

# Estrich Declaration

## Exhibit 14

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

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APPLE INC., a )  
California corporation, )  
Plaintiff, )  
vs. ) Case No.  
SAMSUNG ELECTRONICS CO., ) 11-cv-01846-LHK (PSG)  
LTD., a Korean ) VOLUME II  
corporation; SAMSUNG )  
ELECTRONICS AMERICA, )  
INC., a New York )  
corporation; and SAMSUNG )  
TELECOMMUNICATIONS )  
AMERICA, LLC, a Delaware )  
limited liability company, )  
Defendants. )  
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HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

Continued Videotaped Deposition of RUSSELL S.  
WINER, taken at 51 Madison Avenue, New York,  
New York, commencing at 12:31 p.m., Tuesday,  
November 6, 2012, before Amy Klein Campion,  
a shorthand reporter and Notary Public.

JOB No. 1554078  
PAGES 353 - 521

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17

18

19 ALSO PRESENT:

20 PETER COOPER, Videographer

21

22

23

24

25

1 A. Yes. 12:34:17

2 Q. Was it prepared by an attorney? 12:34:18

3 A. No. 12:34:22

4 Q. Who prepared the first draft? 12:34:22

5 A. It was done by someone at 12:34:24

6 Cornerstone Research. 12:34:29

7 Q. Who is that person? 12:34:29

8 A. I don't know exactly who did it. 12:34:32

9 Q. Do you have any knowledge or 12:34:34

10 information as to who did the first draft 12:34:35

11 of this declaration we've marked as 12:34:37

12 Exhibit 1678? 12:34:40

13 A. It was done by a team of people 12:34:41

14 at Cornerstone, I believe, that I have 12:34:43

15 worked with on this case. 12:34:46

16 Q. Can you tell me by name any of 12:34:49

17 the individuals who worked on this 12:34:54

18 declaration we marked as Exhibit 1678? 12:34:55

19 A. I can't tell you that for sure. 12:34:58

20 Q. Do you have any knowledge or 12:35:02

21 information as to any information they 12:35:05

22 relied upon in connection with the 12:35:07

23 preparation of this declaration we've 12:35:09

24 marked as Exhibit 1678? 12:35:11

25 A. To the best of my knowledge, the 12:35:13

1 basis for this declaration is my expert 12:35:15  
2 report that was filed some time ago. 12:35:18  
3 Q. Anything else? 12:35:22  
4 A. No. 12:35:23  
5 Q. Did the individuals at 12:35:26  
6 Cornerstone review the trial transcript in 12:35:30  
7 this case? 12:35:33  
8 A. I do not know. 12:35:34  
9 Q. Did they review any of the trial 12:35:36  
10 exhibits in this case? 12:35:39  
11 A. I do not know. 12:35:41  
12 Q. Did they review the Declaration 12:35:42  
13 of Phil Schiller that was submitted in 12:35:46  
14 connection with Apple's request for a 12:35:50  
15 permanent injunction? 12:35:52  
16 A. I don't know. 12:35:53  
17 Q. Directing your attention to 12:35:57  
18 paragraph 12 of Exhibit 1678 -- 12:35:58  
19 (The witness complies.) 12:36:02  
20 Q. -- you'll see that there's a 12:36:03  
21 reference here to a U.S. -- a UBS 12:36:07  
22 Investment Research report? 12:36:12  
23 A. Yes, I see that. 12:36:12  
24 Q. For the record, paragraph 12 12:36:14  
25 begins: "Industry observers agree on the 12:36:16

1 question and answer the question. 12:40:17

2 (Requested portion of record 12:40:18

3 read.) 12:40:32

4 MR. HUNG: Calls for 12:40:32

5 speculation, lacks foundation, asked 12:40:35

6 and answered. 12:40:36

7 A. I don't know. 12:40:36

8 Q. In connection with any of the 12:40:39

9 claims made in Exhibit 1678, did you 12:40:42

10 yourself talk to anyone at Apple? 12:40:44

11 A. No, I did not. 12:40:46

12 Q. Did you ask to? 12:40:47

13 A. No, I did not. 12:40:48

14 Q. Did you review the declaration 12:40:50

15 of Phil Schiller prior to the time that 12:40:51

16 you signed this declaration, Exhibit 1678? 12:40:54

17 A. No, I did not. 12:40:56

18 Q. Have you read it now? 12:40:59

19 A. No, I have not. 12:41:01

20 Q. Have you read Mr. Schiller's 12:41:02

21 deposition transcript from last week? 12:41:05

22 A. No, I have not. 12:41:06

23 Q. At any time up through today 12:41:17

24 have you reviewed the Federal Circuit's 12:41:18

25 decision reversing the District Court's 12:41:21

1 grant of an injunction against the Galaxy 12:41:25  
2 Nexus? 12:41:30  
3 A. No, I haven't. 12:41:30  
4 Q. Did you take any of the 12:41:31  
5 pronouncements of the Federal Circuit into 12:41:33  
6 account in offering your opinion in this 12:41:35  
7 case? 12:41:37  
8 MR. HUNG: Objection; vague and 12:41:38  
9 compound. 12:41:40  
10 A. The only thing I've read is the 12:41:40  
11 judgment after the trial in San Jose. 12:41:44  
12 Q. My question is about the Federal 12:41:49  
13 Circuit opinion. Did you do anything to 12:41:51  
14 ensure that your opinions in this case are 12:41:53  
15 consistent with the Federal Circuit's 12:41:55  
16 decision reversing the preliminary 12:41:59  
17 injunction that was granted by the 12:42:00  
18 District Court with respect to the Galaxy 12:42:04  
19 Nexus? 12:42:10  
20 MR. HUNG: Objection; assumes 12:42:10  
21 facts. 12:42:12  
22 A. No. 12:42:13  
23 Q. So whether or not your opinions 12:42:17  
24 meet the requirements of the Federal 12:42:19  
25 Circuit is something you don't know about, 12:42:21

1 right? You can't tell me one way or 12:42:23  
2 another? 12:42:25

3 MR. HUNG: Objection; vague and 12:42:26  
4 compound. 12:42:28

5 A. As I said before, I haven't read 12:42:28  
6 that document you're referring to. 12:42:30

7 Q. So whether or not your opinions 12:42:31  
8 meet the standards set forth by the 12:42:33  
9 Federal Circuit is something you don't 12:42:34  
10 know, correct? 12:42:36

11 MR. HUNG: Objection; vague and 12:42:37  
12 compound, asked and answered. 12:42:39

13 A. I don't know. 12:42:40

14 Q. Did you review any of the 12:42:41  
15 briefing by the parties in connection with 12:42:44  
16 that preliminary injunction appeal as it 12:42:47  
17 pertains to the Galaxy Nexus? 12:42:50

18 MR. HUNG: Objection; vague. 12:42:54

19 A. No. 12:42:56

20 MR. ZELLER: Let's please mark 12:43:13  
21 as Exhibit 1679 a multipage document 12:43:16  
22 bearing Bates numbers 12:43:21  
23 APLITC7960000058721 through 736, and 12:43:27  
24 it is a UBS Investment Research 12:43:33  
25 report. 12:43:37



1 (Exhibit 1679 marked for 12:43:37  
2 identification, UBS Investment 12:43:37  
3 Research report bearing Bates numbers 12:43:37  
4 APLITC7960000058721 through 736.) 12:43:37  
5 BY MR. ZELLER: 12:43:58  
6 Q. Do you recognize what we've 12:43:58  
7 marked as Exhibit 1679? 12:44:00  
8 A. I recognize this document. 12:44:02  
9 Q. Did you review it at about the 12:44:03  
10 time you had signed the declaration we've 12:44:06  
11 marked as Exhibit 1678? 12:44:09  
12 A. No. 12:44:11  
13 Q. When did you last review this 12:44:12  
14 document that we've marked as Exhibit 12:44:15  
15 1679? 12:44:17  
16 (The witness reviews document.) 12:44:20  
17 A. Some time prior to when I 12:44:23  
18 submitted my expert report which was dated 12:44:26  
19 March 22nd, 2012. 12:44:29  
20 Q. And so you had not reviewed 12:44:32  
21 Exhibit 1679 at any time after March of 12:44:34  
22 this year, up through today? 12:44:42  
23 A. Well, I may have reviewed it in 12:44:44  
24 preparation for both my prior deposition 12:44:46  
25 as well as my testimony at trial. But not 12:44:51

1 since the trial. 12:44:53

2 Q. And you didn't specifically 12:44:55

3 review it in connection with the 12:44:56

4 preparation of your declaration we've 12:44:59

5 marked as Exhibit 1678? 12:45:01

6 A. No, I did not. 12:45:03

7 Q. Did you do anything to satisfy 12:45:08

8 yourself that this UBS Investment Research 12:45:10

9 report which we've marked as Exhibit 1679 12:45:15

10 in fact supported the claim that was made 12:45:18

11 in paragraph 12 of your declaration? 12:45:20

12 A. Yes, I have. 12:45:22

13 Q. Well, I'm asking as of the time 12:45:23

14 you had signed your declaration. 12:45:27

15 A. As I said already, I haven't 12:45:28

16 read it since my trial preparation. 12:45:30

17 Q. So you didn't do anything to 12:45:33

18 determine whether the UBS Investment 12:45:35

19 Research report actually supported the 12:45:38

20 proposition that it is cited for in 12:45:41

21 paragraph 12 of your declaration prior to 12:45:43

22 the time you signed the declaration, 12:45:45

23 correct? 12:45:46

24 MR. HUNG: Objection; misstates. 12:45:47

25 A. Not in preparation specifically 12:45:51

1	of this declaration.	12:45:53
2	Q. At the time that you signed the	12:46:00
3	declaration were you aware of what the	12:46:03
4	date of this report was?	12:46:04
5	A. Yes, I was.	12:46:05
6	Q. And so when you signed the	12:46:05
7	declaration where it made the assertion	12:46:09
8	about the uniqueness and consistency of	12:46:11
9	Apple's user experience you were aware	12:46:16
10	that the UBS Investment Research report	12:46:19
11	was from December 12, 2006?	12:46:21
12	A. Yes.	12:46:24
13	THE WITNESS: Excuse me, could	12:46:28
14	we close this door?	12:46:29
15	MR. ZELLER: Let's go off the	12:46:31
16	record for a second.	12:46:33
17	THE VIDEO OPERATOR: The time is	12:46:34
18	approximately 12:46 p.m. We're off	12:46:35
19	the record.	12:46:37
20	(A recess was taken.)	12:48:21
21	THE VIDEO OPERATOR: Stand by.	12:49:10
22	The time is approximately 12:48	12:49:12
23	p.m.	12:49:16
24	We're back on the record.	12:49:17
25	BY MR. ZELLER:	12:49:17

1 Q. Focusing your attention on 12:49:20  
2 Exhibit 1679, which is the UBS Investment 12:49:22  
3 Research report relied upon in paragraph 12:49:25  
4 12 of your declaration, we were discussing 12:49:28  
5 the date of this report is December 2006, 12:49:33  
6 correct? 12:49:36

