EXHIBIT 23

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

APPLE INC., a California corporation,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD., A Korean business entity; SAMSUNG ELECTRONICS AMERICA, INC., a New York corporation; SAMSUNG TELECOMMUNICATIONS AMERICA, LLC, a Delaware limited liability company,

Defendants.

Case No. 11-cv-01846-LHK

EXPERT REPORT OF SUSAN KARE

****CONFIDENTIAL – CONTAINS MATERIAL DESIGNATED AS HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY PURSUANT TO A PROTECTIVE ORDER****

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EXPERT REPORT OF SUSAN KARE

I. INTRODUCTION

1. I, Susan Kare, submit this Expert Report in connection with certain patent, trade dress, and trademark claims being asserted by Apple Inc. ("Apple") in the above-captioned case. I have been informed that Apple has alleged that Defendants Samsung Electronics Co. Ltd., Samsung Electronics America, Inc., and Samsung Telecommunications America, LLC (collectively, "Samsung") have infringed Apple's patents, trade dress, and trademarks.

II. QUALIFICATIONS

2. I am currently an icon designer and user interface graphic designer for my design studio, Susan Kare Design, which provides icon, user interface graphics, branding and corporate identity design services.

3. I received a Bachelor of Arts degree in fine arts and English from Mount Holyoke College in 1975. I graduated Summa Cum Laude and was elected to membership in the Phi Beta Kappa Society.

4. After receiving my Bachelor of Arts degree, I studied graphic design as part of my fine arts curriculum in graduate school at New York University, and I received my Master of Arts degree in 1976. I was granted a Ph.D. in fine arts in 1978 from New York University. My liberal arts background and my experience doing Ph.D.-level research contribute to my ability to develop logical concepts for the groups of icons and other images that I have designed since then.

5. After receiving my Masters and Ph.D. degrees, I received a Rockefeller Fellowship to work at the Fine Arts Museums of San Francisco.

6. Overall, I have over 28 years of experience in the field of icon design and user interface graphic design. (A copy of my curriculum vitae is attached as Exhibit 1.) From 1982

through 1985, I worked for Apple Computer, Inc., first as a graphic artist in the Macintosh software group, and then as a creative director. While at Apple, I created many of the graphical elements of the original Macintosh computer's user interface, including many of its icons and typefaces. From 1986 through 1988, I was the creative director at NeXT, Inc., where I managed the development of that company's graphic identity and other marketing materials.

7. Since leaving NeXT in 1988, I have worked as an independent user interface graphic designer. My work in that capacity has included designing the screen appearance for Microsoft Windows 3.0, including numerous icons and other graphic elements such as buttons and scroll bars. Subsequently I designed icons for a variety of clients, including images for over 100 functions in AutoDesk's AutoCAD and a symbol set for IBM's OS/2 operating system. In the early 90s, I was an employee at General Magic, which developed a handheld communicator, and I provided the graphics for the device's highly visual user interface. I co-founded Glam Media in 2003 and worked as its creative director, along with providing website graphics and design for its fashion-oriented site, through 2008. Glam Media continues to focus on premium digital brand advertising with its family of sites and network of small and midsize online publishers. I am no longer an employee of Glam Media, but I am occasionally consulted as an informal advisor.

8. Since I started working on icon design at Apple Computer in 1982, I have designed thousands of icons for hundreds of clients, including Fortune 500 companies as well as startup companies. I have created icons for a broad range of software programs and products, such as AutoCad (Autodesk), Studio 8 (Electronic Arts), watches (Swatch and Fossil), and over 500 virtual gifts for Facebook.

9. I have also worked as a digital font designer, starting in 1983. I designed most of the bitmap fonts that shipped with the original Macintosh in 1984, including Chicago, New York,

Geneva, Monaco, and Cairo. Subsequently, I designed other bitmap fonts for clients including Fossil and Danger Research, and a number that were sold online by Atomic Media. My experience in font design includes fonts for user interfaces that require a combination of graphic elements and type.

10. In 2001, I was one of six individuals to receive the Chrysler Design Award, which celebrates "the achievements of individuals who have consistently championed seminal works of architecture and design, and significantly influenced modern American culture."

11. In 2003, I was appointed by Secretary of the Treasury John W. Snow to the Citizens Coinage Advisory Committee ("CCAC"). I was recommended to the Secretary by House Minority Leader Nancy Pelosi, in accordance with Public Law 108-15, to fill one of four CCAC positions recommended by Congressional leadership.

12. My expertise in icon design and user interface graphics is the result of various skills that I have developed and practiced over the years. For example, effective icon design requires me to understand the characteristics of the user and the purpose of the icons within a particular user interface. Effective icon design depends on successful visual communication, so that a user understands and remembers the intended association between an icon's image and its meaning. Icons can be used to represent a variety of user interface elements: applications, tools, files, settings, etc. Also, because icons are part of a graphical interface, icon design requires fundamental graphic design skills and an understanding of onscreen presentation and arrangement, which provide the context within which icons exist, and the ability to make aesthetic judgments. Finally, it is also necessary to know how to present type and symbols so that the user can take in information at a glance.

13. I have spent most of my career as a designer developing and evaluating user interface graphics for average users. Through my practical experience, I have gained an

understanding of how icons and user interface graphics are interpreted by average users. This understanding enhances my ability to identify graphic elements that are meaningful and memorable for the average user.

14. I have not testified as an expert or been retained as an expert in any previous lawsuit.

15. I have been retained by Apple in this matter and have been asked to provide my opinions with respect to the visual appearance of the designs depicted in U.S. Design Patent No. 627,790 (the "D'790 patent"), U.S. Design Patent No. D604,305 (the "D'305 patent"), and U.S. Design Patent No. D617,334 (the "D'334 patent") (collectively, the "Design Patents"), as well as the visual appearance of the user interface graphics of the iPhone[1], iPhone 3G, iPhone 3GS, and iPhone 4 (collectively, the "iPhone Devices").

16. I have been asked to provide my opinion with respect to the availability of designs for user interface graphics that constitute alternatives to the designs depicted in the Design Patents and the designs utilized in the iPhone Devices.

17. I have been asked to provide my opinion with respect to the visual appearance of the designs depicted in the Design Patents compared with the visual appearance of the applications screens of the following Samsung phones: Captivate, Continuum, Droid Charge, Epic 4G, Fascinate, Galaxy S 4G, Galaxy S i9000, Gem, Indulge, Infuse 4G, Mesmerize, Galaxy S Showcase (i500), and Vibrant (collectively, the "Samsung Phones"). I have also been asked to provide my opinion with respect to the visual appearance of the user interface graphics of the iPhone Devices compared to the visual appearance of the "applications screens" of the Samsung Phones.

18. I have been asked to provide my opinion with respect to the design of icons

[1] The term "iPhone," as used in this report, refers only to the original iPhone, not to the line of iPhone variants generally.

appearing on the Samsung Phones compared with the design of icons appearing in the Design Patents, the iPhone Devices, U.S. Trademark Reg. No. 3,886,196, U.S. Trademark Reg. No. 3,886,200, U.S. Trademark Reg. No. 3,886,197, U.S. Trademark Reg. No. 2,935,038, and U.S. Trademark Application Serial No. 85/041,463.

19. I expect to testify at trial concerning these opinions as well as my bases for them, such as my knowledge, experience, and expertise concerning the creative process of icon design. I also expect to rebut any opinions I disagree with that are provided by Samsung's expert(s) with respect to the subject matter of this report.

20. I am being compensated for my work in connection with this matter at a rate of $550 per hour. I am being separately reimbursed for all out-of-pocket expenses. No part of my compensation is dependent upon the outcome of this litigation or the opinions that I express.

III. MATERIALS CONSIDERED

21. In forming the opinions set forth in this report, I considered and relied upon my education, background, and experience. I also have reviewed the Design Patents, U.S. Trademark Reg. No. 3,886,196, U.S. Trademark Reg. No. 3,886,200, U.S. Trademark Reg. No. 3,886,197, U.S. Trademark Reg. No. 2,935,038, and U.S. Trademark Application Serial No. 85/041,463, as well as the other documents or reference materials cited or listed in this report. In addition, I have evaluated photographs and physical samples of the Samsung Phones and the iPhone Devices.

22. In forming my opinions, I have also reviewed and considered the materials listed in Exhibit 2 of this report.

23. I reserve the right to rely upon any additional information or materials that may be provided to me or that are relied upon by any of Samsung's experts or witnesses, if called to testify or to give additional opinions regarding this matter.

