

# Estrich Declaration

## Exhibit 5

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 CORPORATION,  | ) | C-11-01846 LHK       |
|  | ) |                      |
|  | ) | SAN JOSE, CALIFORNIA |
| PLAINTIFF,   | ) |                      |
|  | ) | AUGUST 7, 2012       |
| VS.  | ) |                      |
|  | ) | VOLUME 5             |
| SAMSUNG ELECTRONICS CO., LTD., A KOREAN BUSINESS ENTITY; SAMSUNG ELECTRONICS AMERICA, INC., A NEW YORK CORPORATION; SAMSUNG TELECOMMUNICATIONS AMERICA, LLC, A DELAWARE LIMITED LIABILITY COMPANY, | ) | PAGES 1297-1637      |
|  | ) |                      |
|  | ) |                      |
|  | ) |                      |
|  | ) |                      |
|  | ) |                      |
|  | ) |                      |
| DEFENDANTS.  | ) |                      |

---

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

APPEARANCES ON NEXT PAGE

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

## 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  
                              ANNE ABRAMOWITZ  
13                              50 CALIFORNIA STREET, 22ND FLOOR  
                              SAN FRANCISCO, CALIFORNIA   94111  
14  
15                              BY:   VICTORIA F. MAROULIS  
                              KEVIN P.B. JOHNSON  
16                              555 TWIN DOLPHIN DRIVE  
                              SUITE 560  
                              REDWOOD SHORES, CALIFORNIA   94065

17                              BY:   MICHAEL T. ZELLER  
18                              WILLIAM C. PRICE  
                              865 SOUTH FIGUEROA STREET  
19                              10TH FLOOR  
                              LOS ANGELES, CALIFORNIA   90017

20

21

22

23

24

25

INDEX OF WITNESSESPLAINTIFF'S**PETER BRESSLER**

REDIRECT EXAM BY MS. KREVANS (RES.) P. 1336  
RECROSS-EXAM BY MR. VERHOEVEN P. 1349  
FURTHER REDIRECT BY MS. KREVANS P. 1354

**SUSAN KARE**

DIRECT EXAM BY MS. KREVANS P. 1356  
CROSS-EXAM BY MR. VERHOEVEN P. 1414  
REDIRECT EXAM BY MS. KREVANS P. 1478  
RECROSS-EXAM BY MR. VERHOEVEN P. 1489  
FURTHER REDIRECT BY MS. KREVANS P. 1492  
FURTHER RECROSS BY MR. VERHOEVEN P. 1493

**RUSSELL WINER**

DIRECT EXAM BY MR. JACOBS P. 1496  
CROSS-EXAM BY MR. VERHOEVEN P. 1529  
REDIRECT EXAM BY MR. JACOBS P. 1565  
RECROSS-EXAM BY MR. VERHOEVEN P. 1572  
FURTHER REDIRECT BY MR. JACOBS P. 1576

**HAL PORET**

DIRECT EXAM BY MR. JACOBS P. 1577  
CROSS-EXAM BY MR. PRICE P. 1591

1 Q OKAY. WHERE WERE WE?

2 WE WERE TALKING ABOUT YOU PROVIDED THE  
3 TESTIMONY ABOUT HOW A CONSUMER MIGHT MAKE A MISTAKE  
4 OR BE CONFUSED ABOUT THESE APPLICATION SCREENS  
5 THINKING THAT, ONE, THAT IT'S A SAMSUNG APPLICATION  
6 SCREEN AND MIGHT BE AN APPLE PHONE, RIGHT, OR AN  
7 APPLE APPLICATION SCREEN. DO YOU REMEMBER THAT?

8 A THAT A SAMSUNG APPLICATION SCREEN WOULD LOOK  
9 LIKE THE DESIGN OF THE D'305 PATENT.

10 Q DIDN'T YOU -- DIDN'T I HEAR YOU SAY THAT YOU  
11 THOUGHT THAT A CONSUMER WOULD BE CONFUSED AS TO THE  
12 SOURCE?

13 A WHEN WE TALKED ABOUT TRADE DRESS.

14 Q RIGHT?

15 A WHEN WE TALKED ABOUT -- EXCUSE ME. I THOUGHT  
16 YOU WERE ASKING ME ABOUT THE D'305.

17 Q OKAY. BUT YOU DID TALK ABOUT CONSUMERS  
18 BEING -- WHETHER OR NOT CONSUMERS MIGHT BE CONFUSED  
19 BY THE SAMSUNG APPLICATION SCREENS.

