A I may have had assistance with that. 11:17

12 Q Did you review what was posted on your 11:17

13 website about you? 11:17

14 A Yes, I think so. 11:17

15 Q All right. Well, let's -- let's confirm. 11:17

16 MS. CARUSO: Can we mark this as Exhibit 1. 11:17

17 (Document marked Kare Exhibit 1 11:17

18 for identification.) 11:18

19 MS. CARUSO: Ms. Kare, you see what has been 11:18

20 marked as Exhibit 1. 11:18

21 Q Do you recognize this? 11:18

22 A The first paragraph is from -- I did a series 11:18

23 of products for the Museum of Modern Art in New York, 11:18

24 and that quote is from a copy that they put on the 11:18

25 back of the products. 11:18

1 Q Do you agree that your icons communicate 11:18  
2 their function immediately and memorably with wit and 11:18  
3 style? 11:18

4 A Well, that's what the Museum of Modern Art 11:19  
5 said about the icons on those products. And I 11:19  
6 think -- I think in that particular case, that was 11:19  
7 completely accurate. 11:19

8 Q Okay. Do you recognize this Exhibit 1 as a 11:19  
9 printout from your website? 11:19

10 A Yes. 11:19

11 Q In Paragraph 3, there's the statement: 11:19

12 "Kare believes that good icons should be more 11:19  
13 like road signs than illustrations, easily 11:19  
14 comprehensible and not cluttered with extraneous 11:19  
15 detail." 11:19

16 Is that an accurate statement of your belief? 11:19

17 A Yes. 11:20

18 Q When did you -- well, let me -- before we get 11:20  
19 there, we were talking earlier about your -- your 11:20  
20 experience and your interactions with clients. 11:20

21 Aside from the consumers who are your 11:20  
22 clients, have you spoken with other consumers of 11:20  
23 graphic user interfaces about how they perceive 11:20  
24 graphic elements? 11:21

25 A In -- like, in passing or just -- 11:21

1 Q In any context. 11:21

2 A Do I ever speak with people about -- could 11:21

3 you just ask me that one more time. Just -- 11:21

4 Q Aside from your clients, have you spoken with 11:21

5 anyone about their perceptions of graphic elements in 11:21

6 computers? 11:21

7 A Just anecdotally? 11:21

8 Q In any way. 11:21

9 A Yes. 11:21

10 Q Can -- how frequently does that happen? 11:21

11 A To just be in a conversation about graphics? 11:21

12 Q Yes. About, specifically, graphic user 11:22

13 interfaces. 11:22

14 A I mean, it's something that's interesting to 11:22

15 me, and I might talk about with -- casually. I talk 11:22

16 about my colleagues, but I -- I don't know that I 11:22

17 could say minutes a day or... 11:22

18 Q I -- I'm asking outside of your client 11:22

19 relationships or your work colleagues, those 11:22

20 conversations. That's what I'm focusing on. 11:22

21 And I'm not asking for minutes a day, but is 11:22

22 it something that you do every day? Is it something 11:22

23 maybe once a month? Is it frequently? 11:22

24 MS. TAYLOR: Objection; it's compound. 11:22

25 THE WITNESS: I guess I never really 11:23

1 Q Do you think that gives the user any 12:39  
2 information about how these icons work? 12:39

3 MS. TAYLOR: Objection; it's vague. 12:39

4 THE WITNESS: I think looking at this 12:39  
5 picture, you don't know how anything works. It's just 12:39  
6 a picture. You know, we bring to it our experience 12:40  
7 with the phone, so it's easy to look at this. But 12:40  
8 someone who's never seen this might just see it as a 12:40  
9 picture. 12:40

10 MS. CARUSO: Q. Like a picture that you 12:40  
11 would hang on a wall? 12:40

12 A Possibly like a screen shot, but you wouldn't 12:40  
13 necessarily know from this picture if it was a touch 12:40  
14 screen or what -- what -- what those -- if those 12:40  
15 images are images that can be interacted with and what 12:40  
16 would happen if you did. 12:40

