

# EXHIBIT J

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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  
SANJAY SOOD**

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

1 **V. DESIGN IS IMPORTANT IN CONSUMER CHOICE**

2 12. Over the past five years, I have conducted surveys as part of my research on the  
3 impact of product design on consumer choice. Research on consumer behavior—including my  
4 own research—demonstrates that design plays an important role in consumers’ purchasing  
5 decisions. As described below, my research examines consumer willingness to pay a premium  
6 for good design, how consumers process information about design, and the impact of design on a  
7 consumer’s sense of self.

8 13. Typically, the research paradigm provides consumers with a choice between an  
9 attractive-looking product and an average-looking product. Depending on the study parameters,  
10 the products will have varying levels of functional feature information provided, with up to five  
11 other attributes, including price, shown in addition to design. I have examined a host of product  
12 categories, ranging from some that are more public in nature such as socially oriented products  
13 (*e.g.*, sunglasses, blue jeans, etc.) as well as categories that are more private in nature and less  
14 socially oriented (*e.g.*, tape dispensers, CD alarm clock radios, etc.). Based on the studies I have  
15 conducted and that are described below, I have determined that an attractive design for a product  
16 is a critical driver of purchasing decisions in both public and private categories.

17 14. My research also reveals that while consumers are greatly influenced by attractive  
18 design, they are not necessarily consciously aware of this influence. Consumers may not realize  
19 the significance of design in their purchasing decisions, or may be unwilling to identify design as  
20 the single most important factor in their purchase decisions.

21 15. The overall pattern of results suggests that design is a highly valued product  
22 attribute that can provide a strong competitive advantage in the marketplace. The results of my  
23 studies have revealed that consumers are willing to pay large price premiums for products with an  
24 attractive design.<sup>1</sup> Because design is an important factor in consumer buying decisions, a  
25 company such as Apple that has attractive product designs has a significant competitive

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26  
27 <sup>1</sup> Exhibit C, Claudia Townsend and Sanjay Sood, *The Impact of Product Aesthetics on*  
28 *Choice: A Dual Process Explanation.*

1 advantage. My research shows that not only are consumers more likely to buy those specific  
2 products, they are willing to pay more for them. Moreover, other research suggests that if a  
3 company has a consistent focus on design, it may acquire a reputation as an innovator in design  
4 that may increase the overall value of the brand and create a positive image that attracts more  
5 customers.<sup>2</sup>

6 **B. The Impact of Product Aesthetics on Choice**

7 16. The primary focus of some of my studies has been to identify the price premium  
8 that consumers would be willing to pay for a product with an attractive design. My research  
9 reveals a systematic underweighting of design as a reason for choice when consumers are asked  
10 directly to rate the importance of design, as opposed to when consumers are asked indirectly by  
11 being offered a choice between two specific products, one of which has a more aesthetically  
12 pleasing design than the other. I have conducted several studies that examine this contrast in the  
13 importance of design when asking the question directly or indirectly. For example, when asked  
14 directly (as in the case of a survey or questionnaire) about how much extra they would be willing  
15 to pay for a product with an attractive design, consumers replied that they would be willing to pay  
16 about a 30% price premium in categories such as sunglasses.

17 17. When asked indirectly through a choice task, however, the results differed  
18 significantly. Specifically, we provided consumers a choice between a product with an attractive  
19 design and a product with an average design, presented in side by side pictures. Different sets of  
20 people were given different prices for the two products, with the average-looking product priced  
21 at a “base” price and the attractively-designed product priced at a premium, starting at a  
22 15% premium over the base price and going up from there. A fundamental principle in business  
23 is that as the price of a product increases, its market share decreases. In our studies, this principle  
24 did not hold true for products with attractive design. Instead, the market share of the attractive  
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26 <sup>2</sup> Kevin Lane Keller, *Strategic Brand Management*, (3rd edition, Upper Saddle River, NJ:  
27 Prentice-Hall, 2008); Kevin Lane Keller, *The Brand Report Card*, HARV. BUS. REV., 3  
28 (Jan-Feb. 2000); Kevin Lane Keller, *Conceptualizing, Measuring, and Managing Customer-  
based Brand Equity*, 57 JOURNAL OF MARKETING, 1-22 (March 1993).

1 product remained the same even when the price premium increased dramatically to 210%. The  
2 results demonstrate that consumers are very willing to pay a substantial price premium for an  
3 attractively designed product.

4 18. In contrast, the market share decreased when consumers were given a choice  
5 between two products with the same design but varied product attributes. We employed the same  
6 research paradigm described above for products that varied in terms of price (starting with a 15%  
7 price premium) and functionality. However, this time consumers were shown an identical picture  
8 for both options to indicate they had the same design. For example, consumers were given a  
9 choice between a product that was average in functionality and a product that was superior in  
10 functionality (*e.g.*, sound quality for a CD alarm clock) with no variation in design. As the price  
11 of the superior functioning product increased, its market share decreased. The same pattern holds  
12 for products that varied in quality and brand name. That is, when consumers were given a choice  
13 between a product rated average in quality (or from an average brand) and a product rated high in  
14 quality (or superior brand), the market share of the high-quality (or superior brand) product  
15 decreased as its price increased. Thus, we conclude that the remarkably flat price response is  
16 uniquely associated with products that have good design.

17 19. Our studies show that the powerful impact of design is related to its visual nature.  
18 That is, consumers process information about design so quickly that they are not necessarily  
19 aware of the impact of design. In the research paradigm described above, when design is shown  
20 verbally in terms of ratings instead of visually in terms of pictures, the flat price response of  
21 design disappears. To examine the importance of the visual/verbal distinction, we converted the  
22 visual presentation of design into numerical ratings. First we asked a set of consumers to rate the  
23 overall looks/design of the good-looking and average-looking products used above on a 100-point  
24 scale. We then averaged these ratings and provided them to a second set of consumers in a choice  
25 task that now featured a numerical (not visual) variation in design. Specifically, this second set of  
26 consumers was given a choice between a product rated average in design (*e.g.*, 48/100, the design  
27 rating of the average-looking product) and a product rated highly in design (*e.g.*, 73/100, the  
28 actual design rating of the good-looking product). Similar to functionality, when design was

1 described verbally in ratings, the market share of the attractive product decreased as its price  
2 increased.

3           20. It is important to note several additional precautions that provide further  
4 confidence that the results could be uniquely attributed to design. We conducted a pretest to  
5 confirm unanimity of aesthetics. In the pretest, a subset of the participants from the main study  
6 described above were presented with two black and white pictures side-by-side for each product  
7 category, and they were asked to indicate which one had the better “overall looks/design.” There  
8 was more than 90% agreement in each product category for the better-looking design. Thus,  
9 there was general agreement amongst the subject population about which products were beautiful.  
10 In addition, we attempted to separate design from functionality. That is, respondents were told  
11 that all other features were the same across products except for the design and the price. This  
12 statement was included so that respondents would not infer that the product with good design was  
13 also better in terms of functionality or quality more generally. Finally, we focused on categories  
14 that are more privately consumed and therefore do not rely on fashion or have value in terms of  
15 social signaling. For example, we studied CD alarm clocks and desk lamps, products that are  
16 functional in nature and do not have very much social currency. One would expect design to be  
17 more important in fashion categories such as clothing and indeed the results are similar and/or  
18 larger in magnitude.

