

Exhibit C

1 UNITED STATES DISTRICT COURT
2 STATE OF CALIFORNIA SAN JOSE DIVISION

3 - - -

4 APPLE INC., A CALIFORNIA
CORPORATION,
5 Plaintiff,

6 vs.

NO. 11-CV-01846-LHK

7 SAMSUNG ELECTRONICS CO.,
LTD., A KOREAN BUSINESS
8 ENTITY; SAMSUNG ELECTRONICS
AMERICA, INC., A NEW YORK
9 CORPORATION; SAMSUNG
TELECOMMUNICATIONS AMERICA,
10 LLC, A DELAWARE LIMITED
LIABILITY COMPANY,
11 Defendants.

12
13
14
15 VIDEOTAPED DEPOSITION OF YORAM (JERRY) WIND
HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY
Philadelphia, Pennsylvania
16 Wednesday, November 7, 2012
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23 Reported by:
24 Maureen Broderick, RPR
25 JOB NO. 55261

1 consumers buy the Samsung phones because of 10:08
2 these features. 10:08

3 BY MR. KUWAYTI: 10:08

4 Q And I'm trying to get a little bit more 10:08
5 specific to understand what you mean by "drive 10:08
6 consumer demand" and how you understood your 10:08
7 assignment. 10:08

8 Were you trying to determine whether 10:08
9 these features were the sole reason that consumers 10:08
10 bought this product or a substantial reason, or 10:08
11 something else? 10:08

12 MR. RAMOS: Object to the form. 10:08

13 THE WITNESS: I didn't look at it as 10:08
14 either sole or substantial. It is basically to 10:08
15 what extent his study design allows one to 10:08
16 conclude what is the relative importance of 10:08
17 these features in determining consumers' 10:08
18 purchase decisions. 10:08

19 BY MR. KUWAYTI: 10:08

20 Q So when you say "relative importance," 10:08
21 determine whether the extent to which they're a 10:08
22 factor in the decision to purchase the product at 10:08
23 all? 10:08

24 A This, you know, is -- assuming that the 10:09
25 relative importance is zero, then they're not a 10:09

1 factor. But we're not looking at 01. We're looking 10:09
2 at this in terms of -- typically in marketing you 10:09
3 look in terms of what is the relative importance of 10:09
4 different features, benefits in determining consumer 10:09
5 buying decisions. 10:09

6 Q Okay. So if there are some consumers who 10:09
7 are buying the product, a product because of the 10:09
8 features, are those features driving demand? 10:09

9 A Well, for these respondents, for these 10:09
10 consumers, it will be one of the factors that 10:09
11 determines their purchase. The question then is, 10:09
12 how important is it? 10:09

13 (Reporter clarification.) 10:09

14 BY MR. KUWAYTI: 10:09

15 Q So as you understood the term "driving 10:09
16 demand," which you've used in your report in 10:10
17 paragraph 1, describing your assignment, if you 10:10
18 concluded that there were some consumers who were 10:10
19 buying smartphones or tablets because of these 10:10
20 features that Dr. Hauser tested, then that would 10:10
21 mean that those features were driving consumer 10:10
22 demand to some extent? 10:10

23 A You cannot look at it without looking at 10:10
24 the relative importance. It's not an absolutely 01, 10:10
25 as I mentioned before. Everything in term of 10:10

1 consumer behavior is relative. Consumers don't make 10:10
2 decisions based on a single factor in most cases. 10:10
3 And it's a combination of factors, features, 10:10
4 benefits, experiences, that lead to consumer buying 10:10
5 decision. 10:10

6 Q So let's probe that a little bit. You say 10:10
7 consumers don't make decisions based on a single 10:10
8 factor in most cases. Has that been your experience 10:10
9 in your decades of work in the marketing field? 10:11

10 A Yes. 10:11

11 Q And how many factors do consumers 10:11
12 typically look at when they're buying a product? 10:11

13 A It varies all over, depending on the 10:11
14 product, depending on the situation, depending on 10:11
15 the consumers. You know, you cannot generalize. 10:11

16 Q Have you ever encountered a situation 10:11
17 where consumers are buying a product because of just 10:11
18 one reason? 10:11

19 A I'm sure there are some consumers in some 10:11
20 context that may buy because of a single factor, 10:11
21 especially if the factor is something like a brand 10:11
22 as opposed to a feature. But I have a hard time 10:11
23 kind of recalling any study that would show that 10:11
24 there are consumers who buy a product or service 10:11
25 because of one product feature. 10:11

1 Q So that would be very unusual in your 10:11
2 experience? 10:11

3 A Correct. 10:11

4 Q So if there are some consumers for whom 10:11
5 these features were a contributing factor in their 10:12
6 decision to purchase the product, is that -- under 10:12
7 your understanding, would that be driving consumer 10:12
8 demand? 10:12

9 A Yes, it will qualify as contributing. The 10:12
10 question then is, how important is it in term of 10:12
11 their decision? 10:12

12 Q Okay. 10:12

13 A And, again, I mentioned a number of times 10:12
14 it's not a 01, basically it's a relative 10:12
15 contribution. And the question is then empirically, 10:12
16 you know, how important is it relative to other 10:12
17 factors? 10:12

18 Q And how important does it have to be to be 10:12
19 driving consumer demand, in your understanding of 10:12
20 that term? 10:12

21 A It has to be a significant enough factor. 10:12
22 It will, you know, kind of with the presence of this 10:12
23 factor, a consumer -- this will tilt consumer 10:12
24 preference, and they will buy this specific product 10:12
25 compared to another one that does not have this 10:13

1 this product versus other products they're 10:18
2 considering. 10:18

3 Q So I just want to make sure that we're a 10:18
4 hundred percent clear, because to me the two things 10:18
5 that you said there are different. 10:18

6 First, you said that a significant 10:18
7 number of consumers would consider these features to 10:18
8 be significant in their purchase of the product. 10:18
9 And then you went on to say that without these 10:18
10 features, they will not buy the product. 10:18

11 So is that what you were looking to 10:18
12 determine, whether if these features were absent, 10:18
13 consumers would not buy the product? Is that your 10:19
14 definition of "consumer demand"? 10:19

15 MR. RAMOS: Object to the form. 10:19

16 THE WITNESS: Well, that's one operational 10:19
17 definition of what I meant by "significant." 10:19
18 So then we look at this as two separate things. 10:19

19 When I said "significant contribution," my 10:19
20 next sentence was explaining what "significant 10:19
21 contribution" means: that without these 10:19
22 features, people will not buy; with these 10:19
23 features, people will buy them. 10:19

24 And then you can also obviously try to 10:19
25 look in term of the question of, you know, kind 10:19

1 of, how much more would they be willing to pay 10:19
2 for a product with these features versus a 10:19
3 product without these features? 10:19