17 Q Do you think there's anything about the 12:40  
18 images that might suggest to a user that they should 12:40  
19 be touched? 12:40

20 A I think that the -- I don't know. I -- I -- 12:41  
21 I think that obviously, there's a picture and it says 12:41  
22 "calculator." So, you know, anyone with some 12:41  
23 experience with any kind of icon on any other 12:41  
24 device -- but it's kind of speculative. 12:41

25 I mean, we know and I know this is a -- that 12:41

1 this is an app screen, but it's -- really looking at 12:41

2 this, it's about the visual. 12:41

3 Q Do you think that the figure -- the I -- 12:41

4 the -- well, the icons on Figure 2 have a button-like 12:42

5 sense to them? 12:42

6 MS. TAYLOR: Objection; it's vague. 12:42

7 THE WITNESS: I think that they have a 12:42

8 unifying element that is -- can be a button shape, but 12:42

9 it's not the only button shape. 12:42

10 MS. CARUSO: Q. Leaving aside whether it's 12:42

11 the only button shape, do you think that the image on 12:42

12 Figure 2 conveys a sense of buttons? 12:42

13 MS. TAYLOR: Objection; it's vague. 12:43

14 THE WITNESS: I think that there exist in the 12:43

15 real world physical buttons that these evoke, but -- 12:43

16 MS. CARUSO: Q. How do you think that 12:43

17 these -- 12:43

18 MS. TAYLOR: Could you let her finish. 12:43

19 She said "but." Go ahead. 12:43

20 THE WITNESS: But again, that was -- it -- 12:43

21 it's -- I wouldn't want to overgeneralize just because 12:43

22 it's a very specific shape. 12:43

23 MS. CARUSO: Q. In your report, you say: 12:43

24 "The button-like icons are all shaped as 12:43

25 squares with rounded corners." 12:44



1 Do you agree that these are button-like 12:44  
2 icons? 12:44

3 A They are. I just said there exist in the 12:44  
4 real world buttons -- physical buttons that look -- 12:44  
5 that -- that these evoke. So I guess another way to 12:44  
6 say that is "button-like." 12:44

7 Q Okay. And what about them evokes buttons? 12:44

8 A I think that screen elements that are virtual 12:44  
9 can -- because you can have -- you can design them to 12:44  
10 look like anything. You don't need a hard tool or -- 12:44  
11 it's the easiest way to do some virtual industrial 12:44  
12 design. 12:44

13 You know, there's all -- all kinds of buttons 12:44  
14 on refrigerators and calculators and blenders and auto 12:45  
15 tellers. You know, there's -- there's so many devices 12:45  
16 that have so many buttons and a lot of buttons, but 12:45  
17 not all, that -- that this is a shape that draws 12:45  
18 from -- there were physical buttons that looked like 12:45  
19 this before there were -- there were touch screens, 12:45  
20 and that was what would make me say "button-like." 12:45

21 Q All right. 12:45

22 Is there anything about these icons that -- 12:45  
23 in addition to the shape that conveys a more 12:45  
24 three-dimensional button-like quality? 12:45

25 A Well, because of the high resolution and 12:45

1 because of the light source and -- I can't tell, 12:45  
2 remember, without looking at this. There may be just 12:46  
3 the most subtle drop shadow to make them look as if 12:46  
4 they virtually are raised above the plane on which 12:46  
5 they sit. 12:46

6 But there's differently -- the algorithm 12:46  
7 that -- that creates these from flat art gives them a 12:46  
8 little bit of dimension. 12:46

9 Q So all of that helps give this button-like 12:46  
10 feel? 12:46

11 A Yes. 12:46

12 Q You noted in describing the arrangement that 12:46  
13 it's not completely random. 12:47

14 Do you -- do you think it makes it easier for 12:47  
15 a user to interact with a graphic user interface 12:47  
16 that's organized in a way that's not completely 12:47  
17 random? 12:47