20 DO YOU REMEMBER THAT?

21 A YES.

22 Q OKAY. AND YOU THOUGHT THAT THERE'S -- THAT  
23 THEY MIGHT BE?

24 A YES.

25 Q OKAY. SO LET'S LOOK AT WHAT A CONSUMER WOULD

1       SEE WHEN THEY TURN ON THE PHONE BETWEEN THE TIME  
2       THEY HAVE A PHONE LIKE THIS IN THEIR HANDS THAT'S  
3       TURNED OFF AND THE TIME THAT THEY ACTUALLY GET TO  
4       THE APPLICATION SCREEN.

5                I'LL TRY TO DO THIS, YOUR HONOR, ON THE  
6       ELMO.

7                DO WE HAVE A MICROPHONE?

8                THE CLERK:   A MICROPHONE?

9                MR. VERHOEVEN:  YEAH.  I THOUGHT THERE  
10       WAS A LITTLE HAND MIKE.  THERE WE GO.

11               DOES THIS WORK?

12               I'M GOING TO PUT THIS CLOSE TO THE PHONE  
13       SO THAT -- OKAY.

14       Q       SO NOW I'M THE CONSUMER, AND I'M TURNING ON  
15       THE PHONE.  WHAT DOES THE CONSUMER SEE?

16       A       THE START-UP SCREEN WITH THE --

17       Q       WHAT DOES IT SAY?

18       A       IT SAYS, "SAMSUNG."

19       Q       STILL SAYS SAMSUNG.

20               WHAT'S DROID?  IS THAT SHORT FOR ANDROID?

21       A       I DON'T KNOW I KNOW IT'S THIS, THE DROID PHONE  
22       HAS THE CHIN.

23       Q       AND NOW WHAT IS THE CONSUMER LOOKING AT NOW?

24       A       THE UNLOCK SCREEN.

25       Q       SO THE CONSUMER HAS TO DO SOMETHING HERE;

1 RIGHT?

2 A YES.

3 Q WHAT DO THEY HAVE TO DO?

4 A MOVE THE PUZZLE PIECE TO THE RIGHT TO UNLOCK  
5 IT.

6 Q OKAY. NOW, WHAT IS THE CONSUMER LOOKING AT?

7 A THE HOME SCREEN OF THE SAMSUNG PHONE.

8 Q OKAY. AND SO WHAT DOES A CONSUMER NEED TO  
9 DO -- THIS IS -- THIS SCREEN HERE IS NOT ACCUSED;  
10 RIGHT?

11 A NO.

12 Q YOU WEREN'T EVEN ASKED TO LOOK AT THIS SCREEN;  
13 RIGHT?

14 A I WOULD SAY -- I WAS NOT ASKED TO CONSIDER  
15 THIS SCREEN.

16 Q OKAY. SO IT'S JUST THE APPLICATION SCREEN;  
17 RIGHT?

18 A YES.

19 Q OKAY. AND REMIND US, WHAT DOES THE USER HAVE  
20 TO DO -- WHAT DOES THE CONSUMER HAVE TO DO TO GET  
21 TO THE APPLICATION SCREEN?

22 A TOUCH THE BLUE BUTTON ON THE LOWER RIGHT WITH  
23 THE GRID OF SQUARES.

24 Q OKAY. SO IT'S ONLY AFTER ALL OF THOSE STEPS  
25 THAT A CONSUMER GETS TO THE APPLICATION SCREEN.

1 FAIR?

2 A YES.

3 Q NOW, DR. KARE, WOULDN'T YOU AGREE THAT BY THE  
4 TIME A CONSUMER GOES THROUGH ALL THOSE STEPS TO GET  
5 TO THE APPLICATION SCREEN, THAT CONSUMER KNOWS THAT  
6 THIS IS A SAMSUNG PHONE?

