

# EXHIBIT

# 1

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA

3 --oOo--

4 APPLE INC., a California  
5 corporation,

6 Plaintiff,

7 Vs.

Case No. 11-CV-01846-LHK

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

15 Defendants.  
16 \_\_\_\_\_/

17 VIDEOTAPED DEPOSITION OF COOPER WOODRING  
18 Redwood Shores, California  
19 Friday, August 5, 2011

(HIGHLY CONFIDENTIAL ATTORNEYS' EYES  
ONLY PORTIONS BOUND SEPARATELY)

20 Reported By: CAROL S. NYGARD, CSR No. 4018  
21 Registered Merit Reporter  
22  
23  
24  
25

1 August 5, 2011

2 9:46 a.m.

3 Videotaped Deposition of COOPER  
4 WOODRING, held at the offices of  
5 Quinn Emanuel Urquhart & Sullivan,  
6 LLP, 555 Twin Dolphin Drive, Redwood Shores,  
7 California, before Carol S. Nygard,  
8 A Certified Shorthand Reporter,  
9 Registered Merit Reporter.

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1 A P P E A R A N C E S :  
2 FOR THE PLAINTIFF APPLE, INC.:

3 MORRISON & FOERSTER  
4 BY: ANDREW E. MONACH, ESQ.  
5 PATRICK J. ZHANG, ESQ.  
6 425 Market Street  
7 San Francisco, California 94105

8 CYNDI WHEELER, Patent Counsel  
9 Apple  
10 1 Infinite Loop, MS 40-PAT  
11 Cupertino, California 95014

12 FOR THE DEFENDANTS SAMSUNG:

13 QUINN EMANUEL URQUHART & SULLIVAN  
14 BY: MICHAEL T. ZELLER, ESQ.  
15 TAMAR BUCHAKJIAN ESQ,  
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19 QUINN EMANUEL URQUHART & SULLIVAN  
20 BY: MARGARET CARUSO, ESQ.  
21 JOELLE PERRY, ESQ.  
22 555 Twin Dolphin Drive  
23 5th Floor  
24 Redwood Shores, California 94065

25 Also Present:

JAKE KROHN, Videographer  
NATE SUN

1 declaration?

2 MR. MONACH: Objection. Lack of foundation.

3 THE WITNESS: I -- I've already testified I  
4 don't know when it was started.

5 BY MR. ZELLER:

6 Q. When did you first see a draft of any kind?

7 A. Generally mid-June time frame.

8 Q. How did you receive it?

9 A. By E-mail.

10 Q. From whom?

11 A. Mr. Zhang.

12 Q. You'll agree with me that it's often difficult  
13 to compare a two-dimensional drawing to a  
14 three-dimensional object?

15 MR. MONACH: Objection form.

16 BY MR. ZELLER:

17 Q. Correct?

18 A. Difficult for who?

19 Q. For anyone.

20 MR. MONACH: Objection. Form.

21 THE WITNESS: It's probably difficult for a  
22 layperson.

23 I don't think it's difficult for a designer or  
24 one skilled in the art.

25 BY MR. ZELLER:

1 Q. What's a "smartphone"?

2 MR. MONACH: Object to form.

3 THE WITNESS: A phone that does more than be a  
4 telephone.

5 BY MR. ZELLER:

6 Q. Are there any essential components, hardware  
7 components, that you're aware of that a smartphone needs  
8 to have?

9 MR. MONACH: Object to form. Calls for  
10 opinion testimony outside his declaration.

11 You can -- you can answer if you understand  
12 the question and have an answer.

13 THE WITNESS: Smartphones generally require  
14 means of inputting information and means of outputting  
15 or receiving information.

16 BY MR. ZELLER:

17 Q. What's your understanding of what the most  
18 common means is of inputting and outputting information  
19 for a smartphone?

20 MR. MONACH: Object to form.

21 THE WITNESS: Well, in what time frame?

22 Obviously, they've changed over a period of  
23 time as technology changes.

24 BY MR. ZELLER:

25 Q. Well, when were smartphones first available?

1 MR. MONACH: Object to form.

2 THE WITNESS: A number of years ago.

3 BY MR. ZELLER:

4 Q. What year?

5 A. I don't know.

6 MR. MONACH: Object to form.

7 BY MR. ZELLER:

8 Q. Who was the manufacturer of the first  
9 smartphone?

10 MR. MONACH: Object to form.

11 THE WITNESS: I -- I'm not sure.

12 I don't know.

13 BY MR. ZELLER:

14 Q. Do you know what the most common means is  
15 today of inputting and outputting information in  
16 smartphones?

17 MR. MONACH: Object to form.

18 THE WITNESS: Possibly a display screen.

19 BY MR. ZELLER:

20 Q. You say "possibly."

21 Do you know?

22 MR. MONACH: Object to form.

23 THE WITNESS: I -- I wouldn't swear to it. I  
24 don't know for sure.

25 BY MR. ZELLER:

1 Q. You'll agree with me that touch screens are  
2 not proprietary just in terms of their overall shape to  
3 Apple; correct?

4 MR. MONACH: Object to form.

5 THE WITNESS: Would you repeat the question,  
6 please.

7 BY MR. ZELLER:

8 Q. Touch screens are not proprietary in terms of  
9 their overall shape to Apple; correct?

10 MR. MONACH: Objection to form.

11 THE WITNESS: I find the question sort of too  
12 broad or impossible to answer.

13 A touch screen -- the shape of a touch screen  
14 could be proprietary to Apple or to anyone else.

15 BY MR. ZELLER:

16 Q. Please tell me the circumstances under which  
17 in your view the shape of a touch screen would be  
18 proprietary to a manufacturer.

19 MR. MONACH: Object to form.

20 THE WITNESS: Well, if a manufacturer had a  
21 cell phone with a heart-shaped touch screen, it's  
22 entirely possible that that could be proprietary.

23 BY MR. ZELLER:

24 Q. Any other circumstances you can think of?

25 MR. MONACH: Object to form.



1 BY MR. ZELLER:

2 Q. I'm asking about the particular shape of the  
3 rectangular display screen alone.

4 In your view is that particular shape of the  
5 rectangular display screen alone as used in connection  
6 with the iPhones proprietary to Apple?

7 MR. MONACH: Objection to form.

8 THE WITNESS: I would think not.

9 BY MR. ZELLER:

10 Q. You, of course, know that touch screens have  
11 been used in a rectangular form, a generally rectangular  
12 shape, going back to at least the 1990s; right?

13 MR. MONACH: Objection to form.

14 THE WITNESS: I know they have been used for a  
15 number of years. I don't know the specific time frame.

16 BY MR. ZELLER:

17 Q. You know that at least as early as 1997 that  
18 cell phones used generally rectangular-shaped displays;  
19 correct?

20 MR. MONACH: Objection to form.

21 THE WITNESS: Yes.

22 BY MR. ZELLER:

23 Q. Generally speaking, in connection with the  
24 design patents that -- that you reviewed, what was your  
25 impression of them when you first reviewed them?

1 MR. MONACH: Object to form.

2 THE WITNESS: Help me understand what -- what  
3 do you mean by what was my impression?

4 They -- they looked like rather conventional  
5 design patents,

6 BY MR. ZELLER:

7 Q. Well, let's focus on the 889 design patent.

8 Did you think that design that was depicted  
9 there was a -- extremely simple design?

10 Did you think it was ornate?

11 What was your overall impression of it?

12 A. The 087?

13 Q. The 889 design patent, that's the Tab 1?

14 A. Right.

15 I thought it was -- rather typical of  
16 Apple-designed products.

17 Q. And what do you mean by that?

18 A. They tend to be -- what has been described by  
19 other designers as "minimalist designs."

20 Q. Another way of describing it to be defined by  
21 simplicity?

22 MR. MONACH: Object to form.

23 BY MR. ZELLER:

24 Q. In its design.

25 A. You could substitute that term, yes.

1 Q. And was that also true of the two other design  
2 patents that you reviewed pertaining to the surface of  
3 the -- of the phones?

4 A. In general.

5 MR. MONACH: Object to form.

6 THE WITNESS: In general, yes.

7 BY MR. ZELLER:

8 Q. And it's true that when a design is reduced to  
9 a level of simplicity little things mean a lot?

10 MR. MONACH: Object to form.

11 THE WITNESS: They can.

12 BY MR. ZELLER:

13 Q. You, yourself, have said that; true?

14 A. I have.

15 Q. Was it true when you said it?

16 A. Yes, of course.

17 Q. It's something you still believe today?

18 MR. MONACH: Object to form.

19 THE WITNESS: I -- I said that in a certain  
20 context that may not apply to every situation.

21 In general it -- it's true that a -- small  
22 nuances would be less noticeable on a highly-complex  
23 design than they would on a -- a more simple design.

24 BY MR. ZELLER:

25 Q. And in terms of designs for electronic

1 devices, the design patents that bring us here today are  
2 on the side of simplicity rather than complexity; right?

3 MR. MONACH: Object to form.

4 THE WITNESS: In general, yes.

5 BY MR. ZELLER:

6 Q. Now, it's true that informed users of  
7 electronic products pay more attention to differences of  
8 necessary features; right?

9 MR. MONACH: Object to form.

10 THE WITNESS: Well, that's a -- a standard  
11 that is -- utilized in the European community.

12 I don't know that it's a standard that is  
13 appropriate here.

14 BY MR. ZELLER:

15 Q. Well, you've said that you agree with that  
16 standard; true?

17 MR. MONACH: Object to the form. Taking a  
18 statement out of context.

19 He's not here to testify about a European  
20 proceeding.

21 But, if you can answer the question in the  
22 abstract as it's phrased, go ahead.

23 THE WITNESS: I'm not going to argue with the  
24 -- the European community design registration's legal  
25 standards, no.

1 BY MR. ZELLER:

2 Q. I didn't ask you if you were going to argue  
3 with it.

4 You have said that you did agree with the  
5 proposition that informed users pay more attention to  
6 differences of necessary features; correct?

7 MR. MONACH: Object to the form of the  
8 question for the reasons previously stated.

9 To the extent that you're asking him about the  
10 European proceeding, I object that it goes outside the  
11 scope of discovery in this case.

12 BY MR. ZELLER:

13 Q. It's a simple question.

14 You said it or you didn't.

15 MR. MONACH: Same objection.

16 THE WITNESS: I agree with it in the European  
17 community.

18 BY MR. ZELLER:

19 Q. In your view the informed user in Europe  
20 perceives the design patents that bring us here today  
21 differently than an informed user in the United States?

22 MR. MONACH: Objection. Lack of foundation  
23 and goes beyond the scope of preliminary injunctive  
24 discovery here.

25 THE WITNESS: Well, our standards don't --

1 design.

2 MR. MONACH: Object to form. Lacking in  
3 foundation in light of witness' prior testimony.

4 THE WITNESS: If Apple created minimalist  
5 design and there was no -- prior art, it would seem that  
6 it would be entirely able to be protected legally.

7 BY MR. ZELLER:

8 Q. In your view does the 889 design patent  
9 protect or make proprietary to Apple the concept of  
10 minimalism for tablet computers?

11 MR. MONACH: Object to the form of the  
12 question.

13 THE WITNESS: No.

14 As I've already testified, design patents  
15 don't protect concepts. They protect designs.

16 BY MR. ZELLER:

17 Q. In your view do the two -- what we're calling  
18 "the phone design patents" that are the subject of your  
19 declaration make proprietary to Apple the concept of  
20 minimalism for phones?

21 MR. MONACH: Object to the form of the  
22 question.

23 THE WITNESS: No, because, as I have already  
24 testified, design patents don't protect concepts, they  
25 protect designs.