24. I have been informed that expert discovery in this lawsuit is still ongoing, and I

will consider additional facts and material produced through discovery to determine whether such additional material has an impact on my opinions. I may amend or supplement this report as necessary based on such additional information.

IV. FUNDAMENTALS OF ICON DESIGN

25. The icon design process is one of creative problem-solving and involves conceptual and visual components. It often involves the marriage of metaphor and aesthetics.

26. An icon is a visual representation that creates a shortcut for a user in a device interface. A group of icons can represent a set of ideas with images that are differentiated from each other so they can be recognized at a glance.

27. Sometimes an icon is a graphical illustration of a user interface element that functions as something in particular (e.g., a clock). Icons may instead be designed as symbols, either because they represent abstract concepts or verbs (e.g., "copy" or "undo") or portray a generic concrete noun (e.g., document).

28. The first step in icon design is to identify the concept (e.g., a specific category or function) for which an icon is required and consider what visual metaphors might be used to represent that concept or to make it easy to remember. This is the "design problem" that the designer must solve: How can a particular concept or function be represented by an image? Sometimes, the design problem might extend to developing a set of related icons.

29. Icon design may also need to take into account any marketing or design considerations typically found in a creative brief. These considerations might include the nature of the product itself; the target audience; the desired appearance for the user interface graphics; and the competitive landscape (e.g., the goal of being differentiated from competitors in some way). All of these factors can influence the development of an icon beyond the need for the clear and memorable communication of an idea.

30. Because icon design is not an exact science, there is always a great range of visual alternatives for an icon image even when a designer opts for a conventional approach, such as using images associated with traditional postal service mail (e.g., an envelope, stamp, or mail slot) to represent an electronic mail application. An icon of an envelope, for example, still requires many aesthetic choices—including those involving color, style, viewpoint, rendering techniques, etc.—as it is designed. The envelope icon could be a photograph, an illustration, or a simple diagram; either side of the envelope can be shown; details such as a stamp and/or print can be indicated; and the envelope can be rotated or shown in perspective. An icon can also appear to be a flat, two-dimensional image or have the appearance of a three-dimensional image with depth. Beyond the appearance of an individual icon, the designer also takes into consideration how the image will appear along with other icons and graphic elements on a screen.

31. Various factors influence the development of an icon's final visual appearance. Aesthetics are a prime consideration, but issues mandated by a mobile phone environment might include limited screen real estate, touch screen "hit" area space requirements, the relationship of the industrial design to the user interface, and creative issues or goals provided by a client's marketing organization. Moreover, the designer must be aware of any technical requirements or constraints, such as pixel dimensions, bit depth, specific color palette, or touch screen issues. An additional consideration might be optimizing for a user's perception of ease of use, which may affect the desired number and density of icons within a space.

32. Various alternative design approaches are available for the overall layout of a group of icons, such as presenting icon images as "badges" or "buttons" with a uniform background shape (e.g., a circle or rounded rectangle); presenting icons with border shapes that are irregular regions (different border shapes than a single, fixed border shape); or presenting icons within a visible grid or other delineated framework. Color palette might be determined by

branding considerations or used to indicate categories of applications or features. Overall visual style (e.g., a two-dimensional or three-dimensional look, hand drawn effect, primary colors, etc.) might be driven by marketing issues such as target audience or price point. Icon design is typically an iterative process, with design alternatives presented and a final icon set chosen in tandem with a client decision maker.

V. OPINIONS REGARDING SIMILARITIES BETWEEN APPLE AND SAMSUNG ICONS AND USER INTERFACE GRAPHICS

A. Characteristics of Apple Icons and User Interface Graphics

1. The Design Patents

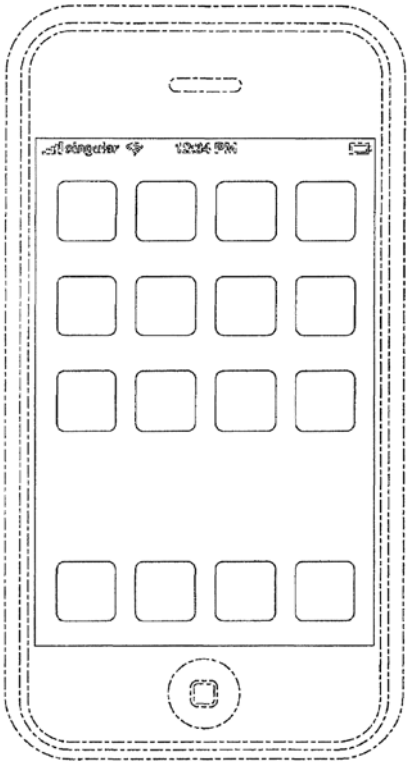


Figure 1
D'790 Patent

33. The D'790 depicts an overall appearance for the layout and shape of icons in a graphical user interface for a display screen. (*See* Figure 1, above.) A 4 x 3 array (4 columns, 3

rows) of rounded rectangular[2] shapes, which appear to be squares with rounded corners, is shown in the top portion of a display screen.[3] (APLNDC00032009-012.) A separate row of rounded rectangular shapes is shown along the bottom of the display screen. In both the 4 x 3 array and the row along the bottom of the display screen, the shapes are evenly spaced horizontally. Within the 4 x 3 array, the shapes are evenly spaced vertically, with slightly more space vertically than horizontally. The width:height ratio of the display screen is approximately 1:1.5.

34. In the D'305 patent, icons are displayed on a display screen. (APLNDC00030421-425.) The width:height ratio of the display screen is approximately 1:1.5. There is a 4 x 3 array (4 columns, 3 rows) on a black background, with an additional row of icons in a gray gradient area at the bottom of the screen. (*See* Figure 2, below.) Approximately the top 80% appears as a solid black background containing the 4 x 3 array. Against the black background, the 12 icons in the top portion provide a bright contrast and appear virtually illuminated against the black. The lower approximately 20% of the screen has a gray gradient-patterned background containing the additional row of icons—the main effect being that the top part and lower part of the screen appear as separate, bounded areas, setting off the icons in the lower part as a separate group. The icons in the D'305 patent have the shape of squares with rounded corners. Under each icon there is gray text that describes the application represented by the icon. There is a band across the top of the screen displaying information: signal strength, carrier name, time, and battery charge status.

[2] I use the term "rounded rectangle," the name of the shape drawn by a tool in Adobe Photoshop and Adobe Illustrator, to refer to the shapes appearing in the D'790 patent as well as the shape of icons in the D'305 patent, the D'334 patent, the iPhone Devices, and the Samsung Phones. Because the icons appear to have equal height and width dimensions, I also refer to their shape as "square with rounded corners."

[3] In dotted lines, the D'790 patent shows elements besides the display screen and the rounded rectangles. I have not been asked to offer any commentary on anything shown in dotted lines.

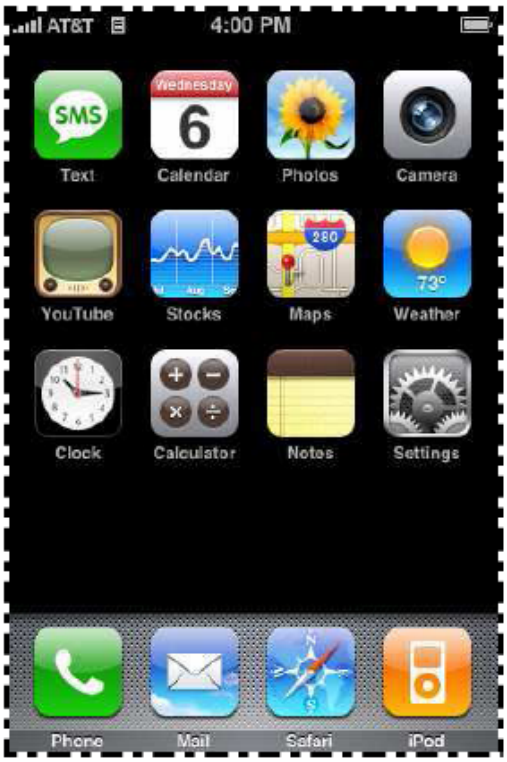


Figure 2
D'305 Patent Fig. 1[4]

35. The D'334 patent shows a display screen with two additional features. (APLNDC00030409-4220.) First, there are additional icons placed in a fourth row in the top portion of the screen. Second, there is a row of dots between the top portion and the bottom portion of the screen. The width:height ratio of the display screen is approximately 1:1.5.

[4] Although the D'305 patent was published in black-and-white, I have been informed that this color image submitted during prosecution of the patent is available from the USPTO. This drawing corresponds to Figure 1 in the issued patent. I have been informed that this drawing has been produced to Samsung in this case. (*See* APLNDC-Y0000232557 at 232558.)