7 A. Correct. 12:49:37

8 Q. That was prior to the time that 12:49:37  
9 a single iPhone was sold, correct? 12:49:40

10 A. Correct. 12:49:42

11 Q. This was prior to the time that 12:49:43  
12 the iPhone was announced, correct? 12:49:44

13 A. Correct. 12:49:47

14 Q. Does this proposition here 12:49:59  
15 talking about the uniqueness and 12:50:00  
16 consistency of Apple's user experience 12:50:03  
17 that is discussed in this report relate to 12:50:09  
18 the first iPhone or is it based on 12:50:13  
19 something else? 12:50:15

20 MR. HUNG: Objection; compound. 12:50:16

21 A. It could be both. Certainly the 12:50:18  
22 iPhone was not announced until January of 12:50:21  
23 2007. However, it's possible that people 12:50:23  
24 in the investment community had some 12:50:26  
25 advanced information about the iPhone. 12:50:28

1 But clearly the phones had not been 12:50:33  
2 introduced to the market by that date. 12:50:35

3 Q. Did the UBS analyst have actual 12:50:37  
4 information about any iPhone at the time 12:50:41  
5 that this report was written in December 12:50:44  
6 of 2006 or earlier? 12:50:47

7 MR. HUNG: Objection; calls for 12:50:49  
8 speculation, lacks foundation. 12:50:51

9 A. I don't know. 12:50:53

10 Q. Did you undertake any 12:50:54  
11 investigation to determine whether it did? 12:50:55

12 A. No, I did not. 12:50:57

13 Q. Can you point to me any actual 12:50:59  
14 language in this report from UBS that 12:51:01  
15 we've marked as Exhibit 1679 where it 12:51:05  
16 talks specifically about the uniqueness 12:51:12  
17 and consistency of Apple's user experience 12:51:16  
18 for the first iPhone? 12:51:19

19 (The witness reviews document.) 12:51:36

20 A. No. 12:51:48

21 Q. Can you point to me any language 12:51:49  
22 in this UBS report which we've marked as 12:51:51  
23 Exhibit 1679 that you're relying upon in 12:51:55  
24 paragraph 12 of your declaration where 12:51:59  
25 there's any discussion about the 12:52:00

1 uniqueness and consistency of Apple's user 12:52:03  
2 experience as it relates to any generation 12:52:08  
3 of iPhone? 12:52:10  
4 MR. HUNG: Objection; the 12:52:11  
5 document speaks itself. 12:52:12  
6 A. No. 12:52:13  
7 Q. Or any generation of the iPad? 12:52:14  
8 MR. HUNG: Same objections. 12:52:22  
9 A. No. 12:52:23  
10 Q. Do you have any reason to think 12:52:24  
11 this US report from December of 2006 12:52:25  
12 provides any support about the uniqueness 12:52:28  
13 and consistencies of Apple's user 12:52:32  
14 experience for any generation of iPad? 12:52:35  
15 MR. HUNG: Objection; asked and 12:52:38  
16 answered. 12:52:40  
17 A. No. 12:52:42  
18 Q. Or for the iPhone 3G? 12:52:45  
19 MR. HUNG: Objection; asked and 12:52:49  
20 answered. 12:52:50  
21 A. No. 12:52:50  
22 Q. Or for the iPhone 4? 12:52:51  
23 MR. HUNG: Same objection. 12:52:55  
24 A. No. 12:52:56  
25 Q. Or for the iPhone 5? 12:52:57

1	MR. HUNG: Same objection.	12:53:00
2	A. No.	12:53:00
3	Q. Prior to the time that you	12:53:20
4	signed this declaration that we marked as	12:53:22
5	Exhibit 1678, did you do anything to	12:53:27
6	determine the reasons why consumers had	12:53:31
7	ever purchased the T-Mobile version of the	12:53:35
8	Galaxy S II?	12:53:38
9	MR. HUNG: Objection; vague.	12:53:42
10	A. No.	12:53:45
11	Q. Prior to the time that you	12:53:47
12	signed this declaration we've marked as	12:53:49
13	Exhibit 1678, did you do anything to	12:53:51
14	determine why consumers purchased the AT&T	12:53:53
15	version of the Galaxy S II?	12:54:00
16	MR. HUNG: Same objection.	12:54:04
17	A. No.	12:54:07
18	Q. Prior to the time that you	12:54:08
19	signed this declaration we've marked as	12:54:09
20	Exhibit 1678, did you do anything to	12:54:12
21	determine why consumers had ever purchased	12:54:14
22	the Galaxy S II Epic 4G Touch?	12:54:18
23	MR. HUNG: Same objection.	12:54:23
24	A. No.	12:54:24
25	Q. Or the Galaxy S II Skyrocket?	12:54:24

1	A.	No.	12:54:29
2	Q.	Or the Droid Charge?	12:54:29
3	A.	No.	12:54:32
4	Q.	Or the Galaxy Prevail?	12:54:33
5	A.	No.	12:54:36
6	Q.	Or the Galaxy S IV?	12:54:36
7		MR. HUNG: Same objection.	12:54:39
8	A.	No.	12:54:41
9	Q.	Or for the Showcase?	12:54:42
10		MR. HUNG: Same objection.	12:54:46
11	A.	No.	12:54:47
12	Q.	Prior to the time that you	12:54:49
13		signed this declaration we've marked as	12:54:50
14		Exhibit 1678, did you do anything to	12:54:52
15		determine why consumers purchased, at any	12:54:55
16		time, any Galaxy Tab device?	12:54:59
17		MR. HUNG: Same objection.	12:55:02
18	A.	No.	12:55:04
19	Q.	Prior to the time that you	12:55:07
20		signed this declaration we've marked as	12:55:09
21		Exhibit 1678, did you do anything to	12:55:10
22		determine why consumers purchased at any	12:55:13
23		time any specific Samsung device?	12:55:16
24		MR. HUNG: Objection; vague,	12:55:20
25		compound.	12:55:24



1	A.	No.	12:55:24
2	Q.	Do you have any direct, specific	12:55:27
3		and reliable data as to why consumers	12:55:32
4		purchased at any time the AT&T version of	12:55:36
5		the Galaxy S II?	12:55:40
6	A.	No.	12:55:45
7	Q.	Or the T-Mobile version of the	12:55:46
8		Galaxy S II?	12:55:49
9	A.	No.	12:55:52
10	Q.	Or the Galaxy S II Epic 4G	12:55:52
11		Touch?	12:55:57
12	A.	No.	12:55:58
13	Q.	Or the Galaxy S II Skyrocket?	12:55:58
14	A.	No.	12:56:02
15	Q.	Or the Droid Charge?	12:56:03
16	A.	No.	12:56:04
17	Q.	Or the Galaxy Prevail?	12:56:04
18	A.	No.	12:56:07
19	Q.	Or the Galaxy S 4G?	12:56:07
20	A.	No.	12:56:11
21	Q.	Or the Showcase?	12:56:11
22	A.	No.	12:56:13
23	Q.	At any time prior to the time	12:56:16
24		you signed this declaration we've marked	12:56:17
25		as Exhibit 1678, did you have in your	12:56:19

1	possession any --	12:56:27
2	MR. ZELLER: Strike that. I'll	12:56:30
3	start again.	12:56:31
4	BY MR. ZELLER:	12:56:32
5	Q. Do you have any direct, specific	12:56:32
6	and reliable data showing the reasons why	12:56:36
7	consumers had purchased any Galaxy Tab	12:56:40
8	devices?	12:56:43
9	MR. HUNG: Objection; vague.	12:56:48
10	A. No.	12:56:49
11	Q. Do you have any direct, specific	12:56:49
12	and reliable data as to the reason why	12:56:52
13	consumers buy any Samsung devices?	12:56:55
14	A. No.	12:57:00
15	Q. Do you have any knowledge or	12:57:13
16	information as to why consumers had	12:57:15
17	purchased any particular Samsung devices?	12:57:20
18	MR. HUNG: Objection; vague.	12:57:23
19	Outside the scope.	12:57:25
20	A. No.	12:57:27
21	Q. Prior to the time that you	12:57:34
22	signed this declaration we've marked as	12:57:36
23	Exhibit 1678, did you undertake any	12:57:38
24	determination --	12:57:41
25	MR. ZELLER: I'm sorry, let me	12:57:43

1 start again. Strike that. 12:57:44

2 BY MR. ZELLER: 12:57:46

3 Q. Prior to the time that you 12:57:46

4 signed this declaration we've marked as 12:57:47

5 Exhibit 1678, did you undertake any 12:57:48

6 investigation to determine to what degree 12:57:51

7 the sale of any particular Samsung device 12:57:55

8 is a lost sale to Apple? 12:58:00

9 A. No. 12:58:05

10 Q. Do you have any knowledge or 12:58:08

11 information as to whether or not the sale 12:58:09

12 of any particular Samsung device results 12:58:12

13 in a lost sale to Apple? 12:58:16

14 MR. HUNG: Objection; vague. 12:58:19

15 Also to the extent it's outside the 12:58:21

16 scope. 12:58:24

17 A. I think it's just a repeat of 12:58:24

18 what you just asked me, but the answer's 12:58:26

19 no. 12:58:29

20 Q. Well, I'm asking very generally: 12:58:29

21 Do you have any knowledge or 12:58:31

22 information on that subject? 12:58:32

23 A. I said no. 12:58:33

24 Q. In those instances where 12:58:39

25 Apple -- I'm sorry, in those instances 12:58:46

1 where Samsung has sold Galaxy S II AT&T 12:58:49  
2 versions of its devices, has Apple lost 12:58:58  
3 any sales? 12:59:02  
4 MR. HUNG: Objection; 12:59:04  
5 foundation. 12:59:05  
6 A. I think that's kind of a general 12:59:08  
7 question. I mean, lost sales of what 12:59:12  
8 product? Of phones? Of Apple TV? 12:59:14  
9 Exactly what -- what are you referring to? 12:59:18  
10 Q. Well, I'm happy to make it more 12:59:20  
11 specific. 12:59:22  
12 A. Please. 12:59:23  
13 Q. Has Apple lost any iPhone sales 12:59:24  
14 as a result of the sale of the AT&T 12:59:28  
15 version of the Galaxy S II? 12:59:33  
16 MR. HUNG: Objection; 12:59:35  
17 foundation. Outside the scope. 12:59:36  
18 A. I can't give you a number. 12:59:39  
19 Q. Can you tell me if it happens at 12:59:42  
20 all? 12:59:45  
21 A. It could. 12:59:46  
22 Q. Does it happen? 12:59:49  
23 A. It could. 12:59:51  
24 Q. Please tell me for a fact as to 12:59:53  
25 whether or not Apple lost any iPhone sales 12:59:59

1 as a result of the AT&T version of the 01:00:05  
2 Galaxy S II? 01:00:08

3 MR. HUNG: Objection; 01:00:11  
4 foundation, outside the scope, asked 01:00:12  
5 and answered. 01:00:14

6 A. It could, but I can't give you a 01:00:14  
7 number, so I don't know. 01:00:16

8 Q. I'm not even asking for a number 01:00:16  
9 at this point. I'll get to that. 01:00:18

10 Has Apple lost sales -- this is 01:00:20  
11 a factual empirical question -- as a 01:00:28  
12 result of Samsung's sale of the AT&T 01:00:31  
13 version of the Galaxy S II? 01:00:35