1 BY MR. ZELLER:

2 Q. What is "4G"?

3 MR. MONACH: Object to the form of the  
4 question. Lacking foundation.

5 THE WITNESS: I don't know.

6 BY MR. ZELLER:

7 Q. Does Apple have a 4G phone?

8 A. I don't know.

9 Q. Who are the carriers for the Samsung Galaxy S  
10 4G?

11 A. I don't know.

12 MR. MONACH: Objection. Lack of foundation.

13 THE WITNESS: I don't know.

14 BY MR. ZELLER:

15 Q. Who are the carriers for the Infuse 4G phone?

16 MR. MONACH: Same objection.

17 THE WITNESS: I don't know.

18 BY MR. ZELLER:

19 Q. What channels are those Samsung phones sold  
20 through?

21 MR. MONACH: Same objection.

22 THE WITNESS: I don't know.

23 BY MR. ZELLER:

24 Q. What channels are the Galaxy Tab 10.1 sold  
25 through?

1 MR. MONACH: Same objection.

2 THE WITNESS: I don't know.

3 BY MR. ZELLER:

4 Q. Have you seen any of those accused products in  
5 any store anywhere at any time?

6 A. I don't recall having seen them, no.

7 Q. You don't have any expertise in the  
8 engineering of mobile phones or tablet computers;  
9 correct?

10 A. No, not specifically.

11 Q. That's a correct statement, that you do not  
12 have such expertise; correct?

13 MR. MONACH: Object to form.

14 THE WITNESS: What is "such expertise" again?

15 MR. ZELLER: I didn't say "such expertise"?

16 MR. MONACH: That's what the -- that's what  
17 the transcript says.

18 MR. ZELLER: Not the original question.

19 BY MR. ZELLER:

20 Q. You are not an expert in the engineering of  
21 mobile phones or tablet computers; correct?

22 A. That's correct.

23 Q. You're not an expert in the manufacture of  
24 mobile phones or computer tablets; correct?

25 A. That's correct.



1 element functional, yes.

2 BY MR. ZELLER:

3 Q. I didn't use the word "functional."

4 I used the word "utilitarian."

5 Are you --

6 A. Okay, utilitarian.

7 Q. So you're an expert in that area; is that  
8 true?

9 MR. MONACH: Object to form. Asked and  
10 answered.

11 You can answer it again.

12 THE WITNESS: From a design view, yes.

13 BY MR. ZELLER:

14 Q. You don't say that anywhere in your  
15 declaration; do you?

16 MR. MONACH: Object to form. Best Evidence  
17 Rule.

18 THE WITNESS: Let me think about that for a  
19 minute.

20 BY MR. ZELLER:

21 Q. Please point out to us where in your  
22 declaration you offer yourself as an expert in the  
23 functional or utilitarian aspects of mobile phones or  
24 tablet computers, or, in fact, offer any opinion on what  
25 is or is not functional or utilitarian.

1 MR. MONACH: Object to the form of the  
2 question to the extent it mischaracterizes his prior  
3 testimony.

4 Object under the Best Evidence Rule that the  
5 declaration is the best evidence of what it says, but if  
6 you want the witness to go -- to sit here and go through  
7 it on the record, he can do so.

8 THE WITNESS: I think the two questions you  
9 asked is what -- one, did I include that opinion in my  
10 declaration and the answer to that is, no, I don't  
11 believe I did, but the prior question was do I consider  
12 myself an expert in that, and the answer to that is yes.

13 BY MR. ZELLER:

14 Q. Why does your declaration contain no opinion  
15 as to whether or not any elements or features of mobile  
16 phones or tablet computers are utilitarian or  
17 functional?

18 MR. MONACH: Object to the form of the  
19 question, and I don't know that this calls for  
20 communications with counsel, but if -- if it calls for  
21 communications with counsel other than facts and  
22 assumptions, I'd instruct you not to reveal those facts  
23 and assumptions.

24 THE WITNESS: I don't think I gave an opinion  
25 on that in my declaration because design patents are --

1 are primarily ornamental or they wouldn't have been  
2 issued by the Patent Office, so I saw no reason to give  
3 an opinion on that.

4 BY MR. ZELLER:

5 Q. Well, focusing on the 889 design patent, when  
6 you offered your opinions in the declaration in this  
7 case, were you assuming that the elements or features  
8 depicted in the design patent were primarily ornamental?

9 A. Yes.

10 Q. And is it also true -- same statement true  
11 with respect to the two other design patents that are  
12 the subject of your declaration, namely those involving  
13 the surface of the -- the phones?

14 A. Yes.

15 Q. So is it true that with respect to utilitarian  
16 or functionality --

17 Well, let me rephrase that.

18 Is it true that with respect to functionality  
19 of -- any of the design patents that are at issue this  
20 is something that you're simply assuming as opposed to  
21 something you're offering an opinion on in this case?

22 MR. MONACH: Object to the form of the  
23 question to the extent it might be intended to cover  
24 rebuttals or replies.

25 The witness has testified to the opinion he's

1 given and hasn't given his opening statement -- his  
2 opening declaration and why, but certainly if someone  
3 from your side comes and says a feature is functional we  
4 reserve the right to respond to that.

5 MR. ZELLER: And I reserve the right to  
6 examine him today on any opinion he has or is going to  
7 give on functionality.

8 The question is is --

9 MR. MONACH: He may not know what the -- he  
10 may not know what opinions he's going to give --

11 MR. ZELLER: Then he's going to have --

12 MR. MONACH: -- until he sees an opinion from  
13 the other side, which he's reserved the right to respond  
14 to.

15 MR. ZELLER: That's, obviously, completely  
16 improper.

17 BY MR. ZELLER:

18 Q. So my question is, are you assuming that the  
19 features of the design patents that you describe in your  
20 declaration are not functional and primarily ornamental,  
21 or are you offering an opinion on that?

22 MR. MONACH: Object to the form of the  
23 question.

24 It's ambiguous with respect to whether we're  
25 talking about the declaration given or an opinion that

1 he might give in response to other opinions.

2 You can answer.

3 THE WITNESS: I didn't assume that they were  
4 primarily ornamental just because the Patent Office says  
5 they are, but it is my opinion that they are ornamental.

6 BY MR. ZELLER:

7 Q. And you had that opinion as of the time that  
8 you signed this declaration on June 30th, 2011; is that  
9 true?

10 A. Yes.

11 Q. So why isn't it in your declaration?

12 MR. MONACH: Objection. Asked and answered.

13 THE WITNESS: I wasn't asked to give that  
14 opinion.

15 BY MR. ZELLER:

16 Q. Okay. Well, please tell me the -- first of  
17 all, the full basis of the investigation that you  
18 undertook to determine whether or not any of the  
19 elements or features of the design patents that you  
20 discuss in your declaration are primarily functional or  
21 primarily ornamental.

22 I want to know everyone you talked to, every  
23 piece of literature you reviewed, all the works that you  
24 did in advance of signing your declaration and as of the  
25 time you formed that opinion.

1 MR. MONACH: I'm going to instruct the witness  
2 not to answer with respect to communications he had  
3 other than communications revealing facts that he relied  
4 on or assumptions that he relied on in giving his  
5 declaration.

6 THE WITNESS: It's pretty simple.

7 I examined the three design patents involved  
8 and looked at the individual visual features of each and  
9 determined that each was ornamental in that its  
10 appearance was not dictated by function.

11 BY MR. ZELLER:

12 Q. So you -- you looked at the designed patents.

13 That was the full extent of your basis for  
14 your opinion that the elements or features of the design  
15 patents that are discussed in your declaration are not  
16 functional and instead are primarily ornamental;  
17 correct?

18 MR. MONACH: Object to form.

19 THE WITNESS: That's correct.

20 I don't know how one could make that  
21 determination unless they the visual features of the  
22 design patent.

23 BY MR. ZELLER:

24 Q. You didn't do anything beyond looking at the  
25 design patents on their face for that inquiry; true?

1 A. Well, when you say I -- my analysis was  
2 limited to looking at them, no, that wouldn't be true.

3 Obviously, when you look at them you have to  
4 make some kind of an intelligent decision based on the  
5 -- on having looked at them.

6 Q. Well, did you ask anyone at Apple whether or  
7 not any of the features that you describe or any of the  
8 elements you describe for any of these design patents  
9 were primarily functional or not?

10 A. No.

11 Q. Did you ask any of the named inventors?

12 A. No.

13 Q. Did you ask anyone to even speak to Apple or  
14 any of the named inventors about that?

15 MR. MONACH: I'm going to instruct the witness  
16 again not to reveal any -- not saying they did happen or  
17 didn't, but not to reveal any attorney/client  
18 communications other than communications in which you  
19 obtained facts or assumptions that you considered in  
20 giving your declaration.

21 THE WITNESS: No, the answer is no, I did not,  
22 because I was able to make that determination on my own.

23 BY MR. ZELLER:

24 Q. Did you review any Apple documents?

25 MR. MONACH: I'll again instruct the witness

1 to limit his answer to any documents that you reviewed  
2 that provided facts that you considered or assumptions  
3 that you relied upon in forming your opinions.

4 THE WITNESS: Well, I obviously examined the  
5 Apple documents of these three design patents.

6 BY MR. ZELLER:

7 Q. Did you review any internal Apple documents  
8 pertaining to the engineering, design, manufacture, or  
9 costing of any tablet computer or any mobile phone?

10 MR. MONACH: Again, I'll instruct the witness  
11 to answer only if you reviewed such documents and you  
12 considered them in giving your opinion.

13 THE WITNESS: Well, again, your question is  
14 very broad, and it included the term "design," so did I  
15 review any Apple documents, the internal, I think you  
16 said, documents involving design?

17 Yes, I examined these three design patents.

18 BY MR. ZELLER:

19 Q. What other documents?

20 MR. MONACH: Same instruction.

21 THE WITNESS: None others.

22 BY MR. ZELLER:

23 Q. Please tell us from a functional point of  
24 view, why is it that the most common shape of a display  
25 screen used for smartphones is rectangular?



1 MR. MONACH: Object to form.

2 THE WITNESS: Probably because the  
3 manufacturers of display screens make them in those  
4 shape and have them in stock and available.

5 BY MR. ZELLER:

6 Q. Do you know what an "aspect screen ratio" is?

7 A. Sure.

8 Q. What is it?

9 A. It's a height-to-width ratio.

10 Q. And what's the relationship between the aspect  
11 screen ratio and the shape -- the most common shape for  
12 display screens that are used for smartphones?

13 MR. MONACH: Object to the form of the  
14 question.

15 THE WITNESS: I don't really know.

16 BY MR. ZELLER:

17 Q. When you say "really," do you know at all?

18 A. No.

19 Q. Do you know what the relationship is between  
20 the aspect screen ratio and the shape of display  
21 sequences that are used for portable tablet computers?

22 MR. MONACH: Object to the form of the  
23 question.

24 THE WITNESS: I doubt that they're limit --  
25 that tablet computers are limited to one aspect ratio

1 particular aspect screen ratios?

2 MR. MONACH: Object to the form of the  
3 question. It's vague and ambiguous.

4 THE WITNESS: I don't know.

5 BY MR. ZELLER:

6 Q. Do you consider yourself to be in a position  
7 as an expert to offer any opinion about that in this  
8 case?

9 MR. MONACH: Same objection.

10 THE WITNESS: What -- what is "about that"?

11 BY MR. ZELLER:

12 Q. That being whether or not there are particular  
13 rectangular shapes of display screens that are most  
14 efficacious for certain aspect screen ratios for tablet  
15 computers.

16 MR. MONACH: Object to the form. Question.

17 THE WITNESS: I don't know.

18 BY MR. ZELLER:

19 Q. You're not an expert in that area and you  
20 can't offer an opinion on that; true?

21 MR. MONACH: Object to the form of the  
22 question.

23 THE WITNESS: Yes, that's true.

24 BY MR. ZELLER:

25 Q. Is it a coincidence that the iPad and the

1 iPad2 have a generally rectangular shape and the display  
2 screen for those products is in a generally rectangular  
3 shape?

4 MR. MONACH: Object to the form of the  
5 question.

6 THE WITNESS: I -- I would have no way of  
7 knowing if it was a coincidence.

8 BY MR. ZELLER:

9 Q. Is it a coincidence that various versions of  
10 the iPhone are in a generally rectangular shape and the  
11 fact that their displays are in a generally rectangular  
12 shape?

13 MR. MONACH: Same objection to form.

14 THE WITNESS: Again, I would have no way of  
15 knowing if it was a coincidence.

16 BY MR. ZELLER:

17 Q. You're generally aware that there are black  
18 borders running along the tops and the sides of the iPad  
19 and the iPad2; right?

20 A. In some cases, yes.

21 Q. Why are there those black borders there?

22 MR. MONACH: Object to form.

23 THE WITNESS: Because that's what the  
24 designers wanted.

25 BY MR. ZELLER:

1 Q. Does that black border do anything for the  
2 display screen or for the product?

3 MR. MONACH: Object to form.

4 THE WITNESS: Help me understand, what do you  
5 mean by does it -- does it do anything?

6 BY MR. ZELLER:

7 Q. Does it perform any -- any function at all in  
8 connection with the device that you know of?

9 A. It hides what's below in -- in that it -- it's  
10 not a transparent or translucent area.

11 Q. And the same is true for the borders that  
12 you've seen on the iPhones as well; right?

13 MR. MONACH: Object to form.

14 THE WITNESS: Generally, yes.

15 BY MR. ZELLER:

16 Q. Do you know what the most common color is for  
17 mobile phones?

18 A. No.

19 Q. Do you know what the most common color was for  
20 mobile phones even prior to the time of the design  
21 patents that bring us here today?

