

Exhibit Q

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 -----)

13
14
15 ***ATTORNEYS' EYES ONLY***
16
17
18

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
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Thursday, September 15, 2011
9:23 a.m.

Attorneys Eye's Only Videotaped Deposition
of ITAY SHERMAN, held at the
offices of Morrison & Foerster,
1290 Avenue of the Americas, New York,
New York, before Jomanna DeRosa, a
Certified Shorthand Reporter and
Notary Public of the States of
New York, New Jersey, California
and Arizona.

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

2

3 MORRISON & FOERSTER

4 Attorneys for Plaintiff

5 425 Market Street

6 San Francisco, California 94105

7 BY: JENNIFER LEE TAYLOR, ESQ.

8 PATRICK ZHANG, ESQ.

9

10 QUINN EMANUEL URQUHART & SULLIVAN

11 Attorneys for Defendant

12 865 South Figueroa Street

13 Los Angeles, California 90017

14 BY: MICHAEL T. ZELLER, ESQ.

15

16 QUINN EMANUEL URQUHART & SULLIVAN

17 Attorneys for Defendant

18 555 Twin Dolphin Drive

19 Redwood Shores, California 94065

20 BY: ANNA T. NEILL, Ph.D., ESQ.

21

22

23

24 ALSO PRESENT:

25 Henry Marte, Legal Video Specialist

1 anything.

2 MR. ZELLER: -- I'm entitled to
3 make my objections. You have been asking this
4 witness now -- you ask him for a legal
5 opinion. You do so in a bald-faced way. Then
6 you pretend as though it is in his declaration
7 that that's the same meaning of it.

8 Ask him about his declaration if
9 that's what you want to do. But don't pretend
10 like somehow, well, that --

11 MS. TAYLOR: I was until you
12 interrupted me.

13 MR. ZELLER: You just interrupted
14 me again, and you did so with an obnoxious
15 gesture.

16 MS. TAYLOR: Let us move on.

17 MR. ZELLER: So that's -- do you
18 think that's appropriate, counsel?

19 MS. TAYLOR: I think it's tiresome
20 that you interrupt my questions halfway
21 through. I am reading a paragraph from
22 Mr. Sherman's declaration.

23 Q. Paragraph 184 says:

24 "It is my opinion that (1) the
25 D'889, 'D677, and D'087 patents are invalid in

1 light of the prior art described above."

2 Do you see that sentence?

3 A. Yes, I see that sentence.

4 Q. Can you tell me what your
5 qualifications are to offer that opinion.

6 A. So first of all, I would say that
7 that -- the term here that they are invalid is
8 related to my assessment as a technical expert and
9 not as legal advice.

10 But the qualifications are
11 obviously my experience in designing mobile
12 phones, the fact that I had seen multiple of these
13 designs as part of the work.

14 So I could assess prior art, and
15 also comment as to the capability of somebody who
16 is skilled in the art to be able to combine these
17 and be able to sort of define whether they're
18 obvious or not.

19 So these would be things that would
20 be necessary for me in order to go and provide
21 that opinion, and that is what I base it on.

22 Q. Have you ever done that type of an
23 analysis before you were asked to do so in
24 connection with preparing the declaration that you
25 submitted in this case?

1 to do with the manufacturing process which makes
2 creation of rounded corners the -- I would say the
3 preferred alternative versus sharp corners in
4 terms of -- both in terms of manufacturing as well
5 as the mechanical strengths of that structure.

6 Q. Now, the phone we looked at earlier
7 called the MODU-1 --

8 A. Yes.

9 Q. -- seemed to have very sharp
10 corners to me.

11 Were you not concerned about these
12 functionality issues that you have just described
13 when you were designing that phone?

14 A. So on the -- specifically on the
15 MODU-1, the corners are not very sharp. They are
16 rounded. In fact, the need to round these metal
17 corners have cost MODU significantly.

18 If you want, I can refer you to the
19 image itself.

20 Q. Yeah. Let's refer to the image,
21 and maybe you can show how they're rounded,
22 because they look square to me.

23 A. Again, on the form here the metal
24 is curved, but this is not a 90-degrees curving.
25 It is -- it has some radius on the turnaround,

1 both here and in that size.

2 There is also rounding of the metal
3 when -- again, you can't see that here, but on the
4 top and bottom, these parts, when they basically
5 end, it doesn't end as a sharp corner, but rather,
6 the metal was bended over all through in order to
7 not create sharp corners.