14 MR. HUNG: Same objections. 01:00:37

15 A. I -- I don't know. 01:00:39

16 Q. If I asked you the same question 01:00:44  
17 with respect to the T-Mobile version of 01:00:46  
18 the Galaxy S II you would give me the same 01:00:49  
19 answer? 01:00:54

20 MR. HUNG: Same objections. 01:00:55

21 A. If you plugged any model 01:00:56  
22 number/name into that I would say I don't 01:01:01  
23 know. 01:01:02

24 Q. But do you know whether or not 01:01:04  
25 Apple has lost any iPad sales to Samsung's 01:01:07

1	sales of any Galaxy Tab devices?	01:01:15
2	MR. HUNG: Objection; vague,	01:01:19
3	outside the scope, foundation.	01:01:22
4	A. I don't know.	01:01:25
5	Q. Do you have any direct	01:01:41
6	information or any knowledge showing	01:01:44
7	whether consumers who purchased any	01:01:47
8	Samsung device would have bought an Apple	01:01:49
9	product if the AT&T version of the Galaxy	01:01:54
10	S II was not available?	01:02:01
11	MR. HUNG: Objection; incomplete	01:02:02
12	hypothetical, vague, outside the	01:02:04
13	scope.	01:02:06
14	THE WITNESS: Could you please	01:02:06
15	repeat the question for me?	01:02:07
16	BY MR. ZELLER:	01:02:09
17	Q. Sure.	01:02:09
18	Do you know whether or not	01:02:16
19	consumers who purchased any Samsung device	01:02:16
20	would have bought an Apple device if the	01:02:20
21	AT&T version of the Galaxy S II was not	01:02:25
22	available?	01:02:29
23	MR. HUNG: Same objections.	01:02:30
24	A. I don't know.	01:02:30
25	Q. And if I were to ask you about	01:02:33

1 other versions of the Galaxy S II such as 01:02:36  
2 the T-Mobile version and the Epic 4G Touch 01:02:40  
3 version and the Skyrocket version, would 01:02:44  
4 you give me the same answer? 01:02:47  
5 MR. HUNG: Same objections. 01:02:48  
6 A. Yes, I would. 01:02:49  
7 Q. And if I asked you the same 01:02:50  
8 question about the Droid Charge, would you 01:02:52  
9 give me the same answer? 01:02:53  
10 MR. HUNG: Same objections. 01:02:55  
11 A. Yes, I would. 01:02:56  
12 Q. In fact, if I asked you about 01:02:57  
13 any Samsung phone or any Samsung tablet 01:02:59  
14 device, you'd give me the same answer? 01:03:04  
15 MR. HUNG: Objection; outside 01:03:06  
16 the scope. 01:03:09  
17 A. You have to ask me -- please ask 01:03:09  
18 me the complete question that's associated 01:03:12  
19 with that. 01:03:13  
20 Q. Sure. Sure. 01:03:14  
21 Do you have any information or 01:03:15  
22 data showing that consumers would have 01:03:16  
23 purchased an Apple device if any Samsung 01:03:21  
24 smartphone or any Samsung Galaxy Tab 01:03:26  
25 device was not available? 01:03:29

1 MR. HUNG: Objection; compound, 01:03:31  
2 incomplete hypothetical. 01:03:36  
3 A. I'm sorry, if any -- just repeat 01:03:37  
4 that. I'm getting confused at the end of 01:03:41  
5 that. 01:03:43  
6 Q. Sure. Let me be a little bit 01:03:43  
7 more specific and see if that helps. 01:03:46  
8 Because we started off specific and 01:03:48  
9 then -- so we'll backtrack a little bit. 01:03:52  
10 Do you know whether consumers 01:03:54  
11 would have purchased any Apple iPhone if 01:03:56  
12 the Galaxy S II Epic 4G Touch was not 01:04:02  
13 available? 01:04:06  
14 MR. HUNG: Objection; 01:04:08  
15 foundation, calls for speculation, 01:04:10  
16 incomplete hypothetical. 01:04:12  
17 A. I don't know the answer to that. 01:04:13  
18 Q. Or if the Galaxy S II Skyrocket 01:04:14  
19 was not available? 01:04:18  
20 MR. HUNG: Same objections. 01:04:19  
21 A. I don't know. 01:04:20  
22 Q. Or if the Droid Charge was not 01:04:21  
23 available? 01:04:22  
24 MR. HUNG: Same objections. 01:04:24  
25 A. I don't know. 01:04:25



1	Q.	Or if the Galaxy Prevail was not	01:04:25
2		available?	01:04:28
3		MR. HUNG: Same objections.	01:04:28
4	A.	I don't know.	01:04:29
5	Q.	Or if the Galaxy S 4G was not	01:04:29
6		available?	01:04:33
7		MR. HUNG: Same objections.	01:04:33
8	A.	I don't know.	01:04:35
9	Q.	Or if the Showcase was not	01:04:35
10		available?	01:04:39
11		MR. HUNG: Same objections.	01:04:39
12	A.	I don't know.	01:04:40
13	Q.	Do you know whether or not	01:04:40
14		consumers would have bought any Apple iPad	01:04:41
15		device if any Samsung Galaxy Tab device	01:04:45
16		was not available?	01:04:50
17		MR. HUNG: Objection;	01:04:51
18		foundation, outside the scope,	01:04:52
19		incomplete hypothetical.	01:04:54
20	A.	I don't know.	01:04:55
21	Q.	Do you have any reason to think	01:05:00
22		that if any particular Samsung smartphone	01:05:02
23		was not available to consumers that those	01:05:08
24		consumers would purchase an iPhone product	01:05:12
25		as opposed to another android product that	01:05:17

1 A. That's correct. 01:09:45  
2 Q. Or how it relates to Apple's 01:09:46  
3 brand, right? 01:09:50  
4 MR. HUNG: Objection; vague. 01:09:52  
5 A. As to what relates to the Apple 01:09:54  
6 brand? 01:09:57  
7 Q. Did you do any analysis, prior 01:09:57  
8 to the time that you signed this 01:10:00  
9 declaration, as to the impact that the 01:10:02  
10 iPhone 5 had on Apple's brand as you use 01:10:07  
11 that term in your declaration? 01:10:11  
12 MR. HUNG: Objection; outside 01:10:14  
13 the scope. 01:10:17  
14 A. No. 01:10:17  
15 Q. So whether or not the launch of 01:10:21  
16 the iPhone 5 helped the brand or damaged 01:10:22  
17 the brand or diminished the brand of Apple 01:10:25  
18 is something you don't have an opinion 01:10:28  
19 about, correct? 01:10:31  
20 A. Correct. 01:10:32  
21 Q. And there's not any analysis 01:10:32  
22 that you've done? Right? 01:10:35  
23 A. Correct. 01:10:39  
24 Q. Were you asked to undertake such 01:10:40  
25 analysis? 01:10:42

1 A. No, I was not. 01:10:43

2 Q. Were you the one who made the 01:10:48

3 decision not to include the launch and the 01:10:51

4 circumstances surrounding the launch of 01:10:57

5 the iPhone 5 into account for purposes of 01:10:59

6 rendering your opinions offered in Exhibit 01:11:01

7 1678? 01:11:04

8 MR. HUNG: Objection; assumes 01:11:06

9 facts. 01:11:07

10 A. No. 01:11:10

11 Q. Why was it excluded? 01:11:12

12 MR. HUNG: Objection; lacks 01:11:15

13 foundation, assumes facts. 01:11:17

14 A. I was asked to develop a 01:11:19

15 declaration that was based on my prior 01:11:21

16 expert report and at the time of that 01:11:25

17 expert report the iPhone 5 had not been 01:11:27

18 introduced. 01:11:30

19 Q. Has the iPhone 5 had any impact 01:11:35

20 of any kind on the Apple brand? 01:11:38

21 MR. HUNG: Objection; outside 01:11:41

22 the scope. 01:11:43

23 A. I haven't studied it, so I don't 01:11:43

24 know. 01:11:45

25 Q. Do you think it's likely that it 01:11:46

1	has?	01:11:48
2	MR. HUNG: Objection; calls for	01:11:49
3	speculation.	01:11:51
4	A. All I can say is that it sold	01:11:52
5	well. I have no research evidence on the	01:11:55
6	brand equity of Apple since the launch of	01:11:58
7	the iPhone 5.	01:12:02
8	Q. At the time that you signed your	01:12:07
9	declaration that we've marked as Exhibit	01:12:09
10	1678, the iPhone 5 had been announced,	01:12:11
11	right?	01:12:14
12	MR. HUNG: Objection; lacks	01:12:16
13	foundation.	01:12:18
14	A. I believe so, yes.	01:12:18
15	Q. And it had been -- the sales of	01:12:19
16	it had actually begun, correct?	01:12:22
17	A. I don't recall the exact dates	01:12:25
18	the iPhone 5 was launched, but given	01:12:26
19	Apple's typical calendar, the answer is	01:12:29
20	likely to be yes, there were some units	01:12:33
21	sold.	01:12:37
22	Q. And I take it you didn't	01:12:41
23	analyze -- that is, actually look at an	01:12:44
24	iPhone 5 -- for purposes of preparing your	01:12:45
25	opinions offered in your declaration,	01:12:49

1 iPhone 3G or 3GS units does Apple 01:15:02  
2 currently have? 01:15:07  
3 MR. HUNG: Objection; lacks 01:15:08  
4 foundation, outside the scope. 01:15:09  
5 A. I have no idea. 01:15:11  
6 Q. Is Apple manufacturing today any 01:15:12  
7 units of the iPhone 3G or 3GS? 01:15:14  
8 MR. HUNG: Same objections. 01:15:18  
9 A. I don't know that. 01:15:19  
10 Q. How long is any vendor going to 01:15:20  
11 be selling the iPhone 3G or 3GS? 01:15:25  
12 MR. HUNG: Objection; lacks 01:15:29  
13 foundation, outside the scope, calls 01:15:30  
14 for speculation. 01:15:32  
15 A. I don't know the answer to that. 01:15:33  
16 Q. Is it going to be more than a 01:15:35  
17 month, less than a month from now? 01:15:39  
18 MR. HUNG: Same objections. 01:15:41  
19 A. I have no idea what their 01:15:42  
20 inventory levels are like or what their 01:15:44  
21 rate of sales is, so I don't know. 01:15:48  
22 Q. When you rendered your opinions 01:15:50  
23 here that are reflected in Exhibit 1678 as 01:15:53  
24 to the Apple brand, did you take into 01:15:56  
25 account the anticipated discontinuance of 01:16:01