4 So these are all ways of measuring 10:19
5 operationally the question of or the statement 10:19
6 that I made concerning significant 10:19
7 contribution. 10:19

8 BY MR. KUWAYTI: 10:19

9 Q How does the, how does measuring the 10:19
10 willingness to pay for a product with these features 10:19
11 relate to your question of determining whether it is 10:20
12 a feature that makes a significant contribution to 10:20
13 the purchaser's decision to purchase? 10:20

14 A Well, if the people would be willing to 10:20
15 pay more for a product with the feature and actually 10:20
16 buy a product at a higher price, then obviously it 10:20
17 is indicated that this feature is important for them 10:20
18 and, therefore, it affects their willingness to buy 10:20
19 the product. 10:20

20 Q To put it into a concrete term in terms 10:20
21 of -- let's say I'm buying a BMW and there are three 10:20
22 things about that BMW that really appeal to me above 10:20
23 everything else. One is the brand. One is the fact 10:20
24 that I think it's the best-looking car out there on 10:20
25 the market. And the other is that I think 10:21

1 technically it's a terrific car. And all three are 10:21
2 leading to my decision to buy the product. 10:21

3 But, you know, I probably would 10:21
4 still -- I would still buy that product if 10:21
5 technically it wasn't quite as good because I think 10:21
6 it looks great and it's a BMW. Would you say in 10:21
7 that scenario that the fact that the product is 10:21
8 technically good is something that is driving my 10:21
9 demand for the car? 10:21

10 A Well, again, @consumer evaluation are 10:21
11 never done in abstract of other brands and other 10:21
12 options in the marketplace. So the question is with 10:21
13 respect to the brand name, how do they value it, the 10:21
14 BMW versus Porsche, Mercedes and others; how they 10:21
15 evaluate the design, the look of the BMW versus 10:22
16 others; and how do they value the technical features 10:22
17 of the BMW versus other cars. It's a relative 10:22
18 evaluation. 10:22

19 And then if you're giving me -- 10:22
20 basically in your scenario it sounded like there are 10:22
21 two BMW cars: One which is a brand look and 10:22
22 superior technology; second option seems to be same 10:22
23 brand, same look, but not as good a technology as 10:22
24 the first one; and then the consumer in the real 10:22
25 world will make a choice, then, between these and 10:22

1 and toward experience and away from features. 10:26

2 Features are actually, in increasing 10:26

3 number of studies, are becoming less and less 10:26

4 critical factors in consumer purchases behavior. 10:26

5 And whether you look at a combination of features, 10:26

6 services, benefits, solution, the experience, look 10:26

7 at the totality of this, consumer buying decision is 10:26

8 a combination of a number of these and rarely, if 10:27

9 ever, a factor of one factor, let alone one feature. 10:27

10 Q So if the test for driving consumer demand 10:27

11 were whether this one factor was the sole item 10:27

12 leading you to the -- leading a consumer to purchase 10:27

13 a product, that test would almost never be met? 10:27

14 MR. RAMOS: Object to the form. 10:27

15 THE WITNESS: I don't think I ever said 10:27

16 that the requirement needs to be a sole 10:27

17 determinant. 10:27

18 BY MR. KUWAYTI: 10:27

19 Q Right. 10:27

20 A I think from the beginning I emphasized 10:27

21 we're talking about relative importance. And the 10:27

22 question then is, is the relative importance strong 10:27

23 enough, significant enough to tilt the decision? So 10:27

24 when you're confronted with your two BMWs, the one 10:27

25 great brand, great look, superior technology, and 10:27

1 the second which is the same brand, the same look, 10:27
2 but somewhat less kind of sophisticated or less good 10:27
3 technology, you know, kind of -- does the difference 10:28
4 in technology between the two change your decision? 10:28
5 And you'll decide, no; now that the level of the 10:28
6 technology is below, it's not good enough and I will 10:28
7 now look at other options in the marketplace. 10:28

8 Q Right. And I think, I think I understand 10:28
9 what you're saying. But if the test for whether 10:28
10 something were driving consumer demand is whether 10:28
11 that was the sole determinant of the reason to 10:28
12 purchase the product, that test could almost never 10:28
13 be met in your experience? 10:28

14 MR. RAMOS: Object to the form. 10:28

15 THE WITNESS: I would find it kind of 10:28
16 strange to find a factor that is a sole 10:28
17 determinant. Perhaps with the exception I 10:28
18 mentioned before of a brand name, that a brand 10:28
19 name represents a totality of images, 10:28
20 associations, perceptions of a consumer of the 10:29
21 brand; and a consumer may decide, you know, BMW 10:29
22 is such a terrific brand; I will just go ahead 10:29
23 and buy a BMW kind of basically because, in 10:29
24 their mind, if you probe further, the BMW is a 10:29
25 very rich set of association with them. So if 10:29

1 you probe further for the association, you'll 10:29

2 find out; and one of them may be technology. 10:29

3 BY MR. KUWAYTI: 10:29

4 Q Okay. Did you try to do your own conjoint 10:29
5 analysis in this case? 10:29

6 A No. 10:29

7 Q Did anybody on your team try to do an 10:29
8 analysis or a conjoint analysis? 10:29

9 A Not that I know. 10:29

10 Q Are you aware of anybody on your team or 10:29
11 not on your team that tried to replicate all or any 10:29
12 part of Dr. Hauser's survey with survey respondents? 10:29

13 A Not that I know. 10:29

14 Q Did you consider doing another survey 10:29
15 to -- let me step back. 10:29

16 You point out in your report that, in 10:30
17 your opinion, there are a number of design flaws 10:30
18 with Dr. Hauser's survey. Did you consider doing 10:30
19 another survey in revising some of those flaws to 10:30
20 see what would happen? 10:30

21 A No. We didn't have time. This was very, 10:30
22 you know, time-compressed. And there was no way I 10:30
23 could have designed a survey in this time period. 10:30

24 Q About how much time would have been needed 10:30
25 to do that? 10:30

1 A You need, you need time to kind of design 10:30
2 a survey carefully and monitor it with the field and 10:30
3 analyze the results. The fastest you can do 10:30
4 probably a meaningful conjoint analysis study will 10:30
5 be about six to eight weeks. And the question is -- 10:30
6 and this assumes that I had the time, and I did not 10:30
7 have the time to devote to this. 10:30

8 Q Okay. So if you didn't have anything else 10:31
9 on your plate, sounds like you could have done it. 10:31
10 It would have been tight, but you could have done 10:31
11 it? 10:31

12 MR. RAMOS: Object to the form. 10:31

13 BY MR. KUWAYTI: 10:31

14 Q In the time since you were approached by 10:31
15 Samsung. 10:31

16 A Yeah. I was not asked to do the design, 10:31
17 nor did I propose it because I basically had many 10:31
18 other commitment and could not have done it. 10:31

