

Exhibit K

1 UNITED STATES INTERNATIONAL TRADE COMMISSION
2 WASHINGTON, D.C.

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In the Matter of:

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) Investigation No.

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CERTAIN ELECTRONIC DIGITAL

)

MEDIA DEVICES AND COMPONENTS

)

337-TA-796

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THEREOF

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VIDEOTAPED DEPOSITION OF TRACY-GENE DURKIN

13

Washington, D.C.

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Friday, January 6, 2012

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Reported by:

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John L. Harmonson, RPR

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Job No. 45197

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January 6, 2012
9:36 a.m.

Videotaped Deposition of TRACY-GENE DURKIN, held at the offices of Quinn, Emanuel, Urquhart & Sullivan, LLP, 1299 Pennsylvania Avenue, N.W., Washington, D.C., pursuant to Notice, before John L. Harmonson, a Registered Professional Reporter and Notary Public of the District of Columbia.

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P R O C E E D I N G S

THE VIDEOGRAPHER: This is the beginning of tape labeled No. 1 in the video deposition of Tracy Durkin, in the matter of Certain Electronic Digital Media Devices and Components Thereof, before the United States International Trade Commission, Washington, D.C., Case No. 337-TA-796.

This deposition is being held at Quinn Emanuel, 1299 Pennsylvania Avenue, Northwest, Washington, D.C., on January 6, 2012. The time is approximately 9:37.

Would counsel please introduce yourselves and state whom you represent.

MR. ZELLER: Mike Zeller for Samsung.

MS. NEILL: Anna Neill for Samsung.

MR. STERN: Peter Stern of Morrison & Foerster for Apple and the witness.

MR. EVENS: Mark Evens for the witness and for Sterne, Kessler, Goldstein & Fox.

THE VIDEOGRAPHER: The court reporter is John Harmonson and the video camera operator is Conway Barker, both in

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2 MR. STERN: Ms. Durkin, in answering

3 that question, I caution you not to disclose

4 any information obtained from Apple with

5 regard to the device that's the subject of

6 the photographs.

7 A. No.

8 **Q. Is it your understanding that these**

9 **images that we're talking about here that we**

10 **marked as Exhibit 12 were part of what Apple**

11 **publicly submitted to the Patent Office back in**

12 **about the 2004 time period in connection with the**

13 **prosecution of the '889 design patent**

14 **application?**

15 A. I would have to see the file wrapper.

16 I don't recall.

17 MR. ZELLER: Let's please mark as

18 Exhibit 13 a copy of the file wrapper for

19 United States Patent 504,889.

20 (Exhibit 13 marked for identification

21 and attached hereto.)

22 **Q. And if you take a look at the pages**

23 **ending 10208 through 10223, such as they are.**

24 **And I'll represent to you this is the way it was**

25 **produced to us.**

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2 **Is it generally your understanding**

3 **that the images we marked as Exhibit 12 are the**

4 **images that were these pages I just indicated in**

5 **the 50 -- excuse me, in the '889 design patent**

6 **file wrapper?**

7 A. Some of the pages are just blank white

8 so it's hard for me to say. But there's some

9 similarity between them, what I see here and what

10 I saw in Exhibit 12.

11 **Q. And when you saw the images that are**

12 **marked here as Exhibit 12, did you see it in the**

13 **context of the overall '889 design patent file**

14 **wrapper?**

15 MR. STERN: Objection; vague.

16 **Q. In other words, did you see it in the**

17 **context of these other pages that we've marked**

18 **here as Exhibit 13?**

19 A. When I saw this the first time, is

20 that what you're asking me?

21 **Q. Yes.**

22 A. Did I see it in the context of a file

23 wrapper? I don't recall. I know they were in

24 the file. I don't recall whether they were a

25 submission and how they were submitted. I just

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2 don't recall.