19           **C. The Impact of Bias on Choice of High Aesthetics**

20           21. My research also shows that consumers may be reluctant to identify “design” as a  
21 reason for their purchase decision when responding to surveys. Similar to the price-premium  
22 research described above, we asked consumers two sets of questions that were designed to test  
23 directly and indirectly whether they felt that “design” justified purchase decisions. Specifically,  
24 consumers were presented with the following scenario: “Person A and Person B are both  
25 shopping for a new blender. There are two options. One is more aesthetically pleasing while the  
26 other functions better [or is lower priced or better branded]. Person A opts for the more  
27 aesthetically pleasing option. Person B opts for the better functioning product [or lower priced or  
28 better branded] option.” Based on this scenario, consumers were asked, “Who is smarter?”

1 None of the respondents said that Person A was smarter in any of the three scenarios (design vs.  
2 function, price, or brand). This research demonstrates that, although consumers weigh design  
3 heavily in their purchase decisions (as discussed above), consumers perceive that reporting that  
4 their decisions are being driven by design is not a rational or “smart” decision. As a result,  
5 consumers may systematically underreport the impact of design in their decision making because  
6 of the bias reflected above.

7 **D. The Impact of Deliberation on Choice of High Aesthetics**

8 22. In another study, we asked consumers questions that indirectly tested whether they  
9 felt that design justified purchasing decisions. Specifically, consumers were given the choice  
10 between an aesthetically appealing product and an average-looking product, similar to the studies  
11 of willingness to pay described above. We used five product categories in this study: tape  
12 dispensers, blenders, CD alarm clocks, desk lamps, and wall clocks. In contrast to the earlier  
13 studies, consumers were given four functional features (in addition to design and price) as a basis  
14 for evaluations for each of the products. For example, in tape dispensers the functional features  
15 included whether or not the base was no-slip (feature A), whether or not the base was weighted  
16 (feature B), whether or not the dispenser could handle more than one size of tape (feature C), and  
17 whether or not it was easy to load the dispenser with tape (feature D).

18 23. All of these functional features were shown to the respondents; however, the  
19 features differed in terms of whether or not they favored the aesthetically pleasing option. For  
20 half of the respondents, two of the features (*e.g.*, features A and B) favored the aesthetically  
21 pleasing option (*e.g.*, this dispenser had a weighted base and a no-slip base) and the other two  
22 features (*e.g.*, features C and D) favored the average-looking option (*e.g.*, this dispenser could  
23 handle more than one tape size and was easy to load). This was reversed for the other half of  
24 respondents so that the features that previously favored the average-looking option (*e.g.*,  
25 features C and D) now favored the aesthetically pleasing option and the features that previously  
26 favored the aesthetically pleasing option (*e.g.*, features A and B) now favored the average-looking  
27 option. After choosing an option, consumers were asked to rate how important each feature was  
28 in their decision.

1           24.     Across the product categories, each feature set (*e.g.*, features A and B or features C  
2 and D) was weighted as being significantly more important whenever it was paired with the more  
3 aesthetically pleasing product. In other words, when asked about the importance of certain  
4 features in terms of being a basis for choice, consumers in this study consistently inflated the  
5 importance of functional features that were paired with the more aesthetically pleasing products,  
6 regardless of which feature set was paired with those products. This research demonstrates that  
7 consumers may justify their choice of an aesthetically appealing product by overweighting  
8 functional product features because they may be reluctant to articulate that design drove their  
9 purchasing decisions.

10           25.     As stated above, based on my research, the distinctiveness of a product's design is  
11 a critical driver of purchasing decisions. The experimental paradigm that we used in the studies  
12 paired an aesthetically pleasing product with an average-looking product. Consumers' choices  
13 made it clear that consumers are willing to pay substantially more for an aesthetically pleasing  
14 product; yet, when asked directly, consumers would underweight the importance of design as a  
15 basis for their choices. Instead, they overweighed the importance of functional features, such as a  
16 tape dispenser with a no-slip base. This is consistent with research in the field of consumer  
17 behavior that shows that when consumers are surveyed about their choices, they tend to give  
18 reasons that are easier to justify to themselves and others (*e.g.*, a tape dispenser with a no-slip  
19 base) rather than reasons that are less rational and harder to justify (*e.g.*, an attractive-looking tape  
20 dispenser).<sup>3</sup> Thus, although consumers prefer notable, attractive designs, they nonetheless tend to  
21 underweight the importance of design when directly asked about its importance, and they  
22 correspondingly overweight other factors.

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27                   <sup>3</sup> Eldar Shafir, Itamar Simonson & Amos Tversky, *Reason-Based Choice*, 49 COGNITION  
28 11 (1993).



1           29.     In summary, my research on product design indicates the following: (i) that  
2 consumers are willing to pay substantial price premiums for an attractive-looking product;  
3 (ii) design is an important feature even in categories that are typically private in nature where  
4 social currency is not a big issue, perhaps because choosing attractive products affirms one’s  
5 sense of self, and (iii) consumers may not be aware of the effect of design, hence the influence of  
6 design may not be revealed in surveys where consumers are asked directly. In fact, we would  
7 expect this effect to become larger with products that do have social currency. When given a  
8 choice between an average-looking product and an attractive-looking product, however, it is clear  
9 that design has a large influence on the decision even in more mundane categories.

10           30.     I note that my research is consistent with anecdotal evidence from Apple. When  
11 Jonathan Ive, Apple’s Senior Vice President of Industrial Design, was asked: “[d]o consumers  
12 really care about good design[,]” he responded:

13                     One of the things we’ve really learnt over the last 20 years is that  
14 while people would often struggle to articulate why they like  
15 something – as consumers we are incredibly discerning, we sense  
16 where [there] has been great care in the design, and when there is  
cynicism and greed. It’s one of the thing [sic] we’ve found really  
encouraging.<sup>10</sup>

17     **VI.    BUILDING BRAND EQUITY VIA CREATING STRONG BRAND**  
18     **ASSOCIATIONS**

19           31.     A brand is one of the most valuable assets of a company.<sup>11</sup> For example,  
20 according to BrandZ, in 2011 the world’s most valuable brand was Apple, valued at over  
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24           <sup>10</sup> See Mark Prigg, *Sir Johnathan Ive: The iMan Cometh*,  
25 <http://www.thisislondon.co.uk/lifestyle/london-life/sir-jonathan-ive-the-iman-cometh-7562170.html>.

26           <sup>11</sup> This section includes concepts from the following sources: Kevin Lane Keller,  
27 *Strategic Brand Management*, (3rd edition, Upper Saddle River, NJ: Prentice-Hall, 2008);  
28 Kevin Lane Keller, *Conceptualizing, Measuring, and Managing Customer-based Brand Equity*,  
*57 JOURNAL OF MARKETING*, 1-22 (March 1993).

1 \$150 billion.<sup>12</sup> In addition to being valued financially, the benefits of having a strong brand can  
2 be described in terms of the advantages it provides in the marketplace. These benefits include:

- 3 1. Greater customer loyalty—customers desire a relationship  
4 with the brand because it has relevant meaning. They are willing to  
5 seek the brand out and actively tell others about the brand.
- 6 2. Less vulnerability to competitive marketing actions—other  
7 brands are not perceived as acceptable substitutes even though the  
8 products may be functionally similar.
- 9 3. Larger price margins—consumers are willing to pay a  
10 premium to keep the brand relationship.
- 11 4. Greater trade cooperation and support—bargaining power  
12 increases with the trade because other products are not perceived as  
13 substitutes. In addition, it is easier for strong brands to develop  
14 trade relationships.
- 15 5. Increased marketing communication effectiveness—a well-  
16 understood brand does not have to spend as much money to get its  
17 positioning across to consumers.
- 18 6. Additional brand extension opportunities—consumers are  
19 more likely to accept new products from brands that they know and  
20 trust.

