

Estrich Declaration

Exhibit 6

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN JOSE DIVISION
4

5 APPLE INC., A CALIFORNIA) C-11-01846 LHK
6 CORPORATION,)
7 PLAINTIFF,) SAN JOSE, CALIFORNIA
8 VS.) AUGUST 10, 2012
9) VOLUME 6
10 SAMSUNG ELECTRONICS CO.,)
11 LTD., A KOREAN BUSINESS) PAGES 1638-1988
12 ENTITY; SAMSUNG)
13 ELECTRONICS AMERICA,)
14 INC., A NEW YORK)
15 CORPORATION; SAMSUNG)
16 TELECOMMUNICATIONS)
17 AMERICA, LLC, A DELAWARE)
18 LIMITED LIABILITY)
19 COMPANY,)
20 DEFENDANTS.)

21
22
23 TRANSCRIPT OF PROCEEDINGS
24 BEFORE THE HONORABLE LUCY H. KOH
25 UNITED STATES DISTRICT JUDGE

APPEARANCES ON NEXT PAGE

26
27
28 OFFICIAL COURT REPORTER: LEE-ANNE SHORTRIDGE, CSR, CRR
29 CERTIFICATE NUMBER 9595
30

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

2 FOR PLAINTIFF MORRISON & FOERSTER
3 APPLE: BY: HAROLD J. MCELHINNY
4 MICHAEL A. JACOBS
5 RACHEL KREVANS
6 425 MARKET STREET
7 SAN FRANCISCO, CALIFORNIA 94105

8 FOR COUNTERCLAIMANT WILMER, CUTLER, PICKERING,
9 APPLE: HALE AND DORR
10 BY: WILLIAM F. LEE
11 60 STATE STREET
12 BOSTON, MASSACHUSETTS 02109

13 BY: MARK D. SELWYN
14 950 PAGE MILL ROAD
15 PALO ALTO, CALIFORNIA 94304

16 FOR THE DEFENDANT: QUINN, EMANUEL, URQUHART,
17 OLIVER & HEDGES
18 BY: CHARLES K. VERHOEVEN
19 50 CALIFORNIA STREET, 22ND FLOOR
20 SAN FRANCISCO, CALIFORNIA 94111

21 BY: VICTORIA F. MAROULIS
22 KEVIN P.B. JOHNSON
23 555 TWIN DOLPHIN DRIVE
24 SUITE 560
25 REDWOOD SHORES, CALIFORNIA 94065

26 BY: MICHAEL T. ZELLER
27 WILLIAM C. PRICE
28 865 SOUTH FIGUEROA STREET
29 10TH FLOOR
30 LOS ANGELES, CALIFORNIA 90017

31 BY: EDWARD J. DEFRANCO
32 51 MADISON AVENUE, 22ND FLOOR
33 NEW YORK, NEW YORK 10010

INDEX OF WITNESSESPLAINTIFF'S**HAL PORET**

CROSS-EXAM BY MR. PRICE (RES.) P. 1665
REDIRECT EXAM BY MR. JACOBS P. 1687

KENT VAN LIERE

DIRECT EXAM BY MR. JACOBS P. 1690
CROSS-EXAM BY MR. PRICE P. 1702

RAVIN BALAKRISHNAN

DIRECT EXAM BY MR. JACOBS P. 1723
CROSS-EXAM BY MR. JOHNSON P. 1769
REDIRECT EXAM BY MR. JACOBS P. 1806
RECROSS-EXAM BY MR. JOHNSON P. 1813

KARAN SINGH

DIRECT EXAM BY MR. JACOBS P. 1815
CROSS-EXAM BY MR. DEFRANCO P. 1848
REDIRECT EXAM BY MR. JACOBS P. 1909

JOHN HAUSER

DIRECT EXAM BY MR. JACOBS P. 1914
CROSS-EXAM BY MR. PRICE P. 1917
REDIRECT EXAM BY MR. JACOBS P. 1945
RECROSS-EXAM BY MR. PRICE P. 1948

BORIS TEKSLER

DIRECT EXAM BY MR. MUELLER P. 1951
CROSS-EXAM BY MS. MAROULIS P. 1964

1 HAVE USED? YOU COULD HAVE USED A MOTOROLA. YOU
2 COULD HAVE USED AN LG TABLET. YOU COULD HAVE USED
3 SOMETHING THAT LOOKED A LOT CLOSER TO THE IPAD THAN
4 THAT?

