

Exhibit 3

EXHIBIT 39

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN JOSE DIVISION

4 APPLE INC., a California
corporation,

5 Plaintiff,

Case No.

6 vs.

11 CV 01846 LHK

7
8 SAMSUNG ELECTRONICS CO., LTD.,
a Korean business entity;
9 SAMSUNG ELECTRONICS AMERICA,
INC., a New York corporation;
10 SAMSUNG TELECOMMUNICATIONS
AMERICA, LLC, a Delaware
limited liability company,

11 Defendants.

12
13
14
15 HIGHLY CONFIDENTIAL ATTORNEYS' EYES ONLY

16
17 VIDEOTAPED DEPOSITION OF RICHARD HOWARTH
18 San Francisco, California
19 Monday, October 31, 2011
20

21
22
23 REPORTED BY:

24 CYNTHIA MANNING, CSR No. 7645, CLR, CCRR
25 JOB NO. 43007

[REDACTED]

6 MR. MONACH: Objection; vague and
7 compound.

8 THE WITNESS: Yeah, I'm sorry.
9 Could you repeat the question?

[REDACTED]

23 BY MR. ZELLER:

24 Q. But in general, you don't think that
25 those terms are precise enough or clear enough

1 that you could be -- you'd be able to say it's
2 really definite; right?

3 MR. MONACH: Objection; vague and
4 ambiguous.

5 THE WITNESS: I don't know what other
6 people think.

7 BY MR. ZELLER:

8 Q. Well, I'm not asking about what other
9 people think. I'm asking you.

10 Do you think that the word "border" or
11 "mask" is a clear term to you as to what it is
12 referring to in the context of tablet computer
13 designs that Apple has made?

14 MR. MONACH: Objection; vague and
15 ambiguous, both a compound and incomplete
16 hypothetical.

17 THE WITNESS: It could be.

18 BY MR. ZELLER:

19 Q. I'm going to show you what was previously
20 marked as Exhibit 8, which for the record is
21 United States Design Patent 504,889.

22 And please let me know when you've had an
23 opportunity to review the '889 design patent.

24 A. (Witness reviewing document.)

25 Okay.

1 Q. You're named as an inventor of the '889
2 design?

3 A. I was one of the industrial design team
4 that worked on this product.

5 Q. Looking at the drawings, these figures
6 that are in the '889 design patent, do any of
7 those drawings show what you, in your view --
8 well, I'm sorry. Let me rephrase it.

9 Directing your attention to the figures
10 and drawings in the '889 design patent.

11 Do any of those drawings show a mask
12 area?

13 MR. MONACH: Objection; lack of
14 foundation. Objection; compound. Objection;
15 calls for a legal conclusion by a nonlawyer
16 witness.

17 THE WITNESS: I'm not a patent lawyer.

18 BY MR. ZELLER:

19 Q. I'm not asking you as a patent lawyer.
20 I'm asking you as an inventor of the '889 design
21 patent.

22 Do any of the drawings or figures in the
23 '889 design patent depict a mask area?

24 MR. MONACH: Same objection; lack of
25 foundation --

1 THE WITNESS: As --

2 MR. MONACH: Hang on a second.

3 Lack of foundation. Objection, to the
4 extent it calls for a legal conclusion.

5 THE WITNESS: As an industrial designer,
6 and not a patent lawyer, it isn't clear to me that
7 there is an area here that is definitely a mask or
8 border.

9 BY MR. ZELLER:

10 Q. Directing your attention to Figure 1.

11 A. Yes.

12 Q. You'll see that on the interior of
13 Figure 1, that there is a rectangular line.

14 Do you see that?

15 A. I see a dotted line.

16 Q. Do you know, is that -- is that a broken
17 line?

18 MR. MONACH: Objection; lack of
19 foundation. Under the Best Evidence Rule the
20 document speaks for itself. Vague.

21 THE WITNESS: It looks like a dotted
22 line. It looks like an inconsistent dotted line.

23 BY MR. ZELLER:

24 Q. Do you know why it's in that form? Do
25 you have an understanding?

1 MR. MONACH: Objection; lack of
2 foundation.

3 And let me just caution you. I'm not
4 saying you did have any such communications, but I
5 don't want you, in answering any of these
6 questions, to reveal any attorney-client
7 communications.

8 THE WITNESS: Okay. I'm not exactly sure
9 what that rectangle is depicting.

10 BY MR. ZELLER:

11 Q. Do you know if that dotted line that you
12 were talking about that's in that rectangular
13 shape on the interior of Figure 1 has some
14 relationship to separating the active area of the
15 display from the mask or nonactive areas of the
16 display?

17 MR. MONACH: Objection; lack of
18 foundation, calls for speculation. Object, to the
19 extent it's asking for a legal conclusion.

20 THE WITNESS: I'm not sure what that line
21 represents.

22 BY MR. ZELLER:

23 Q. And I take it you don't have an
24 understanding as to whether or not that particular
25 line, this rectangular line on the interior of

1 Figure 1 that's dotted, is part of the claimed
2 design here?

3 MR. MONACH: Objection; lack of
4 foundation. Objection, to the extent it calls for
5 a legal conclusion.

6 THE WITNESS: I'm not sure what that line
7 represents.

8 BY MR. ZELLER:

9 Q. Directing your attention to Figure 2 of
10 the '889 design patent.

11 You'll see that there are three sets of
12 diagonal lines on the interior of this.

13 A. Yes.

14 Q. And then directing your attention to
15 Figure 4.

16 You'll see that it doesn't have those
17 diagonal lines.

18 A. Okay.

19 Q. Do you see that?

20 A. Yes, I see that.

21 Q. Do you have any understanding or
22 explanation as to why those diagonal lines don't
23 appear in Figure 4 but they do appear in Figure 2?