21 32. Given the significant benefits of having a strong brand, it is imperative that the  
22 brand be managed with the utmost care. Indeed, if not managed effectively, even iconic brands  
23 can lose their power in the marketplace. Kodak, Sears, and Saturn are a few examples of brands  
24 that have lost tremendous value over the years.

25 33. Creating a strong brand entails establishing relevant meaning in the mind of the  
26 customer. Brand equity is strengthened when a company consistently uses the same branding  
27 association for its products over time, especially if that association is perceived to be unique.  
28 Brand equity is lost when the association is not emphasized or when it ceases to be unique in the  
market.

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<sup>12</sup> “BrandZ Top 100: Most Valuable Global Brands 2011,” *Millward Brown Optimor*, APLNDC-Y0000234947-234999, at APLNDC-Y0000234953; “BrandZ Top 100: Most Valuable Global Brands 2007,” *Millward Brown Optimor*, APLNDC-Y0000234143-234169 at APLNDC-Y0000234152.

1           34.     In order to better understand how to conceptualize brand equity, it is helpful to  
2 consider the difference between a product and a brand. Branding is the primary means to  
3 distinguish the goods of one producer from those of another. Keller's Customer-Based  
4 Brand Equity model provides a framework that distinguishes between products and brands. A  
5 product is anything that can be offered to a market for attention, acquisition, use, or consumption  
6 that might satisfy a need or want. Thus, a product may be a physical good (*e.g.*, a cereal, tennis  
7 racquet, or automobile), service (*e.g.*, an airline, bank, or insurance company), retail store (*e.g.*, a  
8 department store, specialty store, or supermarket), or a person (*e.g.*, a political figure, entertainer,  
9 or professional athlete).

10           35.     Whereas a product refers to the functional aspects of a good or service, a brand  
11 refers to the abstract meaning that differentiates that product in some way from other products  
12 designed to satisfy the same need. These points of differentiation may be rational features related  
13 to product performance or more emotional features related to what the brand represents to  
14 consumers. Thus, extending the example from above, a branded product may be a physical good  
15 (*e.g.*, Kellogg's Corn Flakes cereal, Prince tennis racquets, or Ford Taurus automobiles), a service  
16 (*e.g.*, United Airlines, Bank of America, or Transamerica insurance), a store (*e.g.*,  
17 Bloomingdale's department store, Body Shop specialty store, or Safeway supermarket), or a  
18 person (*e.g.*, Bill Clinton, Tom Hanks, or Michael Jordan). The important aspect for companies is  
19 to emphasize an association consistently over time so that the brand meaning becomes evident to  
20 consumers.

21           36.     Customer-based brand equity is defined as the differential effect that brand  
22 knowledge has on consumer response to the marketing of that brand. A brand is said to have  
23 positive customer-based brand equity when customers react more favorably to a product and the  
24 way it is marketed when the brand is identified as compared to when it is not (*e.g.*, when it is  
25 attributed to a fictitiously named or unnamed version of the product). As described below, brand  
26 knowledge is the critical component that drives brand equity.

27           37.     For example, blind tests routinely find differences in consumer responses between  
28 products when the brand is known relative to when the brand is not known. Many consumer

1 categories such as cola, soap, and pain relievers have competitive products that perform very  
2 similarly when the brand name is not known. The reality, however, is that Coke, Dove, and  
3 Tylenol are some of the strongest brands in the world and when those brands are revealed in  
4 consumer tests, that knowledge affects the results. This brand strength reflects the importance of  
5 brand knowledge, which creates brand meaning and ultimately generates the differential  
6 responses to marketing programs. Two colas may be quite physically similar in composition but  
7 Coke and Pepsi are perceived to be vastly different due to the knowledge accumulated about these  
8 brands over time. Thus, brands and brand equity reside in the minds of consumers, and it is of  
9 paramount importance to actively manage this knowledge with effective brand marketing  
10 programs. Of utmost importance is the creation and consistent reinforcement of a unique point of  
11 difference around which the brand can be positioned.

12 38. Uniqueness is critical to establish, because the strongest brands have a  
13 recognizable point of difference that differentiates them from the competition. For example,  
14 consider a brand like Pepsi. Brand knowledge is often examined by asking customers what  
15 comes to mind when the brand name is mentioned. When asked about Pepsi, consumers may  
16 mention, for example, category associations (cola), attributes (sweet taste), and image  
17 associations (endorsers like Britney Spears). These responses represent the knowledge that  
18 customers have about the Pepsi brand in memory and form the basis of brand equity. What is  
19 important for Pepsi, however, is whether consumers mention something related to the brand's  
20 point of difference. In this case, many customers tend to say that Pepsi is for young people, or  
21 people who think young, or for Generation Next, etc. This is exactly what the brand manager at  
22 Pepsi desires, that customers understand brand meaning and can communicate the brand's point  
23 of difference.

## 24 **VII. APPLE IS KNOWN FOR DESIGN**

### 25 **A. The Importance of Design to Steve Jobs and Apple**

26 39. Apple's focus on design is evident in the way Apple has structured itself internally  
27 and how it expresses itself externally. From the outset, Apple co-founder Steve Jobs believed in  
28

1 the power of design.<sup>13</sup> Eulogizing Jobs as designer first and CEO second, the *New York Times*  
2 pointed out Jobs' attention to design and detail, stating: "He thought about design . . . . In fact,  
3 he went beyond thinking about it. He obsessed over it—every curve, every pixel, every ligature,  
4 every gradient."<sup>14</sup> John Maeda, President of the Rhode Island School of Design, stated that Jobs'  
5 single greatest design achievement "is the Apple organization, an organization that actually cares  
6 about design more than technology."<sup>15</sup>

7 40. Steve Jobs was widely recognized as a design visionary throughout his career.<sup>16</sup>  
8 For example, Paola Antonelli, senior curator of architecture and design at the Museum of

9 <sup>13</sup> For instance, the *Wall Street Journal* stated:

10 The most productive chapter in Mr. Jobs's career occurred near the  
11 end of his life, when a nearly unbroken string of successful  
12 products like the iPod, iPhone, and iPad changed the PC,  
13 electronics and digital-media industries. The way he marketed and  
14 sold those products through savvy advertising campaigns and  
15 Apple's retail stores helped turn the company into a pop-culture  
16 phenomenon.

17 *At the beginning of that phase, Mr. Jobs described his philosophy  
18 as trying to make products that were at 'the intersection of art and  
19 technology.'* In doing so, he turned Apple into the world's most  
20 valuable company with a market value of \$350 billion." (emphasis  
21 added)

18 Yukari Iwatani Kane, *Steven Paul Jobs, 1955-2011*, Wall Street Journal, October 5, 2011,  
19 <http://online.wsj.com/article/SB10001424052702304447804576410753210811910.html>.

20 <sup>14</sup> Nick Bilton, *Steve Jobs: Designer First, C.E.O. Second*, October 6, 2011,  
21 <http://bits.blogs.nytimes.com/2011/10/06/steve-jobs-designer-first-c-e-o-second/?ref=stevenpjobs>.

