

Estrich Declaration

Exhibit 3

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

APPLE INC., A CALIFORNIA)	C-11-01846 LHK
CORPORATION,)	
)	SAN JOSE, CALIFORNIA
PLAINTIFF,)	
)	AUGUST 3, 2012
VS.)	
)	VOLUME
SAMSUNG ELECTRONICS CO.,)	
LTD., A KOREAN BUSINESS)	PAGES 556-930
ENTITY; SAMSUNG)	
ELECTRONICS AMERICA,)	
INC., A NEW YORK)	
CORPORATION; SAMSUNG)	
TELECOMMUNICATIONS)	
AMERICA, LLC, A DELAWARE)	
LIMITED LIABILITY)	
COMPANY,)	
)	
DEFENDANTS.)	

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

APPEARANCES ON NEXT PAGE

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

1 A P P E A R A N C E S:

2 FOR PLAINTIFF MORRISON & FOERSTER
APPLE: BY: HAROLD J. MCELHINNY
3 MICHAEL A. JACOBS
 RACHEL KREVANS
4 425 MARKET STREET
 SAN FRANCISCO, CALIFORNIA 94105

5
6 FOR COUNTERCLAIMANT WILMER, CUTLER, PICKERING,
APPLE: HALE AND DORR
7 BY: WILLIAM F. LEE
 60 STATE STREET
8 BOSTON, MASSACHUSETTS 02109
9 BY: MARK D. SELWYN
10 950 PAGE MILL ROAD
 PALO ALTO, CALIFORNIA 94304

11 FOR THE DEFENDANT: QUINN, EMANUEL, URQUHART,
 OLIVER & HEDGES
12 BY: CHARLES K. VERHOEVEN
 50 CALIFORNIA STREET, 22ND FLOOR
13 SAN FRANCISCO, CALIFORNIA 94111
14 BY: VICTORIA F. MAROULIS
 KEVIN P.B. JOHNSON
15 555 TWIN DOLPHIN DRIVE
 SUITE 560
16 REDWOOD SHORES, CALIFORNIA 94065
17 BY: MICHAEL T. ZELLER
 WILLIAM C. PRICE
18 JOHN B. QUINN
 865 SOUTH FIGUEROA STREET
19 10TH FLOOR
 LOS ANGELES, CALIFORNIA 90017

20
21
22
23
24
25

INDEX OF WITNESSESPLAINTIFF'S**PHILIP SCHILLER**

DIRECT EXAM BY MR. MCELHINNY (RES.)	P. 594
CROSS-EXAM BY MR. PRICE	P. 666
REDIRECT EXAM BY MR. MCELHINNY	P. 717
RECROSS-EXAM BY MR. PRICE	P. 721

SCOTT FORSTALL

DIRECT EXAM BY MR. MCELHINNY	P. 724
CROSS-EXAM BY MR. JOHNSON	P. 760
REDIRECT EXAM BY MR. MCELHINNY	P. 784
RECROSS-EXAM BY MR. JOHNSON	P. 787

JUSTIN DENISON

AS-ON CROSS-EXAM BY MR. LEE	P. 790
AS-ON DIRECT EXAM BY MR. QUINN	P. 839

1 WAS AMAZING. PEOPLE HAD BEEN WAITING SO LONG AND
2 WERE SO EXCITED ABOUT THIS UPCOMING EVENT AT MAC
3 WORLD.

4 Q WHAT WAS THE INITIAL REACTION TO THE
5 ANNOUNCEMENT?

6 MR. PRICE: I'M GOING TO OBJECT, YOUR
7 HONOR. VAGUE, BY WHOM, WHEN?

8 THE COURT: SUSTAINED.

9 BY MR. MCELHINNY:

10 Q WHAT WAS THE MEDIA REACTION TO THE
11 ANNOUNCEMENT?

12 A WE HAD A HUGE AMOUNT OF PRESS, AND AS YOU
13 WOULD EXPECT, THE RANGE OF THE REACTION WAS
14 EVERYTHING YOU COULD IMAGINE FROM EXCITEMENT ABOUT
15 THIS BREAKTHROUGH PRODUCT TO DOUBT THAT APPLE COULD
16 SUCCEED AT THIS OR DO A GOOD JOB AT IT.

17 Q CAN YOU GIVE US EXAMPLES OF PEOPLE WHO SAID
18 THAT YOU -- AFTER SEEING THE ANNOUNCEMENTS,
19 EXPRESSED DOUBT ABOUT WHETHER OR NOT IT WOULD BE --
20 THE IPHONE WOULD BE A SUCCESSFUL PRODUCT?

21 MR. PRICE: OBJECT TO RELEVANCE AND
22 HEARSAY.

23 THE COURT: WHAT WAS THE QUESTION AGAIN?

24 BY MR. MCELHINNY:

25 Q CAN YOU GIVE US EXAMPLES OF PEOPLE WHO

1 EXPRESSED DOUBT ABOUT WHETHER THE IPHONE WOULD BE A
2 SUCCESSFUL PRODUCT.

3 IT'S A SECONDARY CONSIDERATION.

4 THE COURT: I UNDERSTAND. YOU NEED TO
5 LAY A FOUNDATION. OTHERWISE IT IS ELICITING
6 HEARSAY.

7 GO AHEAD, PLEASE. REPHRASE YOUR
8 QUESTION.

9 BY MR. MCELHINNY:

10 Q AS THE HEAD OF MARKETING, DID YOU BECOME AWARE
11 THAT PEOPLE EXPRESSED DOUBT AS TO THE SUCCESS OF
12 THE IPHONE PRODUCT?

13 A YES, ABSOLUTELY.

14 Q CAN YOU GIVE US AN EXAMPLE?

15 A WE HAD MANY PRESS REPORTS, FROM THE PRESS,
16 FROM ANALYSTS, EVEN FROM COMPETITORS WHO SPOKE OUT
17 AGAINST OUR ANNOUNCEMENT AND SAID THAT WE'RE GOING
18 TO FAIL. EVEN MICROSOFT SAID WE WERE GOING TO
19 FAIL. THE HEAD OF PALM SAID WE WERE GOING TO FAIL.
20 THERE WERE MANY PEOPLE EXPRESSING DOUBT.

