

EXHIBIT E

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

APPLE INC., a California corporation,

Plaintiff,

v.

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

Defendants.

Case No. 11-cv-01846-LHK

**EXPERT REPORT OF SUSAN
KARE**

****CONFIDENTIAL – CONTAINS MATERIAL DESIGNATED AS HIGHLY
CONFIDENTIAL – ATTORNEYS’ EYES ONLY PURSUANT TO A PROTECTIVE
ORDER****

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1 Phones display a grid of brightly colored, square icons that have rounded corners. Each corner of
2 the square icons appears to have the same pixel radius. Also, each of the Samsung Phones
3 displays a row of dots that indicates which page of the applications screens is currently displayed.
4 Finally, each of the Samsung Phones has a separate area at the bottom of the screen containing
5 four icons that do not change when the user views additional pages of icons. The icons in this
6 area generally have a dominant rectangular shape with rounded corners.
7

8 71. The bottom row of icons in the Samsung Phones does not have uniformly square
9 icons. However, the similarities between the Samsung Phones and iPhone Devices, discussed
10 above in Sections V.B.1 and V.B.2, results in the applications screens of the Samsung Phones and
11 the iPhone Devices producing the same overall visual impression. The similarities are such that
12 they appear to represent the same general design approach, and users could see the designs as
13 coming from the same company or source, or representing the same brand.
14

15 **C. The Similarities Between the Samsung Phones and the iPhone Devices**
16 **Support the Possibility that Samsung Used the iPhone Devices as a Guide in**
17 **Designing Icons and User Interface Graphics for the Samsung Phones**

18 72. I have been informed that the iPhone Devices were released to the public as
19 follows: the iPhone was released on June 29, 2007; the iPhone 3G was released on July 11, 2008;
20 the iPhone 3GS was released on June 19, 2009; and the iPhone 4 was released on June 24, 2010.

21 73. I have been informed that the Vibrant was the earliest of the Samsung Phones to be
22 released, with a release date of approximately July 2010.

23 74. As explained above, there is a wide range of alternatives for the design of the
24 Samsung Phones' user interface graphics, including many options for the individual icons,
25 general icon style, and overall appearance of the applications screens. Also as explained above,
26 many design decisions are required in order to arrive at final designs for icons and user interface
27 graphics.
28

1 75. Given the breadth of options for the design of individual icons and the overall
2 visual appearance of a graphical interface, I would expect that Apple's and Samsung's respective
3 decisions regarding icon and layout design would result in design identities that vary between the
4 Samsung Phones and the iPhone Devices. In other words, I would expect that independently
5 designed user interface graphics would result in screens with different overall appearances, such
6 as the screens shown in Exhibits 9 through 13.

8 76. However, as described above in Section V.B, there are a number of striking
9 similarities between the applications screen icons and layout of the iPhone Devices and Samsung
10 Phones. The pattern of similarities supports the possibility that the iPhone Devices' screen
11 graphics influenced and served as a guide for the design of the applications screens of Samsung
12 Phones.

13 77. I have been asked to opine as to whether my impressions above are consistent with
14 certain documents obtained by Apple from Samsung in this litigation and provided to me. The
15 documents that I have reviewed are consistent with my opinions (1) that there are many
16 alternative designs, both individual and overall, that Samsung could have chosen for the Samsung
17 Phones; (2) that there were many alternatives for the overall visual appearance of the interface
18 graphics for its applications screens; and (3) that the pattern of graphical similarities between the
19 applications screens of the Samsung Phones and iPhone devices, as explained in paragraphs 60
20 through 71 above, supports the possibility that Samsung used the iPhone as a guide when
21 designing the Samsung Phones' applications screens.

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23
24 **1. Samsung Documents Corroborate the Existence of Alternative Icon
25 Designs**

26 78. Samsung documents are consistent with my opinion, explained in paragraphs 54
27 through 56 above, that there are many icon design options that do not closely resemble particular
28 iPhone icons or the general style of the iPhone user interface graphics.

1 vast number of alternatives.