Figure 3
D'334 Patent Fig. 6[5]

36. Many icons in the D'305 and D'334 patents show a curved reflection of a light source that creates a shiny, arc-shaped effect over the top half of the icon; this is visible in the icons for Text, Photos, YouTube, Stocks, Weather, Clock, Settings, Phone, Mail, iTunes, App Store, and iPod. (*See* Figures 2 and 3, above.) The design of particular icons is discussed in greater detail in Section V.A.2, below, in the discussion of the iPhone Devices' user interface graphics.

[5] I have been informed that, unlike the D'305 patent, the D'334 does not incorporate the color versions of the designs submitted during prosecution of the patent. I have been informed that Figure 3 is an image submitted during prosecution of the patent that corresponds to Figure 6 in the issued patent and is available from the U.S. Patent and Trademark Office. I have included this image because it is a higher quality image than what can be reproduced from the printed patent. I have been informed that this drawing has been produced to Samsung in this case. (*See* APLNDC-0000237387 at Y0000237392.)

2. Graphical Styles of the iPhone Devices' User Interface Graphics

37. I have examined the user interface graphics of an iPhone running iOS version 2.2.1. To do so I have examined an iPhone itself as well as "screen capture" images of an iPhone home screen. (Exhibit 3.) I examined the images using Adobe Photoshop.

38. The overall visual appearance of the iPhone screen is substantially the same as the designs shown in the Design Patents. The iPhone displays a grid of icons in the top portion of the screen. There are four columns and three full rows of icons, with a partial fourth row of icons.[6] There is a separate row of four icons along the bottom of the screen on a gray gradient-patterned background filling approximately the bottom 20% of the screen.

39. When the iPhone is configured to display icons on additional "pages," the separate row of four icons along the bottom of the screen does not change when the user views the additional pages.

40. The iPhone screen is 480 pixels tall and 320 pixels wide, measuring 3.5 inches (diagonal) with a pixel density of 163 pixels per inch.[7] Each icon is a smooth (anti-aliased) rounded rectangle that is 57 x 57 pixels. The black background of pixels blends seamlessly with the black border of the phone itself, so the 16 icons are a bright contrast and appear virtually illuminated against the black. As in the D'305 and D'334 patents, many icons show a curved reflection of a light source that creates a shiny, arc-shaped effect over the top half of the icon; this is visible on all icons except Calendar, Camera, Maps, Calculator, Notes, Safari, and Contacts. (*See* Figures 4(a) and 4(b), below; Exhibit 3.)

[6] The number of rows visible in the top portion of the screen can be reduced to three rows by moving some icons onto a second "page," as shown in Figure 4(b).
[7] http://support.apple.com/kb/SP2

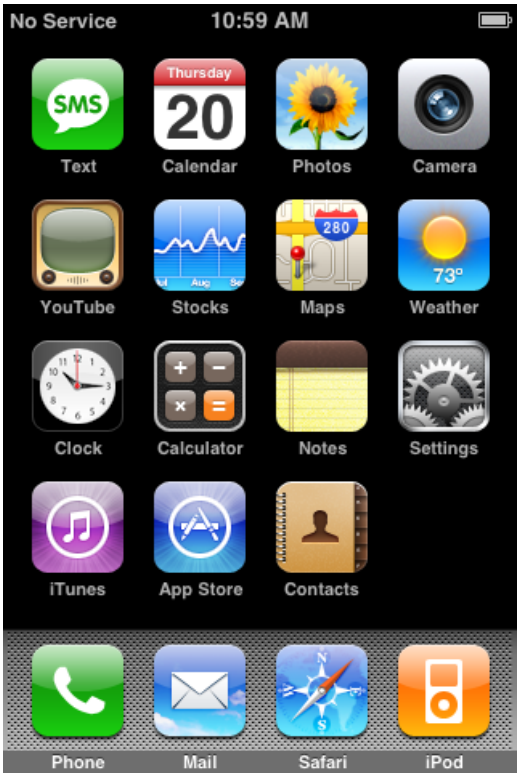


Figure 4(a)
iPhone Screenshot (Home Screen)

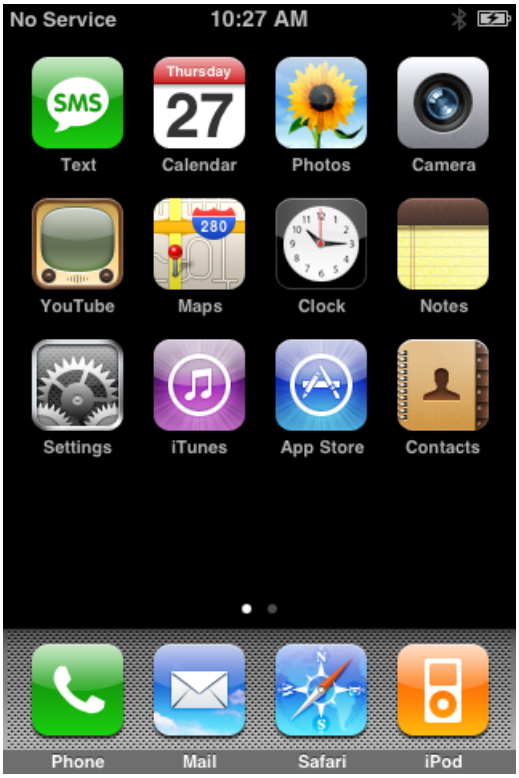


Figure 4(b)
iPhone Screenshot (With Three Icons Moved to Separate "Page")

41. Each iPhone icon is labeled with pale gray, sans-serif, approximately 12 point anti-aliased text (upper and lowercase). The baseline of the text is 14 pixels below the lower edge of the icon.

42. There is a distinctive, overall graphical consistency to the iPhone screen. The button-like icons are all shaped as squares with rounded corners. Images are either cropped by this shape (e.g., Notes), or a discrete image is set within the rectangle, which acts as a background (e.g., Clock). Although graphic styles vary between the individual icons (e.g., a phone symbol for Phone, but photorealistic images for Photos and Camera), the uniform shape and precise placement in a grid provides a sense of organization and unity. There is more vertical space than horizontal space between icons, but because of the text, the amount of black space that runs vertically and horizontally between the icons appears similar. There is additional black

background above and below the grid of icons to afford screen real estate for additional elements (e.g., time and battery life above, page indicator below). Another distinctive feature is the gray panel at the bottom of the screen that sets off four icons in a separate group; the distinctive green Phone icon anchors the far left.

43. I have also examined an iPhone 3GS[8] and an iPhone 4, each running iOS version 5.0.1, and I have used Adobe Photoshop to examine screen capture images from the devices. (Exhibits 4, 5.) The overall visual appearance of the iPhone 3GS and iPhone 4 screens is substantially the same as the designs shown in the Design Patents.

Figure 5
iPhone 3GS Screenshot (Home Screen)

Figure 6
iPhone 4 Screenshot (Home Screen)

[8] I have been informed that the user interface graphics of the iPhone 3G and iPhone 3GS running the same operating system are the same. Accordingly, My analysis regarding the iPhone 3GS throughout this report applies equally to the iPhone 3G.

44. The user interface graphics of the iPhone 3GS and iPhone 4—the shape, arrangement and spacing of the icons—is consistent with the original iPhone, but there are some small changes. (*See* Figures 5 and 6, above.) The iPhone 3GS screen has the same size and resolution as the original iPhone,[9] but the 3.5 inch (diagonal) screen of the iPhone 4 has a higher resolution of 940 x 640, for a pixel density of 326 pixels per inch.[10] Rather than a gray gradient-patterned background for the bottom portion of the screen, there is a rectangular, reflective surface that creates a virtual shelf, which serves as a base for the row of icons. The background is not black, but rather has a gray gradient with scattered water droplets. The anti-aliased text below the icons is white with a drop shadow. As in the D'334 patent, there is a row of dots between the top and bottom portion of the screen. These dots provide an indicator of which "page" of icons is displayed. When the second page is viewed, the second dot becomes white, and the first dot becomes gray.[11] (Exhibits 4, 5.) Otherwise, the above description of the iPhone's appearance applies equally to the user interface graphics of these phones.