18 A I think that it's a part of human nature to 12:47  
19 want to have your stuff organized, whether it's on the 12:47  
20 shelves of the supermarket or icons on your desktop, 12:47  
21 that some kind of organizing structure underlying is 12:47  
22 good; right? If I were a psychologist, I would 12:47  
23 probably know exactly why it's good. But -- but 12:47  
24 orderly is usually helpful for finding things. 12:48

25 Q All right. 12:48

1 Do you think that the -- the black background 12:48  
2 compared to the icon images helps the images stand out 12:48  
3 more on the screen? 12:48

4 A As opposed to? 12:48

5 Q As opposed to, for example, a white 12:48  
6 background. 12:48

7 A I don't know. I think you'd have to put side 12:49  
8 by -- side by side. If you put side by side two 12:49  
9 images, then I could compare them. But it's probably 12:49  
10 one of those, it depends what the alternative is. 12:49

11 I think that in this case, I believe, as it 12:49  
12 says in the report, there's kind of a dual-tone 12:49  
13 colorful quality to the icons, that being against a 12:49  
14 background that isn't equivalently colorful provides 12:49  
15 contrast. Probably doesn't have to be this black 12:49  
16 background, but -- 12:49

17 THE VIDEOGRAPHER: I'm going to have to 12:49  
18 adjust your mic. 12:49

19 THE WITNESS: Oh, I'm sorry. I'm sorry. I 12:49  
20 should have worn something thicker. 12:49

21 THE VIDEOGRAPHER: Go above your top button 12:50  
22 to keep it in place. 12:50

23 THE WITNESS: Okay. Thanks. 12:50

24 MS. CARUSO: Q. In looking at the image of 12:50  
25 Figure 2, do you have any understanding of what is new 12:50

1 about this design? 12:50

2 A As opposed to? 12:50

3 Q As opposed to any prior graphic user 12:50  
4 interfaces. 12:50

5 MS. TAYLOR: I'm going to object to the 12:50  
6 extent it's calling for a legal conclusion. 12:50

7 THE WITNESS: I feel as if I would -- I would 12:50  
8 need to compare it. I mean, I guess that's what a 12:50  
9 patent is about, and I know -- but I feel as if I 12:51  
10 couldn't -- I couldn't say categorically that I know 12:51  
11 exactly what's new about it. 12:51

12 MS. CARUSO: Q. You said you would -- you 12:51  
13 feel like you would need to compare it. What would 12:51  
14 you want to compare it to? 12:51

15 A Well, if you said, "Here is a -- here is a 12:51  
16 handheld device, and here is the iPhone that is older, 12:51  
17 and this is newer, what's new about it," then I could 12:51  
18 see and I could say. 12:51

19 But in a vacuum, to just say what's new about 12:51  
20 it, I don't know how -- I don't know what I would say. 12:51

21 Q Is that something that you attempted to 12:51  
22 provide an opinion on in any way, to look at the prior 12:51  
23 art and identify what is new in the -- in the design 12:51  
24 patent '334? 12:52