22 A. I think I'd probably have an intelligent  
23 guess, but I -- but your question is do I know, and the  
24 answer to that is, no, I don't know.

25 Q. You're not certain, but you have a -- you have

1 a belief?

2 A. Yes.

3 Q. And -- and what's that belief?

4 A. Black.

5 Q. Do you have an understanding as to why the  
6 display screen of the iPad products and the iPhone  
7 products are black when they're turned off?

8 A. Well, when they're turned off, there's no --  
9 no illumination, so they're black.

10 Q. And when they're turned on they illuminate and  
11 they're no longer black; right?

12 MR. MONACH: Object to form.

13 THE WITNESS: Partially or -- or, yes, that's  
14 possible.

15 BY MR. ZELLER:

16 Q. Are there alternative colors for display  
17 screens when they're turned off other than black?

18 A. I don't really know.

19 I suspect there are -- I suspect they can be  
20 dark gray.

21 Q. But you're not sure and you don't have an  
22 expert opinion on that; right?

23 A. No, I don't.

24 Q. Can you think of any advantages from the user  
25 perspective in having a display screen that goes black

1 when it's off?

2 MR. MONACH: Objection vague. Object to form.

3 THE WITNESS: No, I can't think of any  
4 advantage.

5 BY MR. ZELLER:

6 Q. Well, wouldn't one advantage be that the user  
7 knows that the device is actually powered off, it's  
8 turned off?

9 MR. MONACH: Object to form.

10 BY MR. ZELLER:

11 Q. Isn't consuming power?

12 MR. MONACH: Assumes facts not in evidence.

13 THE WITNESS: I wouldn't agree with that, no.  
14 I think the screen could -- could go black  
15 while it was -- while the unit was still on.

16 BY MR. ZELLER:

17 Q. So you still can't think of any advantage for  
18 -- to a consumer to having a display screen that goes  
19 black when it's off?

20 I mean, as we've been talking here you can't  
21 think of anything?

22 A. No.

23 Q. Do you ever go to the movies?

24 A. Sure.

25 Q. Do you have a smartphone?

1 A. Yes.

2 Q. You've seen other people out in the world  
3 having smartphones, too?

4 A. I have.

5 Q. Do you want to sit in a dark theater with  
6 everyone's displays still lit up?

7 Do you think there's some advantage there in  
8 having a display screen that goes dark, goes black?

9 MR. MONACH: Object to the form of the  
10 question.

11 THE WITNESS: I think -- I think there's an  
12 advantage to having a display screen able to go dark.

13 I don't agree with you that's necessarily  
14 indicative of the fact that the machine has shut down or  
15 is not consuming power.

16 MR. ZELLER: I've moved on.

17 You told me you just don't see that, so I've  
18 moved on to something else.

19 MR. MONACH: Objection.

20 If that's a question, I object to form.

21 MR. ZELLER: No. I've asked a completely  
22 separate question.

23 THE WITNESS: Well, repeat the question then.

24 BY MR. ZELLER:

25 Q. Do you think there are advantages to the user

1 in being able to make the device go off and look dark  
2 and be black instead of emitting light such as in  
3 darkened bedrooms at night, such as in movie theaters,  
4 such as in cars at night?

5 You'll agree with me that's an advantage in  
6 having a black -- or display screen that can go black;  
7 right?

8 A. Sure, I'd agree with that.

9 Q. You do know that -- it took a while, but Apple  
10 came out with a white iPhone; right?

11 MR. MONACH: Object to form.

12 THE WITNESS: I know they came out with one.  
13 I don't know that it took a while.

14 BY MR. ZELLER:

15 Q. So you don't know why there was -- it took a  
16 while for Apple to launch a white iPhone?

17 MR. MONACH: Object to form.

18 THE WITNESS: I just said I don't know if it  
19 took a while.

20 BY MR. ZELLER:

21 Q. Do you know what "light bleed" is?

22 MR. MONACH: Object to form.

23 THE WITNESS: I don't know what your  
24 interpretation of "light bleed" is.

25 BY MR. ZELLER:



1 Q. Have you ever heard that term in connection  
2 with electronic devices?

3 A. No.

4 Q. Do you have a sense of what it might mean?

5 MR. MONACH: Object to form.

6 THE WITNESS: Might mean that light is  
7 bleeding.

8 BY MR. ZELLER:

9 Q. Means light is coming out of the device when  
10 you don't want it to?

11 A. I guess it could mean that.

12 Q. And you understand that manufacturers of  
13 electronic devices consider that to be undesirable  
14 because consumers think it's undesirable; right?

15 MR. MONACH: Object to form.

16 THE WITNESS: I'll take your word for it.

17 BY MR. ZELLER:

18 Q. You don't have any reason to doubt that; do  
19 you?

20 A. I'll take your word for it.

21 Q. Please tell me all the reasons you have to  
22 doubt that statement.

23 MR. MONACH: Object to the form. It's  
24 hopelessly vague.

25 THE WITNESS: I just don't have an opinion

1 A. I don't really know.

2 MR. MONACH: Lack of foundation.

3 THE WITNESS: I don't really know.

4 MR. MONACH: It's vague and ambiguous.

5 BY MR. ZELLER:

6 Q. In your view does the ordinary observer, the  
7 ordinary purchaser, vary in any way depending on how  
8 expensive the product is?

9 A. Well, yes, of course, but what you're -- but  
10 what you're saying is that expense is equated only to  
11 the dollar price, and that's not how bright marketers or  
12 designers understand expense.

13 Expense is related to the benefits.

14 And, so, if you get a smartphone that is \$500  
15 but provides extraordinary benefits, the average  
16 consumer may consider this to be a bargain.

17 Q. You understood my question that I asked you  
18 when you gave that answer or was there something unclear  
19 about my question to you?

20 A. I thought I understood it and I thought I  
21 answered it.

22 Q. So it wasn't deliberately?

23 MR. MONACH: Object to the form of the  
24 question.

25 If you have a question, pose it.

1 Don't try to browbeat or argue with the  
2 witness because you don't like the answer.

3 MR. ZELLER: I don't like it because it's not  
4 responsive.

5 I'd ask you listen to my questions.

6 MR. MONACH: Why don't you pose a question.

7 BY MR. ZELLER:

8 Q. In your view --

9 Well, let's talk about your declaration.

10 When you offered your opinions about the  
11 ordinary observer, the ordinary observer you're  
12 referring to includes purchasers of smartphones; true?

13 A. Sure.

14 Q. Purchasers of -- of smartphones are more  
15 likely to pay attention to differences in designs  
16 between smartphones because they are costly products;  
17 correct?

18 MR. MONACH: Object to form.

19 THE WITNESS: Ask the question again, please.

20 BY MR. ZELLER:

21 Q. Isn't it true that purchasers of smartphones  
22 are more likely to pay attention to differences in  
23 designs between smartphones because they are products  
24 that are on the more costly side rather than the less  
25 costly side?

1 MR. MONACH: Object to form.

2 THE WITNESS: Generally I would agree with  
3 that.

4 BY MR. ZELLER:

5 Q. You also understand that purchasers of  
6 smartphones buy those phones overwhelmingly through  
7 carrier storefronts; correct?

8 MR. MONACH: Objection. Lack of foundation.

9 THE WITNESS: I -- I couldn't agree with that.

10 BY MR. ZELLER:

11 Q. Do you know --

12 A. An Apple Store is not a carrier storefront.

13 Q. Do you know where most iPhones are sold?

14 A. Where they're sold?

15 Q. Yes.

16 A. Probably in China.

17 Q. Sold?

18 A. Sold.

19 Q. Let me try it this way: What types of stores  
20 have the most volume in sales of iPhones?

21 MR. MONACH: Objection. Lack of foundation.

22 Outside the scope of his declaration.

23 THE WITNESS: I don't know.

24 I mean -- I guess there's two choices, an  
25 Apple Store or a carrier.

1 BY MR. ZELLER:

2 Q. Well, you do understand, generally speaking,  
3 that most purchasers of smartphones in the United States  
4 enter in to a contract, a long-term contract with a  
5 carrier; right?

6 A. Yes.

7 MR. MONACH: Objection.

8 BY MR. ZELLER:

9 Q. You understand that those contracts are  
10 typically at least a year, sometimes more than a year;  
11 right?

12 A. I understand that.

13 Q. And you'll agree with me that that fact also  
14 means that it is more likely that smartphone purchasers  
15 pay more attention to differences in designs between  
16 smartphones; right?

17 I mean that's another factor that weighs in  
18 favor of purchasers giving more care; right?

19 A. I wouldn't agree with that, no.

20 Q. You don't think a multi-year commitment makes  
21 people more careful?

22 MR. MONACH: Object to form.

23 THE WITNESS: I don't think -- which carrier  
24 you pick or how long your contract is has anything to do  
25 with the selection of the design of the phone.

1 BY MR. ZELLER:

2 Q. Please tell me the full factual basis for your  
3 opinion on that.

4 A. Design decisions in terms of purchasing are --  
5 are often made, as I said earlier, based on high  
6 perceived value and high consumer acceptance related to  
7 the -- the hardware, to the item, and I don't know that  
8 that has any correlation between which carrier or how  
9 long a contract would be.

10 Q. Now you're saying you don't know.

11 Do you know whether or not the fact that  
12 consumers are entering in to contracts with carriers  
13 when they buy these cell phones, these smartphones,  
14 makes the purchasers more careful or not?

15 MR. MONACH: Object to form.

16 BY MR. ZELLER:

17 Q. Do you know one way or the other?

18 A. Makes them more careful.

19 Q. In their purchasing.

20 MR. MONACH: Objection. Vague.

21 THE WITNESS: It may make them more careful in  
22 their purchasing.

23 I don't know that that has anything to do with  
24 a design choice, however.

25 BY MR. ZELLER:

1 Q. I'm not asking about design choice. I'm  
2 asking a pretty straightforward question.

3 Let me try it again.

4 Do you know one way or another whether  
5 purchasers of smartphones are more careful in their  
6 purchasing decisions in order -- in other words, in what  
7 devices to because of the fact that they're entering in  
8 to a contract with a carrier that is -- a year long and  
9 potentially longer?

10 MR. MONACH: Objection. Vague. Asked and  
11 answered.

12 THE WITNESS: I don't know.

13 BY MR. ZELLER:

14 Q. Do most smartphone purchasers in the context  
15 of their potential acquisition of a smartphone interact  
16 with representatives or salespeople of the carriers?

17 MR. MONACH: Object to form.

18 THE WITNESS: I don't know.

19 BY MR. ZELLER:

20 Q. Does that have any effect on whether they pay  
21 attention to differences in designs between smartphones  
22 or not?

23 MR. MONACH: Objection. Vague. Incomplete  
24 hypothetical.

25 THE WITNESS: I don't know.

1 BY MR. ZELLER:

2 Q. Do you know what percentage of purchasers of  
3 iPhones even care about the design of the phone --

4 MR. MONACH: Objection.

5 BY MR. ZELLER:

6 Q. -- as a factor in their purchasing decision?

7 MR. MONACH: Objection. Vague.

8 THE WITNESS: I suspect they all care about  
9 the design.

10 BY MR. ZELLER:

11 Q. Well, you say you suspect.

12 Do you know?

13 A. I couldn't prove that they all know -- or that  
14 they all care.

15 Q. What percentage of iPhone purchasers purchase  
16 the iPhone because of the design?

17 MR. MONACH: Object to the form of the  
18 question.

19 THE WITNESS: I suspect it's a very high  
20 percent.

21 BY MR. ZELLER:

22 Q. What percentage?

23 MR. MONACH: Object to form.

24 THE WITNESS: Vast majority.

25 BY MR. ZELLER:



1 Q. So what -- what percentage?

2 MR. MONACH: Same objection.

3 THE WITNESS: 70, 80.

4 BY MR. ZELLER:

5 Q. And you're offering an expert opinion on that?

6 A. I didn't say it was an expert opinion.

7 You asked me a question, and I tried to give  
8 you an honest answer.

9 Q. Well, are you an expert --

10 Are you offering an expert opinion in this  
11 case about what purchasers notice and care about in  
12 connection with the design of the iPhone?

