

# **EXHIBIT 3**

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

APPLE INC., A CALIFORNIA	)	C-11-01846 LHK
CORPORATION,	)	
	)	SAN JOSE, CALIFORNIA
PLAINTIFF,	)	
	)	OCTOBER 13, 2011
VS.	)	
	)	PAGES 1-104
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.	)	

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE LUCY H. KOH  
UNITED STATES DISTRICT JUDGE

APPEARANCES ON NEXT PAGE

OFFICIAL COURT REPORTER: LEE-ANNE SHORTRIDGE, CSR, CRR  
CERTIFICATE NUMBER 9595

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A P P E A R A N C E S:

FOR PLAINTIFF MORRISON & FOERSTER  
APPLE: BY: HAROLD J. MCELHINNY,  
MICHAEL A. JACOBS, AND  
RICHARD S.J. HUNG  
425 MARKET STREET  
SAN FRANCISCO, CALIFORNIA 94105

FOR COUNTERCLAIMANT WILMER, CUTLER, PICKERING,  
APPLE: HALE AND DORR  
BY: WILLIAM F. LEE  
60 STATE STREET  
BOSTON, MASSACHUSETTS 02109

FOR THE DEFENDANT: QUINN, EMANUEL, URQUHART,  
OLIVER & HEDGES  
BY: KATHLEEN M. SULLIVAN  
51 MADISON AVENUE, 22ND FLOOR  
NEW YORK, NEW YORK 10010  
BY: VICTORIA F. MAROULIS,  
KEVIN P.B. JOHNSON AND  
ANNA T. NEILL  
555 TWIN DOLPHIN DRIVE  
SUITE 560  
REDWOOD SHORES, CALIFORNIA 94065  
BY: MICHAEL T. ZELLER  
865 SOUTH FIGUEROA STREET  
10TH FLOOR  
LOS ANGELES, CALIFORNIA 90017

1 THE COURT: OKAY.

2 MR. MCELHINNY: WHAT I AM SAYING IS IF,  
3 FOR VARIOUS REASONS, YOU MAKE A DECISION NOT TO  
4 CHALLENGE A PARTICULAR PRODUCT, THAT DOES NOT GIVE  
5 THE INFRINGER A FOREGOING -- A FREE PASS TO  
6 CONTINUE TO BRING OUT NEW PRODUCTS THAT DO  
7 INFRINGE.

8 AND THAT QUESTION HAS ARISEN TWICE BEFORE  
9 DISTRICT COURTS, AND WE CITED THEM TO YOU, THE  
10 LATRIM CASE AND THE WHISTLER VERSUS DYNASCAN CASE,  
11 AND IN BOTH CASES THEY SAID "WE'RE NOT GOING TO  
12 ENJOIN YOUR OLDER PRODUCTS BECAUSE YOU WAITED TOO  
13 LONG FOR THOSE, BUT THE NEW PRODUCTS ARE NEW AND WE  
14 ARE GOING TO ENJOIN THOSE PRODUCTS."

15 AND THAT TIES IN AGAIN TO THIS IDEA OF  
16 HOW QUICKLY THE PRODUCTS MOVE IN CYCLES THROUGH  
17 THIS WORLD.

18 THE COURT: BUT DOESN'T THAT SORT OF  
19 UNDERMINE YOUR IRREPARABLE HARM ARGUMENT? I THINK  
20 THE CABBAGE THING ACTUALLY UNDERMINES IT BECAUSE  
21 CONSUMERS ARE FICKLE, ESPECIALLY IN ELECTRONICS.  
22 THIS MAY BE BIG TODAY.

23 WHO KNOWS, IN A YEAR, WHAT'S GOING TO BE  
24 THE NEXT BIG THING.

25 MR. MCELHINNY: WELL, SEE, I --

1 THE COURT: DON'T YOU THINK THAT SORT OF  
2 TEMPORAL LIMITATION ACTUALLY UNDERMINES YOUR  
3 IRREPARABLE HARM ARGUMENT?

4 MR. MCELHINNY: WELL, YOU GET TO DECIDE  
5 THIS. I DON'T.

6 THE COURT: UM-HUM.

7 MR. MCELHINNY: BUT I DON'T SEE IT THAT  
8 WAY.

9 THE COURT: OKAY.

10 MR. MCELHINNY: I SEE IT AS THE SUPREME  
11 COURT'S LINE OF ACTIVITY THAT'S CAPABLE OF  
12 REPETITION, BUT AVOIDS REVIEW.

13 IT'S TAKEN US FOUR AND A HALF MONTHS TO  
14 GET TO THIS HEARING.

15 THEY ALREADY ARE ANNOUNCING NEW PRODUCTS.

16 WHEN THOSE PRODUCTS COME OUT, WE WILL SEE  
17 THEM FOR THE FIRST TIME AND WE'LL DECIDE WHETHER OR  
18 NOT WE HAVE TO BRING ACTIONS ABOUT THEM.

19 BUT IN THE MEANTIME, AS MR. MUSIKA AND AS  
20 MR. WAGNER POINTED OUT, IN THE MEANTIME, THESE  
21 PRODUCTS ARE INJURING US.

22 AND, AS YOUR HONOR DEMONSTRATED PRETTY  
23 CLEARLY, THEY ARE INFRINGING THE PATENTS.

24 BUT FOR THE FACT THAT I -- YOU KNOW, YOU  
25 NEED -- I HOPE YOU WILL LOOK MORE CAREFULLY AT THIS