21 Q AND DID THEY GIVE REASONS WHY THEY THOUGHT IT
22 WOULD FAIL?

23 A YES, ABSOLUTELY.

24 Q AND DO YOU RECALL ANY OF THE REASONS THAT WERE
25 GIVEN AT THE TIME?

1 A PROBABLY THE BIGGEST REASON WAS THAT APPLE HAD
2 NEVER HAD A PHONE BEFORE AND WAS NEW INTO THE PHONE
3 BUSINESS AND THEY EXPECTED THAT WE WOULD FALL ON TO
4 OUR FACE AND DO A BAD JOB OF IT.

5 Q SIR, IF YOU LOOK AT EXHIBIT 133 IN YOUR
6 EXHIBIT BINDER THERE, PX 133.

7 A YES.

8 Q CAN YOU TELL ME WHAT THAT DOCUMENT IS, PLEASE?

9 A THIS IS AN ARTICLE FROM THE NEW YORK TIMES
10 THAT APPEARED THE DAY AFTER THE LAUNCH OF THE
11 IPHONE WRITTEN BY DAVID POGUE, ONE OF THE
12 PREEMINENT --

13 MR. MCELHINNY: YOUR HONOR, I MOVE PX
14 133.

15 THE COURT: ANY OBJECTION?

16 MR. PRICE: WE HAVE NO FURTHER OBJECTION
17 TO THAT.

18 WE WOULD REQUEST A LIMITING INSTRUCTION
19 TO THE JURY THAT THIS IS NOT FOR THE TRUTH OF
20 ANYTHING THAT'S IN THE ARTICLE.

21 THE COURT: THAT'S FINE. THAT'S FINE.
22 IT'S ADMITTED, AND THIS IS NOT FOR THE TRUTH OF
23 WHAT IS STATED IN THE ARTICLE.

24 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
25 133, HAVING BEEN PREVIOUSLY MARKED FOR

1 IDENTIFICATION, WAS ADMITTED INTO
2 EVIDENCE.)

3 THE COURT: YOU MAY CONSIDER IT
4 OTHERWISE.

5 GO AHEAD.

6 BY MR. MCELHINNY:

7 Q WOULD YOU PLEASE PUT UP PDX 1, PLEASE.

8 CAN YOU TELL US BRIEFLY WHAT MR. POGUE
9 SAID IN THIS ARTICLE?

10 A YES. MR. POGUE WROTE THAT APPLE HAD WAVED OUR
11 WAND, THE IPHONE, AT THE PHONE, AND HE CALLED IT
12 BEAUTIFUL AND THAT THAT ALONE WOULD BE ENOUGH TO
13 EXCITE PEOPLE AND MAKE PEOPLE WANT TO BUY IT.

14 HE ALSO CALLED IT GORGEOUS AND HE SPOKE
15 ABOUT ITS SHINY BLACK FACE AND STAINLESS STEEL
16 MIRRORED FINISHED RIM THAT WENT AROUND IT, THE LOOK
17 OF IT.

18 SO HE TALKED ABOUT HOW IT LOOKED AND HOW
19 BEAUTIFUL IT LOOKED.

20 Q WHEN WAS THE IPHONE ACTUALLY PHYSICALLY
21 RELEASED, SIR?

22 A WE SHIPPED THE FIRST IPHONES IN JUNE OF THAT
23 YEAR, JUNE 19TH, 2007.

24 Q DID APPLE DO ANYTHING BETWEEN JANUARY AND JUNE
25 TO PROMOTE THE IPHONE ITSELF?

1 A YES, WE DID.

2 Q CAN YOU GIVE US EXAMPLES OF WHAT YOU DID?

3 A WELL, IN THAT PERIOD FROM JANUARY UNTIL JUNE,
4 WE HAD A FEW MARKETING STRATEGIES.

5 THE BEGINNING WAS FIRST WE CALLED IT GO
6 QUIET. SO RIGHT AFTER THE LAUNCH IN JANUARY, THERE
7 WAS SO MUCH EXCITEMENT, SO MUCH PRESS COVERAGE, WE
8 DIDN'T NEED TO DO OTHER MARKETING. THE BEST THING
9 TO DO WAS LET THE PRESS WRITE AND TALK ABOUT THE
10 IPHONE. SOME TALKED ABOUT THAT AS THE BIGGEST P.R.
11 LAUNCH OF A PRODUCT IN HISTORY.

12 AND THEN LEADING TOWARDS JUNE, WE BEGAN
13 TO CAREFULLY TURN ON THE MARKETING. FIRST WE HELD
14 A TV AD DURING THE ACADEMY AWARDS IN EARLY MARCH.
15 IT WAS CALLED THE HELLO TV AD WHERE WE HAD FAMOUS
16 SCENES OF PEOPLE MAKING PHONE CALLS, AND THEN AT
17 THE END OF THAT AD, IT ANNOUNCED THAT THE IPHONE
18 WAS COMING IN JUNE, AT THE END OF JUNE.

19 AND THEN AS WE GOT CLOSER TO THE LAUNCH
20 IN JUNE, WE STARTED TO BRING ON ADDITIONAL TV ADS
21 SPECIFICALLY ABOUT THE IPHONE, SHOWCASING IT, AS
22 WELL AS DOING A TREMENDOUS AMOUNT OF MARKETING WITH
23 DIRECT MAIL, WEBSITES, HELPING THE WHOLE WORLD GET
24 READY FOR THE ARRIVAL OF THE IPHONE.

25 Q WHERE WERE YOU PHYSICALLY WHEN THE IPHONE WAS

1 RELEASED, SIR?

2 A I WAS AT OUR APPLE STORE IN CHICAGO ON
3 MICHIGAN AVENUE.

4 Q AND WHY WERE YOU THERE?

5 A WE REALIZED THAT THIS WAS A VERY, VERY BIG DAY
6 FOR APPLE, THE LAUNCH OF THE IPHONE, AND SO MUCH
7 EXCITEMENT HAD BUILT UP THAT I SENT MY TEAM,
8 INCLUDING MYSELF, AROUND THE COUNTRY TO DIFFERENT
9 LOCATIONS TO BE EVERYWHERE WE COULD.

10 AND SO I CHOSE TO GO TO CHICAGO, AND I
11 ACTUALLY EVEN BROUGHT MY SON WITH ME BECAUSE THIS
12 WAS SUCH A HUGE DAY AND I WANTED HIM TO BE PART OF
13 THAT.