45. The icon layouts depicted in Figures 1 through 6 are not the only ways to solve the design problem of how to represent a set of icons on a touch screen device. Even restricted to the choice of using icon images (as opposed to words in a menu), a grid of rectangular icons with rounded corners is not the only way to show and arrange them in a vertical space. For example, the icons could be presented as irregular shapes on a background, as shown in the Xperia arc S and Xperia neo V phones, both by Sony Ericsson. (Exhibits 6, 7.) Or, icons could be presented within or on top of other shapes, as in the Blackberry Storm 2 (Exhibit 8), which displays icons—designed with a strong, light-colored outline—in a grid but with each appearing on a black

[9] http://www.apple.com/iphone/iphone-3gs/specs.html
[10] http://www.apple.com/channel/iphone/iphone-4/tour/specs.html. As discussed in footnote 20 below, the proportional size of the icons in the iPhone 4 is unchanged from the iPhone and iPhone 3GS.
[11] The iPhone shown above in Figure 4(a) does not display a series of dots because there is no second page of applications. However, any of the applications shown could be moved off to a second page, which would cause the dots to appear, as in Figure 4(b).

rectangle that almost completely fills the space between the icons and has a gradient to add dimension. The Xperia arc S and Storm 2 are shown in Figures 7 and 8, below. Another alternative would have been to divide the screen using a visible grid. Also, any uniform color, bands of color, gradient, or background texture might have been employed.

Figure 7
Sony Xperia arc S

Figure 8
Blackberry Storm 2

46. Exhibit 9 is a collection of images depicting a variety of visually distinctive, alternative approaches to showing a set of icons on a phone screen. As these examples demonstrate, user interface graphics for phones need not display icons in a 4 x 4 or 4 x 5 grid, nor do they need to feature icons shaped like those in the Design Patents and the iPhone Devices. In fact, the icons can be displayed without using a regular grid of rows and columns at all, as shown in Exhibit 10. (*See* figures 9 and 10, below.)

Figure 9

Figure 10

47. Two alternative approaches depicted in Exhibits 11 and 12, applications screens of the Blackberry Torch 9850 and the Nokia N9, are particularly relevant examples because they are visually distinctive from the iPhone but display roughly the same number of elements in a touch screen space comparable to that of the iPhone Devices.

Figure 11
Blackberry Torch 9850

48. First, the Blackberry Torch 9850 shown in Figure 11 (*see* Exhibit 11) has an 800 x 480, 3.7 inch (diagonal) screen with a pixel density of approximately 253 pixels per inch.[12] As shown in Figure 11, the applications screen of the Blackberry Torch 9850 shows a grid of up to 20 icons (four columns, five rows) on a dark background. Other than the presence of a grid of icons, most of the graphical features of the applications screen distinguish its appearance from that of the iPhone Devices and the Design Patents.

49. At the top of the screen, above the icon grid, are two horizontal bands that occupy approximately 17 percent of the available screen—a significant portion of the screen real estate. The bands are on a background of dark reds and contain variable information such as date, time,

[12] http://us.blackberry.com/smartphones/blackberry-torch-9850-9860/#!phone-specifications

signal strength and battery charge, as well as indicators relating to sounds and alerts (speaker icon) and the presence of messages (letter icon).

50. Immediately above the grid of icons, there is a horizontal band that indicates the categories of applications currently being shown in the grid. This band has a blue highlight with faded edges when it is "selected" (*see* figure 11, above), but otherwise it appears along with the grid of icons as a translucent overlay on top of the background. The icons appear to be stylized illustrations; many suggest everyday objects (e.g., wrench, envelope, alarm clock, camera, folders), but others are more abstract (e.g., Social Feeds, Backup Assistant). There is no pattern of rectangular shapes or rounded corners for the icons; most are various irregular shapes, so even though the icons are laid out in a grid, they do not read as uniform button-shaped icons. Because the icons have different dimensions and border shapes, left and right edges and top and bottom edges of adjacent icons are not precisely aligned. The icons are labeled below with upper and lower case sans serif, anti-aliased, pale gray/blue text. When there is a highlight to indicate a glossy finish (e.g., BlackBerry Messenger, Text Messages, Instant Messaging, Applications, Games, App World) the light area runs diagonally from the upper left to lower right, and fills the upper right portion of the icons. Unlike the iPhone Devices and the Design Patents, there is no area on the screen for a separate group of omnipresent icons. The result of all of these elements is an overall visual impression that is clearly different from that of the iPhone and the Design Patents.

Figure 12
Nokia N9

51. Second, the Nokia N9 shown in Figure 12 has a 854 x 480, 3.9 inch (diagonal) screen.[13] (*See* Exhibit 12.) As shown in Figure 12, this device utilizes icons displayed within uniform, extremely rounded rectangles that approach being read as circular. Most of the icon images are minimal and symbolic, with few colors and details against a dominant background color with a slight gradient. Most of the icon images read as flat symbols, although there are subtle, shadowed dimensional effects. There is a fairly limited background color set: green, blue, gray, white, magenta, and yellow. The overall visual impression of this interface is clearly distinct from that of the iPhone Devices and the Design Patents, and it can display more icons on the screen than the iPhone Devices can. All the rounded buttons are grouped together on one continuous pane, rather than on separate "pages" as on the iPhone Devices, so that a row of icons may only partially be on the screen as the user scrolls up or down. Also, unlike the iPhone

[13] http://europe.nokia.com/find-products/devices/nokia-n9/specifications

Devices and the Design Patents, there is no area on the screen for a separate group of omnipresent icons.

Figure 13
"Meizu M8"

52. Finally, the image shown in Figure 13 represents another alternative design concept for interface graphics of a phone screen.[14] (*See* Exhibit 13.) The dimensions of the image are 675 x 450 pixels, giving it an aspect ratio of 1:1.5, the same as the iPhone Devices. The dark gray background has a subtle highlight and narrow vertical stripes, and it is darker at the edges and corners. It shows sixteen icons in a 4 x 4 grid, each within approximately 80 x 80 pixels, anti-aliased directly against the background (no rectangular button "containers") and (with the exception of the SMS icon) all rendered in a similar dimensional style with detail and highlights. The icons generally show gray, black, and white, and primary colors (red, yellow, and

[14] This graphic was obtained from http://www.loopycellphones.com/tag/meizu/. It is identified as a screenshot for an upcoming phone called "Meizu M8."

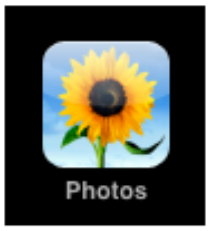
blue), though there are some other accent colors. Several of the icons reference "throwback" technology: an LP record, a cassette, film with sprockets, and a physical calculator. Each is set off with a thin, dark shadow against the background. At the bottom of the screen, a rounded rectangular panel "floats" against the background. It separates three gray gradient, unlabeled icons from the others. There is no row of dots. The overall visual impression of this interface is clearly distinct from that of the iPhone and the Design Patents, yet it displays approximately the same number of icons on the screen—sixteen in the grid and three distinct icons in the separate panel along bottom of screen—as the iPhone and the Design Patents.

3. Design of Specific iPhone Device Icons

53. The five icons described below—the icons for Camera, Photos, Contacts, Phone and iTunes—are specific solutions employed by the iPhone Devices for particular button images. They also represent a variety of *types* of approaches (e.g., photorealistic vs. stylized symbol). This suggests that the consistent use of the rounded rectangular buttons in a grid enabled a fair amount of stylistic freedom regarding the icons themselves while preserving the overall distinctive visual impression of the iPhone Devices.

- **Camera**. This image[15] is a photorealistic view of a generic camera lens as a symbol for the Camera application. It suggests a lens built into a physical camera (as opposed to an interchangeable lens) and is surrounded by a gray metallic gradient, indicating a non-specific camera body. An unseen light source creates reflected highlights, contributing to the precise, 3D quality of the glass lens, which appears to recede into the button.

[15] I have been informed that this image is the subject of U.S. Trademark Reg. No. 3,983,841.



- **Photos**. This image appears to be a realistic illustration or photograph of a single sunflower matted against a blue sky background as a symbol for the Photos application (used for viewing photos on the device). The flower evokes a photograph but is an apparently arbitrary choice for a category often represented by iconic vacation scenes (e.g., beaches, dogs, or mountain landscapes). It symbolizes photos, but it does not suggest a literal representation of a printed photo or typical digital photo aspect ratio. It seems to be a generic photograph—without a reference to any particular camera or photographic end product. The sunflower is a non-controversial subject that is not specific, such as a photo of a particular, identifiable person or place, and the blue sky both provides contrast against black and is a general symbol of optimism. It also echoes the sunny day image on the Weather icon. The icon is the subject of U.S. Trademark Reg. No. 3,866,200. (Dkt. 75-25.)