7 A I WAS ONLY ASKED TO CONSIDER THIS APPLICATION  
8 SCREEN COMPARED TO THE APPLE HOME SCREEN.

9 Q I UNDERSTAND THAT.

10 A BECAUSE --

11 Q BUT I HAVE A DIFFERENT QUESTION FOR YOU.

12 WOULDNT YOU AGREE THAT BY THE TIME THAT  
13 A CONSUMER TURNS ON THE PHONE AND GOES THROUGH  
14 THOSE STEPS WE LOOKED AT, WHERE THEY SEE THE  
15 SAMSUNG NAME PROMINENTLY FOR SEVERAL SECONDS, WHERE  
16 THEY SEE THE GRAPHIC FOR DROID, WHERE THEY HAVE TO  
17 GO PAST THE HOME SCREEN TO THE APPLICATION SCREEN,  
18 BY THE TIME THEY GET TO THAT APPLICATION SCREEN,  
19 WOULDNT YOU AGREE THAT A CONSUMER KNOWS THAT  
20 THEY'RE USING A SAMSUNG PHONE?

21 A I'M NOT AN EXPERT IN CONSUMER BEHAVIOR AND  
22 THAT KIND OF USER EXPERIENCE.

23 I'M REALLY FOCUSSED ON GRAPHIC U/I. SO I  
24 DON'T KNOW THAT I'M QUALIFIED TO ANSWER THAT.

25 Q WELL, QUALIFIED OR NOT, WOULD YOU AGREE WITH



1 ME? A CONSUMER, BY THIS POINT, GOING THROUGH THE  
2 START-UP AND ALL OF THAT, SEEING ALL THAT  
3 ADVERTISING, THEY KNOW THEY HAVE A SAMSUNG PHONE,  
4 DON'T THEY?

5 A I JUST CAN'T SPEAK TO THAT BECAUSE I DON'T --  
6 I DON'T KNOW.

7 Q YOU'RE NOT QUALIFIED?

8 A I HAVEN'T STUDIED START-UP EXPERIENCE FROM  
9 PHONE TO PHONE. I -- I COMPLETELY -- I KNOW THAT  
10 THIS IS THE APPLICATION SCREEN, NOT THE HOME  
11 SCREEN.

12 Q BY THE TIME THAT THE CONSUMER TURNS ON THE  
13 PHONE, SEES THE SAMSUNG NAME PROMINENTLY DISPLAYED,  
14 SEES THE DROID ADVERTISEMENT AND ANIMATION,  
15 WOULDN'T YOU AGREE THAT NO CONSUMER WOULD BE  
16 CONFUSED AS TO WHICH PHONE THEY HAVE BY THAT TIME?

17 A I CAN'T AGREE BECAUSE I HAVEN'T -- I DON'T --  
18 I DON'T KNOW ABOUT CONSUMER BEHAVIOR STARTING -- I  
19 DON'T KNOW ABOUT THE QUESTION YOU'RE ASKING ME.  
20 THAT'S OUTSIDE MY FOCUS.

21 Q IT'S OUTSIDE YOUR EXPERTISE?

22 A YES, AS A GRAPHIC U/I DESIGNER.

23 Q NOW, THERE WAS ONE SLIDE -- I'LL TURN THIS OFF  
24 NOW, YOUR HONOR, IF THAT'S OKAY.

25 THE COURT: GO AHEAD, PLEASE.

1 BY MR. VERHOEVEN:

2 Q THERE'S ONE SLIDE THAT YOU FOCUSSED ON WITH  
3 RESPECT TO YOUR TESTIMONY MORE THAN OTHERS WHEN YOU  
4 WERE TESTIFYING ABOUT YOUR OPINIONS WITH RESPECT TO  
5 THE DESIGN '305 PATENT, AND THAT WAS PDX 14.7.

6 CAN WE PUT THAT ON THE SCREEN. THIS IS A  
7 SLIDE THAT COUNSEL FOR APPLE SHOWED YOU. DO YOU  
8 REMEMBER THAT?

9 A YES.

10 Q AND DO YOU REMEMBER YOU SPENT MOST OF YOUR  
11 TIME EXPLAINING THIS SLIDE, AND FOR THE OTHER  
12 SLIDES SHE SHOWED YOU, YOU SAID SAME REASONS?