14 Q AFTER THE IPHONE WAS PHYSICALLY RELEASED, DID
15 YOU SEE ADDITIONAL REVIEWS IN THE PRESS CONCERNING
16 ITS FEATURES?

17 A YES.

18 Q DID ANY OF THE ARTICLES OR REVIEWS TALK ABOUT
19 THE DESIGN OF THE IPHONE?

20 A OH, I THINK MANY, MANY OF THE ARTICLES TALKED
21 ABOUT THE DESIGN AND SPOKE ABOUT IT, EVEN SHOWED IT
22 IN THEIR STORIES.

23 Q CAN YOU LOOK IN YOUR BINDER, PLEASE, AT
24 EXHIBIT PX 17, 17.

25 A YES.

1 Q CAN YOU TELL ME WHAT THIS DOCUMENT IS, PLEASE?

2 A THIS IS A SUMMARY OF SOME OF THE NEWS COVERAGE
3 ABOUT THE IPHONE.

4 MR. MCELHINNY: YOUR HONOR, I MOVE PX 17.

5 THE COURT: ALL RIGHT. ANY OBJECTION?

6 MR. PRICE: NO FURTHER OBJECTIONS, AGAIN,
7 YOUR HONOR, WITH THE LIMITING INSTRUCTION THAT
8 NOTHING IN THESE ARTICLES IS TO BE TAKEN FOR THE
9 TRUTH OF THE MATTER ASSERTED.

10 THE COURT: ALL RIGHT. SO THIS IS
11 ADMITTED AND YOU ARE NOT TO CONSIDER THIS FOR THE
12 TRUTH OF WHAT'S ASSERTED IN THIS EXHIBIT. YOU CAN
13 CONSIDER IT OTHERWISE.

14 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
15 17, HAVING BEEN PREVIOUSLY MARKED FOR
16 IDENTIFICATION, WAS ADMITTED INTO
17 EVIDENCE.)

18 THE COURT: GO AHEAD, PLEASE.

19 MR. MCELHINNY: THANK YOU, YOUR HONOR.

20 Q IS THIS THE FIRST PAGE OF PX 17?

21 A YES, IT IS.

22 Q AND, AGAIN, JUST WHAT ARE EACH OF THESE
23 PHOTOGRAPHS THAT GO THROUGH THESE PAGES?

24 A THESE ARE ALL EXCERPTS AND SUMMARIES OF
25 DIFFERENT NEWS COVERAGE THAT WAS WRITTEN ABOUT THE

1 MR. SINCLAIR.

2 Q THANK YOU VERY MUCH. WHO IS MR. SINCLAIR?

3 A HE IS A PRODUCT MANAGER ON MY TEAM.

4 Q IT'S ACTUALLY A STRING OF E-MAILS. DO YOU SEE
5 THAT?

6 A YES, THERE ARE A NUMBER OF E-MAILS REFERENCED
7 IN HERE.

8 Q AND ON THE SECOND PAGE, DO YOU SEE IT SAYS ON
9 APRIL 6TH, 2010, STEVE SINCLAIR WROTE; CORRECT?

10 A YES, I SEE THAT.

11 MR. PRICE: YOUR HONOR, MOVE EXHIBIT 578
12 INTO EVIDENCE.

13 THE COURT: ANY OBJECTION?

14 MR. MCELHINNY: NO OBJECTION, YOUR HONOR.

15 THE COURT: IT'S ADMITTED.

16 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
17 578, HAVING BEEN PREVIOUSLY MARKED FOR
18 IDENTIFICATION, WAS ADMITTED INTO
19 EVIDENCE.)

20 MR. PRICE: AND IF WE COULD PUT UP THAT
21 SECOND PAGE AND JUST BLOW UP THE PART THAT STARTS
22 HERE WITH STEVE SINCLAIR, RIGHT HERE ON DOWN, THERE
23 WE GO.

24 Q AND DO YOU SEE MR. SINCLAIR WRITES, "IT'S
25 TOUCH TO APPROACH THIS WITH THE CRITERIA BEING

1 'FIRST,' " AND THIS WAS IN CONNECTION WITH A
2 MARKETING APPROACH THAT WAS BEING DISCUSSED; RIGHT?

3 A THIS WAS A DISCUSSION BETWEEN STEVE SINCLAIR
4 AND THE AD TEAM ON SOME CLAIMS.

5 Q "AD" BEING ADVERTISING?

6 A YES.

7 Q OKAY. AND HE SAYS, "I DON'T KNOW HOW MANY
8 THINGS WE CAN COME UP WITH THAT YOU COULD
9 LEGITIMATELY CLAIM WE DID FIRST. CERTAINLY WE HAVE
10 THE FIRST COMMERCIALY SUCCESSFUL VERSIONS OF MANY
11 FEATURES."

12 AND I JUST WANT TO GO, "THE FIRST PHONE
13 TO INCORPORATE A FULL TOUCHSCREEN FACE," AND IT
14 SAYS, "NOT TRUE," AND YOU SEE THERE'S THAT
15 WIKIPEDIA SITE TO A PRODUCT, THE LG PRADA.

16 DO YOU SEE THAT?

17 A I SEE THAT.

18 MR. PRICE: AND BY THE WAY, YOUR HONOR, I
19 MOVE THE PRADA INTO EVIDENCE, IF I CAN REMEMBER THE
20 EXHIBIT NUMBER. DOES IT HAVE A NUMBER ON THE BACK?
21 1093.

22 THE COURT: OKAY. ANY OBJECTION?

23 MR. MCELHINNY: THIS IS NOT SUPPOSED TO
24 COME IN, YOUR HONOR, PURSUANT TO YOUR ORDER ABOUT
25 THE SPECIFIC LIMITING INSTRUCTION WHICH HAS NOT

1 BEEN PREPARED YET. BUT IT IS NOT PRIOR ART AS THAT
2 TERM IS USED AND WILL BE USED BY THE JURY.

3 MR. PRICE: AND WE'RE NOT -- THIS
4 EXAMINATION IS NOT TALKING ABOUT PRIOR ART.

5 MR. MCELHINNY: SO IT'S NOT RELEVANT TO
6 THE VALIDITY OF ANY OF OUR PATENTS AT ISSUE, YOUR
7 HONOR.

8 THE COURT: ALL RIGHT. SO WHAT -- IT'S
9 1093?

10 MR. PRICE: YES, YOUR HONOR.

11 THE COURT: ALL RIGHT. SO THE LIMITING
12 INSTRUCTION IS THAT THIS EXHIBIT, OR I GUESS THIS
13 PHONE, IS ADMITTED, BUT IT IS NOT PRIOR ART FOR
14 PURPOSES OF ANY INVALIDITY OF THE PATENTS. OKAY?

