

Estrich Declaration

Exhibit 15

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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,

SAMSUNG TELECOMMUNICATIONS

AMERICA, LLC, a Delaware limited

liability company,

Defendants.

CASE NUMBER

11-CV-01846-LHK (PSG)

Confidential Videotaped Deposition of
PHILIP W. SCHILLER, VOLUME II, at 3 Infinite Loop,
Cupertino, California, beginning at 1:01 p.m., and
ending at 4:25 p.m., on Friday, November 2, 2012,
before THOMAS J. FRASIK, Registered Professional
Reporter, Certified Shorthand Reporter No. 6961.

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25

1 MR. JACOBS: Objection.

2 THE WITNESS: I was involved in the choice to
3 include a number of these documents.

4 BY MR. ZELLER:

5 Q. Do any of the attachments to Exhibit 1677, your 13:07:03
6 declaration, show any of the reasons why consumers
7 purchase Samsung devices?

8 MR. JACOBS: Objection.

9 THE WITNESS: Let me look at them again,
10 please. 13:07:20

11 I do not believe that any of the attachments
12 include any specific reasons directly why a Samsung user
13 may by a Samsung phone.

14 BY MR. ZELLER:

15 Q. Prior to the time that you prepared and signed 13:08:58
16 this declaration we've marked as Exhibit 1677, did you
17 undertake any investigation to determine whether or not
18 Apple has in its possession studies or research showing
19 the reasons why consumers purchase any Samsung
20 smartphone? 13:09:14

21 A. I do not recall looking for Samsung research
22 performed by Apple. I'm not aware of any that we have
23 created ourselves specifically of Samsung users.

24 Q. I take it you didn't ask anyone to look into
25 whether or not Apple had such studies or research; is 13:09:38

1 Q. And so we'll just take these one at a time.
2 Focusing your attention on the Galaxy S II AT&T device
3 you refer to in your declaration, does Apple have any
4 tests or studies showing the reasons why consumers
5 purchased that device at any time? 13:12:49

6 A. I am not aware of any study that we have on the
7 reasons for purchase of a Galaxy S II AT&T customer.

8 Q. Do you have any hard data or direct knowledge
9 as to the reasons why consumers have ever purchased that
10 product? 13:13:07

11 MR. JACOBS: Objection. Form.

12 THE WITNESS: I have a lot of knowledge of why
13 customers purchase smartphone products, yes.

14 BY MR. ZELLER:

15 Q. Do you know specifically why consumers purchase 13:13:20
16 the Galaxy SII AT&T? It's referenced here in paragraph
17 5 of your declaration.

18 A. Yes, I do believe I have some knowledge of why
19 consumers may purchase a Galaxy SII AT&T.

20 Q. Do you have hard data or hard information to 13:13:39
21 back up what you believe is that knowledge?

22 MR. JACOBS: Objection. Form.

23 THE WITNESS: I'm sorry. I don't know what you
24 mean by "hard data," "hard information."

25 BY MR. ZELLER: 13:13:51

1 Q. Do you have specific empirical data that you
2 can point us to to support any beliefs that you have as
3 to the reasons why consumers have purchased the Galaxy
4 S II from AT&T?

5 MR. JACOBS: Objection. Form. 13:14:03

6 THE WITNESS: I have a great deal of
7 information from my position over the years in marketing
8 and selling phones as to why people select cellphones,
9 smartphones, including the Galaxy phone, including
10 discussions with customers, with press, product 13:14:26
11 reviewers, people who sell them in the channel and in
12 the stores, and a great deal of information gathered
13 from all of my time working in this business.

14 BY MR. ZELLER:

15 Q. And those conversations pertain specifically to 13:14:39
16 the reasons consumers purchase the Galaxy S II from
17 AT&T, the AT&T version of it?

18 A. Certainly that was one of the products,
19 including many products that I've asked the people that
20 sell the products, you know, why people buy them, ask 13:14:55
21 customers. I've spoken with customers who have had
22 Galaxy SIIs. And throughout my years I've had many
23 interfaces with people who either sell, market, review,
24 or use these products, including the Galaxy S II.

25 Q. Please tell me what is the most important 13:15:13

1 feature that drives consumer demand for the Galaxy S II
2 AT&T version.

3 MR. JACOBS: Objection. Form.

4 THE WITNESS: I think there are a number of
5 features that go into a customer's reason for purchasing 13:15:29
6 products such as the Galaxy S II, and they include
7 design, ease of use, performance, price, to list a few.

8 BY MR. ZELLER:

9 Q. Which is the most important of those with
10 respect to what drives consumer demand for the Galaxy 13:15:58
11 S II AT&T version?

12 MR. JACOBS: Objection.

13 THE WITNESS: I don't understand your question.
14 Because, in my experience, customers have many --
15 customers have a number of reasons they purchase a 13:16:12
16 product, not only solely one, and each person may have a
17 different primary reason. It varies by customer.

18 BY MR. ZELLER:

19 Q. What percentage of consumers who purchase the
20 Galaxy S II, the AT&T version, purchased it because of 13:16:29
21 ease of use?

22 A. I have not done a quantitative study of Galaxy
23 S II users for the reasons for purchase.

24 Q. What percentage of those consumers purchased it
25 because of price? 13:16:45

1 factors into the decision most all the time.

2 Q. So what percentage is your testimony of the
3 number of consumers who purchased the Galaxy S II AT&T
4 version because of design, to use your term?

5 MR. JACOBS: Objection. Form. 13:18:33

6 THE WITNESS: As I stated earlier, I think
7 customers don't purchase a product only solely on one
8 factor. I think there are a number of factors that go
9 into your purchase decision, design is one of those
10 factors. And I think most everybody, which is close to 13:18:47
11 a hundred percent, at least consider design in their
12 purchase. Whether what ranking it is relative to
13 others, I don't know. I've not done a quantitative
14 study of that.

15 BY MR. ZELLER: 13:19:05

16 Q. So it's true that with respect to these factors
17 that you mentioned, design, ease of use, performance,
18 price and any other factors, you can't put them into a
19 rank order in their importance to consumers?