13 A YES.

14 Q SO LET'S FOCUS ON THIS SLIDE.

15 NOW, IF WE LOOK AT THE DESIGN '305 PATENT  
16 COMPARED TO THE FASCINATE, DO YOU SEE IN THE DESIGN  
17 '305 PATENT THE FIRST BOX IN THE UPPER LEFT SAYS  
18 SMS?

19 A YES.

20 Q WHERE IS THAT ICON IN THE FASCINATE?

21 A I BELIEVE THAT THE ANALOGOUS ICON IS IN THE  
22 BOTTOM ROW ON THE RIGHT, THREE FROM THE LEFT.

23 Q I HAVE A LASER POINTER, YOUR HONOR.

24 DO YOU MIND IF I HAND THIS TO THE WITNESS  
25 SO SHE CAN INDICATE ON THE BIG SCREEN?

1 A GO AHEAD, PLEASE.

2 Q DO YOU KNOW HOW TO USE THESE?

3 A I'M NOT A LASER POINTER EXPERT, EITHER.

4 Q JUST PUT THIS BUTTON. DON'T POINT IT IN  
5 ANYBODY'S EYES.

6 A OKAY.

7 Q SO THE SMS IS ON THE TOP LEFT, RIGHT, IN THE  
8 D'305?

9 A YES.

10 Q AND WHERE IS IT IN THE FASCINATE?

11 A (INDICATING).

12 Q RIGHT DOWN HERE?

13 A I BELIEVE THAT THOSE ARE ANALOGOUS.

14 Q OKAY. SO IT'S IN A DIFFERENT PLACE; RIGHT?

15 A YES.

16 Q IN THE '305, THERE'S A DOCK OR -- WHAT WOULD  
17 YOU CALL THIS BOTTOM ROW ON THE '305?

18 A YOU KNOW, IT DOESN'T REALLY SAY IN THE '305  
19 BECAUSE IT'S JUST A DESIGN, ORNAMENTAL DESIGN. SO  
20 I JUST HAVE BEEN CALLING IT AN AREA AT THE BOTTOM,  
21 A SEPARATED AREA AT THE BOTTOM, BECAUSE IT  
22 DOESN'T -- THE '305 DOESN'T TALK ABOUT  
23 FUNCTIONALITY.

24 Q OKAY. WELL, IN THE D'305, THE SMS ICON IS NOT  
25 IN THE BOTTOM ROW THAT'S SET OFF SEPARATELY; RIGHT?

1 A RIGHT.

2 Q BUT IN THE FASCINATE, IT IS IN THE BOTTOM ROW.  
3 IS THAT BOTTOM ROW SET OFF SEPARATELY?

4 A YES.

5 Q SO YOU WOULD AGREE THAT'S A DIFFERENCE?

6 A YES.

7 Q NOW, YOU TALKED ABOUT ROUNDED RECTANGLES FOR  
8 THE IPHONES. DO YOU REMEMBER THAT?

9 A YES.

10 Q AND DO YOU REMEMBER YOU TESTIFIED WITH RESPECT  
11 TO ALTERNATIVE DESIGNS THAT, GEE, SAMSUNG COULD  
12 HAVE USED SOMETHING BESIDES ROUNDED RECTANGLES,  
13 RIGHT? THEY COULD HAVE PICKED A DIFFERENT SHAPE?

14 A YES.

15 Q WELL, THIS ICON SHEER NOT JUST A ROUNDED  
16 RECTANGLE. IT'S GOT A LITTLE -- IT'S ALMOST LIKE A  
17 SPEECH BOX THAT YOU SEE IN CARTOONS; RIGHT?

18 A RIGHT.

19 Q DO YOU AGREE WITH THAT?

20 A YES. I WOULD SAY IT IS A SPEECH BALLOON THAT  
21 HAS, HAS ROUNDED RECTANGULAR ELEMENTS, BUT IT'S NOT  
22 A SQUARE.

23 Q IT'S A DIFFERENT SHAPE? RIGHT?

24 A IT'S NOT A SQUARE. IT HAS -- IT HAS STRAIGHT  
25 EDGES ON TOP AND BOTTOM, BUT IT'S NOT -- AND

1 A THE LEAD PERSON AT CORNERSTONE. HIS NAME IS  
2 SHANKAR, S-H-A-N-K-A-R, IYER, I-Y-E-R.

3 Q SINCE 2000 -- SINCE THE YEAR 2000, YOU'VE  
4 SERVED AS AN EXPERT WITNESS ON AT LEAST 14 OTHER  
5 LITIGATION MATTERS; RIGHT?