22 <sup>15</sup> *How Steve Jobs Changed the World of Design*, October 7, 2011,  
23 <http://www.npr.org/2011/10/07/141144758/remembering-how-steve-jobs-changed-the-design-world>.

24 <sup>16</sup> John Markoof, *Redefined the Digital Age as the Visionary of Apple*, N.Y. Times,  
25 October 5, 2011; *Obituary: Apple co-founder and Silicon Valley pioneer Steve Jobs is dead*,  
26 MercuryNews.com, October 7, 2011, [http://www.mercurynews.com/obituaries/ci\\_19048827](http://www.mercurynews.com/obituaries/ci_19048827);  
27 *Steve Jobs: The Passing of a tech visionary*, SFGate, October 6, 2011,  
28 <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2011/10/06/ED1BILE1C9.DTL>; See Steve Lohr,  
*The Power of Taking the Big Chance*, N.Y. Times, October 8, 2011,  
<http://www.nytimes.com/2011/10/09/business/steve-jobs-and-the-power-of-taking-the-big-chance.html?scp=1&sq=The%20Power%20of%20Taking%20the%20big%20chance&st=cse>.

1 Modern Art in New York exclaimed that Jobs “had an exceptional eye for design, and not just an  
2 eye, but an intelligence for design.”<sup>17</sup> Jobs explained his focus on design, stating “[d]esign is the  
3 fundamental soul of a man-made creation that ends up expressing itself in successive outer layers  
4 of the product or service.”<sup>18</sup>

5 **B. Design is in Apple’s DNA**

6 41. As a result of Steve Jobs’ focus on design, one of Apple’s primary points of  
7 difference is its strong association with design. This association derives from a continued  
8 emphasis on design over decades in the marketplace. Apple has placed the utmost importance in  
9 product design. The focus on design, however, is not limited to the look of the products. Apple’s  
10 corporate culture values design. Apple’s advertising showcases design. Even Apple retail stores  
11 and product packaging emphasize design.

12 42. Apple has stated that its overall business strategy includes leveraging its unique  
13 ability to design and develop products that represent innovative industrial design. According to a  
14 recent annual report:

15 The Company’s overall business strategy is to control the design  
16 and development of the hardware and software for all of its  
17 products, including the personal computer, mobile communications  
18 and consumer electronics devices. The Company’s business  
19 strategy leverages its unique ability to design and develop its own  
20 operating system, hardware, application software, and services to  
21 provide its customers new products and solutions with superior  
22 ease-of-use, seamless integration, and innovative industrial  
23 design.<sup>19</sup>

24 43. This sentiment on the importance of design is echoed in comments from the entire  
25 Apple leadership team. Cordell Ratzlaff, a chief architect of the Mac OS X operating system,  
26 said: “We did the design first. We focused on what we thought people would need and want, and

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27 <sup>17</sup> James B. Stewart, *How Jobs Put Passion Into Products*, N.Y. Times, October 7, 2011,  
28 <http://www.nytimes.com/2011/10/08/business/how-steve-jobs-infused-passion-into-a-commodity.html>.

<sup>18</sup> *Id.*

<sup>19</sup> Apple 10-K/A (Amended Annual Report) filed January 25, 2010, APLNDC-Y0000135185-APLNDC-Y0000135265 at APLNDC-Y0000135191.

1 how they would interact with their computer.”<sup>20</sup> Similarly, Jonathan Ive, the Senior Vice  
2 President of Industrial Design at Apple, reflecting upon the importance of design, said that the  
3 appearance of Apple products is “the result of painstaking attention to detail.”<sup>21</sup> Clearly, Apple’s  
4 corporate culture places tremendous value on design.

5 **C. Publicity Surrounding Products and Product Launches**

6 44. This internal emphasis on design is also expressed externally to consumers. For  
7 example, Apple commonly uses the “product as hero” approach in its advertising of the iPhone  
8 and iPad.<sup>22</sup> This approach is described in Apple’s iPhone, iPad, and iPod touch marketing  
9 communications.<sup>23</sup> The “product as hero” ads showcase the product’s look and feel, often with  
10 close up shots that reveal the elegant product design. For example, Philip Schiller, Apple’s  
11 Senior Vice President of Worldwide Product Marketing, stated that:

12 when we create our website, one of the first things you’ll see when  
13 you go look at the iPhone is a beautiful photo of it because how it  
14 looks is really tantamount. I think it’s one of the most important  
15 things, that it’s beautiful and the design is something unique and  
16 distinctive, and we will show that.<sup>24</sup>

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17 <sup>20</sup> See “Design Thinking and Innovation at Apple,” Harvard Business School Case Study  
18 No: 9-609-066, revised March 4, 2010, APLNDC-Y0000134928–134940.

19 <sup>21</sup> See *id.*

20 <sup>22</sup> See, e.g., Deposition of Sissie Twiggs on July 27, 2011, 97:20-21; Deposition of  
21 Tamara Whiteside on February 28, 2012, 34:1.

22 <sup>23</sup> See, e.g., iPhone Advertising Guidelines, APLNDC0002155318-APLNDC0002155322,  
23 at APLNDC0002155320; iPhone 3G Advertising Guidelines, APLNDC0002155335-  
24 APLNDC0002155338, at APLNDC0002155336; iPhone 3GS Launch Kit – US (June 2009),  
25 APLNDC0002008363-APLNDC0002008405, at APLNDC0002008368-69,  
26 APLNDC0002008380; iPod Family Asset Kit – U.S. (Sep. 2009), APLNDC0001327374–  
27 1327415, at APLNDC0001327376; January 2010 iPhone Asset Kit U.S. (Dec. 2009),  
28 APLNDC0001335264-APLNDC0001335280, at APLNDC0001335266; APLNDC0002203459  
and APLNDC0002203464 in APLNDC0002203457–2203482; 9090-EF03-BB00003101 at p. 5;  
iPad Asset Kit-US (Apr. 2010), APLNDC0001964084-1964099, at APLNDC0001964087; iPad 2  
Business Asset Kit – English (Mar. 2011), APLNDC0002027210-APLNDC0002027226, at  
APLNDC0002027225.

<sup>24</sup> Deposition of Philip Schiller on February 17, 2012, 121:16-22.

1           45.     As another example, Sissie Twiggs, Apple’s Director of Worldwide Advertising  
2 stated:

3                     Apple as a company comes from the design of our products. It is  
4 the key to what makes our products distinctive, and that’s  
5 something we live with every day, fortunately. . . . As I mention all  
6 the time, showing our product as hero, with the design elements in  
7 the center of our advertising, is absolutely critical. And probably  
8 like anyone with their own product, they like to show their product  
9 as it appears in the best light possible. And we’re fortunate with  
10 Apple products that there are so many gorgeous design elements to  
11 them, there’s a lot to show off.<sup>25</sup>

12           46.     Apple’s products have attained unprecedented levels of publicity and news  
13 coverage.<sup>26</sup> The launch of the iPhone in 2007 was covered exhaustively by the national media,<sup>27</sup>  
14 as was each introduction of each new iPhone model.<sup>28</sup> The formal launch of the iPad was even  
15 more extensively covered, with several major media outlets posting live blog reports throughout  
16 the event.<sup>29</sup> These products were exceedingly successful and they appeared in a variety of mass  
17 media channels, from newspapers, magazines, television, and movies. Although it does not pay  
18 for product placements, Apple iPhone and iPad products are frequently seen in popular

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19                     <sup>25</sup> Deposition of Sissie Twiggs on July 27, 2011, 164:17-165:4.

