

Estrich Declaration

Exhibit 13

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

APPLE INC., a California

corporation,

Plaintiff,

vs

SAMSUNG ELECTRONICS CO., LTD.,

a Korean business entity,

SAMSUNG ELECTRONICS AMERICA,

INC., a New York corporation,

et al.,

Defendants.

CASE NUMBER

11-CV-01846-LHK (PSG)

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

VIDEOTAPED DEPOSITION OF MARYLEE ROBINSON

REDWOOD CITY, CALIFORNIA

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VOLUME I

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THOMAS J. FRASIK

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PAGES 1 - 123

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I N D E X

MARYLEE ROBINSON, VOLUME I

EXAMINATION

MR. ALDEN

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MR. OLSON

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MR. ALDEN

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INSTRUCTIONS NOT TO ANSWER/REFUSALS TO ANSWER:

Page	Line
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16	7
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102	12
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1 Q. The court reporter can only transcribe sound,
2 so when you answer a question, it has to be audible. We
3 have a habit to shake our heads up and down or side to
4 side, and that will be picked up by the video but not by
5 the court reporter in the transcript. So it's important 13:04:58
6 that you answer audibly to questions.

7 A. Yes.

8 Q. Do you have any questions before we start?

9 A. I do not.

10 Q. Have you ever been qualified as an expert in 13:05:08
11 any case?

12 A. I have not.

13 Q. How many patent cases have you worked on?

14 A. I would have to estimate probably at least 30.

15 Q. Okay. Have you worked, prior to this case, on 13:05:41
16 any design patent cases?

17 A. I have not.

18 Q. Have you worked on any trade dress cases prior
19 to this case?

20 A. I have not. 13:05:54

21 Q. Have you worked on any antitrust cases prior to
22 this case?

23 A. No.

24 Q. Have you worked on any breach of contract cases
25 prior to this case? 13:06:06

1 A. Yes.

2 Q. Are you an expert in the field of marketing?

3 A. No.

4 Q. Are you an expert in the field of consumer

5 decision-making? 13:06:19

6 A. No.

7 Q. Are you an expert in the smartphone market?

8 A. No.

9 Q. Are you an expert in the tablet market?

10 A. No. 13:06:30

11 Q. Have you ever performed any other work for

12 Apple other than this case?

13 A. I have not.

14 Q. Have you ever had any engagements for Samsung?

15 A. I have not. 13:06:53

16 Q. Did you sign the protective order that was

17 entered in this case?

18 A. I believe that Mr. Musika signed a protective

19 order on behalf of the firm, although I reviewed it.

20 That was quite some time ago. 13:07:11

21 Q. Okay. But you yourself did not sign the

22 protective order?

23 A. It's my recollection that he signed it and

24 that covered all of our -- all the people at Invotex who

25 worked on the case. So I don't recall personally 13:07:25

1 signing a protective order, although it's always
2 possible because I've certainly signed protective
3 orders in the past.

4 Q. Now, you submitted a declaration in this case;
5 is that right? 13:07:42

6 A. That is right.

7 Q. And I will have the reporter mark as
8 Robinson Exhibit 1 a document entitled "Declaration
9 Of Marylee Robinson In Support Of Apple's Motion For
10 A Permanent Injunction For Damages Enhancement, For 13:08:04
11 Supplemental Damages, And For Prejudgment Interest,"
12 filed under seal.

13 (Deposition Exhibit 1 was marked
14 for identification.)

15 MR. OLSON: Anthony, I'll just note for the 13:08:32
16 benefit of the record, it appears that this is a copy of
17 the declaration without the exhibits attached.

18 MR. ALDEN: Correct.

19 BY MR. ALDEN:

20 Q. Ms. Robinson, have you had a chance to look at 13:08:53
21 the document I just handed to you?

22 A. Yes.

23 Q. And is that the declaration you submitted in
24 case?

25 A. It is. 13:09:15

1 Q. Let me be more precise: A copy of the
2 declaration --

3 A. Yes.

4 Q. -- you submitted in this case.

5 When were you asked by counsel to prepare this 13:09:23
6 declaration?

7 A. Early September, second week of September of
8 2012.

9 Q. And how long did you spend preparing the
10 declaration? 13:09:43

11 A. Approximately one week.

12 Q. You say, I believe -- if I can refer you to
13 paragraph 3 of your declaration, on page 1, "I have
14 played a substantial role in Apple's intellectual
15 property dispute with Samsung since December 2011, 13:10:04
16 working closely with Terry Musika in all stages of
17 the case."

18 Do you see that?

19 A. I do.

20 Q. Why did your involvement begin in 13:10:16
21 September 2011?

22 A. Terry, Mr. Musika, issued a declaration
23 regarding the preliminary injunction in this case last
24 September, and that's when our work began on this
25 matter. 13:10:33

1 Q. And how long have you been with Invotex?

2 A. Approximately six years.

3 Q. You say, at line 23 on page 1, "I assisted him
4 in the preparation for his trial testimony."

5 Do you see that? 13:10:51

6 A. Yes.

7 Q. How did you assist him in preparing for his
8 trial testimony?

9 A. Reviewing the reports he prepared, preparing
10 trial exhibits, preparing demonstratives, responding to 13:11:07
11 questions as they came up in his preparation. That
12 would -- I think that's a good summary of the types of
13 things I was doing.

14 Q. And you then say, in the next line, "I have
15 provided analysis and supervision with respect to all 13:11:23
16 aspects of Invotex Group's engagement by Apple."

17 Do you see that?

18 A. Yes.

19 Q. And what kind every analysis did you provide
20 with respect to Invotex's engagement by Apple? 13:11:36

21 A. I assisted in -- I assisted Mr. Musika in
22 developing the damages model that was presented at
23 trial, the lost profits calculations. I assisted in
24 research, you know, third-party research or reviewing
25 third-party research, conducting public research on 13:11:57

1 not believe is permissible and will instruct not to
2 answer.

3 MR. ALDEN: So just so I'm clear, you're
4 instructing her not to answer what other types of harm
5 Apple has suffered other than lost sales and loss of 13:19:35
6 market share; is that correct?

7 MR. OLSON: I am -- so we'd have to go back to
8 the specific question that you asked before.

9 MR. ALDEN: I'm asking this question now: Are
10 you instructing her not to answer what other types of 13:19:46
11 harm she was referring to in her declaration other than
12 lost sales and loss of market share?

13 MR. OLSON: So, I do not recall the rest of the
14 testimony sufficiently as to be able to identify whether
15 the two statements you've made are the sum total of the 13:20:02
16 things that she addressed by way of her declaration.
17 But I will instruct her not to answer with respect to
18 questions of the harm that Apple has suffered that go
19 beyond that which is covered in her declaration and for
20 which she's providing opinions. If that turns out to be 13:20:20
21 the scope of those elements, then yes, I would be
22 instructing not to answer.

23 BY MR. ALDEN:

24 Q. If I could ask you to look at the next
25 paragraph, Ms. Robinson? 13:20:31

1 A. Sure.

2 Q. You write there about an unfortunate medical
3 diagnosis that Terry Musika has suffered. Is that
4 correct?

5 A. Yes. 13:20:45

6 Q. And do you expect that -- I don't intend to get
7 into the details of it. I have no intention to question
8 about it other than my client needs to know the extent
9 of Mr. Musika's future involvement potentially in the
10 case, should the case proceed. 13:21:03

11 So do you expect that with that, all I really
12 am going to ask you is do you expect that Mr. Musika, if
13 necessary, would testify at the hearing on December 6th?

14 A. I don't foresee Mr. Musika testifying in any
15 future hearings, depositions. 13:21:27

16 Q. Okay. You say on lines 4 and 5 of page 2 of
17 your declaration that you affixed his signature to the
18 declaration based on his authorization. Do you see
19 that?

20 A. Um-hum, yes. 13:21:46

21 Q. So Mr. Musika himself didn't sign his
22 declaration; is that correct?

23 A. That is correct.

24 Q. Did Mr. Musika prepare his declaration?

25 A. Yes. 13:21:55

1 Q. And how long did it take Mr. Musika to prepare
2 his declaration?

3 A. Less than a week.

4 Q. And did you help Mr. Musika prepare his
5 declaration?

13:22:11

6 A. Yes.

7 Q. Did he review the declaration that was filed
8 before you affixed his signature to it?

9 A. Yes.

10 Q. So there were no changes made to the
11 declaration after the last version that he saw and your
12 affixiture of his signature to it?

13:22:22

13 A. That is correct.

14 Q. How often, if you know, does -- do other people
15 attach Mr. Musika's signature to his declarations?

13:22:41

16 A. I can't speak for other people. I can speak
17 for my own experience of working with him.

18 It happens on occasion. He'll be on the West
19 Coast, I'll be on the East Coast, we'll be working
20 together, and I'll submit the final version with a
21 signature.

13:23:05

22 Q. And so, in your experience, it's happened more
23 than five times?

24 A. Possibly.

25 Q. More than ten times?

13:23:19

1 A. Unlikely.

2 Q. When did Mr. Musika prepare his declaration?

3 A. Between the date of the jury verdict which I
4 believe was August 24th, and the 29th when -- the date
5 of this report or date of his declaration. 13:23:38

6 Q. I'd like to turn to paragraph 32 of your
7 declaration, please.

8 A. Yes.

9 Q. And this paragraph is dealing with Apple's
10 request for permanent injunction on certain Samsung 13:24:15
11 products; correct?

12 A. Correct.

13 Q. And starting at line 9, you say "These products
14 include the Captivate, Continuum, Droid charge," and
15 there's a list of products. 13:24:28

16 Do you see that?

17 A. I do.

18 Q. When you say "These products include," what
19 other products does Apple seek to enjoin?

20 A. It's my understanding from the filings that 13:24:36
21 Apple is seeking an injunction on other products that
22 may contain or embody some of these intellectual
23 property rights, but they haven't named specifically
24 those products.

25 Q. So you don't know what the names of those 13:25:01

1 products are?

2 A. I do not.

3 Q. Do you know how many other products?

4 A. I do not.

5 Q. If I can turn your attention to paragraph 34? 13:25:10

6 A. Yes.

7 Q. And it's an important paragraph so I'll read it
8 into the record.

9 "A review of the information in the record and
10 produced in discovery shows that the user interface 13:25:26

11 patents drive consumer demand for Samsung's infringing
12 tablets, such that a substantial nexus exists between
13 Samsung's infringement of the User Interface Patents and
14 long-term market share losses Apple with suffer absent
15 an injunction." 13:25:46

16 Did I read that correctly?

17 A. Yes, appears so.

18 Q. And what information did you review in the
19 record and produced in discovery?

20 A. Specific to this point or as a whole, 13:25:57
21 everything that I've reviewed in the case?

22 Q. Specific to this point.

23 A. Okay. Specific to this point, I reviewed --
24 or I reviewed Dr. Hauser's conjoint study, several
25 Samsung internal documents, Samsung commercials 13:26:27

1 advertising the user interface patents, and the
2 testimony of Dr. Balakrishnan.

3 Q. Did you review anything else in connection with
4 this specific point in paragraph 34?

5 MR. OLSON: Did she review or did she rely on 13:27:00
6 anything else?

7 MR. ALDEN: My question was review.

8 MR. OLSON: Sorry.

9 THE WITNESS: It's a fine line because
10 I've reviewed so much over the course of this case. 13:27:10
11 I-- testimony of Bill Schiller from the trial. I think
12 that's ...

13 BY MR. ALDEN:

14 Q. Okay. So just so I'm clear, in connection with
15 paragraph 34, you reviewed Dr. Hauser's study, several 13:28:02
16 Samsung internal documents, Samsung commercials
17 advertising the user interface patents, testimony of
18 Dr. Balakrishnan and testimony of Phil Schiller; is that
19 correct?

20 A. Yes, that's correct. 13:28:18

21 Q. The user interface patents, I take it you're
22 referring to what I'll call the '381 Patent, the '163
23 Patent and the '915 Patent; is that correct?

24 A. Yes.

25 Q. What does the '381 Patent cover? 13:28:35

1 THE WITNESS: The '163 is the doubletap patent
2 which involves the doubletap of -- you know, if you're
3 on a webpage or a document, doubletap and then tap to
4 center, a follow-up tap, so it enlarges it and then
5 centers it. 13:30:25

6 BY MR. ALDEN:

7 Q. Does it cover anything else to your mind?

8 MR. OLSON: Same objection.

9 THE WITNESS: Again, I -- I wouldn't be able to
10 give further explanation beyond what I've already given. 13:30:33

11 BY MR. ALDEN:

12 Q. And, again, you don't recall which claims from
13 that patent Apple has asserted in this case against
14 Samsung?

15 A. I do not. 13:30:44

16 Q. And the '915 Patent, what does that patent
17 cover?

18 A. The '915 is often referred to as the
19 pinch-to-zoom patent and that is -- covers, my
20 understanding, layman's understanding, is the pinching 13:31:02
21 to zoom on a document followed by a -- it's a
22 differentiation between two-finger and one-finger
23 gestures.

