

EXHIBIT F

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

5 APPLE INC., a California
6 corporation,

7 Plaintiff,

8 vs.

CASE NO. 11-CV-01846-LHK

9 SAMSUNG ELECTRONICS CO., LTD.,
10 A Korean business entity;
11 SAMSUNG ELECTRONICS AMERICA,
12 INC., a New York corporation;
13 SAMSUNG TELECOMMUNICATIONS
14 AMERICA, LLC, a Delaware
15 limited liability company,

16 Defendants.
17 _____/

18 C O N F I D E N T I A L
19 A T T O R N E Y S ' E Y E S O N L Y
20 O U T S I D E C O U N S E L

21 VIDEOTAPED DEPOSITION OF RAVIN BALAKRISHNAN, Ph.D.
22 SAN FRANCISCO, CALIFORNIA
23 TUESDAY, AUGUST 16, 2011

24 BY: ANDREA M. IGNACIO HOWARD, CSR, RPR, CCRR, CLR
25 CSR LICENSE NO. 9830
JOB NO. 41176

1 TUESDAY, AUGUST 16, 2011

2 9:10 a.m.

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6 VIDEOTAPED DEPOSITION OF RAVIN BALAKRISHNAN,
7 Ph.D., taken at QUINN EMANUEL URQUHART &
8 SULLIVAN, 50 California Street, 22nd Floor,
9 San Francisco, California, pursuant to
10 Notice, before me, ANDREA M. IGNACIO HOWARD,
11 CLR, CCRR, RPR, CSR License No. 9830.

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

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3 FOR APPLE INC.:

4 MORRISON & FOERSTER

5 By: ANDREW E. MONACH, Esq.

6 DEOK KEUN AHN, Esq.

7 425 Market Street

8 San Francisco, California 94105

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12 FOR SAMSUNG ELECTRONICS CO. LTD:

13 QUINN EMANUEL URQUHART & SULLIVAN

14 By: KEVIN JOHNSON, Esq.

15 HENRY LIEN, Esq.

16 TODD BRIGGS, Esq.

17 MARK TUNG, Ph.D., Esq.

18 555 Twin Dolphin Drive

19 Redwood Shores, California 94065

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22

23 ALSO PRESENT: Alan Dias, Videographer

24

25

1 SAN FRANCISCO, CALIFORNIA

2 TUESDAY, AUGUST 16, 2011

3 9:10 a.m.

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5
6 THE VIDEOGRAPHER: Good morning.

7 This is the beginning of Disk No. 1, of the
8 videotaped deposition of Dr. Balakrishnan, in the
9 matter of Apple versus Samsung, et al., in the United
10 States District Court, Northern District of
11 California, San Jose Division.

12 We are located today at 50 California Street,
13 in the City of San Francisco, California.

14 Today's August 16, 2011, and the time is
15 9:10 a.m.

16 My name is Alan Dias from TSG Reporting.
17 Here with me is Andrea Ignacio.

18 Counsel, would you please identify yourself
19 for the record.

20 MR. JOHNSON: This is Kevin Johnson on behalf
21 of Samsung.

22 MR. MONACH: Andrew Monach, representing
23 Apple and the witness.

24 MR. TUNG: I'm Mark Tung, representing
25 Samsung.

1 MR. LIEN: Henry Lien, representing Samsung.

2 MR. BRIGGS: Todd Briggs, representing
3 Samsung.

4 MR. AHN: Matthew Ahn, of Morrison &
5 Foerster, on behalf of Apple.

6 THE VIDEOGRAPHER: Will the court reporter
7 please swear in the witness.

8
9 RAVIN BALAKRISHNAN, Ph.D.,
10 having been sworn as a witness,
11 by the Certified Shorthand Reporter,
12 testified as follows:

13
14
15 THE VIDEOGRAPHER: You may proceed.

16
17 EXAMINATION BY MR. JOHNSON

18 MR. JOHNSON: Good morning, Mr. Balakrishnan.

19 Q Have -- you've been deposed before?

20 A Yes, I have.

21 Q Okay. About how many times?

22 A About a half a dozen times, roughly.

23 Q I'll try to ask coherent questions, and if
24 you -- hopefully you'll provide some answers, and
25 if -- to the extent that you don't understand any of

1 my questions, I'd appreciate it if you'd just let me
2 know, and I'll do my best to try and rephrase the
3 question; is that a deal?

4 A Fair enough.

5 (Document marked Balakrishnan Exhibit 96
6 for identification.)

7 MR. JOHNSON: Okay. I'll show you what I've
8 marked as Exhibit 96, which is a Notice of Deposition
9 of Ravin Balakrishnan.

10 Q Do you understand that you're appearing today
11 for deposition pursuant to an agreement between
12 Samsung and Apple and their counsel?

13 A Yes.

14 Q Okay. You've done a fair amount of work for
15 Apple in the past; right?

16 MR. MONACH: Object to form.

17 THE WITNESS: I've done some amount of work
18 for Apple, yes.

19 MR. JOHNSON: Okay.

20 Q Well, you've -- you've -- you've testified on
21 behalf of Apple in other cases; right?

22 A Yes.

23 Q About how many other cases?

24 A I testified in the Apple/Elan case at the
25 ITC; and more recently, I've been engaged in the Apple

1 and Motorola case, and in that one, the only testimony
2 I've given so far is a deposition about two weeks ago.
3 I'm not sure if that's called testimony. It's not --
4 it wasn't in front of a judge.

5 Q Okay. The -- the Elan case, there were
6 actually -- there were two cases there; right?

7 A There was an ITC case and a district of
8 California case, yes.

9 Q Okay. And were you retained to testify in
10 both of those cases?

11 A I have been retained for both cases, but I've
12 only testified so far in the ITC case.

13 Q Okay.

14 A The original district of California case, I
15 think there was a Markman hearing before I was
16 engaged, and I was not involved in that.

17 Q Generally, what is the technology involved in
18 the Elan cases?

19 A In the Elan case, it's one patent that's
20 referred to as the '352 patent, I believe to Bassett
21 and others; and the technology there is on analyzing
22 data from a touch -- touch-sensitive input device to
23 determine a number of finger contacts.

24 Q Does the technology overlap at all with
25 your tech- -- the technology in this case?

1 MR. MONACH: Object to form; vague.

2 THE WITNESS: To the extent that, very
3 broadly speaking, they are both concerning touch input
4 devices, yes, but the real subject matter of the Elan
5 case was on this algorithm for analyzing the data
6 coming out of the touch, the touch device. Whereas,
7 here, it's more of a user interface issue, at least
8 the three -- well, the current patent, right, we're
9 talking about today here.

10 MR. JOHNSON: Q. In the Elan case, Apple is
11 a defendant; right?

12 A That is correct.

13 Q And about how many hours have you billed in
14 the Elan case?

15 A Probably about 2- to 300 hours, roughly. I'd
16 have to look it up to get the exact number.

17 Q You also mentioned --

18 MR. MONACH: Excuse me just a second.
19 Just -- this may or may not be confidential, and so I
20 think, as a protective matter, we'll just designate
21 the entire transcript subject to redesignation as
22 attorney's eyes only, and we'll make dedesignations
23 within the time frame.

24 MR. JOHNSON: So --

25 THE WITNESS: A quick question, though. I'm

1 not sure how much I'm allowed to divulge about the
2 Elan case. I would like some advice --

3 MR. JOHNSON: I'm -- I'm not gonna go into a
4 lot of detail.

5 THE WITNESS: Okay.

6 MR. JOHNSON: I -- I have some information
7 about it, but I just want to -- we'll take each
8 question --

9 THE WITNESS: Fair enough.

10 MR. JOHNSON: -- as it comes up.

11 But, Andy, going to your comment, you -- we
12 obviously are under some pretty tight time
13 constraints, and so, you know, we want to make -- and
14 I haven't even started asking really any substantive
15 questions yet, so I -- I think it's sort of improper
16 for you to -- to designate the whole transcript going
17 forward, but be it as it may, I mean, I just -- I --
18 you know, we need to get the dedesignations done
19 quickly, and we can talk about it during a break and
20 figure out how we can -- how we can get that done, but
21 I'll -- I'll keep moving.

22 Q The Motorola cases, now, you've -- you've
23 been retained in more than one of those cases; right?

24 A More than one of which cases?

25 Q The Motorola cases.

1 A So far, I believe, I've only been retained in
2 the ITC case filed for Motorola.

3 Q There -- there are two ITC cases; right?

4 A This is the one where I'm working for Apple
5 as a -- I guess, the plaintiff.

6 Q Okay.

7 A So that's a 7 -- 750, I think.

8 Q A 750 --

9 A I got to check the number --

10 Q Yeah, that --

11 A -- but it's a plaintiff's case.

12 Q -- I think -- I think that's right.

13 But you've also, as far as I can tell in the
14 record, the publicly available record, you've --
15 you've also been retained for the 745-case.

16 MR. MONACH: Object to form.

17 THE WITNESS: The retention letter may have
18 included both cases, but I haven't done any work for
19 the 745, as far as I can tell.

20 MR. JOHNSON: Okay.

21 Q What about in the Apple versus Motorola
22 Wisconsin cases? Have you been involved in any of
23 those cases?

24 A I have not done any work. I believe, at the
25 initial conversations with the Apple counsel at Weil,

1 you know, I think they -- they put out a variety of
2 patents for me to look at, and the Wisconsin case did
3 come up as a possibility, but I have not done any work
4 on it.

5 Q Okay.

6 A So I can't recall if the retention letter
7 included this whole umbrella of cases. It might have.

8 Q According to the publicly available
9 information, you've submitted protective orders
10 subscriptions for the 745 case in the ITC, the 750 ITC
11 case, and it appears, also, that the two Wisconsin
12 cases; but it sounds like the only work you've done,
13 at least thus far, most of the work has been on the
14 750 Apple offensive case; right?

15 MR. MONACH: Object to form.

16 THE WITNESS: Any substantive work, yes.

17 MR. JOHNSON: Yeah.

18 THE WITNESS: Beyond just maybe looking at
19 the initial patents for some of the other cases --

20 MR. JOHNSON: Okay.

21 THE WITNESS: -- but I haven't done any --
22 yeah, the 750-case is the only one I've done
23 significant work on.

24 MR. JOHNSON: Q. And how many hours have you
25 billed so far on the Motorola cases?

1 A I can roughly tell you the hours I've spent.
2 I haven't billed all of it because some of it happened
3 very recently here, and I haven't submitted my
4 invoices. Probably in the order of 80 hours, roughly.

5 Q What patents are you substantively involved
6 in with respect to the Motorola cases?

7 MR. MONACH: Dr. Balakrishnan, we're not
8 involved -- my firm is not involved in the Motorola
9 case, and it may well be that work that -- work that
10 you've done that isn't publicly known, for example, by
11 filing something is confidential and is the work
12 product of the firm representing Apple in that case,
13 so I would caution you not to disclose anything that
14 is not -- has not been made public in that case.

15 It's irrelevant to this case, in our view.

16 THE WITNESS: Okay. I think your question
17 was what patents, and I believe that is, based on my
18 declaration which I believe, are public. The two
19 patents I've primarily been working on is the --
20 what's called the '828 patent, and the other one is
21 the '430 patent. The full number, I'd have to look it
22 up.

23 MR. JOHNSON: Yeah.

24 Q And, just generally, what do those patents
25 relate to?

1 A The '828 patent is about taking data from
2 a -- from a touch device and fitting the ellipses to
3 that data for -- in order to determine what types of
4 contact, whether it's fingers or thumbs or other kinds
5 of body parts.

6 The '430 patent is more to do with the
7 object-oriented located system for -- for operating
8 systems.

9 Q And you've also testified -- or strike that.
10 You've also been involved in the -- in
11 another ITC case on behalf of Nintendo®; right?

12 A That's correct.

13 Q Did you testify in a hearing at that -- in
14 that ITC case?

15 A Yes, I did.

16 Q Just generally, what -- what did the patent
17 relate to or patents relate to in that case?

18 A The -- there were several patents. The one I
19 was working on was relating to a zooming user
20 interface for television programming.

21 Q Okay. I think you -- you said earlier that
22 you testified in about half a dozen hearings or
23 depositions. Beyond the Elan, Motorola, and Nintendo®
24 cases, what -- what other cases did you testify in?

25 A Those are the three cases I've been deposed

1 in. I've only testified in the Nintendo® -- when --
2 when -- when I say "deposed" -- or when I say
3 "testified," I mean in court --

4 Q Right.

5 A -- I've done the Nintendo® case and the
6 Apple/Elan case. The Motorola cases, I've just been
7 deposed.

8 Q Okay. What were you retained to do in this
9 particular case?

10 A In the Apple/Samsung case?

11 Q Yes.

12 A My initial retention is to look at the -- the
13 patent, this '351 patent.

14 Q The '381?

15 A Sorry, '381 patent. So many numbers floating
16 around.

17 The '381 patent and consider infringement
18 analysis. That is my current retention.

19 Q When were you retained?

20 A I think the initial conversations with
21 Mr. Ahn, Matthew Ahn here, was probably a couple of --
22 two or three months ago, roughly. I'm not sure
23 exactly when the retention letter was signed. It was
24 probably a few weeks after that.

25 Q What specifically did you do after you were

1 retained?

2 MR. MONACH: Let me just caution you that in
3 describing what you did, don't disclose any
4 communications that you had with counsel, other than
5 any facts that you relied on for the opinions you're
6 giving in this case or any assumptions you were told
7 to make in giving your opinions, but you can answer
8 the question.

9 THE WITNESS: So, if I recall, your question
10 is what did I do since being retained.

11 With regards to this case, obviously read the
12 patent in detail, looked at the -- what they call the
13 file history, prosecution history of the patent.

14 There was a reexamination of the patent to
15 the patent office, I believe initiated by Nokia, that
16 I looked at that document, and then I looked at the --
17 the four devices that Apple alleges -- the four
18 Samsung devices that Apple alleges infringes the '381
19 patent.

20 MR. JOHNSON: Okay.

21 Q Did you do anything else?

22 A Well, I've then subsequently wrote -- wrote
23 the declaration, if that --

24 Q Okay. Is that it? I'm just trying to get
25 the -- the comprehensive list.

1 A I mean, there was conversations with counsel
2 throughout this, trying to understand what -- what
3 they -- what Apple contended infringed from these
4 devices.

5 Q Did -- did counsel for Apple tell you what
6 Apple contended infringed the '381 patent?

7 MR. MONACH: I'm gonna object to the form of
8 the question, and I will instruct the witness not to
9 answer, except with respect to facts that you relied
10 on for preparing your declaration or assumptions that
11 you relied on for your declaration.

12 THE WITNESS: So counsel for Apple informed
13 me that these four devices were being accused of
14 infringement, and the particular applications that
15 Apple alleged were infringing, they informed me of
16 that.

17 MR. JOHNSON: Q. And then you confirmed
18 there was infringement?

19 A That is correct. I looked at those
20 applications, looked at those devices.

21 Q When is the first time you -- you -- you saw
22 the '381 patent?

23 A Probably very shortly, a few days or even a
24 day or two, after my initial call with Mr. Ahn. He --
25 I think the first thing he did was send me the patent.

1 Q So you haven't been retained by Apple on
2 the '381 patent in any of the other litigations or
3 licensing negotiations?

4 A I've been retained by Apple for the -- I was
5 also retained for the Apple/Samsung case in the
6 Netherlands, which recently -- just last week had a --
7 had a preliminary injunction hearing, I believe is
8 what it's called. Obviously, the patents there were
9 the -- were not the '381 patent, per se. It was a
10 European -- a European patent that has some
11 similarities with the '381, but not -- not exactly the
12 same.

13 Q Did you attend the hearing?

14 A Yes, I did.

15 Q Did you submit a declaration in connection
16 with that?

17 A Yes, I did.

18 Q When was that declaration submitted?

19 MR. MONACH: Object to the form; lack of
20 foundation.

21 THE WITNESS: I'm not sure when the lawyers
22 submitted it to the judge -- to the court, but I wrote
23 it probably about two or three weeks before the
24 hearing.

25 MR. JOHNSON: Q. As part of your -- your

1 work on this matter, did you talk to the inventor of
2 the '381 patent?

3 A No, I did not.

4 Q Did you review his deposition transcript?

5 A I briefly reviewed it in the last couple of
6 days.

7 Q Why do you say "briefly"?

8 A If I didn't, you know, cross-check every
9 little detail in there. I read -- read the whole
10 thing. There's a lot of details.

11 Q Did you skim it?

12 A Maybe a little bit more than a skim.

13 Q What's a little bit more than a skim?

14 A Well, I guess, what I'm saying is, you know,
15 sometimes I referred to other documents and so forth,
16 and I didn't go and look at those documents to
17 cross-check things.

18 Q Okay.

19 A So I read the doc -- read the transcript, but
20 I didn't do all the cross-checking who one, who read
21 it, very thoroughly might have done.

22 Q Okay. Did you look at any other deposition
23 transcripts?

24 MR. MONACH: I'm gonna instruct the witness
25 not to -- well, not to answer, unless you've reviewed

1 something that affects your opinions in this case.

2 THE WITNESS: So, I guess, I -- I can't
3 answer the question.

4 MR. JOHNSON: Q. Why not?

5 A As instructed by counsel, anything else I
6 might have reviewed, I don't believe had any impact on
7 this case.

8 Q Did you review the deposition transcript of
9 Mr. Lutton?

10 MR. MONACH: Same instruction.

11 THE WITNESS: No, I have not.

12 MR. JOHNSON: Q. Did you talk to any of the
13 lawyers involved in the prosecution of the '381
14 patent?

15 MR. MONACH: Object to form.

16 THE WITNESS: When you say "the prosecution,"
17 the initial filing and running it through the patent
18 office?

19 MR. JOHNSON: Q. The back and forth between
20 the patent office and Apple.

21 A No, I did not.

22 Q Did you talk to anybody at Apple with respect
23 to your work on the '381 patent?

24 MR. MONACH: You can answer that "yes" or
25 "no."

1 THE WITNESS: Yes, in that I, at the
2 Netherlands hearing, met or ran into a couple of the
3 Apple in-house counsel, and I think those -- friendly
4 discussion, "Oh, you're also working on that case,"
5 that kind of thing, but nothing substantive.

6 MR. JOHNSON: Q. Who -- who did you see in
7 the Netherlands from -- from Apple?

8 A Jana Witt and another lady by the name of
9 Cindy Wheeler, I believe.

10 Q What kind of phone do you have? Do you have
11 a smartphone?

12 A I do, yes.

13 Q And what do you have?

14 A I have a variety of them. I -- I --

15 Q You do now.

16 A In my pocket right now is a Nokia phone, but
17 until about a week ago, I was carrying an Apple
18 iPhone.

19 Q How come you got rid of it?

20 A The Apple iPhone, I dropped it and it stopped
21 working, so I had to dig in my drawer for a temporary
22 replacement.

23 Q And what about, have you -- have you had any
24 Android phones?

25 A I personally have not carried an Android

1 phone, but in my lab -- in my research lab at the
2 University of Toronto, we have a variety of Android
3 phones that we use for in different projects.

4 Q Like, what? Which ones?

5 A I believe it's a -- probably some HTC ones.
6 There might be some Samsung ones, as well.

7 Q Are you involved in any of Apple's work
8 against HTC?

9 A No, I'm not.

10 Q Okay. When's the first time you saw a
11 Gal- -- a Samsung Galaxy phone?

12 MR. MONACH: Object to form; vague.

13 THE WITNESS: I can't answer that precisely.
14 It's --

15 MR. JOHNSON: Q. Approximately.

16 MR. MONACH: Same objections.

17 THE WITNESS: Some months ago, year -- maybe
18 almost a year ago. We see a lot of -- I see a lot of
19 phones coming through my lab.

20 MR. JOHNSON: Q. How come?

21 A How -- how come I see these phones? Some of
22 my research involves user interfaces for mobile
23 devices, and depending on the project, some of my
24 graduate students will, you know, pick up a particular
25 model, and we happen to have them around a lot.

1 Q And does your anal- -- does your lab analyze
2 the UI features of the various phones that are out
3 there?

4 A We don't do that as an exercise, per se.
5 Sometimes if a student is working on a particular type
6 of interface element, he may or she may look at some
7 of the other work already done, you know, classic
8 literature of use, so to speak; but, you know, it's
9 not our job in the whole research lab to go out and
10 analyze everything on every phone.

11 Q Okay. I want to show you a Galaxy S phone
12 that's been marked as Exhibit 20.

13 A Okay.

14 Q And I'd like for you to look at the -- the
15 gallery and contacts features or applications, and
16 verify whether, for example -- starting with the
17 gallery, whether the gallery infringes the '381
18 patent.

19 MR. MONACH: I'll object to the --

20 MR. JOHNSON: And then -- sorry.

21 MR. MONACH: Go ahead -- go ahead and finish.

22 MR. JOHNSON: I just want -- and then I --
23 once you -- once you look at, and then I'd just like
24 for you to walk me through how it infringes, and we'll
25 just show it to the camera, since that's what we're

1 here for is to record what happens, so...

2 MR. MONACH: I'll -- I'll object to the form
3 of the question and the posing the hypothetical on a
4 phone that appears to be one that's not part of his
5 declaration. So I object he hasn't been given
6 sufficient time or opportunity to form a -- an
7 opinion, but to the extent the witness is able, I'll
8 allow him to go question by question to go through
9 this exercise, if he can.

10 And, Dr. Balakrishnan, if for some reason you
11 can't or you need more -- need something, feel free to
12 speak up.

13 THE WITNESS: So, I guess, to put in context
14 here, right, I'm not sure if this is exactly one of
15 the phones that I've looked at, or the one I looked at
16 was a Galaxy S 4G. So if this is a new phone, I'm
17 doing this on the fly here. So just to put that in
18 context, and if you just give me a minute to get
19 this -- if you don't mind, if we can get a copy of the
20 patent so I can make sure, as I'm walking through,
21 that I'm hitting all of the claims.

22 MR. MONACH: I'll also object to the extent
23 that the question calls for an extended narrative.

24 MR. JOHNSON: What exhibit was it before?

25 THE WITNESS: Thank you.

1 MR. JOHNSON: You can take mine.

2 MR. MONACH: If you -- if you've got an extra
3 one --

4 MR. JOHNSON: Q. I've placed before you what
5 we've previously marked as Exhibit 71, which is
6 the '381 patent.

7 A Does she need to mark it?

8 Q No.

9 A Okay.

10 MR. JOHNSON: You want another one?

11 MR. MONACH: All right.

12 MR. JOHNSON: Okay.

13 Q And you...

14 A I'm sorry.

15 Q Okay. So you've -- you've looked at the
16 gallery application and --

17 A Yes, I just did.

18 Q Okay. So can you -- first of all, is it your
19 opinion that Exhibit 20 infringes Claim 1 of the '381
20 patent?

21 A Based on what I'm looking at right now, in my
22 opinion -- in my quick overview of it, my opinion is,
23 yes, it does infringe Claim 1, yes.

24 Q Okay. Can you explain to us the basis for
25 your opinion?

1 A Sure. So I'll just walk you through the --
2 the claims --

3 Q Yeah.

4 A -- and how it matches them.

5 Q And just as you go through it, as you're
6 manipulating the images, you can just show it to the
7 camera so the camera can -- can focus on it.

8 THE WITNESS: Do I stand up or --

9 MR. JOHNSON: No, just -- just like that.

10 He'll --

11 THE WITNESS: Oh, you can focus in on it?

12 MR. JOHNSON: -- he'll do the work.

13 THE WITNESS: Okay.

14 So just to start with this, the claim, the
15 preamble states a computer-implemented method. This
16 is clearly a smartphone that is a mobile computer,
17 compromising a device of a touchscreen display. It
18 clearly has a touchscreen display. When I touch it,
19 it -- it reacts to my touches.

20 It -- I've got here a -- just a moment
21 here -- I've got here a -- it says "displaying a first
22 portion of an electronic document." I've got here a
23 first portion of an electronic document.

24 Can you see that on the camera?

25 MR. JOHNSON: It may -- it'd be helpful if

1 you just sort of turn it.

2 A This way?

3 Q Yeah.

4 A Okay. It may be a little difficult. It just
5 flipped around and did something.

6 Q If you hold it --

7 A Touch sensor. So tell me how you want it,
8 and then I'll -- I'll keep it that way and --

9 Q Hold it straight up like that, and then you
10 can --

11 A All right. I'm gonna try and manipulate it,
12 if I can.

13 Q Okay. So what -- so what are -- so what are
14 we --

15 A Let me just do this again.

16 Q Okay. So you zoomed in on it first; right?

17 So is it fair to say that your opinion -- for
18 purposes of the gallery here, the -- the photograph
19 has to be zoomed in on it?

20 MR. MONACH: Object to the form of the
21 question; incomplete hypothetical; inadequate
22 opportunity to examine the device; vague.

23 You can answer.

24 THE WITNESS: In this particular example that
25 I'm gonna walk you through is an infringing example, I

1 did zoom in. But whether or not it has to be zoomed
2 in, I need to spend a bit more time making sure
3 whether it has to or not. I have not done that right
4 now on this device.

5 MR. JOHNSON: Okay.

6 THE WITNESS: So, on this device, I went
7 through the -- the preamble. It's clearly a
8 computer-implemented method. It has a device with a
9 touchscreen display. It is displaying right now a
10 first portion of an electronic document. The
11 electronic document here happens to be a photograph or
12 an image, some kind of a picture of something.

13 MR. JOHNSON: Q. Is the electronic doc --
14 what -- what does an "electronic document" mean in the
15 context of this patent?

16 MR. MONACH: Object to form to the extent
17 it's calling for a legal conclusion, but you can give
18 your views on that.

19 THE WITNESS: In the context of this patent,
20 my understanding, having read the patent and the
21 claims, is the electronic document is some visual
22 representation on the screen that has a defined length
23 and a width, as an example, or defined set of
24 boundaries, because they may not have to be a
25 rectangular set of boundaries.

1 MR. JOHNSON: Q. So can it -- it can be
2 anything with a defined length and width?

3 A It could be any visually represented thing
4 with a defined boundary. I'd rather use the word
5 "boundaries," because length and width may connote a
6 rectangular thing. It may not be a rectangle,
7 necessarily.

8 Q Okay. So an electronic document is anything
9 that can be visually represented with a defined
10 boundary?

11 MR. MONACH: Object to the form of the
12 question; object as calling for a legal conclusion.

13 THE WITNESS: In the context of this patent
14 and the claims, reading the patent and the claims, I
15 would say that would be a -- my definition of an
16 electronic document would be something visually
17 representable on the screen that -- that has a defined
18 set of boundaries.

19 MR. JOHNSON: Okay.

20 Q How about the next limitation?

21 A Okay. So, as I said earlier, it's got a
22 first portion of an electronic document. We already
23 went through that.

24 Q And -- and -- I'm sorry.

25 A I'm sorry.

1 Q What does "first portion" mean?

2 MR. MONACH: I'm going to object to the form
3 of the question to the extent it calls for a legal
4 conclusion.

5 THE WITNESS: In -- in this particular
6 example, I would say the first portion is the -- the
7 portion of the image that we see displayed on the
8 screen, which I don't know how to describe this --

9 MR. JOHNSON: Can you zoom in more on the
10 screen, just so we see it better. Yeah, okay. That's
11 good. Thanks.

12 THE WITNESS: Everything, including the
13 yellow blob in the middle and the blue stuff around
14 it.

15 MR. JOHNSON: Q. So it's everything that's
16 shown on the screen is the first portion?

17 A Well, obviously, not this word "Samsung" and
18 things like that.

19 Q Yeah.

20 A The actual display, maybe if I -- without
21 touching it, if I can sort of indicate, you see the
22 bottom boundary there --

23 Q Okay.

24 A -- the top boundary, right boundary, and left
25 boundary?

1 Q Okay.

2 A Should I keep going?

3 Q Yes.

4 A Okay.

5 And then it says "After displaying the first
6 portion of an electronic document, detecting a
7 movement of an object on or near the touchscreen
8 display."

9 So, in this case, I'm -- I'm going to -- I'm
10 gonna deal with that and the next element of the
11 claim, because once I touch it, it's gonna -- it's
12 gonna move; but, essentially, I'm gonna put my finger
13 down, and I'm gonna move it, so it's gonna detect a
14 movement of an object. The object, in this example
15 that I'm doing, would be my finger on the touch
16 display. I'm gonna do that in a second.

17 And then, the next element says "In response
18 to detecting that movement, translating the electronic
19 document displayed on the touchscreen display in a
20 first direction to display a second portion of the
21 electronic document, wherein in the second portion is
22 different from the first portion."

23 So that's -- I'm gonna do those two elements
24 right now. So I've got -- got my finger touching it.
25 So that's my object on or near the touchscreen

1 display. As I move and I pause for a second, it is
2 now displaying a second portion of that same document,
3 which is different from the first portion. As you can
4 see, it's moved to the -- to the right. The yellow
5 blob is now intersecting the right margin of the
6 screen. So that's the second portion.

7 And then, if I go to the third -- I'm not
8 sure what the -- the next element of the claim, it
9 says "In response to an edge of the electronic
10 document being reached while translating the
11 electronic document in the first direction while the
12 object is still detected on or near the touchscreen
13 display, displaying an area beyond the edge of the
14 document and displaying a third portion of the
15 electronic document, wherein the third portion is
16 smaller than the first portion."

17 So, here, I still got my -- my finger or the
18 object on the -- on or near the touchscreen display,
19 and I'm gonna keep moving it in the same direction I
20 was moving earlier, and I reached an edge. The edge
21 is now on the left-hand side. You see the edge of the
22 document is -- is revealed, so in response to the edge
23 being reached while translating, which is what's
24 happened there, it displays an area beyond the edge of
25 the document, which is the, I guess, black or dark

1 gray vertical rectangle beyond the edge of the
2 document there.

3 And then it displays a third portion. So you
4 see the portion of the document being displayed. To
5 the right of that edge is smaller than the -- the
6 first portion. The first portion took up most, if not
7 all, of the screen. In this case, the -- the third
8 portion is smaller. It doesn't take up the whole
9 screen, and so that covers up to that portion of
10 the -- sorry. I don't want to use the word "portion"
11 again, because that's my claim language.

12 That -- that elem- -- that element of the
13 claims, and the last element of the claims says "In
14 response to detecting the object is no longer on or
15 near the touchscreen display, translating the
16 electronic document in a second direction until the
17 area beyond the edge of the electronic document is no
18 longer displayed, to display a fourth portion of the
19 electronic document, wherein in the fourth portion is
20 different from the first portion."

21 So that last element there says when the
22 object, i.e., my finger, is no longer on, if I release
23 it, it's gonna translate in a different direction.
24 So, so far, it's been translating to the -- to the
25 right as I move. Now, when I release, it's gonna

1 translate in a different direction to the left, and it
2 is gonna display a fourth portion of that document,
3 and no longer show the area beyond the edge of the
4 display.

5 So if you -- it's still on the camera. I let
6 it go. You see it kind of moved back towards the --
7 so the edge the -- the area beyond the edge is no
8 longer seen, and now the -- this fourth portion is
9 clearly different, if we go back and look at what the
10 first portion was. The fourth portion of the document
11 is clearly different from the first portion.

12 Q Does Exhibit 20 infringe Claims 19 and 20 of
13 the -- of the patent, as well?

14 MR. MONACH: Same objection to calling for an
15 opinion on the fly here at the deposition, but you can
16 answer.

17 THE WITNESS: So just to put the
18 clarification in my upcoming answer here, I have not
19 had time to investigate this in great detail, this
20 particular device, but to the extent that I'm looking
21 at it right now on the fly, I would say that Claim 19,
22 which says "A device comprising a touchscreen display
23 of one or more processes programs with instructions,"
24 I would say that the very fact that I'm able to
25 manipulate it, manipulate the content, it is running

1 on a smartphone mobile computer, it clearly must have
2 instructions in order to execute those -- those
3 movements and functions that I just demonstrated.

4 So that would cover 19, and Claim 20, when it
5 talks about a storage medium, that -- those
6 instructions, the program that we -- it was executing
7 while I'm manipulating this, would have to be stored
8 on some storage medium, and given that this doesn't
9 appear to be connected to anything else and the medium
10 must be -- wouldn't necessarily have to be inside
11 the -- the device itself, and I say that, again,
12 without having examined the device in great detail,
13 this particular device.

14 MR. JOHNSON: Okay.

15 Q So in your -- in your opinion, the gallery
16 application in -- of Exhibit 20 infringes Claims 1,
17 19, and 20; correct?

18 MR. MONACH: Same objection.

19 THE WITNESS: So, in my opinion, given the
20 short time I've looked at this right now, the time
21 I've had there, I would -- I would say, yes, it
22 infringes.

23 MR. JOHNSON: Q. Can you look at the
24 contacts application --

25 A Sure.

1 Q -- and we'll go through this -- well, let me
2 ask you this: Can you look at the contacts
3 application and tell me whether it's your opinion that
4 the contacts application of Exhibit 20 infringes the
5 claims of the '381 patent?

6 MR. MONACH: Object to form; same objection
7 on asking him a hypothetical question to form an
8 opinion at the -- on the fly at the deposition.

9 THE WITNESS: So, again, I'll preface -- if
10 you give me a minute, first of all, to -- to look at
11 this, but I also preface my upcoming answer by saying
12 that I haven't had a chance to examine this particular
13 phone on my own time, so I'm doing this, again, right
14 here at the deposition, so it's kind of an on-the-fly
15 opinion.

16 Okay. I've looked at it.

17 MR. JOHNSON: Q. In your opinion, does the
18 contacts application of Exhibit 20 infringe the '381
19 patent?

20 MR. MONACH: Same objection to the form;
21 asking for a legal conclusion with minimal time to
22 examine it, the device.

23 THE WITNESS: So based on my brief
24 examination of this right now in the deposition, I
25 would say, yes, it does infringe Claim 1.

1 MR. JOHNSON: Okay.

2 Q Can you walk us through the infringement?

3 A Sure.

4 So let's see on this again.

5 Okay. So what I have here is, again, the
6 Samsung Galaxy -- what appears to be the Samsung
7 Galaxy S smartphone mobile computer, and it has the
8 preamble, again, of Claim 1, a computer-implemented
9 method. It's a mobile computer. It has a computer
10 compromising a device with a touchscreen display and,
11 as you can see, it's a device that's got a touchscreen
12 display that reacts to my touches.

13 So now what I've got here is the -- the
14 so-called contacts application, and what it -- what
15 it's showing me on the screen is a -- displaying a
16 first portion of an electronic document. So this
17 document here consists of a bunch of phones or, you
18 know, contact information of different people, I
19 guess, and their phone numbers and so forth.

20 So, right now, I've got the first portion of
21 that, which, you know, the top here, it's got Bob
22 White, and on the bottom, it's got somebody I just
23 entered, with -- with some random set of letters at
24 the bottom, starting with N. So that's a displaying
25 the first portion of an electronic document element of

1 the claim.

2 The second element is detecting a movement of
3 an object on or near the touchscreen display, and I'm
4 gonna do this in combination with the next element,
5 which says, "In response to detecting the movement,
6 translating the electronic document displayed on the
7 touchscreen display in a first direction to display a
8 second portion of the electronic document, wherein the
9 second portion is different from the first portion."

10 So I'm just gonna do this right now. I'm
11 gonna put my finger down, and that finger would
12 correspond to the object in the claims, and it's gonna
13 detect -- the system's gonna detect the movement of
14 that object with my finger on -- on the touchscreen
15 display. I'm gonna put it down. Oops. I'm sorry. I
16 didn't intend it to activate the -- I'm just gonna go
17 back here.

18 So strike that little portion where it
19 activated. If I put my finger down, it'll lightly
20 move. It -- and I've now moved in one direction,
21 moved my finger in one direction, the document is
22 moved in one direction to display a second portion,
23 and the second portion here, you can see, has a -- the
24 last name at the bottom of the screen -- I don't know
25 if you can see that -- it's now Mary something or the

1 other.

2 Q Johnson?

3 A Maybe Johnson.

4 Q That's a nice name.

5 A All right. I'm sorry. My finger is blocking
6 it. I couldn't read it.

7 Q That's my last name.

8 A I didn't intend --

9 Q No -- no relation to Mary, though.

10 A I didn't intend to mangle the name. I just
11 couldn't see it.

12 Clearly, the -- it's the second portion
13 that's different from that first portion we saw
14 earlier, and now, if I -- I'm gonna go on to the next
15 element of the claim, where it says "In response to an
16 edge of an electronic document being reached while
17 translating the electronic document in the first
18 direction, while the object is still detected on or
19 near the touchscreen display, displaying an area
20 beyond the edge of the document and displaying a third
21 portion of the electronic document, wherein the third
22 portion is smaller than the first portion."

23 So I'm gonna continue moving my object, which
24 is -- my finger, which is the object in the claims, in
25 the same first direction, and as you can see, I keep

1 going here, it is gone to an area beyond the edge of
2 the document, which is on the top of that create
3 contact label there.

4 Q Can you tilt it forward? There you go.

5 A I may lose my touch here, unfortunately. I
6 may have to do this again. I'm sorry. I have to do
7 this again.

8 Q Yeah, that's fine.

9 A So I think I was somewhere here, when I was
10 at the second.

11 Q Yeah. If you -- just -- that's better.
12 Just -- it's picking up glare on the light.

13 A Sure, I understand. I also need to be able
14 to look at it, otherwise I can't --

15 Q Okay.

16 A Let's try this again. I believe this is very
17 similar to the second portion of the document. I had
18 my finger down. It did that again. Let me try this.
19 Okay. Second -- all right.

20 I'm gonna move it down, okay. You can see
21 now I'm on the third portion of the document where it
22 has an area beyond the edge of the document, the black
23 or gray area beyond the -- the heading labeled "create
24 contact" there.

25 So it's showing me the area beyond the edge

1 of the document, and it's showing a third portion of
2 the electronic document, which, you know, ends at the
3 bottom, with Joe -- again, I can't read the last name
4 of that contact because my finger is obscuring it,
5 but, clearly, this third portion is different and
6 smaller than the first portion. It has less
7 information. It's smaller than the first portion I
8 showed earlier.

9 And, then, now, the last element of the claim
10 says, "In response to detecting that the object is no
11 longer on or near the touchscreen display, translating
12 the electronic document in a second direction until
13 the area beyond the edge of the electronic document is
14 no longer displayed to display a fourth portion of the
15 electronic document, wherein the fourth portion is
16 different from the first portion."

17 So -- oops, I accidentally just did that, but
18 I'll -- I'll do this again. So I'm in the third
19 portion here. I'm gonna release my finger, which
20 means the system detects that my object or the finger
21 is no longer on the touchscreen display, and it has
22 translated the -- the electronic document in a second
23 direction, in a different direction from the direction
24 it was going earlier, so that the area beyond the edge
25 of the electronic document is no longer displayed.

1 So if you saw in the third -- in the segment
2 before this, there was a black area or gray area
3 beyond the word -- the header "create document," now
4 that's no longer there. It's -- it's gone back up.

5 And the fourth portion now that -- what you
6 see here is clearly different from the -- the very
7 first portion that we started with, which had, if I
8 recall correctly, a -- the bottom contact was
9 something N, a name with N, something or the other on
10 it.

11 I think that should cover Claim 1.

12 Q Okay. And it's also your opinion that
13 Exhibit 20 in the contacts application infringes
14 Claims 19 and 20, as well?

15 MR. MONACH: Same -- same objection
16 previously stated about asking him to form opinions on
17 the fly at the deposition, but you can answer.

18 THE WITNESS: So, again, to the extent that
19 I've only had a very short time to look at this, so
20 this is my, kind of, off-the-cuff answer, is this
21 contacts application clearly is running on a computer
22 in the smartphone, and although I haven't had a chance
23 to look at the instructions of the code, per se, it
24 must be running some set of instructions in order for
25 this application, the contacts application, to perform

1 the functions that I just showed, and as such, it
2 would infringe Claim 19.

3 And, similarly, for Claim 20, I, again,
4 haven't opened this up to look at the memory in there,
5 given the short time that I have here. But, once
6 again, the -- the program that's running for this
7 contacts application has instructions, and like any
8 other computer program, it would have to be stored in
9 some kind of storage medium or memory that can then be
10 executed to perform these actions. So I would say,
11 yes, it -- it does infringe Claim 20, as well.

12 MR. JOHNSON: Q. Based on your review of
13 Exhibit 20, do the contact features -- strike that.

14 Based on your review of Exhibit 20, does the
15 gallery and contact features operate the same way as
16 the Galaxy S 4G that you looked at for purposes of
17 infringement of the '381 patent?

18 MR. MONACH: Object to the form of the
19 question.

20 THE WITNESS: So I would have to say that in
21 order to answer that completely accurately, I'd have
22 to put both of the devices side by side and look very
23 carefully at whether they're exactly the same.

24 Just off the cuff here, going by what I've
25 just played with for the last, I don't know, five,

1 ten minutes, and my memory of -- of what I looked at a
2 couple of weeks ago on the Galaxy S 4G device that
3 I -- I use, I would say the -- the essence or the --
4 maybe not the word "essence" -- the -- the basics of
5 the operation, with regards to the infringing of the
6 claims, it would be the same. But whether the
7 specifics of the look and feel is exactly the same,
8 I'd have to spend quite a bit more time making sure
9 that that's true.

10 MR. JOHNSON: Q. And all -- what I'm really
11 trying to ask you is just whether the -- for only
12 purposes of alleged infringement of the '381 patent,
13 is whether these features operate basically the same
14 way. I'm not interested in -- in subtle nuances or
15 specific differences between the contacts and gallery
16 applications between the two. I'm just trying to
17 understand whether, for purposes of infringement, the
18 features operate the same way between Exhibit 20 and
19 the Galaxy S 4G, and I'm gonna -- I'm gonna hand you
20 what's been previously marked as Exhibit 21, a
21 Galaxy S 4G, and you can -- if you could take a look
22 at that and just tell me -- it was marked at another
23 deposition.