2 81. Another example is a November 26, 2007 document titled “Moria,: Advanced UX
3 Strategy for 2009.”²⁹ It describes a user interface theme, including an “icon archetype.”
4 (SAMNDCA00204884-5031 at 00205008-5018.) Using a camera icon as an example, the
5 document shows stylistic options for icon design that are very different from any of the icons
6 used in the iPhone Devices, including the camera. (See Figure 31, below.) The icons shown at
7 pages SAMNDCA00205008 through SAMNDCA00205018 represent many stylistic treatments
8 based on several outlined camera shapes. The iconic images range from flat and simple, to
9 debossed, to modeled 3D images. They range from monochromatic to colorful, and some of the
10 most detailed incorporate patterned textures (e.g., wood grain and floral). These are stylistic
11 options that do not mirror the styles of icons used on the iPhone Devices or depicted in the D’305
12 and D’334 patents.
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Figure 31

26 82. Another document (SAMNDCA10202899-983) dated October 23, 2008 appears to
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28 ²⁹ I have been informed that “UX” is shorthand for “User Experience.”

1 show an example of interface graphics using a set of icons that have consistent, light-colored
2 outlines and minimal details. (SAMNDCA10202957.) Such an approach, shown above in figure
3 31, is an alternative, consistent design for a set of icons that is quite different from the design of
4 any of the icons used on the iPhone Devices or depicted in the D’305 and D’334 patents.
5

6 **2. Samsung Documents Support Existence of Alternatives for the Overall**
7 **Visual Appearance of its Applications Screens.**

8 83. Samsung documents also are consistent with my opinion, explained in paragraphs
9 45 through 52 above, that there are many alternative ways to present sets of application icons
10 visually on a touch screen device.

11 84. For example, a document titled “2009 Archetype: Summary”
12 (SAMNDCA10272003-032, slightly different than SAMNDCA10272033-067, described above)
13 considers different graphic user interfaces. Although the image quality is poor, it shows various
14 interface graphics, such as grids of icons with and without rectangular borders, and the use of
15 shading to delineate between rows in a grid. The document mentions the use of 3D versus 2D
16 icons and states that “[c]olorful background in icon boxes” are “disliked.”
17 (SAMNDCA10272017 (*see* Translations App’x).)

18 85. Another example is a document titled “Samsung Mobile Icon Design for 2011.”
19 (SAMNDCA10252511-525). Although the image quality is poor, this document also shows
20 alternative ways to design grids of icons that do not closely resemble the grid of icons in the
21 iPhone Devices (e.g., the 2007-2009 screens shown at SAMNDCA10252515).
22

23 86. Many additional documents obtained from Samsung support my opinion that there
24 are alternative ways to design applications screens that are different than the grid of icons on the
25 iPhone Devices: “Competitor Analysis: GUI Benchmarking 2009 (SAMNDCA00229011-108 at
26 SAMNDCA00229050, 00229063, 00229093); “10 US Archetype Design Input”
27 (SAMNDCA10202899, discussed above); “2009 GUI Archetype 1:1 Interview @SEF”
28

1 (SAMNDCA10272186-225 at 10272192-201, 10272221-223); “2010 Normal Archetype:
2 Graphic Research” (SAMNDCA10298457 at 10298465-471); and “Samsung TN GUI
3 Framework: Final Presentation” (SAMNDCA11030081-359 at 11030245-247).

4 **3. Samsung Documents Are Consistent with the Possibility that Samsung**
5 **May Have Used the iPhone as a Guide When Designing the Application**
6 **Screens for the Samsung Phones**

7 87. As explained above, based on my comparison of the applications screens of the
8 Samsung Phones and the iPhone Devices, I believe that Samsung may have been influenced by
9 Apple’s icon designs and user interface design elements and may have used them as a guide for
10 the design of user interface graphics for the Samsung Phones. The Samsung documents I have
11 reviewed are consistent with that possibility.