24 Q. Does the -- and I take it, again, you don't
25 recall which claims from the '915 Patent Apple asserted 13:31:40

1 against Samsung in this litigation?

2 A. I do not.

3 MR. OLSON: Make sure you wait until he
4 finishes.

5 THE WITNESS: Sorry. 13:31:51

6 BY MR. ALDEN:

7 Q. Does the '381 Patent cover all bouncing on a
8 screen?

9 MR. OLSON: Objection. Calls for a legal
10 conclusion. Beyond the scope. 13:32:00

11 THE WITNESS: I wouldn't -- I wouldn't be able
12 to answer that.

13 BY MR. ALDEN:

14 Q. You don't know?

15 A. Yes. Beyond my area of expertise. 13:32:06

16 Q. Does the '163 Patent cover all tapping to zoom
17 on a touchscreen?

18 MR. OLSON: Same objection. Calls for a legal
19 conclusion. Beyond the scope.

20 THE WITNESS: Again, it's beyond my area of 13:32:22
21 expertise.

22 BY MR. ALDEN:

23 Q. So you don't know?

24 A. I do not know.

25 Q. Does the '915 Patent cover all pinching to zoom 13:32:29

1 on a touchscreen?

2 MR. OLSON: Same objections.

3 THE WITNESS: Again, it's beyond my area of
4 expertise.

5 BY MR. ALDEN: 13:32:42

6 Q. So you don't --

7 A. I do not know. Sorry.

8 Q. What do you understand by the term "substantial
9 nexus"?

10 A. I understand that to mean that there's 13:32:56
11 considerable importance that links demand between the
12 infringing feature and demand for the product, that the
13 features have considerable importance that links their
14 demand between them.

15 Q. You say in paragraph 34 that "a substantial 13:33:31
16 nexus exists between Samsung's infringement of the User
17 Interface Patents and long-term market share losses that
18 Apple will suffer absent an injunction."

19 Did I read that correctly?

20 A. You did. 13:33:52

21 Q. And how long are market share losses that you
22 believe Apple will suffer absent an injunction?

23 MR. OLSON: Objection. Vague.

24 THE WITNESS: I cannot offer a specific time
25 frame or estimate, but it is based on information I've 13:34:10

1 seen in this case and in the record regarding the growth
2 of the market and Apple's loyalty with its customers,
3 that they will suffer losses for quite some time. But I
4 can't offer a specific amount of -- like I can't
5 quantify how long. 13:34:48

6 BY MR. ALDEN:

7 Q. So you can't say is it longer than six months,
8 for example?

9 A. I couldn't say.

10 Q. Could it be less than six months? 13:34:55

11 A. I have no way of knowing.

12 Q. So it could be -- you don't know. You just
13 know it could be some period of time after Samsung stops
14 selling the infringing products; is that correct?

15 A. Sometime after Samsung stops selling the 13:35:16
16 infringing products, yes.

17 Q. But it could be three months, could be six
18 months; you don't know?

19 A. I do not know.

20 THE VIDEOGRAPHER: Mr. Alden, will you please 13:35:27
21 put your microphone to the collar of your shirt, please.
22 Thank you.

23 BY MR. ALDEN:

24 Q. What evidence do you -- are you aware of that
25 Apple will suffer long-term market share losses absent 13:35:51

1 an injunction?

2 A. So this -- these statements relate specifically
3 to the tablets. And your question -- can you read your
4 question, please?

5 Q. What evidence do you have or are you aware of 13:36:13
6 that Apple will suffer long-term market share losses
7 absent an injunction?

8 A. So I think that the -- if you view the market
9 share, historical market share and any loss of market
10 share is an indication that there will be sales -- any 13:36:38
11 sales that have been taken away over time will lead to
12 future losses.

13 Q. So let's break that down. Your opinion is that
14 Samsung has taken market share from Apple, is that
15 correct, in the tablet market; is that correct? 13:37:17

16 A. Any loss of sale that Apple experiences at the
17 expense of Samsung can contribute to loss in market
18 share.

19 Q. Okay. And how many lost -- so it's your
20 opinion that Samsung has taken Apple tablet sales; is 13:37:37
21 that correct?

22 A. Yes.

23 Q. Okay. How many?

24 A. I have not quantified that.

25 Q. And how many tablet sales do you expect that 13:37:46

1 Apple will lose as a result of Samsung taking tablet
2 sales away from Apple?

3 A. I have not quantified that.

4 Q. Is it possible to quantify?

5 MR. OLSON: Objection. Incomplete 13:38:06
6 hypothetical.

7 THE WITNESS: It would certainly be challenging
8 and would require a series of assumptions for analysis.
9 It's not something I can do sitting here right now.

10 BY MR. ALDEN: 13:38:28

11 Q. I understand. But you could do it if you were
12 asked to do it?

13 MR. OLSON: Objection. Misstates the
14 testimony.

15 THE WITNESS: I could make an attempt at 13:38:34
16 estimating, but certainly projecting to a reasonable
17 degree of certainty, that -- that -- I'm not certain
18 that you could calculate that to a reasonable degree of
19 certainty.

20 BY MR. ALDEN: 13:38:56

21 Q. It's possible but you're not sure?

22 A. I'm not sure that it could be done to a
23 reasonable degree of certainty.

24 Q. If I could turn your attention to paragraph 39,
25 please? Paragraph 39 discusses the Hauser report; is 13:39:28

1 that correct?

2 A. Yes, it does.

3 Q. And his testimony --

4 MR. OLSON: Can you actually give her a chance
5 just to let her read it? 13:39:41

6 MR. ALDEN: Yes.

7 THE WITNESS: Okay.

8 BY MR. ALDEN:

9 Q. And have you read Dr. Hauser's report?

10 A. Yes. 13:40:00

11 Q. And have you read Dr. Hauser's trial testimony?

12 A. Yes.

13 Q. And in paragraph 39, the first sentence states
14 "Apple's conjoint survey expert, John Hauser, testified
15 at trial that he conducted two surveys to determine how 13:40:20
16 much money, if any, Samsung consumers would pay for the
17 features associated with the '915, '163, and '381
18 patents."

19 Did I read that sentence correctly?

20 A. Yes. 13:40:35

21 Q. And that is what Dr. Hauser tested; is that
22 correct?

23 A. Yes, that's my understanding.

24 Q. Dr. Hauser did not test demand for the patented
25 features; correct? 13:40:51

1 I -- I -- I am taking his conclusions on their face. I
2 understand -- I have no reason to believe that there's
3 any issue with his study. And I'm not here to offer --
4 I'm unable to or it's not my place, it's beyond my area
5 of expertise, to analyze his report. 13:44:25

6 BY MR. ALDEN:

7 Q. I understand. But you obviously have an
8 opinion or some understanding of what Dr. Hauser did;
9 correct?

10 A. At a high level. 13:44:34

11 Q. Okay. So what's your understanding of what
12 Dr. Hauser did?

13 MR. OLSON: Objection. Asked and answered.
14 Reflects it in the document.

15 THE WITNESS: I understand that Dr. Hauser 13:44:53
16 surveyed owners of Samsung phones and tablets, he asked
17 them a series of questions about these particular
18 patented features as well as other features. The
19 respondents answered those questions, and he drew the
20 conclusion that there's substantial demand for the 13:45:11
21 patented features.

22 BY MR. ALDEN:

23 Q. Is that all you recall at this time?

24 A. Yes.

25 Q. And do you recall whether one of the questions 13:45:24

1 that he asked respondents to the survey was whether they
2 would still buy a Samsung phone without, for example,
3 the '381 patented feature?

4 A. I don't recall one way or the other.

5 Q. Okay. Do you recall whether Dr. Hauser asked 13:45:39
6 respondents whether they would still buy a Samsung phone
7 without the '163 patented feature?

8 A. I don't recall one way or the other.

9 Q. Do you recall whether Dr. Hauser asked
10 respondents whether someone would still buy a Samsung 13:45:57
11 phone without the '915 patented feature?

12 A. I don't recall one way or the other.

13 Q. Do you recall whether Dr. Hauser tested if
14 people buy the iPhone or iPad because of the '381
15 patented feature? 13:46:13

16 A. I believe he did not test that. His population
17 were buyers of Samsung products.

18 Q. Did Dr. Hauser test whether people buy the
19 iPhone or iPad because of the '163 patented feature?

20 A. Again, he tested a population of Samsung 13:46:31
21 owners, so no, he did not test that.

22 Q. Did Dr. Hauser test whether people buy the
23 iPhone or iPad because of the '915 patented feature?

24 A. It's my understanding he did not as he was
25 surveying owners of Samsung devices. 13:46:50

1 Q. Does the fact that someone is willing to pay
2 something for a feature necessarily mean that they won't
3 buy it without the feature?

4 MR. OLSON: Objection. Beyond the scope.

5 THE WITNESS: I don't think it -- no, it 13:47:07
6 doesn't. I mean, I believe it is possible that they
7 could buy it without the feature.

8 BY MR. ALDEN:

9 Q. Are you aware of anyone who has bought a
10 Samsung product because of the '381 patented feature? 13:47:38

11 A. No.

12 Q. Are you aware of anyone who has bought a
13 Samsung product because of the '163 patented feature?

14 A. No.

15 Q. Are you aware of anyone who has bought a 13:47:57
16 Samsung product because of the '915 patented feature?

17 A. I am not aware.

18 Q. Are you aware of anyone who has bought an Apple
19 product because of the '381 patented feature?

20 A. No, not specifically. 13:48:13

21 Q. Are you aware generally?

22 A. I'm aware of evidence that suggests that Apple
23 customers have bought devices for touch capabilities,
24 and these patents cover touch capabilities, multi-touch.

25 Q. I understand. I want to try and focus 13:48:46

1 specifically on the '381 Patent.

2 A. Um-hum.

3 Q. Are you aware of anyone who's bought an Apple
4 product because of the '381 patented feature?

5 A. Not specifically, no. 13:48:57

6 Q. And the same question with respect to the '163
7 patented feature.

8 A. Not specifically.

9 Q. And are you aware of anyone who has bought an
10 Apple product because of the '915 patented feature? 13:49:07

11 A. Not specifically.

12 Q. Did you undertake any surveys of consumer
13 demand for the patented features?

14 MR. OLSON: She personally?

15 BY MR. ALDEN: 13:49:27

16 Q. Did you personally?

17 A. Did I personally conduct any surveys?

18 Q. Yes.

19 A. No.

20 Q. Did you commission any surveys? 13:49:32

21 A. I did not.

22 Q. Why not?

23 A. Was beyond the scope of the areas in which I'm
24 rendering opinions in this declaration.

25 Q. Okay. Do you know what Samsung's share of the 13:49:58

1 US tablet market was in 2011?

2 A. I couldn't specifically say without looking
3 back to a document.

4 Q. Could you say generally without looking back to
5 a document? 13:50:20

6 MR. OLSON: So here, on "generally," just don't
7 guess. If you need to refer to something, go ahead, or
8 if you have a general recollection, that's fine, but
9 don't guess. I don't think that's what he's asking for.

10 You're shaking your head, so that means you are 13:50:40
11 not asking for a guess.

12 BY MR. ALDEN:

13 Q. I am not asking for a guess.

14 Do you recall -- if you have a general
15 recollection, I'm asking for -- 13:50:48

16 A. I don't have a -- I don't have a general
17 recollection.

18 Q. Do you know what Samsung's share of the US
19 tablet market is now?

20 A. I believe it's less than ten percent. 13:50:56

21 Q. And did Samsung's market share, US tablet --
22 strike that. Let me ask a better question.

23 Did Samsung's market share or share of the
24 US tablet market in 2011 impact your analysis of
25 consumer demand for the patented features? 13:51:20

1 A. Specifically in drawing these conclusions, I
2 didn't rely on the market share to draw that -- these
3 specific conclusions, that there's demand for these
4 specific features.

5 Q. So just so I'm clear, you didn't rely on 13:51:56
6 Samsung's tablet market share in concluding that there's
7 a substantial nexus between the patented features and
8 consumer demand for Samsung's tablets; is that correct?

9 A. In drawing these conclusions and issuing this
10 declaration, it's -- 13:52:20

11 (Witness interrupted by the
12 Deposition Reporter.)