20 MR. JACOBS: Objection. Form. 13:19:20

21 THE WITNESS: Are we talking specifically only
22 about the Galaxy S II from AT&T?

23 BY MR. ZELLER:

24 Q. Correct.

25 A. I do not know the ranking of those elements to 13:19:28

1 Galaxy S II users because I've not done a quantitative
2 study of that.

3 Q. And I take it you don't know which one is the
4 most important among the ones you mentioned; correct?

5 A. I do not know on average in a quantitative 13:19:41
6 study across all the users who purchased it what would
7 average out as the most important, no.

8 Q. One factor that you described was what you
9 called "ease of use." What do you mean by that in your
10 terminology? 13:20:02

11 A. Ease of use is a broad term that covers the
12 interface between the product and the user. This is my
13 lay personal definition. That often is about the --
14 what appears on the screen and how you interact with it
15 in the case of a phone, the features it has, and the 13:20:25
16 steps it takes to utilize those features all go into
17 ease of use.

18 Q. Anything else?

19 A. I'm sure there's a lot more that goes into it.
20 If you'd like me to take some time, I can try to think 13:20:41
21 of every possible element that goes into ease of use.
22 It's a very broad topic.

23 Q. Well, I'm trying to understand how you're using
24 the term so, I mean, is that a complete answer in terms
25 of how you're using it or is there more? 13:20:58

1 A. Again, my -- as I described, it's a very broad
2 term that covers many things. Most commonly, it's known
3 for how you interact with a device. And often -- it
4 began with computers, people talk about computers being
5 easy to use, and that meant how the user interacts with 13:21:21
6 the software but it can also include the input devices,
7 in case there's buttons and switches, the interaction
8 between hardware and software, the setup experience, the
9 ability to access advanced features and what are very
10 visible and exposed versus ones you have to study to 13:21:41
11 learn to use. It's, again, a very broad industry term.

12 Q. Another term that you used as a factor was
13 "performance." Please the tell me what do you mean by
14 "performance."

15 A. Performance, again, is a very broad term. It 13:21:59
16 can deal with the speed of a device, it can -- deals
17 with how fast it is to access and use features; it also
18 can relate to network performance, things outside of the
19 device that it interfaces to; deals with things such as
20 the time it takes to start up a device, the time it 13:22:21
21 takes to wake up the device, the time it takes to
22 perform actions. It can also deal with elements such as
23 you might not know anything of performance but actually
24 are related such as battery life are often considered
25 elements of performance to many users. Those are a few 13:22:41

1 examples.

2 Q. Then you used the term "design" as a factor.

3 What do you mean by "design"?

4 A. Design is a very broad term that covers many

5 things. A few examples are how something looks, the 13:22:55

6 shape of it, the color of it, the materials that are

7 used, the size, the weight. I'm sure there are many

8 other elements as well. It includes both hardware and

9 software.

10 Q. Focusing on the reasons why consumers purchased 13:23:14

11 at any time the Galaxy S II, this AT&T version that

12 we've been discussing, does the choice of carrier factor

13 into the decision of the consumer?

14 MR. JACOBS: Objection. Form.

15 THE WITNESS: Speaking specifically about the 13:23:43

16 Samsung Galaxy S II, I haven't done a study to say

17 exactly what -- the extent of what things all

18 contributed to users' decisions to purchase.

19 BY MR. ZELLER:

20 Q. Generally speaking, do consumers have certain 13:24:05

21 preferences for certain carriers?

22 A. I haven't done a study on carrier preference by

23 user so I can't speak quantitatively, specifically to

24 what may or may not be a study of that factor. I don't

25 know. 13:24:26

1 Q. Do you have any knowledge or information as to
2 whether or not carrier preference has been a feature or
3 attribute that has driven consumer demand for that
4 product?

5 MR. JACOBS: Objection. Form. 13:24:42

6 Do you mean the S II AT&T?

7 MR. ZELLER: Correct.

8 THE WITNESS: I haven't done a study
9 specifically of the Galaxy S II, so I do not know to
10 what extent carrier preference played any part in a 13:24:51
11 purchase decision.

12 BY MR. ZELLER:

13 Q. Does Apple have any tests or studies showing
14 the reasons why consumers purchased the T-Mobile version
15 of the Galaxy S II? 13:25:07

16 A. I'm not aware of any study that we have done
17 at Apple about the specific reasons for purchase of a
18 Galaxy S II by Galaxy S II customers for T-Mobile.

19 Q. Do you have any hard data on that subject?

20 MR. JACOBS: Objection. Form. 13:25:24

21 THE WITNESS: Again, if you could please tell
22 me what you mean by "hard data."

23 BY MR. ZELLER:

24 Q. Do you have any kind of verifiable empirical
25 information that would allow you to say with certainty, 13:25:36

1 with confidence, what the reasons are that consumers
2 have purchased the AT -- excuse me -- the T-Mobile
3 version of the Galaxy S II?

4 MR. JACOBS: Objection. Form.

5 THE WITNESS: As I also explained with the AT&T 13:25:51
6 version, as with the T-Mobile, I have a great deal of
7 experience over the years speaking with customers of
8 these products, with channel partners who sell them,
9 with press who review them, and on and on, that have
10 given me some knowledge of why customers may purchase a 13:26:13
11 product or how they may look at the purchase process,
12 what they think about when they're purchasing a product
13 like the Galaxy S II at T-Mobile.

14 BY MR. ZELLER:

15 Q. What's the most important feature or reason why 13:26:29
16 consumers have purchased the T-Mobile version of the
17 Galaxy S II?

18 MR. JACOBS: Objection. Form.

19 THE WITNESS: I believe that there isn't one
20 singular, most important reason for all customers. I 13:26:46
21 believe there's a mix of things that a customer looks at
22 and thinks about when they purchase a smartphone product
23 like the Galaxy S II at T-Mobile.

24 BY MR. ZELLER:

25 Q. The reasons why or what the most important 13:27:07

1 correct?

2 A. We attached the studies to the declaration in
3 support of some of the statements that we make within
4 the declaration, yes.

5 Q. And I take it you didn't have any reason to 13:30:02
6 doubt or hesitate the veracity of the information that
7 you put forth and attached here to your declaration;
8 right?

