

Estrich Declaration

Exhibit 10

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

APPLE INC., A CALIFORNIA CORPORATION,)	C-11-01846 LHK
)	
)	SAN JOSE, CALIFORNIA
PLAINTIFF,)	
)	AUGUST 16, 2012
VS.)	
)	VOLUME 10
SAMSUNG ELECTRONICS CO., LTD., A KOREAN BUSINESS ENTITY; SAMSUNG ELECTRONICS AMERICA, INC., A NEW YORK CORPORATION; SAMSUNG TELECOMMUNICATIONS AMERICA, LLC, A DELAWARE LIMITED LIABILITY COMPANY,)	PAGES 2966-3386
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DEFENDANTS.)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE LUCY H. KOH
UNITED STATES DISTRICT JUDGE

APPEARANCES ON NEXT PAGE

OFFICIAL COURT REPORTER: LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595
IRENE RODRIGUEZ, CSR, CRR
CERTIFICATE NUMBER 8074

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2 FOR PLAINTIFF MORRISON & FOERSTER
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3 MICHAEL A. JACOBS
 RACHEL KREVANS
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6 FOR COUNTERCLAIMANT WILMER, CUTLER, PICKERING,
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12 BY: CHARLES K. VERHOEVEN
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23

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INDEX OF WITNESSESDEFENDANT'S**TIMOTHY SHEPPARD**

DIRECT EXAM BY MR. PRICE P. 3001
CROSS-EXAM BY MR. JACOBS P. 3012

MICHAEL WAGNER

DIRECT EXAM BY MR. PRICE P. 3018
CROSS-EXAM BY MR. JACOBS P. 3057
REDIRECT EXAM BY MR. PRICE P. 3073

RAMAMIRTHAM SUKUMAR

DIRECT EXAM BY MS. MAROULIS P. 3092
CROSS-EXAM BY MR. SELWYN P. 3095

VINCENT O'BRIEN

DIRECT EXAM BY MS. MAROULIS P. 3101
CROSS-EXAM BY MR. SELWYN P. 3113

DAVID TEECE

DIRECT EXAM BY MS. MAROULIS P. 3123
CROSS-EXAM BY MR. MUELLER P. 3141

PLAINTIFF'S REBUTTAL:

TONY BLEVINS

DIRECT EXAM BY MR. LEE P. 3164

EMILIE KIM

DIRECT EXAM BY MR. SELWYN P. 3173
CROSS-EXAM BY MR. JOHNSON P. 3185

PAUL DOURISH

DIRECT EXAM BY MR. SELWYN P. 3188

TONY GIVARGIS

DIRECT EXAM BY MR. SELWYN P. 3220

MANI SRIVASTAVA

DIRECT EXAM BY MR. SELWYN P. 3287
CROSS-EXAM BY MR. JOHNSON P. 3317
REDIRECT EXAM BY MR. SELWYN P. 3320

HYONG KIM

DIRECT EXAM BY MR. LEE P. 3322

1 BROUGHT INTO THE COMPANY AS A RESULT OF THE
2 ALLEGEDLY INFRINGING PRODUCTS, LESS ALL OF THE
3 COSTS IN ORDER TO MAKE THOSE PRODUCTS AND SELL
4 THOSE PRODUCTS.

5 AND YOU SUBTRACT THE COST OF REVENUES AND
6 YOU GET TOTAL PROFITS.

7 Q NOW, LET'S TALK AND FOCUS ON THEIR TOTAL COST
8 AREA, AND IF WE COULD PUT UP 3965.005.

9 AND PERHAPS YOU CAN EXPLAIN TO US WHAT
10 YOU INCLUDE IN TOTAL COSTS?

11 A THE COSTS THAT I BELIEVE ARE APPROPRIATE ARE
12 THE COST OF GOODS SOLD, WHICH ARE THE COSTS TO
13 ACTUALLY MANUFACTURE THE INFRINGING OR ALLEGEDLY
14 INFRINGING SMARTPHONES AND TABLETS BUT ALSO THE
15 OPERATING EXPENSES THAT ARE NECESSARY TO SELL THOSE
16 PHONES.