13 THE WITNESS: In drawing these conclusions and
14 issuing this declaration, it's not a specific piece of
15 evidence that I relied upon in reaching my conclusions. 13:52:46

16 BY MR. ALDEN:

17 Q. Does the Kindle Fire incorporate the patented
18 features?

19 A. I have not reviewed the Kindle Fire to
20 determine if it includes the patented features and I 13:52:59
21 would defer to a technical expert to opine on that.

22 Q. Do you know whether the Barnes & Noble Nook
23 incorporates the patented features?

24 A. Again, I would defer to a technical expert. I
25 have not reviewed that specific product. 13:53:17

1 Q. Did you undertake any studies of any other
2 tablets to see what led to their success or failure?

3 A. No, I did not conduct any studies.

4 Q. Did you review any literature on the tablet
5 market generally? 13:53:43

6 A. In the course of this -- in the course of
7 working on this matter over the last year, I have
8 reviewed literature on the tablet market. Specifically
9 to my opinions in this declaration on this point, it's
10 not a specific piece of data or evidence that supports 13:54:02
11 my conclusion.

12 Q. Have you reviewed any literature on consumer
13 decision-making concerning tablets?

14 A. Could you give me an example of what you mean
15 by consumer literature on consumer decision-making? 13:54:29

16 Q. Sure.

17 A. Is that a common term or --

18 Q. Well, I guess what I'm getting at is -- it's
19 not a trick question.

20 What I'm getting at is have you read or 13:54:44
21 reviewed any literature on why consumers purchase
22 different tablets?

23 MR. OLSON: I think we may be missing
24 Anthony's -- you're talking about stuff in the tablet
25 market and now you've talked about something else. I'm 13:54:58

1 not sure that -- well, I'll let the question stand. I
2 don't mean to interrupt your question.

3 THE WITNESS: I'm just trying to understand
4 what you mean by consumer literature or literature --
5 can you rephrase it? I'm sorry. 13:55:16

6 BY MR. ALDEN:

7 Q. No, no problem.

8 Are you aware that there's a body of academic
9 literature on why people buy things?

10 A. Yes. 13:55:28

11 Q. And have you reviewed any of that literature
12 that concerns tablets?

13 A. Specific to tablets, no.

14 Q. Okay. Have you reviewed any of that literature
15 concerning electronic consumer goods? 13:55:52

16 A. I recall, when working on the preliminary
17 injunction, seeing some expert reports on these issues,
18 and in this matter, Samsung's experts' reports on the --
19 you know, who have opined on these areas. That would be
20 the breadth of what I've reviewed. I haven't read any 13:56:18
21 of their research or their publications or anything like
22 that.

23 Q. Did you review any of that literature in
24 connection with preparing your declaration?

25 A. Not in the -- no. 13:56:31

1 Q. All right. If I can ask you to look at
2 paragraph 40, please?

3 If you want to read the whole paragraph, that's
4 fine. I'm probably going to break it up into sentences,
5 but if you want to review the whole thing now, that's 13:56:54
6 fine.

7 MR. OLSON: Why don't you go ahead and do that.

8 THE WITNESS: Okay.

9 BY MR. ALDEN:

10 Q. So in the first sentence, you say 13:57:16
11 "Additionally, Samsung's own internal documents
12 emphasize the importance of the features embodied by the
13 User Interface Patents to the success of its tablet
14 devices."

15 Do you see that? 13:57:29

16 A. Yes.

17 Q. How does the fact that Samsung documents
18 emphasize the importance of patented features suggest
19 consumer demand for them?

20 A. I look at this from an economic perspective. 13:57:42
21 And Samsung is motivated to sell units of their devices,
22 specifically tablets, in order to make money, gain
23 market share. And their emphasis in their own internal
24 documents suggests that they wanted these features in
25 their product. And, just like every other company, 13:58:08

1 they're motivated to make money, so they must have
2 believed that consumers wanted these features in the
3 device.

4 Q. Does the fact that consumers may want a feature
5 in a device mean that that feature necessarily drives 13:58:26
6 consumer demand for the device?

7 A. It may or may not. It's not going to be the
8 sole reason someone buys a device necessarily. It may
9 be for one person but for another person it may be an
10 entirely different reason. 13:58:52

11 Q. What reasons would there be for people buying
12 devices, and specifically tablets?

13 A. There's a variety of features that a tablet --
14 there's lots of features in a tablet that could be
15 appealing to a customer. 13:59:08

16 Q. Could you give me some examples?

17 A. Screen size, camera, operating system.
18 There's -- those are a couple examples.

19 Q. Do the internal documents that you refer to in
20 the first sentence of paragraph 40 of your declaration 13:59:38
21 show that consumers actually purchased the tablets
22 because of the patented features?

23 A. No, it does not.

24 Q. Do any documents that you -- Samsung documents
25 that you reviewed in this case show that consumers 14:00:10

1 actually purchased tablets because of the patented
2 features?

3 A. No, not -- I'm not aware of any specific
4 documents.

5 Q. You then go on, in paragraph 40, to say 14:01:04
6 "For example, in April 2011 internal report, Samsung
7 described one of its tablets products under development
8 as, "Lacking Fun, Wow Effect," in part because,
9 "movements lack bounce effect."

10 Did I read that right? 14:01:26

11 A. Yes.

12 Q. Does Apple own intellectual property over
13 "fun"?

14 A. No.

15 Q. Does Apple own intellectual property over "wow 14:01:37
16 effect"?

17 A. No.

18 Q. And I believe you testified before that
19 Apple -- that you don't know whether the '381 Patent
20 covers all bounce effects on a touchscreen; correct? 14:01:50

21 A. That was my testimony.

22 Q. You then go on, in the next sentence, to say --
23 well, in the last sentence, so let me rephrase.

24 You say -- in paragraph 40, you say
25 "Samsung marked each of these pages with icon stamps 14:02:11

1 describing the lack of a bounce feature as "Critical"
2 and "Serious" issues."

3 Did I read that correctly?

4 A. Yes.

5 Q. Why did Samsung mark those pages with the icon 14:02:27
6 stamps critical and serious?

7 A. I can only offer my interpretation of the
8 document. I'm not the creator of the document. But it
9 would seem to indicate that these are important items
10 that they want addressed. Normally, when someone says 14:02:50
11 something's critical or serious, it's important to them.

12 Q. Did you speak to anyone at Samsung to --

13 A. I've never spoken to anyone at Samsung.

14 MR. OLSON: Wait till he finishes his question.

15 If you're pulling a document out, Anthony, is 14:03:10
16 this a good time for a break?

17 MR. ALDEN: Yes. That's fine.

18 THE VIDEOGRAPHER: We are off the record at
19 2:03 p.m.

20 (Recess held.) 14:10:37

21 THE VIDEOGRAPHER: We are back on the record at
22 2:10 p.m.

23 BY MR. ALDEN:

24 Q. Good afternoon, Ms. Robinson.

25 You appreciate you're still under oath? 14:10:50

1 A. Yes.

2 Q. I'd like to mark as Exhibit 2 to Ms. Robinson's
3 deposition Exhibit 29 to her declaration, which is a
4 document Bates-numbered SAMNDCA 00176053 through
5 00176125. 14:11:16

6 (Deposition Exhibit 2 was marked
7 for identification.)

8 BY MR. ALDEN:

9 Q. I think I misspoke. It's Exhibit 29 to
10 Ms. Robinson's deposition -- declaration. 14:11:29

11 MR. OLSON: For the benefit of the record,
12 it was also identified as Plaintiff's Exhibit 57 for
13 purposes of the trial, although I don't have any trouble
14 having it identified as Exhibit 2 for purposes of this
15 deposition. 14:11:54

16 BY MR. ALDEN:

17 Q. Ms. Robinson, let me know when you've had a
18 chance to look at it.

19 A. Okay.

20 Q. You see on the cover page it says P5 Usability 14:12:06
21 Evaluation Results?

22 A. Yes.

23 Q. What is "P5"?

24 A. I believe it is the tab 8.9.

25 Q. Was the tab 8.9 accused by Apple in this case? 14:12:20

1 A. No.

2 Q. Do you know who prepared this document?

3 A. I do not specifically recall offhand, no.

4 Q. Do you know what the purpose of this document

5 was? 14:12:52

6 A. It's my understanding that this is a review of
7 a product in development at that time, in April of 2011,
8 that reviewed -- that looked at usability evaluation.

9 Q. What is "usability evaluation"?

10 A. I don't specifically have a definition in mind 14:13:25
11 as to usability evaluation. I could -- it could
12 possibly mean that it's --

13 Q. I don't want you to guess.

14 A. Okay.

15 Q. If you have a basis to say, that's fine. If 14:13:48
16 you don't know, it's better that you say you don't know.

17 A. No basis.

18 Q. What was ultimately done with the information
19 in this document?

20 A. I don't specifically have information on that. 14:13:58

21 Q. So you don't know whether the statements or
22 opinions expressed in this document were ever
23 implemented?

24 A. Specific to the tab 8.9, I do not.

25 Q. Well, with respect to any other product? 14:14:28

1 A. I relied on this document as evidence that
2 Samsung was placing value on patented features asserted
3 in this case. But I don't know specifically what course
4 was taken in response to this document.

5 Q. So you don't know whether the bounce effect 14:14:56
6 that is referred to on page 2 of this document was ever
7 implemented by Samsung; is that correct?

8 A. I have no information. I don't know if it was
9 or was not.

10 Q. You can put that aside. 14:15:24

11 I'd like to mark as Exhibit 3 to Ms. Robinson's
12 deposition Exhibit 30 to Ms. Robinson's declaration. It
13 is a document Bates-stamped SAMNDCA 0020171 through 773.

14 (Deposition Exhibit 3 was marked
15 for identification.) 14:16:05

16 BY MR. ALDEN:

17 Q. Ms. Robinson, let me know when you've had a
18 chance to look at it.

19 A. Yes.

20 Q. Okay. And is this a document that you relied 14:16:25
21 on in preparing your declaration?

22 A. Yes, it is.

23 Q. Okay. And, specifically, you relied on this
24 document in forming your opinion that there's a
25 substantial nexus between the patented features and 14:16:39

1 consumer demand for Samsung's tablets; is that correct?

2 A. Correct.

3 Q. And if we look at the first page of the

4 document after the cover page, the heading says Analysis

5 of Galaxy tab Operation Speed and Screen Effects. Do 14:16:56

6 you see that?

7 A. Yes, I do.

8 Q. Which Galaxy tab is this document discussing?

9 A. I do not know.

10 Q. Was the Galaxy tab that this document is 14:17:07

11 discussing ever released?

12 A. I don't know one way or another.

13 Q. What was the purpose of this document?

14 A. I believe, based on the title, that it's an

15 analysis of the device, the Galaxy tab, it's an analysis 14:17:32

16 of the operation and speed and screen effects. So

17 there's a variety of applications that were reviewed and

18 comment was given regarding that review.

19 Q. How do you know that?

20 A. I'm interpreting the document on its face. 14:17:55

21 Q. Who prepared this document?

22 A. I don't specifically know who prepared it.

23 Q. Was it prepared by Samsung?

24 A. It was produced by Samsung. I don't know

25 specifically how it came into their hands. I would 14:18:32

1 presume that they -- someone at the company prepared it
2 but I don't specifically know.

3 Q. Do you know what was ultimately done with the
4 information in this document?

5 A. I do not know. 14:18:49

6 Q. I'd like to mark as Exhibit 4 to Ms. Robinson's
7 Deposition Exhibit 31 to Ms. Robinson's declaration,
8 which is a document Bates-numbered SAMNDCA 10850604. It
9 was also marked Plaintiff's Exhibit Number 195 at trial.

10 (Deposition Exhibit 4 was marked 14:19:24
11 for identification.)

12 BY MR. ALDEN:

13 Q. Ms. Robinson, let me know when you've had a
14 chance to look at this document.

15 A. Okay. 14:20:31

16 Q. Was this a document that you relied on in
17 forming your substantial nexus opinion?

18 A. Yes, it is.

19 Q. Okay. And you'll see at the top, it says from
20 Sangwook Han; do you see that? 14:20:47

21 A. Yes.

22 Q. Who is Sangwook Han?

23 A. I do not specifically know.

24 Q. Does Sangwook Han work for Samsung?

25 A. I do not know. 14:21:01

1 Q. You see the email address is
2 whan@nemustech.com; do you see that?

3 A. Yes.

4 Q. Who is Nemustech?

5 A. I do not know. 14:21:15

6 Q. What is Nemustech's relationship to Samsung?

7 A. I'm not certain.

8 It was my understanding that this was an email
9 involving Samsung employees. I see on the "to" line
10 there's a Samsung email address. But I'm not certain of 14:21:34
11 the relationship between Nemustech and Samsung.

