

Exhibit M

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

4 APPLE INC., a California
corporation,

5
6 Plaintiff,

7 vs.

Case No. 11-CV-01846-LHK

8 SAMSUNG ELECTRONICS CO., LTD.,
a Korean business entity;

9 SAMSUNG ELECTRONICS AMERICA,
INC., a New York corporation;

10 SAMSUNG TELECOMMUNICATIONS
AMERICA, LLC, a Delaware
11 limited liability company,

12 Defendants.
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15 CONFIDENTIAL
16 ATTORNEYS' EYES ONLY
17 OUTSIDE COUNSEL

18 VIDEOTAPED DEPOSITION OF MICHAEL J. WAGNER, CPA
San Francisco, California
19 Wednesday, September 14, 2011
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23 Reported by:

24 LORRIE L. MARCHANT, CSR No. 10523, RPR, CRR, CCRR, CLR
25 JOB NO. 41962

1 MR. ANDERSON: Objection. Incomplete
2 hypothetical. Assumes facts not in evidence.

3 THE WITNESS: Yeah. You'd need to have a lot
4 more facts in the hypothetical. Again, my answer is the
5 same, it's possible but I'd need more facts to know.

6 BY MR. OVERSON:

7 Q. Well, you would agree that design is one factor
8 that influences persons' decisions who are considering
9 buying a smartphone or a tablet; true?

10 MR. ANDERSON: Objection. Compound.

11 THE WITNESS: It may be, yes.

12 BY MR. OVERSON:

13 Q. Okay. Let me ask it separately.

14 Design is one -- you would agree -- would you
15 agree with me that one factor of customers considering
16 buying a smartphone is design?

17 A. Yes.

18 Q. And would you agree with me that one factor of
19 customers considering buying a tablet is design?

20 A. Yes.

21 Q. Can you turn to paragraph 84 of your
22 declaration, please.

23 In paragraph 84, you're citing to a June 2001
24 Nielsen survey?

25 A. No.

1 Q. You're not?

2 A. I am not. It's a 2011, not a 2001.

3 Q. I don't know how 2001 came out. Thank you.
4 I'll correct that.

5 In paragraph 84, you're citing to a June 2011
6 Nielsen survey; true?

7 A. True.

8 Q. Okay. And that survey ranked touchscreen as
9 the most important factor in a smartphone; true?

10 A. It did.

11 Q. But it also said that other important decision
12 drivers were Internet access, apps -- A-P-P-S -- access
13 to e-mail, design, ease of use and price; true?

14 (Discussion off the record.)

15 THE WITNESS: Yes.

16 BY MR. OVERSON:

17 Q. And -- and you wrote that design is one of six
18 drivers of demand relating to smartphones; true?

19 A. That was part of the sentence that I wrote,
20 yes.

21 Q. Do you agree with it?

22 A. I do agree with that.

23 Q. Okay. And you quoted a statement from the
24 publication. I think it's called FierceWireless. Maybe
25 it makes sense to show it to you.

1 MR. OVERSON: We'll mark this as 162.

2 (Marked for identification purposes,
3 Exhibit 162.)

4 BY MR. OVERSON:

5 Q. So I believe 162 is the document that you're
6 quoting on paragraph 84 of your report.

7 A. It is.

8 Q. Okay. And if you look on the second page of
9 the article, which is entitled "Are touchscreens the
10 most important feature of smartphones?" And it says,
11 It's from FierceWireless, the wireless industry's daily
12 monitor. And the date is June 2nd, 2011.

13 But on page 2, there's a paragraph that has the
14 word "now" at the beginning.

15 A. It does. And I think that's the paragraph that
16 I quote for everything I have in paragraph 84.

17 Q. Okay. And the last sentence states, quote, I
18 think the conclusion to draw from this is that
19 smartphone users want a lot of different things out of
20 their device, which means that smartphone vendors will
21 need to cover all their bases to be successful in the
22 smartphone market.

23 You quoted that -- at least the end of that
24 sentence in your report; true?

25 A. I did.

1 Q. And you would agree with that statement?

2 A. I wouldn't have put it in my declaration if
3 I -- I disagreed with it. I do agree with it, yes.

4 Q. So one of the bases that a smartphone vendor
5 has to cover to be successful is design; true?

6 A. I think that's correct.

7 Q. If a smartphone maker doesn't have a [sic]
8 attractive design, they will have a hard time competing
9 in the marketplace; true?

10 MR. ANDERSON: Objection. Incomplete
11 hypothetical.

12 THE WITNESS: I'd need more information to know
13 to answer that question.

14 BY MR. OVERSON:

15 Q. Well, just from your own paragraph, design is
16 one of the decision drivers on purchases for
17 smartphones; true?

18 A. It is.

19 Q. And a maker of smartphones will have to cover
20 that base, that base being the design, in order to be
21 competitive; true?

22 A. If -- if they are off the scale on the other
23 features and those are the features that a consumer
24 buys, that consumer could probably care less about the
25 design. But in some circumstances, someone -- another

1 And, likewise, we will redact out the Apple
2 confidential information, of which there was some in the
3 declaration and which there was some in other exhibits,
4 I noted, before we share a transcript.

5 MR. OVERSON: Okay. And we'll exchange -- when
6 we give it to our clients, we'll exchange with each
7 other so with know what we did.

8 MR. ANDERSON: That's agreeable.

9 MR. OVERSON: Okay. Thank you.

10 THE VIDEOGRAPHER: This marks the end of
11 Volume I, Disk 4, and concludes the deposition of
12 Michael Wagner. The time is 5:43 p.m. and we are off
13 the record.

14 (Deposition concluded at 5:43 p.m.)

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MICHAEL J. WAGNER

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20 Subscribed and sworn to
21 before me this day
22 of 2011.

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