25 A I believe that in my report and in my role, 12:52

1 know that for sure from looking at this. 14:09

2 MS. CARUSO: Q. If you were designing a 14:09

3 graphic user interface -- let me ask a different 14:09

4 question. 14:09

5 Have you ever designed a graphic user 14:09

6 interface in which you applied two dots for purely 14:09

7 ornamental purposes? 14:10

8 A I've certainly used little sets of dots to 14:10

9 separate things. 14:10

10 Q I'm asking about just two dots. 14:10

11 A Two? 14:10

12 Probably a few more than two. 14:10

13 Q All right. 14:10

14 So you said that in devices that use this 14:10

15 design shown in Figure 2, there is a purpose for these 14:10

16 two dots; is that correct? 14:10

17 MS. TAYLOR: Mischaracterizes her testimony. 14:10

18 THE WITNESS: I know that this -- in this 14:10

19 patent, this is a visual appearance. And I know that 14:10

20 in some iPhone devices they make use of this 14:10

21 appearance, and in those devices there's a purpose. 14:11

22 They're controls. 14:11

23 But I -- this is just based on my 14:11

24 understanding of what a -- and I'm not a lawyer -- of 14:11

25 what a -- I think I understand what the patent means, 14:11

1 just like this isn't a functioning device. This is 14:11

2 just a picture. 14:11

3 MS. CARUSO: Okay. 14:11

4 Q So this picture -- nothing on this page 14:11

5 itself has any function whatsoever? 14:11

6 A Right. 14:11

7 Q Just -- 14:11

8 THE REPORTER: Hold on. I didn't get that. 14:11

9 MS. CARUSO: Q. So on the iPhone devices 14:11

10 that have dots located above the four icons at the 14:11

11 bottom, what purpose do they serve? 14:11

12 A In the device? 14:12

13 Q Yes. 14:12

14 A It's an indicator of a -- that there is 14:12

15 multiple screens to access, and it's a control. 14:12

16 Q Can you think of other ways to show that 14:12

17 there are multiple screens available on a device? 14:12

18 A A lot of different ways. 14:12

19 Q Can you think of any that are more visually 14:12

20 simple than having two dots? 14:12

21 MS. TAYLOR: Objection; that's vague. 14:12

22 THE WITNESS: I can think of other ways that 14:12

23 applications and devices show multiple screens. 14:12

24 Whether or not it's -- you know, there's relative 14:13

25 degrees of simplicity. 14:13

1 I mean, you can have tiny pages. You can 14:13  
2 have numbers, which in some ways is even more 14:13  
3 explicit, and in some ways might be simpler than 14:13  
4 counting five dots to see one through five and have 14:13  
5 the number light up. 14:13

6 I think there -- you know, so many websites 14:13  
7 have page indicators in that affordance. Phone isn't 14:13  
8 the only device where there's multiple screens to see, 14:13  
9 so there are pretty many examples out there. 14:13

10 MS. CARUSO: Q. Are there any others you can 14:13  
11 think of other than the ones you've identified? 14:13

12 MS. TAYLOR: I assume you're not going to 14:13  
13 give her her expert report to refer to because I think 14:13  
14 she had multiple samples in there. 14:14

15 Go ahead from your memory. 14:14

16 THE WITNESS: I mean, numbers, different 14:14  
17 shapes, circles. It's true that if I could look at my 14:14  
18 report, I could look at some other phones and remind 14:14  
19 myself. 14:14

20 MS. CARUSO: Q. You believe that your report 14:14  
21 had different alternatives to the page dot indicators? 14:14

22 A I'd probably start with that. If it was a 14:14  
23 test to show other page indicators, then we could look 14:14  
24 online. I'd start with my report. 14:14

25 Q All right. 14:14

1 beyond -- 17:13

2 THE WITNESS: I couldn't -- 17:13

3 MS. TAYLOR: -- the scope of her expert 17:13  
4 report. 17:13

5 THE WITNESS: -- I couldn't say. Better in 17:13  
6 what way? I don't -- I'm not an expert on the 17:13  
7 functionality of that phone. 17:13

8 MS. CARUSO: Q. As a user of cell phones, do 17:13  
9 you find that some user interfaces are more intuitive 17:13  
10 than others? 17:13

11 MS. TAYLOR: Objection; it's vague; it's also 17:13  
12 beyond the scope of her expert report. 17:14

13 THE WITNESS: My real focus is on the -- the 17:14  
14 ornamental visual design, looking at the Samsung phone 17:14  
15 and the Apple phone. 17:14