- **Contacts**. This image is a cropped view of a tabbed, spiral-bound notebook. The tabs protrude beyond the cover, and the debossed silhouette of a person's head and shoulders appears in the center. It is a combination of a realistic or literal object and an idealized view of an object. It is realistic or literal in that it is a recognizable physical object, with highlights to indicate the metal of the wire binding. It is an idealized view in that the tabs are visible beyond the cover, unlike those in most closed address books, and are relatively large and few, and the silhouette on the cover is filled with a gradient to appear three-dimensional rather than printed. The latter element in particular is a curious, non-realistic detail among other more "book-like"

graphic details. The icon is the subject of U.S. Trademark Reg. No. 3,886,197. (Dkt. 75-28.)

- **Phone**. This image is a silhouette of a telephone handset resembling those from classic Bell telephones designed by Henry Dreyfuss in the 1950s (though he designed many similar handsets from 1938-1982[16]). It is a "retro" shape that is a nod to the era before cell phones. It is shown at a 45 degree angle, facing right and in an upward position, set on a primary green background. The characteristic arc of light causes the top part of the icon to be brighter. This phone icon contrasts with the camera icon—it is a flat retro shape of an entire object, whereas the camera lens is a highly detailed part of a device that suggests contemporary consumer electronics. In the iPhone 3GS and iPhone 4 that I examined (running iOS version 5.0.1), the Phone icon has a texture of subtle, dark green with lighter green diagonal stripes that run from the lower left to upper right. The overall texture appears to be filled with a gradient, so the texture becomes very faint as it merges with the bright, lighter green in the lower part of the icon. The diagonal stripes are approximately 2 pixels across, but they are anti-aliased so their edges blend with the background. There is more contrast (darker green texture) in a horizontal band across the center of the icon. There is also a pale gray gradient on the silhouette, but it reads as a solid color, and there also appears to be a slight drop shadow. The phone in the iPhone icon is white and has no drop shadow. The iPhone 3GS/iPhone 4 version of the icon appears in U.S. Trademark Reg. No. 3,886,196. (Dkt. 75-23.)

iPhone

iPhone 3GS/ iPhone 4

[16] *See* http://imprint.printmag.com/animation/saying-goodbye-to-an-old-friend-the-hardwired-attbell-systemwestern-electric-telephone/.

- **iTunes**. This image could be interpreted as an updated, stylized version of the "iTunes Eighth Notes + CD" depicted in U.S. Trademark Reg. No. 2,935,038. (Dkt. 75-30.) It is presented as the silhouette of a pair of eighth notes within a thick circular border. The round border could be seen as an abstract reminder of LPs and CDs. The notes are an unmistakable symbol for music, and they are the same basic notes used in the original iTunes logo (*see* Figure 19, below). The background is violet, with a subtle starburst tone-on-tone pattern that might suggest sound emanating from the image. The icon is the subject of pending U.S. Trademark Application Serial No. 85/041,463. (Dkt. 75-29.)

54. Each of the icons described above represents one particular graphic option for each concept. There is a wide range of alternatives: both different ways to render those particular choices, and different options altogether. In Exhibit 14 and in the following figures, I have gathered a sampling of varying approaches to those icons to demonstrate that there is a variety of valid solutions to these design problems. It is not difficult to find a range of graphic options that could have been used instead.

Figure 14

- **Camera**. A camera icon is fairly straightforward in that a camera is an easy noun to represent visually. However, a camera lens could be used by itself, or a camera body could be shown. The amount of detail shown to indicate a lens

is completely variable. In fact, very little visual information is needed to make a shape recognizable as a camera; a horizontal rectangle with a circular outline for a lens and a stylized viewfinder or flash is sufficient. Also, the lens need not be dominant; colors and angles can be varied; and a shutter can also symbolize a camera or the act of taking photographs.

Figure 15

- **Phone**. The phone icons on the iPhone Devices are not self-referential—they do not look like an iPhone Device. They exhibit a classic silhouette, but they are actually a bit discordant because they resemble a vintage, if generic, phone handset, not a mobile phone. Other possible images might have included a stylized cell phone, a more recent phone or receiver, a phone keypad, or a hand holding a cell phone. The receiver could also be at a different angle, or vertical (as is common on phone booths).

Figure 16

- **Photos**. If the symbol for a user's photos is a sample photographic image, the possibilities are limitless. It makes sense to avoid a person, because there is no

one typical person, but any kind of landscape, animal, or other easily recognizable image from nature could be representative: a palm tree with the ocean behind it, mountains, a bird, a starry sky with crescent moon, a blue sky with clouds, a dog, etc. Most of these images work across cultures and evoke typical subjects for a wide range of photographers. Besides a sunflower, any easily recognizable flower or plant could work as an icon image.

Figure 17

- **iTunes.** Music-related applications can be represented by a wide range of symbols.[17] A single musical note, instrument, headphones, or treble clef are all simple shapes that are easy to recognize and associate with music. An image incorporating a play button is also an option. Not being tied to a particular type of music storage (e.g., disc or device) is advantageous for icon longevity.

Figure 18

- **Contacts.** To represent Contacts, Apple uses a cropped illustration of a tabbed notebook with wire-o binding containing a silhouette of a person's head and

[17] This discussion applies equally to the iTunes Eighth Note and CD icon described below.

shoulders. There are small indications of letters of the alphabet on the tabs. Many options that could work as Contacts icons feature the "@" sign, as shorthand for contacting someone via email. Even the "@" sign alone is used in some icons, although it also adorns many book images. Stylized groups of people, and other styles of tabbed notebooks abound.

55. Looking at the collection of icons portrayed in the iPhone Devices, the D'305 patent, and the D'334 patent as a group, the main unifying graphical feature is the rounded rectangular button shape against black, or, for the iPhone 3GS and iPhone 4, the alternative background depicted in Figures 5 and 6 above. In part because the style of the icons themselves varies, the container shape is an essential element of the overall visual impression created by the icon arrangement. There are images that read either as illustrations, photographs, or iconic symbols. The Phone icon and iTunes icon are pale, near-monochromatic symbols – simplified light gray or white shapes each centered on a distinctive bright-colored gradient background. The Camera icon, in contrast, is a cropped view of a camera lens, rendered in a photorealistic style with many details and realistic highlights, receding into what appears to be a brushed aluminum camera body. The Contacts icon is a cropped view of an illustrated, tabbed notebook, and the Photos icon shows a photographic image of a single deep yellow sunflower with two green leaves, matted against blue sky.

56. It would have been possible, if desired, to design all the icons of the iPhone Devices using a single, consistent stylistic approach. For example, the camera lens is detailed and "modern" while the phone is stylized, "retro," and detail-free. It would have been possible instead to create a simplified camera icon to "match" the style of the Phone icon. As designed, while there is a variety of different graphic styles for the icons—the simple (e.g., chat bubble for Text/Messages) versus the detailed (e.g., sunflower for Photos), the literal (e.g., camera lens for

Camera) versus the metaphorical (e.g., gears for Settings)—the consistent rounded rectangular shape of the icons and their layout on the screen unifies them in producing their overall visual appearance as a group.

4. Design of the iTunes Eighth Notes + CD Icon

57. This icon (*see* Figure 19, below) combines a background image (optical disc) with a pair of eighth notes that appear to be in the foreground because they overlap the outline of the disc. The eighth note at left is slightly lower, so the bar that connects them angles up to the right. The disc appears as concentric circles—not exactly circular, but condensed at a slight angle. The disc is easily recognizable as an audio CD due to the size and location of the two inner circles and the fact that it is paired with musical notes. This icon is registered in U.S. Trademark Registration No. 2,935,038. (Dkt. 75-30.)

Figure 19

B. Similarity Between Apple Designs and Samsung Icons and User Interface Graphics

58. I have been asked to examine Samsung Phones and opine on the design—including with respect to layout and icon design—of the "applications screens" that are accessible via a button displayed on the phones' default home screens.[18] The phones I have analyzed are:

- Captivate

[18] The iPhone Devices, in contrast, do not have a "home screen" that is separate from the screens showing a grid of icons as in Figures 4 through 6. With respect to the iPhone Devices, "home screen" and "applications screen" are synonymous.

- Continuum
- Droid Charge
- Epic 4G
- Fascinate
- Galaxy S 4G
- Galaxy S i9000
- Gem
- Indulge
- Infuse 4G
- Mesmerize
- Galaxy S Showcase (i500)
- Vibrant

59. Photographs of the applications screens of each of the Samsung Phones are contained in Exhibits 15 through 27. I have examined each of the phones themselves. I have also examined screen capture images of the applications screens of the Droid Charge, Fascinate, Mesmerize, and Galaxy S i9000 (the only four phones from which I could obtain screen capture images created using the phones' built-in operating system). (Exhibits 28, 29, 30, 31.)

