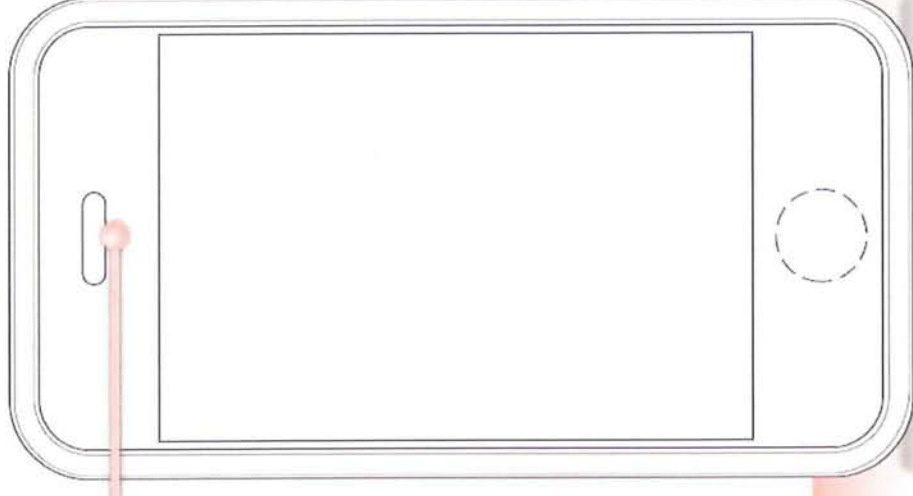


EXHIBIT X-2

Apple's Design Features Are Functional

- Speaker:**
Upper portion of front surface
- Aligns speaker most naturally with the ear
 - Traditional placement of the speaker since the very first telephone handsets



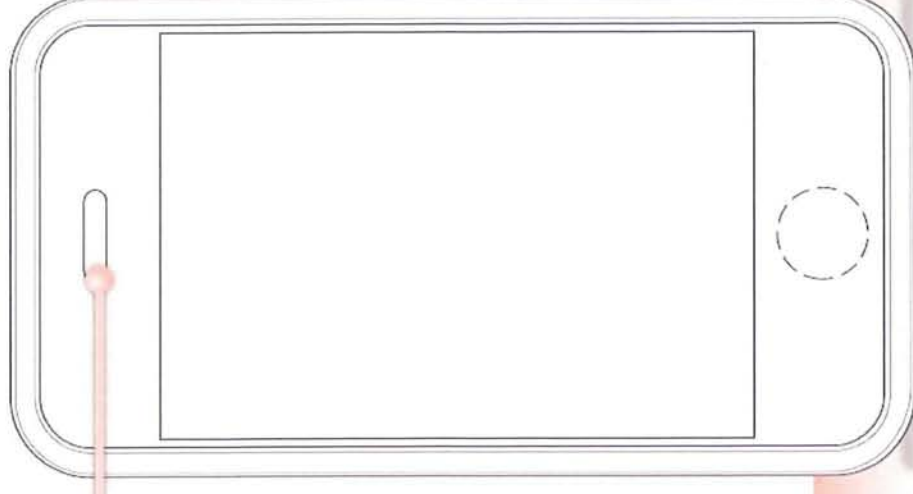
 D'087

Apple's Design Features Are Functional

Speaker:

Horizontal slot shape

- More flexibility for ear alignment
- Does not interfere with the size of the display screen
- Easier to manufacture—drilling leaves rounded side edges
- Preserves structural integrity of the surface
- Better acoustics

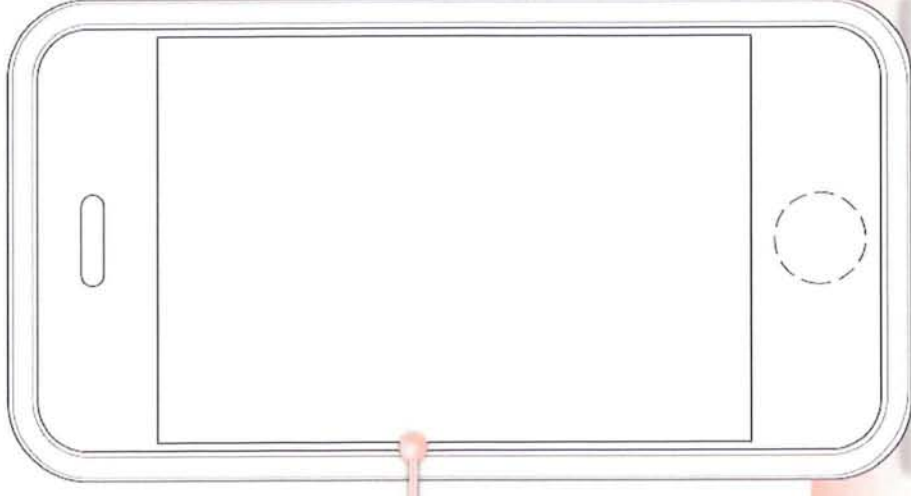


 D'087

Apple's Design Features Are Functional

Borders around screen

- Hides components
- Protects active area of screen

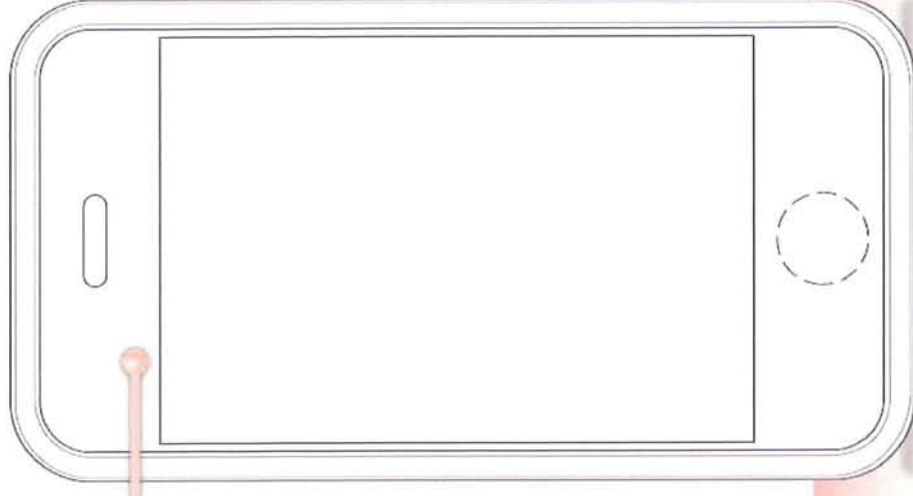


 D'087

Apple's Design Features Are Functional

Flat front face

- No interference to touch screen from protruding bezel
- Easy to clean
- Fewer components to manufacture, break
- Less likely to snag