1 the iPhone 3G and 3GS? 01:16:05

2 A. No, I did not. 01:16:10

3 Q. As of the time that you signed 01:16:12

4 your declaration were you aware that there 01:16:14

5 was the planned discontinuance of the 01:16:17

6 iPhone 3 and 3GS? 01:16:22

7 MR. HUNG: Objection; vague, 01:16:25

8 assumes facts. 01:16:26

9 A. No. 01:16:27

10 Q. Does the discontinuance by Apple 01:16:31

11 of the iPhone 3 and 3GS have any effect on 01:16:36

12 Apple's brand? 01:16:42

13 MR. HUNG: Objection; assumes 01:16:44

14 facts. 01:16:46

15 A. First of all, you're going to 01:16:48

16 have to show me evidence that that has in 01:16:50

17 fact occurred. I have not seen evidence 01:16:54

18 of that. 01:16:56

19 Q. Then I'll ask you this: 01:16:58

20 I want you to assume that Apple 01:17:00

21 is discontinuing sales of the iPhone 3G 01:17:03

22 and 3GS. 01:17:08

23 In your view, does that have any 01:17:11

24 impact on Apple's brand? 01:17:13

25 A. I don't know the answer to that. 01:17:27

1 generally aware that as part of its iPhone 01:26:41  
2 5 launch Apple reduced the price for the 01:26:45  
3 iPhone 4S? 01:26:49  
4 MR. HUNG: Same objections. 01:26:51  
5 A. Yes. But that's a natural 01:26:52  
6 occurrence in the technology-based 01:26:55  
7 markets, for the new technology that's 01:26:59  
8 replacing an old one to be higher priced 01:27:01  
9 and the old one price-reduced, to give 01:27:05  
10 incentive for later adopters to buy it. 01:27:07  
11 Q. Did you undertake any kind of an 01:27:35  
12 analysis to determine what impact reducing 01:27:38  
13 the price for the iPhone 4S would have on 01:27:43  
14 the Apple brand? 01:27:46  
15 MR. HUNG: Objection; vague. 01:27:48  
16 A. No, I did not. 01:27:49  
17 Q. Directing your attention to 01:28:05  
18 paragraph 14 of your declaration -- 01:28:07  
19 (The witness complies.) 01:28:10  
20 Q. -- which is Exhibit 1678, you 01:28:13  
21 have a sentence here that says: "Indeed, 01:28:23  
22 if Samsung continues to sell these 01:28:25  
23 smartphones, the likelihood of dilution 01:28:27  
24 will only increase." 01:28:30  
25 Do you see that? 01:28:31

1	A.	Yes.	01:28:32
2	Q.	Which smartphones is Samsung	01:28:32
3		continuing to sell today among the accused	01:28:36
4		phones?	01:28:41
5	A.	I don't know the answer.	01:28:41
6	Q.	Did you undertake any	01:28:42
7		investigation to determine which phones	01:28:44
8		Samsung was still selling among the	01:28:47
9		accused phones as of the time that you	01:28:50
10		signed this declaration?	01:28:52
11	A.	No.	01:28:54
12	Q.	Did anyone at Cornerstone?	01:28:56
13		MR. HUNG: Objection;	01:28:59
14		foundation.	01:29:00
15	A.	I don't know.	01:29:00
16	Q.	Did you undertake any kind of	01:29:05
17		analysis to determine whether Samsung's	01:29:07
18		sale or continued sale of the AT&T version	01:29:14
19		of the Galaxy S II caused any dilution to	01:29:18
20		Apple's brand?	01:29:22
21	A.	No, I did not.	01:29:26
22	Q.	Did you undertake any kind of	01:29:29
23		analysis to determine whether or not	01:29:31
24		Samsung's sale or continued sale of the	01:29:34
25		T-Mobile version of the Galaxy S II has	01:29:39



1 caused any dilution to Apple's brand? 01:29:42

2 MR. HUNG: Objection; vague, 01:29:46

3 compound. 01:29:49

4 A. By "analysis" do you mean trying 01:29:50

5 to quantify what the sales loss would be? 01:29:52

6 Or just conceptually is there potential 01:29:55

7 damage to the brand? 01:29:57

8 Q. My question is a very specific 01:29:58

9 one. I'm focused first on a particular 01:30:01

10 phone that Samsung has sold. 01:30:03

11 A. Okay. 01:30:05

12 Q. And I'm also asking whether or 01:30:05

13 not you determined whether in fact 01:30:07

14 dilution occurred. 01:30:09

15 So with that framework in mind 01:30:12

16 let me restate the question. 01:30:13

17 Did you undertake any analysis 01:30:14

18 to determine whether or not Samsung's sale 01:30:16

19 of the T-Mobile version of the Galaxy S II 01:30:20

20 specifically has caused any dilution to 01:30:24

21 Apple's brand? 01:30:26

22 MR. HUNG: Do you mean in 01:30:28

23 connection with his declaration? 01:30:30

24 MR. ZELLER: Yes, that's all 01:30:32

25 I'm -- I mean, I'm asking about his 01:30:34

1	opinions in connection with this	01:30:36
2	declaration. I suppose if he has	01:30:38
3	other opinions he can tell me about	01:30:39
4	those.	01:30:41
5	BY MR. ZELLER:	01:30:41
6	Q. But I assume that your opinions	01:30:41
7	are set forth in your declaration?	01:30:43
8	A. My full set of opinions are set	01:30:46
9	forth in my expert report that was filed	01:30:49
10	some months ago.	01:30:52
11	As I told you before, this is a	01:30:52
12	subset of those opinions.	01:30:55
13	Q. Let me be a little bit more	01:30:57
14	precise, then.	01:31:00
15	You understand that your	01:31:00
16	opinions as they relate to current	01:31:02
17	circumstances insofar as Apple is seeking	01:31:06
18	a permanent injunction in this case are	01:31:10
19	those that are set forth in Exhibit 1678?	01:31:12
20	A. Yes.	01:31:15
21	Q. So, then, focusing on your	01:31:17
22	opinions, did you do any analysis to	01:31:19
23	determine whether or not Samsung's sale of	01:31:24
24	the AT&T version of the Galaxy S II	01:31:29
25	specifically has caused dilution to	01:31:34

1	Apple's brand or trade dress claim?	01:31:40
2	MR. HUNG: Objection; vague,	01:31:45
3	compound.	01:31:48
4	A. Not in the intervening time	01:31:48
5	between the trial and the date of the	01:31:50
6	declaration.	01:31:52
7	Q. Well, you previously undertook	01:31:56
8	an analysis specifically as to whether or	01:31:58
9	not the AT&T version of the Galaxy S II	01:32:01
10	caused actual dilution to Apple's brand or	01:32:06
11	claimed trade dresses?	01:32:10
12	A. My prior analysis covered all of	01:32:11
13	the Samsung Galaxy phones and not	01:32:13
14	specifically any one carrier's version of	01:32:18
15	the phone.	01:32:22
16	Q. And understand, I'm asking a	01:32:24
17	question all the way up until today, and	01:32:27
18	I'm asking specifically about particular	01:32:29
19	phones. And if you have an analysis as to	01:32:32
20	particular phones that distinguish those	01:32:35
21	phones from other phones, or even are	01:32:38
22	specifically about that phone, then I'd	01:32:40
23	like to hear it.	01:32:43
24	But I'm trying to specifically	01:32:44
25	ascertain whether you did a specific	01:32:45

1	analysis for particular devices.	01:32:47
2	So again, with that context in	01:32:49
3	mind, did you undertake an analysis to	01:32:51
4	determine whether or not the AT&T version	01:32:54
5	of the Galaxy S II has caused actual	01:32:58
6	dilution to Apple's brand or claimed trade	01:33:02
7	dresses?	01:33:06
8	MR. HUNG: Objection; compound;	01:33:06
9	asked and answered.	01:33:09
10	A. No.	01:33:10
11	Q. Have you undertaken such	01:33:11
12	analysis with respect to the T-Mobile	01:33:13
13	version of the Galaxy S II?	01:33:17
14	MR. HUNG: To be clear, the same	01:33:21
15	context?	01:33:22
16	MR. ZELLER: Correct.	01:33:24
17	MR. HUNG: Same objections.	01:33:25
18	A. No.	01:33:26
19	Q. Or the Galaxy S II Epic 4G	01:33:26
20	Touch?	01:33:31
21	MR. HUNG: Same objections.	01:33:31
22	A. No.	01:33:32
23	Q. Or the Galaxy S II Skyrocket?	01:33:33
24	MR. HUNG: Same objections.	01:33:36
25	A. No.	01:33:37

1	Q.	Or the Droid Charge?	01:33:37
2		MR. HUNG: Same objections.	01:33:39
3	A.	No.	01:33:40
4	Q.	Or the Galaxy Prevail?	01:33:40
5		MR. HUNG: Same objections.	01:33:43
6	A.	No.	01:33:44
7	Q.	Or the Galaxy S 4G?	01:33:44
8		MR. HUNG: Same objections.	01:33:47
9	A.	No.	01:33:48
10	Q.	Or the Galaxy Showcase?	01:33:49
11		MR. HUNG: Same objections.	01:33:51
12	A.	No.	01:33:53
13	Q.	Or any particular Samsung	01:33:53
14		smartphone?	01:33:58
15		MR. HUNG: Same objections.	01:33:59
16	A.	By "particular" you mean	01:34:01
17		combination of model and carrier? The	01:34:03
18		answer's no.	01:34:05
19	Q.	Did you undertake any analysis	01:34:11
20		to determine whether or not Samsung's	01:34:17
21		sales of any of the Galaxy Tab devices has	01:34:21
22		ever caused actual dilution to Apple's	01:34:28
23		brand or claimed trade dresses?	01:34:31
24		MR. HUNG: Same contextual	01:34:35
25		clarification?	01:34:36

1 MR. ZELLER: Right. 01:34:37

2 MR. HUNG: Do you mean at any 01:34:38

3 time or in connection with this 01:34:39

4 declaration? 01:34:40

5 MR. ZELLER: Well, I think it's 01:34:41

6 all the way up until today. 01:34:43

7 BY MR. ZELLER: 01:34:45

8 Q. So, yeah, the same context we're 01:34:45

9 talking about. 01:34:47

10 MR. HUNG: Also, it's outside 01:34:49

11 the scope. 01:34:50

12 A. And is it also a combination of 01:34:51

13 carrier, AT&T and Tab, T-Mobile, or for 01:34:53

14 the 3G devices; is that -- is that also 01:34:57

15 part of this question? 01:34:58

16 Q. I'm talking about particular 01:34:59

17 models of any Galaxy Tab device. 01:35:01

18 MR. HUNG: Same objections. 01:35:05

19 A. No. 01:35:06

20 Q. Directing your attention to 01:35:32

21 paragraph 7 of your declaration -- 01:35:34

22 (The witness complies.) 01:35:35

23 Q. -- you say that "Apple's 01:35:36

24 distinctive iPhone designs significantly 01:35:40

25 contribute to Apple's brand identity and 01:35:43

1 lacks foundation. 01:41:18

2 A. I don't recall. 01:41:19

3 Q. Do you recall any of them doing 01:41:23

4 that? 01:41:26

5 MR. HUNG: Same objections. 01:41:27

6 A. I don't recall if they did or if 01:41:28

7 they didn't. 01:41:30

8 Q. Did any of those professional 01:41:32

9 opinions that you're relying upon 01:41:35

10 undertake any consumer research to 01:41:37

11 determine the reasons why consumers 01:41:43

12 purchased any Samsung device? 01:41:44

13 MR. HUNG: Same objections. 01:41:47

14 A. I don't recall that either. 01:41:49

15 Q. Do consumers purchase iPhones 01:41:51

16 for the same reasons as Samsung devices or 01:41:56

17 for different reasons? 01:42:00

18 MR. HUNG: Objection; compound, 01:42:02

19 foundation. 01:42:05

20 A. I think there are a variety of 01:42:06

21 reasons that consumers purchase iPhones -- 01:42:08

22 I'm sorry, smartphones. There are 01:42:10

23 functional reasons and there are aesthetic 01:42:13

24 and emotional reasons. Some of them, 01:42:16

25 particularly the functional reasons may be 01:42:19

1 similar between Samsung brand and Apple 01:42:22  
2 brand phones. 01:42:25

3 Q. Please tell me, what are the 01:42:25  
4 functional reasons why consumers purchase 01:42:27  
5 smartphones? 01:42:30