1. Similarities Between the Icon Layouts of the Samsung Phones and the iPhone Devices

60. The aspect ratios of the Samsung screens are either the same (1:1.5) or similar (1:1.67) to that of the iPhone Devices (1:1.5).[19] The screens have black backgrounds, with battery, time, signal strength, and other status information in a band across the top. In the Droid

[19] The aspect ratio for each phone was calculated using the resolution available from specifications printed on the device packaging or available on Samsung's website (http://www.samsung.com). I also confirmed the screen resolutions (800 x 480, for a ratio of 1:1.67) of the Droid Charge, Fascinate, Mesmerize, and Galaxy S i9000 by using Adobe Photoshop to examine screen shots taken by the devices themselves.

Charge, Fascinate, Mesmerize, and Galaxy S i9000, this row is 36 pixels tall, or 4.5 percent of the 800 pixel screen height. For the other Samsung Phones, the row of status information appears to be the same or substantially the same height. For all but three of the Samsung Phones, the row of status information is a slightly lighter shade of gray against the apparently black background of the rest of the screen (the Continuum, Mesmerize, and Galaxy S Showcase (i500) have a lighter gray or blue bar). The iPhone Devices also have a row in which signal strength, time, and battery are displayed in the same manner as shown in the D'305 and D'334 patents. The row is 20 pixels tall in the iPhone and iPhone 3GS (4.17 percent of the 480 pixel screen height) and 40 pixels tall in the iPhone 4 (4.17 percent of the 960 pixel screen height). For both the iPhone Devices and the Samsung Phones, the narrow row of status information uses a small area of the display and does not significantly affect the overall visual impression of the screen.

61. The Samsung Phones use the same basic layout as the iPhone Devices: icons arranged in a grid of four rows and four columns in the top portion of the screen, and at the bottom of the screen there is a panel that holds four key icons, with the Phone icon anchoring the left-hand side. (Exhibits 15-31.) The panel sets off those four icons, which do not change as different pages of icons are viewed, and has a gradient to create the appearance of a separate area. The icons in this area generally have a dominant rectangular shape with rounded corners. All of the icons in the top portion of the screen appear on rectangles with rounded corners, each labeled below with light gray or white, sans-serif, anti-aliased upper and lower case type, and each set apart from each other with horizontal and vertical bands of black background color. As on the iPhone, the colorful rounded rectangles contrast with the black of the background, especially some with jewel-like tones of green, blue, and magenta. The rounded rectangular icons are, proportionally, approximately the same size as the icons on the iPhone. On the Droid Charge, Fascinate, Mesmerize, and Galaxy S i9000, the icons are 84 x 84 pixels, which equals 10.5

percent of the 800 pixel screen height and 17.5 percent of the 480 pixel width; the iPhone's 57 x 57 pixel icons are 11.9 percent of the screen height and 17.8 percent of the screen width.[20] There is also a row of dots that indicates which "page" of applications icons is currently being displayed.

Figure 20 (*See* Exhibit 27)
Vibrant Applications Screen
(Page 1 of Applications)

Figure 21 (*See* Exhibit18)
Epic 4G Applications Screen
(Page 1 of Applications)

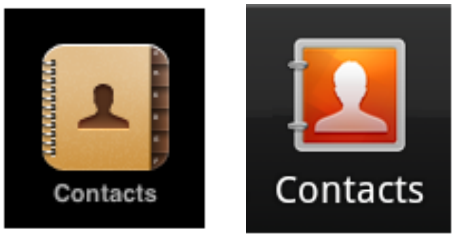
2. Similarity Between Apple Icons and Samsung Icons

62. Exhibit 32 shows the Samsung icons for Contacts, Camera, Gallery, Music/Music Player, and Phone next to the corresponding Apple icons appearing in the iPhone Devices, the D'305 patent, the D'334 patent, and various trademark registrations and applications. At a glance, a number of overall similarities between these pairs of icons are evident and—more

[20] The proportional size of the iPhone 3GS and iPhone 4 icons (measured without including the drop shadow) are exactly the same as on the iPhone: 114 x 114 pixels out of 960 x 640 (11.9 percent of height; 17.8 percent of width).

notably—the stylistic differences between the individual icons are consistent from pair to pair[21]:

- **Address Book (Apple) vs. Contacts (Samsung):**.



Apple **Samsung**

Figure 22

These icons share a similar head and shoulders silhouette in a square book-like format with a ring binding on the left edge. The bindings are not identical, but they both are drawn to appear to be metal rings that pierce the book cover. Both book cover silhouettes (which appear to be the head and shoulders of a person with short hair) have a similar amount of dimension, though Samsung's is embossed and Apple's is debossed. There is a slight lighting effect from the top. Because of these similarities, both icons contribute similarly to the overall visual impression of the screens in which they appear on the respective phones. This analysis applies to the Contacts icon appearing in each of the Samsung Phones I examined.

[21] Except where indicated, the Samsung icons in the comparisons below are taken from the screen capture images shown in Ex. 29.

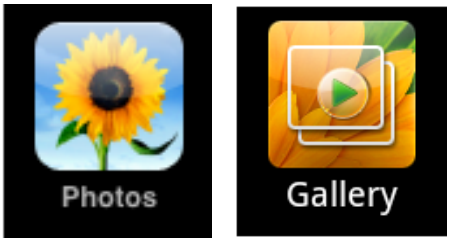
- **Camera (Apple) vs. Camera (Samsung):**

Apple **Samsung**

Figure 23

Samsung's camera icon uses a graphic style similar to that of the camera icon common to the D'305 patent, D'334 patent, and the iPhone Devices. Both camera icons share what reads as a brushed aluminum-finish, with the emphasis on a highly detailed, dimensional lens with reflected light, and what appears to be concentric circles of lens housing. Color is used in the illustration of both lenses, and blue appears as the predominant accent color in each. Although one image is cropped and one shows a whole camera, the dominant feature in both is the round, embedded lens with glossy highlights. There are other graphic style options for a camera icon, but these two particular camera icons make a similar visual impression, as they appear "realistic," particularly when surrounded by other styles of icon images on the respective phones. This analysis applies to the Camera icon appearing in each of the Samsung Phones I examined, although it applies to a lesser extent to the Camera icon in the Galaxy S 4G and Vibrant, which uses a consistent graphical style but has a black camera with a less prominent lens.

- **Photos (Apple) vs. Gallery (Samsung):**



Apple **Samsung**

Figure 24

Both of these icons represent the user's photograph collection, and both use a photographic image of a yellow flower with many long petals that appear textured with ridges and appear to narrow at the tips, like the petals of a sunflower. The whole flower appears in Apple's icon. The Samsung image is cropped and zoomed-in, but the yellow petals and green leaves looks similar to those in Apple's icon and could suggest the same type of flower to the user. The similarity between the two icons is enhanced by the appearance of a nearly identical curved reflection of a light source that creates a shiny, arc-shaped effect in the top half of each icon. There is a striking similarity of subject choice along with color and petal shape. Even though the Samsung icon includes round rectangles to suggest picture frames, and a play button, the green of the play button keeps the coloring consistent with Apple's icon. Because of these similarities, both icons contribute similarly to the overall visual impression of the screens in which they appear on the respective phones. The similarities between these designs also could cause users to see them as coming from the same company or source, or representing the same brand. This is especially the case because each icon uses the same distinctive subject to represent photos, even though, as discussed above, a yellow flower is not a symbol predominantly or historically associated with photos (e.g.,

beaches with palm trees and mountains). This analysis applies to the Gallery icon appearing in each of the Samsung Phones I examined except for the Droid Charge.