19 Q Do you know if Dr. Sukumar tried to do his 10:31
20 own conjoint survey testing these patented features, 10:31
21 the ones that were tested in Dr. Hauser's? 10:31

22 A I heard his name, but I have no idea what 10:31
23 he did. 10:31

24 Q Are you aware of any consideration that 10:31
25 was given by Samsung to replicating Dr. Hauser's 10:32

1 survey and modifying it to correct any of the flaws? 10:32

2 A No, I have not heard of anything like 10:32

3 this. 10:32

4 Q In Paragraph 9 of your report -- 10:32

5 A Yes. 10:32

6 Q -- you describe your experience with 10:32

7 conjoint analysis. 10:32

8 A Correct. 10:32

9 Q A number of the articles that you or 10:32

10 studies that you reference here are 35 years old or 10:32

11 older than that. Are they still relevant today? 10:32

12 A Well, if you go back to the original book 10:32

13 that Paul Green, Dr. Rao and I wrote, there's the 10:32

14 first book on conjoint analysis, it studies a lot of 10:32

15 the principles that still kind of hold. And a lot 10:32

16 of the studies that were used, like if you look at 10:33

17 the Courtyard by Marriott, the design had been 10:33

18 replicated by Courtyard by Marriott a number of 10:33

19 times over the years following this. And the design 10:33

20 is still applicable. 10:33

21 So the idea of some of the approaches 10:33

22 we used in like hybrid conjoint analysis and others 10:33

23 are still very relevant and are still being used 10:33

24 today. 10:33

25 Q Are there any of the articles that you 10:33

1 number will be five, five different measures. 11:11

2 Q Now, in any of the real-life studies that 11:11
3 you've done with conjoint analysis, did the people 11:11
4 taking the survey use actual dollars as part of the 11:11
5 survey? 11:11

6 A I don't recall actual dollars, but the way 11:11
7 that the majority of my studies are designed, it's 11:11
8 typically focused on indicating the likelihood of 11:11
9 buying a product or service or whatever we're 11:11
10 looking at as opposed to just selecting kind of 11:12
11 basically a choice-base conjoint. 11:12

12 So we're looking at the likelihood of 11:12
13 buying. And we are setting the, the setting in term 11:12
14 of the framing of the questions in a way that try to 11:12
15 make it as realistic as possible within the, kind of 11:12
16 the budget constraint of the individuals involved. 11:12

17 Q But these are hypothetical transactions 11:12
18 that the consumer is making; they're not actually 11:12
19 paying with actual dollars for the choices, right? 11:12

20 A Correct. In most of these cases, that's 11:12
21 correct. But you're working -- 11:12

22 Q In fact, in every case that you've been 11:12
23 involved in, it's been a hypothetical transaction. 11:12
24 You've never done a conjoint survey involving actual 11:12
25 dollars where consumers had to spend from money that 11:12

1 they had in making these choices, right? 11:12

2 A I'm trying to kind of recall the different 11:13
3 studies we've done over the years. I definitely 11:13
4 would agree that the vast majority of the studies 11:13
5 are not asking for real dollars. 11:13

6 Q You can't remember even one that you've 11:13
7 ever done -- out of all the conjoint analyses that 11:13
8 you've done, you can't remember even one, sitting 11:13
9 here today, where the consumers used actual dollars? 11:13

10 A Actually I can remember one. 11:13

11 Q One. In how many years you've been doing 11:13
12 this, 35, 40? 11:13

13 A Since 1970. 11:13

14 Q So in over 40 years of doing these 11:13
15 studies, there's one that you can remember where 11:13
16 consumers used actual dollars; otherwise, it was 11:13
17 hypothetical transactions? 11:13

18 A Well, the way we addressed the realism is 11:13
19 through the framing of the question, not by giving 11:13
20 them real dollars. 11:13

21 Q And my question, Dr. Wind, is in over 40 11:13
22 years of doing these conjoint analyses, you can only 11:14
23 remember one that you've done where consumers used 11:14
24 actual dollars? 11:14

25 A But actual dollar is not the only way to 11:14

1 assure the reality and the realism of the task as 11:14
2 opposed to play money. 11:14

3 Q Great. So you don't need to use actual 11:14
4 dollars in a conjoint survey to ensure the reality 11:14
5 and accuracy of the task and results, right? 11:14

6 A Correct. I did not say that you have to 11:14
7 use real dollars. 11:14

8 Q And, in fact, you're not alone in this. 11:14
9 It's not as though you're the only person out there 11:14
10 who is not using actual dollars. In fact, it's 11:14
11 extremely rare for anybody to use actual dollars in 11:14
12 a conjoint analysis, right? 11:14

13 A Correct. 11:14

14 Q And despite that, conjoint analyses are 11:14
15 used, as you said, all the time and are a fixture in 11:14
16 the commercial world and real-life decisions are 11:14
17 based on them? 11:14

18 A Because the real dollar is not the measure 11:14
19 of the realism. The measure of does it represent 11:14
20 market reality and allow consumers to make 11:15
21 meaningful decisions depends on the framing of the 11:15
22 question and the context you're providing them. 11:15

23 Q Right. And the fact that real dollars are 11:15
24 not used is not something that impacts the accuracy 11:15
25 or reliability of the study? 11:15

1 A Correct. Real dollars is not the factor. 11:15
2 The real factor is the realism of the framing of the 11:15
3 questions. 11:15
4 MR. KUWAYTI: We've been going about an 11:15
5 hour. Do you want to take a break? 11:15
6 THE WITNESS: Real quick. 11:15
7 VIDEO OPERATOR: This ends Videocassette 11:15
8 Tape No. 1 of the November 7, 2012 videotaped 11:15
9 deposition of Dr. Jerry Wind. 11:15
10 We're off the video record at 11:16 a.m. 11:15
11 (Brief recess.) 11:15
12 VIDEO OPERATOR: This begins Videocassette 11:29
13 No. 2 of the November 7, 2012 videotaped 11:29
14 deposition of Dr. Jerry Wind. 11:29
15 We return to the video record at 11:29
16 11:29 a.m. 11:29
17 BY MR. KUWAYTI: 11:59
18 Q If you turn to paragraph 12 of your expert 11:29
19 report in this case, Dr. Wind. 11:29
20 A (Witness complies.) 11:29
21 Q It is entitled Materials Reviewed and 11:29
22 Research Team. 11:29
23 A Yes. 11:29
24 Q And it describes, it says that in 11:29
25 appendix B to your report you list materials that 11:30

1 were reviewed and/or relied upon. And my question 11:30
2 is, are those materials that you reviewed personally 11:30
3 or does it include materials that you reviewed and 11:30
4 that your team may have reviewed that you didn't 11:30
5 see? 11:30