20                     <sup>26</sup> See, e.g., Jefferson Graham, *Apple Buffs Marketing Savvy to a High Shine*, USA Today,  
21 March 9, 2007, [http://www.usatoday.com/tech/techinvestor/industry/2007-03-08-apple-marketing\\_N.htm](http://www.usatoday.com/tech/techinvestor/industry/2007-03-08-apple-marketing_N.htm).

22                     <sup>27</sup> See, e.g., John Markoff, *Apple, Hoping for Another iPod, Introduces Innovative  
23 Cellphone*, N.Y. Times, Jan. 10, 2007; Ellen Lee, *Apple Unveils All-in-One iPhone*, S.F.  
24 Chronicle, Jan. 9, 2007; Jon Swartz, *Apple Unveils All-in-One iPhone*, USA Today,  
25 Jan. 10, 2007; Li Yuan & Pui-Wing Tam, *Apple Storms Cellphone Field*, Wall Street Journal,  
26 Jan. 10, 2007.

27                     <sup>28</sup> See, e.g., Brad Stone and Jenna Wortham, *iPhone Stars in Apple Show, Supported by  
28 Software*, N.Y. Times, June 8, 2009; Ryan Kim, *Apple Unveils Faster iPhone with New Features*,  
S.F. Chronicle, June 9, 2009; Nathan Olivarez-Giles and Shan Li, *Apple Fans Camp Out to Get  
New iPhone 4S*, L.A. Times, Oct. 15, 2011; Casey Newton, *Apple’s iPhone 4S Generates Big 1<sup>st</sup>-  
Day Sales*, S.F. Chronicle, Oct. 14, 2011; *For Apple Fans, New iPhone Worth the Wait*, Chicago  
Tribune, Oct. 15, 2011;

<sup>29</sup> See, .e.g., David Gallagher, <http://bits.blogs.nytimes.com/2010/04/03/live-blogging-the-ipads-big-day/> (New York Times blog entry titled “The iPad’s Big Day”).

1 television programs.<sup>30</sup> For example, an episode of the hit ABC series *Modern Family* revolved  
2 around a character's efforts to obtain an iPad the day it was released.<sup>31</sup> The iPad quickly became  
3 associated with leading newsmakers and public figures throughout the world. Pope Benedict  
4 XVI used an iPad to send the Vatican's first tweet and photos of the Pope with his iPad were  
5 viewed all over the world.<sup>32</sup> President Barack Obama stated in an interview that he uses his iPad  
6 to read newspapers that he used to read in print.<sup>33</sup> And Oprah Winfrey named the iPad one of her  
7 "Ultimate Favorite Things."<sup>34</sup> In addition, Apple recently won a product placement award for its  
8 products appearing in a significant number of movies that were top box office hits in 2011.<sup>35</sup>

9 47. Apple has made substantial expenditures on advertising since the iPhone was  
10 launched in 2007.<sup>36</sup> In fiscal year 2008, Apple spent \$97.5 million in the U.S. on iPhone  
11 advertising. Apple's U.S. advertising expenses in the U.S. for the iPhone were \$149.6 million,  
12 \$173.3 million, and \$226.6 million in fiscal years 2009, 2010, and 2011, respectively.<sup>37</sup> Between  
13 fiscal year 2008 and the end of the first quarter of fiscal year 2012, Apple spent a total of \$747.2  
14 million on iPhone advertisements in the U.S.<sup>38</sup> The iPhone advertisements reflect Apple's  
15 "product as hero" philosophy and most advertisements include a large photograph of the iPhone,

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16 <sup>30</sup> Suzanne Lindbergh, Director of Buzz Marketing at Apple, discussed marketing and  
17 product placement at her deposition. *See generally* Deposition of Suzanne Lindbergh on  
18 February 28, 2012.

19 <sup>31</sup> *See* Brian Steinberg, 'Modern Family' Featured an iPad, but ABC Didn't Collect,  
<http://adage.com/article/mediaworks/modern-family-ipad-abc-collect/143105/>.

20 <sup>32</sup> *See, e.g.*, <http://www.bbc.co.uk/news/world-europe-13956572>.

21 <sup>33</sup> *See* Julia Edwards, *Obama Received an Early iPad From Steve Jobs*  
<http://www.nationaljournal.com/obama-received-an-early-ipad-from-steve-jobs-20111003>.

22 <sup>34</sup> "Oprah's Ultimate Favorite Things 2010," *The Oprah Winfrey Show*,  
23 November 19, 2010 (<http://www.oprah.com/oprahshow/Oprahs-Ultimate-Favorite-Things-2010/2>).

24 <sup>35</sup> *See* <http://www.brandchannel.com/home/post/2012-Brandcameo-Product-Placement-Awards-021312.aspx#one>.

25 <sup>36</sup> *See* Beth Snyder Bulik *Marketer of the Decade: Apple* <http://adage.com/article/special-report-marketer-of-the-year-2010/marketer-decade-apple/146492/>

27 <sup>37</sup> *See* APLNDC-Y0000051623.

28 <sup>38</sup> *See* APLNDC-Y0000051623.

1 often highlighting its unique design. Attached as Exhibit E are examples of iPhone print and  
2 billboard advertising.

3 48. Likewise, Apple has invested substantial sums in advertising since the iPad  
4 launched in 2010. Apple's U.S. advertising expenses for the iPad were \$149.5 million and  
5 \$307.7 million in fiscal years 2010 and 2011, respectively.<sup>39</sup> Between fiscal year 2010 and the  
6 end of the first quarter of fiscal year 2012, Apple spent a total of \$535.8 million on iPad  
7 advertising in the U.S.<sup>40</sup> The iPad advertisements also reflect Apple's "product as hero"  
8 philosophy and virtually all advertisements include a large photograph of the iPad, frequently  
9 highlighting its unique design. Attached as Exhibit F are examples of iPad print and billboard  
10 advertising.

11 49. Apple Stores are also an expression of design and many of them have won  
12 architecture awards.<sup>41</sup> Not only are the stores visually appealing in terms of architecture,<sup>42</sup> the  
13 layout inside of the store differs significantly from other consumer electronics stores such as  
14 Best Buy. The products are not jam packed on a shelf, rather they are spaced out on tables to  
15 allow consumers to admire the design, similar to a museum, and even to interact with the  
16 products in a spacious environment. There is a genius bar instead of a help desk.<sup>43</sup> Consumers  
17  
18

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19 <sup>39</sup> See APLNDC-Y0000051623.

20 <sup>40</sup> See APLNDC-Y0000051623.

21 <sup>41</sup> See, e.g., <http://www.bcj.com/public/news/article/81.html> (Opéra Paris);  
22 <http://www.bcj.com/public/projects/project/82.html> (Fifth Avenue);  
23 <http://www.bcj.com/public/projects/project/116.html> (Covent Garden);  
24 <http://www.bcj.com/public/projects/project/123.html> (San Francisco);  
25 <http://www.bcj.com/public/projects/project/121.html> (North Michigan Avenue);  
26 <http://www.bcj.com/public/projects/project/119.html> (Lincoln Park)

27 <sup>42</sup> See David Hill, *Steve Jobs: A Great Client*  
28 <http://archrecord.construction.com/news/2011/10/Apple-Store.asp> ("From the start—Apple's first  
two stores opened on May 19, 2001, in Tysons Corner, Virginia, and Glendale, California—the  
stores were noted for their sleek, minimalist design, a reflection of Apple's products.").