24 Just -- so that -- in your right hand,
25 Exhibit 21 is a Galaxy S 4G, and so if you could just

1 take a look at the gallery application and take a look
2 at the -- the contacts application and just tell me
3 whether -- for purposes of alleged infringement of
4 the '381 patent, whether those two devices operate the
5 same way.

6 MR. MONACH: Object to the form of the
7 question.

8 THE WITNESS: First of all, I'll take your
9 representation that this is actually a Galaxy S 4G.
10 It's very hard to tell just from looking at the device
11 without the box it came in and so forth. So assuming
12 that it is indeed the S 4G, I'm gonna quickly look at
13 the contact application here.

14 MR. JOHNSON: Q. Here's the box.

15 A Assuming it came out of that, I'll take your
16 representation for that.

17 Q You don't want to trust me.

18 A So let me quickly make sure it's the same
19 thing.

20 Q Yeah, it -- take my representation. It's a
21 Galaxy S 4G. It's a nice phone.

22 A So just my -- based on my quick comparison
23 here very briefly, I would say that there are some
24 subtle differences. If you want me to go through
25 that, the -- in terms of the basic functionality, in

1 terms -- and in terms of infringing Claims 1, 19, and
2 20, I would say, for the contacts -- I haven't looked
3 at the gallery yet. For the contacts -- contacts list
4 application, it does the same functionality, but there
5 are some, let's say, visual differences, potentially.

6 MR. JOHNSON: Q. Do those visual -- those
7 visual differences don't matter for purposes of
8 infringement, though; do they?

9 MR. MONACH: Object to the form of the
10 question.

11 THE WITNESS: For this particular
12 application, the contacts application and what I'm
13 seeing right now, the differences between these two, I
14 would say they would not matter --

15 MR. JOHNSON: Right.

16 THE WITNESS: -- because it works the same
17 way.

18 MR. JOHNSON: Okay.

19 Q How -- how about for the gallery application?

20 A Okay.

21 Q Does -- can you look at the gallery
22 application in the Galaxy S 4G and compare it to
23 Exhibit 20 and tell me whether the infringement --
24 alleged infringement is the same?

25 MR. MONACH: Object to the form of the

1 question.

2 THE WITNESS: So based on my quick review
3 here, I would say, again, there's probably some
4 subtleties and differences, but the basic
5 functionality, with regards to Claim 1, appears to be
6 essentially the same.

7 (Phone marked Balakrishnan Exhibit 97
8 for identification.)

9 MR. JOHNSON: Okay. I'm gonna show you what
10 I've marked as Exhibit 97, which is another Samsung
11 Galaxy S phone, and ask you to take a look at the --
12 the gallery in the contacts applications on that -- on
13 that particular phone, and -- and tell me whether
14 those phones, what -- same question.

15 So does Exhibit 97, in the contacts and
16 gallery applications, operate the same way as the
17 Galaxy S 4G for purposes of alleged infringement of
18 the '381 patent?

19 MR. MONACH: Counsel, can we get some better
20 identification of what -- what phone Exhibit 97 is?

21 MR. JOHNSON: It's the -- the Samsung
22 Captivate.

23 MR. MONACH: Okay. Thank you.

24 Same objection as before. Object to the
25 asking for a legal conclusion and an expert opinion on

1 a phone the witness hasn't seen before at the
2 deposition.

3 THE WITNESS: Okay. So to the extent -- and
4 I'm only looking at this, again, for a very, very
5 short time. I've not -- believe -- I don't believe
6 I've seen this phone in any detail before, and my
7 quick review of the Gal- -- I'm sorry -- the gallery
8 application on this phone, on Exhibit 97, I would say
9 for purposes of matching up with the elements of
10 Claim 1, it is doing essentially the same thing as the
11 other two phones I just looked at.

12 Again, there, I believe, are and could be
13 further subtle differences in the visuals and some of
14 the other behavior, but basic functionality appears to
15 be the same for the gallery application; and now I'll
16 look at the contacts application, if that's what you
17 want me to do.

18 MR. JOHNSON: Yeah.

19 Q Can you please look at the contacts
20 application and tell me whether that application
21 operates in the same way as the Galaxy S 4G for
22 purposes of alleged infringement of the '381 patent.

23 MR. MONACH: Same objection.

24 THE WITNESS: So having looked at this,
25 again, briefly, I would say, with the caveat that, you

1 know, not having enough time to really study the
2 details of it, the basic functionality of the contacts
3 application of this phone on Exhibit 97 is -- has the
4 same essential functions that would infringe
5 Claim 1 -- of the elements of Claim 1 of the '381
6 patent.

7 MR. JOHNSON: Q. So it operates the same way
8 as the other two phones --

9 MR. MONACH: Object to the form.

10 MR. JOHNSON: Q. -- for purposes of alleged
11 infringement of the '381 patent?

12 MR. MONACH: Object to the form of the
13 question.

14 THE WITNESS: I would say it -- it operates
15 in a manner that infringes every one of the claims.
16 The -- this -- there could be -- appear to be some
17 subtle differences in some of the operating elements
18 between these three phones for both these
19 applications, but for purposes of infringing the
20 claims, the -- the elements of the claims, the -- this
21 phone has all the elements, as well.

22 MR. JOHNSON: Q. And those subtle
23 differences don't matter for purposes of infringing
24 the claims in the '381 patent; right?

25 MR. MONACH: Same objection.

1 THE WITNESS: So, again, to the extent that
2 I've only had a chance to very quickly look at this, I
3 would say the -- the subtle differences do not appear
4 to be crucial to the -- to the infringement analysis
5 with respect to the claim of the '381 patent.

6 (Phone marked Balakrishnan Exhibit 98
7 for identification.)

8 MR. JOHNSON: Okay. Let me show you
9 Exhibit 98, which is the Samsung Epic 4G.

10 Q I'll ask you the same question, if you could
11 look at the -- the gallery and the contacts
12 applications and just tell me if that phone --
13 those -- strike that.

14 Could you please look at the gallery and
15 contact applications of Exhibit 98 and tell me whether
16 those applications operate in the same manner as the
17 Galaxy S 4G applications for purposes of infringement
18 of the '381 patent?

19 MR. MONACH: Object to the form of the
20 question. Object to asking the witness to offer a
21 legal conclusion and to form an expert opinion on a
22 phone he hasn't seen before it was handed to him at
23 the deposition.

24 THE WITNESS: Okay. I have -- so I've had a
25 chance to quickly look at this. Again, I would say I

1 have not seen this phone in any detail prior to this,
2 so this opinion here is a very quick opinion on the --
3 on the fly.

4 So given my few minutes of examining the
5 contacts list and the gallery application on this
6 phone, Exhibit No. 98 here, I would say both these
7 applications appear to have all the elements that
8 infringe Claim 1 of the '381 patent, based -- based,
9 again, on my very quick overview here.

10 There are subtleties that are -- that seem to
11 be different from the other three phones that I just
12 looked at, but the basic functions seem to be the
13 same.

14 MR. JOHNSON: Q. And so for purposes of
15 alleged infringement of the '381 patent, Exhibit 98,
16 in terms of the gallery and contacts applications,
17 operates the same way as the Galaxy S 4G; right?

18 MR. MONACH: Same objection as previously
19 stated.

20 THE WITNESS: So as I just said, given my
21 very quick overview of this device right here and my
22 on-the-fly opinion, I haven't studied this in detail,
23 the -- the gallery and the contacts list application
24 appear to have the functions that would infringe --
25 perform the same functions that infringe Claim 1 of

1 the '381 patent.

2 MR. JOHNSON: Q. And the same is true for
3 Claims 19 and 20?

4 MR. MONACH: Same objection.
5 You can answer.

6 THE WITNESS: Again, I haven't, you know,
7 looked at this device in great detail, but to the
8 extent that this is a program running on a mobile
9 computer device, it must have instructions, so,
10 therefore, it would infringe Claim 19, and the --
11 those instructions would have to be stored in some
12 kind of a storage media on the device, and, therefore,
13 it would infringe Claim 20, again, based on my very
14 quick view of this right here.

15 Q And 19 -- and 19?

16 A I said that earlier, yes, 19.

17 (Phone marked Balakrishnan Exhibit 99
18 for identification.)

19 MR. JOHNSON: I'm sorry. You're right.

20 Okay. The -- let me show you what I'm gonna
21 mark as Exhibit 99, which is the Samsung Fascinate
22 phone, and basically the same question.

23 Q Can you please look at the -- the gallery and
24 contacts applications and tell me whether, for
25 purposes of infringement of the '381 patent, those

1 applications operate in the same way as the Galaxy S
2 4G, and the other phones.

3 MR. MONACH: Same objection as previously
4 stated. Object to asking the witness to form a legal
5 conclusion, to form a new opinion on a -- on a
6 different device at the deposition; and vague and
7 lacking in foundation with respect to how this phone
8 may operate.

9 THE WITNESS: Okay. So based on, again, a
10 very, very quick overview of this device, which I have
11 not examined in detail before, very quickly looking at
12 the contacts list application and the gallery
13 application, I would say they both perform the -- the
14 steps of the -- of Claim 1 of the '381 patent. Again,
15 based on my very brief exploration of this.

16 MR. JOHNSON: Q. What about Claims 19 and
17 20?

18 MR. MONACH: Same objection.

19 THE WITNESS: Again, I -- you know, given my
20 very quick look at this, I would say because it's
21 running computer programs that would have had to have
22 instructions, those instructions must be running on
23 this mobile device computer, and, therefore, Claim 19
24 would be infringed; and, similarly, those instructions
25 must be stored on a storage media that would be on

1 this device; therefore, Claim 20 would be infringed,
2 as well. Again, I'm saying this, given the very brief
3 opportunity to look at this device.

4 MR. JOHNSON: Q. Do the gallery and contacts
5 applications in Exhibit 99 operate the same way as the
6 Galaxy S 4G and other phones in front of you for
7 purposes of infringement of the '381 patent?

8 MR. MONACH: Object to form; lack of
9 foundation; same objection as previously stated about
10 asking for opinion testimony about a phone he's just
11 seen for the first time.

12 THE WITNESS: So, again, based on my very
13 quick overview of this device here, at the deposition,
14 and not having examined it in great detail, I would
15 say they have the same -- both the gallery and the
16 contacts list application on this phone, on
17 Exhibit 99, have the same basic functionality that
18 would infringe Claim 1 of the '381 patent, that is
19 the -- similar to the, kind of, basic functionality of
20 the other four phones that I have in front of me here.

21 MR. JOHNSON: Okay.

22 THE WITNESS: But there are -- you know,
23 there could be -- there are and could be nuances that
24 are different across the phones.

25 MR. JOHNSON: Q. But -- but those nuances,

1 to the extent they exist, are not important for
2 purposes of infringement of the '381 patent --

3 MR. MONACH: Same objection.

4 MR. JOHNSON: Q. -- in your opinion; right?

5 THE WITNESS: For purposes of -- including
6 the claims that we're talking about, Claim 1, 19, and
7 20, I would say the -- they infringe the -- the device
8 I'm looking at right now, No. 99, is -- would infringe
9 and these differences between the phones, to the
10 extent that I've only looked at it very briefly, I
11 would say they -- they do not impact that infringement
12 analysis.

13 (Phone marked Balakrishnan Exhibit 100
14 for identification.)

15 MR. JOHNSON: Okay. Let me show you what
16 I've marked as Exhibit 100, which is a Galaxy Tab 7.

17 Q Have you seen that before?

18 A I believe I have looked at a similar device.
19 I can't say if it's exactly the same thing, but I
20 haven't had a chance to study this in detail either.

21 Q What --

22 A I'm sorry.

23 Q Is it fair to say that you -- the first time
24 you looked at a similar device was after you were
25 retained in connection with this particular matter, or

1 was it something outside of your retention in this
2 case?

3 MR. MONACH: Object to form; vague.

4 THE WITNESS: You mean a tablet device or the
5 Samsung --

6 MR. JOHNSON: Samsung tablet.

7 THE WITNESS: I would say it's before the
8 retention in this matter. Again, like I said, my lab,
9 we get a variety of these devices in for a variety of
10 projects, and I believe I've seen the Samsung Tablet
11 or more than one tablet --

12 MR. JOHNSON: When --

13 THE WITNESS: -- in -- in the research
14 context. Whether it's exactly this one or not, I
15 can't tell for sure, sitting here.

16 MR. JOHNSON: Q. When do you think you --
17 you first saw a Samsung Tablet, just approximately?

18 A Yeah, I can't answer that definitively. I'd
19 say at least a few months ago.

20 Q Okay.

21 A Earlier in the year.

22 Q So can you look at the Exhibit 100 and tell
23 me, for example, if you pull up the gallery
24 application, does it infringe the '381 patent, in your
25 opinion?

1 MR. MONACH: Same objection as stated --
2 previously stated with respect to asking for an
3 opinion about the phones he hadn't reviewed
4 previously.

5 THE WITNESS: So based on my, again, very
6 quick review of this device right here in this
7 deposition, and not having studied it in detail, I
8 would say that the -- that the features of the gallery
9 application on this device, Exhibit No. 100, appear to
10 infringe all elements of Claim 1 of the '381 patent.

11 MR. JOHNSON: Q. And 19 and 20?

12 MR. MONACH: Same objection.

13 THE WITNESS: Again, to the extent that I've
14 only looked at this very briefly, I would say, yes, it
15 would infringe 19 -- Claims 19 and 20.

16 MR. JOHNSON: Q. And does the gallery
17 application operate in the same way for purposes of
18 alleged infringement of the '381 patent as the Galaxy
19 Tab 10.1?

20 MR. MONACH: Same objection as previously
21 stated.

22 THE WITNESS: So given that I've only had a
23 very quick opportunity to look at this at this
24 deposition and haven't studied it in detail, I would
25 say that -- that the basic functionality, with respect

1 to the elements of the claims of -- Claim 1 of
2 the '381 patent, appear to be the same as the -- those
3 found in the gallery application of these other five
4 phones, five phones that have just been placed in
5 front of me and looked at a few minutes ago. Again, I
6 want to say I haven't studied this in great detail to
7 confirm with 100 percent certainty.

8 MR. JOHNSON: Q. But, as far as you're
9 concerned, the gallery feature operates the same basic
10 way as -- in Exhibit 100 as it does in the Galaxy
11 10.1, for purposes of alleged infringement of the '381
12 patent; right?

13 MR. MONACH: Object to the form of the
14 question, since he hasn't been given an opportunity to
15 compare this with the 10.1 --

16 THE WITNESS: So --

17 MR. MONACH: -- side by side.

18 THE WITNESS: So, I'm sorry, you said against
19 the Galaxy 10.1 tablet, yeah, I would like to look at
20 that in -- in detail before I make that determination.
21 Otherwise, I'd be going by memory.

22 MR. JOHNSON: Q. When's the last time you
23 looked at a Galaxy 10.1?

24 A I might have looked at it yesterday, again,
25 in preparation for the depo, but I certainly looked at

1 it about two or three weeks ago.

2 (Phone marked Balakrishnan Exhibit 101
3 for identification.)

4 MR. JOHNSON: Exhibit 101 is a Galaxy 10.1,
5 so let me ask the question again.

6 Q Looking at Exhibit 100, the Galaxy Tab 7, and
7 comparing the Galaxy 10.1 gallery function, can you
8 tell me whether those gallery applications operate the
9 same way for purposes of alleged infringement of
10 the '381 patent?

11 MR. MONACH: Same objection; lack of
12 foundation; calling for a legal conclusion and a new
13 opinion on devices presented for the first time at the
14 deposition.

15 THE WITNESS: So if you give me a minute to
16 refresh my memory on the 10.1 tablet here.

17 So based -- based on my quick comparison here
18 on -- on the fly, at this deposition, I would say
19 the -- of these two tablets, Exhibit 100 and
20 Exhibit 101, I would say that the base functionality
21 in the gallery application, with regards to elements
22 of Claim 1, appear to be very similar.

23 MR. JOHNSON: Q. Can you look at the
24 contacts application of the Tab 7 and tell me whether
25 the contacts application infringes any claims of

1 the '381 patent?

2 MR. MONACH: Same objection as previously
3 stated.

4 THE WITNESS: So I would say this is the
5 first time I'm looking at this particular contacts
6 application, so you've got to give me a few minutes to
7 study this.

8 So, again, this is the first time I'm looking
9 at this particular style of contacts application,
10 which has a very different look and feel from the
11 other ones on the phones. Given my very quick review
12 here, I would say this contacts application, in terms
13 of scrolling the -- the list of names within the
14 application, would meet the -- would infringe the
15 claims -- the element of the claims of -- of Claim 1
16 of the '381 patent.

17 MR. JOHNSON: Q. Would infringe?

18 A It would infringe, yes.

19 Q Can -- can you walk us through the alleged
20 infringement of the contacts application and using the
21 camera where possible --

22 A Sure.

23 Q -- to show the different limitations of the
24 claim?

25 MR. MONACH: Same objection as previously

1 stated, asking the witness to form a new infringement
2 opinion with a device presented to him for the first
3 time at the deposition.

4 THE WITNESS: Do you know if there's a way to
5 lock the thing from not rotating, because -- anyway,
6 I'm gonna try, if it doesn't keep bouncing around.

7 How are we doing?

8 MR. JOHNSON: If you could just tilt it
9 forward a little bit. That's better. Here, you
10 can --

11 THE WITNESS: You good to go? Okay.

12 To the extent that I'm -- you know, I want to
13 just caveat this by saying I'm doing this live on a
14 device I've just seen a few minutes ago, so I may make
15 some mistakes and maybe do it again.

16 So, first of all, let's walk through to
17 Claim 1. It's a computer implemented method. This is
18 clearly a mobile computer compromising a device with a
19 touchscreen display. This is -- it just shut off.

20 Okay. Let's try this again.

21 It's a device with a touchscreen display that
22 clearly reacts to my -- my touching the display, so it
23 has the preamble of the claim. It says here, in the
24 first part of the claim, it says, "Displaying a first
25 portion of an electronic document," and in this

1 contact application, I would say the electronic
2 document is this list of -- of items, list of names
3 that you see on the left-hand side of the -- of the
4 screen here.

5 MR. JOHNSON: Q. So it's -- it's the -- the
6 column of the names? Can you -- can you just point to
7 what you're talking about?

8 A Sure.

9 Q You should touch the screen before.

10 A Okay. Let's try this again.

11 So the electronic document in this particular
12 instantiation would be the list of -- of names that
13 you see with these letter headings or letter dividers
14 in between the names. It would be the -- so, you
15 know, what you see in, kind of, this box here,
16 starting -- it keeps going off to -- I'm sorry. It
17 keeps shutting off.

18 MR. MONACH: Sorry to interrupt here, but
19 while you're fiddling with that, I just have a
20 continuing objection to this series of questions.

21 THE WITNESS: Okay. All right. Let's try
22 this again. Hopefully, it doesn't go to sleep.

23 So it has -- you know, the list I just marked
24 out there, that would be the electronic --

25 MR. JOHNSON: Q. So an electronic document

1 can be something that's smaller than what you see on
2 the screen, because it meets your definition of
3 visually represented on the screen with a defined --
4 defined set of boundaries?

5 MR. MONACH: Objection; calling for a legal
6 conclusion.

7 THE WITNESS: I would say an electronic
8 document doesn't have to fill the entire screen.

9 MR. JOHNSON: Okay.

10 THE WITNESS: Yes, and it's gone asleep
11 again, so let's try this one more time. Okay.

12 All right. So it is live. So we've got the
13 electronic document. Now, the next element of the
14 claim says "Detecting a movement of an object on or
15 near the touchscreen display," and I -- I'm gonna put
16 my finger down, which would correspond to the object
17 in the -- in the claims, and it detects a movement of
18 my object on or near the touchscreen display and
19 clearly reacts to that.

20 The next element says "In response to
21 detecting the movement, translating the electronic
22 document displayed on the touchscreen display in a
23 first direction to display a second portion of the
24 electronic document, wherein the second portion is
25 different from the first portion."

1 So let's see if I can show this. I've got my
2 finger on the screen, my object on the screen. The
3 first portion is this part of the document that, let's
4 say, starts with Chris Thomas at the top, and at the
5 bottom it has the word "QWERTY," that I just entered.
6 I'm gonna -- I'm gonna move my -- move my finger, and
7 so in response to my -- my finger, it's gonna
8 translate the electronic document to display --
9 translate in a first direction, in one direction here,
10 to display a second portion, which is different from
11 the first portion.

12 So, now, the second portion now, as you see,
13 on the top, has Billy Smith, and the bottom has
14 Michael Myers on the -- on the list of the information
15 on the document. So it's clearly different from that
16 first portion that we saw earlier that had different
17 names on the top and bottom.

18 Now -- now, I'm gonna keep going here to the
19 next element. It says "In response to an edge of the
20 electronic document being reached while translating
21 the electronic document in the first direction, while
22 the object is still detected on or near the
23 touchscreen display, displaying an area beyond the
24 edge of a document and displaying a third portion of
25 the electronic document, wherein the third portion is

1 smaller than the first portion."

2 So I'm gonna keep going here, moving in the
3 same direction as I was earlier, and you can see I've
4 reached the edge, which is at the top of the A, lists
5 Arnold -- Arnold Palmer there, and once I've reach the
6 edge, it displays a third portion.

7 First of all, it displays an area beyond the
8 edge of the document, that white space rectangle above
9 the A, that's the area beyond the edge of the
10 document, and then it displays the third portion of
11 the document that is smaller.

12 So, as you can see, this doc -- part of the
13 document here, the third portion, starts at the top
14 with that white space, and then the document itself
15 starts, which is the A, and then the Arnold Palmer,
16 and at the bottom, that is John Brown, that -- whoops,
17 I just lost it here. Let me just get back to where I
18 was. So it was something like that.

19 This third portion, it has fewer items on the
20 list. It's smaller than -- than the first portion,
21 which I showed much earlier, which had probably at
22 least another item or two displayed on the screen;
23 and, finally, the last element is "In response to
24 detecting that the object is no longer on or near the
25 touchscreen display, translating the electronic

1 document in a second direction until the area beyond
2 the edge of the electronic document is no longer
3 displayed, to display a fourth portion of the
4 electronic document, wherein the fourth portion is
5 different from the first portion."

6 So now I'm gonna release my finger, which
7 is -- corresponds to detecting that the object, i.e.,
8 my finger, is no longer on the touchscreen display.
9 It has translated the document in a second direction,
10 in a different direction from the way it was going in
11 the first three steps there, and the area beyond the
12 edge, where that white space that we saw in that
13 section there, is -- is no longer being displayed
14 above the A. I just lost this.

15 So I just -- I just touched it to refresh the
16 screen. Nothing to do with the claims. And then it
17 has now displayed the fourth portion of the electronic
18 document, which is different from the first portion;
19 and we know that by seeing this fourth portion has
20 Arnold Palmer on the top and Kathy Lee at the bottom,
21 which, going by my memory here, the first portion had
22 a different set of names at the top and the bottom, so
23 it is clearly -- I think clearly meets the -- the
24 elements of this claim.

25 MR. JOHNSON: Okay.

1 THE WITNESS: Just, you know, doing it on the
2 fly here at --

3 MR. JOHNSON: All right.

4 Q And -- and is it true that the -- the Droid
5 charge and the infused 4G operate in the same way in
6 the gallery and contacts applications for purposes of
7 alleged infringement of the '381 patent as the
8 Galaxy S 4G?

9 MR. MONACH: Object to the form of the
10 question.

11 THE WITNESS: So I'm going by memory here. I
12 don't have the Droid charge and the -- you said the
13 infused 4G in front of me, I don't believe, but going
14 by memory at what I looked at, when I wrote my report,
15 the -- the basic operations in the gallery and the
16 contacts list application on those two phones would
17 meet the -- the claims of -- sorry -- the element of
18 the claims of Claim 1 of the '381 patent.

19 MR. JOHNSON: Okay. Why don't we take a
20 quick break?

21 THE WITNESS: Sure.

22 MR. JOHNSON: And we'll go off the record.

23 THE VIDEOGRAPHER: This is the end of
24 Disk No. 1, Volume 1.

25 We are off the record at 10:45 a.m.

1 (Recess taken.)

2 THE VIDEOGRAPHER: This is the beginning of
3 Disk No. 2, Volume I.

4 We are back on record the at 11:02 a.m.

5 You may proceed.

6 MR. JOHNSON: Q. I'd like to show you the --
7 the Galaxy S 4G, which is Exhibit 21, and can you walk
8 us through the -- the alleged infringement with
9 respect to this particular phone of the '381 patent?

10 A You --

11 MR. MONACH: I'm sorry. I thought you did
12 that before, but maybe not.

13 Go ahead.

14 THE WITNESS: So I'll take your
15 representation.

16 MR. MONACH: I'm getting -- I'm getting mixed
17 up.

18 MR. JOHNSON: There is -- there is a blue
19 moon.

20 THE WITNESS: I'll take your representation
21 that this actually is the Galaxy -- Galaxy S 4G.

22 MR. JOHNSON: Q. It doesn't look familiar to
23 you?

24 A It looks very familiar, but it's very hard to
25 tell from just the -- the device itself that it's the

1 4G or something else.

2 Assuming that it is, do you want me to walk
3 through -- walk through which application? Does it
4 matter?

5 Q Start with gallery.

6 A Oh.

7 Q So --

8 A You want me to do it with the --

9 Q Yeah, can we do it with a camera? Sorry.

10 A Hope this doesn't shut down halfway.

11 Q So -- okay. Just -- just to start, can
12 you -- can you go back to the -- the gallery of images
13 and just show how you -- how -- how you got to that
14 particular image?

15 A So from here, you mean?

16 Q Yes.

17 A Okay.

18 Q Okay. So in the gallery of images; right?

19 A Let's rotate back here.

20 Q Right.

21 A So do you want me to walk through the -- all
22 the claim elements, or how do you want me to do this?

23 Q Yeah, let's walk through the claim elements.

24 A Okay. So I'm reading from Claim 1 here, what
25 it says in the preamble, "A completely implemented

1 method compromising a device with a touchscreen
2 display."

3 So this Galaxy S 4G is a mobile computer. It
4 has a touchscreen display, as you can see, when I
5 touch the screen, it reacts to that, so it clearly
6 meets the preamble. Now, this is the gallery
7 application, and I'm gonna just simply select one of
8 these images, and I'm gonna zoom in a little bit here
9 a little bit more. As you can see, it's still, you
10 know, reacting to my touch.

11 Q Okay. So -- so, by the way, before you --
12 you have to zoom in on an image on the Samsung accused
13 phones in order for the gallery application to
14 infringe; correct?

15 MR. MONACH: Object to the form of the
16 question.

17 THE WITNESS: So, right now, I did zoom in.
18 If I don't zoom in, I've already got the -- it doesn't
19 make sense to translate the document, because it
20 already sees the edge, so the -- the claim elements --
21 not all the claim elements would be met --

22 MR. JOHNSON: Right.

23 THE WITNESS: -- by -- if I -- if I did not
24 zoom in on that image.

25 MR. JOHNSON: Okay.

1 Q So a non-zoomed in image in the gallery of
2 the accused phones doesn't infringe the '381 patent;
3 correct?

4 MR. MONACH: Object. Object to the form of
5 the question.

6 THE WITNESS: So I have not done an
7 exhaustive search through all possible images that
8 could -- could belong in a gallery. For example, it
9 may be that some images are so large that the gallery
10 doesn't scale it down. I do not know that. So for
11 the images that I've seen, the -- where the entire
12 image could be displayed in some aspect or ratio on
13 the -- on the screen, I have not determined that
14 the -- an unzoomed in image would infringe all the
15 elements of the claim --

16 MR. JOHNSON: Okay.

17 THE WITNESS: -- but -- but, again, I haven't
18 done an exhaustive search.

19 MR. JOHNSON: Q. But sitting here today,
20 you're not -- you're not aware of any non-zoomed image
21 that infringes the '381 patent in the accused Samsung
22 phones; right?

23 MR. MONACH: Object to form; asked and
24 answered; incomplete hypothetical.

25 THE WITNESS: So in the gallery application

1 of this particular phone -- it's gone asleep again --
2 the -- if the image has not been zoomed in, for the
3 images I have looked at, I can't say for sure for all
4 possible images, I have not been able to determine
5 that it -- that it infringes all elements of the
6 claim.

7 MR. JOHNSON: Okay. Let -- let me just,
8 while we're going through this, to cut through and
9 improve the efficiency, I'm gonna mark, as
10 Exhibit 102, the -- the Droid Charge, and I'll mark,
11 as Exhibit 103, the Infuse 4G. I'm gonna hand those
12 to you.

13 (Phones marked Balakrishnan Exhibits
14 102 - 103 for identification.)

15 MR. JOHNSON: Okay.

16 Q You said earlier that you had looked at the
17 Galaxy S 4G in preparation for, I think, your
18 declaration; right?

19 A That's correct.

20 Q Okay. Have you looked in detail at the
21 Samsung Droid Charge and Infuse 4G products?

22 A I've looked at the Infuse 4G and the Droid
23 Charge products into the same level or detail as the
24 Galaxy S 4G, in -- in -- in terms of the gallery
25 application and the contacts application.

1 Q Okay. And the Galaxy 10.1, you've also
2 looked at in detail?

3 MR. MONACH: Object to form.

4 THE WITNESS: The Galaxy 10.1 Tablet that
5 I've looked at it, no, to the same level of detail. I
6 wouldn't say I've explored the entire device --

7 MR. JOHNSON: Right.

8 THE WITNESS: -- in great detail, no.

9 MR. JOHNSON: Q. And you haven't opened any
10 of them up; right?

11 A You -- you mean physically?

12 Q Right.

13 A No, I have not taken it apart.

14 Q Okay. And you'll understand, just for
15 purposes of our discussion, that when I say "Samsung
16 Accused Products," I'm referring to those four
17 products, namely Exhibits 101, 102, 103, and
18 Exhibit 21, namely the Droid Charge, the Infuse 4G,
19 the Galaxy S 4G, and the Galaxy Tab 10.1?

20 A So the four devices that were in my
21 declaration, yes. I'm assuming the exhibit numbers
22 are correct that you just rattled --

23 Q Okay.

24 A -- off.

25 Q Okay. So let's go back to the -- to the S

1 4G.

2 A Back to that gallery?

3 Q Yeah.

4 A Okay.

5 Q Okay. And -- and before you even zoom in on
6 that image, let's go back to the gallery itself.

7 So when you move the gallery from one side to
8 the other, I notice that it tilts.

9 A I'm sorry.

10 Q Just try and move among --

11 A The gallery, like, not in a particular image?

12 Q Yeah. See how when you get to the edge, it
13 tilts? You can hold that up and show it to the
14 camera.

15 A You mean that -- that kind of tilting?

16 Q That kind of tilting.

17 A Yes.

18 Q All right.

19 And if you go to the other direction, it
20 tilts in the other direction; right?

21 A It appears to, yes.

22 Q Right.

23 That doesn't infringe any claims of the '381
24 patent; right?

25 MR. MONACH: Object to the form of the

1 question; vague and ambiguous; calling for a legal
2 conclusion; incomplete hypothetical; and the witness
3 hasn't opined on this or examined this particular
4 feature before.

5 THE WITNESS: I can't answer that question
6 without spending quite a bit of time considering,
7 looking at this in detail. I have not studied this
8 particular feature --

9 MR. JOHNSON: Q. Why haven't you --

10 A -- in any -- in any detail.

11 Q Why haven't you studied that feature, if you
12 were asked to look at the phones to determine whether
13 they infringe?

14 MR. MONACH: Object to the form of the
15 question. I'll instruct the witness, again, that I'm
16 not saying this -- there was any such communication,
17 but I'll direct you not to reveal any communications
18 with counsel, other than communication of facts or
19 assumptions on which you relied in framing and coming
20 up with your declaration and your opinions.

21 THE WITNESS: So when I was asked to work on
22 this case, I was told that Apple had alleged that
23 these four devices, what we're calling the Accused
24 Products, infringed the patent in Claim 1 and a few
25 other claims, and in particular the -- they identified

1 that they -- they believe the gallery and the contact
2 lists application were the ones that were infringing,
3 so I focused my efforts on -- on looking at those two
4 particular applications. Oh, and the web browser for
5 the -- for the Galaxy 10.1 Tablet, as well.

6 So I -- I spent -- you know, I could -- you
7 would take quite a bit of time to look at every
8 application and all the different features to see if
9 everything infringed, and my understanding, for the
10 purposes of infringement, if you can show that one
11 aspect of the device or one application infringed,
12 that would be sufficient, so I did not take the time
13 to explore all -- all possible infringements and
14 areas --

15 MR. JOHNSON: So you weren't --

16 THE WITNESS: -- once I satisfied myself that
17 within the gallery, within an image, it infringed
18 Claim 1 and any other claims.

19 MR. JOHNSON: Q. So you weren't asked to
20 look at anything beyond the Galaxy -- strike that.

21 So you were not asked to look at anything
22 beyond the gallery and the contacts for purposes of
23 infringement of the accused phones; is that right?

24 MR. MONACH: Object to the extent it
25 misstates his prior testimony about the Galaxy Tab.

1 THE WITNESS: For the phones, I was asked to
2 do the -- I was directed or advised that, you know,
3 they were -- Apple was alleging that it was the
4 gallery and the contacts list that was infringing.
5 For the Galaxy 10.1 Tablet, they also indicated that
6 the web browser was of interest.

7 MR. JOHNSON: Q. So you -- you were told
8 that Apple was alleging that these Accused Products
9 infringed the '381 patent before you actually did any
10 work to verify whether these products infringed
11 yourself or not?

12 A I was -- I was told that that was Apple's
13 allegations, yes, before I looked at it in any detail,
14 yes.

15 Q And you don't have an opinion as to whether
16 the Galaxy -- strike that -- the gallery that you were
17 just looking at that shows the tilt, you don't have
18 any opinion as to whether that infringes or not?

19 MR. MONACH: Object to the form of the
20 question.

21 THE WITNESS: I have not had a chance to
22 study that in detail, so I -- I cannot say today
23 whether there is -- whether it infringes or doesn't
24 infringe. I would have to reserve that 'til I've had
25 a chance to look at it in some amount of detail.

1 MR. JOHNSON: Okay.

2 Q Well, if you turn it back on, can you go back
3 to that gallery that we were just looking at with the
4 tilt, it doesn't display an area beyond the edge of a
5 document; does it?

6 MR. MONACH: Object to the form of the
7 question; incomplete hypothetical; asking the witness
8 to form a new opinion on the fly; calls for a legal
9 conclusion.

10 THE WITNESS: You're talking about in this
11 multi-image view?

12 MR. JOHNSON: Right.

13 THE WITNESS: I would have to study that in
14 detail to give you an answer. If you want me to do
15 that, I can do that. But I'm -- I can't just looking
16 at it right now.

17 MR. JOHNSON: Okay.

18 THE WITNESS: I have to match it up with
19 every element of the claim.

20 MR. JOHNSON: Yeah.

21 Q I'd like for you to look at it over the lunch
22 break, but let's keep going.

23 A Fair enough.

24 Q Okay. So let's go to the gallery, the
25 particular gallery application with the zoomed in

1 image that you believe infringes Claim 1 of the '381
2 patent, and you just show us how you got to that
3 again. So you took the image --

4 A I'm sorry. It's flipping around.

5 Q Yeah.

6 A All right.

7 Q So --

8 A Can you see that? Okay, so I'm in the
9 gallery.

10 Q Right.

11 A I'm gonna select an image just by tapping on
12 it. The image takes up some of the screen. I -- I
13 just zoomed in a little bit into that image, so it's
14 now magnified some -- by some amount.

15 Q Okay.

16 A And so now I've got the image with an
17 electronic document on the screen.

18 Q Okay. So is that displaying a first portion
19 of an electronic document?

20 A In this current state, one could say -- it's
21 shutting off again, I'm gonna just touch it so it
22 comes back on.

23 Yes, in this case, it -- this would be, for
24 example, displaying a first portion of an electronic
25 document.

1 Q Okay. And when the -- what -- what -- what's
2 the first portion? Can you just -- can you point to
3 what the first portion is?

4 A So I would say, in this case, the -- I'm just
5 gonna touch it again --

6 Q That's fine.

7 A -- because it's -- it's going on and off.

8 I don't know if you can see that, the first
9 portion would be what is displayed in the -- I'm just
10 gonna draw around here, where my pen is -- is showing
11 the -- that rectangular thing, where my pen went
12 around.

13 Q Okay. And what's the electronic document?

14 A The electronic document would be the -- that
15 image that --

16 Q The larger --

17 A -- that we're -- that we're seeing a portion
18 of right now.

19 Q So the -- the original image when you --

20 MR. MONACH: Objection.

21 MR. JOHNSON: Q. -- when you clicked on it?

22 MR. MONACH: Objection to the form.

23 THE WITNESS: In this particular case, the
24 image that showed up, yes, when I -- when I clicked on
25 it, and it took up part of the screen.

1 MR. JOHNSON: Okay.

2 Q What is -- what's the next limitation that's
3 met?

4 A So it's displaying the first portion of an
5 electronic document. The next one is detecting a
6 movement of an object on or near the touchscreen
7 display. So, in this case, I'm gonna use my finger as
8 the object, and I'm gonna put it down, and -- and, as
9 you can see, it detects the movement of my finger,
10 i.e., the object on -- on the touchscreen display.

11 You want me to go on?

12 Q Okay.

13 Yes.

14 A The next portion -- next element of the claim
15 says "In response to detecting the movement,
16 translating the electronic document displayed on the
17 touchscreen display in a first direction to display a
18 second portion of the electronic document, wherein the
19 second portion is different from the first portion."

20 So now I've got my -- my finger down and the
21 system is detecting my movement, the movement of the
22 finger or the object, and it's gonna translate the
23 electronic document in a first direction.

24 So I'm going to do this again. I just went
25 over it too much. Okay. So let's do this again.

1 I've got my first portion. I've got my
2 finger down. It's detecting movement. I'm going to
3 translate in a first direction to display a second
4 portion.

5 As you can see, the second portion of the --
6 of the electronic document has -- is different from
7 the first portion, more of that yellow -- I think it's
8 a yellow -- pencil-like thing next to the pink eraser
9 image. More of the yellow portion is yellow.

10 The pencil is showing, so it's clearly a
11 different portion of the image than the first portion;
12 and then, if I continue moving in the same direction,
13 in -- the next element of the claims says "In response
14 to an edge of the electronic document being
15 reached" --

16 Q Just -- just before you go to the next
17 element, let me ask you a question.

18 What does -- what does "in response to"
19 mean, as it's used in the claims of the '381 patent?

20 MR. MONACH: Object to the form of the
21 question as calling for a legal conclusion.

22 You can give your understanding.

23 THE WITNESS: So my understanding of it is
24 when an edge of an electronic document is reached, so
25 when the -- when the -- when the edge is reached and

1 recognized that it will do something, and in this
2 case, the something is -- is gonna display an area
3 beyond the edge of the document and display a third
4 portion of the --

5 MR. JOHNSON: Yeah.

6 Q I was -- I was talking about the previous
7 element, and I'm actually just focusing on the words
8 "in response to."

9 A So are you talking about the one where it
10 says "in response to detecting the movement"?

11 Q Yes.

12 A Okay.

13 MR. MONACH: Same objection.

14 THE WITNESS: So back up.

15 MR. JOHNSON: Q. So what does "in response
16 to" mean?

17 A So in response -- in my understanding, there
18 is -- when it says "in response to detecting the
19 movement," it says -- basically, it means that when
20 the movement is detected, it's gonna do something. In
21 this case, translate the document and so forth.

22 Q So, in your words, does "in response to" mean
23 after "in response to"?

24 MR. MONACH: Object to the form of the
25 question; asked and answered.

1 MR. JOHNSON: Q. It has -- it has to be
2 after something happens; right?

3 A In re- --

4 MR. MONACH: Same objection.
5 Go ahead.

6 THE WITNESS: I'm sorry.

7 MR. MONACH: That's all right.

8 THE WITNESS: I'm talking over him.

9 In -- it's in response to detecting the
10 movement, so it detects the movement and in response
11 to that -- in reaction to that, it -- it does
12 something. So it's responding to an event, which, in
13 this case, is detection of movement.

14 MR. JOHNSON: Q. So in -- in -- in this
15 particular limitation, the translation of the
16 electronic document happens after the movement is
17 detected?

18 MR. MONACH: Object to form.

19 THE WITNESS: So, yes, in re- -- the
20 translation occurs in response to that detection of
21 the movement. So the movement has to be detected, and
22 then the translation occurs.

23 MR. JOHNSON: Okay.

24 Q So "in response to" has this, at least,
25 temporal as -- aspect that deals with after something

1 happens, something else then occurs?

2 MR. MONACH: Object to form.

3 MR. JOHNSON: Q. Do -- do you understand my
4 question?

5 MR. MONACH: Object to form; asked and
6 answered.

7 THE WITNESS: First, can I just release my
8 finger on this?

9 MR. JOHNSON: Yeah.

10 THE WITNESS: I'm sorry. Could you repeat
11 that last portion?

12 MR. JOHNSON: Q. Does "in response to"
13 denote/connote some temporal aspect that deals with,
14 you know, for example, after the movement is
15 detected --

16 MR. MONACH: Object to form.

17 MR. JOHNSON: Q. -- or -- or after the edge
18 of an electronic -- electronic document is reached?

19 MR. MONACH: Object to form; asked and
20 answered.

21 THE WITNESS: In the context of this claim
22 and this patent, it is -- you -- the response is after
23 the detection of the movement. So the movement has to
24 be detected, and then the system responds by
25 translating the document. So in terms of this claim

1 and this patent and the way the patent work --
2 describes this, that response would have to be
3 subsequent in -- in time.

4 MR. JOHNSON: Right.

5 Q And the next element, when it says "in
6 response to an edge of the electronic document being
7 reached," the -- the edge of the electronic document
8 has to be reached before the subsequent action occurs;
9 right?

10 MR. MONACH: Object to the form of the
11 question; calling for a legal conclusion; vague.

12 THE WITNESS: So if you're saying the edge
13 has to be reached before the -- the next translating
14 step occurs, we're -- yes, in the context of this
15 claim, this patent, I would say, yes, the -- the --
16 you'd have -- you'd have to detect the edge, and then
17 that next portion of the translation would occur.