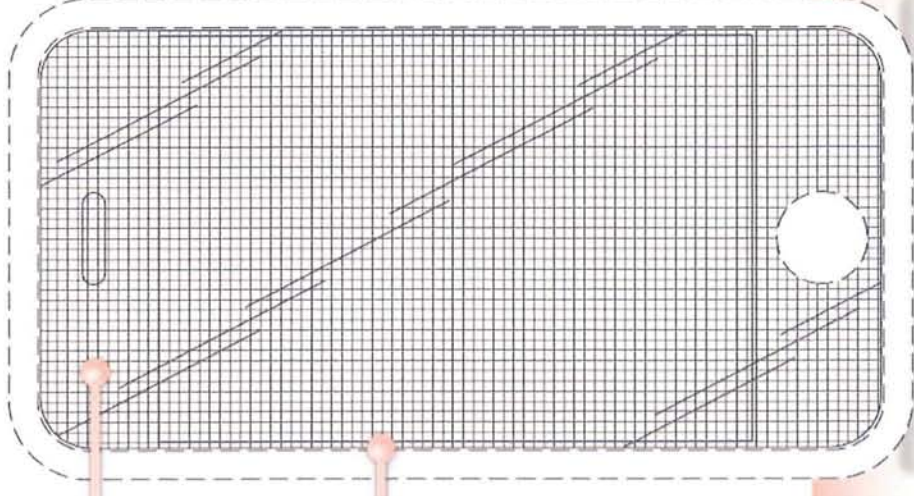


 D'087

Apple's Design Features Are Functional

Black color of front face (D'677 only)

- Hides components
- Default technology color
- Only color range for display screens

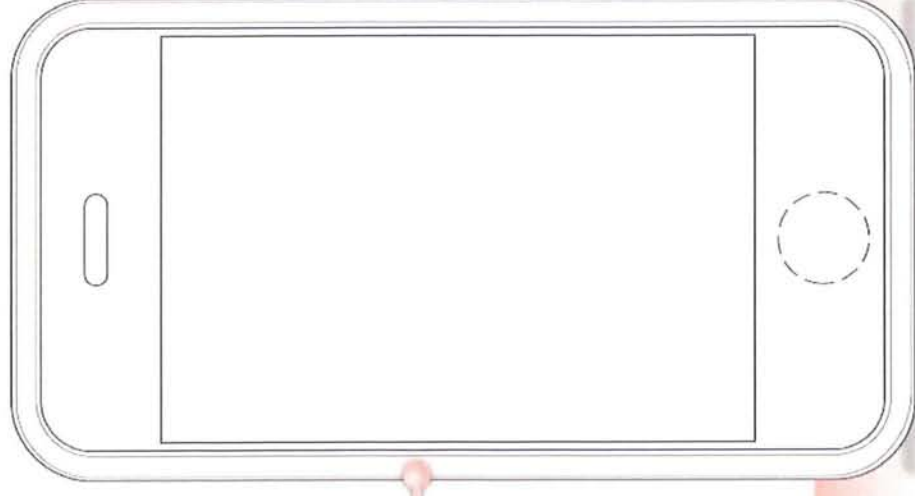


 D'677

Apple's Design Features Are Functional

Bezel (D'087 only)

- Attaches front surface of phone to back surface of phone
- Protects display and glass from side impacts

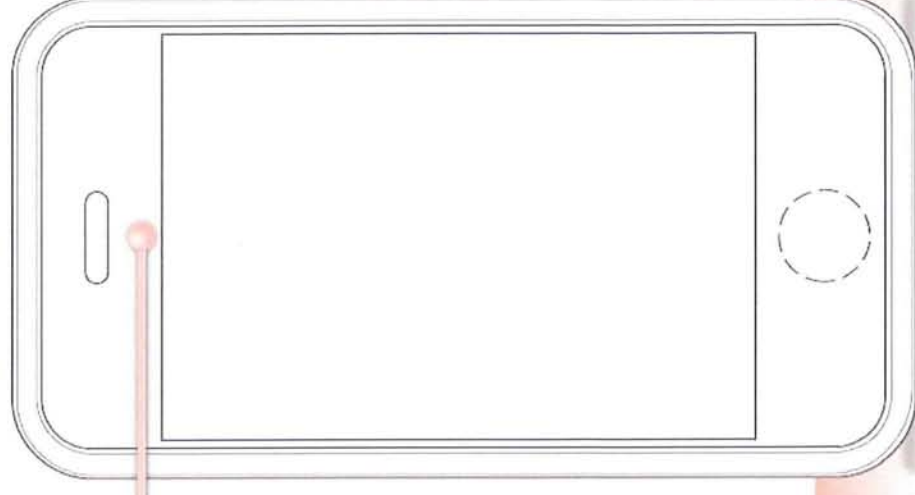


 D'087

Apple's Design Features Are Functional

Lack of significant ornamentation

- By definition—not ornamental
- Enhances user experience by not distracting from screen—primary purpose of a portable, multi-media device



 D'087

Video to be played here: I've_edited.mpg



Apple Admitted Functionality of Lack of Ornamentation



Jonathan Ive Lead Designer



“So, for example, something like the iPhone, everything defers to the display. A lot of what we seem to be doing in a product like that is actually getting design out of the way.”

Apple Admitted Functionality of Lack of Ornamentation



**Apple's
Amended
Complaint**



The iPhone product design is “more accessible, easier to use, and much less technically intimidating than previously available smart phones and PDAs.”

