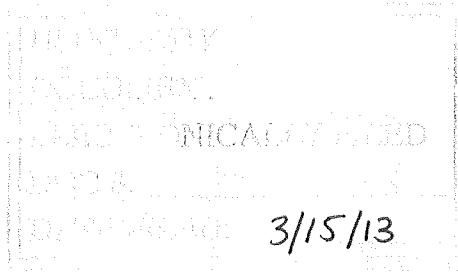
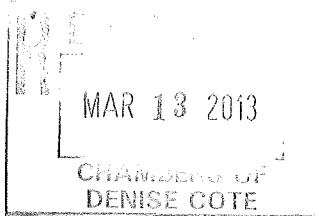


GIBSON DUNN



Gibson, Dunn & Crutcher LLP

200 Park Avenue
New York, NY 10165-0193
Tel 212.351.4000
www.gibsondunn.com

Orin Snyder
Direct: +1 212.351.2400
Fax: +1 212.351.6335
OSnyder@gibsondunn.com

March 13, 2013

D3F
3/15/13VIA ELECTRONIC MAIL

The Honorable Denise L. Cote
United States District Court for the Southern District of New York
500 Pearl Street, Room 1610
New York, NY 10007-1312


Re: United States v. Apple Inc., et al., No. 12-CV-2826 (DLC)

Dear Judge Cote:

On behalf of Apple, we respectfully submit this letter to provide the Court with excerpts from the deposition of Eddy Cue, which was taken by the plaintiffs yesterday in Palo Alto. Mr. Cue's testimony provides additional evidence that Mr. Cook does not possess unique personal knowledge about the relevant issues in this case.

We thank the Court for its kind attention.

Respectfully submitted,


Orin Snyder

cc: All counsel of record

101477163.1

EXHIBIT A

EDDY CUE – APPLE INC.

**ROUGH DRAFT OF DEPOSITION
TRANSCRIPT**

3/12/2013

1

2 UNEDITED, UNCERTIFIED ROUGH DRAFT/REALTIME OUTPUT

3

4 The information you are viewing is provided

5 by the Reporter as a Litigation Support tool using

6 "Realtime" computer technology. This is a ROUGH DRAFT

7 and by statute, CCP Section 2025.540(b), it may not be

8 used as a citation in any official capacity or for any

9 official purpose. Please be aware that page and line

10 references in this draft will not coincide with the

11 Official Transcript, per standards set by National

12 Court Reporters Association.

13 Please recognize this draft may contain

14 untranslates, mistranslates, misspelling, unidentified

15 speakers and unedited punctuation which will not

16 appear in the Official Certified Transcript.

17 By ordering, accepting and utilizing this

18 rough draft, you agree:

19 1. To also purchase the "Official" (certified)

20 version of the Transcript and;

21 2. Not to hold the Reporter or Agency responsible

22 for any discrepancies between this draft and the

23 Official Certified Transcript.

24

25

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]

16 Q. Can you tell me what information you have
17 regarding whether there were private conversations
18 between Mr. Jobs and Mr. Cook in 2009 and 2010?

19 MR. SNYDER: About.

20 THE WITNESS: About iBooks.

21 MR. BUTERMAN: Let me start with the general
22 are you privy to the private conversations that
23 Mr. Jobs and Mr. Cook have.

24 A. Again I'm privy to the private conversations
25 I've worked for Steve for almost 20 years. And so I

1 know his style of work and I've worked with him and so
2 I know the types of conversations we generally have.
3 And so they generally relate around the experts or
4 people with knowledge about a particular subject
5 matter. So...

6 MR. BUTERMAN: Okay. Let me mark as
7 Exhibit 17 a declaration of Timothy Cook.

8 (Plaintiff's Exhibit No. 18 was
9 marked for identification.)