5 A NO, I DON'T AGREE WITH THAT.

6 Q OKAY. SO HAVE YOU SEEN OTHER TABLETS IN THE
7 MARKET AND WHAT THEY LOOK LIKE?

8 A YES.

9 Q OKAY. AND YOU DON'T AGREE THAT THE MOTOROLA
10 AND LG, WHICH WE'VE SEEN ALREADY HERE IN COURT AND
11 PASSED AROUND, YOU DON'T THINK THEY LOOK MORE LIKE
12 THE IPAD THAN THIS?

13 A YES, I THINK, IN FACT, THEY DO LOOK MORE LIKE
14 THE IPAD IN THE SENSE THAT THEY HAVE MORE ELEMENTS
15 OF THE ALLEGEDLY INFRINGING TRADE DRESS.

16 SO IN CHOOSING THE CONTROL, THE IDEA IS
17 TO GET A PRODUCT THAT'S IN THE SAME MARKET THAT HAS
18 THE SAME BASIC FUNCTIONALITY, BUT DOES NOT INCLUDE
19 THE ALLEGEDLY INFRINGING TRADE DRESS.

20 Q WELL, ACTUALLY -- SO ARE YOU SAYING THAT APPLE
21 IS CONTENDING THAT MOTOROLA AND LG, THAT THOSE
22 TABLETS INFRINGE APPLE'S TRADE DRESS AND THAT'S WHY
23 YOU DIDN'T USE THEM?

24 MR. JACOBS: YOUR HONOR, THIS IS ASKING
25 FOR A LEGAL CONCLUSION FROM THIS WITNESS AND LACKS

1 FOUNDATION.

2 THE COURT: SUSTAINED.

3 BY MR. PRICE:

4 Q I'M ASKING YOUR UNDERSTANDING AS TO WHY YOU
5 DIDN'T USE THEM. OKAY?

6 IS IT YOUR UNDERSTANDING, WHICH WOULD BE
7 THE BASIS OF YOU NOT USING THE MOTOROLA AND THE LG,
8 IS IT YOUR UNDERSTANDING THAT YOU COULDN'T USE THEM
9 BECAUSE APPLE IS SAYING THAT THOSE INFRINGE ITS
10 TRADE DRESS?

11 MR. JACOBS: YOUR HONOR, YOU JUST
12 SUSTAINED AN OBJECTION TO THIS SAME QUESTION.

13 THE COURT: SUSTAINED.

14 BY MR. PRICE:

15 Q IF WE CAN LOOK BACK AT THAT 30.5, I THINK IT
16 WAS 30.5, 24.5. NO, I'M SORRY. 31.3. THIS IS
17 YOUR STUDY. I BELIEVE IT'S 31.3.

18 SO IS THIS THE STUDY -- THIS IS YOUR
19 RESULTS SHOWING THAT VIDEO, SHOWING THE NOOK, AND
20 YOU GOT 6 PERCENT IS POST-CONFUSION WITH THE
21 BRANDED, 19, AND YOU AVERAGED THOSE TO GET 12.

22 NOW, IF YOU REALLY WANTED TO COME UP WITH
23 AN AVERAGE THAT MEANT ANYTHING AS FAR AS THE REAL
24 WORLD, YOU'D HAVE TO WEIGHT THOSE NUMBERS; RIGHT?

25 A WELL, I THINK I UNDERSTAND YOUR QUESTION, AND

1 THE -- FIRST OF ALL, THE 12 WAS NOT -- IT ISN'T --
2 I DIDN'T AVERAGE THE TWO. I JUST SUMMED EVERYTHING
3 ACROSS THE TWO CONDITIONS AND THEY COME TO 12
4 PERCENT.

5 Q SO LET ME STOP YOU THERE.

6 SO THIS IS NOT AN OPINION YOU HAVE AS TO
7 NET CONFUSION RATE IN THE MARKET; RIGHT?

8 A NO. I BELIEVE THE CONFUSION -- THE OPINION I
9 OFFERED IN MY REPORT IS THAT IT'S SOMEWHERE BETWEEN
10 6 PERCENT AND 19 PERCENT WERE ACTUALLY CONFUSED BY
11 MY TEST.

12 Q AND THE 19 HERE, YOU DON'T KNOW HOW MANY,
13 QUOTE, "UNBRANDED" TABLETS WERE IN THE MARKET
14 COMPARED TO THE BRANDED ONES; RIGHT?