—Apple's Amended Complaint at ¶ 34

Apple Admitted Functionality of Lack of Ornammentation



Cooper Woodring



Q. And you would also agree with me that the three design patents that bring us here today, the 677 design patent, the 087 design patent, and the 889 design patent, also have this kind of simplified design that makes the technology easier for consumers to understand and increases the ease of use; true?

* * * * *

A. Yes, that's true.

-154:9-16

D'677 and D'087 are Primarily Functional, Not Ornamental

- Design is primarily functional because “everything defers to display” – which is the primary function of a smartphone
- Design is primarily functional because lack of ornamentation makes product easier for consumers to use.
- Design is not primarily ornamental because Apple has “taken design out of the way”

Functional and Obvious Design for Smartphone Recognized Before iPhone Announced

2004

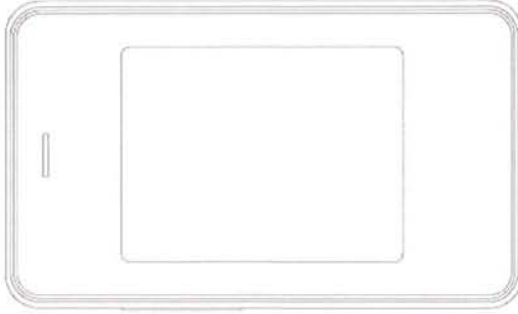
Nokia design
competition



NOKIA

7/06

KR 30-418547
patent published



9/4/06

JP1280315
patent issued



TOSHIBA

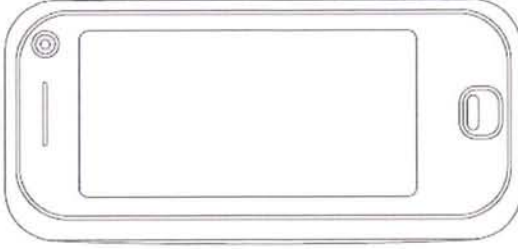
12/06

LG Prada
announced



12/06

KR 30-2006-0050769
patent filed



1/9/07

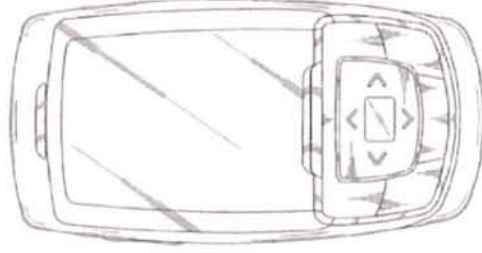
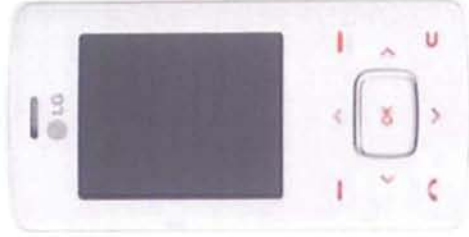
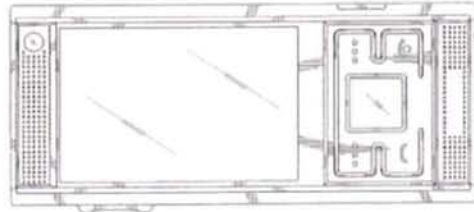
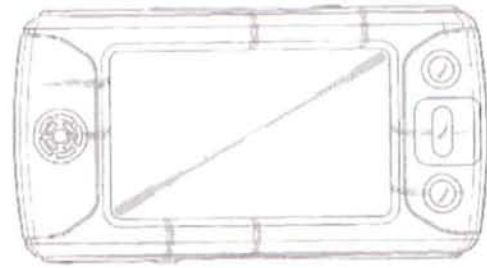
iPhone
announced



Apple's "Alternatives" Do Not Rebut Functionality

Apple's Reply Brief 3-4:

"To rebut Samsung's claim that the elements are 'functional,' Apple submits numerous examples of alternative designs that perform each of the functions highlighted by Samsung,.... These examples establish that no element of the Apple designs is dictated by function."

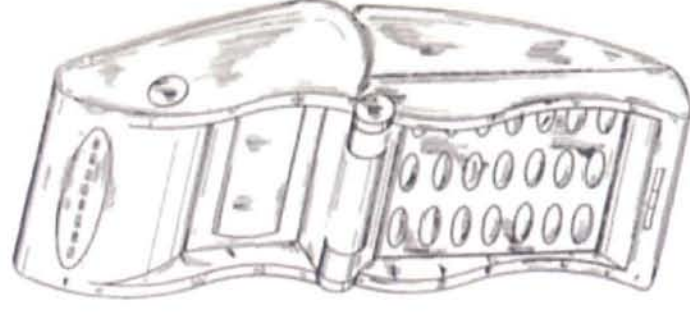


Apple's "Alternatives" Do Not Rebut Functionality

- The existence of alternative designs does not establish that a design is ornamental:
 - *Richardson* rejects the same argument that Apple makes: Namely, that a "design element is purely functional only when the function encompassed by that element cannot be performed by any other design."

-*Richardson v. Stanley Works*, 597 F.3d 1288, 1293
(*Fed. Cir.* 2010).

- In *Cordia v. Nokia*, 347 Fed. Appx. 568 (Fed. Cir. 2009), the court held that the "folding design" of a cell phone was functional despite the fact that a cell phone need not be foldable to function.



Apple's "Alternatives" Do Not Rebut Functionality

“Functionality having been established, ... [t]here is no need... to engage... in speculation about other design possibilities.”

—*TrafFix Devices v. Mktg. Devices, Inc.*, 532 U.S. 23, 33-35 (2001) (trade dress case).

Apple's "Alternatives" are Not Equally Functional

Functionality considerations include:

- Whether the protected design represents the best design;
- Whether alternative designs would adversely affect the utility of the specified article;
- Whether there are any concomitant utility patents;
- Whether the advertising touts particular features of the design as having specific utility; and
- Whether there are any elements in the design or an overall appearance clearly not dictated by function.

—*PHG Technologies LLC v. St. Johns Companies, Inc.*, 496 F.3d 1361, 1366 (Fed. Cir. 2006).