24 MR. MONACH: Objection; lack of
25 foundation. Objection, to the extent it calls for

1 a legal conclusion.

2 THE WITNESS: I'm not sure why those
3 lines are in one view and not in another.

4 BY MR. ZELLER:

5 Q. Do you know if the design that's shown
6 here in the '889 design patent is showing a back
7 surface or bottom surface that is flat and clear?

8 MR. MONACH: Same objection; lack of
9 foundation. Object, to the extent it calls for a
10 legal conclusion.

11 THE WITNESS: I'm not sure what that is
12 depicting.

13 BY MR. ZELLER:

14 Q. Is the design that's shown here in the
15 '889 design patent, by your understanding, does
16 it -- well, I'm sorry. Let me rephrase that.

17 Directing your attention to the '889
18 design patent.

19 In your view, as an inventor and a
20 designer, does this design show a clear front
21 surface of the device?

22 MR. MONACH: Objection; lack of
23 foundation. Objection, to the extent it calls for
24 a legal conclusion.

25 You can give your understanding, if you

1 the device that's shown there is from the
2 orientation of the individual holding it is
3 somewhat wedge shaped, or it tapers?

4 MR. MONACH: Objection; mischaracterizes
5 the evidence, assumes facts not in evidence,
6 argumentative.

7 BY MR. ZELLER:

8 Q. Do you see that?

9 MR. MONACH: Object, to the extent it
10 calls for a legal conclusion.

11 THE WITNESS: I see what you're referring
12 to. I see it's an object that the guy is holding.

13 BY MR. ZELLER

14 Q. Well, from the perspective of the guy
15 whose holding it

16 A. Yes.

17 Q. how would you describe the shape of
18 the top of the device?

19 A. What

20 MR. MONACH: Objection; vague and
21 ambiguous. Object, to the extent it calls for a
22 legal conclusion.

23 THE WITNESS: What are you referring to
24 as "the top"?

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1 BY MR. ZELLER:

2 Q. The top, from the orientation of the
3 individual holding it, which would be your right.

4 MR. MONACH: Objection. Objection;
5 vague.

6 BY MR. ZELLER:

7 Q. If you could hand me your copy.

8 A. Okay.

9 MR. ZELLER: Let's please mark as Exhibit
10 1132 a copy of the '889 design patent with a
11 marking that I'm about to give it. It will be an
12 arrow consisting of an X on Figure 9, and then two
13 arrows with the Figure X, Label X, in Figure 2.

14 (Deposition Exhibit 1132 was marked for
15 identification)

16 BY MR. ZELLER:

17 Q. So directing your attention to Figure 2.

18 A. Okay.

19 Q. You'll see that what I did there is, I
20 put two arrows with the Label X on there.

21 A. Mm hmm.

22 Q. And you'll see that those portions, those
23 sides, appear to taper, or narrow?

24 MR. MONACH: Object to the form of the
25 question as mischaracterizing the evidence;

1 assumes facts not in evidence.

2 THE WITNESS: To me, it looks like a
3 slightly perspective drawing of a rectangular
4 object.

5 BY MR. ZELLER:

6 Q. Do you have an understanding as to
7 whether or not those lines taper because of
8 perspective or because the design that is being
9 communicated here has tapering sides?

10 A. I couldn't say for certain. To me
11 personally, as an industrial designer, it looks to
12 me like they're tapering because of perspective.

13 Q. And in your view, is that an accurate
14 perspective?

15 MR. MONACH: Objection; vague and
16 ambiguous.

17 THE WITNESS: I don't know about an
18 accurate perspective. It looks, perhaps, like
19 that's what was intended.

20 BY MR. ZELLER:

21 Q. And if I asked you the same questions
22 about that edge that I labeled as X in Figure 9,
23 you'd give me the same answers?

24 MR. MONACH: Objection, to the extent it
25 calls for a legal conclusion. But you can give

1 BY MR. ZELLER:

2 Q. And from your perspective, is that is
3 that an accurate depiction of perspective?

4 MR. MONACH: Objection; lack of
5 foundation, incomplete hypothetical. Objection;
6 vague.

7 THE WITNESS: Yes, it could be.

8 BY MR. ZELLER:

9 Q. Can you say with any certainty if it is?

10 MR. MONACH: Same objection.

11 THE WITNESS: I can't say with any
12 certainty without whether that's an absolutely
13 accurate perspective view. But it looks okay. It
14 looks possible.

15 BY MR. ZELLER:

16 Q. You'll see also in Figure 9 that there is
17 a portion of it that has a thicker, darker line
18 that runs around the perimeter of the front.

19 Do you see that?

20 A. Yes, I see that.

21 Q. What does that depict?

22 MR. MONACH: Objection; lack of
23 foundation. Object, to the extent it calls for a
24 legal conclusion.

25 THE WITNESS: It's unclear to me exactly

1 what that is trying to depict.

2 BY MR. ZELLER:

3 Q. Does it depict a gap or a groove?

4 MR. MONACH: Same objection; lack of
5 foundation. Objection, to the extent it calls for
6 a legal conclusion.

7 THE WITNESS: I'm not sure what that
8 precise detail is trying to depict. But it looks
9 like the separation between two parts to me. Not
10 the separation; it looks like the joint between
11 two parts.

12 BY MR. ZELLER:

13 Q. And directing your attention to Figure 1,
14 you'll see that also at least on part of the
15 perimeter of this front surface there is a darker
16 line there as well, darker, thicker line?