13 MR. MONACH: The --

14 I'm going to object and instruct the witness  
15 not to answer or speculate about what he might be --  
16 opinions he might be asked to give in the future in  
17 rebuttal.

18 The opinions he has given are set forth in his  
19 declaration that was filed.

20 THE WITNESS: I don't know.

21 BY MR. ZELLER:

22 Q. Well, are you an expert on that?

23 MR. MONACH: Object to the form of the  
24 question.

25 THE WITNESS: Explain "on that."

1 BY MR. ZELLER:

2 Q. Are you an expert in to the reasons why  
3 consumers buy iPhones?

4 A. Not to the --

5 MR. MONOCH: Object to the form.

6 Go ahead.

7 THE WITNESS: Not specifically with regard to  
8 why they buy iPhones.

9 BY MR. ZELLER:

10 Q. Are you an expert as to why consumers buy iPad  
11 products?

12 A. Not specifically with regard to why they buy  
13 iPad products.

14 Q. Are you an expert in why consumers buy  
15 smartphones?

16 MR. MONACH: Object to form.

17 THE WITNESS: No.

18 BY MR. ZELLER:

19 Q. Now, earlier you offered a percentage of your  
20 belief as to how many consumers buy the iPhone because  
21 of the design.

22 Please tell me the full basis for that  
23 percentage.

24 A. It's my belief in general that a design is an  
25 extremely powerful influence in purchases in general,

1 and in -- in a category like cell phones it's -- just a  
2 terribly influential factor.

3 Q. And that's an assumption that -- that you  
4 bring to your opinions in this case; right?

5 MR. MONACH: Object to the form of the  
6 question.

7 THE WITNESS: You can characterize it as "an  
8 assumption" if you want.

9 I think it's based on decades of experience  
10 working in the retail environment for a company like  
11 J.C. Penney, where we did a lot of studies of how and  
12 why people buy what they do based on the appearance of  
13 products and importance of design.

14 BY MR. ZELLER:

15 Q. In other words, that's a viewpoint that you've  
16 developed over the years based upon your work in the  
17 field, and that's something that's the kind of  
18 information and view that you bring to this case when  
19 you offer your opinion; right?

20 A. I would agree with that.

21 Q. Did you ever ask Apple for any of their  
22 internal research as to why consumers purchase iPhones?

23 A. No.

24 Q. Is there a reason why you didn't ask?

25 A. I thought it was self-evident why.

1 Q. And, by the way, are you an expert on the  
2 reasons why consumers buy tablet computers?

3 A. Not specifically on why they buy tablet  
4 computers, no.

5 Q. Do you have any knowledge or information as to  
6 what it is that carriers believe is important in the  
7 design of smartphones or tablet computers?

8 MR. MONACH: Objection. Vague.

9 THE WITNESS: No.

10 BY MR. ZELLER:

11 Q. Are you an expert in that area?

12 A. No.

13 Q. Before the break we were talking about screen  
14 colors.

15 Do you recall that?

16 A. I recall that.

17 MR. ZELLER: What's the next number?

18 MS. BUCHAKJIAN: 63.

19 MR. ZELLER: 63?

20 Let's please mark as Exhibit 63 a Samsung 4G  
21 phone.

22 (Exhibit 63 was marked for Identification.)

23 MR. MONACH: For the record counsel --

24 Oh. Sorry.

25 Are you representing that this is the phone

1 that's described in his declaration or are you using it  
2 to be a category of phone that has a capability for 4G  
3 communication?

4 MR. ZELLER: It just says "4G" on the back.

5 MR. MONACH: So our record is clear, what is  
6 the name and model of this phone?

7 MR. ZELLER: I'd like to ask my questions  
8 independent of that.

9 That's fine.

10 I mean, I'll identify it, but it's marked for  
11 the record, and I don't want --

12 I mean, we're talking about design here, and  
13 I'm not going to start specifying things for him and  
14 giving him other identifying information.

15 MR. MONACH: Well, that's fine, but you've  
16 made a statement on the record about what you've handed  
17 him, and I think the record should be clear that it's  
18 not one of the phones that is in his declaration.

19 MR. ZELLER: Apparently you're desperate to  
20 communicate that him.

21 MR. MONACH: No, I want the record to be  
22 clear.

23 MR. ZELLER: It's really irrelevant to what  
24 questions I'm going to ask him.

25 I have marked a phone. I called it a "Samsung

1 purchasers of smartphones believe that dark metallic  
2 gray is substantially the same color as black.

3 MR. MONACH: Asked and answered.

4 BY MR. ZELLER:

5 Q. What data, what facts, do you have to  
6 substantiate that opinion?

7 Please tell me all of them.

8 A. Well, as I said earlier, in decades of  
9 experience with J.C. Penney and studying how ordinary  
10 observers evaluate designs at the point of purchase,  
11 they make broad generalizations, unlike an expert, and  
12 my professional opinion is based upon those experiences  
13 and consumer research data that an ordinary observer  
14 would look at the front face of an iPhone and say "It's  
15 black."

16 Q. Anything else?

17 A. I think that's enough.

18 Q. I didn't ask if that's enough.

19 Do you have any other basis for your expert  
20 opinion that you provided or do I have your complete  
21 full basis?

22 A. You have everything I can think of at the  
23 moment.

24 Q. Now, the experience that you just described  
25 working with consumer products was at J.C. Penney;

1 right?

2 A. That's correct.

3 Q. Did J.C. Penney sell -- have any smartphones  
4 that it sold when you were there?

5 A. I left in 1986, so I don't think so.

6 Q. Have you ever worked at any retailer or any  
7 other vendor of smartphone products such that you were  
8 in a position to observe consumer behavior insofar as it  
9 related to the purchase or observation of smartphones or  
10 tablet computers?

11 A. I've never worked in a retail environment that  
12 sold tablet computers or smartphones.

13 Q. So it's true that the experience that you  
14 cited as the basis for your opinion that consumers  
15 believe that gray is black was based on experience that  
16 had nothing to do with smartphones or tablet computers;  
17 true?

18 MR. MONACH: Object to the form of the  
19 question as misstating the prior testimony.

20 THE WITNESS: Well, first, I didn't say that  
21 they thought gray was black, and, secondly, I think that  
22 experience and knowledge that I gained is applicable  
23 here as well as to other areas.

24 BY MR. ZELLER:

25 Q. The experience that you cited for your opinion

1 that consumers believe that dark metallic gray is  
2 substantially the same as black for smartphones and  
3 tablet computers was based upon experience in a retail  
4 environment that did not have in it smartphones or  
5 tablet computers; correct?

6 A. That's correct, but it doesn't mean that the  
7 knowledge gained isn't transferrable from one form of  
8 consumer electronics to another.

9 Q. Well, what consumer electronics are you  
10 referring to where it had a dark metallic gray color for  
11 a display and consumers perceived it to be substantially  
12 the same as the color black?

13 A. I could cite television sets as an example  
14 where at J.C. Penney we designed and had manufactured to  
15 our design specifications and sold television sets that  
16 probably are a very close analogy to this case where the  
17 screen of a television set is not through my eyes  
18 perfectly black, but would be considered so by an  
19 ordinary observer.

20 Q. What were the T.V. sets that you're referring  
21 to that were sold when you were there?

22 A. What were they?

23 Q. Yeah.

24 A. Well, they ranged from 9-inch to 25-inch.

25 Q. They were -- they were cathode ray television



1 inches, neither one of which would seem to be  
2 advantageous.

3 BY MR. ZELLER:

4 Q. And you would agree with me that generally  
5 speaking for iPhones -- or excuse me -- for smartphone  
6 and computer tablet design, the same is true, when you  
7 talk about what the size of those side borders are;  
8 right?

9 MR. MONACH: Object to form.

10 THE WITNESS: I didn't understand your  
11 question.

12 I -- with regard to iPhones and tablets what?

13 BY MR. ZELLER:

14 Q. Well, you told me that you think that there  
15 are certain disadvantages in having to have a wider  
16 border around the display?

17 A. Of having a too wide border, yes.

18 Q. And you talked about that specifically in  
19 context of the iPhone; right?

20 A. Yes.

21 Q. And so my question is now a more general one.

22 Is it true that you also believe that it would  
23 be disadvantageous for smartphones in general and  
24 tablets in general to have to have wider as opposed to  
25 more narrow borders?

1 MR. MONACH: Objection. Vague.

2 BY MR. ZELLER:

3 Q. For those same reasons that you discussed in  
4 connection with the iPhone?

5 A. Your -- your question is -- is so vague I  
6 can't give you a definitive answer.

7 In other words, wider -- wider than what and  
8 up to what width?

9 In other words, it's -- it's all conditional.  
10 These are the choices designers make that makes products  
11 successful.

12 It could be too narrow. It could be too wide.

13 Q. We're talking about a particular design  
14 aspect.

15 We're talking about the borders around the  
16 display screens; right?

17 A. Of?

18 Q. On smartphones.

19 A. Okay.

20 Q. Right?

21 A. Okay.

22 Q. You'll agree with me that it is a design  
23 disadvantage to have to have borders around the display  
24 screen of a smartphone that are so wide that it would  
25 either mean that the screen -- the active display screen

1 area is reduced or the phone size has to be increased;  
2 right?

3 MR. MONACH: Objection. Vague and incomplete  
4 hypothetical in light of his prior testimony.

5 THE WITNESS: In -- in general terms, yes, I  
6 would agree with that.

7 BY MR. ZELLER:

8 Q. And the same is true with respect to tablet  
9 computer design; right?

10 MR. MONACH: Same objection.

11 THE WITNESS: Yes, but to a lesser degree,  
12 because there's a little more freedom in a tablet  
13 computer just because of its size and the fact that it's  
14 probably not designed to go in a pocket and whatnot.

15 BY MR. ZELLER:

16 Q. The scale of it is -- is larger when you're  
17 working with a tablet computer than you are with a  
18 smartphone, so at least the space that you have to work  
19 with is larger in the tablet computer arena?

20 A. The -- the matte, if you will, around --  
21 between the frame and the display screen, yes, you'd  
22 have a little more leeway there, be less constrained.

23 Q. In your view is it important to compare the  
24 products to the -- the designs and the design patents  
25 using the same scale?

1           A.     I think it helps in the analysis, and I did  
2     that in my exhibits.

3           If you -- if you look, the photographs of the  
4     products and the patent drawings are as close to being  
5     the same scale as we could achieve.

6           Q.     And why is it you think it's most helpful or  
7     it does help in the analysis?

8           A.     Well, it's just more of an apples-to-apples  
9     comparison -- excuse the pun.

10          Q.     And please tell me, why do you say that?

11                 Why do you think it makes it more  
12     apples-to-apples?

13                 I'm just trying to understand that part of it.

14          A.     Design patents have no dimensions, so they  
15     know no specific size.

16                 So to scale the drawings in a design patent to  
17     the same scale or size as an accused product simply  
18     makes the comparison an easier one to make.

19          Q.     Directing your attention back to Exhibit 65,  
20     do you know whether as of the time that that product was  
21     designed and manufactured as to whether or not there was  
22     a minimum-sized border on the side that had to be used?

23                 MR. MONACH: Objection. Form.

24                 BY MR. ZELLER:

25          Q.     On the phone?

1 inches, neither one of which would seem to be  
2 advantageous.

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5 speaking for iPhones -- or excuse me -- for smartphone  
6 and computer tablet design, the same is true, when you  
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16 Q. The scale of it is -- is larger when you're  
17 working with a tablet computer than you are with a  
18 smartphone, so at least the space that you have to work  
19 with is larger in the tablet computer arena?

20 A. The -- the matte, if you will, around --  
21 between the frame and the display screen, yes, you'd  
22 have a little more leeway there, be less constrained.

23 Q. In your view is it important to compare the  
24 products to the -- the designs and the design patents  
25 using the same scale?

1           A.     I think it helps in the analysis, and I did  
2 that in my exhibits.

3           If you -- if you look, the photographs of the  
4 products and the patent drawings are as close to being  
5 the same scale as we could achieve.

6           Q.     And why is it you think it's most helpful or  
7 it does help in the analysis?

8           A.     Well, it's just more of an apples-to-apples  
9 comparison -- excuse the pun.

10          Q.     And please tell me, why do you say that?  
11                 Why do you think it makes it more  
12 apples-to-apples?

