

# BRESSLER EXHIBIT 2

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

4 APPLE, INC., a California )  
corporation, )  
5 )CASE NO.  
Plaintiff, )11-CV-01846-LHK  
6 )  
vs. )  
7 )  
SAMSUNG ELECTRONICS, CO., LTD., )  
8 A Korean business entity; )  
SAMSUNG ELECTRONICS AMERICA, )  
9 INC., a New York corporation; )  
SAMSUNG TELECOMMUNICATIONS )  
10 AMERICA, LLC, a Delaware )  
limited liability company, )  
11 )  
Defendants. )  
12 -----)

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15 \*\*\*ATTORNEYS' EYES ONLY\*\*\*  
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19 VIDEOTAPED DEPOSITION OF  
ITAY SHERMAN  
20 New York, New York  
Thursday, September 15, 2011  
21  
22  
23

24 Reported by:  
JOMANNA DeROSA, CSR  
25 JOB NO. 41963

1           A.     I have been involved in the design  
2 of multiple products, including cellular phones  
3 and some consumer electronic devices.

4           Q.     You said you've been involved in  
5 the design.

6                     What does that mean?

7           A.     Correct. In -- the company I  
8 worked in, MODU, I was CTO of the company, and I  
9 had been supervising the work of the ID design  
10 team, plus external teams.

11          Q.     Did you do any of the designing?

12          A.     I've been consulting to them. I  
13 have been proposing ideas. If the question is  
14 whether I was actually sketching the 3-D images on  
15 a 3-D CAD system, I was not the one actually doing  
16 the CAD.

17          Q.     And what steps did the team at MODU  
18 go through to design the products?

19          A.     We would usually start with a  
20 general concept of what is the functionality, what  
21 is the target audience and target device we want  
22 to achieve.

23                     We would then start with what we  
24 call the mood boards, which basically go through  
25 defining what is the overall image that we're

1 would say is the technical impossibility is  
2 something that cannot be done in -- something that  
3 cannot be done in any conceivable way.

4 Q. Was there any case where you were  
5 told -- actually, I'm going to come back to that  
6 point.

7 Did you take any courses in  
8 industrial design?

9 A. No, I did not.

10 Q. Have you taught courses in  
11 industrial design?

12 A. No, I did not.

13 Q. Have you ever taken courses where  
14 you studied minimalism?

15 A. No.

16 Q. Have you read any books on  
17 minimalism?

18 A. Not specifically on minimalism, no.

19 Q. You say "not specifically on  
20 minimalism."

21 Have you read books related to  
22 minimalism?

23 A. I've read some books where the  
24 mention of minimalism was there, but they were not  
25 the main subject of these books.

1 help him. It's your obligation to ask a  
2 noncompound question in the first place.

3 Q. Are there multiple --

4 MR. ZELLER: Please ask one.

5 Q. Are there -- are there multiple  
6 designs of telephones with keypads that are  
7 minimalistic?

8 A. For a telephone with keypads, I  
9 would say yes.

10 Q. Are there multiple designs of  
11 telephones without keypads that are minimalistic?

12 A. In the case of devices -- and I'm  
13 answering specifically for devices that are  
14 dominated by the large screen -- generally, the  
15 form is mostly dictated by the fact that there is  
16 a display. And so the general form is pretty much  
17 dictated.

18 And if we stick to the fact that  
19 you -- that minimalistic is not adding anything  
20 beyond, then the answer would be that overall, it  
21 wouldn't be.

22 Q. I'm not asking about a large  
23 display screen. I'm asking about telephones  
24 without keypads.

25 So are there multiple designs of

1 that display as the interaction, which is the  
2 predominant form for smartphones today, these are  
3 the designs I was referring to when saying that  
4 there is essentially only one minimalistic design  
5 of it because it's predominated by the display.

6 Q. So you believe that -- so there's  
7 no other way to design those phones?

8 A. That's not what I said. I said  
9 that there would be -- when asked whether there  
10 would be multiple minimalistic designs for that  
11 phone, then the answer would be that I don't think  
12 there would be because their general shape is  
13 predominantly due to the display itself. Whether  
14 they could be designed in other ways, that's a  
15 different question.