17 A. I see that.

18 Q. And do you have an understanding as to
19 what that's depicting?

20 MR. MONACH: Objection; lack of
21 foundation. Object, to the extent it calls for a
22 legal conclusion.

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24 what that's trying to depict.

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1 BY MR. ZELLER:

2 Q. Is that darker, thicker line depicting a
3 gap or a groove?

4 MR. MONACH: Same objection. Lack of
5 foundation, calls for a legal conclusion.

6 THE WITNESS: In my opinion as an
7 industrial designer, it doesn't look like that's
8 trying to depict a groove or a gap. It looks like
9 it's perhaps trying to show a radius or an
10 intersection of the rear housing, perhaps.

11 BY MR. ZELLER:

12 Q. But you're not certain?

13 MR. MONACH: Same objection. Asked and
14 answered.

15 THE WITNESS: I'm not certain.

16 BY MR. ZELLER:

17 Q. You'll see that the date of this design
18 patent for filing and this is on the first
19 page

20 A. Okay.

21 Q. in the middle of the first column,
22 March 17th, 2004.

23 Do you see that date there?

24 A. Yes, I do.

25 Q. Prior to March 17th, 2004, which is the

1 filing date of the '889 design patent, [REDACTED]

8 BY MR. ZELLER:

9 Q. You just don't recall one way or another?

10 A. I don't recall.

19 BY MR. ZELLER:

20 Q. Do you recall generally that occurring at
21 some him point?

22 MR. MONACH: Same objection.

23 THE WITNESS: It might have been.

24 BY MR. ZELLER:

25 Q. Let me try something a different way.

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3 SAN JOSE DIVISION

4 APPLE INC., a California
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6 vs.

11 CV 01846 LHK

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25 JOB NO. 43007

1 tablet designs that you worked on there for Apple.

█
█
█
█

6 MR. MONACH: Objection; vague and
7 compound.

8 THE WITNESS: Yeah, I'm sorry.
9 Could you repeat the question?

10 MR. ZELLER: Yes. If you could read it
11 back, please.

12 (Whereupon the reporter read the record
13 as follows:

█
█
█
█

18 MR. MONACH: And I objected; vague and
19 compound.

20 THE WITNESS: Sometimes some people refer
21 to or I refer to the area around the display as
22 a border.

23 BY MR. ZELLER:

24 Q. But in general, you don't think that
25 those terms are precise enough or clear enough

1 that you could be you'd be able to say it's
2 really definite; right?

3 MR. MONACH: Objection; vague and
4 ambiguous.

5 THE WITNESS: I don't know what other
6 people think.

7 BY MR. ZELLER:

8 Q. Well, I'm not asking about what other
9 people think. I'm asking you.

10 Do you think that the word "border" or
11 "mask" is a clear term to you as to what it is
12 referring to in the context of tablet computer
13 designs that Apple has made?

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15 ambiguous, both a compound and incomplete
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20 marked as Exhibit 8, which for the record is
21 United States Design Patent 504,889.

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23 opportunity to review the '889 design patent.

24 A. (Witness reviewing document.)

25 Okay.

1 Q. You're named as an inventor of the '889
2 design?

3 A. I was one of the industrial design team
4 that worked on this product.

5 Q. Looking at the drawings, these figures
6 that are in the '889 design patent, do any of
7 those drawings show what you, in your view
8 well, I'm sorry. Let me rephrase it.

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10 and drawings in the '889 design patent.

11 Do any of those drawings show a mask
12 area?

13 MR. MONACH: Objection; lack of
14 foundation. Objection; compound. Objection;
15 calls for a legal conclusion by a nonlawyer
16 witness.

17 THE WITNESS: I'm not a patent lawyer.

18 BY MR. ZELLER:

19 Q. I'm not asking you as a patent lawyer.
20 I'm asking you as an inventor of the '889 design
21 patent.

22 Do any of the drawings or figures in the
23 '889 design patent depict a mask area?

24 MR. MONACH: Same objection; lack of
25 foundation

1 THE WITNESS: As

2 MR. MONACH: Hang on a second.

3 Lack of foundation. Objection, to the
4 extent it calls for a legal conclusion.

5 THE WITNESS: As an industrial designer,
6 and not a patent lawyer, it isn't clear to me that
7 there is an area here that is definitely a mask or
8 border.

9 BY MR. ZELLER:

10 Q. Directing your attention to Figure 1.

11 A. Yes.

12 Q. You'll see that on the interior of
13 Figure 1, that there is a rectangular line.

14 Do you see that?

15 A. I see a dotted line.

16 Q. Do you know, is that is that a broken
17 line?

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19 foundation. Under the Best Evidence Rule the
20 document speaks for itself. Vague.

21 THE WITNESS: It looks like a dotted
22 line. It looks like an inconsistent dotted line.

23 BY MR. ZELLER:

24 Q. Do you know why it's in that form? Do
25 you have an understanding?

1 MR. MONACH: Objection; lack of
2 foundation.

3 And let me just caution you. I'm not
4 saying you did have any such communications, but I
5 don't want you, in answering any of these
6 questions, to reveal any attorney client
7 communications.

8 THE WITNESS: Okay. I'm not exactly sure
9 what that rectangle is depicting.

10 BY MR. ZELLER:

11 Q. Do you know if that dotted line that you
12 were talking about that's in that rectangular
13 shape on the interior of Figure 1 has some
14 relationship to separating the active area of the
15 display from the mask or nonactive areas of the
16 display?

17 MR. MONACH: Objection; lack of
18 foundation, calls for speculation. Object, to the
19 extent it's asking for a legal conclusion.