9 A. Every study we do has a -- has a measure of
10 its estimated accuracy based on the percentage of the 13:30:24
11 population surveyed and the range of responses, and you
12 try to make sure that within an acceptable range of data
13 that it is representative of the larger population and
14 therefore likely very accurate for whatever topic you're
15 asking about. I think that's normal procedure for any 13:30:47
16 well-done surveys, as we do at Apple.

17 Q. And certainly your intention in submitting this
18 declaration, along with these excerpts from the studies,
19 that the court rely on these materials; correct?

20 A. We believe these materials are accurate that 13:31:07
21 we've attached and that I believe that they're very
22 representative of what we think the population at large
23 that we were interviewing in the surveys believe and we
24 believe that is accurate and true.

25 Q. And why do you -- why do you have confidence in 13:31:20

1 don't tell you and what they're not good for. So one
2 must be very mindful and careful when one does surveys.

3 BY MR. ZELLER:

4 Q. Do you have the authority, as part of your
5 position here at Apple, to ask others to conduct surveys 13:32:52
6 and studies as to the reasons why consumers purchase
7 particular products?

8 A. Yes, I can ask our team to conduct surveys to
9 ask questions about why customers may purchase a
10 particular product. 13:33:14

11 Q. You could have done that in connection with the
12 reasons why it is that consumers purchase Samsung
13 devices; correct?

14 MR. JACOBS: Objection. Form.

15 THE WITNESS: No. That wouldn't be very easy 13:33:24
16 for us to do.

17 BY MR. ZELLER:

18 Q. You don't have any authority to instruct others
19 to conduct surveys to determine the reasons why
20 consumers purchase Samsung devices? 13:33:39

21 A. I have the authority to ask the research team
22 to conduct a survey. I don't think a survey of that
23 nature done by Apple would be easy to do was the point
24 of my comment.

25 Q. At any time here at Apple have you ever 13:33:59

1 that are -- that are possible.

2 Increasingly, as you investigate those methods
3 coming from Apple to a competitor's products, those
4 methods may become less reliable and less sure in terms
5 of their potential results. So I would not be as 13:37:01
6 inclined to do that research because I would less trust
7 the veracity of them as being done from a competitor.

8 BY MR. ZELLER:

9 Q. Was there in fact a specific reason why you did
10 not ask anyone to undertake a survey as to the reasons 13:37:17
11 why consumers purchased Samsung devices prior to the
12 time that you signed your declaration which we've marked
13 as Exhibit 1677?

14 MR. JACOBS: Object and instruct not to answer
15 on work product and attorney-client privilege grounds. 13:37:34

16 You can answer that to the extent there was
17 some nonprivileged reason that you didn't do something.

18 THE WITNESS: None that I can think of at this
19 time.

20 BY MR. ZELLER: 13:37:49

21 Q. Are you able to tell us what the five most
22 common and important reasons are for why consumers
23 purchased the T-Mobile version of the Galaxy S II?

24 MR. JACOBS: Objection. Form.

25 THE WITNESS: I can tell you based on my 13:38:15

1 experience and discussions with customers, reviewers,
2 general partners and others what I believe some of the
3 most common reasons that a customer might purchase a
4 Samsung Galaxy II from T-Mobile, if you would like those
5 reasons. 13:38:41

6 BY MR. ZELLER:

7 Q. Can you tell me the most important in rank
8 order?

9 MR. JACOBS: Objection. Form.

10 THE WITNESS: I have not done a quantitative 13:38:51
11 study to rank order by percentage the reasons that a
12 customer purchases a Galaxy S II from T-Mobile.

13 BY MR. ZELLER:

14 Q. Beyond what you mentioned previously in
15 connection with the AT&T version of the Galaxy S II 13:39:06
16 where you named design, performance, ease of use and
17 price, do you know of any other factors that have gone
18 into the reasons why consumers have purchased the Galaxy
19 S II T-Mobile version specifically?

20 MR. JACOBS: Objection. Form. 13:39:30

21 THE WITNESS: In addition -- I cannot think of
22 any other reasons off the top of my head at this moment
23 in addition to those.

24 Those are some of the most important reasons
25 customers choose these products. 13:39:44

1 BY MR. ZELLER:

2 Q. Can you tell me what percentage of consumers
3 consider price to be an important factor in the purchase
4 of their T-Mobile version of the Galaxy S II?

5 A. I cannot tell you an exact percentage that 13:40:02
6 customers chose price when purchasing a Galaxy S II from
7 T-Mobile because we have not done a quantitative study
8 to give exact percentages of that.

9 Q. Well, you haven't done a qualitative study at
10 all on that subject; correct? 13:40:26

11 MR. JACOBS: Objection. Form.

12 THE WITNESS: We have not done a quantitative
13 or qualitative study of Samsung Galaxy S II from
14 T-Mobile purchasers.

15 BY MR. ZELLER: 13:40:39

16 Q. And I take it you can't provide for me any
17 information on a percentage basis as to the number of
18 consumers who purchased that product for a given reason;
19 is that true?

20 A. In order to provide a percentage, I would need 13:41:01
21 to do a quantitative study, which we have not done, of
22 Galaxy S II T-Mobile purchasers.

23 Q. Does Apple have any test or study showing the
24 reasons why consumers purchased the Galaxy S II Epic 4G
25 Touch, which is referenced there in paragraph 5 of your 13:41:26

1 declaration?

2 A. I do not believe we have done a study of
3 reasons for purchase of a Galaxy S II Epic 4G Touch from
4 Sprint at Apple.

5 Q. Do you have any direct knowledge as to what the 13:41:44
6 most important reason is as to why consumers have
7 purchased that product?

8 A. I do not believe there was one simple most
9 important reason. As stated before, I believe there are
10 a number of reasons that go into consumers purchase of 13:42:03
11 smartphones and I believe I already outlined a list of
12 many of those important factors that a customer
13 considers.

14 Q. And those are the ones you mentioned previously
15 in connection with the AT&T version of the Galaxy S II; 13:42:21
16 right?

17 A. I believe the reasons a customer purchases a
18 Galaxy S II and the factors they consider are similar
19 across all the carriers, including Sprint.