12 Q. You see that the email was addressed to
13 seungyun75.lee@samsung.com; do you see that?

14 A. Right, yes.

15 Q. Do you know whose email address that is? 14:21:55

16 A. It's not ringing any bells, no.

17 Q. Do you know what his or her role is at Samsung?

18 A. No, I do not.

19 Q. Do you know what his or her role was at Samsung
20 at the time of this email? 14:22:22

21 A. No, I didn't.

22 Q. Do you know what product is being discussed in
23 this email?

24 A. It was my understanding that this document
25 related to tablet software, modification of the tablet 14:23:13

1 software.

2 Q. And how did you arrive at that understanding?

3 A. I don't specifically recall at this time.

4 Q. Where in this email does it say that Samsung
5 wanted to create a bounce effect similar to the iPad? 14:23:38

6 A. The words "create" are not in the document.
7 But this is a descrip -- this email describes two ways
8 to create an effect of bouncing to models in the
9 software code that was written, and one of them says
10 it obtains a bounce effect similar to the iPad. 14:24:12

11 MR. OLSON: I may just be -- we all make
12 mistakes on the record but, for the benefit of the
13 record, the document actually does use the word
14 "create."

15 THE WITNESS: Oh. 14:24:25

16 MR. ALDEN: Okay. She -- Ms. Robinson is
17 capable of testifying.

18 MR. OLSON: Sure, she is. She made an error in
19 saying "create" wasn't in the document.

20 MR. ALDEN: It's not typically counsel's role 14:24:34
21 to correct errors in the witness's testimony.

22 MR. OLSON: Anthony, is it really the case that
23 what you want is testimony that is inconsistent with the
24 actual statement of what the document says?

25 MR. ALDEN: What I'd like is short, concise 14:24:46

1 objections --

2 MR. OLSON: Well --

3 MR. ALDEN: -- and not coaching or speaking
4 objections. That's what I would like.

5 MR. OLSON: Well, then what I will say is you 14:24:55
6 should make sure that you've read the document carefully
7 before making any representations regarding it.

8 In this case, there isn't any question but the
9 word "created" is right in the middle of the document.

10 I'm sure that neither of us want a record that 14:25:09
11 is inaccurate as to the contents of this document.

12 MR. ALDEN: Thank you for your testimony,
13 Mr. Olson.

14 BY MR. ALDEN:

15 Q. Is the bounce effect being referred to in this 14:25:19
16 document the same bounce effect that is patented by '381
17 Patent?

18 A. It's possible. I'm not a technical expert so I
19 can't offer an opinion about these technical terms in
20 here. 14:25:39

21 Q. So you don't know whether it's the same bounce
22 effect that is referred to in the '381 Patent?

23 A. I can't recall -- I can't specifically say.

24 Q. Do you know whether -- do you know how the
25 information contained in this email was ultimately used? 14:26:04

1 A. No, I do not.

2 Q. Do you know whether it was used?

3 A. No, I do not.

4 Q. You can put that away. Thank you.

5 If I could direct your attention to paragraph 14:26:15
6 42 of your declaration, you say "Additional examples" --
7 well, strike that.

8 In the first sentence, the paragraph says
9 Additional examples where Samsung placed value on the
10 infringed features of the asserted User Interface 14:26:43
11 Patents include commercials for the Galaxy Tab and
12 Galaxy Tab 10.1, which feature the pinch-to-zoom,
13 scrolling, and tap-to-zoom navigation."

14 Did I read that right?

15 A. Yes. 14:26:57

16 Q. Does Apple have a patent on pinch-to-zoom?

17 MR. OLSON: Objection. Asked and answered.

18 Go ahead.

19 THE WITNESS: The '915 Patent addresses
20 pinch-to-zoom capabilities as my understanding as a 14:27:09
21 layperson.

22 BY MR. ALDEN:

23 Q. Does the '915 Patent cover all methods of
24 implementing pinch-to-zoom?

25 MR. OLSON: Objection. Asked and answered. 14:27:19

1 THE WITNESS: Again, I'm not a technical
2 expert. It would be my understanding as a layperson
3 that it does not cover all capabilities.

4 BY MR. ALDEN:

5 Q. And I believe you testified before that Apple's 14:27:30
6 '915 Patent does not cover all scrolling functions; is
7 that correct?

8 MR. OLSON: Objection. That misstates the
9 prior testimony.

10 THE WITNESS: Again, I would say that I'm not a 14:27:44
11 technical expert. I can't offer an opinion as to
12 whether a specific patent covers all scrolling
13 capabilities.

14 BY MR. ALDEN:

15 Q. Is it your understanding that the '915 Patent 14:27:58
16 covers all scrolling capabilities?

17 MR. OLSON: Objection. Asked and answered.

18 THE WITNESS: I can't -- I cannot offer an
19 opinion. I'm not a technical expert. I cannot offer
20 an opinion specifically as to whether all scrolling 14:28:14
21 capabilities are covered by that patent.

22 BY MR. ALDEN:

23 Q. You then say -- you use the term "tap-to-zoom
24 navigation." What do you mean by "tap-to-zoom
25 navigation"? 14:28:25

1 A. I would call that tap-to-zoom gesturing,
2 navigating on the device with your fingers.

3 Q. Does Apple have a patent that covers all forms
4 of navigating on a device with fingers?

5 A. As a nontechnical expert, I do not know if any 14:28:46
6 specific patent, including this patent, covers all
7 tap-to-zoom capabilities.

8 Q. By "this patent," I take it you mean the '163
9 Patent; is that correct?

10 A. Correct. 14:29:02

11 Q. I'm going to switch gears a bit, if I can, and
12 go to paragraph 25 of your declaration.

13 Let me know when you're there.

14 MR. OLSON: Anthony, by virtue of the fact that
15 this refers to Exhibit 7, can we go ahead and mark 14:29:33
16 Exhibit 7?

17 MR. ALDEN: When I want to use it, we can,
18 sure.

19 MR. OLSON: Okay.

20 BY MR. ALDEN: 14:29:40

21 Q. So this portion of your declaration, starting
22 at paragraph 24, discusses enhancements to the damages
23 award that Apple seeks; correct?

24 A. Correct.

25 Q. And if we look at paragraph 25, it says 14:29:58

1 "Since Samsung first launched the infringing and
2 diluting smartphones, Samsung's US smartphone market
3 share has steadily increased from 5% in June 2010, to
4 10% a year later, to 20% in late 2011, and to over 30%
5 by the second quarter of 2012," then it refers to an 14:30:18
6 Exhibit 7.

7 Did I read that correctly?

8 A. Yes.

9 Q. What were the reasons for the increases in
10 Samsung's market share that are referred to in paragraph 14:30:32
11 25?

12 A. I don't believe I've specifically offered an
13 opinion as to why the increases occurred in my
14 declaration.

15 Q. Do you have an opinion? 14:31:00

16 A. I believe the purpose of this statement is
17 that -- and the purpose of this whole section in the
18 report here is to look at the products found guilty of
19 infringing and diluting trade dress, and their launch
20 was -- occurred in the earlier part here, referencing 14:31:29
21 five percent in June 2010, and performing an analysis to
22 see what the impact of their launch was upon market
23 share in the time period.

24 Q. Okay. And so what -- do you have an opinion
25 about what caused the increase in market share that you 14:31:54

1 referred to in paragraph 25?

2 A. I don't know that I -- I don't have a specific
3 opinion. This -- this was an analysis performed based
4 on an assumption. I didn't offer an opinion as to
5 whether -- and I'm not offering an opinion right now. 14:32:38
6 But this analysis was conducted based on the assumption
7 that the trade dress and products infringing and
8 diluting the trade dress did have an impact on the
9 market share.

10 Q. Okay. Was it your assumption that the 14:32:52
11 increases in Samsung market share that are referred to
12 in paragraph 29 were caused solely by Samsung's sales of
13 the infringing and diluting product?

14 A. I think you may have misspoken. I heard
15 "paragraph 29." Are you referring back to 25? 14:33:13

16 Q. Yes.

17 A. Okay. And do I believe that the -- let me just
18 restate so I can make sure I understand the question, or
19 I can read it.

20 No. My assumption was not that they were 14:33:26
21 "solely" caused. I recognized in my analysis that there
22 are noninfringing products and other things taking place
23 in the marketplace and built-in adjustments to my
24 analysis to account for that.

25 Q. So you accept that there are other reasons why 14:34:08

1 Samsung's market share increased between June 2010 and
2 the second quarter of 2011; is that correct?

3 A. I accept that it's possible that there could be
4 other reasons.

5 Q. Okay. And what other reasons could there be? 14:34:25

6 A. I think earlier I stated some reasons that
7 drive consumer demand. Those same reasons would apply
8 here.

9 Q. So if you can give me some examples, I'd
10 appreciate it. 14:34:53

11 A. Operating system, brand loyalty.

12 Q. What about marketing; does marketing -- could
13 marketing potentially have an effect on Samsung's market
14 share in 2010 and 2012?

15 A. It's possible. 14:35:27

16 Q. Could the release of new products have had an
17 effect on Samsung's market share between 2010 and 2012?

18 A. I would say yes. And I would say that this
19 analysis is working under the assumption that
20 products -- new products that came out enjoyed the 14:35:45
21 benefits of these infringing and diluting phones that
22 came before them, and that's the premise of this
23 analysis.

24 Q. Okay. And what evidence do you have that
25 phones that came after the infringing phones enjoy the 14:35:58

1 benefits of the infringing phones?

2 A. I will draw upon the increases in market share
3 in that time frame. It's not -- it's not a coincidence
4 that products that were found to dilute and infringe
5 were released in a period where the market share jumped 14:36:27
6 from higher than five percent and then maintained their
7 share, and then, you know, new products came out and
8 jumped even higher.

9 Q. Okay. And I'm trying to understand.

10 The basis for your assumption that subsequent 14:36:43
11 sales -- that subsequent increases in market share were
12 driven by the infringing sales is the timing of the
13 increase in the original market share when the
14 infringing products were released; is that correct?

15 MR. OLSON: Objection. Compound. 14:37:08

16 BY MR. ALDEN:

17 Q. And, you know, all I'm -- it's not a
18 trick question. I'm trying to understand what your
19 assumptions are and what the basis for them is.

20 So you told me that -- and correct me if I'm 14:37:34
21 wrong. Again, I'm not trying to trick you. You told me
22 that you've assumed that -- well, why don't we start
23 again.

24 You told me that you've assumed that there are
25 multiple reasons why Samsung's market share could have 14:37:53

1 increased between June 2010 and the second quarter of
2 2012.

3 Did I state your testimony accurately?

4 A. I would just rephrase it to say I think I said

5 I accept that there are multiple reasons. 14:38:09

6 Q. Okay.

7 A. I -- okay.

8 Q. All right. So what contribution to Samsung's
9 increase in market share did the infringing and diluting
10 products make? 14:38:29

11 MR. OLSON: Objection. Vague.

12 BY MR. ALDEN:

13 Q. I'll rephrase.

14 How much did the infringing and diluting
15 products drive the increase in Samsung's market share? 14:38:43

16 A. It's -- that is a measurable data point, but
17 it's not a data point that I have specific documents in
18 front of me to draw upon.

19 Q. Okay. So you, sitting here right now, you
20 cannot tell me how much of an increase in market share 14:39:06
21 that's referred to in paragraph 25 is attributable to
22 Samsung's sales of the infringing and diluting products;
23 is that correct?

24 A. I can tell you that I looked at the sales of
25 these five products and saw that they represented as 14:39:32

1 much as 40 percent of Samsung's total sales during that
2 time period. So if we can look at the exhibits, I
3 could -- if you'd like, I can make an estimate. But, I
4 mean, I did look at -- I know that particularly in one
5 specific quarter it was 40 percent and in another 14:39:55
6 quarter it was 30 or 35 percent in which these five
7 specific products made up Samsung's total IDC market
8 share.

9 Q. And how does the fact that the products make up
10 a certain percentage of Samsung's total product offering 14:40:11
11 show that they drove increases in market share?

12 A. I'd have to do further analysis amongst the
13 infringing or noninfringing phones to give an accurate
14 answer to that question.

15 Q. Okay. So sitting here right now, can you tell 14:41:14
16 me of the, for example, five percent increase in
17 Samsung's market share from June 2010 to one year later,
18 presumably June 2011, can you tell me how much of that
19 ten percent increase was attributable to the infringing
20 and diluting products? 14:41:43

21 A. I don't have enough data in front of me to
22 calculate that.

23 Q. What would you need?

24 A. I'd need IDC total units. I'd need to know the
25 total units for all of the infringing and noninfringing 14:42:07

1 phones in that period.