13                 I'm just trying to understand that part of it.

14          A.     Design patents have no dimensions, so they  
15 know no specific size.

16                 So to scale the drawings in a design patent to  
17 the same scale or size as an accused product simply  
18 makes the comparison an easier one to make.

19          Q.     Directing your attention back to Exhibit 65,  
20 do you know whether as of the time that that product was  
21 designed and manufactured as to whether or not there was  
22 a minimum-sized border on the side that had to be used?

23                 MR. MONACH: Objection. Form.

24                 BY MR. ZELLER:

25          Q.     On the phone?



1 A. No, I don't know if there was a minimum size.

2 Q. You don't know what technical or commercial  
3 constraints there were on the size of that side border  
4 as of the time that this phone that was -- we've marked  
5 as Exhibit 65 was designed or manufactured; is that  
6 correct?

7 MR. MONACH: Objection. Vague.

8 THE WITNESS: I don't agree with that, because  
9 I don't even agree that it has to have a border at all  
10 -- in the form of a matte between the display screen and  
11 the edge of the cabinet.

12 BY MR. ZELLER:

13 Q. You --

14 In your view, as of the time that this phone  
15 we marked as Exhibit 65 was manufactured, that it was  
16 technically commercially feasible to design,  
17 manufacture, and sell a smartphone that had an  
18 edge-to-edge active display area?

19 MR. MONACH: Objection. Form.

20 THE WITNESS: If -- if you define  
21 "edge-to-edge" like the display screen is being shown  
22 here, it's going edge-to-edge, there is no mask, or  
23 black mask, or frame between the edge of the product and  
24 the display screen, then I think that's evidence or  
25 proof that you don't have to have a black mask at all

1 appearance of the design, one -- that helps advance the  
2 accessibility of the -- of the technology and makes it  
3 also easier to use from the consumer perspective?

4 A. That's the goal and purpose, and, if it's done  
5 properly, it accomplishes that.

6 If it's done improperly, as it was done, for  
7 example, on BMW's iDrive, then it makes it so complex  
8 nobody can figure it out and they won't even buy the  
9 car, which is a good case, an example of attempting to  
10 simplify it, but having to go through so many steps to  
11 turn the radio on that it became ridiculous.

12 Q. To make sure we're still on the same page,  
13 because I think I understand what you're saying, because  
14 when you say it was the goal and the purpose here, is it  
15 true that from your perspective the -- the appearance of  
16 the iPhone designs and the appearance of the iPad  
17 designs makes the technology itself more accessible to  
18 people and makes it easier for them to use?

19 MR. MONACH: Object to the form of the  
20 question.

21 THE WITNESS: Yes, again, with the caveat  
22 being that it's the ornamental appearance that I'm  
23 referring to that -- that allows this to happen.

24 BY MR. ZELLER:

25 Q. Right.

1           When you say "the ornamental appearance,"  
2           again, we're talking about really your bailiwick here,  
3           which is the -- the design of the product just simply  
4           from an aesthetic point of view, and that it still has  
5           -- it still reaches these goals and has this purpose you  
6           mentioned of making the technology more accessible and  
7           the technology easier to use?

8           A.       I would agree with that.

9           Q.       And you would also agree with me that the  
10          three design patents that bring us here today, the 677  
11          design patent, the 087 design patent, and the 889 design  
12          patent, also have this kind of simplified design that  
13          makes the technology easier for consumers to understand  
14          and increases the ease of use; true?

15                   MR. MONACH: Object to form.

16                   THE WITNESS: Yes, that's true.

17          BY MR. ZELLER:

18          Q.       Now, as part of your -- your field of study  
19          and design, do you look at ergonomics?

20                   Is that something you -- you have a background  
21          in?

22          A.       Sure.

23                   All products are used by humans, and  
24          ergonomics defines the interface between the product and  
25          the user.

1 Q. Is there anything about the iPhone design that  
2 you believe makes it easier to hold in the human hand?

3 MR. MONACH: Object to the question as vague.  
4 As compared to what?

5 THE WITNESS: Easier than a brick?

6 BY MR. ZELLER:

7 Q. Easier than other --

8 Well, let me ask this.

9 Are rectangular shapes something that -- that  
10 are easy to hold for people?

11 MR. MONACH: Object to form.

12 BY MR. ZELLER:

13 Q. Is there ergonomic value to having a  
14 rectangular shape to a phone?

15 A. Easier than what shape?

16 Q. I'm not even comparing it to anything.

17 Is it --

18 Is a rectangular shape something that you  
19 believe is pleasant and easy for ordinary humans to hold  
20 in their hand to use as a phone?

21 MR. MONACH: Objection. Vague and incomplete  
22 hypothetical.

23 THE WITNESS: No, no. There's no hard rule  
24 that this shape is better than that shape from an  
25 ergonomic point of view.

1           It's the goal of every designer designing  
2 every cell phone that they want them to be comfortable  
3 in their hand.

4           So ergonomics is always a consideration of the  
5 designer, and yet we have a hundred different cell phone  
6 designs all trying to achieve the same ergonomic goal.

7 BY MR. ZELLER:

8           Q.     I'm not asking you to compare. I'm not asking  
9 you for alternatives.

10           I'm asking you a very simple question.

11           Do you think that people find it comfortable  
12 to hold a cell phone or a smartphone that is in the  
13 shape of a rectangle?

14           MR. MONACH: Objection. Vague.

15           THE WITNESS: Generally.

16 BY MR. ZELLER:

17           Q.     You agree with that generally; right?

18           A.     Uh-huh.

19           Q.     That's a "yes"?

20           A.     Generally.

21           Q.     That's a yes, generally; right?

22           A.     Yes.

23           Q.     And the same is true of using a rectangular  
24 shape for a tablet computer; right?

25           A.     Again, it's -- it's hard to answer your

1 question specifically without comparison to other  
2 shapes.

3 It's not an uncomfortable shape, but it may  
4 not be more comfortable than some other shape.

5 Q. Do you think that a rectangular shape for a  
6 tablet computer is something -- a kind of shape that  
7 people find easy and pleasant to hold -- as a product  
8 shape?

9 A. Easy and pleasant.

10 Maybe convenient.

11 I don't know if it's easy, or I don't know if  
12 pleasant is sort of a personal attribute.

13 I don't know if people find it pleasant.

14 Q. So you're more comfortable and you do agree  
15 with the idea that -- and you do agree that having a  
16 rectangular shape for a tablet computer is something  
17 that people find more convenient to hold as -- as a  
18 product shape?

19 MR. MONACH: Objection. Vague.

20 It's more convenient than what?

21 THE WITNESS: They find it convenient.

22 I don't know that it's more convenient than  
23 something else.

24 BY MR. ZELLER:

25 Q. And why do you think it's a convenient shape

1 for tablet computers, just from a -- again, we're  
2 talking now in the context of ergonomics.

3 A. I don't think its convenience stems from  
4 ergonomics.

5 I think it's convenient because throughout  
6 history documents have been rectilinear in shape.

7 Whether they're magazines, or newspapers, or  
8 any printed material is -- is usually in some form of  
9 rectilinear shape.

10 So to -- have a hand-held device where you're  
11 examining documents seems to be reasonable to mimic the  
12 shape that history has predicated those documents.

13 Q. In other words, just from a design  
14 perspective, if you're going to design a product that  
15 people are going to use to view documents and view other  
16 things on one logical design choice would be put it in a  
17 rectangular type form, something that people would be  
18 used to holding and looking at?

19 A. That would be one logical conclusion, yes.

20 (Thereupon the following portion of the  
21 transcript has been designated "Highly  
22 Confidential - Attorneys' Eyes Only" and  
23 continues on page 149, line 1.)

24  
25

1 I mean, there are -- components.

2 I mean, they have to have an energy source.

3 They have to have a battery.

4 I -- as to what's absolutely necessary, that's  
5 probably about it.

6 BY MR. ZELLER:

7 Q. Well, would you consider from a design  
8 perspective a necessary feature of a smartphone to to be  
9 a slot, or a hole, or some sort of aperture where sound  
10 can come out?

11 A. I think I said earlier there has to be a means  
12 of inputting and outputting information.

13 That is a means of outputting information.

14 So I thought -- I think it's covered by that.

15 I certainly disagree with your  
16 characterization that it has to be a slot.

17 Q. But you agree with me that there needs to be a  
18 speaker of some kind; right?

19 A. It certainly would be a highly desirable  
20 feature.

21 As to whether it's absolutely necessary, I --  
22 I don't know.

23 (Discussion off the record)

24 BY MR. ZELLER:

25 Q. Directing your attention to the iPhone that



1 we've marked as Exhibit 65, what would you say is the  
2 shape of the speaker aperture that product?

3 A. I've characterized it as a rounded horizontal  
4 speaker slot.

5 Q. And it's the same for what's depicted in the  
6 087 design patent and the 677 design patent?

7 A. Yes.

8 Q. Why by your understanding is the speaker slot  
9 in the 087 and the 677 design patents in that shape?

10 A. I know of no reason why it need be in that  
11 shape other than as an aesthetic choice on the part of  
12 the designers.

13 Q. To your knowledge was the first electronic  
14 device with a speaker slot that was in the shape of this  
15 slot that's depicted in the two design patents something  
16 that was already known in the art as of the time that  
17 the design patents were conceived of?

18 A. I don't know the answer to that question.

19 I mean, there were hundreds of design patents  
20 and products that had speakers on them.

21 It's conceivable that one of them might have  
22 had a slot-shaped speaker opening.

23 Q. You wouldn't be surprised to -- to find that  
24 that was something already well-established in the art  
25 as of the time that these designs patents were conceived

1 of; right?

2 A. I'd be surprised if it was "well-established,"  
3 as you called it.

4 I wouldn't be surprised if it existed.

5 Q. Well, given then the full range of shapes that  
6 you described as available to designers, why did Apple  
7 designers choose to have this slot shape for the speaker  
8 aperture?

9 A. If you want to know why Apple designers  
10 selected that ornamental shape, you'd have to ask them.

11 I really don't know why. I've just not  
12 discussed it with any of them.

13 Q. Is the speaker slot hole as shown in the 087  
14 and the 677 design patents positioned in some kind of  
15 symmetrical way?

16 A. It's symmetrical, yes.

17 It's centered left to right, if that's -- that  
18 would constitute symmetrical, yes.

19 Q. Is that how you view it?

20 Is that how you view the positioning of this  
21 slot?

22 A. I think that's an accurate description of its  
23 location.

24 Q. Do you have any understanding as to why that  
25 speaker slot is in the upper fifth of the front of the

1 phone?

2 A. Logically it would be in the upper portion  
3 because that might correspond with your ear, but that  
4 wouldn't mean that it needs to be centered left to right  
5 or centered in the black mask area above the screen or  
6 be of the shape or dimension that it is.

7 Q. So then of all the design choices that were  
8 available for the positioning of that speaker slot that  
9 you just described, why is the speaker slot as depicted  
10 in the 087 and the 677 design patent in the center?

11 A. That's where the designers wanted it for  
12 aesthetic reasons.

13 Q. Any other reason?

14 A. I can't think of any.

15 Q. You just testified, I think, that when these  
16 design patents were put in to fixed form, when they were  
17 conceived of, the designers had quite a range of  
18 possibilities as to where to put that speaker slot  
19 relative to the two sides, right, and they put it in the  
20 center; right?

21 A. Yes.

22 Q. By your understanding for cell phones,  
23 electronic devices with speaker slots, as of the time  
24 that these two design patents was conceived of, where  
25 were the speaker slot positions?

1 MR. MONACH: Object to the form of the  
2 question -- if there is one.

3 THE WITNESS: Well, when you say where were  
4 the -- the prior art speaker slots located, I already  
5 testified that there -- there may be a speaker slot in  
6 the prior art.

7 Where they were located implies that there are  
8 more than one or many of them, and I just don't know  
9 that that's the case.

10 BY MR. ZELLER:

11 Q. Well, in fact, on electronic devices as of the  
12 time that these two design patents were conceived of and  
13 first put in to some kind of written form, it was, in  
14 fact, commonplace to have the speaker aperture  
15 positioned centrally and in the upper fifth portion of  
16 the device; right?

17 A. I wouldn't disagree with that.

18 Q. And it's true that one advantage in having a  
19 speaker aperture that's in the form of a slot that runs  
20 horizontally is that it certainly covers more area;  
21 right?