16 I -- I think, in general, some phones -- it's 17:14  
17 hard to say this phone is better categorically than 17:14  
18 this phone because sometimes one phone will do some -- 17:14  
19 something really well, search the Internet and be 17:14  
20 clear on the phone, and another phone which might be 17:14  
21 inferior in those ways might have a feature keyboard 17:14  
22 or -- that some people like physical keyboards and 17:14  
23 swear by them and are willing to put up with a more 17:14  
24 inferior browsing experience to get a keyboard. 17:14

25 So it depends on need, and it depends on the 17:14



1 person, and it depends on the task. So whether 17:15

2 something is better depends on your priorities, not 17:15

3 exclusively how intuitive an interface might be. 17:15

4 MS. CARUSO: Q. So your focus is really on 17:15  
5 the visual appearance; is that correct? 17:15

6 A (Witness nods head.) 17:15

7 Again, the visual appearance in a graphical 17:15  
8 UI, it's a marriage of looks, how it looks and how it 17:15  
9 works. I sit squarely on the how it looks side, but 17:15  
10 there's still some carryover. When you design, you 17:15  
11 don't just design. You don't just design to make -- 17:15  
12 to make it ornamental. 17:15

13 Q But you didn't evaluate how it works, aside 17:15  
14 from this report? 17:15

15 A No. 17:15

16 Q Okay. All right. 17:15

17 A I wasn't asked to for this report. 17:15

18 Q All right. 17:16

19 What about for your rebuttal report? Did you 17:16  
20 consider the -- anything about the how it works side 17:16  
21 of the -- 17:16

22 A Well -- 17:16

23 Q -- user interface? 17:16

24 A -- they're -- they're not mutually exclusive. 17:16

25 And again, a good icon, it's not just, oh, it's 17:16

1 attractive. That's not the scale. So I would never 17:16  
2 say I don't think about how things work, but I think a 17:16  
3 lot about how things look. 17:16

4 And a primary part of what I was asked for 17:16  
5 for this report was, is the overall visual impression 17:16  
6 of this like the overall visual impression of that? 17:16

7 Q And you didn't evaluate how the Nokia N9 17:16  
8 works? 17:16

9 A I was not asked to. 17:16

10 Q And you didn't evaluate how the Samsung 17:16  
11 phones work? 17:16

12 A Primary focus, a visual -- overall visual 17:17  
13 impression of the applications screen. 17:17

14 Q Okay. Did you consider how any of the other 17:17  
15 alternatives that you identified, how those graphic 17:17  
16 user interfaces work? 17:17

17 A Some. Like the Prada phone that I held, I 17:17  
18 could experience it or -- and I actually think, now 17:17  
19 that I have the -- you know, in flipping through the 17:17  
20 report, there were a couple of other phones that we 17:17  
21 looked at. There was a -- there was a BlackBerry. 17:17  
22 You know, there were a lot of phones on the table. 17:17  
23 And there is a list. 17:17

24 Q Oh, where is that list? 17:17

25 A There is a list in here. The -- I was 17:17

1 his expert report? 18:04

2 A I looked at a number of the screen shots and 18:04  
3 sometimes searched online to see if I could find a 18:04  
4 bigger or clearer version. 18:04

5 Q In the process of looking at the prior art, 18:04  
6 did it change your opinion in any way about the 18:04  
7 similarity of the Samsung phones to the Apple design 18:04  
8 patents? 18:04

9 A No. 18:05

10 Q All right. 18:05

11 Did you consider whether the prior art might 18:05  
12 affect how an ordinary observer would compare the 18:05  
13 Samsung phones to the Apple design patents? 18:05

14 A There's a lot. I mean, he gave a lot of 18:05  
15 examples. So I -- it -- it would probably make sense 18:05  
16 to -- in general, I didn't see anything that -- that 18:05  
17 caused me to pause and reconsider. 18:05