16 Q. But those other ways would be  
17 non-minimalistic?

18 Is that the distinction you're  
19 making?

20 A. You've asked me regarding  
21 minimalistic.

22 Q. Yes.

23 A. Regarding minimalistic, I'm saying  
24 there would be, in that specific case of the  
25 mobile phone that has a large display, which is

1 also the element through which you are interacting  
2 with the phone, since that screen is the dominant  
3 part, there would not be multiple minimalistic  
4 designs or that you would significantly  
5 distinguish -- there would not be multiple  
6 minimalistic designs.

7 Q. What about tablet computers; do you  
8 believe that there are multiple minimalistic  
9 designs for tablet computers?

10 A. So when we're talking about --  
11 also, tablet computers include multiple types of  
12 designs in terms of their functionality.

13 So if you -- if you could clarify  
14 if you're referring to tablets that have large  
15 screens and are completely -- the interaction is  
16 completely via the display, or are you referring  
17 to the large -- to the other examples of tablets?

18 Q. I'm not aware of the other  
19 examples. Please tell me what's out there.

20 A. There are other designs where they  
21 have foldable keypads and so on. So --

22 Q. Let's exclude those --

23 A. Okay.

24 Q. -- those other designs, and focus  
25 on what you described as tablets that have large

1 screens.

2 A. So for --

3 Q. So the question is: For those, is  
4 there only one minimalist design for that type of  
5 tablet computer?

6 A. For a tablet that has a large  
7 screen through which all the interaction is made,  
8 trying to create a minimalistic design would  
9 basically fall to the same issue as I mentioned on  
10 the handsets, and that is that it is predominantly  
11 controlled by the screen itself.

12 This is the main element. Since  
13 the displays are essentially square in nature, the  
14 overall design is going to be square. And so  
15 generally, you would not have multiple  
16 minimalistic designs that differ significantly in  
17 that case.

18 Q. Are you familiar with Tadao Ando?

19 A. No, I have not.

20 Q. Have you heard of Dieter Rams?

21 A. No, I have not.

22 Q. What about Ludwig Mies van der  
23 Rohe?

24 A. Yes.

25 Q. Who is he?

1 A. No, I did not take classes in law.

2 Q. Have you ever studied patent law?

3 A. I have not studied in courses  
4 patent law.

5 Q. Did you otherwise study patent law?

6 A. I have been made familiar with it  
7 through my work at MODU through the interaction  
8 with patent lawyers. But again, to the extent of  
9 somebody who's submitted patents, but not as a  
10 patent lawyer.

11 Q. We'll come back briefly -- shortly  
12 to your work at MODU.

13 Did you take any marketing classes?

14 A. No, I did not take marketing  
15 classes.

16 Q. Have you ever done any surveys?

17 MR. ZELLER: Sorry. Did you say  
18 surveys?

19 MS. TAYLOR: Surveys.

20 A. Have I done personally surveys?

21 Did I go and actually executed them? No, I did  
22 not. Whether I reviewed them, helped in creating  
23 them, the answer would be yes.

24 Q. What kind of surveys did you review  
25 or help create?

1 bottom of the MODU-1 design that you couldn't show  
2 to me because we don't have a picture of the  
3 bottom of the phone?

4 MR. ZELLER: I'm sorry. Which  
5 other phone?

6 MS. TAYLOR: The MODU-1.

7 MR. ZELLER: The -- the first one?

8 MS. TAYLOR: Yes.

9 MR. ZELLER: Thank you.

10 A. Again, in the sense that this is  
11 sort of an elongated shape, almost oval,  
12 basically, two straight lines ending with  
13 rounded -- slightly rounded corners, yes, it is.  
14 Whether that's exactly the same height, width,  
15 radiuses, I don't think they are. But again, I'm  
16 not sure. I haven't measured it.