15 SO YOU CAN CONSIDER IT.

16 MR. PRICE: THANK YOU, YOUR HONOR.

17 THE COURT: IT'S IN EVIDENCE.

18 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
19 1093, HAVING BEEN PREVIOUSLY MARKED FOR
20 IDENTIFICATION, WAS ADMITTED INTO
21 EVIDENCE.)

22 THE COURT: GO AHEAD.

23 BY MR. PRICE:

24 Q TO BE CLEAR, THERE'S NO PATENT THAT HAS BEEN
25 ASSERTED HERE THAT SAYS THAT THE TOUCHSCREEN, THAT

1 APPLE OWNS THAT EXCLUSIVELY; RIGHT?

2 A I'M NOT CERTAIN. I KNOW THERE'S SOME
3 TOUCHSCREEN PATENTS INVOLVED. I DON'T KNOW EXACTLY
4 WHICH ONES AND HOW TO SUMMARIZE THAT.

5 Q OKAY. WELL, IF -- YOU UNDERSTAND, AS SOMEONE
6 WHO'S IN MARKETING, THAT THERE IS AN ADVANTAGE TO
7 HAVING A LARGER SCREEN ON THE PHONE?

8 A TO AN EXTENT OF THE THERE ARE TIMES WHEN IT IS
9 AND TIMES WHEN IT CAN BECOME A DISADVANTAGE.

10 Q SO IT'S A FUNCTIONAL ADVANTAGE IF, FOR
11 EXAMPLE, YOU WANT TO WATCH MOVIES; RIGHT?

12 MR. MCELHINNY: EXCUSE ME, YOUR HONOR.
13 IF YOU THINK IT IS A TERM OF ART AND IT'S A LEGAL
14 EXPRESS WHICH HE JUST SUBSTITUTED INTO HIS
15 QUESTION. WE DON'T HAVE A DEFINITION OF FUNCTIONAL
16 AS HE'S USING IT.

17 THE COURT: WHY DON'T YOU REPHRASE YOUR
18 QUESTION.

19 MR. PRICE: SURE.

20 Q YOU BELIEVE THAT A LARGER SCREEN PROVIDES
21 ADVANTAGES TO A CONSUMER IF THE CONSUMER WANTS TO
22 WATCH A MOVIE?

23 A THERE ARE TIMES WHEN A LARGER SCREEN IS A
24 BENEFIT AND ONE OF THOSE WOULD BE WATCHING A MOVIE.

25 Q OKAY. AND THAT IT'S AN ADVANTAGE BECAUSE YOU

1 CAN VIEW A LARGER SECTION, FOR EXAMPLE, OF A WEB
2 PAGE?

3 A DEPENDING ON THE SCREEN RESOLUTION, IT CAN BE
4 AN ADVANTAGE FOR THAT.

5 Q AND IT'S YOUR EXPERIENCE THAT THESE ARE THINGS
6 WHICH CONSUMERS WANT, THAT THEY WANT SCREENS THAT
7 ARE LARGER SO THEY CAN SEE WEB PAGES, MOVIES, YOU
8 KNOW, WITHIN THE LIMIT OF THE, YOU KNOW, BEING
9 USEFUL IN YOUR HAND?

10 A LARGER SCREENS ARE -- CAN BE A BENEFIT TO
11 USERS. IT'S NOT THE ONLY THING THEY WANT, BUT IT'S
12 ONE THING THAT THEY WANT.

13 Q AND WHEN, WHEN YOU -- WHEN APPLE RELEASED THE
14 IPHONE IN 2007, IT EXPECTED COMPETITION IN THE
15 SMARTPHONE INDUSTRY WITH PHONES THAT YOU COULD
16 WATCH MOVIES ON OR VIEW WEB PAGES; CORRECT?

17 A WE EXPECTED COMPETITION IN THE SMARTPHONE
18 SPACE, YES.

19 Q BECAUSE YOU DIDN'T THINK THAT APPLE -- APPLE
20 DIDN'T THINK THAT IT HAD THE EXCLUSIVE RIGHT TO
21 GIVE THE CONSUMER A SMARTPHONE WITH A SCREEN THAT
22 COULD EXHIBIT WEB PAGES, MOVIES, MUSIC; RIGHT?

23 A WE DID NOT HAVE EXCLUSIVITY ON PLAYING MOVIES
24 OR MUSIC ON PHONES.

25 Q SO LET'S TALK THEN NOW ABOUT, ABOUT OTHER

1 THINGS ABOUT THE WAY THE PHONE WORKS.

2 IF -- LET ME ASK YOU, YOU'VE HEARD THE
3 PHRASE THAT EVERYTHING DEFERS TO THE SCREEN?

4 A NO, ACTUALLY, I DON'T RECALL THAT PHRASE.

5 Q DO YOU REMEMBER MR. IVE SAYING SOME PHRASE
6 LIKE THAT, THAT EVERYTHING DEFERS TO THE SCREEN?

7 A YOU MEAN JONATHAN IVE?

8 Q YES, IVE, THANK YOU.

9 A I DON'T RECALL THAT SAYING.

10 Q BUT THAT'S THE IDEA FOR APPLE'S PHONES, FOR
11 EXAMPLE, IS THAT THE SCREEN KIND OF DOMINANTS THE
12 PHONE?

13 MR. MCELHINNY: THIS IS BEYOND THE SCOPE
14 OF DIRECT EXAMINATION, YOUR HONOR, TALKING ABOUT
15 THE ELEMENTS OF THE DESIGN.

