Page 1

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 1              UNITED STATES DISTRICT COURT
 2              SOUTHERN DISTRICT OF NEW YORK
 3

    J.T. COLBY & COMPANY, INC.,
 4  d/b/a BRICK TOWER PRESS,
    J. BOYLSTON & COMPANY,
 5  PUBLISHERS, LLC and
    IPICTUREBOOKS, LLC,
 6
            Plaintiff,
 7

    vs.                        Case No. 11-CIV4060 (DLC)
 8

    APPLE, INC.,
 9
            Defendant.
10  ------------------------------/
11
12       HIGHLY CONFIDENTIAL ATTORNEYS' EYES ONLY
13    VIDEOTAPED 30(b)(6) DEPOSITION OF STEVE GEDIKIAN
14              Redwood Shores, California
15             Thursday, September 27, 2012
16
17
18
19
20
21  Reported by:
22  LORRIE L. MARCHANT, CSR No. 10523
                     RPR, CRR, CCRR, CLR
23
24  JOB NO. 53421
25
```

1   in its -- the existence of this product and its

2   basic features.

3   Q.   What did you know about the basic features

4   of the product before it was released?

5   A.   That the product is an application used for

6   creating -- or an application that anyone can use to

7   create a work that could then be consumed using

8   iBooks or experienced using iBooks.

9   Q.   When was iBooks Author released to the

10   public?

11   A.   I believe it was January of this year.

12   Q.   Do you have any knowledge concerning the

13   reasons that Apple decided to develop the iBooks

14   Author product?

15   A.   I'm not sure of what the intentions were or

16   the reasoning for why we created that product.

17   Q.   Are you aware of the goals that Apple has

18   for that product?

19   A.   iBooks Author is meant to make it easy

20   for anyone to be able to -- to take their

21   inspiration and turn it into a work that can be

22   experienced with iBooks. There are many

23   applications. It's like -- just like a word

24   processor or ...

25   Q.   When you say "the product can be

1 experienced with iBooks," do you mean that the works

2 that people create using iBooks Author can be made

3 available for download on the iBookstore?

4   A.   That's one of the ways that those works

5 could be experienced.

6   Q.   How -- what other ways are there?

7   A.   A person who's created a work could take

8 the document that's been -- that is saved from

9 iBooks Author and put it on a Web site if they wish

10 and make it available to anybody.

11   Q.   If the --

12   A.   There are -- there are many different ways.

13   Q.   Forgive me for interrupting. Were you

14 finished with your answer?

15   A.   Yes, now I'm finished.

16   Q.   If a user of iBooks Author uploaded the

17 result of iBooks Author to a Web site, would

18 somebody who wished to experience that work need the

19 iBooks software?

20   MS. RAY: Objection.

21   THE WITNESS: It depends what you mean by

22 "experience."

23   BY MR. CHATTORAJ:

24   Q.   What do you mean? You've been using the

25 word "experience." What do you mean by that?

1   any other format, that is up to the person to decide

2   how they want that information to be disseminated.

3   Q.   But if that were done, the features of the

4   iBooks Author work that had been created would not

5   all be carried over; right?

6   A.   It depends which features they used.

7   Q.   So it's possible that they could be

8   distributed by e-mail, then, iBooks Author works?

9   A.   The contents of an iBooks Author document

10   could be copied and pasted into an e-mail, the words

11   that you write, and then disseminated in that

12   fashion. It is for the author to decide how they

13   want to share that information.

14   Q.   Are you familiar with the name "iBooks 2"?

15   A.   I am.

16   Q.   What is it?

17   A.   It is the name -- it is -- it is the second

18   version of the iBooks application.

19   Q.   Is the original iBooks application still

20   available for download from Apple?

21   A.   Not to my knowledge.

22   Q.   What are the differences between iBooks 2

23   and the original iBooks software, to the best of

24   your knowledge?

25   A.   iBooks 2 added support for works created

1   with iBooks Author. I believe that was the primary

2   features. So -- and there was a number of features

3   that were associated with that.