Apple's "Alternatives" are Not Equally Functional

- If “alternative designs would adversely affect the utility of the specified article, ... they are not truly ‘alternatives’ within the meaning of our case law.”

- *PHG Technologies LLC v. St. Johns Companies, Inc.*, 496 F.3d 1361, 1367 (Fed. Cir. 2006).

No Infringement of D'677 and D'087

Samsung's phones do not infringe non-functional aspects of D'677 or D'087 designs, taking into account prior art.

Design Patent Infringement Standard

Ordinary Observer

Whether “in the eye of an ordinary observer, giving such attention as a purchaser usually gives, two designs are substantially the same, if the resemblance is such as to deceive such an observer, inducing him to purchase one supposing it to be the other.”

—*Gorham Mfg. Co. v. White*, 81 U.S. 511, 528 (1871).

In View of the Prior Art

The ordinary observer is “deemed to view the differences between the patented design and the accused product in the context of the prior art.”

—*Egyptian Goddess, Inc. v. Swisa, Inc.*, 543 F.3d 665, 676 (Fed. Cir. 2008) (*en banc*).

Filtering Out Functional Elements

In assessing the similarity of designs, the functional elements should be ignored or factored out.

—*Richardson v. Stanley Works*, 597 F.3d 1288, 1296 (Fed. Cir. 2010)(affirming propriety of “ignor[ing] functional elements); *Amini Innovation Corp. v. Anthony Cal., Inc.*, 439 F.3d 1372(Fed. Cir. 2006) (“The trial court is correct to factor out the functional aspects of various design elements.”).

Design Differences for Infuse 4G Are Not “Minute” or “Minor”: Rectangular Shape



Design Differences for Infuse 4G Are Not "Minute" or "Minor": Rounded Corners



Design Differences for Infuse 4G Are Not "Minute" or "Minor": Borders



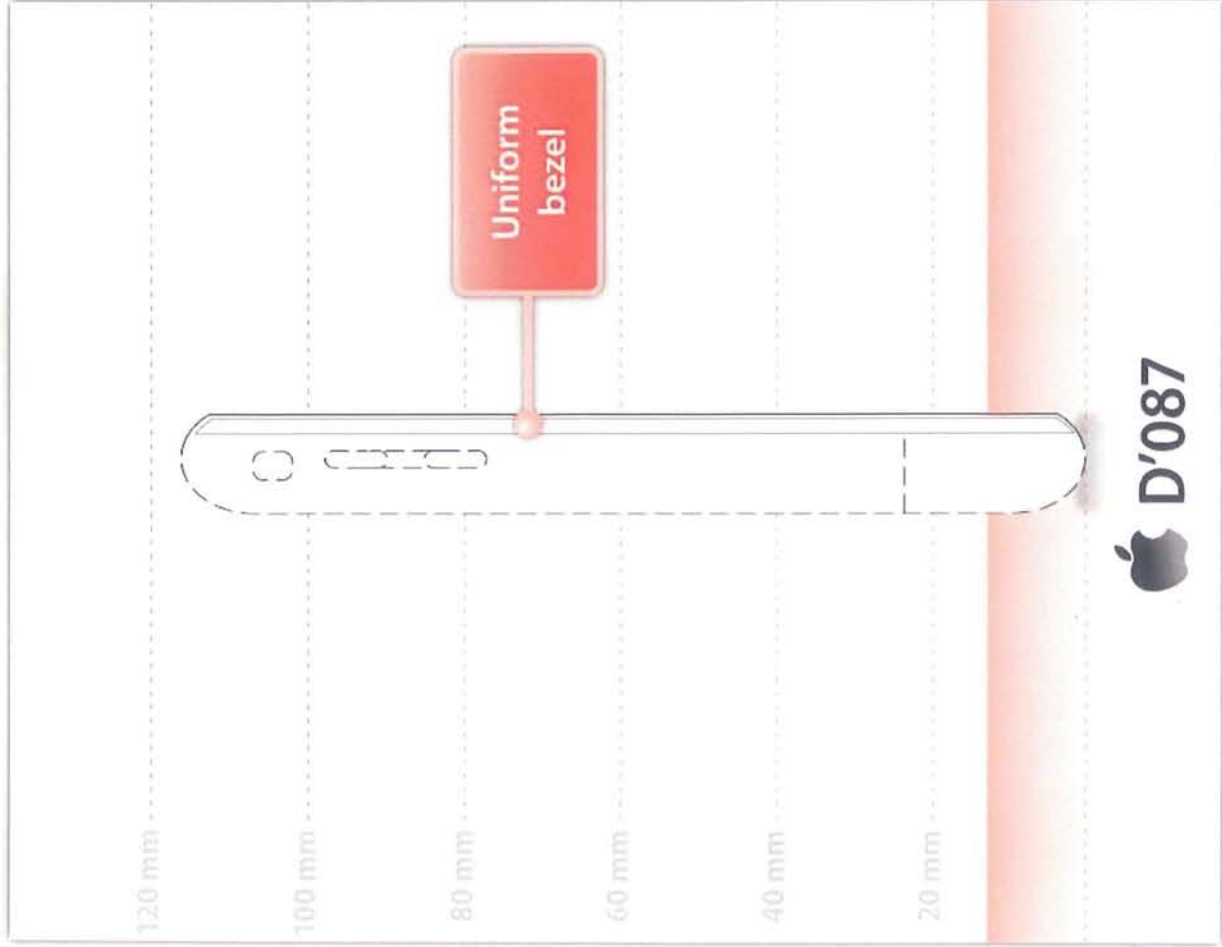
Design Differences for Infuse 4G Are Not "Minute" or "Minor": Speaker Appearance