18 MR. JOHNSON: And the last element says "In
19 response to," again, "detecting that the object is no
20 longer on or near the touchscreen display translating
21 the electronic document in a second direction."

22 Q So, again, the translating the -- the
23 electronic document in a second direction occurs only
24 after the object is no longer on or near the
25 touchscreen display; right?

1 MR. MONACH: Same objection.

2 THE WITNESS: For this claim in this patent,
3 in -- my understanding of it is the -- the object has
4 to be not on or near the touchscreen display anymore,
5 and then the -- that second direction translation
6 would occur.

7 MR. JOHNSON: Okay. Let's go back to the --
8 the -- the third element, I guess.

9 Q "In response to detecting the movement,
10 translating the electronic document displayed on the
11 touchscreen display in a first direction to display a
12 second portion of the electronic document."

13 What's -- what's the first direction?

14 MR. MONACH: Object to form; asked and
15 answered.

16 THE WITNESS: My reading of the claims, as I
17 demonstrated earlier on the -- several of the phones,
18 as well, it says "a first direction," so a direction
19 that the -- that is picked to move to display that
20 second portion.

21 MR. JOHNSON: Okay.

22 Q Do you see the next element refers to "the
23 first direction"?

24 A "The first direction that is different from
25 the" -- you're talking about when it -- when it says

1 "after the edge is reached"?

2 Q Yes.

3 A Okay.

4 Q So the first direction is used twice in the
5 claims; right?

6 A It's used once, twice -- it appears to be
7 used twice, yes.

8 Q And it means the same thing in both
9 instances; right?

10 MR. MONACH: Object to the form of the
11 question to the extent it calls for a legal
12 conclusion; vague.

13 THE WITNESS: I'm not sure what you mean by
14 "the same thing." In the first -- I'm not sure which
15 element this is. The first -- first instance of the
16 word -- of the phrase "first direction" in the claims,
17 it says "in a first direction." So it's some first
18 direction.

19 And then, the second time it appears, it's in
20 the next claim element, it says "in the first
21 direction," and I would imagine it's referring it back
22 to the first direction previously determined. So --

23 MR. JOHNSON: Q. So the -- the direction has
24 to be the same for both instances of -- the use first
25 direction in the claims; right?

1 MR. MONACH: Objection to the extent it's
2 calling for a legal conclusion.

3 THE WITNESS: So the first -- yeah, the first
4 direction is a first direction, and the second one is
5 the same first direction as the previous one.

6 MR. JOHNSON: Yeah, that's all my point is.

7 Q It's the same direction for both of those
8 instances.

9 MR. MONACH: Objection; form.

10 THE WITNESS: The second -- the second first
11 direction is the same as the first first direction.

12 MR. JOHNSON: Q. Let's just circle on your
13 pens.

14 A I'm sorry?

15 Q Just circle both instances --

16 A Yeah.

17 Q -- first direction on your pen.

18 A Yeah, okay.

19 Q Okay. So my -- I think you've already
20 answered this, but the direction that's referred to in
21 both of those, quote, "first directions," is the same;
22 right?

23 MR. MONACH: Objection; form. Objection to
24 the extent it calls for a legal conclusion; asked and
25 answered.

1 THE WITNESS: I think what I said was the
2 second first direction, the second so-called here on
3 the patent, is the same as the first one.

4 MR. JOHNSON: Okay.

5 Q So if you go back to the phone that you were
6 looking at, the -- the S 4G.

7 A This is the one. Yeah, I think it's the same
8 one. Okay.

9 Q Let me -- let me have it for a sec.

10 And if you -- you zoom in on the image, you
11 would agree that the photo pans according to the
12 movement of my finger; right?

13 A It reacts to movement of my -- your -- your
14 finger.

15 Q Okay. And if I -- if I move my finger in a
16 circle, the image moves in a circle; right?

17 A The image appears to follow the finger to
18 some extent, yes.

19 Q And if I -- if I move it in an arc, it moves
20 in an arc; correct?

21 A It's hard to say whether it's an arc or not,
22 but it is kind of tethered to your finger, yes.
23 It's -- it's moving relative to the movement of your
24 finger.

25 Q So if I'm -- as I -- as you were showing me,

1 if I zoom in on the image, and if I move the image,
2 then -- if I -- at 45 degrees, for example, you know,
3 you see my finger has moved 45 degrees?

4 A Roughly.

5 Q -- or approximately; right?

6 A Sure.

7 Q And then that's a first direction; right?

8 MR. MONACH: Objection; form.

9 MR. JOHNSON: Q. I want you to assume that's
10 the first direction.

11 A Okay. Sure.

12 Q Okay. And then if I move the image down from
13 there at 45 degrees, right, have -- in both of those
14 actions, has my finger moved the same direction?

15 MR. MONACH: Objection to the form of the
16 question; vague; calling for a legal conclusion.

17 THE WITNESS: In the compound two-dimensional
18 case, it is moving in two dimensions. It, in one
19 case, moved in some amount of the X, in some amount of
20 the Y. In the other case you moved a different amount
21 of the X, a different amount of the Y, depending on
22 what your components of the direction are. If you're
23 only interested in one axis, then maybe it was the
24 same. I'd have -- I'd have to determine exactly what
25 your paths were. But if you're talking about the

1 two-dimensional movement, then it appears you took two
2 different vectors --

3 MR. JOHNSON: Yeah.

4 Q For purposes --

5 A -- in these images.

6 Q For purposes of the claims of the '381
7 patent, these are -- these are two different
8 directions; right?

9 MR. MONACH: Objection; calling for a legal
10 conclusion.

11 THE WITNESS: For purposes of the claims,
12 these -- the two-dimensional directions that you
13 took -- that you just showed appear to be different.

14 MR. JOHNSON: Right.

15 Q Just so, since you're the actor today, can --
16 can you -- can you --

17 A I hope I'm not acting.

18 Q -- show us on the screen -- or, at least,
19 you're -- you're the hand model.

20 Can -- if you could just put the -- show on
21 the screen the two -- the -- the -- just what I just
22 did.

23 So put -- put your finger on the screen on
24 the zoomed-in image, and if you move it up at
25 45 degrees --

1 A Like, up here?

2 Q Yeah.

3 A Okay.

4 Q And then if you move it down 45 degrees,
5 right, those are not the same direction; right?

6 MR. MONACH: Objection to the form of
7 questions for the reasons previously stated.

8 THE WITNESS: So, as I said, in the
9 two-dimensional space, if I'm concerned with both the
10 X and Y axes, taking both components of movement, then
11 it would be different. However, if I'm only
12 interested in one of the components, say, for example,
13 the X axis, I'd have to look at the data. It may be
14 both moving in the same direction in the X axis, for
15 example.

16 MR. JOHNSON: Q. For purposes of the claims
17 of the '381 patent, they're not the same direction;
18 are they?

19 MR. MONACH: Objection to the form of the
20 question; calling for a legal conclusion.

21 THE WITNESS: So the claim doesn't say
22 whether the direction is two dimensional, three
23 dimensional, one dimensional, so it would be
24 determined -- would depend a little bit on whether you
25 want to constrain the direction to be only a

1 particular axis. If the claim is interpreted broadly
2 to mean any number of axes of movement, then it would
3 not be the same. If it's interpreted more narrowly to
4 say I'm only interested in X axis movement, for
5 example, then it can be the same.

6 MR. JOHNSON: Q. Well, what's your
7 definition of "first direction," under the claims of
8 the '381 patent?

9 A Reading it in terms of the plain language,
10 which is the way I've -- I've interpreted the claims
11 so far, I would take this to be -- could be more than
12 one -- one dimension.

13 Q So under the definition -- under the
14 definition of "first direction" that you just gave for
15 the '381 patent, were those two finger movements the
16 same direction?

17 A They would be the same direction, if you take
18 the two-dimensional components into account, yes.

19 Q So they would be a first direction?

20 A So, no, I'm sorry. Can I go back? I -- I
21 misstated that.

22 They would be -- they would not be the same
23 direction if I took the two-dimensional components
24 into account. But if I only looked at one-dimensional
25 component of the movement, they might be the same.

1 I'd have to look whether the X axis is the same thing.

2 Q Is there -- do you think there's an ambiguity
3 in terms of what "first direction" means in the plain
4 language meaning of that term for the '381 patent?

5 MR. MONACH: Object to the form of the
6 question; vague; incomplete hypothetical; calling for
7 a legal conclusion.

8 THE WITNESS: From a plain reading of this
9 and just taking a high-level view of it, the -- it
10 would appear to encompass all -- all components of the
11 direction, dimensions of the direction, but I could
12 imagine somebody, you know, saying I only want it
13 constrained to X axis, for example.

14 MR. JOHNSON: Yeah, I'm talking about a
15 person of ordinary skill in the art.

16 Q What would a person of ordinary skill in the
17 art understand "first direction" to mean in the '381
18 patent?

19 MR. MONACH: Object to the -- object to the
20 form of the question, but you can give your
21 understanding.

22 THE WITNESS: So as I'm reading this, the
23 claims in conjunction with the patent, I would say it
24 includes the -- the -- the two-dimensional components.

25 MR. JOHNSON: Okay.

1 Q So if I go back to the claim language, the
2 third element says "In response to detecting a
3 movement translating the electronic document displayed
4 on the touchscreen display in a first direction to
5 display a second portion of the electronic document,"
6 so can you show me what that is in the Galaxy S 4G?

7 A So -- so displayed in the touchscreen in a
8 first direction.

9 So if I go -- so let me zoom this one again.
10 If I go this way, see that. Let me do this again. So
11 it's a first direction, for example.

12 Q Okay.

13 A And it displays a second portion of the
14 document.

15 Q And then, the next element says "In response
16 to an edge of the electronic document being reached
17 while translating the electronic document in the first
18 direction."

19 So that means you have to reach the edge
20 using the same first direction?

21 A That's right.

22 MR. MONACH: Object to the form.

23 THE WITNESS: I'm sorry. I should have
24 waited.

25 MR. JOHNSON: So --

1 THE WITNESS: Yeah, so I'm gonna continue in
2 the same direction; and I'm now -- not sure whether it
3 reaches the edge. It all looks black there. Let me
4 do this again. So if I go first direction, keep
5 going, I've definitely reached the edge now.

6 MR. JOHNSON: Okay.

7 Q So if you do what I did before that had the
8 45-degree angle --

9 A Right.

10 Q -- right. So move the image up, and then
11 move it down, and reach the edge.

12 A Like that?

13 Q Right. Zoom in on it first for me, right.
14 First direction, up 45 degrees a little bit.

15 A Yep.

16 Q And then down.

17 A Well, that's already gone past the edge.

18 Q So go -- go --

19 A Still without the edge being shown? I'm
20 sorry.

21 Q Yeah, let me -- let me -- let me -- what
22 I'm -- so if I start here, and I go up here, I haven't
23 reached the edge yet, but then I --

24 A I don't believe so, yes.

25 Q Start there, and then I reach the edge by

1 going down.

2 A I think there's some black dotted stuff
3 there, but I think you reached the edge --

4 Q Right.

5 A -- as it should.

6 Q So that is not using the same first direction
7 to reach the edge; right?

8 MR. MONACH: Same objection to the extent it
9 calls for a legal conclusion.

10 But you can give your understanding.

11 THE WITNESS: To the extent that it's -- the
12 two-dimensional directions that we just discussed,
13 it's not the same two-dimensional directions.

14 MR. JOHNSON: Okay.

15 Q So can you just demonstrate for us the
16 example that I just gave?

17 A So you want me to go --

18 Q Zoom in, and move -- right.

19 A I think I've already passed the edge, though.
20 Okay.

21 Q So that's --

22 A That's --

23 Q So in response to detecting a movement,
24 translating electronic document displayed on a
25 touchscreen display in a first direction.

1 A So you want me to go up --

2 Q Right.

3 A -- to the 45 degrees.

4 Q 45 degrees.

5 A Okay.

6 Q And then, in response to an edge of the
7 document being reached while translating the document
8 in the first direction. So if you move down at
9 45 degrees, and you come to an edge --

10 A Right.

11 Q -- that doesn't meet the claims of the '381
12 patent; right?

13 MR. MONACH: Objection.

14 MR. JOHNSON: Q. -- because it's not the
15 same first direction that's used to get to the edge?

16 MR. MONACH: Objection; form. Objection;
17 calling for a legal conclusion.

18 THE WITNESS: Given that it's a different
19 two-dimensional direction, it would not be the same
20 first direction, correct.

21 MR. JOHNSON: Okay. All right.

22 Q So going back to the claim language, using
23 your example of a first direction, can you -- can you
24 explain to us the alleged infringement for the element
25 that says, "In response to an edge of the electronic

1 document being reached while translating the
2 electronic document in the first direction"?

3 A So same zoomed-in image, I'm going here. I
4 moved in the first direction, and I continue moving in
5 that same direction, I see the edge, and then it
6 continues.

7 So it's detected the edge. Movement is still
8 happening the same first direction and displays an
9 area beyond the edge, which is in black, past the --
10 past the edge of the document, and then displays a
11 third portion of the electronic document, which is
12 what you see in the screen, which is smaller than the
13 first portion that we saw earlier.

14 Q Okay. So when I -- when you moved to the
15 edge of the document by moving your finger over, I saw
16 the image move up a little bit.

17 MR. MONACH: Object to the form of the
18 question.

19 MR. JOHNSON: Q. And so my question is:
20 When you move your finger across and the image moves
21 up or down, is that the same first direction?

22 MR. MONACH: Object.

23 MR. JOHNSON: Q. Do you understand my
24 question?

25 MR. MONACH: Object to the form of question;

1 assuming facts not in evidence. Object to the extent
2 it calls for a legal conclusion.

3 THE WITNESS: So --

4 MR. JOHNSON: Q. So let me -- let me ask it
5 a different way.

6 A Can I release this?

7 Q Yeah, you can release that. This is not --
8 this is not intended to be torture.

9 Is there -- is the only way to infringe this,
10 the claims of the '381 patent, for the -- for the
11 movement of the image and the object to be in a
12 perfectly straight line?

13 MR. MONACH: Object to the form of the
14 question as calling for a legal conclusion; incomplete
15 hypothetical.

16 THE WITNESS: No, I don't think it has to be
17 a perfectly straight line.

18 MR. JOHNSON: Q. You would agree that the
19 first movement that you took when you translated the
20 document to -- to display a second portion of an
21 electronic document, and then when you moved to the --
22 to the edge of the document, your -- your finger
23 didn't move exactly a straight line; right?

24 MR. MONACH: Objection; form. Objection;
25 vague.

1 THE WITNESS: To the extent that a -- a --
2 you know, was my finger exactly on a straight line, I
3 don't think that's humanly possible --

4 MR. JOHNSON: Right.

5 THE WITNESS: -- unless you constrain my
6 finger with some physical gadgetry that would hold it.
7 I don't think that you can do that --

8 MR. JOHNSON: Q. So my question is --

9 MR. MONACH: Please don't interrupt him.

10 MR. JOHNSON: Sorry about that.

11 Q My question is: Where do you draw the
12 boundaries around what constitutes the same first
13 direction? How do you do that?

14 Because, as you just said, you can't have a
15 perfectly straight line, unless your finger is
16 physically constrained to something that -- that makes
17 that happen. So what's -- what constitutes the
18 difference between moving in the same first direction
19 the way you did it, versus the way I did it with a
20 45-degree arc?

21 MR. MONACH: Hang on.

22 Object to the form of the question. Object
23 to the extent you're calling for a legal conclusion.

24 THE WITNESS: So --

25 MR. JOHNSON: Q. So my question is: A

1 person of ordinary skill in the art would not know how
2 to differentiate between drawing the perfectly
3 straight line with a finger in one direction -- in the
4 first direction, versus drawing approximately a
5 straight line.

6 MR. MONACH: Is that a question?

7 Object to -- object to form.

8 THE WITNESS: Are you talking from a -- so
9 I'm not sure I completely understand the question.

10 MR. JOHNSON: I'm talking from a user
11 standpoint.

12 Q Someone wants to try and avoid using this
13 particular claim by saying I'm not gonna use my object
14 to -- to -- to move, in this case, the photo in a
15 first direction. How do I go about avoiding that?

16 MR. MONACH: Object to the form of the
17 question as vague and calling for a legal conclusion.
18 Objection to the extent it calls for a narrative about
19 all the possible ways one might avoid infringing.

20 THE WITNESS: So I think that's -- it would
21 have to be a first direction that the other one --
22 the -- the second first direction and the first first
23 direction in these claims would have to be the same
24 general direction as a user would perceive it to be.

25 I -- I don't think it has to be exactly on a

1 mathematical equivalent straight line, but, to me, if
2 you go, you know, obviously different directions, like
3 you did on the -- the two 45s in very different
4 two-dimensional directions, most users would be able
5 to say that's a -- you know, I've got to change
6 direction along the way.

7 MR. JOHNSON: Okay.

8 Q How about a slight arc? Is that sufficient?

9 MR. MONACH: Same objection; also vague.

10 THE WITNESS: A slight arc. So if you're
11 saying my direction is -- is the contours of the arc,
12 so one, kind of, doing this and continue along the
13 same -- I don't know how you continue in an arc.

14 Eventually you will loop back, but wait. Let
15 me -- that would be -- you know, if your direction is
16 now a two-dimensional direction, yes, it would be the
17 same direction.

18 Or if I was on the 45 angle and continued in
19 this similar 45 and didn't make a sharp turn, then it
20 would be the same dir- -- same first direction.

21 MR. JOHNSON: Q. And what if I -- what if I
22 did an angle that was, you know, ten degrees in one
23 direction and ten degrees in the other direction?

24 I'm trying to understand where the metes and
25 bounds are, where the boundaries are for what

1 infringes, versus what doesn't; and so at what point
2 is it the same first direction and at what point is it
3 not the same direction? Because you said my -- my
4 example of going 45 degrees up and 45 degrees down is
5 not the same direction.

6 So, you know, going at ten degrees up and ten
7 degrees down, is that the same first direction? I
8 mean, I can't draw a straight line with a ruler, so it
9 all looks pretty straight to me, but at what point do
10 you avoid the claim and at what point are you covered
11 by the claim?

12 MR. MONACH: Object to the --

13 MR. JOHNSON: So let -- let me ask it a
14 little bit more specifically.

15 Q At -- tell me -- when -- when you said it has
16 to be the same general direction, what exactly do you
17 mean by that?

18 MR. MONACH: Objection to the extent that
19 you're asking for a legal conclusion. Objection to
20 the extent it's an incomplete hypothetical and you're
21 asking him to form a new opinion here at the
22 deposition.

23 But if you have a -- have you -- you can
24 answer.

25 THE WITNESS: So I haven't, you know,

1 explored this particular question in great detail
2 in -- in thinking about this, because, to me, reading
3 this, as one skilled in the art, it says first
4 direction and another first direction, it would be the
5 direction -- same general direction that a user would
6 generally consider to be a first direction of the same
7 direction; whereas, if it's something that -- you
8 know, I think a straight line from a mathematical
9 definition or a unfavoring first direction from a
10 mathematical -- a direction from a mathematical
11 definition, and then what one skilled in the art or
12 average user would say, yeah, that's in the same
13 direction.

14 So if you're asking me is there an exact
15 mathematical number at which it is no longer one, I
16 don't think I could give you that answer.

17 MR. JOHNSON: Okay.

18 Q What about -- let me -- can we have that
19 phone, please. Thank you.

20 Can you try and get this for me?

21 Okay. So you said this is not the same first
22 direction; right?

23 A Can you do that again?

24 Q That direction is not the same as that
25 direction --

1 MR. MONACH: Objection to the form of the
2 question.

3 MR. JOHNSON: Q. -- right?

4 MR. MONACH: Calling for a legal conclusion.

5 THE WITNESS: If I was a -- as I said
6 earlier, if I'm considering the full two-dimensional
7 movement and not just the X axis component, then --
8 then it is two different directions that a user would
9 perceive it as.

10 MR. JOHNSON: Q. I'm -- all I'm asking is,
11 is it the same first direction for purposes of
12 the '381 patent and how the term "first direction" is
13 used in that?

14 MR. MONACH: Objection; asked and answered.
15 Objection; calling for a legal conclusion and a new
16 opinion with an incomplete hypothetical.

17 THE WITNESS: So to the extent that you --
18 you -- the movement you did was -- from my eyes, it's
19 exact -- it's a different two-dimensional direction.

20 MR. JOHNSON: Okay.

21 THE WITNESS: It is different.

22 MR. JOHNSON: Okay.

23 Q Is -- is this arc the same direction? So if
24 I break it into two --

25 A You didn't pause.

1 Q Let me do it again.

2 So that is the first step of the first
3 direction. This is the second step.

4 Is that the same first direction?

5 MR. MONACH: Same objection as to the
6 previous question.

7 THE WITNESS: So, conceptually, if you're
8 moving in an arc, and assuming you went on the same
9 arc, and you didn't -- when you broke there, you --
10 you were still following the same arc, I would say it
11 is the same first direction.

12 MR. JOHNSON: Q. It is?

13 A Yes.

14 Q Okay. So what if I changed -- what if I
15 break the arc? So if I start this, this way with --
16 and that's the first step, and then I change the angle
17 of the arc, I either go up or I go down at a different
18 angle, so I break the arc?

19 A So it's no longer --

20 MR. MONACH: Same objection.

21 Go ahead.

22 THE WITNESS: I'm sorry.

23 A -- if you're no longer on the same arc, you
24 have -- you have broken the arc, as you -- as you've
25 said, then it would not be the same direction.

1 MR. JOHNSON: Okay.

2 Q And if I move my finger -- you would agree
3 that in moving my finger -- and I can see the image
4 moving up and down -- I mean, generally speaking,
5 there are gonna be components within the movement of a
6 finger that have a vertical component to it, as well
7 as sort of the horizontal component; right? So it's
8 moving up and down.

9 MR. MONACH: Object to the form of the
10 question.

11 MR. JOHNSON: Q. So is that -- is that the
12 same direction, even though it's -- it's bouncing up
13 and down when I move it?

14 MR. MONACH: Same objection.

15 THE WITNESS: Well, I wouldn't say that's
16 bouncing up and down. I saw it moving primarily to
17 the right. I actually could not see it bounce, but
18 I'll take your word that it's moving maybe a little
19 bit up and down. You could exaggerate it a little
20 bit, if you wanted it to, but -- but now you're
21 clearly moving it in a jaggy way, so that's --

22 MR. JOHNSON: Q. So is that the same first
23 direction?

24 A Well, I'm seeing your hand move in a zigzag,
25 so, to me, that's -- I think it's a very contrived way

1 of doing it.

2 Q No, I'm trying to -- I'm -- I'm purposely
3 contriving it to -- to understand if that's the same
4 first direction. So if I move it in a -- in a jagged
5 sort of way --

6 MR. MONACH: Hang on a second.

7 MR. JOHNSON: Q. -- is that the first --
8 with -- let me start over.

9 Q If I move my finger in a jagged way, like
10 this, does that meet the elements of the claim in
11 the '381 patent for first direction?

12 MR. MONACH: Objection; calling for a legal
13 conclusion; vague; incomplete hypothetical.

14 THE WITNESS: So I'm thinking here -- I
15 haven't considered this in detail before. Now you're
16 showing me this for the first time, and I'm thinking
17 out loud here, to some extent.

18 Similar to the arc, where it's a
19 two-dimensional movement, but it follows a pattern,
20 it's following that arc, and I said that it would be a
21 first direction if you continue along the same arc.
22 In this case, you've got a rhythmic -- I think you did
23 a rhythmic jagged movement, where you kind of went up
24 and down, up and down, in a same kind of sawtooth. I
25 would say that is the same direction, if you continue

1 along the same rhythmic two dimension --
2 two-dimensional sawtooth or jaggy, whatever you want
3 to call it, which is different from the original --
4 sorry -- the earlier one where you did a big movement
5 in one direction and another big movement in a
6 different -- very different two-dimensional direction.
7 I would think one of ordinary skill in the art would
8 say that's a different two-dimensional direction.

9 MR. JOHNSON: Okay.

10 Q So, then, let me -- let me go back to that,
11 then, and ask you this: If I -- if I do two saw
12 teeth, up, down, up, down, is that the same first
13 direction --

14 MR. MONACH: Objection; vague and --

15 MR. JOHNSON: Q. -- because it's rhythmic?

16 MR. MONACH: Objection; vague and ambiguous;
17 incomplete hypothetical; calling for a legal
18 conclusion and a new opinion at the deposition.

19 THE WITNESS: Again, I haven't thought about
20 it in detail. You know, I'm thinking about this for
21 the first time here. I would say to the extent that
22 it's repetitive, and you're -- you're going in the
23 same direction, it would be the same first direction.

24 MR. JOHNSON: Okay.

25 Q So repetitive in the same direction,

1 rhythmic, generally the same direction, those all meet
2 the limitations of the '381 patent for first
3 direction, as far as you're concerned; right?

4 MR. MONACH: Same objection.

5 THE WITNESS: Again, thinking on the fly
6 here, you know, haven't -- haven't delved into this in
7 great detail, yes, I would say yes.

8 MR. JOHNSON: Okay.

9 Q So let's -- let's keep going through the --
10 the claim --

11 A Sorry. I can't remember where we were.

12 Q -- limitations.

13 We were -- we were just about to do display
14 in an area beyond the edge of a document.

15 A Okay. So let's assume I've done some of the
16 earlier stuff, and I've now -- I've pulled this, and
17 I've gone in one direction in a -- in the same
18 direction, same first direction. I've now -- I'm now
19 showing an area beyond the document.

20 Q That's the black?

21 A It is the black beyond the blackened dots
22 there. It says, "Displays the area beyond the edge of
23 the document," and then it displays -- well, currently
24 displays a third portion of the electronic document,
25 which is what you see to the right of the -- the area

1 beyond the edge, and that is clearly smaller than the
2 first portion which took up more of the screen.

3 And then, now, that last element of the
4 claims --

5 Q Okay. Before you get there, what -- what is
6 "displaying an area beyond the edge of the document"
7 mean?

8 MR. MONACH: Object to form. Object to the
9 extent it calls for a legal conclusion.

10 You can give your understanding.

11 THE WITNESS: My understanding is, in the
12 context of this patent and the claims, it's -- I've
13 got the edge of the document. I've reached the edge,
14 and I'm gonna show something, some -- some amount of
15 visuals beyond that edge. Displaying an area.

16 MR. JOHNSON: Q. What do you mean you're
17 going to show some amount of visuals beyond the edge?

18 A So, for example, the black space, that black
19 area. It could be a white area. It could be some --
20 some visual that's not part of the document.

21 Q So it could be anything that's visual, as
22 long as it's not part of the document?

23 MR. MONACH: Object to the form of the
24 question. Object to the extent it's vague and calls
25 for a legal conclusion.

1 THE WITNESS: So as this claim reads, it
2 says, "Displaying an area beyond the edge of the
3 document." It doesn't say the area has to have any
4 particular characteristics. Yes, or any -- some area
5 beyond the edge is not part of the document.

6 MR. JOHNSON: Q. And what is -- what does
7 "displayed" mean?

8 A Can I release the --

9 Q Yeah.

10 MR. MONACH: Same objection.

11 THE WITNESS: Displaying, showing on the
12 screen.

13 MR. JOHNSON: Okay.

14 Q Now, you haven't looked at the -- the -- the
15 source code for any of the accused devices; right?

16 MR. MONACH: Objection. Object to form.

17 THE WITNESS: I briefly looked at some of the
18 public Android source code.

19 MR. JOHNSON: Okay.

20 Q Have you -- so -- and, by the way, can you
21 tell us what specific Android source code you looked
22 at for purpose -- I'm talking about the -- for the
23 accused devices, as well?

24 MR. MONACH: Well, objection; vague and
25 compound.

1 MR. JOHNSON: Let me reask it, all right.

2 Q So have you looked at any of the source codes
3 for these particularly accused devices?

4 MR. MONACH: Objection; vague; may be lacking
5 in foundation.

6 THE REPORTER: Excuse me. Don't play with
7 the cord.

8 THE WITNESS: Oh, I'm sorry.

9 I have looked at some of the source codes for
10 Android 2.3, 2.2, for example.

11 MR. JOHNSON: Q. The source code that you're
12 referring to is the publicly available Android source
13 code; right?

14 A That is correct.

15 Q Okay. You haven't looked at any of the
16 proprietary source codes for any of the Samsung
17 Accused Products; right?

18 A I have not looked at any -- anything that was
19 obviously marked proprietary, no.

20 Q Okay. And what -- what specific pieces of
21 the source code for Android 2.3 and 2.2 did you look
22 at?

23 A Well, I can't remember the specifics. I -- I
24 know in -- in Android 2.3, I believe, I looked --
25 looked for -- out of curiosity, really, just looked at

1 some of the scrolling functionality. That's -- you
2 know, that's some of the stuff I looked at.

3 Q When did you look at that?

4 A Maybe a month or two ago. Maybe a month
5 ago --

6 Q After you --

7 A -- a month.

8 Q After you were retained for this case?

9 A That particular chunk of code, yes, it was
10 after I was retained.

11 Q And -- and why did you look at it?

12 A It was when I was --

13 MR. MONACH: Actually, let me just caution
14 the -- caution the witness not to disclose any expert
15 and lawyer communications, except to the extent they
16 relate to facts or assumptions that you relied on,
17 but, otherwise, you're free to answer the question.

18 MR. JOHNSON: Go ahead.

19 THE WITNESS: So when I was looking at these
20 phones, I, you know, was curious because the code was
21 available. Should -- you know, apparently was
22 available online publicly, so I -- you know, I was
23 just curious to see what they were doing there, so I
24 looked at that, but I realized very quickly that the
25 infringement -- I mean, I did not need to look at the

1 code to determine infringement, because it's pretty
2 obvious, just from looking at the applications
3 themselves, that I could determine infringement
4 without analyzing the code in any detail, so I did not
5 pursue the code analysis in any further detail.

6 MR. JOHNSON: Did the aspect of the -- strike
7 that.

8 Q Did the code that you looked at for Android
9 2.3 and 2.2 confirm in your mind infringement of
10 the '381 patent?

11 MR. MONACH: Objection; vague. Objection;
12 compound.

13 THE WITNESS: So in Android 2.3, I saw
14 something called the -- I think it's called a scroller
15 class, over-scroller class. That appeared to be doing
16 some of this moving-past-the-edge thing. I did not
17 study it in great detail to match it up with the
18 claims. I did not, you know, go searching very hard
19 for the same type of functionality in 2.2, because, at
20 that point, I realized I didn't need that to determine
21 infringement.

22 Well, I certainly did not sit there and say,
23 okay, all of this code matches up with the claims; and
24 the code, element by element, infringes, I did not do
25 that analysis yet.

1 MR. JOHNSON: Do Android versions 2.3 and 2.2
2 meet the elements of claim -- strike that.

3 Q Do Android versions 2.3 and 2.2 meet the
4 elements of the -- of the claims of the '381 patent,
5 as far as you're concerned?

6 MR. MONACH: Object to the form of the
7 question as vague and ambiguous; lacking in
8 foundation, in light of the prior testimony. I object
9 to the extent it calls for a legal conclusion and a
10 new opinion on a new subject at the deposition.

11 THE WITNESS: So, as I said, I have not
12 analyzed that code in detail to match them up with the
13 claims, but to the -- but I have looked at these four
14 devices and the gallery and contacts application, as
15 we've already discussed, and from the applications and
16 using the applications, I've matched up the
17 functionality with the claims. And, as I said before,
18 these devices are running code in the -- in the
19 devices, and to the extent that that code is the same
20 code as Android 2.2 or 2.3, or whatever it is, then
21 it -- if it is the same code, then it would have to,
22 because the functionality running on the device is
23 infringing the claims, the code would have to infringe
24 the claims.

25 MR. JOHNSON: But you don't know whether the

1 claim -- well, strike that.

2 Q You don't know whether the -- the accused
3 Samsung products actually implement the Android code
4 in the same way that you reviewed it; right?

5 A So I don't know if the accused Samsung
6 products use exactly the same versions of code I
7 looked at, no, I cannot say that for sure, and the --
8 the products may have additional code beyond the --
9 the publicly available code that I'm not --

10 Q And you just don't, because you haven't
11 looked at the code?

12 A I have not looked at that code in detail
13 enough to make that determination.

14 Q Right.

15 The Android software is obviously publicly
16 available; right?

17 MR. MONACH: Object to form.

18 THE WITNESS: The Android code and software
19 is pub- -- some versions of it are publicly available,
20 I believe, yes.

21 MR. JOHNSON: You didn't look at any of
22 the -- well, strike that.

23 Q Did you look at the -- let me ask you in two
24 ways: You didn't look at any Samsung code to
25 determine if the elements that require "In response to

1 detecting the movement translating the electronic
2 document displayed on the touchscreen display in a
3 first direction," or "in response to an edge of the
4 electronic document being reached while translating
5 the electronic document in the first direction while
6 the object is still being detected on or near the
7 touchscreen display," or "in response to detecting
8 that the object is no longer on or near the
9 touchscreen display translating the electronic
10 document in a second direction until the area beyond
11 the edge of electronic document is no longer displayed
12 to display a fourth portion," you didn't look to
13 determine whether any of the Samsung code meets those
14 limitations specifically; right?

15 MR. MONACH: Object to the form of the
16 question. He's already asked -- he's already been
17 asked and answered whether he looked at the code
18 that's loaded on these devices.

19 You can answer again.

20 THE WITNESS: So I've not looked at the
21 particular code that might be loaded on these
22 devices --

23 MR. JOHNSON: Q. And did you look at --

24 A -- to match them up with the claims, no.

25 Q Did you look at the Android software

1 specifically to determine if those three limitations
2 in the claims were met?

3 MR. MONACH: Objection; asked and answered.
4 You can do it again.

5 THE WITNESS: If you mean the Android
6 publicly available source code, I did not look at it
7 and match up -- I did not do the matching --

8 MR. JOHNSON: Okay.

9 THE WITNESS: -- of the -- of the code to the
10 claims. I did not do that.

11 MR. JOHNSON: All right.

12 Q Let -- let's go back to the limitation that
13 says "displaying an area beyond the edge of a
14 document."

15 You obviously didn't look at any code to
16 determine whether or how the displaying of -- of any
17 of the documents occurs; right?

18 MR. MONACH: Objection; vague.

19 THE WITNESS: I did not -- I'm sorry. You're
20 done?

21 MR. MONACH: Yes.

22 THE WITNESS: I -- I did not look at code
23 that -- specifically looking for how a particular
24 document or area beyond the document might have been
25 displayed.

1 MR. JOHNSON: Q. And there -- there --
2 you're not aware of any instructions in any code,
3 whether it's Samsung code or Android code, to draw an
4 area beyond the edge of the document, as required in
5 Claim 1 of the '381 patent; right?

6 MR. MONACH: Objection; vague.

7 THE WITNESS: I have not seen the code,
8 per se, but there would have to be that code, because
9 the functionality, as I'm working -- as I've
10 demonstrated on all these devices, clearly displays an
11 area beyond the edge of the document, so that
12 functionality is there. It's not magic. There would
13 have to be some code somewhere on the device that's
14 making that happen.

15 MR. JOHNSON: Q. Well, actually, do you have
16 any experience with AMO LED displays? You do; right?
17 AMO LED?

18 A I'm sorry. What do you mean by A --

19 Q AMO LED.

20 Do you have experience with AMO LED displays?

21 A In terms of using them?

22 Q Using them, analyzing them, working with
23 them.

24 A I haven't analyzed the hardware in any
25 fashion at all.

1 Q But I thought you said -- well, strike.

2 Do you know whether any of the Samsung
3 accused devices use AMO LED displays?

4 A I do not know what particular hardware
5 display they're using.

6 Q That's not of any importance to your
7 analysis?

8 MR. MONACH: Object to the form of the
9 question.

10 THE WITNESS: I don't believe for these
11 particular claims the type of display, or beyond the
12 fact that it's a touchscreen display, the type of
13 whether it's an LCD, LED, whatever underlying
14 technology, the claim simply says a touchscreen
15 display, that is able to detect movement.

16 MR. JOHNSON: Q. What is --

17 A So, for those claims, I did not see the need
18 to consider what particular type of hardware
19 technology, beyond the fact that it's a touchscreen
20 display.

21 Q What is an AMO LED display?

22 MR. MONACH: Objection; lack of foundation.

23 THE WITNESS: I -- I haven't thought about
24 that in conjunction with this case, and I haven't --
25 you know, haven't formed an opinion on that, so I'm

1 not going to answer it.

2 Q Have you ever -- have you ever heard of the
3 term?

4 A I believe I have. It's not something that I
5 use regularly.

6 Q Okay. Have you ever heard of the term
7 "organic LED displays"?

8 A I have heard the term, yes.

9 Q Okay. And what -- what is that?

10 A It -- again, I haven't, for purposes of
11 preparation for this, I haven't thought about that in
12 detail to give you a clear answer, so I'm not -- I'm
13 not gonna give you an answer that's detailed. I would
14 say that's a different form of -- of display --

15 Q Okay.

16 A -- than some of the others out there.

17 Q So to -- to meet the elements of the claims
18 in the '381 patent that refer to display in an area
19 beyond the edge of the document, does the display need
20 to actively show something beyond the edge of the
21 document?

22 MR. MONACH: Objection; vague. Objection to
23 the extent it calls for a legal conclusion.

24 THE WITNESS: I'm not sure what you mean by
25 "actively needs to show." It says the -- the claim

1 element says "displaying an area," so it would have to
2 display an area. I'm not sure how it could happen
3 without --

4 MR. JOHNSON: Okay.

5 THE WITNESS: -- the device actually doing
6 it.

7 MR. JOHNSON: Q. Exhibit 21 that's in front
8 of you, the Galaxy S 4G, I think it's off right now,
9 right, so is -- is that display -- strike that.

10 Is that device displaying anything on the --
11 on the screen?

12 MR. MONACH: Object to the form of the
13 question; vague. Object to the extent it's asking for
14 a legal conclusion and a new opinion.

15 THE WITNESS: I haven't thought about this
16 in -- in any detail. Just thinking on the fly here,
17 the display doesn't appear to be powered on, and as a
18 result, the active part of the display doesn't appear
19 to be showing anything.

20 MR. JOHNSON: All right.

21 Q So when it's off, when it's not displaying
22 anything, it's not -- strike that. It's not
23 displaying anything, so let me ask it a different way.

24 When the -- when the screen is turned off,
25 it's not displaying anything; right?

1 MR. MONACH: Same objection.

2 THE WITNESS: When the screen is turned off,
3 the screen portion is not displaying anything. Beyond
4 the screen, there are hard -- you know, hard is the --
5 I guess personally -- permanently or somewhat
6 permanently etched lettering that says "T-Mobile" and
7 "Samsung" on it. You could argue that that's a
8 display on the phone, but it's not, you know --

9 MR. JOHNSON: Q. I'm talking about the
10 screen.

11 A -- the -- the actual active part of the
12 screen, it's not displaying anything, no.

13 Q Okay. So if you go to -- back to your
14 example, where you were demonstrating infringement of
15 the photograph in the gallery.

16 A Uh-huh.

17 Q Can you go back to that for me. Okay.

18 And if you go to the portion where you
19 believe that you're displaying an area beyond the edge
20 of the document --

21 A Like once --

22 Q That's the black --

23 A Yeah.

24 Q -- edge on the left-hand side of the screen.

25 You don't know how the Samsung products

1 actually operate and where that black boundary comes
2 from; do you?

3 A Are you saying where the black boundary comes
4 from and whether it's sending instructions illuminate
5 or not illuminate those pixels?

6 Q Right.

7 A It would have to send the instructions to say
8 illuminate or not illuminate or illuminate with a
9 particular color.

10 Q So what is it doing? Is it telling you to
11 illuminate or not illuminate? What does the code do
12 there?

13 MR. MONACH: Objection; lack of foundation.

14 MR. JOHNSON: Q. And if you don't know, you
15 can say you don't know.

16 A I -- I have not looked at the code that does
17 that, so I cannot answer that question.

18 Q So if -- if the LED -- if there are LEDs that
19 are turned off in that leftmost edge there, right,
20 there -- it's not displaying an area beyond the edge
21 of the document; is it?

22 MR. MONACH: Object to the form of the
23 question. Object to the extent it calls for a legal
24 conclusion and a new opinion.

25 THE WITNESS: So I haven't thought about this

1 in detail until now. Thinking on the fly, if those
2 LEDs are turned off because the code says turn it off,
3 then it is -- it is displaying an area beyond the
4 screen, because it's under instruction that it's
5 turned off.

6 Or if it says display black, which is another
7 possibility, then it's also displaying an area --

8 MR. JOHNSON: Q. What if it doesn't do
9 anything? What if it's not doing anything, and all
10 you're doing is moving the image over?

11 MR. MONACH: Object to the form of the
12 question as vague and ambiguous.

13 MR. JOHNSON: Q. That doesn't meet the --

14 MR. MONACH: Object to the extent it calls
15 for a legal conclusion.

16 MR. JOHNSON: Q. That doesn't meet the
17 element of the claims; do it -- does it?

18 A If you're saying the instructions don't say
19 display or don't -- anything like that?

20 Q Correct.

21 A I think it would have to say something,
22 because, typically, my understanding of how these
23 refreshes of screens work, it -- it -- you typically
24 refresh the whole screen, and if portions are not
25 refreshed, you explicitly say I'm not gonna refresh

1 those portions as refresh this other portion. So
2 there would be instructions in there, given that the
3 screen is on. I mean, if you can shut the whole thing
4 off, obviously, nothing happens.

5 MR. JOHNSON: Q. But you don't know how
6 these devices operate, right, with respect to this
7 particular element?

8 A I have not looked at the code to determine
9 exactly how it operates internally.

10 Q So my question is --

11 A Can I erase --

12 Q -- if these are LE- -- if these are LEDs that
13 are -- that are just off for whatever reason, you
14 don't -- do you have an opinion as to whether that
15 meets the limitation of displaying an area beyond the
16 edge of the document?