4   So, for example, study cards is a feature

5   that was -- that came with support for iBooks Author

6   books and documents.

7   Q.   When was iBooks 2 released to the public?

8   A.   I believe it was released at or around the

9   same time as iBooks Author.

10   Q.   So would that be January 2012?

11   A.   I believe so. I'm not certain.

12   Q.   How would you ascertain that date with

13   certainty?

14   A.   Look at a press release.

15   Q.   Are you familiar with the trade name

16   "iBooks Textbook"?

17   A.   I'm familiar with the term "iBooks

18   Textbook."

19   Q.   I'll withdraw the question. I didn't mean

20   to imply anything legal, a trade name.

21   Are you familiar with the name "iBooks

22   Textbook"?

23   A.   I'm familiar with the name "iBooks

24   Textbook."

25   Q.   What is it?

1   A.   It is a descriptive term to describe one

2   type of work that could be created with iBooks

3   Author.

4   Q.   Did iBooks Textbooks exist before the

5   release of iBooks Author?

6   A.   There was a textbook category available in

7   the iBookstore for which books that could be

8   described as textbooks were available.

9   Q.   Who is the intended audience of iBooks

10   Author?

11   A.   Anyone with a Mac or PC -- I'm sorry.

12   Anyone with a Mac who wishes to create a

13   work.

14   Q.   Can iBooks Author be used on any platform

15   other than a Mac personal computer?

16   A.   iBooks Author is only available on the

17   Mac.

18   Q.   So iBooks Author cannot be used on an iPad?

19   A.   It depends what you mean by can iBooks

20   Author be used on an iPad. The work that is created

21   with iBooks Author can be experienced on an iPad.

22   Q.   Through the use of the iBooks software

23   application; right?

24   A.   Through the use of the iBooks application,

25   the work that's been created with an iBooks

1   used for many, many purposes. They can use to it

2   type words. They can use it to paste in images.

3   They can use to it create -- they can use many of

4   the various objects that are included, widgets that

5   are included in the application, to lay out a work,

6   as the author intended. So that -- these are the

7   ways that that application may be used.

8   Q.   So iBooks Author can be used to design the

9   appearance of the iBooks Author work; right?

10   MS. RAY: Objection.

11   THE WITNESS: iBooks Author can be used

12   to take -- I'm not sure I'm understanding what

13   you're getting at or what your question is

14   specifically. Could you restate your question. I

15   just want to make sure I understand what you're

16   trying to say.

17   BY MR. CHATTORAJ:

18   Q.   Well, I'm not trying to -- I'm just asking

19   you questions.

20   A.   That's fine. I want to make sure I

21   understand your question before I answer it.

22   Q.   That's a good idea, and you're always

23   welcome to ask for clarification.

24   When I say "design," what I mean is to use

25   the iBooks Author tool to arrange the elements --

1   and by "elements" I include both, you know, included

2   objects, text, pictures, covers, in a way that the

3   author wishes to present a certain design of the

4   work to anyone who seeks to read or experience that

5   work.

6   A.   A person who's creating a work with

7   iBooks Author can use iBooks Author's various

8   functions to lay out the contents of that work any

9   which way they please.

10   Q.   Does Apple act as a publisher of books

11 created with iBooks Author that are then offered

12 for sale or download through the iBookstore?

13   MS. RAY: Objection.

14   THE WITNESS: I'm not sure. It depends

15 on -- well, no. I don't know what you mean by

16 "publisher."

17   BY MR. CHATTORAJ:

18   Q.   Do you have an understanding of what the

19 word "publisher" means in general?

20   A.   It is a -- a publisher -- a publisher, in

21 my view, is a organization or legal entity that is

22 responsible for the cost of distributing work. At

23 which point I imagine that they share in any

24 revenues that might result from a purchase of that

25 work.

1   A.   All this -- all this information is, but

2   from a customer's perspective, there is no

3   representation of that separate data file. From the

4   customer's experience perspective, when they open

5   the document, they are viewing a singular document.