15 A WELL, TWO COMMENTS. ONE --

16 Q CAN YOU ANSWER YES OR NO? BECAUSE I'M ON THE
17 CLOCK.

18 A I'M SORRY. I UNDERSTAND.

19 Q DO YOU KNOW HOW MANY --

20 A ASK ME THE QUESTION AGAIN.

21 Q DO YOU KNOW IN THE MARKETPLACE HOW MANY
22 UNBRANDED VERSUS BRANDED THERE WERE?

23 A NO, I DON'T KNOW HOW MANY UNBRANDED VERSUS
24 BRANDED THERE WERE.

25 Q NOW LET'S TALK ABOUT YOUR PHONE ASSOCIATION

1 SURVEY.

2 AND, AGAIN, THIS IS NOT A SURVEY THAT
3 SHOWS CONSUMER CONFUSION AT ALL; CORRECT?

4 A LET ME JUST MENTALLY SHIFT GEARS.

5 SO YOU'RE TALKING ABOUT NOW MY PHONE
6 ASSOCIATION STUDY?

7 Q YES.

8 A YES, THAT STUDY WAS NOT DESIGNED TO MEASURE
9 LIKELIHOOD OF CONFUSION. THAT STUDY WAS DESIGNED
10 TO MEASURE ASSOCIATION.

11 Q OKAY. SO IF WE CAN LOOK AT YOUR STUDY AND
12 LOOK AT 3900.153, THIS IS THE QUESTION YOU ASKED.
13 3900.153. YOU SHOWED THE PICTURE OF ONE OF THE
14 SAMSUNG PHONES AND SAID, "DOES THE LOOK AND DESIGN
15 OF THIS PHONE BRING TO MIND OR CREATE ANY
16 ASSOCIATION FOR YOU WITH ANY OTHER PHONES?"

17 DO YOU SEE THAT?

18 A YES.

19 Q IN THE DEMONSTRATIVE YOU SHOWED THE JURY,
20 WHICH WAS THE QUESTION YOU ASKED, YOU DIDN'T
21 UNDERLINE "OTHER," BUT "OTHER" WAS UNDERLINED IN
22 THE ACTUAL SURVEY?

23 A YES.

24 Q THE PEOPLE WHO READ THIS KNEW THEY WERE
25 SUPPOSED TO THINK OF SOME OTHER PHONE FOR

1 ASSOCIATION; RIGHT?

2 A IT SUGGESTS THAT -- WE'RE ASKING THEM, FIRST,
3 YES, NO, OR DON'T KNOW, DOES IT BRING TO MIND ANY
4 ASSOCIATION? AT THIS STAGE WE'RE NOT TELLING THEM
5 THERE IS AN ASSOCIATION.

6 Q NOW, I WANT TO ASK YOU, IF SOMEONE ASKED YOU,
7 FOR EXAMPLE, SHOWED YOU A PICTURE OF A COKE AND
8 SAID, "DOES THIS BRING TO MIND OR CREATE ANY
9 ASSOCIATION WITH ANY OTHER SOFT DRINK," YOU'D THINK
10 A LOT OF PEOPLE MIGHT SAY PEPSI; RIGHT? BECAUSE
11 THEY'RE THE TWO BIGGEST PLAYERS IN THE MARKET?

12 A I HAVEN'T DONE THAT STUDY, SO I WOULDN'T HAVE
13 AN OPINION ON HOW THAT MIGHT TURN OUT.

14 Q WELL, IF SOMEONE ASKED YOU, YOU KNOW, SHOWED A
15 PICTURE OF A BURGER KING, YOU KNOW, RESTAURANT AND
16 SAID, "DOES THE LOOK AND DESIGN OF THIS RESTAURANT
17 BRING TO MIND OR CREATE ANY ASSOCIATION WITH YOU OF
18 ANY OTHER RESTAURANT," THEY'RE QUITE LIKELY TO SAY
19 MCDONALD'S; RIGHT?