<sup>43</sup> See Bohlin Cywinski Jackson, *Apple Soho*,  
<http://archrecord.construction.com/projects/BTS/archives/retail/AppleStore/overview.asp>.

1 like these stores so much that there are often lines to get in on opening day.<sup>44</sup> The stores are yet  
2 another communication device that further associates Apple with design.<sup>45</sup>

3 50. Even the packaging for Apple products reinforces the uniqueness of Apple  
4 products. Steve Jobs said: “When you open the box of an iPhone or iPad, we want that tactile  
5 experience to set the tone for how you perceive the product.”<sup>46</sup> For the iPhone, the packaging  
6 features a compact black or black-and-white box with metallic silver lettering on a matte black  
7 surface, with the sides of the top of the box extending down to cover the bottom portion of the  
8 box completely. The exterior of the box has minimal wording and a simple, prominent, nearly  
9 full-size photograph of the iPhone itself. The style carries over within the box—the iPhone is  
10 cradled within a specially designed display so that the iPhone, and nothing else, is visible when  
11 the box is opened. The iPad packaging is similarly innovative. Like the iPhone, it utilizes a box  
12 that, when opened, prominently displays the iPad so that it is immediately visible, with all other  
13 accessories and materials layered beneath it. The exterior of the box has a simple, prominent,  
14 nearly full-size photograph of the iPad on a white background. Like the products, advertising,  
15 and retail stores, the packaging of Apple products reinforce the importance of design to Apple

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20 <sup>44</sup> See Shara Tibken, *Apple Opens New York Grand Central Store*,  
21 <http://online.wsj.com/article/SB10001424052970203413304577088201456063374.html> (“Apple  
22 Inc. opened its latest retail store Friday in New York’s historic Grand Central Terminal to  
23 hundreds of eager shoppers from around the country who had been waiting in line for as long as a  
24 day.”).

24 <sup>45</sup> See <http://archrecord.construction.com/features/bwarAwards/archives/03apple.asp> (“In  
25 an effort to bring public attention to its products, the always daring and innovative Steve Jobs  
26 began a campaign a few years ago of opening modern, uniquely designed Apple retail stores that  
27 reflected the company’s design philosophy.”); see also [http://adage.com/article/special-report-  
28 marketer-of-the-year-2010/marketer-decade-apple/146492/](http://adage.com/article/special-report-marketer-of-the-year-2010/marketer-decade-apple/146492/) (Apple stores are meant to act as  
“brand ambassadors.”).

27 <sup>46</sup> See Walter Isaacson, *The Real Leadership Lessons of Steve Jobs*  
28 <http://hbr.org/2012/04/the-real-leadership-lessons-of-steve-jobs/ar/pr>.

1 and the Apple brand.<sup>47</sup> Examples of the Apple packaging are attached as Exhibits G  
2 (iPhone 3GS) and H (iPad 2).

3 **D. Design Recognition**

4 51. The end result of the commitment to design is widespread praise for Apple from  
5 critics and consumers alike. Notably, the iPad and iPhone have both won numerous design  
6 awards. The iPad was named as one of *Time* magazine's 50 Best Inventions of the Year 2010,  
7 Engadget's 2010 Editors' Choice Gadget of the Year, and it received a 2010 Red Dot Award for  
8 Product Design. Likewise, the iPhone received a 2008 Design and Art Direction (D&AD)  
9 "Black Pencil" award, a 2008 International Forum (iF) Product Design Award, and the 2008  
10 International Design Excellence Award (IDEA) Best in Show. More recently, Engadget included  
11 the iPhone as part of its list of the 10 Gadgets That Defined the Decade.

12 52. The iPhone's beauty and distinctive appearance have also been praised in many  
13 articles, including the following:

- 14 • A *New York Times* review of the iPhone (January 11, 2007) notes that "[a]s  
15 you'd expect of Apple, the iPhone is gorgeous."<sup>48</sup>
- 16 • A *New York Times* article (June 27, 2007) describes the iPhone as "a tiny,  
17 gorgeous hand-held computer," and notes that "[t]he phone is so sleek and  
18 thin, it makes Treos and Blackberrys look obese."<sup>49</sup>
- 19 • A *Wall Street Journal* article (June 27, 2007) stated that smartphone  
20 "designers have struggled to balance screen size, keyboard usability and  
21

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22  
23 <sup>47</sup> See generally [http://www.gianfagnamarketing.com/blog/2010/05/21/branding-in-the-](http://www.gianfagnamarketing.com/blog/2010/05/21/branding-in-the-package-lessons-from-apples-master-marketers/)  
24 [package-lessons-from-apples-master-marketers/](http://www.gianfagnamarketing.com/blog/2010/05/21/branding-in-the-package-lessons-from-apples-master-marketers/) ("Apple's look is always simple and clean and  
the packaging for the iPad is true to the brand.").

25 <sup>48</sup> David Pogue, *Apple Waves Its Wand at the Phone*  
26 <http://www.nytimes.com/2007/01/11/technology/11pogue.html?sq=pogue>.

27 <sup>49</sup> David Pogue, *The iPhone Matches Most of Its Hype*  
28 <http://www.nytimes.com/2007/06/27/technology/circuits/27pogue.html?pagewanted=2&ref=iphone>  
ne.

1 battery life . . . . [T]he iPhone is, on balance, a beautiful and breakthrough  
2 handheld computer.”<sup>50</sup>

3 53. Consumers also praise Apple for the design of its products. According to Apple’s  
4 internal research, attractive appearance and design is identified as an important reason for choice  
5 of the iPhone and iPad. Indeed, this strong association between Apple’s products and design is  
6 evident throughout the world as design was rated in importance from a high of 94% in China to a  
7 low of 76% in Japan in the context of iPhone choice.<sup>51</sup> Significant numbers of U.S. respondents  
8 consistently rated “attractive appearance and design” as “very important” or “highly” important to  
9 their decision to purchase the iPhone.<sup>52</sup> This research suggests that Apple products have created a  
10 point of difference related to design that should be nurtured by the company.

11 54. Apple has conducted several primary market research studies that confirm that the  
12 design and appearance of the iPhone are important to consumers. For example, in one survey of  
13

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14 <sup>50</sup> Walter S. Mossberg and Katherine Boehret, *Testing Out the iPhone*  
<http://online.wsj.com/articles/SB118289311361649057.html>.

15 <sup>51</sup> See iPhone Buyer Survey, FY11-Q3, APLNDC-Y0000027506-APLNDC-  
16 Y0000027599, at APLNDC-Y0000027572 (“attractive appearance and design” was rated in  
17 importance from a high of 94% in China to a low of 76% in Japan); see also iPhone Buyer  
18 Survey, FY11-Q2, APLNDC-Y0000027423-APLNDC-Y0000027505, at APLNDC-  
19 Y0000027450 (“attractive appearance and design” was rated in importance from a high of 86% in  
20 the United Kingdom to a low of 75% in Japan); iPhone Buyer Survey, FY11-Q1, APLNDC-  
21 Y0000027341-APLNDC-Y0000027422, at APLNDC-Y0000027362 “attractive appearance and  
22 design” was rated in importance from a high of 85% in the United Kingdom and Germany to a  
23 low of 74% in Japan); iPhone Buyer Survey, FY10-Q4, APLNDC-Y0000027256-APLNDC-  
24 Y0000027340, at APLNDC-Y0000027277 (“attractive appearance and design” was rated in  
25 importance from a high of 89% in the United Kingdom to a low of 78% in Japan).