6   So there is -- while technically under --

7   from an engineering perspective, that data might be

8   stored in a separate file, or in this case, the ones

9   that you listed are, but from a customer experience

10 perspective, they are not represented in a separate

11 fashion.

12   Q.   Right. But just to be clear, from an

13 engineering perspective, annotations, highlighting,

14 font changes, font size changes, backgrounds, themes

15 are all stored in a separate data file from the

16 actual --

17   A.   They're not stored within the book. I

18 don't know if it's a data file or if it's a

19 database, but they're not -- they don't modify the

20 original book or the original document that you're

21 looking at.

22   Q.   If I own -- let me start over.

23   I have an iTunes account, and I use my

24 iTunes account to download content both to my iPhone

25 and to my iPad -- that's my iPad (indicating). I

1   BY MR. CHATTORAJ:

2   Q.   Continuing to look at page 3 of Gedikian

3   Exhibit 8. The left-hand side, there's some text

4   that describes various features of the iBooks app.

5   Is that a fair characterization?

6   A.   It appears that there are -- there are a --

7   several paragraphs that describe various aspects of

8   the iBooks app.

9   Q.   The third paragraph down has a title in

10   heading font that says, Use Reading Tools. Is that

11   a fair characterization of that phrase?

12   A.   That is an accurate reading of that phrase.

13   Q.   Would you call that a --

14   (Discussion off the record.)

15   MR. CHATTORAJ: We took a brief pause for

16   the court reporter and videographer. We are

17   continuing.

18   BY MR. CHATTORAJ:

19   Q.   You just testified that "Use Reading Tools"

20   was an accurate reading of the phrase that appears

21   there. I'm asking you also is that fair to

22   characterize that has a heading describing the

23   content in the paragraph that appears below the

24   phrase "Use Reading Tools"?

25   A.   It appears that "Use Reading Tools" is a

1   heading for that paragraph.

2   Q.   The paragraph reads, You can highlight or

3   underline text, make notes, look up a word in the

4   dictionary or on the Web or search inside the book.

5   You can even VoiceOver to have iPad read to you.

6   Did I read that correctly?

7   A.   Yes.

8   Q.   Would it be fair to characterize those

9   features as reading tools?

10   MS. RAY: Objection.

11   THE WITNESS: That is one interpretation of

12 these features.

13   BY MR. CHATTORAJ:

14   Q.   Is that the interpretation that is

15 reflected on this page?

16   A.   I believe that -- allow me to read it one

17 more time.

18   It depends on what you mean by "reading

19 tool." I believe using highlights or underlining

20 text or adding a note or looking up a word doesn't

21 necessarily have to mean that -- that it aids you in

22 reading. It's just a tool that's related to the

23 concept of reading in this particular case.

24   Q.   So this is a misleading, "Use Reading

25 Tools"?

1   preparation of the documents?

2   MS. RAY: Unless I see them, I can't know

3   whether I did or not.

4   MR. CHATTORAJ: I am showing Counsel a

5   document, as she suggested.

6   And I ask you to verify. Is this the

7   document you're referring to (indicating)?

8   MS. RAY: I believe it is.

9   MR. CHATTORAJ: Okay. We'll print that out

10   and look at that after the next break.

11   BY MR. CHATTORAJ:

12   Q.   Mr. Gedikian, is the iBooks software

13   application an interactive Web collaboration system?

14   A.   It could be interpreted in that way, yes.

15   Q.   How?

16   A.   By interactive, when you open a document

17   with iBooks, you can interact with the contents of

18   that document. You can swipe through pages. You

19   can change the background. You can change the font

20   and point size. You can add commentary in the form

21   of notes and highlights. You can-- so, yeah. So in

22   those ways it is an interactive -- read the

23   description again.

24   Q.   Interactive Web collaboration system.

25   A.   Yeah. You could view it that way. For

1 example, if my wife and I both had iBooks and were

2 using the same account, we could both be looking at

3 the same document and making such edits and changes

4 to them.