3 **Q. And that's just something you don't**

4 **know one way or another?**

5 A. Not today, no.

6 **Q. Are you familiar with a person named**

7 **Ted Mayle?**

8 A. I am.

9 **Q. He's someone who used to work at**

10 **Sterne Kessler?**

11 A. Correct.

12 **Q. Do you know where he is today?**

13 A. I don't.

14 **Q. Have you had any contact with him**

15 **since he left?**

16 A. I have not.

17 **Q. Do you remember about when he left?**

18 A. I couldn't say.

19 **Q. During the time or at the time that**

20 **there was the transition of responsibility for**

21 **certain design patents from Beyer Weaver to**

22 **Sterne Kessler, were there physical or electronic**

23 **materials that were transferred in any way from**

24 **Beyer Weaver to Sterne Kessler?**

25 A. Yes.

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2 **Q. And were some of those materials in**

3 **hard copy form?**

4 A. Yes.

5 **Q. Were some of those materials in**

6 **electronic form?**

7 A. Yes.

8 **Q. Was there a CD or more than one CD of**

9 **electronic documents that was transferred?**

10 A. Yes.

11 **Q. Did you ever see that CD or CDs?**

12 A. Yes.

13 **Q. Can you tell me, was it one or more**

14 **than one?**

15 A. More than one.

16 **Q. And did you yourself actually load**

17 **those CDs and review them in any way?**

18 A. I have not.

19 **Q. Does Sterne Kessler still have the**

20 **CDs?**

21 A. Yes.

22 **Q. And in whose possession there at**

23 **Sterne Kessler are those CDs?**

24 A. They are in mine.

25 **Q. And when was the last time you looked**

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2 at them?

3 A. Yesterday.

4 Q. Was that in connection with your

5 preparation to testify today?

6 A. Correct.

7 Q. And please tell me, how are the CDs

8 generally arranged in terms of their information?

9 A. I don't know.

10 Q. When you went and looked at them, did

11 they have file folders that you saw?

12 MR. STERN: Counsel, you're talking

13 about looking at the contents or looking at

14 the exterior objects themselves?

15 MR. ZELLER: No, I'm talking about

16 looking at the information on the CD.

17 A. I told you I've never done that.

18 Q. I'm sorry, maybe I'm very confused,

19 because when I asked if you reviewed them, you

20 said yesterday. So let me try again, because I

21 do know you did say you had not loaded them, so I

22 thought maybe someone else had done it. So let

23 me try again.

24 Have you ever reviewed the contents of

25 any of those CDs?

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2 A. Not personally.

3 Q. Do you have any knowledge or

4 information as to what is on those CDs?

5 A. Yes.

6 Q. And how do you know what's on the CDs?

7 A. Based on information that others have

8 provided to me.

9 Q. Have you ever seen a printout or seen

10 on any computer screen whether or not there is

11 some kind of directory or file folder structure?

12 A. No.

13 Q. Have you ever seen -- Whether you

14 loaded it yourself or not, have you ever seen any

15 hard copy printouts or any displays on any screen

16 of the content of the CDs?

17 A. No.

18 Q. And so please explain to me, what were

19 you doing yesterday about the CDs to assist you

20 in testifying here today?

21 A. Nothing. I just happened to see them.

22 Q. And where did you see them?

23 A. On my desk.

24 Q. Are there any documents or files or

25 any information on these CDs that relate to the

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2 '889 design patent or its application?

3 A. I don't know.

4 Q. Do you know if there are any images of

5 the item that we marked here as Exhibit 12 on

6 there?

7 A. There are not.

8 Q. And how do you know that?

9 A. Because I have inquired about that,

10 and the answer I was given was no.

11 Q. Are there photographs of any kind on

12 there?

13 A. I don't believe so.

14 Q. Do you know where any copies or images

15 or photographs of the -- of the device or mock-up

16 or tangible we'll call it here in Exhibit 12 are?

17 A. I have no idea.

18 Q. Do you know what other design patents,

19 setting aside the '889 design patent, the CDs

20 have information about?

21 A. Yes.

22 Q. What else?

23 A. Applications that were filed in the

24 first instance by Beyer Weaver.

25 Q. And are these -- When you say

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2 "applications," are these the -- the applications

3 themselves are on the CDs?

4 A. No.

5 Q. What kinds of materials are you aware

6 of being on the CD as it relates to Apple design

7 patent work?