26 <sup>52</sup> See iPhone Buyer Survey, FY11-Q3, APLNDC-Y0000027506-APLNDC-  
27 Y0000027599, at APLNDC-Y0000027523, APLNDC-Y0000027572 (“attractive appearance and  
28 design” was rated by 82% of U.S. respondents as “very important” or “somewhat important”);  
iPhone Buyer Survey, FY11-Q2, APLNDC-Y0000027423-APLNDC-Y0000027505, at  
APLNDC-Y0000027450 (“attractive appearance and design” was rated by 82% of U.S.  
respondents as “very important” or “somewhat important”); iPhone Buyer Survey, FY11-Q1,  
APLNDC-Y0000027341-APLNDC-Y0000027422, at APLNDC-Y0000027362 (“attractive  
appearance and design” was rated by 81% of U.S. respondents as “very important” or “somewhat  
important”); iPhone Buyer Survey, FY10-Q4, APLNDC-Y0000027256-APLNDC-Y0000027340,  
at APLNDC-Y0000027277 (“attractive appearance and design” was rated by 82% of U.S.  
respondents as “very important” or “somewhat important”).

1 early purchasers of the original iPhone, 78% responded that the “appearance and design” was  
2 important to their decision to purchase the iPhone.<sup>53</sup> Similarly, in surveys of purchasers of the  
3 iPhone 3GS and iPhone 4, 82%, 81%, 82%, and 82% responded that “attractive appearance and  
4 design” was somewhat or very important to their decision to purchase an iPhone in FY10-Q4,<sup>54</sup>  
5 FY11-Q1,<sup>55</sup> FY11-Q2,<sup>56</sup> and FY11-Q3, respectively.<sup>57</sup>

6 55. Again, this data reflects that a large number of consumers who purchase the  
7 iPhone value design as an important factor in making their purchasing decision. Note, however,  
8 that the questions in these surveys asked consumers to rate importance of each feature  
9 individually, hence “design” could be important, and functionality, such as “easy-to-use,” could  
10 also be important. Further, as explained above, because consumers undervalue the importance of  
11 design to their buying decisions, it may be the case that design is even more important to  
12 consumers’ decision to buy the iPhone than is indicated in the iPhone Buyer Surveys. Even if no  
13 adjustments are made due to the general undervaluing of the importance of design, the iPhone  
14 Buyer Surveys show that design is an important driver of purchasing decisions. Because the iPad  
15 includes many of the same distinctive design features as the iPhone, I would expect that attractive  
16 appearance and design is a similarly important driver of iPad purchasing decisions. Indeed, the  
17 *New York Times* discussed the attractive design of Apple’s iPad in a recent article on the market  
18 for tablet computers: “Apple also has a lead in design that will be tough to surmount. People  
19 want to own its products because they are so good-looking.”<sup>58</sup>

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22 <sup>53</sup> APLNDC-Y0000029092-APLNDC-Y0000029135 at APLNDC-Y0000029125.

23 <sup>54</sup> APLNDC-Y0000027256-APLNDC-Y0000027340 at APLNDC-Y0000027277-78.

24 <sup>55</sup> APLNDC-Y0000027341-APLNDC-Y0000027422 at APLNDC-Y0000027362.

25 <sup>56</sup> APLNDC-Y0000027423-APLNDC-Y0000027505 at APLNDC-Y0000027450.

26 <sup>57</sup> APLNDC-Y0000027506-APLNDC-Y0000027599 at APLNDC-Y0000027523,  
APLNDC-Y0000027572.

27 <sup>58</sup> David Stretifeld, *Amazon Has High Hopes for its iPad Competitor*, N.Y. Times,  
28 September 25, 2011.

1           56.     The Apple product designs are in fact so notable that they have even been featured  
2 in museums. Apple’s products have been added to the collections of several museums, including  
3 the Museum of Modern Art in New York,<sup>59</sup> the San Francisco Museum of Modern Art,<sup>60</sup> and the  
4 Smithsonian Cooper-Hewitt National Design Museum in New York.<sup>61</sup> Additionally, the  
5 United States Patent and Trademark office featured iPhone-shaped displays in an exhibit  
6 showcasing Steve Jobs’ numerous patents and trademarks.<sup>62</sup>

7           **VIII. APPLE’S BRAND EQUITY, AMONG THE HIGHEST IN THE WORLD, IS TIED**  
8           **CLOSELY TO PRODUCT DESIGN**

9           57.     Since the iPhone was introduced in 2007, Apple’s brand rankings and brand value  
10 have increased significantly. Apple is now one of the most highly ranked brands in the world.

11           58.     The BrandZ rankings by Millward Brown Optimor determined that Apple was the  
12 most valuable brand in the world in 2011. Since the iPhone was introduced in 2007, the BrandZ  
13 ranking of Apple has gone from No. 16 to No. 1, and its brand value has gone from \$24.7 billion  
14 to \$153.3 billion.<sup>63</sup> BrandZ has attributed the increase in brand value and ranking to, in part, the  
15 iPhone and the iPad and Apple’s innovative product design:

16                                 [Apple] earned an 84 percent increase in brand value with  
17                                 successful iterations of existing products like the iPhone, creation  
18                                 of the tablet category with iPad, and anticipation of a broadened  
19                                 strategy making the brand a trifecta of cloud computing, software,  
20                                 and *innovative, well-designed devices*. ... At the start of last year,  
21                                 few people fretted that their lives felt bereft of a digital gadget  
22                                 smaller than their laptop but larger than their mobile phone. By the  
23                                 end of 2010, however, around 18 million of us owned iPads or  
24                                 other tablets. Apple understood that its customers wanted access to

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22           <sup>59</sup> See [http://www.moma.org/collection/artist.php?artist\\_id=22559](http://www.moma.org/collection/artist.php?artist_id=22559).

23           <sup>60</sup> See <http://www.sfmoma.org/explore/collection/artists/102694/artwork>.

24           <sup>61</sup> See <http://www.cooperhewitt.org/apple>.

25           <sup>62</sup> Brian Chen, *Patent Office Highlights Jobs’s Innovations*,  
<http://bits.blogs.nytimes.com/2011/11/23/patent-office-highlights-jobss-innovations/>.

26           <sup>63</sup> “BrandZ Top 100: Most Valuable Global Brands 2007,” *Millward Brown Optimor*,  
27           APLNDC-Y0000234143-234169 at APLNDC-Y0000234152; “BrandZ Top 100: Most Valuable  
28           Global Brands 2011,” *Millward Brown Optimor*, APLNDC-Y0000234947-234999 at APLNDC-  
                  Y0000234953.