5   Q.   Are you and your wife permitted by Apple's

6 terms of use to share the same account?

7   A.   I don't know.

8   Q.   Is it part of Apple's marketing

9 communications to the general public that they

10 should share iTunes accounts?

11   A.   In my experience, when we talk about

12 "accounts," we talk about them in the context of one

13 account per person.

14   Q.   So other than sharing iTunes accounts, are

15 there other ways in which this phrase, "interactive

16 Web collaboration systems," would apply to iBooks?

17   A.   Well, the fact that I can also take the

18 highlights in the book and the commentary that I add

19 and share them with my friends or my wife via e-mail

20 or other mechanisms, I believe that is another

21 interpretation of how iBooks is an interactive

22 collaboration tool.

23   Q.   So you're able to send e-mails from within

24 the iBooks application?

25   A.   Yes. So if I type up a highlight -- or if

1   I make a highlight and add a notation to it or a

2   passage or a comment or whatever, there is a way for

3   me to go and share that note directly from inside of

4   iBooks, which would bring up an e-mail form inside

5   of iBooks and send it.

6   In the same way that you can share photos,

7   for example, from the Photos app via an e-mail.

8   Q.   In my experience of iOS, if I'm using the

9   Photos app or iBooks app or iTunes -- withdrawn.

10   When I'm using the iBooks app in iOS and

11   I -- I seek to e-mail a document, doesn't it open

12   the Mail app?

13   A.   I don't believe that to be the case. I

14   believe a mail sheet -- an e-mail sheet comes up on

15   top of the app, at which point you can pick your

16   sender and subject and you can see the body of the

17   message that is pre-populated by iBooks, and then

18   you can send that message. And when you press send,

19   iBooks is still visible.

20   Q.   But as a technical matter, is that mail --

21   is that e-mail functionality -- withdrawn.

22   As a technical matter, does the e-mail need

23   to be sent by the e-mail client that's installed on

24   an iOS device?

25   A.   As a technical matter, the e-mail sheet is

1 a -- is a representation of a Mail sheet that

2 would -- you could also access inside of the mail

3 app.

4   If you did not have an account set up, for

5 example, inside of the Mail app for e-mail, then

6 attempting to use that feature inside of iBooks

7 would not -- would require you to set up a mail

8 account.

9   Q.   Is the e-mailing function that you're

10 talking about within iBooks handled by mailing

11 software installed on an iOS device as opposed to

12 iBooks, after iBooks has populated the content of

13 the e-mail?

14   MS. RAY: Objection.

15   THE WITNESS: Can you repeat the question,

16 please.

17   BY MR. CHATTORAJ:

18   Q.   Is the e-mailing function that you're

19 talking about within iBooks handled by e-mail

20 software that is installed on an iOS device separate

21 from iBooks?

22   A.   I'm not sure I understand what you mean by

23 "handled."

24   Q.   Does the e-mail that is sent out by the

25 user -- withdrawn.

1   Does iBooks contain an e-mail client?

2   A.   iBooks -- iBooks can access a system -- a

3   developer API that allows applications to send

4   e-mails.

5   Q.   What is an API?

6   A.   An API is, I believe, short for application

7   programming interface. It's basically a function of

8   the programming language that is used to create an

9   app that provides some sort of feature or benefit

10   within the app.

11   So in the case of -- in this specific

12   example, I believe there's a mail API that allows

13   you to invoke or bring up a mail sheet, if you will.

14   We call it a mail sheet. Which allows you to

15   display an e-mail message and send it from within an

16   application.

17   Q.   Is the iOS mail API available to other

18   software applications that developers can create for

19   iOS devices?

20   A.   I believe that to be the case.

21   Q.   So does iBooks itself contain anything

22   other than a call upon the mail API to have its

23   e-mail functionality?

24   A.   Can you restate the question?

25   Q.   You said that iBooks calls on mail API in

1   order to put up the e-mail sheet; right?