2 Q. Is that data that you have?

3 A. Not in front of me, but yes.

4 Q. Okay. Did you perform that analysis?

5 A. I -- no, I haven't -- I have not performed that 14:42:33
6 specific analysis you're referring to.

7 Q. Why not?

8 A. It never -- I wasn't asked to.

9 Q. And I assume that the same -- you would say
10 the same thing if I asked you to identify the specific 14:43:00
11 proportion of the market share from June, increase in
12 market share from June 2011 to late 2011, your answer
13 would be the same; that you cannot, sitting here,
14 identify the proportion of the ten percent increase that
15 is attributable to the sale of the infringing products; 14:43:24
16 is that correct?

17 MR. OLSON: Objection. Misstates the
18 testimony.

19 BY MR. ALDEN:

20 Q. Well, let me ask a clean question. 14:43:35

21 Can you tell me what proportion of the ten
22 percent increase from June 2010 to -- sorry -- from
23 June 2011 to late 2011 was due to the infringing and
24 diluting products?

25 A. I can't do it sitting here, with the 14:43:54

1 information that's in front of me.

2 Q. Okay. You could do it, but you weren't asked
3 to do it; is that correct?

4 MR. OLSON: Objection. Misstates the
5 testimony.

14:44:07

6 THE WITNESS: I believe it could be done, yes.

7 BY MR. ALDEN:

8 Q. But you weren't asked to do it?

9 A. That's correct.

10 Q. Could you estimate, sitting here now?

14:44:16

11 A. I think it would be -- I think I'd need to
12 review the data. I don't think it would be appropriate
13 to estimate, sitting here.

14 Q. Okay. Paragraph 25 is based off IDC market
15 data; is that correct?

14:44:47

16 A. Um-hum.

17 Q. And what Samsung products were included in the
18 IDC data that you used?

19 A. Smartphones sold by Samsung.

20 Q. And do you know which smartphones were
21 included?

14:44:59

22 A. Not specifically. It's -- not specifically.

23 Q. Were the five products found by the jury to
24 both infringe at least one design patent and to dilute
25 trade dress included in the IDC data?

14:45:21

1 A. That's my understanding, that they would be
2 based on the techniques that IDC uses to gather its
3 data.

4 Q. Do you know if they are or not?

5 A. Do I what? 14:45:36

6 Q. Do you know if they are or not?

7 A. I don't -- I don't know with certainty. I
8 don't specifically identify every product captured in
9 their data sets.

10 Q. So you're assuming they're included but you 14:45:47
11 don't know?

12 MR. OLSON: Objection. Misstates the
13 testimony.

14 THE WITNESS: It's my understanding they're
15 included, based on the techniques used by IDC, but I 14:46:00
16 don't know with certainty.

17 BY MR. ALDEN:

18 Q. Did you do anything to check?

19 A. I'm not aware of anything that you can do to
20 check. 14:46:18

21 Q. So your answer is that you didn't?

22 MR. OLSON: Objection.

23 Her answer was what she stated.

24 Asked and answered. Misstates her testimony.

25 THE WITNESS: I did nothing more than 14:46:30

1 background research on how IDC gathers their data, and
2 I understand they are an accepted provider of market
3 share data in this industry.

4 MR. ALDEN: I'd like to mark as Exhibit 5 to
5 Ms. Robinson's deposition Exhibit 3 to Ms. Robinson's 14:46:57
6 declaration.

7 (Deposition Exhibit 5 was marked
8 for identification.)

9 MR. ALDEN: I'd also like to mark as Exhibit 6
10 to Ms. Robinson's deposition Exhibit 7 to Ms. Robinson's 14:47:38
11 declaration.

12 (Deposition Exhibit 6 was marked
13 for identification.)

14 BY MR. ALDEN:

15 Q. Ms. Robinson, I'll first ask you to look at 14:48:17
16 Exhibit 3 to your declaration, which is Exhibit 5 in the
17 deposition, and in particular to page 3.2.

18 A. Yes.

19 Q. And could you describe for me what this page
20 shows? 14:48:46

21 A. This page shows historical sales for eight
22 products that I was able to confirm in September of 2012
23 were still selling in the marketplace, that's the blue
24 line. The green line is a projection of sales for those
25 eight products. 14:49:08

1 Q. And your projection shows that sales of the
2 eight products were decreasing, is that correct, or will
3 decrease; is that correct?

4 A. Correct.

5 Q. So why is it that you believe that sales of the 14:49:20
6 infringing -- of the eight infringing products will
7 decrease that Samsung's market share as a result of
8 sales of the infringing and diluting products will
9 increase?

10 A. When you say "that Samsung's market share as a 14:49:56
11 result of the infringing and diluting products," you
12 mean their overall market share will increase?

13 Q. Yes. So you've opined that -- you projected
14 that Samsung sales of eight infringing and diluting
15 products will decrease until December 2012; correct? 14:50:19

16 A. Correct.

17 Q. In paragraph 25 of your declaration, you report
18 IDC data that shows Samsung's market share increasing
19 until December -- well, until the second quarter of
20 2012; correct? 14:50:37

21 A. Right.

22 Q. So why is Samsung's overall market share
23 increasing if sales of the eight infringing products are
24 decreasing?

25 A. So based on the data I've seen for the 14:50:48

1 historical period, and based on my knowledge of
2 Samsung's telecommunication business, it's their pattern
3 to, you know, withdraw products from the market. And
4 the data is indicating that these particular products
5 are on a downward slope here, that they're going to sell 14:51:08
6 less and less, and anticipate, you know, and ultimate
7 withdrawal from the market, but that is unknown as to
8 when that would happen when this analysis was completed.

9 So as to why it's decreasing, it's based on the
10 historical data and overall knowledge of the 14:51:30
11 marketplace.

12 But as to why their market share, their overall
13 market share would increase or even, I guess, remain
14 steady in later periods, additional products have been
15 released and continue to be released. And going back to 14:51:49
16 the initial assumption of this analysis that's described
17 in my declaration, the assumption was built in that the
18 sales of the infringing and diluting phones had an
19 impact on future sales of other devices, that those
20 devices in later periods or other devices were able to 14:52:26
21 have success on the heels of these prior sales.

22 Q. Okay. And what evidence is there for that
23 assumption?

24 A. The only evidence would be growth of mark --
25 you know, increase in market share. Beyond that, it's 14:52:48

1 an assumption.

2 Q. So, again, I'm trying to understand your
3 assumptions. You're saying that the evidence that
4 you're aware of for why sales of later phones will
5 increase as a result of sales of the infringing and 14:53:15
6 diluting phones is that Samsung got a market share
7 increase from the sales of the infringing and diluting
8 phones; is that correct?

9 A. Yes. The increase in market share would be --
10 would -- my answer's yes. 14:53:45

11 Q. Is it possible that Samsung's market share
12 could go down after it ceases selling the infringing and
13 diluting products?

14 A. I believe anything's possible.

15 Q. So that's a "yes"? 14:54:00

16 A. That's a "yes."

17 Q. And why -- well, strike that.

18 I'd like to mark as Exhibit 7 to Ms. Robinson's
19 deposition a document titled Samsung -- I'm sorry,
20 "Smartphone Shipments and Market Share, US Sales." 14:54:48

21 (Deposition Exhibit 7 was marked
22 for identification.)

23 BY MR. ALDEN:

24 Q. Let me know when you're ready, Ms. Robinson.

25 A. I'm ready. 14:55:24

1 Q. Okay. I'll represent to you that this document
2 was Exhibit 2 to Mr. Musika's reply declaration in
3 support of Apple's preliminary injunction.

4 Are you familiar with this document?

5 A. I am. 14:55:39

6 Q. Okay. And if we look at Samsung's market share
7 in 2007, you see that it was 6.3 percent?

8 A. I do.

9 Q. Do you have any reason to dispute that number?

10 A. No. 14:55:57

11 Q. And that is greater than the five percent
12 market share that Samsung had in June of 2010; correct?

13 A. That's correct.

14 Q. And how does that factor into your analysis?

15 A. It does not factor into my analysis. 14:56:13

16 Q. Okay. You see that in the -- in 2008,
17 Samsung's market share or share of the smartphone market
18 was 6.4 percent; do you see that?

19 A. Um-hum.

20 Q. Any reason to dispute that number? 14:56:38

21 A. No.

22 Q. How does the fact that Samsung's market share
23 prior to introducing the infringing and diluting
24 products was above five percent factor into your
25 analysis? 14:56:52

1 A. You did.

2 Q. What evidence do you have that all of Samsung's
3 losses would be experienced proportionally across all of
4 Samsung's product lines?

5 A. It really goes back to the assumption, which is 14:59:12
6 that the trade dress -- that the other products enjoyed
7 the benefits or had success on the heels of the trade
8 dress, the infringing and diluting products found to
9 infringe the trade dress.

10 Q. Okay. And I want to make sure I understand 14:59:53
11 your testimony.

12 The basis for your proportional allocation is
13 that is your assumption that the later products, the
14 products sold after the infringing and diluting
15 products, would benefit from the market share gained by 15:00:19
16 the infringing and diluting products; is that correct?

17 A. Benefit from the market share and the success
18 of those products, yes.

19 Q. Okay. Why didn't you allocate the percentage
20 losses solely to the infringing and diluting products? 15:00:47

21 A. Can we go to the exhibit?

22 Q. Yes. Which exhibit?

23 A. Exhibit 7. Is that entered here?

24 Q. Um-hum.

25 A. I'd like to explain, if I could, how the 15:01:17

1 analysis actually works.

2 Q. Okay.

3 A. Beyond just one sentence.

4 Q. Okay.

5 A. So box -- box 2, where you see the percentage 15:01:28
6 decreases going across, those are calculated based on
7 holding the market share constant at five percent.

8 Q. Um-hum.

9 A. And those reductions are applied in box 4 to
10 the infringing units. 15:01:45

11 Q. Um-hum.

12 A. And the difference -- so the difference between
13 the two million -- if you're looking at third-quarter
14 2010, the difference between the infringing units of two
15 million and the lost units of 1.3, that difference, call 15:02:02
16 it six million, is actually going back to Samsung in
17 this analysis to -- you know, based on the belief that,
18 you know, noninfringing phones could have made those
19 sales. So I think it's -- I just wanted to clarify that
20 point. 15:02:27

21 Q. Okay. If we go to paragraph 28, you say
22 "Apple's losses due to Samsung's sales of these 13.9
23 million phones are substantial."

24 A. Correct.

25 Q. What evidence do you have that Apple suffered 15:02:42

1 any loss as a result of Samsung's gain in market share?

2 A. Mathematics of it. If Samsung's market share
3 had stayed at five percent, those sales would have gone
4 somewhere.

5 So this analysis is looking at capturing the 15:03:13
6 magnitude of these units over time in an emerging,
7 growing marketplace, after the infringing and diluting
8 phones were entered into the marketplace. So we're
9 talking about lots of units, that's where the
10 "substantial" comes in, and the fact that market 15:03:37
11 share -- as Samsung's growing their market share, had
12 they not -- had their market share not grown, those
13 units would have gone elsewhere.

14 Q. Okay. What evidence do you have of that?

15 A. Again, it really goes back to the assumption in 15:04:01
16 the analysis to demonstrate -- I'm just -- it's what I
17 just said. I think I've already answered the question.

18 Q. Okay. Let me ask if I can -- because I'm not
19 really understanding the answer so --

20 A. Okay. 15:04:32

21 Q. -- let me see if I can ask it a different way.
22 What evidence do you have that Samsung had not
23 sold -- made these 3.9 million in sales, that any of
24 them would have gone to Apple?

25 MR. OLSON: 13.9 million? 15:04:39

1 BY MR. ALDEN:

2 Q. Sorry. 13.9, correct.

3 A. That if Samsung -- the lost units have to go
4 somewhere. And it's an accepted damage theory that some
5 portion of them would be distributed to the marketplace 15:05:02
6 at the market share of the various market participants.

7 Q. Is it possible that no one would have
8 purchased, made these 3.9 million dollars in sales?

9 A. I sup -- I believe that customers had committed
10 to purchase a smartphone and that a smartphone would 15:05:25
11 have been purchased.

12 Q. Okay. And what evidence do you have for that?

13 A. I have data telling me that they purchased a
14 smartphone.

15 Q. Okay. And what evidence do you have that they 15:05:36
16 would have -- some of them would have gone to Apple
17 instead of, for example, HTC, Motorola or Nokia?