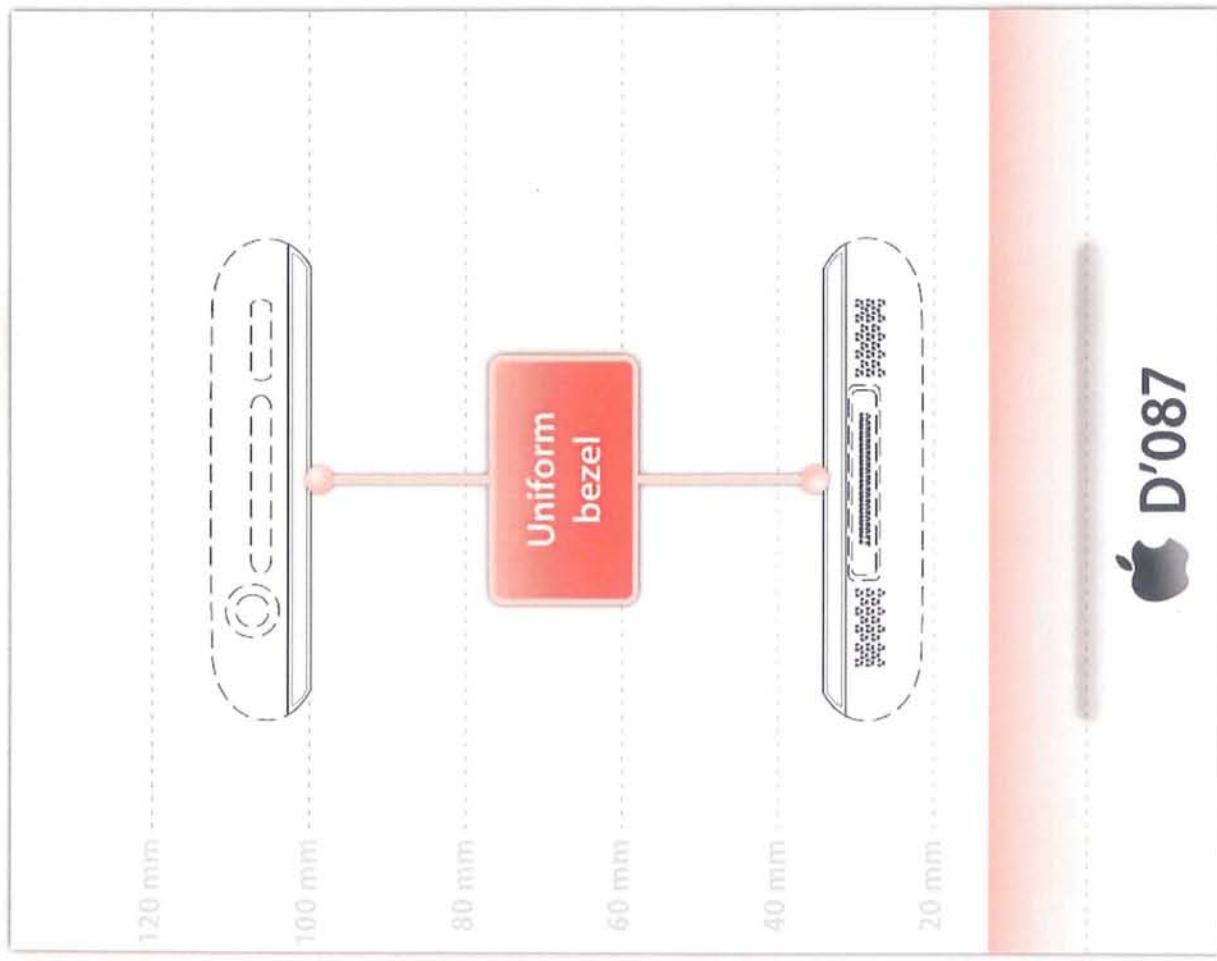
Design Differences for Infuse 4G Are Not “Minute” or “Minor”: Speaker Placement



Design Differences for Infuse 4G Are Not "Minute" or "Minor": Bezel Comparison (D'087 Only)