16 MR. PRICE: HE TALKED ABOUT THE DESIGN AT
17 LENGTH.

18 THE COURT: GO AHEAD. OVERRULED.

19 BY MR. PRICE:

20 Q CORRECT?

21 A I'M SORRY. COULD YOU REPEAT THE QUESTION.

22 Q THE SCREEN DOMINANTS THE APPLE IPHONE;
23 CORRECT?

24 A THE SCREEN IS ONE OF THE DOMINANT FEATURES OF
25 THE PHONE.

1 Q AND I'M GOING TO -- WE WERE TALKING ABOUT
2 EXHIBIT 1000, WHICH WAS THE FIRST PHONE, AND YOU
3 WERE ASKED BY YOUR COUNSEL ABOUT THAT, SO WHEN THE
4 SCREEN DOMINANTS, THEN, FOR EXAMPLE, ON THE IPHONE,
5 THERE'S THESE TWO AREAS AT THE TOP AND BOTTOM,
6 FAIRLY SMALL AREAS COMPARED TO THE SCREEN; CORRECT?

7 A YEAH, THERE ARE AREAS ON THE TOP AND BOTTOM OF
8 THE PHONE AND THE SCREEN AS WELL.

9 Q AND IN THAT REGARD, APPLE'S PHILOSOPHY HAS
10 BEEN LET'S MAKE THIS REALLY CLEAN AND NOT HAVE
11 APPLE ON IT AND JUST HAVE A SPEAKER AND HAVE WHAT
12 IS CALLED THE HOME BUTTON; CORRECT?

13 A OUR PHILOSOPHY IS TO CREATE ONE SEAMLESS FACE
14 ON THE FRONT FOR THE SCREEN AND THE AREA ABOVE AND
15 BELOW IT. THAT'S OUR PHILOSOPHY ON THAT.

16 Q SO IF YOU'VE GOT A TOUCHSCREEN, AND MOST
17 PEOPLE HOLD THEIR PHONES LIKE I'M HOLDING THIS IN
18 MY HAND NOW, RIGHT (INDICATING)?

19 A THAT'S ONE WAY TO HOLD IT.

20 Q VERY RARELY, WHEN MAKING A CALL, FOR EXAMPLE,
21 DO PEOPLE HOLD PHONES LIKE THIS WITH ONE FINGER,
22 RIGHT (INDICATING)?

23 A I HOLD IT LIKE THAT WHEN I MAKE A CALL
24 (INDICATING).

25 Q NOW, WHEN YOU HAVE A TOUCHSCREEN, YOU HAVE TO

1 DO SOMETHING ON THE EDGES HERE SO THAT YOUR FINGERS
2 AREN'T TOUCHING THAT SCREEN AND, AND DOING
3 SOMETHING THAT YOU DON'T WANT IT TO DO; RIGHT?

4 A NO. IT'S MUCH MORE COMPLICATED THAN THAT.

5 Q WELL, YOU DON'T WANT TO HAVE SOMEONE
6 ACCIDENTALLY TOUCHING THE PHONE WHEN THEY'RE
7 HOLDING IT THE WAY THAT THEY WOULD NORMALLY HOLD IT
8 FOR A CALL; CORRECT?

9 A AGAIN, I'M NOT SURE WHAT YOU MEAN. YOU DO
10 WANT PEOPLE TO TOUCH THEIR PHONE WHEN THEY'RE
11 HOLDING IT TO MAKE A CALL AND IT WILL TOUCH THE
12 SCREEN.

13 Q THE SCREEN. YOU DON'T WANT PEOPLE TO -- IF
14 IT'S AN INTERACTIVE TOUCHSCREEN, YOU DON'T WANT
15 PEOPLE TO ACCIDENTALLY TOUCH IT WHILE THEY'RE
16 MAKING A CALL. THAT WOULD BE A PROBLEM THAT WOULD
17 BE KIND OF AN INCONVENIENCE?

18 A WELL, THEY WILL FROM TIME TO TIME TOUCH IT, SO
19 WE'VE INVENTED WAYS TO, TO KEEP THAT FROM CREATING
20 CONTACTS THAT YOU DON'T WANT OR SIGNALS THAT YOU
21 DON'T WANT TO HAPPEN ON YOUR CALL, YES.

22 Q AND WHAT APPLE HAS DONE HERE, AT LEAST ON THE
23 FIRST IPHONE, IT HAS THIS METAL BEZEL AND IT HAS
24 THESE VERY SMALL DARK LINES DOWN THE SIDE WHICH ARE
25 NOT PART OF THE ACTUAL INTERACTIVE SCREEN; RIGHT?

1 A THERE ARE -- THERE IS A BORDER AROUND THE
2 SCREEN THAT'S VERY SMALL, YES.

3 Q AND THAT BORDER, IF YOU TOUCH IT, IT WON'T DO
4 ANYTHING TO MAKE THE PHONE FUNCTION; RIGHT?

5 A IF YOU'RE NOT TOUCHING THE TOUCHSCREEN, YOU'RE
6 NOT -- EXCEPT FOR, OF COURSE, THE HOME BUTTON AND
7 THE BUTTONS ON THE SIDE, YOU'RE NOT INTERACTING
8 WITH IT; CORRECT.

9 Q AND YOU NEED A SPEAKER AT THE TOP TO HEAR?

10 A YOU NEED A SPEAKER TO HEAR, UNLESS YOU'RE
11 USING A HEAD SET.

12 Q AND IF YOU'RE GOING TO HAVE A CAMERA, YOU NEED
13 SOMETHING ON THE TOP FOR A CAMERA; CORRECT?

14 A FOR A FRONT FACING CAMERA, YES.

15 Q AND THESE AREAS THAT ARE DARK, YOU KNOW, ABOVE
16 AND BELOW THE SCREEN, DO THEY HIDE INTERNAL WIRING
17 AND COMPONENTS?

18 A THERE ARE COMPONENTS BEHIND EVERY PART OF THE
19 IPHONE, THE SCREEN AND THE TOP AND BOTTOM, AND
20 ALONG THE BOTTOM AS WELL.

21 Q NOW, ANOTHER THING, THESE ARE ROUNDED. I
22 ASSUME YOU THOUGHT THAT CUSTOMERS MIGHT PUT THESE
23 PHONES IN THEIR POCKETS.

24 A WE CERTAINLY ASSUME CUSTOMERS PUT THEIR PHONE
25 IN THEIR POCKET. I WOULDN'T SAY THAT'S WHY IT'S

1 ROUNDED. THAT'S NOT THE ONLY REASON.

2 Q IT MAY NOT BE THE ONLY REASON, BUT IF IT'S
3 SQUARE, THAT WOULD MAKE IT MORE DIFFICULT FOR A
4 CUSTOMER TO TAKE THEIR PHONE OUT OF THEIR POCKET?