- **Phone (Apple) vs. Phone (Samsung):**

Apple **Samsung**

Figure 25

The icons for Phone occupy the bottom left corner of the display in the Samsung Phones, the D'334 and D'305 patents, and the iPhone Devices. As explained in Paragraph 53, there are two slightly different Apple Phone icons: the iPhone has the same Phone icon as in the D'334 and D'305 patent, whereas the iPhone 3GS and iPhone 4 have the slightly different icon shown in U.S. Trademark Reg. No. 3,886,196. All three icons (Samsung's Phone icon and Apple's two slightly different icons) feature a stylized handset silhouette similar to a classic 1950s-style desktop phone. The Samsung Phone icon closely resembles both of the Apple icons:

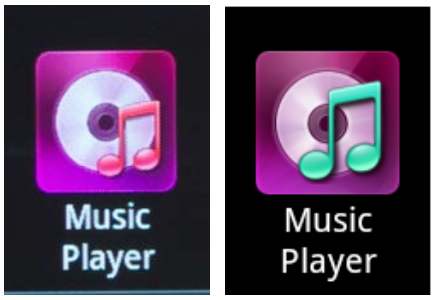
  - Regarding the iPhone 3GS/iPhone 4 Phone icon, both it and the Samsung icon appear light gray with shading towards white. Each slants diagonally from upper left to lower right across a green rounded rectangle with a gradient, and each faces the upper right. Both icons show a classic desk phone receiver. The receivers are not precisely identical, but they both evoke the same real-world classic phone, without a cord. The background

is not an identical shade of green, but the greens are similar, and the pale gray gradient palette against the green (with a slight, edge-defining drop shadow) creates a similar amount of contrast. Because of the similarities between these designs, I would expect that users might see them as coming from the same company or source, or representing the same brand. Also, both icons contribute similarly to the overall visual impression of the screens in which they appear on the respective phones, in particular because they appear in the same location on the screen. This analysis applies to the Phone icon appearing in each of the Samsung phones I examined.

- Regarding the iPhone/D'334/D'305 Phone icon, it shows a classic desk phone receiver in white, anti-aliased against a green background. It slants from the upper left to lower right and faces the upper right corner of its rounded rectangular background. The lightest shades of green are in the top half, where there is a highlight, and the darker shades of green are in the lower half. The Samsung Phone icon is similar; it also shows a pale, retro-style receiver that slants diagonally and faces the upper right. It is also shown on a rounded rectangular background element with shading that is brightest toward the top and darker below. Neither receiver has any indication of a cord; they are symbols as opposed to "realistic" illustrations. Both icons contribute similarly to the overall visual impression of the screens in which they appear on the respective screens, in particular because they appear in the same location on the screen. This analysis applies to the Phone icon appearing in each of the Samsung

Phones I examined.

- **iTunes (Apple) vs. Music/Music Player (Samsung):**



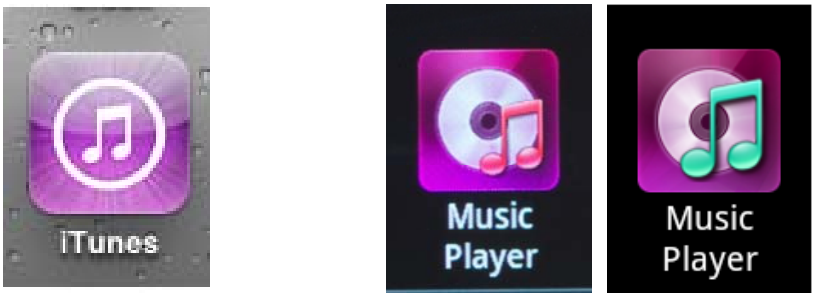
Apple **Samsung**[22]

Figure 26

  - Regarding the iTunes Eighth Notes + CD icon (U.S. Trademark Reg. No. 2,935,038; far left in Figure 26), the Samsung Music/Music Player icon—which appears in two slightly different versions, one with light blue eighth notes and one with red eighth notes—closely resembles the Apple icon. Both feature an image of a compact disc with a pair of eighth notes as an overlay. In each, the pair of notes shows the higher note on the right, and the bar that connects the notes slopes up slightly to the right. In each icon, the notes appear to be in the foreground (as opposed to being printed on the disc) because part of the notes overlap the round border of the disc, and the vertical line of the left note crosses the center portion of the disc. Considering the fact that, as explained above in paragraph 54, there is a wide range of alternative icons available for symbolizing music, the similarities between these designs might cause a user to see them as coming from the same company or source, or representing the same brand.

[22] The Music Player icon with red eighth notes appears in the Captivate, Epic 4G, Galaxy S 4G, Galaxy S i9000, Infuse 4G, and Vibrant. The example shown here and below is from a photograph of the Captivate (Exhibit 15).

This analysis applies to the Music/Music Player icon appearing in each of the Samsung Phones I examined.



Apple **Samsung**

Figure 27

- Regarding the iTunes icon (U.S. Trademark Application Serial No. 85/041,463, far left in Figure 27), it shares several elements with the Samsung Music Player icon. First, it appears on a purple background with what appears to be a magenta radial gradient. Both have darker areas at the left and right. Both share a circular element combined with a pair of eighth notes, and both pairs of eighth notes have a slightly higher note on the right, which causes the horizontal bar that connects them to slope upward toward the right. Because of these similarities, both icons contribute similarly to the overall visual impression of the screens in which they appear on the respective phones. This analysis applies to the Music/Music Player icon appearing in each of the Samsung Phones I examined.

63. Figure 28 shows the Samsung icons for the Gmail (or Google Mail),[23] Email,[24] and Talk applications as well as the iTunes, App Store, and Messages icons from the iPhone 4:

[23] The Gmail icon appears in this form on all of the Samsung Phones except for the Gem, which shows the Gmail icon with an orange background.
[24] The Email icon appears in this form on all the Samsung Phones except for the Galaxy S 4G, Gem, Indulge, and Vibrant. For some of the screens shown in Exhibits 15 through 31, the icon is not displayed in this form, because it appears without the green background when moved to the row of icons at the bottom of the screen.

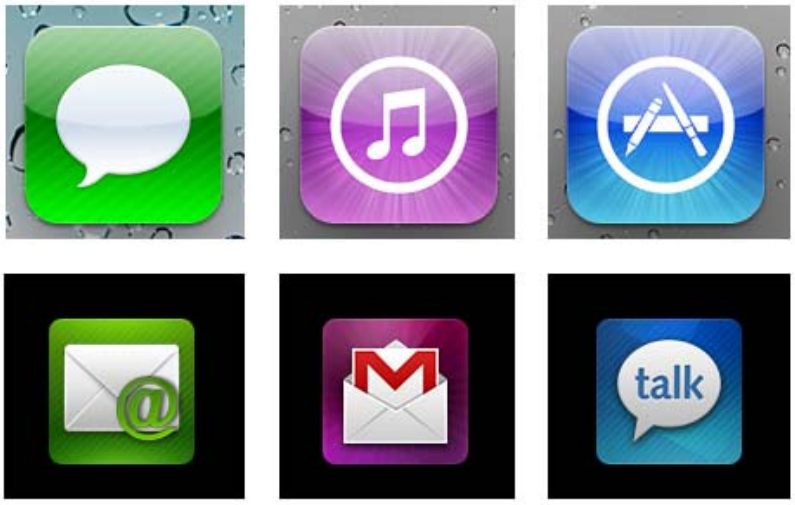


Figure 28[25]

Although the icons for Email (Samsung) and Messages (Apple) represent different subjects, they share a similar green gradient with a diagonal texture behind pale gray icons. This use of similar backgrounds contributes to the overall visual similarity between the applications screens of the Samsung Phones, the iPhone 3GS, and iPhone 4. Similarly, the icon for Gmail (Samsung) obviously represents a different subject than the iTunes (Apple) icon, but they share a very similar magenta radial gradient background, visible behind a pale image. This use of similar backgrounds contributes to the overall visual similarity between the applications screens of the Samsung Phones and iPhone Devices. A similar resemblance between backgrounds exists between the App Store icon and the blue backgrounds appearing in various Samsung icons, such as Skype mobile, Settings, and Talk. (*See* Exhibits 15 through 31.) For example, the App Store icon (Apple) and the Talk icon (Samsung) shown in Figure 28 share a similar blue tonal striped background. Although both are not radial gradients, they have similarly colored bands, similar lighter blues at the bottom and darker areas at the sides. The use of a grid of square icons that have rounded corners and share similarly textured and shaped jewel-toned backgrounds with

[25] These images are taken from screen capture images of the iPhone 4 (Exhibit 5) and Fascinate (Exhibit 29).

equivalently detailed imagery evokes a particular overall graphical style and contributes to the overall visual similarity between the applications screens of the Samsung Phones and the iPhone Devices. The similarities with respect to the patterns and textures in the backgrounds of the iTunes and App Store icons also apply to the D'334 patent, although not with respect to the particular colors.[26]

64. As mentioned above, many icons in the D'305 patent, the D'334 patent, and the iPhone Devices show a curved reflection of a light source that creates a shiny, arc-shaped effect in the upper half of the icon. A nearly identical effect is present in numerous Samsung icons, including: Clock (all except Gem), Gallery (all except Droid Charge), Places (e.g., Epic 4G, Indulge), Navigation (e.g., Epic 4G, Galaxy S i9000). This similarity further contributes to the overall visual similarity between the applications screens of the Samsung Phones and the iPhone Devices, the D'305 patent, and the D'334 patent. The impact is well demonstrated by the Clock icon common to the iPhone, the D'305 patent, and D'334 patent when compared with the Clock icon on the Samsung Phones. Both are compositions that feature a round wall clock. The Samsung clock appears on a blue-gray gradient background and shows four numerals. The Apple clock appears on a black to gray background and has twelve numerals and a second hand. However, the basic commonality of the form factor, plus the distinctive highlight (common to many Apple icons), contributes to the similar appearance of these icons:

iPhone Clock **Samsung Clock**

Figure 29

[26] As noted in footnote 4, the D'334 patent does not incorporate color. The comparison to the D'334 patent here is only with respect to the appearance of the design shown in the patent (*see* Figure 3; APLNDC00030421-425).