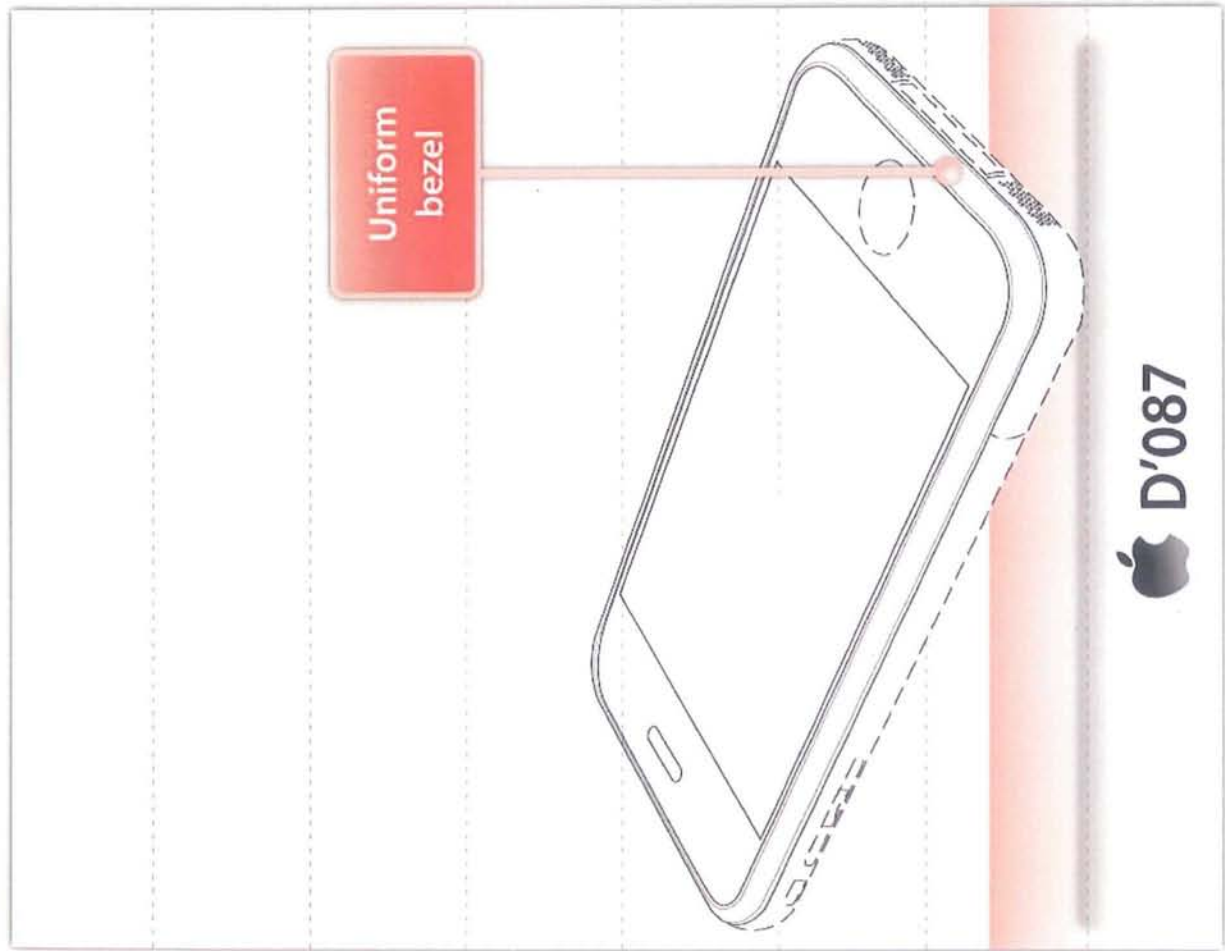


Design Differences for Infuse 4G Are Not "Minute" or "Minor": Bezel Comparison (D'087 Only)

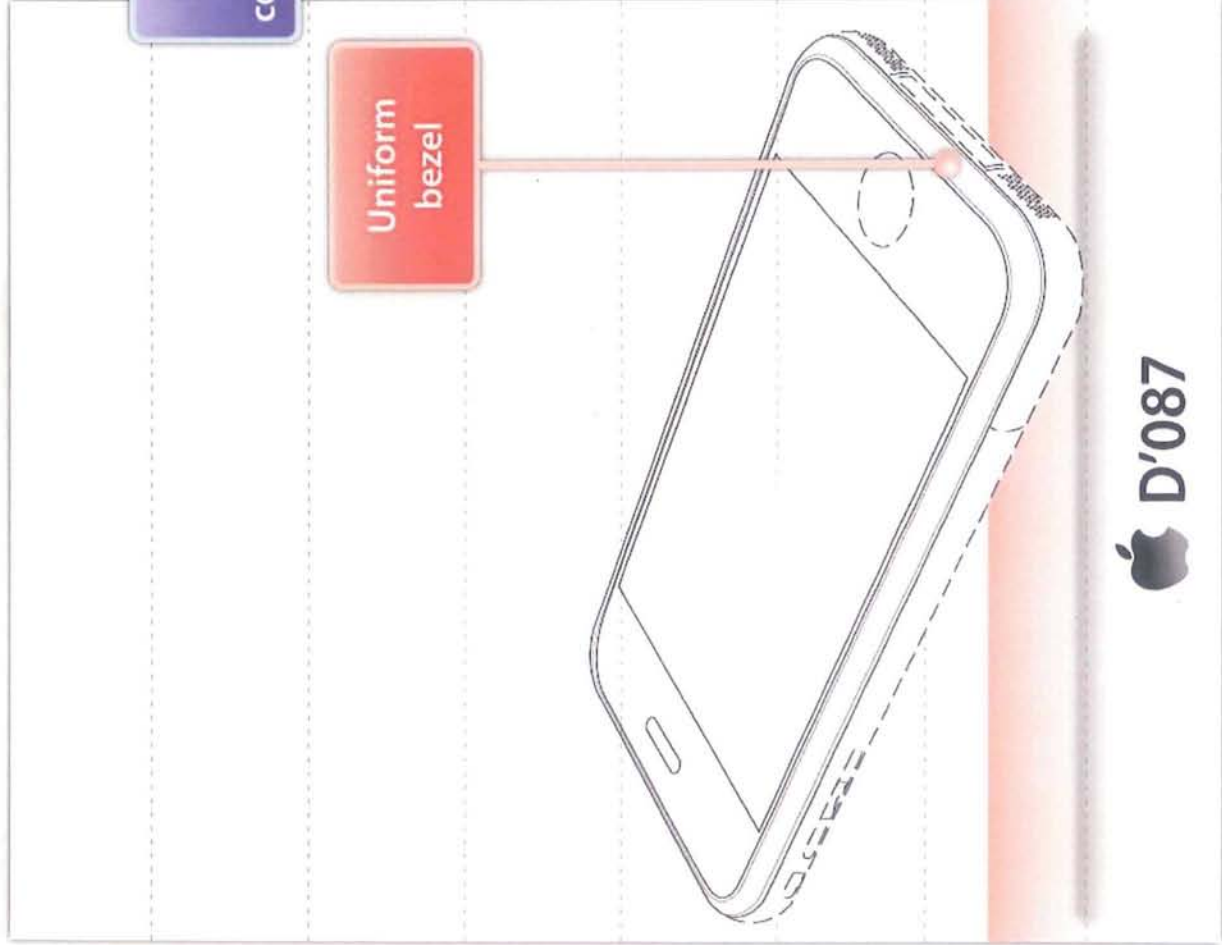


No bezel,
unified
construction

Design Differences for Infuse 4G Are Not “Minute” or “Minor”: Bezel Comparison (D’087 Only)