8 Q. So are they rounded, like, as --
9 from the front towards the back; is that the edge?

10 A. From the front internally, the
11 whole part was basically bent over itself.

12 Q. So the front looks -- because the
13 front -- it looks -- it looks straight in this
14 photo we're looking at.

15 A. In the photo, again, I'm saying --

16 Q. So where --

17 A. -- the left and right here, this
18 one is basically bending over the sides. And
19 again, I'm saying it doesn't bend in 90 degrees.
20 There is some radius there.

21 And if we're referring to the top
22 part when this one ends, the metal here again is
23 not cut straight, but rather folds over in.

24 Q. When you say it folds over, are you
25 talking over the top?

1 A. It's over the top of itself. If
2 you would like, I can sort of make that if you
3 want to sketch that.

4 Q. Is it over the top, like, towards
5 the back of the phone?

6 A. It doesn't go through to the other
7 side.

8 Q. So why don't we look at the MODU-T.

9 A. Sure.

10 Q. If you'd look at the design on the
11 MODU-T on the next page.

12 A. Sure.

13 Q. MODU-T phone design.

14 A. Yeah.

15 Q. Does this demonstrate in any way
16 what you were describing on the MODU-1?

17 A. No. That is a different design.
18 This one is mostly made of plastic. The other one
19 was metal. So the whole construction is slightly
20 different.

21 So here on this one, you can see
22 the bottom part here. You have the corners
23 rounded on both sides. On the upper part, it's
24 simply -- you don't have sharp corners here
25 because that basically -- this part itself is not

1 Let me see if there are other
2 elements mentioned here. Again, the other
3 statement is regarding the fact that black usually
4 is perceived -- when you take something in black,
5 it's usually perceived as slimmer, but that's, I
6 would say, a very general thing that I think most
7 people are aware of.

8 Q. So are you saying that the phone
9 shown on the first page of Exhibit 207 does not
10 achieve the functionality that you describe in
11 Exhibit 109 -- I'm sorry -- in paragraph 109 and
12 in the following paragraph in your declaration?

13 MR. ZELLER: Mischaracterizes the
14 witness' testimony.

15 A. Again, what I'm saying is if I read
16 each one of these, obviously it does not achieve
17 being black since it's white. So that would mean
18 that it's not targeting the most popular color by
19 consumers.

20 As for its ability to -- again,
21 since black makes things look slimmer, since it's
22 white, it does not enjoy that specific advantage.
23 And as I said, in terms of the looks, when the
24 screen is switched off, then you will have
25 contrast versus the exterior, just because the

1 display is not white. So that's basically what
2 I'm saying.

3 Q. One of the items you have in the
4 paragraph following 109 is -- with reference to
5 the title that you have is "Blackness of Surface."
6 You state:

7 "It efficiently hides the wiring
8 and electronic components underlying it."

9 Do you think that doesn't work --
10 that that's not the case with the white iPhone
11 shown on the first page of Exhibit 207?

12 MR. ZELLER: Do you -- do you want
13 him to comment on the construction of it?

14 First of all, if Apple actually
15 would agree that he can see Apple's internal
16 documents and provide an opinion.

17 No. 2, as far as I know, we have
18 repeatedly asked and Apple has hidden its
19 documents as to the development of the white
20 iPhone, which, by the way, common sense, as
21 well as public knowledge, state that there
22 were a whole variety of technical,
23 manufacturing and engineering challenges in
24 the development of that phone. It is widely
25 known.

1 So is Apple going to produce those
2 documents? I mean, I'm going to start
3 instructing this witness on this, because if
4 you want an opinion on it, we're happy to give
5 it. But Apple needs to stop concealing the
6 documents relating to it, particularly from
7 this witness.

8 Q. Mr. Sherman, I think you can look
9 at the photograph on the front page of Exhibit 207
10 and tell me if you personally believe, looking at
11 that photograph, that the white hides the wiring
12 and electronic components underlying it.

13 If you are not able to answer that
14 question based upon looking at the front of
15 Exhibit 207, let me know.

16 MR. ZELLER: Do you have the phone?
17 Why don't you give him the phone?

18 MS. TAYLOR: I don't have the
19 phone.

20 MR. ZELLER: Well, I think it's
21 your responsibility to bring it.

22 Also, I mean, what is the
23 construction of this? You keep on saying "the
24 white." Is that -- is that some sort of solid
25 piece? Is it some sort of painting over it?