18 A. I don't have specific evidence that they would
19 have gone to Apple. But I'm applying the sales at their
20 market share, at Apple's market share, leaving plenty of 15:05:56
21 units for other participants in the marketplace to grab
22 those sales, including Samsung.

23 Q. Okay. In paragraph 28, you reference a
24 "Mor-Flo analysis," correct?

25 A. Correct. 15:06:15

1 Q. Did you perform a Mor-Flo analysis?

2 A. I performed a market share distribution of
3 these units. It's not a true or pure Mor-Flo in that I
4 did not remove Samsung from the market and redistribute
5 those -- the shares. So in a typical Mor-Flo, you would 15:06:35
6 see an up -- an uptake in the market shares of
7 participants once Samsung's removed. And in this case
8 I used a pure market share for Apple, which would be
9 more conservative.

10 Q. Why didn't you use a pure Mor-Flo analysis? 15:06:52

11 A. In performing this analysis, I took a more
12 simplistic and conservative approach to presenting the
13 market share.

14 Q. Why did you decide to do that?

15 A. I felt that performing a more conservative 15:07:11
16 analysis was more appropriate.

17 Q. Why?

18 A. To not give -- not assign more units to any of
19 the participants than necessary. It's just a built-in
20 conservative adjustment. 15:07:46

21 Q. Does doing a pure Mor-Flo analysis allocate
22 more units to the market participants than necessary?

23 A. No, I'm not saying -- I'm not saying that. But
24 it's -- this was just one way to build in conservatism
25 to the model that I performed here. 15:08:12

1 Q. Okay.

2 A. It's not to say that it's inappropriate to
3 perform a pure Mor-Flo analysis.

4 Q. Can a pure Mor-Flo analysis itself account for
5 price differences between accused products and embodying 15:08:27
6 products?

7 A. The market share data does account for consumer
8 preferences for particular devices, thus addressing
9 price concerns.

10 Q. So did your -- is your testimony that your 15:08:56
11 analysis addressed price differences?

12 A. Yes.

13 Q. Did you do a separate analysis of price,
14 concerning price differences?

15 A. No. 15:09:16

16 Q. When calculating lost profits, Mr. Musika did a
17 Mor-Flo analysis; correct?

18 A. Correct.

19 Q. And he did that by carrier; correct?

20 A. Correct. 15:09:28

21 Q. Why didn't you do that?

22 A. In performing this analysis, I took other
23 adjustments that ultimately resulted in a number of
24 units assigned to Apple that was consistent with the
25 percentages of units that Mr. Musika assigned. 15:09:55

1 Q. Did you do a carrier adjustment like
2 Mr. Musika?

3 A. I did not do a specific carrier adjustment, but
4 I feel that my other adjustments captured the necessary
5 overall reductions to units that are necessary. 15:10:11

6 Q. Do you know -- well, do you know who -- which
7 carrier sold the Galaxy Prevail?

8 A. Not off the top of my head, no.

9 Q. Okay. If I told you it was Sprint and Boost
10 Mobile, would you have any reason to disagree with that? 15:10:43

11 A. No.

12 Q. Okay. Are you aware that Sprint did not carry
13 an iPhone until October 2011?

14 A. Yes.

15 Q. Did you do a capacity analysis? 15:10:57

16 A. I did consider capacity in performing this
17 analysis.

18 Q. Okay. Did you do a capacity analysis?

19 A. I relied upon the analysis that Mr. Musika
20 relied upon in his report. 15:11:15

21 Q. Okay. So if we can go to the fourth sentence
22 in paragraph 28, you say "Using the more conservative
23 assumption, Apple would have sold more than four million
24 additional products."

25 Do you see that? 15:11:40

1 A. Yes.

2 Q. Okay. Did Apple have the capacity to sell four
3 million additional products?

4 A. I did not -- I did not consider whether they
5 had the capacity or I don't recall whether they had the 15:11:55
6 capacity to sell four million. I recall considering
7 whether they had capacity to sell two million units.

8 Q. So you don't know whether they could have sold
9 four million additional units; correct?

10 A. I do not know one way or the other. 15:12:12

11 Q. Okay. Then you say "To make this calculation
12 even more conservative, I further assumed that Apple
13 would capture only half of these sales."

14 Do you see that?

15 A. Yes. 15:12:24

16 Q. Why did you assume that Apple would only
17 capture half of the sales?

18 A. To build further conservative adjustment to
19 this analysis and ensure that I wasn't awarding too many
20 units to Apple. 15:12:44

21 Q. Did Apple have the capacity to make 2,089,143
22 additional iPhone sales during the period?

23 A. Yes.

24 Q. Are these the same sales that Mr. Musika
25 presented in his lost profits analysis? 15:12:59

1 MR. OLSON: Objection. Vague.

2 THE WITNESS: Are the two million lost sales
3 here the same as what's in Mr. Musika's analysis?

4 BY MR. ALDEN:

5 Q. Mr. Musika testified that Apple would have sold 15:13:18
6 an additional two million iPhones; correct?

7 A. I don't recall the specific number of units
8 but ...

9 Q. Okay. Well --

10 A. I -- 15:13:33

11 MR. OLSON: Don't guess. If you've got the
12 number ...

13 MR. ALDEN: I'll mark as Exhibit 8 excerpts
14 from the Expert Report of Terry L. Musika, CPA.

15 (Deposition Exhibit 8 was marked 15:14:30
16 for identification.)

17 MR. OLSON: Anthony, as excerpts, are you able
18 to give any more information about what the scope or
19 nature of the excerpts are?

20 MR. ALDEN: They go from page 38 to 15:15:01
21 Mr. Musika's March 22nd, 2012 report, to page 46.

22 MR. OLSON: Perhaps I should put it
23 differently.

24 I take it you've chosen this. Are you able to
25 give us what that is or maybe it will be obvious when I 15:15:15

1 BY MR. ALDEN:

2 Q. Two million units; correct?

3 A. Yes, under this construct, yes.

4 Q. Okay. And how many of the units overlap? In
5 other words, what I'm trying to get at is how many of 15:19:12
6 them are the same units, in essence? I mean, there are
7 a certain number of sales during a period --

8 A. Right.

9 Q. -- correct, whether it's Mr. Musika's period or
10 a period you're using. 15:19:23

11 You've said Apple has lost two million units
12 worth of sales and Mr. Musika has said Apple has lost
13 two million units worth of sales.

14 How many of them are the same sales?

15 A. Well, so on a whole, the two million are 15:19:37
16 similar and overlap. But my analysis is taking -- you
17 know, is really about these five products that were
18 found guilty of infringing and diluting and looking at
19 the units that weren't found to be guilty of infringing
20 and diluting to see what kind of damage was sustained on 15:20:01
21 the heels of the success of those products. So if you
22 compare, for instance, just the five products for
23 lost -- that were awarded damage in the case, as
24 Mr. Wagner's looked at in his approach, you would see
25 that there's not a double-counting taking place. 15:20:31

1 Q. So let me unpack this.

2 What was Samsung's sales of the five products?

3 A. Over this period?

4 Q. Yes.

5 A. Can I review back to my declaration, please? 15:21:16

6 Q. Yes.

7 A. I don't believe I have that information at my
8 disposal.

9 MR. OLSON: If you want it, Anthony, it's in
10 Exhibit 9 to her report. 15:22:03

11 BY MR. ALDEN:

12 Q. Okay. Do you know whether Samsung sold more
13 than or less than two million phones during the -- of
14 the five diluting and infringing phones during the
15 period? 15:22:16

16 A. I would have to refer back to the sales data
17 presented in JX 1500.

18 Q. So Mr. Musika presented an opinion that Apple
19 lost two million sales; correct?

20 A. Right. 15:22:48

21 Q. Okay. And you would agree that the jury
22 awarded damages or awarded lost profits on some of those
23 sales; correct?

24 A. I don't have an opinion as to what specific
25 type of damage the jury awarded for those particular 15:23:03

1 products.

2 Q. Okay. Did you review Mr. Wagner's analysis of
3 the jury's verdict?

4 A. Yes.

5 Q. Okay. Do you disagree with his analysis of the 15:23:15
6 jury's verdict?

7 A. I believe it's mathematically correct, I find
8 no errors in the math.

9 Q. Okay. Do you -- so would you agree that the
10 jury awarded \$91 million in lost profits on these five 15:23:31
11 products that the jury found to infringe and dilute?

12 A. I don't know specifically whether the jury
13 awarded lost profits. I don't know what the jury did.
14 I know that on the verdict form they put damage amount
15 for each product. 15:23:52

16 Q. So it's possible that for every product that
17 that the jury found infringed the design patent, for
18 example, the entire amount of the jury's award could be
19 Samsung's profits?

20 A. I believe that could be possible. 15:24:08

21 Q. And it's possible that for the five phones that
22 the jury found infringed the design patent and diluted
23 trade dress, that the jury's entire award could be
24 infringer's profits under Section 289 for design patent
25 infringement; correct? 15:24:35

1 A. I believe that's possible.

2 Q. For the purposes of his lost profits analysis,
3 Mr. Musika assumed that Samsung would have designed
4 around all of Apple's asserted intellectual property by
5 May 2011; correct? 15:25:29

6 A. Correct.

7 Q. And Mr. Musika assumed that Samsung would have
8 designed around the '381 Patent in one month; correct?

9 A. I believe that's correct.

10 Q. Mr. Musika assumed that Samsung would have 15:25:38
11 designed around the '163 Patent in one month; correct?

12 A. I believe that's correct.

13 Q. Mr. Musika assumed that Samsung would have
14 designed around the '915 Patent in six months; correct?

15 A. I believe that is correct. 15:25:52

16 Q. Okay. You didn't make any assumptions
17 concerning design-around; correct?

18 A. I did not.

19 Q. Mr. Musika also assumed that Samsung would have
20 reentered the market and obtained a hundred percent of 15:26:05
21 its previous market share after designing around;
22 correct?

23 A. He did, yes.

24 Q. Okay. Your analysis assumed that Samsung's
25 infringing products have an effect on Apple's sales 15:26:18

1 after May 2011; correct?

2 A. Yes.

3 Q. What other differences are there between
4 Mr. Musika's lost profits analysis and your analysis?

5 A. I believe you've identified all the 15:26:40
6 differences.

7 Q. If we go to paragraph 29, the last sentence,
8 you say -- let me know when you're there.

9 A. Yes.

10 Q. "Multiplying the lost sales by quarter times 15:27:26
11 per unit."

12 THE VIDEOGRAPHER: Ms. Robinson, you are
13 covering your mic.

14 BY MR. ALDEN:

15 Q. "Multiplying the lost sales by quarter times 15:27:40
16 per unit incremental profits by quarter, Apple's lost
17 profits for the 2.1 million in additional sales are
18 702,868,901, as shown on Exhibit 8."

19 Did I read that correctly?

20 A. Correct. 15:27:56

21 Q. You're aware that, at trial, Mr. Musika opined
22 that Apple's lost profits were approximately \$490
23 million; correct?

24 A. Yes.

25 Q. And that \$490 million is included in the 702 15:28:07

1 million that you have concluded and that you've arrived
2 at in paragraph 29; correct?

3 MR. OLSON: Objection. Misstates prior
4 testimony.

5 THE WITNESS: I would just say that Mr. Musika 15:28:22
6 and I did not look at that time exact, same number of
7 units, so it's not exactly the same number of units but,
8 yes, there is an overlap.

9 BY MR. ALDEN:

10 Q. Given that Apple's, in your opinion, lost 15:28:48
11 profits -- well, it's your opinion that Apple's lost
12 profits were approximately \$700 million; correct?

13 A. It's my opinion, under this analysis and this
14 construct, that that's the amount of lost units that
15 I've calculated under the assumption that after the 15:29:05
16 infringing and diluting products entered the
17 marketplace, that Samsung was able to enjoy success on
18 the heels of those products and, as a result, the damage
19 was 700 million.

20 Q. So it's your opinion that Apple lost 15:29:39
21 \$700 million; correct?

22 A. Built upon the model that we've described and
23 the assumptions built into it, yes.

24 Q. Then why is Apple seeking \$400 million for the
25 five infringing and diluting products as opposed to 15:30:03

1 \$700 million?

2 A. I can't speak specifically to a determination
3 that was made for the \$400 million enhancement. I'm
4 providing context here as to whether that number is in
5 line with the type of damage that Apple has sustained. 15:30:33

6 Q. Why didn't Apple seek \$700 million in lost
7 profits at trial?

8 MR. OLSON: Objection. Asked and answered.

9 Oh, sorry, "at trial." Sorry.

10 THE WITNESS: Mr. Musika prepared his opinion 15:30:46
11 of lost profits built upon a construct that was not --
12 you know, that's not 100 percent the same as this
13 analysis. They're two different types of analysis.