10 THE WITNESS: Thank you.

11 MR. BUTERMAN: Q. Mr. Cue, have you seen
12 this document prior to today?

13 A. I have not.

14 Q. Could you take a moment to familiarize
15 yourself with the doc.

16 A. (Reviewing document.)

17 Q. You've had a chance to review Mr. Cook's
18 declaration?

19 A. I have.

20 Q. I notice throughout that Mr. Cook states
21 almost with respect to with respect to most of the
22 topics here various points regarding his /HR*EL of
23 involvement or knowledge. And he says in a number of
24 places or he qualifies or limits his knowledge or
25 statements to 2009 or 2010.

1 So for example, paragraph 12, I do not recall
2 discussing with Eddy Cue in 2009 or 2010 Apple -- any
3 of Apple's negotiations with publishers about Apple's
4 sale of e-books or any terms of the contracts Apple
5 offered to and/or executed with such publishers do you
6 recall having any conversations with Mr. Cook in 2011
7 or 2012 regarding these topics?

8 A. After he was CEO and the case was brought up,
9 I remember discussing it at our executive team.

10 Q. Before --

11 A. From Bruce Sewell *SPELL* bringing up as an
12 update --

13 MR. SNYDER: That's it.

14 THE WITNESS: I understand just bringing an
15 update up.

16 MR. BUTERMAN: Q. Before the.

17 MR. BUTERMAN: Q. Before the litigation was
18 launched, do you recall having any conversations with
19 Mr. Cook regarding any of Apple's negotiations with
20 the publishers.

21 A. I do not. There was no reason for me to have
22 any discussions with him about it.

23 Q. Now paragraph 13 says I do not recall
24 discussing with Steve Jobs in 2009 or 2010 any of
25 Apple's negotiations with publishers about Apple's

1 sales -- sale of e-books or any terms of the contracts
2 Apple offered to and/or executed with such publishers.

3 Are you aware of all the conversations that
4 Mr. Jobs and Mr. Cook had in 2009 and 2010?

5 A. No. I'm not aware of the conversations they
6 would have. But I'm aware of how Steve managed
7 projects and managed teams and who he would talk to
8 after working with him, as I said, for nearly two
9 decades, I certainly knew how things operated and if
10 Steve was going to have a discussion with Tim who
11 didn't really understand e-books or that part of the
12 business, I'm sure that I would have been involved in
13 the conversation.

14 Q. Prior to June or July of 2010, you were not a
15 member of Apple's executive team; correct?

16 A. That's correct.

17 Q. Okay. So do you have anything to add
18 regarding paragraph 14 in which Mr. Cook says I do not
19 recall anyone raising Apple negotiations with
20 publishers or any terms of the contracts Apple offered
21 to and/or executed with any such publishers during
22 executive team meetings I attended in 2009 or 2010?

23 A. Again, even though I was not a member of the
24 executive team, there were times where I was invited
25 by Steve to come to the executive team to give them an

1 update on a particular project that I was involved in.

2 And I don't ever recall that happening for
3 iBooks. So I never went before the executive team to
4 give them an update.

5 Q. Do you know if Mr. Jobs communicated with the
6 executive team regarding e-books in 2009 or 2010?

7 A. Again, I wouldn't know if he did or did not.
8 But it would be unusual for him if he was going to
9 talk about something I was so involved in, my
10 experiences with Steve is he would have brought me
11 into the executive team as he's done before.

12 Q. Now, do you recall having an e-mail exchange
13 in 2010 with Mr. Cook regarding Random House?

14 A. I think I saw an e-mail about that over the
15 last couple of days, but I'm not sure of the dates.

16 Q. Do you recall generally having an e-mail
17 exchange with Mr. Cook regarding efforts to get
18 Random House to move to an agency model with Apple?

19 A. No. I don't recall the discussion about it
20 from an agency model perspective. As I recall at the
21 time that Mr. Cook was asking me, he was interested in
22 our ability to have a full bookstore because he was
23 interested in making sure that we had the best ability
24 to sell other products. But I didn't have a
25 discussion with him about the deal.