20 A AGAIN, I HAVEN'T DONE THAT SURVEY. I DON'T
21 KNOW THAT TO BE THE CASE.

22 Q YOU DON'T KNOW THAT FROM COMMON SENSE?

23 A I DON'T KNOW THAT FROM COMMON SENSE AS YOU'VE
24 DESCRIBED IT.

25 Q WELL, IF YOU DID FIND THAT, HYPOTHETICALLY,

1 HYPOTHETICALLY YOU DID A SURVEY, "DOES THIS BURGER
2 KING RESTAURANT BRING TO MIND ANY OTHER FAST FOOD
3 RESTAURANT" AND THEY SAID MCDONALD'S, YOU CERTAINLY
4 COULDN'T CONCLUDE FROM THAT THAT THE ASSOCIATION
5 WAS BECAUSE THE DESIGNS ARE SIMILAR; RIGHT?

6 A AGAIN, YOU'RE ASKING ME ABOUT A HYPOTHETICAL
7 STUDY THAT I HAVEN'T CONDUCTED, SO --

8 Q WELL, IN THIS CASE, YOU UNDERSTAND THAT
9 SAMSUNG AND APPLE ARE THE TWO LARGEST COMPETITORS
10 IN THIS MARKET; RIGHT?

11 A I UNDERSTAND THEY'RE TWO LARGE COMPETITORS IN
12 THIS MARKET.

13 Q AND YOU UNDERSTAND FROM KNOWING THE MARKET
14 THAT IF SOMEONE SHOWED YOU A SAMSUNG PHONE AND SAID
15 "WHAT OTHER PHONE DOES THIS REMIND YOU OF," PEOPLE
16 ARE LIKELY TO SAY APPLE, AND VICE-VERSA, BECAUSE
17 THEY'RE THE TWO BIGGIES, JUST LIKE BURGER KING AND
18 MCDONALD'S AND COKE AND PEPSI?

19 A PERHAPS.

20 BUT TO THE EXTENT THAT THAT'S TRUE,
21 THAT'S ALSO HAPPENING IN THE CONTROL. SO IF THIS
22 WAS CREATING A DEMAND CHARACTERISTIC AS YOU
23 SUGGEST, THEN IT WOULD BE NETTED OUT IN THE CONTROL
24 CONDITION.

25 Q SO NOW LET'S TALK ABOUT THE CONTROL. THE

1 CONTROL -- I THINK IF WE CAN SHOW 3900.129.

2 IN SELECTING A CONTROL, YOU COULD HAVE
3 SELECTED FROM A NUMBER OF PHONES; RIGHT?

4 A YES.

5 Q AND YOU INSTEAD -- WELL, OF THE PHONES, YOU
6 SELECTED A BLACKBERRY?

7 A YES, A BLACKBERRY STORM.

8 Q AND IF WE COULD LOOK AT EXHIBIT 24, I GUESS
9 PAGE 4. AND AGAIN, A BLACKBERRY, YOU SAID THIS
10 CONTROL, THE BLACKBERRY CONTROL FOR THE FACT THAT
11 SAMSUNG AND APPLE JUST MIGHT BE NAMES ON THE TIPS
12 OF YOUR TONGUE.

13 IF SOMEONE SHOWED YOU A PICTURE OF A CAN
14 OF MOXIE, DO YOU THINK PEOPLE WOULD ASSOCIATE THAT
15 WITH COKE OR PEPSI?

16 A A CAN OF WHAT?

17 Q MOXIE. YOU DON'T KNOW MOXIE?

18 A I DON'T KNOW MOXIE.

19 Q OKAY. WELL, JUST AS WITH THE BLACKBERRY --
20 AND BY THE WAY, IN THE REAL PICTURE, YOU CAN SEE
21 BLACKBERRY ACROSS THE TOP HERE; RIGHT?

22 A YES. IN ALL OF THE PHONES, THE PICTURES ARE
23 THE ACTUAL PRODUCTS THAT ARE IN THE MARKETPLACE AS
24 THEY WOULD LOOK.

25 Q AND BLACKBERRY AND RIM ARE, ARE PRETTY MUCH --

1 AT THE TIME YOU TOOK THIS SURVEY, THEY'RE NOT ON
2 THE TONGUES OF MANY PEOPLE THINKING ABOUT
3 SMARTPHONES? THEY ARE HAVING SERIOUS TROUBLE AND
4 ALMOST DROPPING OUT OF THE MARKET; RIGHT?