6 MR. HUNG: Objection, outside 01:42:31  
7 the scope, lacks foundation. 01:42:33

8 A. Well, I think they use them for 01:42:35  
9 the reasons we -- we buy these devices. 01:42:37  
10 People want to make phone calls, they want 01:42:40  
11 to browse the web, they want to use apps, 01:42:42  
12 they want to look at stock prices. The 01:42:46  
13 kinds of things that people commonly 01:42:50  
14 purchase these items for. 01:42:52

15 Q. Any other functional reasons? 01:42:54

16 A. Well, I'm sure there are a lot 01:42:57  
17 more functional reasons. I didn't imply 01:42:59  
18 that that was the complete list. 01:43:01

19 Q. Please tell me the other 01:43:03  
20 reasons, the other functional reasons. 01:43:05

21 MR. HUNG: Objection, outside 01:43:07  
22 the scope, lacks foundation. 01:43:09

23 A. Listen to music, for example. 01:43:11  
24 Again, I can't enumerate the 01:43:16  
25 whole list, and that list would vary by 01:43:18



1 individual to individual. 01:43:21

2 Q. Please tell me the ones that you 01:43:24

3 understand and believe are the most 01:43:26

4 important, in addition to the ones you've 01:43:28

5 already mentioned. 01:43:29

6 MR. HUNG: Objection; vague, 01:43:32

7 lacks foundation, outside the scope. 01:43:33

8 A. I don't know which are the most 01:43:35

9 important, as I said before. What I think 01:43:36

10 are the most important would be perhaps 01:43:39

11 different from what you think are the most 01:43:41

12 important. 01:43:42

13 Q. You understand we're not here 01:43:46

14 about what I think, right? I'm trying to 01:43:49

15 find out about your opinions. 01:43:51

16 So please tell me, in addition 01:43:53

17 to what you've mentioned, are there any 01:43:55

18 other functional reasons that you're aware 01:43:57

19 of as to why consumers purchase 01:43:59

20 smartphones? 01:44:01

21 MR. HUNG: Objection; outside 01:44:02

22 the scope, lacks foundation. 01:44:03

23 A. There aren't any that I'm going 01:44:06

24 to state right now. 01:44:09

25 Q. That -- I'm sorry -- what? 01:44:13

1           A.     As I indicated before, there is           01:45:25  
2     some Apple research that shows that the           01:45:27  
3     appearance of the device was among the top       01:45:29  
4     reasons that people chose iPhones.           01:45:31  
5           I don't know and I didn't have           01:45:35  
6     access to research on the Samsung           01:45:36  
7     products. So I don't know what the           01:45:39  
8     reasons would be for purchasing those.       01:45:40  
9           Q.     With respect to Samsung           01:45:44  
10    products, you don't have an opinion and       01:45:47  
11    you are not offering one as to whether or     01:45:50  
12    not consumers believe how the phone works    01:45:53  
13    is more important than how it looks for       01:45:56  
14    purposes of their purchasing; is that       01:45:58  
15    correct?                                       01:46:00  
16           A.     That's correct.                   01:46:01  
17           Q.     Directing your attention to       01:46:08  
18    paragraph 10 of your declaration --           01:46:09  
19           (The witness complies.)               01:46:11  
20           Q.     -- you mention something here     01:46:13  
21    which is a phrase "eroded brand image."     01:46:15  
22           Do you see that?                   01:46:19  
23           A.     Yes, I do.                       01:46:20  
24           Q.     You'll agree with me that there   01:46:21  
25    are many factors that can go into the       01:46:22

1 erosion of a brand image such as Apple's, 01:46:28  
2 right? 01:46:30

3 A. I would say that in general 01:46:31  
4 there are a number of factors that can 01:46:33  
5 cause any brand's image to be eroded. 01:46:35

6 Q. Did you read about the riots at 01:46:43  
7 one of the Foxconn plants? 01:46:46

8 MR. HUNG: Objection. 01:46:49

9 A. Yes. Yes. 01:46:52

10 Q. Are you aware that that plant 01:46:52  
11 was closed down, at least according to 01:46:54  
12 those reports? 01:46:56

13 MR. HUNG: Same objections. 01:46:57

14 A. I read about the riots. I was 01:46:58  
15 unaware -- or I am unaware that the plant 01:47:01  
16 was closed down. 01:47:04

17 Q. Did the riots hurt or erode 01:47:05  
18 Apple's brand image, as you use the term 01:47:10  
19 here? 01:47:13

20 MR. HUNG: Objection; outside 01:47:14  
21 the scope, lacks foundation. 01:47:15

22 A. I haven't seen any research, 01:47:16  
23 before and after, to indicate what the 01:47:18  
24 effect on Apple's brand image has been 01:47:18  
25 from the rioting. 01:47:21

1 Q. I take it that's not something 01:47:21  
2 you've analyzed? 01:47:23

3 A. That's correct. 01:47:24

4 Q. Did you read the recent stories 01:47:25  
5 about Apple's tax avoidance plans? 01:47:34

6 MR. HUNG: Objection; 01:47:38  
7 misleading. 01:47:39

8 Q. And strategies? 01:47:41

9 MR. HUNG: Objection; assumes 01:47:42  
10 facts. 01:47:43

11 A. No, I'm unfamiliar with that. 01:47:43

12 Q. You've never read any publicity 01:47:45  
13 surrounding Apple's payment, or call it 01:47:49  
14 non-payment, of taxes? 01:47:52

15 MR. HUNG: Same objections. 01:47:53

16 A. No, I'm not familiar with that 01:47:55  
17 story. 01:47:59

18 Q. Did you do any analysis to 01:47:59  
19 determine whether or not that publicity 01:48:01  
20 caused any erosion or harm to Apple's 01:48:04  
21 brand image? 01:48:06

22 MR. HUNG: Objection; assumes 01:48:07  
23 facts, incomplete hypothetical. 01:48:09

24 A. Well, as I said before, I'm not 01:48:10  
25 familiar with the story, so clearly it 01:48:12

1 would imply that I haven't done any 01:48:14  
2 research looking at its impact on Apple's 01:48:17  
3 brand. 01:48:21  
4 Q. Are you aware of the criticism 01:48:25  
5 for Apple's recent Maps function in the 01:48:27  
6 iPhone 5? 01:48:32  
7 A. Yes, I am. 01:48:34  
8 Q. Do you believe that that hurts 01:48:35  
9 Apple's brand image? 01:48:38  
10 MR. HUNG: Objection; outside 01:48:39  
11 the scope. 01:48:41  
12 A. Same response as I gave before. 01:48:42  
13 I haven't done an analysis or seen an 01:48:45  
14 analysis of Apple's brand equity before 01:48:47  
15 and after the problem with the Maps. 01:48:49  
16 Q. You don't have any opinion on 01:48:59  
17 that subject? 01:49:01  
18 MR. HUNG: Same objection. 01:49:03  
19 A. As I said, I don't have any -- 01:49:04  
20 any research nor have I read anything 01:49:07  
21 indicating that Apple's brand has been 01:49:09  
22 eroded due to the problem with the Maps. 01:49:13  
23 Q. Did you read any of the press 01:49:16  
24 reports and other media reports 01:49:19  
25 criticizing Apple for lack of innovation 01:49:22

1 in connection with the iPhone 5? 01:49:24

2 MR. HUNG: Objection; assumes 01:49:27

3 facts. 01:49:29

4 A. Yes, I've seen some of those 01:49:29

5 reports. 01:49:31

6 Q. Did those reports hurt Apple's 01:49:32

7 brand -- 01:49:34

8 MR. HUNG: Objection -- 01:49:36

9 Q. -- or erode it? 01:49:37

10 MR. HUNG: Objection; outside 01:49:40

11 the scope, compound. 01:49:41

12 A. I have not seen any research, 01:49:42

13 before and after the reports, indicating 01:49:44

14 that Apple's brand has been affected one 01:49:45

15 way or the other. 01:49:47

16 Q. Do you have any opinion or 01:49:49

17 knowledge on that? 01:49:51

18 MR. HUNG: Same objections. 01:49:53

19 A. No, I don't. 01:49:54

20 Q. You're aware that there was a 01:50:00

21 lot of publicity surrounding Apple's 01:50:03

22 litigation in this case, right? 01:50:07

23 A. Not just Apple's litigation. 01:50:08

24 Samsung's litigation as well. 01:50:10

25 Q. Well, are you offering an 01:50:12

1 opinion about Samsung's litigation in this 01:50:14  
2 case? 01:50:16  
3 A. No, I'm not. 01:50:16  
4 Q. Well, then let's focus on your 01:50:17  
5 opinions, sir. Could you answer my 01:50:20  
6 question? 01:50:22  
7 A. Could you restate it? 01:50:22  
8 Q. Was there some reason you didn't 01:50:24  
9 answer my question before? 01:50:25  
10 MR. HUNG: Objection; 01:50:26  
11 argumentative. 01:50:27  
12 A. I'd just like to hear it again. 01:50:28  
13 Q. It's not a matter of you hearing 01:50:30  
14 it again. Why is it that you put it -- 01:50:32  
15 you understand, are you here as an expert 01:50:35  
16 or you want to be an advocate? 01:50:36  
17 MR. HUNG: Objection; 01:50:38  
18 argumentative. 01:50:40  
19 A. I'm here as an expert. 01:50:40  
20 Q. My question is: 01:50:43  
21 You're aware that there has been 01:50:45  
22 publicity surrounding Apple's litigation 01:50:48  
23 in this exact case, correct? 01:50:51  
24 MR. HUNG: Objection; asked and 01:50:52  
25 answered, outside the scope. 01:50:54