20 Q. Does Apple have any test or study showing the 13:42:39
21 reasons why consumers have purchased at any time the
22 Galaxy S II Skyrocket that's referenced there in
23 paragraph 5 of your declaration?

24 A. I'm not aware that Apple has done a study of
25 Galaxy S II Skyrocket from AT&T customers' buying 13:43:10

1 preferences.

2 Q. You address some additional phones in paragraph
3 6 of your declaration. So focusing on those phones,
4 does Apple have any tests or studies showing the reasons
5 why consumers purchased the Droid Charge? 13:43:37

6 A. I'm not aware of a study that Apple has done
7 for the specific reasons for purchase for a Droid
8 Charge.

9 Q. Or the Galaxy Prevail?

10 A. I am not aware of a study that Apple has done 13:43:57
11 the reasons customers may have purchased a Samsung
12 Galaxy Prevail.

13 Q. Or the Galaxy S 4G?

14 A. I'm not aware of a study that Apple has done
15 for the specific reasons for purchase for a Samsung 13:44:11
16 Galaxy S 4G.

17 Q. Or for the Showcase?

18 A. I'm not aware of a study that Apple has done
19 for the specific reasons for purchase for a customer of
20 the Galaxy -- Samsung Galaxy Showcase. 13:44:27

21 Q. By the way, from time to time Apple commissions
22 or engages third parties to do research on its behalf;
23 is that true?

24 A. Apple works with third parties to often
25 purchase research they have already done or to assist us 13:44:46

1 THE WITNESS: There may be studies that Apple
2 has of why someone has ever purchased a Samsung device
3 of any kind. I don't want to state either way. I may
4 have read one. I do not recall at this moment.

5 BY MR. ZELLER: 13:47:32

6 Q. I take it that in the declaration that you're
7 offering in this case you're not relying on such
8 studies; is that true?

9 A. The studies specifically in support of the
10 statements made in the declaration are the ones that are 13:47:44
11 provided and not others not provided to the best of my
12 knowledge, yes.

13 Q. And the ones that are attached to your
14 declaration, as we talked about earlier, are studies
15 about the reasons why consumers purchase Apple products; 13:47:55
16 right?

17 A. The studies attached to my declaration are
18 specifically studies about Apple customers and their
19 purchase of Apple products.

20 Q. Focusing on the phones that are mentioned 13:48:09
21 specifically in paragraphs 5 and 6 of your declaration,
22 are you aware of any third-party research or studies
23 that have been done into the reasons why consumers
24 purchased those products?

25 A. I can't speak to the world of studies that have 13:48:29

1 been done. I'm not aware of a study that I can recall
2 at this moment specifically on these phones done by any
3 third party.

4 Q. Does Apple have in its possession, whether it's
5 a study that it's done or done by a third party, any 13:48:49
6 data showing the reasons why consumers purchase any
7 Galaxy Tab device?

8 A. I do not recall any studies that Apple has in
9 its possession for specific reasons a customer purchased
10 a Galaxy Tab device. 13:49:12

11 Q. Does Apple have any test or studies showing
12 whether consumers who purchased the Galaxy S II
13 Skyrocket would have bought another Android device as
14 opposed to an Apple device if the Galaxy S II Skyrocket
15 product was not available? 13:49:37

16 MR. JACOBS: Objection. Form.

17 THE WITNESS: I do not recall seeing any survey
18 that explained why the -- what a purchaser of a Galaxy
19 S II Skyrocket might have purchased had they not had --
20 not purchased a Galaxy S II Skyrocket. 13:49:55

21 BY MR. ZELLER:

22 Q. Do you have any surveys or consumer research
23 showing that if the Galaxy S II Skyrocket was not
24 available, those consumers would have purchased an Apple
25 iPhone instead? 13:50:14

1 MR. JACOBS: Objection. Form.

2 THE WITNESS: I do not recall seeing a survey
3 that asked consumers of the Galaxy Skyrocket SII what
4 they would have purchased if it had not been in
5 existence. 13:50:33

6 BY MR. ZELLER:

7 Q. Does Apple have any test or study showing
8 whether consumers who purchased the T-Mobile version of
9 the Galaxy S II would have purchased an Apple device as
10 opposed to some other Android device if the T-Mobile 13:50:50
11 version of the Galaxy S II was not available?

12 A. I do not recall seeing or reading any survey
13 that Apple has where a Galaxy S II for a T-Mobile
14 customer was asked about what they would purchase if it
15 did not exist. 13:51:13

16 Q. Is the same true with respect to the Galaxy
17 S II Epic 4G Touch?

18 A. I also do not recall reading any survey where
19 the user of the Galaxy S II Epic 4G Touch was asked what
20 they would have purchased had it not existed. 13:51:26

21 Q. Is the same true for the AT&T Galaxy S II?

22 A. I also do not recall reading any survey where a
23 user of a Galaxy S II from AT&T was asked what they
24 would purchase if it did not exist.

25 Q. Is the same true for the Droid Charge? 13:51:43

1 A. I also do not recall reading any survey that
2 Apple has where a customer of the Droid Charge was asked
3 what they would purchase if it did not exist.

4 Q. Is the same true of the Galaxy Prevail?

5 A. I also do not recall reading any survey that 13:51:56
6 Apple has where the customer of a Galaxy Prevail was
7 asked what they would purchase if it did not exist.

8 Q. Is the same true for the Galaxy S 4G?

9 A. I also do not recall reading any survey that
10 Apple has that asked customers of a Samsung Galaxy S 4G 13:52:13
11 what they would have purchased if it did not exist.

12 Q. Is the same true for the Showcase?

13 A. I also do not recall reading any survey
14 where -- that Apple has where a customer of the Samsung
15 Showcase was asked what they would purchase if it did 13:52:31
16 not exist.

17 Q. Is the same true for any Samsung Galaxy Tab
18 devices?

19 A. I do not recall seeing any Apple survey where
20 the customer of a Galaxy Tab was asked what they would 13:52:47
21 purchase if it did not exist.