5 A I DON'T HAVE THAT UNDERSTANDING DURING THE
6 PERIOD OF TIME OF THE SURVEY.

7 Q YOU DON'T HAVE IT ONE WAY OR THE OTHER?

8 A THAT'S CORRECT.

9 Q AND IS IT JUST A COINCIDENCE THAT BOTH YOU AND
10 DR. PORET USED A NOOK AND THE BLACKBERRY STORM FOR
11 YOUR CONTROLS? DID YOU GUYS GET TOGETHER AND TALK
12 ABOUT THIS?

13 A NO. I HAVE NO KNOWLEDGE OF MR. PORET'S WORK
14 BEFORE I CAME TO TRIAL AND HEARD ABOUT IT OTHER
15 THAN I KNEW HE HAD DONE SURVEYS.

16 Q DID YOU -- WERE YOU GIVEN THESE PHONES AND THE
17 BLACKBERRY AND THE NOOK TO USE AS THE CONTROLS?

18 A NO. I SELECTED THESE PHONES AND TABLETS WITH
19 MY STAFF FROM OUR REVIEW OF THE PRODUCTS THAT WERE
20 AVAILABLE.

21 Q SO YOU INTENTIONALLY SELECTED THE NOOK AS THE
22 TABLET TO USE AS A CONTROL; RIGHT?

23 A YES.

24 Q YOU'RE SAYING THAT?

25 A YES.

1 Q AND YOU INTENTIONALLY SELECTED THE BLACKBERRY
2 TO USE AS THE CONTROL; RIGHT?

3 A THE BLACKBERRY STORM.

4 Q AND YOU INTENTIONALLY DECIDED, IN THOSE
5 VIDEOS, NOT TO SHOW THE COMPLETE PRODUCT, THE
6 SAMSUNG TABLET? THAT WAS YOUR DECISION?

7 A WELL, IT WAS MY DECISION BASED ON MY
8 UNDERSTANDING FROM THE COMPLAINT, THAT -- AND
9 DISCUSSION WITH COUNSEL, THAT THE FRONT AND THE
10 SIDE VIEWS WAS WHAT MATTERED IN THE TABLET SETTING.

11 Q AND WITH RESPECT TO THE SAMSUNG PHONES, YOU
12 TESTED JUST TWO OF THE PHONES?

13 A YES, I TESTED TWO OF THE, WHATEVER THE NUMBER
14 OF PHONES IS.

15 Q SO, FOR EXAMPLE, YOU DIDN'T TEST THE PHONE
16 THAT MS. KARE SAID HAD A CHIN, THE DROID CHARGE?

17 A NO, I DIDN'T TEST THAT SPECIFIC DEVICE.

18 MR. PRICE: THANK YOU, YOUR HONOR.

19 THE COURT: ALL RIGHT. THE TIME IS
20 10:19.

21 MR. PRICE: I'M SORRY. I MEANT TO MOVE
22 IN THE NOKIA -- I MEAN THE NOOK.

23 MR. JACOBS: YOUR HONOR, AGAIN, THAT IS
24 LISTED ON THE LIST OF DEMONSTRATIVES.

25 THE COURT: IS THAT 2526?

1 THE COURT: ALL RIGHT. OVERRULED.

2 BY MR. MUELLER:

3 Q MR. TEKSLER, IF YOU COULD, PLEASE TURN TO TAB
4 2 IN YOUR BINDER, AND THIS IS PDX 32. IF WE COULD
5 ALSO PUT THAT ON THE SCREEN.

6 MR. TEKSLER, THIS SHOWS SEVEN PATENT
7 COVERS. ARE YOU FAMILIAR WITH THESE PATENTS?

8 A I AM.

9 Q WHAT ARE THEY?

10 A THESE ARE THE PATENTS --

11 MS. MAROULIS: OBJECTION, CALLS FOR
12 OPINION TESTIMONY. LACKS FOUNDATION.

13 THE COURT: WHAT ARE YOU ASKING?

14 MR. MUELLER: I MERELY WANTED TO GET
15 ACROSS THAT THESE ARE THE ASSERTED PATENTS IN THIS
16 CASE.

17 THE COURT: IS THERE ANY QUESTION ABOUT
18 THAT SO FAR?

19 MR. MUELLER: I CAN REPHRASE IF YOU -- IF
20 I MIGHT, YOUR HONOR.

21 Q ARE THESE THE SEVEN ASSERTED PATENTS?

22 A YES, THEY ARE.

23 Q WHERE DO THESE FALL, THESE SEVEN PATENTS,
24 WITHIN THE CATEGORIES YOU DESCRIBED EARLIER IN THE
25 APPLE PORTFOLIO?

1 A CERTAINLY. SO THERE'S FOUR DESIGN PATENTS,
2 AND ALL FOUR DESIGN PATENTS FALL INTO APPLE'S
3 UNIQUE USER EXPERIENCE.

4 AND THEN THE THREE UTILITY PATENTS THAT
5 ARE LISTED HERE GENERALLY RELATE TO USER INTERFACE
6 AND FEATURES THAT WE WOULD ALSO PUT IN THAT SAME
7 CATEGORY OF APPLE'S UNIQUE USER INTERFACE, OR USER
8 EXPERIENCE.