6 A Let me look at appendix B, and I'll let 11:30
7 you know in a minute. 11:30

8 Q Sure. 11:30

9 A I think I've looked at all of these items 11:30
10 listed on appendix B. 11:30

11 Q You looked at them personally? 11:30

12 A Yes. 11:30

13 Q So let's turn to appendix B. 11:30

14 A (Witness complies.) 11:31

15 Q And it lists, there's a category of legal 11:31
16 documents that you reviewed. And it lists some of 11:31
17 the declarations that were submitted with Samsung's 11:31
18 opposition to this motion for a permanent 11:31
19 injunction. Do you see that? The declaration of 11:31
20 Dr. Van Dam, the declaration of Dr. Gray. 11:31

21 A Right. 11:31

22 Q And you reviewed those, right? 11:31

23 A Briefly skimmed them. 11:31

24 Q There's also a declaration from a 11:31
25 Dr. Erdem, E-R-D-E-M. Did you review her 11:31

1 of the factors but not for the other that created 11:53
2 the bias that I'm reporting on. 11:53

3 Q And in those animations -- you viewed the 11:53
4 animations, right? 11:53

5 A Yes, I did. 11:53

6 Q And in the animation relating to the '163 11:53
7 patent, the non-infringing alternative that 11:53
8 Dr. Hauser presented was, in fact, exactly the 11:53
9 non-infringing alternative that you describe in your 11:53
10 report, wasn't it? 11:53

11 A And the '163 is -- I must tell you, I 11:53
12 think I found it very confusing the way the 11:53
13 animation was. And one of the big problems with the 11:53
14 study, which I actually do not mention specifically 11:53
15 in the report, is that there was basically no way 11:53
16 that Dr. Hauser can actually tell if the consumer 11:54
17 really understood the stimuli that they were 11:54
18 presented with. He relied on a pretest in the 11:54
19 beginning, but he really does not -- could have done 11:54
20 very easily, to ask each respondent to test to what 11:54
21 extent they really understood the context of this. 11:54

22 And I still viewed this animation a 11:54
23 few times to try to figure out what '163 patent is. 11:54
24 Very confusing where presenting it. 11:54

25 Q And part of the purpose of the pretest is 11:54

1 to make sure that respondents were understanding the 11:54
2 survey, right? 11:54

3 A Yes. But pretest is no replacement to -- 11:54
4 in a correct survey to include another question. It 11:54
5 could be done very, very simply to ask the 11:54
6 respondent for their understanding of the features. 11:54
7 An open-ended question could have easily been 11:54
8 inserted once the people saw this stimuli to say, 11:54
9 you know, What is your understanding of the specific 11:54
10 features we just discussed? Or something along this 11:55
11 line. This was not done. 11:55

12 And we have no idea to what extent 11:55
13 the consumers really understood what they saw there. 11:55

14 Q And let me go back to my question, which 11:55
15 is the non-infringing alternative that Dr. Hauser 11:55
16 presented in those video animations for the '163 11:55
17 patent is, in fact, exactly what you describe in 11:55
18 your report as the Samsung design-around, the user 11:55
19 double-taps, zooms back out; and if they want to 11:55
20 recenter, they double-tap on that part of the screen 11:55
21 at that point? 11:55

22 A For '163, if consumer understood it, yes. 11:55

23 Q Okay. And then for blue glow, for the 11:55
24 rubber-banding patent, do you recall the 11:55
25 non-infringing alternative that Dr. Hauser presented 11:55

1 in the video the animations? 11:55

2 A Yeah. He presented totally different 11:55
3 thing. He presented red, complete border of red 11:56
4 which is totally different implication than coming 11:56
5 with an elegant, little, blue glow in the corner 11:56
6 when you touch it as opposed to this warning sign of 11:56
7 red all over, red frame. So I don't think this is a 11:56
8 fair representation of the infringing alternative. 11:56

9 Q So Dr. Hauser presented a non-infringing 11:56
10 alternative that had a glow of light around the 11:56
11 entire screen when you get to an edge, and Samsung's 11:56
12 non-infringing alternative is to have a glow of 11:56
13 light just around one side of the screen, right? 11:56

14 MR. RAMOS: Object to form. 11:56

15 THE WITNESS: Yes, but with one kind of -- 11:56
16 you omitted one very important factor, that the 11:56
17 Samsung is light blue and the Dr. Hauser kind 11:56
18 of presentation of this is strong-red glow 11:56
19 around the entire frame, which sends a totally 11:56
20 different signal and is not an appropriate kind 11:56
21 of replacement for the Samsung approach. 11:56

22 BY MR. KUWAYTI:

23 Q And why is it a totally different signal, 11:57
24 in your opinion? 11:57

25 A It's a different stimulus. When you look 11:57

1 at the light-blue glow that you get when you get to 11:57
2 the end, compare it to this red frame, it's a 11:57
3 totally different stimulus. And we don't know how 11:57
4 consumers would react to the blue glow. 11:57

5 Q So your position is that Dr. Hauser needed 11:57
6 to present exactly the Samsung design-around to do 11:57
7 this test? 11:57

8 MR. RAMOS: Object to form. 11:57

9 BY MR. KUWAYTI: 11:59

10 Q To value, to determine how people value 11:57
11 the '163, you have to present precisely the same 11:57
12 design-around that Samsung chose to implement? 11:57

13 A Well, he should have done a few things. 11:57
14 He should have, number one, tried to represent 11:57
15 accurately in the videos the alternative that 11:57
16 Samsung used and make sure that consumers understand 11:58
17 them. 11:58

18 Two, and most importantly, in the 11:58
19 stimuli, the screens, the 16 screens that each 11:58
20 respondent saw, it would have been very important to 11:58
21 include, not kind of to cross over basically to say 11:58
22 or no feature, but rather to present the 11:58
23 alternative. 11:58

24 So I think the problem is much more 11:58
25 serious with respect to the 16 screens that 11:58

1 consumers saw and not just the correction of the 11:58
2 videos that people saw once at the beginning. We 11:58
3 don't know what they understood it to mean. 11:58

4 Q Do you know how they would access the 11:58
5 videos from that screen of 16 if they wished to see 11:58
6 them again? 11:58

7 A They could have clicked, but we have no 11:58
8 idea if they did actually watch it or not. 11:58

9 Q Right. So they -- if they were confused, 11:58
10 so the alternative was presented to them, explained 11:58
11 to them at the beginning, and then they were the 16 11:58
12 in the screen, and if they were confused or couldn't 11:59
13 remember what that alternative was, they could click 11:59
14 on the link and be shown the video again, right? 11:59
15 That's your understanding? 11:59