5 A IT DEPENDS. THERE ARE WAYS TO HANDLE THAT NO
6 MATTER WHAT THE SHAPE IS. SO I WOULDN'T SAY THAT'S
7 A GUARANTEED RULE. I'VE SEEN SQUARE PHONES THAT
8 WORK JUST FINE IN YOUR POCKETS.

9 Q YOU THINK THAT JUST GENERALLY, USING YOUR
10 COMMON SENSE, IT WOULD BE MORE DIFFICULT TO TAKE A
11 SQUARE PHONE OUT OF YOUR POCKET BECAUSE IT MIGHT
12 CATCH ON SOMETHING?

13 A I THINK IT DEPENDS ON THE SIZE, BUT ROUNDED
14 CORNERS CERTAINLY HELP YOU MOVE THINGS IN AND OUT
15 OF YOUR POCKET.

16 Q NOW, YOU SAID THAT YOU WERE INVOLVED IN THE
17 DEVELOPMENT OF THE IPHONE; RIGHT?

18 A YES.

19 Q AND YOU SAID THAT YOU THOUGHT IT WAS, I THINK,
20 BEAUTIFUL, UNIQUE, DISTINCTIVE; CORRECT?

21 A YES.

22 Q AND WE SHOWED THAT PICTURE IN 2011, AFTER
23 MR. JOBS PASSED AWAY, AND THEY HAD THE IPHONES AND
24 YOU SAID YOU COULD IMMEDIATELY RECOGNIZE THOSE AS
25 IPHONES; CORRECT?

1 A YES, I DID.

2 Q BECAUSE THEY WERE SO UNIQUE; RIGHT?

3 A YES.

4 Q SO I THEN HEARD YOU TESTIFY FROM, I GUESS,
5 MR. MCELHINNY SAYING THAT YOU BELIEVED THERE WAS
6 CONSUMER CONFUSION REGARDING THE IPHONE AND
7 SAMSUNG'S PRODUCTS; RIGHT?

8 A I SAID -- I EXPLAINED AN EXAMPLE BOTH WITH TV
9 ADS AND OUTDOOR ADVERTISING HOW IT WOULD CREATE
10 CONFUSION AND IF THE USER SEES EITHER A SAMSUNG OR
11 AN APPLE PHONE, THE MORE THAT A SAMSUNG PHONE
12 COPIES AN APPLE PHONE, THE HARDER IT IS TO TELL
13 WHICH IS WHICH IN SITUATIONS LIKE I DESCRIBED,
14 DRIVING BY A BILLBOARD OR WATCHING TV AND MOVING
15 OUT OF THE ROOM.

16 Q LET'S TALK ABOUT HOW, ABOUT HOW -- YOUR
17 UNDERSTANDING OF HOW CONSUMERS OVER THE YEARS HAVE
18 BUILT THESE SMARTPHONES.

19 THEY'RE FAIRLY EXPENSIVE COMPARED TO
20 OTHER PHONES; CORRECT?

21 A NOT NECESSARILY.

22 Q OKAY. WOULD YOU SAY \$500, \$600 IS EXPENSIVE?

23 A THE IPHONE STARTS AT FREE WHEN YOU PURCHASE
24 IT -- IN THE U.S., THE PREDOMINANT NUMBER OF
25 CUSTOMERS BUY IT WITH A CONTRACT AND IT'S FREE.

1 Q THE CURRENT IPHONE ALSO? MODELS?

2 A THE IPHONE 3GS STARTS AT FREE, YES.

3 Q I'M TALKING ABOUT THE LATEST AND GREATEST
4 MODELS THAT YOU COME OUT WITH AND THERE'S A BIG
5 SPLASH OF MEDIA, THEY'RE KIND OF EXPENSIVE? SOME
6 PEOPLE DON'T BUY THEM BECAUSE THEY'RE EXPENSIVE?

7 A SOME PEOPLE DO, SOME DON'T. THEY
8 TRADITIONALLY START AT ABOUT \$199 UNDER A CONTRACT.
9 SO DEPENDING ON YOUR PERSPECTIVE WHETHER THAT'S
10 EXPENSIVE OR NOT.

11 Q AND YOUR RESEARCH TELLS YOU THAT PEOPLE
12 USUALLY CONSIDER THEIR PHONE PURCHASE CAREFULLY
13 WHEN THEY'RE BUYING SUCH A PERSONAL AND PRICED
14 ITEM?

15 A I DON'T RECALL ANY SPECIFIC RESEARCH ABOUT THE
16 CARE SOMEONE TAKES IN AN INDIVIDUAL PURCHASE.

17 Q YOU'VE HAD EXPERIENCE GOING INTO STORES;
18 CORRECT?

19 A I HAVE GONE INTO STORES.

20 Q AND IN THE STORES, THE IPHONE PRODUCTS ARE
21 SEGREGATED, AT THE CARRIERS, FROM SAMSUNG PRODUCTS;
22 RIGHT?

23 A IT DEPENDS ON THE STORE AND THE SETUP, BUT
24 THEY'RE NOT ALWAYS NEXT TO EACH OTHER.

25 Q THAT'S A LITTLE BIT DIFFERENT. EVERY STORE

1 YOU'VE BEEN INTO THAT'S A CARRIER, THE IPHONE
2 PRODUCTS ARE SEGREGATED FROM THE SAMSUNG PRODUCTS;
3 RIGHT?

4 A AGAIN, I'M NOT SURE BY SEGREGATED WHAT YOU
5 MEAN, BUT USUALLY THEY'RE DISPLAYED SEPARATELY FROM
6 EACH OTHER.

7 Q AND YOU ARE SAYING THAT THE IPHONE IS CONFUSED
8 WITH SAMSUNG PHONES. YOU KNOW THERE ARE A NUMBER
9 OF PHONES THAT ARE, THAT ARE ACCUSED IN THIS CASE;
10 RIGHT?

11 A YES, I BELIEVE THERE ARE A NUMBER OF PHONES
12 THAT HAVE COPIED THE IPHONE, YES.

13 Q AND SO IS IT YOUR TESTIMONY THAT IF YOU LOOK
14 AT THESE PHONES, THEN CUSTOMERS ARE GOING TO BE
15 CONFUSED ABOUT ALL THE PHONES THAT ARE ACCUSED IN
16 THIS CASE?