9 MR. MUELLER: THANK YOU, SIR.

10 NO FURTHER QUESTIONS.

11 THE COURT: ALL RIGHT. THE TIME IS NOW
12 4:22.

13 **CROSS-EXAMINATION**

14 BY MS. MAROULIS:

15 Q GOOD AFTERNOON, MR. TEKSLER. HOW ARE YOU?

16 A GOOD AFTERNOON.

17 Q MY NAME IS VICTORIA MAROULIS. I'M COUNSEL FOR
18 SAMSUNG. AND SEEING HOW IT'S LATE FRIDAY
19 AFTERNOON, I'LL BE VERY BRIEF.

20 YOU TESTIFIED THAT YOU PREPARED A
21 POWERPOINT FOR A MEETING BETWEEN APPLE AND SAMSUNG
22 IN AUGUST 2010. IS THAT CORRECT?

23 A I BELIEVE THAT WAS KEY NOTE, BUT YES.

24 Q AND YOU DIDN'T PERSONALLY ATTEND THE MEETING
25 IN QUESTION; RIGHT?

1 A NO, I DID NOT.

2 Q YOU CANNOT TELL US FROM YOUR PERSONAL
3 KNOWLEDGE ANYTHING ABOUT THAT MEETING AND WHAT WAS
4 PRESENTED; CORRECT?

5 A I KNOW THAT THAT WAS PRESENTED. WE LATER SENT
6 SAMSUNG THE PRESENTATION AND, IN SUBSEQUENT
7 MEETINGS WITH SAMSUNG, WE REFERRED BACK TO THAT
8 PRESENTATION AND TO THE DIALOGUE THAT HAPPENED THAT
9 DAY. SO THAT'S --

10 Q BUT FROM PERSONAL KNOWLEDGE, YOU DO NOT KNOW
11 WHAT OCCURRED AT THAT MEETING AND WHAT WAS SHOWN
12 AND WHAT WAS NOT SHOWN; CORRECT?

13 A OKAY, CERTAINLY.

14 Q AND THE POWERPOINT PRESENTATION THAT YOU
15 PREPARED IS EXHIBIT 52 IN EVIDENCE; CORRECT? IF
16 YOU CAN LOOK IN YOUR CROSS-EXAMINATION BINDER AT
17 TAB 52, DO YOU SEE THAT?

18 A I DO.

19 Q IF YOU LOOK AT PAGES 12 THROUGH 14, DO YOU SEE
20 A VARIETY OF PATENTS LISTED THERE?

21 A YES, I DO.

22 Q OKAY. AND DO YOU REMEMBER, ON DIRECT, JOE
23 ASKED YOU ABOUT THE SEVEN PATENTS ASSERTED IN THIS
24 CASE; CORRECT?

25 A YES, THAT'S CORRECT.

1 Q FOUR OF THEM WERE DESIGN PATENTS?

2 A YES, THAT'S CORRECT.

3 Q ONE OF THOSE DESIGN PATENT PATENTS WAS D'677;
4 RIGHT?

5 A I BELIEVE THAT'S CORRECT, YES.

6 Q THAT PATENT IS NOWHERE IN THIS PRESENTATION;
7 IS THAT CORRECT?

8 A IT'S NOT ENUMERATED.

9 Q IT'S NOT MENTIONED AT ALL AS A PATENT, THE
10 D'677; RIGHT?

11 A SO I THINK WHAT I WOULD SAY IS I AGREE THAT
12 IT'S NOT ENUMERATED IN THE PRESENTATION.

13 WHEN WE WERE PREPARING THE, THE POINTS
14 THAT WE WANTED TO GET ACROSS -- AND I BELIEVE THAT
15 WAS BACK IN SLIDE 17 OF THIS PRESENTATION -- WE DID
16 SAY THAT THERE WAS A REMARKABLE SIMILARITY BETWEEN
17 THE PRODUCTS AND, IN DOING SO, WE DID TALK ABOUT
18 DESIGN PATENTS.