22 MR. MONACH: Object to the form of the  
23 question.

24 BY MR. ZELLER:

25 Q. Than say a pinhole?

1 THE WITNESS: Yes, I believe they would be the  
2 same design as demonstrated by the fact that the 087  
3 patent, for example, both claims and disclaims the  
4 button.

5 So, since a design patent can only claim one  
6 design, they are -- it's one design, whether it has the  
7 button or not.

8 BY MR. ZELLER:

9 Q. In your view would an ordinary observer  
10 consider the designs depicted in these two design  
11 patents to be still substantially the same even if they  
12 didn't have the center button and that speaker slot hole  
13 was moved up closer to the top and then everything else  
14 remained the same?

15 MR. MONACH: Object to form.

16 THE WITNESS: I believe they would, yes. They  
17 would consider them to be the same design -- or at least  
18 substantially similar.

19 BY MR. ZELLER:

20 Q. When you say "substantially similar," you're  
21 saying substantially the same for purposes of design  
22 patent analysis; right?

23 A. Yes.

24 MR. ZELLER: Let's please mark as Exhibit 66 a  
25 multi-page document consisting of a copy of the

1 "Declaration of Cooper C. Woodring in Support of Apple's  
2 Motion for a Preliminary Injunction."

3 (Exhibit 66 was marked for Identification.)

4 BY MR. ZELLER:

5 Q. You recognize Exhibit 66 as your declaration?

6 A. Yes, I do.

7 Q. And, by the way, about how much time did you  
8 personally spend on revising, drafting, writing, and  
9 otherwise putting together the declaration we have in  
10 front of you?

11 A. I don't recall specifically, but probably  
12 somewhere in the range of 20 or 30 hours.

13 Q. And your declaration reflects that you're  
14 being compensated at the rate of \$360 an hour?

15 A. Yes.

16 Q. And that's still the case?

17 A. Yes.

18 Q. And does your compensation change depending on  
19 whether you're testifying at a deposition, or at trial,  
20 or doing other kind of work --

21 A. No.

22 Q. -- or does it just stay the same?

23 A. Flat fee regardless of activity.

24 Q. Directing your attention to paragraph 4 of  
25 your declaration, which is Exhibit 66, do you see that

1 the -- you say that you have received the IDSA Personal  
2 Recognition Award, which has been bestowed on only nine  
3 designers in history?

4 Do you see that?

5 A. Yes.

6 Q. That's an incorrect statement; isn't it?

7 A. No, it's not.

8 It had been bestowed on only nine designers in  
9 history at the time that I received the award.

10 It has subsequently been granted to others.

11 Q. You say here "which has been bestowed on only  
12 nine designers in history."

13 It doesn't say only nine others had received  
14 it before you; right?

15 A. You might want to interpret "has" as "had."

16 Q. How many people to date, in fact, have been  
17 bestowed this recognition award in history?

18 A. I think at the time I --

19 Well, I know at the time I received it there  
20 had been only nine. The Board of Directors had granted  
21 the award only nine times previously.

22 I think they've gotten a little more liberal  
23 with their recognition, which is well deserved, of  
24 others, and it's probably been another nine or 10 since.

25 Q. In fact, isn't it something like 27?

1 A. In total?

2 Q. Yes.

3 A. If -- if you tell me that's the case, I  
4 wouldn't disagree with it.

5 Q. Directing your attention to paragraph 7, you  
6 say here that -- in essence, that you do have experience  
7 observing purchasers of consumer electronics; right?

8 A. I did say that.

9 Q. And that in your view qualifies you to testify  
10 as an expert as to how an ordinary observer would  
11 perceive and evaluate cellular phone and tablet computer  
12 designs; correct?

13 A. Yes.

14 Q. And that's -- that's the basis of your -- your  
15 expertise that you're claiming in this case; correct?

16 MR. MONACH: Object to the form of the  
17 question.

18 THE WITNESS: Yes.

19 BY MR. ZELLER:

20 Q. And then you say, "For example, during my  
21 tenure at J.C. Penney it was estimated" and you talk  
22 about your experience at J.C. Penney; right?

23 A. I do.

24 Q. And then you say you have personal experience,  
25 firsthand experience, observing ordinary purchasers of



1 consumer electronics and that you purchased them  
2 yourself and can speak from your own personal  
3 experiences; right?

4 A. Yes.

5 Q. Now, other than what you did at J.C. Penney  
6 and other than your own personal experiences, do you  
7 have any other experience -- that -- in observing  
8 purchasers of consumer electronics?

9 A. Nothing more than -- having purchased them  
10 myself and observing other people purchasing them  
11 probably while I was purchasing them.

12 So, no, nothing more specific than what I've  
13 stated here.

14 Q. And just so it's clear then, the entirety of  
15 what you're relying upon in order to base your  
16 qualification -- your qualifications as an expert to  
17 testify as to how an ordinary observer would perceive  
18 and evaluate cellular phone and tablet computer designs  
19 is based on your work at J.C. Penney, your own personal  
20 experience in purchasing consumer electronics, and your  
21 seeing others purchasing consumer electronics during the  
22 course of the times when you've been purchasing them; is  
23 that true?

24 A. And -- and during times when I wasn't  
25 purchasing them but maybe visited an Apple Store for a

1 -- to visit a Genius Bar or get an upgrade in software,  
2 or whatever, yes.

3 Q. And is that -- is it true that that's then the  
4 totality of that experience that you're relying on for  
5 that?

6 A. Yes.

7 Q. And I take it from your answer you have, in  
8 fact, been in Apple Stores?

9 A. Yes.

10 Q. Is there a particular one you go to?

11 A. Yes.

12 Q. Which one?

13 A. Providence Mall.

14 Q. Not one of the ones in China, I take it?

15 A. They're not really Apple Stores.

16 Q. Just wanted to make sure they were authentic  
17 ones.

18 And is it -- have you been to many Apple  
19 Stores or is it really that one?

20 A. I've been to several, but not many.

21 Q. And most of your experience is that one in  
22 Providence Mall?

23 A. That's -- I've looked at others.

24 That's where I tend to do business, is with  
25 that one.

1 Q. In -- during your experiences there in the  
2 Apple Store did you think that it was a store that was  
3 similar to -- to J.C. Penney when you worked there?

4 MR. MONACH: Object to form.

5 THE WITNESS: Actually, no, I thought it was  
6 quite different, and that's probably why J.C. Penney  
7 just hired Ron Johnson from Apple as their new CEO.

8 BY MR. ZELLER:

9 Q. You'll agree with me that the retail  
10 environment there at J.C. Penney is not similar to the  
11 retail environment of the Apple Store?

12 A. I would agree with that.

13 Q. Now, you've talked about how in your  
14 declaration and a bit in your testimony here today about  
15 your own personal experiences about purchasing consumer  
16 electronics.

17 So you've purchased yourself cell phones?

18 A. I have.

19 Q. You, yourself, purchased smartphones?

20 A. I have.

21 Q. Which ones?

22 A. I have a -- an Apple -- 32 gig whatever this  
23 is.

24 Q. 3G?

25 A. 3G.

1           This is my second one. First one went  
2 overboard.

3           I purchased one for my daughter.

4           I've purchased -- iPads and -- a number of  
5 computers.

6           Q.     Have you purchased any smartphones by  
7 manufacturers other than Apple?

8           A.     No.

9           Q.     Have you purchased any tablet computers by  
10 manufacturers other than Apple?

11          A.     No.

12          Q.     Do you have any knowledge or information about  
13 -- the purchasers of smartphones other than Apple phones  
14 in your own personal experience?

15                 MR. MONACH: Object to the form of the  
16 question.

17                 THE WITNESS: Do I have any knowledge of them?

18                 If they're in some way different than  
19 purchasers of Apple smartphones, I -- I wouldn't be  
20 aware of that.

21 BY MR. ZELLER:

22          Q.     Do you have any personal experience that gives  
23 you knowledge or information about the purchasers of  
24 tablet computers by manufacturers other than Apple?

25          A.     No, not specifically.

1 Q. As we talked about before, when you were there  
2 at J.C. Penney working in the -- what you're saying,  
3 this retail environment of J.C. Penney, there were no  
4 smartphones or tablet computers that were sold there;  
5 right?

6 MR. MONACH: Objection. Asked and answered.

7 THE WITNESS: That's correct.

8 BY MR. ZELLER:

9 Q. What were the kinds of consumer electronic  
10 products that were being sold at that time that you're  
11 referring to here in your declaration?

12 A. Well, I believe I included some -- an exhibit  
13 showing some of the specific designs of them, but it  
14 included some quite sophisticated audio equipment,  
15 stereo equipment, telephones, radios, CB equipment,  
16 television sets, VHS systems in that era.

17 That's about it -- consumer electronics.

18 Q. And I take it those consumer electronics ran a  
19 broad range of prices?

20 A. Yes.

21 Q. And I take it that those consumer products ran  
22 a broad range of the amount of time and the care that  
23 consumers put in to their purchasing decisions of those  
24 various products; right?

25 A. I wouldn't characterize it as "a broad range."

1 I'd say it was a --

2 Well, I guess it would be a broad range from  
3 the cheapest radio to the most expensive stereo system.

4 Yes, it would be a fairly broad range.

5 Q. Can you tell me how the length of time that  
6 the typical consumers spent making the purchasing  
7 decisions for these consumer electronic products that  
8 you've described there at J.C. Penney compared to the  
9 length of time that a typical consumer spends making a  
10 purchasing decision for a smartphone?

11 A. The consumer research that we did taught us  
12 some broad generalities.

13 For example, we learned that about 70 percent  
14 of all consumers who ever buy anything buy it at the  
15 first store they go to.

16 So they make a preconceived notion that, you  
17 know, pick, your example, if J.C. Penney has the kinds  
18 of sheets or the sheet selection that I want to buy, so  
19 they go to that one store, and they make a purchase, and  
20 because they're predisposed to shop in that one retail  
21 environment they've almost already made a decision, and  
22 so the individual purchase decision once they get there  
23 is far quicker than -- than we are typically aware of.

24 So a purchase decision at J.C. Penney on a --  
25 clock radio for \$25 may be two minutes, on an \$800

1 television set it may be five minutes, but it's a lot  
2 quicker than we think.

3 Q. In general you do agree that consumers or  
4 purchasers put more care in to a decision where they're  
5 spending more money rather than less on something?

6 A. In general, yes.

7 Let me revise that answer.

8 In general, yes, but there are obvious  
9 exceptions, where -- where just the opposite would be  
10 true.

11 Q. Well, you don't have any reason to think  
12 that --

13 Are you familiar with the term "impulse  
14 purchase"?

15 A. Of course.

16 Q. You don't have any reason to think that  
17 smartphones or tablet computers are what people would  
18 consider to be impulse purchases; right?

19 MR. MONACH: Object to form.

20 THE WITNESS: Most people wouldn't.

21 A Saudi prince visiting the shopping mall in  
22 Dubai may buy a dozen of them as an impulse purchase.

23 So there's always that kind of exception.

24 BY MR. ZELLER:

25 Q. I take it you don't consider the Saudi prince

1 to be an ordinary purchaser of these kinds of goods  
2 anyway?

3 A. He's an extraordinary purchaser.

4 Q. Do you have any reason to doubt that  
5 specifically with respect to smartphones and tablet  
6 computers that those products are, generally speaking,  
7 in a price range where consumers spend and give more  
8 attention to their purchasing decision than they do for  
9 less expensive goods?

10 MR. MONACH: Object to form.

11 THE WITNESS: As a general rule, yes, I would  
12 agree with that.

13 Again, there are exceptions that would drive  
14 just the exact opposite opinion, however.

15 BY MR. ZELLER:

16 Q. But as a general principle you agree with the  
17 proposition that smartphones and tablet computers are in  
18 a price range where consumers give more care to their  
19 purchasing decision than they do or would for less  
20 expensive products?

21 MR. MONACH: Objection to the form.

22 THE WITNESS: For the majority of the  
23 population, I would agree with that.

24 BY MR. ZELLER:

25 Q. Now, you'd mentioned, going back a little bit



1 here to your J.C. Penney experience, that some of the  
2 information that you have about the retail environment  
3 is based upon market research that you saw when you were  
4 there?

5 A. That I did while I was there.

6 Q. Well, that you did, and you saw others, too?

7 A. Yes.

8 Q. Did you have other sources of information  
9 about the habits and customs of the customers there at  
10 J.C. Penney other than the market research?