17 YOU CAN'T SELL A PHONE JUST BECAUSE
18 YOU'VE MADE IT. YOU HAVE TO MARKET IT, YOU'VE GOT
19 TO SELL IT, YOU HAVE TO HAVE DEVELOPED IT
20 ORIGINALLY TO ACTUALLY MAKE IT INTO A PRODUCT, AND
21 THEN YOU HAVE TO HAVE AN UMBRELLA ORGANIZATION THAT
22 ORGANIZES ALL OF THOSE ACTIVITIES.

23 Q SO PERHAPS YOU CAN EXPLAIN THEN THE OPERATING
24 EXPENSES THAT YOU HAVE HERE, SALES EXPENSES,
25 MARKING, ET CETERA, SO THE JURY CAN HAVE AN

1 UNDERSTANDING AS TO WHAT THE NATURE IS OF THOSE
2 EXPENSES?

3 A STARTING WITH THE FIRST ONE, SALES EXPENSE, AS
4 YOU JUST HEARD, THERE ARE 40 CARRIERS WHO ARE
5 CUSTOMERS FOR THOSE PRODUCTS IN THE UNITED STATES.

6 SAMSUNG HAS TO SEND PEOPLE OUT TO THOSE
7 CARRIERS. THERE ARE ALL KINDS OF COMPETITORS FOR
8 THE LIMITED SALE SPACE IN THE CARRIER STORES.

9 SO SAMSUNG HAS TO ACTIVELY GET IN THERE
10 AND TELL THESE CARRIERS WHY THEY SHOULD BE CARRYING
11 THEIR PHONES VERSUS APPLE PHONE OR HTC PHONE OR LG
12 PHONE. SO THOSE ARE SELLING EXPENSES.

13 Q IS IT YOUR UNDERSTANDING THAT IT IS CUSTOMARY
14 THAT SAMSUNG WOULD HAVE AN EMPLOYEE THAT'S DEVOTED
15 TO ONE PHONE, LIKE THE DROID CHARGE?

16 A NO. NORMALLY THEY'RE SELLING A WHOLE PRODUCT
17 LINE FOR THE COMPANY.

18 Q AND SO HOW ARE EXPENSES THEN ALLOCATED FOR A
19 SALESMAN LIKE THAT?

20 A WELL, IF YOU WANT TO ALLOCATE TO A PARTICULAR
21 PRODUCT, YOU'D HAVE TO ALLOCATE THAT TIME BECAUSE
22 THAT SALESPERSON DOESN'T ONLY JUST SELL, SAY, AN
23 EPIC 4G. THEY MAY BE SELLING MANY OF THE OTHER
24 MODELS THAT ARE NOT ACCUSED IN THIS CASE AND YOU
25 HAVE TO ALLOCATE IT BASED ON EITHER TIME OR SOME

1 REASONABLE BASIS LIKE REVENUES.

2 Q AND IF YOU COULD EXPLAIN THE MARKETING AND THE
3 R&D EXPENSES IN GENERAL, AND ADMINISTRATIVE?

4 A MARKETING AND GENERAL, YOU AGAIN HAVE TO GET
5 CUSTOMERS AWARE THAT YOU HAVE A PRODUCT. IT'S
6 MAINLY TV ADVERTISING, BILLBOARDS, MAGAZINE ADS,
7 THAT TYPE OF INFORMATION.

8 AND I'VE BEEN WATCHING THE OLYMPICS, OR I
9 DID, AND EVERY CITE I WOULD SEE THREE DIFFERENT
10 SAMSUNG ADS BEING RUN PROMOTING THEIR GALAXY
11 PHONES. THAT COST MONEY, A LOT OF MONEY. THAT
12 COST IS NECESSARY TO BE SUCCESSFUL IN THE
13 MARKETPLACE.