22 Q. Do you have any knowledge or information as to
23 what percentage of consumers who purchased the Galaxy
24 S II Skyrocket would have purchased an iPhone if the
25 Galaxy S II Skyrocket was not available? 13:53:09

1 Q. And if I asked you the same question about any
2 Galaxy Tab device, you'd give me the same answers?

3 A. Yes, I believe I would.

4 Q. And, in fact, if I asked you any questions
5 about any Samsung device, you'd give me the same 14:08:45
6 answers?

7 A. With such a broad statement, could you please
8 restate the question in total just to be sure I get it
9 right?

10 Q. Sure, absolutely. Do you have a percentage of 14:08:55
11 consumers who purchased any Samsung device who would
12 have purchased an Apple device had that product not been
13 available?

14 A. We have not studied customers who have
15 purchased a Samsung device of any kind that I can recall 14:09:20
16 where we asked what they would have purchased from Apple
17 if that device did not exist.

18 MR. ZELLER: Okay. Now is a good time.

19 Thank you.

20 THE VIDEOGRAPHER: This marks the end of disk 14:09:35
21 number one. We are going off the record at 2:09 p.m.

22 (Recess held.)

23 THE VIDEOGRAPHER: This marks the beginning of
24 disk number two and we're going back on the record at
25 2:18 p.m. 14:18:11

1 attributes?

2 MR. JACOBS: Objection. Form.

3 THE WITNESS: This question that we've

4 represented here on this chart is specifically only to

5 attractive appearance and design and how important that 14:25:49

6 was to the customer. There were other questions that

7 asked other features and where they could similarly rank

8 them, and those are comparable. You can then, as a

9 researcher, look at those, but that isn't what this

10 chart is. 14:26:07

11 BY MR. ZELLER:

12 Q. Do you know what the relative ranking of

13 features was in terms of overall percentage of who said

14 a given attribute was very important?

15 A. In order to answer completely your question, I 14:26:21

16 would need to go back to the original survey, look at

17 each question, and then compile an answer. I simply

18 recall off the top of my head that attractive appearance

19 and design was very high amongst all the questions that

20 were asked and responses they gave, it was one of the 14:26:40

21 highest. I don't recall exactly each one of them and

22 their relative distribution of each.

23 Q. Were the iPhone buyer respondents who were

24 surveyed in these surveys shown here in PDX 10.1 asked

25 verbatim the question about "importance of attractive 14:27:00

1 appearance and design," are those the actual words that
2 were used in the questioning to the respondents?

3 A. I believe so, but I would have to look back at
4 the exact methodology report to verify that. To the
5 best of my knowledge, I believe that is the case. 14:27:20

6 Q. Was this phrase "attractive appearance and
7 design" defined to any of the survey respondents?

8 A. I do not believe the terms "attractive
9 appearance" or "design" were further defined for the
10 respondents. 14:27:43

11 Q. Did these surveys define any more specifically
12 what was meant by "attractive appearance and design"?

13 A. I do not know if there was any more definition
14 provided respondents around those terms.

15 Q. In your view, does this study or group of 14:28:00
16 studies that are summarized here show the relative
17 importance of attractive appearance and design of the
18 hardware as opposed to iOS?

19 A. I believe the response customers provide to
20 this question regarding attractive appearance and design 14:28:31
21 is representative of the entire product, the iPhone in
22 this case, its combination of hardware and software.

23 Q. And nothing more specific than that?

24 A. That is my belief.

25 Q. I direct your attention to Attachment 2. This 14:28:54

1 pick, they're looking at the thickness and weight, a
2 number of factors all go into the appearance and design
3 that they consider.

4 Q. And do you have any hard data that would allow
5 you to say that any of those features of the design or 14:43:58
6 appearance is more important than others --

7 MR. JACOBS: Objection. Form.

8 BY MR. ZELLER:

9 Q. -- to the consumer in the purchasing decision,
10 or is it all such a mixture that there's no way of 14:44:14
11 separating them, in your view?

12 A. I don't believe consumers only pick one
13 attribute of a product's appearance and design as most
14 important over some other elements. I think it's a
15 combination of a few, the most visible and distinctive 14:44:31
16 ones, that often make the most impact on customers.

17 Q. Would you be able to tell me the percentage of
18 consumers who considered the flat glass front of the
19 iPhone 5 to be the factor that really drove their
20 purchasing decision? 14:44:54

21 A. I don't believe that we have done a
22 quantitative study of the relative weighting of
23 different pieces of design with consumers.

24 Q. And is the same true of the other elements that
25 you mentioned, the bezel, the overall shape, the 14:45:15

1 materials, including aluminum and the thickness and
2 weight?

3 A. I don't believe we've done a study of iPhone 5
4 buyers to determine the individual elements of the
5 appearance and design and how they would rank them 14:45:34
6 relative to each other.

7 Q. Has Apple done any studies or surveys of
8 iPhone 4 or 4S purchasers such that you would be able to
9 tell us from the consumer perspective which of these
10 features of the appearance and design that you mentioned 14:46:00
11 was the most important in their purchasing decision?

12 A. I am not aware of a study that we have done of
13 iPhone 4 users asking them to weight the relative value
14 of different elements of our design of the iPhone 4.

15 Q. And is the same true of the iPhone 3G and 3GS? 14:46:23

16 A. I'm not aware of a study that we have done at
17 Apple to rank the relative importance of different
18 components of the design for iPhone 3GS or iPhone 4
19 customers.

20 Q. Is the same true of the first iPhone? 14:46:44

21 A. I don't recall us running a survey of iPhone --
22 original iPhone buyers and what individual elements of
23 the design that customers might rank relative to each
24 other.

25 Q. So I take it with respect to these various 14:47:11

1 factors -- I'm sorry. Strike that.

2 With respect to these various features that
3 you've identified that are part of the appearance and
4 design, I take it you can't tell me what percentage of
5 consumers bought an iPhone because of those features 14:47:27
6 individually.

7 A. We, through our surveys, can tell the
8 importance of the design in total to those users, not
9 individual features of the design.

10 Q. And the studies that you're referring to that 14:47:49
11 show it at that level, the totality of the appearance
12 and design taken all together for the iPhones, include
13 the studies that are attached to your declaration?