20 THE WITNESS: I'm not sure what that line
21 represents.

22 BY MR. ZELLER:

23 Q. And I take it you don't have an
24 understanding as to whether or not that particular
25 line, this rectangular line on the interior of

1 Figure 1 that's dotted, is part of the claimed
2 design here?

3 MR. MONACH: Objection; lack of
4 foundation. Objection, to the extent it calls for
5 a legal conclusion.

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7 represents.

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9 Q. Directing your attention to Figure 2 of
10 the '889 design patent.

11 You'll see that there are three sets of
12 diagonal lines on the interior of this.

13 A. Yes.

14 Q. And then directing your attention to
15 Figure 4.

16 You'll see that it doesn't have those
17 diagonal lines.

18 A. Okay.

19 Q. Do you see that?

20 A. Yes, I see that.

21 Q. Do you have any understanding or
22 explanation as to why those diagonal lines don't
23 appear in Figure 4 but they do appear in Figure 2?

24 MR. MONACH: Objection; lack of
25 foundation. Objection, to the extent it calls for

1 a legal conclusion.

2 THE WITNESS: I'm not sure why those
3 lines are in one view and not in another.

4 BY MR. ZELLER:

5 Q. Do you know if the design that's shown
6 here in the '889 design patent is showing a back
7 surface or bottom surface that is flat and clear?

8 MR. MONACH: Same objection; lack of
9 foundation. Object, to the extent it calls for a
10 legal conclusion.

11 THE WITNESS: I'm not sure what that is
12 depicting.

13 BY MR. ZELLER:

14 Q. Is the design that's shown here in the
15 '889 design patent, by your understanding, does
16 it well, I'm sorry. Let me rephrase that.

17 Directing your attention to the '889
18 design patent.

19 In your view, as an inventor and a
20 designer, does this design show a clear front
21 surface of the device?

22 MR. MONACH: Objection; lack of
23 foundation. Objection, to the extent it calls for
24 a legal conclusion.

25 You can give your understanding, if you

1 have one.

2 THE WITNESS: I'm not exactly sure what
3 this document what this figure is showing. It
4 could be.

5 BY MR. ZELLER:

6 Q. And you're not sure one way or another
7 whether what's shown here in the design shows a
8 clear, flat, continuous surface on the front?

9 MR. MONACH: Objection, to the extent it
10 calls for a legal conclusion.

11 THE WITNESS: I didn't create these
12 drawings, so I don't know if that's what that is
13 supposed to represent.

14 BY MR. ZELLER:

15 Q. And even apart from the fact that you
16 didn't create the drawings, you still don't know;
17 is that true?

18 MR. MONACH: Same objection. Object, to
19 the extent it calls for a legal conclusion; asked
20 and answered.

21 THE WITNESS: It isn't completely clear
22 to me that that's what that is representing.

23 BY MR. ZELLER:

24 Q. Directing your attention to Figure 9.

25 You'll see in Figure 9 that the top of

1 the device that's shown there is from the
2 orientation of the individual holding it is
3 somewhat wedge shaped, or it tapers?

4 MR. MONACH: Objection; mischaracterizes
5 the evidence, assumes facts not in evidence,
6 argumentative.

7 BY MR. ZELLER:

8 Q. Do you see that?

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10 calls for a legal conclusion.

11 THE WITNESS: I see what you're referring
12 to. I see it's an object that the guy is holding.

13 BY MR. ZELLER

14 Q. Well, from the perspective of the guy
15 whose holding it

16 A. Yes.

17 Q. how would you describe the shape of
18 the top of the device?

19 A. What

20 MR. MONACH: Objection; vague and
21 ambiguous. Object, to the extent it calls for a
22 legal conclusion.

23 THE WITNESS: What are you referring to
24 as "the top"?

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1 BY MR. ZELLER:

2 Q. The top, from the orientation of the
3 individual holding it, which would be your right.

4 MR. MONACH: Objection. Objection;
5 vague.

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17 Q. So directing your attention to Figure 2.

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19 Q. You'll see that what I did there is, I
20 put two arrows with the Label X on there.

21 A. Mm hmm.

22 Q. And you'll see that those portions, those
23 sides, appear to taper, or narrow?

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25 question as mischaracterizing the evidence;

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3 slightly perspective drawing of a rectangular
4 object.

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6 Q. Do you have an understanding as to
7 whether or not those lines taper because of
8 perspective or because the design that is being
9 communicated here has tapering sides?

10 A. I couldn't say for certain. To me
11 personally, as an industrial designer, it looks to
12 me like they're tapering because of perspective.

13 Q. And in your view, is that an accurate
14 perspective?

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16 ambiguous.

17 THE WITNESS: I don't know about an
18 accurate perspective. It looks, perhaps, like
19 that's what was intended.

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21 Q. And if I asked you the same questions
22 about that edge that I labeled as X in Figure 9,
23 you'd give me the same answers?

24 MR. MONACH: Objection, to the extent it
25 calls for a legal conclusion. But you can give

1 your understanding.

2 THE WITNESS: My understanding is that's
3 what that is trying to represent.

4 BY MR. ZELLER:

5 Q. It is perspective, but you're not
6 certain?

7 MR. MONACH: Object to the form of the
8 question.

9 THE WITNESS: It's possible that that's
10 what that represents.

11 BY MR. ZELLER:

12 Q. But, again, you can't say with certainty
13 whether or not that's that tapering is because
14 of perspective, as opposed to whether or not the
15 design is actually showing that there is some kind
16 of tapering?

17 MR. MONACH: Objection; lack of
18 foundation. Objection, to the extent it calls for
19 a legal conclusion; asked and answered.

20 You can do it again.

21 THE WITNESS: In my opinion, as an
22 industrial designer and not a patent lawyer, I
23 think that that looks like it is an object with
24 perspective and not a tapering geometry.