1 Q. When you say the best ability to sell other
2 products, what products are you referring to?

3 A. iPads, iPhone, Macs. Mostly iPhones and
4 iPads. He was the leader of the sales group at that
5 time.

6 Q. Mr. Cook was?

7 A. He was.

8 Q. Was Mr. Cook involved at all in the pricing
9 decisions that were made with respect to those
10 products that he was the leader of the sales group on?

11 A. That's not an area at that time that I was
12 aware of. I wasn't in the sales meetings or pricing
13 meetings for hardware products.

14 Q. So you just don't know one way or the other?

15 A. Correct.

16 MR. SNYDER: When you mean sales, you mean
17 sales of.

18 A. Hardware.

19 MR. SNYDER: Hardware.

20 MR. BUTERMAN: Yeah.

21 A. That's what I...

22 MR. BUTERMAN: Q. In paragraph ten, Mr. Cook
23 says I did not play any meaningful role in the
24 commercial launch of either iBooks or the iBookstore
25 in April of 2010.

1 Do you have any understanding as to why
2 there's a qualification of meaningful?

3 A. I'm not sure what he means by that. From my
4 point of view, he didn't play any role other than he
5 was developing as the head of sales and manufacturing,
6 he was building iPads and other things where these
7 books would be written. Sorry read. And so maybe
8 he's referring to that. I know he was at the event we
9 launched the product. He wasn't on stage. But he was
10 at the event.

11 From my work in this, I never had any -- saw
12 him in any role at all directly to the books and
13 negotiations or development of the iBookstore or
14 iBooks.

15 Q. And just so we're clear, what was Mr. Cook's
16 role with respect to the development of the iPad?

17 A. Not the development, but the manufacturing.
18 Mr. Cook was the COO of Apple at the time and his
19 responsibility included sales, service and support.
20 Also included operations which includes manufacturing.
21 So he was manufacturing the iPads or was the leader of
22 the organization.

23 Q. In paragraph 11, Mr. Cook says that he did
24 not communicate with anyone from Hachette
25 HarperCollins Simon shoes Penguin or /RAO*US about

1 trade e-books in 2009 or 2010. Do you know whether he
2 had conversations with any of those companies in 2011?

3 A. Again, I don't know for sure. He's never
4 told me and I would be very surprised if he would have
5 called any of them without having a conversation with
6 me about them.

7 Q. And Mr. Cook does not mention any of the
8 parent companies of any of those publishers. Do you
9 know whether he had any conversations with any of the
10 parent companies of any of those publishers at any
11 time?

12 A. Again, most of the parents of these companies
13 are in the media business, which is again something I
14 was involved with. So generally, if he was going to
15 talk to them, I would have known about it because I
16 would have helped set it up or introduced them.

17 Q. And I understand what you're saying I'm
18 asking whether you know for certain whether he had any
19 conversations or did not have any conversations with
20 any of the parent companies in 2009 or 2010 for any of
21 these companies?

22 A. I can't be certain. But again, I would be
23 very surprised if that were to happen without him
24 asking me to set it up or tell him the individuals
25 that are involved.

1 Q. You yourself are not responsible for hardware
2 pricing; are you?

3 A. I am not.

4 Q. Do you know who is responsible for hardware
5 pricing?

6 A. I do now. It's a combination of
7 Peter Oppenheimer, Phil Schiller who's in marketing,
8 the CEO Tim are the primary players based on input
9 from their teams.

10 Q. And do you know who is in charge of hardware
11 pricing in 2010?

12 A. Again, I would expect that it would be
13 Peter Oppenheimer who was the CFO at the time, Steve
14 Jobs, Phil Schiller who was there and Tim as the COO
15 and head of the Mac division also.

16 Q. Okay.

17 A. For hardware.

18 Q. For hardware. I want to go back to a couple
19 of things. You can put that away. We're done with
20 that. Thank you for your time on that.

21 A. Thank you.

22 MR. BUTERMAN: Thank you, Mr. Snyder, for
23 suggesting that we discuss that.

24 MR. SNYDER: You're welcome.

25 MR. BUTERMAN: Q. You mentioned a couple of