14 A. I'm sorry. Could I have that question read
15 back? 14:48:13

16 Q. Sure. I'll try to -- I think I can simplify
17 it.

18 Focusing on the studies that you have attached
19 to your declaration, that you refer to in your
20 declaration, do any of these studies break down and show 14:48:22
21 what features of the appearance and design of these
22 various iPhones drove consumer demand for those phones,
23 or as you understand it these surveys simply show what
24 the totality of all those features among everything else
25 that goes into appearance and design show? 14:48:53

1 product?

2 A. I don't think about those elements in terms of
3 having a ranked element of performance because they are
4 one product together that the user experiences and sees,
5 and I don't think I don't think of them as individual 14:56:17
6 components.

7 Q. Are you able to separate out those features for
8 purposes of identifying which are the most important or
9 relatively the most important for purposes of reasons
10 why consumers purchase a given iPhone? 14:56:36

11 A. I could not easily break them out and don't
12 think that's appropriate for how customers look at a
13 product. As a way of analogy, if I were to ask you
14 which is more important to your health, your heart, your
15 lungs or your brain, as a customer, I would say all of 14:57:00
16 them, they all make up me, and I wouldn't want to have
17 to pick between which one of those things I want, they
18 all make up me. And, similarly, I think those elements
19 we're discussing all make up what customers identify as
20 the iPhone, and it's not a -- I wouldn't ask a customer 14:57:16
21 to break up what they in their own minds don't think of
22 as separate things.

23 Q. So I take it you can't identify specifically
24 what features that go into the appearance and design of
25 the iPhones is the most important one to consumers; is 14:57:38

1 that true?

2 A. It's my statement that these -- the ones --
3 the elements I listed are all important and customers
4 consider them together in defining the design of the
5 iPhone, and they're not thought of as individual, 14:57:57
6 separable things to rank in importance.

7 Q. So I take it that you're not able to tell me
8 what is the most important one from the consumer demand
9 perspective; is that true?

10 A. I don't believe that of the elements I've 14:58:15
11 spoken that there is one to be -- they could be ranked
12 by relative importance.

13 Q. And I take it from your answer you wouldn't be
14 able to rank the five most important features of the
15 appearance and design that drive consumer demand for any 14:58:34
16 iPhone product; correct?

17 A. I believe I've provided the ones that I believe
18 are the most important. And they are not ranked within
19 themselves, but I gave them because they're much more
20 important than other things that are smaller and of less 14:58:55
21 importance. So, for example, I listed the large front
22 screen, the overall shape of it, the iPhone with its
23 rounded corners, its icons on its dock as in the top
24 most important features of design and attractiveness.

25 I did not rank other elements of design 14:59:14

1 have done at Apple that studies individual subcomponents
2 of the design for the relative ranking of importance.

3 Q. Focusing on the first iPhone, was the way that
4 the product worked more important to consumers as part
5 of their purchasing decision than the way it looked? 15:01:14

6 MR. JACOBS: Objection. Form.

7 THE WITNESS: I believe that a number of
8 factors went into importance of the original iPhone and
9 its innovation to consumers when we launched it. The
10 appearance and design, the way it, quote, looked, 15:01:40
11 certainly was an extremely important factor in what
12 customers thought about it, what it did for them and the
13 features it had was also of great importance to
14 customers as well.

15 BY MR. ZELLER: 15:02:06

16 Q. Do you have any empirical data or survey
17 information that would allow you to provide testimony as
18 to whether consumers considered the look of the first
19 iPhone to be more important than how it worked?

20 MR. JACOBS: Object to the form. 15:02:31

21 THE WITNESS: I did not say that the look of
22 the iPhone was more important than how it worked. I
23 said they were both important to consumers when we
24 launched the original iPhone.

25 BY MR. ZELLER: 15:02:46

1 specific to this context or go back and list out what I
2 said. Because now we're talking specifically about what
3 iPhone users said in this survey about rating ease of
4 use, and I don't recall the exact words previously in
5 this deposition. I'd have to hear them again. 15:08:07

6 Q. Please tell me what is your understanding of
7 what "ease of use" means in the context of these surveys
8 that you're relying upon and discussing in your
9 declaration.

10 A. Sure. In this survey, we are asking recent 15:08:20
11 iPhone purchasers -- so in this time, in 2010, we're
12 asking iPhone purchasers of the iPhone 3GS and
13 iPhone 4 -- to tell us how ease of use -- what they
14 thought of ease of use relative to their purchase of
15 an iPhone and to rank it as very important, somewhat 15:08:46
16 important, neither important, somewhat unimportant, very
17 unimportant and don't know. Those are the categories
18 they were given in this question. And I believe a
19 number of factors went into these customers'
20 consideration of ease of use. 15:09:01

21 First of all, specifically, this is ease of
22 use of an iPhone, so they're talking specifically about
23 their experience using an iPhone. So that means it's
24 about the multi-touch experience, because that is one of
25 the key elements of owning an iPhone, is it's a 15:09:15

1 multi-touch smartphone. So they're talking about using
2 their fingers on the screen to access the applications
3 the iPhone comes with. For example, a popular
4 application on the iPhone is the Safari browser we were
5 just talking about, so using the Safari browser to tap 15:09:34
6 on web links to go to web pages, to use fingers to
7 scroll up and down on the webpage, to doubletap on a
8 story and have the text zoom up and fill the screen, on
9 and on, scroll to the end of the page and how it bumps.
10 Those are all elements of what creates the experience 15:09:51
11 that a customer might consider easy to use. It's all in
12 the context of an iPhone user using an iPhone.

13 Q. Any other understanding of what "ease of use"
14 means here, any other features?

15 A. Well, there would be -- sure, there would 15:10:08
16 be many. There's also our home screen and where
17 applications are and how they can have a home screen
18 and tap on it and swipe on it and launch applications.
19 It would be the integration of the hardware and the
20 software, to be able to hold an iPhone with one hand and 15:10:24
21 touch on an application in the dock and launch something
22 simply. It's about using an iPhone and not needing a
23 manual. Customers are always very impressed that you
24 don't need to use a manual to get a lot of functionality
25 out of your iPhone. There are many elements that go 15:10:44

1 into the experience.