1	A.	Yes.	01:50:55
2	Q.	You're aware that there has been	01:50:55
3		negative publicity surrounding Apple's	01:50:58
4		litigation in this case, correct?	01:51:02
5	A.	No.	01:51:04
6	Q.	You've never seen that?	01:51:04
7		MR. HUNG: Objection; assumes	01:51:05
8		facts.	01:51:07
9	A.	Can you be more precise what you	01:51:07
10		mean by "negative publicity"?	01:51:09
11	Q.	Have you seen any articles, or	01:51:12
12		any press accounts, or any comments,	01:51:15
13		public comments, criticizing Apple's	01:51:18
14		litigation in this case?	01:51:21
15		MR. HUNG: Objection; outside	01:51:22
16		the scope, assumes facts.	01:51:27
17	A.	I may have seen some, but I	01:51:29
18		don't recall specific articles.	01:51:31
19	Q.	Did any of the publicity, the	01:51:33
20		negative publicity, surrounding Apple's	01:51:36
21		litigation in this case harm or erode	01:51:39
22		Apple's brand?	01:51:42
23		MR. HUNG: Objection; assumes	01:51:46
24		facts, outside the scope.	01:51:48
25	A.	I don't have any evidence nor	01:51:49



1	have I read any articles showing that	01:51:54
2	there's been a change in Apple's brand	01:51:56
3	equity before versus after.	01:52:01
4	Q. Do you know?	01:52:03
5	MR. HUNG: Same objections.	01:52:04
6	A. No, I don't.	01:52:05
7	Q. Did you read any of the	01:52:07
8	publicity surrounding Apple's violation of	01:52:08
9	the court's order in the United Kingdom in	01:52:10
10	the past 10 days?	01:52:14
11	A. I'm unaware of that.	01:52:16
12	Q. It was a national news story.	01:52:17
13	You didn't see it?	01:52:20
14	MR. HUNG: Objection; asked and	01:52:21
15	answered.	01:52:22
16	A. As I said, I'm unaware of it.	01:52:22
17	Q. What, if anything, have you done	01:52:26
18	to try and determine whether or not	01:52:28
19	factors apart from Samsung have caused	01:52:32
20	erosion or damage to Apple's brand?	01:52:35
21	MR. HUNG: Objection; outside	01:52:37
22	the scope.	01:52:39
23	A. I haven't done any analysis.	01:52:40
24	Q. And I take it you can't tell me	01:52:53
25	whether or not any or all of the other	01:52:55

1 factors that can have an effect on Apple's 01:53:02  
2 brand and cause erosion or damage to 01:53:06  
3 Apple's brand are more important or less 01:53:10  
4 important than Samsung's conduct, right? 01:53:14  
5 MR. HUNG: Objection; vague, 01:53:19  
6 compound, incomplete hypothetical. 01:53:21  
7 A. I haven't done any analysis so I 01:53:24  
8 can't say that I know whether those 01:53:27  
9 factors were more or less important than 01:53:30  
10 Samsung's impact. 01:53:33  
11 Q. Is that the kind of analysis 01:53:35  
12 that you could do? 01:53:37  
13 A. It's too late now, but it could 01:53:40  
14 be done. 01:53:42  
15 Q. And I take it you can't give any 01:53:53  
16 kind of quantification or tell us the 01:53:56  
17 extent to which, in particular terms, 01:54:04  
18 Samsung's activities have eroded or 01:54:09  
19 damaged Apple's brand? 01:54:13  
20 MR. HUNG: Objection, vague -- 01:54:15  
21 Q. Right? 01:54:19  
22 MR. HUNG: Objection; vague and 01:54:20  
23 compound. 01:54:22  
24 A. Correct. 01:54:22  
25 Q. Directing your attention to 01:54:40

1 paragraph 10 of your declaration. 01:54:42

2 (The witness complies.) 01:54:44

3 Q. And this starts on page 2, 01:54:46

4 numbered 2 of your declaration, which is 01:54:53

5 Exhibit 1678, and right there at the 01:54:55

6 bottom of the page it starts: "Reduced 01:54:58

7 brand awareness and lower brand loyalty 01:55:02

8 increases a company's marketing costs 01:55:04

9 and/or decreases a company's sales." 01:55:06

10 Do you see that? 01:55:09

11 A. Yes, I do. 01:55:10

12 Q. Have you undertaken any effort 01:55:11

13 to measure the degree to which Apple's 01:55:13

14 marketing costs have been increased as a 01:55:19

15 result of Samsung's activities? 01:55:21

16 MR. HUNG: Objection; vague as 01:55:26

17 to "Samsung's activities." 01:55:28

18 A. No, I have not. 01:55:30

19 Q. Have you undertaken any effort 01:55:32

20 to measure the degree to which Apple's 01:55:34

21 marketing costs have increased as a result 01:55:37

22 of Samsung's sales of any of its 01:55:39

23 smartphones? 01:55:43

24 A. No, I have not. 01:55:45

25 Q. Or any of its tablet computer 01:55:47

1	devices?	01:55:49
2	A. No.	01:55:52
3	MR. HUNG: Mike, whenever you	01:55:59
4	get to a breaking point, I want to	01:56:01
5	give him one break, at least.	01:56:03
6	MR. ZELLER: Let's take one now.	01:56:06
7	THE VIDEO OPERATOR: The time is	01:56:09
8	approximately 1:55 p.m. This is the	01:56:10
9	end of Media Number 1.	01:56:12
10	We're off the record.	01:56:14
11	(A recess was taken.)	01:56:19
12	THE VIDEO OPERATOR: Stand by.	02:07:50
13	The time is approximately 2:07	02:07:51
14	p.m.	02:07:57
15	This is the beginning of Media	02:07:57
16	Number 2. We're on the record.	02:08:00
17	BY MR. ZELLER:	02:08:00
18	Q. Directing your attention to	02:08:03
19	Exhibit 1678, which is your declaration,	02:08:04
20	specifically paragraph 7 --	02:08:09
21	(The witness complies.)	02:08:12
22	Q. -- and on page numbered 2 there	02:08:13
23	on the corner of that -- of your	02:08:20
24	declaration it says: "Indeed, Apple is	02:08:25
25	known for its unique smartphone designs."	02:08:28

1	You understand that there's a	02:16:30
2	particular description of the iPhone 3G	02:16:36
3	trade dress that's been given in this case	02:16:38
4	by Apple and by you, right?	02:16:40
5	A.      Yes.	02:16:42
6	Q.      And that's a rectangular product	02:16:43
7	with four evenly rounded corners and so	02:16:46
8	on, correct?	02:16:48
9	A.      Correct.	02:16:49
10	Q.      It does not encompass all of the	02:16:49
11	external appearance of the iPhone,	02:16:52
12	correct?	02:16:55
13	A.      That's correct.	02:16:55
14	Q.      It's only elements of the iPhone	02:16:56
15	appearance, correct?	02:16:58
16	A.      It's -- it's a majority, but	02:16:59
17	it's not all the elements.	02:17:02
18	Q.      Was there any kind of study done	02:17:04
19	that you're relying upon that showed the	02:17:09
20	reasons why consumers purchased any iPhone	02:17:12
21	devices was because of any of the elements	02:17:16
22	that are claimed as the iPhone 3G trade	02:17:21
23	dress either individually or taken	02:17:23
24	together?	02:17:25
25	A.      I don't recall.	02:17:27

1 Q. Are you aware of any kind of 02:17:35  
2 study -- 02:17:38

3 MR. ZELLER: I'm sorry, strike 02:17:41  
4 that. 02:17:42

5 Q. Was there any kind of study that 02:17:43  
6 you're relying upon that showed the reason 02:17:44  
7 why consumers purchased any iPhone device 02:17:47  
8 was because of the ornamental appearance 02:17:52  
9 that was shown in the '677 design patent? 02:17:57

10 MR. HUNG: Objection; vague, 02:18:05  
11 lacks foundation. 02:18:08  
12 Go ahead. 02:18:09

13 A. The only question that I saw, as 02:18:09  
14 I said, related to "design and 02:18:12  
15 appearance." 02:18:17  
16 It did not get into specific 02:18:17  
17 elements of the trade dress. 02:18:19

18 Q. Or the design patents? 02:18:22

19 A. Or of the design patents. 02:18:24

20 Q. Do you have any data or 02:18:29  
21 empirical evidence showing that consumers 02:18:37  
22 purchased any iPhone device because of the 02:18:42  
23 appearance of what's shown in the '677 02:18:48  
24 design patent? 02:18:51

25 MR. HUNG: Objection; asked and 02:18:56

1 answered, lacks foundation. 02:18:57

2 A. To the extent that the design 02:18:58

3 patent -- you know -- indicates what the 02:19:01

4 look and feel of the phone is, then that 02:19:06

5 is represented in the market research 02:19:10

6 question, "design and appearance." 02:19:12

7 As I said before, it does not -- 02:19:15

8 the questions that I saw did not enumerate 02:19:17

9 or ask specifically about rounded corners, 02:19:20

10 colorful matrix of icons, et cetera, that 02:19:24

11 are part of the trade dress. 02:19:30

12 Q. I want to make sure we're on the 02:19:31

13 same page here. Step back for a moment? 02:19:33

14 A. Okay. 02:19:35

15 Q. You understand and agree that 02:19:35

16 the '677 design patent does not show the 02:19:38

17 entirety of the external appearance of an 02:19:41

18 electronic device but only part of it, 02:19:45

19 right? 02:19:48

20 A. Yes. 02:19:48

21 Q. So my question is: 02:19:51

22 Do you have any data or evidence 02:19:52

23 that shows that consumers purchased any 02:19:56

24 iPhone devices because of the feature that 02:20:00

25 is shown in the '677 design patent? 02:20:04

1 MR. HUNG: Objection; asked and 02:20:07  
2 answered. 02:20:08  
3 A. No. 02:20:08  
4 Q. Or of -- as the -- 02:20:10  
5 MR. ZELLER: Sorry, strike that. 02:20:15  
6 Start over. 02:20:17  
7 BY MR. ZELLER: 02:20:17  
8 Q. Do you have any data or evidence 02:20:17  
9 that show consumers purchased any iPhone 02:20:19  
10 devices because of the features shown in 02:20:22  
11 the '087 design patent? 02:20:24  
12 MR. HUNG: Objection; lacks 02:20:28  
13 foundation, vague, asked and answered. 02:20:29  
14 A. I don't recall what that patent 02:20:31  
15 was, so I can't answer that. If you could 02:20:33  
16 show it to me I can give you an answer. 02:20:35  
17 (Joint Trial Exhibit 1041 02:20:35  
18 previously marked for identification, 02:21:11  
19 copy of U.S. Patent D593,087, Issue 02:21:20  
20 Date May 26, 2009.) 02:20:49  
21 MR. ZELLER: We've previously 02:20:49  
22 marked it. 02:20:50  
23 Q. I'm showing you what was marked 02:21:03  
24 as Joint Trial Exhibit Number 1041, which 02:21:06  
25 is a copy of the United States Design 02:21:11