17 MR. MONACH: Objection; vague; incomplete
18 hypothetical; calls for a legal conclusion; asked and
19 answered.

20 You can do it again.

21 THE WITNESS: So as I said earlier, I haven't
22 thought about this in detail. I'm thinking on the fly
23 here.

24 If those LEDs were turned off by -- by the
25 code, by instruction --

1 MR. JOHNSON: That's not my question.

2 MR. MONACH: Let me answer.

3 Go ahead and answer -- go ahead and answer
4 the question as you understood it.

5 THE WITNESS: So what I'm saying is, if
6 the -- if the LEDs are turned off, and the code calls
7 it to turn -- turn it off, they would be displaying an
8 area beyond the edge of the document.

9 MR. JOHNSON: That's not my question. Move
10 to strike. Your lawyer will get an opportunity to ask
11 you questions at the end.

12 Q My -- my question is: Just like now, where
13 the screen is black, it's not -- that screen -- you
14 already said it's not displaying anything.

15 So my question is: When the -- when the
16 photograph moves beyond the edge and there's a black
17 portion that appears beyond the edge, you don't know
18 whether that black portion meets the limitations of
19 the claims of the '381 patent because you haven't
20 looked at the code to determine whether it displays an
21 area beyond the edge of the document; right?

22 MR. MONACH: Object to the form of the
23 question. Object to the extent it calls for a legal
24 conclusion; asked and answered.

25 You can answer again.

1 THE WITNESS: As I said before, I've
2 already -- I haven't looked at this in detail. I
3 haven't considered this issue in detail. To me, as
4 the thing is moving, it is -- the code would have to
5 display -- figure out what it's gonna display and what
6 it's not gonna display, and if it is -- if it tells
7 the -- the screen don't illuminate those -- those
8 particular pixels, that would be equivalent to saying
9 display that area in black.

10 So it would be displaying an area beyond the
11 edge of the document. If the code doesn't say it, if
12 it just leaves it, and the system on its own defaults
13 or something, then maybe it's not displaying.

14 MR. JOHNSON: Okay.

15 Q So if the -- if the default is to just leave
16 it, then it doesn't meet the elements of the claims of
17 the '381 patent; right?

18 MR. MONACH: Object to the form of the
19 question; incomplete hypothetical; vague; calling for
20 a legal conclusion and a new opinion at the
21 deposition; asked and answered.

22 THE WITNESS: So, as I said earlier, the --
23 the code would have to say display or don't display,
24 and it -- the system is not gonna just say, by
25 default, don't display, because previously there was

1 something there. So some instruction -- there's some
2 other content there, the earlier part of the image was
3 displayed on that portion of the screen. So the code
4 would have to say, you know, turn that to black or
5 turn it off. It's just not gonna just disappear off
6 the screen during the refresh.

7 There would have to be something in the code
8 that gave instructions to the screen to either display
9 black pixels or to turn off those pixels. In both
10 cases, my testimony is that that would constitute
11 displaying an area.

12 MR. JOHNSON: Q. But you don't -- you don't
13 know what -- you don't know what is in the code or
14 what it -- what it says or how that display is
15 generated one way or the other; do you?

16 A I have not looked -- as I said earlier, I
17 have not looked at the specifics of that code.

18 Q So when you look at Claim 19, and it says
19 "instructions for displaying an area beyond an edge of
20 the electronic document," you don't know what those
21 instructions are; do you?

22 MR. MONACH: Objection; vague.

23 THE WITNESS: As I said earlier, I have not
24 looked at those particular instructions.

25 MR. JOHNSON: Okay.

1 THE WITNESS: And as I've testified, the fact
2 that the program is running and doing the
3 functionality, as in Claim 1, it would have to have
4 some instructions.

5 MR. JOHNSON: Q. But you would agree -- or
6 do you have an opinion -- do you have an opinion as --
7 you said you had an iPhone, right. I mean, do you
8 have an opinion -- do you know whether the -- the
9 displays in an iPhone 4 are the same as the displays
10 that are in the Samsung accused devices?

11 MR. MONACH: Objection; lack of foundation.

12 THE WITNESS: I have not made that
13 determination.

14 MR. JOHNSON: Okay.

15 Q Is -- do you -- you would agree that an
16 organic LED screen operates differently from the
17 touchscreen in the iPhone 4; right?

18 MR. MONACH: Objection; vague; lack of
19 foundation.

20 THE WITNESS: I have not considered those
21 differences, so I cannot make a -- give an answer
22 either way on that one.

23 MR. JOHNSON: Q. You haven't formed an
24 opinion on that; right?

25 A I have not formed an opinion.

1 Q If you have code to draw on only half of the
2 screen and no instructions for the other half, is
3 there a display beyond the edge of a document?

4 MR. MONACH: Objection; incomplete
5 hypothetical; vague; calling for a legal conclusion;
6 calling for a new opinion.

7 THE WITNESS: So I haven't thought this issue
8 through. Again, I'm thinking on the fly here.

9 So the code says only draw a portion of the
10 screen, and doesn't say anything about the other side.
11 The -- there would have to be something in the -- in
12 the machine, in the computer, that decides what to
13 draw on the other side, whether that is another chunk
14 of code or some -- some firmware that also happens to
15 be code that defaults to something. It would have
16 to -- it would have to -- you would have to know to
17 display something on there, whether it's black, white,
18 or -- so if nothing is explicitly said, there would
19 still have to be something in the machine that -- some
20 code, somewhere, that determines what is displayed
21 there; and, therefore, if the screen is on, there
22 would be an area displayed beyond the edge of the
23 document.

24 MR. JOHNSON: Q. So under that explanation,
25 is there code when the device is turned off?

1 A When the device is turned off, the code is
2 not running.

3 Now, I'm not sure, on this particular set of
4 devices, when -- when the screen is turned off,
5 whether the code is not running or not. They -- there
6 might be. The code may still be executing. Just the
7 screen is powered off.

8 Q When there -- when there's -- the black part
9 of the screen is shown beyond the edge of the
10 document, is there code that is running that says
11 "make this black"?

12 MR. MONACH: Objection; lack of foundation.
13 Objection; vague. Objection; asked and answered,
14 multiple times.

15 You can do it again.

16 MR. JOHNSON: Q. And you shouldn't
17 speculate. I want -- I want to know what your -- what
18 your opinion is.

19 A So, as I said, I haven't looked at the
20 particular code on -- on this device. Just from --
21 generally, there would have to be some code that
22 decides what to illuminate on a -- on a display or not
23 illuminate on a display that is -- is powered off.

24 MR. MONACH: Kevin, we've been going for
25 about an hour and 15 or 20 minutes, and we're due for

1 a lunch break, so sometime soon we should probably
2 break, but if you have more questions on this, go
3 ahead; but it seems like we're getting into some
4 repetition.

5 MR. JOHNSON: Q. So going back to the -- the
6 language where I was asking you about in the claims it
7 says "in response to," the temporal aspects of those
8 claims, right, you don't know whether the area beyond
9 the edge of a document is drawn after the edge is
10 reached; do you?

11 MR. MONACH: Object to the form of the
12 question; vague; calling for a legal conclusion; lack
13 of foundation.

14 THE WITNESS: So in -- in using the devices,
15 the way I've demonstrated using these applications,
16 the -- before you hit the edge of the document, there
17 was something drawn there, which is that second
18 portion of the -- of the document, and then it reaches
19 the edge, and it moves beyond the edge, the third
20 portion would have to be drawn. It's either -- it's
21 either drawn as black in that particular example I've
22 shown you, or drawn in that -- some code instructed
23 the system to say don't display anything.

24 So there would have to be some instructions.
25 I have not looked at those instructions, as I've

1 already said.

2 MR. JOHNSON: Q. So in your -- in your
3 opinion, when the code says "don't display anything,"
4 it really means "display something"?

5 MR. MONACH: Objection; vague and ambiguous;
6 lacking in foundation; misstates the prior testimony.

7 THE WITNESS: I think if the code says "turn
8 off the -- those pixels," that is another way of
9 saying display it in -- in the default, turned off
10 color, so it would be the same thing.

11 MR. JOHNSON: Okay. Just a couple of other
12 questions, and then we can break for lunch.

13 Q Earlier when we were looking at the Accused
14 Products, you showed us that you had to zoom in on the
15 photo in order to infringe the claims of the '381
16 patent. I want to understand what limitations are not
17 met when the photo is not zoomed in.

18 MR. MONACH: Objection; misstates the prior
19 testimony; assumes facts not in evidence; vague, and
20 calling for a legal conclusion.

21 Go ahead.

22 THE WITNESS: Finished?

23 I -- I don't want to give the answer right
24 off my cuff here. I'd have to sit here and analyze
25 the situation when it's not zoomed in with respect to

1 each of the elements of the claim, and I'm happy to do
2 that, if you want me to do that.

3 MR. JOHNSON: Okay. Yeah, why don't we take
4 the lunch break, and you can do it over the lunch
5 break. I'd appreciate it. It shouldn't take that
6 long. Now is a good time to break.

7 Well, it's up to you, actually. If you want
8 to break for lunch break, or you want to keep going?

9 THE WITNESS: Yeah, we can do that and --

10 MR. MONACH: Yeah, break for lunch. I
11 don't -- I don't think it's proper to ask him to do a
12 homework assignment over the lunch break, but we'll
13 return, and if you have questions, you can pose them.

14 MR. JOHNSON: Well, those are my questions.
15 I'd like for you to take a look at that over the lunch
16 break.

17 THE VIDEOGRAPHER: This is the end of Disk
18 No. 2, Volume I.

19 We are off the record at 12:22 p.m.

20 (Lunch break taken at 12:22 p.m.)

21 ---oOo---

22

23

24

25

1 A F T E R N O O N S E S S I O N

2 1:38 p.m.

3

4

5

6 THE VIDEOGRAPHER: This is the beginning of
7 Disk No. 3, Volume I.

8 We are back on the record at 1:38 p.m.

9 You may proceed.

10 MR. JOHNSON: Q. Before the lunch break, we
11 were discussing Samsung's S 4G, and I wanted to ask
12 you --

13 A That's this one, 21, right?

14 Q 21, right.

15 So if you could look at that again, and, you
16 know, look at the gallery application, and tell me
17 what limitations are not met when the photo is not
18 zoomed in.

19 MR. MONACH: Object to the form of the
20 question as being vague; calling for a legal
21 conclusion and asking witness to form new opinions on
22 the fly at the deposition.

23 THE WITNESS: So just to be clear, I'm --
24 this is not something I've opined on in my -- in my
25 report. So based on the few minutes I've looked at

1 this here, and -- and not a detailed analysis, I --
2 for one particular image, for example, I'm looking at
3 that particular image, and you --

4 MR. JOHNSON: Q. Can you show it again, just
5 so --

6 A Oh, sorry.

7 Q Okay. Thanks.

8 A So that particular image, other images may
9 well behave differently. I haven't done an exhaustive
10 determination of this. For this particular image, in
11 the gallery application on this phone, it clearly has
12 the -- the preamble is met, the computer-implemented
13 method comprising a device with a touchscreen display.
14 That's clearly met, as we've discussed previously. It
15 shut off again. Just give me a second here.

16 Q You got to change these settings so it
17 doesn't turn off.

18 A So I've got the image here. You can say
19 it's -- it meets the -- I would say it meets the --
20 the element of the claim that says displaying a first
21 portion of an electronic document, i.e., the -- the
22 image here; and then, the second element of the claim
23 would be detecting a movement of an object on or near
24 the touchscreen display. In this case, I'm gonna put
25 my finger down, and the finger is the object in the

1 claims, and clearly the -- the -- this computer
2 implemented method does detect the movement of my
3 finger.

4 And then, the next element of the claim says,
5 "In response to detecting the movement translating the
6 electronic document displayed on the touchscreen
7 display in a first direction to display a second
8 portion of the electronic document, wherein the second
9 portion is different from the first section."

10 So I'm gonna start again here and put my
11 finger down and move it in the first direction. I've
12 now got a second portion.

13 The -- the right-hand side of the image went
14 off screen, so I've got a second portion that's
15 different from the first portion, and then I keep
16 translating it in response to an edge being detected,
17 while translating the electronic document in the first
18 direction. While the object is still detected on or
19 near the touchscreen display, it displays an area
20 beyond the edge of the document, so I don't know if
21 you can see it here, but the -- there's a black region
22 displayed beyond -- beyond the edge of the document on
23 the right-hand side of my -- where my thumb is, and --
24 and there, at the same time, it displayed a third
25 portion of the electronic document, wherein the third

1 portion, which is the -- the part which is not the
2 area beyond the edge is smaller than the first portion
3 we saw at the start of this.

4 And then -- so that's met, and, finally, in
5 response to detecting the object is no longer on or
6 near the touchscreen display, translating the
7 electronic document in a second direction until the
8 area beyond the edge of the electronic document is no
9 longer displayed to display a fourth portion of the
10 electronic document, wherein the fourth portion is
11 different from the first portion.

12 So this time, if I -- if I let go, in other
13 words, it detects that my object, i.e., the finger, is
14 no longer on or near the display, it has translated
15 the electronic document in a second direction, such
16 that the area beyond the edge is no longer displayed.
17 So that part is met, but the fourth portion is -- in
18 this particular example, in this particular image, is
19 not different from the first portion that we started
20 with at the start of this exercise.

21 So I would say that last part of that last
22 element of the claim where the fourth portion is
23 different from the first portion, that's not met in
24 this particular image example that I'm showing you,
25 I'm walking you through right now.

1 Q Okay. What is the first Android phone that
2 you're aware of that has features that infringe
3 the '381 patent?

4 MR. MONACH: Objection; vague and ambiguous;
5 lack of foundation; calling for a legal conclusion.

6 THE WITNESS: Do you mean first Android phone
7 in general?

8 MR. JOHNSON: Yes.

9 THE WITNESS: Regardless of manufacturer?

10 MR. JOHNSON: Yes.

11 THE WITNESS: I don't think I can answer the
12 question. I haven't thought about it in any detail at
13 all, until now. I can't recall when -- when the first
14 time I saw this set -- this sort of feature on an
15 Android phone.

16 MR. JOHNSON: Q. So you don't -- you don't
17 know the answer, sitting here today; right?

18 A I cannot give you a definitive answer either
19 way.

20 Q We've talked a little bit about a person of
21 ordinary skill in the art. Can you define for me who
22 a person of ordinary skill in the art is for the '381
23 patent.

24 MR. MONACH: Object to the form of the
25 question, but you can give your personal view.

1 THE WITNESS: So I haven't made that
2 determination definitively yet as part of my work on
3 this case, so I, you know, haven't put it down in
4 writing yet, and I reserve the right to do that,
5 should the time arise.

6 Just sitting here today, off -- off the top
7 of my head, I would say -- to understand this patent
8 and make use of it, I would say a person would need to
9 have an undergraduate degree in computer science or
10 electrical engineering, or the equivalent of that, and
11 probably a couple of years of work experience or
12 equivalent.

13 MR. JOHNSON: Q. What kind of work
14 experience?

15 MR. MONACH: Same objection.

16 THE WITNESS: Again, I'm -- I'm thinking out
17 loud here. I haven't thought about this in great
18 detail, but some experience in, at least,
19 understanding user interfaces and potentially having
20 either implemented some interfaces or look at other
21 implementations and knowing how to put them together.

22 MR. JOHNSON: Okay.

23 Q Now, degree -- an actual degree in computer
24 science or electrical engineering is not required for
25 a person of ordinary skill in the art; right?

1 MR. MONACH: Same -- same objection; asked
2 and answered.

3 THE WITNESS: So as I said earlier, a -- I
4 would say you would need a degree in computer science,
5 electrical engineering, or the equivalent.

6 MR. JOHNSON: Or the equivalent, okay.

7 Q And what would the equivalent be?

8 MR. MONACH: Object to the form.

9 MR. JOHNSON: So, for example -- sorry.

10 Q So, for example, could -- could a person who
11 has a degree in something else but has -- you know,
12 has computer science experience, having taken a
13 bunch -- you know, either taken courses in it or done
14 programming, could that person meet the definition of
15 a person of ordinary skill in the art for the '381
16 patent?

17 MR. MONACH: Object to form.

18 THE WITNESS: So to meet the equivalence
19 of -- when I said computer science degree or
20 electrical engineering or equivalent, to meet that
21 equivalence, I would think somebody would say, for
22 example, a degree in, let's say, mechanical
23 engineering, having taken substantial coursework in
24 computing, which does happen these days, that might
25 meet the -- the equivalence, or somebody with a human

1 factors degree, having taken sufficient computer
2 science courses, would meet that. That would be an
3 equivalent degree, in my mind, for the purposes of
4 this, this patent.

5 MR. JOHNSON: Q. You said you read the
6 deposition transcript of the patentee, Mr. Ording. In
7 your opinion, is Mr. Ording somebody of ordinary skill
8 in the art?

9 MR. MONACH: I object to the form of the
10 question to the extent it calls for a legal conclusion
11 and a new opinion to be formed at the deposition; lack
12 of foundation, with respect to what he knows about
13 Mr. Ording, but you can answer.

14 MR. JOHNSON: Q. Or -- or does he have more
15 than ordinary skill in the art because he is the
16 inventor on the '381 patent?

17 A So I don't know Mr. Ording's -- I don't
18 recall exactly the portions of his depositions that
19 spelled out, if it did spell out, his exact
20 qualifications.

21 My understanding, having seen him named on
22 this patent, and I believe a few other Apple patents,
23 and the fact that he works at Apple doing user
24 interface engineering, I would think that he, at the
25 very least, meets the ordinary skill definition or,

1 more likely, he is -- he is more than ordinary skill
2 in the art.

3 Q Looking back at the Exhibit 21 and the -- the
4 non-zoomed in image we were just talking about, when
5 the entire image is displayed, I think you -- you
6 testified that that was the first portion; right?

7 A When the full image is on screen?

8 Q Yeah, just show it to the -- so the camera
9 can see it. That's the one I'm talking about.

10 A In -- in this example?

11 Q In that example, right.

12 A That would be a -- I guess, a first portion.

13 Q Right.

14 A Okay.

15 Q So -- so a first portion can be the entire
16 image; right?

17 MR. MONACH: Object to the form of the
18 question as calling for a legal conclusion.

19 THE WITNESS: Yes, I would say so.

20 MR. JOHNSON: Okay.

21 Q Can the first portion and the electronic
22 document, as described in the claims of the '381
23 patent, be the same thing?

24 MR. MONACH: Same objection; incomplete
25 hypothetical.

1 THE WITNESS: I'm not sure I understand the
2 question. I'm sorry.

3 MR. JOHNSON: Q. So -- so, in that example,
4 which has gone dark now, in that example, what's --
5 what's the electronic document?

6 MR. MONACH: Objection; incomplete
7 hypothetical; lack of foundation; calling for a new
8 opinion at the deposition.

9 THE WITNESS: So I haven't thought about this
10 in -- in great detail, but sitting here right now,
11 looking at this, I would say the electronic document
12 would be the -- this image that's shown on the screen,
13 with the boundaries being the -- the edges of that
14 image, as I've just, kind of, outlined here.

15 MR. JOHNSON: All right.

16 Q And -- and for an electronic document, you
17 can have --

18 A Sorry. I'll keep my finger on here so it
19 doesn't go away.

20 Q Under your understanding of an electronic
21 document, an electronic document can have an internal
22 boundary; right?

23 MR. MONACH: Object to the form of the
24 question as misstating the prior testimony and vague.
25 Object as calling for a legal conclusion and a new

1 opinion.

2 THE WITNESS: I don't think I talked about
3 internal boundary at all.

4 MR. JOHNSON: Okay.

5 Q Can an electronic document have an internal
6 boundary?

7 MR. MONACH: Object.

8 MR. JOHNSON: We talked about it in the
9 context of the contacts on the Tab 7 that had the --
10 the list of names.

11 MR. MONACH: Object to the form of the
12 question as vague, misstating the prior testimony.

13 MR. JOHNSON: Q. So do you understand my
14 question?

15 A I -- I'm not 100 percent sure, because the
16 word "internal boundary" I don't think, has come up
17 yet, and if I look at the con- -- if I go back to the
18 contacts list discussions, if I recall correctly this
19 morning, the only thing that when we talked about the
20 boundary of the contact list, I mean, there's the
21 application that has more decorations around it,
22 but -- so it -- you know, maybe you can be more
23 specific about what you mean by -- when you say
24 "internal boundary."

25 Q Okay. So if we -- you can put that one down

1 and pick up the tab -- this is Tab 7.

2 A Okay.

3 Q And if you go to the contacts --

4 A Yes, I'm at the contacts.

5 Q -- location, right.

6 If you -- so my question is: I think earlier
7 you said, use a pen, if you want to use a pen, can you
8 draw -- just can you just sort of show the camera what
9 the electronic document is in that context?

10 MR. MONACH: Object to the form of the
11 question; calls for a legal conclusion, incomplete
12 hypothetical; asking for a new opinion.

13 THE WITNESS: Okay. Let me just refresh
14 myself on what this thing does here.

15 So I think I -- I believe I testified that
16 the electronic document -- this would be a portion of
17 the electronic document, because the entirety is not
18 shown. It's will be this, this stuff that's displayed
19 in this rectangular column, and right now it's showing
20 me a partial --

21 MR. JOHNSON: Yeah.

22 THE WITNESS: -- amount.

23 MR. JOHNSON: Q. So there -- there are
24 pieces above the F and below the T?

25 A There --

1 MR. MONACH: Object to form.

2 MR. JOHNSON: Q. Or maybe not below it.

3 A Yeah, there is stuff above the F and below
4 the T, yes.

5 Q Okay. So all I was asking was, you can have
6 an electronic document that has an internal boundary
7 within a screen; right?

8 MR. MONACH: Object to the form of the
9 question as vague. Objection; calls for a legal
10 conclusion.

11 THE WITNESS: So I -- I'm not -- again, I'm
12 still not sure what you mean by "internal." It --

13 MR. JOHNSON: I'm --

14 THE WITNESS: Are you saying that this is the
15 boundary of the electronic document?

16 MR. JOHNSON: Yeah.

17 Q I just meant that that's internal because
18 it's -- it's located within the middle of the screen?

19 A So in that -- that boundary doesn't match the
20 edge of the screen --

21 Q Exactly.

22 A -- is what you're -- is that what you're
23 saying?

24 Q Exactly.

25 A Sure, the boundary of the document doesn't

1 have to align with the screen.

2 Q So you can have -- you can have the edge of
3 the boundary be something other than the edge of the
4 screen?

5 MR. MONACH: Objection; vague.

6 MR. JOHNSON: I think we're saying the same
7 thing. I'm just -- I'm really bad with trying to --

8 A I want to make sure I say the right thing
9 with my understanding of what you're saying, too.

10 Q So all I'm saying is, under your view of an
11 electronic document, an electronic document can have a
12 boundary that is internal to the screen or, you know,
13 doesn't have to be at the edge of the screen --

14 MR. MONACH: Objection; form.

15 MR. JOHNSON: Q. -- right?

16 MR. MONACH: Objection; calling for a legal
17 conclusion; asked and answered.

18 You can do it again.

19 THE WITNESS: So as I answered earlier, and
20 my opinion is that the boundary of the electronic
21 document, in this case, this -- this edge is one
22 boundary of it, does not have to match the edge of the
23 screen, yes.

24 MR. JOHNSON: Okay.

25 Q So just, during the lunch, I had the guys

1 just print up a sheet of paper with some squares on it
2 for me. So if you imagine, sir, that the -- the
3 quadrants that are labeled 1 to 36 on here are the
4 entire -- that's this -- that's the screen of the
5 display.

6 A So the whole -- the big rectangular is the
7 screen?

8 Q Right.

9 A Okay.

10 Q So you can have an electronic document that
11 consists of smaller grids within the screen; right?

12 MR. MONACH: Object to the form of the
13 question; calling for a legal conclusion; incomplete
14 hypothetical; asking for a new opinion.

15 THE WITNESS: It would depend on what one
16 considers to be the electronic document. It could be
17 one of these, let me call it sub rectangles that you
18 can label with numbers. It could be some combination
19 of them. It --

20 MR. JOHNSON: Right.

21 THE WITNESS: -- really depends on -- depends
22 on how, you know, you want to put the boundary around
23 it.

24 MR. JOHNSON: Q. So you could draw a
25 boundary, hypothetically, around squares 15, 16, 17,

1 18, 21 and 22, 23 and 24?

2 A Say -- sorry. 15, 16, 17, 18, 21?

3 Q 22, 23, and 24.

4 A So kind of like this?

5 Q Yeah, go ahead and draw it.

6 MR. MONACH: Object to the -- object to the
7 form of the question as vague and ambiguous;
8 incomplete hypothetical.

9 MR. JOHNSON: Q. Make it a little more
10 noticeable for me.

11 A We've got black lines around it.

12 Q Yeah, okay.

13 So that could be an electronic document;
14 right?

15 A Depend --

16 MR. MONACH: Same objection.

17 THE WITNESS: Sorry. I jumped in there.

18 Depending on the context, depending on the
19 application, it could be.

20 MR. JOHNSON: Okay.

21 THE WITNESS: Or some other collection.

22 MR. JOHNSON: Q. It's not limited to that;
23 right?

24 A I would not say it's limited.

25 Q So it could be also a -- a six-by-six grid or

1 a two-by-two grid?

2 MR. MONACH: Same --

3 MR. JOHNSON: Q. -- or even a three-by-three
4 grid, I guess --

5 MR. MONACH: Same objection.

6 MR. JOHNSON: Q. -- right?

7 MR. MONACH: Vague and ambiguous; incomplete
8 hypothetical.

9 THE WITNESS: Again, it would depend on the
10 def- -- you know, how -- whoever is being the
11 application, what they consider to be the document --
12 to be the extent of the document, yes.

13 MR. JOHNSON: Q. Under your view, though, it
14 could be those, those grids; right?

15 MR. MONACH: Objection; same objection as
16 before. Also, misstates the prior testimony.

17 THE WITNESS: Depending on the context, it --
18 it could take on different forms.

19 MR. JOHNSON: Okay.

20 Q Does the grid need to be a rectangle?

21 MR. MONACH: Same objection.

22 MR. JOHNSON: Strike it. Let me ask it
23 again.

24 Q Does -- would the grid need to be a rectangle
25 in order for it to be an electronic document?

1 MR. MONACH: Same objection.

2 THE WITNESS: Well, I think the electronic
3 document doesn't have to be anything to do with the
4 grid. It --

5 MR. JOHNSON: Okay.

6 THE WITNESS: -- it's any visual thing with
7 defined boundaries --

8 MR. JOHNSON: So -- so it --

9 THE WITNESS: -- by my definition of it.

10 MR. JOHNSON: Q. Could -- if you -- if you
11 drew lines around squares one, two, and eight, for
12 example --

13 A One, two, and eight. So this kind of, I
14 guess, inverted L?

15 Q Yeah.

16 Could that be an electronic document?

17 MR. MONACH: Objection; vague; incomplete
18 hypothetical; calling for a legal conclusion and a new
19 opinion.

20 THE WITNESS: So to the extent that I haven't
21 considered this, this style of odd-shaped documents
22 prior to coming here today, just thinking on the fly
23 here, a -- based on my understanding of, you know,
24 boundaries, that wouldn't -- would satisfy the notion
25 of a boundary, again, depending on the context of the

1 application and what a document means in that context.

2 MR. JOHNSON: Q. If -- going back to the
3 original two-by-four rectangle of 15, 16, 17, 18, 21,
4 22, 23, 24, if you look at that, is it fair to say
5 that this line right here is an edge of the electronic
6 document?

7 A The line --

8 MR. MONACH: Object.

9 Hang on a second.

10 THE WITNESS: I'm sorry.

11 MR. MONACH: Objection; vague and ambiguous;
12 incomplete hypothetical; calling for a legal
13 conclusion and a new opinion.

14 THE WITNESS: So, again, I haven't considered
15 this prior to this, you putting this in front of me.

16 Thinking on the fly here, so you're saying
17 this line -- the vertical line between --

18 MR. JOHNSON: Since the witness is pointing,
19 I just want to make sure you get what he's pointing
20 to.

21 Yeah.

22 THE WITNESS: The vertical line between 14
23 and 15, and 20 and 21, here, this --

24 Q That -- that's right, yeah.

25 A -- line.

1 Given this hypothetical scenario, where
2 you're saying the -- this two -- I'm sorry --
3 two-by-four grid of elements -- rectangle is an
4 electronic document in this hypothetical scenario,
5 that would be indeed, I guess, one boundary one
6 edge --

7 Q Okay.

8 A -- of that.

9 Q So let's just label that "edge" for me, just
10 so I can keep track of it after the deposition.
11 Just --

12 A What do you want me to call it?

13 Q Just call it "edge," and then maybe put it
14 down at the bottom and draw an arrow down to the line,
15 or something.

16 A Like this?

17 Q Yeah.

18 A Okay.

19 Q Okay. And then, is it fair to say that
20 the -- the -- the Blocks 14 and 20 are an area beyond
21 the edge --

22 MR. MONACH: Same --

23 MR. JOHNSON: Q. -- of the electronic
24 document?

25 MR. MONACH: Same objection.

1 THE WITNESS: So, again, considering this for
2 the first time here, I haven't thought this in detail,
3 if, in this hypothetical scenario, the document is
4 this two-by-four grid, labelled 15, 16, 17, 18, 21,
5 22, 23, 24, if that is the document, then anything
6 beyond that edge would be an area outside the document
7 beyond the edge of the document.

8 So given those hypotheticals, area 14 and 20
9 would be beyond the edge of the document, given that
10 scenario.

11 MR. JOHNSON: Okay.

12 Q So can you just label that "beyond the edge"?

13 A How -- just label each one of these?

14 Q Yeah, or just draw -- however you want.

15 A Well, we're getting a lot of drawings on this
16 thing, so I don't know. "Beyond."

17 Q Speaking of which, let me just mark the --
18 the grid as Exhibit 104.

19 A Put it on the bottom?

20 Q Thanks.

21 (Phone marked Balakrishnan Exhibit 104
22 for identification.)

23 MR. JOHNSON: Q. Can you look at the Galaxy
24 Tab, which is Exhibit 101, and pull up for me the
25 contacts application.

1 A Okay.

2 Q And I noticed, in your declaration, you did
3 not include this particular application on -- as one
4 that infringes the '381 patent, so the question is:
5 Why? Why not?

6 MR. MONACH: Object to the form of the
7 question, and if -- if your answer would -- I'll
8 instruct the witness not to disclose any
9 communications with counsel, other than facts and
10 assumptions that he relied on in forming his opinion.

11 THE WITNESS: So, at the time of writing the
12 report, I was, as I testified earlier, the -- the -- I
13 was -- I was told that Apple was alleging these four
14 devices and the particular applications, and they
15 were -- as far as I know, were not alleging the
16 contacts list on the Galaxy Tab 10.1, so I did not
17 analyze that in great detail.

18 So if you want me to go through this right
19 now, I'm happy to walk you through this and see which
20 portions of the claims I'm having -- which are not, if
21 you want me to do that.

22 MR. JOHNSON: Q. So you haven't -- you
23 haven't done that analysis before today?

24 A I haven't done it in detail sufficiently,
25 just talk about it right off the cuff, without walking

1 through.

2 Q Okay. So when -- when Apple gave you the
3 roadmap to look at what was allegedly infringing,
4 contacts in the Galaxy tab wasn't included?

5 MR. MONACH: Object to form.

6 THE WITNESS: I -- yes, the -- the contacts
7 on the Galaxy Tab was not one of those I was -- it was
8 not one of those that I was told was being alleged to
9 infringe.

10 MR. JOHNSON: Okay.

11 Q So take a look at contacts in the Galaxy Tab
12 and -- and now that you have it, tell me --

13 A Sorry. It just keeps flipping. If you give
14 me a second here.

15 Q -- why it doesn't infringe.

16 MR. MONACH: Object to the form of the
17 question.

18 THE WITNESS: Okay, so I'm just gonna walk
19 through the claims here and try to match it up and
20 tell you where -- where it matches and where it
21 doesn't match, if that's okay.

22 So the Galaxy tab, as we've gone through it
23 before, has a complete computer-implemented method
24 that's in the preamble, compromising a device with a
25 touchscreen display. So we've already established

1 that the device has a touchscreen display. It -- it
2 clearly displays a first portion of an electronic
3 document in this example right here that I've got.
4 I've got an electronic document, which is this
5 contacts list.

6 MR. JOHNSON: Q. Would you mind just showing
7 the camera.

8 A So I'm walking through this, too, so --

9 Q Yeah, that's fine.

10 A -- I may have to go back and forth.

11 Q Yeah, that's fine.

12 A So you got it --

13 Q So where -- where is the electronic document
14 there?

15 A Okay.

16 MR. MONACH: Hang on a second.

17 THE WITNESS: Sorry.

18 MR. MONACH: Object to the form of the
19 question; calling for a legal conclusion; asking for a
20 new opinion at the deposition; and vague and
21 ambiguous.

22 THE WITNESS: So, again, I'm doing this on
23 the fly. I haven't -- haven't thought about this in
24 great detail before.

25 So the electronic document here is this list

1 of -- of contact information on, you know, Big Bird,
2 Genie, Playhouse, and so forth; and what's shown on
3 the display right now, the -- the electronic document
4 is -- well, it just stopped here. It has -- starts
5 with the elements that, starting with a B, all the way
6 down to Tommy Bahama at the bottom, so that would be
7 the -- the first por- -- the portion of the electronic
8 document.

9 MR. JOHNSON: Okay.

10 THE WITNESS: Not the entirety. Clearly
11 there's more stuff.

12 MR. JOHNSON: Okay.

13 THE WITNESS: There appears to be more stuff
14 on the two -- beyond the two edge -- boundaries.

15 MR. JOHNSON: Okay.

16 Q But the area to the right of the edge is not
17 part of the electronic document?

18 MR. MONACH: Same objection.

19 THE WITNESS: So --

20 MR. JOHNSON: Q. So this, this area right
21 over here, is not part of the electronic document?

22 MR. MONACH: Same objection.

23 THE WITNESS: So in this example
24 application -- in this application, looking at it just
25 right now at this deposition, I would say the

1 electronic document does not include the -- the area
2 right here.

3 MR. JOHNSON: Okay.

4 Q Okay. How about the next limitation?

5 A Okay. So I think I already said first
6 portion of the electronic document.

7 The next limitation, detecting a movement of
8 an object on any other touchscreen display. So,
9 again, I'm gonna put my finger down, which would be
10 the object, and it's on or near -- it clearly detects
11 movement of the object on or near the touchscreen
12 display.

13 In response to -- then, the next element
14 would be "In response to detecting the movement,
15 translating the electronic document displayed on the
16 touchscreen display in a first direction to display a
17 second portion of the electronic document, wherein the
18 secret portion is different from the first portion."

19 So let me go back to where I was here. I
20 think it was something like that, with a B, I think it
21 had Tommy Bahama on the bottom there. That's where I
22 was before. So I'm gonna put my finger down, which is
23 the movement, and I'm gonna move it down a little bit,
24 and that would give me the -- translating the
25 electronic document in a first direction display a

1 second portion, where the second portion is different.

2 So the second portion here now has an A on
3 the top part of the portion that's displayed on the
4 screen, and on the bottom, instead of Tommy Bahama on
5 the -- the first portion now has Missy, Missy
6 Buttersworth at the bottom, so that's a different
7 portion of the document.

8 So now we can go on. So it says, in
9 response -- the next element says -- of the claim says
10 "In response to an edge of the electronic document
11 being reached, while translating the electronic
12 document in the first direction, so while the doc --
13 while the object is still detected on or near the
14 touchscreen display, displaying an area beyond the
15 edge of the document."

16 So I'm gonna continue moving, and now I see
17 that it stops. The document there got the As in it
18 stops at the word "14 contacts" that is part of the
19 document. It stops there. It doesn't go -- it
20 doesn't seem to go beyond the edge, so it doesn't seem
21 to meet this thing of going beyond the edge and
22 displaying an area beyond the edge of that document.

23 And so that -- I don't know what the number
24 of this element is, but that -- that part of the claim
25 is not -- it doesn't appear to be met in this

1 particular example that I'm walking through here live.

2 And then it says, "displaying a third portion
3 of the electronic document," so clearly it is
4 displaying a third portion in that there now that
5 bottom is now Jerry -- Jerry Mouse, which is different
6 from -- the second portion different from the first
7 portion, but it's not clear, in this example, that
8 this third portion is smaller than the first portion.
9 It appears that, at least in terms of the number of
10 pixels, the -- the portion is taking up relative to
11 the first portion is the same.

12 So the size issue there or the third portion
13 is smaller than the first portion. It does not appear
14 to be met in this particular example, but I'm -- I'm
15 walking through live here.

16 And then, I already lifted my finger, but I'm
17 gonna redo this, and go to the third portion here, "In
18 response to detecting" -- the last element says "In
19 response to detecting that the object is no longer on
20 or near the touchscreen display, translating the
21 electronic document in a second direction until the
22 area beyond the edge of the electronic document is no
23 longer displayed to display a fourth portion of the
24 electronic document, wherein the fourth portion is
25 different from the first portion."

1 So, if I release my finger, in this
2 particular example or this particular data that I'm
3 doing live here, it doesn't appear to translate the
4 document in a second direction until the edge --
5 sorry -- area beyond the edge of the electronic
6 document is no longer displayed, and so that portion
7 of the claim element doesn't appear to be met.

8 There is a fourth portion being shown, but --
9 and it is different from the first portion, but it
10 hasn't done that translation in a second direction of
11 the limitation of the claim, I guess, is the language.

12 Q So, in your opinion, this particular
13 application of the contacts in the Galaxy 10.1 does
14 not infringe the '381 patent; right?

15 MR. MONACH: Object to the form of the
16 question; calling for a legal conclusion; incomplete
17 hypothetical; asking for a new opinion at the
18 deposition.

19 THE WITNESS: So my opinion, this particular
20 example of contacts, the contacts list on the Galaxy
21 Tab 10.1, with this particular data set that I'm
22 playing with right now live, as I walk through,
23 doesn't -- does not meet all of the limitations.

24 It meets some of the limitations, but not all
25 limitations of Claim 1, but I have to say that I have

1 not exhaustively explored this. It may be that a
2 different data set may result in different behavior.
3 I cannot make that determination right now, but for
4 the example data set I have right now that we just
5 saw, it does not meet all of the limitations.

6 MR. JOHNSON: Okay.

7 Q You see when you scroll down towards either
8 the top or the bottom, there's a little bit of a blue
9 glow that occurs?

10 A Do you mind if I turn this back to take a
11 look?

12 Q At the top or the bottom; do you see that?

13 A Okay. So I go up, but if I keep -- if I keep
14 pulling down, it's pretty hard to see. It's very
15 subtle. It's hard to tell exactly when that blue glow
16 starts, but it looks like if I roll and drag a lot,
17 then a glow does appear. I'm finding it very
18 difficult to see exactly at what point it starts. It
19 starts emanating from the top --

20 Q Okay.

21 A -- or the bottom, same thing, it looks like.

22 Q Okay. Earlier we were looking at the -- the
23 Galaxy S 4G and Exhibit 21, and we were looking at
24 the -- the -- the photo gallery, where all the photos
25 appeared in the grid, and I asked you to scroll over

1 to the edge, and the grid tilted in one direction or
2 the other; do you remember that?

3 A I remember the tilting. I'm not sure which
4 phone exactly did that. Could I just try that out,
5 even if we --

6 Q Sure.

7 My question is whether you've reached an
8 opinion as to whether that infringes the claims of the
9 patent?

10 MR. MONACH: Object to the extent it calls
11 for a legal conclusion; incomplete hypothetical, and
12 asks for a new opinion on the fly at the deposition.

13 THE WITNESS: So I think I testified earlier
14 that I have not had a chance to -- to look at this in
15 any great detail at all, so -- and I -- if you want me
16 to do it right now, I'm happy to walk you through
17 this. And I'm also not clear as to whether you're
18 asking me whether the -- just the tilting meets the
19 claims or --

20 MR. JOHNSON: Q. Well, let -- let me --

21 A -- some combination.

22 Q -- ask you myself.

23 The -- the tilt itself does not meet the
24 limitation of displaying an area beyond the edge of
25 the document; right?

1 MR. MONACH: Objection to the form of the
2 question for the reasons previously stated.

3 THE WITNESS: Well, I would have to study
4 this in detail before I give you a formed --
5 thoroughly informed answer on that, I haven't thought
6 about it and really explored this. If you want an
7 on-the-fly answer, I'm happy to give you an on-the-fly
8 answer.

9 MR. JOHNSON: Yeah, well, I'd like an answer
10 to the question, so --

11 THE WITNESS: Okay. So --

12 MR. MONACH: Object to the form of the
13 question as calling for a legal conclusion and new
14 opinion at the deposition, and incomplete
15 hypothetical.

16 THE WITNESS: So if the document happens to
17 be -- say, for example, if we consider this
18 application the document being, let's say, the
19 whole -- it's bouncing around right now for some
20 reason. So it also reacts to the tilt sensors, so
21 tilting seems to be reacting to different things or
22 caused by different things. It's hard to tell whether
23 it's just the finger that's causing that or not.

24 If -- if the document is the collection of
25 these -- these -- these images or, in this case, a --

1 I guess, an inverted L kind of collection of six --
2 six items, and I've gone beyond -- let's say that's
3 the -- let's say that's the -- it's really hard to
4 keep this from tilting on its own. Let's say that's
5 the -- the edge of the document, and I go beyond, and
6 then it tilts, that -- I don't see the -- the tilting
7 itself is not the -- the area beyond the edge, but the
8 area beyond the edge is this stuff that's displayed.

9 So the tilting causes more area beyond the
10 edge to be -- to be shown, but the act of tilting is
11 not the area beyond the edge. I don't know if that
12 answers your question, but it gets close to that.

13 MR. JOHNSON: Q. Do you have an opinion on
14 what the appropriate conception date is for the
15 asserted claims in the '381 patent?