6 A THAT MIGHT BE CORRECT. I HAVEN'T COUNTED.

7 Q AND YOU'RE BEING PAID FOR YOUR TIME IN THIS  
8 CASE; RIGHT?

9 A CORRECT.

10 Q TELL THE JURY HOW MUCH YOU'RE BEING PAID?

11 A SIX HUNDRED AND TWENTY-FIVE DOLLARS AN HOUR.

12 Q AND HOW MUCH MONEY HAS APPLE PAID YOU SO FAR?

13 A APPROXIMATELY \$50,000.

14 Q AND HOW MUCH TOTAL HAS IT PAID CORNERSTONE?

15 A I HAVE NO IDEA.

16 Q NOW, IN REACHING YOUR OPINIONS IN YOUR EXPERT  
17 REPORT, YOU DID NOT DO ANY SYSTEMATIC CONSUMER  
18 RESEARCH, DID YOU, SIR?

19 A I DID NOT CONDUCT ANY NEW STUDIES BEYOND WHAT  
20 WAS ALREADY DONE FOR THE CASE.

21 Q YOU, YOURSELF, DID NOT PERSONALLY CONDUCT ANY  
22 SYSTEMATIC CONSUMER RESEARCH; FAIR?

23 A THAT'S CORRECT.

24 Q YOU DIDN'T DO ANY FORMAL INTERVIEWS WITH  
25 CONSUMERS ABOUT THEIR PURCHASING EXPERIENCES;

1 RIGHT?

2 A THAT'S CORRECT.

3 Q AND YOU HAVE NO EVIDENCE THAT CONSUMERS IN THE  
4 REAL WORLD HAVE ACTUALLY BOUGHT APPLE DEVICES  
5 THINKING THEY ARE SAMSUNG DEVICES; RIGHT?

6 MR. JACOBS: YOUR HONOR, OPENING THE  
7 DOOR. MR. LEE'S TESTIMONY THAT YOUR HONOR EXCLUDED  
8 THIS MORNING, MR. VERHOEVEN HAS JUST ASKED THIS  
9 WITNESS WHETHER HE HAS ANY ACTUAL EVIDENCE OF  
10 CONSUMER CONFUSION AND THIS WITNESS DOES.

11 MR. VERHOEVEN: LET ME, LET ME ASK YOU --

12 Q AT YOUR DEPOSITION -- DO YOU REMEMBER YOUR  
13 DEPOSITION WAS TAKEN ON APRIL 27TH?

14 A I REMEMBER BEING DEPOSED. I DON'T REMEMBER  
15 THAT DATE, BUT I'LL ASSUME YOU'RE CORRECT.

16 Q AND DO YOU REMEMBER TESTIFYING THAT YOU HAVE  
17 NO EVIDENCE THAT CONSUMERS OUT THERE IN THE REAL  
18 WORLD HAVE ACTUALLY BOUGHT APPLE DEVICES THINKING  
19 THEY WERE SAMSUNG DEVICES?

20 A I THINK THAT MY REPLY WAS IN THE CONTEXT OF I  
21 DID NOT DO ANY RESEARCH MYSELF THAT PROVED THAT.

22 Q WELL, LET'S LOOK AT WHAT YOU SAID.

23 CAN WE PLAY DR. WINER'S DEPOSITION  
24 TESTIMONY FROM APRIL 27TH, 2012, PAGE 35, LINES 7  
25 THROUGH 15.

1 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN  
2 OPEN COURT OFF THE RECORD.)

3 MR. VERHOEVEN: ALL RIGHT. LET'S PAUSE  
4 IT AND GET THE VOLUME WORKING. I APOLOGIZE, YOUR  
5 HONOR.

6 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN  
7 OPEN COURT OFF THE RECORD.)

8 BY MR. VERHOEVEN:

9 Q THAT WAS YOUR TESTIMONY YOU GAVE UNDER OATH IN  
10 APRIL, SIR?

11 MR. JACOBS: YOUR HONOR, UNDER THE RULE  
12 OF COMPLETENESS, I BELIEVE WE SHOULD READ A COUPLE  
13 MORE PASSAGES DOWN, AND MR. VERHOEVEN HAS OPENED  
14 THE DOOR.