11 Did you have other inputs?

12 A. Sure.

13 Q. What were those other ones?

14 A. Well, personal experience.

15 As a designer, if I was asked to design a  
16 sewing machine, which I was, the first thing I would do  
17 is go out to the nearest store and sell sewing machines  
18 for three days and learn a great deal about what  
19 consumers do or don't like.

20 I then took sewing lessons to learn how to  
21 sew.

22 And then I went to Japan and toured the  
23 factory that manufactured our sewing machines for us,  
24 and then came home and felt I was qualified to design a  
25 sewing machine.

1           But the most important of those three aspects  
2 was attempting to determine what consumers' needs and  
3 wants were at the point of purchase.

4           The others were sort of subservient to that.

5           Q.     Were there other sources of information that  
6 you received when you were there at J.C. Penney  
7 concerning the purchasing behavior of -- of customers  
8 other than what you told me about so far?

9           A.     We -- we were a member of NRMA, National  
10 Retail Merchants Association, and served on their Board  
11 of Directors and whatnot, and they did broad base  
12 consumer research that we were privileged to.

13           Some of it was very appropriate to our  
14 customer, who tended to be -- an ordinary observer.

15           Others of it was more targeted to Tiffany or  
16 Gucci and less applicable to our needs.

17           Q.     And is it true that you're relying upon this  
18 -- these various sources of information that you  
19 obtained when you were in J.C. Penney, including the  
20 market research and the consumer research for your  
21 opinions as to how you believe an ordinary observer  
22 would perceive and evaluate the smartphone and tablet  
23 computer designs that are at issue in this case?

24           A.     Yes.

25           Q.     And you would certainly agree with me that how

1 an ordinary observer would perceive and evaluate the  
2 smartphone and tablet computer designs that are at issue  
3 in this case would also be informed by consumer and  
4 market research that Apple has done about reasons why  
5 consumers purchase those products;?

6 MR. MONACH: Objection to form.

7 THE WITNESS: If I understood your question  
8 accurately, I don't think consumers would have any clue  
9 as to what Apples' consumer research showed.

10 BY MR. ZELLER:

11 Q. No. I'm not asking about consumers.

12 I'm asking about your -- your opinion here.

13 You told me that for purposes of your opinion  
14 in this case, namely this conclusion about how an  
15 ordinary observer would perceive and evaluate the  
16 designs at issue, that you're relying at least in part  
17 on the market research information that you received  
18 while you were at J.C. Penney; right?

19 A. Yes.

20 Q. And you do understand that there are --  
21 there's been market research done by Apple specifically  
22 about the products that are at issue; right?

23 A. Yes.

24 MR. MONACH: Object --

25 BY MR. ZELLER:

1 Q. In fact, we saw one example of that a little  
2 earlier here today with the bar graph and other pages  
3 that we talked about, which was Exhibit Number 14;  
4 right?

5 A. Yes. Yes.

6 Q. And you'll agree with me that that kind of  
7 updated specific market research information about the  
8 purchasing behavior of Apple's consumers is relevant to  
9 determining how an ordinary observer would perceive and  
10 evaluate the smartphone and tablet computer designs at  
11 issue in this case; right?

12 MR. MONACH: Object to the form.

13 THE WITNESS: It's relevant, yes.

14 BY MR. ZELLER:

15 Q. So please explain for me why you relied upon  
16 consumer research, going back to this time period when  
17 you were at J.C. Penney.

18 And I think you said you left in 1986?

19 A. Yes.

20 Q. For reaching your conclusions about how an  
21 ordinary observer would perceive and evaluate the  
22 designs at issue here, but you didn't consider or obtain  
23 and weren't given Apple's market research that was  
24 specifically directed to those products?

25 MR. MONACH: Object to the form of the

1 question.

2 THE WITNESS: Well, as I stated earlier, I  
3 think there's some universal truths, if you can call  
4 that, or some truisms that cut across time frames and  
5 market segments that I relied on and I still believe are  
6 true.

7 I didn't think it was necessary to ask Apple's  
8 opinion.

9 BY MR. ZELLER:

10 Q. It certainly occurred to you, and -- it --  
11 before now that the market research that Apple has for  
12 its specific products that are at issue in this case  
13 would be more relevant, and, in fact, far more relevant  
14 to your opinions than market research that was from J.C.  
15 Penney in the 1980s; right?

16 A. No, I wouldn't agree with that for this  
17 reason.

18 We're trying to -- dissect, or classify, or  
19 segregate this -- this ordinary observer which -- which  
20 I think we all agree is a hypothetical person.

21 There is no such real person.

22 So the market research, specific market  
23 research that Apple may have, may or may not even apply  
24 to this hypothetical mythical person.

25 Q. Why in paragraph 7 of your declaration did you

1 cite and rely upon market research, other information  
2 that you obtained about consumers from J.C. Penney, from  
3 the 1986 and earlier time period as opposed to also  
4 including updated information about the purchasing  
5 behavior of consumers for smartphones and tablet  
6 computer designs today?

7 A. Well, I think I've answered that, but I'll try  
8 again.

9 There are some universal truths that we  
10 learned on a broad base that were true then and are true  
11 now.

12 The more specific consumer research gets, like  
13 why did you buy an Apple iPhone, because of design or  
14 brand, the less reliable that consumer research becomes.

15 In fact, the -- the danger is that it becomes  
16 erroneously wrong because the consumer interprets  
17 questions often differently than they're asked, and  
18 that's contrasted with the broader based more universal  
19 kind of consumer research that we were doing at J.C.  
20 Penney that I believe is sort of time honored.

21 It was -- it was true then, it's true now.

22 So, to the best of my ability, that's the  
23 answer to your question.

24 Q. Well, what specific empirical data do you have  
25 to substantiate your assertion that market research and

1 were not given any market research specifically that  
2 related to -- tablet computers or smartphones?

3 MR. MONACH: Asked and answered.

4 To the extent it has a foundation, a portion  
5 of the compound question, lacking in foundation.

6 THE WITNESS: As an expert witness, I'm not an  
7 advocate for Apple.

8 I -- I didn't want to know what they thought.  
9 I didn't want to be influenced by their opinion.

10 I wanted to be an independent expert and give  
11 my opinion.

12 BY MR. ZELLER:

13 Q. So it was a -- it was a conscious decision on  
14 your part to rely upon and cite consumer research from  
15 J.C. Penney in the 1986 and prior time period that  
16 didn't relate specifically to smartphones and tablet  
17 computers and to deliberately shield yourself from  
18 market research since that time that, in fact,  
19 specifically relates to smartphones and tablet  
20 computers; correct?

21 A. Well, I don't think that accurately  
22 characterizes my testimony, but I didn't --

23 I'll go this far with you.

24 I didn't think it was necessary for me to --  
25 necessary or desirous for me to be my -- my opinion to

1 be influenced by Apple.

2 Q. I'm not asking about in the abstract of it  
3 being influenced by Apple.

4 I'm asking about specific market information.

5 You deliberately chose to rely upon the J.C.  
6 Penney consumer information that you had from the 1980s  
7 in lieu of getting up-to-date market research  
8 information about smartphones and tablet computers;  
9 right?

10 A. For the reasons I've previously given, yes.

11 Q. Do you have any knowledge or information as to  
12 whether or not this market research that you're relying  
13 upon for reaching an opinion about how ordinary  
14 observers react to smartphone and tablet computer  
15 designs bears any resemblance to the market research  
16 that has been done, say, in the course of the last  
17 decade about smartphones and tablet computers  
18 specifically?

19 A. I have no specific knowledge of any research  
20 other than what I've seen today regarding smartphones  
21 and tablet computers because neither existed in my --  
22 during my watch at J.C. Penney.

23 Q. But you have no --

24 You have no information and you don't know  
25 whether or not the consumer research that you are



1 familiar with back in the J.C. Penney days is consistent  
2 at all with the research that's been done in recent  
3 years about the purchasing of smartphones and tablet  
4 computers; right?

5 MR. MONACH: Objection. Vague.

6 THE WITNESS: I -- I think I've already  
7 answered that question in the sense that the -- the  
8 research that we did was a -- of a broader base more  
9 universal nature, and, therefore, tended to be more  
10 accurate as opposed to the more specific detailed kind  
11 of information that Apple has done here as to percent of  
12 customers that bought their phone in a certain era  
13 because of a specific reason for which we know the  
14 consumers are unreliable.

15 So -- so I think that the research I'm relying  
16 on is -- has good reason to be more accurate and  
17 entirely appropriate.

18 BY MR. ZELLER:

19 Q. Well, let's -- let's -- let's find out about  
20 how this research was done.

21 Focusing your attention on the market research  
22 that you're relying upon from J.C. Penney in the 1986  
23 and earlier time period, what were the sample sizes of  
24 the surveys that you're relying on?

25 A. They varied from a mall intercept of half a

1 at all with your reliance upon market research from the  
2 1986 and earlier time period from J.C. Penney in order  
3 to reach your opinions in this case in lieu of any  
4 market research undertaken in the course of the last  
5 decade concerning smartphones and tablet computers;  
6 right?

7 MR. MONACH: Object to form.

8 THE WITNESS: No, I don't find it unusual at  
9 all in that all of this -- the whole consumer research  
10 issue that we're discussing is all targeted toward what  
11 a hypothetical ordinary observer might think.

12 So in that context I don't --

13 No, I don't think the it's unusual at all.

14 I think it's probably highly reliable.

15 MR. ZELLER: Let's please mark as Exhibit 67 a  
16 one-page document consisting of a design.

17 (Exhibit 67 was marked for Identification.)

18 MR. ZELLER: Just so you know -- yeah, this is  
19 the top part, the speaker hole.

20 BY MR. ZELLER:

21 Q. Do you know what Exhibit 67 depicts?

22 A. I could surmise it's a smartphone.

23 Q. In your view is the design that's depicted  
24 here on Exhibit 67 substantially the same as the design  
25 that's depicted in Exhibit 6, which is the 087 design

1 patent?

2 MR. MONACH: Object to the form of the  
3 question. Vague, and incomplete hypothetical. Calling  
4 for a legal conclusion without providing the required  
5 information or adequate time.

6 But the witness can respond.

7 THE WITNESS: Ask the question again.

8 Did I think it was what?

9 BY MR. ZELLER:

10 Q. Do you believe that the design that's  
11 reflected here on Exhibit 67 is substantially the same  
12 from the perspective of the ordinary observer or  
13 purchaser as the design that's depicted in the 087  
14 design patent which is Exhibit 6?

15 MR. MONACH: Same objection.

16 THE WITNESS: Yes, it certainly is --  
17 substantially the same in the eyes of the ordinary  
18 observer of at least one embodiment of the 087.

19 BY MR. ZELLER:

20 Q. And you would agree that it is also  
21 substantially the same from the perspective of the  
22 ordinary purchaser or observer as the design that's  
23 depicted in Exhibit 7, which is the 677 design patent;  
24 correct?

25 MR. MONACH: Same objection.

1 THE WITNESS: Probably.

2 I -- I can't answer that question  
3 definitively, because the 677 claims the front surface  
4 of an electronic device that is black, and the Exhibit  
5 67 that you've shown me, there's no indication that the  
6 front surface is black.

7 BY MR. ZELLER:

8 Q. Well, let me rephrase it then.

9 Directing your attention to the design that's  
10 reflected here in Exhibit 67, setting aside the color  
11 limitation that's set forth in the 677 design patent, do  
12 you believe that the ordinary observer or purchaser  
13 would consider the overall design, again, saying aside  
14 the color, of the design in Exhibit 67 to be  
15 substantially the same as the design depicted in the 677  
16 design patent?

17 MR. MONACH: Object to the form of the  
18 question.

19 Object for the reasons previously stated.

20 THE WITNESS: Yeah, they're -- they're  
21 substantially the same.

22 BY MR. ZELLER:

23 Q. And specifically the -- the design that's  
24 reflected here in Exhibit 67, you'll agree, has a -- has  
25 a speaker slot that's smaller and more near the top than

1 the design that's depicted in the 087 and the 677 design  
2 patents; right?

3 A. Yeah. Yeah. I'll answer yes, and I'll go  
4 along with it.

5 If you want to be technical about it, it's a  
6 slot.

7 There's nothing in a design patent that  
8 teaches me that that's a speaker.

9 Q. Well, if you know that this is a smartphone,  
10 as you surmised when you saw it, that would at least  
11 tend to suggest to you that that's a speaker slot;  
12 right?

13 A. It would do that.

14 It -- it just -- it's -- it doesn't prove that  
15 it is, but we -- yes, we can assume that that is the  
16 purpose.