16 MR. MONACH: Objection; vague and ambiguous;
17 lack of foundation; calls for a legal conclusion;
18 incomplete hypothetical.

19 THE WITNESS: My understanding is the
20 application was filed on December 14th, and it goes
21 back to -- has these provisional applications that
22 seem to date back to January of 2007, as opposed to
23 the filing date, so it would be at least January 2007,
24 and I believe I was told from reading Mr. -- Mr. Bas
25 Ording's deposition, that they were -- there's a

1 possibility that he had shown this or conceived of
2 this application earlier than the 2005 range, an
3 internal code that he had written and maybe demoed in,
4 you know, a public or semipublic place.

5 I'm not sure where the demo occurred,
6 necessarily.

7 MR. JOHNSON: You said you were told.

8 Q Who were you told by? Are you referring to a
9 conversation with counsel, or are you referring to
10 having read the transcript?

11 MR. MONACH: Well, let me -- I'm gonna
12 instruct the witness not to disclose any communication
13 you had with counsel, unless it was something on which
14 you've based an opinion in your declaration, but if
15 you -- if you can answer it without -- if you can
16 answer counsel's question without disclosing any
17 communication with counsel that was not a fact you
18 relied on, then you're free to do so.

19 MR. JOHNSON: Let me ask you: Were you told
20 by counsel -- strike that.

21 Q Did counsel give you the information about
22 what the appropriate conception, diligence,
23 introduction to practice dates are for the '381
24 patent?

25 MR. MONACH: I'm gonna instruct the witness

1 not to answer, unless he relied on a fact that was
2 communicated by counsel in forming his opinion here.

3 THE WITNESS: In forming my opinion for the
4 declaration, I did not rely on any such information.

5 MR. JOHNSON: Did you rely on any
6 conception -- strike that.

7 Q In your opinion, what is the appropriate
8 conception dates for -- if you have one -- for the
9 asserted claims of the '381 patent?

10 MR. MONACH: Object to the question as asking
11 for a legal conclusion; may lack foundation; and is
12 posing an incomplete hypothetical for which there may
13 or may not be an adequate foundation.

14 THE WITNESS: In my opinion, just reading
15 the -- this document and -- I would -- I would come up
16 with a January 7th, 2007, date.

17 MR. JOHNSON: And is there -- do you have any
18 reason to believe -- strike that.

19 Q Do you have an opinion as to whether the
20 conception date is earlier than January 7th, 2007, for
21 any of the asserted claims of the '381 patent?

22 MR. MONACH: Same objection.

23 THE WITNESS: So, as I said earlier, I -- I
24 understand, from Mr. Ording's deposition, that it may
25 be that it may date back to 2005, sometime in 2005.

1 MR. JOHNSON: Yeah, I'm asking for your
2 opinion.

3 Q I mean, have you -- have you verified what
4 Mr. Ordning said and tried to determine whether
5 that -- those dates were -- were accurate for -- you
6 know, for -- for purposes of the '381 patent? And by
7 that, did you look at the testimony and compare what
8 he says he conceived with what the claims say they
9 cover?

10 A So if you're asking me did I take his
11 testimony and match it up claim by -- element by
12 element of the claim; is that what you're asking me?

13 Q Let's start there.

14 A I did not do that.

15 Q Okay. So you don't have an opinion that --
16 whether the -- the 2005 conception date is accurate or
17 not; do you?

18 MR. MONACH: Object to the form of the
19 question.

20 THE WITNESS: I'm not able to tell whether
21 that is an accurate date or not --

22 MR. JOHNSON: Okay.

23 THE WITNESS: -- given the information I have
24 to date.

25 MR. JOHNSON: Q. And you haven't been asked

1 to make or to render an opinion on that issue; right?

2 MR. MONACH: I'll object to the form of the
3 question.

4 If -- and I'll instruct you not to answer
5 with respect to communications you may have had that
6 don't relate to facts and assumptions that you used in
7 forming your opinions today. That doesn't -- the
8 witness has expressly reserved the right to respond to
9 arguments made or assertions made by Samsung in his
10 declaration.

11 THE WITNESS: So I'm not sure I completely
12 followed the question or the objection there, so if I
13 could have that read back to me.

14 MR. JOHNSON: Q. Have you been asked to
15 render an opinion on whether the conception, reduction
16 to practice, and diligence dates in this case for
17 the '381 patent are accurate or not?

18 MR. MONACH: And --

19 MR. JOHNSON: That's all I'm asking.

20 MR. MONACH: Same -- same instruction. I'm
21 gonna instruct you not to answer about communications
22 you've had with counsel, specifically if they don't
23 relate to facts you relied on so far.

24 THE WITNESS: I cannot answer that question.

25 MR. JOHNSON: Q. Why not?

1 A Because, as instructed by counsel, I -- I did
2 not rely on those facts to -- to form my opinion in
3 the -- in the -- in the declaration.

4 Q So you're refusing to answer the question on
5 the basis of privilege because you didn't rely on
6 those facts?

7 A I'm not sure what the legal term is, but if
8 what counsel just instructed is called privilege, I
9 would -- I would assume yes.

10 Q Okay. I'm just trying to understand where
11 you're drawing the boundary. So you're not answering
12 the question because what -- basically, counsel told
13 you not to answer the question, because you didn't
14 rely on these facts in your -- forming your opinions?

15 A That is correct, the --

16 Q Okay.

17 A -- 2005 date fact.

18 Q Right.

19 A Yes.

20 Q Okay. Did you look at any of the prototypes
21 or code that Mr. Ordning generated for any of the
22 prototypes that he says relate to the technology in
23 the '381 patent?

24 MR. MONACH: Same instruction.

25 THE WITNESS: I did not look at that code. I

1 assume you mean the director code that Mr. Ording
2 produced at his deposition or discussed at his
3 deposition, I did not look at that code prior to
4 writing the declaration.

5 MR. JOHNSON: Q. Have you looked at it since
6 then?

7 A Yes, I have, or portions of that code.

8 Q Why?

9 A In preparation for this dec- -- I'm sorry --
10 deposition today, and yesterday it was brought to my
11 attention, when I looked at the deposition transcript,
12 that some code was referred to and counsel produced
13 that code to me.

14 Q Okay. And do you have any opinions about
15 that code?

16 MR. MONACH: Objection; vague and ambiguous.

17 THE WITNESS: I have not had a chance to
18 study that code in any kind of detail to match it up
19 to the claims or do anything of that nature.

20 MR. JOHNSON: Q. Do you intend to do so?

21 MR. MONACH: Objection; calls for
22 speculation.

23 THE WITNESS: It might, if it's brought up
24 and --

25 MR. JOHNSON: Q. But you haven't --

1 A -- in these -- in the proceedings after this
2 and, you know, if I -- if I see the need to respond to
3 that in rebuttal or whatever the case may be, I -- I
4 will certainly look at them.

5 Q But you haven't been asked to do that so far;
6 right?

7 MR. MONACH: Objection; vague.

8 THE WITNESS: I have not been asked to study
9 that code in detail and provide a detailed opinion.

10 MR. JOHNSON: Q. Have you been asked to
11 study -- to look at the code in any detail and provide
12 any kind of an opinion about whether the code meets
13 the limitations of the '381 patent claims?

14 MR. MONACH: Same instruction. I'm gonna
15 instruct the witness not to disclose communications
16 with counsel about -- that's all.

17 You can answer that question. You can answer
18 that question.

19 THE WITNESS: I've not been instructed to
20 look at it in any detail to form a detailed opinion,
21 no.

22 MR. JOHNSON: Q. Why did you look at it
23 yesterday?

24 A It -- the priority date issue came up, and it
25 was something that was relevant to that. I haven't

1 had a chance to study it in any detail.

2 Q But you don't have an opinion as to what the
3 appropriate priority date is for the claims of
4 the '381 patent; right?

5 MR. MONACH: Objection; asked and answered.

6 THE WITNESS: As to whether it's that
7 2005-ish date, I -- I haven't been able to do a
8 detailed determination of that, so I cannot say either
9 way, yeah.

10 MR. JOHNSON: Q. Or, have you done any
11 re- -- did you review any of the professional
12 applications that are listed here on the front of
13 the '381 patent?

14 A I looked at one of the professional
15 applications.

16 Q Which one?

17 A I can't recall exactly which one. The
18 numbers skip -- skip my mind.

19 Q Why did you look at it?

20 A It was part of just understanding the -- the
21 providence of the patent, so to speak.

22 Q Did it list other inventors besides
23 Mr. Ordning?

24 A It might have, yes.

25 Q Were you curious as to why those other

1 inventors were dropped?

2 MR. MONACH: Objection; misstates -- assumes
3 facts not in evidence; vague and ambiguous; object to
4 form.

5 THE WITNESS: I -- I'm not sure it's
6 something I immediately worried about. It was -- it
7 did cross my mind. I think -- I don't think I brought
8 it up to counsel or anything like that. My assumption
9 was that, at some point -- you know, I'm not a lawyer,
10 so I don't understand all the legal differences
11 between provisional applications and the final thing
12 that issues. I assumed, at some point, the -- you
13 know, the final version was the -- I guess the
14 penultimate -- I'm sorry. Not penultimate -- the
15 ultimate correct things, so they dropped it, for
16 whatever reason.

17 I don't know why they dropped it, and I --
18 but I didn't see a need to ask that question. I don't
19 think it pertained to the -- I didn't think it
20 pertained to the issue of do these devices infringe
21 those particular claims in this final patent.

22 MR. JOHNSON: Q. And -- and did you -- so
23 you didn't discuss the issue of why certain listed
24 inventors were dropped from the provisional
25 application with counsel?

1 MR. MONACH: I'm gonna instruct the witness
2 not to disclose any communications you had that are
3 unrelated to the facts and assumptions of the opinions
4 you've offered.

5 THE WITNESS: I -- I cannot answer that
6 question.

7 MR. JOHNSON: Q. Why not?

8 A Because I don't think -- as instructed by
9 counsel, I don't think that affects any of my opinions
10 that I've given to date.

11 Q But you did, at least, generally discuss the
12 issue with counsel. Without telling me --

13 MR. MONACH: Same instruction.

14 MR. JOHNSON: So you're not letting him
15 answer that one?

16 MR. MONACH: No.

17 MR. JOHNSON: Q. How do you know that the
18 January 7th, 2007, date is the -- at least in your
19 view, a correct priority date?

20 MR. MONACH: Object to the form of the
21 question. Objection; calls for a legal conclusion;
22 incomplete hypothetical.

23 MR. JOHNSON: Q. Did counsel tell you that?

24 THE WITNESS: I don't know if you want me --

25 MR. MONACH: Which question -- which question

1 are you asking him? The first one or the second one?

2 MR. JOHNSON: Q. Did counsel inform you to
3 use the January 7th, 2007, date as the priority date
4 for purposes of the '381 patent?

5 MR. MONACH: I'll instruct the witness not to
6 answer if the answer would disclose communications
7 that are unrelated to anything he's -- facts he's
8 relied on for his opinions here.

9 THE WITNESS: Based on what counsel just --
10 just said, I won't answer the question. I cannot
11 answer the question.

12 MR. JOHNSON: Q. Did you analyze the
13 provisional application to determine -- whichever one
14 you looked at, to determine whether that application
15 disclosed each of the limitations in the claims of
16 the '381 patent that are being asserted against
17 Samsung?

18 A I did not do a detailed analysis comparing
19 the claims and comparing the provisionals with the
20 final version.

21 Q Are you aware that -- well, having read the
22 transcript of Mr. Ordning, you are aware that he
23 testified that he had problems understanding certain
24 aspects of the claim language of the asserted claims
25 in the '381 patent; right?

1 A I would have to look at the transcript again
2 in detail to make sure that that's exactly what he
3 testified. I read it. I didn't read it in detail
4 enough to memorize the whole transcript, so --

5 Q You -- you don't remember anything like that?

6 A There may be -- there probably was something
7 to that effect. I -- I don't remember the details of
8 the transcript. So I'm happy to look at it now, if
9 you point me to the right portions.

10 Q How do you know there was probably something
11 to that effect?

12 A It sound -- now that you're bringing it up,
13 it sounded like something I had potentially seen in
14 the -- in the transcript, but I don't remember the
15 details of exactly what he said in the transcript.
16 It's a pretty long -- long transcript.

17 Q You would agree, having studied the '381
18 patent, that the claims require that in response to
19 detecting that the object is no longer on or near the
20 touchscreen display, the electronic document is
21 translated in the second direction until the area
22 beyond the edge is no longer displayed; right?

23 A I'm sorry. Where are you seeing this? Oh,
24 you're talking about the last limitation there?

25 Q Right.

1 A So translating the electronic document a
2 second direction until the area -- yes, that clearly
3 is in the language of the claim.

4 Q So if -- after the document snaps back,
5 there's still some area beyond the edge of the
6 document that's being displayed that wouldn't meet
7 these claim limitations; would it?

8 MR. MONACH: Object to the form of the
9 question; calling for a legal conclusion; incomplete
10 hypothetical.

11 THE WITNESS: So you used the term "snaps
12 back." I'm not sure what you mean by that relative to
13 these claims. The claim simply says "moving in a
14 second direction."

15 MR. JOHNSON: Okay.

16 Q So when -- so if after the document moves in
17 the second direction, there's still some area beyond
18 the edge of the document that's displayed. That
19 wouldn't meet these claim limitations in the '381
20 patent; would it?

21 MR. MONACH: Object to the form of the
22 question. Objection; calling for a legal conclusion,
23 with an incomplete hypothetical.

24 THE WITNESS: So I've not considered that in
25 detail. This is the first time I'm thinking about it.

1 Thinking on the fly here, I would say that
2 the earlier elements of the claim, so I don't know,
3 two levels up, where it says "displaying an area
4 beyond the edge of document" or "displaying an area,"
5 I would say that this last limitation that says "until
6 the area beyond the edge of the electronic document is
7 no longer displayed," that area this -- in this last
8 limitation, where it says "until the area," I would
9 imagine that area to be the same as the "an area" in
10 the -- in the limitation prior to that.

11 So if there is some other area beyond the
12 edge of the display -- sorry -- edge of the electronic
13 document that is unrelated to the area that got
14 displayed in this earlier limitation, that may still
15 be there and has nothing to do with this.

16 MR. JOHNSON: So --

17 THE WITNESS: Maybe I should number these
18 to --

19 MR. JOHNSON: Q. Yeah, that's fine.

20 A If you want me to do that.

21 Q Go ahead. Sure.

22 A So I don't know how you -- you call this
23 element one?

24 Q However you want to do it is fine with me.

25 A Okay. I've just labeled these one to seven

1 here, so we can --

2 Q Okay.

3 A -- clearly go back to it.

4 Q So what I'm asking is -- is, in the example
5 of when we move beyond the edge of a document --

6 A So I'm having trouble looking at this. Okay.

7 Q -- and this portion over here is displayed,
8 and when I remove my finger, if the document moves in
9 the second direction but still displays a portion of
10 the black area there, that doesn't meet the claim
11 limitations of the '381 patent; does it?

12 MR. MONACH: Object to the form of the
13 question; incomplete hypothetical; calling for a legal
14 conclusion and a new opinion.

15 THE WITNESS: So I haven't considered this in
16 detail before, and looking at what you just did there,
17 I'm assuming, if I saw correctly, it's a little hard
18 to see, when you started, you first showed the area
19 beyond the screen -- sorry -- beyond the document,
20 right.

21 So now I've got some area that has now been
22 revealed for the -- for, kind of, the first time
23 beyond -- beyond edge of the document, which I've
24 labeled as meeting element five on the -- on the
25 claims here.

1 When you come to element seven, when it says
2 "second direction until the area," I would imagine
3 it's the same -- the entirety of that area.

4 So if that entirety is not no longer
5 displayed, it would not meet the claim --

6 MR. JOHNSON: So --

7 THE WITNESS: -- so if there's some other
8 area beyond the edge of the screen that happened to be
9 there before or otherwise unrelated, that may not fall
10 within this -- this purview of the claims.

11 MR. JOHNSON: Q. So removing the negatives,
12 if -- if a part of that area is still displayed, like
13 in this situation, that wouldn't meet the claim
14 limitations of the '381 patent; would it?

15 MR. MONACH: Objection; misstates the prior
16 testimony. Objection; calling for a legal conclusion;
17 incomplete hypothetical; calling for a new opinion on
18 the fly.

19 THE WITNESS: So, as I just testified, if the
20 first direction of movement resulted in meeting
21 element five, which is displaying an area beyond the
22 edge of the document, and then you come to element
23 seven, where it -- you translate in the second
24 direction, until the area beyond the edge of the --
25 area -- "the area" beyond the edge of the electronic

1 document is no longer displayed, so that "the area," I
2 would -- I would expect it to match up with the same
3 "an area" language of element five.

4 And if that entirety of that "an area" is --
5 is not -- hasn't gone away, then it would not meet,
6 but there could be some other areas that's beyond
7 the -- the edge of the document that is unrelated to
8 that, that "an area" that got displayed in element
9 five. Then that -- that would not have an influence
10 on this in my reading.

11 MR. JOHNSON: Q. In the code that you
12 reviewed for -- for Mr. Ording's prototypes, do you
13 know whether when the image moves in a second
14 direction, whether there is still part of "an area" or
15 "the area" that remains?

16 MR. MONACH: Objection; vague; compound;
17 lacking in foundation.

18 THE WITNESS: So, as I said earlier, I only
19 looked at that code briefly. I didn't study it in
20 great detail to match it up with the claims, so I
21 don't think I can say either way whether that occurred
22 or did not occur in that code. I would have to study
23 it in much more detail.

24 May I ask, when you get a chance, at some
25 point, if I can take a break.

1 MR. JOHNSON: Yeah, why don't we do so right
2 now.

3 THE WITNESS: Okay. Thank you.

4 THE VIDEOGRAPHER: We're off the record at
5 2:36 p.m.

6 (Recess taken.)

7 THE VIDEOGRAPHER: We are back on the record
8 at 2:57 p.m.

9 You may proceed.

10 MR. JOHNSON: I want to ask you about Claim 7
11 in the '381 patent.

12 Q You see the reference to digital image in
13 that claim?

14 A Yes.

15 Q What is a digital image, as it's used in
16 the '381 patent?

17 MR. MONACH: Object to the extent it calls
18 for a legal conclusion or goes beyond the witness's
19 opinions offered in his declaration, but you can give
20 your understanding.

21 THE WITNESS: So I haven't gone a -- in my
22 declaration, I didn't give a specific definition of
23 that digital image, but the common usage of the term
24 would be to mean an image of the sort that we've been
25 playing with in the gallery application in many of

1 these phones today.

2 MR. JOHNSON: Q. So is it something that's
3 displayed on the screen?

4 MR. MONACH: Same objection.

5 THE WITNESS: In -- in this case, because
6 it's an electronic document and the document is a --
7 is a digital image, it would be displayed on the
8 screen, in the context of these claims.

9 MR. JOHNSON: Q. Is it -- is it limited to a
10 JPEG or a TIFF, something like that?

11 MR. MONACH: Same objection.

12 THE WITNESS: I don't think it says anything
13 about the format of the digital image, so I would say
14 it's not limited to a JPEG or a TIFF, necessarily.
15 But it could be a JPEG or a TIFF.

16 MR. JOHNSON: Q. Your definition would be
17 broader than JPEG or TIFF?

18 A My definition would include JPEG and a TIFF
19 and many other image formats that are out there. It's
20 a pretty long list, I think.

21 Q Okay. So your understanding of "digital
22 image," as it's used in the claim of the '381 patent,
23 would be an image that's displayed on the screen?

24 MR. MONACH: Objection; misstates prior
25 testimony; calls for a legal conclusion; incomplete

1 hypothetical; goes beyond his opinions.

2 THE WITNESS: My understanding of a digital
3 image, just thinking out loud here, it is an
4 electronic document. As in the Claim 7, that because
5 it's an electronic document that's displayed on the
6 screen as for Claim 1 -- Claim 7 depends on Claim 1 --
7 it would be an image displayed on the screen. But a
8 digital image in general doesn't have to be displayed.
9 It could be stored on a disk and not be displayed yet,
10 but in context of the claims, I would say it has to be
11 displayed.

12 Q Okay. I understand.

13 If you -- if you turn to Claim 16, there's a
14 reference to "elastically attached."

15 What does "elastically attached" mean?

16 MR. MONACH: Same objection; calling for a
17 legal conclusion; asking him to formulate a new
18 opinion at the deposition.

19 THE WITNESS: So I want to be clear, I have
20 not, in my declaration, given a -- any particular
21 definition of "elastically attached." So just, again,
22 on the fly here, I would say that in the context of
23 these claims and in the context of the patent,
24 the '381 patent, "elastically attached" would connote
25 that the -- the edge of the document is moving in a

1 way that resembles as though -- in the physical world,
2 the analogy would be an elastic band connected from
3 the edge of the document to the edge of the screen, so
4 when you -- when you pull it beyond the stretch of --
5 you know, as the -- as the elastic band stretches,
6 when it pulls back, when it moves in the other
7 direction, it -- it has some -- some physical
8 characteristics of the movement, like -- like an
9 elastic band would in the physical world.

10 MR. JOHNSON: Q. So when the photograph
11 appears to snap or bounce back, that's elastically
12 attached, in your view?

13 MR. MONACH: Object to the form of the
14 question as vague. Object to the extent it calls for
15 a legal conclusion and is an incomplete hypothetical.

16 THE WITNESS: So you used the terms "snap"
17 and "bounce back," and I'm not sure exactly what you
18 mean by those terms, but in terms of the claims, which
19 says the moving in a second direction, moving back,
20 that elastically attached means that movement is --
21 has -- if that movement is -- appears to be
22 elastically attached, that movement would have this --
23 would resemble the kind of movement you would expect
24 to see approximately in the physical world, if an
25 object were connected with an elastic band to some

1 other object and were stretched and released.

2 MR. JOHNSON: Q. You're familiar with
3 BumpTop; right?

4 A Yes.

5 Q What is that?

6 A BumpTop is -- assuming we're talking about
7 the same BumpTop -- the software package that myself
8 and a former student of mine created.

9 Is that the one you're talking about?

10 Q Yes.

11 A Yes, it was created maybe four or five years
12 ago as part of a master thesis, and then went on to be
13 commercialized as a startup, and it's a software
14 package that explores a new kind of user interface for
15 a desktop.

16 Q Was that -- was that startup sold to anybody?

17 A Yes, it was.

18 Q Who was it sold to?

19 A It was sold to Google.

20 Q And what happened after it was sold to
21 Google?

22 MR. MONACH: Object.

23 MR. JOHNSON: Q. Which technology, if you
24 know?

25 MR. MONACH: Object to form; lack of

1 foundation.

2 THE WITNESS: The technology was acquired by
3 Google. After that, I have not been involved in
4 the -- in the -- in the subsequent actions at Google.
5 I have no relationship --

6 MR. JOHNSON: When --

7 THE WITNESS: -- with Google --

8 MR. JOHNSON: Sorry.

9 Q When was the company acquired by Google?

10 A I'd have to check the exact date. It would
11 have been sometime in 2010, kind of the April/May time
12 frame, 2010, but it was last year, yes.

13 Q Is your grad student still involved?

14 A My former grad student, he is, as far as I
15 know, as of last week, he was an employee of Google.

16 Q Did you make any money off of the sale of
17 BumpTop to Google?

18 MR. MONACH: Objection.

19 Yeah, un- -- unrelated to the preliminary
20 injunction motion or to any issue in this case,
21 under -- at least under California law, you may have
22 certain privacy rights about your financial matters
23 and what you received or didn't receive.

24 So I'll just advise you of that,
25 Dr. Balakrishnan, and you can decide whether you can

1 answer and with what level of detail or not.

2 THE WITNESS: So I'll answer that saying,
3 yes, I did make some money.

4 MR. JOHNSON: Q. Did -- and when -- when did
5 you start BumpTop?

6 A The -- the research was started, oh, 2005 --
7 I'd say in the 2003, 2004 time period, and the paper
8 was published at the CHI Conference, the ACM SIG CHI
9 conference. I think it was in 2005 or 2006. I can't
10 remember the exact dates. It's in my CV.

11 Q Do you remember the title of the paper?

12 A I don't know if it had the word "BumpTop" in
13 it. Something to do with keeping it real, or physics
14 in relation to, or something along those lines.

15 (Document marked Balakrishnan Exhibit 105
16 for identification.)

17 MR. JOHNSON: Q. Marked, as Exhibit 105, a
18 copy of the article, I believe, and just confirm for
19 me, if you can, that that's the article.

20 A It was in 2006. Yes, it appears to be a copy
21 of the article, yes.

22 Q So can you just tell me whether -- let me ask
23 it -- strike that.

24 Does -- does BumpTop contain the concept of
25 elastically attached?

1 MR. MONACH: Object to the form of the
2 question, and if to the extent you're trying to link
3 it to the claim construction in the '381, object that
4 it calls for a legal conclusion.

5 THE WITNESS: So BumpTop has various
6 interface examples that embody kind of physical
7 simulations, and included in that is simulations where
8 there is accelerations, momentum, those kinds of
9 things associated with movements of the objects on
10 that prototype desktop, and some of that could have
11 been called -- could have been referred to as kind of
12 elastic-like movements.

13 I have not thought about whether that
14 directly corresponds to the claim language in the '381
15 patent. In the more general sense, yes, there were
16 different physics simulations in -- in BumpTop.

17 MR. JOHNSON: Q. You don't have an opinion
18 as to whether the '381 patent is valid or not; do you?

19 MR. MONACH: Object to the form of the
20 question. The witness hasn't offered that opinion
21 yet, but we reserve the right to --

22 MR. JOHNSON: To make your objection.

23 MR. MONACH: -- have an offer in -- in
24 response to anything that Samsung may come forward
25 with, as stated in his declaration.

1 MR. JOHNSON: Counsel, stop coaching the
2 witness.

3 MR. MONACH: I'm not coaching the witness at
4 all.

5 MR. JOHNSON: You can answer.

6 THE WITNESS: So the question was, am I --

7 MR. JOHNSON: Q. You don't have an opinion
8 as to whether the '381 patent is valid or not; do you?

9 MR. MONACH: Object to the form of the
10 question as vague and calling for a legal conclusion.

11 THE WITNESS: So to the extent that I have
12 not seen anything from Samsung alleging invalidity of
13 this patent, as I said in my report, I obviously
14 reserve the right to respond if and when such an --
15 invalidity contentions are made, everything I've seen
16 so far would lead me to believe -- I don't see any
17 reason to believe that the '381 patent is not valid.

18 MR. JOHNSON: Q. So is your opinion, sitting
19 here today, that the '381 patent is valid?

20 MR. MONACH: Same objection; vague;
21 incomplete hypothetical; calling for a legal
22 conclusion.

23 THE WITNESS: Like I said, I have not seen
24 any invalidity contentions from Samsung, have not had
25 a chance to carefully consider any such potential

1 invalidity contentions to determine invalidity, or
2 things along those lines. Everything I've seen so far
3 with respect to the '381 patent leads me to believe
4 that it is valid.

5 MR. JOHNSON: Q. Why didn't you put anything
6 in your declaration about the validity of the patent?

7 A My -- my assumption, as I said, and
8 everything I saw was -- did not indicate any
9 invalidity issues, and I was asked to -- to look at a
10 patent and determine if these particular devices that
11 Apple alleged infringed, actually infringed the
12 claims.

13 MR. JOHNSON: Q. So you weren't asked --

14 A So I was asked -- asked to provide an
15 infringement opinion, and I was not asked to provide
16 a -- any kind of response to invalidity contentions.
17 If -- if such a -- if such invalidity contentions
18 arose later on, I'd be -- I'm sure I'd be asked to
19 provide my opinion, at that point, and I -- and I will
20 do that after studying the contentions and -- and the
21 patent.

22 Q So you -- you haven't been asked to -- to
23 provide an opinion on validity so far; right?

24 MR. MONACH: Asked and answered.

25 THE WITNESS: I have not. I've only been

1 asked to provide an opinion on infringement of these
2 particular devices relative to the patent.

3 MR. JOHNSON: Q. When you took on the
4 assignment of looking at the -- the Apple contentions
5 to see if Samsung infringed any of the '381 patent
6 claims, did you do any search for prior art?

7 A I did not go out and do an exhaustive search
8 in any fashion.

9 Q Why not?

10 A Again, my -- I was asked to look at the
11 patent, and my reading of the patent did not
12 immediately trigger anything in my mind that, hey,
13 this stuff I've seen all before. I did not get that
14 kind of a reaction reading the patent, and I was only
15 asked to look at infringement issues, so that's what I
16 focused on, and given that I didn't see an obvious
17 place where, you know, I thought that the patent, you
18 know, might -- might not be valid, it might have been
19 done before or portions of it have been done before, I
20 did not see the need to do it.

21 Q I'd like to show you a -- a short video clip
22 that we found on the web with respect to BumpTop, and
23 we got here because your CV references a website
24 called BumpTop.com.

25 You're familiar with that; right?

1 A Of course.

2 Q Okay. So let me show you the video from
3 about 55 seconds to 59 seconds, somewhere in there,
4 and ask you, in your view, does this describe the
5 concept of elastically attached?

6 MR. MONACH: Well, I'll object to the form of
7 the question as vague and ambiguous. Object to the
8 extent it calls for a legal conclusion, if you're
9 linking it to the construction of terms in the '381
10 patent; incomplete hypothetical; and asking the
11 witness to form a new opinion during the deposition.

12 THE WITNESS: So I -- I'm sorry.

13 MR. MONACH: But you can go ahead and show
14 him the video, and if -- if he can answer, subject to
15 those objections, that's fine.

16 THE WITNESS: So I'm having a bit of trouble
17 looking at it because this monitor is -- can you bring
18 it closer, please?

19 Great. Thank you.

20 MR. TUNG: This section here. Those cards.

21 THE WITNESS: Can you play that back again,
22 it's been a while since I've looked at this video.

23 MR. JOHNSON: Q. This looks familiar to you,
24 though; right?

25 A Yes, of course.

1 MR. TUNG: This portion right here, these
2 cards.

3 MR. JOHNSON: Q. Do those cards moving back
4 and forth show the concept of elastically attached?

5 A So those --

6 MR. MONACH: Object.

7 THE WITNESS: I'm sorry.

8 MR. MONACH: Object to form.

9 THE WITNESS: So those cards, if I recall
10 correctly, and just looking at the video from what we
11 did back then, they, I believe, had a spring damper
12 model connecting -- connecting the cards to one
13 another, and as they moved around, they behave like
14 springs connected to one another, which would be
15 analogous to being -- having an elastic band
16 connecting to each other.

17 Now, that's in that context, and the context
18 of the claims, if -- if -- it's, I guess, very
19 different in that, here -- where is that claim? It's
20 talking about area of documents, some of which is
21 shown here is not displayed, and so forth.

22 The context is -- is, I would say, slightly
23 different, but in the broader concept, it is -- they
24 have, you know, equivalent of elastic bands between
25 the -- between the different cards in that -- in that

1 section of the video.

2 MR. JOHNSON: Q. Now, you understand that in
3 rendering an opinion as to whether a claim is
4 infringed, there's a two-step process; right? The
5 first thing you have to do is look at the claims and
6 interpret the claims; correct?

7 MR. MONACH: Objection to the extent it calls
8 for a legal conclusion, but you should -- you can give
9 your understanding.

10 THE WITNESS: I would believe that's probably
11 a reasonable understanding I would have.

12 MR. JOHNSON: Q. And then the second step is
13 to apply the interpreted claims to the actual accused
14 device; right?

15 MR. MONACH: Same objection.

16 THE WITNESS: It's one way of characterizing
17 it, sure.

18 MR. JOHNSON: Okay.

19 Q And so did you undertake this to specifically
20 interpret the asserted claims of the '381 patent?

21 MR. MONACH: Objection; vague.

22 THE WITNESS: I'm not sure what your -- what
23 you're getting at here. If -- if you mean did I try
24 to construe it in all possible ways and did you -- and
25 I read the claims, and based on the specification of

1 the claims themselves, I -- and my understanding, as
2 one skilled in the art, I came to an understanding of
3 those claims.

4 MR. JOHNSON: Q. And so my -- my question
5 is: Did you -- as you were reading the claims, did
6 you interpret the claims in light of the specification
7 in the prosecution history, what had happened, you
8 know, during the prosecution history?

9 A I didn't look in detail at the prosecution
10 history or vis-à-vis the claims and interpreting, if
11 that's what you're asking me.

12 Q Did you notice that the claims were changed
13 during -- over time during the prosecution of the '381
14 patent?

15 A I think I noticed, at some point, that some
16 language had been modified. I did not study that in
17 detail to determine the reasons for that modification.

18 Q In fact, there were -- there were quite a few
19 modifications; right? There was a series of language
20 added. The whole idea, first portion, second portion,
21 third portion, fourth portion, was specifically added
22 to overcome certain prior art; right?

23 MR. MONACH: Object to the form of the
24 question; assumes facts not in evidence.

25 THE WITNESS: So I'm going by memory here,

1 it's -- I haven't looked at the -- I haven't studied
2 the prior -- sorry -- the file history in detail in
3 matching up which parts exactly were changed.

4 If I recall correctly, there was -- there was
5 some addition of the first portion, second portion.
6 I'm not sure if all of that was added later or not.

7 MR. JOHNSON: Q. Did -- when you were
8 undertaking your -- your infringement analysis, did
9 you try to understand what each of the terms in the
10 patent claims meant? Did you try to interpret those?

11 MR. MONACH: Object to form.

12 THE WITNESS: I tried to understand. I,
13 obviously, had to understand the claims or each
14 element of the claims in order to determine whether
15 something was infringing, but in -- in reading
16 these -- these elements of the claim, same Claim 1, I
17 didn't particularly see anything that required -- that
18 was complicated enough that required a construction,
19 you know, for me to interpret it in a -- potentially
20 in more than any one way, so I wasn't stretching to --
21 to understand these.

22 MR. JOHNSON: Q. No, but you would -- you
23 would agree that there are terms in Claim 1 that are
24 ambiguous and subject to multiple interpretations;
25 right?

1 MR. MONACH: Object to form.

2 THE WITNESS: I don't know that I'd agree to
3 that. I think -- I think there are -- well, any word
4 one could argue is ambiguous, depending on context and
5 depending on how far you want to stretch the word
6 "ambiguous."

7 To me, reading is one -- as one skilled in
8 the art reading this thing, I did not find anything
9 particularly difficult to understand or, you know, a
10 term that I went, okay, what does that mean? I did
11 not have --

12 MR. JOHNSON: Q. So you understand --

13 MR. MONACH: Please don't -- please don't
14 interrupt him. I don't think he finished.

15 MR. JOHNSON: Q. You understood --

16 MR. MONACH: Did you finish?

17 THE WITNESS: I -- I don't know if I
18 finished.

19 MR. MONACH: All right.

20 THE WITNESS: I got cut off in the middle. I
21 think I got the gist of what I wanted to say out.

22 MR. JOHNSON: Q. Did you -- you're aware
23 that the '381 patent was asserted against Nokia;
24 right?

25 A I believe so, yes. Yes, it must have been,

1 because Nokia requested that reexamination.

2 Q Did you read the -- besides the reexamination
3 file history, did you read the case file in the Nokia
4 case for purposes of looking at what was said with
5 respect to the '381 patent?

6 A The Nokia case file? No, I don't think I
7 did.

8 Q Did you look at any documents from the Nokia
9 case involving Apple that relate to the '381 patent?

10 A The Nokia case.

11 Beyond the reexamination document, I don't
12 believe I have.

13 Q Did you look at any invalidity contentions
14 that were submitted by Nokia in the case that Nokia
15 and Apple had concerning the '381 patent?

16 A Not beyond what's in the reexamination
17 document.

18 Q When I looked at your declaration in
19 connection with the motion for preliminary injunction,
20 I didn't see any reference to infringement under the
21 doctrine of equivalence.

22 You're not alleging that there's infringement
23 under the doctrine of equivalence; are you?

24 MR. MONACH: Object to the form of the
25 question. Object to the extent it calls for a legal

1 conclusion or -- or additional opinion by the witness.

2 THE WITNESS: So I -- in the declaration that
3 I've put forth so far, I -- I don't believe I've
4 alleged infringement by doctrine of equivalence yet.
5 That doesn't mean that such allegations may not be put
6 forth later on, if we deem it necessary, should --
7 should more information come to light.

8 MR. JOHNSON: Q. Looking at claims in
9 the '381 patent, do you believe those terms -- strike
10 that.

11 Looking at the claims of the '381 patent, do
12 you believe those claims use simple and elegant claim
13 terms?

14 MR. MONACH: Object to the form of the
15 question. It's vague and ambiguous.

16 THE WITNESS: Well, I guess the term "simple
17 and elegant," it's a bit in the eye of the beholder,
18 but I would say these are relatively easy to
19 understand, the terms.

20 MR. JOHNSON: Q. So you think these claims
21 are easily understood --

22 MR. MONACH: Please, please. You're -- I
23 know he drops his voice, and that's his habit, so --

24 MR. JOHNSON: I thought he was done.

25 MR. MONACH: -- I don't think you're --

1 MR. JOHNSON: I thought he was done.

2 MR. MONACH: -- I don't think you're doing it
3 on purpose, but it seems as though he's being cut off,
4 so if you could just wait, and if you could keep your
5 voice up, Dr. Balakrishnan, I think this will go
6 better.

7 THE WITNESS: I'll try to do that.

8 I'm sorry. I've lost my train of thought.

9 MR. JOHNSON: So --

10 THE WITNESS: If we could go back to the
11 question, and I'll try to give you an answer again.

12 MR. JOHNSON: Q. So you believe the -- the
13 terms -- strike that.

14 You believe the claim language of the '381
15 patent to be easily understood?

16 MR. MONACH: Objection; vague; incomplete
17 hypothetical.

18 THE WITNESS: I believe the claim, the
19 language in the claims are -- are comprehensible to
20 someone skilled in the art, yes. I don't see any
21 particular difficulty. I did not have any particular
22 difficulty --

23 MR. JOHNSON: Q. Well, you're an expert.

24 A -- under -- understanding the -- the claim
25 language.

1 Q You're an expert.

2 My question is: Do you believe the claim
3 language to be easily understood?

4 MR. MONACH: Same objection; asked and
5 answered.

6 THE WITNESS: So I think I just answered
7 that. I said I did not have any difficulty. It was
8 comprehensible, so I don't see it being difficult to
9 understand.

10 MR. JOHNSON: Q. And I'm saying you --
11 you're -- you're allegedly an expert in the field.

12 I'm asking: Do you think a person of
13 ordinary skill to -- strike that.

14 To a person of ordinary skill in the art, do
15 you believe these claim -- the claim language to be
16 easily understood and straightforward?

17 MR. MONACH: Objection; vague.

18 THE WITNESS: So to one skilled in the art, I
19 believe that the language used in the claims are --
20 are easily understood, but I don't see any particular
21 difficulty for someone skilled in the art to
22 comprehend these claims.

23 MR. JOHNSON: Q. Do you need to read the
24 specification in order to understand the claim
25 language in the '381 patent?

1 MR. MONACH: Objection; incomplete
2 hypothetical; vague; calls for speculation.

3 THE WITNESS: So I would say that any patent,
4 I would always read the specification --
5 specification, the main body of the -- of the patent,
6 in conjunction with reading the claims.

7 I don't think one would read the claims in
8 isolation. If all you gave me was the claims, I don't
9 think that's typically how patents are read.

10 MR. JOHNSON: I'm talking about with respect
11 to the '381 patent.

12 Q Do you need to read the specification in
13 order to understand the claim language of the '381
14 patent?

15 MR. MONACH: Object to the form of the
16 question; asked and answered; calls for a legal
17 conclusion; vague; incomplete hypothetical.

18 THE WITNESS: So in that, the claims, at
19 least, let's say, take Claim 1, as an example, reading
20 that, I -- I would -- as one skilled in the art or an
21 expert in the field, I would read the spec just to
22 make sure I wasn't missing something necessarily; but,
23 otherwise, I believe the claims actually speak for
24 themselves in this -- in this particular example.

25 MR. JOHNSON: Q. Did you read the

1 specification of the '381 patent?

2 A I have read the specification, yes.

3 Q The whole thing?

4 A Yes.

5 Q All right. And did you read the -- all of
6 the related applications that are discussed right up
7 there in the first few lines of Column 1?

8 A You mean all these patent applications?

9 Q Yeah.

10 A No, I did not read all of them, no.

11 Q You see line 40, it says, "All of these
12 applications are incorted -- incorporated by reference
13 herein in their entirety"?

14 A Yes, I see that.

15 Q Why didn't you read the patent applications
16 that are incorporated by reference in their entirety
17 in the '381 patent?

18 A I didn't see the need to. I read -- I read
19 the claims. I could understand them. The
20 specification in this document itself, without reading
21 those related applications or all of the related
22 applications, the specification itself did not
23 contradict my understanding of the claims, so I did
24 not see the need to -- to delve deeper, so to speak.

25 Q You said that you've -- you've seen parts of

1 the prosecution history. Have you read the whole
2 prosecution history of the '381 patent?

3 A I would say I skimmed it. I haven't read it
4 in -- you know, in detail, saying matching everything
5 up, if that's what you mean.

6 Q Did you read all of the cited art?

7 A I did not read all of the cited art.

8 Q Why not?

9 A For the same reason I did not see the need to
10 do that in order to understand the claims, in light of
11 the specification of the '381 patent, necessarily.

12 Q So you didn't see reading the prosecution
13 history or the cited prior art as -- in forming the
14 scope of the claim terms that are used in the '381
15 patent?

16 MR. MONACH: Objection; vague; incomplete
17 hypothetical; calling for a legal conclusion.

18 THE WITNESS: If you mean by "scope," the --
19 whether it would be limited in particular ways, is
20 that what you mean?

21 MR. JOHNSON: I just mean scope generally.

22 Q I mean, you didn't -- you didn't read the
23 prosecution history or the cited prior art in order to
24 figure out how the claims were supposed to be
25 interpreted?