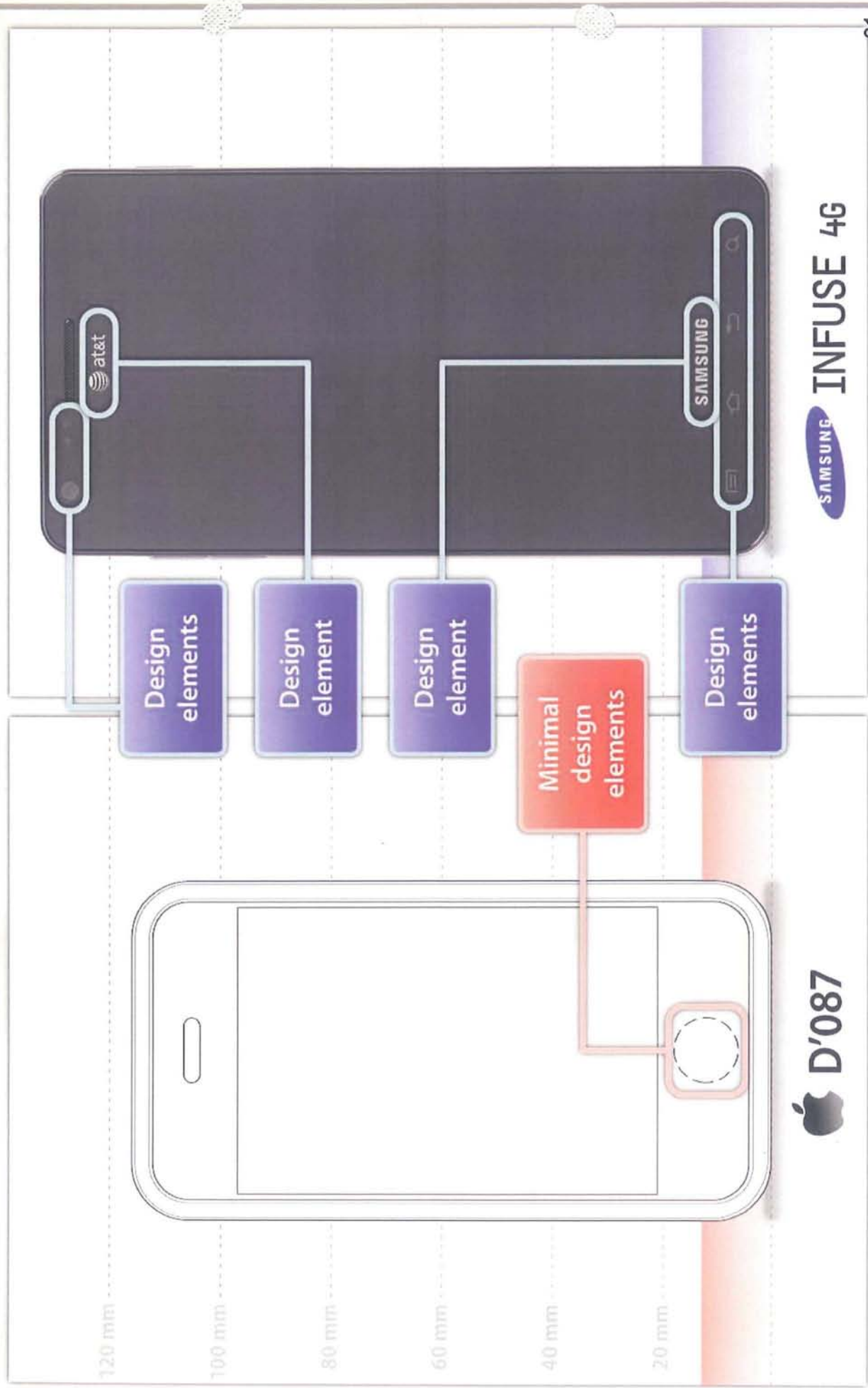
Design Differences for Infuse 4G Are Not “Minute” or “Minor”: Bezel Comparison (D’087 Only)