16 MR. RAMOS: Object to form. 11:59

17 THE WITNESS: That's my understanding. 11:59

18 But basically this assumes that respondents and 11:59
19 Internet panel will take the time to do it. 11:59

20 And it also assumes that this will have more of 11:59
21 an impact on them than what they're seeing in 11:59

22 front of them, which is the stimulus, and the 11:59
23 stimulus screens that basically presented 11:59

24 clearly that the alternative is not having 11:59
25 these features at all. 11:59

1 BY MR. KUWAYTI: 11:59

2 Q Do you know, Dr. Wind, whether at the time 11:59
3 Dr. Hauser constructed his survey these 11:59
4 design-arounds were in the marketplace? 11:59

5 A I don't know. I don't know the exact time 12:00
6 when they were lunched. 12:00

7 Q So your report actually does not make 12:00
8 mention of the fact that Dr. Hauser presented these 12:00
9 non-infringing alternatives in the video animations, 12:00
10 does it? 12:00

11 A Correct. Might have been oversight. I 12:00
12 focused primarily on what I considered to be the 12:00
13 most important factors, which are the screens, the 12:00
14 16 stimuli screens. 12:00

15 Q You didn't explain that to the Court, 12:00
16 that, in fact, when you say he didn't -- you say 12:00
17 here his non-infringing alternatives were to remove 12:00
18 the features from the device; you did not in your 12:00
19 report explain to the Court that, in fact, 12:00
20 non-infringing alternatives were presented for each 12:01
21 of the three patents in detail in video animations 12:01
22 to the respondents of this survey, right? 12:01

23 MR. RAMOS: Object to the form. 12:01

24 BY MR. KUWAYTI: 11:00

25 Q Yes or no? 12:01

1 A -- that he did fail to mention the 12:02
2 alternative design in the 16 screens. The 12:02
3 16 screens do not mention, when people are looking 12:02
4 at it -- and if you think about this in term of a 12:02
5 typical respondent to an Internet patent all trying 12:02
6 to work as fast as they can to finish this, they're 12:02
7 focusing on the screens. And the screens basically 12:02
8 did not mention the alternatives. That's what I was 12:02
9 referring to. If it's unclear, I'd be glad to 12:02
10 modify it to include this comment on the animation. 12:02

11 BY MR. KUWAYTI: 12:02

12 Q And this could have been tested, right? 12:02
13 Dr. Hauser presented his results in March of this 12:02
14 year in his report, right? 12:02

15 A I did not see his report in March. I saw 12:02
16 it much later. 12:02

17 Q Right. But Dr. Sukumar was Samsung's 12:03
18 expert at trial and critiqued Dr. Hauser's survey, 12:03
19 correct? 12:03

20 A That's my understanding. 12:03

21 Q And Samsung has had the report since March 12:03
22 of 2012, correct? 12:03

23 A That's my understanding. 12:03

24 Q And one way to determine, rather than sit 12:03
25 here and have you speculate as to whether people 12:03

1 studies. I was asked primarily to evaluate 12:07
2 Professor Hauser study to the extent that he 12:07
3 would allow us to assess the statement we read 12:07
4 at the beginning, the objective of the study. 12:07

5 So realistically I could not have done it. 12:07

6 BY MR. KUWAYTI: 12:07

7 Q You could not have done it? 12:08

8 A I didn't have the time. I didn't have the 12:08
9 time, nor was I kind of asked to try to do any other 12:08
10 studies in this area. 12:08

11 Q You didn't have the time because you were 12:08
12 busy doing other things? 12:08

13 A Correct. 12:08

14 Q But in the two months you had, that's more 12:08
15 than enough time to have done such a test? 12:08

16 A Assuming that you kind of draw everything 12:08
17 out of my life, yeah. I've major other 12:08
18 responsibilities at the university, and I could not 12:08
19 have devoted the time to do it. 12:08

20 Q Since you've referenced it, why don't we 12:08
21 turn to the section of your report beginning with 12:08
22 paragraph 46 where you describe these inconsistent 12:08
23 results or nonsensical predictions, as you describe 12:08
24 them. 12:08

25 Now, in paragraphs -- in this section 12:09

1 of your report, B1 and 2, what you are describing 12:09
2 here are predictions that you performed using the 12:09
3 results, right? 12:09

4 A I'm not sure of the use of the word 12:09
5 "predictions." I replicated basically Professor 12:09
6 Hauser's approach with respect to the other 12:09
7 scenarios and show basically the results we get are 12:09
8 basically counterintuitive, counter common sense, 12:09
9 nonsensical, whatever term you want to use. 12:09

10 Q So when I use the word "predictions," I'm 12:09
11 actually using your word, sir. You say in 12:09
12 paragraph 46 at the very beginning, In order to 12:09
13 further evaluate the reliability and validity of 12:09
14 Professor Hauser's WTP price premium estimates, I 12:09
15 employed the RFC simulation technique underlying 12:10
16 those estimates to evaluate predictions, not 12:10
17 reported by Professor Hauser in his report. 12:10

18 A You're correct. 12:10

19 Q And then again when you describe Exhibit 9 12:10
20 to your report, you say Exhibit 9 shows specific 12:10
21 predictions of the RFC simulation, right? 12:10

22 A You're correct. 12:10

23 Q Okay. So you're reporting predictions 12:10
24 that you think are nonsensical, not actual results 12:10
25 of the survey, not actual responses from the people 12:10

1 who took the survey? 12:10

2 A Correct. That's what I meant by saying we 12:10
3 replicated his approach. And if you look at the 12:10
4 actual exhibits, we kind of basically replicated 12:10
5 what he has done, but with respect to these new 12:10
6 scenarios. 12:10

7 Q So when you say at page 25 that 32 percent 12:10
8 of survey respondents would prefer to pay \$199 12:10
9 rather than \$99 for the benchmark smart phone -- do 12:11
10 you see that? 12:11

11 A Yes. 12:11

12 Q -- you're not saying that 32 percent of 12:11
13 people who took the survey actually preferred to pay 12:11
14 \$199 rather than \$99 for the benchmark smartphone, 12:11
15 you're saying that you predict, based on the 12:11
16 results, that that would happen? 12:11

17 A Correct. Using his methodology. And the 12:11
18 inference -- to go back to our previous discussion, 12:11
19 and the reason -- one of the reasons you can get it 12:11
20 is, my inference is basically the consumers, when 12:11
21 they were confronted with the actual task of 12:11
22 choosing one of the product on each one of the 12:11
23 screens, that they were inconsistent in their 12:11
24 judgment when they chose the 16 choices they made. 12:11

25 Q I'm going to ask you, if you can, to try 12:11

1 to limit your responses to my question. Some of 12:11
2 your responses are quite long, and I understand you 12:11
3 have a view that you want to get out, which is 12:12
4 expressed in the report. But we have limited time. 12:12
5 If you could try to focus on the question, I would 12:12
6 appreciate it. 12:12

