

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

--oOo--

APPLE, INC., a California corporation

Plaintiff,

vs.

Case No. 4:11-cv-01846-LHK

SAMSUNG ELECTRONICS CO.,
LTD., et al.

Defendants.

_____ /

DEPOSITION OF

JOE TIPTON COLE

Friday, December 16, 2011

HIGHLY CONFIDENTIAL, ATTORNEYS' EYES ONLY

REPORTED BY: COREY W. ANDERSON, CSR 4096

(2003-439831)

HIGHLY CONFIDENTIAL, ATTORNEYS' EYES ONLY
JOE TIPTON COLE - 12/16/2011

Page 41

10:14:42 1 declaration? You have this table here and it says
10:14:47 2 "Samsung's proposed construction, a small
10:14:52 3 application designed to run within another program."
10:14:55 4 Did you draft this definition of applet?
10:15:05 5 A. No.
10:15:06 6 Q. Was this definition provided to you by
10:15:07 7 counsel?
10:15:08 8 A. Yes.
10:15:29 9 Q. Okay.
10:15:32 10 Just going to mark Exhibit 2, a joint
10:15:35 11 claim construction and pre-hearing statement
10:15:37 12 pursuant to patent, Local Rule 4-3.
10:15:41 13 (Whereupon, Exhibit 2 was marked
10:15:41 14 for identification)
10:16:06 15 BY MS. WHELAN:
10:16:07 16 Q. Do you recognize Exhibit 2?
10:16:08 17 (Pause)
10:16:10 18 A. Yes. I have seen it.
10:16:17 19 Q. Okay. Now, if you look on page 3, you can
10:16:20 20 see the document's dated November 14th, 2011?
10:16:28 21 A. Yes.
10:16:30 22 Q. Did you review this document before
10:16:31 23 November 14th?
10:16:32 24 A. No.
10:16:54 25 Q. In forming the opinions presented in your

Merrill Corporation - Boston

617-542-0039

www.merrillcorp.com/law

235e378a-ad44-4758-bb79-154e4a8e6c5

HIGHLY CONFIDENTIAL, ATTORNEYS' EYES ONLY
JOE TIPTON COLE - 12/16/2011

Page 42

10:16:59 1 declaration, did you review any documents other than
10:17:03 2 the ones that you identified in the declaration?

10:17:07 3 A. For the purpose of forming the opinion,
10:17:09 4 no.

10:17:18 5 Q. Did you review any other documents other
10:17:21 6 than for the purpose of forming the opinion?

10:17:23 7 A. The -- as I said, most of the exhibits
10:17:26 8 that I included are the results of doing Internet
10:17:31 9 searches. And so I saw a lot of other material as I
10:17:37 10 went through and selected these items for support of
10:17:41 11 the argument.

10:17:44 12 But other than noting that they were there
10:17:47 13 and not suitable for one reason or another for
10:17:51 14 presentation, I didn't rely on the other material.

10:17:54 15 Q. How did you decide which of your search
10:17:57 16 results were suitable?

10:18:00 17 A. Generally speaking, by date. Much of the
10:18:04 18 material was subsequent to the -- to the patent.
10:18:09 19 And -- well, that was actually most of -- of the --
10:18:14 20 of the difference.

10:18:17 21 I think for whatever searches that I did,
10:18:22 22 the items that I selected here, I don't think I ever
10:18:24 23 had to go to the second page of the search results
10:18:26 24 in order to pick up something that was pertinent.

10:18:38 25 Q. So you didn't look beyond the second page,

Merrill Corporation - Boston

617-542-0039

www.merrillcorp.com/law

235e378a-ad44-4758-bb79-154e4a8e6c5

10:18:40 1 when you stay second page you mean --

10:18:42 2 A. The search results as they were presented.

10:18:53 3 Q. How did you conduct your search?

10:18:54 4 A. It was mostly word or phrase searches

10:18:55 5 using the Google search engine.

10:19:05 6 Q. And when did you conduct your search?

10:19:06 7 A. Near the time of the filing of the report

10:19:08 8 within for the most part I think four or five days

10:19:14 9 before the declaration was put in.

10:19:23 10 Q. So within four to five days before

10:19:26 11 November 28th?

10:19:27 12 A. Yes. Call it a week.

10:19:37 13 Q. And was your goal to identify applets that

10:19:40 14 are operating system dependent?

10:19:42 15 A. My goal was to find material that I

10:19:46 16 thought properly supported the opinion that I was

10:19:49 17 offering.

10:19:51 18 Q. So had you formed the opinion before you

10:19:54 19 conducted the search?

10:19:56 20 A. Let's put it this way. I had a good

10:19:58 21 suspicion of what the -- of what was going to show

10:20:01 22 up. But no, I -- I had to look at the material

10:20:04 23 to -- to see if what I thought was likely to be the

10:20:07 24 case was in fact true.

10:20:09 25 Q. And what did you think was likely to be

10:20:11 1 the case?

10:20:13 2 A. That selecting a definition for the term
10:20:18 3 "applet" that was absolute, that it didn't allow for
10:20:21 4 any possibility of any variants, was unlikely to
10:20:26 5 be -- unlikely to be well-founded.

10:20:34 6 Q. A definition that was absolute in what
10:20:36 7 sense?

10:20:36 8 A. Absolute in the sense that the only
10:20:38 9 possible explanation for the term was that it had to
10:20:40 10 be operating system independent.

10:20:47 11 Q. Then when you conducted your search, were
10:20:49 12 you aware in advance of specific type of applets
10:20:52 13 that you were searching for?

10:20:54 14 A. I was aware that the term was not limited
10:20:56 15 in the way that Apple had proposed, yes.

10:21:01 16 Q. So did you search broadly for "applets"
10:21:05 17 and you wound up finding the examples that you put
10:21:09 18 in your declaration?

10:21:10 19 A. Yes. I began the work just with the term
10:21:13 20 "applet" bare without any qualification whatsoever.

10:21:17 21 Q. So you didn't specifically search for
10:21:20 22 examples with Flash or Ruby or the other examples
10:21:23 23 you included?

10:21:24 24 A. Not in the first searches, no.

10:21:29 25 Q. You did do that in later searches?

HIGHLY CONFIDENTIAL, ATTORNEYS' EYES ONLY
JOE TIPTON COLE - 12/16/2011

Page 45

10:21:32 1 A. Yes.

10:21:36 2 Q. And how did you determine what examples to
10:21:40 3 search for?

10:21:42 4 A. Because of the results that I found along
10:21:44 5 the way.

10:21:49 6 Q. And in your search, did you identify any
10:21:51 7 applets that did not support your opinion?

10:21:53 8 A. Yes.

10:21:57 9 Q. What --

10:21:58 10 A. I'm sorry, I'm sorry, let me recast that.

10:22:02 11 I found applets that were operating system
10:22:05 12 independent, yes. But the existence of an operating
10:22:10 13 system independent applet doesn't contradict my
10:22:13 14 opinion.

10:22:19 15 Q. What were the operating system independent
10:22:20 16 applets that you found?

10:22:23 17 A. Almost exclusively the ones that I found
10:22:25 18 that were characterized or could reasonably be
10:22:31 19 characterized as operating -- operating system
10:22:35 20 independent were I believe almost exclusively Java
10:22:38 21 applets.

10:22:50 22 Q. So did you specifically exclude Java
10:22:52 23 applets from your search results?

10:22:54 24 A. Not initially, no.

10:22:58 25 Q. You just chose not to use those results in

Merrill Corporation - Boston

617-542-0039

www.merrillcorp.com/law

235e378a-ad44-4758-bb79-154e4a8e6c5