1 A. Or the hardware appearance. 02:35:39

2 Q. Right. 02:35:40

3 A. Correct. 02:35:41

4 Q. So my question is, is do you 02:35:42

5 have any empirical data or any hard 02:35:46

6 evidence showing that consumers have 02:35:49

7 purchased any iPhone devices because of 02:35:52

8 specifically the design intellectual 02:35:59

9 property that Apple has asserted in this 02:36:02

10 case, as opposed to the overall appearance 02:36:05

11 of the hardware and the software 02:36:07

12 altogether? 02:36:09

13 MR. HUNG: Objection; vague as 02:36:10

14 to "design intellectual property," 02:36:13

15 asked and answered, compound. 02:36:17

16 A. I have not conducted such a 02:36:18

17 study nor did I see one in the materials 02:36:20

18 that I've reviewed. There may have been 02:36:22

19 other experts for Apple who may have done 02:36:25

20 such a study. 02:36:29

21 Q. Your opinion that's reflected 02:36:32

22 here in the declaration is based on the 02:36:34

23 overall appearance of the iPhone devices 02:36:37

24 taken all together, including the hardware 02:36:41

25 and the software, all together; is that 02:36:44

1 right? 02:36:48

2 A. That's correct. I've 02:36:49

3 consistently maintained that it's the sum 02:36:50

4 of the parts that create the overall 02:36:53

5 appearance and design of the iPhone that 02:36:55

6 makes it attractive to consumers. 02:36:58

7 Q. And you have not offered 02:37:00

8 opinions specifically that separate out 02:37:04

9 that overall appearance and design of the 02:37:08

10 iPhone as distinguished from the subsets 02:37:10

11 of the appearance that are reflected in 02:37:15

12 the design patents and the trade dresses? 02:37:21

13 MR. HUNG: Objection to the 02:37:23

14 extent it misstates, compound. 02:37:24

15 A. I'll state again that my focus 02:37:27

16 has always been on the Gestalt; that sum 02:37:30

17 of all the hardware and software and trade 02:37:34

18 dress elements and how that impacts the 02:37:36

19 Apple brand. 02:37:38

20 Q. And that's been the extent of 02:37:39

21 your opinion, as opposed to parsing it out 02:37:41

22 further, specifically as to the claim 02:37:45

23 trade dresses or the claim design patents? 02:37:48

24 MR. HUNG: Same objection. 02:37:52

25 A. Yes. 02:37:54

1 (Discussion off the record.) 02:38:19

2 MR. ZELLER: Then we can stay 02:38:33

3 here indefinitely. 02:38:35

4 THE WITNESS: I'll double my 02:38:36

5 rates. 02:38:38

6 MR. ZELLER: And, for the 02:38:39

7 record, we're joking. 02:38:40

8 BY MR. ZELLER: 02:38:41

9 Q. Directing your attention to 02:38:41

10 Exhibit 1678, your declaration -- 02:38:46

11 A. Yes. 02:38:49

12 Q. -- you have a sentence in 02:38:49

13 paragraph 10 that says: "Reduced brand 02:38:54

14 awareness and lower brand loyalty 02:38:58

15 increases a company's marketing costs 02:38:59

16 and/or decreases a company's sales." 02:39:02

17 I apologize, I know I've asked 02:39:06

18 you at least a few questions about this, 02:39:09

19 and I had some more, but if I duplicate 02:39:12

20 any of them I apologize in advance. 02:39:14

21 But just to be clear, you didn't 02:39:16

22 do any specific research to determine 02:39:18

23 whether or not Apple's marketing costs 02:39:20

24 have been increased as a result of any 02:39:21

25 conduct by Samsung; is that right? 02:39:25

1 MR. HUNG: Objection; vague, 02:39:27  
2 asked and answered. 02:39:29  
3 A. No, I did not. 02:39:31  
4 Q. Did you do anything to determine 02:39:33  
5 whether or not any of Samsung's conduct 02:39:36  
6 had caused a decrease in Apple's sales? 02:39:42  
7 MR. HUNG: Objection; asked and 02:39:45  
8 answered. 02:39:46  
9 A. No, I did not. 02:39:48  
10 Q. The next sentence says: "Lower 02:39:52  
11 brand loyalty also leads to fewer 02:39:55  
12 recommendations by consumers and negative 02:39:58  
13 word of mouth." 02:40:00  
14 Do you see that? 02:40:01  
15 A. Yes, I do. 02:40:02  
16 Q. Did you do anything to determine 02:40:03  
17 whether or not this had in fact happened 02:40:05  
18 to Apple as a result of anything Samsung 02:40:10  
19 did? 02:40:13  
20 A. No. 02:40:15  
21 Q. The next sentence says: "An 02:40:18  
22 eroded brand image also means that the 02:40:21  
23 brand no longer commands the same brand 02:40:23  
24 image premium." 02:40:26  
25 Do you see that? 02:40:27

1	A. Yes, I do.	02:40:28
2	Q. Did you undertake any kind of	02:40:29
3	analysis to determine whether or not this	02:40:30
4	had actually happened to Apple as a result	02:40:32
5	of any conduct by Samsung?	02:40:35
6	A. It's very difficult to do these	02:40:38
7	analyses, because you don't know what	02:40:40
8	would have happened had Samsung not	02:40:42
9	infringed on the trade dress and created	02:40:45
10	this brand dilution.	02:40:50
11	But the strict answer is that,	02:40:52
12	no.	02:40:54
13	Q. Well, you say it's difficult.	02:40:58
14	But it is certainly possible to determine	02:41:00
15	whether or not a brand no longer commands	02:41:03
16	the same brand image premium, right?	02:41:06
17	MR. HUNG: Objection; incomplete	02:41:09
18	hypothetical, calls for speculation.	02:41:11
19	A. Well, one thing you could do is	02:41:12
20	take a look at the difference in prices	02:41:14
21	between, say, an equivalent Samsung tablet	02:41:16
22	or an equivalent Samsung phone and see if	02:41:20
23	that price has narrowed or decreased over	02:41:24
24	time.	02:41:26
25	There are multiple explanations	02:41:27

1 for that beyond just an erosion of the 02:41:29  
2 brand equity, but you could make an 02:41:32  
3 empirical observation like that. 02:41:34

4 Q. And that's exactly the kind of 02:41:36  
5 question I'm asking here. 02:41:39

6 Did you undertake any analysis 02:41:40  
7 to determine whether or not Apple's brand 02:41:42  
8 no longer commands the same brand image 02:41:45  
9 premium as a consequence of anything 02:41:47  
10 Samsung did? 02:41:50

11 MR. HUNG: Objection; asked and 02:41:51  
12 answered. 02:41:52

13 A. No, I didn't. 02:41:57

14 MR. HUNG: Go ahead. 02:41:58

15 A. No. 02:41:58

16 Q. The next sentence of paragraph 02:41:59  
17 10 of your declaration says: "An eroded 02:42:00  
18 brand image may also affect the firm's 02:42:02  
19 ability to invest in new products and 02:42:09  
20 engage in product expansions." 02:42:09

21 Do you see that? 02:42:10

22 A. Yes. 02:42:11

23 Q. Did you undertake any kind of 02:42:11  
24 analysis to determine whether or not 02:42:12  
25 anything Samsung did affected Apple's 02:42:15

1 ability to invest in new products? 02:42:18

2 A. No. 02:42:21

3 Q. Or engage in product expansions? 02:42:22

4 A. No. 02:42:25

5 Q. The next sentence says, in 02:42:31

6 paragraph 10 of your declaration: "It is 02:42:34

7 noteworthy that an eroded brand image not 02:42:36

8 only impacts the current sales of the 02:42:39

9 diluted and infringed products and other 02:42:42

10 branded products (including, but not 02:42:45

11 limited to or ancillary products), but may 02:42:48

12 also result in potential future lost sales 02:42:50

13 of products." 02:42:53

14 Do you see that language? 02:42:54

15 A. Yes, I do. 02:42:55

16 Q. Did you undertake any analysis 02:42:56

17 to determine whether or not anything 02:42:58

18 Samsung did had impacted the current sales 02:43:01

19 of Apple's products? 02:43:06

20 A. No. 02:43:11

21 Q. Did you undertake any kind of 02:43:12

22 analysis to determine whether or not 02:43:14

23 anything Samsung did had impact on the 02:43:17

24 current sales of Apple's related or 02:43:20

25 ancillary products? 02:43:27

1	A. No.	02:43:30
2	Q. Did you do anything to determine	02:43:31
3	or analyze whether or not Samsung's	02:43:33
4	conduct has resulted in potential future	02:43:37
5	lost sales of products to Apple?	02:43:43
6	A. Well, if you take a look at that	02:43:47
7	sentence -- that phrase, it's almost, by	02:43:49
8	definition, impossible to do that, right?	02:43:52
9	Because it's in the future.	02:43:54
10	I think that my point here is	02:43:55
11	that one of the impacts of brand damage is	02:43:57
12	that it could cost -- cause decreased	02:44:03
13	sales in the future. There's no way to	02:44:06
14	measure that clearly because we're in the	02:44:10
15	present.	02:44:11
16	Q. I'm trying to find out about	02:44:13
17	whether or not you did something specific	02:44:19
18	as it related to Apple and Samsung in	02:44:21
19	connection with this statement.	02:44:23
20	So let me try again.	02:44:25
21	Did you do anything to try and	02:44:26
22	determine whether or not anything Samsung	02:44:29
23	did has or is likely to result in	02:44:32
24	potential future lost sales of products to	02:44:36
25	Apple?	02:44:39



1	MR. HUNG: Objection; asked and	02:44:40
2	answered.	02:44:41
3	A. No.	02:44:43
4	Q. Directing your attention to	02:44:49
5	paragraph 11, starting on line 11, you	02:44:51
6	have a statement here: "In general, a	02:44:58
7	consistent Apple user experience is very	02:45:00
8	important to Apple."	02:45:03
9	Do you see that?	02:45:04
10	A. Yes, I do.	02:45:06
11	Q. And then the next sentence	02:45:06
12	says: "That consistent user experience is	02:45:08
13	an important part of its success in the	02:45:12
14	marketplace and sets Apple apart from	02:45:14
15	other companies."	02:45:17
16	Do you see that?	02:45:18
17	A. Mm-hmm -- yes.	02:45:19
18	Q. Did you do anything to try and	02:45:20
19	quantify or determine the extent to which	02:45:22
20	a consistent Apple user experience was	02:45:24
21	responsible for Apple product sales?	02:45:32
22	MR. HUNG: Objection; compound.	02:45:38
23	A. No.	02:45:41
24	Q. You say it's an "important part	02:45:47
25	of its success."	02:45:49

1           And that is consistent across           02:47:28  
2   Apple TV, MacBook, iPods, iPads, iPhone,       02:47:31  
3   the whole set and the whole range of Apple       02:47:38  
4   products.   02:47:40

5           Q.     Can you tell me what the           02:47:50  
6   features are that make up a consistent           02:47:52  
7   Apple user experience?                           02:47:54

8           A.     Well, I think since the products     02:47:56  
9   are very different -- I mean, it's very         02:47:57  
10   hard to compare an iPhone, you know,           02:47:59  
11   feature to feature, to a MacBook. So I         02:48:02  
12   think that, as I said before, the user         02:48:04  
13   experience has to be thought of as sort of       02:48:07  
14   a higher level kind of phenomenon than         02:48:09  
15   kind of the actual usage of the product,       02:48:12  
16   and that's why I said the higher level         02:48:14  
17   aspects relate to ease of use, I mentioned     02:48:17  
18   connectivity, ease of using wireless, you       02:48:21  
19   know, a whole range of things that Apple       02:48:24  
20   has become known for.                           02:48:27

21           I don't think you can do it           02:48:28  
22   feature by feature across disparate           02:48:30  
23   products.   02:48:34

