

# Exhibit 13

(Part 1 of 4)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JT COLBY AND COMPANY, INC., D/B/A  
BRICK TOWER PRESS, J. BOYLESTON AND  
COMPANY PUBLISHERS, LLC, AND IPICTURE  
BOOKS, LLC,

Plaintiffs,

-against-

Index No.  
11-CV-4060 (DLC)

APPLE, INC.,

Defendant.

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VIDEOTAPED DEPOSITION OF ROBERT SCHERER

New York, New York

November 16, 2012, 9:06 a.m.

Reported By:

Nicole Sesta

Ref: 8577

1 R. Scherer

2 A In 1972 I went to work for what  
3 was then called the Patent Office, subsequently  
4 the Patent and Trademark Office. I was a  
5 trademark examiner from 1972 until 1974.

6 Q So you worked as a trademark  
7 examiner at the patent office for about two  
8 years?

9 A With the Patent and Trademark  
10 Office two, two-and-a-half years, yes.

11 Q What were your duties as a  
12 trademark examiner?

13 A To review incoming applications,  
14 to make sure basic requirements were met, to  
15 determine whether a particular mark was  
16 descriptive or merely descriptive, to conduct  
17 searches of the trademark register for  
18 registrations and then pending applications.

19 I also was involved on a rotating  
20 basis in post registration work, spent some time  
21 in the assignment branch, was an interlocutory  
22 examiner with the TTAB for a short time. Did  
23 everything that was really involved in reviewing  
24 a trademark application.

25 Q Have you now told me about all

1 R. Scherer

2 positions or titles between the two, no.

3 Q Were there any positions or titles  
4 below trademark examiner during the period you  
5 worked there?

6 MR. RASKOPF: Objection to  
7 the form of the question. You may  
8 answer.

9 A For non-attorneys.

10 Q What were those positions or  
11 titles?

12 A There would have been secretary.  
13 I'm not sure of any other titles.

14 Q Did anybody report to you when you  
15 worked at the Patent and Trademark Office  
16 besides a secretary?

17 A No.

18 Q So is it fair to say that the  
19 lowest level attorney position at the Patent and  
20 Trademark Office at the time you worked there  
21 was a trademark examiner?

22 MR. RASKOPF: Note my  
23 objection to the form.

24 A That was the entry level title.

25 Q Correct. So coming right out of

1 R. Scherer

2 deposition in a trademark infringement case?

3 MR. RASKOPF: Objection to  
4 the form of the question.

5 A I don't recall.

6 Q When is the last time you cleared  
7 a trademark for use and registration?

8 MR. RASKOPF: Objection to  
9 the form of the question.

10 A I don't know the exact date. It  
11 would have been toward the latter portion of my  
12 time at Time Warner.

13 Q Can you tell me the year in which  
14 you last cleared a trademark?

15 MR. RASKOPF: Objection.  
16 Asked and answered.

17 A 2005.

18 Q When I say cleared a trademark,  
19 are you familiar with that terminology?

20 A Yes, I am.

21 Q What does that mean to you,  
22 cleared a trademark?

23 A Conducting all of the necessary  
24 searches, evaluating search results, and  
25 investigating those references that appear to be

1 R. Scherer

2 different from computer hardware that I would  
3 view it as a completely new use of the iBooks  
4 mark.

5 Q What is the basis for that  
6 statement?

7 A The difference in products.

8 Q What do you believe to be the  
9 differences between the two products?

10 A One is a very specialized E-book  
11 reader program and the other one is simply a  
12 computer, and I think those are very different  
13 uses.

14 Q In your report you state that the  
15 PTO created arbitrary classes of goods and  
16 services numbered one to 45; is that correct?

17 A Correct.

18 Q You also state that the primary  
19 purpose of this classification system is to  
20 allow the PTO to charge separate filing fees per  
21 class, correct?

22 A Despite arguments to the contrary  
23 and positions they might otherwise take I think  
24 that's the reason.

25 Q Isn't it true that the US uses the