15 THE COURT: I THINK HE'S OPENED THE DOOR,  
16 BUT YOU'RE NOT GOING TO DO IT DURING HIS CROSS.

17 THE WITNESS: I BELIEVE I RESPONDED TO  
18 THAT IN THE CONTEXT OF WHETHER I HAD DONE ANY  
19 RESEARCH MYSELF.

20 I CERTAINLY HAD READ DOCUMENTS, AND I  
21 ALLUDED TO THEM IN MY DEPOSITION, AND MY REPORT,  
22 THAT THERE WERE INTERNAL SAMSUNG DOCUMENTS  
23 INDICATING REAL CASES OF CONFUSION IN THE  
24 MARKETPLACE.

25 BY MR. VERHOEVEN:

1 Q DO YOU STAND BY THE TESTIMONY WE JUST SAW,  
2 SIR?

3 A SURE I DO.

4 Q OKAY. THANK YOU.

5 YOU HAVE NO IDEA WHETHER CONSUMERS HAVE  
6 ACTUALLY BOUGHT APPLE DEVICES THINKING THEY WERE  
7 SAMSUNG DEVICES, HAVE YOU?

8 MR. JACOBS: YOUR HONOR, I'M SORRY. THE  
9 WITNESS HAS BEEN INSTRUCTED NOT TO -- TO FOLLOW AN  
10 EARLIER ORDER OF THE COURT AND MR. VERHOEVEN IS  
11 OPENING THE DOOR. THE WITNESS SHOULD BE INFORMED  
12 THAT HE CAN ANSWER THAT QUESTION TRUTHFULLY.

13 MR. VERHOEVEN: I'LL MOVE ON, YOUR HONOR.

14 Q DR. WINER, YOU HAVE NO EMPIRICAL EVIDENCE TO  
15 SHOW THAT SAMSUNG'S ACTIONS HAVE DILUTED APPLE'S  
16 BRAND; RIGHT?

17 A CORRECT.

18 Q AND YOU HAVE NO HARD DATA TO SHOW THAT  
19 SAMSUNG'S ACTIONS HAVE DILUTED APPLE'S BRAND;  
20 RIGHT?

21 A I WAS NOT ASKED TO DO THAT.

22 Q YOU HAVE NEVER QUANTIFIED THE AMOUNT OF ANY  
23 ALLEGED HARM FROM DILUTION OR LOSS OF ANY KIND TO  
24 APPLE AS A RESULT OF SAMSUNG'S ACTIONS; RIGHT?

25 A CORRECT.



1 Q YOU HAVE NO EMPIRICAL EVIDENCE THAT SHOWS THAT  
2 APPLE HAS ACTUALLY LOST ANY MARKET SHARE AS A  
3 RESULT OF SAMSUNG'S SALES OF ITS DEVICES; RIGHT?

4 A NO.

5 Q THAT ANSWER IS YOU DON'T HAVE ANY EMPIRICAL  
6 EVIDENCE; CORRECT?

7 A CORRECT.

8 Q AND YOU DON'T HAVE ANY EVIDENCE THAT  
9 QUANTIFIES THE AMOUNT OF ANY LOST MARKET SHARE;  
10 CORRECT?

11 A THAT'S CORRECT.

12 Q YOU HAVE NO EVIDENCE QUANTIFYING THE NUMBER OF  
13 PURCHASERS WHO BOUGHT A SAMSUNG DEVICE IN LIEU OF  
14 BUYING AN APPLE DEVICE; RIGHT?

15 A I KNOW OF AT LEAST ONE.

16 Q YOU CAN'T QUANTIFY THE NUMBER OF PURCHASERS  
17 WHO BOUGHT A SAMSUNG DEVICE IN LIEU OF BUYING AN  
18 APPLE DEVICE; RIGHT?

19 A AS FAR AS I KNOW, ONE IS A QUANTIFICATION,  
20 COUNSELOR.

21 Q OKAY. LET'S SEE WHAT YOU SAID IN RESPONSE TO  
22 THAT AT YOUR DEPOSITION, SIR. PAGE NOTE NOTE LINE  
23 CITE.

24 (WHEREUPON, A VIDEOTAPE WAS PLAYED IN  
25 OPEN COURT OFF THE RECORD.)