14 AND R&D, YOU HAVE TO DEVELOP THIS VERY
15 COMPLICATED TECHNOLOGY PRODUCT. THESE ARE THE MOST
16 COMPLICATED CONSUMER PRODUCTS IN THE MARKETPLACE.
17 THERE'S ALL KINDS OF EFFORTS TO DEVELOP THE RIGHT
18 CHIPS, THE RIGHT INTEGRATED CIRCUITS, DETERMINE
19 WHAT FEATURES GO INTO IT, ALL OF THOSE THINGS TAKE
20 A LOT OF TIME AND EXPENSE TO DO AND THOSE COSTS ARE
21 NECESSARY OR YOU'D NEVER SELL A PHONE.

22 AND, FINALLY, GENERAL ADMINISTRATIVE IS
23 YOU, AGAIN, YOU NEED AN ORGANIZATION THAT CAN
24 MANAGE ALL OF THESE ACTIVITIES IN ORDER TO SELL A
25 PHONE.

1 Q LET ME ASK YOU, DID MR. MUSIKA, IN HIS
2 CALCULATIONS, DEDUCT THESE EXPENSES, SALES,
3 MARKETING, R&D?

4 A NOT ONE PENNY.

5 Q SO NOT A PENNY OF ADVERTISING?

6 A NO.

7 Q NOT A PENNY OF RESEARCH AND DEVELOPMENT?

8 A NO.

9 Q LET ME ASK YOU, YOU'VE SEEN APPLE'S 10-K'S,
10 THEIR FINANCIALS?

11 A I HAVE.

12 Q AND DO THEY DEDUCT THESE EXPENSES ON THEIR
13 FINANCIALS?

14 A THEY CERTAINLY DO.

15 Q IF WE COULD LOOK AT EXHIBIT 754.502. 754 IS A
16 NUMBER OF, A NUMBER OF FORM 10-K'S, AND I'M GOING
17 TO CALL YOUR ATTENTION TO ACTUALLY 754.501, OR 502.

18 A THERE'S A REASON I COULDN'T FIND IT. IT WAS
19 ON THE FLOOR.

20 I'VE GOT IT.

21 Q DO YOU SEE THIS IS APPLE'S 10-K FOR THE PERIOD
22 ENDING SEPTEMBER 24, 2011?

23 A CORRECT.

24 MR. PRICE: AND, YOUR HONOR, I'LL MOVE
25 PAGE 2 INTO EVIDENCE.

1 THE COURT: OKAY. NO OBJECTION; RIGHT?
2 IT'S ADMITTED.

3 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
4 754.502, PAGE 2, HAVING BEEN PREVIOUSLY
5 MARKED FOR IDENTIFICATION, WAS ADMITTED
6 INTO EVIDENCE.)

7 BY MR. PRICE:

8 Q IF WE CAN LOOK AT 754.545, IS THIS APPLE'S
9 CONSOLIDATED STATEMENTS OF OPERATIONS?

10 A IT IS.

11 Q AND IF WE CAN BLOW THAT UP.

12 COULD YOU EXPLAIN TO THE JURY WHAT YOU'RE
13 TALKING ABOUT IN DEDUCTING THE OPERATING EXPENSES
14 FROM INCOME TO GET TOTAL PROFIT?

15 A WELL, IT STARTS AT NET SALES, WHICH ARE THE
16 REVENUES, AND THEN IT SUBTRACTS COST OF GOODS SOLD
17 TO GET GROSS MARGIN, AND THAT IS WHAT IS GROSS
18 MARGIN, WHICH MR. MUSIKA CALLED TOTAL PROFIT, WHICH
19 IS NOT TOTAL PROFIT.

20 THEN YOU HAVE THE LINES THE OPERATING
21 EXPENSES WHICH THEY HAVE COLLAPSED INTO TWO GENERAL
22 CATEGORIES, RESEARCH AND DEVELOPMENT, AND THEN
23 SELLING, GENERAL AND ADMINISTRATIVE, AND YOU
24 SUBTRACT THOSE COSTS AND YOU GET TOTAL OPERATING
25 EXPENSES AND TOTAL OPERATING INCOME.