25 //

1 BY MR. ZELLER:

2 Q. And from your perspective, is that is
3 that an accurate depiction of perspective?

4 MR. MONACH: Objection; lack of
5 foundation, incomplete hypothetical. Objection;
6 vague.

7 THE WITNESS: Yes, it could be.

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23 foundation. Object, to the extent it calls for a
24 legal conclusion.

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3 Q. Does it depict a gap or a groove?

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9 like the separation between two parts to me. Not
10 the separation; it looks like the joint between
11 two parts.

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13 Q. And directing your attention to Figure 1,
14 you'll see that also at least on part of the
15 perimeter of this front surface there is a darker
16 line there as well, darker, thicker line?

17 A. I see that.

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19 what that's depicting?

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21 foundation. Object, to the extent it calls for a
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8 trying to depict a groove or a gap. It looks like
9 it's perhaps trying to show a radius or an
10 intersection of the rear housing, perhaps.

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12 Q. But you're not certain?

13 MR. MONACH: Same objection. Asked and
14 answered.

15 THE WITNESS: I'm not certain.

16 BY MR. ZELLER:

17 Q. You'll see that the date of this design
18 patent for filing and this is on the first
19 page

20 A. Okay.

21 Q. in the middle of the first column,
22 March 17th, 2004.

23 Do you see that date there?

24 A. Yes, I do.

25 Q. Prior to March 17th, 2004, which is the

1 filing date of the '889 design patent, [REDACTED]

[REDACTED]

5 MR. MONACH: Object to form. Lack of
6 foundation.

7 THE WITNESS: I don't recall.

8 BY MR. ZELLER:

9 Q. You just don't recall one way or another?

10 A. I don't recall.

[REDACTED]

19 BY MR. ZELLER:

20 Q. Do you recall generally that occurring at
21 some him point?

22 MR. MONACH: Same objection.

23 THE WITNESS: It might have been.

24 BY MR. ZELLER:

25 Q. Let me try something a different way.

[REDACTED]

7 BY MR. ZELLER:

8 Q. And for the record, the word I'm using is
9 vents, V E N T S.

10 MR. ZELLER: Maybe we could see the
11 mockup. That would be helpful.

12 MS. TIERNEY: Absolutely.

13 MR. MONACH: Sure.

14 When you're done with this, maybe we
15 should take a lunch break.

16 MR. ZELLER: Sure. We'll just wrap up
17 this line and show him the model and take a break.

18 (Pause in the proceedings)

19 MR. ZELLER: Thank you.

[REDACTED]

█
█
3 BY MR. ZELLER

4 Q. And I'll hand that mockup to you.

5 And if you could do me a tremendous
6 favor, if you could hold that up for the camera,
7 too, so we'll have a depiction of it.

8 A. (Witness complies.)

9 Q. And could you also show the sides with
10 the ports.

11 A. (Witness complies.)

12 Q. Thank you.

13 And then there's some writing on the back
14 on the label. And if you could, please just read
15 that for the record for us.

16 A. "Apple proto 035."

17 Q. And first let me ask you, with respect to
18 the model that you have in your hands, had you
19 seen that before?

20 MR. MONACH: Instruct the witness not to
21 answer with respect to any communications you had
22 with counsel in connection with the deposition or
23 any other communications with counsel.

24 But if you have a recollection of seeing
25 it independently or a recollection that you don't,

1 you can answer.

2 THE WITNESS: I think so, a long time ago
3 maybe.

4 BY MR. ZELLER:

[REDACTED]

25 //

1 BY MR. ZELLER:

2 Q. You'll see that there's a gap, or a
3 groove, that runs the perimeter of the front
4 there.

5 A. Mm hmm.

6 MR. MONACH: Object to the form of the
7 question.

8 THE WITNESS: I do see that there's
9 something here, a gap. I see that.

10 BY MR. ZELLER:

11 Q. And then if you look inside that opening,
12 you'll see something that appears to be the
13 depiction of vents or some kind of openings?

14 MR. MONACH: Object to the form of the
15 question.

16 THE WITNESS: I see some sort of
17 detailing of something down there.

18 BY MR. ZELLER:

19 Q. Do you know what that detailing is?

20 A. I don't. I couldn't be sure.

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

1 BY MR. ZELLER:

[REDACTED]

21 BY MR. ZELLER:

22 Q. And why do you think it's different?

23 A. Well, I see a number of differences.

24 I don't see this detailing that you're
25 referring to around the outside perimeter.

[REDACTED]

8 Q. And all that leads you to conclude that
9 it's a different design?

10 MR. MONACH: Object to the form of the
11 question as vague and ambiguous. Object, to the
12 extent it's calling for a legal conclusion about
13 the scope of the patented design.

14 THE WITNESS: I'm not exactly sure. I
15 don't believe that this is the product that is
16 being covered by this. It could be.

17 BY MR. ZELLER:

[REDACTED]

25 Q. But you're not certain one way or

1 another?

2 MR. MONACH: Objection; asked and
3 answered, lack of foundation. Object, to the
4 extent it calls for a legal conclusion.

5 THE WITNESS: That's correct. I'm not
6 certain.

7 BY MR. ZELLER:

8 Q. I'm going to show you what was previously
9 marked as Exhibit 841.

10 A. Mm hmm.

11 Q. And please let me know when you've had an
12 opportunity to review those pages.

13 A. (Witness reviewing document.)

14 Okay.

15 Q. I take it generally speaking, at some
16 point, you became aware that there was a dispute
17 between Apple and Samsung, a legal dispute?