1 BY MR. VERHOEVEN:

2 Q YOU WERE ASKED THAT QUESTION AND YOU GAVE THAT  
3 ANSWER AT YOUR DEPOSITION; RIGHT, SIR?

4 A APPARENTLY SO.

5 Q DO YOU STAND BY THAT TESTIMONY?

6 A YES.

7 Q WILL HE ME SWITCH SUBJECTS NOW.

8 IN YOUR MARCH 22ND, 2012 EXPERT REPORT AT  
9 PAGE 160, YOU REFER TO WHAT YOU CALL A SLEEKCRAFT  
10 FACTOR, NUMBER 6, DEGREE OF CARE WITH RESPECT TO  
11 THE IPAD.

12 CAN WE PUT UP PARAGRAPH 160 FROM  
13 DR. WINER'S EXPERT REPORT FROM MARCH 22, PLEASE.

14 CAN YOU PUSH THAT DOWN SO I CAN SEE WHERE  
15 IT WAS PULLED OUT FROM, MR. FISHER? GO BACK.

16 OKAY. SO CAN WE -- THAT'S WHAT I'M  
17 LOOKING FOR, 160.

18 DO YOU SEE IT SAYS SLEEK, SLEEK -- YOU  
19 HAVE IT IN YOUR BINDER AS WELL, SIR?

20 A YES, I DO HAVE IT.

21 Q SLEEK -- SLEEKCRAFT FACTOR SAYS, "TYPES OF  
22 GOODS AND," THIS IS WHAT I'M GOING TO FOCUS ON  
23 HERE, THE REST OF THIS, "AND THE DEGREE OF CARE  
24 LIKELY TO BE EXERCISED BY THE PURCHASER."

25 DO YOU SEE THAT?

1       A       I DO.

2       Q       AND SO THE DEGREE OF CARE, YOU'D AGREE WITH  
3       ME, THAT THE HIGHER THE DEGREE OF CARE EXERCISED BY  
4       THE CONSUMER, THE LESS CHANCE THERE IS GOING TO BE  
5       THAT THERE'S CONFUSION OR DILUTION; RIGHT?

6       A       FOR ANY INDIVIDUAL CONSUMER, THAT WOULD BE  
7       TRUE.

8       Q       SO IF IT'S LIKE A 50 CENTS DOODAD IN THE  
9       GROCERY STORE THAT PEOPLE MIGHT PICK UP, THE DEGREE  
10      OF CARE WOULD BE REALLY LOW, RIGHT?

11      A       YOU WOULD BE SURPRISED, BUT I WOULD AGREE THAT  
12      IT WOULD BE, OVERALL, LOWER THAN FOR A \$600 ITEM OR  
13      \$300 ITEM.

14      Q       OR TO GET REALLY CONTRASTING, A NEW CAR WOULD  
15      BE SOMETHING THAT WOULD BE VERY EXPENSIVE FOR A LOT  
16      OF PEOPLE, YOU'LL HAVE TO PAY FOR IT OVER A NUMBER  
17      OF YEARS, SO THEY'LL BE REALLY CAREFUL WHEN THEY  
18      BUY THAT, RIGHT?

19      A       I JUST DON'T WANT TO USE GENERALITIES. I  
20      WOULD SAY THAT THERE ARE ALWAYS SEGMENTS OF  
21      CONSUMERS WHO TAKE MORE OR LESS CARE IN MAKING  
22      PURCHASES OF PRODUCTS.

23                    SOME MARKETING, WE DON'T WORK WITH THE  
24      NOTION OF THERE BEING A MARKET. WE WORK WITH THE  
25      IDEA THAT THERE ARE SEGMENTS AND DIFFERENT KINDS OF

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 REPORTERS

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

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

/S/

\_\_\_\_\_  
LEE-ANNE SHORTRIDGE, CSR, CRR  
CERTIFICATE NUMBER 9595

/S/

\_\_\_\_\_  
IRENE RODRIGUEZ, CSR, CRR  
CERTIFICATE NUMBER 8074

DATED: AUGUST 7, 2012

- 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