1 A I did not feel I needed to -- to read all the
2 cited prior art in order to understand the claims and
3 interpret in light of the specification that I read in
4 the '381 patent itself.

5 Q How many pieces of cited prior art did you
6 read?

7 A I don't recall, but I've -- I've certainly
8 looked at some of them. I don't remember which ones
9 exactly.

10 Q Did you -- did you read the four pieces of
11 prior art that were discussed in the reexamination
12 proceedings filed by Nokia?

13 A I'm not sure if I've read all of them, but
14 I've read some of them.

15 Q Which ones?

16 A I read, for example, the Glimpse, the Glimpse
17 article in there. I've read that one. I browsed, I
18 think, something called Inside Out, or -- or something
19 to that effect. Some Microsoft product, I browsed
20 that application -- sorry, not application --
21 document. I can't remember what the other two were.
22 I'd have to look it up to see whether I actually
23 looked at it or not.

24 Q There was a Zimmerman reference; do you
25 remember that?

1 A Yes, I do remember the Zimmerman reference.
2 I believe I have looked at that, at some point.

3 Q When you say you looked at it, did you read
4 it?

5 A When I say I looked at it, I read it, but
6 whether I read it at the level of detail of matching
7 up to every claim element and so forth, that, I did
8 not do. And, again, I will reiterate that I was
9 looking at this in terms of infringement. I wasn't
10 looking at the invalidity issues, at that point.

11 Q How about the Robbins patent? Did you look
12 at that?

13 A Which Robbins patent is that?

14 Q The one that was used in the reexam request
15 by Nokia.

16 A Right, if you could tell me the full title,
17 because there's several of Robbins articles that are
18 floating around, I think.

19 MR. MONACH: Objection. Objection; vague and
20 ambiguous, in light of the witness's testimony.

21 MR. JOHNSON: Q. Do you remember the Robbins
22 artic- -- Robbins patent entitled "Advanced Navigation
23 Techniques for Portable Devices"?

24 A Could I have a look at it, if you don't mind.

25 MR. JOHNSON: I'll mark it as Exhibit 106.

1 (Document marked Balakrishnan Exhibit 106
2 for identification.)

3 MR. MONACH: Did you mark -- I'm sorry. Did
4 you mark a 105?

5 THE WITNESS: It was this BumpTop article.

6 MR. MONACH: Okay. Thank you.

7 THE WITNESS: Yes, I have browsed this
8 article.

9 MR. JOHNSON: Q. Is there a distinction in
10 your mind between read it versus browsed it?

11 A Well, I think if I was going to do a detailed
12 invalidity analysis, for example, I would read this
13 very, very carefully and, you know, understand
14 every -- to the extent possible, every nuance.

15 Browsing it, means, you know, I'm looking at
16 it very quickly just to get a sense of the article and
17 not trying to elicit every detail of it.

18 Q Did you read it sufficiently to convince
19 yourself that it doesn't invalidate the '381 patent
20 claims?

21 MR. MONACH: Object to the form of the
22 question; object to the extent it calls for a legal
23 conclusion, and ask the witness to formulate an
24 opinion on the spot here.

25 THE WITNESS: So I was not looking at

1 validity issues at the time I read this. I -- I did
2 not have that as my primary objective, so I don't
3 think I could make that determination with any
4 certainty, unless somebody actually alleged particular
5 portions of this -- of this document called Contends,
6 that it invalidates the '381 patent, at which point
7 I'm happy to -- or I will study it in detail and
8 consider the different invalidity contentions and
9 respond appropriately.

10 At this time, and at the time for analysis of
11 my other colleague, I wasn't doing that level of
12 analysis.

13 MR. JOHNSON: Q. Well, at the time you
14 had -- you read it, though, Nokia had alleged that
15 that reference, as well as the three other references,
16 invalidated the '381 patent claims; right?

17 MR. MONACH: Object to the form.

18 THE WITNESS: At the time I looked at this,
19 the -- Nokia had made the allegation. I believe they
20 may have already settled, at that point, and so
21 they -- my -- my understanding is that it goes away.
22 I'm not sure the legality of whether validity
23 contentions disappear after somebody settles, but...

24 MR. JOHNSON: Q. But when you looked at the
25 request of reexamination prosecution history, Nokia

1 had requested that the '381 patent be reexamined
2 because it believed that these four references
3 invalidated the '381 patent; right?

4 MR. MONACH: Object to the form of the
5 question.

6 THE WITNESS: The reexamination request made
7 that allegation, yes, and -- and I also read that the
8 patent office had looked at it and -- and rejected
9 those claims.

10 MR. JOHNSON: Q. Well, did you look at these
11 references, these four references, sufficiently to
12 determine whether the patent office was correct or
13 not?

14 A I did not do that level of analysis, no.

15 Q Why not?

16 A Because, at that point, I was engaged to do
17 infringement analysis. The patent office had clearly
18 already said that it is -- they had determined the
19 patent was still valid, based on the reexamination. I
20 had no reason to believe otherwise, and I wasn't
21 engaged to do a validity analysis.

22 Q In your review of the prior art that you've
23 looked at, what do you think is the best prior art
24 against the '381 patent claims?

25 MR. MONACH: Object to the form of the

1 question as asking for a legal conclusion; asking the
2 witness to provide opinion testimony where he hasn't
3 formulated an opinion on that subject yet.

4 THE WITNESS: I think you would have to ask
5 me to speculate as to some things being valid. What's
6 the closest validity -- sorry, closest prior art, and
7 I don't think I can do that right now without spending
8 a considerable amount of time considering these prior
9 art articles with invalidity or validity issues at the
10 forefront of my thinking.

11 MR. JOHNSON: Q. So you don't -- you don't
12 have an answer to my question?

13 MR. MONACH: Objection; asked and answered.

14 THE WITNESS: I think I just answered your
15 question. I -- I --

16 MR. JOHNSON: Q. Let me ask it again.

17 A I --

18 Q What is the best prior art that you've seen
19 against the '381 patent?

20 MR. MONACH: Same objection as previously
21 stated in response to that question, and I don't think
22 you're permitted to inquire about the witness's
23 tentative conclusions or -- or thoughts before he's
24 formulated an opinion or offered an opinion on a
25 topic. It's asked and answered.

1 You can answer it again.

2 THE WITNESS: So, as I said before, I have
3 not studied these references with the view of
4 determining validity or invalidity. That was not
5 something I've done in detail, and I cannot answer the
6 question as to which of these is the best or closest
7 prior art, because I haven't done that analysis yet,
8 and -- and when the time comes, if it comes, that I
9 have to do that analysis, I will do it and, at that
10 point, come up with an appropriate opinion.

11 MR. JOHNSON: Q. Did Nokia uncover the best
12 prior art against the '381 patent?

13 MR. MONACH: Objection for the reasons
14 previously stated. This is the same question asked
15 and answered and now has a lack of foundation and
16 calls for speculation.

17 THE WITNESS: Again, as I said, I -- I have
18 not done any kind of invalidity or validity analysis.
19 I have not considered the prior art with respect to
20 the '381 patent in any detail, and it's impossible for
21 me to say whether Nokia found the -- the best or the
22 worst prior art. They certainly found what they
23 contend to be some prior art. I haven't done the
24 analysis to determine either way to say anything
25 definitive about this prior art or other prior art

1 that may exist out there or may not exist.

2 MR. JOHNSON: I'll show you what I've marked
3 as Exhibit 107, which is the Glimpse prior art that
4 was referenced in the reexamination prosecution
5 history.

6 (Document marked Balakrishnan Exhibit 107
7 for identification.)

8 MR. JOHNSON: Q. Have you read this, this
9 article?

10 A Yes, I have.

11 Q And this one you read carefully?

12 MR. MONACH: Object to the form.

13 THE WITNESS: This one I've read in some
14 detail, in -- in, actually, much more in detail way
15 back when it was written. I'm familiar with the
16 article from back in 2005.

17 MR. JOHNSON: Q. How come you're familiar
18 with it back then?

19 A It -- it's, first of all, an article that
20 appeared in a conference that I regularly attend, the
21 CHI Conference. Clifton Foreigns was a former Ph.D.
22 student of mine, and I think, at that time, he was a
23 Ph.D. student of mine, and I know the other authors,
24 so it's a work in my field that I'm generally familiar
25 with.

1 Q Okay. Do you believe this is the best prior
2 art against the '381 patent, or do you have an
3 opinion?

4 MR. MONACH: Objection; same objections as
5 previously stated -- previously stated; asked and
6 answered, multiple times.

7 THE WITNESS: So, as I said earlier, I have
8 not done any kind of analysis on validity or
9 invalidity. I have not formed an opinion in that
10 regard. This could be prior art that's relevant. I
11 have not studied it in view of determining validity or
12 invalidity relative to the '381 patent, so I don't
13 think I can answer that definitively either way right
14 now, but I reserve the right down the road, if the
15 time comes, to actually do that.

16 MR. JOHNSON: But you've reviewed it. You're
17 familiar with the article. You've obviously read the
18 '381 patent a bunch of times.

19 Q Can you tell me what limitations from the
20 '381 patent claims are missing in this particular
21 reference?

22 MR. MONACH: I'll object to the form of the
23 question; asking the witness to formulate an opinion
24 where he's said -- already testified multiple times he
25 hasn't done this work. Object; it asks for a legal

1 conclusion and is compound with respect to all of the
2 different limitations and elements.

3 But if you -- if you can, and -- and want to
4 do so and study it now and give some response, I'm not
5 going to instruct you not to do that.

6 THE WITNESS: So this is a -- I would say a
7 several-pages long article that covers some ground. I
8 have not done the comparison to every element of the
9 claims of the '381 patent, and it's not something I
10 want to do on the fly.

11 If -- I certainly don't want to do this live
12 in a deposition. I would have to spend the time and
13 carefully consider the -- the -- the article and what
14 it -- what it discloses, relative to each of the
15 embodiments -- sorry -- each of the elements of the
16 claims, and I -- I don't -- I simply cannot do that
17 right now.

18 (Document marked Balakrishnan Exhibit 108
19 for identification.)

20 MR. JOHNSON: Let me mark, as Exhibit 108,
21 the Zimmerman '387 patent.

22 Q You've seen that before; right?

23 Have you read the Zimmerman article -- I'm
24 sorry -- the Zimmerman patent?

25 A I have browsed through it, yes.

1 Q You've only browsed through it.

2 Why didn't you read it carefully?

3 A I did not read it in great detail. Again, as
4 I've stated before, I -- you know, my task on this --
5 on this case so far was focused on infringement, and I
6 did not look at invalidity or validity issues in any
7 great detail.

8 Q Do you understand that you can only infringe
9 a valid patent?

10 A I would assume that's --

11 MR. MONACH: Objection.

12 THE WITNESS: I'm sorry.

13 MR. MONACH: Object to the form of the
14 question.

15 THE WITNESS: I would assume that's the case.
16 If it's invalid -- how would you infringe something
17 that's invalid?

18 MR. JOHNSON: Q. So -- so why didn't you do
19 anything to look at the validity of the patent more
20 carefully?

21 A Because, as far as I know, and the patent
22 was -- has not been determined to be invalid, and it
23 had been reexamined by the patent office, which
24 determined it was valid, in light of these references,
25 I wasn't asked to determine validity or invalidity.

1 My job was to look at infringement contentions
2 relative to the patent. I did not -- reading the
3 patent did not lead me to believe that anything was
4 particularly -- anything jumped out to say this --
5 this has got to be invalid. So I did not see the need
6 to do that.

7 If and when I -- you know, I'm presented with
8 particular invalidity contentions and allegations, I
9 will certainly go back and -- and do the very careful
10 analysis to determine if those allegations have any
11 basis, and respond accordingly.

12 Q But you didn't see the need to determine
13 whether what was done during the prosecution history
14 of the '381 patent or the reexamination prosecution
15 history was accurate or not?

16 MR. MONACH: Object to the form of the
17 question.

18 THE WITNESS: Again, to reiterate what I --
19 what I said, I -- my -- my task here was to determine
20 infringement relative to the devices alleged were
21 infringing the applications, that they alleged were
22 infringing relative to the '381 patent, and given that
23 the reexamination by the patent office did not lead to
24 a conclusion of invalidity, I did not see the need
25 to -- to look at invalidity or validity contentions in

1 any great detail, at that time, and if -- if and when
2 the -- such contentions are raised in this case, I
3 will -- I will certainly look at it.

4 (Document marked Balakrishnan Exhibit 109
5 for identification.)

6 MR. JOHNSON: Let me mark, as Exhibit 109,
7 the prosecution history of the -- the reexamination
8 prosecution history of the '381 patent, with
9 production pages SAMNDCA030 through '0350.

10 So we produced this, and we numbered it. We
11 didn't see it produced by Apple.

12 Q I think you said you've browsed this before;
13 right?

14 A Give me a minute here to quickly look through
15 this.

16 Yes, I've browsed, well, at least, an
17 electronic version of this. Paper version looks a lot
18 thicker than the pdf file.

19 Q But you haven't read it carefully?

20 MR. MONACH: Object to the form of question.

21 THE WITNESS: I -- like I said before, I
22 haven't read it with the eye to determine validity or
23 invalidity, because that was not my task for this --
24 for this aspect of the declaration that I put forth.

25 MR. JOHNSON: Okay.

1 Q If you -- if you turn to page '311.

2 A And you mean by the Bates number here?

3 Q Yeah.

4 A Okay.

5 Q The first combination of prior art references
6 that Nokia asserted was grounds for rejection was
7 Glimpse, plus Inside and Out; right?

8 A That appears to be what is said in this --
9 this section of the document.

10 Q Now, if I ask you to look at the claim charts
11 that are on pages 18, 19, et cetera, of this
12 particular document, and I ask you whether the prior
13 art discloses certain claim elements that are
14 described here, are you gonna be able to tell me if
15 they're accurate or not?

16 A I don't think I can -- I'm sorry.

17 MR. MONACH: Object to the -- object to the
18 form of the question as calling for speculation and --
19 and vague.

20 THE WITNESS: If you're asking me can I,
21 based on each of these elements on the table in this
22 chart, whether whatever Nokia said here is accurate or
23 not, I don't think I can do that right now. I haven't
24 spent the time, and I think it's gonna take a
25 considerable amount of time to very carefully look at

1 each of these allegations and correspond it to the
2 article in question and to the claim in question and
3 make that determination.

4 I have not done that, and I certainly don't
5 think I can do that on the fly here. It would take
6 certainly much more time than we have today.

7 MR. JOHNSON: Do you know whether -- did
8 the -- strike that.

9 Q Did the examiner find that Glimpse disclosed
10 pan and zoom navigation using the touch input?

11 MR. MONACH: Objection; lack of foundation.

12 Under the best evidence rule, whatever the
13 examiner found is the best evidence of what he found.

14 THE WITNESS: I'm not sure I completely
15 understood that objection.

16 MR. JOHNSON: Yeah.

17 MR. MONACH: It's basically saying the
18 document speaks for itself. The examiner did or
19 didn't do something and whether you have an opinion on
20 it doesn't change that in the slightest.

21 MR. JOHNSON: That's -- that's an objection I
22 haven't heard at a deposition in a patent case before,
23 but go ahead.

24 THE WITNESS: Can I have the question read
25 back to me, if you don't mind.

1 MR. JOHNSON: Q. Did the examiner find that
2 Glimpse disclosed pan and zoom navigation using touch
3 input?

4 MR. MONACH: Objection; best evidence rule.
5 Objection; lack of foundation.

6 THE WITNESS: I don't recall exactly what the
7 examiner found. I know, in its entirety, the examiner
8 did not find that this prior art invalidated the
9 patent claims.

10 So the particular -- particular elements of
11 the claims and particular elements of the Glimpse
12 article that the examiner may or may not have found to
13 match up, but I'd have to study that in great detail
14 before I -- or at least in some detail before I
15 determine what he found or what he didn't find.

16 MR. JOHNSON: Q. Based on your familiarity
17 with the Glimpse work, can the user preview results of
18 a movement by using a light touch, and then when the
19 user lifts his finger, the movement can be undone?

20 MR. MONACH: Object to the form of the
21 questions.

22 THE WITNESS: Going by memory, I -- I would
23 have to study the article again carefully to match it
24 up with your particular question there, but going from
25 memory, the thrust of that article was to -- to enable

1 glimpsing or previewing some other part of the -- of
2 the document space or the space of multiple documents.
3 The specifics of it, I would have to study in detail
4 in any kind of validity or invalidity contention.

5 MR. JOHNSON: Q. Based on your familiarity,
6 did Glimpse describe going beyond the edge of an
7 electronic document?

8 MR. MONACH: Object to the form of the
9 question. Objection; best evidence rule.

10 THE WITNESS: I would have to study the
11 article again in detail to see if it matches up with
12 the way the edge of an electronic document is used in
13 the claims of the '381 patent.

14 MR. JOHNSON: Q. So you don't know?

15 MR. MONACH: Same objection.

16 THE WITNESS: As I said, I can't answer that
17 question right off. Well, from memory here, I
18 wouldn't be able to tell you either way.

19 MR. JOHNSON: Q. If I -- if I ask you about
20 whether the statements that are made in the request
21 for reexamination that appear on page '294 through
22 '344 --

23 A This is the Bates numbering again?

24 Q -- and whether those are accurate statements,
25 are you able to answer those questions?

1 MR. MONACH: Same objection; compound;
2 calling for a narrative; asking the witness to
3 evaluate a -- 50 pages of a document on the fly.

4 THE WITNESS: If you're asking me that --
5 whether I can tell you right now that each one of
6 these are accurate or inaccurate, I absolutely cannot
7 do that. I have not studied this at that level of
8 detail at all, as I've said multiple times today. I
9 would have to do that studying, and it's gonna take
10 many, many hours.

11 MR. JOHNSON: Q. Did you do anything
12 specifically to determine whether the patent discloses
13 the best mode for performing the claimed inventions in
14 the '381 patent?

15 MR. MONACH: Objection to the extent it calls
16 for a legal conclusion. Objection; vague.

17 THE WITNESS: I -- I would have to ask you
18 what your definition of "best mode" is. I have a
19 vague understanding of it from past cases, but --

20 MR. JOHNSON: Q. What do you understand it
21 to be?

22 A My understanding is that the best possible
23 way or the -- the way the inventor intended it to be
24 used should be disclosed. That's a very lay
25 understanding. I haven't considered the -- just the

1 legal best mode argument.

2 Q Using your understanding, have you done
3 anything specific to determine whether the '381 patent
4 claims meet the best mode requirements?

5 A No, I haven't done any kind of best mode
6 analysis, if that's what you're asking me.

7 Q You weren't asked by counsel to look at that;
8 right?

9 A I was not. I was not instructed or asked
10 to -- to look at any best mode analysis, as far as I
11 know.

12 Q Were you asked to look at whether any of the
13 claims are indefinite?

14 A I was not asked to make that determination.

15 Q Were you asked to look at whether the -- any
16 of the claims are described in a way that they would
17 enable a person of ordinary skill in the art to make
18 and use the inventions that are described in the '381
19 patent?

20 A Did you say would not or would? I'm sorry.
21 I missed some portion there.

22 If you could have it just read back, the
23 question, please.

24 MR. JOHNSON: Let's read it back.

25 (Whereupon, record read by the Reporter as

1 follows:

2 "Question: Were you asked to look at whether
3 the -- any of the claims are described in a
4 way that they would enable a person of
5 ordinary skill in the art to make and use
6 the inventions that are described in
7 the '381 patent?")

8 THE WITNESS: I was not asked to make that
9 determination.

10 MR. JOHNSON: Q. Now, with respect to your
11 declaration that the statements that are made in your
12 declaration are made on personal knowledge; right?

13 A What do you mean by "personal knowledge"?

14 Q I mean, there -- it's knowledge that you --
15 you have, as opposed to -- as to something that you're
16 relying -- are you relying on anybody else for the
17 opinions that are expressed in your declaration?

18 MR. MONACH: Objection; vague and compound.

19 THE WITNESS: I'm not relying on anybody
20 else, except for portions like the legal -- the legal
21 principal section. I was given that information to
22 follow. That's not something I'm an expert on, for
23 example.

24 MR. JOHNSON: All right.

25 Q How many hours have you billed on this case

1 so far?

2 A I don't -- I don't know how many hours I've
3 submitted invoices for yet, but I roughly have worked
4 maybe 30 to 50 hours on the case. I haven't submitted
5 all my invoices yet.

6 Q Okay. Now, you've worked on several
7 different cases for Apple.

8 Have you ever disagreed with any of Apple's
9 positions in its cases?

10 MR. MONACH: I'm gonna instruct the witness
11 not to answer based on Rule 26 and work product
12 privilege. It also goes beyond the scope of the
13 preliminary injunction motion here.

14 THE WITNESS: So I cannot answer that
15 question.

16 MR. JOHNSON: Okay. Let's take a break.

17 THE VIDEOGRAPHER: This is the end of Disk
18 No. 3, Volume I.

19 We are off the record at 3:55 p.m.

20 (Recess taken.)

21 THE VIDEOGRAPHER: This is the beginning of
22 Disk No. 4, Volume I.

23 We are back on the record at 4:08 p.m.

24 You may proceed.

25 MR. JOHNSON: Q. In reviewing the

1 declaration that you submitted in this case, I noticed
2 that in the qualification sections you basically
3 copied a bunch of those paragraphs from other
4 declarations and other expert reports you've done in
5 other cases.

6 A You're talking about my qualifications?

7 Q Yes.

8 A Yes, I think I started from a boilerplate. I
9 may have updated some relevant sections.

10 Q But it --

11 A The gist of it, I think, is similar to the
12 recent declaration.

13 Q Yeah, in a lot of instances it's a copy until
14 we get to the materials considered.

15 So the first question is: Who wrote your
16 declaration in this case?

17 A I wrote it in conjunction with the counsel at
18 MoFo.

19 Q Did you write it in the Bay Area? I mean,
20 when you say "in conjunction," what do you mean?

21 A I wrote -- no, I did not come to the Bay
22 Area. It was done wherever I was in the world through
23 electronic communication.

24 Q Who did the first draft?

25 MR. MONACH: Objection; vague.

1 THE WITNESS: The different sections, I
2 think, I wrote a lot of content sections, I drafted
3 myself, and then it went back and forth.

4 You know, some parts like legal principles,
5 that was from counsel that stuck it in there, and then
6 there was a lot of kind of formatting it and putting
7 it in the kind of style of these reports that counsel
8 did more of that kind of work as well.

9 MR. JOHNSON: Okay.

10 Q The -- the four Accused Devices you said that
11 you've looked at before, did -- did counsel for Apple
12 send those to you?

13 A Yes, they did.

14 Q Now, in your declaration, you say that the
15 Accused Devices are capable of operating -- well,
16 strike that.

17 You would agree that the four Accused Devices
18 are capable of operating in non-infringing modes;
19 right?

20 MR. MONACH: Object to the form of the
21 question as vague and ambiguous.

22 THE WITNESS: So you mean that the devices in
23 other uses don't infringe. Yes, that's true. They
24 infringe in the particular instances, for example,
25 that I elaborate in my report and more on today.

1 MR. JOHNSON: Q. So for the four accused
2 phones, you've identified in the phones themselves the
3 gallery and contacts applications, and particularly
4 manipulation of those applications yields
5 infringement; right?

6 A In the three phones?

7 Q Right.

8 A The gallery and the contacts were in two
9 applications that I determined did infringe the
10 claims.

11 Q And you're not alleging that there are any
12 other applications that infringe the accused phones;
13 right?

14 MR. MONACH: Object to form.

15 THE WITNESS: I don't think we're infringing
16 the phone. Infringing the claims.

17 MR. JOHNSON: Thanks.

18 Q You're not alleging that there are any other
19 applications that infringe the Accused Products?

20 MR. MONACH: Object to form.

21 MR. JOHNSON: Strike that.

22 Q You're not alleging that there are any other
23 applications that infringe the '381 patent; right?

24 MR. MONACH: Object to form.

25 THE WITNESS: Based on what I've seen so far

1 on those three phones and what counsel directed me to
2 look at, I haven't looked -- I haven't done an
3 exhaustive review of all possible applications on
4 those phones.

5 So based on the applications I've seen so
6 far, in particular the gallery and the contacts list,
7 those are the two that I have determined to infringe
8 the claims of -- of the '381 patent on those phones.

9 MR. JOHNSON: Q. And in the -- in the Galaxy
10 Tab 10.1, it's only the particular manipulation of the
11 images in the gallery application, as well as in the
12 browser application that infringe the '381 patent, as
13 far as you're concerned; right?

14 MR. MONACH: Object to form.

15 THE WITNESS: In the Gal -- I'm sorry -- the
16 Galaxy, in the tablet 10.1 device, I have only
17 considered the -- the gallery application and the web
18 browser application in relation to the '381 patent and
19 determined those were infringing.

20 I have not studied any of the other
21 applications in detail to determine whether they
22 infringed or not.

23 MR. JOHNSON: Q. When is the last time you
24 reviewed your declaration?

25 A I looked through it again last night.

1 Q Okay. Is there anything in there that's
2 inaccurate?

3 A I haven't spotted anything that I would --
4 you know, stuck out as being inaccurate; but if there
5 are typos or any inconsistencies potentially that were
6 brought to my attention, I would certainly look at
7 that and consider it, whether I made a mistake; but,
8 in general, I believe it is accurate.

9 Q Are there any changes that you'd like to make
10 to it?

11 A At this point, I don't -- I don't have
12 anything that jumps out now. No one area that maybe
13 needs some updating would be my qualifications.
14 Something about number of papers published, that --
15 that total may have been -- may have increased since I
16 wrote this; but I don't think that substantively
17 changes anything with regards to my opinions of
18 infringement.

19 Just as an example of something that, you
20 know, might need a little bit of updating.

21 Q Have you reviewed Apple's motion for
22 preliminary injunction?

23 A In this case?

24 Q Yes.

25 A I don't recall having reviewed that.

1 Q It's a publicly available --

2 A Might have.

3 Q It's a publicly available document. Why
4 haven't you reviewed it?

5 A I don't know if it's publicly available or
6 not. It's not something I go looking for in the
7 course of my day-to-day work. It was not brought to
8 my attention --

9 Q Your name --

10 A -- that I needed to.

11 Q Your name is all over it.

12 A It is?

13 Q You're not curious what it says?

14 MR. MONACH: Object to the form of the
15 question.

16 THE WITNESS: Well, this is the first time
17 I'm hearing that my name is all over it. Maybe now
18 I'll be curious enough to look at it afterwards.

19 MR. JOHNSON: Q. But you haven't looked at
20 it so far; right?

21 A As far as I know, no.

22 Q In your opinion, did Apple invent
23 touchscreens?

24 MR. MONACH: Objection; vague and ambiguous;
25 lack of foundation; calls for a formulation of a new

1 opinion at the deposition.

2 THE WITNESS: I have not studied in detail or
3 made a determination of the history of touchscreens
4 and who invented what and when. I know touchscreens
5 have been around for quite a while.

6 As to whether it was Apple that invented it
7 or somebody else invented it, I cannot say for sure
8 right now either way.

9 MR. JOHNSON: Q. They were in existence
10 before the '381 patent; right?

11 A Oh, certainly, yes. Before the 2005 or 2007
12 dates, yes.

13 Q And what about momentum scrolling? Did Apple
14 invent momentum scrolling?

15 MR. MONACH: Objection; vague. Objection;
16 lack of foundation and asking for a new opinion.

17 THE WITNESS: First of all, I'm going to ask,
18 you know, if you have a particular definition for
19 momentum scrolling, it's not necessarily a standard
20 term in the art.

21 MR. JOHNSON: Q. Have you heard of that term
22 before?

23 A Yes, I have, a momentum-based scrolling,
24 acceleration scrolling.

25 Q Yeah.

1 What do you understand that to mean?

2 A One understanding I have is scrolling that
3 has, as the list moves or the items move when you
4 scroll, the content moves, the movement has -- the
5 speed of the movement is modulated with some physical
6 characteristics; i.e., momentum style equations or,
7 you know, acceleration characteristics.

8 (Document marked Balakrishanan Exhibit 110
9 for identification.)

10 MR. JOHNSON: I'm going to mark as
11 Exhibit 110, your declaration in this case.

12 Q Can you turn to page 22?

13 A Just give me a second to, yes.

14 Q The last sentence of paragraph 22 says "I
15 understand that other Samsung products contain similar
16 features and functions and therefore also infringe the
17 '381 patent."

18 A Page 22?

19 Q It's paragraph 22.

20 A Okay. Sorry. I'm on the wrong...

21 Q Do you see the statement "I understand that
22 other Samsung products contain similar features and
23 functions and therefore also infringe the '381
24 patent"?

25 A That's correct. Sorry. I see that

1 statement.

2 Q Where did that -- where did your
3 understanding come from?

4 A My understanding there is having played with
5 the four devices that were particularly alleged by
6 Apple, I -- I was looking around some of the web pages
7 and so forth and that I included in -- in the report
8 or the appendices to the report, I also, believe, saw
9 some other devices in the lab that had similar
10 features, which I assumed would similarly infringe.

11 Q What other devices did you see?

12 A I can't remember the exact model numbers, but
13 they were -- they were all phone, like Samsung phone
14 devices.

15 Q Which other Samsung phones do you have in
16 your lab?

17 A I -- I can't remember offhand which --
18 exactly which ones they are.

19 Q Do you still have them?

20 A The lab probably still has them somewhere
21 around, yeah.

22 Q And you looked at those to see if they
23 infringe the '381 patent?

24 A I didn't look at it in detail. I looked at
25 it and said, "Oh, this also has a contacts list

1 feature. This also has a gallery feature," that kind
2 of thing. It exhibited the same type of behavior much
3 like we did today with some of these other phones.

4 They were not the ones that were specifically
5 alleged to infringe in this document or by Apple.

6 Q Well, counsel, we'd ask that they be made
7 available for us.

8 Are the infringement allegations that we've
9 been discussing so far with respect to the '381 patent
10 directed at the Android operating system?

11 MR. MONACH: Object to the form of the
12 question; vague and ambiguous.

13 THE WITNESS: The infringement allegations
14 that I've made -- sorry -- that I'm opining on in my
15 declaration on behalf of Apple's alleged allegations
16 of infringement, my analysis is based on the operation
17 of the devices as I've detailed in my report. My
18 understanding is they run the Android operating system
19 on an eighth [sic], but whether or not there is
20 additional code beyond the Android operating system
21 that Samsung puts in there, I have not made that
22 determination yet. So as to whether this is

23 targeted, these allegations are targeted towards
24 Android, I don't believe that it's necessarily true.

25 It might be, but as of this date, my focus

1 has been on the -- on the operation of the device.

2 Not necessarily the underlying code.

3 THE REPORTER: Don't play with the cord.

4 THE WITNESS: Oh, I'm sorry.

5 THE REPORTER: Thank you.

6 MR. JOHNSON: Q. I noticed a difference when
7 you turn to Claim 19 of -- in your declaration.

8 So if you look, for example, on, this time,
9 page 21, page 22 --

10 A Uh-huh, yes.

11 Q -- in discussing Elements 5, 6, 7, which
12 recite instructions, in -- in describing the alleged
13 infringement in the Samsung products, you -- you say,
14 for example, in paragraph 117, "Because the Infuse 4G
15 performs this element of Claim 19, it must have
16 instructions for displaying a black region beyond the
17 edge of the photograph in displaying a smaller third
18 portion of the photograph," et cetera.

19 You don't know for sure whether the Samsung
20 products have those specific instructions; do you?

21 MR. MONACH: Object to the form of the
22 question.

23 THE WITNESS: As I say in that paragraph, and
24 as I've testified earlier in today's deposition, I
25 have determined that the Infuse 4G and the other

1 phones perform those elements in -- in the actual user
2 interface, and as such it's not magic. It has to
3 happen through some computer code, and as such it must
4 have those instructions in the code somewhere.

5 MR. JOHNSON: Q. So are you saying the code
6 is not necessary to establish infringement of any of
7 the claims of the '381 patent?

8 MR. MONACH: Objection; misstates the prior
9 testimony; objection.

10 MR. JOHNSON: I'll ask it a different way.

11 Q Is the source code necessary to establish
12 infringement of any of the claims of the '381 patent?

13 MR. MONACH: Object; object to the form of
14 the question on establishing infringement as vague.

15 THE WITNESS: Done?

16 So as far as the claims in question, not the
17 claims that Apple has alleged infringement on and that
18 I have opined on, I would say that operation of the
19 phones, the way I've demonstrated in my report and in
20 today's deposition, is sufficient for determining
21 infringement.

22 I do not believe I need to look at the code
23 per se to determine if any one of these elements are
24 infringed. Because the operation makes very clear
25 that it infringes, and it has to be code that performs

1 those operations.

2 MR. JOHNSON: Q. So by the same token, you
3 don't need to look at the source code for any
4 particular device that may invalidate the claims of
5 the '381 patent; right?

6 MR. MONACH: Objection.

7 MR. JOHNSON: Q. As long as it performs
8 those same functions you described; right?

9 MR. MONACH: Objection to the form of the
10 question as vague; calls for a legal conclusion;
11 incomplete hypothetical.

12 THE WITNESS: The -- so you mean any
13 particular other device that Samsung may contend it
14 invalidates as a -- as some third-party device?

15 MR. JOHNSON: Yes.

16 THE WITNESS: Depending on the device,
17 depending on what I see or what is shown on the
18 operation of the device, if it is immediately clear
19 from operating the device that it does -- it meets
20 every element of the claims in question, I do not
21 believe we need to see the source code.

22 But if it is not, if I cannot make a
23 determination from just operating the device and
24 matching it up with the claim elements, then maybe the
25 code may reveal some additional information to -- to

1 justify -- sorry -- to, I guess, justify the
2 invalidity contention.

3 Q So sitting here today, you don't expect you
4 would need to look at the source code for a prior art
5 device that is alleged to infringe -- I'm sorry --
6 allege to invalidate the claims of the '381 patent, as
7 long as it performs the same limitation described in
8 the '381 patent claims; right?

9 MR. MONACH: Objection; vague and ambiguous;
10 incomplete hypothetical; calling for a legal
11 conclusion and a new partial opinion on the fly.

12 MR. JOHNSON: I'm just trying to understand.
13 Because you're saying you don't need the code for
14 infringement, and I want to understand.

15 Q Do you need code for invalidity?

16 MR. MONACH: Same objection; asked and
17 answered.

18 You can do it again?

19 THE WITNESS: So as I said before, I did not
20 need the code in this particular instance or instances
21 to determine infringement, because in looking at the
22 operation of the phones and the -- and the tablet, the
23 four devices being accused here, the -- I was able to
24 match up the functionality in operating it to the --
25 each element of the claims; and there was no reason

1 for me to go look at the code to -- to determine --
2 because -- to determine if they infringed, because the
3 operation was very clearly matching up with the
4 claims.

5 Similarly for the potential invalidity
6 contentions, if a particular device is contended or
7 alleged to invalidate elements of some aspect of the
8 claims, I -- I would look at those devices and see if
9 I can match up, just by operating it, match up to the
10 claims, and if they do indeed perform exactly the same
11 thing, I do not need to look at the code.

12 But if they do not, if it's not immediately
13 apparent from operating it, that it matches up with
14 every element of the claims, then I may need to look
15 at the source code. So my answer is it depends on the
16 situation.

17 MR. JOHNSON: Q. And you understand that
18 Samsung believes it doesn't infringe the '381 patent;
19 right?

20 MR. MONACH: Objection; assumes facts not in
21 evidence; calls for speculation.

22 THE WITNESS: I don't know. Samsung, as far
23 as I know, has not contended invalidity or -- nor
24 noninfringement.

25 MR. JOHNSON: Q. Because it --

1 THE WITNESS: I assume -- I would assume that
2 we are sitting here today, if we admitted
3 infringement, we wouldn't be sitting here today.

4 MR. JOHNSON: Right.

5 A I haven't seen any documentation to just say
6 "Here's why we don't infringe," or "Here's why it's
7 invalid."

8 Q MR. JOHNSON: Let me show you what we
9 previously marked as Exhibit 93, which is the
10 prosecution history of the '381 patent.

11 Do you need a copy?

12 A So why was this previously marked? I'm
13 sorry, and I don't have it.

14 Q I don't know why you don't have it, but it
15 was in a deposition in this case.

16 MR. MONACH: When you said it was previously
17 marked, I think he means it was marked in another
18 previous deposition.

19 THE WITNESS: Oh, I see.

20 MR. MONACH: Not earlier today.

21 THE WITNESS: Fair enough.

22 MR. JOHNSON: Q. You've seen this or browsed
23 this before or skimmed it or read it.

24 A I browsed this in electronic format, yes. I
25 believe so, yes.

1 Q Okay. Did Apple request that the prosecution
2 of this patent be expedited?

3 MR. MONACH: Objection; lack of foundation.
4 Objection; best evidence rule.

5 If you know, you can answer.

6 THE WITNESS: I believe I saw something. I
7 can't remember whether it's in this prosecution
8 history or -- yeah, it might be in this document that
9 there was some request to that effect.

10 I did not pay much attention to it thinking
11 it was just a bunch more legalese.

12 MR. JOHNSON: Okay.

13 Q There was an initial request to accelerate
14 examination which was denied, and then there was a
15 supplemental request for examination that was filed by
16 Apple; does that sound right?

17 MR. MONACH: Same objection.

18 THE WITNESS: I couldn't say whether the --

19 MR. JOHNSON: Q. You don't know?

20 A I'm not sure about the first being denied and
21 the second being allowed. I believe I've seen
22 something with regards to acceleration.

23 Q What's your understanding as to why Apple
24 requested accelerated examination?

25 MR. MONACH: Objection; lack of foundation;

1 calls for speculation.

2 THE WITNESS: I haven't considered that in --
3 in any detail at all.

4 MR. JOHNSON: Q. You don't know?

5 A I don't. I don't know the answer.

6 Q Okay. If you turn to page APLNDC3975.

7 A That's in this stack?

8 Q Yeah.

9 A '3975; is that the --

10 Q Right.

11 A Okay.

12 Q Have you read this particular document
13 before?

14 A I think I've very quickly skimmed, at least
15 the first page of this. I did not look at the details
16 of this. The charts go on forever.

17 Q Did you determine whether the charts are
18 accurate or not?

19 A I did not make any such determination.

20 Q Have you reviewed the -- the Miller personal
21 job application environment document?

22 A No, I have not.

23 Q Have you reviewed something called Photo Mesa
24 as prior art?

25 A I'm aware of Photo Mesa through my own

1 research in my field. I have not reviewed it in the
2 context of this litigation, per se.

3 Q Did you look at it in the context of this
4 prosecution history?

5 A No, I did not.

6 Q Did you look at whether Photo Mesa
7 invalidates any claims of the '381 patent?

8 A As I said, I have not looked at in context of
9 this litigation, so I have not made any determination
10 either way as to whether it invalidates or validates
11 the patent.

12 Q Can you look at page '4028. That's the
13 Miller article.

14 Have you seen that article before?

15 A Just give me a second to...

16 I think I very briefly skimmed it in skimming
17 of this whole document, but I haven't read this in
18 any -- in any detail at all.

19 Q Does this cited reference disclose a
20 touchscreen?

21 A I cannot say that, having not reviewed it in
22 any detail.

23 Q Does this cited reference disclose moving
24 beyond the edge of an electronic document?

25 A I cannot answer that, not having reviewed it

1 in any detail.

2 Q Let's go to what Apple said about it.

3 Take a look at page 16 of actually
4 page '3990.

5 A The Bates number?

6 Q Yes.

7 A '3990; okay.

8 Q Okay. I'm sorry. Let me turn back to '3980.

9 A Okay.

10 Q You see the -- in this document it says "The
11 following references is deemed most closely related to
12 the subject matter of the claims," and then it lists
13 four references there? Do you see that?

14 A Yes, yes it does.

15 Q I think you said you skimmed Zimmerman?

16 A That is the Zimmerman article, the '381
17 patent.

18 Q Right.

19 Have you reviewed the Kwatinetz patent?

20 A I don't -- sorry. I talked over you.

21 Q That's okay.

22 A No, I have not reviewed.

23 Q My wife does it all the time. Strike that.

24 MR. MONACH: It's in there forever. That's
25 going in front of the jury.

1 MR. JOHNSON: I meant I talk all over my wife
2 is what I meant to say.

3 Q The -- have you reviewed the Kwatinetz
4 patent, the '566 patent?

5 A I don't recall having reviewed that in any
6 detail.

7 Q I'm just going to show it to you to see if
8 you recognize it.

9 A Okay.

10 (Document marked Balakrishnan Exhibit 111
11 for identification.)

12 MR. JOHNSON: Exhibit 111 is the '566 patent.

13 MR. MONACH: Thanks.

14 MR. JOHNSON: And Exhibit 112 is the
15 Pallakoff patent.

16 (Document marked Balakrishnan Exhibit 112
17 for identification.)

18 MR. JOHNSON: Q. Have you seen either of
19 those before?

20 A I don't believe I've looked at either of
21 these patents before.

22 Q So here Apple is saying these four references
23 are deemed and most closely related to the subject
24 matter of the claims, but you didn't take the time to
25 look at any of those in any detail?

1 MR. MONACH: Objection; objection to the form
2 of the question.

3 THE WITNESS: I again was -- my task here was
4 to look at infringement relative to the -- the claims
5 of the patent, and I was not doing any kind of
6 detailed investigation as to validity or questions
7 related to validity/invalidity.

8 MR. JOHNSON: Q. Do you see a little bit
9 later on on page '3980, it says "The following charts
10 identify the limitations that are disclosed in whole
11 or in part by Zimmerman, Kwatinetz, Pallakoff, and
12 Miller; do you see that?

13 A Yes, I see that sentence.

14 Q And you understand that Apple was obligated,
15 as part of its request for accelerated prosecution, to
16 actually provide these claim charts in connection with
17 the request?