3. Overall Visual Impression of Samsung Applications Screens Versus the Overall Visual Impression of the Design Patents

65. The applications screens of the Samsung Phones address the same design problem addressed by the iPhone Devices and the Design Patents: how to present a set of application icons on a touch screen device. As demonstrated above in Paragraphs 45 through 52, there are numerous alternative ways to achieve that design goal. Also as demonstrated above in Paragraphs 45 through 52, those alternatives need not produce the same overall visual appearance.

66. As demonstrated in Sections V.B.1 and V.B.2, the icons in the applications screens displayed by the Samsung Phones use varying graphic styles in a similar fashion as do the icons used by the iPhone Devices and contained in the D'305 and D'334 patents. As with the iPhone Devices, the D'305 patent, and the D'334 patent, the consistent use of rounded, square-shaped icons in a grid layout unifies the icons in producing an overall visual appearance as a group. The result of the similarities demonstrated in Sections V.B.1 and V.B.2 is that that overall visual appearance is substantially the same as the overall visual appearance of the designs depicted in the D'305 patent and the D'334 patent. This opinion is unaffected by the fact that the design shown in the D'305 patent has only three rows in the top portion of the screen, as the overall visual appearance of that design is still substantially the same as that of the Samsung Phones, which, in any event, can be configured so that the applications screens only show three rows in the top portion. (*E.g.,* Exhibit 33.)

67. For the same reasons described above, the applications screens of the Samsung Phones also have substantially the same visual impression as the design shown in the D'790 patent. The overall visual impression of the Samsung Phones' applications screens is created mostly by the appearance of a variety of icon images presented on a grid of rounded rectangular shapes. Relative to the size of the display screen, the size and spacing of the rounded rectangles

in the top portion of the Samsung Phones closely resemble the size and spacing of the rounded rectangles in the D'790 patent. Although the default configuration (which, as noted above, can be modified by the user) of the Samsung Phones has a fourth row in the top portion of the screen, and the bottom row of icons is not uniformly rectangular like the icons in the top portion, the overall visual impression is still substantially the same as that shown in the D'790 patent.

4. Overall Visual Impression of Samsung Applications Screens Versus the Overall Visual Impression of the iPhone Devices

68. I have been informed that Apple has asserted trade dress claims concerning the Samsung Phones. I have also been informed that certain aspects of the iPhone Devices' interface graphics are relevant to the asserted trade dress claims, including:

- a grid of brightly colored, square icons that have rounded corners having the same pixel radius;[27]
- a row of dots; and
- a separate area at the bottom of the screen containing four square icons (with the same rounded corners mentioned above) that remain unchanged when the user views additional pages of icons.

69. I have been informed that there are additional factors at issue regarding Apple's trade dress claims that do not concern the icons and interface graphics of the iPhone Devices. As explained above, however, I have only been asked to opine on the design of icons and interface graphics and the overall visual impression they create. I have not been asked to evaluate hardware designs or the visual impression they create.

70. As explained in Sections V.B.1 and V.B.2, the applications screens of Samsung

[27] I have been informed that "evenly rounded corners" (the term used in the Amended Complaint (Dkt. 75)) means corners having the same pixel radius.

Phones display a grid of brightly colored, square icons that have rounded corners. Each corner of the square icons appears to have the same pixel radius. Also, each of the Samsung Phones displays a row of dots that indicates which page of the applications screens is currently displayed. Finally, each of the Samsung Phones has a separate area at the bottom of the screen containing four icons that do not change when the user views additional pages of icons. The icons in this area generally have a dominant rectangular shape with rounded corners.

71. The bottom row of icons in the Samsung Phones does not have uniformly square icons. However, the similarities between the Samsung Phones and iPhone Devices, discussed above in Sections V.B.1 and V.B.2, results in the applications screens of the Samsung Phones and the iPhone Devices producing the same overall visual impression. The similarities are such that they appear to represent the same general design approach, and users could see the designs as coming from the same company or source, or representing the same brand.

C. The Similarities Between the Samsung Phones and the iPhone Devices Support the Possibility that Samsung Used the iPhone Devices as a Guide in Designing Icons and User Interface Graphics for the Samsung Phones

72. I have been informed that the iPhone Devices were released to the public as follows: the iPhone was released on June 29, 2007; the iPhone 3G was released on July 11, 2008; the iPhone 3GS was released on June 19, 2009; and the iPhone 4 was released on June 24, 2010.

73. I have been informed that the Vibrant was the earliest of the Samsung Phones to be released, with a release date of approximately July 2010.

74. As explained above, there is a wide range of alternatives for the design of the Samsung Phones' user interface graphics, including many options for the individual icons, general icon style, and overall appearance of the applications screens. Also as explained above, many design decisions are required in order to arrive at final designs for icons and user interface graphics.

75. Given the breadth of options for the design of individual icons and the overall visual appearance of a graphical interface, I would expect that Apple's and Samsung's respective decisions regarding icon and layout design would result in design identities that vary between the Samsung Phones and the iPhone Devices. In other words, I would expect that independently designed user interface graphics would result in screens with different overall appearances, such as the screens shown in Exhibits 9 through 13.

76. However, as described above in Section V.B, there are a number of striking similarities between the applications screen icons and layout of the iPhone Devices and Samsung Phones. The pattern of similarities supports the possibility that the iPhone Devices' screen graphics influenced and served as a guide for the design of the applications screens of Samsung Phones.

77. [redacted]

1. Samsung Documents Corroborate the Existence of Alternative Icon Designs

78. [redacted]

79. [redacted]

80. [redacted]

[28] For this document and other documents, I have reviewed certified translations of portions of the document. Those translations have been included in Apple's Appendix of Certified Translations in Support of Opening Expert Reports ("Translations App'x").

[redacted]

81. [redacted]

82. [redacted]

[29] I have been informed that "UX" is shorthand for "User Experience."

[redacted]

2. Samsung Documents Support Existence of Alternatives for the Overall Visual Appearance of its Applications Screens.

83. [redacted]

84. [redacted]

85. [redacted]

86. [redacted]

[redacted]

3. Samsung Documents Are Consistent with the Possibility that Samsung May Have Used the iPhone as a Guide When Designing the Application Screens for the Samsung Phones

87. [redacted]

88. [redacted]

89. [redacted]

90. [redacted]

[redacted]

VI. CONCLUSION

91. For the reasons set forth above, it is my opinion that the applications screen of each of the Samsung Phones creates the same overall visual impression as the designs shown in the Design Patents. It is also my opinion that the applications screens of each of the Samsung Phones and the iPhone Devices (the appearance of which I have been informed is relevant to Apple's trade dress claims) create the same overall visual impression. It is also my opinion that the similarities identified above between the following pairs of icons might cause users to see the pair as coming from the same company or source, or representing the same brand: Samsung's Gallery icon and Apple's Photos icon (U.S. Trademark Registration No. 3,886,200); Samsung's Phone icon and Apple's Phone icon (U.S. Trademark Registration No. 3,886,196); and Samsung's Music/Music Player icon and Apple's iTunes Eighth Notes + CD icon (U.S. Trademark Registration No. 2,935,038). It is also my opinion that the similarities between Samsung Phones and the iPhone Devices support the possibility that Samsung used Apple's icon design and layout as a guide in creating the icon designs and layout of the applications screens of the Samsung Phones.

VII. SUPPLEMENTATION

92. I reserve the right to supplement this report with new information and/or documents that may be discovered or produced in this case.

VIII. EXHIBITS TO BE USED

93. I anticipate using as exhibits during trial certain documents and things referenced or cited in this report or accompanying this report. I also anticipate using other demonstrative exhibits or things at trial.

Dated: March 22, 2012

Susan D. Kare

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