2 I do think the multi-touch user interface part
3 of it is probably among the most important of all the
4 elements of how customers perceive ease of use on an
5 iPhone. 15:10:59

6 Q. Any other features that go into "ease of use"
7 as you understand it's being used here?

8 A. I'm sure there are many others. There's how
9 you set up an iPhone right out of the box and start
10 using it. It is the range of applications that it 15:11:14
11 comes with and your mail application and all the other
12 software that's on there, how it all works seamlessly
13 together and how it's designed to work together, how you
14 answer a phone call and make a call. There are many
15 features that go into ease of use. 15:11:33

16 Q. Any other features you can identify?

17 A. I'm sure there are many more but, time
18 permitting, I don't -- at the moment I can't think of
19 any off the top of my head.

20 MR. JACOBS: Mike, at a convenient point for 15:11:49
21 you, could we take another short break?

22 MR. ZELLER: Sure.

23 MR. JACOBS: Do it now?

24 MR. ZELLER: Yes, now is fine.

25 THE VIDEOGRAPHER: We're going off the record 15:11:59

1 You understand that some consumers have a
2 preference for Android over iOS; right?

3 A. I have not researched the preference users have
4 of Android versus iOS specifically. I don't recall a
5 research that we've done with that specific question. 15:48:22

6 Q. So it's true that you're unable to tell me what
7 percentage of consumers purchase a given smartphone
8 because of the operating system that it uses?

9 A. Your question treated the purchase of a phone
10 because of the operating system in a singular as if 15:48:47
11 that's the only feature someone is considering. As I
12 stated earlier, I do not believe that is the only
13 feature someone considers when they purchase a device.
14 I think customers think of a number of features
15 altogether when they make a purchase decision. 15:49:01

16 Q. What percentage of consumers of smartphones
17 consider the choice of operating system to be the most
18 important factor in their purchasing decision?

19 A. I have not -- do not recall reading any survey
20 that tells what percent specifically a customer -- of 15:49:21
21 customers rate choice of operating system the number one
22 most important factor in purchasing a smartphone.

23 Q. Do you have any empirical data or survey
24 evidence that would tell you what percentage of
25 consumers considered the operating system to be 15:49:52

1 important in their smartphone purchasing decision?

2 A. I do not recall reading survey -- any survey
3 data about the importance of one operating system versus
4 another in their purchase decision.

5 Q. Did you review the '381 utility patent in this 15:50:08
6 case, the "bounce patent"?

7 THE REPORTER: "Bounce"?

8 BY MR. ZELLER:

9 Q. "Bounce."

10 A. I'm not sure what you mean by review the 15:50:32
11 patent.

12 Q. In connection with your declaration, in
13 preparing your declaration, did you review any Apple
14 patents?

15 A. No, I did not read any patent documents or 15:50:43
16 filings.

17 Q. Have you ever read a patent that's sometimes
18 called the '381 Patent? It's the one that -- it's an
19 Apple patent that describes a form of bounce-back.

20 A. I'm familiar with the multi-touch bounce 15:50:59
21 feature. I have not read the patent documents
22 associated with that.

23 Q. Focusing on the bounce feature then in iOS,
24 has Apple done any studies or surveys to determine what
25 percentage of consumers purchased an iPhone device 15:51:21

1 because of that feature?

2 A. I don't recall any Apple surveys that my team
3 did on the importance of an individual feature, such as
4 the bounce feature, to the purchase of the device. I
5 believe in the trial there was other research 15:51:46
6 referenced, but nothing that I did with my team.

7 Q. Is there any survey data or research that
8 you're relying upon in your declaration to -- that
9 relates in any way to the -- whether or not the
10 bounce-back feature is a driver of consumer demand 15:52:13
11 for any iPhone?

12 MR. JACOBS: Objection. Form.

13 THE WITNESS: I -- when talking about the
14 bounce interface feature in my statements, I am
15 referring to the data regarding ease of use and my 15:52:30
16 knowledge that the bounce feature is a contributor to
17 the overall ease of use experience the customer has with
18 an iPhone. And there's a great deal of ease of use
19 research provided in the declaration and its
20 attachments. 15:52:49

21 BY MR. ZELLER:

22 Q. Do you know or have any specific information as
23 to the extent to which the bounce-back feature is a
24 driver of consumer demand for any iPhone product?

25 A. Do I know? Yes, I know that the bounce-back 15:53:06

1 bounce-back was created for the purpose of ease of use.

2 So it isn't separate of ease of use, it is about ease of
3 use. It isn't a separable concept.

4 Q. "Ease of use" as used in these surveys, as we
5 discussed, include multiple features within it; right? 15:58:13

6 A. Yes, there are multiple features of ease of
7 use, one of which is bounce-back.

8 Q. So my question is of the specific feature of
9 bounce-back that is part of ease of use, what is the
10 extent to which the bounce-back feature specifically 15:58:27
11 and itself drives consumer demand for any of the
12 iPhone devices? Is there any information that you
13 have that quantifies that percentage of consumers?

14 A. It is my belief that this percentage of ease of
15 use does quantify bounce-back as a -- one of the many 15:58:49
16 key features of ease of use of iOS in the iPhone and is
17 representative of that value.

18 Q. Are there any features that are part of ease of
19 use that you've identified in your deposition that are
20 more important than other features in terms of ease of 15:59:08
21 use?

22 MR. JACOBS: Objection. Form.

23 THE WITNESS: I'm sorry. I don't understand
24 the idea of features of ease of use that have different
25 relative importance. 15:59:24

1 A customer doesn't use an iPhone feature in
2 isolation of the other features, so you can't separate
3 out one from another easily, it's one experience, and
4 the bounce-back feature being a very common one that you
5 run into many times throughout a single day of use. 15:59:41
6 So I feel it affects every user of the iPhone on a daily
7 basis and therefore is absolutely intrinsically tied
8 with the concept of ease of use.

9 BY MR. ZELLER:

10 Q. And if I ask you the same questions about the 15:59:56
11 pinch-to-zoom gesture, you'd give me the same answer?

12 A. I believe that pinch-to-zoom is a very
13 important feature that's intrinsically tied to ease of
14 use in the experience with the iPhone as well.