14 BY MR. ALDEN:

15 Q. Why did you do a different analysis to 15:31:10
16 Mr. Musika?

17 A. I have facts at my disposal that Mr. Musika
18 didn't have, for instance, that five specific products
19 launched in early -- you know, in the 2010 time frame
20 were found to be infringing trade dress. Mr. Musika 15:31:29
21 didn't have that information at his disposal when
22 preparing his lost profits analysis.

23 Q. Well, Mr. Musika made that assumption, didn't
24 he?

25 A. What assumption? 15:31:53

1 So it's -- I'm trying to provide an analysis that looks
2 at the magnitude at which Apple was not compensated,
3 fully compensated at trial.

4 MR. OLSON: Anthony, before you ask another
5 question, we've been going I think it's close to an hour 15:35:08
6 and a half. I'd like the benefit of the break.

7 MR. ALDEN: Yes, just after I finish this line,
8 a couple minutes.

9 MR. OLSON: Well, I'd actually like to have a
10 break right now, but if you have a couple more 15:35:21
11 questions, let's see what we can do.

12 BY MR. ALDEN:

13 Q. Okay. So it's your opinion under this model
14 that Apple lost 700 -- approximately \$703 million;
15 correct? 15:35:32

16 A. Yes.

17 Q. Okay. And how much of that -- how do you know
18 that that amount wasn't included in the jury's verdict?

19 MR. OLSON: Object on asked and answered.

20 THE WITNESS: I believe I've already answered 15:35:51
21 that question.

22 BY MR. ALDEN:

23 Q. I'm sorry. I didn't understand the answer, so
24 if you could explain it to me again?

25 MR. OLSON: Objection. Asked and answered. 15:36:06

1 THE WITNESS: Okay. This amount -- this
2 analysis is providing context for Apple's willfulness
3 request of 400 million --

4 BY MR. ALDEN:

5 Q. Right. 15:36:49

6 A. -- under the Lanham Act, tied to trade dress.
7 I performed this analysis specific to these five
8 products with the assumption that those five products
9 received a benefit -- or the other products received a
10 benefit over time related to those sales in that initial 15:37:09
11 period, capturing shares -- capturing units here.

12 This number, this 700 million that's here,
13 is providing context to the three -- I believe it's the
14 approximate 382 million and which was awarded on those
15 specific five products. 15:37:31

16 Q. So is the 700, approximately 703 million,
17 relating to the lost sales of other products, not the
18 five products; is that correct?

19 MR. OLSON: Objection. Misstates the
20 testimony. 15:37:46

21 THE WITNESS: The 700 is going to include units
22 beyond the five products.

23 BY MR. ALDEN:

24 Q. Okay. Did the jury already award damages on
25 those units? 15:38:05

1 A. Which units?

2 Q. The units --

3 A. The five --

4 Q. No. On the units that are included in the 700

5 million number. 15:38:17

6 A. On -- the jury provided an award for certain
7 products based on the findings of infringement.

8 Q. And did any of that award -- was any of that
9 award for units that are -- on which you base

10 \$700 million number in paragraph 29? 15:38:49

11 A. I don't think I'm in a position to dissect the
12 jury's award.

13 Q. Okay. So you don't know?

14 A. I know they awarded a damage award on -- you
15 know, on certain products, but I don't think I'm in a 15:39:32
16 position to dissect their award.

17 Q. Okay. So it's possible that the jury awarded
18 damages on units on which -- at least some units on
19 which you calculated the \$700 million; you just don't
20 know? 15:39:46

21 MR. OLSON: Objection. Asked and answered.

22 THE WITNESS: Without dissecting the award, I
23 can't offer an opinion as to what specific units the
24 jury gave an award on, beyond taking what I've done in
25 this analysis and what I've done, you know, in this 15:40:42

1 report or this declaration.

2 As to -- I'm going to take it back again one
3 more time to what the purpose of this analysis was,
4 which was to provide context to Apple's request for \$400
5 million and willfulness damages that relate to the 15:41:14
6 Lanham Act and the five products that were found guilty
7 of infringing the trade dress.

8 MR. ALDEN: Okay. Let's take a break.

9 THE VIDEOGRAPHER: We are off the record at
10 3:51 p.m. 15:41:26

11 (Recess held.)

12 THE VIDEOGRAPHER: We are back on the record
13 at 3:58 p.m.

14 MR. OLSON: So, Anthony, just very quickly,
15 because I don't want to take more time: I told 15:58:52
16 Mr. Alden during the break that I may have some
17 re-direct questions, that I would ask him to reserve
18 time, and because that, if he didn't, I would
19 potentially argue that the record's closed within the
20 three-hour limit. 15:59:08

21 I intend to ask a very small number of
22 questions. My understanding is that reserving all
23 objections to this procedure and that his time shouldn't
24 be docked under the circumstances, that you're asking
25 that the time be identified when you have ten minutes 15:59:20

1 left and I'll ask my questions. We'll give the time
2 back to you and we'll see where we go.

3 MR. ALDEN: Correct.

4 I'll just state for the record that I object
5 to the redirect under these circumstances. It's new 15:59:32
6 testimony, new direct testimony by Ms. Robinson,
7 potentially not within the scope of her declaration.

8 The court gave Samsung three hours to depose
9 Ms. Robinson about her declaration, not about new
10 testimony that's being offered subsequent to her 15:59:49
11 declaration.

12 Having said that, you know, to avoid engaging
13 in dispute right now, as Mr. Olson said, I'll reserve
14 ten minutes to -- for re-cross, if necessary.
15 Otherwise, I'd like -- Mr. Olson has agreed that ten 16:00:09
16 minutes can otherwise be used by me as I see fit if I
17 don't have any re-cross. We'll take it from there.

18 MR. OLSON: I think that's fine. Why don't you
19 pick up the questioning.

20 BY MR. ALDEN: 16:00:26

21 Q. So I'd like to turn now, Ms. Robinson, to
22 supplemental damages.

23 A. Okay.

24 Q. And your supplemental damages opinion was based
25 on projected sales for eight products for the third 16:00:35

1 quarter of 2012 and the fourth quarter of 2012; correct?

2 A. Correct.

3 Q. And have you read Mr. Kerstetter's declaration?

4 A. Yes.

5 Q. Would you now accept that your projections are 16:00:55
6 inaccurate?

7 MR. OLSON: Objection. Vague.

8 THE WITNESS: I accept for the three months at
9 which Mr. Kerstetter provided sales for those specific
10 products that his -- the numbers he has presented are 16:01:18
11 different than the numbers I projected for those three
12 months.

13 BY MR. ALDEN:

14 Q. Do you have any reason to doubt
15 Mr. Kerstetter's numbers for the third quarter of 2012? 16:01:27

16 A. In light of the record in this case of
17 inaccurate or changing concerns regarding sales data
18 historically, having eight files produced in the course
19 of discovery, it would be my preference not to. I'm not
20 saying there's -- I'm not saying that Mr. Kerstetter is 16:01:53
21 misrepresenting himself. But it would be my preference
22 to review ordinary course sales files of Samsung for all
23 of the products, not just the eight products that
24 Mr. Kerstetter has provided sales data for.

25 Q. Did you ask for that information prior to 16:02:11

1 providing your declaration?

2 A. I'm not sure if Apple asked for that prior to
3 my declaration or not. Certainly it would be my
4 preference to have that at hand.

5 Q. Did you ask counsel to get you third-quarter 16:02:29
6 sales, Samsung sales data prior to preparing your
7 declaration?

8 A. I believe there was a discussion of "Are we
9 going to get third quarter sales data," and the answer
10 was "No, you're going to need to do a projection." 16:02:49

11 Q. Okay. Did you -- my question is a little
12 different. Did you ask counsel to get you third-quarter
13 sales data?

14 MR. OLSON: Objection. Asked and answered.

15 THE WITNESS: I asked if I was going to receive 16:03:02
16 it.

17 BY MR. ALDEN:

18 Q. Okay.

19 A. I don't -- I mean, it's not typical for me --
20 you know, I don't really see the distinction. 16:03:09

21 I asked "Will I be receiving it?" Of course I
22 want it. "Will I be receiving it?" "No" was the
23 answer.

24 Q. Okay. Are you aware that Apple never asked for
25 that data -- 16:03:20

1 MR. OLSON: Objection. Misstates --

2 BY MR. ALDEN:

3 Q. -- prior to your declaration?

4 A. I have no -- I don't have any knowledge one way
5 or the other. 16:03:28

6 MR. OLSON: So, Mr. Alden, I don't want there
7 to be any confusion.

8 We have very distinctly asked for it recently
9 and it has been refused to us. Is there a change in
10 Samsung's position on that point? 16:03:39

11 MR. ALDEN: I'm going to continue with my
12 questioning.

13 Were you aware that Apple did not ask for
14 third-quarter sales data prior to submitting your
15 declaration? 16:03:48

16 THE WITNESS: I had no knowledge of whether
17 they asked for it or not.

18 BY MR. ALDEN:

19 Q. Was it of concern to you that you didn't get
20 third-quarter Samsung sales data? 16:03:58

21 A. It would be preferred to have the data, but in
22 instances, particularly in a litigation environment
23 where you're not -- you don't have access to
24 information, it's customary to provide projections.

25 Q. Are you preparing revised projections? 16:04:27

1 A. Not at this time.

2 Q. Do you expect to submit a supplemental
3 declaration revising your supplemental damages analysis?

4 A. I believe if Samsung produces -- I believe I
5 understand that Apple has requested comprehensive sales 16:04:48
6 data for all 26 products. Should that data be provided,
7 is my understanding I will be asked to update my
8 analysis.

9 Q. But if that data is not provided, you will not
10 be updating your analysis; is that correct? 16:05:04

11 A. Yes, that is my understanding.

12 Q. Are you -- will you be submitting a
13 supplemental declaration either on the subjects of a
14 permanent injunction or enhancement?

15 A. I -- 16:05:33

16 MR. OLSON: Let me stop.

17 Is the only information you'd have on that some
18 communication you've had with an attorney at
19 Morrison & Foerster?

20 THE WITNESS: Yes. 16:05:45

21 MR. OLSON: Okay. At this point, I would
22 instruct you not to answer pursuant to the parties'
23 stipulation on expert discovery.

24 BY MR. ALDEN:

25 Q. Do you agree that if the court were to grant 16:06:07

1 Samsung's remunerative motion in whole or in part that
2 your supplemental damages calculation would need to be
3 revised?

4 MR. OLSON: Can I have that read back?

5 I can't read it on here. 16:06:34

6 BY MR. ALDEN:

7 Q. I'll ask a different question.

8 If the court grants Samsung's remunerative
9 motion in whole or in part, what impact would that have
10 on your supplemental damages calculation? 16:06:43

11 MR. OLSON: Objection. Incomplete
12 hypothetical.

13 THE WITNESS: I believe there's many things
14 contained in that motion that Samsung has filed and I'm
15 not certain how that would impact my analysis. 16:07:04

16 BY MR. ALDEN:

17 Q. If the court were to reduce the jury's damages
18 verdict, would that impact your supplemental damages
19 analysis?

20 MR. OLSON: Objection. Incomplete 16:07:17
21 hypothetical.

22 THE WITNESS: I suppose if the total verdict
23 amount was reduced, then the numerator involved in the
24 calculation of the \$50.40 per unit could potentially be
25 revised per unit amount. 16:07:45

1 BY MR. ALDEN:

2 Q. Have you ever, prior to this case, performed a
3 supplemental damages calculation?

4 A. I don't -- no, I don't recall working on one.

5 Q. Mr. Musika's lost profits calculation assumed 16:08:12
6 that all of Apple's asserted intellectual property would
7 be found to be infringed and/or diluted; correct?

8 A. Correct.

9 Q. If less than all the intellectual -- Apple's
10 asserted intellectual property was found to in fact 16:08:29
11 infringe or dilute, the jury would need to know the
12 length of the design-around period for the IP found to
13 be infringed in order to calculate lost profits;
14 correct?

15 MR. OLSON: Objection. 16:08:44

16 Unless you can identify where there's a
17 statement on that subject in her declaration, I would
18 instruct her not to answer.