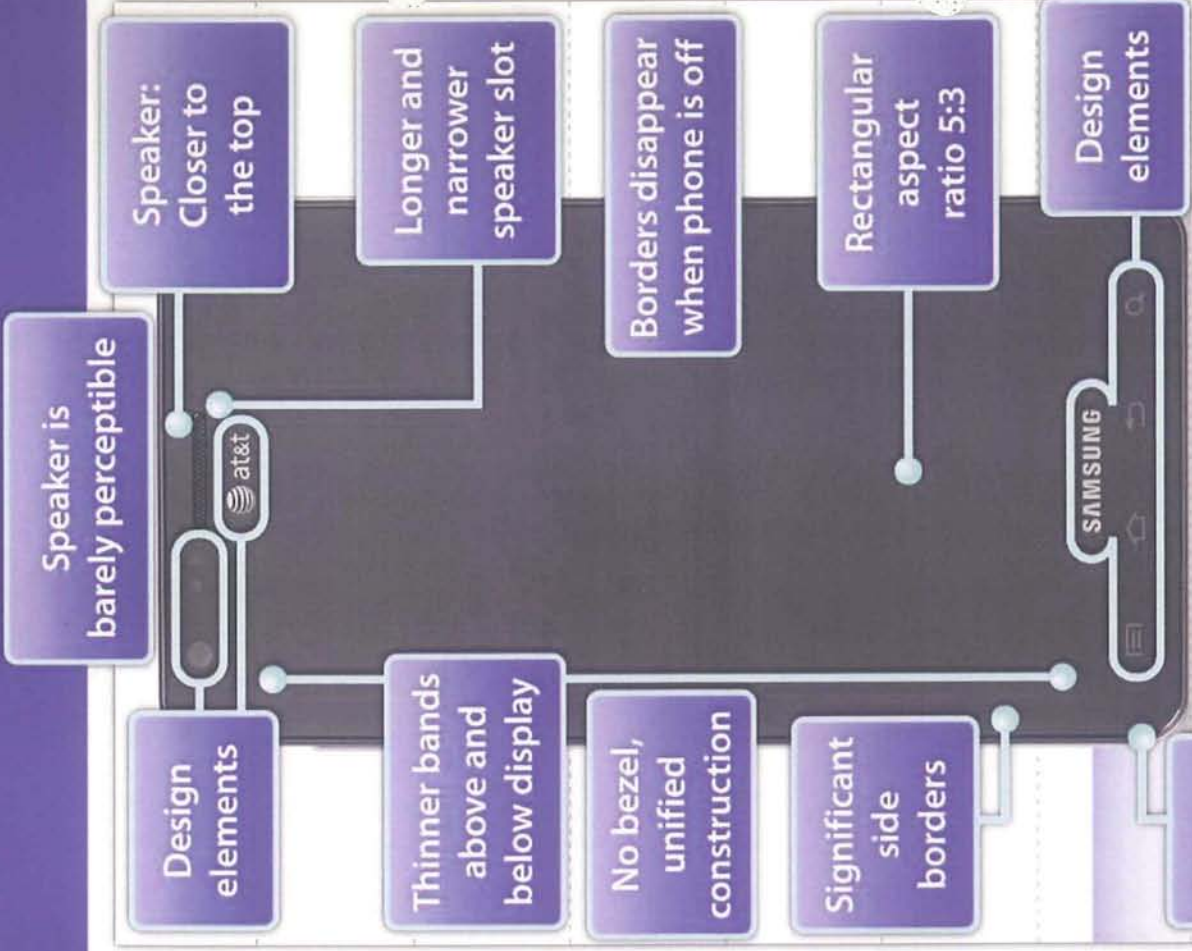
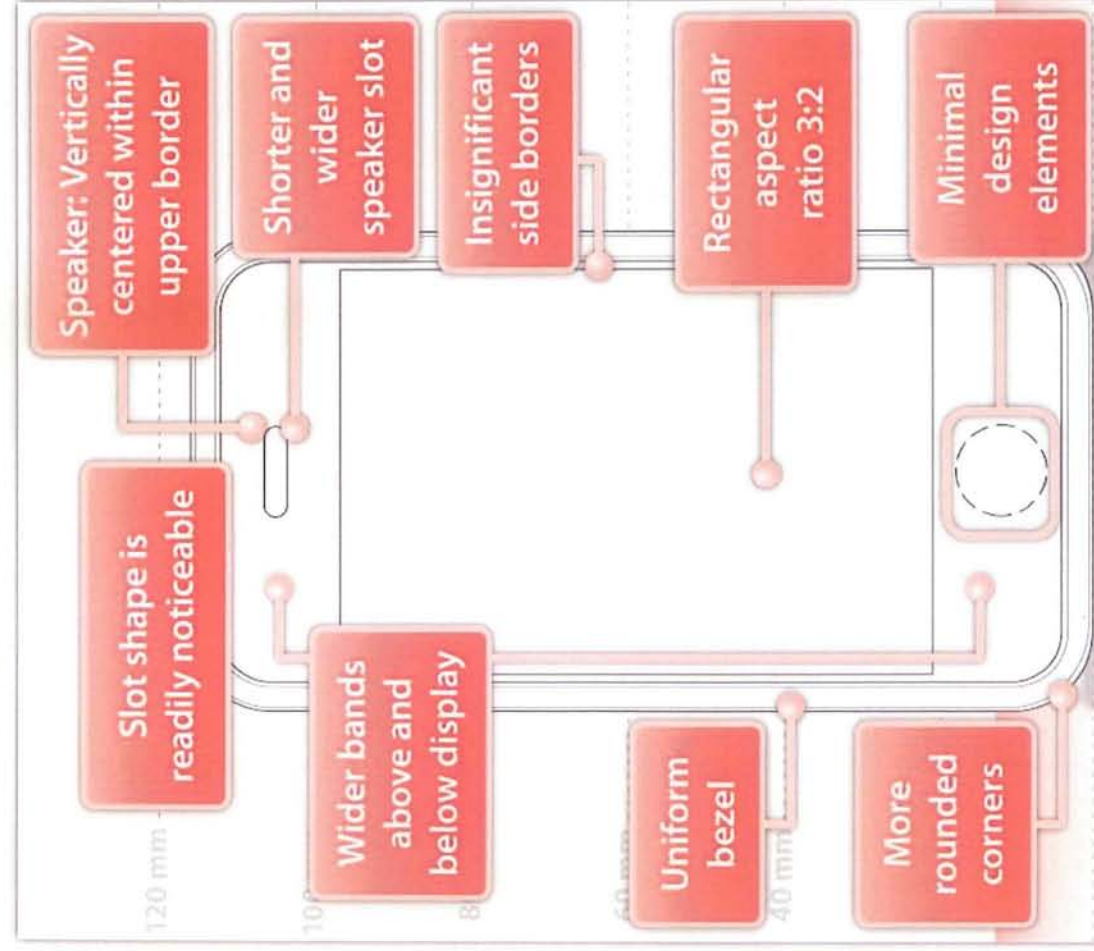
No bezel,
unified
construction



Design Differences for Infuse 4G Are Not "Minute" or "Minor": Lack of Ornamentation



Overall Design Differences for Infuse 4G Are Not "Minute" or "Minor"



Design Differences for Galaxy S 4G Are Not "Minute" or "Minor": Rectangular Shape

120 mm

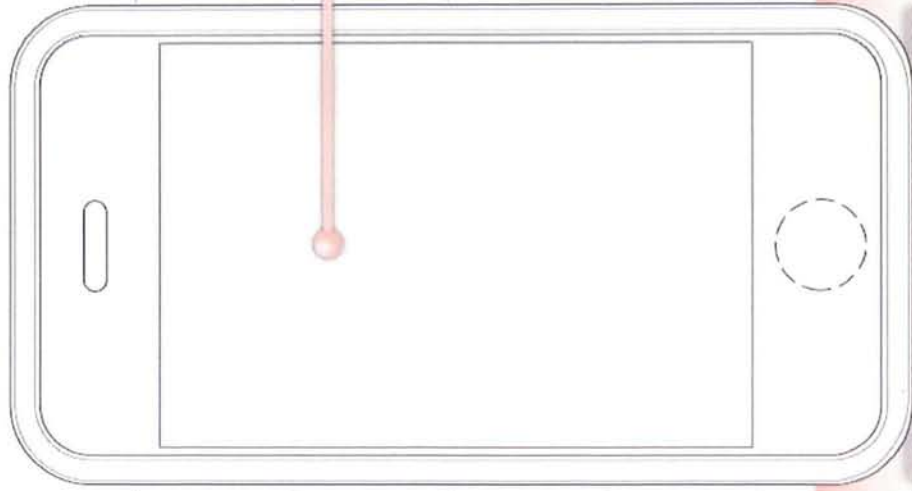
100 mm

80 mm

60 mm

40 mm

20 mm



Rectangular
aspect
ratio 3:2

Rectangular
aspect
ratio 5:3