12 88. For example, a December 14, 2008 email compares proposed icons for Samsung
13 projects referred to as “Eternity” and “Genie” with the icons of the iPhone.
14 (SAMNDCA10247689.) The e-mail refers to AT&T feedback that Samsung’s proposed icons
15 “appear very ‘cartoonish’/animated which is okay if we are targeting a more youthful/tween
16 audience” and that “iPhones [*sic*] icons are colorful and vibrant, however they are in contained
17 square[s] which appear more organized and consistent.” The e-mail author stated that “[w]e
18 would like to request our designers take this into consideration when proposing/designing icons
19 and also take into consideration the target audience the device is for.” Embedded in the email are
20 the “Icons/MainMenu” for “Eternity & Genie,” juxtaposed against the “iPhone Icons/Main
21 Menu,” and the contrast between the two styles is apparent. The existence of this side-by-side
22 comparison between the iPhone’s icons and Samsung’s icons in December 2008 is consistent
23 with the possibility that Samsung was influenced or guided by the iPhone in designing the
24 applications screens for the Samsung Phones, which I have been informed were released
25 beginning in July 2010.
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1 89. In another document, dated March 2, 2010 and titled “Relative Evaluation Report
2 on S1, iPhone,” there are multiple pages that directly compare the iPhone’s icon grid with icon
3 grids that look very similar to the applications screens of the Samsung Phones analyzed above.
4 (SAMNDCA00203880-4010 at SAMNDCA00203922, 00203930, 00204001, 00204006,
5 00204010 (*see* Translations App’x).) The document identifies elements of the iPhone design that
6 are effective and uses them as a point of comparison to the Samsung designs. For example, the
7 document states about the iPhone, “[u]tilizing light, it provides three dimensionality and a
8 luxurious feeling.” (SAMNDCA00204010 (*see* Translations App’x).) In contrast, it states about
9 the “GT-i9000, “[t]he three dimensionality in the menu icons using light falls short,” and it
10 identifies “[d]irections for [i]mprovement” that include “[i]mplement[ing] icons to become more
11 luxurious and smooth by providing effects of light.” (*Id.*) This reference to “effects of light” may
12 be a reference to the shiny, arc-shaped effect, described above in Paragraphs 36, 40, 62, and 64,
13 appearing in many icons on the iPhone Devices, the D’305 patent, the D’334 patent, and the
14 Samsung Phones. The existence of this side-by-side comparison between the iPhone’s icons and
15 Samsung’s icons is consistent with the possibility that Samsung was influenced or guided by the
16 iPhone in designing the applications screens for the Samsung Phones.
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19 90. A final example is a document dated March 22, 2010 and titled “The First
20 Usability Evaluation Results for Spring Bound Vins-Q (SPH-M910).” (S-ITC-000118719-775
21 (*see* Translations App’x).) That document includes side-by-side visual comparisons of the iPhone
22 icons and screen designs with icons and screen designs similar to the Samsung Phones analyzed
23 above. In particular, there are graphics that show the Samsung and Apple icons for Clock (or
24 Alarm Clock), Camera, Calculator, and Settings. (S-ITC-000118722-723.) The existence of this
25 side-by-side comparison between the iPhone icons and Samsung’s icons is consistent with the
26 possibility that Samsung was been influenced by the iPhone in designing the applications screens
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1 for the Samsung Phones. This document also contains particular examples of alternative icons for
2 Phone, Contacts, Clock/Alarm, Gallery, Music, and Camera that are very different than the icons
3 used in the Samsung Phones, as discussed in Section V.B.2, above. (S-ITC-000118722.)

4 **VI. CONCLUSION**

5
6 91. For the reasons set forth above, it is my opinion that the applications screen of
7 each of the Samsung Phones creates the same overall visual impression as the designs shown in
8 the Design Patents. It is also my opinion that the applications screens of each of the Samsung
9 Phones and the iPhone Devices (the appearance of which I have been informed is relevant to
10 Apple's trade dress claims) create the same overall visual impression. It is also my opinion that
11 the similarities identified above between the following pairs of icons might cause users to see the
12 pair as coming from the same company or source, or representing the same brand: Samsung's
13 Gallery icon and Apple's Photos icon (U.S. Trademark Registration No. 3,886,200); Samsung's
14 Phone icon and Apple's Phone icon (U.S. Trademark Registration No. 3,886,196); and
15 Samsung's Music/Music Player icon and Apple's iTunes Eighth Notes + CD icon (U.S.
16 Trademark Registration No. 2,935,038). It is also my opinion that the similarities between
17 Samsung Phones and the iPhone Devices support the possibility that Samsung used Apple's icon
18 design and layout as a guide in creating the icon designs and layout of the applications screens of
19 the Samsung Phones.
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22 **VII. SUPPLEMENTATION**

23 92. I reserve the right to supplement this report with new information and/or
24 documents that may be discovered or produced in this case.
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VIII. EXHIBITS TO BE USED

93. I anticipate using as exhibits during trial certain documents and things referenced or cited in this report or accompanying this report. I also anticipate using other demonstrative exhibits or things at trial.

Dated: March 22, 2012



SUSAN KARE

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