18 MR. MONACH: Object to the form of the
19 question.

20 THE WITNESS: I don't --

21 MR. MONACH: Lacking foundation.

22 Go ahead. Sorry.

23 THE WITNESS: I don't know what the
24 obligation was. I -- it appears that they did provide
25 these reports.

1 MR. JOHNSON: Okay.

2 THE WITNESS: Whether they were obliged to do
3 it or not, it's outside of my knowledge.

4 MR. JOHNSON: Okay.

5 Q Well, take a look at the -- so if I ask you
6 about the claim charts related to Zimmerman,
7 Kwatinetz, and Pallakoff that appear on the subsequent
8 pages, and ask you whether those are accurate or not,
9 you're not going to know the answer; right?

10 A I'm not gonna commit to an answer either way
11 here, because I have not done the due diligence in
12 detail to do that.

13 Q You don't -- you don't know whether they're
14 accurate, whether the claim charts as far as
15 Zimmerman, Kwatinetz and Pallakoff are accurate;
16 right?

17 A I have not made a determination as to whether
18 they're accurate or inaccurate. They may be accurate.
19 They may not be.

20 Q Okay.

21 A I have to make that determination after I
22 review it in detail, if -- if I need to review it in
23 detail at some point.

24 Q Okay. Take a look at the claim charts that
25 start on page '3990 for the Miller reference.

1 A '90. Okay.

2 Q Okay. Do you see that for Claim 1 the only
3 limitation that Apple believes is not disclosed in
4 Miller is the last limitation that says "After the
5 object is no longer detected on or near the
6 touchscreen display, translating the document in a
7 second direction until the area beyond the edge of the
8 document is no longer displayed"?

9 A Are we looking at the same page? I'm not
10 seeing that on '3990.

11 MR. MONACH: Object to the form of the
12 question.

13 THE WITNESS: I'm sorry.

14 MR. JOHNSON: Start over.

15 Q Claim 1 starts on '3990 and spills over onto
16 '3991.

17 A I see; okay.

18 Q And so if you look at the claim language on
19 the left-hand side of the column and the right side
20 discloses what's allegedly described in the Miller
21 reference; right?

22 A That's what it appears, yes.

23 Q You've seen claim charts like this before?

24 MR. MONACH: Object to the form of the
25 question.

1 THE WITNESS: Yes, I've seen similar claim --
2 the -- the style of claim charts, yes.

3 MR. JOHNSON: Right.

4 Q So my point is, from Apple's standpoint, the
5 only limitation that Miller does not disclose is the
6 last limitation that reads "After the object is no
7 longer detected on or near the touchscreen display,
8 translating the document to the second direction until
9 the area beyond the edge of the document is no longer
10 displayed."

11 MR. MONACH: Objection; plainly misstates the
12 document. Objection to the best evidence rule; lack
13 of foundation.

14 THE WITNESS: So before I can answer that,
15 I'll have to read this chart or at least this section
16 in the chart before I do that. If you want me to do
17 that, I'll do that.

18 MR. JOHNSON: Go ahead.

19 THE WITNESS: I'll read. So I would say just
20 from reading the portion of the chart on 3990, that
21 your statement that the only element not disclosed is
22 the last one, I think that's inaccurate.

23 If I read at the bottom of page '3990, the
24 claim language or the element of the claim saying
25 "Detecting a movement of an object on or near the

1 touchscreen display, Apple's -- Apple's disclosure
2 with regard to Miller says the first part of that,
3 that section says -- page six states "The touch, mode,
4 look and feel that's targeted for use on touchscreen
5 display on consumer products, on such products,
6 typically a finger or stylus can be used for input";
7 but then it goes on to say "but Miller did not
8 disclose detecting a movement of an object on or near
9 the touchscreen display as required by this claim."

10 So at least in -- that's one instance where
11 there's something else that Apple has contended Miller
12 does not disclose, and then -- and then it goes on to
13 say what Miller discloses, which is these stationary
14 taps, and so that's one example where I think your --
15 your statement was incorrect with regards to this
16 chart.

17 I'm looking at the next page now. If you
18 give me a minute to continue reading. So again, on
19 the topmost row of the chart on page '3991, again,
20 another example where further contention by Apple that
21 Miller does not disclose an element of the claim.

22 The claim language here is "In response to
23 detecting the movement translating electronic document
24 displayed on the touchscreen display in the first
25 direction," and Apple agrees that pages nine to ten

1 disclose touchscreen that use stationary taps on
2 scroll up and scroll down buttons to translate a
3 electronic list on the touchscreen.

4 But they go on to say "Miller does not
5 disclose translating an electronic document in
6 response to detecting a movement," and it goes on
7 further than that.

8 So that's another example where Apple appears
9 to -- or states clearly that Miller does not disclose
10 another element of the claim.

11 Q Okay.

12 A Should I go on?

13 Q Is there any other part of Claim 1?

14 A Well, I've got to continue reading here.

15 Q That's fine.

16 A So the next section there, Apple says --
17 describes a section of Miller at page nine that talks
18 about what happens when the scrolling list is at the
19 top, and there is a half space left blank, it doesn't
20 say anything about the edge of the document being
21 reached while translating electronic documents.

22 So I'm not sure there's actually a contention
23 that Miller completely discloses that element or not.
24 It explicitly -- explicitly says that it doesn't
25 disclose it but --

1 Q And do you --

2 A -- it doesn't say otherwise either.

3 Q Do you yourself know whether Miller discloses
4 those particular elements?

5 MR. MONACH: Objection; vague. Objection;
6 lack of foundation.

7 THE WITNESS: As I stated earlier, I have not
8 studied Miller in any great detail, so I cannot make
9 that determination right now.

10 MR. JOHNSON: Okay.

11 THE WITNESS: My comments are just based on
12 this chart.

13 MR. JOHNSON: Q. So -- so looking at
14 page '4368 -- I'm sorry -- '4367 --

15 A Okay.

16 Q -- there's a reference to prior art documents
17 discussed in an interview, including Photo Mesa?

18 A Give me a second to look at this.

19 Yes, it appears it says "prior art document
20 discussed."

21 Q Right.

22 A And --

23 Q And on the subsequent pages there is -- there
24 are Figures 1, 2 and 3 along with the copyright page
25 on '4372 that look like they're screen shots in Photo

1 Mesa.

2 Do those look familiar to you?

3 A I don't know. These are pretty bad copies.
4 It's honestly really hard to tell whether it's Photo
5 Mesa or something else.

6 I mean, it appears the title here says Photo
7 Mesa screen shots, and I would assume that's what it
8 is.

9 Q Okay.

10 A I can't tell definitively if it is indeed
11 Photo Mesa.

12 Q On page '4368, the -- there's a -- there's a
13 quote where the examiner says that "The examiner
14 explained, see attached explanation, how the prior art
15 found teaches the claimed subject matter. The
16 applicant requested to propose amendments to the
17 claims in order to overcome cited art."

18 Do you have an opinion as to whether the
19 prior art that was found and explained on the attached
20 pages teaches the claimed subject matter at the time
21 that this document was prepared?

22 MR. MONACH: Objection; lack of foundation.

23 THE WITNESS: So --

24 MR. MONACH: Objection; calls for a legal
25 conclusion about different claims that are in the '381

1 as issued. Objection; asking the witness to form an
2 opinion on the fly here at the deposition.

3 MR. JOHNSON: Counsel, your -- your coaching
4 of the witness is completely improper.

5 MR. MONACH: I'm not coaching the witness at
6 all.

7 MR. JOHNSON: Completely improper.

8 You absolutely are, and the judge will make
9 her own determination. It's completely improper.

10 Q You can answer.

11 A Okay. I have not looked at these -- these
12 prior art pieces in detail with regards to validity of
13 the claims or amendments of the claims. So at this
14 time, I would not be able to say either way whether
15 they teach us the subject matter or not.

16 Of course at some point in the future, should
17 invalidity or validity contentions come up, and I'm
18 given the opportunity to -- to make the appropriate
19 detailed study, I would, at that time, be able to
20 offer my opinion.

21 Q Take a look at page '4380 through '4385.

22 Do you see that there were amendments made to
23 the claims in order to overcome prior art?

24 MR. MONACH: Object to the form of the
25 question; assumes facts not in evidence; lacking in

1 foundation.

2 THE WITNESS: Where did you say you wanted to
3 end this? Sorry. The -- what page?

4 MR. JOHNSON: '85. '4385.

5 THE WITNESS: I guess it appears just from a
6 quick read of this right now that -- that there were
7 various amendments done to Claims 1, 19 and 20, and
8 Claim 2 as well.

9 MR. JOHNSON: Q. Do you know -- do you have
10 an opinion as to whether the cited prior art, and I'm
11 asking for your opinion, discloses the limitations of
12 each of the asserted claims of the '381 patent?

13 A As I've just --

14 MR. MONACH: Objection.

15 THE WITNESS: I'm sorry. He was going to --

16 MR. MONACH: Objection; lack of foundation;
17 calling for a legal conclusion; calling for a new
18 opinion; calling for speculation in light of the
19 witness's repeated testimony about what he's done and
20 not done.

21 THE WITNESS: Can I?

22 MR. MONACH: Go ahead.

23 THE WITNESS: So as I've testified
24 previously, I have not studied these prior art
25 references in detail with respect to validity and

1 invalidity, and as such, I cannot offer an opinion in
2 detail as to whether those references meet these
3 claims or not at this time.

4 But I -- in the future, if I have a chance
5 to -- the need to look at it, based on the invalidity
6 contentions, I will -- I will study it and offer my
7 opinion at that time.

8 MR. JOHNSON: Okay. Why don't we take a
9 quick break.

10 THE VIDEOGRAPHER: We're off the record at
11 4:53 p.m.

12 (Recess taken.)

13 THE VIDEOGRAPHER: We are back on the record
14 at 5:05 p.m.

15 You may proceed.

16 MR. JOHNSON: I've marked, during the break,
17 as Exhibit 113, a copy of the BumpTop video that we
18 saw before. I just -- just for purposes of keeping it
19 on the record. Here's a copy.

20 THE WITNESS: So just put it aside?

21 MR. JOHNSON: Yeah.

22 And, Counsel, I should have asked you at the
23 beginning, but so Mr. Balakrishnan is -- is not a
24 30(b)(6) witness on any topics; is that right?

25 MR. MONACH: Correct.

1 I think there was correspondence back and
2 forth that infringement would be presented by experts,
3 but the experts were not considered to be 30(b)(6)
4 witnesses.

5 MR. JOHNSON: Okay. And without agreeing or
6 disagreeing or waiving anything, to the extent that --
7 that he prepares a subsequent declaration on
8 invalidity or with -- frankly, with respect to
9 anything, noninfringement or otherwise, or
10 infringement, I just want to put on the record that we
11 want to depose him again, if he puts another piece of
12 paper in on the preliminary injunction motion.

13 Q So I also want to ask you a little bit more
14 about the CHI Conference that you mentioned.

15 Can you tell me what that is?

16 A What the conference is?

17 Q Yeah.

18 A It's a -- I don't know. It's a conference in
19 computer science, a lot of publications of research
20 results. Unlike in a lot of other fields, where you
21 would go to a journal, a printed journal in computer
22 science, in many sub areas of computer science,
23 including user interfaces, computer graphics systems,
24 a primary venue of publication would be in a
25 conference proceeding.

1 So you would submit a paper, it would be
2 reviewed by a panel of experts at the conference or
3 prior to the conference, and some number of papers
4 would be accepted, others would be rejected, and at
5 the conference itself, which can last, depending on
6 the conference, three to five days, these papers -- an
7 oral presentation of these papers are typically done,
8 and it's also like any other conference in any other
9 field, it's a -- I guess an opportunity for networking
10 for people in the field to talk to each other and
11 share each other's outcomes.

12 Q How long have you attended the CHI
13 Conference?

14 A Probably, my first one was -- I'm going by
15 rough memory here -- '94, '95 -- 1994, 1995 time
16 frame, and since then, I've probably been to probably
17 every one, maybe missing one or two here and there,
18 and it's -- it's a once-a-year conference, by the way.

19 Q Is it always in the same places, or does it
20 move around?

21 A It moves around.

22 Q All right.

23 And about how many people attend these -- the
24 conference, rather?

25 A It varies. I think, at some point, it was

1 maybe 3- or 4000. The last I heard maybe 2,500. It
2 varies, from year to year, depending on economy and
3 people's travel budgets and so forth.

4 Q But somewhere between 2,000 and 3,000 people?

5 A I'd say, just to give you a broader range,
6 maybe between 1,500 and 4,000 people.

7 Q Okay.

8 A And, obviously, it's grown over the years.
9 In '94 it was probably smaller.

10 Q What time of year is it held?

11 A Typically, in the, kind of, April/May, kind
12 of, time frame. Papers are submitted in September and
13 reviewed by Christmas time --

14 Q So they --

15 A -- and then the conference itself is, kind
16 of, in the April/May time frame.

17 Q So the papers are submitted typically six
18 months in advance of the conference, approximately?

19 A Give -- give or take a month or two, yes.

20 Q And the papers are, then, reviewed by peers?

21 A It is peer reviewed, sent out to other
22 experts in the field, taking into account conflicts of
23 interest and so forth.

24 Q Have you submitted papers for the CHI
25 Conference?

1 A Yes.

2 Q And just tell me a little about the
3 submission of the papers.

4 When you submit the papers in September, are
5 those papers deemed to be public, or are they
6 available to the public?

7 MR. MONACH: Object to form.

8 THE WITNESS: My understanding is the
9 submission and the review process, until such time it
10 appears in -- at the conference, it's considered to be
11 confidential. The review process is confidential.
12 It's not public disclosure, and reviewers are
13 instructed, I believe, in the lengthy length --
14 sorry -- lengthy instructions they get for reviewing
15 to maintain that confidentiality.

16 MR. JOHNSON: Q. But the whole idea in
17 submitting the paper is ultimately it gets published,
18 hopefully; right?

19 A If it is accepted, yes. I mean, the author's
20 obviously hoping to get accepted and published.

21 Q What -- what percentage of the papers, if you
22 have any idea, are published, versus submitted?

23 A So the acceptance rate, so to speak, varies
24 from year to year, and I think in the low, where it
25 was very hard to get papers in, acceptance rate was in

1 15 to 18 percent range. Then more recently, there
2 have been attempts to, kind of, broaden the appeal of
3 the conference a little bit and not reject as many
4 papers, so I think the acceptance rate more recently
5 is probably in the 25 percent range.

6 So, in other words, three-quarters of the
7 papers are being rejected, very roughly.

8 Q Do the -- the people who are doing the -- the
9 peer review of the papers, are they -- do they sign
10 some sort of confidentiality agreement --

11 MR. MONACH: Object to form.

12 MR. JOHNSON: Q. -- to keep the papers
13 confidential?

14 A I don't -- I don't believe there's a signed
15 piece of paper, but I believe all the -- all this
16 reviewing happens in an online -- a closed online
17 portal that you submit the papers and reviewers are
18 assigned. And I believe, in the reviewer agreement
19 there, you click a box saying I've read this and I
20 agree to be confidential, and that, I would assume --
21 I'm not a lawyer, but I would assume that constitutes
22 an equivalence of a signed confidentiality agreement.

23 It would be considered fairly -- I mean, a
24 rather serious matter, I think, if you divulge that
25 confident -- if you break that confidentiality and

1 somebody found out, just as a matter of academic
2 honesty.

3 Q If one of the peers who were reviewing the
4 article then subsequently disclosed without the
5 author's consent, so to speak; is that what you mean?

6 A That's right. I think that would be
7 seriously frowned upon in the field. Whether or not
8 somebody would take legal -- legal action, I haven't
9 heard of that happening, but I could see that
10 happening, if it was --

11 Q You --

12 A -- important enough.

13 Q Yeah.

14 Have you ever heard of that happening?

15 A I have not heard of legal action being taken,
16 per se.

17 Q Okay. Did you -- are you familiar with a
18 gentleman by the name of Ben Peterson?

19 A Yes, I know him.

20 Q How do you know him?

21 A I know him as a, I guess, colleague in the
22 broader research field. We attend the same
23 conferences. I've read some of his work. I've
24 visited his lab probably four or five years ago to
25 give a talk, as is common in academia. He's in the

1 same field as I am.

2 Q Where is his lab?

3 A He's at the University of Maryland in -- I
4 guess, in Maryland.

5 Q Do you remember a talk he gave in -- at
6 the -- the 2005 CHI Conference in Portland, Oregon?

7 A Which talk or what talk? I've heard him give
8 various talks over -- you know, but --

9 Q What -- what do you think of his work?

10 MR. MONACH: Objection; vague; overly broad.

11 THE WITNESS: I think he's a -- he's a
12 reasonable and good researcher out there. Certainly a
13 peer.

14 MR. JOHNSON: Q. Have you been impressed
15 with his work over the years?

16 MR. MONACH: Objection; vague.

17 THE WITNESS: I've been impressed with some
18 of the work, yes.

19 MR. JOHNSON: Q. What work have you been
20 impressed with?

21 A Well, I think, way back, he did some work,
22 kind of Pad++ resuming interface work. I think that
23 was very novel back in the day. That's one thing that
24 comes to mind.

25 Q What was Pi++?

1 A Sorry. Pad++.

2 Q Pad++.

3 What was Pad++?

4 A Pad++, just very quick summary, is a -- what
5 is known as a zooming interface. Basically instead of
6 just moving between content on a screen in the X/Y or
7 planer direction, it also allows you to move in the
8 three-dimensional direction, kind of zooming into
9 different spaces in depth or -- you could think about
10 it as data in -- kind of in a three-dimensional
11 room-like space, and you're flying around in that
12 space.

13 So, at that time, it was something, I
14 believe, considered to be somewhat novel.

15 Q Do you consider Mr. Peterson to be a
16 well-respected colleague?

17 MR. MONACH: Objection; vague.

18 THE WITNESS: I would say Dr. Peterson is a
19 respected researcher in the field, yes.

20 MR. JOHNSON: Q. Would you consider
21 Dr. Peterson to be an expert in user interface
22 technology?

23 MR. MONACH: Objection; vague; lack of
24 foundation.

25 THE WITNESS: Well, yes, he is a researcher

1 on user interfaces, yes.

2 MR. JOHNSON: Q. Do you remember a talk that
3 Dr. Peterson gave in the 2005 CHI Conference in
4 Portland, Oregon, that was titled "Appland and
5 LaunchTile"?

6 A I don't remember attending the talk,
7 necessarily. I might have attended it. I attend a
8 lot of talks at these conference. That one doesn't
9 necessarily stand out.

10 Q Do you remember -- do you remember something
11 called LaunchTile?

12 A I have -- I believe I've seen that work in my
13 -- in my travels or in my research career.

14 Q And what is it?

15 MR. MONACH: Objection; lack of foundation;
16 overly broad; calls for a narrative.

17 THE WITNESS: As giving you a broad
18 description, like I did for the Pad++, that is simply
19 a way to navigate around a space of, kind of, tiled
20 content on a -- on a screen.

21 MR. JOHNSON: Q. Using a touchscreen?

22 A I'm not sure. I can't recall whether it
23 actually used a touchscreen or a pen or a mouse, or
24 maybe all of the above. I'd have to look at the paper
25 again in detail.

1 Q Do you know, is -- is LaunchTile a zoomable
2 user interface?

3 A Going purely from memory, I believe there was
4 some elements that -- that allows -- that allowed for
5 zooming to different levels to see more or less
6 content, but I'm going purely from memory.

7 (Phone marked Balakirshnan Exhibit 114
8 for identification.)

9 MR. JOHNSON: Okay. I actually want to mark,
10 as Exhibit 114, a device that we have that is an iPAQ
11 that is running LaunchTiles on it, and I want to ask
12 you a few questions about it.

13 A Okay.

14 Q So I'm gonna ask my colleague to come around
15 over by you, just so he can put the device over there
16 and he can operate it while I ask you questions about
17 it, since I don't have four hands.

18 A Okay.

19 MR. MONACH: I'll object to the -- to the
20 extent there was a question, I'll object to the
21 question or assertion as vague and assuming facts not
22 in evidence that the device is running LaunchTiles.

23 THE VIDEOGRAPHER: Please stand there. It
24 might be better, and hold it like that.

25 MR. JOHNSON: Just put that on the back for

1 me so we don't forget.

2 THE WITNESS: So you're gonna hold it? Okay.

3 MR. JOHNSON: Q. So you can -- you can take
4 a look at it and, frankly, play around with it, if you
5 want --

6 A Okay.

7 Q -- to familiarize yourself with it, just to
8 tell me if you recognize it as LaunchTile.

9 Have you ever played with LaunchTile before?

10 A I played with it very briefly a long time
11 ago, and then I looked at it briefly again -- was it
12 last week -- last week in the Netherlands, when this
13 came up.

14 Q And how did it come up in the Netherlands?

15 A I believe a similar device -- I don't know,
16 maybe it's the same one, but it was either produced by
17 Samsung or somehow the -- the Apple lawyers had a copy
18 of it, and LaunchTiles was allegedly loaded on it, and
19 they -- they looked at some of the potential
20 functionalities. I did not spend much time on it.

21 Q Okay. What was your impression of it?

22 MR. MONACH: Objection; vague.

23 THE WITNESS: It -- it does what it does.

24 It -- I don't know what you mean what my impression
25 is.

1 MR. JOHNSON: All right.

2 Q Well, take a look at it and just see if that
3 looks like the LaunchTile that you remember.

4 MR. MONACH: Objection; vague; lack of
5 foundation; lack of authentication. I also object
6 this is beyond the scope of his declaration in the
7 pending PI motion.

8 THE WITNESS: So it does appear to be the
9 launch -- you know, a version of the LaunchTile
10 application that I've seen in various forms in the
11 past. I haven't verified that it is actually
12 LaunchTiles.

13 MR. JOHNSON: Q. When is the first time you
14 saw LaunchTiles?

15 A LaunchTiles?

16 It was -- I'm going by a vague memory here,
17 it was probably either at the conference, the CHI
18 Conference of that year, in, I think, 2005. I might
19 have gone to the talk, or I saw it -- or I saw a video
20 of it subsequently. Typically when I go back to my
21 university after a conference, we -- we review some of
22 the papers --

23 Q Are those --

24 A -- so I might have seen the video of it
25 later.

1 Q Okay.

2 A I can't remember when is the first time I
3 played with it. Somebody, one of my students, may
4 have downloaded it, and I checked it out.

5 Q Are the -- are the presentations made at the
6 CHI Conference videotaped?

7 A The presentations of -- they're sometimes
8 videotaped. I don't think they're necessarily all
9 videotaped. I've seen them being videotaped on
10 occasion.

11 Q Do you know whether Dr. Peterson's
12 presentation was videotaped?

13 MR. MONACH: Object to the form.

14 THE WITNESS: That particular presentation at
15 the conference?

16 MR. JOHNSON: Yeah.

17 THE WITNESS: I do not know either way.

18 MR. JOHNSON: Q. Do you know whether he made
19 the presentation or was it somebody else? Do you
20 remember?

21 A I can't tell, as I can't remember whether I
22 attended the presentation or not.

23 Q Okay. So if you can, let me ask you to hand
24 it back to -- to Henry, and I just want to ask you a
25 few questions about some of the -- some of the -- the

1 features of LaunchTiles.

2 So -- well -- and you can -- yeah. You can
3 just -- I just want to make sure we can see it, as the
4 glare from the light is pretty bad.

5 So there -- there -- there -- in the example
6 that we've -- we've pulled up in front of you, which
7 has a 2x2 grid, is the -- is the LaunchTiles example
8 that you see there that's running on the iPAQ device a
9 computer-implemented method?

10 I'm just -- I'm just gonna go through the
11 claims of the '381 patent.

12 A Okay. Let's keep it in front of me.

13 Q I'm not trying to trick you or anything. I
14 just wanna -- I just -- I'm gonna follow along, so if
15 you want to follow along, that's fine.

16 So the question is: In the 2x2 grid that --
17 that we have in LaunchTiles in front of you, does the
18 -- running on the iPAQ device, does that perform on a
19 computer-implemented method?

20 MR. MONACH: Object to the form of the
21 question. I'll object to this whole line of
22 questioning as calling for a legal conclusion; asking
23 the witness to form an -- a new opinion on a topic he
24 has not opined upon at the deposition with incomplete
25 information or opportunity to examine the device of a

1 product, but you can answer.

2 MR. JOHNSON: You can have a running
3 objection on that, just to try and cut through this.

4 THE WITNESS: So I haven't examined this in
5 any great detail, but just looking at this right now,
6 it's -- certainly is an application that's running on
7 a computer-implemented -- or a computer -- so it is a
8 computer-implemented method.

9 MR. JOHNSON: Okay.

10 Q And does LaunchTiles running on iPAQ, does
11 that meet the limitation of a device with a
12 touchscreen display?

13 MR. MONACH: Same objection.

14 THE WITNESS: It's not clear, to me, this is
15 a touchscreen display. I tried touching it a minute
16 ago, like when I was playing with it, and it didn't
17 react to me, but the -- the pen seems to do the job.

18 Okay, so now it does react, so maybe I was
19 mistaken. Given what he just did, it appears to react
20 to touches, so, sure, it would be a device with a
21 touchscreen display.

22 MR. JOHNSON: Okay.

23 Q So in the -- in the 2x2 grid that we see
24 there running on the iPAQ, does that meet the
25 limitation of displaying a first portion of an

1 electronic document?

2 MR. MONACH: Same objection; lack of
3 foundation; incomplete hypothetical.

4 THE WITNESS: So I would have to study this
5 in detail before answering that question, because I
6 need to understand the context of the content being
7 shown on the -- on the display as to what constitutes
8 an electronic document there, whether it's all four
9 tiles is one document or a single tile is a document.
10 I cannot make that determination, just looking at this
11 on the fly.

12 MR. JOHNSON: Q. So if the -- in this
13 example, assume the 2x2 is an electronic document.

14 A So you're representing to me that you want me
15 to consider --

16 Q I want you to consider the 2x2 is an
17 electronic document?

18 A So just to clarify it, does that mean the --
19 the whole thing is one document. Is that what you're
20 saying to me?

21 Q Right. Right, the 2x2.

22 And so, then, when --

23 A So that's your representation. I'm not
24 necessarily agreeing with that.

25 Q I'm just -- yeah, right.

1 And so, then, displaying a first portion of
2 an electronic document would mean that we scroll
3 slightly to the left.

4 Would you agree, just as we saw in the
5 infringement case, that that's displaying a first
6 portion of an electronic document?

7 MR. MONACH: Same objection.

8 THE WITNESS: So, again, to say, you know, I
9 haven't studied this in detail, in your representation
10 the -- the four tiles, as a whole, would be the
11 entire -- would be the electronic document, it would
12 be a first portion. I would note that as you're -- as
13 it's moving there, the -- the electronic document is
14 translated. However, that blue thing in the middle is
15 not moving, so I don't know if you intended the blue
16 thing, the blue circle in the middle, to be part of
17 the electronic document or not, but that -- that's
18 certainly not moving. That's remaining stationary,
19 and some other representation of a so-called
20 underneath is moving, so it doesn't exactly seem to
21 match up in my -- in my current very quick view of
22 this, relative to the claims.

23 MR. JOHNSON: Q. But scrolling to the left,
24 that displays a first portion of the electronic
25 document, which is the 2x2 grid; right?

1 MR. MONACH: Same objection.

2 THE WITNESS: You mean, before you scrolled
3 or after you scrolled?

4 MR. JOHNSON: Q. I mean, after I've
5 scrolled.

6 A So after you made that little movement?

7 Q Right.

8 A Okay.

9 Q That displays a first portion of an
10 electronic document; doesn't it?

11 MR. MONACH: Same objection and assumes facts
12 not in evidence.

13 THE WITNESS: If you, as you represented
14 earlier, before he scrolled -- if you don't mind going
15 back to before you scrolled, I believe, if I
16 understand you correctly, you represented to me that
17 you wanted me to consider the -- this -- all this
18 content, the four tiles with whatever decorations were
19 around it, the entirety, to be an electronic document.

20 MR. JOHNSON: That's correct.

21 THE WITNESS: That's -- that's my
22 understanding --

23 MR. JOHNSON: That's right.

24 THE WITNESS: -- that you represented to me.
25 I don't necessarily agree with that, because I haven't

1 studied this to determine what would constitute an
2 electronic document and what would not, but given that
3 assumption, the hypothetical assumption, if that's an
4 electronic document, and now you are -- I believe he
5 scrolled or --

6 MR. JOHNSON: Scrolled it slightly to the
7 left.

8 THE WITNESS: -- moved it, I would say that
9 parts of the electronic document have moved, but other
10 parts have not moved. So the blue thing that you just
11 represented to me was part of the electronic document
12 hasn't moved, so that hasn't translated at all.

13 MR. JOHNSON: Q. Does it need to move in
14 order to meet the elements of the claim?

15 MR. MONACH: Objection for the reasons
16 previously stated; vague and ambiguous.

17 THE WITNESS: So I haven't studied this in
18 detail. Just very quickly reading the claims, it says
19 in response to detecting the movement. I'm reading
20 Claim Element 3 here, which I --

21 MR. JOHNSON: Q. Yeah, I'm not there yet.

22 A Okay. So where are you?

23 Q Displaying a first portion of an electronic
24 document.

25 A Okay.

1 Q All he's done is moved it slightly to the
2 left.

3 A Okay. I thought you said the first portion
4 was the -- the earlier, the electronic document before
5 he moved it.

6 Q Let's -- let's start over --

7 A Okay.

8 Q -- okay?

9 I want you to assume for me that the
10 electronic document is the 2x2 grid, the four tiles.

11 A All that content?

12 Q Right.

13 A Including the decorations?

14 Q That's fine.

15 A Okay.

16 Q Yeah, okay.

17 By the way, does that meet your definition of
18 an electronic document, namely -- strike that.

19 Does that meet your definition of an
20 electronic document for the purposes of the '381
21 claim?

22 MR. MONACH: Objection; calling for a legal
23 conclusion; in -- incomplete hypothetical; asking him
24 to make a new opinion without adequate information.

25 THE WITNESS: Done?

1 So as I stated earlier, I haven't studied
2 this in detail enough in matching it up with the
3 claims, so your representation is you wanted me to
4 consider all four tiles as one doc -- in a -- in its
5 combination, as an entirety, as one document.

6 That might be an electronic document
7 vis-à-vis the claims. It might not be. I would have
8 to study that in detail --

9 MR. JOHNSON: Well --

10 THE WITNESS: -- relative to the context of
11 the application. I have not done that detailed
12 analysis yet. So it may be that only each -- each
13 tile is an electronic document in this application. I
14 don't know.

15 MR. JOHNSON: Q. Well, it's visually
16 represented on screen with a defined set of
17 boundaries, right, those 2x2 tiles?

18 MR. MONACH: Object to the form of the
19 question; assumes facts not in evidence; lack of
20 foundation.

21 THE WITNESS: As I said, you -- you're
22 representing to me that you wanted me to consider
23 that. So if you considered those four tiles as one
24 entirety with the defined boundaries, that could be
25 an --

1 MR. JOHNSON: Sir --

2 THE WITNESS: -- electronic document in the
3 con- -- but I have not studied this application in
4 detail enough to determine what the contact of use of
5 this application is. Maybe in this application it
6 might be considering each of these tiles as a separate
7 electronic document. I do not know that.

8 MR. JOHNSON: Q. I'm asking you, does the
9 2x2 tiles that we see currently on the screen, does
10 that meet your definition of "electronic document," as
11 that term is used in the '381 patent?

12 MR. MONACH: Objection; lack of foundation;
13 incomplete hypothetical; asking the witness to draw a
14 legal conclusion and a new opinion for the first time
15 at the deposition with inadequate information.

16 THE WITNESS: And as I believe I already
17 answered, it depends on what the context of use is.

18 So if -- if, indeed, the application
19 considers those four things as one entity and is --
20 has defined boundaries, then that might meet the
21 electronic document definition, as used in the claims,
22 but it -- it might not.

23 It might -- it might be that each of those --
24 each of these tiles or quadrants might be a separate
25 electronic document. I would have to study this in

1 the context of use of this -- of these pieces of tiles
2 in this application to determine that with any
3 certainty.

4 MR. JOHNSON: Q. So you don't know right
5 now, sitting here?

6 A I cannot give you a definitive answer. It
7 could be an electronic document, depending on the
8 context of use.

9 Q So when -- when he slides it slightly to the
10 left, does that display a first portion of an
11 electronic document if you assume that that 2x2 grid
12 is an electronic document?

13 MR. MONACH: Same objection.

14 THE WITNESS: So if we make that assumption
15 that that 2x2 grid in its entirety is an electronic
16 document and after he slid it, that could be a first
17 portion.

18 Now, I would still note that when he moved
19 it, the -- if the electronic document was the
20 entirety, including that blue circle in the middle,
21 when he moved it, the blue circle did not move --

22 Q Are --

23 A -- so not all -- let me finish, please.

24 The -- the blue circle did not move, so the
25 entirety of the document --

1 Q But that --

2 A -- in that example.

3 Q -- that's irrelevant for the claims; isn't
4 it?

5 MR. MONACH: Objection; same objection as
6 previously stated; asking for a legal conclusion with
7 incomplete hypothetical.

8 THE WITNESS: So I have not made that
9 determination. I would have to study that. I have
10 not considered the relevance of whether portions of
11 the document moved together or not, whether that is
12 relevant to the -- to the elements of the claim, so I
13 would reserve a detailed opinion on that until I've
14 had a chance to study --

15 Q I'm asking you for your opinion now.

16 Can you tell me if the location of the blue
17 circle on this is relevant to any portions of the
18 claim limitations?

19 MR. MONACH: Same objections as previously
20 stated. Now it's been asked and answered.

21 THE WITNESS: So, as I said, I -- I cannot
22 tell you right now, without studying this in detail,
23 whether that blue thing, blue circle in the middle,
24 whether that moves with the document or not. Whether
25 that has relevance to this, I would have to study that

1 in detail, and I cannot answer that off the cuff now.

2 MR. JOHNSON: Q. Does LaunchTiles, with this
3 2x2 grid operated on an iPAQ, detect a movement of an
4 object on or near the touchscreen display?

5 A Yes, it does.

6 Q Okay.

7 A He -- he showed me with a finger it does
8 that, and the pen is doing that, as well.

9 Q So the -- an object can be either a finger or
10 a pen or something else; right?

11 A Yes, it -- it could be any -- some object,
12 but it has to be on a touchscreen display.

13 Q The -- when he now scrolls back to the right,
14 does --

15 A He's bouncing around a little bit. So you
16 moved to the left, and then now you've come back to
17 this.

18 Q Moved to the right, yeah.

19 A All right.

20 Q So does the 2x2 LaunchTiles grid operating on
21 the iPAQ describe the next limitation in the claims,
22 which is numbered as three?

23 A So this one's saying in response to detecting
24 the movement translating electronic document displayed
25 in the touchscreen in the first direction to display

1 the second portion?

2 MR. MONACH: Same objection.

3 MR. JOHNSON: Correct.

4 THE WITNESS: So you want me to assume the
5 first portion was after he had moved to the left, and
6 now you move it back, and you're saying that's the
7 second portion of the document?

8 MR. JOHNSON: Right.

9 THE WITNESS: With -- with the same caveats I
10 said earlier about the blue thing moving and whether
11 that's part of the document or not, I'll repeat that
12 as part of my current answer, and, again, I haven't
13 had a chance to explore this in great detail, but
14 given those, the qualifications, I would say it
15 appears to be -- it could be meeting that claim --
16 claim element.

17 MR. JOHNSON: Q. And when the device
18 continues scrolling to the right, beyond the edge,
19 does it meet the fourth limitation of Claim 1 of
20 the '381 patent?

21 MR. MONACH: Same objections as previously
22 stated, and now the question assumes facts not in
23 evidence, as well.

24 THE WITNESS: And you mean the fourth
25 limitation that I've labeled here as four; right?

1 MR. JOHNSON: Right. We're gonna mark your
2 copy of the patent as Exhibit 115.

3 THE WITNESS: Sure. I think it's already
4 110, though.

5 MR. JOHNSON: Okay. Even better.

6 THE WITNESS: It's 110?

7 MR. JOHNSON: No, it's actually --

8 THE WITNESS: Oh, I'm sorry. I'm sorry. I
9 made a mistake.

10 MR. JOHNSON: Let's mark, as Exhibit 115, a
11 copy of your patent with the limitations numbered.

12 (Document marked Balakrishnan Exhibit 115
13 for identification.)

14 THE WITNESS: Okay. So we'll just go with
15 what I've written down here, okay.

16 MR. JOHNSON: Q. So, again, the question is:
17 Does the movement that Mr. Lien just did meet the
18 fourth limitation of the claim?

19 MR. MONACH: Same objection as previously
20 stated.

21 THE WITNESS: Again, with the same
22 qualifications about the blue circle in the middle not
23 moving, and if that was part of the document, then it
24 doesn't move appropriately. And, again, with the same
25 qualifications I made earlier, that I haven't had a

1 chance to look at this in detail. Just sitting here
2 right now, an off-the-cuff view of this, I would say
3 it appears to meet -- meet the fourth limitation.

4 MR. JOHNSON: Okay.

5 Q Does LaunchTiles in the 2x2 grid operating on
6 the iPAQ meet the fifth limitation of Claim 1?

7 MR. MONACH: Same objection as previously
8 stated; assumes facts not in evidence, as well.

9 THE WITNESS: Can you do that again, please?

10 Again, given -- well, something else
11 happened. So, again, given the qualifications I did
12 earlier -- I said earlier about the circle in the
13 middle, the blue circle, and also the fact that I
14 haven't looked at this in any detail, in this quick
15 view of this -- of this application running here, I
16 would say it appears to meet the -- the fifth element.

17 MR. JOHNSON: Q. Does it meet the sixth
18 element of Claim 1 of the '381 patent?

19 MR. MONACH: Same objection.

20 THE WITNESS: Can you show me the first
21 portion again?

22 Okay. Now the second portion. Third
23 portion.

24 I would say, in addition to the
25 qualifications I've given earlier, that it doesn't

1 necessarily meet this sixth element, because the third
2 portion here that he's showing me, it's bouncing
3 around a little bit, but the size of that appears to
4 be -- it could be the same as the first portion that
5 he showed me earlier, because the first portion was
6 translated off to the left-hand side with a border on
7 this side. Now he's on this side, with a similar
8 border on the other side. So it -- it may be the same
9 size, that third portion may be the same size as the
10 first portion.

11 MR. JOHNSON: Q. But he could -- he could do
12 it in a way where the third portion is smaller than
13 the first portion; right?

14 MR. MONACH: Same objection.

15 MR. JOHNSON: Q. And meet that -- meets the
16 sixth claim limitation; right?

17 A Well, maybe -- maybe he can show me that.

18 Q Sure.

19 A Show me your first portion. Let's see your
20 first portion. Okay.

21 Second portion. Okay. Third portion. It's
22 very hard to tell. It's bouncing around. I'd have to
23 measure it. It could be. It -- it may not be. It's
24 clearly smaller necessarily, because the other one is
25 also not full screen. It moved off to the other

1 side --

2 MR. JOHNSON: And can you do --

3 THE WITNESS: -- so there was --

4 MR. JOHNSON: -- it again that's more
5 pronounced.

6 Q So let's -- let's look at the first, second,
7 third portions again.

8 A Okay. That's your first portion. So second
9 portion is in the center.

10 It appears, in this case, he's moved it a bit
11 more, and it --

12 MR. MONACH: Same objection.

13 THE WITNESS: -- it potentially could --
14 could infringe -- sorry -- it could not infringe --

15 MR. JOHNSON: Meet the limitation.

16 THE WITNESS: -- meet the limitation of
17 Claim 6, again with the qualifications that I -- I
18 just went through with the circle in the middle and
19 the fact that I haven't studied this in any great
20 detail.

21 MR. JOHNSON: Q. It would meet the sixth
22 limitation of Claim 1; right?

23 MR. MONACH: Same objection; asked and
24 answered.

25 MR. JOHNSON: Q. You said Claim 6, and I

1 think you misspoke.

2 A I meant to say the sixth limitation.

3 Q Okay.

4 A I'm sorry.

5 Q And when he lifts the stylus or his finger,
6 does it meet the seventh limitation of Claim 1?

7 MR. MONACH: Same objection.

8 THE WITNESS: In this case, it's back to the
9 original document, which was, and I would say, to go
10 back, when you -- when you displayed the first portion
11 of the electronic document, that already included a
12 movement, which the claims doesn't talk about.

13 So you already had a movement there. Given
14 that, and given all the caveats -- sorry -- the
15 qualifications that I have made with regards to
16 this -- this demonstration, the circle not moving, the
17 fact that I have not looked at this in any great
18 detail, it -- it appears that it could meet that --
19 that -- that -- sorry -- element 7 of Claim 1, again,
20 with the qualification again that -- that the first
21 portion of this case already included a movement,
22 which this -- this claim doesn't appear to talk about.

23 MR. JOHNSON: Q. Well, the -- the first
24 portion in your infringement reads "also included the
25 zoom-in movement"; right?

1 MR. MONACH: Objection; misstates the prior
2 testimony.

3 THE WITNESS: I didn't talk about zooming at
4 all.

5 MR. JOHNSON: But it included it. I know you
6 didn't talk about it.

7 Q But it included it; right?

8 MR. MONACH: Objection; misstates the prior
9 testimony; vague and ambiguous.

10 THE WITNESS: No, the zoom happened, and then
11 I'm -- I've -- I've got the document up there --

12 MR. JOHNSON: Well, I know the --

13 THE WITNESS: -- and I'm not holding my
14 finger down in a zoomed mode waiting for that -- the
15 next movement to appear. I've zoomed it in. I could
16 leave the device. Start it up again. It's already
17 zoomed in, and then I start implementing the claims of
18 the patent.

19 MR. JOHNSON: But that's my point.

20 Q You've already zoomed in on it for the
21 infringement read; right?

22 MR. MONACH: Objection; misstates the prior
23 testimony, with respect to various portions of his
24 prior testimony.

25 MR. JOHNSON: I'm sure you have it. It's on

1 the videotape.

2 THE WITNESS: In the gallery application, a
3 zooming occurred way before the elements of the claim
4 were started out. In the contacts list application,
5 there was no zooming happening.