2   A.   iBooks will invoke a mail API that will

3   display a blank e-mail -- or a new e-mail sheet that

4   iBooks will then pre-populate with information,

5   depending on what you're sharing.

6   Q.   Is the mail API itself part of the iBooks

7   code?

8   A.   The mail API is a -- my understanding is

9   that the mail API is a function of the iOS system

10   software, and that applications can choose to take

11   advantage of that functionality.

12   Q.   So testimony answer is, no; right?

13   MS. RAY: Objection.

14   THE WITNESS: I believe I answered your

15   question.

16   BY MR. CHATTORAJ:

17   Q.   Is the mail API part of iBooks?

18   A.   The mail API is a system-level API that any

19   application can take advantage of. It depending on

20   what you mean by "is the mail API part of iBooks."

21   The fact that iBooks contains code that invokes the

22   mail API could be construed as it being part of

23   iBooks.

24   Q.   What other collaborative methods exist with

25   respect to iBooks other than sharing iTunes accounts

1   and e-mailing certain content to other users?

2   A.   As a user you can choose to visit the

3   iBookstore, and from there you can provide ratings

4   and reviews on any given book and have a

5   conversation, if you will, with other users about

6   the contents of a particular title.

7   You can also access a "tell a friend"

8   feature within the store that allows you to

9   recommend a particular title to a friend or a

10   colleague or a family member, at which point you can

11   then have subsequent conversations, an e-mail or

12   other forms.

13   In iOS 6, we added the ability to like a

14   particular title on Facebook. And it would show you

15   which of your friends have also liked the particular

16   title. So there are multiple ways that you can

17   interact with others on a particular title.

18   Q.   Going back to the e-mail functionality for

19   a second, does the recipient of the e-mail that you

20   send by pressing the e-mail button within iBooks

21   have to be using the iBooks software?

22   A.   The recipient of the e-mail that's

23   generated is a -- based on the user's action does

24   not require that the customer on the other end have

25   iBooks to read the e-mail.

1   Q.   And what does iBooks populate the e-mail

2   with when you sent an e-mail out of the iBooks

3   software?

4   A.   Depends on what you're sharing.

5   Q.   What kinds of things can you share by

6   e-mail?

7   A.   You can share -- I believe you can share a

8   specific title. So, for example, if you want to

9   recommend a book that you have been reading to a

10   friend, you can share the existence of that title,

11   at which point the recipient would receive an e-mail

12   with a reference to the title and the ability to go

13   to the iBookstore to get more information.

14   You can share annotations, notes, comments,

15   passages, whatever, that you've added to a book, or

16   any title that you have in your iBooks bookshelf.

17   You can share highlights that you've made.

18   I believe those are the -- the things that

19   come mind.

20   Q.   And the person who receives it can read it

21   regardless of whether they have the iBooks

22   application; right?

23   A.   That is a standard e-mail, so it will

24   arrive in their inbox. And whether they use Gmail

25   or any mail reading application.

1   Q.   Now, you mentioned user reviews of books,

2 right, as another collaboration method?

3   A.   That is one way that a customer can, yes,

4 interact with another customer and collaborate on

5 the dialogue of a particular title.

6   Q.   Is a person able to write reviews of books

7 from within the iBooks app interface?

8   A.   A customer can write a review from within

9 the iBookstore which is represented inside of the

10 iBooks app.

11   Q.   Is that another API call?

12   A.   The review is a feature of the iBookstore.

13 So that's just part of the fabric of the iBookstore.

14   Q.   Please describe for me the user experience

15 of writing a review of the title from -- within the

16 iBookstore, as accessed through the iBooks app.

17   A.   So as a customer, you would tap the store

18 button and arrive on typically the iBookstore home

19 page. From there you can tap on any title.