19 So that's a statement to you. I've instructed
20 her. So unless this is a statement that relates 16:09:00
21 to her declaration, and I'm not aware of it -- in fact,
22 I think it's to the contrary, it's think it's just an
23 attempt to reach back to the work of Mr. Musika -- then
24 that's not part of the permissible scope of her
25 deposition, that's not what she's doing. 16:09:20

1 MR. ALDEN: I disagree. And, once again, I
2 think you're obstructing the deposition for strategic
3 purposes.

4 MR. OLSON: I disagree.

5 BY MR. ALDEN: 16:09:29

6 Q. You previously testified that you did not
7 incorporate a design-around period into your calculation
8 of an enhancement amount; correct?

9 A. Correct.

10 Q. Mr. Musika's lost profits calculation was based 16:09:39
11 on or did incorporate design-around periods; correct?

12 A. It did.

13 Q. And Mr. Musika assumed and the IP, that Apple's
14 asserted IP Mr. Musika assumed would have different
15 design-around periods for each element of intellectual 16:10:09
16 property; correct?

17 MR. OLSON: Objection. Asked and answered.

18 THE WITNESS: He assumed that there -- he
19 assumed or assigned certain design-around periods to
20 each form of intellectual property. 16:10:23

21 BY MR. ALDEN:

22 Q. Right. And it would be necessary for the
23 jury to know those design-around periods in order to
24 calculate lost profits, correct, on a specific -- for a
25 specific IP element; correct? 16:10:37

1 Q. Sure.

2 A. -- or my declaration?

3 I did not specifically state that Samsung's
4 "borrowing rate," but I said the "defendant's use of
5 funds." And, logically, I think it's a logical assum -- 16:13:58
6 connection that if Samsung's using funds, it would have
7 to pay a rate to use those funds. And if they were
8 borrowing money, they would be borrowing at their -- you
9 know, at a rate within their borrowing rate.

10 Q. Which documents did you look at to ascertain 16:14:21
11 Samsung's borrowing rate?

12 A. Their financial statements.

13 Q. And which entity did you look at?

14 A. Samsung Electronics.

15 Q. Which financial statements did you look at? 16:14:32

16 A. The year ending 2011.

17 Q. Any others?

18 A. I'm sorry, first quarter, I'm pretty sure it
19 was the first quarter of 2012, and it shows -- you know,
20 it has multiple periods in there. 16:14:49

21 Q. Under what circumstances do you believe that
22 the Treasury rate should be used instead of the prime
23 rate?

24 A. I don't know that I have an example of a
25 scenario where the Treasury rate would be acceptable, 16:15:24

1 but I do understand it can be an acceptable rate.

2 Q. Do you believe that Samsung, and by that I mean
3 Samsung Electronics, was a default risk at all during
4 the damages period?

5 A. I would say that, from Apple's perspective, 16:15:40
6 lending money to your fiercest competitor is a risk in
7 itself that would be considered. It's not typical
8 business practice for fierce competitors to lend money
9 to one another.

10 Q. If there was a contract between Apple and 16:16:01
11 Samsung, do you have any reason to believe that whereby
12 Apple lent Samsung money, do you have any reason to
13 believe that Samsung wouldn't repay that money?

14 A. I'm not aware of Samsung having a history of
15 defaulting on loans. 16:16:22

16 MR. ALDEN: All right. I'll cede, under
17 objection, to Mr. Olson and reserve the remainder of
18 my time.

19 MR. OLSON: All right. Can we go off the
20 record for just one minute? 16:16:44

21 THE VIDEOGRAPHER: We are off the record at
22 4:16 p.m.

23 (Recess held.)

24 THE VIDEOGRAPHER: We are back on the record at
25 4:17 p.m. 16:17:54

EXAMINATION

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BY MR. OLSON:

Q. Ms. Robinson, I'm Eric Olson and I represent Apple. I have a number of questions for you based on comments and questions asked by Mr. Alden today. 16:18:04

Earlier on, there was some discussion about whether or not bounce and/or doubletap or scroll versus gesture, the technologies of the '381, '163 and '915 Patent, had been implemented by Samsung in connection with some specific documents. 16:18:28

In that context, and with that in mind, are you -- do you know that Samsung has implemented the technologies of the '381 Patent in Samsung products?

MR. ALDEN: Objection. Leading. Assumes facts not in evidence. 16:18:44

THE WITNESS: Yes.

BY MR. OLSON:

Q. And why do you know that?

A. The jury found certain products guilty of infringing the '381 Patent. 16:18:53

Q. And does that include tablet products?

A. Yes.

Q. Do you know that Samsung implemented the technology of the '163 Patent in some of its products?

A. Yes. 16:19:08

EXAMINATION (CONTINUED)

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BY MR. ALDEN:

Q. How much does Apple seek in supplemental damages?

A. Combined, 535 -- I'm sorry. Supplemental? 16:25:08

Q. Yes.

A. Sorry. I thought you said "enhanced."

Can I refer back to my declaration?

Q. Sure. Would it help if I told you it was approximately \$121 million? 16:25:56

MR. OLSON: If it helps, to move things along, I think if you look at paragraph 12.

THE WITNESS: Yes, that's where I'm looking at.

It's 121 million.

BY MR. ALDEN: 16:26:10

Q. And that was for eight products; correct?

A. That calculation was derived off of eight products, but the intent beyond -- the intent of that calculation is to represent all infringing devices.

Q. Okay. Did Apple ask for any additional amounts beyond \$121 million for any other infringing devices? 16:26:26

A. The 121 is intended to capture all infringing devices for the supplemental period.

Q. And you testified that it's your understanding that Samsung refused to provide information for all 16:27:04

1 products; correct?

2 A. Yes.

3 Q. How do you have that understanding?

4 A. From counsel.

5 Q. What did counsel say to you? 16:27:11

6 A. That they -- the information's been requested
7 and Samsung will not -- will not be providing the data.

8 Q. Did counsel explain to you why Samsung isn't
9 providing the data?

10 A. We did not discuss that. 16:27:29

11 Q. Did counsel explain to you that Apple did not
12 request the data prior to the time you submitted your
13 declaration and Apple moved for \$121 million in
14 supplemental damages?

15 MR. OLSON: Objection. Asked and answered. 16:27:43

16 THE WITNESS: I have no knowledge of whether
17 the information was requested prior to the issuance of
18 my report.

19 I had a discussion about whether we would -- I
20 would be receiving the data and I was told no. There 16:27:59
21 was no discussion about whether it had been requested.

22 BY MR. ALDEN:

23 Q. I believe you testified in response to
24 Mr. Olson's questions that Samsung's -- in your opinion,
25 Samsung's infringing and diluting sales gave it a 16:28:13

1 head-start in the marketplace. Is that your testimony?

2 A. Yes.

3 Q. How much of Samsung's market share increase is
4 attributable to that head-start?

5 A. As we've discussed, there are multiple factors 16:28:33
6 in this market that could drive sales. I have not
7 studied nor can I provide a specific percentage that
8 it's attributed to.

9 Q. I believe you also testified that Samsung's
10 infringing and diluting sales gave it an opportunity to 16:29:02
11 build brand loyalty?

12 A. Um-hum.

13 Q. What value in dollar terms was that additional
14 brand loyalty worth?

15 A. I have not studied that issue. 16:29:14

16 Q. How many percentage points of market share did
17 that opportunity to build brand loyalty contribute to
18 Samsung's increase in market share?

19 A. I can't -- I cannot isolate a percentage point.

20 Q. I believe you testified that the infringing and 16:29:38
21 diluting sales allowed Samsung to get a greater exposure
22 in the market?

23 A. Yes.

24 Q. How much did that greater exposure contribute
25 to Samsung's increase in market share? 16:29:53

1 A. I mean, similarly, I can't provide a measure.

2 I don't know.

3 Q. In calculating supplemental damages, you relied
4 on Samsung's historical sales information; correct?

5 A. Correct. 16:30:30

6 MR. ALDEN: Okay. I'll just take a very short
7 break, see what else I have left to ask.

8 MR. OLSON: Okay.

9 THE VIDEOGRAPHER: We are off the record at
10 4:30 p.m. 16:30:48

11 (Recess held.)

12 THE VIDEOGRAPHER: We are back on the record at
13 4:41 p.m.

14 BY MR. ALDEN:

15 Q. I just want to turn back now to final 16:41:35
16 installment to supplemental damages.

17 A. Okay.

18 Q. Your supplemental damages calculation was based
19 on the assumption that Samsung would continue to sell
20 the products through December 31, 2012; correct? 16:41:48

21 A. Correct.

22 Q. And you're aware that that assumption is
23 incorrect?

24 MR. OLSON: Objection. Misstates the record.

25 THE WITNESS: I'm aware that Mr. Kerstetter has 16:42:03

1 provided a declaration that's addressed timing of
2 products, last importation and so forth.

3 BY MR. ALDEN:

4 Q. And you're aware that Mr. Kerstetter has
5 testified that Samsung will not be selling all those 16:42:24
6 eight products through December 30th, 2012?

7 MR. OLSON: Anthony, did you say "all those
8 eight products"?

9 MR. ALDEN: Correct.

10 THE WITNESS: Yes. I'm aware that he has 16:42:36
11 represented that.

12 BY MR. ALDEN:

13 Q. Do you have any reason to doubt that
14 representation?

15 A. I don't have any reason to doubt it. I would 16:42:42
16 like to verify the sales records -- I would like to
17 verify that representation through the sales records of
18 Samsung.

19 Q. And to do so, it would be necessary to get
20 those sales records through December 31st, 2012; 16:42:59
21 correct?

22 A. Yes.

23 Q. Your projections do not break out projected
24 sales by product; correct?

25 A. Right. The projection's done on a whole. 16:43:14

1 Q. So there's no way to -- for Samsung to adjust
2 your projections by subtracting out amounts for the
3 specific products Samsung stopped selling prior to
4 December 31st; correct?

5 MR. OLSON: Objection. Vague. 16:43:44

6 THE WITNESS: Can I -- I would agree on the
7 per-product basis.

8 BY MR. ALDEN:

9 Q. Now, your calculation of supplemental damages
10 assumes that every unit with each of the eight products 16:44:17
11 Samsung sells after June 30th will continue to infringe;
12 correct?

13 A. Yes.

14 Q. If that assumption is incorrect, your
15 projections should not be used to calculate supplemental 16:44:32
16 damages; isn't that right?

17 A. The intent of the projection is to represent
18 the damage for all of the products potentially that
19 would sell during this time frame, not just the eight.
20 So you're referring to just the eight no longer 16:45:13
21 infringing; correct?

22 Q. Correct.

23 A. I think it would depend on the circumstances,
24 because many of these devices have been found to
25 infringe multiple forms of intellectual property. And 16:46:01

1 so if, for instance, one particular feature no longer
2 infringed, it may still infringe other features and the
3 damage would not be impacted.

4 Q. But did your analysis consider whether any of
5 those eight products would not infringe any of Apple's 16:46:17
6 asserted intellectual property?

7 A. So did my analysis consider if, for instance,
8 the Droid Charge was no longer infringing at all, not
9 one form of intellectual property that it was found
10 guilty of infringing? 16:46:34

11 Q. Correct.

12 A. No, my analysis did not consider that.

13 Q. And it didn't consider it for any of the eight
14 products; correct?

15 A. That's correct. 16:46:42

16 Q. Now, the blended -- the \$5.40 per sale average
17 that you arrived at, that was based on the jury's total
18 award; correct?

19 A. It's \$50.40.

20 Q. Sorry. \$50.40 -- 16:47:05

21 A. That's okay.

22 Q. -- was based on the jury's total award;
23 correct?

24 A. Correct.

25 MR. OLSON: Anthony takes an average advantage. 16:47:12

1 Anthony, I think we're very close to, if not
2 already beyond, your time.

3 MR. ALDEN: Okay. I'll wrap it up.

4 Thank you for your time.

5 MR. OLSON: Before you say the end, we'd like 16:47:30
6 this transcript marked "Highly Confidential Under the
7 Protective Order," subject to further review, and I
8 think that is all that I need to say at the end.

9 THE VIDEOGRAPHER: This is the end of today's
10 deposition of Ms. Marylee Robinson. 16:47:47

11 We're off the record at 4:47 p.m.

12 Thank you.

13 (TIME NOTED: 4:47 P.M.)

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DEPOSITION REPORTER'S CERTIFICATION

I, the undersigned, a California Certified Shorthand Reporter, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth, at which time the witness was administered the oath; that the testimony of the witness and all objections made by counsel at the time of the proceedings were recorded stenographically by me, and were thereafter transcribed under my direction; that the foregoing transcript contains a full, true, and accurate record of all proceedings.

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

IN WITNESS WHEREOF, I have this date subscribed my name, dated this 6th day of November, 2012.

THOMAS J. FRASIK, CSR No. 6961