24           Q.     What are the features of the         02:48:37  
25   first iPhone that made up a consistent         02:48:40

1 products, leads me to believe that that's 02:51:25  
2 an important aspect of the consumer 02:51:27  
3 decision process. 02:51:30  
4 Q. And is this "consistent Apple 02:51:38  
5 user experience" that you're referring to 02:51:41  
6 the totality of all of these various 02:51:44  
7 products, combination of hardware and 02:51:47  
8 software and how all of that works 02:51:51  
9 together? 02:51:54  
10 MR. HUNG: Objection; vague, 02:51:55  
11 compound. 02:51:57  
12 A. I would say that that's the 02:51:58  
13 case. 02:51:59  
14 Q. I'm sorry, you would say? 02:52:02  
15 A. I would say, yes. 02:52:06  
16 Q. At any time have you undertaken 02:52:28  
17 any kind of analysis to determine whether 02:52:30  
18 or not Apple's brand has actually eroded 02:52:35  
19 or been diminished by any cause? 02:52:39  
20 A. No, I have not. 02:52:43  
21 Q. At any time have you undertaken 02:52:46  
22 any kind of analysis to determine whether 02:52:49  
23 or not any of Apple's claimed trade 02:52:51  
24 dresses or the design shown in the design 02:52:53  
25 patents have actually been eroded or 02:52:59

1 damaged or diluted by any cause? 02:53:02

2 MR. HUNG: Objection; vague as 02:53:09

3 to time, compound. 02:53:10

4 Q. At any time. 02:53:12

5 MR. HUNG: At any time? 02:53:14

6 MR. ZELLER: Mm-hmm. 02:53:16

7 A. I have not done such an 02:53:17

8 analysis. 02:53:19

9 Q. Have you seen any studies by 02:53:28

10 Apple or anyone else that you believe show 02:53:32

11 that Apple has actually had its brand or 02:53:38

12 its trade dress or the design shown in the 02:53:45

13 design patents actually eroded or actually 02:53:48

14 harmed in any way by any cause? 02:53:52

15 A. I'm drawing on my 35 years of 02:53:56

16 marketing expertise to make these 02:53:59

17 assessments and based on other cases that 02:54:01

18 I've seen in the marketplace that damage 02:54:03

19 to brands can occur and they can have 02:54:05

20 long-term effects. I've not specifically 02:54:08

21 analyzed this case. But based on my 02:54:11

22 experience I know that it can happen. 02:54:14

23 Q. And I'm trying to find out 02:54:16

24 something more specific. Because I 02:54:18

25 certainly understand the opinions in your 02:54:20

1 declaration. Now I'm trying to find out 02:54:22  
2 something more specific about it. 02:54:24

3 A. I think I answered that, though, 02:54:28  
4 in there, too. 02:54:30

5 Q. Let's make sure I have a clear 02:54:31  
6 record. I'd appreciate that. Let me try 02:54:33  
7 it this way. 02:54:35

8 Have you seen any studies by 02:54:39  
9 Apple or anyone else that you believe show 02:54:52  
10 that Apple has actually had its brand or 02:54:55  
11 its trade dresses or the designs that are 02:54:59  
12 shown in the design patents actually 02:55:04  
13 eroded or actually harmed by any cause? 02:55:07

14 MR. HUNG: Objection; vague, 02:55:11  
15 compound. 02:55:12

16 A. No. 02:55:14

17 Q. Directing your attention to 02:55:35  
18 paragraph 9 of your declaration, which is 02:55:36  
19 Exhibit 1678 -- 02:55:41  
20 (The witness complies.) 02:55:43

21 Q. -- and here you refer to: 02:55:46  
22 "...Apple's 'coolness' factor that is 02:55:50  
23 inherent in the look and feel of the 02:55:54  
24 iPhone." 02:55:55  
25 Do you see that? 02:55:56

1           So -- and I don't know if it's           02:57:03  
2   50/50, if you're going to push me to           02:57:05  
3   75/25, I have no idea.                           02:57:09  
4           But this coolness and emotional           02:57:10  
5   attachment people have, some of that is to   02:57:12  
6   the Apple brand, some of that is to           02:57:14  
7   individual products.                           02:57:16  
8       Q.     Did you undertake any kind of           02:57:19  
9   analysis to determine whether or not           02:57:22  
10  anything that Samsung has done has           02:57:26  
11  actually caused any consumers or potential   02:57:29  
12  consumers of Apple products to feel less       02:57:34  
13  of an emotional attachment to Apple's       02:57:38  
14  brand image?                                   02:57:41  
15           MR. HUNG:  Objection; vague,           02:57:42  
16   compound.                                   02:57:44  
17   A.     No.                                   02:57:45  
18       Q.     And I take it that that's not       02:57:54  
19  something you've attempted to quantify?       02:57:56  
20   A.     No.                                   02:57:59  
21       Q.     That's a correct statement?       02:58:00  
22   A.     I have not attempted to quantify       02:58:03  
23  that.                                       02:58:05  
24       Q.     If we can go back to 1679,           02:58:22  
25  please.  That's the UBS study.               02:58:28

1	feature?	03:37:02
2	MR. HUNG: Objection; outside	03:37:03
3	the scope, lacks foundation.	03:37:05
4	A. No, I haven't seen any such	03:37:07
5	research.	03:37:09
6	Q. Have you undertaken any kind of	03:37:11
7	analysis or do you have any kind of hard	03:37:14
8	data concerning whether or not consumers	03:37:18
9	in their purchasing decisions have	03:37:22
10	considered the appearance of the iPhones	03:37:24
11	to be more important than the zooming	03:37:28
12	features of the iPhones?	03:37:35
13	MR. HUNG: Objection; vague,	03:37:37
14	outside the scope, lacks foundation.	03:37:39
15	A. No.	03:37:41
16	Q. Do you have any reason to think	03:37:45
17	that consumers purchase Apple devices	03:37:47
18	because of the ability to have one finger	03:37:50
19	scrolling?	03:37:57
20	MR. HUNG: Objection; outside	03:37:59
21	the scope, lacks foundation.	03:38:01
22	A. No.	03:38:04
23	Q. Do you have any reason to think	03:38:05
24	that consumers purchase Apple devices	03:38:07
25	because of the bounce-back feature?	03:38:10

1	MR. HUNG: Objection; outside	03:38:14
2	the scope, lacks foundation, calls for	03:38:16
3	speculation.	03:38:18
4	A. No.	03:38:19
5	Q. Or pinch to zoom?	03:38:20
6	MR. HUNG: Same objections.	03:38:25
7	A. No.	03:38:26
8	Q. Or the ability to have a	03:38:26
9	two-finger gesture for zooming?	03:38:30
10	MR. HUNG: Same objections.	03:38:33
11	A. No.	03:38:34
12	Q. Or having a double-tap gesture?	03:38:34
13	MR. HUNG: Same objections.	03:38:42
14	A. No.	03:38:43
15	Q. Does Google Voice drive demand	03:38:47
16	for any Samsung phones?	03:38:50
17	MR. HUNG: Objection; outside	03:38:53
18	the scope, lacks foundation, calls for	03:38:54
19	speculation.	03:38:56
20	A. I have no idea.	03:38:57
21	Q. Is it true that the Siri feature	03:39:05
22	is an important driver for consumer demand	03:39:12
23	for Apple iPhone devices?	03:39:17
24	MR. HUNG: Objection; lacks	03:39:23
25	foundation, outside the scope.	03:39:26



1 A. I don't know. 03:39:28

2 Q. I take it that you didn't take 03:39:31

3 into account, in rendering your opinions 03:39:32

4 in this case, statements that Apple had 03:39:35

5 made about the importance of Siri being an 03:39:39

6 important driver of consumer demand for 03:39:46

7 iPhones; is that correct? 03:39:52

8 MR. HUNG: Objection; assumes 03:39:53

9 facts, lacks foundation, outside the 03:39:54

10 scope. 03:39:57

11 A. That's correct. 03:40:00

12 Q. I take it Apple never told you 03:40:03

13 that -- well, let me step back. 03:40:05

14 You're aware that there's more 03:40:08

15 than one lawsuit between Apple and 03:40:10

16 Samsung, right? 03:40:13

17 A. Yes. 03:40:13

18 Q. You're aware that there was 03:40:14

19 another case that Apple brought against 03:40:16

20 Samsung that also asserted additional 03:40:18

21 patents in the Northern District of 03:40:21

22 California? 03:40:22

23 A. I know that there's another 03:40:24

24 patent case outside of the one that I've 03:40:25

25 been involved with. 03:40:28

1	questions to follow up.	04:00:45
2	FURTHER EXAMINATION	04:00:45
3	BY MR. ZELLER:	04:00:45
4	Q. You don't discuss the Galaxy Tab	04:00:47
5	10.1 at all in your declaration that's	04:00:50
6	been submitted in connection with the	04:00:53
7	permanent injunction?	04:00:55
8	MR. HUNG: Asked and answered.	04:00:58
9	A. Yes.	04:00:58
10	Q. As far as you understood it	04:00:59
11	you're not offering any opinions in this	04:01:01
12	case as it relates to Apple's request for	04:01:02
13	a permanent injunction as it pertains to	04:01:06
14	the Galaxy Tab 10.1?	04:01:09
15	A. That's correct.	04:01:12
16	Q. Or, for that matter, any other	04:01:13
17	version of any Galaxy Tab?	04:01:16
18	A. Correct.	04:01:20
19	MR. ZELLER: That's all I have.	04:01:26
20	THE WITNESS: Okay.	04:01:27
21	THE VIDEO OPERATOR: The time is	04:01:29
22	approximately 4:01 p.m. This	04:01:30
23	concludes this Media Number 3 as well	04:01:32
24	as today's deposition.	04:01:39
25	We're off the record.	04:01:39

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CERTIFICATION

I, AMY KLEIN CAMPION, a Notary Public for and within the State of New York, do hereby certify:

That the witness whose testimony as herein set forth, was duly sworn by me; and that the within transcript is a true record of the testimony given by said witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 6th day of November, 2012.

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AMY KLEIN CAMPION

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I N D E X

WITNESS	EXAMINATION BY	PAGE
R.S. WINER	MR. ZELLER	357, 516
	MR. HUNG	511

DEPOSITION EXHIBITS

NUMBER FOR ID.

Exhibit 1678 marked for 357  
identification, Declaration of  
Russell S. Winer in Support of  
Apple's Motion For Permanent  
Injunction.

Exhibit 1679 marked for 368  
identification, UBS Investment  
Research report bearing Bates  
numbers APLITC7960000058721  
through 736.

1 Joint Trial Exhibit 1041 440  
2 previously marked for  
3 identification, copy of U.S.  
4 Patent D593,087, Issue Date May  
5 26, 2009.

6 Joint Trial Exhibit 1042 445  
7 previously marked for  
8 identification, copy of U.S.  
9 Patent D604,305, Issue Date  
10 November 17, 2009.

11 Exhibit 1677 previously marked 501  
12 for identification, Declaration  
13 of Philip W. Schiller In Support  
14 Of Apple's Motion For A  
15 Permanent Injunction.

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