1 Is it a coloring? I mean, what is it?

2 MS. TAYLOR: I'm asking him about a
3 photograph. If he is unable -- if he is
4 unable --

5 MR. ZELLER: Counsel, if you
6 provide the information for him to answer your
7 question --

8 MS. TAYLOR: Mr. Zeller, I've
9 asked -- let me finish --

10 MR. ZELLER: Why are you
11 interrupting me?

12 MS. TAYLOR: Because you
13 interrupted me.

14 MR. ZELLER: No, I did not
15 interrupt you.

16 MS. TAYLOR: I am asking him if he
17 is able to tell me if it hides the components.
18 If he cannot look at this and tell me if he
19 thinks it hides the components based upon this
20 picture, that's fine. He can tell me that.
21 That's all I'm asking.

22 MR. ZELLER: Counsel, that's still
23 misleading. And you know it's misleading.
24 That is not --

25 MS. TAYLOR: That's all I'm asking.

1 MR. ZELLER: You are -- you are
2 refusing to provide him a phone or other kinds
3 of information to provide that. And then
4 you're going to pretend, because of your
5 refusal and Apple's refusal to comply with
6 discovery, that somehow that is an appropriate
7 criticism of this expert.

8 So provide the white iPhone so we
9 can see it, or explain what is covering it.

10 MS. TAYLOR: What is covering what?

11 MR. ZELLER: Does Apple produce
12 that information?

13 MS. TAYLOR: What is covering what?

14 MR. ZELLER: You keep on asking,
15 does the white perform the same function.
16 What is the white made of? Is it solid
17 material? Is it paint? Is it a coating?

18 MS. TAYLOR: We need to move on
19 because you're not going to be permitted to
20 answer questions on that picture.

21 Q. So please look at the following
22 picture, which is a phone.

23 A. This one?

24 Q. Okay. If you'll go to the second
25 page of Exhibit 207.

1 the device shown in Exhibit G has a completely
2 flat surface?

3 A. Based on what is shown in the
4 design patent here, the answer would be yes, it
5 does have a flat surface.

6 And that is -- can be understood
7 based on the -- there's a diagram which is titled
8 A minus A dash, which is basically a cut-through
9 of the device, which basically shows that the
10 device face is completely flat.

11 Q. So I understand you looked at F and
12 G?

13 A. As well as the other ones.

14 Q. And the other ones. I'm not saying
15 you didn't, but you highlighted F and G. And so
16 we don't get an objection to the preamble, skip
17 all that.

18 Is there a particular piece of
19 prior art here that you think discloses the rim
20 shown in the '889 patent?

21 A. I'm sorry. You've asked whether it
22 shows the exact rim?

23 Q. Yes.

24 A. Okay. I'm sorry. It's a bit late.
25 I'm not completely focused.

1 Q. We understand.

2 A. So if you look at Exhibit -- if you
3 look at Exhibit H, which is 172-8, the rim itself
4 around the display here on the front face, which
5 is what we were discussing, looks similar,
6 excluding the extra feature that it has.

7 But again, excluding of that would
8 be trivial for somebody who is skilled in the art.
9 But apart from that, it has an appearance that is
10 very similar to what is shown in the '889 design
11 patent.

12 Q. I'm going to ask you to do me a
13 favor because there are two pictures on the front.
14 Can you circle the one you're talking about so we
15 know what you're talking about?

16 MR. ZELLER: He should probably
17 circle the actual exhibit.

18 MS. TAYLOR: Oh, circle the one
19 that's in the exhibit. That's right. Not in
20 your copy of the declaration.

21 Q. There we are. Circle the one that
22 has the rim that you're discussing. And I'm going
23 to put it back in here so it's safe.

24 A. And as I mentioned, after
25 reviewing --

1 analyses that it's done for the relevant
2 patents in this case. Once you stipulate
3 that, he'll answer the questions. So why
4 don't you tell me?

5 MS. TAYLOR: So in any event, if
6 the Judge orders you to come back, we will see
7 you again. If not, we won't. But thank you.

8 THE VIDEOGRAPHER: This marks the
9 end of today's deposition. The time is
10 7:00 p.m., and we're going off the record.

11 (Time Ended: 7:00 p.m.)

12

13

14 _____
ITAY SHERMAN

15

16 Subscribed and sworn to
17 before me this day
18 of , 2011.

19

20 _____

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE

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