7 So when you say similarly in the 12:12
8 second bullet, 43 percent of survey respondents 12:12
9 would prefer to pay \$99 rather than \$0 for the 12:12
10 benchmark smartphone, you're not saying that 12:12
11 actually happened, that 43 percent of people who 12:12
12 took the survey actually made that choice; you're 12:12
13 saying you predict that that's what would happen? 12:12

14 A Correct. Based on Dr. Hauser's 12:12
15 methodology. 12:12

16 Q And that's the same for all of these 12:12
17 bullets on paragraph 25, right? 12:12

18 A Correct. 12:12

19 Q And it's the same for the -- when you say 12:12
20 that you have qualitatively similar predictions 12:12
21 associated with Professor Hauser's tablet analysis, 12:12
22 those are also predictions, not actual results? 12:12

23 A Correct. 12:12

24 Q And it's the same in section 2 of your 12:12
25 report; you say you employed the RFC simulation to 12:12

1 generate predictions involving pairs of smartphones 12:12
2 where one is clearly superior to another. In that 12:13
3 section as well, you're not reporting actual 12:13
4 results; you're reporting predictions that you made, 12:13
5 right? 12:13

6 A Correct; using Dr. Hauser's methodology. 12:13

7 Q And if we turn back to paragraph 15 of 12:13
8 your report and we look at the bullet, first bullet 12:13
9 at the bottom of the page, you say, As many as 12:13
10 43 percent of survey respondents chose to purchase 12:13
11 smartphones or tablets that were priced higher than 12:13
12 an identical lower-priced device. 12:13

13 Do you see that? 12:13

14 A Yes, I see. 12:13

15 Q In fact, that's not an accurate way to say 12:13
16 that, right? What you're really saying is that you 12:13
17 predict that 43 percent of survey respondents would 12:13
18 choose to purchase? 12:13

19 A Correct. That's, that's what we actually 12:13
20 state explicitly in the paragraphs that I mentioned 12:13
21 there: See paragraph 46 to 47. But you're correct; 12:14
22 that should have been more careful in the wording of 12:14
23 this bullet point. 12:14

24 Q Right. If you could go back today, you 12:14
25 would change that, right? 12:14

1 A Correct. 12:14

2 Q Same thing with the next bullet on 12:14

3 paragraph 9 when you say, As many as 35 percent of 12:14

4 respondents preferred, clearly in theory, yet 12:14

5 identically-priced devices, that also isn't really 12:14

6 phrased accurately; you should have said your 12:14

7 prediction is that as many as 35 percent would 12:14

8 prefer? 12:14

9 MR. RAMOS: Object to form. 12:14

10 THE WITNESS: Correct. The same applies 12:14

11 to all of these. Basically, the statement in 12:14

12 the paragraphs that explain it, the detailed 12:14

13 paragraphs, 48 to 51, for example, with respect 12:14

14 to bullet point 2 is correct. And here I 12:14

15 probably should have been more careful in 12:14

16 stating it and stated that a prediction based 12:14

17 on Professor Hauser's methodology yield the 12:14

18 following. 12:14

19 BY MR. KUWAYTI: 11:59

20 Q Okay. So here's an important question for 12:14

21 you: You spend a lot of time with Dr. Hauser's 12:15

22 results, you and your team, correct? 12:15

23 A Yes. 12:15

24 Q Did you find that any of the predictions 12:15

25 that you're setting out in sections 1 and 2 of your 12:15

1 report, did you find that any of those things 12:15

2 actually happened with the thousands of responses 12:15

3 that you had from these surveys? 12:15

4 MR. RAMOS: Object to form. 12:15

5 BY MR. KUWAYTI: 12:15

6 Q Did you find people actually making these 12:15

7 choices? 12:15

8 MR. RAMOS: Object to form. 12:15

9 THE WITNESS: Let me try to understand the 12:15

10 question. So the question is, then, to try to 12:15

11 look at the actual unconstrained respondent 12:15

12 judgments to the 16 stimuli. So you have a 12:15

13 matrix of the -- 400-some respondents by the 16 12:15

14 kind of stimuli, basically the 16 screens; see 12:15

15 their actual choices; identify profiles which 12:16

16 are consistent with these predictions; and see 12:16

17 to what extent consumer actually in the raw 12:16

18 data chose it? Is this your question? 12:16

19 BY MR. KUWAYTI: 11:59

20 Q You're making my question a lot more 12:16

21 complicated than it has to be. Let's back up a 12:16

22 second. 12:16

23 A Okay. 12:16

24 Q Okay. You were given the task of 12:16

25 critiquing Dr. Hauser's report, correct? 12:16

1 A No. I was given the task to evaluate it. 12:16

2 Q And so the first thing that you did was, 12:16

3 when you looked at these results before making these 12:16

4 predictions, the first thing you did was you looked 12:16

5 at these results and you looked at, did people 12:16

6 actually make irrational choices, right? When they 12:16

7 responded to the survey, did any of those people 12:16

8 actually make the wrong choice where they chose a 12:16

9 clearly inferior phone and chose to pay more money 12:16

10 for it? 12:16

11 Did you look at that? 12:16

12 A We did not look at that -- I thought 12:16

13 that's exactly what I was driving in my previous 12:17

14 answer. To look at the actual results, it means 12:17

15 that to look at the actual data for each one of the 12:17

16 respondents, identify -- go back to the actual 12:17

17 stimuli that's presented for each respondent. So 12:17

18 basically you have for each respondent the 16 12:17

19 screens and in each one of the 16 screens the full 12:17

20 profile of the four products that were presented; 12:17

21 look for specific profiles that match the items that 12:17

22 we identify here as inconsistent and see to what 12:17

23 extent the specific combination existed in the raw 12:17

24 data. I have not done this. 12:17

25 What we have done is we primarily 12:17

1 looked at the -- we used the same methodology that 12:17
2 Dr. Hauser used and used this, using exactly the 12:17
3 same approach he did, to try to say what will happen 12:17
4 in other situations. And that's the prediction that 12:18
5 we report in this series of exhibits. 12:18

6 Q So you predict that, on page 25, 12:18
7 32 percent of survey respondents would prefer to pay 12:18
8 a hundred -- 12:18

9 A I'm sorry. Where are you? 12:18

10 Q Page 25, first bullet. 12:18

11 A Yes. 12:18

12 Q You predict that 32 percent of survey 12:18
13 respondents would prefer to pay \$199 rather than \$99 12:18
14 for the benchmark smartphone, and you're not aware 12:18
15 of a single instance where anybody taking the survey 12:18
16 actually did that? 12:18

17 A Well, the whole beauty of conjoint 12:18
18 analysis is that you can evaluate combinations 12:18
19 beyond the combinations given to the respondent. 12:18