18 MR. MONACH: Object to the form of the
19 question as vague.

20 In answering this question, I'll instruct
21 the witness not to reveal any attorney client
22 communications.

23 THE WITNESS: I can't remember when I
24 was when I first found out.

25 //

1 BY MR. ZELLER:

2 Q. Right. I'm not quite at that question
3 yet. I'm just trying to understand something
4 generally. It's to help put some time periods on
5 the questions I'm going to ask.

6 A. Okay.

7 Q. So at some point, did you become aware
8 that there was a lawsuit between Apple and
9 Samsung, just generally speaking?

10 MR. MONACH: You can answer that question
11 yes, no, or I don't recall.

12 THE WITNESS: At some point, yes.

13 BY MR. ZELLER:

14 Q. Now, prior to the time that you became
15 aware that there was a lawsuit between Samsung and
16 Apple, had you seen these pages that were marked
17 as Exhibit 841 before that time?

18 A. I don't recall.

19 Q. Do you recognize what's depicted here in
20 Exhibit 841?

21 MR. MONACH: Objection; vague and
22 ambiguous.

23 THE WITNESS: I'm not I'm not clear on
24 what this on what's depicted in these pages.

25 //

1 inventors here on the '889 design patent, that the
2 design that's shown here in the '889 design patent
3 is the design of the first iPad?

4 MR. MONACH: Objection; vague and
5 ambiguous. Objection; calls for a legal
6 conclusion about the scope of the '889.
7 Objection; lacking in foundation, in light of the
8 prior testimony; asked and answered.

9 THE WITNESS: I'm not an expert in
10 reading patent drawings, so I couldn't tell you if
11 this represents the exact design of the iPad that
12 was launched.

13 BY MR. ZELLER:

14 Q. My question is a very specific one. I'd
15 appreciate if you'd answer it.

16 Do you need it read back?

17 MR. MONACH: Is that a question to the
18 witness?

19 MR. ZELLER: Yes.

20 MR. MONACH: Objection; asked and
21 answered. Object to the argumentative commentary.

22 The question was asked and answered. It
23 calls for a legal conclusion about the scope of
24 the patent. The witness gave his answer and now
25 you're just badgering him.

1 Object that it's vague. Object that it's
2 lacking in foundation. Object that it's asked and
3 answered.

4 Do you have anything else to add?

5 MR. ZELLER: Are you instructing him not
6 to answer?

7 MR. MONACH: No, I am not. Did you hear
8 me instruct him not to answer?

9 MR. ZELLER: Well, you're interrupting my
10 questioning.

11 MR. MONACH: No, I'm objecting to your
12 badging of the witness and characterizing his
13 response because, apparently, you don't care for
14 it, so you keep asking him the same question over
15 and over.

16 MR. ZELLER: Let the record reflect that
17 counsel directed a question to the witness.

18 BY MR. ZELLER

19 Q. Do you believe, as one of the named
20 inventors here on the '889 design patent I'm
21 not asking you as an expert, but as a named
22 inventor that the design that's shown here in
23 the '889 patent is the design of the first iPad?

24 MR. MONACH: Objection; asked and
25 answered. Objection; vague. Objection; lacking

1 in foundation. And objection, to the extent it
2 calls for a legal conclusion.

3 THE WITNESS: In my opinion, I cannot be
4 certain that this that the design of that
5 this document here represents the exact design of
6 the iPad 1.

7 BY MR. ZELLER:

8 Q. Again, I didn't ask about the, quote,
9 exact same design.

10 You see that there's a design that's
11 reflected here in the '889 design patent that
12 you're identified as one of the people who
13 invented it; right?

14 A. I am.

15 Q. And so my question is: In your view, as
16 a named inventor on the '889 design patent, do you
17 think that the iPad has this design that's shown
18 here in the '889 design patent, or do you think
19 it's a different design?

20 MR. MONACH: Objection; vague and
21 ambiguous. Objection, to the extent it calls for
22 a legal conclusion. Objection; lacking in
23 foundation. Objection; asked and answered.

24 THE WITNESS: I see some similarities and
25 differences, but I couldn't tell you if this

1 I'm not I'm really not a patent reading expert.

2 BY MR. ZELLER:

3 Q. Do you have anything else to add to your
4 answers to my questions on the comparison between
5 the iPad design and the '889 design patent?

6 A. No.

7 Q. Directing your attention to the design in
8 the '889 design patent, is this the design of the
9 iPad2?

10 MR. MONACH: Objection; vague and
11 ambiguous. Objection, to the extent it calls for
12 a legal conclusion from a nonlawyer witness.

13 THE WITNESS: I'm not

14 MR. MONACH: Lack of foundation.

15 Go ahead. Sorry.

16 THE WITNESS: I'm not a patent reading
17 expert, so it is makes it difficult to answer your
18 question.

19 BY MR. ZELLER:

20 Q. Do you believe that, in order for someone
21 to understand the design that's shown here in the
22 '889 design patent, that one would have to be a
23 patent expert?

24 MR. MONACH: Objection; vague.

25 Objection; calls for speculation, incomplete

1 hypothetical.

2 THE WITNESS: I don't know what it would
3 take.

4 BY MR. ZELLER:

5 Q. Well, is the design that's shown here in
6 the '889 patent understandable to you?

7 MR. MONACH: Objection; vague and
8 ambiguous. Objection, to the extent it's calling
9 for a legal conclusion.

10 THE WITNESS: Not completely.

11 BY MR. ZELLER:

12 Q. And when you say "not completely," what
13 do you mean?

14 A. I'm not a patent lawyer. I'm not a
15 patent reading expert. So to me, there are things
16 about this that I can say seem different to me
17 than the final design of the iPad.

18 Q. And again, as I've been telling you, I'm
19 not asking you an expert. I'm asking you as
20 someone who is named as an inventor on this
21 design.