18 Q Okay. 18:05

19 (Document marked Kare Exhibit 13 18:06  
20 for identification.) 18:06

21 MS. CARUSO: Oh, sorry. 18:06

22 THE VIDEOGRAPHER: Just hand it to me, and 18:06  
23 I'll hand it to her. 18:06

24 MS. CARUSO: This is better than having my 18:06  
25 shoulder in the picture. 18:06

1 THE WITNESS: If this is prior art, then -- 18:06

2 MS. CARUSO: Q. Then what? Is that a 18:06

3 problem? 18:06

4 MS. TAYLOR: What number is that? 18:06

5 MS. CARUSO: Exhibit 13. 18:06

6 MS. TAYLOR: Okay. 18:06

7 MS. CARUSO: Q. Have you seen the image in 18:06

8 Exhibit 13 before? 18:06

9 A It looks similar to phones I've seen before. 18:06

10 Q Does it look similar in its overall 18:07

11 impression to the D '305 patent? 18:07

12 MS. TAYLOR: It's one of those. 18:07

13 MS. CARUSO: Q. Or Exhibit 4 on your... 18:07

14 A It looks similar, but not identical. 18:07

15 Q Would you say it's substantially similar to 18:08

16 an ordinary observer? 18:08

17 A Yes, probably. 18:08

18 Q Why do you hesitate? 18:08

19 A Well, there's -- there's just some small 18:08

20 differences, but I -- I would say they're very 18:08

21 similar. 18:08

22 Q What differences do you note? 18:08

23 A It's Wednesday, not Tuesday, nine versus six, 18:08

24 different time on the clock, notes to the left, one 18:08

25 extra icon on the third row. 18:08

1 Q Is it your opinion that collectively those 18:08  
2 things would change an ordinary observer's overall 18:08  
3 impression? 18:08

4 A No. I just said they're very similar. 18:08

5 Q All right. 18:08

6 Do you remember when you first saw an image 18:08  
7 that -- that looked like Exhibit 13? 18:09

8 A I'm not sure. I think there's a picture of 18:09  
9 Steve Jobs holding up a phone, but I'm not sure if 18:09  
10 this is that or not, and whether that's the phone or 18:09  
11 if I'm confusing something else that I saw. 18:09

12 Q I'll draw your attention to the fact that the 18:09  
13 carrier identified on Exhibit 13 is Cingular, if that 18:09  
14 helps you place the timing at all. 18:09

15 A I don't know. 18:09

16 Q Okay. Do you remember when the iPhone was 18:09  
17 announced? 18:09

18 A I don't know. 18:09

19 Q Leaving aside if you remember the exact date 18:09  
20 that it was announced, do you remember there being a 18:09  
21 day that the iPhone was announced? 18:10

22 A Announced with an event or -- 18:10

23 Q Announced -- 18:10

24 A -- announced -- 18:10

25 Q -- by Apple. 18:10

1 Steve Jobs introduced it at the Macworld 18:10

2 conference? 18:10

3 A Yeah, and I went to that. 18:10

4 Q Okay. 18:10

5 A But I don't know when it was. 18:10

6 Q All right. 18:10

7 So you were there when the first iPhone was 18:10

8 introduced? 18:10

9 A Yes. 18:10

10 Q Do you remember any publicity after that 18:10

11 event that -- that showed a picture of the iPhone as 18:10

12 it was shown at that Macworld event? 18:10

13 A I don't remember. 18:10

14 Q Do you remember if you went on Apple's 18:10

15 website and looked at any images of the phone after 18:10

16 attending that event? 18:10

17 A I went to Macworld, and there was one in a -- 18:10

18 like a plexi-box, but I -- I don't remember. I don't 18:10

19 know about the website. 18:11

20 Q And attending that event, did it make you 18:11

21 want to get an iPhone 1? 18:11

22 A No. 18:11

23 Q Why is that? 18:11

24 A A variety of personal reasons. 18:11

25 Q Did any of those reasons have to do with the 18:11