19 Q SIR, THIS PRESENTATION DOES NOT MENTION THE
20 WORD "DESIGN PATENT" AT ALL; CORRECT?

21 A I AGREE.

22 Q AND DESIGN PATENT '087 THAT YOU REVIEWED WITH
23 COUNSEL IS ALSO NOT MENTIONED IN THIS PRESENTATION;
24 IS THAT RIGHT?

25 A I AGREE.

1 Q AND DESIGN PATENT '889 IS SIMILARLY NOT
2 MENTIONED IN THIS PRESENTATION; CORRECT?

3 A I AGREE.

4 Q AND SO IS D'305, THAT IS ALSO NOT MENTIONED IN
5 THE PRESENTATION; RIGHT?

6 A I AGREE.

7 Q YOU ALSO LOOKED AT SEVERAL UTILITY PATENTS
8 WITH COUNSEL; IS THAT RIGHT?

9 A I DID.

10 Q ONE OF THEM WAS '163 PATENT; CORRECT?

11 A I BELIEVE THAT'S CORRECT, YES.

12 Q THAT PATENT IS NOT ENUMERATED ANYWHERE IN THIS
13 PRESENTATION WE JUST LOOK AT; RIGHT?

14 A THAT'S CORRECT.

15 Q AND THE '915 PATENT THAT YOU ALSO LOOKED AT IN
16 YOUR DIRECT TESTIMONY IS ALSO NOWHERE MENTIONED;
17 CORRECT?

18 A THAT'S CORRECT.

19 Q THIS PRESENTATION THAT YOU PREPARED FOR
20 SAMSUNG DOES NOT HAVE ANY MENTION OF TRADE DRESS;
21 RIGHT?

22 A AGAIN, I THINK I WOULD PUT IT INTO THE SAME
23 CATEGORY OF BULLET POINTS THAT WE TALKED ABOUT.

24 Q SIR, YOU'RE A LICENSING PROFESSIONAL. YOU
25 KNOW WHAT A REGISTERED TRADE DRESS IS; CORRECT?

1 A I AM, YES.

2 Q SO NOWHERE IN THIS PRESENTATION IS THERE
3 MENTION OF A REGISTERED TRADE DRESS FOR AN IPHONE;
4 CORRECT?

5 A I AGREE THAT THERE IS NOT.

6 Q AND THERE'S NO MENTION OF UNREGISTERED TRADE
7 DRESS FOR IPHONE AS WELL; CORRECT?

8 A I AGREE THAT IT'S NOT WRITTEN ON THE SLIDES.

9 Q AND THERE'S NO UNREGISTERED TRADE DRESS FOR
10 IPAD; CORRECT?

11 A I AGREE.

12 Q EXHIBIT 52 DOESN'T SAY ANYWHERE THAT APPLE
13 WOULD NOT LICENSE ITS DESIGN PATENTS TO SAMSUNG; IS
14 THAT RIGHT?

15 A I AGREE.

16 Q AND THE PRESENTATION DOES NOT IDENTIFY ANY
17 UTILITY PATENTS THAT APPLE WOULD NOT LICENSE TO
18 SAMSUNG; IS THAT RIGHT?

19 A I AGREE.

20 Q PLEASE TAKE A LOOK AT EXHIBIT DX 586 IN YOUR
21 BINDER. THIS IS A PRESENTATION THAT YOU MADE TO
22 SAMSUNG IN OCTOBER 2010; CORRECT?

23 A YES, THAT'S CORRECT.

24 Q YOU PREPARED IT YOURSELF?

25 A I DID.

1 Q AS PART OF DOING BUSINESS AS A LICENSING
2 OFFICER AT APPLE; CORRECT?

3 A YES, THAT'S CORRECT.

4 MS. MAROULIS: YOUR HONOR, I MOVE EXHIBIT
5 586 INTO EVIDENCE.

6 MR. MUELLER: NO FURTHER OBJECTIONS, YOUR
7 HONOR, SUBJECT TO THE LIMITING INSTRUCTION THAT
8 YOUR HONOR MENTIONED.

9 THE COURT: RIGHT. AND THERE IS A --
10 THIS IS ADMITTED.

11 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER
12 586, HAVING BEEN PREVIOUSLY MARKED FOR
13 IDENTIFICATION, WAS ADMITTED INTO
14 EVIDENCE.)