1 data and images anywhere, anytime, in easy-to-view definition with  
2 an easy-to-use touch interface. In a span of a few months, the brand  
3 met these needs with the iPad and iPhone 4. Apple trusted that its  
4 customers would discover uses for these products that would help  
5 organize, simplify or complicate, but mostly improve their lives....  
6 Apple continued quietly developing a cloud and loudly discovered  
7 an empty space in the computing category that it filled with a new  
8 device – the iPad.<sup>64</sup>

9  
10 59. In 2010, BrandZ increased its valuation of the Apple brand by 32 percent from  
11 2009, again focusing on Apple’s elegant designs, stating:

12 [T]his increase is a tribute to the company’s ability to transform  
13 itself from an electronics manufacturer into a brand that is central to  
14 people’s lives. Apple manages to celebrate creativity and self-  
15 expression while, anticipating consumers’ needs and wants and  
16 meeting those needs with *solutions that are noteworthy for their*  
17 *ease of use and elegance of design*. Apple benefited specifically  
18 from the popularity of the iPhone, its 100,000 apps, and  
19 anticipation for the iPad.<sup>65</sup>

20  
21 60. Interbrand increased the ranking of Apple’s brand from No. 33 in 2007 to No. 8 in  
22 2011. Interbrand also highlighted the importance of the iPhone and iPad products to value of the  
23 Apple brand:

24 Setting the bar high in its category and beyond, Apple is the icon  
25 for great branding meeting great technology to deliver a unique  
26 overall experience, making its giant leap from #17 to #8 in the  
27 rankings less than surprising. Consumers continue to follow its  
28 product launches with anticipation and are quick to integrate its  
sleek products into their lifestyles. Continuing its wave of first-to-  
market products, Apple launched the iPad in 2010 creating the new  
tablet category in the process. Since its launch, young and old alike  
have embraced it as a tool, with organizations from education to  
health to sales coming on board as well. Apple has even

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25 <sup>64</sup> “BrandZ Top 100: Most Valuable Global Brands 2011,” *Millward Brown Optimor*,  
26 (emphasis added) APLNDC-Y0000234947-234999 at APLNDC-Y0000234954, APLNDC-  
Y0000234970, APLNDC-Y0000234988.

27 <sup>65</sup> “BrandZ Top 100: Most Valuable Global Brands 2010,” *Millward Brown Optimor*,  
28 (emphasis added) APLNDC-Y0000234185-234257 at APLNDC-Y0000234248.

1 implemented the iPad in its innovative retail spaces as a service tool  
2 for customers as they wait in line.<sup>66</sup>

3 61. Apple has successfully created a brand that stands for innovative designs and  
4 products. According to *Interbrand*:

5 Apple is a brand that customers immediately understand. They  
6 know what they get out of adopting and associating with it. Its  
7 products are seen as innovative and creative. *In contrast to Dell,*  
8 *which creates products that lack any consistent visual cues,*  
9 *Apple's design is consistent and distinctive — from the clean,*  
10 *silver or smooth white of its laptops to the pocket-size rectangle of*  
11 *its iPod or iPhone.*<sup>67</sup>

12 62. In sum, outside of the field of fashion, I am not aware of any other mass market  
13 consumer-oriented company that has been as successful as Apple in tying design to its brand  
14 image. As described above, Apple uses a wide variety of techniques to ensure that consumers  
15 identify its designs as “Apple.” Of course, it starts with excellent product design, but it goes  
16 beyond that. It also features product design front and center in its advertisements, chooses the  
17 most conspicuous locations for outdoor advertising, designs its retail stores to showcase its  
18 products in a museum-like setting, designs its packaging as carefully as the products themselves,  
19 and its products receive extensive exposure in popular media—in the hands of the most  
20 influential celebrities and in the most popular television shows and movies. By integrating every  
21 aspect of its products’ design and presentation, Apple has created a strong association for the  
22 Apple brand. I believe that Apple’s corporate culture has emphasized an integrated approach to  
23 product design, packaging design, store design, advertising design, and product placement. As a  
24 result, Apple enjoys an unprecedented consumer association between the Apple brand and design.

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26 <sup>66</sup> “Best Global Brands 2011,” *Interbrand*, APLNDC-Y0000234947-234999 at APLNDC-  
Y0000234951.

27 <sup>67</sup> “Best Global Brands 2010,” *Interbrand*, (emphasis added) APLNDC-Y0000234185-  
28 234257 at APLNDC-Y0000234190.

1 in developing the look and feel of the Apple products and their unique packaging has contributed  
2 significantly to consumer awareness of the brand.<sup>68</sup> As discussed above, Keller’s Customer-  
3 Based Brand Equity model clearly predicts that Apple’s point of difference on design will be  
4 eroded if competitor products that look similar exist in the market. A point of difference derives  
5 its power to the extent that it is unique in the market. Pepsi is uniquely associated with youth in  
6 colas, Volvo is uniquely associated with safety in automobiles, and McDonald’s is uniquely  
7 associated with families in fast food hamburger restaurants. Similarly, Apple is known for its  
8 unique and distinctive designs. Being unique helps strengthen the point of difference and  
9 increases brand equity.

10 66. Without question, Apple has featured its distinctive design in its advertising.  
11 iPhone and iPad ads generally showcase the products in use on television or display the products  
12 prominently in print.<sup>69</sup> This common technique seen in many Apple ads, as described above, is  
13 sometimes referred to within Apple as “product as hero” advertising.<sup>70</sup> That is, the approach is to  
14 show the product itself as the star of the ad, rather than to use a spokesperson or to show a myriad  
15 of product features as the star. Apple’s advertising tends to focus on big, bold product shots,  
16 making the attractive and distinctive product design central in the ad and clear to the viewer.  
17 Advertising is a significant strength for Apple, as evidenced by the awards that Apple has  
18 received including Advertising Age’s first ever Marketer of the Decade Award in 2010.<sup>71</sup>

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20 <sup>68</sup> “Design Thinking and Innovation at Apple,” Harvard Business School Case Study  
21 No: 9-609-066, revised March 4, 2010, APLNDC-Y0000134928–134940 at APLNDC-  
Y0000134931.

22 <sup>69</sup> The iPad Tracking Study, FY11-Q2, which covers the first quarter of the calendar year  
23 2011, supports a connection between iPad advertisements and sales. The study shows that 18%  
24 of people surveyed in the United States who had purchased an iPad for themselves responded that  
the iPad ads triggered their decision to acquire an iPad. *See* iPad Tracking Study, FY11-Q2,  
APLNDC0000036349-APLNDC0000036570, at APLNDC0000036431.

25 <sup>70</sup> *See, e.g.*, Deposition of Sissie Twiggs on July 27, 2011, 97:20-21; Deposition of  
26 Tamara Whiteside on February 28, 2012, p. 34:1.

27 <sup>71</sup> Beth Snyder Bulik, “Marketer of the Decade: Apple,” *available at*  
28 <http://adage.com/article/special-report-marketer-of-the-year-2010/marketer-decade-apple/146492/>.



1 price premiums in the market. Given the value of the Apple brand, the potential loss of brand  
2 equity is substantial.

3 72. There are compelling anecdotal examples of this erosion of distinctiveness in the  
4 marketplace. For example, at one time, high-end kitchens were denoted by appliances with a  
5 sleek design featuring a distinctive stainless steel look. The uniqueness of the stainless steel  
6 design conveyed status, and consumers were willing to pay huge price premiums for these  
7 appliances. Now, however, such a design is no longer as distinctive as many manufacturers have  
8 copied the stainless steel look in the marketplace.

9 **XI. SUPPLEMENTATION**

10 73. I reserve the right to supplement or amend this report if additional facts and  
11 information that affect my opinion become available. In particular, I understand that Samsung  
12 may serve an expert report concerning one or more of the issues addressed by this report. I may  
13 therefore supplement or amend my report or opinions in response to additional discovery or other  
14 events and may rebut the expert report submitted by Samsung.

15 **XII. EXHIBITS TO BE USED**

16 74. I anticipate using as Exhibits during trial certain documents and things referenced  
17 or cited in this report or accompanying this report. I also anticipate using other demonstrative  
18 Exhibits or things at trial.

19 March 22, 2012  
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22 SANJAY SOOD  
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