8 A. Drawings.

9 Q. Are there other categories of

10 documents or information that you know are on

11 there?

12 A. No.

13 Q. I think you said you didn't know

14 whether or not any of that information related to

15 the '889 design patent or its application.

16 A. I don't know.

17 Q. Do you know if any of the files on

18 that CD relate to the '678 design patent?

19 A. No.

20 Q. Or the '757 design patent?

21 A. Was your question do I know?

22 Q. Right.

23 A. Can you repeat the question?

24 Q. I'll repeat it.

25 Do you know if any of the files on the

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2 **Q. Do you know if there was anything that**
3 **was different about the '387 design patent as**
4 **compared to the prior art?**

5 MR. STERN: That question as phrased
6 invades the privilege and work product
7 protection, and I instruct the witness not
8 to answer the question.

9 **Q. Did Apple represent to the Patent**
10 **Office, including through Sterne Kessler, at any**
11 **time that this design that's shown here in the**
12 **'387 design patent was different from the prior**
13 **art?**

14 MR. STERN: Same instruction.

15 **Q. Did Sterne Kessler have any oral**
16 **communications with the Patent Office about the**
17 **'387 design patent?**

18 MR. STERN: Objection; outside the
19 scope of the subpoena.

20 A. I don't recall.

21 **Q. Did Sterne Kessler have any written**
22 **e-mail communications with the Patent Office**
23 **about the '387 design patent?**

24 MR. STERN: Same objection.

25 A. I don't recall.

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2 MR. ZELLER: We need to change tapes.

3 MR. STERN: Counsel, I think we're
4 concluded. Let's stay on the record.

5 We've already gone about 20 minutes
6 beyond when this witness said that she had
7 reached the limit of being able to give her
8 best testimony. We both have our positions
9 on the time term of the deposition, but for
10 today, we're concluded.

11 MR. ZELLER: And I've certainly said
12 that I don't intend to hold her beyond what
13 she can reasonably testify to, and if she's
14 not giving her best testimony, again, it's
15 obviously without waiving my position about
16 what still needs to be done. But if we're
17 at that point, just let us know.

18 THE WITNESS: I think we are.

19 MR. ZELLER: All right. So we'll
20 adjourn for now.

21 THE VIDEOGRAPHER: This deposition --
22 The deposition of Ms. Durkin is adjourned
23 for the day. Off the record at 6 --

24 MR. STERN: Before we go off the
25 record, I would just like to be clear that

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1 * T.G. DURKIN - HIGHLY CONFIDENTIAL *
2 our position is that the deposition is
3 concluded.

4 THE VIDEOGRAPHER: Off the record at
5 6 --

6 MR. ZELLER: So is Apple now saying
7 that all the witnesses it's now had
8 multi-day depositions with was
9 inappropriate?

10 THE VIDEOGRAPHER: Can I go off the
11 record now?

12 MR. STERN: Yes.

13 THE VIDEOGRAPHER: Off the record at
14 6:19 and it consists of six tapes.

15 (Time noted: 6:19 p.m.)

16
17
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19
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21 _____
22 TRACY-GENE DURKIN

23 Subscribed and sworn to before me this ____ day
24 of _____, 2012.

25 _____
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1 * T.G. DURKIN - HIGHLY CONFIDENTIAL *
2 C E R T I F I C A T E

3
4 DISTRICT OF COLUMBIA

5
6 I, JOHN L. HARMONSON, a Notary Public
7 within and for the District of Columbia, do
8 hereby certify:

9 That TRACY-GENE DURKIN, the witness
10 whose deposition is hereinbefore set forth,
11 was duly sworn by me and that such
12 deposition is a true record of the testimony
13 given by such witness.

14 I further certify that I am not related
15 to any of the parties to this action by
16 blood or marriage; and that I am in no way
17 interested in the outcome of this matter.

18 IN WITNESS WHEREOF, I have hereunto set
19 my hand this 6th day of January, 2012.

20
21 _____
22 JOHN L. HARMONSON, RPR
23 My commission expires: 11/14/15

24
25 _____
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