17 A I BELIEVE CUSTOMERS CAN BE CONFUSED.

18 AND, AGAIN, I WAS SPEAKING SPECIFICALLY
19 ABOUT ALL THE MARKETING EFFORT AND I BELIEVE
20 THEY'RE CREATING CONFUSION THERE.

21 Q WELL, LET ME SHOW YOU WHAT HAS BEEN MARKED AS
22 EXHIBIT 1016. THIS IS A, A JOINT EXHIBIT. IT'S
23 ONE OF THE ACCUSED PRODUCTS. IT'S THE CONTINUUM.

24 IF I MAY APPROACH, YOUR HONOR?

25 THE COURT: GO AHEAD, PLEASE.

1 CALLED THE COM-TECH SURVEY, AND HE SHOWED YOU PAGE
2 23, AND HE SHOWED YOU THE CHART UP IN THE UPPER
3 RIGHT-HAND CORNER, WHICH IF I UNDERSTAND IT
4 CORRECTLY, SHOWED THAT FOUR TIMES MORE PEOPLE LIKED
5 THE DESIGN OF THE BLACKBERRY PHONE THAN LIKED THE
6 DESIGN OF THE APPLE PHONE. IS THAT WHAT THAT
7 PURPORTS TO SHOW?

8 A NO, I DON'T AGREE IT SHOWS THAT.

9 Q YOU WERE GOING TO -- YOU WERE GOING TO TRY TO
10 EXPLAIN HOW TO INTERPRET THIS CORRECTLY, AND I'D
11 LIKE TO GIVE YOU THE OPPORTUNITY TO DO THAT?

12 A YES, AS I UNDERSTAND WHAT THIS COMPANY DID
13 WITH THIS DATA WAS THEY ASKED CUSTOMERS A SPECIFIC
14 QUESTION AND THAT QUESTION WAS, OTHER THAN PRICE,
15 SO YOU'VE ALREADY SET THE MINDSET TO START THEM
16 THINKING ABOUT WHAT MATTERS TO THEM, WHAT ONE OTHER
17 THING WOULD YOU RATE AS IMPORTANT IN YOUR PURCHASE?

18 AND THEY WERE ALLOWED TO ONLY PICK ONE
19 THING.

20 AND THAT'S THE UNDERSTANDING OF THE
21 METHODOLOGY I HAD HERE. SO UNLIKE THE DATA WE
22 COLLECT WHERE WE ASK EACH ITEM AND CHECK WHICH IS
23 THE TOP BOXES OF PREFERENCE, THIS YOU WERE LIMITED
24 IN YOUR CHOICE.

25 AND TO FURTHER ADD CONFUSION, ONE OF

1 THOSE CHOICES IS BRAND, WHICH AS YOU SEE, APPLE
2 RANKS THE HIGHEST OF.

3 AND I BELIEVE THAT CUSTOMERS AT THIS
4 LEVEL AREN'T CLEAR ON BRAND AND DESIGN AND WHAT
5 THAT MEANS.

6 SO YOU WEREN'T GIVEN MORE THAN ONE
7 CHOICE, AND IT WAS CONFUSED WITH OTHER CHOICES THAT
8 HAD RATED VERY HIGHLY. SO IF YOU LIKED BRAND AND
9 DESIGN, YOU COULDN'T SELECT THAT.

10 Q SO THAT WE'RE, AGAIN, USING THE SAME
11 TERMINOLOGY, WHAT DOES BRAND, AS IS USED ON THIS
12 CHART WHICH COUNSEL PUT INTO EVIDENCE, WHAT DOES
13 BRAND MEAN?

14 A ON THIS QUESTION IT'S CONFUSED BECAUSE THEY
15 SAY BRAND/MODEL. SOME PEOPLE THINK BRAND MEANS THE
16 BRAND OF THE COMPANY, BUT MODEL MEANS MODEL OF
17 PHONES. SO IN THIS CASE, IT MIGHT MEAN APPLE AND
18 IPHONE.

19 SO IN THIS CASE, I CAN ONLY ASSUME,
20 BECAUSE IT'S UP TO THE USER'S INTERPRETATION OF
21 WHAT THEY'RE ASKED, THAT 44 PERCENT OF APPLE IOS
22 CUSTOMERS SELECTED APPLE/IPHONE AS A PRIMARY REASON
23 TO PURCHASE, OTHER THAN PRICE. AND THEN THEY
24 COULDN'T EXPECT ANYTHING ELSE.

25 Q BASED ON YOUR EXPERIENCE IN MARKETING, IS

1 THERE AN OVERLAP OR A CONNECTION BETWEEN THE DESIGN
2 OF THE APPLE PHONES AND THE APPLE BRAND?

3 A YES, I THINK THERE'S A STRONG CORRELATION.

4 Q AND WHAT IS THAT CORRELATION?

5 A IT IS THAT PEOPLE ASSOCIATE THE APPLE BRAND
6 WITH GREAT DESIGN, AND THEY HAVE INTRINSIC MEANING
7 TOGETHER.

8 Q SIR, AGAIN, I THINK YOU TESTIFIED THAT YOU
9 WERE INVOLVED IN THE ORIGINAL IPHONE PRODUCT; IS
10 THAT CORRECT?

11 A YES.

12 Q AND WE'VE TALKED A LOT ABOUT WHAT THE IPHONE
13 LOOKS LIKE AND THE DESIGN AND THE ELEMENTS OF THAT
14 DESIGN; IS THAT CORRECT?

15 A YES.

16 Q WAS THAT DESIGN CHOSEN SO THAT IT WOULDN'T
17 MATCH ON SOMEBODY'S POCKET?

18 A NO.

19 Q WHAT WAS THE THEME OF THE OVERALL DESIGN OF
20 THE IPHONE?

21 A WE WERE TRYING TO CREATE A NEW BREAKTHROUGH
22 DESIGN FOR A PHONE THAT WAS BEAUTIFUL AND SIMPLE
23 AND EASY TO USE AND CREATED A BEAUTIFUL, SMOOTH
24 SURFACE THAT HAD A TOUCHSCREEN AND WENT RIGHT TO
25 THE RIM WITH THE BEZEL AROUND IT AND LOOKING FOR A

1 LOOK THAT WE FOUND WAS BEAUTIFUL AND EASY TO USE
2 AND APPEALING.

3 WE HAD A TERM AT APPLE, IN MARKETING,
4 THAT WE CALLED THE LUST FACTOR. DOES THIS IPHONE
5 HAVE APPEAL TO PEOPLE THAT THEY LUST AFTER IT
6 BECAUSE IT'S SO GORGEOUS. THAT'S ONE OF THE THINGS
7 WE WERE GOING FOR, A HIGH LUST FACTOR.