17 Q. Why do they have slightly rounded  
18 corners?

19 A. Again, it's -- on this design  
20 specifically, and generally when you're dealing  
21 with creation of holes for earpiece or speaker,  
22 the shape is very much dictated by the shape of  
23 the component inside and the location inside the  
24 phone.

25 So both in our case here and also

1 dimension as the earpiece component?

2 MR. ZELLER: The question is vague.

3 Incomplete hypothetical.

4 A. Again, this is trying to sort of  
5 capture general terms. If you will direct me to  
6 things that I am aware of or designed, I can  
7 answer. But that's a very general question.

8 Q. Have you designed earpiece slots?

9 A. Correct.

10 Q. Where did you design earpiece  
11 slots?

12 A. As part of the MODU design.

13 Q. And in the case of the MODU  
14 earpiece slots, was the dimension exactly the same  
15 for the earpiece slot as the earpiece component?

16 A. So in the case of MODU, the  
17 components that we used basically came up with  
18 recommendation on what would be the minimal hole  
19 size to be used with these components. So the  
20 size itself was not identical.

21 However, there were very clear  
22 limitations on what size that should be. It  
23 should not extend beyond the earpiece itself so  
24 air wouldn't sort of flow out. But it had very  
25 specific limitations on how small it should be.

1 dimensions matched up exactly with the speaker  
2 components in those phones. Is that correct?

3 A. We did not observe these pieces as  
4 part of taking this apart simply because we didn't  
5 have an interest in that specific part.

6 Q. Have you ever looked into or made  
7 any effort to figure out what any other companies  
8 have done in terms of matching up speaker slot  
9 dimensions to -- I'm sorry -- earpiece slot  
10 dimensions to earpiece components?

11 MR. ZELLER: The question is vague.

12 A. Are you asking me again if I took  
13 the phone apart and looked into these  
14 measurements?

15 Q. Or talked to manufacturers -- other  
16 handset manufacturers; anything you've done to  
17 figure out what people are doing.

18 A. Again, as I mentioned, we as a  
19 manufacturer had the direct connection with the  
20 component vendors. And we got these type of  
21 directions actually not only from one, but at  
22 least two that we have been in contact with.

23 So I assume that is the practice of  
24 most or all of these vendors to actually provide  
25 that. That is also very rational because

1 otherwise, the air would not flow.

2 Q. But other than those directions you  
3 got from the component manufacturers, you don't  
4 have any other particular knowledge on this issue?

5 MR. ZELLER: Mischaracterizes the  
6 witness' testimony. He's given you his basis  
7 previously with engineering. So you continue  
8 to mischaracterize his testimony. This is  
9 improper. It's asked and answered.

10 A. Again, I will repeat my answer  
11 here. I know, based on the work that I have done  
12 in designing mobile phones, that these components  
13 come up with guidance on the size of the hole that  
14 needs to be maintained in order for them to  
15 operate within spec.

16 Q. Did MODU sell any tablet computers?

17 A. MODU did not sell tablet computers.

18 Q. Did it design any tablet computers?

19 A. MODU did not design a tablet,  
20 per se, no.

21 Q. Did you ever give any input on the  
22 design of a tablet computer?

23 A. Again, did I provide inputs on  
24 tablets or computers?

25 Q. Design of tablet computers.

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CERTIFICATE

STATE OF NEW YORK )

)ss:

COUNTY OF NEW YORK)

I, JOMANNA DeROSA, a Certified  
Shorthand Reporter and Notary Public within  
and for the States of New York, New Jersey,  
California and Arizona, do hereby certify:

That ITAY SHERMAN, the witness  
whose deposition is hereinbefore set forth, was  
duly sworn by me and that such deposition is a  
true record of the testimony given by such  
witness.

I further certify that I am not  
related to any of the parties to this action  
by blood or marriage, and that I am in no  
way interested in the outcome of this  
matter.

In witness whereof, I have hereunto  
set my hand this 16th day of September, 2011.

\_\_\_\_\_  
JOMANNA DeROSA