15 Q. And if I ask you the same question about the 16:00:15
16 doubletap-to-zoom, you'd give me the same answer?

17 A. Doubletap-to-zoom is extremely important in
18 ease of use. In fact, it was written about many times
19 as we launched it, we demoed it, we showed it on TV. I
20 think you can't now separate that from customers' minds 16:00:30
21 as a different feature of ease of use. It's all part of
22 what makes up ease of use on the iPhone.

23 Q. And I take it that you can't separate out the
24 extent to which pinch-to-zoom or doubletap-to-zoom or
25 bounce-back are relatively important in relationship to 16:00:49

1 one another in terms of what it is that drives consumer
2 demand for iPhone products?

3 A. I certainly haven't ever separated them out.
4 I know, again, through the trial some other research was
5 provided by other people who have, but I have never done 16:01:09
6 that in our research, separated out these individual
7 features.

8 Q. Are you aware of any empirical data that shows
9 the percentage of consumers who purchased an iPhone
10 product specifically because of pinch-to-zoom? 16:01:27

11 A. I believe that all customers who purchase an
12 iPhone product in part value pinch-to-zoom in the total
13 experience that they want. I don't know of any survey
14 data that specifically attempts to quantify that. But
15 Apple has done -- what percentage of that applies, I 16:01:54
16 don't recall seeing that kind of a question.

17 Q. Does Apple have any empirical data or survey
18 evidence that shows the extent to which consumers have
19 purchased any iPhone devices because of
20 doubletap-to-zoom? 16:02:19

21 A. As with the other two features, I believe most
22 all iPhone users in part purchase the iPhone because of
23 one of the many features it has and has had from the
24 beginning is doubletap-to-zoom and that's critical for
25 their web-surfing experience. But what percent that 16:02:34

1 makes up of their total desire to have an iPhone, I do
2 not know, do not recall a survey question from Apple
3 asking that.

4 Q. Would you consider the bounce-back feature to
5 be one of the five most important reasons why consumers 16:02:49
6 purchase iPhones?

7 A. I don't think of these features individually
8 myself in terms of a relative importance. The
9 experience we create in iOS and in the user experience
10 of iPhone in total has made it extremely easy to use. 16:03:13
11 Among the many features that we've done that are very
12 important and influential I believe is bounce-back.

13 I recall when we were working on it that,
14 without it, the experience was not nearly as good. And
15 when the engineering team created bounce-back, it made a 16:03:31
16 dramatic difference in our usability with iPhone for all
17 of us testing it in our use every single day. So I know
18 it has a great importance. I can't quantify the percent
19 of that importance because we have not researched it
20 that way. 16:03:49

21 Q. So it's true that you can't tell me to what
22 degree the bounce-back feature is an affirmative driver
23 of consumer demand in any sort of quantifiable way, as
24 opposed to you believe it's -- you saw some evidence
25 that its absence made a dramatic difference; is that 16:04:04

1 Of course, price is unique with cellphones in
2 the US because with the subsidized plan model that most
3 phones are sold on, they're really all within the same
4 price range, so it's really sort of neutralized between
5 competing products. I believe quality and performance 16:05:45
6 are important metrics.

7 So as a customer, you look at this total
8 offering and you make a value decision on whether that's
9 the product you want in total and you consider all of
10 these factors. And I think those are a pretty 16:06:01
11 representative list for what most people are looking at.

12 BY MR. ZELLER:

13 Q. Focusing on the features that Apple claims to
14 be patented in this case, can you tell me which of them,
15 if any, is the most important reason why consumers 16:06:18
16 purchase iPhones?

17 MR. JACOBS: Objection. Form. Lacks
18 foundation.

19 THE WITNESS: I have not done a survey of the
20 individual patent features to rank their relative 16:06:31
21 importance to consumers in their purchase process.

22 BY MR. ZELLER:

23 Q. What percentage of consumers have purchased
24 iPhones because of the specific, individual patented
25 features that are at issue in this case? 16:06:53

1 MR. JACOBS: Objection. Form.

2 THE WITNESS: I do not believe customers think
3 about only individual features when they purchase a
4 product like iPhone. I believe they consider all of the
5 features together as one product. That's how I believe 16:07:11
6 customers make a purchase decision.

7 MR. JACOBS: Excuse me just a second.

8 Let me just ask how we doin' on the clock,
9 what's the total time?

10 THE VIDEOGRAPHER: Time on the record? 16:07:28

11 MR. JACOBS: Time on the record.

12 THE VIDEOGRAPHER: Two hours 47 minutes.

13 MR. JACOBS: Okay.

14 BY MR. ZELLER:

15 Q. So you can't give me percentage? 16:07:36

16 A. I'm sorry. Could you restate, percentage of
17 what?

18 Q. Can you tell me the percentage of consumers
19 who have purchased any iPhone products because of the
20 patented features that are at issue in this case? 16:07:51

21 MR. JACOBS: Objection. Form. Foundation.

22 THE WITNESS: I would estimate that a hundred
23 percent of the customers purchase an iPhone because the
24 patented features in this case are features of the
25 iPhone. I think these are features that matter to 16:08:11

1 still being sold?

2 A. I don't know which models are being sold with
3 what specific operating system. It's quite confusing in
4 the Samsung/Android world which operating system ships
5 with which phone. 16:18:41

6 Q. Well, what percentage of consumers are
7 currently buying any kind of Samsung device because of
8 bounce-back?

9 A. As I stated earlier, I have not done a survey
10 of Samsung purchasers to ascertain what percentage of 16:18:48
11 individual Samsung Galaxy buyers are buying a product
12 for a feature.

13 Q. Back during the time period when, according to
14 Apple, Samsung's devices had the bounce-back feature
15 with its various devices, do you believe that consumers 16:19:12
16 purchased those Samsung devices because it had the
17 bounce-back feature?

18 A. I think -- the way I think of it is I believe
19 that if those Samsung devices did not implement
20 bounce-back in copying iOS, fewer customers may have 16:19:34
21 purchased them because they would have been dissatisfied
22 with the ease of use of the product. So I think
23 customers would have chose not to buy it had it not used
24 bounce-back in combination with the other multi-touch
25 features as well. So I do think there's an impact on 16:19:52

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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 5th day of November, 2012.

THOMAS J. FRASIK, CSR No. 6961