20 Q Okay. I understand that you did that. 12:18
21 You went beyond that and you made predictions. 12:18

22 My question is, you're not aware of 12:18
23 any instance where even one person made the choice 12:18
24 that you're predicting would occur in actual fact? 12:18

25 A I cannot answer it in terms of we were or 12:19

1 not. We didn't do the analysis. There may be a lot 12:19

2 of them. We did not do this analysis. 12:19

3 Q You cannot report, you cannot sit here 12:19
4 today and report to the Court that there is even one 12:19
5 person who made that kind of irrational choice in 12:19
6 actual fact? 12:19

7 A But you're missing the point. 12:19

8 Q Sorry, sir. Answer yes or no, and then 12:19
9 you can give an explanation. That's -- that's 12:19
10 right. 12:19

11 A Can you repeat the question, please. 12:19

12 Q Yes. You cannot sit here today and report 12:19
13 to the Court that there's even one person who made 12:19
14 that kind of irrational choice that you're 12:19
15 predicting in your report, in actual fact? 12:19

16 A Nor can I report to the Court the opposite 12:19
17 of this. I don't know. We have not done this 12:19
18 analysis. All I can report to the Court is 12:19
19 basically that using the methodology that Dr. Hauser 12:19
20 used, if you apply exactly the same methodology to 12:19
21 other combinations, other profiles, you're getting 12:19
22 nonsensical results. 12:20

23 And the beauty of conjoint analysis 12:20
24 is that it allows you to deal with any combinations 12:20
25 of the factors and levels presented and not limit 12:20

1 them only to the few items in the stimuli. 12:20

2 But what you're asking for, we can go 12:20

3 back and look at the actual individual-level 12:20

4 respondent and see if there were among the random 12:20

5 profiles that Dr. Hauser created, where there were 12:20

6 these type of profiles, and then I'll be able to 12:20

7 report if any or what is the number of respondent 12:20

8 that actually did make these irrational or kind of 12:20

9 basically nonsensical choices in their stimuli. 12:20

10 But this has to be done before he 12:20

11 adjusts this to the constraint. So we have to look 12:20

12 at the unconstrained responses. 12:20

13 Q Right. And you had those? 12:20

14 A Yes, but we didn't do it. 12:20

15 Q You could have done it; didn't do it? 12:20

16 A Because I didn't find the necessary -- it 12:20

17 necessary to do it, given the nature of conjoint 12:20

18 analysis. I think that given the nature of conjoint 12:20

19 analysis, the beauty of this is that ability to 12:21

20 evaluate all possible combinations of factors 12:21

21 involving all the factors and levels without going 12:21

22 back only to the items which are in the stimulus, 12:21

23 say. But what you're asking for can easily be done. 12:21

24 Q Now, to make the predictions that you did 12:21

25 make, you had to make certain assumptions, right? 12:21

1 somewhere that he also did a First Choice analysis. 12:25

2 Q So you said you replicated exactly the 12:25
3 methodology that Dr. Hauser used? 12:25

4 A Right. 12:25

5 Q And Dr. Hauser used both Randomized First 12:25
6 Choice and First Choice simulations to test his 12:25
7 model, right? 12:25

8 A No. The report that he did, the results 12:25
9 he reports are based on the Randomized First Choice. 12:25
10 There is a footnote that he said that he also did a 12:26
11 First Choice, and he found no difference between the 12:26
12 two. But the report itself and the numbers he's 12:26
13 relying on are the numbers of the Randomized First 12:26
14 Choice and not the First Choice. 12:26

15 Q The report describes in the footnote that 12:26
16 he also did the first choice. 12:26

17 A That's what I just said. 12:26

18 Q Yes. And did you do a First Choice 12:26
19 analysis since you were trying to do -- as you have 12:26
20 said many times in your responses, you were trying 12:26
21 to do exactly the methodology that Dr. Hauser used. 12:26
22 Did you also do a First Choice analysis as he did to 12:26
23 see what the difference would be? 12:26

24 A No. I basically did only the Randomized 12:26
25 First Choice because that's the one he relies on 12:26

1 mostly in his report. 12:26

2 Q So would it surprise you, Dr. Wind, to 12:26

3 find out that if you do your predictions and you 12:26

4 don't use a Randomized First Choice simulation where 12:26

5 you add this random error term, if you just use a 12:26

6 First Choice analysis and stick with the first 12:26

7 choices that people actually made in response to the 12:27

8 survey, that all of these nonsensical results 12:27

9 disappear? Would that surprise you? 12:27

10 A It would surprise me, but I have no idea 12:27

11 because I have not done it. 12:27

12 Q If that's actually the case, does that 12:27

13 suggest that maybe there's some problem with the RFC 12:27

14 simulation that you did? 12:27

15 A If there's a problem with the RFC 12:27

16 simulation I did, then there should be a problem 12:27

17 with Dr. Hauser RFC simulation as well. 12:27

18 Q How hard would it be for you to do, to run 12:27

19 the software to do the First Choice simulation as 12:27

20 Dr. Hauser did? 12:27

21 A It's doable. 12:27

22 Q I mean, how long does that take? 12:27

23 A Not that long. It can be done. 12:27

24 Q In a day? 12:27

25 A I don't know. We have to look at the 12:27

1 setting of the data. It can be done. I have not 12:27
2 done it. 12:27

3 Q You have not done it. Is one reason why 12:27
4 you didn't do it, Dr. Wind, because you believe that 12:27
5 if you used the Randomized First Choice method, you 12:27
6 were more likely to get this kind of nonsensical 12:28
7 result? 12:28

8 A No. I had absolutely zero prediction when 12:28
9 I did this analysis. The idea was basically just to 12:28
10 see what we get. I was very surprised with the 12:28
11 results we got. I did not expect to get so many 12:28
12 nonsensical responses. 12:28

13 Q Now, in paragraph 52 of your report, you 12:28
14 also talk about the fact that, in your estimation, 12:28
15 the estimates of Professor Hauser of the WTP price 12:28
16 premium associated with the touchscreen features 12:28
17 examined exceed the \$152 average smartphone price 12:28
18 paid by survey respondents. 12:28

19 Do you see that? 12:28

20 A Yes. 12:28

21 Q Now, let's just be clear how you get to 12:28
22 that result. You're including -- in paragraph 52, 12:28
23 you're including the three patents that were at 12:28
24 issue in this lawsuit, the features associated with 12:28
25 them, which are rubber band and tap to recenter and 12:29

1 willingness to pay relates directly to demand on the 12:56
2 demand curve, right? 12:56

3 MR. RAMOS: Object to the form. 12:56

4 THE WITNESS: Most of the economic 12:56
5 literature I'm familiar with talks about price, 12:56
6 not necessarily willingness to pay. 12:56

7 BY MR. KUWAYTI: 12:56

8 Q Well, do you have any doubt that I could 12:56
9 pull out a half dozen economic textbooks that define 12:56
10 the demand curve in terms of willingness to pay? 12:56