6 MR. JOHNSON: Q. Way -- way before?
7 Where -- where are we getting "way before" from?

8 A Before I started going through the claims --

9 Q Okay. Does --

10 A -- as I said before; whereas, here, he -- he
11 has to keep his finger on that, on the first portion.
12 In other words, it would bounce back into the center
13 of the screen.

14 Q The fact that he kept his finger or the
15 stylus on the device, does that -- is that relevant to
16 any of the claim language we just looked at? Same
17 objection as previously stated to the whole line of
18 questioning here.

19 A I don't know. It might be. I haven't -- as
20 I said, multiple times with regard to this
21 application, I have not studied it in detail, and --
22 and I'm giving an off-the-cuff analysis here looking
23 at a live demo, and I have not had the opportunity to
24 opine on this in any detail.

25 MR. JOHNSON: Yeah.

1 THE WITNESS: So it might be; it might not
2 be. I don't know.

3 MR. JOHNSON: Q. Take a look at Claim 1 and
4 tell me, in your opinion, does the fact that he kept
5 his finger or the stylus on the screen avoid any
6 limitation of Claim 1?

7 MR. MONACH: Objection; calling for a legal
8 conclusion; incomplete hypothetical; asking the
9 witness to form a new opinion based on inadequate time
10 to study.

11 THE WITNESS: So as I just testified earlier,
12 the fact that he keeps his finger on there may or may
13 not impact Claim 1. I have not had the time to study
14 that in detail and to consider that. That's something
15 I'm being told right now on the fly, and I don't think
16 I can make an informed enough decision or opinion on
17 it just on the fly here. So I'm gonna have to reserve
18 my answer to be a fully qualified opinion after I've
19 had a chance to consider that issue --

20 MR. JOHNSON: I'm --

21 THE WITNESS: -- relative to these claims.

22 MR. JOHNSON: You've read this patent several
23 times.

24 Q I'm asking you to take a look at Claim 1 and
25 tell me, does the fact that he kept his finger or the

1 stylus on the screen avoid infringement or invalidity
2 of this claim, and if so, tell me what the language is
3 that you're relying on.

4 MR. MONACH: Same objection; now it's more
5 vague and compound; asked and answered.

6 THE WITNESS: So I -- I'm going to give you
7 the same answer I just gave. This is a new -- a new
8 element that is being shown to me for the first time
9 here. I haven't had time to study this, and I don't
10 think I can give you a detailed opinion on whether or
11 not it might infringe -- sorry -- it might -- not
12 infringe, it might meet the claim, it might not meet
13 the claim. I have -- I need to have time to study
14 that, and I cannot do that on the fly.

15 MR. JOHNSON: Take a look at Claim 2.

16 Q Does the 2x2 grid in LaunchTile operating on
17 the iPAQ meet the limitation described in Claim 2?

18 MR. MONACH: Same objection as previously
19 stated with the questions about 1; lacking in
20 foundation, given his prior testimony about Claim 1.

21 MR. JOHNSON: Counsel, I really suggest you
22 just keep a running objection, but you're really
23 interfering with the examination, at this point.

24 THE WITNESS: So with regards to Claim 2, I'm
25 looking at this again, my qualifications of -- of what

1 is the electronic document here, from my earlier
2 answers, it's not clear that -- whether that blue
3 circle in the middle is part of the document or not,
4 or, again, I'm looking at this on the flight here,
5 haven't had the time to study it.

6 It is -- I haven't had time to determine if
7 the magnification changes, as he moves it around or
8 not. It might be. It might not be.

9 At, you know, first glance, it looks like it
10 hasn't changed, but I haven't had time to -- to study
11 this in detail, so I cannot give a definitive answer
12 as to whether the magnification of the electronic
13 document, to the extent that's even an electronic
14 document in this application, remains the same.

15 MR. JOHNSON: Okay. Does -- what's -- what's
16 the exhibit number on the back of that?

17 MR. LIEN: 114.

18 MR. JOHNSON: Okay.

19 Q Does Exhibit 114 meet the limitations of
20 Claim 3?

21 MR. MONACH: Same objection as stated in
22 response to the previous question.

23 THE WITNESS: To the extent that -- my
24 understanding is Claim 3 is a dependent claim on
25 Claim 1, so to the extent that Claim 1 is met, which

1 I'm not agreeing whether it does or not, based on my
2 earlier testimony. That said, the -- the portion of
3 the Claim 3, which says the movement of the objects on
4 a touchscreen display, that would be met, yes.

5 MR. JOHNSON: Q. And the limitation of
6 Claim 4 would also be met; right?

7 A With regards to whether the object being a
8 finger, if you can do that again, just so I can see
9 it.

10 Yes, it appears that a finger would affect
11 that kind of movement.

12 Q And does Exhibit 114 meet the limitations of
13 Claim 5?

14 MR. MONACH: Same objection.

15 THE WITNESS: When you say "Exhibit 114," you
16 mean the device with the application running on it?

17 MR. JOHNSON: That's correct.

18 THE WITNESS: Okay.

19 Again, given the -- the same qualifications
20 I've given with my earlier answers with regards to
21 whether it meets Claim 1, and Claim 5 is a dependent
22 claim in Claim 1.

23 Given those qualifications, which I'd like to
24 incorporate in this current answer, I would say, given
25 those qualifications, yes, his first direction is one

1 of a vertical/horizontal or diagonal, so it would meet
2 -- would meet the limitations of Claim 5.

3 MR. JOHNSON: Q. Does it meet the
4 limitations of Claim 7?

5 MR. MONACH: Same objection.

6 THE WITNESS: I don't think I can answer that
7 without knowing what the content of that -- of
8 those -- of that document is. It's not clear to me
9 whether that's a collection of lines of text, whether
10 it's an image, like you said JPEG or something along
11 those lines --

12 MR. JOHNSON: Is --

13 THE WITNESS: -- or a collection of images.
14 I cannot answer that without exploring the -- that
15 document in much greater detail.

16 MR. JOHNSON: Q. Is it -- is it a digital
17 image?

18 MR. MONACH: Objection; same objection to the
19 reasons previously stated; asked and answered.

20 THE WITNESS: So as I just said, I cannot
21 determine if it's a digital image. It may be an
22 image. It may be several images concatenated
23 together. It may be some web pages. It may be lines
24 of text. I -- I cannot make that determination just
25 from a quick look at it.

1 MR. JOHNSON: Q. So is a web page not an
2 electronic document?

3 MR. MONACH: Same objection; vague and
4 ambiguous.

5 THE WITNESS: So Claim 7 says the electronic
6 document is a digital image, so it's -- it's trying
7 to -- my understanding is it's trying to give a more
8 specific instance of what an electronic document is,
9 in that -- in that example, in that claim.

10 MR. JOHNSON: Right.

11 Q Using your -- what is the -- what is the -- I
12 already asked you this. I mean, using your
13 definition -- strike that.

14 Using the definition of a person of ordinary
15 skill in the art would understand a digital image to
16 mean, does Exhibit 114 meet the limitations of
17 Claim 7?

18 MR. MONACH: Same objections as previously
19 stated.

20 THE WITNESS: And I think I've already
21 answered that.

22 I -- without knowing more information about
23 what that -- those four tiles are that you have
24 represented to be the electronic document, is that a
25 single image? Is it multiple images? Is it some

1 text?

2 MR. JOHNSON: Well, take a look --

3 THE WITNESS: I can't tell from -- this could
4 be four images that are concatenated together to form
5 one document.

6 MR. JOHNSON: Q. So would that not meet the
7 limitation? If it's a concatenated series of images,
8 does that avoid Claim 7?

9 MR. MONACH: Same objection.

10 THE WITNESS: I don't know. I haven't
11 considered that scenario. It says here the electronic
12 document is a digital image. It doesn't talk about a
13 concatenated set of images.

14 MR. JOHNSON: Okay.

15 THE WITNESS: And so I would have to study
16 that scenario in detail before answering that
17 question.

18 MR. JOHNSON: Q. Does a concatenated series
19 of images satisfy the definition of a digital image as
20 it's used in the '381 patent?

21 MR. MONACH: Same objection; asked and
22 answered.

23 THE WITNESS: I would say, again, to my --
24 similar answer to what I just gave, it -- it would
25 depend on the application. If the application

1 considered that -- sorry -- I think you asked whether
2 it's a digital image.

3 I would say a concatenation would be a series
4 of a bunch of digital images combined together. Now,
5 if that combination is treated by the application as a
6 single image, then maybe it is. It would depend on
7 the context. So I do not know enough about the
8 context of this application and how it's treating any
9 potential concatenation of images to answer that
10 question in -- in -- with any certainty, at this
11 point.

12 MR. JOHNSON: I heard you earlier say that
13 the claim language of the '381 patent is simple and
14 straightforward.

15 Q So are you telling me that looking at this
16 screen that we see here in Exhibit 114, and what we
17 see on it, you can't tell me whether that is a digital
18 image?

19 MR. MONACH: Object to the form of the
20 question.

21 THE WITNESS: That's not what I said. I said
22 I can't tell that's one digital image or four digital
23 images concatenated together, so it has nothing to do
24 with whether the -- the language. The claim is
25 straightforward. The claim states "a digital image."

1 It doesn't talk about concatenation of digital images
2 or combination of digital images, which this may or
3 may not be. I'm not able to tell that on the
4 application. Nothing to do with the language of the
5 patent.

6 MR. JOHNSON: Q. Does Exhibit 114 meet the
7 limitations of Claim 9?

8 MR. MONACH: Same objection.

9 THE WITNESS: To the extent that if you say
10 the whole of four images can constitute the electronic
11 document, I would say, given this particular set of
12 content there, there appears to be a list of -- if you
13 don't mind, phone list and an inbox, which has a list
14 of items there.

15 So that --

16 MR. JOHNSON: Zoom in.

17 THE WITNESS: -- the electronic document
18 includes a list of items, which is what Claim 9 says.
19 It doesn't necessarily mean the whole document is a
20 list.

21 MR. JOHNSON: Q. Does it meet the
22 limitations of Claim 10?

23 MR. MONACH: Same objection.

24 THE WITNESS: Based on what he showed me
25 earlier, and given the qualifications I've already

1 made regarding Claim 1, I would say it meets Claim 10,
2 yes.

3 MR. JOHNSON: Q. Does it meet the
4 limitations of Claim 13?

5 MR. MONACH: Same objection as stated with
6 respect to the other claims.

7 THE WITNESS: From what I've seen so far, it
8 appears that it would not meet Claim 13, because what
9 I've seen of the area beyond the edge of the document,
10 as shown to me by your colleague here, is not one of
11 these colors. It seems to be a compound set of
12 content there.

13 MR. JOHNSON: Q. So the edge of the document
14 is -- is not black, gray, a solid color, or white?

15 A No, he's --

16 MR. MONACH: Object to the form of the
17 question.

18 THE WITNESS: -- he's showing me all of this
19 other content that has a bunch of other extra stuff
20 there, beyond the -- beyond the edge of the document.

21 MR. JOHNSON: Q. So the fact that part of
22 the edge of the document, beyond the edge of the
23 document includes black, gray, solid color, or white
24 that -- that doesn't meet that limitation?

25 MR. MONACH: Object to the form of the

1 question for the reasons previously stated, and also
2 now misstates the evidence.

3 THE WITNESS: I think he's showing me the --
4 the area beyond the edge includes some other stuff
5 that is not just black, gray, solid color, or white.
6 It has all kinds of other colors there.

7 MR. JOHNSON: Q. But the -- the area beyond
8 the edge includes a solid color. In this case, light
9 blue --

10 A Do you mind if I --

11 Q -- right, in the e-mail example?

12 MR. MONACH: Same objection.

13 THE WITNESS: It --

14 MR. MONACH: Assumes facts not in evidence.

15 THE WITNESS: To me, I'm looking at the area
16 beyond the edge. It's -- the interactive area is way
17 beyond. It has a vertical bar there, but then there's
18 also more stuff beyond it. So it's not -- the whole
19 area is not one of those four things, as in Claim 13.

20 MR. JOHNSON: Q. Does Exhibit 114 meet the
21 limitations in Claim 14?

22 MR. MONACH: Same objection as previously
23 stated to this line of questioning.

24 THE WITNESS: And that's an even trickier
25 one, because I'd have to look very carefully at the

1 content of this stuff that's bouncing around on the
2 edge there and -- to determine if that actually is.
3 So, for example, the bottom here -- whether -- whether
4 that content is actually different, I'd have to study
5 it carefully. To the extent that it is different,
6 then I would say, yes, it meets it. It would really
7 depend on what that content is.

8 MR. JOHNSON: Q. Does claim -- does
9 Exhibit 114 meet the limitations in Claim 16?

10 MR. MONACH: Same objections.

11 THE WITNESS: Can you do that first
12 direction, second direction, and lift it up again,
13 please. If you don't mind, I'll look at it. Whoops.

14 MR. LIEN: Sorry.

15 THE WITNESS: Or maybe I can play with it, if
16 you don't mind. I'm having trouble looking at this
17 thing. Yeah, okay.

18 Do that again. It would appear to be, again,
19 with all the caveats of -- all of the qualifications
20 I've already made with regards to Claim 1, I would say
21 it appears to be, this particular example, there might
22 be an elastic connection there or elastic look to
23 that.

24 MR. JOHNSON: Q. Does Exhibit 114 meet the
25 claim limitations described in Claim 19 of the '381

1 patent?

2 MR. MONACH: Same objection as previously
3 stated.

4 THE WITNESS: Again, the same qualifications
5 with regards to Claim 1 in whether this device meets
6 that or not. To the extent that this is running a
7 computer program, like in the Samsung phones, it
8 clearly has one or more programs running, and then,
9 therefore, it would meet Claim 19, again given my
10 qualifications of Claim 1.

11 MR. JOHNSON: Q. And does Exhibit 114 meet
12 Claim 1?

13 MR. MONACH: Same objection.

14 THE WITNESS: And my, kind of, similar
15 answer, taking all my -- my qualifications with
16 regards to Claim 1, you would have to have some kind
17 of storage media, so it would meet Claim 20, with the
18 same set of qualifications for all of the different
19 elements.

20 MR. JOHNSON: Okay. Let me show you another
21 example --

22 THE WITNESS: I also want to say, just for
23 the -- I'm sorry to interrupt you.

24 MR. JOHNSON: He'll have the opportunity to
25 ask you a question.

1 MR. MONACH: You can finish -- you can finish
2 your answer. Go ahead.

3 MR. JOHNSON: There's -- there's no question.

4 MR. MONACH: There -- there was a question.
5 The witness was still speaking, and he's allowed to
6 speak, and if you want to move to strike it, you can
7 move to strike it, but he can -- he's free to go
8 ahead.

9 THE WITNESS: I'll pass.

10 MR. JOHNSON: Okay.

11 Q The -- the -- I'd like for you now to assume
12 that the electronic document consists of a grid that's
13 actually 2x4 tiles.

14 A I'm not seeing that here. I'm seeing 2x2.

15 Q So that's the four right there.

16 A Right.

17 Q Do you see what I'm talking about?

18 A So I'm seeing four, and earlier he zoomed out
19 to some much larger number of tiles.

20 Q It's the -- it should be 2x4.

21 A So two --

22 Q So two --

23 A Okay.

24 Q It's back to -- it's back to the -- the grid,
25 2x4.

1 So he's --

2 A You're talking about this grid?

3 Q Yeah.

4 A Okay.

5 Q So there are two pages, so to speak. It's
6 two --

7 A So this --

8 Q -- in the vertical direction and four in the
9 horizontal direction; okay?

10 A The -- the document consists of these eight
11 tiles --

12 Q Correct.

13 A -- is your representation.

14 Q Right.

15 A Okay.

16 MR. MONACH: Objection; assumes facts not in
17 evidence in addition to --

18 MR. JOHNSON: Q. So I'd like for you to --

19 MR. MONACH: -- what's been previously
20 stated.

21 MR. JOHNSON: Q. I'd like for you to assume
22 that's the electronic document, the 2x4 tiles, and I'm
23 gonna have him run through again the -- the claim
24 language and see whether you agree with it or not,
25 okay?

1 So assuming the -- the -- the electronic
2 document is 2x4 tiles, and if we start on the left
3 portion, I want you to assume for me that that's a
4 first portion of the electronic document; understand?

5 A So these four tiles of the eight tiles is the
6 first portion.

7 Q Right.

8 A Okay.

9 MR. MONACH: Same objection as --

10 MR. JOHNSON: Then if --

11 MR. MONACH: -- previously stated, and
12 further objection, assumes facts not in evidence.

13 MR. JOHNSON: So we display a first portion
14 of an electronic document. He's detected a movement
15 of an object on or near the touchscreen display.

16 Q Now, the next limitation, which is Claim 3 --
17 sorry -- limitation No. 3 in Claim 1, when he scrolls
18 left, does that meet the third limitation in Claim 1?

19 MR. MONACH: Same objection.

20 THE WITNESS: So when he scrolled left there,
21 I would say, given your assumption that you've asked
22 me to take, I have not determined whether that's an
23 electronic document or not.

24 Given that hypothetical, he is moving to the
25 left, I would again, as I said earlier in the earlier

1 round of answers and questions, the blue circle there
2 that appears to be part of the document initially is
3 not moving, so the translation of the document seems
4 to be partial in this case or when the blue stuff is
5 not moving in a -- and a lighter blue happened to move
6 instead.

7 Given those difficulties or qualifications to
8 the movement there, I would say, apart from that,
9 it -- it does appear to display a second portion that
10 is different from the first portion.

11 MR. JOHNSON: Q. And when he scrolls left
12 beyond the edge, does it meet the fourth limitation?

13 MR. MONACH: Same objection, and now it
14 assumes facts not in evidence.

15 THE WITNESS: I have not seen the edge of a
16 document being reached while translating. So you told
17 me the document was the eight -- eight-item grid.

18 MR. JOHNSON: Right.

19 THE WITNESS: I have not seen the edge being
20 reached.

21 MR. JOHNSON: Q. Now the edge is reached;
22 right?

23 THE WITNESS: Can you --

24 MR. MONACH: Same objection.

25 THE WITNESS: Can you show me that again?

1 So you're talking about that edge is reached?
2 Which edge? I've lost track of where we are on the
3 document. They all look -- the tiles all look the
4 same.

5 MR. JOHNSON: I was trying to keep him quiet,
6 so you weren't having two people ask you the
7 questions, but, okay.

8 MR. LIEN: Reboot.

9 MR. JOHNSON: Yeah. Get the other one. Let
10 me ask about the other one.

11 MR. LIEN: It's good.

12 MR. JOHNSON: Okay. So let's -- let's go
13 back to what we were looking at.

14 Q So assume for me that the -- the --

15 A One of the problems I'm having here is you
16 tilt it over that way for the camera, and maybe we can
17 both sit in a different way so I can see this
18 properly. Okay. That's better for me.

19 MR. JOHNSON: What if you go that way a
20 little bit, and then let him zoom in, and then --

21 MR. LIEN: Okay.

22 THE WITNESS: That's better, yes, thank you.

23 MR. JOHNSON: Q. You're the one that
24 matters.

25 A But you need to get it on camera too; right?

1 Okay. So where are we now? We -- is this
2 the first two tiles of the eight-tile document?

3 Q Right.

4 A So there's four more tiles, kind of, out
5 here.

6 Q That's right.

7 A That's your representation. Okay, given your
8 representation --

9 Q It's like we zoom --

10 A -- now that's the first movement?

11 Q Right.

12 A Okay.

13 MR. MONACH: Same objection.

14 THE WITNESS: Okay. Now --

15 MR. JOHNSON: Q. That's the second portion?

16 A This is the second portion, okay. And now
17 that's the edge that you're saying we reach?

18 Q Right, that's the edge.

19 A So that's the end of the eight tiles; right?

20 Q That's right.

21 A Okay.

22 Q And now we're scrolling beyond the edge, and
23 then when he lifts the object, it bounces back.

24 A Can I ask you to do that again please, right
25 from the start, if you don't mind. Okay. Right.

1 Okay. Yes.

2 MR. MONACH: Same objections.

3 MR. JOHNSON: So --

4 MR. MONACH: Assumes facts not in evidence,
5 as well.

6 MR. JOHNSON: Q. Would you agree that
7 Exhibit 114 meets the limitations of Claim 1 of
8 the '381 patent?

9 MR. MONACH: Same objection.

10 THE WITNESS: All elements of the claim?

11 MR. JOHNSON: Yeah, under the scenario that
12 we just showed you.

13 THE WITNESS: So, again, back to my earlier
14 answers, first of all, I haven't had a chance to study
15 this, the representation you had of the eight -- eight
16 tiles being one document as a whole, that's your
17 representation. Given that hypothetical, I would also
18 say, as I said earlier, the blue circle in the middle,
19 which you represented the whole thing was a document,
20 that does not appear to move when you -- when you
21 translate the document.

22 So, as a result, I would say, given those
23 qualifications, the -- the entirety of these claims
24 are not met. But if you assume, if those things are
25 not present, if the blue thing wasn't there, and

1 the -- or it moved along with it as a document, it --
2 it appears to meet the claims.

3 MR. JOHNSON: Q. Well, which limitation is
4 not met in Claim 1 because of the presence of the blue
5 dot?

6 MR. MONACH: Same objection.

7 THE WITNESS: So, for example, claim --
8 sorry -- element three of Claim 1, it says "In
9 response to detecting the movement translating the
10 electronic document." If the blue dot is part of the
11 electronic document, as I believe I was made to
12 understand in the hypothetical, that would -- part of
13 the document would have to translate it as not -- it's
14 not moving, that blue dot remains stationary through
15 all the reactions -- sorry -- all the intersections
16 that your colleague just did.

17 So Claim 3 -- sorry -- element three of
18 Claim 1. Element four, again, the -- it says, "While
19 translating the electronic document in the first
20 direction," also would not be met, if the blue thing
21 as part of the document is not being translated.

22 Again, element seven has the same problem,
23 translating the electronic document, the blue portion,
24 only a part of the document is moving. The entire
25 thing is not moving.

1 MR. JOHNSON: Okay.

2 Q And what if the electronic document is
3 defined as -- as what you see on the screen or the 2x4
4 tiles without the blue dot?

5 MR. MONACH: Same objection.

6 MR. JOHNSON: Q. Does your analysis change?

7 MR. MONACH: Same objection; vague and
8 ambiguous, as well.

9 THE WITNESS: I would have to think carefully
10 about that. I haven't considered that in detail. So
11 on the fly here, it may or may not. I -- I would have
12 to reserve that --

13 MR. JOHNSON: Q. You don't know?

14 A -- that detailed analysis until I've had a
15 chance to look at that.

16 Q Okay. Okay.

17 If you could look at the subsequent claims
18 that we've looked at earlier, 2, 3, 4, 5, 7, 9, 10,
19 13, 14, 16, and just tell me whether those limitations
20 are met by the 2x4 grid, as the electronic document
21 with -- in Exhibit 114.

22 MR. MONACH: Same objections.

23 THE WITNESS: So with regard to Claim 2, let
24 me quickly look at this again, first portion, second
25 portion. So Claim 2 was with regard to the

1 magnification. Again, similar to the same answer I
2 gave -- to the answer I gave earlier when you went
3 over to Claim 2, I would have to determine for sure
4 whether that was indeed of the same magnification, but
5 if it is, then it would be met. Again, given all the
6 caveats that I -- sorry -- all of the qualifications
7 that I just made with regards to Claim 1 not being
8 met, and Claim 1 is incorporated in Claim 2.

9 Claim 3 is -- the movement is on the
10 touchscreen display, but since it's incorporated in
11 Claim 1, if Claim 1 has -- is not met, for the reasons
12 I just gave you, then it would not be met. But if
13 Claim 1 is met, Claim 3 would be met.

14 Q How about Claim 4?

15 A Claim 4 --

16 MR. MONACH: Same objection.

17 THE WITNESS: -- is the same. I have the
18 same answer as Claim 3, really.

19 If Claim 1 is met, which, as I've said
20 earlier, it may or may not be met, the object could be
21 a finger, and your colleague has demonstrated that.
22 So I think that would be met, if Claim 1 is met.

23 What is the next claim? Five?

24 MR. JOHNSON: Five.

25 THE WITNESS: Again, as in my previous

1 answers, Claim 5 is dependent on Claim 1, and given
2 all of the qualifications I've made with regards to
3 whether Claim 1 is met, if Claim 1 is met, then
4 Claim 5 would be met as the first direction, is one of
5 these three vertical, horizontal, or diagonal
6 directions.

7 MR. JOHNSON: Q. How about Claim 7?

8 A Claim 7, I'm gonna give the same answer I
9 gave earlier when you went over this. It's not clear
10 to me that -- whether that electronic document
11 consisting of, as you, yourself, said, 2x4 grid
12 of -- of images is whether that concatenation of
13 images is a digital image or not, or whether that's
14 eight different images or something else. So I can't
15 say for sure until I've studied this in more detail.

16 Q How about Claim 9?

17 MR. MONACH: Same objection.

18 THE WITNESS: Claim 9, I would have to look
19 at that very quickly again, just to see. So this is
20 still part of the eight -- eight items, okay.

21 Claim 9, given the qualifications with
22 regards to Claim 1, and as I've said, Claim 1 may or
23 may not be met, depending on some of the issues there
24 that I've already discussed, and since Claim 9 is
25 dependent on Claim 1, if Claim 1 is met, then, in this

1 example, if that is indeed the electronic document, it
2 appears that it has, at least in some -- some parts of
3 that document, has a list of documents that would be
4 met.

5 MR. JOHNSON: Q. How about Claim 10?

6 MR. MONACH: Same objection.

7 THE WITNESS: Claim 10, again, I would say it
8 depends on Claim 1, as is clear there, and given all
9 the qualifications I've made with regards to whether
10 Claim 1 is met, would apply here, and if Claim 1 is
11 met, there -- the second direction of movement could
12 be -- I mean, it's possible that it's often the first
13 direction.

14 MR. JOHNSON: Q. So it would be met?

15 MR. MONACH: Same objection.

16 THE WITNESS: It would be met if Claim 1 is
17 met with all my qualifications I've already discussed.

18 MR. JOHNSON: Q. How about Claim 13?

19 MR. MONACH: Same objection.

20 THE WITNESS: Claim 13, again, back to my
21 answer to the same question earlier with regards to
22 the smaller electronic document, I would say it
23 probably is not met, because the area beyond the edge
24 is -- seems to be much more compound than simply a
25 black, gray, solid color, or white, and also it

1 comprehends Claim 1, so Claim 1, I would give it all
2 of the same qualifications I did earlier.

3 MR. JOHNSON: Q. So a compound color beyond
4 the edge of the document would not meet Claim 13?

5 MR. MONACH: Same objection; vague.

6 THE WITNESS: A compound set of visuals, like
7 I'm seeing there, I would say it does not meet
8 Claim 13, because here it says black, gray, a solid
9 color, which I would read to mean one color or not a
10 variety of different colors appearing at the same
11 time, or white.

12 MR. JOHNSON: Okay.

13 Q How about Claim 14?

14 MR. MONACH: Same objection.

15 THE WITNESS: To the extent that the area
16 beyond the edge is some other content that one
17 could -- could determine to be visually distinct, it
18 would be met if Claim 1 is met, which it's not clear,
19 given all of the qualifications I've already -- I've
20 already --

21 MR. JOHNSON: Q. How about --

22 A -- discussed in this deposition.

23 Q Sorry.

24 How about Claim 16?

25 MR. MONACH: Same objection.

1 THE WITNESS: Can you do that for me again,
2 please.

3 So Claim 16, again, it depends on Claim 1.
4 So to the extent that Claim 1 is or isn't met would --
5 would impact Claim 16, but the portion of Claim 16
6 that talks about the elastically attached, that --
7 that appears to be demonstrated in this application.
8 As to whether the whole claim is met would depend on
9 Claim 1, as I've discussed.

10 MR. JOHNSON: Q. Are the limitations in
11 Claim 19 met by Exhibit 114 running LaunchTiles on the
12 iPAQ?

13 MR. MONACH: Same objection.

14 THE WITNESS: I haven't had a chance to study
15 this in great detail, but given that it -- given the
16 functionality I've seen here with the same set of
17 qualifications I've already done with Claim 1, where
18 the language is repeated, just the instructions and
19 the number of the -- the one or more programs stored
20 and executed, that would have to -- that would be met,
21 but the -- the other portions that correspond to a
22 language in Claim 1 may or may not be met, depending
23 on my -- depending on the qualifications I just talked
24 about.

25 MR. JOHNSON: Q. And how about Claim 20?

1 Would that be met by Exhibit 114?

2 MR. MONACH: Same objection.

3 THE WITNESS: Claim 20, again, similar to my
4 answer for Claim 19, it has all the language of
5 Claim 1, and that would have the same qualifications
6 that I've already discussed, or the portion about the
7 instructions being stored in a computer storage
8 medium, I think that would have to -- that would be
9 present on that device.

10 MR. JOHNSON: Okay. We need to take a quick
11 break to change the videotape.

12 MR. AHN: Could we get a total time, too?

13 Thanks.

14 THE VIDEOGRAPHER: This is the end of Disk
15 No. 4, Volume I.

16 We are off the record at 6:15 p.m.

17 (Recess taken.)

18 THE VIDEOGRAPHER: This is the beginning of
19 Disk No. 5, Volume I.

20 We are back on the record at 6:25 p.m.

21 You may proceed.

22 MR. JOHNSON: Q. So I'd like for you to go
23 to Exhibit 14, the LaunchTile application, and
24 particularly the e-mail application. When you click
25 on that, you'll see a list of names right on the

1 left-hand side, and I'd like for you to assume that
2 that's the electronic document similar to what we
3 looked at in the Samsung devices, and I'm gonna ask
4 you: Based on what Henry is doing here with respect
5 to LaunchTiles -- just move it forward, so the glare's
6 not -- just tilt it. Tilt it forward.

7 Does the e-mail application of LaunchTiles on
8 Exhibit 114 meet the limitations of Claim 1?

9 MR. MONACH: Objection; calls for a legal
10 conclusion; asks the witness to come up with a new
11 opinion unrelated to his declaration at the
12 deposition; incomplete hypothetical; vague and
13 ambiguous.

14 MR. JOHNSON: So I'll have -- Henry, if you
15 can go through the first portion, second portion,
16 third portion, fourth portion.

17 THE WITNESS: So where are you now? You seem
18 to just be moving.

19 MR. LIEN: So this is third portion right
20 here.

21 THE WITNESS: Can -- can you go back?
22 What do you mean by first portion, second
23 portion?

24 MR. LIEN: Yeah, so first portion, second
25 portion, third portion, fourth portion.

1 THE WITNESS: Can you do that again, please?

2 MR. LIEN: So first portion, second portion,
3 third portion, fourth portion.

4 THE WITNESS: Some other thing happened.

5 MR. JOHNSON: Do it once more. Try and tilt
6 it forward, Henry, because the glare is --

7 MR. LIEN: Okay.

8 MR. JOHNSON: Yeah, there you go. Much
9 better.

10 MR. LIEN: So first portion, second portion,
11 third portion, fourth portion.

12 THE WITNESS: Okay. So to the extent that
13 I'm seeing this for the first time, I haven't seen
14 that application at all before, so I'm -- I'm giving
15 this opinion on the fly here, I haven't considered it,
16 and it's not a detailed thing I've considered, so I'm
17 looking here. It appears to meet the
18 computer-implemented method preamble.

19 It appears, giving your representation, that
20 that's a list, and it displays the first portion. It
21 meets the first element. To the extent that it
22 detects a movement, it may meet the second element.

23 With the third element, it appears to meet
24 that. The fourth element, I do not see that being
25 met, because I'm not seeing an edge of the electronic

1 document being met.

2 MR. JOHNSON: Q. Look at the -- look at the
3 bottom where there's spacing there.

4 A So he's saying Kathryn Thompson is the last
5 one.

6 MR. JOHNSON: Right.

7 THE WITNESS: Can you keep moving up? Can
8 you go down?

9 MR. LIEN: Which way?

10 THE WITNESS: Do you mind if I try this
11 myself, because I'm having trouble looking at this.

12 MR. JOHNSON: That's fine. Yeah.

13 THE WITNESS: Okay. First portion.

14 So I would say the -- in response to the edge
15 being -- so coming here -- in response to the edge of
16 the document being reached while translating the first
17 direction, it displays an area beyond the edge of
18 document, if the document is a list. It displays a
19 third portion that's smaller, so that meets element
20 six, but when I release my -- release the pen and
21 my -- or my finger, I would assume the finger works
22 the same way, it doesn't appear to -- it does not
23 appear to translate in the second direction until the
24 area beyond the edge of the electronic document is no
25 longer displayed.

1 So I'm not getting element seven in this.

2 MR. JOHNSON: Q. But -- so it -- it has
3 elements one through six, but you have an issue with
4 element seven not being present --

5 MR. MONACH: Same objection.

6 MR. JOHNSON: Q. -- is that right?

7 MR. MONACH: Same objection; misstates the
8 prior testimony.

9 MR. JOHNSON: I'm -- I'm just trying to
10 understand.

11 THE WITNESS: So based on my very quick
12 first-time view of this, haven't studied it in detail,
13 repeating all the things I just said about this, very
14 quickly here I'm not getting element seven.

15 MR. JOHNSON: Okay.

16 THE WITNESS: It appears to meet elements one
17 to six, but I'm not getting element seven.

18 MR. JOHNSON: Q. So I think you may be
19 scrolling too far beyond the list. So if you go back
20 to the list, and you get to the bottom, and you scroll
21 up so it displays the portion beyond the edge, and
22 then you release it.

23 A I'm not getting it. I've got past Kathryn,
24 with just one pixel, and it's not --

25 MR. LIEN: Can I?

1 MR. JOHNSON: Tilt it, Henry. Yep.

2 Q See that?

3 A Keep going.

4 Q Doesn't that meet claim limitation seven?

5 MR. MONACH: Same -- same objection.

6 THE WITNESS: I think I would have to study
7 that in detail. It's not clear to me that I -- it
8 definitely meets the edge -- reaches the edge. When I
9 know that I reached the edge because I've gone -- I've
10 already explored that list further, but just looking
11 at that and maybe there's something beyond that, I
12 don't know. It's only when it goes much further that
13 it clearly tells me that I've reached the edge. So,
14 again, I would caveat this by saying I have to study
15 this in detail --

16 MR. MONACH: Sorry.

17 THE WITNESS: -- before making that
18 determination.

19 MR. MONACH: Sorry.

20 Mr. Videographer, are we at seven hours? Two
21 minutes? Okay.

22 MR. JOHNSON: Okay.

23 Q Can you tell me if this meets the limitations
24 of Claims 19 and 20?

25 MR. MONACH: Same objection.

1 THE WITNESS: So to the extent that if it
2 meets the elements of Claim 1, which I've just
3 discussed it may not, if it didn't meet Claim 1, then
4 a lot of the language in Claim 19 is not met or the
5 portion that talks about one or more programs with
6 instructions in Claim 19, that, I think, would be met.

7 MR. JOHNSON: Q. And what about Claim 20?

8 MR. MONACH: Same objection.

9 THE WITNESS: Same kind of answer with
10 Claim 20. To the extent that the elements of Claim 20
11 that regard -- relate to Claim 1, they may not be met,
12 as I've just discussed with Claim 1, but the portion
13 about a readable storage medium having stored their
14 instructions, which executed that portion, would be
15 met.

16 MR. JOHNSON: Q. Is the -- what we've seen
17 in Exhibit 114, LaunchTiles with the iPAQ, the best
18 piece of prior art you've seen for the '381 patent
19 claims?

20 MR. MONACH: Object to the form of the
21 question. Objection; asking the witness to form a
22 legal conclusion with an incomplete hypothetical;
23 asking him to come up with a new opinion on the fly.

24 THE WITNESS: So I don't think I can answer
25 with any degree of certainty, as I've discussed

1 repeatedly during this deposition, I have not studied
2 all of the prior art in any detail. I have not done
3 an invalidity or validity analysis, so it is certainly
4 one piece of prior art that I'm seeing in detail
5 today. Whether -- how that compares to other pieces
6 of prior art, I would have to do that analysis.

7 MR. JOHNSON: Q. Is that better than the
8 prior art that was cited during the reexamination?

9 MR. MONACH: Same objection; assumes facts
10 not in evidence that it's prior art.

11 THE WITNESS: I -- as I said earlier, I
12 haven't studied the -- the -- the prior art that was
13 cited during the reexam in detail to form a validity
14 or invalidity detailed opinion, so I cannot make that
15 comparison right now.

16 I would also say that it's not clear to me
17 that this -- this application shown to me today is
18 actual prior art. I know the paper is prior art, the
19 CHI 2005 paper. The application itself, I -- I don't
20 know whether that's prior art or whether it was
21 written subsequent to the date of the patent.

22 MR. JOHNSON: Q. Based on the -- the prior
23 art that you've looked at --

24 MR. MONACH: We're at seven hours -- we're --
25 we're done.

1 MR. JOHNSON: Are you leaving at this point?

2 MR. MONACH: We're -- you've had your seven
3 hours. This -- this deposition is over. You had lots
4 of time to ask him about his opinions. You've spent
5 hours and hours doing it, seven hours, including
6 repetitive questioning. We told you we're -- we've
7 told you in advance that these are seven-hour
8 depositions. We haven't agreed to a longer time.

9 MR. JOHNSON: So are you --

10 MR. MONACH: The deposition is over.

11 MR. JOHNSON: So you're not gonna let me ask
12 any more questions?

13 MR. MONACH: Correct.

14 MR. JOHNSON: Okay. Well, we're gonna keep
15 the deposition open, and I can't think of any part of
16 the deposition that should be designated confidential.
17 You know, at the very outset, you designated this
18 confidential, and it's putting us at great prejudice
19 in doing so, and you know that, and so I ask that you
20 right now dedesignate the transcript confidential, and
21 if you want to take the time to designate portions of
22 it confidential between now and tomorrow morning,
23 that's fine, but, you know, our opposition is due, and
24 there shouldn't be hardly any part of this transcript
25 that's designated confidential.

1 MR. MONACH: Well, I disagree that you're at
2 any prejudice. The interim protective order says what
3 it says. You chose to ask him about ITC proceedings
4 and other parties' proceedings, for example, and
5 there's no requirement on us to do it overnight.

6 I mean, you can use the transcript or not use
7 it, as you see fit. I'm not saying we're going to
8 designate or dedesignate after your filing date or
9 before your filing date. Take it under advisement.

10 MR. JOHNSON: Well, when can I get the
11 transcript dedesignated from you?

12 MR. MONACH: I don't know the answer to that
13 question. I'm not gonna make a commitment to you on
14 the record here today.

15 MR. JOHNSON: How about -- how about -- how
16 about within two days?

17 MR. MONACH: I just told you I'm not gonna --
18 I'm not gonna negotiate about it or make a commitment
19 to you on the record here.

20 MR. JOHNSON: Well, that's just completely
21 unacceptable, so we'll have to take it up as we see
22 fit.

23 Thank you. The deposition is still open from
24 our standpoint, and we'll go from there. Thank you.

25 MR. MONACH: All right. From our -- from our

1 perspective, no surprise, I suspect, the deposition is
2 over.

3 THE VIDEOGRAPHER: This is the end of today's
4 deposition.

5 We are off the record at 6:37 p.m.

6 The master disk will be held by TSG.

7 (WHEREUPON, the deposition ended at
8 6:37 p.m.)

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J U R A T

I, RAVIN BALAKRISHNAN, Ph.D., do hereby
certify under penalty of perjury that, I have read the
foregoing transcript of my deposition taken on
August 16, 2011; that I have made such corrections as
appear noted herein in ink, initialed by me; that my
testimony as contained herein, as corrected, is true
and correct.

DATED this ____ day of _____, 2011,
at _____.

SIGNATURE OF WITNESS

CERTIFICATE OF REPORTER

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I, ANDREA M. IGNACIO HOWARD, hereby certify that the witness in the foregoing deposition was by me duly sworn to tell the truth, the whole truth, and nothing but the truth in the within-entitled cause;

That said deposition was taken in shorthand by me, a Certified Shorthand Reporter of the State of California, and was thereafter transcribed into typewriting, and that the foregoing transcript constitutes a full, true and correct report of said deposition and of the proceedings which took place;

That I am a disinterested person to the said action.

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of August, 2011.

ANDREA M. IGNACIO HOWARD, RPR, CCRR, CLR, CSR No. 9830

1 I N D E X

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3 DEPOSITION OF RAVIN BALAKRISHNAN, Ph.D.

4

5 EXAMINATION

PAGE

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MR. JOHNSON

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8 E X H I B I T S

9

10 EXHIBIT

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Exhibit 96 Notice of Deposition of Ravin
Balakrishanan, Ph.D.; 3 pgs.

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Exhibit 97 Samsung Galaxy S 4G Phone

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Exhibit 98 Samsung Epic 4G Phone

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Exhibit 99 Samsung Fascinate Phone

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Exhibit 100 Samsung Galaxy Tab 7

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Exhibit 101 Samsung Galaxy 10.1

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Exhibit 103 Samsung Infuse 4G Phone

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Exhibit 105 Keeping It Real: Pushing the

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1 E X H I B I T S (Continued.)

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3	EXHIBIT		PAGE
4	Exhibit 112	Patent US 2005/0012723 A1,	253
5		Pallakoff, Bates Nos.	
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10	Exhibit 114	iPAQ phone with LaunchTiles	274
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14 NOTE** ALL EXHIBITS RETAINED BY QUINN ATTORNEYS

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1 NAME OF CASE: Apple Inc v. Samsung Electronics Company Limited

2 DATE OF DEPOSITION: 8/16/2011

3 NAME OF WITNESS: Dr. Ravin Balakrishnan

4 Reason Codes:

5 1. To clarify the record.

6 2. To conform to the facts.

7 3. To correct transcription errors.

8 Page _____ Line _____ Reason _____

9 From _____ to _____

10 Page _____ Line _____ Reason _____

11 From _____ to _____

12 Page _____ Line _____ Reason _____

13 From _____ to _____

14 Page _____ Line _____ Reason _____

15 From _____ to _____

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