22 Please tell me what parts of the design
23 that's shown in this '889 design patent is not
24 completely understandable to you.

25 MR. MONACH: Object

1 BY MR. ZELLER:

2 Q. I'm talking about your own individual
3 perspective.

4 MR. MONACH: Object to the form of the
5 question as vague and ambiguous. Object, to the
6 extent it calls for a legal conclusion.

7 THE WITNESS: I find it hard to translate
8 these drawings, as an individual.

9 BY MR. ZELLER:

10 Q. And what is it about the drawings that
11 make it not possible for you to translate them?

12 MR. MONACH: Objection; mischaracterizes
13 the prior testimony.

14 THE WITNESS: That I work with 3D objects
15 usually, and two dimensional drawings are a little
16 bit harder to understand for me.

17 BY MR. ZELLER:

18 Q. Well, setting aside that this is what we
19 have to work with, in terms of a design patent,
20 are these two dimensional drawings, are there
21 let me ask it this way.

22 Again, I'm not asking you as an expert.
23 I'm not asking you as patent law or anything else.
24 I'm just asking you, as your own personal
25 understanding when you look at these drawings, do

1 you feel like you completely understand the design
2 that is being communicated through these drawings,
3 or does it seem uncertain to you in certain
4 respects?

5 MR. MONACH: Objection; vague and
6 ambiguous. Objection, to the extent it
7 incorporates or asks for a legal conclusion.

8 THE WITNESS: Some parts seem clear.

9 BY MR. ZELLER:

10 Q. Other parts don't seem clear to you?

11 MR. MONACH: Same objection.

12 THE WITNESS: Yes.

13 BY MR. ZELLER:

14 Q. And what parts are you referring to that
15 don't seem clear to you? Again, we're talk solely
16 about your own individual perspective.

17 MR. MONACH: Same objection.

18 THE WITNESS: Well, I'm not sure what
19 these lines represent (indicating).

20 BY MR. ZELLER:

21 Q. And what figure are you pointing to?

22 A. Figure 6.

23 Q. And you're referring to the those
24 lines that run horizontally from the perspective
25 of the viewer, or the reader?

1 A. Just those that couple of those ones
2 in particular.

3 Q. Are there other portions of the design
4 shown in the '889 design patent that aren't clear
5 to you?

6 Again, we're talking totally about your
7 own individual perspective.

8 MR. MONACH: Same objections.

9 THE WITNESS: From my perspective, I
10 can yes, it doesn't seem like this is exactly
11 the same as the iPad which is what your question
12 was, the iPad 1.

13 BY MR. ZELLER:

14 Q. Well, I'm asking a slightly different
15 question at this point.

16 You had mentioned, with respect to Figure
17 6, some lines that you thought were unclear to
18 you.

19 Are there other aspects of the design
20 that's shown here, other than what we've talked
21 about, that you think is unclear?

22 MR. MONACH: Objection; vague.
23 Objection, to the extent it calls for a legal
24 conclusion or incorporates legal terms.

25 THE WITNESS: It seems seems like what

1 I'm looking at in these drawings is a housing
2 coming around, one piece housing coming around to
3 a piece of glass. That's what I interpret from
4 these drawings.

5 BY MR. ZELLER:

6 Q. But you're not sure about that?

7 MR. MONACH: Object to the form of the
8 question; asked and answered.

9 THE WITNESS: That's what it looks like
10 to me.

11 BY MR. ZELLER:

12 Q. But are you certain that's the design
13 that's being communicated here, or are you just
14 telling me that that's how it seems to you?

15 MR. MONACH: Object to the form of the
16 question. It's badgering the witness.

17 You've asked him to give his own opinion,
18 and now when he gives it, you seem to be objecting
19 to his own opinion.

20 MR. ZELLER: I'm asking him how certain
21 he is that that's what the design is.

22 MR. MONACH: Object to the form of the
23 question as vague, asked and answered. Object, to
24 the extent you're incorporating a legal term or
25 legal conclusion.

1 BY MR. ZELLER:

2 Q. You can go ahead and answer.

3 A. That's how it appears to me, judging from
4 these drawings.

5 Q. And how certain are you that that's what
6 the drawings show?

7 MR. MONACH: Objection; vague.

8 THE WITNESS: I'm not absolutely certain,
9 but it appears that way to me.

10 BY MR. ZELLER:

11 Q. To go back to the question I was asking,
12 other than what we've talked about, are there
13 other aspects of what's shown here in the '889
14 design that are unclear to you personally?

15 MR. MONACH: Object to the form of the
16 question for the reasons previously stated.

17 THE WITNESS: Not really.

18 BY MR. ZELLER:

19 Q. Directing your attention to Figure 6,
20 you'll see that there is the circular form there
21 on the right hand side, from the perspective of
22 the person looking at it.

23 Do you see that?

24 A. Yes.

25 Q. What is that?

1 A. It's

2 MR. MONACH: Object to the form of the
3 question.

4 THE WITNESS: It looks like a circle.

5 BY MR. ZELLER:

6 Q. What's it depict?

7 MR. MONACH: Object to the form of the
8 question as vague and ambiguous. Object, to the
9 extent it calls for a legal conclusion.

10 THE WITNESS: I'm not exactly sure what
11 it's trying to depict.

12 BY MR. ZELLER:

13 Q. Do you have any idea what it is?

14 MR. MONACH: Same objection.

15 THE WITNESS: Not for certain.

16 BY MR. ZELLER:

17 Q. I'm not asking for certain. I'm asking:
18 Do you have any understanding as to what that
19 circle depicts?

20 MR. MONACH: Same objections as before.
21 You can answer.

22 THE WITNESS: I'm not sure what that
23 circular what that circle is depicting.

24 BY MR. ZELLER:

25 Q. Is that circle being presented with

1 broken lines?