1 AND THAT IS WHERE YOU GET THE TOTAL
2 PROFITS FROM THEIR OPERATIONS.

3 Q AND IF YOU GO BELOW THAT, IT HAS COME FROM
4 PROVISIONS OR INCOME TAXES. IS APPLE TAXED ON THE,
5 THE GROSS MARGIN?

6 A NO. THEY'RE TAXED ON THEIR PROFIT BEFORE
7 TAXES WHICH SUBTRACTS ALL APPROPRIATE EXPENSES.

8 Q AND THIS HAS ADDITIONAL SUBTRACTION, OTHER
9 INCOME AND EXPENSE, WHAT IS THAT RELATED TO?

10 A THAT NORMALLY IS INTEREST INCOME OR INTEREST
11 EXPENSE IF THEY BORROWED MONEY IN ORDER TO DO THEIR
12 BUSINESS.

13 Q AND YOU ALSO LOOKED AT SAMSUNG'S AUDITED
14 CONSOLIDATED FINANCIALS?

15 A I HAVE. THEY DO EXACTLY THE SAME THING.

16 THE COURT: CAN I AND HAVE A QUICK
17 CLARIFICATION. YOU MOVED PAGE 2 INTO EVIDENCE. DO
18 YOU WANT THIS PAGE?

19 MR. PRICE: YES, YOUR HONOR.

20 THE COURT: PAGE 2 IS A SUMMARY.

21 MR. JACOBS: YOUR HONOR, WE SHOULD HAVE
22 THE WHOLE THING IN.

23 THE COURT: YOU'LL HAVE TO MOVE IT IN
24 YOUR CASE. LET ME HEAR WHAT MR. PRICE WANTS.

25 MR. PRICE: YES, PAGE 545.

1 THE COURT: OKAY. THAT'S THE ONLY PAGE,
2 RIGHT.

3 MR. PRICE: AND IF WE CAN FIGURE OUT THE
4 BATES RANGE OF THE WHOLE DOCUMENT, I HAVE NO
5 OBJECTION.

6 BY MR. PRICE:

7 Q NOW, IF YOU'D LOOK AT EXHIBIT 676, WHICH WAS
8 JUST ADMITTED INTO EVIDENCE, THAT'S THAT
9 SPREADSHEET, DID YOU LOOK AT -- DID YOU LOOK AT A
10 SPREADSHEET -- THAT WAS JUST TESTIMONY ABOUT
11 SAMSUNG SPREADSHEET THAT HAD THE, THE INCOME,
12 COSTS, ET CETERA, OF THE PRODUCTS THAT ARE AT ISSUE
13 HERE.

14 A I DID.

15 Q AND DID YOU -- FIRST OF ALL, LET ME ASK YOU,
16 IS -- YOU'VE READ MR. MUSIKA'S REPORT?

17 A I HAVE.

18 Q WAS THIS THE SAME SPREADSHEET THAT HE WAS
19 USING?

20 A HE USED A SIMILAR ONE, BUT THE NUMBERS THAT HE
21 SELECTED HAVE THE SAME NUMBERS THAT THIS ONE HAS.

22 Q YOU SAID THEY HAVE THE SAME NUMBERS. IS IT
23 THE SPREADSHEET THAT YOU GET THE NUMBER FOR INCOME
24 ON THESE PRODUCTS?

25 A FOR REVENUE AND COSTS OF GOODS SOLD.

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CERTIFICATE OF REPORTERS

WE, THE UNDERSIGNED OFFICIAL COURT REPORTERS OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, CONSTITUTES A TRUE, FULL AND CORRECT TRANSCRIPT OF OUR SHORTHAND NOTES TAKEN AS SUCH OFFICIAL COURT REPORTERS OF THE PROCEEDINGS HEREINBEFORE ENTITLED AND REDUCED BY COMPUTER-AIDED TRANSCRIPTION TO THE BEST OF OUR ABILITY.

/S/

LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

/S/

IRENE RODRIGUEZ, CSR, CRR
CERTIFICATE NUMBER 8074

DATED: AUGUST 16, 2012