8 Q DURING THE FOUR YEARS THAT THE IPHONE WAS
9 UNDER DEVELOPMENT, WERE OTHER DESIGNS CONSIDERED AT
10 ANY TIMES?

11 A YES, THERE WERE MANY DESIGNS.

12 Q WOULD THOSE OTHER DESIGNS HAVE CUT ON PEOPLE'S
13 POCKETS.

14 A I DON'T BELIEVE SO.

15 MR. MCELHINNY: THANK YOU. I HAVE
16 NOTHING FURTHER.

17 THE COURT: ALL RIGHT. TIME IS NOW
18 11:50.

19 ANY RECROSS, MR. PRICE?

20 MR. PRICE: NOT MUCH.

21 **RECROSS-EXAMINATION**

22 BY MR. PRICE:

23 Q I WANTED TO ASK YOU, YOU WANTED TO CREATE THIS
24 LUST FACTOR WITH THE IPHONE. THE SAMSUNG PHONES I
25 SHOWED YOU WITH THE FOUR HARD BUTTONS AND THE

1 SIGNAGE AT THE TOP, DO YOU THINK THAT'S BEAUTIFUL?

2 A I DON'T THINK THEY'RE AS BEAUTIFUL AS THE
3 IPHONE, BUT I THINK THEY'RE TRYING TO BE AS
4 BEAUTIFUL AS THE IPHONE.

5 Q AND IN YOUR OPINION, THEY DON'T QUITE CUT IT
6 ON THAT REGARD; RIGHT? IN YOUR OPINION?

7 A NOT FOR ME.

8 Q OKAY. AND THAT'S ONE OF THE REASONS APPLE HAS
9 THAT ICONIC HOME BUTTON WITH NOTHING ELSE ON THE
10 BOTTOM BECAUSE THAT WAS AN IMPORTANT PART OF WHAT
11 YOU THOUGHT WAS A BEAUTIFUL, UNIQUE DESIGN?

12 MR. MCELHINNY: BEYOND THE SCOPE. ASKED
13 AND ANSWERED.

14 THE COURT: OVERRULED.

15 GO AHEAD. GO AHEAD, PLEASE.

16 THE WITNESS: I THINK WE HAVE A LUSTFUL,
17 GORGEOUS DESIGN IN TOTAL AND I THINK THE HOME
18 BUTTON IS ONE OF THE FEATURES ON THE PHONE.

19 MR. PRICE: NOTHING FURTHER.

20 THE COURT: ALL RIGHT. SO IT'S 11:51.

21 MAY THIS WITNESS BE EXCUSED AND IS HE
22 SUBJECT TO RECALL OR NOT?

23 MR. MCELHINNY: I WOULD LIKE HIM EXCUSED,
24 NOT SUBJECT TO RECALL, ALTHOUGH WE MAY CHOOSE TO
25 USE HIM IN REBUTTAL, SO HE WON'T BE IN THE

1 COURTROOM.

2 THE COURT: ALL RIGHT. WELL, YOU'RE
3 EXCUSED.

4 THE WITNESS: THANK YOU.

5 THE COURT: ALL RIGHT. CALL YOUR NEXT
6 WITNESS, PLEASE.

7 MR. MCELHINNY: YOUR HONOR, ON BEHALF OF
8 APPLE, WE CALL MR. SCOTT FORSTALL.

9 THE CLERK: WOULD YOU RAISE YOUR RIGHT
10 HAND, PLEASE.

11 **SCOTT FORSTALL,**
12 BEING CALLED AS A WITNESS ON BEHALF OF THE
13 PLAINTIFF, HAVING BEEN FIRST DULY SWORN, WAS
14 EXAMINED AND TESTIFIED AS FOLLOWS:

15 THE WITNESS: I DO.

16 THE CLERK: WOULD YOU HAVE A SEAT,
17 PLEASE.

18 WOULD YOU STATE YOUR NAME, PLEASE, AND
19 SPELL IT?

20 THE WITNESS: SCOTT FORSTALL, S-C-O-T-T
21 FIRST NAME, LAST NAME FORSTALL, F, AS IN FRANK,
22 O-R-S-T-A-L-L.

23 THE CLERK: THANK YOU.

24 MR. MCELHINNY: MAY I PROCEED, YOUR
25 HONOR?

1 THE COURT: PLEASE, GO AHEAD.

2 DIRECT EXAMINATION

3 BY MR. MCELHINNY:

4 Q GOOD MORNING, MR. FORSTALL.

5 A GOOD MORNING.

6 Q I'M GOING TO HAVE YOU ON THE STAND HERE FOR
7 EIGHT MINUTES.

8 BY WHOM ARE YOU EMPLOYED?

9 A APPLE.

10 Q AND WHAT IS YOUR CURRENT JOB TITLE, SIR?

11 A I'M SENIOR VICE-PRESIDENT OF IOS.

12 Q AND WE'RE GOING TO DO SOME -- I'M GOING TO
13 DEFINE TERMS AS WE GO ALONG. WHAT IS IOS?

14 A IOS IS THE OPERATING SYSTEM THAT RUNS ALL
15 IPHONES, IPADS, AND IPOD TOUCH.

16 Q AND JUST GENERALLY, WHAT IS YOUR GROUP
17 RESPONSIBLE FOR AT APPLE?

18 A SO IN ADDITION TO ALL THE SOFTWARE THAT RUNS
19 ON ALL THOSE PLATFORMS, IPHONE, IPADS AND IPOD
20 TOUCH, MY GROUP ALSO DOES USER INTERFACE DESIGN,
21 BOTH FOR THOSE PRODUCTS AND FOR THE MACINTOSH.

22 Q MR. FORSTALL, THIS WOMAN IN FRONT OF ME IS A
23 COURT REPORTER AND SO SHE'S TRYING TO TAKE DOWN
24 WHAT YOU SAY. SO IF YOU WOULD SLOW DOWN JUST A
25 LITTLE BIT, THAT WOULD BE GREAT.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

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

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

/S/

LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

DATED: AUGUST 3, 2012