2 MR. MONACH: Objection; lack of
3 foundation. And object, to the extent it calls
4 for a legal conclusion. Objection under the Best
5 Evidence Rule.

6 THE WITNESS: I don't know. It looks
7 like there's it looks like there's a line and
8 some dotted lines or dots around it.

9 BY MR. ZELLER:

10 Q. Does the design that's showing here in
11 the '889 design patent let me step back for a
12 moment.

13 Do you see here on the first page the
14 phrase this is under "description" where it
15 says, "The broken lines being shown for
16 illustrative purposes only and form no part of the
17 claimed design."

18 Do you see that?

19 MR. MONACH: Object to the reading of
20 only a portion of the sentence which says,
21 "Figure 9 is an exemplary diagram of the use of
22 the electronic device thereof, the broken lines
23 being shown for illustrative purposes only and
24 form no part of the claimed design."

25 //

1 BY MR. ZELLER:

2 Q. Do you see that part?

3 A. I do. "Figure 9 is an exemplary diagram
4 of the use of the electronic device thereof, the
5 broken lines being shown for illustrative purposes
6 only form no part of the claimed design." Okay.

7 Q. Directing your attention to Figure 6.
8 Is that circle being shown as broken
9 lines?

10 MR. MONACH: Objection under the Best
11 Evidence Rule, that the document is the best
12 evidence of whether the lines are broken or not.

13 THE WITNESS: I can't say for certain.

14 BY MR. ZELLER:

15 Q. Directing your attention to Figure 8.

16 You'll see in the center there, there is
17 a smaller rectangular shape.

18 Do you see that?

19 A. Right.

20 Q. Do you see that?

21 A. Yes.

22 Q. What's that depict?

23 MR. MONACH: Object to the form of the
24 question. Object, to the extent it calls for a
25 legal conclusion.

1 THE WITNESS: I'm not sure what it's
2 depicting.

3 BY MR. ZELLER:

4 Q. Are those broken lines?

5 MR. MONACH: Objection; Best Evidence
6 Rule. Objection; vague.

7 THE WITNESS: They look like dots to me.

8 BY MR. ZELLER:

9 Q. Do you consider those to be broken lines?

10 MR. MONACH: Object to the form of the
11 question.

12 THE WITNESS: They look like dots to me.

13 BY MR. ZELLER:

14 Q. Do you consider dots to be broken lines?

15 MR. MONACH: Object to the form of the
16 question. And object, to the extent it calls for
17 a legal conclusion; lacks foundation.

18 THE WITNESS: I'm not sure what you mean
19 by "broken lines."

20 BY MR. ZELLER:

21 Q. You see the words "broken lines" that are
22 used under the description heading that we talked
23 about on the first page?

24 A. Yes.

25 Q. Do you know what broken lines means in

1 this context, or have any understanding as to what
2 it means?

3 A. Sometimes it can mean there's a dashed
4 line, dot dash, dot dash. "Broken" can be
5 different things.

6 Q. So then specifically, with respect to
7 that smaller rectangular shape there in Figure
8 8

9 A. Right.

10 Q. are those broken lines that are being
11 shown for illustrative purposes only and form no
12 part of the claimed design, as you understand
13 those terms, as you understand this drawing?

14 MR. MONACH: Object to the form of the
15 question as vague, lacking in foundation, and,
16 plainly, just calling for a legal conclusion.

17 THE WITNESS: I don't know what they're
18 trying to represent. I'm not an expert at reading
19 patent drawings.

20 BY MR. ZELLER:

21 Q. Do you have any understanding in that
22 regard as an inventor, a named inventor, of the
23 '889 design patent?

24 MR. MONACH: Same objections; asked and
25 answered.

1 THE WITNESS: I was an inventor of the
2 product, not the patent drawing.

3 BY MR. ZELLER:

4 Q. Setting aside because I'm not asking
5 you as an expert, again. All my questions here
6 have been about how you understand these.

7 Do you have an understanding as to
8 whether that what you call those dotted lines
9 for that rectangular area in Figure 8 is the same
10 as these broken lines that form no part of the
11 claim design or are they something different?

12 MR. MONACH: Objection; asked and
13 answered, vague, lack of foundation, calls for a
14 legal conclusion.

15 THE WITNESS: I'm not exactly sure what
16 those dotted lines mean.

17 MR. ZELLER: Okay. Let's take a few
18 minutes.

19 THE VIDEOGRAPHER: We're off the record
20 at 6:51 p.m.

21 (Recess taken)

22 THE VIDEOGRAPHER: We are back on the
23 record at 7:07 7:03 p.m.

24 You may proceed.

25 //

1 BY MR. ZELLER:

2 Q. I'm going to show you what's previously
3 marked as Exhibit 6, which is a copy of United
4 States Design Patent 593,087.

5 Can you let us know when you've had a
6 chance to look at the '087 design patent.

7 A. (Witness reviewing document.)

8 Okay.

9 Q. Do you recognize the '087 design patent
10 as a patent that you're a named inventor on?

11 A. Yeah, looks like it.

12 Q. What, from your perspective as an
13 inventor of the design that's shown here on the
14 '087 design patent, was new or original about this
15 design?

16 MR. MONACH: Object to the form of the
17 question as vague, lacking in foundation, and
18 incorporating or requesting a legal conclusion.

19 THE WITNESS: What was new about the
20 iPhone? What was new about this patent?

21 BY MR. ZELLER:

22 Q. What was new and original about the
23 design that's shown here in these drawings that
24 make up the '087 design patent?

25 MR. MONACH: Same objection.