15 THE COURT: YOU MAY CONSIDER THIS -- YOU
16 MAY NOT CONSIDER THIS EVIDENCE TO PROVE OR DISPROVE
17 THE VALIDITY OR INVALIDITY OF THE CLAIM OR THE
18 AMOUNT OF THE DISPUTED CLAIM.

19 HOWEVER, YOU MAY CONSIDER THIS EVIDENCE
20 FOR SOME OTHER PURPOSE, FOR EXAMPLE, WHETHER OR NOT
21 SAMSUNG LACKED NOTICE OF APPLE'S INFRINGEMENT
22 CLAIMS.

23 OKAY. GO AHEAD, PLEASE.

24 BY MS. MAROULIS:

25 Q MR. TEKSLER, NOWHERE IN EXHIBIT 586 DOES APPLE

1 IDENTIFY ANY PATENTS; CORRECT?

2 A THAT'S CORRECT.

3 Q AND NOWHERE IN THIS WRITTEN PRESENTATION DOES
4 IT SAY THAT APPLE WOULD NOT LICENSE ITS DESIGN
5 PATENTS TO SAMSUNG; CORRECT?

6 A I'M NOT SURE THAT I AGREE WITH THAT. I KNOW
7 THAT WE TALKED ABOUT THAT AND THAT THERE WAS A
8 SPECIFIC BULLET, I BELIEVE, ON ONE OF THE PAGES
9 THAT ADDRESSED THAT.

10 Q SIR, I'M NOT ASKING YOU ABOUT THE MEETING
11 ITSELF. I'M ASKING YOU ABOUT THE PRESENTATION.
12 NOWHERE IN THIS DOCUMENT, 586, IS THERE A STATEMENT
13 THAT APPLE WOULD NOT LICENSE DESIGN PATENTS TO
14 SAMSUNG?

15 A I THINK THERE IS A BULLET IN HERE THAT SAYS
16 SPECIFIC APPLE PROPRIETARY FEATURES TO BE
17 DISCUSSED.

18 AND IN THAT CONSTRUCT, WE TALKED ABOUT
19 NOT HAVING THE ABILITY TO CLONE OUR PRODUCTS.

20 Q AGAIN, WITHIN THE CONTEXT OF THIS
21 PRESENTATION, THERE'S NO STATEMENT THAT APPLE WOULD
22 NOT LICENSE ITS DESIGN PATENTS TO SAMSUNG; CORRECT?

23 A I AGREE.

24 Q AND NOWHERE IN THIS DOCUMENT DOES APPLE SAY
25 THAT IT WOULD NOT LICENSE CERTAIN UTILITY PATENTS

1 TO SAMSUNG; CORRECT?

2 A SUBJECT TO THE SAME, YOU KNOW, POINT THAT I
3 MADE EARLIER, YES.

4 Q LET'S PUT UP 586, PAGE 13, PLEASE.

5 AT THE TOP OF THE PAGE, IT SAYS "WE WILL
6 PROVIDE SAMSUNG WITH A NUMBER OF OPTIONS FOR
7 OBTAINING A COST-EFFECT LICENSE TO OUR PATENT
8 PORTFOLIO."

9 DID I READ THIS CORRECTLY?

10 A YES, THAT'S CORRECT.

11 Q AND THIS REFERS TO LICENSING PATENT PORTFOLIO;
12 RIGHT?

13 A YES, THAT'S CORRECT.

14 Q IT DOES NOT SAY "PATENT PORTFOLIO EXCEPT
15 DESIGN PATENTS." CORRECT?

16 A NO, I AGREE THE SLIDE DOESN'T SAY THAT.

17 Q AND IT DOESN'T SAY "EXCEPT FOR CERTAIN UTILITY
18 PATENTS." CORRECT?

19 A THAT'S CORRECT.

20 Q IN EXHIBIT 586, APPLE PROPOSED CERTAIN
21 DISCOUNTS ON THE LICENSE FEES BASED ON CERTAIN
22 ELEMENTS; CORRECT?

23 A YES, THAT'S CORRECT.

24 Q AND ONE OF THOSE ELEMENTS WERE PROPRIETARY,
25 SO-CALLED PROPRIETARY FEATURES?

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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 11, 2012