11 A No. And I have no doubt that I can find 12:56
12 half a dozen references in economic literature that 12:56
13 use other measures for price. So it's one way of 12:56
14 measuring it. It's not the only way of measuring 12:56
15 it. 12:56

16 If you go purely to the economic, the 12:56
17 economic literature, then typically the focus is on 12:56
18 price versus quantity. 12:56

19 Q And willingness to pay is one commonly 12:56
20 used definition in economic literature, one commonly 12:56
21 used method in economic literature for measuring 12:56
22 demand? 12:56

23 A It's one of the measures used. I don't 12:56
24 know how common. And I don't, you know, kind of 12:56
25 read all the current economic literature. So it is 12:56

1 used. 12:56

2 The critical question is, what is the 12:57
3 conceptual and the operational definitions of this 12:57
4 term? 12:57

5 Q It is an accepted definition -- in 12:57
6 economic literature, one of the accepted definitions 12:57
7 for demand is based on willingness to pay, correct? 12:57

8 A Yes. But the question here -- all it 12:57
9 does, it presents you a concept. The question, to 12:57
10 be meaningful, has to go to the next level, two 12:57
11 levels, and ask, one, how is it defined 12:57
12 conceptually? And, two, and most critically, how is 12:57
13 it defined operationally? 12:57

14 Without these two, this is almost a 12:57
15 meaningless-type question. 12:57

16 Q How you calculate the willingness to pay, 12:57
17 how you measure it? 12:57

18 A Well, I think it's quite clear that we're 12:57
19 talking about what is the concept that you have over 12:57
20 willingness to pay and then what is the methodology 12:57
21 that you use to try to measure it. 12:57

22 Q If you look at page 40, page 40 of your 12:58
23 report -- 12:58

24 A Yes. 12:58

25 Q -- you have a section of your report that 12:58

1 I'm going to ask you about that deals with what you 12:58
2 consider to be various design flaws in the scenario, 12:58
3 in Dr. Hauser's surveys. And those are a subset of 12:58
4 this table, selective use of multi-media animations 12:58
5 in feature descriptions, lack of non-infringing 12:58
6 alternatives in survey design, respondents not 12:58
7 provided with a no-choice option, results are linked 12:58
8 to hypothetical spending scenarios, and survey 12:59
9 excludes several features critical to consumer 12:59
10 purchase decision. 12:59

11 Those are the design flaws that you 12:59
12 pointed to in your opinion in Dr. Hauser's study, 12:59
13 right? 12:59

14 A Correct. 12:59

15 Q Now, in the case -- we've already talked 12:59
16 about a couple of these. But I want to go to the 12:59
17 effect column that you have here. For example, you 12:59
18 have in the bottom, the last one, survey excludes 12:59
19 several features critical to consumer purchase 12:59
20 decision. As the effect there, you say, May bias 12:59
21 WTP upwards? 12:59

22 A Correct. 12:59

23 Q And that's the best you were able to 12:59
24 conclude on your review of Dr. Hauser's report and 12:59
25 the work that you did is that it may bias the WTP 12:59

1 willingness to pay, but he's basically trying to 01:12
2 estimate and conclude concerning the impact of these 01:12
3 four -- three features on the demand for the 01:12
4 product. 01:12

5 Willingness to pay is only an 01:12
6 intermediary measure. It's not as critical. I 01:12
7 think critical, the absolutely fatal flaw that you 01:12
8 cannot conclude is if you try to estimate anything 01:12
9 as to the impact the features will have on consumer 01:13
10 demand, and you cannot do it without having 01:13
11 alternative brands in the context. 01:13

12 Q One of your other criticisms is that 01:13
13 Dr. Hauser didn't include a no-choice option -- 01:13

14 A Correct. 01:13

15 Q -- measuring willingness to pay in doing 01:13
16 his survey. 01:13

17 And you've done conjoint analyses 01:13
18 where you didn't include a no-choice option, 01:13
19 correct? 01:13

20 A If I do not include an explicit no choice 01:13
21 in my studies, I always use as a dependent variable 01:13
22 the likelihood to buy that includes zero, which 01:13
23 would -- basically is I'm not likely to buy it at 01:13
24 all, is the same as no choice, all the way to a 01:13
25 hundred. 01:13

1 So to rely -- the use of a likelihood 01:13
2 of buying, and especially in the context of a kind 01:13
3 of hybrid design, in a sense, assures that there is 01:14
4 always a no-choice-type option. 01:14

5 Q Now, Dr. Wind, you know that in the 01:14
6 literature there are many articles that debate 01:14
7 whether including an outside option can bias -- 01:14
8 including the outside option can actually bias the 01:14
9 survey and distort the results in some 01:14
10 circumstances, right? 01:14

11 A I think there is mixed messages, if you 01:14
12 want to, in the literature. The strongest study 01:14
13 that I think exists in this area is the Arzel [ph] 01:14
14 study that I'm referring to that clearly shows that 01:14
15 not including kind of a no option, none of these is 01:14
16 an option, does affect the price elasticity, which 01:14
17 is the most critical kind of input to our discussion 01:14
18 here, because it directly compares what happened to 01:14
19 the price elasticity with and without this option. 01:15

20 Q But, as you said, there are mixed messages 01:15
21 in the literature. There are many articles that 01:15
22 disagree with that. 01:15

23 A I'm not sure many, but there are articles 01:15
24 that disagree with this in evaluating this area and 01:15
25 Paul Green, Abba Krieger and I have over the years 01:15

1 have done a number of studies that addresses this 01:15
2 issue as part of other kind of methodological 01:15
3 studies. And the general conclusion is, if you're 01:15
4 trying to draw any conclusions concerning consumers 01:15
5 likely to buy a product in term of impact their 01:15
6 market share, which we typically look at, you have 01:15
7 to include this option. 01:15

8 Q Now, Dr. Sukumar did not include an 01:15
9 outside option in his survey that he did? 01:15

10 A I don't know. I do not recall his study. 01:15

11 Q I'm asking you to assume that he didn't. 01:15

12 A Okay. 01:15

13 Q We know, let's say for Dr. Sukumar's 01:15
14 survey, he only included the Samsung-patented 01:15
15 features. He had no distraction features at all. 01:16
16 It was using -- it was hypothetical transactions. 01:16
17 It wasn't using actual dollars, and there were no 01:16
18 outside options. So now you have these three things 01:16
19 combined. 01:16

20 Now, knowing those three things 01:16
21 combined, do you think that Dr. Sukumar's study 01:16
22 cannot be relied upon to determine a willingness to 01:16
23 pay for the patented features in the smartphone and 01:16
24 tablet? Just knowing those three things, is that 01:16
25 enough to say -- for you to say that study is not 01:16