20   And when you tap on the title, you're taken

21 to a -- a product details page that describes the

22 details of that title. And within that page there's

23 a way to provide a star rating, which is a

24 five-point star, like, quick way to provide a

25 positive or negative view of a particular title, as

1 well as a writer review feature, where you can go in

2 and provide a subject line and, in effect, a

3 dialogue. Whatever you want to say about a

4 particular title.

5   Q.   And that's a dialogue?

6   A.   It's -- I don't think it's a dialogue. I

7 think it's within -- I'm not certain. I think it's

8 within the page.

9   And then by default, what you see are

10 existing reviews and commentary that have been added

11 by other users, but you can choose to add your own.

12   Q.   But can you respond to existing reviews and

13 commentary?

14   A.   You can tap "Write a review" and identify a

15 particular person's name and write whatever you

16 want. So, in effect, yeah you're responding to that

17 person by doing that.

18   Q.   By stating that you're responding to

19 their --

20   A.   Correct.

21   Q.   -- review --

22   A.   Correct.

23   Q.   -- or comment?

24   A.   By stating the person's name and writing

25 whatever it is that you want to say, you are

1 responding to that person. Whether they choose to

2 read it or not is up to them.

3   Q.   Are these user reviews similar to user

4 reviews that are available in other e-commerce

5 sites, such as Amazon?

6   MS. RAY: Objection.

7   THE WITNESS: I can't say -- I can't attest

8 to what specific features other e-commerce sites

9 employ. I don't -- I don't know.

10   BY MR. CHATTORAJ:

11   Q.   Have you ever visited Amazon.com?

12   A.   I have visited Amazon.com.

13   Q.   Does Amazon.com contain user reviews?

14   A.   I have seen customer reviews on Amazon.com.

15   Q.   Do those include star ratings?

16   A.   I believe that they do have a notion of a

17 simple positive or negative rating. I'm not sure if

18 it's stars or not.

19   Q.   Do they have reviews? I mean content that

20 reflects users' opinions about products.

21   A.   From my experience, I have seen Amazon -- I

22 have seen text from users who are discussing the

23 topic of that particular title --

24   Q.   Does --

25   A.   -- or product, whatever it is.

1 context of Amazon.com.

2   So I then asked does the iBookstore

3 describe that use as collaboration?

4   MS. RAY: Objection.

5   THE WITNESS: I'm not aware of a specific

6 instance where the word "collaboration" is used in

7 the context of our marketing materials on -- with

8 regard to customer reviews.

9   BY MR. CHATTORAJ:

10   Q.   Are you aware of any use of the word

11 "collaboration" in connection with any marketing

12 materials concerning iBooks?

13   A.   I can't say whether or not that specific

14 word is used in context of our marketing materials

15 with regards to iBooks. There may be similar words,

16 like "sharing," for example. The fact that you can

17 share your notes.

18   Q.   But the word "collaboration"?

19   A.   I'm not aware of a specific use -- or I

20 can't recall a specific use of that word, of that

21 specific word.

22   Q.   What about the use of the word

23 "collaborative" in marketing materials in connection

24 with iBooks?

25   A.   I don't recall a specific instance where

1   I -- where I've seen that word or remember the use

2   of that word.

3   Q.   Same question with respect to the

4   iBookstore.

5   A.   I don't recall a specific instance where

6   I've used or seen the word "collaborate" or

7   "collaborative" used in the context of the

8   iBookstore in customer-facing marketing materials.

9   Q.   What about internal communications

10   concerning marketing of the iBookstore?

11   A.   I have not seen every single e-mail. I

12   can't tell you for certain whether or not an

13   employee at Apple used that term in the context of

14   iBooks.

15   Q.   Have you ever seen it?

16   A.   I can't recall. I may have. I don't know.

17   "Collaborative" is a bit of a technical or techie

18   term. We usually use synonyms for technical terms.

19   We try to make things simple for people to

20   understand. So words like "sharing" is -- is a more

21   appropriate term from a customer's perspective to

22   describe the things that you can do in the context

23   of collaboration.

24   Q.   Is that true of your internal

25   communications concerning marketing of the