17 The -- the 67 exhibit that you've given me  
18 shows a -- you know, elonggated long end shape at the  
19 top.

20 I don't know -- can't discern from this if  
21 it's an opening, or a protrusion, or just an outline of  
22 a racetrack.

23 Q. Well, for purposes of the questioning I want  
24 you to assume that the -- it's an electronic device.

25 A. Okay.

1 I wanted to make sure that I heard you  
2 correctly and understood everything you said.

3 So all the elements, the major design elements  
4 listed here in paragraph 16, are present in the design  
5 we marked as Exhibit 67 except for the parts where it  
6 says flat, clear, black colored, and inset, and as to  
7 those you don't know?

8 MR. MONACH: Object to the form of the  
9 question.

10 To the extent -- if you're asking him to  
11 testify, it's asked and answered.

12 If you're changing it each time you repeat it  
13 over and over again, then it's mischaracterizing the  
14 prior testimony.

15 Same standing objection to this line of  
16 questions.

17 Go ahead.

18 THE WITNESS: You're -- I think you're asking  
19 me for an infringement analysis by -- by asking me  
20 whether or not it is substantially the same in the eyes  
21 of the ordinary observer.

22 That's a -- as I testified earlier this  
23 morning, that's a lengthy, detailed, analytical  
24 conclusion based on review of prosecution history and  
25 file wrappers and prior art, and I'm not prepared to

1 give you a definitive answer to that here today.

2 I will say that it looks suspiciously similar.

3 BY MR. ZELLER:

4 Q. I'm not asking for so-called infringement  
5 analysis. I'm asking something factual right now.

6 In paragraph 16 of your declaration you lay  
7 out what you consider to be the major design elements of  
8 the 677 design patent; right?

9 A. Yes.

10 Q. And I'm simply asking you whether you see in  
11 this design that we marked as Exhibit 67 elements that  
12 you've listed here in that design, and, if I understand  
13 you correctly, you do see in Exhibit 67 all the major  
14 design elements of the 677 design patent that you lay  
15 out here except for the following: Flat, clear,  
16 black-colored and inset; right?

17 MR. MONACH: Object to the form of the  
18 question for the reasons previously stated.

19 Objection, asked and answered.

20 Object to the extent it misstates his prior  
21 testimony.

22 THE WITNESS: I believe that's correct.

23 BY MR. ZELLER:

24 Q. Directing your attention to paragraph 31 of  
25 your declaration, this is where you lay out in

1     subparagraphs A through E what you consider to be the  
2     major design elements of the 087 design patent; is that  
3     correct?

4           A.     Yes.

5           Q.     Are the elements that you list here in A as  
6     the major design elements also present in the design we  
7     marked as Exhibit 67?

8           A.     It would appear so.

9           MR. MONACH: Hang on a second.

10           Same objection to this as with the previous  
11     line of questioning about the 667, same objection to  
12     lack of foundation in light of the witness' prior  
13     testimony about what he can and can't glean from this.

14           Incomplete hypothetical.

15     BY MR. ZELLER:

16           Q.     You believe that those elements that are  
17     described here in A are present in paragraph 31 -- are  
18     present in the Exhibit 67 design; correct?

19           MR. MONACH: Same objection.

20           THE WITNESS: It would appear so, yes.

21     BY MR. ZELLER:

22           Q.     Focusing then on paragraph 31(b) of your  
23     declaration --

24           A.     Let me go back to A for a minute.

25           I have -- there's no basis for determining



1 that it's flat

2 Q. Okay. Well, we'll exclude flat then.

3 So with respect to 31(b), the elements that  
4 are listed here are present in the Exhibit 67 design with  
5 the exception of potentially flat, because, as you say,  
6 you can't tell from the design that you have in front of  
7 you; right?

8 A. Right.

9 Q. Okay. Then let's focus on paragraph B.

10 Other than the inset description, do you agree  
11 that all the other elements that are listed here in  
12 paragraph 31(b) of your declaration in describing the  
13 087 design patent are present in this design we've  
14 marked as Exhibit 67?

15 MR. MONACH: Same objection.

16 THE WITNESS: It would appear so, yes.

17 BY MR. ZELLER:

18 Q. Are the design elements of the 087 design  
19 patent listed in paragraph 31(c) of your declaration  
20 present?

21 MR. MONACH: Same objection.

22 BY MR. ZELLER:

23 Q. In the Exhibit 67 design?

24 A. Yes, to the extent that we could guess that  
25 that racetrack shape opening is a slot, a slot implies

1 relying upon for your expert opinion as set forth in  
2 your declaration as to what differences are minor or not  
3 between the Samsung products and the -- the claimed  
4 patented designs other than what you've told me about?

5 A. Any other basis for my opinion?

6 Q. Correct, for believing that consumers or that  
7 the ordinary observers or purchasers would perceive  
8 those differences to be minor.

9 A. I will have to grant you this is somewhat of a  
10 science -- somewhat of an art and not a science,  
11 however, it is absolutely without question in my mind  
12 that, say, the Galaxy S4 design has a slightly longer  
13 and thinner speaker slot is a subtle nuance in a  
14 difference in design compared with a -- a significant  
15 feature of the front face being flat, and clear, and  
16 black and whatnot.

17 Q. I'm asking something different.

18 I'm trying to understand the bases for your  
19 opinions about something.

20 You've offered an opinion in this case about  
21 how ordinary observers, or consumers, or purchasers view  
22 designs in this case; right?

23 A. Yes.

24 Q. And one aspect of that opinion that you've  
25 offered is -- is that in your view ordinary purchasers

1 or ordinary observers would consider the differences  
2 between the Samsung phones and the -- and the design  
3 patents that are being claimed to be, quote, "minor  
4 differences," end quote; right?

5 A. Yes.

6 Q. And so my question is, apart from the  
7 qualifications you set forth in paragraph 7 of your  
8 declaration and the qualifications we talked about  
9 earlier here today in terms of your experience with  
10 consumer market research, your work at J.C. Penney and  
11 the like, and apart from the fact that you're a design  
12 expert, do you have any other basis, factual basis, for  
13 your opinion that the ordinary observer or the ordinary  
14 purchaser would consider those differences to be, quote,  
15 "minor differences," or do I have the complete bases  
16 that you're relying on your opinion for that?

17 A. The questions are getting longer and more  
18 difficult to answer, but your question says -- asks me  
19 is there anything I'm relying on other than being an  
20 expert, and the answer is being an expert is enough.

21 That's why I'm an expert.

22 MR. ZELLER: Should we take a break?

23 You need to talk to him.

24 I think -- if I'm not even going to get out of  
25 him what the bases are for his opinion --

1 Take a break. Take a break.

2 Why don't you talk to him.

3 MR. MONACH: He's given the basis for his  
4 opinions. The problem is --

5 MR. ZELLER: No. He thinks -- he thinks  
6 something is sufficient.

7 He's not answering my question.

8 MR. MONACH: No. The problem is you -- is you  
9 restate --

10 MR. ZELLER: Can we take a break?

11 MR. MONACH: -- every question.

12 MR. ZELLER: Because he claims to be losing  
13 the thread of where we are.

14 We're going to take a break.

15 MR. MONACH: We're not.

16 MR. ZELLER: I'm not counting this time  
17 against me.

18 MR. MONACH: Five or six times.

19 MR. ZELLER: You go talk to him, but clearly  
20 I'm entitled to know what the bases are for when he says  
21 something's minor or not.

22 Let's go off the record.

23 But I'm certainly not going to be wasting more  
24 time on this since he obviously doesn't understand the  
25 task of a record.

1 any case as an expert on consumer behavior in mobile  
2 phone or tablet -- computer -- tablet computer markets;  
3 correct?

4 A. That's correct.

5 Q. And you've never testified before this case as  
6 an expert in the areas of smartphones or tablet computer  
7 design; correct?

8 A. That's correct.

9 Q. And you've never testified as an expert before  
10 this case on consumer behavior or perceptions as they  
11 relate to smartphones or be tablet computer marekts;  
12 correct?

13 A. That's correct.

14 Q. Does the Samsung Infuse 4G have a bezel?

15 A. Can you produce one for me or show me one?  
16 You know, as a test of my memory, I don't  
17 recall.

18 Q. I take it that prior to offering your opinion  
19 in this case you actually examined the tangible physical  
20 Infuse device to determine whether or not it had a  
21 bezel; right?

22 A. Yes, I did.

23 Q. Directing your attention --

24 MR. MONACH: That's it. Time's up according  
25 to the videographer.

1 VIDEOGRAPHER: Off the record?

2 MR. MONACH: I just have a -- couple questions  
3 for the witness.

4 MR. ZELLER: That's, obviously, not proper at  
5 all.

6 If he's going to stay here past seven hours,  
7 you aren't going to interrupt me in the middle of my  
8 questioning.

9 MR. MONACH: You've had your seven hours.  
10 You've done repetitive questioning.

11 You've asked him about lots of topics  
12 unrelated to his declaration.

13 I'm allowed a very short -- which is all I  
14 have to do -- redirect to clarify a question you asked  
15 him about.

16 EXAMINATION

17 BY MR. MONACH:

18 Q. Mr. Woodring, in answering some questions by  
19 counsel for Samsung, you testified that the design of  
20 the iPad conveyed a sense of ease of use and access to  
21 technology.

22 Later on, in a different framed question, you  
23 agreed in substance that the designs increased ease of  
24 use and accessibility of technology.

25 Do you recall that?

1 A. Yes.

2 Q. And, as a designer, when you use the term for  
3 a -- an ornamental design ease of use what are you --  
4 what do you mean by that?

5 A. Ease of use from a -- from a designer's point  
6 of view communicates through the ornamental appearance  
7 or the aesthetic quality to the consumer.

8 Q. Okay.

9 A. If a -- to -- to an engineer, conversely, ease  
10 of use might be related to the product's function.

11 Q. Okay.

12 A. But not --

13 Industrial designers don't -- don't design the  
14 product's function. They design the product's  
15 appearance.

16 Q. When you answered questions about -- along the  
17 lines of conveying ease of use for design, were you  
18 intending to offer an opinion about whether they  
19 increased or had any effect on the actual functionality  
20 of -- of a device?

21 A. No. The -- the -- one of the goals of an  
22 industrial designer is to convey or communicate the ease  
23 of use through the ornamental design, which may or may  
24 not promise to actually deliver it.

25 I believe I cited the example of the BMW's

1 iDrive, which was designed to convey ease of use, but it  
2 certainly didn't deliver it.

3 Q. Okay.

4 A. So attempting to communicate that through the  
5 ornamental aspects of the design is no guarantee you're  
6 going to get it.

7 MR. MONACH: Okay. Thank you. That's it.

8 MR. ZELLER: Well, let me ask one follow-up  
9 question about what you've testified to.

10 It may be more than one, but I need to make  
11 sure I understand something.

12 FURTHER EXAMINATION

13 BY MR. ZELLER:

14 Q. You said something to the fact that industrial  
15 designers design aesthetics?

16 A. Yes.

17 Q. What do you mean by that?

18 A. They strive to make -- a product's appearance  
19 appropriate, which may not always be beautiful.

20 A sledge hammer design may not seek to be  
21 beautiful, but it certainly may seek to be appropriate.

22 Q. It's true that it's commonplace for industrial  
23 designers, when they receive an assignment from a  
24 company to design a product, to get technical  
25 specifications that they have to meet as part of this



1 I, CAROL S. NYGARD, a Certified Shorthand  
2 Reporter of the State of California, duly authorized to  
3 administer oaths, do hereby certify:

4 That the foregoing proceedings were taken  
5 before me at the time and place herein set forth; that  
6 any witnesses in the foregoing proceedings, prior to  
7 testifying, were duly sworn; that a record of the  
8 proceedings was made by me using machine shorthand which  
9 was thereafter transcribed under my direction; that the  
10 foregoing transcript is a true record of the testimony  
11 given.

12 Further, that if the foregoing pertains to the  
13 original transcript of a deposition in a Federal Case,  
14 before completion of the proceedings review of the  
15 transcript was not requested.

16 I further certify I am neither financially  
17 interested in the action nor a relative or employee of  
18 any attorney or party to this action.

19 IN WITNESS WHEREOF, I have this date  
20 subscribed my name:

21 Dated: August 6th, 2011

22   
23 \_\_\_\_\_  
24 CAROL S. NYGARD, CSR #4018  
25